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The Underrepresentation of Women of Color in Law Review Leadership Positions

Adriane Kayoko Peralta

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THE UNDERREPRESENTATION OF WOMEN OF COLOR IN LAW REVIEW LEADERSHIP POSITIONS

Adriane Kayoko Peralta*

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INTRODUCTION

For the position of Editor-in-Chief (EIC), the most prestigious board position on the UCLA Law Review, the decision came down to two applicants: both were women, one white and one woman of color (she identifies as black and Latina). At the selection meeting with the voting members, I was one of three Asian American women—all the men were white, and there were no black, Latino, or

* Adriane Peralta holds a J.D. from UCLA School of Law and an Ed.D. from Loyola Marymount University School of Education. While in law school, Adriane specialized in the Critical Race Studies and Public Interest Law and Policy programs, and was a Senior Editor for the UCLA Law Review. Currently, Adriane is a law clerk to the Honorable Ronald L. Ellis in the Southern District of New York.

I thank Professor Frances Olsen for her invaluable feedback on earlier drafts of this Article. I also thank Julie Silverbrook, Chair of the Academic Committee for Ms. JD, for sharing her ideas with me about this topic.

This Article stemmed from a speech that I gave at UCLA School of Law in 2014. The Black Law Students Association (BLSA) held a rally, launching an awareness campaign titled “33/1100” (the fraction of black students attending UCLA Law at the time). See Samantha Tomilowitz & Sam Hoff, UCLA Law Students Protest Lack of Diversity, UCLA DAILY BRUIN, Feb. 10, 2014, available at http://dailybruin.com/2014/02/10/ucla-law-students-protest-lack-of-diversity/. I thank the BLSA leaders for inviting me to speak that day and for inspiring me to create change. I also thank my parents, Janis and Greg Peralta, for teaching me to stand up to injustice. I dedicate this Article to women of color law students everywhere.
Native American members present. To be considered for EIC, applicants must write a personal statement, submit a résumé, complete a graded editing exercise, and interview with the current board.1

At first glance, the two candidates seemed well qualified and notably similar. Both candidates’ résumés reflected similar years of previous work experience, and they were approximately the same age. Based on their résumés, both appeared interested in pursuing public interest legal careers. I had attended both of their interviews, and both women were articulate and thoughtful. The two women did, however, differ in their stated goals for the Law Review. The woman of color was committed to increasing the diversity of the Law Review while the white woman was silent on this issue. In addition, the two candidates differed on their editing performance scores, which are graded objectively and anonymously; the woman of color scored several points higher than her white counterpart. The EIC is the final editor for each published piece, so strong editing skills are vital to the position.

During the discussion of the two candidates, I began to notice that members of the selection committee characterized the two women very differently. Members called the white woman neutral, impartial, and mature, while they called the woman of color biased, opinionated, and assertive. The adjectives used to describe these women were race and gender coded.2 The members using the words “neutral” and “impartial” meant them to be positive attributes, whereas the words “biased” and “opinionated” signaled negative characteristics. Board members criticized the candidate of color for speaking too much about diversity during her interview, as well as for not attending enough law review social activities.3 However, the selection committee admitted that the woman of color was qualified, more approachable, and would likely increase the diversity of the Law Review. One would think that stronger editing and interpersonal skills would make the candidate of color more qualified, but ultimately, the committee selected the “neutral” white candidate—likely because she was less polarizing.

Unfortunately, by selecting the “neutral” white candidate, the Law Review essentially rewarded white privilege. Society normalizes whiteness and views whiteness as neutral. In addition, it is much more difficult for women of color to remain “neutral” in a law school setting, at least by the standards of their white colleagues. It is a privilege that white students are perceived as impartial, as they comfortably occupy almost all law school spaces.4

In the history of the UCLA Law Review, there has been only one black woman to serve as EIC (and just this year, they elected their first black man). Combined with what I witnessed at the selection meeting, this stark reality made me


2. Race and gender coded language is rhetoric that is not overtly racist or sexist, but rather imply race or gender. For example, words that people use only to describe women or people of color. This is discussed further infra Part II.B. For an explanation within the political context, see generally IAN HANEY LÓPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM & WRECKED THE MIDDLE CLASS (2014).

3. Such social activities included Bagel Thursdays, where law review members have bagels and coffee together, and end-of-the-year drinks, where law review members go to a bar for drinks and appetizers. These sorts of activities are, for the most part, white spaces because there are so few people of color on the Law Review.

4. Discussed further infra Part II.C.
very concerned that women of color law students’ opportunities were being unduly and unfairly limited. When competing for law review leadership positions, women of color are significantly disadvantaged.

