

LEFT OUT *and* LEFT BEHIND



The Hurdles, Hassles, and
Heartaches of Achieving Long-Term
Legal Careers for Women of Color

By Destiny Peery, Paulette Brown, and Eileen Letts

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Printed in the United States of America.

24 23 22 21 20 5 4 3 2 1

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Preface

Frequently when women's issues are discussed, researched, and/or analyzed, they do not always take into account additional and separate issues that may be faced by women of color. When it was learned that then-ABA president Hilarie Bass would have as one of her primary initiatives a study and research based on the long-term careers of women in law, it occurred to us that the experiences of women of color could be different. After all, we could within minutes identify approximately 90 percent of the women of color practicing in firms more than 30 years. This is not a good thing.

Women face numerous challenges in the practice of law, and they do not necessarily lessen based on longevity. We were not only pleased to learn about the study but also that Roberta (Bobbi) Liebenberg and Stephanie Scharf would lead President Bass's initiative. We know there are additional challenges experienced by women of color because the layer of race compounds gender bias. It was important to capture data on all women and to simultaneously distinguish them.

It was the intent to conduct a study similar to the primary study, but finding women of color to participate who had been practicing law more than 20 years, particularly in person, was analogous to finding women of color who are equity partners in law firms. The paucity of women of color from whom we could draw for this parallel study was palpable. In the end, we were able to have 35 women of color participate in person and 68 participate via an online survey.

As imagined, there were shared experiences of all women and additional challenges for women of color. While this was not necessarily surprising, we were disappointed to learn what we believed is true. The key question is, how do we channel that disappointment to effectuate a different result than one that has been constant for more than 20 years?

It is said that research based on hard data cannot be denied. When there are not enough women of color to collect data that is statistically significant, it leaves the door open for doubting and excuses. There is one statistic, however, that has not changed over the course of the past 20 years: women of color represent approximately 2 percent of all equity partners at large law firms. That 2020 statistic combined with anecdotal information collected in the study is cause for sufficient alarm as is the mere fact that there were not enough women of color to conduct a fulsome analysis.

In looking at the data we found that while there are few women of color in the ranks of equity partner, those who stay are not necessarily staying because of job fulfillment. Many stay for reasons that relate to their culture and financial obligations. The study results are also disturbing because many women of color want to leave the profession because they see the disparity between themselves and their white counterparts but do not see viable alternatives to their current situation. Those who do enjoy the work in their current environment and being a lawyer nevertheless view the playing field as not equal.

Change is necessary and there is an urgency of now. As this research, led by Dr. Destiny Peery informs us, there is no luxury of incremental steps. Notwithstanding the bits of progress women have made overall, biases continue to exist, and women of color are more inclined to be subjected to both implicit and explicit bias. Firm culture must change to effectuate the change required.

As the study outlines the problems, it also discusses solutions. First and foremost, there must be an acknowledgment that a problem exists. Firms must look at their internal structures and historical data because to effectuate change there must be an understanding, eyes wide open of barriers that have been created for women of color. It is incumbent on those leading the firms to lead this effort and apply standards for accountability. Women of color should not only be treated as numbers to temporarily enhance firm wide statistics, but also credited for the value they add to the firm and practice of law.

We ask that this study not be read and then put on a shelf to be picked up five years from now and “surprisingly” discover nothing has changed. This study provides some answers to the questions about the state of women of color in the profession and if used to its fullest extent will assist in the change that is urgently needed now.



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Foreword on Behalf of the American Bar Association

As 2017-2018 President of the American Bar Association who founded the ABA Initiative on Achieving Long-Term Careers for Women in Law, and as Co-Chairs of the Initiative, we are delighted to introduce the second national study conducted by the Initiative: *Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color*.

There has been far too little progress in addressing the everyday work experiences and challenges faced by women lawyers of color due to the unique double bind of gender and race. In 2006 and 2012, the ABA Commission on Women in the Profession published seminal studies, *Visible Invisibility: Women of Color in Law Firms* and in *Fortune 500 Legal Departments*.

Despite the fact that women of color now comprise almost 15% of all associates, the percentage of women of color partners has remained stuck below 4%. Equally sobering is that women of color have the highest rate of attrition from law firms as they continue to face firm cultures where their efforts and contributions are neither sufficiently recognized nor rewarded.

Left Out and Left Behind fills a critical gap, offering empirical data and thoughtful discussion about what it means to be a woman lawyer of color -- the general experience of practicing law; how work, family, and personal dynamics influence career trajectories; the barriers that women of color confront not simply on an occasional basis but throughout their careers, even after achieving a level of success; and the factors that either drive women of color out of the profession or encourage them to stay. This study is a must-read given the large number of senior women of color participants whose experiences are so candidly reflected in this report.

We are fortunate that *Left Out and Left Behind* was designed, implemented and analyzed by a unusually talented team. Destiny Peery, an accomplished social scientist specializing in diversity and the legal profession, created the research strategy and research design, implemented a series of focus group sessions across the country, conducted follow-up interviews, organized the data for quantitative and qualitative analysis, and drafted the final report. Paulette Brown and Eileen Letts, well known for their advocacy for diversity in the profession, were essential advisors in developing the goals and strategy of *Left Out and Left Behind*, worked through their national networks so that a large number of senior women lawyers of color participated in the study, reviewed drafts, and added their ideas and experiences to greatly enhance the depth and scope of the final report. Their contributions were invaluable.

We encourage all members of the profession to read this special report to understand how women lawyers of color experience the everyday practice of law. We ask that

you reflect with open minds about how best to move forward with better workplace policies and practices, which will encourage more effective sponsorship and mentoring, more equitable promotion and compensation decisions, and greater access to business development opportunities for women attorneys of color. This is not only the right thing to do, it is a business imperative. It is also the best way to ensure that the legal profession will have both the depth and breadth of well trained and talented diverse lawyers to serve the very large number and range of clients that need legal services, and enable all lawyers to thrive without regard to color or gender.



Hilarie Bass
Former President
American Bar Association,
2017-2018



Roberta D. Liebenberg and Stephanie Scharf
Co-Chairs, 2017-2020,
Initiative on Achieving Long-Term Careers
for Women in Law

Introduction

“Law firms in recent years have appropriately expanded the scope of their diversity efforts from recruiting to also focus on retention and advancement of lawyers of color and women. On the surface, it seems like we are headed in the right direction—that is, until we take a closer look at one particular group of lawyers located at the intersection of race and gender: women of color.”

—Paulette Brown and Arin Reeves in *Visible Invisibility: Women of Color in Law Firms (2006)*¹

About 14 years ago, the American Bar Association’s (ABA) Commission on Women in the Profession (the Commission) published a landmark study on the experiences of women of color in law firms,² and the study’s authors reflected on the movement by law firms and the legal profession to improve conditions for women that had largely missed women of color. While we have continued to see increased efforts by law firms and the legal profession at large to address the continued challenges faced by women and diverse attorneys since 2006, relatively little has changed in terms of either the representation or the lived experiences of women and diverse attorneys in the profession. Bar associations and scholars have systematically collected data on the representation and status of women and people of color in the legal profession for over a decade,³ and the data are clear; women and people of color continue to be underrepresented in the legal profession, particularly in the most senior roles.⁴ And the narratives about their experiences highlight persistent barriers to advancement. Further, the pattern of attrition as women advance through their careers in law has been a topic of discussion of increasing interest,⁵ as the profession asks why women continue to leave the profession,⁶ particularly law firms. But the increased interest in the career trajectories of women and their decisions to leave the profession has not given sufficient attention to the ways in which the experiences of women of color may differ from the experiences reported for women in general, which have largely reflected the experiences of white women.

The ABA’s *Visible Invisibility* study, which is still cited as the foundational study in discussions about women of color in the legal profession, represents one of relatively few studies specifically aimed at capturing and addressing the experiences of women of color in law. This study documented that women of color tend to fare worse than white men and women as well as men of color in law firms.⁷ As noted in that study, the data we most consistently see reported simply give us the numbers showing the absence of and higher attrition for women of color, but those numbers alone do not reveal the more nuanced story of why women of color make the career decisions they do. The present study set out

to capture the stories that are often missing from the discussion about women’s experiences in law. Specifically, it was designed to give voice to the decisions and decision-making processes that women of color in particular engage in as they navigate their careers, including whether they consider leaving the profession and why they decide to stay or go.

What follows is an overview of existing research on women of color in the legal profession, as well as discussion of how this study fits into the ABA Commission’s *Achieving Long-Term Careers for Women* initiative and what it contributes to the broader literature on women of color in law. Then, the report turns to the present study and the recommendations that flow from what the present data reflects about the experiences of women of color in the legal profession today.

Research on Women of Color in Law

The published research on women of color in the legal profession begins with the ABA’s *Visible Invisibility: Women of Color in Law Firms*, published in 2006.⁸ This report continues to be cited as the primary source for information on women of color in law, and it provides the foundation for and acknowledgement that women of color have unique experiences previously uncaptured by research. As the study’s co-chairs discuss in their introduction, many of the experiences reported were familiar anecdotes among women of color, but the experiences captured by the study had been largely unrecognized by others and hadn’t been systematically studied prior to this study.⁹ And, as the title suggests, women of color have long reported both standing out due to their race and gender, but also being routinely rendered invisible, often literally unrepresented when it comes time to talk about gender in the legal profession.¹⁰

The *Visible Invisibility* study reported that women of color felt they were missing out on desirable assignments, being denied formal and informal networking opportunities, missing client development and client relationship opportunities, and being denied promotion opportunities because of their race and/or gender. They also reported finding it harder to meet billable hour requirements and build a book of business necessary for advancement in law firms, which was due in part to their relative lack of access to the very opportunities and relationships that would allow them to do so. Further, they felt that they were often treated as tokens and trotted out to clients only when it would help the firm look good but not necessarily in ways that helped them further their own careers. The study also found that many women of color left law firms to pursue lucrative options that had more flexibility to balance work and life demands and more predictable and less subjective pathways for advancement.

