FRIDAY, NOVEMBER 10, 2023
9:00 AM – 10:15 AM

Session 101 | The Road to Authenticity: Diverse Perspectives on Navigating a Fulfilling Legal Career

Lawyers must develop soft skills and mentor relationships to progress their legal career. But how do we get there? And get there while being our authentic selves? Simply talking about career development skills from the “Asian” point of view glosses over the diverse perspectives and challenges facing AAPI lawyers, which may be influenced or driven by a host of factors involving one’s family, background, and experiences. Rather than a one-size-fits-all approach, this program recognizes the diverse perspectives and challenges facing AAPI lawyers, and offers guidance on how to navigate the unique hurdles that different types of lawyers face in their careers. In this moderated panel, lawyers with diverse backgrounds, experience, and tenures—from government, in-house, big law, and minority & LGBTQ+ owned firms—will share their insights on developing soft skills, navigating organizational politics, finding and cultivating mentorship/sponsorship, developing client/stakeholder relationships, preparing for the annual review process, and becoming partner/senior attorney. The panelists will represent attorneys who (1) came to the United States (“US”) for law school, (2) were born in the US, (3) immigrated to the US as a baby adoptee, and (4) identify as LGBTQ+. The program will provide specific advice for attorneys who identify with one or more of these intersectional areas and to attorneys who mentor and sponsor such attorneys.

Moderator:
Julia K. Whitelock (she/her), Partner, Hudson Cook, LLP

Speakers:
Minsuk Han (he/him), Partner, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.
Rachana Fischer (she/her), Assistant United States Attorney, United States Attorney’s Office for the Southern District of Indiana
Bonnie Lee Wolf (she/her), AVP, Staff Admin, Nationwide Insurance
Stephen Kulp (he/him), Owner and Founder, Kulp Legal, LLC
This panel presents the experiences of attorneys whose particular intersectionalities are not typically the subject of the broader intersectionality/minority professional development discussions. We selected these materials to provide background on some of the larger themes we will discuss.

What is intersectionality?

“Intersectionality” is a term coined by Professor Kimberlé Crenshaw in her 1989 paper critiquing the marginalization of the intersection of race and sex. “Intersectionality helps explain how various aspects of a person’s identity, such as gender and race, and any associated privilege, discrimination, and implicit bias, work in combination to create social perceptions of that person, as well as influence that person’s particular experiences.” See Marissa Marquez, “Are You an Attorney Too?” The Impact of Intersectionality on the Career Advancement of Women of Color, 55-APR HOUS. LAW. 12 (2018).

Why does understanding and acknowledging intersectionality matter?

Identities are not mutually exclusive. The experience of an attorney who is a Korean man who immigrated to the United States as an adult is different from an attorney who is a Korean woman who immigrated to the United States as a baby and was raised by Caucasian parents. Both appear Korean, or more broadly “Asian,” but their sex and their cultural upbringing are different based on additional layers of their particular identity. While there may be particular perceptions and stereotypes that attach to one particular identity, the intersectionality of multiple aspects of a person’s identity come with additional or alternative perceptions and stereotypes that may not be present for an aspect taken on its own. See e.g., Mona Mehta Stone, Asian-American Lawyers: Differences Abound, 64-FEB FED. LAW. 42 (2017); Peggy Li, Hitting the Ceiling: An Examination of Barriers to Success for Asian American Women, 29 BERKELEY J. GENDER L. & JUST. 140 (2014).

What are some ways attorneys can navigate a fulfilling career?


Find your community. E.g., NAPABA, Asian Adoptee Network of NAPABA, Philadelphia LGBTQ Bar Association.

Cultivate mentors, sponsors, and allies. See e.g., Sherrie L. Phillips and Isabella T. Hosein, The Importance of Ships, 83 ALA. LAW. 96 (Mar. 2022)

“ARE YOU AN ATTORNEY TOO?”
The Impact of Intersectionality on the Career Advancement of Women of Color

“Are you an attorney, too?” a seasoned Caucasian male attorney asked me at an attorney-networking event. This question came right after he had just assumed my Caucasian female colleague was a fellow attorney, an assumption he did not automatically extend to me, despite it being an attorney-networking event. I asked myself, why else would someone show up to an attorney-networking event in a gray suit and painfully unfashionable but sensible shoes? However, I politely confirmed that I was, in fact, an attorney, and looked for ways to steer the conversation to a shared space. This was not the first time someone assumed, despite all evidence to the contrary, that I was not an attorney. While this is a relatively common experience for many women in traditionally male-dominated professions, why was my experience different from my colleague's experience? The sociological theory of “intersectionality” helps us begin to answer this question and explain—and therefore begin to confront—the particular challenges that women of color encounter in their advancement in the legal profession.

What is “intersectionality”?  
Intersectionality helps explain how various aspects of a person's identity, such as gender and race, and any associated privilege, discrimination, and implicit bias, work in combination to create social perceptions of that person, as well as influence that person's particular experiences. Professor Kimberlé Crenshaw coined the term “intersectionality” in a 1989 paper where she used the intersection of race and gender as a way to help explain that the marginalization of African-American women was profoundly different than the marginalization occurring simply by being an African-American or by being a female.2

One of the cases she used to illustrate the marginalization of African-American women was DeGraffenreid v. General Motors, 413 F. Supp. 142 (E.D. Mo 1976). In 1976, Emma DeGraffenreid and five African-American female production employees alleged a “last hired-first fired” policy violated Title VII because it perpetuated past discriminatory practices of not hiring African-American females. The claim was that, historically, an African-American applicant might get hired to work on the floor of the factory if he were male; however, if she were a female, she would not be considered for the position. Similarly, a female applicant for a secretary position might be hired if she were Caucasian, but would not have a chance if she were African-American. Because of the historical discriminatory hiring practices, African-American females were hired last and, per policy, would be fired first. The trial court refused to recognize African-American females as a distinct protected class and analyzed their race and gender claims separately, rather than considering their combined impact. Intersectionality is the realization that a company can have policies that treat women fairly and separate policies that treat people of color fairly, yet these policies alone do not ensure that women of color are treated fairly. In essence, the discrimination they experienced was invisible because it was lost in the space where race and gender intersect.

When the seasoned attorney interacted with my colleague, their shared identity as Caucasians allowed him, or at least made it more comfortable for him, to assume she was an attorney. Had he encountered a Latino attorney, rather than a Latina attorney, their shared identity as men would have allowed him to assume that the Latino was an attorney. But with me--unlike the seasoned attorney in both gender and race--our lack of shared identities prevented him from making similar assumptions about me. That encounter illustrates the theory of intersectionality in practice, as two forces of subconscious bias simultaneously impacted me. The combination impacted me in a unique way like the DeGraffenreid plaintiffs.
How is intersectionality impacting women of color in the legal industry?

The legal industry is currently 85% Caucasian and 65% male, posing enhanced obstacles for women of color in their paths to advancement. Despite efforts by the American Bar Association (ABA) and others to make the profession more diverse, women of color compose just over 8% of attorneys, a gain of one percentage point since 2007. In an industry where women of color are the most underrepresented group, they face unique barriers to advancement. These statistics are consistent with what intersectionality would predict: women of color face unique challenges compared to their counterparts. And it suggests that intersectionality should be considered when addressing unique barriers faced by women of color.

Dr. Arin Reeves, an attorney, diversity consultant, and former member of the ABA Commission on Women, says that while a few law firms pay attention to intersectionality when it comes to gender and race, “[w]omen of color often are twice removed” and, as a result, feel isolated and operate on the periphery of law firms.

The National Association for Law Placement's (NALP) 2017 U.S. diversity report shows the overall representation of minority women at various levels of advancement in Figure 1:

Lack of mentorship and sponsorship

Several contributors to a 2008 ABA report addressing successful strategies for law firms, and for women of color in law firms, stressed that mentoring was vital to developing a client base and highly important to any attorney's success and advancement. Similarly, a 2012 ABA report regarding women of color in Fortune 500 legal departments indicated that women of color respondents “were hungry for mentors” who often did not materialize. While the 2012 ABA report showed 18% of women of color and 19% of Caucasian males reported they had “no formal mentors,” their reasons were vastly different. Women of color reported they were more likely to be without a mentor because they were unable to create relationships with seasoned attorneys comprised mainly of Caucasian males. Caucasian men, by contrast, believed they succeed on their own without needing mentors to advance their careers.

Since a majority of the attorneys most likely to mentor a woman of color are Caucasian males, many of these senior attorneys are less likely to relate to a woman of color. Mentorships develop naturally over time, and mentorship relationships may form more naturally when the mentor and mentee have shared identities. Thus, in an industry dominated by Caucasian males, women of color might have a harder time developing these career-enhancing relationships naturally than their Caucasian counterparts, which can mean “the difference between career success and career stagnation.” Mentorship relationships are vital to career advancement because they lead to sponsorship. Usually, sponsors are influential leaders who can assist with promotion and career success; however, respondents in the 2012 ABA report identified a “lack of mentors and sponsors willing to advocate on their behalf.”

Lack of assignments

In a 2006 ABA study called Visible Invisibility: Women of Color in Law Firms, 43.5% of the participating women of color reported “missing out on desirable assignments because of race or gender while working at the largest law firms where they’ve practiced,” compared to 25% of men of color, 38.6% of Caucasian women, and 1.9% of Caucasian men. A 2009 study by a non-profit called Catalyst identified “lack of access to business development opportunities and important client engagements” as a challenge for women of color. Tina Tchen, a former big law partner and leader of the Time's Up Legal Defense Fund, summarized the effects of intersectionality and how it can impact a woman of color's career trajectory: “The *14 people
handing out the work are more comfortable with others like themselves, and since the majority of the people handing out the work are white men, it is just perpetuating itself.”

Racial and gender stereotyping

In the ABA's 2012 study, women of color reported “more consistent levels of negative bias across racial, ethnic, and gender categories,” compared to their Caucasian counterparts. For example, Asian-American women reported confronting stereotypes about “being subservient or willing to work nonstop.” This can be seen as a direct consequence of belonging to more than one underrepresented group. In the 2009 Catalyst analysis, women of color reported “racial and gender stereotyping” and more feelings of “sexism” in the workplace compared to Caucasian women. The ABA's 2006 study reported 45% of women of color had experienced one or more forms of discrimination, compared to 28% of men of color, 39.2% of Caucasian women, and 2.5% of Caucasian men.

How can the legal industry use intersectionality positively to impact the advancement of women of color?

Through acknowledging and understanding the issues and consequences of intersectionality, and the corresponding impact on women attorneys of color, all attorneys—including Caucasian male leaders—can proactively create new shared experiences and opportunities to expand their own diverse experiences to the benefit of both. For example, the legal industry can ensure women of color will be:

- at formal and informal client events;
- considered as mentees;
- included in planning for a pitch to a new client; and/or
- consulted on strategies for a new matter.

The legal industry must continue to take conscious steps to connect with women attorneys of color to overcome the invisible barriers presented by intersectionality. As Paulette Brown, Past President of the American and National Bar Associations, said: “It's about equal treatment ... It's putting them on a level playing field.” What is clear is that the negative effects of intersectionality can be addressed and remedied through intentionality.

Footnotes

a1 Marissa Marquez, Esq. is a Human Resources Business Partner at Legacy Community Health. She is a graduate of Baylor University and the University of Texas School of Law. The article expresses the author's views and are not necessarily those of Legacy Community Health.

1 The phrase “women of color” refers to Hispanic/Latina, African-American, Native American, and Asian-American, as well as (hose women from multiracial backgrounds.


The ABA has a “Diversity and Inclusion Resources” website that is available at https://www.americanbar.org/groups/law_practice/resources/diversity.html.


*Id.* at vii.

*Id.* at ix.

*Id.* at viii.

See Chanen, supra, n. 6 (describing and paraphrasing ABA Commission on Women in the Profession, *Visible Invisibility: Women of Color in Law Firms* (Am. Bar Assoc 2006)).


Chanen, *supra*, n. 6.

ABA Commission on Women in the Profession, Executive Summary: *Visible Invisibility: Women of Color in Fortune 500 Legal Departments, supra*, n. 8, at x.

*Id.*

See Chanen, supra, n. 6 (describing and paraphrasing 2006 ABA study).

See Chanen, supra, n. 6 (quoting Paulette Brown).
ASIAN-AMERICAN LAWYERS: DIFFERENCES ABOUND

Asia is the largest and most populous continent on Earth, covering almost one-third of the planet's total surface area. Asia is so vast that it stretches from Japan in the east all the way through Russia in the west. It is understandable then, that Asians speak numerous languages, practice an abundance of distinct religions, and follow a multitude of customs.

What is hard to comprehend, however, is why people from Asia are often called “Asians” as a whole, especially when the continent has so many unique cultures and characteristics. Chinese customs vary greatly from those in India, and life in Turkey certainly differs from life in Pakistan. The term “Asian” implies a likeness among all people from Asia, which simply is not accurate.

Moreover, Asian Pacific Americans in particular often are grouped together as one, homogeneous group. In the legal profession, Asian Pacific American (APA) attorneys especially are often characterized as one “identity” or one subset of diversity. Lawyers and law students are often cast under a broad umbrella of Asian-American groups, such as chapters of the Asian-American Bar Association (AABA), as opposed to more specific memberships, such as the National Asian Pacific American Bar Association (NAPABA). Even within these specific groups, however, Asian-Americans could be classified more distinctly (e.g., the Indian American Bar Association (IABA)).

Perhaps the broad categorization is attributable to the fact that there are so few Asian-American lawyers. According to the American Bar Association, the number of Asian-American attorneys in 2000 accounted for only 2.2 percent of the total number of lawyers in the United States. Whatever the reason, the purpose of this article is to highlight some of the distinctions among Asian Pacific American citizens within the legal field.

Common Misconceptions About Asian-American Lawyers

Overview of Asian-American Ethnicities The Asian population in the United States is comprised of many different groups who speak different dialects and observe diverse traditions. Asian-Americans are not all alike, but misclassifications have existed for years. Despite the various ethnic groups that comprise Asian-Americans, broad and generic terms are used to describe them.

The “Asian-American” group is defined as people having origins in any of the original peoples of the Far East, Southeast Asia,* or the Indian subcontinent. According to the 2008 Census Bureau population estimate, there are 15.5 million Asian-Americans living in the United States. Asian-Americans account for almost 5 percent of the nation's population. In 2008, the following states had the largest Asian-American populations: California, New York, Hawaii, Texas, New Jersey, and Illinois.

More specifically, “Asian Pacific American” is a term that was used by the U.S. Census Bureau from 1990 to 2000 to include both Asian-Americans and Americans of Pacific Islander America. Based on how members of these two groups self-identified themselves, however, the U.S. Census Bureau divided these two groups after 2000. Now, Asian-Americans and Pacific Islanders are two separate groups on the Census.
The term “Asian Pacific Islander” is currently defined by the U.S. Department of Labor, Office of Federal Contract Compliance Programs, as “[a] person with origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Republic and Samoa; and on the Indian Subcontinent, includes India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan.”

According to the United States 2000 Census, among the 10 million Asians in the United States, the five groups that had more than 1 million members in their populations were Chinese, Filipino, Asian Indian, Vietnamese, and Korean. When completing your United States 2010 Census form, you may remember questions asking about race. The first three groups listed were “White,” “Black, African American, or Negro,” and then “American Indian or Alaska Native.” The categories that followed reflect the growing recognition of differences among the Asian Pacific American population;

- Asian Indian
- Japanese
- Native Hawaiian
- Chinese
- Korean
- Gamanian or Chamorro
- Filipino
- Vietnamese
- Samoan
- Other Asian (e.g., Hmong, Laotian, Thai, Pakistani, Cambodian, etc.)
- Other Pacific Islander (e.g., Fijian, Tongan, etc.)

**Demographic Factors that Differentiate Asian-Americans**
Demographics play an important role in defining Asian-Americans. There are key differences in language, education, and economics. Within the APA classification itself, there are marked disparities in these categories.9

**Language Fluency:** According to the Office of Minority Health at the U.S. Department of Health and Human Services, the percentage of people 5 years or older who do not speak English at home varies among Asian-American groups: 62 percent of Vietnamese, 50 percent of Chinese, 24 percent of Filipinos, and 23 percent of Asian Indians are not fluent in English.10 Of a total 894,063 Korean speakers, 264,420 indicated their English-speaking level was “not well” or “not at all.”11 By comparison, out of 477,997 Japanese speakers, 89,677 rated their English-speaking ability as “not well” or “not at all.”12

**Educational Attainment:** According to the 2007 U.S. Census data, roughly 86 percent of both all Asians and all people in the United States 25 and older had at least a high school diploma. However, 50 percent of Asian-Americans versus 28 percent of the total U.S. population had earned at least a bachelor's degree. Among Asian subgroups, Asian Indians had the highest percentage of bachelor's degree attainment at 64 percent. With respect to employment, about 45 percent of Asian-Americans were employed in management, professional, and related occupations, as compared to 34 percent of the total U.S. population. Of note, the proportions employed in high-skilled and managerial sectors varied from 13 percent for Laotians to 60 percent for Asian Indians.13

**Economics:** In 2007, the U.S. Census reported that the median family income of Asian-American families is $15,600 higher than the national median income for all households.14 This aggregation of data contributes to the “model minority” myth discussed below, making it harder for Asian-Americans living in poverty to be identified.

The Identity of Asian Pacific American Attorneys

As noted above, there is a very small percentage of Asian-American attorneys as a whole in the United States. Asian Pacific American bar organizations and affinity groups exist to promote the general goals of APA attorneys by pooling resources and making programs available to a broader audience. But what about the unique interests of South Asian attorneys, East Asian attorneys, North Asian attorneys, etc.? How should divergent interests be represented within the legal community?

“In Arizona, we are having discussions on whether breaking the APA groups apart dilutes the strength of the Asian bar as a whole, especially in terms of seeking resources at the state bar level,” comments Melissa Ho, a Chinese-American associate at Polsinelli Shughart PC in Phoenix and a District 4 representative of the Arizona Bar Young Lawyers Division. As an active member of several legal and civic organizations, including the State Bar of Arizona and Arizona Asian-American Bar Association, she notes the conflict between a “strength in numbers” approach for the general Asian bar groups, versus the ability of distinct Asian Pacific American groups being able to address issues, political involvement, or activities unique to their specific agendas.

Sharon Hwang, a Chinese-American Shareholder at McAndrews Held & Malloy Ltd. in Chicago, comments that, while the numbers of APA attorneys in Chicago is growing, “[W]e are still lacking significant numbers in partnerships and management positions. We have a disproportionately small number of APA judges (federal and state). APAs were also disproportionately affected by the recession in terms of lay-offs.”

She goes on to note that, “Even within the Chinese community, there seems to be a big difference between mainland Chinese, Taiwanese, Singaporeans, Hong Kong natives, etc. When you factor in other nationalities, such as Koreans, Japanese, Filipinos, and Indians, all of whom each have their own unique cultures and heritages, it is actually ridiculous and somewhat demeaning that all APAs are clumped together. However, given the present demographics in this country, APAs can and should unite around common causes because our numbers are otherwise too small to be heard.”

“It is important that Asian-American attorneys seek out opportunities to not only highlight commonalities between the Asian-American community, on the one hand, and the mainstream community, on the other hand, but also educate others about unique aspects of our culture,” notes Ajay Mago, an Indian-American associate at the Chicago office of Jones Day. “Many, if not all, communities have stereotypes that tend to set the context, and in some cases, define the community to outsiders. It is important that we all do our part to invite people into our homes and learn more about what makes us unique.” He has personally found that non-Asians have become very interested in the Indian subcontinent and go away feeling that they have learned something valuable.
Overall, there is a desire to validate the need of those APA lawyers who desire opportunities to bond with others from their same ethnic group, but also foster the notion of a pan-APA legal community that has already shown that it is essential, for example, in securing nominations for more federal judges of APA ancestry.

**Stereotypes of Asian Pacific American Attorneys**

As noted above, Asian Pacific American attorneys as a whole are underrepresented in the practice of law. Ho attributes the low statistics to the fact that Asians historically have been counseled by their parents to enter the fields of medicine or engineering, and only in recent years have the enrollments of Asian Pacific American students in law schools increased. She notes, however, that there still is an incorrect perception that most Asian lawyers are transactional or intellectual property attorneys.

Asian-American attorneys are often stereotyped as the “model minority.” When asked how they view Asian-American lawyers within their firms or legal communities, non-Asian attorneys interviewed for this article overwhelmingly responded that they regard them as having a strong work ethic and being very hard working. On the whole, Asian-American lawyers were described as obedient, rule-abiding citizens of their firms or organizations. The image of the Asian Pacific American attorney is someone who was raised to be conservative, respectful, and traditional. Additionally, supporting this image is the fact that family values were ranked as a high priority among APA lawyers.

While these may be positive traits in and of themselves, there seems to be an unspoken opinion that Asian Pacific American lawyers may be more timid and more afraid to take risks than their non-Asian counterparts. The problem is that they are viewed as less assertive and perhaps less creative, which could mean that supervising attorneys and clients are less likely to use them. An opinion that an APA lawyer is not career-driven, of course, will sabotage chances for long-term success. Mago finds that “people in the past tended to interpret reserved as being too meek” when dealing with APA attorneys.

Physical attributes and body language also play a role. One Indian-American partner in New York notes that Asian Pacific American females, for instance, tend to be petite and demure—not something people generally associate with an aggressive litigator. She remarks, “I was told by colleagues and clients that when they first met me, they thought I was shy and reserved; only once they got to know me did they realize that I am an outgoing, skilled, and forceful advocate. Over time, I learned to become more assertive right out of the box.”

Many Asian Pacific American attorneys in current in-house positions admitted that they felt it was “up or out” for them in terms of career advancement, driving them to seek alternate positions. “There are a lot of government and corporate in-house lawyers that are Asian-American. Of course, some seek those positions voluntarily, but some of us are ‘forced’ into seeking non-law firm jobs because we do not see long-term success at the firm as a viable option,” observes a Chinese American attorney who works for an international telecommunications company.

When asked if ethnicity plays a role in this trend, another Asian Pacific American corporate lawyer who works for a construction company answers, “True, there are not many highly successful Asian-American law firm managing partners. But it’s not a question of conformity or assimilation; to me, it is a question of contributing to the bottom line of an organization. In law firms, that means having a lucrative book of business. In in-house or government jobs, it means accomplishing top results on time and within budget.”

A Korean American attorney who works in the legal department for a nonprofit organization in Miami offers a dissimilar view. “I think ethnicity is a factor, because you have to impress clients. At a law firm, clients include external clients and your managing attorneys. Unless you adapt to their work style and ingratiate yourself, you will not be getting business or billable hours, which translates into no future at the firm. In my current job, I feel more connected to my peers and clients. I think my minority clients identify with me, even if they are not exactly like me.”

One senior non-Asian Pacific in-house attorney even candidly reported, “the Asian lawyers I’ve met at social work functions don’t really drink because they can’t handle alcohol.” Though it is one isolated comment, this remark is fascinating but troubling for several reasons. For instance, it suggests an even greater stigma against Asian-American attorneys as being antisocial and introverted. It also suggests an opinion that all Asian-American lawyers are teetotalers. Moreover, it indicates that social drinking may be expected in order to be part of the “in” group.
Conversely, Asian Pacific American attorneys who were interviewed for this piece projected a different image of themselves. Most acknowledged that they are hard workers, but noted that any successful lawyer, regardless of nationality, is willing to go the extra mile. When questioned about family values, APA attorneys said they seek a healthy work/life balance, just like other attorneys. Asian Pacific American lawyers are cognizant of the lack of role models and managing partners who look like them, but not all were discouraged about their prospects for advancement in their careers.

A third-year Korean attorney in St. Louis comments, “Just because my managing partner is Caucasian does not mean that firm leadership is turning a blind eye towards me. Success at my firm is based on a variety of factors ... I think I have a good shot at making it here.” He did admit, however, to being the only minority--let alone Asian-American--in the room during many firm and client meetings. According to one lawyer, “It can be isolating to be only a handful of minorities at my [branch] office, but it is even more isolating to be the only Bangladeshi in the entire firm. There just aren't enough lawyers like me yet.”

Yet, others were not so optimistic. A female Korean-American attorney at a smaller firm in Dallas observes, “All the lawyers above me are white men. They exclude me from most firm outings, and I do not receive the type of coaching and one-on-one training that I expected at a boutique firm.” A junior Japanese-American lawyer in Houston opines, “Soft tasks like scheduling meetings get pushed on me, while my Caucasian classmates are handling substantive projects.” Admittedly, there may be other underlying circumstances contributing to these situations, but how should these Asian Pacific American attorneys tackle these perceived obstacles? Without a trusted mentor at the firm, it may be more difficult for them to voice their concerns. What can the legal community as a whole do to foster and encourage dialogues about these issues?

**Building Relationships**

“I think that it is important for APA attorneys to get out there and to be involved in the legal community and the community at large. As people get used to seeing more APAs in leadership positions and get to know more APAs through various bar organizations and events, we will have a better opportunity to educate people about our various cultures and our beliefs--thus enriching our community,” advises Sharon Hwang.

