

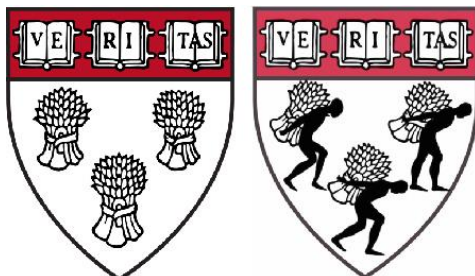
RISING UP

Millennials Could Force
BigLaw To Deal With
Its Diversity Problem

By Max Stendahl | August 8, 2016



On the morning of Nov. 19, 2015, faculty and students at Harvard Law School arrived at Wasserstein Hall on the leafy, cloistered campus in Cambridge, Massachusetts, to find that portraits of black professors had been vandalized, their faces crossed out with black tape. University police investigated the incident as a hate crime but could not find a culprit, fueling conspiracy theories that the tape had been a hoax designed to provoke outrage. And it did, intentionally or not.



Reclaim Harvard Law repurposed the Harvard shield, left, as its logo. Harvard agreed to remove the shield in March amid criticism over its ties to slavery.

During a community meeting on the day of the incident, the dean of HLS told a gathering of students that racism was a “serious problem” at the school, according to a report in the campus newspaper. A few weeks later, a group of students calling themselves Reclaim Harvard Law gave administrators a list of demands. Among other things, the group sought to remove the official HLS shield, an emblem based on the family crest of a wealthy slaveholder named Isaac Royall Jr. whose estate endowed the school in 1817, reduce soaring tuition costs, which the group said disproportionately hurt minority students, hire and promote additional minority staff, create a critical race theory program with at least one tenured faculty member, and require all professors to undergo “cultural competency” training.

On campus, tensions grew. Beginning in February, for several months, members of Reclaim and a related group called Royall Must Fall “occupied” a student lounge and renamed the building Belinda Hall after one of Royall’s slaves. A student posted fliers in the lounge critical of Reclaim, and the fliers were promptly removed, sparking a debate over freedom of speech. At one point, activists claimed to find recording devices in the room, prompting another investigation. (No culprit was found.) In March, the school agreed to remove the shield, only for Reclaim to issue a new demand: eliminating tuition altogether. By the time the school year had ended, the demands were still pending, and Reclaim members were planning to continue their activism in the fall. The dean of students at the law school declined to comment, and a school representative did not respond to an interview request.

HLS is among the most prestigious law schools in the country. It is also one of the most diverse, with students of color making up 44 percent of the class of 2018. Still, many minority students continue to feel that their voices are being marginalized. Bianca Tylek, a Reclaim member who graduated in 2016, said that statistics did not tell the full story, citing what she called “raging sentiments of racism” on campus.

“The fact that there are people in the room doesn’t mean that their voices carry weight,” said Tylek, the daughter of parents who emigrated from Ecuador and Poland. “That’s a reason why microaggressions happen.”



Reclaim Harvard Law organizer Bianca Tylek

The same could be said of the legal industry. Even as law firms nationwide are boosting minority recruitment efforts and devoting significant resources to diversity programs, attorneys of color and

women continue to face significant barriers in attaining partnership status and leadership roles. As a result, the profession has struggled to shed its label as a bastion of white, male privilege.

Experts fear that if law firms don't make immediate strides toward becoming more diverse and inclusive, they risk alienating the next generation of lawyers — millennials who are highly attuned to institutional bias and increasingly vocal about eradicating it. To the extent that industry leaders ignore campus protest movements like the ones unfolding at HLS and other BigLaw feeders, they do so at their own peril.

"If our law firms do not develop a cadre of leadership to reinforce this notion of credibility and faith in our legal institution, we're going to have a real problem," said Husch Blackwell LLP Chairman Maurice Watson, one of the relatively few black lawyers who leads a large U.S. firm. "The pace of change can increase exponentially, and sometimes when you're least prepared for it to happen."

