

12-2014

## **An Empirical Analysis of Diversity in the Legal Profession**

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### **Recommended Citation**

Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 Conn. L. Rev. 271 (2014), available at <http://scholarship.law.ufl.edu/facultypub/581>

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# CONNECTICUT LAW REVIEW

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VOLUME 47

DECEMBER 2014

NUMBER 2

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## Article

### An Empirical Analysis of Diversity in the Legal Profession

JASON P. NANCE & PAUL E. MADSEN

*The purpose of this Study is to empirically examine the diversity of the legal profession. The primary distinctive features of this empirical analysis are that it evaluates diversity in the legal profession by (a) carefully comparing it against other prestigious professions that have significant barriers to entry, and (b) focusing on young individuals who recently began their careers. These distinctions are made to isolate anomalies that are more likely caused by forces specific to the legal profession rather than general social forces that limit the eligibility of historically disadvantaged groups to pursue prestigious employment opportunities. Further, by narrowing our focus to attorneys who recently began their careers, we get a clearer picture of the current state of diversity.*

*In contrast to prior studies, we find that, although woefully underrepresented as a whole in the legal profession, the representation of young African Americans and Hispanic Americans in the legal profession is comparable to the representation of these groups in other prestigious professions. This finding suggests that the underrepresentation of African Americans and Hispanic Americans in the legal profession may be caused primarily by social forces external to the legal profession, and that, in addition to continuing its current diversity efforts, the legal profession should put a concentrated emphasis on initiatives that assist these underrepresented groups to become eligible to pursue all types of prestigious employment opportunities that have significant barriers to entry. Further, we find that Asian Americans, in contrast to other minorities, are very poorly represented in the legal profession as compared to other prestigious professions. Finally, there is some evidence suggesting that women were relatively well represented in the legal profession when compared to other prestigious professions until recently, when they appear to have become slightly underrepresented. This recent drop may be caused by the failure of the legal profession to provide just and inclusive workplaces, leading to greater dissatisfaction and higher attrition rates among female associates.*

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# An Empirical Analysis of Diversity in the Legal Profession

JASON P. NANCE\* & PAUL E. MADSEN\*\*

## I. INTRODUCTION

Diversity in the legal profession<sup>1</sup> is a matter of concern among scholars, the legal community, and society in general.<sup>2</sup> Diversity closely

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<sup>1</sup> For purposes of this Article, the term "legal profession" refers to persons who are eligible to practice law in a court in the United States by passing a state bar exam.

<sup>2</sup> See, e.g., Alex M. Johnson, Jr., *Knots in the Pipeline for Prospective Lawyers of Color: The LSAT Is Not the Problem and Affirmative Action Is Not the Answer*, 24 STAN. L. & POL'Y REV. 379, 379–80 (2013) [hereinafter *Knots in the Pipeline*] (discussing how expanding diversity is a laudable goal); Alex M. Johnson, Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005, 1005 (1997) [hereinafter *The Underrepresentation of Minorities in the Legal Profession*] (commenting on the lack of diversity in the legal profession and the potential value of reducing racism); Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1041 (2011) [hereinafter *From Platitudes to Priorities*] (discussing the struggle for diversity); Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible For Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1079–81 (2011) (discussing how lawyers should be at the forefront of diversity); David B. Wilkins, *Why Global Law Firms Should Care About Diversity: Five Lessons from the American Experience*, 2 EUR. J. OF L. REFORM 415, 415–16 (2000) (explaining how foreign firms look to American firms for leadership on diversity issues); Nelson D. Schwartz & Michael Cooper, *Affirmative Action Ruling Near, Blacks' Progress Remains Slow*, N.Y. TIMES, May 28, 2013, at A1 (discussing the impact of race based programs across the country); Deborah Graham, *Do Women's Initiatives Work?*, A.B.A. J. (June 1, 2013), [http://www.abajournal.com/magazine/article/do\\_womens\\_initiatives\\_work](http://www.abajournal.com/magazine/article/do_womens_initiatives_work) (questioning the effectiveness of diversity campaigns); *IILP Review 2012: The State of Diversity and Inclusion in the Legal Profession*, INST. FOR INCLUSION IN THE LEGAL PROF. 11 (2012), <http://www.theiilp.com/Resources/Documents/IILPReview2012.pdf> [hereinafter *IILP Review 2012*] (seeking to improve diversity and inclusiveness in the legal profession); *IILP Review 2011: The State of Diversity and Inclusion in the Legal Profession*, INST. FOR INCLUSION IN THE LEGAL PROF. 11 (2011), <http://www.theiilp.com/resources/Documents/IILP2011Reviewfinal.pdf> [hereinafter *IILP Review 2011*] (seeking to improve diversity and inclusiveness in the legal profession); Molly McDonough,

relates to the concepts of equality, justice, and the opportunity for full and meaningful participation in our society.<sup>3</sup> These are ideals that the legal profession should seek to uphold everywhere, but especially in its own profession. The continued under-representation and under-inclusion of certain groups in the legal profession should demand an explanation and require our concerted attention.<sup>4</sup>

Empirical studies examining the diversity of the legal profession have focused on both formal and substantive diversity, typically concentrating on gender and racial diversity. “Formal diversity” means equal representation of various groups that share similar attributes.<sup>5</sup> Many commentators have construed “equal representation” to imply that various groups should be represented in the legal profession in proportion to their representation in the general population.<sup>6</sup> “Substantive diversity” goes beyond formal diversity. It means not only having equal representation, but having equal, meaningful participation.<sup>7</sup> Factors that signal equal meaningful participation might include whether certain groups have equal participation in elite segments of the legal profession, have equal compensation rates, have an equal voice in important discussions and decisions, and have equal opportunities for advancement.<sup>8</sup>

With respect to substantive diversity, some empirical studies have examined how women and minorities are treated once they enter the legal profession and begin practicing law after graduating from law school,

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*Demanding Diversity: Corporate Pressure is Changing the Racial Mix at Some Law Firms*, A.B.A. J. (Mar. 28, 2005), [http://www.abajournal.com/magazine/article/demanding\\_diversity](http://www.abajournal.com/magazine/article/demanding_diversity) (discussing why diversity is important to law firms).

<sup>3</sup> See Wald, *supra* note 2, at 1105–06 (describing how diversity is tied to justice and equality).

<sup>4</sup> *Id.* at 1093–94.

<sup>5</sup> *Id.* at 1093. The term “groups” can be and has been broadly construed along the lines of race, ethnicity, national origin, sexual orientation, socioeconomic background, gender, religion, disability, ideology, and hardships, among other ways. See Sharon Elizabeth Rush, *Understanding Diversity*, 42 FLA. L. REV. 1, 2 (1990) (“A group is facially diverse if it includes members who are not all one race and gender.”); Wald, *supra* note 2, at 1093 (“This is the distribution within a population of individuals who are grouped (by themselves or by others) according to a more or less objective and measurable attribute (e.g., age, gender, race, religion, nationality, language, income) that they share with other members of the designated group.” (quoting Peter H. Schuck, *Demography, Human Rights, and Diversity Management, American-Style*, 2 LAW & ETHICS HUM. RTS. 10–11 (2008))). This Article’s empirical analysis, however, focuses on gender and racial diversity (African Americans, Hispanic Americans, Asian Americans, and Indian Americans). See *infra* Part II.B. We limit our diversity analysis in this way primarily because of the limitations of the empirical data.

<sup>6</sup> Wald, *supra* note 2, at 1093. This concept also has been termed “facial diversity” and “demographic diversity.” See Rush, *supra* note 5, at 2 (describing “facial diversity” as including members who are not all of the same gender and race); Schuck, *supra* note 5, at 10–11 (describing demographic diversity as examining the proportion of those with measurable attributes such as age, gender, race, religion, and income against the distribution of those holding these attributes in the population as a whole).

<sup>7</sup> Wald, *supra* note 2, at 1105.

<sup>8</sup> *Id.* at 1105–09.

passing the bar, and finding employment. These studies show that, upon entering the legal profession, women and minorities often face significant barriers that hinder the advancement of their legal careers. For example, it is well documented that women and minorities confront major challenges associated with traditional stereotypes,<sup>9</sup> cognitive biases,<sup>10</sup> and isolation and marginalization in the workplace.<sup>11</sup>

Other empirical studies focus on employment opportunities for women and minorities as practicing lawyers, both initially upon graduating from law school and beyond initial employment. These studies center on women and minority representation among different types of legal practices, such as private law firms, corporate counsel, government agencies, academia, and public interest organizations.<sup>12</sup> Some of these studies examine the representation of women and minorities in top-level jobs in the legal profession such as becoming an equity partner at a private firm, a non-equity partner, a law school dean, or working as an associate at a top-level law firm with a high salary.<sup>13</sup>

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<sup>9</sup> See DOROTHY H. EVENSEN & CARLA D. PRATT, *THE END OF THE PIPELINE: A JOURNEY OF RECOGNITION FOR AFRICAN AMERICANS ENTERING THE LEGAL PROFESSION* 96–97 (2012) (describing the challenges minorities face in overcoming the impact of stereotypes); Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1050–52 (describing how racial and gender stereotypes play a well-documented role in legal workplaces).

<sup>10</sup> See Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1052 (explaining that people are more likely to remember facts that confirm their prior assumptions than information that is inconsistent with those assumptions); Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797, 798 (1995) (describing the increased risk of minorities conforming, as a self-characteristic, to negative stereotypes).

<sup>11</sup> See JANET E. GANS EPNER, A.B.A. COMM'N ON WOMEN IN THE PROFESSION, *VISIBLE INVISIBILITY: WOMEN OF COLOR IN FORTUNE 500 LEGAL DEPARTMENTS* 11 (2006), available at [http://www.americanbar.org/content/dam/aba/marketing/women/visible\\_invisibility\\_fortune500\\_executive\\_summary.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/marketing/women/visible_invisibility_fortune500_executive_summary.authcheckdam.pdf) (describing the isolation and marginalization of minorities in the legal workplace); Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27, 65 (2004) (describing the isolation and marginalization of women in the legal workplace); see also Sylvia Ann Hewlett, *Too Many People of Color Feel Uncomfortable at Work*, HARV. BUS. REV. BLOG NETWORK (Oct. 18, 2012, 12:00 PM), <http://blogs.hbr.org/2012/10/too-many-people-of-color-feel> (describing the “outsider” feeling that minorities often have in the corporate culture); Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1053–56 (describing how minorities often feel marginalized from client development, networking, and frequently are not assigned work that aligns with their current interests).

<sup>12</sup> See ELIZABETH CHAMBLISS, *MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION* 5–7 (2004) [hereinafter *MILES TO GO*] (demonstrating the statistical facts about women and minority representation in law firms); *IILP Review 2012*, *supra* note 2, at 16 (citing data on women’s representation at various sectors of the legal profession); *IILP Review 2011*, *supra* note 2, at 10–12 (demonstrating the representation of minority and women in the legal field).

<sup>13</sup> See *Women and Minorities in Law Firms – By Race and Ethnicity*, NALP (Jan. 2012), [http://www.nalp.org/women\\_minorities\\_jan2012](http://www.nalp.org/women_minorities_jan2012) (citing specific rates of minority representation as associates in big law firms); see also S. Elizabeth Foster, Comment, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. 1631, 1636 (1995) (discussing the underrepresentation of women in high-level positions in law); David B. Wilkins

With respect to formal diversity, there are several empirical studies that examine the total number and percentages of lawyers that are female or belong to specified racial or ethnic groups.<sup>14</sup> When new data is released showing the percentages of women and minorities eligible to practice law, that data is often compared to other data describing the (i) percentages of women and minorities eligible to practice law in prior years;<sup>15</sup> (ii) percentages of women and minorities who enter other professions;<sup>16</sup> and (iii) percentages of women and minorities in the population at large.<sup>17</sup> These comparisons are made to gauge whether the legal profession is becoming more formally diverse over time, to compare how well the legal profession is formally diversified relative to other professions, and to understand whether the level of formal diversity, at least with respect to the raw numbers, is at the level we would expect it to be based on the overall population demographics of the United States.

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& G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CALIF. L. REV. 493, 498 (1996) (describing the lack of minorities in elite law firms); Gita Z. Wilder, *Are Minority Women Lawyers Leaving Their Jobs?: Findings from the First Wave of the After the JD Study*, NALP (2008), [https://webcache.googleusercontent.com/search?q=cache:gvFsaJkA7YMJ:www.nalp.org/assets/1280\\_adminoritywomenmonograph.pdf+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a](https://webcache.googleusercontent.com/search?q=cache:gvFsaJkA7YMJ:www.nalp.org/assets/1280_adminoritywomenmonograph.pdf+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a) (discussing the underrepresentation of minority women in high-level positions in law).

<sup>14</sup> See CHAMBLISS, MILES TO GO, *supra* note 12, at 5–7 (citing demographic data on minority representation in the legal profession); *IILP Review 2012*, *supra* note 2, at 13–35 (citing demographic data on the legal profession); *IILP Review 2011*, *supra* note 2, at 10–32 (citing demographic data on the legal profession).

<sup>15</sup> See, e.g., CHAMBLISS, MILES TO GO, *supra* note 12, at 5–7 (comparing current demographic data on the legal profession to prior demographic data); *IILP Review 2012*, *supra* note 2, at 13–35 (citing statistics on minority and women’s representation from 2012); *IILP Review 2011*, *supra* note 2, at 10–32 (citing statistics on minority and women’s representation in law from 2011).

<sup>16</sup> See, e.g., CHAMBLISS, MILES TO GO, *supra* note 12, at 7 (reporting minority representation among selected U.S. professions); ELIZABETH CHAMBLISS, MILES TO GO IN NEW YORK: MEASURING RACIAL AND ETHNIC DIVERSITY AMONG NEW YORK LAWYERS 6 (2007) (stating that diversity among U.S. lawyers lags behind diversity of most other professions); *IILP Review 2012*, *supra* note 2, at 14 (“Minority representation among lawyers is significantly lower than minority representation in most other management and professional jobs.”); Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1041 (maintaining that the legal profession “lags behind other occupations in leveling the playing field”); U.S. Dept. of Educ., *Degrees Conferred by Degree-Granting Institutions in Selected Professional Fields, by Sex, Race/Ethnicity, and Field of Study: 2009-10*, NAT’L CENTER FOR EDUC. STATISTICS [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_309.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_309.asp) (last visited Aug. 29, 2014) (comparing minority participation across professions); see also Brad Smith, *Raising the Bar: Exploring the Diversity Gap Within the Legal Profession*, MICROSOFT ON THE ISSUES (Dec. 10, 2013), [http://blogs.microsoft.com/on\\_the\\_issues/2013/12/10/raising-the-bar-exploring-the-diversity-gap-within-the-legal-profession](http://blogs.microsoft.com/on_the_issues/2013/12/10/raising-the-bar-exploring-the-diversity-gap-within-the-legal-profession) (discussing how other professions are including women and minorities in greater numbers than the legal profession).

<sup>17</sup> See, e.g., *IILP Review 2012*, *supra* note 2, at 14 (“Minority representation among lawyers is significantly lower than minority representation in most other management and professional jobs.”). See CHAMBLISS, MILES TO GO, *supra* note 12, at 6–7 (reporting minority representation among selected U.S. professions and stating that diversity among U.S. lawyers lags behind diversity of most other professions); Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1041 (maintaining that the legal profession “lags behind other occupations in leveling the playing field”).

This Article is an empirical analysis that examines formal diversity in the legal profession, but in a unique way. Using large-sample evidence, we compare the gender and racial representation in the legal profession against other prestigious professions with significant barriers to entry and focus on young individuals who recently began their careers.<sup>18</sup> Analyses that compare the legal profession against the entire U.S. population or against occupations with differing educational requirements or social status inevitably have ambiguous results.<sup>19</sup> This is because diversity in the legal profession is a function of (a) general social forces limiting the number of women and minorities eligible to pursue any type of prestigious employment with significant barriers to entry, and (b) forces specific to the legal profession that encourage or discourage women and minorities to participate in the legal profession in a unique way.<sup>20</sup> This distinction is important because the legal profession has more control over phenomena influencing diversity specific to the legal profession, such as racial prejudice in hiring, but has much less control over general social phenomena influencing diversity in professions, such as differences in the quality of primary and secondary education available to women and minorities.<sup>21</sup>

The strength of our comparative method is that by comparing diversity in the legal profession against the diversity in other comparable fields we are able to isolate anomalies in women and minority representation that are more likely caused by forces specific to the legal profession. These legal profession-specific anomalies are those that the legal profession is in a better position to address through its diversity initiatives.

Further, results from analyses of diversity in the legal profession that examine workers of all ages are also ambiguous because they aggregate the impact of diversity policies and practices that existed decades ago with current policies and practices. By narrowing our focus to young

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<sup>18</sup> We define “young individuals who recently began their career” as workers who are thirty-five years old or younger. *See infra*, Part II. Because there is not a well-accepted list of prestigious occupations that are comparable to the legal profession, we turn to a dataset called the General Social Survey to identify professions that are comparable in prestige to the legal profession. *See infra* Part II.A. These professions include diagnosing/treating health practitioners (dentists, optometrists, physicians, psychiatrists, podiatrists, surgeons, and veterinarians) and college professors. *See infra* Part II.A.

