



Saturday, November 9, 2024
10:50 AM – 12:05 PM

Session CLE 502 | Where Next and How? Fostering AAPI Representation In the Face of Ongoing Public Pressures-A Conversation with Trailblazers

The past year has been marked by growing opposition to DEI initiatives and policies, fueled by the Supreme Court's decision in *Students for Fair Admissions v. Harvard*. Opposition to DEI has taken various forms including public political opposition to DEI initiatives, heightened scrutiny over workplace DEI programs, and litigation and shareholder proposals targeting DEI programs and boards and management. At the same time, proponents of DEI have continued to urge companies to commit to their DEI programs.

The panel will discuss the impacts of the current DEI pushback on the AAPI community and draw upon the experiences of AAPI trailblazers to discuss the range of strategies and tools for advancing AAPI representation within the legal community.

Specifically, as companies navigate the fraught DEI landscape, the panel will address some key questions facing general counsels and their legal advisors including:

1. What DEI initiatives remain legally permissible and what are the legal bases for challenges to DEI initiatives?
2. How are companies responding to pressures from their stakeholders?
3. Where are the key pressure points in DEI programs that have attracted scrutiny?
4. What are considerations for companies in deciding how to proceed with their existing DEI programs?
5. How should companies talk about DEI issues in an era of heightened scrutiny?

Moderator:

Carmen Lu, *Counsel, Wachtell, Lipton, Rosen & Katz*

Speakers:

Mike Tang, *General Counsel, Emerson Electric*

Kate Wilson, *SVP, Legal, Litigation, Employment & Marketing, ServiceNow*

Joanie Kim, *SVP, Deputy General Counsel, Global Retail & Commercial, Starbucks*

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Equality

From Megadeth to MAGA: Robby Starbuck Is Having a Moment

The music-video-director-turned-right-wing-provocateur is piling up wins in his personal war on woke.



Robby Starbuck *Photographer: Jason Davis/Getty Images*

By [Jeff Green](#)

September 24, 2024 at 5:00 AM EDT

Robby Starbuck is a long way from Hollywood and, as he tells it, the liberals who canceled him for “coming out” MAGA.

But not even Starbuck - conservative activist or conspiracy theorist, depending on who’s talking - might’ve imagined he’d end up here in Tennessee, with two shaggy mini Scottish Highland cows, TeddyBear and HoneyBear.

Back when *The Apprentice* was creating the TV version of Donald Trump, Starbuck was making a name for himself directing music videos for Snoop Dogg and Megadeth. Nowadays, the ponytailed 35-year-old spends his time

tending to his cows, two Great Danes, a pair of rabbits and a coop-full of chickens on his gentleman's farm south of Nashville, 2,000 miles away from LA.

Bloomberg Equality

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Women Leaders Becoming Rarer at UN Debate Despite Equality Push

UK Household Inequality Declined By Most in 12 Years, ONS Finds

Reality TV Union Efforts Gain Steam as Staff at Disney and Hearst's A+E Organize

And also plotting to stamp out “woke-ism” from corporate America.

As a polarized nation dashes toward Election Day, Starbuck is having a moment. A year ago, you would've been hard-pressed to find a CEO who'd heard of him. Now the boyish West Coast transplant has emerged as a key figure in the right-wing fight to roll back diversity initiatives, particularly those regarding the LGBTQ community.

From his farm in Franklin, in the gentle hills of Middle Tennessee, the Cuban-American Starbuck is notching wins against household names like Ford Motor Co. and Harley-Davidson Inc. Suddenly he seems to be everywhere: CNN, Fortune, the Financial Times, The Wall Street Journal. But his public persona still lives mostly on X, where he posts videos “exposing” company DEI programs, and flits from one MAGA allegation to another on topics (cat-eating migrants, stolen elections) that would be familiar to regular viewers of Fox News or Tucker Carlson.

Then there's the conspiracy-fueled documentary, “The War on Children,” that he worked on with his wife. Criticized as anti-trans propaganda, it's gotten a thumbs up from Elon Musk, Donald Trump's richest fan. Musk recommended the movie to his nearly 200 million followers on X and tweeted out all 2 hours and 21 minutes of it. (Starbuck said that Amazon

banned the film, which, among other things, accuses liberals of grooming children for gender transition; Amazon didn't immediately comment.)

Starbuck isn't about to back off, particularly with a coin-toss election - and prospect of a Trump restoration - now less than 45 days away.

"I think even my biggest detractors would say we are winning," Starbuck says in an interview at his farm. "Honestly, I don't know of anything that even scratches the surface of what we've done in just a couple months."

Tractors and Whiskey

His dark hair is slicked back into a tight, glossy coif. His outfit – navy button-up, fitted jeans, walking-heeled boots - throws off an urban cowboy vibe. His target of companies so far - makers of pickups, farm supplies, tractors, whiskey and beer - read like the lyrics to the country music he enjoys.



Robby Starbuck with his cows TeddyBear and HoneyBear at his farm near Franklin, Tennessee. *Photographer: Jeff Green/Bloomberg*

Starbuck begins each anti-DEI campaign, and announces each victory, with a video from his studio with documents and videos displayed on a screen behind him. Most of the videos exceed a million views. He peppers the companies on X with screenshots and video clips, usually from their own programs, that he says show the extreme nature of DEI efforts. Often, he chooses companies that have a conservative consumer base and calls for a boycott.

Starbuck's critics - and he has plenty - say his influence is overrated. Backers of DEI initiatives, which are mostly policies or procedures that encourage representation, say he's providing cover for some businesses that are eager to pull back from diversity programs or are reluctant to set them up at all.

"In some ways, Robby Starbuck is just actually giving the companies what they want," says Rashad Robinson, president of civil-rights group Color of Change. "Robby Starbuck is just helping them keep the status quo."

He's come a long way from Temecula, southeast of LA, where he was sneaking into bars by the age of 14 to shoot music videos. The young Starbuck built cred as a MySpace influencer, moved out of his mom's place at 16 and got married at 18. Then came Snoop, Megadeth, The Smashing Pumpkins and all the rest. In 2015, he was shunned after publicly embracing Trump. His business began to wither away and by 2019, he and his wife, Landon, left for red-state Tennessee.

His Network

From Franklin, Starbuck and his two employees are spreading his anti-DEI doctrine to more than half a million followers on X. He says his recent fame has led to an influx of direct messages from aggrieved employees looking to Starbuck to dismantle their firms' DEI policies. He stopped counting after getting more than 5,000 tips, he says. Their job: find out what companies are doing about diversity, equity and inclusion and report back to Starbuck.

"We will find out if companies say one thing publicly and then do something else privately," Starbuck says.

His overarching message - echoed by wealthy Trump supporters like Musk, tech billionaire Peter Thiel and hedge-fund mogul Bill Ackman - sounds familiar: No one deserves a leg-up because of their sex, race or anything else. Now that the Supreme Court has done away with affirmative action in higher education, conservatives are itching to wipe out DEI in corporate America too.

Starbuck, a father of three, with another on the way, says he wants to protect his children from subjects he thinks are inappropriate. That includes

Pride festivals, drag shows and classroom or workplace discussions about race, gender and sexual orientation. He says he's heavily influenced by the views of his great-grandfather, who was kicked out of Cuba for refusing to join the communist party.

“Some people have tried to frame my disapproval of these types of events as me hating the people who are involved,” Starbuck says when asked about criticisms that attacking corporations for sponsoring events like Pride is because he's against the existence of LGBTQ people. “I think the problem is when corporations attach themselves to it.”

His wins are piling up. In recent months, Starbuck has trained his sites on a string of heartland brands, including Harley-Davidson, Deere & Co., Tractor Supply Co., Molson Coors Beverage Co. and Brown-Forman Corp., maker of Jack Daniels Old No. 7 Tennessee Whiskey. Last week, Caterpillar Inc. joined the list after executives engaged with Starbuck. (Starbuck says he's been talking to several other companies but declined to get into specifics.)



Starbuck begins each of his campaigns with a video from this studio at his farm. *Photographer: Jeff Green/Bloomberg*

Hammering Away

So far, all three businesses Starbuck has targeted with his social-media blitzkriegs have agreed to scale back DEI efforts. Another almost half dozen didn't even put up a fight, he says, agreeing to changes without an attack. A friend and fellow conservative, Andy Puzder, an anti-ESG activist and an unsuccessful candidate for a Trump administration labor secretary, says influencers like Starbuck have a not-so-secret weapon: They can reach more people than the traditional news media - and can keep hammering away day after week after month.

“He can hit on it every night,” Puzder says.

With conservatives villainizing DEI, the mere threat of being singled out publicly - with all the PR headaches and, in the case of Bud Light's campaigns featuring a transwoman influencer, consumer boycotts - can be enough to prompt a company to cave.

“It's the fear,” says Alyssa Dver, chair of the ERG Leadership Alliance, a nonprofit that advises employee resource groups, which are a frequent target of Starbuck's campaigns. “It's a very loud group of anti-everything, right? They're worried about the negative PR. They're worried about the negative ramifications.”

Virtually every major US corporation has said it is committed to building a diverse workforce and promoting equality, and surveys suggest that support is mostly intact, if fraying. Supporters point out that though Starbuck and others malign DEI as unfair to White men, workers of color remain underrepresented at just about every level of power in corporate America.

The purpose of DEI, supporters counter, is to ensure companies hire and retain diverse talent, are inclusive of workers from underrepresented groups, and foster an environment that boosts creativity and innovation. They also say it makes for good business. CEOs including Jamie Dimon at JPMorgan Chase & Co. have repeatedly said they need to strengthen diversity in their workforce in order to reach customers from all communities across America.

But the retreat from DEI in business and academia has many practitioners wondering just how real such promises were to begin with. One strategy that corporations have adopted lately: just stop talking about it. Mentions of DEI and related topics have declined at corporate meetings in the past two years, a [Bloomberg analysis](#) of conference calls, earnings calls and investor calls found.

‘MAGA Bully’

The Human Rights Campaign, an LGBTQ advocacy group which has been a frequent target of Starbucks’ social media posts, has called him a failed political candidate, right wing extremist, internet troll and [MAGA bully](#) and urged companies not to be intimidated.

HRC CEO Kelley Robinson has warned companies that bowing down to Starbucks would have a price. She was speaking at the organization's [annual dinner](#) in Washington this month, where she said executives from more than 1,000 companies were in attendance.

“There are some companies right now that have the nerve to turn their back on the programs and the people that made them profitable.” said Robinson. “Like dykes don’t ride bikes. Like queers don’t drink beers. Like sissies don’t drive F-150s.”



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The half a dozen or so [boardrooms that wilted](#) when Starbucks came calling reflects [the wider rethink](#) of how companies approach race, sexuality and gender, according to people who track corporate behavior. After trying to answer [calls for inclusiveness](#) following the racial reckoning of 2020, some businesses have experienced pushback from conservative workers and customers - and are looking for a way to avoid taking a position on hot-button political and social issues.

Starbuck doesn't dispute the idea that many of the executives that he has dealt with were ready to make the kinds of changes he was seeking. "It does feel a bit like these are surrenders," he says.

Starbuck declines to discuss the financial aspects of his personal war on woke. He says his campaigns have been funded through \$5 monthly X subscriptions, as well as streaming revenue from "The War on Children" which he says has been viewed more than 60 million times. No one else is bankrolling the effort, he says. For now, he's happy to wage this fight as a private citizen rather than an elected official (he tried to run for Congress in 2022 but couldn't get on the ballot in Tennessee).

"I genuinely feel we're doing more to change the country and the world right now outside of politics," Starbuck says.

Stop Overlooking the Leadership Potential of Asian Employees

by Joy Chen and Angela Cheng-Cimini

June 3, 2024



HBR Staff/Gang Zhou/Getty Images

Summary. How can U.S. organizations successfully tap into the talents of their Asian employees, helping them advance in their careers while also benefiting from the unique skills and perspectives this group has to offer? This article explores why so many Asian... [more](#)

Asian Americans are crucial in today's knowledge economy: around 60% hold at least a bachelor's degree and, despite representing only about 7% of the U.S. population, account for 50% of the workforce in leading Silicon Valley tech companies.

But here's the catch: Although Asians are the *most* educated segment of the American workforce, they are the least likely among all racial groups to ascend to leadership roles. In fact, a

detailed analysis of top Fortune 500 technology companies shows that Asian professionals are even less likely to progress in their careers today than they were a decade ago.

This paradox points to a severe underutilization of Asian talent, as defined by the U.S. Census to include people originating from East, South, and Southeast Asia. This squandering of talent not only curtails individual career trajectories, it also directly impacts corporate productivity. When a substantial portion of a company's workforce is hindered from contributing fully, the entire organization suffers.

The urgency to address this challenge is further amplified by ongoing demographic shifts. Pew research shows that in the last two decades, the Asian population segment in the U.S. has surged by 81%, outpacing the growth rates of 70% for Hispanics, 20% for Black and 1% for white segments. This makes Asians not only America's fastest-growing portion of the workforce, but also its fastest-growing business and consumer market.

Of course, prejudice based on race or ethnicity and unconscious bias play a role in these challenges. In this article, we will explain how the unintentional mismanagement of Asian workers results in their career stagnation and lost organizational productivity. We will also offer our views on strategies for ensuring Asian employees can grow and thrive within organizations, in ways that further a company's broader business goals

Dispelling Myths on Asians in Leadership

Asians are often viewed as a uniformly successful group. While highly diverse, Asians by and large do excel in acquiring higher education and securing entry-level positions. However, when they should be leveraging their education and hard work to ascend in their careers, their prospects often take a sharp and unexpected decline.

Although Asians make up around 13% of the U.S. professional workforce, they hold only 1.5% of Fortune 500 corporate officer roles. This disparity is even more pronounced for Asian women, who make up less than 1% of promotions into the C-suite. Additionally, more than half of Fortune 1000 company Boards have no Asian directors.

For many, being “stuck” somewhere in the middle of the career ladder is a profound source of disappointment, frustration, and even shame. This challenge is particularly poignant for those whose professional achievements symbolize the culmination of their family’s multi-generational immigrant dreams and sacrifices.

These racial inequities stem in part from a lack of awareness about cultural differences. In the case of Asians, cultural differences are often misunderstood, leading to a systemic waste of diverse talent.

Asians are frequently stereotyped as excellent workers, but poor leaders. In truth, Asians make *excellent* leaders. For example, a study encompassing 1,000 startups that achieved unicorn status — each valued at over \$1 billion — over the past decade revealed that one-third of those founded in the United States had an Asian founder.

Furthermore, a Goldman Sachs study of 5,000 CEOs, evaluating CEO effectiveness, indicated that Asian CEOs are typically appointed during corporate crisis. Despite these challenging circumstances, the median Asian CEO elevates their company from underperforming to outperforming their sector by nearly 50%. Goldman Sachs concludes that Asian leaders bring unique abilities and perspectives that enable them to succeed in leadership roles.

Thus, the real question for companies is not *whether* Asians are competent leaders, but rather *why* their potential is being squandered, and how we can maximize their contributions to corporate results and profits.

Organizational Barriers to Asian Career Growth

To understand why Asians face unique career barriers, it's crucial to consider demographics: 71% of Asian adults in America are immigrants. (In contrast, only 17% of *all* American adults are immigrants.) Most U.S.-born Asians are children of these immigrants, so despite their fluent English and American education, they are raised with Asian cultural values and norms, which differ markedly from the Western values prevalent in corporate America.

This demographic divide creates a culture clash in the workplace. Many Asians uphold values like academic excellence, hard work, humility, and respect for authority — essential for leadership in collectivist and hierarchical Asian societies. However, leaders often prioritize colleagues who embody the individualistic and assertive styles of Western cultures. As a result, Asians are often relegated to the fringes of corporate networks, where they may stagnate throughout their careers.

This marginalization breeds a deep sense of alienation. Only 16% of Asian men and 20% of Asian women feel a sense of belonging in their workplaces, according to a study from Bain & Company — the lowest rates among all demographic groups.

Such isolation and exclusion not only negatively affects Asian professionals, it also has concrete business impacts. Asian employees are significantly more likely than their white and Black counterparts to disengage from work due to these cultural disconnects, often by considering quitting or scaling back their ambitions, according to a 2011 Coqual report. In fact, it's the youngest cohort of Asian employees, those most likely to be U.S.-born and native English speakers, who report feeling the *least* belonging.

Clearly, time spent in the U.S. alone will not rectify the isolation experienced by Asian employees. Companies aiming to better utilize their Asian employees, while enabling them to thrive and lead, must adopt a proactive approach to doing so.

A Five-Step Roadmap for Leveraging Asian Talent

To optimize the contributions of your Asian professionals, we propose five actions based on our respective experiences helping companies grow through more a more strategic approach to talent.

Equip leaders to lead effectively across all cultures.

When we consider culture, our thoughts often turn to its visible aspects: food, arts, and festivals. However, like the bulk of an iceberg, the most substantial parts of culture remain unseen. Beneath the surface are the learned and shared patterns that powerfully shape our interactions with others.

For example, a common misperception holds that Asians excel in technical domains but are deficient in communication skills. Considering that Asians in America come from societies encompassing over half of the world's population, such a viewpoint not only diminishes the vast diversity of this group, but also exposes a critical gap in cultural understanding. Asian communication styles are not deficient, but simply different. They tend to be more nuanced and layered compared to the direct approaches favored in Western contexts.

These underlying aspects of culture are the crucial “differences that make a difference” to individual and team performance. Since they are subconscious and deeply embedded, we frequently struggle to fully understand their influence.

But understand them we must, since a key factor in whether diversity improves performance is whether leaders effectively harness cultural differences. Research has shown that multicultural teams perform better and unlock more creativity when their differences are understood and utilized wisely.

We've observed that, since the upper echelons of many organizations are quite homogeneous, they often become cultural echo chambers. Consequently, many leaders have limited opportunities to understand the cultural “differences that make a difference” to team performance or to develop the skills to leverage them effectively. This often results in leaders inadvertently imposing their own cultural norms on their teams, stifling diverse voices, and leading to teams that are culturally homogeneous even if they are demographically diverse. In this way, many leaders' goals to be inclusive can be undermined by their own behavioral norms.

Such homogeneity tends to reinforce itself, preventing leaders from gaining meaningful experience with the learned and shared patterns of other cultures. This situation perpetuates cultural silos and groupthink, hindering the team's ability to innovate and respond dynamically to new challenges.

Effective training empowers leaders not only to learn *about* cultural differences, but more importantly, to adapt their behaviors to lead effectively across those cultures. For example, at a global asset management firm, one of us (Joy) equipped senior partners with insights into the evolution of Asian and Western cultures and how these developments subtly influence interactions on their teams today. Joy also introduced effective strategies for engaging and motivating team members and clients from across cultural backgrounds.

And at a technology firm, Joy and her team facilitated interactive sessions between company leaders and Asian employees, focusing on mutual learning and mentoring. Participants explored the logic behind cultural norms — such as indirect or direct communication — from the perspectives of different cultures, with guidance from colleagues who are experts in those cultural contexts. Moreover, they practiced adapting their behaviors creatively to thrive in these new settings while staying true to their core values and authentic selves. This exercise enabled employees to learn from their differences, and to recognize the value that all cultures bring to achieving organizational goals.

By enabling leaders to adeptly bridge cultures, this approach to leadership development transforms cultural diversity from a potential source of isolation and marginalization into a potent source of innovation and growth.

Equip Asian employees with professional development that meets their needs.

Professional development is the single top predictor of Asian employee satisfaction and belonging, [according to Asia Society research](#) — and companies consistently struggle to give Asian employees the professional development they need.

Research published by the Asian Psychological Association [emphasizes that](#) “developing Asian leaders requires organizations to consider the cultural context and tailor training to meet their unique needs.” Traditional leadership programs often do not address the experiences and developmental needs of individuals raised outside Western cultural norms. This oversight not only impedes the career progression of Asian participants, but also risks reinforcing negative stereotypes. Further, when training falls short, there is a tendency to mistakenly attribute the failure to the trainees’ supposed lack of leadership capabilities, further marginalizing them and perpetuating the myth of Asians as inadequate leaders.

We do not suggest pushing for the Westernization of Asian employees; instead, organizations should focus on helping them embrace their own identities while understanding and adapting to Western business norms. The goal is to empower them to be fully effective and authentic in every setting.

For instance, for a global material sciences company, Joy and her team created a 15-month training program that guides Asian learners from being peak performers to becoming extraordinary leaders. The program begins by clarifying the “unwritten rules” of Western business and encouraging cultural self-discovery, allowing learners to recognize and appreciate their cultural strengths. We then teach the emotional intelligence (EQ) skills which are highly valued in Western corporations.

Crucially, these programs extend beyond training the Asian employees themselves. We also provide a streamlined module for their managers and sponsors, equipping these leaders to effectively support and lead multicultural teams. This is essential because frontline leaders are crucial for supporting Asian employees—and indeed, all employees – to be both effective and authentic at work.

Promote and integrate qualified Asian employees into organizational leadership.

Creating equitable career opportunities for Asian professionals necessitates a concerted effort from leadership to establish unbiased career progression frameworks. Research from the *Journal of Business and Psychology* illuminates a critical obstacle: a double whammy, where stereotypical perceptions of Asians directly oppose the traits valued in Western leadership (assertiveness, dominance, and charisma) — yet coincide precisely with those of an ideal follower (competence, hard work, and docility).

This “role incongruence” not only obstructs the career advancement of Asian individuals, but also diminishes organizational willingness to nurture their leadership potential by making it less likely for executives to identify Asians as high-potential leaders. Importantly, the same research indicates that once Asian Americans *are* in leadership roles, they are often viewed as equally effective as their white American peers, effectively debunking misconceptions about their leadership abilities.

The solution is clear: Promote qualified Asian professionals into leadership roles. In so doing, organizations can address and dismantle entrenched cultural biases and also capitalize on the unique perspectives and leadership styles that Asian

professionals contribute. Some of the steps to achieving this include implementing transparent, merit-based promotion criteria and eliminating stereotypical language from employee evaluations. It is also crucial to ensure that Asian employees are fully supported and integrated within the informal networks of their peers and leaders.

Embrace “culture add” instead of demanding “culture fit.”

The celebrated individualism of corporate America, characterized by optimism, ambition, and entrepreneurial drive, is globally admired. However, this culture often inadvertently fosters dynamics where the most assertive voices win, leaving quieter, potentially transformative contributors overlooked, their potential untapped and motivation drained.

Instead of trying to fit everyone into this Western mold, organizations can benefit by adopting some of the collectivist values of many Asian cultures. For example, the Asian focus on group synergy can effectively complement the individualistic nature of Western companies. By integrating these values, organizations can shift from a culture that inadvertently promotes groupthink to one that sees differences as opportunities for mutual learning. Within the team, the focus shifts from individual winners and losers to everyone pulling together to achieve shared success. This evolution allows organizations to move beyond being dominated by the loudest voices towards a more balanced approach that prioritizes the needs of the entire organization.

To do this, leaders should consistently emphasize the interdependence of the team and the importance of every voice. One effective strategy being implemented in several technology companies includes requiring all team members to write memos before meetings. This practice ensures that all voices contribute,

prevents language and cultural differences from overshadowing who gets heard, and promotes the deep thinking necessary for generating valuable ideas. This approach also addresses the ineffectiveness of traditional brainstorming, which can be particularly counterproductive when mismanagement of cultural differences stifles diverse voices.

Additionally, leaders have a crucial responsibility to overcome our natural tendency to gravitate toward those similar to us. It is essential for leaders to ensure that Asian employees and all team members form the strong emotional bonds that are necessary for everyone to contribute fully and effectively. Leaders should consider increasing one-on-one interactions with their Asian employees to foster these connections, thereby facilitating effective teamwork and individual thriving.

By pivoting from a “culture fit” to a “culture add” mindset, teams can enhance their operations with the diverse perspectives of all members, including those from Asian backgrounds.

Leverage Asian employees to power domestic and global market expansion.

Leaders aiming for top-line growth should ensure their Asian employees aren't relegated to back-end technical roles. These workers possess unique strengths that can help power the capture of new and rapidly expanding markets.

A prime example is JPMorgan Chase, which has established a dedicated Office of Asian & Pacific Islander Affairs under the leadership of longtime bank executive Vivian Young. This office actively cultivates opportunities for Asian business owners and their communities, enabling the bank to provide culturally responsive services tailored to their evolving needs. For example, through market research, the office has identified an impending

wave of succession planning needs within Asian communities. In response, JPMorgan Chase is working with Asian community partners and local chambers of commerce to roll out succession planning workshops and additional services designed for these business owners. This proactive strategy not only strengthens community ties but also positions the bank at the forefront of market trends, ensuring it is ready to efficiently meet emerging demands.

Given their predominantly immigrant background, some Asian employees also provide exceptional access to resources in Asia, which is home to a majority of the world's population. If the employee is open to playing such a role, their extensive networks can give their employers a competitive edge in understanding, identifying and capturing opportunities within these key regions.

Moreover, incorporating Asian perspectives at the board level can significantly enhance a company's market strategy. Just as technological or domain-specific expertise is valued, companies can profit from Asian board members who bring relevant market insights and act as vital links to domestic and international markets.

A notable example is Starbucks, which has pinpointed Asia as a key growth market. To support their expansion in this vital region, Starbucks appointed as a Board member Wei Zhang, a former senior Alibaba executive who brings deep expertise in both global technology and Asian markets.

Such strategic appointments can enable a deeper understanding of how to optimally utilize the Asian workforce to achieve organizational goals, turning cultural diversity into a strategic advantage that drives growth and positions the company as a leader in global markets.

Asian Employees as Catalysts for Organizational Growth

As many companies scale back their diversity, equity, and inclusion programs, it's essential to recognize the pressing need for progress in ensuring that all employees can thrive and lead. This commitment must include America's fastest-growing workforce. When we enable Asian employees to fully contribute to corporate results and aspirations, everyone wins.

In fact, we believe companies that fully utilize their Asian employees can enhance bottom-line productivity, drive top-line growth in domestic and global markets, and increase overall enterprise value. To determine the appropriate investment, companies should analyze both the costs of current practices and the potential returns to shareholder value.

Let's consider a hypothetical high-tech company employing 1,000 professionals, reflecting Silicon Valley norms where 50% of the workforce is Asian with a conservatively estimated salary of \$150,000. Research from Qualtrics indicates that only 20% of employees who don't feel a sense of belonging are engaged at work, compared to 91% of those who do. Using Bain and Company's finding that around 80% of Asian employees don't feel belonging, we can infer that only 34% of Asian employees are engaged, leaving 66% disengaged.

Using Gallup's finding that a disengaged employee represents a cost of 34% of their annual salary, by better engaging Asian employees, the company could achieve productivity gains of \$17 million per year. Assuming an enterprise value to earnings ratio of 10x, this \$17 million annual profit boost translates into a remarkable (albeit theoretical) \$170 million increase in enterprise value for shareholders. These calculations scale linearly. A company with 5,000 employees could realize productivity gains of \$85 million per year and create \$850 million in enterprise value.

This approach also has the potential for wider organizational transformation. When companies leverage the diverse talents of their Asian workforce, they can evolve into more global, agile, and powerful hubs of innovation and growth. This strategy not only better engages Asian employees, but also attracts and inspires top talent from all backgrounds.

By strategically meeting the needs of their Asian employees, leaders can alleviate widespread frustration and lack of belonging among this key workforce segment, and thus bolster the present and future success of their enterprise.



Joy Chen is CEO of the [Multicultural Leadership Institute](#), which trains leaders to boost cross-cultural collaboration and sales. Joy is a former Deputy Mayor of Los Angeles and Fortune 500 CEO and Board recruiter. Connect with her on [LinkedIn](#), and subscribe to her [newsletter of cultural insights for leaders](#).



Angela Cheng-Cimini is a veteran practitioner of human resources and currently serves as the Chief Human Resources Officer for Harvard Business Publishing. She is an active advocate for the AAPI community.



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Facing Backlash, Some Corporate Leaders Go ‘Under the Radar’ With D.E.I.

New hurdles and opposition to diversity programs have pushed some business leaders to approach their D.E.I. initiatives “in a less in your face way,” while others are doubling down.



By Emma Goldberg

Jan. 22, 2024

Over the past two years, as Ishan Bhabha and his colleagues at the law firm Jenner & Block prepared briefs for the affirmative action case the Supreme Court ruled on last year, Mr. Bhabha had a realization: If higher education institutions like Harvard were the first target of litigation about diversity, equity and inclusion, America’s corporate boardrooms were probably next.

Mr. Bhabha began working with dozens of Fortune 500 companies to evaluate their diversity programs and ensure that they were on solid legal ground if they were sued.

Proponents of corporate diversity, equity and inclusion programs, commonly called D.E.I., argue that they are important to hiring and retaining people of color. Critics now argue that some such programs can exclude white and Asian people unfairly from hiring processes.

In recent months, hundreds of companies have been re-examining those initiatives after a series of challenges to diversity programs: the threat of litigation in the wake of the Supreme Court’s decision striking down race-conscious college admissions, criticism of D.E.I. initiatives from some high-profile business leaders and a wave of layoffs in the tech industry that heavily affected D.E.I. teams.

This pushback — which has come as more than 20 states weighed or passed new laws last year targeting D.E.I. initiatives — has had a chilling effect on some corporate D.E.I. offices, according to diversity advisers.

“When the economy is booming and when the politics are amenable, we see a lot of growth in diversity programming,” said Frank Dobbin, an expert on D.E.I. at Harvard and author of the 2022 book “Getting to Diversity.” “When there’s either a change in the political winds — which is what’s happening now — or a recession, we’ve seen cutbacks.”

The backlash, Dr. Dobbin said, has pushed some human resource professionals to keep their D.E.I. efforts “under the radar.” At recent conferences he has attended, Dr. Dobbin added, corporate leaders have discussed how to approach D.E.I. “in a less in-your-face way.”

Some have explored moving away from initiatives that attract a lot of public attention, like mandatory anti-bias trainings, and instead focusing on lower-profile D.E.I. strategies, like diversity task forces that bring together leaders from different corporate departments.

“If companies lighten up on things that are ineffective, that could be a good outcome,” Dr. Dobbin said, noting that mandatory anti-bias trainings have been shown to sometimes even worsen bias. “But I do worry that the baby will go out with the bathwater.”

So far, few companies seem to have cut back their programs because of the Supreme Court’s ruling. Three-quarters of employers polled by Littler Mendelson, the employment law firm, said they had not changed their approach to D.E.I. because of the ruling last year, and only 1 percent reported a significant decrease in their efforts, according to a survey released this month.

And some executives say they are doubling down, like Crystal Castille-Cromedy, who leads D.E.I. strategy for Hines, one of the world’s largest real estate companies. Ms. Castille-Cromedy joined the firm in June 2020, days after George

Floyd's murder, and has overseen a number of diversity efforts, including the creation of a mentoring program for underrepresented groups in real estate.

Mr. Bhabha, a partner at Jenner & Block and a chairman of the firm's D.E.I. Protection Task Force, said he had "some clients that say, 'Look, if I was sued over this and I have to become the face of defending D.E.I. against a conservative backlash, I'd be happy to.'" But, he said: "There are the vast majority of my clients not in that bucket. They think, 'We'd like to keep our heads under the parapet.'"

The American Alliance for Equal Rights, a conservative nonprofit organization devoted to challenging race-based policies, sued a handful of law firms last year over their diversity fellowship programs, arguing that these programs discriminate against white and Asian applicants.

The American Alliance's founder, Edward Blum, also established Students for Fair Admissions, the group that sued Harvard over its affirmative action policies and won.

"These lawsuits have sent a powerful message to corporate America: The law firms upon which you turn to for legal advice concerning D.E.I. are themselves violating the law," Mr. Blum said.



Edward Blum is the founder of Students for Fair Admissions, the group that sued Harvard over its affirmative action policies. Jose Luis Magana/Associated Press

American Alliance filed lawsuits against the law firms Perkins Coie, Morrison Foerster and Winston & Strawn. Those firms have all since opened their diversity fellowships to applicants of all races and backgrounds, and Mr. Blum's group dropped the suits.

“Following the Supreme Court’s landmark decision striking down race-conscious affirmative action in college admissions, we undertook a thorough review of our programs,” Winston & Strawn said in a statement. Perkins Coie said in its statement that the program’s revised criteria would continue to “ensure” that the firm hired lawyers “with a diversity of backgrounds and experiences.”

Morrison Foerster said it had been in the process of opening up the fellowship even before the lawsuit.

On top of the threat of litigation, some prominent business leaders have recently criticized diversity programs. The billionaire financier Bill Ackman wrote an essay this month in *The Free Press*, after the resignation of Claudine Gay as president of

Harvard, faulting what he said was “the penetration of D.E.I. ideology into the corporation board room.” Elon Musk, posting on X, wrote, “Discrimination on the basis of race, which D.E.I. does, is literally the definition of racism.” (The billionaire investor Mark Cuban, meanwhile, wrote on X that “the loss of DEI-Phobic companies is my gain.”)

Leaders who have been critical of specific types of diversity programs from within the industry argue that broad-brush criticisms of D.E.I. can be counterproductive, distracting from meaningful efforts to reform corporate diversity initiatives.

“I’ve critiqued things like our relative lack of metrics, the relative lack of accountability, the fact that leaders can release a D.E.I. statement and otherwise not do anything,” said Lily Zheng, a D.E.I. strategist and author of “Reconstructing D.E.I.” Mx. Zheng views critiques of racial quotas as focusing on “a straw man of D.E.I.”

In 2020, after a wave of protests for racial justice in the wake of the killing of Mr. Floyd, corporate D.E.I. programs saw a rush of support, and hundreds of employers came forward to announce new diversity initiatives. In that year alone, companies spent an estimated \$7.5 billion on D.E.I.-related efforts. But some D.E.I. leaders say that attention and investment since then have not been sustained.

“It’s a sugar rush phenomenon,” said John Amaechi, a retired basketball player who now works with companies on D.E.I. strategy. “It creates a huge amount of energy followed by a withdrawal.”

In some cases, D.E.I. programs have been hard hit by job cuts. RevelioLabs, a work force database, published a study last year that looked at 600 companies that had laid off workers since 2020 and found that the attrition rate for people working in D.E.I. was nearly twice that of employees in non-D.E.I. roles.

Many executives still argue that their efforts to recruit diverse employees contribute to company performance. For instance, Armughan Ahmad, the chief executive of Appen, an artificial intelligence company, says a diverse talent pool

allows the company to build products that are trained on diverse users, helping to prevent racial bias in A.I. algorithms.



Armughan Ahmad says that having a more diverse work force helps his artificial intelligence company Appen build products that are trained on diverse users.

Business Wire

Plenty of corporate leaders share that view.

“Even in places where there’s legislation that is anti-D.E.I. being passed, it’s not about companies being relieved somehow they don’t have to do this work,” said Jensen Harris, co-founder of Textio, an A.I. human-resources platform used by more than 1,000 companies. “It’s them figuring out, ‘OK, D.E.I. work is still really important, so how do we work around this legislation?’”

The Supreme Court’s recent decision on race-conscious admissions policies does not directly apply to most employers. The decision was focused largely on Title VI of the Civil Rights Act of 1964, which covers institutions receiving federal funding and doesn’t apply to most private companies. But many employers worry that their D.E.I. initiatives could be challenged legally under Title VII, which deals with employment relationships, or Section 1981 of the 1866 Civil Rights Act, which covers contracts.

Kenji Yoshino, the director of the Meltzer Center for Diversity, Inclusion and Belonging at NYU School of Law, has been advising managers at Fortune 500 companies to code their D.E.I. programs as either green, yellow or red. A red program indicates an initiative that has a high risk for potential litigation, such as a hiring process that provides an advantage to candidates of color; on the other hand, a program that offers mentorship widely to anyone at the company may be categorized as green.

Mr. Yoshino noted that some D.E.I. critics had a limited view of what the programs consisted of. Many corporate diversity programs extend beyond hiring processes to touch on mentoring, training and career development.

“The pessimists say, ‘This is a terrible moment for D.E.I., D.E.I. is over, the sky is falling,’” Mr. Yoshino said. “I want to ask people what they think D.E.I. actually is.”

Emma Goldberg is a business reporter covering workplace culture and the ways work is evolving in a time of social and technological change. [More about Emma Goldberg](#)

A version of this article appears in print on , Section B, Page 1 of the New York edition with the headline: Facing Backlash, Some Companies Go ‘Under the Radar’ on Diversity

Re: How Texas A&M Went Woke proposal I would like to forward the article to Chancellor Sharp and members of
I assume you have the proposal and you guys are thinking about thing

\$25,000 more for MIT project this work will be done more easily if the wokesters at MIT don't see it c
your excellent first things piece especially someone from the low IQ 3rd world

Re: state issue thought They will not act unless we apply serious political pressure on them.
The term "woke," while communicating one idea to our base, turns off
Rhetorically, our side is getting absolutely murdered.

Re: your essay We hope you will help us to counter the Left's dangerous attacks on hi
Sam Ginn The president then told him "Things will change."

Re: your essay They dont understand what is going on there

Re: My talk with DeSantis i asked DeSantis to give you access to chief of staff and campaign hea
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Fwd: SPS Update: 10/29/2020 Being ruled by women, 101
RE: THIS is the guy who should ru the usual pet black phenomenon. We are all just SO grateful if there is
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Re: Contract for Texas DEI Review So glad you are working with us on this.
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Re: there is no way that the court v not tons of asian countries have SSM. More wholesome policies like pr

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Re: Scott Yenor's DEI reporting in / Jeff Sessions I believe is funding it!

