Session 104 | An Honest Conversation With Female Prosecutors: Life After Law Firms – Fighting Crime and Fraud

Female prosecutors from the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) will describe their experiences investigating federal crimes and securities fraud, working with law enforcement agents (such as the FBI and DEA), and learning “trial by fire.” They will discuss topics of interest to all attendees of NAPABA, including: (1) how they compare job fulfillment at the federal government to their experience at law firms; (2) how firm experience prepared them to be successful prosecutors; (3) what investigations involve and a prosecutor’s role in investigations; (4) how they overcame challenges they faced as Asian-American; (5) opportunities available both during and after a career in government; (6) qualifications to be prosecutors and interview tips; (7) the importance of public service and why you should consider a career as a prosecutor; and (8) “if I had to do it over again, I would ...”

Moderator:
Christine Bautista Jeon, U.S. Securities and Exchange Commission, Chicago Regional Office

Speakers:
Zahra Jivani Fenelon, U.S. Department of Justice, U.S. Attorney’s Office, Southern District of Texas
Nicole Kim, U.S. Department of Justice, U.S. Attorney’s Office, Northern District of Illinois
Katie Suh, U.S. Department of Justice, U.S. Attorney’s Office, Southern District of Texas
When It Comes to U.S. Attorneys, All Americans Need a Seat at the Table

By Raman Preet Kaur  |  Posted on June 22, 2017, 9:02 am

In May, Attorney General Jeff Sessions ordered federal prosecutors to pursue the toughest possible charges against suspects of drug- and gang-related crimes—a startling shift from the Obama
administration's stance. These developments are illustrative of a key aspect of criminal justice reform: While the role of police officers is at the forefront of dialogue, the crucial role of prosecutors in law enforcement is frequently ignored.

Prosecutors are powerful agents in the criminal justice system. They choose which cases to take, recommend sentences, and outline priorities for law enforcement. Just as police departments need to be more diverse, America's prosecutors need to be more diverse as well. Unfortunately, there is very little data about the diversity of current U.S. attorneys, but the 2015 diversity statistics for their offices are not good: 8 percent of assistant U.S. attorneys are African American and 5 percent are Latino. Only 38 percent of assistant U.S. attorneys are women.

The Department of Justice's (DOJ) return to war-on-drugs policies brings new urgency to the diversity problem among prosecutors. Because previous war-on-drugs policies disproportionately affected people of color, it can be expected that the return to those policies will have a similarly negative effect on these communities.

The disparities in sentencing show a clear need to have people of color at the table making decisions about who to prosecute, how long to sentence, and what priorities to set for law enforcement. Nationwide, black defendants typically receive longer and harsher sentences than their white counterparts. Because prosecutors recommend sentencing timeframes, this is an issue that prosecutors and judges need to address. Florida has been embroiled in a crisis of sentencing disparities for decades, with judges giving black defendants substantially more time behind bars than their white counterparts with the same criminal histories. Black Americans are arrested for drug crimes at twice the rate of white Americans. Attorney General Sessions ordered prosecutors to outline tougher sentences for all drug- and gang-related criminal suspects, but given the racial disparities in sentencing, people of color will be disproportionately affected.

Sen. Kamala Harris (D-CA), the first woman of color to serve as attorney general of California, talked to The New York Times Magazine about having people of color “at the table” for important decisions in law enforcement:

“I remember being in my office and hearing a group of my colleagues outside my door talking about whether to bring a gang enhancement,” she told me, referring to the more severe penalty that prosecutors could ask for if the defendant was part of a gang. “They were talking about how these young people were dressed, what corner they were hanging out on and the music they were listening to. I remember saying: ‘Hey, guys, you
know what? Members of my family dress that way. I grew up with people who live on that corner.” She laughed. “I still have a tape of that kind of music in my car.”

Senators can do something about the diversity issue plaguing the criminal justice system on the federal level: They can demand diverse U.S. attorneys. In March 2017, President Donald Trump fired 46 U.S. attorneys, so senators now must vet and approve nominees for those open posts. In total, there are 93 open U.S. attorney positions that senators can weigh in on. On Monday of last week, President Trump announced eight candidate nominations for U.S. attorney positions. Three-quarters of these nominees are white men—despite that only approximately 30 percent of Americans are white men. Two of the nominees are people of color, and only one of the nominees is a woman. The White House stated that the eight nominees that the president put forth this week “share the president’s vision for ‘Making America Safe Again.’” If by sharing the president’s vision, they agree that racist war-on-drugs policies work, it is imperative that senators reject their nominations.

Senators have an important role in the process of selecting U.S. attorneys. Whenever there is a vacant U.S. attorney position, senators from that state select potential nominees for the open seat. The president traditionally reviews the list and chooses a nominee, typically from that same list. After a nominee is chosen by the president, senators from the home state of that nominee must sign off on their blue slips, signaling their approval of the president’s nominee. To resist the Trump administration’s return to outdated policies, it is imperative that the 93 U.S. attorney positions be filled with diverse prosecutors—those who have nuanced views of the criminal justice system and can understand the plight of people of color, who are disproportionately targeted by tough-on-crime policies. People of color need their voices heard in the criminal justice system, and senators can do a lot to make sure this happens.

The lack of racial and gender diversity among prosecutors has long-term effects that negatively impact the criminal justice system as well as the judiciary because being a prosecutor is often seen as a pathway to the bench. In a country with an incredibly diverse population, there should not be such a proportional difference between the demographics of the public and the officials who represent them. In a system where the rule of law is now questioned by the president who has sworn to defend it, and where the DOJ chooses to return to racist policies that do not work, federal prosecutors can defend the rule of law.

Sens. Cory Booker (D-NJ), Kirsten Gillibrand (D-NY), Rand Paul (R-KY), Al Franken (D-MN), Lisa Murkowski (R-AK), and Mike Lee (R-UT) do not agree with the recent return to outdated drug policies, and this bipartisan group of senators just introduced a bill that would allow state medical marijuana laws to supersede federal laws on medical marijuana use—a clear rebuff to the attorney general and
the Trump administration's stance. They can go a step further and mitigate some of the damages that this administration can cause and refuse to confirm prosecutors that do not believe in equal protection under the law.

If the nation truly stands for equal justice under the law, we cannot afford to keep sidelining the voices of people of color and other marginalized groups in a criminal justice system that has historically disenfranchised them.

*Raman Kaur is the special assistant of Legal Progress at the Center for American Progress. Billy Corriher, deputy director of Legal Progress at the Center, contributed to this column.*

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Houston federal judge bars female prosecutor from trial, sparking standoff with U.S. attorney’s office

Gabrielle Banks and Lise Olsen
Feb. 12, 2019  |  Updated: Feb. 13, 2019 10:35 a.m.

U.S. Attorney Ryan K. Patrick argued that in twice ejecting the prosecutor before a trial, U.S. District Judge Lynn Hughes exceeded his authority by attempting to rule on who can prosecute a case in his court.

Photo: Michael Ciaglo, Houston Chronicle / Staff photographer

A federal judge banished a female prosecutor from his Houston courtroom last month, sparking a rare standoff between the new U.S. Attorney and a jurist with a history of sniping at lawyers, government officials and litigants.
U.S. District Judge Lynn N. Hughes, a 77-year-old appointed by President Ronald Reagan, has been criticized in the past for making comments perceived as racist or sexist in court.

U.S. Attorney Ryan K. Patrick argued that in twice ejecting the prosecutor before a trial, the judge exceeded his authority by attempting to rule on who can prosecute a case in his court. Hughes told Patrick that the prosecutor — who was involved in a previous case where the judge made controversial remarks — lacked ability and integrity, records show.

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Federal judges have the discretion to excuse lawyers and issues ruling within the bounds of the constitution, and they do not have to provide their reasoning.

Hughes is known for delivering history lectures, issuing blunt critiques about improper courtroom attire and accusing the Justice Department of abusing government resources. Visitors to his court either perceive him as obnoxious and vindictive or witty and astute. He's been called a loose cannon who lashes out at attorneys unaware of his expectations or revered as a no-nonsense defender of constitutionally-guaranteed rights. A 2017 Houston Bar Association poll found that lawyers felt he needed the most improvement in being impartial, following the law and being courteous to attorneys and witnesses.

The recent controversy involved Assistant U.S. Attorney Tina Ansari, the same prosecutor involved in a 2017 court session in which Hughes made remarks characterized by the 5th U.S. Circuit Court of Appeals as “demeaning, inappropriate and beneath the dignity of a federal judge.”

**RELATED: Federal judge criticized by appeals court for 'demeaning remarks**

“It was a lot simpler when you guys wore dark suits, white shirts and navy ties... We didn't let girls do it in the old days,” he said during the court session. The judge later told the Houston Chronicle he was speaking to a group of FBI agents, at least
one of whom was a woman, and not the prosecutor. He said the comments were in reference to the exclusion of women historically and were not derogatory.

Hughes’ remarks were included in the U.S. Attorney’s appeal of his ruling, which the 5th Circuit overturned in July 2018, criticizing him. The appellate court also took the unusual step of ordering the presiding district judge to reassign the case to a different judge.

‘You will be disappointed’

The next time Ansari appeared before Hughes was on Jan. 14, as one of two prosecuting attorneys for an unrelated criminal case. At the pretrial hearing, Ansari announced her name to the court reporter and Hughes promptly excused her from court. She packed up and left.

Four days later at the start of a subsequent hearing on the same health care fraud case, Hughes immediately excused Ansari again.

LEGAL QUESTION: Federal judges butt heads with U.S. lawmakers over ankle monitors for nonviolent suspects

She asked why, and judge declined to provide his rationale.

Ansari thanked Hughes and left the courtroom.

Patrick, the U.S. Attorney, who attended the Jan. 18 hearing, addressed the judge and asked for an explanation. He reminded Hughes it is the Justice Department’s duty to assign prosecutors to cases.

Hughes responded that Patrick had failed to withdraw a “dishonest brief” in the 2017 case that the judge said incorrectly quoted him as making the “girls” remarks to Ansari. Hughes said that in the past prosecutors have corrected mistakes when the court pointed them out, and Hughes claimed that Patrick and his staff had not followed suit.
The judge explained, “Ms. Ansari is not welcome here because her ability and integrity are inadequate,” according to a transcript.

Hughes declined to comment about Ansari’s ejection, but he told Patrick in court that the U.S. Attorney had conflated his earlier comment to Ansari about being unprepared for her case with his later comment about women’s attire, which Hughes said was not directed at the prosecutor.

Patrick’s office asked to stop the criminal trial while they appealed Ansari’s ejection. They also asked that Hughes recuse himself from the case, which the judge declined to do. The appeals court promptly denied the stay, and the fraud trial began without Ansari. A jury convicted the defendant on all counts.

Following the guilty verdict, Patrick said the judge exceeded his authority in excluding Ansari.

“My duty under the law as the U.S. Attorney is to prosecute all crimes in the Southern District and that includes assigning the attorneys I feel are appropriate for any individual case,” said Patrick, who is the top federal law enforcement official in the sprawling federal district. “A judge does not have the authority to decide who gets to appear in front of him and a judge certainly cannot retaliate against a lawyer based on their performance in a previous case where the 5th Circuit has already told him he was wrong.”

Patrick said his office is appealing Hughes’ decision to remove Ansari.

In the meantime, the defense lawyer in the criminal case filed a routine appeal, along with a secondary argument that the jury’s verdict was “null and void” due to the prosecution’s pending appeal of Ansari’s ejection. Hughes denied the request.

**Comments by the judge challenged in earlier cases**

Hughes’ unvarnished critiques from the bench include a 1994 statement that U.S. immigration officers were “flunkies” and “brown shirts” — a reference to Nazi supporters — due to their conduct in a passport fraud case.
In 2013, the Texas Civil Rights Project filed a complaint against Hughes based on a review of court transcripts in three separate cases they said showed a pattern and practice by Hughes of making what the nonprofit organization described as “racist” remarks.

The complaint focused on the judge's comments about diversity, including his ruling that comments allegedly made by a Fort Bend Independent School District administrator to an African American employee were insignificant political speech. The administrator had allegedly told the employee that if Barack Obama were elected president, the Statue of Liberty would have its torch replaced by a piece of fried chicken.

The outcome of that complaint has not been disclosed in court records.

Hughes has garnered national attention for other remarks and rulings, including his dismissal of a sex discrimination case brought by a nursing mother who was prevented from pumping breast milk at work. An appeals court reversed Hughes' ruling in that case.

In other cases, Hughes also has been known to dress down federal officials for what he considers inappropriate courtroom behavior and attire. Last year he snapped at a male FBI agent in a child pornography case for showing up in his courtroom without a tie.

In a 2016, he issued a rare “Order of Ineptitude” in a terrorism case involving a man accused of supporting ISIS overseas. His wrath was not for the alleged terrorist, but a federal prosecutor from Washington, D.C. that Hughes called “just one more nonessential employee.”

After he was berated by Hughes for not coming to his court in a suit and tie, the prosecutor apologized and explained he didn’t have a suit with him because he had just arrived in Houston from the Middle East. Hughes told him to retrieve his passport so he could verify the prosecutor's customs' stamps.
“So, what is the utility to me and to the people of America to have you fly down here at their expense, eat at their expense and stay at their expense when there are plenty of capable people over there, in this room plus over there?” Hughes asked. “You don’t add a bit of value, do you?”

**Ethics questions posed**

Two experts interviewed by the Chronicle said Hughes’ pattern of unusual or improper remarks and his behavior toward the prosecutor could fit the legal definition of federal judicial misconduct or even incompetence and should be formally reviewed by Chief U.S. Judge Carl E. Stewart of the 5th Circuit.

After reading a summary of Hughes’ comments in last month’s hearing, Joanna L. Grossman, a professor at the Southern Methodist University’s Dedman School of Law, said it appears based on court records that Hughes directly retaliated against the female prosecutor because of criticism generated over his 2017 remark — a matter that had nothing to do with the criminal case before him.

“You need some proceeding where either the judge has to account for the conduct or air the facts — and there’s no natural way for that to happen outside of the misconduct complaint process,” Grossman said.

Arthur Hellman, a senior University of Pittsburgh law professor and a nationally recognized expert on federal judicial ethics, separately reviewed portions of the transcript and said Hughes' behavior “seems to be erratic in a way that starts to raise some questions about his competence.”

Hellman said it was bizarre for a judge to be “jumping into the case in this way and deciding this particular (prosecutor) … isn’t competent to represent the U.S. when the U.S. Attorney who runs the office thinks she is.”

Given Hughes’ history as the subject of a previous formal complaint and of public criticism in past appellate court opinions, Hellman said, “I think that the overall pattern of behavior here is sufficient to justify the chief judge initiating a complaint under the misconduct act.”
Under federal law, the chief appeals judge, Stewart, can independently decide whether to initiate his own formal review of whether Hughes’ latest behavior constitutes either judicial misconduct or mental disability based on information already available to him. Stewart, as chief judge, confidentially reviews all misconduct complaints involving federal judges in Texas, Mississippi and Louisiana.

Federal law defines misconduct for federal judges as any act that is “prejudicial to the effective and expeditious administration of the business of the courts” and disability as being “unable to discharge all duties of office by reason of mental or physical disability.”

Stewart did not respond to an email inquiry about whether he plans to investigate last month’s incident involving Hughes.

*Gabrielle Banks covers federal court for the Houston Chronicle. Follow her on Twitter and send her tips at gabrielle.banks@chron.com.*

*lise.olsen@chron.com*

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Diversity in Prosecutors’ Offices: Views from the Front Line

Katherine J. Bies, Darryl G. Long Jr., Megan S. McKoy, Jimmy S. Threatt, and Joshua D. Wolf
Diversity in Prosecutors’ Offices: Views from the Front Line

A Report of the Stanford Criminal Justice Center

March 2016

Katherine J. Bies, Darryl G. Long Jr., Megan S. McKoy, Jimmy S. Threatt, and Joshua D. Wolf*

The Stanford Criminal Justice Center (SCJC), led by faculty co-directors Joan Petersilia, David Sklansky, and Robert Weisberg and executive director Debbie Mukamal, serves as a research and policy institute on matters related to the criminal justice system. For more information about our current and past projects, please visit our website: http://law.stanford.edu/criminal-justice-center.
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Introduction and Overview

In July 2015, the Stanford Criminal Justice Center (SCJC) released a report detailing the racial and gender demographics of prosecutors’ offices across California. That study was conducted in response to events that renewed longstanding concerns regarding the treatment of racial minorities in the criminal justice system. In particular, national protests followed failures to indict White police officers implicated in the deaths of two unarmed Black men, Michael Brown and Eric Garner, in Ferguson, Missouri, and Staten Island, New York. Since the release of the SCJC’s first report, White officers implicated in the death of Tamir Rice, a Black 12-year-old, were also not indicted. The treatment of these officers by White prosecutors stands in stark contrast to the indictment of officers implicated in the death in Maryland of Freddie Gray, a 25-year-old Black man. The State’s Attorney in Baltimore was a Black woman.

Given the concern over the treatment of racial minorities in the criminal justice system, the lack of information on the demographics of prosecutors’ offices seemed especially concerning. Prosecutors wield a substantial amount of influence. They determine who is charged, what they are charged with, what sentence is sought, and what concessions to offer in exchange for a guilty plea. In those cases that do not go to trial—the vast majority—prosecutors exercise perhaps their greatest influence, often effectively determining the defendant’s sentence. Further, prosecutors set broad policies, deciding the aggressiveness with which different laws will be enforced, and other law enforcement officials often follow their lead.

The July 2015 study was the first to make publicly available demographic data regarding prosecutors’ offices. We strongly encourage readers to refer to the July 2015 report in detail. Broadly speaking, we found that minorities, particularly Latinos, are underrepresented among California prosecutors. Whites comprise approximately 38 percent of the population in California but 70 percent of California prosecutors. Further, while 48 percent of prosecutors are women, only 41 percent of supervisors are female.

However, the July 2015 study, as a quantitative analysis of prosecutors’ offices at a particular time, has limitations. In particular, such a snapshot fails to indicate whether, in recent years, offices were becoming less or more diverse. Our earlier report also attempted to describe previous research, which highlighted the possible effects a lack of diversity may have on office performance and to specify some factors that contribute to this lack of diversity. However, our quantitative analysis does not fully illuminate the causes or effects of the lack of diversity. As a result, we sought to supplement our first report with a qualitative analysis.

We interviewed prosecutors in an attempt to better understand the importance of diversity in the workplace, the evolution of the demographics of prosecutors’ offices, the challenges prosecutors face in creating and maintaining a diverse workforce, and the most promising strategies in overcoming those challenges. To that end, we spoke with prosecutors in five California counties:
Riverside, Santa Clara, San Diego, San Francisco, and San Joaquin. Here are the key findings from our interviews:

- **Diversity is important.** Respondents largely agreed that having a range of perspectives in an office encourages more equitable outcomes. They also stressed that a prosecutor’s office should reflect the community because doing so creates an appearance of fairness, cultivates trust, and allows for more effective prosecution.

- **Demographics are changing in offices.** Many, although not all, respondents said that in recent years their offices had hired more attorneys of color and more frequently promoted both attorneys of color and female prosecutors. Much of this change was attributed to the elected District Attorneys prioritizing diversity. Most respondents said that their office had already achieved some semblance of gender balance by the time they were hired.

- **There are many challenges to achieving diversity.** Respondents identified several challenges to increasing diversity in their offices, including: the lack of individuals of color graduating from law school, which necessarily limits the pool of candidates; the difficulty in competing with law firms for diverse candidates; and the negative perception of prosecutors among racial minority groups.

- **But, solutions have been developed to achieve diverse workplaces.** The most common solutions respondents shared include: (1) a conscious effort to recruit diverse candidates; (2) working to ensure that candidates meet women and attorneys of color during the recruiting and interview process; (3) community engagement as a method of combating the pipeline problem and the stigma associated with prosecutors in many communities of color; and (4) programs to actively retain current employees, such as job-sharing for prosecutors who prefer to work part-time.

We explain below how we selected the counties, chose the individual interviewees, and conducted the interviews. We also discuss the limitations of our methodology. We then present our findings in more detail. It is important to stress at the outset that our interviewees were not selected randomly and should not be assumed to be a representative sample of California prosecutors. We did not conduct a scientific survey. Rather, we spoke with a range of prosecutors in several different offices in an effort to get a sense of how issues of workplace diversity appear to at least some California prosecutors. We hope that the perspectives of the prosecutors we interviewed will be helpful in gaining a better understanding of how diversity may matter in prosecutors’ offices, the factors that may explain why there is not more diversity, and strategies that may be helpful in increasing diversity. Given the lack of diversity that exists in prosecutors’ offices across the United States, we hope this study will help foster productive discussions about effective ways to overcome these obstacles on a national level.
Methodology

When selecting offices to interview, we wanted the offices to be geographically heterogeneous. The five counties that we identified—Riverside, Santa Clara, San Diego, San Francisco, and San Joaquin—provided us with a cross-section of larger rural and urban counties from both southern and northern California.

Furthermore, the population of these five counties has interesting demographic compositions when compared to the general population of the state and to other District Attorneys’ offices in the state. The populations of three of the five counties—Riverside, Santa Clara, and San Joaquin—are more diverse than the general population of the state as a whole. When further examining the offices themselves, four of the five offices we interviewed ranked in the top fifteen offices with the highest percentage of non-White prosecutors. Yet their percentages of White prosecutors range from 53 percent to 81 percent.⁴

Figure 1: Racial and Ethnic Composition of District Attorneys’ Offices in California, 2015

<table>
<thead>
<tr>
<th>County</th>
<th>White (Non-Hispanic)</th>
<th>Black (Non-Hispanic)</th>
<th>Latino</th>
<th>Asian or Pacific Islander</th>
<th>Other/Undisclosed</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Francisco</td>
<td>53.5%</td>
<td>12.4%</td>
<td>10.1%</td>
<td>18.6%</td>
<td>5.4%</td>
</tr>
<tr>
<td>Santa Clara</td>
<td>60.3%</td>
<td>3.8%</td>
<td>6.5%</td>
<td>14.1%</td>
<td>15.2%</td>
</tr>
<tr>
<td>Riverside</td>
<td>64.3%</td>
<td>4.9%</td>
<td>9.8%</td>
<td>8.6%</td>
<td>12.3%</td>
</tr>
<tr>
<td>San Diego</td>
<td>70.3%</td>
<td>4.4%</td>
<td>13.1%</td>
<td>11.6%</td>
<td>0.6%</td>
</tr>
<tr>
<td>San Joaquin</td>
<td>81.1%</td>
<td>5.4%</td>
<td>8.1%</td>
<td>4.1%</td>
<td>1.4%</td>
</tr>
</tbody>
</table>

While the five identified counties were among the seventeen larger counties in our previous study, the sizes of the offices ranged from 74 to 244 prosecutors. Still, we believed that, as larger counties, these counties would be receptive to granting us access to their prosecutors.

To hear from a diverse range of perspectives, we requested to speak with eight to ten prosecutors from each office matching the following criteria:

- The District Attorney;
- At least two prosecutors from the Diversity Committee (if such committee exists);
- At least two prosecutors from the Hiring Committee (if such committee exists);
- At least one female supervising prosecutor and at least two female line prosecutors; and
- At least one supervising prosecutor of color and at least one line prosecutor of color.

We also asked that the interviewees have a range of legal and supervisory experience. The offices selected our interviewees, using the criteria we suggested. We interviewed a varied set of 44 prosecutors—24 females and 20 males—across all five offices. The racial and ethnic composition and range of experience for our interviewees can be seen in the figures below.

**Figure 2: Racial and Ethnic Composition of Interviewees**

![Racial and Ethnic Composition of Interviewees](image)

**Figure 3: Interviewees by Position**

![Interviewees by Position](image)
In Riverside County we interviewed ten prosecutors including: the District Attorney, four supervisory attorneys and five line attorneys. Of the ten prosecutors, six were females and four were males, and eight were non-White, including five who were Latino. Their years of experience ranged from seven years to twenty-seven years.

In Santa Clara County we interviewed nine prosecutors including: the District Attorney, five supervisory attorneys and three line attorneys. Most of the attorneys were members of the office’s Diversity Committee. Out of the nine prosecutors interviewed, four were females and five were males, and three were Latino and one was Black. Their years of experience ranged from five years to twenty-one years.

In San Diego County we interviewed seven prosecutors. We did not interview the District Attorney, however, the seven prosecutors consisted of two supervisory attorneys and five line attorneys. Of the seven prosecutors interviewed, three were females and four were males. Five of the seven prosecutors were non-White, and their years of experience ranged from one year to sixteen years.

In San Francisco County we interviewed eight prosecutors including: the District Attorney, four supervisory attorneys and three line attorneys. We interviewed five females and three males, and seven of the eight attorneys were non-White. Their years of experience ranged from one year to twenty-four years.

Finally, in San Joaquin County we interviewed ten prosecutors including: the District Attorney, three supervisory attorneys, four line attorneys and two post-bar clerks. (Like other District Attorneys’ offices in California, San Joaquin often hires recent law school graduates as clerks before promoting them to prosecutor positions.) Of the ten prosecutors, six were females and
four were males, and six were non-White. Their years of experience ranged from one year to twenty-nine years.

We conducted interviews during October 2015 and November 2015. Respondents were interviewed one at a time, with two interviewers asking questions and taking notes. Before our rounds of interviews began, we developed a set of approximately 50 questions. These questions, which can be found in the Appendix below, focused on: the importance of diversity within the office; changing demographics within the office; hiring practices; and attracting, promoting, and developing attorneys from underrepresented backgrounds. Paradigm, a firm that consults with public and private employers in their efforts to attract, hire, develop, and retain diverse workforces, reviewed and provided feedback on the interview schedule we developed.

Additionally, based on these questions, we developed a set of codes to qualitatively analyze the interviews. Interviews lasted 30 to 45 minutes each. In addition to written notes, the interviews were recorded, so that they could be referenced afterwards for coding, summarizing, and quoting. All quotes used within this report have been verified and authorized by the respondent who gave the statement. All interviewees had the option to be quoted anonymously.

Using the recordings, one of the two interviewers wrote a report of the interview. The report was a general summary of questions and responses—not a transcript. Then the other interviewer present at the interview coded the interview report using the predetermined codes. The codes were then used to develop themes across all interviews.

Before addressing our findings, we would like to acknowledge the limitations of our methodology. A set of 44 interviews is not large enough to draw any scientific conclusions, especially given that we did not use a random sample. The lack of a random sample due to the self-selection of respondents obviously makes our findings open to selection bias. Although we prepared questions in advance to make them as neutral as possible, interviews were free-flowing and were not strictly regimented by our set of questions. Because of time constraints with our interviews, different respondents may have been asked a slightly different set of questions depending on the flow of the interviews.

Despite these limitations, our findings are rich with information. Some sentiments were common across offices, some were particular to individual offices, and some differed within offices. This report is not prescriptive but descriptive and suggestive. The description of our findings are detailed in the sections below and provide what we believe are valuable, inside perspectives on the role of diversity within District Attorneys’ offices.

The Importance of Diversity

The respondents highlighted two major themes about the importance of diversity: the importance of diverse perspectives, and having a staff that reflects the community being served.
The Importance of Diverse Perspectives

The prosecutors we interviewed believe that racial, ethnic, and gender diversity is important because it creates an environment with diverse perspectives. They told us that diverse perspectives provide benefits such as combatting biases, which may be present in judgment-based determinations, and fostering more equitable outcomes.

First, some respondents mentioned that prosecutors, like others, can have blind spots or biases. Jeff Rosen, the Santa Clara County District Attorney, stated that everyone has “blind spots that you aren’t aware of until someone points them out to you.”5 Additionally, George Gascón, the District Attorney of San Francisco County, acknowledged, “a bias free environment isn’t possible.”6 But these blinds spots were not necessarily considered to be a negative attribute, but rather a fact of life. Whether good or bad, prosecutors said that they bring both their past life experiences and values when making decisions.

Jay Boyarsky, the Chief Assistant District Attorney in Santa Clara County, pointed out that, along with blind spots, “[p]rosecutors have immense power and responsibility.”7 Respondents said that diverse perspectives are particularly helpful when making judgment calls. As Carlos Monagas, a prosecutor in the Riverside County District Attorney’s Office, explained: “In murder cases, for example, a prosecutor has to decide whether to seek life without parole or the death penalty. Ultimately the prosecutor has to make a gut-check decision and it is better to have more perspectives at the table when making decisions.”8

Prosecutors usually have more discretion the more senior they are in the office. Respondents explained that line attorneys are able to provide input on whether they think a case should be diverted to a treatment program, but these decisions must be approved by management. Justine Cephus, a line prosecutor employed in the San Francisco County District Attorney’s Office, said that “people at the top have much more discretion over charging decisions like whether a defendant is facing 20 years or life without parole.”9 Thus, diverse perspectives are even more important in management. James Simmons, a line attorney who has been at the San Diego County District Attorney’s office for ten years, provided an example of discretion in his daily work:

Right now I’m in the gang unit. I’ve been here for six years. On cases that are less serious—that are not a murder case—for the most part I have almost sole discretion . . . I still have to clear things with my chief and my managers, but I go in there and make a decision on how I think the case should be handled and how I think the case should be resolved. And then I go in there and explain to them why I think it should be resolved that way. Then they’ll either agree or not agree, but for the most part they agree with my discretion or my input. But that’s me after having been a DA for ten years compared to somebody who has just started in the office . . . As you go through your career, depending on the manager as well, you may have more discretion than others.10
Given the racial diversity of defendants, many prosecutors discussed the importance of cultural sensitivity in these judgment-based decisions. When discussing what it means to be “culturally sensitive,” a few respondents pointed to the ability of minority prosecutors to draw on their experiences to better understand the case of a defendant who is also a minority. For example, Jonathan Mott, a prosecutor of White, Latino, and Native American ancestry in the San Joaquin County District Attorney’s Office, said that his negative experiences with police officers in the past can help him to “assess the facts with your goggles on and provide a more realistic or minority-centered view.”

Many prosecutors discussed how working with a diverse, culturally-sensitive team fostered more equitable outcomes for defendants. Although prosecutors are often faced with judgment calls, many prosecutors said that discussing the facts of a case with other line attorneys or supervisors allowed for more balanced outcomes for defendants. As Ron Freitas, a supervising attorney in San Joaquin County, stated, “If you have only one perspective, then you only come to one answer.” He said that diversifying teams made him a better prosecutor and supervisor. Respondents highlighted certain cases in particular that seemed to benefit from diverse perspectives: resisting arrest, human trafficking, domestic violence, and sexual assault cases. For example, Carrie Lawrence, a line prosecutor in San Joaquin County, said it was helpful to discuss resisting arrest cases with minority attorneys:

> Sometimes you’ll take the same set of facts and run it by a few people and you can get really varying answers. I just feel that having people from different backgrounds and experiences is really important in dealing with that. In search and seizure issues, people who have some experience themselves with improper questioning or bad experiences in the past—their view is a little more honest: ‘were those officers being a little too harsh on those kids?’ And so I think that it’s important there’s a range of experiences.

Attorneys of color also spoke about drawing on their own personal experiences to better understand a defendant’s situation. One prosecutor told us that he feels more comfortable dismissing cases because of his own negative experiences with the police. In his first year as a prosecutor, he has dismissed three cases where he felt there were clear Fourth Amendment issues.

Another prosecutor remembered one instance in which she felt the defendant had been stopped by the police because he was Black. She spoke to her supervisors, and the fact that the stop may have been illegitimate influenced the offer she gave to the defendant.

Lastly, a prosecutor reflected that young, minority prosecutors were instrumental in encouraging his office to drop a majority of charges filed against protesters after the 1998 shooting of a young Black woman by police officers. The prosecutor stressed, though, that race should not play a role in whether or not charges are filed or if a case is pursued more aggressively.
These stories align with research showing that increasing diversity in prosecutors’ offices encourages more equitable outcomes. One study found that “Black defendants are more likely to be sentenced to prison than their White counterparts, even after controlling for legally relevant variables, but when Black defendants are sentenced in districts with increased representation of Black prosecutors, they have a decreased likelihood of being imprisoned, resulting in more racially equitable sentences.” Increased interactions with minority prosecutors are likely to provide a new perspective, alter attitudes, increase sensitivity, and help to offset biases. Most importantly, by inserting new and varied perspectives into charging and sentencing recommendations, District Attorneys’ offices may be less likely to make these judgment-based decisions in a way that produces disparate outcomes.

Furthermore, diversity benefits decision making in other ways. As Eric Fleming, a prosecutor in San Francisco County, told us:

I think in the workplace, especially in our workplace, it’s such a team-oriented environment that the more diverse your team is [then] the more street smart your team is, the smarter your team is, [and] the more compassion it has. You can’t have this monotone, or one way of trying to doing things. Diversity allows you to expand your horizons, allows you to be more open-minded, more creative, more understanding.

Wade Chow, a prosecutor in the same office, said that a diversity of viewpoints allows for a questioning mentality: “People question the way things have been done and whether there is a good reason behind it or not.” This echoes research that heterogeneous organizations perform better than less diverse groups with “problem solving, innovation, and creative-solution building.” Diverse organizations are better equipped to approach problems and make decisions because a diverse range of viewpoints encourages that “non-obvious alternatives” are to be more likely considered.

**Defining a Diverse Perspective**

There was no agreed-upon definition of what it means to achieve diversity. Several respondents discussed that a diverse perspective means that all members of the community have a voice. Luis Ramos, a prosecutor in Santa Clara County, explained:

We are a government office and we represent the people of the State of California and if an office this large is representing the People, the attorneys should represent the communities. I’m talking about defendants, defense attorneys, judges, victims, the people out there should see that they are represented within the office and that their voice is being heard.

Some prosecutors said that a diverse perspective is achieved by reflecting the community. As Cindy Hendrickson, a prosecutor in Santa Clara County, put it, “The pool of prosecutors should
look somewhat like the pool of defendants.” Others said that it was more important to represent the languages spoken by the community.

However, most prosecutors we interviewed focused on the importance of representing varied personal experiences in order to reflect the community. Kareem Salem, a prosecutor in San Diego County, explained that hiring attorneys with diverse perspectives “might be accomplished most easily through ethnic diversity.” Other prosecutors emphasized that diverse experiences are not just about ethnicity. Eric Fleming stated, “Diversity is not just about color—it’s about experiences. We represent the city of San Francisco and it is one of the most diverse cities in the country and we want the office to reflect that.” Santa Clara County District Attorney Jeff Rosen felt similarly when discussing his hiring criteria for community prosecutors, who work with the local community to help solve public safety problems. District Attorney Rosen explained:

> We may want someone who can speak the language of the community but it doesn’t mean that that person then has to be that ethnicity. I don’t want people to think that the gang team is for White guys and the family violence team is for women because people are different—some minority prosecutors are conservative and some White attorneys are liberal.

Jaron Shipp in Santa Clara County also emphasized that prosecutors really need to think about diversity from more than a pure numbers standpoint, because “not only do prosecutors’ offices want to increase the numbers of prosecutors of color, it should also be a goal to bring in prosecutors with diverse experiences and backgrounds.”

**The Importance of Reflecting the Community**

The prosecutors who we interviewed explained that it was important to reflect the community in which they work, because it creates an appearance of fairness, cultivates trust, and facilitates more effective prosecution.

Many prosecutors stated that there is a special need for diversity in a government agency. Cindy Hendrickson of Santa Clara County said, “We are public servants, and so we should reflect the public that we serve.” Chris Arriola, Chair of the Diversity Committee in Santa Clara County, expanded on this sentiment and explained that government agencies need to do better than law firms at hiring candidates from underrepresented backgrounds. He stated,

> As a government agency, [the District Attorney] is an elected official. We’re his deputies, and we need to be able to respond to the people we’re trying to help, the people we’re trying to serve and to prosecute, [and] their families. Our jurors need to know we look like them, sound like them, and understand them.

Additionally, San Francisco County District Attorney George Gascón said that “reflecting the community is also important because in a public safety role the office needs to be credible.”
Witnesses, victims, defendants will feel more comfortable if there are folks that look like they look.”

In general, respondents described a vast chasm between law enforcement and minority communities. Tori Verber Salazar, the San Joaquin County District Attorney, acknowledged that “there is a perception that we are not here to help, we are only concerned with convictions or our win-loss record. The reality is much different. We don’t want defendants, because we know with each defendant comes a new victim, someone who has been harmed. It is imperative we intervene and work to prevent crime before it happens.” Justine Cephus, a prosecutor in the same office, described an “us versus them” mentality in her own community:

Victims of crime and defendants in criminal cases are [usually] people of color. I grew up in a family that did not trust the police. And you know calling police and seeing someone who looks nothing like you, [with] experiences wildly different from your own, it’s not exactly something that’s welcoming and makes people want to be forthcoming with law enforcement and that extends all the way to prosecution. If you have a White male officer show up at the scene, and then a White male DA is assigned to your case, and then you go before a White male judge, it is very us versus them—without even saying it—it’s just the message that is conveyed.

Because of this, she emphasized, “You absolutely have to reflect the community you prosecute and that you protect.” Similarly, another prosecutor observed, “Communities have lost faith in law enforcement. The time of believing police officers on the stand is gone. We need to adapt or eventually the community won’t even be able to believe the prosecutor.”

These sentiments reflect research that District Attorneys’ offices can lose legitimacy if their attorneys do not reflect the demographics of those they prosecute. It has also been found that minority communities have less trust and confidence in the police, the courts, and the legal system than Whites.

Many prosecutors said that they are hoping to dispel this negative perception by increasing the number of minority prosecutors. Christina Arrollado, a prosecutor in San Diego County, explained, “It is important there be an appearance of fairness, as this increases trust in law enforcement and makes it less of an us versus them mentality.” Meghan Buckner, a Black prosecutor in San Diego County, suggested that her presence in the office adds credibility:

It gives legitimacy to the criminal justice system for someone [who’s a] minority [to see] someone on the prosecution side who understands . . . I have a cousin that’s in prison, so I understand. And my aunts were very shocked that I wanted to be a prosecutor, but that’s what I told them. It gives legitimacy to the criminal justice system, that there’s someone on the other side knowing where these individuals come from and the struggles that they have.
Another benefit of diversity discussed by Kareem Salem, an Egyptian-American prosecutor in the same office, was that prosecutors of color have a desire to reach out to their communities in order to help change these negative perceptions:

*By virtue of having a diverse office, you are going to have people that want to reach out to those communities. As an Egyptian-American who speaks Arabic, I can tap into that community and get them involved, dispel any misconceptions, or if they have any grievances, let them air those grievances, and act as a channel.*

This aligns with findings that increased diversity improves trust and credibility. One study found that when police departments recruit and promote a large proportion of minority officers, the credibility of its entire force improves within minority communities. Additionally, research suggests that people are more likely to respect and trust authority when the superordinate group includes members of their own ethnic group or gender. Thus, increasing the diversity of criminal justice decision makers could “further enhance the viability of legal institutions and promote the perceived legitimacy of the law.”

Furthermore, prosecutors explained that reflecting the community not only increases credibility, but it also benefits prosecution efforts by improving interactions with victims, witnesses, and defendants. Jean Roland, a prosecutor in San Francisco County, described diversity as a “bridge to the people we represent.” As a Korean, she felt that:

*Koreans* feel comfortable knowing that they have someone in the prosecution office who is like them. I only say that because I come from the Korean community and every time I am in that community I feel like they can relate to our office better. And I think a large part of that is because I have that background. It makes them feel safer but it also makes them feel like they can come forward because I think especially with the Asian community, especially a monolingual community, they don’t really want to get involved when it comes to legal issues because whether it’s fear or immigration issues or because they don’t think anyone is going to understand the cultural sensitivities . . . they just don’t want to be involved.

As a Black prosecutor in San Diego County, James Simmons, felt similarly:

*The community sees the office differently depending on the diversity of the office . . . I make a point to speak with victims of my cases. I go speak with them in their community, in their houses, and a vast majority of the time they are surprised when they see an African-American attorney come to talk to them, saying, ‘Hey I’m the prosecutor that’s handling this case.’ And they feel, in my experience at least, a lot better represented and more comfortable talking to me, especially since I have similar experiences from my own upbringing as a lot of these victims have. I have had similar experiences with family members that have been involved in the criminal justice system as well. So, at least personally, I’ve seen the ability or the ease and the comfort at which I’m able to socialize*
and communicate with people in the community who are not just victims but also defendants. Because despite the fact that they are here as defendants, they still deserve the same respect as everybody else . . . I had a case several years ago, where I was prosecuting a guy for attempted murder. His mother, to this day, sees me on the street, walks up, gives me a hug, and says thank you so much for handling my son’s case and treating us with respect.\(^46\)

Similarly, another Black prosecutor stated that Black victims and Black defendants may be more trusting when the prosecutor working on their case is not White.\(^47\)

In the Latino community, Patricia Rieta-Garcia, a Latina prosecutor in San Joaquin County, said that “victims or witnesses have some visible relief when they see someone who looks like me.”\(^48\) Carlos Monagas, a Latino prosecutor in Riverside County, also argued that attorneys of the same ethnicity or culture could better connect with minority witnesses—especially Spanish-speaking witnesses. He said, “It is more helpful when an attorney does not have to use an interpreter, because culture is not lost within the interpretations.”\(^49\)

In San Joaquin County, District Attorney Tori Verber Salazar told us that it is difficult to break into the Asian and Muslim communities where there are a significant number of unreported crimes. She recently hired several new attorneys who are members of these groups and has accompanied them to religious centers in order to reach out to the communities.\(^50\)

Many prosecutors also mentioned domestic violence and sexual abuse as cases where diversity is immensely important in connecting with the victim—whether by race, ethnicity, gender, or sexual orientation. Amy Barajas, a prosecutor in Riverside County explained that in child abuse and sexual assault cases it is helpful being Mexican and a woman because victims are more comfortable with her, and she does not have to entirely rely on a translator.\(^51\) However, Deena Bennett, another prosecutor in the same office, has seen gender diversity play out both ways in these cases: “Female victims do not want to talk to male prosecutors, but young boys also do not want to talk to women.”\(^52\)

Cindy Hendrickson has also seen the sexual orientation of a prosecutor encourage a victim to be more forthcoming. Hendrickson described an openly gay deputy district attorney who was able to relate to a gay victim in a domestic violence prosecution with greater sensitivity and understanding than another prosecutor might be able to convey. This rapport relaxed the victim and allowed him to be more forthcoming in discussing the case. She emphasized: “Our job is all about being able to relate to others, and so the more diverse the office is, the more diverse the office is in being able to relate to people.”\(^53\)

Furthermore, prosecutors also explained that diversity can benefit the prosecution in front of a jury. Riverside County District Attorney Michael Hestrin emphasized that “race has an impact in the courtroom because of the perception of justice and fairness. While someone’s race certainly
has nothing to do with their skills or abilities in the courtroom, it’s important that, as best as we can, our staff reflect the community we represent.”

Jonathan Mott of San Joaquin County felt that his personal experiences help make a compelling argument to a diverse jury. He said it was important to ask:

\[
\text{How do you think this is gonna play in front of a jury? And not a jury of conservative, White males, but a jury like we’re gonna get in Stockton. You’re gonna have African-Americans on the jury, you’re gonna have Mexican-Americans, you’re gonna have Asian-Americans, you’re gonna have low-income persons from across the board on your jury. You need to ask yourself: ‘What does your experience as a minority tell you about law enforcement coming into an all minority neighborhood’?}
\]

Overall, prosecutors stated that diversity was important in their offices. They explained that diversity could be used as a tool not only to dispel negative perceptions of prosecutors’ offices in the community, but also to encourage more effective and fair prosecution. Accordingly, prosecutors gave many examples about how diverse teams created more equitable outcomes for defendants and facilitated interactions with victims and witnesses. Diversity, whether measured by personal experiences or race and ethnicity, benefits both prosecutors and the communities they serve.

**Changing Demographics**

The prosecutors we interviewed emphasized three main themes related to the changing demographics of their offices in recent years. First, office demographics recently have shifted more dramatically for minorities than for women. Second, women and prosecutors of color are being promoted more frequently. Lastly, respondents attributed these shifts, in part, to changing office culture inspired by leaders who place greater emphasis on diversity.

**Gender**

The majority of respondents said that there have not been significant changes in the number of female prosecutors in their offices. This is not necessarily due to a lack of diversity. Rather it is indicative that for some period of time—at least before many current prosecutors began their careers—these offices already achieved some semblance of balance with regards to gender. For example, Christine Garcia-Sen noted that since she started at the Santa Clara County District Attorney’s Office 19 years ago, the gender demographics “ha[ve] changed, but not a lot,” noting that when she began her career almost half of the prosecutors were women.

However, others offered a different picture. Patricia Rieta-Garcia noted that, when she first started at the San Joaquin County District Attorney’s Office in 1986, she could “count on one
hand how many women were in the office.” Though not to be discounted, such comments were in the minority.

Many respondents voiced concern regarding the assignment of women to units within offices and their promotion to leadership positions. For the most part, respondents said that there have been significant improvements in both areas. Some respondents reported continuing problems, though. One respondent indicated that a desirable unit in the office is comprised entirely of White men, making it difficult for women and prosecutors of color to gain the experience trying serious cases that can be critical to career advancement.

These sentiments echo the findings from our first report that females are underrepresented among prosecutors with supervisory titles, but not among total state prosecutors. Of the 769 prosecutors with supervisory titles in our database, 317—41.2 percent—are female, and of the 52 elected District Attorneys, 17—32.7 percent—are female.

### Race and Ethnicity

Further, most respondents said that racial diversity in their offices has improved significantly. For instance, one respondent noted that during the attorney’s tenure at the office the number of Black prosecutors has doubled. Additionally, Santa Clara County District Attorney Jeff Rosen thinks his office is still not as racially diverse as the county population, but is confident that it has become much more diverse, particularly over the last five years. Other respondents from the Santa Clara County District Attorney’s Office also emphasized that the racial demographics of the office have changed dramatically during their tenures, with the change accelerating over the last five years.

Some respondents, on the other hand, told us that there had not been much change in the racial demographics because their respective offices were already quite diverse. For instance, Wade Chow, who has worked at the San Francisco County District Attorney’s Office for 19 years, noted that it was diverse from the day he started. Our initial report found that in 2015, 53.5 percent of prosecutors in San Francisco County were White. Julie Ching, a prosecutor in the Riverside County District Attorney’s Office, had a similar view. She said the office was probably more diverse than most prosecutors’ offices, that her hiring class was ethnically diverse, and that the office already had a “significant number” of minority attorneys. Our previous study found that 64.4 percent of prosecutors in the Riverside County were White. Though there were not many, other respondents opined that not much has changed in the racial composition of their office and, as a result, their offices continue to lack diversity.

Perhaps the most common sentiment regarding changing demographics was that there has been significant progress in the promotion of attorneys of color to leadership positions. Even those prosecutors who said that their offices had been diverse for a long time stated that there had been a relative dearth of minorities in supervisory positions. Wade Chow remarked that in the San
Francisco County District Attorney’s Office “[t]he major difference . . . over the 19 years is that there are now more attorneys of color in leadership positions. For instance, four of the five criminal division chiefs are of diverse backgrounds.” 67 Another respondent commented that when the prosecutor was hired there was only one prosecutor of color in a leadership position. Now, however, there are more supervisors of color. The change, the prosecutor said, has been dramatic. 68

**Office Culture**

For those respondents who said that their offices have become more diverse, a change in the office culture was often cited as one of the primary factors. In particular, the emphasis placed on diversity by the elected District Attorney seems to have a significant impact. For instance, Deena Bennett, a prosecutor in the Riverside County District Attorney’s Office, noted that the composition of the office is “completely different” under Michael Hestrin, the recently elected District Attorney. 69 This sentiment was echoed by other respondents from Riverside County, many of whom emphasized that District Attorney Hestrin has prioritized diversity.

Ghazal Sharif noted that in the San Joaquin County District Attorney’s Office, the workforce had been almost entirely White men, but within one year of being elected, San Joaquin County District Attorney Tori Verber Salazar hired several prosecutors of color in addition to a very diverse intern class. 70 Patricia Rietta-Garcia, in describing the impact of District Attorney Verber Salazar, remarked that perhaps the greatest sign of increased diversity is that “I’m sitting here talking to you as a chief. It’s important to remember this office is not a democracy. The District Attorney gets to make choices about how things are run.” 71

Prosecutors in the Santa Clara County District Attorney’s Office said much the same thing. Chris Arriola, the Chair of the Diversity Committee, praised the efforts of District Attorney Jeff Rosen: “Having a DA who is committed to diversifying the office is important because ultimately he is going to sit with the list of candidates and decide who to hire. He decides who he is going to promote . . . It’s got to come from the top.” 72 Jaron Shipp also emphasized District Attorney Rosen’s impact: “The leadership in the office truly cares about building a diverse office. I can’t speak for previous administrations . . . but today, the office seems far more progressive on the issue compared to other offices I’ve encountered.” 73

Similarly, in the San Francisco County District Attorney’s Office, Eric Fleming said that he started under former San Francisco County District Attorney Kamala Harris, a Black female, who “made an effort to make the office more diverse” and recruited experienced attorneys of color. He said that the current District Attorney, George Gascón, has continued this trend. 74

Overall, prosecutors seemed positive about what they perceived as increased diversity in their offices, despite the fact that the diversity of these offices still does not fully match the diversity of the communities they serve. 75
Challenges to Attracting and Hiring Diverse Talent

Although most prosecutors we interviewed stated that diversity has increased in their offices in recent years, many identified multiple barriers to attracting and hiring diverse talent. In particular, they highlighted the stigma surrounding prosecutors in minority communities and a pipeline problem which creates a small pool of potential minority candidates.

Stigma

The most frequently identified barrier was the stigma surrounding prosecutors in minority communities, especially among Blacks and Latinos. Almost half of the respondents highlighted this challenge of overcoming the negative perception of prosecutors as the “bad guys.” One Latina prosecutor described how other Latinos viewed her job as a “betrayal of the neighborhood.” A Black prosecutor described being viewed as a sellout.

Ghazal Sharif, a Muslim-American prosecutor in the San Joaquin County District Attorney’s Office, expressed her initial desire to become a public defender because of the cultural bias against prosecution:

*I wanted to be a public defender . . . I just didn’t have the heart to prosecute people . . . Even when I first got here, it was hard to be like my role was, ‘You did something wrong.’ I just didn’t have the heart to do that. I also thought I would never have the opportunity to work at a District Attorney’s office. I went to law school in San Diego and I saw that the people they hired didn’t look like me . . . And even if they did hire me, I thought I wouldn’t appeal to the jury pool . . . Getting a post-bar with a DA’s office, I felt guilty explaining that to my friends . . . I always felt like I had to give a disclaimer: ‘I’m not one of those.’ I still grapple with that.*

A few respondents said this stigma stemmed from a historical distrust of law enforcement within minority communities. Eric Fleming told us, "When you grow up in a certain environment and you have family members who have been prosecuted, you can feel like you are turning your back on your community by being a prosecutor.” Because of the disproportionate representation of minorities among defendants, he concluded that many minority law students feel more inclined to work as public defenders than as prosecutors.

Seven respondents urged that law students pursue prosecution careers since prosecutors have more discretion in making charging decisions. Debbie Hernandez described the discretion she exercises as a reason for her career choice:

*I believed I could make a better impact as a prosecutor rather than as a public defender . . . We actually do have discretion to do certain things, and I have had a case where I do believe that we don’t have the right person or we can’t prove it beyond a reasonable doubt, and I’ll dismiss it. And that’s huge . . . You have the ability to take the case forward and hold them accountable for the crime they committed, but if you think you*
Chris Arriola echoed the need to have more diverse prosecutors, because they are “the arbiter of justice . . . [and] decide what’s charged and what’s not charged.” James Simmons described how an internship at a District Attorney’s office in law school increased his awareness of prosecutorial discretion: “I saw that I could have a bigger impact on this side of the table because we’re the ones that make the charging decisions as far as looking at what someone should face as their potential punishment.”

A handful of respondents said this negative attitude toward prosecutors also existed in law schools. One prosecutor discussed how many of his law school classmates and professors were pro-defense and held a firm bias against prosecutors. When he tried to enroll in a criminal law seminar during his third year of law school, he recalled that a professor suggested he did not belong in the course because of his intended career as a prosecutor.

**Pipeline Problem**

Several respondents also stated that their recruitment efforts were limited by the small pool of minority attorneys in California. Identifying a pipeline problem, they pointed out that minorities were disproportionately underrepresented not only in law schools but also among bar certified attorneys. Because prosecutor offices are “limited to what is available in the marketplace,” San Francisco County District Attorney George Gascón emphasized that they have to be more assertive in their recruitment efforts of diverse candidates. Many respondents concluded that the issue of underrepresentation in prosecution and other sectors in the legal profession largely stemmed from the law school admissions process and graduation rate. Because relatively few minorities graduate from law school and pass the state bar, respondents argued that their offices had a disproportionately low number of minority candidates from which to select.

**Additional Barriers**

Eleven prosecutors described the additional difficulty of competing with law firms for diverse candidates. They mentioned that prosecutors’ offices, in comparison to law firms, have significantly smaller budgets and, in general, cannot compensate their summer interns or post-bar clerks. Respondents suggested that this budget restriction impacts candidates from lower socioeconomic backgrounds who are disproportionately racial minorities. Only prosecutors in Santa Clara County said that their office had funding to pay summer interns in their 2L Honors Program. According to Debbie Hernandez, the program has noticeably increased the racial diversity of their office.

Respondents mentioned a few other barriers in attracting and hiring diverse talent. Two prosecutors discussed that many minority children grow up unaware that becoming an attorney,
let alone a prosecutor, is a career option, as none of their family or community members are attorneys. Meghan Buckner stated, “I did not know a prosecutor growing up. Nobody in my family has ever been a lawyer or been to law school . . . I never thought I wanted to step foot in a courtroom.” A few respondents stressed an additional barrier created by Proposition 209, which amended the California Constitution to prohibit state institutions, including District Attorneys’ offices, from discriminating against and granting preference to racial minorities and women. Elton Grau, a prosecutor in San Joaquin County, stated, “The office is stifled by HR policies . . . As long as we can’t take ethnicity into account, we are limited. Diversity can’t be a category that we choose from, just a category that we look at.” Finally, several prosecutors who work in the Riverside County and San Joaquin County District Attorneys’ Offices described the difficulty of attracting minorities because of their offices’ locations. Prosecutors from both offices faced the challenge of overcoming the perception of their counties as small, rural, and isolated.

While most respondents said they faced multiple barriers to diversifying their offices, this sentiment was not shared by all. One respondent who has worked at the Santa Clara County District Attorney’s Office for several years, said the office did not face any major challenges. This prosecutor estimated that the office typically receives hundreds of applications from candidates of all racial backgrounds. Overall, however, respondents explained that their offices faced various challenges in creating a diverse workforce.

Tools for Diversification

Prosecutors also discussed a wide array of tools for diversifying their workforces in response to the historical lack of diversity within prosecutors’ offices and to the many challenges that stand in the way of diversification. We group the responses under four broad philosophies: Inclusive Hiring, Diversity Attracts Diversity, Community Engagement, and Active Retention.

Inclusive Hiring

As discussed above, the most widespread view regarding diversity among the respondents was that diversity benefits an office for a plethora of reasons. This translated, across all five offices, into maintaining a conscious effort to bring aboard diverse candidates. San Francisco County District Attorney George Gascón, for example, said that “it is important that the DA’s office is ‘actively seeking’ a diverse pool of applicants.” With the goal of diversifying their workforce in mind, offices have implemented a variety of methods as described below. These methods cover three broad areas: proactively recruiting candidates from underrepresented racial and ethnic groups; ensuring equal opportunity for candidates from underprivileged socioeconomic backgrounds; and combating the stigma against prosecution common among communities underrepresented in prosecutors’ offices.
Proactive Recruiting within Diverse Settings

Prosecutors at all five of the offices surveyed identified techniques employed by the office to target diverse candidates in order to counteract the pipeline problem.

One of the primary methods recounted by respondents is for prosecutors to recruit directly at area law schools and at public interest fairs. One prosecutor, for example, said that prosecutors from his office go to nearby law schools to “actively recruit” and seek out qualified minority candidates who maybe thought “they didn’t have a place at the DA’s office.” This prosecutor said that the most recent hires are diverse because the District Attorney “actively searched,” commenting that recruiting minority talent must be part of an “articulated vision.” Indeed, multiple prosecutors from each of the five offices identified this as an important strategy.

A related strategy identified by respondents is direct outreach to student affinity groups. In the San Diego County District Attorney’s Office, for example, James Simmons, told us that he reaches out to Black Law Students Associations both of his own initiative and with the encouragement and support of the office, both generally and during the office’s hiring process.

Another, similar strategy identified by respondents is to establish contacts with ethnic bar and lawyers’ associations. Some of the offices devoted resources to sending their attorneys to such organizations, while other offices encouraged their employees to forge connections but were unable to provide funding for time spent on such endeavors. Jaron Shipp, for example—a prosecutor from the Santa Clara County District Attorney’s Office—was sent by his office to attend the National Black Prosecutors Association Convention. However, while agreeing with the strategy, he noted that such endeavors cannot be one-off events because it is important to have a sustained presence at these types of conventions and job fairs. Although it may result in a low yield at the beginning, Shipp asserted that one has to build up goodwill and trust over a number of years: “No one wants to come in and just be treated like a token; they want to feel valued as a larger member of the office and community.”

Santa Clara County employs another pro-active strategy to diversify its office: sending hiring notices directly to diversity-affiliated groups. Jay Boyarisky explained that when the office circulates a hiring notice, it makes sure to contact a large number of diversity-affiliated organizations.

San Francisco County proved unique among the surveyed offices in that, as a part of its recruitment strategy, the office hosts a diversity symposium. At the symposium, minority students can meet minority attorneys, and the attorneys can share their experiences and their reasons for pursuing a career in prosecution. The event is hosted at the Hall of Justice in San Francisco, and the office conducts outreach at all of the law schools in the San Francisco Bay Area. One respondent from the office noted that a number of prosecutors give a presentation about what it is like to work in a District Attorney’s office. Feeling that attorneys of color are more likely to be public defenders, presenters specifically point out the fact that prosecutors
make many of the critical decisions in a case. Thus, by being a person of color in a prosecutor’s office, one is in a position to have a positive impact on and represent all people, even the defendant.96

Lastly, although none of the offices surveyed actively recruit at historically black colleges and universities, respondents from two different offices believe such a strategy would be effective.

**Paid Internship Positions**

Because of law schools’ disproportionate economic impact upon students from underrepresented backgrounds, prosecutors highlighted that one way to proactively recruit diverse candidates is to offer paid internship positions. One obstacle that was echoed among many respondents, and which is covered above, is the difficulty in attracting candidates from underrepresented backgrounds to unpaid internships when such candidates are also sought out by firms, which pay handsomely for a summer’s work. One prosecutor noted that while their office pays its third-year law clerks, it cannot do so for second-year law clerks. This prosecutor believes this presents a problem in that it is difficult for the office to compete with law firms in recruiting law students: firms offer $30,000 for a summer’s worth of work, whereas the prosecutor’s office does not have the resources to pay its second-year summer clerks.97 Melissa Diaz, a prosecutor in San Diego County responsible for hiring, echoed these sentiments. She noted that retention of second-year law students is difficult, especially with candidates representing diverse populations:

> Everybody and their brother wants [diversity students from top tier schools] at their firm, at their organization, and we can’t compete: we don’t pay our summer interns or academic year interns, and the fact of the matter is I find a lot of our diversity candidates have bigger debt loads than some other candidates. So, when they tell me they don’t want to come back, I encourage them to go to the paid job because debt is debt and I’ve been there.98

Chris Arriola, a prosecutor in Santa Clara County, noted that his office is able to pay its second-year law student interns and “the fact that the [2L Honors Program] is paid is critical.” District Attorney Jeff Rosen established the 2L Honors Internship at the suggestion of David Angel and Chris Arriola. District Attorney Rosen agreed that it should be paid in order to bring a socioeconomic and ethnic diversity to the internship program that it previously lacked when it was all volunteer-based.99

**Combating the Stigma around Prosecution**

In carrying out any of the above pro-active recruiting strategies, multiple prosecutors from each office identified that an important topic to broach with possible candidates from these communities is the stigma against prosecutors and prosecution. In order to combat this stigma, respondents from every office stressed that when recruiting a minority candidate (especially Black and Latino candidates), how the job is framed within the broader criminal justice context
is of paramount importance. Some prosecutors suggested framing prosecution as protecting victims and the community at large rather than targeting defendants. Additionally, many prosecutors explained that a prosecutor has more power to help the community—including defendants—than does a public defender.

Several prosecutors shared how they positively frame prosecution with these considerations in mind. Jay Boyarsky of Santa Clara County stressed that, “If you really want to have an impact, go to where the power is. If you really want the system to change, be a part of the system.”\textsuperscript{100} He challenged the view that “if you really care about injustice, you become a criminal defense attorney,” and noted that this perception is changing. Christine Garcia-Sen, another respondent in the same office, framed it slightly differently:

\begin{quote}
Our focus should be how crime adversely impacts minority victims . . . and that is the selling feature if you’re recruiting people to work as DAs. People don’t sign up to be a DA because [they] want to throw . . . people in jail. They want to be DAs [to do trial work and to] do work that is in line with their values.\textsuperscript{101}
\end{quote}

Meghan Buckner, a respondent from San Diego County, also touched on this issue: “It’s not necessarily because you are a minority you have to defend, because minorities are on both sides. There are minority victims of crimes.”\textsuperscript{102}

\section*{Diversity Attracts Diversity}

Another of the most widespread philosophies and tools for diversification is the principle that “diversity attracts diversity.”\textsuperscript{103} This philosophy is employed both when attracting candidates from underrepresented backgrounds as new hires, and when attracting and promoting candidates from underrepresented backgrounds within the office to management positions.

\subsection*{Attracting New Hires from Underrepresented Backgrounds}

All five offices we surveyed explicitly employ the philosophy of “diversity attracts diversity” as a tool to attract applicants, though in differing ways. At the Riverside County District Attorney’s Office, when the office sends attorneys to recruit at law schools and job fairs, they choose a diverse group to represent the office. According to one of the prosecutors in Riverside County, while the office does not pick applicants based on race or gender, they attract a diverse group of applicants by sending a diverse group of attorneys to the law schools and job fairs.\textsuperscript{104} Another prosecutor added that the goal is to assemble a group of attorneys of different ages, genders, races, and practice areas.\textsuperscript{105}

Santa Clara County employs a strategy of “diversity attracts diversity” in a way similar to Riverside County, but does so through its Diversity Committee. District Attorney Jeff Rosen established the Diversity Committee to examine issues centered around gender, ethnicity, religion, and sexual orientation, as well as to assist in community engagement and office
recruitment. The committee—which comprises attorneys from a range of gender, racial, and ethnic groups within the office and community—keeps an informal tally of the ethnic, gender, and sexual orientation breakdown of the office based on self-identification. Using that data, the committee seeks to bring in candidates from underrepresented backgrounds so that the office better reflects the community. According to one prosecutor in the office, the Diversity Committee’s role is to catalogue the diversity of the office, be mindful of it, and seek out candidates of color. The meetings mainly consist of looking over the numbers in the office and discussing who is attending specific on-campus interviews. From this prosecutor’s experience, “when you have people of color and/or Caucasians that recognize the value of diversity, and those people are the ones going out and looking for candidates . . . almost 100 percent of the time you’ll do a better job, you’ll have a higher yield of diverse candidates coming in for interviews than you would with people who don’t recognize or don’t think about the value of a diverse prosecutor’s office.”

The San Francisco County District Attorney’s Office, as described above, hosts a diversity symposium where minority students can meet minority attorneys and attorneys can share their experiences and their reasons for becoming prosecutors. In addition to these symposia, one of the respondents from San Francisco County suggested that the office’s reputation for being diverse might attract diverse applicants.

While neither the San Diego nor San Joaquin County District Attorney’s Offices reported being proactive in their choice of attorneys sent out to recruit, prosecutors at both offices, along with multiple prosecutors from San Francisco County, identified a conscious effort to ensure that interviewing panels are diverse. In San Diego County, for example, one prosecutor said that for their third-year summer law clerk program, there is a conscious effort for each panel to reflect the gender and ethnic diversity of the office. Likewise, District Attorney George Gascón asserted that the hiring committee in San Francisco County comprises a diverse group of people. This composition is intentional so that committee members come from different backgrounds and have their own contextual view of candidates. District Attorney Tori Verber Salazar told us that today the San Joaquin County District Attorney’s Office consciously makes interview panels more diverse. “We are a diverse community, we want people to realize our diversity the minute they walk in the doors.”

Of the respondents who had an opinion on whether or not the diversity of their interview panel during their own hiring process affected them or their job decision, more respondents said that the demographic composition of the interview panel did not affect their decision to accept an offer. However, of seven respondents who had an opinion on the matter, two attorneys opined that the level of diversity of the hiring panel was a factor in their decision.
Fostering Diverse Management

Respondents from four out of the five offices surveyed told us that having a diverse management staff is an important factor in signaling the opportunity for candidates from underrepresented backgrounds to pursue management positions. In San Diego County, for example, Meghan Buckner, a Black woman and recent hire, said that both the gender and racial diversity of management within the office made her feel that she could and wanted to advance to such positions. In particular, identifying a Black supervising attorney at the office, Buckner said that the fact that he could make it so high in the managerial echelon was really encouraging. She expressed similar sentiments about female managers of color within the office:

> With Melissa [Diaz, a Latina supervising attorney,] being a female, I think that helped as well. Knowing that someone who is a female and who is a minority can definitely achieve greatness in this office . . . that definitely allowed me to understand and see that I can achieve greatness as well.

With regard to the women of the office more generally, Buckner said that given the large number of women in the San Diego County office with families and children, “it is amazing to see how they can do a work-life balance with that. And they’re in management, they’re trying very serious cases—murder cases, three strikes cases—and they still have families . . . That’s what made me really want to be a part of this office because this office facilitates different lifestyles.”

One prosecutor stated that younger attorneys can be affected by whom they see in management. Younger attorneys are “looking for cues: are there people like me that are doing this kind of work?” Younger attorneys consider if there is a “track record of people like me being rewarded for hard work and commitment to the organization.”

Regarding diversity in leadership, Jaron Shipp from Santa Clara County said that, “Many people who become prosecutors are extremely highly motivated [and] ambitious people . . . You want a career that is going to continue to build towards a peak . . . but sometimes your career can stagnate . . . and that’s a concern that [attorneys of color] raise. And I think when your leadership is not necessarily reflective of the diversity in your office and certainly in your community, it can provide an unconscious message to women or attorneys of color that there is some type of glass ceiling.”

Two prosecutors explained that diversity in leadership is important because it creates role models. Stephanie Mason, a female prosecutor in San Francisco County, said that “qualified attorneys wouldn’t work in a place—would not work in an office—where diversity or women in leadership didn’t exist, particularly if they had goals for advancement.”
Community Engagement

Because of the pipeline issue discussed above, and the stigma against law enforcement among communities of color, respondents from all five offices identified early, consistent, and positive community engagement as an important philosophy and tool in enlarging the potential pool of diverse candidates from which to draw. This community engagement came in many flavors, a number of which are detailed below.

Getting into the Trenches

A significant number of respondents from all five offices identified general community outreach efforts as being critical to stemming the bias against prosecutors’ offices among communities of color and in broadening the future candidate pool. One respondent identified this as “getting into the trenches” rather than sitting on high and judging people.119

In Riverside County, for example, the District Attorney has created a very strong mandate that prosecutors volunteer in the community. One of the respondents from that county stated that the office participates in outreach programs for at-risk youth in the county, as the office’s goal is always to hire people from the local community.120

The San Diego County District Attorney’s Office has supported its attorneys’ participation in a community program that interacts with fifth graders. The program—a ten-week curriculum to teach kids to avoid gangs and peer pressure—has the dual benefit of deterring youth from getting entangled with the criminal justice system and of leaving a positive impression of the District Attorney’s Office. James Simmons, a prosecutor who has worked in the program, says “[t]he biggest thing for me is making sure I have an impact in the community. My job as a prosecutor isn’t just to lock up people because nothing changes if that’s all you do. It’s just going to be a revolving door. So I think it’s important to try and have an impact on the community to even prevent individuals from coming into the system.”121

Additionally, another prosecutor talked about the importance of their interaction with the community. This prosecutor discussed the Youth Advisory Board, a program wherein attorneys from the office participate in afterschool programs for at-risk youth. The office also takes part in Thanksgiving dinners with police officers and underprivileged kids in the community.122

In San Francisco County, District Attorney George Gascón noted the importance of convincing young men and women of color that being a prosecutor is an achievable and worthy endeavor. The office hosts its diversity symposium each year to achieve this goal. Additionally, the office participates in many community events to help the office to better appreciate concerns within the community. District Attorney Gascón sends existing staff out to events to increase awareness. He stated that he makes a “proactive effort to have these conversations regularly.”123 Another prosecutor from that office noted that the office recently invited young adults from the Bayview neighborhood of San Francisco, who are predominantly Black. Some of the attorneys in the
office then shared with the youths their reasons for being prosecutors. This prosecutor also noted that the office has similar events for law students and stated that it takes prosecutors of color speaking to these populations to get them to “see a different side.” Another prosecutor from San Francisco County mentioned that the office actively staffs many panel discussions about why individual attorneys chose to be a prosecutor, particularly for people from minority communities.

District Attorney Tori Verber Salazar described some of the efforts of her office to engage with the community of San Joaquin County. She noted that the office partners with Pacific Law Academy, a high school in Stockton with all pre-law students, as well as with the pre-law program at University of Pacific, which allows students to complete their undergraduate and law degrees within a combined six years at University of Pacific and McGeorge Law School. Additionally, the office partners with other programs at Stanislaus State University, University of Pacific, and San Joaquin Delta College. Though she noted that the better results of these efforts will not come for 10-12 years, the office is trying to build a better foundation. As stated by San Joaquin County District Attorney Tori Verber Salazar, the goal of these partnerships is to reach out to younger students in Stockton and to encourage them not to give up on education: “Without intervention and prevention, the community will lose students from the ages of eight to twelve. If we don’t intervene the gangs will.”

Chris Arriola of Santa Clara County described his office’s Law Related Education program, which they have run for almost 20 years. Attorneys from the office speak at almost every fifth grade class within the San Jose Unified School District about being a prosecutor. The program culminates with a trip to criminal court. All prosecutors who might relate to the youth population are encouraged to participate in the program, but especially young prosecutors and those of color.

Respondents from both San Diego County and Santa Clara County noted that their offices participated in local high school mock trial programs. Christine Garcia-Sen, a prosecutor in Santa Clara County, for example, mentioned that she coached mock trial for several years, largely to non-White students. Each year she would bring the students to the courthouse and then introduce them to a sitting judge. Viewing their reactions, Garcia-Sen feels better able to see the system from their viewpoint. The judge is from a minority community, and the students were always excited to see a person with significant power who looks like them. Garcia-Sen believes that these visits help to inspire trust in the criminal justice system among the participating students.

**Community Prosecution Unit**

The Santa Clara County District Attorney’s Office has an entire unit dedicated to community outreach: the Community Prosecution Unit. One prosecutor described the Community Prosecution Unit as being built on a restorative justice model. Thus, while a part of its mandate is
to interact with the community and to positively counteract the stigma against law enforcement therein, it is also a community prosecutor’s job to restore the community. The community prosecutors strive to help the community members advocate for themselves, so that they can allocate more resources to an issue.

The office has recently increased the unit from one person to five in order to liaison with communities of color, so they feel like they have a direct connection to the office.\textsuperscript{130} This takes such forms as attending and participating in community events, as well as, for example, having a Latino prosecutor present on how to avoid falling victim to fraudulent immigration forms.\textsuperscript{131}

**Outreach to Student Affinity Organizations and Membership in Ethnic Bar Associations**

The inclusive hiring practices mentioned above include strategies of outreach to student affinity organizations and of encouraging an office’s attorneys to join or participate in ethnic bar associations. These strategies, however, also serve a second purpose: engaging the community and allowing the office to try to bring in people from those organizations that fit the mold and mission of the office.\textsuperscript{132} One prosecutor, for example, mentioned that while it has not officially been a part of the general hiring process, he sees great value in such outreach and he communicates with local ethnic student organization chapters on his own initiative and with his office’s encouragement.\textsuperscript{133} Likewise, another prosecutor noted that this year their office reached out to criminal law associations at different schools and to student organizations as a part of its hiring process. In so doing, the attorneys met with the students and urged them to apply to the office’s internship programs, which feed its general hiring process.\textsuperscript{134} Another prosecutor mentioned that their office is seeking to work with the local county Bar Association and the La Raza Bar Association.\textsuperscript{135}

**Active Retention**

While the above-three philosophies and their associated strategies focus on attracting and hiring diverse candidates, respondents also identified another important philosophy in creating and maintaining a diverse workforce: active retention of already-hired diverse attorneys. Several tools and strategies to accomplish this goal were highlighted.

