



INCREASING EQUITY IN THE LEGAL SYSTEM:

A Collection of Legal Advocacy Papers by the
LexisNexis® African Ancestry Network & LexisNexis®
Rule of Law Foundation Fellowship 2022 Cohort

Oyinade Adebayo • Marian Anderson • Nija Bastfield
Mikel Brown II • L. J. Chavis • Dominique Douglas
Aquilla Gardner • Kristina Hall • Brianna Joaseus
Nicolle Londoño • Joanne Louis • Alexis McNeal
Amari Roberts • Lauren Skarupsky • Edrius Stagg
Talia Thomas • Zuri Ward • Songo A.R. Wawa



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Foreword

Mike Walsh

LexisNexis® Legal & Professional combines unparalleled legal and business information with analytics and technology to transform the way our customers work and shape a more just world.

We have been committed to the mission of advancing the rule of law for many years. That's because our 10,500 people can see the bright line between strengthening legal infrastructures and furthering peace, prosperity, and progress for all people.

The rule of law is the principle that no one is above the law and that all are equal before the law. Robust economies depend on the existence of clear and accessible laws that govern society and commerce, and an independent judiciary to enforce laws and contracts in a timely manner so that citizens and businesses can be sure that their interests are protected from arbitrary forces.

Our teams work to advance these areas through our core operations, collaborations with customers, actions as a corporate citizen, and efforts in caring for our communities. We help to build, maintain, and enhance entire justice systems through our work with lawyers, judges, and lawmakers in more than 150 countries around the world.

The products and services we provide our customers every day help to make it possible for the foundational institutions of society, including law-making bodies, legal professionals, and the judiciary, to function.

We work to expand access to laws, legal information, and legal decision tools in parts of the world where legal professionals, businesses, and citizens find it difficult to understand, protect, and exercise their rights under the law.

We also support the rule of law through our work with non-profit organizations to protect the rights of some of the most vulnerable members of society. In 2019, we launched the LexisNexis® Rule of Law Foundation to advance rule of law through projects and advocacy.

We recently launched a research and analytics tool called the LexisNexis® U.S. Voting Laws & Legislation Center to increase transparency of law. This first-of-its-kind resource shines a spotlight on voting laws and legislation in the U.S., bringing transparency to information which has historically been difficult to access and understand. The initial release of the Voting Laws Center provides free, public access to a comprehen-



sive collection of U.S. federal and state election and voting laws. This includes proposed legislation, codes, voting-related information, and graphics. It uses legislative data from LexisNexis® State Net and codes from Lexis+®, providing full-text access and real-time updates to existing and proposed state and federal laws. This gives lawmakers, journalists, non-profit organizations, legal professionals, academics, students, and the public, timely, fact-based, and unbiased data on voting and election laws.

We are tremendously proud to have launched a second cohort of Fellows through a partnership of our African Ancestry Network employee resource group 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, and we are pleased to have grown the fellowship to 18 in the second year.

In the following papers, you will read about action-oriented solutions to increase equality under the law by increasing equity in the U.S. legal system. The Fellowship projects cover a range of topics, including increasing education about, and exposure to, the legal profession for youth, providing legal resources to increase equity in wealth creation, and leveraging LexisNexis® data to increase equity in the courts and criminal justice system. Each of the Fellows were challenged to uncover how LexisNexis® products could be used to address and eliminate systemic racism in the legal system.

Our organization and mission are deeply enriched by the work of the Fellows. We are also proud of the contributions from many dedicated LexisNexis® volunteers, who work to bring the rule of law to life through their innovation, expertise, customer focus, and hard work. Our people have worked closely with each of the Fellows to support them in their rule of law project, develop their leadership skills, and accelerate their career. We are pleased to present their forward-thinking and exciting work in this publication. We congratulate each of the Fellows and look forward to their future leadership in advancing the rule of law and increasing equity in the legal system.

Mike Walsh is the Chief Executive Officer of LexisNexis® Legal & Professional Global.



Ronda Moore

In recent years, many organizations have accelerated their efforts to identify and meet meaningful diversity and inclusion objectives. While many organizations grapple with how to make a real impact in this critical business area, LexisNexis® employees are deploying innovative ideas with passion to advance the rule of law. In so doing, they are making an indelible mark on the legal industry and society at large. The LexisNexis® African Ancestry Network Employee Resource Group & LexisNexis® Rule of Law Foundation partnership harnesses our organization's commitment to address systemic racism in the legal system to advance the rule of law. Empowered by our culture of inclusion and diversity, hundreds of colleagues have come together to learn from and support our 18 Fellows, who are now emerging as legal scholars at the Historically Black Colleges and University law schools.



These extraordinary thought leaders examine the complex issues and conditions that have rendered an inequitable legal system. Research and analysis by our Fellows address a myriad of challenges. Most importantly, the Fellows offer viable recommendations and solutions that chart realistic pathways forward to make a significant impact in key areas, such as increasing law school student and legal profession diversity; improving access to tools and resources for the benefit of vulnerable citizens who are engaged in the judicial or legal system; and promoting equity in wealth preservation and creation. Underpinning these scholars are LexisNexis® analytics, products, tools, and people.

Our Fellows began their journey at an innovation retreat at the LexisNexis® global technology center in Raleigh, NC, where members of our global product and technology teams led Fellows in a deep dive into the legal research, insights, and analytical tools available to them through LexisNexis®. In the months that followed, Fellows used products such as State Net®, Lexis+® Research and Law360® to gain insight into legislative issues/reform and to review the latest in legal news and analysis.

This prestigious Fellowship has allowed our Fellows to enhance their professional, leadership, research, and analytical skills. Inspired by the future these Fellows have helped us to envision, LexisNexis® colleagues have mentored and supported their projects. Volunteers in our organization, who have freely shared their time and talent, include data scientists, user experience designers, attorney editors, project managers, technical writers, product managers, and many others.

Finally, A Call to Action For Our Readers

We extend our deepest gratitude and sincere congratulations to our second cohort of Fellows. Your advocacy and scholarship have inspired us. We look forward to following your progress and development as thought leaders in the ongoing work to improve equity in the legal system. I believe that with your steadfast efforts; the best is yet to come! I also congratulate and thank the many LexisNexis® colleagues who continue to demonstrate our commitment to advance the rule of law by partnering with our Fellows to shape a more just world.

As you read these papers and ponder how you might learn more or get involved in the important work of advancing equity in the legal system, I invite you to reach out. A key objective of this program is to enhance the profiles of our Fellows as developing leaders in law; we are committed to amplifying the voices of legal scholars who have traditionally been underrepresented. It will be our pleasure to connect with you or your organization to discuss the content and ideas contained in these papers and to share ideas that can turn our Fellows' collective vision into action.

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



Adonica Black

As I contemplate the premise of this program, I think about the magnificence of the ocean.

In our second year of this Fellowship, the program has grown to 18 Fellows — reflecting a significant 50% increase from our inaugural year — surging tides.

This growth is a direct result of the foundation laid in our first year. All our Fellows helped us to open our minds to what could and should be possible — an exploration of new frontiers.

The 2022 Cohort of Fellows has embarked upon its own unique odyssey to advance the rule of law by eliminating systemic racism. They have faced uncharted and at times rough waters. Fellows have explored the vast open sea of possibilities, conceived new frontiers to promote equity and justice, and have set a course to navigate and advance forward to create a more just world.

Fellows have troubled the waters of the status quo in pursuit of this mission. Each Fellow has focused on an incremental step towards justice, thereby creating a ripple effect on our world, positively impacting the shores of people, communities, and systems afflicted by inequity and systemic racism. Our Fellows have sailed choppy seas to improve social justice and equity, sweeping up passengers as partners in their journey, such as the many talented LexisNexis® employees and partners in the community inspired to help them to achieve their journey's goals.

Our Fellowship, organized in Clusters, takes a systematic approach to toppling the dams of systemic racism that hinder the free flow of progress. The legal system's adverse impact on Black lives often, and unfortunately, begins with an ill-omened encounter with the legal system during adolescence. Such experiences may lead to a lack of trust or interest in the legal system overall, eroding any possibility of a future legal career.



Our first Cluster intends to improve that negative impression, by making the legal system more equitable, accessible, and attractive to our young people in underrepresented communities. Additionally, we must endeavor to build a sense of confidence that the rule of law applies fairly to all. This will help to engender interest and connection with our legal system for our youth, thereby promoting an interest in legal education to more diverse populations. Our second Cluster continues with work that will help to steer the focus of legal education to a more diverse culture in the practice of the law, increased diversity among legal practitioners, and more inclusive and equitable legal remedies. Our third Cluster is focused on uncovering how to make leadership in the legal profession more diverse, which will lead to greater diversity in the areas of practice that are represented by attorneys of color and ensure more equitable outcomes for all, including historically underserved communities.

Next, we must ensure greater representation and equity in the court system, with a particular focus on eliminating bias in the dispensation of justice. Our fourth Cluster leads this work and connects to our fifth Cluster which is focused on the criminal justice system holistically; thus, ensuring a reduction in disparate impact in courts of law, including the process of jury selection. Finally, our sixth Cluster focuses on wealth and ownership. It breaks down barriers to success and serves as a means to underpin a more prosperous future.

Our Clusters, like many ships at sea, will touch different shorelines across our society and bring progress to the numerous areas bound by the shared waters of a legal system that must find ways to improve the system for all or bow under the weight of systemic imbalance. As I continue to reflect on the magnitude of this work via the vehicle of this metaphor, it is not lost on me that the story of systemic racism in our systems also began at sea with the Middle Passage.

In this program, we map out a renewal of these waters with the freshness of justice, equity, and liberty. As you read the work of our Fellows, consider what vessel you may bring to help us navigate this ocean of uncharted territory; consider how you may be able to further develop the work our Fellows have started here. Please reach out and become involved. While our Fellows are leading the way, we need a groundswell of advocates bubbling up their efforts to achieve equity, justice, diversity, inclusion, and belonging. We seek to build relationships and forge alliances to facilitate the changes that promote seismic movements throughout our legal system.

Each ripple creates a wave that evolves into movements that serve as a step forward in the pursuit of advancing the rule of law, refining our legal system's jagged edges. Ultimately, these actions yield dynamic results that contribute toward equitable solutions that are beneficial for all who are served by the rule of law.

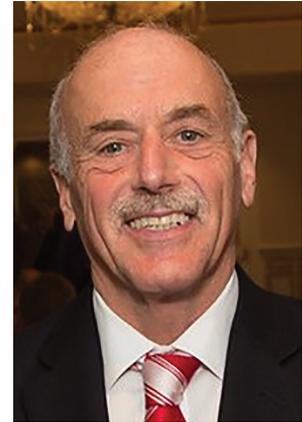
As a rising tide lifts all boats, we set our sails towards the horizon and continue the journey.

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



Nigel H. Roberts

First and foremost, as VP & Secretary of the LexisNexis® Rule of Law Foundation, I was extremely proud of our respective organizations, when the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship program was first established in 2021. It is fantastic to see the program extended this year to 18 Fellows, from 12 in 2021, and I'd like to offer my sincere congratulations to each and every one of these amazing, talented young individuals, most of whom, I am delighted to say, I have had the opportunity to meet in person.



In my “day job” at LexisNexis®, I am VP Global Associations, managing our external relationships with key industry leading associations across the world. I have often shared with our partners, how LexisNexis® is uniquely positioned to drive meaningful impact, and how advancing the Rule of Law is at the core of what we do. Over the years, our work with these organizations has increasingly focused on Rule of Law projects, especially those we can support by leveraging our core business assets — our technology, our innovation, and our people, just as the Fellows are doing through each of their own projects, with the shared goal of implementing solutions to eliminate systemic racism in our legal system, while advancing the four key elements of our rule of law equation: equality under the law; transparency of law; an independent judiciary; and accessible legal remedy.

I believe these incredible Fellows have an exceptional opportunity to drive meaningful change. They share that same commitment and passion and have already achieved significant accomplishments. I have no doubt their projects will make an immediate impact and will help to inspire others. I thank them all, for their dedication and leadership, to help advance equality and the Rule of Law.

Nigel Roberts is VP Global Associations and VP & Secretary of the LexisNexis® Rule of Law Foundation.



Tina DeBose

The LexisNexis® African Ancestry Employee Resource Group stepped forward, being prompted after the murder of George Floyd and the ongoing injustices faced in society with marginalized groups and individuals, to request our company make a financial commitment to projects and organizations representing the change we wanted to see and create. As a result, the AAN asked 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, and we continue now with our sec-

ond group of Fellows. 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. Meeting each Fellow and having the opportunity to hear them express from their hearts the vision and ideas behind their projects inspires me that these change makers are building a pathway to equality for all.

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 deep sense of pride in knowing what the world knows to be true today will be forever changed tomorrow because of their vision.

Tina DeBose serves as the LexisNexis® African Ancestry Network Liaison to the LexisNexis® Rule of Law Foundation Board and Software Engineering Manager at LexisNexis® Legal & Professional.



Roderick Brown

The Fellowship has been an amazing experience. I have enjoyed my time bonding with my fellow Fellowship Committee members, and I have enjoyed engaging with the Fellows to assist them with further formulating their ideas and navigating potential and actual challenges. Collectively, those involved in the Fellowship have accomplished so much in a very short timeframe, and we all have demonstrated the ability to effectuate change regarding the fight against systemic racism and racial inequality. For the present Fellows, and Fellows to come, I hope that the LexisNexis® African Ancestry Network & the LexisNexis® Rule of Law Foundation continue to support the program and the efforts of its participants, to enable bright minds to overcome challenges and flourish in this space.



Roderick Brown is Director and Senior Corporate Counsel at LexisNexis® Legal & Professional. He also serves as a LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship Committee Member.



Gretchen Bakhshai

It is awe-inspiring to see the passion, commitment and resolve demonstrated by every law student who raised their hand to be a part of the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship. In our second year, the program has accelerated both in size and scale, inspiring even more support from our teams at LexisNexis® and the broader legal community. In service of eliminating systemic racism, the work these groups are doing in partnership with our talented Fellows will undoubtedly contribute to dismantling biased and obdurate policies and processes and create a foundation to rebuild a just and equitable legal system.



We are wholly inspired by our Fellows who determinedly pursued innovative equity projects that now exist as tactical roadmaps towards change that others may also pursue. Social injustice has no place in our world today, and it is our unified, unrelenting determination that will bring these projects to life. It has been a gift to be a small part of their work and to be connected to this amazing group of law students driving systemic investigation and reevaluation of our legal systems.

While our 18 Fellows demonstrate the thought leadership, creativity, and innovation required to drive necessary change, the amount of work to be done to overcome an embedded system of oppression cannot be overstated. Tackling these issues requires meaningful action from individuals and organizations like ours (and yours). We hope their work, showcased in this publication, is a broader call to action to others who wish to join us on our collective mission advancing the rule of law.

Gretchen Bakhshai is the Senior Vice President of Global Client Service and Support at Knowable, a subsidiary of LexisNexis® Legal & Professional. She also serves as a LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship Committee Member.



Hannah Hardin

I believe that the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship is a transformative experience for everyone who encounters it. We are living in an age of unprecedented change; it would be easy to stand down and allow the tides of change to wash over us. But this Fellowship demonstrates the tenacity of the human spirit and our mutual commitment to positive societal change.

Eliminating systemic racism is no small task, but these Fellows have answered the call. They have dedicated their time, abilities, and experiences to chipping away at a cultural foundation that can no longer support us. The projects included in this volume are a blueprint for a path forward. A blueprint that I hope inspires you to join us in being an agent of change.



Hannah Hardin is a Director of Human Resources for LexisNexis® Legal & Professional. She has dedicated much of her career to creating inclusive work environments where everyone can feel valued and supported. She also serves as a LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship Committee Member.

Press Release

LexisNexis Fellowship Program Announces New Cohort and Dramatically Increases Funding and Participation in Its Second Year

April 06, 2022

Fellowship program announces 2022 cohort of 18 exceptional candidates and will now award \$180,000 to Historically Black College or University Law School Consortium students

NEW YORK — LexisNexis Legal & Professional®, a leading global provider of information and analytics, today announced the second cohort for its LexisNexis Fellowship Program, which has grown to 18 candidates — 50% more than the program’s inaugural year. To make this expansion possible, the company’s leadership has committed \$180,000 — 50% more than what was originally pledged in 2021. The increase in financial support and participation is a direct result of the program’s overwhelming success in its first year.

The LexisNexis Fellowship Program was launched in 2021 by the African Ancestry Network (AAN) and 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 at the company. The program was created in partnership with the Historically Black Colleges and Universities Law School Consortium (HBCULSC), and this year’s fellows were selected from a large and competitive applicant pool representing all six law schools. The 2022 cohort includes:

Florida A&M University College of Law: Nicolle Londono and Amari Roberts

Howard University School of Law: Oyinade Adebayo, Aquilla Gardner, Joanne Louis and Talia Thomas

North Carolina Central University School of Law: Dominique Douglas and Zuri Ward

Southern University Law Center: Marian Anderson, Antavis L. J. Chavis, Brianna Joaseus, Lauren Skarupsky and Edrius Stagg

Thurgood Marshall School of Law: Mikel Brown and Kristina Hall

University of the District of Columbia David A. Clarke School of Law: Nija Bastfield, Alexis McNeal and Songo Wawa

“Our fellows come from diverse backgrounds and have already achieved many significant accomplishments. The Fellowship is a convergence of their talent and passion to advance the rule of law with the power of LexisNexis products and technology to study and solve complex challenges. Their efforts will make an immediate impact and inspire many for generations to come,” said Ronda Moore, Chief Inclusion and Diversity Officer at LexisNexis Legal & Professional.

Each fellow will be awarded \$10,000 and 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. As with last year, LexisNexis employees will work with fellows on projects with the shared goal of implementing solutions to eliminate systemic racism in our legal system while advancing the four key elements of the rule of law — equality under the law, transparency of law, an independent judiciary, and accessible legal remedy.

“Advancement of the rule of law favorably impacts societies—including their most vulnerable members,” said Ian McDougall, President of LexisNexis Rule of Law Foundation. “Any system becomes fairer and more equitable when the four key elements are enhanced.”

The cohort will participate in a Fellowship Innovation Retreat in Raleigh this May, where they will partner with the LexisNexis product team to uncover how technology can accelerate equity by utilizing LexisNexis products to bolster their projects. Additionally, the fellows will provide reciprocal consultative feedback to the product team on ways to further innovate for equity.

Virtual programming that showcases the fellows’ work will be shared with all LexisNexis employees, the HBCU schools and other key partners. At the culmination of the fellowship, fellows will present the results of their individual projects to LexisNexis CEO Mike Walsh, the executive team, and the HBCULSC deans.

Those interested in reading the findings from the 2021 fellowship cohort can download the report or watch video testimonials from fellows and mentors about the program.

Editor’s Note: Photos of the 2022 Fellowship cohort available upon request.

About LexisNexis Legal & Professional

LexisNexis Legal & Professional® provides legal, regulatory, and business information and analytics that help customers increase their productivity, improve decision-making, achieve better 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 150 countries with 10,500 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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LexisNexis
RULE OF LAW FOUNDATION

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 2022 cohort of LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship awardees.



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 2022 Fellows, showcasing the inspirational principles spearheading their projects into action and starting the journey for eighteen new projects.

The great social movements for justice and fairness made the headlines and front pages for a while. The spark of the George Floyd tragedy raised awareness, inflamed passions, and showed the need for improvement. Yet, as is often the case, before any meaningful change is made, other stories come to the fore. What was once the passion story of the day often gets replaced by the latest news from the reality TV show of the moment. But we believe it is important to stay the course for the long term — to pursue the advancement of the Rule of Law, ending systemic racism wherever it shows or hides. It is why we are proud of those who step forward and, despite the lack of headlines and knowing how hard the road ahead is, take on the Fellowship and help us all take a step forward towards a better world. 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 of LexisNexis® Legal & Professional. He also serves as the President of the LexisNexis® Rule of Law Foundation.

Cluster 1:

Equity for Youth in the Legal System

**The Inequitable Application of Waivers to Adult Court
and Its Negative Implication on Procedural Justice
Within African American Youth Communities**

Oyinade Adebayo

**The School-to-Prison Pipeline:
Addressing the Adverse Effects of Discriminatory
School Discipline Practices and the Negative Implications
on Minorities Entering the Legal Field**

Mikel Brown II

The Inequitable Application of Waivers to Adult Court and Its Negative Implication on Procedural Justice Within African American Youth Communities

Oyinade Adebayo

This project's mission is to increase awareness of the disparate impact of the juvenile-to-adult court waiver system, and to create a model data-driven risk assessment and analytics tool for use by decisionmakers to use as guidance when applying waivers to adult court within the juvenile justice system. This prototype tool will leverage public data sources available through the Department of Justice and other court websites to populate the tool with demographic data, types of charges, and case dispositions. Creation of a live tool built on active court records would require further investment and partnership with government entities to get the tool in the hands of end users in the court system. A prototype built by the LexisNexis® design team will demonstrate the power of an analytics tool that could be deployed in this space to make participants aware of potential bias and inspire policy changes to address systemic bias in the juvenile waiver process.



Oyinade Adebayo is a third-year law student at Howard University School of Law. She plans to pursue a career in labor and employment law upon graduation. Oyinade currently serves as a Senior Staff Editor on the Howard University Human & Civil Rights Law Review. Additionally, she serves as a Henry Ramsey Dean's Fellow for first-year law students at the law school. Her interest in mentoring and building up youth fuels her passion for education equality and juvenile justice reform.

I. Introduction

In a criminal justice system where racial disparities are evident, the waiver to adult court mechanism exacerbates the issue of inequality under the law and negatively affects the prosecution and sentencing of African American juveniles.¹ The waiver to adult court is a legal mechanism through which a juvenile's case is transferred from the juvenile court to the adult court.² There are three mechanisms used to transfer juveniles: statutory exclusion, direct file, and judicial waiver — *the most common mechanism*.³ The purpose behind the transfer of juveniles to adult court is to preserve resources in the juvenile system for juveniles the court believes are capable of rehabilitation and remove those the court believes will not benefit from juvenile court resources.⁴ The general factors used to determine whether a juvenile will be waived typically include: the seriousness of the crime, aggressiveness of the crime, the intentions behind the crime, the juvenile's history of crime, the likelihood of further harm to the community, age, and the likelihood of rehabilitation.⁵

Due to the high level of judicial and prosecutorial discretion in the waiver process, many frequently stray from solely using these factors to determine waiver eligibility and take other detrimental factors into consideration.⁶ These factors include: the race of the juvenile, current hot topics or issues, emotional factors, political agendas and considerations, and public opinion, all of which disproportionately affect African American youth in the criminal justice system.⁷ The absence of specific criteria to guide decisionmakers in their determination of whom to transfer to adult court makes the waiver process vulnerable to abuse and African American juveniles are most affected.⁸ African American youth are disproportionately more likely to receive a waiver into adult criminal court in comparison to their white counterparts who commit similar crimes.⁹

This paper argues that the absence of strict criteria to guide decisionmakers and the resulting disproportionate application of juvenile waivers negatively impacts African American juveniles procedurally by stripping access to rehabilitative opportunities and increasing the likelihood of unwarranted harsher prison sentences in adult court; therefore, the creation of a data-driven risk assessment tool is necessary for decisionmakers to use as guidance when applying waivers to adult court within the juvenile justice system. First, this paper will explore the history of the waiver to adult court and discuss the negative implications of the waiver system. Next, this paper will discuss the US adult waiver statistics and narrow in on the state of Maryland and analyze the varying process and waiver statistics in the state's juvenile court. Then, this paper will highlight factors that show signs of a possibility of rehabilitation from the lens of researchers and juvenile justice advocates. Finally, this paper will introduce the creation of a risk-assessment calculator to

¹ See Jodi K. Olson, *Waiver of Juveniles to Criminal Court: Judicial Discretion and Racial Disparity*, JUSTICE POLICY JOURNAL (2005), available at http://www.cjcj.org/uploads/cjcj/documents/waiver_of.pdf.

² Amy Borrer, *10 of the Scariest Things About the Juvenile Legal System*, THE GAULT CENTER, Blog, <https://www.defendyouthrights.org/2021/10/28/10-of-the-scariest-things-about-the-juvenile-legal-system/> (Oct. 28, 2021).

³ OFF. OF JUV. JUST. & DELINQ. PREV., *Juvenile Justice Reform Initiatives in the States 1994-1996*, https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/reform2/ch2_j.html (last visited Aug. 2, 2022).

⁴ *Id.*

⁵ *Id.*

⁶ Olson, *supra* note 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

calculate the likelihood of rehabilitation vs. recidivism to decrease the number of African American juveniles transferred to adult court.

II. History

The process of waiving juveniles from juvenile court to criminal court has existed and sparked controversy for decades.¹⁰ The legislative response to youth who commit serious crimes is frequently more laws surrounding the transfer to adult criminal court.¹¹ A transfer to adult court (“juvenile waiver”) occurs when a judge agrees to waive the protections that a judicial court would provide and instead allows the adult criminal court to sentence the juvenile.¹² Today, all states have transfer laws that allow or require juveniles to be prosecuted as adults.¹³ Juveniles may be transferred into criminal court by one or more transfer mechanisms: (1) judicial waiver; (2) direct file; (3) statutory exclusion. The most common mechanism used to transfer juvenile cases is the judicial waiver, which permits juvenile court judges to waive juvenile cases into adult criminal court.¹⁴ A judicial waiver may either be discretionary, presumptive, or mandatory. Under a discretionary judicial waiver, a judge has the discretion to decide whether to waive jurisdiction of the juvenile’s case over to adult criminal court.¹⁵ Under a mandatory judicial waiver, “juvenile cases that meet [certain state specified] criteria for age, severity of offense, and/or prior criminal record are required to be transferred” to criminal court.¹⁶ Under a presumptive judicial waiver, “juveniles who meet established criteria such as age and severity of offense are presumed to be suitable for criminal court rather than juvenile court.”¹⁷ These transfer mechanisms authorize the transfer of cases that meet threshold requirements for waiver.

The traditional purpose behind the waiver process was to allow for an individual evaluation of a juvenile, to determine whether the particular individual was capable of rehabilitation through the juvenile justice system.¹⁸ The transfer process is based on the premise that some juveniles are beyond rehabilitation.¹⁹ The major factors that weigh heavily on the determination of whether to transfer a youth from juvenile court to adult criminal court are the availability of treatment services for the specific youth in question, the youth’s willingness to obtain treatment, and the community interest/public safety.²⁰ The discussion of which venue is most appropriate for a juvenile’s case to be processed was further defined in *Kent v. United States*.²¹ In *Kent*, the Supreme Court established eight factors that the courts should consider before transferring a juvenile to adult court.²² These factors included: (1) seriousness; (2) manner offense was committed; (3)

¹⁰ *Id.* at 6.

¹¹ *Id.* at 6.

¹² Kathleen Michon, *When Juveniles are Tried in Adult Criminal Court*, NOLO, <https://www.nolo.com/legal-encyclopedia/juveniles-youth-adult-criminal-court-32226.html?pathUI=button> (last visited Aug. 2, 2022).

¹³ YOUTH.GOV, *Judicially Waived Cases*, <https://youth.gov/youth-topics/juvenile-justice/judicially-waived-cases> (last visited Aug. 2, 2022).

¹⁴ OFF. OF JUV. JUST. & DELINQ. PREV., *supra* note 3.

¹⁵ YOUTH.GOV, *supra* note 13.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Olson, *supra* note 1.

¹⁹ OFF. OF JUV. JUST. & DELINQ. PREV., *supra* note 3.

²⁰ Olson, *supra* note 1.

²¹ Sarah Hockenberry, *Juvenile Justice Statistics: National Report Series Fact Sheet*, OFF. OF JUV. JUST. & DELINQ. PREV. (Jan. 2021), 1, available at <https://ojjdp.ojp.gov/publications/delinquency-cases-waived-2018.pdf>.

²² *Kent Criteria for Judicial Decline Hearings*, WASH. STATE LEGIS., JUV. SENTENCING REFORM, TASK FORCE (July 15,

against persons or property; (4) merits; (5) adult co-suspects; (6) sophistication and maturity; (7) offense history and contacts; and (8) prospect for rehabilitation.²³ Among states, the factors are not uniformly applied because states are permitted to adhere to these factors or choose to replace them with their own, which many states have done over the years.²⁴

III. Negative Implications

While juvenile court judges are permitted to adhere to the *Kent* factors, or replace them with their own, many take into consideration their own attitudes about the juvenile and beliefs about recidivism when making their decision. In 2018, for every 1000 delinquency cases, five were waived into adult criminal court, totaling an estimate of 3,600 delinquency cases waived from juvenile court to the criminal court.²⁵ Although the overall number of waived cases has decreased over the years, cases involving black youth remain more likely to be waived than their white counterparts.²⁶ In 2018, more than half of the cases waived involved black male youth.²⁷ Accordingly, predominately more black males are exposed to adult court as youth, and are stripped of the rehabilitative and less-adversarial nature of juvenile court.²⁸ Youth transferred to adult criminal court generally have worse outcomes than those tried for similar crimes within the juvenile court.²⁹ Youth who are tried in adult court are more likely to be convicted and incarcerated and receive a longer sentence than they would if tried as a juvenile.³⁰ Some transferred youth even receive harsher sentences than adults in criminal court, an effect known as the “juvenile penalty.”³¹ This likely is due to the stigma placed on transferred youth who are assumed to be

Obtaining accurate and complete information on a continuing basis with respect to juvenile offenders can be difficult because of restrictions on the data of those not waived to adult court. Any system based on existing data needs to take into consideration the balancing of interests in the need that those responsible for maintaining the system free of bias have in creating a more equitable system with the privacy rights of the individual youthful offenders. A company like LexisNexis® is well positioned to provide a tool like the one described here, based on substantial experience in developing leading analytics tools, such as Lex Machina® and Context litigation analytics, and their commitment to protecting users' privacy.

2014), <https://leg.wa.gov/JointCommittees/Archive/JSRTF/Documents/2014-07-15/Kent%20Criteria%20for%20Judicial%20Decline%20Hearings.pdf>; see also *Kent v. United States*, 383 U.S. 541, 566–67, 16 L. Ed. 2d 84 86 S.Ct. 1045 (1996).

²³ *Id.*

²⁴ Hockenberry, *supra* note 21.

²⁵ Hockenberry, *supra* note 21 at 2.

²⁶ Hockenberry, *supra* note 21.

²⁷ Hockenberry, *supra* note 21 at 3.

²⁸ Suzanne O. Kaasa, Joseph R. Tatar, III, Amy Dezember, & Elizabeth Cauffman, *The Impact of Waiver to Adult Court on Youths' Perceptions of Procedural Justice*, 24 PSYCHOL. PUB. POL'Y L. 418 (Nov. 2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6424485/#:~:text=Research%20indicates%20that%20waivers%20stigmatize,Griffin%20et%20al.>

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

more dangerous and culpable by adult court judges.³² The juvenile penalty in adult criminal court heightens the likelihood of transferred youth experiencing unfair treatment during trial and sentencing.³³ The negative impacts of a transfer to adult court do not cease at sentencing, but continue well into the juvenile's experience inside the correctional facility.³⁴ Juveniles who are waived and housed in adult correctional facilities typically endure harsher treatment when incarcerated.³⁵ As noted in an article in the *Juvenile Justice Bulletin* of the Office of Juvenile Justice and Delinquency Prevention, "In addition to the immediate physical and psychological dangers resulting from incarceration, adolescents transferred to the adult system can also experience harmful disruptions in their development during late adolescence and early adulthood."³⁶ The stunt to identity formation affects the youth perception of themselves and ability to view themselves outside of facility walls.³⁷ Skills and competencies such as learning about job-related expectations, identifying career interests, resume building, developing relationships, and learning how to manage a household go unlearned.³⁸ The failure to learn these critical skills attribute to the higher recidivism rates for juveniles who previously were transferred to adult court.³⁹

IV. Deep Dive into the Data

A dive into juvenile waiver statistics displays the reality that African American youth are more likely to receive a waiver into adult court in comparison to their white counterparts.⁴⁰ Data going back to 1985 shows that the inequitable application of adult waivers has existed and persisted for over 30 years.⁴¹ From 1985 to 2019, of the 72,135 juveniles waived into adult court, 27,387 were white (37.9%), 33,119 were black (45.9%), 1,221 were American Indian (1.69%), 9,902 were Hispanic (13.7%), and 506 were Asian/Native Hawaiian and Pacific Islander (0.7%).⁴² From 1985 to 2019, of the 72,135 juveniles waived into adult court, 27,387 were white (37.9%), 33,119 were black (45.9%), 1,221 were American Indian (1.69%), 9,902 were Hispanic (13.7%), and 506 were Asian/Native Hawaiian and Pacific Islander (0.7%).⁴³ In 2019, of the 3,300 juveniles waived into adult court, 1,100 were white (33.3%), 1,700 were black (51.5%), 400 were Hispanic (12.1%), less than 50 were American Indian and less than 50 were Asian/Native Hawaiian and Pacific Islander.⁴⁴

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Edward P. Mulvey & Carol A. Schubert, *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court*, JUVENILE JUSTICE BULLETIN, 5 (Dec. 2012), available at <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/232932.pdf>.

³⁷ *Id.*

³⁸ *Id.* at 6.

³⁹ *Id.* at 7.

⁴⁰ M. Sickmund, A. Sladky, and W. Kang, *Easy Access to Juvenile Court Statistics: 1985-2019*, Office of Juvenile Justice and Delinquency Prevention (2021), available at <https://www.ojjdp.gov/ojstatbb/ezajcs/>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

Maryland Snapshot:

In the midst of transfer legislation and juvenile justice reform, today, Maryland has one of the highest rates of trying youth as adults in adult court.⁴⁵ In Maryland, for every 100,000 youths charged, 157.6 of the youths are transferred to adult court.⁴⁶ Under Maryland’s current existing laws, on reaching age seven, children are presumed to fully understand the consequences of their actions and can be held fully criminally responsible.⁴⁷ The state has the ability to send youth to adult court through several methods, including the discretionary waiver (where a court may waive its jurisdiction over a youth who meets specified age/offense criteria and who the court believes is not fit for juvenile rehabilitative measures), statutory exclusion (where the juvenile court automatically loses jurisdiction over youth if the youth commits a particular offense), and “Once An Adult” laws, which mean that once a youth is charged as an adult, any additional charge they face will automatically be processed in adult court.⁴⁸

Pending legislation in the state Senate seeks to expand the Maryland “Reverse Waiver,” which governs the transfer of a juvenile from adult court back to juvenile court unless the child was previously convicted, previously waived, or accused of 1st degree murder at 16 or older.⁴⁹ If passed, the bill would expand the jurisdiction of the juvenile court to children 14 or over who committed crimes that would be punishable by life imprisonment if they were an adult, children 16 and older alleged to have committed specified crimes, and children who were previously charged as an adult and who are subsequently “alleged to have committed an act that would be a felony if committed by an adult.”⁵⁰

Currently, there are 33 eligible charges that can send a youth to adult court in Maryland, and each year more than 200 children in the state are sent to adult court.⁵¹ A majority of these youths are black males, most commonly sentenced for assault, armed robbery, and firearm possession.⁵² Black youth continue to make up the majority of youth in facilities, even as the juvenile detention population decreases.⁵³

⁴⁵ Hannah Gaskill, *Amid Juvenile Justice Reform Push, Commission Examines Maryland’s High Rate of Trying Young People as Adults*, MARYLAND MATTERS (July 21, 2021), available at <https://www.marylandmatters.org/2021/07/21/amid-juvenile-justice-reform-push-commission-examines-marylands-high-rate-of-trying-young-people-as-adults/>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*; OFF. OF JUV. JUST. & DELINQ., Maryland’s Transfer Law, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/tryingjuvasadult/states/md.html> (last visited Aug. 3, 2022).

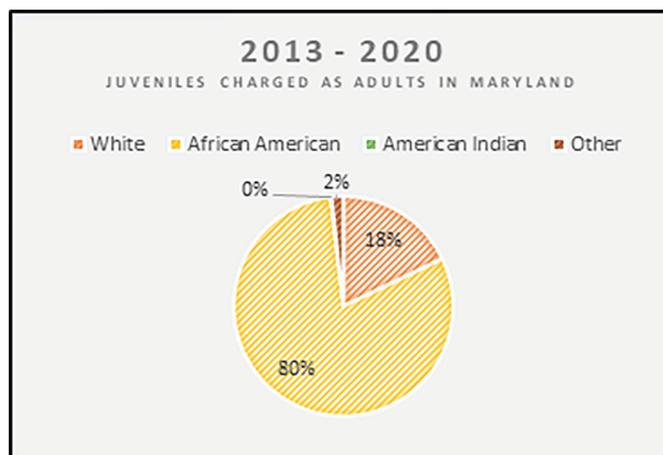
⁴⁹ *Id.*

⁵⁰ Fiscal and Policy Note, Md. Sen. B. 165, Dep’t of Legis. Serv., Md. Gen. Assembly, 2022 Session, 1, available at https://mgaleg.maryland.gov/2022RS/fnotes/bil_0005/sb0165.pdf.

⁵¹ Gaskill, *supra* note 45.

⁵² Gaskill, *supra* note 45.

⁵³ Ryan McFadden, *Juvenile Detention Declined, Yet Black Children Detained at High Rate*, MARYLAND MATTERS (January 2, 2021), available at <https://www.marylandmatters.org/2021/01/02/juvenile-detention-declined-yet-black-children-detained-at-high-rate/#:~:text=According%20to%202019%20Census%20Data,white%20and%2015.5%25%20are%20Hispanic.>



According to data obtained from the Maryland Department of Public Safety and Correctional Services, from January 1, 2013, to January 1, 2020, 7,800 juveniles were charged as adults.⁵⁴ Of the 7,800 juveniles, 1,396 were white (17.9%), 6,258 were African American (80.23%), and 11 were American Indian (0.14%).⁵⁵

This past year, in 2021, 454 juveniles were charged as adults in Maryland, and of those 454 juveniles, 84.6% were African American, 14.8% were White and 5.7% were under 16.⁵⁶

Year	2016	2017	2018	2019	2020	2021
Total juveniles charged as adults	756	683	919	949	756	454
% African American	78.6%	78.8%	78.8%	80.7%	80.4%	84.6%
% White	19.6%	19.3%	19.3%	16.9%	16.8%	14.8%
% Male	91.9%	92.2%	91.2%	89.9%	92.7%	90.5%
% Under 16	3.0%	5.4%	4.6%	4.8%	3.6%	5.7%
Charged with exclusionary offenses	78.8%	79.0%	79.3%	79.2%	83.3%	82.8%

Source: *Juveniles Charged as Adults in Maryland (7/1/2021 – 12/31/2021)* (June 30, 2022), 8; Governor’s Office of Crime Prevention, Youth, and Victim Services; Governor’s Coordinating Offices, http://goccp.maryland.gov/wp-content/uploads/CP-%C2%A7-10-219b6_-GOCPYVS_-Juveniles-Charged-as-Adults-in-Maryland-7_1_2021-12_31_2021-MSAR-12656.pdf.

⁵⁴ *Juveniles Charged as Adults Data*, Maryland, Governor’s Office of Crime Prevention, Youth, and Victim Services, available at https://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Juveniles_Charged_as_Adults_Data.pdf (last visited Aug. 3, 2022).

⁵⁵ *Id.*

⁵⁶ *Juveniles Charged as Adults in Maryland (7/1/2021 – 12/31/2021)* (June 30, 2022), 8; Governor’s Office of Prevention, Youth, and Victim Services; Governor’s Coordinating Offices, http://goccp.maryland.gov/wp-content/uploads/CP-%C2%A7-10-219b6_-GOCPYVS_-Juveniles-Charged-as-Adults-in-Maryland-7_1_2021-12_31_2021-MSAR-12656.pdf.

The top jurisdictions which juveniles were charged as adults were Baltimore City (126), Baltimore (100), Prince George's (78), and Anne Arundel (28).⁵⁷

V. A Chance for Change: Rehabilitation and Desistance

Judges currently consider the age of juvenile, the mental and physical condition of juvenile, amenability of juvenile to juvenile treatment, nature of offense and participation, and public safety when deciding to waive into adult criminal court.⁵⁸ Many judges have erroneously placed an undue emphasis on public safety and less regard for amenability to treatment when transferring youth to adult criminal court.⁵⁹ While these factors may offer judges guidance for placement, they do not provide a clear picture of the juvenile's ability to be rehabilitated, which should be the goal of the juvenile system.⁶⁰

Judges should consider expanding the criteria they take into consideration when deciding which court to place a juvenile.⁶¹ In addition to the factors typically considered, judges should utilize research on pathways to desistance when determining the benefit of keeping a youth in juvenile court; this is especially important because of the drastic increase in the likelihood of a child continuing a life of crime once exposed to adult court.⁶² Desistance is the “ceasing” or “abstaining” of behavior or actions.⁶³ Sociological and psychological theories suggest that one reason most youth desist from crime is because they mature out of antisocial behavior that prompts criminal behavior.⁶⁴ Researchers have sought to gain insight on protective factors that lead to juvenile offenders desisting from offending.⁶⁵ As noted in a 2017 Loyola University Chicago study, protective factors are “aspects of an individual, and/or their situation or environmental context, that contribute to a decreased likelihood of criminal behavior by having a direct effect on problem behaviors.”⁶⁶ Protective factors have been especially significant for use in violence risk assessments; an archival study of risk and protective factors demonstrated that “factors including personal characteristics (*e.g.*, high self-esteem and good temper), family conditions (*e.g.*, structured home environment, parental support), presence of positive adult role models, interest in school and prosocial peers, and hobbies and activities

⁵⁷ *Juveniles Charged as Adults in Maryland (1/1/2021 – 7/30/2021)* (Dec. 31, 2021), 5; Governor's Office of Prevention, Youth, and Victim Services; Governor's Coordinating Offices, http://goccp.maryland.gov/wp-content/uploads/CP-%C2%A7-10-219b6_-GOCPYVS_-Juveniles-Charged-as-Adults-in-Maryland-1_1_2021-6_30_2021-MSAR-12656-1.pdf; *Juveniles Charged as Adults in Maryland (7/1/2021 – 12/31/2021)* (June 30, 2022), 5; Governor's Office of Prevention, Youth, and Victim Services; Governor's Coordinating Offices, http://goccp.maryland.gov/wp-content/uploads/CP-%C2%A7-10-219b6_-GOCPYVS_-Juveniles-Charged-as-Adults-in-Maryland-7_1_2021-12_31_2021-MSAR-12656.pdf.

⁵⁸ Md. Cts. Jud. Proc. Code Ann. § 3-8A-06(e).

⁵⁹ Steve Lash, *Maryland High Court Sets Limits for Transferring Juvenile Cases to Adult Court*, THE DAILY RECORD (July 13, 2022), available at <https://thedailyrecord.com/2021/07/13/md-high-court-sets-limits-for-transferring-juvenile-cases-to-adult-court/>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Edward P. Mulvey & Carol A. Schubert, *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court*, JUVENILE JUSTICE BULLETIN, 3–5 (Dec. 2012), available at <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/232932.pdf>.

⁶³ Laurence Steinberg, Elizabeth Cauffman, & Kathryn C. Monahan, *Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders*, JUVENILE JUSTICE BULLETIN, 4 (March 2015), available at <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248391.pdf>.

⁶⁴ Laurence Steinberg, Elizabeth Cauffman, & Kathryn C. Monahan, *supra* note 63 at 2.

⁶⁵ Laurence Steinberg, Elizabeth Cauffman, & Kathryn C. Monahan, *supra* note 63 at 4.

⁶⁶ Danielle Jordan Nesi, *Developmental Assets and Outcomes: An Analysis of Male Serious Juvenile Offenders to Promote Evidence Based Approaches for Rehabilitation*. MASTER'S THESES (3696), 18 (Loyola University of Chicago, Loyola eCommons 2017), available at https://ecommons.luc.edu/cgi/viewcontent.cgi?article=4695&context=luc_theses.

significantly distinguished non-repeat offenders from repeat offenders.”⁶⁷ The non-repeat offenders also had a higher number of individual protective factors than repeat offenders.⁶⁸ In the 2017 study, researchers found that, for juveniles, having a strong religious community, positive family communication, other positive adult relationships, family support, ability to maintain employment, school engagement, caring school climates, positive peer influence, and a positive view of personal future correlated with a reduction in future offending.⁶⁹ Judges should utilize protective factors when assessing a juvenile’s risk of reoffending because such factors can help determine the juvenile’s likelihood of desistance vs. recidivism.⁷⁰ It is important to not only consider the crime a juvenile committed, but also the circumstances within that youth’s life that may lead to the youth turning from a life of crime.⁷¹ Such youth should not be waived into adult courts, but rather be given ample opportunity to engage in the juvenile court’s rehabilitation programs.⁷²

VI. Solution: Risk Assessment Calculator and Analytics

In recent years, it has become increasingly important, particularly when addressing issues such as systemic injustices, including racism, for decision makers and those with oversight as to those decisions to have the most effective data when determining the future of juvenile offenders. Similarly, an analytics tool would shine a light on biases within the court system by allowing litigants and court officials to more readily spot disparate impacts based on race or other factors.

Obtaining accurate and complete information on a continuing basis with respect to juvenile offenders can be difficult because of restrictions on the data of those not waived to adult court. Any system based on existing data needs to take into consideration the balancing of interests in the need that those responsible for maintaining the system free of bias have in creating a more equitable system with the privacy rights of the individual youthful offenders. A company like LexisNexis® is well positioned to provide a tool like the one described here, based on substantial experience in developing leading analytics tools, such as Lex Machina® and Context litigation analytics, and their commitment to protecting users’ privacy.

Although data regarding juvenile offenders is subject to restrictions in many jurisdictions, including Maryland, the currently available data shows that African American youth are disproportionately waived

⁶⁷ *Id.* at 8.

⁶⁸ *Id.*

⁶⁹ *Id.* at 79-89.

⁷⁰ *Id.*

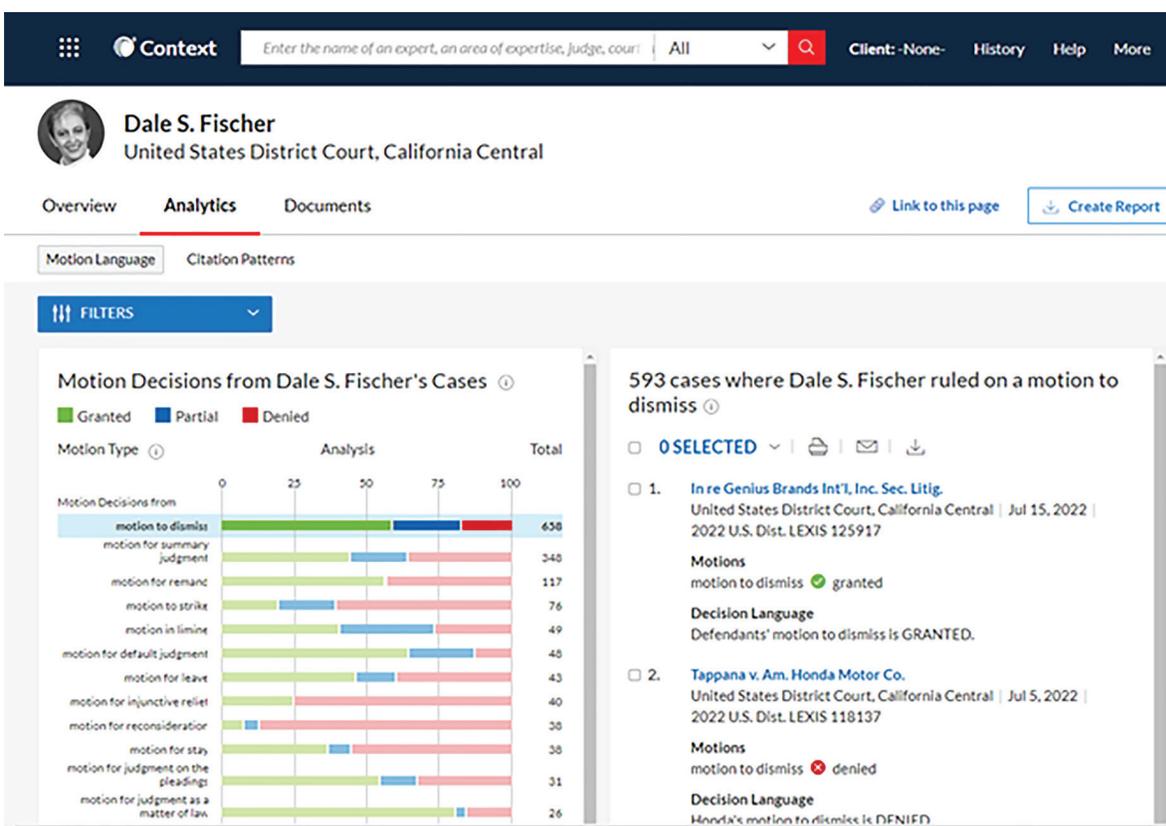
⁷¹ *See id.*, generally.

⁷² *See id.*, generally.

into adult court in comparison to their white counterparts. These youth are stripped of the opportunity to engage in rehabilitative programs offered within the juvenile justice system because of the decisionmaker's belief that the juvenile is unlikely to benefit from such programs. These assumptions are typically based on the juvenile's criminal history, crime committed, and public interest, but in order to address the challenge of eliminating systemic injustices in their decision making, judges and other decisionmakers need to look beyond these factors when making such life changing decisions. The creation of a risk-assessment calculator for use by decisionmakers to calculate the likelihood of rehabilitation vs. recidivism is proposed as one way to decrease the number of African American juveniles transferred to adult court. With limited data, researchers have shown that there are observable factors within juveniles' lives that correlate with a decrease in the risk of reoffending. Companies can add to this research by conducting surveys among reformed juvenile delinquents in the state of Maryland to gain insight on similar factors these juveniles had present in their lives that may have attributed to their desistance from crime. This data could then be transformed into a data assessment tool that calculates the likelihood of desistance based on these observed factors and other relevant data points. This "risk-assessment" calculator would assist decisionmakers such as judges in determining how high of a risk a youth is, and whether to transfer the youth to adult court. In application, the juvenile's case manager would provide the decisionmaker with factors present in the youth's life that would be applicable in the risk-assessment calculator, and the decisionmaker would use the calculator and provided factors to determine the juvenile's risk percentile. The decisionmaker would then use this percentile as a part of the decision-making process on whether to either waive or keep the juvenile in juvenile court.

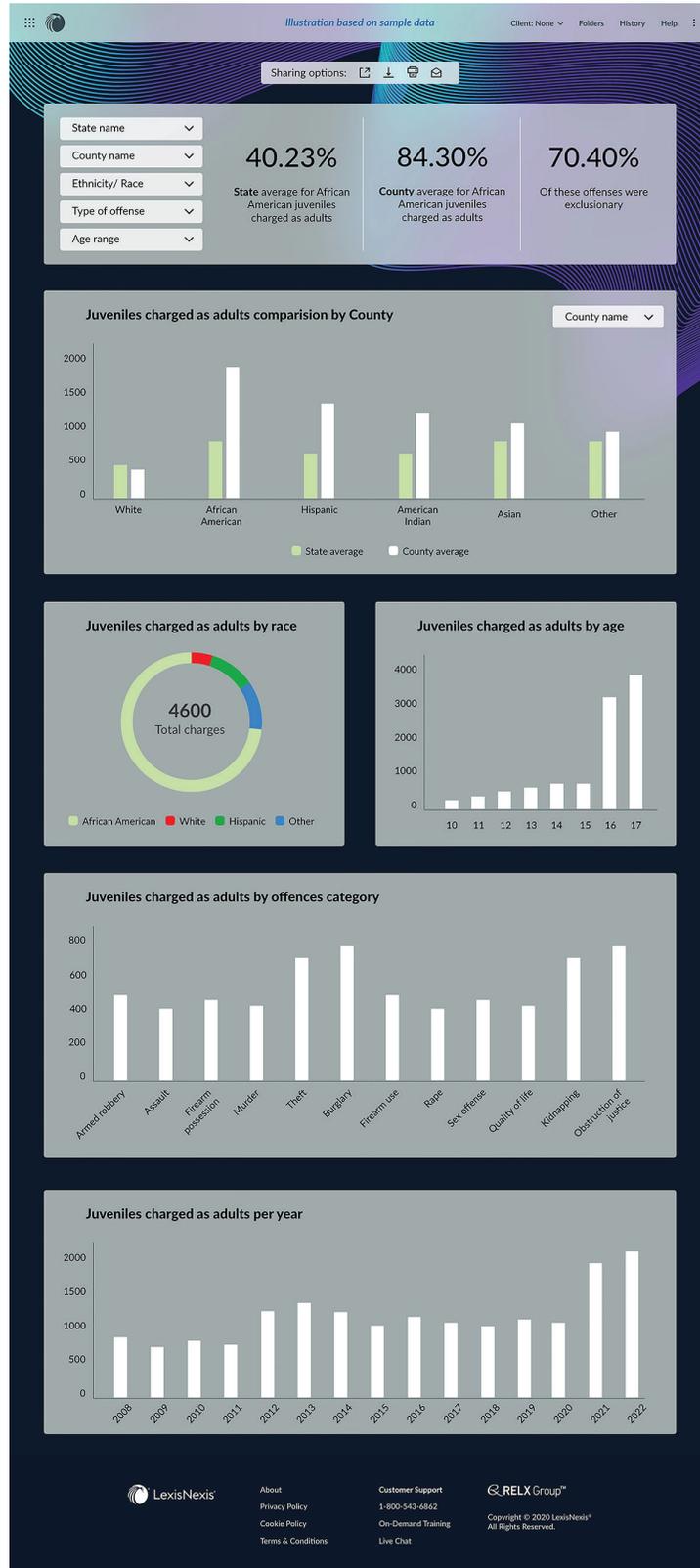
In addition to providing support in making juvenile waiver decisions, providing clear analytics on the court system's juvenile case dispositions and impacts on different demographic groups would identify possible bias in the system and encourage actions within the court system to eliminate bias. As a leading innovator in litigation analytics, LexisNexis® has created certain judicial and attorney analytics tools for the commercial market that provide a useful model for this application. For example, judicial analytics in the LexisNexis® Context product capture judges' decisions on motions to assist attorneys in predicting case outcomes before a particular judge. See Figure 1. A similar tool providing analytics on juvenile waivers and other juvenile court dispositions, combined with demographic data on those defendants would provide similar insights for participants in the juvenile court system. Further, by offering a comparison across court systems, court officials could evaluate their performance against other similarly situated courts to assess their performance on certain criteria associated with possible bias.