This Article explores the potential causes, challenges, and remedies surrounding this inequitable playing field. As Clare Dalton articulated in describing the importance of investigating women’s issues in law school, “Exposing the sites of legal education and practice as important creators and sustainers of the culture of gender, as well as the culture of law, we can assert the importance of studying the treatment of women, women’s realities and women’s concerns in legal education and the legal profession.” The pipeline for women of color joining the law review and ascending into law review leadership positions, such as EIC, is one such site of legal education worth exposing.

Part I introduces the problem by examining the limited research that shows a significant underrepresentation of women and people of color in law review leadership positions and by explaining the significance of such research. Part II explores the possible causes of this unfortunate phenomenon by uncovering the challenges that women of color face in obtaining law review leadership positions. Finally, Part III offers potential solutions for increasing opportunities for women of color in obtaining law review leadership positions.

I. THE DEARTH OF WOMEN OF COLOR IN LAW REVIEW LEADERSHIP POSITIONS

Very few scholars have published research on the underrepresentation of women of color on law reviews and in law review leadership positions.


of the literature on law review membership discusses identity groups solely as either women or people of color, rather than examining the intersectionality of these two groups. Thus, research on women of color and law review membership is not extensive. Nevertheless, this Part attempts to piece together preliminary data on women of color in law review leadership positions. This Part also discusses the importance of law review membership for purposes of career advancement, particularly for women of color.

A. Law Review Diversity Data and Reports

In 2013, Ms. JD, in conjunction with the New York Law School Law Review (NYLSLR), published the 2012–2013 Law Review Diversity Report (the Report) on gender and racial diversity of flagship law reviews. Among law reviews from the U.S. News & World Report’s Top 50 law schools, the Report noted:

In 2011–2012, women held 42% of law review leadership positions in the Top 50 Sample, and only 29% of EIC positions. In 2012–2013, women continued to lag behind their male counterparts in the Top 50 Sample, as women held 46% of leadership positions, and only 38% of EIC positions.

The Report also showed that only 15% of all flagship law reviews had EICs of color. Unfortunately, the Report did not calculate how many EICs were women of color, nor did it report on law review membership or leadership of color. From this initial data, however, we can at least be sure that the percentage of women of color EICs is no more than 15% since only 15% of all flagship law reviews had EICs of color (both men and women combined).

B. The Significance of Law Review Membership and Leadership

For law students, membership on a flagship law review is not just a line on


12. “Ms. JD is a nonprofit and nonpartisan organization dedicated to the success of aspiring and early career women lawyers.” About, Ms. JD, http://ms-jd.org/about/ (last visited Mar. 30, 2015).


14. The report divided the data set into three groups: (1) law reviews from the U.S. News & World Report Top 50 law schools; (2) law reviews outside of the Top 50; and (3) the combined sample of all reviews. Law review membership and election to leadership positions is likely to be more competitive at Top 50 law schools. In addition, law review membership and leadership is also likely to mean more to students from Top 50 law schools because these students are more likely to secure prestigious postgraduate employment (such as federal clerkships, professorships, and positions at large law firms) that value experience on the law review. For more on this, see infra Part I.B.

15. 2012–2013 LAW REVIEW DIVERSITY REPORT, supra note 13, at 3. The percentage of female EICs outside of the Top 50 sample was notably higher (51%), and the combined sample showed that 49% of all law reviews have a female EIC. Id.

16. Id. Interestingly, this percentage was higher at Top 50 law schools (29%). At law schools outside of the Top 50, 12% had EICs of color, and the combined sample showed 15% of all EICs were of color. Id.
an résumé, it is a gateway to prestigious post-graduate employment. Membership signals to future employers a certain set of skills and work ethic. Thus, participation on a flagship law review is an important element for law students on the pipeline towards federal clerkships, teaching fellowships, and associate positions at prestigious law firms. Furthermore, law review provides students with access to an influential alumni network and peer group, in addition to a mentoring relationship with a professor who oversees their comment or student note. Most importantly, law review teaches its members valuable legal skills such as legal writing, editing, citation, and analytical skills. Unsurprisingly, law review membership requires a significant time and work commitment. Busy law students learn to manage their time more efficiently in order to complete the additional work of law review.

These skills are so valuable to future employers that some of the most selective positions even make law review membership a requirement. The benefits of a leadership position on law review are the same as membership, but the recognition and distinction are even greater. Legal employers and the law school community generally consider flagship law review leaders to be the most elite members of an already elite group. Considering the immense benefits that law review members and leaders receive, it is important to better understand the role of women of color on law reviews.

Arguably, the lack of women of color on law reviews and in leadership

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17. Some skills gained through law review work include editing, paying attention to details, displaying superior writing abilities, knowledge of citation rules, and engaging with and providing feedback on complex material.