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Re: FW: Introduction I'd rather not make this public bc I don't want the press catching wind (

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Re: your essay The core of what we oppose is "anti-discrimination." That is too much

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America is under attack by a leftist revolution disguised as a plea for justice

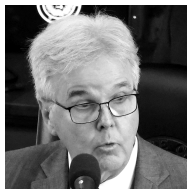
thanks to generous funding from the Searle Freedom Trust

‘America Is Under Attack’: Inside the Anti-D.E.I. Crusade

By Nicholas Confessore Jan. 20, 2024

In late 2022, a group of conservative activists and academics set out to abolish the diversity, equity and inclusion programs at Texas' public universities.

They linked up with a former aide to the state's powerful lieutenant governor, Dan Patrick, who made banning D.E.I. initiatives one of his top priorities. Setting their sights on well-known schools like Texas A&M, they researched which offices and employees should be expunged. A well-connected alumnus conveyed their findings to the A&M chancellor; the former Patrick aide cited them before a State Senate committee. The campaign quickly yielded results: In May, Texas approved legislation banishing all such programs from public institutions of higher learning.



Dan Patrick, lieutenant governor of Texas

Long before Claudine Gay resigned Harvard's presidency this month under intense criticism of her academic record, her congressional testimony about campus antisemitism and her efforts to promote racial justice, conservative academics and politicians had begun making the case that the decades-long drive to increase racial diversity in America's universities had corrupted higher education. Gathering strength from a backlash against Black Lives Matter, and fueled by criticism that doctrines such as critical race theory had made colleges engines of progressive indoctrination, the eradication of D.E.I. programs has become both a cause and a message suffusing the American right. In 2023, more than 20 states considered or approved new laws taking aim at D.E.I., even as polling has shown that diversity initiatives remain popular.

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Thousands of documents obtained by The New York Times cast light on the playbook and the thinking underpinning one nexus of the anti-D.E.I. movement — the activists and intellectuals who helped shape Texas' new law, along with measures in at least three other states. The material, which includes casual correspondence with like-minded allies around the country, also reveals unvarnished views on race, sexuality and gender roles. And despite the movement's marked success in some Republican-dominated states, the documents chart the activists' struggle to gain traction with broader swaths of voters and officials.

2021 draft proposal from
the Claremont Institute

Attempts to reason with universities have failed. The money paying for their bad behavior must be taken away. Only then will the behavior stop.

Centered at the Claremont Institute, a California-based think tank with close ties to the Trump movement and to Gov. Ron DeSantis of Florida, the group coalesced roughly three years ago around a sweeping ambition: to strike a killing blow against “the leftist social justice revolution” by eliminating “social justice education” from American schools.

The documents — grant proposals, budgets, draft reports and correspondence, obtained through public-records requests — show how the activists formed a loose network of think tanks, political groups and Republican operatives in at least a dozen states. They sought funding from a range of right-leaning philanthropies and family foundations, and from one of the largest individual donors to Republican campaigns in the country. They exchanged model legislation, published a slew of public reports and coordinated with other conservative advocacy groups in states like Alabama, Maine, Tennessee and Texas.

In public, some individuals and groups involved in the effort joined calls to protect diversity of thought and intellectual freedom, embracing the argument that D.E.I. efforts had made universities intolerant and narrow. They claimed to stand for meritocratic ideals and against ideologies that divided Americans. They argued that D.E.I. programs made Black and Hispanic students feel less welcome instead of more.

2021 email from
Scott Yenor

The core of what we oppose is 'anti-discrimination.' That is too much of a sacred cow.

Yet even as they or their allies publicly advocated more academic freedom, some of those involved privately expressed their hope of purging liberal ideas, professors and programming wherever they could. They debated how carefully or quickly to reveal some of their true views — the belief that “a healthy society requires patriarchy,” for example, and their broader opposition to anti-discrimination laws — in essays and articles written for public consumption.

In candid private conversations, some wrote favorably of laws criminalizing homosexuality, mocked the appearance of a female college student as overly masculine and criticized Peter Thiel, the

prominent gay conservative donor, over his sex life. In email exchanges with the Claremont organizers, the writer Heather MacDonald derided working mothers who employed people from “the low IQ 3rd world” to care for their children and lamented that some Republicans still celebrated the idea of racially diverse political appointments.

Lagging achievement for African Americans and other racial minorities, some argued privately, should not be a matter of public concern. “My big worry in these things is that we do not make ‘the good of minorities’ the standard by which we judge public policy or the effects of public policy,” wrote Scott Yenor, a conservative Idaho professor who would come to lead the anti-D.E.I. project for Claremont. “Whites will be overrepresented in some spheres. Blacks in others. Asians in others. We cannot see this as some moral failing on our part.”



Scott Yenor, fellow at the Claremont Institute

In a statement for this article, Claremont said that it was “proud to be a leader in the fight against D.E.I., since the ideology from which it flows conflicts with America’s Founding principles, constitutional government and equality under the law. Those are the things we believe in. Without them there is no America. You cannot have those things with D.E.I.”

The institute added: “Repeatedly, and in public, we make these arguments to preserve justice, competence and the progress of science.”

Naming ‘the Enemy’

In recent decades, amid concerns about the underrepresentation of racial minorities on campus, American universities have presided over a vast expansion of diversity programs. These have come to play a powerful — and increasingly controversial — role in academic and student life. Critics have come to view them as tools for advancing left-wing ideas about gender and race, or for stifling the free discussion of ideas. In response, officials in some states have banned D.E.I. offices altogether. Others have limited

classroom discussion of concepts like identity politics or systemic racism. A growing number of states and schools have also begun eliminating requirements that job applicants furnish “diversity statements” — written commitments to particular ideas about diversity and how to achieve it that, at some institutions, have functionally served as litmus tests in hiring.

But in early 2021, in the wake of the George Floyd protests and President Donald J. Trump’s re-election defeat, the Claremont organizers were on the defensive. The documents show them debating how to frame their attacks: They needed not only to persuade the political middle but to energize conservative politicians and thinkers, many of whom they regarded as too timid, or even complicit with a liberal regime infecting American government and business.

Thomas D. Klingenstein, a New York investor who is both Claremont’s chairman and a top Republican donor, offered a glum perspective in March that year.



Thomas Klingenstein, Claremont chairman and Republican donor

“Rhetorically, our side is getting absolutely murdered,” Mr. Klingenstein wrote to Dr. Yenor and another Claremont official. “We have not even come up with an agreed-on name for the enemy.”

One problem, Dr. Yenor reported to his colleagues, was that many lawmakers were reluctant to take on anything called “diversity and inclusion.” Terms like “diversity,” he argued, needed to be saddled with more negative connotations.

“I obviously think social justice is what we should call it,” he wrote. “We should use the term that is most likely to stigmatize the movement that is accurate and arises from common life.” While nobody wanted to seem in favor of discrimination, he argued, “social justice” could be “stigmatized so that when people hear it they can act on their suspicions.”

At the time, a like-minded activist, Christopher Rufo of the Manhattan Institute, was popularizing an alternative catchall with his attacks on “critical race theory” — a once-obscure academic framework that examines how racism can be structurally embedded in seemingly neutral laws or institutions.

In short order, Republican officials and activists around the country set out to ban critical race theory — or anything that could be successfully labeled “C.R.T.” — from schools. But Dr. Yenor believed such bans were not far-reaching enough.

To combat leftism in America, conservatives would need to wage a much broader war. The Claremont group kept tinkering.

2021 email from
Scott Yenor

Bans on CRT and its associated ideologies are a lot of smoke or boob-bait for the bubbas, but they are obviously (I would say) not something that is going to change the educational experience.

By 2022, as Claremont and allies like the Maine Policy Institute and a Tennessee group called Velocity Convergence rolled out early research, the approach had changed. Their public reports began to borrow from Mr. Rufo's rhetoric, attacking "critical social justice" or "critical social justice education."

When Claremont and the Texas Public Policy Foundation turned to the state's public universities in early 2023, they circled back to "diversity," but with a twist.

"Academics and administrators are no longer merely pushing progressive politics but are transforming universities into institutions dedicated to political activism and indoctrinating students with a hateful ideology," warned a report on Texas A&M. "That ideology is Diversity, Equity, and Inclusion (DEI)."

A Donation Opportunity

"Woke" politics was not just a threat to American life. It was also a fund-raising opportunity. By spring 2021, as parents grew impatient with Covid school closures, or skeptical of "anti-racist" curriculums in the wake of the Floyd protests, Claremont officials had begun circulating urgent grant requests to right-leaning foundations.

"America is under attack by a leftist revolution disguised as a plea for justice" reminiscent of "Mao Zedong's Cultural Revolution," Claremont's president, Ryan P. Williams, wrote in a draft proposal to the Jack Miller Family Foundation.



Ryan Williams, Claremont's president

(A spokesman for the Miller foundation said that officials there did not recall whether the foundation had ever received the proposal, and that it had not made any grants to Claremont in recent years.)

Liberals dominated the world of higher education, the Claremont proposals said. What was needed was a frontal attack on public university systems in states where conservatives dominated the legislatures.

2021 draft proposal for
the Jack Miller Family Foundation

America is under attack by a leftist revolution disguised as a plea for justice [...] This is, in fact, the goal: to produce swarms of anti-American zealots who will work to reshape the culture, customs, and political principles of the country, using strategies reminiscent of Mao Zedong's Cultural Revolution.

Claremont officials would partner with state think tanks, and with the hundreds of former fellows scattered through conservative institutions and on Capitol Hill. They would catalog the D.E.I. programs and personnel honeycombed through public universities. Then they would lobby sympathetic public officials to gut them.

In the proposals, Claremont set a first round of targets, in states including Florida, Louisiana, North Carolina, Oklahoma, Tennessee and Texas.

“Our project will give legislators the knowledge and tools they need to stop funding the suicide of their own country and civilization,” Claremont pledged in an August 2021 draft proposal to the Taube Family Foundation.

2021 draft proposal to
the Taube Family Foundation

Our project will give legislators the knowledge and tools they need to stop funding the suicide of their own country and civilization.

The Wisconsin-based Searle Freedom Trust had separately agreed to fund a Claremont effort to inventory what it considered “C.R.T. courses” that had “metastasized throughout Higher Ed,” according to the draft proposal. Another proposal, drafted for the Arthur N. Rupe Foundation in May 2022, aimed to dissect how red states could disentangle themselves from federal funding and mandates that, in Claremont’s view, advanced social justice ideology. Related proposals went to at least eight foundations in total. (Representatives of the Taube and Rupe foundations did not reply to emails and phone messages seeking comment.)

2021 email from Chris Ross

I will finish polishing up the budget along with the rest of the proposal, almost all of which is previously-blessed language from the latest Scaife, Dockweiler, Darling, and Verheij proposals, and send that to you tomorrow.

Ultimately, according to one document, the Claremont organizers hoped state lawmakers across the country would pass sweeping prohibitions on teaching “social justice programming.”

2021 draft proposal to
the Taube Family Foundation

In the project's first year, our goal is to help at least one state to pass legislation to defund and ban spending money on social justice programming, similar to, or better than, what has been accomplished in Idaho. By the end of the third year, our goal is to get another six states to do the same.

As the project progressed, Claremont made plans to prospect for donors at a Dallas country club and at the Palm Beach home of Elizabeth Ailes, the widow of the Fox News co-founder Roger Ailes. Growing anger among older conservatives helped open the spigot. “The Searle kids don’t like wokery,” wrote Chris Ross, a Claremont fund-raising official, in a December 2021 email, apparently referring to adult children of the trust’s late benefactor, Daniel C. Searle. (A representative of the Searle trust disputed whether Claremont officials had knowledge of the Searles’ political views.)

2021 email from
Chris Ross

Ryan, I'd like your feedback on whether the portion in yellow highlight is necessary for context, or whether we can safely assume that since we know the Searle kids don't like wokery, it could safely be summarized in the cover letter.

Among other efforts, the Searle trust agreed to back a project examining critical race theory at the Massachusetts Institute of Technology. The school had been roiled that fall by the cancellation of a science lecture by Dorian Abbot, a geophysicist who, like a plurality of Americans, opposed aspects of affirmative action in higher education.

The following year, a Utah scientist and renewable-energy consultant, along with his wife, kicked in \$25,000 for the project. It had “really caught their imagination,” Mr. Ross wrote, because of their “ongoing concerns about their grandchildren and wokeism.” Secrecy was essential. “This work will be done more easily if the wokesters at MIT don’t see it coming,” he wrote.

2022 email from Chris Ross

This project really caught their imagination, not only because of their backgrounds, but because of their ongoing concerns about their grandchildren and wokeism. With the understanding that this work will be done more easily if the wokesters at MIT don't see it coming, they have volunteered to stay quiet about the project until it is publicized.

Under the Banner of Freedom

The Claremont effort seemed to diverge from others on the right who had long urged academic institutions to renew their commitment to ideological diversity. In one exchange, some of those involved discussed how to marshal political power to replace left-wing orthodoxies with more “patriotic,” traditionalist curriculums.

“In support of ridding schools of C.R.T., the Right argues that we want nonpolitical education,” Mr. Klingenstein wrote in August 2021. “No we don't. We want our politics. All education is political.”

Dr. Yenor appeared to agree, responding with some ideas for reshaping K-12 education. “An alternative vision of education must replace the current vision of education,” he wrote back.

2021 email from
Scott Yenor

An alternative vision of education must replace the current vision of education. In the short-term, state legislatures could get out of the business of banning and get into the business of demanding — demanding the certain conclusions about American history be delivered.

State legislatures, he proposed, could strip “educational professionals” of the power to decide what to teach and even shorten the school day so that young people would spend less time in class. They might pass laws letting private citizens sue school board members with financial ties to the “education industry.”

At the same time, individuals and groups involved in the effort seemed to grasp that academic freedom could be a politically useful frame for their attacks.

In a 2023 exchange, Dr. Yenor and two associates discussed how to defend Amy Wax, a conservative law professor at the University of Pennsylvania. Dr. Wax had drawn the ire of administrators and

students there for once opining, among other things, that the United States would be “better off with fewer Asians and less Asian immigration,” and that Black people felt “resentment and shame and envy” over the “Western peoples’ outsized achievements and contributions.”

Filing a grievance claim against the university, Dr. Wax’s lawyer apparently asked David Azerrad, a professor at Hillsdale College, for a statement of support. Dr. Azerrad, in turn, sought his Claremont friends’ advice.



David Azerrad, professor at Hillsdale College

Dr. Yenor had experience with such situations. Two years earlier, he had faced Title IX complaints at Boise State University following a speech in which he argued that feminism had made women “more medicated, meddlesome and quarrelsome than women need to be.” Amid the uproar, Boise State officials defended the right of faculty to “introduce uncomfortable and even offensive ideas.”

2023 email from

Scott Yenor

I think the main point is that the effect of firing Amy Wax will have ripple effects on academic freedom everywhere.

You are appealing to lefties, so you should target them, both on free speech grounds and on grounds that implicate their fears.

Now, Dr. Yenor advised his friend Dr. Azerrad to aim his statement at a liberal audience — to defend Dr. Wax on the grounds that if she were fired, it would only embolden red-state lawmakers to fire controversial left-wing professors.

“But don’t we want this to happen?” Dr. Azerrad asked.

“Yes,” replied Dr. Yenor. “But your audience doesn’t want it to happen.”

In an email, Dr. Azerrad described the exchanges as “flippant banter” that “do not discuss substantive policy matters.” A spokesman for Claremont said that both Dr. Yenor and Mr. Klingenstein believed that “intellectual diversity and free speech are not ends in themselves but means to other important ends, including a vision of education.”

‘More Wholesome Policies’

Even as they sought to stigmatize and defeat left-wing ideas, academics and activists in the Claremont orbit seemed cognizant that some of their own views were outside the mainstream.

In a 2021 exchange among academics at Claremont, Hillsdale and the University of Wisconsin-Eau Claire, Dr. Yenor discussed edits to an essay he was planning to publish in *First Things*, a conservative journal. His editor, he said, wanted Dr. Yenor to be less “prudent” in his writing about homosexuality, encouraging him to voice ideas like — as Dr. Yenor characterized it — “Our sexual culture will not heal until ‘faggot’ replaces ‘bigot’ as the slur of choice,” or “Our sexual culture will not be healed until we once again agree that homosexuality belongs in the closet and that a healthy society requires patriarchy.” (“Since they are my views, I have tried to do that,” Dr. Yenor wrote. In the end, he settled for tamer language.)

In casual discussions with like-minded academics and activists, some those involved in the anti-D.E.I. effort mocked what they considered liberals' obsession with hierarchies of oppression. Some evinced a frank dislike of gay people.

In an exchange last May, Dr. Yenor, two former Trump administration officials with Claremont ties and Ms. Mac Donald discussed a court case in India about same-sex marriage. Ms. Mac Donald — a fellow at the Manhattan Institute who last spring published a book titled “When Race Trumps Merit: How the Pursuit of Equity Sacrifices Excellence, Destroys Beauty and Threatens Lives” — was not formally connected to Claremont’s anti-D.E.I. efforts but corresponded frequently with those who were.



Heather Mac Donald, fellow at the Manhattan Institute

She speculated in the May exchange that it would be “fun to see” what liberals would say about Indians if the court conferred gay marriage rights but Indians refused to “go along.” “How will western elites explain the benightedness of yet another group of POCs?” In response, Dr. Yenor noted that “not tons of asian countries have SSM” but rather “more wholesome policies like prison” for gays.

2023 email from
David Azerrad

Heather, that's an easy one. Indians are Asians who are white-adjacent so at the bottom of the totem poll. Gays are second after blacks.

Last spring, Ms. Mac Donald emailed some of the same people about news reports that a boyfriend of Mr. Thiel — nominally their ally in the rising “national conservatism” movement — had committed suicide after a confrontation with Mr. Thiel’s husband at a party. Calling the episode “a scandal,” she opined that gay men “are much more prone” to extramarital affairs “on the empirical basis of testosterone unchecked by female modesty.” She added mockingly that a friend had once tried to convince her “how wonderful Thiel’s ‘husband’ was.”

2023 email from
Heather Mac Donald

Some female over the last year or so, eager to show her openmindedness, was crowing to me about how wonderful Thiel's "husband" was, making them out to be the most proper couple.

I wonder if he will feel any shame in public. Probably not.

Neither Ms. Mac Donald nor a Manhattan Institute spokeswoman replied to emails seeking comment.

Dr. Yenor and his allies bristled at the conventions of academic life as overly solicitous toward female and nonwhite students. He sometimes shared routine emails from administrators at his home

institution, Boise State, deriding them as examples of being “ruled by women.” On one occasion, he forwarded a Boise State email featuring a photo of a female computer science student with close-cropped hair and a plaid shirt. “Gynocracy update!” Dr. Yenor wrote.

Riffing on the woman’s masculine appearance, his friend Dr. Azerrad chimed in with a correction: “Androgynocracy update.”

In another email to Dr. Yenor, Ms. Mac Donald reflected on a further “curse of feminism”: the proliferation of “nannies of color” in her Manhattan neighborhood and the “bizarreness” of women entrusting their children to caregivers from “the low IQ 3rd world” while devoting themselves to making partner at a law firm.

2023 email from
Heather Mac Donald

As I was taking my evening power walk in the hood here (upper east side) and seeing all the nannies of color walking school children back to their apartments, it struck me again the bizarreness of females deciding that their comparative advantage is in being an associate in a law firm, say, and thus that they should outsource the once in a lifetime unduplicable unrepeatable experience of raising a unique child to some one else, especially someone from the low IQ 3rd world, while they do the drone work of making partner. The child is evolving so quickly, absorbing so many influences, and yet they would rather absent themselves from its life to show that they are as good as males. such a distribution of labor is allegedly pareto optimal. Another curse of feminism.

Ms. Mac Donald, some Claremont friends and a conservative Canadian professor also discussed a routine in which the comedian Bill Burr took feminists to task for the low attendance at WNBA games. (“None of you showed up! Where are all the feminists?”)

When Ms. Mac Donald asked why the comedian hadn’t been “canceled,” Mr. Williams, Claremont’s president, pointed out that Mr. Burr was “married to a black woman, which helps.”

Ms. Mac Donald replied, “We are all just SO grateful if there is a black who does not overtly hate us.” She went on to rail against a libertarian podcast that praised former President George W. Bush for selecting Black people for his cabinet, “as if there is any talent required to make quota appointments.”

2023 email from

Heather Mac Donald

Hilarious. the usual pet black phenomenon. We are all just SO grateful if there is a black who does not overtly hate us.

The Movement Grows

Since 2021, the network's anti-D.E.I. campaign has spread to at least a dozen states, according to the documents.

In Tennessee, where Claremont partnered with Velocity Convergence, one of the anti-D.E.I. reports they produced reportedly circulated among Republican state lawmakers as they worked to pass a bill limiting how universities could teach or train students about "divisive concepts." A spokeswoman for the University of Tennessee said in a statement that the report's conclusions "seem to be based on subjective criteria, made-up definitions and the opinions of the authors," who obtained information from online searches and public records but "made no attempt to understand the information through questions or interviews." Tennessee's governor signed the new law in April 2022.

Susan Kaestner, Velocity's founder and a veteran Republican operative in the state, said that "the obsessive focus on diversity, equity and inclusion is effectively reducing viewpoint diversity on Tennessee campuses."

ADVERTISEMENT

Last year, Claremont organizers forged connections with the Arkansas Senate's Republican leader. In Alabama, they partnered with a group called Alabamians for Academic Excellence and Integrity. Jeff Sessions, the former U.S. attorney general and a supporter of the Alabama group, was among those who provided funds for a Claremont report, "Going Woke in Dixie?," that focused on Auburn University and the University of Alabama.

After it was released last summer, according to another email, Samuel Ginn, a wealthy Auburn alumnus and donor to both the school and Claremont, confronted the university's president, Christopher B. Roberts, and pressed him to address the report's findings.



Samuel Ginn, Claremont donor

“The president then told him, ‘Things will change,’” a Claremont fund-raiser wrote to Dr. Yenor and other officials there.

An Auburn spokeswoman said in an email that Dr. Roberts “has no recollection of the comment that was attributed to him.” Efforts to contact Mr. Ginn were unsuccessful.

Ahead of the 2022 midterm elections, the group also teamed with Republican political operatives and a think tank in Maine — where Mr. Klingenstein owns a vacation compound — to gather examples of “D.E.I. in action” in the state’s public universities and K-12 schools. Mr. Klingenstein suggested highlighting examples of putatively odd-sounding college courses, as another conservative group had done in a report about left-wing influence at Bowdoin College in Maine. (Among them were “Queer Gardens” and “Sex in Colonial America.” Bowdoin responded by defending its coursework and calling the report distorted and “meanspirited.”)

2022 email from Thomas Klingenstein

When NAS reviewed the Bowdoin curricula NAS highlighted courses such as "Queer Gardens, " "Sex in Colonial America". These were the sorts of thing that got peoples' attention. How do we show a video of DEI in action?

After the group published a report on “critical social justice” in Maine’s K-12 classrooms, Mr. Klingenstein noted in one email that despite the need to reform public schools, the group faced difficulty figuring out what was “actually happening on the ground.” He praised the report but acknowledged it was “necessarily rather anecdotal.” Even so, the work could be wielded as a bludgeon. By fall 2022, the effort had expanded to include an advertising campaign against the state’s Democratic governor, Janet Mills. The campaign, funded by Mr. Klingenstein, was spearheaded by a national advocacy group called the American Principles Project, which in turn operated through a front group called Maine Families First.

2022 email from

Thomas Klingenstein

As you know, Scott Yenor did a report on K-12 education in Maine. It was very good but necessarily rather anecdotal. Could we do, would it make sense to do, an in-depth analysis of one school or one school district a la the Bowdoin report. We might analyze one school/district in Portland, which is all in on social justice, and one in Northern Maine which is more traditional. I wonder if we could get enough information to do this.

Citing the Maine K-12 report, among other sources, ads from the group misleadingly claimed that Ms. Mills was “distributing pornography to our children,” referring to “Gender Queer,” a graphic memoir for young adults that includes sexually explicit scenes. (In fact, according to a report by Maine Public Radio, the book had appeared on one American Library Association list of gay-themed literature, a link to which could be found on the website of the Maine Department of Education.) All told, the group would spend nearly \$3 million on ads attacking Ms. Mills.

‘Just the Beginning’

Ms. Mills went on to win re-election. But the anti-D.E.I. campaign has gained ground in more Republican-leaning states. Claremont has claimed credit for helping pass the most wide-ranging bans, in Florida as well as in Texas. Last January, Gov. Sarah Huckabee Sanders of Arkansas issued an executive order banning “indoctrination and critical race theory in schools.” In North Carolina in June, Republican lawmakers passed a law barring public universities and other agencies from requiring employees to state their opinions on social issues, a move Democratic lawmakers said was aimed at D.E.I. programs more broadly. Oklahoma’s Republican governor, Kevin Stitt, issued a similar executive order in December.

Last year, Claremont officials also courted Mr. DeSantis, then a leading contender for the Republican presidential nomination and the governor most closely associated with anti-D.E.I. policies. The institute dispatched Dr. Yenor to Florida to run a new office in Tallahassee, appointing him as its “senior director of state coalitions.” (On Sunday, Mr. DeSantis suspended his presidential bid.)

In early April, as Mr. DeSantis prepared to announce his presidential campaign, he visited Mr. Klingenstein. In an email, Mr. Klingenstein told Claremont officials that Mr. DeSantis had agreed

to give Dr. Yenor access to his top political and government aides. Mr. Klingenstein also said he'd urged the governor to do a better job explaining to voters why "wokeism" was dangerous.

Appearing on the campaign trail in subsequent weeks, Mr. DeSantis began to offer a more expansive definition of the term — while mentioning "woke" so many times that some reporters began keeping count.

2023 email from
Thomas Klingenstein

I was unsure. He was much more passionate about winning the election than he was in saving the country. He knew policy stuff in great detail. But there was no vision. I asked him how he defines "woke." He said "you know it when you see it." I suggested gently that he might improve on that. I quoted Glenn, "all action no talk."

I suggested he should explain better than he has why wokeism is so dangerous.

But as Mr. DeSantis's presidential bid sputtered and conservative campaigns against left-wing education began to lose traction in some parts of the country, people involved in the anti-D.E.I. effort began to retool once again. In June, the American Principles Project circulated a memo detailing the results of several focus groups held to test different culture-war messages.

For all the conservative attacks on diversity programs, the group found, "the idea of woke or DEI received generally positive scores." Most voters didn't know the difference between equality and the more voguish term "equity," oft-mocked on the right, which signifies policies intended to achieve equal outcomes for different people, not simply equal opportunities.

2023 memo from
the American Principles Project

Similarly DEI was thought to consist more of comfort with diverse workplaces than affirmative action or anti-white hiring practices. When we got into the details of specific DEI initiatives (race-based quotas, affirmative action, diversity for diversity's sake), they were mostly opposed. We also tested the idea of equality vs. equity, and little to no difference was seen between the two words.

The memo was sent by an associate to Mr. Klingenstein and Mr. Williams, along with an undated draft speech apparently written for Representative Jim Banks, an Indiana Republican who founded the House Anti-Woke Caucus last January. (Mr. Banks’s spokesman did not reply to an email seeking comment.)



Representative Jim Banks, Republican of Indiana

For Mr. Banks and other Republicans, the controversies over antisemitism on campus this fall provided a fresh opportunity to make their case. With some student protesters defending or even valorizing the Oct. 7 terrorist attacks on Israel by Hamas, criticisms of campus D.E.I. programs began to gain more of an audience among liberals. In December, when House Republicans summoned Dr. Gay to Capitol Hill, along with the presidents of M.I.T. and the University of Pennsylvania, they argued that diversity programs were the root cause of antisemitic rhetoric on campus.

As the presidential election looms, Republicans are embarking on a renewed campaign against the higher-education institutions they have long criticized, now under the banner of eradicating anti-Jewish hate. The House Committee on Education and the Workforce is investigating Harvard and other schools, and the scope of the inquiry is expected to expand.

“This is just the beginning,” pledged Representative Elise Stefanik, the New York Republican whose questioning of Dr. Gay helped set in motion the Harvard president’s resignation. “Our robust congressional investigation will continue to move forward to expose the rot in our most ‘prestigious’ higher-education institutions and deliver accountability to the American people.”

This article is primarily based on more than 5,000 documents obtained through public-records requests. The documents include correspondence among staff and fellows at the Claremont Institute, draft grant proposals and board presentations. They also include emails between Claremont officials and outside academics, politicians, activists and others. The graphics here show selected text from the documents, as well as selected senders and recipients of different emails, unedited for spelling or grammar.

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DEI Is Under Attack. Here's How Companies Can Mitigate the Legal Risks.

by Kenji Yoshino and David Glasgow

January 5, 2024



Illustration by David Milan; Source images, left to right: Tara Moore/Getty Images, PeopleImages/Getty Images, Klaus Vedfelt/Getty Images

Summary. In June 2023, the Supreme Court effectively ended race-based affirmative action in higher education in the *Students for Fair Admissions (SFFA)* case. On the heels of that decision, newly empowered activists have brought a barrage of... [more](#)

What happens when the irresistible force meets the immovable object? Leaders committed to diversity, equity, and inclusion (DEI) are facing this paradox with fresh urgency these days.

The irresistible force is represented by the mounting legal assault on DEI. In June 2023, the Supreme Court effectively ended race-based affirmative action in higher education in the *Students for*

Fair Admissions (SFFA) case. On the heels of that decision, newly empowered activists have brought a barrage of challenges against workplace DEI efforts. Major companies are being slapped with formal complaints, litigation, and threatening letters.

While the outcome of any particular effort is rife with uncertainties, the overall direction of the law under a 6–3 Supreme Court conservative supermajority is not one of them. As such, some wonder whether DEI work is coming to an end. As one left-leaning legal scholar asked rhetorically: “If your whole job description has been to press for diversity, especially racial diversity, what are you supposed to do when pursuing that objective has been rendered effectively illegal?”

Yet the force of the legal assault on DEI is hitting an immovable object. As Justice Sotomayor pointed out in her dissent in SFFA, “Diversity is now a fundamental American value, housed in our varied and multicultural community that only continues to grow.” Too many people in too many major institutions, including leaders of corporations, government, academia, and the military, are committed to DEI for it to disappear. As one right-leaning journalist observed, it’s foolish for activists to think they can “end DEI,” as “that’s not going to happen.”

What, then, will occur when the force of the law collides with one of the deeply held beliefs of the twenty-first century? We predict that neither side will “win.” Rather, as the law inevitably evolves in a more conservative direction, the new legal standards will be absorbed into the field of DEI, transforming it as an enterprise. While this shift will occur organically, smart organizations can

avoid a lot of pain and expense by thinking about how to adapt in a more intentional way.

What Makes DEI Risky?

To recognize what shifts are necessary, we must start by assessing legal risk. A DEI program is most risky when it meets three criteria:

1. It confers a preference, meaning that some individuals are treated more favorably than others.
2. The preference is given to members of a legally protected group, such as groups defined by the categories protected in Title VII of the Civil Rights Act of 1964. These are race, color, religion, national origin, and sex (including sexual orientation and gender identity).
3. The preference relates to a palpable benefit, such as a job, a promotion, a pay raise, a work assignment, or access to training and development opportunities.

With these three criteria in mind, it is possible to identify risky DEI programs. They include:

- Hiring quotas (“Make sure at least 45% of our incoming associates are women”)
- Tiebreaker decision-making (“If you’re choosing between two similarly strong candidates and one is white and the other is a person of color, pick the person of color”)
- Group-specific internships and fellowships (“Let’s create an internship that limits eligibility to Black and Latino talent”)

- Tying manager compensation to diversity goals (“You will get a bonus if you hire more women and people of color on your team”)

All four of these programs confer a preference on members of protected groups with respect to palpable benefits. Of course, many defenders of such programs rightly point out that these initiatives do not actually involve a “preference,” but rather simply compensate for biases that have systematically deprived certain groups of opportunities. Unfortunately, however, it is clear that the conservative supermajority on the Supreme Court does not agree with such a worldview.

These three risk criteria also point the way to how organizations can mitigate risk in their DEI programs: avoid preferences, avoid protected groups, or avoid palpable benefits.

Avoid Preferences: From Lifting to Leveling

Rather than giving “preference” to some groups, organizations can explore DEI actions that are identity-neutral but remove bias from the workplace. Examples include creating structured recruitment and promotion processes with clear, transparent, merit-based criteria; removing stereotypical language from employee evaluation processes; and reviewing employee benefits policies to ensure they are being applied equally. These approaches do not “lift” certain groups above others, but rather “level” the playing field for everybody.

Even under a worst-case scenario legal landscape, such leveling approaches will remain legal, because anti-discrimination law only applies when some people are treated differently from others.

Avoid Protected Groups: Up-switching, Down-switching, and Side-switching

The next option for reducing legal liability is to avoid protected characteristics such as race or sex. There are three ways of doing so.

The first is to shift from “cohorts to content,” or what we call “up-shifting.” Instead of limiting participation in DEI programs to members of particular cohorts, organizations can open participation to people of all demographic backgrounds who are committed to the content of the program. In a recent high-profile example, three major law firms were sued for diversity fellowship programs that limited eligibility to members of underrepresented groups. As soon as the firms changed the eligibility criteria to include anyone with a demonstrated commitment to diversity and inclusion, the lawsuits were dropped.

The second option is to shift from “cohorts to character” (down-shifting). This means considering a candidate’s identity only where it speaks to their individual character. In the *SFFA* decision, the court pointedly noted that while universities could no longer give a bump to candidates based on their race, they could still consider “an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”

The same applies to employers. While employers cannot make, say, a promotion decision based on race, they could invite candidates for promotion to submit an essay describing how their race and other aspects of identity have affected their lives. The employer could then consider those individual experiences when deciding which candidates have displayed resilience, determination, or other important leadership qualities.

The final option for avoiding protected groups is to shift from “cohorts to cohorts” (side-switching). This means shifting from cohorts protected by laws such as Title VII to cohorts that are not protected in such ways. For example, an organization could adopt a program that advances socioeconomic diversity, given that socioeconomic status is not a protected attribute under federal anti-discrimination law. Provided the organization is not using the new cohort as a proxy for a protected one, this form of side-switching is legally sound.

Avoid Palpable Benefits: From Adverse to Ambient

Organizations also can reduce legal risk by avoiding palpable benefits. Under Title VII, plaintiffs need to have suffered an “adverse employment action” to bring a discrimination claim, meaning a concrete change in their terms or conditions of employment rather than a mere inconvenience or trivial slight. Similarly, under another federal law that is currently being used to challenge DEI programs — section 1981 of the Civil Rights Act of 1866 — claimants need to have experienced discrimination in the making or enforcement of a contract.

As such, one safe harbor for organizations is to create DEI programs that build a more diverse and inclusive workplace culture overall, but do not directly affect the benefits or employment opportunities of individual workers. For instance, organizations might:

- Conduct employee education or training on topics such as bias, allyship, or inclusive leadership
- Create a more physically inclusive office environment, for example through all-gender bathrooms, nursing rooms, or child-care facilities

- Conduct outreach to a broader range of colleges to attract a more diverse candidate pool
- Support community organizations focused on DEI issues, for example through pro bono work and philanthropy

This term, the Supreme Court will decide a case that could lower the standard for what counts as an “adverse employment action,” making it easier to challenge some DEI programs. For now, however, organizations can mitigate risk by embracing a more “ambient” approach to their work.

Putting It All Together

These three shifts respond to the seemingly unanswerable question of what happens when the irresistible force meets the immovable object. The answer is that the object changes. The force is not resisted; it is absorbed. And the object is not moved; it is transformed.

It is true that the law will force the practice of DEI to change significantly. Yet so long as champions of DEI shift it in these strategic ways, DEI’s core project of building a more just future will endure for decades to come.



Kenji Yoshino is the Chief Justice Earl Warren Professor of Constitutional Law at NYU School of Law and the faculty director of the Meltzer Center for Diversity, Inclusion, and Belonging. He is the author of three books: *Speak Now: Marriage Equality on Trial* (2015); *A Thousand Times More Fair: What Shakespeare’s Plays Teach Us About Justice* (2011); and *Covering: The Hidden Assault on Our Civil Rights* (2006).

He is a co-author of the new book *SAY THE RIGHT THING: How to Talk About Identity, Diversity, and Justice* (Atria).



David Glasgow is the Executive Director of the Center for Diversity, Inclusion, and Belonging and an Adjunct Professor of Law at NYU School of Law. He is a co-author of the new book *SAY THE RIGHT THING: How to Talk About Identity, Diversity, and Justice* (Atria).



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August 18, 2023

Pressure on DEI Initiatives Continues to Mount

In the wake of the Supreme Court's decision in *SFFA v. Harvard* (as discussed in our [prior memos](#)), diversity, equity and inclusion (DEI) programs have attracted increased scrutiny from longtime critics. Many high-profile U.S. companies have already fielded letters addressed to boards, senior management and the U.S. Equal Employment Opportunity Commission questioning the legality of their DEI initiatives. Others have been named in lawsuits and federal civil rights complaints alleging violations of the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, state civil rights laws, and federal securities laws in connection with their DEI initiatives.

This recent wave of litigation is focused on (1) corporate pledges seeking to increase diversity in the workforce and among suppliers, which plaintiffs analogize to illegal quotas, (2) claims that such actions constitute breaches of fiduciary duty, and (3) DEI programs that exclusively serve diverse groups, which plaintiffs characterize as reverse discrimination. Incentive compensation tied to DEI metrics has also attracted scrutiny, with plaintiffs claiming that such policies promote discriminatory practices. Some of these pending suits assert securities fraud, claiming share prices were impacted by misstatements related to DEI initiatives.

Last week, in one of the first cases to reach decision, the U.S. District Court for the Eastern District of Washington dismissed claims brought against Starbucks, in an oral decision reaffirming the right of boards to make their own determinations regarding DEI strategy and policies. In rendering his judgment, Judge Bastian noted that “[t]he plaintiffs have ignored the fundamental rules of corporate law, including the business judgment rule. Courts of law have no business involving themselves with legitimate and legal decisions made by the board of directors of public corporations.” Judge Bastian added that “[w]hether DEI policies . . . are good public policy is something for our politicians to decide. It’s something for corporations to decide. It is not something for this court to be involved with.”

