

CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW'S  
ACADEMY FOR INCLUSIVE LEADERSHIP DEVELOPMENT: A  
NEW PEDAGOGY INTEGRATING DIVERSITY, EQUITY, AND  
INCLUSIVE BELONGING INTO LEGAL EDUCATION

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ABSTRACT

This essay outlines the blueprint for The Academy for Inclusive Leadership Development at Case Western Reserve University School of Law. Created in response to the national, racialized police brutality of The Racial Reckoning in summer 2020, The Academy seeks to equip legal professionals and students with tools to identify, assess, and reform policies and practices which perpetuate systemic inequality in the legal profession and education. The architects of The Academy argue that cycles of neutral stances on critical matters that impact the law, legal institutions and the workplace without progressive effective responses cannot sustain the needs of the legal profession in the future. The Academy implements a proactive, leadership-based training model that aims to eradicate stereotypes and mitigate micro-aggressions and biases in the workplace and classroom. Ultimately, The Academy seeks to empower legal professional to take leadership roles in order to create diverse, supportive, and engaging workplaces.

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## INTRODUCTION

On May 26, 2020, Minneapolis, Minnesota police officers killed George Floyd, Jr.<sup>1</sup> His death, along with the cumulative, collective anguish felt upon the killings of Breonna Taylor,<sup>2</sup> Ahmaud Arbery,<sup>3</sup> and others, sparked demonstrations by millions around the world.<sup>4</sup> The staggeringly horrific circumstances of their killings laid bare undeniable, wicked truths about the state of racism in America. For Black and Brown people especially, the killings surfaced painful lived experiences, and intense concerns about their sense of safety, regard, and well-being (or lack thereof)

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1. George Floyd was killed by Minneapolis Police Officer Derek Chauvin as Chauvin restrained Floyd by pressing his knee onto Floyd's neck for eight minutes and forty-six seconds. Amy Forliti & Jeff Baenen, *Minneapolis Police Officers Fired After Death Of Black Man. 'I Can't Breathe,' He Said On Video*, PIONEER PRESS (May 26, 2020), <https://www.twincities.com/2020/05/26/black-man-dies-after-video-shows-officer-kneeling-on-neck/> [<https://perma.cc/TVJ4-UNS5>].

2. *Breonna Taylor: Police Officer Charged But Not Over Death*, BBC (Sept. 23, 2020), <https://web.archive.org/web/20201229011226/https://www.bbc.com/news/world-us-canada-54273317> [<https://perma.cc/HH2P-LN4D>]; Breonna Taylor, who had no criminal history, died by gunshots of Louisville, Kentucky police officers, who fired 32 shots while executing a 'no-knock' search warrant at 1:00 a.m. on March 13, 2020. Darcy Costello & Tessa Duvall, *Minute by Minute: What Happened the Night Louisville Police Fatally Shot Breonna Taylor*, LOUISVILLE COURIER J. (May 14, 2020), <https://www.courier-journal.com/story/news/2020/05/14/minute-minute-account-breonna-taylor-fatal-shooting-louisville-police/5182824002/> [<https://perma.cc/7R8X-2C7Z>].

3. Ahmaud Arbery was killed while jogging on February 23, 2020, in Brunswick, Georgia after being chased by Greg McMichael, William Bryan, and Travis McMichael, the latter of whom then shot Arbery three times with a shotgun. Monitor's Editorial Board, *A Hate Crime Verdict Sends a Message on Race*, CHRISTIAN SCI. MONITOR (Feb. 23, 2022), <https://www.csmonitor.com/Commentary/the-monitors-view/2022/0223/A-hate-crime-verdict-sends-a-message-on-race> [<https://perma.cc/7MKC-W5G2>]; Russ Bynum, *Potential Jurors See Racism Behind Ahmaud Arbery's Slaying*, BOS. GLOBE (Nov. 1, 2021) <https://www.bostonglobe.com/2021/10/31/nation/potential-jurors-see-racism-behind-ahmaud-arberys-slaying/> [<https://perma.cc/8VZ9-AUWK>].

4. According to polls from the Kaiser Family Foundation, NORC, and Pew Research Center, 15–26 million people in the U.S. participated in Black Lives Matter protests in 2020. Thu T. Nguyen et. al., *Progress and Push-Back: How the Killings of Ahmaud Arbery, Breonna Taylor, and George Floyd Impacted Public Discourse on Race and Racism on Twitter*, SSM – POPULATION HEALTH 100922 at 1 (2021); Ryan Fahey, *How George Floyd's Horror Murder Two Years Ago Sparked Protests Around The World*, MIRROR CO. UK (May 25, 2022, 4:25 PM GMT), <https://www.mirror.co.uk/news/world-news/how-george-floyds-horror-murder-27049874> [<https://perma.cc/9458-AUU6>].

in their own spaces.<sup>5</sup> The summer of 2020 came to be described as America's new Racial Reckoning.<sup>6</sup>

As the architects and keepers (or, pejoratively, the perpetrators) of our legal institutions, lawyers, nor the schools that educated them, were spared reprisal. The Racial Reckoning compelled them to candidly interrogate policies and practices which—in ways apparent or hidden, consciously or unconsciously—enabled the conditions that led to the deaths of Floyd, Taylor, and Arbery in the first place. In the past, law firms were deliberate in maintaining neutral positions on social issues such as race, gender, sexual orientation, and even climate change.<sup>7</sup> But the Summer of 2020 marked a dramatic shift in ethos.<sup>8</sup> Law firms and other legal organizations alike evaluated their role in sustaining systemic racial inequities.<sup>9</sup> The events of

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5. See, e.g., Wall Street Journal, *In Wake of George Floyd's Death, Black Professionals Talk Race, Work*, YOUTUBE (June 10, 2020), <https://www.youtube.com/watch?v=zTnNts2tNT0> [<https://perma.cc/KRP6-FR9M>]; Learning Network, *What Students Are Saying About the George Floyd Protests*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/2020/06/04/learning/what-students-are-saying-about-the-george-floyd-protests.html> [<https://perma.cc/X4FJ-HEVN>].

6. See, e.g., John Eligon & Audra D.S. Burch, *After a Summer of Racial Reckoning, Race Is on the Ballot*, N.Y. TIMES (Oct. 30, 2020), <https://www.nytimes.com/2020/10/30/us/racialjustice-elections.html> [<https://perma.cc/7MAK-HDCF>] (describing the summer of 2020 as a racial reckoning after the death of George Floyd); *Looking Back at a Year-Long Racial Reckoning Since George Floyd's Killing*, PBS NEWS HOUR (May 25, 2021), <https://www.pbs.org/newshour/show/looking-back-at-a-year-long-racial-reckoning-since-george-floyds-killing> [<https://perma.cc/9AJB-SVZJ>] (documenting the one-year anniversary of Floyd's death and how the event changed the country); Michael Z. Green, *(A)Woke Workplaces*, 2023 WIS. L. REV. 811, 821 (2023).

7. Yusuf Zakir, Commentary, *Responding and Engaging With the World: Guiding Principles for DEI-Related Messaging*, RECORDER (July 26, 2023, 09:47 AM) <https://www.law.com/therecorder/2023/07/26/reacting-responding-and-engaging-with-the-world-guiding-principles-for-dei-related-messaging/?slreturn=20231027101211> [<https://perma.cc/CBF4-F3U2>]; Tiana Headley, *Culture Wars Catch Big Law Firms Balancing Client, Staff Demands*, BLOOMBERG LAW (Jan. 20, 2023, 5:30 AM EST) <https://news.bloomberglaw.com/business-and-practice/culture-wars-catch-big-law-firms-balancing-client-staff-demands> [<https://perma.cc/ETJ3-H47Y>].

8. Headley, *supra* note 7.

9. Vivian Hood & Terry M. Isner, *Aligning with Client Expectations: Is Your Firm Walking the Walk In 2022?*, ALM LAW.COM (Mar. 28, 2022), <https://www.law.com/2022/03/28/aligning-with-client-expectations-is-your-firm-walking-the-walk-in-2022/> (noting law firms' increasing reception to embracing "social change and culture realignment" of which diversity, equity and inclusive belonging ("DEIB") initiatives are a part); Nicole D. Galli, *Predicting the Future by Creating It: DEI in the Law in the 'New Normal'*, LAW.COM (Aug. 30, 2021), <https://www.law.com/pro-mid-market/2021/08/30/predicting-the-future-by-creating-it-dei-in-the-law-in-the-new-normal/> (asserting that "change for law firms will be a broader focus on eradicating racial injustice and inequity in addition to firms' historically narrower focus on recruiting, retaining and promoting people of color"); Aebra

the world in the Summer of 2020, and the way those events were impacting the members of their organizations and clients compelled firm leaders to recognize that staying neutral was no longer an option when it came to social change.<sup>10</sup>

Law schools asked themselves whether they were doing enough to educate future lawyers to confront, change, or even dismantle unjust systems.<sup>11</sup> Over decades, curricular reforms in legal education programs introduced pedagogies of critical theory, social justice and cultural competence. However, those reforms felt inadequate to meet the moment. Case Western Reserve University School of Law (“Case Western”) set about considering the adequacy of its curriculum. Case Western’s Academy for Inclusive Leadership Development (“The Academy”) was conceived out of our deliberations.

Believed to be the first of its kind in the nation,<sup>12</sup> The Academy was conceived to educate lawyers, business professionals, and students who wish to guide their organizations as they begin, or seek to fortify, their diversity, equity and inclusive belonging (“DEIB”) practices. Through The

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Coe, *Why 2020 Could Be A Pivotal Year For Diversity At Firms*, LAW360 (Aug. 30, 2020), <https://www.law360.com/articles/1298388/why-2020-could-be-a-pivotal-year-for-diversity-at-firms> [<https://perma.cc/CR3C-F47G>]; Aebra Coe, *BigLaw Racial Justice Efforts Continue To Build Momentum*, LAW360 (Dec. 8, 2020), <https://www.law360.com/articles/1335678/biglaw-racial-justice-efforts-continue-to-build-momentum> [<https://perma.cc/82KP-9UAP>].

10. Jacqueline Bell, *Law 360’s Diversity Snapshot: What You Need To Know*, LAW360 (August 30, 2020, 9:02 PM EDT), <https://www.law360.com/articles/1303148/law360-s-diversity-snapshot-what-you-need-to-know> [<https://perma.cc/78VD-C7ER>].

11. See, e.g., *LSAC Justice Hour: Featuring the AALS Law Deans Antiracist Clearinghouse Project*, L. SCH. ADMIN. COUNCIL (June 22, 2020, 3:00 PM), <https://www.lsac.org/events/lsac-justice-hour-featuring-aals-law-deans-antiracist-clearinghouse-project> [<https://perma.cc/QT3A-FLE4>]. The Project was created by several law deans of color and seeks to focus on teaching, scholarship, service, activism, programming, and initiatives on strategies to eradicate racism.

12. A website survey of all U.S. ABA-accredited law schools in Spring 2022 yielded only two strong, distinctive programs which approximate The Academy (on file with Author). Baylor Law School’s Leadership Development Program is designed for law students only and has no explicit DEIB component. *Leadership Development*, BAYLOR UNIV., <https://www.baylor.edu/law/currentstudents/index.php?id=935914/> [<https://perma.cc/7H4Z-V25W>] (last updated Jan. 18, 2023). The Halloran Center for Ethical Leadership at St. Thomas School of Law program is for professionals and law students, but does not, on its own, implement courses which blend leadership and DEIB learning with professional identity formation. *Holloran Center For Ethical Leadership*, UNIV. OF ST. THOMAS, <https://law.stthomas.edu/about/centers-institutes/holloran-center> [<https://perma.cc/9HXH-7XAE>].

Academy, Case Western sought to establish a new pedagogy in legal education, one that integrates law, business, organizational leadership principles and DEIB training.