18. Most law schools do not reward course credit for work on a law review. Many law review members spend several hours each week doing law review-related work in addition to their course work. Thus, some employers view law review membership as an indicator of excellent work ethic.


20. Admittedly, this type of mentoring relationship can also occur through a seminar course or an independent study, if the student seekes out those opportunites. The length of a comment, however, is often much longer than a typical seminar paper (usually twice the length) and often requires an entire year to complete (compared to only one semester in a seminar or independent study). Thus, a student writing a comment can develop a relationship with a mentoring professor for a much longer period of time than if that student wrote a seminar paper.

21. See Baker, supra note 19, at 929 (“The fundamental cornerstones of a solid legal education are research, writing, and analytic and logical thinking. Membership on a school’s law review provides a student with an opportunity to stimulate all of these fundamental legal basics.”); Smith, supra note 19, at 93 (“[T]he real benefit of membership on law review is not just to be noted as such, but it is the presumed intensive training in legal writing that future employers find impressive.”).

22. See Baker, supra note 19, at 931 (“Law review membership necessitates that a member acquire various tools that any successful attorney must possess—efficiency, diligence, task prioritization, and time management. Lawyers are notoriously busy people; they serve multiple clients and multiple cases, and receive significant compensation for their efforts. As such, it is necessary that attorneys learn how to properly budget and manage their time. Law review membership grants students an opportunity to improve these skills before stepping into actual practice.”).

23. When applying for a federal clerkship through the OSCAR online system, many federal judges put in their job postings that flagship law review membership is required. See OSCAR, U.S. COURTS, https://oscar.uscourts.gov/qualifications_salary_benefits (last updated Feb. 5, 2015). Dexter Samida writes, “Despite disagreement about the substantive value of the law review experience as a means to acquire or hone lawyering skills, the idea that law review membership boosts an applicant’s job prospects seems nearly universally accepted.” Samida, supra note 19, at 1721.
positions invariably leads to their underrepresentation in the most elite positions of the legal profession. Consider the following facts:

- In 2010, there were only seventeen women of color serving as general counsel to Fortune 500 companies (approximately 3.41% of all Fortune 500 general counsels and 18.1% of the total number of women holding such positions).  
- In 2014, of the 770 active federal judges, only seventy-one were women of color (9.2%); and there were only eleven women of color on the U.S. Court of Appeals out of 179 judges.  
- At the 200 largest law firms, only 2% of equity partners are women of color; and only 11% of associates are women of color.  
- In the class of 2009, women of color obtained only 8.2% of all federal clerkships.

Unfortunately, data on the percentage of women of color law professors is not available. Nonetheless, the percentage of women law school professors is abysmal: Only 21.5% of full-time faculty members are women, and only 30.4% of tenure or tenure-track professors are women. Considering that the number of women of color in elite legal positions is drastically low, scholars should examine the pipeline in order to improve opportunities for women of color. Law review membership and leadership is just one aspect of this pipeline, and hopefully this Article is just the beginning of a much longer dialogue.

II. CHALLENGES WOMEN OF COLOR FACE IN COMPETING FOR LAW REVIEW LEADERSHIP POSITIONS

As noted above, there is very little research examining why women of color

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30. This pipeline begins as early as elementary school, and continues through law school and beyond. At least within the context of law school settings, other pipeline factors include access to academic support, mentorship, extracurricular activities, summer internships, externships, and a welcoming classroom environment.
are underrepresented on law reviews and in law review leadership positions. This Part attempts to better understand this phenomenon by drawing on research from other contexts and applying such research to the law school and law review setting.

A. Intersectionality Framework

Any discussion of the challenges that women of color face should begin with an acknowledgement of the intersectionality framework. Kimberlé Crenshaw, professor at UCLA School of Law, is the premiere scholar on the various barriers women of color face in discrimination claims. To summarize the extensive writing in this area: Women of color are often marginalized within groups of color because of patriarchy, and are simultaneously ignored within groups of women because of racism, which privileges white women. Thus, women of color are subordinated not only in larger society, but also among people of color and among women as well.

Furthermore, intersectionality also understands that people, especially women of color, face discrimination based on their intersecting identities. Intersectionality points out that most legal frameworks are inadequate because “[t]hese frameworks typically focus on just race or just sex, failing to consider that these two identities interact and intersect in ways that materially shape a person’s vulnerability to and experiences of discrimination.” Intersectional feminist theory asserts, for example, that gender hierarchies “intersect with other hierarchies in ways that make gender injustice deeply contextual in nature.” Such an intersectional approach can include the way in which gender intersects with race, class, religion, age, disability, sexual orientation, and immigration status. For instance, a lesbian woman of color could face multiple forms of oppression on all or only some axes of her identity. Therefore, only focusing on her gender subordination, or any other single axis, is an inadequate analysis.