As we have noted previously, boards and management may consider and determine — as part of an informed and deliberate exercise of business judgement — that certain DEI initiatives and strategies advance the company’s mission and operational success. Such strategies may include the adoption of policies and initiatives that aim to eliminate bias across the workforce and supply chain. Setting DEI goals is not *per se* illegal, provided that the means by which such objectives are

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pursued do not utilize protected categories such as race, gender or religion to determine employment outcomes. Programs that cultivate diverse talent and promote equal employment opportunities for underrepresented groups, including outreach efforts, remain legal and should not be conflated with “affirmative action.”

While the law with respect to DEI programs has not changed, scrutiny will likely continue. Companies need to be prepared to face potential claims, in the court of law and in other public arenas, regardless of the merits of the claims. The recent *Starbucks* decision is an important and helpful reminder of the need to ground assessments of DEI programs in an informed and deliberate exercise of business judgment.

Martin Lipton
John F. Savarese
Adam J. Shapiro
Kevin S. Schwartz
Erica E. Bonnett
Noah B. Yavitz
Carmen X. W. Lu

August 8, 2023

DEI Initiatives Post-SFFA: Considerations for Boards and Management

It is no secret that American corporations face vigorous — and often conflicting — demands concerning diversity, equity and inclusion (DEI) initiatives. Over the past year, DEI initiatives and commitments have come under pressure in the face of macroeconomic headwinds, political scrutiny and legal challenges. That pressure has only grown following the Supreme Court’s recent decision against affirmative action in *SFFA v. Harvard* (as discussed in our prior [memo](#)), after which Attorneys General from both [red](#) and [blue](#) states sent conflicting letters to Fortune 100 companies on what the *SFFA* decision meant for corporate DEI initiatives.

Managing the tension between proponents and opponents of DEI programs and initiatives is particularly complex because of the range of stakeholders involved. Shareholders, employees, customers, suppliers, regulators, stock exchanges and state legislatures are among the groups that have sought to shape the DEI agenda. And DEI is no longer a domestic issue: The European Union’s Corporate Sustainability Reporting Directive, which is expected to affect over 3,000 U.S. companies, includes [disclosure standards](#) that require firms to assess and disclose workforce and supplier diversity, equity and inclusion policies, practices and metrics to ensure equal treatment and opportunities for all.

Boards and management seeking to navigate across this rapidly shifting DEI landscape should keep the following principles in mind:

- Directors and officers of public companies in the United States bear fiduciary responsibilities to develop and adopt good-faith policies and strategies designed to maximize the long-term value of the corporation. To that end, boards and management, as part of an informed and deliberate exercise of business judgment, may consider and in turn determine that certain DEI initiatives and strategies advance the company’s mission and operational success, by, for example, bringing diverse perspectives to bear on business decision-making and aligning the company’s aspirations in this area with those of its workforce, customers and other constituencies.
- Where a DEI policy or strategy is determined, as a matter of business judgment, to further the company’s prospects for long-term value maximization, companies should carefully consider how best to communicate the business-grounded rationale for such undertakings and how the company has assessed and sought to balance the competing priorities of its stakeholders.

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Among the factors to consider include evidence of how DEI initiatives help attract and retain key talent, the impact of DEI strategies on the risk of employment-discrimination claims, how diverse perspectives contribute to better decision-making and business outcomes, and how returns from DEI strategies are commensurate with corporate resources used to further such initiatives.

- Corporate policies and initiatives aiming to promote equity and inclusion and eliminate bias across the workforce and supply chain that were lawful prior to *SFFA* remain lawful after the Court’s decision. For example, the latest Supreme Court ruling does not prohibit employers from continuing efforts to reduce bias in hiring and promotion decisions, provide unconscious bias training, conduct outreach to diverse colleges and candidates, include diverse candidates as part of interview slates, establish employee resource groups, include diverse suppliers as part of RFPs, conduct outreach to underserved communities, facilitate mentorship and other pipeline programs to facilitate employee retention, and implement family-friendly and flexible work options. U.S. Equal Employment Opportunity Commission Chair Charlotte A. Burrows has publicly [reiterated](#) that DEI initiatives that were legal prior to *SFFA* remain so.
- Setting DEI goals is not *per se* illegal provided the means by which such objectives are pursued are legally permissible. For example, care needs to be taken to ensure that goals are not accomplished through quotas and other mechanistic tools that utilize race or gender or other protected categories as a “tiebreaker” — or where an individual’s race, color, religion, sex or national origin is otherwise explicitly factored into employment decision-making — because such practices can violate Title VII of the Civil Rights Act and other antidiscrimination laws that prohibit the use of such protected categories in rendering employment decisions. Employment decisions, including hiring, compensation and promotion, should instead focus on permissible considerations such as the challenges an individual has overcome, the contributions the individual has made to the company’s success, and the perspectives and background that an individual may bring to bear on the company’s long-term business success.
- While legal scrutiny over corporate DEI initiatives is likely to continue to increase, along with claims of reverse discrimination, the burden of proof borne by plaintiffs has not changed. Plaintiffs seeking to prove discrimination under Title VII will still need to prove that they suffered an “adverse employment

action” that was motivated by their race, color, religion, sex or national origin. Companies should continue, as they have done in the past, to maintain practices and procedures that demonstrate compliance with the law. Directors and senior management, for their part, should reinforce the importance of strict adherence to these standards.

The Supreme Court’s decision in *SFFA* has not altered the fiduciary obligations of employers nor has it redrawn the permissible legal contours of DEI initiatives. We nonetheless expect companies to continue facing heightened scrutiny from all sides over why and how they go about identifying, evaluating and implementing DEI policies and goals. For these reasons, we encourage all companies to periodically review and assess their DEI strategies and commitments to ensure they align with broader business purposes and are being implemented in a manner that promotes equity and inclusion for all.

Martin Lipton
John F. Savarese
Adam J. Shapiro
Erica E. Bonnett
Noah B. Yavitz
Carmen X. W. Lu

FOR RELEASE JUNE 8, 2023

Asian Americans Hold Mixed Views Around Affirmative Action

Most are skeptical of considering race and ethnicity in college admissions

BY Neil G. Ruiz, Ziyao Tian and Jens Manuel Krogstad

FOR MEDIA OR OTHER INQUIRIES:

Neil G. Ruiz, Head of New Research Initiatives and Associate Director,
Race and Ethnicity Research

Ziyao Tian, Research Associate, Race and Ethnicity Research

Mark Hugo Lopez, Director, Race and Ethnicity Research

Hannah Klein, Communications Manager

202.419.4372

www.pewresearch.org

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Pew Research Center is a nonpartisan, nonadvocacy fact tank that informs the public about the issues, attitudes and trends shaping the world. It does not take policy positions. The Center conducts public opinion polling, demographic research, computational social science research and other data-driven research. It studies politics and policy; news habits and media; the internet and technology; religion; race and ethnicity; international affairs; social, demographic and economic trends; science; research methodology and data science; and immigration and migration. Pew Research Center is a subsidiary of The Pew Charitable Trusts, its primary funder. The Center's Asian American portfolio was funded by The Pew Charitable Trusts, with generous support from The Asian American Foundation; Chan Zuckerberg Initiative DAF, an advised fund of the Silicon Valley Community Foundation; the Robert Wood Johnson Foundation; the Henry Luce Foundation; the Doris Duke Foundation; The Wallace H. Coulter Foundation; The Dirk and Charlene Kabcenell Foundation; The Long Family Foundation; Lu-Hebert Fund; Gee Family Foundation; Joseph Cotchett; the Julian Abdey and Sabrina Moyle Charitable Fund; and Nanci Nishimura.

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How we did this

Pew Research Center conducted this analysis to understand the views of Asian Americans toward affirmative action. This in-depth analysis uses data from a nationally representative survey of Asian American adults, two nationally representative surveys of U.S. adults, and a qualitative study of Asian Americans. The analysis is the latest in the Center's series of [in-depth analyses of public opinion among Asian Americans](#).

The first is a nationally representative survey of 7,006 self-identified Asian adults conducted online and by mail from July 5, 2022, to Jan. 27, 2023. Asian respondents include those who identified as more than one race or as Hispanic. Here is the [methodology](#) used for the survey of Asian Americans.

The second is a nationally representative [online survey of 5,132 U.S. adults](#) that includes 367 English-speaking, single-race, non-Hispanic Asians conducted on the Center's [American Trends Panel](#) from Dec. 5 to 11, 2022.

Identical questions about affirmative action generally and the use of high school grades, standardized test scores, athletic ability, family income, gender and race and ethnicity in college admissions decisions were asked on the 2022-23 survey of Asian American adults and the December 2022 survey of all U.S. adults. This allows for a comparison of Asian American adults' views with those of other groups of Americans.

The third survey is another nationally representative [online survey of 5,079 U.S. adults](#) conducted on the Center's American Trends Panel from March 27 to April 2, 2023. It includes 368 English-speaking, single-race, non-Hispanic Asians.

For survey questions from all three surveys used in this analysis, see the [topline questionnaire](#).

Survey results were complemented by [66 focus groups of Asian adults](#) conducted before the 2022-2023 survey of Asian Americans, from Aug. 4 to Oct. 14, 2021. The groups were made up of 264 recruited participants from 18 Asian origin groups. Focus group discussions were conducted in 18 languages and moderated by members of their origin groups.

Pew Research Center is a subsidiary of The Pew Charitable Trusts, its primary funder. The Center's Asian American portfolio was funded by The Pew Charitable Trusts, with generous support from The Asian American Foundation; Chan Zuckerberg Initiative DAF, an advised fund of the Silicon Valley Community Foundation; the Robert Wood Johnson Foundation; the Henry Luce

Foundation; the Doris Duke Foundation; The Wallace H. Coulter Foundation; The Dirk and Charlene Kabcenell Foundation; The Long Family Foundation; Lu-Hebert Fund; Gee Family Foundation; Joseph Cotchett; the Julian Abdey and Sabrina Moyle Charitable Fund; and Nanci Nishimura.

We would also like to thank the Leaders Forum for its thought leadership and valuable assistance in helping make this survey possible.

The strategic communications campaign used to promote the research was made possible with generous support from the Doris Duke Foundation.

Terminology

The terms **Asian** and **Asian American** are used interchangeably throughout this report to refer to U.S. adults who self-identify as Asian, either alone or in combination with other races or Hispanic identity.

Ethnicity and **ethnic origin** labels, such as Chinese and Chinese origin, are used interchangeably in this report for findings for ethnic origin groups, such as Chinese, Filipino, Indian, Japanese, Korean or Vietnamese. For this report, ethnicity is not nationality. For example, Chinese in this report are those self-identifying as being of Chinese ethnicity, rather than necessarily being a current or former citizen of the People's Republic of China. Ethnic origin groups in this report include those who self-identify as one Asian ethnicity only, either alone or in combination with a non-Asian race or ethnicity.

The term **Asian origin groups** is used throughout this report to describe ethnic origin groups.

Immigrants in this report are people who were not U.S. citizens at birth – in other words, those born outside the U.S., Puerto Rico or other U.S. territories to parents who are not U.S. citizens. The terms **immigrant** and **foreign born** are used interchangeably to refer to this group.

U.S. born refers to people born in the 50 U.S. states or the District of Columbia, Puerto Rico or other U.S. territories.

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Asian Americans Hold Mixed Views Around Affirmative Action

Most are skeptical of considering race and ethnicity in college admissions

As the U.S. Supreme Court prepares to decide whether colleges can continue to consider race and ethnicity in admissions, a new national survey of Asian adults finds that Asian Americans have mixed views of affirmative action and related issues.

On one hand, about half of Asian adults who have heard of affirmative action (53%) say it is a good thing, while 19% say it is a bad thing, and 27% say they don't know whether affirmative action is good or bad. On the other hand, about three-quarters of all Asian adults (76%) say race or ethnicity should not factor into college admissions decisions.

While not all Asian Americans have heard of affirmative action, most have. Nearly three-in-four (74%) say they have heard the phrase before, with awareness varying some across Asian demographic subgroups:

- About eight-in-ten Filipino (83%) and Japanese (82%) adults say they have heard the phrase, compared with only 57% of Vietnamese Americans.
- Meanwhile, 91% of U.S.-born Asians say they have heard the phrase affirmative action, while 67% of Asian immigrants say they have.

Half of Asian Americans who have heard of affirmative action say it is a good thing ...

% of Asian adults who have ...


Heard of affirmative action  74

Among Asians who have heard of affirmative action, % who say ...

Affirmative action is a good thing  53

But only one-in-five Asian adults say race or ethnicity should be considered in college admissions decisions

Among all Asian adults, % who say ...

Colleges should consider race or ethnicity in admissions decisions  21

Note: Asian adults include those who identified as more than one race or as Hispanic. Shares of respondents who didn't offer an answer or gave other answers not shown.

Source: Survey of Asian American adults conducted July 5, 2022-Jan. 27, 2023.

"Asian Americans Hold Mixed Views Around Affirmative Action"

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Even if not all Asian adults have heard the phrase affirmative action, support for the general concept among Asian Americans spans education, immigration, age and other demographic subgroups, according to the national survey of 7,006 U.S. Asian adults conducted in six languages between July 5, 2022 and Jan. 27, 2023.

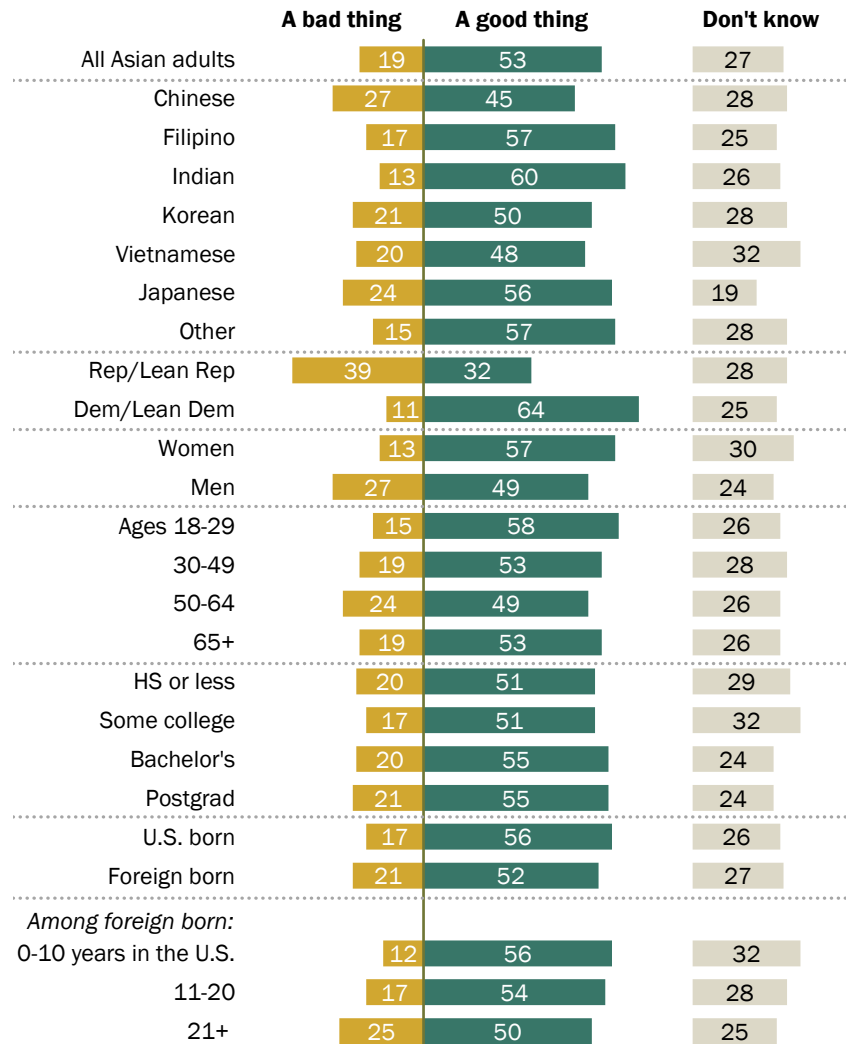
Views about affirmative action among those who have heard the phrase vary slightly across origin groups:

- Indian adults (60%) are more likely than Korean (50%), Vietnamese (48%) and Chinese (45%) adults to say affirmative action is a good thing.
- Chinese adults who have heard of affirmative action are among the least likely to say it is a good thing – 27% of Chinese adults who have heard the phrase say it is a bad thing, and 28% say they don't know.

Among Asian adults who have heard of affirmative action, views do not vary significantly by nativity, though there are

Across most Asian demographic subgroups, roughly half or more who have heard of affirmative action say it is a good thing

Among Asian adults who have heard of the phrase affirmative action, % who say it is ...



Note: Asian adults include those who identified as more than one race or as Hispanic. The six largest ethnic groups and the group "Other" include those who identify with one Asian ethnicity only. Responses for those who identify with two or more Asian ethnicities not shown. "Some college" includes those with an associate degree and those who attended college but didn't obtain a degree. Share of respondents who didn't offer an answer not shown.

Source: Survey of Asian American adults conducted July 5, 2022-Jan. 27, 2023. "Asian Americans Hold Mixed Views Around Affirmative Action"

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some differences by length of time that immigrants have lived in the United States.

- More than half of those born in the U.S. (56%) and about half of immigrants (52%) say affirmative action is a good thing.
- Among Asian immigrants, 12% of those who have lived in the U.S. for 10 years or less say it is a bad thing, as do 17% of immigrants who have been in the U.S. between 11 and 20 years. Half of Asian immigrants who have lived in the U.S. for 21 years or more say affirmative action is a good thing, while 25% say it is a bad thing. Another 25% say they don't know if it's good or bad.

Assessments of affirmative action differ among Asian immigrants by their origins. Chinese immigrants who have heard the phrase (33%) are more likely to say affirmative action is a bad thing than Vietnamese (21%), Korean (21%), Filipino (18%) and Indian (12%) immigrants.

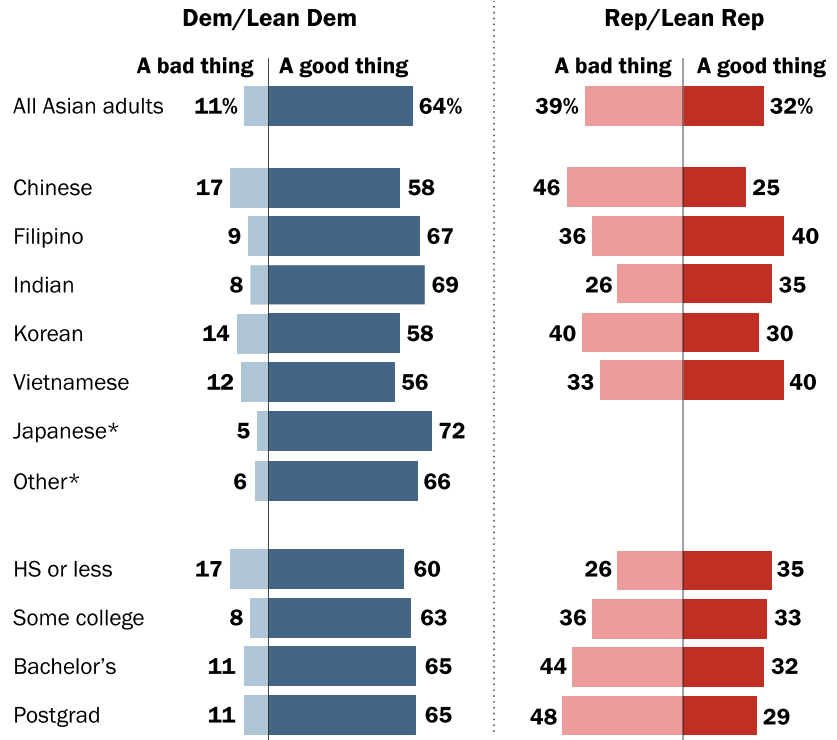
By contrast, there is no significant difference between U.S.-born Chinese adults and other U.S.-born Asians in their views of affirmative action, among those who have heard the phrase. Similar shares say it is a good thing (61% and 55%), as are those who say it is a bad thing (15% and 17%).

Among Asian Americans who have heard of affirmative action, views of it vary by political party affiliation:¹

- About two-thirds (64%) of Asians who identify as Democrats or lean toward the Democratic Party say affirmative action is a good thing. By contrast, only 32% of Asian Republicans or Republican leaners say the same.

Among Asian Americans, Democrats are more likely to say affirmative action is good than bad, while Republicans are more divided

Among Asian adults who have heard of affirmative action, % who say it is ...



*Shares of Republican and Republican-leaning for "Japanese" and "Other" not shown due to small sample sizes.

Note: Asian adults include those who identified as more than one race or as Hispanic. The six largest ethnic groups and the group "Other" include those who identify with one Asian ethnicity only. Responses for those who identify with two or more Asian ethnicities not shown. "Some college" includes those with an associate degree and those who attended college but didn't obtain a degree. Share of respondents who answered "Don't know" or didn't offer an answer not shown.

Source: Survey of Asian American adults conducted July 5, 2022-Jan. 27, 2023.

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¹ About six-in-ten Asian registered voters (62%) identify with or lean toward the Democratic Party, while a third (34%) identify with or lean toward the Republican Party.

- While 11% of Asian Democrats say affirmative action is a bad thing, 39% of Asian Republicans say this.

The partisan divide on affirmative action extends to the five largest Asian origin groups – Chinese, Filipino, Indian, Korean and Vietnamese.

- Among Democrats, all major Asian origin groups are more likely to say affirmative action is a good thing than to say it is a bad thing.
- Among Republicans, Chinese adults are more likely to say it is bad than good.

Views of affirmative action among Asian Republicans who have heard of it vary by education level: 48% of Asian Republican adults with a postgraduate degree say affirmative action is bad, as do 44% with a bachelor's degree, 36% with some college experience and 26% with a high school education or less.

Educational attainment and Asian Americans

Differences in views among Asian adults reflect the [demographic diversity](#) of the nation's Asian population. Among those ages 25 and older in 2019, a higher share of Asian Americans than U.S. adults overall have a bachelor's degree or higher (54% vs. 33%), according to a Pew Research analysis of the 2019 American Community Survey.

However, educational attainment [varies significantly by ethnic origin group](#). Among the six most-populous groups, Indian Americans have the highest share of college degree holders (75%), while Vietnamese Americans (32%) have the lowest share. The share of college degree holders is sometimes even lower among less populous Asian origin groups such as Laotian (18%) or Bhutanese Americans (15%).

Asian Americans are more likely than other groups to [enroll in selective colleges and universities](#). The criteria for admissions at some of these schools is in the spotlight due to a [pair of cases before the U.S. Supreme Court](#).

[Students for Fair Admissions \(SFFA\) argued to the high court](#) that Harvard College, a private university, discriminates against Asian American applicants because they are less likely to be admitted than White, Black and Hispanic applicants with similar qualifications. The group has also sued the University of North Carolina, a public university, over its use of race in college admissions decisions.

Meanwhile, Asian American civil rights organizations such as the Asian American Legal Defense and Education Fund and Asian Americans Advancing Justice (AAJC) have filed briefs in support of race-conscious admissions.² The court is expected to decide the cases by the end of June 2023.

Majority of Asian Americans say race shouldn't be a factor in college admissions

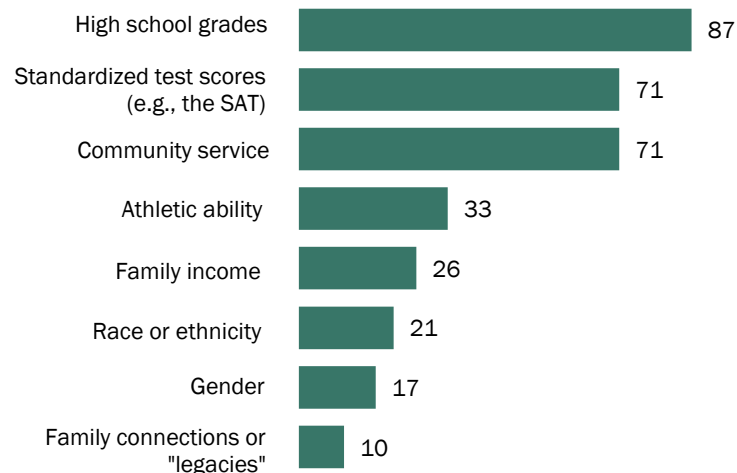
The concept of affirmative action is relatively popular among those familiar with the phrase. But when it comes to college admissions, opinions differ about which factors should be considered when deciding which students to admit to colleges and universities.

Asked about a list of factors that colleges should consider, only 21% of Asian adults say colleges should consider race and ethnicity when deciding which students to accept. By contrast, Asian adults broadly say high school grades (87%), community service (71%) and standardized test scores (71%) should be factors considered in college admissions.

Lower shares say athletic ability (33%), family income (26%) and gender (17%) should be considered. Few Asian adults (10%) say schools should consider family connections or “legacies” in admissions.

Relatively few Asian Americans say race or ethnicity should play a role in college admissions decisions

% of Asian adults who say colleges should consider ___ when deciding which students to accept to their school



Note: Asian adults include those who identified as more than one race or as Hispanic. Share of respondents who say colleges should not consider each item and those who didn't offer an answer are not shown.

Source: Survey of Asian American adults conducted July 5, 2022-Jan. 27, 2023. "Asian Americans Hold Mixed Views Around Affirmative Action"

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² On Aug. 1, 2022, the Asian American Legal Defense and Education Fund submitted an [amicus brief to the Supreme Court](#) on behalf of 121 Asian American groups and educators expressing support of race-conscious admissions at Harvard University and the University of North Carolina. Asian Americans Advancing Justice (AAJC) has also [filed a brief in support of the respondents](#) who support holistic admissions on behalf of a group of Harvard students and alumni.

Overall, majorities of Asian adults across gender, age, education and origin groups say race or ethnicity should *not* factor into college admissions. Similar shares of Indian (77%), Chinese (76%), Filipino (76%), Vietnamese (76%), Korean (72%) and Japanese (70%) American adults express this view.

While Asian Republicans and Asian Democrats differ in their views of whether affirmative action is a good or bad thing, majorities of both groups notably say race or ethnicity should not play a role in college admissions. Among Asian Republicans, 90% say race or ethnicity should not be considered, and 69% of Asian Democrats say the same.

Meanwhile, more Asian immigrants (80%) than those who are U.S. born (64%) say race and ethnicity should not be considered in admissions.

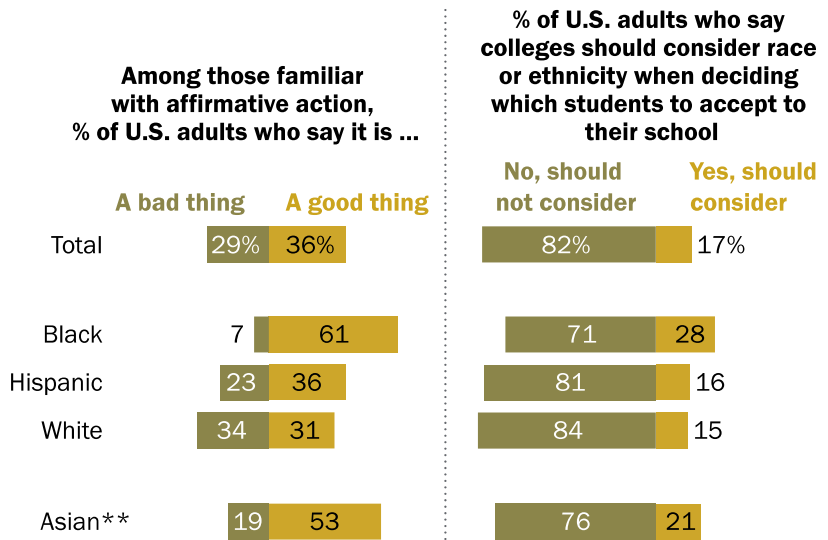
Comparisons with other Americans

Compared with Asian Americans, U.S. adults overall who have heard of affirmative action are less likely to have a favorable view of it, with 36% saying it is a good thing and 29% saying it is a bad thing in a December 2022 survey.

Regardless, only 17% say college admissions should take race into account.

Among racial and ethnic groups, Black Americans are the most likely to say affirmative action is a good thing (61%), while fewer say it is a bad thing (7%). Yet, a much smaller share (28%) of Black adults think colleges should consider race and ethnicity when deciding which students to accept.

U.S. adults who have heard of affirmative action are more likely to say it is good than bad; still, 82% of all adults say college admissions shouldn't consider race



** Figures for Asian adults are from the 2022-2023 survey of Asian Americans. Note: "Total" figures include English-speaking Asian adults and do not include respondents to the 2022-2023 survey of Asian Americans. White and Black adults include those who report being one race and are not Hispanic. Hispanic adults are of any race. Asian adults include those who identify as more than one race or as Hispanic. In left graphic, share of respondents who answered "Don't know" not shown. Attitude toward considering race in college admissions was asked regardless of whether respondents had heard of affirmative action.

Source: For Black, Hispanic, White and "Total" adults figures, survey of U.S. adults conducted Dec. 5-11, 2022. For Asian adults, survey of Asian American adults conducted July 5, 2022-Jan. 27, 2023.

"Asian Americans Hold Mixed Views Around Affirmative Action"

Asian adults say considering race and ethnicity in college admissions has mixed impacts in education

Substantial shares of Asian Americans say that when selective colleges consider race and ethnicity in admissions decisions, it negatively affects fairness and student quality, according to a Center survey of U.S. adults conducted March 27-April 2, 2023, that included a sample of Asian adults interviewed only in English.³

About half (53%) of English-speaking Asians say considering race and ethnicity in admissions would make the admissions process less fair, while 18% say it would make the process more fair. Meanwhile, 36% of English-speaking Asian adults say having race play a role in admissions decisions results in less-qualified students being admitted, compared with 17% who say admitted students would be more qualified.

However, some English-speaking Asians also say affirmative action in college admissions can have a positive impact, according to the March survey. Nearly half (47%) say using race and ethnicity in admissions decisions is good for promoting equal opportunities, compared with 29% who say it is bad. In addition, English-speaking Asians are

Asian Americans are especially likely to say that when colleges consider race in admissions, it negatively affects fairness and student quality ...

% of Asian adults who say that when selective colleges and universities consider race and ethnicity as a factor in admissions decisions in order to increase the racial and ethnic diversity of the school ...

This makes the overall admissions process of these colleges ...



The students who are accepted to these colleges are ...



But they also say considering race in admissions has a positive impact on educational experiences and equal opportunity

This makes students' overall educational experiences at these colleges ...



This is ___ for ensuring equal opportunity for Americans of all racial and ethnic backgrounds



Note: In this chart, estimates are representative of English speakers only, and Asian adults include those who report being one race and are not Hispanic. Share of respondents who didn't offer an answer not shown. See topline for full question wording.

Source: Survey of U.S. adults conducted March 27-April 2, 2023.

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³ About seven-in-ten Asian adults (72%) either speak only English or say they speak English "very well," according to a [Pew Research Center analysis](#) of the 2019 American Community Survey.

somewhat more likely to say affirmative action will improve all accepted students' overall college experience rather than make it worse (37% vs. 24%).

The March survey of U.S. adults also shows that English-speaking Asian adults and Hispanic adults offer mostly mixed assessments of considering race in college admissions. By contrast, Black adults express generally supportive attitudes toward considering race in college admissions, while White adults voice [less supportive views](#).

Asian Americans have differing experiences with efforts to increase racial and ethnic diversity in education and the workplace

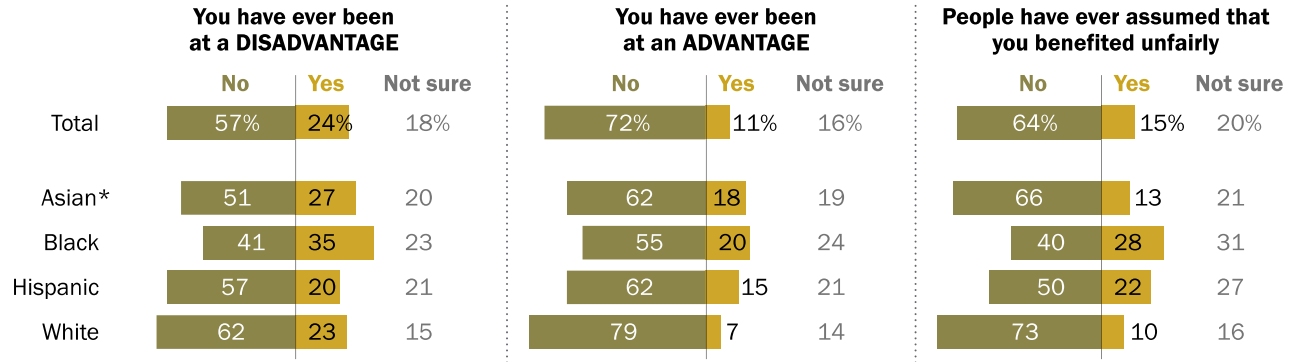
When asked about their experiences with efforts to increase diversity in broader settings including education, career or jobs, about one-in-four English-speaking Asian adults (27%) say they have been at a disadvantage due to these efforts, a share similar to that among all U.S. adults (24%).

At the same time, 18% of English-speaking Asian adults say they think they have ever been at an advantage because of efforts to increase racial and ethnicity diversity. The share is similar among Black (20%) and Hispanic adults (15%), but fewer White adults say this (7%).

Some 13% of English-speaking Asian adults say they think people have assumed they benefited unfairly from efforts to increase diversity; a similar share of all U.S. adults (15%) say the same. Meanwhile, a greater share of Hispanic (22%) and Black (28%) adults say they think people have assumed they benefited unfairly from these types of efforts. Among White adults, just 10% say the same.

About a quarter of Asian adults say they personally have been disadvantaged by efforts to increase diversity; about one-in-five say they have personally benefited

Do you think ___ in your education, career or job because of efforts to increase racial and ethnic diversity? (%)



*Estimates for Asian adults in this chart are representative of English speakers only.

Note: In this chart, White, Black and Asian adults include those who report being only one race and are not Hispanic; Hispanics are of any race. Shares of respondents who didn't offer an answer not shown.

Source: Survey of U.S. adults conducted March 27-April 2, 2023.

"Asian Americans Hold Mixed Views Around Affirmative Action"

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In their own words: Qualitative research findings related to how Asians in the U.S. view affirmative action

In a 2021 Pew Research Center [qualitative research study](#) of Asian Americans, focus group participants were asked about their views of affirmative action policies. All participants were given the following description of affirmative action as background before each of the discussions:

“Affirmative action is a legislative approach to increase the representation of women and minorities in areas of employment and education from which they have been historically excluded. In recent decades, some local and state governments have proposed affirmative action policies for racial minorities who are historically underrepresented such as Black Americans, Hispanics and Asian Americans.”

Three types of views emerged from the focus groups: mixed, negative and positive. The following are some examples from these focus group discussions, lightly edited for style and clarity.

Many participants expressed a mixed view of affirmative action. Those who held mixed feelings usually affirmed the concept for its promotion of equality. At the same time, some also questioned how effective affirmative action is in practice.

“Well, I always feel a little mixed about it. I think there are people that cannot advocate for themselves that it probably has helped, but I think it also has hindered those individuals that have either accomplished a lot on their own because people make an assumption that they got helped or that you’re part of a quota. So that part of it, I think, is very difficult. It does diminish a little bit for those that really have done it on their own too. ... So I feel really mixed about that, but I think it did open a lot of doors initially. The thought behind it was probably good and noble in some ways, but I’m not sure it’s very effective too.”

–U.S.-born woman of Japanese origin in mid-60s

Other focus group participants said affirmative action hurts Asian Americans in college admissions. Some participants who view affirmative action negatively think it helps Asians less relative to other minority groups, if at all.

“There are very, like, pretty big downsides to it but also it hurts Asians the most because, like, affirmative action stuff, like with college board and SAT scores, they dock us down. It’s not based on merit, it’s based on just affirmative action. They want non-Asians – less Asians in there.”

–U.S.-born man of Laotian origin in mid-20s

Finally, many focus groups participants mentioned affirmative action opening doors for them in the job market, while others said it helps elevate the group’s political representation.

“I think that when we apply for a high-position job, we have to compete for more than the [U.S. born]. If this policy becomes true, Asian Americans, especially women, will have better benefits and it will bring some happiness to us.”

–Immigrant woman of Thai origin in late 30s

“[W]e need a seat at the table. ... I mean, even as far as I know, Asian Americans, Filipino Americans have the lowest voter count, and so without having a seat at the table, like how are we going to be heard? So yeah, I mean, I’m down with affirmative action.”

–U.S.-born man of Filipino origin in late 40s

A methodological note: No matter how we asked about topics related to affirmative action, Asian Americans expressed mixed views

How one asks questions in public opinion surveys matters in measuring the public's attitudes toward issues. In survey research, [differences in how questions are framed](#) can substantially affect the answers survey respondents provide.

This report focuses on Asian Americans' views of affirmative action and race and ethnicity in college admissions. Another [accompanying Pew Research Center report](#) focuses on public views of the consideration of race and ethnicity in admissions to selective colleges and universities. Both reports took four broad approaches to understand the public's range of views on these topics:

- **We measured attitudes among those who have heard of affirmative action without any description of the program.** In this approach, we first directly asked respondents, "Have you ever heard the phrase 'affirmative action?'" with no description of affirmative action programs or their goals. We then asked respondents who are aware of affirmative action, "Do you think affirmative action is a good thing, a bad thing or you don't know?" We asked these questions on two surveys, both of which show similar results for Asian Americans.