Tarun Chandran, an associate of Indian origin at the Chicago office of Paul Hastings, agrees. He suggests that, in an effort to educate others about the differences within the Asian community, Asian Pacific American lawyers “be visible and active members of their local bars, and not just minority bars. I think that the best way of combating stereotypes is by replacing those stereotypes with positive examples.”

There are successful Asian-American partners in big law firms, and “[t]hose individuals are helping to pave a path for rising associates by both educating the community at large about our culture and also by assimilating and becoming involved in many mainstream causes and activities (i.e., serving on boards of local hospitals, museums, etc.),” notes Mago.

An Indian-American associate considers it best to be direct and clear if an issue concerning nationality or ethnicity is raised. “There is a difference between X and Y communities/nationalities. When we brush little things aside, it sends the message that grouping together is okay.” Helen Din, a Chinese American associate at Locke Lord Bissell & Liddell in Chicago suggests, “I've noticed that Asian Americans are typically regarded as highly proficient with the technical sciences but not the humanities. In the field of law, some presuppose that Asian-Americans are not as good at writing. My writing has helped me overcome those biases.”

**What You Say and How You Say It Matter**

Being aware of differences among Asian-Americans is critical in forming bonds with colleagues and clients. When asked what might prevent them from asking about an Asian Pacific American's nationality, some non-APA attorneys stated that they were worried about offending someone or being intrusive. Asian Pacific American attorneys generally responded that they do not view it as offensive to inquire about their ethnicity, so long as it is appropriate (for instance, not during a job interview). “It is important that you are inquiring for the right reasons and at the right time (i.e., after you have gotten to know more about the person, as opposed to any initial introductions or meetings),” recommends Mago. One APA attorney maintains, however, “They should not inquire at all, since in a professional environment the issue is irrelevant.”
An associate of Indian descent gave the following example: "I once went to lunch with two senior level partners. This was relatively early in my first year. And one of the first questions that was asked of me out of nowhere was whether I watch Bollywood films... I didn't think it was a big deal, but highlighted the fact in my mind that when partners see me, they don't see a young associate, they see a young associate of color that is different than [them]."

Many APA attorneys relayed a desire that people not automatically assume they are of one Asian descent without asking first. "Diplomacy can go a long way in asking me about my ethnicity," advises one biracial attorney from Los Angeles who is Filipino and Korean. An Indian-American attorney who has been mistaken for Pakistani comments, "I don't really mind, I correct them. I would suggest, if you are curious and want to raise the issue, to ask [someone's] nationality instead of assuming. What I would never ask is 'where are you from' or 'where are you really from.' I don't think anything is quite as offensive to me as saying that."

Helen Din discloses, "Often people like to 'guess' my ethnicity. I've gotten everything from Hawaiian to Native American. I just correct them and note that I couldn't 'tell' a person's ethnicity by merely looking at that person." Another assumption made of Asian Pacific Attorneys is multilingual skills. While many Asian-Americans (whether born overseas or not) speak more than one language, many do not. "It has been assumed that I am bilingual or trilingual-- which I wish was true but is not," declares a Chinese American associate.

Many of the Asian Pacific Americans interviewed for this article relayed instances where they were mistaken for another ethnicity or nationality. While all agreed that the "they all look alike to me" syndrome is prevalent, generational differences may play a role in how it is received and addressed. Some of the senior APA attorneys were not as incensed by misidentifications as some of the junior lawyers. "I have seen enough and heard enough to know that people are just confused. It may be intentional bias in some cases, but I think it is more a matter of educating people so they become aware of differences within the Asian subgroups," notes one senior Japanese American lawyer.

Shareholder Sharon Hwang says that she is not offended when people ask about her background and ask her what her nationality is. "I am clearly not white, and I am proud to be a Chinese-American. I also enjoy learning about the ethnic backgrounds of people that I encounter, whites or non-whites included. However, I do think it is ignorant when people tell me that I speak very good English, ask me whether I speak English, or tell me that all Asians look alike."

Is ignorance an excuse? A junior Pakistani attorney in Atlanta does not think so. "It's like me saying all blond-haired, blue-eyed people all look the same to me. Or saying everybody in Kentucky is married to a blood relative. It's prejudice and it's just not right... people need to be sensitive in how they ask about my background and heritage."

"When discussing diversity, I once told my [non-APA] mentor I felt accepted at my firm. She answered, 'It's because you don't look Indian,'" confides one second-year lawyer. "I did not even know what to say to that! What does that even mean?"

Another third-year Chinese American attorney feels frustrated in his inability to discuss issues openly. "[Race] is a very touchy topic." He believes his supervising attorneys would be put off by a discussion on ethnicity and the differences within the Asian-American community. "Why would I go out of my way to make them uncomfortable?"

Perhaps the time has come for APA and non-APA attorneys to get out of our comfort zones in order to meaningfully appreciate one another and build upon our respective talents. The sense of an APA identity, while in many ways an artificial political construct, nevertheless has practical applications and may even be the first of many steps to move toward a model of inclusion beyond diversity. By moving beyond stereotypes and looking at hard data from the National Association for Law Placement, the fact remains that APAs are the only racial minority group whose numbers entering and graduating from law schools is growing. As reported in the 2004 Miles to Go Report, APA lawyers are the minority group most likely to enter private practice directly out of law school. Yet, the number of APA attorneys who advance to partnership in their firms remains relatively small. How does the APA legal community translate these anecdotes of stereotypes into an understanding of the resultant issues?

Asim Bhansali, an Indian American partner at Keker & Van Nest LLP in San Francisco, recognizes that there is no particular answer that readily accounts for these statistics, but notes two issues might factor into the analysis. First, cultural attributes of APA attorneys may play a role in their appreciation of time and flexibility concerns. He relays that, Indians, for example, tend to have a heightened sense of familial obligations, sometimes making it hard for them to excel professionally in the private law firm setting. "It is not an unwillingness to work hard," he notes, but rather that some Asian-American lawyers may have a more difficult time balancing extended family expectations--which often includes parents, not just children.
Second, he observes that some APA attorneys might hit the proverbial glass ceiling because they enter firms with a specialized competency that does not translate easily into other skill sets in law. As an example, he has seen Asian-American attorneys at other firms who come in with strong technical skills such as in the patent field, but for whatever reason—whether ones of external perception or lack of skills training—cannot, translate that technical ability to stand-up courtroom or deposition skills. Ultimately, those stand-up skills are required to excel in a litigation practice, even a technically oriented one.

There are palpable differences within the legal community, and there is no doubt that the profession of law (whether as an attorney in a private firm, in-house counsel for a corporation, or a government lawyer in a nonprofit setting, etc.) is a demanding one. Adding to the challenge of the profession is maintaining the identity of each unique individual, while at the same time fostering integration within the career setting. Until more APA attorneys represent a larger share of the lawyer population, another difficulty is how to maximize the value of the APA membership as a whole within the legal community. Hopefully, recognizing the differences among Asian Pacific American attorneys can play a role in overcoming these challenges.

Footnotes

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1 new.abanet.org/marketresearch/PublicDocuments/Lawyer_Demographics.pdf.

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3 minorityhealth.hhs.gov/templates/content.aspx?ID=3005.

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7 www.dol.gov/ofccp/regs/compliance/fccm/ofcpch1.htm


Id.

U.S. Department of Health & Human Services, The Office of Minority Health, Asian-American/Pacific Islander Profile: minorityhealth.hhs.gov/templates/content.aspx?ID=3005. These statistics may not be representative of children of Asian refugees, however. By categorizing all people of Asian ancestry as one group, the educational achievement data does not distinguish between refugee children and over-achieving 5th generation Chinese and Japanese American students who skewed the data making it harder for the children of Asian refugees to have their educational needs addressed.

HITTING THE CEILING: AN EXAMINATION OF BARRIERS TO SUCCESS FOR ASIAN AMERICAN WOMEN

I. Introduction

Some say that we live in a “post-racial society,” where race and gender are not barriers to success. These individuals often use the election of President Barack Obama, the first African American president, as a sign of our post-racial era. The “success” of Asian Americans is also touted as an example of our race-neutral society. But this model minority myth that Asian Americans have assimilated and found success in the United States has been shown to be in error. The term “model minority” ignores the past and present discrimination experienced by Asian Americans and legitimizes the oppression of other communities of color. The model minority myth also ignores the existence of a bamboo ceiling that prevents Asian Americans from advancing to high-ranking, leadership positions.

Asian American women face additional barriers as a result of being both Asian American and female. While research is available on the experiences of women, Asian Americans, and people of color, very little research has been done on the unique experiences of Asian American women. For example, the literature on the glass ceiling focuses solely on gender, while the literature on the bamboo ceiling focuses on race and national origin. This necessarily excludes the experiences of Asian American women since the discrimination faced by Asian American women is wholly different from and more than the sum of the discrimination faced by white women and Asian American men. The experiences of people of color generally or other women of color specifically, while helpful in recognizing common themes of oppression, are unable to fully explain the experiences of Asian American women.
American women. Intersectionality, the study of individuals who occupy multiple socially constructed categories, such as race, gender, and sexual orientation, has the potential to shed light on the experiences of Asian American women. Research on intersectionality should be expanded to analyze the experiences of Asian American women. As such, a discussion of Asian American women must take into account their unique history in the United States.

This paper aims to fill the void in legal research on the experiences of Asian American women. This paper is limited in scope and focuses specifically on the experiences of middle-class, educated, Asian American women. It also focuses on societal forces that create barriers to success for Asian American women, such as stereotyping. Asian Americans are not a monolithic group. They are from different countries with distinct histories, and differing languages, cultures, cuisines, and religions. Nevertheless, our dominant society often mistakes all Asian Americans as being members of a monolithic group. For that reason, this paper focuses specifically on external forces creating barriers to success. It will not discuss internal cultural forces that may also create barriers to success for Asian Americans, Part II discusses the exclusion of Asian American women from the theories of the “glass ceiling” and the “bamboo ceiling.” Part III describes the study of intersectionality, its limitations, and potential for understanding and eradicating the barriers to success for Asian American women. To fully understand the barriers to success for Asian American women, Part IV will examine the history of exclusion and stereotypes of Asian American women; this Part will also discuss the model minority myth and how Asian American women fit into this narrative. Part V will examine how these stereotypes contribute to discrimination against Asian American women in the workplace. This paper concludes with a discussion on ways to acknowledge the experiences of Asian American women and remove these barriers to success.

II. The Glass Ceiling, The Bamboo Ceiling, and their Exclusion of Asian American Women

Researchers have documented professional “ceilings” that prevent women and people of color from attaining higher levels of professional success. While the demographics of previously white male dominated professions show a significant increase in the number of women and minorities employed, the demographics of higher-level management present a different picture—one that reflects a cap on how high women and minorities can advance in their careers. This “ceiling” effect has been well documented for women and Asian Americans, but research has severely overlooked the experiences of Asian American women. By focusing only on the experiences of women and Asian Americans, Asian American women, who are subjected to different stereotypes that lie at the intersection of race, national origin, and sex, are left out.

A. The Glass Ceiling

Women have made great strides in the last fifty years. Nevertheless, it is still rare to see women in the highest ranks of employment. In 2010, women made up 47 percent of the total U.S. labor force, yet comprised only 10 percent of senior managers in Fortune 500 companies, less than 4 percent of the upper ranks of CEOs, presidents, and executive vice presidents, and less than 3 percent of the top corporate earners. This lack of progress can be attributed to the glass ceiling.

The glass ceiling is a metaphor that refers to the “artificial barriers to the advancement of women and minorities.” It is an invisible barrier based on attitudinal or organizational bias and discrimination that prevents minorities and women from rising up the corporate ladder and into high-level management positions, despite their qualifications. A glass ceiling inequality represents a gender or racial difference that cannot be explained through other job-relevant characteristics of the employee; this inequality is more pronounced at higher levels of earning and authority. It also represents a gender or racial inequality in the chances for advancement into higher levels of employment. This inequality increases over the course of a career. While the glass ceiling has been used to describe the experiences of both women and minorities, at least one study states that the glass ceiling, as described above, is a “phenomenon of gender stratification” and not race. Furthermore, much of the literature on the glass ceiling uses examples involving women with no mention of race. There is little discussion on the experiences of people of color and almost no discussion of women of color.

The glass ceiling is difficult to identify since bias and discrimination are so deeply embedded in the organizational structure of a business. Indeed, “[e]ven the women who feel [the glass ceiling’s] impact are often hard-pressed to know what hit them.” These barriers appear in common or mundane work practices and in cultural norms that seem unbiased, but put women at a disadvantage in moving up the corporate ladder. The glass ceiling is manifested in multiple ways: informal
recruitment practices that fail to recruit women, lack of opportunities for training and mentorship, exclusion from informal networks, menial assignments rather than challenging assignments that would progress women's careers, wage gaps between men and women despite comparable work, and placement in jobs with very few advancement opportunities. For example, a company's norm of routinely cancelling or setting up last-minute meetings and expecting their employees to be available at all times, a seemingly innocuous practice, disproportionately affects women since women oftentimes bear more responsibility for the home and childrearing, and therefore have more demands on their non-working time. As a result, women who work set hours are excluded from informal networks and miss out on important conversations; they are also perceived as less committed to their job than their male counterparts.

In addition, most organizations have been created by men and are based on male experiences. Because of this predominantly male culture and environment, women are judged on traits stereotypically associated with men, such as toughness and aggressiveness. This results in women being viewed as ineffective leaders when using more feminine managerial styles, or criticized for not being feminine enough when displaying more masculine management styles. Women are placed in a double bind: if they do not speak up, they lose opportunities or are unable to defend themselves; if they do speak up, they are seen as “control freaks.” In contrast, men who speak up are seen as passionate. Stereotypes based on gender are so deeply embedded into workplace norms that they appear innocuous, yet these stereotypes create a barrier, or a “ceiling,” on advancement for women.

B. The Bamboo Ceiling

The “bamboo ceiling” is a term that has been recently used to describe a similar barrier to advancement for Asian Americans. Despite increased visibility on college campuses and in elite professions, Asian Americans are rarely seen in high-ranking positions. As of 2010, Asian Americans made up 4.8 percent of the total population, but held only 2.1 percent of corporate board of director seats in Fortune 500 companies. Whites, on the other hand, made up 72 percent of the total population, and held over 90 percent of corporate board of director seats. Similarly, despite being well represented in the workforce, Asian Americans lack proportional representation in higher-level management positions. While Asian Americans make up more than 11 percent of professionals, they comprise only about 5 percent of first/mid-level officials and managers, and 4 percent of executive/senior level officials and managers. In contrast, whites make up nearly 75 percent of professionals, almost 80 percent of first/mid-level officials and managers, and about 88 percent of executive/senior level officials and managers. Unlike Asian Americans, whites are over-represented in higher-level management positions in proportion to their representation in the workforce.

This data suggests that Asian Americans are not being promoted at the same rate as other minority groups. For example, in 2012, 20 percent of U.S. law firm associates were minorities, yet minorities made up only 6 percent of partners. Asian Americans make up nearly half of all minority associates, yet have the “lowest conversion rate from associate to partner of any minority group.” Asian Americans receive “the lowest return on education (i.e. worst salaries) of all ethnic groups.”

Yet, Asian Americans are perceived to be model minorities: overly competent, hardworking, educated, intelligent, and ambitious. They are viewed as a large middle-class group that has achieved “economic success without using government programs or welfare.” Despite this perception, Asian Americans do suffer from discrimination—a discrimination that is different from that suffered by other disempowered groups. They are perceived to be competent, yet lacking warmth and social skills. Asian Americans are also not historically seen as leaders. These positive and negative stereotypes contribute to why Asian Americans are not adequately represented in executive-level positions.

Like women, Asian Americans also hit a “ceiling” when seeking promotions to leadership or executive positions. For example, in U.S. law firms, the bamboo ceiling prevents Asian American associates from advancing to partner. White partners favor the promotion of white associates. Because whites make up the majority of partners in U.S. law firms, they continue to favor and promote members of their ingroup (whites) over competing outgroups (non-whites), thereby maintaining their high status...
and privilege. Corporate recruitment practices, which include informal referrals, a lack of Asian Americans engaging in these referrals, and a lack of record-keeping, also reinforce exclusionary outcomes for Asian Americans.

C. The Exclusion of Asian American Women

The “glass ceiling” and “bamboo ceiling” are insufficient proxies for understanding the experiences of Asian American women. The concept of the glass ceiling focuses on the experiences of women irrespective of race. The glass ceiling is a concept that is commonly discussed in regards to or as an area of concern for the feminist movement. The feminist movement presents a monolithic woman's experience that is explained independent of race, class, sexual orientation, and national origin. 

The agenda of the women's rights movement has been shaped largely by white, middle-class women. Similarly, the bamboo ceiling addresses barriers to success for Asian Americans as a monolithic group, regardless of gender. In fighting for the rights of Asian Americans, women's issues are seen as secondary. For example, domestic violence and trafficking of Asian American women take a back seat to “more pressing” issues facing the Asian American community, as determined by male community leaders. By using a single-axis analysis where race and gender are mutually exclusive, the “glass ceiling” and “bamboo ceiling” exclude and delegitimize the experiences of Asian American women. The experiences of Asian American women must be analyzed in a way that allows for the interaction of multiple axes of oppression. The barriers Asian American women face are not only distinct, but also more than the sum of the discrimination faced by women and Asian Americans.

Just as the Women's Rights Movement encouraged African American women to set aside the color of their skin to fight for women's rights, and the Civil Rights Movement encouraged African American women to set aside their gender to fight for the rights of African Americans, the glass ceiling and bamboo ceiling encourage Asian American women to set aside their intersectional identities for the advancement of the rights of women and Asian Americans. Dominant members of progressive social organizations tend to “monopolize the political apparatuses of these movements and create hegemonic agendas that reflect their own self-interests and that fail to respond to the needs of less visible and less powerful populations within these communities.” Under this analysis, the Women's Rights Movement and the Asian American Movement favor the interests of the dominant members of these movements: white women and Asian American men, respectively. This mirrors larger social inequalities, whereby men are given more power than women and whites are given more power than non-whites. As a result, the experiences of Asian American women are excluded from the fight for equality and opportunity. We therefore cannot rely on the glass ceiling and the bamboo ceiling to acknowledge and reflect the experiences of Asian American women—we must use a more holistic and inclusive analysis.

III. Using Intersectionality to Acknowledge the Experiences of Asian American Women

To comprehend the experiences of Asian American women and create appropriate strategies for counteracting their oppression, we must look at how race, gender, and national origin interact to create unique obstacles, stereotypes, and stigmas for Asian American women. Intersectionality provides a framework to analyze the experiences of Asian American women. Intersectionality looks at the intersection between multiple categories of socially constructed identities, such as race, color, gender, sexual orientation, and class, and considers their effects on the everyday lives of people who sit at the crossroads of these multiple intersections. It rejects the notion that these socially constructed identities are mutually exclusive, since these identities often work together to “limit access to social goods such as employment, fair immigration, healthcare, child care, or education.” For example, “women of color are frequently the product of intersecting patterns of racism and sexism . . . . Because of their intersectional identity as both women and of color within discourses that are shaped to respond to one or the other, women of color are marginalized within both.” Women of color identify with both women and people of color, yet are constantly asked to “choose sides,” to put aside their “woman-ness” to fight for the rights of people of color, or to put aside the color of their skin to fight for the rights of women. An example of this can be seen in the criticism Alice Walker received for her portrayal of domestic violence in African American families in The Color Purple. Many in the African American community were angered by Walker's narrative because it reinforced negative stereotypes of African American families as unstable, and African American men as aggressive and violent. By choosing to portray this scene, Walker refused to give up her woman-ness for the sake of her blackness and vice versa.
“Asian American women continue to be largely unseen and unheard” in the study of intersectionality. Current research on intersectionality emphasizes the experience of African American women or women of color generally. While Asian American women likely benefit from the work that has been done on intersectionality, since many of the struggles affecting African American women parallel those of Asian American women, “the different social histories of Asian and black women in America have created distinctions in their experiences.”

Asian American women and other women of color all experience marginalization generally; in addition, Asian American women also experience discrimination specific to Asian Americans based on their unique history in the United States. Therefore the discrimination faced by African American women cannot alone explain the experiences of Asian American women. To best utilize intersectionality, research must be conducted to fully incorporate the experiences of Asian American women, taking into account their history, the stereotypes they face, and how they fit within the model minority myth. This research must also examine the ways discrimination against Asian American women manifests in our courts. Only by fully acknowledging these experiences will we gain a more holistic understanding of the barriers to success for Asian American women.

IV. Understanding the Origins and Perpetuation of Discrimination Against Asian American Women

While there are similarities between the oppression of Asian American women and other women of color, Asian American women face a distinct set of barriers as a result of their history in the United States. This history shaped the perception of Asian American women as outsiders, ultra-feminine lotus blossoms, dragon ladies, and model minorities. These stereotypes, both positive and negative, have contributed to discrimination against Asian American women. The following section provides factors that must be considered in order to have a holistic understanding of the barriers to success for Asian American women.

A. The History of Exclusion of Asian American Women

The first settlers and leaders of this country envisioned America as a country for “pious, God-fearing, white Christians.” It was not envisioned to be a place for a multiracial or multicultural society. In order to maintain America's racial purity and homogeneity, outsiders, such as Asian Americans, were discriminated against and subject to strict exclusionary policies.

From the outset, Asian Americans were seen as members of an inferior race and were denied citizenship and the rights typically associated with citizenship. The Naturalization Act of 1790 permitted only “free white persons” to naturalize in the United States. Nevertheless, Asian men were allowed to immigrate to the United States for the limited purpose of serving as cheap labor. In the early 1800s, Asian immigrants began arriving in America: Chinese immigrants worked on the sugar plantations in Hawaii and in the mines and on the railroad in California during the Gold Rush. Asian immigrants also worked as factory operatives, cannery workers, and farm laborers.

Asians were seen as replacements for black workers and were used by whites to discipline black laborers; for example, a railway company displaced black workers by hiring Filipinos to work as attendants, cooks, and busboys, thereby relegating blacks to porter positions and denying them the mobility to obtain easier and better-paying jobs.

During this time (and until the 1920s), very few Asian women came to the United States. American employers preferred a “bachelor society” of single Asian men and thus only recruited single male workers. In addition, Asian laborers found it more economical to have their families stay in Asia. Many also considered the United States unsafe for women and children. As a result, there was a gross gender imbalance among Asians in the United States, which led to the importation of Asian women as prostitutes.

Asian women were allowed to enter the United States, to meet the demand for sex from both white men, who saw them as mysterious and exotic, and Asian men. As a result, during the nineteenth century, sexual stereotypes about Asian women emerged. Asian women were seen as both “lotus blossoms”--passive, domesticated, and feminine--and “dragon ladies”--
demonically aggressive, conniving, and predatory. Many Chinese prostitutes in California were indentured servants; their degradation was used as a justification for restricting and excluding Chinese immigrants. In 1875, the U.S. further stifled the growth of Asian communities through the Page Law, which was aimed at restricting the entrance of prostitutes from China and Japan. The Page Law nearly ended all Chinese female immigration to the United States.

The 1790 Naturalization Act restricted naturalization to “free white” aliens. After the Civil War, Congress debated eliminating racial restrictions to naturalization, but decided against it because of concerns about granting citizenship to Chinese immigrants. Chinese immigrants were “thought to lack the capacity to engage in republican forms of government, and thus, allowing them to naturalize would threaten the survival of American democracy.” The 1790 Naturalization Act was therefore amended to allow the naturalization of only persons of African descent. In 1882, the Chinese Exclusion Act suspended immigration of Chinese laborers for ten years and barred any court from allowing Chinese immigrants to naturalize.

Asians were not only denied citizenship, they were also denied the rights, privileges, and protections typically associated with it. For example, Asians were prohibited from testifying against white men in court, unable to obtain gainful employment, excluded from white public classrooms, excluded from owning property, and segregated into ethnic ghettos.

Anti-Asian animus can be seen in Justice Harlan's dissent to Plessy v. Ferguson. In Plessy, Justice Harlan argued that separation on the basis of race was inconsistent with the Constitution; he then compared African Americans with Asians, “a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to [the Chinese race] are, with few exceptions, absolutely excluded from our country.”

This pattern of exclusion continued well into the modern era. Racial biases towards Asians can also be seen with the internment of Japanese Americans during World War II. After the bombing of Pearl Harbor, Executive Order 9066 allowed the Secretary of War to intern both U.S. citizens of Japanese descent and Japanese aliens for the sake of “security.” Despite attempts to challenge its constitutionality, the Supreme Court stated that the hardship of internment is a circumstance of war, and that concerns for the presence of disloyal members in society allowed for the exclusion of Japanese Americans.

Just like their male counterparts, Asian American women suffered as a result of exclusionary immigration policies and a lack of citizenship. Asian American women arguably faced more discrimination because they were brought into the U.S. as indentured prostitutes, perceived as sexual objects, excluded from entering the U.S. years before the Chinese Exclusion Act, and later faced additional difficulties entering the United States. For example, while most Chinese women were admitted to the U.S. as dependents of men, when Chinese women did enter the U.S. on their own, they were unable to bring their husbands as dependents. Thus, the status and admissibility of Chinese women often depended on men. In addition, Asian American women in the U.S. had to be strong, both physically and emotionally. In Hawaii, Asian American women earned money by working in the fields and cooking and cleaning for others; they also raised their own families and tended to household chores in the evenings while the men relaxed. This history shapes contemporary perceptions and stereotypes of Asian American women.