Part of the difficulty in understanding the problem and solutions to the underrepresentation of women of color on law review and in leadership positions is that little research focuses on women of color. There are reports (discussed in supra Part I.A) on the lack of women and people of color on law reviews, but none that focus on women of color specifically. Although there is some data on women of color in the legal profession (see supra Part I.B), there is little, if any, disaggregated data based on ethnicity within the limited research on women of color. Thus, even within the women of color category, there are certainly more and less privileged ethnic groups, and the members of which have different experiences with discrimination. Scholars, however, have not explored this disaggregation within the context of law reviews.

B. Unconscious Bias and Neutral Decision-making

The board selection meeting described in the Introduction is a troubling example of how unconscious bias can creep into important decision-making, unjustly hindering opportunities for women of color. Although this form of discrimination is unintentional, it still results in negative outcomes for women of color. Even worse, often the perpetrators and/or witnesses to unconscious bias are reluctant to admit or acknowledge that discrimination has actually occurred. Some of this denial has to do with perceptions and definitions of discrimination.

Interestingly, whites and blacks tend to understand discrimination differently. Russell Robinson, professor at Berkeley Law School, explains:

Studies show that blacks and whites are likely to differ substantially in how they conceive of and define discrimination. While many whites expect evidence of discrimination to be explicit, and assume that people are colorblind when such evidence is lacking, many blacks perceive bias to be prevalent and primarily implicit.36

This is particularly troubling for law reviews because white students predominately manage them. If white law review members tend to only recognize explicit discrimination, then implicit discrimination may go unchecked. Law review members should recognize and educate themselves on the ways in which unconscious bias operates and manifests in order to assess candidates of color fairly for membership and leadership positions.

Unconscious bias affects women of color through both racial and gender discrimination. Unfortunately, many decision-makers refuse to even acknowledge that gender discrimination exists. Deborah Rhode, professor at Stanford Law School, explains:

The dynamics of denial fall into three basic patterns. The first involves denials of gender inequality: many individuals fail to recognize the extent of problems facing women. The second dynamic involves denials of injustice: people often rationalize women’s inequality as the result of women’s own choices and capabilities. The final pattern involves denials of responsibility: individuals frequently believe that whatever inequality exists, they personally are neither part of the problem nor part of the solution.37

Because professional and educational settings no longer tolerate and accept overt sexism and sexual harassment, many people believe that women no longer face gender discrimination. As a result, many do not feel that gender discrimination is a serious problem worth addressing. Similar to racial discrimination, gender discrimination is less obvious and harder to recognize.

35. Scholars often refer to unconscious bias as implicit bias—the terms are interchangeable. See Jerry Kang & Kristin Lane, Seeing Through Colorblindness: Implicit Bias and the Law, 58 UCLA L. REV. 465 (2010); Jerry Kang, Trojan Horses of Race, 118 HARV. L. REV. 1489 (2005).
37. DEBORAH L. RHODE, SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY 2–3 (1997). These three forms of denial take place in many forms of discrimination, including racial discrimination.
Among those who recognize that racial and gender discrimination exists, many believe that race-neutral and gender-neutral decision-making is an adequate solution and the best method of combating discrimination. Unfortunately, race-neutral and gender-neutral decision-making results in a significant preference for whites and males. Barbara Flagg, professor at Washington University School of Law, explains:

[W]hites rely on primarily white referents in formulating the norms and expectations that become criteria of decision for white decision makers. Given whites’ tendency not to be aware of whiteness, it’s unlikely that white decision makers do not similarly misidentify as race-neutral personal characteristics, traits, and behaviors that are in fact closely associated with whiteness.  

Although law review members on the selection committee may have thought that selecting the white candidate was completely neutral because we did not discuss race or gender, the use of race and gender coded words to describe the two women contradicts that belief. Flagg explains why the use of certain adjectives is problematic in describing women of color:

[The] seemingly neutral adjective [“hostile”] is in fact race-specific in this context insofar as it rests on norms and expectations that are in themselves race-specific. To characterize the candidate’s responses as hostile is to judge them inappropriate. Such a judgment presupposes an unstated norm of appropriate behavior in that setting, one that reflects white experiences, priorities, and life strategies.

Thus, when committee members described the female candidate of color as aggressive and opinionated, they used these terms in the context of white male norms, without examining the appropriateness of the white male norms in and of themselves. Perhaps the problem was not the candidate, but rather the expectations that women of color should conform to white male norms and that they are behaving inappropriately if they strongly support a policy whose value is not obvious to white men.

