



# ELIMINATING SYSTEMIC RACISM IN THE LEGAL SYSTEM:

A Collection of Legal Advocacy Papers by the LexisNexis  
African Ancestry Network LexisNexis Rule of Law  
Foundation Fellowship 2021 Cohort

Darnell-Terri Andrews • Jamal Bailey • Herbert Brown  
Ebony Cormier • Oscar Draughn • Charles Graham, Jr.  
Kailyn Kennedy • Pearl Mansu • Paris Maulet  
Shayla McIntyre • Emony Robertson • Feven Yohannes



LexisNexis

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## Foreword

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*Mike Walsh*

LexisNexis Legal & Professional, supported by our 10,000 employees, is committed to advancing the rule of law around the world. This is our mission and higher purpose as a business. The rule of law is the foundation for the development of peaceful, equitable, and prosperous societies. At its core, “rule of law” means that no one is above the law. There are many different definitions of the concept. We believe there are four key areas that define the elements of the rule of law: transparency of law, equality under the law, having an independent judiciary, and accessible legal remedy—or the ability to get timely resolution of a legal matter in court.



Today, five billion people live outside the shelter of the rule of law, leaving them vulnerable to human rights abuses and often struggling for daily survival. We’re working to bring this number down to zero through our day-to-day business operations, products and services, and actions as a corporate citizen. Together with the LexisNexis Rule of Law Foundation, we work on this mission closely with customers, leading industry associations, and not-for-profit organizations, such as the United Nations. Everything we do as a commercial business, from publishing content to introducing analytics and decision tools, helps strengthen legal infrastructures needed to advance the rule of law.

In collaboration with the United Nations Global Compact, we developed the “Business for the Rule of Law Framework,” and encourage all businesses to join us in advancing the rule of law. Improving the rule of law isn’t just good for business, it has a positive and measurable impact on society. For instance, high rule of law is correlated with high Gross Domestic Product per capita and high life expectancy. In countries where rule of law is stronger, child mortality rates and corruption rates are also lower. We feel that this is a future worth our focus.

As a part of this work, our people around the world have expressed their solidarity in strengthening our company’s culture of inclusion and diversity and eliminating racism in all its forms, particularly in relation to legal infrastructures. Our resources are used by attorneys and legal aid organizations to close gaps in justice. For example, our legal research platform contains over 20,000 civil rights-related cases, regulations, and legal publications. We are committed to supporting inclusion and racial equality. In response to the extraordinary events of 2020, we developed resources to safeguard civil rights and to provide transparency into legislative responses. One of these resources is a free regulatory tracker that provides visibility into government actions related to police reform. We also recently released a police misconduct module in our litigation analytics product, drawing insight from 60,000 cases. To safeguard election rights, we created a free resource kit to help citizens understand and exercise their right to vote.

As you’ll see in the pages ahead, we are tremendously proud to have launched this new Fellowship initiative from our African Ancestry Network and LexisNexis Rule of Law Foundation. The program was created in partnership with the Historically Black Colleges and Universities Law School Consortium, including Florida

Agricultural and Mechanical University College of Law, Howard University School of Law, North Carolina Central University School of Law, Southern University Law Center, Thurgood Marshall School of Law at Texas Southern University, and the University of the District of Columbia David A. Clarke School of Law. In its inaugural year, we provided 12 Fellowships across six law schools. Our people are working closely with each of the Fellows to support them in their rule of law project, develop their leadership skills, and accelerate their career. I have had the opportunity to work with each of our Fellows, and we're pleased to present their forward-thinking and exciting work in this publication. We at LexisNexis congratulate each of the Fellows on their work and look forward to their future leadership in advancing the rule of law and equality for all.

*Mike Walsh is the Chief Executive Officer of LexisNexis Legal and Professional Global.*



## Ronda Moore

Dr. Martin Luther King, Jr. said: “If you can’t fly, then run. If you can’t run, then walk. If you can’t walk, then crawl, but whatever you do, you have to keep moving forward.” It has been a personally inspiring experience to journey with this inaugural cohort of Fellows who have helped move our organization and the legal industry forward in advancing the rule of law and eliminating systemic racism in the legal system.



We kicked off this inaugural cohort in February of 2021. It was such an apropos celebration of Black History and Black Achievement. Our Fellows are exceptional in every way. To spend any amount of time with this amazing group, one will see shadows of the legacy of leaders and ancestors who have gone before them. As you read their insights, you will be reminded of Fannie Lou Hamer who demonstrated deep passion and persistence for the purpose of social justice. You’ll think of leaders like Frederick Douglass or James Baldwin who shared hard truths with the greatest eloquence and worked to reveal the ugly truths of racism, poverty, and inequality. And finally, I believe you will feel an immense sense of hope, courage, and achievement shown to us by ancestors like Mary McLeod Bethune and Dr. Martin Luther King, Jr.

I congratulate each of our Fellows for their commitment and scholarship over the past several months. I also express my heartfelt gratitude to the many LexisNexis mentors, subject matter advisors, leaders, and volunteers who partnered with our Fellows to help accelerate their careers, develop their leadership skills, and create opportunities to make a real difference. This Fellowship has been a showcase of the things that make our organization great—our people, demonstrating an active commitment to our mission of advancing the rule of law.

*Ronda Moore is the Chief Inclusion and Diversity Officer and Head of Global Talent Development for LexisNexis Legal and Professional. She also serves as a LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship Committee Member.*



## Adonica Black, JD

We must do what we can, where we can, whenever we can, to keep moving forward in the pursuit of justice and equity.

Throughout this Fellowship experience, the ethos I have seen emerge is one of tenacity and agility, with a clear focus on our “true North” towards eliminating systemic racism. In this effort, our Fellows have truly led the way. In this publication, you will learn more about the thought leadership these law student advocates have devised in charting new territory with the shared goal of advancing the rule of law and the many facets of life that it touches. The ideas presented in their legal advocacy papers are blueprints for groundbreaking initiatives to support equality under the law for disenfranchised people everywhere. The papers adopt the spirit of John Lewis that “freedom is an act.”



There is no perfect legal citation or exacting data model to succinctly encapsulate their work. That is because this Fellowship represents a genuine effort and execution in reimagining our society. Thus, our Fellows and the framework of this Fellowship must build it! No precedent to this program exists. As we work to rectify the wrongs of systemic racism, we turn to examples of courage, creativity, and skill found in the many civil rights heroes of the past to be bold and always move forward.

There are many challenges that come with dismantling a system of oppression and reconstructing one of equity and inclusion. Identifying the underlying causative issues that created this system and prescribing directed solutions are the two essentials standing at the top of that list of challenges. I stand with our Fellows and could not be more proud that the LexisNexis African Ancestry Network and the LexisNexis Rule of Law Foundation are boldly partnering with law students to reimagine such solutions to eliminate the evils of systemic racism.

As you will read on the pages ahead, the inaugural 2021 Fellowship cohort has wholeheartedly pioneered this task. They have conceived viable pathways to deconstruct the existing system of oppression in society, the workplace, and within criminal justice. They have, through this Fellowship, laid the foundation to build a system of equitable inclusion in its place.

*Adonica Black is the Director of Global Talent Development and Inclusion for LexisNexis Legal and Professional. She also serves as the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship Program Director and a Committee Member.*





## Tina DeBose

The binding belief that the rule of law is of utmost importance is something the African Ancestry Network embraced by stepping away from the sidelines and into the fray following the murder of George Floyd, among many other events. Being reminded that the rule of law is not just something that happens in courts and legal offices, it's something we help to create every day by choosing to step up as individuals, as well as using the influence of our organization.

As a result, AAN requested that RELX Senior Leadership commit to significant annual donations supporting organizations and projects fighting systemic racism. This was done in partnership with the LexisNexis Rule of Law Foundation as fiduciary.

As a result, our flagship Fellowship Program supporting Historically Black Colleges and Universities was birthed. The purposeful and passionate projects introduced by the Fellows fighting systemic and oppressive policies and procedures that disproportionately affect minorities will impact change for years to come.

As you read and learn more from the labor of love each Fellow dedicated to their project and see the outcomes of their efforts, you will gain a sense of pride in knowing what the world knows to be true today will be forever changed tomorrow because of their vision.

*Tina DeBose is the Manager for Technical Support at LexisNexis Legal and Professional. She serves as the LexisNexis African Ancestry Network Liaison to the LexisNexis Rule of Law Foundation Board.*



## Gretchen Bakhshai

LexisNexis Rule of Law Foundation's goal to create peaceful, equitable, and prosperous societies through practical actions any person, community, or region can take when focused on the end goal. However, we are facing a remarkable challenge.

According to the *World Justice Project Rule of Law Index® 2020*, the rule of law is declining around the globe, with a notable failure with respect to core human rights. These failures have accelerated attacks on fundamental rights around the globe. The Foundation serves as a catalyst in driving transparency and justice throughout the world, putting people first and holding every region visibly accountable for their actions, or lack thereof.

While the U.S. has traditionally been ranked in the top 15%, we must make improvements in three embarrassingly persistent areas: fundamental rights, civil justice, and criminal justice. These oppressions show up in



direct and indirect ways requiring the need for a systemic investigation and reevaluation of our legal systems. Tackling these issues requires commitments and meaningful action from organizations like ours, to ensure we are creating processes that provide equity for all.

In furtherance of these goals, the LexisNexis Rule of Law Foundation, in partnership with the African Ancestry Network, an employee resource group that has led our organization with the insight of where to focus and impact change in ending systemic racism, has engaged in the Fellowship twelve outstanding law students, two from each of the six HBCU law schools, with a deep commitment to tackling these issues through eliminating systemic racism in legal systems. We are beyond inspired by their vision and their developing projects with actionable tactics and measurable outcomes. Their work will make a difference in countless lives impacted by social injustice today and build a roadmap for others to do the same.

*Gretchen Bakhshai is the Senior Vice President of Commercial and Head of Business Development at Knowable, a subsidiary of LexisNexis Legal and Professional. She also serves as a LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship Committee Member.*



## Hannah Hardin

With the advent of technology and digital connectivity, we have begun to be presented with daily visual reminders of injustices occurring in our communities and around the world. A vast majority of those injustices occur in the absence of the rule of law. Here in the United States those injustices are disproportionately directed towards people of color.

For the rule of law to be effective, there must be equality under the law, transparency of law, an independent judiciary, and access to legal remedy. One of the ways we can ensure these tenets apply to all members of our society is by eliminating racial bias in the legal system. This is where the LexisNexis African Ancestry Network and LexisNexis Rule of Law Foundation Fellowship has and will make an impact.



In creating this fellowship, we have brought together a group of the brightest up-and-comers in the field of law. They have dedicated their time to tackling these very issues I mentioned earlier. They have had the opportunity to focus on important areas, including cash bail, bankruptcy reform, and diversity within the legal practice.

Working with these future lawyers the past few months has been an honor, and I cannot wait to see how they continue to shape the legal field in a way that makes it more equitable for all.

*Hannah Hardin is the Human Resources Director for LexisNexis Legal and Professional. She proudly serves as a LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship Committee Member.*

## Press Release

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### **LexisNexis Launches New Fellowship Program Aimed at Eliminating Systemic Racism in Legal Systems**

May 06, 2021

*Fellowship program will award \$120,000 to Historically Black College or University Law School Consortium students*

LexisNexis Legal & Professional, a leading global provider of information and analytics, launched a new Fellowship initiative from its African Ancestry Network (AAN) and LexisNexis Rule of Law Foundation (LNROLF) as a part of its commitment to eliminate systemic racism in legal systems and build a culture of inclusion and diversity at the company. The program was created in partnership with the Historically Black Colleges and Universities Law School Consortium (HBCULSC), including Florida Agricultural and Mechanical University College of Law, Howard University School of Law, North Carolina Central University School of Law, Southern University Law Center, Thurgood Marshall School of Law at Texas Southern University, and the University of the District of Columbia David A. Clarke School of Law.

The LexisNexis Fellowship consists of twelve law school students from the six law schools that make up the HBCULSC in its inaugural cohort, selected from a large, competitive applicant pool. The Fellows that have been selected for the 2021 Fellowship Cohort are Charles Graham, Jr. of Thurgood Marshall School of Law of Texas Southern University, Darnell-Terri Andrews of Southern University Law Center, Ebony Cormier of Southern University Law Center, Emony Robertson of Howard University School of Law, Feven Yohannes of Howard University School of Law, Herb Brown of North Carolina Central University School of Law, Jamal Bailey of the University of the District of Columbia David A. Clarke School of Law, Kailyn Kennedy of North Carolina Central University School of Law, Oscar Draughn of Florida Agricultural and Mechanical University College of Law, Paris Maulet of Thurgood Marshall School of Law of Texas Southern University, Pearl Mansu of the University of the District of Columbia David A. Clarke School of Law, and Shayla McIntyre of Florida Agricultural and Mechanical University College of Law.

“Our Fellows have demonstrated deep passion for the purpose of social justice and are willing to work to reveal and address the ugly truths of racism, poverty and inequality. One can’t help but feel an immense sense of hope, courage and achievement working with this group. Like many leaders who have

gone before, the Fellows will work to build their own legacy of leadership in advancing the rule of law,” said Ronda Moore, Chief Inclusion and Diversity Officer at LexisNexis Legal & Professional.

Each Fellow will be awarded \$10,000 and will spend nine months engaging in a unique experience that will accelerate their career, develop their leadership skills, and create opportunities to make a real difference. LexisNexis employees will work with Fellows on projects with the shared goal of eliminating systemic racism in our legal system and implementing solutions while advancing the four key elements of the rule of law—equality under the law, transparency of law, independent judiciary, and accessible legal remedy. The Fellowship began with a Fellowship Virtual Orientation held on March 8, 2021. LexisNexis will invest in the Fellows’ development by providing dedicated mentorship and recurring professional development sessions that will enhance Fellows’ technology, data analytics, and leadership skills.

“The core mission of advancing the rule of law which underpins LexisNexis and its foundation has never been more important than it is today. We applaud the work being undertaken by the Fellows to expose elements of systemic racism in the legal system and address these challenges through a rule of law-framework,” said Ian McDougall, President of LexisNexis Rule of Law Foundation.

Virtual programming that showcases the work of the Fellows will be shared through various initiatives internally for LexisNexis employees and externally with the HBCUs and key partners. At the culmination of the Fellowship, Fellows will present the results of their individual projects to the LexisNexis Legal & Professional CEO Mike Walsh, the Executive Team, and the HBCULSC Deans.

#### *About LexisNexis Legal & Professional*

LexisNexis Legal & Professional® is a leading global provider of legal, regulatory and business information and analytics that helps customers increase productivity, improve decision-making and outcomes, and advance the rule of law around the world. As a digital pioneer, the company was the first to bring legal and business information online with its Lexis® and Nexis® services. LexisNexis Legal & Professional, which serves customers in more than 160 countries with 10,400 employees worldwide, is part of RELX, a global provider of information-based analytics and decision tools for professional and business customers.

The African Ancestry Network (AAN) is organized as an official network for employees of African descent at RELX. AAN embraces RELX corporate diversity initiatives aimed at improving the company’s competitiveness by increasing the representation, development, promotion, and retention of black employees.

*About LexisNexis Rule of Law Foundation*

LexisNexis Rule of Law Foundation is a 501(c)(3) non-profit organization which has the mission to advance the rule of law around the world. The foundation efforts focus on the four key elements of the rule of law: transparency of the law, accessible legal remedy, equal treatment under the law, and independent judiciaries.

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# Introduction

by Ian McDougall

For the LexisNexis Rule of Law Foundation, the link between ending systemic racism in the legal system and our mission to advance the rule of law is clear: equal treatment under the law. When the legal process treats parties unequally in the application of laws, there is an inherent lack of fairness in the system, and justice needs to be restored.



As the President of LexisNexis Rule of Law Foundation, I want to take this opportunity to recognize the Fellows in the inaugural cohort of LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation (AAN/LN-ROLF) Fellowship awardees. These Fellows are scholars from the six law schools affiliated with the Historically Black Colleges and Universities: Florida Agricultural & Mechanical University College of Law, Howard University School of Law, North Carolina Central University School of Law, Southern University Law Center, Texas Southern University Thurgood Marshall School of Law, and the University of the District of Columbia David A. Clarke School of Law.

These Fellows have identified areas of inequity that spoke most clearly to them. Their words have helped to draw in the commitment of our many LexisNexis employees who have shared time and talent to help to examine these areas of inequity. Together, the volunteers and Fellows have deployed skills ranging from legal acumen to data analysis, and from editorial skill to technological expertise. These strengths have combined to make these projects working tools to shape a better, more equitable world.

Here, we highlight the stories of our AAN/LNROLF Fellows, showcasing the inspirational principles spearheading their projects into action and starting the journey for twelve new projects. The connecting thread is that these concepts have together defined a combined mission to end systemic racism in the legal system and to advance the rule of law. The Fellows' projects are crucial steps toward forming a legal system that is clearly grounded in equity and fairness—so that the scales of justice move back towards equal treatment under the law.

*Ian McDougall is the Executive Vice President & General Counsel, LexisNexis Legal and Professional. He serves as the President of the LexisNexis Rule of Law Foundation.*

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# Legislative Advocacy for Bail Reform

*Darnell-Terri Andrews*

Protecting the rights of poor and minority detainees who are unable to post pretrial bail and remain in jail despite the legal concept of a prisoner being “innocent until proven guilty” is a fundamental step in eradicating systemic racism.



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Darnell-Terri is a third-year law student at the Southern University Law Center. Her legal interests include civil rights and public rights law; she desires to work with a corporate or government entity. During this Fellowship, Darnell had an internship where she pursued posthumous pardons and exonerations on behalf of individuals wrongly convicted. Darnell-Terri’s Fellowship project focuses on protecting the rights of minority detainees.

Protecting the rights of poor and minority detainees who are unable to post pretrial bail and remain in jail despite the legal concept of a prisoner being “innocent until proven guilty” is a fundamental step in eradicating systemic racism.

## 1. Introduction

The goal of this project is to create a legislative model bill to protect the rights of minority detainees in Louisiana and elsewhere across the United States. The model bill will seek to protect the fundamental rights of poor and minority detainees who are unable to post pretrial bail and remain in jail despite the important legal concept of a prisoner being “innocent until proven guilty.” The model bill focuses on certain nonviolent and nonrepeat offenders. The bill will focus on setting multiple conditions in order for a detainee to be released, such as a balancing test of whether the detainee’s release is feasible, whether it is safe for the community, and whether the detainee will either obstruct the criminal justice process or comply with all of the conditions set as the terms of pretrial release.

In Louisiana, those who are arrested and unable to afford the bail amount are required to secure their release. Those who cannot afford to secure their release remain in jail, regardless of the nature of the crime. The consequences that follow affect not only the lives of the individuals detained and their families, but also affect the health of the economy and many other facets of society. These grave costs begin before the person arrested is even convicted of a crime. Additionally, these consequences may occur before the court has decided that there is a case against the person arrested.

## 2. History of Cash Bail

Bail is defined as a conditional release of an arrestee, to whom a promise to appear in court is attached.<sup>1</sup> The right of the person arrested to be released from jail pretrial predates the Constitution.<sup>2</sup> The right was brought over from English law and created in the federal constitution through the Eighth Amendment, which prohibits excessive bail.<sup>3</sup> The most common form of bail is a cash bail, but there are other methods of obtaining release.

In *Stack v. Boyle*,<sup>4</sup> the Supreme Court of the United States held that the right to pretrial release required an “individualized determination”<sup>5</sup> of the arrestee’s likelihood to appear for trial. The Court stated: “Since the function of bail is limited, the fixing of bail for any individual defendant

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1. *Bail*, BLACK’S LAW DICTIONARY 126 (9th ed. 2009).

2. *2018 Report on the Louisiana Bail System*, Crim. Just. Comm. Rep., La. St. Bar Ass’n (Aug. 2018).

3. *2018 Report on the Louisiana Bail System*, Crim. Just. Comm. Rep., La. St. Bar Ass’n (Aug. 2018).

4. *Stack v. Boyle*, 342 U.S. 1 (1951).

5. *2018 Report on the Louisiana Bail System*, Crim. Just. Comm. Rep., La. St. Bar Ass’n (Aug. 2018).



must be based upon standards relevant to the purpose of assuring the presence of that defendant. The traditional standards as expressed in the Federal Rules of Criminal Procedure are to be applied in each case to each defendant.”<sup>6</sup> Joining with the majority, Justice Jackson stated: “Each defendant stands before the bar of justice as an individual.”<sup>7</sup>

### **3. Louisiana Cash Bail**

Louisiana’s statutes indicate that it is a right to bail state. This suggests that detainees have a right to be admitted to bail when charged with a criminal offense. Furthermore, it implies that most detainees are guaranteed access to bail. However, Louisiana’s pretrial detention rates are some of the highest in the United States.

The discrepancy between the language awarding the right to bail and the pretrial detention rates can be attributed to the variations in bail procedure that occur in the state through different parishes/counties. Some variations in the parish practices involve the percentage of people and type of crime a person would be released on recognizance, the time that passes while a person is detained before bail is set, and the offenses for which a bond schedule is used.

### **4. How Cash Bail Harms Those Who Cannot Pay Bail**

Cash bail inflicts harm on those nonviolent offenders who cannot afford bail. Cash bail also inflicts harm on society, outweighing any social benefits it may provide to society. The harms done can have lasting effects that are invasive into other facets of society. Failure to be released from jail pretrial can cause a multitude of problems in a detainee’s life. One such area of life that can be affected is one’s social and domestic life.

Children whose parents are held because they cannot afford secured money bail suffer the most. Depending on the age of a child, *i.e.*, a very young child or a nursing baby, the absence of a parent can be extremely disturbing. This can cause long term developmental and emotional issues that affect how well that child will blend with society. In many cases, children stay with those deemed custodians who are less than able to provide for their needs. Although this is only in extraordinary circumstances, parents can lose legal custody of their children, despite a lack of history of abuse or neglect, and the children will be placed in the care of the State, where long term outcomes for the children are slim to none.

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6. 342 U.S. at 5 (1951).

7. 342 U.S. at 8 (1951).

Additionally, there are a plethora of collateral effects of a detainee remaining in jail pretrial. These consequences include unemployment and a loss of housing and property. These situations produce irrevocable negative outcomes for not just the detainee, but also the detainee's family.

Individuals who remain in jail pretrial are obviously unable to go to work. This inability to work triggers the loss of income and potentially unemployment because it is unlikely that an employer would find an employee's stint in jail to be an excused absence. Even if the detainee is not fired, the detainee will lose needed income. "According to a study published by Pew Charitable Trusts on Incarceration's effect on economic mobility, pretrial detainees who lose employment often encounter reduced wages when they find new employment."<sup>8</sup>

## 5. How Cash Bail Is Not a Deterrent to Crime

Cash bail is often the only obstacle to a detainee's release. Pretrial detention creates more recidivism than it eliminates. Research shows that pretrial detention of low-risk detainees who are unable to post their cash bail is heavily connected with higher rates of recidivism, both pretrial and post-disposition. "The longer low-risk defendants are detained, the more likely they are to be rearrested for new criminal activity pending trial."<sup>9</sup> The high percentage of recidivism rates are likely due to the disruption of the detainee's employment, finances, residence, and family while they are being detained. In a matter of a week's time, a detainee could lose their job and be placed in financial need. This disruption in a person's life from being held in jail pretrial could also impact public safety at large.

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Children whose parents are held because they cannot afford secured money bail suffer the most. Depending on the age of a child, *i.e.*, a very young child or a nursing baby, the absence of a parent can be extremely disturbing.

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## 6. Alternatives to Cash Bail

Some states allow defendants to be released on their own recognizance (ROR). This means that a detainee can be released from detention pretrial without providing bail through sureties or otherwise. The states often attach stipulations with the applicability of these ROR statutes such as whether the "release will not reasonably assure the accused's appearance at trial, or, under some statutes, that such a release will threaten public safety."<sup>10</sup> Because many detainees are often unable

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8. 2018 Report on the Louisiana Bail System, Crim. Just. Comm. Rep., La. St. Bar Ass'n (Aug. 2018).

9. 2018 Report on the Louisiana Bail System, Crim. Just. Comm. Rep., La. St. Bar Ass'n (Aug. 2018).

10. Application of state statutes establishing pretrial release of accused on personal recognizance as presumptive form of release, 78 A.L.R.3d 780.

to pay any amount for cash bail, implementing ROR statutes would help those detainees with rehabilitation back into society.

Many jurisdictions across the United States are using predictively accurate risk assessment tools to make the decision whether to release an arrestee. Research performed over the past twenty years has identified several factors that can predict the risk of a defendant failing to appear for required court proceedings and the risk that the defendant will commit new criminal offenses while released on bond.<sup>11</sup> A pretrial risk assessment tool can also remove variations in practices. By using a tool that approaches bail setting with a presumption toward release, jail incarceration rates can be substantially reduced. Furthermore, using risk assessment-based tests rather than cash bail to determine release can increase public safety.

## **7. Conclusion**

The cash bail system creates an array of burdens on the individual detainee and the economy. Pretrial detention creates a burden on the individuals charged with crimes who are incarcerated because they lack the financial resources to secure their release—all without any attempt to determine the likelihood that an individual would fail to appear for court or any attempt to assess their actual threat to the community. Many of the individuals detained pretrial offer little to no flight risk or danger to the community and could safely be released without the need for local municipalities to pay for their incarceration. Louisiana’s bail system creates a financial burden to the state at large, which ultimately bears the collateral financial burden of unemployment, homelessness, and increased rates of recidivism that are caused by unnecessary pretrial detention. While the bail system has created a financial advantage for the bail bond industry, those advantages are far outweighed by the personal and economic costs to the economy, and the situation must be remedied.

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11. *2018 Report on the Louisiana Bail System*, Crim. Just. Comm. Rep., La. St. Bar Ass’n (Aug. 2018).

**Mentor: Terry Jennings**

Head of Rule of Law Development, LexisNexis Legal and Professional  
Vice President & Treasurer, LexisNexis Rule of Law Foundation  
AAN LexisNexis Rule of Law Foundation Fellowship Committee Member



**Reflection on working with Fellow Darnell-Terri Andrews**

*My understanding of both state government affairs and the rule of law were a natural fit to assist Darnell on her project to craft model legislation to correct inequities in the cash bail system. Through weekly calls and support, Darnell and I became close. In the project, I encouraged Darnell early on to meet with a state representative from her home district of New Orleans. This legislative outreach was crucial to the project, as the representative agreed to review and possibly introduce Darnell's final draft as pre-filed legislation in the 2022 legislative session in Darnell's home state of Louisiana. We brought together a team of dedicated volunteers from around LexisNexis. These committed individuals read laws, case decisions, and news articles and synthesized them to understand the changes required to provide relief to detainees who remain in prison after arrest due to lack of funds. The group then worked with Darnell to shape ideas and language into current law in proper bill drafting style to seek changes to underlying Louisiana law. We worked together to reach back out to the state representative to review these planned changes and to seek approval to form a pre-filed introduction as legislation.*

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Terry Jennings has worked at LexisNexis for six years, heading rule of law development efforts globally and creating and implementing projects which advance the rule of law through the LexisNexis Rule of Law Foundation. Terry received her JD from George Washington University Law School and her LL.M. in Rule of Law for Development from Loyola University Chicago. Terry was honored as the SDG Pioneer for the Rule of Law by UN Global Compact in 2017. Prior to her work at LexisNexis, Terry served ten years as the senior state lobbyist for RELX, the parent company of LexisNexis, with six years of state legislative work for the American Express Company.

