



Race and Gender Challenges: Practices in the Firm and the Courtroom

March 4, 2022 (1:00 – 3:00 p.m.), 120 minutes

Asheville, North Carolina (In-Person)

Panelists: The Honorable Doris Causey, Dana Cutler, The Honorable Helivi Holland, Rebecca Marquez, The Honorable Stephanie Shortt

Agenda:

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| <p>I. Introduction</p> <ul style="list-style-type: none"> A. Definitions B. Statistics C. Cultural Aspects <p>II. Occupational Risks</p> <ul style="list-style-type: none"> A. Lack of Diversity B. Implicit Bias | <ul style="list-style-type: none"> C. Micro-aggressions D. Vicarious Trauma <p>III. Building Community and Effecting Change</p> <ul style="list-style-type: none"> A. Mentoring B. Storytelling <p>IV. Speaking the Same Language in the Courtroom</p> <p>V. Dynamics in Supervision</p> <p>VI. Systemic Change: Bias-interrupters</p> <p>VII. Recommendations</p> |
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Presenter Biographies:

- **The Honorable Doris Causey:** The Honorable Doris Henderson Causey is a judge on the Virginia Court of Appeals to which she was elected by the Virginia General Assembly in 2021. Prior to her appointment, Judge Causey was the managing attorney of the Richmond office of the Central Virginia Legal Aid Society during which she was been awarded the Clarence m. Dunnville Jr. Achievement Award, sponsored by the VSB Diversity Conference.

In 2017, Causey made legal history in the Commonwealth when she was inducted as the VSB's first African American president, and first president from the legal aid community. Throughout her legal career, Causey has made service a priority, both in her profession and for the legal community. Causey has provided many years of service on the VSB's Executive Committee and Bar Council, as well as on the Old Dominion Bar Association's Executive Committee, and as secretary of both the Old Dominion Bar and of the Hill Tucker Bar, Richmond Chapter. Causey received her BA in Mathematics and Political Science from the University of Mississippi and her Juris Doctorate from Texas Southern University, Thurgood Marshall School of Law.

- **Dana Cutler:** Dana Cutler is an American lawyer and judge, famously known for being a judge on the show, "Couples Court with the Cutlers" where she judges with her husband, Keith Cutler and is a partner with James W. Tippin & Associates in Kansas City, Missouri. She is the President-Elect of The Missouri Bar; Immediate Past President, Board of Directors of The Missouri Bar Foundation; and a Member of the Board of Directors of Swope Community Enterprises and Swope Parkway Health Center. She served as Chair of The Missouri Bar Leadership Academy from 2000-2002; Chair of The Missouri Bar Committee on Minority Affairs from 1999-2002; and an Elected Member of the Board of Trustees of The Missouri Bar from 2002-2007. She is a member of the American Bar Association, the National Bar Association, The Missouri Bar, the Jackson County Bar Association, and the Kansas City Metropolitan Bar Association (KCMBA).

Cutler received the Women's Justice Award (Litigation) – Missouri Lawyers Weekly in 2014; the Nefertiti Award – Societas Docta, Inc. in 2013; the Judge Lewis W. Clymer Award – Jackson County Bar Association in 2011; and The Missouri Bar's President's Award for Service in 2001, 2002 and 2014. Ms. Cutler graduated cum laude with a B.A. degree from Spelman College, Atlanta, Georgia; and earned her Juris Doctorate from the University of Missouri-Kansas City.

- **The Honorable Helivi L. Holland:** The Honorable Helivi L. Holland is a district court judge for the 5th Judicial District in Virginia. She previously served as Suffolk's City Attorney and as the Director of the state Department of Juvenile Justice. Judge Holland also previously worked as a deputy city attorney in Suffolk and, prior to being in the Suffolk City Attorney's office, was a prosecutor in the Portsmouth and Suffolk Commonwealth's Attorney's offices, where she prosecuted major juvenile crimes.

Judge Holland is a member of First Baptist Church Mahan Street and a Diamond Life Member of Delta Sigma Theta Sorority Inc. in the Suffolk Alumnae Chapter. Ms. Holland was elected to a two-year term as Old Dominion Bar Association President May 30, 2014. She is on the Virginia Judges and Lawyer's Assistance Program's Board of Directors and has served on the boards of directors at the Children's Center, Suffolk Education Foundation, Suffolk chapter of the American Red Cross and the Genieve Shelter. For 12 years, she also served as an adjunct professor at Paul D. Camp Community College, teaching on two campuses as well as at a Virginia Department of Corrections facility.

- **Rebecca Marquez:** Ms. Marquez has been involved in the legal profession for approximately 30 years. She is a solo practitioner in the Law Office of Rebecca Marquez where she serves as defense counsel in civil litigation and criminal cases in Virginia's trial courts and counsels and represents clients in trusts and estates matters. Ms. Marques started her legal career as an attorney in the Fairfax Office of the Public Defender where she supervised and motivated staff and attorneys representing clients charged with felonies in the Family Court Unit in the Juvenile and Domestic Relations District Court. Ms. Marquez received her Juris Doctorate from The University of San Diego School of Law and her Bachelor of Science in Criminal Justice and Criminology from Metropolitan State University of Denver.
- **The Honorable Stephanie Shortt:** Judge Shortt is a judge in the juvenile and domestic relations district court for the 27th Judicial District in Virginia. She was elected to the court by the Virginia General Assembly on November 10, 2014 and assumed office on December 1, 2014, for a six-year term, during which she served as Chief Judge. Before she joined the court, Judge Shortt served as a commonwealth attorney for Floyd County. She previously served as a public defender in Fairfax City, Fairfax County, and Roanoke. Judge Shortt received her undergraduate degree from Mount Holyoke College and her Juris Doctorate from the American University Washington College of Law.

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Written Materials:

I. Introduction

A. Definitions

1. *Diversity and Inclusion* efforts recognize the need for equity for all members of the legal profession. In so doing, identifying and addressing the risks, vulnerabilities, and barriers to equity is of primary importance. There are disparities in many racial, ethnic, gender, and sexual minorities in this country in mental health concerns, access to services, and mental health outcomes for multiple factors (e.g., cultural stigma surrounding mental

- health care, discrimination, a lack of awareness about mental health, structural barriers to accessing mental health treatment, inequities in socioeconomic status).
2. A *stereotype* is an exaggerated belief, image or distorted truth about a person or group—a generalization that allows for little or no individual differences or social variation. Stereotypes are based on images in mass media, or reputations passed on by parents, peers and other members of society. Stereotypes can be positive or negative.
 3. A *prejudice* is an opinion, prejudgment or attitude about a group or its individual members. A prejudice can be positive, but in our usage refers to a negative attitude. Prejudices are often accompanied by ignorance, fear or hatred. Prejudices are formed by a complex psychological process that begins with attachment to a close circle of acquaintances or an "in-group" such as a family. Prejudice is often aimed at "out-groups."
 - a) Social scientists believe children begin to acquire prejudices and stereotypes as toddlers. Many studies have shown that as early as age 3, children pick up terms of racial prejudice without really understanding their significance.
 - b) Soon, they begin to form attachments to their own group and develop negative attitudes about other racial or ethnic groups, or the "out-group". Early in life, most children acquire a full set of biases that can be observed in verbal slurs, ethnic jokes and acts of discrimination.
 4. *Discrimination* is behavior that treats people unequally because of their group memberships. Discriminatory behavior, ranging from slights to hate crimes, often begins with negative stereotypes and prejudices.
 5. *Bias*: The attribution of negative traits on the basis of race or other group characteristics. Implicit biases are based in implicit attitudes and stereotypes and may differ from explicit self-reporting of attitudes and stereotypes. Like attitudes and stereotypes, biases can be favorable or unfavorable
 6. *Explicit biases*: Biases that are directly expressed or publicly stated or demonstrated, often measured by self-reporting, e.g., "I believe homosexuality is wrong." A preference (positive or negative) for a group based on stereotype
 7. *Hindsight bias*: Bias where outcome knowledge affects judgment. "The well-documented tendency to overestimate the predictability of past events... from an intuitive sense that the outcome that actually happened must have been inevitable. People allow their knowledge to influence their sense of what would have been predictable." Hindsight bias appears to be particularly difficult to overcome
 8. *Implicit bias*: A preference (positive or negative) for a group based on a stereotype or attitude we hold that operates outside of human awareness and can be understood as a lens through which a person views the world that automatically filters how a person takes in and acts in regard to information. Implicit biases are usually measured indirectly, often using reaction times
 9. *Implicit social cognition*: Schemas operating without conscious control regarding human interaction to guide the way a person thinks about social categories. Social cognitions include stereotypes and attitudes. For example, most white Americans will associate women with family as compared to careers; similarly most white Americans will associate violence with African Americans as compared to white Americans. Implicit social cognition "often conflicts with conscious attitudes, endorsed beliefs, and intentional behavior," and we may well be unaware, or wrong, about the source of our social cognitions.
 10. *Inattentional blindness*: Inability to see something because of attention to another thing and lack of attention to an unexpected object; made famous by Daniel Simon's Invisible Gorilla test. Expanding from their original research, these psychologists discuss "six everyday illusions that profoundly influence our lives: the illusions of attention, memory,

confidence, knowledge, cause and potential.” All are likely to have significance in addressing implicit bias