<sup>19</sup> Nevertheless, there are some very useful studies comparing the diversity efforts of the legal profession to other very large organizations such as the United States Army. *See* SARAH E. REDFIELD, DIVERSITY REALIZED: PUTTING THE WALK WITH THE TALK FOR DIVERSITY IN THE LEGAL PROFESSION 13, 20–21 (2009) [hereinafter DIVERSITY REALIZED] (describing the lessons learned from military integration).

<sup>20</sup> *See* Sarah E. Redfield, *The Educational Pipeline to Law School—Too Broken and Too Narrow to Provide Diversity*, 8 PIERCE L. REV. 347, 371 (2010) [hereinafter *The Educational Pipeline*] (describing the legal profession’s failure in its approach to increasing diversity).

<sup>21</sup> *See id.* at 376–81 (describing initiatives the legal profession can take to increase diversity).

professionals, we get a clearer picture of the current state of diversity in the legal profession.

We perform analyses using methods similar to those used in prior research in addition to analyses using our distinctive methods. Our distinctive methods include controlling for other variables that might influence whether an individual works in the legal profession, such as whether the individual (a) lives in a metropolitan area; (b) is married; (c) is widowed, separated, or divorced; and (d) lives with children under the age of nineteen that are counted as part of the individual's family.<sup>22</sup>

We emphasize that our method of comparing the diversity of the legal profession to the diversity of other prestigious professions does not speak to the socially optimal level of diversity of the legal profession. We are also quick to point out that what has been accomplished by other professions should not determine the ultimate benchmark by which the legal profession should be assessed. Instead, we make these comparisons in an attempt to isolate anomalies that are likely caused by forces specific to the legal profession rather than by external social forces over which the legal profession has less control. While this is a less ambitious goal than assessing social optimality, we believe that it is an instructive way to evaluate the past performance of the legal profession's diversity efforts and to explore where such efforts might be targeted most fruitfully in the future.

Further, we acknowledge and emphasize that our analyses do not evaluate the pressing concern of substantive diversity—or full, meaningful participation—in all levels of the legal profession, including, for example, at the partnership level of private law firms or in supervisory roles in prestigious government positions. We believe that full meaningful participation is necessary at all levels of the legal profession and maintain that more research and analysis is needed to have a more complete picture of what can be done to achieve this.

This Article proceeds in four parts. Part II will summarize the scholarly literature and theories associated with diversity in the legal profession relative to women and minorities and provide the context for our Study. Part III will discuss the data and models of our Study. Part IV will present the results of our Study. Part V will then discuss the implications of the empirical findings.

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<sup>22</sup> See Mark Aguiar & Erik Hurst, *Measuring Trends in Leisure: The Allocation of Time over Five Decades*, 122 Q. J. OF ECON. 969, 973 (2007). See also *infra* note 164 (discussing the controls we used in our study).

## II. LITERATURE REVIEW AND THEORY

Diversity in the legal profession is an extremely important goal that is worthy of our concerted attention. Diversity in the educational system and among all occupations and professions reflects a sense of fairness, equality, and dignity in our society.<sup>23</sup> It signifies an effort to root out illegitimate privilege and subordination based on race and gender, which is often the result of conscious and unconscious actions, biases, and beliefs.<sup>24</sup> But diversity is especially important in the legal profession for several additional reasons.

First, as Eli Wald explains, diversity in the legal profession is important because it closely relates to equality and reflects an effort to overcome bias and discrimination, which are core values of the legal profession and the rule of law.<sup>25</sup> Because a lack of diversity is caused by discrimination and inequalities, a lack of diversity weakens the meaning of the law and the legal profession in general.<sup>26</sup> These principles recently were articulated in the American Bar Association's Presidential Diversity Initiative. The American Bar Association explained:

The United States occupies a special place among the nations of the world because of its commitment to equality, broad political participation, social mobility, and political representation of groups that lack political clout and/or ancestral power. . . . Without a diverse bench and bar, the rule of law is weakened as the people see and come to distrust their exclusion from the mechanisms of justice.<sup>27</sup>

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<sup>23</sup> See Wald, *supra* note 2, at 1093 (“[D]iversity thus reflects the basic intuition that in a competitive, equal society, the diversity of the populace will and ought to be reflected in diversity in its educational system and in its various occupations and professions . . .”).

<sup>24</sup> See DEREK W. BLACK, EDUCATION LAW: EQUALITY, FAIRNESS, AND REFORM 147 (2013) (describing the effects of unconscious or subtle bias on state actors); Osamudia R. James, *White Like Me: The Negative Impact of the Diversity Rationale on White Identity Formation*, 89 N.Y.U. L. REV. 425, 428 (2013) (discussing how the plaintiff in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), who challenged the school's diversity admission policies, benefitted from privilege); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1506–14 (2005) (describing social cognition research demonstrating that most people have implicit biases against racial minorities); Shani King, *The Family Law Canon in a (Post?) Racial Era*, 72 OHIO STATE L.J. 575, 628 (2011) (“[N]ot only is it rare for racial motives to be articulated, but they are often subconscious.”); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1164 (1995) (observing that unconscious bias is the most prevalent form of discrimination).

<sup>25</sup> Wald, *supra* note 2, at 1101.

<sup>26</sup> See *id.* (describing “under-representation” as a result of “biased standards, past discrimination, and current structural discrimination”).

<sup>27</sup> Am. Bar Ass'n Presidential Diversity Initiative, *Diversity in the Legal Profession: The Next Steps*, AM. BAR ASS'N 9 (Apr. 2010), [http://www.americanbar.org/content/dam/aba/administrative/diversity/next\\_steps\\_2011.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.authcheckdam.pdf) [hereinafter *The Next Steps*].

As Professor Alex Johnson, Jr. observes, a profession that in part gains its relative prestige and preference over other professions by promoting and striving to maintain civil liberties risks losing that prestige if it cannot practice what it preaches by diversifying its own profession.<sup>28</sup>

Second, and closely related to the first point, a lack of diversity in the legal profession weakens “what it means to be a lawyer in the United States.”<sup>29</sup> Lawyers purport to be public interest servants and owe fiduciary duties to pursue equality, fairness, and justice.<sup>30</sup> Accordingly, a lack of diversity among the legal profession should trouble us more than the under-representation of women and minorities in other professional fields. Lawyers, as public interest servants, have a duty to address a lack of diversity in the legal profession caused by inequalities, cultural perceptions, and discrimination, all of which are fundamentally inconsistent with the values of equality, fairness, and justice that our profession should strive to uphold.<sup>31</sup>

Third, by diversifying the legal profession, more opportunities for socioeconomic mobility and leadership are provided to minorities and women, which is advantageous to our greater society.<sup>32</sup> Lawyers benefit from higher than average pay and high social and cultural status.<sup>33</sup> Becoming an attorney is also an important stepping-stone for moving into powerful positions in the private and public sphere.<sup>34</sup> In *Grutter v. Bollinger*,<sup>35</sup> Justice Sandra Day O’Connor reminds us that many of our political leaders are drawn from the legal community, and diversity within the legal profession most likely will promote diversity among key leadership positions at top levels of our government.<sup>36</sup>

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<sup>28</sup> Johnson, *The Underrepresentation of Minorities in the Legal Profession*, *supra* note 2, at 1011.

<sup>29</sup> Wald, *supra* note 2, at 1101.

<sup>30</sup> See, e.g., MODEL RULES OF PROF’L CONDUCT pmb. ¶ 1 (2010) (“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”).

<sup>31</sup> See Wald, *supra* note 2, at 1102 (“[A] definition of lawyers as professionals must inherently include a commitment to advancing equality under the law, and, therefore, to fighting under-representation and promoting diversity.”).

<sup>32</sup> See *The Next Steps*, *supra* note 27, at 9 (discussing how the American Bar Association’s efforts to diversify the legal profession addresses larger societal concerns).

<sup>33</sup> Wald, *supra* note 2, at 1096.

<sup>34</sup> *Id.* at 1096, 1103; see also REDFIELD, DIVERSITY REALIZED, *supra* note 19, at 14 (quoting *Reaching the Top: A Report of the National Task Force on Minority High Achievement*, THE C. BOARD 2 (1999), <http://research.collegeboard.org/sites/default/files/publications/2012/7/misc1999-3-reaching-the-top-minority-achievement.pdf>) (describing the correlation between higher education and increased leadership); *The Next Steps*, *supra* note 27, at 10 (referring to the “Leadership Rationale” which suggests that society “draws its leaders from the ranks of the legal profession”).

<sup>35</sup> 539 U.S. 306 (2003).

<sup>36</sup> *Id.* at 332 (“Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives.”); see also *The Next Steps*, *supra* note 27, at 5 (describing the legal profession’s “unique responsibility for sustaining a political system” by increasing diversity in the

Fourth, as Deborah Rhode has observed, there is a business justification for diversity.<sup>37</sup> According to the American Bar Association's Presidential Initiative Commission on Diversity, "[i]t makes good business sense to hire lawyers who reflect the diversity of citizens, clients, and customers from around the globe. Indeed, corporate clients increasingly require lawyer diversity and will take their business elsewhere if it is not provided."<sup>38</sup> Proponents of this business justification point out that diversity in the workplace facilitates critical thinking and problem solving and counteracts "group think."<sup>39</sup> They also observe that diversity signals to clients that an organization is committed to equal opportunity and responsiveness to diverse stakeholders.<sup>40</sup>

Although most agree that diversity in the legal profession is important, women and minorities have a history of being underrepresented in the legal workforce because of discriminatory forces from both inside and outside of the legal profession. And while the legal profession has made some progress, there is still much work to be done. This Section summarizes the historical progress that the legal profession has made to better diversify the profession, identifies theories for why the legal profession has not made better progress in adequately diversifying its professionals, describes various initiatives taken to increase the diversity of the legal profession, and provides context for how our empirical study illuminates the current discussion.

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judiciary and bar). William G. Bowen and Derek Bok also remind us that diversity initiatives allow minorities to gain "training that will allow them to offer . . . services to traditionally underserved communities and give political leadership to struggling urban constituencies." WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* 116 (1998).

<sup>37</sup> See Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1060–64 (describing the research, benefits, and weaknesses associated with a business justification for diversity).

<sup>38</sup> *The Next Steps*, *supra* note 27, at 9.

<sup>39</sup> Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1061.

<sup>40</sup> The business justification for diversity has been heavily criticized and questioned, especially when used in isolation. For example, if organizations rely solely on the business justification for diversity, women and minorities justifiably may resent being treated as a commodity to increase profits. See Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1064 ("Lawyers of color often resent being 'treated like a commodity . . . a token who is simply there for the firm's numbers . . .'" (quoting *Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity and Inclusion in Large Law Firms*, MINORITY CORP. COUNS. ASS'N 14 (2009), [https://www.mcca.com/\\_data/global/images/Research/5298%20MCCA%20Pathways%20final%20version%202009.pdf](https://www.mcca.com/_data/global/images/Research/5298%20MCCA%20Pathways%20final%20version%202009.pdf))). In fact, Eli Wald argues that the business justification for diversity, "while well-reasoned and well-intended, has backfired, ending up weakening and eroding the meaning of diversity." Wald, *supra* note 2, at 1081. David Wilkins, who has written extensively about the business justification for diversity, has strongly cautioned against giving up on the normative diversity arguments in favor of the self-interested business justification for diversity. David B Wilkins, *Do Clients Have Ethical Obligations to Lawyers? Some Lessons from the Diversity Wars*, 11 *GEO. J. LEGAL ETHICS* 855, 857 (1998).

### A. Women

The legal community has made significant progress with respect to female representation in the legal profession.<sup>41</sup> As Cynthia Fuchs Epstein observes, “[t]he movement of women into the legal profession is one of the great under-noticed revolutions of our time.”<sup>42</sup> This “quiet revolution” of increasing women’s representation in high-status and high-education occupations is considered to be one of the most important American social movements of the twentieth century.<sup>43</sup> This revolution was made possible in large part because of legislation against sex discrimination, especially Title VII of the Civil Rights Act of 1964, followed by the efforts of several key individuals such as Ruth Bader Ginsburg, Harriet Rabb, George Cooper, and members of the American Civil Liberties Union’s Women’s Rights Committee, who battled against informal quotas, formal policies, and prejudice against women who wanted to enter law school and practice law.<sup>44</sup> In the 1960s, women made up less than 3% of the legal profession,<sup>45</sup> and the majority of women who were in the legal profession at that time were confined to low-prestige settings and specialties.<sup>46</sup> It was not until the 1970s that all accredited law schools eliminated gender-based restrictions on admission.<sup>47</sup> Then from 1970 to 1988 women’s representation in the legal profession grew substantially, increasing from 3% to 20%, and

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<sup>41</sup> See Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1042 (“Until the late 1960s, women constituted only about three percent of the profession and were largely confined to low-prestige practice settings and specialties. Now [in 2009], about half of new lawyers are female; they enter law firms at about the same rate as men, and are fairly evenly distributed across substantive areas.” (footnotes omitted)).

<sup>42</sup> Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 U. KAN. L. REV. 733, 733 (2001).

<sup>43</sup> Paul E. Madsen, *The Integration of Women and Minorities into the Auditing Profession Since the Civil Rights Period*, 88 ACCT. REV. 2145, 2149 (2013); see also Claudia Goldin, *The Quiet Revolution That Transformed Women’s Employment, Education, and Family*, 96 AM. ECON. REV. 1, 1 (2006) (discussing the “Quiet Revolution” of “women’s increased involvement in the economy” as the “most significant change in labor markets during the past century”).

<sup>44</sup> Epstein, *supra* note 42, at 735.

<sup>45</sup> Deborah L. Rhode, Am. Bar Ass’n, Comm’n on Women in the Profession, *The Unfinished Agenda: Women and the Legal Profession*, AM. BAR ASS’N 13 (2001) [hereinafter *The Unfinished Agenda*], <http://womenlaw.stanford.edu/pdf/aba.unfinished.agenda.pdf> (citing DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 23 (1989); Donna Fossum, *Women in the Legal Profession: A Progress Report*, 67 A.B.A. J. 578, 579 (1981)).

<sup>46</sup> See Epstein, *supra* note 42, at 733 (explaining that women lawyers at one time “could only find employment in the lower rungs of government service, in family firms, or, for those who were economically secure—in volunteer work”).

<sup>47</sup> Rhode, *The Unfinished Agenda*, *supra* note 45, at 13. For example, women first applied to Harvard Law School in the 1870s, but the first woman was not admitted until 1950. D. Kelly Weisberg, *Barred from the Bar: Women and Legal Education in the United States 1870–1890*, 28 J. LEGAL EDUC. 485, 486 (1977). Notre Dame Law School accepted its first woman in 1969, and Washington & Lee Law School did not accept its first woman until 1972. *Id.*

continued to grow thereafter.<sup>48</sup>

In 2012, the American Bar Association's Commission on Women in the Profession released promising figures. The Commission reported that women comprised 33% of the legal workforce, and women received 47.3% of the juris doctor degrees awarded in the United States in 2011.<sup>49</sup> Some estimate that women's representation among lawyers will reach 40% by 2020 and 50% by 2050.<sup>50</sup> In addition, in 2012, the Commission reported that women began working in law firms approximately at the same rate that men do and were roughly distributed at the same rates across substantive legal areas.<sup>51</sup> Women also secured 51% of all clerkships, obtaining 45.6% of all federal clerkships, 54.8% of state clerkships, and 54.3% of local clerkships.<sup>52</sup> Indeed, it is well documented that women have made strides in obtaining high-level positions in both the public and private sectors.<sup>53</sup>

However, there is also substantial evidence that women are not fully integrated at all levels of the legal profession, and that progress may be slowing or even reversing. For example, in 2011, only 19.5% of women were partners in private practice, only 15% of women were equity partners in private law firms, and only 5% were managing partners at large law firms.<sup>54</sup> Unfortunately, studies show that women are less likely than men to become partners even after controlling for factors such as law school grades, time spent in the workforce, and part-time schedules.<sup>55</sup> In addition,

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<sup>48</sup> Ann J. Gellis, *Great Expectations: Women in the Legal Profession, A Commentary on State Studies*, 66 IND. L.J. 941, 941 (1991); see also Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829, 848 (1995) (explaining that in 1970, about 10,000 women were members of the legal profession; in the early eighties, that number grew to 44,000; by 1991, there were 160,000 in the legal profession). This astounding growth is related to the increase of women who enrolled in law school over this time period. *Id.* at 849. For example, in 1970, 6,682 women were enrolled in American Bar Association-approved law schools (8.6% of the total law students); in 1980, 40,834 women were enrolled (34.2%); and in 1988, 50,932 women were enrolled (42.2%). *Id.* at Table 8.

