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Election 2016: An Analysis of the Role of Race at the Halfway Mark

By Kareem Crayton

As this frenzied primary season draws to a close, the respite before the general election begins in earnest to choose the forty-fifth U.S. president offers a chance for reflection and assessment. With several shocks along the road to the nomination, one of the more fascinating aspects of this process is the evolving, complex role of race and ethnicity in separating the victors from the also-rans.

On the Democratic side, the most unsurprising part of this campaign has been the extent to which African American voters shaped the contest for delegates. With the nation’s first African American president (who remained neutral) completing his final term, support from this solid Democratic constituency has been a focal point in the strategies of both Hillary Clinton and Bernie Sanders. Roberta Rampton, “Sanders Meets with Obama, Says President Will Remain Neutral in Primary Race,” Reuters, Jan. 28, 2016; Brooks Jackson, “Blacks and the Democratic Party,” FactCheck.org, Apr. 18, 2008. As was true in the 2008 campaign, the string of primaries starting in South Carolina (where African Americans are nearly half the electorate) supplied a delegate margin that ultimately determined the nominee. Nate Silver, “Black, Youth and Latino Turnout, and Obama’s Electoral Map,” fivethirtyeight.com, May 11, 2008. With a consistently strong performance among African Americans this time, Secretary Clinton developed a lead that has proven beyond the reach of Senator Sanders. Andrew Rafferty, “Donald Trump, Hillary Clinton Score Big Super Tuesday Primary Wins,” NBC News, Mar. 2, 2016.

The GOP, for its part, has followed a rather uncommon course in its primary contests. Amidst the uncertainty of having the largest field of candidates in the modern political era, mostly overlooked is that this year featured the most racially diverse group of Republican aspirants in the party’s history. Halimah Abdullah, “A More Diverse Slate of Republican Presidential Possibles,” CNN, Feb. 26, 2014. The top tier of candidates featured an African American along with two Latinos (both of Cuban decent). And these were far from fringe candidates—all of them were well funded and had gained notoriety among key party constituencies. In fact, these three candidates held the top spots in the field after the opening contest in Iowa, Iowa Republican Primary, google.com (last updated June 19, 2016). Compared with the Democratic side of the ballot, the Republican challengers were also more racially diverse and younger. Yet, none of these distinctions proved sufficient to overwhelm the most unconventional of nominees in history, billionaire (and political newcomer) Donald Trump.

Influencing both of the primary campaigns were policy issues related to racial and ethnic identity. Arguably the most pressing substantive difference between the parties was on immigration, which has been framed with reference to the Latino and Muslim groups. Donald Trump has made several controversial statements about deporting undocumented immigrants in
the country and (at least temporarily) barring entry both to visitors and immigrants based on religion. Alex Pfeiffer, “Who Is More Hardline on Immigration: Ted Cruz or Donald Trump?,” Daily Caller, Mar. 9, 2016; Press Release, Campaign of Donald Trump, Donald J. Trump Statement on Preventing Muslim Immigration (Dec. 7, 2015). In response, Clinton has pointedly criticized these ideas as insensitive to these communities and also inconsistent with core American principles of inclusion and pluralism. Janell Ross, “The Poignant Moment when Donald Trump’s Immigration Policies Were Made Real for All to See,” Wash. Post, Mar. 10, 2016.

Both contests have produced surprising results. Few might have guessed that out of the 17 Republican candidates, including many with long political résumés, Donald Trump would emerge as the presumptive nominee. And while she has now secured the Democratic nomination after a strong finish in the last round of primaries, Secretary Clinton has been surprised by a deceptively strong challenge from Bernie Sanders in several states, including Michigan and New Hampshire (two of the primaries Clinton won in 2008; see “Election Guide 2008: Democratic Contests,” N.Y. Times (n.d.)).

Notwithstanding the unpredictable nature of this presidential contest so far, much of what awaits in the general elections should come as no surprise. America’s voting age population has grown increasingly diverse, adding pressure on the GOP to reach beyond its traditional campaign model in national contests. William H. Frey et al., Am. Enter. Inst., America’s Electoral Future: How Changing Demographics Could Impact Presidential Elections from 2016 to 2032 (Feb. 2016). Appealing to white voters as a first-order strategy is no longer sufficient to win the White House; Mitt Romney won close to 60 percent of the available white vote (three percentage points more than Ronald Reagan did in 1980), yet he handily lost the 2012 election. Roper Ctr. for Public Opinion Research, How Groups Voted in 2012; How Groups Voted in 1980. And these changes are a sign of things to come; non-white voters account for two-thirds of the electorate’s growth in the past four years.

