

The Least Diverse Profession: Comment on Blanck, Hyseni, and Altunkol Wise’s National Study of Diversity and Inclusion in the Legal Profession

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I. INTRODUCTION

Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+ (“Blanck et al.”) is an incredibly careful, thoughtful, and powerful article, and may and should lead to changes in the stigma, bias, and discrimination landscape in the legal profession.¹

It is fitting that this work is coming out on the thirtieth anniversary of the Americans with Disabilities Act (“ADA”). Blanck et al. is the first comprehensive, empirical study on stigma, bias, and discrimination in the legal world affecting people with different identified demographics. It makes subtle and important distinctions among these, as well as within each camp. The two groups on which Blanck et al. focuses are people with disabilities and LGBTQ+ folks (lesbian, bisexual, gay, transgender, queer, and those with other sexual orientations and gender identities). The study provides valuable new insights into reports of bias and discrimination, compelling analysis of diversity and inclusion’s key elements, and exciting possibilities for future research.

II. KEY FINDINGS

The article has great strength in its methodology and data processing. *Blanck et al.* surveys the landscape on these issues, situating the study in the surrounding literature, both scholarly and empirical.

Many of the findings are intuitive—for example, the showing that non-Hispanic White men report the least bias, stigma, and discrimination.² Some make sense with a little

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¹Peter Blanck, Fitore Hyseni & Fatma Altunkol Wise, *Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 47 AM. J.L. & MED. 9 (2021).

²*Id.* at 51.

thought—for instance, its inquiry into why many younger people with disabilities report less discrimination.³ Perhaps they are not subject to as much overt discrimination because their bosses have been trained in working within the parameters of the ADA; they report less because there is less to report.

One interesting finding is that law is among the least diverse of professions.⁴ This finding, among many others in this paper, is counterintuitive in that we think of law and lawyers as highly focused on protecting the rights and dignity of people. Some suggestions are given for why things break down as they do—for example, psychiatric disabilities can be invisible, while many physical disabilities are apparent; this factor may affect the ease of discrimination occurring in this space.⁵ In all, the study helps to explain why a profession so focused on justice and equality still struggles with diversity and inclusion within its own ranks.

III. DIVERSITY & INCLUSION PLUS ACCOMMODATION

Central to *Blanck et al.*'s analysis of discrimination and bias in the legal profession is its discussion on organizational diversity and inclusion. The authors characterize Diversity and Inclusion (“D&I”) through three elements: (1) diversity of talent, (2) inclusion of talent, and (3) accommodation of talent.⁶

Regarding the first two elements, *Blanck et al.* notes that D&I methods vary as a function of context, time, group dynamics, and other characteristics of a particular environment.⁷ Importantly, distinctions among groups may lead to different interventions for different groups.

The article then analyzes the third element, accommodation, asking who requests accommodations and who is likely to be granted them.⁸ It identifies the role of individual characteristics and their intersections, including disability, sexual orientation, gender, race and ethnicity, and age. For example, older people are generally less likely to request accommodations, but the odds of making a request are higher for older LGBTQ+ populations.⁹ On the whole, *Blanck et al.* finds that those who need accommodations most are more likely to request them; yet, those same groups are less likely to have their requests granted.¹⁰ Counter to predictions, disability is negatively associated with accommodations being granted.

Success in D&I efforts can be measured in a variety of ways. *Blanck et al.* builds on the idea that to be successful, the legal profession must seek, hire, and retain diverse talent.¹¹ In a similar way, devaluation of talent can manifest in many ways—for example, through “unintentional,” “implicit,” or “unconscious” bias, and through subtle verbal or nonverbal aggressions.

³*Id.* at 9.

⁴*Id.* at 11.

⁵*Id.* at 49.

⁶*Id.* at 14.

⁷*Id.* at 13.

⁸*Id.* at 16.

⁹*Id.* at 15.

¹⁰*Id.* at 16.

¹¹*Id.* at 12 (citing Tomas Chamorro-Premuzic, *Ace the Assessment*, HARV. BUS. REV., July-Aug. 2015, at 118, 120–21).

IV. RECOMMENDATIONS FOR FUTURE RESEARCH

Blanck et al. suggests some potential areas of future research, as do I. Exploring reported discrimination and bias for non-lawyers in the legal profession, such as paralegals and legal secretaries, would be beneficial. Future studies could also explore these same concerns for law students or non-professionals. Additionally, later research could examine discrimination and bias for different professionals outside the law. For instance, unlike lawyers, doctors may be less attuned to being discriminated against because their training does not key them into this kind of behavior.

It is of interest that there is so much stigma, bias, and discrimination in the legal world. Indeed, it is worth repeating that law is among the least diverse of professions. This fact, again, is shocking because lawyers' culture is one that focuses on liberty, dignity, and non-discrimination. Further research could help shed light on why this is the case and what can be done to remedy the situation.

Whichever studies are pursued, it will be especially important to look into the different kinds of stigma, bias, and discrimination, as well as who experiences them. This information may suggest different interventions we can make to help improve a person's life and workplace.

V. CONCLUSION

I conclude with a personal note on this issue. I was myself hospitalized in Oxford, England for one month in 1977 and four months in 1978. I then returned to Yale Law School and was hospitalized there for five months. As a woman diagnosed with schizophrenia, I have had multiple encounters with stigma—two in particular come to mind.

My first encounter with stigma was at Yale when I was experiencing some wicked headaches and a loss of short-term memory. My friends brought me to the emergency room where a predictable disaster occurred: the doctors found my psychiatric records and decided I was just having an episode, despite the fact that my friends were jumping up and down, insisting they had seen me psychotic many times in the past and it did not look remotely like this. Eventually, I was told by my internist to go back to the emergency room where they decided to do a spinal tap. The procedure uncovered that I was having a subarachnoid hemorrhage, which kills about fifty percent of the people who have it—but I was just a mental patient.

My second experience with stigma was social. An administrative friend and I often went out to dinner together. One day, she told me she was glad she did not know I had schizophrenia when we started doing dinners together. When I asked her why, she said she never would have agreed to dinner with me had she known. I was stunned that a smart, kind, and well-meaning person would harbor such stigma that she would not even go to a public restaurant with me. Discrimination and bias in the legal profession can manifest in many forms, and even isolated instances such as this can be harmful and symptomatic of a larger institutional problem.

Blanck et al. is a real tour de force exploration of important issues surrounding workplace life among lawyers with different minority statuses. I conclude with the fervent hope that the authors take on some of the allied issues that remain to be researched. Studies like *Blanck et al.*, current and future, are invaluable to creating a kinder, more supportive, and more inclusive workplace environment, both within and outside of the legal profession.