C. Law School Environments

Law school environments may also hinder the success of women of color in obtaining law review leadership positions because a successful campaign partially depends on reputation. Furthermore, a positive reputation in law school often hinges on white norms and expectations. Women of color may have an especially difficult time conforming to white norms and expectations because many law school environments are highly competitive, politically contentious, and racially isolating.

Racial isolation occurs when there are so few students of color that they are

39. Id. at 976.
40. GUINIER ET AL., supra note 7, at 2 (“Because law school’s education mission is so intertwined with the goal of selecting students for entry into a competitive profession, much of its pedagogy, including examination formats, is designed to rank students. The idea is that those who succeed in this highly competitive and individualistic culture will do well as lawyers.”).
often the only student, or one among very few students, of their racial background present in a classroom or other law school settings. Racial isolation increases the likelihood that every student of color will be viewed as a representative or spokesperson for his or her entire race and gender. Experts often refer to this phenomenon as “tokenism.” The American Psychological Association reports: “Tokenism heightens the undue attention paid to minorities, fosters stereotyping, and reduces perceptions of individuality. Further, tokenism can foment social stigma and inhibit student achievement.”

Thus, when the class discussion turns toward issues of race, people of color often face the serious burden of having to speak on behalf of their race because there are so few people of color in the room. Even though the class in a sense expects (or indirectly pressures) a woman of color to be an expert on issues of race and gender, classmates will eventually call her outspoken or opinionated for talking about race or gender too much.

On the other hand, white women and men hardly ever have the burden of having to say anything in class. White students do not have the burden of sticking up for their race because only rarely are whites as a group challenged in class. Even if such a challenge were to arise, there are plenty of other white students to speak up. Thus, white students have the privilege of remaining “neutral” by never having to say a word, while women of color more often feel a sense of responsibility to stand up for racial justice and gender equality issues. White students simply do not have the same burdens as women of color.

D. Female Faculty as Role Models and Mentors

Another consideration is the female role model or mentor effect. The Ms. JD/NYLSLR report on gender discussed in Part I.A found that “a higher percentage of female full-time faculty at a law school had a statistically significant, positive correlation to a higher percentage of female membership on the law review.” This finding suggests that “law schools having greater gender diversity among their full-time faculty may have a greater likelihood of success in achieving law review membership.” This finding is important, though not surprising: When female students have female professors that look like them and mentor them, they will likely be more encouraged to complete and succeed at the write-on competition.

Although the Ms. JD/NYLSLR study did not consider the correlation between female law students of color and their professors, one could assume that the results would be similar. The shortage of women professors of color, well under 18% of full-time law school faculties, means that women law students of color will find fewer professors who look similar to them and will mentor them.

43. Id. at 6.
44. At most law schools, students achieve law review membership through a write-on competition. At UCLA Law, the write-on competition begins the week immediately following first-year final exams. The law review provides approximately 300–400 pages of reading, and students must write a 10-page comment with up to 15 pages of citations. The law review also assigns citation exercises in which students receive points for fixing errors. The law review selects students based on their writing abilities and understanding of citation rules. The write-on competition is highly selective because there are only a limited number of staff positions each year.
45. Id. at 13. Unfortunately, I could not find current data on the percentage of female law faculty of color.
Getting more female faculty of color in law schools could potentially increase mentoring opportunities for female law students of color. One study showed that professors discriminate against women and people of color in forming informal faculty mentoring relationships. The study investigated “how likely faculty were to respond to a request with a student to discuss research opportunities [and] found that professors were more likely to respond to white men than women and black, Hispanic, Indian or Chinese students.” Although the study did not control for the race and gender of the faculty, female faculty of color may be more aware that such discrimination exists and be more willing to mentor women of color.

Having more female faculty of color could also assist in combating stereotype threat. Stereotype threat is the “pressure that people feel when they fear that their performance could confirm a negative stereotype about their [racial] group,” which “manifests itself in anxiety and distraction that interferes with intellectual functioning.” Stereo
type threat causes some students of color to perform below their true academic potential on performance-based assignments, resulting in test scores and grades that often understate their knowledge or ability. Increasing the number of female faculty of color could reduce stereotype threat by somewhat relieving women of color of their need to represent their racial group. If so, female law students of color would be more likely to demonstrate their true potential on the write-on competition and board editing exercises (used in selecting members for the law review editorial board).

E. Informal Mentoring, Networking, and Campaigning

Beyond the importance of female faculty discussed immediately above, mentoring, networking, and campaigning among peers are also informal aspects to successful law review membership and election to leadership positions. Informal mentorship often occurs between the outgoing board members and the incoming members applying for board positions. Some call this mentoring an informal “grooming” in which third-year board members select second-year staff members that they would like to see obtain leadership positions. Such mentoring, or grooming, includes strategizing for the election process, backing certain candidates, and creating a favorable reputation.

