

THE PRESSURES MOST LAWYERS FACE ARE SIGNIFICANT. FROM HIGH STAKES MATTERS IN FAST-PACED ENVIRONMENTS WITH HEAVY WORKLOADS; TO THE EXPECTATIONS OF PERFECTION; TO THE RELIANCE ON INTELLECTUAL CAPITAL AS THE NECESSARY DRIVING FORCE OF A LAWYER'S TRADE; IT IS NO WONDER THAT LAWYERS SUFFER FROM MENTAL HEALTH ISSUES AT ASTRONOMICAL RATES THAT ARE LIKELY UNDERREPORTED DUE TO STIGMA.

Thankfully, the mental health issues lawyers face are receiving increasing visibility in the media, in large law firms (as evidenced by the increasing programming designated to make sure that legal professionals have support for those issues, e.g. a few years ago at Hogan Lovells we instituted the Ask programs, which consist of onsite counselors available for our lawyers and business services professionals in many of our US offices), and the launch of the American Bar Association's Well-being Pledge for Legal Employers in 2018 with its seven-point program designed to improve wellness in legal organizations. Given that it is impossible to address a problem that is unacknowledged, all of this attention is a productive step forward.

While diverse lawyers experience the same pressures that other lawyers do, the mental and physical health impacts that diverse lawyers also face as a result of discrimination, explicit and implicit bias, prejudice, racial anxiety, stereotype, and microaggressions (collectively referred to herein as "Inequitable Conditions") in their workplaces warrants increased attention.

Discrimination on the basis of identity, explicit and implicit bias, and prejudice are all terms that are generally known, so I won't define them here. However, microaggressions, or the daily assaults of corrosive explicit and implicit denigrations,

invalidations, insults and exclusions that diverse lawyers face on a daily basis, have been described as "death by a thousand cuts". The term "microaggressions" is sometimes misconstrued as the acts themselves being negligible or small in impact; rather, the individual and cumulative effects can be monumental on diverse lawyers. Of all the Inequitable Conditions, microaggressions tend to be the most prevalent in our workplaces and particularly insidious because they are deemed too small to drive action and, unfortunately, many of them can be difficult to pin down or explain to others that do not have similar cultural awareness.

NERVOUS CONDITIONS

Racial anxiety and stereotype threat are two related phenomena impacting diverse lawyers that can, over extended periods of time or with a significant traumatic event, lead to increased stressors for diverse people.

Racial anxiety refers to the heightened level of stress and emotion that permeates relationships between people of different backgrounds. In legal environments, for younger diverse lawyers who understand that more senior non-diverse lawyers have their futures in their hands, it may mean approaching interactions in a more sensitive, cautious way that could prevent the authentic relationships required to be trusted, developed and invested in. It may mean that diverse lawyers avoid the informal

social functions that can lead to relationship-building and provide insider knowledge necessary to career advancement but that can also feel like navigating a gauntlet of potential faux pas pitfalls that could reveal that a diverse lawyer doesn't belong or "isn't one of us". Conversely, it may also mean that non-diverse lawyers, scared of inadvertently being the center of a #MeToo story or being accused of bias, may opt out of having meaningful interactions with diverse lawyers which might protect them in the short-term but is the essence of privilege. Another way this may play out is a non-diverse lawyer refraining from offering the same level of critical feedback in the moment to diverse

about how their behavior may confirm stereotypes attributed to the diverse category in which they belong. In some sense, it is a self-fulfilling prophecy, where the mental and physical energy diverse lawyers use thinking about stereotypes and attempting to navigate around them can lead to confirming the very stereotypes the diverse lawyers were trying to avoid. One way I have seen this present itself is a diverse lawyer worried that they will be viewed as incompetent or unintelligent spending time reviewing work assignments multiple times to ensure that it is error free late into the night, and due to working long hours under stress when tired, may make unforced errors, or may cause the

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lawyers as non-diverse lawyers due to fear of being perceived as discriminatory or biased. In these instances of not being able to correct the inevitable errors that result from being human and eventually not being deemed technically or otherwise competent enough to progress, diverse lawyers lose. Whether experienced by diverse lawyers or non-diverse lawyers, racial anxiety has the effect of adding stress and mental health pressures on diverse lawyers that they have to deal with on top of the other pressures inherent in lawyering.

