

Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+

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Abstract

Purpose:

This article is part of an ongoing body of investigation examining the experiences of lawyers with diverse and multiple minority identities, with particular focus on lawyers with disabilities; lawyers who identify as lesbian, gay, bisexual, transgender, and queer (“LGBTQ+” as an overarching term); and lawyers with minority identities associated with race and ethnicity, gender, and age. The focus of this article is on discrimination and bias in their workplaces as reported by the lawyers experiencing it.

Methods:

We employ survey data from the first phase of this investigation, gathered from the survey responses of 3590 lawyers located across all states in the United States and working in most types and sizes of legal venues. The data were collected between 2018 and 2019, before the 2020 pandemic. We estimate differences across three categories of discrimination reported—subtle-only discrimination, overt-only discrimination, and both subtle and overt discrimination. We estimate the nature and magnitude of associations among individual and organizational variables, and we use multinomial logistic regression to illustrate relative risks of reports of discrimination for intersecting identities.

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Results:

As compared to non-disabled lawyers, lawyers with disabilities show a higher likelihood of reporting both subtle and overt discrimination versus no discrimination. Similarly, lawyers who identify as lesbian, gay, bisexual, and queer (“LGBQ”) show a higher likelihood of reporting both subtle and overt discrimination, and subtle-only discrimination, as compared to lawyers who identify as straight/heterosexual. Women lawyers and lawyers of color are more likely to report all three types of discrimination. In general, younger lawyers are more likely to report subtle-only discrimination when compared to older lawyers. Lawyers working at a private firm are less likely to report all types of discrimination, while working for a larger organization is associated with a higher relative risk of reporting subtle-only discrimination versus no discrimination.

Conclusions:

The current study represents a next, incremental step for better understanding non-monochromatic and intersectional aspects of individual identity in the legal profession. The findings illustrate that primary individual and multiple minority identities, as identified by disability, sexual orientation, gender, race/ethnicity, and age, are associated with reports of discrimination and bias in the legal workplace.

I. INTRODUCTION

This Article is the third in a program of study, conducted in collaboration with the American Bar Association (“ABA”), on diversity and inclusion (“D&I”) in the legal profession.¹ The investigation’s overarching focus is on lawyers with disabilities² and lawyers who identify as lesbian, gay, bisexual, transgender, and queer (“LGBTQ+”) as an

¹In addition to the funding mentioned in note †, *supra*, this program of study is supported in part by the American Bar Association (“ABA”) Commission on Disability Rights (we thank Amy Allbright, Director) and the ABA Commission on Sexual Orientation and Gender Identity (we thank Malcolm “Skip” Harsch, Director). This investigation has been a collaborative effort, with many people and organizations graciously giving of their time to enhance the diversity and inclusiveness of the legal profession. Leaders from the ABA, Chairman Scott LaBarre of the Disability Rights Bar Association (“DRBA”), President Wes Bizzell of the National LGBT Bar Association, and other non-profit and state legal leaders and associations contributed to this effort. Many people from across the United States acted as members of the project’s Blue-Ribbon Advisory Panel, providing feedback and insight into the development of the first phase survey. Countless other legal professionals provided feedback, and we have vetted our ideas at national and state legal association meetings and educational programs. This investigation would not be possible but for this engagement by such leaders in the diverse community of legal professionals, law firms, state bar associations, not-for-profit legal associations, and others. As mentioned in note †, *supra*, the views expressed herein represent the opinions of the authors, and not those of any funding agency, university, or other entity. They have not been approved by the House of Delegates or the Board of Governors of the ABA and, accordingly, should not be construed as representing the position of the ABA or any of its entities.

²When linguistically possible, we use person-first and identity-first language interchangeably when referring to selfhood and individual experience and preference. This usage also recognizes the importance of person-first language to the disability movement (and other movements) when disability is an important part of self-identity. Not all individuals and groups endorse the same type of person- or identity-first language, however. The National Federation of the Blind may refer to “blind people.” In deaf culture, individuals may refer to a “Deaf Person” or “hard of hearing person.” In the Autistic community, some may refer to “Autistic Individuals” or “being on the spectrum.” The notion of “neurodiversity” is one way of describing people with neurological differences—another naturally occurring aspect of the human condition. Others with neurodiversity may describe themselves as having conditions, such as Dyslexia, Attention Deficit Hyperactivity Disorder, and Autistic Spectrum Disorder.

While our current language choices respect, but cannot enduringly reflect, all the ones that would be made or preferred by all people in the disability and broader communities, our aim is to be thoughtful and cognizant of the value in all persons. See PETER BLANCK, *DISABILITY LAW AND POLICY* (2020) [hereinafter BLANCK, *DISABILITY*]. We have included explanations for our choices in this footnote and in the next two.

overarching term).³ It further considers multiple individual and social intersectional identities associated with race and ethnicity, gender, and age.⁴

Ours is not the first study to focus on the legal profession. Earlier studies of the legal profession included broad formative empirical investigations, such as the longitudinal study, *After the JD*, conducted from 2004 to 2019 by the American Bar Foundation (“ABF”) and the National Association for Law Placement (“NALP”).⁵ Specific diversity-oriented studies from 2015 to 2020 have acknowledged that the legal profession remains among the least diverse professions in the United States, and particularly at senior and leadership levels.⁶ Despite extensive efforts to promote D&I in the profession, and existing

³For the first two articles, see Peter Blanck, Fitore Hyseni & Fatma Altunkol Wise, *Diversity and Inclusion in the American Legal Profession: Workplace Accommodations for Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 30 J. OCCUPATIONAL REHAB. 538 (2020) [hereinafter Blanck et al., *Workplace Accommodations*]; Peter Blanck et al., *Diversity and Inclusion in the American Legal Profession: First Phase Findings from a National Study of Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 23 U.D.C. L. REV. 23 (2020) [hereinafter Blanck et al., *First Phase*]. In our endeavors, we recognize that people with multiple and intersectional identities may choose unique ways in language to express their personhood. See, e.g., *Finding the Right Words: LGBTQ+ Glossary*, IT GETS BETTER PROJECT (last updated Apr. 28, 2020) [hereinafter *LGBTQ+ Glossary*], https://itgetsbetter.org/blog/lesson/glossary/?gclid=Cj0KCKQiApsiBBhCKARIsAN8o_4iulMIOQS0gOOem_WLYCaw9RaFXcu-IcHCLJi1cTyMUefvszaZicaAvZIEALw_wcB [https://perma.cc/B6NG-R6YD] (“Many LGBTQ+ people use labels to express who they are. These labels can help listeners like you and me understand who that person is and how they wish to identify. Some labels are often used universally by LGBTQ+ people, while others relate to [specific] concepts.”). We also are mindful of individual choice in pronouns that are gender neutral or gender inclusive, and where possible have tried to reflect that preference as well as to use pronouns thoughtfully in general.

⁴See Blanck et al., *Workplace Accommodations*, *supra* note 3; Blanck et al., *First Phase*, *supra* note 3. In this Article, we use both the terms “people/person of color” (POC) and “racial/ethnic minorities” to refer to ethnic and racial minorities in the United States. The goal of using such over-encompassing terms is not to imply a monolithic experience, but to highlight the common experiences of systemic racism that Black, Hispanic/Latino, Asian American, and Indigenous populations experience. Where possible, we also offer disaggregated data on these groups to show the nuance in experiences of workplace discrimination. Other researchers and activists have suggested the use of the term BIPOC (“Black, Indigenous, and People of Color”) to highlight and center the unique experiences of Black and Indigenous Peoples. Given the diverse and large number of people of color represented in our survey, we have decided to use the terms “people of color” and “racial/ethnic minorities” interchangeably so as to most fully identify shared axes of inequality in the workplace, and we also refer specifically to lawyers as appropriate when using these terms. Nonetheless, we recognize other assumptions in our use of this language, which we will consider in future studies, such as including White individuals with Hispanic heritage who may not be considered people of color and do not experience systems of oppression comparable to those that Black or other POC experience.

⁵See Ronit Dinovitzer et al., *After the JD: First Results of a National Study of Legal Careers*, NAT’L ASS’N FOR L. PLACEMENT (“NALP”) FOUND. FOR L. CAREER RES. & EDUC. & AM. B. FOUND. (“ABF”) (2004), <http://www.americanbarfoundation.org/research/project/118> [https://perma.cc/E5ZA-E3TK]. The study was done in three phases, with the Second Results coming in 2009. The Third Results came in 2014. Ronit Dinovitzer et al., *After the JD III: Third Results from a National Study of Legal Careers*, NALP FOUND. FOR L. CAREER RES. & EDUC. & ABF (2014). To aid in comparing the *After the JD* studies and our study, where possible we have conformed our data tables to those adopted in the *After the JD* reports. Another important comparator study for our study is Robert L. Nelson et al., *Perceiving Discrimination: Race, Gender, and Sexual Orientation in the Legal Workplace*, 44 L. & SOC. INQUIRY 1051 (2019). For an excellent overview, see DIVERSITY IN PRACTICE: RACE, GENDER, AND CLASS IN LEGAL AND PROFESSIONAL CAREERS (Spencer Headworth et al. eds., 2016).

⁶See Allison E. Laffey & Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives*, A.B.A. (May 2, 2018), <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/> [https://perma.cc/D6QZ-KTE8]; see also Deborah L. Rhode & Lucy Buford Ricca, *Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel*, 83 FORDHAM L. REV. 2483 (2015); Ronit Dinovitzer & Bryan G. Garth, *The New Place of Corporate Law Firms in the Structuring of Elite Legal Careers*, 45 L. & SOC. INQUIRY 339 (2020). According to Dinovitzer and Garth,

We find that, consistent with the long-standing hierarchies of the legal field, the so-called upper hemisphere represented by the corporate law firm remains dominated by white

antidiscrimination laws, reports of discrimination and bias by minority-identity lawyers are prevalent.⁷

The existing body of study on the lack of D&I in the legal profession, while robust, has primarily focused on gender,⁸ racial and ethnic minorities,⁹ and the intersection of gender and race.¹⁰ Our engagement in a program of studies to extend the focus of D&I studies to include lawyers with disabilities and who identify as LGBTQ+¹¹ comes to coincide with the thirtieth anniversary of the Americans with Disabilities Act (“ADA”).¹²

male graduates of elite law schools with wives at home. The sequence analysis of equity partners shows a group that touched all the bases to fit the institutionalized hierarchies of the large law firm, including both the capital (law review, high grades, elite schools, and judicial clerkships) and the ambitions and fit required. They also continue the white male dominance within the equity partnership track. Because of this story of continuity, we term them “the inheritors” from the golden age of corporate law firms.

Id. at 364.

⁷See Nelson et al., *supra* note 5, at 1051; see also Todd A. Collins, Tao L. Dumas & Laura P. Moyer, *Intersecting Disadvantages: Race, Gender, and Age Discrimination among Attorneys*, 98 SOC. SCI. Q. 1642, 1654 (2017); Wesley Bizzell, *LGBTQ+ Lawyers Experience Breakthroughs and Setbacks: Comment on Blanck, Hyseni, and Altunkol Wise’s National Study of the Legal Profession*, 47 AM. J.L. & MED. 67, 67 (2021) (“While other studies have focused on LGBTQ+ bias and discrimination in the American workforce, few have looked at these issues in the specific context of the legal profession, a profession with an often rigid hierarchy and a woeful lack of diversity across multiple spectrums.”).

⁸See Beatrice Dinerman, *Sex Discrimination in the Legal Profession*, 55 A.B.A. J. 951 (1969).

⁹See ELLEN BERREY, ROBERT L. NELSON & LAURA BETH NIELSEN, *RIGHTS ON TRIAL: HOW WORKPLACE DISCRIMINATION LAW PERPETUATES INEQUALITY* (2017); Monique R. Payne-Pikus, John Hagan & Robert L. Nelson, *Experiencing Discrimination: Race and Retention in America’s Largest Law Firms*, 44 L. & SOC’Y REV. 553 (2010).

¹⁰For the seminal discussion, see Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989) (conception of intersectionality derived from the attitudinal and structural oppression, discrimination, and bias facing Black women). See also Collins et al., *supra* note 7; *LGBTQ+ Glossary*, *supra* note 2, at 5 (“Intersectionality (GE, GI, S, SO). Noun. The idea that people who find themselves at the crossroads of multiple identities (for example, in terms of race, gender, or sexuality) experience discrimination in a way uniquely different from those who with whom they may only share one or some identities in common. For example, Black women will experience racism differently than Black men and sexism differently than white women, and the way they experience racism and sexism is informed by their unique intersectional identities. The term was first used in the context of feminism by civil rights scholar and advocate Kimberlé Crenshaw.”).

¹¹See Barry D. Adam, *Stigma and Employ Ability: Discrimination by Sex and Sexual Orientation in the Ontario Legal Profession*, 18 CANADIAN REV. SOC. 216 (1981); see also Nelson et al., *supra* note 5; Blanck et al., *First Phase*, *supra* note 3. And for their excellent report on experiences of lawyers with disabilities, see Debbie Foster & Natasha Hirst, *Legally Disabled? The Career Experiences of Disabled People Working in the Legal Profession* (Cardiff Bus. Sch. 2020), <http://legallydisabled.com/wp-content/uploads/2020/01/Legally-Disabled-full-report-FINAL.pdf> [https://perma.cc/3HVW-YXD5]. On the unique discrimination experiences of bisexual individuals, see Ann E. Tweedy & Karen Yescavage, *Employment Discrimination Against Bisexuals: An Empirical Study*, 21 WM. & MARY J. WOMEN & L. 669, 735-37 (2015) (“The study confirmed that bisexuals and others with fluid identities believe they experience a wide range of types of discrimination based on sexual orientation, including many types of harassment as well as the more traditional types of discrimination—firing and failure to hire due to sexual orientation. ... The fact that such a high proportion of respondents had experienced inappropriate jokes or insults based on their sexual orientations may be evidence that bisexuality is not seen as a serious identity that is deserving of protection, a complaint that participants in Stonewall’s study voiced.”) (citations omitted).