11. *In-group bias*: Bias or favoritism for the group to which a person belongs
12. *Outcome bias*: “the tendency to base assessments of a decision's quality on its consequences.
13. *Stereotype*: Trait associated with a social category, a belief that members of a group generally possess some characteristic (for example, the belief that women are typically nurturing). Stereotypes can be favorable or unfavorable, implicitly or explicitly held
14. *Stereotype threat*: The “threat of being viewed through the lens of a negative stereotype, or the fear of doing something that would inadvertently confirm that stereotype.” Situation where members of a group stereotyped for a certain attribute or ability feel threatened by the stereotype to the point where they perform poorly when they are reminded of that attribute and the stereotype is implicated. For example, when women are told they are taking a difficult math test, the stereotype that women are not good in math may be triggered, negatively impacting their performance; when the same women are told that this is a test that women typically do well on, the results are much higher. Stereotype threat operates where the matter at hand is important to those involved
15. *Confirmation effect*: Behavioral or cognitive situation where perceivers “simply selectively interpret, attribute, or recall aspects of the target person's actions in ways that are consistent with their expectations.” Because of this selectivity, different perceivers, with different prior expectations may view precisely the same action or sequence of events and see or conclude differently
16. *Equality vs. Equity*¹ –
 - a) Equality is giving everyone a house to live in
 - b) Equity is giving people in the tropics housing that provides good ventilation, windows with screens to keep mosquitoes out and sufficient shade from the heat; and giving people in arctic climates a house with good insulation and a good heat source

B. Barriers to Equity, Diversity and Inclusion (EDI) efforts²

1. Lack of Budget – can be difficult to prove return on investment (ROI) for EDI investments, must consider all the potential benefits to an organization to accurately calculate ROI
2. Lack of Support – initiatives often met with skepticism, which requires education of all the potential benefits of EDI (ROI and otherwise set forth in full detail below
 - a) Lack of tools – need the tools to measure and track EDI investments, education and support can depend on accurate measurements of progress

B. Research and Statistics

1. You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession (2018)³
 - a) Survey seeking to understand in-house and law firm lawyers' experiences of bias in the workplace: 2,827 respondents completed the survey, and 525 respondents included comments. The survey asked respondents whether they had experienced the patterns of gender and racial bias that have been documented in decades of

¹ Schindler, Janine, MCC, *Equity And Accessibility in the Workplace*, November 11, 2020.

<https://forbes.com/sites/forbescoachescouncil/2020>

² Watson, Holly, *Webrecruit 3 Common Barriers to Equality, Diversity & Inclusion Initiatives*, March 17, 2021

<https://webrecruit.co/blog/recruitment-insights/3-common-barriers-to-equality-diversity-inclusion-initiatives>

³ Commission On Women In the Profession and Minority Corporate Counsel Association, “You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession,” American Bar Association (2018), available at:

<https://www.americanbar.org/products/ecd/ebk/358942050/>

experimental social psychology studies. In addition, the survey asked whether attorneys had experienced implicit bias in basic workplace processes (hiring, assignments, business development, performance evaluations, promotions, compensation, and support). Also included was a series of questions about sexual harassment.

b) Bias Pervasiveness

- i. Most of the biggest findings of the survey had to do with bias existing in the basic business systems of attorneys' workplaces. Women and people of color reported higher levels of bias than white men regarding equal opportunities to:
 - Get hired
 - Receive fair performance evaluations
 - Get mentoring
 - Receive high-quality assignments
 - Access networking opportunities
 - Get paid fairly
 - Get promoted
 - ii. In other words, gender and racial bias was reported in all seven basic workplace processes.
- c) Women of color often reported the highest levels of bias of any group. In almost every workplace process, women of color reported the highest levels of bias. For example:
 - Women of color reported that they had equal access to high-quality assignments at a level 28 percentage points lower than white men.
 - Women of color reported that they had fair opportunities for promotion at a level 23 percentage points lower than white men.As a trend throughout the report, we often found that women of color reported the highest levels of bias overall.
- d) Compensation: Women of color agreed that their pay is comparable to their colleagues of similar experience and seniority at a level 31 percentage points lower than white men; white women agreed at a level 24 percentage points lower than white men.

2. Diversity Lags Among Lawyers⁴

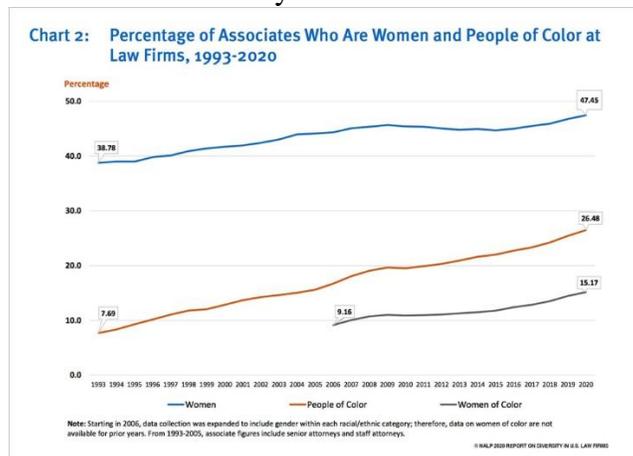
- a) 86% of lawyers are non-Hispanic white people, compared to 60% of the US population
- b) Percentage of female lawyers has increased from 31% to 37% (2010 – 2020), Female equity partners @ 21% in 2019, up from 15% in 2012.
- c) Gains among people of color and other minorities are minimal:
 - i. 5% are black (same as 10 years ago), while 13.4% of US population is black.
 - ii. 5% are Hispanic (up from 4% 10 years ago), while 18.5% of US population is Hispanic
 - iii. 2% of all lawyers are Asian (up from 0.4% 10 years ago), while 6% of US population is Asian
 - iv. Native Americans are represented proportionally to their presence in the general population: 0.4% of lawyers are Native American compared to 0.7% 10 years ago
 - v. LGBT lawyers represent 3% up from 2.5% three years earlier
 - vi. Physically Disabled lawyers represent 0.5% of the profession (twice the representation 10 years ago)

3. 2020 Report on Diversity in U.S. Law Firms (2020)⁵

⁴ ABA Profile of the Legal Profession: Diversity and Well-Being, 2020
<https://www.2civility.org/aba-profile-of-the-legal-profession-diversity-and-well-being/#>

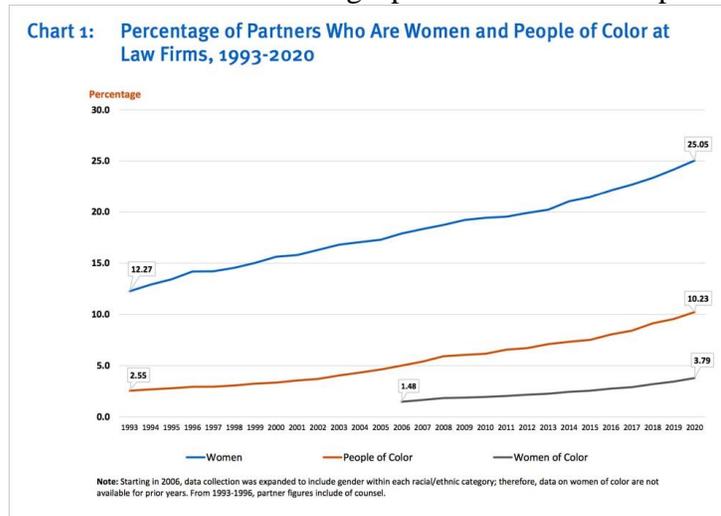
⁵ National Association for Law Placement, Inc. (NALP) (2020), available at: https://www.law.berkeley.edu/wp-content/uploads/2021/02/2020_NALP_Diversity_Report.pdf