<sup>49</sup> Comm'n on Women in the Profession, *A Current Glance at Women in the Law*, AM. BAR ASS'N 2, 4 (2012), [http://www.americanbar.org/content/dam/aba/marketing/women/current\\_glance\\_statistics\\_2012.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_2012.authcheckdam.pdf); see also Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1042 (stating that as of 2011 "about half of new lawyers are female").

<sup>50</sup> Epstein, *supra* note 42, at 737.

<sup>51</sup> Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1042; see Comm'n on Women in the Profession, *supra* note 49, at 2 (showing that in 2011 45.4% of associates in private practice were women).

<sup>52</sup> Comm'n on Women in the Profession, *supra* note 49, at 5.

<sup>53</sup> See Epstein, *supra* note 42, at 742-48 (describing the high level jobs that women have obtained).

<sup>54</sup> Comm'n on Women in the Profession, *supra* note 49, at 2.

<sup>55</sup> Theresa M. Beiner, *Not All Lawyers Are Equal: Difficulties That Plague Women and Women of Color*, 58 SYRACUSE L. REV. 317, 328 (2008) (citing Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 ANNALS AM. ACAD. POL. & SOC. SCI. 130, 140 (2004)); Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1043; see also Mary

the attrition rates for female associates in private law firms are almost twice as high as for male associates.<sup>56</sup> In fact, women are more likely than men to depart from the private law firm that first employs them within three years.<sup>57</sup> Further, women in the legal profession express greater levels of dissatisfaction about various dimensions of their professional lives, including salary, responsibility level, recognition, work content, the probability of advancing their careers, and control over their professional lives.<sup>58</sup> There is also evidence of substantial pay differences between men and women in the legal profession.<sup>59</sup>

Lamentably, women also suffer disproportionately from normative standards of time priorities, which place substantial strain on their careers, particularly if women work in private law firms.<sup>60</sup> Traditionally, men are expected to devote their attention primarily to their work, and women are expected to devote their attention primarily to their families, especially to child care.<sup>61</sup> Some women who work in private law firms struggle to balance these traditional family expectations against the billable hour requirement that they must meet to remain employed, procure certain financial bonuses, or be eligible for partnership.<sup>62</sup>

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C. Noonan, Mary E. Corcoran & Paul N. Courant, *Is the Partnership Gap Closing For Women? Cohort Differences in the Sex Gap in Partnership Chances*, 37 SOC. SCI. RES. 156, 174–75 (2008) (describing a study demonstrating that although women made “substantial progress” in attaining partnerships, a man’s probability of becoming partner was 13% higher than that of a woman’s even with controls in place).

<sup>56</sup> Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1042–43; *see also* Joyce S. Sterling & Nancy Reichman, *Navigating the Gap: Reflections on 20 Years Researching Gender Disparities in the Legal Profession*, 8 FIU L. REV. 515, 516 (2013) (“[W]omen are more likely than men to depart from the practice of law.”).

<sup>57</sup> Noonan & Corcoran, *supra* note 55, at 131; Reichman & Sterling, *supra* note 11, at 41.

<sup>58</sup> Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1044; *see also* Reichman & Sterling, *supra* note 11, at 65 (stating that women face barriers to building professional relationships); Nat’l Ass’n Law Placement Found. Law Career Research & Educ. & Am. Bar Ass’n, *After the JD: First Results of a National Study of Legal Careers*, AM. BAR FOUND. 58 (2004), [www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf) (stating that women are less satisfied with “job setting, social index of work, and the power of track”).

<sup>59</sup> *See* Elena Kagan, *Women and the Legal Profession—A Status Report*, 61 REC. ASS’N B. CITY N.Y. 37, 42 (2006) (describing the difference in median salary between male and female attorneys); Vivia Chen, *Pay Gap Between Male and Female Partners Is Now Gaping Hole*, THE CAREERIST (Sept. 19, 2012), <http://thecareerist.typepad.com/thecareerist/2012/09/bad-news-women-mla-report.html> (describing the distinct salary difference between male and female partners).

<sup>60</sup> Epstein, *supra* note 49, at 750–52; *see also* Sterling & Reichman, *supra* note 56, at 518–19 (describing law firms as “gendered organization[s]” that favor “masculine” traits such as a willingness to work “on demand” and being free from domestic responsibilities).

<sup>61</sup> Epstein, *supra* note 42, at 751; *see also* Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1057 (“Despite a significant increase in men’s domestic work over the last two decades, women continue to shoulder the major burden.”).

<sup>62</sup> *See* Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1057 (describing the disproportionate burden placed on female attorneys due to childcare).

In addition, the globalization of the legal workplace and the advent of portable electronic devices to contact attorneys around the clock have put a significant strain on women who wish to spend time with their family during the evenings and on weekends.<sup>63</sup> To complicate this issue even further, there has been a social movement that has escalated the demands of parenting. Many parents feel that their children must participate in a variety of after-school activities such as sports, music, and dance programs to ensure that their children are well-rounded.<sup>64</sup> These after-school activities are in addition to the other daily demands of having children such as providing meals, completing other household duties, and assisting children with their homework. Again, because of steeped social traditions, many of these responsibilities often fall to women. As a result, meeting expectations both at work and at home often creates serious difficulties.<sup>65</sup>

Further, many women who choose to adopt a reduced schedule for less pay at a private law firm quickly learn that this option is not worth the pay cut. Many women discover that their reduced schedules are not respected, their hours increase over time, they are given less desirable assignments, and they are stigmatized in their firms.<sup>66</sup> Thus, it is not surprising that women have high attrition rates in private firms.<sup>67</sup> As Deborah Rhode put it, “[m]any women who now opt out of full-time work or the race for partnership are not simply ‘pulled’ by family demands; they are ‘pushed’ by inflexible unresponsive workplaces.”<sup>68</sup>

## B. Minorities

Adequate representation for minorities in the legal profession, especially for female minorities, has been much less promising than for white females. Nevertheless, the legal profession has made some progress.

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<sup>63</sup> See Epstein, *supra* note 42, at 751 (describing the increased availability expected of attorneys due to new technologies); see also Rhode, *supra* note 2, at 1056 (observing that the new norm of constant accessibility falls disproportionately on women who are likely to assume primary caretaking responsibilities).

<sup>64</sup> Epstein, *supra* note 42, at 751.

<sup>65</sup> See SHERYL SANDBERG WITH NELL SCOVELL, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 107 (2013) (explaining how women are still considered to be the default caregiver for children by society); Sterling & Reichman, *supra* note 56, at 528 (“[T]he ideal lawyer does not have a family or has a spouse/significant other at home taking care of private demands and can be present and visible at the firm at all times.” (citing JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT DO ABOUT IT* 4–6, 70 (2000))).

<sup>66</sup> See Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1056–57 (discussing how taking time off or working reduced hours as a lawyer hurts chances for advancement); Sterling & Reichman, *supra* note 56, at 529–30 (describing how women that ask for reduced rates end up working full hours for less pay).

<sup>67</sup> See CHAMBLISS, *MILES TO GO*, *supra* note 12, at 27 (reporting that women were more likely than men to leave the workforce to care for children).

<sup>68</sup> Rhode, *From Platitudes to Priorities*, *supra* note 2, at 1058 (footnote omitted).

In 1960, less than 1% of all lawyers were minorities.<sup>69</sup> In 1970, minorities represented approximately 1.3% of the legal workforce.<sup>70</sup> In 1980, this percentage increased to 5% and then in 1990, to 7%.<sup>71</sup> According to U.S. Census Bureau data, in 2000, minority representation in the legal profession reached 9.7% and then climbed to 13.1% in 2010.<sup>72</sup>

Slow progress is also evident when disaggregating data by race, except for Native Americans. For example, in 1990, African Americans accounted for 3.4% of attorneys, Hispanic Americans accounted for 2.5%, Asian Americans for 1.4%, and Native Americans for 0.2%.<sup>73</sup> In 2000, the representation of African Americans, Hispanic Americans, and Asian Americans rose to 3.9%, 3.3%, and 2.3% respectively, while remaining at 0.2% for Native Americans.<sup>74</sup> In 2010, the representation of African Americans, Hispanic Americans, and Asian Americans continued to rise to 4.3%, 3.4%, and 3.4% respectively.<sup>75</sup> The Department of Labor reported

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<sup>69</sup> *Id.* at 1045.

<sup>70</sup> Kornhauser & Revesz, *supra* note 48, at 860.

<sup>71</sup> *Id.* Of course, during this general time period, there was a comparable increase in the number of minorities attending American Bar Association-approved law schools. For example, in 1977, minorities comprised 8.4% of all law students; in 1980, they accounted for 8.8%; in 1985, they accounted for 10.4%; then 11.8% in 1988; and 13.6% in 1990. *Id.*

<sup>72</sup> *IILP Review 2012*, *supra* note 2, at 17 (citing data from the *Census 2000 EEO Data Tool*, U.S. CENSUS BUREAU, <http://www.census.gov/eo2000/index.html>) [hereinafter *Census 2000 EEO Data Tool*] (last visited Sept. 13, 2014); U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012, TABLE 616, EMPLOYED CIVILIANS BY OCCUPATION, SEX, RACE AND HISPANIC ORIGIN (2010) [hereinafter TABLE 616, EMPLOYED CIVILIANS], available at <http://www.census.gov/compendia/statab/2012/tables/12s0616.pdf>). Data from the Department of Labor approximate the data from the U.S. Census Bureau. According to Department of Labor data, in 2009 minority representation among lawyers reached 11.6%, and in 2011, it increased to 12.7%. See *IILP Review 2012*, *supra* note 2, at 18 (citing data from the U.S. DEP'T OF LABOR, U.S. BUREAU OF LABOR STATISTICS, TABLE 6, EMPLOYED PEOPLE BY DETAILED OCCUPATION, RACE, AND HISPANIC OR LATINO ETHNICITY 2009 ANNUAL AVERAGES (2009) [hereinafter 2009 EMPLOYMENT AVERAGES], available at <http://www.bls.gov/cps/cpsrace2009.pdf>; U.S. DEP'T OF LABOR, U.S. BUREAU OF LABOR STATISTICS, TABLE 8, EMPLOYED PEOPLE BY DETAILED OCCUPATION, RACE, AND HISPANIC OR LATINO ETHNICITY, 2011 ANNUAL AVERAGES (2011) [hereinafter 2011 EMPLOYMENT AVERAGES], available at <http://www.bls.gov/cps/cpsrace2011.pdf>).

<sup>73</sup> *IILP Review 2012*, *supra* note 2, at 17 (citing data from the *Census 2000 EEO Data Tool*, *supra* note 72). Of these percentages, 1.5% were female African Americans (compared to 1.9% for male African Americans); 0.8% were female Hispanic Americans (compared to 1.7% male Hispanic Americans); 0.5% were female Asian Americans (compared to 0.9% male Asian Americans); and 0.1% were Native Americans (compared to 0.1% male Native Americans); CHAMBLISS, MILES TO GO, *supra* note 12, at 5.

<sup>74</sup> *IILP Review 2012*, *supra* note 2, at 17. Of these percentages, 1.9% were female African Americans (compared to 2% for male African Americans); 1.2% were female Hispanic Americans (compared to 2% male Hispanic Americans); 1% were female Asian Americans (compared to 1.3% male Asian Americans); and 0.1% were Native Americans (compared to 0.1% male Native Americans). CHAMBLISS, MILES TO GO, *supra* note 12, at 5.

<sup>75</sup> *IILP Review 2012*, *supra* note 2, at 18 (citing data from TABLE 616, EMPLOYED CIVILIANS). Information for Native Americans was not available in 2010. *Id.* Information regarding the percentages of female minorities beyond the year 2000 are not yet available; *IILP Review 2012*, *supra* note 2, at 17.

figures in 2009 and 2011 that approximated the 2010 U.S. Census Bureau data, but were slightly different. In 2009, according to the Department of Labor, African American representation reached 4.7%; Hispanic American representation was 2.8%; and Asian American was 4.1%.<sup>76</sup> In 2011, African Americans accounted for 5.3% of all lawyers, Hispanic Americans for 3.2%, and Asian Americans for 4.2%.<sup>77</sup>

Nevertheless, while slow improvement is evident, minority representation regrettably lags far behind minority representation in the U.S. general population, especially for African Americans and Hispanic Americans.<sup>78</sup> According to the 2010 Census Data, 12.6% of the U.S. population was African American, 16.3% was Hispanic American, and 4.8% was Asian American.<sup>79</sup> Stated another way, although minorities comprise over 33% of the U.S. population, they comprise about 11% of the attorneys practicing law, which amounts to a gross underrepresentation of minorities as a whole in the legal profession and with respect to each individual minority group.<sup>80</sup> Analyzing the disparities between the representation of minorities in the legal profession and their representation in the U.S. population, Alex Johnson, Jr. recently observed that:

given the attractiveness of a legal career for minorities, there should be no shortage of interest in law and the legal profession as a career option for all minority students based on the percentage of graduating college students who choose to pursue law as their first (and usually last) professional degree. However, the legal profession attracts a disproportionately low number of underrepresented minorities rather than a disproportionately high number.<sup>81</sup>

Scholars have put forth several theories to explain why minorities are underrepresented in the legal profession, most of which focus on the underrepresentation of African Americans. Some of these theories focus on

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<sup>76</sup> 2009 EMPLOYMENT AVERAGES, *supra* note 72, at 16.

<sup>77</sup> 2011 EMPLOYMENT AVERAGES, *supra* note 72, at 22.

<sup>78</sup> See Redfield, *The Educational Pipeline*, *supra* note 20, at 349 (explaining how minorities are not represented in the legal profession in similar proportions to their representation in the U.S. general population); Am. Bar Ass'n, Presidential Advisory Council on Diversity in the Profession, *The Critical Need to Further Diversify the Legal Academy & the Legal Profession 1* (2005) [hereinafter *The Critical Need*], available at <http://apps.americanbar.org/op/pipelineconf/acdreport.pdf> ("While racial and ethnic minorities make up approximately 30% of the U.S. population, they make up less than [sic] 15% of the practicing attorneys in this country.').

<sup>79</sup> U.S. CENSUS BUREAU, PROFILE OF GENERAL POPULATION AND HOUSING CHARACTERISTICS: 2010 (last visited Sept. 24, 2014), available at <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>; see also Johnson, *Knots in the Pipeline*, *supra* note 2, at 392–93 (citing 2000 U.S. Census data).

<sup>80</sup> Johnson, *Knots in the Pipeline*, *supra* note 2, at 392–93.

<sup>81</sup> *Id.* at 393.

forces specific to the legal profession that discourage participation, while other theories focus on general social forces that limit the number of minorities eligible to pursue a law degree.

George Shepherd and Alex Johnson, Jr. have both identified shortcomings specific to the legal profession that discourage minority participation. Shepherd argues that the American Bar Association has disproportionately excluded African Americans from the practice of law through accreditation practices that disfavor African Americans. He maintains that the American Bar Association inflicts academic racism by denying accreditation to law schools whose student qualifications fall below a certain standard.<sup>82</sup> For example, the American Bar Association generally denies accreditation for schools whose students' average Law School Admissions Test (LSAT) scores fall below a 143.<sup>83</sup> However, the average LSAT score for African Americans is a 142,<sup>84</sup> and only 6% of African Americans exceed the median LSAT score of 156.<sup>85</sup> According to Shepherd, this standard results in accreditation to schools that admit average white students, but shuts down a school serving average African American students.<sup>86</sup> This is problematic because, according to Shepherd, the LSAT is a historically poor predictor of a student's ability to eventually pass the bar exam and become a successful lawyer.<sup>87</sup>

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<sup>82</sup> George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 104 (2003).

<sup>83</sup> *Id.* at 104–05.

<sup>84</sup> *Id.* at 105; see also SUSAN P. DELESSANDRO, LISA C. ANTHONY & LYNDA M. REESE, LSAT TECHNICAL REPORT SERIES 23 (2012), available at [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-12-03.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-12-03.pdf) (showing that the average LSAT scores for African-Americans from 2005 through 2012 hovered between 142 and 143); Floyd Weatherspoon, *The Status of African American Males in the Legal Profession: A Pipeline of Institutional Roadblocks and Barriers*, 80 MISS. L.J. 259, 289 (2010) (“The average LSAT score for African American students is 142 . . .”).

<sup>85</sup> EVENSEN & PRATT, *supra* note 9, at 123; REDFIELD, *DIVERSITY REALIZED*, *supra* note 19, at 11.

<sup>86</sup> Shepherd, *supra* note 82, at 105.

