

Disrupting Bias and Reaping the Reward\$ of Equity, Equality, Diver\$ity, and Inclu\$ion

GOOD Guys: Law Firm Leaders Edition

*S*HERYL *L.* *A*XELROD

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A certified woman-owned law firm

Agenda

Part I: Unconscious & Confirmation Bias: What They Mean And What We Know About Them

Part II: The Scope of the Damage: How Disenfranchised Women And Historically Underrepresented Men Are

Part III: The Profitability of Diver\$ity: How Equality Multiplies Organizations' Success

Part IV: Tools Everyone Can Use To Become Diversity Champions

Part I: Unconscious & Confirmation Bias: What They Mean and What We Know About Them

- Why are women and historically underrepresented men not treated fairly in the workplace?

Answer: Unconscious and confirmation bias, which come from the disenfranchisement of women and historically underrepresented men

Examples of Unconscious Gender Bias:

The lab manager hypothetical: “Science faculty’s subtle gender biases favor male students” in the National Academy of Sciences

- The scientists evaluating these applications rated the male student: more competent, more likely to be hired, deserving of a better salary, and worth spending more time mentoring.
- These were science faculty from research-intensive universities

Examples of Unconscious Gender Bias:

The lab manager hypothetical: “Science faculty’s subtle gender biases favor male students” in the National Academy of Sciences (continued)

- Female scientists were as likely as male scientists to evaluate the students this way.

The Stunning Data About Unconscious Gender Bias

- **Orchestra Auditions**

- “Blind” auditions increased the likelihood of female musicians being selected by 30%.

- **Venture Capital**

- About 40% of U.S. businesses are owned by women, yet just 2.7% of the money invested by venture capital firms goes to women-owned firms.
- Similarly, women CEOs receive only 3% of total venture capital invested every year in the U.S.

Examples of Unconscious Racial Bias

- **Job Applications**

- Job applicants with white names
 - For every **10 resumes**, they received 1 callback
- Job applicants with African-American names
 - For every **15 resumes**, they received 1 callback

Unconscious Gender and Racial Bias: Who Leads Our Companies

- We prefer not just men, but tall, white men
 - In the US, only about **14.5%** of men are 6' tall or taller, but **58%** of Fortune 500 CEOs are white, male, and 6' or taller.
 - In the US, only **3.9%** of adult men are 6'2" or taller whereas **30%** of Fortune 500 CEOs are.

Malcolm Gladwell, *Blink*

Confirmation Bias: How We Racially Predetermine Competence

- **A Study on Writing**

- A legal memorandum written that intentionally included mistakes in grammar, logic, application of the law, etc.
- Said to be written by Thomas Meyer, a third-year associate with a degree from NYU Law School.
- Sent to 60 partners at law firms, who were asked to judge the potential of Thomas Meyer and to offer feedback.

“Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills,” summarizing an eye-opening study by Dr. Arin N. Reeves

Confirmation Bias: How We Racially Predetermine Competence

- **A Study on Writing (continued)**

- Thomas Meyer was identified as white to half of the partners and as Black to the others.
- The white Thomas Meyer was rated much higher, given more positive feedback and was seen as having much more potential than the Black Thomas Meyer.

“Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills,” summarizing an eye-opening study by Dr. Arin N. Reeves

We All Have Bias

- Black partners were as likely as white partners to more negatively evaluate the purported Black associate's writing.
- The takeaways:
 - We all have bias;
 - We don't want to treat people unfairly;
 - We need to actively and consciously check ourselves against our biases.

What Is the Bias Against Women? That Women Are “Overly Aggressive”

- The notion that women who act the same as their male counterparts are “overly aggressive,” is also known as the “personality trap”
- Bias impacts how we hear women.
- The ABC News Experiment, “Women Endure Surprising Bias in the Workplace” at:
<https://www.youtube.com/watch?v=7nJq6des4jg>
- Either over confident or too meek

What Is the Bias Against People of Color? That They Are Less Competent Than White People.

- “Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills,” summarizing an eye-opening study by Dr. Arin N. Reeves

Bias Impacts Our Reviews

Of Women: In evaluations of 248 people in the technology field:

- Women received comments like “Watch your tone!” “Step back!” and “Stop being so judgmental!” in 71 of 94 critical reviews (over 75% of the time)
- Men received such comments only 2 times in 83 critical reviews (only 2% of the time)
- Against people of color: The Black John Thomas was scored worse, partners found additional errors in his work, and gave him very negative feedback

“The abrasiveness trap: High-achieving men and women are described differently in reviews” by Fortune by Kieran Snyder

Bias Impacting Business Inheritance

- White men inherit business relationships from other men in disproportionately large numbers, often with little client input on the decision.
- Women stockbrokers are assigned inferior accounts
- When stockbrokers leave the firm, the more profitable elements of the portfolio are given to men
- Women produce sales equivalent to men when given accounts with equivalent prior sales histories.