Thirty professionals and law students comprised our first cohort. Beginning in October 2022, The Academy consisted of 19 learning sessions over the course of seven months. The selected topics explored structural inequities in the legal profession, principles undergirding bias, the experience of bias in the workplace and the implementation of transformational change through organizational assessment and leadership. Sessions were both in-person and asynchronous and were facilitated by legal experts and specialists with extensive experience in DEIB training, human resource management, organizational change, and leadership.<sup>13</sup> Distinctively, The Academy sought to grow understanding of the perceptual, institutional, and psychological processes that impact the ways people interact with each other in organizations. Ultimately, we hoped that The Academy would impart skills and delivers tools that empowered current and future lawyers as they took on leadership roles to create diverse, supportive, and engaging workplaces.

This Essay describes The Academy. Part I explains the reasons why Case Western Law School established The Academy and sets forth the current demographics of the legal profession and law schools. Part II reviews the participants' Academy experience in conversing about their individual vulnerabilities, strengths, and needs in advance of engaging in the remaining curriculum. Part II then surveys our discussion of the science and principles that undergird stereotypes, unexamined bias, and micro- and macro-aggressions, with specific accounts of our modules centered on race, gender, and LGBTQ+<sup>14</sup> identity in the workplace. Part II concludes with The Academy's coverage of leadership development, organizational strategic planning and self-assessment. Before concluding, Part II discusses the participants' dialogue about leadership, followership, and having difficult conversations with resisters to DEIB initiatives in organizations. Part III discusses The Academy's outcomes and areas for improvement.

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13. The Academy's nine in-person sessions were all held on Saturdays and ran from 2-3 hours.

14. "LGBTQ+" refers to Lesbian, Gay, Bisexual and Transgender identities. The "+" is a shorthand for other sexual identities such as Intersex and Asexual. See *LGBTQIA+ Vocabulary*, CTR. FOR BELONGING AND SOC. CHANGE, OHIO STATE UNIV., <https://cbosc.osu.edu/documents/lgbtqia-vocab.pdf>.

## I. WHY THE ACADEMY?

The Academy was born out of our evaluation of the ways in which the events of the Summer of 2020 were impacting law schools and the legal profession. The law school deans were thinking critically about ways to reform our curriculum to give students the capacity to be agents for organizational change. At the same time, we were observing a palpable paradigm shift in law firms and legal organizations regarding their commitment to meaningful efforts at diversity, equity, and inclusive behaviors in their own spaces. As the evaluations would tell, we think both student and professional participants alike came away inspired and empowered.

### *A. The Law School*

In struggling to articulate their responses to the George Floyd killing, law schools issued public statements,<sup>15</sup> conducted teach-ins,<sup>16</sup> or convened special programs.<sup>17</sup> Schools also set about reforming their curriculum in ways to more intentionally examine institutional racism, social injustice writ large, and law reform.<sup>18</sup> The American Bar Association (ABA) itself revised its law school accreditation regulations. ABA Rule 303, which governs law school curricula, now requires its laws schools to provide “substantial opportunities” for professional identity formation, and, at least twice in the course of a student’s law school experience, education centered on bias, cross-cultural competency, and racism.<sup>19</sup>

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15. Law School Deans Antiracist Clearinghouse Project, THE ASS’N OF AM. L. SCHS., <https://www.aals.org/antiracist-clearinghouse/> [<https://perma.cc/X44Y-43TY>] (compiling statements of over 100 law schools).

16. *Id.*

17. *Id.*

18. Etienne C. Toussaint, *The Purpose of Legal Education*, 111 CALIF. L. REV. 1, 5, n. 14 (2023) (“Many law schools have already begun to implement new initiatives geared toward increasing debate on racial and economic justice in the law classroom.”).

19. The ABA approved Standard 303 reads, in relevant part:

(b) A law school shall provide substantial opportunities to students for: \*\*\*

(3) the development of a professional identity.

(c) A law school shall provide education to law students on bias, cross-cultural competency, and racism:

(1) at the start of the program of legal education, and

Like many law schools, Case Western's was profoundly impacted by the killings of Floyd, Taylor, and Arbery, and their aftermath. In June 2020, as part of our response, we held a series of webinars on the Floyd killing and the legal and policy issues surrounding the court systems and police.<sup>20</sup> Further, in February 2021, Lonita Baker, an attorney representing Breonna Taylor, addressed our community about her work on behalf of Taylor's family.<sup>21</sup> In our effort to provide students opportunities to examine structural inequality and bias, we also added a Critical Race Theory course,<sup>22</sup> a first-year elective called Race, Law & Society,<sup>23</sup> and established our Social Justice Law Reporter.<sup>24</sup>

To be sure, in the Summer of 2020, law students themselves were calling for institutional change. Those demands took the form of open letters,<sup>25</sup> and even active protests.<sup>26</sup> The bottom-up pleas spilled into the interview rooms, with law students asking prospective employers about their commitment to diversity, equity, and inclusive belonging.<sup>27</sup> Inquiring

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(2) at least once again before graduation.

ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022-2023  
Standard 303 (AM. BAR ASS'N 2022).

20. The three-part series was held in conjunction with Seattle University School of Law, and can be found at SEATTLEULAW, <https://www.youtube.com/@seattleulaw/search?query=george%20floyd> [<https://perma.cc/34ZG-R5H7>].

21. Case Western Reserve University School of Law, *Breonna Taylor and the Pursuit of Justice*, YOUTUBE (Feb. 17, 2021), <https://www.youtube.com/watch?v=48wgOtFioNY> [<https://perma.cc/SRJ6-BRBW>].

22. *New Curricular Innovations*, CASE W. RESERVE UNIV. SCH. OF L., <https://case.edu/law/our-school/diversity-inclusion/cwru-law-racial-justice/new-curricular-innovations> [<https://perma.cc/NL75-TSQE>].

23. *Id.*

24. The Social Justice Law Reporter compiles essays written by second and third-year law students enrolled in our Social Justice Law Center. *CWRU School of Law Launches Social Justice Law Reporter*, CASE W. RESERVE UNIV. SCH. OF L. (Dec. 5, 2022), <https://case.edu/law/our-school/news/cwru-school-law-launches-social-justice-law-reporter> [<https://perma.cc/S4RW-UHVC>].

25. Karen Sloan, *'This Is the Civil Rights Movement of My Lifetime': Black Law Students Demand Action*, LAW.COM (June 18, 2020, 3:40 PM), <https://www.law.com/2020/06/18/this-is-the-civil-rights-movement-of-my-lifetime-black-law-students-demand-action/> [<https://perma.cc/688U-EUTX>].

26. Janelle McPherson, *Law Students Fight For Racial Justice*, PRELAW (2020), [https://mydigitalpublication.com/publication/frame.php?i=671028&p=&pn=&ver=html5&view=articleBrowser&article\\_id=3749880](https://mydigitalpublication.com/publication/frame.php?i=671028&p=&pn=&ver=html5&view=articleBrowser&article_id=3749880) [<https://perma.cc/WX2A-GLVZ>]. For example, in October 2020, our Black Law Students led an Our Eyes on Justice Zoom demonstration where, instead of their faces on screen, participants chose a headshot of a Black person slain by police officers.

27. Meghan Wood, *Conscientious Job Seeking: Assessing Employer's Commitment to DEI*, UNIV. OF WASH. (Sept. 16, 2021), <https://careers.uw.edu/blog/2021/09/16/conscious-job-seeking-assessing-employers-commitment-to-dei-shared-article-from-nace/> [<https://perma.cc/2HZ3-8M75>]; *see*

into the DEIB ethos of firms, students asked questions like “Could you tell me about the actions the company has taken to create an inclusive work environment?” or “Are there opportunities for all employees to get involved with DEI initiatives?”<sup>28</sup>

### B. The Legal Profession

For some time, law firms and legal organizations have been attempting to diversify their ranks and enhance their inclusive practices. From a moral standpoint alone, firms have evolved in their views of the need to improve workplace diversity and climate by adopting a strong DEIB ethos.<sup>29</sup> Furthermore—no doubt due in part to client demands<sup>30</sup>—law firms came to acknowledge the economic benefits of the same.<sup>31</sup> As a result, the past 20 years have seen the rise in legal organization DEI officers, DEI committees, and employee resource groups.<sup>32</sup> Generally, individuals in these roles have been tasked with identifying, assessing, and initiating better practices for

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*also Questions to Ask Your Interviewers*, HARVARD L. SCH., <https://hls.harvard.edu/bernard-koteen-office-of-public-interest-advising/opia-job-search-toolkit/interview-questions/#questions-to-ask-your-interviewers> [https://perma.cc/Y4DL-V7A5] (suggesting that students ask potential employers about their DEI efforts). *See also Questions to Ask Your Interviewers*, HARVARD L. SCH., <https://hls.harvard.edu/bernard-koteen-office-of-public-interest-advising/opia-job-search-toolkit/interview-questions/#questions-to-ask-your-interviewers> [https://perma.cc/Y4DL-V7A5] (suggesting that students ask potential employers about their DEI efforts).

28. Suhuyini Abdulai, Atrisha Lewis & Mariam Moktar, *At The End Of Your Next Job Interview, Ask (At Least) One Of These 10 Questions About The Firm’s Commitment To Diversity*, PRECEDENTJD (Sept. 13, 2018), <https://precedentjd.com/advice/end-next-job-interview-ask-least-one-10-questions-firms-commitment-diversity/> [https://perma.cc/375S-7BZ5]. *See also* Wood, *supra* note 27; *Questions to Ask Your Interviewers*, *supra* note 27; *Questions to Ask to Assess an Organization’s Commitment to Diversity*, YALE UNIV. OFF. OF CAREER STRATEGY, <https://ocs.yale.edu/blog/2021/08/25/questions-to-ask-to-assess-an-organizations-commitment-to-diversity/> [https://perma.cc/26TN-YLE5] (last visited Sept. 17, 2023) (supplying a list of questions for students to ask potential employers to assess the employer’s commitment to DEI).

29. *See* Bell, *supra* note 10.

30. *See* Colleen Cochran, *Demographics as Destiny: Making the Case for Law Firm Diversity and Inclusion*, AM. BAR ASS’N (June 22, 2021), <https://www.americanbar.org/groups/journal/articles/2021/demographics-as-destiny-making-the-case-for-law-firm-diversity/> [https://perma.cc/8PZM-W52W].

31. *Id.*

32. Law firm diversity departments have grown, with the Association of Law Firm Diversity Professionals reporting 450 members, doubling its membership since 2021. Aebera Coe, *Law Firms Are Boosting DEI Departments, With Mixed Results*, LAW360 (June 12, 2023), <https://www.law360.com/articles/1687640/law-firms-are-boosting-dei-departments-with-mixed-results#> [https://perma.cc/BLN2-Y6DH].



hiring, promoting, and retaining professionals from historically marginalized groups.<sup>33</sup>

The legal profession has a long way to go in realizing true diversity. There are more than 1.3 million lawyers in the United States,<sup>34</sup> and there has been a slow increase in the diversity of these lawyers. In 2012, the percentage of female U.S. lawyers stood at 33% and has grown to 38% in 2022.<sup>35</sup> The percentage of lawyers of color also grew between 2012 and 2022 from 12% to 19%.<sup>36</sup>

Of all lawyers, Hispanic<sup>37</sup> attorneys constitute the greatest number of minority attorneys at 5.8%.<sup>38</sup> Asian American attorneys currently represent 5.5% of all practitioners.<sup>39</sup> However, Latinas represent roughly 2% of all lawyers.<sup>40</sup> Native Americans, the smallest racial or ethnic group among U.S. lawyers, represent just one-half of 1% of all lawyers.<sup>41</sup> Overall, 3.7% of all lawyers identify as lesbian, gay, bisexual, transgender or queer (LGBTQ+).<sup>42</sup> Those with disabilities represent 1.2% of all lawyers.<sup>43</sup> Black men and women only comprise 4.5% of all U.S. lawyers, a *decrease* from 4.7% in 2012.<sup>44</sup>

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33. See Coe, *supra* note 9.

34. As of January 1, 2022. *Demographics: Growth of the Legal Profession*, AM. BAR. ASS'N, <https://www.abalegalprofile.com/demographics.php#anchor1> [https://perma.cc/F3TJ-QADD] (last visited March 31, 2024).