**Job-Share Programs**

A job-share program allows two employees to occupy one position within the office, which is accomplished by each of the two employees dropping from full-time to part-time. The biggest area in which the importance of this tool arose was in the arena of maternity and paternity.
The Riverside County District Attorney’s Office has an official job-share program in which one attorney effectively vacates his or her position, and then both attorneys evenly split a salary and all benefits while dropping to part time. The San Francisco County District Attorney’s Office also has a job-share program. District Attorney George Gascón said that he has tried to make the workplace more desirable for new parents. In the past, he noted that this has been accomplished through job sharing. Santa Clara County also has a formal program of voluntary reduced work hours.

However, prosecutors had some criticism of these programs. One prosecutor participated in a job-share program after the birth of her children. She described working part-time through the program for a long period before coming back on full time. She believes working part-time never impacted the trajectory of her career. In contrast, another prosecutor in the office considered using the program but never did. She told us it would be financially difficult for her family to lose half of her income, and also thought it would be hard to put her career aside, noting that it is “hard to have a balance of home life and professional life.” Another female respondent noted that “it seemed for a while that there were certain women who decided that they wanted to raise their families” and left the office. There is a job sharing program at her office, but, in her opinion, it was “not an easy job if you have to get home.”

Other Tools and Strategies for Retention

In addition to the retention strategies outlined above, some additional strategies were highlighted by various respondents. For example, one prosecutor said that it is important to tell candidates from underrepresented backgrounds that they are valued. Eric Fleming, from the San Francisco County District Attorney’s Office, explained: “We sit down and talk to [diverse attorneys and law clerks] and let them know they’re valued, and talk to them about their future at this office.” In fact, Fleming stated that among the reasons he has stayed at the office is because the leadership informed him how much they value him. Another strategy that Fleming detailed was keeping in touch with law clerks that have left but who have an interest in returning. For example, occasionally the office will have a law clerk during the summer who then works at another prosecutor’s office the following summer. The office will stay in touch with that person and let them know when it expects the interview to be a line prosecutor to take place. This can play a key role in the individual picking the San Francisco office over other opportunities. “We let them know they are sought after because their experiences are important to us and it will allow them to be a voice for the community.”

One prosecutor we interviewed believes that some diverse candidates have the feeling that they do not belong or are not wanted by certain District Attorneys’ offices, so this prosecutor’s office tries to let candidates know it is not true.

By employing tools from the four broad categories detailed above—Inclusive Hiring, Diversity Attracts Diversity, Community Engagement, and Active Retention—prosecutors in the five
offices we surveyed said that they have been able to tackle many of the obstacles which inhibit workforce diversity.

**Conclusion**

We spoke with 44 prosecutors across five different California District Attorneys’ offices to better understand the obstacles to and strategies for achieving a diverse office. Although this study is limited by the sample size, the nonrandom selection of interviewees, and our qualitative interview method, we were able to identify some common themes and strategies amongst the offices in regard to diversity.

First, respondents highlighted that diversity within the office is important because it allows for diverse perspectives in decision-making and makes the office more reflective of the community it serves. Although there was disagreement as to whether diversity is accomplished numerically by race or through attorneys’ personal experiences, our respondents repeatedly said that by drawing on personal experiences, prosecutors with diverse perspectives reduce potential biases, enhance cultural sensitivity, and provide for more equitable outcomes. Our respondents also emphasized that it is especially important that a District Attorney’s office, as a government agency, reflect the community in order to foster an appearance of fairness, cultivate trust within the community, and allow for more effective prosecution.

Second, although the diversity of District Attorneys’ offices lags behind the diversity of the state population, respondents for the most part agreed that the racial, ethnic, and gender demographics of their offices have become more diverse over the past ten to fifteen years, especially with respect to racial and ethnic diversity. Also, even though some prosecutors believe that there are still not enough women and attorneys of color in management positions, we consistently heard from respondents that women and attorneys of color are being promoted more frequently now than they had been in the past. Many respondents emphasized the uptick in these two demographic shifts were spurred by a change in office culture that was largely driven by the administration and the District Attorney.

Third, along with competing against law firms for candidates, and the limits of Proposition 209 on hiring practices, respondents identified two main challenges that hindered their offices’ ability to recruit and hire minority candidates: a negative perception of prosecutors’ offices and a small pool of minority applicants. Despite agreeing that prosecutors from underrepresented backgrounds are needed within their offices, respondents explained that one of the largest challenges to recruiting and hiring minority candidates was overcoming the negative perception of prosecutors held by candidates that could drive them away from prosecution and into defense. Respondents also emphasized a pipeline problem, in which potential minority candidates are
siphoned off at every step in the process of becoming a prosecutor—from college enrollment to law school enrollment to bar passage.

Fourth, respondents suggested that their offices could overcome some of those hindrances by employing inclusive hiring practices, using the office’s current diversity to attract candidates from underrepresented backgrounds, engaging the community, and employing active retention methods. Respondents suggested a variety of inclusive hiring practices that could help overcome the pipeline problem by proactively recruiting candidates from underrepresented racial and ethnic groups through job fairs, public interest fairs, student affinity groups, and ethnic bar and lawyers’ associations, and by offering paid internship positions for law students. Respondents also said they thought that using the office’s current diversity for on-campus interviewing, interviewing panels, diversity committees, or diversity symposia, and promoting female attorneys and attorneys of color to management positions can help attract more candidates from underrepresented backgrounds to apply to their offices. To further combat the pipeline and negative perception problems, respondents emphasized the importance of engaging communities early, consistently, and positively through volunteering in community programs and building relationships with community prosecution units. While those three techniques have been used to attract more prosecutors from underrepresented backgrounds, respondents also identified active retention methods like job-share programs, which may be especially beneficial for retaining gender diversity.

Our conclusions are limited by research constraints. Our qualitative analysis reflects both the challenges five California District Attorneys’ offices face in attracting diverse talent and the techniques that have been used to address these challenges, but we still have unanswered questions about the success of these strategies. We cannot say with confidence how successful these techniques have been in increasing the diversity of prosecutors in these offices. Further research is necessary to assess and compare the success of these various strategies, as well as regarding whether the successes and struggles that District Attorneys’ offices face in hiring and retaining minority and female prosecutors vary from county to county or state to state. More work, both qualitative and quantitative, is needed to better understand these challenges to diversity and strategies to diversify.

While these offices have undoubtedly worked to increase diversity, our initial report illustrates that racial and ethnic demographics are still “Stuck in the 70’s.” Although obstacles to and strategies for increasing diversity varied from office to office, all respondents emphasized the important and beneficial role diversity plays in their workforce. We hope that the opinions and anecdotes shared by our respondents will suggest some of the roles diversity may play in prosecutors’ offices, as well as possible challenges to and opportunities for increasing diversity in those offices.
Appendix

Interview Questions

Mission Statement: Thank you for taking the time to speak with us. We are conducting a follow-up to a study that we publish in July about the race, ethnic, and gender demographics of DA’s offices. The information we gather from these interviews will be published in a qualitative report in the winter on attorneys’ experiences with diversity in DA’s offices. For the purposes of our study, we are defining diversity as racial, ethnic, and gender diversity. Have you signed the consent form? Unless we get your permission, we won’t identify you or your office. Is it ok for us to record?

Elected District Attorney

Background

1. Could you please talk about your experience with diversity in your office.
2. When did you start at this office?
3. Could you describe the demographic composition of the office with respect to race, ethnicity, and gender when you first started?
4. Have there been shifts in the demographic composition of the office? How? Why do you think this has happened?
5. What role, if any, do you think diversity plays in the workplace, particularly within the criminal justice setting?
6. Do you have a formal position on diversity and inclusion?

Attract / Hire

1. Does your office have a formal hiring process? Could you please describe your office’s hiring process?
2. Does your office recruit attorneys? How?
3. What kind of factors, skillsets, or traits does your office look for in potential hires?
4. What’s the gender, racial, and ethnic composition of interviewers during the hiring process?
5. What’s the gender, racial, and ethnic composition of the hiring committee?
6. What factors do you consider when attempting to attract talent or to hire talent at your office?
7. What strategies, if any, do you use to attract talent to your office?
8. Are there any initiatives that your office is undertaking to increase the diversity of your office?
9. Are there challenges with attracting diverse talent? Please describe.
10. Have state policies such as Prop 209 shaped your hiring process?
11. Have practices changed? How? Why?
Develop and Retain

1. What is your onboarding process?
2. What is your process for giving feedback?
3. Is there a formal performance review process?
4. Are there opportunities for mentorship?
5. Have you ever conducted research on employee engagement (either a survey or interviews)?
6. What data do you have about people’s job satisfaction?
7. What factors do you think are important when retaining talent at a district attorney’s office? To retain diverse talent?
8. Are there challenges to retaining diverse talent? What challenges?
9. Do you use any strategies to retain attorneys? What about attorneys from underrepresented backgrounds?
10. Do you implement any strategies to increase the diversity of your office? What strategies?

Closing

1. Is it ok if we follow up with you?

Diversity Committee

Background

2. Could you please talk about your experience with diversity in your office.
3. When did you start at this office?
4. Could you describe the demographic composition of office with respect to race, ethnicity, and gender when you first started?
5. Have there been shifts in the demographic composition of the office? How? Why do you think this has happened?
6. What role, if any, do you think diversity plays in the workplace, particularly within the criminal justice setting?
7. Do you have a formal position on diversity and inclusion?
8. What is your role on the diversity committee?
9. Does the diversity committee have a mission? What is it?
10. Does the diversity committee have a formal strategy? What is it? How was it determined?

Attract / Hire

1. Does your office have a formal hiring process? Could you please describe your office’s hiring process?
2. Does the hiring committee factor diversity into attracting talent, resume review, interviewing and making decisions? How?
3. Do you feel diversity is a factor to consider when attracting talent / hiring at a district attorney office? Why or why not?
4. Please describe the gender/ethnic make-up of the Diversity Committee.
5. Are there any current initiatives that the diversity committee is undertaking regarding attracting talent? What have been the results?
6. How are resumes reviewed?
7. How are resume reviewers selected?
8. How are interviewers selected? How large is the pool of attorneys who interview candidates?
9. Do interviewers receive any training?
10. How are interview questions determined? Who formulates interview questions?
11. How are hiring decisions made following interviews? Whose and what input is considered when deciding who to hire?
12. How are candidates selected for interviews? What is the decision-making process like?
13. Does each candidate answer the same questions? Is there a rubric for evaluating answers to interview questions?
14. Who communicates with the candidates? What information is given to the candidates before the interview?
15. Are open positions advertised? How?
16. Does the office recruit directly on law school campuses? If so, do you target particular schools? How? Why? If so, in what manner does the office advertise recruiting on the individual campuses?
17. What kind of factors, skillsets, or traits does your office look for in potential hires?
18. Is “fit” a consideration? If it is, how is fit determined?
19. Do you include any language or statements about valuing diversity or encouraging people from underrepresented backgrounds to apply, either on your website or in job descriptions?
20. What is the pre-interview process evaluation like? What kind of information are candidates required to provide? Does the office ask specifically about the criminal history of family members of the candidate?
21. Do you collect feedback from the candidate on the hiring process? If so, what have you learned?
22. Are there challenges to attracting diverse talent? What challenges?
23. Do you use strategies to attract diverse talent and increase the diversity of your office? What strategies?
24. How have state policies such as Prop 209 shaped your hiring process?
Retain

1. Do you feel diversity is a factor to consider when retaining talent at a district attorney office? Why or why not?
2. Are there challenges to retaining diverse talent? What challenges?
3. Do you use strategies to retain diverse talent and increase the diversity of your office? What strategies?
4. If you have collected data on employee engagement, have you found differences by demographic variables (do underrepresented minorities report different levels of engagement?)

Supervising Attorney

Background

1. When did you start at this office?
2. Could you describe the demographic composition of the office with respect to race, ethnicity, and gender when you first started?
3. Has the demographic composition of the office changed since you began? Why or why not?
4. What role, if any, do you think diversity plays in the workplace, particularly within the criminal justice setting?
5. Do you have any specific examples where diversity amongst your team has helped solve/win a case?
6. How does your office’s demographic composition compare to your prior work experiences?
7. What does your office do well regarding diversity?
8. What could your office do better?

Attract / Hire

1. Could you describe the hiring process when you were applying for a position?
2. Please describe the gender/ethnic make-up of your interview panels/hiring committee.
3. Why did you choose to work at this office?
4. What factors did you consider in selecting DA offices to interview at or to accept a job at? Did you consider staff diversity?
5. What have been the challenges to attracting diverse talent?
6. What strategies, if any, have you used to attract minority applicants?
7. Have practices changed? How? Why? (might be interesting to press on specific issues like pipeline problem, Prop 209, etc.)

Retain

1. Why have you stayed at this office?
2. Do you have any specific examples of female or minority co-workers who have left the office and why?
3. Do you think diversity is important in leadership at a DA office?

**Line Attorney**

**Background**

1. When did you start at this office?
2. Could you describe the demographic composition of office with respect to race, ethnicity, and gender when you first started?
3. Has the demographic composition of the office changed since you began? How has it changed?
4. How do you perceive the level of demographic diversity of this office? How does it compare to your prior work experiences?
5. Do you think diversity is important in the workplace, particularly within the criminal justice setting?
6. Do you have any specific examples where diversity amongst your team has helped solve/win a case?
7. What does your office do well regarding diversity?
8. What could your office do better?
9. Was there something in particular about the culture of this office that you found appealing?

**Attract / Hire**

1. Could you describe the hiring process when you were applying for a position?
2. Who communicated with you?
3. What information were you given about the interview process?
4. What did you like about the interview process? What could be improved?
5. Please describe the gender/ethnic make-up of your interview panels/hiring committee.
6. Why did you choose to work at this office?
7. What role did diversity play in selecting DA offices to interview at or to accept a job at?
8. Do you feel diversity is an important factor to consider when choosing a DA office? Why?
9. Are there challenges to attracting diverse talent? What challenges?
10. Are there strategies to attract diverse talent and increase the diversity of your office? What strategies?
11. How have state policies such as Prop 209 shaped your hiring process?
12. Have practices changed? Why? How? (might be interesting to press on specific issues like pipeline problem, Prop 209, etc.)
1. Why have you stayed at this office?
2. Do you have any specific examples of female or minority co-workers who have left the office and why?
3. Do you think diversity is important in leadership at a DA office?

3 For instance, data obtained by the Stanford Criminal Justice Center through a federal Freedom of Information Act request indicates that, nationwide, 8 percent of Assistant United States Attorneys are Black and 5 percent are Latino.
4 In our quantitative study, the Riverside County District Attorney’s Office was reported as 64 percent White, making it the office with the tenth highest percentage of non-White attorneys. But since 27 out of the 30 attorneys categorized as “Other” did not disclose their race or ethnicity, the percentage of the office that is White could be as high as 75 percent. This would place Riverside County outside of the top 15 of offices with the highest percentage of non-White attorneys.
5 Interview with Jeff Rosen, District Attorney, Santa Clara County District Attorney’s Office, in San Jose, Cal. (Nov. 3, 2015).
6 Interview with George Gascón, District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Nov. 6, 2015).
7 Interview with Jay Boyarsky, Chief Assistant District Attorney, Santa Clara County District Attorney’s Office, in San Jose, Cal. (Oct. 20, 2015 and Nov. 6, 2015).
8 Interview with Carlos Monagas, Supervising Deputy District Attorney, Riverside County District Attorney’s Office, in Riverside, Cal. (Oct. 21, 2015).
9 Interview with Justine Cephus, Assistant District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).
10 Interview with James Simmons, Deputy District Attorney, San Diego County District Attorney’s Office, in San Diego, Cal. (Oct. 22, 2015).
11 Interview with Jonathan Mott, Deputy District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).
12 Interview with Ron Freitas, Chief Deputy District Attorney, San Joaquin County District Attorney’s Office, in Stockton, Cal. (Nov. 6, 2015).
13 Interview with Carrie Lawrence, Deputy District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).
14 Interview with Anonymous Prosecutor #11.
15 Interview with Anonymous Prosecutor #38.
16 Interview with Anonymous Prosecutor #29.
18 Roscoe C. Howard, Jr., Changing the System from Within: An Essay Calling on More African Americans to Consider Being Prosecutors, Widener L. Symp. J. 139, 164 (2000); Ward et al., supra note 17, at 773.
20 Interview with Eric Fleming, Chief Trial Assistant District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).
21 Interview with Wade Chow, Deputy District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).
Interview with Luis Ramos, Deputy District Attorney V, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Oct. 20, 2015).

Interview with Cindy Hendrickson, Assistant District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).

Interview with Kareem Salem, Deputy District Attorney I, San Diego County District Attorney’s Office, in San Diego, Cal. (Oct. 22, 2015).

Interview with Eric Fleming, Chief Trial Assistant District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).

Interview with Jeff Rosen, District Attorney, Santa Clara County District Attorney’s Office, in San Jose, Cal. (Nov. 3, 2015).

Interview with Jaron Shipp, Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Oct. 20, 2015).

Interview with Cindy Hendrickson, Assistant District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).

Interview with Chris Arriola, Supervising Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).

Interview with George Gascón, District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Nov. 6, 2015).

Interview with Tori Verber Salazar, District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).

Interview with Justine Cephus, Assistant District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).

Interview with Anonymous Prosecutor #11.

Interview with Anonymous Prosecutor #38.

Interview with Patricia Rieta-Garcia, Chief Deputy District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).

Interview with Carlos Monagas, Supervising Deputy District Attorney, Riverside County District Attorney’s Office, in Riverside, Cal. (Oct. 21, 2015).

Interview with Tori Verber Salazar, District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).

Interview with Amy Barajas, Senior Deputy District Attorney, Riverside County District Attorney’s Office, in Riverside, Cal. (Oct. 21, 2015).

Interview with Deena Bennett, Deputy District Attorney, Riverside County District Attorney’s Office, in Riverside, Cal. (Oct. 21, 2015).

Interview with Cindy Hendrickson, Assistant District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).
Interview with Mike Hestrin, District Attorney, Riverside County District Attorney’s Office, in Riverside, Cal. (Oct. 21, 2015).
Interview with Jonathan Mott, Deputy District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).
Interview with Christine Garcia-Sen, Deputy District Attorney V, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Oct. 20, 2015).
Interview with Patricia Rietà-Garcia, Chief Deputy District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).
Interview with Anonymous Prosecutor #9.
Interview with Anonymous Prosecutor #5.
Interview with Jeff Rosen, District Attorney, Santa Clara County District Attorney’s Office, in San Jose, Cal. (Nov. 3, 2015).
Interview with Chris Arriola, Supervising Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015); Interview with Cindy Hendrickson, Assistant District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015); Interview with Nahal Iravani-Sani, Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Oct. 20, 2015).
Interview with Wade Chow, Deputy District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).
Interview with Julie Ching, Deputy District Attorney, Riverside County District Attorney’s Office, in Riverside, Cal. (Oct. 21, 2015).
Interview with Wade Chow, Deputy District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).
Interview with Anonymous Prosecutor #25.
Interview with Deena Bennett, Deputy District Attorney, Riverside County District Attorney’s Office, in Riverside, Cal. (Oct. 21, 2015).
Interview with Ghazal Sharif, Deputy District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).
Interview with Patricia Rietà-Garcia, Chief Deputy District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).
Interview with Chris Arriola, Supervising Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015)
Interview with Jaron Shipp, Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Oct. 20, 2015).
Interview with Eric Fleming, Chief Trial Assistant District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).
Interview with Anonymous Prosecutor #13.
Interview with Anonymous Prosecutor #38.
Interview with Ghazal Sharif, Deputy District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).
Interview with Eric Fleming, Chief Trial Assistant District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).
Interview with Debbie Hernandez, Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).
Interview with Chris Arriola, Supervising Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).
Interview with James Simmons, Deputy District Attorney, San Diego County District Attorney’s Office, in San Diego, Cal. (Oct. 22, 2015).
Interview with Anonymous Prosecutor #28.
Interview with George Gascón, District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Nov. 6, 2015).
Interview with Debbie Hernandez, Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).
Interview with Meghan Buckner, Deputy District Attorney I, San Diego County District Attorney’s Office, in San Diego, Cal. (Oct. 22, 2015).

Interview with Elton Grau, Deputy District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).
Interview with Anonymous Prosecutor #36.
Interview with George Gascón, District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Nov. 6, 2015).
Interview with Anonymous Prosecutor #11.
Interview with James Simmons, Deputy District Attorney, San Diego County District Attorney’s Office, in San Diego, Cal. (Oct. 22, 2015).
Interview with Jaron Shipp, Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Oct. 20, 2015).

These organizations include: California Women Lawyers, the California Association of Black Lawyers, the Santa Clara County Bar Association, the Asian Pacific American Bar Association, the National Asian Pacific Islander Prosecutors Association, La Raza Lawyers Association of California, the Filipino Bar Association of Northern California, the Vietnamese American Bar Association of Northern California, the Arab American Attorney Association, the Bay Area Association of Muslim Lawyers, Palo Alto Area Bar Association, Santa Clara County Black Lawyers, Silicon Valley Bar Association, Women Lawyers/Santa Clara, Sunnyvale Cupertino Bar Association, Asian American Bar/Bay Area, Korean American Bar Association/Northern California, Queen’s Bench, Diversity Committee of Santa Clara County Bar Association, South Asian Bar Association of Northern California, and the Charles Houston Bar Association.

Interview with Jay Boyarsky, Chief Assistant District Attorney, Santa Clara County District Attorney’s Office, in San Jose, Cal. (Oct. 20, 2015 and Nov. 6, 2015).
Interview with Anonymous Prosecutor #9.
Interview with Anonymous Prosecutor #39.
Interview with Anonymous Prosecutor #23.
Interview with Melissa Diaz, Deputy District Attorney, San Diego County District Attorney’s Office, in San Diego, Cal. (Oct. 22, 2015).
Interview with Chris Arriola, Supervising Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).
Interview with Jay Boyarsky, Chief Assistant District Attorney, Santa Clara County District Attorney’s Office, in San Jose, Cal. (Oct. 20, 2015 and Nov. 6, 2015).
Interview with Christine Garcia-Sen, Deputy District Attorney V, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Oct. 20, 2015).
Interview with Meghan Buckner, Deputy District Attorney I, San Diego County District Attorney’s Office, in San Diego, Cal. (Oct. 22, 2015).
Interview with Elaina Gambera Bentley, Deputy District Attorney, Riverside County District Attorney’s Office, in Riverside, Cal. (Oct. 21, 2015).
Interview with Anonymous Prosecutors #31.
Interview with Anonymous Prosecutor #34.
Interview with Chris Arriola, Supervising Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).
Interview with Anonymous Prosecutor #3.
Interview with Anonymous Prosecutor #5.
Interview with Anonymous Prosecutor #8.
Interview with Anonymous Prosecutor #23.
Interview with George Gascón, District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Nov. 6, 2015).
Interview with Tori Verber Salazar, District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).

Interview with Anonymous Prosecutors #11 and #18.

Interview with Meghan Buckner, Deputy District Attorney I, San Diego County District Attorney’s Office, in San Diego, Cal. (Oct. 22, 2015).

Interview with Anonymous Prosecutor #10.

Interview with Jaron Shipp, Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Oct. 20, 2015).

Interview with Anonymous Prosecutors #7 and #40.

Interview with Stephanie Mason, Deputy District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).

Interview with Anonymous Prosecutor #25.

Interview with Anonymous Prosecutor #31.

Interview with James Simmons, Deputy District Attorney, San Diego County District Attorney’s Office, in San Diego, Cal. (Oct. 22, 2015).

Interview with Anonymous Prosecutor #22.

Interview with George Gascón, District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Nov. 6, 2015).

Interview with Anonymous Prosecutor #38.

Interview with Anonymous Prosecutor #41.

Interview with Tori Verber Salazar, District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).

Interview with Tori Verber Salazar, District Attorney, San Joaquin County District Attorney’s Office, in San Joaquin, Cal. (Nov. 6, 2015).

Interview with Chris Arriola, Supervising Deputy District Attorney, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Nov. 3, 2015).

Interview with Christine Garcia-Sen, Deputy District Attorney V, Santa Clara County District Attorney’s Office, in Santa Clara, Cal. (Oct. 20, 2015).

Interview with Anonymous Prosecutor #3.

Interview with Anonymous Prosecutor #4.

Interview with Anonymous Prosecutor #2.

Interview with Anonymous Prosecutor #1.

Interview with Anonymous Prosecutor #44.

Interview with Anonymous Prosecutor #2.

Interview with Anonymous Prosecutor #28.

Interview with George Gascón, District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Nov. 6, 2015).

Interview with Anonymous Prosecutor #37.

Interview with Anonymous Prosecutor #30.

Interview with Anonymous Prosecutor #34.

Interview with Anonymous Prosecutor #7.

Interview with Eric Fleming, Chief Trial Assistant District Attorney, San Francisco County District Attorney’s Office, in S.F., Cal. (Oct. 29, 2015).

Id.

Interview with Anonymous Prosecutor #39.
In more than a decade of arguing cases in court, I’ve witnessed the stubborn cultural biases female attorneys must navigate to simply do their jobs.

LAST YEAR, ELIZABETH FAIELLA took a case representing a man who alleged that a doctor had perforated his esophagus during a routine medical procedure. Before the trial began, she and the defense attorney, David O. Doyle Jr., were summoned to a courtroom in Brevard County, Florida, for a hearing. Doyle had filed a motion seeking
to “preclude emotional displays” during the trial—not by the patient, but by Faiella.

“Counsel for the Plaintiff, Elizabeth Faiella, has a proclivity for displays of anguish in the presence of the jury, including crying,” Doyle wrote in his motion. Faiella’s predicted flood of tears, he continued, could be nothing more than “a shrewdly calculated attempt to elicit a sympathetic response.”

Faiella told the trial judge, a man, that Doyle’s allegations were sexist and untrue. The judge asked Doyle whether he had a basis for the motion. Faiella says that he replied that he did, but the information was privileged because it came from his client. (Doyle told me the information had in fact come from other defense attorneys.) Faiella called his reply “ridiculous.” She told me: “I have never cried in a trial. Not once.”

As Faiella listened to Doyle press forward with his argument, her outrage mounted. But she had to take care not to let her anger show, fearing it would only confirm what Doyle had insinuated—that she would use emotional displays to gain an advantage in the courtroom.

The judge denied Doyle’s request, saying, in essence, “I expect both parties to behave themselves.” Afterward, Faiella confronted Doyle in the hallway. “Why would you file such a thing?” she demanded, noting that it was unprofessional, sexist, and humiliating.
“I don’t understand why you are getting so upset,” she says Doyle replied. (Doyle denied that gender was the motivating factor behind filing the motion; he said he had filed such motions against male attorneys as well.)

When I asked Faiella for a copy of Doyle’s motion, she said that she could send me examples from more than two dozen cases across her 30-year career. She said that at least 90 percent of her courtroom opponents are male, and that they file a “no-crying motion” as a matter of course. Judges always deny them, but the damage is done: The idea that she will unfairly deploy her feminine wiles to get what she wants has been planted in the judge’s mind. Though Faiella has long since learned to expect the motions, every time one crosses her desk she feels sick to her stomach. “I cannot tell you how much it demeans me,” she said. “Because I am a woman, I have to act like it doesn’t bother me, but I tell you that it does. The arrow lands every time.”

For the past two decades, law schools have enrolled roughly the same number of men and women. In 2016, for the first time, more women were admitted to law school than men. In the courtroom, however, women remain a minority, particularly in the high-profile role of first chair at trial.

In a landmark 2001 report on sexism in the courtroom, Deborah Rhode, a Stanford Law professor, wrote that women in the courtroom face what she described as a “double standard and a double bind.” Women, she wrote, must avoid being seen as “too ‘soft’ or too ‘strident,’ too ‘aggressive’ or ‘not aggressive enough.’”

The glass ceiling remains a reality in a host of white-collar industries, from Wall Street to Silicon Valley. If the courtroom were merely another place where the advancement of women has been checked, that would be troubling, if not entirely surprising. But the stakes in the courtroom aren’t
just a woman’s career development and her earning potential. The interests—and, in the criminal context, the liberty—of her client are also on the line.

What makes the issue especially vexing are the sources of the bias—judges, senior attorneys, juries, and even the clients themselves. Sexism infects every kind of courtroom encounter, from pretrial motions to closing arguments—a glum ubiquity that makes clear how difficult it will be to eradicate gender bias not just from the practice of law, but from society as a whole.

I began my career as a trial lawyer in 2001, the same year that Rhode published her report. I worked in the Federal Public Defender’s Office in Los Angeles. When I took the job, I had braced myself for the stress; almost immediately, my caseload included clients facing lengthy prison sentences for serious felonies. I did not expect to be told in explicit terms that my gender would play a significant role in how I could defend my clients, and that learning this lesson was crucial to my success and by extension to my clients’ lives. “There are things I can do that you can’t, and things you can do that I can’t” was the way one of the male supervising attorneys in my office put it.

Let’s start with the clothes. In my office, and in the U.S. Attorney’s Office, where the federal prosecutors worked, the men stuck to a basic uniform: a dark suit, a crisp button-down shirt, an inoffensive tie, and a close shave or neatly trimmed beard. If they adhered to that model, their physicality was unremarkable—essentially invisible.

Women’s clothing choices, by contrast, were the subject of intense scrutiny from judges, clerks, marshals, jurors, other lawyers, witnesses, and clients. I had to be attractive, but not in a provocative way. At one trial, I took off my suit jacket at the counsel table as I reviewed my notes
before the jury was seated. It was a sweltering day in Los Angeles, and the
air-conditioning had yet to kick in. The judge, an older man with a mane of
white hair, jabbed a finger in my direction and bellowed, “Are you
stripping in my courtroom, Ms. Bazelon?” Heads swiveled, and I looked
down at my sleeveless blouse, turning scarlet.

Observing my female colleagues and opposing counsel as I settled into the
job, I took mental notes. Medium-length or long hair was best—but not too
long. Heels and skirts were preferred at trial—but not too high and
definitely not too short. And pantyhose. I hated pantyhose, both the
cringe-inducing word and the suffocating reality. They itched miserably
and ripped. But showing up in federal court with bare legs was as
unthinkable as showing up drunk.

Clothing may seem trivial, but what a woman wears at trial is directly
related to her ability to do her job. When impeaching a witness to expose a
lie, the men in my office would march up to the witness box, incriminating
document in hand, and shove it in the witness’s face. I had to approach
witnesses gingerly—because I was balancing on heels.

It wasn’t just men who taught me what to wear and how to act. Later in my
career, I had a female supervisor who told me in no uncertain terms that I
should wear makeup and color my graying hair. In fact, she told me I
needed a complete makeover, and offered to pay for it. I didn’t take her
money, but I did take her advice, and I’ve borne the significant cost of
these expectations since. My supervisors also reminded me to smile as
often as possible in order to counteract the impression that my resting
facial expression was too severe. I even had to police my tone of voice.
When challenging a hostile witness, I learned to take a “more in sorrow
than in anger” approach.
Reading over my old trial transcripts, I am taken aback by how many times I said “Thank you”—and how often I apologized.

This isn’t just dated wisdom passed down from a more conservative era. Social-science research has demonstrated that when female attorneys show emotions like indignation, impatience, or anger, jurors may see them as shrill, irrational, and unpleasant. The same emotions, when expressed by men, are interpreted as appropriate to the circumstances of a case. So when I entered the courtroom, I took on the persona of a woman who dressed, spoke, and behaved in a traditionally feminine and unthreatening manner.

In some ways, this was easy. I had been raised to be polite and to show respect for authority. In other ways, this was difficult. When I got angry, I had to stifle that feeling. When my efforts failed, I feared having come across as strident—or, worse, as a bitch. When I succeeded, I felt as if I was betraying my feminist principles. But if there was a sliver of a chance that the girl-next-door approach would deliver a more favorable outcome, not taking it would be wrong. I told myself that my duty was to my client, not my gender.

In the seven years I worked as a deputy federal public defender, I fought hard for my clients, and I had my share of victories. But I was practicing law differently from many of my male colleagues and adversaries. They could resort to a bare-knuckle style. Most of what I did in the courtroom looked more like fencing. Reading over my old trial transcripts, I am taken aback by how many times I said “Thank you”—to the judge, to opposing counsel, to hostile witnesses. And by how many times I apologized.
In 2017, after nearly a decade of holding jobs that offered limited opportunities to go to court, I took a position as a clinical professor at the University of San Francisco School of Law. I’m now training students to become trial lawyers by supervising their representation of criminal defendants in San Francisco Superior Court. During my first semester, all five of my students were women. Four were women of color. Eighteen years earlier, I had been sitting where they were. I wondered what had changed.

In 1878, Clara Shortridge Foltz, who was living in San Jose, California, was left to raise five children on her own when her husband abandoned her. To support her family, Foltz decided to become a lawyer. California law prevented it: “Any white male” was eligible to practice law, but women and minorities were excluded. Undeterred, Foltz drafted the Woman Lawyer’s Bill, successfully lobbied the state legislature to pass it, took the bar exam, and, on September 5, 1878, became the first female attorney admitted to the California bar.

Today, Foltz is seen in feminist legal circles as a pioneering hero. As a lawyer, she was an advocate for the poor and disadvantaged, who formed the bulk of her client base, since few people would voluntarily agree to female representation. In court, the men who opposed Foltz routinely used her gender to discredit her. In her memoirs, she recalled a prosecutor who had told the jury to reject Foltz’s arguments on these simple grounds: “She is a woman, she cannot be expected to reason. God Almighty declared her limitations.”

In 2002, Los Angeles renamed its downtown criminal courthouse after Foltz. It’s inspiring to see a woman’s name on the building; women lawyers continue to struggle to get inside, however. National data are hard to come by, but state-level studies paint a bleak picture. The New York
State Bar Association, for example, found in a 2017 report that female attorneys accounted for just 25 percent of all attorneys appearing in commercial and criminal cases in courtrooms across the state. The more complex the civil litigation, the less likely a woman was to appear as lead counsel, with the percentage shrinking from 31.6 percent in one-party cases to less than 20 percent in cases involving five or more parties. The report concluded: “The low percentage of women attorneys appearing in a speaking role in courts was found at every level and in every type of court: upstate and downstate, federal and state, trial and appellate, criminal and civil, ex parte applications and multi-party matters.”

Over the past year, I’ve interviewed more than two dozen female trial lawyers from across the United States. Their experiences bear out these grim findings. Beth Wilkinson, a lawyer based in Washington, D.C., told me that the number of women who litigate “bet-the-company cases”—in which millions or even billions of dollars are at stake and a corporation’s ability to survive absent a win at trial is in doubt—is “abysmally low.”

Wilkinson enjoyed a formidable reputation at Paul, Weiss, Rifkind, Wharton & Garrison, a white-shoe firm where she was a partner, winning cases, bringing in new clients, and earning a high salary. But she told me she was “never in the inner circle. Big Law is a male-dominated place, and it is very hard for women to thrive in an institution built that way.” In 2016, she co-founded her own firm, Wilkinson, Walsh & Eskovitz, which represents a roster of major clients, including the NCAA, Pfizer, Duke Energy, and Georgia-Pacific.

The situation is worse for female litigators who are not white. According to a 2006 report by the American Bar Association, nearly two-thirds of women of color said they had been shut out of networking opportunities; 44 percent said they had been passed over for plum work assignments;
and 43 percent said they had little opportunity to develop client relationships. In a survey and in focus groups, many described feeling lonely and perpetually on edge, anxious to avoid race- and gender-based stereotypes. One respondent said she was treated like an “exotic animal,” trotted out for photo ops at diversity and recruitment events but otherwise sidelined. An Asian American woman recounted being asked to translate a document written in Korean and having to explain that she was Chinese.

“I want a Jew lawyer,” a client once said to me. I told him I was Jewish. “No, a man Jew lawyer,” he responded.

Kadisha Phelps is a 37-year-old associate at a Miami-based firm. She worked her way up to first chair in part by bringing in her own business: She’s built a cottage industry representing former NFL players who claim that they were scammed out of their earnings by unscrupulous financial advisers. Phelps, who is African American, describes herself as “a pit bull in a skirt.” But she told me that when she goes to court, she often has to bring one of her male partners along—even if he knows little about the case. “That older white man at the table carries some kind of credibility,” she explained. “It gives judges the assurance that it’s not just some little black girl out there on her own.”

In July 2017, Phelps got into a heated debate with a male trial judge about how many depositions she would be allowed in a case her firm valued at $2 million. Phelps had asked Douglas Broeker to join her in court to play the role of the silent white partner. When Phelps pressed her point, the judge turned to Broeker. “Maybe you should take a few minutes and walk out and try to calm your associate down,” he said.
As Phelps’s experience suggests, it can be difficult to separate the various forms of discrimination women face. “I want a Jew lawyer,” a male client once said to me. I told him I was Jewish. “No, a man Jew lawyer,” he responded.

**The problem isn’t** merely that women are outnumbered in the courtroom. It’s that men occupy the positions of power in staggering proportions. Women make up only 33 percent of federal trial-court judges. As of June, Donald Trump had made 73 U.S.-attorney nominations. Sixty-six of them are men. The state-level statistics are just as dismal: 30 percent of trial-court judges are women. In 2015, according to the Women’s Donor Network, an advocacy group, 17 percent of elected prosecutors were women; women of color made up 1 percent. In the criminal context, the odds are that a female lawyer will face off against a male prosecutor in a contest overseen by a male judge.

Not all male prosecutors and judges harbor sexist views of women, though many do. Male lawyers referred to their female peers as “honey” and “sweetheart” in court frequently enough that, in 2016, the American Bar Association felt compelled to pass a rule designed to curtail the use of such demeaning terms. Judges, for their part, can reinforce gender stereotypes, implicitly normalizing them and even explicitly enforcing them. Female trial attorneys routinely report that male judges critique their voices as too loud or too shrill.
Romany McNamara is a public defender in Alameda County’s Oakland office. In 2011, she had just started litigating felony trials. One morning, a trial judge called two of McNamara’s cases before she’d had a chance to introduce herself to her new clients or explain the legal process to them. When she asked for a brief delay in the proceedings, she says, the judge berated her in front of the packed courtroom. “He likes to humiliate young female trial lawyers,” she told me.

McNamara had a third case that day. The judge waited until the end of the calendar to call it. When the courtroom emptied and McNamara started to
walk out, she says, the judge beckoned her to approach the bench. As she stood before him, he offered a lukewarm apology, emphasizing the importance he placed on running his courtroom efficiently. Then he leaned in and said softly, “Don’t do it again.” McNamara says the judge then struck her on the back of her hand, hard enough to leave a mark.

“I could see the outline of where he hit me in white before it turned bright pink,” she told me. “There was nothing overtly sexual about it,” she said. “But that was absolutely the undertone, like: You’ve been a bad girl.”

McNamara told a colleague about the incident; I spoke with that colleague, and he confirmed that she had told him what happened, and that they had debated how she should respond. McNamara initially decided against filing a formal complaint. This “wasn’t just any judge,” she said. “He was a kingmaker. He brokered deals.” She feared the repercussions of calling him out. “I thought he could ruin my career.”

Years passed, but McNamara remained angry and disgusted. In 2016, she filed a complaint against the judge with California’s Commission on Judicial Performance, describing the 2011 incident and accusing him of having physically assaulted her. The complaint has yet to be resolved.

Most judges, of course, don’t strike female attorneys in their courtroom. But at various points during the first semester of the clinic, my all-female class of aspiring trial lawyers experienced lower-wattage versions of such treatment.

In November, one of my students was slated to argue a motion before a judge who I knew could be nasty to female lawyers. Playing the judge’s role in a mock argument to prepare her, I went out of my way to be sneering and combative, my best imitation of his behavior. And indeed, in court, when my student objected to opposing counsel’s request for a
continuance so that a police officer could testify, the judge laid into her for lacking professional courtesy. She tried to explain her reasoning, but he interrupted, not allowing her to demonstrate that the matter could be resolved without the officer having to testify. (Two months later, a different judge agreed: The officer didn’t testify, and we won the motion.)

In class later, I asked my students whether they thought the judge would have treated a male attorney the same way. There was a long pause. “That’s a joke, right?” one of them said.

**Johnnie Cochran told one female associate: Be “the person in the courtroom that everyone loves.”**

**EVEN WHEN ARGUING** before the most enlightened judge and against fair-minded opposing counsel, women enter the courtroom at a disadvantage. In America’s adversarial system, the ability to compel useful testimony from a hostile witness is often essential to winning at trial. When you invade a witness’s personal space, the witness may feel stress, anxiety, and anger. These emotions may lead the witness to blurt out helpful information. In general, jurors tend to be impressed by lawyers who demonstrate power and control in the courtroom. But for female lawyers, projecting power and control is a tricky proposition. When male attorneys show flashes of anger—a raised voice, a pointed finger—juries tend to view them favorably, as “tough zealous advocates,” according to research cited in a 2004 *Law & Psychology Review* article. When women betray anger, they may be seen as overly emotional.

Trial lawyers routinely talk with members of the jury when a case is over in order to get their feedback, and jurors can be quite candid in their
assessments. Kila Baldwin, a partner at the personal-injury firm Kline & Specter, tries about five cases a year and has won a string of multimillion-dollar verdicts. “I always wear heels in front of the jury unless I am in pain,” she told me. Last June, Baldwin was in pain: The tendons in her feet were inflamed, so she wore flats to a trial. Afterward, a female juror told her that she had not cared for her shoes. “I never have a casual Friday,” Baldwin said. “You get less respect.”

Some female trial lawyers have succeeded in turning the attributes associated with their gender—compassion, warmth, accessibility—to their advantage, particularly once they get in front of a jury. Shawn Holley, a prominent entertainment lawyer in Los Angeles, told me that she makes her gender work for her. She described her courtroom affect as “polite and charming”—but not so polite or charming that it “gets in the way of the job that needs to get done.” Holley cut her teeth working as an associate for Johnnie Cochran during the O. J. Simpson trial. She said it was this quality—a sweet steeliness—that led Cochran to recruit her. He encouraged her to be “the person in the courtroom that everyone loves while being as capable and prepared as possible.” She followed his advice, and today she represents high-profile clients including Justin Bieber, Lindsay Lohan, and Kim Kardashian.

Holley has constructed a persona that works for her in her area of the law. But when I talked with her and other women who have enjoyed courtroom success, I saw a pattern emerge. Many of them excelled in areas where being seen as a woman first and a lawyer second gave them an advantage over their male adversaries.

Embracing traits traditionally associated with women seems to pay off particularly well in litigation involving so-called women’s issues. In many of these cases, female trial lawyers are favored and even actively
recruited. In the civil arena, for example, women have thrived in high-stakes medical-malpractice lawsuits where the plaintiff claims that the defendant’s product injured her genitalia or reproductive organs.

For a number of years, Ethicon, a subsidiary of Johnson & Johnson, has been defending itself against tens of thousands of cases alleging defects in mesh devices it created for surgical implantation in the vagina to alleviate incontinence, among other conditions. Some patients who had the devices implanted experienced complications such as bleeding and the perforation of internal organs.

In 2013, Kimberly Adkins, a 48-year-old Ohio woman, sued Ethicon, claiming that the mesh sling implanted to treat her incontinence had caused permanent internal damage, leaving her unable to have sex. Ethicon retained Kim Bueno, a partner at the Texas-based law firm Scott Douglass & McConico, to serve as lead counsel. In May 2017, the case went to trial in downtown Philadelphia. My sister Jill was picked to be one of the jurors.

I could not fathom why Ethicon would let Jill on the jury. I figured that my sister, a mother of two, would naturally be sympathetic to Adkins. For many women, minor urinary incontinence is a fact of life after childbirth—we cross our legs before sneezing and locate the nearest bathroom immediately upon entering an unfamiliar place.

But Jill, who has a doctorate in education policy, also comes from a family of lawyers—including our father, her husband, and three sisters. Bueno told me later that she was counting on jurors like her: highly educated individuals who would listen to both sides and apply the law to the facts.

I’m confident my sister did exactly that, but she told me she had been impressed by more than just Bueno’s command of the law. Jill had related
to her. She was the only woman lawyer in a courtroom packed with attorneys. The men were dour and dull; Bueno was personable and dynamic. She referred to the female anatomy with confidence and ease. By contrast, Adkins’s all-male team struggled when forced to ask personal questions. “If you can’t say the word *vagina*, you are probably not the best lawyer for the case,” Jill said. By tiptoeing around their client’s injuries, Adkins’s male lawyers undersold her pain and failed to prove its direct link to Ethicon.

A turning point in the trial, Jill told me, was Bueno’s cross-examination of Adkins. “She kept her same friendly demeanor while asking some very tough questions. She had to break [Adkins] down and demonstrate that she was not a reliable witness. And she did it without seeming mean or horrible.” In a case involving complicated issues relating to female genitalia, my sister said, “I trusted her more because she was a woman.”

In a sweeping victory for Ethicon, the jury found that the mesh had been defective but that Adkins had failed to prove that it had caused her injuries. (In August 2017, the judge overrode the jury’s verdict; Ethicon has appealed.) When I spoke with Bueno, she told me that she has been involved in hundreds of mesh cases. “A woman is able to cross-examine a female personal-injury victim with greater sensitivity,” she said. “She can probe a little further without coming across as attacking the victim.”

**LYNNE HERMLE** conducted what was perhaps the highest-profile cross-examination of 2015. Ellen Pao was seeking $16 million in damages from her former employer, the Silicon Valley venture-capital firm Kleiner Perkins Caufield & Byers, claiming that she had experienced gender discrimination—and had been fired when she’d spoken up about it. Hermle, a partner at Orrick, Herrington & Sutcliffe, was the lead counsel for the all-female defense team. Hermle is the senior
partner in Orrick’s Silicon Valley employment group, where 10 of the 13 attorneys are women. “I think women are better at the conflict aspect in the courtroom,” she told me. “We are able to confront people directly and dismantle false stories in a way that men can’t do without coming across as a bully.” In the Pao case, “I had a really tight, well-crafted cross-examination that never involved shouting.” The proof, Hermle said, was in the result: The jury ruled for her client.

Yet Hermle’s success in the Pao case came at the expense of a woman ostensibly fighting for gender equity in an industry notorious for its chauvinism. I asked her whether she saw an irony in this. Hermle said no. Pao, she maintained, was simply the wrong messenger for a righteous cause.

Hermle’s success has been a boon for her practice at Orrick. But a nagging question remains: Would women like Bueno and Hermle have had the same opportunities if they’d pursued a legal career in which they would not have been perceived as having a gender-based advantage—as, say, a prosecutor in a homicide division? Hermle argued that taking on cases in which being a woman offers an advantage can provide a ladder up and out. “Women can use these [cases] to get high-profile trial experience, which is hard to get, but ultimately I think that falls away once you achieve a certain stature.” She told me that only about 40 percent of her cases involve gender and that some of her biggest wins came when she was defending companies against discrimination claims based on race, ethnicity, disability, or religion. Since her win in the Ellen Pao case, Hermle has defended both Twitter and Microsoft in class-action lawsuits brought by employees alleging gender discrimination.

VERY WOMAN I interviewed said she had experienced Deborah Rhode’s double bind: the imperative to excel under stressful
courtroom conditions without abandoning the traits that judges and juries positively associate with being female. It is a devilishly narrow path to walk, and can severely hinder the ability to offer a client the best and most zealous defense.

I know this because in the middle of a case in 2013, I consciously stopped trying to walk that path. My client had been convicted in 1979 of a murder he did not commit and had spent 34 years in prison. The case against him was preposterous, and the refusal by the Los Angeles County District Attorney’s Office to concede error infuriated me. Just days into the evidentiary hearing that would determine his fate, what was left of the state’s case fell apart.

For the first and only time in my life as a litigator, I knew we were going to win. As the hearing had gone on, I had grown angrier. Now I had nothing to lose by pretending otherwise. When I went after the police, who I believed had lied and covered up evidence, I was by turns angry, sarcastic, and, yes, aggressive. My cheeks were red, not from shame but from righteous indignation. My voice shook as I questioned my client, not because I was being hysterical or manipulative but because the travesty of his stolen life broke my heart. In closing, I raised my voice and slammed my fist into my open palm as I argued to the judge—a woman—that the case had been a colossal miscarriage of justice. It was exhilarating to allow myself to feel the full range of emotional responses and to use the full array of tactics available to men.

The judge threw out the conviction. Afterward, my client’s 76-year-old mother paid me what I consider the greatest compliment of my career. Gripping my wrists, she looked at me and said, “You are a trial beast.”
TWOULD MAKE FOR a tidy ending to say that I am training my law students to be trial beasts. But it would not be true. The case I just described, tried before a female judge, and in which I was armed with overwhelming evidence of my client's innocence, comes along once or twice in a career in criminal court—if ever. My students will litigate murkier cases in courtrooms controlled by men, facing juries who will be more willing to listen to and be convinced by a traditionally feminine woman.

In 1820, Henry Brougham, a lawyer tasked with defending Queen Caroline before the House of Lords against allegations by her husband, King George IV, that she had committed adultery and should be stripped of her crown, explained his role this way: "An advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and, among them, to himself, is his first and only duty."

I've always loved that definition of a lawyer's work and its description of the sacrifices we make for our clients. But in the courtroom, whether as an attorney or as an instructor, I'm constantly reminded that women lawyers don't have access to the same "means and expedients" that men do. So I tell my female students the truth: that their body and demeanor will be under relentless scrutiny from every corner of the courtroom. That they will have to pay close attention to what they wear and how they speak and move. That they will have to find a way to metabolize these realities,
because adhering to biased expectations and letting slights roll off their back may be the most effective way to advance the interests of their clients in courtrooms that so faithfully reflect the sexism of our society.

Sometimes I worry that I am part of the problem, that I am holding my students back by using valuable class time to pass on the same unfair rules that were passed on to me. And then we go to court.
The Horrible Conflict Between Biology and Women Attorneys

By Anusia Gillespie

Women during rush hour.

Editor's Note: This article was written in November 2016, published on Law360 and highlighted on Above The Law.

Last week, I had the wonderful opportunity to participate in a radio program, Radio Entrepreneur – On the Record, graciously sponsored by O'Brien & Levine Court Reporting. I went on air as a millennial consultant who is committed to the retention and advancement of women attorneys in the multigenerational firm. I should have been prepared for the inevitable question that follows that bold statement, so why do women leave their firms? Unfortunately, I wasn't prepared to answer in that forum.

My response? Frankly, I don't know.

The fact is, I do know. At least, I have a well-researched opinion. However, without having practiced a diplomatic response, I was wary to respond in a forum available for public consumption because a “non-strategic” answer is destined for failure. Take a step in one direction, and it is perceived as blaming the law firms. Take a step in the other
direction, and it is perceived as blaming the women. I wasn’t prepared to ascribe responsibility or alienate either audience. Further, I was not prepared to shoot from the hip on a question that is of fundamental importance to our industry. (For context, women have comprised around 47% of graduating law school classes since 2000, and yet women represent only about 18% of equity partners nationwide.)

The real answer is that there is not a blanket reason. It is a straightforward question that has a nuanced answer, entrenched in institutional, social, and personal constructs. It is a question that begs the response, how much time do you have? Additionally, the answer is tangled in gender. Nearly 80 percent of all associates leave large law firms in year five and, of those remaining, 55 percent of midlevel attorneys do not expect to be working in a law firm in five years.

So, how do you effectively tease out gender-specific reasons?

Furthermore, many women do ascend to the top! I would be remiss to discuss the reasons women leave their law firms without acknowledging the achievements of the women who have paved the path to partnership.

The frustration with my inarticulate response and desire to respond more strategically in future conversations prompted me to ask everyone I came across last week for their opinions. Fortunately, I had a big week. I crowdsourced the best available insights, combined with information from my graduate independent study based on Lauren Rikleen’s book, Ending the Gauntlet: Removing Barriers to Women’s Success in the Law, and continued research, and have infused them into the framework of the top two reasons lawyers leave their law firms, regardless of gender.

The top two reasons attorneys leave their law firms are: 1) unsustainable billable hours and work/life considerations, and 2) a limiting culture.

The following encompasses the overarching, gender-specific reasons that women leave private practice, and is in no way intended to discuss the details and nuances of implicit bias, individual career goals and preferences, or practice areas. It is intended as a 30,000-foot view of why women leave law firms, from a generationally informed millennial perspective.
I. Unsustainable Billable Hours And Work/Life Considerations

1) The Horrible Conflict Between Biology and Women Attorneys in Private Practice

In my conversations with managing partners and other firm decision-makers, the best I have heard the issue described is this: “there is a horrible conflict between biology and women ascending in private practice.” As this attorney described, for women who decide to have children, the biological window for motherhood directly conflicts with the career window requiring the biggest investment of time and energy.

The average age of a law school graduate is 27. ⑥

The average path to partnership takes ten years. ⑦ Therefore, the investment of time and energy required to rise through the ranks in a private law firm must be made between the approximate ages of 27 and 37.

As young associates, attorneys are expected to produce heavy billable hours and learn as quickly as possible to produce a foundational competency in their practice area. The young associate blossoms into a competent senior associate approximately four to six years into practice, corresponding to ages 31-33. At this time, associates are then encouraged to strategize their business development efforts to demonstrate continued commitment and potential for further contribution to the firm. Accordingly, an increased pressure for growth and renewed expectation for commitment occurs in the senior associate stage, which takes place from the age of 31-33 until the attorney makes partnership, around age 37.

From ages 31-35, female fertility drops by about 3 percent per year and then accelerates thereafter. As David Adamson, the president of the American Society for Reproductive Medicine explains, “[t]he average 39-year-old woman has half the fertility she had at 31, and between 39 and 42, the chances of conceiving drop by half again.” ⑧

Accordingly, women are biologically encouraged to bear children at the same time that their careers require the most commitment of time and energy. During the time that women are out of the office on maternity leave, their male counterparts continue to move ahead in billing and learning and demonstrating their commitment to the firm. The effect compounds with additional children. Women attorneys then find themselves in a constant game of “catch-up” as they work to realign with the progression of their male counterparts, also while transitioning to their new role as a mother and all of the attendant, non-work responsibilities associated with that title. The feeling of treading
water, while male and non-mother colleagues get the better assignments and continue to climb, produces a sentiment that it is no longer worth the effort. As a result, many mother attorneys leave their firms.

However, this is not the end of the story. Not all women are able or wish to bear children. And, many women leave their law firms before family considerations are on the table, or for reasons completely unrelated to them.

2) Desire For The Life Side of the Work/Life Balance Equation

As one woman attorney who has not yet left her firm, but is considering it, describes, “I do not have a family. I simply want the time to work, sleep, and go to the gym, and I don’t have it. I’m four years in and feel that I should at least have the time and flexibility to care for my well-being.”

As another woman attorney who has left her firm, moving to a corporate position, describes, “I billed 2,600 hours last year. I never want to do that again.”

I don’t see this issue as related to gender. It is well understood, and so I will not belabor it here. Many attorneys leave their law firms because they want more time for life outside of work. Many more leave due to cultural considerations.

II. The Limiting Impact of Cultural Components.

1. Headwinds.

There exists an old boys network in law. An old boy network is defined as, “an informal system of support and friendship through which men use their positions of influence to help others who went to the same school or college as they did or who share a similar social background.”

I do not say this with frustration or any kind of chip. It is simply a fact. There are a number of studies, articles, and resources discussing how this emerges in the law firm context. The two major fallout effects relate to assignment delegation and social outings.

a. Assignment Delegation & Sponsorship. First, it is well-researched and reported that the old boys network results in better deals and cases being assigned to male counterparts.

As a result, women regularly receive deals and cases that are inferior in terms of challenge, client exposure, or client relationship and must actively seek the better assignments. This is one type of headwind for women attorneys.
To address this, young women are encouraged to seek sponsorship in their firms as a way to create their own version of the old boys network and ascend more swiftly. The term “sponsorship” has gained popularity over the past few years. Sponsorship is an active form of mentorship, wherein the sponsor goes to bat for the sponsee and actively pulls the sponsee up the ranks. However, with a ratio of 1 woman in 5 senior attorneys, it leaves women with few options to seek female sponsorship. Further, it encourages competition amongst associate women for the attention of the one senior female attorney.

I discussed this concept with the Chief Marketing Officer of a global firm a couple weeks ago, and she remarked that she did not view this as a gender issue. I can see her point. After all, gender is not the only trait or interest to have in common with someone. She went on to explain that many women attorneys in her firm seek informal mentoring and sponsorship from male attorneys at the firm, and it seems to work just fine. I hope this is widely adopted at other firms.

b. Social Outings. Second, the old boys network impacts social outings. Please note that this is anecdotal, from stories I’ve heard from women attorneys who currently practice in private law firms. According to their accounts, their male colleagues are consistently asked to partake in rounds of golf with clients and other such outings, typically revolving around sports, while the women are not. These social outings provide opportunities to develop deeper professional relationships with senior attorneys, while simultaneously providing exposure to clients. They are critical for firm ascension. And yet, from the accounts of many women attorneys, they must make an awkward ask to be included, while it is expected that their male counterparts will join. This is a second type of headwind for women attorneys.

2. You Can’t Be What You Can’t See.

As noted above, only 18% of equity partners are women. Through many conversations with women attorneys over the years, I have heard that it is difficult to have the drive and unwavering commitment required to ascend when they don’t have a visual of what their success will look like - they don’t have role models.

By role model, they mean a senior woman attorney who has made the job and life work for her and is now enjoying her success. Instead, I’ve heard sentiments like, “I wouldn’t do it the same way,” “if conforming who she is, as a person, is required for success, then I don’t want to do that,” and “I don’t see anyone ahead of me whose life I want.” All of these sentiments are different ways of saying, “I don’t have a visual for success in my firm.”
Without the visual of someone who they aspire to be, many women lose interest or feel defeated before even really trying to ascend. If they don’t see it, it is hard to have the drive and unwavering commitment required to be it. So, they choose to pursue alternate routes with a more hopeful outcome.

Conclusion

Women leave their law firms for a lot of the same reasons that men do, many of which were not addressed in this article. But, there are some reasons specific to women that account for the proverbial leak in the pipeline.

Attorneys compete on hours and client development in law firms. Given the biological factor for women who choose to have children and the resulting disruption in their hours, these attorneys are incentivized to compete by developing business opportunities for the firm. According to the 2014 NAWI, National Survey on Retention and Promotion of Women in Law Firms, women have not hit their stride when it comes to rainmaking and are therefore not adequately competing on this metric.

Furthermore, while developing business can ensure that an attorney is valuable to the firm, partnership makes the ultimate decision on the attorney’s advancement. Women experience cultural obstacles on this front. They face headwinds with respect to assignment delegation and social outings as well as the difficulty associated with the limited ability to see a model for success.

These insights are a driving factor for my work. I believe that a firm’s increased investment in talent management, specifically in developing business opportunities and growing mindfully to remove obstacles to advancement, addresses many of the reasons attorneys leave their law firms and therefore results in improved retention and engagement of women attorneys.

I hope this article provides the proper attention and detail in addressing a question of significance to our industry.

Authors

End Notes
THE Unfinished Agenda

WOMEN AND THE LEGAL PROFESSION

Deborah L. Rhode
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Meeting Planner

Jackie Cyriac
Legal Intern

American Bar Association
Commission on Women in the Profession
750 North Lake Shore Drive
Chicago, IL 60611 (312)988-5715

Copies of this publication can be obtained on the Commission’s website: www.abanet.org/women
EXECUTIVE SUMMARY

This report provides the most comprehensive contemporary review of the status of women in the American legal profession and justice system. Published by the Commission on Women in the Profession, this third status report chronicles progress toward gender equality and progress yet to be made.

Since its creation in 1987, under the initial leadership of Hillary Rodham Clinton, the ABA’s Commission on Women in the Profession has been the leading national voice for women in law. And since its beginning, the status of women has dramatically improved. Over the last dozen years, the number of women law partners, general counsels, and federal judges doubled. At the turn of this century, women accounted for almost a third of the nation’s lawyers, and for the first time constituted a majority of entering law students.

Yet despite substantial progress towards equal opportunity, that agenda remains unfinished. Women in the legal profession remain underrepresented in positions of greatest status, influence, and economic reward. They account for only about 15 percent of federal judges and law firm partners, 10 percent of law school deans and general counsels, and five percent of managing partners of large firms. On average, female lawyers earn about $20,000 less than male lawyers, and significant disparities persist even between those with similar qualifications, experience, and positions. Studies involving thousands of lawyers find that men are at least twice as likely as similarly qualified women to obtain partnerships. The underrepresentation of women of color is still greater. They account for only 3 percent of the profession and their small numbers limit the information available about their experience. However, what data are available find significant inequalities in pay and promotion for lawyers of color, as well as for lesbian and disabled attorneys.

The problems are compounded by the lack of consensus that there are in fact serious problems. In the ABA Journal’s 2000 poll, only about a quarter of female lawyers and three percent of male lawyers believed that prospects for advancement were greater for men than for women. Most attorneys equate gender bias with intentional discrimination, and the contexts in which they practice produce few overt examples. Yet a wide array of research finds that women’s opportunities are limited by factors other than conscious prejudice. Major barriers include unconscious stereotypes, inadequate access to support networks, inflexible workplace structures, sexual harassment, and bias in the justice system. This report provides an overview of these barriers and recommends appropriate responses.
I. BARRIERS FOR WOMEN IN THE LEGAL PROFESSION

A. Gender Stereotypes
A longstanding obstacle to equal opportunity involves the mismatch between characteristics associated with women and those associated with professional success, such as assertiveness and competitiveness. Women still face a long-standing double standard and a double bind. They risk criticism for being too “soft” or too “strident,” too “aggressive” or “not aggressive enough.” And what appears assertive in a man often appears abrasive in a woman. A related obstacle is that female attorneys often do not receive the same presumption of competence or commitment as their male colleagues. In large national surveys, between half and three quarters of women believe that they are held to higher standards than men. The problem is compounded for women of color or other identifiable minorities including lesbians and disabled women. The performance of these groups is subject to special scrutiny, and their achievements often are attributed to special treatment rather than professional qualifications.

The force of traditional stereotypes is reinforced by other biases in decision making. People are more likely to notice and remember information that confirms prior assumptions than information that contradicts them. For example, attorneys who assume that working mothers are less committed tend to remember the times they left early, not the nights that they stayed late. People also want to believe that their own evaluations and workplaces are meritocratic. If women are underrepresented, the most psychologically convenient explanation is that they lack the necessary qualifications and commitment.

B. Support Networks
An equally persistent problem is inadequate access to informal networks of mentoring, contacts, and client development. Despite recent progress, many attorneys are most comfortable supporting others who seem similar in backgrounds, experiences, and values. Many organizations fail to provide adequate time and rewards for mentoring. The small number of women, particularly women of color, in senior positions prevents adequate assistance for all the junior colleagues who need it. Female attorneys who have substantial family commitments also have difficulty making time for mentoring relationships and for the informal social activities that generate collegial support and client contacts.

The result is that many female lawyers remain out of the loop of career development. They aren’t given enough challenging, high visibility assignments. They aren’t included in social events that yield professional opportunities. And they aren’t helped to acquire the legal and marketing skills that are central to advancement.

These barriers can become self-perpetuating. Overburdened senior attorneys are reluctant to spend scarce time mentoring women who seem likely to leave. Women who are not supported are in fact more likely to leave. Their inability to reach senior positions then reduces the pool of women mentors and perpetuates the assumptions that perpetuate the problem. Again, the problem is particularly pronounced for women of color; in recent national surveys, fewer than a third were satisfied with the availability of mentors and fewer than one percent remain at firms where they are initially hired.

C. Workplace Structures
One of the greatest challenges for the profession involves workplace structures that fail to accommodate a balanced life. About two-thirds of surveyed lawyers report experiencing work/family conflict and most believe that it is the greatest barrier to women’s advancement. Only a fifth of surveyed lawyers are very satisfied with the allocation of time between work and personal needs, or with their opportunities to pursue the social good.

The most obvious failures in workplace structures are excessive hours and resistance to reduced or flexible schedules. Client expectations of instant responsiveness and total availability, coupled with lawyers’ expectations of spiraling salaries, have pushed working hours to new and often excessive levels. Hourly requirements have increased dramatically over the last two decades, and what has not changed is the number of hours in the day. Unpredictable deadlines, uneven workloads, or frequent travel pose further difficulties for those with substantial family obligations.

Unsurprisingly, most female attorneys feel that they do not have sufficient time for themselves or their families, and half report high levels of stress in juggling their responsibilities. Moreover, women who do not have families often have difficulty finding time for relationships that might lead to them. Unmarried associates frequently report ending up with disproportionate work because they have no acceptable reason for refusing it. Yet many lawyers who would like to adjust or reduce their hours bump up against considerable resistance. A wide gap persists between formal policies and accepted practices. Although over 90 percent of surveyed law firms allow part time schedules, only about three to four percent of lawyers actually use them. Most women surveyed believe that any reduction in hours or availability would jeopardize their prospects for advancement.
The result is yet another double standard and another double bind. Working mothers are held to higher standards than working fathers and are often criticized for being insufficiently committed, either as parents or professionals. Those who seem willing to sacrifice family needs to workplace demands may be thought lacking as mothers. Those who need extended leaves or reduced schedules may be thought lacking as lawyers. These mixed messages leave many women with the uncomfortable sense that whatever they are doing, they should be doing something else. Assumptions about the inadequate commitment of working mothers can influence performance evaluations, promotion decisions, and opportunities for the mentoring relationships and challenging assignments that are crucial for advancement.

Yet contrary to conventional wisdom, there is little basis for assuming that working mothers are less committed to their careers than other lawyers. Women are not significantly more likely to leave legal practice than men. Rather, they typically move to positions with greater flexibility. Also contrary to popular assumptions, taking a reduced schedule does not necessarily signal reduced professional commitment. In fact, it generally takes exceptional dedication for women to juggle competing work and family responsibilities in unsupportive working environments.

Although the inadequacy of family-friendly policies is not just a “women’s issue,” the price is paid disproportionately by women. Despite a significant increase in men’s domestic work over the last two decades, women in two-career couples continue to shoulder the major burden. Part of the reason involves longstanding socialization patterns and workplace practices that deter men from taking part-time schedules or family leaves for more than a few weeks. Only about 10-15 percent of surveyed law firms and Fortune 1000 companies offer the same paid parental leave to men and women.

Yet these norms make little sense, even from the most narrow economic calculus. A wide array of research indicates that part time employees are more productive than their full time counterparts, particularly those working extended hours. Bleary burned-out lawyers seldom provide cost-effective services, and they are disproportionately prone to stress, substance abuse, and other health-related disorders. Moreover, full-time employees are not necessarily more accessible than those on reduced or flexible schedules. Lawyers at a deposition for another client are less available than women at home with cell phones, emails, and fax machines. The limited research available finds no negative impact on client relations from reduced or flexible schedules.

Considerable data also indicate that such arrangements save money in the long run by reducing absenteeism, attrition, and corresponding recruitment and training costs. Adequate opportunities for alternative schedules and reasonable working hours are becoming increasingly important in attracting as well as retaining talented lawyers. Almost half of surveyed women and a third of men placed work/life balance among their top reasons for selecting their current legal employer.

Similar points could be made about other workplace policies that affect lawyers’ quality of life. Organizations that fail to provide benefits for domestic partners, and to welcome them at social events, are overlooking cost-effective ways of making lesbian attorneys feel valued and comfortable in their workplaces. And organizations that fail to offer reasonable accommodations for lawyers with disabilities are paying a similar price. Greater efforts to insure the inclusiveness of legal workplaces would serve the interests of both lawyers and their employers.

Greater support for pro bono activities would yield similar benefits. ABA surveys consistently find that lawyers’ greatest source of dissatisfaction with their legal practice is the absence of connection to issues of social justice. This lack of involvement is partly attributable to the lack of employer support. Many organizations fail to give full credit for pro bono service in meeting billable hour requirements, or to reward it in promotion and compensation decisions. Although the inadequacy of pro bono policies is a concern for the legal profession generally, it also assumes special importance for women. Without employer support, pro bono service is likely to fall by the wayside among female lawyers who already face particular difficulties in juggling family and work commitments. The absence of pro bono assistance also carries special costs for women as potential clients, since women account for about two-thirds of the low income Americans who lack adequate access to legal services.

The result is to shortchange all concerned. Lawyers lose valuable opportunities for training, contacts, and connection to social justice causes that often sent them to law school in the first instance. Legal employers lose opportunities to build the morale, skills, and reputation of their workforce. And the public loses opportunities for assistance with urgent unmet legal needs.

D. Sexual Harassment

Another context in which inadequate policies assume particular significance for women involves sexual harassment. Of course, considerable progress has been made since the Commission was founded in 1987, when only about a third of surveyed law firms had sexual harassment policies. Almost all firms now have such policies. Yet, here again, the gap between formal policies and actual practices remains substantial. In the most recent surveys, about half to two-thirds of female lawyers, and a quarter to half of female court personnel, reported experiencing or observing sexual harassment. Almost three-quarters of
female lawyers thought harassment was a problem in their workplaces.

It is a problem for which women pay a substantial and disproportionate price. They account for about 90% of reported complaints, and many experience both economic and psychological injuries, such as loss of employment opportunities, unwanted transfers, anxiety, depression, and other stress-related conditions. Organizations pay another price in decreased productivity, increased turnover, and risks of legal liability.

The problem is often magnified by the costs of identifying it. Many women justifiably fear ridicule or retaliation. Those who complain are often dismissed as humorless and hypersensitive, and are subject to informal blacklisting. As a result, surveys from a wide variety of occupational contexts find that few women, typically well under 10 percent, make any formal complaint; fewer still can afford the financial and psychological costs of litigation. Yet while the likelihood of complaints is small except for the most serious behavior, concerns about unjust accusations often deter men from mentoring or socializing informally with younger women.

E. Gender Bias in the Justice System

The gender bias confronting women attorneys is part of a broader pattern that affects women throughout the justice system. Efforts to address bias in these other settings again reflect partial progress. Since 1982, when the first gender bias task force was formed, some 65 state and federal courts have issued reports on bias in the justice system. The ABA has also amended both the ABA Model Code of Judicial Conduct and Model Rules of Professional Conduct to include prohibitions on bias. Yet despite such initiatives, bias commissions generally find persistent problems, involving not only gender but also race, ethnicity, disability, and sexual orientation.

Gender-based disparities are apparent in a wide variety of areas: in the composition of the bench, bar, and court personnel; in the outcomes for male and female litigants in areas like bail, sentencing, and custody awards; and in perceptions of participants in the justice system. Between two thirds and three quarters of women report experiencing bias, while only a quarter to a third of men report observing it and far fewer report experiencing it. About two-thirds of African American lawyers, but less than a fifth of white lawyers, report witnessing racial bias in the justice system. Forty percent of surveyed lawyers report witnessing or experiencing sexual orientation bias in professional settings, and between a quarter to a half of lawyers with disabilities also experience various forms of bias in the legal system. The most commonly cited problems involve disrespectful treatment, such as racist, sexist or homophobic comments; devaluation of credibility and injuries; and stereotypical assumptions about gender, race, ethnicity, disability, and sexual orientation.

Although women are the most common victims of adverse gender stereotypes, men can be targets as well, particularly in areas such as custody disputes.

II. GENDER ISSUES IN CONTEXT

Although many of the opportunities and obstacles for women in the legal profession and legal system are widely shared, there are also some important differences across practice contexts. This report reviews key variations in women’s experiences. About a third of female attorneys now work in law firms and another third are in solo practice. About 10 percent work in government or corporate counsel offices. About three percent are in the judiciary or in public interest, public defender, or legal aid organizations. And about one percent are in legal education. Compared with men, women are less likely to work in law firms, and more likely to work in public interest and public sector offices.

Part of the reason for such gender disparities may reflect perceptions about the different opportunities for women and men in these practice settings. Most studies find that men’s chances of becoming partners in law firms are two to three times higher than women’s. Gender disparities are especially pronounced for managing and equity partners, and for women of color. Minority women hold fewer than 1 percent of equity partnerships and their attrition rate after 8 years is virtually 100 percent. By contrast, women, particularly women of color, have traditionally perceived more hospitable environments in public interest and public sector positions. When relieved of the obligation to reward business
III. THE DIFFERENCE GENDER DIFFERENCE MAKES

For those concerned with women and the profession, a crucial question is what difference gender difference makes. Do women bring demonstrably different qualities than men to their work? The evidence is mixed, but the best answer appears to be “some women, some of the time.” However, the differences tend to be smaller than often assumed. In general, psychological research finds few respects in which men and women consistently differ, and even for those characteristics, gender typically accounts for only a small part of the variation among individuals. Contextual forces and other factors like race and ethnicity can be equally or more significant.

Systematic evidence concerning women in the legal profession is limited and not entirely conclusive. The most extensive research involves judicial behavior. Some, but not all studies, find gender differences, although not necessarily on issues of gender equality. Unsurprisingly, however, there is ample evidence that women as a group attach particular importance to such issues. Professional organizations like the National Association of Women Judges, the ABA Commission on Women and the Profession, women’s bar associations, and women’s networks all have helped transform the legal landscape on women’s issues. Yet it also bears emphasis that many of these initiatives have been actively supported by men.