In terms of geography, “purple states” (the most competitive in presidential races) feature electorates in which people of color form a major share of the voting population. YouGov.com, Not All States Are Red or Blue; Esther Elizabeth Suson, “Swing States to Watch in the 2016 Election,” POTUS 2016, June 16, 2015. In this light, Trump’s rather heated rhetoric about Latinos and Muslims poses a serious challenge. The nominee’s more recent assertions of bias about a sitting federal judge due to his ethnicity has only deepened the angst in his party about its challenges in appealing to Latino voters. Nina Tottenberg, “Who Is Judge Gonzalo Curiel, the Man Trump Attacked for His Mexican Ancestry?,” Nat’l Pub. Radio, June 7, 2016. Democrats face distinct challenges in many of the same critical states. While non-white voters have strongly favored Democrats in recent years, election law changes threaten to make balloting more complicated. Chris Cillizza & Jon Cohen, “President Obama and the White Vote? No Problem,” Wash. Post, Nov. 8, 2012. Republican legislatures in North Carolina and Wisconsin (two major battle grounds) enacted new laws requiring voter identification. N.C. State Bd. of Elections, Voter ID Requirements in NC; State of Wis. Gov’t
Accountability Bd., Voter Photo ID Law Information; Wendy Underhill, Nat’l Conference of State Legislatures, Voter Identification Requirements; Voter ID Laws (Apr. 11, 2016). Similar new provisions have limited the time for early voting. Brennan Ctr. for Justice, Voting Laws Roundup 2014 (Dec. 18, 2014). While facially neutral, these laws (the details of which include some telling exceptions (Suevon Lee & Sarah Smith, “Everything You’ve Ever Wanted to Know about Voter ID Laws,” Pro Publica, Mar. 9, 2016)) impose burdens disproportionately affecting voters of color. John R. Logan & Jennifer Darrah, The Suppressive Effect of Voter ID Requirements on Naturalization and Political Participation (Jan. 2, 2008). For example, eliminating Sunday voting, largely viewed as a reaction to the successful Souls to the Polls program, removes an effective method of organizing African American voters. If they withstand legal challenges (see Anita Earls, “New Strict Voter ID Laws Challenged in Court,” Moyers & Co., Mar. 6, 2015), these barriers will require Democratic groups to redouble efforts to maintain turnout levels in crucial battleground states. A recent decision by the governor of Virginia to restore the voting rights of about 200,000 citizens with past felonies (see Van R. Newkirk II, “Governor McAuliffe’s Gambit,” Atlantic, Apr. 27, 2016) may aid this trend, assuming that this executive order survives a GOP legal challenge. See Laura Vozzella, “GOP Sues to Block McAuliffe Order to Let 200,000 Virginia Felons Vote,” Wash. Post, May 23, 2016.

One final note that bears mentioning: As in every presidential election, the contours of this campaign will be shaped as much by what the candidates plan as by the unexpected events that happen between now and November. Surprises at home and abroad will press both the Clinton and Trump campaigns to respond and (where necessary) to improvise effectively. One very somber example comes from Orlando, Florida, the site of the deadliest mass shooting in this nation’s history. See Ralph Ellis et al., “Orlando Shooting: 49 Killed, Shooter Pledged ISIS Allegiance,” CNN, June 13, 2016. As with the shooting massacre only last year in Charleston, South Carolina (see Jeffrey Collins & Jonathan Drew, “1 Year after Church Shooting, Much Is the Same in Charleston,” Associated Press, June 12, 2016), this horrific moment raises questions about the ability of minority communities (defined by race and sexual orientation) to remain secure in public spaces. Each candidate has pressed an assessment about what happened and what policy steps might prevent it from occurring again. Among the chief duties of every president is speaking to the nation in times of tumult or uncertainty. These rarely foreseen emergencies provide crucial tests of a candidate’s mettle in offering aid to a community (and even a nation) in distress. In this particular case, the candidates’ reactions and handling of this issue in the weeks to come will doubtless bear heavily on the campaign in Florida, the largest of the battleground states.

When these various factors are taken together, the election of 2016 stands as a fascinating test of what we know (or think we know) about the confluence of race and politics. With both the party conventions and the general election to come, the next six months will doubtless provide more twists and turns before the November voting commences.
Keywords: litigation, diversity, inclusion, election 2016, Hillary Clinton, Donald Trump, Bernie Sanders, race and ethnicity

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The Millennial Perspective on the Current State of the Practice of Law

By Robert K. Dixon

The curmudgeon attorney may view millennial attorneys—those born between about 1980 and 2000—as a generation of attorneys plagued by the participation trophy and their sense of self-entitlement. But millennial attorneys have grown up with computers in the classroom and have survived the perils of the Great Recession during a particularly vulnerable period of their young careers. For that reason, millennials are highly educated and motivated. In addition, millennials are the most racially diverse generation in American history, according to a Pew Research Center study, Millennials in Adulthood (Mar. 2014). In light of these unique characteristics, below are some perspectives from different civil litigators of the millennial generation on the current state of the practice of law.