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## Revisiting the Myth of Meritocracy

*Jamal Bailey*

Systemic racism in the legal profession begins with the law school admissions process. The discrimination by effect is carried out by the reliance on standardized test examinations to provide “fair” and “neutral,” but inherently biased, candidate evaluations, backed by an accrediting body that frequently anchors law school compliance standards at or above the national average of minority populations, and celebrated by third-party law school ranking publications.



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**Jamal Bailey has an MBA from Hampton University and is a third-year law student attending the University of the District of Columbia David A. Clarke School of Law. Currently, Jamal serves as UDC Law’s Student Bar Association President, Managing Editor of UDC Law Review, and a Student-Attorney in the Community Development Legal Clinic working with D.C.’s underrepresented business owners. Jamal has accepted an offer with Paul, Weiss in the litigation group to pursue a career in litigation focusing on business disputes, white-collar, and securities matters. Jamal’s Fellowship project focuses on reforming access to law school education by challenging the status quo of law school admissions.**

**Jamal is grateful to promote his passion of advocacy for underrepresented persons at the bar by challenging the law school admissions process. Thank you to Adonica Black, Margaret Huffman, Rosann Torres, and the team at LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation.**

## Introduction

The Juris Doctorate is one of the most dynamic and sought-after degrees of study in the United States. The law defines liberty and property, and thus touches every aspect of our society. An understanding of the law allows a person to influence the rights that people are afforded. As powerful as the legal degree can be, the legal profession is also one of the least diverse fields in America.

Only 5.9% of lawyers are Black.<sup>1</sup> Contrasting starkly with their white counterparts who hold a controlling 86.6% of the profession,<sup>2</sup> Black lawyers are restricted to a dismal representation even though Black Americans make up 13% of the total U.S. population.<sup>3</sup> The state of underrepresentation in law is not a new phenomenon; Black representation in law has only increased by 2% since 1983.<sup>4</sup> This 2% growth is particularly alarming, considering that the total number of lawyers has ballooned from approximately 620,000 in 1983 to 1,300,000 in 2019, more than a 200% growth.

In reviewing this statistical breakdown of race distribution in the legal profession, we must ask the question, “Why?” This paper argues that systemic discrimination in the legal profession begins in the law school admissions process. To promote fairness and achieve true diversity in the profession, we must adopt holistic admission standards that evaluate candidates based upon both qualitative and quantitative measures.

This article is organized into three parts: first, a brief exploration of the dominance of the Law School Admissions Test (LSAT) in the admissions process and the resulting layers of dependency that create institutional racism by effect; second, a critique of the flawed logic behind the legal profession’s LSAT dependency, highlighting its direct link to poor diversity in the legal profession; and lastly, recommendations for a potential way forward.



“A law school shall require each applicant for admission as a first-year J.D. degree student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant’s capability of satisfactorily completing the school’s program of legal education.”<sup>5</sup>

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1. U.S. Bureau of Labor Statistics, Household Data Annual Averages: Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity, Table 11 (2019), <https://www.bls.gov/cps/cpsaat11.pdf>.

2. *Id.*

3. U.S. Census Bureau, ACS Demographic and Housing Estimates (2018), <https://data.census.gov/cedsci/table?q=U.S.%20population%20by%20race&hidePreview=false&tid=ACSDP1Y2018.DP05>.

4. U.S. Census Bureau, *Section 13: Labor Force, Employment, and Earnings*, at 18 (2000), <https://www.census.gov/prod/2001pubs/statab/sec13.pdf>.

5. American Bar Association, Chapter 5, *Admissions and Student Services, Standard 501(c)*, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure-chapter-5.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure-chapter-5.pdf) (2021).

## 1. The Law School Admissions Test

Prior to 2016, a “valid and reliable” admission test referred exclusively to the Law School Admission Test, developed and administered by the Law School Admissions Council (LSAC). Designed in 1947 during a meeting of the minds with higher education’s influential actors,<sup>6</sup> the LSAT was created to predict an applicant’s aptitude to endure and succeed in the first year of law school. In the present, the LSAT is offered on specific dates determined by the LSAC to measure applicant’s critical reading, verbal reasoning, and analytical skills.<sup>7</sup>

Purportedly, the LSAT provides a means for admissions officers to evaluate candidates on a basis of fair and objective standards. Unfortunately, in practice, the LSAT is a better measure of an applicant’s ability to perform well on the exam, only, rather than the actual ability to perform well in law school.<sup>8</sup> This critical distinction shows how the LSAT exacerbates the inherent inequality in the legal profession throughout America,<sup>9</sup> particularly regarding Black and Latino minority populations, as well as those from low income socio-economic backgrounds.<sup>10</sup> The LSAT, and subsequent admissions decisions, in their current state, foster an environment that (1) rewards those who are well-resourced<sup>11</sup> and (2) builds the first line of defense for the system’s proverbial ability to gatekeep minorities out of the profession.<sup>12</sup>

The LSAT administered by LSAC is the first actor in a three part defense; the American Bar Association and the profession’s reliance on third-party rankings of law schools are the remaining problems.

## 2. The American Bar Association

The American Bar Association (ABA) is the major governing authority for law schools in the United States. Goal III of the American Bar Association’s mission and goals states that the ABA sets forth to (1) promote full and equal participation in the association, or profession, and the justice system by all persons; and (2) eliminate bias in the legal profession and the justice system.<sup>13</sup>

6. William P. LaPiana, *Merit and Diversity: The Origins of the Law School Admissions Test*, 48 ST. LOUIS U. L.J. 955, 963-64 (2003-04).

7. See generally Kristen Holmquist, et al., *Measuring Merit The Shultz-Zedeck Research on Law School Admissions*, 63, no. 4, J. LEGAL EDUC. 565-84 (2014).

8. *Id.*

9. William Malpica & Mauricio A. España, *Expanding Latino Participation in the Legal Profession: Strategies for Increasing Latino Law School Enrollments*, 30 FORDHAM URB. L.J. 1393, 1408-1410 (2003).

10. *Id.*

11. *Id.*

12. Vernellia R. Randall, *The Misuse of the LSAT: Discrimination Against Blacks and Other Minorities in Law School Admissions*, 80 ST. JOHN’S L.R. 107, 111-12 (2006); see also Scott Jaschik, *Do Law Schools Limit Black Enrollment With LSAT?*, Inside Higher Ed (April 15, 2019), <https://www.insidehighered.com/admissions/article/2019/04/15/study-argues-law-schools-limit-black-enrollment-through-lsat>.

13. American Bar Association, *ABA Mission and Goals*, ABA (2021), [https://www.americanbar.org/about\\_the\\_abalaba-mission-goals/](https://www.americanbar.org/about_the_abalaba-mission-goals/).

As the governing body, the Council of the ABA Section of Legal Education and Admissions to the Bar is recognized by the U.S. Department of Education and all state supreme courts as the accrediting agency for JD programs in the United States.<sup>14</sup> In short, the Council is the sole authority that determines who gains entry into the legal profession by dictating effectively both who gains admittance to law school and who sits for the Bar examination. This extension of power is carried out by law school admission officers' duty to follow the standards set forth by the ABA for their respective schools to remain in compliance.<sup>15</sup>

To illustrate the admission officers' duty to follow the ABA's standards, many law schools have historically deployed presumptive cut-off scores beginning at the 145 mark of submitted LSAT scores.<sup>16</sup> Concurrently, and to no surprise, the ABA has frequently filed notices of non-compliance for law schools where the median LSAT scores have ranged from 143-146.<sup>17</sup> The national average LSAT score for Black and Latino test takers, however, are 142 and 146 respectively.<sup>18</sup> Thus, the expressed goals of promoting full and equal participation in the profession and eliminating bias rings hollow because the ABA sets accreditation compliance parameters seemingly at, or above, the mark that most minorities frequently score.<sup>19</sup>

In addition to the LSAT's pervasive ability to determine who belongs in the profession and who does not, and the accrediting body's ability to determine which law schools can and cannot operate, the last component that solidifies institutional racism barring entry to the profession is the reliance on third-party law school ranking agencies.

### 3. Law School Rankings

"A career in law starts with finding the school that fits you best. With the *U.S. News* rankings of the top law schools, narrow your search by location, tuition, school size and test scores."<sup>20</sup> Law school applicants nationwide have most likely read some version of this language from the abundance of websites, publications, and journals that compete to be the source that leads applicants to the school of their dreams by highlighting the statistics that the profession cares about.<sup>21</sup>

14. American Bar Association, *Legal Education and Admissions to the Bar*, ABA (2021), [https://www.americanbar.org/groups/legal\\_education/](https://www.americanbar.org/groups/legal_education/).

15. See Malpica, *supra* note 9, at 1400.

16. See Randall, *supra* note 12.

17. Robert R. Furnier, *Proposed ABA Law School Accreditation Standard 316: A Threat to Diversity in Law Schools and the Legal Profession?*, *Law Practice Today* (July 14, 2016), <https://www.lawpracticetoday.org/article/hbcu-law-school-accreditation-standard/>.

18. Marisa Manzi, 'Already Behind': *Diversifying the Legal Profession Starts Before the LSAT*, NPR (Dec. 22, 2020), <https://www.npr.org/2020/12/22/944434661/already-behind-diversifying-the-legal-profession-starts-before-the-lsat>.

19. See Randall, *supra* note 12.

20. U.S. News: Education, *2022 Best Law Schools*, U.S. News (2021), <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings>.

21. U.S. News: Education, *2022 Best Law Schools*, U.S. News (2021), <https://www.usnews.com/best-graduate-schools/top-law->



*U.S. News* actually publishes its methodology for computing law school rankings. The factors in this methodology purportedly measure quality assessments derived from expert opinions, peer assessment scores, assessment scores by lawyers and judges, selectivity, as well as median LSAT scores and median undergraduate grade point averages.<sup>22</sup> Although publishing its ranking methodology is generally considered positive, quality assessments, peer assessments, selectivity, and assessment scores by judges and lawyers combine to weight the vast majority of percentage or quality points

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Deploying an ESG standard into the law school admissions process would likely shift the hyper-competitive nature, which breeds elitism, and focus more on the public service aspect that being an officer of the court should have from the beginning.

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in their survey.<sup>23</sup> In short, the LSAT and undergraduate grade point averages are the only objective means anchoring the survey, with the remaining factors based on subjective opinion. This situation leads to the reasonable inference that, because the majority of the survey criteria are subjective, persons selected to provide input are operating based on perceived quality and regard for law schools that select applicants with high LSAT scores and undergraduate grade point averages.<sup>24</sup>

Since 1983, law schools have placed a high value on rankings published by the *U.S. News* and other third-parties.<sup>25</sup> The attempts to make selection criteria a science have exacerbated the gap between the haves and the have nots,<sup>26</sup> essentially limiting the law schools' ability to select candidates that fit a different model, such as law schools that prioritize social justice, public interest, community involvement, or social responsibility.<sup>27</sup> So long as rankings are conducted by peers in the industry without a means to measure objective criteria other than undergraduate grade point average and LSAT scores, law schools will remain in a hostage-like environment pandering for rankings and praise from peers, thus leaving people from disenfranchised backgrounds to fall by the wayside.

Reviewing the totality of the circumstances, traditional and inherently biased notions of undergraduate grade point averages plus LSAT scores constituting the major part of law school admissions criteria, plus accreditation standards administered by the ABA that restrict law schools from

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*schools/law-rankings*; see also Staci Zaretsky, *The 2022 U.S. News Law School Rankings Are Here: Check Out Some of the Largest Rankings Tumbles and Gains. Yikes!*, *Above the Law* (March 29, 2021), <https://abovethelaw.com/2021/03/2022-us-news-law-school-rankings/>.

22. Robert Morse, et al., *Methodology: 2022 Best Law School Rankings*, *U.S. News: Education* (March 29, 2021), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

23. *Id.*

24. Tony Varona, *Diversity and Disgrace—How the U.S. News Law School Rankings Hurt Everyone*, 38 *N.Y.U. R. L & Soc. CHANGE* (last accessed: Oct. 11, 2021), <https://socialchangenyu.com/harbinger/diversity-and-disgrace-how-the-u-s-news-law-school-rankings-hurt-everyone/>.

25. Briana Boyinton, *Infographic: 30 Editions of the U.S. News Best Colleges Rankings: U.S. News' Process for Ranking Colleges Has Evolved Since the First Edition Was Published in the Early 1980s*, *U.S. News: Education* (Sept. 9, 2014), <https://www.usnews.com/education/best-colleges/articles/2014/09/09/infographic-30-editions-of-the-us-news-best-colleges-rankings>.

26. See Varona, *supra* note 24.

27. James C. Hathaway, *The Mythical Meritocracy of Law School Admissions*, 34 *J. LEGAL EDUC.* 86-96 (1984).

admitting most minority candidates, and, lastly, third-party ranking agencies publishing law school rankings that militate against admitting candidates with lower grade point averages and LSAT scores have created a melting point that allows institutionalized racism to engrain itself into the very fabric of the legal profession.



Since inception, the LSAT's efficacy for predicting law school success, particularly for Black, Latinx, and other minority populations, has been challenged.<sup>28</sup> Not only challenged, but the notions of “fairness” and “unbiased” in the use of the LSAT in admissions decisions have been wholly debunked.<sup>29</sup>

The argument for abolishing the LSAT examination altogether is a convenient shorthand solution that does not fix the root of the problem. The real complexity arises in shifting from a paradigm that has taken more than half of the 20th century to build. We must reach the hearts and minds of professionals and thought leaders in the legal profession to have them understand that diversity can never be attained so long as we depend on “neutral,” but inherently biased, testing standards that continue to determine who does and does not deserve to be included in the profession. Recommendations to move forward are the following: implementing selection criteria that support a law school's specific goals; ranking schools according to their impact in the legal profession; including a social responsibility component in law school accreditation standards; and adding quantifiable criteria based on leadership, community involvement, and overcoming adversity in educational settings.

## 1. Goal-Specific Selection Criteria

As Hathaway argued in 1984, implementing a goal-oriented admissions policy would shift the landscape of the profession by forcing institutions to (1) self-reflect and define their niches in the profession; and (2) compose selection criteria explicitly looking to strengthen their brands.<sup>30</sup> Further, an industry-backed, goal-specific application process would free law schools from the competition model of subjective peer assessments, median LSAT scores, undergraduate grade point averages, and “selectivity” to determine rankings.

## 2. ESG Accreditation Standards

Environmental, social, and governance (ESG) evaluation criteria have taken the corporate industry by storm in 2021.<sup>31</sup> Particularly popular in investment spaces, thought leaders have recog-

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28. *Id.*

29. Lani Guinier, *From the Lessons of Admitting Students of Color, Law Schools Can Learn How to Fix the Rules for Everyone*, LEGAL TIMES (Sept. 16, 2002).

30. See Hathaway, *supra* note 27, at 96.

31. E. Napoletano & Benjamin Curry, *Environmental, Social, and Governance: What Is ESG Investing*, Forbes Advisor (March 1, 2021), <https://www.forbes.com/advisor/investing/esg-investing/>.

nized the business value of directing resources into causes that support socially conscious efforts in the community and nationwide.<sup>32</sup> Focusing on the “S,” social criteria frequently measure impact on communities, customers, company culture, and investments into causes for good. Deploying an ESG standard into the law school admissions process would likely shift the hyper-competitive nature, which breeds elitism, and focus more on the public service aspect that being an officer of the court should have from the beginning. Reframing considerations of law school rankings and accreditation through an ESG lens will not solve all the issues, but certainly will bridge the gap between privileged and underrepresented applicants.

### 3. Quantifying Noncognitive Attributes

The backward facing nature of practicing law forces the legal profession to move forward more slowly than others.<sup>33</sup> Should the above-mentioned methods be perceived as radical, then a plausible solution right now is to add quantifiable attributes to selection criteria such as leadership, community engagement, and overcoming adversity in the education setting. This solution is not novel.<sup>34</sup> However, the weights of each category are rarely disclosed and most likely are not weighted the same at each law school. To promote fairness, applicants should be able to bridge the gap of lower traditional indicators (LSAT and undergraduate grade point average) with their interpersonal qualities that are more commonly exhibited in the profession. Again, these solutions are not perfect remedies to systemic racism in the profession. However, progress must begin somewhere, and I believe the infrastructure for change already exists. The gatekeepers simply need more of a push.

## Conclusion

In summary, systemic racism in the legal profession begins with the law school admissions process. The discrimination by effect is carried out by the reliance on standardized test examinations to provide “fair” and “neutral,” but inherently biased, candidate evaluations, backed by an accrediting body that frequently anchors law school compliance standards at or above the national average of minority populations, and celebrated by third-party law school ranking publications. The arguments against this paradigm have existed for ages. However, post George Floyd<sup>35</sup> and the subsequent calls for diversity in the legal profession, we must acknowledge the inherent bias and implement steps to heal the system now.

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32. *Id.*

33. Thomson Reuters, *Overcoming lawyers’ resistance to change*, Thomson Reuters: Legal (accessed: Oct 10, 2021), <https://legal.thomsonreuters.com/en/insights/articles/overcoming-lawyers-resistance-to-change>.

34. See Hathaway, *supra* note 27, at 95-96.

35. Emma Whitford, *Going Behind the Rhetoric*, Inside Higher Ed (Aug. 5, 2021), <https://www.insidehighered.com/news/2021/08/05/naspa-report-examines-statements-wake-george-floyds-murder>.

## Mentor: Margaret Unger Huffman

Senior Product Manager I, LexisNexis Legal and Professional



### Reflection on working with Fellow Jamal Bailey

*Experiencing the Fellowship as a Mentor has been one of the most rewarding experiences of my career. Our goal of addressing the challenge of systemic racism in the legal system, while certainly an important cause, is undoubtedly daunting to most. However, working amongst some of the most talented law students in the country as well as the amazing thought leaders at LexisNexis has resulted in significant progress towards this goal.*

*I am honored to have worked with Fellow Jamal Bailey who showed his passion, creativity, and determination in developing a powerful advocacy project. Focused on ways to diversify and break down barriers to law school, Jamal*

*has gathered and analyzed data to examine the ways law students are evaluated and recommended improved approaches which could help to shape the future of law school admissions.*

*The Fellowship allowed me to utilize my skills, both as an attorney and Product Manager, but also challenged me to think more deeply about these issues, and what I can do to zealously advocate for change. I am thankful that LexisNexis values advancing the rule of law so strenuously and creates such valuable programs. I am proud of all our Fellows and cannot wait to see what the future holds!*

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**Margaret Unger Huffman currently serves as a Senior Product Manager for LexisNexis, focusing on the flagship product, Lexis+. Margaret is also the President of the Women Connected Raleigh Chapter Employee Resource Group. Margaret holds a JD from Campbell University Norman Adrian Wiggins School of Law, a Bachelor of Science in Business Administration, and a Bachelor of Arts in Music from the University of North Carolina at Chapel Hill. As a licensed North Carolina attorney, Margaret is passionate about advancing the rule of law and using her talents to help the community through educating others on the legal system and her pro bono practice.**

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## HB6U Law Practice Pipeline

**Herbert Brown**

The HB6U Law Practice Pipeline's mission is to increase diverse representation in the legal field through dedicated experiential learning and employment opportunities, provide corporations and firms with a consistent pool of diverse talent, and promote overall goodwill in the fight to end systemic racism in the law profession.



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Herbert Brown is a third-year law student at North Carolina Central University School of Law. Herb is a U.S. Army Veteran and holds a Master of Social Work degree from North Carolina State University. Prior to attending law school, Herb served his community both as a psychotherapist and as an adjunct Instructor at Durham Technical Community College. As an instructor Herb primarily taught courses designed to reintegrate formerly incarcerated individuals back into society, assist them in securing and maintaining livable wage employment, and reduce the rate of recidivism among his students. Herb is also the founder and executive director of Real Fresh Apparel Company, a Black empowerment fashion brand and formerly served as editor-in-chief for *Real Fresh Magazine*, a empowerment and educational periodical. Herb is the proud father of three; two of whom are currently high school seniors preparing for their own collegiate journey. Herb is passionate about the protection of ownership rights and the preservation of generational wealth through intellectual property law, real property law, transactional law, and estate planning for individuals, families, and business entities. Herb's Fellowship project focuses on addressing systemic racism in the legal field with the HB6U practice pipeline, designed to expand access to experiential learning opportunities for HBCU law students and to increase Black and Brown representation in the legal profession.

The disparities are clear. Nearly all people of color are underrepresented in the legal profession compared with their presence in the U.S. population. For example, only 4.7% of all lawyers are Black in 2021—nearly unchanged from 4.8% in 2011. The U.S. population is 13.4% Black.<sup>1</sup> An even smaller piece of that number represents Black attorneys in corporate law firms and in-house corporate counsel roles.<sup>2</sup> In both cases, minority attorneys are often unable to acquire the experience necessary to be competitive for these positions, or they see so few Black and Brown attorneys in those spaces that they are discouraged from pursuing corporate positions altogether. There are 107 Historically Black Colleges and Universities (HBCUs) in the United States. Of the 107, six have a law school program. The HB6U Law Practice Pipeline’s mission is to increase diverse representation in the legal field through dedicated experiential learning and employment opportunities, provide corporations and firms with a consistent pool of diverse talent, and promote overall goodwill in the fight to end systemic racism in the law profession.

In an effort to increase experiential learning and employment, the HB6U Law Practice Pipeline connects HBCU law students with underrepresented segments of the legal field including: securities law, intellectual property, compliance, products liability, mergers & acquisitions, global supply chains, right to publicity law, cannabusiness, and data privacy. I hope to engage with the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation (AAN/ROLF), an entity “working to bring the percentage of people living outside the umbrella protection of the rule of law down to zero through [its] day-to-day business operations, products and services, and actions as a corporate citizen.”<sup>3</sup> The proposed program would deploy a three-stage process, potentially facilitated by the Rule of Law Foundation, beginning with selection and onboarding of the students. During this phase, HB6U facilitators would work closely with the corporate partners to provide essential tools and training to the selected students. Phase 2 entails student placement in various legal departments within the partner corporations/firms for 10–12 weeks; based on emerging legal trends, student interest, and corporate need. During this phase, HBCU law students are exposed to the most current legal issues, strategies, and solutions. Simultaneously, the corporate/firm partners are exposed to fresh perspectives, an untapped talent pool, and the opportunity to lead by example in the effort to end systemic racism in America.

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The disparities are clear. Nearly all people of color are underrepresented in the legal profession compared with their presence in the U.S. population.

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Our collaborative approach to injecting this raw talent into national firms and corporations solves both the front end and back-end issue: removing the barriers to experience and creating more welcoming environments for law students navigating the ills of systemic racism and underrepresentation.

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1. American Bar Association, *2021 ABA Profile on the Legal Profession*, <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>, accessed on Sept. 22, 2021.

2. For details on efforts to increase the representation of Black general counsel, see the Black General Counsel Initiative at <https://www.blackgc2025.com/about/overview/our-initiative/>.

3. See LexisNexis, *Rule of Law Mission*, <https://www.lexisnexis.com/en-us/rule-of-law/default.page>, accessed on Oct. 19, 2021.

HB6U will deploy a phased approach, consisting of three phases:

### *Proposed Phase 1: Selection and Onboarding by CLEO, Inc.*

This initial phase may encompass a one or two-week training and evaluation period by chosen facilitators, like Council on Legal Education Opportunity, Inc. (CLEO), who are committed to the Rule of Law. This step ensures proper and appropriate placement of the student in accordance with assessed skills and career goals of the student.

### *Proposed Phase 2: Placement and Mentorship.*

This phase includes the assignment of a mentor who facilitates the transition from onboarding to placement at a particular agency as well as the continuing mentorship, maintaining of the appropriate level of client confidentiality and ethics. Phase 2 runs for a minimum of about 10-12 weeks.

### *Proposed Phase 3: Off-boarding and Student Feedback.*

At the end of the placement, mentors will facilitate the off-boarding process and conduct exit interviews and/or surveys with both the internship supervisor and the intern. The interviews/surveys will be designed to gauge the students' performance, growth, areas for continued professional improvement, and student strengths. On the student side, the interviews/surveys will gauge the students overall experience with the firm or corporation and grade the student's observations and perceptions in terms of diversity for that firm or corporation. This data, gathered over time, will yield constructive feedback to the firms and corporations. Feedback may consist of acknowledgments by firms and corporations that excel at addressing systemic racism as well as recommendations for those who are lacking in that area. Awards and other incentives can serve to encourage this type of growth and diversity.

## *Conclusion*

There is one field that is of particular interest to the Black and Brown community, in general, as well as from a corporate legal perspective. The cannabis industry is poised to become as large as any other agricultural industry in this country. As we have begun to see, those traditionally harmed by anti-cannabis laws are not the ones now able to capitalize on State legalization bills. The above-mentioned framework could very well serve to combat this disparity. With a concerted effort by HB6U to place Black and Brown law students, who desire to enter that industry, into those firms, these students will inevitably find and formulate ways to empower the general Black and Brown communities to engage the industry, which would eventually influence the wealth gap in America. As we approach potential federal legalization, it is imperative that Black and Brown attorneys and law students have a seat at the table of the retail, manufacturing, supply chain, regulatory bodies, and legislation. This is one way to help steer that equitable outcome.

**Mentor: Brian Kennedy**

Director, Government Content, LexisNexis Legal and Professional



**Reflection on working with Fellow Herbert Brown**

*Being a mentor has been an extremely fulfilling experience for me. I was pleased when LexisNexis formed its Rule of Law Foundation and remain enthused by its global impact. The HBCU Fellowship program demonstrates Lexis' commitment to correct some of the injustices created by systemic racism. I am proud to be a part of this effort. As a product of a HBCU Law school, I am honored to have the opportunity to give back as a mentor to Fellow Herbert Brown. I have been impressed by the Fellows' passion, commitment, and time management. The Fellows have demonstrated to me that our future is bright.*

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Brian Kennedy began working at LexisNexis as a Legal Analyst one year after graduating from North Carolina Central University School of Law. He worked his way up, becoming a Senior Legal Analyst and then an Editorial Manager, eventually becoming an Editorial Director responsible for the creation of the primary law products for the eastern half of the United States. Brian is currently Director of Government Content, responsible for establishing and maintaining primary law publishing contracts and acquiring data.