On the 2022-23 survey of Asian American adults, 74% had heard of affirmative action, compared with 67% English-speaking Asian adults on the December 2022 survey of U.S. adults. Among those who had heard the phrase "affirmative action," 53% of Asian adults said it is a good thing and 19% said it is a bad thing on the 2022-23 Asian Americans survey, compared with 42% of English-speaking Asians who said it is a good thing and 27% who said it is a bad thing on the December 2022 U.S. population survey.

- **We measured attitudes toward criteria for college admissions, including race and ethnicity, without mentioning the term "affirmative action."** After being asked specifically about "affirmative action," respondents were asked if a series of factors such as high school grades, standardized test scores, athletic ability, family income, gender, and race and ethnicity should be considered when colleges decide which students to accept.

On the 2022-23 survey of Asian American adults, 21% said race or ethnicity should be considered, while 76% said it should not. In the separate December 2022 survey of U.S. adults, 15% of English-speaking Asian Americans said race or ethnicity should be considered, while 85% said it should not.

- **We measured views toward race and ethnicity as a factor in selective colleges' admissions for the purpose of increasing the school's racial and ethnic diversity.**

We asked respondents whether they approve of such practices but did not mention the term “affirmative action.” This question was asked in a separate Pew Research Center national survey of U.S. adults conducted in March 2023. While 37% of English-speaking Asian adults said they approve of the practice, a higher share (52%) said they disapprove, a result similar to that for all U.S. adults (33% approve and 50% disapprove).

- **We assessed views of potential impacts of the practice of using race and ethnicity in selective colleges' admissions to increase racial and ethnic diversity.**

Respondents to the March 2023 survey were further asked what impact they think this practice has on fairness of the process, student qualifications, students' college experiences, and ensuring equal opportunity for Americans of all racial and ethnic backgrounds – again with no reference to the “affirmative action” label.

About half of English-speaking Asian adults said this practice makes the admissions process less fair (53%), while 18% said it makes the process fairer. The share saying this process leads to less-qualified students being admitted (36%) was higher than the share who said it leads to more qualified students (17%). By contrast, more English-speaking Asian adults said it makes all accepted students' overall college experiences better (37%) than worse (24%), and more said it is good (47%) for ensuring equal opportunity than bad for it (29%).

Across all these approaches, the surveys find Asian American adults hold mixed views about affirmative action and related topics. While about half who have heard of affirmative action say it is a good thing, 76% of Asian adults say colleges should not use race or ethnicity in college admissions decisions.

Another survey of English-speaking Asian adults finds 52% disapprove of using race and ethnicity in selective college admissions to increase racial and ethnic diversity of student bodies. And more say the process is less fair when race and ethnicity is used in selective college admissions (53%) than say it is more fair (18%). Still, English-speaking Asian adults are more likely to say these practices are *good* for ensuring equal opportunity for all Americans than to say these practices are bad for the same goal (47% vs. 29%).

Acknowledgments

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We would also like to thank the Leaders Forum for its thought leadership and valuable assistance in helping make this survey possible.

The strategic communications campaign used to promote the research was made possible with generous support from the Doris Duke Foundation.

This report was written by Neil G. Ruiz, head of new research initiatives and associate director of race and ethnicity research; Ziyao Tian, research associate; and Jens Manuel Krogstad, senior writer and editor.

Many individuals contributed to the design, data collection and methodology of the 2022-2023 survey of Asian American adults. The survey and the reports from it would not be possible without Senior Methodologist Ashley Amaya, who designed the survey's methodology, managed the long fielding period with Westat, and helped with the questionnaire development. The entire survey project was expertly managed by Research Associate Luis Noe-Bustamante. Noe-Bustamante also managed a team that carried out the survey's data processing and included temporary Research Associate Abby Budiman, Research Assistant Carlyne Im, Research Methodologist Arnold Lau and Research Assistant Lauren Mora.

Ruiz and former Research Associate Sunny Shao led the development of the survey questionnaire with help from Amaya, Research Associate Khadijah Edwards, Research Assistant Mohamad Moslimani, Mora and Noe-Bustamante. Senior Demographer Jeffrey Passel provided advice on the demographic analysis. Pew Research Center is also grateful to Westat's Mike Brick, Ismael Flores Cervantes, Eric Jodts and Hanna Popick for their many contributions to this project.

Director of Race and Ethnicity Research Mark Hugo Lopez provided editorial guidance over the project, including the survey questionnaire, this report and related products. Jocelyn Kiley,

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The communications and outreach strategy for the report was led by Communications Manager Hannah Klein, with help from Communications Managers Tanya Ardit and Nida Asheer, and Communications Associates Mimi Cottingham, Julia O’Hanlon and Talia Price. The charts and illustrations were designed by Senior Information Graphics Designer Bill Webster.

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Find related reports online at www.pewresearch.org/AsianAmericans

Methodologies

This report draws on three surveys and a series of focus groups conducted by Pew Research Center between 2021 and 2023. These include a nationally representative survey of Asian American adults, two nationally representative surveys of U.S. adults, and a qualitative study of Asian Americans. Brief descriptions of and links to the methodologies for these studies are included below.

Survey of Asian adults, 2022-23: Asian Americans' views on affirmative action and factors in college admissions

A nationally representative survey of 7,006 self-identified Asian adults conducted online and by mail from July 5, 2022, to Jan. 27, 2023, for Pew Research Center by Westat. The survey was offered in six languages: Chinese (Simplified and Traditional), English, Hindi, Korean, Tagalog and Vietnamese. Asian respondents included those who identified as more than one race or as Hispanic. The sampling design of the survey was an address-based sampling (ABS) approach, supplemented by list samples, to reach a nationally representative group of respondents. After accounting for the complex sample design and loss of precision due to weighting, the margin of sampling error for these respondents is plus or minus 2.1 percentage points at the 95% level of confidence. Here is the [methodology](#) used for the survey of Asian Americans.

Survey of U.S. adults, 2022: U.S. adults' views on affirmative action and factors in college admissions

The second survey was conducted online among [5,132 U.S. adults from Dec. 5 to 11, 2022](#), using the Center's American Trends Panel. In this survey, the Asian sample is made up of 367 English-speaking Asian adults who reported being one race and were not Hispanic. This survey provided questions on knowledge and attitude toward affirmative action and views of factors in college admissions, identical to the questions in the 2022-2023 survey of Asian Americans. To learn more, read the [detailed methodology](#) of the American Trends Panel (ATP) and data from this study.

Survey of U.S. adults, 2023: U.S. adults' views of efforts to increase racial and ethnic diversity

The third survey was conducted online among [5,079 U.S. adults from March 27 to April 2, 2023](#), also using the Center's American Trends Panel. The survey interviewed 368 English-speaking Asian adults who reported being one race and were not Hispanic. Survey respondents were asked questions on attitudes toward efforts to increase racial and ethnic diversity in colleges and universities and the workplace. To learn more, read the [detailed methodology](#) of the American Trends Panel and data from this study.

Focus groups, 2021: Asian Americans' views on affirmative action

The Center also conducted 66 pre-survey online focus groups with Asian Americans from Aug. 4 to Oct. 14, 2021. The focus groups were designed to study the diverse experiences and perspectives of Asians living in the U.S. on a variety of topics including affirmative action. The focus groups had 264 recruited participants from 18 Asian origin groups. Discussions were conducted in 18 languages and moderated by members of an Asian origin group. Read the [methodology](#) of the 66 online focus groups of Asian Americans for more details.



A PORTRAIT OF ASIAN AMERICANS IN THE LAW 2.0

IDENTITY AND ACTION IN CHALLENGING TIMES

TYLER DANG · KATHERINE FANG · BENJI LU · MICHAEL TAYAG · GOODWIN LIU



AMERICAN BAR FOUNDATION
NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

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Republished in February 2023, with the modification of figure 12 and the addition of figure 15.

COVER IMAGES:

Judge Amul Thapar of the U.S. Court of Appeals for the Sixth Circuit and **Chief Judge Sri Srinivasan** of the U.S. Court of Appeals for the D.C. Circuit are among 47 Asian Americans serving as active federal judges in 2022, up from 25 in 2016. Photograph of Judge Thapar: Alicia Sachau / Notre Dame Law School.

Thai American survivors of human trafficking at a commemorative event at the Los Angeles United Methodist Museum of Social Justice in 2021, in honor of an exhibit telling the story of their case, the El Monte Thai Garment Slavery Case in California, two and a half decades after they were freed in 1995 with the assistance of several Asian American legal advocacy organizations. Their case led to the passage of the Victims of Trafficking and Violence Protection Act in 2000. Photographer: Curtis McElhinney / curtvision.com. © Thai Community Development Center.

Asian American protesters in 2014 in New York. The original image, which we cropped, was taken and posted online by Marcela McGreal at <https://flickr.com/photos/122896845@N07/15829179718> [<https://web.archive.org/web/20200310144828/https://flickr.com/photos/122896845@N07/15829179718>]. It is licensed under the Creative Commons Attribution 2.0 Generic license (<https://creativecommons.org/licenses/by/2.0/>).

Angela Hsu, Counsel at Bryan Cave Leighton Paisner, and **BJay Pak**, Partner at Alston & Bird and former U.S. Attorney for the Northern District of Georgia, are among the leaders of the Georgia Asian Pacific American Bar Association who created an AAPI Crime Victims and Education Fund in the wake of a 2021 mass shooting in Atlanta in which six of eight victims were Asian women.

Hong Yen Chang, the first Chinese American licensed to practice law in the United States. New York granted him a law license, but California denied his application in 1890. In 2015, the California Supreme Court voted unanimously to award him the license posthumously in *In re Hong Yen Chang*, 344 P.3d 288 (Cal. 2015).

Marie Oh Huber, Senior Vice President and Chief Legal Officer of eBay, is among the 45 Asian Americans serving as Fortune 1000 general counsel in 2020, up from 19 in 2009. She is also one of several general counsel supporting the Alliance for Asian American Justice, a nonprofit launched in 2021 to provide pro bono legal services to victims of anti-Asian hate.

Protests in 2017 in Washington, D.C., against an immigration ban.

DESIGN: Weiher Creative

A PORTRAIT OF ASIAN AMERICANS IN THE LAW 2.0

IDENTITY AND ACTION IN CHALLENGING TIMES

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Executive Summary

Five years ago, a novel study titled *A Portrait of Asian Americans in the Law* found that “Asian Americans have penetrated virtually every sector of the legal profession, but they are significantly underrepresented in the leadership ranks of law firms, government, and academia.”¹ Its key results were cited in a range of advocacy efforts, including before Congress, state bars, law firms, and leading companies. Since then, the Asian American community has been significantly affected by major events, including a disturbing rise in anti-Asian hate and violence. One in six Asian Americans reported experiencing a hate incident in 2021, up from one in eight in 2020.² The past five years have also seen a growing movement to address anti-Black racism as well as myriad challenges posed by a global pandemic.

Against this backdrop, we present *A Portrait of Asian Americans in the Law 2.0: Identity and Action in Challenging Times*. This study again canvasses Asian American attorneys for insights into law school enrollment, career advancement, and political participation. To these ends, we researched the literature on diversity in the legal profession, conducted our own survey of Asian American attorneys (2022 Survey), and led focus groups with Asian American lawyers to gain qualitative insights. Our key findings include the following:

Asian American attorneys indicated greater engagement with social and political issues, along with a desire to change and improve society.

- In contrast to five years ago, 2022 Survey respondents seeking to change practice settings ranked a desire to advance issues or values important to them among their most significant reasons for doing so. This was ranked among the least significant reasons five years ago.
- The second most common motivation for attending law school among 2022 Survey respondents was the desire to change or improve society, with 46% identifying it as one of their top three motivations. This motivation was identified more frequently than in the first Portrait Project survey (2016 Survey), where it was the fourth most common. Societal events since the previous survey may have influenced both recent law school graduates and more senior lawyers to foreground this motivation for attending law school.

1 ERIC CHUNG, SAMUEL DONG, XIAONAN APRIL HU, CHRISTINE KWON & GOODWIN LIU, *A PORTRAIT OF ASIAN AMERICANS IN THE LAW* (2017), <https://www.apaportraitproject.org> [hereinafter PORTRAIT PROJECT 2017].

2 Jennifer Lee & Karthick Ramakrishnan, *A Year After Atlanta*, AAPI DATA: DATA BITS (Mar. 16, 2022), <http://aapidata.com/blog/year-after-atlanta> [<https://perma.cc/UJF5-NQ2R>].

- Among 2022 Survey respondents, 44% reported having become more involved in Asian American bar associations or other attorney organizations in response to events of the last five years, and 47% reported having become more involved in Asian American community organizations. First-generation immigrants in particular have reported increasing their participation in public protests or other forms of advocacy by or for Asian Americans: 43% of first-generation immigrants have increased their participation, compared to 26% of all other generations of immigrants.
- Almost as many survey respondents increased their participation in public protests or other forms of advocacy for issues important to Black Americans (26%) as for issues important to Asian Americans (27%) in the past five years.

Underrepresentation of Asian Americans in the top ranks of the legal profession persists. But there has been notable progress in the appointment of federal judges and in the ranks of general counsel, and law school enrollment has rebounded somewhat from a 20-year low.

- After Asian American and Pacific Islander (AAPI) enrollment in law school declined during the Great Recession to a 20-year low in 2017, it increased by 14.5% from 2017 to 2021.
- The number of Asian American federal judges has increased over the past five years, comprising 6.0% of active federal judges compared to 3.4% in 2016.
- The proportion of law clerks who are Asian American has changed little over the past quarter century. In 1995, 6.4% of federal clerks and 4.5% of state clerks were Asian American. In 2021, those numbers were 5.8% for federal clerks and 6.3% for state clerks.
- In 2020, Asian Americans entered law firms upon graduating from law school at a higher rate than any other racial group, with 65.0% doing so. They entered government (7.5%), public interest (6.4%), and clerkships (7.2%) at the lowest rate of any racial group.
- Asian Americans continue to be the largest minority group at major law firms, but they continue to experience the highest attrition. They made up 7.8% of attorneys overall in 2019 but 10.4% of attorneys who left their firms that year. And they have the lowest ratio of partners to associates, as they did five years ago. Only 4.3% of equity partners at major firms in 2020 were Asian American; almost 90% were White.

- Only eight out of 2,396 elected prosecutors in the United States identified as Asian American in 2019, and only one Senate-confirmed U.S. Attorney identifies as Asian American.
- In 2020, there were 45 AAPI general counsel of Fortune 1000 companies, up from 19 in 2009.

Greater institutional support would likely reduce barriers to advancement and improve the professional lives of Asian American attorneys.

- As this study found five years ago, Asian Americans who had two or more mentors in law school were more likely to obtain a judicial clerkship. But one-third of 2022 Survey respondents indicated that they had no mentors in law school. Those who are the first in their families to attend law school were especially likely to report being unaware of the importance of mentorship to their careers.
- The obstacles to career advancement that 2022 Survey respondents identified most frequently remain the same as five years ago: a lack of formal leadership training programs, inadequate access to mentors and contacts, and a lack of recognition for their work.
- More 2022 Survey respondents, compared to 2016 Survey respondents, reported perceiving overt (41% versus 32%) and implicit (64% versus 58%) discrimination in the workplace because of their race.
- Almost 80% of 2022 Survey respondents reported experiencing anxiety since entering the legal profession, and 55% reported experiencing depression. Nearly half of the respondents who sought professional help for mental health problems reported skepticism about mental health providers' competency to address cultural needs.

In sum, Asian American attorneys reported greater engagement with social and political issues, including those concerning racial justice and equality, compared to five years ago. Altogether, our findings suggest that recent events have invigorated Asian American attorneys' commitment to racial justice, their sense of racial or ethnic identity, and their determination to protect our communities. Further, Asian American enrollment in law school has rebounded since 2017, and more federal judges and Fortune 1000 general counsel today are Asian American. But Asian Americans remain underrepresented in clerkships and in leadership positions in law firms, state judiciaries, and other public and private sector arenas. They are grossly underrepresented among top prosecutors at the local, state, and federal levels. Our study also draws attention to the lack of access to institutional resources and support that can help Asian American attorneys bridge those disparities.

Acknowledgments

We express our deep gratitude to Ajay Mehrotra (Northwestern University and American Bar Foundation) and Shih-Chun Steven Chien (Cleveland-Marshall College of Law and American Bar Foundation) for their unwavering support and guidance at every stage of Portrait Project 2.0. In addition to marshaling and administering the resources necessary to bring this project to fruition, they provided countless hours of insight and counsel that made our research questions sharper and the final report clearer and more robust.

We thank Priya Purandare, Maureen Gelwicks, and Mary Tablante (National Asian Pacific American Bar Association) for their support and collaboration, especially on the 2022 Survey and the dissemination of this report. We also thank Mona Shah (South Asian Bar Association), Ann A. Nguyen (National Conference of Vietnamese American Attorneys), Panida Pollawit (Thai American Bar Association), Danielle Taylor (National Association for Law Placement), Noelle Smith, Bob Nelson, Bryant Garth, Joyce Sterling, Stephen Daniels, Meghan Dawe (American Bar Foundation), and Meera E. Deo (Southwestern Law School) for their invaluable assistance with outreach, data collection, and project coordination. We owe immense gratitude to our graphic designer Amy Weiher for expertise, vision, and patience; she transformed our ideas into a report of which we can be proud. For help gathering our cover images, we thank Panida Rzonca (Thai Community Development Center), Kevin Allen (Notre Dame Law School), and Tim Tai (Yale Law School). Finally, we thank Yale Law School, Ian Ayres, Darcy Smith, and all the colleagues and friends who supported us in conducting focus group sessions, administering our survey, and writing the report.

The Portrait Project received generous support from the American Bar Foundation, National Asian Pacific American Bar Association, the Oscar M. Ruebhausen Fund and Dean Heather Gerken at Yale Law School, and Northwestern University Pritzker School of Law. The project also received financial support from the Asian American Bar Association—Bay Area, Asian American Bar Association of New York, Asian American Law Fund of New York, Asian Pacific American Bar Association—Silicon Valley, Arnold & Porter, Davis Polk, Davis Wright Tremaine, Haynes & Boone, Latham & Watkins, Silvia Chin, Carol F. Lee, and an anonymous donor.

This project was reviewed and approved by the Institutional Review Board at Yale University (IRB 2000031286) and the American Bar Foundation.

Background and Purpose

Over the past four decades, Asian Americans have dramatically increased their presence in the legal profession. In 1983, there were around 2,000 Asian American and Pacific Islander (AAPI)³ students enrolled across all law schools accredited by the American Bar Association (ABA), comprising less than 2% of total enrollment.⁴ By the mid-2000s, AAPI enrollment had increased more than fivefold to over 11,000 students, comprising about 8% of total enrollment.⁵

Since 2000, the number of Asian American lawyers has correspondingly grown from 20,000 to about 51,000 as of 2021, comprising 4.7% of all lawyers nationwide.⁶

Since 2010, however, law school enrollment has declined, and it has declined the most among Asian Americans. Based on data from the ABA, whereas total first-year enrollment decreased by 19.9% from 2011 to 2019, Asian American first-year enrollment decreased by 27.8% during that period, the largest decline of any racial or ethnic group.⁷

In 2017, we published *A Portrait of Asian Americans in the Law* (Portrait Project 1.0), the first comprehensive study of the career paths of Asian American law students and lawyers. This five-year follow-up study generates and compiles updated data in an effort to provide an ongoing resource for lawyers, policymakers, researchers, and advocates to understand how Asian Americans are situated in the legal profession.

3 The United States Census Bureau collects data for the following ethnic groups within the Asian diaspora: Asian Indian; Bangladeshi; Bhutanese; Burmese; Cambodian; Chinese, except Taiwanese; Filipino; Hmong; Indonesian; Japanese; Korean; Laotian; Malaysian; Mongolian; Nepalese; Okinawan; Pakistani; Sri Lankan; Taiwanese; Thai; Vietnamese; Other Asian, specified; Other Asian, not specified; and Two or more Asian. U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES DETAILED TABLES tbl.B02015 (2020), <https://data.census.gov/cedsci/table?q=%3DACSDT5Y2020.B02015>. It collects data for the following ethnic subgroups under the Native Hawaiian and Other Pacific Islander umbrella: Native Hawaiian; Samoan; Tongan; Other Polynesian; Chamorro; Marshallese; Other Micronesian; Fijian; Other Melanesian; and Other Pacific Islander, not specified. *Id.* tbl.B02019, <https://data.census.gov/cedsci/table?q=pacific%20islander&tid=ACSDT5Y2020.B02019>.

4 For student enrollment data between 1971 and 2010, we used aggregate annual data provided by the American Bar Association. See PORTRAIT PROJECT 2017, *supra* note 1, at 4 (citing *Asian or Pacific Islander J.D. Enrollment 1971–2010*, AM. BAR ASS'N., http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_12.authcheckdam.pdf; *First Year and Total J.D. Enrollment by Gender 1947–2011*, AM. BAR ASS'N., https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf). For student enrollment data between 2011 and 2021, we aggregated annual data provided by ABA-required Standard 509 disclosures from each law school. See *Section of Legal Education—ABA Required Disclosures*, AM. BAR ASS'N. (last visited Aug. 16, 2022), <https://www.abarequireddisclosures.org/Disclosure509.aspx>.

5 *Asian or Pacific Islander J.D. Enrollment 1971–2010*, *supra* note 4.

6 U.S. BUREAU OF LAB. STAT., EMPLOYED PERSONS BY DETAILED OCCUPATION, SEX, RACE, AND HISPANIC OR LATINO ETHNICITY (2021), <http://www.bls.gov/cps/cpsaat11.htm> [<https://perma.cc/N3M7-48WG>].

7 Miranda Li, Phillip Yao & Goodwin Liu, *Who's Going to Law School? Trends in Law School Enrollment Since the Great Recession*, 54 U.C. DAVIS L. REV. 613, 639 fig.13 (2020).

In this new report, Portrait Project 2.0, we continue to examine the career paths of Asian American lawyers, with a particular emphasis on their behaviors, commitments, sense of identity, and well-being during a period marked by dramatic societal changes. We aim to provide an empirical grounding for broader conversation within and beyond the Asian American community about the challenges and opportunities Asian Americans face in the legal profession and possible directions for reform.

Methodology

Like Portrait Project 1.0, our study comprises three main components.

First, we synthesized an array of literature on Asian Americans and diversity in law schools and the legal profession. We also collected original data through requests to government agencies and other organizations. This wide-ranging effort enabled us to assemble comprehensive statistics on Asian American enrollment in law schools and participation in various sectors of the legal profession.

Second, we conducted 11 focus groups with 70 Asian American attorneys. These sessions took place in person at the December 2021 convention of the National Asian Pacific American Bar Association (NAPABA) in Washington, D.C., as well as via Zoom video conferences in partnership with the National Conference of Vietnamese American Attorneys (NCVAA).⁸ We organized the NAPABA focus groups by practice setting (large law firms, corporate counsel, government, and public interest), ethnicity (mixed groups, Korean, and South Asian), gender, and seniority, with six to eight participants in each group. The focus groups, each lasting one hour, used a standard script to canvass attorneys' experiences with race, identity, and activism over the past five years; their perceptions of the workplace, including obstacles to professional advancement and discrimination; and their mental health. Through the focus groups, we gained qualitative insights that guided our construction of a survey instrument and informed our quantitative findings.

Third, we created and disseminated a 92-item survey (2022 Survey) through NAPABA and affiliated networks, including the NCVAA and the National Filipino American Lawyers Association, and the South Asian Bar Association of North America, to collect information from a broader population of Asian American lawyers. From each respondent, the survey gathered data on demographics, political participation, law school experiences, career choices and experiences in the legal profession, future aspirations, identity in the workplace, mental health, and current events.

⁸ In our efforts to learn more about how different ethnic groups within the broader Asian American legal community might differ in their responses, we solicited feedback from a variety of affinity bar organizations. The NCVAA was able to accommodate our request for a Zoom focus group.

Throughout this report, we include anonymous quotes from focus group participants and from open-ended survey questions to provide greater texture to the data. Quotes have been edited for clarity.

Our survey garnered responses from a broad cross-section of Asian American lawyers.

We received completed surveys from 705 respondents⁹ with the following characteristics:

- 61% identify as women, 39% identify as men, and less than 1% identify as another gender identity;¹⁰
- 5% were under 30, 30% were 30-39, 33% were 40-49, 17% were 50-59, and 15% were 60 or older;
- 5% were born outside the United States and immigrated after high school, 28% were born outside the United States and immigrated before graduating from high school, 51% were born in the United States to immigrant parents, 8% were born in the United States to U.S.-born parents and had immigrant grandparents, and 7% were born in the United States with grandparents (and possibly earlier generations) born in the United States;
- 42% Chinese, 20% Korean, 11% Japanese, 9% Filipino, 10% Taiwanese, 7% Indian, 5% Vietnamese, and 5% other ethnicities;
- 23% with neither parent having a bachelor's degree, 21% with both parents having a graduate degree, and 5% with at least one parent having a law degree;
- 70% Democrat, 6% Republican, 10% Independent, 11% with no political party registration, and 3% declining to identify their political party registration;
- 43% in law firm or solo practice, 20% in government (including judges and prosecutors), 18% corporate counsel, 7% in nonprofit or public interest, and 2% in academia.

9 We filtered out responses that did not match our criteria for inclusion. For example, respondents who indicated they were not Asian American were not included in our analysis.

10 When disaggregating 2022 Survey results by gender, we summarize the responses of the four respondents who identified as another gender identity in writing instead of graphically because of the small sample size.

Most of our respondents live in California (36%) or New York (16%). The next most frequently reported places of residence were New Jersey, Texas, Illinois, Georgia, Washington, Virginia, the District of Columbia, and Maryland.

In our findings, we compare data from the first Portrait Project survey (2016 Survey) with data from the 2022 Survey. The surveys are cross-sectional, and the demographic characteristics of 2022 respondents are similar to those of 2016 respondents. One notable difference is that nearly 32% of 2022 Survey respondents are age 50 or above, compared to 19% of 2016 Survey respondents.

MAJOR FINDINGS

Law School

Asian American enrollment declined steeply after the Great Recession and remains far below historical highs, though it has rebounded in recent years.

From the early 1970s to the early 2010s, the enrollment of Asian Americans in law school increased more than the enrollment of any other racial or ethnic group.¹¹ Asians were the fastest-growing group in law school from 1999 to 2009, with enrollment increasing by 43% over that period. By comparison, Hispanic enrollment grew 35%, Black enrollment grew 10%, and White enrollment grew 3% over the same period.^{12, 13} But the most recent decade has seen a decline in the enrollment of all groups except Hispanic students and individuals identifying with two or more races. In particular, the total enrollment of Asian Americans declined by 23.5% from 2011 to 2021.¹⁴

11 PORTRAIT PROJECT 2017, *supra* note 1, at 2.

12 Li, Yao & Liu, *supra* note 7, at 625. Throughout this report, we identify racial or ethnic groups according to the terms used by the underlying data source. We recognize that such terms are contested; for example, the term “Hispanic” is not without critics. Compare David Gonzalez, *What’s the Problem with ‘Hispanic’? Just ask a ‘Latino’*, N.Y. TIMES (Nov. 15, 1992), <https://www.nytimes.com/1992/11/15/weekinreview/ideas-trends-what-s-the-problem-with-hispanic-just-ask-a-latino.html> [<https://perma.cc/DK3U-RKHC>] with Luis Noe-Bustamante, Lauren Mora & Mark Hugo Lopez, *About One-in-Four U.S. Hispanics Have Heard of Latinx, but Just 3% Use It*, PEW RSCH. CTR. (Aug. 11, 2020), <https://www.pewresearch.org/hispanic/2020/08/11/about-one-in-four-u-s-hispanics-have-heard-of-latinx-but-just-3-use-it/> [<https://perma.cc/VYY4-SD2T>].

13 Figures for American Indians and Alaska Natives are reported in few instances in this report due to limited data. We highlight the need to recognize and collect more data on these important peoples. See generally Kimberly R. Huyser & Sofia Locklear, *Reversing Statistical Erasure of Indigenous Peoples: The Social Construction of American Indians and Alaska Natives in the United States Using National Data Sets*, in MAGGIE WALTER ET AL., THE OXFORD HANDBOOK OF INDIGENOUS SOCIOLOGY (2021), <https://doi.org/10.1093/oxfordhb/9780197528778.013.34> [<https://perma.cc/G785-MRBV>]; Aggie J. Yellow Horse & Kimberly R. Huyser, *Indigenous Data Sovereignty and COVID-19 Data Issues for American Indian and Alaska Native Tribes and Populations*, J. POPULATION RSCH. (2021), <https://doi.org/10.1007/s12546-021-09261-5> [<https://perma.cc/VKR9-R99B>].

14 *Section of Legal Education—ABA Required Disclosures*, *supra* note 4. Since 2011, the ABA’s 509 Information Reports have employed the following nine race and ethnicity categories: “Hispanics of any race,” “American Indian or Alaska Native,” “Asian,” “Black or African American,” “Native Hawaiian or Other Pacific Islander,” “Two or more races,” “Nonresident alien,” “Race/Ethnicity Unknown,” and “White.” Under the ABA’s method of non-overlapping reporting, if a student selects “Nonresident alien,” that student is reported as “Nonresident alien” regardless of any other categories selected. Then, if a student selects “Hispanic,” that student is reported as “Hispanic” regardless of any other categories selected. And then, if a student selects two or more categories, that student is reported as “Two or more races.” Under this methodology, the term “Asian” is largely synonymous with “Asian American,” although it omits Asian Americans who identify as Hispanic or who identify with more than one race. Further, because the ABA’s Standard 509 Information Reports before 2011 used the category “Asian” without a separate category for Native Hawaiians or Pacific Islanders, from 2011 onward we combine the counts of “Asian” and “Native Hawaiian or Other Pacific Islander” within the category “Asian” in order to enhance comparability across years.

In 2017 there were 6,834 Asian Americans enrolled in law school—the lowest number in more than 20 years.¹⁵ A recent study examining enrollment trends from 1999 to 2019 (Enrollment Study) concluded that, as of 2019, Asian American enrollment had declined more steeply following the Great Recession than that of any other racial or ethnic group.¹⁶ It suggested two possible reasons: First, concerns about future earnings may have caused Asian Americans, more so than other groups, to turn away from law.¹⁷ Second, the recession may have disproportionately narrowed the pool of Asian Americans considering law school. Economic stress may have motivated a greater share of students to decide on their career paths during or before college; if so, this would have disproportionately reduced the number of Asian Americans considering law school because a higher share of Asians, compared to other groups, do not consider law school until after college.¹⁸

The Enrollment Study examined data gathered by the American Association of Law Schools (AALS). AALS’s survey of college students from 2017 showed “clear indications that Asian undergraduates express less interest in law school than other groups.”¹⁹ The survey asked undergraduates considering law for the top three factors that might prevent them from going to law school. In response, Asian undergraduates were more likely than other groups to indicate that “[t]oo few jobs in th[e] field pay enough money.”²⁰ They were also more likely to see “[l]ittle advancement opportunity in the field” as a top factor preventing them from going to law school.²¹

Further, data from AALS’s survey of 2,727 first-year law students in 2017 showed that Asians were more likely than other groups to first consider going to law school after college and less likely to first consider law school before college.²² Asian undergraduates, to a greater degree than those of other groups, rated “[w]hether my family thinks it would be a good choice” as an

15 *Id.*

16 Li, Yao & Liu, *supra* note 7, at 635.

17 *Id.* at 647.

18 *Id.*

19 *Id.* at 644 (citing ASS’N OF AM. L. SCHS., BEFORE THE JD: UNDERGRADUATE VIEWS ON LAW SCHOOL 24 fig.1.1, 25, 27 tbl.1.2 (2018) [hereinafter BEFORE THE JD]). The AALS study did not distinguish between foreign nationals and U.S. citizens or permanent residents, so the law review article used the term “Asian” instead of “Asian American” in discussing the study’s findings.

20 BEFORE THE JD, *supra* note 19, at 50 fig.6.2 (reporting that among undergraduates considering law, 25% of Asians, 14% of Blacks, 18% of Hispanics, 16% of Whites, and 17% overall selected “[t]oo few jobs in this field pay enough money”).

21 *Id.* (reporting that among undergraduates considering law, 18% of Asians, 14% of Blacks, 10% of Hispanics, 9% of Whites, and 10% overall selected “[l]ittle advancement opportunity in the field/takes too long to move up”).

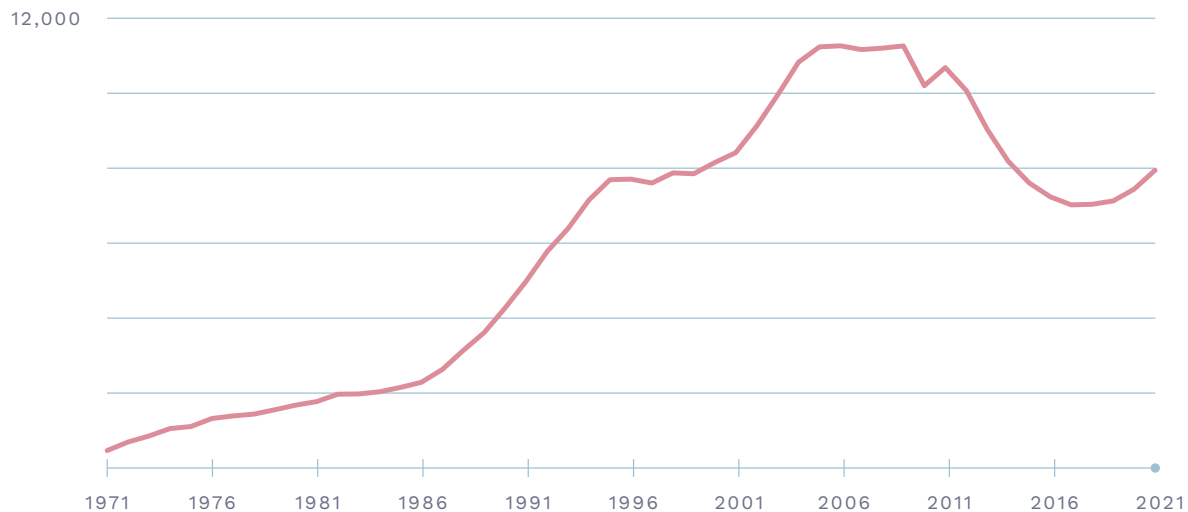
22 *Id.* at 32 fig.2.1, 108 tbl.A2.1 (reporting that 28% of Asians first considered law school after college, compared to 16% of law students overall, and that only 45% of Asians first considered law school before college, compared to well over half of law students overall and more than two-thirds of Black students).

important factor in their career selection.²³ Based on this data, the Enrollment Study concluded that the lack of familiarity with legal careers or the American legal system among family members may partly explain why Asians are significantly less likely than peers of other racial groups to consider law school before college.²⁴

Since the Enrollment Study, total Asian American enrollment has increased by 14.5% from 2017 to 2021.²⁵ During the same period, Asian American first-year enrollment increased from a 23-year low of 2,478 in 2017 to 2,906 in 2021.²⁶ Figure 1 shows total AAPI JD enrollment over the past four decades. It remains to be seen whether the recent uptick in Asian American enrollment will be sustained and to what extent it will result in net increases in the number of Asian American lawyers as ever-larger cohorts of Asian American lawyers retire.

Figure 1.
Asian or Pacific Islander JD Enrollment, 1971–2021

SOURCE: American Bar Association



Asian Americans remain disproportionately enrolled in higher-ranked schools.

In 2021, 36% of Asian American law students were enrolled in the top quintile of schools (the top 30 schools) ranked by U.S. News & World Report, compared to 22% of Black students,

23 *Id.* at 30 fig.1.3 (reporting that among undergraduates surveyed, 51% of Asians, 43% of Blacks, 36% of Hispanics, and 37% of Whites rated “[w]hether my family thinks it would be a good choice” as an extremely or somewhat important factor in selecting a career).

24 Li, Yao & Liu, *supra* note 7, at 646.

25 *Section of Legal Education—ABA Required Disclosures*, *supra* note 4.

