

WE CAN, AND MUST, DO BETTER

by Rosalyn “Sia” Baker-Barnes

George Floyd ... Ahmaud Arbery ... Breonna Taylor ... Jacob Blake. Names, and more importantly, lives, that have captured the attention of the world and caused everyone to reflect upon the impact that racial injustice has on all of us. The 2020 referendum on racism has caused major businesses, political leaders, schools, and law firms, to confront these issues in ways that we never had before. The FJA^{*} Minority Caucus was created to address issues of diversity within the Florida Justice Association: from pathways to leadership, to promoting diverse speakers and presenters at FJA events, to developing new ways to encourage diverse Plaintiffs’ trial lawyers to join our organization. I have been involved in the FJA since I started practicing law 20 years ago. I enjoyed serving in the Young Lawyers’ Section, ultimately as its first Black woman chairperson, on the Board of the Women’s Caucus and on the “big board,” as we call it. I stepped back for a while to climb the ranks of the Palm Beach County Bar Association, eventually serving as its first Black woman president. At the time I started my FJA service, I could count on one hand the number of lawyers in the organization that looked like me. Twenty years later, there are a few more of us, but not many. The question is: why? The answer requires us to peel back the layers of numerous issues in our profession, which seem to be amplified in our respective areas of practice.

The issue is not only one of diversity, which is critical, but also *inclusion*, which is key to our success. Inclusion means so much more than having members of our organization that are of different racial, gender and ethnic backgrounds; it means fostering an environment where members of all racial, gender and ethnic backgrounds feel included, with equal access and opportunity within the organization to learn, present, lead and generate business. I encourage all of us to look within and think about the number of occasions on which your opposing lead trial counsel at trial, has been a black woman. Going further, how often has your opposing counsel at a deposition, your mediator, your co-counsel, partner or associate, or your judge, been a woman of color? For me, I specialize in medical negligence cases, and I could extend the inquiry even further and ask my FJA colleagues the number of occasions on which your expert, or your opposing expert witness, has been a Black woman. I would venture to guess very few. Imagine working every day in that environment, one that can be isolating, lonely, and exhausting. Recently, Procter & Gamble released an advertisement entitled “The Look.”¹ I know it. It is the look (or stare) you get from a person that believes, perhaps consciously or subconsciously, that you don’t belong, or questions how or why you are present. Imagine experiencing “The Look” on a regular basis in your professional world, sometimes every day, constantly working to prove that you belong.

In June 2020, the American Bar Association’s Commission on Women

in the Profession released the results of a study conducted to assess the status of women of color in the legal profession. It is titled “Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color.”² This study was designed to operate as a follow-up to a study conducted 14 years ago, to evaluate the relative experiences of women of color practicing in law firms for more than 30 years.³ The results are alarming. There were *so few* women of color *nationwide* meeting the criteria that researchers were able to identify 90 percent of women of color practicing in law firms more than 30 years *within minutes*.

It was the intent to conduct a study similar to the primary study, but finding women of color to participate who had been practicing law more than 20 years, particularly in person, was analogous to finding women of color who are equity partners in law firms. The paucity of women of color from whom we could draw for this parallel study was palpable. In the end, we were able to have 35 women of color participate in person and 68 participate via an online survey.⁴

Unable to gather a statistically significant group from which to draw more precise data, the researchers instead focused on the unique experiences of the women they were able to gather, to better understand *why* there were so few women of color with long-term legal careers. One statistic that has not changed over 20 years — women of color represent approximately 2 percent of equity partners at large law firms. While law firms have hired more women of color as associates in the last 20 years, attrition was high and very few attained partnership. The women surveyed across the board expressed experiencing bias, stereotyping and racism in the workplace. They described the challenges of isolation, when one is constantly the only woman of color in the law firm, or the courtroom, or the boardroom, and inability of their colleagues to relate to their experiences. Many women described limited opportunity for advancement. In the end, more than 70 percent of the women surveyed desired to leave the legal profession altogether, because they did not see any viable alternative to their current situation. We must recognize and address the fact that this attrition is not the *cause* of lack of diversity in law firms, it is a *symptom* of minimal diversity and pervasive exclusion.

These statistics reach far beyond hiring, retention and pathways to partnership. They pervade every aspect of the practice of law. We in the FJA are trial lawyers. Yet in a 2015 study, the ABA’s Com-

mission on Women in the Profession studied the role of women at trial, finding that women were severely underrepresented as lead trial lawyers. The study, “First Chair at Trial: More Women Need Seats at the Table,”⁵ found that women were far less likely than men to be lead counsel in tort, contract and intellectual property cases. Men were three times as likely to appear as lead counsel in civil trials than women. The study did not address the racial or ethnic disparities in these areas, however, we can all surmise that these statistics, as applied to women of color as lead counsel, are likely to be staggering. The ability to serve as lead counsel affects whether a lawyer will achieve State and National Board-Certification in Civil Trial law, membership in the American Board of Trial Advocates (ABOTA) and impacts a lawyers’ reputation in her legal community. Not surprisingly, women of color are severely under-represented in these areas as well. Hence, the challenges we face in achieving diversity and inclusion in the Florida Justice Association. So, how do we overcome these challenges?