Brian and his wife Kimberly are the proud parents of three wonderful children. They spend their free time chasing after their four-year-old grandson.



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## Cash Bail: Profit, Poverty, and People of Color

*Ebony Cormier*

Our justice system holds that we are innocent until proven guilty. However, the cash bail system, which disproportionately affects Black and minority people, tells us otherwise. The statistics show that “three out of every five people in jail in the U.S. have not been convicted of a crime.” Then why are they in jail? The answer: the current cash bail system in the United States.



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**Ebony Cormier is a third-year evening student at Southern University Law Center (SULC). She's involved with several student organizations where she's held many leadership roles, which include National Director of Corporate Engagement for the National Black Law Students Association. Additionally, Ebony is a 2021 White House HBCU Recognition Program Scholar, and a 2021 LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellow where she spends time working on efforts to combat systemic racism in the legal industry. Prior to attending law school, Ebony obtained her BS and MBA and spent seventeen years in financial services managing business operations, people, projects, and processes. Ebony resides in North Texas with her husband and four children. She is eager to explore new opportunities, network, and be exposed to innovative thinkers and creatives who enjoy working in service of others. Ebony's Fellowship project focuses on making the cash bail system more equitable for indigent, low-level offenders.**

The term “systemic racism” has crept into the vernacular of many Americans since the gripping death of George Floyd, which we all witnessed during the summer of 2020. It is refreshing to finally see mainstream outlets and major corporations acknowledge what Black and minority people have known for years: many of our systems are inherently racist where barriers were erected to keep marginalized groups in their place. One of those barriers is the cash bail system. Our justice system holds we are innocent until proven guilty. However, the cash bail system, which disproportionately affects Black and minority people, tells us otherwise. Statistics demonstrate “three out of every five people in jail in the U.S. have not been convicted of a crime.”<sup>1</sup> That bears asking the question: why are they in jail? The answer: the current cash bail system in the United States.

## The Problem

People held in pretrial detention are presumed innocent under the law but remain incarcerated until they can pay bail to purchase their freedom. Many of the people held are Black and minority who cannot afford bail set as low as \$500. The Charles Koch Institute research shows only 15% of people can afford a bail set at \$500 or more.<sup>2</sup>

The United States Constitution gives every person in this country protection against excessive bail under the Eighth Amendment. If a person who is deemed indigent cannot afford bail, then it should be considered excessive. Case closed. It appears the system that is supposed to keep our community safe is only concerned about how much money it can garner from an already suffering population. Furthermore, according to the Prison Policy Initiative, two-thirds of the jail population is currently detained pretrial, and 43% of pretrial detainees are Black.<sup>3</sup> These numbers are staggering and imply that Black people are inherently dangerous, and therefore, need to be detained pretrial before ever being convicted of a crime. Bail is supposed to be a system in place that protects the community from dangerous individuals and a method to detain people who are flight risks, not punish people for being poor and an ethnic minority.

In 2011, Dominique Strauss-Kahn, head of the International Monetary Fund (IMF) at the time, was accused of four felonies and three misdemeanors. One of the felonies was the heinous crime of rape! He posted a \$1 million bail and was released on house arrest with multiple felony and misdemeanor charges pending against him. Dominique was a wealthy, white male with access and opportunity who managed the world’s money. A million dollars was nothing to him. He had no connections to the community, but a bail amount was set low enough for him to afford it. On the

1. L. Hunter, *What You Need to Know About Ending Cash Bail*, Am. Progress (March 26, 2020), <https://www.americanprogress.org/issues/criminal-justice/reports/2020/03/16/481543/ending-cash-bail/>.

2. Pretrial Justice Bail Reform Poll (July 13, 2018), <https://charleskochinstitute.org/stories/pretrial-justice-bail-reform-poll/>.

3. Wendy Sawyer, *How Race Impacts Who Is Detained Pretrial*, Prison Policy Initiative (Oct. 9, 2019), [https://www.prisonpolicy.org/blog/2019/10/09/pretrial\\_race/](https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/).

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The toll the bail system takes on indigent communities who are disproportionately communities of color is catastrophic. People wait months and sometimes years before their cases are resolved. In the meantime, they can suffer the loss of their job, children, and home. Furthermore, there is a deterioration of their physical and mental health.

other hand, a year earlier, Kalief Browder, a 16-year-old Bronx, New York native, was arrested after being accused of stealing a backpack with a camera and \$700 dollars inside. He was held on a \$3,000 bond that his family could not afford to pay. He remained in jail at Riker's Island, one of the toughest jails in the country, for three years where he was mentally and physically abused. These crimes are on the opposite ends of the spectrum regarding severity of the accusation. Logic would dictate the individual accused of rape be held and the person accused of stealing a backpack released on his own recognizance. Reality is vastly different, especially for people of color.

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The toll the bail system takes on indigent communities who are disproportionately communities of color is catastrophic. People wait months and sometimes years before their cases are resolved. In the meantime, they can suffer the loss of their job, children, and home. Furthermore, there is a deterioration of their physical and mental health. Seeing this large disparity in minority communities, it is important to reunite families and allow them a chance to resolve their issues while maintaining their dignity. In the case of Dominique and Kalief, charges were dismissed, and the men were free to live the rest of their lives. Both men attempted to do so. Dominique flew back to Europe where he had resources to deal with the fallout from his arrest. Kalief returned to the Bronx and obtained his G.E.D. Also, he attended college and tutored other G.E.D. students. Today, Dominique has re-married and has been acquitted of all pending charges against him in Europe where he continues to advise governments about what to do with their money. On the other hand, Kalief succumbed to the mental anguish from the abuse of being on Riker's Island, and, unfortunately, he committed suicide.

## **The Solution**

Kalief's path is disheartening. This should not happen to any other teen or person who is subjected to pretrial detainment simply because he is Black and poor and cannot afford to purchase his freedom. The solution is to do away with cash bail for non-violent crimes and replace it with a presumption of pretrial release. Instead of a bond hearing, the pretrial hearing should simply set the court date, have the defendant sign a promise to appear, and then release the defendant on his or her own recognizance. At that time, for pretrial detention to occur, the prosecution should have to prove that a person is a threat to the community through the defendant's prior history and the severity of the alleged act, is a flight risk, or has other pre-determined factors requiring cash bail. Implementing this new policy requires wholesale change across the country, in every jurisdiction. It is a seemingly

Herculean effort, however, with time and commitment, it can be done. In the interim, the solution is to have corporations, non-profits, and other equality partners contribute to an Equality Bail Fund, which will be used on a case-by-case basis when the defendant meets certain pre-determined criteria. The criteria will include first-time, low-level offenses, and misdemeanors. Thus, instead of low-income, marginalized people hustling up funds to make bail, they can hustle funds for proper representation—which is an entirely different problem.

The Equality Bail Fund is a solution that gives corporations with a commitment to social justice and diversity initiatives a chance to provide real change in communities of color. While no system is perfect, we understand potential donors may have questions about what happens if someone is provided with bail funds and commits another crime. Through the vetting process and questionnaire, we will identify candidates who are best suited for the fund's assistance. The Equality Bail Fund will model Harris County, Texas, as it recently eliminated practices in its bail system that made wealth a determining factor of how someone accused of a misdemeanor crime was treated. Harris County's goal is to protect the constitutional rights of defendants while making public safety a priority. The County is now recognized as a national model for other communities facing unfair bail practices. In fact, according to research at Duke Law, Harris County's bail system has resulted in a:

- Reduction in the number of misdemeanor filings;
- Reduction in the use of cash bail in misdemeanor cases;
- Large reduction in race, ethnicity and sex disparities in imposition of cash bail; and
- Large reduction in premiums that misdemeanor arrestees have paid in bond.<sup>4</sup>

## Call to Action

The number of people jailed for their lack of ability to pay bail fees is disproportionately minority. It is a dreaded cycle. Communities of color are more likely to be policed, more likely to be

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4. *Houston Bail Monitor One-Year Report Shows Increased Releases, Reduced Use of Cash Bail* (March 8, 2021), <https://wcsj.law.duke.edu/2021/03/houston-bail-monitor-one-year-report-shows-increased-releases-reduced-use-of-cash-bail/>.

arrested, and more likely to be subjected to pretrial detention. Mitigating the issues within the cash bail system requires us to go back to the reason for its existence. The cash bail system was supposed to be used as collateral to ensure citizens pending trial will be present at their court appearance or otherwise be jailed. Why not require \$200 bail instead of \$2000? The bail system has become more of a penalty for being impoverished, especially if you are Black or minority. Corporations and businesses flocked to release a statement about the murder of George Floyd in the Summer of 2020. They turned their Instagram screens black to stand in solidarity with the Black community. However, beyond internet trends and fluffy language are real problems that can be addressed in the community through corporate sponsorship and involvement. I seek commitment from corporations, non-profit organizations, community groups, and faith leaders to join forces with this initiative to mitigate the effects of the cash bail system on African American communities.

## Mentor: Afsoon Khatibloo-McClellan, JD

Director, Global Associations



### Reflection on working with Fellow Ebony Cormier

*Serving as a mentor for this inaugural Fellowship is a particular privilege. The opportunity to work with individuals passionate and committed to addressing social justice issues resulting from years of systemic racism in our legal profession reaffirms my belief in the commitment to our collective desire to create a more just nation. Specifically, working with Ebony Cormier on an Equality Bail Fund: to provide the means for individuals who have been incarcerated as the result of alleged (non-violent) crimes to secure their release pending trial.*

*Ebony's dedication to her community and to the profession is remarkable and humbling. In working with her on her project, our conversations provide a perspective and exposure to an issue that as a white, cis-gendered woman I cannot fathom. The butterfly effect of incarceration resulting from indigency is detrimental to the entire community of the individual affected. Specifically, BIPOC individuals/communities are disproportionately affected. Furthermore, I've gained an understanding through Ebony's work that the cash bail system is often leveraged as a source of income for some court systems, creating an inherent conflict of interest between judges and justice.*

*Ebony serves as an inspiration to continue to work tirelessly to better serve others. I have enjoyed getting to know her professionally and personally and look forward to our continued friendship.*

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**Afsoon Khatibloo-McClellan, JD is responsible for managing the LexisNexis relationships with US legal associations and leading industry groups.**

**Afsoon's role includes partnering with global associations on various Corporate Social Responsibility and Rule of Law projects, including initiatives addressing women in leadership in the law; the Centennial Celebration of the 19th Amendment and what it means to women to have the right to vote around the globe; emerging trends in the legal profession; Diversity, Equity & Inclusion; and how to engage the business community in advancing the rule of law. For her work with the ABA International Law Section on women's right to vote, Afsoon was awarded the Chair's Award in 2020.**

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## Misdemeanor Defendants and the Ever-Evasive Right to Court-Appointed Counsel

*Oscar Draughn*

Most pro se defendants have little knowledge regarding the inner workings of the criminal court system. Therefore, failing to apprise them of their right to legal counsel in the interest of quickly dispensing with cases constitutes a miscarriage of justice.



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**Oscar Draughn is a third-year law student at Florida Agricultural & Mechanical University College of Law. Oscar's Fellowship project focuses on educating and assisting persons charged with low-level misdemeanor offenses about how to defend themselves when adequate counsel is not affordable or provided by the court.**

Most pro se defendants have little knowledge regarding the inner workings of the criminal court system. Therefore, failing to apprise them of their right to legal counsel in the interest of quickly dispensing with cases constitutes a miscarriage of justice. Judicial rulings regarding a defendant's Sixth Amendment right to counsel are clear, but adherence to case precedence is lacking in many jurisdictions throughout the country, especially when the accused is charged with committing a low-level misdemeanor offense. When a defendant's immigration status is placed in jeopardy, the importance of providing adequate legal counsel is further heightened. The following sections will highlight the case law and unforeseen issues that have arisen due to judicial reluctance to provide legal counsel to low-level pro se defendants. Lastly, this paper will identify potential remedies that could lead to a more fair and just legal system.

## A. Seminal Cases

*Shelton v. Alabama* is one of the seminal cases addressing pro se defendants' right to counsel.<sup>1</sup> In *Shelton*, the defendant was accused of third-degree assault and although the trial court advised the defendant of the dangers of appearing without the assistance of counsel, counsel was not appointed at the state's expense and the defendant was subsequently sentenced to thirty days in the county prison.<sup>2</sup> The sentence was suspended on the condition that the defendant pay the resulting court costs, but the issue as to whether the Sixth Amendment right to counsel applied in cases of suspended or conditional sentences was heard by the Supreme Court.<sup>3</sup> Ruling for the defendant, the Court held that the right to counsel extends to defendants that have a suspended sentence that could lead to imprisonment.<sup>4</sup>

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Judicial rulings regarding a defendant's Sixth Amendment right to counsel are clear, but adherence to case precedence is lacking in many jurisdictions throughout the country, especially when the accused is charged with committing a low-level misdemeanor offense.

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Shortly after the right to counsel was extended to defendants who had suspended or conditional sentences, the Court was tasked with determining whether the right to counsel included defendants charged with misdemeanor offenses.<sup>5</sup> In *Argersinger v. Hamlin*, the defendant was accused of carrying a concealed weapon, an offense that carried a maximum penalty of six months imprisonment and a \$1000 fine under Florida law.<sup>6</sup> The defendant was indigent and the trial court failed to appoint

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1. *Shelton v. Alabama*, 535 U.S. 654 (2002).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Argersinger v. Hamlin*, 407 U.S. 25 (2006).

6. *Id.*



legal counsel. Subsequently, the defendant was convicted and sentenced to 90-days incarceration.<sup>7</sup> On appeal, the defendant asserted that the Sixth Amendment guaranteed the right to counsel for defendants charged with misdemeanor crimes, and the Supreme Court ruled in favor of the defendant.<sup>8</sup> According to the Court, a criminal defendant charged with any offense punishable by imprisonment is entitled to an attorney under the Sixth Amendment.<sup>9</sup>

Following the holdings in *Shelton and Argersinger*, it would be reasonable to expect that the vast majority of pro se defendants are provided with legal counsel, but, to the contrary, many

To relieve overloaded dockets, prosecutors and judges routinely coerce defendants to waive their right to counsel without explanation of the resulting consequences by offering the inducement of little or no jail time.

jurisdictions are not adhering to the Supreme Court's holdings. For example, a Chief Justice sitting on the Supreme Court of South Carolina stated that, "*Alabama v. Shelton* is one of the more misguided decisions of the United States Supreme Court . . . so I will tell you straight up we [are] not adhering to *Alabama v. Shelton* in every situation."<sup>10</sup> In Florida, defendants are assessed a \$50 fee to apply for a public defender, a fee that may act as a deterrent in some cases and cannot be waived by a judge.<sup>11</sup> Further, in cases where the accused do not face the penalty of jail, deprivation of the right to court appointed counsel is the stark reality for many indigent defendants.<sup>12</sup> To relieve overloaded dockets, prosecutors and judges routinely coerce defendants to waive their right to counsel without explanation of the resulting consequences by offering the inducement of little or no jail time.<sup>13</sup> Because defendants who appear without the assistance of counsel are not well versed in the different stages of criminal proceedings, defendants who appear pro se must overcome obstacles and pitfalls that defendants represented by counsel are easily able to navigate. According to the National Center for State Courts, misdemeanor-related offenses accounted for eighty percent of the criminal cases prosecuted in 2013 in Florida, Arizona, Minnesota, Washington, Texas, and Iowa.<sup>14</sup> The situation is further complicated because a large portion of these defendants are unable to afford the assistance of an attorney and therefore opt to act as their own

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7. *Id.*

8. *Argersinger v. Hamlin*, 407 U.S. 25, 92 (2006).

9. *Id.*

10. Robert Boruchowitz, et al., *Minor Crimes, Massive Waste The Terrible Toll of America's Broken Misdemeanor Courts*, National Association Of Criminal Defense Lawyers, April 2009, NACDL—MINOR CRIMES, MASSIVE WASTE: THE TERRIBLE TOLL OF AMERICA'S BROKEN MISDEMEANOR COURTS.

11. Jerry Iannelli, *Despite Common Belief, Floridians Can't Always Get a Free Public Defender*, MIAMI NEW TIMES (Oct. 29, 2019), <https://www.miaminewtimes.com/news/two-florida-laws-keep-public-defenders-out-of-misdemeanor-courtrooms-11309207>.

12. *Id.*

13. Robert Boruchowitz, et al., *Minor Crimes, Massive Waste The Terrible Toll of America's Broken Misdemeanor Courts*, National Association Of Criminal Defense Lawyers, April 2009, NACDL—*Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts*.

14. Erica Hashimoto, *Protecting the Constitutional Right to Counsel for Indigents Charged with Misdemeanors—Testimony of Erica J. Hashimoto before the U.S. Senate*, (2015), *Protecting the Constitutional Right to Counsel for Indigents Charged with Misdemeanors—Testimony of Erica J. Hashimoto before the U.S. Senate* ([uga.edu](http://uga.edu)).

legal counsel to their detriment.<sup>15</sup> Pro se defendants are far more likely to plead guilty to misdemeanor offenses, and the fallout related to their admission of guilt can exert lasting consequences outside of the legal system.<sup>16</sup> For example, the ability to secure housing, employment, and federal funding for upper-level education are collateral consequences that could occur as result of a conviction for a misdemeanor offense.<sup>17</sup>

## B. Immigrants as Pro Se Defendants

Navigating the legal system is difficult for U.S. citizens, but they are not faced with the possibility of being expelled from the country due to being convicted of petty crimes. As previously stated, defendants are routinely coerced into waiving their right to counsel, and this situation becomes even more dire when a defendant's immigration status is placed in jeopardy. Due to immigration reform over the last twenty years, it is likely that immigrants accused of some misdemeanor crimes will face the possibility of being detained and/or deported.<sup>18</sup> Pursuant to Section 1101(a)(43) of the Immigration and Nationality Act, crimes of moral turpitude can result in deportation.<sup>19</sup> The courts have asserted that breaches of the people's and country's trust where incidents of dishonesty or theft occur are punishable by deportation.<sup>20</sup> Although the punishment for committing a petty crime is unlikely to result in incarceration, immigrants arrested for minor drug possession or DUI without a conviction still face the possibility of intervention at the federal level and subsequent deportation.<sup>21</sup> Thus, the requirement that defense counsel provide "accurate legal advice for noncitizens" regarding the consequences of entering a guilty plea under the holding in *Padilla v. Kentucky* should be expanded to require that judges advise pro se defendants who are immigrants accordingly, and perhaps even establish a mandatory rule of counsel being provided to insure the defendant does not unduly jeopardize his case

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15. Alisa Smith, et al., *Three-Minute Justice: Haste and Waste in Florida's Misdemeanor Courts*, National Association of Criminal Defense Lawyers (July 2011), NACDL—THREE MINUTE JUSTICE: HASTE AND WASTE IN FLORIDA'S MISDEMEANOR COURTS.

16. *Id.*

17. *Id.*

18. George Khoury, *Will a Misdemeanor Conviction Affect My Immigration Status?* FindLaw (April 7, 2017), <https://www.findlaw.com/legalblogs/law-and-life/will-a-misdemeanor-conviction-affect-my-immigration-status/>.

19. FindLaw Staff, reviewed by Maddy Teka, Esq., *Can You Get Deported for a Misdemeanor*, FindLaw (May 14, 2020), <https://www.findlaw.com/immigration/deportation-removal/can-you-get-deported-for-a-misdemeanor.html>.

20. *Id.*

21. *Id.*

and status in the United States. Therefore, additional due process protections should be afforded to immigrants charged with low-level offenses that might result in deportation.

### **C. Policy Recommendations**

There is no time like the present for our legal system to truly display all the virtues that it espouses to stand for and protect the rights of all who face the possibility of their liberties being infringed upon. There is no legitimate reason why the courts throughout the country should not be unilaterally required to adhere to the standard outlined in *Argersinger* and *Shelton*. It is equally important that we not only protect the rights of natural citizens of this country but of those who have traveled long distances seeking a better life for themselves and their families. In cases involving immigrants charged with low-level misdemeanor offenses, counsel should be automatically appointed until it is determined that the defendant has been appraised of their right to counsel, and they have the financial means to obtain private counsel or make an informed decision to waive the assistance of court appointed counsel. Furthermore, legislators at the local and federal level should ensure that laws are enacted and enforced that prohibit prosecutors and judges from speaking with pro se defendants regarding the merits of their respective case until their Sixth Amendment right to counsel has been clearly explained. Finally, the requirement that indigent defendants pay application fees to obtain court appointed counsel should be terminated. The very reason why these defendants are seeking court appointed counsel is largely tied to their inability to afford private counsel. Therefore, it stands to reason that barriers such as application fees that further impede a defendant's ability to adequately defend themselves should be removed to ensure that justice is served in a fair manner.

**Mentor: Serena Wellen**

Senior Director of Product Management for LNNA



**Reflection on working with Fellow Oscar Draughn**

*Working with Oscar Draughn, I've been truly inspired, both by him personally and the project he is championing for his Fellowship: helping low income individuals charged with low-level crimes get justice. Oscar's Fellowship is concerned with the "justice gap" encountered by low income defendants, unable to afford representation or qualify for a public defender. Prior to law school, Oscar's work in the community allowed him to observe the devastating effects of the justice gap firsthand. A guilty plea can result in the inability to get a job, a loan, and other impacts that follow the individual for life. Now in law school, Oscar is determined to take action on this problem, and despite having a full load with law school, summer internships, and a newborn baby (!), he has jumped into customer research and concept discovery. As I write this, Oscar is leading the small team I've recruited for him in a "design sprint" activity to create and validate a prototype solution, studying for exams, and caring for his young son. It's been a true privilege to work with Oscar and support him in his mission to help close the justice gap for low income defendants.*

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**Serena Wellen is Senior Director of Product Management for LNNA. Her portfolio includes AI-enabled solutions, decision tools, analytics, and advanced search capabilities. She leads multidisciplinary teams that are focused on applying AI, machine learning, and other advanced technologies to solve complex customer problems, particularly around understanding the language of the law. Serena's career at Lexis has spanned multiple editorial and product roles, and her passion is infusing deep customer understanding into product development. Prior to joining LexisNexis, Serena practiced law, both in law firm and in-house settings. She earned her Bachelor of Arts from Stanford University, was awarded a JD from the University of San Francisco, and received a Masters in Fine Art from the San Francisco Art Institute.**

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## Money, Power, and Diversity: Examining the Impact of Compensation Models on Attorneys of Color at Major U.S. Law Firms

*Charles Graham, Jr.*

Many factors contribute to the lack of partner diversity at large American firms. The data reflect only a sample of the barriers to partnership for minority attorneys. There is a need to look at the systems and culture within major American firms to find solutions. This study peels back the layers of major U.S. law firms to understand what firms are doing to retain, and to lose, their diverse talent. The findings of this study show that creating more equitable compensation models is one key to unlocking increased access to partnership for diverse attorneys.



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Charles Graham, Jr. is a third-year law student at the Thurgood Marshall School of Law at Texas Southern University. Charles has a decorated background in education. Before attending law school, Charles was a Special Education teacher and educational leader for eight years. As an educator, Charles witnessed the many ways in which law and policy impact families and teachers. Charles hopes to use his platform to advocate for underrepresented communities and promote diversity within the legal profession. Charles' Fellowship project focuses on creating paths to partnership for minority attorneys.

## I. Introduction

The National Association of Law Placement’s (“NALP”) “2020 Report on Diversity in U.S. Law Firms” shows that lawyers of color account for only 10.23% of partners at major U.S. law firms.<sup>1</sup> This number illustrates a striking attrition rate of minority associates on the partnership track. For example, one decade ago, there were about 20% associates of color at major law firms.<sup>2</sup> On average, it takes an associate eight to ten years to become a partner.<sup>3</sup> What happened to the 9.77% of the associates of color that did not make partner by 2020? This research attempts to uncover how the legal industry can close this gap and take significant steps towards ending systemic racism in the field of law.

Over the last decade, firms have progressed in recruiting minority associates, but retention and promotion continue to be challenges. The lack of diverse partner-mentors at major U.S. firms increases attrition rates of minority associates at large firms. One study showed that the top three reasons why associates leave firms are because they feel isolated, experience a lack of guidance, and have diminished opportunities for professional growth.<sup>4</sup> All three of these issues can be addressed by closing the partner diversity gap. This study shows that the compensation structure a firm utilizes impacts partner diversity at major U.S. law firms. Further, this research reveals that tracking origination credits, having diverse representation on partner promotion committees, and maintaining transparency about partner compensation increase diversity at the partner level. Thus, major law firms can help end systemic racism in the legal profession by adopting equitable compensation models and practices.

### A. A Closer Look at Major U.S. Law Firms by the Numbers

In 2020, enrollment of minority law students was about 32.6%.<sup>5</sup> 2020 Census data show that the minority population in the United States was 42.2%, indicating a 9.6% gap in the data.<sup>6</sup> Currently, 26.48% of associates at law firms are people of color; 17.95% of total lawyers at law firms are people of color; and 10.23% of all partners are people of color.<sup>7</sup> Since it takes about ten years for most associates to become partners, the diversity of the 2010 class of associates serves as a baseline—representing the diversity that should be reflected in today’s group of partners at major

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1. 2020 Report on Diversity in U.S. Law Firms, National Association for Law Placement, Inc. (Feb. 2021), [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf).

2. 2020 Report on Diversity in U.S. Law Firms, National Association for Law Placement, Inc. (Feb. 2021), [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf).

3. Justin Wise, *Women, Megafirm Attys May Face Longer Time to Partner*, Law360 (Feb. 4, 2021), <https://www.law360.com/pulse/articles/1350788/women-megafirm-attys-may-face-longer-time-to-partner>.

4. The American Lawyer, *Starved of Professional Development, Minority Associates Are Fleeing Big Firms, Report Finds* (Sept. 30, 2020) <https://www.law.com/americanlawyer/2020/09/30/starved-of-professional-development-minority-associates-are-fleeing-big-firms-report-finds/>.

5. American Bar Association, *Various Statistics on ABA-Approved Law Schools, Statistics, ABA Required Disclosures* (Dec. 18, 2020) [https://www.americanbar.org/groups/legal\\_education/resources/statistics/](https://www.americanbar.org/groups/legal_education/resources/statistics/).

6. U.S. Census Bureau, *Racial and Ethnic Diversity in the United States: 2010 Census and 2020 Census* (Aug. 12, 2021), <https://www.census.gov/library/visualizations/interactive/racial-and-ethnic-diversity-in-the-united-states-2010-and-2020-census.html>.

7. National Association for Law Placement, Inc., *2020 Report on Diversity in U.S. Law Firms* (Feb. 2021), [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf).

firms. In 2010, 20% of associates at law firms were attorneys of color.<sup>8</sup> Thus, firms should aim to have about 20% of its partners to be racially and ethnically diverse.

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Many factors contribute to the lack of partner diversity at large American firms. The data above reflect only a sample of the barriers to partnership for minority attorneys. There is a need to look at the systems and culture within major American firms to find solutions.