B. Perceptions and Stereotypes of Asian American Women

The perception of Asian women in the nineteenth century as sexual objects, and the perception of Asian Americans in the twentieth century as model minorities permeate our conception of Asian American women today. Generally, Asian Americans are perceived to be overly competent, yet not warm, sociable, aggressive, or assertive. Because of their distinct physical features, Asian Americans are unable to blend into the melting pot; their physical features are markers of their foreignness. This explains why Asian Americans often get asked, “where are you from?” followed by, “where are you really from?” They are also often the recipients of comments such as, “you speak English so well,” or are complimented for not having an accent. Asians are thus seen as perpetual foreigners and distinctively “not American.”
While Asian America women share some of the same stereotypes as Asian American men, Asian American women face additional discrimination as a result of their sexualization. Stereotypes of Asian American women are rooted in the nineteenth-century images of Chinese prostitutes and “slave girls.” These women were seen as “meek, shy, passive, childlike, innocent and naïve,” yet surprising in [their] sexual prowess and desire to please [their] male master.” Recent images of Asian women paint them as sexual servants to soldiers overseas in Asia. Asian women are seen as embodying feminine ideals and “setting the bar . . . femininity.” Myths about their subservience and sexual prowess have ignited Western fetishes for Asian women. Asian women are “fetishized as the embodiment of perfect womanhood and genuine exotic femininity.” This western male fantasy is elaborated in Tony Rivers' article in Gentleman's Quarterly entitled “Oriental Girls”:

When you get home from another hard day on the planet, she comes into existence, removes your clothes, bathes you and walks naked on your back to relax you . . . . She's fun you see, and so uncomplicated. She doesn't go to assertiveness-training classes, insist on being treated like a person, fret about career moves, wield her orgasm as a non-negotiable demand . . . . She's there when you need shore leave from those angry feminist seas. She's a handy victim of love or a symbol of the rape of third world nations, a real trouper.

In addition, white men have touted Asian American women's femininity and passivity as a response to the non-femininity of American women who have left their place in the home to pursue a career and independence. White women's gains in career, income, and personal autonomy have ignited a backlash against them in American society; they are perceived as abandoning their roles as mothers and wives. In contrast, Asian American women are seen as docile, devoted, traditional, and as deriving joy from serving their men, thereby replacing white career women as “true” women.

These stereotypes are also reflected in mass media. Popular culture and mass media reinforce stereotypical images of Asian American women through one-dimensional, simplistic, and inaccurate portrayals. Often, these characters reinforce two stereotypical images of Asian American women: the “Lotus Blossom Baby” and the “Dragon Lady.” The “Lotus Blossom Baby” is shy and diminutive, while the “Dragon Lady” is devious and wicked. For example, Anna May Wong, the first Chinese-American actress to gain prominence in cinema, was type-cast into roles that sexualized Asian American women, such as “Mongolian Slave Girl” in The Thief of Bagdad (1924). There were very few roles available to Asian Americans at that time, and the roles Wong acquired were stereotypical and demeaning. This led Wong to flee to Europe in 1928. During her time away from Hollywood, images of Asian women in Hollywood did not experience much change. In 1932, Wong returned to Hollywood as an archetypal China Doll/Dragon Lady in Shanghai Express (1932).

Today, despite Asian American women's significant progress in film and television, there are few Asian American actresses and few roles that truly reflect the experiences of Asian American women. While Asians make up about 5 percent of the U.S. population, they occupy only 3 percent of total characters, and only 1 percent of regular or opening credits in the media. Like Anna May Wong, most Asian American women have played stereotypical Asian American characters, such as the sexualized female. This creates a limitation on the number and quality of roles available for Asian American women, which allows for the perpetuation of negative stereotypes. For example, in Charlie's Angels (2000), Lucy Liu, dressed in tight, revealing clothing, plays a strong, beautiful agent. Similarly, Li Gong plays a beautiful, exotic, and dangerous wife of an arms and drug trafficker in Miami Vice (2006). Also, in The Scorpion King (2002), Kelly Hu plays a scantily clad, beautiful sorceress. While all of these characters are strong and intelligent, they are nevertheless sexualized and exoticized. Since mainstream media offers few Asian American female characters outside of these stereotypes, these negative stereotypes are reinforced, making it difficult for Asian American women to be accepted as ordinary, as opposed to exotic.
The few Asian female characters that were produced by Asian American women are fascinating and provide a more realistic portrait of the experiences of Asian American women. These characters can be found in works such as Amy Tan's The Joy Luck Club (1989), and Maxine Hong Kingston's The Woman Warrior: Memoirs of a Childhood Among Ghosts (1976). Nevertheless, these realistic, complex female characters are few and far between, and thus remain virtually unknown in mainstream American consciousness, while negative stereotypes continue to persist.

C. The Model Minority Myth and How Asian American Women Fit Into This Myth

In addition to the ultra-feminine sexualized stereotype of Asian American women, Asian American women are also perceived through the model minority myth. The model minority myth focuses on Asian Americans' educational achievement, economic success, and assimilation into American culture, and characterizes Asian Americans as hardworking, intelligent, and successful. More accurately, this myth refers to the way Asian Americans have “assimilated and adhered to American society's 'prescribed mode of behavior for minority assimilation; through hard work, education, quietly remaining in the background, inaction in the face of injustice, and blind faith to the American dream of equality and opportunity for all.” This misleading portrait furthers the oppression of Asian Americans by denying the existence of present-day discrimination and ignoring the effects of past discrimination. It ignores income disparities within the Asian American community and the absence of Asian Americans in high-ranking executive positions, which is especially striking given the high representation of Asian Americans in universities and professional positions. This perception of Asian American success allows the public, our government, and our judiciary to ignore or marginalize the needs of Asian Americans, for example, by denying funding to social services for Asian Americans. As a result, much-needed funding and attention to issues affecting many Southeast Asian communities, which have poverty rates at least three times the national average, are denied. When Asian Americans do discuss the oppression they face, these complaints are seen as unwarranted given their “success” as a model minority. Asian Americans are not seen as victims of racism.

Within these “positive stereotypes,” the model minority myth also evokes negative stereotypes about Asian Americans. For example, Asian Americans are perceived as passive, lacking social skills, apolitical, submissive, and lacking the aggressiveness required for high-ranking managerial positions. These perceptions of Asian Americans as hardworking, intelligent, ambitious, and achievement-oriented work alongside negative stereotypes of Asian Americans as shy, quiet, polite, and cold to prevent them from breaking the bamboo ceiling and advancing into executive positions.

The model minority myth, created during the Civil Rights Movement to provide a counter example to politically active African Americans, is used to legitimize the oppression of other minority groups and to blame them for “not being successful like Asian Americans.” This myth reinforces and furthers the belief in America's system of meritocracy in which “any group can be successful if they work hard enough or possess the right values.” A color-blind meritocratic system minimizes the effects of oppression and discrimination on minority groups. The model minority myth implies that other minorities have not adopted the “American cultural characteristics of self-sufficiency, individuality, and hard work,” which have been adopted by Asian Americans and are the reason for their success. It is used not only to blame minorities for their oppression, but also to campaign for the government to stop providing social services for “undeserving,” “lazy” minorities. The model minority myth is also used to campaign against affirmative action. This creates resentment and tension between minority groups, which may lead to violence and anger, and prevent minority groups from working together.

Asian American women are caught between two restrictive stereotypes, the sexualized ultra-feminine and the model minority. The model minority traits of passivity and submissiveness are reinforced, intensified, and gendered by the stereotype of Asian American women as obedient, servile, passive, feminine, reserved, humble, and demure. An example of a sexualized, racialized stereotype of Asian American women can be seen in Year of the Dragon (1985). In this film, Tracy Tzu, a Connie Chung inspired character, is a professional newscaster. She represents the “upwardly-mobile professional female variant of the model minority.” The “plot . . . undermines the image of gender and racial liberation” through the incorporation of a submissive, passive Asian woman. Despite her public success, Tracy Tzu is “privately dominated” by a “white, ethnic,
working-class police detective” who “domesticates” her by taking control of her career. Despite initially resisting, Tzu eventually gives in. 

This film demonstrates how the stereotype of a model minority woman and a sexualized, submissive lotus blossom interact to subjugate and legitimize the domination of Asian American women. The perception of Asian American women as privately compliant, catering, and predisposed to submit to the “assertion of white male desire,” while displaying a hyper-competent, professional exterior puts women at an increased risk of sexual harassment. This stereotype reinforces a belief that Asian American women will be receptive to a harasser's aggressive sexual advances regardless of how competent, professional, or independent they may seem.

V. Stereotypes About Asian American Women Have Contributed to Discrimination and Sexual Harassment Against Asian American Women in the Workplace

Stereotypes about Asian American women manifest themselves in discriminatory conduct and sexual harassment against Asian American women in the workplace. The objectification of Asian American women and stereotypes that they are submissive, politically passive, exotic, and compliant makes them susceptible to racialized sexual harassment. This perception makes many believe that it is “okay” to sexually harass and discriminate against Asian American women. In Sumi K. Cho's article, Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong, Cho discusses two cases of racialized sexual harassment involving Asian American women: a hostile work environment case and a quid pro quo case. In both cases, the injuries suffered by the women are a result of the “synergy of race and gender,” rather than race and gender independently.

Asian American women also suffer from unconscious racism in the workplace. For example, minority female attorneys are often mistaken for secretaries or paralegals. They are often excluded from networking opportunities, denied desirable assignments, and denied promotions. Asian American female attorneys, while perceived as being “hard-working, obedient, and compliant,” are also seen as sexually available and too passive for litigation. These stereotypes create barriers to advancement for Asian American women. For example, minority male partners at law firms outnumber minority female partners more than two to one, despite there being more minority female associates than minority male associates.

A. Proving Unlawful Discrimination

Title VII makes it unlawful for an employer

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

To prove unlawful discrimination, an employee plaintiff must generally show that the employer intended to discriminate; the employer took actions that adversely affected the employee's employment; and the adverse actions were causally linked to the employer's intent to discriminate. Under the McDonnell Douglas burden-shifting test for employment discrimination, an employee must first establish a prima facie case of discrimination, which creates a rebuttable presumption that the employer unlawfully discriminated. The employer must then rebut this presumption by establishing a legitimate, non-discriminatory reason for the adverse employment decision. If the employer is able to show a legitimate, non-discriminatory reason, the
burden shifts back to the employee to show that the employer's reason was pretext, and that the real reason for the adverse employment decision was discrimination. 189

Asian American women experience discrimination not as Asian Americans or as women, but as Asian American women. Therefore, laws addressing employment discrimination must take into account the unique intersecting identities of Asian American women. Courts have been inconsistent with their analysis of cases involving individuals who fit in multiple socially constructed *160 categories. 190 While some courts separate an individual's claim into discrete unrelated categories, such as “race” and “gender,” others examine discrimination in a more holistic matter by looking at both “race and gender.” 191

Asian American women face an intersection of at least three forms of illegal discrimination: race, gender, and national origin. 192 When employment discrimination is discussed through a single-axis analysis that compartmentalizes discrimination into discrete categories, the experiences of Asian American women and other individuals who fit in more than one protected category are overlooked. 193 This “marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination.” 194 Without a more holistic approach, the manner in which Asian American women are subordinated cannot be addressed. 195

B. Examining the Discrimination Claims Brought By African American Women Is Helpful for Understanding the Claims Brought By Asian American Women Since Both Are Discriminated Against for Their Race and Gender

In discussing employment discrimination against Asian American women, it is helpful to look at similar claims brought by African American women since both groups of women face similar difficulties in bringing claims based on the intersection of their race and gender. 196 In DeGraffenreid v. General Motors, African American women alleged that their employer's “last-hired-first-fired” policy discriminated against them and perpetuated past acts of discrimination against African American women. 197 After deciding that African American women are not a special protected class under Title VII, the court broke down the Plaintiffs' claims and analyzed the race and sex discrimination claims separately. 198 With regard to the sex-based discrimination claim, the court granted summary judgment to General Motors, 199 noting that General Motors had hired female employees before the Civil Rights Act of 1964, thereby indicating that their layoff policies did not perpetuate past discrimination against women. 200 The court failed to address the fact that General Motors had employed *161 only one black female prior to 1970. 201 The court then dismissed Plaintiffs' race discrimination claim so that it could be consolidated with another race discrimination claim. 202 In this case, the court refused to recognize the distinct discrimination faced by African American women. Rather, it defined the discrimination faced by African American women in terms of the experience of white women and African American men. As a result, African American women can succeed on a discrimination claim only if they can fit their experiences into discrete protected categories.

In contrast, the court in Jeffries v. Harris County Community Action Association agreed with Plaintiff that, “discrimination against black females can exist even in the absence of discrimination against black men or white women.” 203 There, an African American woman alleged that her employer discriminated against her on the basis of race and sex by failing to promote her and terminating her employment. 204 Unlike the court in DeGraffenreid, the court in Jeffries looked at whether the employer discriminated against Plaintiff on the basis of race, sex, and race and sex. 205 The court found that Plaintiff failed to prove race discrimination since the individual who actually received the promotion was also African American. 206 The court remanded Plaintiff's sex discrimination claim, ordering the district court to make further findings of fact and conclusions of law. 207

With regard to the sex and race claim, the court agreed with Plaintiff that “discrimination against black females can exist even in the absence of discrimination against black men or white women.” 208 The court stated that the “or” in Title VII prohibits discrimination based on any or all of the protected classifications. 209 In doing so, the court recognized that if black men and white women were considered to be in the same protected class as black females, no remedy would exist for discrimination directed only at black women. 210 The court therefore held that in Title VII cases alleging discrimination against black females, “the fact that black males and white females are not subject to discrimination is irrelevant and must not form any part of the basis for a finding that the employer did not discriminate against the black female plaintiff.” 211 It further concluded that the
recognition of African American women as a distinct protected subgroup is the only way to remedy discrimination against African American women.\textsuperscript{212}

The cases above demonstrate the inconsistent approach taken by courts in response to employment discrimination claims made by African American women. In these cases, African American women claimed that they were discriminated against as a result of both their race and sex. As such, these cases provide guidance for Asian American women who are discriminated against for their race, sex, and national origin.\textsuperscript{213}

C. Asian American Women Have Had Difficulty Bringing Forth Discrimination Claims Based on Their Intersectional Identities

Like African American women, Asian American women have experienced difficulties bringing forth employment discrimination claims based on the intersection of more than one protected category. For example, in Lim v. Citizens Savings & Loan Association, Plaintiff brought a claim alleging that her employer discriminated against her on the basis of race and sex by failing to promote her and discharging her.\textsuperscript{214} Plaintiff also attempted to file a class action suit on behalf of female and Asian employees charging discriminatory practices.\textsuperscript{215} The court refused to certify the class,\textsuperscript{216} citing statistics that indicated that the percentage of women and Asians employed by Defendant was comparable to relevant labor pools.\textsuperscript{217} The court also granted Defendant's motion for summary judgment on Plaintiff's individual claim, stating that Plaintiff either failed to prove a prima facie case for discrimination, or that Defendant rebutted her showing with several legitimate reasons for its decisions so that “‘no genuine issue of material fact’ as to discrimination remains.”\textsuperscript{218}

In Chaddah v. Harris Bank Glencoe-Northbrook, N.A., Plaintiff, an Asian American woman, claimed that she was harassed, denied a transfer, and discharged because of her age, race, and color.\textsuperscript{219} In addition to being denied a transfer, Plaintiff claimed that she was harassed by bank employees who ridiculed her English pronunciations, told her that foreigners should not work at the bank if they could not use proper English, and told her that she would “fit right in” with the women in China who worked in the fields barefoot.\textsuperscript{220} Plaintiff ultimately resigned from the bank.\textsuperscript{221} The court dismissed Plaintiff's constructive discharge claim and held that Plaintiff failed to show that a reasonable person under her circumstances would have resigned.\textsuperscript{222} Further, the court held that Plaintiff failed to show that younger, white women promoted before her were less qualified than she or that there were few or no Asian bank officers.\textsuperscript{223} The court highlighted the fact that “Plaintiff offer[ed] no statistical evidence that other persons in her age category or of her racial background suffered similar discrimination.”\textsuperscript{224} The court's analysis separated Plaintiff's claims and looked at each individually rather than in combination, which resulted in the dismissal of Plaintiff's cause of action.\textsuperscript{225}

In contrast, the court in Lam v. University of Hawai'i looked at whether discrimination occurred on the basis of a combination of race and sex.\textsuperscript{226} Plaintiff, a Vietnamese woman, twice applied to be the Director of the University of Hawai'i's Richardson School of Law's Pacific Asian Legal Studies (PALS) Program and was rejected both times.\textsuperscript{227} During the school's first hiring search, Plaintiff was one of ten finalists recommended by an appointments committee for full-faculty review.\textsuperscript{228} The chairman of the appointments committee had previously had a “run-in” with Plaintiff, and Plaintiff was concerned about how this would affect her candidacy.\textsuperscript{229} During a debate regarding Plaintiff's application, the chairman stated that Plaintiff was “not collegial, was a poor scholar, . . . had poor administrative ability,” and “was unfit to teach anywhere on the University of Hawai'i campus.”\textsuperscript{230} The faculty failed to reach a consensus about who should be appointed, and the search was cancelled.\textsuperscript{231}

In response, Plaintiff filed a discrimination complaint with the University, which resulted in a report “detailing confidentiality breaches and procedural violations” in the committee's search for a new director.\textsuperscript{232} University EEO officers spoke with law school faculty and recommended the use of rating sheets and of a clear definition for the PALS program and the director position.\textsuperscript{233} When the university reopened its search for a PALS director, Plaintiff reapplied.\textsuperscript{234} The new committee disregarded the EEO's recommendations for screening out potential bias.\textsuperscript{235} The final list of candidates consisted entirely, or almost entirely, of persons of U.S. origin, which was in stark contrast to the substantial number of non-white and foreign-
born finalists in the first search. The committee offered the position to a white candidate who declined the offer; as a result, the faculty once again cancelled the search.

At trial, the Ninth Circuit rejected the district court's justification for granting summary judgment to Defendants, stating that Defendants' favorable consideration of an Asian man and a white woman did not demonstrate a lack of discrimination against an Asian woman. The Ninth Circuit further noted that the district court seemed to view racism and sexism as separate and distinct elements amenable to almost mathematical treatment, so that evaluating discrimination against an Asian woman became a simple matter of performing two separate tasks: looking for racism “alone” and looking for sexism “alone,” with Asian men and white women as the corresponding model victims.

The court found this perception of employment discrimination to be misconceived, since the attempt to bisect an individual's identity into discrete categories often distorts or ignores the particular nature of their experience. “When a plaintiff is claiming race and sex bias, it is necessary to determine whether the employer discriminates on the basis of that combination of factors, not just whether it discriminates against people of the same race or of the same sex.”

Currently, some courts have embraced an intersectional approach, while others have dissected a claimant's claims into discrete protected categories. Because Asian American women are subjected to stereotypes not shared by Asian men or white women, courts must examine employment discrimination claims holistically, taking into account the history of oppression, stereotypes, and prejudices pertaining to Asian American women specifically. Frameworks, like intersectionality, which integrate multiple factors, such as race and gender, should be utilized to “account for the multi-dimensional character of harassment that occurs and is challenged across races, social classes, and borders.” Such a holistic approach not only acknowledges the experiences of Asian American women, but also provides justice for litigants.

*165 VI. Pathways to Removing Barriers to Success

Asian American women face barriers to success that are similar to those faced by Asian American men, white women, and other women of color, but these barriers are wholly different because of Asian American women's unique history in the United States and their perceived characteristics. Because Asian American women are subjected to a different set of assumptions and stereotypes, theories such as the glass ceiling and bamboo ceiling are insufficient to describe the barriers they face. To address barriers to success for Asian American women, a holistic approach must be used. Intersectionality is a well-suited theory to provide this holistic approach since it focuses on the experiences of individuals who fit in more than one protected category. Intersectionality will demonstrate that the discrimination faced by Asian American women is not the same as the discrimination faced by women or Asian American men, and thus is deserving of its own analysis. Asian American women are discriminated against because of their race, sex, and national origin, therefore an understanding of their experiences that ignores how these axes of oppression intersect is incomplete and fails to provide the justice Title VII requires. By examining the history, stereotypes, and experiences of Asian American women, intersectionality can acknowledge the specific experiences of Asian American women and create opportunities for their professional advancement.

Expanding the theory of intersectionality to incorporate the experiences of Asian American women may remove some of the barriers to success for Asian American women by increasing their access to the courts. It will allow courts to analyze discrimination cases based on a combination of factors, rather than mutually exclusive factors. Increasing Asian American women's ability to find justice in employment discrimination cases will not only send a message to employers that discrimination against Asian American women as a discrete category will not be tolerated, but will also lead to a heightened awareness of the ways implicit biases affect employment decisions.

The knowledge gained from intersectional analysis should be provided to businesses so they can structure their employment policies in ways that do not disparately impact Asian American women. Many businesses are devoted to diversity, but are unaware of how stereotyping and implicit bias affect everyday employment decisions to the detriment of Asian American
women. An awareness of the stereotypes of Asian American women will help businesses acknowledge their implicit biases, and will make them more attuned to business practices, conduct, and behavior that may prohibit Asian American women from entering the workforce or obtaining high-ranking positions. This knowledge can \textsuperscript{166} be shared with businesses through trainings on implicit bias \textsuperscript{240} and intersectionality; \textsuperscript{250} by requiring management to explore the Project Implicit website \textsuperscript{251} and take the Implicit Association Test, which demonstrates the divergence between the conscious and unconscious mind; \textsuperscript{252} or by seeking a private consultation to understand how implicit biases against Asian American women occur in the employer's specific workplace. \textsuperscript{253} An understanding of implicit bias and intersectionality can assist businesses in recruiting a representative class of Asian American women and avoiding future liability.

Also, in studying the barriers to success for Asian American women, the theory of intersectionality can help shed light on harmful stereotypes surrounding Asian American women, and how these stereotypes are perpetuated through the media to reinforce the oppression of Asian American women. When images of Asian American women are available in the media, they tend to portray negative, unrealistic stereotypes. To remove these denigrating stereotypes, and acknowledge the true experiences of Asian American women, we need more positive, realistic images of Asian American women in the media. This involves having more Asian Americans in mass media, playing multi-dimensional, realistic, humanized roles. This increased visibility will change the public perception of Asian American women and hopefully ensure that negative stereotypes do not prevent these women from reaching the upper echelons of management. Increasing the visibility of Asian American women also requires having more Asian American women in executive positions. By increasing the visibility of Asian American women, we can begin to chip away at the stereotypes that prevent Asian American women from moving forward in society.

VII. Conclusion

This paper discusses the failure of the bamboo and glass ceiling theories to adequately represent the experiences of Asian American women in the workplace. It argues that intersectionality has great potential to explain and \textsuperscript{167} acknowledge the experiences of Asian American women, and should thus be expanded to examine the unique position of Asian American women who face discrimination on the basis of multiple categories of identity. To accomplish this, intersectionality must look at the history of Asian American women in the United States, the stereotypes that emerged from this dark history and how these stereotypes permeate our current perceptions of Asian American women, and the effects of the model minority myth. Intersectionality must also look at how these stereotypes manifest in the workplace and prevent Asian American women from advancing to the highest ranks of employment. Intersectionality is a persuasive theory that has the ability to help remove barriers to economic, social, financial, and political success, and to create opportunities for Asian American women.

This paper is limited in its scope in that it focuses on the experiences of educated, middle-class Asian American women. Future research should examine the experiences of Asian Americans with varying levels of education and wealth. This paper is also limited in that it focuses on the external societal forces, rather than the internal cultural forces, that create barriers to success. In the future, research should examine how cultural forces interact with societal forces to produce barriers to success for Asian American women. This research will require examining the cultural forces unique to each discrete Asian American community.

This paper provides an introduction to and overview of the individual factors contributing to the barriers to success for Asian American women. It is clear that there is much more research that needs to be done to better understand the experiences of Asian American women. This research will not only chip away at the ceiling that prevents Asian American women from achieving success, but will also create opportunities for Asian American women to rise above and beyond this ceiling.

Footnotes

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2 See id. at 1258-60.


8 Meyerson & Fletcher, supra note 4, at 127.


10 Meyerson & Fletcher, supra note 4, at 127.


13 Cotter et al., supra note 11, at 657-58.
Id. at 659.

Id. at 661.

Id. at 671.

Meyerson & Fletcher, supra note 4, at 127-28.

Id. at 127.

Id. at 128.

See Ragins et al., supra note 12, at 29-33, 35. See also Cotter et al., supra note 11, at 673.

Meyerson & Fletcher, supra note 4, at 129.

Id.

Id.

Id.

Ragins et al., supra note 12, at 30.

See Meyerson & Fletcher, supra note 4, at 129.

Id.

See generally Bigelow, supra note 3, at 2-3, 10.


Id. at 9 app.2.

Id. at 2 fig.2.

Id. at 9 app.2.

EEOC 2011, supra note 33.

Id.

Id.

