



CLE Materials: Building a Diverse Litigation Team

DLA Piper's Product Liability Symposium

Wednesday, October 25, 2023



State of Diversity in the Legal Profession



Of more than 1.3 million active lawyers in the US...

- 38% women (up from 33% in 2012)
- 81% white (overrepresented compared to the percentage of white people in the US population)
- 19% of color (up from 12% in 2012 but this is less than half of the US minority population, which is approximately 40%)
- 5.5% Asian American
- 5.8% Hispanic
- 4.5% Black
- 0.5% Native American

[Demographics | American Bar Association Profile of the Legal Profession \(abalegalprofile.com\)](#)

[2022NALPReportonDiversity_Final.pdf](#)

[After the JD: A National Study of Lawyer Careers - ABF \(americanbarfoundation.org\)](#)

State of Diversity in the Legal Profession



Of more than 1.3 million active lawyers in the US...



- 26.65% partners are women and people of color
- 49.42% associates are women and people of color (we're making progress!)
- Only 4.17% are LGBTQ (consider underreporting/issues with disclosure)
- Only 1.41% have disabilities (consider underreporting/issues with disclosure)
- 2021 median age – 46.5 years old (lawyers are older than most American workers on average)

[Demographics | American Bar Association Profile of the Legal Profession \(abalegalprofile.com\)](#)

[2022NALPReportonDiversity_Final.pdf](#)

[After the JD: A National Study of Lawyer Careers - ABF \(americanbarfoundation.org\)](#)

What the Research Tells Us

- **We want diverse juries.** Racially diverse juries deliberate longer, discuss more evidence, refer to the jury instructions more often, and make fewer factually inaccurate statements when discussing the evidence than non-diverse juries (as a result, they are also more likely to side with a civil defendant).
- **Groupthink.** The mode of thinking that persons engage in when concurrence-seeking becomes so dominant in a cohesive in-group that it tends to override realistic appraisal of alternate courses to action. In other words, non-diverse groups tend not to challenge one another for the sake of harmony. Diverse teams bring different perspectives, which causes each person in the group to more closely examine the foundations for their opinions.
 - The same should be true with diverse trial teams – reduces group think
 - Recent research shows that diversity in groups working together can enhance creativity and innovation by 20%
- **If we have diverse juries, we need diverse trial teams.** Better strategizing leads to better outcomes. Litigation is telling your client's story in a way that will connect with the audience and be adopted by them. Diverse teams develop strategies that have more universal appeal.

Considerations & Challenges

- **How do we define “diversity?”**
- **What opportunities for inclusion exist at different phases of litigation and why are these important?**
- **How do we balance providing opportunities for professional learning and inclusion with aiming for positive client outcomes?**
- **How will SCOTUS’ affirmative action ruling impact private firms and corporations?**
- **How does D&I programming and mentorship improve the pipeline to practice?**

Popular Culture and Diversity in the Courtroom

Anthony P. Ashton (Senior Assistant General Counsel, NAACP; Former DLA Piper Partner)



The Jury Expert

The Art & Science Of Litigation Advocacy
A publication of the American Society of Trial Consultants

“A trial is essentially competing stories told through evidence and attorney argument. Having members of the team with different world and life views increases the chances of formulating a trial strategy that communicates the client’s story in a way that has more universal appeal...Rather than blaming the audience for not appreciating the story, such an attorney might do well to ask: ‘What was there about the way in which I communicated my client’s story that proved ineffective for the jury?’ The answer may be that the jury did not identify with the story, how the story was presented, or the storyteller.”

“The simple and eternal truth is that people like it when they win. In a situation where we cannot personally win, we like it when our surrogate, i.e., someone whom we perceive to be like us, wins. Thus, when assembling the trial team, it is advisable to provide the jury with persons the jurors consciously or subconsciously want to see win.”

“If you practice at a large law firm, your firm is likely diverse in terms of gender, race, and ethnicity. Presumably, these diverse attorneys are skilled or they wouldn’t be at your firm. Increasing the diversity of your trial team may be no more difficult than utilizing someone already on your firm’s payroll.”

<https://www.thejuryexpert.com/2012/07/popular-culture-and-diversity-in-the-courtroom/>

Effective Storytelling

What jurors have to say

“We liked that there were several women working on the defense side.”

-Actual juror (Santa Ana, CA)



“I feel like women could relate to her more.”

-Actual juror (Indianapolis, IN)

“We needed a woman in the mix.”