What is the ultimate goal for most millennial attorneys practicing today?

Monee Takla Hanna of Tucker Ellis LLP: I can’t claim to speak for most millennial attorneys, but I think this generation hopes to build a meaningful, sustainable practice. Millennials are often unfairly labeled as disloyal or noncommittal, when they may just be more willing to find their ideal fit.

Christina Tapia of Littler Mendelson P.C.: I believe the goals of millennial attorneys are similar to those of most attorneys—we strive to develop the skills necessary to properly represent our clients and grow in our practice.

Daniel C. Gunning of Wilson Turner Kosmo LLP: Many millennials seek to achieve a work-life balance. While many want to become partners, I’ve talked to a lot of attorneys who have admitted partnership is not their ultimate goal, as they are not willing to sacrifice work-life balance to make partner. They want to achieve their goals in their law practices, and they want time for outside activities and family. Achieving this balance is probably the greatest struggle for any attorney, but especially millennials.

What obstacles do you believe millennial attorneys face that were nonexistent when the prior generations of attorneys started practicing law?

Daniel C. Gunning: Technology has changed the way that the practice of law is done, especially for millennial attorneys, as it has virtually eliminated the concept of working nine to five. The ability to access emails and work outside the office has created an atmosphere in which millennials believe they have to be on call 24-hours a day in order to meet client expectations. And the challenge is then to turn off your technology so that you can disconnect when you are outside the office.
Monee Takla Hanna: Technology has been both a blessing and a curse. While the ability to work remotely has allowed for greater flexibility and increased the potential for maintaining a work-life balance, our inability to ever “disconnect” has presented a new set of challenges. Technology has also altered our opportunities for training and client contact. Where young associates were once sent to a client’s business to sift through documents, they are now confined to their desks where they may or may not spend their first years clicking through subsets of documents that can’t provide a full understanding of that client’s business.

Christina Tapia: There is so much information available to attorneys through online sources and multiple digital resources. Because of this, younger attorneys may forget the basics when it comes to their legal training. To overcome that, we need to remember to seek out mentors and speak one-on-one with other attorneys to learn the practical aspects of our practice—something online sources cannot truly educate us on.

What can law firms do to retain the diverse talent of the millennial generation?

Christina Tapia: Retaining diverse talent can be as simple as taking the time to speak with your diverse associate and making sure he or she feels part of the group. Sometimes law firms arrange for mentorship relationships, which can be helpful. However, if the only mentors assigned to a diverse associate are another diverse attorney and/or a mentor with a similar background, diverse associates may still feel left out from the rest of the firm. Efforts made by the firm’s non-diverse partners and/or senior associates to provide insight on the practice, mentorship (either formally or informally), and/or everyday conversation can go a long way to make a diverse associate feel welcome and increase the likelihood that he or she stays with a firm.

Daniel C. Gunning: Law firms that recognize that technology helps you work from home, work different hours, and that some in-office meetings can be replaced with phone calls or emails will be able to retain millennials who want to work different schedules and different hours to achieve their own personal needs.

Monee Takla Hanna: We are willing to work hard but need to find meaning in our practice. Law firms need strong mentorship and open channels of communication with firm leadership to retain talent. They also need to recognize the need for flexibility.

Are the majority of law firms paying lip service to the issue of diversity and inclusion or are they practicing what they are preaching?

Monee Takla Hanna: Law firms no doubt value diversity and likely strive for inclusion but need to make more of an effort to retain diverse talent. While new classes of law students and associates are more diverse than ever, partnership and law firm leadership still do not reflect it.

Daniel C. Gunning: I think law firms are still somewhat only paying lip service to this issue. Law firms are still very structured; there is a ceiling of sorts, especially for minorities and
women, which is why you’ll see minorities and women start with law firms, but these firms will have difficulty retaining their diverse talent.

**Christina Tapia:** Most of the firms I have interacted with make some effort toward diversity during their recruitment process, and it has been great to see the increased support of law firms for the local attorney associations, which also work toward promoting a diverse legal community.

**How can millennial attorneys get involved in their firm’s business development efforts?**

**Daniel C. Gunning:** Attorneys can get more involved in business development by asking attorneys who are more senior if they can attend client lunches and dinners as well as by asking permission to join legal organizations and to attend conferences. But the key is to take on a leadership role within the organization, instead of just being a member.