A Wave of Protests

The Reclaim and Royall Must Fall movements at Harvard continue a rich history of campus activism on issues of inequality. In 1990, for example, the law school's first black professor, Derrick Bell, took a leave of absence in protest of a dearth of minority faculty. Among his most vocal supporters was a young student named Barack Obama, who delivered a rousing speech at a campus rally. In July 2009, when prominent black scholar and Harvard professor Henry Louis Gates Jr. was arrested after breaking into his own home in Cambridge — sparking a national debate over the state of race relations — President Obama convened a "beer summit" at the White House with Gates and the city's white police sergeant to discuss the incident.



President Barack Obama toasts with professor Henry Louis Gates Jr. and Sgt. James Crowley at the start of their meeting in the Rose Garden of the White House in July 2009.

Harvard is not the only elite school with deep BigLaw ties that has grappled with racial tensions in recent years. At Columbia, a student group successfully petitioned the law school to postpone final exams for anyone who felt traumatized by grand jury decisions in New York and Missouri not to indict police officers in the Eric Garner and Michael Brown cases. In an open letter to faculty and administrators, the group wrote that students of color sometimes felt "devalued and isolated" on campus and accused the institution of not doing enough to make them feel welcome.

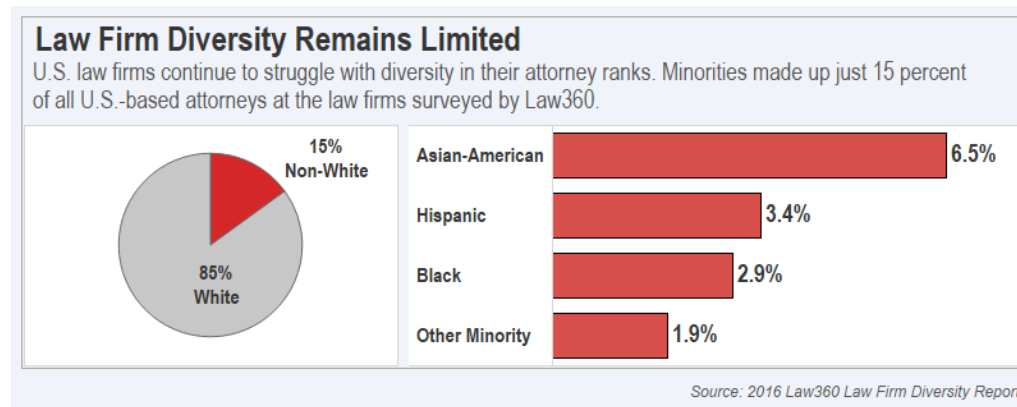
At UCLA, more than 100 students protested the law school's perceived lack of diversity by wearing shirts that read "33/1100," representing what they said was the ratio of black students to all students, the campus newspaper reported. And at UC Berkeley, where incoming students are broken up into different sections or "mods," administrators drew criticism for failing to have any black students in a few of the mods. The law school's dean defended the arrangement, saying that it was designed to eliminate feelings of isolation and help underrepresented students achieve "critical masses."

More prominently, at Yale, administrators have rejected calls by undergraduate and law students to rename Calhoun College, which is named after pro-slavery alum and South Carolina statesman John Calhoun. In March, following months of research and dozens of meetings with students, faculty, staff and alumni, the law school issued a lengthy report on its efforts to improve diversity. Among the recommendations in the report: recruit minority students more aggressively, provide them with extensive mentorship opportunities, and hire faculty members who are diverse — not just in terms of race, ethnicity and gender, but also in their political views and teaching methodologies.

A few months after the report was issued, controversy again erupted on the New Haven, Connecticut, campus. After a black dining hall employee smashed a stained-glass window that depicted slaves and resigned, a group of law students wrote a highly critical open letter to Yale's president urging the school not to press charges. "Yale, like every prominent institution in the United States, has paid lip service to the tenets of racial equality," the students wrote. "But these tenets must be more than just hollow mantras, parroted in order to protect the Yale brand." Police filed charges but later dropped the case, and Yale has said that it will rehire the employee.