Bigelow, supra note 3, at 3.

Id. at 4.

Id. at 5.

Id. at 10. See also Virginia W. Wei, Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender and National Origin, 37 B.C. L. Rev. 771, 798 (1996); Lydia Lum, Stepping Forward, Diverse Educ., August 25, 2005, http://diverseeducation.com/article/4560/ [hereinafter Lum, Stepping Forward] (reporting that Asian Pacific Americans make up about 50 percent of undergraduate students at the University of California, Irvine).

Bigelow, supra note 3, at 9.

Id. at 10.

Chang, supra note 1, at 1247.

Bigelow, supra note 3, at 12.

Lum, Stepping Forward, supra note 40.


See Bigelow, supra note 3, at 4-5.

Id. at 26.

Id.

Chiu, supra note 46, at 1090.

Perez, supra note 5, at 236.

Id. at 212.

Id.

Id.


Hutchinson, supra note 56, at 5.

Id.

See generally Peggy McIntosh, White Privilege: Unpacking the Invisible Knapsack, in Race, Class, and Gender in the United States (7th ed. 2007).


Intersectionality, supra note 60.

Crenshaw, Mapping the Margins, supra note 60, at 1243-44 (emphasis in original).

See, e.g., id. at 1252-53, 1258 (noting that in regards to violence against women, while “race-based priorities function to obscure the problem of violence suffered by women of color; feminist concerns often suppress minority experiences as well.”).

Id. at 1256.

Id.
Perez, supra note 5, at 213.

See Wei, supra note 40, at 772 ("[I]ntersectionality theory[,] began largely with black women's experiences.").

Id.

Id. at 773.


Chiu, supra note 46, at 1058.

Id.

Id. at 1058-59.

Wei, supra note 40, at 787.

Chiu, supra note 46, at 1060-61.

Hutchinson, supra note 56, at 90.

Id.

Chiu, supra note 46, at 1059.

Wei, supra note 40, at 787.

Id. at 788 n.187.

Id. at 792.

Cho, supra note 7, at 183.

Wei, supra note 40, at 793.

Id.

Id. See also Cho, supra note 7, at 183.

Cho, supra note 7, at 184.
87 Hutchinson, supra note 56, at 93-94; Perez, supra note 5, at 217.

88 Cho, supra note 7, at 184-85; Hutchinson, supra note 56, at 94.

89 Cho, supra note 7, at 184.


91 Id. at 410-11.

92 Id. at 412-13. “White persons” was later defined as the common white man. US v. Thind, 261 U.S. 204 (1923); Chiu, supra note 46, at 1061.

93 Volpp, supra note 90, at 412.

94 Id.

95 Id. at 413.

96 Id. at 465, 413.

97 Chiu, supra note 46, at 1060-61.

98 People v. Hall, 4 Cal. 399, 405 (1854).

99 Chiu, supra note 46, at 1063.

100 Id. at 1064.

101 Id. (“[L]egislation... made it unlawful for ‘aliens ineligible to citizenship’ to own real property and prohibited such aliens from leasing agricultural land for a term of more than three years.”).

102 Id. at 1065.

103 Plessy v. Ferguson, 163 U.S. 537, 561 (1896) (Harlan, J., dissenting).

104 Id.

105 Wei, supra note 40, at 791.
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106 Id.

107 Id. at 792. See also Korematsu v. United States, 323 U.S. 214, 219, 223-24 (1944).

108 See Wei, supra note 40, at 793, 796.

109 Volpp, supra note 90, at 456-57.

110 Id.

111 Wei, supra note 40, at 794.

112 Id.

113 Id. at 799; Bigelow, supra note 3, at 9.

114 See Wei, supra note 40, at 800-01.

115 See id.; Chiu, supra note 46, at 1070.

116 Id. See also Chiu, supra note 46, at 1070.

117 See Chiu, supra note 46, at 1070.

118 Wei, supra note 40, at 801.

119 Id.

120 Perez, supra note 5, at 218.

121 Wei, supra note 40, at 801.

122 Robert S. Chang & Adrienne D. Davis, An Epistolary Exchange Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom, 33 Harv. J.L. & Gender 1, 10, 25-26 (2010) (describing how American culture characterizes Asian American women as “geishas” and “Suzie Wongs” who are “‘fetishized as the embodiment of perfect womanhood and genuine exotic femininity’”).

123 Perez, supra note 5, at 217.


126 Cho, supra note 7, at 192; Chiu, supra note 46, at 1086-87.

127 Chiu, supra note 46, at 1086.

128 Id. at 1086-87.

129 Wei, supra note 40, at 801. See also Perez, supra note 5, at 218-19 (discussing portrayals of Asian American women in film).

130 Wei, supra note 40, at 801-02.

131 Id. at 802.


133 See id.

134 Id.

135 Id.


138 Id.

139 Id.

140 Id.

141 Id.


143 Sexploitation of the Asian American Female Body, supra note 137.
144 Wei, supra note 40, at 802.

145 See id.

146 Id. at 802-03.

147 Id. at 803; Chiu, supra note 46, at 1072.

148 Carolyn Jin-Myung Oh, Questioning the Cultural and Gender-Based Assumptions of The Adversary System: Voices of Asian-American Law Students, 7 Berkeley Women's L.J. 125, 140 (1992); Chang, supra note 1, at 1258.

149 Oh, supra note 148, at 140.

150 Chang, supra note 1, at 1258-60.

151 Id. at 1261-63.

152 Id. at 1258-59, 1261.

153 Id. at 1261.

154 Id. at 1260.

155 Hutchinson, supra note 56, at 27.

156 Oh, supra note 148, at 140; Cho, supra note 7, at 185-86; Bigelow, supra note 3, at 9, 12.

157 See Bigelow, supra note 3, at 9-10.

158 Cho, supra note 7, at 185.

159 Chang, supra note 1, at 1264.

160 Sue et al., supra note 70, at 98-99. See also Wei, supra note 40, at 798.

161 Sue et al., supra note 70, at 98. See also Chiu, supra note 46, at 1085 n.210; Chang, supra note 1, at 1261-65.

162 Chiu, supra note 46, at 1080.

163 Chang, supra note 1, at 1264. See also Sue et al., supra note 70, at 98.

164 Chang, supra note 1, at 1264.
See id. at 1264-65.

Oh, supra note 148, at 140; Cho, supra note 7, at 186. See also Hutchinson, supra note 56, at 94 (“The ‘model minority myth’ solidified white supremacist notions of Asian American passivity and economic success and, together with historically sexualized notions of Asian American female status, led to the saturation of popular culture with images of Asian American women as docile, servile and heterosexually submissive.”).

Cho, supra note 7, at 188.

Id.

Id.

Id.

Id. at 188-89.

Id.

Id. at 189.

Id. at 190.

Id.

Id. at 194, 208-09.

Id. at 206.

Id. at 201-10.

Id. at 210.


Id.

Id. at 8-9.

Id. at 9.

Id. at 11.


Id.

Id. at 804-05.

See Wei, supra note 40, at 780-85.

Id.

Id. at 773.

See id. at 775, 780-85.

Crenshaw, Demarginalizing the Intersection of Race and Sex, supra note 5, at 140.

See id.

Wei, supra note 40, at 780.


DeGraffenreid, 413 F. Supp. at 143.

Id. at 145.

Id. at 144.

DeGraffenreid, 558 F.2d at 482.

DeGraffenreid, 413 F. Supp. at 145.

Jeffries v. Harris Cnty. Cmty. Action Ass'n, 615 F.2d 1025, 1032 (5th Cir. 1980).
Id. at 1028.

Id. at 1030-34.

Id. at 1030.

Id. at 1031-32.

Id. at 1032.

Jeffries, 615 F.2d at 1032.

Id. at 1032-33.

Id. at 1034.

Id.

See Wei, supra note 40, at 780.


Id.

Id. at 813.

Id. at 806.

Id. at 813-14 (quoting Fed. R. Civ. P. 56).


Id. at *2-3.

Id. at *2.

Id. at *3.

Id. at *5-6.
224 Id. at *5-6.


226 Lam v. Univ. of Haw., 40 F.3d 1551, 1562 (9th Cir. 1994).

227 Id. at 1554.

228 Id. at 1555-56.

229 Id. at 1556.

230 Id. at 1556.

231 Id. at 1557.

232 Lam, 40 F.3d at 1557.

233 Id.

234 Id.

235 Id. at 1558.

236 Id.

237 Id. at 1558.

238 Lam, 40 F.3d at 1561.

239 Id.

240 Id. at 1561-62.

241 Id. at 1562.

242 See id.; Jeffries, 615 F.2d at 1025.
See DeGraffenreid, 413 F. Supp. 142; Lim, 430 F. Supp. 802; Chaddah, 1994 WL 75515.

Lam, 40 F.3d at 1562.


Cho, supra note 7, at 209.

See generally Perez, supra note 5, at 211-13; Lam, 40 F.3d at 1561-62; Wei, supra note 40, at 771.

See Intersectionality, supra note 60, at 3. See generally Crenshaw, Demarginalizing the Intersection of Race and Sex, supra note 5; Crenshaw, Mapping the Margins, supra note 60.


LEGAL SOLUTIONS FOR APA TRANSRACIAL ADOPTEES

III. LGBT and APA Communities

Research suggests there is a gap in understanding and racial identity resource delivery between adoptees and the Asian American community. The gap impacts more than a small portion of the community, but a sizeable portion of all Asian Americans. Approximately six to ten percent of all Korean Americans (there are about 1.7 million Korean Americans) are transracial adoptees. Korea was criticized in the 1980s for the high number of children it exported for adoption. International criticism inspired reform such as policies to encourage Korean families to adopt domestically. With greater restrictions and thus fewer adoptive children available from Korea, adoptive parents turned to China for adoption. Currently, China provides the bulk of Asian adoptees, mainly girls, to white families in America. The number of Chinese adoptees is expected to soon outstrip the number of Korean adoptees. With the continuing influx of Asian adoptees, the relationship between Asian adoptees and the APA community will not diminish in importance.

There are geographic and social obstacles that prevent Asian adoptees from identifying as part of the APA community. White adoptive parents tend to remain in predominantly white communities. Unless the transracial family moves to an urban center with a large number of Asian Americans, most adoptees live until their late teen years without significant contact with other Asian Americans. Adoptees report feeling that they are fraudulent Asians because they cannot speak an Asian language nor have what they believe to be similar cultural experiences to other Asian Americans.

The Asian American community has never made a public, concerted effort to claim Asian adoptees as members of a racial community without whom the continued production of a racial identity will be compromised. There are historical and social factors that account for this silence, but the silence should be broken because there is a strong possibility that Asian transracial adoptees may not suffer as much depression, family alienation, suicide, eating disorders, and poor adjustment if they experience positive racial identity development. Asian adoptees' desire for racial identity development may come to serve as a point around which the Asian American community could recognize the challenges that adoptees face, giving the community the impetus to craft its identity around answering part of its community's needs in addition to protecting itself from anti-Asian violence.

Chosen families and supportive networks are tools used by LGBT individuals to help develop and reinforce a positive LGBT identity. Some heterosexual families who accept their LGBT children participate in groups that build family-like support networks, such as PFLAG (Parents and Friends of Lesbians and Gays). Unlike the concerns about authenticity that
plague culture camps and cultural programming for transracial adoptees, there is little concern about the authenticity of groups and networks for LGBT youth and their families.

National LGBT groups like the Trevor Project, PFLAG, the Human Rights Campaign, and the Family Acceptance Project have made a concerted effort to advocate for LGBT youth. These groups have no legal or biological ties to the children they seek to help. Members of national LGBT organizations are demographically diverse and have no legally enforceable right to intervene between a parent and child. Yet, sexual identity has provided a point around which a diffuse, demographically diverse group can coalesce to make a legal intervention. National LGBT groups are not making a claim that they have a right to LGBT children in lieu of the parents' rights. Rather, they advocate on behalf of LGBT youth and offer services that supplement family efforts or support if the family rejects the youth.

There are multiple explanations for the Asian American community's silence in regards to adoptees. Because of immigration laws, there simply were not as many Asians, making it difficult to have a cultural presence. Related to the obscured history of Asian immigration is the mistaken belief that the Asian American community has never had the identity-solidifying experiences of the African American community, such as coercive immigration, Jim Crow laws, and the civil rights movement. Robert Chang challenges the belief that Asian Americans were uninvolved with the civil rights movement in America. In fact, Asian American groups have consistently fought against inequality, but the model minority myth has obscured that history. Another possibility is that Asian Americans have a diffuse, nation-based identity, making it difficult to coalesce and identify as Asian American. A third related theory is that various national groups immigrated at different times and sought to distance themselves from each other in hopes of assimilating and not suffering bias and discrimination like their predecessors. The drive for each group to assimilate with white culture and distance themselves from other Asian immigrant groups would drive Asian American communities to downplay racial identity. Downplaying identity may lead to the devaluing and obscuring of the value of racial identity.

As discussed earlier, many Asian adoptees are raised in culturally white spaces so they tend to identify with their families' racial identity. When Asian adoptees become adults, a large percentage of them begin to self-identify as Asian American, rather than white. However, even as they self-identify as Asian American, that designation is also fraught because many report experiences that highlight their inability to fit comfortably within Asian American communities because of their lack of acculturation with other Asians. There are multiple layers of identity for Asian adoptees that are difficult to reconcile causing them to experience cognitive dissonance not only because they do not physically resemble their parents, but also because they do not have the characteristics associated with their racial appearance. They are perceived as Asian based on phenotypic appearance, but adoptees have no Asian cultural capital. In one study, participants found that they were not accepted as members of their birth group due to their family experience, because they lacked a common experience. For instance, Carrie learned that, due to her adoptee status, she was no longer considered Korean by the Korean people in the United States and, at the same time, was seen as a social outcast in Korea.

Another respondent was “openly criticized [by other Korean Americans] . . . for ‘not being Korean enough,’ because she did not know the language or was not versed in the cultural [process].” Asian adoptees, even if they are considered part of the Asian American community when tabulating racial demographics, may not have any group affiliation or geographic closeness to other Asian Americans. The bewildering experience of meeting other Asian Americans for the first time in college or more urban centers is a frequent trope in Asian adoptee experiences. Lastly, there are the cultural and familial ties to white communities that are an important part of Asian adoptees' identity that is often overlooked or explained away as assimilation into American culture. Asian adoptees exemplify the concept of “honorary whiteness” and their experiences simultaneously reveal the limits of colorblindness and obscure how honorary whiteness devalues Asian racial identity.

The desire voiced by Asian adoptees for a racial identity should be heard as a call to the APA community to reclaim and revalue racial identity as Asian Americans and people of color, not just as nationalistic subgroups and not as a solely political entity in competition with other immigrant and racial groups. In part, this call to action requires shuffling off the assimilation desires that feed the model minority myth. It is painful to think about mistreatment, ethnic slurs, and race-based violence, but if the community appropriated the pain and race-based mistreatment it could counter the pressure to assimilate. For the Asian
adoptees that battle racism in small communities and quiet family spaces without any help from Asian Americans or the media, which persists in narrowly portraying Asians as villainous, sexy, extremely skilled in martial arts, or nerdy, finding a community that acknowledges the reality of racism can be a lifesaving revelation. In part, this calls for embracing a constructed identity. Leaders in the Asian American community can take the opportunity to learn about Asian adoptees and respond as a community to their unique needs by critically addressing what it means to have a racial identity as an Asian American.

The concept of honorary whiteness cuts in much the way that the model minority myth does and also has to be eschewed in order to claim and reveal the devaluation of Asian identity that is implicit in being white-like. Claiming racial value is a bold, risky move that challenges the white standard as the measure of all racial value. If we compare attitudes about sovereignty and the right to govern one's own group to racial group identity, we can see there is great strength in turning inward to one's group and valuing its needs over the drive to be accepted by other groups. In contrast, individual racial identity is too often measured against a white standard. Income levels, educational attainments, housing, and other outcomes measured by race are typically compared to white standards. Unlike Native American tribes, Asian Americans are not a separate sovereignty with the carved out right to govern themselves. Asian Americans are more like other racial minorities in that racial identity is something that must be created and valued in spite of pushback framed as colorblindness or generic multicultural appreciation for cultural performance. While there is no specific formula or program of thinking that can adequately encompass the existing diversity within the Asian American community, those at the center of the APA community, like politicians, thought leaders, policy makers, and media personalities, could harness the desire and energy of those on the fringes who want an Asian American racial identity. This could help shake off the idea that the APA community is hopelessly fractured and practically white. The APA community, like national LGBT advocacy groups, could focus on defining itself across one identity trait, reframing its fractured and diffuse characteristics as being everywhere and touching many people's lives.

Footnotes

a1 Assistant Professor, Gonzaga University School of Law, Spokane, Washington. My gratitude to the UC Irvine APALSA, UC Irvine Law Review Executive Board, Devon Carbado, Addie Rolnick, Doug NeJaime, Robert Chang, Leslie Francis, Orly Rachmilovitz, Jason Gillmer, Brooks Holland, Inga Laurent, Kurt Meyer, Jessica Kiser, Gail Hammer, the Williams Institute Fellows Roundtable, and the Rocky Mountain Junior Scholars Forum for their conversations and critiques. I wish to thank Lucy Lin and the UC Irvine Law Review editorial staff for thoughtful and professional editing. My thanks to Candace Magnin and Dawn Berry for excellent research assistance and the librarians of the Chastek Library for their expert help.

1 See generally Sara K. Dorow, Transnational Adoption: A Cultural Economy of Race, Gender, and Kinship 247 (2006) (observing that among families that adopted Chinese girls that the researcher worked with, it was white LGBT parents who tended to seek extrafamilial resources to help their children develop racial identity); Ramona Faith Oswald, Resilience Within the Family Networks of Lesbians and Gay Men, 64 J. Marriage & Fam. 374, 374-83 (2002) (noting that LGBT individuals' understanding of familial relationships allows them to build complex families that increases resources available to members).

24 Cindi Kim, A Phenomenological Study of Racialized Experiences of Asian Adult Adoptees 53-54 (2010) (unpublished dissertation, University of Denver) (on file with author). This study, performed after the Beyond Culture Camp study, offers a smaller, qualitative study into the experiences of adult transracial adoptees as a counterpoint to studies that rely on the Multigroup Ethnic Identity Measure (MEIM), which is designed for “measuring general racial and ethnic populations” when discussing transracial adoptees’ experiences of developing racial and ethnic identities when they have had little experience and exposure to racial and ethnic populations during childhood. The fact that there are multiple methods for researching and measuring the racialization and identity development process illustrates the developmental stage and various viewpoints available, making it difficult to create a universal solution for transracial adoptees engaged in racial identity development. Kim, supra at 53-54.
Song & Lee, supra note 12, at 22; Kim Ja Park Nelson, Korean Looks, American Eyes: Korean American Adoptees, Race, Culture and Nation 169 (Dec. 2009) (unpublished Ph.D. dissertation, University of Minnesota) (on file with author) (“Interference in parenting is often perceived as a most unwelcome and presumptuous disruption of the right to individuality. In this way, parenting of transracial adoptees is protected in a way that few other institutions are.”).

Early adoptive parents who made assimilation demands on their adoptive children are to some extent excused because of the time period and the belief that they did not know better. Now, adoptees’ perception is that adoptive parents, even progressive parents who proactively expose their children to cultural activities, are defensive because of white privilege and still fail to recognize that their children “will fit into the nation differently than they do.” Eleana J. Kim, Adopted Territory: Transnational Korean Adoptees and the Politics of Belonging 117 (2010); see also Kim, supra note 24, at 86-89 (finding that all respondents, as children, experienced racial teasing that highlighted difference, which caused them to try to assimilate into American culture as much as possible to downplay that difference).


Elizabeth M. Hoeffel et al., U.S. Census Bureau, The Asian Population: 2010 (2012) (listing the total Korean American population at over 1.7 million Koreans, making total number of Korean adoptees roughly 6.4% of total Korean American population); McGinnis et al., supra note 8, at 20 (“South Koreans comprise the largest group of internationally adopted persons in the U.S., and adoption from South Korea into this country has a longer history than other types of transnational adoption.”); Ron Nixon, Adopted from Korea and in Search of Identity, N.Y. Times, Nov. 9, 2009, at A9 (reporting that since 1953, Americans have adopted more than 250,000 children from foreign countries, approximately 160,000 of whom were from Korea); Hollee McGinnis, South Korea and Its Children, N.Y. Times Relative Choices Blog (Nov. 27, 2007, 10:27 PM), http://relativechoices.blogs.nytimes.com/2007/11/27/south-korea-and-its-children (reporting that ten percent of Korean Americans immigrated through transnational adoption, meaning that 150,944 children were placed between 1953 and 2006); Norimitsu Onishi, Korea Aims to End Stigma of Adoption and Stop ‘Exporting’ Babies, N.Y. Times (Oct. 8, 2008), http://www.nytimes.com/2008/10/09/world/asia/09adopt.html?pagewanted=all (reporting how the ten percent figure has dropped as South Korea has made concerted efforts to reduce number of Korean children placed for adoption internationally); U.S. Dep't of State, About Us--Statistics, Intercountry Adoption, http://adoption.state.gov/about_us/statistics.php (presenting interactive graph showing that between the years 2007 and 2011, 4,682 children from South Korea were placed for adoption with American parents).

Pew Research Center, The Rise of Asian Americans 7 (2013), available at http://www.pewsocialtrends.org/files/2013/04/Asian-Americans-new-full-report-04-2013.pdf (“On the other side of the socio-economic ledger, Americans with Korean, Vietnamese, Chinese and ‘other U.S. Asian’ origins have higher shares in poverty than does the U.S. general public, while those with Indian, Japanese and Filipino origins have lower shares.” (citation omitted)); see also Julianne Hing, Asian Americans Respond to Pew: We're Not Your Model Minority, Colorlines.com, http://colorlines.com/archives/2012/06/pew_asian_american_study.html (last visited Nov. 28, 2012) (“Cambodian and Laotian Americans report poverty rates as high as, and higher than, the poverty rate of African Americans, according to the 2010 census. Even among those that Pew included in its study, like Chinese and Vietnamese Americans, these groups report a below average attainment of high school diplomas.”).

Robert S. Chang, Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, 81 Calif. L. Rev. 1241, 1289-1300 (1993) (providing a brief summary of anti-Asian immigration and naturalization laws). For more in-depth history and analysis, see, for example, Hiroshi Motomura, Americans in Waiting 16-37 (2006); Ronald Takaki, Strangers from a Different Shore 121-123 (1998) (noting that the few Chinese women who were allowed to immigrate during the 1800s were largely prostitutes, making it difficult for the high number of Chinese men to start families).
Nelson, supra note 45, at 11.

Hoeffel et al., supra note 109.

Id.

Kim, supra note 59, at 2 (citing the censure South Korea received from North Korea about the number of children sent abroad for adoption); Onishi, supra note 109 (reporting on the efforts to incentivize domestic adoptions in Korea and the decreasing international adoption placements).

International Adoption Facts, Evan. B. Donaldson Adoption Institute, http://www.adoptioninstitute.org/FactOverview/international.html (last visited Nov. 29, 2012) (reporting that for the year 2001, most Chinese children adopted were girls, and children from China were more than one-quarter of all international adoptions).

Onishi, supra note 109 (quoting Kim Dong-won, from the Ministry of Health in South Korea, in an interview: “South Korean is the world's 12th largest economy and is now almost an advanced country, so we would like to rid ourselves of the international stigma or disgrace of being a baby-exporting country”); International Adoption Facts, supra note 197 (noting that in 1990, thirty-seven percent of international adoptions were Korean; by 2001, twenty-five percent were from China).

Kreider & Raleigh, supra note 71.

McGinnis et al., supra note 8, at 45; Nelson, supra note 45, at 166 (citing several studies that “identify a trend for transracial adoption families to live in predominantly White neighborhoods”); id. at 216-22 (recounting transracial adoptees' experiences with other Asian Americans and people of color in their late teens and early college years).

Nelson, supra note 45, at 157.

McGinnis et al., supra note 8, at 45 (“Our findings indicate that a strong racial/ethnic identity... is an important predictor of comfort with that identity, which in turn is intricately interwoven with comfort with adoption.”); id. at 49 (“[P]erceived discrimination is linked with greater psychological distress, lower self-esteem, and more discomfort with one's race/ethnicity.”).

Oswald, supra note 1, at 378.

Id. at 375-76 (“Heterosexual members of gay and lesbian family networks may also create family relationships out of friendships, especially those formed in support group settings such as Parents and Friends of Lesbians and Gays.”); Ryan, supra note 35, at 13 (advising parents to “[f]ind a support group for yourself to talk with other parents and family members with gay and transgender children and adolescents”).

Takaki, supra note 171, at 99-103 (providing a history of restrictive immigration law and social policies that prevented the development of an extensive Chinese American population in the nineteenth century); id. at 121-23 (noting the skewed ratio of men to women, discouraging building of families; Chinese women immigrating to America during mid-nineteenth century were predominantly prostitutes, at “a ratio of 1,685 males to every one female”).
Nelson, supra note 45, at 150-51 (considering that tests conducted in 1970s where Asian children expressed preference for white over black dolls may have been due to smaller numbers of Asian Americans with “less cultural influence” so children would not be aware that they could “be not Black and not White”).