<sup>87</sup> *Id.*; see also EVENSEN & PRATT, *supra* note 9, at 119–123 (arguing that performance on the LSAT correlates better with parents' income than performance in law school or success in the legal profession); Dana N. Thompson Dorsey, *Accessing the Legal Playing Field: Examining the Race-Conscious Affirmative Action Legal Debate Through the Eyes of the Council of Legal Education Opportunity (CLEO) Program*, 16 TEX. WESLEYAN L. REV. 645, 648 (2010) (asserting that LSAT scores alone have little or no correlation to bar passage rates); Cecil J. Hunt, II, *Guests in Another's House: An Analysis of Racially Disparate Bar Performance*, 23 FLA. ST. U. L. REV. 721, 766–67 (1996) (finding that the correlation between LSAT scores and bar passage rates indicate that both tests measure the same skills and do not necessarily correlate with the ability to practice law competently); Richard O. Lempert et al., *Michigan's Minority Graduates in Practice: The River Runs Through Law School*, 25 LAW & SOC. INQUIRY 395, 490 (2000) (finding no relationship between LSAT scores and success after graduation as measured by income, satisfaction, and service contribution); Paula Lustbader, *Painting Beyond the Numbers: The Art of Providing Inclusive Law School Admission to Ensure Full Representation in the Profession*, 40 CAP. U. L. REV. 71, 89 (2012) (stating that high LSAT scores do not correlate with success in the practice of law); Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S.* News & World

In addition to academic racism, Shepherd argues that the American Bar Association accreditation standard also inflicts financial racism.<sup>88</sup> The accreditation standards cause law schools to pass on significant costs to law students, in many cases over \$200,000 to obtain a law degree, precluding many minorities whose families have fewer resources.<sup>89</sup>

Alex Johnson, Jr. has a different view. He argues that low LSAT scores are not the primary barrier to greater minority representation in law school. Rather, minority applicants need only apply to the right law school—those law schools at which the applicants have a realistic chance of gaining admission given their LSAT scores and undergraduate grade point averages.<sup>90</sup> Johnson maintains that the real barriers for minorities are recent moves by several states' bar associations to raise the minimum passing scores of their bar exams.<sup>91</sup> These changes, Johnson argues, have had a disproportionate effect on minorities.<sup>92</sup> Johnson laments that many underrepresented minorities who receive failing scores in some states would pass the bar under other states' standards.<sup>93</sup> He believes that all states should establish a uniform minimum passing score or implement a national bar examination in order to prevent penalizing minorities who take bar exams in states that have higher cutoff scores.<sup>94</sup>

Other scholars, such as Sarah Redfield, have focused on the general social forces that limit the number of minorities eligible to pursue a law degree.<sup>95</sup> Redfield believes that minorities are underrepresented in the legal

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Report *Law School Rankings*, 83 IND. L.J. 791, 809 (2008) (maintaining that LSAT scores are a highly-imperfect predictor of bar passage); Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1, 36–39 (1997) (asserting that LSAT scores alone have little or no correlation to bar passage rates). *But see* Joan Howarth, *Teaching in the Shadow of the Bar*, 31 U.S.F. L. REV. 927, 928 (1997) (stating there is a well-known correlation between LSAT scores and bar passage rates); Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367, 421 (2004) (showing that the LSAT is a strong predictor of bar passage rates); Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 107 (2007) (noting a correlation between LSAT scores and bar passage rates).

<sup>88</sup> Shepherd, *supra* note 82, at 105.

<sup>89</sup> *Id.*

<sup>90</sup> Johnson, *Knots in the Pipeline*, *supra* note 2, at 396.

<sup>91</sup> *Id.* at 417.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 406–07.

<sup>94</sup> *Id.* at 418–19.

<sup>95</sup> See REDFIELD, *DIVERSITY REALIZED*, *supra* note 19, at 69–99 (explaining that the achievement gap is a result of students' differing experiences as they progress through school, caused by social forces such as race-based negative perceptions, and systems that track underperforming students to low-level classes; it thereby perpetuates a cycle of failure, lack of engagement caused by unengaging or irrelevant classes, and lack of meaningful mentoring relationships); Redfield, *The Educational Pipeline*, *supra* note 20, at 358 (arguing that the failures and weaknesses of the education system “are a direct cause of the profession’s failure to achieve meaningful diversity”).

profession primarily because too few of them progress in school and successfully move through all stages of the educational pipeline.<sup>96</sup> Indeed, many minority students face serious challenges that run deep and begin early.<sup>97</sup> One in three African American children live in poverty, which is more than double the rate for white children.<sup>98</sup> The effects of poverty, especially concentrated poverty, are extremely deleterious and should not be underestimated.<sup>99</sup> Several empirical studies demonstrate that growing up in poverty is highly correlated with reduced cognitive capacities and achievement.<sup>100</sup> Poverty affects nutrition, health, and early learning opportunities, all of which are critical to cognitive development.<sup>101</sup>

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<sup>96</sup> See REDFIELD, *DIVERSITY REALIZED*, *supra* note 19, at 37–54 (discussing statistical models demonstrating the educational differences between minorities and non-minorities and how those differences contribute to the achievement gap); Redfield, *The Educational Pipeline*, *supra* note 20, at 358 (“[T]oo few underrepresented minorities are progressing in school and moving successfully through the pipeline. Too few are graduating from high school and progressing to and succeeding in college. Too few are achieving LSAT scores and GPAs that meet the standards for admission to law school, all too few to contribute to a diverse profession.”) (footnotes omitted); see also EVENSEN & PRATT, *supra* note 9, at 227 (observing that the biggest challenges for African Americans to enter the legal profession may be their neighborhoods and neighborhood schools).

<sup>97</sup> See Redfield, *The Educational Pipeline*, *supra* note 20, at 359 (noting that differences between white and black children in knowing letters, early vocabulary, and reading are apparent as early as kindergarten); see also CATHERINE Y. KIM ET AL., *THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM* 34 (2010) (maintaining that the racial achievement gap is measurable by age three); Nancy E. Dowd, *What Men?: The Essentialist Error of the “End of Men”*, 93 B.U. L. REV. 1205, 1217 (2013) (noting that the racial achievement gap “is measurable by age three” and that “school is unlikely to close the gap” because minority schools “are poorly funded and underperforming”).

<sup>98</sup> PEDRO A. NOGUERA, *THE TROUBLE WITH BLACK BOYS AND OTHER REFLECTIONS ON RACE, EQUITY, AND THE FUTURE OF PUBLIC EDUCATION* 21 (2008); Dowd, *supra* note 97, at 1210–11; see also EVENSEN & PRATT, *supra* note 9, at 114 (noting that 44% of African-American families have incomes below the middle-class threshold); The Critical Need, *supra* note 78, at 9 (comparing black and white unemployment rates and noting that, oftentimes, children of parents without jobs live in poverty); Tamar R. Birkhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL’Y 53, 59 (2012) (“[C]hildren of color are more than twice as likely to be impoverished than their white counterparts.”).

<sup>99</sup> See Dowd, *supra* note 97, at 1211 (discussing the harmful effects of poverty on children, including cognitive and academic impairment as well as poor nutrition and health problems).

<sup>100</sup> See, e.g., Dowd, *supra* note 97, at 1210–16 (“Poverty impacts early development, which is central to later functioning.”); Martha J. Farah et al., *Childhood Poverty: Specific Associations with Neurocognitive Development*, 1110 BRAIN RESEARCH 166, 166, 169 (2006), available at [http://cogpsy.skku.ac.kr/cwb-data/data/newarticle/farah\\_2006.pdf](http://cogpsy.skku.ac.kr/cwb-data/data/newarticle/farah_2006.pdf) (finding that childhood poverty results in “disparities in working memory, cognitive control and especially in language and memory”). Professor James E. Ryan recently documented neuroscience research suggesting that conditions associated with poverty impact a child’s brain development and functioning capacity. James E. Ryan, *Poverty as Disability and the Future of Special Education Law*, 101 GEO. L.J. 1455, 1478–90 (2013) (explaining that on almost every test of cognitive development, there are significant cognitive disparities that correlate with socioeconomic status).

<sup>101</sup> Dowd, *supra* note 97, at 1211; Steven H. Hobbs & Shenavia Baity, *Tending to the Spirit: A Proposal for Healing the Hearts of Black Children in Poverty*, 26 B.C. THIRD WORLD L.J. 107, 110–14 (2006).

Further, recent evidence provided by Patrick Sharkey suggests that low-income African Americans tend to live in concentrated poverty for multiple generations. Sharkey observes that 48% of all African American families have lived in the poorest quarter of neighborhoods for at least two generations compared to only 7% for white families.<sup>102</sup> The effects of living in concentrated poverty for multi-generations are severe for children, multiplying the detrimental effects of poverty. Sharkey maintains:

When families live in disadvantaged neighborhoods over multiple generations, children show substantially worse developmental outcomes when compared to families that live in poor neighborhoods in a single generation, and this remains true even after we account for everything else about a family that might affect children's development.<sup>103</sup>

Sharkey found that children from families that lived in poor neighborhoods for two generations scored substantially lower on tests measuring reading and language abilities than children living in poor neighborhoods for only one generation, even after accounting for other factors that affect children's cognitive development.<sup>104</sup>

In addition, minority children, especially those that live in poor neighborhoods, often receive a subpar education that does little to address the challenges they face. It is well documented that minority students often have less-experienced and lower-paid teachers, have less access to higher-level curriculum, are forced to learn in over-crowded classrooms, have lower levels of peer group competition and support, have fewer instructional resources, and disproportionately attend schools with dysfunctional learning environments.<sup>105</sup> Minority students also are

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<sup>102</sup> PATRICK SHARKEY, *STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY* 40 (2013).

<sup>103</sup> *Id.* at 46.

<sup>104</sup> *Id.* at 129.

<sup>105</sup> See, e.g., The Critical Need, *supra* note 78, at 2 (analyzing disadvantages minorities face in educational systems, including lack of access to higher-level courses and fewer instructional resources); REDFIELD, *DIVERSITY REALIZED*, *supra* note 19, at 76–81 (discussing disadvantages minorities confront in schools); Johnson, *Knots in the Pipeline*, *supra* note 2, at 388 n.23 (asserting that black males disproportionately suffer from inadequate educational resources and support); Jason P. Nance, *School Surveillance and the Fourth Amendment*, 2014 WIS. L. REV. 79, 82–83, 90–91 (discussing empirical research indicating that schools serving predominantly minority and low-income students are more likely to implement “harsh, intense security conditions than other schools—even after accounting for factors such as school crime, neighborhood crime, school disorder, school location, and school size”) (footnote omitted); Jason P. Nance, *Students, Security, and Race*, 63 EMORY L.J. 1, 4–5 (2013) (explaining that the school-to-prison pipeline “disproportionately affects minority students, particularly African-American boys”); see also LINDA DARLING-HAMMOND, *THE FLAT WORLD AND EDUCATION* 30 (2010) (reporting that disadvantaged students often have less access to qualified teachers and high-quality curriculum and are often subjected to dysfunctional learning environments); Gary Orfield, *The Growth of Segregation: African Americans, Latinos, and Unequal Education*, in *DISMANTLING*

disproportionately subjected to extreme disciplinary measures such as suspension and expulsion, are disproportionately referred to the juvenile justice system for violations of school rules, and are disproportionately placed in restrictive educational environments such as alternative schools and special education programs.<sup>106</sup> And, given all of these barriers, it should be no surprise that minorities graduate from high school at lower rates than white students.<sup>107</sup>

Cognitive disparities that result from living in poverty and receiving a sub-standard education begin early and are evident at every stage of many minorities' lives.<sup>108</sup> Empirical studies demonstrate that there are disparities

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DESEGREGATION: THE QUIET REVERSAL OF *BROWN V. BOARD OF EDUCATION* 53, 67–69 (explaining that minority students typically have less-qualified teachers and fewer instructional resources and observing that “disadvantaged students face more barriers and receive less reinforcement to succeed in school”); GARY ORFIELD & CHUNGMEI LEE, *RACIAL TRANSFORMATION AND THE CHANGING NATURE OF SEGREGATION* 29–30 (2006), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/racial-transformation-and-the-changing-nature-of-segregation/orfield-racial-transformation-2006.pdf> (describing disadvantages of schools in areas of concentrated poverty, which are disproportionately attended by minority students); Roslyn Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools*, 81 N.C. L. REV. 1513, 1547 (2003) (reporting that segregated black learning environments offer fewer resources to educate students); Press Release, U.S. Dep’t of Educ., *New Data from U.S. Department of Education Highlights Educational Inequities Around Teacher Experience, Discipline and High School Rigor* (Mar. 6, 2012), available at <http://www.ed.gov/news/press-releases/new-data-us-department-education-highlights-educational-inequities-around-teache> (describing the inequalities for minorities in the public education system and explaining that the “undeniable truth is that the everyday educational experience for many students of color violates the principle of equity at the heart of the American promise”).

<sup>106</sup> Theresa Glennon, *Looking for Air: Excavating Destructive Educational and Racial Policies to Build Successful School Communities*, in *JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM* 107, 110–11 (Nancy E. Dowd ed. 2011) (citing studies that demonstrate that minority students are disciplined disproportionately); KIM ET AL., *supra* note 97, at 53–54 (discussing the overrepresentation of minorities in restrictive special education programs); NOGUERA, *supra* note 98, at xvii (“Throughout the United States, Black males are more likely than any other group in American society to be punished . . . , labeled, and categorized for special education (often without any apparent disability), and to experience academic failure.”); Angela A. Cioffi & James E. Ryan, *Race and Response-to-Intervention in Special Education*, 54 HOW. L.J. 303, 326–27 (2011) (observing that African-Americans are overrepresented in restrictive educational environments such as alternative schools); Dowd, *supra* note 97, at 1216–22 (describing the disparities for minorities, particularly African-American males, in schools); Russell J. Skiba, Suzanne E. Eckes & Kevin Brown, *African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy*, 54 N.Y.L. SCH. L. REV. 1071, 1086–89 (2009) (discussing empirical evidence showing that African-American students are disproportionately subjected to school discipline even though they do not engage in higher rates of disruptive behavior compared to other students).

<sup>107</sup> See Clive R. Belfield & Henry M. Levin, *The Education Attainment Gap: Who’s Affected, How Much, and Why It Matters*, in *THE PRICE WE PAY: ECONOMIC AND SOCIAL CONSEQUENCES OF INADEQUATE EDUCATION* 1, 7 (Clive R. Belfield & Henry M. Levin eds., 2007) (reporting that public high school graduation rates for African Americans and Hispanic Americans are significantly lower than for white students); James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 274 (1999) (describing the high dropout rates for students in inner-city schools).

<sup>108</sup> See Margaret Burchinal et al., *Examining the Black-White Achievement Gap Among Low-Income Children Using the NICHD Study of Early Child Care and Youth Development*, 82 CHILD DEV.

between minorities' and whites' abilities to identify letters of the alphabet and understand vocabulary in kindergarten.<sup>109</sup> As children progress through school, these disparities continue and widen.<sup>110</sup> The average African American or Hispanic American seventh grade student reads at the level of an average white third grade student, and the average African American or Hispanic American seventeen-year-old reads at the same level as the average thirteen-year-old white student.<sup>111</sup> Similar achievement gaps exist in assessment exams that measure other subject areas and academic skills.<sup>112</sup> Margaret Burchinal and her colleagues recently summed up these educational achievement gaps in the following way:

The substantial gap in educational achievement between Black and White children is one of the most pernicious problems facing American society. Black children in the U.S. start school about one half of a standard deviation behind their White peers on standardized reading and mathematics tests, and racial disparities in school achievement increase by about one tenth of a standard deviation during each year of school.<sup>113</sup>

Of course, living in poverty and poor educational opportunities are only some of the challenges that minorities face. Empirical studies also demonstrate that minority youth, especially African-American males, are more likely to be involved in the criminal justice system than white youth.<sup>114</sup> Nancy Dowd observes that disproportionate minority confinement “is present throughout the [juvenile justice] system, reflected in disparate and harsher treatment, as well as disproportionate and unnecessary entry and penetration into the juvenile justice system. Disproportionate minority confinement is not due to differential offending. Race, class, and neighborhood are critical to one’s likelihood of being

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1404, 1404 (2011) (“Black children in the U.S. start school about one half of a standard deviation behind their White peers on standardized reading and mathematics tests . . .”).

<sup>109</sup> REDFIELD, DIVERSITY REALIZED, *supra* note 19, at 38–41.

<sup>110</sup> *Id.* at 41–48; *see also* Burchinal et al., *supra* note 108, at 1404 (“[R]acial disparities in school achievement increase by about one tenth of a standard deviation during each year of school.”); Dowd, *supra* note 97, at 1217 (explaining that, because minority schools have fewer resources, the racial achievement gap only widens as children grow).

<sup>111</sup> REDFIELD, DIVERSITY REALIZED, *supra* note 19, at 359.

<sup>112</sup> *Id.* at 360; *see also* Ryan, *supra* note 107, at 274 (explaining that African-American students generally do not perform as well as white students on standardized tests).

<sup>113</sup> Burchinal et al., *supra* note 108, at 1404 (internal citations omitted).