**Monee Takla Hanna:** Millennial attorneys are able to stay in touch with their classmates through social media more effortlessly than previous generations, giving them unique opportunities for personal business development. Because those opportunities may not materialize immediately, millennials should still take advantage of any business development opportunities provided by their firm.

**Christina Tapia:** First, endeavor to impress your existing clients since they can dictate whether you (and your firm) receive future work and clients’ contacts can serve as a source of new work if they change jobs. Then try to make contacts with others in your local or national attorney associations and your firm’s own practice groups. If you pay attention, that involvement can lead to various business development opportunities.

**Keywords:** litigation, diversity, inclusion, millennials, business development
SCOTUS Rules for Black Man Who Claimed Prosecutors Eliminated Blacks from Jury on Basis of Race
By Debra Cassens Weiss

The U.S. Supreme Court has ruled 7-1 on a behalf of a black man on death row who claimed Georgia prosecutors violated the Constitution by using their peremptory challenges to keep blacks off the jury.

Chief Justice John G. Roberts Jr. wrote the majority opinion finding prosecutors discriminated during jury selection for Timothy Foster, convicted in the 1986 strangulation and sexual assault of a 79-year-old widowed white woman. Justice Clarence Thomas dissented.

Prosecutors used peremptory challenges to strike all four blacks who remained as potential jurors during the last stage of jury selection. Someone had highlighted the names of all four on the jury list in the prosecutor’s file and used the letter “B” next to each one’s name. All the blacks were also on a list in the prosecutor file that was labeled “definite no’s.”

Foster had claimed the removal of two of those jurors was racially motivated, and the Supreme Court agreed. “Two peremptory strikes on the basis of race are two more than the Constitution allows,” Roberts wrote.

Prosecutors later cited race-neutral reasons for their decisions to eliminate the two potential black jurors from the panel, but Roberts’ viewed those explanations with skepticism. He cited a variety of evidence suggesting purposeful discrimination by prosecutors, including their “shifting explanations, the misrepresentations of the record, and the persistent focus on race in the prosecution’s file.”

Roberts didn’t believe the explanation a prosecutor gave for striking one of the two potential jurors. The prosecutor said he considered both the black potential juror and a white potential juror to be “questionable,” but he opted for the white person partly because she was recommended as a juror by a third party. Yet the black juror was on the “definite no’s” list. “Contrary to the prosecution’s submissions, the state’s resolve to strike [the juror] was never in doubt,” Roberts wrote.

Roberts didn’t believe the state’s explanation that the prosecutor had misspoken. “This was not some off-the-cuff remark; it was an intricate story expounded by the prosecution in writing, laid out over three single-spaced pages in a brief filed with the trial court,” he said.

Roberts also questioned the “laundry list of reasons” prosecutors gave for striking the potential juror. They were: She had a job working with disadvantaged youth; she kept looking at the ground; she gave short answers; she appeared nervous; she was too young; she misrepresented her familiarity with the location of the crime; she failed to disclose her cousin was arrested on a
drug charge; she was divorced; she had two children and two jobs; the defense asked her few questions; and she did not ask to be excused from jury service.

Many other jurors accepted by prosecutors had the same attributes as that juror and the second juror whose elimination was at issue, Roberts said.

The state had contended the emphasis on race in the prosecutor’s file represented a thoughtful effort to consider black prospective jurors and to defend against any suggestion that prosecutors were offering pretextual reasons for their decision to strike black jurors from the panel. The argument was made for the first time in the U.S. Supreme Court and it “reeks of afterthought,” Robert said.

In his dissent, Thomas said the majority “distorts the deferential Batson inquiry” and fails to consider the possibility that the court lacks jurisdiction. He was referring to Batson v. Kentucky, the Supreme Court case decided shortly before Foster’s trial, which held that eliminating jurors on the basis of race violates the equal protection clause.

Foster’s lawyer, Stephen Bright of the Southern Center for Human Rights, said in a statement that the discrimination became apparent only because the defense obtained the prosecution notes. “The decision in this case will not end discrimination in jury selection,” Bright said. “Justice Thurgood Marshall said in Batson v. Kentucky that it would end only with the elimination of peremptory strikes. The choice going forward is between the elimination or reduction of peremptory strikes or continued discrimination.”

The case is Foster v. Chatman.

Debra Cassens Weiss is a senior writer with the ABA Journal. This article originally appeared on ABAJournal.com on May 23, 2016.
Minority Women Are Disappearing from BigLaw--and Here's Why

By Liane Jackson

Occasionally when Jenny Jones walks down the hall of her white-shoe law firm, a chairman emeritus will stop and ask how she's doing and about her work. These moments are a highlight because outside of this intermittent interaction, Jones feels largely ignored by the powers that be.