- a) Analyses of the 2020-2021 National Association for Law Placement (NALP) Directory of Legal Employers (NDLE) — the annual compendium of legal employer data published by NALP
- b) Representation of women, people of color, and women of color among lawyers overall was up, reaching new historic highs. People of color had the greatest year over-year gain (1.0 percentage point) since NALP began compiling figures for lawyers overall
- c) Associates:
 - i. Women, people of color, and women of color continued to make steady progress in representation at the associate level in 2020. Of these three groups, associates of color had the largest year over-year growth, increasing about 1.0 percentage point from 25.44% of all associates in 2019 to 26.48% in 2020.
 - ii. The percentage of Black or African American associates surpassed 5% for the first time since NALP began collecting data and the share of associates who are Black women (3.04%) finally exceeded the 2009 figure of 2.93%. Eleven years later, representation of Black or African American women at the associate level has increased by just one-tenth of a percentage point.
 - iii. After experiencing more than two decades of continuous growth, the percentage of Asian associates plateaued in 2020 at 12.12%, just below the 2019 figure of 12.17%
 - iv. The representation of minorities among lawyers as a whole rose some in 2018, to 16.10%. Consistent with findings for minority women among partners and associates, representation of minority women as a whole also increased slightly from 7.54% in 2017 and minority women now make up 8.08% of lawyers at these law firms.



- d) Partners:
 - i. In 2020, women, people of color, and women of color made small improvements in representation at the partner level; however, all remain markedly underrepresented within the partnership ranks. Women experienced the largest year-over-year gains, increasing by approximately 0.9 percentage points from 24.17% of all partners in 2019 to 25.05% in 2020.
 - ii. Despite modest growth in 2020, Black women and Latinx women each continued to represent less than 1% of all partners in U.S. law firms. The percentage of Black partners overall finally surpassed 2% for the first time since NALP began collecting data

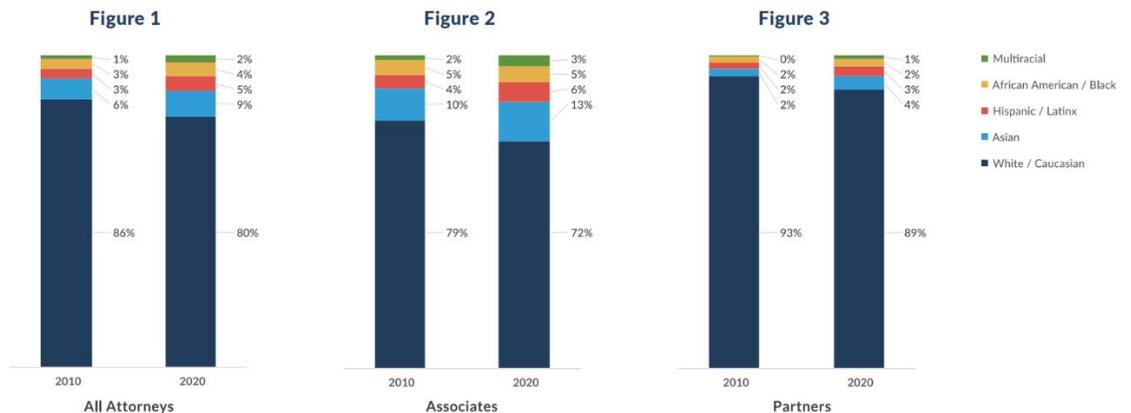
- iii. Women, people of color, and women of color all made small improvements in representation at the partner level in 2020. Women of color remain the most underrepresented group, with Black and Latinx women each making up less than 1% of all partners.



e) Equity Partners

- i. Continue to be disproportionately white men. In 2020, approximately one in five equity partners were women (21.3%) and only 8.1% were people of color. The percentage of equity partners who are women increased by one percentage point and the percentage of equity partners who are people of color increased by half of a percentage point compared to 2019.
 - ii. Overall, the share of partners who are equity partners fell from 57.3% in 2019 to 55.8% in 2020. More than 59% of men partners were equity partners in 2020, while approximately 46% of women partners, and 46% of partners of color were equity partners.
 - iii. Among non-equity partners in 2020, over 68% were men, nearly 32% were women, and 11.8% were people of color.
 - iv. In 2020, the percentage of women and people of color who are equity partners increased; however, both groups are still considerably underrepresented.
- f) Counsel: the proportion of counsel who are people of color and women of color improved slightly by approximately 0.2 and 0.3 percentage points, respectively, in 2020. In 2020, representation of people of color and women of color among counsel in U.S. law firms grew somewhat, but the share of women counsel overall declined.
- g) Non-Traditional Track/Staff Attorneys: Non-traditional track/staff attorney positions are the only attorney positions in which women are the majority, despite men narrowing the gap in 2020. The share of non-traditional track/staff attorney positions that are held by people of color and women of color are similar to those of associate positions.
- h) Summer Associates: The percentage of summer associates who are people of color increased by 1.2 percentage points, growing from 35.26% in 2019 to 36.48% in 2020. Most of this increase can be attributed to the rise in the percentage of summer associates who are women of color, which increased by 1.0 percentage point to 22.12% in 2020. After declining in the aftermath of the Great Recession, the percentage of associates who are Black or African American women finally surpassed their 2009 figure.

4. 2021 Minority Corporate Counsel Association (MCCA) Law Firm Diversity Survey (2021)⁶
 - a) Assessed a decade of law firm employee demographics (Figures 1-3) across more than 200 firms representing most of the AmLaw100 and the NLJ250
 - b) Law firms are bringing in more people of color but are less successful at retaining them.
 - c) It found an increase in the overall share of working attorneys identifying as members of underrepresented racial and ethnic groups including multiracial, from 14% in 2010 to 20% in 2020.
 - i. In 2020, 89% of partners across surveyed U.S. laws firms identified as White/Caucasian, down from over 93% in 2010.
 - ii. Representation of historically underrepresented racial and ethnic groups improved more noticeably among summer associates (from 28% in 2010 to 36% in 2020) and associates (from 21% in 2010 to 28% in 2020)
 - d) Even with the gains recorded over the last decade, especially among new associates, demographic changes have been slow to trickle upward, as law firm partners remain overwhelmingly white and male.
 - e) While the share of Asian, Hispanic or Latinx, and multiracial attorneys at firms increased slightly between 2010 and 2020, there was no change in the share of associates and partners who are African American or Black



- f) In 2020, 36% of the summer associates who received offers of full-time positions were from underrepresented racial and ethnic groups. At the same time, however, 32% of the associates who left their firms were from those same underrepresented groups. As firms consider where they can do more to diversify their team, it will be critical to concurrently increase diversity at senior levels and ensure that early-career attorneys are supported and empowered to advance
5. You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession (2018)⁷
 - a) Survey seeking to understand in-house and law firm lawyers' experiences of bias in the workplace: 2,827 respondents completed the survey, and 525 respondents included comments. The survey asked respondents whether they had experienced the patterns of gender and racial bias that have been documented in decades of experimental social psychology studies. In addition, the survey asked whether

⁶ MCAA, 2021 Vault/MCCA Law Firm Diversity Survey (2021), Available at: <https://www.mcca.com/resources/reports/2021-mcca-law-firm-diversity-survey/>

⁷ Commission On Women In the Profession and Minority Corporate Counsel Association, "You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession," American Bar Association (2018), available at: <https://www.americanbar.org/products/ecd/ebk/358942050/>

attorneys had experienced implicit bias in basic workplace processes (hiring, assignments, business development, performance evaluations, promotions, compensation, and support). Also included was a series of questions about sexual harassment.

b) Findings: Race and Gender

- i. Women of color reported PIA bias at a higher level than any other group, 35 percentage points higher than white men.
- ii. White women and men of color also reported high levels of PIA bias, 25 percentage points higher than white men.
- iii. Women of color reported that they are held to higher standards than their colleagues at a level 32 percentage points higher than white men.
- iv. Women of color reported that they had been mistaken for administrative staff, court personnel, or janitorial staff at a level 50 percentage points higher than white men. White women reported this bias at a level 44 percentage points higher than white men, and men of color reported this bias at a level 23 percentage points higher than white men.
- v. White women reported doing more administrative tasks (such as taking notes) than their colleagues at a level 21 percentage points higher than white men, and women of color reported doing more of this type of office housework at a level 18 percentage points higher than white men.