Over sixty major U.S. law firms have at least 30% associates of color.<sup>9</sup> However, only 11 of the same law firms have 20% partner diversity in 2020.<sup>10</sup> Even within the firms that rank high based on these diversity metrics, there is room for improvement. For example, sixteen major U.S. law firms have zero Black partners—including the number one ranked firm for diversity and four other firms that ranked in the top fifteen most diverse firms.<sup>11</sup> Currently, Black partners make up only 2.2% of all partners at large American firms.<sup>12</sup> Minority associates leave large firms at a 5% higher rate than nonminority attorneys. Also, 26% of all entry-level associates that leave large American firms are people of color.<sup>13</sup>

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Many factors contribute to the lack of partner diversity at large American firms. The data above reflect only a sample of the barriers to partnership for minority attorneys. There is a need to look at the systems and culture within major American firms to find solutions. This study peels back the layers of major U.S. law firms to understand what firms are doing to retain, and to lose, their diverse talent. The findings of this study show that creating more equitable compensation models is one key to unlocking increased access to partnership for diverse attorneys.

## **B. Lawyers of Color Matter**

The murder of George Floyd renewed the Black Lives Matter Movement and brought racial injustice back to the forefront of American discourse. Racial protest across the country forced corporate America to speak up to end systemic racism or support the status quo. As a result, chief executive officers from large American companies such as JP Morgan Chase, Twitter and Square, Walmart, and even the National Football League vowed to “do more.”<sup>14</sup> Many in the legal commu-

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8. 2020 Report on Diversity in U.S. Law Firms, National Association for Law Placement, Inc. (Feb. 2021), [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf).

9. Gerald Schifman, *Law360's Diversity Snapshot: How Your Firm Stacks Up*, Law360 Pulse (Aug. 16, 2021), <https://www.law360.com/pulse/articles/1411137>.

10. Jacqueline Bell, *These Law Firms Have the Most Diverse Equity Partnerships*, Law360 Pulse (Aug. 17, 2021), <https://www.law360.com/pulse/articles/1411611>.

11. Debra Cassens Weiss, *16 BigLaw Firms Have No Black Partners, Including Firm Ranked No. 1 for Diversity* (May 28, 2021), ABA Journal <https://www.abajournal.com/news/article/sixteen-larger-law-firms-have-no-black-partners-including-firm-ranked-no.-1-for-diversity>.

12. 2020 Report on Diversity in U.S. Law Firms, National Association for Law Placement, Inc. (Feb. 2021), [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf).

13. Debra Cassens Weiss, *Law Firms Lost 15 Associates for Every 20 They Hired, NALP Foundation Study Finds* (Oct. 1, 2020), ABA Journal <https://www.abajournal.com/news/article/law-firms-lost-15-associates-for-every-20-they-hired-study-finds>.

14. Tracy Jan, Jena McGregor, Renae Merle, and Nitasha Tiku, *As Big Corporations Say, “Black Lives Matter,” Their Track*

nity joined the commitment to combat racial inequities through pro bono work, financial contributions to legal nonprofits, and internal diversity initiatives. Below is an excerpt from Akin Gump that illustrates the statements made by major firms across the country.

From the voices of two generations of moral leadership, Akin Gump heeds the call. We cannot remain silent, and we cannot look away. And we cannot accept the sad reality that too little has changed for too long . . . . But it is also time to reimagine what we can do to effect change in our communities and what we can do with the special responsibilities and privileges we hold as part of the legal profession. As a part of this commitment, we are making a \$200,000 financial contribution, split between the NAACP Legal Defense and Educational Fund and Equal Justice Initiative. . . . We will engage in dialogue, seek to educate and raise a call to action in our own firm. . . . We will take our long history of pro bono representation and ensure that we are using the talent and passion of our firm to directly address racial injustice.<sup>15</sup>

Almost 75% of law firms created diversity programs and initiatives because of racial protest.<sup>16</sup> Time will reveal whether these efforts result in lasting change that shifts racial equity within the legal community.

### **C. The History of Compensation at Large American Law Firms**

Understanding the current compensation methods requires the examination of how partner pay at large American firms has evolved. Traditional American law firms, such as Cravath, Swaine & Moore, featured a lockstep compensation plan. Lockstep means that attorneys are paid based on seniority. The benefits of this compensation plan are that attorneys know how much money they will make, and they tend to stay with one firm their entire career. The drawback is that older attorneys at the top, who may not be doing the amount of work reflective of their salaries, are being carried by younger attorneys bringing in new clients. The lockstep model began to crack as new firms poached top lawyers from traditional white-shoe firms with mega deals.

The race for lateral hires and their books of business has ushered in a new compensation structure called the “eat-what-you-kill” model. This model rewards rainmakers for the business they bring into the firm and places a greater value on billable hours. For example, Kirkland & Ellis, which is now the top grossing firm in America, offered Sandra Goldstein a 5-year \$55 million dollar deal to leave Cravath in 2018.<sup>17</sup>

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*Records Raise Skepticism*, THE WASHINGTON POST (June 13, 2020), <https://www.washingtonpost.com/business/2020/06/13/after-years-marginalizing-black-employees-customers-corporate-america-says-black-lives-matter/>.

15. Kim Koopersmith, *Heeding the Call: Our Commitment to Racial Justice*, Akin Gump Strauss Hauer & Feld LLP (accessed on Oct. 14, 2021) <https://www.akingump.com/en/diversity-inclusion/heeding-the-call-our-commitment-to-racial-justice.html>.

16. The Vault Law Editors, *Law Firm & Law School Responses to Black Lives Matter Movement*, *Firsthand* (June 10, 2020) <https://www.vault.com/blogs/vaults-law-blog-legal-careers-and-industry-news/law-firm-law-school-responses-to-the-black-lives-matter-movement>.

17. James B. Stewart, *\$11 Million a Year for a Law Partner? Bidding War Grows at Top-Tier Firms*, THE NEW YORK TIMES (April



The eat-what-you-kill model also has flaws. For example, the New York super firm, Dewey & LeBoeuf, famously collapsed after making more guarantees to high-paid partners than was economically feasible.<sup>18</sup> The use of the eat-what-you-kill model influenced laterals to join Dewey & LeBoeuf, because partners with large books of business could make more money obtaining origination credits from their clients' matters than they could in a lockstep system. The problem for Dewey & LeBoeuf was that the firm expanded too quickly while luring high power partners away from rival firms with exorbitant financial packages. As a result, the firm was forced to lay off its mid-level attorneys, partners began to leave, and then the firm filed for bankruptcy. The backstabbing that took place during the collapse of Dewey & LeBoeuf shed light on the cultural impact that this compensation model can have. Many critics of the eat-what-you-kill model loathe the cutthroat competition this model can have on a firm's culture.

The lockstep and the eat-what-you-kill models are both imperfect, so firms have begun to modify these compensation systems. The following represent the most recognized models used by American law firms today:

- **Lockstep** – sets fixed levels of percentage participation in a firm's profits according to a predetermined set of progressively increasing steps, usually based on seniority.
- **Equal Distribution** – a form of lockstep in which all partners are paid equally.
- **Modified Lockstep** – involves a lockstep schedule for part or all of a partner's compensation; this lockstep schedule can be accelerated, decelerated or managed based upon individual performance.
- **Formula** – compensation is determined by a quantitative formula based on each individual partner's statistical performance.
- **Combination** – compensation is based on statistical performance, but the application of the statistics may be subjectively modified.
- **Subjective** – compensation is determined based on the subjective decisions made by a person or committee, although inputs to the decision may include statistical information.
- **Corporate** – a normal business model where partners receive a salary and bonus based on performance and then are paid dividends based on the profitability of the firm.
- **Eat-What-You-Kill** – this system compensates partners almost entirely based on one's fee production.<sup>19</sup>

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26, 2018), <https://www.nytimes.com/2018/04/26/business/cravath-kirkland-ellis-partner-poaching.html>.

18. James B. Stewart, *The Collapse*, *The New Yorker* (Oct. 7, 2013), <https://www.newyorker.com/magazine/2013/10/14/the-collapse-2>.

19. Aderant, *Your Partner Compensation System Can Be Better: Here's How* (Oct. 2015), [http://www.aderant.com/wp-content/uploads/2015/10/Partner\\_Compensation.pdf](http://www.aderant.com/wp-content/uploads/2015/10/Partner_Compensation.pdf).

## **II. Findings**

### **A. Survey Methodology**

The survey in this study went out to law firms to gather data on the types of compensation models they use, their diversity initiatives, and their diversity metrics. Quantitative data were collected and analyzed for correlations among these three subjects. The data came from primary and secondary sources. Secondary sources include the 2021 Law360 Diversity Snapshot<sup>20</sup> and the MCCA and Vault Law Firm Diversity Database.<sup>21</sup>

The method of collecting primary data consisted of sending the survey to law firms with over one hundred attorneys. Forty-three responses were received. The firms were cross-referenced to law firm databases, data reports, and the primary survey. Compensation data from the primary survey were cross-referenced with the diversity scores from the Law360 Diversity Snapshot. Trends from the most and least diverse firms were noted. Law firms that responded were also searched in the MCCA and Vault Law Firm Diversity Database. A list of diverse compensation practices instituted by a majority of the highly diverse firms was generated.

### **B. Compensation Models Correlate to Increased Partner Diversity**

After analyzing thirty-eight firms, the data reveal two distinct buckets. The first group of compensations models is the “Salary and Seniority” bucket. This group includes lockstep, modified lockstep, equal distribution, and the corporate model. These models favor loyalty, seniority, and salary. The results showed that 50% of the firms with 10% or more diversity at the partner level fall within the Salary and Seniority group. Conversely, 31% of the firms with less than 10% partner diversity use these compensation models.

The second bucket is the “Fee Production” model. Its compensation structures include eat-what-you-kill, combination, and formula. Implementors of these models subjectively use quantitative formulas and statistical performance to reward partners. The number one statistic that these models value is the fees a partner brings into the firm. Again, 50% of the firms with 10% or more diversity at the partner level fall within the Fee Production group. Conversely, 69% of the firms with less than 10% partner diversity use these compensation models.

Firms that use Salary and Seniority models and Fee Production models can both achieve diversity at the partner level. However, firms at the bottom of the diversity totem pole tend to have compensation structures that fall in the Fee Production bucket. One hypothesis is that the Fee Pro-

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20. Gerald Schifman, *Law360's Diversity Snapshot: How Your Firm Stacks Up*, Law360 Pulse (Aug. 16, 2021), <https://www.law360.com/pulse/articles/1411253/the-2021-diversity-snapshot>.

21. For information on the 2020 Vault/MCCA Law Firm Diversity Survey Report, see <https://www.mcca.com/resources/reports/2020-vault-mcca-law-firm-diversity-survey/>.

duction models enhance racial bias more than seniority-based models. Firms that recognize these biases can use their compensation practices to combat racism and to promote equality.

### **C. Diverse Compensation Practices Correlate to Increased Partner Diversity**

The way a firm utilizes origination credits, the diversity of the partner promotion committee, and compensation transparency play a vital role in increasing partner diversity. Survey data show that 90% of firms with at least 10% diversity at the partnership level track their origination credits. Further, firms with greater diversity at the partner level tend to have greater diversity on partner promotion committees. Firms with 15% or more partners of color average about 20% diversity on their partner promotion committees. Finally, transparency from the top down about partner compensation is essential. It is just as important for young associates of color to understand how partner compensation operates because it influences their work, their access to mentors, firm culture, and much more. Compensation practices that increase law firm diversity are tracking origination credits, increasing diversity on partner promotion committees, and maintaining compensation transparency.

## **III. Recommendations**

1. **Be conscious of racial bias, no matter the compensation model.** Salary and Seniority models tend to promote more diversity than Fee Production models. However, both required room for subjectivity and a holistic view of partner contributions to increased access for minority attorneys.
2. **Track orientation credits.** Simply tracking credits can highlight disparities and guide firms in making decisions that promote equitable compensation models.
3. **Diversify the firm's partner promotion committee.** Diverse perspectives are needed to fully understand the unique abilities of prospective partners and to call out racial bias and inequities in the partner promotion process.
4. **Be transparent about partner compensation throughout the firm.** Associates and partners need to fully understand how partners are compensated to progress and build trust.

## **IV. Conclusion**

Partners hold a lot of power within law firms. Partner compensation plays a vital role in firm culture, associate retention, and partner diversity. Rethinking the way law firms implement compensation models and practices can help end systemic racism within the legal industry.

## Mentor: Meredith Crews

Vice President of Finance for Knowable



### Reflection on working with Fellow Charles Graham, Jr.

*I cannot say enough about how lucky I've been this year to have the chance to be a part of the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship program and serve as a mentor for Charles Graham, Jr.*

*During my own law school experience, I remember feeling that I had little power to change systemic injustices in the legal system. I am so inspired by the Fellows in the program who, through their projects (and perseverance!), are proving me wrong every day. It's been a gift to be able to be part of supporting their accomplishments.*

*Ensuring compensation equity is not only a critical issue in my day job in finance, but also one that is near and dear to my heart. Charles's project examines the intersection of partnership compensation models and law firm diversity. His work exposes that historically accepted compensation methods can have a chilling impact on the number of people of color who rise to and remain partners in large law firms. While it has been fantastic to support work that I feel passionately about, it has been even more meaningful to build a relationship with Charles. I look forward to our calls, not just because of his resume and dedication, but also because I've truly enjoyed every conversation. I can't wait to see the impact that he will make throughout his legal career.*

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**Meredith Crews is the Vice President of Finance for Knowable. While previously with Axiom, Meredith helped build the operational infrastructure and led the financial planning and analysis function for their managed services business lines. After serving on the spin-off deal team, Meredith was thrilled to join Knowable in its joint venture with LexisNexis. Meredith earned her undergraduate degree at the University of the Puget Sound, and received her JD from Loyola University Chicago School of Law.**

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## Keep Shutting the Door on Systemic Racism

*Kailyn Kennedy*

My project for the Fellowship is an interactive web series called Legal Vision, which will now open the doorway for those within the legal community to have hard conversations, be educated, and find solutions to resolve employment discrimination through a web show. This web show, as currently envisioned, will consist of an initial season with a couple of episodes diving deep into the employment cycle within the legal community in the effort to eliminate systemic racism.



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**Kailyn Kennedy is a third-year law student at North Carolina Central University School of Law. Kailyn currently serves as the Notes and Comments Editor for the Science and Intellectual Property Law Review for the 2021-2022 school year at NCCU. Additionally, Kailyn serves as the President for the Intellectual Property Law Society (IPLS) at the school and has been a member of the organization since her first year of law school. Kailyn practices as a student-attorney in the USPTO-Certified Trademark Clinic. Intellectual Property, namely fashion law, is one of Kailyn's areas of interest. Kailyn's Fellowship project focuses on allowing people of color working in the legal field to have a space to discuss the racial injustice that exists inside employment via an innovative web series.**

## I. Introduction

What does systemic racism mean? Systemic racism has existed since the early beginnings of our society. Systemic racism consists of practices, attitudes, and behavior that result in discrimination through narrow-mindedness, ignorance, absent-mindedness, and racist stereotyping, thereby disadvantaging those of color. Being a biracial woman in the world, I have concluded that systemic racism encompasses everyone; not just people of color, but also those who are not of color. To elaborate, in today's world, I see those who come from different racial backgrounds other than Caucasian treated unequally because of the color of their skin. However, I then see those individuals of color pointing the finger at all individuals who are Caucasian, just because some individuals are discriminatory.

Systemic racism has always been imbedded in our society, existing everywhere with respect to job opportunities, medical treatment, equality in the judicial process, and equal protection from violence. The overall issue that has now become more evident and prevalent is systemic racism in the employment field of the legal community. According to the Bureau of Labor Statistics, the legal field is one of the least racially diverse professions in the nation.<sup>1</sup> Eighty-eight percent of lawyers are white; while other professions do somewhat better with respect to racial diversity.<sup>2</sup> For example, the statistics reveal that 81 percent of architects and engineers are Caucasian; 78 percent of accountants are Caucasian; and 72 percent of physicians and surgeons are Caucasian.<sup>3</sup> It is necessary and essential that the legal profession becomes as inclusive as the population it serves, as the legal profession encompasses many occupations, including lawyers, judges, corporate legal departments, educators, academic leaders, presidents, politicians, policy makers and professionals in non-profit and legal organizations. In combating systemic racism, it is essential to develop and adopt solutions and implement more inclusive practices that can help end systemic racism in the employment field of the legal community.

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Being a biracial woman in the world, I have concluded that systemic racism encompasses everyone; not just people of color, but also those who are not of color. To elaborate, in today's world, I see those who come from different racial backgrounds other than Caucasian treated unequally because of the color of their skin. However, I then see those individuals of color pointing the finger at all individuals who are Caucasian, just because some individuals are discriminatory.

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1. Deborah L. Rhode, *Law Is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That*, THE WASHINGTON POST, May 27, 2015, at <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/> (retrieved on Oct. 7, 2021).

2. *Id.*

3. *Id.*

## II. Legal Vision Web Series

One of the initial steps to help end systemic racism is addressing the lack of diversity, a task which will require increased communication. To open the door for more communication, I have been given the opportunity to be a part of a Fellowship program and to create a project with the sponsorship of LexisNexis Legal & Professional, a leading global provider of information and ana-

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I believe systemic racism can and will be eliminated as long as we do as much as we can to drive racial injustices and biases out of the legal system. The hope is to build a culture of inclusiveness within the legal system, and that's important because having different and divergent perspectives can create positive outcomes and contributions to the legal community.

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lytics. The Fellowship was created by the LexisNexis African Ancestry Network and the LexisNexis Rule of Law Foundation as a part of LexisNexis' commitment to eliminate systemic racism in legal systems and build a culture of inclusion and diversity.

My project for the Fellowship is an interactive web series called *Legal Vision*, which will now open the doorway for those within the legal community to have hard conversations, be educated, and find solutions to resolve employment discrimination through a web show. This web show, as currently envisioned, will consist of an initial season with a couple of episodes diving deep into the employment cycle within the legal community in the effort to eliminate systemic racism. In the hope of receiving positive responses toward the show, the proposal would be to continue with more seasons of *Legal Vision* in an effort to continue to shut the door on systemic racism. *Legal Vision* will operate as a forum for those of different racial backgrounds in the legal community to discuss the racial injustices in employment. This web show will offer a

free, no judgment space for communication, questions, knowledge, and solutions to be shared about the racial discrepancies in legal employment. This environment of open communication is imperative because it allows individuals of the legal community to have these tough conversations. I have talked to dozens of legal professionals, and they have expressed that during the times we are in now, these conversations need to be had and are necessary for the growth of the legal community.

As an overview of *Legal Vision*, the project will consist of a web series with its first season called the "Employment Life Cycle," which will have three episodes. The first episode is titled "Diversity = You" and is focused on racial discrepancies and the impact in the legal industry. The way this platform is developed is that since we are in the world of dealing with COVID-19, everything has been virtual. I use a forum called *Restream* that allows us to use different tools to be creative and

even allows us to use other applications for an anonymous Q&A. Once we incorporate different attorneys from minority backgrounds to discuss the topic for the show and are ready to launch, using *Restream* will allow us to stream the creative web show live to our main platform on *YouTube*. This will give us and our audience a more interactive show, and the speakers will be able to give solutions or answers to the audience's questions instantly.

The reason I chose this Fellowship and to create *Legal Vision* is because as a biracial person I see both sides of the fence. After last year, with all the racial injustices that occurred, my mother, who is of the Caucasian race, and I were watching a fictional television show in which they were integrating real world problems of racial injustice. As I started to shed tears quietly, my mom could not understand why I was weeping, because she did not understand the racial injustices that had occurred in my life of which I had never spoken. My mom expressed to me that sometimes people do not mean to be racially insensitive or biased because, in some cases, people are not always aware of things that are considered wrong. In my efforts to explain, I ultimately decided to share some of the experiences of racial bias that I had experienced. She explained to me that she did not realize what I had been through, and, even though she should be able to understand, she doesn't because I haven't communicated and shared my experiences. So, I wanted to create a safe space for communication about the raw topics of racial discrepancies. Being biracial, I understand firsthand from seeing through different lenses. I know everyone has different experiences. We need to have these conversations, or we will not be able to come up with viable solutions. What discrimination looks like to one person may not look like discrimination to another.

### III. Solutions

Another solution that I believe will be beneficial to increasing diversity in the employment field of the legal community, and will perhaps be discussed in the first season of the *Legal Vision* web series, is to regularly participate in diversity training, utilize a diversity consultant, and create or review their own diversity, equity, and inclusion policies. For example, when I was working for in-house counsel as a legal department intern, during training and clearance, I had to complete a series of modules. A couple of the modules included diversity training on how to spot racial injustices in the workplace, what were the do's and don'ts, and how to report when and if an individual senses someone being discriminated against, and even included resolutions

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As an overview of *Legal Vision*, the project will consist of a web series with its first season called the "Employment Life Cycle," which will have three episodes. The first episode is titled "Diversity = You" and is focused on racial discrepancies and the impact in the legal industry.

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for those creating the injustices in the workplace. That is why diversity, equity, and inclusion are highly important for eliminating systemic racism because they allow the legal community to respond to diverse individuals more effectively when they acclimate accordingly to unprecedented or less familiar situations. Additionally, they allow for the creation of new ideas, opinions, talents, experiences, and strategies. Diversity within the legal community can help individuals help each other in building strengths and overcoming weaknesses. Training modules like the ones I experienced can improve the quality of service of the legal community to ensure that the voice of the racially uninclusive groups have the opportunity of being heard by bridging the gap and eliminating systemic racism.

#### **IV. Conclusion**

I believe systemic racism can and will be eliminated as long as we do as much as we can to try to drive racial injustices and biases out of the legal system. The hope is to build a culture of inclusiveness within the legal system, and that's important because having different and divergent perspectives can create positive outcomes and contributions to the legal community. Lastly, I am so thankful to the LexisNexis Fellowship family because by creating this Fellowship, they have made significant efforts toward eliminating systemic racism with all of the Fellows' projects that will benefit the legal community.

**Mentor: Jonathon Woods**

Director, Corporate Communications, LexisNexis Legal and Professional



**Reflection on working with Fellow Kailyn Kennedy**

*As a proud graduate of Howard University, a Historically Black University, this Fellowship program enables me to continue to support these important institutions. I am privileged to work with a bright young Fellow, Kailyn Kennedy, and her efforts to address systemic racism in the legal system and contribute to our mission of advancing the rule of law in a meaningful way. The project ‘Legal Vision’ is particularly important because it fosters candid conversations that help not only people of color validate and navigate their unique experiences, but provides insights for all to grow and learn.*

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**Jonathon Woods, originally from Milwaukee, Wisconsin, graduated from Howard University in Washington, D.C. where he studied Journalism with a concentration in Public Relations. He started his career at Edelman Public Relations, one of the largest global public relations and marketing agencies. Jonathon joined LexisNexis in 2013. He currently drives strategy and communications support for executive leadership, functional groups and RELX. Outside of work, he loves to volunteer, cook, entertain family and friends, and explore the bustling city of New York.**

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## Diverse at the Bottom, Converse at the Top? It's Time to Stop:

### A Study on Factors that Affect Underrepresentation of Black Women Partners Across the United States

*Pearl Mansu*

Black women attorneys are vastly underrepresented in law firm leadership across the United States. Amplifying the voices of Black women attorneys by recognizing their credibility on the subject of racial disparity, heeding their warnings about factors that prevent Black women from making partner, and replicating conditions that help them attain partnership are essential ways to combat the underrepresentation of Black women in law firm leadership.



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Pearl Mansu, a high-achieving third-year student at the University of the District of Columbia David A. Clarke School of Law (UDC Law), has served as a student attorney in the Immigration and Human Rights Clinic at UDC Law and is currently serving with the school's Whistleblower Protection Clinic. She is excited to be joining Reed Smith, LLP's Washington, D.C. office as an associate after graduation, and looks forward to growing in that firm's litigation practice, as well as its pro bono work with asylum and refugee protection.

Pearl is full of passion and exhibits the excellence, aptitude, and grit that minority attorneys and law students bring to the table. As a Ghanaian-born millennial with a five-year gap between undergrad and law school, she is an advocate for the value that diverse and nontraditional talent adds to legal practice. Having chosen a service-oriented HBCU as a clear path to private sector jobs—including jobs in big law—Pearl is determined to demonstrate that varied paths are still valid paths to competitive legal positions.

Pearl's Fellowship project focuses on deepening network opportunities for women attorneys of color to increase diversity in law firm leadership.

## **I. Introduction and Framework: Background Statistics**

*“Black and Brown attorneys have demonstrated that they are capable of successfully operating in legal practice. But they are not capable of leading or driving the legal field. Sure, attorneys of color can skillfully play by the rules. But they simply cannot make the rules.”*

The preceding statements are repugnant enough to nauseate any sensible person. In fact, the legal community would hardly tolerate these statements from individuals and would emphatically condemn people who spewed such lines. But what happens when law firms and major legal organizations scream the same messages by hiring token Black and Brown lower-level associates while habitually failing to promote qualified minorities to partner? What happens when law firms boast of robust diversity and inclusion programs only to have high leadership positions composed exclusively of white or white-passing faces? Curiously, until 2020, the legal community seemed as audible as a throng of mimes in condemning the systemically racist practice of denying qualified Black and Brown attorneys access to high leadership positions.

While a whopping 85% of lawyers are Caucasian, less than 5% are Black, 5% are Hispanic, and 3% are Asian.<sup>1</sup> When it comes to law firm leadership, the numbers are even lower for attorneys of color. As of 2018, Asian Americans made up 3.6% of law firm partners across the United States, Hispanic Americans composed 2.5%, and African Americans constituted a mere 1.8%.<sup>2</sup> Compounded with gender, the lack of diversity and inclusion in the legal industry is even more apparent. In 2018, Asian American women made up 1.4% of partners in law firms across the nation, with Hispanic women trailing behind at 0.8% and African American women even further behind at 0.7%.<sup>3</sup> Hence, the available data reflects that more than other groups for which data is available, Black women attorneys are most negatively affected by the legal industry's failure at diversity and inclusion.

Black women attorneys are vastly underrepresented in law firm leadership across the United States. Amplifying the voices of Black women attorneys by recognizing their credibility on the subject of racial disparity, heeding their warnings about factors that prevent Black women from making partner, and replicating conditions that help them attain partnership are essential ways to combat the underrepresentation of Black women in law firm leadership.

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1. American Bar Association, *Profile of the Legal Profession 2020*, 113 (July 2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

2. Inst. for Inclusion in the Legal Pro., *IILP Review 2019-2020: The State of Diversity and Inclusion in the Legal Profession*, 14 (2019-20), [https://theiilp.wildapricot.org/resources/Documents/IILP\\_2019\\_FINAL\\_web.pdf](https://theiilp.wildapricot.org/resources/Documents/IILP_2019_FINAL_web.pdf).

