

# BLACK STORIES

**How Implicit Bias Serves to Impede Black  
Advancement in Law, Education and Enterprise**

***A Presentation for the  
Contra Costa County Bar Association***

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## PANELISTS

- Judge Jennifer Madden (Moderator)
- Dr. Princess
- RJ Martin
- Adante Pointer
- Ayana Curry
- Terrance Evans
- Johnathan Madison
- Stan Goff
- John Burris
- James Cook (Moderator)
- Michel R. Huff

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## DISCUSSION FORMAT

- 1. The moderators will briefly introduce all panelists at the beginning.
- 2. Panelists will provide further introduction during the first question.
- 3. Each panelist will have 2 - 4 minutes to answer the questions listed below. An Alarm will sound at 15 seconds.
- 4. The question will be listed in the PowerPoint presentation and provide some examples. The legal and BIAS MCLE points are color-coded.
- 5. This discussion explore the explores bias in terms of providing insight to for people who don't share the experiences and perspectives of accomplished black professionals.
- 6. Panelists are encouraged to reframe any questions and modify their answer as they see fit.

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## #1 INTRODUCTIONS/THE SYSTEM (2 minutes)

- Please introduce yourself and your current title. Briefly describe your background and your story which led you to where you are in your profession. Describe you experience with the "SYSTEM" in terms of career advancement - whether it be criminal/justice, political, financial, or the overall "prison, military, corporate, industrial complex"

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## #2 WHITE ALLIES (90 Seconds)

- You've heard the concept of "ALLYSHIP". With everything happening in the U.S. including George Floyd, Daunte Wright, Black Lives Matter, you've probably been asked about how to be an "ALLY". In the wake of the George Floyd uprisings, it feels like the allies have gone silent as it pertains to black advancement in law and enterprise. What is your opinion?

5

## #3 Voting Restrictions (180 seconds)

- ***Voting Restrictions and Gerrymandering Dominate Today's headlines.*** Numerous states have advanced restrictive voting laws. Those states have also gerrymandered voting districts designed to dilute the black franchise. In some cases it feels like progressive politicians are passive on this issue. In terms of an MCLE bias discussion, can you offer insight on how black professionals and other minority professionals think about this and other similar issues as distinguished from their white counterparts? What does this mean for midterm elections?

6

## #4 JANUARY 6, 2021 (180 seconds)

- We know what happened on January 6, 2021. We've seen the pictures. We know who was there? At this point, arrests have been made and there is a Congressional Investigative Committee. Though it is easy to predict what would have happened had the protagonists been black, our community surprisingly supports both sides of the issue. In terms of a bias discussion, what is your take?

7

## #6 COVID 19 and the Healthcare System (90 seconds)

- Covid 19 has decimated black communities throughout the country. Covid 19, Delta, and Omicron highlight inequalities in healthcare. Regardless, Black people still have the lowest vaccination rates. The reasons for African-American vaccine hesitancy are rooted in the legacy of events such as Tuskegee. This attitude distinguishes itself from the viewpoints held by the Anti-Vax movement and QAnon. Considering all of this what are your thoughts?

8

## #7 Local Court System (90 seconds)

- The criminal justice system, academics, and business, finance, and science are frequently considered hostile territory for black African-American advancement. What changes would you like to see in your arena. Lawyers, for instance, what changes would you make in the local court system to forge an even playing field and to make the forum less intimidating for black and brown people?

9

## #8 DEAR WHITE PEOPLE (30 seconds)

- As a black professional, who bears witness to and carries the burden of the struggle of our ancestors, how would you complete this phrase: Dear white people....

10

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## A National Conversation on Racism: the Legal Profession's Role in Driving Equality



Photo: mavo/Shutterstock.com

NEWS

### The Black Attorney Population Has Not Grown Since 2011

The stagnation in Black attorney head count growth comes as overall minority numbers have inched up and as the legal industry has put a considerable focus on improving diversity in the profession.

August 02, 2021 at 01:56 PM

🕒 2 minute read

Diversity

[Dylan Jackson](#)

### What You Need to Know

- The proportion of Black attorneys in the legal industry has slightly declined since 2011, according to the ABA.
- The decline comes as the number of minority attorneys as a whole has seen an increase.
- Poor retention and a decline in representation among other sectors of the industry may be to blame.

New data from the American Bar Association has found that Black attorneys make up roughly 4.7% of all lawyers—a small dip from 2011, when Black attorneys made up 4.8% of the lawyer population, and a testament to the lack of progress the industry as a whole has seen in the last decade despite the renewed push from Big Law.