¹²ADA Amendments Act of 2008, 42 U.S.C. § 12101 et seq. (2018) (amending the Americans with Disabilities Act of 1990); see also BLANCK, DISABILITY, *supra* note 2; Peter Blanck, *Disability Inclusive Employment and the Accommodation Principle: Emerging Issues in Research, Policy, and Law*, 30 J. OCCUPATIONAL REHAB. 505 (2020) [hereinafter Blanck, *Emerging*]; Peter Blanck, *On the Importance of the Americans with Disabilities Act at Thirty*, J. DISABILITY POL’Y STUD. (forthcoming 2021) [hereinafter Blanck, *ADA at Thirty*]; Peter Blanck, *Why America is Better Off Because of the Americans with Disabilities Act and the Individuals with Disabilities Education Act*, 35 TOURO L. REV. 605 (2019) [hereinafter Blanck, *America Better Off*].

In our studies, we seek to build upon the increasing recognition that, to be successful, legal organizations must seek to hire and retain diverse talent.¹³ Our body of research likewise rests on the recognition that “success” in the legal profession can be measured in a wider variety of ways than have typically been recognized, such as in diversity of personal and professional experience; work ethic and competence; emotional intelligence; and values, such as integrity, that underpin the legal profession.¹⁴

As is well recognized in the legal profession, attitudinal and structural stigma and bias are antithetical to D&I, as are intentional and unintentional discrimination in the workplace.¹⁵ When these unjustified and harmful forces play a role in organizations, some of their members, and sometimes their organizational customers and clients, perceive other members to have qualities that are devalued—regardless of those other members’ competence or other professional characteristics.¹⁶ This devaluation may be expressed in myriad ways, such as by overt bias, stigma, and discrimination; by subtler verbal means, nonverbal means, or both, as with “microaggressions”;¹⁷ or by variations of both verbal and nonverbal types of discrimination. Devaluation may also be expressed intentionally or unintentionally. This latter form often is described as implicit, or “unconscious,” bias.¹⁸

These forms of discriminatory expression may be conveyed, or perceived to have been conveyed, by both individuals and groups. These expressions may be internal or external to an organization’s governing mechanisms and may take the form of discriminatory policies, procedures, practices, and norms (this last term is also referred to as organizational culture or climate). These mechanisms all inevitably vary as a function of context, time, group dynamics, tasks and objectives, and other characteristics of particular environments.¹⁹

¹³Talent and competence are culturally, situationally, and contextually loaded concepts. *See, e.g.*, Tomas Chamorro-Premuzic, *Ace the Assessment*, HARV. BUS. REV., July-Aug. 2015, at 118, 120–21. In our investigation to date, it may appear that we have assumed a level of commitment to D&I in the legal profession. However, it is important to note that, as pointed out by Neumeier and Brown, such assumptions should be questioned. Shain A. M. Neumeier & Lydia X. Z. Brown, *Beyond Diversity and Inclusion: Understanding and Addressing Ableism, Heterosexism, and Transmisia in the Legal Profession*, 47 AM. J.L. & MED. 82, 83 (2021). Our findings and reviews in our prior articles in this series, and in other anecdotal evidence of marginalized individuals in the legal profession, suggest that meaningful commitment in the profession to demonstrated outcomes in increased diversity and inclusion remains an open issue. *See id.* (“Furthermore, developing effective diversity and inclusion measures requires that researchers analyze why the bias and discrimination they seek to address persists to such a significant extent. Developing an understanding of these reasons depends in turn on examining any underlying, unexamined assumptions researchers themselves may have about the degree of even abstract commitment to the principles of diversity and inclusion within the legal profession”).

¹⁴Blanck et al., *First Phase*, *supra* note 3, at 27; Chamorro-Premuzic, *supra* note 13, at 119 (“[V]alid tests help companies measure three critical elements of success on the job: competence, work ethic, and emotional intelligence.”).

¹⁵*See* Alex B. Long, *Employment Discrimination in the Legal Profession: A Question of Ethics*, 2016 U. ILL. L. REV. 445.

¹⁶*See* A.B.A., *New Study Finds Gender and Racial Bias Endemic in Legal Profession* (Sept. 6, 2018), <https://www.americanbar.org/news/abanews/aba-news-archives/2018/09/new-study-finds-gender-and-racial-bias-endemic-in-legal-professi/> [https://perma.cc/PCS8-78RX]; Laffey, *supra* note 6.

¹⁷*See* Scott Lilienfeld, *Microaggressions: Strong Claims, Inadequate Evidence*, 12 PERSP. ON PSYCHOL. SCI. 138 (2017) (critiquing microaggressions concept on methodological and empirical grounds).

¹⁸There are a multitude of writings and critiques on the forms of bias, stigma, and discrimination across the professions. For reviews, *see, e.g.*, Samuel Bagenstos, *Implicit Bias’s Failure*, 39 BERKELEY J. EMP. & LAB. L. 37 (2018); BLANCK, DISABILITY, *supra* note 2; *see also* Kayla Lett, Andreea Tamaian & Bridget Klest, *Impact of Ableist Microaggressions on University Students with Self-Identified Disabilities*, 35 DISABILITY & SOC’Y 1441 (2019).

¹⁹For a review, *see* Mikki Hebl, Shannon Cheng & Linnea Ng, *Modern Discrimination in Organizations*, 7 ANN. REV. ORGANIZATIONAL PSYCHOL. & ORGANIZATIONAL BEHAV. 257 (2020).

Stigma, bias, and discrimination, of course, are perceived, experienced, and reported differently depending upon the individuals and groups engaged in the particular interaction and circumstance.²⁰ So, too, are they affected by the individual's sense of self-identity, personal and professional experience, culture, age, and myriad other factors.²¹ Their receipt is also moderated by environmental, organizational, and other contextual and temporal effects.²² Given the ubiquity of the terms stigma, bias, and discrimination, as expressed and received in all their forms,²³ they are inevitably viewed and interpreted differently by researchers, lawyers, the general public, and bystanders.

The demographic, economic, and structural changes in the legal profession over the past twenty-five or so years, recently magnified due to the global health and economic emergency from the pandemic, have slowly led to recognition that D&I in the legal profession—understood, in part, as anti-stigma, anti-bias, and antidiscrimination mechanisms—is, to put it simply, important.²⁴ Nonetheless, despite such commitments, corporate law firms remain dominated by non-disabled White men²⁵ and are unwelcoming for many individuals with multiple marginalized and oppressed identities.²⁶

Passage of the ADA has added, or ought to have added, to the factors changing the legal profession. Because the ADA includes an accommodation principle, we have argued that the D&I objective for a culture of inclusion must include that principle. We have called the resulting concept Diversity and Inclusion plus Accommodation (“D&I+”).²⁷ D&I+ includes three core elements that may be applied across settings to advance an organization's mission: (1) Diversity of talent, (2) Inclusion of talent, and (3) Accommodation of talent.²⁸

We proceed in this Article as follows: in Part II, we provide a brief overview of the studies in our investigation. We then review extant literature on forms of workplace

²⁰See Brenda Major & Laurie T. O'Brien, *The Social Psychology of Stigma*, 56 ANN. REV. PSYCHOL. 393, 394-96 (2005).

²¹*Id.*

²²*Id.*

²³*Cf.* Nelson et al., *supra* note 5, at 1052 (“Contrary to the common assertion that most discrimination today entails implicit bias and subtle forms of unequal treatment, respondents’ accounts show that workplace bias is often explicit. Both overt workplace interactions and implicit bias appear to reinforce the very hierarchies of race, gender, and sexual orientation decried by leaders of the legal profession. These findings extend our theoretical understanding of discrimination and have important implications for equal opportunity within the legal profession and the prospects for equal justice under the law.”) (citations omitted).

²⁴See Joan Williams, *Hacking Tech’s Diversity Problem*, 92 HARV. BUS. REV. 96, 96-99 (Oct. 2014) (discussing a novel approach to fighting bias in the workplace); Cynthia L. Cooper, *Can Bias Interrupters Succeed Where Diversity Efforts Have Stalled?*, A.B.A. (July 10, 2017), <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2017/summer/cbiinterrupters-succeed-where-diversity-efforts-have-stalled/> [<https://perma.cc/M77K-3DMS>]. For application to lawyers, see Joan C. Williams et al., *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession 7-9* (report prepared for the ABA’s Comm’n on Women in the Pro. & the Minority Corp. Counsel Assoc. 2018).

²⁵See, e.g., Dinovitzer & Garth, *supra* note 6, at 341, 345, 364.

²⁶For example, for thoughtful discussion of assumptions regarding “productivity” as imbedded in legal education, see Neumeier & Brown, *supra* note 13, at 89 (“The legal academy, as it is, requires adherence to strict standards of performance, achievement, and excellence that are in turn rooted in deeply ableist, classist, and racist expectations. For instance, students must complete a certain quantity of coursework within a compressed time period, while achieving certain grades, participating in certain prescribed activities, and demonstrating sufficient intellectual capacity in rigid examinations. These expectations do not account for the high variability of marginalized students’ experiences, such as childcare and outside work responsibilities, disabilities that cause chronic pain and cognitive fatigue, constant trauma from racial terror and stress, or survival of abusive familial and intimate partner relationships, all of which can significantly impact ability to complete coursework at a specific pace, in a specific timeframe, and to a specific degree of excellence.”)

²⁷See note 3, *supra* (prior articles in this program of study).

²⁸Blanck et al., *First Phase*, *supra* note 3, at 30.

discrimination, with a focus on forms of overt and subtle discrimination, as well as the combination of these complex processes. In Part III, we overview the methodology used to conduct our research, with mention of the participants, methods, and research questions. In Part IV, we present our findings about the extent to which individuals with minority and multiple minority identities, as compared to others, are likely to report forms of discrimination.²⁹ Finally, in Part V, we discuss the implications of the findings and the limitations of the study, and we propose pathways for future research.

II. PURPOSE

A. PRIOR STUDIES AND CURRENT STUDY

The first article in our series of studies presented descriptive findings from our nationwide study of the legal profession focusing on lawyers with disabilities and lawyers who identify as LGBTQ+.³⁰ Lawyers with disabilities, those who identified as LGBTQ+, women, and racial/ethnic minority lawyers reported generally higher rates of discrimination at their workplaces.³¹ Other studies are in accord with these findings, showing that lawyers of color, White women, and those who identify as LGBTQ+ are more likely to report they have been targets of discrimination than are White men.³²

Consistent with our prior findings, researchers also find that lawyers with marginalized identities report relatively more experiences of overt forms of discrimination.³³ Based on the oppression, discrimination, and bias that have been documented elsewhere,³⁴ we predicted that the intersection of minority identity characteristics would create unique challenges. Thus, individuals who identify with multiple minority and differing salient identities are more likely than individuals not identifying as such to report discrimination on the basis of their race, gender, and age.³⁵ The results from our study showed that around four in ten lawyers reported at least one form of subtle or overt discrimination, but almost half (46%) also reported they had experienced strategies and practices that were aimed at lessening the effects of bias and discrimination in their workplaces.³⁶ In that first article, we also introduced the concept of D&I+.

In the second article in this series, we examined workplace accommodations or individualized adjustments to work, vital for employees with disabilities, to further the broader conception of D&I+ that we had introduced.³⁷ We considered who requests accommodations and who is more likely to have their requests granted. We investigated

²⁹In this article, we use the terms “minority” and “marginalized” to signify groups that are systematically oppressed and discriminated against in U.S. society as well as specifically in the legal profession. In their comment on our article, Kellye Testy and Elizabeth Bodamer insightfully distinguish the uses of the terms “minoritized” and “minority” to better reflect the present situation for groups such as women, who in aspects of the legal profession are no longer a minority, but who nonetheless still face barriers as a “minoritized” group. See Kellye Testy & Elizabeth Bodamer, *Reflections on a New Study that Examines Discrimination and Bias Reported by Lawyers*, 47 AM. J.L. & MED. 99, 102 (2021).

³⁰See Blanck et al., *First Phase*, *supra* note 3.

³¹*Id.* at 47.

³²Nelson et al., *supra* note 5, at 1074.

³³*Id.* at 1076.

³⁴See, e.g., Crenshaw, *supra* note 10.

³⁵See Collins et al., *supra* note 7, at 1654.

³⁶Blanck et al., *First Phase*, *supra* note 3, at 48. The article provided descriptive statistics, highlighting the ways in which individual minority identities overlap. For example, while 16.6% of lawyers identified as lesbian, bisexual, and gay (“LGB”), of those respondents who reported health and disability issues, 18.7% identified as LGB. *Id.* at 43.

³⁷Blanck et al., *Workplace Accommodations*, *supra* note 3.

the role of individual characteristics and their intersection, including disability, sexual orientation, gender, race/ethnicity, and age. Using the data set from our study, we estimated the odds of requesting accommodations and having the request approved, as well as differences in odds according to individual characteristics, adjusting for organizational control variables.

Certain personal identity factors, such as disability, gender, and age, were associated with requests for accommodations. The odds of requesting accommodations were higher for women and people with disabilities as compared to men and those without disabilities, but lower for the older individuals in the study as compared to the younger individuals. The odds of requesting accommodations were higher for a segment of the older population—older LGBQ lawyers—than for younger LGBQ lawyers.³⁸

But the results also showed that accommodations were granted differentially to individuals with multiple marginalized identities. Counter to our predictions, being a person with a disability was negatively associated with having an accommodation granted. Older lawyers had higher odds of having accommodations granted; nonetheless, such accommodation-granting effects were offset for groups such as women and racial/ethnic minorities, whose odds went down with age. LGBQ lawyers of color likewise had lower odds than did White LGBQ lawyers of having their accommodations granted. Longer job tenure and working for a large organization resulted in generally higher odds of having accommodations approved, while working for a private organization decreased the odds.