6. Mental Health Disparities

a) African Americans⁸ 13.3% of the population

- i. Health challenges - 27% live below the poverty line (10.8% of non-Hispanic whites), Death rate higher than that of whites for: heart disease, stroke, cancer, asthma, influenza, pneumonia, HIV/AIDS and homicide, 30% of households headed by a woman with no male counterpart
- ii. Risk Factors for Mental Health – only 1/3 who need mental health care receive it, African Americans with mental illness more likely to use emergency rooms than specialists, and are less likely to receive evidence-based medication therapy or psychotherapy
- iii. Barriers to Mental Health: distrust of the health care system, lack of diverse racial/ethnic background of providers, lack of insurance/under insurance

b) Asian Americans/ Pacific Islanders⁹

- i. Health Challenges – 50 subpopulations speaking over 100 languages, fastest growing ethnic group on U.S., highest life expectancy of any group
- ii. Risk Factors for Mental Health – 70% from SE Asia diagnosed with PTSD, suicide was a leading cause of death (alone) for those 15-24
- iii. Barriers to Mental Health – Myth of Model Minority: group perceived to have higher degree of socioeconomic success creates unreasonable pressure, lack of understanding of mental health leads to denial/neglect of mental health issues.

⁸ American Psychiatric Association, Division of Diversity and Health Equity, *Mental Health Disparities: African Americans*, Updated by Phillip Murray, M.D., and Reviewed by Danielle Hairstrom, M.D. and the Council on Minority Mental Health and Health Disparities, 2017. <https://psychiatry.org>

⁹ American Psychiatric Association, Division of Diversity and Health Equity, *Mental Health Disparities: Asian Americans/Pacific Islanders*, Authored by Raisa Tanquero, M.D. and Sejal Patel, M.P.H. and Reviewed by Vabren Watts, Ph. D., 2017. <https://psychiatry.org>

- c) Hispanics and Latinos¹⁰ (Hispanic refers to a language and those whose ancestry comes from Spanish speaking countries. Latino refers to geography and specifically those from Latin America including Caribbean, South America and Central America
 - i. Health Challenges – Youngest ethnic group in US 1/3 under 18, will make up 30% of US population by 2060
 - ii. Risk Factors for Mental Health – Lower risk of most psychiatric disorders (with US born reporting higher rates than non-US born), 1/10 use PCP for mental health issues and only 1/20 receive help of a specialist, 21.1% uninsured
 - iii. Barriers to Mental Health – Lack of insurance, cultural stigma associated with mental health issues, shortage of bilingual or linguistically trained health professionals, lack of awareness of mental health problems
 - d) American Indians / Alaskan Natives¹¹
 - i. Health Challenges – 567 federally recognized AI/AN with more than 200 languages, 2/3 live off the reservations, life expectancy is 4.4 years lower than the nation, highest poverty rate of any ethnicity
 - ii. Risk Factors for Mental Health – High rates of Substance Use Disorders (SUD), PTSD suicide and intergenerational historical trauma, Highest reported rates of depression
 - iii. Barriers to Mental Health – significantly more likely to seek help from traditional healer than other sources, lack insurance and financial resources, mistrust health care providers, lack of awareness of mental health issues and available services
7. Well-Being Struggle for Attorneys¹²
- a) Well-Being: continuous process whereby lawyers seek to thrive in these areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health and social connection with others.
 - b) Stats – Between 21 and 36% of lawyers qualify as problem drinkers, 28% struggle with depression, 19% with anxiety and 23% with stress. Younger lawyers in private firms experience the highest rates of problem drinking and depression. In young lawyers, 17% experienced depression, 14% severe anxiety, 23% mild or moderate anxiety and 6% suicidal thoughts; 43% report binge drinking in previous two weeks, 22% reported 2 or more times in that period and 25% fell into a category at risk for alcoholism.
 - c) Pandemic Effect on Well-Being
 - i. COVID-19 has a significant effect on all segments of legal profession: age, gender, race/ethnicity, seniority and practice setting

¹⁰ American Psychiatric Association, Division of Diversity and Health Equity, *Mental Health Disparities: Hispanics and Latinos*, Updated and Reviewed Respectively by Maria Jose Lisotto, M.D. and the Council on Minority Mental Health and Health Disparities, 2017. <https://psychiatry.org>

¹¹ American Psychiatric Association, Division of Diversity and Health Equity, *Mental Health Disparities: American Indians and Alaskan Natives*, Updated by Mira Zein, M.D., M.P.H., and Reviewed by Mary Roessel, M.D. and the Council on Minority Mental Health and Health Disparities, 2017. <https://psychiatry.org>

¹² The Report of the National Task Force on Lawyer Well-Being, “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change” Task Force Chairs: Bree Buchanan and James C. Coyle, August 2017. https://www.americanbar.org/groups/professional_responsibility/task_force_lawyer_wellbeing

- ii. Lawyers, especially those with children, are overwhelmed – much higher levels of stress, disengagement with social aspects of work, frequently questioning whether employment as a lawyer is worth it.
- iii. Greater impact upon minorities: higher levels of stress at work, greater difficulty in taking time off from work, harder to keep work and home life separate.
- iv. Greater Impact Among Women: greater disruption in work than men, greater proportion feel overwhelmed, greater pressure to care for children,
- v. Regardless of increased obligations because of COVID, levels of work have not decreased: 80% continued to have full-time workload

C. Cultural Aspects

1. The concept of culture is broader than race and gender, and includes such things as language, nationality, religion, ethnicity, physical and mental ability, sex, sexual orientation, and profession
2. Individual differences exist within cultures. Shared culture does not equate to identical thinking or identical behavior.
3. Culture shapes attitudes about child rearing, sexual roles, care-taking, treatment, dress, spirituality, education, discipline, punctuality, pre-marital sex, drugs/alcohol, homosexuality, employment, politics, the importance of family, authority figures, medications, criminal justice system, protective services, death and dying, living arrangements, marriage, domestic violence, and hospitality.
4. Culture also shapes our behavior, communication style, and interactions with others.
5. Being aware of cultural differences can help us to communicate and interact with one another more effectively. In the criminal justice context, awareness of cultural differences can improve our ability to communicate with colleagues and the communities that we serve.
 - a) The culture of the criminal justice system and the lawyers within that system are influenced by its adversarial nature; by each attorney's valued mode of communication such as cross-examination, application of legal rules, and precedent to facts; and by varied motivations for doing the work (e.g., upholding the Constitution, enforcing the law, protecting society, or helping people).
 - b) Cultural collisions are abound in the courtroom between prosecutors, defenders, judges, law enforcement, and court personnel; when working with clients, victims, and witnesses; in our offices; and among colleagues.

II. Occupational Risks

- A. Diverse lawyers have the occupational risks in the practice of law as well as those that are population specific (e.g., history of marginalization, intergenerational historical trauma, lower measures on the social determinants of physical health, discrimination). Data show that additional workplace stressors and the pandemic have added to the stress of practicing law and to diverse lawyers specifically.
- B. Lack of Diversity: The Virginia State Bar President’s report, “The Occupational Risks of the Practice of Law” (2019)¹³ identified the following risk to attorneys’ mental health: Lack of Diversity in the Legal Profession

SPECIAL COMMITTEE ON LAWYER WELL-BEING

ADAPTATION RISKS			
Risk Description	Potential Effects	Practice Pointers for Individuals	Practice Pointers for Organizations
Lack of Diversity in the Legal Profession	Diverse and inclusive working environments foster lawyer wellness. A lack of diversity, however, can lead to isolation, a sense of exclusion, and ultimately poor performance and a lack of autonomy.	<ul style="list-style-type: none"> • Actively seek mentors within your organization and practice area. • Participate in diversity and inclusion sections of bar organizations. • Develop an awareness of implicit biases. • Seek out relationships with colleagues who have a different background. 	<ul style="list-style-type: none"> • Prioritize and set accountability goals for diversity and inclusion in recruitment, practice, promotion, retention, and partnership. • Recognize implicit cultural biases. • Develop and enhance mentoring programs for a diverse workforce. • Train management to understand the benefits of a genuinely diverse workplace. • Provide adequate employee benefits, including family leave and flexible work hours. • Promote a team mentality among all members of the organization favoring open dialogue about diversity and other issues. • Emphasize respect and appreciation for all members of the team, recognizing the diversity of their contributions.