Figure 1: Judicial Analytics in LexisNexis® Context



As the first step in the development process to create these tools, the LexisNexis® design team has created a wireframe of the proposed juvenile case dispositions analytics tool, displayed in Figure 2. The application will provide a visual dashboard that will allow users to select the jurisdiction, case type, and demographic data of interest to get a better understanding of how cases are handled in a particular jurisdiction. They will also be able to select two jurisdictions to compare case dispositions for the same types of cases across jurisdictions. This will provide a valuable benchmarking tool for court officials and litigants. By surfacing the data in a new, user-friendly way, we aim to increase awareness of the data and the usage of that data in the decision-making process regarding juvenile waivers.

Figure 2: Wireframe of the Proposed Juvenile Case Dispositions Analytics Tool



The goal with this prototype, completed with the help of LexisNexis®, is to inspire others to get involved in this effort and commit resources to the completion of a tool to reduce bias in the juvenile court waiver process. To complete this development, this paper advocates that LexisNexis® or other interested legal technology company move forward with testing the prototype with users and seeking a partnership with public data providers, such as the Department of Justice, in order to build a functional application.

Challenges in the implementation of this approach include getting buy in from court officials, which may be content with current approaches (*e.g.*, having a department that analyzes individual cases in order to make a juvenile waiver recommendation to the court and litigants). As mentioned earlier in this article, data privacy is also a concern that must be carefully managed, with all parties complying with applicable privacy protection statutes and regulations.

VII. Conclusion

As contended in this paper, the absence of strict criteria to provide guidance to decisionmakers and the resulting disproportionate application of juvenile waivers negatively impacts African American juveniles procedurally by stripping access to opportunities for rehabilitation and increasing the likelihood of unwarranted harsher prison sentences in adult court. Accordingly, this paper advocates for the development of a data-driven risk assessment and analytics tool to provide decisionmakers with guidance when applying waivers to adult court within the juvenile justice system. A detailed discussion of the conceptual design and technical aspects of the risk assessment and analytics tool is beyond the scope of this paper, but the fundamental function of the tool would be to calculate the likelihood of rehabilitation vs. recidivism, and to identify bias in the juvenile court system. The objective of the risk assessment calculator would be to decrease the number of African American juveniles transferred to adult court and, in turn, disrupt the disproportionate impact of the juvenile to adult waiver mechanism on African American youth.

Mentor: Elizabeth Christman

Senior Director of Product Management, LexisNexis® Legal & Professional



Reflection on working with Fellow Oyinate Adebayo:

As a mentor to LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellow, Oyinate Adebayo, I worked with her to explore issues in the juvenile court waiver process that result in a disproportionate number of African American juveniles being tried in adult court. Together we learned a lot more about the waiver process by talking with former prosecutors about how waiver decisions are made, the impact of statutory waiver requirements, and how the process varies from state to state and even county to county. It can be daunting to tackle these complex issues, and we hit some challenges in obtaining court data on juvenile case dispositions due to juvenile records being sealed. Fortunately, Oyinate was able to pivot to work with available data, e.g., data gathered

by the Department of Justice, demonstrating her quick thinking and resilience.

I'm hopeful that Oyinate's paper will help raise awareness of these issues, and we have discussed creating a court analytics application that would enable litigants to benchmark the court's performance on juvenile case dispositions and monitor for potential bias. Oyinate's professional interests may take her away from the criminal law arena, but I have no doubt her passion for eliminating racial bias in the law and improving access to justice will make her a great lawyer.

For myself, participating in this program has given me new energy and inspiration to continue to work on access to justice issues, and I'm extremely proud to work for a company that provides true, meaningful support to advancing the rule of law around the world.

Elizabeth Christman is the product manager for the Case Law portfolio and Brief Analysis on Lexis+®. She has a long tenure in the legal technology industry, holding a variety of roles in editorial, content operations, and product management. For the past six years she has focused on improving the case law research experience on Lexis® and developing document-based research tools to support users in brief drafting.

Based in Raleigh, NC, she works directly with editorial, engineering, and UX teams at LexisNexis® to develop new features and enhancements. Originally from California, Liz earned her BA in Journalism from Cal Poly Humboldt, and her JD from California Western School of Law, and is licensed to practice in California.

The School-to-Prison Pipeline: Addressing the Adverse Effects of Discriminatory School Discipline Practices and the Negative Implications on Minorities Entering the Legal Field

Mikel Brown II

Mikel Brown II is a third-year law student at Thurgood Marshall School of Law (TMSL) at Texas Southern University in Houston, Texas. Mikel was born and raised in San Antonio, Texas, and is a first-generation law student. Before law school, Mikel attended Prairie View A&M University (PVAMU), earning a Bachelor of Business Administration in Marketing. He has always had a passion for defending others and making a positive social impact. At PVAMU, Mikel grew his passion for advocacy when he participated in part two of the PV 19 March and Protest of 1992. The 2008 protest was in response to the Waller County Commissioners Court's decision to provide only one polling location for the over 12,000 residents, who were primarily African American. Mikel has credited great teachers, his mother, and a single opportunity from TMSL with his journey to getting to law school, an accomplishment he understands not many people with his background get to achieve. He has had his own negative experiences with the justice system early in his life, which is reflected in his mission to dismantle the pipeline-to-prison and increase the number of African Americans in law.



This project's mission is the development of a new LexisNexis® Practical Guidance resource on school discipline titled "School-Based Law Enforcement Resource Toolkit"¹ for use by attorneys representing school districts, resource officers, teachers, and support staff.

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.

I. Introduction

The United States Constitution and federal law guarantee protections for every person in the United States without regard to race, color, religion, national origin, disability, sex, familial status, and citizenship status.² We have all been taught that the law should apply and protect all people equally. The wretched reality is that nearly 500 years after slavery and nearly 60 years after the passage of the Civil Rights Act of 1964, racial discrimination and racism against African Americans still exists.

Racial discrimination in our society takes shape in many forms of inequality. In education and schools, it presents itself in the discriminatory administration of discipline practices, biased standardized testing, and a deficiency in opportunities. In the administration of school discipline, the inequality is clear. Children of color, particularly black children, continue to be over-criminalized and overrepresented at every point — from school discipline and arrest to sentencing and post-adjudication placements.³ The school-to-prison pipeline (STPP) is flowing with black and minority youth at a current as strong as the Mississippi river, with damning outcomes.

According to the *Civil Rights Data Collection*, the rate of suspension and expulsion for black students is three times greater than for white students.⁴ In 2017–2018, black students received one or more in-school suspensions (31.4%) and one or more out-of-school suspensions (38.2%) at rates that were more than twice their share of total student enrollment (15.1%).⁵ The same study also showed that black students accounted for 28.7% of all students referred to law enforcement and 31.6% of all students arrested at school or during a school-related activity — twice their share of total student enrollment of 15.1%.⁶ A referral to law enforcement, as defined by the Office for Civil Rights of the U.S. Department of Education, “includes situations where a school official reports a student to a law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken.”⁷ In addition, “citations, tickets, court referrals, and school-related arrests are considered referrals to law enforcement.”⁸

The graphic below shows the percentage of enrollment and in-school and out-of-school suspensions by race, ethnicity, and sex in 2017 to 2018.

² *About the Division*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/about-division> (last visited June 16, 2022).

³ *The State of America’s Children 2021, Youth Justice*, CHILDREN’S DEFENSE FUND, <https://www.childrensdefense.org/state-of-americas-children/soac-2021-youth-justice/> (last visited June 15, 2022).

⁴ *Laws & Guidance: School Climate and Discipline: Know the Data*, U.S. DEP’T OF EDUC., <https://www2.ed.gov/policy/gen/guid/school-discipline/data.html> (last visited June 15, 2022) (citing, Civil Rights Data Collection, U.S. DEP’T OF EDUC., <https://ocrdata.ed.gov>).

⁵ Civil Rights Data Collection, *2017-18 State and National Estimations*, U.S. DEP’T OF EDUC., OFF. FOR CIV. RIGHTS, released June 2021, <https://ocrdata.ed.gov/estimations/2017-2018> (last visited June 16, 2022).

⁶ *Id.*

⁷ *An Overview of Exclusionary Discipline Practices in Public Schools for the 2017–2018 School Year*, U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection, June 2021*, U.S. DEP’T OF EDUC., OFF. FOR CIV. RIGHTS, at 17, <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf> (last visited June 17, 2022).

⁸ *Id.*

School Suspensions by Race/Ethnicity and Sex in 2017-18						
Race/Ethnicity	BOYS			GIRLS		
	Enrollment	One or More In School Suspensions	One or More Out-of-School Suspensions	Enrollment	One or More In School Suspensions	One or More Out-of-School Suspensions
American Indian or Alaska Native	0.5%	0.9%	1.0%	0.5%	0.4%	0.4%
Asian	2.6%	0.8%	0.9%	2.5%	0.2%	0.2%
Hispanic or Latino	13.9%	15.8%	15.3%	13.3%	7.4%	6.4%
Black	7.7%	20.1%	24.9%	7.4%	11.2%	13.3%
White	24.4%	28.7%	24.9%	22.9%	10.2%	7.9%
Native Hawaiian or Pacific Islander	0.2%	0.2%	0.3%	0.2%	0.1%	0.1%
Two or More Races	1.9%	2.7%	3.0%	1.9%	1.3%	1.3%
TOTAL	51.4%	69.2%	70.3%	48.6%	30.8%	29.7%

Black girls were the only group across all races/ethnicities for girls where a disparity was observed. Black girls received in-school suspensions (11.2%) and out-of-school suspensions (13.3%) at rates almost two times their share of total student enrollment (7.4%).

Black boys received both in-school suspensions (20.1%) and out-of-school suspensions (24.9%) suspensions at rates more than three times their share of total student enrollment (7.7%)—the largest disparity across all race/ethnicity and sex groupings. White boys experienced higher rates of in-schools suspensions (28.7%) relative to their share of total student enrollment (24.4%). American Indian or Alaska Native and multiracial boys also experienced disparities in school suspensions.

Source: U.S. Education Department, Office for Civil Rights, Civil Rights Data Collection, 2017-18 State and National Estimations, released June 2021, available at <https://ocrdata.ed.gov/estimations/2017-2018>

Source: *An Overview of Exclusionary Discipline Practices in Public Schools for the 2017–2018 School Year*, U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, June 2021, U.S. Dep’t of Educ., Off. for Civ. Rights, at 17, <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf> (last visited June 17, 2022).

As noted in a report from the organization, Texas Appleseed, “[e]xperts have established that children of color are more likely than their peers to be punished, even though they are not more likely to misbehave. They also are more likely to receive harsher punishments than their peers, even for the same behaviors.”⁹

Children of color are also disproportionately transferred to the adult criminal justice system, where they are tried and prosecuted as adults.¹⁰ In 2018, black youth represented less than 15% of the total youth population, but 52% of youth prosecuted in adult criminal court.¹¹ Black youth in 2016 were nine times more likely than white youth to receive an adult prison sentence.¹² That same year, American Indian/Alaska Native youth were almost two times more likely, and Hispanic youth were 40% more likely.¹³

In addition, with respect to the residential placement of children in the juvenile justice system in Texas, 38% of the 3,963 children in residential placement in 2017 were black, 40% were Hispanic, and 20% were white.¹⁴

⁹ *Texas: The State of School Discipline, A Look at the Data, 2017-2018*, TEXAS APPLESEED, at 4, <https://www.texasappleseed.org/sites/default/files/SchoolDisciplineinTexas-new.pdf> (last accessed June 17, 2022).

¹⁰ *Youth in Adult Courts, Jails, and Prisons*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/wp-content/uploads/2021/12/Youth-in-Adult-Courts-Jails-and-Prisons.pdf> (last accessed July 26, 2022).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *The State of America’s Children in Texas*, 2021 Factsheet, CHILDREN’S DEFENSE FUND, <https://www.childrensdefense.org/>

In his article, *Students, Security, and Race*, Professor Jason P. Nance notes that “disproportionate exposure to stricter discipline and security measures perpetuates inequalities by affecting minority students’ opportunities for advancement.”¹⁵ These measures, “especially when used in conjunction with zero-tolerance policies, increase the likelihood of suspension, expulsion, and arrest — all of which can have profound consequences on students’ future educational and employment opportunities.”¹⁶ Lived experience involving interactions with legal professionals has shown how feelings of disdain and distrust in law enforcement, the justice system, and the study of law can be developed. As contended by Professor Nance, “[S]tudents in minority communities are routinely stopped and frisked in their neighborhoods, then find they are treated the same way in their schools [by school resource officers]. The result is that these students perceive their school as simply ‘another appendage to the police state.’”¹⁷

With this information, it should not be a far-fetched mystery as to why the number of black attorneys is abysmally low and disproportionate to the U.S. population. In 2021, the American Bar Association reported that while 85% of all lawyers were non-Hispanic whites, only 4.7% of all lawyers were black.¹⁸ Though the U.S. population is 13.4% black, the number of black attorneys today is nearly unchanged from the 4.8% in 2011.¹⁹ The number of black attorneys compared to the number of attorneys is disproportionate on its face. This is on trend with the number of minority students in schools and the disproportionate referral to law enforcement in comparison to their counterparts.

This article contends that the administration of discriminatory school discipline results in more black youth being referred to law enforcement and funneled into the STPP in disproportionate numbers, which results in the underrepresentation of black attorneys and minorities in the legal field. The STPP in the form of discriminatory school discipline practices, early negative police experiences, and unequal justice system interactions, has a negative impact on black youth being interested in legal education. Further, this article posits that the creation of more restorative justice programs and initiatives, along with changes to school discipline policies regarding referrals to police, must occur to offset the effects of having more police in schools.

This article will first highlight the disproportionate school discipline statistics of Texas school districts and then recommend what practices school districts should implement to help balance the scales of equity in the law. The mission of this article is to bring more awareness and advocacy to dismantle the STPP for black youth in America.

Finally, through the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship, the mission of impacting social change can be realized through the development of the new LexisNexis® Practical Guidance Resource Toolkit on school discipline titled: “School-Based Law Enforcement Resource Toolkit.”

wp-content/uploads/2021/03/SOAC-2021-Fact-Sheet_Texas.pdf (last accessed June 17, 2022).

¹⁵ Jason P. Nance, *Students, Security, and Race*, 63 EMORY L.J. 1, 27 (2013), available at <https://scholarship.law.ufl.edu/facultypub/372/>.

¹⁶ *Id.*

¹⁷ *Id.* at 26.

¹⁸ *Demographics*, AMER. BAR. ASSOC., <https://www.abalegalprofile.com/demographics/#:~:text=For%20example%2C%204.7%25%20of%20all,from%203.9%25%20a%20decade%20earlier> (last visited June 16, 2022).

¹⁹ *Id.*

The idea behind this toolkit is new for LexisNexis®, and the idea will continue to be developed. Through this partnership, the team recognized that there is a need for this toolkit throughout the United States as a resource for attorneys representing school districts, resource officers, teachers, and support staff. Attorneys will be able to utilize the information and practical guidance resources compiled on LexisNexis® and Practical Guidance in an easily accessible toolkit on LexisNexis® Practical Guidance. The toolkit should then be used to revise student discipline practices and to develop and expand experiential learning and restorative justice programs for all grade students with the goal of ending the STPP.

II. Discussion

Many school districts throughout the United States have increased investment in School Resource Officers (SROs) over the past, several years, and it can be argued that schools have not become any safer.²⁰

For the better part of American history, public school districts did not maintain their own police departments. Initially, police officers were introduced into schools through programs like the “Officer Friendly” program, dating back to the 1960s in Michigan.²¹ These early programs had the overall goal of improving relationships between local police and youth.²² Responsibilities of participating police officers included the teaching, counseling, and mentoring of students on a full-time basis.²³

The late 1970s’ “War on Drugs” and the continual phenomenon of mass shooting events brought strong growth in the number of SROs and programs like Drug Abuse Resistance Education (D.A.R.E.) and Gang Resistance Education and Training (G.R.E.A.T.) in schools.²⁴ These programs, along with police presence, were historically established in predominately black and brown minority communities resulting in more criminalization.²⁵ In the years following these officer/community-based programs, several tragic, high-casualty mass shootings (such as Columbine in 1999, Sandy Hook in 2012, Parkland in 2018,

²⁰ Kendrick Washington, *School Resource Officers: When the Curse is Worse than the Disease*, ACLU WASHINGTON (May 24, 2021), <https://www.aclu-wa.org/story/school-resource-officers-when-cure-worse-disease> (last visited July 26, 2022).

²¹ *A Toolkit for California Law Enforcement: Policing Today’s Youth, Defining the Role of School-Based Police Officers*, POLICE FOUNDATION, at 1, available at https://www.policinginstitute.org/wp-content/uploads/2016/10/PF_IssueBriefs_Defining-the-Role-of-School-Based-Police-Officers_FINAL.pdf#:~:text=The%20first%20school-based%20officer%20program%20began%20in%20Flint%2C,counseling%2C%20and%20mentoring%20students%20on%20a%20full-time%20basis (last visited July 26, 2022). See also Anthony Petrosino, Trevor Fronius, & Darius Taylor, *Research in Brief: School-Based Law Enforcement*, REL WEST, REGIONAL EDUCATIONAL LIBRARY AT WESTED, available at https://ies.ed.gov/ncee/edlabs/regions/west/relwestFiles/pdf/4-2-3-20_SRO_Brief_Approved_FINAL.pdf (last visited July 26, 2022).

²² *A Toolkit for California Law Enforcement: Policing Today’s Youth, Defining the Role of School-Based Police Officers*, POLICE FOUNDATION, at 1, available at https://www.policinginstitute.org/wp-content/uploads/2016/10/PF_IssueBriefs_Defining-the-Role-of-School-Based-Police-Officers_FINAL.pdf#:~:text=The%20first%20school-based%20officer%20program%20began%20in%20Flint%2C,counseling%2C%20and%20mentoring%20students%20on%20a%20full-time%20basis (last visited July 26, 2022).

²³ *Id.*

²⁴ Megan Walter, *Inherent Racism of the D.A.R.E. Program* (2021), Undergraduate Research Competition 4, COASTAL CAROLINA UNIVERSITY, <https://digitalcommons.coastal.edu/ugrc/2021/fullconference/4/> (last visited July 26, 2022); *A Toolkit for California Law Enforcement: Policing Today’s Youth, Defining the Role of School-Based Police Officers*, POLICE FOUNDATION, at 3, available at https://www.policinginstitute.org/wp-content/uploads/2016/10/PF_IssueBriefs_Defining-the-Role-of-School-Based-Police-Officers_FINAL.pdf#:~:text=The%20first%20school-based%20officer%20program%20began%20in%20Flint%2C,counseling%2C%20and%20mentoring%20students%20on%20a%20full-time%20basis (last visited July 26, 2022).

²⁵ Megan Walter, *Inherent Racism of the D.A.R.E. Program* (2021), Undergraduate Research Competition 4, Coastal Carolina University, <https://digitalcommons.coastal.edu/ugrc/2021/fullconference/4/> (last visited July 26, 2022).

and Robb Elementary in 2022 have occurred.²⁶ In response to these violent tragedies, several presidential administrations and school officials authorized budget increases to support more SROs on campuses to make schools “safer.”²⁷ SROs are sworn police officers who have arrest powers and who carry firearms and a police department badge.²⁸ School districts started establishing programs with local police and/or sheriff’s departments under which one or more SROs assign their time to maintaining a presence on school grounds.²⁹ The number of officers steadily increased until a new system had to develop based on the increasing exploitation of school safety and discipline.

Today, school districts have a new approach to discipline and safety. Throughout the country, school districts address the establishment of police departments independent of any municipal police agency.³⁰ Presently, school-based policing is one of the most rapidly growing areas of law enforcement.³¹ One reason school-based policing is growing is the fallacy that more officers may deter shootings or that an officer will intervene more quickly if present on campus. However, there is no evidence demonstrating that the expansion of law enforcement by adding SROs results in improved school safety.³² In fact, in the school shooting in Parkland, Florida, a SRO was on duty at Marjory Stoneman Douglas High School at the time.³³ The Broward County Sheriff reported that the SRO maintained a defensive position outside of the school at the time of the shooting.³⁴ Also, just this year in Uvalde, Texas, we have seen footage of as many as 20 officers on the Robb Elementary School campus unable to act until 77 minutes after the massacre began while children and teachers were being murdered.³⁵ The responses by these officers have been widely criticized, sparking debate over whether resource officers make schools safer, or their presence actually harms the student-school relationship. Nevertheless, instead of proceeding with care and forethought, administrations have used, as contended by the American Civil Liberties Union, “flawed data on school shootings to emphasize a need for more school discipline — which has turned schools into militarized places that deprive students of color of equal education.”³⁶

Increased presence and function of SROs at schools have negative results on the overall learning environment and cause disproportional criminal harm to African American and minority kids.

The American Psychological Association published a study of the explicit and unconscious biases of 176 police officers and 264 undergraduate students in 2014.³⁷ The study found that, “[b]lack boys as

²⁶ Anthony Petrosino, Trevor Fronius, & Darius Taylor, *Research in Brief: School-Based Law Enforcement*, REL WEST, REGIONAL EDUCATIONAL LIBRARY AT WESTED, at 2, available at https://ies.ed.gov/ncee/edlabs/regions/west/relwestFiles/pdf/4-2-3-20_SRO_Brief_Approved_FINAL.pdf (last visited July 26, 2022).

²⁷ *Id.*

²⁸ *Id.* at 1.

²⁹ *Id.*

³⁰ *Id.*

³¹ Cherly Corley, *Do Police Officers In Schools Really Make Them Safer?*, NPR, <https://www.npr.org/2018/03/08/591753884/do-police-officers-in-schools-really-make-them-safer> (Mar. 8, 2018).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ James Barragan & Zach Despart, *Waiting for Keys, Unable to Break Down Doors: Uvalde Schools Police Chief Defends Delay in Confronting Gunman*, TEXAS TRIBUNE (June 8, 2022), available at <https://www.texastribune.org/2022/06/09/uvalde-chief-pete-arredondo-interview/>.

³⁶ ACLU, *Race, Discipline, and Safety at U.S. Public Schools*, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/race-discipline-and-safety-us-public-schools> (last visited July 26, 2022).

³⁷ TEXAS APPLESEED, *Dangerous Discipline*, <https://report.texasappleseed.org/dangerous-discipline/> (last visited July 26, 2022).

young as 10 may not be viewed in the same light of childhood innocence as their white peers but are instead more likely to be perceived as guilty and face police violence if accused of a crime and seen as less ‘child-like.’”³⁸ Further, the study illustrated the researchers’ hypothesis that individuals believed that black boys were “more responsible for their actions” and were “more appropriate targets for police violence” and that “officers who dehumanized [b]lack people in unconscious bias tests were more likely to have used force against a black child in custody.”³⁹

As the number of SROs increased, the police officer focus shifted from mentoring and counseling to policing and enforcing school rules.⁴⁰ Research has shown that the increased presence of SROs and the implementation of zero tolerance policies have fashioned schools in African American and minority communities to resemble prison-like environments and detention centers.⁴¹ Reports illustrate that the “mere presence” of SROs has resulted in increased criminalization for minor misconduct that normally would have been handled by school administration and the increased use of legal punishments (citations, arrests, other sanctions) in schools.⁴²

Many students who experience contact with police may be vulnerable to negative outcomes and consequences. However, “youth with disabilities and youth of color are arrested, accused of crimes, sent to court, and placed in juvenile probation at disproportionately high rates, increasing their exposure and vulnerability to many well-documented harms,” as contended by the organization, Texas Appleseed, in its article “Dangerous Discipline.”⁴³ The Texas Appleseed article states: “In every major component of the school-to-prison pipeline — classroom exclusions, police contact, probation referrals, and court contact — black and, in many districts, Latino youth are over-represented.”⁴⁴

For example, in the state of Texas, data collected from the Bryan Independent School District (BISD) revealed that although black students comprised less than 25% of students in the district, they accounted for more than 50% of Class C misdemeanor tickets issued from schools in the district.⁴⁵ Black students were four times more likely than their peers to receive tickets for Disorderly Conduct and Disruption of Class, two extremely vague and subjective offenses that were used to punish low-level behaviors like “talking too much.”⁴⁶ Notably, the Bryan ISD was investigated by the Obama administration for the discriminatory police ticketing of black youth in schools, but the investigation stalled and unfortunately ended under the

³⁸ *Id.*, quoting Phillip Atiba Goff, et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, 2014, Vol. 106, No. 4, 526–45, <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>.

³⁹ *Id.*

⁴⁰ TEXAS APPLESEED, *Dangerous Discipline*, <https://report.texasappleseed.org/dangerous-discipline/> (last visited July 26, 2022).

⁴¹ Kathy Martinez-Prather, Joseph M. McKenna, & Scott W. Bowman, *The School-to-Prison Pipeline: How Roles of School-Based Law Enforcement Officers May Impact Disciplinary Actions*, Qualitative Criminology, Vol. 4, Issue 2 (Nov. 1, 2016), <https://www.qualitativecriminology.com/pub/v4i2p4/release/1>.

⁴² *Id.*

⁴³ TEXAS APPLESEED, *Dangerous Discipline*, <https://report.texasappleseed.org/dangerous-discipline/> (last visited July 26, 2022).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Office of Civil Rights (OCR) Complaint filing — U.S. Department of Education, *Complainants: Texas Appleseed (public interest law center), Brazos County NAACP, Counsel for Complainants: NAACP Legal Defense and Educational Fund, Inc., National Center for Youth Law, Filed date/time: 10 a.m. Wed., Feb. 20, 2013*, TEXAS APPLESEED, available at <https://www.texasappleseed.org/sites/default/files/143-STPP-SummaryBryanOCRcomplaint.pdf>.

Trump-Devo administration of the U.S. Department of Education, which ordered investigators to limit civil rights probes.⁴⁷

Throughout Texas, as pointed out by Texas Appleseed in its “Dangerous Discipline” article, “black students received 32% of tickets and complaints, 22% of arrests, and 40% of the use of force incidents from 2011-2015, although they comprise[d] only 13% of total student enrollment in Texas.”⁴⁸ The article notes that: “While schools referred Latino and [w]hite 10-year-olds to probation at roughly the same rate, 11-, 12-, and 13-year-old Latino youth are referred to probation at nearly double the rate of [w]hite youth, while [b]lack youth are referred at rates that are 2.5 to 3.5 times the rates of [w]hite youth in all age groups.”⁴⁹

The presence of police, ticketing, arrests, and probation for minor school and behavior offenses is not the only flow for the funneling of black and minority kids into the STPP. A report produced by the American Civil Liberties Union (ACLU) shows that data from the 2015-2016 academic year by the U.S. Department of Education’s Office for Civil Rights illustrated the discriminatory school discipline practice of out-of-school suspension.⁵⁰ The report notes that, “nationally, [b]lack students lost 66 days of instruction compared to just 14 days for [w]hite students. This difference of 52 more days lost for [b]lacks than [w]hites means that [b]lacks lost nearly five times the amount of instruction as [w]hites.”⁵¹

How LexisNexis® will help to dismantle the School-to-Prison Pipeline (School-Based Law Enforcement Resource Toolkit).

Attorneys can support the voices of the youth and advocacy agencies by utilizing the LexisNexis® Practical Guidance “School-based Law Enforcement Resource Toolkit” to help guide schools, teachers, resource officers and others to establish safe and supportive school environments. Resources include:

- Advice on reviewing and revising student codes of conduct (COC) and highlighting opportunities for the district to remove harmful, vague, and discretionary terms, or language that requires far more criminal justice referral of minor misconduct than is required by law.
- Background and supplemental SRO training materials in adolescent development, positive school discipline, mental health crisis intervention, working with local cultural diversity, implicit bias, de-biasing, and de-escalation techniques. This type of specialized training can help divert students away from the court system.
- Background information and guidance on implementing equitable justice programs and restorative justice initiatives to facilitate a safe and supportive environment where minorities are introduced to the law in an encouraging and mentoring capacity.

⁴⁷ Annie Waldman, *Shutdown of Texas School Probe Shows Trump Administration Pullback on Civil Rights*, PROPUBLICA (Apr. 23, 2018), <https://www.propublica.org/article/shutdown-of-bryan-texas-schools-probe-shows-trump-administration-pullback-on-civil-rights>.

⁴⁸ TEXAS APPLESEED, *Dangerous Discipline*, <https://report.texasappleseed.org/dangerous-discipline/> (last visited July 26, 2022).

⁴⁹ *Id.*

⁵⁰ The Center for Civil Rights Remedies, *11 Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools (Part 1)*, ACLU, https://www.aclu.org/sites/default/files/field_document/final_11-million-days_ucla_aclu.pdf (last visited July 26, 2022).

⁵¹ *Id.* at 5.

- Considerations on increasing the coverage of mental health services (counselors, psychiatrists, social workers, trauma specialists) for teachers and students. This includes increasing the counselor-to-student ratio to the American School Counselor Association’s recommendation of 1:250; the national average is 415-to-1 for the 2020-2021 school year.⁵²

LexisNexis® Practical Guidance Resource Toolkit: School-Based Law Enforcement Resource Toolkit

The LexisNexis® Practical Guidance Resource Toolkit will provide a wealth of resources for implementing restorative justice programs, guidance on proper nondiscriminatory administration of school discipline, and appropriate school-based policing to end the pipeline to prison.

School-based law enforcement policing by way of SROs and independently operated school district police departments will continue to grow throughout the nation as waves of violence and mass shootings occur at schools. This toolkit will include training resources, articles, law reviews, data reporting information, websites, curricula, and programs all related to dismantling the STPP considering the circumstances and state of American race relations. This toolkit will encourage individuals to act and support fostering a pleasant learning environment for all children.

III. Conclusion

There is a distinction between advocacy and activism.⁵³ In his article, “The Distinction between Lawyers as Advocates and as Activists; And the Role of the Law School Dean in Facilitating the Justice Mission,” Thurgood Marshall School of Law Professor, James Douglas, wrote: “To make changes in critical societal relationships that you consider unjust or unfair you must not only change ‘the law,’ you must also change the way people think about the values and assumptions that underlie the rule that allows the injustice. Social Activists change the way people think; lawyers do not.”⁵⁴ Professor Douglas notes that social activists are not concerned with the rule of law and will breach it to gain a societal change; however, lawyers describe the changes of the rules and how people think.⁵⁵ Relevant to this article, this observation translates to: To make critical social changes around systemic racism to positively impact the equality of law, we must change the way people think and what they assume. Lawyers can be both attorneys and “real” social change activists that impact real social change in duality.

The rules and laws have been applied unfairly and discriminately for hundreds of years. Getting into law school, graduating, and then passing the bar for a minority, especially for a black male in America, can be considered an act of social activism and defiance in itself. A large center of American society still believes that black people are inferior and place restrictions on what they should be able to achieve. African Americans who choose to follow the path of becoming an attorney add to the abysmal number of black attorneys and in many ways are defiantly saying to society that they will not be contained to society’s small

⁵² AMERICAN SCHOOL COUNSELOR ASSOC., *School Counselor Roles & Ratios*, <https://www.schoolcounselor.org/About-School-Counseling/School-Counselor-Roles-Ratios> (last visited July 26, 2022).

⁵³ James Douglas, *The Distinction between Lawyers as Advocates and as Activists; And the Role of the Law School Dean in Facilitating the Justice Mission*, 40 CLEVE. ST. L. REV. 405 (1992), available at <https://engagedscholarship.csuohio.edu/clevstlrev/vol40/iss3/14> (last visited August 15, 2022).

⁵⁴ *Id.*

⁵⁵ *Id.*

box of what they should be able to achieve in their life; Black attorneys who persist through that injustice, prejudice, and unfairness demonstrate “real” social change and activism.

Society’s values and assumptions of today have fluctuated from the 1960s Civil Rights Movement and from when Thurgood Marshall was appointed the first black Supreme Court Justice. Thurgood Marshall, being appointed to the most superior court of the land, changed the way society viewed African Americans and the law. America as a union was briefly and with a short arm reaching for equality.

Consequently, it is again the time to fight for inclusion and the equality of the law. It is critical that we end the school to prison pipeline. The pipeline to prison has been one of many triggers as to why the number of minorities entering the legal field and black youth being interested in law has stalled. The school to prison pipeline along with increased law enforcement in schools conveys to black and minority kids that there are still two Americas. Minority communities are over policed throughout the country. And, in schools, where they should feel safe and supported, black and minority kids experience the same law enforcement interactions they experience at home through the over policing of their communities. The negative disciplinary interactions minority kids are having with school resource officers are often their first interaction with the criminal justice system in their formative years. It is not a positive experience and from then on, the law and the justice system are viewed as unfair, unjust, and as an insidious system that does not treat them equally.

Personal experience forms the opinion that youth may want to avoid the field entirely based on their experience with legal professionals. If a student does not have a positive interaction with their criminal defense attorney, they will also believe that lawyers are another extension of the same authority harming them. Thus, minority youth may decide to avoid the legal field all together, not realizing attorneys provide a breadth and depth of services (*e.g.*, estate and corporate law attorneys) that they may be interested in pursuing. Lastly, because of these interactions with school police and discriminatory discipline, students may end up with fines and criminal records that could preclude them from becoming an attorney or gaining scholarships to law school. The STPP is a major underlying cause and effect for the lack of minority attorneys in America, and it must be ended to balance the equality of law and justice.

It is acknowledged that there are honorable law enforcement officers and nurturing schoolteachers and staff who work on the front lines every day to protect and support children across America. At times, a constructive critique can feel like criticism. The purpose of this note is to increase awareness about racial discrimination in the administration of school discipline and education. Increased awareness will highlight this as a real problem that needs to be addressed with urgency to permanently dismantle the STPP. This article contends that the increased presence and current function of SROs (sworn police officers with guns and arrest power) bring disproportionate collateral criminal consequences to black youth and funnel them into the STPP.

Schools need more counselors, social workers, and revised COC on a national level, and the need is immediate. As SROs and school-operated police departments become more prevalent, it is important to advocate for social changes in the equality of law in education and provide a solution. Revisions in the approach may be a factor in eliminating barriers to entering the legal profession.

Mentor: Erika Lehman
Senior Director, Large Law



Reflection on working with Fellow Mikel Brown II:

Working with Fellow, Mikel Brown, has been a wonderful, inspiring experience. What I remember most about meeting Mikel for the first time was his unrelenting passion for ending the school-to-prison pipeline. He reminded me what school used to be like: when kids messed up, teachers, guidance counselors or principals handled the situation. Times have changed; now, school resources officers are called to intervene — often in disproportionately high numbers when minority students are involved and with life changing consequences. When I asked Mikel what he hoped to accomplish during his Fellowship, he told me he wants more people to know about this issue. As he connected with people and organizations trying to make a difference, he identified that too few resources exist to help those willing to

start making change. His toolkit is a compilation of those real-world, practical resources that attorneys, schools, teachers and others can use to start effecting change in their communities. When I asked him more recently what he hopes to do after he graduates law school, he told me he's just getting started: more people still need to know about this issue. Mikel is smart, hardworking, driven, creative and willing to tackle big challenges. I know we're in good hands.

Erika Lehman is a Senior Director managing pricing, deal approval, and contracting in Large Law. She has been with LexisNexis® for more than seven years in a variety of roles. She earned her Juris Doctor from Northern Kentucky University - Chase College of Law, and her Bachelor of Arts degree from Mount St. Joseph University. She is passionate about the Rule of Law and helping to develop new talent in the legal industry.

Cluster 2:

Diversity, Equity, and Inclusion in Legal Education

"The Gavel League": An App Providing Legal Education to Adolescents

Dominique Douglas

Minority High School Students and Pathways to a Diversified Legal Profession

Songo A.R. Wawa

I, Too, Sing America: Uncovering Untold U.S. History Through the Law

Alexus McNeal

"The Gavel League": An App Providing Legal Education to Adolescents

Dominique Douglas

This project's mission is the development of "The Gavel League,"¹ a mobile application designed to increase literacy and comprehension of critical legal concepts for youth in the United States, as well as for their parents and guardians. "The Gavel League" focuses on providing legal educational opportunities to children of marginalized communities, by teaching legal concepts that impact many citizens, such as Miranda rights, and providing a vehicle to gain knowledge and understanding of the rule of law for the youth.

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.



Dominique Lashuan Douglas is a third-year law student from North Carolina Central University School of Law. Her experience at both the South Carolina House of Representatives and Senate and with the North Carolina Senate has provided ample opportunities to develop her administrative, problem solving, and legal analytical skills.

Introduction

Avoiding engagement with the criminal justice system yields important advantages to the life experience, insofar as initial criminal offenses can lead many offenders to commit repeat offenses. Potential recidivism is a key focus in juvenile justice system efforts to avoid protracted criminal justice system engagement following a probationary period. This focus is especially critical largely because parents are often ill-equipped to provide relevant guidance to their children in dealing with the criminal justice system.²

These conditions indicate a need for self-reliance on the part of youth who may potentially face encounters with law enforcement. Children and adolescents need tools to build and fortify such self-reliance. Addressing this need is the subject of this paper, which explains the rationale for, and the feasibility of, “The Gavel League,” an internet application for children, adolescents, and their parents or guardians.

Some of the problems challenging adjudicated delinquent adolescent youth are grounded largely in educational factors. In comparison to peers who are not engaged in the legal system, such youth are disproportionately prone to truancy and absences from under-resourced schools.³ They are more likely to perform below grade level. Moreover, they are at higher risk of being the subject of scrutiny and discipline, and to undergo evaluation and remedial education.⁴ Disabilities, mental and/or physical, are also a hazard as affected youth may require special education services. Additionally, they are at higher risk of becoming high school dropouts.⁵

To the extent that the socialization of minority youth is impaired by gaps in wealth and education quality between minorities and whites, parallel dynamics are evident in law enforcement behavioral patterns impacting youth engagements in juvenile justice experiences.⁶ It is evident that education quality and lack of educational success impacts the relative incidence and frequency of engagement with the juvenile justice system. The disparity in juvenile justice system engagement between white and minority youth is in great measure a function of the quality of education available to white youth vis-à-vis minority youth.⁷

At the point of engagement with the juvenile justice system, uninformed parental guidance and/or intervention on a child’s behalf may harm, rather than promote, the child’s best interests.⁸ When parents

² Caitlin Cavanaugh & Elizabeth Cauffman, *What They Don’t Know Can Hurt Them: Mothers’ Legal Knowledge and Youth Re-Offending*, 23 PSYCH. PUB. POL. & L. 141 (2017). See James Austin, Kelly Dedel Johnson, Ronald Weitzer, *Alternatives to the Secure Detention and Confinement of Juvenile Offenders*. Washington, D.C: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (2005).

³ *Creating Positive Consequences: Improving Education Outcomes for Youth Adjudicated Delinquent*, 3 DUKE FORUM FOR L. & SOC. CHANGE (2011), citing Matthew T. Zingraff et al., *The Mediating Effect of Good School Performance on the Maltreatment-Delinquency Relationship*, 31 J. RES. CRIME & DELINQ. 62, 62 (1994).

⁴ *Id.* at 6.

⁵ *Id.* at 6, citing Joseph B. Tulman & Douglas M. Weck, *Shutting Off the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, 54 N.Y. L. SCH. L. REV. 875, 882 (2009/2010); Ruth Curran Neild & Robert Balfanz, *Unfulfilled Promise: The Dimensions and Characteristics of Philadelphia’s Dropout Crisis, 2000-2005* 37 (Phila. Youth Transitions Collaborative eds., 2006), available at http://www.csos.jhu.edu/new/Neild_Balfanz_06.pdf.

⁶ *Id.* at 6.

⁷ *Id.* at 7.

⁸ Caitlin Cavanaugh & Elizabeth Cauffman, *What They Don’t Know Can Hurt Them: Mothers’ Legal Knowledge and Youth Re-Offending*, 23 PSYCH. PUB. POL. & L. 141, 142 (2017).

do not understand their rights and their children’s rights, they are not able to properly and effectively recognize and object to violations of these rights.⁹ This problem may be compounded among parents or youth from disadvantaged communities.¹⁰ Therefore, affected minority youth are especially prone to hazards with far-reaching and life-changing implications. Affected youth and their families need additional tools to avert pathways to unjustified outcomes.

Part I — Awareness Fulfillment

This paper posits that access to legal knowledge is critical to youth awareness of their civil rights. Such access can especially benefit children in communities of systemically marginalized groups. With internet access, our youth and their guardians can realize awareness that is so essential to personal development. “The Gavel League” is an app conceived to deliver the knowledge of legal scholars, who will share their legal expertise, synthesizing and articulating the law in a concise curriculum, and using terms and language that lay persons can readily understand, digest, and retain.

“The Gavel League” app’s delivery of essential information will provide users with a meaningful chance to make consciously prudent decisions that are based on a working knowledge of the legal process. This program will comprise a menu of legal enrichment modules that present clear, concise, insightful explanations of legal principles and complexities in understandable discourse that will resonate with youth and their guardians. In addition to insights into matters tied to law enforcement matters and engagement with the legal system, these modules will provide key information relevant to development in citizenship. For example, modules will impart knowledge about voting rights, among other civil rights. Modules will cover additional topics essential to successful navigation of opportunities that users may encounter in civic affairs, as well as resolution of potential legal problems that may emerge. Results of learning progress will be studied by volunteers in real time to facilitate rapid analysis and assessment of comprehension of legal principles and their implication in relevant circumstances.

Part II — The Demonstrative Need for “The Gavel League”

The need for an innovative application like “The Gavel League” is evident in an assessment of authorities in the conduct of criminal investigations and prosecutions.¹¹ The misfortune of convicted defendants in some criminal cases could have plausibly been reversed with a basic knowledge of legal principles before their engagement with law enforcement. “The Gavel League” application concept purports to equip lay people with such knowledge to better equip them to respond effectively in critical situations. The story of the “Central Park Five” is a case in point.

On April 19, 1989, a 28-year-old New York City resident (the “Central Park Jogger”) was physically assaulted and raped in Central Park, then found unconscious with fractures to her skull with no memory of

⁹ *Id.* at 151. See Kristin N. Henning, *It Takes a Lawyer to Raise a Child: Allocating Responsibilities Among Parents, Children, and Lawyers In Delinquency Cases*, NEV. L.J., 6, 836-89 (2005).

¹⁰ Katherine Burdick et al., *Creating Positive Consequences: Improving Education Outcomes for Youth Adjudicated Delinquent*, 3 DUKE FORUM FOR L. & SOC. CHANGE 5, 6-7 (2011).

¹¹ See *People v. Richardson*, 202 A.D.2d 227, 608 N.Y.S.2d 627 (N.Y. App. Div. 1st Dep’t 1994); *People v. Wise*, 204 A.D.2d 133, 612 N.Y.S.2d 117 (N.Y. App. Div. 1st Dep’t 1994); *People v. McCray*, 198 A.D.2d 200, 604 N.Y.S.2d 93 (N.Y. App. Div. 1st Dep’t 1993); *People v. Salaam*, 187 A.D.2d 363, 590 N.Y.S.2d 195 (N.Y. App. Div. 1st Dep’t 1992).

the attack.¹² Five defendants were arrested, tried, and convicted for the attack.¹³ The police investigations focused on five young African American and Latino teens. Police found Korey Wise, 16, Yusef Salaam, 15, Kevin Richardson, 14, Antron McCray, 15, and Raymond Santana, 14 (the “Central Park Five”),¹⁴ in the park “wilding” at the time of the attack.¹⁵ Note that “Wilding” is defined to mean not domesticated or cultivated.¹⁶

Police arrested Richardson while he was headed home from the park after he fled when police ordered him and other teens to freeze. Noting that in his experience “even if you’re innocent, when you see police, people tend to run,” he fled and was later “knocked unconscious by a pursuing officer and awoke to find himself in handcuffs.”¹⁷ Richardson stated that he had not known of his right to an attorney, even though he was so advised, during the reading of his *Miranda* rights.¹⁸ Richardson’s understanding of the law was so minuscule that Richardson “didn’t even know who ‘Miranda’ was,”¹⁹ explaining that he was so unaware of his legal rights that he thought *Miranda* was a former schoolmate.²⁰ Police officers took Santana into custody on suspicion of intimidating behavior and mugging.²¹ Police took McCray, Salaam, and Wise into custody the following day. Wise wasn’t considered a suspect at this time,²² but after more than seven hours of prolonged police interrogation, the five boys falsely confessed on videotape that they touched or restricted the Central Park Jogger during the alleged assault.²³ It was this fear, while alone in a police interrogation room within earshot of the beating of their companion in progress in the next room, unaware that this was a violation of his civil rights, that caused the teens to develop fears that they were not going to be released and would get the same treatment, compelling them to submit coerced confessions to a crime they did not commit. In finding them guilty the court’s opinions were heavily grounded on prosecutorial accounts, resting largely on the advancement at trial of prosecutorial evidence that was based on inadequate management of records and evidence, and less than thorough detective work.²⁴

But for the 2002 confession of Matias Reyes, a convicted rapist and murderer, the Central Park Five convictions might never have been vacated. An encounter with Korey Wise, a fellow inmate in a New York correctional facility, prompted Reyes’ confession.²⁵ Only then was DNA testing conducted. This evidence identified Reyes as the perpetrator, leaving no indication that the Central Park Five were involved.²⁶ This evidence prompted an extensive investigation led by the Manhattan District Attorney at the time, Robert

¹² *Fairstein v. Netflix, Inc.*, 553 F. Supp. 3d 48 (S.D.N.Y. 2021).

¹³ *Id.*

¹⁴ *Id.* at 58

¹⁵ *Id.* at 79.

¹⁶ *Wilding* definition, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/wilding> (last visited July 25, 2022).

¹⁷ Jim Walsh, *Central Park Five Member To Police: ‘You’ve Got To Treat People With Respect’* COURIER (2022), <https://www.courierpostonline.com/story/news/2022/03/01/central-park-five-kevin-richardson-korey-wise-scott-coffina-black-history/9331017002/> (last visited July 15, 2022).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Central Park Five: The True Story Behind When They See Us*, BBC NEWS (2019), <https://www.bbc.com/news/news-beat-48609693> (last visited July 15, 2022).

²² *Id.*

²³ *Id.*

²⁴ N. Jeremi Duru, *The Central Park Five, the Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV. 1315, 1320 (Mar. 2004), citing Mike Kelly, *Some Call This Justice*, THE RECORD (Bergen County, N.J.) Dec. 8, 2002, at O1.

²⁵ *Id.* at 1315.

²⁶ *Id.* at 1317, citing Barbara Ross & Robert Ingrassia, *Joy and Rage over Jogger 5*, N.Y. DAILY NEWS, Dec. 6, 2002, at 4.

Morgenthau. Pursuant to the investigation, the New York State Supreme Court vacated the Central Park Five convictions on December 19, 2002.²⁷ By this time, the original defendants had been released from prison, having been incarcerated for years.

Part III — In Retrospect: Results in Justice Considered

The trauma that the Central Park Five experienced is consistent with a sentiment shared in communities of systemically marginalized individuals. “The Gavel League” was conceived to reduce these types of experiences in our criminal justice system. If the Central Park Five had had “The Gavel League” app to learn from before their arrests, they would have been fully aware of their legal rights, such as their right to counsel and their right to refuse to speak to law enforcement without their counsel and, as minors, to have their parents or representatives present. With the aid of this app, the Central Park Five would have known their constitutional rights, and if their rights were being violated when they were arrested by police officers. Moreover, they would have developed a clearer understanding of their *Miranda* rights, having learned from “The Gavel League” not to incriminate themselves by recording false confessions in attempting to be removed from police custody. In addition, use of the app would have instilled in them an acute awareness of their fundamental civil rights.

Conclusion

“The Gavel League” will leverage certain LexisNexis® content and resources to deliver legal instruction that specifically and disproportionately impacts children in systemically marginalized communities. “The Gavel League” will awaken young minds to be conscious of leading in citizenship, by instilling heightened awareness of the law and their own rights, as well as respect for the rights of others. “The Gavel League” will provide children with an additional tool to develop a strong and effective voice, by promoting their legal literacy and comprehension.

The purpose of “The Gavel League” app is to teach minors and their guardians fundamental principles that will prepare them to interact with law enforcement authorities should circumstances arise that require them to do so. This tool will advise end users of their fundamental civil rights and the meaning of these rights at the point of engagement with various levels of law enforcement authorities. In addition, “The Gavel League” will survey the American political structure and teach the history of marginalized Americans with an emphasis on voting rights and other legal processes frequently experienced by adolescents. A thematic objective of “The Gavel League” will be to enlighten youth on fundamental legal rights and knowledge.

“The Gavel League’s” legal enrichment modules and supplementary learning curve tracking functionality will substantially facilitate understanding of, and critical thinking about, legal principles that can impact the lives of young citizens in minority communities. In doing so, “The Gavel League” will be a significant asset in ongoing efforts to eradicate adolescent legal illiteracy. Success in this mission will improve chances both for individual adolescents and for minority communities at large in their outlook for justice and fulfillment.

²⁷ *Id.* citing Samuel Maull, Associated Press, *Judge Throws Out Rape Convictions in 1989 Central Park Jogger Case*, ALAMEDA TIMES-STAR, Dec. 20, 2002.

Mentor: Margaret Unger Huffman, Esq.

Senior Product Manager II, LexisNexis® Legal & Professional



Reflection on working with Fellow Dominique Douglas:

Contributing as a mentor for the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship, I have seen a glimpse into the future of our legal system through the eyes of our nation’s future legal leaders. The future shines bright! It has truly been an honor to work with Fellow Dominique Douglas on her project, “The Gavel League.”

Dominique’s legal advocacy paper focuses on the negative impact of inadequate comprehension of legal rights. As Dominique points out, this knowledge gap disproportionately impairs affected minority youth self-advocacy when such rights are violated. “The Gavel League,” a mobile application conceived to benefit elementary school children, will provide fundamental legal education in a creative manner. Dominique’s passion, innovation, and advocacy are

self-evident as she lays the foundation to make a vital difference in our community. She has worked diligently with a diverse team of colleagues to make “The Gavel League” come to life, and I cannot wait to see what the future holds!

Challenging, rewarding, and priceless, my mentorship experience through the Fellowship inspires me to reinforce my own advocacy efforts as a Product Manager at LexisNexis® and pro bono attorney in North Carolina. It is incredibly gratifying to participate in this remarkable Fellowship and to share the value that LexisNexis® promotes in the worldwide advancement of the rule of law.

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 Juris Doctor 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.

Minority High School Students and Pathways to a Diversified Legal Profession

Songo A.R. Wawa

The Ten-Year Plan to the Bar (T-Bar)¹ focuses on building a pipeline into the legal field for college-ready students by introducing and guiding students on the pathway to the legal field from the perspectives of pre-law undergraduate students, current law students, a financial advisor, and attorneys, some of whom followed the traditional route after law school, and others who followed an alternative route.

T-Bar is an online webinar series designed to jumpstart high school students into the legal field. T-Bar will ensure high school students can aspire to and successfully chart a career path as an attorney with guidance from a pre-law undergraduate student, a law student, an attorney who followed a traditional route, an attorney who followed an unconventional route, and a legal financial advisor. The program will include a pre- and post-assessment to gain feedback and opportunities for growth. Moreover, the program will work in conjunction with high schools that are affiliated with Upward Bound, an education program sponsored by the federal government and hosted through each of the six Historically Black Colleges and Universities Law School Consortium's (HBCULSC) undergraduate campuses.

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.



Songo A.R. Wawa is a third-year law student from the University of the District of Columbia School of Law. Her experience at the Maryland Office of Public Defenders, Government Services Administration, and AmeriCorps strengthened her commitment to public service and advocacy for marginalized communities. After graduation, Songo is committed to continuing her work in public service as an attorney.