A 2009 study on women of color in law firms by Catalyst,¹¹ a nonprofit dedicated to the advancement of women in the workplace, further established that women of color have different experiences than men of color, white women, and white men, and those experiences tend to be more negative. This study found that women of color are more likely to report seriously considering leaving their law firms.¹² Relatedly, women of color were more likely to report that current law firm diversity efforts place too little emphasis on the quality of the work environment or workplace culture (34 percent of women of color versus about 16 percent of white men and women).¹³ These results highlight how

the challenges of working in law firm environments and the lack of intervention on this dimension by law firms lead women, and particularly women of color, to consider leaving the law firm and/or the legal profession.

This study also found that women of color were more likely to be single than white women lawyers (43 percent vs 32 percent),¹⁴ and women of color reported having different work-life needs and challenges than white women, which created difficulties for the women because these different needs and challenges did not fit law firm expectations about family obligations and life outside the law firm. For example, women of color were more likely than white women and men to report having extended family responsibilities. Black women in particular were more likely to report that participating in community activities was a personal responsibility.¹⁵ Women of color were less likely than white women to use a babysitter for childcare, and they were the least likely to cite a spouse/partner as a resource for childcare compared to white women and men. They were also less likely to employ service providers for domestic help compared to white women.¹⁶

Further, this study showed that women of color were less satisfied with how client-service assignments were distributed and the access they had to working with high-profile clients.¹⁷ And even though women of color were more likely to report having a mentor, they considered their mentors less effective and less likely to have influence at the firm¹⁸ (the characteristics that often separate a mentor from a sponsor who actively advocates for the person). Lawyers of color also reported that they were less satisfied with their access to and support from informal networks and relationships inside the law firm, including access to information about what is going on at the firm and opportunities to interact in more informal and/or social ways with partners and supervising attorneys.¹⁹ Women of color also reported being left out of relationship-building at the firm, reporting that they had the least access to senior attorneys and colleagues compared to white women and men.²⁰ No more than 21 percent of surveyed attorneys of all races and genders believed that supervising attorneys were being held accountable for developing and advancing women and diverse attorneys, and no more than 19 percent believed that supervising attorneys received any training on how to manage a diverse workforce.²¹ Taken together, these conditions create barriers to advancement in the law firm because of the importance of relationships in building a book of business and being assessed positively and supported by superiors as one hopes to advance in the law firm.

More recently, a 2018 ABA report from the Commission on Women in the Profession²² discussed the impact of gender and racial biases, particularly implicit biases, on women and women of color in the legal profession. The study found, for example, that 57 percent of women of color had been confused for custodial, administrative, or courtroom staff as compared to 7 percent of white men, and they regularly confront assumptions that they are unlikely to be the lawyer in the room.²³ Further, women of color were the most likely to report that they had to go “above and beyond” to get the same respect and recognition as others and that they are held to a higher standard in the workplace.²⁴ And, consistent with past research, women of color were more likely to report that they had less equal access to high-quality work assignments and fewer fair opportunities for promotion.²⁵

In addition, a 2019 study on women in the workplace²⁶ found that women of color are more likely to seek advancement than white women (76 percent to 68 percent, respectively), are more likely to aspire to attain promotions than men (83 percent of Asian

women and 80 percent of black women versus 75 percent of men), and are more likely to want to be top executives than white women (51 percent of Asian women, 44 percent of Latina women, and 38 percent of black women versus 39 percent of white women. Despite evidence of greater ambition to reach senior-level and leadership roles, women of color are significantly underrepresented as law firm equity partners and law firm leaders, making up only about 3 percent of all equity partners (men and women) and only 12 percent of female equity partners,²⁷ highlighting that most of the small gains made by women in the legal profession are being realized by white women.²⁸

Taken together, this past research establishes a baseline for women of color that has remained largely unchanged over the course of more than 14 years of study. That baseline is that women of color continue to feel invisible and unsupported in the legal profession, particularly in law firms, and they find themselves regularly contemplating their exits. Faced with a lack of access to a career-advancing resources and relationships, and often facing a working environment that is indifferent, if not outright hostile, to their unique perspectives and challenges, women of color have long felt as though they are left standing on the outside looking in. This has been exacerbated in recent years in light of increased efforts by the legal profession to enhance recruitment and retention of women and diverse attorneys because the evidence suggests that the primary beneficiaries of these efforts thus far have been white women, with little to no progress being made with respect to attorneys of color, including women of color.

The Present Study

ABA Commission on Women in the Profession: Achieving Long-Term Careers for Women in Law²⁹

Initially a presidential Initiative of then-ABA President Hilarie Bass, the ABA Commission on Women in the Profession has continued the work of investigating the issues and career dynamics that experienced women lawyers have faced as they've advanced through their careers. In particular, the *Achieving Long-Term Careers for Women in Law* initiative has been focused on better understanding the reasons for the disproportionate attrition of women, particularly midcareer and senior women, from the legal profession when they should be at the prime of their careers. Thus, instead of focusing on just the numbers of women at various career stages, this initiative was aimed at investigating the factors behind the numbers.

As part of the *Achieving Long-Term Careers for Women in Law* initiative, four research projects were completed: (1) a survey of large law firm managing partners and practicing attorneys, (2) a representative survey on the career trajectories of women and men who graduated law school 15+ years ago, which included questions about social and personal factors that influenced their careers, (3) a national focus group study aimed at capturing the personal, social, and professional factors affecting the careers of women lawyers practicing for 15+ years, and (4) a national study on the personal, social, and professional factors affecting the careers of women of color lawyers practicing for 15+ years.

One of these projects, the survey of managing partners and individual practicing attorneys, was recently published by the ABA and ALM Intelligence in a report titled, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*.³⁰ This study shows, yet again, the persistence of many of the same barriers that women have been reporting for more than a decade. The focus was on women and men who had been practicing law for at least 15 years, a similar age cohort as the present study, and it was aimed at understanding the obstacles that are faced by more senior women attorneys, even after achieving successes like making partner, that cause them to consider leaving the legal profession. As in past research, this study reaffirms the problems faced by women in building business, getting access to the opportunities and resources required for continued growth and advancement, particularly in law firms, and their continued experiences with barriers such as bias. Further, the authors highlight, as we do here, that despite advances in the policies and practices on the books of many legal employers, there has been little change in the representation and experiences of women, particularly at the more senior levels, and this is due to a failure to address the harder

although more important structural and cultural factors that continue to place barriers in the paths of women and diverse attorneys.

Given the often low capture of women of color in studies not directly aimed at studying their experiences, including in the other studies in the initiative, it was intentional that the research plan included a study that focused on women of color exclusively, an acknowledgement that this population of lawyers has been underrepresented in past research on the representation and experiences of women in the legal profession. In addition, it was considered important to capture the voices of these women, to let them share the nuances of their experiences rather than simply report their numbers in the ranks of lawyers.

Methods

The research team, with the help of the study co-chairs and study's advisory committee, advertised the focus group and online survey versions of the study to national and regional bar associations, law school alumni associations, and personal contacts. Participants were recruited to participate in a study on self-identified women of color who had graduated law school 15 or more years before to answer questions about their career trajectories and how being women of color affected their legal careers. A total of 103 participants from around the country participated by focus group or online survey.

Participants

Thirty-eight focus group participants participated in 11 focus groups conducted in Atlanta,³¹ Chicago,³² Los Angeles,³³ and New York City.³⁴ These cities were selected due to their large legal markets, the variety of legal sectors represented, regional diversity, and their larger populations of people of color. The focus group participants are, on average, 52 years old, graduated law school, on average, in 1992, and have an average of 22 years of practice experience. These women are 22 percent Asian, 49 percent black, 14 percent Hispanic/Latinx, and 16 percent multiracial or multiethnic. About 65 percent of the women in the focus group sample are married or partnered, 11 percent are divorced or widowed, and 22 percent are never married or single. They have a median of one child, and 38 percent have no children. About 77 percent reported they were practicing law in their current positions, although some of the 23 percent who reported they were not practicing law were still employed in law-related positions.

Sixty-five online survey participants answered the same set of questions posed to the women participating in the focus groups. The online participants are, on average, 51 years old, graduated law school, on average, in 1994, and have an average of 21 years of practice experience. These women are 11 percent Asian, 52 percent black, 20 percent Hispanic/Latinx, and 17 percent multiracial or multiethnic. About 68 percent of the women in the online sample are married or partnered, 18 percent are divorced or separated, and 14 percent are never married or single. They have a median of one child, and about 23 percent have no children. About 73 percent reported they were currently practicing law,

although many of the 27 percent who reported they were not currently practicing law were still employed in law-related positions.