<sup>114</sup> *See* Dowd, *supra* note 97, at 1222–26 (detailing statistics of African American youth being involved in the juvenile justice system and the structurally flawed system that results in adverse outcomes); *see also* Weatherspoon, *supra* note 84, at 277–93 (explaining that a disproportionate number of young African American males are incarcerated and describing the hurdles they face in returning to the educational system, which translate into low college enrollment and law school admission).

arrested.”<sup>115</sup> For example, in 2003, African American youth comprised 16% of the youth population in the United States, yet represented 28% of juvenile arrests, 30% of referrals to juvenile court, 30% of youth adjudicated by juvenile court, 37% of youth in secure detention facilities, and 58% of youth sentenced to a state adult prison.<sup>116</sup> With respect to all minority youth, “[t]wo-thirds of all youth in public detention facilities today are youth of color—though they represent only thirty-nine percent of the overall youth population—who are still treated more harshly even when charged with the same offense as White youth.”<sup>117</sup> And those youth of color who are arrested but are not incarcerated still suffer from severe psychological effects. According to Catherine Kim, Daniel Losen, and Damon Hewitt,

[s]tudies show that being arrested has detrimental psychological effects on the child: it nearly doubles the odds of dropping out of school and, if coupled with a court appearance, nearly quadruples the odds of dropout; lowers standardized-test scores; reduces future employment prospects; and increases the likelihood of future interaction with the criminal justice system.<sup>118</sup>

All of these factors represent enormous challenges for minorities to advance through the educational pipeline and be eligible to pursue a law degree.

### C. *Current Diversity Initiatives*

Recognizing that racial and gender diversity is important but challenging to achieve, the legal profession has made several efforts to improve diversity. Some of these efforts are led nationally by groups such as the American Bar Association; others are led locally by entities such as state bar associations, local bar associations, law schools, law firms, and other groups. This Section will first describe the overall diversity efforts of the American Bar Association in the legal profession; it will then describe in detail a few specific diversity efforts made by various local entities at different stages of minorities’ education. We provide these descriptions to give further context for our empirical findings and conclusions, ultimately

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<sup>115</sup> Dowd, *supra* note 97, at 1222–23 (footnotes omitted).

<sup>116</sup> Mark Soler et al., *Juvenile Justice: Lessons for a New Era*, 16 *GEO. J. ON POVERTY L. & POL’Y* 483, 530–31 (2009).

<sup>117</sup> JAMES BELL & LAURA JOHN RIDOLFI, W. HAYWOOD BURNS INST., *ADORATION OF THE QUESTION: REFLECTIONS ON THE FAILURE TO REDUCE RACIAL & ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM* 8 (Shadi Rahimi ed., 2008), available at <http://www.burnsinstitute.org/downloads/BI%20Adoration%20of%20the%20Question.pdf>

<sup>118</sup> KIM ET AL., *supra* note 97, at 113.

with the hope that we might identify fruitful avenues for the legal profession to further its diversity efforts.

### 1. *Diversity Initiatives at the National Level*

At the national level, the American Bar Association's Center for Racial and Ethnic Diversity is an organization that provides resources and guidance to the legal profession to promote diversity among its professionals.<sup>119</sup> Within the Center for Racial and Ethnic Diversity, two groups focus on different aspects of diversifying the legal profession. The first group is the Commission on Racial and Ethnic Diversity in the Profession, comprised of diverse committed attorneys who seek to enhance leadership and economic opportunities for racially diverse lawyers in the legal profession.<sup>120</sup> For example, the Commission supports the Minority Counsel Program, which facilitates relationship building between corporations and racially diverse lawyers and also promotes career growth and professional development for racially diverse lawyers working inside corporations and law firms.<sup>121</sup>

The second group within the American Bar Association's Center for Racial and Ethnic Diversity is the Council for Racial & Ethnic Diversity in the Educational Pipeline. The Council is a "programmatically incubator for activities that foster a more diverse educational pipeline into the legal profession and provide a forum to address these issues in our educational systems and the legal profession."<sup>122</sup> The Council offers scholarship opportunities for incoming diverse law students.<sup>123</sup> It also provides sponsorship opportunities, such as the Judicial Clerkship Program, where judges, former law clerks, and up to one-hundred minority students are brought together to participate in panel discussions, social events, and

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<sup>119</sup> See *Center for Racial and Ethnic Diversity*, AM. B. ASS'N, <http://www.americanbar.org/groups/diversity.html> (last visited Sept. 2, 2014) (detailing various programs aimed at providing services to diverse communities).

<sup>120</sup> See *About the Diversity Commission*, AM. B. ASS'N, [http://www.americanbar.org/groups/diversity/racial\\_ethnic\\_diversity/about-the-commission.html](http://www.americanbar.org/groups/diversity/racial_ethnic_diversity/about-the-commission.html) (last visited Sept. 2, 2014) (detailing the group's strategic plan).

<sup>121</sup> *Minority Counsel Program*, AM. BAR. ASS'N, [http://www.americanbar.org/groups/diversity/racial\\_ethnic\\_diversity/mcp.html](http://www.americanbar.org/groups/diversity/racial_ethnic_diversity/mcp.html) (last visited Sept. 2, 2014); see also Am. Bar Ass'n Ctr. for Racial and Ethnic Diversity, *Diversity and Inclusion Digest: The 2012-2013 Compilation of ABA Opportunities, Programs, and Services for Diverse Lawyers*, AM. B. ASS'N 8, [http://www.americanbar.org/content/dam/aba/administrative/diversity/Diversity\\_and\\_Inclusion-Digest-2012-2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/diversity/Diversity_and_Inclusion-Digest-2012-2013.authcheckdam.pdf) (last visited Sept. 16, 2014) (describing the purpose of the Minority Counsel Program).

<sup>122</sup> *Council for Racial & Ethnic Diversity in the Educational Pipeline*, AM. BAR ASS'N, [http://www.americanbar.org/groups/diversity/diversity\\_pipeline.html](http://www.americanbar.org/groups/diversity/diversity_pipeline.html) (last visited Sept. 2, 2014).

<sup>123</sup> See, e.g., *ABA Legal Opportunity Scholarship Fund*, AM. B. ASS'N, [http://www.americanbar.org/groups/diversity/diversity\\_pipeline/projects\\_initiatives/legal\\_opportunity\\_scholarship.html](http://www.americanbar.org/groups/diversity/diversity_pipeline/projects_initiatives/legal_opportunity_scholarship.html) (last visited Sept. 2, 2014) (describing the ABA Legal Opportunity Scholarship Fund and providing statistics of former ABA Scholars).

research and writing exercises to introduce the value of obtaining a judicial clerkship.<sup>124</sup> Furthermore, the Council, in conjunction with the Law School Admission Council, has created the Pipeline Diversity Directory, which is a searchable database of projects, programs, and initiatives to diversify the legal profession.<sup>125</sup>

In addition to its efforts to promote racial diversity, the American Bar Association has also established the Commission on Women in the Profession to promote gender diversity. The Commission is dedicated to ensuring that women have equal opportunities for professional growth and advancement.<sup>126</sup> This commission sponsors programs such as the Women of Color Research Initiative, which studies the integration of minority women in the legal profession;<sup>127</sup> the Women in Law Leadership Academy, which teaches female lawyers career and legal skills designed to help them become leaders in the profession;<sup>128</sup> and the Ms. JD Fellows Program, a mentoring program for female law students.<sup>129</sup>

## 2. Other Diversity Initiatives

Law firms, state and local bar associations, law schools, corporations, and other organizations also have their own programs and initiatives designed to promote diversity within the legal profession, primarily focusing on racial diversity. The Pipeline Diversity Directory contains descriptions of about four hundred of these programs that have been established throughout the country.<sup>130</sup> These programs are far-ranging and vary as to their depth, commitment, and outreach. These programs target pre-high school students, high school students, community college students, university students, law students, adult career changers, or a combination of these groups.<sup>131</sup> Sarah Redfield has documented several of

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<sup>124</sup> *Judicial Clerkship Program*, AM. B. ASS'N, [http://www.americanbar.org/groups/diversity/diversity\\_pipeline/projects\\_initiatives/judicial\\_clerkship\\_program.html](http://www.americanbar.org/groups/diversity/diversity_pipeline/projects_initiatives/judicial_clerkship_program.html) (last visited Sept. 2, 2014).

<sup>125</sup> *Pipeline Diversity Directory*, AM. B. ASS'N, [http://www.americanbar.org/groups/diversity/diversity\\_pipeline/resources/pipeline\\_diversity\\_directory.html](http://www.americanbar.org/groups/diversity/diversity_pipeline/resources/pipeline_diversity_directory.html) (last visited Sept. 2, 2014).

<sup>126</sup> *Women in the Profession*, AM. B. ASS'N, <http://www.americanbar.org/groups/women.html> (last visited Sept. 2, 2014).

<sup>127</sup> *Women of Color Research Initiative*, AM. B. ASS'N, [http://www.americanbar.org/groups/women/initiatives\\_awards/women\\_of\\_color\\_research\\_initiative.html](http://www.americanbar.org/groups/women/initiatives_awards/women_of_color_research_initiative.html) (last visited Sept. 2, 2014).

<sup>128</sup> THE ABA COMM'N ON WOMEN IN THE PROFESSION & THE YOUNG LAWYERS DIV., *Women in Law Leadership Academy*, AM. B. ASS'N, (2012), [http://www.americanbar.org/content/dam/aba/events/women/will\\_2012\\_brochure.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/women/will_2012_brochure.authcheckdam.pdf).

<sup>129</sup> *Fellowship*, MS. JD, <http://ms-jd.org/> (last visited Sept. 2, 2014).

<sup>130</sup> *Search the Pipeline Diversity Directory*, AM. B. ASS'N, <http://apps.americanbar.org/abanet/op/pipelindir/search.cfm> (last visited Sept. 2, 2014); see also Sarah E. Redfield, *The Need for Focused Pipeline Programs with Documented Outcomes*, in THE EDUCATION PIPELINE TO THE PROFESSIONS 3, 4 (Sarah E. Redfield ed., 2012) [hereinafter *Focused Pipeline Programs*] (noting that there are over 400 pipeline programs in the ABA/LSAC Pipeline Directory).

<sup>131</sup> *Search the Pipeline Diversity Directory*, AM. B. ASS'N, <http://apps.americanbar.org/abanet/op/pipelindir/search.cfm> (last visited Sept. 2, 2014).

these pipeline programs at every level of education, from pre-school to college.<sup>132</sup>

For example, at the pre-school level, the Georgetown University Law Center has partnered with the District of Columbia's Latin American Montessori Bilingual Public Charter School to promote high quality early literacy development.<sup>133</sup> This program, called the Voices Project, organizes workshops for teachers and parents geared to encourage parents to read books about families to their children and to discuss their own personal family histories, stories, and activities with their children.<sup>134</sup> These activities are designed to facilitate parent-child interactions and to help children develop their own personal books documenting family events.<sup>135</sup>

At the elementary school level, Sonnenschein Nath & Rosenthal LLP created Legacy Charter School in an underserved area of Chicago to better prepare students to enter college.<sup>136</sup> Ninety-nine percent of Legacy's enrollment is African American.<sup>137</sup> The firm pledged one million dollars over a five-year period to create Legacy, and another three million dollars to construct a new school building.<sup>138</sup> In addition to funding and other contributions such as technology and furniture, Sonnenschein Nath & Rosenthal's employees volunteer their time to participate in a weekly tutoring program, teach classes, clean and paint classrooms, act as judges

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<sup>132</sup> See REDFIELD, *DIVERSITY REALIZED*, *supra* note 19, at 88–89, 94–99, 127–128, 134–138, 157–162, 171–174, 176–180, 182–193, 196–202 (illustrating various educational pipeline programs that are underway); Redfield, *Focused Pipeline Programs*, *supra* note 130, at 5, 13, 25, 39, 53, 61, 73–74, 83, 97, 121, 135, 145, 163, 187, 207 (providing examples of pipeline programs at preschool, elementary school, middle school, high school, college, and law school). Redfield defines pipeline programs as:

[a]ny program operated or supported by an educationally affiliated institution or an educationally or professionally focused group for the purpose of providing information, motivation, relevant educational programming, or activities in the context of successfully moving students forward along the educational continuum . . . . The end goal is to promote knowledge of, interest in, and academic capabilities for careers or higher levels of education or professional preparation in law-related pathways in order to increase the number of diverse students interested in and qualified for admission to law school and the professions.

*Id.* at 3.

<sup>133</sup> Richard Roe, *The Emerging Voices Project of the Latin American Montessori Bilingual Public Charter School (LAMB) and the Georgetown Street Law Clinic*, in *THE EDUCATION PIPELINE TO THE PROFESSIONS* 13, 13, 15 (Sarah E. Redfield ed., 2012).

<sup>134</sup> *Id.* at 15–16.

<sup>135</sup> *Id.*

<sup>136</sup> Errol Stone, *Legacy Charter School Chicago, Illinois*, in *THE EDUCATION PIPELINE TO THE PROFESSIONS* 25, 25–26, 34 (Sarah E. Redfield ed., 2012).

<sup>137</sup> *Id.* at 27.

<sup>138</sup> *Id.*

at school events, and participate in other activities with students such as chess, quilting, and guitar.<sup>139</sup>

Also at the elementary school level, Brigham Young University Law School has created a mentoring program that partners law students with fifth and sixth graders to help students develop an interest in the legal profession and instill a stronger understanding of the value of education.<sup>140</sup> Thus far, the University's mentoring program has "provided more than 20,000 hours of one-on-one mentoring to more than 1,000 elementary school students by law school student volunteers."<sup>141</sup>

Examples at the high school level include Pacific Pathways, which is a partnership among the University of the Pacific McGeorge School of Law, several local undergraduate institutions, and several local public schools in underserved areas.<sup>142</sup> Pacific Pathways seeks to promote academic achievement in high school and admission to college.<sup>143</sup> Organizers of this initiative provide mentoring, bring in speakers from the legal community, train teachers to help students learn about legal issues, facilitate college and law school campus visits, host Saturday seminars for students, and oversee internship programs.<sup>144</sup>

Another example at the high school level is Legal Outreach. Legal Outreach is a New York City based legal education organization that seeks to prepare urban youth from disadvantaged communities to be successful in high school and attend college.<sup>145</sup> Legal Outreach's College Bound Program helps students with their schoolwork, teaches students how to write, offers a life and study skills seminar program, provides mentors, offers internships with law firms, organizes an SAT preparation program, and assists students with college selection and filling out college applications.<sup>146</sup> After admission to college, students involved with Legal Outreach who wish to attend law school may participate in the College to Law School Pipeline Diversity Program.<sup>147</sup>

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<sup>139</sup> *Id.*

<sup>140</sup> Brett G. Scharffs et al., *Brigham Young University, Provo, Utah*, in *THE EDUCATION PIPELINE TO THE PROFESSIONS* 39, 39–40 (Sarah E. Redfield ed., 2012).

<sup>141</sup> *Id.* at 40.

<sup>142</sup> *Program Profile*, AM. B. ASS'N, [http://apps.americanbar.org/abanet/op/pipelndir/search\\_results\\_display.cfm?profileid=4](http://apps.americanbar.org/abanet/op/pipelndir/search_results_display.cfm?profileid=4) (last visited Sept. 17, 2014).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *About Us*, LEGAL OUTREACH, [http://legaloutreach.org/?page\\_id=2](http://legaloutreach.org/?page_id=2) (last visited Sept. 17, 2014); see also James O'Neal, *Legal Outreach, New York, New York*, in *THE EDUCATION PIPELINE TO THE PROFESSIONS* 83, 83–96 (Sarah E. Redfield ed., 2012) (detailing the history of the program and describing its strategy).

<sup>146</sup> *Program Profile*, A.B.A., [http://apps.americanbar.org/abanet/op/pipelndir/search\\_results\\_display.cfm?profileid=32](http://apps.americanbar.org/abanet/op/pipelndir/search_results_display.cfm?profileid=32) (last visited Sept. 17, 2014).

<sup>147</sup> *About Us*, LEGAL OUTREACH, [http://legaloutreach.org/?page\\_id=2](http://legaloutreach.org/?page_id=2) (last visited Sept. 17, 2014).

Another example is the Center for Educational Partnerships at the University of California, Irvine's Saturday Academy of Law.<sup>148</sup> The purpose of the Saturday Academy of Law is to (a) develop critical reading, writing, and speaking skills to prepare high school students to succeed in college and professionally, and (b) generate excitement and develop a better understanding of the field of law by interacting with legal professionals.<sup>149</sup> The Saturday Academy of Law conducts Saturday sessions for six consecutive weeks, teaching students through a combination of mini-lectures, interactive exercises, and writing activities.<sup>150</sup> Following the Saturday sessions, each student is paired with a mentor who meets with her mentee personally at least twice a month and contacts the mentee at least once each week in person or by email.<sup>151</sup>

Yet another example at the high school level includes the Center for Youth Development's Law Summer Program through Law at the University of California at Berkeley School of Law.<sup>152</sup> In this program, high school students attend class at Berkeley Law for ten days during the summer and learn about the law through traditional reading and writing exercises, discussions, debates, and mock Supreme Court hearings.<sup>153</sup> Students also participate in internships, are matched up with mentors, and learn about appropriate workplace etiquette, networking, resumes, job interviews, and various careers.<sup>154</sup>

There are also pipeline programs at the undergraduate college level, including the Texas Law School Preparation Institute, which serves

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<sup>148</sup> Karina Hamilton & Sarah E. Redfield, *Saturday Academy of Law University of California, Irvine, California*, in *THE EDUCATION PIPELINE TO THE PROFESSIONS* 97, 97 (Sarah E. Redfield ed., 2012).