Based on these prior studies, we concluded that it is indeed often those who need accommodations the most, such as lawyers with disabilities and women, who are more likely to request accommodations. However, concerning grants of accommodation requests, disabled lawyers, older women lawyers, older lawyers of color, and LGBQ lawyers of color were less likely to have accommodation requests approved as compared to their counterparts. The results highlighted the need for continued study of intersectional identities in the accommodation process.

Building on our prior two studies, this current study continues to parse the original survey data from the national study and to espouse the concept of D&I+. We again focus on lawyers who identify as having health conditions, impairments, and disabilities, and on lawyers who identify as LGBTQ+. This study, however, builds on the prior descriptive findings of reported discrimination and extends the analysis by using multivariate modeling to predict the likelihood of reports of discrimination in the workplace.

Specifically, in this study, we extend the prior analysis by examining the extent to which different individuals with multiple minority identities are likely to report types of overt and subtle discrimination, or both. Given the lack of systematic study in this area from an intersectional perspective, we aim to help further the empirical basis for reports of discrimination in the legal profession.³⁹

The findings in this Article demonstrate that lawyers with disabilities show a higher likelihood of reporting both types of discrimination (overt and subtle). Lawyers who identify as LGBQ show a higher likelihood of reporting subtle-only discrimination, as well as both subtle and overt discrimination. Women, as compared to men, and lawyers of color, are more likely to report all three types of discrimination (subtle, overt, and both subtle and overt discrimination). In general, younger lawyers are more likely to report

³⁸As mentioned, we use the overarching term LGBTQ+ to highlight the broader focus of this investigation. However, where appropriate, we distinguish sexual orientation (“LGBQ”) from gender and transgender identity.

³⁹For one recent study of the legal profession, see Foster & Hirst, *supra* note 11.

subtle-only discrimination as compared to older lawyers.⁴⁰ Lawyers working at a private firm are less likely to report any type of discrimination, while working for a larger organization is associated with a higher relative likelihood of reporting subtle-only discrimination.

In summary, this study is an incremental step toward understanding the impact of multiple minority identities in the legal profession. The findings illustrate that primary and multiple minority identities—disability, sexual orientation, gender, race/ethnicity, and age—are associated with reports of discrimination and bias in the legal workplace. Men, regardless of identity, generally have the lowest probabilities of reporting all three types of discrimination and, consequently, the highest probability of experiencing no discrimination in the legal workplace.

B. WORKPLACE DISCRIMINATION AND BIAS OVERVIEW

Workplace discrimination is commonly the adverse or negative treatment of similarly situated employees on the basis of their individual and social identities, some of which are protected characteristics under the law, such as race, gender, disability, sexual orientation and gender identity, and age.⁴¹ The current study, as had others before, considers aspects of the legal profession's culture as differently affecting persons with disabilities and those identifying as LGBTQ+—in other words, as subjecting them to discrimination.⁴²

Discrimination or bias may present explicitly or overtly, as “blatant antipathy, beliefs that women and people of color are inherently inferior, endorsement of pejorative stereotypes, and support for open acts of discrimination.”⁴³ Overt discrimination has been described as “differential and unfair treatment that [is] clearly exercised, with visible structural outcomes.”⁴⁴ Overt discrimination may be evidenced in individual attitudes and behaviors, verbally or nonverbally. It also may be evidenced in structural aspects of organizations, such as workplace policies, procedures, and practices, as well as in aspects of organizational culture and norms.

In all their pernicious forms, overt forms of discrimination are viewed as unacceptable behavior in the workplace, and such behavior usually leads to consequences for the person(s) who commit it.⁴⁵ For example, the ADA prohibits employers from

⁴⁰The findings for job tenure and age suggest that older people tend to report lower rates of subtle bias than younger people; at the same time, those with more tenure report experiencing higher rates of subtle bias. There appears to be a separate effect for age, as Elyn Saks insightfully suggests in her commentary: that is, younger lawyers may be more informed about the nature of subtle (“unconscious”) bias, while those with tenure, who thus have greater job security, are more likely to report subtle bias. See Elyn Saks, *The Least Diverse Profession: Comment on Blanck, Hyseni, and Altunkol Wise's National Study of Diversity and Inclusion in the Legal Profession*, 47 AM. J.L. & MED. 95, 96 (2021).

⁴¹ALFRED BLUMROSEN, MODERN LAW: THE LAW TRANSMISSION SYSTEM AND EQUAL EMPLOYMENT OPPORTUNITY 50 (1993); BLANCK, DISABILITY, *supra* note 2.

⁴²See BLANCK, DISABILITY, *supra* note 2, at 43 (corporate culture and attitudes, in parallel with economic considerations, are found to motivate the use of accommodations); see also Lisa Schur, Douglas Kruse & Peter Blanck, *Corporate Culture and the Employment of Persons with Disabilities*, 23 BEHAV. SCI. & L. 3, 13–18 (2005); Lisa Schur et al., *Is Disability Disabling in All Workplaces? Workplace Disparities and Corporate Culture*, 48 INDUS. REL. 381, 384–87 (2009).

⁴³Lilia M. Cortina, *Unseen Injustice: Incivility as Modern Discrimination in Organizations*, 33 ACAD. MGMT. REV. 55, 59 (2008).

⁴⁴Koen Van Laer & Maddy Janssens, *Ethnic Minority Professionals' Experiences with Subtle Discrimination in the Workplace*, 64 HUM. RELS. 1203, 1205 (2011).

⁴⁵See Kristen P. Jones et al., *Not So Subtle: A Meta-Analytic Investigation of the Correlates of Subtle and Overt Discrimination*, 42 J. MGMT. 1588, 1591 (2016). For their study of subtle discrimination against ethnic minorities, see Laer & Janssens, *supra* note 44.

discriminating against their employees based on their disabilities, and denial of a reasonable workplace accommodation to an otherwise-qualified worker is discrimination under the law.⁴⁶

Often, therefore, bias and stigma are presented subtly.⁴⁷ Such presentation does not necessarily result in a less malignant delivery or effect, but it is expressed with less obvious or visible intent and action. As with overt discrimination, it can be both verbal and nonverbal.⁴⁸ Subtle forms of discrimination often may be as harmful as, or even more harmful than, overt forms of discrimination.⁴⁹ The prior descriptive findings in this program of study have shown that subtle forms of discrimination were reported with greater frequency than more overt forms of discrimination.⁵⁰

Subtle, and seemingly ambiguous, behavior or actions, with negative intent or consequences, may also be particularly stressful to individuals, as compared to explicit discrimination.⁵¹ This is because subtle forms of discrimination, bias, and aggression are more difficult to discern and detect, and may occur more frequently because they are less obvious.⁵² For victims, subtle discrimination is associated with increased risk for negative health effects and somatic symptoms,⁵³ lower levels of well-being,⁵⁴ low job satisfaction and high levels of detachment,⁵⁵ and lower earnings, self-esteem, self-regulation, and task-performance for those who are subjected to it.⁵⁶

⁴⁶See generally BLANCK, DISABILITY, *supra* note 2; Blanck, *Emerging*, *supra* note 12. In their commentary, Neumeier and Brown appropriately argue that a further and critical approach is required for analyzing the prevalence of overt (and other) discrimination in the legal profession, in consideration of the response to the victim of discrimination and the lack of accountability for such acts by others. Neumeier & Brown, *supra* note 13, at 83-84 (“The results of the study itself reveal that the existence of legal protections is not proof of adequate enforcement, or even widespread support for the law’s purpose. While the findings of the study support the position that overt discrimination by itself is less common than either subtle discrimination alone or the combination of both types, it provides no evidence of widespread accountability for acts of overt discrimination, nor even that overt discrimination in all its forms is widely frowned upon. If anything, the fact that disabled people most often face both subtle and overt discrimination suggests that ongoing (acceptance of) overt discrimination is an open secret within the legal community.”).

⁴⁷See generally Jones et al., *supra* note 45.

⁴⁸See generally Christian S. Crandall & Amy Eshleman, *A Justification-Suppression Model of the Expression and Experience of Prejudice*, 129 PSYCHOL. BULL. 414 (2003).

⁴⁹See Cortina, *supra* note 43, at 71; see generally Mary P. Rowe, *Barriers to Equality: The Power of Subtle Discrimination to Maintain Unequal Opportunity*, 3 EMP. RESPS. & RTS. J. 153 (1990).

⁵⁰See Blanck et al., *First Phase*, *supra* note 3, at 47; Nicole E. Negowetti, *Implicit Bias and the Legal Profession’s “Diversity Crisis”: A Call for Self-Reflection*, 15 NEV. L.J. 930, 935 (2015). See generally Connie Lee, *Bias in the Courtroom: Combating Implicit Bias against Women Trial Attorneys and Litigators*, 22 CARDOZO J.L. & GENDER 229 (2015).

⁵¹Jones et al., *supra* note 45, at 1589.

⁵²*Id.*

⁵³See Anthony D. Ong et al., *Racial Microaggressions and Daily Well-Being among Asian Americans*, 60 J. COUNSELING PSYCHOL. 188, 196 (2013).

⁵⁴Sandy Lim & Lilia M. Cortina, *Interpersonal Mistreatment in the Workplace: The Interface and Impact of General Incivility and Sexual Harassment*, 90 J. APPLIED PSYCHOL. 483, 493 (2005).

⁵⁵Jessica T. DeCuir-Gunby & Norris W. Gunby Jr., *Racial Microaggressions in the Workplace: A Critical Race Analysis of the Experiences of African American Educators*, 51 URB. EDUC. 390, 406 (2016); Gregory T. Gifford, *Stigma in the Workplace: Testing a Framework for the Effects of Demographic and Perceived Differences in Organizations 1*, 17 (2009) (Ph.D. dissertation, University of Nebraska-Lincoln) (on file with the University of Nebraska-Lincoln).

⁵⁶Jessica Salvatore & J. Nicole Shelton, *Cognitive Costs of Exposure to Racial Prejudice*, 18 PSYCHOL. SCI. 810, 814 (2007); Sarah LaTash Brionne Singletary, *The Differential Impact of Formal and Interpersonal Discrimination on Job Performance* (2009) (Ph.D. dissertation, Rice University) (on file with the Rice Digital Scholarship Archive). Some research suggests that repeated experiences with subtle discrimination may be associated with increased alcohol and illicit drug use. Mary E. (“Memi”) Miscally, *A Path Model of Discrimination, Social Integration, Social Support, and Substance Use for Asian American Adults* (2009) (Ph. D. dissertation, Tulane University) (ProQuest).

There are, of course, innumerable manifestations across the continuum of attitudinal and structural discrimination in the workplace, and they are experienced at the individual, work team, and organizational levels.⁵⁷ Discrimination, particularly of the subtle type, may be evidenced in seemingly ordinary interpersonal dynamics, verbally, nonverbally, symbolically, intentionally, and unintentionally.⁵⁸ Many D&I awareness and training programs address such intentional and unintentional discrimination, sometimes termed as “conscious” or “unconscious.”⁵⁹ In reality, whatever the form of such attitudinal and structural bias and discrimination, it is typically not manifested only in discrete incidents but, instead, as a pattern of behavior, occurring over time in differing degrees and circumstances.⁶⁰

D&I awareness and training programs have addressed intentional and unintentional discrimination in various contexts, including the legal community context.⁶¹ In our current study of the legal profession, and for our phase one survey, we asked the lawyer participants to recount experiences of subtle and overt forms of bias and discrimination, as well as the combination of these two. We used this terminology and approach, in part, because we assumed that most of our lawyer participants would be generally familiar with antidiscrimination laws and regulations that prohibit explicit or overt forms of workplace discrimination, and which have had the effect of making subtle forms of discrimination and bias more commonplace.⁶² In addition, lawyers in particular are usually mindful of D&I training and “unconscious bias,” with some state bars requiring continuing education in the D&I area.⁶³

The broad contours of the study and debate about workplace bias and discrimination are well beyond the immediate scope of this investigation. Our immediate purpose is to further document, and empirically model, discrimination and bias in the legal profession as reported by disabled and LGBTQ+ lawyers, and by others with related

⁵⁷For a review of subtle bias, see Isabel Bilotta et al., *How Subtle Bias Infects the Law*, 15 ANN. REV. OF L. & SOC. SCI. 227 (2019). Bilotta states, “Subtle bias is a discrete prejudice or preference toward a certain group, person, or thing that can drive one’s decisions and actions. Biases are belief systems that can be extremely problematic to both the individual who holds the biased belief and the target or object of these beliefs.... As we take in information about different kinds of races, ages, genders, and abilities, we begin to form stereotypes.... These stereotypes can be either altered or reinforced based on the new information that we receive from our environments throughout our early development. Bias can be broken into two types: explicit and implicit. ... [T]he difference lies in the degree to which individuals are aware of their biases. Explicit biases are the beliefs that people consciously possess and intentionally express, whereas implicit biases are composed of well-learned associations that reside below conscious awareness and can automatically drive behavior in a manner that is inconsistent with one’s personal attitudes. ... Interpersonal discrimination is one of the forms in which subtle bias can manifest as subtle discrimination. Interpersonal discrimination can be reflected in less eye contact, shorter interactions, and colder facial expressions. Another way that subtle biases can manifest is in the form of microaggressions.... [S]ubtle discrimination that emerges as a result of implicit biases is just as harmful as overt discrimination, if not more so, because the target is more likely to internalize the experience than to discount it as discrimination.” *Id.* at 228-229 (citations omitted).

⁵⁸Generally, subtle discrimination is “interpersonal discrimination that is enacted unconsciously or unintentionally and that is entrenched in common, everyday interactions, taking the shape of harassment, jokes, rudeness, avoidance, and other types of disrespectful treatment.” Van Laer & Janssens, *supra* note 44, at 1205.

⁵⁹For two, among many, views, see Samuel R. Bagenstos, *supra* note 18; Rhode & Buford Ricca, *supra* note 6, at 2495.

⁶⁰Jones et al., *supra* note 45, at 1590.