Stereotype threat is the anticipatory anxiety that diverse lawyers develop as a result of worrying

individual to record an abnormally long period of time for the work performed, or by self-editing the amount of time that it took to complete the assignment as to not raise any eyebrows which can lead to questions about what that diverse lawyer is doing during the rest of their time. All of these results can provide evidence to someone seeking confirmation of incompetence, lack of intelligence, inability to handle the workload, laziness or any other number of stereotype affirming behaviors. Stereotype threat is, in short, a self-fulfilling prophecy.

Racial anxiety and stereotype threat are amplifying externalities that are natural results

of the Inequitable Conditions diverse lawyers experience, that have a compounding effect when considered with the deleterious effect of Inequitable Conditions and the pressure cooker environments that are embedded in most lawyers' experiences. Jean Paul Sartre, in the preface to post-colonial theorist Frantz Fanon's *Wretched of the Earth*, wrote that "[t]he condition of a native is a nervous condition". Sartre was referring to the interwoven neuroses that colonized people developed as a result of the various physical and psychological pressures they experienced in colonial and post-colonial environments. Nervous conditions encompass racial anxiety and stereotype threat, but also refers to the constant decision-making and thought that diverse lawyers take into account as they navigate the various cultural, social and other worlds they are a part of. The culture of legal organizations is laden with rules, mostly unwritten, that are based on the culture of the individuals that built it: predominately straight cisgender white able-bodied men. Many diverse lawyers don't have access to the formal and informal networks that make the unwritten rules that undergird legal organizational culture. The stress of navigating these environments is an additional physical and cognitive burden that diverse lawyers face. W.E.B. DuBois, American Pan-Africanist, civil rights activist and sociologist, expressed the substance of this phenomenon in a different way, as "double consciousness": where diverse people are required to look at themselves through their own eyes and through the eyes of other people that may have contempt for them. It causes a duality of experience that can be illuminating and provide some advantage, but for many causes dissonance, a lack of sure footing, and the instability of recognizing that the world as they see it exists but may not be as important as the world as perceived or articulated by others that control

their fate.

Nervous conditions, like racial anxiety and stereotype threat, are Inequitable Conditions that diverse lawyers need to address or ably navigate in order to be successful in legal organizations.

INEQUITABLE CONDITIONS LEAD TO NEGATIVE HEALTH IMPACTS ON DIVERSE PEOPLE...

In addition to adding to the burdens and challenges that diverse people face in our organizations on top of the stressors that all others face, Inequitable Conditions lead to adverse health outcomes for diverse people. In her article "How racism and microaggressions lead to worse health" published for the Center for Health Journalism, Gina Torino explores the ways the explicit and implicit Inequitable Conditions can cause adverse physical health outcomes such as heart disease and mental health outcomes like "depression, anger, physical reactions, avoidance, intrusion, hypervigilance, and low self-esteem", the latter of which other studies have validated. In addition to increased trauma, there is a correlation between microaggressions and suicidal thoughts. It also has been found that class may also play an interesting role with respect to the way racial microaggressions impact mental health. Esthanette Reid of the University of Massachusetts Boston in her thesis "How Racial Microaggressions Impact the Mental Health of Black Women of Different Occupational Prestige" (May 2017) finds that Black women with higher occupational prestige will experience microaggressions associated with more symptoms of depression, anxiety and trauma more frequently than Black women with lower occupational prestige. Based on traditional and current perspectives, the law is a high prestige field, and one might reasonably be able to argue that Black women lawyers (and other similarly situated intersectional lawyers) face more trauma from Inequitable Conditions than what might have been assumed or supposed.



...AND COULD AMOUNT TO A DISABILITY.

If Inequitable Conditions are an amalgamation of systemic, pervasive phenomena and a barrage of constant daily intentional and unintentional abuses (re: death by a thousand cuts), in the aggregate, Inequitable Conditions can lead to significant physical and psychological challenges for diverse lawyers. Overtime, depending on the individual's life experiences, socialization, and other factors, the synergistic impact of these Inequitable Conditions may lead to long-term impacts, including arising to the level of a disability. A "disability" is defined under the Americans with Disabilities Act, 1990 (as amended) (ADA) as a person who has a recorded physical or mental impairment that substantially limits one or more major life activities. Major life activities include more obvious tasks like caring for oneself, performing manual tasks and seeing, but also include other activities like learning, reading, concentrating, thinking, communicating and working, which are critical to be able to do as a competent, competitive lawyer. When I talk to diverse people about feeling like the world is "closing in" after hearing a microaggression, or that encounter someone that they know has discriminated or exhibited bias and their mind goes blank, or when I hear them describe the mental energy it takes on a daily basis to review their work six or seven times over to avoid any mistake so their competence goes unquestioned (which for diverse lawyers can be a fatal blow to their careers), it seems reasonable to me that diverse lawyers could easily