<sup>149</sup> *Id.* at 99.

<sup>150</sup> *Id.* at 100.

<sup>151</sup> *Id.* at 104.

<sup>152</sup> Nancy Schiff, *Center for Youth Development Through Law, Berkeley, California*, in *THE EDUCATION PIPELINE TO THE PROFESSIONS* 121, 121 (Sarah E. Redfield ed., 2012).

<sup>153</sup> *Id.* at 124.

<sup>154</sup> *Id.* at 125–28. Other examples include the Georgetown University Law Center's well-known Street Law program that has been running for over forty years. See Richard Roe, *Street Law Clinics at Georgetown University Law Center, Washington, D.C., and Others*, in *THE EDUCATION PIPELINE TO THE PROFESSIONS* 135, 135 (Sarah R. Redfield ed., 2012) (describing the history of the clinic at Georgetown University Law Center and its current initiatives). This initiative trains and organizes Georgetown Law students to teach high school students from the District of Columbia about the law. *Id.* Specifically, Georgetown Law students teach high school students the basic structure of the legal system, their fundamental constitutional rights, and the function and operation of trials and other proceedings. *Id.* at 137. This program has been highly successful at not only teaching high school students about the American legal structure, but it also benefits the law students and other legal professionals who participate in this program by fostering a commitment to public service and diversity in the legal profession. *Id.* at 143.

undergraduate students at several University of Texas schools.<sup>155</sup> This program prepares underrepresented students to take the LSAT and teaches students legal and technical writing skills, legal communication skills, and how to analyze cases.<sup>156</sup>

The above descriptions amount to only a small sample of the dozens of noteworthy diversity initiatives sponsored by legal professionals and organizations throughout the country.<sup>157</sup> However, the programs we describe above are far more extensive than many of the four hundred programs of which we are aware.<sup>158</sup> Further, while the sheer number of programs and initiatives may impress some, they are not preparing enough minority students to appropriately diversify the legal profession.<sup>159</sup>

#### D. Contribution of this Empirical Study

Our Study seeks to illuminate the discussion regarding the diversity of the legal profession and to identify productive paths for the legal profession to further its diversity efforts. As explained above, diversity in the legal profession is a function of general social forces that limit the number of women and minorities from being eligible to pursue a law degree, and forces specific to the legal profession that encourage or discourage participation in the legal profession in a distinct way. Some of the research analyzing the causes of the lack of diversity in the legal profession has identified these external forces.<sup>160</sup> For example, to become a legal professional, an individual must pass through a number of filters that

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<sup>155</sup> Jerry Polinard & Richard Gambitta, *Texas Law School Preparation Institutes, El Paso, San Antonio, and Others*, in *THE EDUCATION PIPELINE TO THE PROFESSIONS* 163, 163–64 (Sarah R. Redfield ed., 2012).

<sup>156</sup> *Id.* at 174. This program was born in response to the Fifth Circuit Court of Appeals decision in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), which prohibited Texas law schools from employing race conscious affirmative action policies in their admissions processes. *Id.* at 163–64 (citing *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996)). With the help of this program, 243 minority students have received at least one offer for admission to law school. *Id.* at 184.

<sup>157</sup> See Redfield, *Focused Pipeline Programs*, *supra* note 130, at 4 (referencing the hundreds of pipeline programs in the ABA/LSAC Pipeline Directory).

<sup>158</sup> *Id.* (“The seemingly-infinite variety of individual programs now extant, many of which are one-of-a-kind, many of which are splash and dash, are not the answer.”).

<sup>159</sup> Further, as Redfield notes, it is difficult to discern the impact of these programs because almost all of them have not been adequately examined or appropriately evaluated. *Id.* Nevertheless, Dorothy H. Evensen and Carla D. Pratt have produced an illuminating work that explores how some disadvantaged minorities have successfully been admitted to the bar, many of whom benefitted from pipeline programs. See generally EVENSEN & PRATT, *supra* note 9, at 207–234 (explaining the benefits received by some of the students from pipeline programs).

<sup>160</sup> See *The Critical Need*, *supra* note 78, at 10–11 (discussing some of the external forces resulting in a lack of diversity in the legal profession); Redfield, *The Educational Pipeline*, *supra* note 20, at 356 (noting that the educational system is the root of the problem in the pipeline to the legal profession); Weatherspoon, *supra* note 84, at 277–93 (discussing a number of forces contributing to African American males being excluded from the legal profession).

are either controlled by the legal profession or are beyond its control. A lawyer typically must receive a high quality elementary, middle, and high school education; attend a college that offers high quality training in reading, writing, and analytical thinking; perform well in courses to obtain a high undergraduate GPA; achieve an adequate score on the LSAT; have quality life experiences to enhance a law school application; perform well in law school; pass the bar exam; receive and accept a job, and remain employed in the legal profession throughout the duration of the individual's career. Each step along this path acts as a filter, shrinking the pool of individuals eligible to remain employed as a legal professional.<sup>161</sup> As explained above, minorities and women may be disproportionately filtered from the pool of individuals at various stages of this process, many of which are not controlled by the legal profession.

Workers in every occupation gain entry into that occupation by passing through some type of filtering process. But for many occupations, the filtering process is very different from the filtering process for becoming a legal professional. When evaluating the diversity of the legal profession, it is important to distinguish between factors that are controlled by the legal profession, such as recruiting law school graduates or raising the cutoff score to pass the bar, and factors over which the legal profession has far less influence, such as the quality of public school education.<sup>162</sup> The approach we have taken is to study the diversity of the legal profession relative to the diversity of other occupations that have similar filters. Typical studies that compare the representation of women and minorities in the legal profession to the representation of women and minorities in other professions simply compare ratios.<sup>163</sup> Our study goes beyond this. We compare legal professionals against other prestigious professions that also require the attainment of a professional or doctorate degree and focus on young individuals who have completed their education and recently begun

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<sup>161</sup> See Redfield, *The Educational Pipeline*, *supra* note 20, at 357–58 (explaining that there are leaks in the pipeline that hinder diversity in the legal profession); Weatherspoon, *supra* note 84, at 277–79 (describing the institutional barriers for African American males in the educational pipeline from elementary school through professional school).

<sup>162</sup> Professor Redfield maintains that focusing on the role of the legal profession “is not intended to underestimate or undervalue other issues also of massive proportions, including the role of parents, family, language, and culture; issues of school ethos, environment, and safety; the reality of poverty; the enduring school funding limitations; and the power of the status quo.” REDFIELD, *DIVERSITY REALIZED*, *supra* note 19, at 69.

<sup>163</sup> See, e.g., CHAMBLISS, *MILES TO GO*, *supra* note 12, at 7 (providing statistics for minority representation among U.S. professions from 2000); see also Smith, *supra* note 16 (referencing minority representation growth among U.S. professions from 2003 until 2012); *IILP Review 2012*, *supra* note 2, at 14 (comparing minority representation in the legal profession to representation in other professions, including accountants and auditors, software developers, and physicians and surgeons); *IILP Review 2011*, *supra* note 2, at 10 (comparing women's representation in the legal profession to representation in other professions, including architects, engineers, psychologists, and clergy).

their careers to glean a clearer picture of the current state of diversity in the legal profession. Further, we control for other variables that might influence whether an individual works in the legal profession such as whether the individual (a) lives in a metropolitan area; (b) is married; (c) is widowed, separated or divorced; and (d) lives with children under the age of nineteen, who are counted as part of the individual's family.<sup>164</sup>

### III. THE DATA AND MODELS

#### A. *The Data*

The data in this Study is collected annually by the U.S. Census Bureau in its March Current Population Survey. Because the level of detail in the Current Population Survey's racial classifications increased beginning with the 1992 Current Population Survey, we examine diversity in the legal profession during three windows of time following that improvement: 1992–1995, 2001–2005, and 2008–2012. Machine-readable microdata from the Current Population Survey is not made available to the public; however, a subset of Current Population Survey microdata is collected, harmonized, and released to the public by a project called the Integrated Public Use Microdata Series, which is sponsored by the Minnesota Population Center at the University of Minnesota.<sup>165</sup>

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<sup>164</sup> We include these controls to better isolate the relationship between women and minority status and membership in the legal profession while holding constant potentially confounding relationships. We searched for measures available in the Current Population Survey that we expected could be associated with both women and minority status and membership in the legal profession and include these variables in the regression models so that the statistical associations we observe between women and minority status and membership in the legal profession cannot be attributed to uncontrolled differences between individuals in the Current Population Survey. For example, because lawyers often work long hours, we include a number of controls (the relationship status and children measures) intended to capture the extent to which individuals in our sample are under pressure to perform work at home (sometimes called “non-market” or “home production” work). We expect that individuals, whose lifestyles require significant home production work, are less likely to work as lawyers full-time. In addition, given evidence that women continue to perform a disproportionate share of home production work in the United States, *see generally* Aguilar & Hurst, *supra* note 22, at 976 (detailing their study concerning the share of nonmarket work between women and men), we add controls interacting our female indicator variable with our relationship status and children controls to account for gender differences in the extent to which pressure to perform home production work influences the likelihood an individual works full-time as a lawyer. We include a control for metropolitan residence because populations of many minority groups have historically been concentrated in cities, likely increasing their representation among occupations whose members are also concentrated in cities. *Id.* We note, however, that while there are many other factors that might influence entry into a profession, we were limited to the data available to us.

<sup>165</sup> The Integrated Public Use Microdata Series - Current Population Survey is constructed by randomly sampling the original Census Bureau microdata from printed pages or microfilm reels, recording it in machine readable formatting, and recoding or “harmonizing” variables whose definitions have changed so that they are consistent over time. These data are available for download from the IPUMS project website using its built-in “data extraction system.” *See Integrated Public Use Microdata Series*, MINNEAPOLIS POPULATION CTR.: UNIV. OF MINN.,

The Integrated Public Use Microdata Series - Current Population Survey permits us to study women, African Americans, Hispanic Americans, Asian Americans, Native Americans, and individuals designated as “other racial minority or multi-racial,” which we denote as “Other Race.”<sup>166</sup> A significant strength of the Current Population Survey relative to datasets that exclusively describe lawyers is that the Current Population Survey contains data describing members of the legal profession as well as workers in every other major occupation in the United States.<sup>167</sup> As a consequence, we can characterize the diversity of members of the legal profession as well as the diversity of members of other comparable professions. It is through these comparisons that our empirical tests isolate diversity anomalies that are unique to the legal profession.

The prestige and educational requirements of the legal profession are among the highest for any profession. Because there is not a well-accepted list of prestigious occupations that are comparable to the legal profession, we turn to a dataset called the General Social Survey to identify professions that are comparable in prestige to the legal profession. The General Social Survey is a survey dataset characterizing the demographics and opinions of average Americans, collected typically at one or two year intervals since 1972 by the University of Chicago’s National Opinion Research Center.<sup>168</sup> The General Social Survey contains data on the prestige of a sample of 490 occupations.<sup>169</sup> General Social Survey prestige scores were estimated in 1989 by asking a large sample of respondents to “estimate the social standing of occupations.”<sup>170</sup>

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<https://cps.ipums.org/cps/index.shtml> (last visited on Oct. 6, 2014); see also *Frequently Asked Questions, How Do I Obtain Data?*, MINNEAPOLIS POPULATION CTR.: UNIV. OF MINN., <https://cps.ipums.org/cps-action/faq#ques10> (last visited on Oct. 6, 2014).

<sup>166</sup> *Id.*

<sup>167</sup> See *Description, Occupation, 1990 Basis*, MINNEAPOLIS POPULATION CTR.: UNIV. OF MINN., [https://cps.ipums.org/cps-action/variables/OCC1990#description\\_section](https://cps.ipums.org/cps-action/variables/OCC1990#description_section) (last visited Oct. 6, 2014) (explaining that the Integrated Public Use Microdata Series - Current Population Survey occupation classification system is based on the system of the U.S. Census Bureau but has been adjusted to maximize the consistency of occupational classifications over time).

<sup>168</sup> Tom W. Smith et al., *General Social Survey 1972-2012*, INTER-U. CONSORTIUM FOR POL. AND SOC. RES. Vii, [http://people.wku.edu/douglas.smith/GSS%201972\\_2012%20Codebook.pdf](http://people.wku.edu/douglas.smith/GSS%201972_2012%20Codebook.pdf) (last visited Feb. 18, 2014).

<sup>169</sup> See *id.* at Appendix F for a complete list of the occupations analyzed in the General Social Survey.

<sup>170</sup> See *General Social Survey Codebook for Cumulative Data*, NAT’L OP. RES. CTR. AT THE U. CHL., [http://publicdata.norc.org/GSS/DOCUMENTS/BOOK/GSS\\_Codebook\\_AppendixG.pdf](http://publicdata.norc.org/GSS/DOCUMENTS/BOOK/GSS_Codebook_AppendixG.pdf) (last visited Feb. 18, 2014) (discussing the researchers’ methodology in determining prestige scores in the General Social Survey studies).

The twenty-six General Social Survey occupations with the highest prestige scores are displayed in Table 1, Panel A.<sup>171</sup> The occupation classification systems of the General Social Survey and Current Population Survey differ, so some interpretation is necessary when we use General Social Survey prestige scores to identify prestigious Current Population Survey occupations. Guided by the General Social Survey prestige results, we conclude that the legal profession is a member of a small set of “extremely prestigious” professions which includes: diagnosing/treating health practitioners (dentists, optometrists, physicians, psychiatrists, podiatrists, surgeons, and veterinarians), lawyers and judges, and college professors. Table 1, Panel B shows our “extremely prestigious” Current Population Survey occupations as well as their occupation codes in Integrated Public Use Microdata Series - Current Population Survey.

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<sup>171</sup> *Infra* tbl. 1, panel A. The General Social Survey occupation classification system identifies 28 separate types of college professors, all of which received the same prestige score. *See* Smith, *supra* note 168, at App. F. We merge them into one occupation for our purposes.

**TABLE 1**  
**OCCUPATIONAL PRESTIGE**<sup>172</sup>

*Panel A: 26 Most Prestigious General Social Survey Occupations*

Occupation	Prestige Score	Rank
Physicians	86	1
Lawyers	75	2
Computer systems analysts and scientists	74	3
Professors	74	3
Architects	73	5
Chemical engineers	73	5
Physicists and astronomers	73	5
Chemists, except biochemists	73	5
Physical scientists, NEC	73	5
Biological and life scientists	73	5
Aerospace engineers	72	11
Dentists	72	11
Engineers, NEC	71	13
Judges	71	13
Chief executives and general administrators, public admin.	70	15
Geologists and geodesists	70	15
Managers, medicine and health	69	17
Civil engineers	69	17
Psychologists	69	17
Clergy	69	17
Pharmacists	68	21
Lab techs	68	21
Veterinarians	67	23
Petroleum engineers	66	24
Registered nurses	66	24
High school (secondary school) teachers	66	24

<sup>172</sup> Data in this table come from the General Social Survey (Panel A) and the Current Population Survey (Panel B). Panel A shows the 26 most prestigious General Social Survey occupations where prestige is measured using surveys of random samples of Americans in 1989. Panel B shows Current Population Survey occupations we consider in this Study to be “extremely prestigious” which we identify using the General Social Survey prestige scores from Panel A. The professions in Panel B are those that we consider most comparable to the legal profession. Comparison of the diversity of the legal profession against these comparable professions are likely to yield the most meaningful results when the purpose of the analysis is to evaluate the diversity efforts of the legal profession. We identify extremely prestigious professions in the Current Population Survey using the occupation codes shown in Panel B. The Current Population Survey’s “Occ1990” variable identifies diagnosing/treating health practitioners and lawyers in all years examined in this Study. “Occ1990” identifies professors during only a subset of our sample period. We identify professors during years in which the “Occ1990” value is missing using the Current Population Survey’s “Occ” variable.