Introduction

The legal profession has long been a difficult field for minorities to enter. Within the last few years, the legal field has sought to diversify itself because of the benefits diversity brings to clients and company culture.² Moreover, global companies have tied their relationships with law firms to diversify the pool of lawyers the law firms hire.³ Despite the acknowledgment of the need for more diversity, the legal field still lacks equitable representation.

Several factors account for the lack of minority representation in the field, including minority candidates' disproportionate undergraduate debt; uncompetitive undergraduate grade point averages; lack of mentorship; low standardized test scores; and the overall cost to attend and complete law school. This paper posits that first-generation or low-income minority high school students who are in college-readiness programs are hindered in entering the law profession because they are not provided the guidance and resources for long-term success after graduating from high school. The Ten-Year Plan to the Bar (T-Bar), administered by school counselors, could benefit students by providing real-time insight and answers to questions from the perspectives of practicing attorneys and others in the legal profession. These individuals would offer insights into each phase of the legal educational journey toward optimizing long-term success for diversity in the legal field.

Part I of this paper focuses on the challenges minorities face in the legal field by exploring the effects of systemic racism exacerbating these difficulties. Part II identifies the college-preparedness programs that are currently in place to assist minorities in accessing these resources for post-secondary education. Part III sets forth a proposed program for disadvantaged minority high school students that would provide mentorship from the perspectives of individuals on the student's path to the legal profession and long-term success in the legal field.

Part I — Factors Contributing to Minorities' Difficulties Accessing the Legal Field

The legal profession remains challenged to create openings for, and to retain, minority attorneys, despite over a decade of advocating for a more diverse legal workforce.⁴ Since 2010, the number of African American lawyers has remained virtually unchanged, whereas the pool of Hispanic lawyers has increased by 1%.⁵ In 2020, African Americans comprised 5% of all lawyers in the United States, the same as Hispanic representation in the profession. In contrast, 86% of lawyers in 2020 were non-Hispanic whites.⁶ One of the crucial issues plaguing minority lawyers' access to the legal field is systemic racism in attaining a legal edu-

² Ellen Milligan and Todd Gillespie, *Diversity at Elite Law Firms Is So Bad Clients Are Docking Fees*, BLOOMBERG (Oct. 5, 2021), <https://www.bloomberg.com/news/articles/2021-10-05/big-law-has-a-diversity-problem-and-corporate-clients-are-stepping-in> [<https://perma.cc/2BSC-WZF3>].

³ *Id.*

⁴ *Id.*

⁵ American Bar Association, Section on Lawyers by Race & Ethnicity, *Statistics*, https://www.americanbar.org/groups/young_lawyers/projects/men-of-color/lawyer-demographics/#:~:text=Nearly%20all%20people%20of%20color,population%20is%2013.4%25%20African%20American (last visited July 19, 2022).

⁶ *Id.*

cation. The statistical data outlined indicate how systemic racism hinders aspiring disadvantaged minorities from pursuing careers in the legal profession. Consequently, minorities fail to enter and graduate from law school or pass the bar exam because of financial obstacles and adjusting to the non-academic elements of law school — things like food, transportation, and family obligations.⁷ As a result, the disparity in a lack of quality education and mentorship disproportionately affects minorities' access to, and presence in, the legal field.

Second, debt is disproportionately skewed in undergraduate and law schools, burdening minorities to a greater degree than whites. Black undergraduates owe an average of \$25,000 more in student loan debt compared to white college graduates.⁸ Furthermore, minority students face the same financial burdens in law school. In 2019, 71% of black students took time off between undergraduate and law school, compared to 64% of whites.⁹ Student loan debt, notwithstanding financial aid and academic support services is the main contributing factor to socioeconomic status despite a person's career path.¹⁰ The cost of tuition forces a majority of minority students to incur large amounts of debt to pay for tuition, school supplies, rent, food, and transportation.¹¹ As a result, by the time minorities graduate from law school, they have incurred thousands of dollars in debt from undergraduate education. Thus, minority law students may be more likely to be dissuaded from advocating for other minorities to pursue a legal career because of the disproportionate debt intake.

Finally, standardized tests, such as the SAT, LSAT, and state bar exams have been proven to have discriminatory effects due to “the educational deficits and inequalities brought about by conditions of racial hierarchy.”¹² Evidence suggests that a competitive score on standardized tests has been positively attributed to a person's wealth.¹³ First, the expenses of test coaching, practice examinations, and overall standardized test preparation resources highly affect a person's success on standardized tests.¹⁴ Furthermore, black middle- to upper-middle-class families lack the financial resources “necessary to provide their children the same opportunities and support that their privileged white peers enjoy” because of racial socio-economic disparities.¹⁵ Despite these racial-socioeconomic disparities, standardized test scores account for 70% to 80% of law school admissions decisions.¹⁶ Finally, in a majority of all states, “participation in the legal profession as an attorney is ultimately dependent upon admission to the bar.” Thus, prospective minority lawyers must overcome a series of hurdles, including law school admission, retention, graduation, and bar passage.¹⁷

⁷ William Malpica and Mauricio A. España, *Expanding Latino Participation in the Legal Profession: Strategies for Increasing Latino Law School Enrollments*, 30 *FORDHAM URB. L.J.* 1393 (2003).

⁸ Melanie Hanson, *Student Loan Debt by Race*, EDUCATION DATA INITIATIVE, <https://educationdata.org/student-loan-debt-by-race> (last updated June 13, 2022).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Arshil A. Kabani, *Celebrating Ten Years of Giving Voice to the Voiceless: Comment: The Door to Higher Education: Accessible to All? Whether State-funded Merit-Aid Programs Discriminate Against Minorities and the Poor*, 10 *THE SCHOLAR* 69 (2008).

¹² Kevin Woodson, *Entrenched Racial Hierarchy: Educational Inequality from the Cradle to the LSAT*, 47 *MITCHELL HAMLIN LAW REVIEW* 224, 246 (2021).

¹³ Malpica and España, *supra* note 7, at 1402.

¹⁴ Malpica and España, *supra* note 7, at 1402.

¹⁵ Woodson, *supra* note 12, at 229.

¹⁶ Laura Rothstein, *Symposium: The Ronald H. Brown Center for Civil Rights and Economic Development Presents: The LSAT, U.S. News & World Report, and Minority Admissions: Misuse and Abuse of the LSAT: Making the Case for Alternative Evaluative Efforts and a Redefinition of Merit*, 80 *ST. JOHNS'S L.REV.* 41, 96 (2006).

¹⁷ *Id.*

Part II — College-Preparedness Program and Resources Currently Available

Since the mid-20th century, there has been a movement to alleviate the effects of systemic racism against minorities.¹⁸ Because of this, the federal government has advanced and promoted broad programs and funding to facilitate disadvantaged, minority high school students with ambitions to pursue a college education. However, the statutes in place do not provide specific guidance on a set career path for high school students.¹⁹ Instead, the current programs direct a general path to college and college assistance.²⁰ Thus, disadvantaged high school students are rarely shown the pathway into the legal field until they attend undergraduate school.

Upward Bound is a federally funded and expansive post-secondary school pipeline program for disadvantaged and minority high school students.²¹ Under the Economic Opportunity Act of 1964, Upward Bound was created as one of the pipelines to college programs for disadvantaged minority students.²² Upward Bound’s goal is to “... provide support services to individuals from disadvantaged backgrounds to promote achievement in postsecondary education.”²³ Thus, Upward Bound assists high school students with “tutoring, mentoring, academic guidance and personal counseling, information on postsecondary education opportunities and student financial assistance, and assistance with applications for college admissions and financial aid.”²⁴ This assistance provides disadvantaged high school students with general information on the pathway to college.

Part III — T-Bar as a Remedy to Diversity in the Legal Field

A legal-centric program for disadvantaged, marginalized high school students is needed to help alleviate the effects of systemic racism and facilitate access to the legal field. Law schools, along with state judiciaries and bar associations, are involved in the movement to increase minority engagement in the pursuit of careers in law. The proposed program, T-Bar, is unique in that it targets potential students during high school and provides robust resources and a long-term plan to help them become lawyers. Through the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship program, connections were made with a variety of minority attorneys from around the world²⁵ who chose various paths within LexisNexis®, the government, and law firms using their law degrees. The attorneys work and have worked as associates, editors, consultants, account managers, general counsel, project managers, and legal tech product developers. The attorneys were interviewed to uncover their journeys and develop best practices and guidelines for the T-Bar Program. In addition, connections were made with LexisNexis® leaders in financial services and human resources to better illustrate the financial needs, long-term planning, and responsibilities of seeking a legal career. A variety of LexisNexis® resources, such as Lexis+®, Context, and Legal News Hub were employed. These resources provided the needed data and information to build out

¹⁸ OFFICE OF POSTSECONDARY EDUCATION, U.S. DEPARTMENT OF EDUCATION, *History of the Federal TRIO Programs*, <https://www2.ed.gov/about/offices/list/ope/trio/triohistory.html#:~:text=History%20of%20the%20Federal%20TRIO%20Programs&text=The%20history%20of%20TRIO%20is,of%20the%20Higher%20Education%20Act> (last visited July 29, 2022).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ U.S. DEPARTMENT OF EDUCATION, *Fast Facts Report for the Upward Bound and Upward Bound Math Science Programs: 2017-2018*, <https://www2.ed.gov/about/offices/list/ope/trio/ububmsfastfactsreport1718.pdf> (last visited July 6, 2022).

²⁴ *Id.*

²⁵ Countries include the United States, United Kingdom, and Australia.

a robust curriculum for the T-Bar as well as create pre- and post-assessments for the high school students. T-Bar is an interactive online webinar that aims to jumpstart high school students into the legal field. T-Bar is a diversity pipeline that provides high school students with the tools and resources to enter the legal field. These resources include SAT and LSAT preparation, loan and funding resource navigation tools, college and law school application roadmaps, mentorship, bar exam preparation help, and overall guidance to assist minority students in their academic and professional pursuits to accomplish the goal of becoming lawyers. Thus, T-Bar prepares high school students with a durable foundation on how to become an attorney.

T-Bar enrolls Upward Bound high students from one of the six Historically Black Colleges and Universities Law School Consortium (HBCULSC) that hosts Upward Bound on its undergraduate campus. T-Bar is provided through a live webinar by college-readiness counselors during the fall of each school year. During the live stream, T-Bar's guest speakers inform high school students on how to attend affordable postgraduate institutions and promote the value of extracurricular activities, internships, fellowships, and experiences that provide mentorship, funding, and competitive resume points. Moreover, T-Bar participants receive guidance on entrance exam preparation, undergraduate application review, financial education regarding loans and repayment plans, preliminary law school application pointers, an overview of the law school experience, and an introduction to bar preparation information and resources. Furthermore, Upward Bound students' ambitions, questions, and expectations are answered throughout and after participating in T-Bar to assist their progress and ultimate success in the legal field. T-Bar ensures disadvantaged high school students aspire to, and achieve the career path of, becoming an attorney. In conclusion, T-Bar's guest speakers share their personal stories throughout their legal journeys that led them to stay committed despite systemic racism and obstacles.

T-Bar provides a pre-assessment and post-survey assessment for engaging and tracking participants learning and career outcomes. The pre-assessment survey asks students to identify what they currently know about the legal profession career path, what more they would like to know about the career path, and what they hope to gain from participating in the program.

Afterward, T-Bar participants complete a post-survey to inform what they learned about the legal career path from T-Bar, what additional knowledge would be helpful, and the extent to which T-Bar persuaded the students to pursue a career in law. It is recommended that program participants are contacted regularly over the course of ten years to follow-up on their career goals. After participating in T-Bar, the participants will have endured and overcome the systematic disadvantages by having a deeper understanding of the steps, resources, and long-term planning it takes to seek a legal career. They will have clear, preferably demonstrated, commitments to pursuing undergraduate and law school degrees, and to becoming lawyers and increasing diversity in the legal profession.

Conclusion

The legal field would have more success in diversifying the profession if there was a legal college preparation program for high schoolers. T-Bar delivers such preparatory programming. T-Bar assists disadvantaged minority high schoolers in becoming better prepared to map out their undergraduate and law school journey for a more successful rate on the bar exam and long-term diversity in the legal field. As a result, T-Bar will proactively address systemic racism and sets the needed foundation to increase minority representation in the legal field.

Mentor: Rhea Ramsey, Esq., LL.M

Regional Manager, Large Markets: Large Law & Law Schools, LexisNexis®
Legal & Professional



Reflection on working with Fellow Songo A.R. Wawa:

One of the amazing qualities of LexisNexis® is our drive to deliver high quality work while still being able to give back to our communities by supporting passion projects like those of the Fellowship. Some towering passions for me are mentoring, equal justice advocacy, and the rule of law. Being a mentor in the LexisNexis® African Ancestry Network & LexisNexis® Rule of Foundation Fellowship is not only an honor and privilege but allows us to contribute to and empower our minority community.

Collaborating with Fellow, Songo Wawa, has been an inspiring and exciting experience. Songo's Ten-Year Plan to the Bar (T-Bar) project is not only a needed solution to address systematic racism but also a unique and visionary answer of what the future can be. She continuously exudes enthusiasm in conjunction with a very defined vision to proactively remedy the gap of diversity in the legal profession by reaching and educating minority high school students. She demonstrated her amazing talents of curriculum building, technology implementation, and advanced networking and recruiting to ensure diversity in assemblies and students group meetings.

Through the Fellowship's student mentoring program, I observed Songo devise and build a program that would work in sync with and leverage other programs like Upward Bound¹ and CLEO.² In addition, it aligns with one of the previous Fellowship programs, The Blueprint Program, to ensure that we expose our minority youth to what is possible and achievable. Lastly, the program aims to break the systematic racism that has troubled the legal system and field for far too long. Over these last several months, Songo honed her skills as a future leader in our legal community. Through her arduous work, we have reaffirmed that exposure and knowledge of the law and the legal profession is power and most impactful in the high school experience, when our youth are deciding their futures. I am confident that Songo and her T-Bar program will initiate a wave of needed change that will help to end racial bias and implement the ideal of "Equal Justice under Law."

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¹ For more information on the Upward Bound program, see <https://www2.ed.gov/programs/trioupbound/index.html>.

² For more information on CLEO, see <https://cleoinc.org/>.

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I, Too, Sing America:* Uncovering Untold U.S. History Through the Law

Alexus McNeal

Alexus McNeal is a third-year law student at the University of the District of Columbia David A. Clarke School of Law. Alexis' Associate of Science in cosmetology degree from the Dudley Beauty College, her Bachelor of Science degree from Clark Atlanta University, and her future law degree will make her a three-time HBCU attendee and graduate. Maintaining a cosmetology business that caters to women throughout the District of Columbia, Maryland, and Virginia area has led her to intern with WomensLaw.Org, which provides legal information and resources to victims of domestic violence and others needing assistance with civil and family law matters. Alexis has also served as a Student-Attorney in the Community Development Legal Clinic, working with D.C. business owners in transactional matters. Her distinctive education and training have helped her forge her own path that mixes business and law with benevolence.



This project's mission is to create an accessible LexisNexis® repository of racially diverse case law to help legal scholars, historians, and others to increase awareness of minority culture and nuances in the law. The repository is available to users through the Lexis+® Research platform in the secondary supplemental materials. To increase accessibility to the repository, a keyword search filter will be added to the LexisNexis® platform which would distinguish racially diverse cases utilizing current racial/ethnic terminology as well as AI technology which would capture historically-based racial/ethnic terminology and language in cases.

* Langston Hughes, *I, Too*. THE COLLECTED POEMS OF LANGSTON HUGHES (New York: Knopf: Distributed by Random House) 1994.

Introduction

It is an easy task to highlight various aspects of systemic racism in the American legal system and the American professional community. African Americans represent only 14.2% of the U.S. population;¹ yet account for more than 38% of the overall U.S. prison population.² These statistics strongly contrast with white American incarceration rates (over 61% of the U.S. population,³ but less than 58% of the overall U.S. prison population).⁴ Moreover, recent statistics indicate that African Americans represent only 5.4% of the American legal profession; while 87.1% of American lawyers are white.⁵ These statistics are objective measures of the countless factors accounting for systemic racism. Imbalance of racial themes in law school curricula is one of the aggravating factors accounting for inequality because of close ties between such curricula and discriminatory dynamics in the legal profession and community.

Myriads of reasons explain the disproportionately low representation of African Americans in the legal profession. For one, the Law School Admission Test (LSAT), a standardized test used by law schools to decide on prospective law school candidates, is riddled with flaws that greatly exclude African Americans.⁶ Many schools utilize LSAT scores to determine admissibility, despite the Law School Admission Council's position that the LSAT test scores are not appropriate tools for assessing things like bar exam performance.⁷ LSAT scores are also the primary driver of scholarship awards. This is significant because in a 2016 study involving 16,424 law students from 67 U.S. law schools accredited by the American Bar Association (ABA), African American students had both the lowest average LSAT scores and the lowest chance of receiving merit-based scholarships.⁸ Further, African American law school applicants are least likely to gain school admission, to attend law schools with the most favorable outcomes, and to receive financial aid from scholarships which in turn leads to heavy student loan reliance.⁹ In fact, even though African Americans have median incomes lower than both white and Asian Americans,¹⁰ they have the highest rates of borrowing and the highest expected student loan balances.¹¹ Finally, although the recent median African Americans'

¹ U.S. Census Bureau, *2020 Census Illuminates Racial and Ethnic Composition of the Country* (2022), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html#:~:text=White%20Population-,Overall%2C%20235.4%20million%20people%20reported%20White%20alone%20or%20in%20combination,million%20and%2072.4%25%20in%202010.5> (last revised Jun. 10, 2022).

² Federal Bureau of Prisons, *Inmate Statistics* (2022) https://www.bop.gov/about/statistics/statistics_inmate_race.jsp (last revised Jul. 23, 2022).

³ See U.S. Census Bureau, *supra* note 1.

⁴ See Federal Bureau of Prisons, *supra* note 2.

⁵ U.S. Bureau of Labor Statistics, *Household Data Annual Averages: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino ethnicity*, Table 11, <https://www.bls.gov/cps/cpsaat11.pdf> (2019).

⁶ Law School Admissions Council, U.S. NATIONAL DECISION PROFILES (2018).

⁷ Daniel O. Bernstine, *Why LSAT Scores Should Not Be Used to Label Law Schools and Their Students*, LAW SCH. ADMISSION COUNCIL, <https://www.lsac.org/lsacreport/december2015/president.html> (last visited Aug. 20, 2022).

⁸ Aaron N. Taylor & Chad Christensen, *Law School Scholarship Policies: Engines of Inequity*, LSSSE (Feb. 2017). Annual Results 2016). Bloomington, IN: Indiana University Center for Postsecondary Research, <https://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf>

⁹ *Id.*

¹⁰ Bureau of Labor Statistics U.S. Department of Labor, *Usual Weekly Earning of Wage and Salary Workers Second Quarter 2022*, <https://www.bls.gov/news.release/pdf/wkyeng.pdf> (Jul. 19, 2022).

¹¹ Sandy Baum & Patricia Steele, *Who Borrows Most? Bachelor's Degree Recipients with High Levels of Student Debt* (2010), <https://trends.collegeboard.org/sites/default/files/trends-2010-who-borrows-most-brief.pdf> (last visited Jul. 27, 2022).

student LSAT score was 142,¹² the ABA has frequently filed notices of non-compliance for law schools where the median LSAT scores have ranged from 143 to 146.¹³

Part I — Historical Perspectives in Education

As mentioned, asymmetry in American legal education is a burden that specifically affects black students aspiring to pursue and succeed in careers in the legal profession. This issue is so plainly evident, it is difficult to understand why it has not been remediated. For context, the first English colony of America was founded at Jamestown, Virginia, in 1607.¹⁴ By late August 1619, the first enslaved Africans landed at Point Comfort in Hampton, Virginia.¹⁵ These two threshold events, only years apart, are windows to two separate historical perspectives of American history. However, to this day, many Americans learn history only from the first perspective in academic settings.

A. Primary and Secondary Education

In K-12 classrooms across the United States, history is typically a required social studies course. Since being introduced into the formal field of study, the main goal of social studies has been citizenship education.¹⁶ Social studies and U.S. history in K-12 curricula are taught through textbooks which convey the national story to prepare young people and to foster values that equip them to actively participate in society.¹⁷ However, these textbooks often overemphasize the contributions and morality of Christian white men, while evidently downplaying roles played by other ethnic and religious groups. In fact, research of social studies teachers' education textbooks over a seven-year period revealed their consistent neglect of race and racism in American history.¹⁸

This background knowledge brings us to the importance of the field of law. Law is a maze of facts and opinions that has led us to where we are today as a country. In that way, the field of law is the shaper of American history. It is, therefore, of great importance that those who study law be able to navigate all the complexities and paradigms the legal field has to offer.

¹² Maris 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> (last visited Jul. 27, 2022).

¹³ Jamal Bailey, *Revisiting the Myth of Meritocracy*, in *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 8 (Mathew Bender 2021).

¹⁴ National Park Service, U.S. Department of the Interior, *A Short History of Jamestown*, <https://www.nps.gov/jame/learn/historyculture/a-short-history-of-jamestown.htm> (last revised Dec. 22, 2021).

¹⁵ Beth Austin, *1619: FIRST AFRICAN LANDING, HAMPTON HISTORY MUSEUM 3*, <https://hampton.gov/DocumentCenter/View/24075/1619-Virginias-First-Africans?bidld=> (Dec. 2019).

¹⁶ J.P. Shaver, *Citizenship, Values, and Morality in the Social Studies*, in H. Mehlinger & O.L. Davis (Eds.), *THE SOCIAL STUDIES: THE EIGHTIETH YEARBOOK OF THE NATIONAL SOCIETY FOR THE STUDY OF EDUCATION* (105-125) (Univ. of Chicago Press (1981).

¹⁷ James W. Loewen, *LIES MY TEACHER TOLD ME: EVERYTHING YOUR AMERICAN HISTORY TEXTBOOK GOT WRONG*. (N.Y. Press 1995).

¹⁸ Geneva Gay, *Deracialization in Social Studies Teacher Education Textbook*, in G. LadsonBillings (Ed.), *CRITICAL RACE THEORY PERSPECTIVES ON SOCIAL STUDIES: THE PROFESSION, POLICIES, AND CURRICULUM* (123-148) (Greenwich: Information Age Publishing 2003).

B. Imbalances in Legal Education

The specific issue at hand in U.S. law schools is the lack of case law studies from matriculation through graduation that highlight and share stories about legal problems and challenges that have plagued minorities throughout the country's history.

Legal education teaches social rules and values, providing background knowledge of legal precedents from various fields. These broad frameworks are typically accompanied by the study of judicial opinions in case books that highlight the reasons for rules underlying established legal principles.¹⁹ Treatises, also known as hornbooks, complement student case book studies by explaining legal principles in narrative style, discussing themes, and citing supporting authority to sharpen student understanding of key legal precepts.²⁰

This is an effective model that demonstrably yields knowledgeable legal professionals, as it allows both macro- and micro-understanding of solutions to legal problems. However, imbalance in the curricula is evident. Most cases in the textbooks highlight issues that affect or have affected white Americans.²¹ This is evident in most core courses apart from criminal law and criminal procedure where laws that discuss criminal and civil rights can be found.²² Further, the entire case-dialogue method, introduced by Christopher Langdell, was created during a time when nearly all law students, educators, and lawmakers were white.²³ Studying the legal profession as a science, through cases and opinions dominated by white Americans inherently assigns the white perspective as objective in the legal field.²⁴ Even now, it is no secret that the hypothetical “objective reasonable person” standard often used in criminal law cases, is considered a white male.²⁵ While effective, this way of study does not consider that minority law students often have different experiences, beliefs, and values than their counterparts.²⁶ Therefore, minorities often abandon their life experiences to participate in and understand the “objective” court reasonings, even if the reasoning contributes to their systemic suffering. Examples include the *Dred Scott*²⁷ decision, which denied African Americans U.S. citizenship status, and *Plessy v. Ferguson*,²⁸ which upheld the legal separation of races.

¹⁹ Cynthia Lee & Angelina P. Harris, *CRIMINAL LAW, CASES AND MATERIALS* (4th ed. 2019); Epstein, et al., *CASES AND MATERIALS ON CONTRACTS: MAKING AND DOING DEALS* (6th ed. 2014); Joseph W. Glannon, et al., *CIVIL PROCEDURE: A COURSEBOOK* (4th ed. 2019).

²⁰ Richard G. Singer & John Q. La Fond, *CRIMINAL LAW: EXAMPLES AND EXPLANATIONS* (7th ed. 2018); David G. Epstein, et al., *A SHORT & HAPPY GUIDE TO CONTRACTS* (2019); Joseph W. Glannon, *THE GLANNON GUIDE TO CIVIL PROCEDURE* (4th ed. 2019).

²¹ Peter Goodrich & Linda G. Mills, *The Law of White Space: Race, Culture, and Legal Education*, 51 *JOURNAL OF LEGAL EDUCATION*, 15-38 (2001).

²² See Cynthia Lee & Angelina P. Harris, *CRIMINAL LAW, CASES AND MATERIALS* (4th ed. 2019); Ric Simmons & Renee Hutchins, *CRIMINAL PROCEDURE INVESTIGATIONS* (2d. 2019).

²³ Russell Weaver, *Langdell's Legacy: Living with the Case Method*, 36 *VILL. L. REV.* 517, 529 (1991).

²⁴ Judith G. Greenberg, *Erasing Race from Legal Education*, 28 *U. MICH. J.L. REFORM* 51, 68 (1994) (finding that “[t]he message of color blindness also is implicit in many of the common practices of legal education.”).

²⁵ Mia Carpiello, *Striking a Sincere Balance: A Reasonable Black Person Standard for “Location Plus Evasion” Terry Stops*, 6 *MICH. J. RACE & L.* 355, <https://core.ac.uk/download/pdf/232704581.pdf> (2001).

²⁶ Kimberle Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 *S. CAL. REV. L. & WOMEN'S STUD.* 33, 35-36 (1994).

²⁷ *Scott v. Sandford*, 60 U.S. 393 (1857).

²⁸ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

Part II — Legal Issues Disproportionately Affecting African Americans

A. Property Law

American history is replete with legal issues challenging minorities. Historically, property-centric issues have adversely affected blacks, such as neighborhood redlining, mortgage loan discrimination, rental discrimination, and evictions. Systemic racism issues tied to areas of interest such as these and others are clearly candidates for treatment in the LexisNexis® repository for study, discussion, and remediation investigatory efforts.

One historical example of systemic racism affecting property interests lies in partition sales, which work to the disadvantage of poor black farmers who own “heir property.” Heir property is defined to mean family-owned land that is jointly owned by descendants of a deceased person whose estate did not clear probate.”²⁹ Because many black farmers die without a will, their family members become tenants in common, which creates multiple interests in the property. In American history, this dynamic has made black farmers vulnerable to partition sales.³⁰ Usually, during a partition sale, a white buyer purchases the interest of one of the co-tenants and then seeks partition, or a split of the total land. For example, in 1991, Moffitt paid heirs of a family \$2,775 for one-fifth interest in 50 acres of undeveloped land. The following year, Moffitt filed for partition, forcing 42 heirs to court, negotiated a settlement with the family, then sold the land she purchased for \$217,000.³¹ This pattern of division has contributed to a decline in black farm ownership over the last 80 years, a trend that continues to this day.³²

Partition sales have been a major concern for decades. However, with more people becoming aware of its effects, 21 states have adopted the Uniform Partition of Heirs Property Act (UPHPA) since its first drafting in 2010 by the Uniform Law Commission.³³ The act provides remedies that allow families to hold onto their land whenever possible without restricting individual liquidation of shares.³⁴ State adoptions of the UPHPA validate the importance of showcasing issues that plague particular social groups, thereby generating awareness in people who have knowledge and hold positions of power, which in turn increases the probability of a speedy viable solution.

B. Criminal Law

The maxim “history repeats itself” reminds us that legal issues that have come up repeatedly in the past are still hot issues today. Criminal justice reform is a great illustration of this. For example, the Thirteenth Amendment to the U.S. Constitution, ratified in 1865, abolished slavery. However, a loophole in the

²⁹ Heirs’ Property Landowners, <https://www.farmers.gov/working-with-us/heirs-property-eligibility> (last visited Jul. 26, 2022).

³⁰ Jess Gilbert et al. *The Decline (And Revival?) Of Black Farmers and Rural Landowners: A Review of the Research Literature*: (Univ. of Wisc. Madison 2001).

³¹ Todd Lewan & Dolores Barclay, *The Authentic Voice, Developers and Lawyers Use a Legal Maneuver to Strip Black Families of Land*, https://theauthenticvoice.org/mainstories/tornfromtheland/torn_part5/ (last visited Jul. 27, 2022).

³² Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs’ Property Owners Facing Partition in Equity*, 17 TEMP. POL. & CIV. RTS. L. REV. 1 (2007).

³³ Uniform Law Commission, *Partition of Heirs Property Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d> (last visited Jul. 27, 2022).

³⁴ Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 ALA. L. REV. 1 (2014).

Thirteenth Amendment created an effective exception to slavery abolition for those convicted of a crime, leading to a surge in the African American prisoner population after 1865.³⁵

For instance, in 1850, 99% of prison inmates in Alabama were white Americans; by 1880, with the Thirteenth Amendment loophole in place, 85% of Alabama's prison population was African American.³⁶ We can see this trend emerging once again with mass incarceration beginning in the 1970s. After civil rights movements of the 1960s achieved some success, political figures of the late 1960s and 1970s, such as Richard Nixon, began to link street crime and drug use with civil rights activism.³⁷ In 1970, the federal and state prison population was 196,441, with 39% of the prison population African American.³⁸ By 1985, the federal and state prison population increased to 481,616; African Americans comprised 43% of that population.³⁹ In contrast, whites comprised 61% and 56% of the state and federal white prison population in 1970 and 1985, respectively. These trends are indicative of disproportionate targeting of African Americans.⁴⁰

Part III — Redefining Legal Education

A. Curriculum Recognition of Minority Perspectives

This project seeks to help mitigate, reduce, or eliminate the harms of systemic racism by using the LexisNexis® platform to uncover the stories, through the lens of law, from minority cultures that teach the same overarching laws, but in a more inclusive way. Identified case studies can be interjected into casebooks, treatises, and classroom curricula to educate advocates and improve understanding of cultural differences in the practice of law. As stated, recent statistics indicate that only 5.4% of American lawyers are African American,⁴¹ and that number declines with respect to other ethnic groups, such as Asians, who account for 4.7% of the profession.⁴² However, real change can happen by educating all law students on diverse precedents that form this country's rule of law. In this way, more legal professionals will engage in practice better equipped to recognize racial patterns in the law and to act on them.

A LexisNexis® repository of racially diverse cases can provide resources to create casebooks and treatises that would provide law students across the country with a legitimate record of minority group achievements in case law and a window to untold histories of America. Such a repository would also provide a corollary source of secondary education focusing on African Americans for discussion and review

³⁵ Christopher R. Adamson, *Punishment After Slavery: Southern State Penal Systems, 1865-1890*, SOCIAL PROBLEMS 30, no. 5 (1983).

³⁶ Khalil Gibran Muhammad, *Convict Leasing: BLACK HISTORY IN TWO MINUTES* <https://blackhistoryintwominutes.com/convict-leasing-be-woke-presents-black-history-in-two-minutes/> (Feb. 14, 2020).

³⁷ Richard M. Nixon, *Address Accepting the Presidential Nomination at the Republican National Convention in Miami Beach, Florida*, American Presidency Project, <https://perma.cc/XN26-RSRA>.

³⁸ U.S. Department of Justice, *State and Federal Prisoners, 1925-85* (Washington, DC: BJS, 1986), 2, <https://perma.cc/6F2E-U9WL>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ U.S. Bureau of Labor Statistics, *Household Data Annual Averages: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*, Table 11, <https://www.bls.gov/cps/cpsaat11.pdf> (2019).

⁴² See U.S. Bureau of Labor Statistics, *supra* note 5.

in law school classrooms. A secondary education means students will be able to learn relevant legal issues while receiving beneficial cultural exposure at the same time. Exposure to these three areas would be invaluable to law students.

The LexisNexis® repository could, and should, also include treatment of success stories tied to black leaders who have engaged in cases and controversies with positive results. Examples of black leadership success are manifold and multi-dimensional, leaving favorable outcomes for posterity in their wake. The positive social implications of successful legal engagements for future black leaders are palpable in a host of business and professional fields, such as business management, entrepreneurship, finance, marketing, and many others.⁴³ Coverage of positive legal engagement dynamics involving black leaders would fortify the repository’s viability as an essential resource for aspiring black law students and professionals.

B. Establishing a Legitimate Record of Achievement

Robert A. Sedler observed that the content of casebooks can be divided into three categories: “(1) “cases, cases, and more cases”; (2) “cases and substantive commentary”; and (3) “cases and commentary with direction and probing.”⁴⁴ Casebooks in the second and third categories present an opportunity for publishers to include untapped information through racially diverse cases. For instance, in *Fuller Products Co. v. Fuller Brush Company*,⁴⁵ an African American businessman sued a brush manufacturing company for the right to use the Fuller name. While ordinary on its face, *Fuller* provides a wealth of information about one of America’s most successful brands, owned by an African American. The case details the methods Mr. Fuller used to sell various beauty and cosmetic products in black communities.

S.B. Fuller himself was so influential, he is credited with training countless major black entrepreneurs, including John H. Johnson of Johnson Publishing, George Johnson of Johnson Products, and Joe L. Dudley of Dudley Beauty Co.⁴⁶ By studying substantive commentary on cases such as this one, law students can become familiar with leaders, businesses, and achievements of African Americans within all areas of American history that have never received mainstream recognition because of their skin color.

C. A Peek into the Untold History of America

Like the forgotten leaders and achievements on the browner side of history, there are also forgotten histories. In *Antonio Proctor v. United States*,⁴⁷ a black free man sued to claim a title in fee simple absolute for 185 acres of land near St. Augustine, Florida. Proctor claimed he was given the land under the authority of the Spanish government for his service in the Spanish militia. After Florida became the property of the United States, Mr. Proctor sought to keep his land by providing the original land grant and survey. The board of commissioners ultimately found that Mr. Proctor had established his title to the 185 acres, and

⁴³ See *Cases with Protagonists of Color*, HARVARD BUSINESS PUBLISHING EDUCATION, <https://hbsp.harvard.edu/protagonists-of-color/> (last visited August 8, 2022).

⁴⁴ Robert A. Sedler, *Constitutional Law Casebooks: A View from the Podium*, 79 MICH. L. REV. 1020, 1026 (1981).

⁴⁵ *Fuller Products Co. v. Fuller Brush Company*, 299 F.2d 772 (Ct. of App. 7th Circuit, 1962).

⁴⁶ Mary Fuller Casey, S.B. Fuller, *PIONEER IN BLACK ECONOMIC DEVELOPMENT* (Jamestown, N.C., Bridgemaster Press, 2003).

⁴⁷ *Antonio Proctor v. United States*, Congressional Documents 1777-present, U.S. Serial Set ID: ASP031 Pub.land.454 (1824).

they “confirm[ed] the same to him and his heirs” on June 4, 1824.⁴⁸ Teaching from this case opinion and from similar ones, especially in a course of instruction on property law, would educate students about land grants, while also uncovering pieces of American history, from the brown side, that are seldom discussed.

B. Secondary Cultural Education in Legal Classrooms

Finally, our history books tell us that African Americans were slaves, fought for civil rights, and later, that an African American became a president of the United States after serving Illinois in the U.S. Senate. There is so much more to the stories. Racially diverse case law studies can educate law students on a myriad of secondary cultural and historical topics. For example, in *Jenkins v. Elligan*,⁴⁹ the patent holder of hair weavings, Christina Jenkins, sued the defendant for infringement of her hairweaving patent. This case opinion details the history of hair weaves, their extensive use from as early as the 1920s, and other fascinating facts. The case provides copious secondary cultural and historical information, while also maintaining its relevance to business and trademark law.

Conclusion

Cultural competency in professional development is one way to mitigate and eventually eliminate systemic racism in the law profession. This competency is largely a function of exposure in legal education to a survey of legal principles that strikes a balance to drive increased attention to the distinctive relationship between the black community and the American legal system.

To this end, an accessible LexisNexis® repository of racially diverse case law to help legal scholars, historians, and others to increase awareness of minority culture and nuances in the law is currently in the development stages. The repository will soon be available to users through the Lexis+® Research platform in the secondary supplemental materials. To increase accessibility to the repository, a keyword search filter will be added to the LexisNexis® platform to distinguish racially diverse cases. Secondary supplemental material offered on the LexisNexis® platform would also provide interested students an opportunity to take a deeper dive into diverse cases with relevance to their course work in core disciplines, including Torts, Criminal Law, Contracts, Property Law, and Evidence. Additionally, efforts are currently underway to determine how to implement a LexisNexis® search option to facilitate diverse case searches. In addition to contemplating current racial/ethnic terminology, search filter technology will include AI functionality to capture historically-based terminology and language in cases to identify the racial makeup of the parties. Attaining these objectives will accomplish a great deal toward uncovering the diverse nature of American history. The result of the project will be to enhance research by making diverse cases easily searchable and accessible on the LexisNexis® platforms. The repository of secondary supplemental materials achieves the goal of allowing researchers to take a deeper dive into the history of minority populations. The search filter and AI filtration technology would allow users to begin their research with more diverse options within their search results.

⁴⁸ *Id.*

⁴⁹ *Jenkins v. Elligan*, 253 F. Supp. 403 (N.D. Ill. 1965).

Mentor: Natasha Newberry

Director & Senior Corporate Counsel, LexisNexis®



Reflection on working with Fellow Alexis McNeal:

As a black female attorney, I am painfully aware of how deeply embedded systemic racism is in our everyday lives. Participating as a mentor in the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship has been rewarding and invaluable. I have been inspired by the variety of creative ideas the Fellows are exploring to help eliminate systemic racism. Alexis McNeal is brilliant and impressive! She is passionate and deeply dedicated to uncovering the untold stories of black people through case law in an effort to provide a more robust legal and historical education to law students. Throughout my own legal education, aside

from cases specifically discussing race, the appearance of racially diverse parties noted in cases was rare. Alexis reminded me that much of black history is either missing or limited, often to slave narratives with a few stories of triumph. We notice trends throughout history that have a significant effect on black communities, but we often have no basis or foundation for the root of these trends. Alexis reminded me that to truly understand where we are going, we must understand where we have been. She and I have worked closely together to delve into the importance of expanding the legal education to explore caselaw that emphasizes racial diversity amongst the parties. She took her idea a step further by deciding to focus on a variety of secondary cultural and historical topics to not only educate, but to inspire future generations. There is much more to the black experience that should be explored. Alexis' goal to uncover and highlight the black experience through caselaw will enrich legal education for all law students and in turn better equip them as legal professionals.

Natasha Newberry is Director & Senior Corporate Counsel for LexisNexis® and is responsible for negotiating complex customer and vendor contracts and collaborating with the various market segments to address current legal needs and mitigate potential legal issues. Natasha earned her Juris Doctor from Northern Kentucky University-Chase College of Law, and her Bachelor of Arts degree from Bowling Green State University. She is a results-driven attorney passionate about contributing to the success of minorities within the legal profession.

Cluster 3:

Diversity in Leadership of Legal Profession

**Pathways to Practice Pipeline: Building Bridges for HBCU Students
to Legal Fields Lacking Diversity**

Nicolle Londoño

Moving the Needle on Black Ownership in the Law

Joanne Louis

Breaking Down the Barriers: A Pipeline to the Bench

Kristina Hall

Pathways to Practice Pipeline: Building Bridges for HBCU Students to Legal Fields Lacking Diversity

Nicolle Londoño

This project's mission is to increase the diversity of students in prestigious and lucrative fields of law by providing HBCU law school students with additional professional development support and exposure to ensure their success through the Pathways to Practice Pipeline Program.¹

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.



Nicolle Londoño is a third-year law student at Florida Agricultural and Mechanical University College of Law (FAMU). Currently, Nicolle serves as the Vice President of the Hispanic American Law Students Association and Secretary for the Marshall Bell Society. Prior to attending law school, Nicolle obtained her bachelor's degree in Political Science with a pre-law concentration while working as a litigation paralegal in varied practice areas. Nicolle lives in Orlando, Florida with her husband and child.

I. Introduction

Combating systematic racism requires us to take direct action by both tackling policies that prevent, and instilling practices that contribute to furthering, the advancement of racial equality within the legal practice for minorities. According to data released by the Minority Corporate Counsel Association (MCCA),² which has been tracking the representation of minorities and other disenfranchised groups in the legal profession since 1997, representation of minorities has only slowly increased with respect to the attainment of equity and other partnership status within law firms.³ Although 2020 data shows that minorities accounted for nearly 28% of all associates, representation declined dramatically for minorities in achieving partnership status — with only 12.5% achieving non-equity partnership status, and slightly over 10% achieving equity partnership levels.⁴ Despite modest growth in 2020, black and Latina women continue to account for less than 1% of all partners in U.S. law firms.⁵ The root of this lack of representation problem is that key decision makers in law firms often overlook minorities and fail to afford them with the opportunity to obtain the experience necessary to compete adequately for positions in the more prestigious and lucrative fields of practice.⁶

Experience for any aspiring attorney is essential when seeking employment in their desired field of study, regardless of their race, connections, or law school matriculation. Many fellow aspiring, first-generation Latina law students attending an HBCU have experienced first-hand the disparity between internship opportunities available to students that do not attend an HBCU, and those that do. This article argues that the underrepresentation of minorities in the more prestigious and lucrative fields of practice, which thereby makes internships for minorities in these areas less accessible,⁷ exacerbates systemic racism in the legal profession. Students who desire to practice in such areas of law experience a lack of opportunities that stifle their ability to engage in these fields. Minority law students require experience so that hiring partners and managers can view them as competitive candidates. To bridge this gap, the Pipeline to Practice initiative focuses on combating systemic racism in the underrepresented areas of law by pairing deserving, underrepresented law students with executive decisionmakers in these fields, providing the students with additional professional development support to ensure their success. This paper is divided into the following topics: an examination of barriers to entry for minority students in obtaining internships; an examination of the importance of internships; and how the Pipeline to Practice initiative will pave the way and bridge the gap for HBCU minority students, thereby allowing them access to areas of law otherwise unavailable to them.

² For more information on the MCCA, see <https://mcca.com/membership-advancing-dei/>.

³ Law Firm Diversity Survey, MINORITY CORPORATE COUNSEL ASSOCIATION (2021), <https://mcca.com/wp-content/uploads/2021/12/2021-MCCA-Law-Firm-Diversity-Survey-Report.pdf>.

⁴ Law Firm Diversity Survey, MINORITY CORPORATE COUNSEL ASSOCIATION (2021), <https://mcca.com/wp-content/uploads/2021/12/2021-MCCA-Law-Firm-Diversity-Survey-Report.pdf>. See also Karen Sloan, *Law Firm Diversity Gains Mainly Confined to Junior Ranks, Survey Finds*, Reuters (Dec. 23, 2021, 1:01 PM PST), <https://www.reuters.com/legal/legalindustry/law-firm-diversity-gains-mainly-confined-junior-ranks-survey-finds-2021-12-23/>.

⁵ 2020 Report on Diversity in U.S. Law Firms, THE NATIONAL ASSOCIATION OF LAW PLACEMENT (Feb. 2021), https://www.law.berkeley.edu/wp-content/uploads/2021/02/2020_NALP_Diversity_Report.pdf.

⁶ Dev Stahlkopf, *Why Diversity Matters in the Selection and Engagement of Outside Counsel: An In-house Counsel's Perspective*, AMERICAN BAR ASSOCIATION (May 6, 2020), https://www.americanbar.org/groups/litigation/publications/litigation_journal/2019-20/spring/why-diversity-matters-the-selection-and-engagement-outside-counsel-inhouse-counsels-perspective/.

⁷ Stuart Esrock, Ph.D., *Minority Students Less Likely to Get Paid Internships*, UNIVERSITY OF LOUISVILLE CAREER SERVICES (2022), <https://louisville.edu/career/news/minorities-overrepresented-unpaid-interns>.

II. Barriers to Entry

In 2012 Drs. Ashleigh Shelby Rosette and Robert W. Livingston conducted a ground-breaking study focusing on whether individuals with multiple-subordinate identities are more prone to experience negative perceptions about their leadership roles compared to others with single-subordinate identities.⁸ The results confirmed that black women leaders experienced “more negative leader perceptions”⁹ and “suffered double jeopardy and were evaluated more negatively than Black men and White women, but only under conditions of organizational failure.”¹⁰ Note, however, that all groups were examined and evaluated less favorably than white men.¹¹ The results of this study show that black women, carrying multiple-subordinate identities, are burdened by disproportionate sanctions for making mistakes on the job.¹² The negative perception that black women and other minorities experience goes hand-in-hand with additional “invisible labor” they are required to perform.¹³ This “invisible labor” concept illustrates the idea that black women and other minorities must work harder and perform flawlessly at work in order to combat the assumption of incompetence wrongly associated with their race or gender.¹⁴ This idea further exacerbates the feeling many minorities experience of not being sufficiently competent and not belonging. Imposter syndrome conceals the effects of structural racism, which often makes people of color feel as though they do not belong.¹⁵ Ebony McGee conducted a study of 54 black doctoral students in the field of science, technology, engineering, and mathematics, and the results demonstrated that almost all of them reported feeling like an imposter at least once in their academic lives.¹⁶ Minorities also can feel discouraged from applying to internships because they doubt their own ability and talent — a feeling known as “impostor syndrome” — or they determine, by surveying an organization’s racial demographics (especially in leadership positions), that a company is not seriously committed to racial diversity and inclusion.¹⁷ Research shows that minority racial groups’ feelings of self-doubt and insecurity stem in part from the perfunctory efforts that corporations take to be inclusive, making racial minorities hyper-visible and their contributions highly scrutinized.¹⁸

Racial minorities are faced with systemic obstacles in academia and the workplace. Companies can work toward creating a non-hostile, inclusive environment by removing the gateway barriers that hinder racial minorities. Minority students work toward destroying the barriers by encouraging dialogue on the challenges they face and the support they need, thereby creating a network of advocacy within the corpora-

⁸ Ashleigh Shelby Rosette & Robert W. Livingston, *Failure Is Not An Option for Black women: Effects of Organizational Performance on Leaders with Single Versus Dual-Subordinate Identities*, J. EXPERIMENTAL SOC. PSYCH., Vol. 48, Issue 5 at 1162-1167 (Sept. 2012), <https://www.sciencedirect.com/science/article/abs/pii/S0022103112000832?via%3Dihub>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Tsedale M. Melaku, *Why Women and People of Color in Law Still Hear “You Don’t Look Like a Lawyer,”* HARVARD BUSINESS REVIEW (Aug. 07, 2019), <https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer>.

¹⁴ *Id.*

¹⁵ Ebony McGee, *Imposter Syndrome? No. Just Racism*, University World News (June 5, 2021), <https://www.university-worldnews.com/post.php?story=20210531104710417>.

¹⁶ *Id.*

¹⁷ Jasmine Medina-Perez, *Reimagining the Internship to Promote Racial Equity*, STANFORD SOC. INNOVATION REV. (July 9, 2019), https://ssir.org/articles/entry/reimagining_the_internship_to_promote_racial_equity#.

¹⁸ *Id.*

tion to advocate and facilitate those communications and working together toward creating the supportive strategies discussed.¹⁹

Systemic racism goes beyond race and gender. It undoubtedly is present in our everyday lives and affects all minorities, unfairly, in ways of which some may be unaware. Linguistic barriers present an obstacle for many working minorities. These linguistic barriers prevent working minorities from advancing through promotions and frequently are encountered in standardized testing. These are only two of the many obstacles faced by minorities.²⁰ Latino professionals emerge from a distinct cultural background and language than that of the black community but experience similar struggles. For many minority professionals, learning the language and mannerisms of corporate America can be seen as a challenging task. In corporate America, specifically in Fortune 500 companies, only 1% of Chief Executive Officers were black, 2.4% were East Asians or South Asians, and 3.4% were Latinx.²¹

Linguistic obstacles present barriers to promotions and barriers to entry. In 2007, the U.S. Department of Justice sued the New York City Fire Department (FDNY) after an association of black firefighters contended through thoughtful examination of the entrance questions and statistics that the examination presented a bias against minority applicants.²² In July 2009, U.S. District Judge Nicholas Garaufis held that the written tests had “discriminatory effects and little relationship to the job of a firefighter,”²³ thereby ruling that the FDNY exams administered in 1999 and 2002 were biased against black and Hispanic applicants.²⁴ Corporations must look for solutions to combat systemic racism and work toward providing opportunities for minorities where they can build their future and achieve financial security.²⁵ Combating systemic racism in the legal profession begins early in a minority student’s career with access to internship opportunities that will lead to executive decision-making positions. Internships are imperative to students’ work placements and experiences upon graduation.²⁶

Jon Pryor, a higher education researcher, conducted a study that focused on the relationship between a student’s college experience and their professional outcome.²⁷ The study found that college graduates who

¹⁹ *Id.*

²⁰ This paper specifically chooses to discuss two of the many barriers to entry to highlight some of the obstacles faced by minorities that corporations may be either unaware of or turn a blind eye to. This paper states these in a way to gather the recognition of such barriers in hopes that corporations and the legal field will understand and combat the micro-and-macro transgressions faced collectively.

²¹ Richard L. Zweigenhaft, *Diversity Among Fortune 500 CEOs from 2000 to 2020: White Women, Hi-Tech South Asians, and Economically Privileged Multilingual Immigrants from Around the World*, Guilford College, WHO RULES AMERICA (Jan. 2021), https://whorulesamerica.ucsc.edu/power/diversity_update_2020.html.

²² See *United States v. City of New York*, 637 F. Supp. 2d 77 (E.D.N.Y. 2009) (finding New York City’s hiring practices had an unlawful disparate impact on black and Hispanic firefighters). See also N.R. Kleinfeld, *Baptism by Fire: A New York Firefighter Confronts his First Test*, THE NY TIMES (June 20, 2014), <https://www.nytimes.com/interactive/2014/06/22/nyregion/rookie-new-york-firefighter-faces-first-test.html>.

²³ *United States v. City of New York*, 637 F. Supp. 2d 77, 79 (E.D.N.Y. 2009). See also N.R. Kleinfeld, *Baptism by Fire: A New York Firefighter Confronts his First Test*, THE NY TIMES (June 20, 2014), <https://www.nytimes.com/interactive/2014/06/22/nyregion/rookie-new-york-firefighter-faces-first-test.html>.

²⁴ *United States v. City of New York*, 637 F. Supp. 2d 77, 79 (E.D.N.Y. 2009).

²⁵ Bria Saunders, *Internships: The Solution to Racial and Ethnic Discrepancy in The Legal Field*, 22 LOYOLA J. PUB. INT. L. 132 (Winter 2020).

²⁶ *Id.*

²⁷ The College of St. Scholastica, *The Importance of Internships: How Students & Employers Both Reap the Benefits* (April 9, 2018), <https://www.css.edu/about/blog/the-importance-of-internships-how-students-employers-both-reap-the-benefits/>.

had internships in college, years later as alumni, were twice as likely than those who did not have internships to be engaged in their work and 1.5 times more likely to report high levels of wellbeing.”²⁸ Furthermore, the National Association of Colleges and Employers (NACE) reports that internship experience among college graduates is directly linked to students with a higher chance of obtaining a job offer after graduation versus a student who was not able to participate in an internship.²⁹ A 2019 analysis conducted by NACE found that, as a whole, employers discriminate against people of color when hiring and paying interns.³⁰

III. Pipeline to Practice

The goal of the Pipeline to Practice project is to pair deserving law students attending an HBCU with an internship where the students are exposed to national firms and corporations, and to aid the student’s accrual of experience necessary to secure an internship, thereby obtaining the experience necessary to succeed as an attorney with the hopes of a possible job placement upon graduation.

The first part of the solution is to identify the problems and understand what it takes to dissolve those barriers and replace them with opportunities. The Pipeline to Practice project aims to remove the barriers for minority law students attending HBCUs while navigating the ills of systemic racism, increasing workplace diversity, and solving the underrepresentation of minorities in the top areas of the legal fields. This project will address the underrepresentation of minorities in top legal fields by connecting HBCU students with industry leading corporations and top law firms within the student’s area of interest by: (1) recruiting and partnering with top corporations and law firms to provide internships in underrepresented areas of law; and (2) preparing and placing students with these partners. LexisNexis® has advocated for this Pipeline to Practice by facilitating connections by leveraging relationships with large law clients and corporate legal departments to determine opportunities to connect deserving minority students with opportunities in exclusive legal fields. The Prepare to Practice content will be used to prepare program participants for early career success. The Pipeline to Practice was built on feedback from summer associates, legal interns, and judicial clerks to help new legal professionals complete the common tasks they face. The content will be leveraged to provide program participants with important resources to enable their success.