3. *Id.*

## **II. Research Methodology: Questionnaire**

This study seeks to amplify the voices of Black women attorneys by reporting factors that Black women identify that either help or deter their advancement towards partnership at law firms across the nation. To carry out this mission, this study employs a 26-question survey intended for completion by Black women attorneys. The purpose of the questionnaire was to obtain both qualitative and quantitative data from Black women attorneys. In the spirit of inclusivity and to ensure that Black women participants did not feel targeted, the survey opened with a statement giving insight to the survey's purpose and the reason to pointed questions that may feel uncomfortable. The substance of the survey measured various factors that affected Black women attorneys' journey to partnership, if indeed they embarked on such a journey.<sup>4</sup>

The survey begins by gathering basic demographics, namely the professional title of the survey taker,<sup>5</sup> the survey taker's work setting,<sup>6</sup> the size of said legal setting, and the dominant practice area(s) of the survey-taker's setting, along with the survey taker's own practice area, their race identification, and their gender identification. The survey then moves into questions that gauge what diversity and inclusion mean to the survey participant, followed by questions about factors that have helped or hindered the participant's journey to partnership. For those participants who never ventured on the journey to partnership, the survey asks questions to gauge the reason. Throughout the topics touched, the survey uses both closed and open-ended questions where appropriate.

## **III. Survey Results, Analysis, and Implications**

### **A. Insights on Response and Accuracy**

One research consulting firm<sup>7</sup> posits that while there are several factors that affect survey accuracy, as a "very rough" guide, 200 responses generally provide fair accuracy for most surveys.<sup>8</sup> The firm expounds that 100 responses are needed even for marginally acceptable accuracy.<sup>9</sup> The survey at hand drew just 29 respondents,<sup>10</sup> lagging far behind the general guideline for accuracy. Further, only

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4. See Appendix A for survey questions.

5. *I.e.*, law student, junior, mid-level, or senior associate, or partner, with the option to fill in an unlisted professional title.

6. *I.e.*, law firm, in-house or academia, with the option to fill in an unlisted setting.

7. Great Brook Consulting, <https://greatbrook.com>, is a Massachusetts-based consulting firm that provides service organizations with insights on leveraging customer base, particularly through survey design and analysis.

8. GreatBrook.com, *Survey Statistical Confidence: How Many is Enough?* (accessed October 2021), <https://greatbrook.com/survey-statistical-confidence-how-many-is-enough/#:-:text=As%20a%20very%20rough%20rule,even%20for%20marginally%20acceptable%20accuracy>.

9. *Id.*

10. Responses of those who did not identify as female were excluded, as this study focuses on Black women.

six (6) of the twenty-nine identified as Black women.<sup>11</sup> The minuscule number of responses provokes an inquiry into why such a pressing topic received so few responses.

The preliminary consideration for such few responses should inevitably begin with the survey window, marketing efforts in getting the survey to the target audience—here, Black women attorneys. The survey was live for two weeks; a greater window could have yielded more results. Additionally, the survey administration team used LexisNexis' internal database for distribution, as well as *LinkedIn* postings, announcements in law school course rooms, and word-of-mouth invitations. As with most other survey projects, greater resources applied to marketing efforts would likely have increased the number of responses.

Beyond preliminary considerations of survey window and marketing, the first consideration for low response number is time. This survey was designed for attorneys, professionals who generally make their earnings through a system of billing time. For a lawyer, time—down to even a tenth of an hour<sup>12</sup>—means money. Hence, an attorney who sees that the survey at hand could take up to fifteen minutes to complete may be discouraged to participate: fifteen minutes translates to roughly three-tenths of an hour that could be used on client matters to generate earnings.

Still, given how presumably important (and this is a huge presumption) it is for a Black woman attorney to participate in an activity that *could* increase her advancement opportunities, would three-tenths of an hour not be worth the investment? Herein a second consideration into low survey response: after centuries of systemic oppression, marginalization, and lack of representation that has resulted in Black women only comprising about 2% of all lawyers in the U.S. as of 2019,<sup>13</sup> Black women attorneys may question the ability of surveys to rectify past oppression. In the potential view of survey respondents, years of systemic racism in the legal field may have plausibly created a sense of hopelessness that will take more than a fifteen-minute, well-meaning survey project to heal.

Another research consulting firm<sup>14</sup> lists four reasons why people generally refuse to take surveys: (1) participation requires too much effort; (2) the survey omits a well-explained context; (3) the

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11. There were eleven (11) respondents who identified as being of two or more races. It is of note that some of those of more than one race may identify as Black. However, as the specific identification as a Black woman is not decipherable from responses, this study focuses on the responses of the six (6) Black women.

12. At most firms, attorneys bill their time in six-minute or one-tenth increments, with even the quickest tasks cumulatively amounting to significant client bills. See Quovant, *Understanding Legal Billing Increments and Billable Hours* (July 18, 2016), <http://blog.quovant.com/blog/understanding-legal-billing-increments-and-billable-hours#:~:text=Most%20law%20firms%20have%20their,increment%20possible%20at%200.10%2Dhour>.

13. Inst. for Inclusion in the Legal Pro., *IILP Review 2019-2020: The State of Diversity and Inclusion in the Legal Profession*, 227 (2019-20), [https://theiilp.wildapricot.org/resources/Documents/IILP\\_2019\\_FINAL\\_web.pdf](https://theiilp.wildapricot.org/resources/Documents/IILP_2019_FINAL_web.pdf).

14. NSF Consulting, <http://nsfconsulting.com.au/>, is an Australian research consulting firm that offers evidence-based advice on research and evaluation services.

survey's purpose does not seem legitimate; and (4) the topic of the survey is too sensitive.<sup>15</sup> Reason two does not apply here; the survey opened with an explanation of context and purpose, and questions asked closely aligned with the specified context and purpose.

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Black women attorneys are more likely to deem a firm genuine when the firm employs policies that favor diversity, including dress code policies. An example of such a policy could be the open acknowledgment that at a given firm, traditionally Afrocentric hairstyles (from braids to afros to locks) are considered as professional as Eurocentric coifs.

Regarding reason three, a Black woman attorney may be skeptical that the purpose of the survey is a superficial show of solidarity with the Black community, as has arguably been a trend in the U.S. since the summer of 2020. As for the first reason, it is plausible that up to fifteen minutes of thinking through potentially triggering or unpleasant realities of one's profession is simply too much. The fourth reason is also plausible here, as recalling and reporting potentially negative, race-based experiences could be an overly sensitive topic. Mental Health America explains the condition of race-based traumatic stress or RBTS, where a person suffers a mental and/or emotional injury resulting from encounters with racial or ethnic discrimination, bias, racism, or crime.<sup>16</sup> It follows that a survey that deals with a topic for which a mental health diagnosis exists may require too much effort or involve too sensitive a topic for participants.

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In all, aside from the need for a greater response window, more effective marketing strategies, and a higher rate of exposure to the target audience, factors that may be responsible for this survey's low response rate include but may not be limited to: survey completion time, cynicism about the impact and purpose of the survey, effort required for participation, and sensitivity of the survey's topic.

An alternative for collecting information on diversity and inclusion from Black women attorneys could be in the setting of a group discussion led by other Black women attorneys. Safe spaces where groups of Black women attorneys can vulnerably share their experiences about legal practice may be especially informative.

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15. NSF Consulting, *Unwillingness to Answer. 4 Reasons Why People Refuse to Respond*, (accessed Oct. 2021), <http://nsfconsulting.com.au/4-reasons-for-survey-refusals/>.

16. Mental Health America, *Racial Trauma* (accessed Oct. 2011), <https://www.mhanational.org/racial-trauma>.

## **B. Highlights of Results & Implications**

Despite receiving few survey responses, the information gathered from collected responses are nonetheless insightful, shedding light on factors at play in the percentage of Black women partners at law firms across the nation. Immediately following are highlights of raw results gleaned from responses of the six (6) Black women attorneys, with responses from other women of color to supplement where appropriate data from Black women is missing.<sup>17</sup> Of the total of 29 respondents who identified as female, aside from the six (6) who identified as Black or African American alone, nine (9) identified as Asian alone; eleven (11) identified as being of two or more races; two (2) identified as Hispanic or Latina alone; and one (1) identified as an unlisted ethnicity, with no further specification of that ethnicity.

### **a. Results on Demographics**

Of the six (6) Black women respondents, 50% worked in medium-sized firms (16 to 350 attorneys) and 50% worked in large-sized firms (over 350 attorneys). Sixty-seven percent (67%) identified as junior associates, defined as having to up to three years of legal practice, and 33% identified as “other,” with no further specifications. None of the Black women respondents reported themselves as a partner.

Of all 29 women of color respondents, only two (2) (or 7%) identified as a partner: one (1) who self-reported as Asian alone and one (1) who self-reported as being of two or more races. All respondents (including Black women) reported that they worked at law firms.

### **b. Highlighted Results on Perceptions of Diversity and Inclusion**

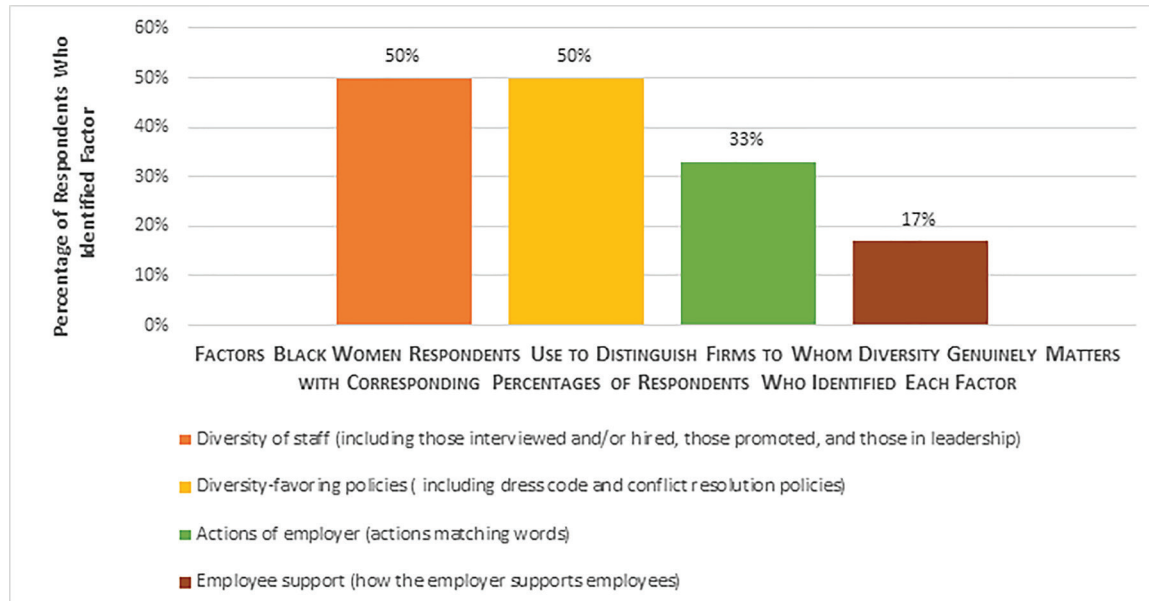
Of Black women respondents, 83% indicated that they could usually tell the difference between an employer that says diversity and inclusion are important to them but does not mean it, and an employer that genuinely means that diversity and inclusion are important to them. Seventeen percent (17%) indicated that they could tell the difference sometimes. No Black women respondent reported that they could usually not tell the difference. Black women respondents listed the items below as factors that differentiate employers to whom diversity and inclusion genuinely matter, with respondents able to identify multiple factors.

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17. For instance, as results will reflect, none of the six (6) Black women respondents identified as partners. Hence, looking to other women of color respondents who are partners may prove informative.

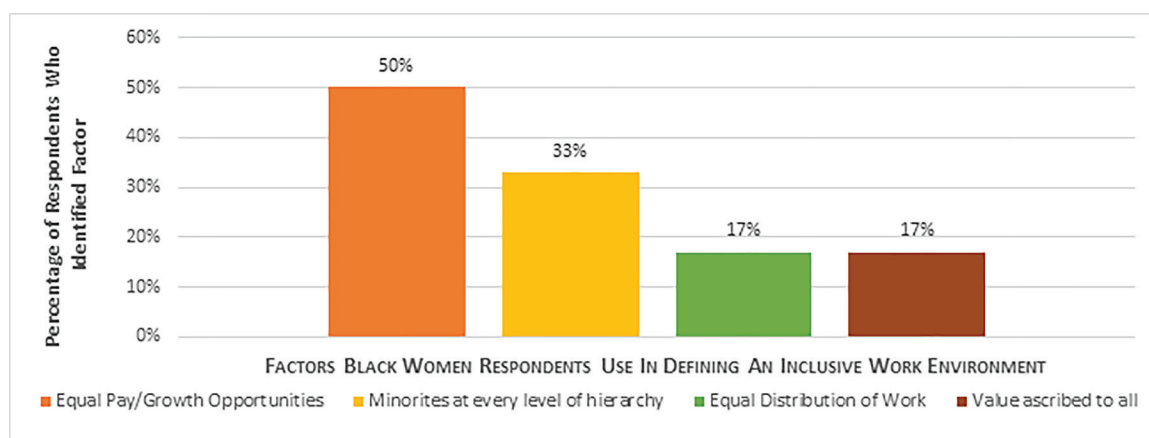


## Diverse at the Bottom, Converse at the Top? It's Time to Stop



The above data implies that through specific measuring factors, most Black women attorneys can decipher an employer who is serious about diversity and inclusion from one offering lip service. Diversity of staff and diversity-favoring policies are the largest factors here. Both factors are closely tied to the third factor of a firm's actions regarding diversity and inclusion matching their claims. Accordingly, Black women attorneys may perceive firms with low rates of diversity in their interviewing, hiring, promotion, and leadership line-ups as firms who are not genuine in claims of valuing diversity. Black women attorneys are more likely to deem a firm genuine when the firm employs policies that favor diversity, including dress code policies. An example of such a policy could be the open acknowledgment that at a given firm, traditionally Afrocentric hairstyles (from braids to afros to locks) are considered as professional as Eurocentric coils.

Further, Black women respondents noted the factors below in conveying how, if at all, they *define* an inclusive work environment. Each respondent could list multiple items.



In addition to equal compensation, equal opportunities for growth, and equal distribution of work as non-diverse attorneys, Black women attorneys define inclusive firms as ones where there are minorities at *every* level of the firm's hierarchy. Also, Black women attorneys define inclusive firms as those where all, not just some, feel valued.

***i. Working for an Employer to Whom Diversity & Inclusion Are Not Important***

Of Black women respondents, 16.5% indicated that when dealing with an employer for whom they perceive diversity and inclusion are not important, they would “pass on that employer and take [their] talents to South Beach.” A competing 16.5% indicated that they would work for such an employer regardless, with respondents noting that they seek employment for other reasons, and not for diversity and inclusion. Respondents who chose this second option declined to identify the “other reasons” they are at their given place of work.

A majority (67%) indicated that they would work for such an employer long enough to handle certain obligations and *then* take their talents to South Beach like Lebron. All (100%) those who selected the option to temporarily work for this type of employer identified their “certain obligations” as financial obligations (paying off student loans, saving enough money, and taking care of family, etc.). In addition to financial obligations, 25% of those who chose this temporary working arrangement also identified social obligations (working at a prestigious firm, networking, and adding the position to their resume).

Of Black women respondents, 50% reported that they would choose an employer that paid less but valued minorities over one that paid top dollar but did not value minorities. Conversely, 50% reported that they would choose an employer that paid top dollar but did not value minorities over one that paid less but valued minorities.

Hence, although most Black women attorneys value diversity and inclusion at firms, they also value the ability to fulfill financial obligations. Financial security is evidently a major factor to Black women attorneys, as 50% would choose a firm with top compensation over a diverse and/or inclusive firm with less pay. Still, the fact that a 67% majority is willing to temporarily tolerate a firm that is not inclusive for financial reasons may be a tell-tale sign of the low percentage of Black women's partnership percentage. This fact implies that Black women attorneys leave non-diverse, non-inclusive firms with low morale after they have handled financial obligations, which could be long before the attorneys are even up to be considered for partnership.<sup>18</sup> An article from the *ABA Journal* supports the implication that Black women leave non-diverse, non-inclusive firms before

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18. Debra Cassens Weiss, *Majority of Minority Female Lawyers Consider Leaving Law; ABA Study Explains Why*, A.B.A. J. (June 22, 2020) <https://www.abajournal.com/news/article/most-minority-female-lawyers-consider-leaving-law-aba-study-explains-why>.

consideration for partnership. The article points out that 70% of minority female lawyers either leave, or consider leaving, legal practice altogether because of biases and stereotypes on account of being a minority female.<sup>19</sup> To add, a *Bloomberg Law* article relays that Black women have higher firm attrition rates than any other minority group, pointing out evidence why law firm culture may not be conducive to the success of minority women.<sup>20</sup>

## *ii. Treatment in the Workplace*

Of Black women respondents, 83% reported that they cared about being valued and included as a minority in the workplace and considered this as a factor when applying for opportunities or accepting offers; 17% of respondents reported that they cared about being valued and included as a minority in the workplace, but did not consider this as a factor when applying for opportunities or accepting offers. No Black woman respondent selected that they did not care about being valued or included as a minority employee, and that they just wanted to grow as an attorney, or make money, or both.

Eighty-three percent (83%) of Black women respondents indicated they believe tokenism exists in the workplace, while 17% were not sure if tokenism existed at work. Fifty percent (50%) indicated they were okay with being their employer's token minority employee as long as their employer paid them enough, but only long enough to pay off student loans. Further, 16.5% indicated that they were okay (indefinitely) with being their employer's token minority employee as long as their employer paid them enough. In contrast, 33% indicated they were not okay with being their employer's token minority employee, no matter how much their employer paid them.

Although a third of Black women attorneys surveyed indicated that money had no bearing on their resolve not to be a token for their firm, the majority conveys the significance of money in a Black woman attorney's acquiescence to being tokenized, even if just temporarily.

In response to a request for respondents' definition of tokenism in the workplace, Black women respondents answered (verbatim):

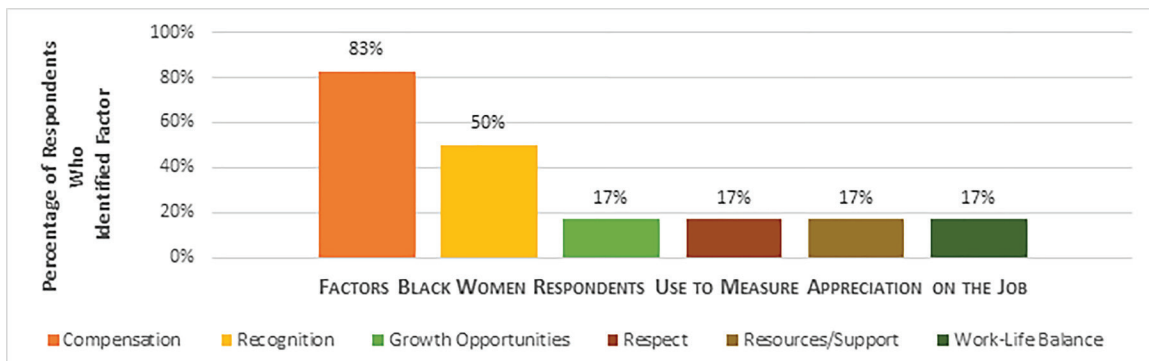
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19. *Id.*

20. Stephanie Russell-Kraft, *Law Firms Struggle to Hire and Keep Black Women*, *Bloomberg Law* (Jan. 6, 2017) <https://news.bloomberglaw.com/business-and-practice/law-firms-struggle-to-hire-and-keep-black-women>.

- *"Hiring 'one of each,' showing them on firm literature but not giving substantive work or opportunity"*
- *"Having a person of color, woman and/or someone who identifies as LGBTQIA in a visible position"*
- *"Always asking me to be involved in marketing events/shoots"*
- *"Firms that preach diversity because it is popular but don't do the work. They count diverse employees for the sake of saying they have a diverse workplace but don't make improvements to the environment / company culture for the diverse employees"*
- *"An allstar [sic] diverse lawyer"*

All Black women respondents (100%) reported that they would recommend a job opportunity to minority colleagues even if the respondents knew their minority colleagues would not be appreciated at that job, but that respondents would caution their minority colleagues about the challenges their minority colleagues would face at that job. Black women respondents noted the factors below in conveying what being appreciated at a job meant to them, with each respondent able to list multiple factors.



Again, the data reflects that Black women attorneys recommend jobs to minority colleagues where minority colleagues may not get adequate compensation, recognition, growth opportunities, respect, resources, or work-life balance. The data also reflects that Black women attorneys inform minority colleagues about challenges of unappreciation. Hence, minority colleagues who received recommendations from Black women attorneys potentially come into non-inclusive firms with low morale, already knowing the challenges to expect and from whom to expect it.

If those minority colleagues are other Black women who follow the majority trend of enduring a non-inclusive environment just long enough to fulfill financial obligations, then they will likely not stay at the firm long enough to even be considered for partnership.

### **iii. Firm Metrics**

Of Black women respondents, 16.5% reported their job expected 1501 to 1700 hours billable hours annually. One-third (33.3%) reported their job expected 1701 to 1900 hours billable hours annually. Half (50%) reported their job expected 1901 to 2200 hours billable hours annually. A majority (83%) found their job's billable hour requirement reasonable, while 17% found their job's billable hour requirement unreasonable.

The fact that the majority of Black women attorneys found their expected billable hour requirements to be reasonable implies that completing work and meeting job expectations is generally not an issue for Black women attorneys. As a non-issue, meeting job expectations—or merit—is likely not a notable reason for the shortage of Black women partners in the nation.

### **c. Results on Partnership**

Regarding desire and capability for partnership, one-third of Black women respondents (33.3%) reported that they wanted to make partner one day and that they thought they could be successful in making partner. These women identified the following reasons for their sentiments: ample opportunity for growth at their firm; feeling as valued as non-diverse candidates; and personal ambition, worth ethic, and ability.

Another one-third (33.3%) reported that they wanted to make partner one day, but did not think they could actually make partner. These women identified the historical difficulty of female minorities making partner as the reason for their sentiment.

Yet another one-third (33.3%) indicated that while they once wanted to make partner, they did not anymore. Roughly 16.5% of these women identified long hours and firm politics as the reasons for their sentiments. Additionally, 16.5% specified that while they generally still wanted to make partner, they did not want to do so at their current firm.

Significantly, although none of the Black women respondents were partners at the time of the survey, 100% carried a desire either in the past or present to make partner. Hence, like meeting firm expectations, lack of desire to make partner is likely not a notable hindrance in Black women making partner. It is of note that a 16.5% minority identified long hours as a deterrent to becoming partner. It is likely that a minority of Black women attorneys lose desire for partnership because they

may not want to work beyond expected billable hours. Also, a 16.5% minority of Black women attorneys may want to leave their current firm before pursuing their desire of partnership. Exploring reasons for this deferment may be enlightening; the reasons *may* have to do with waiting to pursue leadership in an inclusive environment. Moreover, that one-third of Black women respondents have named historical difficulty of female minorities making partner as the reason for respondents believing they cannot make partner is telling. This historical framework seems to stand as a discouraging obstacle to Black women attorneys.

*i. Insights from Other Women of Color Partners*

Out of 29 respondents who identified as non-white females, only two (2) or 7% reported that they were partners: one (1) identified as Asian alone and one (1) identified as being of more than one race. The respondent who identified as a partner who was Asian alone indicated that to make partner, they had to overcome the obstacle of “getting noticed by other important partners at the firm to get their support.” They conveyed that “internal firm relationships” helped them to achieve partnership.

The respondent who identified as a partner who was of two or more races indicated that they had to overcome the obstacle of “learn[ing] how to build networks, participate on committees, and hide [their] disabilities.”

Though the insights immediately above did not come from Black women partners, they may prove useful in the context of Black women where data from Black women partners is lacking. This is because these insights come from other women of color. As such, Black women may need to overcome the hurdle of getting noticed and supported by important partners at the firm, as well as that of learning to build networks, participating in company initiatives, and navigating thriving with any disabilities. As referenced by other women of color partners, Black women attorneys can likely advance in the quest for partnership through strong internal firm relationships, as well as channeling disdain for systemic racism at firms as fuel for this quest.

*ii. Insights from Black Women Attorneys on Specific Ways to Increase Partnership*

Ultimately, Black women attorneys agree with the power of relationships as propellants to partnership. When asked to offer insights about how to increase the number of Black women partners across the United States, Black women respondents answered that mentoring—including mentoring potential, future Black women attorneys as early as high school—was essential to increasing partnership percentages. Black women also named active recruiting of Black women as a key to increasing the partnership percentage.

### **C. Synoptic Recommendations**

Considering all the preceding data, it is clear that the majority of Black women attorneys are willing to endure non-diverse and non-inclusive firms for as long as they need to attain financial security, and then they are gone. They are not willing to stay in non-inclusive spaces for longer than necessary, which may mean that they do not stay at certain firms long enough to be considered for partner.

To increase the number of Black women partners, it follows that creating inclusive conditions where Black women can work with fulfillment beyond any financial or social obligation is key. Based on data from Black women attorneys, law firms can create inclusive environments by:

- Ensuring Black women get equal compensation, recognition, and opportunities for growth, and comparable distribution of work as non-diverse attorneys;
- Backing claims about the importance of diversity and inclusion with measurable action;
- Ensuring diversity of staffing at *every* level of hierarchy, including high leadership;
- Intensifying recruiting, interviewing, hiring, and promotion, of qualified minorities;
- Establishing and maintaining an internal mentorship programs where relationships between high executives and Black women attorneys are formed and strengthened;
- Establishing and maintaining external mentorship and pipeline programs with Black women and girls who aspire to be attorneys;
- Adopting diversity-favoring policies that acknowledge and celebrate Afrocentric values and not just Eurocentric values;
- Rejecting the idea that diverse candidates are not as meritorious as nondiverse candidates;
- Refraining from using Black women attorneys for diversity quota or marketing purposes while refusing them opportunities for coveted/substantive work and/or adequate pay;
- Discontinuing practices based on the belief that hiring or promoting one (or a handful) of Black women attorneys equals achieving diversity and inclusivity; and
- Advocating for Black women attorneys who express desire and drive for partnership.

The recommendations above are synoptic in nature and far from exhaustive. Yet they capture Black women attorneys' idea of inclusion. By heeding such recommendations, law firms can replicate conditions which Black women are not forced to temporarily endure. Rather, firms across the U.S. can boost retention of Black women, resulting in increased partnership rates.