⁶¹See Rhode & Buford Ricca, *supra* note 6, at 2495.

⁶²See generally Hebl et al., *supra* note 19.

⁶³See, e.g., *Diversity CLE requirement*, NEW YORK CITY BAR, <https://www.nycbar.org/member-and-career-services/cle-and-events/cle/diversity-cle-requirement-ny-2018> [<https://perma.cc/82J6-54RR>] (“Diversity CLE Requirement. New York has instituted a Diversity, Inclusion and Elimination of Bias (D&I) CLE requirement for experienced attorneys, effective January 1, 2018. Experienced attorneys who are due to re-register on or after July 1, 2018 must complete at least one (1) credit hour in D&I.”) (last visited Nov. 13, 2020).

minority identities. Thus, for the phase one survey reported on here, we recorded individual reports of discrimination and bias along dimensions that were presumably familiar to lawyers—overt, subtle (whether intentional or unintentional), and combinations of these categories.

But we do also have a broader aim: to increase understanding of D&I, or D&I+, in the legal profession, in order to help mitigate sources of bias and discrimination. That is why we also consider correlates and predictors of reports of discrimination and bias. Lisa Nishii and colleagues have illuminated such D&I approaches using a “multi-level process model”⁶⁴ and have considered the efficacy of D&I practices such as mentoring, targeted recruiting, training, and work-life integration. However, Nishii and colleagues, and others, find the general efficacy of D&I programming disappointing: for most studies, “the results were mixed or inconclusive and occasionally even negative.”⁶⁵ Often, D&I programs do not have specific and desired objectives, and they are frequently implemented without full appreciation for, or in isolation from, the intersectional human experience.⁶⁶ Recent evidence shows that such trainings not only may be ineffective, but may also have the opposite effect of the one desired—instead of reducing bias and discrimination, they increase it.⁶⁷ For example, Michelle Duguid and Melissa Thomas-Hunt have shown that

⁶⁴See generally Lisa Nishii et al., *A Multi-Level Process Model for Understanding Diversity Practice Effectiveness*, 12 ACAD. MGMT. ANNALS 37 (2018).

⁶⁵*Id.* at 37. They have concluded: “If, as these findings suggest, organizations cannot rely on specific diversity related activities to consistently produce favorable results, the logical question to ask is: ‘Why?’ ... [Because] the overall theme that emerges relates to the absence of a holistic view of the situation.” *Id.*

⁶⁶*Id.* (emphasis added). Cf. Nelson et al., *supra* note 5, at 1054 (traditionally marginalized groups more likely to perceive discrimination in workplace and as objective experience) (citing Lincoln Quillian et al., *Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring over Time*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA (Aug. 8, 2017)); see also Jones et al., *supra* note 45; John Dovidio, Lisa Pagotto & Mikki Hebl, *Implicit Attitudes and Discrimination against People with Physical Disabilities*, in DISABILITY AND AGING DISCRIMINATION: PERSPECTIVES IN LAW AND PSYCHOLOGY 157 (Richard Wiener & S. L. Willborn eds., 2011); Christopher Petsko & Galen Bodenhausen, *Multifarious Person Perception: How Social Perceivers Manage the Complexity of Intersectional Targets*, 14 SOC. & PERSONALITY PSYCHOL. COMPASS (2020) (intersectional identities, dominant identity, and integrated identity); Erika Hall, et al., *Mosaic: A Model of Stereotyping through Associated and Intersectional Categories*, 44 ACAD. MGMT. REV. 643 (2019) (social categorization).

⁶⁷For an illustrative review, see Mike Noon, *Pointless Diversity Training: Unconscious Bias, New Racism and Agency*, 32 WORK, EMP. & SOC. 198 (2018). According to Noon, “The failure to recognise that UBT [unconscious bias training] is likely to be least effective for those whose actions most need modification is due to the inadequate treatment of agency and responsibility. Part of the allure of the notion of unconscious bias is that it is not about blame. It is convenient to believe that racial discrimination is not a product of our conscious thought but deeply embedded, so discrimination is not really our fault.” *Id.* at 202. Further, “In a systematic evaluation of diversity programmes for the advancement of women and ethnic minorities into management, [one study] found diversity training initiatives addressing bias to be one of the least effective methods. Indeed, such interventions have been found in some circumstances to solidify existing attitudes or create backlash. From an extensive review of 985 published studies of prejudice reduction, [another study concludes] that there are plenty of ideas and theories, but no evidence conclusive enough to develop confident policy making. More recently, a meta-analysis of the effects of diversity training (covering 260 studies published over the last 40 years) leads the authors to argue that while there is evidence of diversity training success in the short term, and especially when combined with other initiatives, there is ‘no compelling evidence that long-term effects of diversity training are sustainable in relation to attitudinal/affective outcomes.’” *Id.* at 203 (citation details and citations omitted).

Research suggests there are ways to promote worker rights, such as through collective action via unions or class action litigation. However, typically union settings are rare in white collar professional workplaces. See Mason Ameri et al., *Disability and the Unionized Workplace*, in SUSANNE BRUYÈRE, EMPLOYMENT AND DISABILITY: ISSUES, INNOVATIONS, AND OPPORTUNITIES 27 (2019) (“Union workers both with and without disabilities are more likely than their non-union counterparts to request workplace accommodations, which reflects a positive additive effect of both union coverage and disability status. By providing greater voice in general, unions may benefit workers with disabilities by decreasing employer resistance and potential stigma and co-worker resentment associated with accommodation requests. Our exploratory results indicate, however, that

messages about the prevalence of stereotyping, presented in many unconscious bias trainings, do not actually mitigate the expression of stereotyping behavior.⁶⁸

Thus, despite innumerable D&I efforts in the legal profession (even with a focus on “implicit” bias), existing laws prohibiting discrimination, and workplace rules aimed at preventing discrimination, marginalized individuals in our studies still report high levels of overt and subtle forms of discrimination.⁶⁹ In accord, Robert Nelson and

accommodation requests made by workers with disabilities are about equally likely to be granted in union and non-union settings”).

⁶⁸See Michele Duguid & Melissa Thomas-Hunt, *Condoning Stereotyping? How Awareness of Stereotyping Prevalence Impacts Expression of Stereotypes*, 100 J. APPLIED PSYCHOL. 343 (2015). According to Duguid and Thomas-Hunt, “[T]he message that everyone stereotypes but that we should be mindful of our biases has been promulgated in many business school classrooms, in the popular press, and hence in organizations. For some, recognition that stereotyping is prevalent has become a means of engaging a broader audience in the dialogue without pointing fingers. The promise of such an approach is that defensive responses associated with blame will subside and individuals will become open to working against natural inclinations. However, this supposition has overlooked the possibility that publicizing the notion that everyone stereotypes might create a descriptive social norm for stereotyping. Therefore, ironically, the very approach purported to reduce stereotyping may backfire and actually increase its occurrence.” *Id.* at 354. They also suggest, “[T]o reduce stereotype expression and its effects, it might be more useful to capitalize on social norms by highlighting the pervasiveness of individuals’ willingness to exert effort against their unconscious stereotypes.” *Id.*; see also Noon, *supra* note 67, at 206 (“[unconscious bias training] is not necessarily bad if it gets people talking about discrimination, but it is yet another distraction from the embedded, structural disadvantages within organisations; disadvantages that require far more radical solutions than introspective sessions that simply nudge managers and employees, often begrudgingly, into recognising that they are biased.”).

⁶⁹See Rhode & Buford Ricca, *supra* note 6, at 2495; see generally Blanck et al., *First Phase, supra* note 3 (people with disabilities marginalized, stereotyped, and experience discrimination in the legal workplace). According to an NALP 2019 Survey, about 0.55% of lawyers have disabilities, and there are relatively few empirical studies on the experiences of lawyers across the spectrum of disability and LGBTQ+ identities. *2019 Report on Diversity in U.S. Law Firms*, NALP FOUND. FOR L. CAREER RES. & EDUC. (Dec. 2019), https://www.nalp.org/uploads/2019_DiversityReport.pdf [<https://perma.cc/8FGL-2NSU>]; Donald H. Stone, *The Disabled Lawyers Have Arrived; Have They Been Welcomed with Open Arms into the Profession? An Empirical Study of the Disabled Lawyer*, 27 LAW & INEQ. 93, 120 (2009). People with disabilities and people who identify as LGBTQ+ are among those minority groups most stigmatized by society and in the workplace. See Peter Blanck & Mollie Marti, *Attitudes, Behavior, and the Employment Provisions of the Americans with Disabilities Act*, 42 VILL. L. REV. 345, 375-80 (1997); Peter Blanck, “The Right to Live in the World”: Disability Yesterday, Today, and Tomorrow, 13 TEX. J. C.L. & C.R. 367, 400 (2008); Peter Blanck, *Disability and Diversity: Historical and Contemporary Influences, Workplace Inclusion of Employees with Disabilities*, in 1 MANAGING DIVERSITY IN TODAY’S WORKPLACE: GENDER, RACE, SEXUAL ORIENTATION, ETHNICITY, AND POWER 173, 187 (Michele Paludi ed., 2012). They are often targets of negative stereotypes, and they experience adverse career, economic, and health consequences. For the legal profession, its lack of diversity is undoubtedly a contributing factor. Although the number of women lawyers has increased, they are still outnumbered by men at higher levels in the profession, and nearly all racial/ethnic minorities are underrepresented, despite a slow increase of minority lawyers in recent years. See *National Lawyer Population Survey: 10-Year Trend in Lawyer Demographics*, A.B.A. (2020), https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2010-2020.pdf [<https://perma.cc/3DQC-FT2F>]. Studies have long shown that women and minority attorneys experience more discrimination than White male attorneys. See, e.g., Dinerman, *supra* note 8, at 951; Albert I. Goldberg, *Jews in the Legal Profession: A Case of Adjustment to Discrimination*, 32 JEWISH SOC. STUD. 148 (1970); Stephen J. Spurr, *Sex Discrimination in the Legal Profession: A Study of Promotion*, 43 INDUS. & LAB. REL. REV. 406 (1990); David N. Laband & Bernard F. Lentz, *Is There Sex Discrimination in the Legal Profession? Further Evidence on Tangible and Intangible Margins*, 28 J. HUM. RES. 230 (1993); Kate Eastman, *Sex Discrimination in the Legal Profession*, 27 U. N.S.W. L. J. 866 (2004); Payne-Pikus et al., *supra* note 9; Jill L. Cruz & Melinda S. Molina, *Few and Far Between: The Reality of Latina Lawyers*, 37 PEPP. L. REV. 971, 1014 (2010) (Hispanic National Bar Association National Study on the Status of Latinas in the Legal Profession); see generally Blanck et al., *First Phase, supra* note 3. Moreover, ethnic and racial minority women lawyers face unique challenges such as exclusion from networking opportunities, desirable assignments, client relationships, and promotion opportunities. See Janet E. Gans Epner, *Visible Invisibility: Women of Color in Law Firms*, ABA COMM’N ON WOMEN IN THE PRO. (2006), <https://www.americanbar.org/content/dam/aba/administrative/women/visibleinvisibility.pdf> [<https://perma.cc/P3KM-MWZF>]; Mark Hansen, *Worst of Both Worlds: Women of Color in the Legal Profession Face Double Whammy of Discrimination*, A.B.A. J., Oct. 2006, at 62. According to the

colleagues report that women, especially women of color, men of color, and LGBTQ attorneys are more likely than their counterparts to perceive discrimination from their clients, as well as from their supervisors, even when controlling for other individual and organizational factors.⁷⁰ Our own earlier descriptive study showed that lesbian, gay, and bisexual (“LGB”) lawyers report relatively high perceptions of subtle biases.⁷¹ Lawyers with disabilities,⁷² women and transgender lawyers, and lawyers of color also report experiencing a high prevalence of overt forms of discrimination, including harassment and bullying.⁷³ Transgender people and people who identify as LGBQ also experience high levels of employment and workplace discrimination in professions other than the legal profession.⁷⁴

Overall, overt and subtle discrimination and bias, expressed in attitudes, behavior, and actions, co-exist in the multidimensional human experience. Although discrimination and bias are expressed and perceived in different forms and circumstances, they cannot be separated from organizational and group form, history and culture, and

NALP, in the late 1990s more than 75% of minority female associates left their jobs in private law firms within five years of being hired. Eight years after being hired, this percentage increased to 86%. By 2005, 81% of the minority female associates were leaving their work within five years of hiring. See NALP FOUND. FOR LAW CAREER RES. & EDUC., TOWARD EFFECTIVE MANAGEMENT OF ASSOCIATE MOBILITY: A STATUS REPORT ON ATTRITION, NAT’L ASS’N. FOR L. PLACEMENT (2005). Other studies show that women of color are significantly more likely than White men to report that a client had requested a different attorney, Nelson et al., *supra* note 5, at 1075, and they are more likely than others to experience unfair treatment based on race, gender and age. Collins et al., *supra* note 7, at 1650. Other studies show that the intersection of sexual orientation and race increases the probability of discrimination. See Darren L. Whitfield et al., *Queer is the New Black? Not So Much: Racial Disparities in Anti-LGBTQ Discrimination*, 26 J. GAY & LESBIAN SOC. SERVS. 426 (2014). However, there are not many studies documenting experiences of LGBTQ+ individuals and people with disabilities in the legal profession. Nelson et al., *supra* note 5, found that LGBTQ attorneys are more likely to experience discrimination than non-LGBTQ attorneys. There is little systematic information about discrimination experiences of transgender attorneys in legal workplaces. See generally Blanck et al., *First Phase*, *supra* note 3.

⁷⁰ See generally Nelson et al., *supra* note 5.

⁷¹ Blanck et al., *First Phase*, *supra* note 3, at 47.

⁷² See Silvia Bonaccio et al., *The Participation of People with Disabilities in the Workplace across the Employment Cycle: Employer Concerns and Research Evidence*, 35 J. BUS. & PSYCHOL. 135 (2019).