Idling in her career, unable to hit the billable-hour requirements, Jones (her real name is not used due to the sensitivity of the issue) is a fifth-year associate busy planning an exit strategy. But hers is not an isolated tale of personal failure; it is the all-too-common story of women of color struggling to thrive at large law firms—and leaving in droves.

Statistically, Jones faces a grim career outlook. Eighty-five percent of minority female attorneys in the U.S. will quit large firms within seven years of starting their practice. According to the research and personal stories these women share, it’s not because they want to leave, or because they “can’t cut it.” It’s because they feel they have no choice.

“When you find ways to exclude and make people feel invisible in their environment, it’s hostile,” Jones says. “Women face these silent hostilities in ways that men will never have to. It’s very silent, very subtle and you, as a woman of color—people will say you’re too sensitive. So you learn not to say anything because you know that could be a complete career killer. You make it as well as you can until you decide to leave.”

Disturbing sentiments like these led the ABA Commission on Women in the Profession to undertake the Women of Color Research Initiative in 2003. Findings concluded that, in both law firms and corporate legal departments, women of color receive less compensation than men and white women; are denied equal access to significant assignments, mentoring and sponsorship opportunities; receive fewer promotions; and have the highest rate of attrition.

“If you look at the women-of-color research, the numbers are abysmal,” says the New York Public Library’s general counsel, Michele Mayes, who chairs the ABA commission. “When you lose any ground, you lose a lot because you never had that much in the first place.”

Studies and surveys by groups such as the ABA and the National Association of Women Lawyers show that law firms have made limited progress in promoting female lawyers over the course of decades, and women of color are at the bottom.

“We’re still a profession less diverse than doctors or engineers and that is 88 percent white,” notes Danielle Holley-Walker, dean of Howard University School of Law. “We’ve been at this for 40-plus years—firms have been recruiting lawyers of color since the late ’60s.
“There should be no mystery about how you create a diverse workforce. It’s just a commitment,” Holley-Walker says. “There’s a refusal to acknowledge that meritocracy goes hand in hand with diversity. But we have to have a group of lawyers that are both excellent and diverse.”

DECADES OF PIPELINE

The trajectory of women of color entering BigLaw dovetails with the progress of women entering the profession over time.

In the 1980s, as chair of the ABA’s newly formed women’s commission, Hillary Clinton signed off on the first-ever ABA report on the status of women in the profession. The prescient, but dire, conclusion? That the passage of time and the increase of women in the field would not erase the barriers to practice or solve problems that female lawyers face.

“That was the mid-’80s,” observes Laurel Bellows, co-chair of the ABA Task Force on Gender Equity and principal at the Bellows Law Group in Chicago. “When I chaired the commission six to eight years later, we came up with another report, and the conclusion was the same.”

According to the National Association of Women Lawyers, since the mid-1980s, more than 40 percent of law school graduates have been women. But despite a decades-old pipeline of female grads, there remains a disproportionately low number of women who stay in BigLaw, and even fewer who advance to the highest ranks. The ninth annual NAWL survey, released in 2015, shows that women account for only 18 percent of equity partners in the Am Law 200 and earn 80 percent of what their male counterparts do for comparable work, hours and revenue generation.

“We have a pay gap in our own profession,” Bellows says. “And let’s remember, 80 percent is very significant when you’re talking about equity partners because that could mean millions of dollars in terms of retirement.”

Data released last year by the National Association for Law Placement show the overall percentage of female associates decreased over most of the previous five years, although women and minorities continue to make marginal gains in representation among law firm partners.

Buoyed by increases in Asian-American and Hispanic women on staff, the percentage of minority female associates rose from about 11 percent between 2009 and 2012 to 11.78 percent in 2015. And those in the trenches say snapshot statistics don’t tell the full story. For example, NALP also reports that representation of African-American associates in the profession has been declining every year since 2009—from 4.66 percent to 3.95 percent.

And according to a November NALP press release, at just 2.55 percent of partners in 2015, minority women “continue to be the most dramatically underrepresented group at the partnership level, a pattern that holds across all firm sizes and most jurisdictions.”
Tiffany Harper recently transitioned from law firm life to a post as associate counsel for Grant Thornton in Chicago; she also co-founded Uncolorblind, a diversity blog and consulting company. Previously, she worked in corporate bankruptcy and restructuring at Schiff Hardin and, most recently, Polsinelli. Harper saw an in-house position as a chance to broaden her skill set, but she says she also saw the writing on the wall.