## Appendix A: A Survey Exploring Factors Affecting Percentages of Black Women Partners in Law Firms Across the U.S.

*Thank you for taking the time to honestly respond to questions on this survey.*

*This survey was created to address the low percentage of Black women attorneys who hold leadership roles across law firms in the United States. Specifically, as of 2019, Black women only make up 0.7% of law firm partners across the nation.*

*The information gathered from this survey will help our team understand the factors that contribute to the incredibly low percentage of Black women partners in the U.S. Subsequently, your responses will enable our team to create a manual that empowers U.S. firms to increase the number of Black women partners nationwide.*

*Please note that it will take anywhere from about two (2) minutes to fifteen (15) minutes to complete this survey.*

### I. Demographics:

1. Please select the professional title that best describes you:

- a. Law student
- b. Junior associate (0 to 3 years of practice)
- c. Mid-level associate (3 to 5 years of practice)
- d. Senior-level associate (5 or more years of practice)
- e. Partner
- f. Other: \_\_\_\_\_

2. Please select the legal setting in which you work:

- a. Law firm
- b. In-house
- c. Academia (professor)
- d. Other: \_\_\_\_\_

3. If you work in a law firm, please describe the size of your firm:

- a. Small (15 attorneys or less)
- b. Medium (16 to 350 attorneys)
- c. Large (Over 350 attorneys)



d. N/A

4. What is/are the dominant practice area(s) at your place of work? \_\_\_\_\_

5. What is/are your practice area(s)? \_\_\_\_\_

6. We recognize that ethnicity can be complex. Please choose the ethnicity with which you identify, or write in your ethnicity if none of those listed apply.

- a. White alone
- b. Black or African American alone
- c. American Indian and Alaska Native alone
- d. Asian alone
- e. Native Hawaiian and Other Pacific Islander alone
- f. Two or More Races
- g. Hispanic or Latino alone
- h. Ethnic identity not listed above: \_\_\_\_\_

7. Please choose the gender that best describes you. As gender can be complex, please write in your gender if none of those listed apply.

- a. Female
- b. Male
- c. Non-binary/third gender
- d. Cisgender
- e. Agender
- f. Transgender
- g. Gender identity not listed above: \_\_\_\_\_

*\*Point of exit for those who do not identify as (1) women and (2) non-white. \**

## **II. Diversity & Inclusion:**

8. I can usually tell the difference between an employer that says diversity and inclusion are important to them but does not mean it, and an employer that genuinely means that diversity and inclusion are important to them.

- a. Yes

- b. No
- c. Sometimes

9. To you, what are the factors that differentiate an employer that genuinely means that diversity and inclusion are important to them from an employer that says diversity and inclusion are important but does not mean it? \_\_\_\_\_

10. When it is clear to me that diversity and inclusion are not important to an employer:

- a. I would pass on that employer and take my talents to South Beach like Lebron.
- b. I would apply for and/or accept an offer from them regardless. I am here for other reasons, not for diversity or inclusion.
- c. I would work there long enough to handle certain obligations and then take my talents to South Beach like Lebron.
  - i. *Sub-question for choice B only:* Please identify your other reasons:  
\_\_\_\_\_
  - ii. *Sub-question for choice C only:* Please identify your obligations:
    - 1. Financial obligations (*paying off student loans, saving enough money, taking care of family, etc.*)
    - 2. Social obligations (*working at a prestigious firm, networking, adding the position to your resume, etc.*)
    - 3. Not listed above: \_\_\_\_\_

11. Money vs. minority treatment—please choose one:

- a. I would choose an employer that pays less but values minorities over one that pays top dollar but does not value minorities.
- b. I would choose an employer that pays top dollar but does not value minorities over one that pays less but values minorities.

12. Being valued as a minority employee: to care or not to care? Please choose one:

- a. I care about being valued and included as a minority in the workplace, and I consider this as a factor when applying for opportunities or accepting offers.
- b. I care about being valued and included as a minority in the workplace, but I do not consider this as a factor when applying for opportunities or accepting offers.
- c. I do not care about being valued or included as a minority employee. I just want to grow as an attorney, make money, or both.

13. Do you believe tokenism exists in the workplace?
- Yes
  - No
  - Not sure
14. How, if at all, do you define tokenism in the workplace? \_\_\_\_\_
15. Token minority employee? Please choose one:
- I am okay with being my employer's token minority employee as long as they pay me enough.
  - I am not okay with being my employer's token minority employee, no matter how much they pay me.
  - I am okay with being my employer's token minority employee as long as they pay me enough, but only long enough to pay off my student loans.
16. To you, what does it mean to be appreciated at a job? \_\_\_\_\_
17. Job recommendation—please choose one:
- I would recommend a job opportunity to my minority colleagues even if I knew they would not be appreciated at that job.
  - I would not recommend a job opportunity to my minority colleagues if I knew they would not be appreciated at that job.
  - I would recommend a job opportunity to my minority colleagues even if I knew they would not be appreciated at that job, but I would caution my colleagues about the challenges they would face there.
18. How, if at all, do you define an inclusive work environment? \_\_\_\_\_
19. Managers/direct supervisors: Please choose one:
- Those whom I directly report to at work (includes internships) promote an inclusive atmosphere.
  - Those whom I directly report to at work (includes internships) oppose an inclusive atmosphere.
  - Those whom I directly report to at work (includes internships) or school neither promote or oppose an inclusive atmosphere; they take a neutral stance.

### **III. Partnership & Metrics**

20. Please choose one and list a reason for the choice you make:

- a. I want to make partner one day, and I think I can do it.
  - i. Why? \_\_\_\_\_
- b. I want to make partner one day, but I do not think I can do it.
  - i. Why? \_\_\_\_\_
- c. I once wanted to make partner, but not anymore.
  - i. What changed your mind? \_\_\_\_\_
- d. I never wanted to make partner.
  - i. Why? \_\_\_\_\_
- e. I have already made partner.
  - i. Why did you want to become partner? \_\_\_\_\_
  - ii. What, if any, obstacles did you overcome to the path to become partner?  
\_\_\_\_\_
  - iii. What, if anything, helped you achieve partnership? \_\_\_\_\_

21. Please choose one: my job expects:

- a. Less than 1500 billable hours annually
- b. 1501 to 1700 billable hours annually
- c. 1701 to 1900 billable hours annually
- d. 1901 to 2200 billable hours annually
- e. Over 2200 billable hours annually

22. Please choose one:

- a. My job's billable hour expectation is reasonable.
- b. My job's billable hour expectation is unreasonable.

23. Please choose one:

- a. My job requires additional hours, aside from billable hours.
  - i. *If so, please indicate a general estimate of the additional requirement:*  
\_\_\_\_\_

- b. My job does not require additional hours, aside from billable hours.

*\*The next question is only for those who answered "a" to the previous question. \**

24. Please choose one:

- a. My job's additional hour expectation is reasonable.
- b. My job's additional hour expectation is unreasonable.

25. Please choose one:

- a. I meet my job's hour expectation easily.
- b. I meet my job's hour expectation, but with *some* difficulty.
  - i. *Please list and describe the factors that make meeting the expectation somewhat difficult.* \_\_\_\_\_
- c. I meet my job's hour expectation, but with difficulty.
  - i. *Please list and describe the factors that make meeting the expectation difficult.* \_\_\_\_\_
- d. I do not meet my job's hour expectation.
  - i. *Please list and describe the factors that prevent you from meeting the expectation.* \_\_\_\_\_

26. *(Optional)*:

Please add any additional comments you wish to include about how to increase the number of Black women partners across firms in the United States.

**Mentor: Roderick F. Brown**

Senior Counsel and Director, LNLP NA



**Reflection on working with Fellow Pearl Mansu**

*The Fellowship has been an amazing experience. I have enjoyed time bonding with colleagues who are Committee Members, and I have enjoyed time working and growing with my mentee, Fellow Pearl Mansu, and members of her cluster. Collectively, those involved in the Fellowship have accomplished so much in a very short timeframe, and we have demonstrated the ability to effectuate change in the fight against systemic racism and racial inequality. For the present Fellows, and for Fellows to come, I hope the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation continue to support the Fellows' efforts, and the growth of the program, to ensure continued positive change in this space.*

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Roderick F. Brown is the LexisNexis Legal and Professional North America Senior Counsel and Director. He previously served as Senior Corporate Counsel at HCL America, Inc., and Senior Counsel at Murphy Wesley & Harlan (formally Gonzalez, Saggio, and Harlan), where his focus areas were, and still remain, supporting and negotiating complex commercial transactions, intellectual property, new product development, alliances and channel partnering, software and data licensing, cloud computing, Software as a Service, and mergers and acquisitions. He also served as Vice President of Business Development and General Counsel for FDR Inc., a boutique government contracting organization that focused on technical and specialized military training.

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## Law School Preparation Bridge Program

*Paris Maulet*

Access to a legal education and to the tools needed to become successful in the legal field is not the same for minorities as for their white counterparts. This access disparity, in turn, is a disadvantage that drives down the pool of African Americans in the legal profession to a disproportionately low level.



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Paris Maulet is a third-year law student at Texas Southern University Thurgood Marshall School of Law. Paris is a first-generation law student who, by way of access to a Pre-Law program, was able to gain access to a legal education. Paris' project, The Blueprint Program, aims to help end systemic racism in the legal profession by giving students who come from disenfranchised communities access to a legal education. Paris' Fellowship project focuses on prepping prospective law students on the law school admissions process and ultimately preparing third-year law students with the opportunity to have access to the bar exam.

**T**he work that must be done to help increase diversity in the legal profession must be done at this juncture, not only in America, but around the world.

Diversity and Inclusion initiatives can be seen starting as early as the 2000s with countless schools, law firms, and organizations that have dedicated time, resources, and funding to help increase diversity within the legal profession. However, the question remains: Why is the number of African American attorneys still low? The answer to that question lies within the actual process of becoming an attorney. Access to a legal education and to the tools needed to become successful in the legal field is not the same for minorities as for their white counterparts. This access disparity, in turn, is a disadvantage that drives down the pool of African Americans in the legal profession to a disproportionately low level.

Here are the statistics supporting this analysis:

## Law School Admissions

It is no secret that systemic racism in the legal profession begins in the Law School Admissions process.

**Key Facts:** Statistics support the need to focus on racial equity in law school admissions and in the legal profession.

- 5.9% of lawyers are Black;<sup>1</sup>
- Black Americans represent 13.4% of the Total U.S. Population (Census);
- Since 1983 Black representation has grown only 2% in the legal profession (Census);
- In 1983 there were 620,000 lawyers in the U.S., compared to 1,300,000 in 2020 (Census);
- As of Fall 2020, African Americans are still disproportionately underrepresented in the pool of first-year law students.<sup>2</sup>

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1. American Bar Association, ABA National Lawyer Population Survey Lawyer Population By State, [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/2021-national-lawyer-population-survey.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/2021-national-lawyer-population-survey.pdf).

2. American Bar Association, ABA Law School Data: JD Total FY Class Enrollment Data, Aggregate, Fall 2020, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2020-fall-fyclass-enrollment-gender-race-aggregate.xlsx](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2020-fall-fyclass-enrollment-gender-race-aggregate.xlsx).



## Traditional Qualifiers Are Outdated

In 2021, the traditional formula for admission criteria relies largely on a law school student candidate's Law School Admission Test (LSAT) score and undergraduate grade point average (UGPA). This formula does not account for a candidate's advanced degrees, life experiences, and other factors that better gauge law school success.

### Quick Facts:

- The traditional indicators of LSAT + UGPA are outdated measurements of applicant evaluation;
- 142 is the average LSAT Score for Black test-takers, compared to a 153 average for non-diverse applicants; and
- Current trends reveal that Black people are gaining work experience and advanced degrees before entering law school; yet the criteria for admissions remain essentially the same.<sup>3</sup>

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In 2021, the traditional formula for admission criteria relies largely on a law school student candidate's Law School Admission Test (LSAT) score and undergraduate grade point average (UGPA). This formula does not account for a candidate's advanced degrees, life experiences, and other factors that better gauge law school success.

In addition to the data, I would also like to share my personal journey and how increasing the pipeline of the African American community to the legal field became a need and a personal passion project. Due to Hurricane Katrina, my family had to relocate to Houston, Texas, and make a fresh start. From grade school through college, I saw how the law positively and negatively impacted my family and community as they rebuilt their lives. From property, probate, criminal and personal injury matters, I noted that there were few attorneys of color when we sought counsel, support, and advocacy in these various legal challenges. Seeing that representation gap became very noticeable when trying to work through the "blind" scales of justice that are not genuinely blind but also tinted with many layers of unconscious bias and systemic racism.

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As a result of my experiences and observations, I decided to seek a career in law. At this point, I also noted a gap in representation within the industry and, more importantly, access and entry into law practice when it came to minorities, especially African Americans. Unlike the majority, our community lacked access to career counselors, ad-

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3. For further examination of the status and trends in the education of racial and ethnic groups, refer to <https://nces.ed.gov/programs/raceindicators/>.

vocates, mentors, and reviewers to help us navigate the intricacies of law applications, personal statements, resume writing, and references. Our community also lacked access to professional advice, financial support, and guidance, with respect to fees associated with the applications, as well as funding for a law school education overall.

Fortunately for me, however, through a connection in my undergraduate program, I was introduced to The University of Houston Law Center's (UHLC) Pre-Law Pipeline Program, whose mission was to increase diversity in the legal profession by coaching pre-law students through the law school application and preparation process for law school. Through that program, I could navigate all the paths to matriculating at Texas Southern University's Thurgood Marshall School of Law, where I am now a third-year law student.

I have always believed that there should be more programs like the UHLC Pre-Law Pipeline Program. Had it not been for that program, I would not be where I am today. As the saying goes, "it takes a village to raise a child." The UHLC Pre-Law Pipeline Program has opened a network of professionals and peers who have helped me work toward realizing my aspiration to become a lawyer.

My mission now is to reach back and help those individuals who will come behind me gain access to a legal education and become attorneys. Through the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship, I was able to connect with like-minded Fellows and attorneys from across the nation to help design and build my passion project, BLUEPRINT, a program conceived to increase diversity in the legal field while providing continued support throughout the experience from the pre-law application process to graduating, taking and passing the bar examination, and joining the industry as a practicing attorney.

BLUEPRINT is a diversity pipeline initiative aimed at creating effective methods for increasing law school diversity by providing aspiring lawyers with preparatory resources—LSAT preparation, law

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school application assistance, introductory law school preview, mentoring, bar preparation, and overall guidance to pursue their goal of becoming lawyers. The goal is to target prospective law students from underrepresented racial, ethnic, and socioeconomic backgrounds who possess the potential for law school success but may be unlikely to gain admission due to unfavorable factors. In turn, the program will also provide graduating law school students with a bar exam preparation course to make sure they succeed in becoming an attorney.

This program welcomes all first-generation students, low-income, or members of groups underrepresented in the legal profession with a genuine interest in attending law school and pursuing a legal career. BLUEPRINT uses a cohort-based model of engaging and tracking participants. Pre-Law applicants will be selected from the six undergraduate schools of the law that make up the Historically Black Colleges and Universities Law School Consortium (HBCULSC). The Graduating Law Students cohort will be comprised of students who attend one of the six law schools that make up the HBCULSC. The initial goal is to have 25 students for each cohort for a total of 50 with a long-term goal to grow each year and branch out to more law schools beyond the HBCULSC. BLUEPRINT will work in alignment with sponsoring organizations in legal education to ensure that the pipeline and pathway to the legal field remains open and widens as the programs evolves.

With the data and passion, I am honored to be part of the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship, which is affording me the creativity, support, dedication, and leadership skills that are necessary to build a program that addresses systemic racism and access to a legal education to ensure that “Equal Justice Under Law” can be fully realized by all.

**Mentor: Rhea Ramsey, Esq., LL.M.**

Regional Manager – Large Markets: Large Law & Law Schools



**Reflection on working with Fellow Paris Maulet**

*It is an honor to serve as a mentor to this inaugural Fellowship program and specifically with the Fellow, Paris Maulet. We both are from Houston, Texas, and clearly know the systematic barriers to a legal education within our community. What is special about Paris' BLUE-PRINT project is her passion behind it and the desire to make a tangible impact in this space. She showcased her talents of creating a vision, implementing strategic networking, and building a robust curriculum to ensure that diversity in legal education will be achieved. Through the Fellowship and mentoring, I watched Paris overcome challenges with tenacity, develop professionally as a fu-*

*ture leader in the legal community and grow in a variety of areas, including business acumen and development. I also grew with this opportunity by having more exposure to addressing the Rule of Law needs. In addition, I was able to marry my commitment to community activism and service with my passion for my role at LexisNexis in legal education; and fulfill my goal to always support and motivate future leaders of my community to make sure we are always moving upward and forward. Thank you for this opportunity.*

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Rhea Ramsey, based in Chicago, Illinois, manages a team of practice area consultants who support the Law Schools and Am Law 200 firms within the Midwest legal market. She is a graduate of Wellesley College and has a JD from University of Wisconsin Law School and a LL.M. in Health Law from Loyola University-Chicago, School of Law. Prior to joining Lexis, she practiced health care law at Gardner, Carton & Douglas and was a sales and marketing associate at Astrogamma, Inc. She has been with LexisNexis for 21 years.

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## Systemic Racism's Impact on Minority Attorneys Within Law Firms

*Shayla McIntyre*

Systemic racism is ingrained in the fabric of the United States in the professional sector, educational field, healthcare arena, and many other systems. Diversity initiatives that address the specific needs of minority attorneys, instead of assuming all attorneys require the same diversity initiatives to feel included in the workplace, are necessary.



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Shayla McIntyre is a third-year law student at Florida Agricultural & Mechanical University College of Law. Shayla has a strong interest in pursuing contract negotiation and mediation in the business, entertainment, and intellectual property fields upon graduation. During her third year of law school, Shayla enjoys serving as Treasurer of the Student Bar Association and participating in the Mediation Clinic Program. Upon completing her Fall 2021 studies, Shayla will become a Certified Mediator in all counties in the State of Florida. Shayla's Fellowship project focuses on providing a safe space for minority attorneys to voice their concerns and share challenges faced in their professional roles as attorneys.

Systemic racism adversely impacts the experiences of minority attorneys in law firms and legal organizations, but we can only begin to effectively address those issues after receiving concrete data to articulate what issues exist. Systemic racism is racism that permeates social and professional entities and offers an unequal and negative experience for minorities.<sup>1</sup> This form of racism stifles the chances of minorities succeeding at the same rates as their Caucasian counterparts.<sup>2</sup> Systemic racism is ingrained in the fabric of the United States in the professional sector, educational field, healthcare arena, and many other systems. Diversity programs are needed that address the specific needs of minority attorneys, instead of those programs that assume that all attorneys require the same diversity initiatives to feel included in the workplace.

## Diversity and Inclusion Programs

Diversity and inclusion programs are administered within the workplace to combat discrimination and improve the minority experience. Diversity and inclusion programs tend to focus on the experience of all minorities, including racial and ethnic minorities, such as Asians, Native Americans, African Americans, Latin Americans, and others. These diversity programs tend to group all minorities together and assume they share the same sentiments about diversity, without focusing on what each specific group may need to feel that they exist in an inclusive and diverse environment. Diversity programs may also focus on what the program creators believe minorities desire as a cultural monolith, without giving significant attention to what they may be experiencing in their specific workplace. Many affirmative action programs ensure that a certain number of minorities are hired, but their experience once they arrive may be deficient due to inadequate diversity and inclusion programs or meaningful discussions surrounding race.<sup>3</sup>

## Independent Survey

As part of my participation in the inaugural cohort of the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship, I conducted an independent survey to examine these issues. The survey collection and its responses revealed what racially and ethnically minority attorneys are experiencing in the legal field, thereby uncovering current trends in the workplace

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1. Ryan Lavalley & Khalilah Robinson Johnson (2020), *Occupation, Injustice, and Anti-Black Racism in the United States of America*, JOURNAL OF OCCUPATIONAL SCIENCE, DOI: 10.1080/14427591.2020.1810111.

2. See American Bar Association, *New Study Finds Gender And Racial Bias Endemic In Legal Profession*, <https://www.americanbar.org/news/labaneews/aba-news-archives/2018/09/new-study-finds-gender-and-racial-bias-endemic-in-legal-professi/> (2018).

3. Allison E. Laffey and Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives*, American Bar Association, <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/> (2018).

worthy of further examination.<sup>4</sup> Overall, the data showed that minority attorneys feel discriminated against in the legal field.

My survey process involved first interviewing minority attorneys to get an overview of the impact systemic racism has had on their experiences in the legal field. As part of my research protocols in formulating targeted questions, I referred to other prominent diversity and inclusion surveys conducted by leading entities before drafting survey questions.<sup>5</sup> My survey's target audience consisted of minority attorneys who work in law firms or legal organizations with at least 10 or more attorneys. Given this specific survey criteria, it was challenging to draw a widespread response. The survey generated forty-seven comprehensive responses from attorneys across America. That, in and of itself, is the issue. Minorities are wholly underrepresented in the field. The lower level of responses, when compared with the profession at large, evidences how minor the minority representation is in the practice of law. Thus, it is a self-perpetuating cycle in many ways, as underrepresented minorities are therefore not heard at the level of resolution to maintain retention in the profession.

### Survey Format

With respect to the survey format, there were multiple choice and open-ended questions. The questions focused on whether attorneys felt included, valued, and whether they were treated differently than attorneys of other races. Due to the sensitivity of the subject matter, those who participated were assured that their responses would be kept confidential. The survey revealed very insightful responses about the presence of systemic racism in the legal field and its impact. The minority groups participating in the survey were African American, Hispanic, Asian, and mixed race attorneys. Of the attorneys surveyed, 57% stated they did not feel they were offered the same opportunities as counterparts of other races, and 64% stated that their ideas and contributions were not valued due to their race.<sup>6</sup>

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4. A replication of the questions offered in the survey is available in the Appendix.

5. American Bar Association, Diversity and Inclusion Survey, <https://www.americanbar.org/groups/diversity/DiversityCommission/model-diversity-survey/>; American Bar Association, Gender and Racial Bias Endemic in The Legal Profession, <https://www.americanbar.org/news/abaneews/aba-news-archives/2018/09/new-study-finds-gender-and-racial-bias-endemic-in-legal-profession/> (2018); American Bar Association, Visible Invisibility, [https://www.americanbar.org/content/dam/abala/administrative/women/visible\\_invisibility\\_fortune500\\_reprint.pdf](https://www.americanbar.org/content/dam/abala/administrative/women/visible_invisibility_fortune500_reprint.pdf) (2013).

6. Note that this survey data was prepared based on responses received by October 10, 2021. Additional unvetted responses arrived after the production of this analysis was complete, which would potentially serve to lower these percentages to 37% and 17%, respectively. The data have not been verified as yet; however, the later results bring to light the reality that amongst minorities there may be differing views on how diversity, equity, and inclusion initiatives should be structured. Therefore, it is possible upon reevaluation of this data that some self-identifying minorities do not agree with the original data set takeaways. As with surveys of this nature, the survey-taker is self-selected, so it is possible to achieve responses from people who have stark, outlying opinions. Though the data may be valid, it may not be conclusory. This development shows that revised data is necessary, and broader marketing efforts to obtain data earlier in this study would have assisted in a more comprehensive pool of results. None of this detracts from the issues at hand—there needs to be broader communication of issues facing all disenfranchised groups in the workplace. In fact, the data results serve to prove that broader studies and examination are vital.

## **Solutions, Recommendations, and Resources**

Survey participants had the opportunity to provide solutions and resources they felt would improve the experience of minority attorneys. Some resources that survey takers felt would improve the law firm experience for minorities involved more diversity trainings in group settings with colleagues, more diversity in leadership and high-level positions, metrics-based strategic approach to diversity and inclusion, transparency amongst leadership, and more opportunities to excel and feel respected as an attorney by means of opportunities to do substantive work with an appropriate support network, irrespective of their race. Minority attorneys also stated that self-awareness programs should be implemented to provide non-minority attorneys with the opportunity to see instances of their own prejudices, discriminatory actions, or micro-aggressive behavior. Others stated that diversity and inclusion personnel are needed within law firms so that minorities would have a place to voice their concerns and have an opportunity to seek solutions. One key response involved how 78% of survey participants currently do not feel comfortable interacting with their firm or company's human resources department (HR) about racial issues occurring within their workplace. The concept of developing a specific place where minority attorneys can address racial issues to help facilitate an environment where they feel comfortable voicing their issues and concerns was suggested by certain survey participants. Participants also expressed a desire for more spaces that highlight issues minorities face coupled with the creation of safe working environments that uplift minorities of color. Other recommendations were that clear, vocal support from leadership and peer allies be provided to minorities and discussions about race be commonplace, not taboo. The majority of attorneys stated that the experiences of minority attorneys were not meaningfully discussed or considered during diversity training in their law firms.

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Several attorneys stated that firms should acknowledge that minority attorneys have a different experience than non-minority attorneys, and we can only begin to combat those issues and provide solutions when we acknowledge those issues. Minorities want to feel valued in their workplace and should receive support for the racial challenges they face in the legal field.

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## **Discrimination in Role as an Attorney**

The survey then provided the attorneys with an opportunity to share instances where they felt discriminated against in their role as an attorney. One attorney discussed how a law firm intentionally gathered information for Asian Heritage month social media posts without truly providing education or facilitating discussions about the value of Asian Heritage month within the law firm.



The firm then informed other Asian attorneys that the social media posts would only be used if the Asian attorneys “did the work” and gathered research for the creation of each post. The firm did not want to do their own research, but instead shifted the burden to the marginalized group for social media posts to allow the firm to appear inclusive to the general public via social media.

## **Opportunities to Excel**

Other attorneys who participated in the survey asserted that firms should stop focusing on race completely and give everyone the same opportunity to excel. Another attorney stated that because of his race, he was taken less seriously for missing an event due to taking firm related phone calls with clients as opposed to a non-minority attorney who missed the same event due to forgetfulness. He then added that he had to defend himself for missing an event with a valid reason and attributed this inequitable reaction to his race, due to the microaggressions expressed during this exchange. There were many attorneys who stated that there were different expectations placed upon them for the same or similar assignments. Some asserted that they were only assigned to cases because leadership thought a shared racial identity with the client would be useful for the case, as opposed to receiving the assignment due to the attorney’s ability, talent, or work ethic. Several attorneys stated that firms should acknowledge that minority attorneys have a different experience than non-minority attorneys, and we can begin to combat those issues and provide solutions only when we acknowledge those issues. Minorities want to feel valued in their workplace and should receive support for the racial challenges they face in the legal field.

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In this safe space, minority attorneys can voice grievances without fear of retaliation within their workplace and receive support from other minorities who may be facing similar issues. 58% of attorneys agreed that if a safe space were created to allow minorities professionals to voice their concerns without fear of retaliation, they would use it.