The wave of protests comes as law schools nationwide are making steady but modest gains in minority enrollment. According to the American Bar Association, for the 2013-14 school year, the most recent year for which data is available, about 27 percent of enrolled students were minorities. At top law schools that have traditionally fed students to elite firms, the percentage of minority students is around 30 percent, with some schools approaching the 40 percent mark.

But any overall gains in minority enrollment do not appear to be translating into a significantly more diverse profession. Instead, there is evidence of stagnation. Law360's annual headcount survey of more than 300 U.S. law firms found that only about 15 percent of their attorneys were minorities as of the end of 2015, about the same percentage as the year before. Only about 8 percent of partners are minorities, and fewer than 2 percent are black. Data from the U.S. Bureau of Labor Statistics shows that the legal industry is one of the whitest, least diverse professions in the country.



Part of the problem, according to James Leipold, the executive director of National Association for Law Placement, is that layoffs during the recession of 2008 and 2009 disproportionately affected junior associates, generally the most diverse part of a firm. And while many firms have ramped up minority recruitment and hiring efforts, the attrition rate for minorities — particularly black attorneys — remains high, creating a churning effect. “It’s an exaggerated form of the problem that we face in most of American society and business: a lack of equal opportunity for women and minorities,” Leipold said.

Often, Leipold said, female and minority lawyers will pursue in-house careers “because those workplaces have built better cultures.” Still, he added, “I think law firms are taking this very seriously. It’s a big ship, and it takes time to turn it around.”

A New Sense of Urgency

There is growing unease in the profession about a lack of meaningful progress. On Aug. 3, the American Bar Association unveiled a new “diversity and inclusion portal” on its website. The portal includes a searchable database of so-called pipeline programs that are designed to help minorities pursue careers in the law beginning at a young age, training videos about implicit bias, a model survey for clients to assess the diversity of firms, and a model template for creating a diversity program. The ABA said that it will also consider instituting Continuing Legal Education courses that are focused on diversity and inclusion. “It can no longer be acceptable for us to be the least diverse of all comparable professions,” ABA President Paulette Brown said in a statement announcing the new measures.

Broader demographic trends are adding to the sense of urgency. Census data shows that millennials, defined as adults ages 18 to 34, are a more diverse group than past generations. According to the Pew Research Center, millennials recently became the largest share of the total U.S. workforce, and their ranks appear to be growing.

Not only are millennials more diverse, but they also think about inclusion in new and different ways. A 2015 study by Deloitte, based on a survey of thousands of professionals of all ages, found that millennials tended to define inclusion as “having a culture of connectedness that facilitates teaming, collaboration, and professional growth,” whereas non-millennials viewed it as a matter of “representation and assimilation.” In other words, the study found, inclusion for millennials “isn’t just about getting people of different creeds in a room. It’s about connecting these individuals, forming teams on which everyone has a say, and capitalizing on a variety of perspectives in order to make a stronger business impact.”

That should give the legal industry pause. A 2015 paper, written by Fordham University School of Law professor Russell Pearce, University of Denver Sturm College of Law professor Eli Wald and Harvard Law School research fellow Swethaa Ballakrishnen, argued that leaders in the profession have continued to judge attorneys based on individual merit without taking into account the “structural constraints” that disproportionately affect minorities. According to the article, those barriers include, most notably, unconscious bias — the idea that people are often unaware of their own prejudices, which draw on stereotypes and societal norms and can manifest in split-second decisions. Viewing the industry as a color-blind meritocracy made up of “atomistic” individuals has had the positive effect of reducing overt, intentional discrimination, the article argued. But, it said, it has also ingrained the pernicious if unconscious view that white men predominate in positions of authority because of superior merit.