⁷³ Although there is insufficient research about the experiences of transgender individuals in the legal profession, studies of other fields show they are more likely to experience overt discrimination, including physical and sexual assault, as compared to cisgender people. See Jaime M. Grant et al., *National Transgender Discrimination Survey Report on Health and Health Care*, Nat’l Ctr. for Transgender Equal. & Nat’l Gay & Lesbian Task Force (Oct. 2010), https://cancer-network.org/wp-content/uploads/2017/02/National_Transgender_Discrimination_Survey_Report_on_health_and_health_care.pdf [<https://perma.cc/U28Z-DP7Y>]; see also Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Nat’l Ctr. for Transgender Equal. & Nat’l Gay & Lesbian Task Force, 2011), https://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf [<https://perma.cc/43RF-UQ2P>].

⁷⁴ Gina R. Rosich’s study with transgender-identified people, *Sexual Citizenship Theory and Employment Discrimination among Transgender-Identified People*, 10 SOCIETIES 17, 19 (2020) shows “trans men (FtM) were 132.6% more likely to report discrimination in the workplace, while trans women (MtF) were more likely to experience a wider variety of types of discrimination. Respondents out to their coworkers were 292.4% more likely to experience discrimination.” Sean Waite’s report on discrimination experiences of transgender, non-binary, genderqueer people, and other minority employees, *Should I Stay or Should I Go? Employment Discrimination and Workplace Harassment against Transgender and Other Minority Employees in Canada’s Federal Public Service*, J. HOMOSEXUALITY 1 (Jan. 2020), shows that “gender diverse employees are between 2.2 and 2.5 times more likely to experience discrimination and workplace harassment than their cisgender male coworkers.” For other studies on employment and workplace discrimination against transgender people, see Skylar Davidson, *Gender Inequality: Nonbinary Transgender People in the Workplace*, 2 COGENT SOC. SCIS.1 (2016). For the gender transition experiences of transgender employees while in the workplace, see Brewster et al., *Voices from Beyond: A Thematic Content Analysis of Transgender Employees’ Workplace Experiences*, 1 PSYCHOL. SEXUAL ORIENTATION & GENDER DIVERSITY 159 (2014).

interpersonal dynamics in a particular place and time. These observations naturally will lead us to examine in further detail programs and organizational efforts that transcend current D&I approaches, such as our D&I+ conception.⁷⁵

But first, in this study, we take a closer look at reports of discrimination and bias and their differential effects across and within individual and multiple identities.⁷⁶

C. RESEARCH QUESTIONS

Using our data from the 2018/2019 sample of 3590 lawyers across the United States, this study examines reports of workplace discrimination during the years before the pandemic. We purposefully oversampled from the Disability Rights Bar Association (“DRBA”), the National LGBT Bar Association, and other organizations of lawyers with disabilities and from the LGBTQ+ community. Our data make it possible to explore differences in workplace experiences within and across these groups, while also considering other intersecting identities such as gender, race, and age.⁷⁷

We address two overarching research questions in this study. First, what are the characteristics of those lawyers who are likely to report discrimination in the legal workplace? Given the established literature in this area, we hypothesized that historically marginalized groups are more likely to report workplace discrimination, particularly people with disabilities, those who identify as LGBTQ, women, and racial/ethnic minorities.⁷⁸

Second, we examine the extent to which these lawyers are likely to report discrimination (overt-only, subtle-only, both overt and subtle, or none) in their workplaces. Based on the prior literature, reports of discrimination will vary by individual, temporal, and contextual factors. We predict that those individuals whose multiple identities typically require formal disclosure (i.e. certain types of disabilities, sexual orientation, and gender identities) will be more likely to report subtle discrimination and bias, as compared to individuals with more obvious identities, who will be more likely to report overt discrimination and bias or both subtle and overt discrimination and bias. The current

⁷⁵See Bilotta et al., *supra* note 57, at 240 (“[A]s a means to foster diversity, [law] firms might adopt an integration and learning approach, using bias-awareness policies and initiatives to create inclusive communities that are conscious of the systems that perpetuate implicit bias and work to combat disproportionate representation.”) (citation omitted).

⁷⁶For other discussions of some of these issues, see generally Paul Harpur & Peter Blanck, *Gig Workers with Disabilities: Opportunities, Challenges, and Regulatory Response*, 30 J. OCCUPATIONAL REHAB. 511 (2020); Peter Blanck & Paul Harpur, *California’s Response to the Status of Gig Workers with Disabilities: An Update*, 30 J. OCCUPATIONAL REHAB. 689 (2020) (discrimination may be evidenced against people with disabilities with multiple minority identities in non-traditional gig work settings); Blanck, *ADA at Thirty*, *supra* note 12.

⁷⁷For detailed discussion of recruitment and sampling issues in the present investigation, see Blanck et al., *First Phase*, *supra* note 3, at 38–42.

⁷⁸For additional studies on the discrimination experiences of marginalized groups, see Roland G. Fryer, Jr., Devah Pager & Jörg L. Spenkuch, *Racial Disparities in Job Finding and Offered Wages*, 56 J. L. & ECON. 633 (2013); Kathleen E. Hull, *Employment Discrimination Based on Sexual Orientation: Dimensions of Difference*, in HANDBOOK OF EMPLOYMENT DISCRIMINATION RESEARCH 167 (Laura Beth Nielsen & Robert L. Nelson eds., 2005); Eros R. DeSouza, Eric D. Wesselmann & Dan Ispas, *Workplace Discrimination against Sexual Minorities: Subtle and Not-So-Subtle*, 34 CANADIAN J. ADMINISTRATIVE SCI. 121 (2017); Quillian et al., *supra* note 66; Fong Chan et al., *Drivers of Workplace Discrimination against People with Disabilities: The Utility of Attribution Theory*, 25 WORK 77 (2005). The literature also suggests that people who have more than one marginalized identity are more likely to perceive discrimination than other employees. See, e.g., Elizabeth Hirsh & Christopher J. Lyons, *Perceiving Discrimination on the Job: Legal Consciousness, Workplace Context, and the Construction of Race Discrimination*, 44 L. & SOC’Y REV. 269, 284 (2010).

exploratory analyses identify some of these possible associations that future studies will better consider, such as which identity disclosures and other factors may be associated with reports of workplace discrimination.⁷⁹

III. METHODS

A. DATA

To answer the main research questions, we employ the data from our phase one survey of a sample of lawyers in the United States. Our survey methods have been described in detail elsewhere.⁸⁰ But some key features are that the survey uses quantitative and qualitative questions, with fixed-choice and open-ended response opportunities. We deployed the survey electronically and in accessible formats to geographically dispersed people working in the legal profession across types (e.g., private/public) and sizes of organizations. In the end, as noted, 3590 people completed and submitted the survey, although not all participants completed all the survey questions.⁸¹ For the current analyses, the subsample consists of 2577 individuals who responded to all the questions included in our model.

B. OUTCOME VARIABLES

Type of Discrimination: Our dependent variable is a nominal outcome variable with four categories of reported discrimination: overt and subtle discrimination (“both types”), overt discrimination only, subtle discrimination only, and no discrimination.⁸² Overt discrimination includes reports of discrimination, bullying, and/or harassment. Subtle discrimination includes two possible reports: subtle and intentional bias, and subtle but unintentional bias. “No discrimination reported” was coded for respondents who answered “do not know,” “prefer not to say,” “not applicable,” or who did not provide an answer to the question.⁸³ As discussed and presented in [Table 1](#) below, approximately one in six (16%) of respondents reported both types of discrimination, one in five (20%) reported subtle-only, and one in twenty-five (4%) reported overt-only. The majority (60%) reported no discrimination.

⁷⁹According to Creed and Scully, “visible social identities trigger potentially judgmental and divisive reactions.” W. E. Douglas Creed & Maureen A. Scully, *Songs of Ourselves: Employees’ Deployment of Social Identity in Workplace Encounters*, 9 J. MGMT. INQUIRY 391, 391 (2000). Increased levels of stigma consciousness make people of color, and people from different ethnic or racial backgrounds and women, more likely to perceive discrimination. See Brenda Major & Cheryl R. Kaiser, *Perceiving and Claiming Discrimination*, in HANDBOOK OF EMP. DISCRIMINATION RES. 167 (Laura Beth Nielsen & Robert L. Nelson eds., 2005). Nelson et al.’s 2019 study also showed that lawyers of different races, genders, and sexual orientation are experiencing more overt forms of discrimination. See generally Nelson et al., *supra* note 5.

⁸⁰Blanck et al., *First Phase*, *supra* note 3, at 38-42.

⁸¹Due to our intentional oversampling, the proportion of lawyers identifying as disabled or LGBTQ+ in this study is higher than reported in the legal profession overall. The magnitude of these subsamples, therefore, may not be representative of the population in the legal profession. However, they may be considered as comparators to other subpopulations sampled, in particular, for gender, race, and age. Nonetheless, to be able to understand the experiences of these underrepresented groups, oversampling is crucial.

⁸²We evaluated whether our discrimination categories should be combined using the Wald and Likelihood-ratio (“LR”) test. The results suggest that no categories should be combined.

⁸³We acknowledge that for this initial survey our “no discrimination category” serves as a proxy that is based on the coded responses described in the text. In our next survey follow-up, we plan to revise that question to specifically address the nature (or not) of the discrimination reported.

Table 1. Descriptive Statistics

| Variable | N | % |
|---|------|--------|
| Discrimination Reports | | |
| Reporting Subtle and Overt Discrimination | 3567 | 0.157 |
| Reporting Only Subtle Discrimination | 3567 | 0.202 |
| Reporting Only Overt Discrimination | 3567 | 0.043 |
| Reporting No Discrimination | 3567 | 0.598 |
| Disability | | |
| Disability | 3366 | 0.250 |
| Type of Disability or Health Condition | | |
| Mental Health | 830 | 0.241 |
| General Health | 830 | 0.190 |
| Sensory | 830 | 0.151 |
| Mobility | 830 | 0.116 |
| Other Condition or Disability | 830 | 0.024 |
| More than One Disability | 830 | 0.278 |
| Other Individual Characteristics | | |
| LGBQ | 3330 | 0.170 |
| Women | 3172 | 0.537 |
| Men | 3172 | 0.447 |
| Transgender | 3172 | 0.016 |
| Racial/Ethnic Minority | 3432 | 0.162 |
| Age | 3526 | 49.669 |
| Accommodations | | |
| Accommodation Fully Granted | 757 | 0.745 |
| Accommodation Partially Granted | 757 | 0.151 |
| Accommodation Not Granted | 757 | 0.104 |
| Control Variables | | |
| Tenure | 3497 | 11.189 |
| Private Venue | 3166 | 0.601 |
| Large Organization | 3344 | 0.197 |

Notes: Age and tenure are continuous variables, with the range for age at 24 to 90 years and the range for tenure at 0 to 70 years, and with the mean values for these variables reflected in the % column in the Table.

C. INDIVIDUAL CHARACTERISTICS

Table 1 provides information about the characteristics of our overall sample, such as disability status and type, sexual orientation, gender identity, race/ethnicity, and age. Table 1 provides an overview of the number of the respondents, indicating the proportion for each variable included in our model.

Disability is coded as a binary variable: “1” for “has a disability, impairment, or health condition” and “0” for “no disability.”⁸⁴ One in four respondents (25%) report having a disability. Within disability, individuals with more than one health condition,

⁸⁴This variable reflects a combination of two questions. In the first question, respondents were asked about the six disability-related measures from the U.S. Census Bureau’s American Community Survey (“ACS”). See American Community Survey, <https://www.census.gov/programs-surveys/acs>. ACS Measures: Are you deaf or do you have serious difficulty hearing? Are you blind or do you have serious difficulty seeing even when wearing glasses? Because of a physical, mental or emotional condition, do you have serious difficulty concentrating, remembering or making decisions? Do you have serious difficulty walking or climbing stairs? Do you have difficulty dressing or bathing? Because of a physical, mental, or emotional condition, do you have difficulty doing errands alone such as visiting a doctor’s office or shopping? In the second question, respondents were asked “Do you have a disability or health condition not reflected in the previous question?” Those who answered “yes”

disability, or impairment and those with mental disabilities represent the largest share of our sample among people with disabilities and health conditions (28% and 24%, respectively).⁸⁵

Table 1 also shows that for workplace accommodations, three-quarters (75%) of respondents who requested an accommodation reported that their request was fully granted, 15% reported that it was partially granted, and 10% that it was not granted.

Sexual orientation is coded as a binary variable, with “1” when the respondent identified as LGBTQ, and “0” for straight/heterosexual. About one in six (17%) of respondents identified as LGBTQ.⁸⁶

Gender is coded as three separate binary variables: women (“1” for Women, “0” for Other), men (“1” for Men, “0” for Other), and transgender (“1” for Transgender, “0” for Other). Although the sample of individuals who identify as transgender is relatively small, we include their responses, given the general lack of data about transgender individuals in the legal profession. Men is the “omitted variable” in our models; that is, it is the baseline level against which the other variables in the models are compared. The gender identity variables are derived from two different survey questions that asked respondents their gender (“Woman, Man, Other”) and whether they identify themselves to be transgender.⁸⁷ Women make up the largest group at 54% of respondents, men at 45%, and transgender at 1%.

Race and ethnicity are coded as one binary variable to indicate racial and ethnic minority status, which is done to simplify subsequent intersectional analyses as well as to increase cell sizes. This variable is coded as “1” when the respondent identifies as a person of color (Black, Hispanic or Latino, American Indian or Alaska Native, Native Hawaiian or Pacific Islander, Asian, Multiracial) and “0” if White, non-Hispanic. About one in six (16%) of respondents identify as a person of color.

Age is coded as a continuous variable, ranging from 24 to 90 years of age, with the average age at just over 49 years.⁸⁸ In our regression models, age is centered at the mean (49 years) to help in the interpretation of results.⁸⁹

to one or more of the total of seven options presented by the two questions were coded as “1,” and those responding no to all the options as “0.”