Id. at 102 (noting the historical reality that “blacks, Indians, and Chinese” were classified as not white and therefore could not exercise legal rights like testifying against white people in courts of law). But see Sora Y. Han, The Politics of Race in Asian American Jurisprudence, 11 Asian Pac. Am. L.J. 1, 15-24 (2006). Han critiques Asian American jurisprudence that seeks to make the racial bias experienced by Asian Americans more visible by comparing their experiences of oppression to the oppression experienced by African Americans. I cite to Han's argument to acknowledge that Asian American scholarship is not monolithic nor is it aligned along a single point in terms of critical methods for creating an Asian American jurisprudence, just as I wish to avoid reiterating the flattening of the idea of Asian American identity as a monolithic, static concept.

Barbara Stark, Baby Girls From China in New York: A Thrice-Told Tale, 2003 Utah L. Rev. 1231, 1261-62 (discussing the model minority myth and the obfuscation of the racial discrimination that Asian Americans have experienced, particularly in comparison to the discrimination against African Americans).

Chang, supra note 171, at 1312-14 (detailing the struggle to identify as Asian American across class and national origin lines to coalesce around fighting anti-Asian violence and oppression).

Id. at 1289-90 (tracking Asian immigrants' efforts to distance themselves from earlier Asian immigrants as an effort to deflect violence and anti-Asian sentiment through assimilation to Western norms instead of coalescing to form a pan-Asian identity).

Nelson, supra note 45, at 157; id. at 208 (“[P]erhaps there is also the feeling of isolation, of being familiar with a racial group that one is not part of and being excluded culturally by the racial group one is part of. All of these thoughts and their attached emotions can make for an awkward moment, even in a wordless chance encounter with another Asian person.”).

Kim, supra note 24, at 107-08.

Id. at 108.

Nelson, supra note 45, 214-22 (listing various accounts of Asian adoptees encountering other adoptees and Asian Americans in college and larger metropolitan settings).

Dorow, supra note 1, at 37-38 (discussing adoptive parents' beliefs that Asian children are more desirable than African American children based on racialized history of Asian model minority myths used to discipline other racial groups); Kim, supra note 59, at 28 (“[M]odel-minority myths about Asian immigrants coincide with predominant views of infant Asian girls as most likely to be accepted in white homes and communities.”); Han, supra note 205, at 15-24 (critiquing Asian American jurisprudence, particularly that proposed by Robert Chang, that seeks to make Asian American narratives of racial bias and discrimination visible at the expense of negating black narratives of racial bias and discrimination); Nadia Y. Kim, Critical Thoughts on Asian American Assimilation in the Whitening Literature, 96 Soc. Forces 561, 570-71 (2007) (“Asian and black Americans have been played off of one another, respectively, as ‘harder working than blacks’ and ‘more American than Asians’ and, at different points in time, ‘more like those blacks’ (‘Filipino brown brothers’) and ‘more like us.’ While it does matter that white America ideologically valorizes Asian ethnics above blacks in the color order, this tripartite arrangement also reveals a citizenship order in which Asian Americans experience their most profound subordination. This white-led racial system, then, has racialized Asian and black Americans vis-à-vis one another not only to ensure an internecine minority war, but to legitimize the ‘foolproof’ existence of American meritocracy. That is, if the system can racially lump and stereotype all Asian Americans as
model minorities, then blacks have only themselves, not the system, to blame. This point is also crucial insofar as it shows that Asian Americans have been valorized for their success as a racial minority group, not as a white majority. They have also experienced the highest rates of discrimination and violence precisely for being too model a minority, from the Chinese gold miners to engineer Vincent Chin to the college students who systematically face racial animus. While it matters, then, that Asian Americans are non-black, what matters most is that Asian and black people in the United States are both non-white.” (citations omitted)); Nelson, supra note 45, at 316-17 (analogizing Asian transracial adoptees to second- and third-generation Asian Americans where cultural “whitening” occurs because of assimilation with dominant cultural norms; for adoptees, the process is accelerated and Nelson argues that the acceleration is not entirely negative, but may also confer economic and social privilege on adoptees because of their familiarity and acceptance of white cultural norms).

Kim, supra note 24, at 97-100 (discussing the impact one-dimensional portrayals of Asians in the media had on Asian transracial adoptees living in predominantly white communities without significant contacts with Asian Americans).

See, e.g., Buck Rogers (Universal Pictures Co. 1939) (portraying an Asian villain with the character Ming the Merciless); Goldfinger (Eon Productions 1964) (portraying an Asian villain with the character Oddjob); Red Dawn (ContraFilm 2012) (the North Koreans invade America); Star Trek II: The Wrath of Khan (Paramount Pictures 1982) (portraying an Asian villain with the character Khan); The Hangover (Warner Bros. 2009) (portraying an Asian villain with the character Ken Jeong).


See, e.g., Crouching Tiger, Hidden Dragon (EDKO Films 2000) (Michelle Yeoh as Yu Shu Lien); Wendy Wu: Homecoming Warrior (Disney Channel 2006) (Brenda Song as the homecoming warrior).

See, e.g., Gung Ho (Paramount Pictures 1986) (Takahara Kazuhiro as a nerdy Japanese executive); Hawaii Five-O (CBS television broadcast Sept. 20, 2010) (Masi Oka as the nerdy Dr. Max Bergman); Sixteen Candles (Universal Pictures 1984) (Long Duk Dong as a nerdy foreign exchange student).

Chang, supra note 115, at 12, 20 (detailing how those “occupying the Asian racial category” coalesced around racial discrimination, but ultimately concluding that Asian American identity is an invention and a shared history of discrimination may not be enough to produce racial solidarity).

Pew Research Center, supra note 115, at 19-75.

See Matthew L.M. Fletcher, The Original Understanding of the Political Status of Indian Tribes, 82 St. John's L. Rev. 153, 154-56 (2008) (explaining legal precedent behind political status). Although the right is not perfect and there is a long history of the federal government making inroads into Native sovereignty, the fact that there has been Native sovereignty supports the ability of tribes to look inward and care for their members in traditional ways that may or may not align with mainstream American methods. See Addie Rolnick, Rewriting the End of a Sovereignty Story: Santa Clara Pueblo Members Vote to Change Patrilineal Membership Rule, PrawfsBlawg (June 18, 2012, 5:59 PM), http://prawfsblawg.blogs.com/prawfsblawg/2012/06/rewriting-the-end-of-a-sovereignty-story-santa-clara-pueblo-members-vote-to-change-patrilineal-membe.html.

Advertisements aired before the Proposition 8 election in California often relied on testimonials from LGBT families that aimed at humanizing and demonstrating that LGBT individuals were already part of the fabric of society. Karen

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A New Minority?

International JD Students in US Law Schools

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A NEW MINORITY?
International JD Students in US Law Schools

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Abstract

This Article reveals the significance of a new and growing minority group within US law schools - international students in the Juris Doctor (JD) program. While international students have received some attention in legal education scholarship, it mostly has been focused on their participation in the context of programs specially designed for this demographic (e.g. post-graduate programs like the LLM and SJD). Drawing from interview data with fifty-eight international JD students across seventeen graduating US law schools, our research reveals the rising importance of international students as actors within a more mainstream institutional context. Particularly, in examining the ways these students navigate their law school environments, we find that although international status often impacts identity and participation, not all students encounter its impact similarly. While some students use the identity to their advantage, others cannot escape negative implications, even with effort. This is consistent with other scholarship on minority students, and adds to a growing literature that uses their socialization experiences to better understand professional stratification. To unpack these different ways of "being international," we borrow from Goffman's theorization of stigma to suggest illustrative variations in the ways international students experience their environments. In doing so, we offer an introductory landscape to better understand this growing population and hope this enables new insights to theorize about other kinds of minority experience.

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A NEW MINORITY?

International JD Students in US Law Schools

INTRODUCTION

Legal institutions have given scholars a range of empirical sites and phenomena to dissect patterns of stratification and mobility. One prominent strain of this scholarship has been the problematic dominant narrative of professional identity (Mertz 2007; Pearce, Wald, and Ballakrishnen 2015; Sommerlad 2007), and a focus on minority actors and their identity negotiations within professionalization sites (Costello 2005; Moore 2008; Pan 2017). In this Article, we use data on the experiences of a group that traditionally has not been recognized as a minority group - international students in American law schools enrolled in the Juris Doctor (JD) program - to reveal the ways in which the emphasis and negotiation of minority identities reproduce hierarchy.

Law schools long have been seen as seminal to the process of professional socialization (Costello 2005; Kennedy 1982; Mertz 2007) and, in the case of international students, the context of JD programs offers a particularly illuminating site to study minority identity formation. Unlike post-graduate law programs like the LLM and SJD that have developed to cater to international students, JD programs historically have been considered a “domestic” and mainstream law degree. It is within this insular context that we ask the following interrelated
questions: How is the identity of an international student created and sustained? And how do we understand the significance of this new identity group from the perspective of its members? We expect the answers to these and subsidiary questions to complicate our views about law school stratification and clarify our understanding of inequality in elite educational settings more generally.

Drawing from interview data with fifty-eight international JD students across seventeen graduating US law schools, as well as supplemental data from law school faculty and administrators, we suggest that there are several distinct ways in which being international in an American law school matters to the experience of these students. As one would expect, we find that interactions with peers as well as perceived “fit” within sites in which they are embedded (classrooms, student groups, study groups, etc.) shape these experiences. More importantly, we find that students with outward similarities navigate this international status differently. In our study, being international attached itself to a student’s identity in both assimilatory and isolating ways: a difference that was seen as “cool” in one student could be seen as “un-relatable” in another. Furthermore, while this identity-making involved interactions with peers and superiors, assumptions made about students by those with whom they interacted oftentimes had nothing to do with students’ formal citizenship. As a result, there were both students who technically were US citizens but were perceived as
“international,” as well as those who were technically international (i.e., were attending the school on a student/research visa) but perceived as “not different.”

We use these variations of assimilation and exclusion as layers to capture the complex reality of being international in a setting that traditionally has been exclusionary to this category of student. The population of international students has been understudied, despite being a growing minority demographic. We begin with a discussion of what it means to be international in the JD program. Next, we describe how the JD program also often offered an inherent promise of an alternate identity: for many international students, enrollment in this program, at least at the outset, offered a chance at differentiating themselves from a pre-determined international identity that attached firmly to those who chose the more “typical” international route of the post-graduate US law degree. But this assimilatory logic, while fairly universal, did not lend itself equally to all international students. While some students were able to inhabit their international identities without much repercussion (and in the odd case, even with advantage), others could not escape its implications. Finally, to unpack the experience of this marginal identity of being international in a mainstream law program, we borrow from Erving Goffman’s theorization (1963) of stigma and suggest that the interaction of students’ self-perception with their reception by others shaped the ways in which their environments were experienced. While Goffman’s theory initially was put forward to understand the lived realities of traditional social outliers with abject
difference, it since has been used as an important lens to understand the social encounters of a range of minorities in high status institutional settings. Central to this work—and to the extensions that have followed it—has been the management of identity by the individual within a given social setting. In this Article, we use this theoretical framework as one entry point to understand identity creation and preservation by this growing and understudied US law school minority demographic.

MINORITY EXPERIENCES IN US JD PROGRAMS

Empirical accounts have been especially important for understanding institutional constructions of inequality around axes of gender and sexuality (e.g. Guinier 1997; Homer and Schwartz 1989; Menkel Meadow 1988; Yoshino 2007), race and ethnicity (Cardabo and Gulati 1999; Pearce 2004; Wilkins 1998), and class (Granfield 1991; Grover and Womack 2017; Manderson, Desmond and Turner 2006; Pipkin 1982). Legal education, in particular, historically has been an important context to track and reproduce race and class privilege (Abel 1989; Auerbach 1976; Costello 2005; Bourdieu and Passeron 1977; Jewel 2008). In her seminal book about the “language” of law school, Elizabeth Mertz (2007) argues that much of this reproduction is under the employed guise of meritocracy: a set of institutionalized thought and speech processes that have led students and professors alike in US law schools to truly trust their “superior analytical ability”
In a similar vein, Moore and Bell (2011) argue that elite US law schools, often by employing structures of merit, facilitate the reproduction of existing hierarchies without explicit animosity to a diversity discourse. In turn, these institutionalized frameworks systematically disenfranchise outsiders and newcomers within these spaces, culminating in what is now dubbed the “least diverse profession” (Rhode 2017). To better understand the hegemonic processes that produce inequality within the legal profession, scholarship has started to focus on the ways in which professional socialization and minority experiences produce unequal career outcomes (e.g. Fontaine 1996; Moore 2008; Wilkins and Gulati 1996).

Class background and immigration status, for example, were identified by Pipkin (1982) in his early study on part-time law students as key determinants in whether a student attended law school full time. Granfield’s research (1991) is more forthright with its claim about the marginalization of students on the basis of social class: non-elite students are intimidated, deal with more stress, and generally feel alienated within elite law schools. To lessen the tension and avoid being judged by their social status, many students manage and adjust their identities (e.g. by passing through attire and speech). Granfield suggests that legal education demands from these students not just educational skills, but also new kinds of social, cultural, and psychological capital. Similarly, scholarship on gender in the law school setting repeatedly confirms that women, despite their general parity in
grades (Jacobs 1972), have lower self-confidence, participate in classrooms much less than their male counterparts, and generally are excluded from formal and informal spaces within the law school (Fisher 1996; Guinier 1997; Mertz 2007). To make sense of this systemic isolation, Wendy Moore (2008) draws on a critical race framework (Crenshaw 1988; Feagin 2006) and argues that law schools are inherently white spaces that have indoctrinated rationalized ideas of dominant narrative and privilege. Moore suggests that in responding to this “white racial frame” (Feagin 2006), students of color live in different worlds, even as they share what could appear to be the same law school environment. In more recent work, Pan (2017), who studies both elite and non-elite law schools, shows that this persistent racial frame also impacts the socialization of Asian/Asian-American and Latina/o law students. In Pan’s study, the culture shock and racialized experiences of beginning law school propel minority students to form pan-ethnic affiliations. This finding confirms other work on professional socialization more generally, which explains that non-mainstream students suffer from not having what Carrie Yang Costello terms “identity consonance,” meaning that they arrive at professional school without the “contours of their identities already shaped in a manner appropriately streamlined, so that the grains of socialization slip smoothly around them” (Costello 2005, 117).

But while this literature on minority socialization and assimilation within law schools has richly documented race, gender, and class variations, less is known
about the experiences of international students outside of specific graduate programs (e.g. Ballakrishnen 2012; Garth 2015; Hupper 2015; Lazarus-Black 2017; Silver 2001, 2013). Immigrant assimilation long has been central to understanding boundary making within elite professional spaces (Abel 1989; Auerbach 1976; Menkel-Meadow 1993; Smigel 1964; Sutton 2001; Wald 2007).

Yet, aside from a few exceptions (e.g. Dawe and Dinovitzer 2017; Nelson 1994; Stevens 2001), immigrant and, especially, temporary immigrant careers – as is the case of many students in our sample – have not received much attention. Further, despite the rich literature on the importance of law school socialization for diversity (e.g. Costello 2005; Mertz 2007), little is known about how professional socialization helps buffer career assimilation for these student minorities. Early work suggests that immigrants were central to triggering the erection of entry barriers within the profession (Abel 1989; Auerbach 1976), and there was systemic resistance to immigrant assimilation into elite law schools (Garth 2013; Smigel 1964; Stevens 2001). And more recent research continues to suggest that foreign-born lawyers and recent immigrants are likely to be disadvantaged in career outcomes (Dias and Kirchoff 2018; Dinovitzer and Dawe 2017; Michelson 2015; Nelson 1994; Silver 2001). However, what we know less about is the everyday, identity-creating experiences of this cohort of students: How do immigrant and non-immigrant international students inhabit and experience law school? And, in turn, how do their experiences transform their – and our - understanding of the
spaces themselves? It is this ground-up perspective that this research, following
others in its tradition (e.g. Mertz 2007), attempts to illuminate.

Our data reveal that, for many students, the status of being “international” is
neither singular nor one-dimensional. Instead, it has multiple implications and
pragmatic consequences for students across levels of analysis, which depend on their
self-perceived identity at the individual level; on their interactions with peers and
professors within and outside classrooms at the interactional level; and, at the
institutional level, on the kinds of educational environments within which they are
embedded. Dissecting these factors and their interaction is important because it
enables us to think of international identity as a “system” (Ridgeway and Correll
2004) that operates across different levels of analysis, reinforcing and priming the
status in different ways given different circumstantial permutations. Our findings
show that students experience their international identities differently and that the
same identity that could offer welcome subversion to some, could be irrelevant, or
even stigmatizing to others.

To understand these layered patterns of assimilation and belonging, we
employ the theoretical framework extended by Erving Goffman (1963) and used
since by other scholars in theorizing about marginal identities (e.g. Bliss 2016;
Granfield 1991; Yoshino 2007). Specifically, in his work on stigmatized identities,
Goffman explains that individuals who possess traits or attributes that might
differentiate them from mainstream “normals” (1963, 5) are likely to employ a range
of mechanisms to moderate their visibility (48–51). A stigmatized person might act one way with "normals" and another in their interactions with similarly stigmatized individuals. But the stigma itself may attach only as a function of certain internal and external characteristics. Inherent to this theorizing is the underlying assumption that the stigmatized identity is a fluid one that is heightened or minimized depending on a combination of individual, interactional, and institutional factors. Thinking of the stigmatized identity beyond Goffman's extreme examples of social outliers helps us access a broader sentiment that underlies this scholarship. Further, the porous fluidity of this identity in our data has important implications because it highlights the ways in which stigma can attach differently even with the same, given identity category. To the extent identity is flexible (Ong 1999), then, so is its variable potential for associated stigma.

**BEING INTERNATIONAL IN THE JD PROGRAM**

Over the last two decades, US law schools have been a site of growing internationalization, with transformative changes in curriculum, research, and regulation (Attanasio 1996; Cummings 2008; Dezalay and Garth 2002; Saegusa 2009; Sexton 1996; Silver 2006; Trubek et al. 1993). The relationship of these changes to student demographics has most acutely been felt in the margins of the law school, through attendance and engagement of international students within
international-friendly (and, often, internationally-focused) post-graduate programs like the LLM and SJD (e.g. Ballakrishnen 2012; Garth 2015; Hupper 2007; Hupper 2015; Lazarus Black 2017; Lazarus-Black and Globokar 2015; Silver 2006, 2010; Silver and Ballakrishnen 2018; Spanbauer 2007). In this section, we situate the growing internationalization in legal education within broader demographic contexts of the academy.

In higher education generally, as well as in the context of US legal education, the definition of who is international is derived from students’ immigration status as non-resident aliens. This is the basis for law schools’ formal reporting about student enrollment to the American Bar Association (which functions as the accrediting organization), as well as in marketing material describing students’ geographic diversity, among other things. But the non-resident alien category offers only a partial picture of the international student population, as described more fully below.

In many respects, trends in legal education reflect those in higher education, and it is helpful to consider enrollment patterns in higher education to contextualize changes in law. Within all levels of US higher education, international students comprised approximately 5.3 percent of enrolled students in the fall of 2016 (IIE 2017), but they were a more substantial portion of the population at the graduate level, where they accounted for slightly more than thirteen percent of enrolled students (IIE 2017; National Center for Education
Statistics 2017). Students pursuing professional degrees accounted for a small slice of all international graduate students studying in the United States: only approximately three percent of all graduate-level international students were enrolled in graduate professional degrees in the 2016-2017 academic year (IIE 2016/2017).

At many law schools, the proportion of international students exceeds these national figures. For at least two decades, a significant proportion of US law schools have offered post-graduate master's-level degree programs (typically leading to an “LLM” degree) specifically for international law graduates - meaning students who earned their first degree in law from a school situated outside of the US. The popularity of the LLM for international law graduates is reflected in the growth in the proportion of law schools offering them: in the mid-2000s, approximately forty percent of all American Bar Association (ABA)-approved law schools offered at least one LLM program open to international law graduates (Silver 2006); today, this has increased to more than seventy-five percent of all ABA-approved law schools. While not all LLM (much less other non-JD) programs are designed to attract international law graduates, even among those not specifically aimed at international graduates – such as LLM programs in tax – outreach in admissions to international law graduates is common (Georgetown Law 2018; Northwestern Law 2018b; University of Florida 2018). Law schools are not required to report the proportion of students in LLM and other non-JD
programs who are international, but evidence indicates that international law graduates may comprise as many as three-quarters of all applicants to US law school LLM programs. And as JD enrollment has declined over the last several years, the proportion of all enrolled students who pursue an LLM or other post-JD degree has increased; between 2013 and 2016, the proportion of post-JD students to all enrolled students in US law schools rose from approximately 6.7% to approximately eight percent (ABA Law School Data 2017).

Although a much smaller proportion of the JD population is international, international JD students represent an important and growing demographic of new entrants. First, as Table 1 shows, there has been a marked growth of non-resident alien students, who require a visa to study in the US, within JD programs over the last half decade; this especially is the case in law schools highly ranked by US News & World Report, which is a significant force in framing the reputation of US law schools (Espeland and Sauder 2016). The number of non-resident alien students reported by all ABA-approved law schools, in the aggregate, increased by slightly more than forty percent between 2011 and 2017; as a percentage of the total JD population, the proportion of non-resident aliens increased during this same period by more than eighty-six percent (from 1.78% to 3.32%), reflecting the overall decline in law school enrollment. At a group of law schools consistently included in the top-twenty ranked positions by US News, the number of non-resident aliens almost doubled during this period, and grew from comprising just

But it is not only that there are more international students. Because of the changing demographics in the law student population and the context of declining enrollment in the aggregate, international students are a more significant part of the overall diversity of the law student population, especially within highly-ranked law schools. These broadscale trends are highlighted in Table 2, which reports on enrollment across races as compared to non-resident aliens. Generally, it shows that the greatest proportionate increase in any segment of the student population during the period of 2011 to 2017 was in the international student population. During this period, overall enrollment in the JD program fell from 146,930 to 110,183. Of course, even now, non-resident aliens remain a small segment of the JD population, but their relative role in the changing configuration of enrollment is significant. This point is illustrated by considering that the proportional representation of non-resident aliens during this time period increased much more than did the proportional representation of other minority groups: the proportion of non-resident aliens in the aggregate JD population grew by 86.52 percent (from
compared to Latino students at 37.11 percent and Black students at 17.60 percent.

These patterns are further defined by the discrepancies in student enrollment for groups of law schools organized according to their US News rank (Figures 1 and 2). Despite a slight overall increase in the proportion of Black students at the aggregate group of law schools (Table 2) and reflected in the Non-Top Twenty schools (7.20% in 2011 to 8.84% in 2017), there was a decrease in Black law student enrollment at the Top Twenty ranked law schools (6.88% in 2011 to 6.30% in 2017). In contrast, despite an overall decrease in enrollment across schools, Asian student enrollment remains pronounced in Top Twenty schools and they are the single largest minority student group in these schools. Latina and non-resident alien students have growing populations across schools, but here too the relative patterns of enrollment offer further texture: while the increase in Latina student enrollment is much more pronounced outside the Top Twenty ranked law schools (9.48% in 2011 to 13.36% in 2017), it is in the Top Twenty schools that the growth of the non-resident alien student population is most significant (4.13% in 2011 to 7.64% in 2017). Together, these data suggest that although non-resident aliens are an increasing law student demographic, their relative presence is, at least for the time being, likely to be most significantly felt within highly-ranked law schools.
Delving into the school-level context clarifies the role of non-resident alien students as an important minority category. Non-resident aliens comprised a larger proportion of the student body than Black students at half of the Top Twenty law schools in 2017, up from just ten percent in 2011. And the proportion of Top Twenty schools where the population of non-resident aliens is larger than the size of other minority populations also increased during this period, going from zero percent to thirty percent of schools where there were more non-resident alien students than Asian students, and from fifteen percent to forty-five percent of schools where there were more non-resident aliens than Latinas, as reported in Table 3 (ABA 2011-2017). Every Top Twenty law school has enrolled non-resident aliens in their JD program since 2011 (which is the earliest year for which data is reported). While the significance of non-resident aliens compared to Blacks, Asians, and Latinas is modest at Non-Top Twenty law schools, the proportion of schools in this group with no non-resident aliens fell by 28.58 percent, to slightly more than sixteen percent.
As international students become a more substantial and recurring segment of the mainstream law school population, paying heed to their experiences will serve law school administrators, instructors, and institutions alike as they begin to develop ways to embrace them and reflect their identities in their own. Further, understanding the forces that shape their experiences at this nascent stage may offer crucial insight into the early assimilatory stigmas of other minority groups within these settings, insight which might have become less obvious— or normalized—as groups crystallize into their specific sub-population identities.