“I didn’t see a path for me to partnership at a large law firm. For women of color, there has to be a synergy for you to make partner,” says Harper, who has also served as president of the Black Women Lawyers’ Association of Greater Chicago. “You have to have everything working in your favor at the time you go up for a vote: a practice group that is thriving, the billable hours, people singing your praises, a client base. That has to all come together for you in a way it doesn’t have to for other people.”

Greenspoon Marder shareholder Evett Simmons knows all too well how tough it can get. Based on the statistics, she’s already an outlier. She joined a Florida law firm as a lateral equity partner in 2000 that was later partially absorbed by Greenspoon Marder, where she is currently the only female shareholder of color.

Simmons grew up in the Jim Crow South, where as part of the demoralizing impact of segregation, she “didn’t believe black folks were as good as white folks.” That is, until she got to college and was the student frequently tapped to help white students complete their term papers. From there, Simmons continued to expand her horizons, attending law school and eventually rising to partner and chief diversity officer at Greenspoon Marder.

“I started at a time when it was difficult for women to get positions, let alone African-American women,” Simmons notes. “I started with legal services, went to a small firm, opened up my own firm, merged with another firm.”

With 33 years of practice under her belt, Simmons has seen the effort it takes for minority lawyers to succeed. In many ways, it’s a numbers game.

“My focus has been the pipeline,” she says, with the goal of expanding the existing pool of minority female law grads. To that end, Simmons started a law camp with the National Bar Association, based at Howard University. Some camp graduates are now practicing lawyers. But that’s just the first step.

“We need to make sure they have business and are fairly treated,” Simmons says. “This is the next phase in my work with the ABA.”

Like many working on recruitment and retention issues, Simmons recognizes that getting minority female candidates in the door isn’t the same as keeping them there. And each ethnic group faces its own challenges.
In the first study of its kind, the National Native American Bar Association found that Native Americans often feel invisible and are “systematically excluded from the legal profession.” The NNABA study, *The Pursuit of Inclusion*, found that “diversity and inclusion initiatives have largely ignored the issues and concerns of Native American attorneys.” Not surprisingly, women were more likely than men to report demeaning comments, harassment and discrimination based on gender.

“We can’t talk about diversity generically; we have to talk about women of color specifically in order to make a difference,” says Arin Reeves, president of the Chicago-based consulting firm Nextions, who studies unconscious bias and has pioneered research on women of color at large law firms and in corporate America. “Most gender strategies affect the majority of people in that gender category, which are white women,” Reeves says. “Racial and ethnic strategies are created around biases involving minority men. But women of color have the highest attrition rate. This is a group impacted by both gender and racial bias, so they will be impacted at twice the rates.”

**NOT JUST A U.S. PROBLEM**

As the only black female attorney in a 200-lawyer office of a multi-national firm based in Toronto, fifth-year associate Indi Smith (her real name is not used due to the sensitivity of the issue) faces a stark reality. The lack of diversity coupled with a macho firm culture has left her feeling isolated and demoralized.

At her firm, common interests like hockey—a sport she doesn’t follow—are crucial for relationship building. Instead of continuing to fight an uphill career battle, Smith is exploring her options. She calls her experience at the firm “unhealthy” and says it has drastically affected her self-confidence.

“In order to advance you need to get work, show your progress in terms of complexity of the work—but it’s an environment where you only get work based on the relationships with partners,” Smith says. “There’s no one here who I can commiserate with or who is a source of work for me. Just being able to see someone who looks like you would help.”

Smith says her request to join her firm’s diversity committee was rejected, and the lip service given to more inclusion hasn’t translated into action. But she notes that even if there were more attorneys of color on board, hiring diverse attorneys isn’t enough without creating a culture of inclusiveness.

“A lot of law firms have jumped on the diversity and inclusion bandwagon, but none of them are really diverse in a way that truly matters,” Smith says.

The Law Society of Upper Canada is trying to bring more attention to issues of diversity and equity in the profession through a working group and reports such as *Challenges Faced by Racialized Licensees*. A number of survey respondents told LSUC researchers they were forced...
to enter solo practice because of barriers faced in obtaining employment or because they were unable to advance in other practice environments. According to one anonymous respondent:

“Most of us are sole practitioners because we could not get into large firms because of racial barriers; the ones I know who got into firms ended up leaving because of feelings of discrimination, and ostracizing and alienation [such as] not being invited to firm dinners and outings. Some black lawyers feel suicidal because of repeatedly running into racial barriers—not academic performance—trying to enter large firms.”

Jones, who is also a Toronto-based attorney—can commiserate, although she was one of a lucky few to receive an offer from an elite firm out of law school. Still, as one of the only women of color at her office, her experience over the years has not been positive.