⁸⁵Disability-type variables for this study have been coded to be mutually exclusive. Additional information on the coding of these variables can be provided by the authors upon request.

⁸⁶For purposes of our analyses, those attorneys who identified as lesbian, gay, bisexual, and queer are coded as one group to increase statistical power to conduct the analyses of interest. *See generally* Blanck et al., *First Phase*, *supra* note 3 (providing a more detailed description of the workplace experience of LGBTQ attorneys).

⁸⁷The phase one survey includes a two-step measure of gender identity. Respondents are asked about their gender identity (man, woman, other), and then, in a follow-up question, they are asked if they consider themselves to be transgender. The answers are coded to be mutually exclusive. While we recognize and acknowledge the felt gender of transgender lawyers, to identify unique challenges related to discrimination for this group, we have coded transgender lawyers as transgender even when they selected their gender as man or woman. In our phase two survey, we plan to further clarify this line of questions.

⁸⁸We asked respondents to select their age group. However, for our analysis here, it is important to code age as a continuous variable to consider variations in trends regarding discrimination reports by age. Therefore, we use the last two numbers of each respondent’s year of birth to create a unique ID. We use age as a categorical variable in tandem with these responses to double check the numbers and avoid any technical errors. Thirty-three (33) respondents provided a year of birth that did not match their reported age grouping. Our coding of this variable for our current analyses differs somewhat from that used in our previous articles in this series, as we have used relaxed rules to match year of birth and age category, thus increasing our sample size modestly.

⁸⁹Centering a predictor variable at the mean is a technique to make interpretation of a model easier, especially when interaction terms are included, as is the case in our study. Specifically, in our models, we center age at the mean because age 0 is not a meaningful value for interpreting reports of discrimination. Interpreting such reports at the average age of our sample is much more meaningful. For example, when we interpret the effect

D. CONTROL VARIABLES

We included specific covariates identified in the prior literature to control for their effect on our core variables: job tenure, organization size, and organization type (e.g., private/public).⁹⁰ First, *job tenure*⁹¹ reflects the number of years the respondent had worked at the current organization at the time of the survey. Responses ranged from less than one year (coded as “0”) to seventy years, with the average tenure being slightly longer than eleven years. Thus, there is a degree of job stability for this cohort.

Second, *organization size* is coded as a binary variable, with “1” for firms and organizations with more than 500 lawyers (“large” or “BigLaw”) and “0” for organizations with less than 500 lawyers. Around 20% of respondents worked at organizations with more than 500 employees. Third, we included *practice type* as a binary variable, coded “1” for private firm and “0” for other types (in-house legal department, public sector, non-profit, judicial, educational, and other). The majority (60%) of organizations were private firms.

E. ANALYTIC STRATEGY

To provide descriptive statistics for our sample, we estimate differences in characteristics between the types of discrimination reported (i.e., both overt and subtle, subtle-only, overt-only, or none).⁹² To answer our research questions, we estimate the relative risk ratio of reporting one of the three types of discrimination as compared to no reported discrimination.

Specifically, using multinomial logistic regression, we estimate differences in the relative risk of reported discrimination by individual characteristics such as disability, sexual orientation, gender, race/ethnicity, and age (Model 1). We progressively add to this basic model the covariates, such as job tenure, organization type, and organization size, to assess their contribution to the variation in discrimination reports (Model 2). We then add two-by-two (“2x2”) interactions of individual characteristics (Model 3). This is done to model the intersectional analysis, which considers combinations of individual characteristics that create unique identity experiences for these respondents.⁹³

of gender on reporting discrimination, we no longer report it as the relative risk of reporting discrimination if you are woman at age 0, but instead as the relative risk of reporting discrimination if you are a woman at age 49.

⁹⁰We consider organization size and type because prior literature shows these as determinants of reports of discrimination. See, e.g., Hirsh & Lyons, *supra* note 78, at 287 (“[C]ontrols for workplace size and sector indicated that, counter to expectations, workers in larger establishments were more likely to perceive discrimination whereas those employed by government agencies were equally likely to perceive discrimination, as compared to workers in the private sector.”); Linda R. Shaw, Fong Chan & Brian McMahon, *Intersectionality and Disability Harassment: The Interactive Effects of Disability, Race, Age, and Gender*, 55 REHAB. COUNSELING BULL. 82, 88 (2012) (“[W]orking for either a small or very large company seem to place individuals at higher risk of experiencing disability harassment.”).

⁹¹We consider job tenure at the individual and organizational level as a useful determinant of reports of discrimination. Job tenure is an indicator of individual career advancement and a measure of organizational culture and the willingness and ability to retain people of diverse backgrounds. Consequently, it is a relevant variable to include in our model.

⁹²We use Pearson’s χ^2 to test for association between variables with a $p < 0.1$ to reject the null hypothesis that our variables are independent, which is a more liberal exploratory level than the typical $p < 0.05$ cutoff. The purpose of the exploratory Pearson’s χ^2 test is to help determine if the different rates of reports of discrimination are more likely due to random chance or due to a person’s individual characteristics. We make this decision based on a p-value that tells us whether reports of discrimination are dependent on various individual characteristics. For $p < 0.1$, we can suggest with 90% confidence that a certain characteristic is associated with differences in reports of discrimination. Based on these results and our literature review, we make decisions about whether to include variables in our multivariate regression models.

⁹³Analyses were conducted using Stata. See STATA.COM.

IV. RESULTS

A. BASIC FINDINGS

Table 2 shows pairwise (simple bivariate) correlation coefficients for the variables used in our model to consider the central research questions.⁹⁴ The results indicate that reports of *both* types of discrimination, overt and subtle, are significantly associated with:

- Identifying as a person with a disability;
- Not reporting sensory disability;
- Identifying as LGBQ;
- Women;
- Identifying as a racial/ethnic minority;
- Younger individuals and those with less job tenure;
- Non-granting of workplace accommodations (including non-full granting of accommodations or partial granting of accommodations);
- Not working at private firms.

Reports of both types of discrimination trend toward an association with reports of mental health conditions.⁹⁵ In addition, and conversely, the combination of identifying as a man, being older, having longer job tenure, and working for a private organization is associated with fewer reports of both types of discrimination, subtle and overt.

The results indicate that reports of subtle-only discrimination partially mirror the findings (direction of relationship and magnitude) for reports of both subtle and overt discrimination. Consistent with the findings in Table 2 for reports of both types of discrimination, the experience of subtle-only discrimination is positively and significantly associated with lawyers who identify as LGBQ, are women, and are people of color. Our results indicate that reports of subtle-only discrimination, as compared to reports of both types of discrimination, are also significantly associated with:

- Not identifying as a person with a disability;
- Reporting mental health conditions;

⁹⁴Given the nature of our data, the correlation coefficients presented in this table are different. For all dichotomous variables, we have presented phi coefficient, a measure of association between two binary variables. In other cases, we have used the Point-Biserial Correlation coefficient to represent the strength of association between a continuous variable and a binary variable. We use pairwise deletion to calculate the correlation coefficients: See, e.g., *Correlation / Stata Annotated Output*, INSTITUTE FOR DIGITAL RESEARCH AND EDUCATION STATISTICAL CONSULTING, <https://stats.idre.ucla.edu/stata/output/correlation/> [<https://perma.cc/X6M9-SG34>] (last visited Nov. 15, 2020) (“When you do pairwise deletion...a pair of data points are deleted from the calculation of the correlation only if one (or both) of the data points in that pair is missing.”). That is, “all available observations are used to calculate each pairwise correlation without regard to whether variables outside that pair are missing.” “**correlate**” – Correlations (covariances) of variables or coefficients, STATA.COM, <https://www.stata.com/manuals13/rcorrelate.pdf> [<https://perma.cc/VX77-C7KC>] (last visited Nov. 15, 2020) (emphasis added).

⁹⁵See Table 2, Mental Health variable, $r = 0.0485$, $p = 0.1626$. See also Lori Anderson Snyder, Jennifer S. Carmichael, Lauren V. Blackwell, Jeanette N. Cleveland & George C. Thornton III, *Perceptions of Discrimination and Justice among Employees with Disabilities*, 22 EMP. RESPS. & RTS. J. 5, 5 (2010) (“Analyses indicate that disabled employees reported more overt and subtle discrimination and more procedural injustice than their non-disabled counterparts. Examination by the type of disability also revealed that those with non-physical disabilities reported more negative experiences than employees with physical disabilities. Perceived organizational and supervisory support were shown to have promise in reducing the effects of disability status on workplace attitudes and perceptions.”)

Table 2. Correlation Between Discrimination Types and Relevant Individual Characteristics

| | Both Types | Subtle | Overt |
|------------------|--------------------------|--------------------------|--------------------------|
| Both Types | 1.0000 | | |
| Subtle | -0.2172 0.0000 | 1.0000 | |
| Overt | -0.0913 0.0000 | -0.1066 0.0000 | 1.0000 |
| Disability | 0.0916 0.0000 | -0.0371 0.0314 | 0.0291 0.0918 |
| General Health | -0.0398 0.2521 | -0.0010 0.9772 | 0.0059 0.8657 |
| Mental Health | 0.0485 0.1626 | 0.0591 0.0889 | 0.0268 0.4401 |
| Mobility | -0.0227 0.5136 | -0.0456 0.1891 | -0.0034 0.9219 |
| Sensory | -0.0647 0.0623 | -0.0177 0.6098 | 0.0182 0.6007 |
| Other Disability | 0.0474 0.1721 | 0.0063 0.8551 | -0.0376 0.2790 |
| >1 Disability | 0.0402 0.2475 | -0.0110 0.7524 | -0.0300 0.3886 |
| LGBQ | 0.0354 0.0412 | 0.1374 0.0000 | -0.0246 0.1555 |
| Women | 0.2063 0.0000 | 0.1786 0.0000 | 0.0626 0.0004 |
| Men | -0.2120 0.0000 | -0.1771 0.0000 | -0.0619 0.0005 |
| Transgender | 0.0204 0.2507 | -0.0079 0.6562 | -0.0033 0.8535 |
| Race/ Ethnicity | 0.1071 0.0000 | 0.0551 0.0012 | -0.0012 0.9457 |
| Age | -0.0506 0.0027 | -0.1813 0.0000 | -0.0046 0.7839 |
| Not Granted | 0.2436 0.0000 | -0.0956 0.0085 | 0.0398 0.2743 |
| Fully Granted | -0.3416 0.0000 | 0.0890 0.0143 | -0.1049 0.0038 |
| Partial Granted | 0.2081 0.0000 | -0.0267 0.4640 | 0.0939 0.0097 |
| Tenure | -0.0612 0.0003 | -0.0913 0.0000 | -0.0136 0.4217 |
| Private Org | -0.0843 0.0000 | -0.0283 0.1111 | -0.0566 0.0014 |
| Large Org | -0.0089 0.6069 | 0.0655 0.0002 | -0.0321 0.0634 |

Notes: Table represents pairwise correlation between dependent and independent variables and their corresponding p-value. We have represented phi coefficients and Point-Biserial Correlation coefficients as appropriate. Shown in bold are significant results with an associated p-value < 0.1.

Table 3. Distribution of Discrimination Type by Individual Characteristics (Column Percentages)

| Demographic Variables | Type of Discrimination | | | | | | | | p-value |
|---------------------------|------------------------|-------|-------------|-------|------------|-------|------------|-------|--------------|
| | No Discrim | | Only Subtle | | Only Overt | | Both Types | | |
| | N | % | N | % | N | % | N | % | |
| Have a disability | | | | | | | | | |
| Yes | 447 | 23.09 | 158 | 21.88 | 47 | 30.72 | 188 | 33.87 | 0.000 |
| No | 1489 | 76.91 | 564 | 78.12 | 106 | 69.28 | 367 | 66.13 | |
| Type of Disability | | | | | | | | | |
| Mental Health | 90 | 20.18 | 45 | 29.41 | 13 | 28.89 | 52 | 27.96 | 0.042 |
| Other | 356 | 79.82 | 108 | 70.59 | 32 | 71.11 | 134 | 72.04 | |
| General Health | 90 | 20.18 | 29 | 18.95 | 9 | 20.00 | 30 | 16.13 | 0.263 |
| Sensory | 76 | 17.04 | 21 | 13.73 | 8 | 17.78 | 20 | 10.75 | |
| Mobility | 59 | 13.23 | 13 | 8.50 | 5 | 11.11 | 19 | 10.22 | |
| Other | 9 | 2.02 | 4 | 2.61 | 0 | 0.00 | 7 | 3.76 | |
| > 1 | 122 | 27.35 | 41 | 26.80 | 10 | 22.22 | 58 | 31.18 | |
| Sexual Orientation | | | | | | | | | |
| Straight/Heterosexual | 1673 | 87.18 | 525 | 73.12 | 130 | 87.25 | 435 | 79.96 | 0.000 |
| LGBQ | 246 | 12.82 | 193 | 26.88 | 19 | 12.75 | 109 | 20.04 | |
| Gay/Lesbian | 150 | 7.82 | 115 | 16.02 | 8 | 5.37 | 70 | 12.87 | 0.000 |
| Bisexual | 50 | 2.61 | 27 | 3.76 | 5 | 3.36 | 18 | 3.31 | |
| Queer | 14 | 0.73 | 6 | 0.84 | 2 | 1.34 | 6 | 1.10 | |
| Other | 32 | 1.67 | 45 | 6.27 | 4 | 2.68 | 15 | 2.76 | |
| Gender | | | | | | | | | |
| Men | 1090 | 58.38 | 178 | 27.34 | 44 | 30.56 | 105 | 20.59 | 0.000 |
| Women | 749 | 40.12 | 464 | 71.27 | 98 | 68.06 | 394 | 77.25 | |
| Transgender | 28 | 1.50 | 9 | 1.38 | 2 | 1.39 | 11 | 2.16 | |
| Race/Ethnicity | | | | | | | | | |
| White Non-Hispanic | 1763 | 87.67 | 575 | 79.86 | 126 | 84.00 | 412 | 74.77 | 0.000 |