DATA AND METHODOLOGY

Non-resident alien status is one mechanism for identifying who is international. But the category of "international student" is a symbolic rather than an objective category (Dezalay and Garth 1995, 31) that eludes a simple definition. Our work explores variations in this seemingly cohesive category, including how students are sorted and select themselves into micro-categories. This approach avoids inadvertently reproducing the views of a particular participant in legal education, whether the administration, faculty, or students. As a consequence, it is not possible to pursue this research by obtaining a list of "international" students from law schools. In order to address definitional challenges7 and to generate as diverse a sample in terms of law school attended, home country, gender, and
experience, we pursued several methods of identifying interviewees. In addition to outreach efforts through law schools,⁸ we used a snowball sample method by asking each interviewee to identify other international JDs who might consider participating in the research. Snowball sampling resulted in slightly more than thirty percent of our interviewees, with the remaining coming from direct or indirect outreach by law schools.

Interviewees were enrolled in and graduated from seventeen US law schools.⁹ Thirty-eight percent (twenty-two) of the interviewees were enrolled in a single law school; twenty-eight interviewees graduated from eight other law schools at which we interviewed between two and seven interviewees per school, and the remaining eight interviewees graduated from eight different law schools.

As we show in other work (Silver and Ballakrishnen 2018), interviewees pursued different paths in and to law school: some earned degrees outside the US before beginning their JD, some had LLMs before they enrolled in the JD, and others transferred between law schools within the parameter of a three-year JD.¹⁰ These variations also were further complicated by the different home countries and citizenship statuses of interviewees.¹¹

Law schools do not publicly report the home countries of their JD students, which presents a challenge with regard to assessing the representativeness of the home countries of the interviewee sample. Two sources of information provide some insight. First, the Law School Admission Council (LSAC) reports on the
number of matriculating students by country of citizenship, but if an applicant reported two countries of citizenship, both are reported. Thus, the data do not necessarily reflect non-resident aliens alone, because a US citizen with dual citizenship also would be reflected in the report. Nevertheless, for the 2015 academic year, when most of the interviews were conducted, LSAC reported that Canada, China, and Korea accounted for the largest non-US citizenship groups of matriculating students: Canadians comprised approximately twenty-six percent of non-US citizen matriculating students, Chinese citizens were fifteen percent, and Koreans nearly eleven percent (LSAC 2015a).

A second source for gaining insight into the home countries of international JD students comes from data on visa approvals for students entering the US to study law in a doctoral program, which is defined according to the Classification of Instructional Programs to include the JD degree (National Center for Education Statistics 2018). Data from such visa approvals, obtained through a Freedom of Information Act request by the Brookings Institution’s Senior Policy Analyst and Associate Fellow, Neil Ruiz, was made available to us in the aggregate for the years 2008-2012. These data avoid the complication of LSAC’s over-inclusiveness because of individuals holding US and non-US citizenship, since those individuals would not require a visa to study in the US. At the same time, because trends in sending countries are not static, and the date of these data is slightly earlier than the period when our interviewees were law students, we cannot
be certain that they reflect the same trends characteristic of the period when we conducted interviews. Nonetheless, the visa data are consistent with the LSAC report with regard to home country: Canada accounted for approximately one-quarter of all international JD students needing a visa, China accounted for approximately nineteen percent, and South Korea for nearly sixteen percent. Our sample generally reflects this demographic. Canada, China, and South Korea account for slightly more than seventy percent of our interviewees (compared with approximately fifty-two percent of matriculants reported by LSAC and sixty percent of recipients of student visas).

All but eleven interviews took place in 2015; seven were conducted in 2016 and four in 2017. Interviews were conducted either in person or through a video call platform (Skype or FaceTime) by one of the authors (with the exception of three interviews conducted by a trained research assistant, himself an international JD). Interviews were open-ended and semi-structured and both authors were involved in developing interview questions, especially as subsequent interviews began to probe into emergent themes from the preliminary data. Interviews lasted approximately one hour and all but two were recorded. All recordings were transcribed and interviewers took detailed written notes of unrecorded interviews. Authors discussed emerging themes from the data as the interviews progressed and developed an exhaustive coding scheme (174 items) that incorporated both personal and demographic data (e.g. home country, education,
characteristics of US law school, etc) as well as a range of thematic categories that motivated the interview questions around experiences (e.g. in the law school classroom, within pan-ethnic community spaces), interactions (e.g. between different contingents of JD students and international students) and temporal life events (e.g. marriage, partnership decisions, career interests, etc). The emergent data were further analyzed with more focused coding on similarities and differences, interpreted based on existing research on minority experiences in higher education research (e.g. peer group affiliations, classroom sociability) as well as our schematic understandings of the data (e.g. stigma for international status, unperturbed international status) especially around students’ emerging cosmopolitan life experiences (e.g. previous socialization in the US through camps, exchanges, transnational parents). Interviewees are referred to by a pseudonym derived from lists of common given and surnames in the interviewee’s home country.^{14} American names were assigned to interviewees who used American names.

**FINDINGS**

For international students, the JD offers the most likely path into the US legal labor market. The JD is the “traditional” route pursued by domestic students and it is the only path to bar eligibility universally recognized in the United States (NCBE and ABA 2017). In contrast, the two degrees that law schools designate
for international students - the one-year LLM and the research-focused SJD – do not have the same sort of credibility in US labor markets (Ballakrishnen 2012; Hupper 2015; Silver 2010) or in legal markets outside of the United States that are influenced by US law firm hiring preferences (Silver 2010, 48); nor do they qualify for bar eligibility in all states (NCBE and ABA 2017). A range of functional distinctions were important to students as they made the decision to pursue a JD: the advantages of having more time in the program (three years versus nine months), the credibility on the job market, and the overall feeling that their legal training was more solid. Prisha Patel, a second-year student who pursued her JD as part of a combined degree she earned from a law school in her home country, described this difference between the two degrees as one of credibility (11530, 6): “But US law schools really train you to think like a lawyer and I don’t know if LLM would have given me that. Especially at the outset, I was sure I wanted to practice in US.” Similarly, Yu Wei, a first-year JD from China (commenting here on the relative burden of being international, 11517, 12) felt that there were core functional advantages to going through the JD experience, despite the steep costs associated with it: “If I want to stay in United States, of course I will choose JD. Even though it’s, like, three years program, you need to put efforts and time in it, but it’s worth it.”

But alongside this technical difference for what the JD could do in the job market, our respondents’ choice also was motivated by another factor: avoiding the
bias of being a typical international student. For many interviewees, their self-perception of being international was tied to their perception of what it meant to be an international student in an international program (i.e., the LLM or the SJD) within the law school – an identity that they reserved for others not like them. As Yana Nabiyeva, a woman from Eastern Europe who had earned her undergraduate degree in the United States, offered, “I feel that my personal experience, there is this divide between JD and LLM students” (I1532, 9). Many interviewees perceived their degree to be a path that allowed for more identity masking and negotiation.

This distancing from the LLM identity is important to note because it reveals the perceived stigma attached to this category of student within US legal education. Some interviewees suggested that LLMs were not as serious about their legal education. As Robert Silva, a second-year JD student who initially earned an LLM from another US law school, explained, the difference between LLM and JD students was simply a degree of seriousness: “[the LLM is] a whole different culture experience that you want to explore, so for spring break they travel around the country and do things like that. As a JD, I don’t really want to do that anymore…. So, it’s different, and sometimes I do feel that there is some tension that makes it more difficult for both groups to build lasting relationships” (I1542, 13). Some interviewees noted identity assumptions about LLM students. Take, for example, Victoria Zeng, who did not otherwise feel like she would stand out as
international (she is a Canadian student of Chinese descent and felt, for the most part, that she fit in) but nonetheless understood why students – especially those whose first language was not English - would want to signal that they were not LLM candidates. She explained, “I do feel like people whose, let's just say if English isn't their first language and they sound like they may be an LLM or they're international, I feel like there is a bias, kind of, that people don't necessarily want to work with them” (I1539, 12).

The diversity of backgrounds and statuses of students who volunteered to talk about their experiences as “international JD students” reveals the importance of students’ self-perception of their international identity. Beyond being able to distance themselves from their peers in the LLM, identity was negotiated through three main lenses for international JDs: their technical citizenship and immigration status, students’ views of their own identity within the JD program as a function of their experiences, and the ways in which their perceived identities were primed in interactions with peers, professors, and others. Each student who required a visa had to contend with the technicality of being international; students routinely described visa and labor restrictions as something they worried about. But while all students with non-resident alien status shared these technical consequences of being international, their self-perception of being international did not mean or signal the same thing to everyone.
The JD track offered a path for an international student both to feel better prepared for life outside law school as well as to signal a more legitimate status to audiences considered relevant by the student. Interviewees generally spoke about entering a JD program as a thought-out decision, aimed at gaining access to and preparing for a market that was both insular and yet influential outside of the US. Less clear, however, was how much of this decision actually bore fruit. As we describe in the following sections, students navigated different paths once in law school, sometimes independent of their immigration status.

All Internationals Are Not Equal: Technical Citizenship and Navigated Status

The non-resident alien immigration status used by law schools to report on who is international is both over- and under-inclusive of those students who identify as being international. A student who was born in the United States would not be reported as a non-resident alien but nonetheless might consider herself international. An example is Daisha Robinson, who was born in the United States but lived in the Caribbean from shortly after her birth until age eighteen, when she returned to the United States for college. Although she held US citizenship because of her birth in the United States, she considered herself an international student:

.... So I personally identify as an international person. If someone asks me where I'm from, [I would tell them] that I am [describes identity as rooted in her home country], that [name of country] is where all my family is. This [America]
is not my home in that sense, and therefore in that sense I consider myself an international student. (I1535, 22)

Other respondents relayed feeling torn between identities of their home country and the United States because dual citizenship allowed them to view themselves as belonging and not belonging in equal parts. A Canadian interviewee, Sophia Bertrand (I1513, 9), explained that “people [who] have two citizenships, including a US one for example” are included as international students in law school reports as a way for “the admissions office to bolster their number so that it sounds so great and welcoming, but actually the reality is slightly different.” She went on to describe her understanding of a “pure international” as someone who “wouldn’t have a US citizenship.”

Other interviewees had permanent residency status rather than citizenship. Prisha Patel (I1530), for example, was born and raised outside of the United States and immediately before beginning the JD program gained permanent resident status based on one of her parents being a naturalized citizen. Another student, Lin Lai (I1515), explained that she was about to “lose” her international status based on her husband qualifying for a “Green Card.” Several interviewees described themselves as having a “dual identity,” including Seohyun Lee (I1533), a second-year student who was born in South Korea and lived there until age ten, when she moved with her family to the United States and later became a permanent resident. Daniel Tao, a third-year student from China, echoed this sentiment (I1528, 5):
“most of the time, I just consider myself both [‘Chinese or to be more Chinese American or Asian-American’], as one package, if that makes any sense.” On the other hand, David Zamora (I1557), who is categorized by his law school as a non-resident alien, declined to participate in the study, explaining: “I'm not exactly your target audience. I have lived in the US since I was seven, so I feel more American than international. The only respects in which I've had a different experience have been with visa issues/concerns.”

But while David does not self-identify as international, despite his school’s classification, other interviewees who held US citizenship (and thus, technically were not non-resident aliens), nevertheless identified a different, related dissonance. Kyungsoo Lee, for example, was born in Texas and moved to Korea at age one when his parents returned to their home country. He spent approximately half of his life in Korea and the other half in the United States. Like Daisha, he was not technically international, but he felt like others treated him as if he were:

I don't think [the law school] count[s] me as an international student in their statistics. But they do think of me as an international student when I interact because I think I represent myself as such. I think it's because although I lived here for long enough to speak the language and understand the culture, I still have some things that I do not completely understand. For example, the fever over Super Bowl, I don't watch it. And like, you know, I really like soccer. And I played it in high school and I watched English primarily, but because I don't watch anything else there are some basketball or baseball or the Super Bowl, different sports-oriented
cultural America that I cannot ... When the kids start talking about that, I just, I feel very isolated. (I1531, 5)

Kyungsoo’s experience illustrates how assimilation for many international students was not simply a function of their technical status, or even often-touted characteristics like “poor language” or not “understanding the culture.” Instead, these variations illustrate that being international is a complicated and layered social category. It is to these variations in perception and reception that we turn next.

The Trouble With Being International: Peer Interactions and Other Experiences

Although our sample was comprised of students who defined themselves as “international,” in choosing the JD program they attempted to assimilate into the core US law student identity group. Despite this intention, their degree program choice did not always enable breaking out of the mold of being an international student, and they did not uniformly succeed in avoiding being seen or read as international by their environments and in interactions.

Not surprisingly, for students for whom English was not a first language, the technical difficulty of being international extended to the classroom. In line with other research on pedagogy and minority identity (Granfield 1991; Guinier 1997; Menkel-Meadow 1988; Mertz 2007), the classroom was a hostile space for
many students. For example, Yan (Violet) Min’s classroom experience summed up what many students whose first language was not English felt about the hardship of keeping track of their foreign surroundings:

I think in law school there are basically two things that struggle me. ... One is the language problem .... And I have to pay more attention to ... the class. And sometimes I ... have to sit in the front row. ... And I can listen clearly. And ... I’m trying to be more involved in class ’cause I noticed that some other American people, they answer the question frequently and carefully, but most of Chinese people won’t answer the questions, even though they know the answer, they don’t want to hands up and answer that. ... And the second ... thing is about the ... way you think. ... Just like what I talk about, about the legal system, and the different teaching method that you should get used to that. (I1511, 41-2)

While language proficiency isolated Violet and others like her from their environments, language in the classroom was only one form of distancing that international students felt they encountered. The JD, as many of these students recounted, was a chance at more time in an environment that could socialize them more completely into an American law school experience. But for students whose language hurdles hindered them in the classroom, and for students who were not assimilated at entry, the extra time in the JD program, compared to the LLM, did not always result in a more heterogeneous social circle. Even for those who could have assimilated based on their years spent in the United States, a general sense of displacement from the dominant narrative of the law school made them more
likely to seek homogenous peers. As John Oh, a Korean student who spent substantial periods of time prior to law school in the United States, including high school and college, shared:

And this is very personal, but when I meet a lot of Americans I can tell that they're one of those people who have never had an Asian friend in their life or had a good amount of diversity in their experience. So sometimes it's really hard to be close to those American friends. And ... you know, there's some people, and dare I say some professors, I've heard a lot of complaints about my friends too, who are just uncomfortable with different cultures, bad English. (I1526, 10-11)

This suggestion by John that his JD experience did not necessarily result in a wider, more heterogenous network of friends is in line with Pan's (2017) research that suggests a pan-ethnic clustering and “incidental racialization” of Asian and Latina/o students. Relatedly, many students told us about acquaintances who found their international backgrounds interesting and some spoke about friends who shared ethnic or language similarities, but few shared stories about close friends who were “American.” “American,” of course, was a euphemism for how international students described US – and often, white - students who did not share their racial, ethnic, and cultural heritage. Instead, as Liwei Jiang recalls, the circles of international students were often homogenous:

It wasn’t until the second semester of my 2L at [name of University] when I start making friends with Chinese JD students who started as 1Ls. Strictly speaking, I don’t have any close friends among American JD students at [name of University]. Most of my close friends are from China or Korea. (I1549, 5)
Dissonance between the students' anticipation of social opportunities and their lived experiences was common. For students who felt assimilated in terms of language and culture, the JD offered a much less jarring law student experience. But for students who saw themselves as outside of this in-group of English-speaking mostly domestic students, relationship networks remained more homogeneous. However, pan-ethnic social groups also did not offer a safe haven to all international students. As John Oh, who, despite having a fairly homogenous friend group, commented: “In terms of things to do, I would have to say at least for me it makes me not mix into some student groups. So, for example, APALSA [the law school’s Asian students’ association], with all due respect, I think those are great guys, but to me they’re a little too American so I just don’t click with them in a way.” John’s comment about his peers at APALSA being too “American” complicates our understandings of these students’ experiences, both distinguishing and building on the research on the work these spaces do for domestic ethnic minorities.

In addition to these moderators of the law school experience, there were more subtle measures of difference-making and othering. Interviewees commonly described a bias against international students, especially in interactions with peers, which they perceive in indirect - but no less powerful - ways from their environment. An example of this was relayed by Hillary Han, a third-year student
who earned her undergraduate degree at a Big Ten University and was in her third year of law school at another Big Ten school. She reported having felt excluded in her civil procedure class, a first-year required course at her law school. Her description of feeling both that she did not know what was going on and that she did not feel comfortable enough in her surroundings to ask for clarification sets up exactly the kind of dangerous hostile environment that many international students endure:

So for the Civil Pro class – I had never taken any law class before, because we don’t have a law degree in the US. And I never had any legal background. ... And then I find out that I had a problem understanding what the professor is talking about in Civil Pro. And I felt so awkward to ask questions, because I feel everybody else around me knows what is going on, except myself. And I still remember one day one of my classmates asked me a question. I have no idea what she’s talking about. And she gave me a really dirty look. ... it just feels so hard. (G1659, 7)

Despite her relative proficiency with the English language, this illustration of “how hard it feels” for Hillary when her classmate gave her a “really dirty look” is not unlike Violet’s description of the hostile classroom where she and her peers were afraid to answer questions. A robust literature confirms that speaking up is hard for minorities, especially in high status environments where they feel judged by a “fair” and “meritocratic” standard (Costello 2005; Mertz 2007), and these experiences reveal how classmates and instructors alike worked in different ways to exclude students who did not feel that they were natural fits in the classroom.
Another common example of exclusionary behavior that primed the minority status of international students involved the classic case of being ignored and/or specifically targeted by a faculty member. Students often were quick to reassure us that this behavior was mostly unintentional and rooted in the faculty member’s inability to navigate the palpable differences in the classroom. Nevertheless, the exclusion was a common theme in these students’ experiences.

Seohyun Lee explains:

So I had one professor who cold-called everybody by their first names, but I don't blame him at all, I think it's natural, but he referred to me and this other Korean JD MBA by our last names because it was easier. I wasn't offended by it, but it just feels more distant. That's one. And I'm not sure if this ... If professors also think about this consciously, but I never get cold called in the beginning of the semester. And I like to think that it's because my name is not ... When you're looking at the seating chart it's not the first thing that pops up. It's not the easiest I think for professors to say, that's my guess. (11533, 21)

Seohyun’s example of exclusion (not being called on) and express inclusion (being referred to by her last name) highlight two important characteristics of increasingly diverse classrooms: First, there is high potential for students to feel alienated in classrooms when they are not part of the dominant group (in this case, not being seen as domestic students), even when professors do not intend to treat them differently. Second, even when they are treated differently, students may underreport or, as in Seohyun’s case, explain away
actions that further alienate themselves and similar peers. As researchers studying these newly diversifying environments, we are mindful of students' relative standing as they navigate these terrains, as well as their tendency to justify the structural inequalities around them (Moore 2008). After all, even targeted alienation, in the eyes of a student who structurally has less power, can be perceived as "just another quirk" or something that is convenient for the professor. Further, this alienation may seem unimportant to the student because, in addition to having less power in such a situation, she also has an incentive to downplay these divisive classroom dynamics. After having worked so hard at trying to fit in, who would want to make a scene about being made to stand out?

Alongside faculty interactions that — independent of intention — resulted in students feeling that they were different (on positive interpretations) or did not belong (with less generous interpretations), law school colleagues, both within and outside of the classroom, were pivotal to shaping students' experiences. James Wilson, a second-year student from Canada, explained:

I think particularly toward international students from East Asian, East and Southeast Asia, there's a presumption among many American students that their English ability will be limited or that their cultural understanding will be limited. That may not always be true, and that . . . presumption can actually hinder what could otherwise be fruitful discussions. . . . Never anything quite so overt as rolling eyes, but cutting conversations short early because of a slight language barrier or conversations among Westerns where people just sort of express an attitude of like, what's the point of talking to that person or like referring to someone as like some random
Asian chick or whatever. . . . I mean I've had those interactions where I'm at an event and it might be a loud, crowded event and someone tries to have a conversation with me and I just literally can't understand what they're saying. And I'm like, I don't want to be dismissive, but I just cannot understand between the noise and the accent and the vocabulary. (I1540, 9-10)

Crucial to this explanation is the difference between what actually marks a student's identity (their language and cultural references) and what is seen as marking their identity. The difference between the perception (in this case) of Asian students presupposed any chance of an interaction with them, thereby reinforcing the distance that already was at play in these interactions. As James highlighted, there are cases where the language gap is real, but that is not always the case. It is worthy of note that James was a white male student from Canada, who saw himself as a different sort of international compared to students from non-English, non-Western countries. His suggestion that this assumption of poor language skills might interfere with "what could otherwise be fruitful discussions" reveals another level of intra-group distancing pursued by a cross-section of international students within their own cohort. It also offers insight into how a majority of international students might be received by their environments.15

A central element of the management of these identities is that they were not always predicated on actual international or domestic status. Even students who were not technically international, like Kyungsoo Lee, described earlier, found that over and above language, the cultural American-ness of the classroom
served as a barrier. And even for those who had socialized cultural entry into the US, like Daisha Robinson (who went to college in the US), entry into peer groups often was stymied by their otherness and by the perception of their being international, whether or not that was technically the case. Daisha explained that while her current friends are Americans, this had not always the case:

> The friends that I am closest to now are all American actually. . . . Going in [to law school], I probably would have never thought [that Americans] would have been my closest friends . . . . so when I first arrived, this accent that I have, no, I didn't have then. So I sounded like I was directly from the Caribbean, so every time I spoke they could never really understand what I was saying. They would make fun of me all the time and tell me I'm their [Caribbean] and all that. (I1535, 6)

Overall, being international was not determined by a student's passport or the visa on it, but rather was a combination of how identity was imagined by the self and then perceived and managed in interactions with others.

**The Relatively Unperturbed Internationals**

Not every interviewee experienced law school with a sense that they did not belong or had been mistaken to assume that assimilation was possible. Alongside the students we describe above, who felt their difference palpably, other students experienced the international tag differently; many did not perceive themselves as different, even if on occasion others received them as international. Timothy Cho, for example, had spent equal amounts of time in Korea and the
United States prior to law school. He was technically international but he did not consider this status central to his identity. After earning his undergraduate degree (not in law) in Korea, Timothy’s decision to apply to a United States JD program had much less to do with being in the "less-international" track and more to do with what he wanted to do with his life:

So my decision to come to law school was really not about being an international student or just... it was pretty much like 100 percent about my career goals. I need... I wanted the legal education that I could get here. I didn’t even consider myself... I didn’t even think that it would be hard adjusting to the US. So it was really not a consideration. Like being an international student didn’t really matter to me at all. (I1521, 27)

Similarly, Victoria Zeng, introduced earlier, felt that the status of being international did not matter much to her. When asked if she felt like she was treated differently as an international student, her response was direct: “Not at all. I feel like it’s because people generally don’t even realize that I’m international” (I1539, 8). Instead, for students like Victoria and Timothy, the technical restrictions around their international status were at odds with their everyday experience in law school. They had to worry about visas, paperwork, and finding different sources of funding. But many of these technical challenges were administrative and some of them – like standing in longer immigration lines in the airport – were more of a hassle than a real problem. As Victoria explains:
It is kind of an annoyance . . . that coming back into America all the time if I were just coming in as a tourist, a Canadian tourist, I could use the kiosk, the global entry kiosk and it would be very painless, very easy . . . . But because I'm on a student visa I don't get to use that and I always have to go through the super long line and wait super long for them to scan my papers. So that's just an annoyance that I have to deal with, but I wouldn't say it's a challenge. (I1539, 12)

Victoria's description stands in contrast to "technically American" students (i.e. students who had US citizenship and did not have to go through these paperwork "challenges"), who nevertheless felt that they were different from the standard "American" JD student. Instead, Victoria and Timothy are examples of students who describe being international as having very little effect beyond general ambivalence. For these students, who, aside from technical or administrative hurdles, felt completely assimilated, having an international background was incidental to their interactions.

Further, to the extent they were interested in more global careers, global fluency could even potentially help such students. Victoria, for example, explained that given her interest in international law, her background "helped her get the job she wanted" (I1539, 12). Other research has revealed that accent and intonation can work to the advantage of British LLM graduates practicing in the United States (Silver 2012, 2404). While interviewees did not report their accent as providing them extra credibility, for students like Daisha, being international offered an exotic rather than marginal identity. She saw her experience in law school as one
in which students could learn from her about different cultures, and she felt that among her “mostly American friend group” she might be “their first international friend” (11535, 6).

But Daisha’s experience of being able to inhabit a certain global status was exceptional. Moreover, even fewer international students were able to effectively pass as “local” students. For example, James Wilson (who, as we saw earlier, had strong opinions about the limitations of certain kinds of international students), knew that his identity in a Midwestern law school – as a white male Canadian – still was “different.” James explained that when he started at law school, he was teased about his Canadian accent (11540, 12-13), a tick that he had to “forcibly shift” to make himself more mainstream. Yet, this was an option available to very few international students. Most could not come close to passing sufficiently to become part of – or be mistaken for – the local “American” in-group, even with language proficiency and despite technical “localness.”

DISCUSSION: Variations on Being International

These accounts go beyond casting light on demographic shifts to suggest that even within what could be seen as a singular category, international students traverse the US law school in a variety of ways. In unraveling the interconnected processes in which these students negotiate their identities, we find that international status operates as a flexible social category that goes beyond the
technical and logistical classifications of immigration and visa regulations. For many – if not most – students, being international was attached to a certain kind of stigma, but their experience suggests that there is not just one way of being international. Instead, unlike strict normative rules and procedures that bind the dichotomy of US or international status, international students’ identities emerge in their experiences and mindsets. Specifically, we find that being international matters differently based on the interaction of students’ self-perception and the reception by others, as primed in interactions.