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## **Safe Space for Minorities**

After receiving feedback from the survey, the responses clearly show that there are minority attorneys having negative experiences within the legal field due to their race and a solution is needed to combat these issues. One solution would be a safe space for minorities to voice their concerns, thereby allowing them to express the challenges they face and providing them with relief. A safe space within national bar associations or law firms should be created to allow attorneys to voice their grievances within the workplace. This safe space would allow minority attorneys to avoid confrontational situations, maintain anonymity, and have an opportunity to have their voices heard. In this safe space, minority attorneys can voice grievances without fear of retaliation within their workplace and receive support from other minorities who may be facing similar issues. 58% of attorneys agreed that if a safe space

were created to allow minorities professionals to voice their concerns without fear of retaliation, they would use it. If at least half of the attorneys would use a safe space to voice their concerns, not only could they bring awareness to current issues in the field, they also would be able to advocate for their colleagues who may not feel as comfortable voicing their concerns. The goal of the safe space is to provide support from bar associations, as influential bodies, and allow minorities to be proactive about their personal experiences instead of waiting until issues rise to the level of human resources' involvement. This initiative would be most useful for professionals who see issues they wish to improve upon, not to report blatant conduct violations or grossly offensive behaviors that should be escalated to their respective human resources departments. After the grievances are voiced, the information should be compiled throughout the year and then used for an annual continuing legal education (CLE) showcasing the findings. CLE courses can be used to introduce attorneys to new concepts or expand upon information already understood relating to practicing law equitably and in an inclusionary workplace. The CLE courses would inform attendees of challenges minority attorneys are experiencing in the workplace and provide solutions that would help eliminate those issues to provide improved and inclusive outcomes. An annual or quarterly CLE course would address the information gathered from survey data and from safe space responses.

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By signing the public diversity pledge, firms also show that their commitment to diversity is not a reaction to a racial or political crisis that may be trending, but it can show true dedication to fostering an inclusive environment.

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## **Public Diversity Pledge**

Another recommendation would be the creation of a public diversity pledge for legal entities. By signing the pledge, firms and legal organizations can signal to potential employees and the public that they are committed to diversity and making minorities feel safe within their company or firm. A public diversity pledge would offer attorneys the opportunity to weigh their options for law firms and legal organizations before joining them. This public commitment shows that they desire to be marketable to minority talent who wish to be treated equally and be provided the same opportunities as their counterparts. By signing the public diversity pledge, firms also show that their commitment to diversity is not a reaction to a racial or political crisis that may be trending, but it can show true dedication to fostering an inclusive environment. As a requirement of the pledge, the firm would commit to requiring the aforementioned CLE courses, as a means of providing a baseline of diversity, equity, inclusion, and belonging for all members of its firm. If 86% of attorneys asserted that they would like to know how a firm feels about diversity before they joined it, then a public diversity pledge would be a great way to signal to attorneys which firms value their presence as a minority attorney.

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## *Systemic Racism's Impact on Minority Attorneys Within Law Firms*

Minority attorneys are negatively impacted by systemic racism and should be provided with support that addresses the issues they face within the legal field. By ensuring that diversity and inclusion initiatives address the specific needs of minority attorneys, we can begin eliminating instances of performative allyship and providing effective support for all attorneys.

## **Appendix: Survey Questions**

1. What is your race and/or ethnicity?
2. At first glance, what ethnicity do your colleagues perceive you as?
3. How many attorneys work in your firm or company?
4. Do you feel you are offered the same opportunities as counterparts of other races within the legal field or your individual firm?
5. Do you believe that you have been discriminated against based on your race while working in a law firm or legal organization?
6. Do you believe that you have not been considered for opportunities due to your race?
7. Do you feel you have been denied opportunities based on your race?
8. Do you feel ideas and contributions voiced in your firm are not valued due to your race?
9. Do you feel your hair has negatively impacted your experience in the legal field?
10. What are solutions that would help you feel more comfortable or improve your experience?
11. If there were a confidential Safe Space within your local Bar Association or any national bar association without the risk of employment retaliation, would you use it?
12. Do you feel safe talking to and interacting with your HR department about racial issues within your law firm?
13. Are you offered the same opportunities for mentorship as your counterparts of other races while working in a law firm or legal organization?
14. As an African American or minority, do you feel comfortable talking to and interacting authentically with attorneys from different backgrounds, cultures or religions?
15. Do you feel comfortable talking to and interacting with your HR department about racial issues that may arise within your law firm or legal organization?
16. Do you feel that opportunities for expansion have improved over the past year in a real way that has a positive impact on you or your opportunities for career advancement?
17. Would you characterize racial inequities or discriminatory treatment that you have experienced as willful or micro-aggressive conduct? Micro-aggressive conduct is conduct that

the transgressor is unaware of or would claim to be unaware of that could be perceived as harmful based on race.

18. Over the past year, do you believe that discriminatory practices/conduct has decreased in the legal environment in which you work?
19. If you answered yes to the previous question, please provide instances you believe show a decrease in the discriminatory practices in the legal environment in which you work.
20. Do you feel the experiences of African American attorneys are considered and/or meaningfully discussed during minority diversity training in your law firm or legal organization?
21. Do you believe that the organization in which you work has met the moral obligation to address and redress racial inequities? Please rate on a scale from one to five with one being not at all and five being yes completely.
22. Are there any solutions you would like the survey to consider while conducting issues on racial issues within the workplace?
23. Please share an instance or experience when you felt discriminated against based on race.
24. What can the legal community do to improve the experience of minorities?
25. Do you identify with any of the following:
  - I feel I am only seen as valuable in cases that involve minority clients.
  - I feel I am criticized more than my peers due to my race.
  - My colleagues treat me differently because of my race.
26. I would like to know how a firm feels about minority and diversity issues before accepting employment.

**Mentor: Troy Lemke**

HR Manager, LexisNexis Legal and Professional



**Reflection on working with Fellow Shayla McIntyre**

*My wife and I had our first child when we were in law school. One professor encouraged us to bring our son to class as a reminder to other students about the importance of life beyond the classroom. In a similar vein, the opportunity to be a mentor to Shayla, and participate in the Fellowship, has served as a reminder of things more important than just the work of corporate America. At this particular time in history, to be even a small part of the Fellowship is a humbling and gratifying experience.*

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Troy Lemke has been with LexisNexis for 15 years, beginning as a statutory editor before managing case law editing teams and then shifting into Human Resources. He has a law degree from Valparaiso University and a bachelor's degree from Brigham Young University. Troy lives in Colorado with his wife and six children, enjoying the outdoors in the beautiful Rocky Mountains. He remains thrilled at the opportunity to be a small part of this inaugural Fellowship and to work for a company that takes seriously the responsibility to leave the world a better place.

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## Pulling African Americans from Under the Faults in Consumer Bankruptcy

*Emony M. Robertson*

Consumer bankruptcy is a system that does not track race, but that has been found to consist of a clear racial disparity—African Americans are disproportionately advised by their attorneys to file Chapter 13 petitions in comparison to their white counterparts, who are more likely to file Chapter 7 petitions. While there are many reasons that may contribute to this racial disparity, the role of the attorney is one of the largest.



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**Emony M. Robertson is a third-year law student from Howard University School of Law. Her experience as a Strauss Diversity & Inclusion Scholar at Akin Gump Strauss Hauer & Feld LLP, along with her participation in the Annual Duberstein Bankruptcy Competition, helped to clarify her interest in bankruptcy litigation. After graduation, Emony will clerk for Judge Craig Goldblatt in the United States Bankruptcy Court for the District of Delaware. Emony's Fellowship project focuses on reducing racial bias in consumer bankruptcy practices.**

*When Americans are faced with financial struggles and believe bankruptcy is the way out, they generally turn to attorneys. Those attorneys help their clients to take one of two routes: (1) File a Chapter 7 petition which requires attorneys' fees up front, is likely to discharge debts, and completed within six months, or (2) File a Chapter 13 petition, which requires attorneys' fees over time of the petition, debts are typically not discharged, and can take up to five years. Consumer bankruptcy is a system that does not track race, but that has been found to consist of a clear racial disparity—African Americans are disproportionately advised by their attorneys to file Chapter 13 petitions in comparison to their white counterparts, who are more likely to file Chapter 7 petitions. While there are many reasons that may contribute to this racial disparity, the role of the attorney is one of the largest.*

*If practitioners are not willing to see their role in the gapping racial disparity, the disparate treatment will only get worse as the COVID-19 pandemic has created substantial hardships for many Americans. With the resources of the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation, (AAN/ROLF) Emony M. Robertson was determined to work with attorneys to develop tools that would ameliorate the racial disparity in the advisement of consumer debtors. When asked to engage in these efforts, however, thousands of bankruptcy practitioners and consumer protection practitioners either shied away or responded with the notion that they were only doing their jobs and were not inclined to review their actions and recommendations in this regard. Perhaps, the first step in alleviating this disparate treatment and the manner in which African Americans are disproportionately affected by the bankruptcy system is acknowledgment by the practitioners that such a disparity exists and that they may be one of the most significant resources for change in the system.*

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**W**hile people in America of every race and class, and in every socioeconomic group, experience hardships, particularly financial hardships, the way in which people deal with those hardships varies widely. Although the underlying hardships may be the same, there are significant differences in the approaches that people take to alleviating their situation. Some people choose consumer bankruptcy; those people who pursue this option hope that the bankruptcy will provide a way to alleviate their debts and allow them to still take care of their families. Others simply survive by the old-time notion that you do what you must to survive. When Americans are faced with financial struggles and believe bankruptcy is the way out, their first recourse is to consult attorneys who specialize in bankruptcy. The attorneys help their clients to take one of two routes: (1) File a Chapter 7 petition, which requires attorneys' fees up front, which is likely to discharge debts, and which is completed within six months; or (2) File a Chapter 13 petition, which requires attorneys' fees over time of the petition, in which debts are typically not charged, and which can take up to five years.



Every American should experience the same confidence that the bankruptcy system will enhance their financial security and provide an opportunity for debt relief as set forth by the Bankruptcy Code, and more specifically, the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”).

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Every American should experience the same confidence that the bankruptcy system will enhance their financial security and provide an opportunity for debt relief as set forth by the Bankruptcy Code, and more specifically, the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”).

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As Americans try to claw their way out of debt, the Bankruptcy Code is supposed to protect consumers and give them options—to both deal with their debts and enjoy their lives. All financial hardships, however, are not created equal, and the Bankruptcy Code does not treat the financial hardships of debtors equally.<sup>1</sup> “The vast majority of debtors file under Chapter 7 of the [B]ankruptcy [C]ode, which typically allows them to erase most debts in a matter of months. It tends to have a higher success rate and is less expensive than the alternative, Chapter 13, which requires debtors to dedicate their disposable income to paying back their debts for several years.”<sup>2</sup>

This concept is not novel. In a study published in the *Journal of Empirical Studies*, researchers found that African Americans file Chapter 13 bankruptcies more often than any other group.<sup>3</sup> “[B]ankruptcy lawyers [are] much more likely to steer [B]lack debtors into a Chapter 13 than white filers even when they had identical financial situations.”<sup>4</sup> And worse, those Black debtors often find themselves in significantly worse off positions than when they filed their petitions.<sup>5</sup> This does not mean that Chapter 13 is the wrong chapter choice

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1. Leslie A. Pappas, *Bankruptcy Racial Disparities Poised to Add to Pandemic Pain (1)*, Bloomberg Law: Bankruptcy Law, <https://news.bloomberglaw.com/bankruptcy-law/bankruptcys-racial-disparities-poised-to-add-to-pandemics-pain> (“The U.S. Bankruptcy Code, while not overtly racial, ‘is designed to give relief to people who fit a certain profile,’ said Mechele Dickerson, a professor at the University of Texas at Austin School of Law and an early researcher on race and bankruptcy. It most benefits debtors with wealth in large homes, trusts, or retirement accounts, Dickerson said, and economic data shows that ‘is not going to be, in most instances, Black people.’”).

2. Tara Siegel Bernard, *Blacks Face Bias in Bankruptcy, Study Suggests*, THE NEW YORK TIMES (Jan. 20, 2012), <https://www.nytimes.com/2012/01/21/business/blacks-face-bias-in-bankruptcy-study-suggests.html>.

3. See Tara Siegel Bernard, *Blacks Face Bias in Bankruptcy, Study Suggests*, THE NEW YORK TIMES (Jan. 20, 2012), <https://www.nytimes.com/2012/01/21/business/blacks-face-bias-in-bankruptcy-study-suggests.html>. (“Blacks are about twice as likely as whites to wind up in the more onerous and costly form of consumer bankruptcy as they try to dig out from their debts.”); see also Jean Braucher, Dov Cohen, Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEG. STUDIES 393, 394 (2012) (“African Americans were about twice as likely to file for Chapter 13, as compared to their non-African American counterparts.”); Edward R. Morrison, Belisa Pang & Antoine Uettwiller, *Race and Bankruptcy: Explaining Racial Disparities in Consumer Bankruptcy*, 63 J.L. & ECON. 269, 269 (2020) (examining the racial disparities found amongst consumer debtors’ bankruptcy chapter choices using data from the Bankruptcy Courts for the Northern District of Illinois, Northern District of Georgia, and Middle District of Tennessee, as well as data from the city of Chicago).

4. Tara Siegel Bernard, *Blacks Face Bias in Bankruptcy, Study Suggests*, THE NEW YORK TIMES (Jan. 20, 2012), <https://www.nytimes.com/2012/01/21/business/blacks-face-bias-in-bankruptcy-study-suggests.html>. (“Many distressed borrowers go that route because they may be able to save their homes from foreclosure. But even that does not explain away the difference: among blacks who did not own their homes, the rate of filing for Chapter 13 was still twice as high as the rate for other races.”).

5. Tara Siegel Bernard, *Blacks Face Bias in Bankruptcy, Study Suggests*, THE NEW YORK TIMES (Jan. 20, 2012), <https://www.nytimes.com/2012/01/21/business/blacks-face-bias-in-bankruptcy-study-suggests.html>. (“Nearly two of every three Chapter 13 plans

in comparison to Chapter 7; it does emphasize that Chapter 13 is linked to the racial disparity found between Black and white debtors and that attorneys play a role at the commencement of debtors' petitions that often result in disparate outcomes.<sup>6</sup>

The catch is that racial disparities found amongst debtors are not one-dimensional.<sup>7</sup> Many Chapter 13 debtors want to save their homes and many tangible assets—a concern that is often a priority for Black debtors.<sup>8</sup> These debtors want to save money; typically, Chapter 13 petitions are less costly to initiate than Chapter 7 petitions.<sup>9</sup> Yet, the factor that steers most chapter choices, but is not overt, is the influence of practitioner recommendations and advice on debtors.<sup>10</sup>

“The professionals in the bankruptcy system are on the whole a very conscientious, self-critical and public-spirited group, committed to equal justice,” but consumer attorneys are essential to any solution for ameliorating racial disparities in consumer bankruptcy.<sup>11</sup> Practitioners have the duty to abide by their clients' wishes, but also have the professional responsibility to provide counsel on chapter choice.<sup>12</sup> “It might be plausible to argue that attorneys' racially disparate chapter recom-

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are not completed, which means the filers' remaining debts are not discharged, leaving them right where they started.”).

6. Edward R. Morrison, Belisa Pang & Antoine Uettwiller, *Race and Bankruptcy: Explaining Racial Disparities in Consumer Bankruptcy*, 63 J.L. & ECON. 269, 293 (2020) (“Because of the importance of Chapter 13 to the working poor, it is puzzling that the same rules apply to both poor and nonpoor debtors. For example, bankruptcy courts often require debtors to pay a minimum recovery to unsecured creditors...A requirement like this renders Chapter 13 unfeasible or unsuccessful for many poor debtors.”).

7. Edward R. Morrison & Belisa Pang, *Race and Bankruptcy: Explaining Racial Disparities in Consumer Bankruptcy*, 63 J.L. & ECON. 269, 293 (“[R]acial differences in debt burdens and in the costs of debt enforcement help explain well-documented racial disparities in bankruptcy filings.”).

8. Edward R. Morrison & Belisa Pang, *Race and Bankruptcy: Explaining Racial Disparities in Consumer Bankruptcy*, 63 J.L. & ECON. 269, 293 (“Chapter 13 would remain important to the working poor because it permits consumers to retain (and recover) assets that are vulnerable to collection by creditors.”); Tara Siegel Bernard, *Blacks Face Bias in Bankruptcy, Study Suggests*, THE NEW YORK TIMES (Jan. 20, 2012), <https://www.nytimes.com/2012/01/21/business/blacks-face-bias-in-bankruptcy-study-suggests.html> (“Chapter 13 is not always an inferior choice. Many distressed borrowers go that route because they may be able to save their homes from foreclosure. But even that does not explain away the difference: among blacks who did not own their homes, the rate of filing for Chapter 13 was still twice as high as the rate for other races.”).

9. Tara Siegel Bernard, *Blacks Face Bias in Bankruptcy, Study Suggests*, THE NEW YORK TIMES (Jan. 20, 2012), <https://www.nytimes.com/2012/01/21/business/blacks-face-bias-in-bankruptcy-study-suggests.html>. (“[T]hey can pay the fee over time, unlike in a Chapter 7, which typically requires a payment before the case is filed. If blacks are perceived as less likely to have the resources—or a family with resources—to come up with a lump sum, some lawyers may be inclined to suggest a Chapter 13, these experts suggested.”).

10. Tara Siegel Bernard, *Blacks Face Bias in Bankruptcy, Study Suggests*, THE NEW YORK TIMES (Jan. 20, 2012), <https://www.nytimes.com/2012/01/21/business/blacks-face-bias-in-bankruptcy-study-suggests.html>. (“When the couple was named ‘Reggie and Latisha,’ who attended an African Methodist Episcopal Church—as opposed to a white couple, ‘Todd and Allison,’ who were members of a United Methodist Church—the lawyers were more likely to recommend a Chapter 13, even though the two couples’ financial circumstances were identical.”).

11. Jean Braucher, *How to Address Apparent Racial Disparity in the Consumer Bankruptcy System*, Credit Slips: A Discussion on Credit, Finance, and Bankruptcy, [https://www.creditslips.org/creditslips/2012/01/how-to-address-apparent-racial-disparity-in-the-consumer-bankruptcy-system.html?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+creditslips%2Ffeed+%28Credit+Slips%29](https://www.creditslips.org/creditslips/2012/01/how-to-address-apparent-racial-disparity-in-the-consumer-bankruptcy-system.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+creditslips%2Ffeed+%28Credit+Slips%29).

12. *Id.*; see Model Rules of Professional Conduct, Rule 1.1 (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”); see also Model Rules of Professional Conduct, Rule 2.1 (“In representing a client, a lawyer shall exercise independent

mentations are not a product of bias but rather reflect their knowledge of clients' preferences."<sup>13</sup> But unfortunately, some attorneys are advising their clients with the goal of ensuring that debtors learn their lesson, as opposed to ensuring that debtors' financial hardships are diminished.<sup>14</sup> And researchers continue to find that "[a]ttorneys seem to have different standards or expectations for clients and different assumptions about the outcomes they desire depending on the client's race."<sup>15</sup>

Practitioners struggle to address their role in the racial disparities found between African American and white debtors; their acknowledgment is tied to the ability or inability of African Americans to trust that the system will actually serve them as the drafters of the Bankruptcy Abuse Prevention and Consumer Protection Act intended.

As government assistance that was provided during the COVID-19 pandemic tapers off, it can be anticipated that financial hardships resulting from the pandemic will be exacerbated. Thus, as noted in a recent article, "[t]he National Consumer Law Center and the National Association of Consumer Bankruptcy Attorneys are urging Congress to make immediate changes, warning that the [B]ankruptcy [C]ode has 'not evolved to meet the needs of today's consumers, or more pointedly, to address today's global crises.'"<sup>16</sup> Advocates and knowledgeable debtors await these changes, but until Congress acts on these recommendations, practitioners need to find alternative ways to quell racial disparities among consumer debtors to bring the bankruptcy system a step closer to being one that serves all debtors and provides equal opportunities to reach solutions that will lessen the debtors' financial hardships and not intensify them.

Tackling systemic racial bias in consumer bankruptcy using resources from the AAN/ROLF seemed to be on par with AAN/ROLF's overall goal to ensure equal treatment under the law. Over the course of 2021, there has been ample time to grapple over the recommendations by researchers—beginning with the consumer bankruptcy attorneys since they typically have the strongest degree of interaction and potential influence with debtors at the commencement of a bankruptcy petition.

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professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation.").

13. Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393, 407 (2012).

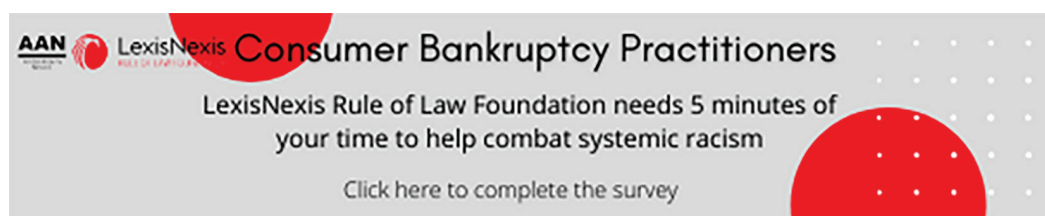
14. Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393, 397 (2012) ("[I]n addition to furthering their clients' and their own financial interests, lawyers 'also attempted to fulfill some version of appropriate social role playing on the part of their clients and themselves.'"); *see also id.* at 414 ("Attorneys seem to thus be evaluating their white and African American clients against different sets of standards or expectations about what it means to be a mature, competent, financially responsible [debtor].").

15. Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393, 408 (2012).

16. Leslie A. Pappas, *Bankruptcy Racial Disparities Poised to Add to Pandemic Pain* (1), Bloomberg Law: Bankruptcy Law, <https://news.bloomberglaw.com/bankruptcy-law/bankruptcys-racial-disparities-poised-to-add-to-pandemics-pain>.

The primary goal of the survey was to elicit from attorneys what steps they took and what resources they used in counseling debtors before filing a petition. Given the information that exists regarding racial bias, as seen in the disparate treatment of debtors, a secondary goal was to elicit responses as to what attorneys thought would be beneficial to their practice in alleviating or eliminating disparate outcomes between African American and white debtors. Thus, efforts to obtain this information consisted of using the Consumer Bankruptcy Toolkit Questionnaire, along with a privacy statement, which produced an advertisement that was shared with subscribers to the LexisNexis *Consumer Protection Newsletters* and *Bankruptcy Newsletters*. Each newsletter prominently displayed a banner containing the survey advertisement (Image 1) and a sidebar containing the survey advertisement (Image 2). The advertisements ran for seven business days through daily newsletters.

The banner displayed on each newsletter read:



*Image 1.*

The sidebar displayed on each newsletter read:



*Image 2.*

Over the course of those seven business days, 230,662 Consumer Protection Newsletters were sent to subscribers. A review of the banner and sidebar advertisements combined indicated that subscribers to the Consumer Protection Newsletter clicked on the advertisements a total of 208 times during that period of time, an open rate of less than 0.413%. Concurrently, 277,582 Bankruptcy Newsletters were sent to subscribers over the course of those same seven business days. A review of the banner and sidebar advertisements combined indicated that subscribers to the Bankruptcy Newsletter clicked on the advertisements a total of 129 times during that period, an open rate of less than 0.131%.<sup>17</sup>

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By providing updated bankruptcy filing checklists for customers to review before engaging with African American clients and offering literature that explains the disparate outcomes for African Americans that can be ameliorated with conscious practice, the AAN/ROLF will accomplish two goals—(1) work with attorneys to expand their capacity to offer competent counsel and to serve as effective advisors as required by the Professional Rules of Conduct; (2) offer tools to truly reduce racial bias in consumer bankruptcy.

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While the engagement from practitioners through both newsletters was low, it was presumed that practitioners might not be interested in racial bias in consumer bankruptcy because they did not believe there to be much of an issue. But this presumption was affirmed by the practitioners' responses to the questionnaire. The few who did take the questionnaire provided their thoughts in response to whether they considered the information about racial bias in consumer bankruptcy in their practice.<sup>18</sup>

One recently retired practitioner stated that saving homes was a priority for many of his clients and Chapter 13 was the appropriate petition to file given that Chapter 7 does not afford this protection.<sup>19</sup> He further proposed a race blind intake process—that system already exists and is a part of the problem. Another respondent stated that the data from the Consumer Bankruptcy Project would not affect his advisement of clients.<sup>20</sup> And with respect

to practitioners engaging with potential resources that might help reduce racial bias in consumer

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17. See Appendix, Advertisement Reports for Consumer Bankruptcy Toolkit Questionnaire.

18. *Race and Choice of Chapter 7 Verses Chapter 13 Bankruptcy*, American Bankruptcy Institute, <https://www.abi.org/feed-item/race-and-choice-of-chapter-7-verses-chapter-13-bankruptcy> (“According to a study by the Consumer Bankruptcy Project, Blacks are about two times as likely as white people to file Chapter 13, with the Chapter 13 rate at 54.7% for Black people, and the Chapter 13 rate at 28.6% for white people. Additionally, Asians were found to file Chapter 13 at 24.4%, and Latinos at 21.7%. Further, the Consumer Bankruptcy Project has noted that “[a]lmost all chapter 7 cases end with the debtor receiving a discharge of debts. In contrast, only around one-third of chapter 13 cases end in discharge.”).

19. See the *Consumer Bankruptcy Toolkit Questionnaire* available at [https://docs.google.com/forms/d/e/1FAIpQLScJ\\_Gb-1n3EChrHXuaSnhSZ\\_qac8CttI8prj\\_ZQhA5ZapdmYg/viewform?form=MY01SV&OCID=MY01SV&form=MY01SV&OCID=MY01SV](https://docs.google.com/forms/d/e/1FAIpQLScJ_Gb-1n3EChrHXuaSnhSZ_qac8CttI8prj_ZQhA5ZapdmYg/viewform?form=MY01SV&OCID=MY01SV&form=MY01SV&OCID=MY01SV).

Note the following questions: *Have you thought about this information in your practice? If you have, does it affect your advisement? If this information has not been a consideration in the past, how could you make use of it in the future?*

20. *Id.*

bankruptcy, one respondent stated, “Most lawyers who have careers and families don’t have a great deal of free time to ‘engage’ with material. As practicing attorneys, time is our commodity and there’s a finite amount of it. If it doesn’t pay a fee, we’re not going to expend that time unless there is another good reason to do so.”<sup>21</sup>

Although the questionnaire efforts, which were to be the driving force for development as part of the Consumer Bankruptcy Toolkit, did not produce the conclusive results desired, all was not lost and the Consumer Bankruptcy Toolkit Questionnaire did produce some significant results, particularly in the answers provided by respondents.

Some responses to the questionnaire seemed to confirm some of the attitudes on which the questionnaire was premised and affirmed for the researchers the need for effectuating potential solutions to the role of racial bias and racial disparity in the bankruptcy system. “Bob Lawless, Dov Cohen and [Jean Braucher] made two modest proposals that could possibly help to elicit necessary information and contribute to change: (1) that a question about race of the debtor should be included on the form for a bankruptcy petition to make it possible to confirm (or disprove) the finding that African Americans file in chapter 13 at a much higher rate than debtors of other races (about double in the data we have), and (2) that all actors in the bankruptcy system—judges, trustees, attorneys and clients—be educated about the apparent racial disparity and the possibility that subtle racial bias may be producing it.”<sup>22</sup> With the resources of the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation, one could only hope to move the practice area towards fully implementing Braucher’s solutions.