C. Implicit Bias

1. Implicit bias is unconscious. It is not overt or purposefully discriminatory. Discussions about implicit bias should not be accusatory or place blame.
 - a) Once people understand and accept their own implicit bias, they can begin to engage in productive and meaningful discussions on topics like diversity and inclusion, generational differences, office culture, or professional expectations.
 - b) For instance, how do traditional law firm partners who are protecting the bottom line square with young lawyers who seek the flexibility and autonomy the partners never had? How do bar associations grapple with issues of diversity when diverse members are hesitant to participate? How do we create the space to bring implicit bias to light?

¹³ Available at: https://vjl.org/wp-content/uploads/2019/11/VSB-Presidents-wellness_report.pdf

2. We all have biases, good and bad, which influence our decision-making and relationships. Scientific research has demonstrated that biases thought to be absent or extinguished remain as "mental residue" in most of us. Studies show people can be consciously committed to egalitarianism, and deliberately work to behave without prejudice, yet still possess hidden negative prejudices or stereotypes.
3. Encourage team members to take self-tests pertaining to implicit bias, such as those concerning gender and race. Once we identify our own bias, we can come to the table as our authentic selves and adjust our internal barometers to what is right and fair.
4. "Implicit Association Tests" (IATs) can tap those hidden, or automatic, stereotypes and prejudices that circumvent conscious control. Test your implicit bias.¹⁴ It may be a tool that can jumpstart our thinking about hidden biases: Where do they come from? How do they influence our actions? What can we do about them?

Implicit Bias Defined

□ EVERYONE HAS SCHEMA/IMPLICIT BIAS

- a preference for a group (positive or negative)
- often operating outside our awareness
- based on stereotypes and attitudes we hold
- that tend to develop early in life
- and tend to strengthen over time

Attitudes

Evaluative feelings that are positive or negative

Stereotypes

Traits we associate with a category

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D. How do we perpetuate bias:

1. Bias is perpetuated by conformity with in-group attitudes and socialization by the culture at large. The fact that white culture is dominant in America may explain why people of color often do not show a strong bias favoring their own ethnic group.
2. Mass media routinely take advantage of stereotypes as shorthand to paint a mood, scene or character. The elderly, for example, are routinely portrayed as being frail and forgetful, while younger people are often shown as vibrant and able.
3. Stereotypes can also be conveyed by omission in popular culture, as when TV shows present an all-white world. Psychologists theorize bias conveyed by the media helps to explain why children can adopt hidden prejudices even when their family environments explicitly oppose them.

E. Biases and Behavior

1. A growing number of studies show a link between hidden biases and actual behavior. In other words, hidden biases can reveal themselves in action, especially when a person's efforts to control behavior consciously flags under stress, distraction, relaxation or competition.
2. Unconscious beliefs and attitudes have been found to be associated with language and certain behaviors such as eye contact, blinking rates and smiles.

¹⁴ Examples of implicit bias assessments may be found at: <https://www.learningforjustice.org/professional-development/test-yourself-for-hidden-bias> or <https://www.projectimplicit.net>

3. Studies have found, for example, that school teachers clearly telegraph prejudices, so much so that some researchers believe children of color and white children in the same classroom effectively receive different educations.
4. A now classic experiment showed that white interviewers sat farther away from Black applicants than from white applicants, made more speech errors and ended the interviews 25% sooner. Such discrimination has been shown to diminish the performance of anyone treated that way, whether Black or white.
5. Experiments are being conducted to determine whether a strong hidden bias in someone results in more discriminatory behavior. But we can learn something from even the first studies:
6. Those who showed greater levels of implicit prejudice toward, or stereotypes of, Black or gay people were more unfriendly toward them.
7. Subjects who had a stronger hidden race bias had more activity in a part of the brain known to be responsible for emotional learning when shown Black faces than when shown white faces.

F. Micro-aggressions

1. *Micro-affirmations*: Small messages that “convey inclusion, respect, trust, and genuine willingness to see others succeed.” Micro-affirmations may lead to a more productive and efficient work environment where all members feel valued and enjoy work
2. *Micro-inequities*: Small messages where individuals are either singled out, overlooked, ignored, or otherwise discounted based on an unchangeable characteristic such as race or gender. A micro-inequity usually takes the form of a slight difference of language, gesture, treatment, or even tone of voice. Micro-inequities are often subconsciously given but can have a huge impact on a work environment or social structure
3. *Micro-messages*: Small messages including affirmations, inequities, and aggressions, “sometimes unspoken, and often unconscious messages that are constantly sent and received that can have a powerful impact on our interactions with others.”

G. Vicarious Trauma: how to manage a safe space and process these feelings

III. Building Community and Effecting Change (boosting diversity)

- A. Conscious attitudes and beliefs can change. If people are aware of their hidden biases, they can monitor and attempt to ameliorate hidden attitudes before they are expressed through behavior. This compensation can include attention to language, body language and to the stigmatization felt by target groups. If people are aware of their hidden biases, they can monitor and attempt to ameliorate hidden attitudes before they are expressed through behavior. This compensation can include attention to language, body language and to the stigmatization felt by target groups.
- B. Why Well-Being Matters:
 1. Good for Business: well-being linked to many organizational successes – lower turnover, higher client satisfaction, higher productivity and profitability
 2. Good for Clients – well-being influences ethics and professionalism, troubled lawyers can struggle with minimal competence 40-70% of disciplinary/malpractice proceedings involve substance abuse, depression, or both.
 3. The Right Thing to Do – untreated mental health and substance use disorders ruin lives and careers, well-being is part of the ethical duty to practice with competence, it includes the ability to make healthy/positive work/life choices, it is not solely the absence of illness, but also a positive state of wellness
- C. Why Diversity Matters¹⁵

¹⁵ Hunt, Vivian, Layton, Dennis, and Prince, Sara, Why Diversity Matters, McKinsey & Company, January, 2015.
<https://www.mckinsey.com/business-functions/organization>

1. Diversity is a key driver of innovation – multiple and varied employees have a wide range of experiences helping to generate new ideas and provide valuable insight into the markets they reflect
2. Diverse Workforce Attracts Top Talent: to attract the best talent, a company needs to be reflective of that talent in the market, ability to attract best talent also depends upon solid job advancement opportunities for that talent
3. Diversity/Inclusion is not just about gender and race: many contemporary companies are seeking/maintaining diversity in areas of disability/sexual orientation/and age

D. Solutions to Equity / Inclusion: PRESS¹⁶

1. Problem Awareness –
 - a) Research reveals that many white people do not see that racism continues to oppress people of color. 57% of Whites and 66% of working whites believe that there is more racism against them than against Blacks
 - b) Assumption is that racism is deliberate action motivated by malice and hatred
2. Root-Cause Analysis –
 - a) Racism can have many psychological sources
 - b) Most is the result of structural factors – laws, institutional practices and norms
 - c) Many do not involve intent
3. Empathy –
 - a) Once people are aware of problem and its root cause question is whether they care enough to do something about it.
 - b) Many experience sympathy, or pity, when they witness racism, but
 - c) Empathy is experiencing the same hurt and anger that people of color feel
 - d) Empathy provides solidarity and social justice while sympathy quiets the symptoms while perpetuating the disease
4. Strategy – Once the foundation has been laid, then what to do about it
 - a) Need to change personal attitudes, informal cultural norms and institutional policies.
 - b) Many strategies for reducing racial bias, but must get people to actually adopt them
 - c) Strategy must address all three
5. Sacrifice – Organizational change requires investment of time, energy, resources and commitment