Questions Asked

The questions asked of the participants were designed to elicit narratives about both the experiences of women of color in law, as well as their decision-making processes throughout their careers. We focused our questions on how women saw the arc of their careers (e.g., What has your general experience practicing law been? What have been the best/worst parts?), as well as the influence of specific variables (e.g., family, personal characteristics) and influential figures (e.g., mentors, parents) on their career trajectories. The women engaged the most with questions about their experiences relative to others in the legal profession, particularly white men and women, the barriers they consistently faced throughout their careers even after advancement and success, and whether they had ever considered leaving the legal profession, why they had considered it, and why they ultimately stayed. In both the focus group and online survey versions of the study, the participants were given space to interpret the questions and respond in their own words.

Of special note, in the focus groups, the participating women seemed to engage most and seemed to benefit most from sharing experiences with each other. The facilitators observed that the women were able to comfort and commiserate with one another in ways they reported they were not able to regularly in their workplaces where most of them were one of few women of color. This highlights the importance of giving space for underrepresented groups in law to find community with like others who can identify with their lived experiences more closely.³⁵ And legal employers should realize the benefit of giving an outlet for these individuals to voice their frustrations and concerns,³⁶ which may provide support that enables women of color, for example, to stick it out longer in an environment that is not yet completely hospitable to them. One of our participants expressed it this way:

“As I hear others speak about how they realized what we were up against, I wish I’d had this conversation with all of you about 20 years ago because I have been able to place in context my experiences and have been validated by things that you have all said.”

—60-YEAR-OLD ASIAN WOMAN

Women of Color Continue to Experience Barriers and Bias, Consistent with Existing Research

Bias and Stereotyping

As established by past research, much of which is discussed and cited above, our participants again consistently reported experiences with bias and stereotyping based on their identities as women, people of color, and women of color. Nearly all of our participants mentioned that they had experienced bias and stereotyping during the course of their legal careers. In addition, our participants, like those who have participated in past research, shared experiences like the following to highlight the role of bias and stereotyping in their lives:

“Some of the barriers you can’t do [anything] about—like the (mis)perceptions people have in their own minds about your race or your sex or your background. So you start by having to overcome those negative assumptions, stereotypes, and presumptions. And then there’s the “black tax” of having to demonstrate outsized achievements just to get the same opportunities as everyone else. It’s not by accident that at the firms at which I worked, every single black associate had at least two Ivy League degrees. Majority associates? Not so much.”

—LATE 40S BLACK WOMAN

• • •

“The bias that I face as a woman of color has become the elephant in the room. It means that I have to keep proving myself to clients, peers, superiors, subordinates, even after each success. Sometimes others assume that I am not a threat because they don’t see me as real contender for business or leadership roles. I am not seen as a viable team member until I prove that I am. Then, even once I get buy-in from others, there are those who doubt my abilities or wait for me to fail. I feel like I have to try harder than white [men]. I feel like people don’t give me the same tools to succeed or excel. I have to make my own way without these tools for success. I face adversity even when I try to be normal. Being content is not an option for me.”

—EARLY 40S BLACK WOMAN

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“I think judges expected me to be dumb and unprepared. They compliment me as if I am an exception. I have judges trying to correct my English skills. I had a prosecutor infer I was “illegal.” I saw this happen to other women of color. One of the smartest women I know stopped practicing in immigration court because of the way she was undermined. The judges would only talk about her hair style and not about the quality of her argument. I have heard judges complain about women being “bitchy.” A judge in our jurisdiction denied a continuance for a woman who had just had a baby, and when she appeared with baby in tow, he held her in contempt. On numerous occasions male colleagues have resubmitted something that I prepared in a case and were granted while I was denied the exact same submission.”

—55-YEAR-OLD LATINX WOMAN

In line with forthcoming research from the ABA that highlights the ways that differences in the experiences of white women and women of color are often under-recognized,³⁷ it is important to note that in discussing the experiences of women of color, particularly the ways that bias and stereotyping may manifest in their working lives, it is important to also acknowledge that the experiences of women of color of different backgrounds are also not a monolith. In other words, while women of color (including but not limited to Asian, black, and Latinx women) may share some experiences compared to white women, they also have experiences that are distinct from each other. Our participants included Asian, black, Latinx, and multiracial women, and these distinctions between their experiences based on their particular identities are captured in the below quotes:³⁸

“Many men still see minority women (especially Hispanic women) as docile and assume we will follow their lead in order to keep our job.”

—60-YEAR-OLD HISPANIC/LATINX WOMAN

• • •

“[Asian women] are seen as quiet, docile, amiable, conflict averse. The opposing lawyer trying to get his way is all the more outraged to find that I do not conform to his preconceived (and wrong) beliefs.”

—50-YEAR-OLD ASIAN WOMAN

• • •

“I was not just a pushy woman but an aggressive black woman. If I suggested a new path, I was told I was being ‘argumentative’ even if the suggestions were valid. If I stayed quiet, I wasn’t adding value. My hair choices were scrutinized. I was called ‘articulate’ and ‘token.’”

—39-YEAR-OLD BLACK WOMAN

• • •

“Of course my experiences differ from men’s experiences, but they also differ from the experiences of white women, who, after all, can still be analogized to daughters when those in positions of power are looking for a basis on which to connect with someone. The black and Latina women in the lives of privileged white men and women might be nannies, housekeepers, doormen, or other household employees. We certainly do not feel analogous to their children, and we most assuredly do not feel like their equals.”

—MID-40S BLACK WOMAN

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“The African American woman was being marginalized because the men perceived her as being in their face and being too outspoken. The Asian American woman couldn’t get noticed, couldn’t get a seat at the table.”

—68-YEAR-OLD ASIAN WOMAN

• • •

“White women . . . are saying show up and be your true authentic self. [But women of color] have to morph to what society wants from us, whether it’s to make yourself bigger or to make yourself smaller. You’ve got to fit the square peg into the round whole. White women now have more of an opportunity to be vulnerable and be themselves and to do all of that and to be respected for it. So [women of color] are still behind the curve.”

—43-YEAR-OLD ASIAN WOMAN

Our participants reported being aware of the stereotypes that are associated with their groups, and they acknowledged the tightrope they often have to walk to avoid confirming negative stereotypes that might adversely affect perceptions of their job performance. They also reported trying to avoid creating backlash by deviating too strongly from expectations of them as women and women of color. Social science research confirms this tightrope and potential for backlash, highlighting that women face gendered stereotypes that they are less competent, ambitious, and competitive than their male counterparts, but in order to succeed professionally, they often need to be exactly those things.³⁹ Unfortunately, given the prescriptive nature of gender stereotypes that tell women (and men) how they should be, women who are competent, ambitious, and competitive often face backlash for violating stereotypes of women.⁴⁰ And these effects can be complicated by the intersections of race and gender, such that women of color experience different versions of this tightrope and backlash effect based on their specific identities and in ways that often differ from each other and white women.⁴¹ This highlights, again, the importance of considering the experiential nuances of women of different racial/ethnic backgrounds. Our participants shared their experiences with this:

“I feel as if men are not counseled about their tone or dismissed when they provide a contrary opinion. I feel as an attorney who is female, I am doing my best not to offend others or be dismissive of different points of view to avoid being perceived as difficult or shrill.”

—39-YEAR-OLD BLACK WOMAN

• • •

“I definitely feel that strong women have to be careful. It is definitely a double-edged sword being a strong advocate for your clients, which can alienate your opposing counsel.”

—59-YEAR-OLD LATINX WOMAN

• • •

“I was always considered ‘aggressive’ or ‘not a team player’ when I performed just like my male colleagues.”

—39-YEAR-OLD BLACK WOMAN

• • •

“Men exhibiting confidence is applauded. Women exhibiting confidence is viewed as cocky or bitchy.”

—56-YEAR-OLD BLACK WOMAN

Finally, our participants also expressed frustration at the lack of awareness of both the existence and influence of bias and stereotyping affecting them as women and people of color. Again, they discussed how men often fail to see the influence of gender, white people often fail to see the influence of race, and people in general often fail to see how being a women of color uniquely affects their experiences in ways that are distinct from the impacts of gender and race on their own. This lack of institutional knowledge of the effects of the bias and stereotyping they face means they often suffer the consequences of these alone. This is complicated further by the often subtle, ambiguous ways that these biases can manifest, such as microaggressions⁴² and microinequities⁴³ that create some uncertainty as to whether bias is operating or not.⁴⁴

Our participants shared their experiences with these microaggressions and the consequences of negotiating how to respond to them:

“As one small example, African Americans are often told, and I have been told this literally thousands of times, ‘You’re so articulate!’ or ‘You speak so well!’ Why, thank you, that’s super nice, but is anyone surprised when white people know how to string together a sentence? It only ever seems to be a subject of pleasant surprise when it comes to people of color being able to do so. Why? Because the surprised person started with the assumption that we don’t have a solid grasp of the English language. Think what a handicap that is for a practicing lawyer. It’s huge! And that’s just one of many burdens we are obliged to carry. Every. Single. Day.”

—LATE-40S BLACK WOMAN

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“I have to prove myself over and over again. I share office space with a white male attorney. Even though my name is first on the door, people presume that I am his secretary. They have never presumed that he is mine.”

—EARLY-40S BLACK WOMAN

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“I just very recently finished briefing a motion where the other side, white men, had the gall to complain that somehow the referee was favoring my side, an all-female team by the way, led by me. I was able to point out that the referee in the oral argument had interrupted me 22 times as compared to the man only four times. When he referred to me, it was always [by my first name], whereas to the male it was Mr. So-and-So, consistently. So, it’s those little things. It seems little, but it’s not. It indicates the kind of condescension and lack of respect that we, that I feel that as a woman of color, I have to go up against all the time.”