It is equally critical to emphasize that gender differences are experienced differently by different groups of women in different practice contexts. There is no “generic woman.” Race, class, ethnicity, disability, age, and sexual orientation can be as important as gender in defining professional opportunities and concerns. In order to ensure equality for all women, it is crucial to build alliances across these groups. A candid acknowledgment of differences encourages a better understanding of commonalities and a stronger collective effort to address shared concerns.
IV. AN AGENDA FOR CHANGE

A. Guiding Principles: Commitment and Accountability
The most important factor in ensuring equal opportunity for women in the legal profession is a commitment to this objective, a commitment that is reflected in both institutional and individual priorities. Legal employers and bar associations must be prepared to translate principles into practice, and to hold their leadership accountable for the results. Lawyers in positions of influence need to build a moral and a pragmatic case for diversity, and to incorporate diversity goals into their organization’s policies and reward structures. Progress toward those goals should be a factor in evaluating supervisors, law firms, and other legal employers. Bar associations, women’s organizations, and corporate and governmental clients can assist this effort by monitoring the performance of employers, and by steering business or providing special recognition to those with successful records. What strategies are most effective will depend on the particular workplace, but the information available suggests certain best practices that are most likely to be successful.

B. Strategies for Legal Employers and Bar Associations

1. Assessment of Problems and Responses: Policy Evaluation, Benchmarks, and Training
   • Organizations should collect systematic information concerning women’s experience in areas such as promotion, leadership opportunities, compensation, alternative work schedules, sexual harassment, and satisfaction levels.
   • Organizations should review formal policies, procedures, and educational materials to ensure that they reflect adequate commitments to equal opportunity and inclusiveness. Model policies from the ABA Commission on Women and other bar organizations can provide useful guidance. At a minimum, employers need to specify diversity-related objectives, prohibited conduct, and remedial processes.
   • Organizations should establish formal benchmarks for monitoring progress on diversity-related goals, and should consider progress toward these goals in evaluating lawyers’ performance.
   • Organizations should consider providing management training and employee education on diversity issues and enlisting assistance from expert consultants. Such initiatives should be seen as a catalyst, not substitute for, broader changes.

2. Evaluation Structures, Leadership Opportunities, and Professional Development
   • Organizations should review their evaluation, work assignment, and compensation procedures to ensure equal opportunity.
   • Legal employers and bar organizations should provide adequate opportunities for formal and informal training in areas that affect professional development, such as marketing, leadership, communication, and related skills.
   • Organizations should reexamine leadership selection criteria and structures to ensure adequate opportunities and diversity.

3. Quality of Life and Work-Family Initiatives
   • Employers need to develop adequate policies and practices concerning flexible and reduced schedules, family leaves, telecommuting, child care assistance, domestic partners, disability accommodations, and related quality of life initiatives.
   • Organizations need to monitor implementation to ensure that options that are available in principle are acceptable in practice and that standard billable hour expectations are not excessive.

4. Mentoring Programs and Women’s Networks
   • Legal employers and bar organizations should establish formal mentoring programs and support voluntary women’s networks that provide informal mentoring and career assistance. Well-designed programs should assess and reward mentoring efforts.
   • Women’s networks should receive adequate assistance for activities such as workshops, seminars, speaker series, and informal events, and for outreach to particular groups of women who may encounter special obstacles, such as women of color, lesbians, women with disabilities, and women on part-time schedules. Where appropriate, support staff should be included in network initiatives.

5. Sexual Harassment
   • Organizations should develop or review sexual harassment policies to ensure adequate procedures for receiving complaints, providing effective sanctions, and preventing retaliation. These procedures should also establish adequate safeguards against unwarranted accusations, and overly punitive responses to genuine misunderstandings or inadvertent offenses.
   • Bar ethical authorities should treat sexual harassment as a form of professional misconduct.
6. **Pro Bono Work By and For Women**

- Employers and bar associations should provide adequate opportunities, rewards, and recognition for pro bono work. Assistance should be available for initiatives that effectively link women lawyers and women’s professional organizations with programs that assist women in particular need of assistance.

**C. Strategies for the Justice System**

Courts and bar organizations should work with gender bias specialists to ensure that every justice system has strategies such as:

- A standing committee or administrative structure with adequate staff and resources to address gender bias;
- Effective education, not just in “bias sensitivity” but also in the social, economic, and psychological research that should inform decision making on gender-related issues;
- Complaint structures that provide options for confidential reports and protections against retaliation;
- Codes of conduct that specifically address gender bias;
- Attention to the intersection of multiple forms of bias, including not only gender but also race, ethnicity, sexual orientation, and disability;
- Initiatives to ensure equal opportunities for women at all levels of the justice system;
- Collaboration with other groups, both within and outside of the courts, concerned with eliminating gender bias;
- Collection of data to identify persistent problems and to monitor the effectiveness of responses.

This is not a modest agenda. But it is critical to maintaining a legal system that is committed to equal justice in practice as well as principle.
The Commission on Women in the Profession was created in 1987 to assess the status of women in the legal profession and to identify barriers to their advancement. Hillary Rodham Clinton, the first chair of the Commission, set the agenda for the Commission to change the face of the legal profession by issuing a path breaking report. That report provided a comprehensive review of the obstacles to equal opportunity in the profession.

Now, in its second decade, the Commission aims not only to address the challenges that women lawyers face, but also to combat bias in the justice system and to improve the quality of life for the profession generally. Drawing upon the diverse backgrounds and expertise of its twelve members who are appointed by the ABA President, the Commission develops programs, policies, and publications to promote gender equality.

As the national voice for women lawyers, the Commission is dedicated to ensuring fairness in the justice system and equal opportunity in legal workplaces.

The Commission’s Newsletter
Published three times per year, Perspectives gives you crucial insights on professional development:

- Advice and resources for career advancement
- Political and legal developments that affect women in the profession
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To subscribe to Perspectives, you may call (800) 285-2221 or order through the Commission’s website at www.abanet.org/women.

New Commission Publications
Two other Commission publications expected this year are:

**Lawyers and Balanced Lives.** A second edition to one of the Commission’s most popular publications, *Lawyers and Balanced Lives* is a practical guide to drafting and implementing effective workplace policies. While the policies described in the manual are designed to promote equal opportunity, *Lawyers and Balanced Lives* also serves to enhance the quality of life for all members of the legal profession. An introductory section provides a comprehensive overview of research, reports, and recommendations on effective workplace practices. The remainder of the manual provides sample policies and guidelines on family leave, alternative work schedules, and pro bono work.

**The Difference “Difference” Makes** A new report highlights the findings of the Women’s Leadership Summit held in the spring of 2001 and cosponsored by the ABA Office of the President and The Kennedy School of Government at Harvard University. This publication explores the difference gender makes in both access to leadership and in its exercise. With a focus on law, politics, and business—three arenas of greatest public influence—this report explores the difference gender makes in leadership opportunities, styles, effectiveness, and priorities. Strategies for change at both an institutional and individual level are also included.

To order these new publications, or others from the ABA Commission on Women, call (800) 285-2221 or visit the Commission’s website at www.abanet.org/women.
For most of American history, women were considered unfit for law, or law unfit for women. Until early in the 20th century, judges, legislators, and legal educators largely agreed that women lacked a “legal mind,” the “peculiar qualities of womanhood, its gentle graces, its purity, its delicacy... and its emotional impulses” were not qualifications for “forensic strife.”

Even after formal legal prohibitions on admission were lifted, informal barriers persisted. Until the early 1960s, women constituted no more than 3 percent of the profession, and it was not until the 1970s that all accredited law schools eliminated sex-based restrictions.

During the past three decades, the number and prominence of female lawyers have grown dramatically. Women now constitute almost 30% of the profession and about half of entering law school students. Women’s representation in leadership positions has similarly increased. Since 1987, when the American Bar Association’s Commission on Women in the Profession was formed, the number of female federal judges, large firm partners, and general counsels has more than doubled. At the turn of the 21st century, two women sat on the Supreme Court, and women served as Attorney General, President of the American Bar Association (ABA), and President of the National Conference of Bar Presidents. Female leaders can be found within virtually every field of private and public sector practice. And their success generally comes through the support of men as well as women who are deeply committed to equal opportunity.

Yet despite substantial progress toward equal opportunity, that agenda remains unfinished. The first report of the Commission on Women in the Profession, submitted in 1988 by Chair Hillary Rodham Clinton, predicted that “time alone is unlikely to alter significantly the underrepresentation of women in law firm partnerships, judicial appointments, and tenured faculty positions.” The research summarized in this report confirms that prediction.

Barriers persist, and a central problem is the lack of recognition that there is a significant problem. Ironically enough, women’s increasing progress has created its own obstacles to change. In recent surveys by the American Bar Association and National Association for Law Placement, a majority of lawyers, both male and female, agreed that women are treated equally in the profession.

Even those who acknowledge gender bias to be a problem often discount its significance, or fail to recognize its persistence in their own workplaces. Many attorneys equate bias with intentional discrimination and the legal settings they encounter produce few clear examples of it. Most individuals are reluctant to see their own actions and organizations as anything other than meritocratic.

This ‘no problem’ problem is of central concern both for the profession and for the public. Barriers to women’s advancement compromise fundamental principles of equal rights and social justice, as well as impair effective organizational performance. In an increasingly competitive and socially diverse environment, the profession needs to reflect a similarly diverse set of backgrounds and experiences at all levels, in all fields of practice. In occupations like law, where half of new entrants are women, organizations must insure equal opportunity in order to attract, retain, and motivate the best qualified individuals. Unsurprisingly, current research finds that the employers most successful in promoting gender equality are also the most successful in financial terms such as economic growth and return on investment.

It stands to reason that an organization’s ability to take full advantage of the entire pool of talented professionals will affect its productivity. Clients, colleagues, and the public all benefit from a diverse workforce that can bring different experiences, perspectives, and concerns to the resolution of legal problems.

Moreover, as gatekeepers of our nation’s justice system, lawyers should be leaders in promoting equality. Fundamental fairness requires a legal profession that adequately represents the community it serves. We remain a considerable distance from that goal.
A. Myths of Meritocracy

Gender inequalities in the legal profession are pervasive; perceptions of inequality are not. A widespread assumption is that barriers have been coming down, women have been moving up, and it is only a matter of time before full equality becomes an accomplished fact. In the ABA Journal’s 2000 poll, only a quarter of female lawyers and three percent of male lawyers thought that prospects for advancement were greater for men than for women.7

As lawyers responding to state gender bias surveys have put it, “time [will] take care of the problem.” “The so-called gender gap is vastly overblown. If people who enter the arena will concentrate on the job and get the chip off their shoulders . . . they should do fine in today’s society.” “Of all the problems we have as lawyers . . . discrimination is low on the list of important ones.”8

Such perceptions are hard to square with the facts. Time alone, and women’s relatively recent admission to the profession cannot explain the extent of sex-based disparities in pay or promotion. At the turn of the 21st century, women in legal practice made about $20,000 a year less than men, and surveys of law firms and corporate counsel salaries have consistently found a significant gender gap even among those with similar positions and experience.9

Moreover, male and female attorneys with similar qualifications frequently do not obtain similar positions. In law, as in most other professional contexts, women are underrepresented at the top and overrepresented at the bottom. Women now account for almost 30 percent of the profession, but only about 15% of federal judges and law firm partners, 10% of law school deans and general counsels, and 5% of managing partners of large firms.10 Comparable gender disparities are apparent in court administrative positions.11 Studies involving thousands of lawyers have found that men are at least twice as likely as similarly qualified women to obtain partnership.12 The underrepresentation of women of color is still greater. They account for only 3% of the profession and their small numbers have limited the information available about their experience.13 However, what data are available reflect significant disparities in pay and promotion for lawyers of color, as well as for members of other identifiable groups such as lesbian and disabled lawyers.14 The pipeline leaks, and if we wait for time to correct the problem, we will be waiting a very long time.

In accounting for these persistent and pervasive disparities, a wide array of research reveals common patterns. Few of the problems reflect intentional discrimination. Women’s opportunities are limited by traditional gender stereotypes, by inadequate access to mentors and informal networks of support, by inflexible workplace structures, and by other forms of gender bias in the justice system.

B. Gender Stereotypes

In order to make sense of a complex social world, individuals rely on a variety of techniques to categorize
information. One strategy involves stereotypes, which associate certain socially defined characteristics with identifiable groups. In virtually every society, gender is a fundamental aspect of human identity and gender stereotypes influence behavior at often unconscious levels. These stereotypes work against women's advancement in several respects, even among individuals and institutions fully committed to gender equality.

First, and most fundamentally, the characteristics traditionally associated with women are at odds with many characteristics traditionally associated with professional success such as assertiveness, competitiveness, and business judgment. Some lawyers and clients still assume that women lack sufficient aptitude for complex financial transactions or sufficient combativeness for major litigation. Particularly in high stakes matters, risk averse managers are often reluctant to gamble on female practitioners.

Yet professional women also tend to be rated lower when they depart from traditional stereotypes and adopt “masculine,” authoritative styles. Negative evaluations are particularly likely when the evaluators are men, or the role is one typically occupied by men. As a consequence, female lawyers often face a double standard and a double bind. They risk appearing too “soft” or too “strident,” too aggressive or not aggressive enough. And what appears assertive in a man often appears abrasive in a woman.

A related obstacle is that women often do not receive the same presumption of competence as their male counterparts. In large national surveys, between half and three-quarters of female attorneys believe that they are held to higher standards than their male counterparts or have to work harder for the same results. Only about a third of women are very satisfied with their opportunities for advancement. Particularly where the number of women is small, their performance is subject to closer scrutiny and more demanding requirements, and their commitment is open to greater question. The devaluation of women and the influence of gender stereotypes is especially likely in organizations that have few women in leadership positions.

Even in experimental situations where male and female performance is objectively equal, women are held to higher standards, and their competence is rated lower. Women also see themselves as less deserving of rewards for the same performance and they are less likely to be viewed as leaders. And as subsequent discussion notes, working mothers, unlike working fathers, are often assumed to lack the commitment necessary for demanding legal positions.

The problem is compounded when evaluators have little accountability and those evaluated are women of color or other identifiable minorities including lesbians and disabled women. The performance of these groups is more often subject to criticism, and their achievements more often attributed to luck or special treatment. These stereotypes are particularly hard to avoid for women of color, whose positions are frequently attributed to affirmative action rather than professional qualifications. Of course, the form these stereotypes take varies somewhat across, and even within, racial and ethnic groups. For example, Asian-American women face different expectations than African-American women, and there are also important variations in the experiences of women with Mexican-American, Puerto Rican, Cuban, or other Latin American backgrounds.

However, all of these groups also share an experience of devaluing and demeaning stereotypes. As an earlier Commission report notes: “Although certain assumptions of incompetence or weakness are leveled at women generally, or at minority males, neither group has to weather both sets of stereotypes the way multicultural women do.”

Yet that double disadvantage is often overlooked or understated by those who never experience it. About two thirds of black lawyers, compared with only 10 percent of white lawyers, believe that minority women are treated less fairly than white women in hiring and promotion. Unsurprisingly, women of color also are significantly less satisfied with their professional opportunities than other lawyers.

Women with disabilities and lesbians who are open about their sexual orientation face analogous problems. In representative surveys, between half and three-quarters of disabled lawyers believe that their condition has limited their employment opportunities. And a majority of gay and lesbian lawyers similarly report that their sexual orientation has adversely affected their careers.

The force of traditional stereotypes is compounded by the subjectivity of performance evaluations and by other biases in decision-making processes. People are more likely to notice and recall information that confirms prior assumptions than information that contradicts them. Attorneys who assume that working mothers are less committed tend to remember the times they left early, not the nights they stayed late.

A related problem is that people share what psychologists label a “just world” bias. They want to believe that, in the
absence of special treatment, individuals generally get what they deserve and deserve what they get. Perceptions of performance are frequently adjusted to match observed outcomes. Individuals are also motivated to interpret information in ways that maintain their own status and self-esteem.38

Lawyers who have achieved decision making positions generally would like to believe that the system in which they have succeeded is fair, objective, and meritocratic.39 If women, particularly women of color, are underrepresented in positions of greatest prominence, the most psychologically convenient explanation is that they lack the necessary qualifications or commitment.

The problem is compounded by the disincentives to raise it. Women who express concerns often learn that they are “overreacting” or exercising “bad judgment.”40 The result is to prevent candid discussions of diversity-related issues. Lawyers who experience bias are reluctant to appear confrontational, and decision makers are reluctant to air concerns about performance that could make them appear biased.41

Recent studies also find that women are less inclined than men to engage in internal office battles that often yield power and financial rewards. Traditional gender roles and stereotypes discourage many female lawyers from feeling entitled to complain about credit, compensation, and committee assignments.42 Rather than appear “pushy” or “strident,” women often lump it or leave it, which perpetuates a structure unresponsive to their concerns.

C. Mentoring and Support Networks
An equally persistent problem is inadequate access to informal networks of mentoring, contacts, and client development.43 Despite recent progress, many men who endorse equal opportunity in principle fall short in practice; they support those who seem most similar in backgrounds, experiences, and values.44

Some individuals don’t like the tension of working with those who seem “different.” Concerns about sexual harassment or the appearance of impropriety can heighten that discomfort. Male attorneys often report reluctance to mentor or to be seen alone with female colleagues because of “how it might be perceived.”45 Others enjoy the bonding that occurs in all-male social or sporting events. Law firm surveys offer repeated refrains of exclusion from “boys clubs” or “old boys’ networks.”46

It is, of course, not only men who are responsible for these patterns of exclusion. Recent surveys reveal frustration with some senior women who believe that if they managed without special help, why can’t everyone else.47 These attitudes may be rewarded by the special power, visibility, and status that come with being one of the few women at the top.

By contrast, many other prominent women leaders are concerned about gender-related problems but reluctant to become actively involved in the solution. Some worry about being “typed as a woman” by participating in special women’s networking groups or by giving disproportionate support to other women, particularly those whose performance is not sure to reflect favorably on their sponsors.48

Many other senior women, particularly women of color, do what they can but are too overcommitted to provide adequate mentoring for all the junior colleagues who need assistance.49 And female attorneys at all levels who have substantial family commitments also have difficulty making time for mentoring relationships and for the informal social activities that generate collegial support and client contacts. Excessive hourly demands, inadequate rewards for mentoring, and high attrition rates compound the problem. Overworked senior lawyers are reluctant to invest time assisting those who are soon likely to leave.

The result is that many female lawyers remain out of the loop of career development. They aren’t adequately educated in their organization’s unstated practices and politics. They aren’t given enough challenging, high visibility assignments. They aren’t included in social events that yield professional opportunities. And they aren’t helped to acquire the legal and marketing skills that are central to advancement.50

These barriers can then become self-fulfilling in several respects. Women who don’t achieve prominence within their organizations have difficulty attracting clients, contacts, and recognition outside it. This lack of external influence prevents women from demanding the internal opportunities that would help secure it. So too, women who aren’t gaining the experience necessary to succeed have difficulty gaining mentors who could help address the problem. Overburdened senior attorneys are often reluctant to spend scarce time mentoring junior colleagues who seem unlikely to advance. Women who are not mentored are in fact less likely to advance. Their disproportionate attrition then reduces the pool of mentors for lawyers of similar backgrounds, and perpetuates the assumptions that perpetuate the problem.51

Problems of exclusion are greatest for those who appear “different” on other grounds as well as gender, such as race, ethnicity, disability, or sexual orientation. Many women of color report being treated as outsiders by white colleagues, and as potential competitors by minority men. In Catalyst’s 2001 survey, fewer than a third of the women of color were satisfied with the availability of mentors.52 This absence of support is part of the reason why women of color have the lowest law firm retention rate of any group.53

A related problem for these women is being confined to certain specialties where race or ethnicity is viewed as an asset, such as employment discrimination cases, or government relations with minority-led agencies.54 In the ABA Journal’s most recent survey, fewer than 10 percent of black attorneys believed that law firms had a genuine commitment to diversity.55
So too, women with disabilities frequently report being shunned or stigmatized by other lawyers.\textsuperscript{56} And despite growing tolerance toward gay and lesbian attorneys, those who are open about their sexual orientation too often risk isolation and denial of access to clients who might be “uncomfortable” working closely with them.\textsuperscript{57} Many legal employers fail to include sexual orientation in their anti-discrimination policies.\textsuperscript{58} Even in jurisdictions that prohibit discrimination on the basis of sexual orientation, some professionals remain quite explicit about their prejudices. As one anonymous participant in a Los Angeles bar survey described his firm’s attitude: “Don’t have any, don’t want any.”\textsuperscript{59}

**D. Workplace Structures**

A further obstacle involves workplace structures that fail to accommodate substantial family responsibilities and pro bono commitments. In recent surveys, about two-thirds of lawyers report experiencing work/family conflict and most believe that it is the greatest barrier to women’s advancement.\textsuperscript{60} Only a fifth of surveyed lawyers are very satisfied with the allocation of time between work and personal needs, or with their opportunities to contribute to the social good.\textsuperscript{61}

The most obvious failures in workplace structures are excessive hours and resistance to reduced or flexible schedules. Part of the problem involves the increasing pace and competition of commercial life. Technological innovations have been a mixed blessing. They make it easier for attorneys to work from home, but by the same token, they also make it harder for attorneys to not work while at home. Lawyers remain perpetually on call-Btethered to the workplace through cell phones, emails, faxes, and beepers. Client expectations of instant responsiveness and total availability, coupled with lawyers’ expectations of spiraling salaries, have pushed working hours to new and often excessive limits.\textsuperscript{62}

Hourly requirements have increased dramatically over the last two decades, and what has not changed is the number of hours in the day.\textsuperscript{63} Twelve hour days and weekend work are typical of many practice settings.\textsuperscript{64} Unpredictable deadlines, uneven workloads, or frequent travel pose further difficulties for those with substantial family obligations. Unsurprisingly, most female attorneys feel that they do not have sufficient time for themselves or their families, and half report high levels of stress in juggling their responsibilities.\textsuperscript{65}

Few supervisors are as blunt as the partner who informed one junior colleague that “Law is no place for a woman with a child.”\textsuperscript{66} But that same message is sent by resistance to “special” treatment for working mothers. Moreover, women who do not have partners or children often have difficulty finding time for relationships that might lead to them. As unmarried associates in a recent law firm survey noted, they end up with disproportionate work because they have no acceptable reason for refusing it.\textsuperscript{67}

The problem is compounded by the tendency to view long hours as a measure of other qualities such as commitment, ambition, and reliability under pressure.\textsuperscript{68} The result is a “rat race equilibrium” in which most lawyers feel that they would be better off with shorter or more flexible schedules, but find themselves within institutional structures that strongly discourage such alternatives.\textsuperscript{69}

A wide gap persists between formal policies and actual practices. Although over 90 percent of surveyed law firms report policies permitting part time schedules, only about three to four percent of lawyers actually use them.\textsuperscript{70} As is clear from a forthcoming ABA Commission Report, “Lawyers and Balanced Lives,” part of the problem involves the inadequacy of many policies in terms of laws, eligibility, assignments, and advancement. Most women surveyed believe, with good reason, that any reduction in schedule or availability would jeopardize their prospects for promotion and could put them “permanently out to pas-
The lack of adequate work arrangements is a similar problem for women throughout the legal system, such as court administrative personnel. The result is yet another double standard and another double bind. Working mothers are held to higher standards than working fathers and are often criticized for being insufficiently committed, either as parents or professionals. Those who seem willing to sacrifice family needs to workplace demands may be thought lacking as mothers. Those who need extended leaves or reduced schedules may be thought lacking as lawyers. These mixed messages leave many women with the uncomfortable sense that whatever they are doing, they should be doing something else.

Assumptions about the inadequate commitment of working mothers can influence performance evaluations, promotion decisions, and opportunities for the mentoring relationships and challenging assignments that are prerequisites for advancement. Some women lawyers come back from maternity leaves and receive only routine work, while other women encounter choices that aren’t really choices, such as “would you rather sleep or win?” In the ABA Journal’s 2000 poll, a third of women doubted that it was realistic to combine successfully the roles of lawyer, wife, and mother. The number of women expressing such doubts has almost tripled over the past two decades.

Yet contrary to conventional wisdom, there is little basis for assuming that working mothers are less committed to their careers than other lawyers. Women are not significantly more likely to leave legal practice than men. Rather, they typically move to positions with greater flexibility.

Also contrary to popular assumptions, taking a reduced schedule does not necessarily signal reduced professional commitment. In fact, it generally takes exceptional dedication for women to juggle competing work and family responsibilities in unsupportive working environments. As one lawyer told a Boston Bar Association task force: “On most days I am taking care of children or commuting or working from the moment I get up until I fall in bed at night. No one would choose this if they weren’t very committed.”

Although the inadequacy of family-friendly policies is not just a “women’s issue,” the price is paid disproportionately by women. Many male attorneys have spouses who assume the bulk of family responsibilities; the vast majority of female attorneys do not. Almost half of women in legal practice are currently unmarried (compared with 15% of men) and few women have partners who are primary caretakers. Despite a significant increase in men’s domestic work over the last two decades, women in two career couples continue to shoulder the major burden.

Part of the reason involves longstanding socialization patterns and workplace practices that deter men from taking part-time schedules and or extended family leaves. Workplaces that only grudgingly accommodate mothers are even less receptive to fathers. Only about 10-15 percent of surveyed law firms and Fortune 1000 companies offer the same paid parental leave to men and women. Almost no male lawyers take reduced schedules and few feel free to ask for leaves beyond a few weeks.

Ironically enough, the expectation that fathers will remain fully committed to their careers may sometimes give them greater leeway than mothers in seeking modest accommodations for family needs. In a recent survey of large law firms, several women noted with resentment that when male colleagues wanted time off in the middle of the day for family reasons, they were thought “caring and devoted” or “cute and endearing,” but when women left for similar reasons, they were typed as unreliable and uncommitted.

However, that special leeway for men extends only so far. As one male lawyer explained to a Boston Bar Association work/family task force, it may be “okay [for men] to say that they would like to spend more time with the kids, but it is not okay to do it, except once in a while.”

As a consequence, many workplace structures short-change both men and women as well as their families. Recent research suggests that close parent-child relationships are crucial to the well-being of fathers and mothers. Yet men have fewer acceptable justifications than women for seeking reduced schedules. And women’s justifications tend not to be seen as truly acceptable as long as they are viewed as “women’s issues.” In short, men cannot readily get on the “mommy track.” Women cannot readily get off it.

The result is that those with the greatest family commitments rarely achieve positions with the greatest influence over workplace policies. By contrast, many lawyers who do reach those positions have made substantial personal sacrifices and resist accommodating colleagues with different priorities. A recurrent refrain in management circles is “I had to give up a lot. You [should] too.”

If women want to be “players,” the message is that they have to play by the existing rules.
Yet these rules make little sense, even from the most narrow economic calculus. A wide array of research indicates that part-time employees are more productive than their full-time counterparts, particularly those working sweatshop schedules.88 Bleary burned-out lawyers seldom provide cost-effective services, and they are more prone to stress, substance abuse, and other health-related disorders.89

Nor are these full-time employees necessarily more accessible than those on reduced or flexible schedules. Lawyers at a deposition for another client are less available than women with a cell phone on the playground. What little research is available finds no negative impact on client relations from reduced or flexible schedules.90 And considerable data indicate that such arrangements save money in the long run by reducing absenteeism, attrition, and corresponding recruitment and training costs.91

Adequate opportunities for alternative schedules and reasonable working hours also are becoming increasingly important in attracting as well as retaining talented lawyers. In the Catalyst 2001 survey, almost half of women and a third of men placed work/life balance among their top reasons for selecting their current legal employer.92

Similar points could be made about other workplace policies that affect lawyers’ quality of life. Organizations that fail to provide benefits for domestic partners and to welcome them at social events, are overlooking cost-effective ways of making lesbian attorneys feel valued and comfortable in their workplaces.93

And organizations that fail to offer reasonable accommodations for lawyers with disabilities are paying a similar price. Most requests for assistance are on the order of a few hundred dollars, and many obvious needs of a similarly modest nature remain unmet because lawyers are afraid to draw attention to their disabilities.94 Greater efforts to insure the inclusiveness of legal workplaces would serve the interests of both lawyers and their employers.

Greater support for pro bono activities would yield similar benefits. ABA surveys consistently find that lawyers’ greatest source of dissatisfaction with their legal practice is the absence of opportunities to further the social good.95

That lack of opportunity is partly attributable to the lack of employer support. Many organizations fail to give full credit for pro bono service in meeting billable hour requirements, or to reward it in promotion and compensation decisions.96 The result is to shortchange all concerned. Lawyers lose valuable opportunities for training, contacts, and connection to social justice causes that often sent them to law school in the first instance.97 Legal employers lose opportunities to build the morale, skills, and reputation of their workforce. And the public loses opportunities for assistance with urgent unmet legal needs.

Although the inadequacy of pro bono policies is a concern for the profession generally, it also assumes special importance for women. Without employer support, pro bono service is likely to fall by the wayside among female lawyers who already face particular difficulties in juggling family and work commitments. The absence of pro bono assistance also carries special costs for women as potential clients, since women account for about two-thirds of the low-income Americans who lack adequate access to legal services.98

E. Sexual Harassment
Another context in which inadequate policies assume particular significance for women involves sexual harassment. About 90% of reported complaints are from women, and many pay a substantial price in both economic and psychological terms, such as loss of employment opportunities, unwanted transfers, anxiety, depression, and other stress-related conditions.99 Organizations pay another price in decreased productivity, increased turnover, and risks of legal liability.100 Those risks can be considerable, in terms of reputation as well as dollars. A widely publicized example involved a mid-1990s multimillion dollar verdict against a prominent San Francisco law firm for failure to prevent repeated harassment by one of its leading partners.101

The point has not been lost on employers. Considerable progress has been made since the Commission was founded in 1987, when only about a third of surveyed law firms had sexual harassment policies.102 Recent studies indicate that almost all firms now have such policies, which typically follow federal regulations prohibiting unwelcome sexual advances and conduct creating an intimidating, hostile, or offensive working environment.103 Yet in some organizations, the gap between formal prohibitions and actual practices remains substantial. The most recent surveys find that between about half to two-thirds of female lawyers, and a quarter to half of female court personnel, report experiencing or observing sexual harassment.104 Almost three-quarters of female lawyers believe that harassment is a problem in their workplaces.105 It is, of course, impossible to determine from such surveys how much
of the conduct at issue would be held serious enough to justify legal remedies. But gender bias studies and reported cases leave no doubt that some clearly illegal harassment persists in legal workplaces: sexual propositions, physical groping, and abusive comments remain a problem.106

The problem is magnified by the costs of identifying it. Many women justifiably fear ridicule or retaliation. Those who complain are often dismissed as humorless and hypersensitive, and are subject to informal blacklisting.107 As a result, surveys from a wide variety of occupational contexts find that few women, typically well under 10 percent, make any formal complaint; fewer still can afford the financial and psychological costs of litigation.108 Yet while the likelihood of complaints is small for all but the most serious behavior, concerns about unjust accusations are considerably higher. As noted earlier, many men report reluctance to mentor, or to socialize informally with younger women, because of concerns about the appearance of sexual impropriety.109

In short, our progress in addressing sexual harassment over the last decade should not obscure the progress that still remains to be made. Part IV identifies strategies that can help legal workplaces in deterring and remedying serious harassment while also avoiding overly punitive responses to minor or unintentionally offensive conduct.

F. Gender Bias in the Justice System

The gender bias confronting women attorneys is part of a broader pattern that affects women throughout the justice system. Efforts to address bias in these other settings again reflect partial progress. As late as 1980, only one article on the entire subject had appeared in mainstream legal literature.110 Two years later, the first gender bias task force was established in New Jersey, and within a decade most states had followed suit. Their efforts were spearheaded by the National Judicial Education Program to Promote Equality for Women and Men in the Courts, a program created by the NOW Legal Defense and Education Fund in 1980 and cosponsored by the National Association of Women Judges. Some jurisdictions also established separate commissions on racial and ethnic bias, or gave one commission responsibility to consider all diversity-related issues. By the turn of the 21st century, some 65 state and federal courts had issued reports on bias in the justice system.111 The ABA had also amended both the ABA Model Code of Judicial Conduct and the Model Rules of Professional Conduct to include prohibitions on bias.112

These initiatives, and the social forces that produced them, have fundamentally altered the legal landscape. No longer do we tolerate courts that sanction a witness of color for refusing to answer when addressed by her first name, or a female attorney for refusing to use her husband’s name.113 Judgments have been reversed, judicial discipline has been imposed, policies have been issued, and training programs have been implemented.114

Yet while egregious discrimination is rare, more subtle forms of bias are not. As the New York Task Force on Women and the Courts bluntly concluded, gender bias remains a “pervasive problem with grave consequences.”115 And its costs are compounded by other forms of bias, particularly those involving race, ethnicity, disability, and sexual orientation.

The extent of the problem is, of course, difficult to measure with any precision, and studies have varied in their methodologies and findings. Commissions typically have relied on some mix of quantitative and qualitative approaches, and have considered issues such as the demographics of the bench, bar, and court personnel; the outcomes for male and female litigants in areas like bail, sentencing, and custody awards; and the perceptions of participants in the justice system.116 In general, these studies find significant evidence of bias, as well as significant race and gender gaps in perceptions of bias. Between two thirds and three quarters of women report experiencing bias, while only a quarter to a third of men report observing it and far fewer report experiencing it.117 Women are also more likely than men to believe that bias is a significant problem and that female attorneys are treated less favorably than male attorneys by judges and opposing counsel.118 Two-thirds of African American lawyers, but less than a fifth of white lawyers, report witnessing racial bias in the justice system in the last three years.119 About forty percent of surveyed lawyers report witnessing or experiencing sexual orientation bias in professional settings, even in jurisdictions that have ordinances prohibiting it.120 Between about a quarter to a half of lawyers with disabilities also experience various forms of bias in the legal system.121

Perceptions of bias are common among the general public as well. In the American Bar Association’s 1999 study, close to a third of Americans did not believe that courts try to treat males and females alike, and about half did not believe that the courts treat all racial and ethnic groups the same.122

The most commonly cited forms of bias fall into several categories: disrespectful treatment; devaluation of credibility and injuries; and stereotype assumptions about gender, race, ethnicity, disability, and sexual orientation.

1. Disrespectful Treatment

Demeaning conduct takes a variety of forms. To be sure, gender bias rules and educational programs have reduced the most egregious problems. Female lawyers no longer routinely cope with labels such as “pretty girl,” “little lady,” “lady lawerette,” “baby doll,” “sweetie” and “attorney general-lette.”123 Nor do women frequently encounter questions such as whether they “really understand all the economics involved in this [antitrust] case,” or whether their clients...
are “satisfied with the representation [they] had at trial even though [the lawyer] was a woman.”

However, some of these problems persist, particularly those involving disrespectful forms of address. Female lawyers, administrative personnel, and witnesses are still addressed by their first names, while male counterparts are not. Women of color and other identifiable subgroups face also bias on two fronts. Racial slurs range from the obviously invidious such as “tarbaby” or “taco bell,” to the ostensibly benign but backhanded compliment for being a “credit to your race.” Homophobic jokes and comments are not uncommon. Lawyers with disabilities report disparaging remarks and lack of reasonable accommodation by judges, court personnel, clients, and other counsel.

Women also report recurring instances of being ignored, interrupted, or mistaken for nonprofessional support staff. And support staff, for their part, often experience similarly demeaning comments and have been expected to perform menial personal services, such as making coffee or running non-work related errands. Such problems persist partly because they are not acknowledged as problems. Many white men, who have not been on the receiving end of systematic bias, tend to discount its significance. The gender gap in experience is striking. For example, in the District of Columbia Circuit survey of lawyers, only 3 percent of white men, but over a third of white women and half of women of color, had been mistaken for non-lawyers by other counsel.

When men do observe such incidents, they often seem like isolated, idiosyncratic, or inadvertent slights. A common reaction is that women should just “grow up and stop whining.” Such reactions both silence and stigmatize complainants. Many women are unwilling to jeopardize a client’s case or their own career prospects by antagonizing decision makers or earning a reputation as “humorless,” “oversensitive,” or a “troublemaker.”

These incidents assume broader significance when viewed not as isolated occurrences but as part of a systematic pattern. However unintentional, they serve to undermine competence, confidence, and credibility. The message is unstated but unmistakable when female lawyers or judges of color are repeatedly assumed to be court reporters, and occasionally even asked to verify their status. That message inevitably affects perceptions not only about the qualifications of women, but also about the fairness of the justice system.

2. Devaluation of Women’s Credibility and Legal Claims

Another common finding of gender bias studies is that the credibility of female lawyers, litigants, and witnesses is often discounted. Examples range from the occasional overt comment, such as “Shut up. Let’s hear what the men have to say,” to the much more common and subtle patterns of devaluation, such as openly ignoring or trivializing claims.

In some instances, judicial attitudes are tied to perceptions about the substantive rights or injuries at issue. Claims involving violence, acquaintance rape, sexual harassment, and employment discrimination face special skepticism. In New Jersey’s recent follow-up survey of gender bias, about 60 to 70 percent of women (compared with about a quarter of men) reported that victims of domestic violence and sex harassment had less credibility than other victims.

Again, examples range from the occasionally outrageous to the more routinely callous. At one end of the spectrum are the domestic violence cases where one judge sentenced a batterer to take his victim out to dinner once a week and “try to work it out,” and another judge, after hearing testimony about a woman who had been doused with lighter fluid and set on fire, responded by singing “you light up my wife” to the tune of “you light up my life.” In some courtrooms, brutal assaults appear to matter less when they are “family matters.”

At the other end of the spectrum are dismissive attitudes that are less explicit but therefore less readily identified and remedied. A widely shared perception among those responding to gender bias surveys is that courts view employment discrimination and sexual harassment cases as “small potatoes,” a “waste of time,” and diversions from more important issues on the judicial docket.

Yet as the Working Committee of the Second Circuit’s Task Force on Gender, Racial and Ethnic Fairness in the Courts noted: “whether a case is worth the time it takes is also a function of the values and life experiences that a judge brings to the case. One could argue plausibly that cases involving individual rights and protection against discrimination, even if small and affecting only a single individual, are more rather than less deserving of the attention and expertise of the federal bench, than a large commercial case in which the parties could probably get a fair resolution in a variety of dispute resolution
fora. The point is simply, that when a case is properly before a federal court, a judge's belief that it is too trivial for his or her attention can too easily result in actual unfairness to a litigant—a result that disproportionately disadvantages both women and members of minority groups. This is a problem that deserves attention.140

3. Stereotypical Assumptions
Stereotypical assumptions about gender, race, ethnicity, and sexual orientation are equally in need of attention. Gender bias studies reveal problems across a wide range of substantive areas, particularly those involving family, criminal, and employment law. Commonly cited assumptions are that:
• domestic violence victims are responsible for provoking, tolerating, or declining to report abuses;
• rapes involving acquaintances are less harmful than “real” (i.e., stranger) rapes;
• mothers who work full time or who have same-sex partners are less deserving of custody than fathers who are heterosexual or who have second wives willing to be full time caretakers;
• promiscuity is more serious for female juvenile offenders than for male offenders.141

Although women are the most common victims of adverse gender stereotypes, men can be targets as well. Custody cases are the most commonly cited illustration; maternal preferences may be impermissible in law but they persist in practice, at least for parents of young children.142 Gender bias in criminal charging and sentencing decisions is also common. For example, male defendants are likely to be held more responsible than their female counterparts for joint crimes, or treated more harshly for certain offenses.143 Yet it bears note that even in contexts where women as a group have advantages, not all women benefit. Although female defendants with children may be less likely than male defendants to face extended prison terms, those who do, largely poor women of color, confront additional hardships because of their disproportionate childrearing responsibilities and the lack of facilities for female offenders near their families.144

Comprehensive strategies for addressing such bias have been carefully designed and broadly publicized. They have not, however, been widely implemented. Lynn Hecht Schafran, Director of the National Judicial Education Program, notes that progress has been “uneven.”145 Relatively few jurisdictions have done what is really required. As discussion in Part IV makes clear, every court needs a “comprehensive framework that will establish long-term implementation” of gender bias strategies.146
Although many of the opportunities and obstacles for women in the legal profession are widely shared, there are some important differences across practice contexts. There are also some sex-based differences in career paths that affect women’s representation in particular practice settings. The following table reflects the most recent comprehensive survey of the workplace settings of male and female attorneys.

Table 1
Distribution of Male and Female Lawyer Populations by Employment

<table>
<thead>
<tr>
<th>Employment Setting</th>
<th>Male Lawyers</th>
<th>Female Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Solo practice</td>
<td>225,584</td>
<td>34</td>
</tr>
<tr>
<td>Firm practice</td>
<td>265,356</td>
<td>41</td>
</tr>
<tr>
<td>Federal judicial department</td>
<td>2,127 &lt;1</td>
<td></td>
</tr>
<tr>
<td>Other federal government</td>
<td>18,163</td>
<td>3</td>
</tr>
<tr>
<td>Other state/local government</td>
<td>14,746</td>
<td>2</td>
</tr>
<tr>
<td>Private industry</td>
<td>25,609</td>
<td>4</td>
</tr>
<tr>
<td>Private association</td>
<td>53,882</td>
<td>8</td>
</tr>
<tr>
<td>Legal aid or public defender</td>
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<td>1</td>
</tr>
<tr>
<td>Education</td>
<td>4,938</td>
<td>1</td>
</tr>
<tr>
<td>Retired or inactive</td>
<td>582</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>655,623</td>
<td>100</td>
</tr>
</tbody>
</table>

As this table indicates, female lawyers are more likely than male lawyers to work in private industry, government, legal aid, and public defender programs, and less likely to practice in law firms. The reasons for those disparities may partly reflect different career preferences among law school graduates, but some of the variation may be attributable to women’s perceptions of the opportunities open to them in particular practice settings.148

As the following discussion makes clear, prospects for advancement in law firms remain especially limited.

A. Law Firms
In summarizing recent trends, an American Bar Foundation statistical report notes: “the most pervasive underrepresentation of female lawyers, although of lesser magnitude than in [previous decades] . . . existed among partners in law firms. In spite of improvements over time, only . . . 60 percent as many female lawyers were partners in law firms . . . as would have been expected had women been fully represented among partners. Moreover, when representation is controlled for age, women were persistently underrepresented in all age groups.”149 Similarly, in the New York Bar Glass Ceiling study, women were three times less likely to become partners as men. In the American Bar Foundations study, women’s chances were less than half of men’s.150

The disparities are especially pronounced for equity and managing partners. Among large firm partners, only about sixty percent of female attorneys, compared with three quarters of male attorneys, have equity status.151 And as noted earlier, only about 5 percent of managing partners in surveyed firms are women.152 Underrepresentation is greatest for women of color; their proportion of equity partners remains stuck at under one percent, and their attrition rate after eight years is one hundred percent.153

The difficulties for women in law firms reflect the problems faced by women in the profession generally: unconscious bias and stereotypes; inflexible work structures; and exclusion from mentoring and social networks. However, certain distinctive features of law firm settings compound the difficulties.

One involves the heightened competition within and across professions. Law firms face greater economic pressures due to substantial increases in the size of the bar, coupled with increasing competition from nonlawyers and in-house counsel, as well as increasing competition for talented law graduates.154 These pressures have, in turn, heightened competition within firms. Partnership means less and is harder to obtain. Increasing emphasis is placed on maximizing billable hours and on developing new business. Such priorities tend to disadvantage women, given their greater family responsibilities and their greater difficulties in networking with largely male clients.155

A preoccupation with the bottom line has also squeezed out other values that are central to workplace satisfaction. It has reduced time for mentoring that is often key to the success of junior women.156 And the priority of profits has discouraged the kind of pro bono work that lawyers rank among their most satisfying professional experiences. Ironically enough, recent increases in law firm revenues and salaries have eroded, not expanded support for public service. For example, over the last decade,
when the profits of the nation’s highest earning firms increased by over 50%, average pro bono contributions dropped by a third. As noted earlier, the absence of support for pro bono activities poses particularly painful tradeoffs for women. Their disproportionate family commitments often leave little free time for work that does not count toward escalating billable hour requirements.

All of these forces contribute to disaffection and attrition that ill serve the interests of women and their firms. Over forty percent of associates leave within three years, generally before their firms have had time to recover their initial investment in recruiting and training.158 Because many offices fail to track or allocate attrition costs, their reward structures often overcompensate rainmakers who “churn” associates and undercompensate supervisors who are effective mentors.159

Moreover, the costs of excessive attrition extend well beyond financial expenses. As the Boston Bar Association’s work/family task force noted, rapid turnover disrupts relationships and discourages mentoring.160 Supervising lawyers do not want to invest time assisting associates whom they expect to leave. Women who lack assistance are more likely to leave. Their departures reduce the pool of mentors for lawyers of similar background, and perpetuate the expectations that perpetuate the problem.161 The problem is greatest for women of color, who have the highest attrition rates and greatest difficulties obtaining mentors.162

So too, “every woman who opts to ‘have a life’ means one less woman in the management ‘pipeline.’”163 Women who want substantial time for their families or for pro bono work disproportionately drift off the leadership track, leaving behind a decision making structure insulated from their influence.

Some of these problems are less pronounced in small firms where lawyers often have closer working relationships and greater willingness to accommodate colleagues with competing commitments. However, smaller firms also have fewer attorneys available to cover for those on leave or alternative schedules. And these firms are less likely to have formal policies that attempt to support and regularize such options. Some women have sought greater flexibility by working in women-owned firms or in firms with other family members.164 Yet these choices come at a cost. Although satisfaction with quality of life is relatively high in small firms, they generally do not offer the same status, economic rewards, or professional leadership opportunities as larger firms.165

So too, in some practice settings, competitive pressures have pushed small firms in the same direction as their larger counterparts—toward extended hours, constant availability, and bottom-line orientations.166 Franchise firms are a case in point. Many chains of small local offices that have promised “family friendly environments” have yet to provide them.167 Female attorneys who are “too family oriented and not entrepreneurial enough” have lost out in compensation and promotion decisions, and have rarely achieved managing partner positions.168 Changing these patterns is no small challenge. Economic pressures are substantial and likely to increase. But so is the representation of women in the profession. At a time when half of law school graduates are women, firms cannot afford structures that disadvantage so much of the talent pool. Yet although many firm leaders lament the decline of law from a profession to a business, too few have taken an effective businesslike approach to human resources issues.169

To make significant progress, equal opportunity for women needs to be seen as an economic as well as moral issue, and treated as a bottom-line priority. As discussion in Part IV makes clear, cost-effective strategies are available to help firms of all sizes move closer to gender equality in practice as well as principle.

B. Solo Practice

Although about a third of women are solo practitioners, there is relatively little systematic information about their experience, or about the dynamics of their practice settings. The limited accounts available suggest that the opportunities and obstacles for women in solo practice are similar to those in small firm settings. Female attorneys who work on their own are generally seeking flexibility, independence, control, and direct client contact.170 Some work out of home offices, which helps to reduce work/family conflicts. The price for such advantages is often paid in greater isolation, economic uncertainty, and instability, as well as lower income and status.171

The absence of mentoring and back-up support poses additional stresses. For some solo practitioners, a lack of time or contacts for business development, together with an inability to afford professional membership dues and subscription fees, can compound the economic difficulties.172
Many women attempt to minimize these problems through cooperative office sharing arrangements with other lawyers. Some also manage through the economic security provided by spouses or partners in well-paying positions. Although many of the challenges are inherent in the nature of solo practice, Part IV identifies initiatives that can assist solo practitioners.

C. Corporate Counsel

The percentage of women in corporate counsel positions has grown dramatically over the past five years, up from about a quarter in the mid 1990s to over a third at the turn of the century. However, women are still underrepresented, particularly at the highest levels. About 11 percent of female lawyers, compared with 18 percent of men, work in corporate legal departments. At the turn of this century, only ten percent of the general counsel of Fortune 500 companies were women. Only one of those was a woman of color.

The reasons for this partial progress reflect both the increasing attractiveness of corporate employment, and the continuing legacy of gender stereotypes and inflexible workplace structures. In-house counsel positions typically offer somewhat more regular hours and greater job security than law firms, along with an escape from up-or-out promotion structures and client development obligations.

In recent national surveys, about two-thirds to three-quarters of corporate counsel indicated that gaining a better balance between their professional and personal life was a major reason for their current job choice. Many women also like the opportunities for proactive problem solving and for movement into management positions that are available in corporate settings. And in some companies, a recent focus on diversity initiatives has created a particularly supportive climate for women of color.

Yet many female attorneys confront the same barriers to advancement in corporate legal departments as in other practice settings. These barriers include stereotypical assumptions about the qualifications of women and minorities; exclusion from informal social activities and mentoring networks; isolation from other practitioners; and extended hours for those in senior positions. Although in house counsel do not face the same business development obstacles as lawyers in private practice, neither are these counsel free from all marketing obligations and from the disadvantages that gender, race, ethnicity, disability, and sexual orientation impose. Corporate counsel need to be sufficiently liked and respected to work effectively with management and with outside community and industry constituencies that are not always free from unconscious bias. Here again, women of color are especially likely to confront obstacles and most do not believe that corporations are making genuine efforts to diversify corporate counsel positions.

Moreover, in some companies, downsizing and cost-containment strategies have created economic pressures analogous to those in firms, and have compromised the quality of life for legal employees.

In Catalyst’s 2001 survey, women in corporate law departments did not report significantly less difficulty balancing their professional and personal life than women in firms, and in-house counsel were even less likely to believe that they could use flexible work arrangements without jeopardizing their advancement. Only about a quarter were satisfied with their advancement opportunities.

The strategies for equalizing opportunities in corporate settings are also analogous to those developed for other legal employers, discussed in Part IV below. However, women holding senior in-house positions have certain special challenges and opportunities that come with control over hiring decisions and selection of outside counsel. Increasing efforts have been made to convince these women to recruit and channel business to other women, and to prefer firms with good records on diversity.

Women’s networks and social events with those objectives have had mixed success. Some general counsel are wary of charges of favoritism: how can they “preach fairness” and then give preferences based on race or sex? And if performance problems later arise, women worry that they will be criticized for not choosing lawyers strictly on the merits.

Although these are valid concerns, they suggest reasons for selecting only well-qualified counsel, not for abandoning efforts to identify women who meet those standards. Past a certain threshold, what counts as merit is often subjective. As the federal Glass Ceiling Commission notes, “comfort and chemistry” have long played a role in corporate personnel decisions and women, particularly women of color, have long been left out of the loop from which selections have been made. Efforts to correct those historic patterns of exclusion are a way to match formal policies on diversity with actual business practices.

D. Government and Public Interest Organizations

Although only a small percentage of lawyers work in public interest or public sector jobs, women are quite well represented in those positions. As Table 1 indicates, female lawyers are more likely than males to work in government, legal aid, or public-interest organizations.

The pattern begins early: among recent law school graduating classes, about a third of women, compared with a quarter of men, take government, public interest, or judicial clerkship positions. In some sectors, such as the federal government, women constitute about a third of lawyers. Women of color are particularly likely to work in such positions. For example, 6 percent of minority female law graduates take public interest jobs, compared with 2 percent of white men.

There are several reasons for these patterns. One is that
Women judges are “important as symbols that positions of power and responsibility are attainable for women; they are indispensable as well to the public’s confidence in the ability of our courts to respond to the legal problems of all Americans.”


public interest and public sector organizations are perceived as more “meritocratic” than private practice.\textsuperscript{191} When relieved of the obligation to attract paying clients, lawyers can focus more on the quality of their legal work, and worry less about exclusion from men’s social networks that are crucial to business development.

A second explanation for the attractiveness of government and public interest jobs is that they also tend to have more family-friendly and egalitarian environments than other legal workplaces. The hours are often more reasonable and predictable, or at least more likely to be chosen than imposed. Some public sector agencies like the U.S. Department of Justice have been leaders in addressing quality-of-life issues: they offer part-time work, job-sharing, flexible work schedules, and on-site dependent care.\textsuperscript{192} While there is often some gap between formal policies and acceptable practices, that gap tends to be smaller than in private practice.\textsuperscript{193}

Government employers also have a reputation for being more progressive on diversity-related issues than most law firms. Agencies that are politically and financially accountable to the broader public generally are under some pressure to be representative of the community that they serve.\textsuperscript{194}

So too, many public interest organizations have particularly strong commitments to equal opportunity and to egalitarian management structures in which women and minorities are adequately represented.

Another explanation for women’s greater representation in public sector and public interest positions involves tradeoffs between ideological commitments and financial opportunities. Women are somewhat more likely than men to choose law for reasons related to social justice.\textsuperscript{195} Women are also less likely than men to see themselves as their families’ primary wage earners. Both factors increase women’s willingness to accept low-paying public interest and public sector work. Although attorneys in these positions often report frustration with their lack of resources, status, or advancement opportunities, many find offsetting benefits in their control, responsibility, and connection to social causes.\textsuperscript{196}

E. The Judiciary

1. Underrepresentation

Women’s representation in the judiciary has also increased substantially over the past decade. At the turn of the 21st century, women accounted for about 18 percent of federal district and appellate judges, double the percentage from the early 1990s.\textsuperscript{197} Although comprehensive information is not available for state courts, the limited data indicate similar, if somewhat uneven progress. In some jurisdictions, the increase in female representation has been especially dramatic. In Massachusetts, for example, women constitute 30 percent of the bench and a majority on the supreme court.\textsuperscript{198}

Yet such progress should not be grounds for complacency. Much of the increase in women’s representation on the federal bench has been recent, and has reflected exceptional commitment to diversity. President Clinton’s appointment of 100 female judges nearly tripled the number appointed by Presidents Bush and Reagan.\textsuperscript{199}

Sustaining that level of commitment should be a high priority for the profession. As in other contexts, women in the judiciary still remain underrepresented at the highest levels and overrepresented at the lowest. In the federal system, they account for fewer federal judges with life tenure than for lower tier, non-Article III appointments (e.g., magistrates and bankruptcy judges).\textsuperscript{200} Similar patterns hold in many states, and the underrepresentation of women of color is still greater in both systems.\textsuperscript{201}

2. Bias

Part of the reason for such underrepresentation may have to do with biases in selection and confirmation processes, biases that most surveyed women, but not men, identify as problems.\textsuperscript{202} Another reason may be the tendency of such processes to penalize applicants who have public service and public interest backgrounds, because these backgrounds are assumed to predict “activism” on controversial issues.\textsuperscript{203}

Such assumptions work against women, particularly women of color, who disproportionately come from such backgrounds or who have been involved with such issues. The result is to deprive the judiciary of the diversity of experience necessary to ensure both the fact and appearance of justice. As Justice Ruth Bader Ginsburg noted in the ceremony marking her appointment to the U.S. Supreme Court, “women, like persons of different racial groups and ethnic origins, contribute . . . [to the US. judiciary] a distinctive medley of views influenced by differences in biology, cultural impact, and life experience.”\textsuperscript{204} Diversity is critical to the legitimacy, credibility, and quality of the justice system.
Efforts to combat the bias facing women judges are equally critical. Studies of judicial performance evaluations find that female judges are rated consistently lower than their male counterparts, and that male lawyers are particularly critical. State and federal gender bias surveys also reveal similar biases, including a significant incidence of disparaging comments by male judges about their female colleagues and about the number of women on the bench. Female judges often receive criticism for strong and decisive action, while the same behavior by male judges attracts praise. The credibility and self esteem of women on the bench can be further undermined by unconscious slights, such as being mistaken for court staff and occasionally for each other. In anticipation of such problems, the National Association of Women Judges presented Justice Ginsburg and Justice O’Connor matching T-shirts. One read “I’m Ruth, not Sandra,” the other, “I’m Sandra, not Ruth.” As Ginsburg later noted, wearing them might have avoided embarrassment for an Acting Solicitor General who, three times in one term, addressed her as Justice O’Connor.

Although such mistakes can be humorously dismissed by women at the highest judicial level, they reflect and reinforce patterns of devaluation that carry more serious consequences for other women. As the preceding discussion of gender bias indicates, the accumulation of these incidents, however inadvertent, sends a signal about credibility and legitimacy that is not lost on other participants in the legal system. The symbol of justice may be blind, but lawyers, litigants, and witnesses generally are not. And the judiciary has not yet realized its aspirations to exemplify, as well as dispense, equal justice under law.

F. Legal Education
The experience of women in legal education again reflects a history of dramatic, but still only partial progress. Until the 1970s, women in law schools were noticeable largely for their absence. Only three schools had ever had women deans, and few had more than one or two women faculty. Female students constituted no more than 3 percent of entering classes and the atmosphere for those present was less than fully welcoming. Some professors ignored their presence as much as possible except on “Ladies Days.” Then, women students were singled out for questions on “women’s issues,” such as sexual assaults or hypotheticals involving needlework. Justice Ruth Bader Ginsburg recalls that when she attended law school, there were associations for wives of law students but not for women students themselves.

By the turn of the 21st century, the academic landscape had been transformed. Women now account for a majority of entering law students and racial and ethnic minorities constitute about 20 percent. But women, particularly women of color, remain overrepresented at the bottom and underrepresented in the upper ranks of legal education. And at many schools, the curriculum and climate for women still leaves much to be desired.

1. Underrepresentation
Despite substantial progress, women in legal education still have not achieved wholly equal opportunities, particularly for leadership positions. Only 20 percent of full professors and 10 percent of law school deans are female, and only about 5 percent of those in either position are women of color. Women faculty are still clustered in the least prestigious academic specialties and positions, such as librarians, research and writing instructors, and non-tenured clinicians. Gender inequalities persist within as well as across these specialties. For example, women account for two-thirds of legal writing instructors, but are only half as likely as their male counterparts to hold tenured positions or to direct writing programs. At many schools, women students are also underrepresented in the most prestigious positions such as law review editors, class officers, and members of academic honor societies. The limited research available finds that these gender and racial disparities cannot be entirely explained by objective factors such as academic credentials or experience. Some evidence also suggests that women of color are underrepresented in student bodies relative to their undergraduate performance and academic potential.

Such findings should come as no surprise. Racial, ethnic, and gender biases persist within the legal profession generally, and there is no reason to expect legal education to be different. Female students and faculty are subject to the same double standards and double binds that women encounter in other legal settings. Their competence is subject to heightened scrutiny and they risk criticism for being too assertive or not assertive enough.

Women’s disproportionate family responsibilities also carry a cost when pitted against substantial research,
teaching, and committee obligations. Although work schedules in law school generally permit more flexibility than those in legal practice, performance pressures and time demands can be even more unbounded.221 The problem is exacerbated by the overlap between women’s biological and tenure clocks. About two-thirds of surveyed women law professors cite work/family conflicts as a significant problem.222

Although there is no reason to expect law schools to be exempt from broader patterns of gender bias, there is reason to expect them to address the issue more effectively. Without a critical mass of similar faculty colleagues, women bear disproportionate burdens of counseling and committee assignments, and lack adequate mentoring and support networks.223

Institutions also lose valuable guidance and students lose valuable role models. And without adequate racial and ethnic diversity among faculty and students, prospective lawyers lack the informed classroom interchanges, and understanding of multiple perspectives that is critical to practice within an increasingly multicultural world. Empirical research consistently finds that students who experience racial diversity in education show less prejudice, more ability to deal with conflict, better cognitive skills, clearer understanding of multiple perspectives, and greater satisfaction with their academic experience.224

Yet efforts to achieve such diversity have been compromised by recent assaults on affirmative action. California’s Proposition 209 and a federal Court of Appeals ruling in Hopwood v. Texas, 78 F.3d 932 (5th Cir.), cert. den. 518 U.S. 1033 (1996), Grutter v. Bollinger, ___F. Supp. 2d, No. 97-CV-75928-DT (E.D. Mich. March 27, 2001) have barred reliance on race at universities within their jurisdictions. Similar litigation and legislative initiatives are underway in other states as part of a national campaign against affirmative action. Partly as a result, the number of law students of color has grown less than one percent over the past five years, the lowest increase in over twenty years.225

This lack of progress is particularly disturbing in light of the broad consensus about the importance of diversity for legal education. As is clear from recent position papers by the Association of American Law Schools (AALS) and a coalition of virtually every other major organization in higher education, challenges to affirmative action compromise academic excellence. In summarizing experts’ views, the AALS statement concludes: “different backgrounds enrich learning, scholarship, public service, and institutional governance. They promote informed classroom interchanges and keep academic communities responsive to the needs of a changing profession and a changing world.”226 Meeting these needs requires sustained recruitment and retention efforts.

2. Educational Climate and Curricula

A true commitment to equal opportunity will also require broader changes in the educational culture. Research over the last decade consistently finds that women, particularly women of color, are more likely than men to be silenced in the classroom. Female students volunteer less frequently and make fewer follow-up comments. The gender differentials are most pronounced in courses that are taught by men and that have high male-female ratios.227

Part of the reason appears to be the largely unconscious biases that continue to affect classroom experiences. When women speak in mixed groups, they are often heard differently than men. Female students’ comments are more likely to be overlooked, devalued, or misattributed. The highly competitive atmosphere of many law school classrooms also tends to silence students with lower self-
confidence, who are disproportionately women, especially women of color.\textsuperscript{228} The marginalization of women’s classroom participation is compounded by the marginalization of issues concerning race, gender, and sexual orientation in core curricula, as well as the disparaging treatment of students and faculty who introduce such concerns. Reviews of gender bias in casebooks disclose that these issues generally receive insignificant coverage.\textsuperscript{229} And in class discussions, such topics are often tacked on as curricular afterthoughts—-as brief digressions from the “real” subject. Some teachers exclude issues of obvious importance, such as domestic violence, same-sex marriage, or pornography, because the discussion may become too volatile. When such issues do arise, students or faculty who express strong views frequently are dismissed or demeaned.\textsuperscript{230}

Most institutions have experienced racist, sexist, and homophobic backlash in e-mails, graffiti, or anonymous flyers, and many have experienced other egregious forms of sexual harassment.\textsuperscript{231} In Law School Admission Council surveys, discrimination is reported by about two-thirds of gay and lesbian students, a majority of African-American students, and a third of women, Asian American, and Hispanic students.\textsuperscript{232} Harassment is also common for conservative students who express unpopular views on gender and diversity issues.

What is especially disturbing about such patterns is the tendency among many faculty to dismiss their significance. A common response is simply to ignore inappropriate comments or to rely on other students to respond. Yet tolerance of intolerance falls short of ensuring the equal opportunity and mutual respect that professionally responsible educators should demand. Many schools have also failed to respond adequately to other forms of demeaning or biased treatment. Women faculty often experience classroom challenges to their competence and authority.\textsuperscript{233} Women of color, women who are open about their same-sex orientation, and women who take strong feminist positions have been especially likely targets of offensive comments, adverse evaluations by students, and marginalization by colleagues.\textsuperscript{234} The devaluation of teaching and scholarship that focuses on gender, race, ethnicity, and sexual orientation also discourages junior faculty from pursuing such interests and disadvantages those who persist.\textsuperscript{235}

In short, too many women, particularly women of color and lesbians still feel uncomfortable in the educational environment and too few have advanced to positions where they can significantly affect it. And too few schools have committees or other administrative structures charged with addressing gender-related concerns.\textsuperscript{236} Given these patterns, it is scarcely surprising that women report higher levels of dissatisfaction and disengagement with the law school experience, and that women of color have the greatest likelihood of alienation.\textsuperscript{237} If our goal is to create an educational community, and ultimately a profession, of equal opportunity and mutual respect, we have a significant distance yet to travel.

3. Pro Bono Commitments

If our objective is also to inspire commitments to pro bono service, there is also progress still to be made. Only about ten percent of law schools require pro bono participation by students and fewer still impose requirements on faculty.\textsuperscript{238} About a third of schools have no voluntary law-related pro bono projects or programs involving fewer than fifty participants a year. As a result, most students graduate without pro bono work as part of their educational experience.\textsuperscript{239}

The absence of adequate pro bono programs should be a matter of concern for the entire profession, but it also holds particular importance for women. As noted earlier, women are especially likely to come to law school with public service interests and to make those interests a focus of their careers.\textsuperscript{240} Moreover, since women account for a disproportionate share of low income clients with unmet legal needs, pro bono programs are an important way to build awareness of women’s concerns and the gender inequality that produces them.
III. The Difference Gender Difference Makes

For those concerned with women and the profession, a crucial question is what difference gender difference makes. A longstanding issue is whether male and female lawyers bring different, gender-linked perspectives to their work, and if so, what follows from those differences. A related set of questions involves diversity among women. To what extent are gender differences experienced differently across race, ethnicity, age, sexual orientation, and related characteristics? How can bar associations speak on behalf of women without losing sight of the diversity in their backgrounds, values, and concerns?

A. Women’s “Different Voice”

Perceptions of gender differences are widely shared. In the recent ABA Journal poll, fewer than a fifth of women lawyers believed that male and female lawyers had the same strengths, the same weaknesses. Slightly under half of male lawyers believed that men and women had the same strengths and weaknesses. Women lawyers were thought to have greater empathy and “better people skills,” but insufficient assertiveness and aggressiveness.

Some feminist theorists have made broader claims. They argue that women reason in a “different voice,” one more sensitive to values of care, compassion, and cooperation than prevailing legal norms. Slightly under half of male lawyers believed that men and women had the same strengths and weaknesses. Women lawyers were thought to have greater empathy and “better people skills,” but insufficient assertiveness and aggressiveness.

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The evidence for many presumed gender differences is, however, weaker than commonly supposed. Psychological research finds few characteristics on which men and women consistently differ along gender lines, and even on these characteristics, gender typically accounts for only about 5 percent of the variation. Contextual forces and other factors like race, ethnicity, and sexual orientation can be equally significant. The most respected recent studies avoid sweeping claims about inherent gender differences, but also acknowledge the role of gender-based experiences and expectations in professional lives.

For example, surveys of leadership styles and decision-making behavior have reached mixed results that underscore the contextual variations in gender difference. Some research based on laboratory experiments and individuals’ self-descriptions finds that women display greater interpersonal skills and adopt more participatory, democratic styles, while men rely on more directive and task-oriented approaches.

Yet other large scale studies based on self-reports find no such gender differences. Nor do these differences emerge in most research involving evaluations of leaders by supervisors, subordinates, and peers in real world settings.

There are several explanations for these divergent results. One involves sex stereotypes, which are particularly likely to influence lab studies and self-descriptions. In experimental situations, where participants have relatively little information about each other, they are more likely to fall back on conventional assumptions about appropriate masculine and feminine behavior. Such assumptions may also skew individuals’ willingness to behave or to describe their behavior in ways that deviate from stereotypical norms. Since women do not enjoy the same presumption of competence, the same latitude for assertiveness, and the same access to power as their male colleagues, a less autocratic style may seem necessary.

By contrast, the force of conventional stereotypes is weaker in actual organizational settings than in lab studies or self-assessments. Women who have achieved decision-making positions in traditionally male-dominated professions generally have been socialized to follow prevailing practices. It is not surprising that their styles are similar to those of male counterparts.

Efforts to determine whether women lawyers approach their work differently than men yield similarly mixed results. The bottom line appears to be “some women, some of the time.”

The most systematic studies involve judicial behavior, but their reliability is sometimes limited by small sample sizes and inadequate controls for factors other than gender. Early studies tended to find no significant gender differences in judicial rulings, even on women’s rights issues. By contrast, some more recent studies have found differences at least on certain issues, although not always on women’s rights or on matters traditionally thought to inspire feminine compassion.

An equally critical question is the extent to which women judges have used their leadership to press for changes in the judicial process that would make it more responsive to the needs of women. Here again, the evidence is mixed. In some respects, as Judge Gladys Kessler notes, “there has truly been a ‘revolutionary reform’ of the justice system’s response to women’s concerns” in areas such as domestic violence, child support, and gender bias. Much of this change has resulted from efforts by female judges, not only through
their rulings but also through their work in organizations like the National Association of Women Judges.257

Yet as Kessler also observes, many women leaders have “become the victims of [their] own success.” They have so many individual opportunities and claims on their time that their collective reform efforts are suffering from a “fading sense of urgency, diminishing energy, and a loss of commitment.”258 Many pressing needs of women in the justice system remain unmet, and not all women judges and bar leaders have joined forces to respond.259

The same point could be made about other legal contexts. What limited information is available about women lawyers and women’s professional organizations again provides a mixed record. Many female attorneys have made a crucial difference in promoting women’s issues and in creating institutional structures that will do the same. The ABA’s Commission on Women in the Profession is a reflection of those efforts, as are many women’s bar associations, women’s networks, and women-owned law firms. These institutions have both provided support for individual members and have pressed for fundamental reforms on issues such as family leaves, sexual harassment, flexible or reduced schedules, performance evaluations, mentoring programs, and other diversity initiatives.260

Yet many men have also been leaders on these issues. And not all women have been committed to creating “kind[er], gentler” workplaces.261 While some women-owned firms have sought to institutionalize more family-friendly policies, collaborative dispute resolution approaches, and egalitarian management structures, other have adopted the same “business ethic” as traditional firms.262

Surveys of law firms and corporate law departments also find some senior women who do not actively advocate women’s interests. One of the most common complaints by female associates is that powerful female partners have not always “played a role in promoting the opportunities and quality of life” of junior colleagues.263 Some women in corporate decision-making roles have been similarly reluctant to press gender-related issues.264

Underlying these different priorities are differences in personal commitments, rewards, risks, and influence. The most obvious explanation for varying levels of support concerning women’s issues is women’s personal investment in those issues. Experiences of discrimination, marginalization, or work/family conflicts leave some women with a desire to make life better for their successors. By contrast, other women have internalized the values of the culture in which they have succeeded. These lawyers have “gotten there the hard way,” they have “given up a lot,” they “have conformed to the system.”265 If they managed, so can anyone else.

What lessons women draw from their own struggle may in part depend on what consequences that they anticipate from continuing the struggle on behalf of other women. These consequences vary considerably across contexts. In some settings, the rewards from pressing such concerns outweigh the risks: women are viewed as “brave,” or “fair minded” for “standing up for what [they] believe.”266 Other, more tangible benefits can also result from becoming a “squeaky wheel:” more equitable compensation structures, greater flexibility in workplace schedules, increased career or client development opportunities, and a larger critical mass of supportive female colleagues.267

Yet for many women, such potential benefits come at too great a cost. One common concern involves becoming “pigeon-holed” as a “feminist” or “women’s libber.”268 These labels are rarely meant as compliments. The more conservative the organization, the more women justifiably worry about taking positions that will brand them as “extremist,” “strident,” “oversensitive,” or “difficult to work with.”269

Such risks leave many women lawyers in a double bind. Those who “rock the boat” on women’s issues may lose the collegial support and career development opportunities that would provide a power base within their organizations, and make their advocacy ineffective.270 But those who obtain influence by conforming to organizational values may feel unable to use that influence on behalf of those who might benefit most.

There are no easy answers to these tradeoffs. However, as discussion in Part IV indicates, one of the best ways for women to minimize risks and maximize effectiveness is to seek allies. Support from other women and women’s groups can be crucial in building the foundations for reform.

B. Differences Among Women

As the preceding discussion makes clear, gender differences are experienced differently by different groups of women in different practice contexts. There is no “generic woman.”271 Race, class, ethnicity, age, disability, and sexual orientation can be as important as gender in defining professional opportunities and concerns. These differences among women highlight a longstanding challenge for those working on behalf of women. By definition, the
women’s movement claims to speak from the experience of women. Yet that experience counsels attention to its own diversity, and to the role of contextual forces and multiple identities in mediating gender differences.

For women in the legal profession, the greatest challenges have generally occurred across race and ethnicity. In an effort to bridge those differences and to insure stronger cooperation and coalitions, the ABA’s Commission on Women in the Profession and its Commission on Racial and Ethnic Diversity have jointly sponsored the Multicultural Women Attorneys’ Network. That Network’s programs and publications, including its recent collection of multicultural women’s essays, *Dear Sisters, Dear Daughters*, have been crucial in increasing understanding among different racial and ethnic groups.

More such initiatives are necessary, as are efforts to build alliances across other differences. One central challenge, too often unaddressed, involves bridging the generational divide. A recurring frustration among younger women lawyers is a perceived lack of understanding and support from some senior women colleagues, particularly on quality of life issues. Whether intended or not, their message seems to be, “If I had to struggle to make it, so should you;” “I had to give up a lot, you do it too.”

Younger women unwilling to make these sacrifices often report difficulty identifying sympathetic mentors and role models. Of course, that difficulty may at times reflect more a lack of time than a lack of support by senior women. But it is also the case that some of these women express frustration with junior colleagues who expect special treatment and time-consuming assistance, but then leave before those efforts are repaid. It can also be hard to empathize with younger colleagues who do not seem to recognize the obstacles faced by their predecessors and who demand choices that they never had.

These difficulties are not always easily resolved. A generation of women who grew up expecting equal opportunity in the workplace cannot see why they should settle for less, or why they must give up satisfying personal and family lives to achieve it. A generation of women who had to struggle to be treated as equals cannot see why their successors should expect so much more while sacrificing so much less. However, some progress in bridging these differences is possible by institutionalizing opportunities for interchange and collaboration among women at different levels of seniority. As Part IV notes, formal mentoring programs and women’s networks are often effective strategies in building mutual respect. Some research also suggests that generational differences are less pronounced and less divisive in organizations that have a critical mass of women in senior positions.