26 *Id.*

18% of Latinx students, and 24% of White students. Over half of Asian American law students in 2021 attended a law school in the top two quintiles.²⁷

Figure 2.
Minority Percentage of Total JD Enrollment by Tier, 2021

SOURCE: American Bar Association; *U.S. News & World Report*

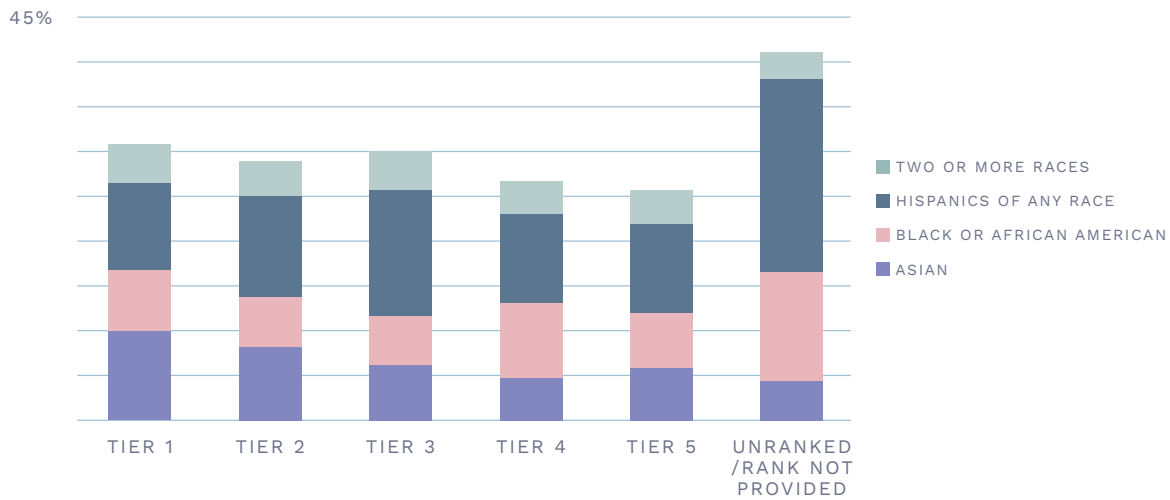
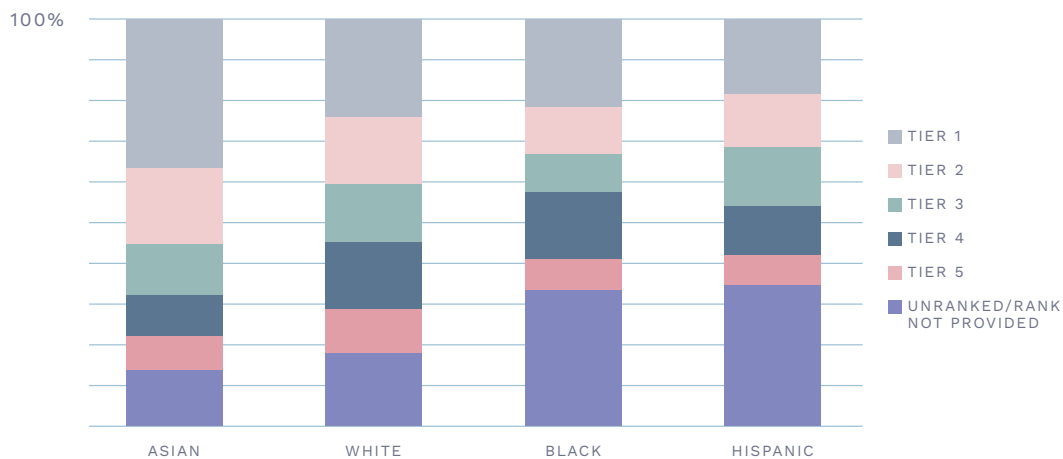


Figure 3.
Distribution of Each Racial or Ethnic Group Across Tiers, 2021

SOURCE: American Bar Association; *U.S. News & World Report*



²⁷ We derived these figures by compiling and tabulating data from the ABA’s 509 Information Reports and grouping law schools according to the *U.S. News & World Report’s* 2021 rankings.

Compared to 2016 Survey respondents, more 2022 Survey respondents reported that one of their primary motivations for attending law school was to change or improve society. Relatively few reported that one of their primary motivations for attending law school was to gain a pathway into government or politics, although that number has also increased compared to the 2016 Survey.

The motivations for attending law school that 2022 Survey respondents ranked as most influential were to develop a satisfying career (first), to change or improve society (second), and intellectual challenge (third).

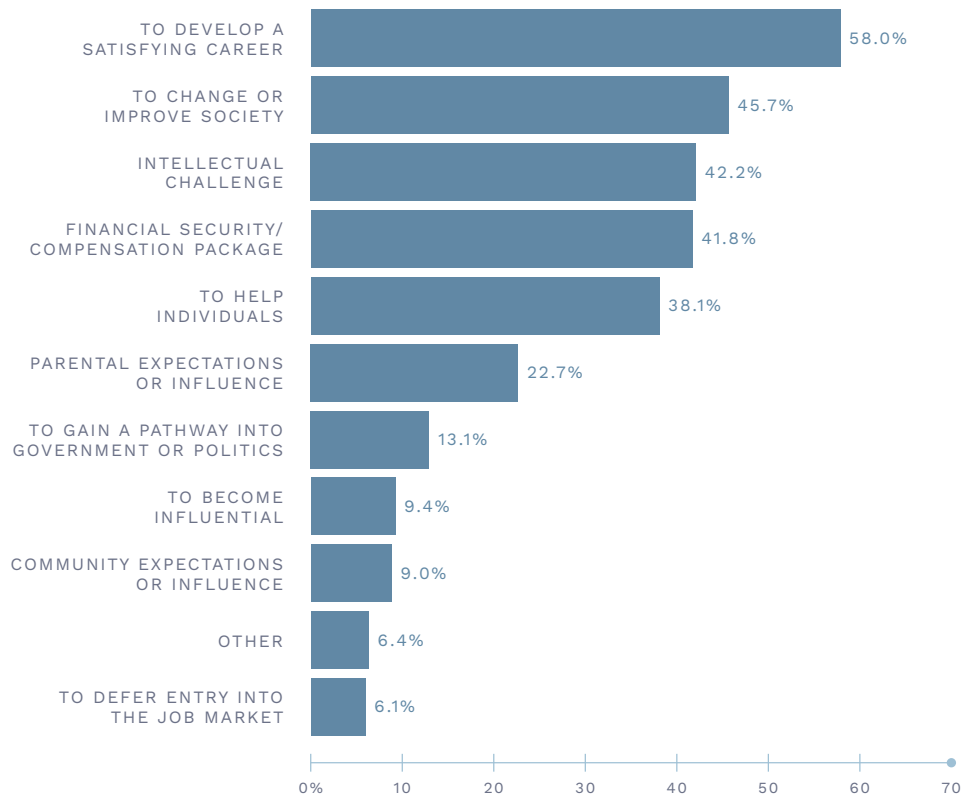
Notably, whereas the desire to change or improve society was the fourth most common motivation among 2016 Survey respondents,²⁸ it was the second most common among 2022 Survey respondents, with 46% identifying it among their top three motivations. Meanwhile, only 13% of 2022 Survey respondents indicated that one of their top three motivations was to gain a pathway into government or politics, although this figure is much higher than the 5% of 2016 Survey respondents who indicated the same. Only 9% of 2022 Survey respondents said one of their top three motivations for attending law school was to become influential.

28 See PORTRAIT PROJECT 2017, *supra* note 1, at 11.

Figure 4.**Top Three Reasons for Attending Law School**

Respondents were asked to rank how significant each of the 10 listed factors was in motivating their decision to attend law school. This figure shows how many respondents ranked each factor as one of their top three motivations for choosing law school.

SOURCE: 2022 Portrait Project Survey



Because the 2022 Survey respondents are older on average than the 2016 Survey respondents—only 5% of 2022 Survey respondents are under 30, compared to 11% of 2016 Survey respondents—it seems unlikely that these changes in motivation are being driven by young attorneys who went to law school during the past five years. Societal events since 2016, including the pandemic and the rise of reported anti-Asian hate incidents, may have influenced the most recent law school graduates to attend law school as a means to improve or change

society.²⁹ But recent events may also have caused more senior lawyers to reassess their motivations for attending law school in retrospect. It is also possible that in 2022, compared to 2016, attorneys who went to law school to change or improve society were more inclined to complete our survey.

In any event, these results remain consistent with *After the JD*'s findings that Asians were less likely than other groups to indicate that an important reason they attended law school was to become influential, and that Asians were far less likely than other groups to have considered politics as an alternative to a legal career.³⁰ Only 14% of Asian respondents in the *After the JD* study on race and ethnicity considered politics as an alternative career to law, compared to 34% of Whites, 32% of Blacks, and 27% of Hispanics.³¹ Likewise, 34% of the Asian undergraduates who took AALS's Before the JD survey said that gaining a pathway to a career in politics, government, or public service was a top reason for attending law school, compared to 34% of Black students, 42% of Hispanic students, and 46% of White students.³²

We find it notable that although relatively few Asian Americans are motivated to pursue law in order to enter government or politics or to become influential, 46% of 2022 Survey respondents said a key reason they went to law school was to change or improve society. This suggests that Asian American lawyers may seek to change or improve society through avenues such as public interest work, pro bono services, community activism, policy advocacy, or participation in professional associations, rather than government service or politics.

29 In an email to the authors on October 16, 2022, Shih-Chun Steven Chien and Stephen Daniels kindly shared as yet unpublished data on AAPI law students from their ongoing research on law students' motivations for attending law school. They found a relatively stable pattern between 2010 and 2021. The motivations of "having a challenging and rewarding career" and "furthering academic development" remained the most influential motivations, followed by financial security. Notably, their data suggest that the motivation to contribute to the public good was significantly more influential in 2021. They also found that the increased influence of this motivation was most dramatic among Asian American students. See also Shih-Chun Steven Chien & Stephen Daniels, *Who Wants to be a Prosecutor? And Why Care? Law Students' Career Aspirations and Reform Prosecutors' Goals*, 65 *How. L.J.* 173, 194-202 (2021); Stephen Daniels & Shih-Chun Steven Chien, *Beyond Enrollment: Why Motivations Matter to the Study of Legal Education and the Legal Profession*, LSSSE GUEST BLOG (Sept. 24, 2020), <https://lsse.indiana.edu/blog/guest-post-beyond-enrollment-why-motivations-matter/> [<https://perma.cc/8MJC-FZD9>]; Stephen Daniels & Shih-Chun Steven Chien, *Why Motivations Matter Revisited: More So Now*, LSSSE GUEST BLOG (Dec. 21, 2021), <https://lsse.indiana.edu/blog/guest-post-why-motivations-matter-revisited/> [<https://perma.cc/N8CR-B5NU>].

30 *After the JD* is a longitudinal study examining the first 10 years of law graduates' careers. Its national sample of nearly 4,000 lawyers admitted to the bar in 2000 was intended to be representative of the national population of new lawyers. The sample includes more than 200 Asian Americans. See RONIT DINOVTIZER ET AL., NALP FOUND. FOR L. CAREER RSCH. & EDUC. & AM. BAR FOUND., *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* 21 tbl.2.1 (2004); RONIT DINOVTIZER ET AL., NALP FOUND. FOR L. CAREER RSCH. & EDUC. & AM. BAR FOUND., *AFTER THE JD: SECOND RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* 19 tbl.2.1 (2009) [hereinafter *AJD II*]; RONIT DINOVTIZER ET AL., NALP FOUND. FOR L. CAREER RSCH. & EDUC. & AM. BAR FOUND., *AFTER THE JD: THIRD RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* 21 tbl.2.1 (2014) [hereinafter *AJD III*].

31 GITA Z. WILDER, NALP FOUND. FOR L. CAREER RSCH. & EDUC. & NAT'L ASS'N FOR L. PLACEMENT, RACE AND ETHNICITY IN THE LEGAL PROFESSION: FINDINGS FROM THE FIRST WAVE OF THE AFTER THE JD STUDY 52 tbl.30 (2008).

32 BEFORE THE JD, *supra* note 19, at 45 fig.5.2.

MAJOR FINDINGS

Clerkships and Mentorship

The percentage of Asian Americans serving as judicial clerks has changed little over the past quarter century.

In 1995, Asian Americans comprised 6.4% of federal clerks and 4.5% of state clerks. Over 25 years later, in 2021, Asian Americans comprised 5.8% of federal clerks and 6.3% of state clerks.³³ By comparison, Black/African American law graduates made up 5.5% of federal clerks and 5.4% of state clerks in 1995, compared to 5.2% of federal clerks and 6.2% of state clerks in 2021. Hispanic/Latinx law graduates comprised 3.4% of federal clerks and 2.1% of state clerks in 1995, compared to 5.5% of federal clerks and 8.6% of state clerks in 2021.³⁴

Figures 5 and 6 show the proportion of federal and state clerks identifying as AAPI, Black/African American, and Hispanic/Latinx. It includes data for the odd-numbered years between 1993 and 2011 and for every year thereafter.

33 The National Association for Law Placement (NALP) publicly reports data disaggregated by race/ethnicity for some years. *See, e.g., Increasing Diversity of Law School Graduates Not Reflected Among Judicial Clerks*, NAT'L ASS'N FOR L. PLACEMENT: NALP BULL. (Sept. 2014), <https://www.nalp.org/0914research> [<https://perma.cc/QA8H-8DF5>]; *A Demographic Profile of Judicial Clerks - 2006 to 2016*, NAT'L ASS'N FOR L. PLACEMENT: NALP BULL. (Oct. 2017), <https://www.nalp.org/1017research> [<https://perma.cc/SMA2-XS9M>]; *Racial/Ethnic Representation of Class of 2019 Judicial Clerks*, NAT'L ASS'N FOR L. PLACEMENT: NALP BULL. (Feb. 2021), <https://www.nalp.org/0221research> [<https://perma.cc/V5BW-64A4>]; *Judicial Clerks Remain Less Diverse than Law Graduates Overall*, NAT'L ASS'N FOR L. PLACEMENT: NALP BULL. (Oct. 2022), <https://www.nalp.org/1022research> [<https://perma.cc/F8R8-ZUTC>]. NALP provided data for the remaining years upon request.

34 *See id.*

Figure 5.
Minority Law Clerks in Federal Courts, 1993–2021

SOURCE: National Association for Law Placement

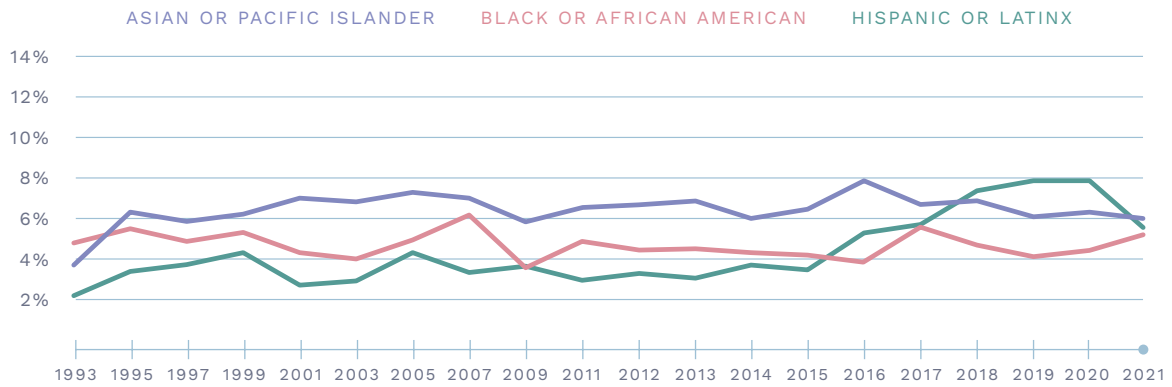
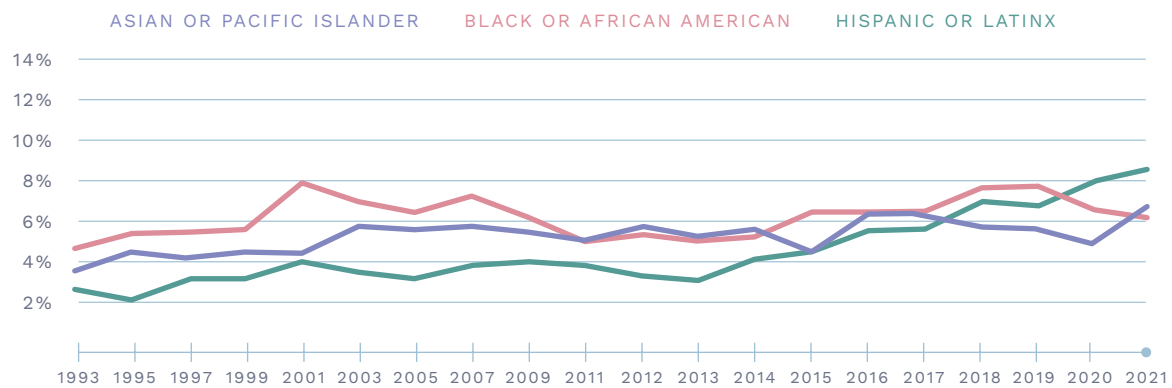


Figure 6.
Minority Law Clerks in State Courts, 1993–2021

SOURCE: National Association for Law Placement



The share of federal judicial law clerks from minority groups remains markedly lower than the share of minority graduates from top schools.

Figures 7 and 8 compare minority groups’ enrollment at the top 30 law schools with their attainment of judicial clerkships, in 2021 and historically.³⁵

Figure 7.
Top-30 Law School Graduates and Judicial Clerkships, 2021

SOURCE: American Bar Association; National Association for Law Placement; *U.S. News & World Report*

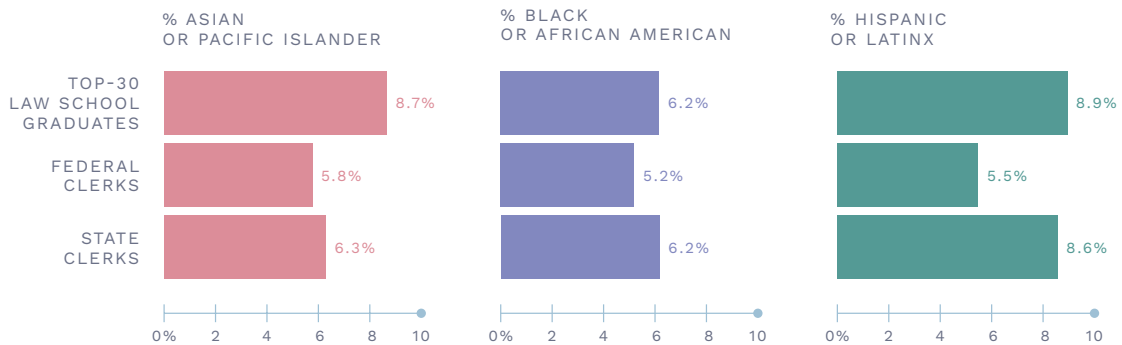
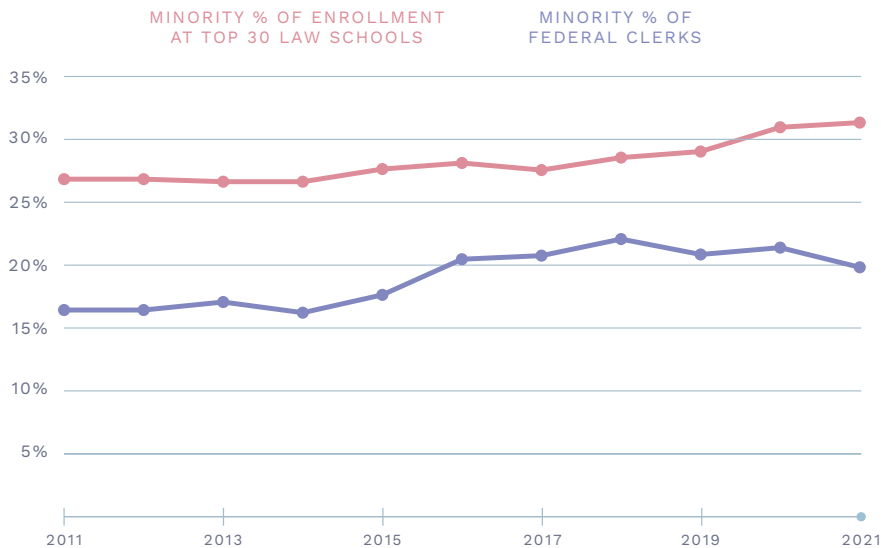


Figure 8.
Minority Enrollment at Top 30 Law Schools of Respective Year vs. Percentage of Federal Clerks, 2011–21

SOURCE: American Bar Association; National Association for Law Placement; *U.S. News & World Report*



35 To compare with 2015 data, see PORTRAIT PROJECT 2017, *supra* note 1, at 13 fig.6.

Interest in pursuing clerkships varies by race, socioeconomic status, and gender.

A recent study interpreting data from the Law Student Survey of Student Engagement (LSSSE) lists four observations about students' views on clerkships.

- First, judicial clerkships are frequently more of an aspirational (rather than expected) career goal for almost all respondents, including those with strong academic records.³⁶
- Second, student preferences for and expectations of clerkships vary considerably by race.³⁷ In the LSSSE survey, students were asked to identify the setting in which they would most prefer to work after graduation and the setting in which they most expected to work.³⁸ As both 1Ls and 3Ls, White students overwhelmingly preferred clerkships at a higher rate than their Asian American, Latinx, and Black classmates.³⁹ Underrepresented minority groups generally become increasingly interested in clerkships during the course of law school, with Asian Americans reporting the greatest overall growth in their preferences for clerkships—an increase of 3.24 percentage points, compared to 1.76 for Black students, 1.20 for Latinx students, and 1.94 for White students.⁴⁰
- Third, students from higher socioeconomic backgrounds, based on parents' educational backgrounds and educational debt levels, appear to prefer clerkships at higher rates than their counterparts.⁴¹
- Fourth, women generally prefer clerkships more than men do. Women have made up roughly half of all judicial clerks (state and federal) since at least 2006, reflecting their representation among law graduates but not their greater preference for clerkships.⁴² But historically, fewer women than men have secured federal clerkships.⁴³ And Latina women

36 Shih-Chun Steven Chien, Ajay K. Mehrotra & Xiangnong Wang, *Sociolegal Research, the Law Student Survey of Student Engagement, and Studying Diversity in Judicial Clerkships*, 69 J.L. EDUC. 530, 544 (2020) (citing IND. UNIV. CTR. FOR POSTSECONDARY RSCH., ANNUAL SURVEY RESULTS: PREFERENCES & EXPECTATIONS FOR FUTURE EMPLOYMENT 8 (2017), <https://lssse.indiana.edu/wp-content/uploads/2015/12/2017-Annual-Survey-Results.pdf> [<https://perma.cc/Z8VG-Q8KJ>]).

37 *Id.*

38 *Id.* at 543 n.60.

39 *Id.* at 544.

40 *Id.* at 550 fig.5.

41 *Id.* at 544, 555-59.

42 *Id.* at 544, 552.

43 *Id.* at 540; see also Alex Badas & Katelyn E. Stauffer, *Gender and Ambition Among Potential Law Clerks*, J.L. & CTS. (forthcoming) (manuscript at 11), <https://www.alexbadas.com/uploads/6/7/8/2/67829045/badasstaufferjlcgenderambition.pdf> (finding that among women and men with the same self-reported levels of qualification and encouragement, women are less likely to apply for federal circuit court and Supreme Court clerkships, but similarly likely to apply for federal district court and state court clerkships).

were the only group in the class of 2019 data that showed a decline in preference for clerkships between their 1L and 3L years.⁴⁴

More recent data show that the underrepresentation of women in federal clerkships persists. In 2021, women made up 53.2% of law graduates but secured 48.4% of federal clerkships.⁴⁵

The likelihood of clerking is positively associated with having mentors in law school.

In our 2022 Survey, 30% of respondents who had more than two mentors in law school obtained a state or federal clerkship, compared to 25% of respondents with one or two mentors and 12% of respondents who had no mentors. Whereas 8% of respondents with more than two mentors obtained a federal appellate clerkship, the same was true of 6% of respondents with one or two mentors and 1% of respondents who had no mentors. The 2016 Survey similarly showed a positive correlation between the number of mentors and the likelihood of clerking.⁴⁶

It is not clear from these data whether mentoring increases the likelihood of obtaining a clerkship or whether students who seek mentors are better clerkship candidates. Both may be true. It is possible that students who find more than two mentors are especially strong clerkship candidates, and it is also possible that a multiplicity of mentors increases the likelihood of obtaining a clerkship. More research is needed to distinguish these hypotheses and their relative influence on outcomes.⁴⁷

While most respondents were somewhat or very satisfied with their mentorship experiences during law school, some noted difficulties identifying and developing relationships with mentors.

Among 2022 Survey respondents who reported the number of mentors they had in law school, 33% indicated they had no mentors at all. Among respondents who provided written explanations of their mentorship experience, many reported that it was or would have been

44 Chien, Mehrotra & Wang, *supra* note 36, at 553-54.

45 *Judicial Clerks Remain Less Diverse than Law Graduates Overall*, *supra* note 33.

46 PORTRAIT PROJECT 2017, *supra* note 1, at 14.

47 Access to mentoring opportunities also warrants further study in light of evidence that faculty may be less responsive to mentoring requests from female students and minority students, and especially from Asian students. *See generally* Katherine L. Milkman, Modupe Akinola & Dolly Chugh, *What Happens Before? A Field Experiment Exploring How Pay and Representation Differentially Shape Bias on the Pathway into Organizations*, 6 J. APPLIED PSYCH. 1678 (2015).

more helpful to develop relationships with mentors of similar identities or backgrounds. Respondents reported difficulty in obtaining such mentors due to the compositions of their law school faculties and the small number of Asian Americans in the legal profession generally, especially in earlier decades. Respondents who were the first in their families to attend college or law school were especially likely to report not knowing as law students about the importance of mentorship in their future careers.

Despite these challenges, over half of 2022 Survey respondents indicated they were either somewhat or very satisfied with mentorship in law school. Among those who successfully found mentors, whether in law school or in their careers after graduation, many reported great benefit from those relationships. It is also possible that respondents had limited expectations for the mentorship they would receive in law school and were thus less prone to dissatisfaction.

Figure 9.
Satisfaction with Mentorship Received in Law School

SOURCE: 2022 Portrait Project Survey

VERY DISSATISFIED	SOMEWHAT DISSATISFIED	NEITHER SATISFIED NOR DISSATISFIED	SOMEWHAT SATISFIED	VERY SATISFIED
11%	9%	20%	35%	24%

“I never thought to look for mentors in law school. I did not have any mentors, formal or informal, up through that point in my life. I am the first and only attorney in my family, and I had limited exposure to law and the legal profession. In law school, I did not have any Asian American law professors. At my 1L and 2L summer associate programs, I did not work with any Asian American partners. It was not until I started full time at a law firm after passing the bar that I started working with an Asian American partner, and it changed the course of my career.”

“Mentorship is so integral to the paths I took, including clerkships, and yet because of the general population of professors, it’s difficult to find mentors who are similar to you, including those who are AAPI and sometimes women or those who recognize intersectional identities.”

“I had to actively seek out mentors and felt like some (particularly White mentors) had preconceived notions of Asian Americans as hard workers and intense but not particularly savvy in navigating the law.”

“I did not find many mentors I could identify with during law school. I would have loved to have a woman of color mentor who looked like me and had the same background as me, but they were all so busy that I didn’t want to add more to their plate, so I didn’t seek their help. There are so few women of color in the legal field, and so much labor is demanded of them.”

“My mentors have provided me with insight into their career paths, served as references and wrote letters of recommendation, and overall provided support throughout my professional journey. Some of my best mentors have taken the time to share with me their personal experiences being an attorney and a woman of color in the profession.”

MAJOR FINDINGS

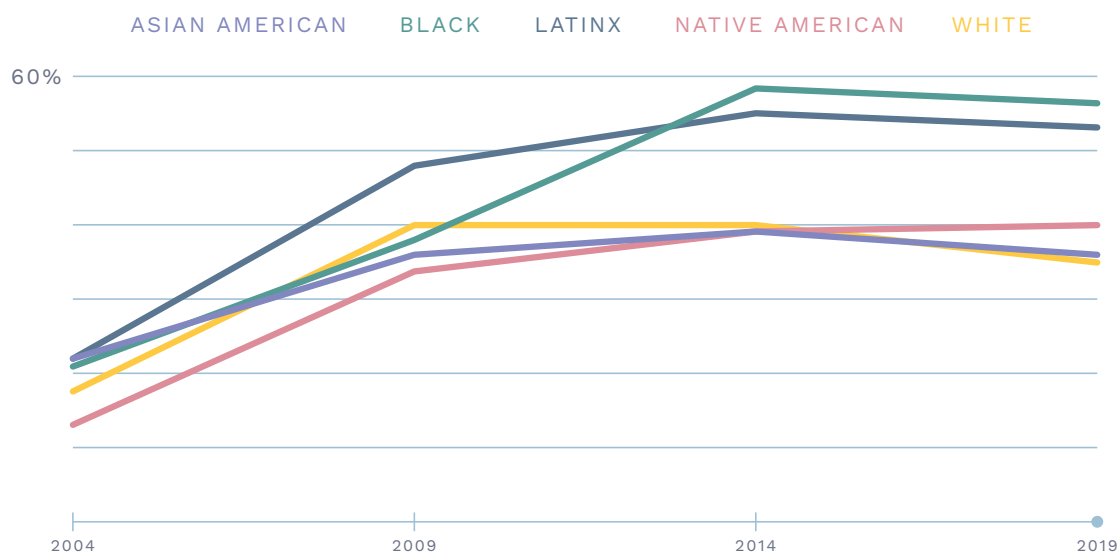
Law School Debt and Post-JD Employment

Asians graduate from law school with lower levels of debt than most other groups.

The LSSSE survey administered to law students nationwide⁴⁸ found that in 2019, 36% of Asian American students expected to owe over \$100,000 in law school debt, compared to 35% of White students, 40% of Native American students, 53% of Latinx students, and 56% of Black students.⁴⁹

Figure 10.
Students Expected to Owe Over \$100k, by Year and Race

SOURCE: Law Student Survey of Student Engagement



48 Since 2004, 203 law schools in the United States, Canada, and Australia have administered the LSSSE survey, eliciting over 380,000 student responses. MEERA E. DEO, CHAD CHRISTENSEN & JACQUELYN PETZOLD, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., THE CHANGING LANDSCAPE OF LEGAL EDUCATION: A 15-YEAR LSSSE RETROSPECTIVE 6 (2020).

49 *Id.* at 10.

Women generally incur more law school debt than men, with Black and Latinx women especially likely to carry a heavy debt load. For Asian Americans, however, women are less likely than men to incur the highest levels of debt; 7.7% of Asian American women expected to owe more than \$200,000 in student loan debt, compared with 9.9% of Asian American men. The same level of debt was expected by 14% of Black women and 7.3% of Black men, 16% of Latinx women and 12% of Latinx men, and 5.5% of White women and 4.3% of White men.⁵⁰

Compared to other law graduates, Asians are the most likely to work in private practice and the least likely to work in government or public interest.

The National Association for Law Placement (NALP) conducts an annual survey of graduates of ABA-accredited law schools nine months after graduation. According to NALP's 2020 survey, Asian graduates were the most likely of any group to be employed in private practice.⁵¹ Sixty-five percent of Asian graduates obtained jobs in private practice, compared to 45.9% of Black or African American graduates, 57.9% of Latinx graduates, and 56.6% of White graduates. Asians were the least likely to be employed in government or public interest work in the first year after law school.

Figure 11.
Employer Types by Race/Ethnicity, 2020⁵²

SOURCE: National Association for Law Placement

	PRIVATE PRACTICE	GOVERNMENT	PUBLIC INTEREST	CLERKSHIPS	BUSINESS
ASIAN (n=2,120)	65.0%	7.5%	6.4%	7.2%	12.3%
BLACK OR AFRICAN AMERICAN (n=2,050)	45.9%	16.1%	11.8%	8.8%	14.8%
LATINX (n=2,867)	57.9%	11.4%	12.5%	8.1%	8.5%
WHITE (n=17,903)	56.6%	11.4%	8.1%	12.9%	9.7%

50 MEERA E. DEO & CHAD CHRISTENSEN, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., ANNUAL SURVEY RESULTS: THE COST OF WOMEN'S SUCCESS 9 (2019).

51 NAT'L ASS'N FOR L. PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES—CLASS OF 2020 82 (2021).

52 Figures are based on all jobs. Figures in parentheses indicate the number of graduates represented. Not all employer types are shown in the table.

This pattern appears fairly stable over time. In the *After the JD* sample of lawyers admitted to the bar in 2000, 70% of Asians worked in law firms or business settings two years into practice, compared to 72% of Whites, 52% of Blacks, and 58% of Hispanics.⁵³ By contrast, 14% of Asians worked in government, compared to 16% of Whites, 27% of Blacks, and 21% of Hispanics.⁵⁴

53 WILDER, *supra* note 31, at 16 tbl.5.

54 *Id.*

MAJOR FINDINGS

Law Firms and Corporate Counsel

For over 20 years, Asian Americans have been the largest minority group at major law firms.⁵⁵

In the NALP 2021 report on major U.S. law firms, based on data provided by 877 offices, Asians comprised 8.06% of attorneys, whereas African Americans comprised 3.63% and Latinx attorneys comprised 4.37%.⁵⁶ Law360's survey of nearly 300 firms found that in 2021 Asian Americans comprised 8% of U.S.-based attorneys, whereas African Americans comprised 4% and those identifying as Hispanic comprised 5%.⁵⁷ In addition, a survey of 225 law firms by the Minority Corporate Counsel Association (MCCA) reported that in 2020, 12.6% of associates and 14.4% of summer associates were Asian American, 5.3% of associates and 9.0% of summer associates were Black or African American, and 6.2% of associates and 7.5% of summer associates were Hispanic or Latinx.⁵⁸

Asian Americans have the highest ratio of associates to partners of any racial or ethnic group, and this has been true for over 20 years.⁵⁹

Law360's survey reported that in 2021 the ratio of non-partners to partners was 3.12 for Asian American attorneys, 2.86 for Black attorneys, 2.57 for Hispanic attorneys, and 1.12 for White attorneys.⁶⁰ Similarly, the ratio of associates to partners in the 225 firms surveyed by MCCA

55 U.S. EQUAL EMP. OPPORTUNITY COMM'N, DIVERSITY IN LAW FIRMS 10 (2003), <https://www.eeoc.gov/special-report/diversity-law-firms> [<https://perma.cc/MD9X-TGVW>] (tracking employment data among larger legal service firms by race/ethnicity from 1975 to 2002). *Women and Minorities at Law Firms – What Has Changed and What Has Not in the Past 25 Years*, NAT'L ASS'N FOR L. PLACEMENT: NALP BULL. (Feb. 2018), <https://www.nalp.org/0218research> [<https://perma.cc/4ZLS-3EGE>].

56 NAT'L ASS'N FOR L. PLACEMENT, 2021 REPORT ON DIVERSITY IN U.S. LAW FIRMS 19 tbl.2 (2022).

57 Jacqueline Bell, *Law360's Diversity Snapshot: What You Need to Know*, LAW360 (July 25, 2022), <https://www.law360.com/articles/1513172/law360-s-diversity-snapshot-what-you-need-to-know> [<https://perma.cc/B25Q-DXHA>].

58 MINORITY CORP. COUNS. ASS'N, LAW FIRM DIVERSITY SURVEY 7 (2021), <https://mcca.com/wp-content/uploads/2021/12/2021-MCCA-Law-Firm-Diversity-Survey-Report.pdf> [<https://perma.cc/6XBW-ZLC7>].

59 NAT'L ASS'N FOR L. PLACEMENT, *supra* note 56.

60 Bell, *supra* note 57.

in 2020 was 2.93 for Asian American attorneys, compared to 2.21 for African American/Black attorneys, 2.0 for Hispanic/Latinx attorneys, and 0.81 for White/Caucasian attorneys.

The disparity also applies at the equity partner level. According to MCCA data from 2020, the ratio of associates to equity partners was 2.93 for Asian American attorneys, compared to 2.41 for Black/African American attorneys, 2.21 for Hispanic/Latinx attorneys, and 0.81 for White/Caucasian attorneys.⁶¹ Asian Americans comprised 4.3% of equity partners at major firms in 2020, whereas almost 90% of equity partners were White. As discussed below, law firm attrition appears to be particularly severe among minority women, including Asian American women.

Figure 12.
Demographics of Law Firms, 2020

SOURCE: Minority Corporate Counsel Association Diversity Survey Report

	ALL ATTORNEYS	ASSOCIATES	EQUITY PARTNERS	ASSOCIATES/ EQUITY PARTNERS RATIO
ASIAN AMERICAN	8.6%	12.6%	4.3%	2.9
AFRICAN AMERICAN/ BLACK	4.2%	5.3%	2.2%	2.4
HISPANIC/ LATINX	4.7%	6.2%	2.8%	2.2
WHITE	79.8%	72.2%	89.6%	0.8

We do not address whether these data reflect differences in the age distribution of attorneys belonging to each group. It is possible that the high ratio of associates to partners is partly a function of how recently Asian Americans have entered the legal profession in substantial numbers. But the significance of this explanation has diminished over time, and as discussed below, Asian Americans have high attrition rates in law firms and report significant obstacles to career advancement.

61 MINORITY CORP. COUNS. ASS'N, *supra* note 58, at 7.

Compared to their numbers within the overall law firm population, Asian Americans are less represented than other groups at the management level.

Although Asian Americans comprised 7.8% of all attorneys in the Vault/MCCA survey data for 2019, they held 4.1% of seats on executive management committees.⁶² African American/Black and Hispanic/Latinx attorneys were better represented in these leadership roles relative to their respective numbers in the overall firm population. African American/Black attorneys made up 3.7% of all attorneys and 3.7% of management-level committee members, while Hispanic/Latinx attorneys made up 4.4% of all attorneys and 3.0% of management-level committee members.⁶³

Among Asian Americans and other minority groups, women are more likely to be associates and less likely to be partners.

In the Vault/MCCA survey of 2020 data, Asian American women made up 7.4% of associates and 1.8% of partners, compared to 5.1% and 2.5% for Asian American men, respectively.⁶⁴ Asian American women made up 3.9% of attorneys promoted to partner in 2020, slightly higher than 3.5% for Asian American men.⁶⁵

Similarly, African American/Black women comprised 3.2% of associates (compared to 2.1% for African American/Black men) and 0.9% of partners (compared to 1.4% for African American/Black men).⁶⁶ Hispanic/Latinx women made up 3.3% of associates (compared to 2.9% for Hispanic/Latinx men) and 1.0% of partners (compared to 2.0% for Hispanic/Latinx men).⁶⁷ The ratio of men to women at the partner rank is even more skewed among White/Caucasian attorneys; only 21.8% of White/Caucasian partners are women.⁶⁸

62 MINORITY CORP. COUNS. ASS'N & VAULT, 2020 VAULT/MCCA LAW FIRM DIVERSITY SURVEY REPORT 27 tbl.A4 (2020), https://mcca.com/wp-content/uploads/2021/02/2020-Vault_MCCA-Law-Firm-Diversity-Survey-Report-FINAL.pdf [<https://perma.cc/RF4R-ZKLS>].