—56-YEAR-OLD ASIAN WOMAN

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“I can be waiting in front of the prosecutor when another male attorney comes in and pushes his way past me. Even though the prosecutor knows I am next in line, he takes on the male attorney and the male attorney refuses to acknowledge me and does not care. But when I speak up, I get the ‘she’s a bitch’ look. Same happens with judges. Male attorney cases get called up before mine even if I was there first. Worse yet, despite having practiced for many years, I still get the ‘Are you the interpreter?’ question because they see me speaking Spanish with my clients.”

—54-YEAR-OLD LATINX WOMAN

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“Having to deal with assumptions of inferiority, intellectual or otherwise, and constantly having to prove myself no matter how senior or qualified or experienced I am is something my white male peers do not have to do. It is psychologically exhausting.”

—MID-40S BLACK WOMAN

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“I think when you’re an outlier and sometimes it is hard to know whether it’s because you’re a woman or because you’re a woman of color or a person of color. Sometimes you just don’t know which one it is.”

—56-YEAR-OLD ASIAN WOMAN

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“Men are seldom questioned when they convey information that the other side may not want to hear, nor are they mistaken for being the court reporter, the girlfriend of the defendant, the social worker, etc.”

—55-YEAR-OLD BLACK WOMAN

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“I’m sure no man has been called ‘little boy’ in open court or confused with the court reporter or legal assistant on a frequent basis or told what to wear in court (i.e., no pant suits if you want to appear lady-like).”

—42-YEAR-OLD LATINX WOMAN

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We’ve all asked, ‘Is it me?’ Then, I have a conversation with [other women of color] while it’s happening. Then I say, ‘Okay, I’m not crazy. It’s not just me.’”

—68-YEAR-OLD ASIAN WOMAN

Lack of Institutional Awareness and Support for Women/WOC

Particularly when discussing the policies and practices of legal organizations, our sample of women of color largely mirror the discussions captured in previous research, although they do recognize that the efforts made by legal organizations to support women are often realized disproportionately by white women. They see that more attention is being paid to women’s issues by the legal profession, but they also experience women’s issues being framed in a particular way that doesn’t necessarily address their challenges and concerns in the same way and that is not merged with addressing diversity more broadly or race specifically.

But despite the increased attention to women and diversity, our participants continue to point out the persistent inequality in distributions of resource and opportunities in the workplace. They called out the pervasive and resilient preferences for white men in particular, which translates into white men continuing to monopolize access to prime

work assignments, to the best mentors and sponsors with access and influence, and to insider information about the inner workings of the firm, often realized through socializing and relationship-building that continues to happen in male-dominated spaces, such as the golf course. Our participants talked about the persistence of the “Old Boys’ Club” and the ways that affinity biases and the choice to invest in people like oneself continues to shut women, particularly women of color, out of full participation and access in the legal workplace, leaving them looking in from the outside, lacking access to the resources and opportunities needed to thrive and succeed at the highest levels.

Experiences with Other Women

In 2016, the ABA Commission on Women in the Profession set out to study the dialogue (or lack thereof) between women lawyers of different racial and ethnic groups, particularly with respect to the role that race and ethnicity play in their experiences as lawyers.⁴⁵ The researchers held focus groups with a sample of 94 women (selected from a pool of 606 volunteers) that was 46 percent white women and 54 percent women of color from across the legal profession. This study also confirms many of the same findings reported in *Visible Invisibility* about 14 years ago, but it adds detail about how women of various racial and ethnic groups feel about acknowledging and talking about race and its impact on their experiences in the legal profession. Some of the insights highlighted in the report include that women of color report that white women often prioritize a focus on women’s issues, which are often framed around and primarily benefit white women, to the exclusion of addressing the distinct challenges of women of color. Further, women of color report experiencing a dismissal of intersectional approaches to women’s issues that would acknowledge that women of different racial and ethnic backgrounds have different experiences, thereby further silencing women of color as the, albeit still small, advances of women in law go disproportionately to white women.

The present study adds to the experiences of women of color and their interactions with each other and white women by capturing that some women of color reported learning early in their careers that they shouldn’t assume they would automatically have allies in other women. When asked about individuals who had an influence on their careers (positively or negatively), our sample of women of color were most likely to name white men or people of color as those formal and informal mentors, sponsors, and cheerleaders who helped pull them up or push them along the paths of their careers. And some of these same women offered anecdotes about their experiences with women senior to them, who not only did not serve as positive influences on their careers, but who were perceived as actively not supporting, if not actually working against, the success of our participants. For example:

“Despite working on a team headed by a woman, there existed (in my opinion) a bias towards the white women on the team who often received better assignments, better mentorship, and greater visibility.”

—41-YEAR-OLD BLACK WOMAN

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“We have had female clients [accept] the [same] information and advice without much hesitation from a male [attorney] [but engage in] constant debate [when it is offered by] a female member of our team.”

—42-YEAR-OLD BLACK WOMAN

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“While sexism was a common thread, my white female counterparts didn’t have to deal with the elements of race. Moreover, they also benefitted from the racial hierarchy. They didn’t have a presumption of being angry if they were focused on work and not chit-chatty. When white women leave the profession I hear it is because of balance and cultural issues. When people of color, especially black and Hispanic, attorneys leave our firms I heard people have discussions about whether they were qualified to begin with. More dishearteningly, I have watched white women not address intersectionality or issues of race as part of women’s initiatives and at times downplay them.”

—EARLY-40S BLACK WOMAN

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“I feel white women have more choices. They seem to succeed more than we do, but [women of color] are so few in number that it’s hard to tell. And when [white women] are in power, they often become similar to their male counterparts—they don’t necessarily go out of their way to promote other women and certainly not women of color.”

—55-YEAR-OLD BLACK WOMAN

What these findings highlight is the need to dig deeper into understanding the ways that women of different backgrounds experience the legal profession. In addition, as women slowly make their way into more leadership positions in the legal profession, those women who have achieved access to decision-making roles need to examine what role they may play, even if unintentionally, in replicating the status quo and gatekeeping in ways that continue to leave women, and particularly women of color, out.

Should I Stay or Should I Go? Insights from Women of Color Who Stay

As part of the ABA’s *Achieving Long-Term Careers for Women in Law* Initiative, this study set out to ask why women stay and leave the legal profession. While we sought out women of color who had left the legal profession, we found women of color participants who had largely decided to stay in the profession despite a large majority of them reporting that they had considered, sometimes regularly, leaving the profession. But data from existing research suggest that women and lawyers of color do leave the profession in large numbers. Using numbers from the 2018 Vault/MCCA Law Firm Diversity Study,⁴⁶ for every 100 associates, about 14 are women of color and 32 are white women. Assuming the associate numbers as a baseline, when we consider nonequity partners, for every 100, only about five are women of color and 25 are white women, suggesting that about one-third of women of color associates make it to nonequity partner but three-fourths of white women associates make it. Finally, at equity partner, for every 100 equity partners, only three are women of color and 17 are white women, suggesting that about one-fourth of women of color associates make it to equity partner and one-half of white women associates make it. These numbers correspond with the finding that 46 percent of white attorneys are partners, while only 26 percent of attorneys of color are.⁴⁷ Taken together, this means that women and women of color and attorneys of color are all leaving law firms in significant numbers, even though we were not able to capture them in our sample. While this dampens our ability to dig deeply into the reasons why women of color leave the profession per se, we are uniquely positioned to talk about the reasons why women of color consider leaving and why they ultimately decide to stay.

Most Women of Color Consider Leaving the Legal Profession

“I actually have a file folder that says all the reasons I need to leave, and there are emails, and sometimes I print them up, and I put in there so that whenever I do leave and I do that exit interview, I don’t forget, not one thing that I could tell them as to why.”

—BLACK WOMAN

It has been suggested that three factors that influence a woman's decision to stay or leave a legal job or the profession entirely include (1) Is the work intellectually challenging? (2) Are her contributions valued? (3) Can she reasonably manage her personal and professional responsibilities?⁴⁸ Our data suggest that most women of color consider leaving the legal profession, which is in line with previous research that has shown that women of color are more likely to report seriously considering leaving their law firms.⁴⁹ In our sample, 70 percent of the women reported leaving or considering leaving the legal profession. In line with the factors listed above, the women of color in our sample who reported leaving or considering leaving explained that the motivation for such considerations came down to feeling undervalued and/or facing barriers to advancement in their careers, particularly as a result of being women and women of color, and that the norms and expectations of the legal profession often interfered with their ability to manage their personal and professional responsibilities.

As mentioned previously, our sample likely uniquely captures a group of women of color who have contemplated leaving the profession but who have largely decided and have been able to stay. The statistics on the representation of women of color across the legal profession suggest that women of color do in fact leave (particularly law firms), both voluntarily and involuntarily, in significant numbers, and this issue needs to be studied more. On the other hand, our sample of midcareer women of color reflects the population of women who have survived the various pressures to go. As a population of women of color who have been practicing for 15+ years, they have survived the ups and downs of a legal career to achieve partnership and senior levels in their legal organizations, and still most of them report considering leaving and most of them continue to stay.

Why Do Women of Color Ultimately Stay in the Legal Profession?