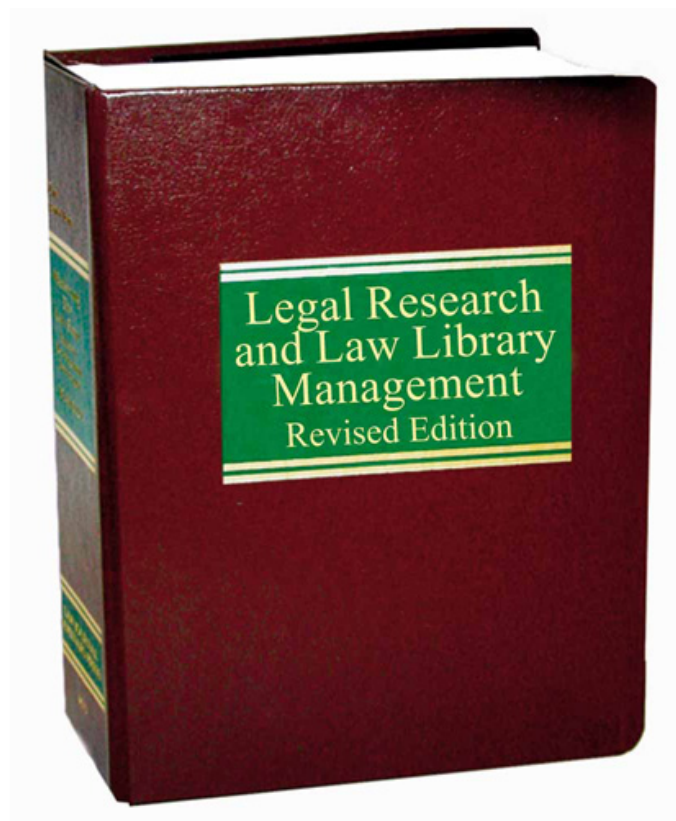
The data stems from the [ABA National Lawyer Population Survey](#) released last week. The survey notes that while Black attorneys have seen a decline in proportional representation, the overall proportion of minority attorneys have increased over that same time frame. In 2011, 11.7% of attorneys belonged to a minority group. This year, 14.6% of attorneys identify as a minority—a percentage increase of 2.9%.

Asian attorneys have seen a 0.8% uptick, from 1.7% to 2.5%, while Hispanic attorneys have grown from 3.9% of the attorney population in 2011 to 4.8% this year. It's worth noting that all of the various minority groups are still lagging behind their proportion of representation among the overall

population. For example, while Hispanic attorneys account for a growing proportion of attorneys, Hispanics make up around 18% of the total population.

The numbers are puzzling given the recent and real push by Big Law firms, corporate clients and outside organizations such as Diversity Lab to increase the number of minority attorneys in the legal industry. Michelle Silverthorn, founder and CEO of Inclusion Nation, said that without a drill-down on the data, it's hard to know where the deficiencies lie.

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“Big Law is an important fraction, but a small fraction of the lawyers that practice across the country,” Silverthorn said. “You have to look at government attorneys, in-house counsel, solo practitioners.”

The ABA does note that minority attorneys skew toward associate ranks—either indicating that there is an issue with retention or that firms need a few more years to convert a robust pipeline into representation among the partnership ranks. The American Lawyer’s 2021 Diversity Scorecard [found](#) that 16 of the nation’s largest firms, nine of which are in the Am Law 200, did not have one Black partner in 2020.

“What happens between year six and nine which makes those attorneys leave?” Silverthorn added.

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## Lawyers Say They Face Persistent Racial and Gender Bias at

By Karen Zraick

Sept. 6, 2018

Women and people of color in the legal profession continue to face barriers in hiring, promotion and pay, according to a study released Thursday by the American Bar Association.

The survey, which proposes strategies for employers to eliminate the barriers, was conducted by the Center for WorkLifeLaw at the University of California, Hastings College of the Law, for the bar association's Commission on Women in the Profession and the Minority Corporate Counsel Association.

Michele Coleman Mayes, former chairwoman of the commission, said she oversaw the report, called "You Can't Change What You Can't See: Interrupting Bias in the Legal Profession," because she was dismayed by statistics on men of color and women in top positions — and the way that law firms and organizations were talking about diversity.

The most commonly used training materials and leadership courses focused on how individual lawyers could overcome barriers in the workplace, she said, rather than on removing those barriers.

"That's only half of the equation," she said. "We're hoping that people can look at the systems, and not put so much weight on the individual."

The researchers had 2,827 lawyers fill out online surveys in spring 2016 about their experiences at work. The surveys were distributed by the bar association's email list and other professional networks. The association has 400,000 members.

They found that many women and people of color felt they were held to a higher standard than white men. That feeling was most prevalent among women of color, who reported the highest levels of bias in almost every category.

About half of the women of color said they felt they had equal access to the kind of "high-quality" assignments that lead to exposure and advancement in an organization. Among white men, that number was 81 percent.