“Performance-Support Bias and the Gender Pay Gap among Stockbrokers,” Janice F. Madden, University of Pennsylvania

Bias Impacts Billing Rates

- Female associates are billed out at lower rates than men.
 - The average hourly billed rate of a female associate at a 1,000-plus lawyer firm was \$27 less than that of her average male colleague—\$377 compared with \$404.

Sky Analytics study of \$3.4 billion in law firm invoice data

Testing for Bias

- Why we have bias – Our socialization into bias
- We all have it
- Despite our biases, most of us want to treat people equally, without favoritism
- Go to Harvard's Project Implicit at:
<https://implicit.harvard.edu/implicit/>

Part II: The Scope of the Damage: How Disenfranchised Women and Historically Underrepresented Men Are

- This explains why we have bias.
- We have become socialized to the bias that exists across our government

The Disenfranchisement of Women in Our Executive Branch

- 0 out of 46 presidents who have been women
- 1 president and 1 vice-president of color
- How our Executive Branch would look if we had reached equality – With **roughly equal** numbers of male and female presidents and about 40% -- **approximately one-quarter** – people of color

Women in Statewide Elective Executive Office in 2021

Statewide Executive Positions

- Women currently hold **94 of 310 seats: 30.3%**
- Of those 94:
 - 51D, 41R, 2NP (non-partisan)
 - **17 are women of color: 18.1%**
 - 9 Governors (6D, 3R); 18% of 50 seats
 - 18 Lt. Governors (11D, 7R); 41.9% of 43 seats
 - 67 Other (34D, 31R, 2NP); 30.9% of 217 seats