63 *Id.*

64 MINORITY CORP. COUNS. ASS'N, *supra* note 58, at 18.

65 *Id.* at 19.

66 *Id.* at 22.

67 *Id.* at 20.

68 *Id.* at 16.

An ABA study published in 2019, based on input from over 1,200 big firm lawyers who have been in practice for at least 15 years, showed that women surveyed were far more likely than men to report factors that blocked their “access to success.”⁶⁹ Women were far more likely to report being overlooked for advancement, being denied a salary increase or bonus, feeling treated as a token representative for diversity, lacking access to business development opportunities, being perceived as less committed to her career, or lacking access to sponsors.⁷⁰

A 2022 study by the Institute for Inclusion in the Legal Profession reported the percentages of total matters assigned to women, disaggregated by race and ethnicity, based on survey responses from 136 corporations.⁷¹ It found that “[w]ell over half of the matters that respondents assigned to [diverse] outside counsel were assigned to White women lawyers who were given primary responsibility for the matters.”⁷² African American and Hispanic women received a very small amount of the work assigned to women, and Asian American and Native American women received “almost none.”⁷³

The MCCA survey of 2020 data reports that less than 0.1% of full-time attorneys at the firms surveyed identified their gender as non-binary.

The attrition rate for Asian Americans, like those of other minority groups, is disproportionately high.

Attrition rates remain disproportionately high among minority attorneys. While Asian Americans made up 7.8% of all attorneys in the Vault/MCCA 2019 survey, they comprised 10.4% of attorneys who left their firms that year. Similarly, African American/Black attorneys made up 3.7% of attorneys but 5.8% of those leaving their firms, and Hispanic/Latinx

69 ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, AM. BAR ASS’N, WALKING OUT THE DOOR: THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE 7-8 (2019), https://www.americanbar.org/content/dam/aba/administrative/women/walkoutdoor_online_042320.pdf [<https://perma.cc/3ZX4-PB9D>].

70 *Id.* See generally JOYCE STERLING & LINDA CHANOW, AM. BAR ASS’N, IN THEIR OWN WORDS: EXPERIENCED WOMEN LAWYERS EXPLAIN WHY THEY ARE LEAVING THEIR LAW FIRMS AND THE PROFESSION (2021), <https://www.americanbar.org/content/dam/aba/administrative/women/intheirownwords-f-4-19-21-final.pdf> [<https://perma.cc/G4RY-SKBU>] (presenting findings from focus groups and individual interviews).

71 Vivia Chen, *Asian American Women Are the Losers in Big Law*, BLOOMBERG L. (Sept. 30, 2022, 7:00 AM), <https://news.bloomberglaw.com/business-and-practice/asian-women-are-the-losers-in-big-law> [<https://perma.cc/XS4B-7PAF>] (quoting INSTITUTE FOR INCLUSION IN THE LEGAL PROFESSION, DIVERSE OUTSIDE COUNSEL: WHO’S GETTING THE BUSINESS? 20 (2022)).

72 INSTITUTE FOR INCLUSION IN THE LEGAL PROFESSION, *supra* note 71, at 27.

73 *Id.* at 30; see also DESTINY PEERY, PAULETTE BROWN & EILEEN LETTS, AM. BAR ASS’N, LEFT OUT AND LEFT BEHIND: THE HURDLES, HASSLES, AND HEARTACHES OF ACHIEVING LONG-TERM LEGAL CAREERS FOR WOMEN OF COLOR 2 (2020), <https://www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf> [<https://perma.cc/U9GF-ZH3Z>] (reporting findings from 103 women of color fifteen or more years out of law school on their unique challenges).

attorneys made up 4.4% of attorneys but 5.2% of those leaving.⁷⁴ These figures are similar to those we reported five years ago.⁷⁵

Attrition rates among attorneys of color are most pronounced at the associate level. MCCA's 2020 survey revealed that Asian Americans comprised 12.8% of associates who left their firms that year, compared to 7.9% for African American/Black attorneys and 6.7% for Hispanic/Latinx attorneys.⁷⁶

According to *After the JD* data, the number of Asian Americans working in firms with over 100 attorneys declined by 68% over the decade from two to 12 years after bar admission, compared to a 61% decline among Blacks, a 44% decline among Hispanics, and a 53% decline among Whites.⁷⁷

Further study is needed to examine why Asian Americans leave firms at the highest rates. One reason may be that Asian American attorneys are more likely than other groups to leave firms for the business sector, including in-house counsel positions as well as positions not practicing law. The *After the JD* study reported that 14.5% of Asian Americans were in the business sector two years after bar admission, compared to 27.5% in this sector a decade later—a greater increase than for Black, Hispanic, or White attorneys.⁷⁸ Figure 14 shows that, among attorneys working in midsize to large firms at the beginning of their careers, Asian Americans were the least likely to still be in such firms 12 years after bar admission and the most likely to be in the business sector.

Figure 13.

Percentage of Lawyers in Business Sector by Race/Ethnicity, 2012-13

SOURCE: American Bar Foundation; NALP Foundation for Law Career Research and Education

	ASIAN	BLACK	HISPANIC	WHITE
2 YEARS AFTER BAR ADMISSION	14.5%	7.6%	8.4%	8.5%
12 YEARS AFTER BAR ADMISSION	27.5%	19.5%	15.3%	19.9%

74 MINORITY CORP. COUNS. ASS'N & VAULT, *supra* note 62, at 13-15.

75 PORTRAIT PROJECT 2017, *supra* note 1, at 19. Attrition rates increased for all three groups over a five-year span. In 2014, Asian American attorneys made up 8.9% of attorneys who left their firms that year, compared to 4.9% for African American/Black attorneys and 4.3% for Hispanic/Latinx attorneys. *Compare id.*, with MINORITY CORP. COUNS. ASS'N & VAULT, *supra* note 62, at 13-15.

76 MINORITY CORP. COUNS. ASS'N, *supra* note 58, at 18, 20, 22.

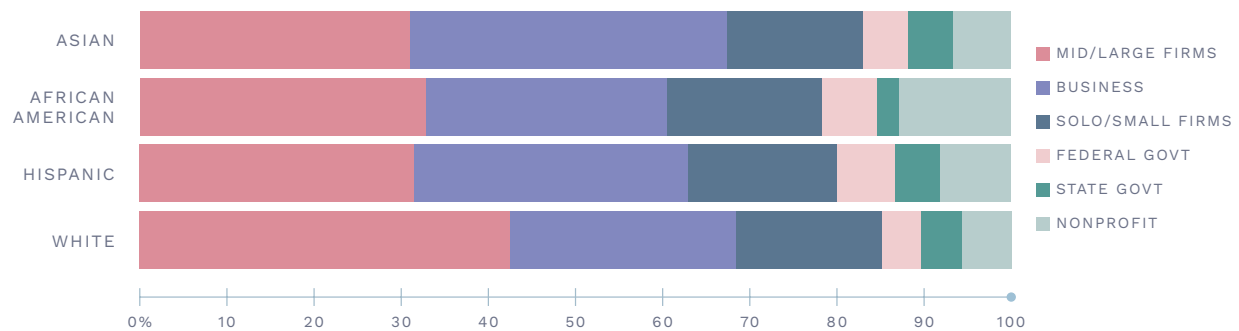
77 AJD III, *supra* note 30, at 74 tbl.9.1.

78 *Id.*

Figure 14.

Employment Settings 12 Years into Practice Among Lawyers Who Were at Midsize to Large Firms in Second Year of Practice, by Race/Ethnicity, 2012-13

SOURCE: American Bar Foundation⁷⁹



“I was working at a very conservative firm when George Floyd died. They didn’t put out a statement. We didn’t have any Black attorneys at the law firm. It was very isolating but I couldn’t exactly articulate why. . . . In terms of authentic self and work, I didn’t feel like I could bring my whole self. The work wasn’t fulfilling for me either, and that’s why I made the decision to leave. . . . [My current job is] much more welcoming. . . . We’re mission driven. I felt isolated and I didn’t know why until I left.”

“I left my law firm. I had to project the image of being a good associate who was always ready to be part of the team. I didn’t want to create a problem by speaking out about anything. It feels different than being in-house. I’m encouraged to talk about my feelings with current events. I’m also concerned about the amount of putting on a show of supporting diverse attorneys at firms. It’s hard to see that people are really going to follow through on a lot of things. My former firm had a lot of these diversity initiatives, but three diverse partners left in the same year due to pay issues. It was disheartening.”

⁷⁹ Analysis conducted by the American Bar Association on February 26, 2018 upon request.

“I moved in-house recently. My last law firm did a lot of virtue signaling. [T]hey made statements, gave us a day off for Juneteenth, etc. I had to fight so hard to be the first woman to be promoted internally for over a decade. I didn’t see more meaningful discussion on issues. They issued statements, but that’s different from looking at internal policies and practices. I would be outspoken about, for example, diverse attorneys not being retained. I was told that the facts were not the facts; they would say certain attorneys simply couldn’t succeed. [Now] I feel like I can have more honest conversations about diversity and inclusion initiatives.”

The number of Asian American and Pacific Islander general counsel in the Fortune 1000 has increased over the past decade.

In 2009, among the general counsel (GCs) of Fortune 1000 companies, 19 were AAPI, 36 were African American, 10 were Hispanic, and one was Native American.⁸⁰ Among these 66 minority GCs, 15 were women: two AAPI, four Hispanic, and nine African American.⁸¹

Just over a decade later, in 2020, 45 of the Fortune 1000 GCs were AAPI, 48 were African American, 22 were Hispanic/Latinx, and 860 were White.⁸² A total of 296 were women: 17 AAPI, 27 African American, eight Hispanic/Latinx, and 244 White. The 2020 survey did not report numbers for American Indians or Alaska Natives.⁸³

80 *MCCA’s 2009 Fortune 500 Minority General Counsel*, DIVERSITY & BAR, Sept.–Oct. 2009, at 17, <https://archive.mcca.com/wp-content/uploads/2017/10/Minority-GC-survey-2009-by-industry.pdf> [<https://perma.cc/TV3V-7QNN>].

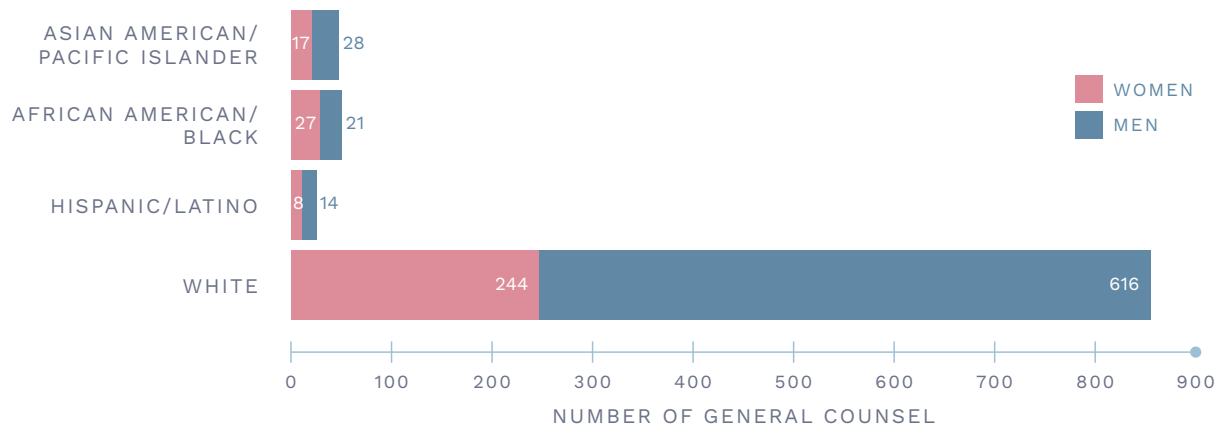
81 *MCCA’s 2009 Survey of Fortune 500 Women General Counsel*, DIVERSITY & BAR, July–Aug. 2009, at 15, <https://archive.mcca.com/wp-content/uploads/2017/10/Women-GC-survey-2009-by-industry.pdf> [<https://perma.cc/H2NT-BXGR>].

82 MINORITY CORP. COUNS. ASS’N, 2021 MCCA FORTUNE 1000 GC SURVEY 4 tbl.1 (2021), <https://mcca.com/2021-fortune-1000-gc-survey/>.

83 Between 2019 and 2020, there was no net change in the total number of AAPI GCs, compared to a 5.88% decrease in African American/Black GCs, a 4.76% increase in Hispanic/Latinx GCs, and a 1.42% increase in White GCs. *Id.* at 4 tbl.2. Over the same period, the share of female GCs rose 2.42% overall. *Id.* There was a 6.25% increase in the number of AAPI women, no net change in the number of African American/Black women, a 14.29% increase in the number of Hispanic/Latinx women, and a 3.39% increase in the number of White women. *Id.*

Figure 15.**Demographics of Fortune 1000 General Counsels, 2020**

SOURCE: Minority Corporate Counsel Association



Among racial or ethnic minorities, AAPIs had the highest number of GCs in a single sector, with 13 in the consumer services industry in 2020.⁸⁴

84 *Id.* at 6.

MAJOR FINDINGS

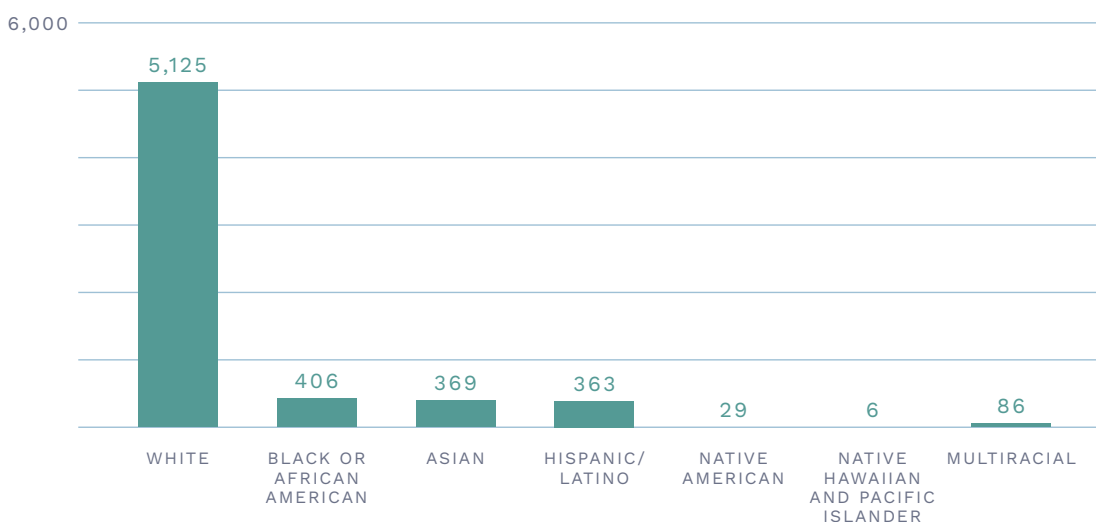
Prosecutors and Public Defenders

Prosecutors and public defenders play prominent roles in our criminal justice system and local communities. Although Asian Americans serve in significant numbers in some geographic areas, overall they are grossly underrepresented at the highest levels of the justice system.

By one count, among 6,293 Assistant U.S. Attorneys (AUSAs) nationwide in December 2021, 5.8% were Asian, 6.4% were Black, and 4.0% were Hispanic or Latino.⁸⁵ Five years ago, we cited a study reporting that 5.2% of AUSAs were Asian American, 8.0% were Black, and 5.2% were Hispanic or Latino in 2013-14.⁸⁶

Figure 16.
Demographics of Assistant U.S. Attorneys, 2021

SOURCE: Office of Personnel Management, Federal Workforce Data, Diversity Cubes Dec. 2021



⁸⁵ *Federal Workforce Data: December 2021*, U.S. OFF. PERS. MGMT. (Dec. 2021), <https://www.fedscope.opm.gov/diversity.asp>. This number was based on attorneys working in the U.S. Department of Justice under the AD pay scale, which is the pay scale of Assistant U.S. Attorneys. See *Administratively Determined Pay Plan Charts*, DEP'T OF JUST. (Jan. 4, 2022), <https://www.justice.gov/usao/career-center/salary-information/administratively-determined-pay-plan-charts> [<https://perma.cc/M229-BDM9>].

⁸⁶ PORTRAIT PROJECT 2017, *supra* note 1, at 22 fig.13.

In some regions with large Asian American populations, the number of local district attorneys of Asian descent has declined. Asians comprise about 13% of the population of Manhattan. Among 594 staff attorneys in the Manhattan District Attorney’s Office in 2022, 33 (5.6%) were Asian, 47 (7.9%) were Black or African American, and 28 (4.7%) were Hispanic or Latino.⁸⁷ These percentages represent declines from 2016, when 8.6% of these attorneys were Asian, 10% were Black or African American, and 6.1% were Hispanic or Latino.⁸⁸ One contributing factor may be that recent Asian American law school graduates chose to go into criminal law at lower percentages than their peers in other racial and ethnic groups (8% for Asian American students in 2016-18 versus 13% for White, 17% for Black, and 16% for Hispanic students).⁸⁹

The overall number of Asian Americans at the supervisory and elected levels remains disturbingly low throughout the United States.

Out of 93 possible Presidentially appointed U.S. Attorneys, only one currently serving identifies as Asian American. That individual, Cindy Chung, the U.S. Attorney for the Western District of Pennsylvania, is presently a nominee for the U.S. Court of Appeals for the Third Circuit. Unless another Asian American is appointed by the President and confirmed by the Senate, the number of Presidentially appointed U.S. Attorneys who are Asian American will drop to zero.⁹⁰

A 2019 survey of 2,396 elected prosecutors nationwide identified only 14 who were Asian American.⁹¹ However, upon further scrutiny of the underlying data, we were able to verify only eight who identified as Asian American, representing 0.29% of the total. Although this includes prominent officeholders like Connecticut Attorney General William Tong, the number of elected prosecutors who are Asian Americans has increased only slightly from the total of four in 2014.⁹²

87 *The New York County District Attorney’s Office – New York, New York: Lawyer Demographics*, NAT’L ASS’N OF L. PLACEMENT: DIRECTORY OF LEGAL EMPS. (last visited July 25, 2022), [https://www.nalpdirectory.com/employer_profile?FormID=15205&QuestionTabID=44&SearchCond\]SON=\[https://perma.cc/C9T6-K964](https://www.nalpdirectory.com/employer_profile?FormID=15205&QuestionTabID=44&SearchCond]SON=[https://perma.cc/C9T6-K964)].

88 PORTRAIT PROJECT 2017, *supra* note 1, at 22.

89 Shih-Chun Steven Chien & Stephen Daniels, *Who Wants to Be a Prosecutor?*, 65 *How. L.J.* 173, 211-12 (2021).

90 Data provided by the National Asian Pacific American Bar Association as of October 10, 2022. This total includes only U.S. Attorneys who have been nominated by the President and confirmed by the Senate. President Biden has announced his intention to nominate Alamdar S. Hamdani as U.S. Attorney for the Southern District of Texas. But, as of the publication of this report, the Senate has not confirmed Mr. Hamdani.

91 *Tipping the Scales: Challengers Take on the Old Boys Club of Elected Prosecutors*, REFLECTIVE DEMOCRACY CAMPAIGN (Oct. 2019), <https://wholeads.us/research/tipping-the-scales-elected-prosecutors/> [<https://perma.cc/HD6B-FUKT>].

92 PORTRAIT PROJECT 2017, *supra* note 1, at 21.

There are geographic pockets with a few more Asian American prosecutors in leadership roles. For example, among the 175 supervising attorneys in the Manhattan District Attorney’s Office in 2022, 11 (6.3%) were Asian American, 19 (10.9%) were Black or African American, and 12 (6.9%) were Hispanic or Latino.⁹³ However, the dearth of Asian Americans in prosecutorial leadership roles nationwide is severe and especially troubling against the backdrop of increasing numbers of reported incidents of anti-Asian hate and violence in recent years.

There are no systematic data currently available on the demographics of public defenders.

Our previous report noted that there is no systematic data currently available on the demographics of public defenders. However, the U.S. Department of Justice is expected to soon publish a Survey of Publicly Appointed Defense Attorneys that will include demographic statistics. It will be the first federally funded survey of its kind to focus on the publicly appointed defense attorneys themselves rather than the systems and offices in which they work.⁹⁴

93 *The New York County District Attorney’s Office – New York, New York: Lawyer Demographics*, NAT’L ASS’N OF L. PLACEMENT: DIRECTORY OF LEGAL EMPS. (last visited July 25, 2022), https://www.nalpdirectory.com/employer_profile?FormID=15205&QuestionTabID=44&SearchCondJSON= [<https://perma.cc/C9T6-K964>].

94 Survey of Public Defenders (SPD) Funding Opportunity, BUREAU OF JUSTICE STATISTICS, DEPARTMENT OF JUSTICE (Mar. 29, 2019), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/spd_sol.pdf [<https://perma.cc/5WAT-NL7Q>].

MAJOR FINDINGS

Government Attorneys

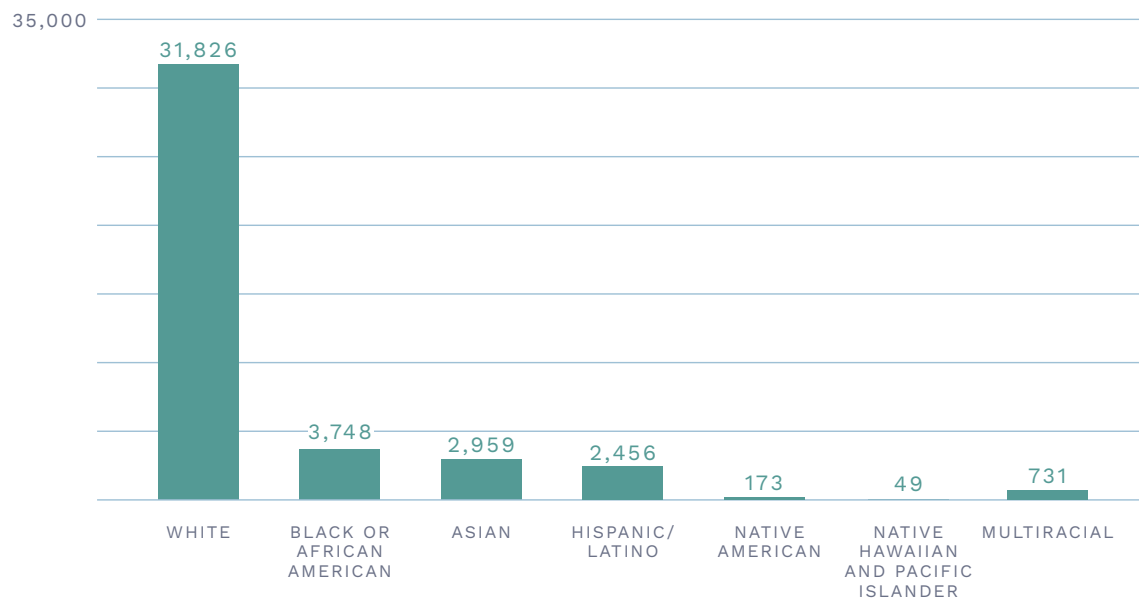
Over the past five years, Asian American attorneys have made little progress in several areas of government employment.

According to data provided by the Office of Personnel Management, Asians comprised 7.0% of government attorneys, up slightly from its 6.7% share in 2015, whereas Black and African Americans comprised 8.9% (compared to 8.3% in 2015) and Hispanic and Latinos comprised 5.8% (compared to 4.8% in 2015).⁹⁵

Figure 17.

Demographics of “General Attorneys” in the U.S. Government, 2021

SOURCE: Office of Personnel Management, Federal Workforce Data, Diversity Cubes Dec. 2021



⁹⁵ *Federal Workforce Data: December 2021*, *supra* note 85; *PORTRAIT PROJECT 2017*, *supra* note 1, at 22.

The percentage of Asian American attorneys at higher ranks of government reflects mixed progress from the last report.

In December 2021, 7.3% of GS-11 Attorneys (described as “entry-level” positions by the Department of Justice)⁹⁶ were Asian, as were 6.7% of GS-15 Attorneys (the highest civil service pay grade).⁹⁷ This reflects mixed progress compared to five years ago, when Asians comprised 9.0% of GS-11 attorneys and 5.6% of GS-15 attorneys.⁹⁸ The effect of this decrease on the pipeline of Asian American attorneys reaching the highest ranks of government service remains to be seen.

96 *Entry-Level (Honors Program) and Experienced Attorneys – Attorney Salaries, Promotions, and Benefits*, DEP’T OF JUST. (Dec. 1, 2020), <https://www.justice.gov/legal-careers/attorney-salaries-promotions-and-benefits> [<https://perma.cc/S8YT-M6PP>].

97 *Federal Workforce Data: December 2021*, *supra* note 85.

98 *Id.*; PORTRAIT PROJECT 2017, *supra* note 1, at 23.

MAJOR FINDINGS

Legal Academia

Lack of updated data on demographics of law faculty is an obstacle to tracking changes over time.

We are not aware of any systematic survey of diversity in legal academia since 2013, when Asians comprised 4.3% of full-time law teachers in the United States.⁹⁹ Among the 6,907 professors in tenured or tenure-track positions in 2013, 310 (4.5%) were Asian, compared to 5,459 (79%) professors who identified as White.¹⁰⁰ Multiple law review articles have documented the experiences of Asian American faculty, identifying the obstacles many have faced during their careers.¹⁰¹ Without increased transparency from law schools about the racial and ethnic makeup of their faculties, we do not know whether the picture has changed over the past decade.¹⁰²

Currently, under the ABA's required disclosures, law schools are only required to note if a faculty member identifies as "minority," without any further disaggregation. In 2021, among the 9,213 full-time faculty members at the 197 ABA-accredited law schools, 2,014 were identified as "minority" faculty members, representing 21.8% of the full-time faculty. This number does not differentiate between tenured and non-tenured professors.¹⁰³

A recent survey of legal research and writing professors suggests significant minority underrepresentation. Out of 320 respondents, only nine (2.8%) identified as Asian, compared with 283 respondents (88.4%) identifying as White.¹⁰⁴ The survey does not claim to be a

99 *ABA Approved Law School Staff and Faculty Members, Gender and Ethnicity: Fall 2013*, AM. BAR ASS'N (last visited Oct. 20, 2022), https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives/ [<https://perma.cc/DR9X-HFCH>].

100 PORTRAIT PROJECT 2017, *supra* note 1, at 26 fig.16.

101 *E.g.*, Cyra Akila Choudhury & Shruti Rana, *Addressing Asian (In) Visibility in the Academy*, 51 SW. L. REV. 287 (2022).

102 One notable study from Professor Meera E. Deo provides both qualitative and quantitative data on how race and gender intersect for legal academics. MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019). However, to our knowledge, there is no publicly available, comprehensive dataset like the ABA's report in 2013 that was detailed in Portrait Project 1.0. *See* PORTRAIT PROJECT 2017, *supra* note 1, at 26 fig.16.

103 *Section of Legal Education—ABA Required Disclosures*, *supra* note 4.

104 ASS'N OF LEGAL WRITING DIRS., *ALWD/LWU LEGAL WRITING SURVEY, 2020-2021: REPORT OF THE INDIVIDUAL SURVEY 124-25* (2021), <https://www.alwd.org/images/resources/2020-2021-ALWD-and-LWI-Individual-Survey-report-FINAL.pdf> [<https://perma.cc/RVY2-GJNS>]. This number is inclusive of those who identified as multiracial and chose the specific race/ethnicity when prompted further.

comprehensive analysis of the demographics of all legal research and writing professors; it offers a snapshot of the lack of racial and ethnic diversity within this sample pool. The small number of Asians in legal research and writing teaching positions appears troubling insofar as such positions can serve as a path to tenure-track or research faculty positions. On the other hand, Asian Americans could be opting for other paths to tenure-track or research faculty positions. More data are required to evaluate these possibilities.

MAJOR FINDINGS

Judges

Asian Americans have made significant gains in the federal judiciary over the past five years.

Over the past five years, an additional 25 Asian Americans have been appointed to Article III judgeships, increasing the number of Asian Americans who have ever served as an Article III judge from 37 to 62.¹⁰⁵ Among them, 47 currently serve as active judges—31 as federal district judges, 15 as federal circuit judges, and one as a judge on the U.S. Court of International Trade—comprising 6.0% of the 786 active federal judges currently sitting. By comparison, 563 (71.6%) active federal judges currently sitting are White, 107 (13.6%) are African American, and 81 (10.3%) are Hispanic.¹⁰⁶ In 2022, 3.3% of the almost 1,600 administrative law judges identified as Asian in the Office of Personnel Management database, an increase from 2.5% in 2015.¹⁰⁷

Additionally, although the Trump administration lagged behind the previous three presidential administrations in the total number and percentage of non-White judges appointed to the federal judiciary, 5.8% of President Trump’s judicial appointments were Asian American, compared to 5.3% of President Obama’s judicial appointments.¹⁰⁸ By comparison, 15 of the 81 active judges appointed by President Biden and confirmed by the Senate as of October 20, 2022 identify as Asian American, comprising 18.5%.¹⁰⁹ This number is in line with data generally

105 PORTRAIT PROJECT 2017, *supra* note 1, at 24; Biographical Directory of Article III Federal Judges, 1789-Present, FED. JUD. CTR. (last visited Oct. 20, 2022),

<https://www.fjc.gov/history/judges/search/advanced-search>. These totals include judges who are deceased or not actively sitting.

106 *Biographical Directory of Article III Federal Judges, 1789-Present*, FED. JUD. CTR. (last visited Oct. 20, 2022), <https://www.fjc.gov/history/judges/search/advanced-search>. These numbers reflect the data as of October 20, 2022.

107 *Federal Workforce Data: December 2021*, U.S. OFF. PERS. MGMT. (Dec. 2021), <https://www.fedscope.opm.gov/diversity.asp>; PORTRAIT PROJECT 2017, *supra* note 1, at 24.

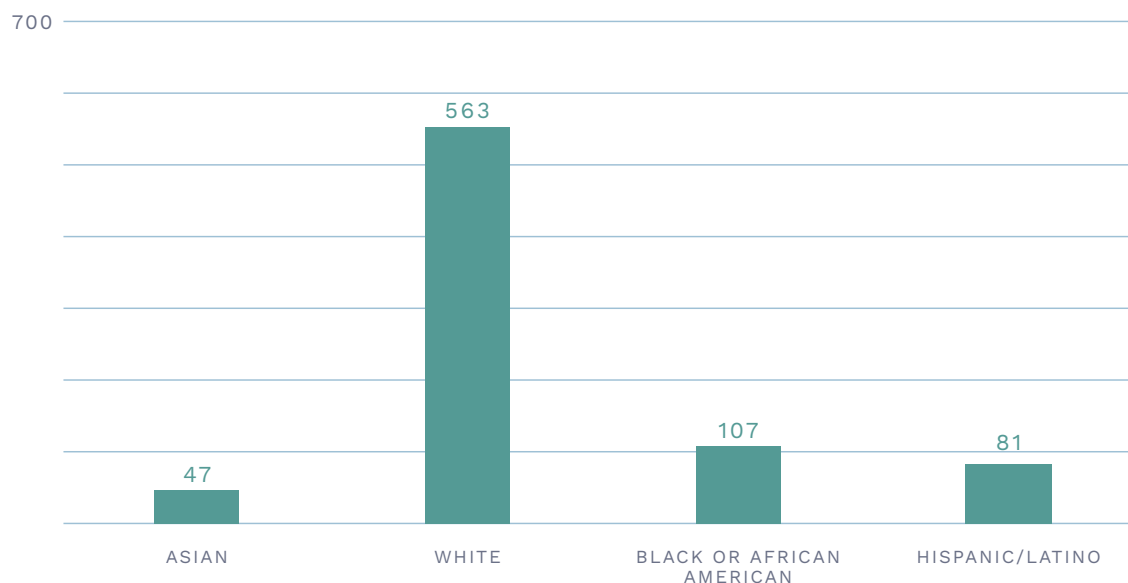
108 John Gramlich, *How Trump Compares with Other Recent Presidents in Appointing Federal Judges*, PEW RSCH. CTR. (Jan. 13, 2021), <https://www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/> [https://perma.cc/U6Z9-CX8G].

109 *Biographical Directory of Article III Federal Judges, 1789-Present*, FED. JUD. CTR. (last visited Oct. 20, 2022), <https://www.fjc.gov/history/judges/search/advanced-search>.

showing that President Biden has appointed a record-high percentage of both non-White and female judges compared to past presidents.¹¹⁰

Figure 18.
Federal Judges, 2022

SOURCE: Federal Judicial Center



The number of state court judges who are Asian American remains small.

Asian Americans have made less progress in state courts. Among the 340 state high court judges in the United States in May 2022, there were nine Asian Americans sitting in seven states,¹¹¹ compared with eight Asian American state high court judges in 2016.¹¹²

In state courts, there were also signs of limited increases in representation of Asians within certain jurisdictions.

110 John Gramlich, *Biden Has Appointed More Federal Judges Than Any President Since JFK at This Point in His Tenure*, PEW RSCH. CTR. (Aug. 9, 2022), <https://www.pewresearch.org/fact-tank/2022/08/09/biden-has-appointed-more-federal-judges-than-any-president-since-jfk-at-this-point-in-his-tenure/> [https://perma.cc/Q5VS-FDA2].

111 Amanda Powers & Alicia Bannon, *State Supreme Court Diversity – May 2022 Update*, BRENNAN CTR. FOR JUS. (May 20, 2022), <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-may-2022-update#:~:text=Across%20all%20state%20high%20courts,on%20the%20supreme%20court%20bench> [https://perma.cc/P38Q-2LZW].

112 PORTRAIT PROJECT 2017, *supra* note 1, at 24.

For example, in 2021, 8.7% of California's 1,706 judges identified as Asian only (compared to 6.5% in 2016), 8.4% were Black or African American only (compared to 6.6% in 2016), and 11.7% were Hispanic or Latino only (compared to 9.9% in 2016).¹¹³ Asians made up 17.8% of the population of California in the 2020 Census.¹¹⁴

In 2022, among 882 judges in New York, 39 (4.4%) identified as Asian American, an increase from the 22 who identified as Asian American in 2014.¹¹⁵ Asians made up 10.8% of New York's population in the 2020 Census.¹¹⁶

113 *Judicial Officer (JO) Demographic Data*, JUDICIAL COUNCIL OF CALIFORNIA (last visited Oct. 20, 2022), <https://www.courts.ca.gov/13418.htm> [<https://perma.cc/BZ8Y-LPMM>]; PORTRAIT PROJECT 2017, *supra* note 1, at 25.

114 *California: 2020 Census*, UNITED STATES CENSUS BUREAU (last visited Oct. 20, 2022), <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html> [<https://perma.cc/8XR4-8YLN>].

115 *Self-Reported Statewide Judicial Demographics*, N.Y. STATE UNIFIED CT SYSTEM (last visited Oct. 20, 2022), <https://app.powerbigov.us/view?r=eyJrIjoieE4NWl0YmQtNjdlMS00ZGRjLTkzODktMWRiMjYyM2E4ZTdlIiwidCI6IjM0NTZmZTkYLVNiZDEtNDA2ZC1iNWZlLTUzNjRiZWwYTGzMyj9&pageName=ReportSection3c9979d9de791c912650>; PORTRAIT PROJECT 2017, *supra* note 1, at 25.

116 *New York: 2020 Census*, UNITED STATES CENSUS BUREAU (last visited Oct. 20, 2022), <https://www.census.gov/library/stories/state-by-state/new-york-population-change-between-census-decade.html> [<https://perma.cc/L2RZ-6443>].

MAJOR FINDINGS

Career Satisfaction

Asians report lower levels of satisfaction with their decision to become a lawyer than other groups.

According to *After the JD* data, Asian respondents had the lowest levels of satisfaction with their decision to become a lawyer two years after bar admission. On a five-point scale, with 5 indicating the highest level of satisfaction, Asians reported an average satisfaction level of 3.8, compared to 4.3 for Black respondents, 3.9 for Hispanic respondents, 4.1 for Native Americans, and 4.0 for White respondents.¹¹⁷ At this two-year mark, 74.5% of Asians reported that they were moderately or extremely satisfied with their decision to become a lawyer, compared to 85.5% of Black respondents, 78.4% of Hispanic respondents, 79.0% of Native American respondents, and 78.9% of White respondents.¹¹⁸ Similar percentages were reported seven and 12 years after bar admission, with Asians still the least likely to report moderate or extreme satisfaction.¹¹⁹ Asians were more likely than all other groups to report a desire for more or better training, more or better mentoring, greater opportunity to shape decisions, and less pressure to bill.¹²⁰

The *After the JD* survey further asked respondents to rate their levels of satisfaction with various aspects of their jobs, which were distilled into four dimensions: the substance of the work, the power track, the job setting, and the social index.¹²¹ Asian lawyers' levels of satisfaction were below average across all dimensions except for the power track, which includes compensation.¹²² They were lowest on the social index, which includes pro bono opportunities and workplace diversity.¹²³

117 WILDER, *supra* note 31, at 44 tbl.23.

118 Data provided by the American Bar Foundation upon request.

119 AJD II, *supra* note 30, at 76; AJD III, *supra* note 30, at 77. Additional data provided by the American Bar Foundation upon request.

120 WILDER, *supra* note 31, at 47 tbl.25.

121 AJD III, *supra* note 30, at 53.

122 The power track dimension includes compensation, method by which compensation is determined, opportunity for advancement, recognition for work, and performance evaluation. *Id.* at 55.

123 *Id.* at 56.