²⁸ *Id.*

²⁹ Key Gray, *Key Steps for Boosting Diversity Hiring of Interns*, NACE (June 13, 2022), <https://www.nacweb.org/diversity-equity-and-inclusion/best-practices/key-steps-for-boosting-diversity-hiring-of-interns/>.

³⁰ Steven Rothberg, *Study Finds that Largest Employers of College Students Discriminate Against People of Color*, COLLEGE RECRUITER (July 31, 2021), <https://www.collegerecruiter.com/blog/2020/07/31/study-finds-that-largest-employers-of-college-students-discriminate-against-people-of-color>.

Mentor: Brian Kennedy

Director, Government Content, LexisNexis® Legal & Professional



Reflection on working with Fellow Nicolle Londoño:

As a long-term LexisNexis® employee, one of the things that I cherish about being a part of this organization is its commitment and dedication to being a good corporate citizen. The efforts of LexisNexis® to advance the Rule of Law throughout the world are extremely appealing to me. The establishment of the LexisNexis® African Ancestry Network & LexisNexis Rule of Law Foundation is a prime example of the commitment of LexisNexis® to advancing the rule of law and fighting for equity and fairness. I am honored to serve as a mentor to Fellow, Nicolle Londoño. From the first time I met with Nicolle, she has impressed me with her compassion, dedication, and work ethic. Nicolle's project seeks to battle systemic racism by providing law students from HBCU Law schools opportunities not readily available based on perception. Being a graduate from North Carolina Central

School of Law, I am sensitive to these perceptions, and I appreciate Nicolle's effort towards seeking equity in this area. Nicolle has opened my eyes to underrepresented areas of law that I was unaware of, and I have learned a lot during this process. Nicolle's research showing the effects of these perceptions is thorough and enlightening. Nicolle has impressed me with her ability to successfully balance working on this project while handling her school obligations, extracurricular duties, and tending to personal obligations. She has the determination and work ethic that will result in this project leading to meaningful change by combating systemic racism in the U.S. legal system.

Brian Kennedy began working at LexisNexis® as a Legal Analyst one year after graduating from North Carolina Central University School of Law. Brian has worked at LexisNexis® in several capacities including Senior Legal Analyst, Editorial Manager, and Director of Editorial. Brian currently serves as Director of Government Content; he is responsible for establishing and maintaining primary law publishing contracts and acquiring data. Brian is a founding member of the Raleigh African Ancestry Network and currently serves as Treasurer. Brian and his wife Kimberly are the proud parents of three wonderful children. Brian and Kimberly spend their free time chasing after their five-year-old grandson.

Moving the Needle on Black Ownership in the Law

Joanne Louis

This project's mission is to develop a curriculum outline for the Black Ownership in the Law Accelerator Program, also referred to as B.O.L.¹ to provide minority entrepreneurs with the mentorship, resources, coaching, professional development, and training that they need to launch a law practice successfully.

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.



Joanne Louis is a third-year law student at Howard University School of Law. Joanne graduated with a Bachelor of Science in Entrepreneurship and Finance from Babson College, and in 2016 she became the owner of Writing Stylist LLC, a writing consulting company. Through her business, she has helped many black founders start and grow their businesses. After graduation, Joanne will join the Investment Funds and Private Equity practice at Sidley LLP in Boston, MA.

In today's world, ownership is power. Entrepreneurship and business ownership have specifically been pathways for different groups of people to gain power, status, and autonomy. Systemic racism continues to persist in the legal field because of the lack of diverse representation in senior leadership and in partnership as owners. Currently, black lawyers make up 10% of senior leadership.² According to the most recent Vault/Minority Corporate Association Law Firm Diversity Survey, just 2% of law firm partners are black.³ Innately, systemic racism exists because of racist systems; racist systems exist because of the people who put them in place — people in leadership. The lack of diverse law firm owners directly challenges the racial equality that this country promotes. The Black Ownership in the Law Accelerator Program will provide entrepreneurs with the mentorship, resources, coaching, professional development, and training that they need to be their own boss. This project has a people-centric deliverable, namely, the increase in black-owned law firms and black-owned law firms staying in business longer.

Society needs more black-owned law firms to really shape how business is done in America and how black people are viewed in this country. This paper argues that increasing the number of black-owned law firms is crucial to furthering racial equity and representation, not only for the legal field, but also for both lawyers and the greater society. Part I of this paper will discuss the current status of black ownership in the law. Part II will discuss the results of a survey that was sent to black-owned law firms. Part III will discuss B.O.L., the Accelerator Program for aspiring law firm owners. Part IV will discuss the impact of this program and explore the changes on society.

Part I — Today's Black Ownership of Law Firms

There are few black partners at the top law firms, which hinders the potential for more black-owned law firms. Partners get the experience of running a law firm, and are most capable of starting a law firm because of that experience. If there aren't more black partners, the likelihood of having more black lawyers start businesses is low. According to the National Association for Law Placement (NALP) *2020 Report on Diversity*, only 2.2% of partners in the U.S. are black or African American (largest percentage as of the data of that study).⁴ This data is depicted in Chart 1, below. Further, only 2.80% of partners are Latinx.⁵ These statistics reflect the current low leadership of black lawyers in the legal system, which undermines the potential of black lawyers leading the country through their businesses and practices.

² NALP, Inc., *2020 Report on Diversity in U.S. Law Firms* (Feb. 2021), https://www.law.berkeley.edu/wp-content/uploads/2021/02/2020_NALP_Diversity_Report.pdf.

³ Orlando R. Richmond Sr., *A Black Partner's Perspective on Why Law Firms are Failing at Diversity*, FORTUNE (June 11, 2020 9:28 AM PDT), <https://fortune.com/2020/06/11/law-firms-black-diversity-inclusion/>.

⁴ NALP, Inc., *2020 Report on Diversity in U.S. Law Firms* (Feb. 2021), https://www.law.berkeley.edu/wp-content/uploads/2021/02/2020_NALP_Diversity_Report.pdf.

⁵ *Id.*

	Partners					
	Asian		Black or African American		Latinx	
	Total %	% Women	Total %	% Women	Total %	% Women
2020	4.08%	1.62%	2.10%	0.80%	2.80%	0.90%
2019	3.89	1.46	1.97	0.75	2.52	0.80
2018	3.63	1.38	1.83	0.68	2.49	0.77
2017	3.31	1.23	1.83	0.66	2.40	0.73
2016	3.13	1.17	1.81	0.64	2.31	0.68
2015	2.89	1.07	1.77	0.64	2.19	0.63
2014	2.74	0.99	1.72	0.63	2.16	0.60
2013	2.67	0.91	1.78	0.60	1.99	0.54
2012	2.48	0.89	1.73	0.60	1.91	0.48
2011	2.36	0.82	1.71	0.58	1.92	0.48
2010	2.30	0.81	1.70	0.56	1.70	0.44
2009	2.20	0.76	1.71	0.57	1.65	0.41

The percentage of partners reported as equity partners is also low for black and African American people.

Source: NALP Report on Diversity, available at https://www.law.berkeley.edu/wp-content/uploads/2021/02/2020_NALP_Diversity_Report.pdf.

Table 4. Distribution of Equity and Non-Equity Partners by Gender and Race/Ethnicity

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Equity partners	12,396	13,864	13,760	13,508	13,078	13,323	12,630	12,067	11,633	9,581
% men	84.4%	84.7%	83.5%	82.9%	82.6%	81.9%	81.3%	80.4%	79.7%	78.7%
% women	15.6%	15.3%	16.5%	17.1%	17.4%	18.1%	18.7%	19.6%	20.3%	21.3%
% people of color*	4.7%	4.8%	5.4%	5.6%	5.6%	5.8%	6.1%	6.6%	7.6%	8.1%
Non-equity partners	7,842	8,992	9,101	8,968	9,369	9,278	8,720	8,959	8,675	7,588
% men	72.3%	72.7%	72.4%	71.8%	71.2%	70.6%	69.3%	69.5%	68.9%	68.4%
% women	27.7%	27.3%	27.6%	28.2%	28.8%	29.4%	30.7%	30.5%	31.1%	31.6%
% people of color*	8.3%	8.4%	9.1%	8.9%	9.4%	9.9%	10.4%	10.7%	10.7%	11.8%

Source: NALP Report on Diversity, available at https://www.law.berkeley.edu/wp-content/uploads/2021/02/2020_NALP_Diversity_Report.pdf.

The distribution of equity and non-equity partners by race additionally shows the lack of representation in leadership in law firms. According to Table 4, only 8.1% of people of color were equity partners in 2020.⁶ Lastly, black lawyers in big law firms represent the smallest population in 2020. In law firms with more than 700 lawyers, Table 6 demonstrates that only 11.54% were people of color.⁷

⁶ *Id.*

⁷ *Id.*

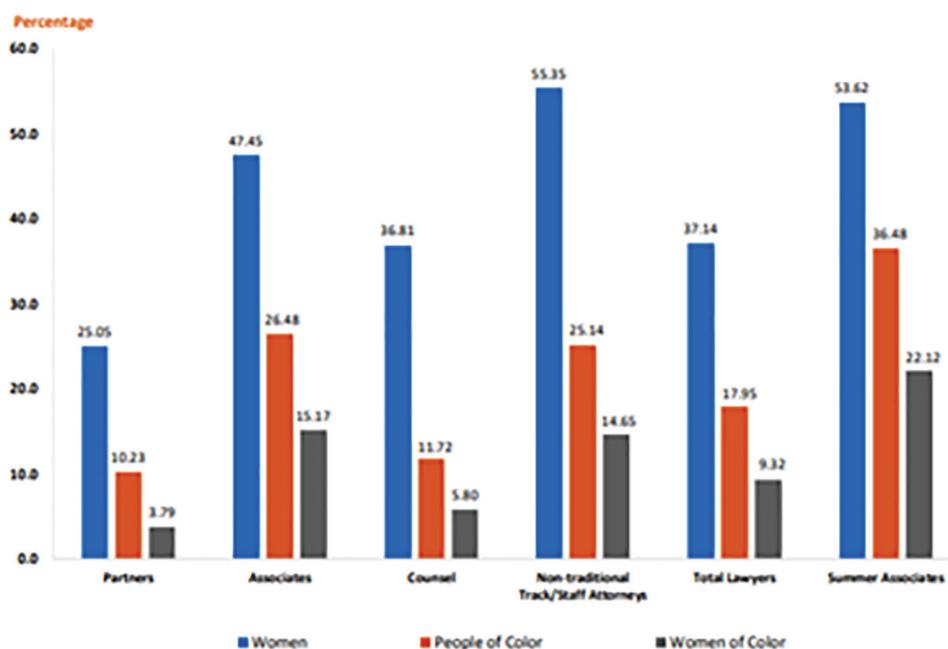
Table 6. Women and People of Color at Law Firms: Partners and Associates — 2020

	Partners				Associates				# of Offices
	Total #	% Women	% People of Color*	% Women of Color*	Total #	% Women	% People of Color*	% Women of Color*	
Total	42,438	25.05%	10.23%	3.79%	43,398	47.45%	26.48%	15.17%	883
By Number of Lawyers Firm-wide:									
100 or fewer lawyers	1,459	23.71	8.57	3.36	845	41.18	21.30	12.07	51
101-250 lawyers	5,910	24.40	7.56	2.61	3,477	47.11	20.74	12.22	101
251-500 lawyers	8,263	24.97	8.97	3.34	5,802	45.93	24.51	13.36	184
501-700 lawyers	3,582	26.41	9.74	3.91	3,317	47.54	26.80	15.44	71
701+ lawyers	23,224	25.12	11.54	4.25	29,957	47.96	27.64	15.92	476

Source: NALP Report on Diversity, available at https://www.law.berkeley.edu/wp-content/uploads/2021/02/2020_NALP_Diversity_Report.pdf.

Finally, the percentage of black people in leadership also decreases as time in a law firm increases.⁸

Chart 7: Percentage of Women and People of Color at Law Firms — 2020



Source: NALP Report on Diversity, available at https://www.law.berkeley.edu/wp-content/uploads/2021/02/2020_NALP_Diversity_Report.pdf.

⁸ *Id.*

It is clear that black lawyers have limited power in law firms, and as a result they have a very small voice in the legal system. Further, because black leadership is low in law firms, there aren't many black lawyers who have the experience and knowledge required to start and successfully run a law firm business. The Accelerator Program is necessary to teach and coach aspiring entrepreneurs who may not have the experience or resources needed to be successful.

Part II — Black Law Firm Owners Survey Results

The Accelerator Program will provide resources and tools to help aspiring black entrepreneurs start their own law firms. In order to adequately assist the lawyers, a survey was conducted to determine the most important resources for future entrepreneurs. Insights were gleaned from responses of entrepreneurs who have launched businesses. Below are the survey questions that were asked:

Survey Questions

1. Name
2. Ethnicity
3. Name of Law firm
4. Law firm website
5. Main type of law serviced
6. Did you work before starting your firm?
7. If so, for how many years?
8. How long have you been a law firm owner?
9. How long have you been an attorney?
10. What city is your business in?
11. How many people work in your business?
12. How many people did you start with?
13. Who did you need when you first started?
14. What was the hardest party of your journey to ownership?
15. How did you get new business when you started?
16. Was raising capital a hardship?
17. What was a large obstacle that stood in the way of starting your law firm?
18. Did you use any helpful resources when you started your firm?
19. Did you have peer support during your entrepreneurial journey?
20. What program recommendations do you have for an Accelerator Program for Black entrepreneurs who want to start their own law firms?
21. Did you have enough resources to start?

- a. Which ones did you wish you had?
22. What area of business/entrepreneurship did you wish you knew better?
23. What advice would you give to a black lawyer trying to start a business?

Survey Reflections

The survey conducted yielded several insights. Law firm owners who responded to the survey were firm owners who ranged from 1.5 years of operation to 13 years of operation in a number of areas and services including business transactions, intellectual property, family law, real estate, and commercial transactions. Several owners launched their law firms immediately following law school, indicating there may be a need to provide more resources and training to law school students about business ownership. Law firms represented in the survey were all small and had less than ten employees. Survey respondents indicated a perceived gap of administrative assistant and accounting resources as a key challenge at the beginning of their practice. Other challenges highlighted included sustaining clients, gaining grants/capital, and getting their clients to pay for services rendered in a timely fashion. Survey respondents shared that major expenses included legal fees such as continuing legal education (CLE) classes, business website upkeep, license renewals, taxes, operations, other overhead, and payroll expenses. Finally, responses indicated that information and resources related to finance, sales, marketing, and client retention would be most beneficial.

Part III — B.O.L., the Accelerator Program for Aspiring Black Law Firm Owners (Black Ownership in the Law)

The recommendation is a nine-month program with three phases to provide aspiring black lawyer entrepreneurs with the mentorship, resources, coaching, professional development, and training to be a successful entrepreneur. Results from the administered survey and insights from LexisNexis+® informed the recommended phases and curriculum content.

Phase 1: Feasibility (2 months)

The first phase of the Accelerator Program should prepare future owners to focus on the feasibility of the business and development of a business plan. Feasibility will be assessed via in-depth market research, entity formation decisions, getting trademarks, and creating a business plan. Market research will be essential to understanding the potential for the business and preparing the entrepreneur to compete in the market. Participants should be trained to use resources to map out their target market audience and understand the demographics such as age, location, and issues that they have as potential clients.

Choosing the entity is essential to the start of the business, and an expert should be provided to help participants with the type of entity formation that is available to each business owner depending on the state in which they are operating or doing business. Using LexisNexis® forms, clauses, and business formation to help inform this important curriculum. Sample Practical Guidance checklists and incorporation documents by state should be provided to participants with forms and drafting notes necessary to establish the appropriate entity. The Practical Guidance drafting notes help business owners avoid common pitfalls. The drafting note also contain alternate clauses to account for other business factors.

Business plans are one of the most crucial elements of starting a business. According to the U.S. Small Business Administration, future business owners should create a business plan because it: (1) will help steer the business as it starts and grows; (2) is a straightforward way to organize the business starting process; (3) will help achieve business milestones; (4) can help with funding; and (5) is a tool to shape the business and culture of a business.⁹

Finally, the curriculum will cover: accounting and financial reporting for sole practitioners, day-to-day operations of a sole practice, information to acquire malpractice insurance, working virtually, and having a virtual paralegal to assist with day to day functions in a law practice. Leasing office space to assist with client waiting area, interview rooms, and meeting area will also be provided.

Phase 2: Building

The second phase curriculum recommendations include resources to help future entrepreneurs gain the skills to build their business through mentorship from current black business owners and relevant resources and tools. Mentorship will be an important way for aspiring entrepreneurs to avoid pitfalls. The curriculum should also include panel discussions that provide future owners with tips and storytelling from successful owners on how they effectively compete against larger firms.

Another focus during the building phase should be equipping future owners with tools and resources to actually run their business and serve their clients. LexisNexis® Practical Guidance resources provides tools which will allow attorneys practicing solo or with a partner to handle every aspect of a client's case from start to close. As the sole legal counsel for clients, it is critical to digest immense amounts of case law in a short span of time. Along with Practical Guidance, Lexis+ provides valuable resources to help entrepreneurs conduct market research, vet potential clients and accelerate business development. These features and services will provide entrepreneurs with an opportunity to serve their clients more efficiently.

Phase 3: Execution

The final proposed phase is execution. The execution phase should focus on building a team, marketing, clients, and running the business for four months under the supervision of business coaches. The goal would be to engage with experts to coach on social media and marketing and how to build a client-base. Insights from the survey indicated these were potentially significant knowledge gaps for entrepreneurs, so extra care should be taken to provide this level of support.

Part IV — Impact and Changing Society

The goal of this Accelerator Program is to increase the number of black-owned law firms. Increasing black law firm owners will make the legal system more accessible to diverse clients as well as provide greater influence to black legal professionals. More diverse law firms and more diverse ownership will lead to a more equitable legal system.

⁹ *5 Reasons You need a business plan*, SMALL BUSINESS ADMINISTRATION (Dec. 10, 2018), [https://www.sba.gov/blog/5-reasons-you-need-business-plan#:~:text=Business%20plans%20can%20help%20you,business\)%20is%20a%20smart%20decision.](https://www.sba.gov/blog/5-reasons-you-need-business-plan#:~:text=Business%20plans%20can%20help%20you,business)%20is%20a%20smart%20decision.)

Mentor: Jamie Holden

Director of Enablement LexisNexis® North America



Reflection on working with Fellow Joanne Louis:

Volunteering to serve as a mentor for the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship is a responsibility that I take very seriously. I believe in its mission and recognize the opportunity to effectuate solutions-based change and direct action to help eliminate systemic racism in the legal system. I am especially impressed by Joanne Louis and her vision to grow black law firm ownership and leadership. Acting on Joanne's project will yield significant benefits to black law school students and attorneys who aspire to be entrepreneurs. An Accelerator Program will facilitate Joanne's vision with the coaching, training, mentorship, and

other professional development resources necessary to help entrepreneurial black lawyers achieve their goals. Joanne's survey will uncover important insights to help build a framework for this program.

Aside from her remarkable Fellowship work, Joanne's demonstrable dedication to her community, professional responsibilities, and motivated educational achievement are all elements indicative of her ambition and character. It has been impressive to watch Joanne manage all of her responsibilities with a positive and enthusiastic attitude. Her efforts will not only help create a more diverse legal profession but a more diverse legal profession and American social fabric.

Jamie Holden has been with LexisNexis® for more than seventeen years and has held multiple roles in sales, sales leadership, sales training, and product release support. He and his team work closely with our product, marketing, and business leaders to educate our 800+ sales professionals on our existing products, their value propositions, competitive differentiators, and new enhancements so that they can confidently speak to the value of our innovative solutions to our customers. He has a Bachelor's Degree in Marketing from Saint Joseph's College and an MBA from the University of Dayton where he also served as an Adjunct Instructor for six years.

Breaking Down the Barriers: A Pipeline to the Bench

Kristina Hall

This project's mission is to increase the diversity of federal judicial clerks by making recommendations for a program that pairs talented and prepared law students from underrepresented backgrounds with the key resources they need to obtain positions as federal clerks.



Kristina M. Hall is a third-year law student at Texas Southern University, Thurgood Marshall School of Law. Her previous experience as a paralegal at Hunton Andrews Kurth LLP and internship for United States District Judge George C. Hanks, Jr., helped clarify her interest in civil litigation. Kristina served as a summer associate for Norton Rose Fulbright LLP, where she shadowed attorneys as they prepared an argument before the United States Court of Appeals for the Fifth Circuit. After graduation, Kristina's goal is to clerk for the United States District Court for the Southern District of Texas. Kristina's fellowship project focuses on creating opportunities for law students of color to obtain a federal clerkship and increase the number of people of color in the federal judiciary.

Introduction

Which came first: the chicken or the egg?” The causality dilemma that is “the chicken or the egg” seems as if it has no place in the discussion of the lack of diversity in the federal judiciary; however, this metaphoric adjective describing situations of infinite regress serves as a perfect analogy of the federal judicial bench. As of July 2022, only 155 of the 1,409 judges sitting on the federal bench identify as having some African descent.¹ Of the 116 Justices who have served on the Supreme Court, all but nine have been white men with only four out of the nine being people of color.² Thus, a meager 3.45% of the Justices in American history have been people of color. The most recent data released by the National Association for Law Placement reflects that out of 3,100 graduates in 2019 that were afforded the opportunity of a federal judicial clerkship, 79.2% were white, and 20.8% were persons of color.³ Out of the 20.8% persons of color, only 2.1% were black or African American, thereby representing the group least likely to obtain a federal clerkship.⁴ In comparison, black or African Americans represent 8.7% of the graduating class of all ABA-accredited law schools and 13.4% of the U.S. population in 2019.⁵ In each phase of becoming a federal judge — from law school to clerkship to sitting judge — the statistics show a clear underrepresentation. This gross underrepresentation is said to be the result of a plethora of factors, including: missed educational opportunities putting fewer minorities in the applicant pool; possible candidates being enticed by the hefty salaries offered in “BigLaw,” due to significant law school debt; and judges’ hiring practices, such as only hiring from top-tier law schools or using recommendations from previous clerks or law school professors.⁶ However, there are other critical factors at work, in the form of subconscious biases that create unfounded kinship between individuals sharing similar racial and background characteristics⁷ and exacerbate the lack of diversity by freezing out applicants who may be equally qualified. Therefore, the initial question remains — how can we increase diversity on the bench when there is no diversity on the bench?

This paper attempts to answer the question of how we can increase diversity on the bench by arguing that systemic racism in the legal profession is exacerbated by the underrepresentation of minorities in judicial clerkships where they can gain some of the experience necessary to become a federal judge. It is essential to pair deserving, underrepresented law students with executive decisionmakers, and LexisNexis® will assist with the creation of a pipeline to establish fairer judicial clerkship hiring practices for law students of color. This paper is organized as follows: Part I will address the systemic issues that have caused the lack of diversity in federal judicial clerkships. Part II will address the importance of professional diversity in the judiciary. This part delves into the lack of diversity in the judiciary as it pertains to the longevity of

¹ *Biographical Directory of Article III Federal Judges, 1789-present*, FEDERAL JUDICIAL CENTER, <https://www.fjc.gov/history/judges/search/advanced-search> (last visited July 19, 2022).

² *Id.*

³ *Racial/Ethnic Representation of Class of 2019 Judicial Clerks*, THE NATIONAL ASSOCIATION FOR LAW PLACEMENT (Feb. 2021), <https://www.nalp.org/0221research>.

⁴ *See supra* note 3 (discussing that “At the federal clerkship level, Black graduates had the lowest level of employment when compared to Asian, Latinx, and white graduates. At just 2.1%, Black graduates were employed in federal clerkships at nearly half the rate of graduates overall ...”).

⁵ *See supra* note 3.

⁶ *Courting Clerkships: The NALP Judicial Clerkship Study*, THE NATIONAL ASSOCIATION FOR LAW PLACEMENT (Oct. 2000) available at <https://www.nalp.org/courtingclerkships?s=judicial%20clerkship%20study>.

⁷ *See generally* Cheryl Pritlove, Clara Juando-Prats, Kari Ala-leppilampi, and Janet A Parsons, *The Good, the Bad, and the Ugly of Implicit Bias*, THE LANCET (2019).

Justices being appointed to the bench, thereby significantly and disproportionately affecting disenfranchised people. Finally, Part III will address how a pipeline to a federal clerkship can mitigate the different barriers that keep persons of color from obtaining a coveted federal clerkship and create a more diverse judiciary that better represents the number of law students of color.

Part I – Systemic Issues and the Lack of Diversity in the Judiciary

America has been considered a “melting pot,” due to its array of cultures, ethnicities, and races; however, implementation of this diversity rarely manifests in practice.⁸ Ironically, the language and intent of the Thirteenth, Fourteenth, and Fifteenth amendments embody a promise of equality and prohibit the states from making or enforcing laws that would abridge the privileges or immunities of citizens of the United States or deny any person within its jurisdiction the equal protection of the laws.⁹ However, this express language and intent did not stop the states from implementing such laws that *did* abridge the privileges or immunities of its citizens, specifically its African American citizens, or from courts upholding such laws. With state legislators and courts contradicting the language and intent of the law, separatism reigned and was the initiating culprit feeding the lack of diversity in most professional settings within the legal arena — courts being no exception.¹⁰

In *Plessy v. Ferguson*,¹¹ African Americans quickly realized this promise of equality amounted to empty promises, with little possibility of application. Prior to *Plessy*, and until the 1880s, white and black Southerners mixed relatively freely.¹² However, in *Plessy*, the United States Supreme Court upheld the constitutionality of racial segregation under the “separate but equal” doctrine.¹³ The case stemmed from an 1892 incident in which an African American train passenger, Homer Plessy, refused to sit in a car for “blacks.”¹⁴ The Supreme Court rejected Plessy’s argument that his constitutional rights were violated, ruling that a law that “implies *merely* a legal distinction” (emphasis added) between whites and blacks was

⁸ See Liwen Mah, *The Legal Profession Faces New Faces: How Lawyers’ Professional Norms Should Change to Serve a Changing American Population*, 93 CALIF. L. REV. 1721, 1733-1734 (2005) (“A tenet of American mythology is the “melting pot,” which was first described in a play by the Jewish-English immigrant Israel Zangwill. Under this view, America “melts” immigrants into a single American culture. From a normative perspective, the American melting pot has two prongs: Americans must agree that immigrants can and should become Americans, and immigrants must agree to become Americans.”).

⁹ Kurt T. Lash, *The Origins of the Privileges or Immunities Clause, Part I: “Privileges and Immunities” as an Antebellum Term of Art*, 98 GEO. L.J. 1241, 1242 (2010).

¹⁰ See Jason Rathom, *A Post-Racial Voting Rights Act*, 13 BERKELEY J. AFR.-AM. L. & POL’Y 139, 174 (2011) (“As throughout American history, however, civic nationalism exists in tension with racial nationalism. A strengthened civic nationalism could roll back the advances of the new racial nationalism and put the country on track to become a post-racial society. The old racial nationalism’s politics were rooted in separatism and animated by the belief that membership in a political community must be limited to individuals who possess the characteristics of the enclave community for it to remain cohesive.”).

¹¹ *Plessy v. Ferguson*, 163 U.S. 537, 551-52 (1896).

¹² See Kenneth W. Mack Law, *Society, Identity, and the Making of the Jim Crow South: Travel and Segregation on Tennessee Railroads, 1875-1905*, 24 LAW & SOC. INQUIRY 377, 383 (1999) (“The typical black passenger could mix freely with white second-class passengers without objection.”).

¹³ See *Plessy v. Ferguson*, 163 U.S. 537, 551-52 (1896) (“When the government, therefore, has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized and performed all of the functions respecting social advantages with which it is endowed. Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.”) (internal quotes removed).

¹⁴ *Id.* at 538.

not unconstitutional because the protections of the Fourteenth Amendment applied only to political rights, not “social rights,” which sitting in the railroad car of one’s own choosing would be considered.¹⁵ As a result of the ability of states to make these *mere* distinctions between whites and blacks, restrictive Jim Crow legislation and separate public accommodations based on race became commonplace and continued to be the law of the land until set aside in *Brown v. Board of Education*.¹⁶

In 1850, there were a total of 23,939 lawyers in the United States, including territories.¹⁷ Only two of those lawyers were African American, and they were both practicing in Massachusetts.¹⁸ By 1950, one hundred years later, the number of lawyers and judges in the United States had increased to 174,205, of whom 1,367 were black — less than one percent of all attorneys.¹⁹ Although representing a minuscule portion of attorneys, this increase had resounding impacts — spearheading the civil rights revolution that would topple the Jim Crow laws with the ruling in *Brown v. Board of Education*, and other barriers that kept African Americans out of the legal profession for centuries.²⁰ Specifically, in *Sweatt v. Painter*, the United States Supreme Court held that the Equal Protection clause of the Fourteenth Amendment required that the petitioner be admitted to the University of Texas Law School because the Court could not find substantial equality in the educational opportunities offered to white and black law students by the state — equal protection of the laws could not be achieved through indiscriminate imposition of inequalities.²¹

The inability to gain access to a legal education created a disproportionate representation of African Americans in the legal community,

This paper attempts to answer the question of how we can increase diversity on the bench by arguing that systemic racism in the legal profession is exacerbated by the underrepresentation of minorities in judicial clerkships where they can gain some of the experience necessary to become a federal judge. It is essential to pair deserving, underrepresented law students with executive decisionmakers, and LexisNexis® will assist with the creation of a pipeline to establish fairer judicial clerkship hiring practices for law students of color.

¹⁵ *Id.* at 543 (“A statute which implies *merely a legal distinction* between the white and colored races — a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color — has no tendency to destroy the legal equality of the two races or reestablish a state of involuntary servitude. Indeed, we do not understand that the Thirteenth Amendment is strenuously relied upon by the plaintiff in error in this connection.”) (emphasis added).

¹⁶ *Brown v. Bd. of Educ.*, 347 U.S. 483, 495-96 (1954).

¹⁷ J. CLAY SMITH JR., EMANCIPATION, THE MAKING OF THE BLACK LAWYER, 1844-1944 at 615-16 (1993) (hereinafter “EMANCIPATION”).

¹⁸ EMANCIPATION, *supra* note 17, at xiii

¹⁹ EMANCIPATION, *supra* note 17, at xiii.

²⁰ EMANCIPATION, *supra* note 17, at 152.

²¹ *Sweatt v. Painter*, 339 U.S. 629, 633-34 (1950).

which has persisted. Minorities are still underrepresented in the legal profession.²² For example, in 2020, 5% of all lawyers were African American — the same percentage as 10 years ago — but the United States' population is 13.4% African American. Minority enrollment in law school has risen gradually in recent years.²³ In 2011, 25% of law students were minorities.²⁴ In 2018, minority enrollment was 31%.²⁵ In 2020, 63% of law students were white, 13% Hispanic, 8% African American, 6% Asian and 10% race unknown or other.²⁶

The underrepresentation of black students at law school means that there is a disproportionately small number of black law students entering the applicant pool for clerkships. This disproportionality has been used as an excuse by judges and Justices alike for the lack of diversity in clerkships.²⁷ Unfortunately, judges have almost complete discretion over whom they hire for clerkships.²⁸ In the Supreme Court, Chief Justice William Rehnquist, who served a 26-year tenure on the bench, hired 79 clerks — none of whom were black.²⁹ Similarly, the late Justice Antonin Scalia failed to hire a Hispanic, African American, or Asian American clerk.³⁰ These statistics show a stark disparity in numbers, but many argue that this does not equate to discrimination based on race because of lack of “qualified” applicants in the pool. However, it is a common hiring practice that judges recruit the top performers coming out of the top law schools and base their decisions heavily on recommendations from distinguished judges and/or professors, known as “feeder(s)” who overwhelmingly consist of white males.³¹

²² See Jason P. Nance and Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 286-87 (2014) (“Stated another way, although minorities comprise over 33% of the U.S. population, they comprise about 11% of the attorneys practicing law, which amounts to a gross underrepresentation of minorities as a whole in the legal profession and with respect to each individual minority group.”).

²³ *Id.*

²⁴ See *Lawyers by Race and Ethnicity*, AMERICAN BAR ASSOCIATION (2020), https://www.americanbar.org/groups/young_lawyers/projects/men-of-color/lawyer-demographics/.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Trenton H. Norris, *The Judicial Clerkship Selection Process: An Applicant's Perspective on Bad Apples, Sour Grapes, and Fruitful Reform*, 81 CAL. L. REV. 765, 772-73 (1993) (discussing the “very few legal or ethical restrictions” imposed on a judge’s selection of law clerks. Norris noted that Congress has placed almost no restrictions “on the manner in which judges, hire, train, supervise, or fire their law clerks.... Furthermore, neither Congress nor the President has prohibited judges from discriminating on the basis of race, religion, sex, age, or disability.”).

²⁸ See Tony Mauro, *Corps of Clerks Lacking in Diversity*, USA TODAY (Mar. 13, 1998) at A12.

²⁹ See Trenton H. Norris, *The Judicial Clerkship Selection Process: An Applicant's Perspective on Bad Apples, Sour Grapes, and Fruitful Reform*, 81 CAL. L. REV. 765, 772-73 (1993) (discussing the “very few legal or ethical restrictions” imposed on a judge’s selection of law clerks. Norris noted that Congress has placed almost no restrictions “on the manner in which judges, hire, train, supervise, or fire their law clerks.... Furthermore, neither Congress nor the President has prohibited judges from discriminating on the basis of race, religion, sex, age, or disability.”).

³⁰ See Trenton H. Norris, *The Judicial Clerkship Selection Process: An Applicant's Perspective on Bad Apples, Sour Grapes, and Fruitful Reform*, 81 CAL. L. REV. 765, 772-73 (1993) (discussing the “very few legal or ethical restrictions” imposed on a judge’s selection of law clerks. Norris noted that Congress has placed almost no restrictions “on the manner in which judges, hire, train, supervise, or fire their law clerks.... Furthermore, neither Congress nor the President has prohibited judges from discriminating on the basis of race, religion, sex, age, or disability.”).

³¹ *Id.* (identifying the top feeder judges as Laurence Silberman of the United States Circuit Court for the District of Columbia, Alex Kozinski of the United States Court of Appeals for the Ninth Circuit, and Michael Luttig of the United States Court of Appeals for the Fourth Circuit who have sent 20, 18, and 16 clerks, respectively, to the Supreme Court); see also Norris, *supra* note 27, at 774 (noting that some judges “justify [] their ratios by reference to the pool of ‘top’ graduates from the ‘best’ law schools”).

Part II – The Importance of Professional Diversity in the Judiciary

The importance of diversity in the judiciary has been discussed repeatedly. Specifically, diversity confers legitimacy on the judiciary by strengthening people’s faith in the legal system. For the public to accept the judiciary’s decisions as legitimate, it is crucial that those who are making the decisions share the demographic characteristics of those who are impacted by the decisions. In dispensing justice to all citizens, the legal system cannot allow a demographically homogenous group to hand down decisions while other racial and ethnic groups withstand the worst of those decisions. Such a process exposes the judiciary to accusations of bias and discrimination.

For example, when examining the reasonable person standard, it is paramount to identify who this reasonable person standard is based upon. Examining the history of the judiciary process, where African American people were excluded and then judged based upon a standard in which their presence was never wanted or accepted, demonstrates some of the precursory problems with a racially uniform judiciary. Furthermore, African Americans possess a shared sense of political destiny that is derived from their historical experience of slavery and their struggles with discrimination. For example, when asked whether African Americans are treated fairly in the criminal justice system, 83% of white judges believed that African Americans were in fact treated fairly, whereas only 18% of African American judges believed the same.³²

Racial differences in perspective, at times, have tangible impacts in court. Some social science analysis suggests that African American judges may be more sensitive to the impact of crime within the black community, leading to different patterns of sentencing among African American and white judges.³³ In workplace racial harassment cases, the differences in judgments delivered by African American and white judges are notable.³⁴ A study conducted by Pat K. Chew and Robert E. Kelley found that plaintiffs in racial harassment cases that appeared before black judges had a 45.8% chance of success — more than twice the 20.6% success rate of those who appeared before white judges.³⁵

³² KEVIN L. LYLES, *THE GATEKEEPERS: FEDERAL DISTRICT COURTS IN THE POLITICAL PROCESS* 237-38 (1997) (This difference is observed throughout the white and black populations more broadly. See Monica Anderson, *Vast Majority of Blacks View the Criminal Justice System as Unfair*, PEW RES. CTR. (Aug. 12, 2014), <http://www.pewresearch.org/fact-tank/2014/08/12/vast-majority-of-blacks-view-the-criminal-justice-system-as-unfair> (When asked whether “blacks in their community were treated less fairly than whites [in the courts],” sixty-eight percent of blacks agreed but only twenty-seven percent of whites agreed.); John Sides, *White People Believe the Justice System is Color Blind. Black People Really Don’t.*, WASH. POST: WONKBLOG (July 22, 2013), <https://www.washingtonpost.com/news/wonk/wp/2013/07/22/white-people-believe-the-justice-system-is-color-blind-black-people-really-dont> (When asked whether it was a “‘serious problem’ in their community that police ‘stop[ped] and question[ed] blacks far more often than whites’ or that police ‘care[d] more about crimes against whites than minorities[.]’ . . . 70 percent of blacks, but only 17 percent of whites, considered these serious problems.”) (hereinafter “THE GATEKEEPERS”))

³³ THE GATEKEEPERS, *supra* note 32, at 238.

³⁴ See Pat K. Chew & Robert E. Kelley, *Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases*, 86 WASH. U. L. REV. 1117, 1156-57 (2009) (“African American judges as a group and White judges as a group perceive racial harassment differently . . . [The] study results suggest that if presented with comparable facts, they often reach different conclusions about whether discrimination is present. [The] findings indicate that judges are not different from people in general. Although society has made progress, racial harassment and discrimination continue to pervade American life. African American judges can personally identify with instances of discriminatory treatment. Thus, when plaintiffs describe being racially harassed, African American judges can imagine that possibility — have a racial consciousness — in a way that White judges do not.”)

³⁵ See Pat K. Chew & Luke T. Kelley, *The Missing Minority Judges*, 14 J. GENDER RACE & JUST. 179, 192 (2010).

Creating a space where African Americans have an opportunity to actively participate in the judicial process by clerking for a federal judge helps to mitigate these systemic racially charged problems.

Part III – Pipeline to Establish Fairer Judicial Clerkship Hiring Practices

As discussed and observed, the lack of diversity on the bench, as an issue left unchecked has and will continue to potentially produce an unjust standard of law. Establishing a pipeline that can introduce more individuals of diverse racial and ethnic backgrounds can address the lack of diversity and can assist with a just standard of law. The following framework is recommended as an approach for establishing fairer judicial clerkship hiring practices for law students of color. The recommended framework consists of three potential stages.

The first stage will consist of intense training that focuses on the necessary skills — *e.g.*, research, legal writing, and editing — that create a successful clerk. Participants of the pipeline will attend in-depth tutorials focusing on the necessary skills needed to draft an order and memorandum. This process will be interactive and holistic with each skill building on the previous one. Participants should be encouraged to complete the LexisNexis® Practice Ready Certification on Lexis+®.³⁶ The content involved in this certification process was built on feedback from summer associates, legal interns and judicial clerks to ensure early career practitioners have the skills they need to complete the tasks they will face in roles such as a clerkship. Using LexisNexis® products, such as LexisNexis+® Litigation Analytics, and LexisNexis® Brief Analysis, participants will gain the ability to efficiently conduct research, prepare an order and memorandum, as well as identify key writing styles in judges making them ideal candidates for a judicial internship. During the first stage, participants will also be able to develop a strong writing sample (an order and a memorandum) and cover letter for their clerkship application as well as participate in a mock interview.

The recommended second stage includes an assignment of a previous federal clerk mentor and a four- to six-week internship placement with a federal judge where participants will have the opportunity to obtain valuable experience and potentially a letter of recommendation upon successfully completing the internship, according to the discretion of the judge. A key component of this fellowship has been leveraging LexisNexis® relationships and resources with various Judicial and Bar Associations to identify champions, mentors, and sponsors for participants in the prescribed clerkship program.

The third and final stage will assist with the application process using the Online System for Clerkship Application and Review — OSCAR. OSCAR is a web-based system for federal law clerk and appellate staff attorney recruitment. It is the single, centralized resource for notice of available clerkships, clerkship application information, and law clerk employment information. The final stage will include a two-day virtual summit where participants can join different breakout rooms that focus on important aspects of the application process with expertise from multiple key speakers. This last stage will also provide participants with a schedule to ensure their application is timely. In each stage, the pipeline will address different barriers.

³⁶ LexisNexis®, *Practice Ready Certification*, <https://www.lexisnexis.com/en-us/lawschool/prepare-to-practice/home.page> for more information (last visited Aug. 18, 2022).

ers that keep persons of color from obtaining a coveted federal clerkship and create a more diverse judiciary that better represents the number of law students of color.

Each stage of the pipeline will address different barriers that keep persons of color from obtaining a coveted federal clerkship and mitigate systemic racism in the legal profession, which is exacerbated by the underrepresentation of minorities in judicial clerkships where they can be afforded opportunities to obtain the experience necessary to be on the federal bench.

Conclusion

How can we increase diversity on the bench when there is a lack of diversity on the bench? Simply, by understanding and acknowledging the systemic discriminatory practices that are present; by working with active, sitting judges to correct the lack of diversity problem; and, by actively and purposefully interjecting talented and prepared individuals of diverse racial and ethnic backgrounds into the pipeline of potential judges.

Mentor: Afsoon Khatibloo-McClellan

Director, Global Associations



Reflection on working with Fellow Kristina Hall:

Through my mentorship experience with Kristina, a Fellow with the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship Program, I am afforded the opportunity to work with a passionate individual committed to addressing issues resulting from years of systemic racism in our legal profession.

Working with Kristina on her Fellowship project to provide opportunities for judicial clerkship via an intermediate internship experience is a privilege. Kristina's dedication to opening doors for students to whom those doors have traditionally been closed is not just inspiring but incredibly necessary.

Oftentimes, individuals who attain a seat on the Federal bench have judicial clerkship experience. However, in an already competitive field, gaining experience is disproportionately challenging for BIPOC individuals. This is especially true if that individual is not attending or a graduate of an "elite" law school. Subsequently, there is a less diverse candidate pool for positions on the Federal bench.

Through Kristina's work on her project, the empirical evidence, coupled with data, demonstrates a correlation between representation (or lack thereof) and outcomes for individuals within the system. A more inclusive and diverse judiciary is a critical component of moving toward true justice. Kristina's Fellowship project would provide training, education, and an alternative route for BIPOC individuals to gain the requisite experience toward creating a more diverse and inclusive judiciary. Kristina's passionate commitment to this endeavor is truly humbling, and I appreciate her tremendously for allowing me to join her on the journey to creating new avenues of experience for students interested in obtaining a judicial clerkship.

Afsoon Khatibloo-McClellan 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 CSR 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; DE&I; 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.

Cluster 4:

Diversity and Equity in the Courts

In the New Age Can Artificial Intelligence and Technology Alleviate Racial Bias in Jury Selection?

Aquilla Gardner

Progressive Prosecution: Combating Racism within the Judicial System

L. J. Chavis

Reinventing the Jury Wheel: Using Big Data Technology to Create Jury Pool Lists

Edrius Stagg

***Ally Legal*: Your Digital Path to the Courtroom — Ensuring Equality under the Sixth Amendment**

Nija Bastfield

In the New Age Can Artificial Intelligence and Technology Alleviate Racial Bias in Jury Selection?

Aquilla Gardner

This project's mission is to gather survey results and analyses documenting bias in the jury selection process in North Carolina and to develop a jury dashboard to show what a bias-free jury might look like in a county-by-county data visualization tool for use by practitioners and the community.



Aquilla Gardner is a J.D. candidate at the Howard University School of Law. Her experience as a summer associate at Mayer Brown LLP and K&L Gates LLP, along with her previous work experience in technology and business have helped to shape her interest in transactional law. After graduation, Aquilla is planning to work in big law in the District of Columbia.

Introduction

The Sixth Amendment of the United States Constitution guarantees individuals accused of a crime the right to an impartial jury.¹ This paper examines the jury selection process, the right to an impartial jury, and racial bias using North Carolina as a case study. This paper argues that a lack of representation in the jury pool and the process for selecting a jury pool foster a culture of racial and ethnic bias, resulting in a disproportionate number of judicial decisions not being determined strictly on the case's merits. Jury bias is harmful because it contributes to the ever-growing number of wrongful convictions, unfair and excessive sentencing, and social and economic penalties for African Americans and other people of color.² While bias of all kinds (gender, ableism, age, sexuality, or social-economic) can have detrimental impacts, this paper focuses primarily on ethnic and racial bias, whether intentional or unconscious.

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. ...”³ Black's Law Dictionary defines impartial as “[n]ot favoring one side more than another; unbiased and disinterested; unswayed by personal interest.”⁴ Despite the law's call for impartiality, biases permeate the legal system. Jury bias may occur when the jury pool is not representative of its community and its constituents. Jury bias, when it manifests as racial discrimination, is harmful because it contributes to the ever-growing number of wrongful convictions, unfair and excessive sentencing, and social and economic penalties for African Americans and other people of color.⁵ What if artificial intelligence (“AI”) could be used to alleviate some of these issues by enforcing a more equitable and impartial jury selection process that would also serve to build trust within these communities? To thoroughly examine this issue, this paper argues that a lack of representation in the jury pool⁶ fosters a culture of racial and ethnic bias, resulting in judicial decisions not determined strictly on the case's merits. Thus, this negatively impacts African Americans and other people of color and contributes to these communities' negative perception of the justice system and their chance of a fair trial.⁷ Creating and implementing a data-driven tool would enable anyone to observe the ethnic profile of a jury and compare it with the actual population of the county's pool of jury candidates.⁸ Such a tool would lay the foundation for more innovative solutions and provide the community and activists with the necessary data to push legislatures to address these inequalities and maintain a more equitable and diverse jury pool.

¹ U.S. CONST. amend. VI.

² Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>.

³ U.S. CONST. amend. VI.

⁴ *Impartial*, BLACK'S LAW DICTIONARY (11th ed. 2019).

⁵ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>.

⁶ *The Bias Free Jury Project, North Carolina Toolkit*, <https://www.myjury.us/>, last accessed (July 31, 2022). Note that the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation conducted its own general population survey of 300 residents across North Carolina. The survey was conducted with Pollfish, Inc. from May 29, 2002 to June 10, 2022, and that survey revealed that respondents sensed bias within the jury selection process).

⁷ Note that while biases, including, gender, ableism, age, sexuality, and social-economic undermine our society, this paper focuses primarily on ethnic and racial bias, whether intentional or unconscious.

⁸ The LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship, AI in Jury Selection cohort, developed a dashboard using census data to display the general populations for different counties in North Carolina.

Part I of this paper discusses the Sixth Amendment right to an impartial jury and North Carolina’s jury process. Part II provides historical references and examples of racial bias within the judicial framework to explain why representation is critical. Part III delves into AI and its pros and cons for reducing bias. Part IV presents the dashboard created by the team as the building block for future AI or innovative improvements to the jury pool selection process while discussing relevant census data, discrepancies, and proposing long-term recommendations. Finally, Part V offers reflections on whether AI can help alleviate racial bias in jury selection.

I. Jury Selection in North Carolina

Understanding how a jury is composed sheds light on why there may be a lack of diversity in jury selection. Starting with the United States Constitution, the Sixth Amendment guarantees the right for criminal defendants to face the judgment of their peers.⁹ While “peers,” interpreted broadly, can mean other citizens,¹⁰ it also represents the “constitutional right to a jury drawn from a group which represents a cross section of the community.”¹¹ It also includes representation from individuals of varying economic, social status, different levels of education and training, and other qualified groups such as diverse ethnicities.¹² Despite the call for representation in the jury process, diversity in the jury selection process is lacking.

Juries arise from a jury selection process, which represents the manner in which U.S. citizens participate in the judicial process.¹³ Most states’ trial courts follow a selection process, most often consisting of randomly pulling names from a pool of registered voters and a list of individuals with driver’s licenses, in an effort to select jurors who are representative of their community.¹⁴ Like many states, North Carolina’s¹⁵ jury duty process comprises four parts: (1) general qualification; (2) pooling and summoning; (3) the selection process; and (4) jury service.¹⁶ Each step of the process works to narrow down the selection to a short list of qualified jurors; however, the ways in which the lists are narrowed leaves room for disproportional representation of certain communities.

In North Carolina, as a general qualification to serve as a juror, “a person: (1) must be a citizen of the United States and a resident of the state of North Carolina, (2) must be a resident of the county in which

⁹ See U.S. CONST. amend. IV; see also, Equal Justice Initiative, *A History of Discrimination in Jury Selection: Race and the Jury* (July 27, 2021), <https://eji.org/report/race-and-the-jury/a-history-of-discrimination-in-jury-selection/>.

¹⁰ Anonymous, *Jury of One’s Peers*, LEGAL INFORMATION INSTITUTE (July 20, 2020), https://www.law.cornell.edu/wex/jury_of_one%27s_peers.

¹¹ Michael Mark, et al. *Challenges to Jury Composition in North Carolina*, NORTH CAROLINA CENTRAL LAW REVIEW, Vol. 7, no. 1, 1 (Oct. 1975), (citing, *Fay v. New York*, 332 U.S. 261, 299-300 (1947) (Murphy, Black, Douglas and Rutledge, dissenting)).

¹² *Id.*

¹³ United States Courts, *Learn about Jury Service*, <https://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service> (last visited July 31, 2022).

¹⁴ *Id.*

¹⁵ North Carolina Judicial Branch, *Jury Service*, <https://www.nccourts.gov/help-topics/jury-service/jury-service> (last visited July 31, 2022), see also Resensteel Fleishman, *Jury Selection Process in Criminal Trials* (Apr. 25, 2020), <https://www.rflaw.net/jury-duty/>.

¹⁶ N.C. Gen. Stat. § 15A-1211 (Lexis Advance through Session Laws 2022-50 of the 2022 Regular Session of the General Assembly but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10); see also Resensteel Fleishman, *Jury Selection Process in Criminal Trials*, <https://www.rflaw.net/jury-duty/> (Apr. 25, 2020).

called to serve as a juror, (3) must be at least 18 years of age, (4) must be physically and mentally competent to serve, (5) must be able to hear and understand the English language, (6) must not have been convicted of or pled guilty to a felony unless citizenship has been restored according to law and (7) must not have served as a juror during the preceding two years.”¹⁷ In certain sensational cases in which there is a great deal of publicity, a person may be required to serve as a juror in a county other than the one in which they live.¹⁸ The initial selection of those meeting the general requirements is collected from pools of individuals who are registered to vote and/or that have government identification (driver’s licenses are most common).¹⁹ Next, the pool of individuals is further narrowed by excluding those with a felony or individuals that previously served on a jury in the past two years.²⁰ At the selection process, an even smaller pool of individuals is randomly selected to receive a summons.²¹ The judge may then question the remaining potential jurors regarding their qualification to serve.²² Finally, lawyers have the right to ask additional questions and strike potential jurors using the preemptive challenge, which is discussed more fully in Part III.²³

However, like many states, North Carolina’s jury process creates the potential for unequal representation. For example, starting the initial pool with only individuals registered to vote and/or those that have government-issued identification, leaves out a whole group of individuals within the community who may be physically and mentally capable, but either do not have the means or need for certain identification. In addition to not being registered to vote or having government issued identification, many people of color are summoned and never receive the summons. In 2019, it was reported nationally that an average of 12% of jury summonses are returned “undeliverable,” significantly draining the number of available jurors.²⁴ Combined with the fact that many courts do not regularly update mailing address records and that people with low income are more likely to move frequently,²⁵ this increases the probability that those of low income are less likely to receive summonses.²⁶ Thus, people of color, disproportionately burdened by poverty, become much more likely than their white counterparts to never receive a summons and be excluded from the initial selection.²⁷

¹⁷ North Carolina Judicial Branch, *Jury Service*, <https://www.nccourts.gov/help-topics/jury-service/jury-service> (last visited July 31, 2022).

¹⁸ North Carolina Bar Association, *This Is the Law: Serving on a North Carolina Jury*, NORTH CAROLINA BAR ASSOCIATION (1983).

¹⁹ North Carolina Judicial Branch, *Jury Service*, <https://www.nccourts.gov/help-topics/jury-service/jury-service> (last visited July 31, 2022).

²⁰ *Id.*

²¹ *Id.*

²² Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>; see also Nina W. Chernoff, *Black to the Future: The State Action Doctrine and the White Jury*, 58 WASHBURN LAW JOURNAL 103, 120-21 (2019).

²³ *Id.*

²⁴ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>; see also Nina W. Chernoff, *Black to the Future: The State Action Doctrine and the White Jury*, 58 WASHBURN LAW JOURNAL 103, 120-21 (2019).

²⁵ Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, HOUSING POLICY DEBATE, 14:4, 461-501, DOI: 10.1080/10511482.2003.9521483 (2003).

²⁶ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>; see also Nina W. Chernoff, *Black to the Future: The State Action Doctrine and the White Jury*, 58 WASHBURN LAW JOURNAL 103, 120-21 (2019).