Yet in order to secure conditions that will permit this critical mass to succeed, women need to work together. And a candid acknowledgment of differences encourages a better understanding of commonalities and a stronger collective effort to address shared concerns.
IV. An Agenda for Change

A. Guiding Principles: Commitment and Accountability
The most important factor in ensuring equal opportunity for women in the legal profession is a commitment to this objective, a commitment that is reflected in both institutional and individual priorities. Legal employers and bar associations must be prepared to translate principles into practice, and to hold their leadership accountable for the results. Lawyers in positions of influence need to build a moral and a pragmatic case for diversity, and to incorporate diversity goals into their organization’s policies and reward structures. Progress toward those goals should be a factor in evaluating supervisors, law firms, and other legal employers.277

Bar associations, women’s organizations, and corporate and governmental clients can assist this effort by monitoring the performance of employers, and by steering business or providing special recognition to those with successful records. What strategies are most effective depends on the particular workplace, but the information available suggests best practices that are most likely to be successful.

B. Strategies for Legal Employers and Bar Associations
1. Assessment of Problems and Responses: Policy Evaluation, Benchmarks, and Training
To promote equal opportunity in practice as well as principle, it is often helpful to conduct formal or informal surveys. Such surveys can assess women’s experience in areas such as compensation, leadership positions, promotion patterns, alternative work arrangements, and satisfaction levels.278 Confidential exit interviews with lawyers who have left the organization can be equally useful, particularly if their results are tabulated and monitored over time.279

Organizations need systematic information about whether men and women are advancing in equal numbers, whether they feel equally well supported in career development, and whether they are experiencing problems such as gender bias or sexual harassment. Information about the full costs of dissatisfaction and turnover can be a powerful catalyst to reform.280

Related strategies are to provide management training on diversity issues or to enlist a diversity consultant in identifying problems and designing appropriate responses.281 Where an organization’s leadership fails to acknowledge any significant “woman problem,” survey findings or recommendations by an outside expert can serve as a constructive persuasive tool. And where colleagues fail to perceive the stereotypical assumptions and structural barriers that limit women’s opportunities, diversity training can be similarly helpful.282

However, such initiatives need to be seen as a catalyst, not as a substitute for change. Many women, particularly women of color, doubt the effectiveness of some training efforts. As one disillusioned associate noted, law firms can hire diversity consultants or “put on programs until the cows come home,” but significant progress will also require leaders to act on the recommendations they hear.283 That, in turn, will require benchmarks for assessing progress and procedures for monitoring performance. As bar leaders and management experts often note, what isn’t measured isn’t done.284

Comparisons with similar organizations and guidance from best practice standards by bar associations can often help in developing realistic strategies. For example, the Commission on Women in the Legal Profession has published materials and model policies on alternative work schedules, family leave, sex harassment, and performance evaluations. A forthcoming Commission Manual also identifies best practices on related issues such as mentoring, compensation, marketing, and career development.

At a minimum, organizations need formal policies and educational programs that clearly specify diversity-related commitments, prohibited conduct, and remedial processes. Such processes should provide for adequate investigation of complaints, appropriate sanctions, and protection against retaliation.285 To achieve equal opportunity for all women, employer initiatives should also target issues including racial and ethnic diversity, sexual orientation, and disability.286

In the long run, the effectiveness of these strategies depends not only on their specific content, but also on the process by which they are adopted and implemented.287 Although that process will vary across organizations, its basic objective should be the same: to insure that women’s concerns are fully aired and systematically addressed.

2. Evaluation Structures, Leadership Opportunities, and Professional Development
In Fair Measure: Toward Effective Attorney Evaluation, and a forthcoming manual on Best Practices, the ABA’s Commission on Women in the Profession identifies strategies that can help eliminate gender bias in performance assessments and compensation decisions. Other bar organizations have developed related materials. Appropriate strategies include monitoring written evaluations for stereotypical characterizations; placing greater reliance on objective outcome-related criteria; reviewing assignments to provide equal opportunities for career development; ensuring adequate diversity in leadership and key committee positions; and educating attorneys about how to make and receive effective performance and compensation assessments.288
Having associates evaluate their supervisors can also help to address diversity-related biases and barriers.

Legal employers and bar organizations also should provide more opportunities for formal and informal training in nonsubstantive areas that affect professional development. Marketing, leadership, communication, and related skills are particularly critical for women lawyers, who are not competing on an equal playing field. They should also be encouraged to develop specific career objectives and to seek training, and feedback that will advance those goals.

Reexamining an organization’s leadership selection systems, criteria, and structures can be equally important. The more democratic and participatory the process, the greater the likelihood that women will have opportunities to serve on nominating committees or to be considered as leadership candidates. Rotation systems for key decisionmaking positions can similarly help women gain leadership expertise, as well as prevent entrenchment of senior attorneys who do not view diversity as a priority.

Selection criteria that do not give excessive weight to business development are equally critical. Both women and firms can benefit from adequate consideration of other leadership capabilities, particularly interpersonal skills.

Organizations can also help equalize leadership opportunities by providing adequate support for women who assume them. Many individuals, especially those with significant family responsibilities, have seen too little to gain from accepting a senior management position. Others have dropped off the leadership track after being “worn down and worn out” by serving as a token woman with insufficient influence to compensate for the obligations.

The problem is especially pronounced for women of color, whose small numbers often mean disproportionate administrative burdens. Insuring adequate recognition, respect, and credit for leadership responsibilities can encourage more women to seek them. A critical mass of senior women can then promote the workplace cultures and policies that make for truly equal opportunities.

3. Quality of Life and Work-Family Initiatives

Any serious commitment to equal opportunity requires a similarly serious commitment to addressing work/family conflicts and related quality of life issues. Promising proposals are not in short supply. The ABA’s Commission on Women in the Profession, as well as many local bar associations and national policy organizations, have identified best practices concerning matters such as flexible or reduced schedules, telecommuting, leave policies, sexual orientation, and disability assistance.

Although the details of effective policies will vary across organizations, the key factors are mutual commitment and flexibility. Both the individual and the institution have to be willing to make adjustments that are fair for all concerned. Women on reduced schedules need to be prepared to increase their hours when short-term needs emerge. Their colleagues need to avoid taking advantage of that availability, to provide adequate compensation for additional work, and to make reasonable accommodations of women’s scheduling concerns. To that end, employers should establish benchmarks for monitoring the effectiveness of alternative work arrangements, including usage, satisfaction, and promotion rates, and perceptions about the acceptability of such options. Some administrative structure or position should be established to assist those considering alternative work arrangements and to help insure their success.

Technological innovations that blur the boundary between home and work can both promote and sabotage these flexible scheduling opportunities. Lawyers should have access to telecommuting resources such as home computers, cell phones, and faxes, and should not be judged on “face time” in the office. But neither should they be expected to remain perpetually on call when they are out of the office. Women who seek to demonstrate their commitment and accessibility should not end up with part-time status but full-time schedules.

Employers also need to insure that women who seek temporary accommodations do not pay a permanent price. “Stepping out” should not necessarily mean “stepping down.” Rigid up-or-out promotion structures should be reconsidered, but alternatives to equity partnerships should not become new “pink ghettos.” Lawyers who opt for reduced or flexible schedules should not lose opportunities for challenging assignments, eventual promotion, and fair compensation. Nor should other attorneys bear undue burdens as a result of their colleagues’ restricted availability. Peer resentment can sabotage the most family-friendly policies, so employers have a responsibility to structure workloads in ways that are reasonable for all concerned.

Finally, and most important, quality of life concerns should be seen not just as “women’s issues” but also as workplace priorities. Organizations that want the most able and diverse group of lawyers possible need an environment that can attract and retain them. At a minimum, that will mean restructuring the sweatshop schedules that are increasingly common in private practice. Reasonable working hours yield more efficient performance, better morale, and fewer stress and health-related problems.

In the ABA Journal’s 2000 survey, a majority of lawyers agreed that the increase of women in the profession would ultimately promote a better balance between work and
family, more flexible work arrangements, and a higher quality of service. These are changes long overdue, and lawyers cannot afford to wait until women have sufficient influence to ensure them.

4. Mentoring Programs and Women’s Networks

Although the importance of mentors has often been recognized, the institutionalization of mentoring has lagged behind. For many women, senior colleagues can play a critical role in career development by providing advice, support, and as role models. Mentors can sponsor women for challenging assignments and prestigious positions, as well as channel clients and business development opportunities in their direction. In many mentoring relationships, the rewards run in both directions. Quite apart from the satisfaction that comes from assisting those who need assistance, senior colleagues may receive more tangible benefits from the loyalty and influence that their efforts secure. Talented junior colleagues generally want to work for effective mentors, and to support them for leadership positions.

Yet as earlier discussion indicated, these benefits have not been sufficient to provide adequate access to mentors. Part of the problem is that the upper levels of the professional partnerships are dominated by men, who often prefer bonding with younger men, or who worry about the appearance of impropriety of forming close relationships with younger women. Senior women cannot adequately fill the gap; their numbers are too small and their schedules are too overcommitted to provide support for all the junior colleagues who need it. Women in solo practice, or those too overcommitted to provide support for all the junior colleagues, generally want to work for effective mentors, and to support them for leadership positions.

Formal mentoring programs in firms and bar associations are a partial solution. Of course, relationships that are assigned are seldom as effective as those that are chosen. But formal programs can at least remove the concerns about appearances that sometimes inhibit mentoring relationships, and can create accountability for some measure of assistance. Well-designed programs that evaluate, monitor, and reward mentoring activities can make a significant difference; the benefits show up in participants’ skills, satisfaction, marketing capacities, and retention rates.

Another strategy is to encourage voluntary mentoring through women’s networks. A growing number of networks have emerged both within and across organizations. These networks sponsor a variety of activities, such as workshops, seminars, speaker series, and informal social events. Some groups link lawyers with potential clients; some help participants develop marketing, leadership, and other career advancement skills; some focus on showcasing women’s achievements and representing their interests on workplace issues; and some assist particular groups, such as women of color, lesbians, women with disabilities, and women on part-time schedules. In many organizations, those efforts have benefitted from advocating the interests of female support staff and including them in appropriate events. These networks can play a crucial role not only in expanding opportunities for women, but also in improving the productivity and marketing capacity of their employers.

Building effective networks does, however, present its own share of challenges. Not all female attorneys—or their male colleagues—see the value of separatism. Some women are concerned about being “branded” with women’s issues and appearing to want special favors; others worry about being seen as elitist and concerned only with problems of privileged professional women. Some men resent subsidizing career development opportunities that are not available to them, or fear that networks will expose sex discrimination problems resulting in legal liability. How best to respond to these concerns varies across organizations. One strategy for reducing resentment is to include men as members or to invite their participation in major events. Another strategy is to build a financial case for all-female memberships by developing substantial new business through marketing initiatives.

Proactive recruiting and inclusive programming efforts can also help networks increase their responsiveness to underrepresented groups, especially women of color. Although the activities of successful networks differ, they generally rely on similar processes. After systematically assessing women’s needs, these groups set attainable goals and monitor progress. Their “small wins” often establish the groundwork for more significant change.

5. Sexual Harassment

As earlier discussion noted, almost all legal employers have policies on sexual harassment, but not all are effective in deterring or remedying harassing conduct, or in preventing employee backlash. In designing appropriate policies, legal employers need to strike a balance. They must establish procedures that make it safe for targets of sexual harassment to complain, and that insure appropriate

Never underestimate the ability of a small, dedicated group of people to change the world; indeed it’s the only thing that has ever changed the world.

Margaret Mead
sanctions for inappropriate conduct. But these procedures must also provide adequate safeguards against unwarranted accusations, and overly punitive responses to genuine misunderstandings or inadvertent offenses.

Given the amount of time that lawyers spend at work and the importance of informal social activities to professional success, it is unrealistic to think that all sexually freighted conduct can be banished from the workplace. But it is realistic to do more to prevent coercive, demeaning, and abusive behavior, through well designed policies and educational programs. At a minimum, employers should: train supervisors in identifying and responding to inappropriate conduct; establish user-friendly grievance procedures with multiple reporting options; insure protection against retaliation; impose meaningful sanctions; and monitor the effectiveness of procedures. Bar ethical codes should also treat sexual harassment as a form of professional misconduct, and disciplinary agencies should act where other remedies are insufficient.

6. Pro Bono Work By and For Women
Organizations that are truly committed to equal opportunity must also assume some obligation to promote it in the world outside their workplace. Although pro bono initiatives are not distinctive-ly “women’s issues,” they hold particular importance for women in several respects. First, women are especially likely to enter law with a commitment to social justice and social welfare. Moreover, support from these women and their employers has been crucial to the struggle for gender equality. To take only the most obvious examples, the Commission on Women and the Profession, as well as women’s rights organizations, have all depended on pro bono contributions from the private sector. Public interest initiatives are an essential vehicle for women of influence to use that influence for the common good, and to speak on behalf of those who lack opportunities to speak effectively for themselves.

Greater support from a greater number of individuals and institutions is needed. Far too few law firms and businesses that are readily able to make substantial contrib-

However complicated our lives, however tough the personal struggles to balance it all, I urge you to commit some of your time, your skill, your talent to improve our public life.

Hillary Rodham Clinton, First Chair of the ABA’s Commission on Women in the Profession, United States Senator

butions have actually done so. Too many women work in organizations where bottom-line concerns have discouraged the public interest pursuits that traditionally have ranked among professionals’ most satisfying experiences. More collaborative pro bono efforts are necessary among employers, bar associations, law schools, and service providers. Initiatives sponsored by the ABA Commission on Women in the Profession, the National Conference of Women’s Bar Associations, and by many local women’s bar associations are a step in the right direction. But far more could and should be done to enable lawyers to connect their principles with their practice, particularly on issues of special concern to women.

C. Strategies for the Justice System
Many state commissions, as well as the National Judicial Education Program (NJEP), have provided guidance for addressing gender bias. NJEP has compiled a comprehensive Implementation Resources Directory, and has developed key components of a model plan that are set forth in Appendix One. That plan, together with recommendations from the state gender bias commissions on which it draws, emphasizes certain crucial strategies:

• A standing committee or administrative structure with adequate staff and resources to address gender bias;
• Effective education, not just in “bias sensitivity” but also in the social, economic, and psychological research that should inform decision making on gender-related issues;
• Complaint structures that provide options for confidential reports and protections against retaliation;
• Codes of conduct that address gender bias with specificity;
• Attention to the intersection of multiple forms of bias, including not only gender but also race, ethnicity, sexual orientation, and disability;
• Initiatives to ensure equal opportunities for women at all levels of the justice system;
• Collaboration with other groups, both within and outside of the courts, concerned with eliminating gender bias;
• Collection of data to identify persistent problems and to monitor the effectiveness of responses.

This is not a modest agenda. But it is critical to maintaining a legal system that is ensures equal justice in practice as well as principle.

D. Strategies for Legal Education
An important first step for law schools committed to equal opportunity is to evaluate their own performance and to establish administrative structures with explicit responsibility for addressing gender and other diversity-related concerns. To that end, schools should gather information about the experience of women and the effectiveness of policies that affect them. The ABA Commission on Women in the
Profession has published a sample questionnaire, and has identified promising strategies for reform. The ABA’s Commission on Racial and Ethnic Diversity in the Profession has also proposed initiatives to promote equal opportunity in legal education. These recommendations, together with other research in the field, suggest reforms on several levels.

One involves admissions. Although women now constitute at least half of entering classes, women of color are still underrepresented. Part of the reason involves admission criteria that place undue reliance on combined grade point averages and LSAT scores. These ostensibly “merit” based criteria cannot adequately assess it. They predict only about a quarter of the variation in law school performance. And there is reason to doubt how well they predict success in practice. The few attempts to follow students after graduation have not found that undergraduate GPAs and test scores correlate with graduates’ income, career satisfaction, or pro bono contributions. Minorities admitted under affirmative action have done as well on these measures as other graduates admitted under more quantitative criteria.

A serious commitment to diversity as well as educational quality argues both for maintaining affirmative action programs and for developing more inclusive admission standards. For example, a growing number of institutions are considering additional, non quantitative characteristics such as leadership ability, employment experience, community service, and perseverance in the face of economic disadvantage or other hardships. Consideration of such factors does, of course, carry a cost; it requires more time and carries more risk of idiosyncratic bias than reliance on GPAs and test scores. But the costs of overreliance on quantitative factors are far greater. Both the public and the profession have a stake in promoting judgments that consider applicants’ full potential and that foster diverse learning environments.

Similar considerations argue for closer scrutiny of senior faculty and administrative appointments. The under-representation of women, particularly women of color, cannot be explained solely on the basis of “objective”: merit-based considerations.

Law schools need to identify and address factors that may disadvantage women, such as unconscious bias in faculty and student evaluations; disproportionate counseling and administrative burdens; insufficient mentoring; inadequate work/family policies; and devaluation of scholarship related to race, gender, sexual orientation and related topics.

These topics also should receive more effective treatment throughout the educational experience. The core curriculum needs to move beyond the conventional “add woman and stir” approach, which offers an occasional case or reference to gender but little effort at systematic analysis or inclusive course materials. Promising reform strategies include adding diversity-related topics to faculty workshops and lecture series, and providing support for curricular integration. Professors should be encouraged to develop supplemental readings, case studies, and exercises that address issues such as gender, race, ethnicity, class, and sexual orientation.

Other efforts should center on teaching strategies that will promote broader student participation. Less competitive classroom atmospheres, and greater opportunities for interactive, experiential learning could create more inclusive educational environments. Faculty also could do more to insure tolerance and mutual respect. Harassing and demeaning conduct should be viewed as institutional problems demanding institutional responses.

Finally, law schools should make greater efforts to promote pro bono service. The AALS Commission on Pro Bono Opportunities and Lawyers for One America have recommended that schools should make available to all students at least one well-supervised, law-related pro bono opportunity and either require service or find ways to attract the great majority of students to volunteer.

Efforts along these lines could help increase understanding of women’s unmet needs and foster commitments to respond. Making public service a rewarded and rewarding opportunity in law schools is one of the best ways to inspire continuing service after graduation.

All of these strategies will require a sustained and substantial commitment. Faculty, administrators, alumnae, and bar accrediting authorities must join together to place greater priority on issues of equal opportunity, and on the profession’s obligation to address them. The foundations of our legal culture are laid in law school, and they need to express our aspirations to equality in practice as well as principle.
At the turn of the last century, some states still prohibited women’s admission to the bar; others reported no women interested in applying. Many had fewer than a dozen female lawyers, and the nation as a whole had fewer than two dozen African-American women in legal practice.

“Bring on as many women as you choose,” offered one District of Columbia judge. “I do not think they will be a success.”

By the turn of the 21st century, the profession had been transformed. If current trends in law school applications continue, women’s representation will equal men’s in the foreseeable future. But whether equal numbers will bring equal opportunities is less certain. Much depends on the profession’s willingness to address the gender biases and barriers that persist. The mission of groups like the ABA’s Commission on Women in the Profession is to help meet these remaining challenges.

Women’s increasing influence in the bar also raises broader opportunities. As Virginia Woolf once observed, women for centuries had stood only as spectators before the “procession of educated men.” Now that barriers to entry have lifted, women are free not only to join this procession but also to rethink its direction and the terms on which they will participate. That opportunity holds great promise for women, the profession, and the public.
Key Components to Achieve and Secure Gender Fairness in the Courts

1. A standing committee on gender fairness.
2. Staff and funding to carry out the work of implementation on a long-term basis.
3. Education for judges, court personnel, and judicial nominating and disciplinary commissions on an ongoing basis.
4. Gender-fairness initiatives that address the different court-related issues confronting women of diverse racial and ethnic backgrounds and lifestyles.
5. Codes of conduct for judges, court personnel, and lawyers that address gender bias with specificity.
6. Legislation recommended by the task forces and implementation committees.
7. Gender-neutral/gender-appropriate language in courtrooms, court rules and correspondence, jury instructions, opinions, and other court communications.
8. Mechanisms for handling formal and informal complaints of gender bias.
9. Initiatives to ensure gender fairness in the judicial nomination, election, evaluation, and disciplinary processes.
10. Initiatives to ensure gender fairness in court employment.
11. Collection of necessary data to monitor known areas of gender bias and identify new problems on an ongoing basis.
12. Collaboration and alliances with other groups, both inside and outside the court system, that can implement task force recommendations, monitor progress, and initiate new activities.
13. Wide diffusion of the task force’s findings and initiatives to entities such as district attorney/public defender offices, police, academic institutions including law schools and community organizations.
14. Periodic evaluation to assess the task force’s implementation efforts, analyze their effect on reducing gender bias in the courts, and identify new problem areas.
15. Initiatives to ensure that each court planning and reform effort addresses the relevant gender fairness concerns.


7. Samborn, supra note 3, at 33; Lynn S. Glasser, “Survey of Female Litigators: Discrimination by Clients Limits Opportunities,” in The Woman Advocate: Excei lling in the 90s, at 60, 72 (Jean MacLean Snyder & Andrea Barnash Greene, eds. 1995) (58% of women surveyed believed they had equal opportunity at their firms).


11. Richard C. Kearney and Holly Taylor Sellers, “Gender Bias in Court Personnel Administration,” 81 Judicature 8, 9 (1997) (noting that women are a majority of court personnel but are clustered in low level, undercompensated positions); Laura Gatland, “Courts Behaving Badly,” ABA J. Nov. 1997, at 30 (reporting Eighth Circuit finding that women filled about three-quarters of staff positions but only a third of management positions).


17. Graham, supra note 4, at 46-51, 72; Elizabeth K. Ziewacz, “Can The Glass Ceiling Be-Shattered?: The Decline of Women Partners in Large Law Firms,” 57 Ohio St. L. J. 971, 977 (1996); Epstein et al., supra note 8, at 337; Kathryn Reed Edge, “Gender Bias Goes to Ground in Tennessee,” Judges’ Journal, Spring, 2000, at 29; Glasser, supra note 7, at 59.

18. Graham, supra note 4, at 328, 353, 360, 376.


21. Samborn, supra note 3, at 31 (57 percent believe women must work harder); ABA Commission on Women in the Profession, Fair Measure: Toward Effective Attorney Evaluation 14 (April 1997)(three quarters believe women held to higher standards); Glasser, supra note 7, at 59.


32. Hayes, supra note 13, at 56. See NALP, supra note 3, at 32-36.

33. Catalyst, supra note 22, at 6.


35. L.A. County Bar Association, supra note 14, at 341.


42. Donnell, Sterling, & Richman, supra note 9, at 26, 34, 45-46; Deborah Graham, Best Practices, chapter 5 (ABA Commission on Women in the Profession, forthcoming); Sheila Wellington & Catalyst, Be Your Own Mentor 64 (2001).


45. Epstein et al., supra note 8, at 356.


51. Epstein, et al., supra note 8, at 28; ABA Commission, supra note 13, at 6-7, 14-15; Bar Association of San Francisco, supra note 28, at 17, 25; Wilkins & Gulati, “Black Lawyers,” supra note 14, at 570; Thomas & Proudford, supra note 41.


54. Bar Association of San Francisco, supra note 28, at 34; ABA Commission, supra note 13, at 26-27.


59. L.A. County Bar Association, supra note 14, at 312.
60. Catalyst, supra note 22, at 8, 10.
61. ABA Young Lawyers Division, Career Satisfaction Survey, Table 15 (2000). See infra note 94.
63. Juliet B. Schor, The Overworked American: The Unexpected Decline of Leisure 1-5, 79-82 (1993); Rhode, supra note 62, at 10, 35; ABA Young Lawyers Division, supra note 61, at 11 (finding that over a third of surveyed lawyers billed over 2000 hours, compared with a fifth of lawyers in 1995).
64. Almost half of young lawyers in the ABA's most recent survey worked more than 50 hours a week. Young Lawyers Division, supra note 61, at 1; Joan Williams, Unbending Gender: Why Family and Work Conflict and What to Do About It 71 (2000); Arlie Russell Hochschild, The Time Bind: When Work Becomes Home and Home Becomes Work 70 (1997); Carl T. Bogus, "The Death of an Honorable Profession," 71 Ind. J. L. 911, 925-926 (1996).

66. Marilyn Tucker, "Will Women Lawyers Ever Be Happy?" L. Prac. Mgmt., Jan./Feb. 1998, at 47. See also Epstein et al., supra note 49, at 34 (quoting advice "If you want to be a lawyer, be a lawyer. If you want to be a mother, be a mother.").
67. Nosel & Westfall, supra note 40, at 90, 259, 270.
69. Landers, Rebitzer, & Taylor, supra note 68.
71. Nosel & Westfall, supra note 40, at 168; see also id. 3, 14, 59, 71, 180-81, 194, 199, 255, 358, 362, 366, 375. See Samborn, supra note 3, at 35 (findings that 46 percent of surveyed women believed that taking a leave or part-time status after becoming a parent would be very likely to have an adverse effect on advancement and another 35 percent thought it was somewhat likely). In a recent study of part-time lawyers, only 1% had become partners. Epstein at al., supra note 49, at 56; Michael D. Goldhaber, "‘Part Time Never Works’ Discuss," Nat’l L.J. Dec. 4, 2000, at A31 (finding over 40% of associates believed that part time is under utilized because it never works). See also Women’s Bar Association of Massachusetts, More Than Part-Time (2000); Project for Attorney Retention, supra note 70, at 4.
74. Harrington, supra note 47, at 33; Epstein, supra note 8, at 298; Women's Bar Association of Massachusetts, supra note 71; Project for Attorney Retention, supra note 70, at 4; Harvard Women's Law Association, supra note 47, at 72; Rhode, supra note 39, at 588. In the NALP survey, half of the women believed that female attorneys were considered less committed than their male colleagues. Willard & Patton, supra note 3, at 37; Catalyst, Flexible Work Arrangements III: A Ten Year Retrospective of Part-Time Arrangements for Management and Professionals, 46-47 (New York: Catalyst, 2000).
76. Terry Carter, “Paths Need Paving," ABA J. Sept. 2000, at 34. (In 2000, 33% of women believed that the successful combination of roles was unrealistic compared with 13% in 1983.)
80. The extent of the inequality is estimated differently by researchers using different methodologies. Compare studies cited in Williams, supra note 64, at 71 (citing studies suggesting that women perform about 70 percent of the tasks); Rhode, supra note 5, at 7-8, 149 (citing studies suggesting that employed women spend about twice as much time on family matters as employed men); with Tamar Lewin, “Men Assuming Bigger Role at Home," N.Y. Times citing James To Bond et al., The 1997 National Study of the Changing Workforce (1998) (discussing Families and Work Institute study finding that men reported performing one hour less than mothers doing household chores on the average weekday and on the average day off work).
84. Boston Bar Association, supra note 78, at 17. See also Catalyst, supra note 70, at 25-26.
85. Boston Bar Association, supra note 78, at 15.
87. Nosel & Westfall, supra note 40, at 21, 24, 261, 277.
89. An estimated one-third of American attorneys suffer from depression or from alcohol or drug addiction, a rate two-to-three
times higher than the population generally. See sources cited in Rhode, supra note 62, at 8. Almost half of women lawyers, and almost two-thirds of those working more than 45 hours a week, report such stress levels have adverse effects on reproductive health. Schenker, et al., supra note 65, at 556. See also Mary Beth Grover, “Daddy Stress,” Forbes, Sept. 6, 1999, at 202.


91. Williams, supra note 64, at 71-73; Boston Bar Association, supra note 78, at 39; Catalyst, supra note 70, at 20-21; Catalyst, supra note 74, at 16.

92. Catalyst, supra note 22, at 10.


94. Report from the Commission’s Subcommittee on Lawyers with Disabilities, supra note 56; State Bar of California, Survey, supra note 14; Coyle, supra note 56, at 64.

95. ABA Young Lawyers Division, supra note 61, at Table 15; ABA Young Lawyers Division, Career Satisfaction Survey 11 (1995).


98. Over four-fifths of the legal needs of the poor are unmet. See sources cited in Rhode, supra note 96.


100. Rhode, supra note 5, at 101,283 n.14; Laband & Lentz, supra note 99, at 600-04; Seagrave, Sexual Harassment, at 203-04.


103. See 29 C.C.R. 1604, Guidelines on Discrimination Because of Sex. For the frequency of policies, see Michigan Women Lawyers Association, Self-Audit for Gender Equity [SAGE] 13 (June 1999) (79 percent of surveyed firms have written policy); Dana Casale, “Area Firms Share Sexual Harassment and Anti-Discrimination Policies,” Lawyers J., June 30, 2000, at 4.

104. Lorraine Dasky, Still Unequal: The Shameful Truth About Women and Justice in America 223-24 (1996) (half of female litigators, 43 percent of law firm lawyers); Glasser, supra note 7, at 60; Lisa Pfenninger, “Sexual Harassment in the Legal Profession: Workplace Education and Reform, Civil Remedies, and Professional Discipline,” 22 Fla. St. U. L. Rev. 171, 176-77 (1994); Margot Slade, “Law Firms Begin Reining In Sex-Harassing Partners,” N.Y. Times, Feb. 25, 1994, at A19; Weidlich & Lawrence, supra note 102, (half female lawyers check); Laband & Lentz, supra note 99, (66 percent of women in law firms and 46 percent of women in corporate and public sector organizations); Catherine E. Shanelaris et al., “Ten Year Gender Survey,” New Hampshire B. J. March 1998, at 56-78 (between half and two thirds of female lawyers in New Hampshire reported various behaviors constituting sexual harassment); Kearney & Sellers, supra note 11, at 8, 10 (49% of female court employees in Missouri reported instances of sexual advances to obtain job benefits; 35-40% of Rhode Island women experienced sexual comments, touching or disrespectful interest; 27% of Mississippi women experienced unwanted verbal or physical harassment).


107. See Rhode, supra note 5, at 93.


112. See Model Rule 8.4. That Comment’s prohibitions cover “a lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice;” The ABA Model Code of Judicial Conduct, Section 3B(6) provides that: “lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.”


118. New Jersey Supreme Court Task Force on Women in the Courts, Gender Bias Survey Report ii, 4 (July, 1998); Edge, supra note 17, at 29 (reporting survey findings that about three-quarters of male attorneys, but only one-quarter of female attorneys, disagreed that the outcome of cases is affected by bias against female attorneys).


121. State Bar of California, Survey, supra note 14; Rothstein, supra note 34, at 690.


124. See the California study cited in Rhode, supra note 20, at 66 and the California and Florida reports cited in Delfs, supra note 117, at 315.

125. Hensler & Resnik, supra note 111, at 248-49; Jackson, supra note 114, at 16; Kearney & Sellers, supra note 11, at 10; Boston Bar Association Task Force, supra note 27, at 24-25.

126. See Rhode, supra note 20, at 66.


129. Hensler & Resnik, supra note 111, at 248-49; Multicultural Women Attorney’s Network, supra note 27, at 19; Pfenninger, supra note 104, at 6, 178; Gatland, supra note 11, at 39; Podger, supra note 117, at 343; see Gina L. Hale, “Males to Go Before We Sleep,” Judges Journal, Spring 2000; Jackson, supra note 114, at 16; Hayes, supra note 13, at 56; Boston Bar Association Task Force, supra note 27, at 24-25.

130. Kearney & Seller, supra note 11, at 10.


133. Hensler & Resnik, supra note 111, at 250; Kearney & Seller, supra note 11; Jackson, supra note 114, at 4; Podger, supra note 117, at 344; Gatland, supra note 11, at 30; Delfs, supra note 117, at 34 (reporting court’s dismissal of complainant as a “humorless feminist”). See also Pfenninger, supra note 104, at 177 (reporting experience of complainant who was told she was “menopausal”).


135. Second Circuit, supra note 117, at 345; Hensler & Resnik, supra note 111, at 260n., 581 (reporting conclusions of some 20 reports); Jackson, supra note 114, at 116-17; Reiko Hasukeye, “Credibility and Gender in the Courtroom: What Jurors Think,” in the Woman Advocate, supra note 7, at 117; Delfs, supra note 117, at 316; Boston Bar Association Task Force, supra note 27, at 24.

136. New Jersey Supreme Court Task Force, supra note 118, at iv.


138. See Rhode, supra note 5, at 110-111.

139. Second Circuit, supra note 117, at 342, 344; Jackson, supra note 114, at 17; Resnik, supra note 8, at 2207.

140. Second Circuit, supra note 117, at 353.


142. See cases cited in Rhode, supra note 5, at 188; New Jersey Supreme Court Task Force, supra note 118, at iii.

143. Resnik, supra note 8, at 2202-3.

144. Resnik, supra note 8, at 2203.


146. Id.


148. Hull & Nelson, supra note 9, at 5 (noting that gender differences in job preferences explain only part of the variation in male and female career paths).

149. Id., at 14.

150. Epstein et al., supra note 8, at 359 (finding women’s chances to be about 5 percent and men’s 17 percent); Hull & Nelson, supra note 9, at 4 (finding men’s chances to be 40 percent and women’s 16 percent).


152. See supra note 9. Comprehensive information is unavailable about leadership positions outside of large firms, but experts generally agree that underrepresentation of women is a pervasive problem; Graham, supra note 42, at chapter 3.


155. Graham, supra note 4, at 74, 333; Graham, supra note 42, at chapter 4; Donnel, Sterling, & Richman, supra note 9, at 68-71.

156. See Abbott, supra note 43; ABA Commission, supra note 13, at 26-27; Catalyst, supra note 52, at 13.


159. Catalyst, supra note 22, at 26.


165. ABA Young Lawyers Division, supra note 61, at 20-21; Boston Bar Association Task Force, supra note 27, at 3; Graham, supra note 164, at 58.


167. Van Hoy, supra note 166, at 115-16.

168. Id., at 115-116, 127.

169. Graham, supra note 4, at 47-51; Rhode, supra note 62, at 45.


174. Catalyst, supra note 22, at 47 (noting that 25 percent were women in 1993 and 37 percent were women in 2000); Roth, supra note 157, at 5.

175. Carter, supra note 76, at 37; Lawyers for One America: Action is the Difference We Make 6 (2000).


177. Catherine Amon, “Despite the Mergers and Fast Pace, In-House Lawyers are Basically Happy,” Conn. Law Tribune, Oct. 9, 2000 (77%); Catalyst, supra note 22, at 11 (61%).


180. Roth, supra note 157, at 5-6; Carter, supra note 76, at 37; Boncompagni, supra note 179, at 28; Boston Bar Association Task Force, supra note 27, at 14.


183. Carter, supra note 76, at 37; Graham, supra note 4, at 341.

184. Catalyst, supra note 22, at 46, 56.

185. Roth, supra note 157 (discussing letter signed by 300 General Counsel to their outside lawyers indicating that diversity efforts will count in selecting firms to handle their corporate legal matters).

186. Boncompagni, supra note 179, at 28 (quoting Vanessa Allen); Graham, supra note 4, at 374-82.


190. Hayes, supra note 13, at 56.


193. Some anecdotal evidence suggests that there is often a gap between formal policies and actual practices and government agencies; mid-level supervisors are not always willing to provide “family friendly” accommodations. Dowd, supra note 13, at 210, n. 43; “Redesigning Work and the Benefits Related to It,” 49 Am. U. L. Rev. 851, 885, 888 (2001).


195. Rhode, supra note 20, at 41.

196. See Catalyst, supra note 22, at 51; Dowd, supra note 13; Boston Bar Association Task Force, supra note 27, at 13-14.

197. As of January 1, 2001, approximately 22% of federal district and appellate judges were women: 36 of the 154 judges serving on the U.S. Courts of Appeals, and 130 of the 606 judges serving on the U.S. district courts. Federal Judges Biographical Database, and the Federal Judicial History Office of the Federal Judicial Center; Hensler & Resnik, supra note 111, at 258, n. 38.


201. Id. For example, in Florida, 70 percent of the state’s judges are white men. Three-quarters of federal courts of appeal have no African-American or Latino judges. Lawyers for One America, Bar None 5 (2000).

202. New Jersey Supreme Court Task Force, supra note 118, at 20 (reporting that about two thirds of women believed that female judicial candidates were treated less favorably often or most of the time, while about three quarters of men believed that such bias occurred rarely). See Alliance for Justice, Judicial Selection Project (discussing charges of bias by women and civil rights supporters).


206. Durham, supra note 205, at 11; Mary Flood, “Texas Journal: Where Many See Too Many Men, Some See Too Few,” Wall St. J., June 16, 1999, at T2 (reporting that 9 percent of the male judges, and 1 percent of female judges believed that there were too many women on a bench that is 22 percent female).

208. See supra text accompanying notes 129-131.


213. Carter, supra note 76, at 38.


222. Catalyst, supra note 22, at 60.


225. ABA Commission, supra note 13, at 1.


235. ABA Commission, supra note 215, at 30-31; Resnik, supra note 8, at 2195.

236. Rhode, supra note 62, at 192. According to data collected by the Diversity Committee of the ABA Section on Legal Education and Admission to the Bar, only 10 schools have committees on gender. About 40 have committees that could deal with gender-related issues under broader mandates, such as Committees on Diversity, Student Life, or Educational Environment. See Final Report of the Committee on Diversity, American Bar Association Section on Legal Education and Admission to the Bar (2000).

237. ABA Commission, supra note 215; Linda F. Wightman, supra note 228, at 25, 36, 72-74; Rhode, supra note 220, at 217; Law School Outreach Project, supra note 229, at 24; Guinier, Fine, & Balin, supra note 217, at 28-29, 51-62.

238. Rhode, supra note 62, at 204.


240. See supra text accompanying notes 187 and 194.

241. Carter, supra note 76, at 34.

242. Forty percent thought that the strengths of male and female lawyers were the same, and 49 percent thought that they had the same weaknesses. Id.

243. Carter, supra note 76, at 37.

244. See Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development (1982); Rand Jack and Dana Crowley


246. Rhode, supra note 5, at 37-38.


250. Klenke, supra note 109, at 151; Cleveland, Stockdale & Murphy, supra note 6, at 307; Eagly, Makijani, & Klonsky, supra note 19, at 18; Eagly and Wood, supra note 245, at 314.


262. Id.


265. Nossel & Westfall, supra note 40, at 277, 126, 261. See also id. at 187, 251, 266, 277. Harrington, supra note 47, at 38; Ely, supra note 24.

266. Ashford, supra note 264, at 365-366, 370.

267. Id., at 365; Graham, supra note 42, at chapters 1-6...

268. Ashford, supra note 264, at 369-70; Nossel & Westfall, supra note 40, at 103-108.

269. Ashford, supra note 264, at 369-370, 375.

270. Nossel & Westfall, supra note 40, at 50; Graham, supra note 42, at chapter 1, 3.


274. Nossel & Westfall, supra note 40, at 40, 126.

275. Id., at 102, 187, 251; Saltzman, supra note 48.

276. Ely, supra note 24, at 589.

277. Catalyst, supra note 52, at 69-74; Bar Association of San Francisco, supra note 28, at 34-37; Ridgeway & Correll, supra note 26, at 118.


280. Catalyst, supra note 22, at 13; McCracken, supra note 273, at 162; National Association of Law Placement, supra note 14.


training, see Susan Bison-Rapp, “An Ounce of Prevention is a Poor Substitute for a Pound of Cure: The Questionable Embrace of Employee Sexual Harassment Training by the Legal Profession” (forthcoming 2001).


285. ABA Commission, supra note 88.

286. ABA Commission, supra note 13, at 30-31; L.A. County Bar Association, supra note 14; California State Bar, Survey, supra note 14.

287. Mattis, supra note 278, at 275. For general discussion of benchmarks, see Catalyst, supra note 278, at 39-57; Catalyst, supra note 52, at 31-32.


290. Graham, supra note 42, at chapter 3.

291. Id.

292. Id. For general discussion of tokens, see Klenke, supra note 109, at 176; Kanter, supra note 23. For women’s underrepresentation on executive committees, see Claudia Rosenbaum, “For Men Only?” Cal. Lawyer, Apr., 2001 at 1.


294. See sources cited in ABA Commission, supra note 88; Catalyst, supra note 70; Boston Bar Association, supra note 78; Catalyst, supra note 22, at 13-14.

295. Catalyst, supra note 70; Williams, supra note 64, at 112; Catalyst, supra note 70, at 16.


297. Klenke, supra note 109, at 183-184; Catalyst, supra note 52, at 27; Catalyst, supra note 278, at 62-63; Ronald J. Burke and Carol A. McKeen, “Career Development Among Managerial and Professional Women,” in Davidson and Burke, supra note 249, at 65, 73.

298. Cleveland, Stockdale & Murphy, supra note 6, at 374; Catalyst, supra note 288, at 29.


301. Graham, supra note 42, at chapter 2; Pat Terry, “Marketing Groups Shape New Rainmakers,” Perspectives, Fall, 2000, at 7, 8.

302. Catalyst, supra note 260; Graham, supra note 42, at chapter 2.

303. Catalyst, supra note 260; Terry, supra note 301, at 8; Graham, supra note 42, at chapter 2.


307. Neither the ABA Model Rules of Professional Conduct nor the ABA Model Code of Professional Responsibility expressly address sexual harassment. However, a growing number of states have adopted rules prohibiting all or some forms of harassment, such as demanding sexual relations with clients or engaging in discriminatory conduct. See Pfenniger, supra note 104, at 213; Bowman, supra note 12, 749. Some courts also have imposed discipline for harassment under general ethical rules prohibiting conduct that adversely reflects on fitness to practice law. Model Rule 8.4; Model Code D.R. 102(A)(6). See Pfenniger, supra note 104, at 213-14. The comment to Rule 8.4 defines misconduct in terms that could encompass sexual harassment. See note 112 supra.

308. Rhode, supra note 20, at 41.


310. Lynn Hecht Schafran, Norma Wikler, and Jill Crawford, Gender Fairness Strategies Implementation Resource Directory (1998). The Directory describes a wide range of “products” ranging from benchmark books, to codes of conduct, to judicial education programs created by gender bias task force implementation committees that can be adapted or adopted by other states. See also Lynn Hecht Schafran and Norma J. Wikler, Gender Fairness in the Courts: Action in the New Millennium (forthcoming 2001).


312. Final Report of the ABA Committee on Diversity, supra note 236, at 5.


314. ABA Commission, supra note 13, at 29-30.


319. See supra text accompanying note 218.

320. AALS Commission, supra note 239; Lawyers for One America, supra note 201, at 28.


325. Available from National Judicial Education Program, 395 Hudson Street, 5th Floor, New York, New York 10014 (212)925-6635, Fax: 212 226-1066, njep@nowldef.org.
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CHAPTER 1
CRIMINAL PROSECUTION

A. Overview

Criminal prosecution in the U.S. is conducted at the federal level, predominantly by the Department of Justice through “Main Justice” in DC and the U.S. Attorneys’ Offices (USAOs) that are scattered across the country. At the state and local level, District Attorney Offices (sometimes referred to as County or State’s Attorneys), which are distributed across the major cities of most states, take the laboring oar, typically with some involvement of the State Attorney General’s Office.

Many Yale law students are interested in finding summer employment at a U.S. Attorney’s or District Attorney’s (DA) Office due to the exciting cases, solid litigation experience, and public service that these offices provide. Careers in criminal prosecution attract many of our alumni, for reasons best expressed by them:

In this job, you never feel that what you do on a day to day basis does not matter; you are always working hard to help make communities safer and to represent fairly and objectively the interests and rights of those who are impacted by crime.

There are very few jobs where young attorneys get so much responsibility so early in their careers.

Quite frankly, this is not a job you take for the money. . . The real reward of this job . . . is in going to work each day knowing that what you are doing makes a real and positive difference in people’s lives.

In a typical day, I’ll see something hilarious and something heart-breaking, something rewarding and something frustrating, but never, ever boring.

Along with the pleasure of puzzle-solving come the same fascinating underlying facts in immense variety, and the satisfaction of litigating cases that matter.

I wanted a job where I was doing work that mattered, where I was fighting about issues like justice and liberty rather than about money, and where the marching orders were to do the right thing rather than to win at all costs. I am happy to report that the job . . . is all those things and more.

This guide will explore these careers and provide guidance in pursuing the path of criminal prosecution.

1. Summer Internships

a. Benefits

During the summer many U.S. Attorneys’ Offices and District Attorney Offices employ first- and second-year law student volunteers. There are a number of reasons that these offices attract a large number of students year after year. First, volunteering at a criminal prosecution office for a summer provides students with an opportunity to experience the inner workings of the courtroom with some of the best trial lawyers in the country. For those who want to become prosecutors or other types of trial lawyers, these
jobs provide both helpful experience and valuable contacts. Even for students who choose not to continue in a related field, most USAOs and District Attorney Offices are widely respected places to work and the experience will be an asset in future job searches.

b. Qualifications

Hiring decisions rest heavily on outstanding references and a resume that demonstrates intelligence, commitment to public service, and good research, analysis, and writing skills. Trial experience is also a plus but not expected for summer positions. If you are a first-year student, you will probably not have had much of a chance to differentiate yourself from your classmates in terms of legal experience, but if you have handled a project for the Pro Bono Network, worked at the Temporary Restraining Order Project (TRO), or are planning to take a clinic in the spring, definitely include these experiences in your resume. Relevant experience also includes any paid or volunteer position in which you were called upon to research, write, advocate, present, exercise judgment, or use any other lawyerly skills. Also include activities that show an interest in government work, litigation, or criminal and civil justice including prior work, volunteer experiences, or your choice of law school classes.

c. Procedure

Your cover letter should state your strong interest in working for the particular U.S. Attorney’s or District Attorney’s Office to which you are applying. Detailed information about the unique qualities of each office can be obtained by contacting students who have worked in them, writing to the graduate mentors included in this guide, or contacting the offices directly. Refer to CDO’s *Introduction to Career Development* for examples of resumes and cover letters.

The Interview
Summer positions are usually obtained through a short (20-30 minute) interview, either on the phone or in person. Interviewers are typically one or more prosecutors involved in the summer hiring program. Second-year students applying to DA offices which might consider making permanent offers after the summer should be prepared for a longer interview process, possibly involving a second round of interviews with a panel. Typical questions explore why the student wants to work in a criminal prosecution office, why they want to work in that particular office, and other general questions about law school and past experiences. The use of criminal hypothetical questions is rare at this type of interview, although commonly used in interviews for permanent positions.

2. Attorney Hiring

a. Qualifications

Law School

Because only experienced attorneys are typically hired for Assistant U.S. Attorney (AUSA) positions, law school activities are usually eclipsed by subsequent employment experience. It is possible to get a District Attorney position just after graduating from law school, but law school activities will receive greater scrutiny. A new graduate without at least one clinic, summer job, or significant experience related to criminal justice work may be hard pressed to convince a DA office that they are truly interested in criminal law. Either way, law school experiences can help to inform students about the role of a criminal prosecutor, prepare the student for the duties involved in the job, demonstrate the student’s skills and interests, and establish strong references. YLS offers a variety of experiences through student groups,
journals, moot court, clinical programs, externships, and CDO programs to accomplish these goals. For example, clinical work and membership in a student organization demonstrates strong interest in the criminal justice system.

The activity that probably best demonstrates a student’s strong interest and ability to be an AUSA or to work with the DA’s office is the prosecution externship. Students who participate in this externship assist either state or federal prosecutors in a variety of tasks, including preparation of appellate work and prosecution of both misdemeanors and felonies. Placement in a U.S. Attorney’s Office for the externship must be arranged at least four months in advance so that a security clearance may be obtained. To learn more about this opportunity, contact Professor Jay Pottenger at (203) 432-4821.

One alumnus who is now an AUSA warned that some offices may be skeptical about applicants’ commitment to working for the prosecution, especially graduates from highly-ranked law schools like Yale which are perceived as being “liberal” or “pro-defense.” These offices may question whether you are really committed to working in the public interest and specifically for the prosecution. They will want to see that you’re really “in it for the long haul,” rather than just for the prestige or the excellent trial experience the job provides.

Experience
An USAO typically requires several years of experience for a permanent hire. District Attorney Offices are more likely to be willing to hire a graduating student and train them on the job, but will also hire laterally. There are three steps attorneys can take to obtain the best recommendations and experience possible for an application to the USAO or a District Attorney’s office. First, do excellent work in all of your jobs so you and your employers will have no problem speaking of your skills, accomplishments, and dedication. Second, be aware that past employment and employer recommendations will be judged not only as to their content regarding your experience and character, but also by the perceived quality of the former employer’s office. Knowing that you will be judged by your employment choices makes it all the more important to choose employers who do good work and provide solid training and an environment for excellence. Finally, choose employment or experiences that allow you to develop relevant skills and that demonstrate your commitment to public service generally, or to the criminal justice system specifically.

Because U.S. Attorneys and District Attorneys are responsible for their own hiring, and these individuals differ in what they regard as the best prior work experience for becoming a criminal prosecutor, it is difficult to describe any “correct” path. For example, a number of AUSAs have moved directly from the Department of Justice (DOJ), as the Honors Program hires directly from law school. Some U.S. Attorneys prefer candidates who have worked in a District Attorney’s office because of the prosecutorial experience, while others question the quality of the training received at a given District Attorney’s office because of the demands of their heavy caseloads. Working with a State Attorney General’s office provides experience that may be valued in the hiring process. In addition, working in a litigation department of a law firm is often considered to be worthwhile, but working in the trust and estate or corporate department may not be highly valued. In developing your experience keep in mind that most USAOs and District Attorneys keep a strong emphasis on substantive trial experience, including extensive research, writing and analysis.

Summer or term time work in criminal prosecution is obviously highly relevant for several reasons. It not only helps you to develop relevant skills, but also allows you to get to know AUSAs and Assistant District Attorneys (ADAs), or even the U.S. Attorney or District Attorney. These individuals can then vouch for your ability and commitment, if not hire you themselves, when you are later looking for this type of work.
Judicial clerkships are also generally regarded as a plus since most employers feel they help develop research, analysis, and writing skills and provide their own brand of courtroom experience. For an AUSA, the federal clerkships have several other advantages. A law clerk will hopefully be able to obtain a solid reference from his or her judge, probably an individual who is highly respected in the U.S. Attorney community. In addition, a law clerk will have an opportunity to meet the AUSAs appearing before the court and to establish a working relationship with them that may serve him or her well later on. This is especially helpful if a law clerk is clerking in the district in which he or she plans to practice.

**Character**

A hiring criterion consistently emphasized by criminal prosecutors is the importance of a strong commitment to the criminal justice system and to public service. The unique and powerful role played by prosecutors in our criminal justice system requires that individuals who carry out this function have a strong respect for the process. While the U.S. Attorneys’ Offices and District Attorney Offices look for individuals who are comfortable advocating the punishment of convicted defendants, they also look for individuals who will have the sense of fairness that ensures the credibility of the entire criminal justice system.

In addition, an AUSA represents the United States of America and an ADA represents the state. These prosecutors work closely with victims, witnesses, opposing counsel, defendants, juries and judges. All should be left with a sense of the competence and fairness of the individual and the office. Lest this leave you with the sense that you must present a Lincolnesque demeanor, prosecution offices, like most employers, really value a person of maturity and judgment who will “fit” in the office. A sense of humor, good interpersonal skills, and a sense of professionalism can go a long way.

**b. Procedure**

**The Interview**

Interviews for positions as a criminal prosecutor tend to be different from a typical law firm or even public interest interviews, both in rigor and content. Although each of these offices is independent in their hiring process and can follow their own unique procedures, it is common to find multiple rounds of interviews for a permanent hire and the use of certain questions to probe the candidate’s commitment to criminal justice and ethics.

**Rounds**

For both USAOs and DA offices, it is not uncommon for there to be two to four rounds of interviews prior to an offer. These interviews can range from one-on-one meetings with the recruiter to five-person panel interviews. A very common element is a final interview with the District Attorney or U.S. Attorney. Although several rounds of interviews are common, it doesn’t always mean they are on different days. If a candidate has traveled far for an initial interview, the committee may try to stack the rounds in one visit to spare the candidate travel expenses, especially since prosecution offices cannot cover interview expenses.

Below are examples of the interview process for several offices that are popular among YLS students.

**Connecticut U.S. Attorney’s Office, New Haven:**
1. First interview with the hiring committee of 6-10 people
2. Second round with the potential direct supervisor(s)
3. Final interview with the U.S. Attorney
Eastern District of New York (EDNY):
1. First round with 3 senior AUSAs
2. Second round with the Division Chief
3. Final interview with the U.S. Attorney

New York County District Attorney’s Office (Manhattan):
1. First interview with one Hiring Board member
2. Panel interview with three Hiring Board members
3. Executive Panel interview with the Director of Legal Hiring and two ADAs from the Executive Staff
4. Interview with District Attorney Cyrus R. Vance, Jr.

Suffolk County, MA District Attorney’s Office:
1. One-on-one interview with an ADA
2. Second interview, typically with two individuals, usually including the District Court Chief

Philadelphia District Attorney’s Office:
1. Prescreen interview with an ADA
2. Full committee interview (20 minutes) with at least five members of the Hiring Committee

Interview Questions
Before going into what will likely be a rigorous interview, candidates should familiarize themselves with the distinctive interview process for prosecutorial positions. In addition to possibly speaking to a CDO counselor or consulting with a classmate who has gone through the process, candidates can review the following resources available in CDO’s Handout Drawer, which offer helpful suggestions about these interviews: The Criminal Hypothetical and Other Unique Aspects of the Criminal Law Interview Process and Sizing Up the Prosecution: A Quick Guide to Local Prosecution.

Typical interview questions attempt to probe four areas: knowledge and desire for the job, legal qualifications, ethical qualifications, and fit with the office culture.

To explore the candidates’ knowledge and desire for the job, the employer will ask why the candidates want to be a DA or AUSA and why they want to work at this particular office. Prepared candidates should be ready to demonstrate their commitment to public service, interest in the criminal justice system, and knowledge of the particular office in issue.

The interviewer will try to examine the candidate’s legal qualifications for the job by learning more about the specifics of their training in litigation skills and criminal justice. Not every candidate has solid litigation or criminal justice experience, but a successful candidate will be prepared to discuss how either their courses, legal experience, or other activities demonstrate their ability to take on this difficult practice. It is important to note that USAOs tend to focus more on practice experience since they almost never hire students immediately after graduation, but instead look to the intervening years as a more accurate assessment of skills and interests. For DA offices that hire right out of law school, law school courses, clinics, and summer jobs assume more importance.

Ethical qualifications are most commonly explored through the use of one or more hypothetical question(s). A prosecution office may choose a hypothetical to ask of every applicant to try to learn more about how they would handle a legal and ethical problem. They are looking at the candidate’s thought process, communication skills, and judgment. Whether the answer is legally correct is of less concern at this juncture, although a grasp of the Fourth Amendment and criminal law issues will serve a candidate well. The hypothetical also allows the office to assess whether a candidate is able to think on their feet, ask the right questions, exercise judgment, and take responsibility. An example is as follows:
You are a new attorney with the office, having your first opportunity to act as first chair at a trial. There is no other USAO present in the courtroom. You put a cooperating witness on the stand and they testify according to plan. The Defense Attorney then begins his cross examination and your witness begins to say things you have never heard before. You think he might be making it up to bolster his story. What do you do?

Obviously the attorney could do nothing, probe this on redirect, leap up in court and call the witness a liar, or ask the judge and defense counsel for a recess. Verbalizing your thought process, which includes ethical standards as well as the goal of successful and fair prosecution, is the best avenue. According to NALP’s *The Criminal Hypothetical and Other Unique Aspects of the Criminal Law Interview Process*, “Candidates should remind themselves that their thought processes and ethical awareness will be valued more than the ‘correct’ legal answer. If students engage in conscientious thinking about their own interests, skills, and understanding of the law, they will be well prepared to tackle the distinct challenges of an interview with a prosecutor’s office.”

Fit with the office culture is largely determined by having several attorneys from the office talk with the applicant and assess his or her character and personality. It does not hinge on political party affiliations or conservative versus liberal ideology, but on character, judgment, collegiality, and perhaps even a decent sense of humor!

**B. The U.S. Attorney’s Office**

There are approximately 5,800 Assistant United States Attorneys who work in 93 United States Attorneys’ Offices located throughout the United States, Puerto Rico, the U.S. Virgin Islands, and Guam. While the range of litigation in which U.S. Attorneys’ Offices are involved has grown over time, their activities are generally divided into the criminal and civil divisions. Each of these divisions is commonly subdivided for increased specialization. Within the criminal division, U.S. Attorneys handle the majority of federal criminal prosecutions, including everything from organized and white collar crime to child pornography, human trafficking, drugs and firearms offenses. Within the civil division, the U.S. Attorneys are responsible both for pursuing affirmative litigation, such as the enforcement of federal housing regulations, and for defending the government in cases involving the interests of the United States. The civil cases handled by AUSAs represent more than one-third of the workload of the U.S. Attorneys’ Offices. Although this guide will focus on the criminal work, additional information on the civil divisions can be found on the DOJ website ([www.justice.gov](http://www.justice.gov)) and from our students and alumni who have pursued those avenues.

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**1. Summer Internships**

**a. Type of Work**

The work of each USAO is influenced by the office’s geographic location and its resulting size and focus. For example, although many YLS applicants apply to offices in large cities where they feel the criminal division tends to prosecute the biggest cases, some medium-sized offices in smaller cities also have a significant criminal practice with a full range of size and complexity of cases. Additionally, smaller cases can provide greater opportunity for interns and new attorneys to take on significant responsibility and a broader range of experience.

Because of the variations among offices, students should contact interns from prior years to get a feel for each office’s individual policies. Current YLS students who summered in a USAO are listed in Chapter 2.

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In addition, the summer evaluations of YLS students (available online) provide further information on summer work in U.S. Attorneys’ Offices.

b. Demand

Each summer the U.S. Attorneys’ Offices are among the most popular destinations for Yale law student summer employment and for law students generally. The number of law students hired by each USAO varies by the size of the district and their attitude toward student assistance.

For example, the projected number of summer volunteers needed for summer 2016 for these popular offices is:

- the District of Columbia—120
- the Eastern District of New York—90
- the Southern District of New York—55
- the Eastern District of Pennsylvania—20
- the District of Connecticut—17 (New Haven 9, Hartford 4, and Bridgeport 4)

Projections for these and other USAOs are available in Volunteer Summer Legal Intern Positions, produced by the DOJ in December preceding the summer in question and found on the CDO reception area shelves or on the Internet at www.usdoj.gov/oarm under Legal Careers at Justice, then Opportunities for Law Students & Entry-Level Attorneys and then under Volunteer Legal Intern Opportunities.

c. Procedure

If your goal is to work at a U.S. Attorney’s Office as a summer volunteer, you have the best chance of obtaining a position if you are willing to explore a variety of geographic options. Although the competition at some offices can be quite stiff, there are a number of things you can do to increase your chances of receiving an offer. While none of the offices will accept first-year resumés until December 1 (in compliance with NALP guidelines), they tend to move rather quickly after that date, so applicants should send in their cover letters and resumes as soon after December 1 as possible. If you wait until mid-to late-January to apply, finding open positions in popular cities may be difficult. Second-year students should make their first contact in the fall and comply with the individual office’s hiring timeline.

d. Requirements

Security and Suitability Clearance
All law student and lawyer applicants to a U.S. Attorney’s Office must go through a security clearance like those who apply to work for the DOJ in Washington, DC. You will be asked to fill out a standard form (SF) and to submit to checks regarding your credit, fingerprints, name, and drug use (although typically drug testing is only required of paid summer interns, not of volunteers). The form will be mailed to you after a tentative offer of employment is extended. No candidate will be hired without successfully passing the suitability review. The forms are available in the DOJ Security Form binder in CDO or at www.opm.gov/forms/ under Standard Forms.

USAOs typically require summer interns to complete the most basic form, SF-85. This requests information regarding illegal drug activity, including use, sale, possession or manufacture. The other forms, which may be required by your USAO, especially if you will be working in a highly sensitive area, are SF-85P, SF-85P-S and (in rare cases) SF-86. These forms request more extensive information on illegal drug activity, and may include inquiries regarding a police record, use of alcohol, financial records,
foreign countries you have visited, and consultations with a mental health professional. In addition, a few USAOs have added their own suitability form. The DOJ Security Form binder in CDO has some examples of this.

You should review the relevant forms prior to applying to the U.S. Attorney’s Office to make sure that you are comfortable with the questions and to address any concerns you may have in a timely manner. You should also read CDO’s Before You Apply: Understanding the U.S. Government Security Clearance Procedure, available online at www.law.yale.edu/student-life/career-development/students/career-guides-advice/you-apply-understand-us-government-security-clearance-procedure.

Although the Department of Justice and USAOs generally want law abiding citizens to work for them, they are most concerned with recent or current illegal activity. The standards regarding past misdeeds will be determined at the discretion of the staff at the Office of Attorney Recruitment and Management (and possibly at the USAO) on a case by case basis, but in our experience, it appears that any illegal drug use within one year of application will disqualify an applicant for a summer intern position. Additionally, students have been precluded from obtaining a security or suitability clearance based on credit problems, conflicting information on their security forms, or residency issues (interns compensated by the DOJ are subject to a residency requirement). Any candidate who has lived outside the United States for a total of two of the past five years may have difficulty being approved for appointment by the Department’s Security Staff. Federal or military employees, or dependents of federal or military employees serving overseas, are exempted from this requirement. The Office of Attorney Recruitment and Management will take anonymous phone calls regarding background information and suitability issues after an offer of employment has been extended. Call the Office at (202) 514-3397 and ask to speak with an attorney for advice regarding background checks.

Despite these difficult questions and unhappy consequences: DON’T LIE ON THE SECURITY FORMS! You are required to sign these forms attesting that they are true and acknowledging that a false statement can be punished by fine or imprisonment under federal law. Beyond that, you do not want to start your legal career by lying in writing to the federal government. If you have an issue of concern, discuss it with a law school career counselor or give a call to the DOJ. Because of the look-back period, simply waiting a year to apply may solve your problem.

Also note that from time to time a student will report to their summer job at a USAO only to discover that they cannot start work since their security review has not been completed. To avoid this unfortunate event, we suggest that you request and fill out the Standard Form immediately upon receiving a tentative offer from the USAO. Return the form to the USAO, and request, ever so politely, that they FEDEX it to the DOJ for review. Some of the delay problems may occur when a USAO holds the forms until all summer interns are selected and have returned their forms. Feel free to tell them that your Career Development Office suggested that you request these procedures to make sure you would be able to start on time.

**U.S. Citizenship**
Although some DOJ positions will occasionally consider a non-U.S. citizen applicant, U.S. Attorneys’ Offices will not. The U.S. citizenship requirement is a policy of the Executive Office of United States Attorneys. Dual citizenship is handled on a case-by-case basis.

**e. Salary**

Because all summer positions at U.S. Attorneys’ Offices are typically volunteer, second-year students will probably enjoy an advantage at many offices because of their more extensive experience. While some compensated positions have been offered through special grant funding for certain USAOs, summer
internships have been unpaid by the DOJ in the past and are expected to be unpaid again for future summers. Luckily, Yale’s Student Public Interest Fellowship Program will provide funding for students interested in working for a U.S. Attorney who need the grant to cover expenses for the summer.

f. Avoiding Conflicts of Interest

Students should be mindful that in every jurisdiction the Rules of Professional Conduct, or other applicable ethical rules, impose the obligation to avoid conflicts of interest. This could arise in a clinic or internship if you are “on the other side” from your future employer in a case or transaction. Legal employers are responsible for inquiring about possible conflicts of interest, but you should consider whether your past legal work (e.g. cases you handled during your 1L summer) or ongoing legal work (e.g. clinic or externship casework in which you are currently involved) may present a conflict. Bring any potential issue to the attention of the hiring attorney as soon as it is feasible. This is especially true if you are planning to work for the USAO. If you have questions as to whether your specific situation could possibly be a conflict of interest with your employer, make an appointment to talk it over with a career counselor.

2. Attorney Hiring

a. Demand

In Fiscal Year 2013, 276 attorneys were hired and 317 attorneys left the collective USAOs. In the previous Fiscal Year, 154 attorneys were hired and 284 attorneys left the collective USAOs. Regardless of the year, there are many attorney hires in the U.S. Attorneys’ Offices and competition is fierce for these highly sought-after positions.

In general, large U.S. Attorneys’ Offices are more likely to have positions available. Large offices also tend to be in major cities and often experience higher turnover rates because of competition with private firms that may offer higher salaries. The District of Columbia is the largest United States Attorney’s Office in the country because the office handles federal legal matters and also legal matters that normally would be handled by state and local prosecutors. The Southern and Eastern Districts of New York, Southern District of Florida, and Central District of California also are very large offices.

For example, in 2014 the offices below had the following number of attorneys working with them:

- the District of Columbia Office had over 300 attorneys;
- the Eastern District of New York had over 150 attorneys;
- the Southern District of New York had over 200 attorneys;
- the Central District of California had over 230 attorneys;
- the Southern District of Florida had over 220 attorneys.

The average age of an AUSA is 47. The average length of service for non-supervisory attorneys is 12.6 years. Over one-third of non-supervisory attorneys have six years of federal service or less. The average length of service for supervisory AUSAs is 18.6 years. These numbers indicate that although some attorneys may briefly pass through a USAO to gain valuable experience, many more are pursuing a significant part of their career in this environment.
b. Procedure

Some AUSA positions are listed on the websites of the specific offices, which can be found through the DOJ website at www.justice.gov/usaos/districts/. This site also lists contact information for each office. In addition, the DOJ requests that all USAOs post their job listings with the DOJ at www.usdoj.gov/oarm under Legal Careers at Justice, located on the left side bar. However, not all offices have a website or post their vacancies on the DOJ site, so you should also contact the office of interest to learn about openings and to submit your material.

c. Requirements

All AUSAs must be residents of the districts to which they are appointed, or live within 25 miles thereof. However, they need not be residents at the time of application.

The U.S. Attorney in charge of each office, or his or her designee, has the authority to hire the Assistant U.S. Attorneys for the office. Generally they will only hire experienced attorneys, typically lawyers with at least two to three years of experience. In addition, several USAOs require a specific longevity commitment from new hires. For example, DC requires a four-year commitment, while the Eastern District of Michigan and the Southern District of New York require three.

An AUSA recruit must go through a more in-depth security clearance than summer volunteers and interns. This requires a more intrusive form, a credit report, fingerprint and name check, drug test, and tax record review prior to receiving a temporary appointment. After an FBI background investigation is successfully concluded, the appointment becomes permanent.

d. Salary

AUSA positions are paid under an administratively determined pay system which is approved by the Attorney General. They are not a part of the GS pay system, which covers most other attorneys in the Department of Justice. Base starting salaries for non-supervisory AUSAs with up to three years of experience range from $45,027 to $68,667. These figures do not include additional locality pay, which is the same as that paid for GS attorneys, and which is based on the geographic location of the position. Locality pay varies from a low of 14.16% to a high of 35.15% added to basic pay. For specific information about the locality rates for a given location, visit the Office of Personnel Management website at www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2015/general-schedule/. Each year, AUSAs receive a pay review in which their performance rating, pay range, and experience will be evaluated to determine if a salary increase is appropriate. The maximum rate of basic pay, i.e., not including locality, for a non-supervisory AUSA is $132,849.

C. The District Attorney’s Office

In a typical state, criminal prosecution cases are prosecuted by a District Attorney’s Office, with the exception of a few cases handled by the State Attorney General’s Office. District Attorneys’ Offices may be organized by county or judicial districts, and are typically led by an elected or appointed District Attorney. In some states, the attorneys in these offices may be called “prosecuting attorneys,” “state’s attorneys,” or “county attorneys.” Because this structure is determined by state law, the jurisdiction and organization of these offices vary greatly. Some also handle civil cases and other responsibilities such as providing legal advice to county officials. Some are free-standing, while others may be incorporated into the State Attorney General’s Office or under its oversight. Descriptions of the organization and legal jurisdiction of the 50 states’ prosecuting attorneys’ offices, and contact information for the offices, can be
found in the *National Directory of Prosecuting Attorneys* in the CDO library. Information regarding District Attorneys can be found at the National District Attorneys Association website at [www.ndaa.org](http://www.ndaa.org).

1. **Summer Internships**

   a. **Type of Work**

   The model of the Summer Intern Program varies greatly from one office to the next. Some offices, such as the Philadelphia DA Office, administer different first-year and second-year law student programs. The first-year law student is assigned to one of the twenty-two units. The second-year law student program consists of three three-week rotations and a one-week training period, and it allows students the opportunity to try cases and advocate for crime victims.

   Some offices also have an educational program, such as the New York County DA’s Office, which conducts a weekly lecture and field trip series to expose law students to various aspects of the criminal justice system. In many offices, second-year interns interested in full time work after graduation will be granted an interview at the end of the summer.

   Due to the variations among offices, students should conduct research on specific DA offices. Many of the offices list details of the Summer Intern Program directly on their websites. Students are also encouraged to contact current and former summer interns to get a feel for each office. In addition, the summer evaluations of YLS students (available online) provides information on summer work in District Attorneys’ Offices for your review.

   b. **Demand**

   In the summer of 2014 hundreds of law students worked in District Attorneys’ offices across the country. The number hired in a particular office varies by the size of the district and their attitude toward student assistance. For example, the number of summer volunteers for summer 2014 for these popular offices are listed below:

   - the Suffolk County, MA District Attorney’s Office—35 1Ls, 35 2Ls
   - the Philadelphia District Attorney’s Office—43 1Ls, 26 2Ls
   - the New York County District Attorney’s Office—50 interns

   c. **Procedure**

   Although many of the DA offices have a deadline of March 1, first-year students are encouraged to apply in early December since interviews are conducted from January through March, with offers being made up to and well into April. Second-year students should apply in early fall as interviews in many DA offices conclude by mid-December.

   d. **Requirements**

   **Security Clearance**

   Once a student has accepted a summer position, they must go through a security clearance. The background check usually includes a criminal record check at the internship level. Some offices will also ask interns to be fingerprinted. The clearance for internships at District Attorney’s offices does not typically include a drug test, auto violations search or credit check.
U.S. Citizenship
Typically, a student without U.S. citizenship can work in a District Attorney office for the summer as long as they have the proper working papers. We recommend that you discuss this issue with the office prior to applying.

e. Salary

Although salaries will vary from office to office, the majority of District Attorney offices do not pay at the intern level. Students should, however, check with any office(s) of interest, as there are weekly stipends at some offices.

Below are some examples of internship salaries:

- the New York County District Attorney’s Office—receive a stipend of $500/week
- the Philadelphia District Attorney’s Office—first-years are unpaid; second-years (who are not in work study) receive $460/week
- the Queens District Attorney’s Office—unpaid both years
- the Suffolk County, MA District Attorney’s Office—unpaid both years.

2. Attorney Hiring

a. Demand

Assistant District Attorney positions are extremely competitive. Like most employment opportunities, there will be more openings in larger cities.

As mentioned earlier, 2L DA interns interested in post-graduation employment often receive interviews at the end of their summer, thus giving them an advantage over other applicants.

b. Procedure

Since deadlines for ADA positions can be as early as late October/early November and most DA offices do not usually participate in FIP, students interested in these opportunities are encouraged to check with the DA office they are interested in for specific timelines. It is not uncommon to apply in the late summer of the second year or early fall of the third year. Most applications require a cover letter, resume, official law school transcript, writing sample, and a list of professional references. Lateral hires are taken throughout the year.

c. Requirements

All ADA positions require bar passage eventually; however, most do not require bar passage prior to hiring a new graduate and commencement of work. New graduate hires, however, are expected to have taken the Bar in the summer prior to starting work. Since DA offices in different states are governed by different practice laws, they may differ in whether new hires can handle cases in court between the time they take the bar exam (usually the July after graduation) and when they receive their results (usually October). Some offices, like Suffolk County, MA require candidates to secure certification under a specific provision of a court rule (Supreme Judicial Court Rule 3:03 in MA) during their 3L year once they have accepted an ADA position. This certification, which basically allows the recent graduates to practice in court before receiving their bar results, is considered a “good standing” certificate of character.
Attorneys must go through a thorough background check which can include a criminal record search and possibly a drug test, auto violations search, and a credit check. If you have outstanding auto violations, you could be required to make sure all accounts are up to date before starting employment. Although it will be unlikely to pass the background check with a juvenile or adult felony conviction on your record, there may be misdemeanors that could be explained, depending on the situation. In all cases, disclosing all information in the beginning and explaining everything up front is the best course of action.

U.S. citizenship is required to work as an attorney in a District Attorney’s office. Some District Attorney offices require that you are a resident of that particular state before starting employment. Others require a commitment to stay with the office for several years. For example, the New York County and Queens offices require new ADAs to serve the office for a three-year minimum.

**d. Salary**

Salaries for ADAs vary depending on the location. For more information on a range of salaries for ADAs, refer to the *NALP Public Sector and Public Interest Attorney Salary Report* in CDO’s Library.

Below are some examples of salaries for 2014:

- the Suffolk County, MA District Attorney’s Office—$40,000
- the Philadelphia District Attorney’s Office—$50,199
- the Manhattan District Attorney’s Office—$60,000
- the Bronx District Attorney’s Office—$55,500
- the Queens District Attorney’s Office—$59,500.
CHAPTER 3
PERSONAL NARRATIVES

A. Attorneys

1. District Attorney

SUFFOLK COUNTY DISTRICT ATTORNEY’S OFFICE

*Stephen Kerr ’07*

After graduating from law school, I worked for a year as an Assistant District Attorney in the Appellate Unit of the Suffolk County District Attorney’s Office in Boston, Massachusetts. I consider the job one of the best jobs I have ever had. What first impressed me about the job was how quickly I was given responsibility for cases. The day I moved into my office, I found that I already had two appellate briefs assigned to me. A couple of weeks later, the Chief of Appeals asked me if I wanted to argue a case before the Massachusetts Appeals Court. Within four months of starting my job, I had authored numerous appellate briefs, argued before the Massachusetts Appeals Court, second-sat trials in district and superior court, and argued motions against the founding partner of a Boston law firm in a district court case of first impression concerning the constitutionality of a Massachusetts criminal law. I don’t know where else I could have gotten as much courtroom experience or otherwise been entrusted with as much responsibility so early in my legal career.