Mobility intentions are not a straightforward indicator of dissatisfaction but can provide additional context. Twelve years after receiving their JDs, Asian lawyers reported relatively low rates of mobility intentions: 22.8% reported a likelihood of leaving their employers within two years, compared to 37.2% of Black respondents, 26.4% of Hispanic respondents, and 22.8% of White respondents.¹²⁴ Among Asian respondents, those in firms with two to 20 lawyers were the least likely to consider a job change (17.4%), while those in firms of unknown size (34.6%) and the non-governmental public sector (28.4%) were the most likely. Among Asian respondents working in firms of over 100 lawyers, 20.5% were considering leaving their employers.

It is notable that Asians report the lowest levels of satisfaction despite also reporting among the lowest levels of educational debt and the lowest likelihood of leaving their employers 12 years into their careers. It is unclear why having relatively greater financial freedom does not result in greater satisfaction early in Asian lawyers' careers. But it is possible that their greater tendency to remain in their jobs contributes to lower levels of satisfaction than other groups. Asian lawyers' career satisfaction merits further study.

Among 2022 Survey respondents, those working in academia, in the federal government, and as judges reported the greatest satisfaction with their current employment. Respondents in big law firms reported less satisfaction.¹²⁵

In our survey, 82% of respondents in academia and 70% of judges said they were “very satisfied” with their current employment—by far the most of any employment category. At least half of the respondents who were lawyers in the federal government, solo practice, small law firms, and public interest organizations said they were very satisfied. Less than 35% of big law firm attorneys, prosecutors, and public defenders said they were very satisfied. Figure 19 reports our findings in more detail.¹²⁶

124 *Id.* at 78 tbl.9.5.

125 The 2022 Survey defines big law firms as those with 100 or more lawyers, medium law firms as those with 16-99 lawyers, and small law firms as those with two to 15 lawyers.

126 Some of these results differ notably from the results of the 2016 Survey, *see* PORTRAIT PROJECT 2017, *supra* note 1, at 27 fig.17. For example, 2022 Survey respondents at small law firms were 23 percentage points more likely than their 2016 Survey counterparts to report being very satisfied. This difference was statistically significant. On the other hand, 2022 Survey respondents working as prosecutors were 23 percentage points less likely than their 2016 Survey counterparts to report being very satisfied. But we did not have enough respondents to conclude that this difference reflected an actual difference in satisfaction rates, as opposed to natural sampling variability. Finally, within the 2022 Survey alone, there was a gap of nine percentage points in satisfaction between state and federal government lawyers; this gap was not statistically significant.

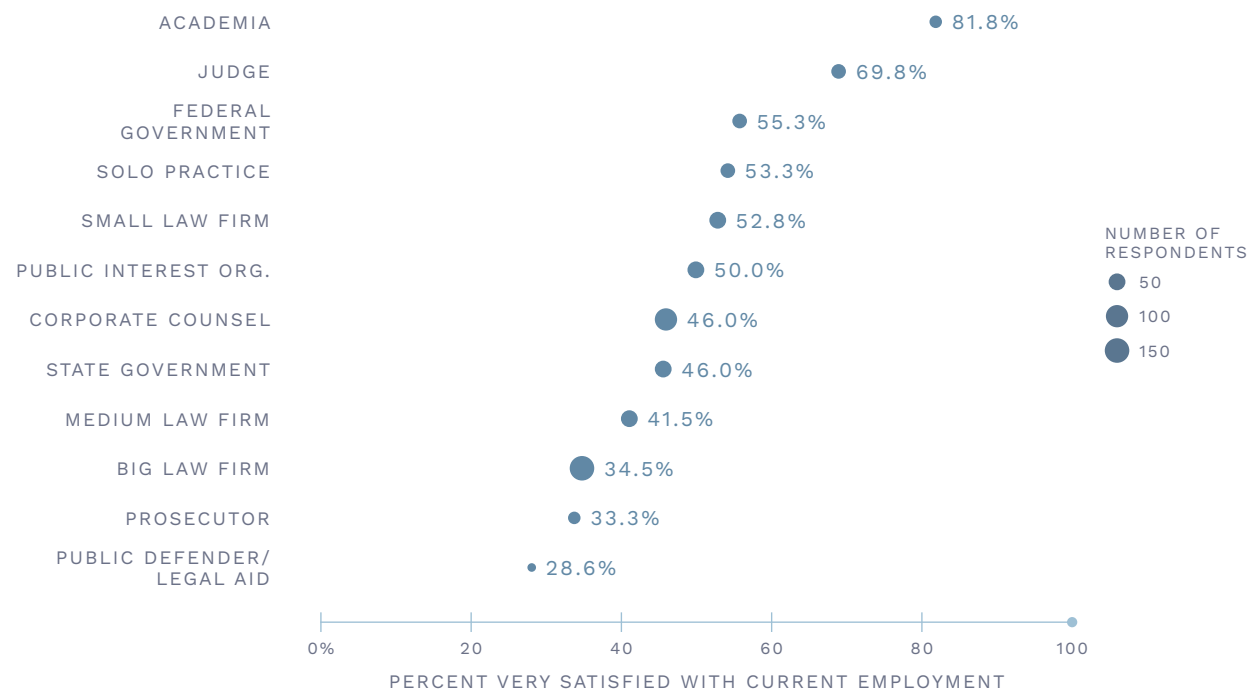
Those who reported having five or more mentors in their legal careers were 15 percentage points more likely to report being very satisfied (52%) than those who reported having no mentors or one mentor (37%).

Figure 19.

Satisfaction with Current Employment by Practice Setting

We asked 2022 Survey respondents how satisfied they were with their current employment. This figure shows the percentage of respondents in each practice setting who answered “very satisfied.”

SOURCE: 2022 Portrait Project Survey



In a shift from five years ago, 2022 Survey respondents who wished to change practice settings ranked a desire “to advance issues or values important to [them]” among their most significant reasons for doing so.

This reason was one of the lowest-ranked among 2016 Survey respondents.¹²⁷ On the other hand, geographic location, which ranked among the most significant reasons five years ago,¹²⁸ was ranked among the least significant this year. The other top reasons—better match with interests, better work-life balance, and better pay—remained unchanged.

It is unclear what is driving the two changes identified above. But they are consistent with national trends over the past five years. The COVID-19 pandemic accelerated a shift toward remote work, giving some lawyers more geographic flexibility even without needing to seek new jobs. And the heightened salience of societal issues directly related to law and justice has spurred some to find work more aligned with their values.

Overall, 40% of 2022 Survey respondents reported that they wished to change practice settings, down from 58% in the 2016 Survey.¹²⁹ About half of the law firm and government attorneys surveyed reported that they wished to change practice settings, compared to 20% to 30% of respondents working as corporate counsel, as judges, in academia, or in public interest organizations.

127 PORTRAIT PROJECT 2017, *supra* note 1, at 28.

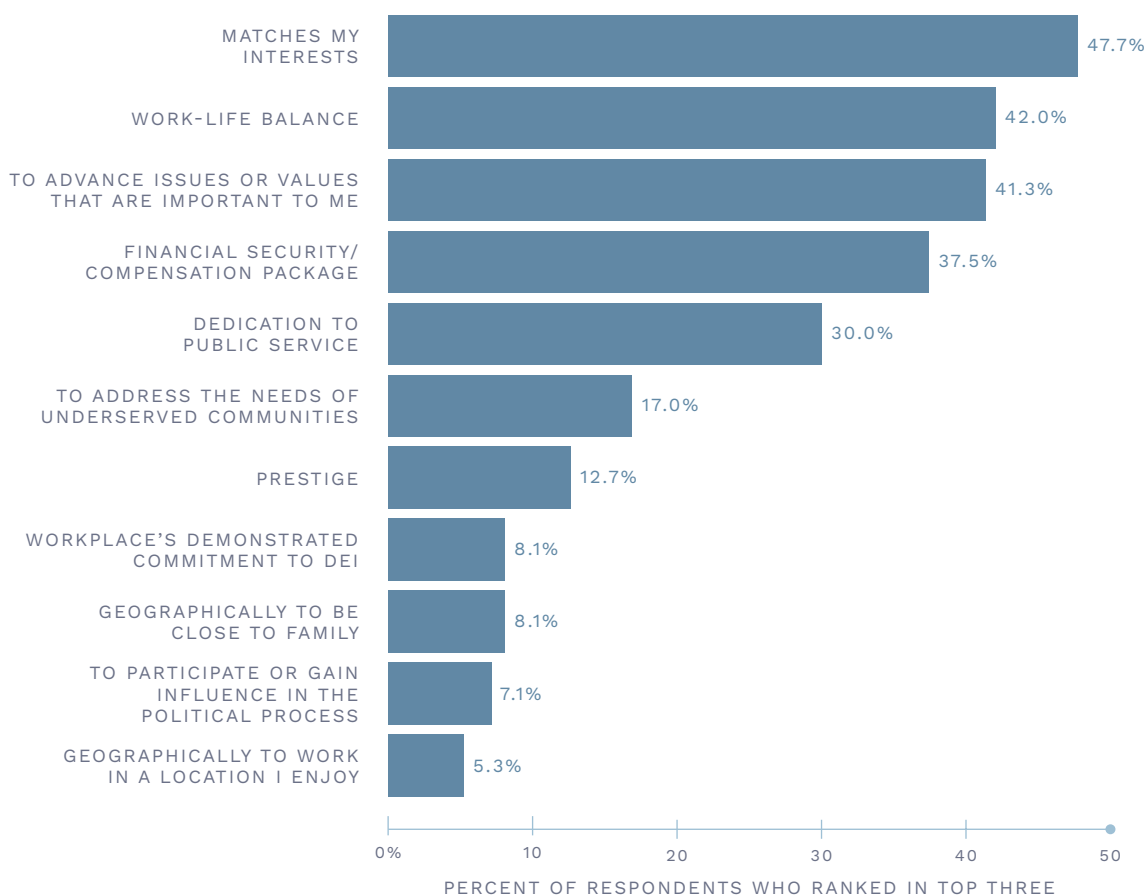
128 *Id.*

129 *Id.*

Figure 20.**Motivations for Changing Practice Settings**

We asked 2022 Survey respondents who indicated that they wished to change practice settings to select and then rank from most to least significant their reasons for wishing so. This figure shows the percentage of respondents who ranked each reason among their three most significant.

SOURCE: 2022 Portrait Project Survey



The practice settings most often identified as desirable among 2022 Survey respondents wishing to change are mostly the same as five years ago.¹³⁰

The practice settings most often identified as desirable were corporate counsel, the federal government, nonprofit and public interest organizations, the federal judiciary, and academia. Each of these settings was listed as a desirable destination by at least 20% of respondents who wished to change practice settings. Corporate counsel was the most frequently desired, at 40%.

130 *Id.*

A substantial number of respondents (10% to 20%) expressed an interest in state judiciaries, big law firms, and state governments. Less than 10% of respondents expressed a desire to change to prosecution, public defense, solo practice, or small or medium law firms.

Respondents' reasons for wishing to change practice settings varied with their desired settings. Figure 21 shows, for each desired practice setting and reason for changing settings, the percentage of respondents desiring that practice setting who cited the reason among their three most significant.

Figure 21.

Motivations for Changing to Specific Practice Settings

This figure shows, for each practice setting and reason for changing settings, the percentage of respondents desiring that practice setting who cited the reason among their three most significant.

SOURCE: 2022 Portrait Project Survey

	BIG LAW AND CORPORATE COUNSEL	GOVERNMENT AND JUDICIARY	NONPROFIT/ PUBLIC INTEREST ORGANIZATIONS	ACADEMIA
TO ADDRESS THE NEEDS OF UNDERSERVED COMMUNITIES	6%	17%	29%	26%
PRESTIGE	16%	18%	6%	5%
FINANCIAL SECURITY/ COMPENSATION PACKAGE	57%	33%	26%	33%
TO ADVANCE ISSUES OR VALUES THAT ARE IMPORTANT TO ME	28%	52%	58%	53%
DEDICATION TO PUBLIC SERVICE	16%	43%	35%	26%

Education-related debt substantially affected 2022 Survey respondents' early career choices.

Among 2022 Survey respondents, 44% reported that education-related debt substantially affected their career choices immediately after law school. In addition, 28% reported that debt affected their career choices five years after law school, and 13% reported that debt affected their career choices 10 years after law school.

“COVID-19 and all the social unrest made me really think deeply for the first time in my life why I was on this path. ‘What is the point of my life? What am I trying to do?’ I felt like I was just clocking in and clocking out. But none of it was because that’s what I wanted. I realized I made myself believe I wanted these things because that’s what society made me believe I should want or what my parents made me believe I should want. Seeing so many people die from COVID-19, and seeing several of my friends losing their parents to COVID-19, just made me really think, ‘What am I doing?’”

“Working from home has changed how I view being a lawyer. I used to go to work and then come home and try to put work aside. But there’s no physical separation anymore, so I have to shift my mental focus and say, ‘How do I integrate all of myself and everything that I do outside of work into my identity as a lawyer?’ Part of it is coming to NAPABA, participating in the community more as a lawyer, and doing more pro bono work. Working from home makes that easier.”

MAJOR FINDINGS

Obstacles

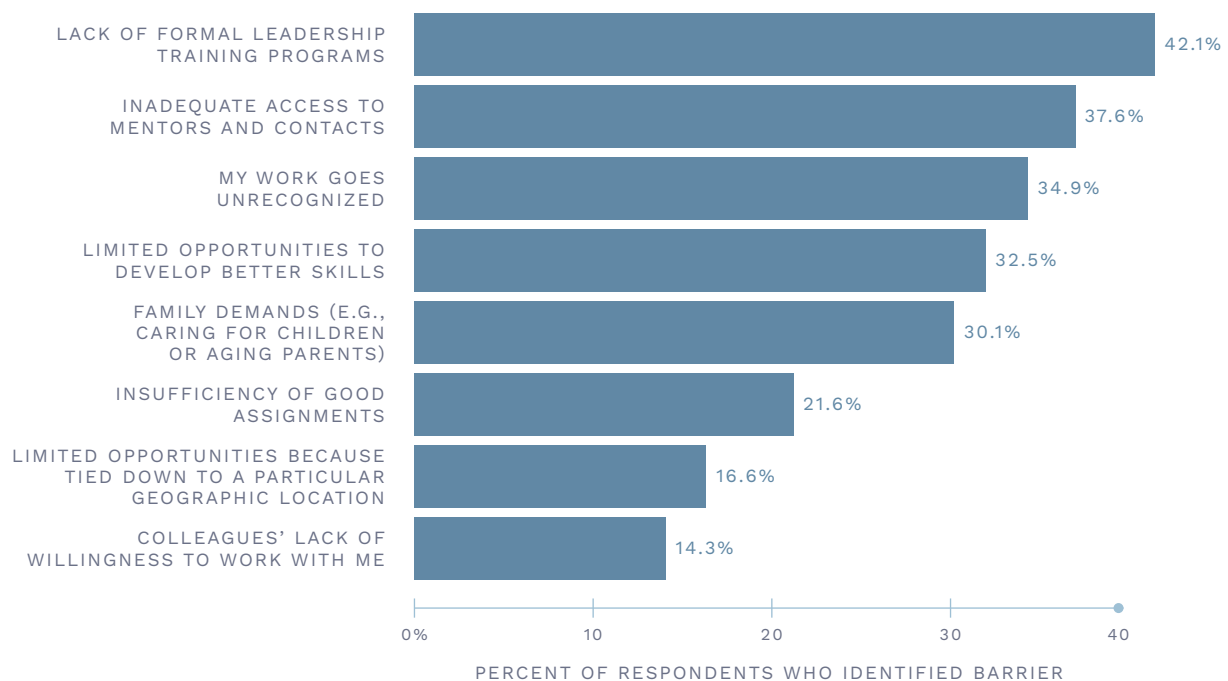
The obstacles to career advancement that 2022 Survey respondents identified most frequently remain the same as five years ago: a lack of formal leadership training programs, inadequate access to mentors and contacts, and a lack of recognition for their work.¹³¹

The most frequently identified obstacles are fairly consistent across practice settings, with the exception of geographic constraints: Whereas 9% of law firm attorneys identified geographic constraints as a barrier to career advancement, 26% of government attorneys did.

Figure 22.
Perceived Barriers to Career Advancement

We presented 2022 Survey respondents with a list of barriers to career advancement and asked them to select all of the ones they had encountered. This figure shows, for each barrier, the percentage of respondents who selected it.

SOURCE: 2022 Portrait Project Survey



131 *Id.* at 30 fig.18.

In our 2022 Survey, 84% of women reported experiencing at least one barrier to career advancement, compared to 78% of men. More generally, the number of barriers reported was fairly evenly distributed between men and women. We find these numbers somewhat surprising in light of other indicators of gender disparities in career advancement, including the data on law firm attrition discussed earlier.¹³² Two of the four respondents who identified as another gender identity reported experiencing at least one barrier.

There was one significant difference in the kinds of barriers men and women tended to face: 35% of women identified family demands as a barrier, compared to 23% of men. The data showed other differences as well, but none to a statistically significant degree. For example, 35% of women identified limited opportunities to develop better skills as a barrier, compared to 28% of men. On the other hand, 40% of men identified inadequate access to mentors and contacts, compared to 36% of women.¹³³

When asked what behaviors they exhibited in the workplace in considering their racial identity and possible discrimination, 2022 Survey respondents most commonly reported that they sought association with other Asian Americans for support.

Among 2022 Survey respondents, 78% reported doing so at least sometimes.¹³⁴ Figure 23 provides more detail: 89% of respondents reported “never” or “rarely” avoiding association with other Asian Americans, 45% reported at least sometimes downplaying traits that may bring attention to their Asian identity, and 61% reported at least sometimes compensating for or trying to emphasize certain traits that others may perceive them to lack because of their Asian identity. Moreover, 61% reported at least sometimes seeking association with other, non-Asian American identity groups for support. This last behavior showed the greatest gender disparity: 66% of women, compared to 54% of men, reported doing so at least sometimes. All of the four respondents who identified as another gender identity also reported doing this at least sometimes.

132 See *supra* notes 64-73 and accompanying text; see, e.g., LIEBENBERG & SCHARF, *supra* note 69, at 7-8.

133 One of the four respondents who identified as another gender identity named family demands as a barrier, while another identified inadequate access to mentors and contacts. Both identified limited opportunities to develop better skills.

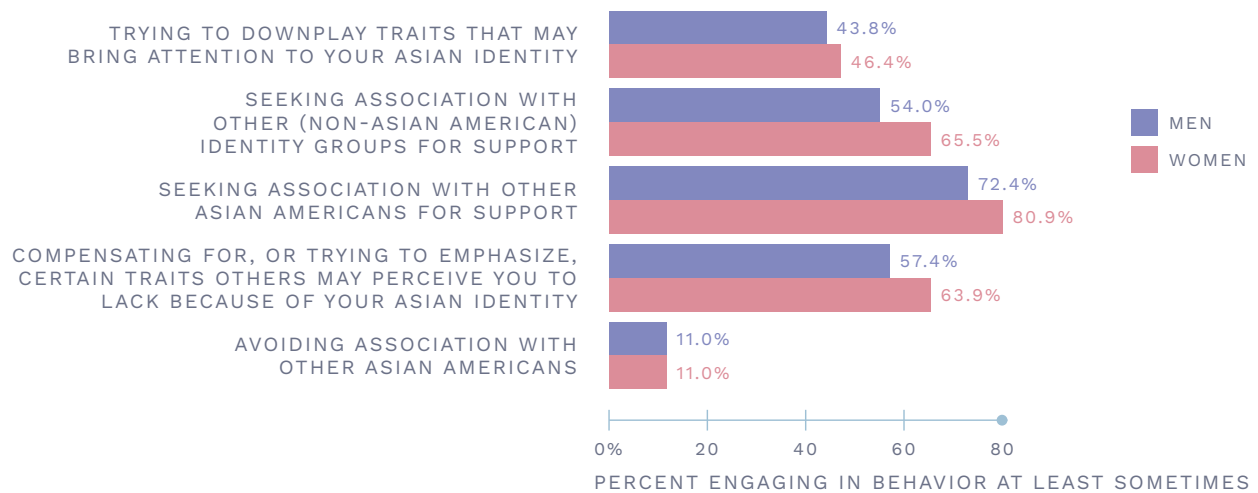
134 This was also the most commonly reported behavior among 2016 Survey respondents. PORTRAIT PROJECT 2017, *supra* note 1, at 30.

Figure 23.

Workplace Behaviors

We asked 2022 Survey respondents, in considering their racial identity and possible discrimination, how often, if at all, they have found themselves behaving in certain ways in the workplace. This figure shows the percentage of men and women who reported engaging in each behavior “sometimes,” “often,” or “very often.”

SOURCE: 2022 Portrait Project Survey



The traits 2022 Survey respondents perceived the legal profession to associate with Asian American lawyers remain virtually unchanged from five years ago.

Over half of 2022 Survey respondents said that being “hard-working,” “responsible,” “logical,” “careful,” “quiet,” “passive,” and “introverted” were traits that the legal profession “often” or “very often” associates with Asian Americans. These results largely mirror those from the 2016 Survey.¹³⁵

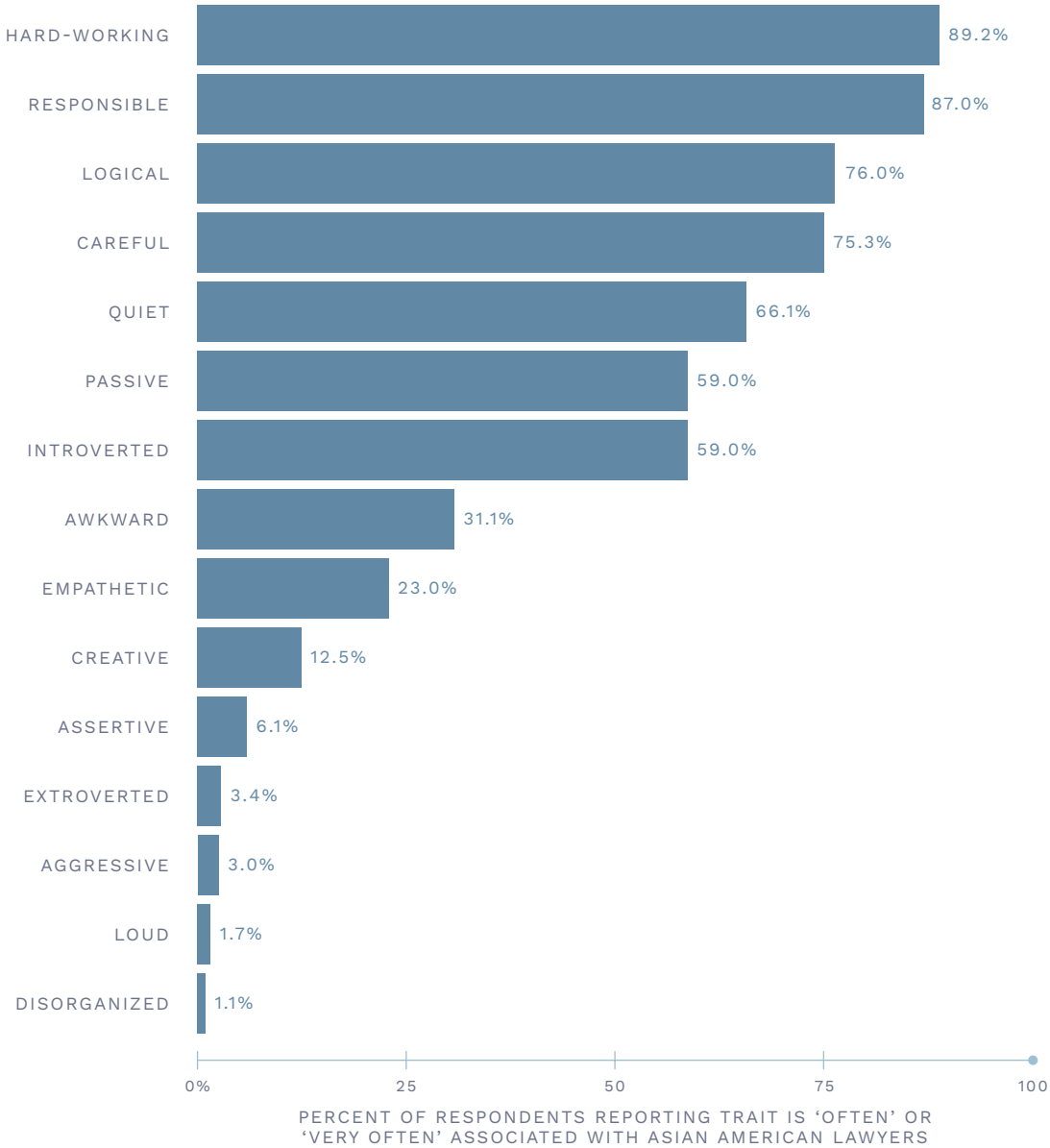
135 *Id.* at 31 fig.19.

Figure 24.

Traits Associated with Asian American Lawyers

We asked 2022 Survey respondents which of these traits they have found the legal profession to associate with Asian American lawyers. This figure shows the number of respondents who answered that a certain trait was “often” or “very often” associated with Asian American lawyers.

SOURCE: 2022 Portrait Project Survey



2022 Survey respondents reported perceiving overt and implicit discrimination in the workplace because of their race more often than 2016 Survey respondents did.

Among 2022 Survey respondents, 41% perceived overt discrimination because of their race at least sometimes, compared to 30% of 2016 Survey respondents.¹³⁶ And 64% of 2022 Survey respondents perceived implicit discrimination because of their race at least sometimes, compared to 58% of 2016 Survey respondents.¹³⁷ In written comments, respondents reported instances of perceived discrimination by their supervisors, colleagues, and clients.

The factors driving these changes are unclear. It could reflect changes in colleagues' workplace behavior. It could also reflect changes in respondents' own awareness of discrimination. And it could be that those who perceived discrimination were more likely to respond to the 2022 Survey than the 2016 Survey.

There were no substantial differences in rates of perceived racial discrimination by ethnicity, gender, or immigrant generation.

Just over half (52%) of 2022 Survey respondents said they believed or were certain that they have encountered discrimination as a barrier to career advancement.

Only 7% said that they definitely have not.

“As a judge, as a woman of color on the bench, I get sassed a lot more than my male colleagues do. . . . [Once,] I was saying, ‘Well, counsel, I have this question.’ [A lawyer in the courtroom] said, ‘No, you wait until I’m finished.’ It was like, ‘No. No, I’m sorry. Last time I checked, I was the judge. And so I get to decide who speaks when.’”

“I have been escorted out of a judge’s chambers because I was not viewed as an attorney.”

¹³⁶ *Id.* at 32.

¹³⁷ *Id.*

“I was assigned to [a technology-intensive practice group], which was not what I wanted. When I asked the managing partner, he assumed it was because I had the right background for the practice group. I have an English degree.”

“I was passed over for a promotion that I felt I deserved and worked for. The reason I was given for not being promoted was that the position entailed a lot of interacting with the public and that I ‘didn’t have the right face’ for the position.”

“In an interview for a summer associate position, the interviewer said, ‘We are a very aggressive firm, and we do a lot of litigation. You are obviously an Asian person, and that’s not something that you all do. How would you deal with that?’ And I remember how incapable I was of thinking of anything to say because I was so offended—and I also wanted the job. I didn’t hate the comment enough to walk out.”

MAJOR FINDINGS

Mental Health

The 2022 Survey expanded on the 2016 Survey's inquiry into respondents' mental health. It included new questions about respondents' experiences seeking professional help or treatment for their mental health. And, against the backdrop of efforts to understand the effectiveness of cultural competence in mental health care,¹³⁸ the 2022 Survey asked respondents about the importance to them of culturally competent care and their satisfaction with their providers' cultural competence.

Mental health challenges appear to be prevalent among Asian American lawyers from law school onward.

Among 2022 Survey respondents, 79% reported experiencing at least one of the following mental health conditions in law school: anxiety, insomnia, depression, panic attacks, alcoholism, eating disorder, and non-alcoholic drug abuse. Anxiety was the most reported condition, with 74% of respondents indicating that they had experienced it in law school. Eating, drinking, and substance use disorders were the conditions reported least frequently (around 10% each).

Each mental health condition we asked about was more prevalent after law school. Rates of depression and insomnia changed the most, each increasing by at least 10 percentage points.

More 2022 Survey respondents reported mental health challenges than 2016 Survey respondents did.

The difference was consistent across mental health conditions and severity levels. Among 2022 Survey respondents, 84% reported mild, moderate, or severe experiences of at least one of the listed mental health conditions in their legal careers, compared to 78% of 2016 Survey respondents. For moderate or severe experiences only, those numbers were 53% and 44%, respectively; for severe experiences only, they were 18% and 11%. These differences were

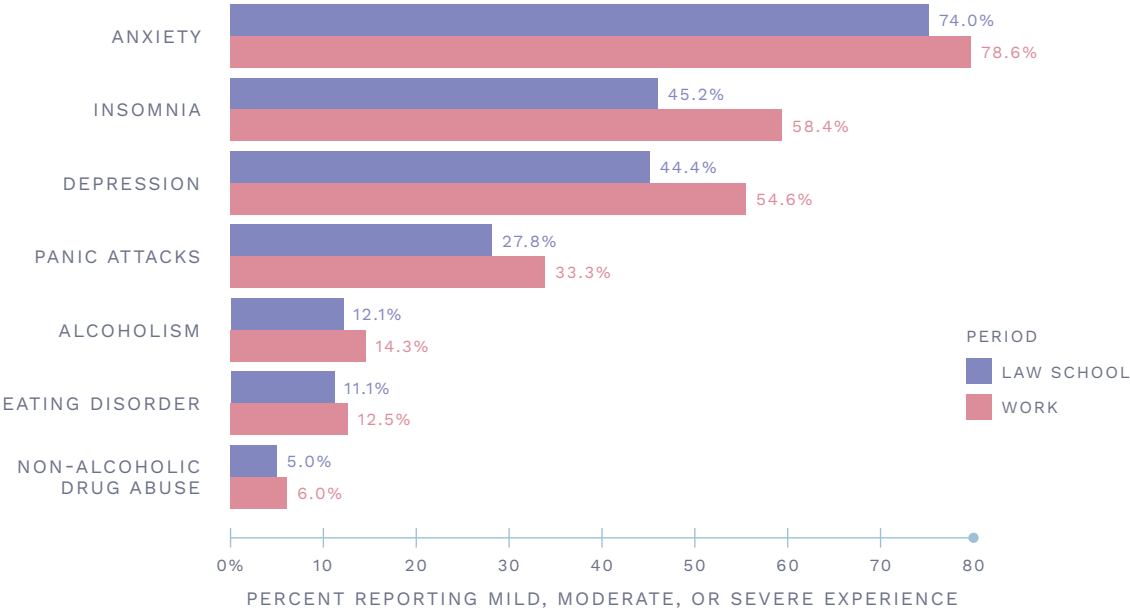
¹³⁸ See, e.g., Kamaldeep Bhui et al., *Cultural Competence in Mental Health Care: A Review of Model Evaluations*, 7 BMC HEALTH SERV. RSCH. 15 (2007).

mostly uniform across mental health conditions except for non-alcoholic drug abuse, which was no more prevalent among 2022 Survey respondents than it was among 2016 Survey respondents.

Figure 25.
Mental Health Challenges

This figure shows the percentage of 2022 Survey respondents who reported experiencing each mental health challenge at mild, moderate, or severe levels during and after law school.

SOURCE: 2022 Portrait Project Survey



More 2022 Survey respondents reported seeking professional treatment or help for their mental health than 2016 Survey respondents did.

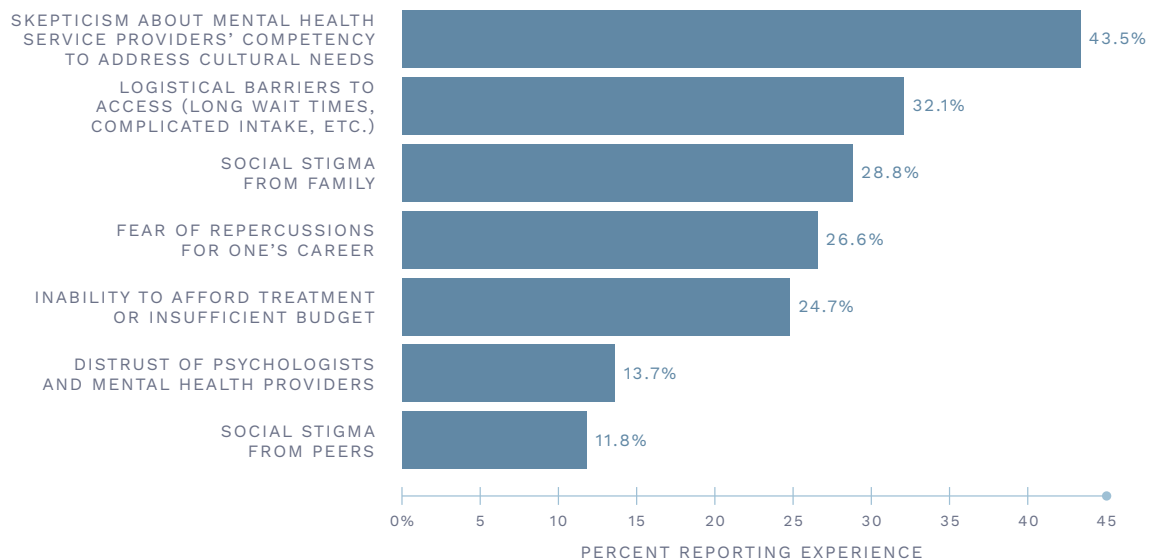
Among 2022 Survey respondents who reported experiencing at least one of the listed mental health conditions in their legal careers, 44% reported seeking professional treatment or help for their mental health; that figure for 2016 Survey respondents was 34%.¹³⁹ Further, 44% of 2022 Survey respondents who sought professional treatment or help reported experiencing skepticism about mental health service providers' competency to address cultural needs in or as a result of doing so. The most common reason survey respondents gave for ever not seeking treatment was logistical barriers to access.

Figure 26.

Experiences While or as a Result of Seeking Mental Health Treatment

We asked 2022 Survey respondents whether they have sought professional help or treatment for any of the challenges listed in Figure 25. For those who have, we then asked whether they have experienced any of these things in or as a result of seeking treatment. This figure shows, among respondents who have sought treatment, the percentage who have had each experience.

SOURCE: 2022 Portrait Project Survey

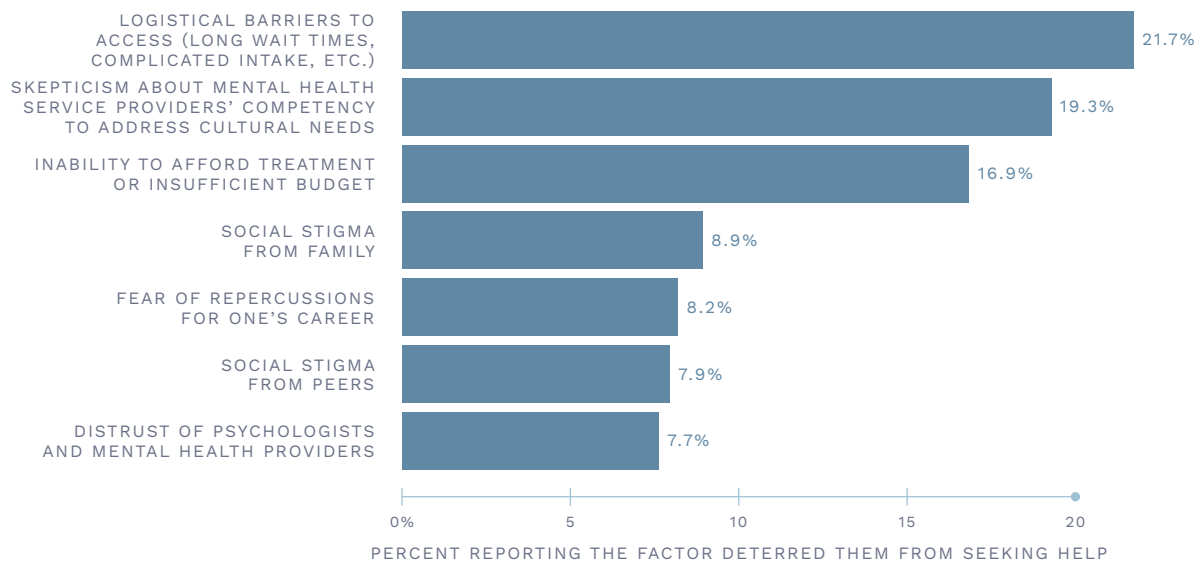


¹³⁹ For a related but not directly comparable analysis of the 2016 Survey data, see PORTRAIT PROJECT 2017, *supra* note 1, at 37.

Figure 27.**Reasons for Not Seeking Mental Health Treatment**

We asked 2022 Survey respondents whether any of the listed items were reasons they decided at any point not to seek mental health treatment. This figure shows the percentage of respondents who selected each reason.

SOURCE: 2022 Portrait Project Survey



We asked survey respondents how important it was that their mental health service providers understood their cultural background and needs, as well as how competently their mental health service providers did so. Among those who responded to the first question, 55% said it was “important” or “very important” to them. Among those who responded to the second question, 39% said their providers were “competent” or “very competent.”

Respondents’ mental health experiences correlated with debt level, age, and gender.