²⁷ *Id.*

Courts should reflect the community they serve. To advance this goal, research is needed on how best to pull from a representative and diverse pool of individuals in the community. For example, some states have begun to pull names from state income tax rolls, unemployment compensation lists, and public benefits lists, in addition to voter registration and driver's license records, to reflect more accurately a fair cross-section of the community.²⁸

II. Representation, Race and the United States Courts

Not only can the source of the data and general qualification contribute to the lack of representation on juries, but they also can affect the way in which potential jurors are summoned and vetted. Even when potential jurors meet the legal qualification for jury duty, they still can be excluded “for cause” or by the use of attorneys’ peremptory challenges.²⁹ Challenges for cause seek to disqualify potential jurors for a stated reason, such as prejudice, bias, or prior knowledge that the court has determined would prevent them from evaluating the case impartially.³⁰ These challenges, subject to judges’ broad discretion, result in the exclusion of people of color as jurors at disproportionately high rates. For example, “[a] study involving 1,300 felony trials and almost 30,000 prospective jurors throughout North Carolina found that trial judges were 30% more likely to remove prospective jurors of color for cause than white prospective jurors.”³¹

If a potential juror meets the legal requirement for jury selection and survives for-cause challenges, they are deemed “qualified jurors.”³²

Peremptory strikes, challenges that exclude potential jurors without the need for an explanation or reason, are often used by prosecutors and defense attorneys to narrow further those jurors who are qualified to serve and needed at trial.³³ The 1965 case, *Swain v. Alabama*, represented the first time the United States Supreme Court addressed discriminatory use of peremptory strikes. In this case, a prosecutor used peremptory strikes to remove all six black prosecutive jurors and maintain an all-white jury.³⁴ Prior to 1986, peremptory challenges presented attorneys with a mostly unregulated ability to object to a proposed juror without much explanation and were historically and routinely a way to discriminate against black jurors.³⁵ In 1986, the U.S. Supreme Court ruled in *Batson v. Kentucky*³⁶ that it was unconstitutional and a denial of equal protection for a prosecutor to use peremptory challenges in a criminal case to exclude racial minorities from the jury.³⁷ In *Batson*, the prosecutor used peremptory challenges to remove all African

²⁸ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>; see also footnote 80.

²⁹ *Id.*

³⁰ Legal Information Institute, *Challenge for Cause*, https://www.law.cornell.edu/wex/challenge_for_cause.

³¹ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>.

³² *Id.*

³³ Legal Information Institute, *Peremptory Challenge*, https://www.law.cornell.edu/wex/peremptory_challenge; see also *Race and the Jury—Equal Justice Initiative*, <https://eji.org/wp-content/uploads/2005/11/race-and-the-jury-digital.pdf>.

³⁴ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>; see also *Swain v. Alabama*, 380 U.S. 202 (1965).

³⁵ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>.

³⁶ *Batson v. Kentucky*, 476 U.S. 79 (1986).

³⁷ See *Batson v. Kentucky*, 476 U.S. 79 (1986).

Americans.³⁸ As a result, the jury was made up entirely of white jurors. Batson, the defendant, moved to discharge the jury claiming the removal of all African Americans violated his right under the Equal Protection Clause of the Fourteenth Amendment.³⁹ The Court held that race alone could not be the determining factor for striking a potential juror. Later in 1991, in *Edmondson v. Leesville Concrete Co., Inc.*,⁴⁰ the Court determined that private litigants may not use race to exclude potential jurors.⁴¹ In this case, the Court required the private litigant to articulate a race-neutral reason for his peremptory challenges and denied the litigants' request because the civil proceeding resulted in a jury composed of 11 white and one black.⁴² These cases, while instrumental because they put parameters around prosecution and private parties' ability to create a racially biased jury, did not fully prevent the potential for an unrepresentative jury pool. Despite these rulings, a large disparity in jury strike rates across races remained since these cases only addressed intentional bias in jury selection, thus, incentivizing prosecutors to find pretextual ways to maintain striking black jurors without triggering a *Batson* objection.⁴³

Still today, how attorneys structure their questions to strike potential jurors can be biased and serve as a pretense for removing jurors of color. An attorney may ask potential jurors of certain races more questions than other races or have ulterior motives in their line of question in order to strike potential jurors. Such questions might look like:

- Have you ever had a negative experience with law enforcement?
- Have you ever been stopped by police?
- Have you ever felt unsafe with law enforcement?

In North Carolina, from 1995 to 2011, there was a conference where district attorneys reportedly hosted training sessions on how to strike prospective black jurors without triggering judicial scrutiny.⁴⁴ More widely, an *Above the Law* article discussed this dilemma in how attorneys may inadvertently use race to pick a jury and exclude black jurors for perceivably race-neutral reasons.⁴⁵ The article detailed portions of *Flowers v. Mississippi*,⁴⁶ a 2019 U.S. Supreme Court case in which the defendant Flowers had been convicted of murder in Mississippi in 1996 — the first time by an all-white jury even though black people made up almost of half of the county population.⁴⁷ In the case, the Court considered whether there was implicit prejudice since the prosecutor had asked black jurors 3.5 more questions than white jurors, and Flowers

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Edmondson v. Leesville Concrete Co.*, 500 U.S. 614 (1991).

⁴¹ *See Edmondson v. Leesville Concrete Co.*, 500 U.S. 614 (1991).

⁴² *Id.*

⁴³ Emmanuel Felton, *Many Juries in America Remain Mostly White, Prompting States to Take Action to Eliminate Racial Discrimination in their Selection*, WASHINGTON POST (Dec. 23, 2021), https://www.washingtonpost.com/national/racial-discrimination-jury-selection/2021/12/18/2b6ec690-5382-11ec-8ad5-b5c50c1fb4d9_story.html; *Race and the Jury—Equal Justice Initiative*. <https://eji.org/wp-content/uploads/2005/11/race-and-the-jury-digital.pdf>.

⁴⁴ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>.

⁴⁵ Toni Messina, *How Attorneys Use Race to Pick a Jury*, *Above the Law*, 26 Mar. 2019, <https://abovethelaw.com/2019/03/how-attorneys-use-race-to-pick-a-jury/>.

⁴⁶ *Flowers v. Mississippi*, 588 U.S. ___, 139 S. Ct. 2228, 204 L. Ed. 2d 638 (2019).

⁴⁷ *Flowers v. Mississippi*, 588 U.S. ___, 139 S. Ct. 2228, 204 L. Ed. 2d 638 (2019).

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was tried six times for the same crime.⁴⁸ Fortunately, for Flowers the *Batson* rule was enforced, and the charges were dropped.⁴⁹

The lack of diversity in both trial and grand juries can harm the communities most unrepresented. An increase in wrongful convictions, unfair and excessive sentencing, and social and economic penalties for underrepresented ethnic groups are all potential effects of racially biased juries.⁵⁰ A trial jury, also known as a petit jury, consists of six to 12 individuals from the community who are responsible for determining whether a defendant committed the crime charged or is at fault for any injury caused in a civil case.⁵¹ Whereas a grand jury, consisting of 16 to 23 individuals from the community, has the responsibility of determining whether there is probable cause an individual committed a crime that would warrant a trial.

While jury bias might allow someone in a position of authority to escape conviction, unjust acquittals of white defendants and people of authority are just as dangerous. Consider the case involving the murder of Emmett Till and the acquittal of the two men responsible for his murder. In 1955, J.W. Milam and Roy Bryant, two white men from Mississippi, were responsible for kidnapping and murdering Emmett Till, an African American teenager.⁵² After being acquitted by an all-white jury, they confessed and shared publicly how they beat Emmett Till with a gun, shot him, and threw Emmett's body in the Tallahatchie River.⁵³ Only five days into the kidnapping and murder trial, the all-white jury deliberated for a little over an hour to decide the defendants were not guilty despite the overwhelming evidence that showed otherwise.⁵⁴ There were even accounts that the jury would have decided even more quickly if they did not need a soda break.⁵⁵ This decision raised international outrage, fueled the civil rights movement,⁵⁶ and likely influenced the later the *Batson* decision.

The jury bias in the Emmett Till murder case shows why diversity on juries matters, especially since studies show that all-white juries spend less time deliberating, make more mistakes, and consider fewer perspectives.⁵⁷ Additionally, there have been similar outrages over the 2013 not guilty verdict of George Zimmerman for the murder of 17-year-old Trayvon Martin and other high-profile cases involving allegations of racial bias such as the light sentencing and failure of grand juries to authorize criminal prosecution against police officers involved in the murders of Michael Brown, Eric Garner, Breonna Taylor, and other black and brown individuals.⁵⁸

⁴⁸ *Id.*

⁴⁹ Yesko Parker, *Charges against Curtis Flowers Are Dropped | It's Over | APM REPORTS* May 4, 2022, <https://www.apmreports.org/episode/2020/09/04/charges-against-curtis-flowers-are-dropped>.

⁵⁰ EJI Reports, *How Juries Are Selected: Race and the Jury*, <https://eji.org/report/race-and-the-jury/how-juries-are-selected/#jury-pools>. (last visited July 31, 2021).

⁵¹ United States Courts, *Types of Juries*, <https://www.uscourts.gov/services-forms/jury-service/types-juries> (last visited July 31, 2022).

⁵² History.com, *Emmett Till Murderers Make Magazine Confession*, A&E TELEVISION NETWORKS, Nov. 13, 2009, <https://www.history.com/this-day-in-history/emmett-till-murderers-make-magazine-confession>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>.

⁵⁸ *Id.*

These are a few examples of countless stories and experiences of those who have suffered or benefited from unrepresentative juries. Bias is not always blatant and may even be unconscious; there may be no way to completely remove bias altogether. While acknowledging that increasing diversity does not wholly alleviate bias, an influx of diversity of experience and perceptions would likely lead to more impartial decisions. As “[r]epresentative juries not only ensure representation of minority voices, but ‘also motivate all jurors to perform their duty diligently and thoughtfully regardless of the defendant’s race.’ [w]hen juries represent a fair cross-section of the community, as the Constitution requires, the reliability and accuracy of criminal trials are improved, and the integrity of the entire legal system is upheld.”⁵⁹

III. AI in the New Age

A. What Is AI Anyways?

Global investment in AI continues to significantly increase; for example, Gartner forecasts that the worldwide AI software market will reach \$62 billion in 2022.⁶⁰ AI has also become a catchall term for applications that perform complex or manual tasks that once required human input. “Machine learning is a branch of AI focused on building applications that learn from data and improve their accuracy over time without being programmed to do so.”⁶¹

AI exists and often plays an invisible role in ordinary life, such as its use in powering search engines, product recommendations, and speech recognition systems.⁶² For example, AI works behind the scenes to enable and personalize individual’s feeds on social media, enables scanning and detection of fraud in banking systems, and powers Google search engine, Netflix, and Amazon recommendation engines.⁶³

B. Perception of AI

While there are many use cases and ways AI has positively impacted and improved systems and processes, it has received much criticism for its ability to mimic not only the good but the negative attributes of human behavior. Some uses of AI have received a bad reputation for perpetuating bias.⁶⁴ An article discussing racial bias in AI and its effect on fairness in decision-making processes provided examples of such bias

⁵⁹ Equal Justice Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, EJI REPORTS, Oct. 1, 2021, <https://eji.org/report/race-and-the-jury/>.

⁶⁰ Gartner, *Gartner Forecasts Worldwide Artificial Intelligence Software Market to Reach \$62 Billion in 2022*, <https://www.gartner.com/en/newsroom/press-releases/2021-11-22-gartner-forecasts-worldwide-artificial-intelligence-software-market-to-reach-62-billion-in-2022> (last visited July 31, 2022).

⁶¹ Kelechi–culture, tech, *Racial Bias in AI Algorithms and Its Effects on Fairness in Decision-Making Processes*, MEDIUM May 26, 2022, <https://kelechi-docx.medium.com/racial-bias-in-ai-algorithms-and-its-effects-on-fairness-in-decision-making-processes-2021-cfe8009215a3>.

⁶² IBM Cloud Education. *What Is Artificial Intelligence (AI)?* IBM, <https://www.ibm.com/cloud/learn/what-is-artificial-intelligence> (last visited July 31, 2022).

⁶³ Bernard Marr, *The 10 Best Examples of How AI Is Already Used in Our Everyday Life*, FORBES (Dec. 16, 2019), <https://www.forbes.com/sites/bernardmarr/2019/12/16/the-10-best-examples-of-how-ai-is-already-used-in-our-everyday-life/?sh=277a2db51171>.

⁶⁴ Kelechi–culture, tech, *Racial Bias in AI Algorithms and Its Effects on Fairness in Decision-Making Processes*, MEDIUM May 26, 2022, <https://kelechi-docx.medium.com/racial-bias-in-ai-algorithms-and-its-effects-on-fairness-in-decision-making-processes-2021-cfe8009215a3>.

decision-making. Policing case, the AI tool was created to predict where crimes would occur, identify individuals who may commit them, the types of crime, and who the victims would be.⁶⁵ This tool, powered by machine learning algorithms, collected and analyzed large datasets to essentially determine an individual's propensity for crime.⁶⁶ This is especially harmful given the fact it appeared that the tool's algorithms were trained using "dirty data," or data created from flawed, racially biased, and sometimes illegal practices.⁶⁷

It is likely that most developers do not intentionally seek to develop biased algorithms, but unconscious bias (influenced by family, media, and long-standing stereotypes against certain communities) has the potential to seep into and be perpetuated through machine learning systems.⁶⁸ To this point, AI use in predictive analytics is dangerous especially when it is used in policing and law enforcement matters.

However, technology has become an essential part of daily life and, as has been shown, can be used in more meaningful ways. AI should not be used to further enforce pre-existing or biased stereotypes but to mitigate these risks. While the claim that one should not fix oppressive social institutions with biased data is a valid argument, one must start somewhere, and an algorithm trained to deal with the targeted problem or race and bias may prove helpful. Like weapons, AI is tool that can be used for good or bad, depending on the use of its holder.

For example, future AI tools do not need to be used for predictive policing but could be used instead for judicial oversight, tracking, and monitoring. The AI tool could focus on the entire life cycle of jury selection from the initial pool of candidates, be used to survey the list of those receiving a randomized summons, and track and monitor the diversity spread at each level. It could be used to flag when there exist common recurrency or disproportionate and or major discrepancies between the list of qualified jurors, and those the eventually sit on the jury. AI tools could be used to identify prejudicial lines of questioning that would disproportionately lead to removing jurors of color and track when prosecutors show a repeated pattern of this line of questioning to better inform and hold them accountable to the community. AI, by focusing on these areas versus the community at large, would help to mitigate the risk of perpetuating bias against vulnerable groups while holding the system and officers of the law to the standards mandated by the Sixth Amendment.⁶⁹

⁶⁵ Kelechi–culture, tech. *Racial Bias in AI Algorithms and Its Effects on Fairness in Decision-Making Processes*, MEDIUM May 26, 2022, <https://kelechi-docx.medium.com/racial-bias-in-ai-algorithms-and-its-effects-on-fairness-in-decision-making-processes-2021-cfe8009215a3>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ This recommendation should be implemented in conjunction with expanding the initial pool of potential jurors, as mentioned previously, and maintaining the accuracy of the jury selection list. Additionally, companies are aware of these issues and take steps to course correct. For example, IBM, one of the leaders in the AI space, announced the release of its *Advertising Toolkit for AI Fairness 360*, which is an open-source solution deploying 75 fairness metrics and 13 state-of-the-art algorithms to help identify and mitigate biases in discrete data sets. While this toolkit addressed bias in advertising the legal sphere and helping to identify bias in jury selection could be great use cases. For more information on *AI Fairness 360*, see <https://aif360.mybluemix.net/mybluemix.net>.

IV. Proposed Solution & Recommendations

A. Phase One: Surveying Residents Of North Carolina

To establish ground truth data on whether bias exists in the North Carolina jury selection process LexisNexis® partnered with the research agency Pollfish, Inc. to conduct a state-wide survey of the North Carolina population. Residents were randomly sampled via Random Device Engagement (“RDE”), typically via mobile apps. This general survey of 300 residents across North Carolina, conducted with Pollfish, Inc. from May 29, 2022, to June 10, 2022, revealed respondents sensed bias within the jury selection process. Those respondents who identified as non-white were less likely to have reported being summoned to a jury (as seen in Chart 1). Respondents self-identifying as “Black” were the least likely to have served on a 12-person jury. Additionally, respondents identifying as “Black” were the least likely to agree with the statement “If I was ever accused of a crime, I would get a fair trial in North Carolina.” The results of this survey laid the foundation for the creation of a tool that could be used to help reduce some of the biases and distrust in the jury selection and judicial processes.

Chart 1:

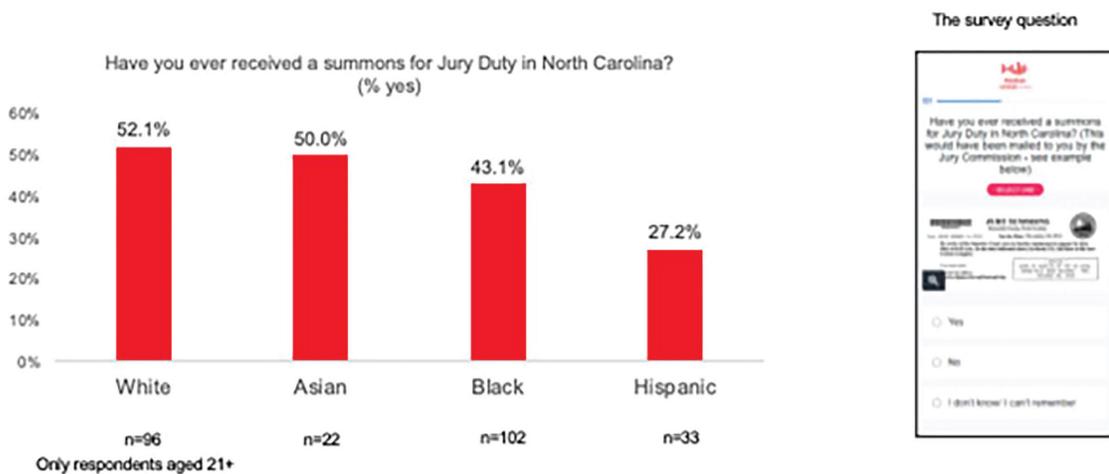


Chart 2:

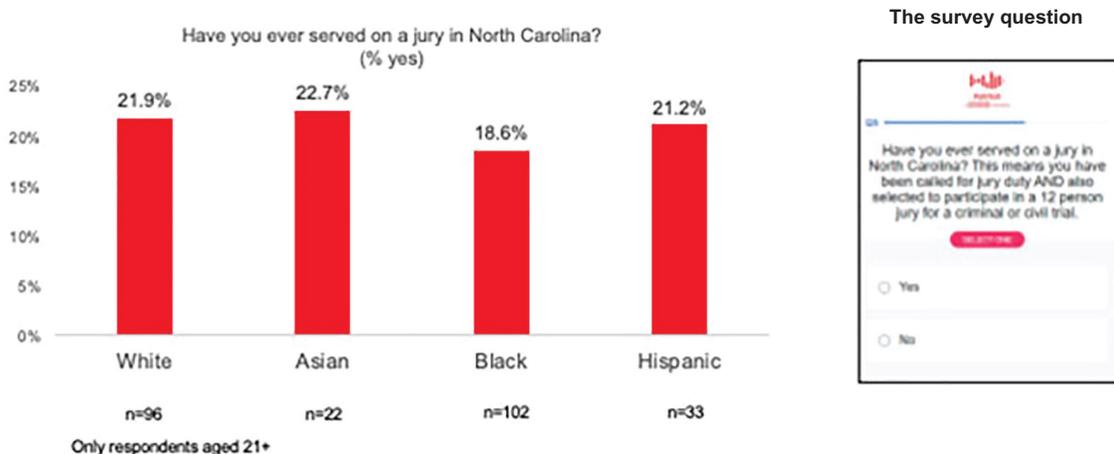
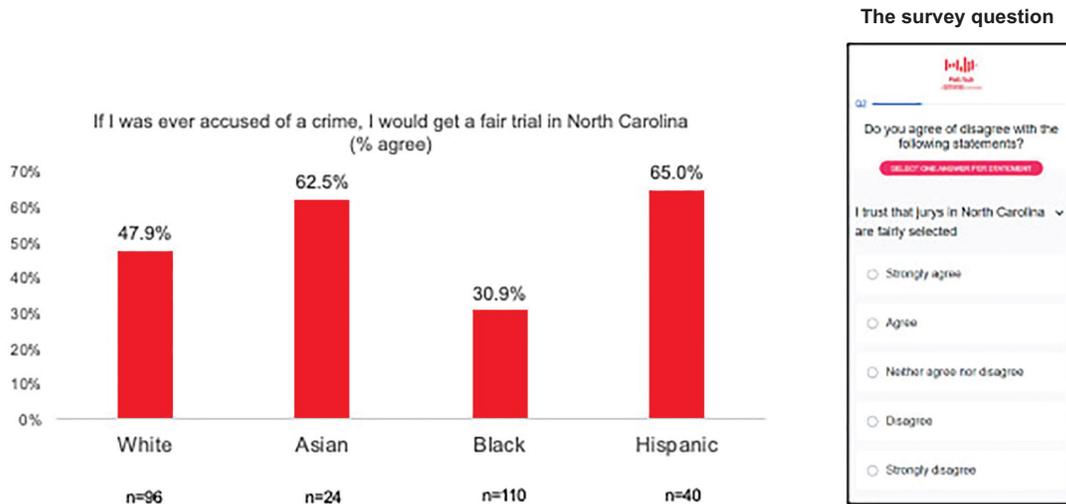


Chart 3:



B. Phase Two: Dashboard

Building on the first phase of this project, LexisNexis® developed a jury dashboard to show what a bias-free jury might look like. This tool leverages country-wide 2020 census data to provide a county-by-county reflection of what a jury may look like if it is representative of its community. This technology is driven by statistical analysis and provides an indication of when something is abnormal, and what may be worthy of further investigation if it is frequently occurring within the county’s jury make-up. While this tool is a building block toward a tool using AI technology, it provides the community and community activists with a way to push against the notion of jury selection being randomized and providing fundamentally noisy data. It shows what might be, with no other considerations such as the number of individuals who have driver’s licenses, the racial makeup of the jury and thus provides the community an avenue to push legislators to investigate why a jury is not a reflection of the community.

V. Limitations and Constraints

Additionally, this paper acknowledges that there may be other constraints on the lack of diversity in jury selection. As previously mentioned, the pull from lists of registered voters and those with a driver’s license, as well as questions from judges and peremptory challenges from attorneys, may promote less diversity in jury selection. Additional constraints include the low wages jurors are paid and the time commitment involved, both of which may discourage participation from the underrepresented population.

This paper acknowledges the tool’s limitation and its use of census data, given that U.S. census data can be inherently racially biased, historically, and still today. However, census data was the best data for the time constraints of this project. It represents a starting point and a call for greater representation and recognition of racial identity at the federal and state levels.

This paper acknowledges such limitations because from a historical standpoint, the categorization

of humans based on geographic ancestry in the U.S. census has narrowly considered three populations — “free white” people, people held as property and their descendants (and individuals of the same skin color), and everyone else.⁷⁰ No other identity was recognized until 1870, when catchalls for Asian and Native Americans were added.⁷¹ Not until 1930 were additional categories of identities recognized beyond black, white, Asian, and Native American.⁷²

Further proof of racial bias in past census data can be found in the evolution and accounting of individuals of African descent. In 1790, individuals of African descent were only counted as 3/5th a person.⁷³ In 1820, the census introduced and used the term “colored.”⁷⁴ By 1850, the census introduced “Black” and mulatto” identities, as well as an explicit division between “free inhabitants” and “slave inhabitants.”⁷⁵ By 1870, the census introduced “Chinese” (for all east Asian identities) and “Indian” (Native American) identities under the “Color” column.⁷⁶ Then in 1890, the census first used the term “race,” and “Japanese,” along with terms such as “quadroon” and “octoroon” representing individuals of mixed ethnicity, were added.⁷⁷ In 1930, the census codified the “one-drop rule” so that individuals with any black ancestry were recorded as “Negro.”⁷⁸ Filipino, “Hindu,” and Korean identities also were added, and respondents were allowed to write in identities not otherwise represented.⁷⁹

While race is self-reported, many people in the United States have no ability to select their self-identified identity.⁸⁰ Even given the diversity of the United States today, the 2020 Census only included five categories of race: white, black or African American, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, and Some Other Race.⁸¹ While, for example, the Vice President identifies as African American and South Asian American, her South Asian heritage has no place in the 2020 Census.⁸² Additionally, troubling is the fact that North African or Middle Eastern are counted as “White” even though their experience as a Brown person in America may show otherwise.⁸³ As such, this solution is just one building

⁷⁰ United States Bureau of the Census & United States Census Office. Census Bureau, *An Act Providing for the Enumeration of the Inhabitants of the United States*. 1st Census (1908) (last visited July 31, 2022).

⁷¹ United States Census Bureau, *Through the Decades*, <https://www.census.gov/> (last visited July 31, 2022).

⁷² United States Census Bureau, *History:1930*, <https://www.census.gov/> (last visited July 31, 2022).

⁷³ U.S. CONSTITUTION, Art. 1, Sec. 2; *see also* U.S. CONSTITUTION, *ConstitutionUS.com*, <https://constitutionus.com/> (last visited July 31, 2022).

⁷⁴ United States Census Bureau. *Through the Decades*, https://www.census.gov/history/www/through_the_decades/ (last visited July 31, 2022).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ United States Census Bureau, *History: 1930*, <https://www.census.gov/>. Archived from the original on September 28, 2009 (last visited July 2022).

⁷⁹ *Id.*

⁸⁰ United States Census Bureau, *Measuring Racial and Ethnic Diversity for the 2020 Census*, <https://www.census.gov/newsroom/blogs/random-samplings/2021/08/measuring-racial-ethnic-diversity-2020-census.html>. Accessed July 2022; *see also* American Anthropological Association. *A Brief History of the OMB Directive 15*. Response to OMB Directive 15 (PDF) (Report). Sept. 1997. Retrieved July 2022.

⁸¹ United States Census Bureau, *Measuring Racial and Ethnic Diversity for the 2020 Census*, <https://www.census.gov/newsroom/blogs/random-samplings/2021/08/measuring-racial-ethnic-diversity-2020-census.html> (last visited July 31, 2022).

⁸² About, U.S. Senator Kamala Harris, <https://www.harris.senate.gov/about> (last visited July 31, 2022); *see also* United States Census Bureau. *Measuring Racial and Ethnic Diversity for the 2020 Census* <https://www.census.gov/newsroom/blogs/random-samplings/2021/08/measuring-racial-ethnic-diversity-2020-census.html> (last visited July 31, 2022).

⁸³ United States Office of Management and Budget. Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity; Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 62 Fed. Reg.

block, future findings and recommendations arising from this research must transcend the historical biases embedded into the Census to avoid further perpetuating biases. With all regards to census data and myriad past, this model presents the best way of capturing and showing discrepancies between the community and its jury of peers. Future tools in the development of the project should consider how to best capture a community, what would present a clean data, and ensure any training acknowledges and corrects bias.

VI. Conclusion

This project reviewed the jury selection process, and potential improvements, using North Carolina as a case study. The project conducted primary research that established the existence of bias in the lived experience of jury selection. To help measure the potential for bias, the project then created online tooling — available to any in North Carolina — that allows juries to be compared to representation benchmarks for each county. Solving the issue of jury bias presents significant challenges, and this project provides the building block for future advancements. All primary data, census analysis, and tooling is made publicly available for future projects, and we encourage future Fellows to carry on the torch and build on this work.

In answering whether AI can help alleviate racial bias in jury selection, the answer is: it depends. Most likely, it depends on access to clean data and attention to inherent bias when training and developing the algorithms and providing AI tools specific to monitoring and tracking discrepancies in the jury selection process versus predict analytics.

58,782 (October 30, 1997); see also Moustafa Bayoumi, *I'm a Brown Arab-American, and the US Census Refuses to Recognize Me I*, THE GUARDIAN February 14, 2019, <https://www.theguardian.com/commentisfree/2019/feb/14/arab-american-census-america-racism>. Accessed July 2022.

Mentor: Steve Carroll

VP Customer Insights, Global Product



Reflection on working with Fellow Aquilla Gardner:

At LexisNexis®, we're driven by purpose. Our products improve access to justice, and our volunteering helps improve the Rule of Law around the world.

We want to shape a more just world. It's in our DNA.

For my part, I have had the opportunity (via our LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship) to mentor Aquilla Gardner at the Howard University School of Law. Frankly, I believe I have learned more from Aquilla than she may ever have learned from me!

Each of our Fellows undertakes a Rule of law project. Aquilla has been focused on jury bias in North Carolina. Working with a volunteer team of experts from around LexisNexis®, we have conducted primary research to establish ground truth data on bias, mined census data in every North Carolina county, and built tools to help analyze potential bias.

It's been an incredible journey, and Aquilla is only just getting started.

Steve Carroll, VP Customer Insights, is responsible for ensuring customers remain at the center of everything LexisNexis® does. His team ensures all employees are connected with their customer feedback. Steve also works across a range of Rule of Law Foundation projects. These include the Rule of Law Impact Tracker, the IBA 50/50 by 2030 Gender Initiative, and the global Rule of Law Monitor.

Progressive Prosecution: Combating Racism within the Judicial System

L. J. Chavis

This project's mission is to increase awareness of progressive prosecution practices by exploring why progressive prosecution has a positive impact on society and argue that progressive prosecution should be employed and held as a standard by all prosecutors. Additionally, this research aims to inform criminal defense attorneys, traditional prosecutors, law students, and citizens of the positive impact progressive prosecution can have on marginalized communities.



L. J. Chavis is a third-year law student from the Southern University Law Center. His experience as a congressional staffer on Capitol Hill sparked his interest in Public Policy and Legislative Affairs. Additionally, his experience as a fellow with the Congressional Black Caucus Institute and law clerk with the Lawyers Committee for Civil Rights Under Law and the Louisiana House of Representatives helped shape his passion for public service and advocacy for communities of color. Additionally, while clerking with the Maryland Public Defender's Office and the Office of the Attorney General for the District of Columbia, L. J. furthered his passion for advocacy. After graduation, L. J. plans to return to D.C. area to pursue his legal career.

I. Introduction

The chief goal of progressive prosecution is to change the way society thinks about crime and to eliminate decades of systemic racism which has led to mass incarceration.¹ The progressive prosecutorial movement has been defined by many as an attempt to evolve the U.S. justice system, which traditionally focused on punishment, into a justice system that embraces and advocates for rehabilitation.² Rehabilitation would better equip the convicted person for reentry back into society and prevent those accused from obtaining a criminal conviction by way of pretrial diversion programs. However, this is not an easy task. This effort calls for advocacy to reverse years of legislation that embraced, tolerated, and advocated for discrimination, racism, and classism in and along cultural and economic lines.³ The trend of focusing on prosecutor elections as a means of criminal justice reform has led to the election of a considerable number of lawyers as District Attorney in their respective jurisdictions.⁴ These elections have changed how people in these communities view the prosecutor's role.⁵

II. Background

Philadelphia District Attorney, Larry Krasner, one of the architects of the progressive prosecution movement, stated, “[a] progressive D.A. is not the same as a traditional D.A. You might call me a prosecutor with compassion. Or a public defender with power.”⁶ Obtaining and using such authority to help, instead of punishing, can change a society that has been riddled with racism since its inception.⁷ In many ways, it can be said that the prosecutor is the most powerful person in the criminal justice system.⁸ Typically, judges defer to the prosecutors’ recommendations in sentencing, the plea-bargaining process, and charging of crimes.⁹ Judges also traditionally decline to impose significant checks on prosecutorial conduct.¹⁰ Because of this power, progressive prosecutors can change the outcome of a troubled society.

To illustrate the power of a progressive prosecutor, during the height of the pandemic, there were about 2.3 million people in American prisons, and many more who passed through county and city jails.¹¹ When the potential spread of COVID-19 confronted jails and prisons, defense lawyers, community activists, and social groups all panicked about how they would get their clients out of jail. “Their best hope is that a prosecutor will have mercy — by dismissing a case, agreeing to pretrial release without bail, con-

¹ Cody McGraw, *Prosecuting With Compassion, Defending With Power: Progressive Prosecutors And The Case For Rehabilitative Justice*, 9 PENN. ST. J.L. & INT’L AFF. 261, 265 (2021).

² *Id.* at 266.

³ *Id.* at 265.

⁴ See Sam Reisman, *The Rise of the Progressive Prosecutor*, Law360® (Apr. 7, 2019, 8:02 PM), <https://www.law360.com/articles/1145615/the-rise-of-the-progressive-prosecutor>.

⁵ *Id.*

⁶ See Daniel A. Medina, *The Progressive Prosecutors Blazing a New Path for the US Justice System*, THE GUARDIAN (Jul. 29, 2019, 2:00 PM), <https://www.theguardian.com/us-news/2019/jul/23/us-justice-system-progressive-prosecutors-mass-incarceration-death-penalty>.

⁷ Cody McGraw, *Prosecuting With Compassion, Defending With Power: Progressive Prosecutors And The Case For Rehabilitative Justice*, 9 PENN. ST. J.L. INTL AFF. 261, 266 (2021).

⁸ Darcy Covert, *Transforming the Progressive Prosecutor Movement*, 2021 WIS. L. REV. 187, 87-88 (2021).

⁹ Benjamin Levin, *Imagining the Progressive Prosecutor*, 105 MINN. L. REV. 1415 (2021).

¹⁰ Darcy Covert, *Transforming the Progressive Prosecutor Movement*, 2021 WIS. L. REV. 187, 188 (2021).

¹¹ Darcy Covert, *Transforming the Progressive Prosecutor Movement*, 2021 WIS. L. REV. 187, 190 (2021).

senting to release on parole, or in some other way. In some jurisdictions, prosecutors have cooperated en masse.”¹² Based on that point, it seems even during a global pandemic, the prosecutor’s actions, decisions, and policies took precedence when determining the outcome of a detained defendant.

Using LexisNexis® products such as Law360® and Lexis+®, this article will continue to explore why progressive prosecution has a positive impact on society, along with how it can change bias, racism, and injustices that are entrenched in the criminal justice system. Moreover, it will argue that this style of prosecution should be held as the standard for the current political and social environment, as well as moving forward. This research aims to inform criminal defense attorneys, traditional prosecutors, law students, and laypeople of the positive impact progressive prosecution can have on marginalized communities.

Under the American judiciary system if a person is serving a prison sentence then one should assume for the most part that said person was charged, prosecuted, and convicted of a crime.¹³ Within that process, the convicted was brought before a sentencing judge who attempted or should have attempted to analyze a substantial number of factors before making their decision. Those factors included: the severity of the crime, the convicted persons criminal record, and most importantly the sentencing guidelines and prior records scores, which are created and passed by the legislature.¹⁴

A prosecutor’s power to decide whether to prosecute a case could change the current landscape of mass incarceration in the United States. “Prosecutorial discretion is the vehicle available to all prosecutors in overseeing the “gatekeeper” role between criminals and peaceful, law-abiding citizens. Progressive prosecutors use this discretion as a vehicle to reform the system from within a position of power already established by law.¹⁵ This concept, “prosecutorial discretion” is the same resource progressive prosecutors are using to help change the old structure of justice. The streamlined process an accused person faces in the American judicial system is directly impacted by implicit biases which influences prosecutorial discretion.¹⁶ The discretion of the prosecutor is a tool that has been used to punish defendants in this country for decades. However, progressive prosecutors have employed the use of progressive prosecution as the vehicle to turn the United States’ system into one that truly values human life and dignity instead of blind punishment.”¹⁷

Discretion plays a vital role when determining the fate of a defendant. As such, it is the only determinant which leads to the overall process of convicting a defendant and determining their sentence. In fact, this discretion is so powerful that a prosecutor can unilaterally decide if a crime should or should not be charged. There is no other actor in the judiciary who has the power to threaten criminal prosecution.¹⁸

¹² *Id.* at 190-91.

¹³ Cody McGraw, *Prosecuting With Compassion, Defending With Power: Progressive Prosecutors And The Case For Rehabilitative Justice*, 9 PENN. ST. J.L. & INT’L AFF. 261, 294 (2021).

¹⁴ *Id.* at 295.

¹⁵ *Id.*

¹⁶ *Id.* at 297.

¹⁷ Cody McGraw, *Prosecuting With Compassion, Defending With Power: Progressive Prosecutors And The Case For Rehabilitative Justice*, 9 PENN. ST. J.L. & INT’L AFF. 261, 300 (2021).

¹⁸ *Id.*

The staggering rate of incarceration in America is alarming when compared to the rate of imprisonment in other countries. Currently, America has a population of 332.4 million people, which is just five percent of the world’s population.¹⁹ However, America’s 2.3 million prisoners account for about twenty-five percent of the world’s prisoner population.²⁰ A sizable portion of this statistic derives from systemic racism, punishment, and decades of implementing “get-tough-on crime” initiatives.”²¹

Due to years of the misuse of prosecutorial conduct, racist policies, and an American criminal justice system focused on punishment, many Americans have found themselves behind bars. In fact, because of this plagued system, about 85.9 million people in American alone have some sort of criminal record.²² Research has concluded that nearly 70% of criminal convictions have resulted in a sentence which included some length of time incarcerated. “Aside from actual prison sentences, many ex-convicts also face the harsh reality on having to undergo post-confinement supervision programs, such as probation or parole release, either in place of a longer sentence or as an additional constraint on their freedom once they are released from prison.”²³

A progressive prosecutor can reverse mass incarceration by way of diversion programs. Although such programs exist, an update to the system is needed. Historically, some U.S. jurisdictions employ different types of diversion programs to prevent population overflow within the prison system. Note that certain U.S. jurisdictions began implementing diversion programs around the 1970s, when the population of prisons and jails grew significantly.²⁴ “Early academic evaluations showed that diversion produced mixed results on criminal justice penetration and recidivism.”²⁵ However, despite the mixed reviews, prosecutorial offices recognize that the “wars on crimes and drugs” brought causalities within their imperfect system. In fact, they insisted on pursuing some type of program.²⁶

III. Potential Solutions and Recommendations

Looking ahead, to effectuate change as it relates to diversion programs within the scope of prosecutorial discretion, leadership within prosecutors’ offices would have to ensure line prosecutors (Assistant District Attorneys) buy into the progressive profile.²⁷ Line prosecutors, typically assistant district attorneys who deal with everyday court activity, are great candidates for this change because they have the most contact with defendants. Therefore, line prosecutors would have to embrace employing diversion programs as a priority and the preferred act of the prosecutor on the ground level. This effort would make the purpose

¹⁹ Derick Moore, *U.S. Population Estimated at 332,403,650 on Jan. 1, 2022*, U.S. CENSUS BUREAU (Dec. 30, 2021), <https://www.census.gov/library/stories/2021/12/happy-new-year-2022.html>.

²⁰ Wendy Sawyer & Peter Wagner, *Mass Incarceration*, PRISON POLICY INITIATIVE (Mar. 14, 2022), <https://www.prisonpolicy.org/>.

²¹ Cody McGraw, *Prosecuting With Compassion, Defending With Power: Progressive Prosecutors And The Case For Rehabilitative Justice*, 9 PENN. ST. J.L. & INT’L AFF. 261, 294 (2021).

²² *Id.* at 270.

²³ *Id.* at 270.

²⁴ David Noble, *Practitioner: Executive Summary of the Institute for Innovation in Prosecution (IIP) Diversion Roundtable*, 5 CRIM. L. PRAC. 79 (2020).

²⁵ *Id.* at 80.

²⁶ *Id.*

²⁷ *Id.* at 81.

and ideas of progressive prosecution a reality as prosecutors are seeking to be more thoughtful and strategic in how they attempt to install effective change in their communities.

More effective usage of diversion programs could reverse the negative status quo found in some jurisdictions. In fact, today, we see diversion programs have a better impact on communities. Specifically, “according to a 2018 report on prosecutor-led diversion published by the National Institute of Justice, in contrast to the reformers of the 1970s, modern-day practitioners aim first and foremost to produce cost and time savings and lessen the burden of convictions and collateral consequences.”²⁸

IV. Conclusion

The fight for progressive prosecutors to combat racism in America’s broken judicial system continues. Although progress has been made, much more progress could be achieved through the implementation of effective diversion programs “A survey conducted by the Center for Court Innovation revealed that prosecutor’s offices also strive to hold participants accountable through the diversion process.”²⁹ Such programs seek to hold defendants responsible for their actions, satisfy the victims, and reassure communities that justice was served. More importantly, it ensures that defendants have a second chance to live a life as a productive member of society after prosecution.

²⁸ *Id.* at 82.

²⁹ *Id.* at 82.

Mentor: L. Delaine Frazier, Esq.

Client Manager, LexisNexis® Legal & Professional



Reflection on working with Fellow L. J. Chavis:

Serving as a mentor in the LexisNexis® African American Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship program has given me the opportunity to support meaningful and impactful work done to eliminate systemic racism in legal systems. As a Southern University Law Center alumnus, it has been a privilege and eye-opening experience to work with L. J. Chavis challenging the boundaries of progressive prosecution. As L. J. explores the impact of progressive prosecution on communities of color, he uncovers how traditional prosecutorial procedural practices have crippled marginalized communities. Over these months, I have seen L. J. con-

tinue to challenge and question practices that impact minorities. He has inspired me to look beyond what we may deem as acceptable prosecution and value the lasting impact on society. L. J. has grown tremendously during his time in the program and has shown tremendous effort to learn and expose himself to opportunities for growth. I look forward to seeing where his legal endeavors take him.

Delaine Frazier is a Large Law Client Manager at LexisNexis® Legal & Professional, serving as lead point of contact for large firms in Louisiana and North Carolina. Delaine holds a Juris Doctorate from Southern University Law Center. Delaine has received the LexisNexis® SMARTY Award, the LexisNexis® North America One Dream One Team Award, and the LexisNexis® North America Mountain Movers Award. In 2020, with Rhea Ramsey, Delaine offered a solution to the 2020 Rule of Law Challenge to create an Equal Justice Practice Area Page to support equal justice initiatives.

Reinventing the Jury Wheel: Using Big Data Technology to Create Jury Pool Lists

Edrius Stagg

This project's mission is the creation of a "Jury Wheel 2.0"¹ data visualization dashboard prototype as an aspirational representation of a Big Data solution generated by leveraging digital technologies (via contractual procurement by state government) to utilize current, real-time information to ensure that a summons to jury duty is sent to the correct address and represents the demographic make-up of the state/county/parish community, per Census Population data. Successful outcomes include: more diverse representation reflected in the identification and selection of jury pool candidates and transparent reporting of the demographic make-up of the surveyed, selected, and impaneled jury pool.

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.



Edrius Stagg is a fourth-year law student at Southern University Law Center. He serves as the Managing Editor for the Southern University Law Review and has held many other leadership roles while in law school. Edrius spent his previous two summers at Reed Smith, LLP as a Summer Associate. Edrius' Fellowship project focuses on reducing racial bias within the jury selection process. A special thank you to Edrius' mentor, Jacqueline Hall (Jacquie), Director of Operations Quality Assurance & Program Management at LexisNexis®. Without Jacquie's help, this project would not have been possible.

America is, supposedly, the land of the free and home of the brave. It is a country where freedom is valued so highly that to convict someone in a criminal case, that person must be found guilty beyond a reasonable doubt by twelve strangers, a jury of their peers. The idea of using lay people to determine the guilt or innocence of their fellow citizens as a failsafe to the government being able to arbitrarily imprison its citizens is a good one. Yet, the jury selection process is riddled with illegal racial discrimination² and is often found inconsistent with the Sixth Amendment which states, in part, that the accused has a right to be tried by a jury of their peers.³ While the entire jury selection process needs to be fixed, this note focuses specifically on the creation of jury pool selection master lists, the processes which jurisdictions use to fill the jury box, and whether there are more automated ways to create these master lists that eliminate the impact of systemic racism.

The decision to focus on automation and technology as a solution to help eliminate systemic racism in the jury pool selection process was crystallized when leveraging the LexisNexis® premium legal research product, Lexis+®. In consultation with legal research experts at LexisNexis®, the first search term yielded over 300 results in Cases, Statutes and Legislation, Secondary Materials, and Administrative Codes and Regulations. This vast amount of research options included data-driven insights from multiple reputable sources. Advocacy for fair jury selection in the United States aligns with the global principles of LexisNexis® to advance the Rule of Law: (1) Equality Under the Law, (2) Transparency of the Law, (3) Independent Judiciary, and (4) Accessible Legal Remedy.⁴ As an illustrative example, the Commonwealth of Massachusetts demonstrates adherence to Federal Census 2020 population data by transparently disclosing on a quarterly basis the demographic make-up of jurors who responded to surveys, appeared for jury service, and were impaneled.⁵ Just imagine if a state like Louisiana, influenced by the Lexis+® research that serves as the foundation of this paper, considered adopting the Massachusetts model?

This paper argues that the jury selection process exacerbates systemic racism because it continues to depend on methods that have historically excluded black people to create jury pool selection master lists; therefore, the utilization of big data technology to generate jury pool master lists that better help reflect the ethnic background of the community is necessary. Part I of this note reviews how jury pool lists are currently created. Part II explains the importance of rectifying the jury pool selection process. Part III concludes with a discussion on how current technology can improve the process of creating master jury selection lists, and thus, benefit the community.

Part I — How the Jury Pool Lists Are Currently Created

When creating a master jury list, the primary objective is to create a list that is broadly inclusive of the jury-eligible population.⁶ The master jury list is supposed to be geographically and demographically representative of the community and accurate with respect to the names and addresses of potential jurors.⁷

² Press Release, *EJI Releases New Report Documenting Widespread Underrepresentation of People of Color on Juries*, EQUAL JUSTICE INITIATIVE, <https://eji.org/reports/race-and-the-jury-overview/> (last visited July 18, 2022).

³ U.S. CONST. amend. VI.

⁴ LexisNexis® Rule of Law Foundation, *Rule of Law Equation*, <https://www.lexisnexisrolfoundation.org/> (last visited Aug. 20, 2022).

⁵ Office of the Jury Commissioner of the Commonwealth. *Demographic Survey Results - 1/1/2022-3/31/2022*, <https://www.mass.gov/doc/office-of-jury-commissioner-2022-q1-demographics/download> (last visited August 11, 2022).

⁶ National Center for State Courts, *Jury Managers' Toolbox Characteristics of an Effective Master Jury List*, <https://www.jurytoolbox.org/more/Characteristics%20of%20Effective%20MJL.pdf> (2009).

⁷ *Id.*

Many jurisdictions rely on voter registration lists and lists of licensed drivers/state identification card holders as the exclusive sources for prospective jurors.⁸

Historically, the popularity of voter registration lists in many jurisdictions was due to identical, or nearly identical, qualification criteria for both voting and jury service. However, exclusive reliance on the voter registration lists as the primary source for perspective jurors has waned as courts have become increasingly aware that many of these lists were neither inclusive nor representative of their communities.⁹

Under federal law, all litigants in federal courts entitled to a jury trial shall have their juries selected from a fair cross section of the community.¹⁰ It is also the United States' policy that all citizens shall have the opportunity to be considered for service on juries in the district courts of the United States and shall have an obligation to serve as jurors when summoned for that purpose.¹¹

While this right does not require that the jury precisely mirror the community and reflect the various distinctive groups in the population,¹² it does require that the jury wheels in which the names of prospective jurors are placed and then drawn by chance not systematically exclude distinctive groups from the pools of names, panels, or the venires from which juries are drawn and thereby fail to be reasonably representative of the community as a whole.¹³

To establish a violation of the fair cross-section requirement, a defendant must prove: (1) that a distinctive group in the community was excluded; (2) representation of a group in venires from which juries are selected is unfair and unreasonable in relation to that group's numbers in the community; and (3) that underrepresentation is due to systematic exclusion of that group.¹⁴

Under Louisiana law, for example, in developing a list of all persons who may be called for jury duty, it shall be determined by each judicial district whether the names of prospective jurors shall be drawn exclusively from voter registration lists or also drawn from other sources or lists.¹⁵ District judges may use their discretion to authorize the use of sources other than voter registration lists. When this occurs, the jury commission of that district is then obliged to use those other sources in addition to voter registration lists.¹⁶

The variance in the laws that surround the creation of the master jury lists are evident here in the language of both the federal and state statutes. There is no clear guidance as to what sources are proper. The lack of clear rules leaves room for officials' discretion about the use of multiple source lists to create the master jury lists.

⁸ Michael L. McConnell, *United States District Court Middle District of Louisiana Jury Plan*, <https://www.lamd.uscourts.gov/sites/default/files/Jury/MDLA%20Jury%20Plan%205-19-2021.pdf> (Mar 17, 2021).

⁹ National Center for State Courts, *Jury Managers' Toolbox Characteristics of an Effective Master Jury List*, <https://www.jurytoolbox.org/more/Characteristics%20of%20Effective%20MJL.pdf>, 2009 (last accessed July 12, 2022).

¹⁰ 28 USCS § 1861.

¹¹ *Id.*

¹² *Holland v. Illinois*, 493 U.S. 474 (1990).

¹³ *Taylor v. Louisiana*, 419 U.S. 522 (1975) (holding that the defendant's Sixth and Fourteenth Amendment rights to trial by jury comprised of fair cross-section of the community violated by systematic exclusion of women from state jury panels).

¹⁴ *United States v. Garcia*, 991 F.2d 489, 491 (8th Cir. 1993).

¹⁵ LA. CODE CRIM. PROC. ANN. § art.408.1(a).

¹⁶ LA. CODE CRIM. PROC. ANN. § art.408.1(b).

Part II — Why Reinvention of the Jury Wheel Is Needed

Imagine being on trial for a crime that comes with the risk of incarceration. How would you feel with such a risk and having to face a jury that is not like you: different race, different age, different culture? Your counsel argues to the court that the jury pool is not representative of the community, but the judge rejects such argument because the judge determines that the disparity stems from the failure of people similar to your race, age, or culture to respond to the jury questionnaires issued by the courts. This situation unfolds in the courts of both Louisiana¹⁷ and around the United States routinely. Unfortunately, it is hard to respond to a jury duty questionnaire that was never received because of an outdated address or other error. In contrast to the government’s use of antiquated methods of creating source lists for jury duty, source data used by technology companies can accurately track personal information, such as name and address, about customers. So why should something inferior be used for the crucial task of creating jury pool selection lists?

This exclusion of a fair cross section, however, is difficult to prove. Often, racial data is not collected by the government when compiling these jury selection lists, so until the respondents arrive in court, their ethnic ancestry might not be known. Only the accused has standing to challenge the creation of the jury list, and such a challenge is difficult without visibility and direct knowledge of how the list was created. Thus, it creates a hardship for the defendant that is very difficult to prove. The right to a jury of one’s peers is a constitutional right that should be given by the government to the accused without the accused having to prove that they were not given a “jury of their peers.”¹⁸ What that means is that the government, whether on a federal or state level, should proactively seek source lists or other technologically advanced methods that would provide a fair cross section of the community.

It is apparent that blacks are not being called to jury duty because their representation in the jury box is low or nonexistent throughout many jurisdictions in the country.¹⁹ Voter registration lists have long served as the sole source of jury selection lists.²⁰ But how do they ensure a representative pool for groups, such as blacks, whose states and local jurisdictions have historically used violence and intimidation to keep them from voting?²¹ Sole reliance on voter registration lists does not always lead to identifying the fairest cross section of the community. The limitations of voter registration lists are but one example of the defects in the current jury selection process. This problem is serious because freedom is an inalienable right to all citizens. All people, regardless of race, gender, or any other factor, have the right to be heard by a jury of their peers. To turn a blind eye, whether intentionally or unintentionally, to a select group of people, who are historically robbed of their right to a fair cross section of the community for jury selection lists, tears at the very fabric of the ideals that America was built upon. It is everyone’s responsibility to keep the community safe. Serving on a jury is one of the most substantial civic opportunities for citizens.²² Therefore, anyone that is a part of the community who is eligible for jury duty should have an equal opportunity to

¹⁷ John Simerman, *Challenge That Points to Racial Disparities in New Orleans Jury Pools Gets Rejected by Federal Judge*, THE ADVOCATE (New Orleans) (June 4, 2021, 3:35 p.m.), https://www.nola.com/news/article_5b8c0a62-c562-11eb-974f-9733856315f3.html.

¹⁸ U.S. CONST. amend. VI.

¹⁹ Equal Justice Initiative, *Race and the Jury: Illegal Racial Discrimination in Jury Selection* (2021).

²⁰ Solomon Jones, *Attempts to Suppress Black Voters Have Evolved, but Not Ceased*, WHYY PBS NPR, <https://whyy.org/articles/attempts-to-suppress-black-voters-have-evolved-but-not-ceased/>, July 12, 2021 (last accessed: July 19, 2022).

²¹ *Id.* See also, Grace Panetta, *How Black Americans Still Face Disproportionate Barriers to the Ballot Box in 2020*, INSIDER (Sept. 18, 2020).