35. *Id.*

36. *Id.*

37. "Hispanic" and "Latino" remain the predominant terms to use when referring to people who trace their lineage to Spain or Latin America, respectively. Nicki Lisa Cole, *The Difference Between Hispanic and Latino*, THOUGHTCO. (June 30, 2019), <https://www.thoughtco.com/hispanic-vs-latino-4149966> [https://perma.cc/4EPX-6BWV]. In this Essay, the term "Hispanic" or "Latino/a" is used as denoted in a cited report. Outside of those references, this Essay uses the term "Latinx."

38. See *Demographics: Growth of the Legal Profession*, *supra*, note 34. Still, as with all minorities, Hispanics are underrepresented among lawyers compared with their share of the U.S. population (18.5%). *Id.*

39. *Id.*

40. As of May 2022. Jenny Castro, *Latinas in Law*, LATINICIDA, INC., <https://www.latinicidainc.org/blog/latinainlaw#:~:text=In%20the%20legal%20profession%20specially,small%20majority%20at%20around%20%25>. [https://perma.cc/KH93-SHGZ] (last visited March 31, 2024.)

41. See *Demographics: Growth of the Legal Profession*, *supra* note 34. This is nearly unchanged from 0.6% in 2012. *Id.* The U.S. population is 1.3% Native American. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* That is far less than the percentage of Black people in the U.S. population (13.4%). *Id.*

In U.S. law firms, people of color, women, and women of color have made modest progress. According to the National Association of Law Placement, as of 2022,<sup>45</sup> just over 28% of associates are lawyers of color, an increase of approximately 9% since 2010.<sup>46</sup> Black associate numbers increased to 5.8% from 4.2%.<sup>47</sup> Black women made up 3.45% of those, lagging behind Latinx (3.6%) female associates, but far behind Asian American women (7.3%).<sup>48</sup> Those identifying as LGBTQ+ were 6.1% of firm associates.<sup>49</sup> A mere 0.2% of all associates were Native American or Alaska Native, and less than 0.1% were Native Hawaiian or other Pacific Islander.<sup>50</sup>

White attorneys continue to dominate law firm upper ranks. In 2022, White men constituted 45.1% of equity and 28.1% of non-equity partners.<sup>51</sup> Women constituted 13.1% and 13.6% of equity and non-equity partners, and lawyers of color are 5.2% of equity and 5.5% of non-equity partners.<sup>52</sup> Overall, Asian women constitute just 1.73% of law partners, and Black and Latinx women represent less than 1% of all partners.<sup>53</sup>

Women and people of color continued to make up the majority of non-traditional track/staff attorney roles. In fact, they were the only positions in which women were the majority—56%.<sup>54</sup> The representation of people of color in those roles is 22.5%.<sup>55</sup> Perhaps not an unfortunate surprise, these roles are non-partner track, and have less job security.<sup>56</sup>

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45. NAT'L ASS'N FOR L. PLACEMENT, 2022 REPORT ON DIVERSITY IN U.S. LAW FIRMS (2023) [hereinafter 2022 NALP Survey]. NALP surveyed over 102,000 partners, associates, and other attorneys in 877 offices nationwide.

46. *Id.* at 6. In 2012, 19.53% of associates were associates of color.

47. *Id.* at 20 tbl. 3.

48. *Id.*

49. *Id.* at 38 tbl. 16.

50. *Id.* at 20 tbl. 3.

51. *Id.* at 24 tbl. 8. Many law firms have a two-tier partnership system. Generally, equity partners share in a firm's profits, while non-equity partners typically receive guaranteed payments out of firm profits that resemble a salary. Dan Bowman, *Breaking Down Law Firm Partnership Structure*, NAT'L L. REV. (Sept. 16, 2023), <https://www.natlawreview.com/article/breaking-down-law-firm-partnership-structure> [<https://perma.cc/P625-ZX4H>].

52. 2022 NALP Survey, *supra* note 45, at 24 tbl. 8.

53. *Id.* at 19 tbl. 2.

54. *Id.* at 27 tbl. 10.

55. *Id.*

56. Vivien Chen, *Will We See Big Law Gender Parity in 20 Years? Dream On*, BLOOMBERG LAW (May 31, 2022, 4:45 AM EDT), <https://news.bloomberglaw.com/business-and-practice/will-we-see-big-law-gender-parity-in-20-years-dream-on> [<https://perma.cc/8RFH-UXSA>]. Women in these roles also, in part, account for the vast pay disparity between men and women in law firms. *Id.*

Another challenge to legal organization diversity is attrition. A recent NALP study “found that the overall attrition rate for law firm associates in 2021 reached a record high of 26%.”<sup>57</sup> For associates of color, that number was 34%.<sup>58</sup> Another study “found that Black lawyers are 22 percentage points more likely to leave their firms than white lawyers; gay lawyers are 10 percentage points more likely to leave their firms than straight lawyers; and female lawyers are 2 percentage points more likely than male lawyers to leave their current roles.”<sup>59</sup> Another study found that Black lawyers are 22 percentage points more likely to leave their firms than white lawyers, gay lawyers are 10 percentage points more likely to leave their firms than straight lawyers, and female lawyers are 2 percentage points more likely than male lawyers to leave their current roles.<sup>60</sup>

It is clear that Whites are still overrepresented in the legal profession compared with their presence in the U.S. population.<sup>61</sup> This lack of diversity has real consequences for their recruitment, retention, and advancement of legal organizations. Certainly, diversity in the legal profession can only be as robust as the diversity of law school student bodies. Thankfully, there has been some progress on that score.

In 2022, 55.7% of all students at ABA-accredited law schools were women.<sup>62</sup> Overall, the total number of minorities enrolled increased for the

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Anecdotally, women staff attorneys are pleased with the availability of these positions as they allow them to achieve a better work-life balance. However, these structures perpetuate a refusal to examine whether partnership standards should be adjusted to better accommodate those balances. *Id. See also Is There a Gender Wage Gap in the Legal Profession?*, ENJURIS (noting that “[o]ne of the reasons there is such a significant gender pay gap among lawyers is that women are underrepresented at the uppermost tiers of law firms.”), <https://news.bloomberglaw.com/business-and-practice/will-we-see-big-law-gender-parity-in-20-years-dream-on>, [<https://perma.cc/8RFH-UXSA>].

57. Paul Fischer, *The Legal Profession Is Not Doing Enough To Fix Its DEI Problem*, FASTCOMPANY (Oct. 21, 2022), <https://www.fastcompany.com/90797820/the-legal-profession-is-not-doing-enough-to-fix-its-dei-problem> [<https://perma.cc/WB7F-KFD2>].

58. *Id.*

59. *Id.*

60. *Id.* (citing THOMSON REUTERS INSTITUTE, *LAW FIRMS COMPETING FOR TALENT IN 2022*, at 26 fig.14)(2022), <https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/04/Law-Firms-Stay-Go-Report-2022.pdf> [<https://perma.cc/C9ST-PKEP>].

61. *Demographics: Growth of the Legal Profession*, *supra* note 34. White lawyers constitute 81.0% of the profession, in excess of their 75.5% share of the U.S. population. *Id.*; *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045222> [<https://perma.cc/JY9S-N5EU>].

62. *Law School Rankings by Female Enrollment*, ENJURIS (2022),

fifth year in a row, and the percentage of minorities enrolled in law school increased for the third year in a row.<sup>63</sup> In 2022, people of color comprised just over 33% of all law students.<sup>64</sup> Latinx students were the largest minority, at 14.6%.<sup>65</sup> Blacks constituted 8.3% of all students, Asians 7.4%, and Native/American Indian students, just 7%.<sup>66</sup> As a result, the racial and ethnic makeup of law students in ABA-accredited law schools is coming closer to reflecting that of the U.S. population as a whole (35.2% v. 42.2%).<sup>67</sup>

However, there are well-founded reasons to believe that enrollment of racial and ethnic minorities will get worse before it gets better. This is due to the recent Supreme Court decision in *Students for Fair Admissions v. President and Fellows of Harvard College*.<sup>68</sup> In *SFFA*, the Court held 6-3 that any sole use of race in college admissions decisions violated the Equal Protection Clause of the 14th Amendment, and Title VI of the Civil Rights Act.<sup>69</sup> With that inability, “[i]f colleges and universities admit fewer minority students following the Supreme Court’s decision, law schools will struggle to keep up their diversity numbers, which in turn will mean fewer diverse lawyers.”<sup>70</sup>

No matter the composition of the law school student body, it is especially imperative that graduates are equipped to play a constructive role in advancing DEIB practices in their organizations. We felt that we could design an educational program which would augment their legal learning with principles essential to DEIB practices and leadership skills. Students could, in turn, bring these principles and skills into the organizations in

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<https://www.enjuris.com/students/law-school-women-enrollment-2022/> [https://perma.cc/5A8G-REQ2].

63. *Law School Enrollment by Race and Ethnicity*, ENJURIS (2022), <https://www.enjuris.com/students/law-school-race-2022/> [https://perma.cc/37FQ-DY7H].

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Students for Fair Admissions v. President & Fellows of Harvard Coll.*, No. 20-1199, slip op. at 39 (U.S. June 29, 2023).

69. *Id.* In *Students for Fair Admissions*, the Court held that Harvard College’s admissions system does not comply with the principles of the equal protection clause embodied in Title VI of the Civil Rights Act. *Id.*

70. Karen Sloan, *U.S. Supreme Court’s Affirmative Action Ruling A ‘Headwind’ For Lawyer Diversity, Experts Say*, REUTERS (June 29, 2023), <https://www.reuters.com/legal/government/us-supreme-courts-affirmative-action-ruling-headwind-lawyer-diversity-experts-2023-06-29/> [https://perma.cc/J9R5-VPGF] (quoting Law School Admission Council President Kellye Testy).

which they practice, immediately adding value that law firms urgently seek and need.

## II. THE ACADEMY FOR INCLUSIVE LEADERSHIP DEVELOPMENT

We began conceptualizing what The Academy would look like in early 2021. We first established its goal, which was not just to educate law students, but lawyers and all business professionals, on DEIB practices. As we began to think more expansively about the content, we felt the program would be stronger if we incorporated business, leadership, and applied organizational theory into the curricular plan. We then settled on approximately 35 topics which, after reviewing them with select lawyers, DEIB experts, and organization consultants, we narrowed to 18. In the Spring of 2022, we prepared to roll out a pilot version of The Academy for the following October.

To attract attorneys, we applied for continuing legal education credit through the Ohio's crediting organization, the Ohio State Bar Association. The application involved submitting The Academy syllabus, lesson plans for each module (2-3 hours in length), and assigned reading materials. We were successful in having the program confirmed for 20 hours. This greatly enhanced The Academy's attraction to lawyers licensed in Ohio because they need only obtain 24 CLE hours every two years to maintain their license.<sup>71</sup> Students completing The Academy would receive a transcript notation for their achievement. We then set about executing our publicity plan by contacting law firms, businesses, and legal organizations in Northeast Ohio. We admitted our first set of participants in September.

The Academy's first cohort was diverse in salient ways: age (approximately 23-70 years old), race (roughly 50% White, 40% Black, and 10% Latinx or Other), and approximately 30% male. They were lawyers, judges, human resource managers, administrative executives, business executives, law students, college professors, and a high school teacher.

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71. Ohio Sup. Ct. R. X(3)(A); see also *What You Need To Know About Ohio Bar CLE*, OHIO STATE BAR ASS'N, <https://www.ohiobar.org/cle-certification/osba-cle-information/> [https://perma.cc/5549-9ZZC].

The Academy's topics were: Orientation; Structural Bias (Race, Gender, Ethnicity, LGBTQ+ Identity, Ability, Asian Identity); The Science of Bias\*; Cultural Intelligence and Listening for Values; Microaggressions and Interrupting Bias; Assessing Organizational Climate, Policies and Structures; Implementing and Instilling DEI practices across teams\*; The Economics of Law Practice\*; Laws Impacting DEI\*; Attorney-client relationships across borders\*; DEI in hybrid settings: ensuring equity and inclusion in evaluation, retention, and promotion\*; Developing Strategic Plans\*; Leadership and Self-Assessment; Leadership and Change Management.<sup>72</sup>

The Academy's topics were organized to take the participants through a logical process of self-discovery and learning. The in-person sessions ranged from two-three hours and were held Saturday mornings. In addition to the twelve in-person sessions, seven asynchronous modules were developed in advance and interspersed over the course of the entire program.