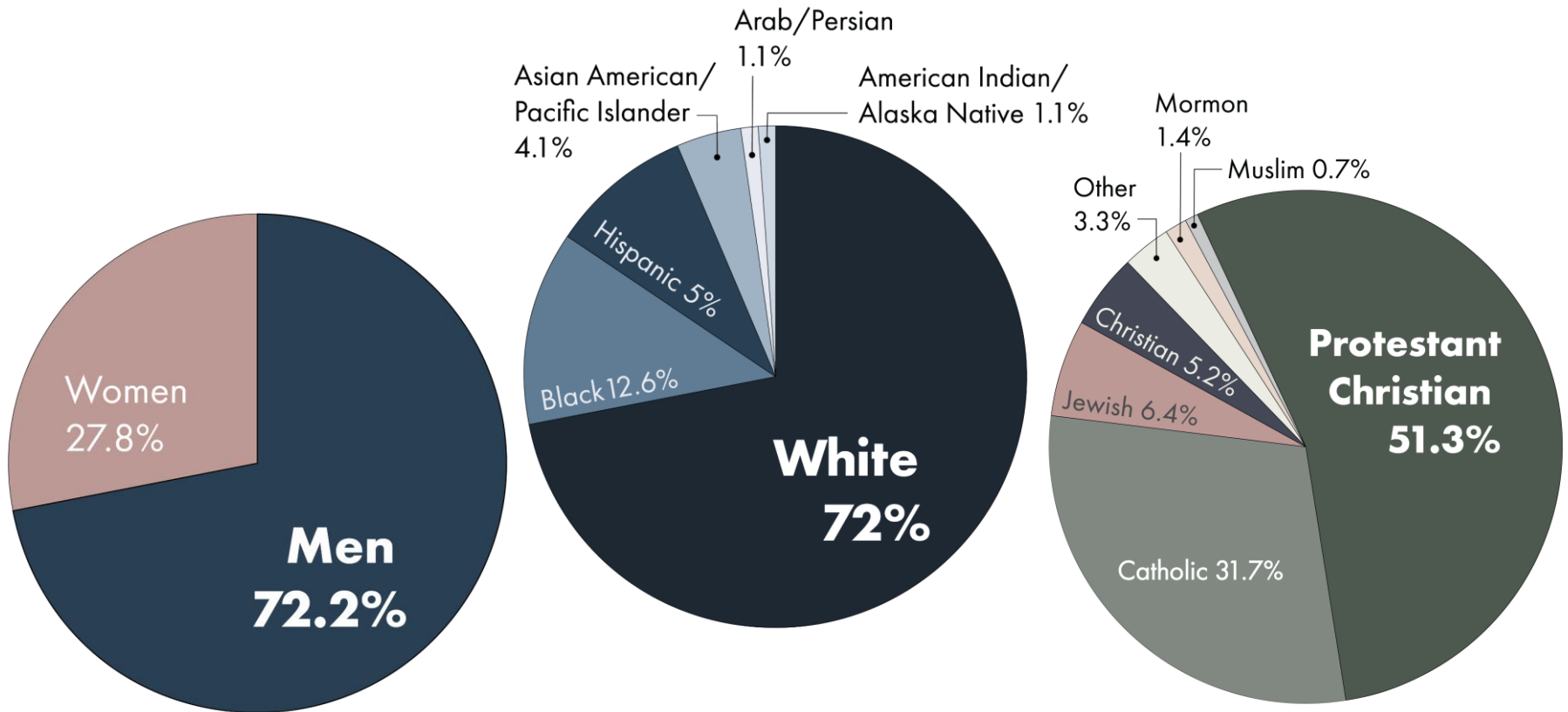
Center for American Women and Politics

Women in Statewide Elective Executive Office in 2021

Statewide Legislature Positions

- Women currently hold **2,274 of 7,383 seats: 30.8%**
- Of those 2,274:
 - 1,506D, 747R, 13NP, 6I, 2P
 - Since 1971, the number of women serving in state legislatures has more than quintupled
 - 557 State Senate (359D, 183R, 13NP); 28.1% of 1,972 seats
 - 1,719 State House (1,147D, 564R, 6I, 2Prg); 31.8% of 5,411 seats

Disenfranchised Women and Historically Underrepresented Groups in the Legislative Branch



https://www.legistorm.com/congress_by_numbers.html

How Our Legislature Would Look if We Were at Equality

- We would have roughly 50% women and about 40% would be people of color.

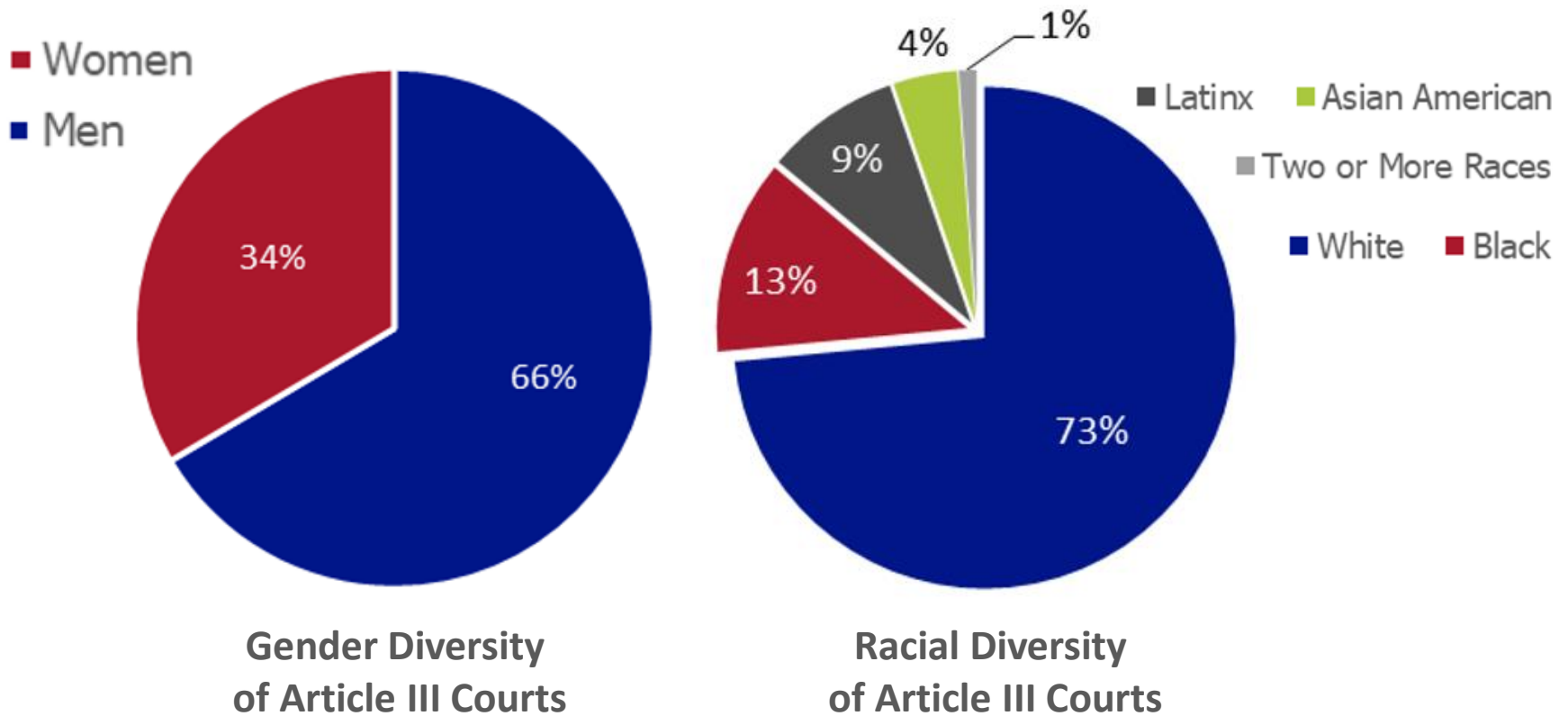
70% of the people of the United States are Christian, versus the 83% of our legislature that is.