(Continued)

Table 3 (Continued)

| Demographic Variables | Type of Discrimination | | | | | | | | p-value |
|-----------------------------|------------------------|-------|-------------|-------|------------|-------|------------|-------|--------------|
| | No Discrim | | Only Subtle | | Only Overt | | Both Types | | |
| | N | % | N | % | N | % | N | % | |
| People of Color | 248 | 12.33 | 145 | 20.14 | 24 | 16.00 | 139 | 25.23 | |
| Black Non-Hispanic | 52 | 2.59 | 45 | 6.25 | 7 | 4.67 | 49 | 8.89 | 0.000 |
| Hispanic | 53 | 2.64 | 19 | 2.64 | 3 | 2.00 | 27 | 4.90 | |
| Asian | 48 | 2.39 | 33 | 4.58 | 5 | 3.33 | 22 | 3.99 | |
| Other | 95 | 4.72 | 48 | 6.67 | 9 | 6.00 | 41 | 7.44 | |
| 24-35 years old | 416 | 19.76 | 230 | 32.03 | 27 | 18.12 | 118 | 21.30 | 0.000 |
| 36-55 years old | 752 | 35.72 | 325 | 45.26 | 71 | 47.65 | 267 | 48.19 | |
| 56 years or older | 937 | 44.51 | 163 | 22.70 | 51 | 34.23 | 169 | 30.51 | |
| Accommodations | | | | | | | | | |
| Fully Granted | 264 | 89.49 | 178 | 80.54 | 26 | 56.52 | 96 | 49.23 | 0.000 |
| Partially Granted | 17 | 5.76 | 30 | 13.57 | 13 | 28.26 | 54 | 27.69 | |
| Not Granted | 14 | 4.75 | 13 | 5.88 | 7 | 15.22 | 45 | 23.08 | |
| Tenure | | | | | | | | | |
| 5 or fewer years | 873 | 41.91 | 356 | 49.86 | 64 | 42.95 | 260 | 47.19 | 0.000 |
| 6-20 years | 736 | 35.33 | 266 | 37.25 | 62 | 41.61 | 219 | 39.75 | |
| More than 20 years | 474 | 22.76 | 92 | 12.89 | 23 | 15.44 | 72 | 13.07 | |
| Venue Type | | | | | | | | | |
| Private | 655 | 35.35 | 285 | 42.54 | 72 | 52.94 | 250 | 49.31 | 0.000 |
| Other | 1198 | 64.65 | 385 | 57.46 | 64 | 47.06 | 257 | 50.69 | |
| Size of Organization | | | | | | | | | |
| < 500 | 1620 | 81.45 | 519 | 75.22 | 121 | 86.43 | 426 | 81.14 | 0.001 |
| > 500 | 369 | 18.55 | 171 | 24.78 | 19 | 13.57 | 99 | 18.86 | |

Notes: P-value represents Pearson's χ^2 . Significant results with a p-value of 0.1 or lower are shown in bold. Column percentages adjusted with rounding to add up to 100%.

- Full-granting of workplace accommodations; and
- Working at larger organizations.

Reports of disability overall are negatively associated with subtle bias, whereas reports of mental health conditions are positively associated with reports of subtle bias. This finding further amplifies the strong suggestive evidence of the negative stigma (subtle discrimination here) often associated with reports of mental health conditions.

Lastly, the reports of overt-only discrimination vary somewhat as compared to the reports of both types and subtle-only discrimination, in that overt-only discrimination is significantly associated with:

- Identifying as a person with a disability;
- Women;
- Non-full granting of workplace accommodations (including partial granting of accommodations);
- Not working at private firms; and
- Not working for a large organization.

Reports of overt-only discrimination are not associated with identification as LGBTQ or being a racial/ethnic minority. We return to these basic associations below in our multivariate regression modelling.

Table 3 summarizes the basic descriptive statistics organized by the four categories of discrimination (both, subtle-only, overt-only, and none) and by the demographic and firm variables introduced earlier.⁹⁶ Table 3 displays the frequency distributions of the discrimination types by groupings with the associated column percentages.⁹⁷

Disability. Results show that there is a statistically significant relationship between disability status and the type of discrimination reported. Specifically, although lawyers with disabilities make up only about one-quarter (23%) of the “no discrimination” responses, they comprise about one-third (34%) of cases reporting both types of discrimination and about one-third (31%) of cases reporting overt-only discrimination. In addition, lawyers who report a mental health condition represent a significantly larger portion of individuals reporting discrimination as compared to those reporting no discrimination. Predictably, nine in ten (90%) of lawyers who did not report discrimination had their accommodation request fully granted, as compared to 81% of those reporting subtle-only discrimination and less than half (49%) reporting both types of discrimination, with somewhat more than half (57%) for those reporting overt-only discrimination.

Sexual Orientation and Gender Identity. Results show that the probability of reporting discrimination differs by individual sexual orientation. Thus, LGBTQ lawyers make up a relatively larger portion of those who report both types of discrimination (20%) or subtle-only discrimination (27%), as compared to those not reporting discrimination (13%) or reporting overt-only discrimination (13%). Although women comprise just over half (54%) of the respondents, they make up more than three-quarters (77%) of those reporting both types of discrimination. Women also comprise 71% of those reporting subtle-only discrimination, 68% of those reporting overt-only discrimination, and less than half (40%) of those reporting no discrimination. Similarly, while transgender individuals

⁹⁶The p-value associated with Pearson's χ^2 is displayed to show statistical significance.

⁹⁷To ease interpretation of descriptive statistics, we have re-coded variables such as gender, race/ethnicity, sexual orientation, age, and tenure into three or more categories to show the nuances across and between different subgroupings. These categories were collapsed to create the major variables reviewed, which also increased the statistical strength of our analyses.

Table 4. Determinants of Reporting Discrimination in the Workplace Among Lawyers (Multinomial Logistic Regression)

| | Model 1 | | Model 2 | | Model 3 | |
|---|----------|----------------|----------|----------------|-----------|----------------|
| | RRR | 95% CI | RRR | 95% CI | RRR | 95% CI |
| Both Subtle and Overt Discrimination | | | | | | |
| Individual Characteristics | | | | | | |
| Disability | 1.636*** | 1.264 - 2.116 | 1.573*** | 1.211 - 2.042 | 3.095*** | 1.811 - 5.289 |
| LGBQ | 1.897*** | 1.363 - 2.640 | 1.780*** | 1.276 - 2.484 | 9.916*** | 5.591 - 17.584 |
| Women | 5.133*** | 3.925 - 6.712 | 4.940*** | 3.770 - 6.473 | 12.712*** | 8.173 - 19.771 |
| Transgender | 5.765*** | 2.025 - 16.414 | 5.453*** | 1.905 - 15.611 | 2.267 | 0.763 - 6.735 |
| Race/Ethnicity | 2.168*** | 1.616 - 2.907 | 2.071*** | 1.541 - 2.783 | 5.147*** | 2.923 - 9.064 |
| Age | 0.994 | 0.985 - 1.003 | 0.998 | 0.987 - 1.009 | 0.998 | 0.987 - 1.009 |
| Covariates | | | | | | |
| Tenure | — | | 0.993 | 0.979 - 1.007 | 0.995 | 0.981 - 1.009 |
| Private Org | — | | 0.673*** | 0.528 - 0.859 | 0.673*** | 0.527 - 0.860 |
| Large Org | — | | 1.196 | 0.881 - 1.624 | 1.118 | 0.818 - 1.527 |
| 2 x 2 Interactions | | | | | | |
| Disability x LGBQ | — | | — | | 0.460** | 0.228 - 0.926 |
| Disability x Women | — | | — | | 0.505** | 0.279 - 0.916 |
| LGBQ x Women | — | | — | | 0.092*** | 0.047 - 0.181 |
| Women x Race/Ethnicity | — | | — | | 0.283*** | 0.147 - 0.547 |
| Constant | 0.072*** | 0.056 - 0.092 | 0.099*** | 0.071 - 0.139 | 0.046*** | 0.029 - 0.073 |
| Subtle Discrimination Only | | | | | | |
| Individual Characteristics | | | | | | |
| Disability | 0.900 | 0.696 - 1.162 | 0.899 | 0.693 - 1.165 | 1.176 | 0.741 - 1.867 |
| LGBQ | 2.423*** | 1.831 - 3.206 | 2.341*** | 1.763 - 3.108 | 4.892*** | 3.111 - 7.694 |
| Women | 3.308*** | 2.652 - 4.127 | 3.340*** | 2.670 - 4.179 | 4.946*** | 3.661 - 6.682 |
| Transgender | 2.286 | 0.817 - 6.402 | 2.265 | 0.806 - 6.372 | 1.444 | 0.497 - 4.198 |
| Race/Ethnicity | 1.618*** | 1.228 - 2.132 | 1.598*** | 1.210 - 2.110 | 2.753*** | 1.697 - 4.465 |
| Age | 0.974*** | 0.967 - 0.982 | 0.968*** | 0.958 - 0.979 | 0.969*** | 0.958 - 0.979 |

(Continued)

Table 4 (Continued)

| | Model 1 | | Model 2 | | Model 3 | |
|-----------------------------------|----------|----------------|----------|----------------|----------|----------------|
| | RRR | 95% CI | RRR | 95% CI | RRR | 95% CI |
| Covariates | | | | | | |
| Tenure | — | | 1.016** | 1.003 - 1.029 | 1.017** | 1.003 - 1.030 |
| Private Org | — | | 0.778** | 0.623 - 0.973 | 0.776** | 0.620 - 0.970 |
| Large Org | — | | 1.325** | 1.024 - 1.715 | 1.284* | 0.989 - 1.667 |
| 2 x 2 Interactions | | | | | | |
| Disability x LGBTQ | — | | — | | 0.759 | 0.408 - 1.412 |
| Disability x Women | — | | — | | 0.735 | 0.429 - 1.259 |
| LGBTQ x Women | — | | — | | 0.288*** | 0.165 - 0.504 |
| Women x Race/Ethnicity | — | | — | | 0.430*** | 0.240 - 0.770 |
| Constant | 0.152*** | 0.125 - 0.185 | 0.140*** | 0.104 - 0.188 | 0.108*** | 0.077 - 0.151 |
| Overt Discrimination Only | | | | | | |
| Individual Characteristics | | | | | | |
| Disability | 1.452* | 0.942 - 2.239 | 1.317 | 0.850 - 2.042 | 1.088 | 0.486 - 2.434 |
| LGBTQ | 1.186 | 0.645 - 2.179 | 1.129 | 0.611 - 2.085 | 1.142 | 0.357 - 3.654 |
| Women | 2.825*** | 1.852 - 4.309 | 2.633*** | 1.719 - 4.031 | 3.528*** | 2.036 - 6.113 |
| Transgender | 4.606* | 0.872 - 24.339 | 4.114* | 0.770 - 21.986 | 3.709 | 0.584 - 23.531 |
| Race/Ethnicity | 1.378 | 0.813 - 2.336 | 1.277 | 0.751 - 2.171 | 3.307*** | 1.482 - 7.383 |
| Age | 0.990 | 0.975 - 1.005 | 0.987 | 0.969 - 1.006 | 0.988 | 0.970 - 1.007 |
| Covariates | | | | | | |
| Tenure | — | | 1.005 | 0.982 - 1.029 | 1.007 | 0.983 - 1.030 |
| Private Org | — | | 0.539*** | 0.359 - 0.810 | 0.538*** | 0.357 - 0.811 |
| Large Org | — | | 0.850 | 0.482 - 1.501 | 0.863 | 0.488 - 1.525 |
| 2 x 2 Interactions | | | | | | |
| Disability x LGBTQ | — | | — | | 2.046 | 0.617 - 6.784 |
| Disability x Women | — | | — | | 1.125 | 0.436 - 2.901 |
| LGBTQ x Women | — | | — | | 0.475 | 0.126 - 1.785 |
| Women x Race/Ethnicity | — | | — | | 0.206*** | 0.071 - 0.596 |
| Constant | 0.037*** | 0.025 - 0.053 | 0.055*** | 0.033 - 0.093 | 0.048*** | 0.027 - 0.085 |

(Continued)

Table 4 (Continued)

| | Model 1 | | Model 2 | | Model 3 | |
|---|---------|--------|---------|--------|---------|--------|
| | RRR | 95% CI | RRR | 95% CI | RRR | 95% CI |
| No Discrimination (base outcome) | | | | | | |
| Number of observations | 2,577 | | 2,577 | | 2,577 | |
| Pseudo R2 | 0.081 | | 0.087 | | 0.101 | |
| LR chi2 | 451.81 | | 30.73 | | 82.37 | |
| LR test p-value | 0.0000 | | 0.0003 | | 0.0000 | |

Notes: ***p-value < 0.01; **p-value < 0.05; *p-value < 0.1. No discrimination is the base outcome. Age is mean centered at 49 years.

comprise about one percent of the overall sample, they make up more than two percent of those reporting both types of discrimination.

Race/Ethnicity. The identification of race/ethnicity is associated with the type of discrimination reported. Results in Table 1 show that White non-Hispanic respondents comprise more than eight of ten respondents (84%), with individuals reporting as racial/ethnic minorities comprising about 16% of respondents. Yet, Table 3 shows that racial/ethnic minorities reflect only about one in ten (12%) of individuals reporting no discrimination as compared to almost nine in ten (88%) of White non-Hispanic lawyers. For racial/ethnic minorities, discrimination reports are: 25% for both types, 16% for overt-only, and 20% for subtle-only.

Age/Tenure. Younger respondents and those with less than five years' tenure at a firm are more likely to report all forms of discrimination as compared to older lawyers.