The entire course was platformed on Canvas.<sup>73</sup> The in-person session content included introductory materials, pre- or post-session assignments, discussion prompts, and bibliographic resources. The asynchronous modules consisted of that same content, but also short readings and videos. Those videos included "virtual roundtables," with interviews of local DEIB law firm officers, business leaders, and professionals discussing topics centered on DEIB.<sup>74</sup> Participants were also given materials they could download and use in their organizations to perform climate surveys and DEIB assessments or develop strategic plans. Participants were also provided self-assessment materials related to cultural competency, bias interruption, and leadership styles.

The Academy Faculty was selected by our Associate Dean for Diversity and Inclusion, based on relationships within the legal academy, the legal community, Case Western alumni, and DEIB experts. Facilitator expertise

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72. "\*" denotes those modules that were held asynchronously.

73. Canvas is a web-based learning management system that, amongst other features, enables instructors to construct course modules and upload course materials, engage in dialogues with student/participants, and evaluated submitted content. *What is Canvas*, INSTRUCTURE, <https://community.canvaslms.com/t5/Canvas-Basics-Guide/What-is-Canvas/ta-p/45>, [<https://perma.cc/5P5L-LH92>]

74. The roundtable topics were "assessing workplace culture," and "policies and articulations of commitment to diversity, equity and inclusive practices."

ranged from DEIB training executives, organizational specialists, law professors, and leadership development consultants. Several, but not all, had worked with legal organizations in some capacity, which enhanced the relevance and learning experience for the participants.

Because space will not allow a comprehensive summary of The Academy's 19 modules, what follows are the modules that explored three broad themes: setting the experiential foundation for DEIB learning, examining structural bias, stereotyping, micro- and macroaggressions, and leadership and organizational change.

#### *A. The Academy's Foundational Concepts*

Before engaging in the conversations centered on structural biases, we thought it essential that the participants come in having thought about their own positionalities as they regarded identity, privilege, openness, and even blind spots. To that end, in advance of Orientation, we had participants engage in three reflection exercises.

##### i. Self-Assessments on Vulnerabilities, Strengths, and Needs

The first exercise asked participants to view this illustration.



We then had the participants describe themselves along three discrete external and internal diversity dimensions.<sup>75</sup> For each, we had them self-reflect, then share answers to questions such as “What messages did I learn about [being Black] growing up?”; “How does [being Black] affect my day-to-day life?”; and “In a given day, how often am I asked to adapt to other people’s [race]?”

Next, the participants were impelled to situate themselves within groups seen as dominant or marginalized. We then wanted them to consider the social complexities of our identities and how they impact our daily experiences. We had them complete a grid with three columns.<sup>76</sup> The first column listed various aspects of identity. The second column listed nonexclusive examples of groups that enjoy privilege with respect to that identity. The third column listed nonexclusive groups who are marginalized or oppressed with respect to that same identity. (e.g., Blacks and “code-switching”).

For example, participants were asked to consider the way identity is experienced in the United States, and to consider several identities (e.g., gender, race, age socio-economic class, religion/spirituality) and place themselves as experiencing privilege within that identity (e.g., Race-White people), or marginalization (e.g., Race-Black people). Participants found that they all, in some way, were a member of the privileged group in some categories (e.g. Black men), but not always others. For each category, we wanted participants to reflect upon their levels of comfort, awareness and experience at managing each privileged or marginalized identity that they are.<sup>77</sup>

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75. LEE GARDENSWARTZ & ANITA ROWE, DIVERSE TEAMS AT WORK 33 (2003).

76. *See infra* app. A.

77. For example, a form of “managing” behaviors may involve ‘code switching’-- which involves “adjusting one’s style of speech, appearance, behavior, and expression in ways that will optimize the comfort of others in exchange for fair treatment, quality service, and employment opportunities.” Courtney L. McCluney, Kathrina Robotham, Serenity Lee, Richard Smith, & Myles Durkee, *The Costs of Code-Switching*, HARV. BUS. REV. (2019) <https://hbr.org/2019/11/the-costs-of-codeswitching> [<https://perma.cc/2T2A-KLX9>]. Code-switching “has long been a strategy for black people to successfully navigate interracial interactions” in which they are minoritized, especially in the workplace. *Id.*



This conversation on privilege/marginalization was designed to impel the participants to consider how various aspects of their identity affect their daily lives. We then moved on to ask participants how their identities, privileges, and marginalization might impact how they might engage with a co-worker or client of the same or different race, ethnicity, sexual orientation, or gender. The idea was to get participants to closely examine their assumptions about the ease or difficulty in engaging with others because, despite similarities and differences, conscious and unconscious biases are always at work.

In the final part of our opening conversations, we asked participants to share with each other three concerns or vulnerabilities that would impact their engagement in the upcoming sessions on structural bias. We did this recognizing that people often avoid conversations about race, racism, and other social inequities because of their own fears of being assailable. Participants did voice concerns such as “I don’t feel prepared to have a discussion about race,” or “I’m afraid of being attacked for saying the wrong thing, even though I mean well.”

We then asked them to articulate three personal strengths that would aid them in their engagement. Some said, “I’m willing to learn more,” or “I’ve done a good deal of work on unconscious bias already.” Finally, we also asked them to list three specific needs that, if met, would improve their ability to navigate difficult conversations. Answers ranged from “I need more information,” to “we need ground rules,” or “we need to define what we mean by ‘diversity,’ ‘equity,’ and ‘inclusion.’” By defining our operational definitions of “diversity,” “equity,” “inclusion,” and “belonging,” and setting forth the ground rules<sup>78</sup> for having difficult conversations in our Orientation session, we hoped that participants were primed for what would unfold over the next several classes.

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78. Establishing ground rules helps create open and productive environments and discussions in which people feel safe sharing their experiences and perspectives and are receptive to learning. KELLY E. MAXWELL ET AL., FACILITATING INTERGROUP DIALOGUES: BRIDGING DIFFERENCES, CATALYZING CHANGE 29 (2011). Our list of ground rules was long, and included: 1. Listen respectfully, without interrupting; 2. Listen actively and with an ear to understanding others’ views; 3. Criticize ideas, not individuals; 4. Commit to learning, not debating; 5. Assume we are all coming from a charitable place when we express ourselves; 6. Be conscious of body language and nonverbal responses (they can be as disrespectful as words); 7. Everything that is discussed in these sessions stays in these sessions; 8. Speak from your own experience instead of generalizing (use “I” instead of “they,” “we,” and “you”).

## ii. “Diversity,” “Equity,” “Inclusion,” and “Belonging”

From the outset, it was important to establish a common understanding of what we meant by “diversity,” “equity,” “inclusion,” and “belonging” (or “inclusive belonging”). In explaining what is meant by *diversity* in the context of organizations, the facilitator referenced our opening exercises, stating that it is useful to think of diversity in two ways: surface-level characteristics like gender, race, ethnicity, age, national origin, religion, ability status, and sexual orientation, and deeper-level characteristics, such as peoples’ personalities, attitudes, belief and values. Both surface- and deeper-level characteristics are assumed to strongly influence the way that people approach their work, their perspectives about work, and how they are perceived by others.<sup>79</sup>

Achieving *equity* is premised on a recognition that not everyone starts in the same place. It is not synonymous with equality. Equity also takes historical inequities into consideration when designing opportunities or distributing resources to attend to both individual and organizational needs. *Belonging* is based upon the need to be cared for, protected, and valued by your organization. Belonging is created through actions that express affinity, empathy, and generosity, but also allows for redress of grievances and more.

Achieving *equity* is premised on a recognition that not everyone starts in the same place. It is not synonymous with *equality*. While equality is an idealized state in which all are treated the same, and given access to support and resources despite their differences, the concept of equity “implies that we understand that the playing field is uneven, since we don’t all begin from the same place” nor have the same opportunities.<sup>80</sup> Equity also takes historical inequalities into consideration when designing opportunities or distributing resources to attend to both individual and organizational needs.<sup>81</sup> *Inclusiveness* refers to the state of an organization’s culture in which employees’ needs are addressed, they feel supported, and their voices are heard.<sup>82</sup> *Belonging* exists when employees feel connected to and

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79. YEHUDA BARUCH, *MANAGING CAREERS AND EMPLOYABILITY* 312 (2022).

80. Jennifer Brown, *HOW TO BE AN INCLUSIVE LEADER* 45 (2019).

81. *Id.* at 46.

82. Erika Nelson Brown, *DIVERSITY IN THE WORK PLACE: LEARN HOW TO BE AN INCLUSIVE LEADER, MANAGE DIVERSITY IN THE WORK PLACE, TACKLE UNCONSCIOUS BIAS, AND FOSTER*

invested in an organization's goals, and they experience psychological safety in expressing their views and having them valued.<sup>83</sup> Belonging is a culmination of an ideally equitable and inclusive environment.

### iii. Stereotypes, Unexamined Bias, and Micro- and Macroaggressions

In advance of our discussion of stereotypes, bias, and micro- and macroaggressions, we gave the participants two homework assignments. We had them take the Implicit Association test (IAT).<sup>84</sup> The IAT is a long-term research project based at Harvard University that aims to measure people's associations between concepts and evaluations or stereotypes about social groups.<sup>85</sup> We also had them watch *Blue Eyes/Brown Eyes*, a documentary about an elementary school teacher in rural Iowa who wanted to teach her students about prejudice and discrimination.<sup>86</sup> In 1968, the day after Reverend Dr. Martin Luther King, Jr. was assassinated, Jane Elliott divided her predominately white third-grade students according to eye color (as a proxy for race), privileging those with blue eyes on the first day, then privileging those with brown eyes the next.<sup>87</sup> Each day Elliot allocated benefits and punishments based on that trait.<sup>88</sup> Eventually, those privileged began to exhibit feelings of superiority and even engaged in bullying.<sup>89</sup>

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INCLUSIVE CONVERSATIONS 75 (2011).

83. See Kathryn Jacob, BELONGING: THE KEY TO TRANSFORMING AND MAINTAINING DIVERSITY,

INCLUSION AND EQUALITY AT WORK 4 (2021)

84. *Take a Test*, PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/takeatest.html> [<https://perma.cc/X2M7-2PDZ>].

85. *Id.*

86. *Frontline: A Class Divided* (PBS television broadcast Mar. 26, 1985), <https://www.pbs.org/video/frontline-class-divided/> [<https://perma.cc/5WWZ-V9ZH>]; Rachel Martin, Simone Popperl, Avery Keatley, & Emma Bowman, *We Are Repeating The*

*Discrimination Experiment Every Day*, *Says Educator Jane Elliott*, NPR (July 8, 2020, 3:42 PM ET), <https://www.npr.org/sections/live-updates-protests-for-racialjustice/2020/07/08/888846330/we-are-repeating-discrimination-experiment-every-day-educator-says> [<https://perma.cc/Y67B-PCTT>].

87. *Frontline: A Class Divided*, *supra* note 83.

88. *Id.* At the beginning of class, Elliott told her students that those with blue eyes were better than those with brown eyes. *Id.* The blue-eyed students would be allowed to play in recess for an extra 5 minutes, use the playground equipment and drink out of the water fountain while the brown-eyed students would have to drink out of paper cups and wear collars around their necks so they could be easily identified from a distance. *Id.* Students with different colored eyes could not play together. *Id.*

89. *Id.* The students resisted at first, but quickly began to adopt the idea that blue-eyed people

Members of the outgroup became victims, and experienced ostracization and even mental distress.<sup>90</sup> In our modules on stereotyping, cultural competence and micro- and macro aggressions, the participants referenced back to their IAT outcomes, and the lessons learned from Elliot's groundbreaking experiment. In our modules on stereotyping, cultural competence and micro- and macro aggressions, the participants referenced back to their IAT outcomes, and the lessons learned from Elliot's groundbreaking experiment.