How Disenfranchised Women and Historically Underrepresented Men Are in the Supreme Court

- **3 women** (Justices Elena Kagan (EK), Sonia Sotomayor (SS) and Amy Coney Barrett (ACB)) / 6 men – Men outnumber women by a factor of 2 to 1
- **2 racial minorities** (Justices Clarence Thomas and SS) – Whites outnumber people of color by a factor of 3½ to 1
- **2 religious minorities** (both Jewish) (Stephen Breyer, and EK) – Christians (virtually all, Roman Catholics) outnumber non-Christian justices by a factor of 3 to 1
- **None openly LGBT**

White Men Dominate the Judiciary

For sitting federal judges as of February 24, 2020:

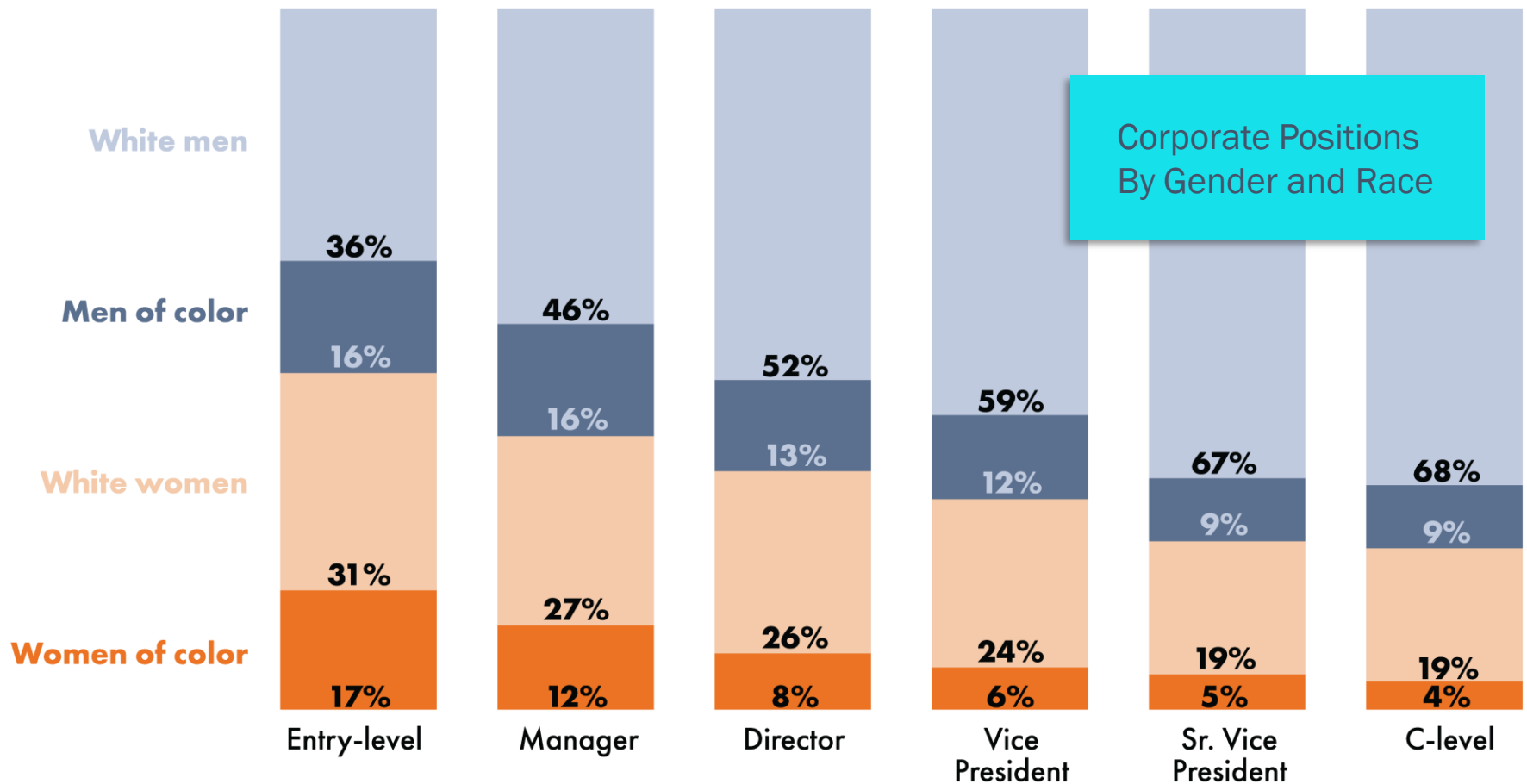


acslaw.org/judicial-nominations/diversity-of-the-federal-bench-march-2020/

How Our Judiciary Would Look if We Were at Equality

- We would have roughly 50% women federal court judges and over 40% of our judiciary would be people from historically underrepresented groups – including on the Supreme Court.