Because I was thrown almost immediately into work, most of my training took the form of learning-by-doing. Fortunately, all of my colleagues in the Appellate Unit had an “open door” policy and the more senior attorneys were able to answer most every question I thought to pose. Also, every brief produced in the Appellate Unit was reviewed by the Deputy Chief of Appeals, who would sit down with the drafting attorney to discuss useful edits and general ways to improve the attorney’s writing. The tutelage of my colleagues at the District Attorney’s Office was extraordinarily helpful to my development as an attorney.

Given that I will spend much of my life at work, it is important to me that I love my job. In my experience, there are a few factors that most determine my job satisfaction: 1) whether I am working for a cause I believe in, 2) whether I am intellectually stimulated by my work, and 3) whether my work environment is pleasant. I was fortunate to find all three factors present in large part in the Appellate Unit of the Suffolk County District Attorney’s Office. First, I was able to take pride in the work that I did. Assistant District Attorneys represent the state in criminal cases, fight to protect the public, and advocate on behalf of victims of crime. While the adversarial nature of the American legal system, institutional pressures, and the hierarchy of decision in an office may occasionally require an Assistant District Attorney to prosecute a case or make a legal argument that he or she would not otherwise have chosen, taking official positions which may diverge from one’s personal views is part of being an attorney and Assistant District Attorneys are perhaps called upon to do this less frequently than other attorneys.

Second, working in appeals afforded me ample intellectual stimulation. Legal research and writing was the bread and butter of my day, and the breadth of legal issues I worked on was amazing. Not only had I to familiarize myself with the laws of evidence, the Massachusetts penal code, and the federal and state constitutional issues most common in criminal cases, but I had also to learn any other rules of law that might apply to the specific facts of a case I was working on. For example, I found the answer to one of my appellate criminal cases in the law of property, specifically in the law of implied easements arising

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2 Stephen Kerr left the Suffolk County District Attorney’s Office in 2008.
from necessity. Even when a case I was working on involved the same general area of law as a previous case, the facts of the case were always different and required that I learn something new, furthering my understanding of the law.

Finally, the Appellate Unit had a great office culture. Most of my colleagues were exceedingly friendly, expressing a genuine interest in my life, well-being, and professional development. The Chief of Appeals was generous in giving younger attorneys opportunities to take on important cases. Four days after being admitted to the bar of Massachusetts, a colleague of mine argued before the Massachusetts Supreme Judicial Court a case that was the subject of a BBC documentary. Within eight months of starting work at the office, he was again before the Supreme Judicial Court, this time on a case involving a quadruple homicide arising out of a dispute over territory between rival crime families in Boston. Both of these cases and the case of first impression I worked on raised significant legal issues and garnered major media attention in Boston. In many other organizations, perhaps including other district attorney’s offices, more senior attorneys would have claimed such cases for themselves.

The Appellate Unit of the Suffolk County District Attorney’s Office also allowed attorneys the flexibility of alternative work schedules. Due to family obligations, a number of my colleagues took advantage of this. One colleague worked four days a week, another worked three days a week, and a third worked at 87.6%-time. Even those of us who worked full-time were given leeway in our work hours. Some attorneys came to work a little later in the day while others, who had to pick up children from school, came and left earlier. A number of attorneys broke up the day with a walk in downtown Boston or a trip to the gym. Our work had to get done, however, and my colleagues and I regularly took work home with us.

I highly recommend work as an Assistant District Attorney, whether in an appellate unit or a trial unit, and whether for one’s whole career or just to begin one’s career. The job provides a great opportunity to feel good about what you do, be constantly stimulated, and work alongside caring and committed people.

2015

NEW YORK COUNTY DISTRICT ATTORNEY’S OFFICE

Martha Bashford ’79

I am the chief of the Sex Crimes Unit in the New York County District Attorney’s Office, supervising more than 50 lawyers handling sexual assault and human trafficking cases. Before that, I was chief of the Forensic Sciences/Cold Case Unit, and before that I had been one of two attorneys in the Sex Crimes Cold Case DNA Project.

While at Yale, I had been a summer associate in a Wall Street firm and in a small firm in upstate New York. The people were nice, the pay was spectacular, but I found the work to be deadly dull. Robert M. Morgenthau, then the Manhattan DA, came to Yale my third year to do recruitment. He offered low pay (I believe back then it was around $17k) and long hours. But this was the clincher: he promised I would never be bored. I took him up on his offer, intending to fulfill the three year commitment and move on, with solid trial experience under my belt. It’s been 35 years, I’m still here, and he was right; I have never been bored.

Many colleagues have moved on over the years. When we get together, the universal refrain is that this was the best job they ever had. The working atmosphere is unsurpassed. People are supportive and encouraging. Your colleagues take pleasure in your successes and commiserate with your setbacks. Unlike firms, where only a few partnership positions may be available, internal competition is not part of the daily environment.
There are very few jobs where young attorneys get so much responsibility so early in their careers. Is a witness truthful or not? Is a witness’ identification accurate or mistaken? Given this set of facts, what crimes, if any, have been committed? What is the appropriate resolution of this case? Who should I pick for this jury? What am I going to say in my closing argument? These are all questions ultimately answered by the attorney assigned to a particular case.

It hasn’t always been easy juggling work and family. My husband also is a public service lawyer, so money can be tight, particularly with getting a daughter through college, and now law school. When I am on trial, the trial is all-consuming. When I am not on trial, I have a great deal of flexibility in my schedule. In a typical day, I’ll see something hilarious and something heart-breaking, something rewarding and something frustrating, but never, ever boring. Few lawyers can say that.

NEW YORK COUNTY DISTRICT ATTORNEY’S OFFICE

Jorge Xavier Camacho ’10

When I applied to the Manhattan District Attorney’s Office, I did so largely based on the reputation of the office as perhaps the premiere prosecutor’s office in the country and on the recommendations of people I knew who had worked there. I was told by countless people how their time at DANY, as it’s commonly known within the office, was the highlight of their careers. I, myself, had never previously worked there, so all of my knowledge of what to expect came from what others told me. In light of the constant stream of praise heaped onto the DA’s office, I expected a lot out of my career there. As I write this narrative, two things are true: first, I’m about nine months into my career there, and second, all of my expectations have already been exceeded. Without exaggeration, I cannot imagine a better place for any lawyer to work, particularly those looking for a job that affords them independence, immediate responsibility, and most importantly, interesting and fulfilling matters to work on.

One of the best parts of working at DANY is the fact that, even if pressed for an answer, I would not be able to describe what a “typical” day would be. On any given day I might be conducting arraignments, drafting criminal complaints against newly-arrested defendants, conducting investigations into any of my 200 or so open cases, sitting in on a particularly interesting trial, conducting a hearing over someone’s status as a sex offender, meeting with witnesses, victims, or even defendants, or preparing for my own trials. What makes this job so exciting, and equally terrifying depending on your outlook, is the fact that your day can change momentum without a moment’s notice, going from zero to sixty and back within a matter of minutes.

I had a day where, in the middle of interrogating a domestic violence defendant, I was called to court by a judge who was threatening to dismiss one of my cases because he thought I was beyond the time limit imposed under law for bringing the case to trial. I had to take a break from the interview, run to court, argue (successfully) that I was in fact nowhere near the time limit, then run back to the interrogation room to continue my investigation. Another day, while in court, I received a message that a case I had agreed to cover for my officemate while she was on trial was itself proceeding to trial in a few minutes, forcing me to rush out, gather the case file, educate myself as to what the case was about, gather the witnesses who were waiting at our office, escort them to the trial courtroom, then start the trial, which itself consisted of doing preliminary hearings, jury selection, and pre-trial motions practice, all within the span of an hour or so, before even beginning the trial itself and on a case I had little prior familiarity with. On other days, I’ve had to run out of my office to meet with victims who suddenly showed up to the office unannounced or to cover another ADA who had to leave court to deal with any one of their unexpected crises. Every day is filled with uncertainty, and every day poses its own unique, unexpected challenges that need to be

3 Jorge Xavier Camacho left the Manhattan District Attorney’s Office in 2013.
dealt with on top of the everyday responsibilities that ADAs are entrusted to undertake. Needless to say, this job is not for those who do not deal well with such uncertainty or who are unable to think quickly and decisively on their feet. Every single day is filled with decisions that have to be made immediately and with imperfect knowledge, decisions that will have impacts on defendants, witnesses, victims, and on you.

Despite the fact that so much of your day is spent putting out fires, so to speak, the first-year experience at DANY is perhaps the most formally structured out of all the class years at the office. The trial division of the DA’s office is divided into six different trial bureaus, each with their own chief and assigned ADAs. Each month, each bureau is assigned to staff certain institutional assignments, like arraignments, the complaint room, community court, the domestic violence court, or various other courts. It’s the rookies at DANY who actually staff these assignments, with your assignments varying month-to-month depending on your bureau’s schedule. For example, in one month, your bureau might be scheduled to staff arraignments on the weekends, the complaint room at night, and the felony arraignments court. This means that each day, rookies from that bureau are assigned to staff each of these assignments. The next month, the rotation may take you out of felony arraignments but put you in community court instead. After your rookie year, you no longer have to staff these assignments, leaving you mostly with free days where you’re unassigned and are able to dedicate the bulk of your time to investigating and pursuing your cases.

This set up effectively means that the rookie year tends to be the busiest in terms of workload and number of hours spent at the office, because after you’re done staffing whatever assignment you have for the day, you’ll usually return to your office and actually do work on your caseload. Because institutional assignments take up the entire day, this means that you’ll arrive at work between 8 and 9, be in court until around 5, then return to your office and deal with the ever-growing caseload assigned to you. I’ve settled into a routine of spending anywhere between 2 to 4 additional hours at work after my assignment for the day just to try to keep on top of my cases, which means that I usually leave work sometime between 7 pm and 9 pm. In slower months, I may leave closer to 5. As you become more senior, however, your caseload goes down and you staff many fewer assignments, leaving you with more time during the day to work on your cases. Of course, the more senior you get, the more serious your cases, which is the reason for the heavy assignment load for rookies. More senior ADAs need more time to do thorough investigations for their higher-stake cases.

But this is not to say that rookies themselves do not have serious cases. Currently, I have cases dealing with assaults, menacing, sex abuse, drug sales, weapons possession, child endangerment, thefts, and drunk driving. Each case has its own story, its own cast of witnesses, its own set of evidence, and, of course, its own unique set of legal and factual problems that make them exciting to work on. While the caseload itself can get overwhelming, the office entrusts you with the responsibility to do what needs to get done to make sure that important cases don’t fall by the wayside, and expects you to be able to prioritize your cases accordingly. No one expects you to be 100% on top of all 200+ cases, but they do expect you to exercise sound judgment when determining which cases to pay attention to. Luckily, the office is full of wonderful support staff who help us investigate cases, reach out to witnesses, and provide victims with much needed services and support.

I could honestly continue for pages and pages about my experience at DANY, but I’ll sum up with the following: there is simply no better job for a young lawyer (or any lawyer, for that matter) to have. District Attorney’s Offices all over the country, and especially in New York, have their finger on the pulse of their respective cities. There is something uniquely satisfying about seeing the work of your office making the front page of every area newspaper, and many national newspapers, on a daily basis. You will read about familiar cases or familiar people, and may even have the fortune (or misfortune) of reading about one of your own cases or defendants in the paper, which drives home the point that the
work you’re doing is meaningful, important, and noteworthy. I have no regrets about my decision to become a prosecutor or to make the Manhattan DA’s office my home, and I encourage all law students to explore this career path. I’m sure that they will not be disappointed.

2015

NEW YORK COUNTY DISTRICT ATTORNEY’S OFFICE⁴
Mark Dwyer ’75

I graduated from law school in 1975, spent a year as a federal law clerk, and thereafter took a one-year position as a legal writing instructor at a New York law school. I began work for the New York County District Attorney’s Office in 1977, and stayed through 2009. My expectation was that I would try cases, but the Office initially placed me in the Appeals Bureau. I never asked for a transfer.

Why did I stay so long? It was not the money. The starting salaries are now around $60,000, which is of course not quite what they pay at the big firms. The pension plan and other benefits are notable, and while I was there I typically received a yearly $5,000 or $6,000 raise during good behavior. But one does not go to a DA’s Office expecting to get rich. You go for the fun. In whatever part of the office you work, you almost immediately begin to make the decisions in cases. There is no senior partner to ruin your plans for the weekend. Rather, you make the choice to go to the office on Saturday because you care about the cases (your cases) and you want to do what needs to be done. And it adds a lot that you are not settling how much A pays B in damages after a slip and fall. You are helping determine whether a crime victim and an accused will receive justice. If you were born to litigate, then for you that is fun. The typical ADA ultimately leaves the office not because he or she wants to, but only because life circumstances compel that decision.

That is not to say that the rookie prosecutor is handed the Son of Sam case and told to wing it. In the Trial Division there is a natural progression through the innumerable simple cases, typically misdemeanors like minor assaults and petty thefts, through the robberies and burglaries, to the sex crimes and homicides. You are trained and watched. But the invaluable opportunity at an office like this one is to become a veteran trial lawyer by doing the job: by picking the juries, questioning the witnesses, arguing the law and the facts—and by making both mistakes and brilliant moves. You will not be carrying anyone else’s briefcase.

It helps as well that Manhattan is the home to just about every kind of depraved behavior that can be imagined, including the biggest white collar frauds, the most organized of criminal conduct, and the most gruesome street crimes. ADAs take incredible satisfaction from ensuring that those who commit such crimes are incapacitated. And it must be said, the facts can be simply fascinating. That is why “Law & Order” elected to “rip” so many scripts from our headlines.

As I noted, however, I personally did not do the trial work you see on TV shows. I did appellate work. What suits me about that work is that every case presented a unique legal puzzle. Typically Appeals ADAs defend convictions, and the appellant has filed a thick brief making the case against the prosecution evidence, the judge’s rulings, the defense attorney’s trial strategy, or any number of other things. The job of the appellate prosecutor is to search the trial transcript, the law, and the imagination to find the most persuasive answers to the questions posed. Along with the pleasure of puzzle-solving come the same fascinating underlying facts in immense variety, and the satisfaction of litigating cases that matter.

⁴ Mark Dwyer left the New York County District Attorney’s Office in 2009.
On that front, make no mistake: an appellate prosecutor is a litigator. He or she is engaged in legal combat with an opponent, and has the same instinct to “crush” the opponent that moves every successful litigator. Appellate litigation is simply a bit more civilized in form. ADAs submit briefs, and then argue cases in front of appellate panels made up of smart judges looking for holes in the prosecution presentations. Trial lawyers speak “at” the jury in summation, perhaps pounding the podium while doing so; but during appellate arguments the judicial audiences talk back, challenging the premises of the parties’ positions and keeping the lawyers nimble. And that challenge too is fun.

Appellate work is not for everyone. For example, some lawyers will prefer constant and hectic interaction with jurors, witnesses, police officers, and defendants. But I submit that appellate work is often an overlooked career path, and one that is very well-suited for the litigator who loves the law and loves to persuade through the written word. You might consider it.

Two notes: from the years I spent on our hiring board, I would recommend that any applicant to a district attorney’s office make sure that his or her resume refers to at least one clinic or summer job related to criminal justice work. There are so many applicants that some are rejected simply because the interviewers are not sure that they are truly interested in the criminal law. And if you might want to do appellate work, mention it in the interview. Every office is looking for more good appellate lawyers.

NEW YORK COUNTY DISTRICT ATTORNEY’S OFFICE
Olivia Sohmer ’86

I worked as a prosecutor under Robert M. Morgenthau at the New York County District Attorney’s Office from 1990 to 2010. The experience was challenging and rewarding, and I worked with many skilled attorneys and fine human beings.

I was bitten by the DANY bug during the summer after my first year in law school. I was fortunate enough to get a position in the summer intern program—not quite a volunteer position, but hardly a lucrative one. I spent that summer in a Trial Bureau, assigned to work with two senior Assistant District Attorneys on their homicide investigations and trials. I still remember watching, dissecting, and trying to reconcile the contradictory videotaped statements of three men arrested for beating a fourth with sticks and bottles.

After law school, I spent a year clerking for a magistrate judge in the federal court, and then 2 ½ years in the Litigation department at Willkie Farr & Gallagher (where I had worked the summer after second year), before returning to DANY as a lateral hire. The availability of lateral hire positions has varied over the years, and changes with budget and administration concerns. By working in four different bureaus at the Manhattan District Attorney’s Office, it was as though I had four very different jobs.

Coming to DANY as a mid-year lateral, I did not follow the usual path of a rookie: intensive training and orientation followed by writing up and handling misdemeanor cases. Instead, I started in the Career Criminal Program, a bureau that is now essentially dissolved. At the time, CCP was referred cases from a Career Criminal Squad of the NYPD Detective Bureau, whose mission was to gather supporting evidence to strengthen the prosecution of recidivists. I spent three years there, trying pickpockets, robbers and burglars. Almost every case I had was one that I handled from the moment of learning that the police had an arrest—or even just a suspect who needed to be put into a lineup—through to sentencing. That “vertical” assignment of cases, which is the paradigm throughout DANY, provided an invaluable education in how to assemble a case. There’s nothing like discovering in the middle of a trial that you don’t know a fact or have a piece of evidence to teach you what you should have asked at the first interview.
After three years with CCP, I moved to the Labor Racketeering Unit, where I would spend seven years investigating and prosecuting organized crime influence on the trade show industry in New York, unemployment insurance fraud, and bribery of various types of inspectors. The pace there was very different. In the trial division, the life cycle of a case averaged 6-8 months. In LRU, the grand jury presentation itself could take that long, and might be preceded by a year or more of working with undercover officers and confidential informants, applying for and supervising wiretaps, and sifting through the proceeds of meticulously drafted search warrants. Then, once arrests were made, there would follow complex pretrial litigation of all the issues that we had tried to anticipate during the investigation. Many of the cases in LRU were disposed of by pleas, but when they went to trial, the trials were long and complex, with eavesdropping evidence and financial analysis.

My next position was with the Family Violence and Child Abuse Bureau, prosecuting felony charges of physical and sexual abuse of children under the age of 14, usually committed by those entrusted with caring for those they victimized. For six years my job was almost as much social worker as lawyer. I listened to children describe horrific allegations and tried to help them discover that, through the criminal justice system, they could be more than powerless victims. At all times, it was essential to be alert to the very real possibility of false accusations. The hours were long, the work was emotionally draining, and it is no hyperbole at all to say that I consider the work that is done in that bureau to be the most valuable and rewarding work that a prosecutor can do.

Finally, I spent four years in the Appeals Bureau, handling and arguing cases in the Appellate Division and Appellate Term, and occasionally trying to reach—though usually trying to stay out of—the Court of Appeals. Once again, the pace is dramatically different: it is generally a month from case assignment to printed brief. In Appeals, an ADA has an opportunity to become an expert in a wide variety of issues, both substantive and procedural. Every case affords the chance to learn from the example—and the mistakes—of judges and attorneys. Of course, Appeals is the place to hone your writing and editing skills, since almost all briefs are written by one ADA and edited by another. And, presenting a legal argument in six minutes, with five judges peppering you with questions, and white and red lights alerting you to the expiration of your time, is an in-court experience utterly different from trial work.

Quite frankly, this is not a job you take for the money. You will probably be paid more even at the smallest personal injury law firm, and you might even get into court as often. But, in the grand scheme of things, compared to non-legal careers, the pay is not bad at all. And the position is secure, since there is, unfortunately, no shortage of work to be done. The real reward of this job, however, is in going to work each day knowing that what you are doing makes a real and positive difference in people’s lives.

EL PASO COUNTY DISTRICT ATTORNEY’S OFFICE
Rebecca Tarango ’96

I didn’t graduate law school with the intent, or even imagine the possibility, of being a career prosecutor. My husband and I had a baby during my third year of law school, and while we always wanted to return to El Paso, having a baby clinched the decision for us, as our entire support network was here. El Paso’s a great place to live and raise a family, with warm, friendly people and the best Mexican food in the world. After graduation in 1996, we came home and I started working at a private firm in their international/immigration law section. I was not happy with the work, and felt that being an advocate for our clients at times conflicted with my own values. I also felt more like a secretary than a lawyer. I’d spend 12 or more hours a day at the firm, often being told to just sit and wait for instructions, which was hard not only on my ego, but also on my baby.
When a high school friend who was working at the El Paso District Attorney’s Office told me that they were hiring, I asked my supervisor’s permission to take a lunch hour the following week—and used that hour to interview at the DA’s Office. That was one of the best decisions of my life. I was nervous about being a real trial lawyer, because I didn’t have any prior trial work experience and I hadn’t even taken any trial advocacy classes during law school. However, when I started, I didn’t have time to be nervous anymore, and the on-the-job training began. There was a lot of work to be done, and the way to learn it was by just being thrown in and doing it. The DA’s office also sent me, along with the other recent hires, to what we call “Baby Prosecutor School” in Austin. Our boss, District Attorney Jaime Esparza, is wonderful. He’s demanding and expects the best of us, insisting that we always work hard and be fair in service to our community.

When I started in July of 1997, I was first assigned to screening misdemeanor and felony cases for prosecution. At first, I was a little worried that my pay cut would hurt our family, but at $37,000, I was still making more than most El Pasans, and much more per hour than I was earning at the firm. I generally worked 8 to 5, and still do, unless I’m in a big trial. After a few months, I was moved into a misdemeanor court where I tried a case my first week. After another few months, I was moved up to a felony trial attorney position. I tried a couple of murder cases along with other felonies within my first few months as a felony trial lawyer. Then, I took a year and a half off after having our second baby. Our District Attorney hired me back once I was ready to return to work, and I’ve been here since 2000. During my years as a prosecutor, I have made some of the best friends of my life. There is something to working with people who, despite cultural, political, and religious differences, all have a common goal—to see that justice is done. I have also tried dozens of cases, from misdemeanor assault cases all the way to capital murders. Trial is challenging, exhilarating, and incredibly fun. Every case is different, and every trial evokes powerful emotional responses, ranging from sorrow to hilarity, from fear to rage. It is very freeing to be able to do the right thing, always, despite whether it helps or hurts our client, the State of Texas. As a prosecutor, I’ve never felt I had to compromise my beliefs or do anything distasteful in furtherance of a goal. Because our aim is justice, all we have to be is fair and truthful.

I have spent the largest portion of my time with the DA’s Special Crimes Unit (“SCU”), handling predominantly homicides. There, my job was to ensure that murder cases were ready for trial by assisting detectives with various types of search or arrest warrants and serving as a sounding board for investigative strategy, reading final police reports and witness statements, analyzing the collection of evidence and taking of confessions for legality, organizing and presenting cases to the grand jury, preparing all the written discovery to be filed in court, and writing briefs or doing research pertaining to legal issues that affected each case. My work involved daily dealings with law enforcement officers, other prosecutors, defense attorneys, forensic experts, and judges. I tried several of the more complicated or difficult murder cases. Being in trial is absolutely, without a doubt, the greatest part of this job.

A couple of years ago, I was promoted to the position of misdemeanor Trial Team Chief. In this position, I supervised 6 misdemeanor trial attorneys. Guiding and training new lawyers was a lot of fun; their eagerness and youth infuses energy into the office. After that, I was made a felony chief. Now, I am back in the SCU as a co-chief. My dear friend and co-chief, Denise, and I supervise the two SCU lawyers—one does murders and one does intoxication homicides—and 2 regular felony lawyers. In addition to the general SCU duties from before, we now train these four lawyers to prepare and try homicide cases. I love our team and the challenging work we do.

Over the years, my skills have improved through experience and watching my fellow prosecutors in trial. In El Paso, my job as a prosecutor helps my family enjoy a good life, and mostly, time together. My third year baby is now a junior in college, and I feel lucky that I got to be fully there for her, and for her younger brother. I also have the great satisfaction of knowing that I’ve helped to put away serial killers and other dangerous felons, and helped the families of the victims receive some measure of justice. While
it can be very emotionally draining to deal with the victims of crime, particularly abused children or families of drunk driving victims, there is still nothing I can think of that’s more rewarding than to be able to tell them that you’re fighting for justice on their behalf. I love wearing the white hat. I think I have the best job in the world, and I am very grateful for it.

2015

2. U.S. Attorney

CENTRAL DISTRICT OF CALIFORNIA
Carol Chen ’00

I am an Assistant United States Attorney in the Organized Crime and Drug Enforcement Task Force (OCDETF) section of the United States Attorney’s Office in the Central District of California. I have been in OCDETF for about three years, after having completed the requisite stint in the General Crimes section, which is the boot camp/training/trial section for new AUSAs (referred to as “rookies”). As a line assistant in the OCDETF section, I primarily prosecute cases against high-level, international drug trafficking organizations, cartels, and criminally active street gangs for violations of federal drug, money laundering, and racketeering statutes. Because criminals oftentimes tend to be opportunistic “jacks of all trades,” these investigations may also implicate issues relating to public corruption, national security, and fraud.

Since the fourteen years that I have graduated from Yale, I have had many legal jobs—Ninth Circuit law clerk (for the late Pamela Ann Rymer), district court law clerk (for Lourdes G. Baird), litigation associate for a large LA-based law firm (Latham & Watkins), and an Assistant United States Attorney in the Civil Division of the United States Attorney’s Office—each of which I greatly enjoyed both professionally and personally. Indeed, I have been blessed with the privilege of working with and learning from two brilliant, well-respected, and fair jurists and unlike many others, I actually enjoyed the big firm life. But, I can say without a doubt that my current job as a federal criminal prosecutor is the best and most satisfying legal job I have ever had.

You never forget or doubt what your goal is each day on the job, which is to always do justice, always do what is right, even when it is politically inexpedient to do so or the criminal defense attorney on the other side seemingly is engaging in every possible underhanded tactic. Though it may sound pollyanna-ish and self-serving, it means something to be a member of the Department of Justice—you do justice. That in and of itself is a reward that is absent from most other legal jobs.

In terms of intellectual stimulation and excitement, you cannot find a better job. No two days are ever the same. On any given day, you work with a variety of individuals and entities, from federal agents in different law enforcement agencies (the Drug Enforcement Administration, the Federal Bureau of Investigations, the Department of Homeland Security, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, just to name a few) to task forces made up of both local police and sheriff’s departments and federal agents created to combat violent criminally active street gangs and major drug trafficking organizations (including the High Intensity Drug Trafficking Area (HIDTA) task force) to various units within Main Justice in Washington, D.C., to United States Probation Officers, United States Marshals, and Pre-trial Service Officers. At any one time, you may be juggling a couple of applications to intercept wire and electronic communications of several high-level, Mexican-based drug cartel members or Mexican Mafia-affiliated gang members; read the line sheets of wiretap calls between drug traffickers and/or violent gang members speaking in coded terms about drug transactions, gang “business,” and murders, attempted murders, and assaults; write a warrant to obtain judicial authority to put a GPS tracker
on a target’s vehicle or to get GPS coordinates of a target’s telephone; draft a search warrant or a complaint; present an indictment to the grand jury; handle multiple arraignments for several of your defendants; do a change of plea; and/or sentence a defendant—perhaps all while preparing for a multi-defendant, multi-week trial and writing an appellate brief.

The work is definitely fast-paced and the opportunity (or challenge of having) to think on your feet presents itself on a daily basis. Because you have a mix of both large-scale pre-indictment investigations and cases which have already been indicted, you will be both in court, on your feet arguing something, and working closely with different federal agents and local task force officers to formulate strategy and further pending investigations on any given day. You do exciting, interesting work that matters. No matter what section you are in—whether in OCDETF or Major Frauds or Environmental Crimes or Violent and Organized Crimes or Cyber and Intellectual Property Crimes—you know that what you do has a practical and immediate impact on real individuals—the victims and their families, the defendants and their co-conspirators, and the constituents of the city in which you live (and sometimes, even the nation as a whole). Indeed, especially as a gang prosecutor involved in taking down violent, criminally active street gangs from the very top of the hierarchy right down to the “foot soldiers” on the streets with 50 to 70-defendant racketeering indictments at a time, you will literally change the landscape of cities and reduce violent, major crimes across neighborhoods. Knowing that you actually have contributed to a small part of keeping the streets safer is a feeling like no other—you know you have put that Yale Law School degree to good use and that you have kept in mind all these years the school’s creed of public interest and public service.

Of course, no job is completely perfect (even though this one comes pretty close to it). I, for one, took a 6-figure pay cut when I left my big law firm as a fifth year associate to come back to the federal government; if your goal is to maximize your earning power or lead a lavish, glamorous, and/or carefree lifestyle, this job is probably not for you (though this job might help you land a partnership position at a law firm or a judgeship later on). The hours are long and the job can be, and often is, extremely stressful; you get a lot of responsibility starting from your first day on the job and there is an awful lot at stake. Indeed, you literally have someone’s liberty/life in your hands and you never ever take that for granted. There is also a lot of scrutiny; courts (at least here in the Central District of California) are much tougher on the government than they are on the defense and you often have to travel the proverbial “high road” more often than not. But I will happily take these “negatives” of the job because there is nothing comparable to being a federal criminal prosecutor armed with the ability to effect immediate change for the better and the freedom to formulate legal strategy and run your own cases from the beginning of the investigation all the way through the post-trial conviction and appeal stages.

2014

CENTRAL DISTRICT OF CALIFORNIA

Wesley L. Hsu ’96

Control of your cases, going to trial, and always trying to do the right thing. These are, in my view, the best parts of being an Assistant United States Attorney. The U.S. Attorney’s Office does not overstaff cases, so AUSAs have a great deal of decision-making authority in their cases. Criminal cases go to trial far more often than civil cases, so AUSAs get excellent trial experience. Not as much as in a district attorney’s office or even a city attorney’s office, but I think AUSAs get a healthy balance between considering legal issues, which DA offices often have too many cases to do, and trial experience. Finally, AUSAs are tasked with doing justice, not just what the client wants, and that is perhaps the best part of the job.

There are other benefits as well. AUSAs do not have to bill their time in six minute increments, and you should not underestimate how nice that is. Because AUSAs have control of their cases, AUSAs also have
more control of their schedules and time than in private practice. AUSAs work hard—as hard as law firm associates lots of times, but it is rare when an AUSA has to work over the weekend or late into the night unexpectedly. Generally, AUSAs have some control over when they will have to put in overtime. More time in court, in front of the bench, also provides AUSAs an excellent opportunity to build their reputation in the legal community (OK, this last one can be good AND bad).

The primary drawback to being an AUSA is the pay. In most cases, AUSAs make far less than their private practice counterparts. Also, AUSAs have to do a lot of their “grunt” work for themselves as USAOs simply cannot afford to have the armies of support staff that law firms do. The most challenging part of the job is, not surprisingly, trial. Trial is extremely hard work, and getting it right is pain-staking. On the other hand, for a litigator, trial is also the most rewarding aspect of the work.

AUSAs have many other responsibilities other than trial. We advise federal law enforcement agencies on conducting investigations into crimes. We often train these agencies, and other AUSAs, on legal developments and certain subject matter areas of the law. We also spend a great deal of time doing pre-trial motions practice. In these situations, of course, we always have our eyes on the trial ramifications of our advice and motions work. In the Los Angeles USAO, we also handle our own appeals. We handle guilty pleas, sentencings, and post-conviction collateral attacks.

I think the “typical” candidate for an AUSA position is someone who has clerked for a federal judge and who has spent a few years at a law firm as a litigator. An externship at a USAO is a great thing to have on an applicant’s resume—it demonstrates early interest in a job at the USAO. Trial experience in any form is a huge plus. Trial experience can take many forms. Take trial advocacy. Candidates should also try to get trial experience while at their firm. In Los Angeles, for example, the City Attorney’s Office has “TAP,” or trial advocacy program, where young law firm associates spend time in the City Attorney’s Office trying misdemeanors. That type of program boosts a candidate’s application. Not all AUSAs take that path, of course. Our USAO also hires from the district attorney’s office and the military.

My path was “typical.” I was an extern in the USAO in New Haven while at Yale. I graduated from Yale Law School in 1996. I clerked for the Honorable Mariana R. Pfaelzer in the Central District of California. I then worked at Gibson, Dunn and Crutcher in their Intellectual Property and Appellate groups. I joined the USAO in Los Angeles in 2000. I joined the Cyber and Intellectual Property Crimes Section when it was created in October 2001. I became the Deputy Chief of the Section in 2005, and in 2008 I became the Chief of the Section.

I guess I wish I had known before I started my career path that 1) clerking for a district judge who was an AUSA or even the U.S. Attorney in a particular USAO is helpful toward getting hired in that USAO, 2) working at a law firm with former AUSAs and USAs will give you a leg up on applying (provided they like you, of course), 3) evidence is an absolutely critical subject area that I use every single day, and 4) everything you do in every case you ever work on can affect your reputation in the legal community.

I’ll conclude with a story. I was in court one day waiting for a court appearance. My colleague was before the court for the sentencing of a defendant who had defrauded dozens of people out of their life savings by selling them bogus medical insurance. Several of the victims addressed the court during sentencing, telling the court what incredible harm this defendant had done. These victims did not know that their medical insurance was bogus until they had terminal cancer and no way to pay for treatment. After these heart-rending stories, my colleague asked the court for a significant sentence of imprisonment. The court imposed a significant sentence, but, even more powerful, the court also ordered the defendant taken into custody immediately (he had been released on bond). The victims had the opportunity to see this truly evil defendant taken into handcuffs to serve his prison sentence. I was incredibly proud that day to be an AUSA, to be part of a team trying to do justice.
I went to law school to be a prosecutor, and I enjoy almost every day of it. I strongly recommend it. Everything in this description is, of course, my own personal opinion and does not reflect the opinion of the U.S. Department of Justice.

2015

NORTHERN DISTRICT OF CALIFORNIA
Damali Taylor ’02

I am an Assistant United States Attorney in the Strike Force Violent Crimes (SFVC) section of the United States Attorney’s Office in the Northern District of California. I have been with the office for almost three and a half years. As an AUSA in the Strike Force section, I prosecute cases against violent criminal street gangs for violations of federal murder, firearms, and racketeering statutes. Before joining the United States Attorney’s Office in 2011, I was an Assistant District Attorney in the San Francisco District Attorney’s Office, where I prosecuted domestic violence cases.

Before becoming a prosecutor, I worked at big law (Davis Polk in New York and O’Melveny & Myers in San Francisco). I actually enjoyed big firm life both professionally and personally and I was blessed with some of the best mentors anyone could ask for.

That said, being a prosecutor is, without a doubt, the most personally rewarding and most important job I have ever had. Coming from a lower-income community plagued by crime, words cannot express how much it means to me to attempt to do justice for crime victims—especially when my work affects under-represented communities. As I always say, defendants have lawyers. No one speaks for crime victims. No one, that is, except prosecutors. We each take an oath to in some small way do our part to give voice to the folks who are truly voiceless. That is an incredible privilege.

I have tried over a dozen cases (both at the USAO and when I was an ADA). I am regularly in court, drafting briefs and interacting with federal agents. A given day may involve any combination of the following: drafting a wire application; reading the line sheets of wiretap calls between drug dealers or gang members; writing a warrant to obtain judicial authority to put a GPS tracker on a target’s vehicle; drafting a search warrant or a complaint; presenting an indictment to the grand jury; examining civilian witnesses before a grand jury as part of an investigation; arguing before a magistrate that a defendant should be detained pending trial because he/she is a risk of flight and/or danger to the community; opposing a motion to suppress evidence; preparing for trial.

My piece of advice would be this: if you don’t believe in the work that federal prosecutors do (which includes regularly putting people in prison), then this is not the right job for you. It is a meaningful life but an enormous responsibility. It is not for the faint of heart. If, however, you have a passion for protecting people and helping communities, you will find no better job.

2014

DISTRICT OF COLUMBIA
Stephen Gripkey ’92

I have been working as an Assistant U.S. Attorney in the District of Columbia since the fall of 1998. More recently I have been assigned to the Violent Crimes and Narcotics Trafficking Section, which handles cases primarily in federal court. I started my legal career through the Attorney General’s Honor Program at Main Justice, working in the Civil Fraud Section of the Civil Division. Although my job duties have varied a lot through the years, I have been working for one overall agency, the Department of Justice, since graduating from law school in 1992.
My opening gig at Main Justice was fantastic. In the Civil Fraud section, I was given enormous
responsibility from the start in handling a variety of affirmative civil cases across the country, suing
individuals and corporations to recover monies defrauded from the government, and often working in
parallel fashion with criminal investigations. The people were great, the work was great, and I learned a
lot. However, I rarely saw the inside of a courtroom. Most of what constitutes civil litigation, such as
paper discovery and depositions and negotiations and motions preparation, etc., happens outside of a
courtroom, and very few cases ever make it to trial. I probably spent a total of about six hours of elapsed
time in a courtroom over the six years I worked there.

Given D.C.’s unique jurisdictional status, the USAO has traditionally handled adult criminal matters both
local and federal. A considerable portion of our work is done in Superior Court, the local courthouse that
sees criminal trials of everything from misdemeanor assaults to murders. Work in Superior Court involves
various stints or “rotations” in a variety of sections at the USAO that handle everything from grand jury
work, appellate work, and bench trials of misdemeanor cases, to jury trials of street-level drug and gun
cases and jury trials of more serious violent offenses. My stint as a “senior” prosecutor involved about six
years in the homicide section, which was intense and very rewarding.

Most AUSA’s here work on the Superior Court side for a number of years—with a brief “rotation” on the
federal side of the house—before leaving the office, and courtroom experiences abound. In my 17 years
here (which includes two years of non-trial section work), I’ve tried about 21-26 bench trials and about 30
jury trials, and have argued about 6 appeals before the local appellate court. These numbers do not
include the many additional sentencing hearings, evidentiary hearings, motions hearings, and status
hearings for which I’ve had responsibility. At this point in my career, the courtroom is still a scary place,
but I’ve gotten more used to it.

My current assignment involves working with agents on longer-term investigations that often involve
wiretaps and multiple co-defendants. The work is more legally and logistically complex than what I have
done before. But my experience from working through the various “rotations” in our office has been of
great service as I work through the “rookie” years yet again in my current section.

Working as a criminal prosecutor is hard work. Unlike television, you can’t really tell jurors to put
themselves in the shoes of the victim; you can’t really make passionate TV arguments about justice; you
can’t really indict a ham sandwich; and the only unilateral power you have is to dismiss a case.
Everything else you try to accomplish depends upon convincing someone else to please go your way—
whether it’s law enforcement agents to do certain work, judges to sign warrants, witnesses to appear and
to tell the truth, grand jurors to indict, judges to rule your way on motions, petit jurors to convict, and
judges to sentence. You are not just a paid mouthpiece: your job is as much to make sure the trial is a fair
one as it is to try and “win” it. You more than anyone in or out of the courtroom have to care about and
fight for the truth, as much if not more when that means letting the innocent go and when dismissing
cases that rely on obviously “bad” seizures and stops. Tough and practical ethical situations can arise on a
daily basis, many of which involve the very lives and safety of witnesses and defendants. To do the job of
a criminal prosecutor well at the trial level requires not only writing, research, and verbal skills, but
people skills and “street” sense and common sense. To do it really well demands integrity, ethics,
honesty, honor, tenacity, mercy, hard work, and humility.

The best trial work is at least a craft and at times an art. To have been able to participate in that craft
through the years on behalf of a cause that is larger than me and for the benefit of the community, has
been—and continues to be—a privilege and an honor. If you find yourself drawn to working as a criminal
prosecutor, I highly recommend it.
Years ago I failed to fully appreciate that deciding to go to law school is not quite a career choice. There are as many “law jobs” as there are lawyers. The choices come after law school. And these choices often depend more on the ensuing day-to-day than what was decided while pausing at the proverbial “fork in the road.” In short, like anything else, what you get out of a choice depends very much on what you put into it after you have made it. I have no illusions that my contributions are making the world safe for democracy or “winning” the “war on crime.” Although my community needs folks that “stand on the wall” as ethical law enforcement, certainly no matter how hard we work there will be a new wave of criminals and outrageously cruel acts that will come along and replace the current crop. Whether one continues to approach the job of a prosecutor with some measure of idealism versus a large dollop of cynicism, ultimately, is a very personal choice that you make every day when you get up in the morning.

But it is a real blessing to have a job, much less a lawyer’s job, where that choice is even a possibility. 2015

DISTRICT OF CONNECTICUT
Liam Brennan ’07

I had given up on the idea of law school when I met a prosecutor who loved her job. She made her work sound meaningful, rewarding and exciting and convinced me that I should re-consider the law as a profession. By the time I came to YLS, I was pretty certain I wanted to leave being a criminal prosecutor. I graduated in 2007 and was accepted to the Honors Program at the Department of Justice, Criminal Division.

Honors Program applicants apply to specific divisions at the DOJ (criminal, civil rights, environmental, antitrust). Once accepted to the Criminal Division, the new attorney chooses three Sections of the Criminal Division that he or she is interested in. That attorney is virtually guaranteed one of the three sections and most people usually get one of their top two choices. When I applied, the attorneys had to give both a three-year commitment to the DOJ as a whole and a three-year commitment to their section specifically. (Currently, I believe, Honors Grads in the Criminal Division give a four-year commitment to the DOJ and a three-year commitment to their sections. In their fourth year, they are given the option to try a different section, if they wish.)

I started with the Fraud Section in 2007 and was immediately sent to Houston to assist on a trial. I was told the trip would consist of one week of trial preparation and two weeks of trial. After two months of trial prep and two months of trial, I finally returned to DC. (In fairness, I returned on most weekends, too.) I had not considered that, having national jurisdiction, Main Justice employees would often have to travel the country (and sometimes the world) for significant periods of time. It was both daunting and exciting. Early on in the Fraud Section, I was able to handle significant matters and have real responsibility that my friends at firms would have to wait years for. I also got to handle large, complicated cases that some attorneys never see.

However, large complicated cases can make for slower cases, as does the fact that Main Justice Trial Attorneys often have to coordinate with local U.S. Attorney’s Offices. When I applied, one of my interviewers told me that in criminal prosecution Assistant District Attorneys were in court the most, followed by Assistant U.S. Attorneys, and finally, Main Justice Trial Attorneys were even one more step removed. I found this to be true. Some new attorneys in the Fraud Section get to try cases early on, others can wait a couple of years before trying cases. Supervisors will often try to arrange for attorneys to be on cases going to trial, but ensuring that it happens quickly is not guaranteed. Main Justice Trial Attorneys also don’t get the same grand jury practice that AUSAs get.
What they do get is the opportunity to see cases that some AUSAs never get to see, see how law is practiced across the country, and better pay. The GS scale used at Main Justice is one of the most generous scales of pay for public interest work. It is not Big Firm pay (or even as good as the SEC’s pay scale) but it is decent and better than the AD scales used at U.S. Attorney’s Offices.

The Fraud Section was a great experience that I would do again without question. I traveled to various states and countries to collect evidence and interview witnesses. I got to handle significant, interesting cases. And I got to be in court more than I would have in most other jobs.

In 2011, I left the Fraud Section to go to the U.S. Attorney’s Office in Connecticut. I currently handle mostly securities fraud cases. I happily took the downgrade in pay for a host of reasons. After having a baby with my wife and trying a month long case in 2010, I didn’t want to risk having to try another case in a state far away from my family. I also wanted to be in court more than was possible at the Fraud Section. I currently have basically the same job, but the cases move faster, I don’t travel regularly and I make less money.

Being outside of DC, the bureaucracy is significantly reduced and I get more quality time with supervisors, who are all excellent. Our jobs are goal-focused, which allows for decent workplace flexibility; if I have to work late, I can almost always make it home to have dinner with my family and put my kids to bed before logging in again. My colleagues are excellent attorneys and dedicated public servants. I may never travel the world again looking for witnesses, but I do get to know the local Court, the judges and the special agents in a way that I never got to do when the courts, judges and special agents were spread all over the country. I cannot overemphasize how happy I am with this office, my supervisors and colleagues, the responsibility I am given, and the quality of cases I see.

About two years ago, a friend who was thinking about moving to a U.S. Attorney’s Office from a firm asked me what I didn’t like about my job. I had no response, which was more telling than any answer I ever could have given.

2015

DISTRICT OF CONNECTICUT/
FORMER DEPARTMENT OF JUSTICE ATTACHÉ, ITALY

Bill Nardini ’94

The motto of the Department of Justice is “Qui Pro Domina Justitia Sequitur”; and truly enough, the best reason to be an AUSA is to “prosecute on behalf of Lady Justice.” Some years ago, I was reading a defendant’s appellate brief and realized that, due to an error in calculating his sentencing guidelines, the judge had improperly doubled his prison term. Everybody had missed the error at the time of sentencing. I double- and triple-checked the law. The defendant was right. We probably could have defended the result, since no objection had been preserved, and the error was based on an obscure advisory note in the guidelines. Yet as an AUSA, the solution was a no-brainer: Call the defense lawyer, congratulate him on spotting the mistake, and stipulate to vacatur and remand of the sentence. How many other legal jobs let you confess error, just because it’s the right thing to do?

During most of my time at Yale Law School, I never dreamed of working in criminal law. I liked Crim Pro with Steve Duke, but it wasn’t until my last semester that I took Crim Law with Kate Stith and my interest was piqued. After graduation, I clerked for Judge Cabranes, who had just been named to the Second Circuit but was still sitting by designation on the district court in New Haven. What struck me about the criminal proceedings is that the AUSAs seemed unlike most other lawyers who appeared—they acknowledged a duty to serve the public interest. Plus, pleadings from the U.S. Attorney’s Office were
usually head and shoulders above those of most other litigants. That year, and the next two years I spent clerking (first for Judge Calabresi on the Second Circuit, and then for Justice O’Connor at the Supreme Court), it always saved time to read the government’s appellate brief first, even if they were the appellee. You could count on their red brief to set forth the facts and the law most thoroughly, including all the warts. After clerking, I wanted to be one of those lawyers who wore the white hat.

I didn’t go straight to the U.S. Attorney’s Office. Instead, I moved to Italy for three years, first on a Fulbright fellowship and then working at the Italian Constitutional Court in Rome. All this time, though, I had kept in touch with the U.S. Attorney’s Office in New Haven, and was lucky enough to be hired as a line AUSA in the criminal division upon my return in 2000.

There are few better jobs than being a criminal AUSA. Connecticut is a mid-sized district, with about 65 attorneys spread through offices in Bridgeport, Hartford, and New Haven. At first, I handled a hodgepodge of smallish cases to get my feet wet: bank robberies, identity theft, drug importation, mail theft, tax fraud. These were thin case files that gave me an opportunity to work with all kinds of agents: FBI, Postal Inspectors, Secret Service, Customs, IRS. I soon found myself preparing search warrants, issuing subpoenas, questioning witnesses in the grand jury, drafting indictments, negotiating plea agreements, and appearing in court a couple of times each week. Within a month of my arrival, I was second-chairing a five-week mail fraud trial. Six months later, I had already first-chaired two small gun-possession trials. The pace and responsibility were exhilarating.

Because U.S. Attorney’s Offices can’t afford to overstaff cases, junior lawyers often find themselves working on high-profile cases. In my third year, I tried a case in Boston with our Deputy U.S. Attorney, charging a former state police officer with leaking electronic surveillance information to a mobster. During trial, I had dinner with a law school friend. She was flabbergasted to hear that the following day, I was the one making the closing argument; that I had argued back-to-back appeals in the First and Second Circuits just weeks before; and that I was going to try another two public corruption cases in Connecticut that fall, involving the State Treasurer. Nine years out of law school, she was still finding that big firm “litigation” rarely involved courtroom work.

From 2004 to 2010, I was the Appeals Chief for our district. About two-thirds of my time was spent managing our appellate work, with a much-reduced district court docket taking up the rest. Primarily, I reviewed briefs written by others—sometimes doing little more than proofreading, but usually making substantive revisions that could amount to an entire re-write. (This is when journal-editing skills come in handy.) Working on so many cases before the court of appeals offers a real opportunity to contribute to the shaping of the law, in a way that few other jobs can. I chatted with colleagues in other USAOs in my district, at Criminal Appellate or other DOJ sections, or at the SG’s office, in an effort to build a long-term litigation strategy for key legal issues. Being at a USAO lets you operate at both the micro and macro level.

As the Appeals Chief, I was in court much less than my colleagues, but the flexibility of appellate work was very convenient when I had young children at home. I could generally get out of the office by 6:00 p.m. and crank up the laptop or edit a hard copy of a draft brief after the kids went to sleep. One of the great advantages of working at a USAO is that everyone’s door is open—people are constantly in and out of your office, talking through legal issues, debating whether to charge a defendant or to appeal an adverse decision. The downside of that open-door environment is that you rarely have an uninterrupted block of time to crank out a brief—at least, not until you’re home and the house is quiet. Still, you’re the keeper of your own schedule and “face time” is a foreign concept.

From 2010 to 2014, my career as a prosecutor took an unusual turn. My family and I moved to Italy, where I served as the Department of Justice Attaché at the U.S. Embassy in Rome. For four years, I was
on loan from the U.S. Attorney’s Office to DOJ’s Office of International Affairs, which is based in Washington. The Attaché serves as a liaison between U.S. prosecutors (state and federal) and Italian judicial authorities, including the Ministry of Justice, prosecutors, and judges. Much time is spent on extraditions and mutual legal assistance requests, when U.S. or Italian prosecutors need help gathering evidence abroad. Half my work was in Italian, and all of it involved getting two very different legal systems to work together. I was also the legal adviser to federal law enforcement agencies based at the Embassy in Rome. The job required travel up and down the peninsula, sometimes nudging our more complicated requests through the Italian bureaucracy, sometimes facilitating meetings of AUSAs and agents with Italian counterparts to coordinate cross-border investigations. One day might involve debriefing a terror suspect or a mafia witness; the next day might involve negotiating the return of stolen antiquities to Italy.

I returned to the U.S. Attorney’s Office in 2014, where I now serve as the Chief of the Criminal Division, overseeing all of our District’s criminal prosecutions, in areas ranging from violent crimes and drugs to national security and white-collar fraud. Much more of my time is spent as a manager, and much less litigating case of my own.

Being a DOJ prosecutor opens doors to a host of career possibilities. You can concentrate on being a trial lawyer in gun and drug cases; focus on longer-term cases like public corruption and terrorism that might require lengthier investigations and few trials; spend time as an appellate lawyer doing much more research and writing, and long-term litigation strategy; or go abroad to help with the Department’s international work. What all of these jobs have in common is that you’re always a federal prosecutor, committed to seeking justice in the name of the American public. It’s hard to find a better job than that.

2015

MIDDLE DISTRICT OF FLORIDA
Jay Hoffer ’80

During the fall semester of my third year at the law school in 1979, I was fortunate enough to stumble into something that has made my career as an attorney most rewarding and satisfying. At that point in my law school career, I had no idea what area of the law I might want to specialize in; all I had was my experience during the two preceding summers as a government agency law clerk and then as a summer associate at a Manhattan firm. Fortunately for me, a classmate had worked as a student intern in the United States Attorney’s Office in New Haven the semester before and told me about his experiences. As a result of that conversation, I decided to spend part of the fall semester of my third year as an intern with the office of the United States Attorney for the District of Connecticut.

What resulted from the brief but extraordinary experience was a lifelong career as a prosecutor. After graduation from the law school in 1980, I joined the Office of the District Attorney of New York County (Manhattan). I served as an assistant district attorney in that office from 1980-1989, working my way up from handling the simplest misdemeanor cases to working on major felony crimes and homicide cases. In 1989, I was appointed an Assistant United States Attorney for the Middle District of Florida and joined the Tampa division of that office. I have been there since that time, working in both the Major Crimes and Bank Fraud Sections of that office.

The responsibilities of an AUSA in the criminal division of a U.S. Attorney’s Office include the investigation of criminal matters and their preparation for trial. In that capacity, an AUSA works regularly with a number of different federal law enforcement agencies on a wide variety of federal criminal allegations and charges. The average case load of an AUSA may include the more “reactive” types of cases (for example, drug trafficking, bank robbery, and counterfeiting matters) or long-term, more
complex investigative matters (for example, tax fraud, and other “white collar” crime matters which entail more investigative work and analysis). Depending upon your assignment and responsibilities, the average AUSA can expect to be involved in a wide variety of cases and factual situations.

An equally important part of any prosecutor’s education is learning how to deal with the most divergent and challenging array of potential witnesses. These may include disinterested witnesses, cooperating defendants, informants, and law enforcement agents. From early on, a significant part of any prosecutor’s work is developing the skills to be able to relate to, and get the most out of, the kinds of witnesses that your cases present to you.

One of the main attractions of being a prosecutor (either on the state or federal level) is the ability to learn early on the basics of both the investigation and preparation of cases for trial. From the earliest stages of my career as a prosecutor, I had extraordinary discretion in handling my own cases and making my own decisions about them. I also learned, from watching other colleagues with whom I worked and by my own trial and error experiences, how to try a case to verdict. The latter skill is one that attorneys in private practice may take years, if at all, to learn. The development of your own trial and advocacy skills is a significant part of the work of being a prosecutor at any level. Those skills, which law school clinical and forensic programs can only begin to teach in an academic environment, are useful to any attorney in any type of practice.

Aside from these purely “vocational” benefits of being a prosecutor, the job itself has an additional benefit which, in my view, makes it perhaps the most satisfying of career choices. The ability to make use of one’s legal skills and intelligence in the service of law enforcement makes a job as a prosecutor emotionally rewarding and enriching. Perhaps that is why, unlike most members of my law school class, I have had only two employers in the 20 years since my graduation, and each of them in the same field of legal endeavor. A career in criminal prosecution is “public service” in its highest form and is one that many more Yale Law School graduates should consider strongly.

2015

SOUTHERN DISTRICT OF FLORIDA
Matthew Axelrod ’97

From 2003 to 2009, I served as an Assistant United States Attorney in Miami, Florida. From 2009 to 2013, I was on detail to Main Justice, where I worked as a Senior Counsel to the Assistant Attorney General for the Criminal Division and then as an Associate Deputy Attorney General. After spending 2014 in private practice, I returned to DOJ in February 2015 to serve as the Principal Associate Deputy Attorney General, responsible for helping the Deputy Attorney General run the day-to-day operations of DOJ.

I graduated from the Law School in 1997 and then spent two years clerking, first for the Hon. Ralph K. Winter on the United States Court of Appeals for the Second Circuit and then for the Hon. Janet C. Hall on the United States District Court for the District of Connecticut. After the clerkships, I moved back to my hometown of Boston, where I spent a little over three years working as a litigation associate for the now defunct law firm Hill & Barlow and then six months working at a litigation boutique, Donnelly, Conroy & Gelhaar.

Perhaps because SDFL is one of the larger U.S. Attorney’s Offices, there is a dedicated Appellate Section. A number of AUSAs work there permanently, but it is also the section to which all new AUSAs are assigned for a few months when they first start in the office. Spending a few months writing appellate briefs gives new AUSAs a chance to acclimate themselves to the office and to begin to familiarize themselves with some recurring issues that arise in federal criminal practice.
After the short stint in appeals, new AUSAs typically move on to the Major Crimes Section. Major Crimes handles all of the cases that come to the office reactively, rather than as the result of a long-term investigation. For example, drug couriers attempting to bring cocaine in through the airport, bank robberies, felons found in possession of a firearm—all of these are typical matters handled by Major Crimes AUSAs. The section is incredibly fast-paced and AUSAs are in court virtually every day. In my two years in Major Crimes, I had 15 jury trials (at the same time, the folks in the Appellate Section let me argue three cases before the Eleventh Circuit). I’m not sure of the exact statistics, but I’ve heard it said that the Major Crimes Section alone tries more cases each year than most entire federal districts. I don’t know why that is, but I do know it offers an unparalleled opportunity to learn how to try cases.

After Major Crimes, AUSAs in SDFL are typically transferred to the Narcotics Section, the Economic Crimes Section, or the Special Prosecutions Section. In Narcotics, AUSAs work larger drug cases, usually involving wiretaps and multiple defendants. The district is unusual in that many of the narcotics defendants are not here in the United States, but in Central or South America. Because these individuals have shipped large amounts of cocaine or heroin to the United States, they are subject to the United States’ criminal laws. SDFL AUSAs will indict them and then seek to have them apprehended in their home countries and extradited for trial. For example, during my time in the Narcotics Section, I was part of the team that convicted two founders of the Cali cartel, who had been extradited to Miami from Colombia. In Economic Crimes, AUSAs work mostly document-intensive fraud cases, such as bank fraud and healthcare fraud. The Special Prosecutions Section focuses its work on combating violent crime and crimes against children.

After my tenure in the Narcotics Section, I worked in the office’s Public Integrity/National Security Section. The Section conducts national security and terrorism investigations as well as corruption investigations of public officials, including corrupt law enforcement officers. As one example, I was part of the team that convicted the Sheriff of Broward County on fraud and tax charges related to undisclosed private business dealings he had with people who were also doing business with his office.

In short, I cannot imagine a better job as a lawyer than being an AUSA. When I applied to work as one, I wanted a job where I was doing work that mattered, where I was fighting about issues like justice and liberty rather than about money, and where the marching orders were to do the right thing rather than to win at all costs. I am happy to report that the job of an AUSA is all those things and more.

As a final note, if you really want to be an AUSA, do not let repeated frustrations with the application and acceptance process deter you from your goal. I started applying for an AUSA position in my hometown of Boston as far back as 2000, but was unsuccessful in landing a position. In 2003, despite the fact that my wife and I had bought a house that we liked and despite the fact that we had a one-and-a-half year old toddler, we decided that I should broaden my search. Accepting the job in Miami meant uprooting my family and leaving Boston. At the time, it was not easy to take that leap. But, looking back, it was the best thing I ever could have done.

2015

SOUTHERN DISTRICT OF FLORIDA

Evelyn Baltodano-Sheehan ’02

I am an Assistant United States Attorney in the Southern District of Florida. As the Deputy Chief of the Southern District’s Asset Forfeiture Division, I currently represent the United States in criminal and civil asset forfeiture actions and supervise AUSAs in the Asset Forfeiture Division. Representative matters include the criminal forfeiture in the case of US v. Scott W. Rothstein, a Ponzi scheme which resulted in the forfeiture of approximately $28 million worth of assets, in addition to multi-million dollar criminal and civil forfeiture cases involving Medicare, mortgage and investment fraud. While a member of the
Major Crimes and Appellate Divisions, I represented the United States in a wide range of criminal prosecutions, including narcotics and immigration offenses, access device and health care fraud and bulk cash smuggling.

While at Yale, I had been a summer associate at a small boutique firm in Georgetown and then at a large corporate firm in New York City. I then practiced corporate and bankruptcy law for almost two years before moving to Miami and joining the complex commercial litigation department of another corporate firm and a brief stint at a boutique plaintiff's litigation firm. The seven years of private practice do not nearly compare to the pride, excitement and challenge that comes with being an AUSA. The experience, comradery and pride I take in my current position outweigh the financial sacrifice that comes with public service.

I have now been here for six years and I can wholeheartedly say that it is the best job I’ve ever had. As many others I’m sure will say, I can assure you that you will never be bored. No two days will ever be alike. A day will not pass when you will not encounter something new to learn. You will be surrounded with smart, committed colleagues who generally have an open door and who will not hesitate to sit and brainstorm through any particular legal or logistical challenge. Although many colleagues choose to move on over the years (most often strictly due to financial pressures), most of them will always look back fondly at their time at USAO/DOJ.

My “typical” day can include complex criminal motion practice, including forfeiture jury trials or contested sentencing hearings; coordinating with the U.S. Marshalls Service or other federal agencies on the disposition of real estate or complex business assets; working with Criminal Division AUSAs and agents on ongoing criminal investigations; drafting and presenting seizure warrants for planes, cars, or bank accounts; drafting interrogatories or deposing claimants in civil forfeiture proceedings; conducting criminal evidentiary hearings related to forfeited assets; arguing dispositive motions on novel issues in federal court against name partners at major law firms, etc. I have found it extremely rewarding to either be recouping fraud proceeds for the benefit of victims of crime or protecting the public fisc.

I cannot stress the lack of emphasis on face time enough. It is a stark contrast with life at a law firm, which often rewards inefficiency because of the constant pressure to bill hours. Everyone operates at a high level, work is always plentiful and my supervisor’s unflinching focus on work quality and timeliness over face time has made a huge difference in my ability to balance work with life’s commitments (family, health, whatever you hold dear). The lack of pressure to bill leads to rewarding results and efficiency.

I have found the training available to DOJ/USAO employees to be excellent. The National Advocacy Center provides top caliber training and in-house training conducted by experienced AUSAs serves to supplement my trainings at the NAC. And after six years of experience, I’m now training AUSAs and federal and state law enforcement agents.

In all, I cannot recommend it enough. Complex work, amazing colleagues, unparalleled responsibility and a firm commitment to do justice. Simply unmatchable. For me, despite the financial sacrifice and inevitable stress, a total dream job.

2015

SOUTHERN DISTRICT OF FLORIDA
Olivia Choe ’04

I am an Assistant U.S. Attorney in Miami, where I have worked for the past four years. After graduating from YLS in 2004, I clerked twice, first for Judge John Walker on the Second Circuit, and then for Judge Rya Zobel in the District of Massachusetts. After clerking, I worked in the Litigation Department at
Ropes & Gray in Boston for almost four years. Since joining the U.S. Attorney’s Office in 2010, I have worked in the Appeals Section, where I had the opportunity to argue before the Eleventh Circuit, and in the Major Crimes Section, where I prosecuted a range of case, including violent crime, narcotics offenses, child pornography offenses, tax fraud, bank fraud, identity theft, and immigration fraud. For the last two years, I have been assigned to the Special Prosecutions Section, where I focus on violent crime, child exploitation offenses, and human trafficking matters.

As an AUSA, I get to do a variety of things. Part of my job is to conduct proactive investigations, which involve close work with agents from a variety of law enforcement agencies (the FBI, DEA, Homeland Security, Department of State, IRS, Secret Service, as well as local police departments) to develop evidence supporting charges against individuals who are believed to be committing federal offenses. During the investigative stage, I work with agents to review the evidence that we have, to interview witnesses, including cooperators, as well as victims, and to determine what if any additional evidence we might need or be able to get through grand jury subpoenas, court-authorized wiretaps, search warrants, or tracking devices, or through other means.

My job also involves a lot of court time. During an average month, I will typically appear before one of our grand juries to present evidence, have a witness testify, or seek an indictment. Once a defendant is arrested, I appear before a magistrate judge for the defendant’s initial appearance, at which he is advised of his rights, as well as a hearing on his bond. As the case progresses, the assigned district court judge may hold status conferences to discuss discovery or evidentiary issues with the parties. Depending upon what the defendant decides to do, I appear in district court to handle either the defendant’s guilty plea or trial, and, ultimately, sentencing.

My clerkships and my years at Ropes & Gray provided great preparation for my work as an AUSA. As an appellate clerk and a law firm associate, I had lots of opportunities to hone my legal research and writing skills, which provided an excellent basis for the briefs, memoranda, correspondence with defense attorneys, and other legal writing that my job requires on a daily basis. As a litigation associate, I also learned the importance of meticulous discovery practices, which are—if anything—even more crucial in criminal matters, where someone’s liberty is at stake. As a district court clerk, I spent a year observing parties in a variety of cases, civil and criminal, appear before my judge, whether at a sentencing, discovery hearing, or lengthy trial. I learned the importance of earning and maintaining credibility with the bench, the value of exercising good judgment and being reasonable at all times, and the virtue of brevity.

I love my job. Although being a government attorney involves financial sacrifice, I feel lucky to get such great satisfaction out of my work. My office is extremely friendly and collegial, and I find my work varied, challenging, and worthwhile.

DISTRICT OF MASSACHUSETTS

Michael Tabak ’75

I graduated from Yale Law School in 1975. I spent the next year clerking for Hon. Irving R. Kaufman, who then was Chief Judge of the United States Court of Appeals for the Second Circuit. I was a litigation associate at Davis Polk & Wardwell in New York City from 1976 to 1978, and then was Deputy Chief Counsel to the Special Commission in Massachusetts that investigated, held public hearings about, and drafted reform legislation to address corruption related to the state and county government building process.
I was an Assistant United States Attorney for the Southern District of New York from 1980 to 2004, starting in the Manhattan office and then moving to the White Plains division in 1986. Since late 2004, I have been an Assistant United States Attorney for the District of Massachusetts, working from the main office in Boston. (This involved an entirely separate application and selection process, not a transfer.) It has been a terrific professional experience. I have investigated and prosecuted challenging and complex terrorist, mafia, corruption, fraud, tax, environmental, and many other kinds of criminal cases. On a personal level, I have found it extremely rewarding to feel that I am serving the public, rather than feeling as if I am merely a “hired gun.” Moreover, it is a privilege to work in an environment where my colleagues not only are extremely bright, motivated, and willing to help each other, but also are steeped in the long tradition of the office to “cut square corners”—to do things the right way, the ethical way, the honorable way.

I have handled a wide variety of cases, which keeps the work continually interesting. Moreover, an AUSA in this office handles a case from the beginning of the investigation, through the Grand Jury and trial (or plea), and within the U.S. Court of Appeals. This gives us many different roles to play. In the investigative phase, we work closely with the Special Agents from the FBI, the IRS, and the many other federal (and sometimes state and local) investigative agencies. In many sophisticated and difficult investigations, we often play a leading role in shaping strategy, creatively overcoming obstacles, questioning witnesses, and negotiating with their attorneys. We handle the motion practice, the trials (or, more often, the guilty pleas), and the sentencings of the cases we have investigated, and we also draft the appellate briefs and do the oral arguments in the U.S. Court of Appeals of any appeals in such cases. The Solicitor General’s Office in Washington, DC handles the relatively few criminal cases that reach the Supreme Court.

Salaries at the U.S. Attorney’s Office are good by government standards, but they are substantially less than one could earn as a partner in a major law firm (which is probably particularly true in metropolitan areas). AUSAs are given great responsibility, significant independence, and substantial caseloads, and being an AUSA is a very hands-on job. Demanding cases and tight deadlines may necessitate working long hours and doing a significant amount of unglamorous—but important—work, but that can be true for litigators in private practice as well.

Although beginning AUSAs are given training and mentoring, they quickly start handling cases and appearing in court. Thus, they must not only be bright, hard-working, honest, and ethical, but they also need good judgment, self-confidence (but not arrogance), the ability to express themselves orally in a clear and persuasive manner, strong research and writing skills, a good strategic sense (including understanding and anticipating potential defenses), the ability to see not only the “big picture” but also to master the details, the flexibility to overcome setbacks, the ability to think on their feet, skill at negotiating, and the ability to relate to and interact with a wide variety of people—including victims, bystander witnesses, cooperating defendants, defendants, defense attorneys, colleagues, support staff, supervisors, trial judges, and appellate judges. While many of these skills are learned and improved on the job, the hiring process seeks to select people who are likely to do well in these areas, and thereby effectively and honorably represent the United States. Prior prosecution experience is not necessary and probably is not typical, but it is important that applicants have been able to handle responsibility well and have strong references.

I have earned far less money working at the U.S. Attorney’s Office than was available in private practice, but I would make the same career choice if I were starting out again. It is a privilege to work with such smart, decent, dedicated people, to have a steady stream of interesting and challenging cases, and to feel that you are contributing in your own small way to furthering the public interest.

2015
Although I had an inkling during my time at Yale Law School that I wanted to be a federal prosecutor, I became absolutely convinced of it during my clerkship for Hon. Leonard B. Sand of the United States District Court for the Southern District of New York. I spent most of that year assisting Judge Sand as he presided over a lengthy criminal trial involving four defendants who ultimately were convicted of participating in the 1998 terrorist bombings by Al Qaeda of the U.S. embassies in Kenya and Tanzania. Fresh out of law school, I spent that trial in awe—not just of Judge Sand and his brilliance and kindness—but also of the assigned AUSAs, who worked tirelessly in the cause of justice, all without ever compromising themselves or the office that they represented.

And so, after a second clerkship for Hon. Chester J. Straub of the United States Court of Appeals for the Second Circuit (who, by graciously letting me work on as many criminal appeals as I wanted, taught me more about constitutional and criminal law than I could have ever learned in a classroom), I joined the U.S. Attorney’s Office for the Eastern District of New York in the fall of 2003, just three years into my career as an attorney. There, I first served in the General Crimes Section—as all new AUSAs do for their first 12 months in the job—and then moved to the Organized Crime and Racketeering Section, where I have been ever since and where I prosecute traditional (Cosa Nostra) and emerging (Eastern European) organized crime cases.

I can think of no better way to describe how amazing my job is than to tell you what I’ve been doing for the last few weeks: preparing for a two-month racketeering trial against the acting boss of an organized crime family who committed and attempted to commit numerous crimes of violence, including the murders of other mobsters and the solicitation to murder a federal prosecutor and federal judge in this district. That preparation has included my debriefing of witnesses relocated to secret locations as part of the Witness Security Program, writing and arguing motions and rehearsing my opening statement, which I’m scheduled to deliver in less than one week (yikes!). The point of all this is to say that each of you can just as easily be doing the same and in just a few years after graduating from law school—that is, actually litigating cases, representing the public good and doing work that is both exciting and that matters. This is why, if you ask AUSAs how they feel about their jobs, their answer, including mine, will always be that they love it and couldn’t see themselves being any other kind of lawyer.

But don’t just take my word for it. The best way to see if this job is right for you is to see it for yourself up close, either by working alongside an AUSA as an intern or by watching AUSAs as a law clerk to a federal judge. In particular, make sure that the particular internship program lets you work intimately with AUSAs who will give you responsibility over assignments more than just research memos and who will even let you appear in court (like our internship program does), or that the particular judge permits law clerks to work on criminal cases (some do not). Additionally, U.S. Attorney office internships and federal clerkships, although not prerequisites, can be helpful down the road if and when you actually do apply for an AUSA position.

Once you’re convinced that you do want to become an AUSA, the application process is straightforward: a standard form, writing sample, transcript and reference letters. There is no “right” time to apply, although our office generally requires at least two years of post-graduation legal experience. There are three rounds of interviews, each conducted by a panel of three AUSAs, and, at bottom, we’re looking for smart, articulate and personable lawyers who have good judgment and a demonstrated commitment to public service, and who would represent the United States with the highest professionalism and integrity.
Good luck, and feel free to contact me directly if you want to talk more in depth about becoming an AUSA in general, or working for the Eastern District in particular.

2015

SOUTHERN DISTRICT OF NEW YORK
Nicholas Lewin ’04

I’ve served as an Assistant U.S. Attorney in the Southern District of New York since 2007, working principally on terrorism and other national security cases (such as espionage, counter-proliferation, and counterintelligence). I graduated from YLS in 2004, and then clerked for two wonderful years—first on the Southern District of New York, then on the Second Circuit. I came straight to the U.S. Attorney’s Office from my second clerkship. Between clerkships, I worked for about a year at a twenty-odd-lawyer litigation firm in Manhattan, Lankler, Siffert and Wohl.

(A brief aside: I had a terrific experience at Lankler, Siffert and Wohl. This firm, like a handful of other small litigation firms in New York, is comprised largely of former prosecutors. The firms are structured and oriented in a fundamentally different way than the larger firms, but are often involved in the same cases as those firms. As a result, the work, the people (and even the quality of life) were truly excellent. But this is no non-sequitur: working at a small firm like this one—where many of the partners had been AUSAs—significantly advanced my application to the U.S. Attorney’s Office.)

My time at SDNY has been typically interesting, challenging and fun, but atypical in other respects. As with almost all AUSAs in SDNY, I started in the General Crimes Unit. There, AUSAs are exposed to a broad range of cases, from immigration to housing fraud to violent crime. The caseload is heavy. And the learning curve was steep—at least it was for me. I conducted two jury trials during my general crimes year. Most SDNY AUSAs spend the next year in the Narcotics Unit; I spent only about six months there, trying one jury trial before transitioning full time to terrorism prosecution.

In March 2009, I took a temporary assignment in Washington DC to serve on the Guantanamo Review Task Force. The task force was charged with reviewing the then-241 detainees still held at the detention facility in Guantanamo Bay, Cuba. My role, along with about a dozen other federal prosecutors from around the country, was to assess which Guantanamo detainees could be feasibly prosecuted in an Article III court.

In June 2009, Ahmed Khalfan Ghailani became the first—and, to date, only—Guantanamo detainee to be transferred from Guantanamo Bay for prosecution in federal court. I returned to SDNY to prosecute the Ghailani case. Ghailani was charged for his role in al Qaeda’s August 1998 attacks against the U.S. Embassies in Kenya and Tanzania that killed 224 people and injured thousands more. After his 2004 capture in Pakistan, Ghailani was held in a CIA black site—during which time he was subject to so-called “enhanced interrogation techniques”—before being transferred to Guantanamo Bay in 2006. For more than a year, we prepared for trial; I spent months traveling across the world with our truly extraordinary FBI case agents, including to Guantanamo Bay, Mombasa and Nairobi, Kenya, and Dar es Salaam, Tanzania. I met with dozens of the victims and their families. We briefed and argued multiple dispositive and complex pre-trial motions, including ones based on alleged violations of the speedy trial clause and of outrageous government conduct. After a five-week trial, the jury convicted Ghailani of one count (which carried a life sentence) but acquitted him of 284. Nevertheless, I cannot imagine that I will ever prosecute another case in which I will be prouder to have played a role.