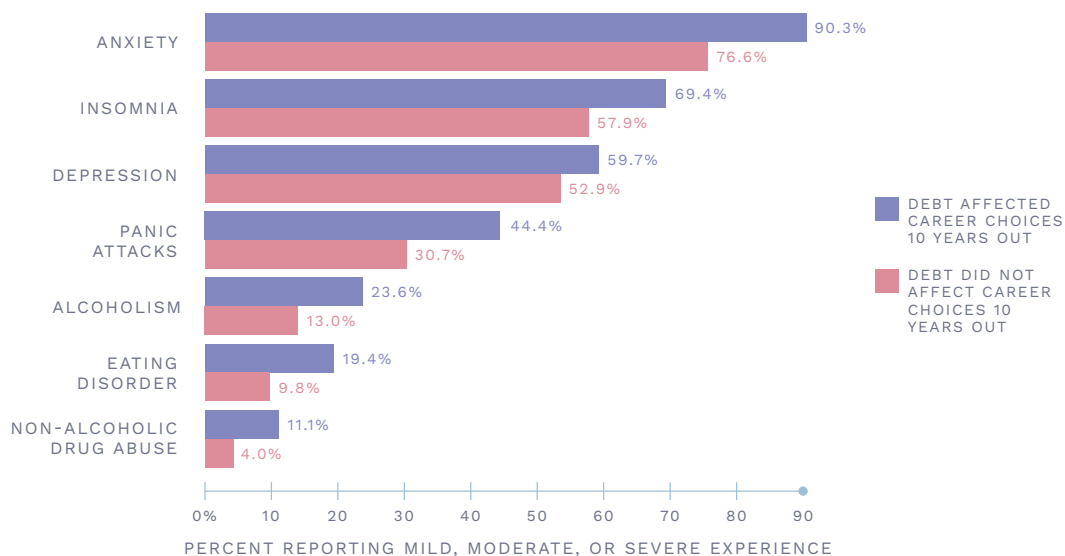
Debt burden correlated with nearly every mental health disorder. For each disorder we asked about, those who reported that education-related debt still substantially affected their career choices 10 years after law school were up to 20 percentage points more likely to report having experienced it in their legal careers than those who reported that education-related debt had never substantially affected their career choices. The disparity in mental health between those who are affected by debt and those who are not widens over time. Figure 28 shows the disparity for each disorder 10 years after law school as an example. We caution, however, that we cannot draw causal conclusions from these trends.

Figure 28.

Mental Health Challenges by Debt Burden

This figure shows, among 2022 Survey respondents who have been out of law school for at least 10 years, the percentage who reported experiencing each mental health challenge at mild, moderate, or severe levels after law school, disaggregated by whether education-related debt substantially affected their career choices 10 years after law school.

SOURCE: 2022 Portrait Project Survey



Age also correlated with mental health. Respondents currently younger than 40 were generally more likely than respondents currently older than 50 to report experiencing mental health disorders. In law school, for example, they were up to 16 percentage points more likely to experience at least mild depression. They were also 11 percentage points more likely to seek treatment and, as Figure 29 shows, up to 17 percentage points more likely to report certain negative experiences, particularly logistical and financial barriers to access, as a result of doing so.

Figure 29.

Mental Health Challenges by Age

This figure shows the percentage of 2022 Survey respondents who reported experiencing each mental health challenge at mild, moderate, or severe levels after law school, disaggregated by age range.

SOURCE: 2022 Portrait Project Survey

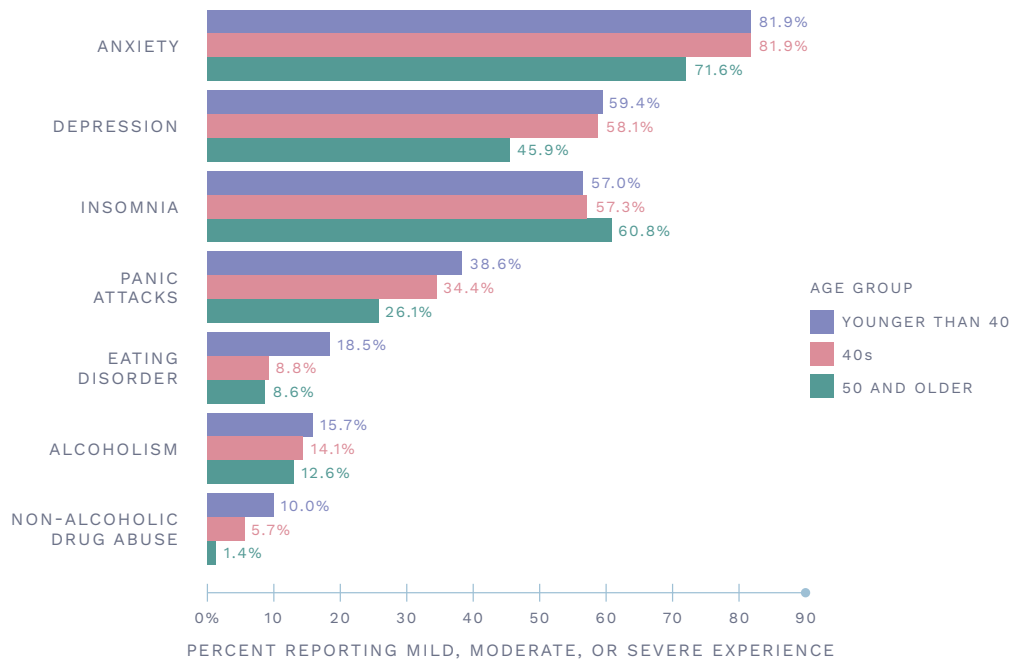
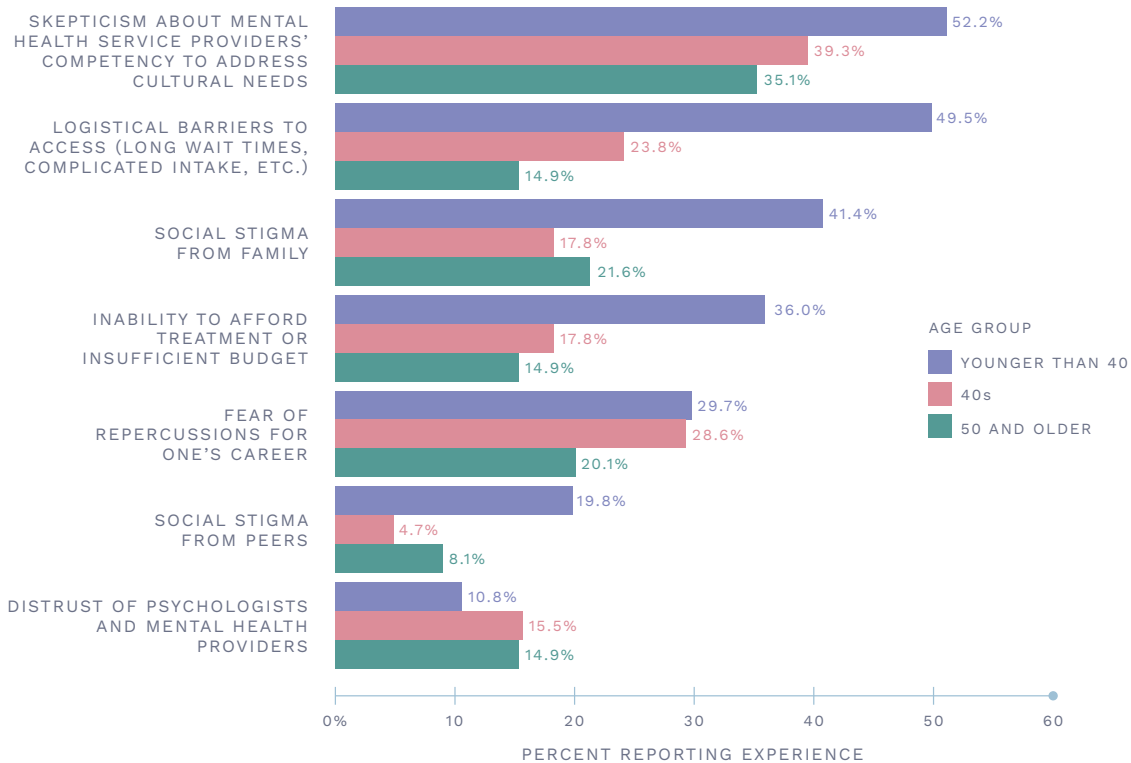


Figure 30.

Experiences While or as a Result of Seeking Mental Health Treatment by Age

This figure shows, among respondents who have sought mental health treatment, the percentage who have had each experience, disaggregated by age range.

SOURCE: 2022 Portrait Project Survey



As Figure 31 shows, women were more likely than men to report at least mild depression and insomnia both during and after law school; 59% of women reported at least mild depression after law school, compared to 48% of men. And 49% of women reported at least mild insomnia during law school, compared to 38% of men. A 2020 survey of lawyers of all races by the California Lawyers Association and the D.C. Bar found that women were more likely to report stress, anxiety, depression, and hazardous drinking.^{140, 141}

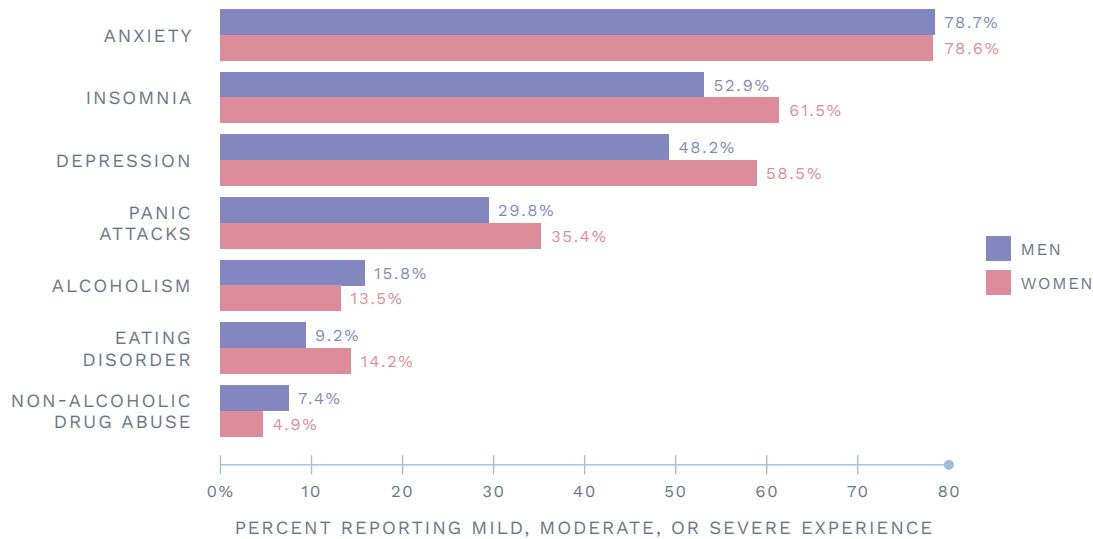
140 Justin Anker & Patrick R. Krill, *Stress, Drink, Leave: An Examination of Gender-Specific Risk Factors for Mental Health Problems and Attrition Among Licensed Attorneys*, PLOS ONE, May 12, 2021, at 6-7, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0250563>.

141 Among the four people who identified as another gender identity, the number who reported anxiety during and after law school were four and three, respectively; depression four and three; insomnia four and four; panic attacks four and two; eating disorders two and two; non-alcoholic drug abuse one and one; and alcoholism one and zero.

Figure 31.**Mental Health Challenges by Gender**

This figure shows the percentage of 2022 Survey respondents who reported experiencing each mental health challenge at mild, moderate, or severe levels after law school, disaggregated by gender.

SOURCE: 2022 Portrait Project Survey



Respondents' mental health experiences did not correlate with practice setting or social background.

We found no meaningful differences in the prevalence of any condition across practice settings.¹⁴² Nor did we detect meaningful differences based on the educational resources respondents had when applying for college and law school.

142 This contrasts with research suggesting that law firm attorneys are especially vulnerable to mental health and substance use disorders. See, e.g., Jonathan Koltai et al., *The Status-Health Paradox: Organizational Context, Stress Exposure, and Well-Being in the Legal Profession*, 59 J. OF HEALTH & SOC. BEHAV. 20, 27-29 (2018) (finding "higher levels of depressive symptoms" among law firm attorneys compared to attorneys working in the public sector); Patrick Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. OF ADDICTION MED. 46, 49-51 (2016) (finding that attorneys working in law firms "experience some of the highest levels of problematic alcohol use compared with other work environments").

“I have recently seen colleagues burned out from working from home and from everything going on in the pandemic. At least three people that I’m close to have been taking breaks for three months or six months for personal or mental health reasons. The firm has been supportive of that as far as I can see. I think that’s good, but I don’t know what else they could do.”

“Therapy was extremely painful for me. All of a sudden, you realize you have all these blind spots. For me, for example, I had no boundaries between work and personal life. Therapy was tough work, and I hated it. But then I had a period of reflection where I realized I’ve really begun to change my behavior based on these revelations. It’s the best thing I’ve ever done for myself.”

“Growing up in an Asian household, there’s this idea of pride and not sharing too much about your family. I went to a therapist as an adult, but I never told my parents. I think they would be so offended or confused and say things like, ‘Why would you need to pay money to talk to a stranger? We didn’t do anything wrong. You don’t have any issues.’”

“I wish the Asian community were more open to therapy. I tried to find an Asian therapist, and I couldn’t. It’s so hard to find somebody who has that shared experience and would have direct guidance for you. I wish that it were more open and more accepted, and I’m hopeful that it will be.”

MAJOR FINDINGS

Politics, Current Events, and Community Engagement

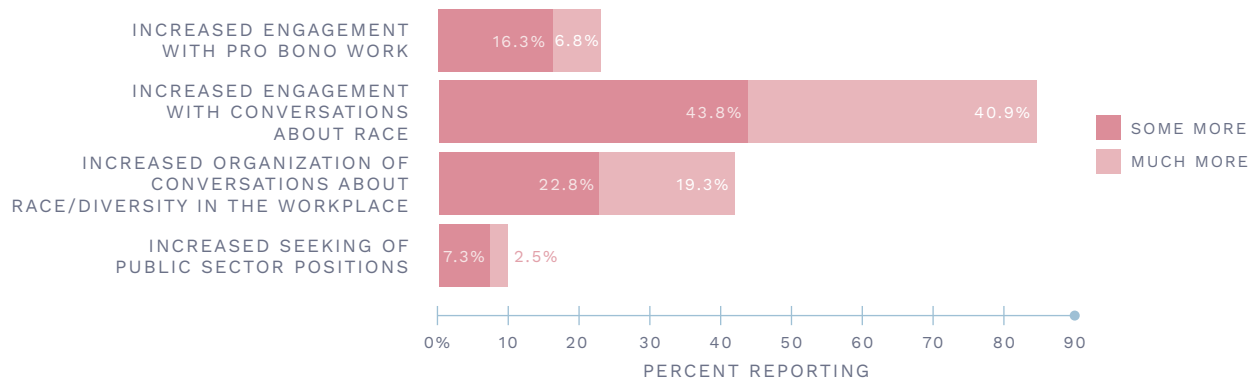
Our 2022 Survey featured new questions that asked respondents to reflect on COVID-19, racism and violence against Asian Americans, and racial justice mobilizations. We were interested in learning how Asian American attorneys have responded to these events in their personal and professional lives.

We asked respondents to identify whether they engaged in certain activities “much less than,” “somewhat less than,” “the same amount as,” “some more than,” or “much more than” before. We note two caveats when interpreting their responses. First, we asked only about actual engagement, not desire to engage. For example, because of COVID-19, certain individuals may have chosen to stay at home. These individuals may therefore have reported less participation in certain activities for personal health reasons, whatever their level of desire to participate. Second, we asked about changes in level of engagement. Individuals who already engaged substantially in an activity before the time frame we asked about could have remained relatively active. Those people would report no change in their level of engagement.

A significant proportion of 2022 Survey respondents (85%) reported engaging in more conversations about racial justice since March 2020, in response to the changing social climate in the country. In addition, 42% have increased their formal organizing of such discussions in their workplace.

Figure 32. Change in Professional Activities from March 2020

SOURCE: 2022 Portrait Project Survey



“I experienced anti-Asian violence well before 2020, as did my mom, who worked in a sweatshop. I think that for South Asians, and East Asians that occupy the lower rungs of America’s socioeconomic hierarchy, the violence has always been there. What’s changed, in addition to the number of incidents, is that middle-class and professional Asian Americans feel threatened now. . . . I think a lot of Asian Americans have recently started developing their political voices and identities, and there have been and will be a lot of growing pains.”

“Throughout my life, I have been subjected to a lot of teasing, ridicule, and outright discrimination because of my race. . . . The same animus that prompted that teasing, ridicule, and discrimination are now manifesting itself as violence, and I feel that my children will be paying that price.”

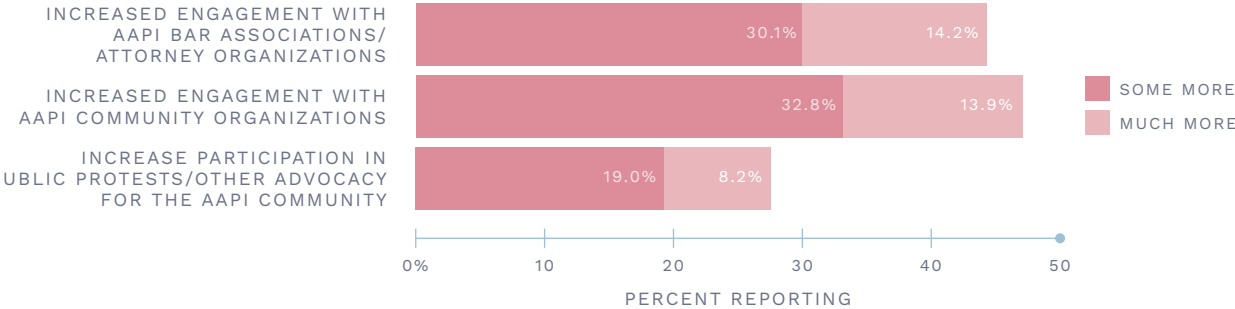
“Recent events have validated the work that I do as a public defender and reinforced my commitment to underserved communities.”

Since March 2020, participation in groups and events centered on the Asian American community has also increased. First-generation immigrants in particular have reported a sizable increase in engagement in public protests and other forms of advocacy by or for Asian Americans.

Among survey respondents, 44% have become more involved in Asian American bar associations or other attorney organizations, and 47% have become more involved with Asian American community organizations. A higher proportion of first-generation immigrants, whom we define as individuals who immigrated to the United States after high school, reported that they increased their participation in public protests and other forms of advocacy by or for Asian Americans (43%) compared to all other generations of immigrants (26%).

Figure 33.
Change in AAPI Activities from March 2020

SOURCE: 2022 Portrait Project Survey



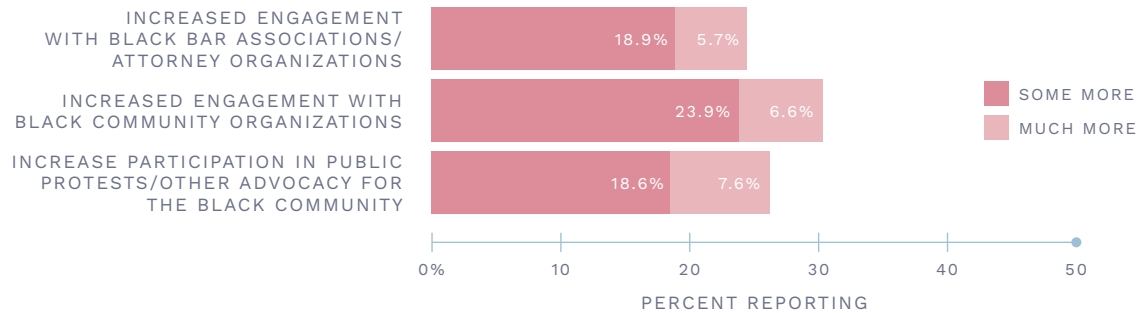
Since March 2020, the number of respondents who have increased engagement in public protests or other forms of advocacy by or for Black Americans mirrors the number who have increased such activity by or for Asian Americans.

Among 2022 Survey respondents, 26% have engaged in more public protests or advocacy in support of the Black community. This number is almost the same as the proportion of respondents—27%—who have engaged in more public protests or advocacy on Asian American issues.

Figure 34.

Change in Advocacy or Support for Black Community Since March 2020

SOURCE: 2022 Portrait Project Survey



“Following the killings of Ahmaud Arbery in Georgia, George Floyd in Minnesota, and Breonna Taylor in Kentucky, I participated actively in a protest organized by AAPIs for Black Lives Matter. Following the massacre of six AAPI women in Georgia, I participated actively in organizing multiple events with GAPABA [Georgia Asian Pacific American Bar Association] and local AAPI community activists, joining and then coordinating protests, webinars, vigils, and commemorative events.”

“I have especially taken any opportunity to highlight the fact that Asian Americans have historically been used as a wedge against Black Americans and other communities of color to perpetuate the myth of meritocracy, signa[ling] to those groups to just ‘keep their heads down and work hard.’”

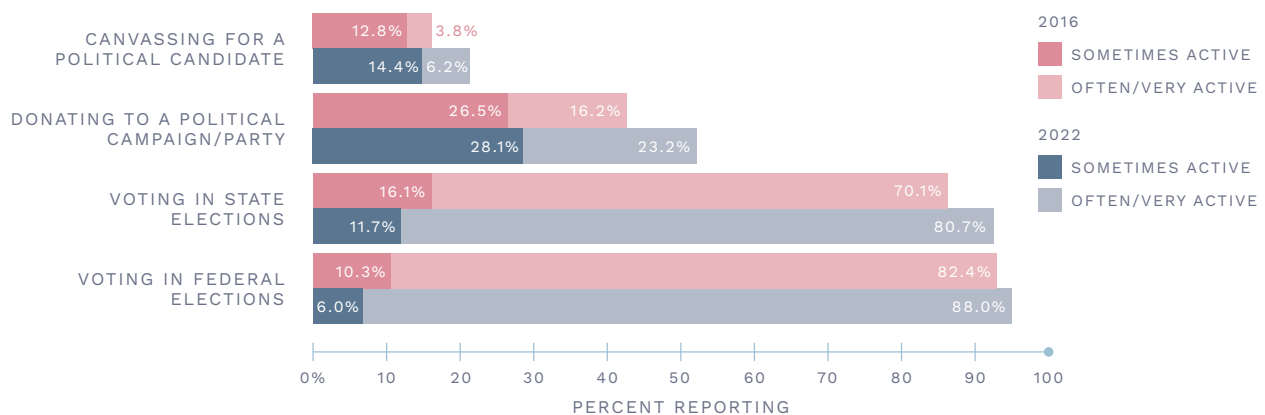
“I’ve been supporting the advocacy of groups serving Black and African immigrants and uplifting their stories and drawing attention to the fact that immigration is also a Black issue.”

Compared to 2016 Survey respondents, a greater proportion of 2022 Survey respondents reported having canvassed for a political candidate (21% versus 17%), donated to political campaigns or political parties (51% versus 43%), or voted in state elections (92% versus 86%).

While the percentage of respondents voting in federal elections has remained stable, a slightly greater proportion of respondents now report being “often” or “very” active in casting ballots in federal elections (88% versus 82%). These data indicate that Asian American attorneys have historically participated at high rates in federal elections.¹⁴³

Figure 35.
Political Activity

SOURCE: 2022 Portrait Project Survey



Across all gender identities, 2022 Survey respondents reported that they have considered running for political office, whether local, state, or federal, more than 2016 Survey respondents.

Among our 2022 Survey respondents, 24% reported considering running for political office, while 12% reported maybe considering running. In light of the fact that only 13% of respondents reported “gaining a pathway to government or politics” as one of their top three reasons for entering law school,¹⁴⁴ the data here suggest that individuals may have shifted their

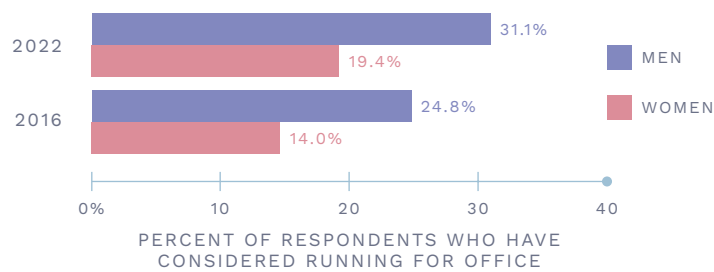
143 National 2020 General Election Early & Absentee Vote Report, TARGET SMART (Oct. 4, 2021, 2:56 PM), https://targetearly.targetsmart.com/g2020/?demo_filters=%5B%7B%22key%22%3A%22raceEdu%22%2C%22value%22%3A%22All%22%7D%5D&view_type=National.

144 See *supra* p. 28.

goals over time. More men than women have thought about running. A greater percentage of both men and women responding to the 2022 Survey reported contemplating running relative to 2016 Survey respondents. In addition, one of the four respondents identifying as another gender identity has thought about running for office.

Figure 36.
Thoughts About Running for Office

SOURCE: 2022 Portrait Project Survey

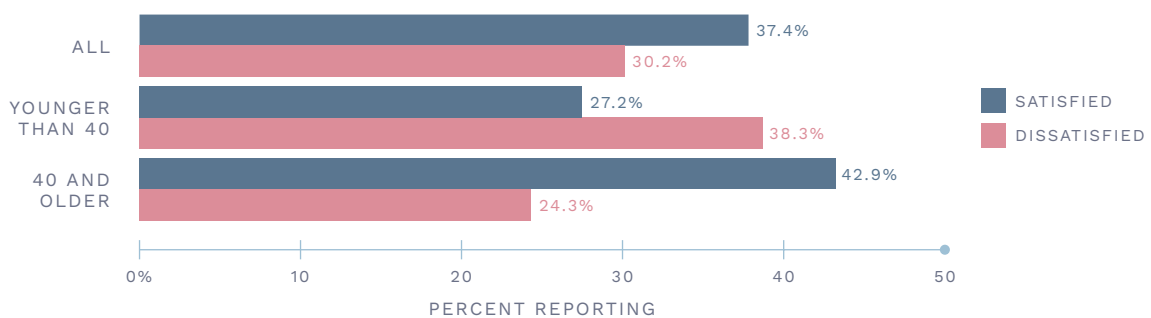


Our 2022 Survey respondents showed a generational divide in satisfaction with the support their employers offer Asian American attorneys in light of recent events. More attorneys aged 40 and older are satisfied than dissatisfied, while more younger attorneys are dissatisfied than satisfied.

More attorneys under 40 reported being dissatisfied (38%) than satisfied (27%). Among attorneys over 40, the ratio is flipped: 24% are dissatisfied, and 43% are satisfied. Further, 7% of men are “very dissatisfied,” compared to 12% of women and one of the four respondents identifying as another gender identity.

Figure 37.
Satisfaction with Workplace Support

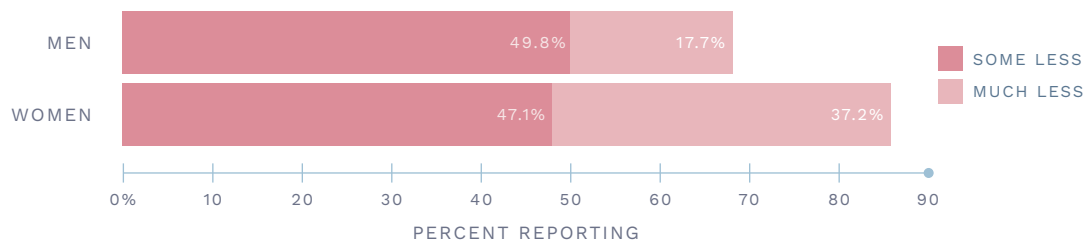
SOURCE: 2022 Portrait Project Survey



Over three-quarters of 2022 Survey respondents reported feeling less physically safe in the past two years than they did before. In particular, 84% of women and all four individuals identifying as another gender identity feel less safe.

Figure 38.
Perceptions of Physical Safety

SOURCE: 2022 Portrait Project Survey



“As someone who . . . grew up in a poor, working-class family in Brooklyn, I am not at all surprised that many of the assailants are young men of color. I myself have been harassed on the subway. I think that when we, as Asian American lawyers and now fairly well-to-do, talk about these issues, we are not always talking about the class dynamics. The poor, the elderly grandparents who are being knocked over are usually living in very poor communities. They are monolingual. They are English deficient. They grow up with stereotypes about men of color. I know that’s how my mother reacted when I first introduced my now-husband, who’s Latino, to her. I think that these issues are really complicated. And when we talk about coalition-building and authenticity, we have to talk about those issues on that level.”

We also asked 2022 Survey respondents about their self-identification as Asian American in comparison to their self-identification with their specific ethnic or national identity. A greater percentage of East Asian respondents (45%) than non-East Asian respondents (30%) reported that they “strongly agree” that their pan-Asian American identity is important.

Non-East Asian respondents reported participating in more associations, community organizations, or work affinity groups that are specific to their ethnic identity (1.1 on average) than East Asian respondents did (0.7 on average).¹⁴⁵

“One of the other ways I’ve tackled my identity is I’ve actually formed an organization with a few others for American Muslims in the legal industry. As part of that, we highlight and showcase the success of people, but also some of the challenges that they’ve faced along the way.”

“I joined professional organizations for community purposes, but have often found too much focus in AAPI organizations on law firms and in-house positions. There are far fewer conversations and opportunities for folks interested in public interest, academia, or other types of legal work. It is one aspect that has turned me away from renewing memberships in some bar associations.”

“I am a Korean adoptee, so I don’t 100% feel like part of the Asian community. . . . So while I have sought out professional organizations that focus on Asians to be part of a community, being an adoptee is like being a minority within a minority. The community organization I volunteer with and am a board member of is specifically focused on Korean adoptees and their families.”

145 We count Chinese, Japanese, Korean, and Taiwanese-identifying attorneys as East Asian attorneys and other respondents as non-East Asian attorneys. In light of the diversity of our respondents, we chose terminology that tracks as accurately as possible the two groups we separate out in this section. For a more complete demographic breakdown of respondents, see *supra* pp. 9-10.

Discussion

We report the findings of this study against the backdrop of five tumultuous years since the original publication of *A Portrait of Asian Americans in the Law*. A global pandemic has amplified harmful stereotypes of Asian Americans as disease vectors and perpetual foreigners, fueling a rise in anti-Asian hate incidents, harassment, and violence. The murder of George Floyd brought new urgency to advocacy for the Black community and a wide range of racial justice initiatives. And anti-immigrant rhetoric and policies have conjured the troubling history of racist and xenophobic attacks directed at many Asian American groups.

Throughout these events, Asian American lawyers have fought discrimination and helped safeguard the rule of law. A global law firm teamed up with the Asian American Bar Association of New York to produce a groundbreaking report on anti-Asian hate and violence, calling for improved reporting mechanisms and increased representation of Asian Americans in law enforcement and the courts.¹⁴⁶ After a mass shooting in Atlanta in which six of eight victims were Asian women, the Georgia Asian Pacific American Bar Association created an AAPI Crime Victims and Education Fund to combat hate crimes and provide support for victims.¹⁴⁷ Several Fortune 1000 general counsel and partners at major law firms created the Alliance for Asian American Justice to provide pro bono legal services to victims of anti-Asian hate.¹⁴⁸ And two federal judges—one Asian American and one Native Hawaiian—were among the first to enjoin an Executive Order that imposed a “travel ban” on individuals originating from certain countries, many with large Muslim populations.¹⁴⁹

The findings in this report reflect a heightened awareness among Asian American lawyers of their role in combating discrimination, promoting public safety, and educating the citizenry. Our 2022 Survey respondents reported experiencing discrimination, overt and implicit, more

146 Asian American Bar Association of New York and Paul, Weiss, *A Rising Tide of Hate and Violence against Asian Americans in New York During COVID-19: Impact, Causes, Solutions* (2021), https://cdn.ymaws.com/www.aabany.org/resource/resmgr/press_releases/2021/A_Rising_Tide_of_Hate_and_Vi.pdf [<https://perma.cc/3X63-SXB3>].

147 Meredith Hobbs, *Asian-American Bar Groups Launch Fundraisers for Spa Shooting Victims, Anti-Hate Efforts*, LAW.COM (Mar. 26, 2021), <https://www.law.com/dailyreportonline/2021/03/26/asian-american-bar-groups-launch-fundraisers-for-spa-shooting-victims-anti-hate-efforts/> [<https://perma.cc/CR5W-BF7P>].

148 *Standing Up Together for Victims of Anti-Asian Hate*, ALL. FOR ASIAN AM. JUST. (last visited Oct. 30, 2022), <https://www.allianceaajustice.org/> [<https://perma.cc/QS6W-YX34>].

149 *State v. Trump*, 265 F. Supp. 3d 1140, 1145 (D. Haw.), *aff'd in part, vacated in part*, 878 F.3d 662 (9th Cir. 2017), *rev'd and remanded*, 138 S. Ct. 2392 (2018); *Int'l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539, 543 (D. Md.), *aff'd in part, vacated in part*, 857 F.3d 554 (4th Cir. 2017), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *vacated and remanded sub nom. Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353 (2017).

often than 2016 Survey respondents, and a substantial majority of 2022 Survey respondents, both men and women, said they have felt less safe in the past two years than before. More Asian American attorneys this year than in 2016 identified a desire to change or improve society as a primary motivation for attending law school, and far more attorneys this year than in 2016 identified a desire to advance issues or values important to them as a significant motivation for changing their practice setting.

In addition, an overwhelming majority of 2022 Survey respondents said they have engaged in more conversations about racial justice compared to five years ago, and 40% to 50% have organized such discussions in their workplaces or increased their involvement in Asian American organizations. This year's respondents reported higher levels of political activity (donating, canvassing, and voting) than 2016 Survey respondents. And over a quarter of 2022 Survey respondents have increased their engagement in protests or other advocacy on behalf of the Asian American community—roughly the same number who have increased their engagement in protests or other advocacy in support of the Black community. Altogether, these findings suggest that events over the last five years have invigorated Asian American attorneys' commitment to racial justice, their sense of racial or ethnic identity, and their determination to protect our communities.

This uptick in social and political engagement has occurred at the same time as Asian American enrollment in law school has rebounded in the past four years from a 20 year low and as Asian Americans have made progress in joining the federal judiciary and corporate C-suites. Asian Americans now comprise 6% of active federal judges, almost double the percentage in 2016; this figure includes 15 judges on the federal courts of appeals, comprising 8.4% of federal circuit judges. In addition, there were 45 Asian Americans serving as general counsel of Fortune 1000 companies in 2020, up from 19 in 2009. The presence of Asian Americans in these visible roles contributes to the quality of decision-making on important issues and inspires others to achieve similar success.

At the same time, Asian Americans remain underrepresented in the top ranks of major law firms. In one 2020 survey, Asian Americans comprised 8.6% of all attorneys but only 4.3% of equity partners. Asian Americans at law firms continue to exhibit the highest attrition rate among all groups, and the reasons for this are the subject of ongoing Portrait Project research. Further, the numbers of Asian Americans remain low among law clerks, law professors, and state court judges. And their numbers are disturbingly low among top prosecutors: As of October 2022, only one of the 93 Senate-confirmed U.S. Attorneys is Asian American, and in 2019, there were only eight Asian Americans among the nearly 2,400 elected prosecutors

in cities, counties, and states throughout the country. These figures are especially concerning given the rise in reported incidents of anti-Asian harassment and violence in recent years.¹⁵⁰

The top obstacles to career advancement identified in our 2022 Survey are the same as those identified in our 2016 Survey: lack of formal leadership training programs, inadequate access to mentors and contacts, and lack of recognition for one's work. In addition, our 2022 Survey respondents reported being perceived in the workplace in stereotyped ways—hard-working, responsible, and logical, but not empathetic, creative, or assertive—that portray them as lacking in interpersonal skills and leadership potential. These findings mirror those in our original study, where we reported that “Asian Americans appear to face significant obstacles” in selection processes that “involve not only objective measures of ability, but also access to mentorship and subjective criteria such as likability, gravitas, leadership potential, and other opaque or amorphous factors that may inform whom judges, faculty members, or law firm partners regard as their protégés.”¹⁵¹ We conclude that Asian Americans would benefit greatly from more institutional supports that counteract stereotypes and facilitate relationship-building, development of soft skills, and leadership opportunities.

Finally, 84% of 2022 Survey respondents said they have experienced mental health challenges in their careers, compared to 78% of 2016 Survey respondents. Such challenges are experienced at higher rates among women, younger attorneys, and those with educational debt. Among those who reported experiencing mental health challenges, a higher percentage of 2022 Survey respondents (44%) compared to 2016 Survey respondents (34%) sought professional treatment. Still, less than half of respondents facing mental health challenges sought treatment, and among those who did, 44% expressed skepticism about the competency of providers to address cultural needs. These findings, in the midst of a pandemic that has negatively impacted mental health throughout the population, underscore the continuing need to improve the efficacy and accessibility of wellness resources throughout the legal profession.

150 Goodwin Liu, *Anti-Asian Attacks Might Have Been Taken More Seriously if We Had More Asian American DAs*, L.A. TIMES (Mar. 26, 2021), <https://www.latimes.com/opinion/story/2021-03-26/rob-bonta-attorney-general-asians-prosecutors> [<https://perma.cc/4DK8-SQJP>].

151 PORTRAIT PROJECT 2017, *supra* note 1, at 39.

About the Authors

TYLER DANG is a 2022 graduate of Yale Law School, where he was Co-Chair for the Asian Pacific American Law Student Association and a Coker Fellow.

KATHERINE FANG is a 2022 graduate of Yale Law School, where she was a Paul & Daisy Soros Fellow for New Americans.

BENJI LU is a JD/PhD candidate at Yale Law School and the UC Berkeley Department of Statistics.

MICHAEL TAYAG is a 2021 graduate of Yale Law School, where he was a member of the Worker and Immigrant Rights Advocacy Clinic and served on the executive boards of the Capital Assistance Project and First Generation Professionals.

GOODWIN LIU is an Associate Justice of the California Supreme Court. Before joining the court in 2011, he was Professor of Law and served as Associate Dean at the UC Berkeley School of Law.