²² *Flowers v. Mississippi*, 139 S. Ct. 2228, 2238 (2019); *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975).

serve because it is fundamental to our democratic system.²³ The members of the community better reflect the conscience of the community that is necessary when deciding issues of life and death and, arguably, freedom, or imprisonment.²⁴

Part III — Jury Wheel 2.0 – Integrating Technology with a Fundamental Right

The solution to this issue is to utilize currently available big data technology to reach all eligible citizens within a jurisdiction in an effort to create a true fair cross section of the community. Big data is information generated every time someone goes online, shops, uses social media or even uses a smartphone.²⁵ Anytime that person ventures online, they are producing data and leaving a digital footprint.²⁶ The billions of gigabytes of data that are created each day are analyzed by technology companies to improve their products and services.²⁷ Such data are also used to shape lives and experiences.²⁸

A big data solution generated by real-time use of digital technologies to create jury selection lists would work because it would use current, real-time information provided by the citizens to keep up with the citizens of the community so that a summons to jury duty is sent to the correct address. This simple change in the way that jury pool selection lists are developed would improve the chance that a fair cross section of the community would be captured for the creation of a jury pool as guaranteed by the Sixth Amendment.

One may argue that privacy concerns could arise from the use of commercial data. But the benefits of using the data are far greater. Most, if not all, of the data that would be used for the creation of the jury pool selection lists, such as name, address, and age, is already public information. In fact, many people of the community give this data to companies voluntarily.²⁹ Therefore, repurposing this data to more accurately find members of the community to create a more diverse source list for jury selection pools is good as a matter of public policy.

Americans want nothing more than for their communities to be safe. Equally important is that the government is not able to strip anyone of their freedom and liberty without the proper due process. This protection includes the right to being tried by a jury of your peers. This goal is more achievable by utilizing today's technology. There is no longer a need to use antiquated methods at the discretion of local, state, or federal jurisdictions to decide the fate of accused persons, particularly people of color, many times before the juries are ever actually selected.

It is the conclusion of this project that a successful advocacy campaign of the Louisiana Senate and House of Representatives to propose legislation that would revamp the current jury-management computer systems by incorporating big data technology and visualization dashboards would promote transparency and increase the likelihood of trials by impartial jurors, per the Sixth Amendment of the U.S. Constitution.

²³ *J.E.B. v. Alabama*, 511 U.S. 127, 145 (1994).

²⁴ *Witherspoon v. Illinois*, 391 U.S. 510, 519 (1968).

²⁵ Ronald van Loon, *What is Big Data and How Does It Work?*, DATA SCIENCE CENTRAL, <https://www.datasciencecentral.com/what-is-big-data-and-how-does-it-work/> (Dec. 12, 2017).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Lee Rainie and Maeve Duggan, *Privacy and Information Sharing*, PEW RESEARCH CENTER, <https://www.pewresearch.org/internet/2016/01/14/privacy-and-information-sharing/> (Jan. 14, 2016).

Mentor: Jacqueline C. Hall

Director, Operations — Quality Assurance & Program Management



Reflection on working with Fellow Edrius Stagg:

The opportunity to mentor Edrius Stagg through his participation in the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Fellowship program has been thought-provoking, awe-inspiring, and humbling. During our first meeting, it was obvious that Edrius has endured a lifetime of real-world experiences that goes beyond his fourth-year law student at Southern University Law Center designation. We found ourselves to be instantly compatible — kindred spirits who are intellectually curious and passionate about upholding the civic duty of jury service to the highest standards of due process.

As a LexisNexis® employee, the collaborative partnership with Edrius on his “Finally Reinventing the Jury Wheel: Creating Jury Pool Lists by Utilizing Big Data Technology” project has personally increased my appreciation of the advancement of Rule of Law principles around the globe by LexisNexis®.

The aspirational objective of Edrius’ project is to leverage Big Data technology to equip state courts, like Louisiana, with tools to ensure adherence to the Sixth Amendment which states, in part, that the accused has a right to be tried by a jury of their peers.

The “Finally Reinventing the Jury Wheel: Creating Jury Pool Lists by Utilizing Big Data Technology” Rule of Law project embodies the definition of Rule of Law at LexisNexis®: Equality Under the Law; Transparency of the Law; Independent Judiciary; and Accessible Legal Remedy.

It has been an honor and privilege to get to know Edrius and share ah-ha moments from our legal research efforts. Edrius Stagg’s engaging personality, impactful communication skills, and learning agility are successful leadership traits that will ensure success in any post-law school career that Edrius chooses to pursue.

Jacqueline Hall, in her current role as Operations Director for Quality Assurance & Program Management, strategically leads a global team of Quality Analysts who evaluate products and processes on behalf of Customer Support, Customer Fulfillment, and Editorial functional groups. Her career at LexisNexis® Legal & Professional began 37 years ago as a copyeditor for Matthew Bender products. Jacqueline graduated from Northwestern University and leverages industry certifications in Project Management, Six Sigma Green Belt, and U.S. Privacy to lead global initiatives and continuous process excellence projects. Jacqueline is a passionate advocate for inclusion and diversity principles, impactful allyship, inspirational coaching/mentoring, and an “upside-down pyramid” leadership style.

Ally Legal: Your Digital Path to the Courtroom — Ensuring Equality Under the Sixth Amendment

Nija Bastfield

This project's mission is to develop a mobile application called *Ally Legal*¹ that will improve access to the legal system for individuals accused of criminal traffic violations. This digital experience will include a user-friendly interface, frequently asked questions, a list of traffic infractions, access to a public defender office representation application, and a database of pro bono private attorneys.

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.



Nija A. Bastfield is a fourth-year evening law student from The University of the District of Columbia, David A. Clarke School of Law. Her experience as a Law Clerk at the Baltimore City State's Attorney's Office, along with her experience at the United States Attorney's Office in Washington, D.C., and the New York County District Attorney's Office, helped to clarify her interest in criminal law. After graduation, Nija seeks to become an Assistant District Attorney in the New York County District Attorney's Office. Nija's Fellowship project focuses on providing digital litigation assistance for marginalized communities.

I. Introduction

Many people believe that state pretextual traffic stops have a disproportionate effect on minorities; specifically, “they put People of Color in reasonable fear for the bodily safety and even the lives of themselves, their children, their loved ones and friends; and they exacerbate and perpetuate the profound problem of racial disparities in the criminal justice system and society.”² In addition, “racial profiling in traffic stops has proven to be an intractable problem, the devastating consequences of which have been recognized for many years.”³ This paper argues that some people of color who receive traffic citations and failure to appear notices incur default judgments that negatively affect them in greater numbers than white people. This problem has a disproportionate impact on minority communities; therefore, the creation of a mobile application will aid individuals to navigate the court system and foster equal access to justice. This paper addresses the rules regarding traffic citations, including laws surrounding default judgments and its effects. Finally, it explains how *Ally Legal* can assist individuals to overcome this historical problem among communities of color.

“The United States Supreme Court has established an objective test to evaluate the reasonableness of a traffic stop by law enforcement under the Fourth Amendment of the United States Constitution.”⁴ People who receive traffic infractions or citations must pay the fine or appear in court. In *Bell v. Burson*,⁵ the United States Supreme Court held that “due process requires that when a state seeks to terminate an interest such as a driver’s license, it must afford notice and opportunity for a hearing appropriate to the nature of the case before the termination becomes effective.”⁶

Even though police officers write traffic tickets that contain general factual allegations, some people of color lack the requisite legal, financial, and literacy tools to successfully navigate this area. Communities of color are disproportionately policed.⁷ Correspondingly, people of color are disproportionately stopped, ticketed, arrested, charged, and punished. Therefore, driver’s license suspensions, and the associated fines, fees, and costs, disproportionately target and harm communities of color.⁸ License-for-payment laws ultimately create conditions that parallel modern-day debtor’s prisons and are vulnerable to several legal challenges.⁹ For these reasons, lawmakers should end suspensions for nonpayments of traffic tickets and nonappearances in traffic court, practices which unduly target and harm communities of color.¹⁰

Fines are the most common form of punishment in the United States and are disparately imposed against people of color.¹¹ With jurisdictions using traffic fines as a way to fund government, there is a real incentive to over-police and over-punish minor crimes.¹² In additions, some jurisdictions across the country are

² See *State v. Brown*, 930 N.W.2d 840, 865–66 (Iowa 2019), citing Brief of ACLU of Iowa et al. as Amici Curiae Supporting Appellant at 10, *Brown*, 930 N.W.2d 840 at 865–66 (No. 17-0367).

³ *Commonwealth v. Long*, 485 Mass. 711, 736, 152 N.E.3d 725, 749 (2020).

⁴ *Brown*, 930 N.W.2d at 844.

⁵ *Bell v. Burson*, 402 U.S. 535, 542 (1971).

⁶ Daniel E. Feld, *Necessity of Notice and Hearing Before Revocation or Suspension of Motor Vehicle Driver’s License*, 60 A.L.R.3d 361, 2a.

⁷ Melissa T. Levin, *Driver’s License Suspensions for Nonpayments: A Discriminatory and Counterproductive Policy*, 48 HASTINGS CONST. L.Q. 73, 79 (Fall 2020).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Daniel S. Harawa, *How Much Is Too Much? A Test to Protect Against Excessive Fines*, 81 OHIO ST. L.J. 65, 66 (2020).

¹² *Id.*

disproportionality assessing fines against people of color.¹³ For example, in Ferguson, Missouri, “one demographic that was most characteristic of cities that levy large amounts of fines on their citizens: a large African American population.”¹⁴ The update concluded that the “[u]nchecked discretion [and] stringent requirements to impose fines or fees can lead [and have led] to discrimination and inequitable access to justice.”¹⁵

When people started examining how fines and forfeitures are being imposed in America, one thing became clear: fines and forfeitures can be incredibly damaging to a person’s life.¹⁶ Assessing a fine that a person cannot pay risks setting off a chain of destructive events.¹⁷ First, if a defendant is late paying a fine, there are often late fees or collections fees that are assessed, and that same person who could not make the initial payment is charged interest for every day their payment is late, compounding the problem.¹⁸ We know that police officers are pressured into arresting people of color for minor crimes for financial reasons, and that judges are imposing exorbitant financial punishment for said crimes because they operate in systems in which that financial punishment is critical to a fully funded government--the same government that pays their salaries.¹⁹

[T]he ACLU, along with other groups, similarly explained that state and local governments use “fines, fees, and forfeitures to raise revenue,” which “disproportionately harm communities of color for reasons that include the longstanding racial and ethnic wealth gap and higher rates of poverty and unemployment.”²⁰ “The existence of a municipal warrant effectively means that one is subject to state capture at any moment; it modifies behavior in a myriad of ways.”²¹ Additionally, “these warrants legitimize virtually all police activity in black neighborhoods; in communities with as many warrants as households, even the most egregiously pretextual and unlawful traffic stop will likely end with a ‘wanted person’ being taken into custody.”²² As fines and forfeitures continue to be imposed, and as long as they are disparately imposed against people of color, courts must be wary of rubberstamping the constitutionality of this ubiquitous form of punishment.²³

Coupled with difficult to interpret citations and the lack of financial and literacy tools, people of color face unequal access to legal representation versus white people. The president of the American Bar Association called for “a recommitment to the noblest principles that define our profession: providing legal representation to the poor, disadvantaged and underprivileged; and performing public service that enhances the common good.”²⁴ “Many lower-income people rely on government programs to obtain essential human needs, making their reliance on the law and its enforcement greater than for more affluent citizens.”²⁵ To combat this disparity, *Ally Legal*, which is a tool that provides digital accessibility for an accused who lacks the financial resources and literacy to obtain counsel, will assist people of color in bridging the gap for legal presentation required under the Sixth Amendment of the United States Constitution.²⁶

¹³ *Id.* at 68.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 91.

²¹ Brendan D. Roediger, *Abolish Municipal Courts: A Response to Professor Natapoff*, 34 HARV. L. REV. 213, 224 (2021).

²² *Id.*

²³ Daniel S. Harawa, *How Much Is Too Much? A Test to Protect Against Excessive Fines*, 81 OHIO ST. L.J. 65, 109 (2020).

²⁴ Robert R. Kuehn, *Undermining Justice: The Legal Profession’s Role in Restricting Access to Legal Representation*, 2006 UTAH L. REV. 1039, 1069 (2006).

²⁵ *Id.* at 1039.

²⁶ U.S. CONST. amend. VI.

II. Background

A. Traffic Citations

The Traffic Safety Act in Florida “authorize[s] a traffic infraction enforcement officer . . . to issue a traffic citation” for one’s failure to stop at a red light.”²⁷ When a police officer sees a traffic offense, such as driving with a faulty turn signal, the officer has the power to direct the driver to stop the vehicle and produce identification.²⁸ Although most would expect the officer to issue a summons, that is not the only option available. In many jurisdictions the officer may arrest the driver, which may involve a brief ride to the precinct followed by the payment of a bond or the signing of an agreement to later appear in court.²⁹ In almost every state, police officers may choose to arrest or issue a citation for the vast majority of offenses.

B. Disparate Treatment and Disparate Impact

“Dramatic racial disparities in traffic stops, citations, and arrests were ‘not the necessary or unavoidable results of legitimate public safety efforts’ and ‘stemmed in part from intentional discrimination.’”³⁰ “Figuring out the nature of the disparity in any predictive context is a necessary first step in redressing it.”³¹ “Frequent stops for minor traffic violations send an unmistakable signal to individuals that they are potential suspects, rather than full citizens.”³² Unfortunately, for people of color, traffic stops are the most common interaction they have with law enforcement.³³ As a result, traffic stops play a distinct role in the way people of color view law enforcement. “[T]he U.S. Supreme Court minimally considers the historical and personal experiences of the driver. Here, the U.S. Supreme Court fails to make a simple recognition: the black experience with police is different and unique from the white experience.”³⁴ In *Whren v. United States*,³⁵ the U.S. Supreme Court first considered the role that race may play in a police officer’s decision to stop a vehicle. Writing for the unanimous court, Justice Antonin Scalia noted that traffic stops at best “interfere with freedom of movement, are inconvenient, and consume time and at worst may create substantial anxiety.”³⁶ It is reasonable to expect that the constant scrutiny by police officers would lead to mistrust, fear, and nervousness by those who are consistently followed.³⁷

²⁷ Police Powers for Sale: Red-Light Enforcement Sold to the Foreign Bidder, 8 FIU L. REV. 137, 161.

²⁸ Barbara C. Salken, *The General Warrant of the Twentieth Century? A Fourth Amendment Solution to Unchecked Discretion to Arrest for Traffic Offenses*, 18 PACE L. REV. 97, 99 (1997).

²⁹ *Id.*

³⁰ Sandra G. Mayson, *Bias in, Bias Out*, 128 YALE L.J. 2218, 2300 (2019).

³¹ *Id.* at 2261.

³² John Sides, *What Data on 20 Million Traffic Stops Can Tell Us About ‘Driving While Black’*, MONKEY CAGE (July 17, 2018), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/07/17/what-data-on-20-million-traffic-stops-can-tell-us-about-driving-while-black/>.

³³ Steven Plitt & Steven J. Gross, § 8:8. *Use of Traffic Convictions in Civil Matters*, 9, THE CLAIM ADJUSTER’S AUTOMOBILE LIABILITY HANDBOOK (2021).

³⁴ Anthony J. Ghiotto, *Traffic Stop Federalism: Protecting North Carolina Black Drivers From The United States Supreme Court*, 48 U. BALT. L. REV. 323, 328-329 (2019).

³⁵ 517 U.S. 806 (1996).

³⁶ *Id.* at 817.

³⁷ Anthony J. Ghiotto, *Traffic Stop Federalism: Protecting North Carolina Black Drivers From The United States Supreme Court*, 48 U. BALT. L. REV. 323, 351 (2019).

C. Negative Implications of Traffic Citations

1. Default Judgments

“Default judgments are available because of litigation non-participation.”³⁸ Under Federal Rule of Civil Procedure 55, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by otherwise, the clerk must enter the party’s default.”³⁹ “Factors that courts may consider in determining whether to grant default judgment are: (1) merits of plaintiff’s substantive claim; (2) sufficiency of complaint; (3) sum of money at stake in action; (4) possibility of prejudice to plaintiff; (5) possibility of dispute concerning material facts; (6) whether default was due to excusable neglect; and (7) strong policy favoring decision on merits.”⁴⁰

2. Lenders Against Low-Income Debtors

Current laws allow lenders to impose financial obligations on alleged debtors.⁴¹ Insolvent people of color are sued by debt buyers disproportionately in jurisdictions with larger concentrations of poor people and racial minorities.⁴² Since the 1970s, debt collection is concentrated in poor areas, and falls disproportionately on minorities.⁴³ For example, federal law prohibits creditors from garnishing a debtor’s social security payments, caps wage garnishments at 25% of a debtor’s disposable income, and protects people directly deposited federal benefits.⁴⁴ The laws in some states provide additional protections. Alabama, Delaware, Kentucky, and Michigan, for example, “allow debt collectors to seize nearly everything a debtor owns.”⁴⁵

As a result, low-income families struggle to pay these debts over time, preventing families from securing basic economic and social needs such as food, clothing, and medicine. In July 2010, the United States Federal Trade Commission concluded that “[t]he system for resolving disputes about consumer debts is broken” and that “neither litigation nor arbitration currently provides adequate protection for consumers.”⁴⁶ The negative impact on the defendants’ fundamental economic and social rights, such as rights to housing, food, and clothing, makes it imperative for court systems and policymakers to address these problems.⁴⁷ Courts should ensure that the judgments they hand down in debt buyer cases have merit.⁴⁸ For defendants living in poverty or at the margins, the evidentiary and due process concerns highlighted in the American Bar Association, *Criminalizing Poverty Through Fines, Fees, and Costs* report take on an outsized level of importance and urgency.⁴⁹

³⁸ Jesse N. Panoff, *Debtors, Creditors, Default Judgments, & Discretion: Why Rule 62(b)(4) Will Become One of the Most Important Federal Rules of Civil Procedure*, 44 CREIGHTON L. REV. 227, 233 (2010).

³⁹ Fed. R. Civ. P. 55(a).

⁴⁰ Fed. R. Civ. P. 55.

⁴¹ Monica Llorente, *Criminalizing Poverty Through Fines, Fees, and Costs*, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/criminalizing-poverty-fines-fees-costs/> (Oct. 3, 2016).

⁴² Peter A Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 LOY. CONSUMER L. REV. 179, 218 (2014).

⁴³ *Id.* at 228.

⁴⁴ *Id.*

⁴⁵ *Report: Which States Put Families At Risk of Poverty During the COVID Crisis?*, National Consumer Law Center, <https://www.nclc.org/media-center/report-which-states-put-families-at-risk-of-poverty-during-the-covid-crisis.html> (Oct. 29, 2020).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

3. Real World Stories of Default Judgment Impacts

The United States Department of Justice found a system that disproportionately targets poor minorities by using traffic citations, ultimately leading to suspended licenses for inability to pay, as means to generate revenue and force a cycle of indebtedness to the city.⁵⁰ Courts increasingly impose fees on convicted people to cover basic court expenses, such as the maintenance of court facilities and compensation for court personnel.⁵¹ Nonpayment often leads to incarceration for people without the resources to pay, in direct contravention of established U.S. Supreme Court precedent.⁵² Though they constitute the largest number of filings in criminal court, traffic citations are generally afforded the least process. Only four states consider a person's ability to pay prior to a driver's license suspension (Louisiana, Minnesota, New Hampshire, and Oklahoma).⁵³ The modern-day racial project of penal debt arising out of traffic citations depends on the functioning of a criminal justice system that is "rife with explicit and implicit racial biases and prejudices."⁵⁴

For example, many black and Latino clients vividly recount stories of being pulled over for minor violations — expired tags, no license plate — and being roughly commanded to exit their vehicles, thrown on the hood of their vehicles or on the sidewalk, and handcuffed, so that the officers can search for what they broadly defined as "guns and drugs." When nothing illegal is found, the officers issued citations. The citations are their batons, the fines their weapons of financial destruction, the fees their instruments of deprivation.⁵⁵ In other words, police use their discretion to treat "Driving While Black" like a criminal offense. African Americans suffer from heavier penalties than their white counterparts upon being stopped.⁵⁶ When compared to white people, the economic vulnerability is even more stark. The black-to-white income ratio is 0.62 and when it comes to assets, black people owned 15 cents to every dollar owned by white people.⁵⁷ This lack of assets plays a tangible role in not only the advancement of black people financially, but in how black people might fare when confronted with a crisis or emergency.⁵⁸

It is impossible to ignore the financial consequences of this compounding effect, nearly all of which are assigned to low-income individuals who are victims of this scheme.⁵⁹ If someone cannot pay a lump sum total up front, they will be subject to interest that accumulates on the debt.⁶⁰ In jurisdictions where the interest rate simply outstrips the monthly amount a defendant can afford to pay, individuals are placed on a never-ending treadmill of paying only the interest that has accrued, never the principal.⁶¹ In some instances, a person's inability to pay court-ordered debt in full results in incarceration — a modern-day form of debtors' prisons. Time spent incarcerated leads to people losing jobs, cars, and housing.⁶² A person may be forced to stay on probation longer than is necessary to justify for public safety reasons because the sole reason for maintaining probation conditions is the inability to pay all outstanding fines and fees.⁶³ Outstanding

⁵⁰ Bryan Altman, *Improving the Indigent Defense Crisis Through Decriminalization*, 70 *ARK. L. REV.* 769, 799 (2017).

⁵¹ *Id.*

⁵² Theresa Zen, *(Color) Blind Reform: How Ability-To-Pay Determinations are Inadequate to Transform a Racialized System of Penal Debt*, 43 *N.Y.U. REV. L. & SOC. CHANGE* 175, 177 (2019).

⁵³ *Id.* at 186.

⁵⁴ *Id.* at 188.

⁵⁵ *Id.* at 191-92.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 197.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 199.

⁶² *Id.*

⁶³ *Id.*

traffic tickets prohibit family members from being able to see their loved ones in prison, despite numerous studies that show positive effects of prisoners receiving visits.⁶⁴

D. Incorporating a Mobile Application to Bridge the Gap to Access

1. The Need for the Ally Legal Tool

The project proposes a mobile application called *Ally Legal*. This digital judicial experience will include a user-friendly interface, frequently asked questions, a list of traffic infractions, access to a public defender office representation application, and a database of pro bono private attorneys. Technology and legal services are tools to close access to justice gaps.⁶⁵ In addition, *Ally Legal* can provide unrepresented parties with substantive and procedural expertise to navigate court hearings.⁶⁶

2. Endorsement of Ally Legal to Address the Digital Divide

Ryan Calo, cyberlaw scholar and professor at University of Washington, offers an impactful definition for when technological exceptionalism occurs: “when [a technology’s] introduction into the mainstream requires a systematic change to the law or legal institutions in order to reproduce, or if necessary, displace, an existing balance of values.”⁶⁷ It involves at least two elements: 1) a dramatic technological change that 2) necessitates systematic legal change.⁶⁸

“Successful broad implementation of technological based projects must include universal access for those with disabilities, adequate connectivity and speed, affordable and accessible hardware, and effective computer and legal information literacy training.”⁶⁹ Technology raises “[T]he consciousness of the justice system and the broader society to the consideration of access to justice and the use of technology to break down barriers and increase access, thereby minimizing or eliminating both the ‘Digital Divide’ and”⁷⁰ To accomplish that, “we must be clear about how technology is changing how society conducts its affairs, what the barriers may be, and what solutions are emerging.”⁷¹ Then, to bring about and perpetuate the desired changes, we must continue to work in partnership, collaboration, and cooperation with many others.⁷²

“Successful implementation of judicial information systems will depend upon the acceptance of technological innovation by all relevant constituencies, including judicial system personnel, the public and private bar, and the general public.”⁷³ “The poor man looks upon the law as an enemy, not a friend. For him, the law is always taking something away.”⁷⁴

⁶⁴ *Id.* at 200.

⁶⁵ *Id.*

⁶⁶ Victor D. Quintanilla, *Doing Unrepresented Status: The Social Construction and Production of Pro Se Persons*, 69 DE-PAUL L. REV. 543, 581 (2020).

⁶⁷ Meg L. Jones, *Does Technology Drive Law? The Dilemma Of Technological Exceptionalism In Cyberlaw*, 18 U. ILL. J.L. TECH. & POL’Y 249, 253 (Fall 2018).

⁶⁸ *Id.*

⁶⁹ Susan Drisko Zago, *Riding Circuit: Bringing the Law to Those Who Need It*, 12 FLA. A & M U.L. REV. 1, 31 (2016).

⁷⁰ Donald J Horowitz, *Technology, Values, and the Justice System: The Evolution of the Access to Justice Technology Bill of Rights*, 79 WASH. L. REV. 77, 103 (2004).

⁷¹ *Id.* at 103.

⁷² *Id.*

⁷³ Anderson, et al., *The Impact of Information Technology on Judicial Administration: A Research Agenda for the Future*, 66 S. CAL. L. REV. 1762, 1794 (1993).

⁷⁴ Mark Lloyd, *The Digital Divide and Equal Access to Justice*, 24 HASTINGS COMM. & ENT L.J. 505, 508 (2002).

People of color do not know their rights. As Justice Sandra Day O'Connor told the American Bar Association in 1991, often, if people do know their rights, they do not know how to enforce them — resulting in many people desperately needing legal services but cannot afford them.⁷⁵ The American Bar Association concluded that “our civil justice system is fundamentally disconnected from the lives of millions of Americans.”⁷⁶ The problem is clear enough. “Most Americans do not have adequate access to our judicial system, and neither government-supported legal services nor private pro bono efforts while often well intended, are insufficient.”⁷⁷

In addition to applying the Bill of Rights to the states, the Fourteenth Amendment guarantees that “no State shall . . . deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”⁷⁸ “[T]he courts have not generally interpreted either “due process” or “equal protection” to mean free access to the courts or state-provided legal representation before a judge or jury.”⁷⁹

“[E]qual access to justice would seem to be a fundamental right enjoyed by anyone accused of a crime or anyone upon whom the state would enforce a penalty resulting from some non-criminal act.”⁸⁰ The American Bar Association sets out steps to improve access to justice that include: (1) implementing new networked communications technologies, (2) informing people about their legal options and helping them with legal referrals, and (3) using simplified forms and procedures to make the courts “more approachable.”⁸¹ This note compels the court to see unequal access to justice as a constitutional problem.⁸² It urges our leaders to spend and allocate resources to further the goal of equal access to justice.

III. Conclusion

“It can be daunting when a new technology is introduced, and it is changing the way you do things, but this is the future.”⁸³ This paper has sought to demonstrate the need of incorporating technological advancements within the judiciary. While this paper does not advocate for an entire digitized judicial experience, access must be universally entrenched for all individuals including people of color. Accordingly, this paper has endeavored to articulate an area of law coupled with the information that reflects a distinct disconnect from the lack of equal accessibility of the laws. More importantly, there is a lack of basic knowledge of the judicial system regarding the rights and responsibilities of individuals who receive traffic citations or infractions. New communications technologies, such as *Ally Legal*, can help correct the lack of knowledge if they are appropriately used to focus and direct actual dialogue. Implementing *Ally Legal* will ensure equal access to the law among all people. “If the principles of the legal profession mean anything, then all lawyers, courts, and bar organizations need to fight to ensure access to justice is truly equal and without restrictions.”⁸⁴

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 511.

⁷⁸ U.S. CONST. amend. XIV.

⁷⁹ Mark Lloyd, *The Digital Divide and Equal Access to Justice*, 24 HASTINGS COMM. & ENT. L.J. 505, 508 (2002).

⁸⁰ *Id.* at 516.

⁸¹ *Id.* at 528.

⁸² *Id.* at 533.

⁸³ Abbott Elementary (ABC television broadcast Jan. 12, 2022).

⁸⁴ Robert R. Kuehn, *Undermining Justice: The Legal Profession's Role in Restricting Access to Legal Representation*, 2006 UTAH L. REV. 1039, 1079 (2006).

Mentor: Serena Wellen

Senior Director, Product Management



Reflection on working with Fellow Nija Bastfield:

As an employee of LexisNexis®, I am proud of the company's mission — advancing the rule of law around the world — and the dedication of so many of my colleagues in furtherance of that goal. I'm also proud of the commitment LexisNexis® has shown to diversity and inclusion, within the company, within the legal profession, and within the U.S. justice system. The LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Fellowship program is at the confluence of these missions, and it gives me the opportunity to work with truly extraordinary people — tomorrow's leaders — and help enable their vision of equality before the law.

Nija Bastfield is one of those emerging leaders of the legal profession. Nija brings powerful arguments, personal insight, and compassion to the case that she makes for equal justice. In working with her to help defendants cited with vehicular infractions avoid default judgements, and all the resulting terrible impacts, I've learned about how the police use traffic stops to generate revenue, and impose fines disproportionately on people of color. So, not only are these activities terrorizing black and brown communities, who rightly fear police brutality, but the negative financial and personal consequences happen even when violence is avoided: fines for traffic infractions, arrests for nonpayment of fines, suspension of drivers' licenses, and default judgements against those who can't navigate the legal system.

Nija's vision is to use bot technology to help criminal defendants both navigate the legal system at no cost to them and avoid default judgements. Her vision is truly inspiring, and I'm grateful for the opportunity to work with and learn from Nija.

Serena Wellen is Senior Director of Product Management for LexisNexis® North America. Her portfolio includes AI-enabled solutions, decision tools, analytics, advanced search capabilities, and Microsoft O365 collaboration tools. 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 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 Juris Doctorate from the University of San Francisco, and received a Masters in Fine Art from the San Francisco Art Institute.

Cluster 5:

Equity in the Criminal Justice System

Citizens Call on Georgia Legislature to Pass Bill Abolishing the Death Penalty

Amari Roberts

Capital Punishment: The New Modern-Day Lynching

Talia Thomas

Smoked Out: The Over-Criminalization of Black Youth for Marijuana Usage and Possession

Marian Anderson

Citizens Call on Georgia Legislature to Pass Bill Abolishing the Death Penalty

Amari Roberts



This project's mission is to complete a draft act abolishing the death penalty in the State of Georgia. The proposed bill, titled the McCleskey Act, eliminates the requirement to prove disparate intent thereby rectifying the disparate impact that Georgia's death penalty law has on black and brown inmates. The Act also eliminates the disparate impact that Georgia's death penalty system has on black and brown inmates on death row, thereby ending the history of racial discrimination as a motivating factor for execution.

Amari Roberts is a third-year law student from Florida A&M University College of Law. Amari's passion for law developed as she watched her mother zealously advocate for her clients every day in the justice system. As a Georgia native, Amari's experience at the Fulton County District Attorney's Office motivated her to take on the challenge of rectifying capital punishment in the state of Georgia. She hopes to keep being an inspiration for future law students. Amari's Fellowship project is the McCleskey Act, a bill proposal that focuses on eliminating Georgia's death penalty system's discriminatory intent requirement and that would instead require only proving that a law has discriminatory impact.

Introduction

Georgia's death penalty system has intentionally targeted inmates of color from colonial times. Georgia statutes enacted as early as 1755 made certain acts capital crimes, but only if committed by a black person.¹ In fact, in 1816 Georgia enacted a race-based death penalty statute that sentenced black slaves and black free people to be hanged if they committed certain crimes.² It was not until 1865 that Georgia subjected white people to that same statute.³ Georgia applied the 1816 statute to white people not out of equity, but to prevent black people from starting, or attempting to start, an insurrection or revolt of slaves.⁴ This paper posits that Georgia's death penalty system and the express language of its capital punishment legislation have a disparate impact on black people. Therefore, it is necessary to draft legislation ending the death penalty through the McCleskey Act ("Act"), a proposed bill that would eliminate such racial disparities and abolish the death penalty. This paper offers background to Georgia's death penalty regime and describes how, with the assistance of the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship to draft the Act, Georgia's death penalty law may be eliminated.

This paper is organized as follows: Part I discusses the long and troubling history of Georgia's death penalty regime and exposes the pervasiveness of racism weaving in and out of that state's death penalty legislation. Part II exposes the underlying discriminatory intent in the writing of Georgia's death penalty legislation, and is followed by a discussion of the United States Supreme Court case, *McCleskey v. Kemp*,⁵ which displays the disparate impact that Georgia's death penalty law has on African American inmates who committed a crime against white victims. This section describes the hot-button debate over the death penalty and its cruel and unusual punishment of inmates of color. Part III describes the Act and provides an overview of the proposed bill and its solution. Part IV summarizes the hopeful future presented by the Act's impact on Georgia's death penalty system.

Part I — Putting Georgia's Death Penalty System into Context

The Georgia General Assembly passed death penalty legislation in 1924⁶ at the height of lynchings of black people that replaced death by hanging with death by electrocution.⁷ Although the lynchings of black people continued at an alarming rate during this period in history, the legislature failed to address

¹ Donald E. Wilkes, Jr., *Sentenced to Death*, POPULAR MEDIA. https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1138&context=fac_pm (last accessed June 24, 2022) (describing how "[a]n 1816 Georgia statute made the following acts capital crimes, but only if committed by a slave or a 'free person of color': poisoning or attempted poisoning; insurrection or attempted insurrection; rape or attempted rape of a white female; assaulting a white person with a deadly weapon or with intent to murder; maiming a white person; and burglary)."

² *Georgia – History of the Death Penalty*, DEATH PENALTY INFORMATION CENTER, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/georgia> (last visited June 24, 2022).

³ *Id.*

⁴ *Id.*

⁵ *McCleskey v. Kemp*, 481 U.S. 279 (1987).

⁶ 4 General Assembly, Act of Aug. 16, 1924, 1924 Ga. Laws 195 (changing the state's execution method from hanging to electrocution and requiring that executions be carried out by state officials in state prison rather than in the county of execution).

⁷ See 1980 Ga. Op. Att'y Gen. 255 (1980). From 1735 to 1924 the legal method of execution in Georgia was hanging. See also Office of Planning and Analysis: *The Death Penalty in Georgia, Executions by Year 1924-2014*, http://www.dcor.state.ga.us/sites/all/files/pdf/Research/Standing/Death_penalty_in_Georgia.pdf; see also Pamela S. Nagy, *Hang by the Neck Until Dead: The Resurgence of Cruel and Unusual Punishment in the 1990s*, 26 PAC. L.J. 85, 86-87 (1994).

this epidemic in its amended statute.⁸ Georgia’s lynchings were aimed at black people by an overwhelming majority (95%) and “almost always consisted of white mobs killing black men.”⁹ The Georgia General Assembly simply enacted a law stating that defendants of capital crime would no longer be hanged, a sub-category of lynching, but they would be electrocuted.¹⁰

Racial injustice became even more prevalent in the United States in the throes of the Great Depression. Black people, specifically black men, who were providers for their families, struggled to find jobs and produce income sufficient to sustain their livelihoods.¹¹ Even with the South’s overwhelming poverty, Georgia’s revised legislation omitted reform for black inmates living in poverty, and only increased the difficulties for black inmates subject to capital punishment. Most of these black inmates lacked adequate financial resources to seek counsel or fund their appeals process. As a result, 60 out of the 65 executions performed were on black male inmates.¹²

The next revision to Georgia’s death penalty law came in 1973 after the Supreme Court suspended all executions in the United States.¹³ Just three years later, however, the Georgia legislature reinstated the death penalty, and discriminatory intent reared its ugly head once again. The Georgia General Assembly reinstated the law during the height of federal civil rights legislation without also enacting revisions that prohibited segregation and discrimination. Although Governor Jimmy Carter introduced these civil rights laws to Georgia in 1971, Georgia still passed the same death penalty law, ultimately responsible for 95% of its executions being of black people.¹⁴ As a result, all subsequent executions, save one, were of black inmates (with the second execution of a white inmate not occurring until more than 10 years later).¹⁵

In 2020, the General Assembly enacted O.C.G.A. 17-10-2, allowing:

any lawful evidence which tends to show the motive of the defendant, his lack of remorse, his general moral character, and his predisposition to commit other crimes [to be] admissible in aggravation. ... Each case is necessarily different; however, such evidence, by way of illustration, may consist as it did here of the defendant’s attitude concerning his crime and the victim, the trier of fact’s personal observation of the defendant, [the defendant’s] conduct after incarceration and evidence of subsequent crimes.¹⁶

Simply put, jurors, as triers of *fact* in a case, can now use a defendant’s *character* when determining the defendant’s fate.

⁸ 1980 Ga. AG LEXIS 62, 1980 Ga. Op. Att’y Gen. 255, 1980 Ga. Op. Atty Gen. No. 80-121.

⁹ *Id.*

¹⁰ Of Georgia’s victims of lynch mob “justice,” the overwhelming majority (95%) were black, and they were murdered primarily, although not exclusively, by white mobs.

¹¹ Georgia’s lynch violence almost always consisted of white mobs killing black men.

¹² Encyclopedia.com, “*Black Americans 1929-1941.*” *Historic Events for Students: The Great Depression*, (June 21, 2022). <https://www.encyclopedia.com/education/news-and-education-magazines/black-americans-1929-1941>.

¹³ *Furman v. Ga.*, 408 U.S. 238 (1972).

¹⁴ Stephen Tuck, *Civil Rights Movement*, NEW GEORGIA ENCYCLOPEDIA (last modified Aug. 24, 2020) <https://www.georgiaencyclopedia.org/articles/history-archaeology/civil-rights-movement/>.

¹⁵ *Georgia – History of the Death Penalty*, DEATH PENALTY INFORMATION CENTER, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/georgia> (last visited June 24, 2022).

¹⁶ *Fair v. State*, 245 Ga. 868 (1980).

Part II — Analysis of Problem

Aside from the death penalty being egregiously wrong from a moral and ethical standpoint, the creators of the 1933 Georgia Code drafted the death penalty statute with discriminatory intent which has trickled through every revised death penalty statute in Georgia, culminating in a modern-day genocide of black and brown people. From the inception of Georgia’s death penalty system to today, it has disproportionately targeted and preyed on the killing of black people.¹⁷ A vast majority of studies have shown that the race of the victim influences a defendant being charged with capital murder and receiving the death penalty.¹⁸ In other words, death row inmates who murdered a white victim were found more likely to be sentenced to death than those who murdered a black victim. This is not a new problem; however, it needs to be publicized. A death penalty system that allows such discriminatory effects on black and brown people is a problem that is deeply rooted in Georgia’s legislative history.

A major problem is not only that the death penalty system exists, but that it also allows the trier of fact to stray away from lawful, concrete evidence that is close to impossible to dispute, and gives the trier of fact overly broad criteria to use when assessing the defendant’s character.¹⁹ The “defendant’s attitude concerning his crime and the victim” can easily be interpreted by the trier of fact as “defendant’s attitude concerning the victim and the race of the victim.”²⁰ “The trier of fact’s personal observation of the defendant” can be easily thought of as “racially profiling the defendant, observing his race compared to the victim’s race, and passing him as guilty because [the defendant] committed murder.”²¹ Lastly, “[the defendant’s] conduct after incarceration and evidence of subsequent crimes” can quite frankly be misinterpreted as “his likelihood of having more white victims or his likelihood of having more black victims.”²² Although we anticipate jurors in a jury trial to uphold the justice system fairly and impartially when assessing the facts of a case, the reality is that the state cannot always cherry-pick people with implicit racial biases and excuse them from potentially serving in a jury pool. Further, it is naïve and faulty logic to think that a questionnaire will always force potential jurors to reveal their racist and biased subconscious thoughts.

Part III —The Solution: Drafting the McCleskey Act

The McCleskey Act is a proposed bill to abolish the death penalty. The proposed bill, set to launch on January 9, 2023, is named in honor of Warren McCleskey, a black man who courageously fought for his life before the Justices of the U.S. Supreme Court.²³ At trial, the jury sentenced Warren McCleskey to the death penalty for killing a white police officer during an armed robbery. During a literal fight to save his life, McCleskey argued on appeal that Georgia’s capital punishment law was discriminatory against African Americans, thereby violating the Equal Protection Clause of the Fourteenth Amendment.²⁴ McCleskey used

¹⁷ In *Furman v. Georgia*, 408 U.S. 238 (1972), Justice Stewart noted that death sentences imposed under Georgia’s capital sentencing regime were “cruel and unusual in the same way that being struck by lightning is cruel and unusual.” *Id.* at 309.

¹⁸ Scott Phillips & Justin Marceau, *Whom the State Kills*, 55 HAR. C.R.-C.L. L. REV. 602, 615 (2020).

¹⁹ O.C.G.A 17-10-2.

²⁰ *Fair* at 11.

²¹ *Id.*

²² *Id.*

²³ *McCleskey v. Kemp*, 481 U.S. 279 (1987); see also Anthony G. Amsterdam, *Race and the Death Penalty Before and After McCleskey*, 39 COLUM. HUM. RTS. L. REV. 34, 47 (2007) (stating that “McCleskey is the Dred Scott decision of our time.”).

²⁴ *McCleskey v. Kemp*, 481 U.S. 279, 282, 107 S. Ct. 1756, 1762 (1987).

statistics such as the *Baldus* study to support his argument.²⁵ Through the study, McCleskey showed the Supreme Court that: (1) where black defendants kill white victims, the defendant was 22 times more likely to be sentenced to death than if the victim were also African American; and (2) prosecutors were significantly more likely to seek the death penalty for African American defendants than for Caucasian defendants.²⁶ Although the statistical study showed that Georgia had a substantial number of racial disparities in the administration of the death penalty, the Supreme Court held this statistical data to be insufficient and upheld executing McCleskey in 1987.²⁷

The McCleskey Act will ensure that racial disparities in Georgia's death penalty system no longer exist. The goal of drafting the Act is to repeal the death penalty law, and in doing so, eliminate the requirement to prove disparate intent, thereby rectifying the disparate impact that Georgia's death penalty law has on black and brown inmates.²⁸ The Act would also eliminate the disparate impact that Georgia's death penalty system has on black and brown inmates on death row, thereby ending the history of racial discrimination as a motivating factor for execution. Twenty-two states have already abolished the death penalty and multiple states have imposed moratoriums on their executions.²⁹ State Net®, a LexisNexis® product, enables users to track pending legislation and has served a pivotal role in the foundational research in the fight to abolish the death penalty in Georgia. When enacted, the McCleskey Act will resentence all death row convicts (including people of color) to life imprisonment with the possibility of parole. Furthermore, the statute's passage will exonerate wrongfully convicted or mentally incompetent prisoners on death row.

Part IV — Conclusion

This paper aimed to shed light on a wound of systemic racism in our country that needs healing — capital punishment's disparate impact on black and brown inmates on death row and on black and brown victims in general. To heal this wound, systematic racism in capital punishment must be eliminated. Beginning with the Georgia General Assembly, i.e., the Georgia House of Representatives and the Georgia Senate, it is important to hold legislators responsible and give people of color a fair chance of justice with more humane capital punishments. This can be done through the second block of our pyramid, the McCleskey Act.

The Georgia Legislature's passage of the McCleskey Act will eliminate the discriminatory impact the death penalty has on people of color by abolishing the death penalty. This would give way to a third block: more humane capital punishments that serve the justice system equally. Overall, by working together, Georgia can eliminate the cycle of systemic racism and build a better and brighter future for every one of its residents, no matter their skin color.

²⁵ *Id.*

²⁶ David C. Baldus et al., *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 4 J. CRIM. L. & CRIMINOLOGY 661 (1983).

²⁷ *McCleskey* at 279. In an interview, five years later, Justice Lewis F. Powell, Jr., admitted that if there were any of his votes that he could change, it would be voting in favor of *McCleskey v. Kemp*. John C. Jeffries Jr., JUSTICE LEWIS F. POWELL JR.: A BIOGRAPHY (1991).

²⁸ Sierra Romero, *What Constitutes Discrimination in the Courts? Proving Discriminatory Intent and Systematic Racism in the Death Penalty* (May 21, 2022), <https://www.culawreview.org/journal/what-constitutes-discrimination-in-the-courts-proving-discriminatory-intent-and-systematic-racism-in-the-death-penalty>.

²⁹ *Georgia – History of the Death Penalty*, DEATH PENALTY INFORMATION CENTER, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/georgia> (last accessed June 24, 2022).

Mentor: Teal Taylor

Relationship Manager, Nexis Solutions



Reflection on working with Fellow Amari Roberts:

Working on the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Fellowship Program with Fellow Amari Roberts has been an inspiring and exciting experience. When I first met with Amari, I was impressed by her ability to think big while also being very detail oriented. Her passion to fearlessly advocate for abolition of the death penalty in the state of Georgia is inspiring in itself. Amari's detail-oriented focus tracing the root of this systemic problem is exemplary, especially in view of her ambitious objective. Amari's project aspires to draft a model bill to abolish the death penalty in the state of Georgia, a penalty that disproportionately impacts people of color. Amari's advocacy project requires a command of constitutional law, legislative history, bill drafting, and ad-

vocacy — skill sets that define effective attorneys. Amari has worked together with a team of LexisNexis® professionals, impressively analyzing and synthesizing case opinions, tracking current and pending legislation, and strategically navigating the legislative system. She developed connections with local lawmakers and influencers to garner support for her proposed bill, while remaining connected with her community to ensure their voices are heard. Amari fully embraces the mission of her project; her enthusiasm, tenacity, and commitment to this legal advocacy project inspire me to work with her and others to effectuate change in the legal system and promote the rule of law.

Teal Taylor is a Relationship Manager for Strategic Accounts at Nexis Solutions. She joined LexisNexis® in 2014, where she worked in both the Law School and Large Law Markets. Teal is a graduate of Princeton University and has a J.D. from University of San Francisco School of Law. Prior to joining Lexis®, she practiced maritime law in San Francisco.

Capital Punishment: The New Modern-Day Lynching

Talia Thomas

This project's mission is to analyze the racial disparities present within the American capital punishment system. This analysis argues that law schools should introduce and expose their students to additional career paths as federal defenders. The project results in a short video to be housed on a LexisNexis® platform or distributed to law students to bridge the "exposure gap" among law students in relation to potential careers in the capital habeas and federal defense field.



Talia Thomas is a third-year law student at the Howard University School of Law. Talia had the pleasure of honing her legal skills interning at Yale Law School in its Challenging Mass Incarceration Clinic, by providing criminal defense and re-entry services to recently released persons. Her experience at Yale greatly influenced her decision to join the inaugural Capital Habeas Pipeline Program at HUSL where she worked alongside federal defenders on various habeas claims. Talia's project focuses on the racial disparities apparent within our capital punishment system.

Introduction

From 1976 through December 2021, 21 people in the United States have been executed in cases where the defendant was white and the murder victim black.¹ This figure compares with 297 black defendants executed for murders of white victims. In addition, 95% of elected prosecutors are white.² These statistics depict a stark reality of the racial bias present in our capital punishment system.

Though the courts and legislatures have addressed discrimination in jury selection, juries still largely fail to represent the communities they serve regarding race, resulting in harsher sentencing along racial lines.³ Access to post-conviction appeal and habeas relief is arduous, expensive, and riddled with extremely high standards of review. Notably, regarding relief, “studies of post-conviction appeals have demonstrated that ineffective assistance of counsel is the most commonly raised issue.”⁴

This paper analyzes the racial disparities present within the American capital punishment system. This analysis argues that law schools should introduce and expose their students to additional career paths as federal defenders. The goal of highlighting these disparities is to encourage students to pursue these alternative career paths post-graduation, to develop their skills over time, and to provide experienced and effective counsel in capital cases to help mitigate the damages from these experiences.

Part I of this paper provides a broad overview of the history of capital punishment in this country via its foundational case law. Part II addresses the instances of racial bias apparent in death penalty cases, specifically, in jury selection and prosecutorial strategy. Part III discusses the prevalence of claims of ineffective assistance of counsel and explains how the introduction of capital habeas corpus and criminal defense-oriented education into law school curricula can help reduce this prevalence and, in turn, mitigate harm to those seeking post-conviction relief.

I. The History of the Death Penalty in America

The death penalty in the United States has a long and tumultuous history, dating as far back as 1608 when the colony of Virginia executed its first criminal.⁵ Since then, 16,018 people have been executed

¹ Deborah Fins, *Death Row U.S.A.: Winter 2022*, NAACP LEGAL DEF. AND EDUC. FUND 5, <https://www.naacpldf.org/wp-content/uploads/DRUSAWinter2022.pdf> (last visited July 24, 2022).

² Reflective Democracy Campaign, *Tipping the Scales: Challengers Take On the Old Boys’ Club of Elected Prosecutors*, WHOLEADS.US 2 (Oct. 2019), <https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf> (last visited July 24, 2022).

³ *Race and the Jury: Illegal Racial Discrimination in Jury Selection*, EQUAL JUSTICE INITIATIVE, <https://eji.org/report/race-and-the-jury/> (last visited July 24, 2022).

⁴ Dr. Emily M. West, *Court Findings of Ineffective Assistance of Counsel Claims in Post-Conviction Appeals Among the First 255 DNA Exoneration Cases*, INNOCENCE PROJECT 1 (Sept. 2010), https://www.innocenceproject.org/wp-content/uploads/2016/05/Innocence_Project_IAC_Report.pdf (last visited July 25, 2022).

⁵ *Early History of the Death Penalty*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/executions/methods-of-execution/description-of-each-method>(last visited July 25, 2022).

through 2020.⁶ Though the United States has a long history of executions, this history is not linear. No executions took place in the early 1970s when the death penalty was deemed unconstitutional.⁷

“On June 29, 1972, the Court decided in a complicated ruling, *Furman v. Georgia*, that the application of the death penalty in three cases was unconstitutional.”⁸ It is important to note that this ruling does not explicitly condemn executing someone as a punishment for a crime as unconstitutional.⁹ However, the decision does proscribe the arbitrary and discriminatory nature in which the states applied the death penalty as “cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.”¹⁰

In *Furman*, Georgia had sentenced the three petitioners to death for rape and murder.¹¹ All three were black, and two had some form of mental or intellectual disability.¹² According to Justice Douglas’ concurring opinion, not enough facts were on the record to surmise that these petitioners received the death penalty because they were black.¹³ However, the Court did recognize that the application of the death penalty could be seen as arbitrary and discriminatory.¹⁴ The source of the arbitrariness and discrimination resulted from discretionary statutes that were “pregnant with discrimination.”¹⁵ Justice Douglas noted that the Cruel and Unusual Punishments Clause of the Eighth Amendment requires legislatures to pass laws that are “evenhanded, nonselective, and non-arbitrary” and to apply these laws in a similar manner.¹⁶ The Court ruled that the application of the death penalty in these cases constituted cruel and unusual punishment for the reasons discussed above, and was, therefore, unconstitutional pursuant to the Eighth Amendment.¹⁷ This ruling led to a four-year moratorium on capital punishment in the United States.¹⁸

This suspension of the death penalty ended with *Gregg v. Georgia*¹⁹ in 1976.²⁰ As mentioned, the issues regarding the death penalty cited in *Furman* were due to the discretionary and often discriminatory nature in applying the death penalty.²¹ In the years following the decision, many state legislatures rewrote their death penalty statutes to provide more specific sentencing guidelines such as requiring courts to con-

⁶ *Executions in the U.S. 1608-2002: The Espy File*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/executions/overview/executions-in-the-u-s-1608-2002-the-espy-file> (last visited July 24, 2022). This figure encompasses all executions occurring in the United States from 1608 to December 31, 2020. Between January 1, 2021 and July 13, 2022, 18 more people were executed.

⁷ Scott Bomboy, *On This Day, Supreme Court Temporarily Finds Death Penalty Unconstitutional*, NAT’L CONST. CTR. (June 29, 2022), <https://constitutioncenter.org/interactive-constitution/blog/on-this-day-supreme-court-temporarily-finds-death-penalty-unconstitutional#:~:text=On%20June%2029%2C%201972%2C%20the,in%20three%20cases%20was%20unconstitutional.>

⁸ Bomboy, *supra*, note 7.

⁹ *Furman*, 408 U.S. at 241-42.

¹⁰ *Id.* at 256-57.

¹¹ *Id.* at 238, 240.

¹² *Id.* at 252-53.

¹³ *Id.* at 253.

¹⁴ *Id.* at 256.

¹⁵ *Id.* at 256-57.

¹⁶ *Id.* at 256.

¹⁷ *Id.* at 239.

¹⁸ David Von Drehle, *The Death of the Death Penalty*, TIME (June 8, 2015), <https://time.com/deathpenalty/>.

¹⁹ *Gregg v. Georgia*, 428 U.S. 153 (1976).

²⁰ *The History of the Death Penalty: A Timeline*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/stories/history-of-the-death-penalty-timeline> (last visited July 24, 2022).

²¹ *Furman*, 408 U.S. at 256 (Douglas, J., concurring).

sider aggravating and mitigating factors.²² These revisions also included mandating capital punishment for certain crimes.²³

The *Gregg* case also introduced other notable procedural changes to capital punishment trials.²⁴ First, trials in which defendants could be subject to the death penalty should be bifurcated.²⁵ Defendants first go through a guilt phase and, if convicted, proceed to a separate sentencing proceeding.²⁶ Second, those convicted and sentenced to death have a right to appeal both their convictions and sentences.²⁷ Third, the state appellate court performs a proportionality review on all capital punishment sentences to reduce or eliminate sentencing disparities.²⁸ These enhanced death penalty statutes, approved in the *Gregg* decision, presumably ended arbitrary and discriminatory death sentences.²⁹ Unfortunately, the reality of the death row landscape tells a different story. Jury selection and prosecutorial strategy continue to perpetuate racial disparities among those sentenced to death.