White Men Dominate the Top of Corporate America



Women in the Workplace 2018, in which Leanin.org and McKinsey examined the employee pipeline of 279 US corporations.

How Our Corporations Would Look if We Were at Equality

- We would have roughly 50% women at the top of our corporations and over 40% of those heading them would be people from historically underrepresented groups – including on our Boards of Directors and as CEOs.

The Impact of Being Steeped in a Biased Environment

- Growing up in a society in which women and other historically underrepresented groups have been so greatly disenfranchised, led us to:
 - Become conditioned to our disenfranchisement;
 - Internalize biases against women, i.e., that women:
 - should not be self-possessed or assertive;
 - don't belong in leadership positions;
 - are viewed as less trustworthy when they are in leadership positions;
 - are viewed as less likeable when they are in leadership positions.

The Impact of Being Steeped in a Biased Environment

- Growing up in a society in which women and other historically underrepresented groups have been so greatly disenfranchised, led us to:
 - Internalize biases against people of color, i.e., that people of color:
 - are less competent;
 - don't belong in leadership positions.

Part III: The Profitability of Diversity: How Equality Multiplies Organizations' Success

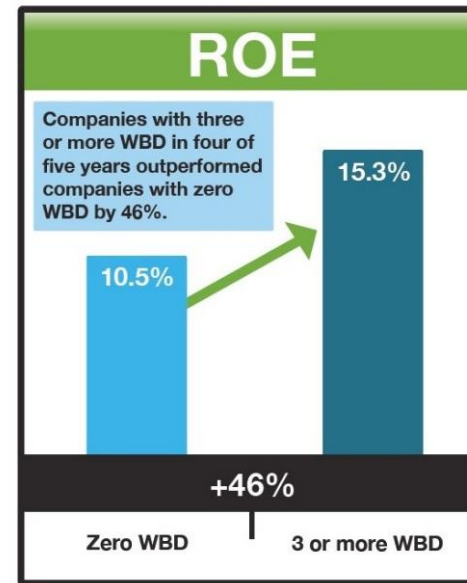
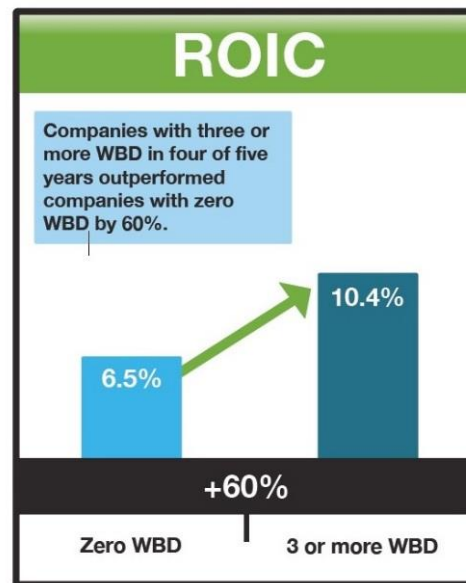
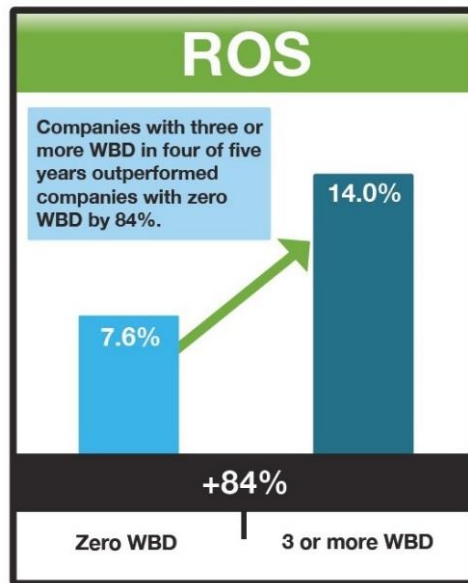
- The Fortune 500 companies with the most women on their boards outperformed those with the least by:
 - **66%** in return on invested capital (ROI)
 - **42%** in return on sales
 - **53%** in return on equity

Diversity Multiplies Organizations' Success

Having Women at the Top Pays

Financial Performance at Companies With Three or More WBD vs. Those With Zero WBD

Companies with sustained high representation of WBD (three or more WBD in at least four of five years) significantly outperform those with sustained low representation (zero WBD in at least four of five years).