In May of 2012, I accepted another long-term assignment, as Special Counsel to FBI Director Robert Mueller, and served for about a year-and-a-half as his advisor on a wide variety of national security
matters. After Director Mueller left, I served briefly as special counsel to Director James Comey, before returning to SDNY. Serving as the Directors’ Special Counsel was just as interesting as it sounds. And it was a personal honor to serve Directors Mueller and Comey.

Upon my return to SDNY, I was fortunate to help conduct two lengthy trials, in 2014 and 2015, of senior al Qaeda leaders: first as part of the team prosecuting Sulaiman Abu Ghaith, who was charged with a variety of crimes relating to his activities, in 2001 and 2002, as a senior leader of al Qaeda; and more recently, as part of the team prosecuting three defendants charged in connection with the 1998 Embassy Bombings: Adel Abdel Bary, Anas al-Libi, and Khalid al-Fawwaz. Each case was an extraordinary opportunity to work closely with some truly outstanding prosecutors and amazing investigators.

I feel privileged to work at the U.S. Attorney’s Office. The work has been extraordinary. In addition to working on fascinating cases, I’ve had the opportunity to develop real litigation, trial and appellate skills, and to hone those skills by working with some truly extraordinary investigators and lawyers—and great people.

2015

DISTRICT OF OREGON

Hannah Horsley ’92

I have been an Assistant United States Attorney since 1997. I have practiced in three different districts, and have worked in many different areas of criminal law. I am currently an AUSA in Portland, Oregon and have been here since 2005. I was an AUSA in the San Francisco office of the Northern District of California from 2001-2005, and in the Seattle and Tacoma offices of the Western District of Washington from 1997-2001. Each of the moves has required a new application, rather than a simple transfer, but one has an advantage as an experienced AUSA with a current FBI background clearance. I have also worked with attorneys from several different litigating sections at Main Justice, so have some limited information about some of the sections in the Criminal Division at DOJ as well.

My practice as an AUSA has primarily involved criminal prosecution as a trial attorney. I have handled cases ranging from civil rights, human trafficking, organized crime, public corruption, tax defiance/sovereign citizens, drug trafficking, and a full array of fraud and violent crimes. I have loved the substantive variety, and the ability to shift around from time to time in order to try something new and expand the scope and nature of my professional experience. I also spent three years as an Appellate Chief, where I focused almost exclusively on appellate work in the Ninth Circuit. This involved an extensive amount of brief writing and oral argument, but also a lot of editing and training of other AUSAs whose appellate work I supervised.

In each of the different areas I have practiced in, I have also appreciated the remarkable variety of legal work I engage in on a regular basis. Because AUSAs typically handle several cases at a time—and handle their own cases from the investigative stage throughout the appeal and post-conviction habeas process—there are a variety of tasks that I am handling at any given time. I work closely with investigative agents from the FBI, IRS, ICE and other federal agencies and local police departments to provide strategic advice and obtain court approval for any investigative techniques that require it (e.g. wiretaps, search warrants). Once a case is ready to be charged, I handle all phases of the prosecution and appear in grand jury, district court, and the court of appeals (in cases that go to the Supreme Court, the government is represented by the Solicitor General’s office). Any given day, I could be meeting with agents about an investigative plan in one case, appearing in a motions hearing in another, and working on the appellate brief in a third case.
For people who want trial and other complex litigation experience, a U.S. Attorney’s Office does offer unique opportunities. Because the government has initiated the case as plaintiff and has the only burden of proof in a criminal case, we typically determine the pace and scope of the trial and put on the vast majority of evidence that is presented. In my experience, defense attorneys get the benefit of learning how to cross-examine witnesses (among many other things), but they do not develop the same experience of learning what it takes to build and manage a complex case from its inception, or to put a case together for trial so it is presented to the jury in a coherent and compelling manner. The prosecution typically questions more witnesses and presents more exhibits at trial, and is also usually responsible for anticipating and briefing issues that need to be brought to the court’s attention for rulings or otherwise. All of this is challenging and satisfying in its own right, but is also of great value as a litigator even if one is not a trial lawyer later in one’s career. I have never worked in a DA’s office, but believe it offers much of the same experience. There are fewer trials in federal court than one would get in a DA’s office, but they can be longer and more complex. And there is typically more substantial pretrial litigation and appellate work in a USAO.

In addition to the litigation experience, there are several other good things about this job. I am still very proud to stand up in court and say I am appearing “on behalf of the United States.” I also feel lucky to work in a law office that is very collegial and supportive, and with colleagues I have the utmost respect for. For a period of time I worked part-time so I could spend the afternoons with my children when I was not in trial or otherwise had to be in court. This was not easy as a trial lawyer, but it was great to have the flexibility to do it and I think several USAOs and litigating sections at DOJ allow some flexible scheduling options.

I never thought I would be a career AUSA, but I have loved this job and would highly recommend it. I’d be happy to talk to any current or former students about what the job involves and how to increase their chances for getting hired. Prior prosecutorial experience can be very helpful, but is not essential. After graduating from law school in 1992, I clerked for a year on the Tenth Circuit, practiced at Covington and Burling, and worked at the United States Sentencing Commission before joining the U.S. Attorney’s Office.

2015

NORTHERN DISTRICT OF TEXAS

Jay Weimer ’99

I am an Assistant United States Attorney in the Northern District of Texas. Although I handle mostly white-collar cases, I have prosecuted virtually every category of federal crime during my nine years with the Department of Justice.

One of the great things about this job is that what we do is interesting to non-lawyers. I began my career working at a big law firm. And while some of my work (though certainly not all) may have been interesting to other lawyers, few non-lawyers cared to hear stories about my latest discovery dispute. Now when I travel and meet people outside the legal profession, I can talk about my job and not see eyes glazing over as I speak. Curiosity about crime and criminals keeps TV shows like Law & Order and CSI at the top of the Nielson ratings. And while my day-to-day isn’t always “ripped from the headlines,” many of my cases are interesting enough to receive media attention.

Another great part of this job is that it is intellectually challenging. We have a dedicated appellate section in our district but many trial AUSAs volunteer to handle appeals. During my time in this district I have argued as many appeals in front of the Fifth Circuit as I have tried cases to a jury. And many of our appeals involve cutting-edge constitutional issues, some surprising. As one would expect, we regularly handle Fourth, Fifth, and Sixth Amendment claims. But we also handle issues involving religious liberty,
citizenship, voting rights, the right to bear arms, and the freedom of expression. In fact, if you enjoyed courses like Akhil Amar’s Bill of Rights, I can think of no better place to work on the issues you discussed in class than in the appellate section of a U.S. Attorney’s Office.

But perhaps the best part of working in a U.S. Attorney’s Office is the environment. In a big law firm, lawyers are constantly mindful of the clock. The need to bill hours cuts short casual conversations and inhibits collaboration across sections. If you can’t bill for it, you can’t afford to spend time on it. Here, however, we have no billable hours. We watch each other’s trials, gather informally to discuss interesting cases, and talk sports and politics. I may be putting too much blame on the billable hour—the selection bias produced by a job that requires lawyers to spend so much time standing up in court may result in a high percentage of extroverted personalities—but U.S. Attorney’s Offices are much friendlier places than big law firms.

There are a few downsides to this work. The pay is low relative to the private sector. The federal bureaucracy can be stifling at times. And, particularly if you are coming from the private sector, you may be surprised by the number of incompetent employees that remain employed despite their incompetence (see last sentence). Nevertheless, the job satisfaction rate for AUSAs is stellar. I’ve heard dozens of federal prosecutors call this “the best job you can have with a law degree.” I haven’t had a broad enough experience in legal professions to be able to verify that statement and I am sure other legal jobs make the same claim. But if this isn’t the best job you can have with a law degree, it’s certainly on the short list.

B. Summer Interns

1. District Attorney

NEW YORK COUNTY DISTRICT ATTORNEY’S OFFICE
Medha Devanagondi ’08

My summer at the Manhattan District Attorney’s Office was very rewarding and a lot of fun. I applied for the job through the Spring Interview Program, and joined a class of 50 interns. There were no typical days for me at the office, and this made the job interesting throughout the entire 10 weeks. The environment at the office was very laid back, even though all of the attorneys I worked with were strongly committed to their work. I worked about 40 hours each week, until 5:00 p.m., and most attorneys did the same. Of course, they would stay as late as necessary when they were on trial, and I also had a couple of late nights when I was second-seating a trial. Overall, I was pleasantly surprised to be on my feet for much of the day, in and out of court continuously, and taking “field trips” to get a more well-rounded view of the criminal justice system.

The summer program is very well run. There is a half-day orientation before the interns are sent to work. Interns are responsible for obtaining assignments from one of their 8 assigned attorneys. Assignments were usually legal research memos or parole letters. I did legal research on issues involving internet identity theft, investigation of a defense attorney for fraud, attorney-client privilege issues, sexual assault, domestic violence, prostitution, and homicide. Every intern also gets to second-seat a trial, which is an invaluable experience because you participate in witness preparation, jury selection, evidence gathering/organization, last-minute legal research, and trial strategy.

In addition to the trial, interns are welcome to observe sentencing hearings and summations, and are alerted to particularly interesting cases. At the end of the summer, 2L interns conduct a mock suppression hearing and are given feedback about their performance. Some of the other activities included standing on arraignment, working in the Complaint Room, accompanying the NYPD on a 6-hour ride-along.
attending brown-bag lunches on specific topics in criminal justice, touring the lower Manhattan jail, and visiting the police officers’ training school.

Working at the DA’s office is a great learning experience whether or not you think you will ultimately end up working in criminal justice. During my summer, I felt as if I was doing important work and that I got a real idea of what working as an ADA would entail. I cannot speak more highly about the quality and passion of the attorneys at the DA’s office. That summer provided me with greater insight into the challenges of the criminal justice field and also helped me to figure out the characteristics of the type of lawyer I would like to be.

*Summer 2006*

### 2. U.S. Attorney

**DISTRICT OF ARIZONA**

*Dylan Keenan ’13*

The summer after my 1L year I worked as an intern at the U.S. Attorney’s Office for the District of Arizona. I did not have any connection to Arizona. I knew I wanted to work for the government during my first summer, and a U.S. Attorney’s Office sounded like a good option. The reviews were universally positive and the legal work sounded interesting and rewarding. I was not disappointed.

I applied to Arizona among many other offices. They mostly followed the same hiring process. I heard back from an Assistant U.S. Attorney or secretary who asked to set up a phone interview. For some offices in the Northeast I was asked to come and interview in person. The remaining offices conducted interviews by phone. The interviews were rarely challenging. In one case (not Arizona) I got hypothetical questions (drawn from real life examples), but most offices simply asked about my resume and why I wanted to work at a U.S. Attorney’s Office. Keep in mind that different offices have very different timelines and different levels of competitiveness. Some offices finish interviewing prospective interns in January, while others begin in March. Don’t assume that because you don’t hear quickly, you won’t get an interview or an offer. The internship competition is not as bloodthirsty as FIP, but there is competition and you don’t get an offer from every office just because you go to Yale.

There was no typical day at the U.S. Attorney’s Office. I got to observe several trials, even sitting at counsel’s table during one. I also watched sentencing proceedings, arraignments, plea allocutions and plea negotiations (which are fascinating). The assignments were equally varied. Every intern in the office got to work on an appellate brief. Many of my assignments were motions. I also drafted an indictment as well as several intra-office memoranda. I researched *Daubert/expert testimony* issues, civil asset forfeiture, criminal procedure issues both trial and pre-trial, and venue for tax cases, to name only a few issues. An assignment about the Confrontation Clause provided the seed for my SAW, which I ultimately published as a Note in *YLJ*.

Arizona is distinct from most other U.S. Attorney’s Offices in several ways. First, it is larger than the average district. Every state has at least one district, but there is no rhyme or reason beyond that. Arizona has one district covering the entire state while Oklahoma has three. Second, Arizona has a very large Native American population. Consequently, U.S. attorneys prosecute a large number of crimes traditionally handled at the state level—for example, murder, rape and domestic violence. Arizona does not hear the most sophisticated white-collar crimes or terrorism prosecutions (although they have a lot of white-collar crime, many in the form of mortgage fraud cases). But the legal work was diverse and interesting.
Even with the challenging legal work, U.S. Attorneys in Arizona have excellent work/life balance. I stayed past 8pm exactly once—on the first day of a trial, to research a Batson challenge that came up during jury selection. Otherwise, I left most days by 5pm and the AUSAs usually left at around the same time.

One final point is that you don’t need an interest in criminal prosecution, or even criminal law, to have a positive experience. Most of the other interns did not intend to pursue careers as prosecutors. Many of the AUSAs had experience in civil practice prior to becoming prosecutors and they were happy to provide all varieties of career advice. I would highly recommend the U.S. Attorney’s Office to anyone who wants to see the judicial system from the inside while researching and writing about exciting legal issues.

Summer 2011

NORTHERN DISTRICT OF CALIFORNIA (SAN JOSÉ)
Joseph Kanada ’07

For anyone interested in working as an Assistant United States Attorney, a summer internship with a U.S. Attorney’s Office will provide valuable insight into the nature of the work and inside information regarding hiring procedures and standards. I worked with the Criminal Division in San Jose. This particular office has three distinct benefits. First, as a branch office it is smaller which provides for a lighter caseload and more interaction with the AUSAs. Second, because of its central location in the Silicon Valley, the office handles unique casework related to technology and has a Computer Hacking and Intellectual Property (CHIP) division. And third, perhaps because of its location or size, the office has a relaxed atmosphere.

As summer clerks, we were responsible for our own cases. Misdemeanors and felonies which the office chooses to prosecute as misdemeanors are assigned to law clerks who handle every aspect of the case. Clerks determine whether or not to bring charges, deal with defense counsel, and appear in court for arraignments, status hearings, plea agreements, and sentencing. The most common cases assigned to law clerks in the San Jose office are postal theft, driving under the influence on federal property, and bank embezzlement. The clerks are also responsible for the petty offense calendar. This calendar occurs once a month and involves low-level traffic crimes that occur on federal property. The law clerks, in cooperation with Federal Public Defender law clerks, negotiate with the defendant in an effort to arrive at an amicable settlement.

In comparison to the San Francisco law clerks, the San Jose law clerks have fewer cases and more work related to legal research. Although we had fewer court appearances because of this, it allowed us to work on the larger felony cases and gave more exposure to USA responsibilities. The research I worked on involved the Sentencing Guidelines, RICO, child pornography, international search warrants, and death threats to federal officials. I also had the opportunity to write a Memo in Opposition to a Motion to Dismiss, which was ultimately filed in a copyright violation case.

And finally, this office provided numerous opportunities for “field trips.” We watched our supervisor argue in front of the Ninth Circuit, participated in a police ride-along, had a potluck with several District judges, had a tour of Alcatraz, and watched trials in both state and federal court. Watching the trials was particularly insightful for those interns considering working both as a District Attorney and as an USA.

Because of these educational opportunities both in and out of the office, I would highly recommend working at the San Jose office.

Summer 2005
DISTRICT OF COLUMBIA
Marisa West '13

My application process was an unconventional one that I caution students who actually want to work during their 1L summer to avoid. In the chaos of finishing my first semester, taking exams, and beginning a new semester, I ignored the “Apply For a Job” bullet point on my to-do list. Per CDO’s advice, I signed up for the NYU Public Interest Job Fair as a backup plan months in advance, but between the time that I signed up for the fair that I hoped I would not need to attend and the weekend of the fair, I had only applied to one job. Much to my surprise, the Friday before the job fair I received a “Congratulations” email from the DC U.S. Attorney’s Office. It turns out that the résumé that I had uploaded to the NYU Job Fair website to register was selected by the DC USAO internship coordinator and a job landed in my lap.

I could not have been luckier. My summer at the DC USAO was incredible. The unique thing about this particular USAO is it handles both local and federal crime, making it the largest and most diverse USAO in the country. After 10 short weeks I was able to sit second chair in a criminal trial, aid an Assistant U.S. Attorney at counsel’s table in a federal criminal hearing, gather critical evidence with FBI agents to indict a co-conspirator, and write a brief that ultimately decided the course of all subsequent issues related to a particular aspect of DC criminal trials. As an intern in the Sex Offense and Domestic Violence section, I worked on both federal and local trials. I participated in the trial process from intake (police officers arriving in the morning with the list of arrests from the previous evening), to witness interviews, to trial, to sentencing. In an office where there is always too much to do and never enough resources, the interns worked alongside Assistant U.S. Attorneys to research legal issues and prepare for trial. We were encouraged to go to court as much as possible and frequently went to watch some of the best prosecutors in the country in action. I was in DC Superior (local) or DC District Court (federal) every day and learned so much just from observing.

Although there are over 100 interns working in the DC USAO, the sections were mostly separate and I spent a majority of my time with the seven interns in my section. We had a wonderful time together and greatly enjoyed our office, but I did hear that some interns in other sections were not as happy. My impression is the interns who reached out to attorneys, fostered relationships, and asked for meaningful work were rewarded; those who were less active may have been disappointed. I highly suggest that if you work in this office, you take initiative and seek out opportunities to work on interesting cases and go to court as much as possible.

One thing many of the interns and I wish we had done was taken Criminal Procedure before the summer. All of us had taken Criminal Law our second semester of 1L year which was extremely helpful, but we would have been saved a lot of time working on projects if we had a better understanding of the procedure. Taking Criminal Law and Criminal Procedure together may be a tough endeavor, so I am not convinced that is a viable solution.

Interning at the DC USAO is a wonderful experience that I highly recommend. If you have an interest in criminal trials, this is the place to be for the summer.
Summer 2011

DISTRICT OF CONNECTICUT (NEW HAVEN)
Lisa Wang '17

I spent the summer after my 1L year working as a law intern at the U.S. Attorney’s Office for the District of Connecticut in New Haven. I knew I wanted to stay in New Haven for the summer, and that I wanted
to work for the federal government, having never done so before. The reviews from past YLS interns were overwhelmingly positive, and the experience certainly did not disappoint.

I applied to the office and some other local options in December. Since it was still early on in the cycle, I called to request an interview since I hadn’t heard back yet. They had me come in right away and I interviewed with the paralegal and attorney who would be supervising the summer interns. The interviews were not challenging and were focused on having you understand the position and getting a sense of your personality and work ethic. I heard back with an offer after about two weeks and began the security screening process in March. Make sure to complete the security screening diligently and as quickly as possible, as several interns were not cleared until a few weeks into their internships.

After a half-day orientation, I began work right away. The office does not match interns to attorneys, allowing students the chance to experience criminal work on a variety of topics (insurance fraud, mortgage fraud, national security, human trafficking, immigration, etc.) as well as civil work (civil defense and affirmative litigation). Attorneys are great about giving substantive legal work. I have written appellate brief arguments, drafted responses to memos, rebutted habeas petitions, and performed targeted legal research. There’s also plenty of opportunities to observe arraignments, plea hearings, trials, and sentencings at the District Court next door. Each intern is also afforded the opportunity to make an appearance; I did a guilty plea and others second-seated at trials or represented the government during arraignments.

The office has a friendly and open-door but hardworking atmosphere. As opposed to US Attorney’s Offices in New York, the prosecutors tend to be older, career prosecutors who are family-oriented. Most prosecutors follow a 9-5 schedule and are happy to give interns career or life advice. The intern program is also quite robust; we had the opportunity to watch Second Circuit arguments, tour a federal prison, meet the Attorney-General and U.S. Attorney for Connecticut, have lunches with judges, watch an FBI bomb demonstration, and go on social outings such as happy hours and baseball games.

I strongly recommend this position to any YLS student looking for a great substantive experience. You don’t have to be interested in litigation or government work to enjoy it; the exposure to criminal law is invaluable to any legal career. You also shouldn’t refrain from applying if you are interested in defense work. Many prosecutors have moved in and out of defense work, and the office culture is very conscientious of the duty to do justice and deal with the defendant fairly, and there are so many community policing programs and compassionate prosecutors that have completely shaped how I have understood the profession. I am very grateful for the opportunity to work at the USAO Connecticut this summer and strongly recommend it.

Summer 2015

DISTRICT OF CONNECTICUT (NEW HAVEN)
Anonymous

I worked as a summer intern in the New Haven U.S. Attorney’s office after my 1L year at YLS, and could not have been happier with my experience. In fact, the great experience I had at that office made me reconsider what I wanted out of a career in the law. I would especially recommend interning at a U.S. Attorney’s Office if you have not had any experience with litigation before (for example, you weren’t a paralegal, or your parents are not lawyers) because it will give you an excellent perspective into that side of law. For me, it convinced me that litigation was the most exciting part of law and it’s made the rest of law school much happier for me as I’ve been able to choose courses and clinics that fit this newfound interest.
My internship was ten weeks long, although I voluntarily stayed on for an extra few weeks to help with a trial. At first, assignments were coordinated through our supervising attorney. The research assignments were very specific legal research questions. Sometimes the assigning AUSA would request a memo, but more often they would prefer to simply have the cases printed out and a verbal report from me as to the results of my research. It turns out this was a very good skill to have honed in this internship, because I have had to do the same thing at my firm this summer and having that experience has helped tremendously. Our experience extended beyond the office as well. We took multiple field trips (including to an FBI bomb training explosion demonstration, the FBI, Danbury Correctional Institution) and had presentations from the District of Connecticut, U.S. Marshals’ office, the United States Probation Office, and the Court Clerk. We also met the district and magistrate judges in the District and took a trip to see two AUSAs argue in front of the Second Circuit.

I’ll admit that I knew nothing about criminal law or criminal procedure before I began my internship, so there was a bit of a learning curve. However, I quickly learned whatever law I needed to as I went, and my WestLaw skills improved greatly. Because the office conducted a number of trials that summer, I often was asked to research a last-minute question that had come up in the trial proceedings. For example, I had to research the law on opening statements two days before trial began when the judge created a new rule for opening statements—nothing like crunch time! Other assignments had more flexible time frames, like working on an ineffective assistance of counsel claim, or working with the court to correct a mistaken sentence. I also had the opportunity to draft a Second Circuit brief in a response to an appeal. I worked with many different attorneys, which was also good exposure to the diversity of lawyering and mentoring styles that I’ve experienced at my firm this summer. At the New Haven USAO, interns do not have to choose between criminal and civil divisions—while I chose to only take one civil assignment, my fellow interns took on more civil assignments and participated in a number of interesting and substantive assignments, including depositions and civil rights investigations.

Because the office had so many trials, I was able to observe many of the attorneys in action over the course of the ten weeks. Being able to spend so much time in court, just watching different prosecutors and defense counsel, was a chance that most law students won’t get (unless they clerk for a district court). I learned a lot from watching the AUSAs about how to communicate with opposing counsel as well as argue in court. The office is committed to having every summer intern appear in court at least once during the summer. I had the opportunity to appear twice—one for a presentment, and once in trial.

Far and away, the best experience I had that summer was participating as a second chair in a trial. Granted, it was a one-day trial on a very simple matter, but I have not been able to get over the exhilaration of that experience. It’s very rare for an intern to participate in trial and I committed to staying on part-time for three or four weeks after my internship ended. As a result, I was able to prepare witnesses, participate in a suppression hearing, visit the DNA laboratory, write motions and briefs for the trial, and perform a direct examination on both a fact witness and an expert witness. Standing up in court to represent the United States was one of the best experiences of my life, and I have never been more nervous than waiting for the verdict (even when opposing counsel objected to my direct examination closing question). The attorneys I worked with were amazing mentors who prepared me to be successful and were generous with their time and support. That was true for almost every attorney I met at the USAO—they all loved their jobs, wanted to share what they did with others, and were committed to doing the right thing, in a just and fair manner. It was a truly collegial environment where doors were open and attorneys conferred on case strategy or how to approach this issue in front of that judge. It made me excited to be a lawyer.

What I did at the USAO my 1L summer changed the way I thought about many aspects of the law, large and small—from the federal criminal justice system in the United States to how I want to spend my days as a lawyer. I learned a surprising amount about myself and found interests I did not know I had, like
being a trial attorney. The level of substantive work I did at the USAO gave me plenty to talk about in FIP interviews, and gave me some ideas of what practice areas of a large law firm I wanted to experience my 2L summer. I would especially recommend this experience to anyone who is interested in a ground-level look at litigation, whether civil or criminal, and encourage you to consider interning in a USAO wherever you’d like to spend a summer.

Summer 2014

DISTRICT OF CONNECTICUT (NEW HAVEN)

Michelle Morin ’08

Working at the U.S. Attorney’s Office over the summer is a great opportunity to see what being a federal prosecutor is like. It’s different from the typical law firm experience in several ways. No perks or frills are included when you work for the government. The attorneys may take you out to lunch once or twice, but chances are that it’s on their own dimes if they do. You won’t have a secretary or support staff, and there won’t be an “assignments chair” or other such person looking over your shoulder to make sure you have the right quantity and quality of projects to do over the summer (though the summer program coordinator does get things started for you). You may not even have your own computer. All that means is that you’ll have to be a self-starter—introduce yourself to the attorneys, ask what they’re working on, and ask what you can get involved in. You’ll get plenty of work if you do, because there’s plenty to go around.

Trials are more frequent in a USAO than in a firm, and in New Haven you’ll have the opportunity to observe trials in the various courthouses, starting with the one next door. You’ll probably be involved in legal research and in other methods of assisting the attorneys prepare for trials, and there’s a good chance you’ll be assigned to write an immigration brief if you’re in New Haven. The office is small enough that you don’t necessarily get assigned to work only in civil or only in criminal, which I enjoyed. Many interns enjoy the opportunity to appear in court to do a guilty plea or other simple appearance for the government. The office also sends the interns out to several educational events, such as talking with federal judges over lunch, or visiting a state courthouse and talking with state judges.

I really enjoyed working in the New Haven USAO, but I think there are things about working for the federal government that don’t rub everyone the right way. The salary (non-existent for summer inter “volunteers”) is one. Two, you may or may not enjoy that the prevailing practice is to work from 9 to 5 except in the very specific case where you have a trial coming up. I’ve heard that this is more characteristic of USAOs in locations outside the Southern District of New York or other big metropolitan offices, where the pace, the intensity, and the workload is more similar to that of the big law firms in those cities, but I have no personal experience in such an office.

The easiest way to get a summer job at the New Haven U.S. Attorney’s Office is to genuinely want to be there (both at that job and in that office), and to have previously demonstrated your sincere commitment to and desire to continue government service. One way to have done this is through pre-law-school government work; another is through the Prosecution Externship during the school year. I’d say this continues to apply if and when you seek a full-time job after law school. People who stay at law firms too long, and have no prior record of wanting to be at the USAO, may be perceived as “refugees” from BigLaw. The USAO wants people for whom it is a first choice, not a fallback.

Summer 2006

NORTHERN DISTRICT OF ILLINOIS (CHICAGO)

Alexander Berlin ’08

During the summer of 2006, I worked for the U.S. Attorney’s office in the Northern District of Illinois (NDIL). I heartily endorse the experience. The job will, of course, be of particular interest to those
interested in criminal law and criminal procedure, but frankly, the job should appeal to almost anyone. One of the best aspects of the job is that interns are not assigned to a particular division or a particular attorney; instead, interns do a wide range of work, both criminal and civil, and are encouraged to work with a number of different Assistant U.S. Attorneys. I researched and wrote memos on issues ranging from specifics of the Clean Air and Clean Water Acts to the appropriate procedures for obtaining financial records to various aspects of criminal procedure and substantive criminal law. I wrote numerous motions and an appellate brief. I was also able to assist with pre-trial and trial work. I talked with defense attorneys, strategized with prosecutors, assisted in proffers, helped prepare defendants for the grand jury and the witness stand, and sat in with Assistant U.S. Attorneys at every stage of the criminal trial process: from initial appearances to detention hearings to probable cause hearings to trials to sentencing hearings. Interns who have finished two years of law school can also play a more active role in the courtroom than I was able to, not only assisting the prosecutors but also questioning witnesses and gaining other trial experience. Likewise, interns who have finished two years of law school can act as full-fledged prosecutors at the monthly petty offense days.

The quality of life is also quite high. Interns are required to work 40 hours a week for twelve weeks, and given the assignment-based structure of the job, while some days one can expect to stay late, most days I was able to leave the office by 6 p.m. or so. Chicago is also a wonderful city in which to live and work. If you live outside the Loop, the rent is much cheaper than in East Coast cities like New York, Boston, and Washington, DC. Commuting is also pretty easy, as the “L” runs frequently, and most residential areas are in close proximity to at least one “L” stop. Chicago’s neighborhoods are fun and distinct. It’s beautiful, and there’s great food, theater, and museums. And, of course, there are two storied baseball franchises that play there during the summer months. With about 12 other interns, from a number of different law schools, and lots of friendly Assistant U.S. Attorneys, the social scene is great both inside and outside of the office.

The only note of caution is that obtaining the internship involves a few procedural hurdles. At least for the summer of 2006, applications were due very early for 1Ls (the first week of December), the requirements were somewhat daunting for a student in his or her first semester of law school (three letters of recommendation, preferably legal), and the responses came quite late (March), which can be a problem when other jobs want to know your plans in early February.

Once the hurdles are jumped, however, the job can’t be beat. The work is interesting, fun, and diverse. Interns are given a lot of responsibility, and the learning opportunities are endless. The people are smart, friendly, and eager to share their knowledge and experience with interns. I can’t recommend it highly enough.

Summer 2006

DISTRICT OF NEW JERSEY

Adam Yoffie ’11

Five rabbis and three mayors walk into a courthouse . . . No, this is not the start to a bad joke but rather a description of the Newark Federal Courthouse last July during my summer with the U.S. Attorney’s Office for the District of New Jersey. Although I did not have the pleasure of working on the top secret case that involved bribes in cereal boxes and the selling of kidneys, I did get to witness the office break one of the largest public corruption cases in state history.

I cannot say enough good things about my experience last summer when I had the opportunity to work on an appellate brief for the Third Circuit and on a separate response to a motion for severance in a high profile murder case involving a former Assistant United States Attorney. Working with experienced counsel committed to mentoring, I learned about the practice of law on behalf of the federal government
both inside and outside the courtroom. Although prosecution is not for everyone, I felt right at home and delighted in visiting the courtroom whenever I had the chance. Staying in touch with my appellate mentor, I even traveled to Philadelphia later in the fall to attend the oral arguments.

In addition to the structured work assignments, the summer program also included field trips to Fort Dix where we fired semiautomatic pistols and to the Newark Airport where we met with ICE officials. We met with local law enforcement officials and the head of the Newark branch of the U.S. Marshalls program. Yet the best part was actually the end-of-the-summer Mock Trial program when I finally had the opportunity to conduct my own direct and cross-examination.

Most importantly, my fellow group of interns provided support and amusement in our crowded “office”—and I not only benefited from the direct support of my supervising attorneys but also from the two AUSAs specifically in charge of running the summer internship program. For any law student interested in engaging in substantive work after his/her first year, I cannot recommend a better experience than a United States Attorney’s Office—especially the office in Newark, New Jersey.

Summer 2009

EASTERN DISTRICT OF NEW YORK
Samuel Adelsberg ’13

Spending my 1L summer at the U.S. Attorney’s Office was an unbelievable experience. I came in knowing little about prosecution and left with a whole new appreciation for our federal criminal justice system.

I had a strong preference for working on terrorism prosecutions and I expressed that during my interview. Luckily, I was placed in the division that focuses on terrorism and violent crimes. Perhaps even more fortuitous, however, was the fact that I was able to work on two separate terrorism trials during my summer—one a plot to blow up JFK airport while the other was a plot to blow up the NYC subway system.

My bosses were fantastic. They always kept me in the loop and gave me substantive litigation assignments. In fact, I was asked to author the major section of our brief in the subway plot case. This was a true highlight for me as the topic was cutting-edge and the fact pattern was fascinating. I was also able to get up in court and argue in a bail hearing which I believe only EDNY interns are able to do.

Apart from the direct work I was able to do on those cases, the internship program was also very well structured and informative. We had brown bag lunches with different DOJ divisions, defense lawyers and judges. We had day trips to courts, prisons and forensic labs. There was also a neat social element that made it very easy to make friends among the different interns.

All in all, I highly recommend spending a summer at the U.S. Attorney’s Office—especially in Brooklyn!

Summer 2012

EASTERN DISTRICT OF NEW YORK
Diana Kane ’11

If you are interested in exploring criminal prosecution or civil litigation, developing your legal writing, creating effective work product that benefits from the feedback of highly skilled attorneys, and gaining trial practice experience, then you should consider an internship in the U.S. Attorney’s Office for the Eastern District of New York (EDNY).
An extremely collegial and friendly working environment, the EDNY office is comprised of a Civil Section, a Criminal Section, and an Appeals Section. The Criminal Section has several prosecuting units: General Crimes, Narcotics, Civil Rights, Organized Crime, Violent Crimes & Terrorism, Business & Securities Fraud, Public Integrity, and Appeals. In the Criminal Section, an intern may request assignment to a specific unit and the Summer Intern Committee will try to accommodate it, based on availability. Each intern is assigned to a supervising Assistant U.S. Attorney, who works one-on-one with the intern on research, writing and investigatory projects from their active case load. I was invited to observe court appearances, meetings with FBI, DEA, ICE and other law enforcement agents, and to participate in defendant and witness proffers. I researched and wrote prosecution proposals, memoranda, motions, briefs, and sentencing recommendations. Interns are encouraged to supplement their primary assignments with additional assignments in other areas of interest. For instance, I was assigned to Violent Crimes & Terrorism (by request), but I had a chance to work on cases in Narcotics, Organized Crime, Business & Securities Fraud, and Appeals.

The office organizes a weekly brown bag lunch series that features informal presentations and Q&A sessions with the chiefs of each unit, as well as with specialists from support agencies such as the FBI, the Medical Examiner’s office, and judges from the District Court. The office also organizes two field trips. During my 1L summer we had an excellent, all-access tour of the Metropolitan Detention Center (the federal jail) and were hosted by Judge Reena Raggi (former U.S. Attorney for EDNY) at the Second Circuit Court of Appeals.

Because the District Court in Brooklyn permits law clerks to appear in court under the supervision of an AUSA, the office encourages summer interns to take as many opportunities as possible to represent the government. In the first week of my internship, I argued a sentencing before Judge Weinstein in a narcotics courier case. By the end of my internship, I had appeared in court five times (sentencing, detention hearing, two status conferences, and a Daubert hearing) and was second chair in an appeal before the Second Circuit. I was also very fortunate to be assigned to a high-profile securities fraud case. Participating in a trial from pre-trial motions and jury selection, through the presentation of evidence, to verdict was an exciting and invaluable experience. I learned more substantive law and procedure supporting the trial team than I have in two years of law school.

If you are interested in regulatory practice, prosecution or law enforcement (SEC, DOJ, FBI, CIA), then an internship in the Eastern District is an excellent opportunity to gain experience on national-level cases and make connections with government attorneys, federal prosecutors and law enforcement agents. If you are interested in pursuing litigation, the breadth of cases brought in the district affords valuable exposure to both major corporate litigation and white collar defense. Whatever your interest, during a summer at EDNY, you will make valuable connections beyond the prosecutor’s office. The attorneys I worked with who represented defendants and corporate witnesses turned out to be the partners and associates I interviewed with at FIP. While working at the Department of Justice in Washington, D.C. during my 2L summer, I benefited from the patronage of several EDNY AUSAs who were detailed there on national assignments. I can say without reservation that my summer in Brooklyn was the best work experience I have ever had, legal or otherwise.

Summer 2009

SOUTHERN DISTRICT OF NEW YORK
Kate Heinzelman ’09

Working at the U.S. Attorney’s Office was the perfect job after my first year of law school. The day I arrived, I met the Assistant U.S. Attorney (AUSA) with whom I would be working and was immediately whisked off to attend court. A few days later, we were in the midst of a trial. As soon as that ended, we had to catch up on the rest of the AUSA’s caseload.
Every day was exciting and the breadth of the experiences I was able to have over those few weeks was incredible. I attended many, if not all, of the meetings the AUSA attended, assisted on a full trial, observed at court regularly, drafted sections of briefs and completed preliminary evidence review. Although I worked in the international narcotics and trafficking unit, I had exposure to many of the other departments as well.

The office atmosphere was very collegial and, in addition to spending a lot of time with the AUSA for whom I was working, I had the opportunity to get to know many of his colleagues. The AUSAs are—not surprisingly—a highly impressive group. It was also great to be with the other legal interns. The office would frequently organize programs for the interns as a group. The AUSAs do a very good job of helping students become better writers and researchers. At the same time, they make sure that all of the assignments are substantive and interesting.

On the whole, working at the USAO was a fantastic experience and a great window through which to observe federal litigation.

Summer 2007

**EASTERN DISTRICT OF PENNSYLVANIA**

**Heather Coleman ’07**

I spent a wonderful summer after my 1L year working at the U.S. Attorney’s Office in the Eastern District of Pennsylvania (EDPA), located in Philadelphia, Pennsylvania. I will attempt to give a fairly comprehensive description of my experience below, but I would still be happy to talk to anyone interested in spending a summer at the EDPA USAO.

The EDPA USAO summer program typically begins in early June and runs for a mandatory ten weeks. Interns generally work from 9 to 5 and are assigned to work on criminal, civil, or organized crime (“strike force”) matters, although you can request to try more than one area during the summer. In all divisions, interns work on cases from the investigatory stage through trial and appeal. The program coordinators strive to give each intern at least one trial experience (including trial preparation) and one appellate brief assignment.

I spent all 10 weeks of my internship working on criminal matters. My assignments included numerous research memos, a habeas response, one trial, and two appellate briefs. In general, most of my summer was spent researching and writing. In between assignments, interns are encouraged to observe trials and appellate arguments at the federal courthouse directly across the street from the USAO. There are few restrictions—as long as you get your assignments done you are free to allocate your work time however you like. I spent at least half a day each week at the courthouse.

The EDPA USAO has a unique structure. AUSAs are assigned to the Criminal, Civil, or Strike Force Divisions, but there is minimal specialization beyond that level. This means that an AUSA might work on bankruptcy fraud litigation one month and a drug conspiracy case the next; the U.S. Attorney feels that this keeps lawyers refreshed and on their toes. The summer program takes a similar approach. Interns are not assigned to a particular attorney or area of criminal/civil law. This structure enables interns to gain exposure to numerous fields; however, it makes it more difficult to develop a strong relationship with any particular attorney. On the other hand, interns have the opportunity to view the varied approaches of different AUSAs, and the lawyers are always happy to discuss their work regardless of whether or not you are completing an assignment for them.

The “field trips” are one of the best parts of this internship; they take place about once every other week. During my internship, we spent time in city and state court as well as the Third Circuit, and the USAO
arranged for us to meet privately with judges in each. Furthermore, we visited a federal prison where we spoke with Bureau of Prison lawyers and participated in a full day training session at a federal firing range (where, among other things, we fired fully automatic machine guns.) In addition to the field trips, the office sponsors many in-office lunches and speeches.

I feel that the USAO summer program provided me with ample exposure to prosecutorial work while strengthening my research and writing skills. Above all else, my fellow interns and the office’s attorneys were the best part of my summer experience. The size and structure of the program fosters close relationships within the summer class, and I still keep in touch with some of the other interns. I would highly recommend this program!

Summer 2005

NORTHERN DISTRICT OF TEXAS
Joshua Johnson ’09

During the summer after my 1L year, I worked for twelve weeks at the U.S. Attorney’s Office for the Northern District of Texas in Dallas. At the beginning of my 1L job search, I knew that I wanted to work for the federal government or a public-interest organization, and I was also interested in criminal law. I am from the Dallas-Fort Worth metroplex, so I was interested in working in Texas, although I had not ruled out the possibility of interning in Washington, DC, or New York. Through Career Connections, I contacted Leigha Simonton, a YLS graduate who works on appellate matters at the U.S. Attorney’s Office in Dallas. Originally, I had not planned to apply to the U.S. Attorney’s Office in Dallas and had simply wanted to speak with Mrs. Simonton about legal job opportunities in the North Texas area. After hearing Mrs. Simonton talk about her work, however, I quickly accepted her offer to forward my resume to the AUSA in charge of summer hiring. I drove to the Dallas office for in-person interviews while I was home for winter break, and I received an offer shortly afterward.

During my summer at the USAO in Dallas, the office had less than ten interns. Unlike some larger USAOs, such as the USAO for the Southern District of New York, the Dallas office did not divide interns between the criminal and civil sections; instead, interns were free to work on both criminal and civil projects. Given my interest in criminal law, I chose to focus almost exclusively on criminal assignments, but civil projects were available for those who were interested.

Interns at the USAO in Dallas receive high-quality assignments and are entrusted with a substantial amount of responsibility. I wrote a couple of sentencing memorandums that were submitted to the court with little revision, and I also drafted a motion to dismiss an appeal that was granted by the Fifth Circuit. In addition, I drafted a trial brief and a motion for summary judgment in a civil forfeiture action, and I worked on a number of interesting research projects, mostly relating to sentencing, evidentiary, and procedural issues.

My favorite part of working at the USAO in Dallas was the ability to observe court proceedings firsthand. The USAO in Dallas is located in the federal courthouse downtown, and interns were regularly encouraged to attend trials, pretrial hearings, and sentencing proceedings. In fact, as the summer progressed, I would sometimes turn down offers to observe courtroom proceedings so that I could focus on the interesting work I had been assigned.

The highlight of my summer was being assigned to the trial teams in a counterfeiting case and a white-collar prosecution. In both cases, I assisted the attorneys with pretrial legal research and also had the opportunity to discuss the prosecution’s trial strategy. I then observed the trials and helped the attorneys with last-minute legal research issues. Once the trials ended, I waited with the attorneys as the jury deliberated and then watched the jury announce its verdict. Since criminal prosecutions move more
rapidly than civil cases, working at a USAO provides summer interns with a unique opportunity to work on and observe cases over the full course of the litigation life cycle. If you are interested in doing trial-level litigation, it is hard to think of a better place to work as a summer intern than a USAO.

The summer I worked at the USAO in Dallas, we had an incredible intern coordinator who dedicated an extraordinary amount of time and energy to ensuring that we had a memorable summer. Nearly every week, the interns went on a different “field trip.” We had the opportunity to tour the local FBI, DEA, and Secret Service buildings, along with the federal penitentiary in Seagoville and the state DA’s office in Dallas. We also received shooting lessons from ATF agents at a local firing range (although I had never shot a gun in my life, the ATF agents were incredibly patient with me, and it was great to have the opportunity to spend an afternoon with real federal agents).

I would highly recommend an internship with the USAO in Dallas. The AUSAs at the office are incredibly friendly, bright, and dedicated people. The office did not feel ideologically charged, and I found that the AUSAs held a range of political views. In fact, I was happy to see that many of the AUSAs were excited about the upcoming Democratic primary season and enjoyed discussing Democratic politics. Also, the work-week at the USAO in Dallas is hard to beat. I usually arrived at the office around 8:30 a.m. and left by 5:30 p.m. I never worked weekends and rarely worked past 6:00 p.m. When I did leave the office a little past 5:30 p.m., I noticed that many attorneys had already left for the day. Although the AUSAs in the Dallas office work hard and are extremely committed to their jobs, they also seem to enjoy a healthy work-life balance.

If you have any questions about the USAO in Dallas, please feel free to contact me. It is a great place to work, especially for anyone interested in trial-level litigation.

Summer 2007

EASTERN DISTRICT OF VIRGINIA
Joshua Bone ’13

I spent the summer of 2011 working at the United States Attorney’s Office for the Eastern District of Virginia. I decided to work in EDVA for a variety of reasons. First and foremost, I was attracted by their diverse docket. Not only do they handle a wide variety of national security cases, but they also handle many securities fraud cases because the SEC servers are located in EDVA and the Fourth Circuit has ruled that this gives EDVA venue over basically all cases involving securities registered with the SEC. Thus, the docket is very similar to the SDNY docket. Additionally, I knew that the intern class was reasonably small, at least compared to DC, SDNY, and EDNY, so I suspected I would be less likely to fall through the cracks and more likely to receive substantive work.

The job didn’t disappoint. The office was desperate for assistance—it handles a huge and complicated caseload, and I interned in the midst of a hiring freeze—and the Assistant U.S. Attorneys I worked with were all very grateful for the help. They also made a significant effort to incorporate summer interns into the day-to-day operations of the office. We felt like part of the team, at least for the matters on which we worked.

I came into the job with a particular interest in criminal law, which likely made the assignments more enjoyable for me. That said, the types of issues I researched presented complex and interesting questions that would excite almost anyone: I examined everything from extraterritorial jurisdiction to the Federal Rules of Evidence. An internship at a U.S. Attorney’s office is probably valuable for most rising 2Ls, regardless of their long-term professional interests, mostly because the job provides a lot of opportunities for legal writing.
Another perk of the job in EDVA—and, from what I understand, in many other offices—is the proximity to the courthouse. If we had a slow afternoon, we could wander over to court and observe various types of hearings in criminal and civil matters. I learned as much from this sort of observation as I did from my own research. In law school, you learn the law through reading appellate opinions; if you have any interest in trial work, it might behoove you to seek out a job that will give you an opportunity to observe courtroom action first-hand.

In terms of quality of life, the job really can’t be beat. I was supposed to be in the office for 40 hours a week (9 to 5, Monday through Friday). While I occasionally had to stay late, I never had to bring work home, and I never worked on weekends. The attorneys I worked with were always respectful of my schedule and avoided loading me up with so much work that I became overwhelmed. Additionally, the intern coordinator arranged approximately one field trip a week for us. Among other things, we received a private tour of the CIA headquarters and got tickets to observe the Supreme Court announce opinions.

A final note about the application process: while these jobs are competitive, you have a good chance of getting one if you apply as early as possible after December 1. At least in EDVA, it also helps to have a Virginia connection of some sort (it doesn’t have to be that strong; my connection was that I lived in Arlington for a while between college and law school). Offices like EDVA have smaller intern classes, so they tend to be a bit more selective.

Summer 2011

3. U.S. Department of Justice

US DOJ, Criminal Division, Office of Enforcement Operations
Gregory Kimak ’17

My summer experience at OEO was very rewarding and I recommend it to anybody interested in complex criminal issues at the federal level. The office supports U.S. Attorney’s offices throughout the country by providing approval and advice on a variety of specialized tools and programs including: wiretaps, witness security, and subpoenas of attorneys, journalists, and public officials. The small number of interns (~5) generally work on research assignments related to these topics through short memos and similar products. The program is relaxed and flexible, the people are nice and supportive, and D.C. is a great city to spend a summer in. If you’re interested in criminal law, an internship at OEO will expose you to programs and problems that you probably can’t find through a class or externship at Yale.

The summer program is well run. My supervisor made sure that we always had something to do and was being exposed to all aspects of the section. Additionally, we were each assigned a mentor within the office that also provided general feedback and career advice throughout the summer. The office organized a special tour of the FBI for us, and each of us went on a ride-along with the DC police. The Criminal Division at DOJ organized weekly lunches for all the interns from each section of the Division. Highlights included a presentation on social media tracking by the Computer Crimes Section, as well as war stories from a member of the Organized Crimes section about prosecuting gang members in Maryland.

The relatively few downsides of the program had more to do with the DOJ bureaucracy than the OEO internship itself. Interns are prohibited from assisting with active wiretap applications or anything involving grand-jury testimony. We ended up working on more of the policy aspects of different programs rather than specific cases that were flowing through the office. Also, the office has a generally high workload so interns need to be proactive in seeking out specific career advice from the attorneys in the office.
Overall, I would recommend a summer at OEO. I feel that the experience I received working at the criminal division cannot be replicated by a summer in a U.S. Attorney’s Office. I feel that I now have some unique experiences and knowledge that will translate to new opportunities for next summer and after graduation. Like other individuals have said, this internship provided me with greater insight into the lawyer that I want to be.

*Summer 2015*
Disclaimer
This is a report of the staff of the U.S. Securities and Exchange Commission. The Commission has expressed no view regarding the analysis, findings, or conclusions contained herein.
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INTRODUCTION

The U.S. Securities and Exchange Commission’s (SEC, Commission, or agency) Office of Minority and Women Inclusion (OMWI) is pleased to submit its Annual Report to Congress pursuant to Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act). The report summarizes the actions the SEC and OMWI have taken to promote diversity and inclusion in the agency’s workforce, increase opportunities for minority-owned and women-owned businesses to contract with the agency, and implement other statutory requirements. Unless otherwise noted, this report covers the period October 1, 2017, to September 30, 2018.

The report is organized around OMWI’s responsibilities in four areas: Supplier Diversity, Workforce Diversity and Workplace Inclusion, Diversity Policies and Practices of SEC-Regulated Entities, and SEC Contractors’ Workforce Inclusion of Minorities and Women. The report highlights the progress the SEC has made towards attaining the goals and objectives of the Dodd-Frank Act, as well as areas of focus for the agency’s ongoing efforts to promote diversity and inclusion.

ORGANIZATIONAL OVERVIEW

U.S. Securities and Exchange Commission

The U.S. Securities and Exchange Commission is a bi-partisan Commission consisting of five Commissioners appointed by the President and confirmed by the Senate. The President designates one Commissioner to serve as Chairman. Jay Clayton is the current Chairman. The SEC’s mission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Accordingly, the SEC’s goals are to focus on the long-term interests of our Main Street investors; recognize significant developments and trends in our evolving capital markets and adjust our efforts to ensure we are effectively allocating our resources; and elevate the agency’s performance by enhancing our analytical capabilities and human capital development.

The SEC oversees more than 26,000 market participants, including investment advisers, mutual funds, exchange traded funds, broker-dealers, municipal advisors, transfer agents, national securities exchanges, and others. The agency’s functional responsibilities are carried out through five main divisions and 25 offices, each of which is headquartered in Washington, DC. The SEC also has 11 regional offices located throughout the country.

The Office of Minority and Women Inclusion

In accordance with Section 342 of the Dodd-Frank Act, the SEC established its Office of Minority and Women Inclusion in July 2011, and assigned the office responsibility for all matters related to diversity in the agency’s management, employment, and business activities. The OMWI Director is a senior officer reporting directly to the Chairman. OMWI’s staff also includes a deputy director, attorney advisers, a data analyst, and management and program analysts dedicated to the office’s major functional areas—workforce diversity and inclusion and supplier diversity.

OMWI is responsible for providing leadership and guidance for the SEC’s diversity and inclusion efforts. Section 342 of the Dodd-Frank Act requires the OMWI Director to develop standards for ensuring equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency; increasing participation of minority-owned and women-owned businesses in the SEC’s programs and contracts; and assessing the diversity policies and practices of entities regulated by the SEC. The OMWI Director is also required to advise the Commission on the impact of the SEC’s policies and regulations on minority-owned and women-owned businesses.

Further, Section 342 of the Dodd-Frank Act requires the OMWI Director to develop procurement procedures that include a written statement that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

As a result of this requirement, the OMWI Director is required to establish standards and procedures for determining whether agency contractors and subcontractors have failed to make good faith efforts to include minorities and women in their workforces.

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2 See Section 342(b)(2)(A)-(C).
3 See Section 342(b)(3).
4 See Section 342(c)(2).
5 See Section 342(c)(3)(A).
SUPPLIER DIVERSITY

The SEC continues to embrace its obligations under Section 342 of the Dodd-Frank Act to promote the increased utilization of minority-owned and women-owned businesses (MWOB) in the agency’s business activities. Establishing and maintaining a diverse supplier base maximizes the SEC’s ability to procure the best goods and services to meet its contracting needs. To implement the agency’s strategy for promoting supplier diversity, OMWI works closely with the Office of Acquisitions (OA), which is responsible for all contracting activities at the agency.

The SEC follows the Federal Acquisition Regulation (FAR), which includes provisions that require contracting officers to set aside certain requirements for competition solely among certain categories of small businesses. This authority allows the SEC to increase opportunities for MWOBs that are small businesses to compete for contracts through the Small Disadvantaged Business, 8(a) Certified, Women-Owned Small Business, and Economically Disadvantaged Women-Owned Small Business programs administered by Small Business Administration (SBA).

In FY 2018, the SEC continued to pursue supplier diversity initiatives for ensuring the utilization of MWOBs in the agency’s business activities. As discussed in more detail below, the five-year trend data show:

» The SEC paid MWOBs $124.4 million or 31.6 percent of the SEC total contract payments in FY 2018; an increase of nearly 5 percentage points since FY 2014.

» SEC contract awards to MWOBs were $143.8 million in FY 2018, a slight decrease from the $147.4 million awarded in FY 2014.

» The average dollar value of the SEC contract award to MWOBs increased from $1.1 million in FY 2014 to $1.3 million in FY 2018.

6 See FAR Subpart 19.5—Set—Asides for Small Businesses for more information.
Supplier Diversity Initiatives

OUTREACH AND TECHNICAL ASSISTANCE

While the SEC’s supplier diversity efforts extend to MWOBs of all sizes, many MWOBs are small businesses. In fact, 88.1 percent of MWOBs awarded SEC contracts in FY 2018 were small businesses under SBA size standards. As a result, OMWI and the Small Business Specialist in OA collaborate on outreach activities that are designed to increase MWOB and small business awareness of SEC requirements and participation in agency contracting. The SEC also provides potential contractors technical assistance on how to conduct business within the SEC procurement space.

OMWI and OA jointly host a monthly “Vendor Outreach Day” at SEC headquarters. This event provides MWOBs and small businesses with an individualized opportunity to learn about the SEC’s contracting needs and present their business capabilities to OMWI’s Supplier Diversity Officer, the SEC’s Small Business Specialist, and other key SEC personnel. In FY 2018, 64 businesses participated in Vendor Outreach Day.

In addition, OMWI participates in external business networking events and procurement matchmaking sessions to increase the interaction between MWOBs and the SEC. During FY 2018, OMWI engaged with hundreds of potential suppliers by participating in 11 national business conferences and procurement matchmaking sessions, including the 28th Annual Government Procurement Conference; CelebrAsian Procurement and Business Conference; National 8(a) Association Conference; and the Women’s Business Enterprise National Council Conference and Business Fair.

In FY 2018, the SEC worked with other Federal financial regulatory agencies and external business groups to identify additional opportunities for OMWI supplier diversity officers to participate as panelists at business conferences geared toward diverse suppliers. The goal of this effort is to educate larger audiences of MWOBs about our supplier diversity programs and specifics on how to do business with Federal agencies. In FY 2018, the SEC successfully collaborated with the U.S. Pan Asian Chamber of Commerce to secure the participation of a multi-OMWI panel at the organization’s CelebrAsian Procurement and Business Conference. Additionally, SEC staff served on three additional national business conference panels arranged by the Bureau for Consumer Financial Protection, Federal Reserve Board, and the Office of the Comptroller of the Currency.

OMWI JOINT PROCUREMENT TECHNICAL ASSISTANCE EVENT

In FY 2018, the OMWIs from all eight Federal financial regulatory agencies jointly hosted a technical assistance event for companies interested in building and growing their Federal contracting opportunities. The event was held on August 29, 2018 at the downtown campus of the University of Texas at San Antonio. The Supplier Diversity Working Group, comprised of the OMWI supplier diversity officers from the eight agencies, coordinated with the Minority Business Development Agency (MBDA) Business Center San Antonio and other stakeholders to execute the event.
The theme of the OMWI Joint Procurement Technical Assistance event was “Smart Contacts—Smart Contracts.” The “Smart Contacts” component afforded attendees the opportunity to meet supplier diversity and procurement representatives from the Federal financial regulatory agencies, whose combined annual spend is over $1 billion. Attendees also had access to networking opportunities with several business assistance organizations. The “Smart Contracts” component included interactive informational sessions on writing smart, winning proposals; and using competitive intelligence to collect data essential for making informed bidding decisions. The two sessions were led by practitioners with decades of federal contracting experience.

Overall attendance was 199, and the feedback received from event attendees was overwhelmingly positive.

**OTHER INITIATIVES TO PROMOTE SUPPLIER DIVERSITY**

OMWI maintains an electronic Supplier Diversity Business Management System (SDBMS) to collect up-to-date business information and capabilities statements from diverse suppliers interested in doing business with the agency. SDBMS is used to assist OA and SEC program offices with identifying MWOB suppliers for market research purposes, upon request.

In addition, OMWI uses the SDBMS to regularly disseminate information to MWOBs about SEC contracting opportunities, industry days, and supplier diversity outreach events. In FY 2018, OMWI launched a self-registry web portal that enables MWOBs to securely complete business profiles in the SDBMS. This new functionality has contributed to OMWI’s ongoing efforts to augment our repository of interested diverse suppliers.

In FY 2018, OMWI actively engaged with over 250 vendors registered in the system based on a fit relative to the company’s North American Industry Classification System (NAICS) categories, SEC current and forecast business needs, and conversations with the companies about their current capabilities and goals.

Another useful tool for MWOBs is the “Potential Competitive Contracting Opportunities Forecast” (Forecast) published by OA on the SEC.gov website. The Forecast lists competitive contracting opportunities that may occur during the fiscal year and provides project descriptions, estimated award amounts, and, in a few instances, the estimated start date for performance. The Forecast also indicates the SEC division with the potential contracting need and whether the government-wide acquisition contract or some other acquisition strategy will be used.

OMWI maintains a webpage for Supplier Diversity Outreach, dedicated email address, and telephone line for contracting inquiries and outreach.
Supplier Diversity Performance Metrics

SEC CONTRACTORS

Figure 1 depicts the total number of contractors the SEC paid and the number of MWOBs receiving contract payments from FY 2014 to FY 2018. In each fiscal year since FY 2014, nearly a quarter of firms receiving SEC contract payments have been classified as MWOBs. Of the 427 firms receiving contract payments in FY 2018, 109 or 25.5 percent were MWOBs. Non-minority women-owned businesses (i.e., women-owned firms without minority designations) represented 6.6 percent of the firms receiving SEC contract payments in FY 2018. The representation of non-minority women-owned businesses among firms receiving contract payments had been trending downward since FY 2014, but increased by nearly one percentage point from FY 2017 to FY 2018.

Figure 1. SEC Contractors Receiving Payments FY 2014–FY 2018

<table>
<thead>
<tr>
<th></th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEC Total</td>
<td>488</td>
<td>504</td>
<td>405</td>
<td>430</td>
<td>427</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>All Other Firms</td>
<td>367</td>
<td>381</td>
<td>294</td>
<td>323</td>
<td>318</td>
</tr>
<tr>
<td></td>
<td>75.2%</td>
<td>75.6%</td>
<td>72.6%</td>
<td>75.1%</td>
<td>74.5%</td>
</tr>
<tr>
<td>Total MWOBs</td>
<td>121</td>
<td>123</td>
<td>111</td>
<td>107</td>
<td>109</td>
</tr>
<tr>
<td></td>
<td>24.8%</td>
<td>24.4%</td>
<td>27.4%</td>
<td>24.9%</td>
<td>25.5%</td>
</tr>
<tr>
<td>Asian</td>
<td>36</td>
<td>39</td>
<td>44</td>
<td>26</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>7.4%</td>
<td>7.7%</td>
<td>10.9%</td>
<td>6.0%</td>
<td>7.3%</td>
</tr>
<tr>
<td>Black</td>
<td>24</td>
<td>28</td>
<td>27</td>
<td>29</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>4.9%</td>
<td>5.6%</td>
<td>6.7%</td>
<td>6.7%</td>
<td>5.9%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>9</td>
<td>14</td>
<td>9</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>1.8%</td>
<td>2.8%</td>
<td>2.2%</td>
<td>3.5%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Other Minority</td>
<td>7</td>
<td>9</td>
<td>6</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>1.4%</td>
<td>1.8%</td>
<td>1.5%</td>
<td>2.8%</td>
<td>2.6%</td>
</tr>
<tr>
<td>Non-minority Women</td>
<td>45</td>
<td>33</td>
<td>25</td>
<td>25</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>9.2%</td>
<td>6.5%</td>
<td>6.2%</td>
<td>5.8%</td>
<td>6.6%</td>
</tr>
</tbody>
</table>

Source: Federal Procurement Data System (FPDS) and Delphi retrieved on January 29, 2019. Firm count uses distinct count of Supplier Number. “Non-minority Women” include women-owned businesses without minority designations.

7 In the contract payment data, businesses that are both minority-and women-owned are counted in the minority group categories. For example, an Asian women-owned business would be counted only as an Asian-owned business.
CONTRACT PAYMENTS
The contract payments made in each fiscal year since FY 2014 and the amounts paid to MWOBs are shown in Figure 2. The SEC paid $393.5 million to contractors in FY 2018, of which $124.4 million or 31.6 percent was paid to MWOBs. The percentage of the SEC total contract payments to MWOBs (31.6 percent) declined 4.4 percentage points from FY 2017 to FY 2018, and was slightly lower than the average of the previous four fiscal years (31.9 percent), but remains significantly higher than FY 2014 (25.5 percent).

Contract payments to Hispanic American-owned businesses increased from 3.8 percent in FY 2017 to 4.0 percent of the SEC total contract payments in FY 2018. Contract payments to Asian American-owned businesses decreased from 18.5 percent in FY 2017 to 14.7 percent of the SEC total contract payments in FY 2018. Non-minority women-owned businesses and Black/African American-owned businesses also saw slight decreases in their percentages of the SEC total contract payments from FY 2017 to FY 2018 by 1.4 and 1.1 percentage points, respectively.

Figure 2. Contract Payments by MWOB Category FY 2014–FY 2018 (Amount in Millions)

<table>
<thead>
<tr>
<th>SEC Total</th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Other Firms</td>
<td>$336.3</td>
<td>100.0%</td>
<td>$362.9</td>
<td>100.0%</td>
<td>$380.9</td>
</tr>
<tr>
<td>Total MWOBs</td>
<td>$250.5</td>
<td>74.5%</td>
<td>$239.8</td>
<td>66.1%</td>
<td>$257.3</td>
</tr>
<tr>
<td>Asian</td>
<td>$123.2</td>
<td>33.9%</td>
<td>$123.6</td>
<td>32.4%</td>
<td>$133.7</td>
</tr>
<tr>
<td>Black</td>
<td>$14.3</td>
<td>4.3%</td>
<td>$18.9</td>
<td>5.2%</td>
<td>$16.2</td>
</tr>
<tr>
<td>Hispanic</td>
<td>$8.3</td>
<td>2.5%</td>
<td>$19.6</td>
<td>5.4%</td>
<td>$5.8</td>
</tr>
<tr>
<td>Other Minority</td>
<td>$6.1</td>
<td>1.8%</td>
<td>$4.3</td>
<td>1.2%</td>
<td>$8.0</td>
</tr>
<tr>
<td>Non-minority Women</td>
<td>$28.5</td>
<td>8.5%</td>
<td>$276.7</td>
<td>76.0%</td>
<td>$20.8</td>
</tr>
</tbody>
</table>

“Contract payments” are the actual funds the SEC paid out to contractors for goods and services provided. Performance of a contract may not occur within the same fiscal year the contract is awarded. Payments made during the fiscal year in many instances are for goods or services provided under contracts awarded in prior fiscal years. As a result, the dollar amounts for contract payments and contract awards in a given fiscal year are not comparable.
Figures 3 depicts the total number of MWOBs awarded SEC contracts in each fiscal year since FY 2014, and the percentage of MWOBs among firms awarded SEC contracts. The percentage of MWOBs among firms awarded SEC contracts increased slightly since FY 2014. In FY 2018, the SEC awarded contracts to 413 firms, of which 107 or 25.9 percent were classified as MWOBs. Women-owned businesses represented 13.1 percent of the firms awarded SEC contracts in FY 2018, and their percentage among firms awarded SEC contracts decreased slightly since FY 2014.

Figure 3. MWOBs with SEC Contract Awards FY 2014–FY 2018

<table>
<thead>
<tr>
<th></th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEC Total</td>
<td>515</td>
<td>549</td>
<td>484</td>
<td>438</td>
<td>413</td>
</tr>
<tr>
<td>Total MWOBs</td>
<td>130</td>
<td>145</td>
<td>126</td>
<td>115</td>
<td>107</td>
</tr>
<tr>
<td>WOBs</td>
<td>69</td>
<td>75</td>
<td>63</td>
<td>54</td>
<td>54</td>
</tr>
<tr>
<td>MW-OBs</td>
<td>30</td>
<td>35</td>
<td>35</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>MOB</td>
<td>91</td>
<td>105</td>
<td>98</td>
<td>83</td>
<td>78</td>
</tr>
<tr>
<td>Asian</td>
<td>41</td>
<td>45</td>
<td>42</td>
<td>33</td>
<td>31</td>
</tr>
<tr>
<td>Black</td>
<td>26</td>
<td>30</td>
<td>28</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>Hispanic</td>
<td>14</td>
<td>20</td>
<td>16</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Native American</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: FPDS retrieved on January 29, 2019. WOBs include all firms designated as women-owned irrespective of MOB designation. MOBs include all firms designated as minority-owned irrespective of WOB designation. MW-OBs include firms with both minority-owned and women-owned designations. “Other” category includes MOBs with more than one race designation and MOBs with an “other” designation.

“Contract awards” are the net amount of funds obligated for all contract actions, which includes new awards and modifications that the SEC entered into the Federal Data Procurement Systems (FPDS) during the fiscal year.
Figure 4 depicts the dollar value of contract awards to MWOBs in each fiscal year since FY 2014, and the percentage of SEC contract dollars awarded to MWOBs. Of the $451.0 million in SEC contract awards made in FY 2018, $143.8 million or 31.9 percent of SEC contract dollars were awarded to MWOBs. This represents a slight decrease of $1.3 million in awards since FY 2017; contract awards to MWOBs decreased 2.1 percentage points from FY 2017 to FY 2018.

Contract awards to minority-owned businesses represented 25.8 percent ($116.2 million) of the contract dollars awarded by the SEC, of which awards to women-owned businesses represented 13.6 percent ($61.3 million), and awards to minority women-owned businesses represented 7.5 percent ($33.8 million).

The $143.8 million awarded to MWOBs in FY 2018 represented a slight decrease of 2 percentage points, or $3.6 million less, than the amount awarded to MWOBs in FY 2014.

Figure 4. Contract Awards by MWOB Category FY 2014–FY 2018 (Amount in Millions)

<table>
<thead>
<tr>
<th></th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEC Total</td>
<td>$434.2</td>
<td>$456.9</td>
<td>$486.0</td>
<td>$418.9</td>
<td>$451.0</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Total MWOBs</td>
<td>$147.4</td>
<td>$155.6</td>
<td>$153.9</td>
<td>$142.5</td>
<td>$143.8</td>
</tr>
<tr>
<td></td>
<td>33.9%</td>
<td>34.1%</td>
<td>31.7%</td>
<td>34.0%</td>
<td>31.9%</td>
</tr>
<tr>
<td>WOBs</td>
<td>$66.0</td>
<td>$73.3</td>
<td>$75.6</td>
<td>$57.0</td>
<td>$61.3</td>
</tr>
<tr>
<td></td>
<td>15.2%</td>
<td>16.0%</td>
<td>15.6%</td>
<td>13.6%</td>
<td>13.6%</td>
</tr>
<tr>
<td>MW-OBs</td>
<td>$41.5</td>
<td>$49.0</td>
<td>$50.2</td>
<td>$34.7</td>
<td>$33.8</td>
</tr>
<tr>
<td></td>
<td>9.6%</td>
<td>10.7%</td>
<td>10.3%</td>
<td>8.3%</td>
<td>7.5%</td>
</tr>
<tr>
<td>MOBs</td>
<td>$122.9</td>
<td>$131.3</td>
<td>$128.5</td>
<td>$112.4</td>
<td>$116.2</td>
</tr>
<tr>
<td></td>
<td>28.3%</td>
<td>28.7%</td>
<td>26.4%</td>
<td>26.8%</td>
<td>25.8%</td>
</tr>
<tr>
<td>Asian</td>
<td>$84.5</td>
<td>$73.3</td>
<td>$71.1</td>
<td>$72.6</td>
<td>$65.1</td>
</tr>
<tr>
<td></td>
<td>19.5%</td>
<td>16.0%</td>
<td>14.6%</td>
<td>17.3%</td>
<td>14.4%</td>
</tr>
<tr>
<td>Black</td>
<td>$17.8</td>
<td>$30.4</td>
<td>$24.8</td>
<td>$12.8</td>
<td>$12.0</td>
</tr>
<tr>
<td></td>
<td>4.1%</td>
<td>6.7%</td>
<td>5.1%</td>
<td>3.1%</td>
<td>2.7%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>$11.4</td>
<td>$11.1</td>
<td>$15.7</td>
<td>$5.0</td>
<td>$17.9</td>
</tr>
<tr>
<td></td>
<td>2.6%</td>
<td>2.4%</td>
<td>3.2%</td>
<td>1.2%</td>
<td>4.0%</td>
</tr>
<tr>
<td>Native American</td>
<td>$0.8</td>
<td>$5.6</td>
<td>$9.3</td>
<td>$14.9</td>
<td>$14.3</td>
</tr>
<tr>
<td></td>
<td>0.2%</td>
<td>1.2%</td>
<td>1.9%</td>
<td>3.6%</td>
<td>3.2%</td>
</tr>
<tr>
<td>Other</td>
<td>$8.4</td>
<td>$11.0</td>
<td>$7.7</td>
<td>$7.1</td>
<td>$6.9</td>
</tr>
<tr>
<td></td>
<td>1.9%</td>
<td>2.4%</td>
<td>1.6%</td>
<td>1.7%</td>
<td>1.5%</td>
</tr>
</tbody>
</table>

MAJOR CONTRACT AWARD CATEGORIES

Figure 5 depicts the distribution of SEC contract awards by category, using NAICS categories. The highest amount of SEC contract dollars was awarded for contracts in the NAICS category of Computer Systems Design and Related Services, followed by Management, Scientific, and Technical Consulting Services. These were also the two largest categories for contract dollars awarded to MWOBs.

Figure 5. SEC and MWOBs Contract Amount by NAICS Category (Amount in Millions)

“All Other NAICS Categories” includes, among others:

» Accounting, Tax Preparation, Bookkeeping and Payroll Services (5412)—$6.5 million in SEC contract awards, with $1.9 million awarded to MWOBs;

» Electronic and Precision Equipment Repair and Maintenance (8112)—$5.3 million in SEC contract awards, with $0.8 million awarded to MWOBs;

» Business Support Services (5614)—$5.1 million in SEC contract awards, with $5 million awarded to MWOBs; and

» Employment Services (5613)—$1.1 million in SEC contract awards, all awarded to MWOBs.

Next Steps

In FY 2018, the SEC’s Office of Information Technology launched a program to streamline the acquisition process for information technology platforms and services. The resulting Indefinite Delivery Indefinite Quantity (IDIQ) contract covers seven service channels that include platform application management and development; business systems delivery; IT infrastructure management; data management; IT governance; technology business management; and information security. This broad enterprise contract vehicle, now titled “OneIT,” could be used to award up to $2.5 billion in procurements over the course of a 10-year period of performance. OneIT has a significant “pool” of contractors which includes several MWOBs.

OMWI utilized the SDBMS during FY 2018 to inform vendors of the potential contracting opportunity and associated industry day. Initial interest among MWOBs was high. Three awards were made to large businesses in late FY 2018 and 15 to small businesses in early FY 2019. Among the original 15 small business pool awardees, 10 were MWOBs. Moving forward, OMWI will continue to monitor how the program impacts the participation of MWOBs in this spend category, which historically has accounted for over 50 percent of SEC contract awards.

In FY 2019, OMWI will expand efforts to leverage the SDBMS to conduct targeted outreach to diverse suppliers with a focus on disseminating timely information on potential procurements. The office will also undertake analysis to identify contracting categories that may present opportunities for increased MWOB utilization. Further, OMWI will continue to enhance the content of the supplier diversity section of the office’s external webpage to provide additional information and resources to interested vendors.
WORKFORCE DIVERSITY AND WORKPLACE INCLUSION

The SEC is firmly committed to achieving the goals and objectives of Section 342 of the Dodd-Frank Act to promote diversity and inclusion in the agency’s workforce. To successfully perform its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, the SEC recognizes that sustained efforts are needed to attract, hire, develop, and retain high-quality, diverse talent for all levels of the agency’s workforce. To that end, the SEC strives to cultivate a workplace culture that values diversity, encourages collaboration, flexibility and fairness, and allows all employees to contribute to their full potential.

The agency pursues a comprehensive strategy for building and maintaining a diverse workforce. Key components of that strategy include:

» Engaging in outreach and recruitment to attract diverse candidates for employment and internship opportunities;
» Training for employees, supervisors, and managers in equal employment opportunity and diversity awareness;
» Supporting employee participation in leadership development training programs;
» Incorporating support for agency diversity and inclusion efforts in a performance standard for supervisors and managers;
» Monitoring and analyzing internal demographics to assess diversity at all levels of the agency’s workforce and identify opportunities for improvement; and
» Evaluating the effectiveness of the agency’s workforce diversity initiatives.