Even after explaining the many reasons why they considering leaving, the women of color in our sample provided three basic reasons for the persistence in the legal profession: (1) they enjoy the work (often despite the environment), (2) it makes financial sense, and (often related to finances) (3) aspects of their personal and familiar lives may require or encourage it.

Previous research has shown that women of color lawyers are more likely to be single than white women lawyers⁵⁰ and that women of color, particularly black women, are more likely to be the breadwinners in their families than white women.⁵¹ In addition, previous research has also shown that women of color report having different work-life needs and challenges than white women, and these different needs and challenges do not fit the conceptions that law firms expect. For example, women of color were more likely than white women and men to report having extended family responsibilities, and black women in particular were more likely to report participating in community activities as a personal responsibility.⁵² Further, as mothers, women of color are less likely than white women to use a babysitter for childcare and are the least likely to cite a spouse/partner as a resource for childcare compared to other groups. They're also less likely to employ

service providers for domestic help than white women.⁵³ In total, this means that women of color are more likely than white women and men to be directly involved in executing the details of care for their families and their households.

Taken together, previous research has shown the financial and familiar pressures on women of color, particularly black women, that often differ from those experienced by white women in particular and that can contribute both to pressures to stay or leave the legal profession. The assumptions and expectations of many legal environments fail to recognize that different family structures, needs, and priorities create distinct challenges for maintaining a personal and professional life that differ not only for men and women, but also for women of different backgrounds.

Why Women of Color Stay: Love of the Law

The legal profession is clearly missing an opportunity when it fails women of color who love being lawyers but who are driven out by lack of opportunity or difficult workplace cultures. Many of the women of color we spoke to expressed that they have stuck with the legal profession, in large part, because they enjoy the substantive work of being a lawyer. As suggested above, being intellectually challenged by the work plays a significant role in whether women will continue to engage with it.⁵⁴ Our participants reported that they enjoyed the problem-solving and helping nature of legal work, that they had always wanted to be a lawyer, and that they enjoyed the prestige and status that accompanies being a lawyer. When asked about their overall experience practicing law, a majority of the women of color in our sample expressed at least some positivity in their overall experience, and they expressed that in the following ways:

“I’ve generally had a good experience practicing law. I enjoy continuously learning, growing, and being challenged.”

—49-YEAR-OLD BLACK/MULTIRACIAL WOMAN

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“The practice law is educational and rewarding. . . . The best part of practicing law is using the information to educate and empower my community.”

—64-YEAR-OLD BLACK WOMAN

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“For the most part I believe it’s been a good experience. I’ve enjoyed the intellectual challenges the legal profession has provided for me and helping people, some of whom would not have had access to the legal system but for my assistance.”

—61-YEAR-OLD BLACK WOMAN

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“I enjoyed using my brain to solve complex problems for my clients.

I love the nuances and strategy involved with litigating cases and conducting investigations. . . . I enjoy grappling with the gray areas to provide the best legal advice to help my clients achieve their goals; it feeds my inner nerd’s soul. I enjoyed the teamwork and the client service piece—meeting and exceeding client expectations. I also enjoyed the travel—going to different countries and experiencing different cultures. I also like mentoring younger lawyers and seeing the evolution of the practice of law through their younger eyes. Helping them to avoid some of the missteps I made and helping/empowering them to reach even higher heights and watching them succeed is very satisfying.”

—MID-40S BLACK WOMAN

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“I have immensely enjoyed the practice of law. It brings me so much personal fulfillment when I meet certain milestones in my career. When I hit these milestones, I have more passion to keep going and keep advancing. I also like learning and mastering new challenges and the practice of law allows me to do this at every stage of my career. I’m still learning new skills today.”

—EARLY-40S BLACK WOMAN

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“Nothing can actually stop me. I went home and cried angry and indignant tears often. I love what I do, and I worked very hard to get where I am. There is literally nothing they could have done short of killing me that would have resulted in my quitting the law.”

—55-YEAR-OLD LATINX WOMAN

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“I enjoy being a lawyer and helping people. It is such a big part of my identity.”

—41-YEAR-OLD LATINX WOMAN

• • •

“I LOVE the law. I, for the most part, LOVE what I do. And I wanted to be a lawyer since I was seven years old.”

—63-YEAR-OLD BLACK WOMAN

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“I would say that in terms of my experience with substantive law, it’s been highly rewarding; it’s been intellectually challenging, stimulating. I felt like I worked in a lot of areas where we were breaking new frontiers, so I felt like I practiced law substantively at a very high level.”

—68-YEAR-OLD ASIAN WOMAN

Why Women of Color Stay: Financial Needs and Desires

The need or desire to make a good, professional salary was cited often as an additional reason beyond substantive interest in the law for pursuing a career in the legal profession. It is increasingly the case that first-generation lawyers and lawyers of color carry more student loan debt coming out of both their undergraduate and law degree programs than their white peers.⁵⁵ This disparity will continue to put additional pressure on first-generation lawyers and lawyers of color in particular to pursue legal positions where earning potential is higher, particularly Big Law jobs, although these higher-paying jobs may be exactly the environments that are the least welcoming to these same lawyers.

In addition, while many studies suggest that white people may be more likely to provide financial support to family members on average through, for example, financial support of their young adult children, people of color who attain some financial security have been shown to face the financial burden of giving and lending money to a broader network of poorer relatives, which has been shown to harm the stability of their financial position and is said to partially explain the race-wealth gap.⁵⁶ Further, this same research has shown that as income goes up for professionals of color, they give more to their family networks than their similarly compensated white counterparts.⁵⁷ This dynamic puts pressure on people of color who attain the professional status to make middle- or upper-class salaries to continue making those salaries in order to provide support to their families and communities. This experience was shared by our participants.

“I was very serious about my career—it was a matter of life and death for me. It meant getting out of poverty for my family.”

—LATE-50S LATINX WOMAN

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“I wanted to quit many times on the way to partner but never thought that was truly an option given my financial responsibilities.”

—MID-40S BLACK WOMAN

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“I have considered leaving the profession, but I need the money.”

—54-YEAR-OLD LATINX WOMAN

• • •

“I stayed in the legal profession because my survival was dependent upon my earnings. I had to keep my legal job to financially support my children and myself.”

—65-YEAR-OLD BLACK WOMAN

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“I thought about it time to time, but I’m the sole breadwinner in my family. I don’t really have that luxury. I suppose I could if I sold the house and we moved to some place that had a very low cost of living then I could probably swing it.”

—56-YEAR-OLD ASIAN WOMAN

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“I have to pay bills. I’m a single mother of two children. . . . I was the breadwinner of my past marriage, so I’ve got bills to pay. So I can’t really leave.”

—ASIAN WOMAN

In addition, many of our participants discussed how the financial needs and desires of a middle-class life, including education for children and other markers of middle-class status, required that they maintain their legal professional careers and the corresponding income in order to maintain their current quality of life. Given that the women in our sample are often from families with no or few lawyers in the family, many of them experienced wanting to live a quality of life that was not available to them in the same way during their own upbringing. Further, they enjoyed the perceived freedom that their legal professional careers and salaries provided them to do things in their lives that they maybe would not have been able to do otherwise, even if this same career path has constrained them in other ways.

Why Women of Color Stay: Family and Community

In addition to financial needs and wants of lawyers of color, previous research has also shown that people of color are more likely to provide assistance to family members, including extended family; are more likely to have frequent contact with extended family; and are more likely to support folks in their broader communities, including their religious congregations.⁵⁸ Further, research has shown that women of color are more likely to provide practical support to family, including help with transportation, household work, and childcare, and the greatest differences appear when comparing the support provided by black women compared to white women since men of both groups are more similar to each other than they are to the women in their racial group.⁵⁹

As mentioned previously, women of color, particularly black women, are also more likely than white women to be the primary breadwinners and caretakers for their families. Historically, black women have always had the highest levels of labor market participation compared to others, particularly white women, and their participation has been less affected by marriage, child-rearing, and other familial events that often lead women to leave the labor force. This coupled with the enhanced support for their extended families and communities means that the familial and social network structures of women of color often look different and demand different things than they do of white women. Our participants shared their experiences to this effect:

“Looking back, since I have been at the same law firm for 27 years, I think I have limited my earning potential. I declined the partnership track because I became pregnant with my son. As a single parent with an elderly mother, I chose to stay at the firm because they were family oriented.”

—59-YEAR-OLD LATINX WOMAN

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“Support systems for women of color often come from familial support, but often the family is pulling financially rather than pushing. Thereby, forcing a ‘no option’ scenario [where the only choice is] to move forward in doing the work, caring for family and friends with less support.”

—42-YEAR-OLD BLACK WOMAN

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“I was the primary caregiver for my dad and shared caretaking for Mom. It took time away from work and added major worry. There was no support for this.”

—55-YEAR-OLD MULTIRACIAL WOMAN

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“I had significant responsibilities to care for my mother . . . who passed at a relatively young age.”