*Panel B: Extremely Prestigious Professions in the Current Population Survey with Variable Codes*

	Occ1990	Occ 92–02	Occ 03–10
Diagnosing/treating health practitioners	84–89		
Lawyers	178		
Professors	113–150	113–154	2200

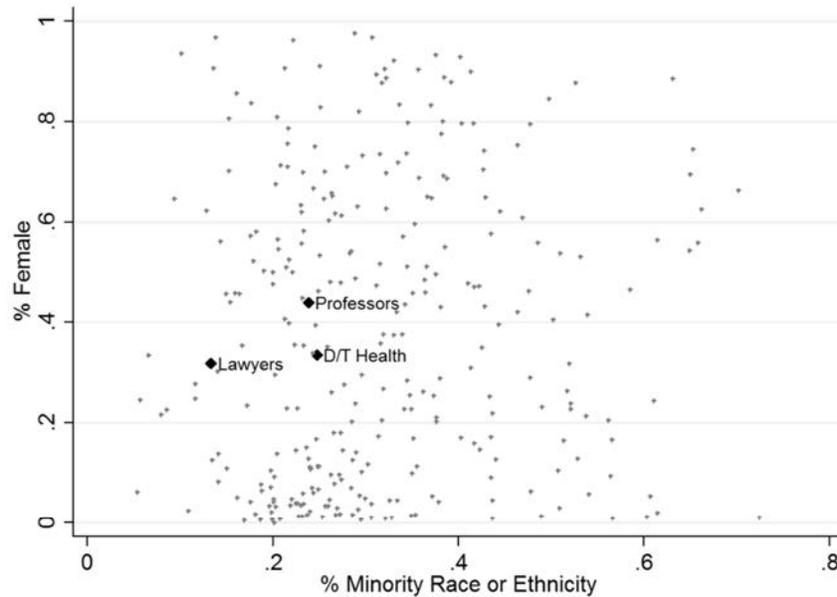
The Current Population Survey contains 611,569, 1,075,801, and 1,030,508 individual-level observations in the 1992–1995, 2001–2005, and 2008–2012 datasets, respectively. Because we are interested in examining the forces influencing professional diversity at a given time, most of our analysis focuses on full-time workers who are thirty-five years old and younger, as the educational and career paths of these individuals were determined most recently and may, therefore, better reflect changes in the forces influencing diversity. This narrows our sample to 92,280, 139,663, and 118,098 workers in each time period, respectively. There are between 471 and 801 lawyers in each time period that we examine. Our estimates for women, African Americans, Hispanic Americans, and Asian Americans are likely more precise than our estimates for Native Americans or our Other Race category because those sample sizes are larger. Specifically, when the sample is narrowed to full-time lawyers who are thirty-five years old and younger during our selected time periods, it contains 164 to 372 women, 9 to 52 African Americans, 24 to 50 Hispanic Americans, 7 to 76 Asian Americans, 2 to 4 Native Americans, and 0 to 16 individuals in our Other Race category.

*B. Descriptive Statistics*

Figure 1 shows a scatterplot of the diversity of occupations in Integrated Public Use Microdata Series - Current Population Survey during 2008–2012. The points are arranged by the representation of women (y-axis) and the representation of minorities (x-axis labeled “minority race or ethnicity”) in each occupation.<sup>173</sup> The scatterplot shows that there is significant variation in diversity across all occupations. It also shows that women and minorities are more poorly represented among lawyers than in average occupations.

<sup>173</sup> We generate the occupation-level data by aggregating individual-level Current Population Survey observations after weighing them by their survey probability weight.

**FIGURE 1**  
**DIVERSITY OF CURRENT POPULATION SURVEY OCCUPATIONS FROM 2008 TO 2012**<sup>174</sup>



However, comparisons of the legal profession against other occupations are limited because occupations, and the requirements to join them, differ along a number of measurable dimensions, including education requirements and whether these employment opportunities are more easily attainable in metropolitan areas. As a consequence, data like those in Figure 1 are difficult to interpret. Observed variation in diversity could be explained either by forces specific to the legal profession that could be fruitful targets for diversity interventions, or by broad social forces, like differences in the quality of secondary education, that are not directly controllable by the legal profession.

Table 2 displays the descriptive statistics for different groups of individuals in the Current Population Survey, such as females, African Americans, Hispanic Americans, Asian Americans, and Native Americans for the time periods of 1992–1995, 2001–2005, and 2008–2012.

Each of those descriptive statistics represents a percentage of the total population.<sup>175</sup> Table 2 also contains descriptive statistics for other groups,

<sup>174</sup> Data in this figure come from the Current Population Survey. Each point represents an occupation. Values are calculated by weighting observations by their survey probability weights and aggregating them by occupation.

including the percentage of full-time workers who possess a bachelor's degree, master's degree, professional degree, or doctorate degree. Table 2 further contains the descriptive statistics for the percentage of full-time workers who work in a metropolitan area ("Metro"), the average age of the full-time worker ("Age"), the percentage of full-time workers who are married ("Married"), the percentage of full-time workers who are widowed, separated, or divorced ("Widowed, Sep., Divorc."), and the average number of children living with the full-time worker who are under the age of nineteen and are counted as part of the individual's family ("Children").

Table 2, Panel A shows data describing full-time workers of all ages in the legal profession and compares them against all individuals in the Current Population Survey regardless of age, employment status, education, or any other demographic information. The results in Panel A show that women and minorities are consistently underrepresented in the legal profession relative to the population of full-time workers in the U.S.

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<sup>175</sup> For example, Table 2 displays the proportion of all full-time workers who are female from 1992–95 (51.9%), compared to the proportion of lawyers who are female during that same time period (21.0%).

**TABLE 2**  
**DESCRIPTIVE STATISTICS FOR**  
**CURRENT POPULATION SURVEY SUBSAMPLES<sup>176</sup>**

*Panel A: Full-Time Workers of All Ages in the Legal Profession Relative to All Current Population Survey Observations Regardless of Age, Employment Status, or Education*

	1992–95		2001–05		2008–12	
	All	Law	All	Law	All	Law
Proportion Female	0.519	0.210	0.517	0.269	0.514	0.297
Proportion Black	0.117	0.018	0.118	0.046	0.121	0.049
Proportion Hispanic	0.088	0.026	0.124	0.033	0.143	0.033
Proportion Asian	0.028	0.009	0.045	0.027	0.050	0.038
Proportion Nat. Am.	0.006	0.002	0.009	0.003	0.009	0.003
Proportion Other Race	0.006	0.003	0.008	0.005	0.014	0.013
Bachelors	0.130	0.000	0.157	0.000	0.171	0.000
Masters	0.043	0.000	0.054	0.000	0.065	0.000
Professional	0.011	0.860	0.013	0.814	0.013	0.787
Doctorate	0.008	0.140	0.010	0.186	0.012	0.213
Metro	0.778	0.914	0.816	0.940	0.838	0.948
Age	42.679	41.692	43.583	44.825	44.537	46.692
Married	0.446	0.241	0.465	0.279	0.486	0.258
Widowed, Sep., Divorc.	0.177	0.092	0.178	0.117	0.180	0.100
Children	0.747	1.101	0.699	0.961	0.663	0.974

*Panel B: Full-Time Workers 35 and Younger in the Legal Profession Relative to Full-Time, College Educated Workers 35 and Younger*

	1992–95		2001–05		2008–12	
	All	Law	All	Law	All	Law
Proportion Female	0.452	0.297	0.486	0.421	0.511	0.433
Proportion Black	0.071	0.019	0.085	0.049	0.085	0.051
Proportion Hispanic	0.039	0.032	0.063	0.042	0.081	0.049
Proportion Asian	0.046	0.015	0.095	0.077	0.096	0.084
Proportion Nat. Am.	0.002	0.005	0.004	0.003	0.004	0.000
Proportion Other Race	0.005	0.000	0.007	0.007	0.014	0.017
Bachelors	0.785	0.000	0.766	0.000	0.732	0.000

<sup>176</sup> Data in this table come from the Current Population Survey. Each number is a mean calculated across individuals in a given subsample which is weighted by each observation's sampling probability weight. Data are listed for the periods 1992–1995, 2001–2005, and 2008–2012. Each panel shows data for a subsample of individuals in the Current Population Survey in a given period and, next to these, similarly calculated figures for the legal profession for comparison. *Proportion Female*, *Proportion Black*, *Proportion Hispanic*, *Proportion Asian*, *Proportion Nat. Am.*, and *Proportion Other Race* are the proportion of the sample that is in these racial and ethnic categories. *Bachelors*, *Masters*, *Professional*, and *Doctoral* are the proportions of the sample that report each of these degree levels as the highest they have earned. *Metro* is the proportion of the sample living in a Census designated metropolitan area. *Age* is the average age of individuals in the sample in years. *Married* is the proportion of individuals in the sample who are currently married. *Widowed, Sep., Divorc.* is the proportion of the sample that is widowed, separated, or divorced. *Children* is the average number of respondents' own children living in their household.

Masters	0.150	0.000	0.169	0.000	0.201	0.000
Professional	0.046	0.883	0.041	0.852	0.039	0.821
Doctorate	0.019	0.117	0.023	0.148	0.028	0.179
Metro	0.888	0.943	0.903	0.953	0.920	0.960
Age	29.432	31.013	29.476	30.800	29.240	31.051
Married	0.474	0.350	0.481	0.398	0.508	0.429
Widowed, Sep., Divorc.	0.050	0.038	0.046	0.025	0.045	0.039
Children	0.529	0.619	0.517	0.498	0.517	0.534

*Panel C: Full-Time Workers 35 and Younger in the Legal Profession Relative to Full-Time Workers 35 and Younger in Other “Extremely Prestigious” Professions*

	1992–95		2001–05		2008–12	
	All	Law	All	Law	All	Law
Proportion Female	0.300	0.297	0.409	0.421	0.454	0.433
Proportion Black	0.025	0.019	0.048	0.049	0.049	0.051
Proportion Hispanic	0.039	0.032	0.048	0.042	0.048	0.049
Proportion Asian	0.060	0.015	0.159	0.077	0.155	0.084
Proportion Nat. Am.	0.003	0.005	0.004	0.003	0.001	0.000
Proportion Other Race	0.007	0.000	0.008	0.007	0.018	0.017
Professional	0.775	0.883	0.723	0.852	0.678	0.821
Doctorate	0.225	0.117	0.277	0.148	0.322	0.179
Metro	0.929	0.943	0.936	0.953	0.937	0.960
Age	31.129	31.013	30.944	30.800	31.275	31.051
Married	0.337	0.350	0.390	0.398	0.373	0.429
Widowed, Sep., Divorc.	0.034	0.038	0.024	0.025	0.028	0.039
Children	0.667	0.619	0.549	0.498	0.607	0.534

Although such an analysis could be interpreted as evidence that the legal profession has failed to adequately integrate women and minorities, the methodology that produces Panel A does not consider the exceptional nature of becoming an attorney. As explained above, an intense filtering process of conditions both controlled and not controlled by the legal profession ultimately narrows the pool of potential candidates for entry into the legal profession. If for any reason women and minorities pass through any of these filters at different rates than other groups, their level of representation among lawyers will differ from their representation in the U.S. population. Given these differences, conclusions based on comparing the percentages of minorities and women who are legal professionals with the percentages of minorities and women in all other professions may produce spurious results. In addition, Panel A has an additional shortcoming. It gives equal weight to the diversity of lawyers who were educated decades ago and recently educated lawyers and, therefore, is less informative about the current state of the legal profession than it could be.

Table 2, Panel B displays the same descriptive statistics that Table A displays, except that it shows information only relating to full-time workers who are thirty-five years old or younger. Panel B shows that when

the diversity of young members of the legal profession is compared against the diversity of young college graduates in the U.S., the legal profession still appears less diverse. However, the disparities are not quite as large as those found in Panel A, particularly in 2008–2012, which may be the best representation of the effect of current policies and practices.

Table 2, Panel C displays the same descriptive statistics shown in Panels A and B, except that it shows information relating to full-time workers who are thirty-five years old or younger in those professions deemed “extremely prestigious.” Panel C suggests that the diversity of young members of “extremely prestigious” professions is generally comparable to the diversity of young legal professionals for women and all minorities except Asian Americans, who are relatively poorly represented in the legal profession. Nevertheless, the results from Panel C could be misleading if members of the legal profession differ from members of other professions in important ways such as lifestyle factors relating to marriage, working in a metropolitan area (where, for example, it may be easier to find work as a practicing attorney), and deciding to have children.

Analyses that statistically control for such lifestyle differences are more informative than raw comparisons like those in Figure 1 and Table 2, Panels A, B, and C. Accordingly, the remainder of our analyses involves controlling for those other factors that might affect the decision to become or remain working as a practicing attorney.

### C. *The Models*

To study the diversity of members of the legal profession, we model the propensity of individuals in our dataset to work in the legal profession as a function of women and minorities’ status and our control variables. Our basic model is of the form:

$$\text{LegalProfession}_i = \alpha + \beta_1 * \text{W\&M}_i + \text{Controls} + \varepsilon$$

where:

- $\text{LegalProfession}_i$  = an indicator variable equal to one if individual  $i$  reports working in the legal profession and zero otherwise.
- $\text{W\&M}_i$  = one of five measures including:
  - $\text{Minority}_i$  = an indicator variable equal to one if individual  $i$  is African American, Hispanic American, Asian American, Native American, or Other Minority and zero otherwise.

- Not Female<sub>i</sub>, Not Black<sub>i</sub>, Not Hispanic<sub>i</sub>, Not Asian<sub>i</sub>, Not Native American<sub>i</sub>, Not Other Minority<sub>i</sub>, and Not Minority<sub>i</sub>, which are each indicator variables equal to zero for individuals reporting membership in a given demographic group and one otherwise. These transformations of the W&M status indicator variables are performed to facilitate interpretation of the results as explained below.<sup>177</sup>
- Control variables are as follows:
  - Metro<sub>i</sub> = a dummy variable equal to one for individuals living in a metropolitan area, as defined by the U.S. Census Bureau, and zero otherwise.
  - Age<sub>i</sub> = worker age in years.
  - Married<sub>i</sub> = a dummy variable equal to one for individuals who are now married and 0 otherwise.
  - WSD<sub>i</sub> = a dummy variable equal to one for individuals who are widowed, separated, or divorced and zero otherwise.
  - Children<sub>i</sub> = a count of the number of children under nineteen years old living with the respondent as part of their family.
  - Interactions of *Married*, *WSD*, and *Children* with *Female* because prior research has shown that these lifestyle controls impact the labor market status of women and men differently.<sup>178</sup>

All models are estimated using survey regression methods, which account for the observations' survey sampling probabilities and, therefore, results represent population-level estimates. Because the dependent variable is an indicator variable, we estimate our models using survey-weighted logit. However, logit coefficients are not easily interpreted. To facilitate their interpretation, we first transform raw logit coefficients into odds ratios, which are interpreted as the ratio of the odds that a W&M participates in the legal profession over the odds that a non-W&M participates in the legal profession. Based on prior research, we expect that many of these odds ratios will be less than one, which again complicates

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<sup>177</sup> We note here that we were unable to test effects relating to the interactions of gender and various racial groups (i.e., African American women and Hispanic American women). Testing the interactive effects using logistic regression produces results that are extremely difficult to interpret. See JAMES J. JACCARD, INTERACTION EFFECTS IN LOGISTIC REGRESSION 53 (2001) (explaining that interactive effects in logistic regression "are difficult for readers of reports to conceptualize").

<sup>178</sup> See *supra* note 164 (describing the rationale for including these control variables).

their interpretation. To facilitate their interpretation, instead of including W&M indicator variables as dependent variables, we include variables labeled “Not” and a given W&M group. These are indicator variables equal to zero for members of each W&M group and one otherwise. These transformed W&M indicators are more likely to have coefficients greater than one and are, therefore, more likely to yield easily interpreted results.

#### IV. RESULTS

We first estimate models of the propensity of individuals to work in the legal profession. We begin by estimating our models on the population of all full-time workers regardless of education or age. Results are displayed in Table 3, Panel A. Regardless of the control variables, we find that women were poorly represented among legal professionals in all of our sample periods. We also find significant underrepresentation of all minority groups, except for our category “Other Minorities,” in all time periods. But these results should be interpreted with caution because the legal profession is unusual in that it requires high education levels, including attaining an advanced degree, and extreme preparation. If the legal profession is evaluated relative to all other occupations, it may appear to be exceptionally poorly integrated. But this poor integration could be spuriously attributed to failures of the legal profession if its exceptional qualities also make it and other similar professions less accessible to women and minorities. The analysis would be more informative if it compared the legal profession to other similar prestigious professions. In addition, the analysis in Table 3, Panel A examines all members of the legal profession, some of whom were recruited, hired, and promoted many decades ago. The analysis would be more informative about the diversity impacts of current practices in the legal profession if it focused on workers who entered the profession recently.

Table 3, Panel B shows an analysis that corrects for some of the deficiencies in Table 3, Panel A. Table 3, Panel B shows that when the analysis focuses only on young full-time workers who are thirty-five years old or younger, and when legal professionals are compared against only other college educated individuals, the finding that women and minorities are poorly integrated into the legal profession is weakened, but most women and minority groups still appear to be poorly represented in the legal profession. Specifically, the coefficient for women in Table 3, Panel A in the timeframe of 2008–2012 is 2.08, which signifies that the odds that a man will work as a legal professional are 2.08 times greater than the odds that a woman will work as a legal professional regardless of age or education. However, among young, college educated workers in Table 3, Panel B, during the 2008–2012 time period, the coefficient is 1.46, signifying that the odds that a man will work as a legal professional are only 1.46 times greater than the odds that a woman will work as a legal

professional. This is an improvement over the picture painted by Table 3, Panel A. Similarly, the coefficient for African Americans in Table 3, Panel A in the timeframe of 2008–2012 is 2.68, meaning that the odds that a non-African American will work as a legal professional are 2.68 times greater than the odds that an African American will among all full-time workers regardless of age or education. However, among the young, college educated workers in Table 3, Panel B, during the 2008–2012 time frame, the coefficient is 1.83, representing an improvement.