#### a. Stereotypes and Unexamined Bias

We were intent upon providing The Academy participants with foundational frameworks of the cognitive processes involved in bias and stereotype formation. Our reasoning was to better enable them to self-reflect on their own biases and stereotypes, and how those processes may operate in the workplace. Moreover, this would be essential for participants to competently develop and manage dialogues in their organizations.

Reiterating our conclusions from the diversity data, invidious discrimination is not the sole explanation for the disparate numbers in hiring, promotion, retention, and advancement of minoritized lawyers in law firms and legal organizations.<sup>91</sup> It is not enough to look solely to overt acts of benign or intentional discrimination. As overt racism or sexism becomes less common, more subtle forms of discrimination in everyday interactions imbedded in systems, policies, and formal and informal practices—sometimes referred to as “casual” racism or microaggressions—warrant surfacing.

First, we covered the science of bias. “Bias” is a basic form of human perception.<sup>92</sup> Perception refers to the process of interpreting sensory

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were better than brown-eyed. By the end of the day, students were using “brown-eyed” as an insult. *Id.* The blue-eyed students started bullying the brown-eyed students who began to develop self-doubt and believe that they truly were not as good as the blue-eyed students. *Id.*

90. *Id.* Elliott was shocked by the results and decided to switch the roles the following day. She told her students that she had made a mistake the previous day and that brown-eyed students were actually better than blue-eyed students. *Id.* The brown-eyed students now reaped the benefits while the blue-eyed students were subjected to the treatment they inflicted on the brown-eyed students the day before. *Id.*

91. See discussion, *supra* part IB.

92. David Galowich, *Understanding Biases And Their Impact On Our Perceptions*, FORBES (Sept. 19, 2018), <https://www.forbes.com/sites/forbescoachescouncil/2018/09/19/understanding-biases-and-their-impact-on-our-perceptions/?sh=5fbfe6cd7859> [https://perma.cc/F99H-3LFV].

information in order to comprehend the environment, through the use of cognitive functions, and our senses.<sup>93</sup> Biases, which can be conscious or unconscious, are “mental shortcuts,” and emerge from our efforts to comprehend our surroundings.<sup>94</sup> Biases are further developed through acculturation, beliefs, or what we observe, hear, or learn. Biases may be reflected in the policies, norms, and practices of institutions.<sup>95</sup> Stereotyping is a type of bias.<sup>96</sup>

“Stereotyping” is a method of categorizing incoming stimuli (consciously or unconsciously selected), that creates fixed beliefs about the characteristics, attributes, and behaviors of members of certain groups.<sup>97</sup> Like biases, stereotypes are conditioned by external factors (e.g. socialization process, education, media).<sup>98</sup> Stereotypes enable us to subconsciously draw conclusions based on what we expect to see or experience.<sup>99</sup> Once we make an assumption, we tend to look for evidence that reinforces it, rather than being open-minded and objective about a given situation.<sup>100</sup> Whether

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93. Kendra Cherry, *What Is Perception? Recognizing Environmental Stimuli Through the Five Senses*, VERYWELLMIND (Updated on February 01, 2023).

<https://www.verywellmind.com/perception-and-the-perceptual-process-2795839>

94. Yaşar Suveren, *Unconscious Bias: Definition and Significance*, 14 CURRENT APPROACHES PSYCHIATRY 414, 415 (2022) (“one may become biased as one tries to make sense of the available information”); Pragya Agarwal, *Here Is Why Organisations Need to be Conscious of Unconscious Bias*, FORBES (Aug 26, 2018, 08:59am EDT)

<https://www.forbes.com/sites/pragyaagarwaleurope/2018/08/26/here-is-why-organisations-need-to-be-conscious-of-unconscious-bias/?sh=712cbe81726b> [https://perma.cc/JNN2-MFRW]. (distinguishing between known and unknown biases).

95. Agarwal, *supra* note 91 (“unconscious bias can affect workplaces and organizations” and “can have an impact on recruitment, mentoring and promotions.”).

96. *Id.*

97. *Stereotype* AM. PSYCH. ASS’N: APA DICTIONARY OF PSYCH., <https://dictionary.apa.org/stereotype> (last visited April 3, 2024); Jill Suttie, *Tips for Rooting Out Bias in Yourself and Your Organization*, GREATER GOOD MAG. (January 28, 2022).

[https://greatergood.berkeley.edu/article/item/tips\\_for\\_rooting\\_out\\_bias\\_in\\_yourself\\_and\\_your\\_organization](https://greatergood.berkeley.edu/article/item/tips_for_rooting_out_bias_in_yourself_and_your_organization) [https://perma.cc/4LC4-UQP3].

98. Baoshan Zhang et al., *Editorial: The psychological process of stereotyping: Content, forming, internalizing, mechanisms, effects, and interventions*, FRONTIER PSYCH., January, 2023, at 1, 2; Suttie, *supra* note 94.

99. Zhang et al., *supra* note 95, at 2; Suttie, *supra* note 94.

100. Joan Marques, *Awakened Leadership as a Pillar for Diversity, Equity, and Inclusion in LEADING WITH DIVERSITY EQUITY AND INCLUSION: APPROACHES, PRACTICES AND CASES FOR INTEGRAL LEADERSHIP* 9 (Joan Marques & Satinder Dhiman eds. 2022)(defining confirmation bias).

conscious or unconscious, biases and stereotypes can influence behavior in both positive and negative ways.<sup>101</sup>

We first asked the group what attributes of a person likely trigger the most rapid categorization. Many landed on race, ethnicity, and gender. The facilitator discussed how stereotyping schema then associates externally conditioned attributes with those we are perceiving and attaches labels upon the person. Thus, stereotypes are not only what we see, but what we encode and recall about people.

With stereotyping, we tend to assign all the characteristics or traits of that category to all the individuals within a group, even regardless of evidence to the contrary.<sup>102</sup> We do that because we tend to recall information more consistent with our schemas than inconsistent.<sup>103</sup> However, unconscious attributions prevent us from recognizing the variability that actually exists across people in a particular category.<sup>104</sup>

As a result of stereotyping and unconscious biases, the labels we attach to people within the stereotype carry power to influence how we perceive them in a host of contexts.<sup>105</sup> In the workplace, those biases operate to influence how we perceive others in terms of their competence, behavior, and capabilities.<sup>106</sup> Biases also operate to develop “in-group” and “out-group” biases in the workplace.

Group bias is activated through stereotypes, and is a tendency for people to give preferential treatment to others who belong to the same group, and disfavorable treatment to those belonging to the out-group.<sup>107</sup> In-group bias, is particularly relevant when considering the workplace inclusion and belonging.<sup>108</sup> Often, in-groups form along the lines of race, gender, class employment status, and/or organizational hierarchies.<sup>109</sup> Positive attributes

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101. Lucy Johnston & Miles Hewstone, *Cognitive Models of Stereotype Change: Subtyping And The Perceived Typicality of Disconfirming Group Members*, J. 28 EXPERIMENTAL SOC. PSYCH. 360, 361 (1992)

(stereotypes “may lend a sense of order and structure to social stimuli, but it may also have negative consequences.”).

102. Lisa Nishii, Vice Provost for Undergraduate Education, Cornell University, Lecture at eCornell Diversity and Inclusion Program (Oct. 2021) (lecture notes and transcript on file with author).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

are also ascribed more to in-group than out-group members.<sup>110</sup> Moreover, research shows that it is easier to remember negative things about out-group members, and it is also easier to remember ways in which out-group members are different, rather than similar, to members of the in-group.<sup>111</sup> As one can imagine, the presence of fixed in-group and out-groups also has a profound impact upon equity, inclusiveness and belonging in organizations especially with regards to the paucity of lawyers in firms and organizations who are Black, ethnic, women, LGBTQ+, or ability diverse.

‘Participants surfaced impactful and difficult experiences as members of outgroups in their organizations. They also admitted to examples of allowing their own unexamined biases to infect choices in their work.

#### b. Micro- and Macroaggressions

As the participants continued their focus on workplace dynamics, the sessions moved away from stereotypes and bias towards their manifestations, *viz.*, micro- and macroaggressions. Microaggressions are intentional or unintentional interpersonal verbal, non-verbal, or symbolic insults, invalidations, or assaults reflected in the behaviors of individuals towards another.<sup>112</sup> Macroaggressions are more systemic, and reside in the rules, regulations and practices of an organization which impact an entire class or group of people.<sup>113</sup>

Micro- and macroaggressions can be expressed toward any marginalized group.<sup>114</sup> In the same manner as other forms of workplace discrimination, cumulatively, micro- and macroaggressions can violate

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110. *Id.*

111. *Id.*

112. The term “microaggression” was coined by Dr. Chester Middlebrook Pierce. *Chester Middlebrook Pierce, MD, Class of 1952*, PERSPECTIVES OF CHANGE, HARVARD UNIV., <https://perspectivesofchange.hms.harvard.edu/node/28>. [https://perma.cc/9HQS-XX7B]. While Dr. Pierce explicated microaggressions as impacting Blacks, microaggressions can be, and are, expressed towards any marginalized group in society, and rooted in racism, sexism, genderism, heterosexism, classism, ableism, and other forms of oppression. DERALD WING SUE & LISA SPANIERMAN, MICROAGGRESSIONS IN EVERYDAY LIFE: RACE, GENDER, AND SEXUAL ORIENTATION 6 (2d. ed., 2020). Moreover, the term ‘micro’ is not a reference to the aggression being “small,” but is meant to underscore its interpersonal level. *Id.*

113. SUE & SPANIERMAN, *supra* note 109, at 10.

114. *Id.* at 251.

employment laws, and create a hostile work environment.<sup>115</sup> At the very least, both work against the development of an inclusive workplace and, for their targets, lead to expenditure of cognitive energy, disruption, and fatigue.

With that foundation, the class began to explore the ways in which micro- and macroaggressions manifest in the workplace. Macroaggressions were noted in organizations' dress codes, the absence of gender-neutral bathrooms, or an environmental macroaggression, such as firm wall portraits depicting only white men. Macroaggressions were also noted in law firm compensation structures and how women and minorities dominate the non-equity partner, staff attorney, and of counsel roles in firms. Macroaggressions were also seen in the promotion and retention structures that privilege attorneys with ready connections to potential clients of high economic value. New, White attorneys from high socioeconomic backgrounds are more apt to have those built-in networks than Black or Brown attorneys who may not come from those backgrounds.<sup>116</sup> As a result, the latter are less likely to achieve promotion and retention benchmarks based upon the "book of business" they yield.<sup>117</sup> Microaggressions predominated the participants discussions in the structural bias modules.

### *B. Structural Bias Dialogues*

Dialogues centered on inequality, especially regarding race, gender, and ethnicity, can be fraught. To be sure, these conversations *should* be fraught and impel participants to recognize and reside in, to a degree, their discomfort about the subject matter. Research on, and experiences in DEIB programs evidence that such dialogues, if mismanaged, can do more grievous harm than good.<sup>118</sup> However, if the intentions are to prepare the participants to effectively engage in and eventually lead such conversations

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115. *Id.*

116. Zack Needles, *Big Law's Lack of Diversity Is Being Exacerbated by Its Lack of Creativity*, Part II, LAW.COM (October 12, 2020), archived at <https://www.bloomberglaw.com/document/X8H44R38000000?jsearch=fmf45kigd#jcite>.

117. *Id.* ("Research shows that attorneys of color have a disproportionately harder time than their white colleagues acquiring and developing significant books of business."); Dylan Jackson, *Why They Left: Black Lawyers on Why Big Law Can't Keep Them Around*, LAW.COM, archived at <https://www.bloomberglaw.com/document/XD3TTPOO000000?jsearch=hdi45jhij#jcite>.

118. MAXWELL ET. AL., *supra* note 75, at 29–32.



in their home organizations, these dialogues are indispensable to our program.