To the extent these categories are flexible, then, so are the degrees of stigma that attach to them. Different combinations of their self-perception and reception allow students more or less leeway in seeming like the mainstream or “normal” American student. And a range of factors affected the ways in which these international students navigated their JD experiences, including their immigration status or citizenship, their familiarity and comfort in the United States, their home country and ethnicity, and their confidence and ability to work in English (Silver and Ballakrishnen 2018). Further, while most students were disadvantaged by their international identity, for select students, being international offered a slight advantage – either by enabling a student to signal cosmopolitan status or by being useful in their broader global careers.

[Table 4 About Here]
To make sense of these variations, we offer a set of classifications to explain the relationship between student identities and their associated stigma (Table 4). As we suggest in this typology, each variation of this identity creation – of being primed as international, passing for local, or it being insignificant altogether – corresponds to students describing their identities as a burden, advantage, or neutral factor, respectively.

For instance, the typical interviewee perceived herself and was received by others as international (Track 1), and generally experienced being international as a central identity that was primed across most of her interactions. She likely was spoken to and interacted with as an “other,” she most likely viewed herself as different from international students in graduate LLM programs but at the same time, also as different from “mainstream American” JD students. In contrast, variations in perception and reception characterizing the experiences of other students allowed them to pass with varying degrees of success (Tracks 2, 3). It was easier, for example, for a Canadian student who needed to just slightly alter his accent (Track 3) than it was for a Korean student to pass as a “normal” student, despite being an American citizen (Track 2). And for the few exceptional students who neither perceived themselves nor were seen by others as international (Track 4), the stigma of being international had no relevance because it was not a category through which their experiences were mediated.
At the same time, while these tracks are useful analytically to make sense of the two main factors contributing to variations in student experiences, these factors themselves (i.e. perception and reception) were more fluid and relational. In order to unpack this complicated layering, which does not neatly align within tracks, we offer four broad ways to theorize about international student identity and experiences (Table 5). Particularly, drawing on the variations in perception and reception outlined in Table 4, we suggest that international students fall within one of four general contingents based on the ways they navigate their JD program and the broader law school environment: disadvantaged majority, assimilated other, model minority, and cosmopolitan. In turn, as we discuss below, each of these contingents corresponds to a four-by-four matrix that reflects various levels of self-perception (as international) and stigmatized reception of such status.

For a majority of our interviewees, self-perception and reception aligned to form a mainstream international identity. These are the “disadvantaged majority” who conform to a standard perception of how we think of the international “outsider” – those who are international, who are seen as international, and who identify themselves as international. For these students, the identity of being an international student generally is experienced as a burden, and it is one they work
hard at overcoming. These students are seen as active exceptions in the American
JD classroom and their actual experience in the law school remains on the
periphery. They are acutely aware of their difference compared to the traditional
"American" student. Students in this Disadvantaged Majority quadrant share a
number of common experiences and perceptions, including the sense that they
often work harder to be recognized in the classroom, that their international status
is primed routinely in interactions with faculty and peers, and that their friends
most often are members of their own identity group (either other international JDs
or students in the law school with language and/or home country similarities).

In contrast, students in the second quadrant did not experience an
international identity as something that worked against them. Similar to the
Disadvantaged Majority, these students strongly self-identified as international,
but their identity was received as either an asset or an irrelevance. For these
"model minorities," their distinct sort of internationalness buttressed, rather than
undermined, their lived experience. There were not many students in our sample
for whom this Model Minority status was plausible, and in large part this depended
on the negotiation of other kinds of intersectional advantage. For example, Daisha
described the interest in her international background (including growing up in the
Caribbean and working outside of the US prior to law school) shown by lawyers
with whom she interviewed during her job search. She felt these were beneficial in
building relationships with members of the law firm she clerked for as a summer
student (and in which she eventually accepted a permanent position) (I1535, 26). Similarly, interviewees who were enrolled in a joint JD-MBA program reported a more favorable reception to their international identities by their business school peers (I1525, 15). These students were committed to their international identities, but the reception of it in interactions was not as stigmatized as it was for students in the Disadvantaged Majority.

As we show in other work (Silver and Ballakrishnen 2018), many interviewees narrativized their enrollment in a JD program as a ticket to assimilation. The third quadrant is comprised of students who had internalized this rhetoric. These “assimilated others” had a low self-perception of themselves as international, they were students who knew that they sometimes were seen as international others (including often when it was not actually the case), but who, alongside this othering, considered themselves as generally having been assimilated. An example is Seohyun, who had lived in the United States since about age ten— that is, for more than half of her life by the time we met her— and was about to become a naturalized citizen. Her experiences in law school reflected her being read as an international person, and she excused the alienating conduct by constraining it to being about her name. Seohyun offered that her name was not perceived as a clue to her being international in the law firm she worked at over the summer (and was planning to join after graduation), as if to say she was looking beyond the parochialism of the law school environment in forming her
identity. In other cases, these *Assimilated Others* were technically international but for a range of reasons (e.g. having spent formative years in the United States) they did not perceive themselves to be international in any way that affected them in a negative fashion even as their internationalness was something they had to contest and explain in select interactions. Similarly, Kyungsoo Lee, who spent many of his formative years in the United States, felt mostly assimilated (and was not even technically international!) but still felt like he did not culturally fit in sometimes. For both Seohyun and Kyungsoo, the disparity between their own and received identities was a cause of slight frustration because, unlike a student like Daisha who strongly identified with being international (and felt the advantage of being a *Model Minority*), they felt their environments stigmatize them in ways that were inconsistent with their self-perception.

Finally, a fourth quadrant of students, the “cosmopolitans,” navigated the law school environment as being “international” in name only: they were not likely to identify strongly with an international identity and they were not often received as international in interactions, either. The experiences of the *Cosmopolitans* were of even more assimilation than the *Assimilated Others*; they were read as native students and their international identity did not affect or impact them in stigmatizing ways. Our Canadian respondents, such as Victoria Zeng, provide a good example, as do students like Timothy Cho. These were students who did not get read as international, who did not perceive themselves to be “really”
international, and for whom the technical liability of having a non-American passport did not result in meaningful consequences. In the rare case of a stigma relating to being international attaching to these students, it was different from the ways in which stigmas attached to those in the other quadrants. For students like James Wilson, for example, who felt he had to change his accent just a little bit to fit in, passing was possible, not to mention easier than it was for others of our interviewees. Nevertheless, the experience of having to make an effort to adjust was a reminder of difference, at least in name.

These variations reveal important aspects of the layered socialization processes that reproduce hierarchies within law school. Our hope is that this preliminary framework helps map the different ways of “being international” in these and perhaps other contexts. At the same time, recognizing variations within the international student category does not explain all the possible processes that they encompass (Gordon 1964). For one, as we mention above, variations in students’ perception and reception are neither standard nor predictable. Further, even within the broad categories of combinations of self-identity and reception by others that we outline, differences (and overlaps) exist, and the high / low (or, in another sense, strong/weak) characterizations we suggest in Table 5 offer only a starting point to think about and organize these individual variations. Second, and crucially, most categories have intersectional implications (Crenshaw 1988; Feagin 2006). Interactions can be stigmatizing even when not obvious (Costello 2005;
Moore 2008), and different kinds of pan-ethnic organizing might respond more to
hegemonic student categories than to a commitment to specific ethnic identity (Pan
2017). Notably, we cannot discount the influence of race in these interactions of
self-identity and reception by others. Third, without further observational data, the
theoretical matrix we offer about perception and reception is not comprehensive as
we do not have full knowledge about all the ways in which stigma could attach to
students’ interactional experiences. At the same time, while our data cannot reveal
nuances in the reception of international status beyond the descriptions offered by
interviewees of their environments, they do provide insight into the ways in which
these environments clash or are consistent with self-perception. Fourth,
international students do not fall neatly within existing categories of diversity and
identity within the US law school and might require different analytical tools to
deconstruct. These data suggest that there are certain assumptions based on
nationality (e.g. James’ comment about the language presumptions attributed to
certain students from Asia), but these assumptions do not necessarily tack onto
affinity between what might be considered racially homogenous groups. As John
Oh offered about the APALSA “I think those are great guys, but to me they’re a
little too American so I just don’t click with them in a way.”

A more substantive limitation about the nature of these findings relates to
our attempt at theorizing this population as a new kind of minority. We recognize
that international students are different in important ways from other minority
groups to which we offer comparison. The international students in our sample do not start from the position of a disadvantaged minority. To the contrary, many in our sample were socially advantaged in their home countries, and it was this home country privilege that gave them access to a US legal education. Furthermore, many had global career options unavailable to domestic law students. As a result, despite the inequalities in socialization, it is likely that the returns they reap from this education differentiate them from students whose social disadvantage in law school necessarily attaches to their pre-law school experiences and their extended careers. Even so, as our data reveal, while certain advantages of social class were important and even necessary for entry, other factors like socialization, language proficiency, and assumed racial identities affected the ways in which stigma attached to these students once they were admitted. In short, social class was important, but could not necessarily solve for other characteristics valorized in the US law school context (and perhaps, also, in broader legal profession). Instead, over and above technical variations, what explained the variance in experience for international students was a more nuanced global, cosmopolitan advantage – a particular strand of global cultural capital – that only certain students were able to leverage even while they remain in the US.

Despite these limitations, these data offer fresh insight into understanding the creation and experience of law school cultures for a rising demographic of the US law student body. In doing so, they inform our understanding about how
minority identities and hierarchies are created and reproduced. These findings also complicate our understanding of diversity and minority populations beyond the construction of legal education. It is our hope that these preliminary findings offer a jumping-off point to explore this growing population further and to understand its implications for legal education and the global legal profession. Even more, we hope that future research uses this as a case to theorize about global stratification and stigma. Recognizing marginalization as a function of transnational mobility allows us to explore nuances about social stratification that could extend existing theoretical understandings of flexible global identity to include ideas of flexible privilege and stigma. It is this malleable category of diversity creation and stigma attachment that, at its core, this research begins to unpack.

CONCLUSION

International students comprise an important and understudied group within US law schools. We have argued in this Article that formal or official definitions of the “international student” do not do justice to the rich variation of a category that is complex, porous, and plural. Students’ experiences were moderated by the ways in which they perceived their own status and the ways in which their status was received within these environments. Together, these factors create a matrix for understanding how students categorize themselves and, in turn, are categorized. Other scholars have paid attention to identity formation within law
school as a prism to understand inequality within the profession more generally. In revealing this new minority category, our research adds to that literature and highlights a cohort of students who are becoming increasingly relevant to law schools, and, even more generally, to international (and internationalizing) legal organizations and legal practice.

Yet, as parallel minority narratives foreshadow, an increase in numbers does not necessarily mean a decrease in alienation or isolation. These discrepancies are of significance given the strong relationship between professional socialization and future career trajectories and inequalities (e.g. Seron et al. 2016). As law schools begin to accommodate this new diversity, they should consider the kinds of hegemonic spaces they are creating that consistently exclude and include different kinds of students (Kennedy 1982; Mertz 2007). This may implicate rethinking their pedagogy and the kinds of scholarship – and scholars – they value. Scholars across disciplines have been pushing to more critically examine the importance of a “hidden curriculum” in higher education (Margolis 2001) that alienates different minorities and disadvantaged others. Incorporating lessons from such dialogues with relevant populations (e.g. Calarco 2018) should be a priority as law schools reconsider their social organization to better account for (and meet) the needs of diverse students. As feminist scholars have argued about the importance of going beyond mere inclusion for women (Hamler 1983; Homer and Schwartz 1989), one cannot “add and just stir” (Guinier 1997; Littleton
1987) upon reaching a certain critical mass. If law schools are committed to holistic consideration of their diverse student body, accommodation of international students has to go beyond admittance to nurture more sustainable, thoughtful acceptance.
TABLES & FIGURES

**Table 1.** Non-resident aliens (“NR”), total number at all ABA-approved law schools and as percentage of all enrolled students (all for JD degree program only)

<table>
<thead>
<tr>
<th>Year</th>
<th>All JD Students</th>
<th>Number of NRs</th>
<th>Percentage of JDs who are NRs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>146930</td>
<td>2609</td>
<td>1.78%</td>
</tr>
<tr>
<td>2012</td>
<td>139504</td>
<td>2748</td>
<td>1.97%</td>
</tr>
<tr>
<td>2013</td>
<td>128799</td>
<td>2972</td>
<td>2.31%</td>
</tr>
<tr>
<td>2014</td>
<td>119845</td>
<td>3232</td>
<td>2.70%</td>
</tr>
<tr>
<td>2015</td>
<td>113907</td>
<td>3642</td>
<td>3.20%</td>
</tr>
<tr>
<td>2016</td>
<td>111095</td>
<td>3531</td>
<td>3.18%</td>
</tr>
<tr>
<td>2017</td>
<td>110196</td>
<td>3656</td>
<td>3.32%</td>
</tr>
</tbody>
</table>

*Source: ABA Standard 509 Requirement Disclosures 2011-2017*

**Table 2.** Percentage of JD population who are White, Black, Asian, Latina/o and Non-resident alien (“NR”), all ABA-approved law schools

<table>
<thead>
<tr>
<th>Year</th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
<th>Latina/o</th>
<th>NR</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>66.06%</td>
<td>7.16%</td>
<td>6.97%</td>
<td>9.19%</td>
<td>1.78%</td>
</tr>
<tr>
<td>2012</td>
<td>64.75%</td>
<td>7.50%</td>
<td>6.93%</td>
<td>9.72%</td>
<td>1.97%</td>
</tr>
<tr>
<td>2013</td>
<td>63.72%</td>
<td>7.95%</td>
<td>6.75%</td>
<td>10.37%</td>
<td>2.31%</td>
</tr>
<tr>
<td>2014</td>
<td>62.39%</td>
<td>8.43%</td>
<td>6.61%</td>
<td>11.11%</td>
<td>2.70%</td>
</tr>
<tr>
<td>2015</td>
<td>61.26%</td>
<td>8.69%</td>
<td>6.50%</td>
<td>11.57%</td>
<td>3.20%</td>
</tr>
<tr>
<td>2016</td>
<td>60.49%</td>
<td>8.61%</td>
<td>6.35%</td>
<td>12.21%</td>
<td>3.18%</td>
</tr>
<tr>
<td>2017</td>
<td>60.83%</td>
<td>8.42%</td>
<td>6.20%</td>
<td>12.60%</td>
<td>3.32%</td>
</tr>
</tbody>
</table>

*Source: ABA Standard 509 Requirement Disclosures 2011-2017*
Figure 1. Trends in Enrollment for Black, Asian, Latina/o and Non-Resident Alien ("NR") JD Students at Top 20 Ranked Law Schools


Figure 2. Trends in Enrollment for Black, Asian, Latina/o and Non-Resident Alien ("NR") JD Students at Law Schools Outside of the Top 20 Ranked Schools

Table 3. Law School Level Analysis of Non-Resident Aliens (“NR”) in Comparison to Blacks, Asians and Latina/os, Top 20 and Non-Top 20 Schools

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>Proportion of Top-20 law schools where:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NRs &gt; Black students</td>
<td>10%</td>
<td>29%</td>
<td>25%</td>
<td>40%</td>
<td>55%</td>
<td>45%</td>
<td>50%</td>
</tr>
<tr>
<td>NRs &gt; Asian-American students</td>
<td>0%</td>
<td>5%</td>
<td>15%</td>
<td>15%</td>
<td>20%</td>
<td>20%</td>
<td>30%</td>
</tr>
<tr>
<td>NRs &gt; Latina/o students</td>
<td>15%</td>
<td>15%</td>
<td>25%</td>
<td>25%</td>
<td>45%</td>
<td>35%</td>
<td>45%</td>
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<tr>
<td>No NRs</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

| **Proportion of Non-Top-20 law schools where:** |      |      |      |      |      |      |      |
| NRs > Black students   | 7.10%| 8.20%| 8.74%| 10.38%| 11.96%| 9.78%| 10.38%|
| NRs > Asian-American students | 3.83%| 4.37%| 7.65%| 10.93%| 16.30%| 13.59%| 11.48%|
| NRs > Latina/o students | 4.92%| 3.83%| 4.92%| 8.20%| 6.52%| 5.43%| 5.46%|
| No NRs                 | 22.95%| 19.13%| 18.58%| 20.22%| 20.11%| 19.02%| 16.39%|

Table 4. Identity Negotiation Based on Perception and Reception of International Status

<table>
<thead>
<tr>
<th>Track</th>
<th>Perceived by Self as International</th>
<th>Received by Others as International</th>
<th>Primed Identity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Track 1</td>
<td>Yes</td>
<td>Yes</td>
<td>Prized Identity</td>
</tr>
<tr>
<td>Track 2</td>
<td>No</td>
<td>Yes</td>
<td>Unsuccessful Passing</td>
</tr>
<tr>
<td>Track 3</td>
<td>Yes</td>
<td>No</td>
<td>Successful Passing</td>
</tr>
<tr>
<td>Track 4</td>
<td>No</td>
<td>No</td>
<td>No Stigma from International Status</td>
</tr>
</tbody>
</table>

Table 5. Variations on Being International

<table>
<thead>
<tr>
<th>Stigmatized reception of international status by others</th>
<th>Self Perception as International</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>High</td>
</tr>
<tr>
<td>High</td>
<td>Disadvantaged Majority (1)</td>
</tr>
<tr>
<td>Low</td>
<td>Model Minority (2)</td>
</tr>
</tbody>
</table>
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NOTES

1 LLM and SJD programs are referred to as “post-graduate” because they follow, in sequence, the JD, a graduate degree in the United States system of legal education.
2 The 75 percent figure is based on data reported by the ABA Section of Legal Education and Admissions to the Bar regarding law schools with post-JD and non-JD programs, and a review of the websites of listed law schools. As per these data, 154 US law schools supported at least one LLM or other post-graduate program open to international law graduates.
3 The ABA Section of Legal Education gathers information on the number of students enrolled in the non-JD programs of ABA-approved law schools. According to the Section’s Managing Director William Adams, there were 9,394 students in post-JD programs (LLM, SJD and “anything that requires a JD to get into the program”) in 2013. He reported that there were 9,797 post-JD students in 2015. The Section does not identify what proportion of these students are international law graduates. (Adams 2017, 6).
4 According to the Law School Admissions Council (LSAC), 7,194 of 8,601 LLM applicants as of August 2015 were graduates of non-US law schools (LSAC 2015b). Note, however, that these LSAC data likely do not represent all applicants to all US LLM programs because certain schools allow applicants to bypass the LSAC credentialing service.
Recently, law schools also have developed degree programs for students who are college graduates but have not studied law. Described as “post-baccalaureate” programs, these also are an increasingly important aspect of law school enrollment, and typically include international students, too, whether they have graduated from a US college or university or one situated outside of the US (USC Gould 2018; Northwestern Law 2018a).

The law schools used to comprise the Top Twenty group was held constant despite slight changes in the composition of the Top Twenty group ranked by US News. The schools comprising the Top Twenty category for purposes of the Article are University of California Berkeley, UCLA, University of Chicago, Columbia, Cornell, Duke, Georgetown, Harvard, University of Michigan, University of Minnesota, New York University, Northwestern, University of Pennsylvania, USC, Stanford, University of Texas, Vanderbilt, University of Virginia, Washington University (St. Louis), and Yale.

The non-resident alien marker is both over- and under-inclusive for international students. Yet, even if we were to take the non-resident alien status as indicative of being international, research might need to draw on sources beyond the law schools themselves because of the schools’ sensitivity to sharing these data. And even if obtainable, these lists would not include the geographic diversity of an international student population, without which efforts to develop a representative interviewee population are challenged. While an overall sense of the geographic diversity of
matriculating JD students at all US ABA-approved law schools in the aggregate is available, this is not reported at the law school level.

8 Two schools shared the contact information for every JD student with non-resident alien status. At one of these schools, where there were fewer than ten non-resident aliens in the JD program, we invited each student on the list to participate in the research. The second school enrolled approximately 50 non-resident alien students and in order to avoid over-sampling at a single law school and with regard to particular home countries, we selected students to solicit for interviews based on balancing the general interview pool that we were developing. This resulted in excluding first-year students and students from certain home countries that were over-represented in our sample. We interviewed approximately seventy-five percent of all of the international students at the first school, and seventy-five percent of those we solicited at the second school. Three other law schools helped connect us to their international JD students without providing a list of non-resident alien students. One school sent an email message to its non-resident alien JDs asking them to consider participating in the research and instructing them to email one of the authors; another school posted a message about the research in a student publication, again asking students to contact one of the authors if interested in participating. The third school arranged for a group meeting of one author with seven non-resident alien JD students.
Seven of the schools were ranked in the top-fourteen in the 2014 Best Law School rankings issued by US News & World Report (Caron 2013), which, given the years our interviewees were considering and applying to law school (and the stability of schools in the Top Fourteen rankings (Espeland and Sauder 2016) likely shaped the perceptions of most of our interviewees; thirty-three, or approximately fifty-seven percent, of the interviewees graduated from these top-ranked schools. Of the remaining schools, five were ranked between fifteen and fifty (attended by fourteen interviewees) and five were in the fifty-one-through-unranked spots (attended by eleven students). Four of the law schools are part of public universities, accounting for thirteen interviewees. Eleven of the schools, from which forty-seven interviewees graduated, are located in the Midwest, and all but five schools are located in major metropolitan areas. Eleven law schools were in the 500-1000 range for their JD enrollment, five were larger and one was smaller. Further, the distribution of schools with regard to the size of their post-JD enrollment, which includes international LLMs, was more even across size-categories: five enrolled fewer than 100 post-JD students, five enrolled more than 200 each year, and six were in the middle range.

Sixteen students earned a first degree in law outside of the US before beginning the JD; half of these completed an LLM before beginning the JD. Half of the LLM graduates and half of those with a first degree in law from their home country attended a law school ranked in the Top Fourteen. Ten interviewees, enrolled in six
different schools, spent fewer than three years in the JD program, either because they received advance standing for completing an LLM or because their degree program was designed to be abbreviated. Even students in a three-year JD program might spend fewer than three years in the same law school because of transferring, which was the path that six interviewees pursued. Of those interviewees enrolled in a three-year JD program (including transfers), thirteen were first-year students when they interviewed, fifteen were second-year students, sixteen were third-year students, and four had graduated in the year before the interview. Twenty-one interviewees earned an undergraduate degree in the United States; fourteen of these attended a law school ranked in the Top Fourteen. Three interviewees earned a non-law master’s degree in the US before beginning their JDs, two in accounting and one in finance.

11 The citizenship of interviewees who earned an undergraduate degree in the US includes Korean (five interviewees), Chinese (five), US (four), as well as Canada (dual citizenship with third country), England (dual, Hong Kong (dual), Japan, Poland, Viet Nam and a small Eastern European country (one each).

12 However, the interviewee sample is more heavily weighted toward students from China than is the case for the LSAC and visa data. Chinese nationals accounted for nearly forty-five percent of interviewees, South Koreans represented nearly sixteen percent (including one interviewee with dual citizenship of Korea and a third country), and Canadians represent slightly more than ten percent (including one
interviewee with dual citizenship of Canada and a third country). Nearly nine percent of interviewees hold US citizenship; generally, this reflects having been born in the US. In addition, four interviewees either had obtained US permanent resident status or were confident that they would obtain it in the near future. Outside of China, South Korea, Canada and the US, interviewees held citizenship in thirteen other countries, with three interviewees from Mexico (one of whom held triple citizenship (including US) and two being citizens of Hong Kong (in each case, holding dual citizenship with a third country). No other country accounted for more than one interviewee.

13 Notes and transcriptions both are in the authors’ possession.

14 Interviews are cited by reference to a numerical code in the format of “I1501,” where “I” refers to interviews conducted with a single interviewee, “G” to those conducted in a small group, “15” or “16” refers to the year when the interview was conducted (2015 or 2016) and the last two digits reflect the numerical code for the particular respondent (e.g., “01”). Page references to interview transcripts are indicated following a comma, where relevant.

15 In the context of administering a set of experimental questions about interaction of JD and international LLM students through the Law School Survey of Student Engagement, comments were solicited about the nature of interaction in class, among other things. The reaction of JD students to international LLMs in their classes ranged from positive to negative, with the negative being illustrated by the
following comment: “Various students in Corporations felt it was their job to explain the law in their country. This did not aid the class discussion. Instead, it was quite annoying to the JD students.” (Silver 2013, 483)

16 It is possible that there is a parallel track comprised of students who did not perceive themselves as international but nevertheless were, in fact, discriminated against in this new environment where they are a minority. But without observational data, there is no way for us to explore the contours of this particular category. At the same time, the cautious assimilatory narratives of our respondents reveal an important possible extension for this research – the triangulation of these narratives with other kinds of data to reveal further inconsistencies within this flexible identity category.
THE IMPORTANCE OF SHIPS

Retaining female attorneys is an important issue. Polls, surveys, reports, and articles have been conducted and written on this subject offering solutions. Businesses with more diverse employees have been shown to be more financially successful and the employees more satisfied and content with their firms.  