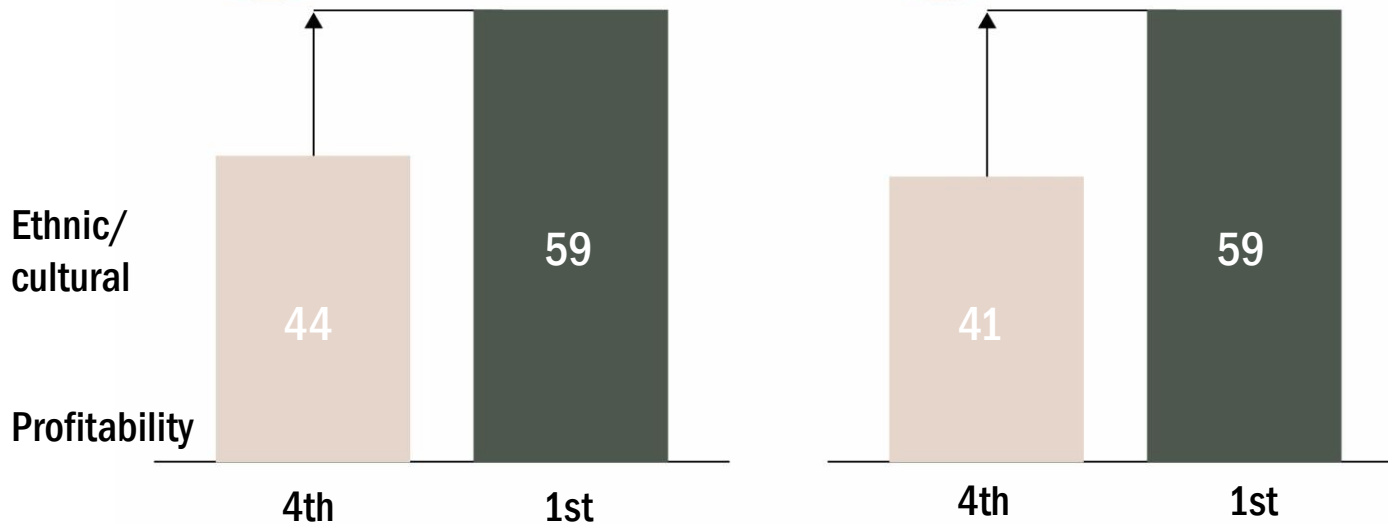
Racial Diversity Pays

How ethnic diversity correlates with profitability

Likelihood of financial performance above national industry median by diversity quartile (percent)

Executive team
N=589

Board of directors
N=493



Companies with more culturally and ethnically diverse **executive teams** were **33% more likely to see better-than-average profits**. Companies with more ethnically and culturally diverse **boards** were **43% more likely to see above-average profits**.

McKinsey & Company research

The Eye Popping Data About the Profitability of Diver\$ity

- “A new Federal Reserve Bank of San Francisco study calculated that in 2019, the country’s output would have been **\$2.6 trillion greater** if the gap between white men and everyone else were closed.* And a 2020 report from analysts at Citigroup calculated that if America had adopted policies to close the Black-white economic gap 20 years ago, U.S. G.D.P would be an estimated **\$16 trillion higher.**”**

*That would add another **over 12%** to the US GDP (of \$21.43 T)!

That would be **76% higher (as the 2020 GDP was 20.94 T)!

“The Way Out of America’s Zero-Sum Thinking on Race and Wealth: The evidence shows we all lose when society’s overwhelmed by white resentment and win when we organize across our differences” by Heather C. McGhee (New York Times)

Diverse Teams Outperform Non-Diverse Teams

- Diverse thinkers (defined as those with different educational backgrounds, experience levels, and/or racial, gender, and ethnic identities) are markedly **better at solving problems** than teams selected for their intellectual ability.
- See the [ABA-NAMWOLF new 5-article series](#) on this, and COMMENT on it!
- Register for our Roundtable (10/15/21 from 2-4 pm EST) and spread the word about it

Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*

Non-Diverse Teams Suffer From Groupthink

- Teams with members from diverse backgrounds, experiences, and perspectives avoid “groupthink,” whereas homogeneous teams approach problems from the same angle.