E. Mentoring: The importance and differences this can make with women in the practice of law

F. Storytelling: Story telling/importance of sharing our journey of successes and pitfalls

IV. Speaking the Same Language in the Courtroom and in the Office

A. True Tales:

1. Clerk: “Hey, are *you* an attorney?”
2. Judge: “Does your client know *you* are representing them?”
3. Judge: “Are you the Plaintiff or Defendant?”
4. Judge: “Are you our court reporter?”
5. Judge: “I want to hear about this from Mr. Z.” Attorney: “But it is my motion.” Judge: “I know, but *he* will know how to get to the point.”
6. Judge: “Well, little lady, you’re new here, but this is how we do it in my courtroom..”
7. January 2022 (streamed live on YouTube after hearing ended);

¹⁶ Livingston, Robert, “How to Promote Racial Equity in the Workplace,” *Harvard Business Review*, September – October 2020. <https://hbr.org/2020/09/how-to-promote-racial-equity-in-the-workplace>

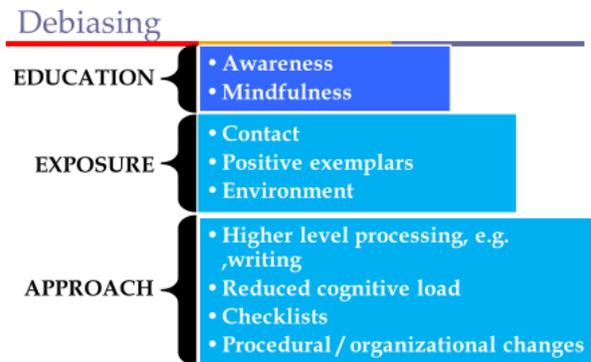
- a) Judge: “Did you see her going nuts?! Glasses off, fingers through her hair, the phone’s going all over the place, it’s insane.” ... “You know what she said to Todd cause Todd’s been ill? She says maybe you should get somebody that’s not sick that can do the job.”
- b) Attorney (female ASA): “She’s maybe not the nicest person.”
- c) Judge: “Can you imagine waking up next to her every day? Oh my God!”
- d) Attorney: “There would be a number of things wrong with my life if I was waking up next to her every day.”
- e) Judge: “I couldn’t have a visual on that if you paid me. So, there you have it.” ...
- f) Attorney: “Judge, who was that sweet young man who was Sam Kennedy? Who was that?”
- g) Judge: “That’s her assistant.”
- h) Attorney: “13-year-old boy dressed up in a suit.”
- i) Judge: “That’s her man-child.”

B. Massachusetts Supreme Judicial Court Standing Committee on Lawyer Well-Being, Report Summarizing Affinity Bar Town Hall Meetings (2021)¹⁷

1. In an effort to begin identifying the concrete challenges to professional well-being faced by Massachusetts lawyers, judges, and law students from underrepresented, historically excluded, and systemically oppressed populations, in June 2020, the Committee began hosting a series of individual town hall meetings with various Massachusetts affinity bar associations.
 - a) The goal of these sessions was for the Committee to hear from these legal professionals about their own lived experiences, to hear their stories.
 - b) The Committee envisioned that these stories and this Report will help in the collaborative design and implementation of various projects.
2. The general sentiment of the attorneys and law students who participated in the town hall meetings was that being a member of the Massachusetts bar from a historically excluded population results in significant to extreme challenges on top of those faced by all attorneys and law students.
 - a) Many participants shared upsetting, discouraging, and deeply concerning lived experiences, although some also shared positive experiences about allyship, celebrations of diversity, and upstander actions taken by colleagues and mentors.
 - b) The Committee repeatedly heard that attorneys from these backgrounds not only face challenges getting to law school, getting through law school, passing the bar exam, and completing the character and fitness review to be admitted to practice, but once they conquer those obstacles and enter the profession, they must continue disproportionately to prove their worth to other legal professionals who assume that their work will be of lesser quality.
 - c) They experience recurring identity-based challenges and discrimination, no matter how far in their career they have advanced.
3. The participants explained that these experiences are exhausting and complex, continually impairing their mental health and well-being as members of the profession, and that they must be shared, acknowledged, and responded to by the Massachusetts legal community.
4. They noted that increasing the hiring of attorneys from these populations is not enough to make real progress without also (a) recognizing the disparate treatment they face, and (b) seeking to change culture, policies and procedures to support their retention, promotion, and paths to leadership.

¹⁷ Available at: <https://static1.squarespace.com/static/5e6d105ff4b7d15cf766c1e1/t/601c1f4150b47a206f84de37/1612455745353/Affinity+Bar+Town+Hall+Report+2021.pdf>

- V. Dynamics in Supervision: Dynamics of female supervisor's compared to male counterparts. The dynamic of women promoting women.
- VI. Systemic Change: Bias-interrupters



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Bias Interrupters: Tools for Success¹⁸

A. Research:

1. Research shows that diverse workgroups perform better and are more committed, innovative, and loyal.¹ Gender-diverse workgroups have higher collective intelligence, which improves the performance of both the group and of the individuals in the group, and leads to better financial performance results. Racially diverse workgroups consider a broader range of alternatives, make better decisions, and are better at solving problems.
2. Implicit Bias and the Legal Profession's "Diversity Crisis": A Call for Self-Reflection (2015)¹⁹
 - a. Implicit bias can impact decision-making at all phases of the law firm cycle: hiring, training, mentoring, evaluating, and promoting.
 - b. Firms that employ informal assignment processes allow partners to select associates to complete assignments, forcing associates to jockey for position. But this model may place women and minorities at a distinct disadvantage from day one. "A socially constructed assignment process is influenced by implicit bias because partners, who are predominantly white males, distribute assignments to those with whom they naturally felt an affinity – associates who were most like themselves."
 - c. Women and minorities don't rise to partnership level as often because they don't have the same opportunities, and may leave because of it.
 - d. Associates of color, in one study, identified lack of opportunity to work on important matters and "lack of relationships" as reasons for ultimately leaving the firm (citing Veronica Root, *Retaining Color*, 47 U. Mich. J.L.L. Reform 575, 595-96 (2014))
 - e. Implicit bias seeps into law firm decision-making elsewhere, including the hiring stage, or during evaluation. Research has demonstrated that implicit bias can compel people to favor those who are most similar to themselves, thereby leading to a tendency for managers to hire those whose qualities align with their own
 - f. Studies also show that attorneys who assume that attorneys of color have achieved success due to preferential treatment, and not solely because of merit, will more readily recall their errors rather than their contributions to the firm.

¹⁸ Source: www.biasinterrupters.org

¹⁹ Nicole E. Negowetti, *Implicit Bias and the Legal Profession's "Diversity Crisis": A Call for Self-Reflection*, 15 Nev. L.J. 930 (2015).

- g. The legal profession’s “diversity crisis,” and how the cycle perpetuates itself. But here’s the good news: Implicit bias can be deactivated, once we know it’s there.
- h. Three decades of research demonstrates that once activated, implicit biases influence many of our behaviors and judgments in ways we cannot access and often cannot control. Fortunately, studies show that these biases are not permanent, and that we can deactivate the stereotypes we hold.

B. Change Process:

- 1. Use Metrics: Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)
- 2. Implement Bias Interrupters: Bias interrupters are small adjustments to your existing business systems. They should not require you to abandon your current systems.
- 3. Repeat as Needed: After implementing bias interrupters, return to your metrics. If they have not improved, you will need to ratchet up to stronger bias interrupters.