All SEC divisions and offices have a role in ensuring the agency promotes workforce diversity and fosters an inclusive workplace. While OMWI is responsible for all matters related to diversity in employment at the SEC, OMWI coordinates and collaborates with the Office of Human Resources (OHR), the Office of Equal Employment Opportunity (OEEO), and other offices to advance the SEC’s diversity and inclusion goals and objectives.

Since its creation in 2014, the SEC Diversity Council has been actively involved in supporting and facilitating diversity and inclusion in the agency’s workforce. SEC Chairman Jay Clayton currently serves as the chair of the Diversity Council and its 20 members include representatives from agency management, the National Treasury Employees Union (NTEU), and SEC Employee Affinity Groups. As discussed in more detail below, upon the recommendation of the Diversity Council, and following an agency roundtable on options for promoting mentorship opportunities at the SEC hosted by the Chairman and SEC Commissioners, the SEC established a mentoring program in FY 2018 to help the agency attract, develop, and retain a cadre of diverse and highly talented employees.
The SEC’s commitment to diversity and inclusion is also evident in leadership’s support for SEC Employee Affinity Groups and their programs and activities. Chairman Clayton, SEC Commissioners, and Senior Officers serve as executive sponsors and leadership resources for the Employee Affinity Groups.

In FY 2018, the SEC continued to direct efforts towards enhancing diversity in senior management positions and the agency’s five designated “mission critical occupations”—attorney, accountant, economist, securities compliance examiner, and information technology (IT) management. Employees in these five occupations comprised 78.2 percent of the SEC workforce as of the end of FY 2018. The SEC workforce continues to become more diverse. The data for FY 2016 to FY 2018 show:

» The representation of women among Senior Officers increased from 36.3 percent in FY 2016 to 39.6 percent in FY 2018.

» The representation of minorities in supervisory and management positions increased from 23.4 percent in FY 2016 to 24.2 percent in FY 2018.

» The percentage of employees separating from the SEC workforce who were minorities decreased from 32.9 percent in FY 2017 to 28.5 percent in FY 2018, a total of 4.4 percentage points.

The actions taken in FY 2018 to advance the SEC’s strategy for achieving and sustaining diversity at all levels of the agency’s workforce are summarized below.

Outreach and Recruitment
Restrictions on external hiring remained in effect throughout FY 2018, and as a result, the SEC participated in fewer outreach and recruitment events than in previous years. The agency placed greater emphasis on developing a pipeline of talent for future careers at the agency and targeted outreach to students at colleges, universities and professional schools.

DIVERSITY PARTNERSHIPS
The SEC continues to rely upon its relationships with minority and women professional associations and educational organizations to further the agency’s workforce diversity objectives. These collaborative relationships, referred to as “Diversity Partnerships” at the SEC, provide a variety of opportunities for outreach and recruitment. Partnering organizations also agree to disseminate information about current SEC employment and internship opportunities, and share information and best practices for promoting diversity and inclusion. In addition to the formal partnerships, the SEC collaborates regularly with academic institutions and educational organizations.

In FY 2018, the SEC maintained its Diversity Partnerships with student-focused organizations, such as the National Black MBA Association, National Association of Asian MBAs, and the Council on Legal Education Opportunity, Inc.
The SEC also continued its Diversity Partnerships with several minority professional associations, including the Association of Latino Professionals for America, and the National Association of Black Accountants. For a complete list of organizations that have entered into Diversity Partnerships with the SEC, see Appendix A.

OUTREACH EVENTS
In FY 2018, OMWI coordinated the SEC’s participation in over 30 diversity outreach and recruitment events to inform professionals and students about employment at the SEC, and the SEC regional offices participated in dozens more. Over 100 SEC employees actively participated in diversity outreach, including serving as speakers and panelists at conferences, participating in meetings of partnering organizations, and representing the SEC at career fairs and outreach events held on campuses of women’s colleges and minority-serving colleges, universities and law schools.

At events hosted by organizations such as the National Association of Black Accountants and the SIFMA Women’s Leadership Forum, SEC employees provided information on a wide variety of topics including the specialized skills and experience needed for employment at the SEC, agency career paths, and the application process. Chairman Clayton was a featured speaker at the National Association of Securities Professionals (NASP) 29th Annual Pension and Financial Services Conference in Houston, Texas. For a list of the FY 2018 outreach and recruitment events, see Appendix B.

STUDENT OUTREACH INITIATIVES
The SEC continued its efforts to encourage student interest in future careers and internships at the SEC and in financial services in FY 2018. SEC employees engaged in outreach while attending events at minority-serving colleges and universities and women’s colleges including, Howard University, West Virginia State University, Florida International University, Southern University Law Center, Prairie View A and M University, and Wellesley College. Highlighted below are examples of FY 2018 student-focused outreach activities.

» Hispanic National Bar Foundation (HNBF) Law Camp: The SEC headquarters in Washington, DC hosted high-school students from around the country participating in the HNBF’s Future Latino Leaders Law Camp. The visit arranged by OMWI included a career panel with senior SEC attorneys and a question and answer session that helped students understand how to prepare for law school and careers in corporate and securities law. Students toured the SEC’s offices and met with senior members of the Chairman’s staff.

» West Virginia State University: At this HBCU located in Charleston, West Virginia, OMWI visited with accounting students to discuss opportunities at the SEC and provide background on the SEC’s work.

» Trinity University Career Fair: At the career fair held at this women’s college located in Washington, DC, the SEC provided information on careers available to recent graduates in the fields of accounting, law, IT management and other areas, and also provided investor education materials.
International Leadership Foundation (ILF): ILF is an organization that promotes public service among Asian American youth. OMWI hosted ILF’s summer cohort at the SEC for a career seminar, financial literacy event and tour. ILF’s college students learned about pathways to SEC careers and how the capital markets promote American entrepreneurship and prosperity. The SEC also participated in ILF’s career fair.

The Professionals Reaching Out to Promote Excellence and Learning for Students (PROPELS) financial literacy and mentoring program has been held at headquarters and several regional offices for eight years. Students from high schools with high minority populations participate in the PROPELS program to gain exposure to careers in business, finance, law, and information technology and learn about the importance of financial education.

As part of the PROPELS program in FY 2018, OMWI and the Office of Investor Education and Advocacy teamed up with the Federal Deposit Insurance Corporation to support the Junior Achievement Finance Park program at two locations in Maryland and Virginia. SEC employees at headquarters helped students learn about personal financial planning and career explorations as they navigated storefronts and kiosks set up to correspond to personal financial decisions, such as buying a home, purchasing a car, or determining investment options. Over three days, 46 SEC employees provided one-on-one assistance to over 180 students in Junior Achievement’s innovative learning environment.

DIVERSITY OUTREACH AND INITIATIVES IN REGIONAL OFFICES
SEC employees in regional offices have been indispensable to the success of the agency’s initiatives to promote diversity and inclusion. They have been especially helpful in carrying out activities prescribed by Section 342(f) of the Dodd-Frank Act for seeking diversity at all levels of the agency’s workforce. For example, employees in the Boston, Fort Worth, and Miami regional offices conducted outreach and recruitment on campuses of minority-serving colleges and universities and women’s colleges in their regions in FY 2018. In addition, employees in the Miami, Los Angeles, New York, Philadelphia, and San Francisco regional offices represented the SEC at conferences, career fairs, and other diversity outreach events.

As part of the FY 2018 PROPELS program, employees in the Boston, Chicago, Denver, Fort Worth, Los Angeles, New York, and Philadelphia regional offices mentored high school students about careers in financial services and financial literacy. Boston regional office employees had over 100 students from three high schools participate in the PROPELS program. New York regional office employees participated in career days at two area high schools as part of PROPELS, and engaged with over 100 students. More than 170 employees from SEC regional offices were involved in the PROPELS program in FY 2018.

The Miami Regional Office’s (MIRO) tradition of actively supporting the SEC’s workforce diversity and inclusion efforts continued in FY 2018. MIRO employees participated in 22 diversity outreach, recruitment, and education events for diverse professionals, law students, and business students. In addition, MIRO employees made financial education presentations at 14 high
schools in South Florida, reaching over 1300 students. In FY 2018 MIRO attorneys also taught a 14-week Securities Law course at the Florida International University (FIU) College of Law, a Hispanic Serving Institution. The course, which has been taught since 2009, explores all aspects of SEC enforcement from the perspectives of both the government and the private practitioner.

The Diversity Committees and Employee Affinity Groups in several regional offices conducted programs and activities to commemorate Special Observances and heritage months, which help to foster greater awareness, support and understanding of diversity, and promote an inclusive workplace culture.

**STUDENT INTERNS**
The SEC’s Student Honors Program provides opportunities for undergraduate, graduate, and law students to learn about securities regulations and the work of the SEC. The ten-week internship is offered at headquarters and in the SEC’s 11 regional offices. From fall 2016 to summer 2018, 730 students participated in the Student Honors Program, and 32 (4.4 percent) were from educational institutions specified in Section 342(f)(1) of the Dodd-Frank Act—historically black colleges and universities, Hispanic-serving institutions, women’s colleges, and colleges that typically serve majority minority populations.

**Diversity Training**
Making diversity and inclusion training readily available to managers and employees continues to be a key element of the SEC’s strategy for building and maintaining a diverse workforce and fostering an inclusive workplace. OMWI works closely with SEC University (SECU), a component of the Office of Human Resources (OHR), to offer on-demand, web-based courses, as well as classroom training, related to diversity and inclusion throughout the year. In FY 2018, SECU continued to make available two online classes on unconscious bias.

In late summer and early fall 2018, OMWI staff conducted unconscious bias training for employees in the Boston, Fort Worth, Los Angeles, Miami and San Francisco regional offices. Managers and non-managers attended separate sessions, and 98 managers and 144 non-managers in total received the training. OMWI staff will deliver unconscious bias training to employees in the remaining regional offices in 2019.

During FY 2018, the SEC offered programs aimed at fostering an inclusive culture that covered a wide range of topics. For example, OMWI launched “TED Talk Tuesdays” in FY 2018, a lunchtime discussion series around the inspiring and thought-provoking ideas of TED (Technology, Entertainment and Design) Talks. Employees in headquarters and regional offices participated in sessions featuring presentations concerning cultural differences and stereotyping; and human connection and the power of vulnerability.
As part of the SEC’s Leading Author Series, OMWI and OHR presented Meredith A Jones, author of *Women of the Street: Why Female Money Managers Generate Higher Returns (and How You Can, Too)*. The book looks at behavior and biological investment research to explore how women think about investing, and determine why women have a money management edge.

**Leadership Development Programs**

The SEC provides employees with numerous opportunities to acquire the skills and certifications needed to succeed in their positions and progress in their careers. SECU offers classroom-style and e-Learning programs in technical areas. In addition, the agency supports participation in career and leadership development programs, some of which are described below.

- **The Aspiring Leader Program** is an interactive blended learning program designed to strengthen the leadership and management skills of SEC non-supervisory (SK-13 and SK-14) employees. In FY 2018, the SEC selected 68 employees to participate in the Aspiring Leader program.

- **The Women in Leadership Program** is an external leadership development program conducted by the Brookings Institute. Through the Women in Leadership program, individuals from across federal agencies learn how to strengthen leadership qualities and explore key elements of senior leadership success while maintaining authenticity and balance. The SEC selected seven employees to participate in the Women in Leadership program in FY 2018.

- **The Excellence in Government (EIG) Fellows Program** coordinated by the Partnership for Public Service strengthens the leadership skills of experienced federal employees through a combination of innovative coursework, best practices benchmarking, challenging action-learning projects, executive coaching and government-wide networking. During this competitively-based program, EIG Fellows remain in their full-time jobs, meet every six weeks and spend approximately 21 days total in session(s). This program is offered to employees in both supervisory and non-supervisory roles. In addition to activities with the Partnership for Public Service EIG Fellows, SEC Fellows will be involved in facilitated cohort meetings at SEC headquarters to explore and share in more depth what they are learning and how this information can be applied to improve organizational performance, workplace relationships, and productivity within the SEC. In FY 2018, the SEC supported the participation of 14 employees in the EIG Fellows program.

**Mentoring**

The SEC’s Diversity Council recommended that the agency establish a formal mentoring program to enhance employees’ opportunities for career development and advancement. To help ensure the program’s long-term success, the Diversity Council’s recommendation called for a phased implementation. In January 2018, the Chairman and SEC Commissioners convened a roundtable with internal and external participants to discuss the importance of mentoring and key considerations in developing a mentoring program. With support from the Chairman and SEC Commissioners, the SEC adopted the Council’s recommendation and launched a pilot mentoring program in FY 2018.
The SEC’s Office of the Chief Operating Officer oversees the mentoring program with assistance from OMWI and the Office of Public Affairs. A total of 30 mentoring pairs were selected to participate in the pilot program, which runs from September 2018 to June 2019. The mentoring program focuses on professional development and is intended to encourage collaboration across divisions and offices, help employees expand their networks, and provide leadership opportunities for mentors. To kick off the mentoring program, the agency hosted a half-day “speed mentoring” event at headquarters in July 2018, where employees had the opportunity to give or receive career advice during a series of short and focused conversations with colleagues. The event also permitted employees interested in the mentoring program to meet potential mentors and mentees.

Monitoring and Analyzing Internal Demographics

In FY 2018, OMWI continued to provide each of the SEC’s divisions and offices a quarterly workforce demographic profile, which tracks personnel activity (e.g., hiring, promotions, and separations) by gender, race, and ethnicity. In addition, OMWI conducted briefings for SEC regional offices that provided an overview of the current state of diversity and inclusion in their organizations. During each meeting, OMWI presented detailed workforce statistics and discussed the progress made since FY 2013 in enhancing diversity, particularly in leadership positions and major occupations in the regional office. OMWI conducted similar briefings in FY 2017 for each of the divisions and offices at headquarters.

Evaluating Performance

APPLICANT DATA ANALYSIS

OMWI obtained from the Office of Personnel Management (OPM) demographic data for the applicants for vacancies filled through the USAJOBS.gov website. OMWI analyzed the data to determine the diversity of the applicant pools for vacancies in the agency’s mission critical occupations—attorney, accountant, economist, securities compliance examiner, and IT management.

As depicted in Figure 6, the data from applicants who self-identified their gender, race, and ethnicity show that the application rate of each minority group for vacancies in mission critical occupations was about equal to or higher than the group’s representational percentage in the same occupations in the Civilian Labor Force (CLF). The analysis indicates that women applied for vacancies in accountant, securities compliance examiner, and IT management occupations at rates that were lower than their CLF representational percentages in these occupations.

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10 The Civilian Labor Force includes all persons 16 years of age and over, except those in the armed forces, who are employed or who are unemployed and seeking work. CLF data are defined by the Bureau of the Census and the Bureau of Labor Statistics and are reported in the most recent decennial or mid-decade census, or current population survey, under title 13 of the United States Code or any other reliable statistical study. See 5 CFR 702.202(d).
Current State of Diversity

FY 2018 SEC WORKFORCE PROFILE

As of the end of FY 2018, the SEC workforce had 4,448 employees (4,359 permanent and 89 temporary employees). Nearly two-thirds of SEC employees worked at the agency’s headquarters in Washington, DC, and one-third worked in the SEC’s 11 regional offices.

From FY 2017 to FY 2018, the size of the SEC workforce decreased by 151 employees. The overall demographic composition of the SEC workforce, however, remained relatively unchanged.

Figure 7 depicts the SEC workforce representation by gender, race, and ethnicity. As of the end of FY 2018, men comprised 54.1 percent and women comprised 45.9 percent of the SEC workforce. The breakdown of the SEC workforce by race and ethnicity was as follows: 65.7 percent of SEC employees self-identified as White, 15.5 percent as Black or African American, 12.3 percent as Asian, 5.5 percent as Hispanic or Latino, 0.4 percent as American Indian or Alaskan Native, 0.6 percent as Two or More Races, and 0.0 percent as Native Hawaiian or Other Pacific Islander.

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11 Unless otherwise noted, data is reported for permanent and temporary employees.
Since FY 2016, the representation of Asian and Hispanic or Latino employees increased slightly, while the representation of Black or African American employees decreased slightly. As shown in Figure 8, the representation of women and minorities in the SEC workforce increased negligibly from FY 2016 to FY 2018.

Figure 7. Workforce Demographic by Gender, Race, and Ethnicity FY 2016–FY 2018

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2016</td>
<td>54.2%</td>
<td>45.8%</td>
<td>65.8%</td>
<td>15.9%</td>
<td>5.3%</td>
<td>12.0%</td>
<td>0.9%</td>
</tr>
<tr>
<td>FY 2017</td>
<td>54.0%</td>
<td>46.0%</td>
<td>65.6%</td>
<td>15.5%</td>
<td>5.5%</td>
<td>12.2%</td>
<td>1.0%</td>
</tr>
<tr>
<td>FY 2018</td>
<td>54.1%</td>
<td>45.9%</td>
<td>65.7%</td>
<td>15.5%</td>
<td>5.5%</td>
<td>12.3%</td>
<td>1.0%</td>
</tr>
</tbody>
</table>

Source: Federal Personnel and Payroll System (FPPS) FY 2018 data retrieved on January 29, 2019. “All Other” includes the Native Hawaiian or Other Pacific Islander, American Indian or Alaskan Native, Two or More Races categories, and unknowns.

Figure 8. Women and Minority Representation FY 2016–FY 2018

SEC WORKFORCE COMPARED TO THE FEDERAL WORKFORCE AND CLF

To provide context for the workforce diversity and inclusion efforts, Figure 9 depicts how the demographic composition (i.e., gender, race, and ethnicity) of the SEC workforce, as of the end of FY 2018, compared to the demographic composition of the Federal workforce and the CLF. These comparisons provide a frame of reference for the present level of diversity in the SEC workforce and the progress made toward building and maintaining a workforce drawn from all segments of society. As of the end of FY 2018, the representation of women in the SEC workforce was higher than their representation in the Federal workforce, but lower than their representation in the CLF.

Minorities collectively represented 34.4 percent of the SEC workforce as of the end of FY 2018, which was 25 percent higher than their representational percentage in the CLF (27.6 percent), and 7.6 percent lower than their representational percentage in the Federal workforce (37.2 percent). The SEC workforce had a lower representation of Black or African American employees (15.5 percent) and Hispanic or Latino employees (5.5 percent) than the FY 2018 Federal workforce, and a lower representation of Hispanic or Latino employees than the CLF. The percentage of Asian employees in the SEC workforce exceeded their representational percentage in both the CLF and Federal workforce.

Figure 9. FY 2018 SEC Workforce Compared to CLF and Federal Workforce

<table>
<thead>
<tr>
<th>Demographic Groups</th>
<th>SEC FY 2018 Workforce</th>
<th>FY 2018 Federal Workforce</th>
<th>2010 Civilian Labor Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>54.1%</td>
<td>56.5%</td>
<td>51.9%</td>
</tr>
<tr>
<td>Women</td>
<td>45.9%</td>
<td>43.5%</td>
<td>48.1%</td>
</tr>
<tr>
<td>White (Non-Minority)</td>
<td>65.7%</td>
<td>62.7%</td>
<td>72.4%</td>
</tr>
<tr>
<td>Minority</td>
<td>34.3%</td>
<td>37.2%</td>
<td>27.6%</td>
</tr>
<tr>
<td>Black or African American</td>
<td>15.5%</td>
<td>18.2%</td>
<td>12.0%</td>
</tr>
<tr>
<td>Hispanic or Latino</td>
<td>5.5%</td>
<td>9.0%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Asian</td>
<td>12.3%</td>
<td>6.0%</td>
<td>3.9%</td>
</tr>
<tr>
<td>Native Hawaiian or Other Pacific Islander</td>
<td>0.0%</td>
<td>0.5%</td>
<td>0.1%</td>
</tr>
<tr>
<td>American Indian or Alaska Native</td>
<td>0.4%</td>
<td>1.7%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Two or More Races</td>
<td>0.6%</td>
<td>1.7%</td>
<td>0.5%</td>
</tr>
</tbody>
</table>


WORKFORCE ANALYSIS BY OCCUPATION

The SEC has employees in over 50 occupations. Figure 10 depicts the percentage of each demographic group in the 15 most prevalent occupations in the SEC workforce. It also reveals gender and racial differences in employment patterns.
Attorney is the most prevalent occupation in the SEC workforce; 42.2 percent of all SEC employees were in the attorney occupation as of the end of FY 2018. Attorney is the most prevalent occupation for both men and women. Attorney is also the most prevalent occupation for three of the four largest racial and ethnic groups in the SEC workforce, though differences exist in the degree of prevalence. As of the end of FY 2018, 50 percent of White, 37.1 percent of Asian, and 30.9 percent of Hispanic or Latino, employees were employed as attorneys. Attorney was the second most prevalent occupation for Black or African American employees (19 percent) as of the end of FY 2018. A slightly greater percentage of Black or African American employees were employed in positions in the Miscellaneous Administration and Program Series (19.6 percent).

<table>
<thead>
<tr>
<th>Figure 10. FY 2018 Percent of Demographic Group in Top 15 Occupations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Occupation</strong></td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>0905 General Attorney</td>
</tr>
<tr>
<td>0510 Accounting</td>
</tr>
<tr>
<td>1831 Securities Compliance Examining</td>
</tr>
<tr>
<td>2210 Information Technology Management</td>
</tr>
<tr>
<td>0301 Miscellaneous Administration and Program</td>
</tr>
<tr>
<td>0343 Management and Program Analysis</td>
</tr>
<tr>
<td>0110 Economist</td>
</tr>
<tr>
<td>0950 Paralegal Specialist</td>
</tr>
<tr>
<td>0201 Human Resources Management</td>
</tr>
<tr>
<td>1102 Contracting</td>
</tr>
<tr>
<td>1160 Financial Analysis</td>
</tr>
<tr>
<td>0501 Financial Administration and Program</td>
</tr>
<tr>
<td>0303 Miscellaneous Clerk and Assistant</td>
</tr>
<tr>
<td>0340 Program Management</td>
</tr>
<tr>
<td>0318 Secretary</td>
</tr>
<tr>
<td>All Other Occupations</td>
</tr>
</tbody>
</table>

Source: FPPS FY 2018 data retrieved January 29, 2019. “All Other” includes Native Hawaiian/Pacific Islander, American Indian/Alaska Native, Two or More Races, and unknowns. Mission critical occupations are highlighted in yellow.
The majority of White, Asian, and Hispanic or Latino employees worked in the agency’s mission critical occupations shown in red in Figure 10. As of the end of FY 2018, 85.7 percent of White employees, 85.2 percent of Asian employees, and 71.9 percent of Hispanic or Latino employees worked in these occupations. As of the end of FY 2018, 44.2 percent of Black or African American employees worked in mission critical occupations.

MISSION CRITICAL OCCUPATIONS
Enhancing diversity in mission critical occupations has been a primary objective of the SEC’s diversity and inclusion initiatives. Figure 11 depicts how the FY 2018 workforce representation of minorities and women in each of the SEC’s designated mission critical occupations compared to the availability of minorities and women in these occupations in the CLF. The comparisons with the occupational CLF are helpful in assessing the agency’s progress towards achieving diversity at all levels of the agency’s workforce and identifying any areas that should be the focus of ongoing outreach and recruitment efforts.

The percentage of women in all mission critical occupations in the SEC workforce except attorney was below the percentage of women in these occupations in the CLF. The percentage of Black or African American employees in the securities compliance examiner and economist occupations in the SEC workforce was lower than their percentage in these two occupations in the CLF. The percentage of Hispanic or Latino employees in the attorney, economist, and IT management occupations in the SEC workforce was slightly lower than their representational percentage in the same occupations in the CLF.

Minorities collectively represented 22.3 percent of attorneys, 28.3 percent of accountants, 34 percent of economists, and 34 percent of securities compliance examiners in the SEC workforce. In contrast, minorities collectively held 55.2 percent of IT management positions in the SEC workforce, which was higher than the representational percentage of minorities in the IT management occupation in the CLF (26.9 percent).
Figure 11. FY 2018 SEC Workforce Mission Critical Occupations Compared to CLF

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>0905 General Attorney</strong></td>
<td>SEC Workforce</td>
<td>55.5%</td>
<td>44.5%</td>
<td>77.7%</td>
<td>7.0%</td>
<td>4.0%</td>
<td>10.8%</td>
</tr>
<tr>
<td></td>
<td>OCLF</td>
<td>66.7%</td>
<td>33.3%</td>
<td>86.4%</td>
<td>4.7%</td>
<td>4.4%</td>
<td>3.6%</td>
</tr>
<tr>
<td><strong>0510 Accounting</strong></td>
<td>SEC Workforce</td>
<td>56.7%</td>
<td>43.3%</td>
<td>71.7%</td>
<td>8.7%</td>
<td>6.1%</td>
<td>12.7%</td>
</tr>
<tr>
<td></td>
<td>OCLF</td>
<td>39.9%</td>
<td>60.1%</td>
<td>76.0%</td>
<td>8.1%</td>
<td>6.1%</td>
<td>8.6%</td>
</tr>
<tr>
<td><strong>1831 Securities Compliance Examining</strong></td>
<td>SEC Workforce</td>
<td>66.6%</td>
<td>33.4%</td>
<td>66.0%</td>
<td>9.1%</td>
<td>6.7%</td>
<td>17.0%</td>
</tr>
<tr>
<td></td>
<td>OCLF</td>
<td>54.7%</td>
<td>45.3%</td>
<td>72.4%</td>
<td>12.3%</td>
<td>6.7%</td>
<td>7.7%</td>
</tr>
<tr>
<td><strong>0110 Economist</strong></td>
<td>SEC Workforce</td>
<td>70.0%</td>
<td>30.0%</td>
<td>66.0%</td>
<td>4.0%</td>
<td>5.0%</td>
<td>23.0%</td>
</tr>
<tr>
<td></td>
<td>OCLF</td>
<td>67.1%</td>
<td>32.9%</td>
<td>81.0%</td>
<td>5.5%</td>
<td>5.2%</td>
<td>7.1%</td>
</tr>
<tr>
<td><strong>2210 IT Management</strong></td>
<td>Applied</td>
<td>73.1%</td>
<td>26.9%</td>
<td>44.8%</td>
<td>21.3%</td>
<td>7.0%</td>
<td>24.8%</td>
</tr>
<tr>
<td></td>
<td>OCLF</td>
<td>70.4%</td>
<td>29.6%</td>
<td>73.1%</td>
<td>11.1%</td>
<td>7.6%</td>
<td>7.1%</td>
</tr>
</tbody>
</table>

Source: FPPS FY 2018 data retrieved on January 29, 2019. OCLF data from Census 2010 EEO Tabulation retrieved on January 29, 2019. “All Other” includes Native Hawaiian or Other Pacific Islander, American Indian or Alaskan Native, Two or More Races categories, and unknowns.

Figure 12 depicts employees in mission critical occupations by gender, race, and ethnicity from FY 2016 to FY 2018.¹² The percentage of minorities in mission critical occupations increased negligibly from 27.8 percent in FY 2016 to 28 percent in FY 2018. The percentage of Asian, Black or African American, and Hispanic or Latino employees in mission critical occupations changed little over the three-year period. The percentage of women in mission critical occupations increased slightly since FY 2016.

Figure 12. Mission Critical Occupations FY 2016–FY 2018

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FY 2016</strong></td>
<td>3,641</td>
<td>2,153</td>
<td>1,488</td>
<td>2,628</td>
<td>320</td>
<td>185</td>
<td>481</td>
<td>27</td>
</tr>
<tr>
<td>100.0%</td>
<td>59.1%</td>
<td>40.9%</td>
<td>72.2%</td>
<td>8.8%</td>
<td>5.1%</td>
<td>13.2%</td>
<td>0.7%</td>
<td></td>
</tr>
<tr>
<td><strong>FY 2017</strong></td>
<td>3,592</td>
<td>2,115</td>
<td>1,477</td>
<td>2,581</td>
<td>314</td>
<td>185</td>
<td>481</td>
<td>31</td>
</tr>
<tr>
<td>100.0%</td>
<td>58.9%</td>
<td>41.1%</td>
<td>71.9%</td>
<td>8.7%</td>
<td>5.2%</td>
<td>13.4%</td>
<td>0.9%</td>
<td></td>
</tr>
<tr>
<td><strong>FY 2018</strong></td>
<td>3,477</td>
<td>2,041</td>
<td>1,436</td>
<td>2,504</td>
<td>303</td>
<td>177</td>
<td>464</td>
<td>29</td>
</tr>
<tr>
<td>100.0%</td>
<td>58.7%</td>
<td>41.3%</td>
<td>72.0%</td>
<td>8.7%</td>
<td>5.1%</td>
<td>13.3%</td>
<td>0.8%</td>
<td></td>
</tr>
<tr>
<td><strong>Percent Change</strong></td>
<td><strong>FY 2016–FY 2018</strong></td>
<td><strong>-4.5%</strong></td>
<td><strong>-5.2%</strong></td>
<td><strong>-3.5%</strong></td>
<td><strong>-4.7%</strong></td>
<td><strong>-5.3%</strong></td>
<td><strong>-4.3%</strong></td>
<td><strong>-3.5%</strong></td>
</tr>
</tbody>
</table>

Source: FPPS FY 2018 data retrieved on January 29, 2019. “All Other” includes Native Hawaiian or Other Pacific Islander, American Indian or Alaskan Native, Two or More Races categories, and unknowns.

¹² Certain charts and analyses in our annual reports for FY 2014 to FY 2017 covered only four of the agency’s mission critical occupations—attorney, accountant, economist, and securities compliance examiner. The charts and discussion of mission critical occupations presented in this FY 2018 annual report include IT management. As a result, data for mission critical occupations presented in this report for FY 2016 and FY 2017 differ from data for mission critical occupations presented in our two previous annual reports for FY 2016 and FY 2017.
SUPERVISORS AND MANAGERS

Generally, SEC employees at grade levels SK-15 (e.g., branch chiefs), SK-17 (e.g., assistant directors), and Senior Officers (e.g., associate directors, deputy directors, and directors) serve in supervisory and managerial positions. Senior Officers, the highest-ranking employees at the SEC, are equivalent to Senior Executive Service personnel at other Federal agencies. As of the end of FY 2018, the SEC workforce had 898 supervisors and managers. Of this total, 876 supervisors and managers held positions at grade levels SK-15, SK-17, or Senior Officer.13

Figure 13 depicts the number and percentage of SEC supervisors and managers by gender, race, and ethnicity from FY 2016 to FY 2018. Minorities collectively held 24.2 percent of supervisory and managerial positions at the SEC as of the end of FY 2018, up from 23.4 percent in FY 2016. The percentage of women among SEC supervisors and managers decreased from 38.3 percent in FY 2016 to 38.0 percent in FY 2018, while the percentage of minorities among SEC supervisors and managers increased incrementally over the three-year period.

The percentage of Asian supervisors and managers increased each year since FY 2016. The percentage of Hispanic or Latino supervisors and managers increased incrementally, while the percentage of Black or African American and all other racial minority groups in supervisory and management positions decreased slightly since FY 2016.

SENIOR OFFICERS

Figure 14 presents data on the gender, race, and ethnicity of Senior Officers in each year since FY 2016. The number of Senior Officers at the SEC decreased from 146 in FY 2016 to 143 as of the end of FY 2018.

The representation of women among Senior Officers continued to trend upward. Women represented 39.2 percent of the Senior Officers in FY 2018, compared to 36.3 percent in FY 2016.

13 The SEC also had employees in supervisory and management positions in the SK-9–SK-14 grade levels.
The representation of women among Senior Officers was higher than the representation of women among Senior Executives in the Federal workforce. According to OPM’s FedScope, women made up 33.8 percent of Senior Executives in the Federal workforce in FY 2018.

As of the end of FY 2018, minorities held 12.6 percent of Senior Officer positions. In contrast, minorities held 21.1 percent of Senior Executive positions in the Federal workforce in FY 2018. Since FY 2016, the representation of minorities among Senior Officers decreased slightly. From FY 2016 to FY 2018, the number of Black or African American and Asian Senior Officers remained the same, while the number Hispanic or Latino Senior Officers decreased by one.14

Figure 14. Senior Officers FY 2016–FY 2018

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2016</td>
<td>146</td>
<td>93</td>
<td>53</td>
<td>127</td>
<td>7</td>
<td>3</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>FY 2017</td>
<td>149</td>
<td>91</td>
<td>58</td>
<td>130</td>
<td>7</td>
<td>3</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>FY 2018</td>
<td>143</td>
<td>87</td>
<td>56</td>
<td>125</td>
<td>7</td>
<td>2</td>
<td>8</td>
<td>1</td>
</tr>
</tbody>
</table>

Percent Change (FY 2016–FY 2018) -2.1% -6.5% 5.7% -1.6% 0.0% -33.3% 0.0% 0.0%

Source: FPPS FY 2018 data retrieved on January 29, 2019 and includes employees in the SO pay plan. “All Other” includes the Native Hawaiian or Other Pacific Islander, American Indian or Alaskan Native, Two or More Races categories, and unknowns. Includes only permanent and temporary employees in the SO pay plan.

NEW HIRES

The SEC workforce had significantly fewer new hires in FY 2018 than in previous years as a result of the hiring restrictions that were in effect. As shown in Figure 15, the SEC workforce had 53 new hires as of the end of FY 2018, representing a decrease of 88.1 percent from the FY 2016 hiring level.

The percentage of women new hires decreased from 44.8 percent in FY 2016 to 41.5 percent in FY 2018. The percentage of minorities among new hires decreased from 38.3 percent of the 444 new hires in FY 2016 to 13.2 percent of the 53 new hires in FY 2018. The percentage of Black or African American and Asian new hires decreased from FY 2017 to FY 2018. In FY 2017, 6.6 percent of new hires were Hispanic or Latino; in FY 2018 there were no Hispanic or Latino new hires.

Although their numbers remained unchanged, Black or African American and Asian Senior Officers left the SEC and Black or African American and Asian Senior Officers were appointed during the three-year period.

14
Figure 15. New Hires Trend by Gender, Race, and Ethnicity

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2016</td>
<td>444</td>
<td>245</td>
<td>199</td>
<td>274</td>
<td>56</td>
<td>29</td>
<td>78</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>55.2%</td>
<td>44.8%</td>
<td>61.7%</td>
<td>12.6%</td>
<td>6.5%</td>
<td>17.6%</td>
<td>1.6%</td>
</tr>
<tr>
<td>FY 2017</td>
<td>166</td>
<td>100</td>
<td>66</td>
<td>112</td>
<td>12</td>
<td>11</td>
<td>28</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>60.2%</td>
<td>39.8%</td>
<td>67.5%</td>
<td>7.2%</td>
<td>6.6%</td>
<td>16.9%</td>
<td>1.8%</td>
</tr>
<tr>
<td>FY 2018</td>
<td>53</td>
<td>31</td>
<td>22</td>
<td>46</td>
<td>3</td>
<td>0</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>58.5%</td>
<td>41.5%</td>
<td>86.8%</td>
<td>5.7%</td>
<td>0.0%</td>
<td>7.5%</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

Source: FPPS FY 2018 data retrieved on January 29, 2019. “All Other” includes the Native Hawaiian or Other Pacific Islander, American Indian or Alaskan Native, Two or More Races categories, and unknowns. Includes permanent and temporary employees.

Figure 16 depicts new hires into mission critical occupations from FY 2016 to FY 2018 by gender, race, and ethnicity. From FY 2017 to FY 2018, the percentage of women among new hires into mission critical occupations increased. The percentage of Black or African American and Asian new hires into mission critical occupations decreased from FY 2017 to FY 2018, as the number of new hires into those roles across the agency decreased from 124 to 44.

Figure 16. New Hires into Mission Critical Occupations FY 2016–FY 2018

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2016</td>
<td>325</td>
<td>180</td>
<td>145</td>
<td>209</td>
<td>27</td>
<td>21</td>
<td>63</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>55.4%</td>
<td>44.6%</td>
<td>64.3%</td>
<td>8.3%</td>
<td>6.5%</td>
<td>19.4%</td>
<td>1.5%</td>
</tr>
<tr>
<td>FY 2017</td>
<td>124</td>
<td>81</td>
<td>43</td>
<td>88</td>
<td>6</td>
<td>5</td>
<td>22</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>65.3%</td>
<td>34.7%</td>
<td>71.0%</td>
<td>4.8%</td>
<td>4.0%</td>
<td>17.7%</td>
<td>2.4%</td>
</tr>
<tr>
<td>FY 2018</td>
<td>44</td>
<td>27</td>
<td>17</td>
<td>38</td>
<td>2</td>
<td>0</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>61.4%</td>
<td>38.6%</td>
<td>86.4%</td>
<td>4.5%</td>
<td>0.0%</td>
<td>9.1%</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

Source: FPPS FY 2018 data retrieved on January 29, 2019. “All Other” includes the Native Hawaiian or Other Pacific Islander, American Indian or Alaskan Native, Two or More Races categories, and unknowns. Includes permanent and temporary employees.
SEPARATIONS

Figure 17 depicts the separations by gender, race, and ethnicity since FY 2016. In FY 2018, 200 employees left the SEC. Separations due to resignation, retirement, and term appointments accounted for nearly all separations from FY 2016 to FY 2017.

### Figure 17. Workforce Separations by Gender, Race, and Ethnicity FY 2016–FY 2018

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FY 2016</strong></td>
<td>201</td>
<td>144</td>
<td>87</td>
<td>138</td>
<td>30</td>
<td>10</td>
<td>20</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>56.7%</td>
<td>43.3%</td>
<td>68.7%</td>
<td>14.9%</td>
<td>5.0%</td>
<td>10.0%</td>
<td>1.5%</td>
</tr>
<tr>
<td><strong>FY 2017</strong></td>
<td>249</td>
<td>148</td>
<td>101</td>
<td>167</td>
<td>37</td>
<td>10</td>
<td>30</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>59.4%</td>
<td>40.6%</td>
<td>67.1%</td>
<td>14.9%</td>
<td>4.0%</td>
<td>12.0%</td>
<td>2.0%</td>
</tr>
<tr>
<td><strong>FY 2018</strong></td>
<td>200</td>
<td>112</td>
<td>88</td>
<td>143</td>
<td>23</td>
<td>11</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>56.0%</td>
<td>44.0%</td>
<td>71.5%</td>
<td>11.5%</td>
<td>5.5%</td>
<td>10.5%</td>
<td>1.0%</td>
</tr>
</tbody>
</table>

Source: FPPS FY 2018 data retrieved on January 29, 2019. “All Other” includes the Native Hawaiian or Other Pacific Islander, American Indian or Alaskan Native, Two or More Races categories, and unknowns. Includes permanent and temporary employees.

From FY 2016 to FY 2018, the percentage of employees separating from the SEC workforce who were women increased from 43.3 percent to 44.0 percent. The percentage of employees separating who were minorities was lower in FY 2018 than in FY 2016.

Separations from mission critical occupations by gender, race, and ethnicity in each fiscal year since FY 2016 are shown in Figure 18. In FY 2018, 76.3 percent of employees who separated from the SEC left from mission critical occupations. The percentage of minorities separating from mission critical occupations was 4.1 percentage points lower in FY 2018 than in FY 2017. However, the separations in FY 2018 had little effect on the overall representation of minorities in mission critical occupations.

### Figure 18. Separations from Mission Critical Occupations FY 2016–FY 2018

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FY 2016</strong></td>
<td>128</td>
<td>77</td>
<td>51</td>
<td>100</td>
<td>10</td>
<td>4</td>
<td>13</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>60.2%</td>
<td>39.8%</td>
<td>78.1%</td>
<td>7.8%</td>
<td>3.1%</td>
<td>10.2%</td>
<td>0.8%</td>
</tr>
<tr>
<td><strong>FY 2017</strong></td>
<td>162</td>
<td>109</td>
<td>53</td>
<td>117</td>
<td>11</td>
<td>6</td>
<td>26</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>67.3%</td>
<td>32.7%</td>
<td>72.2%</td>
<td>6.8%</td>
<td>3.7%</td>
<td>16.0%</td>
<td>1.2%</td>
</tr>
<tr>
<td><strong>FY 2018</strong></td>
<td>152</td>
<td>98</td>
<td>54</td>
<td>116</td>
<td>9</td>
<td>10</td>
<td>15</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>64.5%</td>
<td>35.5%</td>
<td>76.3%</td>
<td>5.9%</td>
<td>6.6%</td>
<td>9.9%</td>
<td>1.3%</td>
</tr>
</tbody>
</table>

Source: FPPS FY 2018 data retrieved on January 29, 2019. “All Other” includes the Native Hawaiian or Other Pacific Islander, American Indian or Alaskan Native, Two or More Races categories, and unknowns. Includes permanent and temporary employees.

28 | OFFICE OF MINORITY AND WOMEN INCLUSION
**PROMOTIONS**

Figure 19 depicts promotions by gender, race, and ethnicity since FY 2016. For purposes of this report, promotions include all instances where employees are converted to a higher pay grade. Accordingly, the data reflects career-ladder, competitive, and temporary promotions, as well as conversions to a higher-level position.

Minorities received 40 percent of promotions in FY 2018. Compared to FY 2016, the percentage of promotions received by Black or African American, Hispanic or Latino, and Asian employees increased in FY 2018. The percentage of promotions received by women also increased since FY 2016.

**Figure 19. Promotions FY 2016–FY 2018**

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
<th>Asian</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2016</td>
<td>612</td>
<td>330</td>
<td>282</td>
<td>390</td>
<td>102</td>
<td>40</td>
<td>77</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>53.9%</td>
<td>46.1%</td>
<td>63.7%</td>
<td>16.7%</td>
<td>6.5%</td>
<td>12.6%</td>
<td>0.5%</td>
</tr>
<tr>
<td>FY 2017</td>
<td>559</td>
<td>290</td>
<td>269</td>
<td>330</td>
<td>103</td>
<td>44</td>
<td>76</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>51.9%</td>
<td>48.1%</td>
<td>59.0%</td>
<td>18.4%</td>
<td>7.9%</td>
<td>13.6%</td>
<td>1%</td>
</tr>
<tr>
<td>FY 2018</td>
<td>502</td>
<td>248</td>
<td>254</td>
<td>301</td>
<td>92</td>
<td>38</td>
<td>66</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>100.0%</td>
<td>49.4%</td>
<td>50.6%</td>
<td>60.0%</td>
<td>18.3%</td>
<td>7.6%</td>
<td>13.1%</td>
<td>1.0%</td>
</tr>
</tbody>
</table>

Source: FPPS FY 2018 data retrieved on January 29, 2019. “All Other” includes the Native Hawaiian or Other Pacific Islander, American Indian or Alaskan Native, Two or More Races categories, and unknowns. Promotions include all employee transactions resulting in a higher grade level.

**Work Environment**

The Partnership for Public Service annually publishes rankings for the Best Places to Work in the Federal Government, which are based on the Federal Employee Viewpoint Survey (FEVS) administered by OPM. The SEC moved up two places in rankings in 2018, and was ranked third out of 27 mid-size agencies. While opportunities for improvement remain, the steady increases in FEVS scores since 2012 on the indices for Global Satisfaction (23 percentage points), New Inclusion Quotient Index (17 percentage points), and Employee Engagement (16 percentage points) reflect the SEC’s commitment to promoting workforce diversity and fostering workplace inclusion as an integral part of the agency’s human capital strategic plan.

**EMPLOYEE AFFINITY GROUPS**

SEC Employee Affinity Groups have been instrumental in helping to cultivate a workplace culture that attracts diverse talent and encourages employee engagement and retention. The improvements seen in FEVS scores and the SEC’s high ranking among the Best Places to Work are attributable, in part, to the active involvement of Employee Affinity Groups in fostering inclusion at the SEC. Employee Affinity Groups provide educational, cultural, and networking opportunities for SEC employees, and serve as a resource for outreach and recruitment initiatives.
SEC Commissioners and Senior Officers serve as executive sponsors for Employee Affinity Groups. OMWI provides program support for all Employee Affinity Groups except the Veterans Committee, which receives program support from OHR. In FY 2018, nine Employee Affinity Groups were active at the SEC:

» African American Council;
» American Indian Heritage Committee;
» Asian American and Pacific Islander Committee;
» Caribbean American Heritage Committee;
» Disability Interests Advisory Committee;
» Hispanic and Latino Opportunity, Leadership, and Advocacy Committee;
» Lesbian, Gay, Bisexual, and Transgender (LGBT) Committee;
» Veterans Committee; and
» Women’s Committee.

Employee Affinity Groups have a major role in planning and conducting SEC-sponsored programs and activities to commemorate Special Observances. These programs celebrate the diversity in the SEC workforce and enhance cross-cultural awareness and understanding. For a list of the FY 2018 programs and activities for Special Observances, see Appendix C.

FEVS INCLUSION QUOTIENT INDEX

The FEVS Inclusion Quotient Index (New IQ) empirically measures enabling conditions that lead to an inclusive workplace. The New IQ is made up of 20 FEVS questions grouped into the following “5 Habits of Inclusion:”

» Fair: Are all employees treated equitably?
» Open: Does management support diversity in all ways?
» Cooperative: Does management encourage communication and collaboration?
» Supportive: Do supervisors value employees?
» Empowering: Do employees have the resources and support needed to excel?

The New IQ score reflects the percentage of positive responses to the questions corresponding to each “habit” of inclusion. The SEC’s overall New IQ for 2018 was 71 percent positive, which was 2 percentage points higher than the agency’s overall New IQ for 2017 and 15 percentage points higher than 2014. The SEC’s scores on each Habit of Inclusion also increased: Fair (up 3 percentage points), Open (up 2 percentage points), Cooperative (up 2 percentage points), Supportive (up 1 percentage point), and Empowering (up 1 percentage point). The trend calculations shown in Figure 20 indicate the SEC New IQ continues to increase.
In addition to the New IQ, OMWI tracks the percentage of positive responses to three diversity-related FEVS questions. As shown in Figure 21, the agency’s scores on these questions increased each year since FY 2014, which suggests growing support for the agency’s diversity and inclusion efforts.

### Figure 21. SEC Scores on Selected Diversity Related FEVS Questions

<table>
<thead>
<tr>
<th>Question</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q34—Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).</td>
<td>60%</td>
<td>63%</td>
<td>65%</td>
<td>67%</td>
<td>67%</td>
</tr>
<tr>
<td>Q45—My supervisor is committed to a workforce representative of all segments of society.</td>
<td>71%</td>
<td>72%</td>
<td>76%</td>
<td>80%</td>
<td>82%</td>
</tr>
<tr>
<td>Q55—Supervisors work well with employees of different backgrounds.</td>
<td>63%</td>
<td>64%</td>
<td>68%</td>
<td>77%</td>
<td>78%</td>
</tr>
</tbody>
</table>


**Challenges and Next Steps**

Enhancing diversity in senior management positions and certain mission critical occupations remain key areas of focus for the SEC’s ongoing diversity and inclusion efforts. In FY 2019, OMWI will work with the divisions and offices authorized to fill positions to identify specific recruiting needs and develop outreach and recruitment strategies. The SEC will also increase efforts to recruit diverse students for SEC internship opportunities.
Assessing Diversity Policies and Practices

In January 2018, the SEC introduced a new form called the “Diversity Assessment Report for Entities Regulated by the SEC” (Diversity Assessment Report) as a complement to the Joint Standards for Assessing Diversity Policies and Practices of Entities Regulated by the Agencies (Joint Standards) issued by the SEC and five other financial regulatory agencies in June 2015. The Diversity Assessment Report is designed to help SEC-regulated entities conduct voluntary self-assessments of their diversity policies and practices, and provide them with a template for sharing information about their diversity self-assessments with the SEC, as contemplated under the Joint Standards.

The Diversity Assessment Report is intended primarily for SEC-regulated entities with more than 100 employees, as the agencies focused on institutions of this size when developing the Joint Standards. Using registration statements and other public information, the SEC identified regulated entities meeting the threshold number of employees, and asked 1367 investment advisers, broker-dealers, municipal advisors and self-regulatory organizations to submit a Diversity Assessment Report during calendar year 2018.

The requests for Diversity Assessment Reports were staggered; they were sent in January, September, and November. The SEC asked regulated entities in the first group, which was comprised of largest SEC-regulated entities (1000 or more employees), to complete and submit the Diversity Assessment Report online using a secure web-based survey management system. Regulated entities in the second and third groups were invited to submit either a pdf version of the Diversity Assessment Report, which is available on the OMWI page of the agency’s public website, or their own self-assessment instruments.

The response from regulated entities to the request for information about their diversity self-assessments was lower than expected. The SEC received 22 responses from the first group, and 16 from the second and third groups, for a total of 38 individual responses. Some SEC-regulated entities are divisions or subsidiaries of large financial institutions regulated by other Federal financial agencies. In some instances, the SEC asked more than one division or subsidiary of a financial institution to submit a Diversity Assessment Report, and the parent company submitted a single response for all of its subsidiaries that referred to the diversity policies and practices of the “enterprise” or the parent company.

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16 See https://www.sec.gov/omwi/regulated-entities.
While the 38 responses cover 55 or 4 percent of the regulated entities asked to submit diversity self-assessment information, the firms represented employ nearly 47 percent of the employees in securities and other financial investments.\(^{17}\)

Of the 38 responses, the overwhelming majority (89 percent) indicated the firm has a written diversity and inclusion policy. The majority of responses (84 percent) indicated that a senior level officer directs the firm’s diversity and inclusion efforts, and a majority (73 percent) said the firm publishes information about its diversity and inclusion efforts on its website. A smaller majority of responses (55 percent) indicated the firm has a supplier diversity policy aimed at providing business opportunities to MWOBs.

**Financial Regulatory Agencies’ Diversity and Inclusion Summit**

In September 2018, the first-ever “Financial Regulatory Agencies’ Diversity and Inclusion Summit” was held at the Federal Reserve Bank of New York. The Offices of Minority and Women Inclusion from the SEC, Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, and the National Credit Union Administration convened the Diversity and Inclusion Summit to provide a forum for business leaders, diversity professionals, and government officials to discuss ongoing efforts to promote diversity and inclusion in the financial services sector. The half-day event, which had over 140 participants, focused on the Joint Standards, as well as best practices for promoting workforce diversity and inclusion, supplier diversity, and organizational commitment to diversity.

**Challenges and Next Steps**

The Joint Standards envision that regulated entities will conduct self-assessments of their diversity policies and practices at least annually. The SEC expects to collect diversity self-assessment information from its regulated entities every two years. The next round of requests for diversity self-assessments will not be sent until FY 2020. A challenge for the SEC will be to find a way to incentivize regulated entities to conduct diversity self-assessments and share them with the agency.

In the meantime, the SEC will continue to promote the Joint Standards at educational events hosted by industry trade associations and conferences of professional associations. In addition, the agency will continue to encourage SEC-regulated entities to use the Diversity Assessment Report as a guide for their diversity self-assessments.

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\(^{17}\) Based on the current employment statistics in the Securities, Commodity Contracts, and Other Financial Investments and Related Activities subsector (NAICS 523) of the Finance and Insurance sector (NAICS 52).
SEC CONTRACTORS’ WORKFORCE INCLUSION OF MINORITIES AND WOMEN

To implement the requirements of Section 342 of the Dodd-Frank Act related to the workforce diversity of agency contractors, the SEC includes its Contract Standard for Contractor Workforce Inclusion (Contract Standard) in all solicitations and contracts for services with a dollar value of $100,000 or more. The Contract Standard also is to be included in subcontracts for services with a dollar value of $100,000 or more awarded under the contract.

The Contract Standard requires the service contractor, upon entering into a contract with the SEC, to confirm it will ensure, to the maximum extent possible and consistent with applicable law, the fair inclusion of minorities and women in its workforce. The Contract Standard further requires a contractor to provide documentation, upon the request of the OMWI Director, demonstrating it has made good faith efforts to ensure the fair inclusion of minorities and women in its workforce and, as applicable, demonstrating its covered subcontractor(s) has made such good faith efforts.

Section 342 of the Dodd-Frank Act directs the OMWI Director to determine whether a contractor has failed to make good faith efforts to include minorities and women in its workforce, and requires the agency administrator to take appropriate action if the OMWI Director makes such a determination. OMWI conducts post-award reviews, referred to as “Good Faith Effort Reviews,” to determine whether contractors have complied with the requirements of the Contract Standard to make good faith efforts to ensure workforce inclusion of minorities and women.

In FY 2018, OMWI reviewed a total of 45 contractors (38 prime and 7 subcontractors). In each review, OMWI determined that the information and representations in the contractor’s submission appeared to indicate the contractor had taken actions demonstrating good faith efforts to comply with the requirements of the Contract Standard. Where OMWI’s analysis of a contractor’s workforce data revealed that the representation of women or minorities in an EEO-1 job category (e.g., Officials and Managers and Professionals) was lower than would be expected, OMWI advised the contractor that the particular job categories should be areas of focus for its ongoing diversity efforts. In the reviews for 20 prime contractors (53 percent) and 7 subcontractors (100 percent), OMWI identified job categories that should be the focus of diversity efforts.
CONCLUSION AND FY 2019 OUTLOOK

For the SEC, diversity and inclusion is a strategic imperative. Promoting workforce diversity and inclusion and supplier diversity assists the SEC in maintaining the highest standards in pursuit of its mission. OMWI will continue to work with all divisions and offices and SEC senior leadership to advance the agency’s diversity and inclusion goals and objectives.

The SEC will also continue to implement initiatives that have been effective and explore new strategies for enhancing diversity in senior management positions and the agency’s mission critical occupations. Diversity in both leadership and the workforce is needed to maximize mission effectiveness. Further, as limitations on new hiring are expected to continue, OMWI will continue to focus on developing a pipeline of diverse talent for future employment and internship opportunities.
## APPENDIX A. OMWI FY 2018 DIVERSITY PARTNERS

<table>
<thead>
<tr>
<th>Organization Name</th>
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<tbody>
<tr>
<td>ASCEND, Inc.</td>
</tr>
<tr>
<td>Association of Latino Professionals For America</td>
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<tr>
<td>Council on Legal Education Opportunity, Inc.</td>
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<tr>
<td>DC Diverse Partners Network, Inc.</td>
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<tr>
<td>Hispanic Association of Colleges and Universities</td>
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<tr>
<td>Hispanic National Bar Association</td>
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<tr>
<td>Hispanic Bar Association of the District of Columbia</td>
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<tr>
<td>International Leadership Foundation</td>
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<tr>
<td>National Association of Asian MBAs</td>
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<tr>
<td>National Association of Black Accountants</td>
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<tr>
<td>National Association of Black Accountants, Metropolitan DC Chapter</td>
</tr>
<tr>
<td>National Bar Association</td>
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<tr>
<td>National Bar Association, Greater Washington Area Chapter</td>
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<tr>
<td>National Black MBA Association, DC Chapter</td>
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<tr>
<td>National Society of Hispanic MBAs</td>
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<tr>
<td>National Society of Hispanic MBAs, DC Chapter</td>
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<tr>
<td>Thurgood Marshall College Fund</td>
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<tr>
<td>United Negro College Fund</td>
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<tr>
<td>White House Initiative on HBCUs</td>
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<tr>
<td>Women’s Bar Association</td>
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</tbody>
</table>

Source: Office of Minority and Women Inclusion.
APPENDIX B. FY 2018 OUTREACH AND RECRUITMENT EVENTS

<table>
<thead>
<tr>
<th>Event Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minority Corporate Counsel Association (MCCA) Pathways to Diversity Conference</td>
<td>October 2017</td>
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<tr>
<td>Women of Color (WOC) STEM Conference</td>
<td>October 2017</td>
</tr>
<tr>
<td>Securities Industry and Financial Markets Association (SIFMA) Women’s Leadership Forum</td>
<td>October 2017</td>
</tr>
<tr>
<td>West Virginia State University Campus Visit</td>
<td>October 2017</td>
</tr>
<tr>
<td>National Association of Insurance Commissioners (NAIC) Annual Conference</td>
<td>October 2017</td>
</tr>
<tr>
<td>National Association of Black Accountants, Inc. (NABA) 2017 Western Regional Student Conference</td>
<td>October 2017</td>
</tr>
<tr>
<td>National Association of Women MBAs (NAWMB) 2017 Annual Conference and Career Fair</td>
<td>October 2017</td>
</tr>
<tr>
<td>Securities Industry and Financial Markets Association (SIFMA) Annual Conference</td>
<td>October 2017</td>
</tr>
<tr>
<td>TOIGO Groundbreakers Summit</td>
<td>October 2017</td>
</tr>
<tr>
<td>Accounting and Financial Women’s Alliance (AFWA) National Conference</td>
<td>October 2017</td>
</tr>
<tr>
<td>Sweet Briar College Federal Career Expo</td>
<td>November 2017</td>
</tr>
<tr>
<td>Urban Financial Services Coalition Conference</td>
<td>January 2018</td>
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<tr>
<td>Women-in-Business Breakfast</td>
<td>January 2018</td>
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<tr>
<td>Florida International Law College Visit</td>
<td>February 2018</td>
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<tr>
<td>Financial Literacy and Your Future Program</td>
<td>February 2018</td>
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<tr>
<td>Hispanic National Bar Association (HNBA) 2018 Corporate Counsel Conference</td>
<td>March 2018</td>
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<tr>
<td>Bowie State University Career and Internship Fair</td>
<td>April 2018</td>
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<tr>
<td>Trinity Washington University Spring Career Fair</td>
<td>April 2018</td>
</tr>
<tr>
<td>Financial Industry Regulatory Authority (FINRA) Sixth Annual Diversity Summit</td>
<td>April 2018</td>
</tr>
<tr>
<td>National Association of Securities Professionals (NASP) 29th Annual Pension and Financial Services Conference</td>
<td>June 2018</td>
</tr>
<tr>
<td>U.S. Department of Housing and Urban Development (HUD) 4th Annual EEO and Diversity Conference</td>
<td>June 2018</td>
</tr>
<tr>
<td>National Association of Black Accountants, Inc. (NABA) 2018 National Convention and Expo</td>
<td>June 2018</td>
</tr>
<tr>
<td>UnidosUS 2018 Annual Conference</td>
<td>July 2018</td>
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<tr>
<td>Hispanic National Bar Foundation (HNBF) Law Camp Visit to SEC</td>
<td>July 2018</td>
</tr>
<tr>
<td>International Leadership Foundation (ILF) Visit to SEC</td>
<td>July 2018</td>
</tr>
</tbody>
</table>
### Appendix B. FY 2018 Outreach and Recruitment Events (continued)

<table>
<thead>
<tr>
<th>Event Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Bar Association (NBA) 93rd Annual Convention and Exhibits</td>
<td>August 2018</td>
</tr>
<tr>
<td>National LGBT Bar Association 2018 Annual Lavender Law Conference and Career Fair</td>
<td>August 2018</td>
</tr>
<tr>
<td>ASCEND Pan-Asian Leaders 2018 National Convention and Career Fair</td>
<td>September 2018</td>
</tr>
<tr>
<td>Hispanic National Bar Association (HNBA) Annual Convention</td>
<td>September 2018</td>
</tr>
<tr>
<td>Congressional Black Conference Foundation 48th Annual Legislative Conference</td>
<td>September 2018</td>
</tr>
<tr>
<td>Howard University Law School Open House</td>
<td>September 2018</td>
</tr>
</tbody>
</table>

Source: Office of Minority and Women Inclusion. Representative list.
## Appendix C. FY 2018 Programs for Special Observances

<table>
<thead>
<tr>
<th>Program and Speaker</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Disability Awareness Month (October 2017)</strong></td>
</tr>
<tr>
<td>Guest Speaker (HQ): Sara Hart Weir, President and C.E.O. of the National Down Syndrome Society</td>
</tr>
<tr>
<td><strong>Veterans Day Commemoration (November 2017)</strong></td>
</tr>
<tr>
<td>Guest Speaker (HQ): Bradley Warren “Brad” Snyder, a combat-wounded Naval explosive ordnance disposal officer turned gold medal-winning Paralympic swimmer and author</td>
</tr>
<tr>
<td><strong>American Indian Heritage Month (November 2017)</strong></td>
</tr>
<tr>
<td>Guest Speaker (HQ): Keith Harper, Former U.S. Ambassador to UN Human Rights Council</td>
</tr>
<tr>
<td><strong>African American History Month (February 2018)</strong></td>
</tr>
<tr>
<td>Keynote Event (HQ): Command Sgt. Major Michael L. Gragg, U.S. Army Medical Command</td>
</tr>
<tr>
<td>Networking Event (HQ): “Financial Literacy and Your Future” program hosted by African American Council, Office of Investor Education and Advocacy, and OMWI for local university students</td>
</tr>
<tr>
<td><strong>Women’s History Month (March 2018)</strong></td>
</tr>
<tr>
<td>Keynote Event (HQ): Gen. Flora D. Darpino, Retired, Three-Star Army General and 39th Judge Advocate General of the Army</td>
</tr>
<tr>
<td>Panel Discussion (New York Regional Office): Cryptocurrencies and Cybersecurity</td>
</tr>
<tr>
<td>Financial Fitness Information Session (HQ) hosted by Women’s Committee and Office of Investor Education and Advocacy</td>
</tr>
<tr>
<td><strong>Asian American Pacific Islander Month (May 2018)</strong></td>
</tr>
<tr>
<td>Guest Speaker (Los Angeles Regional Office): Mia Yamamoto, criminal defense attorney and co-founder of the Multicultural Bar Alliance and Asian Pacific American Bar Association of Southern California</td>
</tr>
<tr>
<td>SEC Career Panel (HQ): AAPI Heritage Month Theme “Unite Our Vision by Working Together”</td>
</tr>
<tr>
<td>Guest Speaker (Philadelphia Regional Office): Rob Buscher, Director, Philadelphia Asian American Film Festival Discussion</td>
</tr>
<tr>
<td><strong>Caribbean American Heritage Month (June 2018)</strong></td>
</tr>
<tr>
<td>Guest Speaker (HQ): Dr. Winnette McIntosh Ambrose, chemical engineer-turned-entrepreneur, two-time Food Network Champion, and the creative director and owner of Souk and the Sweet Lobby, an artisanal bakery</td>
</tr>
<tr>
<td><strong>Lesbian, Gay, Bisexual and Transgender (LGBT) Pride Month (June 2018)</strong></td>
</tr>
<tr>
<td>Night OUT at Nationals Park (HQ) Washington Nationals baseball game hosted by the LGBT Committee</td>
</tr>
<tr>
<td>Guest Speaker (Philadelphia): Evan Thornburg, Deputy Director of the Philadelphia Office of LGBT Affairs</td>
</tr>
<tr>
<td>Guest Speaker (Los Angeles Regional Office): Michael Eselun, co-founder of GLIDE-Gays and Lesbians Initiating Dialogue for Equality</td>
</tr>
<tr>
<td>Guest Speaker (Denver Regional Office): Judy and Dennis Shepard, parents of Matthew Shepard, discussing hate crimes prevention</td>
</tr>
<tr>
<td>Guest Speaker (New York Regional Office): Douglas Hallward-Driemeier, appellate practice attorney who argued landmark case Obergefell v. Hodges</td>
</tr>
</tbody>
</table>
Appendix C. FY 2018 Programs for Special Observances (continued)

<table>
<thead>
<tr>
<th>Program and Speaker</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hispanic Heritage Month (September 15-October 15, 2018)</strong></td>
</tr>
<tr>
<td>» Keynote Event (HQ): Jovita Carranza, U.S. Treasurer, U.S. Department of Treasury</td>
</tr>
<tr>
<td>» Guest Speaker (Chicago Regional Office): Gloria Castillo, President and CEO of Chicago United</td>
</tr>
<tr>
<td>» Guest Speaker (Philadelphia Regional Office): The Honorable Juan R. Sanchez, Chief Judge U.S. District Court for the Eastern District of Pennsylvania</td>
</tr>
<tr>
<td>» Guest Speaker (New York Regional Office): The Honorable Dora L. Irizarry, Chief Judge U.S. District Court for the Eastern District of New York</td>
</tr>
</tbody>
</table>

Source: Office of Minority and Women Inclusion. Representative list.
A Portrait of Asian Americans in the Law

ERIC CHUNG
SAMUEL DONG
XIAONAN APRIL HU
CHRISTINE KWON
GOODWIN LIU

YALE LAW SCHOOL
NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION
2017
The portrait project

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Cover Images:

Legal staff at Poston Camp No. 1, Jan. 4, 1943. From left to right: Cap Tamura, Franklyn Sugijama, Tom Masuda, Elmer Yamamoto, Saburo Kido. Mr. Kido was the National President of the Japanese American Citizens League. Photographer: Francis Stewart. Poston, Arizona.

Congresswoman Patsy Mink. Photographer: Ralph Crane. © Time Inc.

You Chung Hong in New Chinatown, 1950s. The Huntington Library, Art Collections, and Botanical Gardens.

These images, drawn from a limited historical record, provide a few examples of pathbreaking Asian American lawyers. But they do not represent the full diversity of the forebears of today’s Asian American legal community.

Design: Isometric Studio
Executive Summary

Asian Americans are not new to the legal profession. But as we were reminded in 2015 when the California Supreme Court granted posthumous bar membership to a Chinese applicant denied admission in 1890, Asian Americans long faced exclusion from the legal profession, which rendered them subjects of the law but not its architects or practitioners. Today, Asian Americans make up a significant number in law schools and the legal profession writ large. Within the span of a generation, Asian Americans have become a visible presence in all sectors of the legal profession. They work as big firm lawyers, small firm or solo practitioners, government attorneys, corporate counsel, prosecutors, public defenders, judges, and more. The participation of Asian Americans in the legal profession has reached levels unthinkable just 30 years ago.

_A Portrait of Asian Americans in the Law_ provides a systematic account of how Asian Americans are situated in the legal profession.

Since 2000, the number of Asian American lawyers has grown from 20,000 to 53,000 today, comprising nearly 5% of all lawyers nationwide. Through wide-ranging data analysis, focus groups, and a national survey, we have assembled a comprehensive portrait documenting the rise of Asian Americans in the law, their distribution across practice settings, and the challenges they face in advancing to the top ranks of the profession. Our key findings include the following:

— Over the past three decades, the number of Asian Americans in law school has quadrupled to roughly 8,000, now comprising nearly 7% of total enrollment—the largest increase of any racial or ethnic group.

— But since 2009, Asian American first-year enrollment has fallen by 43%—the largest decline of any racial or ethnic group. The number of Asian Americans who entered law school in 2016 was the lowest in more than 20 years.

— After law school, Asian Americans are more likely than other racial or ethnic groups to work in law firms or business settings, and they are least likely to work in government. Few Asian Americans report that gaining a pathway into government or politics was a primary reason they attended law school.
— Although Asian Americans comprised 10.3% of graduates of top-30 law schools in 2015, they comprised only 6.5% of all federal judicial law clerks.

— For nearly two decades, Asian Americans have been the largest minority group in major law firms. But they have the highest attrition rates and the lowest ratio of partners to associates among all groups.

— Although a significant number of Asian Americans serve as line prosecutors and government attorneys in some agencies and jurisdictions, their numbers dwindle at the supervisory level. In 2016, there were only 3 Asian Americans serving as United States Attorneys, and in 2014, there were only 4 Asian Americans serving as elected district attorneys nationwide.

— Despite recent progress, only 25 Asian Americans serve as active Article III judges, comprising 3% of the federal judiciary. Asian Americans comprise 2% of state judges.

— Many Asian American attorneys report experiencing inadequate access to mentors and contacts as a primary barrier to career advancement.

— Many Asian American attorneys report implicit bias and stereotyped perceptions as obstacles to promotion and advancement. Among Asian American attorneys, women are more likely than men to report experiencing discrimination on the basis of race.

— Asian American attorneys may experience mental health challenges at a higher rate than the legal profession as a whole.

Overall, Asian Americans have penetrated virtually every sector of the legal profession, but they are significantly underrepresented in the leadership ranks of law firms, government, and academia. Our study provides a descriptive account of this central finding, laying the groundwork for future exploration of causal mechanisms and potential solutions. Asian Americans have a firm foot in the door of the legal profession; the question now is how wide the door will swing open.
Background and Purpose of the Study

Over the past three decades, Asian Americans have dramatically increased their presence in the legal profession. In 1983, there were around 2,000 Asian American and Pacific Islander students enrolled across all ABA-accredited law schools, comprising less than 2% of total enrollment. By the mid-2000s, Asian American and Pacific Islander enrollment had increased more than five-fold to over 11,000 students. The number of Asian American lawyers has more than doubled since the year 2000. There are now over 53,000 lawyers who are Asian American, comprising 4.7% of all lawyers in America. The number of Asian American lawyers will keep growing for at least another decade as the size of the cohorts coming into the profession continues to exceed the size of the cohorts aging out.

FIGURE 1.
NUMBER OF ASIAN AMERICAN LAWYERS, 2000–2015
source: U.S. Bureau of Labor Statistics; Institute for Inclusion in the Legal Profession
Although the American Bar Association and other groups regularly publish data on diversity in the legal profession, there has not yet been a comprehensive study of the career paths of Asian American law students and lawyers. Perhaps the closest effort is the wide-ranging longitudinal study, *After the JD*, which examines the career paths of a national cohort of nearly 4,000 lawyers, including more than 200 Asian Americans. Building on that study and others, this project—*A Portrait of Asian Americans in the Law* (the Portrait Project)—is an initial effort toward a systematic understanding of how Asian Americans are situated in the legal profession. We aim to describe the rise of Asian Americans in the law as well as the incentives and choices that influence their career paths. This information is intended to provide an empirical grounding for broader conversation within and beyond the Asian American community about the unique challenges and opportunities Asian Americans face in the legal profession and possible directions for reform.

We address five broad sets of questions:

1. How are Asian Americans distributed across law schools and the legal profession? In what sectors and positions are they overrepresented or underrepresented?

2. What factors influence how Asian Americans are distributed in the legal profession? What motivations or aspirations do Asian Americans have when they decide to attend law school? What incentives and obstacles—familial, societal, financial, or professional—affect the career decisions of Asian American law students and lawyers? What stereotypes do they face in navigating the legal profession? In what ways do they seek to counter or assimilate to those stereotypes?

3. Are Asian American lawyers satisfied with their careers? With what aspects of their careers are they most satisfied? Least satisfied? Does their career satisfaction vary over the course of their career?

4. To what extent have Asian Americans achieved positions of leadership that enable them not only to practice and implement the law, but also to shape the law and the legal profession?

5. To what extent do Asian American lawyers experience mental health challenges? How do they compare on this dimension to the profession as a whole? How often do Asian American lawyers seek treatment?
Study Design

Our study has three main components.

First, we canvassed and synthesized a broad array of existing information on Asian Americans in the law as well as literature on diversity in law schools and the legal profession. We also collected data through specific requests to government agencies and other organizations. This wide-ranging effort enabled us to assemble comprehensive statistics on Asian Americans in law schools and various sectors of the legal profession.

Second, we conducted 12 focus groups with 77 Asian American attorneys at the November 2015 convention of the National Asian Pacific American Bar Association (NAPABA) in New Orleans. We organized the focus groups by practice setting (large law firms, mid-size law firms, small firms, solo practitioners, nonprofit, government, corporate counsel, judges, prosecutors/public defenders, and students), with 4 to 12 participants in each group. The focus groups, each lasting one hour, used a standard script examining motivations for pursuing a legal career, experiences in law school, influences affecting career choices, obstacles to professional advancement, perceptions of discrimination, and the role of Asian American identity and affinity groups. Through the focus groups, we gained qualitative insights that informed our statistical findings and guided our construction of a survey instrument.

Third, we disseminated a 68-item survey (Portrait Project Survey or PPS) through NAPABA and affiliated networks to collect information from a larger population of Asian American lawyers. From each respondent, the survey gathered data on basic demographics, political participation, law school experiences, career choices and experiences in the legal profession, and future aspirations. Throughout this report, we have included quotes from both our focus group sessions and responses to our survey’s open-ended questions.
We received completed surveys from 606 respondents comprising:

— 57% women and 43% men;

— 11% under age 30, 41% ages 30–39, 30% ages 40–49, 12% ages 50–59, and 7% ages 60 and above;

— 66% born in the United States and 34% born abroad;

— 35% Chinese, 22% Korean, 11% Filipino, 11% Japanese, 10% Taiwanese, 8.3% Vietnamese, 7.8% Indian, and 6.5% other ethnicities;

— 26% with neither parent having a bachelor’s degree, 21% with both parents having graduate degrees, and 5.5% with at least one parent having a law degree;

— 61% Democrat, 9% Republican, 12% Independent, and 12% with no political party registration; and

— 46% in law firm or solo practice, 25% in government, 20% corporate counsel, and 6% in nonprofit organizations or academia.

Fifteen respondents reported graduation dates of 2017 or later, indicating that they were law students at the time of the survey. We have omitted their responses to questions on current employment.

Because there are no population-wide data on many of the characteristics above, it is unclear whether the survey respondents comprise a representative sample of all Asian American lawyers. But it is significant that our sample comprises roughly 1% of Asian American lawyers nationwide and generally reflects Asian American enrollment trends over the past four decades. Given the size of our sample, we are able to make valid comparisons among survey respondents on a variety of dimensions. Our sample is likely skewed in one obvious way: Because we administered our survey through NAPABA and affiliated networks, and because respondents filled out the survey on a voluntary basis, it is likely that the respondents have a stronger interest in Asian American identity or more strongly value the opportunities afforded by Asian American affinity groups than the overall population of Asian American lawyers.