—MID-40S LATINX WOMAN

Further, past research has found shown that women of color are quite aware of the ways that the cultural norms and expectations about negotiating family and work in the legal profession is informed by models set by white parents and families. Thus, women of color may find themselves pulled by family obligations, such as to extended families or financial support to a wider array of family members, that are not recognized as family matters that are allowed to interfere with or be balanced against work.⁶⁰

In addition to supporting their families and communities, our participants often discussed the need to stick it out in their respective legal professional spaces in part because they understood the significance of representing women of color in a space where they are largely still absent. Research has shown the power of having gender- and race-matched role models and mentors available in educational and professional settings, and it is clear that younger people entering these spaces perform better and persist longer when they can see themselves in the more senior ranks. Our participants both acknowledged that they mostly did not have this when they were younger attorneys, and this reinforced for them the importance of playing that role now that they had the ability to do so. This pull to be available as role models and mentors, in representational and interactive ways, was enough for some women to overcome their own personal struggles that seemed to be pulling them away from the legal profession. For example:

“At times, it feels like the weight of the world is on my shoulders. But I keep going because I know that this is a path that we are all paving for the women of color who come after us. We are doing this for ourselves and for our daughters (and sons).”

—EARLY-40S BLACK WOMAN

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“You end up protecting a lot of people because you see stuff from a lot of different [perspectives]. And people come up to me every day [and say], ‘if you leave, if you leave, we’re out of here.’ So I think about it like [this is how] change has come in this society, there [are] a lot of people [who] have had to sacrifice what they really wanted to do for themselves for the greater good. It’s bigger than me. It’s about what I want to leave my children, my grandchildren, so I stay in it.”

—45-YEAR-OLD BLACK/MULTIRACIAL WOMAN

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“My negative experiences did not and will not affect my willingness to continue to practice law but it does make me conscious of my responsibility to help younger attorneys to avoid and adapt to those types of negative experiences.”

—63-YEAR-OLD BLACK WOMAN

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“I also feel that we are responsible for trying to create a career and legacy that we can be proud of. I don’t want to just show up at the office. I want to make a difference in the community and to become the best lawyer that I can be.”

—45-YEAR-OLD BLACK/MULTIRACIAL WOMAN

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“I refuse to leave because my continued presence is beneficial for younger generations. I also try to be the mentor that I wanted when I started out. My daughter should NOT have to deal with the same crap that I have.”

—42-YEAR-OLD LATINX WOMAN

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“[I have this sense of] obligation to stay within the system to try and change the system. . . . For me it was this sense that we need to bring more women of color in particular into law. That’s why I stayed to try and do that.”

—ASIAN WOMAN

Recommendations

The results of the present study add to the literature on women of color in law that began with *Visible Invisibility* in 2006, revealing that 14 years later, in most substantive ways, little has changed for women of color in the legal profession. They continue to feel as though, by virtue of their race and gender, they are left standing on the outside of even the small advances made by white women. Despite the authors of *Visible Invisibility* calling out the need to pay attention to the unique challenges and barriers faced by women of color more than a decade ago, the profession has largely continued to ignore their plight.

The present study reveals just how much opportunity the legal profession is missing when it fails to retain even more women like those in our sample, women who are committed to the law and who find that being a practicing lawyer, in many but not all ways, helps them support their personal and familial lives financially and otherwise. This study and previous research make clear that the legal profession continues to fail at retaining women of color due to stubborn barriers to advancement that result both from the traditional requirements of success in legal practice, as well as an exclusive professional culture that continues to reflect a narrow set of norms, assumptions, and expectations at odds with an increasingly diverse world.

While many previous publications have offered recommendations to the legal profession on how to address the lack of significant progress for women and diverse attorneys, we will reiterate a few below. But, more important, it is time for the legal profession to move beyond diversity as representation and changing policies and practices on paper to changing the culture and experience of the legal profession in ways that will better support a diverse population of attorneys, particularly women of color.

Structural Change: Adopt Best Practices for Reducing Biases in Decision-Making

Most of the focus on recommendations for addressing the attrition of women, women of color, and diverse attorneys more broadly focuses on examining workplace practices for inequities, including asking who gets access to which resources and opportunities and on the basis of what criteria. In other words, interventions are increasingly focused, as they should be, on examining the structure of decision-making processes and the distribution of opportunities and resources and the outcomes they produce. This focus is motivated by the realization that many practices, policies, and procedures, particularly of law firms, are out of step with the evolution of best practices in the corporate world at large and that many of these very practices, policies, and procedures are ripe for bias, if not built at one point to be biased, particularly against underrepresented groups.

There has been some early-stage discussion in the legal profession about revising the policies, practices, and procedures that inform the various decisions that are consequential for advancement and success in the legal profession. The ABA took on this topic directly in their recent report *You Can't Change What You Can't See*,⁶¹ which focused on the ways that subtle, often implicit, biases creep into the workplace culture and decision-making processes of legal organizations. The report focuses on relaying best practices, at this point well-known in other professional spaces outside of law, in hopes of reducing the influence of bias and nonsubstantive preferences on outcomes, such as increased monitoring of work distributions, randomization of work assignments, equitable distributions of the prime assignments, and more standardized, less subjective decision-making processes. Using this ABA study as a model, another recent study⁶² asked law firms whether they were in fact engaging these bias-interrupting practices, and the data show that firms reported that they were still most likely to be engaging in displaying and announcing their commitment to diversity and inclusion while being much less likely to be changing the structures of their decision-making processes in ways that interrupt bias. Clearly, more work, then, needs to be done to move beyond commitments to diversity and inclusion that are not followed up with effective action to support those commitments.

The need to address these decision-making processes is highlighted by previous research that has shown that high levels of subjectivity in promotion standards, selection for assignments, compensation decisions, and performance appraisals are often colored by stereotypes and serve as institutional and structural barriers to the advancement of women of color⁶³ and other underrepresented attorneys. And women of color are acutely aware of the consequences of these decisions, reporting in multiple past studies that they are less satisfied with their outcomes and their access, or lack thereof, to opportunities and resources necessary for advancement, including, for example, how client-service assignments are distributed and the access they have to working with high-profile clients.⁶⁴ Further, no more than 21 percent of surveyed attorneys of all races and genders believed that supervising attorneys are held accountable for developing and advancing women and diverse attorneys, and no more than 19 percent believed that supervising attorneys received any training on how to manage a diverse workforce.⁶⁵ These perceptions are supported by recent findings from the National Association of Women Lawyers (NAWL) that firms are less likely to engage in bias-reduction efforts that require managing the discretion of decision-makers or otherwise checking the decision-making processes of these actors.⁶⁶ Taken together, these results highlight the need for serious consideration of who is making decisions, how they're making decisions, and whether these decisions adequately consider the potential for biases.

Improve Access to Effective, Engaged Mentors and Sponsors

“Though not called mentoring, men were mentored, over lunch, at the bar over drinks, at the coffee truck. I could hear them getting advice, see them being set on the right path.”

—52-YEAR-OLD BLACK/MULTIRACIAL WOMAN

A consistent finding from the present study and past research is that women of color experience difficulty in getting access to mentors or sponsors who serve them in ways they see white men in particular being served by these relationships. Interestingly, women of color often report being more likely to have mentors than others,⁶⁷ which is likely the result of the legal profession recognizing on some level that diverse attorneys, including women of color, may benefit from formal mentoring programs that ensure that they will have access to mentors rather than relying on informal processes to produce these relationships. But women of color report that even though they are more likely to have these mentors, their mentors are less effective and less likely to have influence at the firm, which are precisely the characteristics that often separate a mentor from a sponsor that actively advocates for the person in ways that may help them advance.⁶⁸ In other words, women of color are especially likely to report that they lack access to mentors or sponsors who are well-connected and have power and influence to both clue them into important dynamics of the workplace and effectively advocate for them.

Beyond formal mentors, lawyers of color have also reported that they are less satisfied with their access to and support from more informal networks and relationships, including access to information about what is going on at the firm and opportunities to interact in more informal and/or social ways with partners and supervising attorneys.⁶⁹ Women of color have also reported being left out of relationship-building at the firm, reporting that they have the least access to senior attorneys and colleagues compared to white women and men.⁷⁰ These conditions create barriers to advancement because of the importance of relationships in building business and the importance of being assessed positively and supported by superiors as one advances in their careers.

These experiences with mentors and relationship-building highlight the importance of considering the structures for creating, facilitating, and maintaining formal and informal relationships for attorneys throughout their career, particularly populations like women of color who experience more difficulty forging engaged relationships that lead to effective mentorship and sponsorship and feelings of belonging in the community. Taken with previous research showing that formal mentor programs for diverse attorneys may mean that these attorneys are more likely to report having a mentor, it is important for the legal profession to go beyond the formal relationships as assigned on paper through formal programs to considering how to better set expectations for the mentors about their engagement and how to better foster the substantive, engaged relationships that produce effective mentorship experiences and outcomes.

Go Beyond Recruitment

At this point, most employers, including legal employers, seem to understand diversity as it comes to recruitment and representation, but they continue to fail to understand the necessity of a focus on inclusion and retention. In other words, they understand and possibly value representational diversity, but they lack sufficient understanding of how to retain the diverse populations they are recruiting.

The population that many legal employers, particularly law firms, recruit heavily from for new hires are recent law school graduates, and over the years the representation of women has reached 50 percent and the numbers of racial/ethnic minorities has also increased significantly. While the legal profession, including law firms for which we have the best numbers, have gotten better about creating entry-level cohorts that reflect this increasing diversity, the profession has not gotten better at retaining this diversity as these lawyers advance through their careers. It remains true that women and attorneys of color leave the legal profession in large numbers, and it also remains true that there is still more that needs to be understood by the legal profession about what they are doing (or not doing) that facilitates or fails to prevent attrition of the very populations of attorneys they now spend so much time, energy, and money recruiting at the entry level.