experience difficulties, or at worst a mental impairment with respect to some of the major life activities covered by the ADA like learning, concentrating, thinking, communicating and working. From my perspective, a reasonable explanation for diverse lawyers suffering from underreported mental health challenges like anxiety, depression, imposter syndrome, hyper-focused perfectionism, and other conditions is the state of having to constantly experience and be subject to Inequitable Conditions combined with the high stress environment of most legal organizations.

BUT ISN'T THAT PROBLEMATIC?

Yes, namely because diverse lawyers have enough problems succeeding despite the Inequitable Conditions they face without having to deal with the stigma and the connotative implications of being a disabled lawyer. Whether conscious or unconscious, intentional or unintentional, many think lawyers that have disabilities, regardless of what those disabilities are, are incapable of performing at the level of lawyers without disabilities. There is a sense that lawyers that have any kind of mental health issue or cognitive disability do not have the intellectual fortitude or capacity to be able to perform at the level that a competent lawyer should be able to. Most of these perceptions are generally invalid, especially given that disclosure rates of mental health issues and disabilities are so low that it is unlikely that individuals even have a large enough sample size to draw a valid or legitimate conclusion.

As a general rule, individuals that have multiple

diversity characteristics experience exponential discrimination that is more than the sum of its parts. Giving non-diverse people additional ammunition by implying that diverse lawyers experience such hardships due to Inequitable Conditions on top of the stressful legal organizational environment feels problematic. The strongest rebuttal to this challenge is that it is a response that perpetuates and reinforces an ableist narrative without refuting or confronting the underlying stereotypes associated with that narrative.

PUTTING THAT ASIDE, WHAT SHOULD WE DO?

We need to have more robust initiatives supporting both diversity and inclusion initiatives in the legal profession but also wellness and mental health initiatives. Fortunately, as noted, some legal organizations are on the path to devoting increased resources to supporting lawyers and business services professionals. As organizations institute, continue to build out and refresh mental health programming and programs that support individuals with disabilities, it is critical that those programs ensure that the unique mental health challenges that may be faced by diverse lawyers as a result of Inequitable Conditions are addressed. This will be a challenge. While there are some organizations that do not affirmatively offer robust mental health programs, those that do often do not try to deal with the root cause of the problem even for all lawyers.

Perhaps changing the fundamental nature of firms is just too ambitious and costly. The programs tend to address extremely necessary topics like resilience and grit, rather than re-thinking the billable hour model that incentivizes working as much as possible on complex matters under extreme deadlines. Unfortunately, topics like resilience and grit, while incredibly important, often do not signal to diverse lawyers that the organization understands the pressures that they are resilient and gritty through on a daily basis.

It essentially lays the responsibility (and as some infer, the blame) on the individual that is experiencing mental health challenges or stress rather than looking at the interlocking structural systems that support law firms that is at the root of those challenges. Devoting more resources to diversity and inclusion initiatives, which should aim to contemporaneously create and improve systems adversely impacting all lawyers, but diverse lawyers acutely, while providing the diverse lawyers at the organization with the strategies and tools they need to do the best they can to successfully navigate the environment, is key. Continuing to make sure that all of our policies, practices, processes and programs, including our mental health initiatives reflect the unique experiences of diverse lawyers will ensure that we are on our way to providing holistic support that can lead to increased retention, advancement and wellbeing of diverse lawyers.



BENDITA CYNTHIA MALAKIA

Hogan Lovells
bendita.malakia@hoganlovells.com
<http://www.linkedin.com/in/bendita>
Bendita Cynthia Malakia is Senior Inclusion Manager at Hogan Lovells. In her role, Bendita focuses on integrating diversity and inclusion into the architecture of the firm, investing in high potential diverse lawyers, creating a culture of inclusion, and advancing the business case for inclusion by engaging clients. Prior to joining Hogan Lovells, Bendita was a diversity and inclusion consultant, a private lending lawyer at Goldman Sachs Bank, a development finance lawyer at International Finance Corporation and Norton, Rose, Fulbright. A graduate of Barnard College and Harvard Law School, Bendita is Secretary of the Board of the National LGBT Bar Association.