II. Racism in the Capital Punishment System

A. Jury Selection and Prosecutorial Strategy

“Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process.”³⁰ Serving on a jury is so important to our values as Americans that our Constitution codifies the right to a jury of one’s peers to protect us from state and federal government abuses of power.³¹ Moreover, the Supreme Court has even recognized on numerous occasions that “[e]qual opportunity to participate in the fair administration of justice is fundamental to our democratic system.”³² The Court has also recognized that eliminating racial bias in jury selection is essential to ensuring public confidence in our criminal justice system.³³ Unfortunately, even with these legal assurances and the Court’s recognition of these discriminatory issues, minorities, specifically the black community, have historically been excluded from serving on juries.³⁴

One of the strategies that prosecutors frequently use to produce all white juries is the preemptory strike.³⁵ Unlike a challenge for cause, an attorney does not have to justify a preemptory strike to remove a

²² *Constitutionality of the Death Penalty in America*, DEATH PENALTY INFO. CTR, <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/constitutionality-of-the-death-penalty-in-america> (last visited July 24, 2022).

²³ *Id.*

²⁴ *Gregg*, 428 U.S. at 163.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 166.

²⁸ *Id.* at 163-67.

²⁹ *The Constitutionality of the Death Penalty in America*, DEATH PENALTY INFO. CTR, <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/constitutionality-of-the-death-penalty-in-america> (last visited July 24, 2022).

³⁰ *Flowers v. Mississippi*, 139 S. Ct. 2228, 2238 (2019) (citing *Powell v. Ohio*, 499 U.S. 400, 407 (1991)).

³¹ *Duncan v. Louisiana*, 391 U.S. 145, 151-53, 156 (1968).

³² *J.E.B. v. Alabama*, 511 U.S. 127, 145 (1994).

³³ *Foster v. Chatman*, 578 U.S. 488, 522 (2016) (Alito, J., concurring).

³⁴ *Race and the Jury: Illegal Racial Discrimination in Jury Selection*, EQUAL JUSTICE INITIATIVE, <https://eji.org/report/race-and-the-jury/> (last visited July 24, 2022).

³⁵ *Id.*

juror.³⁶ We've seen all white juries as a result of preemptory strikes in cases like *Swain v. Alabama*³⁷ and the infamous case against activist Angela Davis.³⁸ In *Swain*, the Court even raised the hurdle for showing racial discrimination in using preemptory strikes by requiring the defendant to demonstrate a pattern of discrimination over a number of cases rather than just in the defendant's case.³⁹ It wasn't until the 1986 *Batson v. Kentucky*⁴⁰ decision that the Supreme Court recognized that an already established and apparent pattern of preemptory strikes excluded black jurors.⁴¹ To remedy this situation, the Court provided a feasible three-part legal standard to enable defendants to prove racial discrimination in jury selection.⁴²

III. The Remedy

Black people are underrepresented in juries.⁴³ In addition, “more than 40% of Americans are people of color,⁴⁴ but 95% of elected prosecutors are white.”⁴⁵ To mitigate this situation, more black people, especially black lawyers, must enter the criminal law system. Currently, instead of operating on the offense or through the prosecutor's office, black people must, quite literally, operate on the defense.

One of the most claimed issues on post-conviction appeals is ineffective assistance of counsel. Though the Sixth Amendment of the U.S. Constitution guarantees the right to counsel, even if we are not able to afford an attorney, the Constitution does not speak to or guarantee the quality of counsel we receive.⁴⁶ The widely accepted standard requires the court to “indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.”⁴⁷ To meet this standard, the defendant must first show that counsel's performance was deficient. This condition requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” that the Sixth Amendment guarantees. Second, the defendant must show that the deficient performance prejudiced the defense. This condition requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.⁴⁸ The Court handed down this standard in *Strickland v. Washington*.⁴⁹ In

³⁶ *Id.*

³⁷ *Swain v. Alabama*, 380 U.S. 202, 205 (1965).

³⁸ *Race and the Jury: Illegal Racial Discrimination in Jury Selection*, EQUAL JUSTICE INITIATIVE, <https://eji.org/report/race-and-the-jury/> (last visited July 24, 2022).

³⁹ *Swain*, 380 U.S. at 224 (1965).

⁴⁰ *Batson v. Kentucky*, 476 U.S. 79 (1986).

⁴¹ *Id.* at 99.

⁴² *Id.* at 96-97.

⁴³ *Race and the Jury: Illegal Racial Discrimination in Jury Selection*, EQUAL JUSTICE INITIATIVE, <https://eji.org/report/race-and-the-jury/> (last visited July 24, 2022).

⁴⁴ *QuickFacts: United States*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045221> (last visited July 24, 2022).

⁴⁵ Reflective Democracy Campaign, *Tipping the Scales: Challengers Take On the Old Boys' Club of Elected Prosecutors*, WHOLEADS.US 2 (Oct. 2019), <https://wholeads.us/wp-content/uploads/2019/10/Tipping-the-Scales-Prosecutor-Report-10-22.pdf> (last visited July 24, 2022).

⁴⁶ Dr. Emily M. West, *Court Findings of Ineffective Assistance of Counsel Claims in Post-Conviction Appeals Among the First 255 DNA Exoneration Cases*, INNOCENCE PROJECT 1 (Sept. 2010), https://www.innocenceproject.org/wp-content/uploads/2016/05/Innocence_Project_IAC_Report.pdf (last visited July 25, 2022).

⁴⁷ *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

⁴⁸ *Id.*

⁴⁹ *Id.*

capital cases, ineffective counsel can not only end in the defendant's ultimate demise but can also bar the defendant from other procedural opportunities to have a sentence overturned or reduced.⁵⁰

To provide effective assistance of counsel in capital punishment and other criminal cases, law students should consider entering career paths as federal defenders to gain the experience and skills needed to defend the accused and to navigate the complex habeas relief and other appellate processes. We've seen throughout our legal history, and even most recently, how incompetence on counsel's part can be seriously detrimental to their clients facing capital punishment.⁵¹ Whether this detriment results because of a failure to raise mitigating evidence during the sentencing phase,⁵² failure to conduct an adequate investigation,⁵³ or failure to understand the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) tolling provisions,⁵⁴ the detriment remains a grave consequence for clients who trust the competence of their attorneys with their lives. Attorneys owe their clients, who usually are indigent, their best efforts and the highest level of competence when the consequence is death.

As the late Justice Ruth Bader Ginsburg once said, "people who are well represented at trial do not get the death penalty."⁵⁵ While this statement lacks a great deal of nuance, it does speak to an important principle that is recognized at even the highest level of legal interpretation: having a well versed, experienced, and prepared lawyer is paramount. This principle is also why it is important to introduce law students to career paths as federal defenders while they are still in law school. Early introduction to this vital topic allows students to explore the subject and develop an interest in this legal work. This interest can manifest itself by participating in internships or externships where students can gain the experience of working on capital punishment or federal habeas cases. It can also manifest itself in students taking courses on appellate procedure, advocacy, and complex statutes like AEDPA. The goal is to make sure that the first-time law students hear about AEDPA or deal with all the "heavy lifting" required in capital cases is not when the students are lawyers tasked with defending someone's right to live. Rather, the goal is to introduce law students to this subject matter while they are still in school so they can learn from their mistakes so as not to result in the death of their clients.

LexisNexis® has a plethora of products including various Social Justice Hubs on their Lexis+® search engine that aided in the research phase of this project and publication. The LexisNexis® social justice platforms provided the mentorship and development to spark innovation leading to a proposal and working in earnest on a solution to the lack of exposure issue among law students. For the past nine months, the team created a short video that can be used to bridge the "exposure gap" among law students in relation to potential careers in the capital habeas and federal defense field. This video will feature students who were exposed to this field as law students and have worked in this field post-exposure. It will also feature current federal defenders and professors who will shed light on the racial and systemic issues that are present in our capital punishment system. Lastly, the video will feature organizations that work with individuals needing

⁵⁰ *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022). In this opinion, Justice Thomas noted that a post-conviction counsel negligently failing to develop the state court record will not allow the Court to set aside the equitable ruling given in *Martinez v. Ryan*, 566 U.S. 1 (2012) to allow prisoners/petitioners to have evidentiary hearings in federal habeas proceedings.

⁵¹ *Id.*

⁵² *Andrus v. Texas*, 140 S. Ct. 1875, 1879 (2020).

⁵³ *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022).

⁵⁴ *Holland v. Florida*, 560 U.S. 631, 635-36 (2010).

⁵⁵ *Inadequate Representation*, ACLU, <https://www.aclu.org/other/inadequate-representation> (last visited July 24, 2022).

the help of law students, law clerks, and/or lawyers to help file, draft, or research their habeas claims to illuminate spaces where students and lawyers can hone and share their skills with those in the greatest need of them.

It is recommended that BLSA chapters, especially those at HBCUs, have special viewings of this important capital punishment crash course video. As a result of viewing the video, the goal is to inspire black law students and future attorneys specifically to pursue legal careers in this often-overlooked area of law. The video should encourage discussions about how students can garner the experience they need to be successful as federal defenders even as they matriculate through law school. Hopefully, these discussions would show the administration at these law schools that the interest is there for classes that center learning the skills necessary to bring habeas claims and defend those who have been sentenced to death. A secondary goal is to make this video available to law firms dedicated to diversity. Because the video would feature links to organizations looking for pro bono help, lawyers across these various firms and experience levels would be able to learn more about the capital habeas field while also having the opportunity to decide if they would like to complete their ABA recommended pro bono hours with the organizations identified. In the end, the increased traffic to this field of law will not only benefit these often-forgotten clients but provide students with tangible ways that they can affect change even before obtaining their degrees.

Mentor: Amber McKinney

Managing Editor, Law360®



Reflection on working with Fellow Talia Thomas:

In covering legal news for many years, I thought I knew a lot about the challenges in the legal system related to racial inequality. I've seen survey data each year on the state of diversity in the legal profession. I've worked with reporters on stories about racism baked into the system — from prosecutorial discretion to jury selection to sentencing. But what I knew less about were the innovative solutions that can make a real difference.

In working as a mentor to LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellow Talia Thomas, I got to see these issues in a fresh way with a solution-oriented mindset. Her project aims to raise awareness

around how capital punishment is rife with racial disparity and invite law students to pursue careers that can foster change in this critical area of the law.

Talia's project acknowledges that a key way to combat legal structures that are tainted by racism is to invite more attorneys of color into the spaces and positions where change can happen. Talia aims to create a video that is a call to action for both students and attorneys who may take up the cause on a pro bono basis.

I know her passion around the issue will shine through and inspire others to take on this important work. And I can't wait to see the impact she is sure to have on the justice system.

Law360® Managing Editor Amber McKinney has over 15 years of experience in legal journalism, covering a variety of key areas including employment, intellectual property, media and entertainment, immigration, international trade, life sciences, competition, telecommunications and technology law. Amber built and manages the team responsible for Law360®'s Employment Authority product, the go-to source for labor and employment legal news. In addition to her management duties, Amber co-hosts Law360®'s award-winning Pro Say podcast, a weekly dive into the biggest stories and the hidden gems from the world of law. Amber also serves as an executive producer for many of Law360®'s videos and podcasts, including The Term that focuses on the U.S. Supreme Court and Law360® Explores, a narrative-style show that has taken deep looks at legal issues related to the cannabis industry and the downfall of acclaimed plaintiff's attorney Tom Girardi. Amber received a J.D. from The George Washington Law School and a B.A. in English and Political Science from West Virginia University. She joined Law360® in 2014.

Smoked Out: The Over-Criminalization of Black Youth for Marijuana Usage and Possession

Marian Anderson

The project's mission is to highlight the excessive sentencing of African Americans for marijuana usage and possession. This research focuses on the penalties faced by individuals imprisoned for marijuana offenses while marijuana is a flourishing tax revenue generating commodity for some states. The project also provides recommendations for advocacy and reform in this area.



Marian Anderson is a third-year law student at Southern University Law Center in Baton Rouge, Louisiana. She is an Atlanta native who looks forward to practicing defense, civil rights, and human rights litigation because she wants to contribute her bit toward making the world a more equitable and habitable place for all. Marian's project highlights some sentencing disparities for racialized groups by focusing on law makers' refusal to decriminalize marijuana use and possession at the federal level.

Imagine sitting in a cell for years, decades, or even for life, convicted of an activity that is no longer a crime, while thousands of other people build intergenerational wealth doing exactly the same thing.

Last Prisoner Project¹

The Supreme Court of the United States of America, a creation by slavery-condoning framers of the Constitution, has held that a law that burdens an insular racial group can only be invalidated as unconstitutional when proven to have a discriminatory purpose and a discriminatory impact,² making it nearly impossible to strike racially discriminatory laws. The Supreme Court has said it is constitutional for police to stop citizens under false pretense,³ thus increasing the unnecessary encounters many have with the police. The Supreme Court upholds the doctrine of qualified immunity, which creates a defense for government employees who violate “civil rights” while doing their job.⁴ The list is long, and the lives stolen are plenty. Excessive drug related penalties continue to be imposed on African Americans and other marginalized groups in the United States of America (U.S.). What is to be done when the rule of law enshrines, buttresses, and green lights racial discrimination?

According to the American Civil Liberties Union, African Americans in the U.S. are 3.73 times more likely to be arrested for marijuana possession than their white counterparts.⁵ This paper seeks to inform on some of the ways in which marijuana criminalization and convictions adversely affect youth, specifically, African American youth in the U.S. Marijuana refers to the dried leaves and flowers of the cannabis plant that are smoked, vaporized, or cooked to extract cannabinoids for psychoactive effects.⁶ “Since 1937, the U.S. federal government’s approach has remained that of prohibition, meaning that its laws and its participation in international treaties have upheld the illegal status of use, possession, cultivation, and sale of marijuana.”⁷ In 2022, in some parts of the U.S., marijuana is big business. In other parts of the U.S., black people continue to be sentenced to prison for marijuana use and possession.

This paper explains how convictions for marijuana use and possession adversely affect the lives and the futures of those youth who are convicted. This paper also highlights that where legalized marijuana is not a booming industry, imprisonment, fines, fees, and recidivism for black youth remain strong. This analysis shows the adverse effects of extracting youth from their communities for marijuana offenses. Finally, this paper highlights some legislative proposals created to eliminate and alleviate these problems.

In 1995, John DiIulio, a professor at Princeton University, gave the U.S. Congress and media outlets a gift that continues to give: the term “super predators.”⁸ In his article for the conservative periodical, *The*

¹ Last Prisoner Project, *Change is Coming, Fighting Criminal Justice and Reimagining Drug Policy* (July 25, 2022, 3:26 PM), <https://www.lastprisonerproject.org/>.

² *Washington v. Davis*, 426 U.S. 229 (2006).

³ *Whren v. United States*, 517 U.S. 806 (1996).

⁴ 42 U.S.C. § 1983; *see also Whren v. United States*, 517 U.S. 806 (1996).

⁵ *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*, AMERICAN CIVIL LIBERTIES UNION (June 2013), https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf.

⁶ Seth Ammerman et al., *The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update*, 135 PEDIATRICS 3 (2015).

⁷ *Id.*

⁸ Joseph DiIulio, *The Coming of the Super Predators*, THE WEEKLY STANDARD (Nov. 27, 1995, 12:00 AM), <https://www.>

Weekly Standard, Dilulio warned of the need to thwart an explosion of violent youth, some of whom were not yet born:

No one in academia is a bigger fan of incarceration than I am. . . . [W]e will probably need to incarcerate at least 150,000 juvenile criminals in the years just ahead. In deference to public safety, we will have little choice but to pursue genuine get-tough law-enforcement strategies against the super-predators.⁹

Dilulio, and similarly situated others, posited that these super predator youths are the result of moral poverty. This theory of moral poverty stemmed from conservative theories that ignore material reality,¹⁰ i.e., American moralism. Much like misleading monikers like “do the crime, do the time,” the article fails to address the material realities of many African Americans. In Dilulio’s article, there is no mention of neighborhoods being flooded with drugs, guns, and alcohol,¹¹ like other colonized communities, while being deprived of opportunity. Instead, Dilulio suggests that religion is the answer, rather than addressing a society birthed in genocide on stolen land and built with stolen labor from the barbaric institution of chattel slavery.¹² Although he failed to address the true material conditions and how they originated, Dilulio’s words were taken and spread through a concoction of fear and purported well-wishing that continues to fuel hatred and burden this community some decades later. Dilulio admitted he was wrong about super predators, but, by then, many lives had been extracted from communities and ruined.¹³

Another such “study” from some 40 years earlier, *Juvenile Narcotics Use*, posited that juvenile drug use flourished most in deprived areas, “where the population is of the lowest socioeconomic status, and where often-discriminated-against ethnic groups are highly concentrated.”¹⁴ Rather than address the deplorable lives forced upon African American youth, which stems from the legacy of slavery, black codes, mass incarceration, Jim Crow laws, economic deprivation, environmental racism, and general racism, the authors instead suggested personal responsibility as a means of escaping deprivation:

To escape the pull of the delinquent subculture requires determination and support. The pressure to fall in with the fast, noisy, aggressive “cats” is great. The derisive taunts of “chicken,” “yellow,” “punk,” and “square” are powerful weapons to use against any adolescent boy. The capacity to withstand the appeals as well as the pressures exerted by the delinquent groups depends on the boy’s having something very solid to fall back on: inner strength, a clear sense of identity which extends into the future, and the support of friendly and concerned adults. Only then can he afford to dissociate himself effectively from the delinquent subculture and the threat it contains.¹⁵

washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Robert L. Allen, *BLACK AWAKENING IN CAPITALIST AMERICA* 268 (1969).

¹² Gerald Horne, *THE APOCALYPSE OF SETTLER COLONIALISM: THE ROOTS OF SLAVERY, WHITE SUPREMACY, AND CAPITALISM IN SEVENTEENTH-CENTURY NORTH AMERICA AND THE CARIBBEAN* 49 (2018).

¹³ *The Superpredator Myth, 25 Years Later* (Apr. 7, 2014), <https://eji.org/news/superpredator-myth-20-years-later/>.

¹⁴ Isidor Chein & Eva Rosenfield, *Juvenile Narcotics Use*, 22 *LAW & CONTEMP. PROBS.* 52 (1957).

¹⁵ *Id.*

These types of pontifications likely contributed to the War on Drugs rather than a war on poverty, inequality, or injustice. American moralism prevailed.

In contrast to the extent of our national drug problem, the federal funds being provided are insufficient to meet the demand for increased diplomatic initiatives, interdiction and eradication efforts, treatment programs, and education and prevention activities. We are providing resources for a skirmish. Not those needed to win a war.

— Charles Rangel To Select Committee on Narcotics Abuse and Control (October 3, 1986)¹⁶

The labeling of black youth as “super predators” helped usher in increased policing and incarceration for that group. Marijuana possession is such a reason for excessive policing, arresting, and in many cases, murdering African American youth. “As the Drug Enforcement Administration notes, nobody has ever died of a marijuana overdose. But aggressive enforcement of drug laws has led to some deaths. Growing efforts to decriminalize or legalize marijuana in part seek to reduce these kinds of police encounters that can turn fatal.”¹⁷

According to the American Academy of Pediatrics’ technical report, *The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update*, “[d]ecriminalization and legalization of marijuana have been the focus of global debate and controversy for several decades and continue to be an active concern, particularly as they pertain to the adolescent population.”¹⁸

Juvenile caseloads are largely substance offenses.¹⁹ Drug offenses are among the most common reasons that teenagers are arrested.²⁰ African American youth “are more likely to be incarcerated than their white peers.”²¹ This is due to unequal policing.²² African American and Latinx youth have been targets of the War on Drugs since it began.²³ There is no distinction made between marijuana offenses by adults and marijuana offenses by youth.²⁴ Steven Bender explains that “[i]n Southern states with large [African American] populations, fears of violent [African American] smokers led to marijuana laws. ... [M]arijuana was scapegoated as prompting murder, rape, and mayhem among [African Americans] in the south . . . with marijuana blamed for the seduction of white girls by [African American] men.”²⁵ Youth drug convictions

¹⁶ *Crackdown: Policing Detroit Through The War on Crime, Drugs, and Youth*, <https://policing.umhistorylabs.lsa.umich.edu/s/crackdowndetroit/item/3280>.

¹⁷ Christopher Ingram, *Marijuana Really Can Be Deadly—When Encountering Police Officers*, THE WASHINGTON POST (Oct. 7, 2016, 10:55 AM), <https://www.denverpost.com/2016/09/29/marijuana-deadly-encountering-police/>.

¹⁸ Seth Ammerman et al., *The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update*, 135 PEDIATRICS 3 (2015).

¹⁹ Yvonne M. Terry-McElrath, Jamie F. Chriqui, Hannalori Bates & Duane C. McBride, *Do State Policies Matter in Prosecutor-Reported Juvenile Marijuana Case Disposition?*, 60 CRIME & DELINQUENCY 402 (2014).

²⁰ Josh Rovner, *How Tough on Crime became Tough on Kids: Prosecuting Teenage Drug Charges in Adult Courts*, THE SENTENCING PROJECT (Dec. 7, 2016), <https://www.sentencingproject.org/publications/tough-crime-became-tough-kids-prosecuting-teenage-drug-charges-adult-courts/>.

²¹ Josh Rovner, *Racial Disparities in Youth Incarceration Persist*, THE SENTENCING PROJECT (Feb. 3, 2021).

²² *Id.*

²³ Steven W. Bender, *The Colors of Cannabis: Race and Marijuana*, 50 U.C. D. L. REV. 689 (2016).

²⁴ Yvonne M. Terry-McElrath, Jamie F. Chriqui, Hannalori Bates & Duane C. McBride, *Do State Policies Matter in Prosecutor-Reported Juvenile Marijuana Case Disposition?*, 60 CRIME & DELINQUENCY 402 (2014).

²⁵ Steven W. Bender, *The Colors of Cannabis: Race and Marijuana*, 50 U.C. D. L. REV. 689 (2016).

are sentenced broadly.²⁶ “Imprisoning youth can have severe detrimental effects on youth, their long-term economic productivity and economic health of communities.”²⁷

Current laws in many states allow for youth to be tried as adults for drug offenses.²⁸ This followed largely after Dilulio’s crusade against the flood of “super predators.”²⁹ Transfer laws allow for youth processed through the juvenile justice system to be tried as an adult by mandate or discretion.³⁰ Judicial or discretionary waivers mean that:

The decision to transfer an individual case into adult court is in the hands of the juvenile court judge, following a request from a prosecutor and a transfer hearing. There are circumstances in which the waiver is a presumptive waiver, in this the prosecutor requests the transfer and the burden is on the young person to argue against it. The transfer hearing separates discretionary waivers from prosecutorial and automatic transfers. Forty-four states and the District of Columbia allow for judicial waivers.³¹

Forcing youth into prison cells with adults is anathema to rehabilitation, restoration, or repair. Instead, it poses a great danger to their health as well as life. In many states, youth who are held in the captivity of prison cells are brutalized by other captives and by prison employees.

Decriminalizing marijuana use is a wide-ranging topic that often contemplates several variables such as limiting legalized marijuana to medical marijuana, determining the quantity that should be illegal, or identifying the methods of ingestion or absorption that are acceptable. Rarely discussed is who should be allowed to access legalized marijuana.

Is marijuana legalization a viable solution for over-policed and over-incarcerated African American youth who are accosted for marijuana possession? No. Marijuana possession remains a criminal offense for youth in states where marijuana usage is legal:³²

Decriminalization of marijuana typically is defined as the reduction of criminal offenses for the possession of small amounts of the marijuana plant to a misdemeanor, infraction, or civil penalty (*e.g.*, similar to a parking or speeding ticket) rather than a felony charge . . . 18 states currently (2014) have laws that have decriminalized the individual use and possession of marijuana and 4 states and

²⁶ Yvonne M. Terry-McElrath et al., *Evidence for Connections Between Prosecutor-Reported Marijuana Case Dispositions and Community Youth Marijuana-Related Attitudes and Behaviors*, 55 CRIME & DELINQUENCY 600 (2009).

²⁷ *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, Justice Policy Institute (May 2009) https://justicepolicy.org/wp-content/uploads/2022/02/09_05_rep_costsofconfinement_jj_pS.pdf.

²⁸ Josh Rovner, *How Tough on Crime became Tough on Kids: Prosecuting Teenage Drug Charges in Adult Courts*, THE SENTENCING PROJECT (Dec. 7, 2016), <https://www.sentencingproject.org/publications/tough-crime-became-tough-kids-prosecuting-teenage-drug-charges-adult-courts/>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Caislin L. Firth et al., *Implications of Cannabis Legalization on Juvenile Justice Outcomes and Racial Disparities*, NATIONAL LIBRARY OF MEDICINE AM J PREV MED. 58(4): 562-569 (Apr. 2020). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7266456/>.

the District of Columbia, have legalized nonmedical use, marketing, and sales of marijuana for adults.”³³

The Marijuana Opportunity Reinvestment and Expungement Act (H.R. 3617) was introduced by U.S. House Representative Jerrold Nadler from New York. This project can track the status of this legislation using the LexisNexis® State Net® tool. The legislation was proposed to decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, to provide for expungement of certain cannabis offenses, and for other purposes.³⁴ Black communities have not benefited from marijuana being legalized.³⁵ While marijuana use has been legalized in several states across the United States, many people, specifically black people, continue to languish in prison cells or become imprisoned for marijuana use or possession. NBC NEWS³⁶ reported that 11 states saw \$3 billion dollars in tax revenue for recreational marijuana sales. “A legacy of racial and ethnic injustices, compounded by the disproportionate collateral consequences of 80 years of cannabis prohibition enforcement, now limits participation in the industry.”³⁷ This describes a significant assault on African Americans for more than a century after the “formal” end of slavery.

The MORE Act calls for removing marijuana from the schedule of controlled substances and reclassifying it as a drug not included in any schedule.³⁸ The bill will be effective for all marijuana offenses, pending cases, and convictions for adults and youth entered before, on, or after the Act is enacted.³⁹ The MORE Act will establish an Opportunity Trust Fund with 60% of funds earmarked for the 1968 Omnibus Crime Control and Safe Street Act.⁴⁰ A policy created to make the streets safer essentially meant increased incarceration of African Americans.

While decriminalizing and legalizing marijuana usage and possession are important and necessary steps toward lessening the criminalization of black youth in the U.S., there are other important efforts needed in this area such as: expunging marijuana convictions, providing resources to shore up communities and make them whole, abrogating mandatory minimum sentencing, and returning constitutional rights to those who reenter communities after having completed prison sentences.

These remedies proposed for aiding black youth are the same remedies proposed for relief for African American adults in the U.S. Both groups are over-policed and over-regulated for using and possessing a high-profit commodity. These communities have been strategically degraded and left behind; excessive incarceration has been a tool assisting in the facilitation of degradation.

³³ Seth Ammerman et al., *The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update*, 135 PEDIATRICS 3 (2015).

³⁴ *Marijuana Opportunity Reinvestment and Expungement Act*, H.R. 3617, 117th Cong. (2022).

³⁵ *Id.*

³⁶ Elliot Ramos, *Recreational Marijuana Sales Showered States with Cash in 2021*, NBC News (Jan. 21, 2022, 3:51 PM EST), <https://www.nbcnews.com/news/us-news/recreational-marijuana-sales-showered-states-cash-2021-n1287861>

³⁷ *Id.*

³⁸ *Marijuana Opportunity Reinvestment and Expungement Act*, H.R. 3617, 117th Cong. (2022).

³⁹ *Id.*

⁴⁰ *Id.*

Mentor: Dave DiCicco

Senior Director of Product Management, LexisNexis® Legal & Professional



Reflection on working with Fellow Marian Anderson:

Marian is smart, persistent, and passionate. I learn so much from her during our conversations. Together we have explored how systemic injustices continue to churn out woefully disparate outcomes. Some people are languishing in jail for marijuana offenses, while a new generation of entrepreneurs are generating wealth and tax revenue from the sale of recreational marijuana with the blessing of state governments. Excessive drug related penalties continue to be imposed on black populations and other marginalized groups in America. Marian's research has focused on the penalties faced by individuals imprisoned for marijuana offenses while marijuana is a flourishing commodity. I was already deeply committed to the Rule of Law before working with Marian. She inspires me to work even harder. The work will never truly be done.

Dave DiCicco has been with LexisNexis® for 20 years, gaining a wealth of technical and product management expertise. Notably, Dave received a "Fastcase 50" award (2020) as a leading visionary in legal technology. His experience includes working on our legal API solutions, as well as delivering tools for lawyers into the Microsoft Office environment. He brings this expertise and his deep knowledge of our legal products and their use cases to deliver solutions enabling the success of our customers.

Cluster 6:

Racial Equity in Wealth and Ownership

Umbrella: Combating Systemic Racism by Providing Black Creators Accessible Tools to Safeguard Their Intellectual Property

Zuri Ward

Unblur the Lines of Appraisal Bias: Creating Transparency Between Appraisers and American Consumers

Brianna A. Joaseus

Building Generational Wealth by Protecting Black Property Ownership Through Wills / Estate Planning

Lauren Skarupsky

Umbrella: Combating Systemic Racism by Providing Black Creators Accessible Tools to Safeguard Their Intellectual Property

Zuri Ward

Zuri Ward is a third-year, evening student at North Carolina Central University School of Law. At present, Zuri is a Legal Specialist in the Intellectual Property Center of Excellence at Elevance Health (formerly Anthem Inc.). Because of her interest in Intellectual Property and Entertainment Law, Zuri has served in the law school's Trademark Clinic and on the Executive Board of the Sports and Entertainment Law Society. Zuri is making the most of her legal education by coupling IP and Entertainment Law with Technology Law through her work as a Research Assistant in the Technology Law and Policy Center and her coursework in the Tech Law Certificate Program at North Carolina Central University School of Law. In addition to her studies, Zuri's project, *Umbrella*, focuses on addressing systemic racism and increasing access to the law by educating entrepreneurs and creators about their intellectual property rights and how they can protect their work.



This project's mission is to create *Umbrella*,¹ a web-based resource to combat systemic racism in the intellectual property arena by providing clear and digestible information to black creators and entrepreneurs about federal intellectual property laws and rights.

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.

Introduction

The horrors and injustices of systemic racism are deeply rooted in our nation's soil and hover over all areas of American life like the leaves on a centuries-old oak tree. Many Americans can identify the most high-profile examples of systemic racism, including: inequities in the criminal justice system; abuses of police power; and socioeconomic disparities.² However, systemic racism extends beyond these visible issues. It invades and diminishes a myriad of rights, including intellectual property rights, which are the focus of this paper.³ We must deploy activism to truly address such a pervasive problem.

Activism in intellectual property benefits all Americans because it is intellectual property that pushes the country forward in art, technology, medicine, and more. The foundation of intellectual property law is a person's rights to their creations, inventions, and innovations.⁴ However, systemic racism, in the form of a lack of resources, discriminatory classifications, and blatant exclusion and theft of intellectual property limits access to those rights by black people and other people of color in America.

Umbrella is a web-based resource created to combat systemic racism in the intellectual property arena by providing clear and digestible information to black creators and entrepreneurs about federal intellectual property laws and rights. The *Umbrella* web resource serves as an activism tool that creates transparency around intellectual property law. *Umbrella* provides information that allows artists and entrepreneurs to make informed decisions about protecting, licensing, or selling their work. The scope of *Umbrella* remains with copyright law for music. Although intellectual property includes trademarks, trade secrets, and patents, these aspects are outside the scope of this paper.⁵ This paper instead focuses on how *Umbrella* addresses systemic racism regarding music in copyright law. The analysis begins with a brief overview of copyright law. The paper will then review scholarly arguments concerning the impact of racism on copyright law. It will then provide detailed illustrations of how the earlier named elements of systemic racism have disenfranchised black creators. Finally, the paper will offer suggestions for rectifying the inequalities among black creators by outlining how *Umbrella* contributes to reducing the impact of systemic racism and increasing the rule of law.

² See John Haltiwanger, *The Trump Administration Does Not Believe in Systemic Racism. But It's So Real That Merriam-Webster Is Changing the Definition of Racism to Include It*, INSIDER (June 11, 2020, 10:02 a.m.), <https://www.businessinsider.com/trump-administration-doesnt-believe-in-systemic-racism-its-not-debatable-2020-6>; Halimah Abdullah, *What Do Terms Like Systemic Racism, Microaggression and White Fragility Mean?*, ABC NEWS (June 14, 2020, 4:11 a.m.), <https://abcnews.go.com/Politics/terms-systemic-racism-microaggression-white-fragility/story?id=71195820>; Marshall Terrill, *ASU Professor Says Everybody Has Homework to Do When It Comes to Learning about Racism in Society*, ASU NEWS (June 23, 2020), <https://news.asu.edu/20200614-discoveries-%E2%80%98systemic-racism%E2%80%99-defined-and-deconstructed#:~:text=ASU%20professor%20says%20everybody%20has,see%20and%20hard%20to%20defend.https://news.asu.edu/20200614-discoveries-%E2%80%98systemic-racism%E2%80%99-defined-and-deconstructed>.

³ Anjali Vats, *THE COLOR OF CREATORSHIP: INTELLECTUAL PROPERTY, RACE, AND THE MAKING OF AMERICANS*. Stanford, Cal.: Stanford University Press, 2020.

⁴ Kurt M. Saunders & Michael A. Lozano, *More Than an Academic Question: Defining Student Ownership of Intellectual Property Rights*, 28 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 175.

⁵ For an overview of copyright, see Campbell v. Acuff-Rose, 510 U.S. 569 (1994); see also Olufunmilayo B. Arewa, *From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context*, 84 N.C. L. REV. 550, 552-82.

Part I — Copyright Law

The intent of the Copyright Act of 1976 is to afford federal copyright protection to all works upon creation.⁶ Section 102(a) provides that copyright protection exists in “work[s] of authorship” that are “original” and “fixed” in any tangible medium of expression.”⁷ Works are considered “fixed” once they are “embodi[ed] in a material object . . . from which the work can be perceived, reproduced, or otherwise communicated.”⁸ A work is “fixed” if it can be perceived “either directly or with the aid of a machine”⁹ and, consequently, “fixed” works range from written song lyrics to music videos to songs stored as electronic files. The list of protected works includes musical works and sound recordings.¹⁰ A “musical work” is the song itself, regardless of how it is performed, while a sound recording is a recording of a particular performance of the song.¹¹

Several exclusive rights attach to the original work when it is fixed in its specific medium of expression.

These rights are:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords¹² of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.¹³

The exclusive right to copy a nondramatic musical work, that is, a musical work that is not integral to a larger product such as a feature length movie, is circumscribed by Section 115 of the Copyright Act, which

⁶ Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (1976) (current version at 17 U.S.C. §§ 101-810 (2006 & Supp. II 2008)).

⁷ Copyright Act, 17 U.S.C. § 102(a) (1976).

⁸ *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 U.S. 1002, 1008 (2017) (explaining how a medium of expression becomes “fixed”).

⁹ 17 U.S.C. § 102(a).

¹⁰ 17 U.S.C. § 102(a).

¹¹ *Johnson v. Copyright Royalty Bd.*, 449 U.S. App. D.C. 50, 969 F.3d 363 (2020) (discussing the distinction between “musical work” and “sound recording”).

¹² While the physical embodiments of most copyrighted works are referred to as “copies,” the physical embodiments of a sound recordings are referred to as “phonorecords.” 17 U.S.C. § 101.

¹³ *Id.* at § 106.

provides that a third party who meets specific requirements is entitled to a “compulsory license,” sometimes called a “mechanical license,” to copy the work.¹⁴ Generally, a compulsory license is not available for sound recordings.¹⁵

The law does not require a creator to register their work for these rights to attach. However, federal intellectual property law does require copyright registration to enforce these rights.¹⁶

While copyright law grants many rights to creators, it has its limitations. For instance, fair use is a limitation that allows reproduction and making copies of particular works if it is done for the purpose of “criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.”¹⁷ These kinds of uses are not considered copyright infringement.¹⁸ Generally, commercial use and use of an entire work tend to weigh against a finding of fair use.¹⁹

Part II — Limitations on Access and Ownership

Scholarship surrounding intellectual property law and racism is not as vast as in other areas of race theory or law. The small group of scholars or “copyright and trademark activists”²⁰ have varied theories on how intellectual property has affected black Americans. However, their views converge on the single idea that the racist undertones of intellectual property law began early in America’s history. As it relates to intellectual property, black American music has been appropriated and devalued for as long as black artists have resided in America.²¹ The rights violations of black Americans, particularly as regards copyright protection, have arguably been displayed most in the arena of black music.

Record companies exhausted large budgets on artist development to make black artists appeal to a “pop” or white audience.²² While style, tone, and diction may have been the keys to unlocking crossover success, the timeless art created by black musicians came with its own appeal. Unfortunately, mainstream America often found this appeal too intangible to validate. Scholar and author K.J. Greene identifies this as one of the ways the copyright structure has disadvantaged black Americans.²³ Since “the idea/expression dichotomy of copyright law prohibits copyright protection for raw ideas, and protects only expression of ideas,” a work so innovative and imitated could be construed as only “ideas, and thus impossible to protect.”²⁴

¹⁴ 17 U.S.C. § 107.

¹⁵ 17 U.S.C. § 115(a)(1)(B).

¹⁶ Dan L. Burke, *Racial Bias in Algorithmic IP*, 106 MINN. L. REV. 270, 278 (2021).

¹⁷ 17 U.S.C. § 107.

¹⁸ *Id.*

¹⁹ *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994).

²⁰ Richard Schur, *PARODIES OF OWNERSHIP* 178 (2009).

²¹ K. J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 A.M. U.J. GENDER, SOC. POL’Y L. 365, 370 (2008) [hereinafter Greene, *Blues*].

²² Phillip Brian Harper, *Synesthesia, “Crossover,” and Blacks in Popular Music*, 23 DUKE UNIV. PRESS 102, 105-10 (Autumn–Winter 1989).

²³ Greene, *Blues*, *supra* note 21, at 371.

²⁴ *Id.*

Greene suggests that, for many years, the second-class treatment of black people in America made it such that black people held no proper rights to their music. Instead, black music like jazz fell into the public domain.²⁵ The Copyright Act of 1906 reinforced this injustice because the creator did not have ownership rights until they published or registered the work.²⁶ Naturally, financial limitations and limited knowledge about copyright, in general, made this difficult for black creators. Circumstances such as these were deplorable because they also meant that anyone laying claim to the work could copy it, publish it, and register it as their own.²⁷

It is true that “[a]bsent access to building blocks in the public domain, many works would not be created.”²⁸ Because black music disproportionately lands in the public domain, the ensuing opportunities to profit from black music, with no compensation to black creators, are more significant.²⁹ Organizations such as American Society of Composers, Authors, and Publishers (ASCAP) and Broadcast Music, Inc. (BMI), which function to help musicians collect fees owed to them for public performances, have somewhat “exclusionary” histories based on race and musical style or genre.³⁰

The money and recognition left on the table by the refusal to acknowledge black music inspired Greene to advocate for reparations for black musicians.³¹ While Greene was once an outcast in the intellectual property community, his idea is catching on as more scholars and advocates consider “reparations as one of several possible sweeping reforms to a music industry founded on the exploitation and appropriation of [b]lack artists’ intellectual and creative work.”³²

However, increasingly restrictive copyright laws have made it difficult for today’s black artists to build new works through inspiration from others. Artists who do not have access to legal counsel or an understanding of the law could find themselves in litigation similar to that of the parties in *Williams v. Gaye*³³ (but without the benefit of the legal teams that the parties had in that case).

The outcome in *Williams v. Gaye* illuminated the division between artists that is likely generational.³⁴ In *Williams*, the Ninth Circuit Court of Appeals reviewed the lower court’s decision that Billboard’s 2013 “song of the summer,”³⁵ “Blurred Lines,” infringed on the Gaye family’s copyright ownership in Marvin Gaye’s song “Got to Give It Up.”³⁶ This years-long dispute between the Gaye family and Pharrell

²⁵ *Id.* at 370.

²⁶ K.J. Greene, *Copyright, Culture, and Black Music: A Legacy of Unequal Protection*, 21 HASTINGS COMM. ENT. L.J. 339, 342 (1999).

²⁷ *Id.*

²⁸ Michael A. Carrier, *Cabining Intellectual Property Through A Property Paradigm*, 54 DUKE L.J. 1, 49 (2004).

²⁹ Greene, *Blues*, *supra* note 21, at 371.

³⁰ James Boyle & Jennifer Jenkins, *THEFT! A HISTORY OF MUSIC* 199 (2017).

³¹ Johnathan Bernstein, ‘Compensation, Healing, and Closure:’ One Man’s Quest for Reparations in the Music Business, ROLLING STONE (Mar. 5, 2022, 10:00 a.m.), <https://www.rollingstone.com/music/music-features/music-business-reparations-1311529/>.

³² *Id.*

³³ *Williams v. Gaye*, 885 F.3d 1150 (9th Cir. 2018).

³⁴ *Id.*

³⁵ Gary Trust, *Robin Thicke’s ‘Blurred Lines’ Is Billboard’s Song of the Summer*, BILLBOARD (Sept. 5, 2013), <https://www.billboard.com/pro/robin-thicke-blurred-lines-is-billboards-song-of-the-summer/>.

³⁶ *Williams*, 885 F.3d at 1159.

Williams, Robin Thicke, and Clifford “T.I.” Harris suggests that both parties believed whole-heartedly in their evidence. Even after extensive testimony from musicologists, Thicke argued that the district court verdict was “against the clear weight of evidence.”³⁷ The court’s ruling demonstrated its reluctance to reverse jury verdicts in music cases on appeal, citing the “difficulty of proving access and substantial similarity.”³⁸ This difficulty centers on the debate over inspiration, borrowing, and theft. Black artists from all generations would likely agree that “[c]opyright is supposed to leave room for musicians to build on their inspirations.”³⁹

Another notable issue concerns the fact that “copyright protection is available only by way of a very specialized area of law inaccessible to the unschooled. Intellectual property has been worthless where the creator failed to comply with legal requirements.”⁴⁰ In a feature covering North Carolina folk singer, Elizabeth Cotten, NPR quotes Greene, who states: “A lot of times these artists, not being well educated, not being well resourced, not knowing how to navigate the copyright system, didn’t realize that if they performed their work publicly anybody could fix those lyrics and claim copyright.”⁴¹

Even with internet resources and better general education for people of color, copyright law still can be challenging to navigate today. Organizations like Corporate Counsel Women of Color have mobilized to provide mentorship and counsel to creators of color.⁴² Unfortunately, such efforts, although well-intentioned, often remain in academic circles and fail to reach diverse creators who could benefit most. Mentorship and enrichment programs undoubtedly make a difference in the lives of black people. Reaching diverse creators requires intentional steps such as promoting such opportunities in spaces diverse creators will frequent.

Part III — Umbrella as a Solution

In 2020, Bloomberg Law reported that black lawyers accounted for 1.7% of intellectual property lawyers in the United States.⁴³ *Umbrella* desires to make these lawyers visible to support black artists and creators. Artists may shy away from seeking counsel in general; however, knowing that there are attorneys who look like them may increase their willingness to work with an attorney, and thus help them protect their art or business.

Umbrella is a vibrant website providing articles designed to teach people of color about intellectual property. Research for the creation of *Umbrella* involved using Lexis+® search engines and secondary sources to find law review articles relating to the issues of systemic racism in the IP arena. LexisNexis® treatises, such as NIMMER ON COPYRIGHT, MILGRIM ON LICENSING, and MILGRIM ON TRADE SECRETS, were consulted to

³⁷ *Id.* at 1171.

³⁸ *Id.* at 1172 (quoting *Three Boys Music v. Bolton*, 212 F.3d 447, 481 (9th Cir. 2000)).

³⁹ Boyle & Jenkins, *supra* note 30, at 120-21.

⁴⁰ Greene, *Blues*, *supra* note 21, at 370.

⁴¹ Alyson McCabe, *How Elizabeth Cotten’s Music Fueled the Folk Revival*, NPR (June 29, 2022, 5:00 a.m.), <https://www.npr.org/2022/06/29/1107090873/how-elizabeth-cottens-music-fueled-the-folk-revival>.

⁴² Emily Lever, *In-House Attys Look To Boost Female Entrepreneurs Of Color*, Law360® PULSE (Jan. 13, 2022, 2:16 p.m.), <https://www.law360.com/pulse/articles/1455210>.

⁴³ Ian Lopez, *Black IP Lawyers Who’ve Made It Look to Grow Ranks Beyond 1.7%*, BLOOMBERG L. (Aug. 6, 2020, 5:16 a.m.), <https://news.bloomberglaw.com/ip-law/black-ip-lawyers-whove-made-it-look-to-grow-ranks-beyond-1-7>.

help outline the rules for copyright in IP as they related to music. Further, examination of case law in this area was enhanced using Lexis+® to gather relevant cases and draw conclusions with respect to the needs of the platform. In addition, Practical Guidance’s practice notes, forms, and checklists help distill difficult IP concepts for a broader creative audience. Practical Guidance articles were used as a jumping-off point to create infographics, scripts for videos, and short articles, by modifying the text for a broader audience.

The website features links to regional resources such as Volunteer Lawyers for The Arts,⁴⁴ law school clinics, and other pro bono programs to help artists obtain counsel despite financial barriers. *Umbrella* serves as a home base for opportunities and resources. The web content and the site’s aesthetic target the unique needs of diverse creators and how they consume information.

Although copyright law presents unique challenges for each person, *Umbrella*’s knowledge database addresses many needs. Whether a music producer attempts to understand the law governing sampling or rights clearance, or a singer/songwriter seeks pro bono assistance for a contract dispute, *Umbrella* features educational materials or other resources to put them on the right path. *Umbrella*’s contributors write and produce all aspects of the website with creators of color in mind, thereby embedding nuance, care, and understanding into the platform’s offerings.

Author and music journalist, Danyel Smith, declares that ownership for black musicians creates “an amazing position of strength and power.”⁴⁵ *Umbrella* will exponentially increase that strength and power by packaging information, resources, and cultural understanding into clear and digestible content.

Conclusion

Legal theorists and scholars have only scratched the surface of the racism embedded in intellectual property and how copyright law has disadvantaged black creators. The work continues as music publications finally begin to discuss remedies like music reparations.⁴⁶ However, addressing systemic racism means that change-makers cannot afford to wait until the problem is fully explained to implement a solution.

Umbrella is getting a head start on such a solution. *Umbrella* is a web resource created with the use of the LexisNexis® research platforms to outline IP rules so that black creators can have the knowledge to protect their work. The solution is dedicated to the people most affected by systemic racism and will reduce the spread of that effect through tailored education and legal resources compiled through certain LexisNexis® platforms. The result is a more equitable society in which this country affords ownership, knowledge, and justice to the black people and people of color who contribute exponentially to American art, culture, and innovation.

⁴⁴ For more information on this organization, see <https://vlany.org/>.

⁴⁵ Janai Norman, *Black Musicians Reclaim the Rights to Their Own Music*, NIGHTLINE, ABC NEWS (June 18, 2022), <https://youtu.be/qNs3VAjg7K8>.

⁴⁶ Bernstein, *supra* note 31.

Mentor: Meredith Crews

Senior Vice President, Finance, Knowable



Reflection on working with Fellow Zuri Ward:

It has been a true privilege to be a mentor in the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship, and particularly to have had the chance to work with Fellow, Zuri Ward. Zuri had a vision to address systemic racism in intellectual property law, where black Americans have historically been under-protected. Throughout the Fellowship, I had the amazing opportunity to watch her dedication and poise-under-pressure as she executed on that vision to create Umbrella — a website that provides black creators with digestible, easy to access, and supportive tools to help protect their work.

Umbrella exemplifies the commitment that we, as a part of LexisNexis®, make to advancing the rule of law. Zuri was able to leverage support from across the whole organization, from Practical Guidance to editorial to social media, in furtherance of creating greater transparency into an area of the law that has historically been inaccessible to people of color. I am so grateful to have been a part of it, and I cannot wait to see what comes next!

Meredith Crews is responsible for Finance, HR and Operations at Knowable. Meredith was previously a Director of Finance at Axiom, where she helped build operational infrastructure and led financial planning and analysis. After serving on the spin-off deal team, she was thrilled to join Knowable in its joint venture with LexisNexis®. Meredith is a graduate of the University of Puget Sound and has a JD from Loyola University-Chicago School of Law.

Unblur the Lines of Appraisal Bias: Creating Transparency Between Appraisers and American Consumers

Brianna A. Joaseus

This project's mission is the creation of a digital checklist using resources such as Practical Guidance, Legal News Hub on Lexis+®, and Content Acquisition to decrease bias in the appraisal process by identifying "red flag" situations in which the appraisal process may be being applied unfairly or with bias. The form will be available as a resource on relevant association and regulatory body websites and will remind appraisers of their duty to maintain the standards of the profession. The form will raise awareness and can be used as a tool by both appraisers and property owners to fight bias in the appraisal process.



Brianna A. Joaseus is a third-year law student at the Southern University Law Center. Brianna's experience serving as a Victim Witness Coordinator at the Office of the State Attorney's 15th Judicial Circuit, being a Real Estate Broker Sales Associate at Coldwell Banker, and working as a Legal Graduate Underwriting Intern at First American Title has solidified her interest in commercial real estate law and litigation.

I. Introduction

The valuation of real estate is a detail-oriented process that impacts every aspect of ownership of real property. Disparities that the Federal Housing Finance Agency (FHFA) and other agencies have found in thousands of cases indicate potential bias that has affected and continues to adversely affect property owners in minority communities.¹ Although it is not clear what specific factors have the greatest impact in contributing to racial bias, it is evident that there is a strong need for tools that address and attempt to remediate the bias in standard appraisal procedures and to apply those procedures in a less biased and more equitable manner.

Many American consumers looking to purchase or secure mortgages for real property turn to lenders for financing. The appraisal process is integral to establishing not only a property's value for the purpose of homeownership, but also for creating a valuable asset from which the wealth can be passed to subsequent generations. For many Americans, the idea of homeownership is a part of the American dream. The opportunity to own property, and to pass that property on to subsequent generations, is one of the measures of the legacy that individuals leave to future generations. Unfortunately, over the course of time, personal biases, most notably racial bias, have seriously impacted the foundational analytical tools used by lenders to determine an adequate basis for a loan, commonly known as valuation reports. Racial bias in home valuation plays a pivotal role in undermining generational wealth among underrepresented parties. As a result, even if the homeownership gap was to be closed, the issue of the wealth gap remains where the property of those in minority communities remains undervalued. This paper attempts to address the issue of racial bias in the appraisal process, its impact on the black community, and how more specifically directed tools can be used to identify situations in which there is the potential for racial bias, conscious or unconscious, in the appraisal process, and provide evidence of that bias.

In addition to bringing attention to the ways in which racial bias affects the home valuation process, by presenting specific examples and case studies of real situations in which underrepresented parties have been impacted by unfair valuation processes, this paper will reveal ways to combat the situation by providing an accessible tool. This tool will take the form of a checklist through which consumers can identify and prevent future incidents of bias. This paper will focus on the standards that appraisers should follow. It will also address instances in which the standards have not been upheld and the result of such decisions. The paper will then discuss the possible effects of continued violation of such standards and will conclude with an explanation of the effects that the development of a checklist, or worksheet, can have, and the ways in which such a checklist or worksheet will help to protect the legacy of black homeowners for future generations, and help to alleviate the factors that exacerbate wealth inequality.

II. Historical Factors Affecting Homeownership

One of the most basic laws protecting the rights of the individual in property is the Fourteenth Amendment of the U.S. Constitution, which states that, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

¹ See, e.g., Federal Housing Finance Agency's 2021 Targeted Community Lending Plan.

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”² Appraisals that are unfair and biased because of race, national origin, or ethnic background serve as evidence of the denial of “equal protection of the laws,” a specific right that the Fourteenth Amendment is designed to protect. To safeguard the protection of an American individual’s right to fair and equal treatment, the proper approach to valuing real property must be clearly delineated and followed.