Table 3, Panel C presents results that are more informative when the goal is to isolate anomalies that are likely caused by forces specific to the legal profession rather than general social forces that limit the eligibility of historically disadvantaged groups to pursue any type of high status employment. It compares young, full-time legal professionals against young, full-time workers in other high status professions. In the first three columns, the results suggest that women are as well represented in the legal profession as they are in comparable professions but that minorities are not. However, when the results for minorities are disaggregated, women, African Americans, Hispanic Americans, Native Americans, and Other Minorities appear to be, for the most part, as well represented in the legal profession as they are in other high status professions. However, Asian Americans are drastically underrepresented in the legal profession when compared to other high status professions. Asian American underrepresentation in the legal profession is quite large, with the odds that a young non-Asian American will work as a legal professional being at least three times greater than the odds that an Asian American will, in all time periods analyzed. Perhaps surprisingly, while women have been well represented in the legal profession through the early 1990s and 2000s, by 2008–2012, there is evidence that women were significantly underrepresented among young lawyers when the legal profession is compared against other high status professions.

**TABLE 3**  
**PROPENSITY TO WORK AS A LAWYER<sup>179</sup>**

*Panel A: Propensity to Work as a Lawyer Among Full-Time Workers Regardless of Age or Education*

	92-95	01-05	08-12	92-95	01-05	08-12	92-95	01-05	08-12
<b>Not Female</b>	<b>2.57***</b>	<b>1.96***</b>	<b>1.77***</b>	<b>2.56***</b>	<b>1.98***</b>	<b>1.79***</b>	<b>2.28***</b>	<b>2.06***</b>	<b>2.08***</b>
<b>Not Minority</b>	<b>4.68***</b>	<b>3.24***</b>	<b>3.02***</b>						
<b>Not Black</b>				<b>6.55***</b>	<b>2.81***</b>	<b>2.63***</b>	<b>6.61***</b>	<b>2.86***</b>	<b>2.68***</b>
<b>Not Hispanic</b>				<b>4.01***</b>	<b>4.71***</b>	<b>5.39***</b>	<b>4.25***</b>	<b>4.59***</b>	<b>5.35***</b>
<b>Not Asian</b>				<b>3.64***</b>	<b>2.16***</b>	<b>1.76***</b>	<b>4.33***</b>	<b>2.43***</b>	<b>2.02***</b>
<b>Not Nat. Am.</b>				<b>3.00*</b>	<b>2.67***</b>	<b>2.83***</b>	<b>2.41</b>	<b>2.11**</b>	<b>2.14**</b>
<b>Not Other Race</b>				<b>1.08</b>	<b>1.68*</b>	<b>1.03</b>	<b>1.11</b>	<b>1.58</b>	<b>0.94</b>
Metro							3.30***	3.74***	3.93***
Age							1.01***	1.02***	1.02***
Married							0.70***	0.63***	0.60***
WSD							0.95	1.15	0.86
Children							1.14***	1.10***	1.09***
F * Married							1.72***	2.74***	2.43***
F * WSD							0.65*	0.41***	0.60***
F * Children							0.83***	0.84***	1.00

*Panel B: Propensity to Work as a Lawyer Among Full-Time College Educated Workers Thirty-Five and Younger*

	92-95	01-05	08-12	92-95	01-05	08-12	92-95	01-05	08-12
<b>Not Female</b>	<b>1.95***</b>	<b>1.30***</b>	<b>1.37***</b>	<b>1.94***</b>	<b>1.29***</b>	<b>1.36***</b>	<b>1.72***</b>	<b>1.24</b>	<b>1.49**</b>
<b>Not Minority</b>	<b>2.53***</b>	<b>1.52***</b>	<b>1.51***</b>						
<b>Not Black</b>				<b>3.94***</b>	<b>1.83***</b>	<b>1.76***</b>	<b>3.89***</b>	<b>1.83***</b>	<b>1.83***</b>
<b>Not Hispanic</b>				<b>1.50</b>	<b>1.65***</b>	<b>1.77***</b>	<b>1.50</b>	<b>1.65***</b>	<b>1.85***</b>
<b>Not Asian</b>				<b>3.61***</b>	<b>1.37</b>	<b>1.27</b>	<b>4.23***</b>	<b>1.53**</b>	<b>1.54***</b>
<b>Not Nat. Am.</b>				<b>0.53</b>	<b>1.23</b>	<b>9.84***</b>	<b>0.40</b>	<b>1.13</b>	<b>8.70***</b>
<b>Not Other Race</b>					<b>0.96</b>	<b>0.83</b>		<b>0.88</b>	<b>0.80</b>
Metro							2.25***	2.22***	2.10***
Age							1.14***	1.13***	1.19***
Married							0.68**	0.69**	0.73*
WSD							0.68	0.76	0.50
Children							0.85**	0.82***	0.82***
F * Married							1.03	1.38	1.62**

<sup>179</sup> This table displays estimation results for models of the propensity of Current Population Survey full-time workers to report that they work as a lawyer. The models are estimated using survey weighted logit. Because logit coefficients are not easily interpreted, we display odds ratios rather than logit coefficients for each independent variable. The dependent variable is an indicator equal to one for individuals reporting that they work as lawyers and zero otherwise. *Not Female*, *Not Black*, *Not Hispanic*, *Not Asian*, *Not Nat. Am.*, and *Not Other Race* are indicator variables equal to one for individuals that are *not* in these demographic categories and zero otherwise. We transform our women and minorities indicator variables in this way to facilitate interpretation of odds ratios, which are more easily interpreted when they are greater than one. *Metro* is a dummy variable for individuals who live in a Census-designated metropolitan area. *Age* is each individual's age in years. *Married* is an indicator variable equal to one for individuals who are currently married and zero otherwise. *WSD* is an indicator variable equal to one for individuals who are widowed, separated, or divorced and zero otherwise. *Children* is a count of the number of the respondents' own children are living with them. *F \** signifies an interaction of the *Female* dummy variable with a give variable. \*\*\*, \*\*, and \* represent statistical significance at the 0.01, 0.05, and 0.1 levels, respectively.

F * WSD				1.43	0.37*	1.65
F * Children				0.88	0.87	0.87

*Panel C: Propensity to Work as a Lawyer Among Full-Time Members of Extremely Prestigious Professions Thirty-Five and Younger*

	92-95	01-05	08-12	92-95	01-05	08-12	92-95	01-05	08-12
<b>Not Female</b>	<b>1.00</b>	<b>0.84</b>	<b>1.12</b>	<b>0.99</b>	<b>0.87</b>	<b>1.16</b>	<b>1.02</b>	<b>1.01</b>	<b>1.78***</b>
<b>Not Minority</b>	<b>2.88***</b>	<b>2.33***</b>	<b>1.87***</b>						
<b>Not Black</b>				<b>1.72</b>	<b>1.25</b>	<b>1.05</b>	<b>1.74</b>	<b>1.24</b>	<b>1.19</b>
<b>Not Hispanic</b>				<b>1.55</b>	<b>1.67**</b>	<b>1.10</b>	<b>1.52</b>	<b>1.69 **</b>	<b>1.23</b>
<b>Not Asian</b>				<b>7.13***</b>	<b>3.57***</b>	<b>2.95***</b>	<b>7.22***</b>	<b>3.74***</b>	<b>3.28***</b>
<b>Not Nat. Am.</b>				<b>0.47</b>	<b>1.99</b>	<b>3.50</b>	<b>0.29</b>	<b>1.82</b>	<b>5.06</b>
<b>Not Other Race</b>					<b>1.29</b>	<b>1.14</b>		<b>1.31</b>	<b>1.14</b>
Metro							1.59*	1.83***	2.37***
Age							0.98	0.98	0.97
Married							1.01	0.95	1.09
WSD							0.86	1.21	0.91
Children							0.90	0.86*	0.85*
F * Married							0.84	1.04	1.68
F * WSD							2.26	0.91	2.30
F * Children							1.08	1.23	1.29*

## V. DISCUSSION

We designed our analyses to illuminate the discussion of diversity in the legal profession. Specifically, we designed our analyses to provide a clearer picture of whether the lack of diversity in the legal profession exists because of forces specific to the legal profession or because of general social forces that limit the eligibility of historically disadvantaged groups to pursue any type of prestigious employment with significant barriers to entry such as practicing law. Several key findings emerged from our Study.

The first key finding is that the legal profession appears to be as diverse with respect to African Americans and Hispanic Americans as other similarly prestigious professions among attorneys who are thirty-five years or younger.<sup>180</sup> This is true even after taking into account other variables that might influence whether an individual works in the legal profession, such as whether the individual (a) lives in a metropolitan area; (b) is married; (c) is widowed, separated or divorced; and (d) lives with children under the age of nineteen that are counted as part of the individual's family.<sup>181</sup> This is an important finding for the following reasons. First, this finding provides empirical support for what has been observed anecdotally—that minorities who are eligible to pursue professional or advanced degrees appear to be just as likely to become legal professionals as they are to become members of other high status

<sup>180</sup> See *supra* Tbl. 3, Panel C (demonstrating the propensity of professionals thirty-five years old and younger to work as a lawyer among the extremely prestigious professions).

<sup>181</sup> *Id.*

professions.<sup>182</sup> However, as noted above, this does not imply that the legal profession is adequately diversified. In fact, African Americans and Hispanic Americans currently are *woefully* underrepresented in the legal profession when compared to their ratios in the U.S. population. Sarah Redfield estimates that “[p]rojecting population changes to 2030, and assuming that lawyers remain the same percentage of the population they were in the last census . . . some 100,000 additional black attorneys and more than 230,000 additional Hispanic attorneys would need to join the ranks of the profession to approach parity with the general population.”<sup>183</sup>

The fact that Hispanic Americans and African Americans are so underrepresented overall in the legal profession, yet the legal profession appears to be as diverse as other similarly prestigious professions among the occupation’s young elites with respect to these groups, highlights why our findings are important. They provide further empirical support demonstrating where the legal profession should focus its efforts to improve diversity. Specifically, the legal profession needs to find better ways to help more students become eligible to pursue all types of advanced degrees. Sarah Redfield has advocated this point for years. She maintains:

[T]here are too few underrepresented minorities moving through the pipeline, too few graduating from high school, too few persisting and succeeding in college, too few presenting LSAT scores and GPAs that meet today’s norms for admission to law school. To achieve significant diverse populations, the law academy would need to increase its admissions for blacks and Hispanics well beyond what the current applicant pool, in the current milieu, can bear—at rough count, 1,500 more black students and 7,500 more Hispanic students a year would be needed to approach parity with the population by 2028, the year Justice O’Connor’s twenty-five year window would close for affirmative action.<sup>184</sup>

In other words, while it is important for the legal profession to continue its current diversity initiatives, especially those designed to help disadvantaged students overcome the significant barriers they face to be

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<sup>182</sup> See Johnson, *Knots in the Pipeline*, *supra* note 2, at 387–88 (observing that the legal profession does well in attracting minority college graduates to apply to law school and pursue a legal career, but the overall pool of minority college graduates is too low to adequately populate all of the professions and academia).

<sup>183</sup> REDFIELD, *DIVERSITY REALIZED*, *supra* note 19, at 10; see also EVENSEN & PRATT, *supra* note 9, at xxiv–xxv (stating that African Americans “remain proportionally under-represented in the legal profession”).

<sup>184</sup> REDFIELD, *DIVERSITY REALIZED*, *supra* note 19, at 2–3 (footnotes omitted).

eligible to pursue an advanced degree,<sup>185</sup> the legal profession should significantly broaden its reach. Specifically, entities such as the American Bar Association, law schools, law firms, and local bar associations should collaborate with one another and with government agencies, public schools, and, in particular, other prestigious professions to help these minority groups progress to a point where they will be eligible to pursue a professional degree and enter any prestigious profession.<sup>186</sup>

Other prestigious professions, such as the medical and dental professions, also realize that they must increase the number of students eligible to pursue advanced degrees if they want to successfully diversify their professions.<sup>187</sup> For example, the American Association of Medical Colleges has stated that “poor academic preparation starting early in life is a major barrier to minorities entering training for health careers,” and “[p]rograms focusing on improving academic preparation must start early in a student’s life, must be intensive, and must persist during all levels and grades of schooling.”<sup>188</sup> However, the American Association of Medical Colleges also recognizes that because of their limited resources and experience in addressing this problem, “educational partnerships throughout the education pipeline seem to be the most realistic option for working toward sustained changes that could yield results.”<sup>189</sup> A merging of resources from the medical, legal, dental, and other professional communities to build sustainable programs to assist disadvantaged minorities to pursue advanced degrees would benefit the diversity efforts of all prestigious professions and improve our society at large.<sup>190</sup>

A second key finding is that Asian Americans, in contrast to other minorities, are very poorly represented in the legal profession. The odds that an Asian American will become an attorney are between 1.5 and 7 times lower than those for non-Asian Americans.<sup>191</sup> Unfortunately, there is

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<sup>185</sup> See *supra* Part II.C. (explaining how the legal profession has made an effort to improve diversity).

<sup>186</sup> See EVENSEN & PRATT, *supra* note 9, at 229 (“[P]ipeline programs can serve as structural mechanisms to counteract or leverage against the detrimental effects of poor neighborhoods, underfunded schools, poverty or economic hardship, and the performance gap especially as it relates to performance on high stakes, standardized measures like the LSAT.”).

<sup>187</sup> See REDFIELD, DIVERSITY REALIZED, *supra* note 19, at 119–24 (explaining how the medical and dental professions have made an effort to improve diversity within their respective fields).

<sup>188</sup> Ass’n of Am. Med. Colls. & The Health Professions P’ship Initiative, *Learning from Others*, HEALTH DIVERSITY 1, 3 (2004) available at <http://www.healthdiversity.pitt.edu/diversity/documents/HPPILiteratureReview.pdf> (emphasis omitted).

<sup>189</sup> *Id.* at 2.

<sup>190</sup> A roadmap for how this may be accomplished will be the subject of an upcoming research project.

<sup>191</sup> See *supra* Tbl. 3, Panel C (showing that Asian Americans are less likely to become lawyers). However, it is important to note that some believe that the number of Asian Americans admitted to and matriculating into law schools is currently increasing. See Johnson, *Knots in the Pipeline*, *supra* note 2, at 382 (stating that the number of Asian Americans attending law school is increasing).

almost no research examining the reasons for why Asian Americans are less likely to enter the legal profession than other high status professions. More research should be conducted in this area to identify ways for which the legal profession can attract more Asian Americans to join its ranks.

A third key finding is that there is evidence suggesting that women have been well represented in the legal profession until recently, when they appear to have become slightly underrepresented. This evidence suggests a troubling trend in the integration of women into the legal profession. As explained in Part II, the legal community has made substantial progress with respect to female representation in the legal profession.<sup>192</sup> Nevertheless, the literature also suggests that private law firms, which are where women typically begin their legal careers, do not provide just and inclusive workplaces for women.<sup>193</sup> The research indicates that women are more likely to depart from private law firms after three years and express greater dissatisfaction for various dimensions of their professional lives.<sup>194</sup> Thus, it should not be surprising that the latest empirical trends suggest that if women choose to pursue an advanced degree and enter a prestigious profession, they are less likely to choose law than other prestigious professions that may be more conducive to family life or produce higher levels of professional satisfaction.

## VI. CONCLUSION

The purpose of our empirical analysis is to shed more light on the discussion regarding the diversity of the legal profession and to identify productive avenues for the legal profession to further its diversity efforts. The results of our analyses suggest that, although underrepresented as a whole in the legal profession, the representation of African Americans and Hispanic Americans in the legal profession is not significantly different from the representation of these groups in other prestigious professions among workers who are thirty-five years old or younger. This finding does not imply that the legal profession is adequately diversified with respect to these groups, as these groups are very much underrepresented in the legal profession when compared to their ratios in the U.S. population. Rather, this finding provides empirical support for the conclusion that the legal profession needs to find better ways to help more students become eligible to pursue all types of advanced degrees. Once a member of these groups becomes eligible to pursue an advanced degree, it appears that the legal profession fares no worse than other prestigious professions requiring advanced degrees. Armed with this knowledge, the legal profession should

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<sup>192</sup> See *supra* Part II.A.

<sup>193</sup> See *supra* Part II.A.

<sup>194</sup> See *supra* Part II.A.

consider broadening its efforts, including teaming up with other professions, such as the medical and dental professions, to help more members of these minority groups become eligible to pursue all prestigious employment opportunities that have high barriers to entry.

In addition, we find that Asian Americans are very poorly represented in the legal profession as compared to young professionals in other prestigious professions. Finally, we provide empirical evidence for another troubling trend in the legal profession. Specifically, we find that in the 2008–2012 time period, women were underrepresented in the legal profession when compared to other young workers in prestigious professions. While more research must uncover the precise reasons for this drop, it may be caused by the failure of the legal profession to provide just and inclusive workplaces, leading to greater dissatisfaction and higher attrition rates among female associates.