“We’ve had so many great female associates leave, and I don’t see anyone on the path to become a partner—black, white, you name it,” Jones says. “I don’t see women being placed into positions where they can become rainmakers,” she says. “Unless you have a really good champion, a white male who will protect you in a certain way, it’s a tough fight. It’s a losing battle. If you want to make it to partnership, it’s at what cost? And then when you make it to partner, what are you going to do then?”

DEFEATING DEFEATISM

Helping law firms understand how they can support the careers of women of color is Reeves’ focus. She says partners need to ask themselves very specific questions about their actions in the diversity realm and determine whether their efforts are truly proactive. Instead of succumbing to a defeatist perspective, the question should be “How can we fix this?” not “Can it be fixed?”

“People think because they’re committed to diversity and inclusion that they are creating diversity and inclusion. But partners need to ask themselves: How am I mentoring women of color and how can I do so?” says Reeves, a former lawyer who has a doctorate in sociology.

Latina attorney Gray Mateo-Harris says that after eight years practicing labor and employment defense, she’s finally found a firm focused on growing diversity and the unique needs of attorneys who are women of color. Mateo-Harris says Ogletree, Deakins, Nash, Smoak & Stewart in Chicago has provided an environment where she can thrive and find balance.

“You don’t realize early in your career how critical it is to have the support that will develop you as an attorney and help your career blossom,” Mateo-Harris says. “The reality is, as a woman of color I can’t necessarily count on inheriting a partner’s book of business. That’s not usually an option for people of color—and especially women.”

Mateo-Harris has worked at a smaller firm and in BigLaw and notes that too often, minority women are lost in the shuffle of incoming classes, left to sink or swim.

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“You really need to be at a firm where the culture sees attorneys as an asset to be invested in, not as fungible,” she says. “It doesn’t bode well for women of color to be thrown in and see if someone takes an interest in them and mentors them. Those chances don’t usually end up favorably for women of color.”

To help women of color navigate the law firm dynamic, the ABA Commission on Women in the Profession published a brochure in 2008, From Visible Invisibility to Visibly Successful, which offers success strategies based on advice gathered from dozens of female minority partners.

“It takes a village to raise a lawyer” was one insight provided by a study participant, explaining how she learned to find a support system outside of the firm in addition to one within.

Another partner described how she hired a coach to give her business development training in order to grow her book of business.

“Success in law firms is one part intellect and four parts stamina,” said another respondent, warning that the challenges of isolation and racial and gender bias could take a physical and mental toll.

“There’s a lot to be said for going in knowing you’re going to be treated differently, so I need to work twice as hard,” Reeves advises. “Understand that it’s not in your head. It is real, it is happening and it’s not easy.”

She adds: “Most women of color at law firms have phenomenal survival strategies, but we think it’s going to be fair and we kind of get sideswiped. But if you’re well-prepared for it, then I think you’re steady on your feet and no one can shake you with craziness.”

The 2008 report, which was prepared by Reeves, also urges young attorneys to “show up” and “speak up” at social events and meetings, and notes that even if you’re shy or don’t like to schmooze, you should actively seek out mentors inside and outside your law firm by joining organizations and networking.

And law firm mentors need to be “situated in the sphere of influence within the firm.” Several contributors stressed that mentoring is crucial to developing a client base and more critical to a lawyer’s success and mobility than the number of billable hours one generates.

Many successful female attorneys, including Simmons of Greenspoon Marder, talk about the male partners and mentors who were advocates and allies and helped their careers advance. Bringing men to the table and capturing the attention and stories of men who “get it” is often cited as essential to continued progress.

Holley-Walker, the Howard law dean who enjoyed a successful career in commercial litigation at a large law firm before going into academia, says young lawyers must get good work and continue to get better work as they progress in their practice. And that means having influential partners at the firm take an interest in their career, which isn’t often the case for women of color.
“That move from mentorship to sponsorship” is key, says Holley-Walker. “People who will know your work intricately and give you honest feedback—and when it comes time, will basically go to bat for you.”

To encourage partners to become mentors and sponsors, the brochure concludes that practice group leaders need to be held accountable for ensuring that work is distributed in an equitable and unbiased way. Associates are judged on their ability to get assignments from partners, but partners aren’t held accountable or required to work with a variety of associates. That puts the most vulnerable attorneys at risk for failure.

CHANGING THE PARADIGM

Simmons believes a climate of inclusiveness for women and minorities, where differences are acknowledged and valued, can only occur once firms change the entrenched paradigm on delivery and individual contributions.

“We need to be able to recognize that a woman has some value other than getting a book of business. Maybe she can assist you with managing a book of business,” Simmons says. “We need to measure success on more than whether a person brought a client into the room. There are other intrinsic values that can grow the firm besides bringing in money.” These tangible benefits to the firm’s business can include client services and committee work, Simmons says.