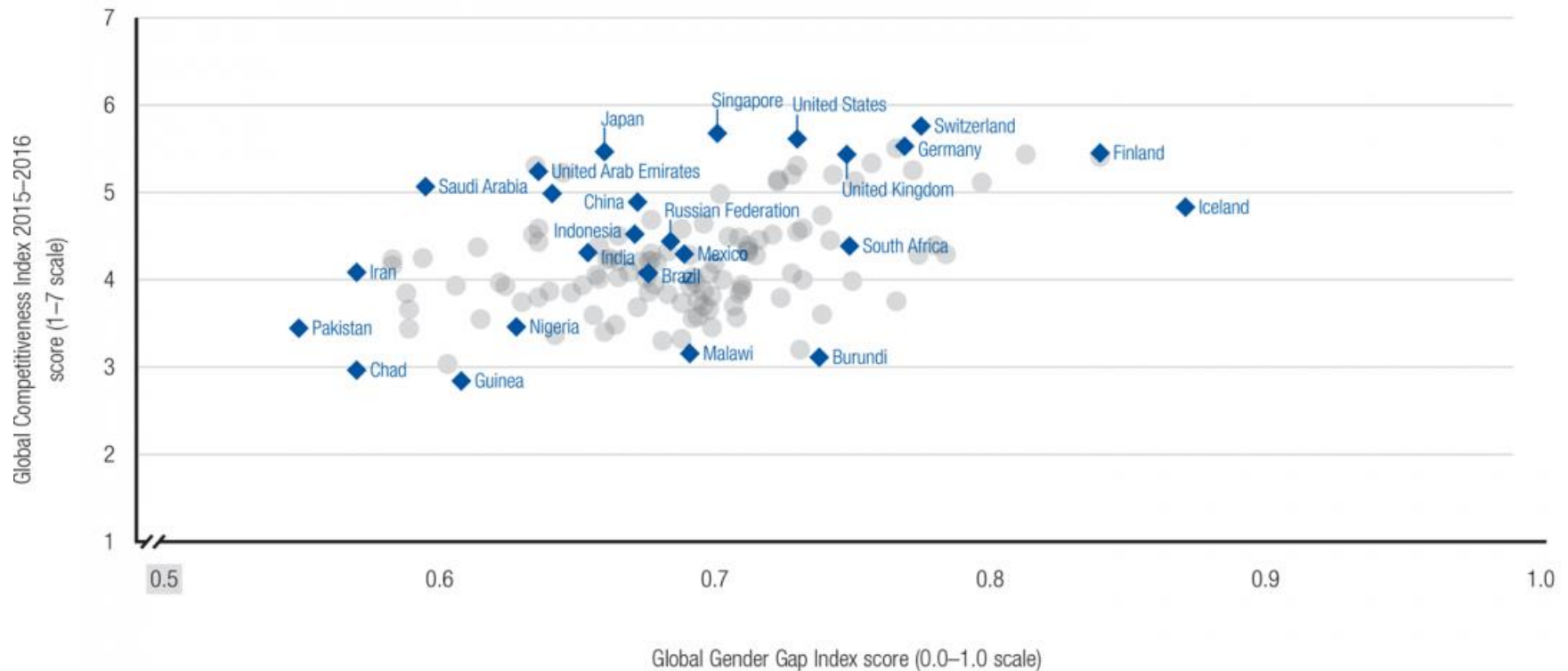
Deloitte, Only Skin Deep? Re-Examining the Business Case for Diversity

Takeaways

- This means that diversity positively impacts non-profit organizations as well.
- Diversity actually creates a *synergistic* positive impact

Diversity Drives Entire Countries' Financial Competitiveness

Figure 33: Global Competitiveness Index vs Global Gender Gap Index 2015



Sources: Global Gender Gap Index 2015 and Global Competitiveness Index 2015-2016.

Notes: The X axis has been truncated to enhance readability. Angola, Bahamas, Barbados, Belarus, Belize, Brunei Darussalam, Burkina Faso, Cuba, Fiji, Maldives, Suriname, Syria and Yemen are not included in the figure.

Societies Benefit From Diversity, Equity, and Inclusion

- “[C]ountries with more female directors [also] tend [not only] to be the wealthiest [and] most prosperous, [but also the] best educated, least corrupt, and happiest”.
- John Okray, “Female Corporate Directors Pay Dividends for Corporations and their Countries”

Minefields: Guarding Against Backlash

- Women are not treated equally in salary negotiations
- **People penalize women** who negotiate for higher pay more than they do men

“Social incentives for gender differences in the propensity to initiate negotiations: Sometimes it does hurt to ask,” Hannah Riley Bowles, Linda Babcock, Lei Lai

Women Who Negotiate Pay Less Are Rationally Responding to the Backlash

- “Women are more reticent to negotiate than men, for good reason.” - Bowles.

“Lean Out: The Dangers for Women Who Negotiate,” by Maria Konnikova (discussing “Social incentives for gender differences in the propensity to initiate negotiations: Sometimes it does hurt to ask,” Hannah Riley Bowles, Linda Babcock, Lei Lai)

People Are Less Willing to Work with Women Who Negotiate Their Salaries

- It's not that men are immune from being seen as tough or unlikeable when they make aggressive demands. Attempting to negotiate can make anyone seem less nice, Bowles repeatedly found. **But it's only women who subsequently suffer a penalty: people report that they would be less inclined to work with them,** be it as coworkers, subordinates, or bosses. The effect is especially strong, Bowles has found, when people observe women who engage in salary negotiations. (Emphasis supplied.)