C. Hiring:

- 1. Metrics: For each metric, examine:
 - a. Do patterned differences exist between majority men, majority women, men of color, and women of color? (Include any other underrepresented group that your firm tracks, such as military veterans or LGBTQ people.)
 - b. Important metrics to analyze:
 - i. Track the candidate pool through the entire hiring process: from initial contact, to resume review, to interviews, to hiring. Analyze where underrepresented groups are falling out of the hiring process.
 - ii. Track whether hiring qualifications are waived more often for some groups.
 - iii. Track interviewers’ reviews and/or recommendations to ensure they are not consistently rating majority candidates higher than others.
 - c. Keep metrics by (i) individual supervising attorney; (ii) department; (iii) country, if relevant; and (iv) the firm as a whole.
- 2. Implementation:
 - a. Empower and Appoint
 - i. Empower people involved in the hiring process to spot and interrupt bias. Use the “Identifying Bias in Hiring Worksheet” (available at BiasInterrupters.org). Read and distribute it to anyone involved in hiring.
 - ii. Appoint bias interrupters. Provide HR professionals or team members with special training to spot bias and involve them at every step of the hiring process. Training is available at BiasInterrupters.org.
 - b. Assemble a Diverse Pool
 - i. Limit referral hiring (“friends of friends”). If your existing firm is not diverse, hiring from your current employees’ social networks will replicate the lack of diversity. If you use referrals, keep track of the flow of candidates from referrals. If referrals consistently provide majority candidates, consider limiting referrals or balance referral hiring with more targeted outreach to ensure a diverse candidate pool.
 - ii. Tap diverse networks. Reach out to diverse candidates where they are. Identify law job fairs, affinity networks, conferences, and training programs aimed at women and people of color and send recruiters.
 - iii. Consider candidates from multitier schools. Don’t limit your search to candidates from Ivy League and top-tier schools. This favors majority candidates from elite backgrounds and hurts people of color and professionals from nonprofessional backgrounds (class migrants)

- Studies show that top students from lower-ranked schools are often similarly successful.
 - Get the word out. If diverse candidates are not applying for your jobs, get the word out that your firm is a great place to work for women and people of color. One company offers public talks by women at their company and writes blog posts, white papers, and social media articles highlighting the women who work there.
- iv. Change the wording of your job postings. Using masculine-coded words such as “leader” and “competitive” tends to reduce the number of women who apply. Tech alternatives can help you craft job postings that ensure you attract top talent without discouraging women.
- c. Insist on a diverse pool. If you use a search firm, tell them you expect a diverse pool, not just one or two diverse candidates. One study found the odds of hiring a woman were times greater if there were at least two women in the finalist pool; the odds of hiring a person of color were 194 times greater.
 - d. Resume Review
 - i. Distribute the “Identifying Bias in Hiring Worksheet” (available at [Bias Interrupters.org](http://BiasInterrupters.org)). Before resumes are reviewed, have reviewers read the worksheet so they are aware of the common forms of bias that can affect the hiring process.
 - ii. Commit to what’s important—and require accountability. Commit in writing to what qualifications are important, both in entry-level and lateral hiring. When qualifications are waived for a specific candidate, require an explanation of why they are no longer important—and keep track to see for whom requirements are waived.
 - iii. Ensure resumes are graded on the same scale. Establish clear grading rubrics and ensure that everyone grades on the same scale. Consider having each resume reviewed by two different people and average the score.
 - iv. Remove extracurricular activities from resumes. Including extracurricular activities on resumes can artificially disadvantage class migrants. A recent study showed that law firms were less likely to hire a candidate whose interests included “country music” and “pick-up soccer” rather than “classical music” and “sailing”—even though the work and educational experience was exactly the same. Because most people aren’t as aware of class-based bias, communicate why you are removing extracurricular activities from resumes. • Avoid inferring family obligations. Mothers are 79% less likely to be hired than identical candidates without children.
 - v. Train people not to make inferences about whether someone is committed to the job due to parental status and don’t count “gaps in a resume” as an automatic negative.
 - vi. Try using “blind auditions.” If women and candidates of color are dropping out of the pool at the resume review stage, consider removing demographic information from resumes before review. This allows candidates to be evaluated based solely on their qualifications.
 - e. Interviews
 - i. Use structured interviews. Ask the same list of questions to every person who is interviewed. Ask questions that are directly relevant to the job for which the candidate is applying.
 - ii. Ask performance-based questions. Performance-based questions, or behavioral interview questions (“Tell me about a time you had too many things to do and had

- to prioritize.”), are a strong predictor of how successful a candidate will be at the job.
- iii. Try behavioral interviewing. Ask questions that reveal how candidates have dealt with prior work experiences. Research shows that structured behavioral interviews more accurately predict the future performance of a candidate than unstructured interviews. Instead of asking “How do you deal with problems with your manager?” say “Describe for me a conflict you had at work with your manager.” When evaluating answers, a good model to follow is: the candidate should describe the Situation faced, the Task handled, the Action taken to deal with the situation, and the Result.
 - iv. Do work-sample screening. If applicable, ask candidates to provide a sample of the types of tasks they will perform on the job (e.g., ask candidates to write a legal memo for a fictitious client).
- f. Develop a consistent rating scale and discount outliers. Candidates’ answers (or work samples) should be rated on a consistent scale, with ratings for each factor backed up by evidence. Average the scores granted on each relevant criterion and discount outliers.
- i. If “culture fit” is a criterion for hiring, provide a specific work-relevant definition. Culture fit can be important, but when it’s misused, it can disadvantage people of color, class migrants, and women. Heuristics such as the “airport test” (Who would I like to get stuck with in an airport?) can be highly exclusionary and not work-relevant. Questions about sports and hobbies may feel exclusionary to women and to class migrants who did not grow up, for example, playing golf or listening to classical music. Google’s work-relevant definition of “culture fit” is a helpful starting point.
 - ii. “Gaps in a resume” should not mean automatic disqualification. Give candidates an opportunity to explain gaps by asking about them directly during the interview stage. Women fare better in interviews when they are able to provide information up front rather than having to avoid the issue.
 - iii. Provide candidates and interviewers with a handout detailing expectations. Develop an “Interview Protocol Sheet” that explains to everyone what’s expected from candidates in an interview or use ours, available at [Bias Interrupters.org](http://BiasInterrupters.org). Distribute it to candidates and interviewers for review.
 - iv. When hiring, don’t ask candidates about prior salary. Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap. (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.)

D. Assignments

1. Research shows that women do more “office housework” than men. This includes literal housework (ordering lunch), administrative work (scheduling a time to meet), and emotion work (“she’s upset; comfort her”). Misallocation of the glamour work and the office housework is a key reason leadership across the legal profession is still male dominated. Professionals of color (both men and women) also report less access to desirable assignments than do white men
 - a. Glamour work. More than 80% of white male lawyers but only 53% of women lawyers of color, 59% of white women lawyers, and 63% of male lawyers of color reported the same access to desirable assignments as their colleagues.
 - b. Office housework. Almost 50% of white women lawyers and 43% of women lawyers of color reported that at work they more often play administrative roles such as taking notes for a meeting compared to their colleagues. Only 26% of white male lawyers and 20% of male lawyers of color reported this.

2. Metrics: find out if and where you have a problem: (i) Distribute the “Office Housework Survey”; (ii) Convene relevant managers (and anyone else who distributes assignments) to identify the glamour work and the lower-profile work in the law firm. Use the “Assignment Typology Worksheet” to create a typology for assignments and the “Protocol” for more details; (iii) Input the information from the typology meeting into the “Manager Assignment Worksheet” and distribute this to managers (available online at Bias Interrupters.org). Have managers fill out the worksheets.
3. Implementation
 - a. Don’t ask for volunteers. Women are more likely to volunteer because they are under subtle but powerful pressures to do so.
 - b. Hold everyone equally accountable. Hold men and women equally accountable for carrying out all assignments properly, even office housework.
 - c. Use admins: If possible, assign office housework tasks to admins
 - d. Establish a rotation for administrative tasks.
 - e. Avoid mixed messages. If your law firm values mentoring and committee work (such as serving on the Diversity Initiative), make sure these things are valued when the time comes for promotions and raises.
 - f. Conduct a roll-out meeting. Gather relevant managing and supervising attorneys to introduce the bias interrupters initiative and set expectations.
 - g. Provide a bounceback. Identify individual supervising attorneys whose glamour work allocation is lopsided. Hold a meeting with that supervisor and bring the problem to his or her attention. Help the supervisor think through why he or she only assigns glamour work to certain people or certain types of people. Work with the supervisor to strategically address any identified deficiencies.