As law firms reassess their business models under the “new normal” of law practice, many hope external change will open up paths for minority female attorneys to succeed.

“The billable hour was the altar at which [law firms] prayed,” says Mayes, the women’s commission chair. “That altar is being seriously challenged. As a young person looking at the profession, many would say, ‘My investment ain’t that great here.’ Too many lawyers in the job market, not enough return on investment.”

Mayes points to other industries that have changed their profit-sharing and partnership models to be more inclusive and to reflect the times. “If you look at Deloitte or KPMG, they’ve gotten better at cultivating talent and not just having one way to do it. It’s more of a team model than an individual model.”

Reeves says part of the problem is that firms measure, recognize and reward business development primarily based on how men develop business. According to a 2014 survey by the National Association of Women Lawyers, lack of business development and high attrition rates are the two main reasons the number of female equity partners has not significantly increased.

“They need to see you as profitable,” says Harper. “Either you have to have brought in smaller matters, RFPs, you’re in the community—how do you bring in dollars? It’s been too long that firms have not been able to make this work [for women of color]. I think it will take a structural
change, and I don’t know that firms are ready and willing to make a difference in how they do things.”

While little has changed in BigLaw as to how the pie is divvied up or how assignments are passed out, Reeves points out that the law doesn’t pivot fast. “The law generally has lagged behind its corporate counterparts, and it’s the most risk-averse profession,” she says. “Even with technology—law firms were the last to adopt email. When we keep all this in mind, we depersonalize the issue a little bit and we can actually pursue change with a little more stamina.

“I don’t think it’s that law firms see the problem and don’t want to do anything about it,” Reeves says. “It will change. It’s just going to take longer here than it does in other places.”

This article originally appeared in the March 2016 issue of the ABA Journal with this headline: “Invisible then Gone: Minority women are disappearing from BigLaw—and here’s why.”

Sidebar

Learning—& Winning

Law firms tend to be opaque operations, with limited details available on pay, policies and perks. But if you’re a female attorney looking to lateral or a female law student on interview rounds, there is a resource that offers a window into what you can expect from BigLaw.

The annual list of the 50 best law firms for women from Working Mother Media and Flex-Time Lawyers showcases what some of the top firms are doing to attract and retain female talent. Law firms that make the cut are recognized for their family-friendly policies along with career and business development initiatives. Making the list is a competitive process the founders view as an instrument of change. The firms “learn lessons about themselves,” says Jennifer Owens, editorial director of Working Mother magazine and director of the Working Mother Research Institute. “The initiative was founded for the competition, but also for the learning. The act of filling out [the application] is learning. We hope the carrot is: You’re trying to get on this list where we’ll laud you as a best law firm for women.”

Participation in the survey is free and voluntary. Firms complete an extensive, confidential questionnaire and receive a scorecard that shows how they rank alongside other participants. Additional reports with in-depth analysis of the results are available for purchase. And the winners’ list is disseminated to general counsel and law schools across the country.

Drinker Biddle & Reath has made the 50-best list four times. Partner Lynne Anderson is proud of the firm’s recognition and focus on women’s initiatives, which she says requires intention and support from the top. “I think any firm has to have more than just the trappings,” Anderson says. “They have to have a roll-up-your-sleeves commitment to the advancement of women in the
firm. That takes financial commitment, time commitment—including from the senior levels of the firm.”

Anderson says some of the policies and programs that helped propel Drinker Biddle onto the list include compensation transparency, a 12-week paid parental leave policy, flex-time and reduced-hours work options, and a strong women’s leadership committee that includes the firm chairman.

“What does it take to have a firm that’s supportive of women? It’s not just helicoptering in and out of the issue. It’s sustained and ongoing programs—a committee, a budget and policies that make this work,” Anderson says. “And to be willing to take a hard look at the metrics on a regular basis.”

Top firms on the 2015 list employ more female equity partners than the national average—20 percent vs. 17 percent. And 96 percent allow reduced-hour lawyers to be eligible for equity partnership promotion. Other elements taken into account include compensation, pro bono work, benefits, flex-time options, paid leave and workplace culture. The list also looks at the rates of women of color in leadership roles.

The 50-best list was founded in 2007 by Flex-Time Lawyers’ Deborah Epstein Henry in partnership with Working Mother Media. According to Henry, the best law firms are those that focus both on retention and promotion, by cultivating and investing in female talent. “I think a lot of women’s initiatives make the mistake of not understanding the link between work-life issues and power and leadership. They think they have to advocate for one or the other,” Henry says. “We have the philosophy that if you don’t support women in their early years, we’re never going to have the critical mass of women we need in order to fill leadership roles like equity partner.”

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