As new scholarship on the subject emerges, law firm leaders say that they are increasingly incorporating unconscious bias training into their diversity programs. At Husch Blackwell, Watson said, “some of the people who seem to get the most out of it are older partners who had never looked at the world from any perspective other than that they believe they make decisions totally based on merit factors.” Watson added that participation in mentorship programs at the firm is voluntary. That approach is backed up by social science research, which shows that mandatory diversity programs can backfire by fueling resentment and, in some cases, reinforcing biases. “You must persuade people that it’s a value,” Watson said.



Students gather for a Reclaim Harvard Law teach-in last December at Dean Martha Minow’s office.
(Credit: Anna Joseph)

Some firms are also rethinking traditional models of evaluation. While recent grads have historically been judged on their first-year academic performance, overall grade point average and admission into an elite school, such factors tend to favor white attorneys and do not necessarily predict future success, according to Michelle Wimes, the director of professional development and inclusion at Ogletree Deakins Nash Smoak & Stewart PC. She noted that many minority attorneys are the first members of their families to attend law school, giving them reduced access to professional networks and what she called “the rules of the road.”

Ogletree, which had the largest percentage of black attorneys among the firms surveyed in Law360’s racial diversity report, focuses instead on the behavioral qualities of job candidates. Key questions include: Can they easily establish rapport with others? Do they listen more than they speak? Are they highly motivated and receptive to feedback? Do they take ownership of their work product and exhibit sound judgment and intellectual courage?

The next generation of lawyers — a group defined in part by its activism on issues of racial, ethnic, sexual orientation and gender inequality — is closely monitoring the industry’s diversity efforts, according to Wimes. “It’s an urgent situation,” she said. “They are astute. They are looking at your results on the [Human Rights Campaign] survey and corporate equality index.”

Ropes & Gray LLP associate Diana Santos said that the firm’s highly diverse atmosphere was a key factor in her decision to join. (The firm was ranked eighth on Law360’s recent list of the top firms for minority attorneys.) Santos, a graduate of Fordham University Law School, said the legal profession’s diversity shortcomings became evident when she interviewed at other firms and found that some of the offices

were mostly populated by men. “I don’t think I would be here without the relationships that I’ve formed as a result of diversity initiatives,” she said.

At Lewis Brisbois Bisgaard & Smith LLP, which ranked third on the Law360 survey, young minority attorneys are given substantial, billable work — not just rote research tasks. This year, the firm launched a summer diversity fellowship program, with around eight total attorneys selected to work at offices in Los Angeles, Dallas, New York and Atlanta. The feedback from the participants has been positive so far, according to partner Karen Campbell, who chairs the firm’s diversity and inclusion committee. “I really wanted to put them in the most real world environments that they could be in,” she said.

The work of promoting diversity and inclusion should not just fall to senior partners and law firm leaders, experts say. Cooley LLP, for example, has a minority associates group — that is, an affinity group that is managed by associates, for associates. Chairs in different regional offices plan networking and social events tailored to the associate experience, while providing an open forum for addressing diversity issues. All associates, no matter how they identify, are invited to join. Last year, the group held a “Cocktails with Cooley” event in Palo Alto, California, where attorneys of all ages and ranks mingled with one another and with a number of the firm’s in-house contacts. “People really want opportunities to socially connect with other diverse attorneys,” said Bethany Lobo, a senior associate who co-chairs the group. “You don’t want to be the only person in the room who looks different.”

Wilson Sonsini Goodrich & Rosati, ranked fourth in Law360’s survey, prides itself on not even having a formal diversity program. Instead, the firm seeks to integrate diversity into its day-to-day operations — for example, by closely tracking how work assignments and opportunities to shadow senior partners are divvied up among minority and majority attorneys, according to Christopher Boyd, the senior director of professional services. At some firms, “people point at the diversity committee and say, ‘Well, it’s their job,’” Boyd explained. “This kind of embedding tends to yield better results when done well.”