-Actual juror (Tuscaloosa, AL)



Effective Storytelling

What jurors have to say

**“It was pretty cool to see a black man
up there kicking ass.”
-Actual juror (Los Angeles, CA – Santa Monica)**



**“The way he talked – you could tell he
didn’t grow up with a silver spoon; he was
more like the rest of us on the jury.”**

-Actual juror (St. Louis, MO)

An Ensemble Cast of Characters

What jurors have to say

“They only had her there to be the ‘token black woman’ because there were black women on the jury. All she did was talk to the wife; it was offensive – like they were pandering the jury.”

–Actual juror (Baltimore, MD)



“She [an African-American attorney] was paid to do a job, so she did it. It seems they hired her so they wouldn’t be known as racist.”

– Actual juror (Jefferson Parish, LA)

Female Attorneys

What jurors have to say

**“Maybe because I tend to trust women more than men,
I liked her ‘informal’ style.”**

-Actual juror (Los Angeles – Santa Monica, CA)



**“And the other one, the woman I liked her too. Very
believable. I don’t know why, but I just believed her.”**

-Actual juror (Los Angeles – Downtown, CA)

All eyes are on you: Gender, race, and opinion writing on the US Courts of Appeals

Article in Law & Society Review (Sept. 2021)

Abstract: Because stereotyping affects individual assessments of ability and because of socializing experiences in the law, we argue that women and judges of color, while well-credentialed, feel pressure to work harder than their white male peers to demonstrate their competence. Using an original dataset of published appellate court opinions from 2008–2016, we find that majority opinions authored by female and non-white judges go farther to explain and justify their rulings, when compared to opinions written by white male peers. In comparison to other judges, opinions by white men are about six percent shorter, with 11 percent fewer citations, and 17 percent fewer extensively discussed citations. Our findings suggest that norms about crafting judicial opinions are gendered and racialized in ways that create higher workloads for women and judges of color.

[All-eyes-are-on-you-Gender-race-and-opinion-writing-on-the-US-Courts-of-Appeals.pdf \(researchgate.net\)](#)

“I haven't come a long way, and I'm not a baby:” Task assignment and diversity of the Supreme Court bar

Article in Social Science Quarterly (Nov. 2021)

Objective: Gender disparities in litigation task assignment are not limited to the trial court context; they are present in even the highest of courts in the United States. We explore and seek to explain the gendered patterns of participation by lawyers arguing before the U.S. Supreme Court.

Results: Descriptively, we find that male attorneys present more oral arguments than female attorneys, and most litigant briefs are written by male-dominated teams. In fact, more than a third of the briefs are only signed by men. In multivariate analyses of Supreme Court oral arguments and briefs, we find that women are more likely to argue and sign briefs on issues in which they are stereotypically perceived as more competent (women's issues) and less likely to participate in issue areas where they are perceived to be less competent, like economic issues. Similarly, women are less likely to orally argue in complex cases.

Conclusion: While occupational segregation and other factors may play a role, the participation of female attorneys in this forum is likely driven, in part, by stereotyped assessments of their competency.

[“I haven't come a long way, and I'm not a baby”: Task assignment and diversity of the Supreme Court bar - Szmer - 2021 - Social Science Quarterly - Wiley Online Library](#)

Hierarchy, Race, and Gender in Legal Scholarly Networks

Article in Stanford Law Review (Feb. 2023)

Abstract: A potent myth of legal academic scholarship is that it is mostly meritocratic and that it is mostly solitary. Reality is more complicated. In this Article, we plumb the networks of knowledge co-production in legal academia by analyzing the star footnotes that appear at the beginning of most law review articles. Acknowledgements paint a rich picture of both the currency of scholarly credit and the relationships among scholars. Building on others' prior work characterizing the potent impact of hierarchy, race, and gender in legal academia more generally, we examine the patterns of scholarly networks and probe the effects of those factors. The landscape we illustrate is depressingly unsurprising in basic contours but awash in details. Hierarchy, race, and gender all have substantial impacts on who gets acknowledged and how, what networks of knowledge co-production get formed, and who is helped on their path through the legal academic world.

[Hierarchy, Race, and Gender in Legal Scholarly Networks | Stanford Law Review](#)

On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations

Article in Journal of Personality and Social Psychology (2006)

Abstract: This research examines the multiple effects of racial diversity on group decision making. Participants deliberated on the trial of a Black defendant as members of racially homogeneous or heterogeneous mock juries. Half of the groups were exposed to pretrial jury selection questions about racism and half were not. Deliberation analyses supported the prediction that diverse groups would exchange a wider range of information than all-White groups. This finding was not wholly attributable to the performance of Black participants, as Whites cited more case facts, made fewer errors, and were more amenable to discussion of racism when in diverse versus all-White groups. Even before discussion, Whites in diverse groups were more lenient toward the Black defendant, demonstrating that the effects of diversity do not occur solely through information exchange. The influence of jury selection questions extended previous findings that blatant racial issues at trial increase leniency toward a Black defendant.