A brief word about terminology: We use the term “Asian American” and “Asian” in accordance with their usage by cited sources. The terms are not necessarily interchangeable and may reflect variation in the included subgroups. For example, the term “Asian” may include foreign nationals, and “Asian American” sometimes but not always includes Pacific Islanders. We also use the terms “Hispanic” and “Latino,” as well as “Black” and “African American,” in accordance with their usage by cited sources.
MAJOR FINDINGS

Law School

Over the past three decades, the enrollment of Asian Americans in law school has increased more than the enrollment of any other racial or ethnic group.

From a mere 1,962 students in 1983, Asian American enrollment rose to a peak of 11,327 in 2009 before declining to 8,975 in 2013. Whereas African American enrollment nearly doubled and Hispanic enrollment tripled from 1983 to 2013, Asian American enrollment more than quadrupled over that time. From 2003 to 2010, Asian Americans were the largest minority group attending law school, comprising 7% to 8% of total enrollment.\textsuperscript{12}

\textit{“My parents were immigrant farmers; they got ripped off by people saying ‘the law didn’t allow this or that.’ I had to write documents for my parents, but I didn’t understand what I was doing. I felt motivated to understand this ‘thing’ that could be used against or for people.”}

\textbf{FIGURE 2.}
\textbf{ASIAN OR PACIFIC ISLANDER J.D. ENROLLMENT, 1971–2015}

\textit{Source: American Bar Association}
But since 2009, the enrollment of Asian Americans has declined more than the enrollment of any other racial or ethnic group, and the number of Asian Americans who entered law school in 2016 was the lowest in more than 20 years.

From 2009 to 2016, whereas total first-year enrollment declined by 28%, Asian American first-year enrollment declined by 43%, from 3,987 to 2,263. The Asian American share of first-year enrollment in 2016, at 6.1%, was the lowest since 1997. Meanwhile, since 2009, first-year enrollment has declined by 34% among whites and by 14% among African Americans, while it has increased by 29% among Hispanics.¹³

We found no simple relationship between the extent of Asian American enrollment decline and law school tier. It is possible that the 2008–2009 recession and instability in the legal employment market, together with the relative attractiveness of other professions, have disproportionately deterred qualified Asian Americans from pursuing law school. One recent study suggests that some schools are combating enrollment declines by recruiting more African American and Hispanic students,¹⁴ which may help account for the decline of Asian American enrollment relative to other minority enrollment (but does not explain why Asian American enrollment has declined more steeply than white enrollment). Notably, the decline in Asian American enrollment since 2009 has not yet reached a plateau. This recent trendline deserves attention and further research.

Asian Americans are disproportionately enrolled in higher-ranked schools.

In 2015, 34% of Asian American law students were enrolled in the top quintile of schools (the top 30 schools) ranked by *U.S. News & World Report*, compared to 21% of white students, 15% of African American students, and 14% of Hispanic students. More than half of Asian American law students in 2015 attended a law school in the top two quintiles.¹⁵
FIGURE 3.
MINORITY PERCENTAGE OF TOTAL J.D. ENROLLMENT BY TIER, 2015

SOURCE: American Bar Association; U.S. News & World Report

FIGURE 4.
DISTRIBUTION OF EACH RACIAL OR ETHNIC GROUP ACROSS TIERS, 2015

Very few Asian Americans report that one of their primary motivations for attending law school was to become influential or to gain a pathway into government or politics.

The motivations for attending law school that PPS respondents ranked as most significant were to develop a satisfying career, to challenge themselves intellectually, and to help individuals. Only 11% of PPS respondents indicated that one of their top three motivations for attending law school was to become influential; only 4.7% indicated that one of their top three motivations was to gain a pathway into government or politics. This is consistent with After the JD’s findings that Asians were less likely than other groups to indicate that an important reason they attended law school was to become influential and that Asians were far less likely than other groups to have considered politics as an alternative to a legal career. Only 14% of Asian respondents in the After the JD survey considered politics as an alternative career to law, compared to 34% of whites, 32% of blacks, and 27% of Hispanics.  

FIGURE 5.
TOP 3 REASONS FOR ATTENDING LAW SCHOOL

Respondents were asked to rank how significant each of the ten listed factors was in motivating their decision to attend law school. This figure shows how many respondents ranked each factor as one of their top three motivators for choosing law school.

SOURCE: Portrait Project Survey
MAJOR FINDINGS

Clerkships and Transition to Practice

The percentage of Asian Americans serving as judicial clerks has been stagnant over the past two decades.

In 1995, Asian Americans comprised 6.4% of federal clerks and 4.5% of state clerks. Twenty years later, that percentage is only up 0.1% for both federal and state clerks. Other minority groups have fared little better. African Americans made up 5.5% of federal clerks and 5.4% of state clerks in 1995 compared to 4.2% of federal clerks and 6.4% of state clerks in 2015. Hispanics comprised 3.4% of federal clerks and 2.1% of state clerks in 1995 compared to 3.5% of federal clerks and 4.6% of state clerks in 2015.

The share of judicial law clerks who are Asian American is markedly lower than the share of graduates from top schools who are Asian American.

In 2015, Asian Americans comprised 10.3% of graduates from the top 30 schools ranked in the U.S. News & World Report. However, they accounted for only 6.5% of federal law clerks and 4.6% of state law clerks. The shares of federal clerkships going to African Americans as well as the shares of federal and state clerkships going to Hispanics likewise trail their respective shares among top-30 law school graduates. By contrast, whereas 58.2% of students from top-30 schools were white, they obtained 82.4% of all federal clerkships and 80.2% of all state clerkships.17

“I wish I could have found one or two people who would commit to mentoring me through law school, especially since there are no lawyers in my family or in my family’s immediate circle....I would have probably made much different choices with my career in the beginning had I known more about the industry.”
FIGURE 6.
TOP-30 LAW SCHOOL GRADUATES AND JUDICIAL CLERKSHIPS, 2015
SOURCE: American Bar Association; National Association for Law Placement; U.S. News & World Report

FIGURE 7.
MINORITY LAW CLERKS IN FEDERAL COURTS, 1993–2015
SOURCE: National Association for Law Placement
The likelihood of clerking is positively associated with having more than two mentors in law school.

In our survey, 30% of respondents who had more than two mentors in law school obtained a clerkship, compared to 19% of respondents with one or two mentors, 21% of respondents who sought mentors but had none, and 15% of respondents who did not seek or have mentors. Whereas 12% of respondents with more than two mentors obtained a federal appellate clerkship, the same was true of 4.6% of respondents with one or two mentors, 2.4% of respondents who sought mentors but had none, and 3.0% of respondents who did not seek or have mentors.

It is not clear from these data whether mentoring increases the likelihood of obtaining a clerkship or whether students who seek mentors, successfully or not, are better clerkship candidates. Both may be true. We note that although respondents who had one or two mentors do not differ much in their likelihood of clerking compared to those who had no mentors, the substantially higher likelihood of clerking among those with more than two mentors is suggestive. It is possible that students who find more than two mentors are especially strong clerkship candidates, and it is also possible that a multiplicity of mentors increases the likelihood of obtaining a clerkship. More research is needed to distinguish these hypotheses and their relative influence on outcomes.¹⁸

“My most important mentor was one of my law school professors. She taught me important research and writing skills and helped me develop my advocacy skills. She also wrote me letters of recommendation for my prior internships and my current job. She was, and continues to be, my biggest supporter, mentor and friend.”
Compared to other groups, Asians graduate from law school with the lowest level of debt and the highest average salaries.

The *After the JD* study found that the average law school debt for Asians was $66,254, compared to $70,993 for whites, $72,875 for Blacks, and $73,258 for Hispanics.¹⁹ Fourteen percent of Asians graduated with no debt, compared to 19% of whites, 6% of Blacks, and 5% of Hispanics.²⁰ Two years after bar admission, the mean salary was $96,000 for Asians, compared to $82,000 for whites, $79,000 for Blacks, and $77,000 for Hispanics and Native Americans.²¹

![Figure 9. Mean Law School Debt and Salaries, 2002](source: After the JD)

<table>
<thead>
<tr>
<th>Source: After the JD</th>
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<tbody>
<tr>
<td><strong>MEAN LAW SCHOOL DEBT</strong></td>
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<tr>
<td>ASIAN</td>
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<tr>
<td>$66,254</td>
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<tr>
<td><strong>MEAN SALARIES 2 YEARS AFTER BAR ADMISSION</strong></td>
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<td>ASIAN</td>
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In the initial years after bar admission, Asians are more likely than other groups, except whites, to work in private law firms or other business settings, and they are the least likely to work in government.

In the *After the JD* sample, 70% of Asians worked in law firms or business settings two years after bar admission, compared to 72% of whites, 52% of Blacks, and 58% of Hispanics.²² By contrast, 14% of Asians worked in government, compared to 16% of whites, 27% of Blacks, and 21% of Hispanics.²³

In those initial years, Asians report the lowest level of satisfaction with their decision to become a lawyer.

According to *After the JD*, Asian American respondents averaged about a 3.8 out of 5 on career satisfaction compared to Hispanic respondents, who averaged 3.9 out of 5, and black respondents, who had the highest satisfaction scores and averaged 4.3 out of 5.²⁴ *After the JD* reports that Asians were more likely than all other groups to report a desire for more or better training, more or better mentoring, greater opportunity to shape decisions, and less pressure to bill.²⁵
FIGURE 10.
JOBS 2 YEARS AFTER BAR ADMISSION, 2002

SOURCE: After the JD
MAJOR FINDINGS

Law Firms

For nearly 20 years, Asian Americans have been the largest minority group at major law firms.26

In the National Association for Law Placement’s 2016 report on major U.S. law firms, Asians comprised 7.0% of attorneys, whereas Hispanics comprised 3.3% and African Americans comprised 2.9%.27 Law360’s survey of over 300 firms found that in 2015, Asian Americans comprised 6.5% of U.S.-based attorneys, whereas Hispanics comprised 3.4% and African Americans comprised 2.9%.28 A 2015 survey of 225 law firms by Vault and the Minority Corporate Counsel Association (Vault/MCCA) reported that Asian Americans comprised 11.4% of associates and 13.8% of summer associates, African Americans or Blacks comprised 4.22% of associates and 6.97% of summer associates, and Hispanics or Latinos comprised 4.77% of associates and 5.47% of summer associates.29

Asian Americans have the highest ratio of associates to partners of any racial or ethnic group, and this has been true for more than a decade.30

In 2015, the ratio of associates to partners in the 225 firms surveyed by Vault/MCCA was 3.70 for Asian Americans, compared to 2.22 for African Americans or Blacks, 1.92 for Hispanics or Latinos, and 0.86 for whites.31 Law360’s survey of 289 firms similarly reported that in 2014 the ratio of non-partners to partners was 3.59 for Asian Americans, 2.37 for Blacks, 1.89 for Hispanics, and 0.98 for whites.32

We do not address whether these data reflect differences in the age distribution of attorneys belonging to each group. It is possible that the high ratio of associates to partners for Asian Americans is partly a function of how recently this group has entered the legal profession in substantial numbers. At the same time, as discussed below, Asian Americans have high attrition rates in law firms and reported significant obstacles to career advancement in our survey.
Compared to their numbers within the overall law firm population, Asian Americans are less well represented than other groups at the management level.

Although Asian Americans comprised 7.05% of all attorneys in the Vault/MCCA survey of 2015 data, they held 2.09% of seats on executive management committees, 2.32% of seats on partner review committees, and 3.78% of seats on associate review committees. African Americans, Hispanics, and whites were better represented in these leadership roles relative to their respective numbers in the overall firm population.

Among Asian Americans, although women outnumber men among law firm associates, men outnumber women by almost twofold at the partner level.

In the Vault/MCCA survey of 2014 data, 56% of Asian American associates were women, while 36% of Asian American partners were women. Among Blacks or African Americans, 58% of associates were women and 37% of partners were women, and among Hispanics or Latinos, 48% of associates were women and 30% of partners were women. The ratio of men to women at the partner rank is less skewed among minority groups; across all groups, male partners outnumber female partners by more than three to one. But there are signs of change: Among the 104 Asian Americans promoted to partner in the 2014 survey, 58 were women and 46 were men.
The attrition rate for Asian Americans, as for other minority groups, is disproportionately high.

Whereas Asian Americans, Blacks or African Americans, and Hispanics or Latinos comprised 6.7%, 3.1%, and 3.5% of all attorneys, respectively, in the Vault/MCCA 2014 survey, they comprised 8.9%, 4.9%, and 4.3% of attorneys, respectively, who left their firms that year. Vault/MCCA's 2015 survey revealed that 14% of Asian American attorneys left their firms that year, compared to 16% of Blacks or African Americans, 11% of Hispanics or Latinos, and 10% of whites/Caucasians. According to After the ID, the number of Asian Americans working in firms with over 100 attorneys declined by 68% over the decade from 2 to 12 years after bar admission, compared to a 61% decline among Blacks, a 44% decline among Hispanics, and a 53% decline among whites.
MAJOR FINDINGS

Prosecutors and Public Defenders

In some jurisdictions, significant numbers of Asian Americans serve as line prosecutors.

— In 2014, among 5,508 Assistant U.S. Attorneys nationwide, 5.2% were Asian, 8.0% were Black or African American, and 5.2% were Latino.42

— In 2015, among 2,996 full-time line prosecutors in county district attorney’s offices throughout California, 12.6% were Asian or Pacific Islander, 5.6% were Black, and 9.1% were Latino.43 Asians comprise nearly 15% of the California population.44

— In 2016, among 429 staff attorneys in the Manhattan District Attorney’s office, 8.6% were Asian, 10% were Black or African American, and 6.1% were Hispanic or Latino.45 Asians comprise nearly 13% of the Manhattan population.46

— In California, women significantly outnumber men among line prosecutors who are Asian or Pacific Islander.47 The same is true for Black or African Americans, and the opposite is true for whites.48 In the Manhattan District Attorney’s office, women significantly outnumber men among line prosecutors for all three of these groups.49

The number of Asian Americans dwindles at the supervisory level and is vanishingly small among United States Attorneys and elected district attorneys.

— Among the 94 United States Attorneys in office in 2016, there were 3 Asian Americans: one in Hawai’i, one in Guam and the Northern Mariana Islands, and one in the Southern District of New York.50

— In 2015, among the 769 full-time supervisory prosecutors in California, 9.0% were Asian American or Pacific Islander, 6.6% were Black, and 11% were Latino.51 Among 52 counties composing nearly 98% of California’s population, there was only 1 elected district attorney who is Asian or Pacific Islander.52
In 2016, among the 161 supervising attorneys in the Manhattan District Attorney’s office, 4.3% were Asian American, 7.5% were Black or African American, and 6.2% were Hispanic or Latino.53

A 2014 survey identified only 10 Asian Americans among the 2,437 elected prosecutors in the nation.54 We independently sought to identify these 10 and, in so doing, found that only 4 of the 10 are actually Asian American. By comparison, the survey identified 64 African American and 41 Hispanic elected prosecutors. The vast majority of elected prosecutors in America—95% in the survey—are white.

There are no systematic data currently available on the demographics of public defenders. Although the U.S. Department of Justice conducts an ongoing Census of Public Defender Offices, this data collection does not include attorney demographics.55 As of 2016, the Justice Department was developing a survey instrument to collect information on public defenders nationwide, including demographic data.56
Major Findings

Government Attorneys

Over the past decade, Asian Americans have occupied an increasing share of attorney positions in the federal government.

According to 2015 data compiled by the U.S. Equal Employment Opportunity Commission, Asians comprised 6.7% of attorneys in 68 federal agencies, whereas Blacks comprised 8.3% and Hispanics or Latinos 4.8%. Men outnumbered women by a ratio of 1.3 to 1 among white attorneys, while women outnumbered men by a ratio of 1.4 to 1 among Asians, by 1.9 to 1 among Blacks, and by 1.1 to 1 among Hispanics or Latinos. In 6 of the agencies with the largest numbers of attorneys, the share of attorneys who are Asian increased from 4.2% in 2005 to 6.4% in 2015.

The U.S. Department of Justice, the leading federal agency responsible for setting law enforcement and legal policy priorities, has the largest number of attorneys but a low percentage of Asian Americans compared to other agencies.

In 2015, Asian Americans comprised 5.7% of attorneys in the U.S. Department of Justice and 5.5% of attorneys in the Executive Office of the U.S. Attorneys, compared to 7.5% across all other agencies. Among senior level positions in the Justice Department as of 2011, the percentage of Asians was even smaller at 3.1%. 
The percentage of attorneys who are Asian American dwindles at higher ranks of government.

In 2016, Asians made up 9.0% of GS-11 federal government attorneys, but only 5.6% of GS-15 attorneys (the highest civil service pay grade) and 5.2% of non-GS attorneys with annual salaries over $150,000.⁶¹
The number of Asian Americans on the federal bench has increased over the past decade but remains small.

Only 37 Asian Americans have ever served as Article III judges. Among them, 25 are currently serving as active judges—19 as federal district judges, 5 as federal circuit judges, and 1 as a judge on the U.S. Court of International Trade—comprising 3.4% of the 744 authorized active federal judges, compared to 536 (72%) for whites, 106 (14.2%) for African Americans, and 79 (10.6%) for Hispanics. In 2016, there were 47 Asians serving as federal administrative law judges, less than 3% of the total.

**FIGURE 14.**
**FEDERAL JUDGES, 2016**

*source: Federal Judicial Center*
Asian Americans are less well represented among state judges than among federal judges.

In 2014, Asian Americans made up approximately 2% of 10,295 surveyed judges serving on a state appellate court or general jurisdiction trial court, compared to 82.7% for white non-Hispanics, 7.9% for African-Americans, and 5.2% for Hispanics. Forty states did not have a single Asian American judge serving on a state appellate court, and 21 states did not have a single Asian American judge serving on a state appellate court or general jurisdiction trial court. Asian Americans made up less than 1% of state appellate or general jurisdiction trial judges in another 12 states, including several with significant Asian American populations (e.g., Illinois, Maryland, New York, and Virginia). Among the 334 state high court judges in the nation, we are aware of 8 Asian Americans.

FIGURE 15.
STATE JUDGES, 2014

source: The Gavel Gap: Who Sits in Judgment on State Courts?

Hawai‘i and California have the most Asian American judges.

Over three-quarters of Hawai‘i’s state judges are Asian American. In 2015, 108 (or 6.5%) of California’s 1,674 judges were Asian, 110 (or 6.6%) were African American, and 165 (or 9.9%) were Hispanic or Latino. In 2014, only 22 (or 1.8%) of New York’s 1,250 judges were Asian American.
MAJOR FINDINGS

Legal Academia

Although Asian Americans have made inroads into legal academia, their numbers remain low.

In 2013, among the 8,848 full-time law teachers in the United States, 383 (or 4.3%) were Asian American. Among the 6,907 professors in tenured or tenure-track positions, 310 (or 4.5%) were Asian American. By comparison, there were only 61 tenure-track or tenured Asian American law professors in 1992.

There are few Asian Americans in the ranks of academic administration and leadership.

In 2013, there were 3 Asian Americans among the 202 law deans in the country and 18 Asian Americans among the 709 associate or vice deans.

FIGURE 16.
LAW SCHOOL FACULTY AND ADMINISTRATORS, 2013
SOURCE: American Bar Association
MAJOR FINDINGS

Career Satisfaction and Aspirations

Among PPS respondents, those who work as judges, prosecutors, or government lawyers expressed the greatest satisfaction with their work, while those who work in law firms expressed the least satisfaction.

This is consistent with other research finding that lawyers in public service jobs report greater happiness and less alcohol consumption than lawyers in more lucrative private practices.73

FIGURE 17.
SATISFACTION WITH CHOOSING LAW
We asked respondents how satisfied they were with their current employment. This figure shows the percentage of respondents per type of employment who answered “very satisfied.”

SOURCE: Portrait Project Survey
A majority of PPS respondents (58%) indicated they wished to change practice settings, citing as their top reasons a desire for a better match with their interests, higher salary, work-life balance, and geographic location.

The lowest-ranked reasons were to participate or gain influence in the political process, prestige, to address the needs of underserved communities, and to advance issues or values important to the respondent. Over two-thirds of PPS respondents who work in law firms, compared to half of those who work in government and 39% of those who work as corporate counsel, said they would like to change practice settings.

Among PPS respondents who wished to change practice settings, the settings most often identified as desirable were corporate counsel, the federal government, and nonprofit/public interest organizations.

A substantial number of respondents indicated interest in state government, academia, or the judiciary. Few respondents indicated interest in becoming a prosecutor or public defender/legal aid worker.
MAJOR FINDINGS

Obstacles to Professional Advancement

When asked to identify barriers to career advancement, PPS respondents most often cited inadequate access to mentors and contacts, lack of formal leadership training programs, and lack of recognition for their work.

Respondents who work in law firms were more likely than other respondents to indicate inadequate access to mentors and contacts, colleagues’ lack of willingness to work together, and insufficiency of good assignments as significant barriers to career advancement.

Women were more likely than men to report experiencing barriers to career advancement.

Among PPS respondents, 88% of women reported at least one barrier to career advancement, compared to 79% of men. The gender disparity was more pronounced for certain obstacles: 37% of women, compared to 24% of men, cited family demands, including caring for children or aging parents, and 41% of women, compared to 31% of men, cited lack of recognition for their work. These disparities are statistically significant and persist after controlling for age, ethnicity, immigrant generation, sexual orientation, and law firm employment.

“As an APA litigator, I believe that I am not selected for certain assignments (e.g., oral argument) because I am not seen as having enough ‘presence’ to effectively advocate in court.”

“Being an Asian woman added another layer as men were often more interested in expressing themselves as romantic prospects as opposed to colleagues.”
We presented survey respondents with a list of barriers to career advancement and asked them to select all of the ones they had encountered. This figure shows the number of respondents counted for each obstacle.

**SOURCE**: Portrait Project Survey

When asked what behaviors they exhibited in the workplace in considering their racial identity and possible discrimination, PPS respondents most commonly reported they “sometimes” sought out association with other Asian Americans for support.

On average, PPS respondents reported they did not often try to downplay traits that may bring attention to their Asian identity or avoid association with other Asian Americans. This is unsurprising since we conducted the survey through NAPABA and affiliated networks. Asian Americans who join these organizations are presumably inclined to embrace their racial identity, and they have voluntarily sought to associate with other Asian Americans for support and networking. Women were more likely than men to seek association with other Asian Americans and to seek association with other (non-Asian) identity groups for support.
According to PPS respondents, Asian Americans perceive the legal profession as associating them with certain stereotypical traits.

Many respondents reported being perceived as hardworking, responsible, logical, careful, quiet, introverted, passive, and awkward. By contrast, few respondents reported being perceived as creative, assertive, extroverted, aggressive, or loud. We found very few statistically significant differences in these reported perceptions across practice settings, which suggests the pervasive nature of these stereotyped perceptions.

“Asians work hard and do not say no to their superiors. With that, somehow I was the only one staying back to cover the team assignments when the others went out for yoga and wine.”

**FIGURE 19.**
**TRAITS ASSOCIATED WITH ASIAN AMERICAN LAWYERS**

We asked survey respondents which of these traits they believed the legal profession associated with Asian American lawyers. This figure shows the number of respondents who answered that a certain trait was “very often” or “often” associated with Asian American lawyers.

_SOURCES_: Portrait Project Survey
Most PPS respondents did not perceive overt discrimination in the workplace because of their racial identity.

Approximately 71% of those who answered said they rarely or never perceive overt discrimination in the workplace, 24% said they sometimes do, and 6% said they often or always do. Government attorneys were less likely to say they perceive overt discrimination than non-government attorneys.

“When I sent out 30 [resumes] with my Asian last name, [I] got zero callbacks. Sent one out with [my] married name, same resume, got about 10 callbacks.”

Most PPS respondents do perceive implicit discrimination in the workplace because of their racial identity.

Approximately 20% of those who answered said they often or always perceive implicit discrimination in the workplace, 38% said they sometimes do, and 43% said they rarely or never do.
Perceptions of discrimination differ by gender.

Among PPS respondents who answered the survey questions about perceptions of discrimination, 32% of women reported experiencing overt discrimination on the basis of race sometimes, often, or always at the workplace, compared to 26% of men, and 61% of women reported experiencing implicit discrimination on the basis of race sometimes, often or always at the workplace, compared to 53% of men. These disparities are statistically significant and persist after controlling for age, ethnicity, immigrant generation, sexual orientation, and law firm employment.

“I’m an immigration lawyer. When I go to immigration court, I’m mistaken for the alien. When I go to jail to visit a client, I’m mistaken for their girlfriend.”
FIGURE 22. PERCEPTIONS OF OVERT DISCRIMINATION, BY GENDER

SOURCE: Portrait Project Survey

FIGURE 23. PERCEPTIONS OF IMPLICIT DISCRIMINATION, BY GENDER

SOURCE: Portrait Project Survey
MAJOR FINDINGS

Mental Health

A substantial minority of PPS respondents reported moderate to severe mental health challenges during their legal careers.

Among respondents who answered the question, 36% reported moderate to severe anxiety, 22% reported moderate to severe insomnia, and 20% reported moderate to severe depression. Controlling for other factors, women were more likely than men to experience mental health challenges in law school and during their legal careers.

FIGURE 24.
MENTAL HEALTH CONCERNS DURING LEGAL CAREER
This figure shows how many respondents reported experiencing each mental health challenge at either moderate (light blue) or severe (dark blue) levels.

SOURCE: Portrait Project Survey
Asian American lawyers may experience mental health challenges at a higher rate than the legal profession as a whole.

A recent study of 12,825 American lawyers in the United States found that 61% reported anxiety, 46% reported depression, and 8% reported panic disorder (defined as recurring panic attacks), whereas 72% of PPS attorney respondents who answered the question reported anxiety, 52% reported depression, and 23% reported panic attacks. However, PPS respondents may be less likely to experience alcohol or other substance abuse problems than the general attorney population. Whereas 11% of PPS respondents who answered the question reported alcoholism and 4% reported other drug abuse at mild, moderate, or severe levels, 23% of respondents in the national study reported that their use of alcohol or other substances had been problematic at some point in their lives.

Controlling for other factors, PPS respondents who work in law firms were 41% more likely than non-law firm respondents to report moderate or severe anxiety.

We found no statistically significant difference between private and public sector respondents on reported anxiety when controlling for law firm employment.

Controlling for other factors, PPS respondents with at least one parent with a law degree were 46% less likely than respondents with at least one parent with a college degree to report moderate or severe anxiety in law school.

Conversely, PPS respondents with at least one parent who did not graduate high school were 29% more likely than respondents with at least one parent with a college degree to report moderate or severe anxiety in law school. Interestingly, PPS respondents with at least one parent with some college but no degree were 31% less likely than respondents with at least one parent with a college degree to report moderate or severe anxiety in law school.
Most PPS respondents who reported serious mental health challenges did not seek help or treatment.

Among respondents who reported mild, moderate, or severe panic attacks, alcoholism, drug abuse, or eating disorders, or who reported moderate or severe anxiety, depression, or insomnia, 68% did not seek help or treatment. Women were more likely than men to seek help during their careers.

“Treatment is not a cure. Success is the cure.”

FIGURE 25.
SEEKING PROFESSIONAL HELP OR TREATMENT

SOURCE: Portrait Project Survey
Our study documents the dramatic rise of Asian Americans in the legal profession over the past generation.

From the mid-1990s to the mid-2000s, Asian American enrollment in law school grew faster than the enrollment of any other group. Since 2009, however, Asian American enrollment has dropped more precipitously than any other group. This recent decline deserves attention and careful study.

As a variety of indicators show, Asian Americans have a foot in the door in virtually every sector of the legal profession. Now the question is how wide the door will swing open. In earlier times, the influence of Asian Americans in the legal profession was largely constrained by their small numbers. Today, the constraints increasingly have to do with career pathways, incentives, and barriers to promotion. It is possible that age and lack of seniority account for some of the underrepresentation of Asian Americans at the top ranks of the profession. But our study suggests other challenges as well.

The barriers to career advancement facing Asian Americans lawyers are often subtle and not explicit, but they are nonetheless real.

One challenge has to do with perceptions. It is striking that across all sectors of the legal profession, Asian Americans report being perceived as hardworking, responsible, logical, and careful, but to a far lesser extent as empathetic, creative, extroverted, and assertive. Whereas Asian Americans are regarded as having the “hard skills” required for lawyerly competence, they are regarded as lacking many important “soft skills.”

A related challenge has to do with our finding that inadequate access to mentors and contacts was the most frequently cited barrier to career advancement among survey respondents. To the extent that mentoring and networking are conditioned by perceptions of sociability and conformity with cultural norms, Asian Americans may face particular obstacles rooted in stereotyped perceptions of being foreign, socially awkward, or unassimilable.

Several of our findings appear consistent with these challenges. Asian American law students are disproportionately enrolled in top-ranked schools, which reflects their strong performance on a key admission criterion, the Law School Admission Test (LSAT).
But Asian Americans do not obtain judicial clerkships in numbers comparable to their enrollment at highly ranked schools, and they are significantly underrepresented in the partner and leadership ranks of law firms. These selection processes—clerkships and law firm promotion—involves not only objective measures of ability, but also access to mentorship and subjective criteria such as likability, gravitas, leadership potential, and other opaque or amorphous factors that may inform whom judges, faculty members, or law firm partners regard as their protégés. Asian Americans appear to face significant obstacles in these settings.

Another challenge has to do with the gravitation of Asian Americans toward business settings and law firm jobs, and the relative dearth of Asian Americans in various government, nonprofit, and academic settings. The skew toward law firm jobs may account for the higher salaries but also lower career satisfaction and higher frequency of mental health problems observed among Asian American attorneys. It is notable that few Asian Americans appear motivated to pursue law in order to gain a pathway into government or politics. This finding is consistent with the paucity of Asian American lawyers in the highest ranks of government, especially among top prosecutors and judges. Greater penetration into these public leadership roles is critical if the increasing number of Asian American attorneys is to translate into increasing influence of Asian Americans in the legal profession and throughout society. A major challenge is to encourage Asian American lawyers to pursue public service roles and to eliminate barriers for those who do.

Finally, although this study offers a comprehensive portrait of Asian Americans in the legal profession, further data collection and research are needed to deepen our understanding of observed disparities and potential interventions.

For example, to what extent is the high associate-to-partner ratio among Asian Americans at major law firms attributable to barriers to advancement versus attractive off-ramps to other opportunities? Is the number of Asian Americans obtaining judicial clerkships more heavily influenced by the hiring decisions of judges or by faculty mentorship and advising? What can be done to position more Asian Americans to serve as judges and top prosecutors? These are among the questions that merit additional research. Going forward, a key challenge is to enhance the portrait we have painted here in broad strokes with more focused and ongoing study of diversity in the legal profession by sector and by state or region. Such study is essential to raising awareness and motivating behavioral and institutional change.
Acknowledgments

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Asian or Pacific Islander J.D. Enrollment 1971–2010, supra note 2.


The rate of growth will decline, however, as the difference in size between new cohorts coming into the profession and older cohorts leaving the profession narrows.


These percentages add up to more than 100% because some respondents indicated more than one ethnicity.

A recent study of nearly half a million attorneys ("the most extensive analysis of the political ideology of American lawyers ever conducted") reported that on the whole "American lawyers

10 Not every respondent who completed the survey answered every item. When we report the percentage of respondents who gave a particular answer on a survey item, the denominator is the number of respondents who actually answered the item instead of the entire pool of 666.

11 By comparison, the cohort of lawyers studied in the first wave of the After the ID study included a sample of 254 Asian American attorneys. AFDI REPORT, supra note 7, at 21. Unlike our survey respondents, who reflect Asian American law school enrollment trends over the past four decades, the After the ID sample was drawn only from lawyers newly admitted to the bar in the year 2000. Id. at 14. As a result, the average age of attorneys in our sample is between 39 and 40, whereas the average age in the After the ID sample when surveyed in 2002–03 was 28.6. In addition, compared to the After the ID sample, our sample includes a higher percentage of respondents who have clerked, a higher percentage who have fathers with graduate or professional degrees, a higher percentage who work in government and a lower percentage who work in private law firms, a higher average of annual pro bono hours among attorneys in private practice, and a higher percentage of Democrats and lower percentage of Republicans. See id. at 11, 15 tbl.5, 24 tbl.10, 25 tbl.11, 64 tbl.4. Our sample resembled the After the ID sample in gender breakdown, percent who graduated from law school with no debt, and median level of student debt. See id. at 9 tbl.9, 58 tbl.36, 60 tbl.38.

12 We derived these figures by compiling and tabulating from data available from the American Bar Association (ABA), Section of Legal Educ. & Admission to the Bar, Statistics, A.B.A., http://www.americanbar.org/groups/legal_education/resources/statistics.html; Section of Legal Educ. & Admission to the Bar, Section of Legal Education–ABA Required Disclosures, A.B.A., http://www.absarequireddisclosures.org/ (providing Standard 509 Information Reports). The Asian American figures include the ABA’s separate tabulation of Native Hawaiians and Pacific Islanders.

13 See supra note 12. We obtained 2016 first-year enrollment data from the ABA’s compilation of Standard 509 Information Reports.


15 We derived these figures by compiling and tabulating from the ABA’s Standard 509 Information Reports and grouped law schools according to U.S. News & World Report’s 2015 rankings.


17 Data provided by the National Association for Law Placement upon request. We tabulated demographic data for the top 30 schools from Standard 509 Information Reports collected by the ABA.

18 Access to mentoring opportunities also warrants further study in light of evidence that faculty may be less responsive to mentoring requests from female students, minority students, and Asian American students in particular. See Katherine L. Milkmann, Modupe Akinola & Dolly Chung, What Happens Before? A Field Experiment Exploring How Pay and Representation Differentially Shape Bias on the Pathway into Organizations, 61 APPLIED PSYCH. 1678 (2015).


20 Id.


22 Id. at 16 tbl.5.

23 Id.

24 Id. at 44 tbl.23.

25 Id. at 47 tbl.25.


The New York County District Attorney’s Office—New York, New York, Lawyer Demographics, supra note 45.

Id. at 44–47. The report contacted the District Attorney’s Office for each of California’s 58 counties and ultimately obtained data for all but 6 of them. Id. at 8.

The New York County District Attorney’s Office—New York, New York, Lawyer Demographics, supra note 45.


See supra note 120. The New York County District Attorney’s Office—New York, New York, Lawyer Demographics, supra note 45.

See supra note 42, at 38.

MINORITY CORP. COUNSEL ASS’N & VAULT, supra note 29, at 11–12.

Id. at 11, 21 tbl.1.

Id. at 11, 29 tbl.2.

Id. at 11, 29 tbl.2.

Id. at 11, 29 tbl.2.

MINORITY CORP. COUNSEL ASS’N & VAULT, supra note 29, at 10.

 id. Report, supra note 7, at 74 tbl.9.


Id. at 26–28, 36–38. Data on line prosecutors were tabulated by subtracting counts of “Full-Time Supervisory Prosecutors” from counts of “Total Full-Time Prosecutors.” See id. at 25 (survey form).


The New York County District Attorney’s Office—New York, New York, Lawyer Demographics, supra note 29, at 11–12.


See supra note 43.

Id.

The New York County District Attorney’s Office—New York, New York, Lawyer Demographics, supra note 45.

This information was provided by the National Asian Pacific American Bar Association and only reflects Senate-confirmed United States Attorneys.

The 6 agencies reviewed were the U.S. Department of Justice, U.S. Securities and Exchange Commission, National Labor Relations Board, Federal Trade Commission, Federal Communications Commission, and U.S. Equal Employment Opportunity Commission. We decided to calculate numbers for these 6 agencies because they had the most attorneys among federal agencies in which the Equal Employment Opportunity Commission listed “general attorney” as a major occupation. Given the variations in total workforce size of many agencies, note that there remain some agencies not included in this review with more general attorneys than these 6 agencies. OFFICE OF FED. OPERATIONS, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, ANNUAL REPORT ON THE FEDERAL WORK FORCE (2005), https://www.eeoc.gov/federal/reports/fsp2005/fsp2005.pdf; see also supra note 57.

See supra note 57. “Attorneys” here refer to any of the aforementioned legal occupations as categorized by the Office of Personnel and Management.


History of the Federal Judiciary: Diversity on the Bench, FED. JUD. CT., https://www.fjc.gov/history/judges/search/advanced-search; see also Active Asian-American & Pacific Islanders Article III Judges, MINORITY CORP. COUNSEL ASS’N (July 31, 2015), http://www.mcca.com/index.cfm?FuseAction=pageTitle&pageID=258&type=1. A number of judges identify with multiple racial or ethnic groups. As a result, the sum of each particular racial or ethnic group’s percentage of the total number of judges exceeds 100 percent when added together.

Diversity Cubes, supra note 61.

These data were provided by two researchers who created a database of and recently published a study on the demographics of judges in state courts. See TRACIE E. GEORGE & ALBERT H. YOON, AM. CONST. SOC. TRACIES NOTEBOOK: WHAT MAKES LAWYERS HAPPY?: A DATA-DRIVEN PRESCRIPTION TO REDEFINE PROFESSIONAL SUCCESS, 83 GEO. WASH. L. REV. 864 (2015); Douglas Quenqua, Lawyers with Lowest Pay Report More Happiness, N.Y. TIMES (May 12, 2015), at A19.

The percentages on perceptions of overt and implicit discrimination do not add up to 100 because of rounding.


Id. at S1.

Discussion


Id.

See supra note 64.

Demographic Data Provided by Justices and Judges Relative to Gender, Race/Ethnicity, and Gender Identity/Sexual Orientation, JUD. COUNCIL CAL. (2016), http://www.courts.ca.gov/documents/2016-Demographic-Report.pdf. These figures are based on the number of respondents who identify as “Asian Only,” “Black or African American Only,” and “White Only,” respectively. These counts could be higher when including respondents who identify as “More Than One Race,” such as Tani Cantil-Sakauye, California’s first Asian-Filipina American and current Chief Justice. Chief Justice Tani Cantil-Sakauye, CAL. JUD. BRANCH, http://www.courts.ca.gov/2664.htm.


Law School Staff: Fall 2013, supra note 69.

AUTHORS

Eric Chung
is a 2017 graduate of Yale Law School, where he was a Paul & Daisy Soros Fellow for New Americans and a student director of the Education Adequacy Project and the Supreme Court Advocacy Clinic.

Samuel Dong
is a 2016–17 Postgraduate Associate at Yale Law School, conducting empirical research under the supervision of Professor Ian Ayres.

Xiaonan April Hu
is a 2017 graduate of Yale Law School, where she worked as a Diversity Representative for the Office of Admissions and served on the executive board of the Asian Pacific American Law Students Association.

Christine Kwon
is a 2017 graduate of Yale Law School, where she served on the executive boards of the Asian Pacific American Law Students Association and the Yale Law Journal.

Goodwin Liu
is an Associate Justice of the California Supreme Court. Before joining the court in 2011, he was Professor of Law and served as Associate Dean at the UC Berkeley School of Law (Boalt Hall).
FEDERAL GOVERNMENT, JOB SEARCHES, SECURITIES AND EXCHANGE COMMISSION, U.S. ATTORNEYS OFFICES

8 Tips For Getting Into — And Out Of — A Job As A Federal Government Lawyer

Here's some helpful advice for lawyers interested in working as AUSAs or at the SEC.

By DAVID LAT

Nov 9, 2015 at 5:58 PM

68 SHARES

How do you land a job in a U.S. Attorney’s Office or the Securities and Exchange Commission, some of the most coveted positions available to young lawyers? And after your years of government service, how can you make a smooth and successful transition to private practice?

These questions formed the focus of “Breaking Barriers: Diversifying the White-Collar Bar,” a panel at last week’s 2015 annual convention of the National Asian Pacific American Bar Association (NAPABA), featuring the following young stars of the white-collar bar:

- Rodney Villazor (moderator), a litigation partner at DLA Piper;
- Christine Bautista, an attorney in the Enforcement Division of the U.S. Securities and Exchange Commission;
- Ryan Poscablo, a litigation partner at Schiff Hardin;
- Seetha Ramachandran, a special counsel at Schulte Roth & Zabel; and
- Priya Sopori, a litigation partner at Locke Lord.

The panelists, all former federal prosecutors, stressed that they were not speaking on behalf of any of their current or former employers — and, in fact, some were a little skittish about being on the record
1. If at first you don’t succeed, try, try again.

Getting a job in a U.S. Attorney’s Office or at the SEC is extremely competitive. A single opening might attract hundreds of applications, many of them from candidates with judicial clerkships and Biglaw stints on their résumés. So if you don’t get hired the first time you apply, don’t give up; as you gain more experience, you’ll become a more compelling candidate.

2. Build the right résumé for the job.

You don’t need to have graduated from a top law school or worked at a top law firm to get hired as an assistant U.S. attorney. There is no one single path to working as a prosecutor. At the same time, there are some things you can do to make yourself a more attractive applicant.

If you can, try to work at your current employer with former AUSAs, especially ones who have worked in the office you hope to get hired into. If you impress them with your work, they can go to bat for you when you apply — and because they know what it’s like to be an AUSA and what skills are required, their recommendation will carry weight with their former colleagues.

Also, to the extent that you can — and if you work in Biglaw, it’s admittedly not that easy — try to get as much trial experience as possible. It’s definitely something that U.S. Attorney’s Offices look for when plowing through the hundreds of résumés they receive.

3. Think carefully about where you want to work.

Not all government lawyer jobs are created equal. You should think about the type of work you’d like to do and where you’d like to be doing it.

For example, think about the differences between working at a U.S. Attorney’s Office versus the Department of Justice headquarters in Washington, D.C. (aka “Main Justice”). If you want to practice and make a name for yourself in a particular city or market other than D.C., that might rule out Main Justice for you. But if you are open to living in the nation’s capital, Main Justice has some advantages. Lawyers at Main Justice earn more than their counterparts in U.S. Attorney’s Offices — there’s a separate pay scale for Main Justice — and Main Justice is also arguably better if you want to turn yourself into a subject-matter expert, e.g., a guru of civil rights or money laundering or public corruption laws, with experience working on complex cases in that specific area from all over the country.
Different offices take different approaches to hiring. You should ask around to find out, for example, how many rounds of interviews the office you’re interested in conducts, how long the process generally takes, and what the interviews are like. Some offices take a Biglaw-style approach to interviewing, which is more casual, conversational, and focused on personality fit, while other offices treat it like a SCOTUS-clerkship grilling, torturing you with elaborate hypotheticals about issues of substantive law (sometimes criminal procedure issues you might be unfamiliar with if you’re coming from a civil litigation background).

One question that is almost always asked at U.S. Attorney’s Offices: why do you want to be an AUSA? With so many applicants, offices seek out lawyers who are not just capable of doing the work, but excited and enthusiastic about it. Evincing an interest in public service is a typical response — it’s common (maybe even clichéd) to talk about your desire to stand up in a courtroom and say, “My name is [X], and I represent the United States” — but it’s also important to have the work experience and other résumé items to back up that interest.

5. Have realistic expectations for the job.

Congratulations — you’ve gotten a job as a lawyer with the DOJ or the SEC. How can you prepare yourself for the experience?

It helps to have realistic expectations. You’ll often hear former AUSAs talk about how being a prosecutor was “the best job I ever had.” But these jobs, while wonderful in many ways, aren’t perfect. They have their pluses and minuses, just like any other.

The advantages: the opportunity to be in court constantly and to try cases to juries, the ability to get to know judges and law clerks, and the aforementioned privilege of standing up in a courtroom and saying you represent the United States — in other words, the opportunity to do justice or to “to wear the white hat,” as one panelist put it.

The disadvantages: the possibly lower pay, at least if you’re coming from Biglaw, and the reduced ability to control your own career path. As a public servant, you will be assigned to where the powers that be think you can best serve the public. So you might want to work on white-collar cases but get assigned instead to drug cases, and there’s not much you can do about that.

6. Don’t stress too much about exit opportunities; it’ll all work out.

Ladder-climbing lawyers are conditioned to think about what’s next, and government-bound lawyers are no exception. But one theme that emerged from the panel was that exit opportunities are plentiful for government lawyers with good experience — at least right now, given the good overall health of
When is the best time to leave government service? You’ll organically figure out when the right time is for you. Maybe it’s when you take out that mortgage on a house in the suburbs, or when your third kid arrives, or when you find yourself surrounded at a Friday happy hour with colleagues who are way younger than you. If you don’t intend on spending the rest of your career in government service (and there’s certainly nothing wrong with that), you will just feel when it’s your time to move along.

As usual in the legal world, networking is key. Some takes place in person, such as lunches with former colleagues who have gone before you through the revolving door, and some takes place online, through sites like LinkedIn. Luckily, U.S. Attorney’s Offices and other government offices are known for their large and strong professional networks.

Some panelists said they developed business plans as they marketed themselves to firms; others did not. Some panelists used recruiters; others did not. Recruiters can be helpful in terms of speeding up the process, but you shouldn’t delegate the entire process to them. For example, if you work in a very specific niche, you might know about opportunities that they don’t know about, or you might know better about how to position yourself to prospective employers.

7. Don’t be shy about marketing yourself — but try to do so in substantive ways.

Since this panel took place at NAPABA, there was some discussion (and joking) about how self-promotion can be frowned upon in certain Asian-American families or communities. But if you want to succeed in your law firm job search, and then later at getting clients, you need to know how to promote yourself.

You don’t need to — and shouldn’t — be obnoxious or self-aggrandizing about it. And be careful not to overpromise and underdeliver (a common problem along lateral lawyers). But you shouldn’t be afraid of talking about your experience, your accomplishments, and what you can bring to a firm or to clients.

Speaking at conferences and writing articles can be an excellent form of marketing (for more on this, see some of the past columns of Mark Herrmann). It’s a great way of putting yourself out there without bragging about your own awesomeness; instead, you’re simply demonstrating your expertise in certain issues. Some of your conference presentations or law review articles might have drab-sounding titles, but when a prospective client is doing preliminary research into that highly technical area of law, they might come across your pieces and call or email you with specific questions. That contact can be a great opportunity to build a relationship.

8. Don’t discount or rule out working as a prosecutor, even if you don’t see yourself as a “prosecutorial type.”
overcriminalization, excessive sentences, racial injustice, and a whole host of problems in the criminal justice system? Is it a negative that public perception has shifted somewhat and that some people (cough cough, Matt Kaiser) don’t exactly see prosecutors as wearing the aforementioned “white hat”?

The panelists offered candid responses, acknowledging that some of the work they did as prosecutors was discomfiting and even difficult. It isn’t easy to charge someone with a crime that you know will trigger a ten-year mandatory minimum, or to speak at sentencing against a defendant who’s a single mother, listening to the proceedings through an interpreter, with her young children in the audience.

And it shouldn’t be easy. Prosecutors should feel the weight of their work. Sending people to prison is no laughing matter.

Which is why, the panelists argued, we don’t want a system full of prosecutors who see only black and white or who view all defendants as “bad guys” (or gals). If you have experience as a defense lawyer or the ability to see cases from the defendant’s point of view, that will make you a better, fairer prosecutor — not just in terms of your courtroom skills, but in terms of your doing justice. So you shouldn’t rule out working as a prosecutor because you think you don’t have a “prosecutorial mindset.” Prosecution should not be the province of vengeful zealots.

One of the former prosecutors quoted the famous line from Spider-Man: “Remember, with great power comes great responsibility.” The public benefits from smart, principled, compassionate people exercising the prosecutor’s power — now more than ever.

P.S. If you’ll be in D.C. on November 16 and you’re interested in the state of the criminal justice system — and if you’ve read this far, you probably are — then consider attending Does the American Criminal Justice System Need an Overhaul?, a debate at the Cato Institute featuring Judge Alex Kozinski (9th Cir.) and Judge J. Harvie Wilkinson (4th Cir.). You can read about it here and register here.

2015 Annual Convention [National Asian Pacific American Bar Association (NAPABA)]

Earlier: Life After Being An AUSA
When Humor In The Courtroom Isn’t Funny
While the number of Asian-American lawyers and law students increased greatly in recent decades, there are still few Asian-American lawyers in top positions in the legal field.

Tawatchai Muelae/Getty Images/iStockphoto
In 1872, 13-year-old Hong Yen Chang came to the U.S. to be groomed as a diplomat. He earned degrees from Yale University and Columbia University's law school, and passed the bar exam.

He became the first Chinese-American lawyer in the U.S. in 1888, when he was admitted to the New York bar. But not all states were as welcoming. When Chang applied for a California law license in 1892, the state's Supreme Court denied his application citing bar association rules, which precluded noncitizens from joining. Chang was unable to become a citizen because of the Chinese Exclusion Act of 1882.

More than a century later, Chang's descendants petitioned for their relative to be granted posthumous bar admission and brought the case before the California Supreme Court.

In 2015, the California Supreme Court reversed the ruling. "Even if we cannot undo history, we can acknowledge it and, in doing so, accord a full measure of recognition to Chang's path-breaking efforts to become the first lawyer of Chinese descent in the United States," the judges wrote in their decision.

"That case got me thinking about the fact that Asian-Americans have been formally excluded from the legal profession as Chang was, and of course, [with] all the informal barriers," says California Supreme Court justice Goodwin Liu, who reviewed the case. He said he realized he hadn't seen a comprehensive study of how Asian-Americans came into the legal profession — so he took it upon himself to lead one.

In the study, Liu shows that though Asian-Americans are the fastest-growing minority group in the legal field, there's still a stark lack of Asian-American lawyers in top positions in this country.

In 2015, 10 percent of graduates at the top-30 law schools were Asian-American, according to the study. Yet they only comprised about 6 percent of federal law clerks and 4 percent of state law clerks. Compare that to white students, and you'll see a striking contrast: 58 percent of students from top-30 schools were white, but still landed 82 percent of all federal clerkships and 80 percent of all state clerkships.
Liu and his co-researchers also found that while Asian-Americans comprise 5 percent of lawyers in the U.S. and 7 percent of law students, only 3 percent of federal judges are Asian-American, and three out of 94 U.S. Attorneys last year were Asian-American.

The study noted that some obstacles Asian-Americans face include a lack of access to mentors, as well as stereotypes of Asians as being unable to assimilate or socially awkward.

"Whereas Asian Americans are regarded as having the 'hard skills' required for lawyerly competence, they are regarded as lacking many important 'soft skills,' " the researchers wrote.

The study also pointed out that there's a dearth of Asian-American lawyers in public service roles:

"It is notable that few Asian Americans appear motivated to pursue law in order to gain a pathway into government or politics. ... Greater penetration into these public leadership roles is critical if the increasing number of Asian American attorneys is to translate into increasing influence of Asian Americans in the legal profession and throughout society. A major challenge is to encourage Asian American lawyers to pursue public service roles and to eliminate barriers for those who do."

When asked to break out the data further by ethnicity, Xiaonan Hu, one of the researchers, told NPR that she noticed Filipino-American and Indian-American respondents were more likely to say they enrolled in law school to work in government or politics than, say, Japanese-American or Korean-American respondents. Two percent of respondents who were Japanese-American and 3 percent of Korean-Americans ranked the entry into government or politics as a top motivator for going to law school, compared to 11 percent of Filipino-Americans and 5 percent of Indian-Americans.

So what could account for this?

"It doesn't seem like it's as much about those groups [being] MORE interested in government and politics, but less averse to it," Karthick Ramakrishnan, a professor of
political science at the University of California, Riverside, wrote in an email.

"For Filipino Americans, many of them made advancements in government and local politics in California and Hawaii, where they have large populations and there were relatively long-standing Filipino communities," Ramakrishnan, who also runs the project AAPI DATA, said.

"Indian Americans, by comparison, are much more recently arrived in the United States (with their population booming in the last 2 decades). That normally would mean that we would not expect them to be involved in politics. But, past research indicates that prior experience with democracy and high English proficiency tend to mean greater political participation."

And while there are rampant structural issues that need to be addressed, Chris Kang, former National Director of the National Council of Asian Pacific Americans, said that emphasizing role models can sometimes be powerful.

When Kang was working with the Obama administration as Pres. Obama's Deputy Counsel, he helped appoint federal judges. Kang said he and his team tried to highlight each new justice's ethnicity and gender.

"It wasn't just, 'the first Asian-American judge in the district,' but we really went and highlighted 'the first Vietnamese-American, the first Filipino-American,' " Kang told NPR.

"If there's someone of your particular ethnicity — or an Asian-American woman, [where there's] only been two to the federal bench before — seeing now a dozen of them starts to make a difference," Kang said, "and you start to think as you're going into law school or you're a lawyer considering what's next for you, that a judgeship might be possible."
Law schools are filled with Asian Americans. So why aren’t there more Asian judges?

By Tracy Jan
July 18, 2017

The question arose for California Supreme Court Justice Goodwin Liu when his court granted posthumous bar admission to Hong Yen Chang, a Chinese immigrant denied a law license more than a century ago because of his race: how are Asian Americans faring in the legal profession today?

Asian Americans are no longer subject to exclusion laws, but they have hit a legal glass ceiling in private practice, academia and public service.

While Asian Americans are the fastest growing minority group in law, and are overrepresented in the country’s top law schools as well as at major law firms, they lag behind all other racial groups when it comes to attaining leadership roles in the legal profession, according to a study released Tuesday by Yale Law School and the National Asian Pacific American Bar Association.

“Asian American growth in the legal profession has been impressive but penetration into leadership ranks has been slow,” said Liu, who co-authored the study with a group of students at Yale Law School, his alma mater.

Asian Americans comprise 10 percent of graduates at the country’s top law schools although they make up just 6 percent of the U.S. population. But only 3 percent of the federal judiciary and 2 percent of state judges are Asian American, the study found.

Of the 94 U.S. attorneys, only three are Asian American. And only four of the 2,437 elected prosecutors are Asian American.

In the private sector, Asian Americans have been the largest minority group in major law firms for nearly two decades, making up 7 percent of attorneys. But they have the highest attrition rates and the lowest ratio of partners to associates of any racial group.

And in academia, Asian made up only 3 out of 202 law school deans in the country in 2013, and 18 out of 709 associate or vice deans.

“Asian Americans do well when it comes to competition and selection with objective metrics” such as LSAT scores and grades, Liu said. “But when the selection begins to involve things that are intangible for promotions, they kind of flip off the radar.”
The disparities become evident straight out of law school. Asian Americans make up just 6.5 percent of federal judicial law clerks and 4.6 percent of state law clerks, despite their heavy presence at the top 30 law schools.

In contrast, while whites make up 58.2 percent of students at top law schools, they landed 82.4 percent of all federal clerkships and 80.2 percent of state clerkships.

This could be because professors often serve as the gateway to such opportunities, Liu said, and Asian American students may not have cultivated as strong ties with faculty given that most of them are white.

“Who do they think of as their proteges? Who do they mentor and decide to encourage?” Liu said. “In this very discretionary subjective selection process that involves having contacts, Asian Americans don’t do as well.”

Other students though simply know what to do. “They knew what a clerkship was -- that it was something to go for and could open more doors for you later on in life,” Liu said. “They know how to seek out the professors who know the judges. You have to be part of that conversation and that network to know these things. There is no published manual.”

Eric Chung, a 24-year-old Yale Law graduate who co-authored the study, is clerking for Liu, having gotten to know him through their work in the report.

“For many Asian Americans, the traditional dynamic is just put your head down, do the good work, and it’s not who you know but how hard you work and what you do,” Chung said. “But in a society where a lot depends on these informal networks, that may not be sufficient.”

Similar patterns turn up in law firms when it comes to promotions, and candidates are evaluated on criteria like leadership, likability, sociability, gravitas and access to contacts, Liu said.

Implicit biases contribute to firms’ decisions about placing lawyers with clients and on the management committee, or naming as general counsel, he said.

“You hear a lot of recruiters talk about how we are one of the top two candidates but ultimately we weren’t the right ‘fit,’” said Jean Lee, president and chief executive of the Minority Corporate Counsel Association and a former vice president and assistant general counsel at JP Morgan Chase. “One of the primary factors is we’re not seen as leaders.”

Liu said the report, based on a survey, focus groups, and an analysis of publicly available data, is the first comprehensive look at Asian Americans in law.

He said he hopes the legal community will use the results to stimulate conversations about improving mentorship of law students and law firm associates, as well as to make people aware of existing biases.

“You have to give people hard numbers to show people that this is an issue,” Liu said.
The report’s findings, he said, turns the Asian “model minority” myth on its head. “People think Asian Americans are doing so well. But when you look at the top rungs, Asian Americans aren’t doing well at all.”

Tracy Jan
Tracy Jan covers the intersection of race and the economy for The Washington Post. She previously was a national political reporter at the Boston Globe. Follow
Asian American Attorneys: Shattering Conventional Notions

BY ELISABETH FRATER, ESQ. | ELISABETH FRATER, ESQ.

"We may be in a better position [than other minorities] in some respects, but we are in a worse position in others. Where we are in a better position is that we have quite a high proportion of Asian Americans who have higher education because of the emphasis on education. If, however, the number of Asian Americans at the top of the professions and major corporations is any indication—and it may not be—we seem to be getting a comparatively lower return."

—Woon-Wah Si

Despite making gains on all measures of success, from the attainment of advanced degrees to financial holdings, Asian Pacific Americans are still underrepresented in the legal profession. While U.S. Census data indicate that Asian Pacific Americans account for approximately five percent of the U.S. population and are the fastest-growing racial group in the country, they
make up almost four percent of the nation's estimated 1.1 million lawyers, according to the National Asian Pacific American Bar Association.

Even worse, many Asian Pacific American lawyers are confronted with harmful stereotypes as they make headway in the legal world. James D. "Jimmy" Nguyen displayed a talent at school in competitive speech, so it comes as no surprise that he became a successful litigator. But it was a taste of the stereotypes to come for this Vietnamese American that others were shocked he was so eloquent. "There is somewhat of a perception that Asian people are either more quiet or not as assertive or certainly not as eloquent as other speakers," says Nguyen, a partner in Foley & Lardner's Los Angeles office.

Julie Cheng, assistant general counsel with Bayer Healthcare LLC, has at times encountered a similar reaction when she demonstrated her natural legal abilities. Some of her former colleagues have expected her to "be able to crank out the work, not make any waves, and be a good do-bee," Cheng relates.

"When I get to work I am not really like that," says Cheng, who is Taiwanese American. "Sure I do a lot of work, but I'm not the kind of person who sits in their office all day and stays quiet. I am often in meetings with people who don't know me. A lot of times, I've been taken to be one of the researchers, and I'm sometimes fairly quiet. When they discover that I'm an attorney and that I will express my opinions, they are often visibly surprised."

What does it take to break down these misperceptions? The answer, according to these attorneys, requires both recognizing and hurdling the stereotypes while pressing for greater acceptance in the higher echelons of business and law.

**THE MODEL MINORITY FALLACY**

Joseph J. Centeno, a partner with Philadelphia's Obermayer Rebmann Maxwell & Hippel, says, "There has always been a question about Asians—where do we fit? In the language of black and white and race and politics in America, where are the Asians?"

Centeno, who is Filipino American, appreciates the work of Frank Wu, dean and professor of law at Wayne State University Law School and the author of *Yellow: Race in America Beyond Black and White*, and others who attack the albatross of the Asian American community—the notion that Asians are the "model minority."

Professor Wu has written that the "model minority" viewpoint is that Asian Americans have suffered discrimination but overcame its effects by being conservative, hard-working, and well-educated.

Woon-Wah Siu, a member of Chicago-based Bell, Boyd & Lloyd, encountered the myth when she was in law school. Other students told her, she says, "You Asians are doing well and you don't need any help."
Siu, who was born in China, says this is a harmful assumption. "We may be in a better position [than other minorities] in some respects, but we are in a worse position in others. Where we are in a better position is that we have quite a high proportion of Asian Americans who have higher education because of the emphasis on education. If, however, the number of Asian Americans at the top of the professions and major corporations is any indication—and it may not be—we seem to be getting a comparatively lower return."

Rishi Agrawal of Eimer Stahl Klevorn & Solberg LLP and president-elect of the Asian American Bar Association of Chicago believes that the small percentage of Asian Americans at the top of the legal profession makes it difficult for younger Asian American attorneys to obtain the necessary mentorship that is invaluable to the success of professionals.

"This serves to handicap an Asian American legal community that has only recently entered the field—and therefore, the supposed model minority benefits are overstated," stated Agrawal.

The disadvantage is subtle, according to Siu. "What is not in our favor is that, compared to Hispanic Americans and African Americans, we definitely look foreign. For other minorities, the second generation grows up here, they speak like Americans and people don't see them as foreigners. But with second-generation Asian Americans, people still see them as foreigners," she says. "People just instinctively think that you are different; they think, 'Maybe I have to deal with you differently.'"

SHATTERING STEREOTYPES

These stereotypes are different than those facing other ethnic and racial minorities. "I do not believe the 'quiet' and 'science/math' labels have been applied as forcefully to other minorities," says Michael P. Chu, partner at Chicago's Brinks Hofer Gilson & Lione and president of the National Asian Pacific American Bar Association.

Indeed, some view these labels as "good" stereotypes. "But the fact remains that they are stereotypes," says Chu, "and stereotypes are just not how a minority—or any group—should want to define itself."

"Just because you're Asian American doesn't mean you can well represent your clients when dealing with an Asian company."

— Larry C. Lowe

Nearly every attorney interviewed voiced a concern that even enumerating the stereotypes was harmful to Asians. Jeffrey D. Hsi, a partner at Boston's Edwards & Angell, says, "I hate to reinforce the stereotypes that Asian Americans excelled in and focused on science,
engineering, and medicine. But, I think the reality is that, in fact, that was the case," he says. "My generation maybe less so than that of the generation ahead of me or the one before that."

These stereotypes can stifle professional growth. Reed Smith Partner Min S. Suh, who is based in Philadelphia, believes that the challenge to Asian American attorneys is to avoid being pigeonholed as excelling only in certain areas, such as the hard sciences. "For instance, she says, "There is a perception, especially in the legal community, that Asian American lawyers are not suitable for management or leadership positions due to the stereotype that Asian Americans lack the personality to influence and lead others."

Centeno points to the stereotype of Asian Americans "not being aggressive or assertive and being meek or sometimes a geek." In addition, he notes the well-worn stereotype that Asians don't want to rock the boat.

"I question whether or not that is true, and even if these are true stereotypes, is that making us a model minority?" he asks. "In our society, to be a leader in any industry, you have to be bold, you have to take risks, and you have to be out there and network and create relationships with people. That's what I think Asian Americans need to do to break what is viewed by me and others to be a glass ceiling," says Centeno.

Bayer's Cheng stresses that some challenges are unique to Asian women.

"There is this perception that a lot of people still have that we are quiet and that we are going to follow orders. We are treated differently than the male associates." But she points out, "We are also treated differently than the white and black females. When you don't act like people expect, people don't know how to deal with you, and sometimes get upset."

Unfortunately, physical appearance may be an unspoken challenge to Asian American attorneys. "I call it a challenge because most of us look really young, and are blessed with genetically good skin. I feel like I look young and I am smaller in stature," says Nguyen. He says that a youthful appearance may be a benefit in one's personal life, but, as a professional, it may cause others to assume he lacks experience.

Not all the myths about Asian Americans revolve around culture, appearance, and values. As Apple Computer Inc. Senior Counsel Larry C. Lowe points out, sometimes the misconceptions have to do with overplaying one's ethnic background. "There is a lot of business going on between Asian companies and companies here in the [Silicon] Valley, including Apple," says Lowe. "There is sometimes a thought that, 'Gee, if I am an Asian American, I can get into that business and help and be an asset.' I don't know if that is actually always true."

Lowe believes this is a dangerous assumption unless the attorney is foreign-born or has spent considerable time in Asia. "Unless you are fluent, and I mean really fluent in the foreign language, it is dangerous to try to do business in that language," he says. "Business
negotiations require a precise and careful use of language, well beyond that of casual conversation. Just because you're Asian American doesn't mean you can well represent your clients when dealing with an Asian company."

Nguyen of Foley & Lardner is sometimes asked whether he can tap into the Vietnamese business marketplace. "I was recently asked, 'Now that Vietnam as a country is opening up more to the Western economy and business, are you able to take advantage of that situation and develop business, and clients?' " Nguyen recalls. "I said not really, because the Vietnamese businesses are at a much younger, less sophisticated place."

Another challenge for Nguyen is that, "My natural contact base is not a good potential client base for me. I think that is true of a lot of ethnic minority groups. While it is helpful that I am Vietnamese—sometimes I do get calls from people looking for a Vietnamese lawyer—they are often not companies of the size and sophistication that can afford our firm's legal services."

HOME INFLUENCES
Suh of Reed Smith was the rst lawyer in her family. Her parents were concerned that Suh, who was born in Seoul, South Korea, would face more discrimination in the legal profession than in other fields.

"While my parents were supportive of my decision to enter the legal profession, they were apprehensive about my future as an Asian American woman in a predominantly white male profession," she says.

Hsi agrees. "It has always been said that the generations before us might have steered us that way [into science and technology] in part because there was less exposure to bias," says Hsi. He notes that during his formative years and then through college and law school, he didn't have a natural network of lawyers or people in the legal community to speak with about potential legal jobs.

"In the Asian culture, especially those before us, people didn't want to be adversarial, they wanted to save face, they held the utmost respect for elders and authority, and those values sometimes are in tension with attributes you might need to be a lawyer," explains Hsi.

Siu disagrees that the home environment might have discouraged Asian Americans in the past from going into the legal profession. "At least in my own case, that is not the case. I think the perception when I was growing up in Asia is that lawyers are these awesome people. They are highly regarded and they definitely are on par with other professionals, like engineers and doctors."

Benjamin T. Lo, a partner in the Chicago-based firm of Ungaretti & Harris, says, "I just don't think that 10 to 15 years ago that Asians thought about going to law school until we started
seeing more numbers and observing people in more high-profile positions," says Lo. "You see Asians on television, you see Asians in the news, and working on high-profile cases now."

**MARKETING 101**

Siu points out that for young Asian American attorneys, like all minorities, the key to success is to better market one's abilities to the firm, to the senior lawyers, and, as one becomes more experienced, to the clients.

Lo says, "I think that one thing that has hurt Asian American attorneys is that they may be very good attorneys, but people in the community don't know that they are attorneys or are afraid to approach them."

Suh explains that it goes "hand-in-hand with how we view ourselves. Asian Americans tend to avoid public disputes and controversies. We are not particularly litigious people." Suh points out the differences between the Asian and American legal systems may have some bearing on the issue. "In Asia, the idea of suing someone because you fell on their property is obscene to most people."

"The key is to find the right balance between fitting in and using our ethnicity to our advantage. Through our interactions with our colleagues, we need to display that we belong, that we possess the necessary skills to advance and be an asset to the firm. At the same time, we need to demonstrate how our ethnicity enables us to form specific contacts and networking opportunity for the firm. This is especially important given the growing global legal market," remarked Agrawal, who is also on the board of the Indian American Bar Association of Chicago and the National Association of South Asian Bar Associations.

Nguyen says the challenge of a law firm experience is generating business and client relationships. "I think that is generally harder for minority and women lawyers because the buyers of our legal services tend not to be women and minorities."

"Which isn't to say we only get hired by people like us, but it makes it easier to get access to contacts that will lead to potential contacts in business. I think it is a little bit harder for me as an Asian American attorney," Nguyen adds.

In addition, some attorneys suggest that to get ahead, Asian American attorneys need to break out of their comfort zone. According to Hsi, "We are at an interesting crossroads because, as we speak, diversity has a higher profile." Yet, Hsi continues, geographically, it is still more comfortable to be an Asian American lawyer in cosmopolitan markets like New York and San Francisco, because of the sheer numbers of Asians who practice there.

**ASIAN AMERICANS: THE SUM OF IT ALL**

- 13.1 million U.S. residents say they are Asian or Asian in combination with one or more other races. This group comprises five percent of the total population. Since Census 2000, the
number of people who are part of this group has increased nine percent—the highest growth rate of any race group, as stated by the 2000 U.S. Census.

- The projected percentage increase between 2000 and 2050 in the population of people whose only race is Asian is 213 percent. This compares with a 49 percent increase in the population as a whole over the same period, as stated by the 2000 U.S. Census.
- Ninety-five percent of Asian and Pacific Islanders live in metropolitan areas. Fifty-one percent of Asians and Pacific Islanders live in the Western part of the United States, according to the 2000 U.S. Census.
- Sixteen percent of Asians and Pacific Islanders 25 years and over have earned an advanced degree (for example, master's, Ph.D., M.D., or J.D.). This percentage amounts to 1.3 million Asians and Pacific Islanders. The corresponding rate for all adults in this age group is nine percent according to the 2000 U.S. Census.
- The median household income for Asian American families is $10,000 above that of whites according to the 2000 U.S. Census.
- Asian Americans accounted for 5.9 percent of all college enrollment in 2002, while whites were 62 percent, African Americans were 11.5 percent, Latinos were 9.5 percent, and Native Americans were less than one percent, according to the U.S. Department of Education, National Center for Education Statistics (Spring 2003).
- For each dollar earned by white men, Asian American women earn 75 cents. This is better than white women, who earn 70 cents on the dollar, as stated by the Institute for Women's Policy Research report, "Status of Women in the States," (November 2004).

REACHING HIGHER

Most observers agree there is room for improvement in the legal profession's highest levels. "There is a clear underrepresentation in one area—the judiciary. Clearly there is a political aspect that goes back to the old boy network," Hsi comments.

Brinks Hofer's Chu points out that there are only six Article III federal judges in the United States. "I view these deficits as incredible opportunities for Asian American lawyers to steer their careers toward judicial positions," he says.

Centeno agrees. "You ask yourself how many Asian American judges sit on the federal bench? In Pennsylvania and New Jersey—the answer is none, never. Why is that?"

Siu, who is also a member of the Chicago Committee on Minorities in Large Law Firms and is the executive vice president of the Organization of Chinese Americans of Greater Chicago, points to the anecdotal evidence that the rank-and-file of Asian American lawyers at the entry level is growing. "But if you look at partnerships in the Chicago area, you see that the number of Asian American partners is small."
Centeno strongly advocates the role of mentors, especially those in the highest law-firm tiers, so that Asian Americans can more easily achieve political acceptance and gain a stronger foothold.

Hsi conveys that the biggest challenge is getting larger numbers of Asian Americans into the profession. "If you look historically at the numbers, there is clearly improvement and that is a good sign, but clearly there is work to be done."

He notes that the number of Asian Americans entering law school has grown. Indeed in 2004, Asian Americans made up the greatest number of minority law student groups, and in many law schools, they dominate the minority student body, according to the American Bar Association's Presidential Advisory Council on Diversity in the Profession (ACD).

But Hsi is disheartened by the lack of Asian Americans who have moved up from the associate level. "The next issue is the transition of Asian Americans into higher ranks, whether in partnerships in law firms, or more senior positions in corporations or government organizations. Obviously, more Asian Americans are starting to ascend to those positions, but I think if you look across the board, those numbers are still lacking compared to population numbers."

"We need to recognize even within our ethnic group there are sometimes diverse views and that all of those views should be encouraged in connection with undermining stereotypes and increasing Asian American participation in the legal profession."

— Terry Bates

Terry Bates, a partner in Reed Smith's Los Angeles office and his firm's diversity liaison in Southern California, says, "The Asian American Bar needs to make sure that, while it continues to advance its memberships' participation in the judiciary and senior levels of law firms, it does not become politically polarized in its efforts or otherwise creates a bar stereotype."

"I have been to quite a few bar functions where it seems that the group is automatically assuming that there is one view," says Bates, who is Chinese American.

"We need to recognize even within our ethnic group there are sometimes diverse views and that all of those views should be encouraged in connection with undermining stereotypes and increasing Asian American participation in the legal profession."

**NOT YET COLORBLIND**

Geography also plays a part in stereotypes about Asian Americans. Lowe, of Apple Computer, emphasizes the notion that the San Francisco Bay Area is completely a culturally neutral and color-blind society is not true. The reality, says Lowe, is that a minority attorney cannot
assume full acceptance from juries or opposing counsel. "You have to be conscious of your ethnicity, although you don't have to be controlled by it. But I think you are foolish if you don't take it into account in jury selection how to present yourself."

"Conversely, having been in the Valley, I don't think it is an issue to be a minority attorney here in the high-tech world," Lowe adds.

Reed Smith's Suh remains optimistic that there will be more opportunities for Asian American lawyers as they become more integrated into society. "I say the word 'integration' in terms of the politics. A lot of Asian Americans are so far removed from the political process."

"You need the grassroots community support to garner political appointments," Suh continues. "But we are not our best advocates when it comes to speaking of our achievements. The public spotlight and immodesty does not sit well with Asians. Fortunately, the second generation Asian Americans are slowly unburdening themselves with these hampering thoughts. They are much more politically active and savvy than the former generation."

While Asian Americans are currently underrepresented in law, they continue to break down stereotypes and move into leadership positions. This minority group seems poised and eager to reach the ultimate levels of success in the legal profession.

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Elisabeth Frater, Esq. specializes in business litigation in Napa, Calif.

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