All of this is to say that the legal profession has hit the point where it should be recognizing that diversity at the recruitment stage is necessary but not sufficient to create long-lasting diversity in the profession. Further, the legal profession needs to look beyond diversity toward inclusion to fully address the continuing lack of diversity in the profession, particularly beyond the first few years of one's legal career. Our study and past studies have highlighted that while representation matters to women of color, that is seeing others like them, having access to mentors or role models who look like them, what they want is not just a handful of faces that look like theirs but workplace and professional cultures that value and incorporate them. In other words, they want inclusion, and they often find themselves choosing to sacrifice themselves to a noninclusive culture in order to meet other personal and professional goals, but this is a choice that their white colleagues, particularly their white male colleagues, often don't have to make.

Incorporate an Intersectional Approach to Addressing Diversity and Gender

“I think that white women do want to align with women of color on gender. I also think that a lot of white women are blind to their whiteness. But if they’re not blind to their whiteness and they understand that aspect of their identity, they can be really powerful allies. So, that’s always to me the challenge and the conversation to be had. I also agree that black women and Latinas and Asians, we’ve all had different histories in this country. We face different barriers in this country.”

—ASIAN WOMAN

The women in our sample regularly discussed the ways that gender and diversity initiatives in professional spaces often miss the complexities of their full identities by focusing on only one aspect at a time, often only gender or only race and ethnicity. Like our participants here, in *This Talk Isn’t Cheap*, a forthcoming report from the ABA,⁷¹ the women of color lament the ways they’re often told by women’s initiatives and similar efforts that gender comes first and/or that race and ethnicity is a distraction from getting work done on gender. And our participants experience this as a denial or ignorance of the ways that their experiences as women of color differ from those of white women in ways that have significant effects on their lived experience in the profession, as well as their ability to persist and achieve over the long term. Further, our mixed-race group of participants acknowledged that it is also important to move beyond a simple white and woman of color distinction, to acknowledge that even among women of color, there are often important and meaningful differences in their experiences that should be acknowledged and addressed.

To put numbers to the influence of intersectionality, when looking at pay inequality, it is easy to see how a singular focus on gender misses the nuances of gender by race intersections that tell a more complicated story about the state of women’s pay compared to men’s pay. In the general statistics that float around these discussions, women make about 80 percent of what men make, but when broken down by race and gender, the story becomes more complicated. Asian women make 85 percent of what men make, white women 77 percent, black women 61 percent, Native American women 58 percent, and Hispanic/Latina women 53 percent. Of course the reasons for these differences in the general numbers are due to multiple factors, but those factors are often gendered and raced. In other words, they’re intersectional.

Further, to highlight the blindness to intersectionality, in research on perceptions of pay inequality, White women are often less likely than women of color to perceive the gaps that exist between women of different racial backgrounds.⁷² They see the gender gap clearly, that is the gap between men and women, but they’re less likely to realize that women of color are paid less than they are⁷³ or otherwise experience the workplace or the profession differently due to the combination of gender and race. Further, white women have been shown to be less supportive of policies that focus on diversity rather than gen-

der when asked about policies that would support women. For example, only 52 percent of white women believed in making supporting or advocating diversity a criterion for compensation decisions for executives, but 67 percent supported legislation that ensures equal pay based on gender.⁷⁴ In other words, they were more likely to support policies that focused on gender specifically compared to ones that focused on diversity more broadly.

This continued blindness to or ignorance of the ways that gender and race (as well as other social identities) can interact to create distinct experiences will only lead the legal profession to fall further behind in their diversity and gender efforts, as the world at large takes more notice of these effects. In addition, the future of diversity work that increasingly focuses on more than mere representation and more on retention and inclusion will require intersectionality to be taken into account.

Create a More Inclusive Culture in the Legal Profession

“Because [law] leaders are dominated by white males, they don’t know what to do with women of color. The good ones want to be inclusive but have no idea what that means, and most are not willing to open up to get to know us or to include us in their worlds. It makes them feel good to have some of us there but not too many so they can still keep their distance.”

—MID-40S BLACK WOMAN

We close with a call for the legal profession to move to the next step of its diversity efforts toward inclusion, and true inclusion will require changes to the legal professional culture and the structure of decision-making in these spaces. And the importance of addressing culture cannot be understated, as no amount of fixing only policies, practices, and procedures can lead to the depth of change needed to achieve diversity and inclusion goals. Without cultural change, diversity efforts will stall in the very places they have already stalled in the legal profession. Any organization can have all the “right” policies in place, but that organization must begin to ask how those policies work on the ground and whether the workplace culture actually supports the use of these policies, practices, and procedures. Further, do policies, practices, and procedures take the role of workplace culture into account when they are written and implemented? In other words, culture interacts with structure, and both are needed for the deep, lasting change needed to create an inclusive legal profession.

As has been true on other points, our participants—experienced women of color lawyers—are quite aware of the consequences of ignoring culture and inclusion. Previous research has also shown that women of color are more likely to report that current law firm diversity efforts place too little emphasis on the quality of the work environment or workplace culture (34 percent of women of color versus about 16 percent of white men

and women).⁷⁵ And our participants mentioned again and again the myriad ways that the culture of the legal profession interfered with their abilities to succeed, to feel valued, and sometimes to persist in the legal profession. In other words, when identifying the root of the problem, our participants and others before them have consistently pointed to the culture of the legal profession as the biggest challenge to overcome. It is a culture that has continued to leave women of color out. It's well past time to let them in.

Endnotes

1. *Visible Invisibility: Women of Color in Law Firms* (2006), available at <https://www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility.pdf>.
2. *Id.* The ABA published a follow-up study under the same title but focused on women of color corporate counsel in 2012, available at https://www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility_500.pdf.
3. The ABA Commission on Women in the Profession has been conducting research related to women of color in law since 2003, when it launched the first research initiative aimed at exploring the unique experiences of women of color in the legal profession. More information on the ABA's Women of Color Research Initiative can be found at https://www.americanbar.org/groups/diversity/women/initiatives_awards/women_of_color_research_initiative. Additional data on representation and diversity in the legal profession is regularly collected and reported by The National Association for Law Placement (NALP), the National Association of Women Lawyers (NAWL), and the Minority Corporate Counsel Association (MCCA).
4. *See e.g.*, the 2019 NAWL Survey on Retention and Promotion of Women in Law Firms, available at <https://www.nawl.org/page/2018survey>.
5. For example, as part of the ABA's Achieving Long-Term Careers for Women in Law Initiative, in 2017 and 2018 the ABA held two national summits and featured programming at the annual meeting to discuss the issue of women leaving the legal profession, often at what should be the height of their careers, and what could be done about it. *See e.g.*, *Why Are Women Leaving the Profession Mid-Career? ABA Initiative Take Up Issue* (November 15, 2017), available at http://www.abajournal.com/news/article/why_are_women_lawyers_leaving_the_profession_mid_career_aba_initiative_hope; *Why Do Experienced Female Lawyers Leave? Disrespect, Social Constraints, ABA Survey Says* (August 3, 2018), available at http://www.abajournal.com/news/article/why_do_experienced_female_lawyers_leave_disrespect_social_constraints_ABA.
6. *See e.g.*, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice* (2019), available at https://www.americanbar.org/groups/diversity/women/initiatives_awards/long-term-careers-for-women/walking-out-the-door.
7. *Visible Invisibility: Women of Color in Law Firms* (2006) and *Visible Invisibility: Women of Color in Fortune 500 Companies* (2012).
8. *Id.*
9. *Id.*
10. *See e.g.*, the 2020 issue of the *Illinois Super Lawyers* magazine, which features a cover story entitled "The Face of a Lawyer: An Oral History of Trailblazing Women in Illinois Law" accompanied by a photo of five white women.
11. *Women of Color in U.S. Law Firms* (2009), available at https://www.catalyst.org/wp-content/uploads/2019/01/Women_of_Color_in_U.S._Law_Firms.pdf.
12. *Id.* at pp. 38–39
13. *Id.* at pp. 10–11
14. *Id.* at p. 5
15. *Women of Color in U.S. Law Firms* (2009) at p. 45
16. *Id.* at p. 43
17. *Id.* at p. 44
18. *Id.* at pp. 25–28
19. *Id.* at pp. 34–35
20. *Women of Color in U.S. Law Firms* (2009) at p. 30