In the study on Women of Color, the ABA researchers examined why women who did meet the criteria, yet still experienced the challenges addressed above, decided to stay in the profession. They found that despite experiencing isolation, bias and racism, roadblocks to advancement, these women love, enjoy and excel in the practice of law. They serve as examples to young women of all backgrounds, but especially women of color, that we can be successful trial lawyers, in Big Law or whatever your goal may be. They also feel a sense of obligation to reach back and serve as mentors to up and coming women lawyers of color. They recognize that if they drop out of the profession, the availability of mentors for these women would be minimal. I’m one of the lucky ones. I am privileged to be among the 2 percent referenced in the study, and I am blessed to practice in a law firm that recognizes the importance of, and affirmatively works to achieve, true diversity and inclusion. I am a member of ABOTA, having served as lead counsel in many trials, some with multiples of millions on the line. I have been mentored by men and women, inside and outside of my law firm, and I have several amazing mentors who also are successful women lawyers of color. But I am in a very small minority, and I have strong desire to help others attain the same opportunities that I have had.

And, I am not exempt. I, too, have and continue to experience bias, racism, “The Look,” isolation and everything in between, but I never talked about it to my partners before. I normalized it, treated it as if it just came with the territory. *I was wrong.* In order for us to truly address these issues, as difficult and uncomfortable as it may make us, we must be willing to face them. To hear one another out, to make one another aware that racism and sexism are real, and that even us “successful professional lawyers,” the 2 percent, are not exempt. I may look like a lawyer in the courtroom or in the boardroom, but in my everyday life, what many people see first is that I am a Black woman. Everything else is second. These circumstances are difficult, sometimes painful, but they are not insurmountable.

Placing these factors in the context of the 2020 referendum on race, we must recognize that potential clients and jurors will likely look more closely and the composition of our law firms, our courtrooms and our

boardrooms. The public is more aware than ever of the importance of diversity and inclusion in their selection of lawyers and law firms, demanding that they represent our community at large and walking away when they don’t. I have had clients in the wake of these incidents tell me that they specifically sought me out because of my experience and track record first, but *also* because they wanted a lawyer that could relate to their own life experiences. Achieving true diversity and inclusion in your law firm, and in the Florida Justice Association, is an *advantage*, not a burden.

The ABA researchers developed several key recommendations designed to improve the relative experiences of women of color in the legal world and, enhance our ability not only attract diverse candidates, but also to cultivate, support, promote and retain them:⁶

- Develop rules designed to eliminate or reduce bias in decision-making, including hiring, case assignment, speaking opportunities, lead counsel opportunities and partnership; i.e., give *everyone* the opportunity to shine in your law firm.
- Seek out reliable mentors and support systems for women of color, that can relate to their shared experiences; i.e., we need your support, but we also need to be able to go to someone that can relate to our experiences. If we don’t know of such a person, help us find one. Additionally, encourage and support your lawyers’ involvement in community organizations and activities. I found that my involvement in my sorority and other organizations provided me with an outlet, a place where women like me had shared experiences. The ABA study also emphasized this as key factor for those women in the 2 percent.
- There are many qualified diverse lawyers out there, eager for the opportunity to succeed. Look for them, hire them and then, give attention, focus and effort to inclusion and retention; i.e., you have to have more than just the presence of a Black, Latina or Asian woman in your office. Your environment must recognize that everyone’s life experiences are



different, and we need to affirmatively attempt to foster an environment that is welcoming to all of us.

- Create an environment where all lawyers can be comfortable raising and addressing issues of bias, stereotypes and racism; i.e., we have to talk about it. When issues like the George Floyd murder occur, don't ignore it, address it. True inclusion occurs when there is respectful dialogue, when there are shared experiences, and when we all learn a little bit more about each other.

Taking these steps will not only allow our law firms to attain true diversity and inclusion, but will also allow organizations like the Florida Justice Association, ABOTA and others to do the same. It may result in an

increasing in the number of women of color achieving Board Certification. The FJA's conventions, seminars, lobbying efforts, and political efforts will only be enhanced when our membership, and leadership, better reflects our community. The FJA Minority Caucus is committed to these efforts, but to be successful, it will take all of us. We can, and must, do better. ■



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¹ "The Look," (2020) Procter & Gamble, available at www.youtube.com/watch?v=aJav36Nbn58.

² "Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color," (2020) American Bar Association, Commission on Women In the Profession, available at www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf

³ "Visible Invisibility: Women of Color in Law Firms," (2006), American Bar Association, Commission on Women In The Profession, available at www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility.pdf

⁴ *Id.* at iii (emphasis added).

⁵ "First Chair at Trial: More Women Need Seats at the Table," (2015) American Bar Association, Commission on Women In The Profession, available at www.americanbar.org/content/dam/aba/marketing/women/first_chairs2015.authcheckdam.pdf

⁶ "Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color," (2020) American Bar Association, Commission on Women In the Profession, 20-26, available at www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf

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