One way to think about this is to think in terms of “ships”—three different types of relationships.

As with all problems, it is essential to understand and address the underlying causes of the issue. There are numerous reasons why female attorneys leave their firms, or the practice of law in general. Two of the most common and pervasive reasons given is the perceived pay gap between male and female attorneys, and the perceived gender bias within the legal practice. Of course, outside commitments also play an important role in why female attorneys may choose to leave the profession, but as those underlying causes are largely individual to each attorney, this article focuses on the underlying causes which may be seen as applying to the practice of law as a whole.

The American Bar Association released data in July 2021 which speaks to the gender pay gap and perceptions of gender bias. Women now account for approximately half of all law school students and law firm associates. However, by the time these female attorneys gain the necessary experience to attain partnership status, a large percentage are no longer practicing law. As time and experience are gained, fewer women are practicing, which means that fewer women are eligible to become a partner. Only approximately 20 percent of the managing and equity partners are female attorneys. At this rate, it is estimated that women will reach the same level as men in leadership positions by approximately 2085.

Obviously, the number of female partners is a significant factor in the current wage gap. According to data collected in 2020, female associates were paid 91 percent of what their male associates made; however, by the time female attorneys reached equity partner status, that number dropped significantly. Equity female partners were paid 85 percent of the salaries made by their comparable male counterparts, which averaged out to female equity partners making $132,426 less per year than male equity partners. Taken one step further, this calculates to an average disparity of approximately $1.3 million over a 10-year period and approximately $2 million over a 15-year period.

Perceptions of gender bias continue to have a detrimental impact on the retention of female attorneys. This issue will be discussed later in more detail, but initially it is important to note that while almost 90 percent of men thought their firm made gender diversity a priority, only about half of the female attorneys believed it. This is obviously a large difference in how men and women view gender within their firms and organizations.

Retention of female attorneys should be a priority for the legal profession. When senior female attorneys leave a firm or the profession, their firms and organizations lose the time and money invested in them.
As stated earlier, one of the most effective means for addressing the pay gap and perceptions of gender bias within firms and organizations is the development of three types of “ships”--mentorship, sponsorship, and allyship. And each has added benefits.

Mentorship

The “ship” most familiar and most often utilized is mentorship. A mentor is “anyone with experience who can support a mentee on how to build skills, professional demeanor, and self-confidence in the workplace.” Mentorship comes in many forms: an experienced attorney assisting a single law student or advising a group, a partner and associate relationship within a firm, or through bar association involvement, again, whether that mentor relationship be informal or formal.

The Center for Talent Innovation suggests that an overwhelming majority of women need guidance addressing practical issues within their offices. The center's research highlights the positive impact mentoring has on leadership and communication skills, expanding business relationships, and gaining a more extensive network of contacts. The benefits of mentorship are difficult to deny.

Women face a unique issue regarding mentorship in that, within the legal profession, the majority of attorneys with the requisite experience to productively mentor are male. Typically, mentees seek mentors who are like themselves. Women mentor other women at a rate of 83 percent. While women supporting other women is essential for the retention of female lawyers, it is also imperative that male attorneys make a concerted effort to mentor female attorneys.

The statistics on this aspect of mentorship are troubling. According to one source, senior men are 3.5 times more likely to hesitate when asked to have a work dinner with a junior woman than when asked to have a work dinner with a junior man, and they are five times more likely to hesitate when asked to travel with a junior female. A survey by LeanIn.org shows that 60 percent of male managers in the U.S. are “uncomfortable participating in a common work activity with a woman, such as mentoring ....” It is therefore no surprise that women interact much less with their senior level leaders than their male counterparts; in fact, almost 60 percent of women of color have never informally interacted with their senior leaders. Obviously, the negative impact of these statistics on potential female mentees is tremendous. Women are much less likely to receive the benefits of mentorship, unlike their male counterparts. This means female attorneys have less opportunities to develop leadership skills, fewer interactions with senior level attorneys, and fewer opportunities to expand their legal and business network. These decreased opportunities lead to an increased perception of gender bias among female attorneys, as well as greater job dissatisfaction. Consider the following data collected by the American Bar Association:

- 88 percent of men believed their firms prioritized gender diversity, but only 54 percent of women believed the same.

- 84 percent of men said their firm had “succeeded in promoting women into positions of leadership,” yet only 55 percent of women stated the same.

- 74 percent of men thought their firm had “successfully retained experienced women attorneys,” only 47 percent thought the same.

- 7 percent of men thought gender was the reason they were overlooked for advancement, while an amazing 53 percent of women thought their gender stopped them from advancing within their firm.

- 73 percent of men are satisfied with their firm's leadership, but only 53 percent of women felt the same.
• 62 percent of men felt “extremely or somewhat satisfied” with the advancement opportunities provided to them by their firm, while only 45 percent of women felt the same. 17

Effective mentorship by male and female attorneys can have a significant positive impact on this data. Research shows that mentorship is dually impactful on both mentor and mentee. 18 Mentors report a gain in appreciation for their work and better insight into other's perspectives and ideas. 19 The majority of financial executives, 63 percent, have been mentors at some point in their careers. 20 The two chief benefits of being a mentor, according to these executives, is the improvement of leadership skills (38 percent), and the satisfaction of helping others (29 percent). 21

While mentorship is certainly valuable to both mentor and mentee, perhaps the two remaining “ships” provide even more effective means for retention of female attorneys.

**Sponsorship**

Sponsorship is more specific than mentoring in that it is tailored to a “senior member of management invested in the protegee's success.” 22 Typically, mentors provide advice, while sponsors open links to give their protegees the tools to carry out any guidance or advice previously received. Mentorship offers advice and knowledge, while sponsorship provides connections and relations that are valuable for a sustainable career. 23 Effective sponsorship is centered upon the premise that the sponsor has enough influence and power to change or reinforce opinions made by the decision makers within the firm or organization and that the sponsor will use that influence and power to actively advocate for his or her protegee. 24

Sponsors should possess sufficient connections and networks to help their protegees gain better and more productive relationships in the workplace. Consequently, sponsors are generally senior level attorneys, as they must possess a significant level of influence and power to advocate for their protegees in a positive and effective way. 25 Sponsors actively lobby for advancement in their protegees' careers, as well as actively promoting and supporting the ideas of their protegees.

Sponsorship is one of the most valuable relationships that a female attorney can cultivate. It directly affects the rate of promotion and advancement. Women with senior-level sponsors rise in their organizations at the same rate and level as men. 26 However, according to one source, if females do not have sponsors, they fall behind their male counterparts in promotion, leadership roles, and salary. 27 Interestingly enough, female lawyers tend to be over-mentored and under-sponsored. 28 It is vital that women receive advocacy from other women, but also, and perhaps more importantly, that they receive advocacy from men. As is obvious from the previously cited statistics, the pool for available sponsors within the legal profession is primarily male. Therefore, male attorneys should search for opportunities to sponsor deserving female attorneys.

Sponsorship, like mentorship, does have its issues. One study suggests that when women are willing to advocate for diversity and equity by sponsoring other women, the sponsors are negatively affected in that they are not offered higher positions and receive lower performance ratings. 29 Understandably, some female attorneys are hesitant to sponsor other women. Even so, women still commit to sponsoring other women at a higher rate than men. 30 Whether male or female, the risks and rewards of sponsorship of female attorneys is well worth the effort. Research shows that women who have been, or are being, sponsored are 27 percent more likely to ask for a raise and 22 percent more likely to ask for assignments that build their reputations, as sponsors provide confidence. 31 Sponsorship directly impacts retention of female employees as 85 percent of females who are mothers and are sponsored stay at their jobs, while that number drops to 58 percent for those mothers without a sponsor. 32 Additionally, attorneys who serve as sponsors are 11 percent more likely to report job satisfaction than those without protegees, and this number increases to a whopping 30 percent for sponsors of color. 33 The need for effective sponsors cannot be undervalued. It is one of the most effective tools we have as a legal profession to combat the lack of retention of female attorneys.
Likewise, the third “ship” is similarly vital to this goal.

**Allyship**

Allyship is a relationship among equals. While the mentorship and sponsorship relationships occur between a more experienced attorney and a less-experienced attorney or law student, the relationship between allies is generally a relationship between professional equals. In other words, allies are typically at the same structural level or tier within their firm or organization.

Allies work together to improve the workplace environment. Through encouragement and collaboration, allies create strategies which address inequities in the workplace. Allyship is centered on providing a space for active listening and open conversation. Allies may also serve as mentors and sponsors, but an ally's main objective is to pool resources and join forces with others to advocate for change. Allyship is a group effort to improve overall equity and success within the firm or organization.

Advantages of allyship are self-evident as it pertains to retention of female attorneys within the legal profession. If allyship is effective, female attorneys will stay with their firm or organization longer. Evidence shows that organizations which have higher percentages of female leaders outperform other similar organizations by “quantifiably superior financial results.”

Effective allyship would also improve satisfaction for attorneys who participate in the process. Building ally relationships to effectuate change within firms and organizations leads to overall success, not only for the allies, but also their respective employers or groups.

Mentorship, sponsorship, and allyship are three of the most effective tools attorneys and firms can use to combat the issue of female attorney retention. The bonus to all three “ships” is that the mentor, sponsor, and ally receive as many benefits from these relationships as their respective mentees, protegees, and other allies.

**Footnotes**

a1 Sherrie Phillips graduated from the University of Alabama and from the University of Alabama School of Law. She is admitted to the Alabama State Bar and the U.S. District Courts for the Northern, Middle, and Southern Districts of Alabama and serves of counsel in the area of creditors' rights at the Montgomery firm of Sasser, Sefton & Brown PC. She is serving her second term as chair of the Women's Section of the Alabama State Bar.

a2 Isabella Hosein is a 2021 graduate of the Montgomery Academy where she served as co-captain of the 2021 Alabama State Champion Speech and Debate team and as attorney general for the Alabama YMCA Youth In Government Program. She is a freshman at Elon University where she is a member of the Elon Mock Trial Team and the North Carolina Student Legislature.


3 *Id.*

4 *Id.*

5 *Id.*

Id.

Ibid.

Ibid.


Id.

Id.


Id.

Id.


Id.


Id.


Id.


Id.


83 ALLAW 96
Summary. An audit of bias in performance reviews at a midsized law firm found sobering differences by both race and gender. The authors identified four patterns of bias in the evaluations and recommended two simple changes for the following year: 1) Reworking... more

About two years ago, a midsize U.S. law firm reached out to the Center for WorkLife Law to learn how bias was surfacing in their performance evaluations. The firm’s D&I director had spot-
checked a sample of supervisor evaluations for bias and identified several red flags. They decided they wanted to go a step further and take a data-driven approach. (Music to our ears!)

We started by conducting an audit of the firm’s performance evaluations. The vast majority seemed useful and appropriate. But when we looked closer at the data, we found sobering differences by both race and gender. Most dramatic was that only 9.5% of people of color received mentions of leadership in their performance evaluations — more than 70 percentage points lower than white women. Not surprisingly, leadership mentions typically predicted higher competency ratings the next year.

We recommended a number of interventions — what we call bias interrupters — and agreed to test their efficacy by looking at the firm’s performance evaluations the following year.

The good news? The results of the interventions were striking. We saw sharp improvement in a single year. Here’s how.

**The Four Patterns of Bias That Affect Evaluations**

We identified four basic patterns of racial and gender bias, documented by decades of research, in our assessment of the evaluations:

1. **Prove It Again**

Groups stereotyped as less competent — including women, people of color, individuals with disabilities, older employees, LGBT+, and professionals from blue-collar backgrounds — have to prove themselves over and over again. The way this plays out in performance evaluations is that “prove-it-again” groups tend to be judged on their performance — their mistakes are noticed more and remembered longer — while the majority white men are judged on their potential.
In year one of our study, 43% of people of color and 31% of white women had at least one mistake mentioned in their evaluation, compared to 26% of white men. Studies have shown that Black attorneys are consistently subjected to higher scrutiny, and this data set was no different, with 50% of Black men and 50% of Black women’s evaluations mentioning at least one mistake.

2. The Tightrope

A narrower range of workplace behavior is accepted from women and people of color. White men simply need to be authoritative and ambitious in order to succeed, but women and people of color risk being seen as overly aggressive or “difficult” if they behave the same way.

The clearest evidence of tightrope bias in our audit concerned comments about personality. We found that people of color and white women were far more likely to have their personality mentioned in their evaluations (including negative personality traits). What’s optional for white men (getting along with others), seemed to be necessary for white women and people of color. Case in point: 83% of Black men were praised for having a “good attitude” vs. 46% of white men, and 27% of white women were praised for being “friendly and warm” vs. 10% of white men.

Personality wasn’t the only type of tightrope bias we found: 50% of Black women’s evaluations included mentions of doing the “office housework” (aka the undervalued, behind-the-scenes work) compared to 16% of white women and 3% of white men. Prescriptive stereotypes create pressure for women to be modest, helpful, and nice. (Think the “office mom.”)

3. The Maternal Wall

This reflects assumptions that mothers are no longer committed to their work, that they probably shouldn’t be, and that they are less competent. (Think “pregnancy brain.”)
One of our most shocking findings was that almost 20% of white women received comments on their performance evaluations to the effect that they did not want to make partner. We suspect that many of these women had not said so and that managers were just making assumptions about their diminishing commitment to their work after having children. Women were also more likely to receive comments about being overworked than men.

4. Racial Stereotypes

Racial stereotypes pertaining to performance evaluations can be overt, such as the stereotype that Asian Americans are good at technical tasks but lack leadership ability, or more subtle, such as the assumption that people of color need to be more willing to sacrifice work-life balance than white men. In our audit, we found that one third (33%) of people of color received comments that they were willing to travel, as compared to 13% of white men.

Two Simple Changes

To combat these biases, we worked with the firm to make two simple and inexpensive tweaks to their performance evaluation system.

First, we changed the form itself. The original form had an open-ended prompt that didn’t specify which competencies the organization valued or require evidence to justify the manager’s ratings. The new form broke job categories down into competencies and asked that ratings be backed by at least three pieces of evidence. That’s to combat the “halo-horns” effect where white men are artificially advantaged by global ratings because they get halos (where one strength is generalized into an overall high rating) whereas other groups get horns (where one mistake is generalized into an overall low rating).

Second, we worked with the company to help develop a simple, one-hour workshop that taught everyone how to use the new form. The workshop showed actual comments from the prior
year’s evaluations and asked a simple question: Which of the four basic patterns of bias does this comment represent, or does it represent no bias?

**How the Intervention Helped Everybody — And Why**

We then examined the next round of performance reviews after the interventions. In year two, not only did people of color get more leadership mentions (100% in year 2), they also got wildly more constructive feedback. Only 17% of the comments given to people of color contained constructive feedback in year one, as compared to 49% in year two. Constructive feedback increased for white women, too (from 10.5% to 29.5%) — and for white men (from 15% to 27%). This highlights a supremely important point: Using an evidence-based performance evaluation system helps all employees. In year two, the evaluation form’s specificity also allowed for far more effective assessments of the key skills and contributions which are of great value to the company.

The intervention leveled the playing field in other important ways, too. White men had longer, more complex evaluations in year one; in year two, both word count and language complexity were similar across all groups. Negative personality comments sharply declined in year two for people of color: 14% had a negative personality comment in year one, but 0% in year two. The organization identified “taking initiative” as a core value, mentioned it as a competency on the form, and saw a dramatic increase in the number of employees who received a comment describing a time they took initiative — the change was most dramatic for people of color (19% in year one to 94% in year two) but was large for white people as well.

White men are unfairly advantaged by global ratings provided without backup, which are petri dishes for bias. By shifting to specific skills and competencies, white men lost their unearned advantage over people of color in promotion recommendations, too.
Not One and Done: An Iterative Process

A single year of a single intervention will not transform a company culture. Think about it: If your company had a problem with sales, you would not expect to nail it in a single year. You would change one thing and see how it worked, then change another thing, then another until you achieved your sales goal. Companies need to use the same iterative approach with DEI.

The evaluations in year two suggest that this company still has a “women are wonderful” problem. Women had higher ratings on many different items, including being referred to as a value or an asset to the company, but this didn’t seem to translate into the opportunities that lead to promotion. White women were still far more likely than other groups to have comments in their evaluations saying they need additional opportunities (51% vs 33%) and that they deserve promotions (37% vs. 22%).

People of color also still had “prove it again” problems. The new form asked evaluators to list the employee’s two or three top competencies. Only 33% of people of color had efficacy and effectiveness (a key value for the organization) listed, compared to 80% of white women and 63% of white men. People of color’s mistakes were also reported at higher levels than white people’s (78% vs. 43%).

Finally, the firm still has an office housework problem. White men were much less likely than people of color or white women to have mentions of less important, administrative tasks.

At this firm, as at any organization, solving DEI challenges will be a multi-year process that will require changing long-standing performance management practices. But one thing’s for sure: Working with evidence and using metrics will help companies make steady progress year after year and improve outcomes for everyone. This is the only road to sustainable change.
At this moment when many organizations are reckoning with their roles and responsibility to ensure racial equity, the good news is that a data-driven approach can deliver rapid concrete gains.

**Joan C. Williams** is a Distinguished Professor of Law at University of California-Hastings, the Hastings Foundation Chair, and the founding director of the Center for WorkLife Law. An expert on social inequality, she is the author of 12 books, including *Bias Interrupted: Creating Inclusion for Real and for Good* (Harvard Business Review Press, 2021) and *White Working Class: Overcoming Class Cluelessness in America* (Harvard Business Review Press, 2019). To learn about her evidence-based, metrics-driven approach to eradicating implicit bias in the workplace, visit www.biasinterrupters.org.

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Frances Armas-Edwards is an intrapreneur working in People Operations at Google. Frances’ work focuses on improving diversity, equity and inclusion; she leverages research to shape systemic interventions, design scaled learning solutions and improve people processes across the company. She holds a doctorate in education leadership from Harvard’s Graduate School of Education.

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Making Performance Reviews Fairer in a Hybrid Workplace
Making the Most Out of Attorney Performance Reviews

By Ms. JD Editor • October 18, 2021 • Ms. JD, Writers in Residence, Careers

Every law firm or legal organization conducts performance reviews, albeit differently. Some have formal evaluations and many actually offer informal evaluations, but you have to be proactive and ask. However, I have many lawyer friends who don’t have any such system at their respective organizations or they are really on their own in terms of tracking their performance. Regardless of your organization’s way of evaluating employees, carving out some time regularly to assess your work performance is definitely a best practice for any lawyer.

Some lawyers find that their own firm’s annual performance review doesn’t help them or fails to inform them about the areas where they are doing a good job or what to work on. For example, some firms simply provide printouts of your billing and your team’s billing performance and that is the extent of your review. Other times, your management team will assess your client contacts, writing, personality, morale, and constructive feedback in a certain department or practice area goals. Despite these opportunities, I have many lawyer friends in the profession who do not have formal or informal evaluations at their respective organizations or are on their own in terms of tracking their performance.
Here are six tips for making the most out of attorney performance reviews. If your organization lacks a formal system, you can still use these tips if you are asking your supervisor(s) for a one-on-one, or do your own assessment.

**One - Pulse Check**

At my present place of employment, I speak to one of the founding law firm partners almost daily. These meetings are not really long conversations; they last about 2-3 minutes. He makes rounds and stops by my office to ask me whether I need anything. It is always an informal “pulse check.” He does this not only with me, but with other lawyers in our particular office location. I usually also tell him what type of work I am doing and he will sometimes ask to take a look at my work product. While he does this, I also tell him what my goals are. I don’t give him a running list, but I ensure that he knows that I am looking to get more work with X client or work with X partner on various projects. Although not a formal performance review, frequent check-ins like these ensure that the law firm partner and their employees are maintaining an open and consistent dialogue. An open line of communication ensures that employees are on the same page and can assist them with identifying any problems as they arise.

Some firms have pulse checks in the form of a survey. These surveys tend to focus on a few key areas that a department or the entire firm wants to get feedback on. For example, recently, pulse surveys were sent out to get employee feedback regarding return-to-work plans. Another survey may focus on morale, business development, and/or diversity, equity, and inclusion.

However, if your office does not have a pulse check or similar engagement assessment, you can easily do this on your own without a survey. Get a feel of what is driving or hindering your department’s or team’s workflow. What are some issues that may need to be addressed? For example, do you feel that the firm may benefit from a morale boost or creative ways for business development? If so, send a quick email to colleagues about an upcoming networking event or bar association meeting. Sometimes just engaging your own co-workers will also help you and the firm. Another example might be to stop by a partner’s office or a colleague’s office to briefly get a sense of anything that may be needed from you or the group.

**Two - Ask for Specific Feedback with Examples**

Whether a formal or informal review, take your supervisor’s critiques and schedule a follow-up meeting after a few months. This is another opportunity for a pulse check after the performance review. At the review, ask for specific feedback with examples. If your employer cannot recall, follow-up with them in the next meeting. You can also specifically ask, “I would like your thoughts on ________ assignment. What are some things that went well and what could I have done better?” Or, if you are working remotely, send this in a short email or through your instant messaging program.

**Three - Track Your Assignments and What You Have Accomplished**

Some offices have a self-assessment system where you are to give yourself a score or evaluate your own performance. This is really an exercise for you to become self-aware and mindful of areas where you can improve, but also where you have strengths. A self-aware attorney knows how to grow in their career. This skill takes time but with some practice and consistency, it will become more manageable.

Although my particular firm does not have a self-assessment system, I have previously worked at firms that did. The best way to develop better self-awareness is to track your assignments and
what you have accomplished. If any feedback comes up in your daily work, take note and reflect on this information when you’re preparing to complete your self-assessment. For example, I usually keep a running Excel spreadsheet of the assignments I worked on or that I am currently working on. I write down whether it was a writing assignment or speaking engagement such as a presentation, oral argument, or deposition. Here is a sample template of how I keep track of the assignments and you may modify the template in a way that works for you and your practice. I use the color green to emphasize positive outcomes. This is for your own personal use and can easily be referenced for a formal assessment but also may be beneficial when you decide to update your resume.

<table>
<thead>
<tr>
<th>Date</th>
<th>Assignment/Matter #</th>
<th>Type of Assignment</th>
<th>Attorneys/Firms Involve</th>
<th>Outcome/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 2020</td>
<td>Prepared Letter Brief to Court outlining company X’s position on case (1234)</td>
<td>Writing/Litigation (Employment)</td>
<td>Attorney A, Esq.; John Doe Associates, LLP</td>
<td>Court agreed with X points made. Partial dismissal of claims as a result. Client happy with outcome. Partner gave X feedback.</td>
</tr>
<tr>
<td>March 2020</td>
<td>Memo to X regarding X (4321)</td>
<td>Writing/Counsel to Client (Business Dispute)</td>
<td>Attorney B, Esq.; Jane Doe, P.C.</td>
<td>Client emailed that they were happy with memo and inquired about next steps regarding X.</td>
</tr>
<tr>
<td>March 2020</td>
<td>Preparation of discovery for X – document review and privilege log (5678)</td>
<td>Discovery/Litigation (Environmental Matter)</td>
<td>Big Law Firm 1; Big Law Firm 2; Boutique Firm</td>
<td>Reviewed XXX# of data and compiled privileged log timely; parties were satisfied of our diligence in getting this out</td>
</tr>
<tr>
<td>April 2020</td>
<td>Preparation of oral argument before X – (91011) for motion for summary judgment.</td>
<td>Speaking/Oral Argument</td>
<td>Mid-Size Firm; Insurance Company</td>
<td>Court took into consideration X points but we did not win. Good experience before X Court. Partner allowed me to handle on my own.</td>
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Four - Communicate Your Goals to Management

When I was a brand new lawyer, I attended a women lawyer’s event with other lawyers who have become partners and equity partners at their respective firms. I recall that one partner emphasized the importance of associates, mid-career lawyers, and non-equity partners to communicate their goals for partnership or another leadership role. One partner told a story of one associate in her eighth year of practice at that particular firm who did excellent work but did not give management any insight into whether she wanted partnership or not. This particular...
lawyer did not communicate her goals during performance reviews or did not share how she felt about her future at the firm. This partner stressed how you have to “sell yourself” in every stage of your career and do it at the appropriate moments.

As a new lawyer, your focus is on doing good work as often as you can. However, as you continue to grow in your career, you can show that you are interested in advancement, whether that is through leadership at the firm, organization, or partnership, by sharing your ideas or discussing which potential clients or clients you have provided to the firm. For example, in any performance reviews, remind management of the clients and types of cases that you successfully worked on or the ones that you brought to the firm or organization.

**Five - Give Your Employer/Supervisor Feedback**

Performance reviews are a two-way street. This time allows you to give feedback to your employer. For example, are you getting enough work from the department? Is there another partner who you work with more outside of your team who you want to continue to work with? Also, let your employer know if you want to form a committee at the firm or discuss how your employer can communicate with you if that is lacking.

**Six - Listen and Think Big Picture**

Focus on your opportunities for growth throughout the process. This is the chance for you to be introspective about your career path. What are your current goals at your firm? Do you have any? If not, is it time to look for another company to work for? Are you meeting the needs of your organization and are they meeting your needs? Perhaps you would like to hang your own shingle? Do you feel that it is time to do so?