Over the years, a range of factors have adversely impacted the potential for homeownership in the black community and the subsequent value placed on that homeownership. One of the earliest of those factors was the impact of slavery on the property rights of those who themselves were once considered property. As part of a report compiled for the General Assembly of the United Nations, Tendayi Achiume, a U.N. racism investigator, noted that, “Slavery and colonialism allocated rights and privileges on a racial basis, and they also entrenched economic, social, and political inequalities along racial lines. The formal abolition of slavery and colonialism was by no means sufficient to undo these racial inequalities that were consolidated over centuries.”³ The effect of slavery continues to be felt, even to the present time. As noted in a recent Elon Law School law review article, “The theft of black labor and land, and the systemic disenfranchisement and exclusion of black Americans from full citizenship over the past 400 years has produced profound and enduring racial inequality that persists today. That inequality is intersectional, impacting financial mobility and housing, health care outcomes, carceral rates, education, community investment, and environmental justice.”⁴

The undervaluation of homes, and the resulting smaller loans approved for the homes, exacerbates, and widens the wealth gap, thus creating a downward trend in the ability to purchase homes for consumers living in the affected areas. When smaller and fewer loans are available for the properties in an area, there is a smaller pool of residential properties available to the consumer for purchase and fewer opportunities to make property a worthwhile investment. The undervaluation of properties, and the resulting smaller loans based on that valuation, means it is less likely that a consumer will be approved for a property that represents the best investment, from both a financial and personal perspective. Because undervaluation in minority communities seems to be a pervasive problem, minorities are being affected on a greater scale than their white counterparts. The inability to procure residential properties significantly impacts the potential for creating generational wealth for minority consumers.

Today, there is substantial evidence that suggests that racial and ethnic bias is still a contributing factor toward the depressed values that appraisers in purchase transactions assign to properties in majority black and Latino neighborhoods.⁵ Evidence of racial bias as a contributing factor can readily be seen in a study conducted by the Cook County Treasurer’s Office to evaluate the impact of the Illinois Scavenger Sale Law. This law was enacted more than 80 years ago and was intended to address the need to remediate

² U.S. CONST., Amend.14.

³ James Reinl, *U.N. revives call for slavery, colonialism payouts*, Anadolu Agency (Oct. 30, 2019), <https://www.aa.com.tr/en/world/un-revives-call-for-slavery-colonialism-payouts/1631218> (quoting from address given by Tendayi Achiume, UN racism investigator, concerning the results of her 23-page report prepared for the United Nations). See also Vanessa Zboreak, *Regulatory Reparations*, 14 ELON LAW REVIEW 215 (2022).

⁴ Vanessa Zboreak, *Regulatory Reparations*, 14 ELON LAW REVIEW 215 (2022).

⁵ See PAVE, INTERAGENCY TASK FORCE ON PROPERTY APPRAISAL AND VALUATION EQUITY, <https://pave.hud.gov/> (last visited July 28, 2022).

distressed and tax-delinquent properties in the Chicago area, and to restore the value of the property and the community at large.⁶ The study found that, for the most part, the Illinois Scavenger Sale Law has not successfully addressed the property ownership problems in Chicago that it was intended to remedy.⁷ The study included vast amounts of data and looked primarily at properties that were offered under the Cook County 2022 Scavenger Sale. The researchers found that, of the 27,358 houses and vacant lots offered at that sale, 14,085 fell within the boundaries of a security map of the Chicago area.⁸ The study indicated that much of the problem with the valuations was the result of redlining, a discriminatory practice used by banks based on the designation of a particular area as less desirable, which was used extensively in neighborhoods with high numbers of racial minorities.⁹ The Cook County Treasurer, Maria Pappas, was quoted as having observed that, while the Illinois Scavenger Sale Law was intended as “a solution to redlining ... it didn’t work because it didn’t solve redlining and the underlying lack of generational wealth among Black families.”¹⁰ Of the properties included in the study, more than 72% were in predominantly black wards and suburbs.¹¹ Only a small percentage of the properties (7,636) received bids.¹²

Redlining works in tandem with the appraisal process by marking the inception of discriminatory actions within the procurement of real estate. As reported in the press, the study found that the Scavenger Sale has proved “inadequate in restoring distressed properties in communities that have long suffered from housing discrimination, from redlining to scant mortgage lending and below-value mortgage appraisals in minority communities.”¹³

The appraisal regulations cover any real estate-related financial transactions that involve financial institutions, their holding companies, or their subsidiaries.¹⁴ Because lenders require an appraisal before approving a home loan, American consumers have no choice but to rely on appraisers to fairly assess and value their property for purchase, sale, or taxation endeavors.

III. Failures in Attempts to Address Racial Bias in the Appraisal and Valuation Process

Despite the protections of the U.S. Constitution, the enactment of laws such as the Fair Housing laws,¹⁵ and the efforts of other governmental authorities to address the issue of racial bias in the appraisal and valuation process and to ensure that the homeownership process is conducted in a fair and equitable

⁶ Maria Pappas, *Maps of Inequality: From Redlining to Urban Decay and the Black Exodus*, OFFICE OF THE COOK COUNTY TREASURER Maria Pappas (July 2022) available at <https://www.cookcountytreasurer.com/pdfs/scavengersalestudy/2022scavengersalestudy.pdf>.

⁷ *Id.*

⁸ *Id.* at 5.

⁹ Corey Williams, *Report: Illinois Property Law Fails to End Redlining Impact*, ABC NEWS (July 19, 2022).

¹⁰ *Id.*

¹¹ Maria Pappas, *Maps of Inequality: From Redlining to Urban Decay and the Black Exodus*, OFFICE OF THE COOK COUNTY TREASURER 5 (July 2022) available at <https://www.cookcountytreasurer.com/pdfs/scavengersalestudy/2022scavengersalestudy.pdf>.

¹² *Id.* at 20.

¹³ Corey Williams, *Report: Illinois Property Law Fails to End Redlining Impact*, ABC NEWS (July 19, 2022).

¹⁴ 1 BANK SAFETY AND SOUNDNESS REGULATORY SERVICE § 15.02 (2022).

¹⁵ See Fair Housing Act (Title VIII of the Civil Rights Act of 1968), Public Law 90-284, 82 Stat. 73 (1968), as amended.

manner, recent cases, both in the courts and in media accounts, have indicated that racial bias is far from being eliminated. There is still a great need for further regulation of the appraisal process and identification of those aspects of the process that demonstrate significant racial bias, which strongly impacts the black community to this day.

For example, in *Tate-Austin v. Miller*,¹⁶ a case that is being adjudicated in the Federal District Court in the Northern District of California, the court has allowed a case brought by African American homeowners to proceed against the appraisers who seemingly undervalued their home based on racial bias. In this case, the plaintiffs, an African American couple, purchased and financed a house in December 2016, which was appraised at an estimated market value of \$575,500. After the homeowners made constant renovations over the span of three years, the value of the property increased, and the assessed value of the property in 2019 was \$1.45 million. In 2020, the homeowners sought to refinance their mortgage for a third time and had an appraisal done. At the time of the appraisal, family photos and African-themed art were displayed throughout the home. After inspecting the property, the appraiser determined that the market value of the house was \$995,000. Because the homeowners were unable to obtain financing due to the low estimate, they requested that a second appraisal be done. When the second appraisal was scheduled to be done, the homeowners enlisted the cooperation of a Caucasian friend, who agreed to stand in as the homeowner. The second appraisal resulted in an estimated value of \$1,482,500 for the house. The case of *Tate-Austin v. Miller* is one of many instances of discrimination within the valuation process conducted in minority neighborhoods.

This case serves as an example of the trials and tribulations that minority families still face today while attempting to make strides toward acquiring generational wealth. Although AO-16,¹⁷ the Fair Housing Act,¹⁸ the Truth in Lending Act,¹⁹ the Equal Credit Opportunity Act,²⁰ and the Appraisal Standards and Appraiser Criteria Report²¹ have made substantial strides in creating laws and regulations to decrease housing discrimination, the case of *Tate-Austin v. Miller* in 2022 is proof that there is still more work to be done.²²

Other situations that have been documented by the FHFA have found that *Tate-Austin v. Miller* is not an isolated incident. In its report on “Identifying Bias and Barriers, Promoting Equity,” the National Fair Housing Alliance (NFHA) notes anecdotal evidence of specific instances of apparent racial discrimination in the appraisal field, not only in California, but also in Florida, Colorado, and Indiana.²³ While the

¹⁶ *Tate-Austin v. Miller*, No. 21-cv-09319-MMC, 2022 U.S. Dist. LEXIS 68454 (N.D. Cal. Apr. 13, 2022); see also Maria Dinzeo, *Judge finds plausible race discrimination in Black couple’s lawsuit over lowball appraisal*, COURTHOUSE NEWS SERVICE (Apr. 13, 2022), <https://www.courthousenews.com/judge-finds-plausible-race-discrimination-in-black-couples-lawsuit-over-low-ball-appraisal/>.

¹⁷ Uniform Standards of Professional Appraisal Practice, Advisory Opinion 16 (AO-16), Fair Housing Law and Appraisal Report Content.

¹⁸ Fair Housing Act (Title VIII of the Civil Rights Act of 1968), Public Law 90-284, 82 Stat. 73 (1968), as amended.

¹⁹ Truth in Lending Act, Public Law 90-321, 82 Stat. 146.

²⁰ Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*

²¹ *Identifying Bias and Barriers, Promoting Equity, An Analysis of the Appraisal Standards and Appraiser Qualifications Criteria*, National Fair Housing Alliance (Feb. 2022).

²² *Tate-Austin v. Miller*, No. 21-cv-09319-MMC, 2022 U.S. Dist. LEXIS 68454 (N.D. Cal. Apr. 13, 2022).

²³ *Identifying Bias and Barriers, Promoting Equity, An Analysis of the Appraisal Standards and Appraiser Qualifications Criteria*, NATIONAL FAIR HOUSING ALLIANCE (Feb. 2022).

FHFA provides a tremendous resource in the collection of data and identification of potential overt and covert forms of bias, these documented situations indicate that more tools are needed to identify and address the impact of racial bias on the housing market, and, as a result, on current and generational wealth opportunities.²⁴ The checklist proposed in this paper would act as a resource for those wanting to determine whether racial bias is present, and whether the information available on the factors that were considered in an appraisal needs to be supplemented with additional information.

IV. Regulating the Appraisal Process: What Has Been Done and Why It Is Not Enough

The role of the appraiser in the property appraisal process is a complex one. The appraiser is responsible for establishing a fair and equitable value for the property for various purposes: obtaining financing for homeownership; setting the valuation for tax purposes; refinancing to increase the value of property; selling the property for maximum value; or transferring the property through gift or inheritance.

The courts have, at various times, noted the standards that appraisers are required to follow when making their appraisals.²⁵ The Uniform Standards of Professional Appraisal Practice (USPAP) are basically the rules that govern the applicable standards for professional appraisers to use when conducting their valuation and appraisal activities. One of the rules, Standard 2, sets out the way appraisers are required to report and communicate their findings with respect to valuation of property.²⁶ The Standard requires the appraiser to: (1) clearly and accurately set forth the appraisal in a manner that will not be misleading; (2) include sufficient information to enable the intended users of the appraisal to understand the report properly (this requirement emphasizes the need to effectively convey the results of the appraisal investigation); (3) clearly and accurately disclose any extraordinary assumption, hypothetical condition, or limiting condition that directly affects the appraisal, and indicate its impact upon value; and (4) discuss the reason for selecting the approach(es) used in the value estimate as well as the reasons for rejecting any other approach.²⁷ Following these standards, intended users should understand the report properly, and the creation of a new checklist/worksheet will assist in providing such transparency and understanding of each valuation report.

There have been several advancements in the fight to address documented instances of appraisal discrimination along racial lines. For instance, there are rules of conduct, competency, and reporting content to which an appraiser must adhere for compliance with current fair housing laws. According to Advisory Opinion 16 (AO-16), an appraiser should be knowledgeable about the laws that affect the subject property of an assignment. As laws and regulations on fair lending and fair housing continue to evolve, appraisers must provide appraisals that do not illegally discriminate or contribute to illegal discrimination.²⁸ The purpose of the Advisory Opinion is to eliminate impartiality and create an equal footing for valuation through strict regulation. However, the housing discrimination crisis continues, rendering the Advisory Opinion by

²⁴ See, e.g., Federal Housing Finance Agency's 2021 Targeted Community Lending Plan.

²⁵ See, e.g., *In re Equalization Appeal of Johnson Cty. Appraiser/Privitera Realty Holdings*, 47 Kan. App. 2d 1074, 283 P.3d 823 (2012).

²⁶ *Uniform Standards of Professional Appraisal Practice (USPAP)*, THE APPRAISAL FOUNDATION (2020-2021), Standard 2.

²⁷ *Id.*, Rule 2-1.

²⁸ *Id.*

itself insufficient to remediate such an issue. Another advancement is the “Appraisal Standards and Appraiser Criteria report” conducted by NFHA, Dane Law LLC, and the Christensen Law Firm (the “NFHA Consortium”).²⁹ The report is the most comprehensive review of bias in the appraisal industry to date, and presents a roadmap for Congress, regulators, advocates, and the industry to address the nation’s long legacy of bias in the valuation of real estate and to build a future in which a family’s most valuable asset is treated fairly.³⁰ Although the “Appraisal Standards and Appraiser Criteria report” provides a strong basis for review, the report is reactionary, not pro-active, and does not account for input from the people being directly affected.

The federal government has also made a commitment to addressing the issues of appraisal fairness and equity, and the elimination of systemic racism and bias in the process.³¹ In June 2021, President Joe Biden announced the creation of the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) to “develop a transformative set of actions to root out racial and ethnic bias in home valuations.”³² The action plan outlines a set of commitments and actions, most of which can be taken by existing federal authorities. It also offers educational information as to what appraisal bias is and encourages visitors to share their stories if they believe themselves to be a victim of appraisal bias.³³ The plan calls for action in the following ways: (1) make the appraisal industry more accountable; (2) empower consumers with information and assistance; (3) prevent algorithmic bias in home valuation; (4) cultivate well-trained appraisers that look like the community they serve; and (5) create a federal appraisal-bias database.³⁴ Because PAVE currently remains in the transitional phase while looking for collaborators, the new checklist proposed in this article, which would readily identify potential overt and sometimes covert forms of bias, aims to jump-start this call to action by creating transparency for American consumers.

V. New Tools to Combat Systemic Racism in the Appraisal Process

To assist with identifying and addressing potential issues of bias, the checklist proposed in this paper would utilize information in such a way that it can “red flag” situations in which the appraisal process may be being applied unfairly or with bias. The proposed checklist will be created using resources such as Practical Guidance, Legal News Hub on Lexis+, and Data Science & Content Acquisition through the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship. The project team will work with relevant associations and institutions to have a digital link uploaded to their site through which both appraisers and consumers may gain access to the checklist. This will serve as a supplemental branch to the already established method of acquisition for the appraisal report form. Using the same steps as the established process to access the link for the digital checklist lessens any confusion that could otherwise result from an added step and allows the checklist to be of greater benefit to the appraisal process. To

²⁹ *National Fair Housing Alliance: Groundbreaking Report Identifies Bias and Systemic Barriers in Real Estate Appraisals*, NFHA (Jan. 19, 2022), <https://nationalfairhousing.org/groundbreaking-report-identifies-bias-and-systemic-barriers-in-real-estate-appraisals/>.

³⁰ *Id.*

³¹ *Action Plan to Advance Property Appraisal and Valuation Equity, Executive Summary*, PAVE, INTERAGENCY TASK FORCE ON PROPERTY APPRAISAL AND VALUATION EQUITY (2021), <https://pave.hud.gov/actionplan>.

³² Kerry Smith, *Biden Task Force Releases Appraisal Bias Study*, Florida Realtors (Mar. 23, 2022), <https://www.floridarealtors.org/news-media/news-articles/2022/03/biden-task-force-releases-appraisal-bias-study>.

³³ *Id.*

³⁴ *Id.*

obtain a copy of the completed appraisal report, the consumer must reach out to the individual lender to request the finalized report.

In addition, the form containing the checklist will set forth ethical rules and rules of professional responsibility, as a reminder to appraisers of their duty to maintain the standards of the profession and to carry out those duties without bias. The checklist will be in the guise of a digital form affixed to valuation reports and will be released to involved parties upon its completion.

The checklist will contain separate sections, each of which will address a specific aspect of the appraisal process. The initial sections of the checklist will contain rules of ethical conduct and competency rules, to serve as a reminder of the standards that are to be upheld and strictly followed by appraisers when completing the remainder of the form.

Following the ethics and competency rules, there will be a signatory section for the appraiser to swear and affirm that they have understood the rules, and that the appraiser will abide by them, or, if they are unable to do so, will recuse themselves. The next section will contain common identifying information of the address being inspected, whether any persons or identifying materials are displayed, and a description if so. The following section will lay out the comparable properties used, sale prices, and neighborhood likeness or commonalities.

The concluding section will include the appraiser's first and last name, contact information, and employing office.

A consumer who identifies an instance of purported racial bias generally bears the burden of proving that there is a bias that is reflected in the valuation report, and that such bias impacted the accuracy of the appraisal. The checklist will provide information necessary to identify inconsistencies that can indicate potential bias and will help to satisfy a party's burden of proving that a governmental or individual valuation is invalid because of a bias. For example, case law indicates that, in many situations involving the appraisal process on which the governmental authorities rely for the imposition of property tax, the governmental authority responsible for the valuation of the property does not bear the burden of proving the accuracy of the appraisal on which it relies. If the homeowner files an appeal of the property tax valuation and assessment, the board of tax appeals, or other administrative board, is generally justified in retaining the taxing authority's valuation of the property absent a showing of bias by the appellant. In situations where the taxpayer fails to meet their burden of proof, the administrative board will accept the government's valuation, even where there is no additional evidence to support the auditor's valuation.³⁵ For those cases in which homeowners are unable to meet the burden of proof due to lack of information, tools such as those proposed in this project can be of invaluable assistance in remedying the situation and providing the necessary resources to prevail.

³⁵ 7991 Columbus Pike, LLC v. Del. Cty. Bd. of Revision, 2016-Ohio-5758 (Ct. App.).

VI. Conclusion

The lack of sufficient regulation of home valuation reports and the resulting potential for bias, negatively impacts the ability of underrepresented American consumers, particularly those in black and minority communities, to obtain home loans, thereby decreasing the likelihood of creating generational wealth among these communities. The creation of a self-regulating tool in the form of a checklist is necessary to track real estate appraisal values, appraisal methodology breakdowns, and the appraisal company tasked with finalizing each evaluation. The checklist will be created by working with industry professionals, attorneys, and LexisNexis® product specialists and content developers. It will promote transparency through self-regulation of valuation reports and help to identify and eliminate systemic racism, thereby ensuring the rights of homeowners.

Mentor: Rachel Travers

Vice President, Law360®



Reflection on working with Fellow Brianna Joaseus:

Property ownership is core to dreams of many, often tying together the aspirations of family, community, and legacy with the need for shelter and financial security. Brianna’s project sets out to identify ways in which racial bias is playing an unwelcome role in that dream — negatively impacting the chances of home ownership and wealth generation for minority groups. Brianna’s plan to attack this bias through her Red Flag checklist is as smart and ambitious as she is, pulling together elements of awareness, regulation, and process, and giving homeowners additional protection during appraisals.

Working with Brianna Joaseus and the LexisNexis® Rule of Law Foundation team is a privilege, of course, but it is also a personal source of hope. The work brings with it the feeling that a few dedicated people can make positive changes, whether in small steps or significant leaps. It brings with it the knowledge that although major barriers to progress exist, we must fight through them with all the tools, resources, and smarts we can muster. It brings with it the sense that the next generation of smart legal minds such as Brianna’s — given a little time — might just set a few dreams back on track.

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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.

At Law360®, Rachel leads a talented team of reporters, editors, developers, product managers, and sales and marketing professionals. Together, they bring daily news and insight to the legal industry, encouraging deep reader engagement and growth. Law360® has expanded to cover more than 70 US and UK Practice Area sections, and several expanded, deep news offerings. In 2021 Law360® Pulse was released, taking the Law360® know-how into the business of law and providing a new series of rankings and industry insight to the market. Prior to joining the team at Law360® in 2019, Rachel led the Practical Guidance and Analytical content teams for LexisNexis® North America driving significant product improvements and growth in both revenues and customer satisfaction. Before joining the US LexisNexis® team, Rachel was Managing Director LexisNexis® New Zealand, responsible for the strategic in-market direction for the company and enjoyed being part the Asia Pacific leadership team.

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

Building Generational Wealth by Protecting Black Property Ownership Through Wills / Estate Planning

Lauren Skarupsky

This project's mission is to create a toolkit that will "Help," "Educate," and "Identify" interested persons (family members/individuals of minority descent), assist with "Real" property descriptions, and educate individuals as to "Succession" laws and planning (HEIRS¹). The HEIRS toolkit will help alleviate the wealth gap in the United States by advocating for the building of generational wealth through estate planning. The toolkit is designed to assist practicing attorneys with creating estate plans to protect their clients from losing land held within their families and will be made available in print pamphlets that can be distributed to attorneys or located within a Practical Guidance module on Lexis+[®]. A 50-state survey of relevant estate statutes on Lexis+[®] will also be created to help practicing attorneys and law students in succession clinics to quickly identify current law.

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.



Lauren Skarupsky is a third-year law student at Southern University Law Center. Over the past two years, Lauren has gained legal experience in various fields including, but not limited to oil and gas law, property law, sports law, and criminal law. Lauren has strong interest in the following areas of law: corporate law, real estate/property law, and succession planning.

Introduction

Individuals aspire to leave behind a legacy when they die, whether that legacy is one that is left for the entire world or simply one that is left for their heirs alone. The opportunity to buy, build or enjoy ownership interests in real property is part of the American Dream.² However, for Blacks, this dream comes with legal complications that often make property ownership meaningless due to the disproportionate negative impact that property and inheritance laws have had on the black community for over 150 years.³

Everyone who owns property leaves that property behind when they pass away.⁴ If an individual dies without a will or estate plan, the death is classified as “intestate,” meaning that the laws of the state in which the individual resides before death will determine how the property will be distributed.⁵ Complications arise as to who possesses an ownership interest in inherited land since, in the course of time, black landowners’ ownership interests started to divide fractionally among heirs of their estate due to the intestate laws created by state legislators.⁶ The concept of heirs’ property is a leading cause of generational land loss within the black community.⁷ Individuals are unaware of their property ownership interests in land owned by their families. This leads to the possibility that they will lose that familial land due to predatory actions of others, as well as the state laws that do not protect individuals from those predatory actions.⁸

This article advocates for the importance of building generational wealth throughout the black community and promotes the importance of estate planning to ensure that black family assets are protected, allowing more Blacks to leave a legacy for their heirs and future heirs. Part I of this article will discuss both the historical background of inherited property and what is presently occurring within the black community concerning property ownership. Part II will address the historical background of succession planning through the creation of an estate plan. Part III will explore a solution using LexisNexis® resources and products that will help bridge the wealth gap and combat systemic racism within the black community, through the creation of a toolkit that will Help Educate Individuals of minority descent on Real property and Succession (HEIRS).

² C. Scott Garber, *Heirs Property: The Problems And Possible Solutions*, 12 CLEARINGHOUSE REV. 273 (1978).

³ Lizzie Presser, *Their Family Bought Land One Generation After Slavery, The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It*, PROPUBLICA (June 15, 2019), <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south>.

⁴ Jens Beckert, *INHERITED WEALTH*, 1 (Thomas Dunlap trans., Princeton Univ. Press 2008).

⁵ Thomas W. Mitchell, *Historic Partition Law Reform: A Game Changer for Heirs’ Property Owners*, 65-67 (Cassandra J. Gaither, Ann Carpenter, Tracy Lloyd McCurdy, & Sara Toering eds., 2019).

⁶ *Heirs Property and Generational Land Loss*, THE AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL, <https://www.actec.org/diversity/heirs-property-generational-land-loss> (last visited June 12, 2022) (Alabama, AL Code §43-8-40 (1982); Georgia, O.C.G.A §53-2-1 (2008); Louisiana, La. CC. Art. 880 (1982); Mississippi, MS Code §91-1-1 (2020); South Carolina, S.C. Code Ann. §62-2-101 (2014)).

⁷ *Id.*

⁸ United States Department of Agriculture, *HEIRS’ PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT*, 94 (Cassandra Johnson Gaither et al. eds., 2019).

Part I – History of Black Property Ownership

Real property ownership is a key component to building generational wealth within families.⁹ Black families are disproportionately less likely to own real property than white families because of racial bias and socio-economic factors in the United States.¹⁰ The ownership interests of many black individuals who possess ownership interests in land date back to familial ties from the late 1800s. In 1862, the enactment of the Homestead Act provided that any adult citizen, including freed slaves, could claim a 160-acre plot of surveyed government land.¹¹ To receive the land, the individual must have filed an application, improved the land for five years, and filed for a deed of title.¹² The deed of title was an important record of land ownership, which later became critical for real estate transactions as the land passed through generations of familial lineage.

In the 1900s, black land ownership peaked at around 15 million acres; however, since that time, black land ownership has dropped drastically due to the concept of heirs' property and the complications that arise from it.¹³ Heirs' property refers to land and other real property passed down across generations in the absence of a probated will.¹⁴ Heirs' property comprises approximately 3.5 million acres across the South, more than a third of the Southern black-owned land, valued at more than \$28 billion.¹⁵ Over the course of time, black heirs lost land through sale or abandonment of property, which did not allow successive generations to reap the benefits of ownership by building generational wealth for decades to follow.¹⁶ Through probate, wealthier landowners are able to consolidate their holdings; however, when there is no probate, heirs who are classified as tenants-in-common experience challenges with their property ownership.¹⁷

The absence of a probated will or estate plan leaves the property susceptible to laws and regulations in the state in which the property is located that may adversely impact the rights associated with the property.¹⁸ Each state has created statutes or regulations controlling how property is passed down to a decedent's

⁹ Andrew Lanoie, *Why Real Estate is One Asset that Builds Generational Wealth*, FORBES, <https://www.forbes.com/sites/forbesrealestatecouncil/2021/01/07/why-real-estate-is-one-asset-that-builds-generational-wealth/?sh=60c6c5421f68> (last visited July 29, 2022).

¹⁰ Angela Hanks, Danyelle Solomon, Christian E. Weller, *Systemic Inequality*, AMERICAN PROGRESS, <https://www.americanprogress.org/article/systemic-inequality> (last visited July 29, 2022).

¹¹ See *The Homestead Act of 1862*, THE U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, <https://www.archives.gov/education/lessons/homestead-act> (last visited July 15, 2022).

¹² Act of May 20, 1862 (Homestead Act), Public Law 37-64 (12 STAT 392); 5/20/1862; Enrolled Acts and Resolutions of Congress, 1789 - 2011; General Records of the United States Government, Record Group 11; National Archives Building, Washington, DC.

¹³ *Supra* note 8, at 9.

¹⁴ Jennifer Fahy, *How Heirs' Property Fueled the 90 Percent Decline in Black-Owned Farmland*, FARM AID, <https://www.farmaid.org/blog/heirs-property-90-percent-decline-black-owned-farmland/> (last visited July 15, 2022).

¹⁵ Lizzie Presser, *Their Family Bought Land One Generation After Slavery, The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It*, PROPUBLICA (June 15, 2019), <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south>.

¹⁶ Ralph Bostic, *Heirs' Property in the Southeast: A Community Development Perspective*, UNITED STATES DEPARTMENT OF AGRICULTURE, https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf (last visited July 15, 2022).

¹⁷ Thomas W. Mitchell, *Historic Partition Law Reform: A Game Changer for Heirs' Property Owners*, 67 (Cassandra J. Gaither, Ann Carpenter, Tracy Lloyd McCurdy, & Sara Toering eds., 2019).

¹⁸ *Id.*

heirs and controlling who will possess undivided shares in the property.¹⁹ Heirs who own property as tenants-in-common see familial wealth dissipate right before their eyes.²⁰ Under the concept of tenants-in-common, all individuals with an interest in the property have equal rights to possession of the property, which can create some complexities as to property ownership.²¹ Tenants-in-common have the ability to do whatever they want with their ownership interest in the property, leaving the title to become clouded as different transactions take place in relation to each ownership share.²² It can become very difficult to know who owns what piece of property as well as the encumbrances on that property.²³ For this reason, estate planners and real estate attorneys believe that this type of ownership is one of the most unstable forms of property ownership and possesses many dangers to families.²⁴

With the structure of our society today, families are spread out across the country and even the world. Many people are not aware of property they may own, and this leaves their ownership interests easily susceptible to voluntary transfer of their rights unknowingly allowing the party who acquires their rights to dispose of the entire property through judicial processes of partitioning.²⁵ To help solve this issue, the Uniformed Partition of Heirs Property Act (UPHPA) was enacted to address “a widespread, well documented problem of deprivation of property rights and loss of wealth that many low- to middle-class income owners of family real property have experienced over the past several decades.”²⁶

The UPHPA helps preserve family wealth in the form of real property when it is passed through future generations.²⁷ The Act applies only to heirs’ property and when there is no written agreement governing partition among the owners of the property.²⁸ The Act lays out the steps that the court must follow in order to protect the interests of all co-tenants when one of the co-tenants wants to partition the property.²⁹

¹⁹ *Id.*

²⁰ Ralph Bostic, *Heirs’ Property in the Southeast: A Community Development Perspective*, UNITED STATES DEPARTMENT OF AGRICULTURE, vii, https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf (last visited July 15, 2022).

²¹ *Tenancy in Common*, CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/tenancy_in_common (last visited July 29, 2022).

²² United States Department of Agriculture, HEIRS’ PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT, 11 (Cassandra Johnson Gaither et al. eds., 2019).

²³ *Id.*

²⁴ *Heirs Property and Generational Land Loss*, THE AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL, <https://www.actec.org/diversity/heirs-property-generational-land-loss>, (last visited June 12, 2022) (Alabama, AL Code §43-8-40 (1982); Georgia, O.C.G.A §53-2-1 (2008); Louisiana, La. CC. Art. 880 (1982); Mississippi, MS Code §91-1-1 (2020); South Carolina, S.C. Code Ann. §62-2-101 (2014)).

²⁵ United States Department of Agriculture, HEIRS’ PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT, 14 (Cassandra Johnson Gaither et al. eds., 2019).

²⁶ *The Uniformed Partition of Heirs Property Act*, UNIFORM LAW COMMISSION NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=1166a210-6868-cacb-32dd-20624634c8d8&forceDialog=0> (last visited July 15, 2022).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* First, the co-tenant requesting partition must give notice to all of the co-tenants. The court must then order an independent appraisal to determine the property’s fair market value. If there is an objection to this appraisal value, the objecting co-tenant must present evidence as to the value of the property in court. Then any co-tenant has the ability to purchase the interest of the co-tenant seeking partition for a proportional share of the court-determined fair market value. If no co-tenant decides to purchase the share, then the court must order a partition-in-kind, unless the court determines it is incapable of doing so as it will be a great prejudice to the co-tenants as a group. The Act lays out factors for the court to consider when determining whether a partition-in-kind is appropriate. If partition-in-kind is an inappropriate remedy, then the court will order partition-by-sale, through an open market sale or auction.

Only 20 states have adopted the UHPA, leaving individuals in 30 other states exposed to actions, such as an individual offering much less than what the property is worth, in order to later partition the property through a judicial proceeding.³⁰ The UHPA forces a person seeking partition to give notice to all co-tenants. State statutes that do not follow the Act do not necessarily have this notice requirement.³¹ Without the notice requirement, land partition can occur behind the scenes, without anyone knowing that their property will soon be taken from them.³²

Part II – Analyzing Estate Planning Amongst the Black Community

A. Historical Background

In the United States, estate planning is an area that is least exercised by individuals, especially by those in the black community.³³ Estate planning is traced back to the 1700s and has continuously been evolving ever since.³⁴ Estate planning is a process that involves the use and arrangement of property for and among family members, which will afford them benefits from the property.³⁵

Creating an estate plan is an important responsibility that many often look past, as they do not plan for the future of their families after their passing. Death is a scary topic to discuss; however, at some point, everyone is going to pass, and it is important to have plans in place that allow families to benefit from the legacy that is left. According to a study by Caring.com, “more than 50% of Americans think that estate planning is at least somewhat important, but only 33% have a will or living trust.”³⁶ In 2022, only 29% of black Americans indicated that they have a will or another estate planning document to protect their assets.³⁷ That percentage is low. Black Americans are missing out on the largest wealth transfer opportunities available to everyone in the United States.³⁸

With black households earning merely 12 cents for every dollar earned by a white household, estate planning is an opportunity to close the wealth gap.³⁹ “Everything you’ve worked for, everything you’ve earned and created, has the ability to benefit future generations.”⁴⁰ Building generational wealth will not happen overnight; that process takes time, attention, and planning.

³⁰ *The Uniformed Partition of Heirs Property Act*, UNIFORM LAW COMMISSION NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=1166a210-6868-cacb-32dd-20624634c8d8&forceDialog=0> (last visited July 15, 2022).

³¹ *Id.*

³² *A Brief History of Estate Planning in America*, TRUST & WILL, <https://trustandwill.com/learn/history-of-estate-planning> (last visited July 15, 2022).

³³ Michelle Fox, ‘We Are in A State of Emergency.’ More than 70% of Black Americans Do Not Have A Will. Here’s Why A Plan is Key, CNBC, <https://www.cnbc.com/2022/02/07/70-percent-plus-of-black-americans-dont-have-wills-why-estate-plans-are-key.html> (last visited July 29, 2022).

³⁴ William D. Rollison, *History of Estate Planning*, 37 NOTRE DAME L. REV. 160 (1961).

³⁵ *Id.*

³⁶ Daniel Cobb, *2022 Wills And Estate Planning Study*, CARING.COM (2022), <https://www.caring.com/caregivers/estate-planning/wills-survey/> (last visited Jul 15, 2022).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Patricia Cohen, *Beyond Pandemic’s Upheaval, a Racial Wealth Gap Endures*, THE N.Y. TIMES (April 9, 2021), <https://www.nytimes.com/2021/04/09/business/economy/racial-wealth-gap.html> (last visited Jul 15, 2022).

⁴⁰ *Id.*

B. Barriers Blocking the Development of Estate Plans in the Black Community

Planning for a future of which you will not be a part can be daunting to some. Many people experience denial about the inevitability of leaving behind those they love. Often, people fear that estate planning means loss of control, or they maintain the belief that estate planning is only for the wealthy and believe that they do not own enough to make the process worth the costs.⁴¹ This mindset of many Americans, especially in the black community, is what leaves billions of dollars of property owned by blacks susceptible to being taken or lost across generations.⁴² In addition, there is a common misconception that people are too young to create an estate plan.⁴³ Death is unpredictable; there is no way of telling when you may pass away, leaving family members unsure about what to do with the property.

Many individuals hold common misconceptions about developing an estate plan, even if they have a desire to do so. Many do not know where to start, or how to develop an effective plan.⁴⁴ There is an educational gap in the black community, directly leading to the loss of property in partition sales.⁴⁵ It is important to start educating the black community about the importance of estate planning, to help build the wealth for generations to come.

In addition, there is an overwhelmingly low number of black attorneys within the transactional law space, which is a contributing factor to the vulnerability of the black community, as they become more susceptible to the dangers of owning property as tenants-in-common.⁴⁶ It is important to encourage more blacks to enter the practice of wills, trusts, and estates so that they can advocate for the black community to develop estate plans. Simply having someone who the community can trust can go a long way and help close wealth gaps and build generational wealth amongst the community.

Part III – Breaking Barriers: Building Wealth

Part of the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship’s fight to combat systemic racism within the legal system will be the creation of a toolkit that will “Help,” “Educate,” and “Identify” interested persons (family members/individuals of minority descent), assist with “Real” property descriptions, and educate individuals as to “Succession” laws and planning (HEIRS). The HEIRS toolkit, which will be featured on Lexis+®, will help alleviate the wealth gap in the United States by advocating for the building of generational wealth through estate planning.

⁴¹ THE NAT’L LAW REVIEW, *Do I Need An Estate Plan?*, <https://www.natlawreview.com/article/do-i-need-estate-plan> (last visited July 15, 2022).

⁴² Lizzie Presser, *Their Family Bought Land One Generation After Slavery, The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It*, PROPUBLICA (June 15, 2019), available at <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south>.

⁴³ *Id.*

⁴⁴ Daniel Cobb, *2022 Wills and Estate Planning Study*, CARING.COM (2022), <https://www.caring.com/caregivers/estate-planning/wills-survey/> (last visited Jul 15, 2022).

⁴⁵ *Id.*

⁴⁶ United States Department of Agriculture, HEIRS’ PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT, 11 (Cassandra Johnson Gaither et al. eds., 2019).

The toolkit is designed to assist practicing attorneys with creating estate plans to protect their clients from losing land held within their family. The “Education” component of the toolkit will include pamphlets that break down the concept of heirs’ property for individuals unfamiliar with the law as well as a step-by-step guide on how to check real property ownership. Local bar associations can potentially distribute the pamphlets to attorneys who can share the information with prospective clients and community centers in areas that they serve. The “Identification” component will identify all those who are real parties in interest, thus lessening the likelihood that a relevant party would be omitted and will protect the interests of all parties. The segment involving the “Real Property Descriptions” will enable, with some specificity, identification of the property, and will lay out its parameters, history, origin, and development, as well as indicate the means by which title is held. The portion involving the “Succession Planning” would include the means by which succession is to be effectuated, as well as the restrictions and limitations to which the succession would be subject, through an easily accessible 50-state survey on LexisNexis®. This will enable practicing attorneys and law students in succession clinics to access a resource that covers statutes and regulations across all states as a starting point to their research.

LexisNexis® tools that will be used to create this toolkit include the Practical Guidance function on Lexis+®, state statute collection, and secondary sources. Using these resources in creation of the HEIRS toolkit on Lexis+® will assist with building generational wealth amongst the black community and be a driving force towards eliminating systemic racism within the area of property law in the United States.

Conclusion

Legacies can last forever. It is important to protect black property ownership rights in order to build generational wealth amongst the family and continue to grow on that legacy. Finding solutions to ending systemic racism can be quite difficult; however, with education, assistance, and an overall drive to move forward, society can progress into a direction that once seemed like a dream. HEIRS toolkit on LexisNexis® will be a step into that direction. Black family legacies can live on forever.

Mentor: David A. Collins

Director, Product Management



Reflection on working with Fellow Lauren Skarupsky:

As a LexisNexis® employee, I love telling my friends and family I help develop the content and tools that support the Rule of Law around the world. Now, as mentor in the LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship, I get to help support talented law students with projects aimed at combating systemic racism within the legal system. My Fellow, Lauren Skarupsky, is not only extremely talented and near the top of her law class at Southern University Law Center, but she is also passionate about helping the black community protect property interests, build generational wealth through estate planning, and bridge the wealth gap with critical estate planning methods. Having grown up Appalachia, I am well aware of the wealth gaps in regions of the country; accordingly, extreme economic disparities have greatly concerned me. Lauren's research has given me a deeper understanding of why wealth creation has been such a struggle for the black community, and I believe her work, including a 50-state survey of statutes and regulations relevant to succession planning, will benefit all communities through awareness of the need to revise state estate and property laws to help in closing the wealth gaps as part of building a better and more equal society.

David A. Collins is the Director, Product Management for federal and state codes content and features at LexisNexis®. He and his development team's most recent achievements include LexisNexis® Product Excellence Awards for Code Compare, Cited Law Preview and Shepard's® Regulation Alert for the Code of Federal Regulations. He holds a Juris Doctor degree from The University of Akron School of Law and a Master of Business Administration degree from The University of Dayton School of Business Administration.

LexisNexis® African Ancestry Network & LexisNexis® Rule of Law Foundation Fellowship Cohort 2 Project Impact Chart

FELLOW & MENTOR	LEGAL ADVOCACY PAPER TITLE	LEXISNEXIS® PRODUCTS/ RESOURCES USED FOR RESEARCH AND SOLUTION IMPLEMENTATION	LEXISNEXIS® TALENT SUPPORT	ADVOCACY PROJECT IMPACT STATEMENT
OYINADE ADEBAYO & ELIZABETH CHRISTMAN	<i>The Inequitable Application of Waivers to Adult Court and Its Negative Implication on Procedural Justice Within African American Youth Communities</i>	<ul style="list-style-type: none"> Lexis+® Research Legal News Hub CourtLink® LexisNexis® Public Records 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors Data Scientists Software Engineers User Experience Researchers User Experience Designers 	This project's mission is to increase awareness of the disparate impact of the juvenile-to-adult court waiver system, and to create a model data-driven risk assessment and analytics tool for use by decisionmakers to use as guidance when applying waivers to adult court within the juvenile justice system.
MARIAN ANDERSON & DAVE DICICCO	<i>Smoked Out: The Over-Criminalization of Black Youth for Marijuana Usage and Possession</i>	<ul style="list-style-type: none"> Lexis+® Research State Net® Lexis® for Microsoft® Office 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors Legal Researcher Content Editor Data Analyst Project Manager 	This project's mission is to highlight the excessive sentencing of African Americans for marijuana usage and possession. This research focuses on the penalties faced by individuals imprisoned for marijuana offenses while marijuana is a flourishing tax revenue generating commodity for some states. The project also provides recommendations for advocacy and reform in this area.
NIJA BASTFIELD & SERENA WELLEN	<i>Ally Legal: Your Digital Path to the Courtroom—Ensuring Equality under the Sixth Amendment</i>	<ul style="list-style-type: none"> Law360® Litigation Profile Suite Context LexisNexis® Public Records CourtLink® 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors Product Manager Data Scientists User Experience Designers 	This project's mission is to develop a mobile application called <i>Ally Legal</i> ¹ that will improve access to the legal system for individuals accused of criminal traffic violations. This digital experience will include a user-friendly interface, frequently asked questions, a list of traffic infractions, access to a public defender office representation application, and a database of pro bono private attorneys.

¹ Referenced names are only conceptual and used by the Fellow for demonstration purposes.

FELLOW & MENTOR	LEGAL ADVOCACY PAPER TITLE	LEXISNEXIS® PRODUCTS/ RESOURCES USED FOR RESEARCH AND SOLUTION IMPLEMENTATION	LEXISNEXIS® TALENT SUPPORT	ADVOCACY PROJECT IMPACT STATEMENT
MIKEL BROWN II & ERIKA LEHMAN	<i>The School-to-Prison Pipeline: Addressing the Adverse Effects of Discriminatory School Discipline Practices and the Negative Implications on Minorities Entering the Legal Field</i>	<ul style="list-style-type: none"> • Law360® • Legal News Hub Lexis+® Research • State Net® • Practical Guidance 	<ul style="list-style-type: none"> • Attorney Staff • Writers • Legal Editors • User Experience Researcher • Data Scientist/ Designer • Software Engineer • Practical Guidance Product Manager 	This project's mission is the development of a new LexisNexis® Practical Guidance resource on school discipline titled "School-Based Law Enforcement Resource Toolkit" ² for use by attorneys representing school districts, resource officers, teachers, and support staff.
L. J. CHAVIS & DELAINE FRAZIER	<i>Progressive Prosecution: Combating Racism within the Judicial System</i>	<ul style="list-style-type: none"> • Lexis+® Research • Law360® • Lexis® for Microsoft® Office 	<ul style="list-style-type: none"> • Attorney Staff • Writers • Legal Editors • User Experience Designer • Technical Writer 	This project's mission is to increase awareness of progressive prosecution practices by exploring why progressive prosecution has a positive impact on society and argue that progressive prosecution should be employed and held as a standard by all prosecutors. Additionally, this research aims to inform criminal defense attorneys, traditional prosecutors, law students, and citizens of the positive impact progressive prosecution can have on marginalized communities.
DOMINIQUE DOUGLAS & MARGARET (MAGGIE) UNGER HUFFMAN	<i>"The Gavel League": An App Providing Legal Education to Adolescents</i>	<ul style="list-style-type: none"> • Lexis+® Research • Lexis® for Microsoft® Office 	<ul style="list-style-type: none"> • Attorney Staff • Writers • Legal Editors • User Experience Researchers • User Experience Designers • Software Engineers 	This project's mission is the development of "The Gavel League," ³ a mobile application designed to increase literacy and comprehension of critical legal concepts for youth in the United States, as well as for their parents and guardians. "The Gavel League" focuses on providing legal educational opportunities to children of marginalized communities by teaching legal concepts that impact many citizens, such as Miranda rights, and providing a vehicle to gain knowledge and understanding of the rule of law for the youth.

² Referenced names are only conceptual and used by the Fellow for demonstration purposes.

³ Referenced names are only conceptual and used by the Fellow for demonstration purposes.

Project Impact Chart

FELLOW & MENTOR	LEGAL ADVOCACY PAPER TITLE	LEXISNEXIS® PRODUCTS/ RESOURCES USED FOR RESEARCH AND SOLUTION IMPLEMENTATION	LEXISNEXIS® TALENT SUPPORT	ADVOCACY PROJECT IMPACT STATEMENT
AQUILA GARDNER & STEVE CARROLL	<i>In the New Age Can Artificial Intelligence and Technology Alleviate Racial Bias in Jury Selection?</i>	<ul style="list-style-type: none"> • Lexis+® Research • Law360® • Lexis® for Microsoft® Office 	<ul style="list-style-type: none"> • Attorney Staff • Writers • Legal Editors • Data Scientist • Software Engineers • User Experience Researchers 	This project's mission is to gather survey results and analyses documenting bias in the jury selection process in North Carolina and to develop a jury dashboard to show what a bias-free jury might look like in a county-by-county data visualization tool for use by practitioners and the community.
KRISTINA HALL & AFSOON KHATIBLOO-MCCLELLAN	<i>Breaking Down the Barriers: A Pipeline to the Bench</i>	<ul style="list-style-type: none"> • Lexis+® Research • Context 	<ul style="list-style-type: none"> • Attorney Staff • Writers • Legal Editors • Data Discovery & Enrichment Expert • Data Scientist • Account Manager • Segment Leader • User Experience Designer • User Experience Researcher 	This project's mission is to increase the diversity of federal judicial clerks by making recommendations for a program that pairs talented and prepared law students from underrepresented backgrounds with the key resources they need to obtain positions as federal clerks.
BRIANNA JOASEUS & RACHEL TRAVERS	<i>Unblur the Lines of Appraisal Bias: Creating Transparency Between Appraisers and American Consumers</i>	<ul style="list-style-type: none"> • Legal News Hub • Data Science and Content Acquisition • Practical Guidance 	<ul style="list-style-type: none"> • Attorney Staff • Writers • Legal Editors • Practical Guidance • Product Managers • Data Analysts • Software Engineers • Content Developers 	This project's mission is to create a digital checklist using resources such as Practical Guidance, Legal News Hub on Lexis+®, and Content Acquisition to decrease bias in the appraisal process by identifying “red flag” situations in which the appraisal process may be being applied unfairly or with bias.

FELLOW & MENTOR	LEGAL ADVOCACY PAPER TITLE	LEXISNEXIS® PRODUCTS/ RESOURCES USED FOR RESEARCH AND SOLUTION IMPLEMENTATION	LEXISNEXIS® TALENT SUPPORT	ADVOCACY PROJECT IMPACT STATEMENT
NICOLLE LONDOÑO & BRIAN KENNEDY	<i>Pathways to Practice Pipeline: Building Bridges for HBCU Students to Legal Fields Lacking Diversity</i>	<ul style="list-style-type: none"> Practical Guidance Lexis+® Research 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors Data Scientists Practical Guidance Product Managers 	This project's mission is to increase the diversity of students in prestigious and lucrative fields of law by providing HBCU law school students with additional professional development, support and exposure to ensure their success through the Pathways to Practice Pipeline Program. ⁴
JOANNE LOUIS & JAMIE HOLDEN	<i>Moving the Needle on Black Ownership in the Law</i>	<ul style="list-style-type: none"> Practical Guidance CounselLink® 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors Practical Guidance Product Manager User Experience Researcher 	This project's mission is to develop a curriculum outline for the Black Ownership in the Law Accelerator Program, also referred to as B.O.L., ⁵ to provide minority entrepreneurs with the mentorship, resources, coaching, professional development, and training that they need to launch a law practice successfully.
ALEXUS MCNEAL & NATASHA NEWBERRY	<i>"I, Too, Sing America": Uncovering Untold U.S. History Through the Law</i>	<ul style="list-style-type: none"> Lexis+® Research Shepard's® Citations 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors Data Scientists User Experience Designer Editorial Operations 	This project's mission is to create an accessible LexisNexis® repository of racially diverse case law to help legal scholars, historians, and others to increase awareness of minority culture and nuances in the law. The repository would be available to users through Lexis+® and its secondary supplemental materials. To increase accessibility to the repository, a keyword search filter would be added to the LexisNexis® platform which would distinguish racially diverse cases.
AMARI ROBERTS & TEAL TAYLOR	<i>Citizens Call on Georgia Legislature to Pass Bill Abolishing the Death Penalty</i>	<ul style="list-style-type: none"> Legislative Outlook State Net® Nexis NewsDesk™ Lexis+® Search Statutes 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors Subject Matter Experts in Legislation 	This project's mission is to complete a draft act abolishing the death penalty in the State of Georgia. The proposed bill, titled the McCleskey Act, eliminates the requirement to prove disparate intent thereby rectifying the disparate impact that Georgia's death penalty law has on black and brown inmates.

⁴ Referenced names are only conceptual and used by the Fellow for demonstration purposes.

⁵ Referenced names are only conceptual and used by the Fellow for demonstration purposes.

Project Impact Chart

FELLOW & MENTOR	LEGAL ADVOCACY PAPER TITLE	LEXISNEXIS® PRODUCTS/ RESOURCES USED FOR RESEARCH AND SOLUTION IMPLEMENTATION	LEXISNEXIS® TALENT SUPPORT	ADVOCACY PROJECT IMPACT STATEMENT
LAUREN SKARUPSKY & DAVID A. COLLINS	<i>Building Generational Wealth by Protecting Black Property Ownership Through Wills / Estate Planning</i>	<ul style="list-style-type: none"> Practical Guidance Lexis+® Secondary Sources State Net® 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors Software Engineers Practical Guidance Product Managers 	This project's mission is to create a toolkit that will "Help," "Educate," and "Identify" interested persons (family members/individuals of minority descent), assist with "Real" property descriptions, and educate individuals as to "Succession" laws and planning (HEIRS ⁶). The HEIRS toolkit will help alleviate the wealth gap in the United States by advocating for the building of generational wealth through estate planning.
EDRIUS STAGG & JACQUELINE (JACQUIE) HALL	<i>Reinventing the Jury Wheel: Using Big Data Technology to Create Jury Pool Lists</i>	<ul style="list-style-type: none"> Lexis+® Research Law360® Lexis® for Microsoft® Office LexisNexis® Public Records 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors User Experience Designer User Experience Researcher 	This project's mission is the creation of a "Jury Wheel 2.0" ⁷ data visualization dashboard prototype as an aspirational representation of a Big Data solution generated by leveraging digital technologies (via contractual procurement by state government) to utilize current, real-time information to ensure that a summons to jury duty is sent to the correct address and represents the demographic make-up of the state/county/parish community, per Census Population data.
TALIA THOMAS & AMBER MCKINNEY	<i>Capital Punishment: The New Modern-Day Lynching</i>	<ul style="list-style-type: none"> Legal News Hub Lexis+® Search Statutes 	<ul style="list-style-type: none"> Attorney Staff Writers Legal Editors User Experience Designers Visual Graphics Designers Technical Script Writers 	This project's mission is to analyze the racial disparities present within the American capital punishment system. This analysis argues that law schools should introduce and expose their students to additional career paths as federal defenders. The project results in a short video to be housed on a LexisNexis® platform or distributed to law students to bridge the "exposure gap" among law students in relation to potential careers in the capital habeas and federal defense field.

⁶ Referenced names are only conceptual and used by the Fellow for demonstration purposes.

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FELLOW & MENTOR	LEGAL ADVOCACY PAPER TITLE	LEXISNEXIS® PRODUCTS/ RESOURCES USED FOR RESEARCH AND SOLUTION IMPLEMENTATION	LEXISNEXIS® TALENT SUPPORT	ADVOCACY PROJECT IMPACT STATEMENT
ZURI WARD & MEREDITH CREWS	<i>Umbrella: Combating Systemic Racism by Providing Black Creators Accessible Tools to Safeguard Their Intellectual Property</i>	<ul style="list-style-type: none"> • <i>Shepard's® Citations & New Full Document</i> • Product Development Research • Data Science & Content Acquisition • Practical Guidance 	<ul style="list-style-type: none"> • Attorney Staff • Writers • Legal Editors • User Experience Designer • Practical Guidance Product Manager 	This project's mission is to create <i>Umbrella</i> , ⁸ a web-based resource to combat systemic racism in the intellectual property arena by providing clear and digestible information to black creators and entrepreneurs about federal intellectual property laws and rights.
SONGO A.R. WAWA & RHEA RAMSEY	<i>Minority High School Students and Pathways to a Diversified Legal Profession</i>	<ul style="list-style-type: none"> • Lexis+® Research • Context 	<ul style="list-style-type: none"> • Attorney Staff • Writers • Legal Editors • User Experience Researcher • Finance Partner • Visual Designers • User Experience Designers • Corporate Counsel 	This project's mission is the creation of the Ten-Year Plan to the Bar (T-Bar), ⁹ which focuses on building a pipeline into the legal field for college-ready students by introducing and guiding students on the pathway to the legal field from the perspectives of pre-law undergraduate students, current law students, a financial advisor, and attorneys.

⁸ Referenced names are only conceptual and used by the Fellow for demonstration purposes.

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