“Lean Out: The Dangers for Women Who Negotiate,” by Maria Konnikova (discussing “Social incentives for gender differences in the propensity to initiate negotiations: Sometimes it does hurt to ask,” Hannah Riley Bowles, Linda Babcock, Lei Lai)

When Women Negotiate Higher Pay, Their Social Skills Go Under a Microscope

- Julie Phelan and her colleagues at Rutgers have found that, when women are already in the hiring or promotion process — that is, when their credentials have already been screened and they are **in the interview phase — the focus shifts away from their competence and toward their social skills.**
- **That effect is absent for male candidates.**
- **Bottom line: Companies must level the negotiating playing field**

“Lean Out: The Dangers for Women Who Negotiate,” by Maria Konnikova (discussing “Social incentives for gender differences in the propensity to initiate negotiations: Sometimes it does hurt to ask,” Hannah Riley Bowles, Linda Babcock, Lei Lai)

Checking the Backlash: Look at What This Ad Shows

- This stunning, spot on ad by Pantene has gone viral globally:
<https://www.youtube.com/watch?v=B8gz-jxjCmg>

Measures Companies Can Take to Support Women and Minority Lawyers

- Work with women and/or minority owned law firms.
 - NAMWOLF – www.namwolf.org – Search for us by city, state, and practice area – It won't take until 2181 if you do!
- Work with women and/or minority lawyers for your Settlement Masters, Mediators, Discovery Masters, Receivers, Expert Witnesses, and AAA Arbitrators
- Make sure all your vendors are women and/or minority owned businesses: expert witnesses, court reporting companies, the companies from which you buy paper and other supplies, etc.

Institutional Measures Companies Can Take to Better Include Women and Historically Underrepresented Groups

- Pay women and minorities the same as their white, non-diverse male colleagues with comparable levels of experience
- Make pay transparent
- Set up a fair, thoughtful, and equitable system in which who inherits client work is not decided by affinity bias
- Audit reviews to eliminate bias against women being self-promoted

More Strategies to Boost Diver\$ity

- Audit reviews against people of color being unfairly judged on their competence
- Audit billing rates so women and people of color are billed at their white male colleagues' rates
- Ensure that the firm's process for advancement is clear with written criteria and again, audit how it is applied to ensure that women and minorities are fairly and equitably evaluated.

More Strategies to Boost Diver\$ity

- Build unconscious bias training and sponsorship training into the firm's formal training program and culture.
- Ensure that the firm's equity partners are diverse by gender and race. Show that the firm values diversity.

Adapted from "Gender divide and conquer: Breaking through bias," Grant Thornton

More Strategies to Boost Diver\$ity

- Tie partner compensation to diversity and inclusion metrics including:
 - the retention and advancement of women and minorities and conversely, the loss and lack of advancement of women and minorities; and
 - the growth of business by women and minorities and conversely, the lack of the growth of business by women and minorities.
- Elevate the firm's head of Human Resources to a strategic role and title (ex: Chief Human Resources Officer)

Adapted from "Gender divide and conquer: Breaking through bias," Grant Thornton

More Strategies to Boost Diver\$ity

- Make talent management experience, including successfully managing D&I programs, a highly preferred criteria for admission to the firm's Management and Compensation Committees
- Make sure every committee tasked with making hiring and advancement decisions for senior-level roles is fairly represented with a diverse balance of women and minorities.
- Make sure the firm isn't typecasting women or minority male lawyers for roles that pay less, have little visibility, and/or have no upward mobility

Adapted from "Gender divide and conquer: Breaking through bias," Grant Thornton

Part IV: Axelrod's Tools Everyone Can Use to Become Diversity Champions

“PEP”: **PLACE**, ECHO, and PROMOTE women

- Place: **When you see an opportunity for a woman or minority** – whether it's a publication to which she/he should write, a speaking engagement that would suit her/him, a person or group she/he should meet –**recommend her/him for the opportunities.**
- **Help PLACE her/him.**

Axelrod's Tools for Diversity Champions

“PEP”: PLACE, **ECHO**, and PROMOTE women

- **Echo: In group settings, ECHO good suggestions you hear women and people in historically underrepresented groups make.** Say her/his idea was great. Specifically mention her/his name and repeat her/his idea to ensure it was heard, it gets well received, and that she/he gets the credit for it.

“Amplification” – This is so powerful a tool that using it, the women in the White House under President Obama achieved gender parity among those in the President’s inner circle.

Axelrod's Tools for Diversity Champions

“PEP”: PLACE, ECHO, and **PROMOTE** women

- **PROMOTE: Speak highly of other skilled women and minorities' capabilities**, personalities, and professional qualities, telling people how terrifically well you regard them. **PROMOTE** them.

Axelrod's Tools for Diversity Champions

- **Develop a coalition of allies, your own personal board of directors, and work with them to:**
 - Have them echo the words you want to be described by – think of Carla's Pearls (Carla Harris);
 - Mentor each other;
 - Strategize with each other;
 - PEP each other; and
 - Use each other's connections to grow.

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THANK YOU