Women of all races said they had to walk a "tightrope" in their behavior. They reported pressure to behave "in feminine ways" and a backlash for exhibiting stereotypically male behaviors. They were more often saddled with "office housework," like taking notes, ordering lunch or comforting a co-worker in distress.

In a law firm, that kind of work reduces billable hours, which can hurt compensation. And while it takes up time and energy and helps the organization, it often does not lead to career advancement. The report states that a lack of opportunities to take on challenging work also contributes to high attrition rates among women in law firms.

Many women said they felt they were paid less than their colleagues with similar experience. (Almost 70 percent of women of color said so, compared with 60 percent of white women and 36 percent of white men.)

And a quarter of female lawyers reported that they had experienced sexual harassment at work, including unwanted sexual comments, physical contact and romantic advances. Those episodes sometimes had career costs. About one in eight white women, and one in 10 women of color, said they had lost opportunities because they rejected sexual advances.

Among all respondents, about 70 percent said they had heard sexist comments, stories or jokes at work. And while the numbers were higher among women, lawyers of both genders felt that taking parental leave would have a negative impact on their career.



"You've got systemic barriers in place," said Ms. Mayes, who is the chief legal counsel for the New York Public Library. "If you don't think a woman with children should be promoted, if the woman has children of a certain age or expects to, that's a huge impediment."


According to the latest report from the bar association's Commission on Women in the Profession, only 35 percent of active American lawyers in 2016 were women, and they earned less than their male colleagues. Of the top lawyers for Fortune 500 companies, just 26 percent were women. And while women graduate from law schools in large numbers, they made up only 32 percent of law school deans.

The report lays out methods and practices for organizations to counter bias, with an emphasis on using metrics to track and encourage fairness. They include abolishing questions about prior salary in job interviews, having boilerplate questions and policies for interviews and performance evaluations, and monitoring supervisors to ensure there are no consistent disparities by demographic group.

And the report includes online tool kits for employers to identify and avoid bias. It offers ad evaluations using specific evidence, rather than generalizations about an employee's abilities. A manager might write: "In March, she gave X presentation in front of Y client on Z project, and was successful in making the sale."

In a statement, the bar association's president, Bob Carlson, said that the remedies it suggested would promote best practices and greater diversity, which will benefit the entire legal profession and our clients.

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## Race

# Why the US needs black lawyers even more than it needs black police

According to the American Bar Association, 88% of all lawyers are white and only 4.8% are black. This shouldn't matter in principle - until it does

**Yolanda Young**

🐦 @yolandayoungesq

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Consider the role of prosecutors, who, without objective criteria, decide what the charges will be. They alone decide whether to offer a plea bargain or proceed to trial.

They are usually allowed to exercise this power with impunity and outside of public view, but in the last year, the curtain has been pulled back.

In a rash of high-profile police killings of unarmed black males - John Crawford III, Michael Brown, Eric Garner, Tamir Rice and Walter Scott - white prosecutors appeared reluctant to vigorously pursue indictments, even when facts were highly disputed. Reports by Talking Points Memo, the Wall Street Journal and the Washington Post conclude that almost none of the police officers who kill roughly 1,000 people each year are ever charged.

By contrast, Baltimore state's attorney [Marilyn Mosby joins a strong block of prosecutors](#), including the US attorney general, Loretta Lynch, and her predecessor Eric Holder, who are able to respect and support law enforcement without ignoring the complexities of police power. All of them happen to be African American.

## White prosecutorial restraint does not extend to black defendants



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offenses were also more likely than white people to be held in jail or prison at their arraignment.

Such biases are largely responsible for the current makeup of the prison population. In 2012, African Americans and Hispanics accounted for 58% of those in prison for drug offenses.

DANY's prosecutors are 75% white and 10% black, with only 6% of black attorneys in supervisory positions. Crucially, its staff is actually more diverse than many DA offices across the country, and this lack of diversity has had discriminatory consequences.

A 2010 [national study](#) uncovered “shocking evidence of racial discrimination in jury selection in every [southern] state”. The study found evidence that some state and local prosecutors were actually trained to exclude people on the basis of race and instructed on how to conceal their racial bias. While unconscious-bias training and stricter rules might improve the situation, the best way to stem discrimination is to

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How we get those black attorneys in the room is a difficult question that demands an answer.

Just ask the residents of Ferguson, Missouri. The public was shocked to learn that despite its black majority, only 6% of the police force is black. At the time of Brown's killing in August, the number of black attorneys in Ferguson was zero, according to the Missouri bar, which listed only four white attorneys for the city's 14,000 black residents, who were issued 92% of the city's warrants and received 95% of two-day or more jail sentences.

 Photograph: Yolanda Young

~~Though neighboring St. Louis has a significant number of black attorneys, poverty~~

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By disproportionately targeting African Americans and routinely violating their constitutional rights, Ferguson created the predatory environment in which a jaywalking stop by police officer Darren Wilson could escalate to Brown's death.