Law firms that become more diverse put themselves at a competitive advantage with clients, research shows. According to a recent survey by legal research firm Acritas, corporate clients spend 25 percent more with legal teams that they view as “very diverse” than with teams that are “not at all diverse” or strictly male. Elizabeth Zamora-Mejia, a partner at Atkinson Andelson Loya Ruud & Romo who chairs the diversity and inclusion program, said that many of the firm’s existing and potential clients are making concerted efforts to improve diversity in their own ranks. “They’re going to go with a firm that espouses the same kind of commitment,” she explained.

Atkinson, ranked ninth in Law360’s survey, emphasizes open lines of communication. Associates select partners to mentor them, and are not confined to choosing partners who work in the same practice group or have a similar demographic profile. Zamora-Mejia said that her mentee had chosen her because they are both working mothers. “She wanted insight about how I balance it all,” she said. “That was a great conversation.”

Confronting the Status Quo

Law firm leaders understand that their profession does not exist in a vacuum. “The issues that we face in the legal profession in terms of the recruitment and advancement of lawyers of color, as well as of female attorneys, cannot be viewed in isolation from wider societal issues,” Watson said. He pointed to the recent fallout from a series of deadly confrontations between police and unarmed black men. “It is largely an issue of a lack of understanding that someone from another racial or ethnic background could have a completely different perception of reality than you could,” he said.

Unconscious bias presents the industry with a particularly vexing problem: It is both pervasive and difficult to identify in real time. In an interview, Pearce, the Fordham professor, cited a 2014 study in which 60 law firms partners were given the same memo written by a third-year associate and asked to evaluate it. Half of the partners were told that the associate was white, and half that the associate was black. The partners gave an average rating of 4.1 on a scale of 1 to 5 when they believed that the associate was white, and only 3.2 when they believed the associate was black. Meanwhile, partners who thought that the associate was black identified far more spelling and grammatical errors and gave feedback such as “average at best” and “can’t believe he went to NYU.” The white associate, on the other hand, was described as a “generally good writer” who had “potential.”

Pearce predicted that minority law students would continue to pursue careers in BigLaw despite the industry’s diversity shortfalls, given the prestige and compensation attendant in landing an associate role. Indeed, for attorneys of color, attaining a job at an elite firm may be more of a financial necessity than for their white peers. A 2015 study by the Law School Survey of Student Engagement found that 61 percent of black respondents and 56 percent of Latino respondents expected to have more than \$100,000 in total debt, compared with about 40 percent of white respondents. A similar survey in 2006 documented “only marginal racial and ethnic differences” in such expectations, suggesting that the disparity has grown.

“Women and people of color are tuned in to how firms work,” Pearce said. “They know that they’re not going to get an equal chance if they go to a big firm. It doesn’t mean that they’ll get a zero chance. It just means that they won’t get the same opportunities that a white man will get.” Asked whether there is a heightened awareness of institutional bias among younger attorneys, Pearce said: “There is more awareness on the part of white people like myself. But I think that this was never a secret for women and people of color.”

Tylek, the Harvard student and member of the Reclaim movement, said that she and her peers will sometimes discuss the ongoing lack of diversity at law firms. “We talk about what it means to have a lot of white spaces. Harvard is one of those places,” she said. “It’s undoubtedly a concern, to the extent that a lot of folks feel very uncomfortable in their work environments.” When asked to define diversity, she said, “A diverse workplace is one that provides for and promotes perspectives and people who represent parts of society that have, throughout history, been ostracized and oppressed.”

Tylek recently took the bar exam and is about to begin a fellowship at the Brennan Center for Justice focused on addressing inequities in the corrections industry. But while the fellowship is being funded by Ropes & Gray, Tylek has no plans to pursue a career in BigLaw.

On a recent evening, Tylek said, she was walking to a bar with a friend who will soon start a job at a large, elite firm. The friend disclosed that he would be one of just two black men in the new associate class. Tylek was taken aback. “I’m like, ‘One of two?’” she recalled. Two, the friend confirmed.

“That can’t be the status quo,” Tylek said.

Max Stendahl is a feature reporter for Law360’s In-Depth magazin