Women of color are likely disadvantaged in gaining a third-year mentor because there are few women of color on the law review. Law reviews are predominately run by white males and, insofar as research suggests, white men

46. Anecdotally, as a woman of color, all of my close mentors in law schools were women of color. This could be self-selection on my part, but I also think that men, especially white men, are hesitant to mentor women and women of color.


48. Gibney, supra note 47.


50. Id. at 2.

51. Id. at 1.

prefer to mentor white men. One study on women of color at law firms found that “49% of women of color reported being informally mentored by white men (as compared to 74% of white men who reported being mentored by other white men).”\(^{53}\) This at least suggests that white men are less likely to mentor women of color, as compared to white male counterparts. In the law school setting, women of color may have difficulty finding an upperclassman willing to groom them for a leadership position.\(^{54}\)

Networking and campaigning for votes are also important aspects of obtaining a law review leadership position. Most law reviews elect their leaders, and thus, some networking and campaigning is necessary to get the required votes. This often occurs informally at law review social events, membership on law review committees, and informal classmate networks. This can be more challenging for women of color because women of color are more likely to have other obligations and responsibilities outside of law school that prevent them from attending social events and committee meetings.\(^{55}\) In addition, women of color are less likely to feel comfortable attending white male dominated events, such as law review happy hours and committees. Finally, women of color do not have the same classmate networks to sufficiently support their candidacy for law review leadership. Unfortunately, many law students tend to self-segregate and because there are fewer women of color on law school campuses, their classmate networks tend to be smaller.

These conditions force women of color to transcend both gender and racial barriers in order to network with their white and male counterparts. All of these informal relationships make it more difficult for women of color to obtain law review leadership positions because the informalities of the process perpetuates patterns of racial and gender discrimination.

## III. Increasing the Number of Women of Color in Law Review Leadership Positions

A diverse law review staff is not only important to the career advancement of underrepresented groups (discussed in supra Part I.B), but it is also important to the success of the law review itself and to the reputation of the law school. Law reviews benefit from a diversity of opinions, perspectives, and beliefs; this is particularly important to slating and above-the-line editing departments.\(^{56}\) The law students selecting articles and student comments for publication are not experts in any particular area of the law. In fact, many criticize law reviews because amateurs (students) in the profession manage them.\(^{57}\) Considering this, it may be difficult for slating editors to know what high quality scholarship looks like and what to publish.

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53. ARIN N. REEVES, FROM VISIBLE INVISIBILITY TO VISIBLY SUCCESSFUL: SUCCESS STRATEGIES FOR LAW FIRMS AND WOMEN OF COLOR IN LAW FIRMS 7 (2008).
54. Cross-gender mentoring can be difficult for some because of accusations of a sexual motive or relationship. Some also find cross-racial mentoring problematic out of special treatment claims for students of color, even though most find white-on-white mentoring normal and not a special preference.
55. Such responsibilities may include work obligations, child and elder care duties, household maintenance, or community activities.
56. Slating is the selection process in which editors choose which articles to publish. Above-the-line editing is editing the main text of an article; not the citations found below the line.
Similarly, it may not be easy for above-the-line editors to know how to improve a slated article when they have no background in the area of law. Having a wide range of interests and backgrounds would increase the collective knowledge of the law review so that members can select the best articles, slate a diverse range of topics and perspectives, and provide helpful feedback to authors.

Moreover, law schools benefit from a diverse law review. Flagship law reviews represent the law school as a whole, and serve an important public relations function. It reflects poorly on the law school when the law review lacks diversity. For example, most law reviews take a class photo each year to be displayed somewhere in the school or on the website. It is very embarrassing for a law school if each year, the law review photo has few people of color or women. Law schools care about displaying images of diversity. In a recent study investigating the promotional materials of 371 colleges, researchers found that students of color were considerably overrepresented in photographs as compared to the actual diversity of the school. Some colleges have gone as far as to Photoshop pictures of students of color into promotional photos where the student was not actually present. Universities do this in order to appear inclusive and tolerant of diversity. Similarly, law schools care about the racial and gender composition of the law review since the public, other institutions, and the legal community view it as representative of the entire school. As such, law schools and law reviews alike should have an interest in the following proposed remedies.

A. Welcoming Environment

The first step in improving the representation of women of color in law review leadership positions is creating a more welcoming law review environment in which women of color feel more comfortable. Part of the difficulty of this rests upon the reputation of all law reviews as competitive, demanding, and elitist. In other words, they are not viewed as a friendly place in the law school. Moreover, when law reviews already have few women of color, it may not appear to be a particularly welcoming environment for women of color. Thus, law reviews must attempt to change their reputations and environments so that women of color will want to be a part of the law review and run for leadership positions.