Were legal representation available to the black citizens of Ferguson, perhaps they could avoid many of the fines and financial landmines that result from the Ferguson municipal court system.

Instead, Ferguson residents are subjected to a modern-day debtors' prison, according to a recent lawsuit filed by ArchCity Defenders, which found that Ferguson's poor residents provide the second-largest source of revenue for the city, \$2,635,400 in 2013 as Ferguson municipal court disposed of 24,532 warrants and 12,018 cases, "or about three warrants and 1.5 cases per household".

## **But why do we need black lawyers?**

According to the American Bar Association, 88% of all lawyers are white and only 4.8%

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Experts maintain that because of a shared group identity, a black attorney can more easily communicate with and gain the trust of a black client, but black client outcomes demonstrate a more compelling reason for why more black attorneys are needed.

In [White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law](#), Russell G Pearce writes: “The latest research in the field of organizational behavior suggests that the assumption of lawyer neutrality so central to lawyer professionalism is not only wrong descriptively, but that it also undermines ... white lawyers’ ability to provide their [black] clients with optimal representation.”

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cases and tried to determine why African Americans are 2.5 times more likely than white plaintiffs to file employment discrimination claims pro se, in which plaintiffs represent themselves and typically have significantly worse litigation outcomes than those with representation.

The researchers found that while part of the problem stems from African Americans' lack of trust, information, and resources regarding lawyers and the legal system, the blame also rests on the shoulders of the mostly white discrimination lawyers, who one would hope would be particularly conscientious.

Of the 20 lawyers who participated, 19 were white and admitted that in deciding to reject a case, they considered clients' ability to pay, as well as their perceived "demeanor and mannerisms", which is often coded language for racial characteristics.

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Allison”. And while “Todd and Allison” were perceived as having better values and being more competent when they wanted to file Chapter 7, giving them a “fresh start”, “Reggie and Latisha” were credited with such values only when they expressed a preference for chapter 13.

As a consequence of such biases, African Americans have the highest rates of Chapter 13 filings.

### **... And black judges**

Even the bench does not appear exempt from such biases.

In **Myth of the Color-Blind Judge**, Pat K Chew, a professor at the University of Pittsburgh School of Law, and Robert E Kelley, a professor at Carnegie Mellon University Tepper School of Business, performed an empirical study of federal government harassment cases spanning 20 years.

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The lack of judicial diversity extends beyond federal courts to state benches, where the majority of legal disputes are adjudicated. A report by the Brennan Center found that the judicial selection commissions of some states have no African American representation, and as recently as 2010 there were still some states with all-white benches. They also noted evidence that the number of black male judges is actually decreasing.

According to the American Bar Association, in state trial courts, where the vast majority of cases are handled, only 7% of judges are black.

### **... And black law clerks**

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its investigation revealed that of the 394 law clerks hired by the nine sitting supreme court justices, only seven had been African American.

Then sitting justices William Rehnquist, Anthony Kennedy, Antonin Scalia and David Souter had never hired a black clerk. A decade later, a study by the Administrative Office of the US Courts found that the number of African Americans clerking for appellate judges had actually declined from 3.5% in 2006 to 2.4% in 2010. At the district court level, the percentage of African American clerks declined from 3.5% to 3.2%.

## **What now?**

The empirical evidence leaves little doubt that African Americans are currently disadvantaged by the justice system, so the only remaining question is: “What can be done about it?”

Of course, we must provide more training and research on unconscious bias among legal professionals, but without more black attorneys, the justice system can’t fulfill its mission.

The law, by its very nature, is subjective and requires diverse viewpoints to be fully realized. If the only perspective considered is that of the majority, minority interests will certainly be trampled upon.

The road to justice eventually comes through the judicial system. An overwhelmingly white bar stood at the helm when racial disparities in our legal system came into existence, so one cannot expect significant change as long as the demographic remains as it is.

How do we get more black lawyers? Foundations, corporations, advocates and politicians should use their considerable power to bear down on the legal profession,

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It is curious that a profession that exists to further thought and solve complex social, ethical and legal problems has been unable to solve its own even when some solutions seem obvious - increase minority law school pipeline initiatives and remove the cost impediments of attending law school; provide more training and apprenticeship opportunities; and above all else, treat black attorneys fairly once they enter the profession.

In considering the bar's protracted approach to diversifying the profession, I'm reminded of Martin Luther King Jr's Letter From A Birmingham Jail: "'Wait!' It rings in the ear of every Negro with piercing familiarity."

This "wait" has almost come to see, with one of our distinguished jurists, that "justice too long delayed is justice denied".

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ohn R. Lewis Voting Rights Advancement Act of 2021

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