We aimed to create a space conducive to the types of conversations we hoped the participants would have. We wanted the structural bias conversations to be frank, passionate, and even spirited—without devolving into arguments and/or personal attacks. So, in addition to the restatement of the ground rules, and using icebreakers to open every session, we employed other means to best ensure we were creating a space in which participants felt welcome and safe to share their experiences and perspectives.

At the time of enrollment, we made it clear to all prospective participants that they were required to attend *all* structural bias modules.<sup>119</sup> DEIB training experience in the past demonstrated that, if given an option, participants will ‘pass’ on these topics precisely because of the vulnerabilities we surfaced. These dialogues rely upon authentic, mutual engagement about participants’ experiences and perspectives. Any one person’s absence from one (or several) structural bias sessions would alter the interpersonal dynamics of equitable sharing and trusting relationships, and thus infect the climate of subsequent sessions.

We also made clear that structural bias modules would be *in-person*, with no option for virtual participation. The outcomes we wanted for these difficult conversations simply could not be achieved through virtual engagement. Conversations about bias and our subject matters must be especially attentive to not just words, but nonverbal communication such as vocal tone, pitch, body language, eye contact, and gestures.<sup>120</sup> Virtual engagement hinders the ability to have impactful conversations as it distorts meaning and interpretation where communicative intent and impact are essential to effective dialogue.<sup>121</sup> If one truly wants to have authentic conversations about racism, sexism and the like, meaning and interpretation simply cannot be adequately captured on a computer screen.

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119. If a participant failed to attend one, they could not participate in any subsequent Academy session, and would be disenrolled.

120. Research in nonverbal communications agree that 93% of the total impact of a message comes from the vocal and visual nonverbal communication elements, with only 7% of the influence from the words themselves. Jean A. Mausehund, Susan A. Timm, & Albert S. King, *Diversity Training: Effects of an Intervention Treatment on Nonverbal Awareness*, 59 BUS. & PROF. COMM’N. Q., no. 1, at 27–28 (1995).

121. See *id.* at 29; Linda L. Holstein, *The Trouble with Zoom*, TWIN CITIES BUS., (August 25, 2022) <https://tcbmag.com/the-trouble-with-zoom/>

### *C. Structural Biases in the Workplace*

The Academy participants examined stereotyping, bias, and microaggressions along six identities: Race, Gender, Ethnicity, LGBTQ+ Identity, Ability, and Asian Identity. It was important to contextualize these discussions within the data on legal organization diversity<sup>122</sup>—or the lack thereof. Most importantly here, however, we wanted the participants to share their observations and lived experiences. As participants became more comfortable with one another, they moved into relating their personal stories which were pointed, authentic, and gripping. To illustrate, three examples of the structural bias modules follow.

#### *i. Race in The Workplace*

In advance of the Race session, we had the participants view a short video on the impact George Floyd's murder had on their workplace experience. In the video, Black professionals discuss their experience in the workplace in the wake of George Floyd's killing.<sup>123</sup> In their own way, each wrestle with persistent biases, inequitable performance expectations, and challenges with social engagement over the impact of the killing.<sup>124</sup> We asked the participants for their reactions to George Floyd's killing. What was your work or school experience at the time of his killing and the subsequent uprisings? What were the conversations you were having? Hearing? How did it impact your emotional health and well-being? To the Black participants, we asked what "burdens" George Floyd's killing placed upon them in predominantly White spaces, especially when sometimes being the only Black person in the room. The conversation surfaced pain about Floyd's death regardless of race, but was also revelatory in helping non-Black participants understand the pain, frustration, and isolation they were experiencing as Blacks in overwhelmingly White spaces.

We then moved into more conversation about workplace experiences, during which the participants discussed examples of experiences with race in the workplace or the classroom. Observations included:

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122. See discussion, *supra* part IIA.

123. See Wall Street Journal, *supra* note 5.

124. *Id.*

- A failure by a White colleague is explained away as situational, but failure for a Black attorney is demonstration of incompetence.
- One Black attorney spoke of being mistaken for the clerk of court by her presiding judge.
- Black participants reported that they have to go “above and beyond” to get the same respect as their White colleagues.
- One female expressed frustration with White women colleagues wanting to touch her “exotic” braided hair.
- One Black student discussed their embarrassment when being chastised by a White professor for her ‘poor English’—in the classroom.
- One Black participant recalled a judge before whom he was about to conduct a jury trial warning him not to mispronounce words like “ask.”

After surfacing various forms of bias and microaggressions, the participants then moved to an exercise called *The Race Card*. The Race Card experiment was created by National Public Radio journalist Michelle Norris.<sup>125</sup> It was designed as a vehicle to start conversations about race.<sup>126</sup> In advance of our module on race, we had the participants: 1) consider their questions, hopes, dreams, laments or observations about race and identity, and then 2) take those thoughts and distill them to just one sentence that had only six words—no more, no fewer.

Facilitators had the participants place their essay on a piece of paper, with their name on the bottom. The facilitators asked the participants to recite what they had written and offer the backstory. That exercise yielded incredibly powerful, moving, and even harrowing accounts.

One participant, a Black woman, wrote “I fear for my son’s life.” She then told of her daily angst to keep her now 30-year-old son *alive*. She was

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125. *The Race Card*, MICHELLE NORRIS, <https://michele-norris.com/theracecard/>, <https://perma.cc/A4YJ-HKGH>].

126. *Id.*

compelled to remind him that, as a tall, large, Black man, police will almost instinctively read him as a threat, because of their unchecked stereotyping. If there is a conflict; she discouraged him from being in any places in which police conflict might arise, e.g., protests. She cried as she told the class how she made him attach his driver's license, vehicle registration document, and insurance card to his car's sun visor so that if he were stopped by police, he would not have to reach into the glove compartment and arouse anxiety or panic. After she finished, save for some quiet sobs, the room was silent for minutes.

#### ii. Gender in the Workplace

Our gender in the workplace session went beyond a discussion of the disparate numbers in hiring, promotion, retention, and advancement in legal and business organizations and overt acts of discrimination. The session began with two hypotheticals—one involving a woman in a firm conference meeting, another involving a client assignment. The takeaways from each illustrated the ways in which a host of microaggressions operate against women in practice.

From there, the participants' conversations emerged from their own experiences with "casual" sexism, such as experiencing men taking credit for their ideas in meetings, being relegated to 'helping' roles in the firm (organizing social events, cleaning the breakrooms), and other microaggressions at work. Equally powerful were those accounts of Black women in the group who saw gendered and racial behavior in the workplace, such as a Black female lawyer being told to "smile more." In the session:

- Participants observed that women who voice their opinions or are unafraid to disagree with others are often described as "aggressive," "pushy," or "self-interested," while the same behaviors engaged in by a man are expected and therefore are more likely to be referred to as "leader-like," "strategic," or "assertive."
- Several female participants expressed frustration at being interrupted by men in meetings, being talked over, or that their ideas were not taken as seriously as their male peers.

- Law firms lack clear and equitable succession policies that would prevent retiring partners from favoring associates who looked like themselves (viz. White men).
- Participants affirmed the surveyed experience wherein women of all races reported that they were treated worse after they had children; that is, they were either passed over for promotions, given “mommy track” low-quality assignments, demoted or paid less, and/or unfairly disadvantaged for working part-time or with a flexible schedule.

### iii. LGBTQ+ Identity in the Workplace

For this module, we invited three out lawyers from various fields with a combined 60+ years of experience to discuss their experiences as gay or lesbian attorneys. We asked them three questions:

1. What was your experience as a gay person working in an overwhelmingly straight space?
2. Considering your workplace, courts, clients, and communities, what were the codes, signs, politics, and formal and informal norms that reinforced feelings of marginalization for you?
3. Where do you see things today that better allow you and others like you to be their authentic selves?

We staged this as a conversation between the three in a ‘fishbowl’ setting, with the participants listening in on the panelists’ exchange. The lawyers discussed with each other their own personal career journeys, identifying common and distinct experiences, especially regarding the ability to be ‘out,’ the need to ‘cover,’ or the sheer exhaustion suffered from having to engage in identity management. In addition, the panel exchanged experiences that highlighted how pervasive and embedded heteronormative policies and practices are in the workplace.

In the last part of this session, participants began to comment on what they heard, and to offer their own insights.

- One participant discussed his reluctance to put a picture of his male partner on his desk at his law firm because of concerns about overt or quiet discrimination.
- When coming out to a colleague at work, one participant was told “you don’t act gay.”
- One of the panelists was told by her former supervisor to “manage” her attire when working with a particular client.
- One participant recounted an ongoing debate within their firm to establish gender-neutral bathrooms.
- Another participant astutely noted how these experiences can create not only feelings of frustration, but also fatigue, anxiety and depression for LGBTQ+ attorneys.

*D. Responding to Stereotypes, Bias, Micro- and Macroaggressions in Workplace*

Through the dialogues on identity, we hoped that the participants came to appreciate how stereotypes, unconscious bias, and micro- and macroaggressions, if left unchecked, may pose a formidable obstacle to diversity, equity, and inclusive belonging in organizations. To allow the participants to devise possible ways to combat these barriers in the workplace, we spent a class session centered on allyship, bystander intervention methods, and interrupting bias.

We first had participants read and then discuss approaches to bias interruption. We opened the session by asking participants why they would want to avoid engaging in adverse stereotyping and bias. Responses alternated from “it’s important to me,” to “it’s the moral thing to do,” and “I would not want that to happen to me.” From there, we apprised the participants of “internal” and “external” ways to manage stereotypes and biases.

For this discussion we used the participants' assigned reading on "controlled processing." Controlled processing relates to a habit of mind associated with low-prejudice people.<sup>127</sup> In contrast to automatic processing, controlled processing is the active rejection of stereotypes and labels.<sup>128</sup> In its place, low-prejudiced people engage with more egalitarian thoughts and motivations to individualize the person with whom they are engaged.<sup>129</sup> The takeaway for the group was that, as they themselves experienced and discussed in the bias modules, failure to engage in this internal approach to managing stereotypes or unconscious biases will allow them to affect decision making in significant ways.

More obvious to the participants was the application of external processes to compel employees to engage in controlled processing. We asked them "what prevents you from engaging in discriminatory behaviors, say as a racist or sexist?" Participants cited avoiding personal embarrassment, being sued, being shunned, or being fired. They arrived at external norms to implement that would mitigate or eliminate biasing tendencies. For example, one participant discussed their use of interview panels for new hires. Another talked about their changes to attorney evaluation procedures to include peer feedback as a check on possible biases of any one evaluator impacting the subject of the evaluation.

We also discussed approaches to mitigate the harms that emerge from micro- and macroaggressions. The participants were clear that combatting macroaggressions first requires identifying them and why they exist. In discussing the ways in which microaggressions are perpetuated by those in power, the group concluded that dismantling macroaggressions also invariably requires engaging organization leaders, and impelling them to abandon those inequitable institutional policies and practices. For example, including more diverse portrait presentations in the office, creating gender-neutral bathrooms, implementing more equitable systems of promotion and

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127. Kimberley A. Clow & Victoria M. Esses, *Expectancy Effects in Social Stereotyping: Automatic and Controlled Processing in the Neely Paradigm*, 39 CANADIAN J. BEHAV. SCI., no. 3, 2007, at 161, 162; MARGO J. MONTEITH, STEVEN A. ARTHUR, & SARAH MCQUEARY FLYNN, *Self-Regulation and Bias*, THE SAGE HANDBOOK OF PREJUDICE, STEREOTYPING AND DISCRIMINATION 494-95 (John F. Dovidio, Miles Hewstone, Peter Glick and Victoria M. Esses eds 2010.)

128. See MONTEITH ET.AL., *supra* note 124, at 496.

129. *Id.* at 495.

compensation in law firm organizations were considerations the participants proposed.

Microinterventions, sometimes referred to as bystander interventions,<sup>130</sup> are interpersonal tools that are intended to counteract, change, or stop microaggressions by subtly or overtly confronting and educating the perpetrator.<sup>131</sup> The participants used prepared hypotheticals as well as examples surfaced in our identity sessions to explore ways to intervene when microaggressions occur. After discussing the hypotheticals and other examples, the facilitator helped distill the possible microintervention approaches. Those approaches entailed making the invisible visible (e.g., asking “What did you mean by that?”); disarming the microaggression (e.g., saying, “I disagree with that sexist stereotype.”); educating the offender (e.g., saying, “While you might have intended to make a joke, you actually harmed students of that faith.”); and seeking external support (e.g., seeking guidance from a peer or senior associate).