The perception of the law review may also differ between white students and non-white students. For example, Asians accounted for 3.3% of the student body but 5.1% of the students appearing in promotional photos; blacks made up 7.9% of enrolled students but 12.4% of the photographed students. Scott Jaschik, Viewbook Diversity vs. Real Diversity, INSIDE HIGHER ED 2 (July 2, 2008), http://www.insidehighered.com/news/2008/07/02/viewbooks; accord Matthew Hartley & Christopher C. Morphew, What’s Being Sold and to What End? A Content Analysis of College Viewbooks, 79 J. HIGHER EDUC. 671, 686–87 (2008).

There are many other reasons why colleges and universities highlight students of color in their promotional material, but these reasons are outside the scope of this paper. See Nancy Leong, Racial Capitalism, 126 HARV. L. REV. 2151 (2013).


62. Cultural feminists would argue that women feel especially uncomfortable in such competitive settings because it goes against their nature. Cultural feminists contend that “women have a different culture and even different epistemology (different ethics, ideas, and language) from men—one that involves valuing intimacy, prioritizing relationships over competitions, and being caring rather than dominating.” Aya Gruber, Neofeminism, 50 HOUS. L. REV. 1325, 1338 (2013).
and students of color (discussed in supra Part II.A. in the explanation by Russell Robinson), and be based in part on how well the law review responds to discrimination. One aspect of a welcoming environment for students of color is for them to know that discrimination will not be tolerated and that claims of discrimination will be taken seriously. One of the fears shared by people of color when they are a small minority in an organization is that the organization will not take seriously their concerns, especially those concerning discrimination. As Russell Robinson explains, “Outsiders who perceive discrimination face not just psychological costs, but also substantial social costs if they articulate that perception. Several compelling studies demonstrate that social pressures may silence targets of discrimination. These social costs include being perceived as a hypersensitive complainer and facing negative career effects.”

Law reviews can combat the psychological and social costs that Robinson describes by having strong and public antidiscrimination policies that address unconscious bias. Law reviews can also make clear their diversity initiatives and statements within their constitutions.

Additionally, law reviews should implement annual diversity trainings that address unconscious bias for their staff. For some members, law review may be their first experience in working closely with a person of color. For many, the board selection process may also be the first time they have considered candidates of color for leadership positions. Law review staff must learn to actively recognize and fight against unconscious bias so that everyone will feel welcome on the law review and can compete more fairly for coveted leadership positions.

B. Structural Remedies

The formal structures in place define the law review community. Law reviews should put structural remedies in place in order to increase the overall diversity of law reviews and representation of women of color in leadership positions. Many law reviews have taken the initiative of creating a diversity outreach editor position and/or a diversity committee. Usually, the diversity editor is responsible for conducting outreach to first-year students, promoting diversity initiatives within the law review, and supporting those diverse students who do join the law review. The diversity editor also leads a diversity committee, which functions as a law review department. The diversity committee works on diversity policy proposals, events, and programming.

Some law review diversity committees have established a minimum number of membership slots for diverse students, and race-conscious and gender-conscious admissions policies. Like any race- or gender-conscious policy, there are critics who claim that students of color and women will receive an undeserved preference and that others will stigmatize them as unqualified. This stigmatization argument is not convincing when compared to the immense benefits bestowed on all law review members. Moreover, the argument is not strong when considering the unearned benefits that white and male students receive. The argument assumes that inequality does not exist. However, white and male students do not need to conform to the

63. Robinson, supra note 36, at 1147.

64. Rhode, supra note 37, at 3 ("[C]ommentators air their view that ‘merit is out,’ and ‘special privileges’ are in, and the only group that can’t claim equal protection under the law is white men.... This perspective is widely shared. According to recent polls, close to half of all men think that they are subject to unfair penalties for advantages that others had in the past.").
norms of law review because law reviews are largely based on white male norms. In addition, white law students are more likely to have highly educated parents and networks, and enhanced educational opportunities before law school, compared to law students of color. Thus, white students are already at an unfair advantage when competing for law review positions with regards to skills and familiarity. Race-conscious admission policies are not putting students of color ahead, but are rather putting them on the same level as white students.