<https://www.apa.org/pubs/journals/releases/psp-904597.pdf>

Racial diversity and its asymmetry within and across hierarchical levels: The effects on financial performance

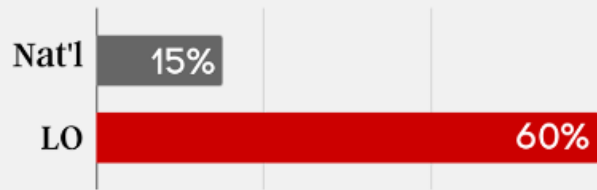
Article in Human Relations (2019)

Abstract: The benefits and drawbacks of diversity inside organizations have been the focus of attention for researchers and practitioners for several decades. In our article, we investigate the business case for racial diversity across different hierarchical levels. More precisely, we ask: How does racial diversity within organizations and its asymmetry across hierarchical levels affect their financial performance? From a sample of 143 US law firms from 2008 to 2012, we provide strong support for the business case and show that greater racial diversity for the entire organization is positively associated with firm financial performance. However, contrary to our initial expectations, the benefits of diversity are not more pronounced at the top of the organization, where its effects should arguably be more clearly observable. Diversity seems to have a similar effect across the three levels in law firms: associates, mid-level and partners. Furthermore, we find that the most profitable firms actually have their racial diversity heavily concentrated at the associate level. We discuss alternative explanations for this surprising finding and why the top-performing law firms have both overall higher degree of racial diversity and more concentration of its diversity at the lower level.

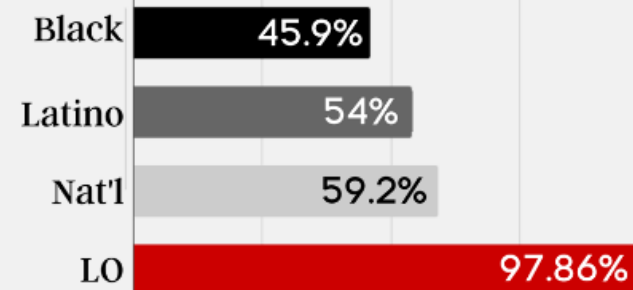
[Racial diversity and its asymmetry within and across hierarchical levels: The effects on financial performance - Stephen Smulowitz, Manuel Becerra, Margarita Mayo, 2019 \(sagepub.com\)](#)

Legal Outreach prepares urban youth from underserved communities in New York City for higher education, professional careers, and community leadership by using intensive legal and educational programs as tools for fostering vision, developing skills, and enhancing confidence in one's ability to achieve lofty goals.

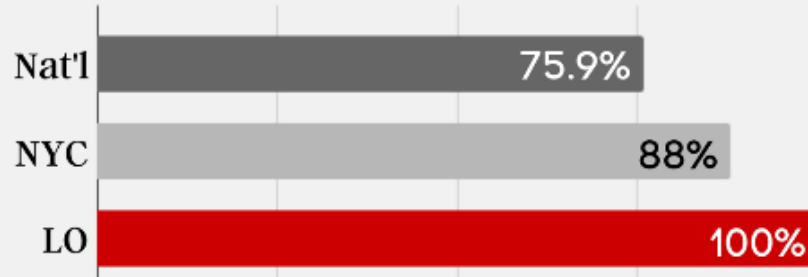
MATRICULATION RATE TO MOST & HIGHLY SELECTIVE COLLEGES



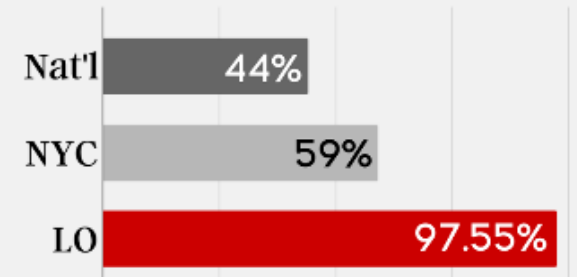
SIX-YEAR COLLEGE GRADUATION RATES



HIGH SCHOOL GRADUATION RATES



MATRICULATION RATE TO FOUR-YEAR COLLEGES



Thank you