#### *E. Leadership and Organizational Development*

The Academy was also designed to educate on organizational development and management, with a dual emphasis on law firms and DEIB practices. Borrowing from business school applied scholarship, our latter modules focused on leadership development, performing organizational assessments, developing strategic plans, and dialogue on the role of middle managers.

Two-thirds into The Academy, we had hoped to achieve a consensus among the participants around the principle that to foster an effective, sustained DEIB ethos, organizations must equip themselves to implement bias-interrupting interventions. With that, we then began to discuss the essential human resources needed for that implementation. Our final sessions focused on leadership, department managers, and “followers” within organizations.

Moving an organization from its current state to a desired state of DEIB practice involves actor buy-in at all levels of the enterprise: initiators,

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130. This term is limiting however, as it presumes the absence of agency on the part of target of the microaggression. Although there may be legitimate reasons why a microaggression target cannot or will not engage in a response, they are not without agency to do so.

131. SUE & SPANIERMAN, *supra* note 109, at 56.



leaders, agents, managers, frontline employees, and change targets/recipients.<sup>132</sup> Above all, organizational change requires effective leadership, and that is what the participants first set about examining.

#### i. Leadership Development

Effective leadership is indispensable to envisioning, creating and sustaining organizations committed to DEIB. Several of The Academy professionals were mid-level, senior partner attorneys or business executives. Considering their management responsibilities, we thought it would be valuable to have them think more intentionally about their own leadership style and the ways in which they could be more effective in growing the DEIB practices in their organizations.

Any effective DEIB program must be affirmed by senior members, and at least one who sets out the firms' vision and is held accountable for its success.<sup>133</sup> The first objective for successful DEIB planning is to ensure that those in leadership roles fully support the work.<sup>134</sup> Support entails providing the tools and resources to participating units and/or partners, including guidance for unit-based planning and implementation.<sup>135</sup>

With those imperatives in mind, we engaged the topic of leadership development along three distinct themes: 1) performing self-assessments; 2) the concept of followership; and 3) engaging with White men who resist DEIB programs.

#### a. Performing Self-Assessments

We invited the entire group to perform self-assessments on leadership. One tool used was The Leadership Circle Profile ("TLCP"), a competency-based 360-degree assessment tool.<sup>136</sup> The goal was to allow participants to

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132. Tupper F. Cawsey, Gene Deszca & Cynthia Ingols, *Organizational Change: An Action-Oriented Toolkit* 307 (Terri Lee Paulsen et al. eds., 3rd ed. 2015) (discussing roles in organizational transformation).

133. See Pamela Kay Caldwell, *Top-Down Workplace Diversity and Inclusion*, in LEADING WITH DIVERSITY, EQUITY AND INCLUSION, *supra* note 97, at 137.

134. See *Id.*

135. Pushpa Rani, *Implementation in Organizations: A Conceptual Overview*, 14(3) MANAGEMENT 205, 207 (2019) (discussing factors for successful strategy implementation).

136. Leadership Circle, *Leadership Circle Profile*, <https://leadershipcircle.com/leadership->

link common leadership patterns to their own habits of thought.<sup>137</sup> With the TLCP, participants were able to assess their own preparedness for leadership and link their outcomes with theoretical frameworks in leadership and psychological literature.<sup>138</sup> The aim was to allow participants to situate their leadership assessment outcome with the goal of developing effective DEIB plans for their organization.

The facilitator closed this part of the session with a discussion of practices that create inclusive belonging in organizations. This submodule opened with a working definition of inclusive belonging. Inclusive practices are those which 1) result in people feeling that they are insiders who 2) experience a sense of belonging and psychological safety, and 3) their uniqueness highly valued.<sup>139</sup>

The facilitator asked the participants about their personal experiences with direct managers. Many themselves had managerial experience, as heads of law firm departments, company departments, or leads of discrete organization projects. The facilitator asked the group not only to rely upon the assigned reading, but also their own experiences.

The facilitator placed two words on a whiteboard: “Facilitator” and “Inhibitor.”

He then asked the group to articulate examples of leadership behaviors that facilitate inclusive belonging, and those that inhibit the same. Some of the qualities articulated by the group included:

- Being ethical
- Creating a culture of psychological safety<sup>140</sup>
- Being transparent

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assessment-tools/leadership-circle-profile/ [https://perma.cc/6V8S-GFWW].

137. William Bradley, Solution Design, Delivery and Support, VerifyMe, Class Presentation (Apr. 8, 2023).

138. *Id.*

139. *Id.*

140. This entails creating climates where team members do not withhold ideas and feel they can speak up without reprisal or being attacked. *What is psychological safety?*, MCKINSEY & CO. (July 17, 2023),

<https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-psychological-safety#/> [https://perma.cc/V5SM-3VHV]; see also William A. Kahn, *Psychological Conditions of Personal Engagement and Disengagement at Work*, 33 ACAD. MGMT. J. 692, 708 (1990) (discussing psychological safety).

- Trust
- Managing my own stereotypes
- Training and education
- Modeling inclusive behavior
- Listening with an open mind
- Identifying individual strengths
- Psychological availability<sup>141</sup>
- Ensuring shared understanding of goals
- Giving team members positive reasons to engage

The facilitator then asked the group to ideate inhibitors to inclusive behaviors:

- Microaggressions and macroaggressions
- Unconscious bias
- Being inattentive to personal needs
- Lack of transparency
- Perceptions of hierarchies as “ingroups”
- Being uninspiring
- Inability to give constructive feedback
- Silencing team members

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141. Psychological availability refers to the need of all employees to have the capacity to engage by, e.g., mitigating the impact of physical and temporal resources away from the job, self-confidence, or stressors. *Id.* at 714.

### b. Followership

We moved away from a discussion of qualities of effective leaders and their impact on processes and outcomes to a conversation on *followership*. The facilitator made the case that employees are not merely passive recipients or, at best, moderators of leader influence and behaviors.<sup>142</sup> He did so by engaging the participants in an active exercise where they were placed in small groups to discuss the positive and negative attributes of leaders in an organization to which they had belonged.

After coming together and synthesizing responses, the group was able to conclude that in successful ecosystems, leaders and followers engage in a type of psychological exchange. Ideally, leaders give direction and vision; protection and security; achievement and effectiveness; pride and self-respect; and, most relevantly, inclusion and belongingness.<sup>143</sup> In exchange, leaders receive focus and self-direction; gratitude and loyalty; commitment and effort; cooperation and sacrifice; and respect and obedience.<sup>144</sup> The facilitator emphasized that everyone cannot be an organization's leader, and that was not only fine, but essential. Leaders need thoughtful followers who also play distinctive roles in advancing firm goals.<sup>145</sup> For our purposes, it was important that the participants appreciated the distinctions and dynamics of each role.

### c. Speaking to White Men and the C-Suite

In the final part of this module, some participants acknowledged that they would need to address concerns of their work peers who feel they are being disadvantaged by DEIB initiatives. Particularly, the participants wanted to discuss the need for White men to increase their support for DEIB efforts within their organizations. While White men are not the only people

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142. Burak Ock & Michael R. Bashshur, *Followership, Leadership And Social Influence*, 24 THE LEADERSHIP Q., at 919, 920 (2013).

143. Sevgi Emirza, *Compassion and Diversity: A Conceptual Analysis of the Role of Compassionate Leadership in Fostering Inclusion*, in LEADING WITH DIVERSITY, EQUITY AND INCLUSION, *supra* note 97, at 131–34.

144. *Id.*

145. See Desiree Benson, *Followership*, UNIV. OF SASKATCHEWAN (Nov. 25th, 2018), <https://static1.squarespace.com/static/5df3bc9a62ff3e45ae9d2b06/t/5e4c5f97e872c67900f3d204/1582063514325/Followership+-+Kellerman.pdf>

[<https://perma.cc/Y39E-CJAP>].

who may express resistance to or even resentment toward DEIB programs, as we see from the data alone, White men occupy the majority of organizational space and, critically, leadership.<sup>146</sup>

The group discussed possible reasons for White men failing to participate in firm DEIB efforts. There were myriad reasons asserted for their lack of engagement, and many were surfaced by the White men in the class session. Some White men want to engage but don't want to "intrude;" some do not know how to engage as an ally; some offer support only when asked to do so; some flatly believe these initiatives are unfair.<sup>147</sup>

Our facilitator discussed some possible approaches to dialogues.

- Look for common ground by asking what they perceive to be unfair about DEIB initiatives.
- Emphasize the point that diverse talent is good for business, especially as clients are insisting upon it.
- Make personal appeals, for example, by asking "wouldn't you want your (wife, daughter) to work in a space that values them for their perspectives, and where they can thrive?"
- Emphasize that DEIB is not a zero-sum game; if the organization is stronger and performs better, more opportunity is created for everyone.
- Explain how DEIB efforts contribute to establishing policies that benefit a broader group. For example, flexible work arrangements that ostensibly benefit women also benefit men.

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146. In 2019, 85.6 percent of Fortune 500 CEOs were white men. That share rose to 86.2 percent in 2020 and was 86 percent in 2021. Dana Wilkie, *How DE&I Evolved in the C-Suite*, SHRM EXEC. NETWORK, (July 1, 2022), <https://www.shrm.org/executive/resources/articles/pages/evolving-executive-dei-diversity-c-suite.aspx> [<https://perma.cc/6K9P-ZPCJ>].

147. See Lily Zheng, *How to Show White Men That Diversity and Inclusion Efforts Need Them*, HARV. BUS. REV., (October 28, 2019).

- Above all, highlight what can be gained in terms of leadership. The most effective leaders are those who can lead diverse teams.

## ii. Organizational Assessment

We wanted the participants to learn how to examine their organizations to determine the extent and effectiveness of its DEIB practices. We invited them to use the Diversity, Equity and Inclusion Spectrum Tool.<sup>148</sup> While there are several variations of DEIB assessment tools,<sup>149</sup> each is framed with organizational structural components and more specific topics of inquiry within each component.<sup>150</sup> DEIB assessment tools identify several organizational areas of inquiry within three broad categories: 1) institutional commitment to DEIB, 2) institutional practices for hiring and engagement, and 3) committee staff structure and actions.<sup>151</sup>

For example, “institutional commitment” may mean asking whether the firm has articulated a DEIB vision or reviewing the existing diversity within the organization. “Institutional practices for hiring and engagement” may entail looking at job descriptions or website narratives and the presence or absence of biased or exclusionary terms or phrases. “Committee staff structure and actions” may mean assessing the need to have a member or group lead DEI initiatives, or the presence of employee resource groups within the firm.<sup>152</sup>

While we asked participants to complete an organizational assessment, for confidentiality reasons, we did not have them submit their responses. We did ask them to generally discuss “hypothetical” challenges found in law firms and organizations. Several discussed job descriptions and noted

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148. Meyer Memorial Trust, *Diversity, Equity, and Inclusion Spectrum Tool*, <https://mmt.org/news/understanding-meyers-dei-spectrum-tool> [https://perma.cc/8WNJ-6M3P].

149. Trinidad Tellez, *Diversity, Equity, and Inclusion (DEI) Organizational Assessment Tools: A Resource Guide*, INST. FOR ECON. AND RACIAL EQUITY (2021), <https://heller.brandeis.edu/iere/pdfs/dei-organizational-assessment-tools.pdf> [https://perma.cc/UZE8-ES34].

150. National Association of Colleges and Employers, *Diversity & Inclusion Self-Assessment* (Aug. 2022), <https://www.nacweb.org/diversity-equity-and-inclusion/resources/diversity-and-inclusion-self-assessment/> [https://perma.cc/M2VC-HEHU].