By providing updated bankruptcy filing checklists for customers to review before engaging with African American clients and offering literature that explains the disparate outcomes for African Americans that can be ameliorated with conscious practice, the AAN/ROLF will accomplish two goals—(1) work with attorneys to expand their capacity to offer competent counsel and to serve as effective advisors as required by the Professional Rules of Conduct;<sup>23</sup> (2) offer tools to truly reduce racial bias in consumer bankruptcy. These two goals are not easily accomplished without the compliance of attorneys, but they will certainly have an impact of the trajectory of African American debtors for generations to come.

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21. See *supra* note 17. Note the following questions: Would you engage with a tool on LexisNexis if it highlighted patterns like those noted by the Consumer Bankruptcy Project and provided resources to reduce racial bias in consumer bankruptcy? If no, why would you be less inclined to engage with this material?

22. Jean Braucher, *How to Address Apparent Racial Disparity in the Consumer Bankruptcy System*, Credit Slips: A Discussion on Credit, Finance, and Bankruptcy, [https://www.creditslips.org/creditslips/2012/01/how-to-address-apparent-racial-disparity-in-the-consumer-bankruptcy-system.html?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+creditslips%2Ffeed+%28Credit+Slips%29](https://www.creditslips.org/creditslips/2012/01/how-to-address-apparent-racial-disparity-in-the-consumer-bankruptcy-system.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+creditslips%2Ffeed+%28Credit+Slips%29).

23. See Model Rules of Professional Conduct, Rule 1.1 (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”); see also Model Rules of Professional Conduct, Rule 2.1 (“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”).

## Appendix: Advertisement Reports for Consumer Bankruptcy Toolkit Questionnaire

### LN Rule of Law Fellowship Bankruptcy Survey Sponsor Ad Report

Law360 <service@law360.com>

#### External Email Warning

**WARNING!** Please proceed with caution as this message could be a scam. The sender's account may have been compromised and used to send malicious messages. If this message seems suspicious, please **DO NOT CLICK** any of the links and/or attachments. If you believe the contents of this email may be unsafe, please send it as an attachment to the ETS Information Security Team: [ets-infosec@howard.edu](mailto:ets-infosec@howard.edu)

## Client Account: LN Rule of Law Fellowship Bankruptcy Survey

Campaign: LN Rule of Law Fellowship Bankruptcy Survey 08/18/2021  
Dates: Wednesday, August 18, 2021 to Thursday, August 26, 2021 (7 Business Days)  
Newsletters: Bankruptcy

Sponsor Ad Image: zone-1 / version-1



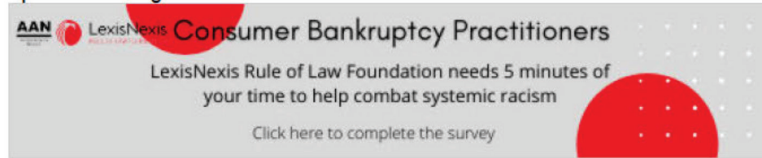
Date	Newsletters	Impressions	Clicks	Open Rate	Click Rate
Wednesday, August 18	46238	8473	7	18.32%	0.083%
Thursday, August 19	46243	7450	10	16.11%	0.134%
Friday, August 20	46254	7917	15	17.12%	0.189%
Monday, August 23	46255	8922	11	19.29%	0.123%
Tuesday, August 24	46296	8520	12	18.4%	0.141%
Wednesday, August 25	46296	8271	9	17.87%	0.109%

Total Newsletters: 277,582  
Total Impressions/Opens: 49,553  
Total Clicks: 64  
Open Rate: 17.85%  
Click Rate: 0.129%  
Status: Campaign Ended

Campaign: LN Rule of Law Fellowship Bankruptcy Survey 08/18/2021  
Dates: Wednesday, August 18, 2021 to Thursday, August 26, 2021 (7 Business Days)  
Newsletters: Bankruptcy

## Pulling African Americans from Under the Faults in Consumer Bankruptcy

Sponsor Ad Image: zone-2 / version-1



Date	Newsletters	Impressions	Clicks	Open Rate	Click Rate
Wednesday, August 18	46238	8470	14	18.32%	0.165%
Thursday, August 19	46243	7438	10	16.08%	0.134%
Friday, August 20	46254	7929	8	17.14%	0.101%
Monday, August 23	46255	8898	9	19.24%	0.101%
Tuesday, August 24	46296	8528	10	18.42%	0.117%
Wednesday, August 25	46296	8228	14	17.77%	0.17%

Total Newsletters: 277,582  
 Total Impressions/Opens: 49,491  
 Total Clicks: 65  
 Open Rate: 17.83%  
 Click Rate: 0.131%  
 Status: Campaign Ended

Campaign: LN Rule of Law Fellowship Bankruptcy Survey 08/18/2021  
 Dates: Wednesday, August 18, 2021 to Thursday, August 26, 2021 (7 Business Days)  
 Newsletters: Consumer Protection

Sponsor Ad Image: zone-1 / version-1



Date	Newsletters	Impressions	Clicks	Open Rate	Click Rate
Wednesday, August 18	38432	4480	14	11.66%	0.313%
Thursday, August 19	38428	4965	13	12.92%	0.262%
Friday, August 20	38456	4696	15	12.21%	0.319%
Monday, August 23	38402	5128	17	13.35%	0.332%
Tuesday, August 24	38460	4901	15	12.74%	0.306%
Wednesday, August 25	38484	5130	13	13.33%	0.253%

Total Newsletters: 230,662  
 Total Impressions/Opens: 29,300  
 Total Clicks: 87  
 Open Rate: 12.7%  
 Click Rate: 0.297%  
 Status: Campaign Ended



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## Pulling African Americans from Under the Faults in Consumer Bankruptcy

Campaign: LN Rule of Law Fellowship Bankruptcy Survey 08/18/2021

Dates: Wednesday, August 18, 2021 to Thursday, August 26, 2021 (7 Business Days)

Newsletters: Consumer Protection

Sponsor Ad Image: zone-2 / version-1



Date	Newsletters	Impressions	Clicks	Open Rate	Click Rate
Wednesday, August 18	38432	4469	15	11.63%	0.336%
Thursday, August 19	38428	4975	22	12.95%	0.442%
Friday, August 20	38456	4685	20	12.18%	0.427%
Monday, August 23	38402	5124	25	13.34%	0.488%
Tuesday, August 24	38460	4892	18	12.72%	0.368%
Wednesday, August 25	38484	5137	21	13.35%	0.409%

Total Newsletters: 230,662

Total Impressions/Opens: 29,282

Total Clicks: 121

Open Rate: 12.69%

Click Rate: **0.413%**

Status: **Campaign Ended**

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## Mentor: Rachel Travers

Vice President, Law360



### Reflection on working with Fellow Emony Robertson

*Part of the reason we, at LexisNexis, get up in the morning and “do the work” is the fact that our broader mission has profound impact beyond our daily tasks—we support the Rule of Law. Being a mentor in the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship has brought that purpose to life in a practical and inspirational way. Meeting and working with my Fellow, Emony Robertson, has been a terrific experience. She is smart and dedicated, of course, but what is remarkable is her deep and infectious passion about her future in the law and its connection to her battle against systemic racism within the legal system. Emony has taught me so much in our sessions. Together we have explored how bankruptcy works (or does not work) practically, and how the choices made, and advice given by bankruptcy practitioners, particularly to people of color, can have repercussions for their clients that transcend the financial. We have also discovered that there is a startling lack of awareness of the racial bias affecting that advice. Although there seems to be a willingness or intention to make things better, far too many seem too busy, too process driven, or simply not sure it is their “job,” to truly engage in solving the issue. I do hope that the Fellowship impacts and extracts some small shift in that awareness—but I have no doubt that Emony will take her courage and conviction to drive long lasting and substantial change wherever her career takes her.*

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Rachel Travers is VP, Law360, and has enjoyed a career focused on bringing together legal content and technology to meet customer needs in Asia Pacific, London, and North America. She joined LexisNexis in 2010 as Head of Content and Product Development and has not looked back in the 11 years since. Rachel proudly serves as a mentor for the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship.

Rachel holds a BA LLB (Law), English Literature from Victoria University of Wellington, New Zealand. She is currently based in New York.

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## Looking at the Numbers: Analyzing Metrics to Effectuate Best Practices and Develop Training to Combat Judicial Bias

*Feven Yohannes*

Judicial bias pervades our legal system in implicit and explicit ways. Numerous studies demonstrate the ways in which stereotypes among other implicit biases are impacting judicial outcomes. Research has demonstrated that there appears to be biased judicial sentencing.



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**Feven Yohannes is a second-year law student at Howard University School of Law. Her project focuses on creating an anti-bias judicial training within Harris County, Texas. Her law interests include human rights law, health law, and international trade. Feven's Fellowship project focuses on eliminating bias in the judicial system.**

## I. Introduction

Judicial bias is a factor that seems to pervade our legal system in both implicit and explicit ways. Numerous studies have indicated how stereotypes, among other implicit biases, are impacting judicial outcomes. For example, research has demonstrated that there appear to be serious biases in judicial sentencing. Based on an analysis of the metrics of a single jurisdiction, that of Harris County, Texas (one of the most diverse jurisdictions in the country), the following article will attempt to address the issue of judicial bias in the context of the data evaluated and to work toward the establishment of best practices related to combating judicial bias.<sup>1</sup>

When conducting a study of judicial bias, it is important to note the distinction between what the data indicates and the perceptions of the judges as to whether their own biases factor into their determinations. For example, in a study conducted a few years back among a group of judges in an educational setting, 97% of the judges surveyed rated themselves as top of the attendees in combating racial bias.<sup>2</sup> When faced with the results of surveys such as this, the question then becomes: How can racial bias (or any other bias) be combated if there is a perception by the judges that implicit and explicit biases are already being addressed in their own jurisdictions, or at least their own courtrooms?

This study will progress through the process of seeking to establish whether there is judicial bias, from data collection through analysis of the data and the limitations on the process, and will follow through to the point of establishing best practices to combat judicial bias and evaluating the conclusions that can be reached (or not reached) based on the data.

## II. Data Collection

While the data collected for purposes of this paper are from a single jurisdiction, the process for data collection and data analysis can be applied in a broader context to other jurisdictions. As one of the most diverse populations in the country, Harris County, Texas becomes a unique area in which to conduct research related to judicial bias. The selection of this particular jurisdiction takes into consideration the effect of the COVID-19 pandemic and the impending rise in eviction rates nationwide. The factors assessed during this research study include judge partisanship affiliation, zip code, whether a litigant is pro se, and damages impact outcomes during a trial.

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1. This article is written as part of a collaboration with the LexisNexis African Ancestry Network LexisNexis Rule of Law Foundation Fellowship.

2. P.M. Casey, R.K. Warren, F.L. Cheesman, & J.K. Elek, *Addressing implicit bias in the courts*. *Court Review: The Journal of the American Judges Association*, 49, 64 (2013).

This paper asserts that factors such as zip code, partisanship, the value of damages, and whether a defendant filed a pro se set contribute to judicial bias in Harris County, Texas. Therefore, to best serve eviction appeals cases and combat systemic racism, judges must account for how these factors play a role in their own unconscious bias. This paper will outline the data collection process, analysis of the data, best practices to combat judicial bias, limitation, and concluding thoughts and next steps.

For the purposes of this study, judicial bias can be defined as implicit and explicit values that impact courtroom behaviors and decision-making.<sup>3</sup> Implicit bias encompasses unconscious beliefs and attitudes that can influence one's behavior and reactions.<sup>4</sup> Implicit bias can impact behavior and influence decisions, especially those under stressful conditions.<sup>5</sup> Likewise, explicit biases are beliefs that are actively expressed.<sup>6</sup> When evaluating factors that contribute to implicit bias in the judicial system, this study focuses on trends that could result in an unconscious aversion to a cognizable group based on race, socio-economic status, or gender.

The data collection process began with the retrieval of evictions appeals cases in Harris County, Texas. With 3,323 cases retrieved, the entire data collection process took nearly four months to complete.<sup>7</sup> Using Lex Machina™ as a base, the cases were filtered to determine whether damages were awarded and whether there were additional stages to the litigation. The cases were then compiled into an Excel spreadsheet, in which cases were sorted and arranged by: (1) days to trial; (2) plaintiff firm; (3) party names; (4) amount of damages; (5) name of the judge; (6) judge's partisan affiliation; (7) zip code; (8) ruling type; (9) the trial resolution; and (10) whether a pro se set was filed.

To determine the defendant's zip code, the data was evaluated manually. Individuals would utilize the Lex Machina™ database to search for docket entries such as the Justice of the Peace (J.P.) citation to identify a litigant's zip code. From there, the zip code was manually entered into the Excel spreadsheet. Data was entered individually and in teams among the Lexis organization. Further, we collaborated with judges in Harris County to ensure that the areas from which data would be collected corresponded to the areas of possible bias judges witnessed firsthand.

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3. Bienias et al., Intell. Prop. Owners Ass'n, *Implicit Bias in the Legal Profession*, <https://ipo.org/wp-content/uploads/2017/11/Implicit-Bias-White-Paper-2.pdf>.

4. Bienias et al., Intell. Prop. Owners Ass'n, *Implicit Bias in the Legal Profession*, <https://ipo.org/wp-content/uploads/2017/11/Implicit-Bias-White-Paper-2.pdf>.

5. Binna Kandola, *THE VALUE OF DIFFERENCE: ELIMINATING BIAS IN ORGANISATIONS* (2009).

6. Dovidio et al., *IMPLICIT AND EXPLICIT PREJUDICE AND INTERRACIAL INTERACTION* (2002).

7. All cases were retrieved using Lex Machina™ and filtered to determine whether damages were awarded and what stage in litigation the case remained in.

Next, to determine whether a pro se set was filed, the Lex Machina™ team created a text-matching query to identify every case in the data set with a “pro se set” docket entry filing label. Because this query yielded 100% accuracy and completeness, this data was automated. After collecting the data, I discussed the areas of research with judges in the Harris County district to determine if these factors would be appropriate to analyze.

The research questions posed during this stage were included but not limited to how does data highlight disparities between lower and upper-middle-class groups? Are lower-income communities more likely to suffer an eviction? Does zip code impact an individual’s likelihood of being evicted? When a plaintiff has an attorney, how do their outcomes differ in comparison to someone pro se? When a defendant has an attorney, how do their outcomes differ in comparison to someone pro se? How does being pro se impact damages?

### III. Data Analysis

Throughout the process of data collection, the study was done in collaboration with judges and researchers who were familiar with the Harris County area. Meetings were conducted with judges and professors, focusing on judicial bias to determine what factors may potentially act as catalysts for unconscious bias. The first factor analyzed was a judge’s partisan affiliation and the impact on a trial resolution. The data suggested that there was no substantial difference in the number of times a plaintiff won versus the times that a defendant won when a judge was a Democrat in comparison to the same data with respect to a Republican judge. Because this analysis failed to uncover any substantial differences because of partisan affiliation, other factors such as zip code were evaluated.

When looking at the data through a platform called ArcGIS, which creates maps that identified zip code hotspots in Harris County, there was no apparent pattern related to zip codes. Further, when comparing zip code frequency to a redlining map in Harris County, it appeared that most cases fell outside of the redlining map, suggesting no correlation. However, the zip code with the highest frequency of cases was 77090 with 125 cases.<sup>8</sup> In this zip code, the population count is 40,761 and the median income is \$39,808, and about 21.6% of individuals live below the poverty line.<sup>9</sup> In comparison to the state median income amount of \$61,874 and poverty rate of 14.7%, the rate of evictions in this area could be affected by numerous factors.<sup>10</sup> Likewise, the zip codes with the lowest number of cases were 77350, 77352, 77447, 78255, 72803, 77426, 77254, 77052, 72095, 77588,

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8. See table of zip code frequency.

9. Census Reporter, <https://censusreporter.org/profiles/86000US77090-77090/> (last visited Oct. 11, 2021).

10. Census Reporter, <https://censusreporter.org/profiles/86000US77090-77090/> (last visited Oct. 11, 2021).

77366, 77484, and 77046, with one case in each respective zip code.<sup>11</sup> In comparison to areas with higher rates of eviction, these zip codes had much lower population counts and poverty rates, the most populous zip code was 77447 with a count of 16,246 people, median income of \$76,343, and poverty rate of 12.9%.<sup>12</sup> Therefore, while there could be several factors contributing to disparities in eviction rates, it appears that the population count plays a factor as well.

Additionally, the impact of being pro se and the days to trial were also evaluated. The data revealed that litigants who were pro se were more likely to go to trial faster than individuals who were not pro se. While there could be several reasons for this, it could be possible that individuals who have legal counsel are more likely to file motions that delay the trial date as compared to a litigant who is pro se. However, because data collected did not clearly indicate if a defendant was pro se or if they just did not show up to trial, these results are based only upon whether a pro se set was filed in the docket entry and would require further evaluation.

Another factor evaluated was judicial partisanship, and although there were no distinct trends suggesting bias based on party affiliation, the data did reveal that Democrat judges were disproportionately taking on cases in Harris County, despite there being an equal number of judges representing both parties. This may be attributed to the fact that during the most recent election, there was a Democratic sweep that the courts had seen for the first time. Nevertheless, there could also be other underlying factors contributing to the disproportionate number of Democrat judges taking on cases.

### Pro Se

Days to Trial	
Count	376.000000
Mean	30.489362
Std	21.244102
Min	4.000000
25%	18.000000
50%	25.000000
75%	38.250000
Max	263.000000

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11. See table of zip code frequency.

12. Census Reporter, <https://censusreporter.org/profiles/86000US77447-77447/> (last visited Oct. 11, 2021).

### Not Pro Se

Days to Trial	
Count	2918.000000
Mean	40.201508
Std	37.478548
Min	7.000000
25%	21.000000
50%	32.000000
75%	47.000000
Max	769.000000

### Judge Party Affiliation

Number of Republican Judges	5
Number of Democrat Judges	5
Cases Adjudicated by Democrats	1,573
Cases Adjudicated by Republicans	273
Cases Adjudicated by Both	1,445

### Top Plaintiffs/Landlords

Progress Residential	32
AMG City View Apartments LLC	27
Westchase Ranch Apts	23
Cerberus SFR Holdings LP	22
Villa Nueva Apartments LLC	21
556 Linda Vista LP	20
Houston Housing Authority	20
Palms at Cypress Station	20
Camillo Properties	19
Federal National Mortgage Association	18
AMG City view 2 LLC	17
Invum Three LLC	17
Woodbridge Crossing	17



The Bank of New York Mellon	16
2015 Houston Redford Road LLC	14
American Residential Leasing Company, LLC	14
Lakeside Gardens Associates, LLC	14
The Professional Landlords LLC	14
200 Hollow Tree LP	13
Aragon 2015 Villages at Meyerland	13
Camillo A-1 Property Owner, LLC	13
Gallery at Champions	13
Home SFR Borrower LLC	13
Acquisition Broadway Square LLC	12
GPE 1331, LLC (The Preserve at Westchase)	12
Hreal Company, LLC	12
Portofino Landing LLC	12
Raamco Texas Properties LP	12
Richard L Pfirman	12
The Monte Carlo	12
Trails of Ashford	12
Apartments of Cypress Houston LLC	11
Arcadia at Westheimer Apts	11
Palms on Rolling Creek	11
Raamco RBBC LLC	11
TAH Holding LP	11
Timber Ridge Apartments	11
U.S. Bank National Association	11
Villa Toscana	11
AM Walnut Bend LLC	10
Camden Development, Inc.	10
City Station LLC	10
Cranbrook Polo Club LLC	10
Deutsche Bank National Trust Company	10
Village at Piney Point	10
Wells Fargo Bank, N.A.	10
Westside Realty	10

## **IV. Data Limitations**

Despite what the data uncovered, there were also limitations to the research conducted. To begin, while the analysis looked at socio-economic factors, such as the median income and income per capita within a specific zip code as compared to the median income and income per capita in Harris County, the data did not look at the race of the litigants. While several factors impacted judicial bias, race is a key component when determining if bias is present; thus, future research or next steps would require an in-depth analysis of race as a factor impacting judicial bias. Furthermore, the most significant limitation to this research is the narrow focus. The research focused solely on evictions appeals in Harris County, Texas, a single county. There is a possibility that factors contributing to bias can vary across county, city, or state lines. Therefore, future research must consider various jurisdictions outside of Harris County. Moreover, the research focused on a single type of matter, evictions appeal, making it possible that, in other areas of law, different factors are contributing to bias. Further, a limitation to the research was time and budget constraints. Given the timeline of about a year, there was a limit to the amount of data that could be assessed when also factoring in budget constraints. Adding to this, the data came exclusively from Lex Machina™, so that data collection was limited to information that was available on the Lex Machina™ platform. Finally, a limitation to the research was that, while data entry was conducted using both manual and automated processes, there is always the possibility of human error in both processes.

## **V. Best Practices**

Although the data did not conclusively prove that factors such as a litigant's zip code, judge partisanship affiliation, or pro se status impact litigant damages or contribute to bias in the judicial system, conducting this study demonstrated the importance of data collection in the judicial system because that is something that contributes to bias as well. The constraints on data collection and lack of data available and widely accessible related to litigants' race, socio-economic status, and what is occurring in the courtroom make it difficult to assess what is happening in our judicial system to evaluate bias and create best practices going forward. In the United States, judicial data regarding judge diversity and courtroom demographics is extremely lacking. Much of the data collected during this study was manually retrieved and entered into a database. Therefore, much of the time spent attempting to collect the data could have been directed towards a focus on an analysis of trends and patterns in the courtroom if the data was widely available.

Going forward, best practices for judges and courtrooms to combat judicial bias begins with recording processes. After speaking with judges in Harris County, Texas, it was discovered that the data collection process in courtrooms is largely discretionary. Thus, encouraging standard recording and data entry practices in courtrooms nationwide would set a precedent to encourage meaningful analysis to combat bias in our judicial system.

## **VI. Next Steps**

Given the prominence of evictions cases, work regarding evictions appeals and the presence of bias in courtrooms must continue. With the COVID-19 eviction moratorium expiring in several states, there will be an influx of eviction-related litigation. First, steps to combat judicial bias in the courtroom include improved data collection in the courts. This includes better surveys completed after each case, noting the race of litigants, and establishing a database where case information is made accessible. While there may be possible privacy concerns associated with making this information public, information like zip code and address of a litigant are typically accessible online anyway, and it would just be a matter of compiling this information into a single place. Further, noting if the defendant appeared at trial is also something that must be noted going forward.

## **VII. Conclusion**

Despite being one of the most diverse populations in the nation, factors such as judge partisanship affiliation, zip code, whether a litigant is pro se, and damages did not appear to conclusively impact outcomes during a trial based on the findings. A summary of my research findings indicates that there was no conclusive evidence showing that partisanship affiliation, zip code, whether a litigant is pro se, and damages impact outcomes during a trial. However, the research demonstrated that obstacles to assessing judicial bias include a lack of accessible data regarding courtroom proceedings and the background of litigants. This information will be utilized to recommend best practices for judicial data collection to combat judicial bias in our system. Despite the lack of conclusive evidence establishing judicial bias, the data collection process revealed that one of the largest barriers to combating judicial bias begins with the data collection process. Moving forward requires the establishment of a firm base for data collection, a solid analysis of all relevant factors and recognition of the limitations on that analysis, and a strong set of data on which to base the best practices and successfully combat the impact of judicial bias on the judicial system.

## Appendix: Table of Zip Codes and Frequency of Cases

Zip Code	Frequency
77090	125
77082	113
77449	102
77042	101
77077	96
77084	75
77014	70
77073	61
77036	59
77015	54
77091	53
77088	52
77099	52
77063	51
77433	50
77021	47
77396	46
77373	43
77044	43
77004	43
77095	42
77072	42
77338	42
77379	42
77060	40
77067	39
77083	39
77065	36
77057	36
77035	36
77040	36
77070	34
77026	33
77089	33
77047	33
77034	32
77069	31
77080	31
77061	31
77033	30

Zip Code	Frequency
77520	30
77045	29
77016	29
77028	28
77032	28
77054	27
77064	27
77051	26
77429	26
77506	26
77071	25
77058	23
77521	22
77048	22
77049	22
77002	22
77096	22
77346	22
77075	22
77074	21
77388	21
77068	21
77020	19
77450	19
77079	19
77375	19
77081	19
77530	18
77087	18
77066	18
77078	17
77043	17
77027	17
77062	16
77086	16
77598	16
77017	16
77076	15
77055	15
77056	15

Zip Code	Frequency
77009	14
77093	14
77092	14
77571	13
77019	13
77494	13
77018	12
77041	12
77007	12
77031	11
77038	11
77532	10
77022	10
77006	10
77502	9
77562	9
77493	9
77389	9
77008	9
77011	9
77098	8
77039	8
77013	8
77029	8
77025	8
77504	7
77003	7
77339	6
77377	6
77536	6
77503	6
77023	5
77012	5
77345	5
77547	5
77586	5
77336	5
77024	4
77587	4
77085	4

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*Analyzing Metrics to Effectuate Best Practices and Develop Training to Combat Judicial Bias*

<b>Zip Code</b>	<b>Frequency</b>
77053	4
77596	4
77037	3
77050	3
77546	3
77005	2
77477	2
77505	2
77378	2

<b>Zip Code</b>	<b>Frequency</b>
77030	2
77581	2
77059	2
77094	2
77350	1
77352	1
77447	1
78255	1
72803	1

<b>Zip Code</b>	<b>Frequency</b>
77426	1
77254	1
77052	1
72095	1
77588	1
77251	1
77366	1
77484	1
77046	1

## **Mentor: Adam Pingel**

Chief Technology Officer of Global Platforms, LexisNexis Legal and Professional



### **Reflection on working with Fellow Feven Yohannes**

*My experience with the Fellowship program was very rewarding. From the outset, Feven's vision for the project to understand judicial bias resonated with me. We were quickly able to assemble a team across LexisNexis that was similarly motivated, including subject matter experts, product managers, and engineers. As a team, we've been able to explore several hypotheses relating to judicial bias with a depth I've not seen previously. I've learned so much from this experience and this team and this specific project, from technical tools to history. The data-driven approach we've taken to explore the topics of judicial bias and eviction is exemplary of how I hope law and policy-making are practiced generally.*

---

**Adam Pingel is Chief Technology Officer of Global Platforms, LexisNexis Legal and Professional. He joined LexisNexis in 2017 via the acquisition of Ravel Law. Adam recently moved to Raleigh, NC after nearly three decades in California. He holds computer science degrees from Stanford and UCLA.**

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