21. *Id.* at pp. 14–15
22. *You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession* (2018), available at <https://www.americanbar.org/content/dam/aba/administrative/women/Updated-percent-20Bias-percent20Interrupters.pdf>.
23. *Id.* at p. 7
24. *Id.*
25. *Id.* at p. 9
26. *Minority Women Are More Ambitious* (January 30, 2019), available at <https://thecareerist.typepad.com/thecareerist/2019/01/the-paradox-of-minority-women-and-ambition.html>; citing to *Women in the Workplace* (2018), available at <https://www.mckinsey.com/featured-insights/gender-equality/women-in-the-workplace-2018>.
27. See e.g., *2019 NAWL Survey on Retention and Promotion of Women in Law Firms*.
28. See also *2018 Vault/MCCA Law Firm Diversity Survey*, available at <https://www.mcca.com/wp-content/uploads/2018/11/2018-Vault-MCCA-Law-Firm-Diversity-Survey-Report.pdf>, which showed that women overall have seen their numbers with respect to partnership and leadership positions increase slowly over time, but women of color are less likely to be realizing these gains compared to white women. In particular, among white attorneys, about 46 percent of white attorneys are partners while only 24 percent of attorneys of color are partners.
29. For more information on this ABA initiative, visit https://www.americanbar.org/groups/diversity/women/initiatives_awards/long-term-careers-for-women.
30. Available at https://www.americanbar.org/groups/diversity/women/initiatives_awards/long-term-careers-for-women/walking-out-the-door.
31. We thank the Georgia State College of Law for hosting focus group sessions conducted in Atlanta, GA.
32. We thank Northwestern University Pritzker School of Law and the National Asian Pacific American Bar Association (NAPABA) for hosting focus group sessions conducted in Chicago, IL.
33. We thank USC Gould School of Law for hosting focus group sessions conducted in Los Angeles, CA.
34. We thank Columbia Law School and the NYU School of Law for hosting focus group sessions conducted in New York, NY.
35. See e.g., *Two Sides of the Same Coin: Safe Space and Segregation in Race/Ethnic-Specific Law Student Organizations* (2013), available at https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1825&context=law_journal_law_policy.
36. See e.g., *Why Law Firm Affinity Groups Are a Valuable Resource* (October 23, 2008), available at <https://www.law.com/almID/1202425460077?slreturn=20200023201218>.
37. *This Talk Isn't Cheap: Women of Color and White Women Attorneys Find Common Ground* (forthcoming).
38. Most of our focus groups were run with mixed-race groups of participants, so it was hearing the experiences of women of different racial/ethnic backgrounds that often highlighted the ways that experiences could differ between these women of different backgrounds.
39. See e.g., *Backlash Effects for Disconfirming Gender Stereotypes in Organizations* (2008), available at http://rutgerssocialcognitionlab.weebly.com/uploads/1/3/9/7/13979590/rudman__phelan_2008._backlash_effects_for_disconfirming_gender_stereotypes_in_organizations.pdf.
40. *Id.*
41. See e.g., *Visible Invisibility: Women of Color in Law Firms* (2006) at p. 25
42. Microaggressions are subtle slights or snubs, often rooted in stereotypes or biased assumptions, that are directed at historically stigmatized or minority status groups. More information is available at <https://www.apa.org/monitor/2009/02/microaggression>. For more examples, see *Visible Invisibility: Women of Color in Law Firms* (2006) at p. 18

43. Microinequities, like microaggressions, are subtle slights or snubs that demean, dismiss, and marginalize others, but they are not necessarily rooted in stereotypes or social identities. More information is available at <http://mitsloan.mit.edu/shared/ods/documents/?DocumentID=4275>.

44. This uncertainty is also known as “attributional ambiguity,” which refers to a psychological state of uncertainty caused by being unable to determine or not confident in the attributions one makes about one’s treatment or outcomes. More information available at <https://psychology.iresearchnet.com/social-psychology/social-cognition/attributional-ambiguity>. The social science research on this attributional ambiguity shows that it contributes to imposter syndrome (i.e., a feeling that one is not qualified to be in a particular space or role), mental and emotional fatigue, lowered self-esteem, etc.

45. *This Talk Isn’t Cheap: Women of Color and White Women Attorneys Find Common Ground* (forthcoming).

46. 2018 Vault/MCCA Law Firm Diversity Survey at p. 4.

47. *Id.* at p. 5

48. *Retaining Women in Law Firms* (2018), available at <https://www.chambers-associate.com/law-firms/diversity/retaining-women-in-law-firms>.

49. *Women of Color in U.S. Law Firms* (2009) at pp. 38–39

50. *Id.* at p. 5

51. See e.g., *Breadwinning Mothers Continue to Be the U.S. Norm* (2019), available at <https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm>.

52. *Women of Color in U.S. Law Firms* (2009) at p. 45.

53. *Id.* at pp. 43–44

54. See e.g., *Retaining Women in Law Firms* (2018). See also, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice* (2018) at pp. 4, 9.

55. See e.g., *Black-White Disparity in Student Loan Debt More Than Triples After Graduation* (2016), available at <https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation>.

56. See e.g., *Depleting Capital? Race, Wealth, and Informal Financial Assistance* (2012), available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.839.7847&rep=rep1&type=pdf>.

57. *Id.*

58. See e.g., *Racial and Ethnic Differences in Extended Family, Friendship, Fictive Kin and Congregational Informal Support Networks* (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4116141/pdf/nihms591372.pdf>.

59. See e.g., *Kin Support among Black and Whites: Race and Family Organization* (2004), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1033.6362&rep=rep1&type=pdf>.

60. Past research has captured women of color discussing how their obligations and investment in extended family (e.g., cousins, nieces, and nephews), along with their commitments to their church and communities, are seen as strange by their colleagues. As these are not the norm among their white colleagues, their workplaces are not accustomed to making accommodations for these family responsibilities. *Women of Color in U.S. Law Firms* (2009) at p. 44–46.

61. *You Can’t Change What You Can’t See: Interrupting Racial & Gender Biases in the Legal Profession* (2018).

62. 2019 NAWL Survey on Retention and Promotion of Women in Law Firms at pp. 10–13.

63. See e.g., *Trading Action for Access: The Myth of Meritocracy and the Failure to Remedy Structural Discrimination; Why Are There so Few Black Lawyers in Corporate Law Firms* (2008), available at https://cdn.harvardlawreview.org/wp-content/uploads/pdfs/myth_of_meritocracy.pdf.

64. *Women of Color in U.S. Law Firms* (2009) at p. 44; *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice* (2019) at pp. 7–8; *Visible Invisibility: Women of Color in Law Firms* (2006) at pp. 19–20.

65. *Women of Color in U. S. Law Firms* (2009) at pp. 14–15.
66. *2019 NAWL Survey on Retention and Promotion of Women Law Firms* at p. 13.
67. *Women of Color in U.S. Law Firms* (2009) at p. 25.
68. *Id.* at pp. 25–28; See also, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice* (2019) at p. 8.
69. *Women of Color in U.S. Law Firms* (2009) at pp. 34–35; *Visible Invisibility: Women of Color in Law Firms* (2006) at p. 17.
70. *Women of Color in U.S. Law Firms* (2009) at p. 30; *Visible Invisibility: Women of Color in Law Firms* (2006) at p. 12.
71. *This Talk Isn't Cheap: Women of Color and White Women Attorneys Find Common Ground* (forthcoming).
72. See e.g., *You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession* (2018) at p. 9, where white women were more likely than women of color to say that their pay was comparable to similarly situated colleagues and less likely to say that they were paid less than similarly situated colleagues.
73. *Sisterhood in the Workplace Only Goes So Far When It Comes to Perceptions of Pay* (May 20, 2019), available at <http://www.morningconsult.com/2019/05/10/sisterhood-in-the-workplace-only-goes-so-far-when-it-comes-to-perceptions-of-pay>. A recent poll found that only 34 percent of white women think that women of color are paid less than white women for similar work; although 66 percent of white women think that women are paid less than men.
74. *Id.*
75. *Women of Color in U.S. Law Firms* (2009) at pp. 10–11.
- As above, these percentages are for women and men reporting that they are “extremely satisfied” or “somewhat satisfied” with the aspect of their work.
- See “2019 Client Advisory” by Hildebrandt Consulting and Citibank at 11 (reporting that in 2017, more partners were hired laterally than promoted internally). See also “Should Law Firms Be Clamoring For Diversity in Recruiters?”, *Law 360*, Oct. 4, 2019.

Acknowledgments

This research stems from the American Bar Association's efforts to focus on Long-Term Careers for Women in Law. The Initiative is co-chaired by Roberta Liebenberg, former Chair of the ABA Commission on Women in the Profession, and Stephanie Scharf, current Chair of the Commission on Women in the Profession. This report is part of a four-part study that also includes a joint ABA/ALMI survey of law firm attorneys and managing partners, a survey of law school alumni to generate data about the course of long-term careers for women and men, and a national focus group study to understand factors that affect women's long-term careers.

This report, *Left Out and Left Behind*, reflects key contributions from several people affiliated with the American Bar Association Presidential Initiative on Long-Term Careers for Women in Law. Aracely Muñoz, Wendy Shiba, Cyndie Chang, and Samantha Grant were instrumental in recruiting the 35 women lawyers of color who participated in person and 68 who participated via online survey. We would also like to acknowledge Lauren Bright, Rippi Gill, Helen Kim, Monica Parham and Kia Scipio for their assistance. We offer a special thank you to Stephanie Scharf, who worked with us every step of the way and remains completely invested. Ivory Mills, recent Northwestern University JD/PhD, helped recruit participants, program the online survey, and conduct the focus group sessions alongside Destiny Peery. Juana Haskin, Melissa Murray, Shaun Ossei-Owusu, Lauren Sudeall, and Franita Tolson helped reserve space to conduct the focus group sessions, providing an essential resource for conducting the focus groups in multiple cities.

We are greatly appreciative of the many contributions of excellent staff from the ABA, especially Katy Englehart, Melissa Wood, Jennifer Sawicz and Cecilia Boyd, whose commitment to issues about women in law made the initiative's activities flow smoothly. They made sure to solve any administrative obstacle with alacrity and enthusiasm. We also thank Marisa l'Heureux and Nick Panos, who ably assisted in the publishing process.

No initiative can be conducted without funding—and in this regard, many organizations and individuals gave generously to support the work of the ABA Presidential Initiative on Long-Term Careers for Women in the Law. The American Bar Association greatly appreciates the support of:

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