151. *Id.*

152. *See id.*

the presence of, for example, anti-discrimination language. Others observed prominent placement of firms' DEIB policies and promotions on websites. Yet others still found wanting the promotion and retention structures that predominantly work against minoritized people and women in their organizations.

More than one participant discussed their firm's struggle with hybrid work. The pandemic imposed an entirely new work and business model in firms, and many struggled to adjust, especially regarding how hybrid work impacted evaluation, retention, and promotion. The group discussed how hybrid work environments, if not carefully considered, adversely impact women and minorities especially, who were disproportionately impacted by COVID and family imperatives.

Another structural assessment that generated a good deal of discussion was first articulated by law students. Students bemoaned the practices of large national or international firms that only hire top students from some of highest ranked law schools, which perennially lack meaningful racial and ethnic diversity. Moreover, regardless of law school rank, most firms continue to hire from student prospects who are themselves ranked in the top 10% or 20% of their law class. One participant lamented that the number of minoritized students in those ranks are perennially low, and the failure of law firms to untether the likelihood of success as a lawyer from law school G.P.A. remains *the* primary impediment to increasing organizational diversity.

### iii. Developing Strategic Plans

Strategic planning is a process that outlines the direction of an organization. It identifies how an organization will allocate their resources to achieve a desired future state while positioning itself to be competitive within the industry.<sup>153</sup> Strategic plans evolve through 1) pre-planning; 2) developing a planning process; 3) data collection and analysis; and 4) developing and finalizing the plan.<sup>154</sup>

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153. Dan R. Ebener & Frederick L. Smith, STRATEGIC PLANNING: AN INTERACTIVE PROCESS FOR LEADERS at i (2015) ("we define strategic planning as one of the interactive processes that moves leaders, managers, and followers toward that shared vision or common goal.").

154. William D. Bradley, *supra* note 134. *Id.*, at 13–15; Ronald C. Machen & Cadene Russell Brooks, *Establishing a Strategic Plan to Advance Law Firm Diversity and Inclusion Efforts*, SAVOY

Strategic plans must set forth a substantive, clear and well-organized process for implementation at all levels of the organization. Planning might include clearly defining operative terms (e.g., “diversity”), establishing decisional hierarchies, working groups or committees, and the allocation of human, financial and technical resources. Equally essential to strategic plans is the need to create metrics to measure plan effectiveness.<sup>155</sup> Above all, strategic plans should be flexible and evolvable and build in opportunities for stakeholder feedback, revision, and course correction.

We gave the participants a hypothetical law firm’s vision, mission, and goals for their organization’s DEIB practices. We then asked them to 1) identify the aspects of their firm or organization that must be aligned with the vision, mission, and goals; 2) identify the personnel essential for collaboration; 3) establish metrics for success; and 4) identify the resource (human, financial) needs essential to succeed.

The group was able to talk about the need to assess all aspects of their organization’s functions, *viz.*, job descriptions, evaluation and promotion policies, public-facing communications such as websites, the need for diversity training, and the need to empower all levels of management. They also discussed the value of climate surveys, educational opportunities for organization members centered on cultural competence, and instituting inclusive and belonging practices.

We hoped The Academy participants could engage in a sustained, impactful learning experience that coursed fundamental DEIB principles through their workplace experiences. The success of The Academy was vitally conditioned upon creating the space where the participants felt comfortable discussing and learning about difficult topics such as bias centered on race, gender and the like. We also hoped that the participants got value from the exercises we conducted, and the tools we gave to them to utilize in their organizations.

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(Feb. 20, 2022), <http://savoynetwork.com/establishing-a-strategic-plan-to-advance-law-firm-diversity-and-inclusion-efforts>. [<https://perma.cc/R4YB-A388>]

155. Janet Bautista Smith, THE ART OF INTEGRATING STRATEGIC PLANNING, PROCESS METRICS, RISK MITIGATION, AND AUDITING 4 (2016).



### III. OUTCOMES AND AVENUES FOR IMPROVEMENT

The Academy finished in April, and in our final session, we asked the participants for feedback. They gave both oral and written comments. Above all, they were extraordinarily receptive to The Academy's concept of integrating law, business, and organizational and leadership theory into DEIB learning and bringing together such a diverse learning group. They were especially positive about the modules on structural bias ("riveting"), and leadership ("I learned a great deal about myself and my limitations"). They also appreciated the tools for practical application ("I will use the leadership assessment tool with my team"). Conversely, some wanted *more* tools (e.g., for strategic plan development and approaches for ally-building).

One early mistake resulted in an early course-correction. Aside from the assessment that it was unnecessary to separate law students from the other professionals, other critiques centered on The Academy's timing. The fact that the program spanned several months, and each session was mandatory created significant barriers to participation. As a result, several members of the community could not participate because they were unable to fulfill such a long-term commitment.

Out of our desire to ensure authentic dialogues, we initially divided the participants into two cohorts: Professionals—the lawyers, judges, executives and educators, and pre-professionals—and the law students. We did this out of a concern that participants would engage in self-censorship during the structural bias conversations. We feared that students, in the presence of potential employers, would be reticent to speak authentically, or worse, conform their statement to what they heard others saying. We also feared that the professionals, particularly the lawyers and judges, would be reticent to discuss structural bias in their work experience for fear of disclosing unflattering information about their organizations.

Gratefully, our concerns were not well-founded. In our debriefing after race and gender sessions, participants roundly agreed that it was not only fine but important for all the participants to share the same conversational space on these issues and on the entire program going forward.

The Academy will be offered again in Fall 2023. We fully intend to take participant feedback into account. This year's iteration, for example, will compress several modules into a 3-day workshop, with the remainder being platformed on its CANVAS site. We are also aiming to expand enrollment

opportunities by facilitating CLE accreditation for out-of-state lawyers who wish to participate. Finally, we would like students to receive law school credit for participation instead of a mere transcript notation. This pilot experience gave us much to reflect upon for The Academy's next iteration.

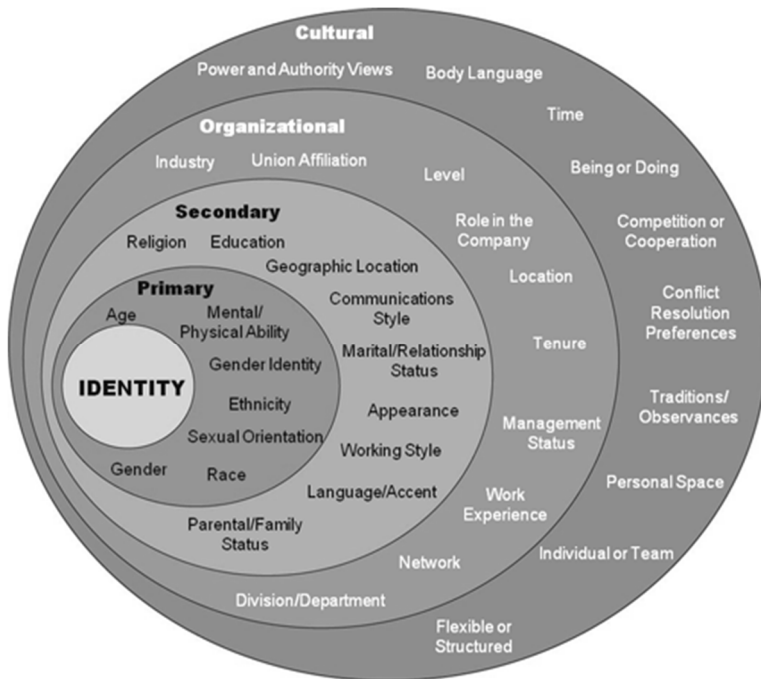
### CONCLUSION

Improving diversity in the legal industry has significant implications beyond just improving equality in the profession. As painfully evidenced in the context of the events of 2020, there is an urgent need for legal education to better prepare current and future professionals to identify, assess, and reform policies and practices, which perpetuate inequality. That is the critical goal of The Academy.

Ultimately, The Academy should confer profound benefits to our students, law firms, and the legal community. Offering DEIB education along with our law school curriculum is a moral and professional obligation we have to our students. Moreover, The Academy teaches distinct skills highly valued by law firms and legal organizations. The Academy empowers current professionals to immediately introduce the best approaches to improving their organization's DEIB efforts and position them to take on leadership roles to ensure the perpetual advancement of the organization's goals. In the long run, The Academy will enable law firms and legal organizations to build capacity, leveraging its own members to implement, lead, and perpetuate the organization's commitment to diversity, equity, and inclusive belonging.

APPENDIX A: EXPLORING COMPLEX IDENTITIES

I. YOUR IDENTITIES



## II. EXPLORING COMPLEX IDENTITIES

Aspects of identity	Groups that experience privilege	Groups that are marginalized or oppressed (U.S. context)
<b>Gender</b>	Men	Women, trans; genderqueer; intersex
<b>Gender identity</b>	Cisgender/ Non-trans	Transgender; genderqueer; gender non-conforming
<b>Race</b>	White people	People of color
<b>Sexual orientation</b>	Heterosexual	Gay; lesbian; bisexual; queer
<b>Age</b>	30s to early 50s	Younger and older
<b>Class-socio-economic</b>	Middle class; owning class	Working poor; working class
<b>Educational level</b>	College graduate	High school or less
<b>Religion/ spirituality</b>	Christian; protestant or catholic	Muslim; Jewish; Buddhist; Hindu; agnostic; spiritual; pagan
<b>Nationality</b>	U.S.-born; born as U.S. citizens	Born outside the U.S.; immigrant to U.S. with or without legal immigration status
<b>Childhood family structure</b>	Raised by biological family in an environment that felt safe and without abuse	Adopted or raised in the foster system; amongst domestic violence, sexual violence, with drug or alcohol abuse in the home, and/or other home experiences that felt unsafe and lacked stability
<b>Ability/ disability</b>	Able-bodied	Living with a physical, mental, emotional, and/or learning disability
<b>Ethnicity/ culture</b>	Western European	Dine, Persian, Ilocano, Vietnamese, Yoruba, Kazakh, Arab, etc.
<b>Size/ appearance</b>	Slender; perceived as attractive; handsome; beautiful; etc.	Of size; particularly tall or short; perceived as unattractive
<b>Use of English</b>	“proper” English	Accented English; another primary language
<b>Marital/ parental status</b>	Married in a heterosexual relationship with or without children	Divorced; single; lgbtq parent; domestic partnership or gay marriage; single parent
<b>Organizational status/role in company, firm or organization</b>	Partner, c-suite	Manager, department leader, junior associate, paralegals, pre-professional

Use this grid to think about the social complexities of our identities and how they impact our daily experiences. The first column lists the various

(nonexclusive) dimensions of identity. The second column lists (nonexclusive) examples of groups that enjoy privilege with respect to that identity. The third column lists some (nonexclusive) groups who are marginalized or oppressed with respect to that same identity.

Complete this grid by marking whether you currently belong to a group that is privileged or marginalized within each of the 16 categories of identity.

Once you have marked the identities that presently apply to you, answer the reflection questions below.

### III. REFLECTING ON PRIVILEGE

You may find that you are a member of the privileged or oppressed/marginalized group in the majority or all of the categories. If so, pay particular attention to your feelings and reactions in noticing that pattern.

1. I am most aware of my membership in the \_\_\_\_\_ privileged group.
2. I am least aware of my membership in the \_\_\_\_\_ privileged group.
3. I have the most experience managing my membership in the \_\_\_\_\_ privileged group.
4. I have the least experience managing my membership in the \_\_\_\_\_ privileged group.
5. I am the most comfortable with my membership in the \_\_\_\_\_ privileged group.
6. I am the least comfortable with my membership in the \_\_\_\_\_ privileged group.
7. I am most aware of my membership in the \_\_\_\_\_ marginalized group.
8. I am least aware of my membership in the \_\_\_\_\_ marginalized group.

9. I have the most experience managing my membership in the \_\_\_\_\_ marginalized group.
10. I have the least experience managing my membership in the \_\_\_\_\_ marginalized group.
11. I am the most comfortable with my membership in the \_\_\_\_\_ marginalized group.
12. I am the least comfortable with my membership in the \_\_\_\_\_ marginalized group.