E. Performance Evaluations

1. In one study,²⁰ law firm partners were asked to evaluate a memo by a third-year associate. Half the partners were told the associate was black; the other half were told the identical memo was written by a white associate. The partners found 41% more errors in the memo they believed was written by a black associate as compared with a white associate.³⁸ Overall rankings also differed by race. Partners graded the white author as having “potential” and being “generally good,” whereas they graded the black author as “average at best.”
2. Metrics: Keep metrics by (1) supervising attorney; (2) department; (3) country, if relevant; and (4) the law firm as a whole. Do patterned differences exist between majority men, majority women, men of color, and women of color? Include any other underrepresented group that your firm tracks, such as military veterans, LGBTQ people, or individuals with disabilities.
 - a. Do patterned differences exist for parents after they return from leave or for lawyers who reduce their hours?
 - b. Do patterned differences exist between full-time and part-time employees?
3. Implementation: All bias interrupters should apply both to written evaluations and in meetings, where relevant.
 - a. Empower and Appoint
 - i. Empower people involved in the evaluation process to spot and interrupt bias. Use the “Identifying Bias in Performance Evaluations Worksheet,” available online at BiasInterrupters.org. Read and distribute.
 - ii. Appoint bias interrupters. Provide HR professionals or team members with special training to spot bias and involve them at every step of the performance evaluation process. Training is available at BiasInterrupters.org.

²⁰ Major, Lindsey, & Africa, “2016 Partner Compensation Survey,” <https://www.mlaglobal.com/publications/research/compensation-survey-2016>.

- b. Tweak the Evaluation Form
 - i. Begin with clear and specific performance criteria directly related to job requirements. Try “He is able to write an effective summary judgment motion under strict deadlines” instead of “He writes well.”
 - ii. Require evidence from the evaluation period that justifies the rating. Try “In March, she argued X motion in front of Y judge on Z case, answered his questions effectively, and was successful in getting the optimal judgment” instead of “She’s quick on her feet.”
 - iii. Consider performance and potential separately for each candidate. Performance and potential should be appraised separately. Majority men tend to be judged on potential; others are judged on performance.
- c. Tweak the Evaluation Process
 - i. Level the playing field. Ensure that all candidates know how to promote themselves effectively and send the message that they are expected to do so. Distribute the “Writing an Effective Self-Evaluation Worksheet,” available online at BiasInterrupters.org.
 - ii. Offer alternatives to self-promotion. Encourage or require supervisors to set up more formal systems for sharing successes, such as a monthly e-mail that lists employees’ accomplishments.
 - iii. Provide a bounceback. Supervisors whose performance evaluations show persistent bias should receive a bounceback (i.e., someone should talk through the evidence with them).
 - iv. Have bias interrupters play an active role in calibration meetings. In many law firms and legal departments, the Executive Committee or another body meets Evaluations to produce a target distribution of ratings or to cross-calibrate rankings. Have participants read the “Identifying Bias in Performance Evaluations Worksheet” on bias before they meet (available at BiasInterrupters.org). Have a trained bias interrupter in the room.
 - v. Don’t eliminate your performance appraisal system. Eliminating formal performance evaluation systems and replacing them with feedback on the fly creates conditions for bias to flourish

VII. Recommendations²¹

A. Acknowledge the Problems and Take Responsibility:

1. Every sector of the legal profession must support lawyer well-being
2. Each lawyer should strive to change the profession’s mindset from passive denial to active support for change.
3. All need to prioritize lawyer health to change the legal culture

B. Leaders Must Demonstrate a Personal Commitment to Well-Being –

1. Broad-scale change requires buy-in and role-modeling from the top down.
2. Leaders in the courts, law firms, law schools and bar associations are watched by others for signals as to what is expected
3. Leaders can create and support change through their own demonstrated commitment to well-being in their personal and professional lives

²¹ The Report of the National Task Force on Lawyer Well-Being, “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change” Task Force Chairs: Bree Buchanan and James C. Coyle, August 2017. https://www.americanbar.org/groups/professional_responsibility/task_force_lawyer_wellbeing (provides source data for IV (a) through IV(n))

C. Facilitate, Destigmatize and Encourage Help-Seeking Behavior

1. Factors hindering seeking help for mental health include: failure to know symptoms, not knowing how to access treatment, a culture's negative attitude about such conditions, fear of adverse reactions by others, feeling ashamed, viewing help-seeking as a sign of weakness, fear of career repercussions, concerns about confidentiality, uncertainty about effectiveness of treatment, and lack of time
2. Rather than seeking help early many wait until symptoms are so severe they interfere with work
3. Leaders can remove these obstacles with education, skill building and stigma-reducing strategies
4. Most effective way to reduce stigma is through direct contact with someone who has personally experienced a relevant disorder (ideally practicing lawyer/law student) to create a personal connection

D. Build Relationships with Lawyer Well-Being Experts

1. Partner with Lawyer Assistance Programs - All should partner with and insure sufficient and stable funding for Lawyer Assistance Programs
2. Consult Lawyer Well-Being Committees and Other Types of Well-Being Experts – similar to Lawyer Assistance Programs many bar associations have quality of life/well-being committees or initiatives and there are many high-quality consultants available on the topic

E. Foster Congeniality and Respectful Engagement Throughout the Profession:

1. Judges, practitioners, regulators students and professors regularly interact with each other, clients, opposing parties and clerks, staff and many others, that contact can be foment a toxic culture or foster a respectful culture.
2. Civility is in decline: 72% describe incivility as a serious/moderately serious problem with the profession compared with 42% 15 years ago
3. Judges, law firms should adopt rules of professionalism including the expectation that all leaders in the profession should be role models for such rules/standards
4. Exemplary standards of professionalism are inclusive: organizational diversity and inclusion initiatives are associated with employee well-being, general mental and physical health, lower perceived stress levels, increased job satisfaction, increased organizational commitment, increased trust, increased work engagement,

F. Promote Diversity and Inclusivity – Scholarships, bar exam grants for qualified applicants, law school orientation programs to highlight importance of diversity and inclusion, CLE programs on diversity, business development and symposia for women and minority owned law firms, diversity clerkships and law firm initiatives

G. Create Meaningful Mentoring and Sponsorship Programs – can aid well-being and career progression for women and diverse professionals

H. Enhance Lawyers' Sense of Control

1. High job demands coupled with lack of control over schedule/lives breeds depression, elevates risk of alcohol abuse
2. Long-standing structures of the legal profession, organizational norms and embedded expectations can be modified to allow increased sense of control and support healthier lifestyle

I. Provide High-Quality Educational Programs About Lawyer Distress and Well-Being-

1. Legal professionals should receive training in identifying addressing and supporting fellow professionals with mental health and substance use disorders

2. Training should include: warning signs, how and where to get help, relationship between substance use, depression anxiety and suicide, freedom from substance use and mental health disorders as an indispensable predicate to fitness to practice
 3. Enlist help of recovering lawyers who are successful members of their community
- J. Guide and Support the Transition of Older Lawyers:
1. Legal community is aging and practicing longer.
 2. Create system to detect and address cognitive decline in oneself and others
 3. Leaders should develop succession plans to guide the transition of the aging legal professional
 4. Legal professionals, judges, courts, law schools should develop programs to aid in the transition of retiring legal professionals.
- K. De-Emphasize Alcohol at Social Events –
1. Workplace cultures that support alcohol consumption are among the most consistent predictors of employee drinking.
 2. Can reinforce tendencies towards problem drinking and stigmatize seeking help
- L. Utilize Monitoring to Support Recovery from Substance Use Disorders
1. Random drug/alcohol testing is effective way to support recovery
 2. 96% of medical professionals subject to random drug tests remained drug free vs. 64% not so subject
 3. 95% were still working in the healthcare field at a five year follow up
- M. Begin a Dialogue About Suicide Prevention –
1. Lawyers have a high rate of suicide related to reluctance to ask for help, high levels of depression and stressful nature of the job
 2. Members of the profession need to provide education and take action
 3. Share stories of those affected by suicide
 4. Provide education about signs of depression/suicidal thinking
 5. Learn non-verbal signs of distress
 6. Collect and publicize available resources.
- N. Support a Lawyer Well-Being Index to Measure the Profession's Progress – Bar associations need to create a well-being index for legal professionals including metrics related to lawyers, staff, clients, the legal profession and the broader community. Success should not be measured in purely economic terms

Approach: Change Process

- Consider procedural or organizational changes.
- Insist on appropriate accountability.

	2010	2011
Recruit	✓	✓
Retain	✓	✓
Promote		✓
Messaging		✓
Environment		✓
Mentors Exemplars	✓	✓
Etc.		

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