Once there are more women of color on the law review, law reviews can implement structural pipelines into leadership positions. For example, a formal mentorship program that pairs law review staff with a board member, alumni, and professor would go a long way. In addition, having a support group for women of color law review members that meet on a regular basis would develop a sense of community and belonging on the law review. In a study of the racial microaggressions that students of color face on college campuses, Professors Daniel Solórzano and Tara Yosso found that black students highly valued counter-spaces as a response to racial microaggressions. Counter-spaces are places in which students of color can receive validation and emotional and academic support. A law review group for women of color could discuss progress on comment writing, developing relationships with professors, and/or strategies for the board application process. Law reviews need to provide a space specifically for the success and advancement of women of color.

Finally, more transparency in the decision-making process is necessary to prevent discrimination. Part of the reason why discrimination continues is that there is no record as to how decisions were made. The veil of confidentiality only perpetuates the status quo by isolating those making the decisions from wrongdoing. If law reviews recorded meetings or at least if there was someone taking notes, then members may give more thought to how they characterize candidates and make more of an effort to avoid sounding racist or sexist. If no one is allowed to talk about the decision-making process, then no one is held accountable when discrimination occurs.

C. Informal Remedies

Unfortunately, public universities under state law bans on affirmative action will have to be more creative in formulating remedies since nearly all race-
conscious policies are likely to fall within the bans. Outgoing board members (third-year law review members), alumni, and faculty could, however, conduct informal remedies that target students of color because they are no longer formally associated with the journal as active members. Any current members targeting students of color could be accused of violating state bans on race-conscious remedies. Such diversity outreach includes trainings and workshops to first-year students of color in preparation for the write-on competition. Many students of color are first-generation law students, and do not have the same skills and knowledge as their white counterparts to effectively compete for law review membership. Therefore, diversity efforts must happen even before students make it onto the law review in order to increase women of color in leadership positions.

Once women of color make it onto the law review, board members, alumni, and faculty, should mentor and prepare women of color to run for leadership positions. Leadership selection is very political and women of color need guidance on the steps to successfully run a campaign. For example, publishing a student comment or note is often a valuable résumé line, but male students drastically out-publish women. Faculty support in this area would greatly enhance the chances of female students publishing their comments or notes. Another example is training for the editing performance tests. In order to secure the EIC position, law review members must perform well on the editing tests, but rarely does any formal training occur. Outgoing board members could train incoming women of color staff on how to properly edit. Most importantly, though, mentorship is required for navigating the treacherous political climate. Law reviews have historically included a significant number of white males so white norms will likely continue to dominate. Thus, female mentors of color must teach younger women of color how to be successful within a white institution in order to not temper unconscious bias.

Admittedly, these informal remedies require widespread and deep commitment to diversity on the part of the outgoing law review members, alumni, and faculty. For example, the UCLA Law Review has implemented diversity outreach efforts for the past few years, but only a small group of third-year law review members (fewer than ten people), and hardly any faculty or alumni, participate in training and mentoring the first-year students of color in preparation for the write-on competition. As a result, the UCLA Law Review has a poor record of recruiting underrepresented students of color. In addition, board members, alumni, and faculty must make a concerted effort to mentor the few women of color that make the law review so that they can effectively compete for leadership positions.

D. Faculty Involvement

Finally, faculty involvement in the law review is especially important considering most law reviews lack significant institutional memory. Part of the
difficulty in creating change within law reviews is that each year the board and staff turn over. Thus, the law review leadership usually adopts the practices from the previous year without reflecting on ways to improve. The law school faculty, however, could be an essential element for change because of their long-term involvement with the university. In addition, law school professors have an interest in the success of the law review because law reviews impact the prestige and reputation of the entire law school.

Admittedly, law reviews are mostly student-run organizations, but there is room for faculty involvement. Faculty involvement could be a formal relationship, such as a faculty advisor for the law review, but it could also be more informal. For example, informal advising could take the form of a consulting role during the slating process, if the article is within a professor’s specialization. Formal and informal faculty advising could help with the relatively short-term institutional memory of law reviews. For instance, a faculty member who has seen the progression of the law review over a number of years could advise the law review to change its policies or informal practices.

In addition, more faculty involvement from female professors of color could make a dramatic difference for improving the representation of women of color in law review leadership positions. As discussed above in the Ms. JD/NYLSLR report, there is a positive correlation between the increased number of female faculty and the gender diversity of the law review. If female law review members of color see female professors of color involved and interested in the law review, this might encourage women of color to apply for leadership positions. Their involvement would also make the law review a more welcoming environment for women of color.

CONCLUSION

Hopefully, this Article is just the beginning of an extensive conversation. The dearth of women of color on law reviews and in leadership positions impacts who occupies the most elite positions in the legal profession. If we want to see more female judges of color, more female professors of color, more women of color serving as general counsels at top corporations, and more female partners of color in law firms, then we need to start increasing their representation and leadership on law reviews.

73. Although the UCLA Law Review did have a faculty advisor, she was not very involved in running the journal.