B. WHO IS LIKELY TO REPORT DISCRIMINATION? REGRESSION MODELS

To estimate differential reporting of discrimination, we conduct a series of multinomial logistic models. The results in Table 4 present the relative risk ratio (“RRR”) of reporting the discrimination categories—overt-only, subtle-only, or both—as compared to reporting no discrimination (the baseline value), controlling for the other variables in the model. In other words, we examine the risk of a respondent reporting one of the three discrimination categories relative to the risk of reporting no discrimination, while considering the other variables in the models as presented in Table 4.⁹⁸

Model 1 in Table 4 presents a basic multinomial logistic model, which considers the main variables as predictors of the outcomes of interest—both, subtle-only, and overt-only discrimination. Model 2 in Table 4 adds the organizational covariates—job tenure, private/public firm, and size of organization. The full model, Model 3, adds the 2x2 interaction terms; that is, associations between pairs of variables. Table 4 at the bottom also presents the results of the Likelihood Ratio Test (“LR”), which compares the explanatory usefulness of each model.⁹⁹

We observe in Model 1 that, as compared to those not reporting discrimination, individuals with disabilities; individuals who identify as LGBTQ, women, or transgender; and individuals who are racial/ethnic minorities are more likely to report both types of discrimination as compared to their counterparts.¹⁰⁰ The findings in Models 2 and 3 comport with these findings, except that in Model 3 we cannot reach any conclusions for individuals identifying as transgender, which is likely related to the small sample size of this group.

In addition, as evidenced by the correlational findings in Table 2, the results from Model 1 suggest that: (1) individuals who identify as LGBTQ, women, and racial/ethnic minorities show a higher risk of reporting subtle-only discrimination, as opposed to not experiencing discrimination, and (2) older individuals show a lower risk of reporting subtle-only discrimination, as opposed to not experiencing discrimination. These findings differ for overt-only discrimination (Model 1), where we find that individuals with

⁹⁸LR is a statistical test that helps to identify the relative degree of usefulness of our exploratory multivariate modeling. See Appendix Table 1a (using “subtle discrimination” as the baseline category).

⁹⁹We have conducted numerous diagnostic tests. Specifically, our results suggest that the Independence of Irrelevant Alternatives (IIA) assumption has not been violated. Our results, such as VIF and tolerance level, show that multicollinearity is not an issue in our models. In addition, model specification tests show that our models are correctly specified and that discrepancies between predicted and observed frequencies are small/not significant. To compare models, in addition to LR tests, we have carried out multiple tests and relied on BIC, AIC, and McFadden's R2, among others, to decide if adding 2x2 interactions and other controls would benefit our model.

¹⁰⁰The results also show no significant relationship between reporting both types and the age of respondents.

disabilities, women, and those who identify as transgender are more likely to report overt discrimination versus no discrimination.

Disability. The results from Model 3 in Table 4 show that the relative risk ratio of reporting both types of discrimination (versus no discrimination) increases by a factor of 3.095 (210%)¹⁰¹ for a person with a disability as compared to a person with no disability, controlling for the other individual and organizational characteristics. This effect for disability does not appear for subtle-only versus no discrimination or overt-only versus no discrimination.

Review of the 2x2 interaction analysis in Model 3 shows that, for disabled individuals reporting both types of discrimination, the main effect of disability varies as a function of (i.e., interacts with) sexual orientation and of gender.¹⁰² That is, the relative risk of reporting is reduced by 54% for LGBQ individuals with disabilities, and 49% for women with disabilities as compared to their counterparts.¹⁰³

Sexual Orientation. Table 4 shows that the RRR of reporting both types of discrimination versus no discrimination is almost ten times (9.916) higher for a person who identifies as LGBQ as compared to a person who does not identify as LGBQ, controlling for the other variables in the model. The comparable RRR for subtle discrimination is almost five times (4.892) higher for a person who identifies as LGBQ as compared to a person who identifies as straight.¹⁰⁴ The effect of sexual orientation varies with disability identification (discussed above) and with gender. For instance, the relative risk for LGBQ women reporting both types of discrimination is about 91% lower, and about 71% lower for reporting subtle-only, compared to no discrimination.¹⁰⁵

Gender. Being a woman is associated with a higher relative risk of reporting all three types of discrimination—both, subtle-only, and overt-only—as compared to men, controlling for the other variables in the model.¹⁰⁶ Holding constant the other variables in

¹⁰¹The main effect of disability for both types of discrimination vs. no discrimination is statistically significant (RRR=3.095, 95% CI = 1.811 - 5.289). The main effect of disability in the model for subtle-only vs. no discrimination (RRR = 1.176, 95% CI = 0.741 - 1.867) and overt-only vs. no discrimination (RRR = 1.088, 95% CI = 0.486 - 2.434) is not statistically significant.

¹⁰²The interaction effect between disability and sexual orientation (RRR = 0.460, 95% CI = 0.228 - 0.926) and gender (RRR = 0.505, 95% CI = 0.279 - 0.916) is statistically significant for those who reported both types of discrimination vs. no discrimination. In Table 4, this interaction effect is not evidenced for those reporting subtle-only (LGBQ RRR = 0.759, 95% CI = 0.408 - 1.412; Women RRR = 0.735, 95% CI = 0.429 - 1.259) and overt-only discrimination (LGBQ RRR = 2.046, 95% CI = 0.617 - 6.784; Women RRR = 1.125, 95% CI = 0.436 - 2.901).

¹⁰³An interaction effect represents the unique effect for one particular grouping (e.g., women with disabilities relative to the converse grouping). As such, the effect for women with disabilities is the joint, additive, or combined component effect for women, individuals with disabilities, and the unique effect for women with disabilities. Even in instances when the interaction coefficient suggests a decrease overall in the risk of reporting discrimination, however, we cannot simply conclude that women with disabilities experience less discrimination relative to women without disabilities. The calculations provided *infra* regarding such average probabilities provide an estimate of such differences. For a related explanation of interaction effects, see Ralph L. Rosnow & Robert Rosenthal, "SOME THINGS YOU LEARN AREN'T SO": *Cohen's Paradox, Asch's Paradigm, and the Interpretation of Interaction*, 6 PSYCHOL. SCI. 3 (1995) (providing a related explanation of interaction effects).

¹⁰⁴The main effect of sexual orientation for reports of both types of discrimination vs. no discrimination (RRR = 9.916, 95% CI = 5.591 - 17.584) and for reports of subtle discrimination vs. no discrimination (RRR = 4.892, 95% CI = 3.111 - 7.694) is statistically significant. Sexual orientation is not significantly associated with reports of overt-only discrimination vs. no discrimination (RRR = 1.142, 95% CI = 0.357 - 3.654).

¹⁰⁵The effect of sexual orientation differs by gender for reports of both types of discrimination vs. no discrimination (RRR = 0.092, 95% CI = 0.047 - 0.181) and subtle-only discrimination vs. no discrimination (RRR = 0.288, 95% CI = 0.165 - 0.504). It does not differ for reports of overt-only discrimination vs. no discrimination (RRR = 0.475, 95% CI = 0.126 - 1.785).

¹⁰⁶Being transgender is not associated with reports of both types of discrimination (RRR = 2.267, 95% CI = 0.763 - 6.735), subtle-only discrimination (RRR = 1.444, CI = 0.497 - 4.198), or overt-only

the model, the RRR of reporting both types of discrimination (versus no discrimination) is 12.712 times higher for women than men; the RRR for subtle-only versus no discrimination is 4.946 times higher for women than men; and the RRR for overt-only versus no discrimination is 3.528 times higher for women than men.¹⁰⁷

The interaction effect of gender (for women) varies with race/ethnicity for those who report all three types of discrimination versus no discrimination. Specifically, the risk of reporting all three types of discrimination, compared to no discrimination, is reduced for women who are racial/ethnic minorities.¹⁰⁸

Race/Ethnicity. Race is associated with a relative risk of reporting all types of discrimination (compared to no discrimination). The RRR for reporting both types is 5.147 times higher for lawyers who identify as racial/ethnic minorities; the RRR of reporting subtle-only is 2.753 times higher for racial/ethnic minorities; and the RRR of reporting overt-only is 3.307 times higher, as compared to White lawyers.¹⁰⁹

Age. The variable of age is significant for those who report subtle-only, but not for both types or overt-only, as compared to no discrimination. The risk of reporting subtle-only discrimination versus no discrimination declines by 3% for a one-year increase in age (RRR = 0.969), net of the other variables in the model.¹¹⁰

Organizational and Job Covariates. Job tenure is associated with a 1.7% higher risk of reporting subtle-only discrimination for a one-year increase (relative to reporting no discrimination).¹¹¹ Working for a private organization compared to other organizations is associated with a decline of 33% in the risk of reporting both types, a 22% decline in the risk of reporting subtle-only, and a 46% decline in the risk of reporting overt-only, versus no discrimination.¹¹² Working for a large organization versus a small organization is associated with an increase of 28% in the relative risk of reporting only subtle-only versus no discrimination.¹¹³

discrimination (RRR = 3.709, 95% CI = 0.584 - 23.531) in Model 3. However, it is associated with both types and overt-only discrimination in the first two models, as discussed previously.

¹⁰⁷The main effect of being a woman on reporting both types of discrimination vs. no discrimination (RRR = 12.712, 95% CI = 8.173 - 19.771), reporting subtle-only discrimination vs. no discrimination (RRR = 4.946, 95% CI = 3.661 - 6.682), and reporting overt-only discrimination vs. no discrimination (RRR = 3.528, 95% CI = 2.036 - 6.113) is statistically significant.

¹⁰⁸The interaction term between women and race/ethnicity is statistically significant for reports of both types of discrimination vs. no discrimination (RRR = 0.283, 95% CI = 0.147 - 0.547), reports of subtle-only discrimination vs. none (RRR = 0.430, 95% CI = 0.240 - 0.770), and reports of overt-only discrimination vs. none (RRR = 0.206, 95% CI = 0.071 - 0.596).

¹⁰⁹The main effect of race/ethnicity for reporting both types of discrimination vs. no discrimination (RRR = 5.147, 95% CI = 2.923 - 9.064), reporting subtle-only discrimination vs. no discrimination (RRR = 2.753, 95% CI = 1.697 - 4.465), and reporting overt-only discrimination vs. no discrimination (RRR = 3.307, 95% CI = 1.482 - 7.383) is statistically significant.

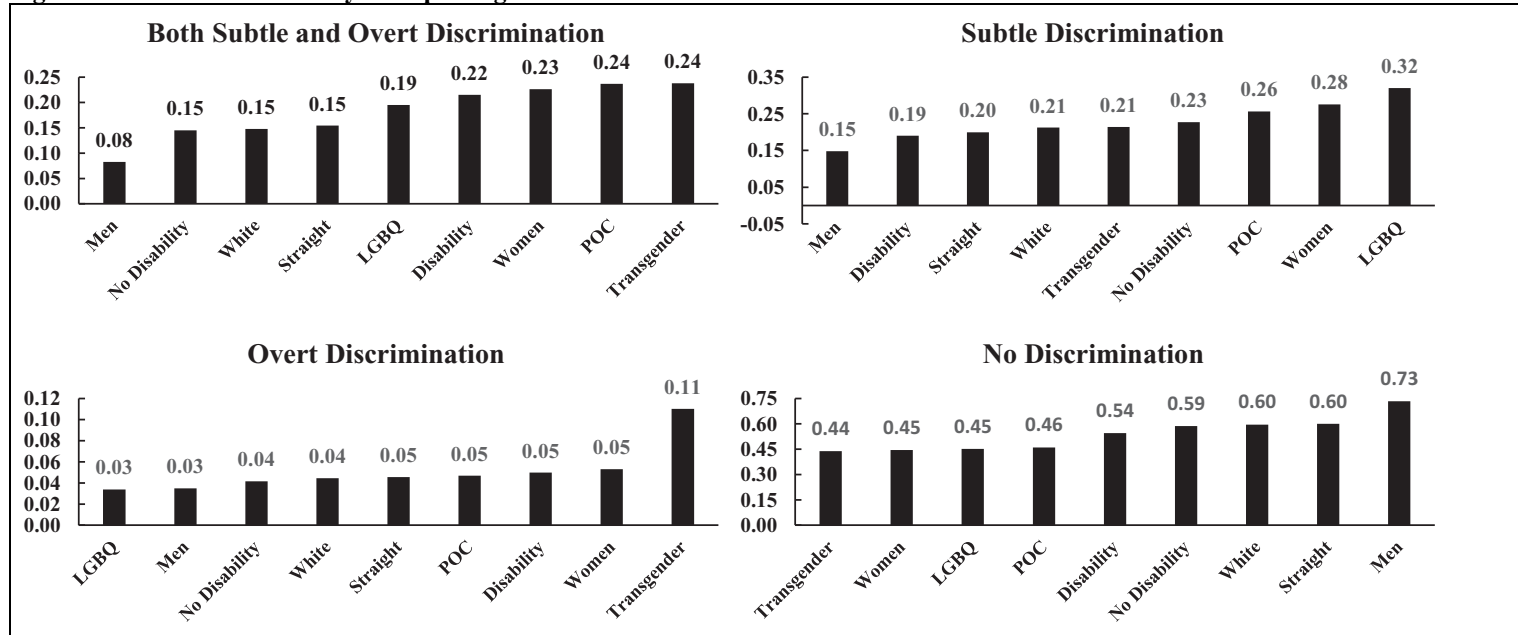
¹¹⁰The main effect of age for reports of subtle-only discrimination vs. no discrimination (RRR = 0.969, 95% CI = 0.958 - 0.979) is statistically significant, while that for reports of both types of discrimination vs. no discrimination (RRR = 0.998, 95% CI = 0.987 - 1.009) and overt-only discrimination vs. no discrimination (RRR = 0.988, 95% CI = 0.970 - 1.007) is not statistically significant.

¹¹¹The main effect of tenure for reporting subtle-only vs. no discrimination (RRR = 1.017, 95% CI = 1.003 - 1.030) is statistically significant. This effect is not significant for those who report both types vs. no discrimination (RRR = 0.995, 95% CI = 0.981 - 1.009) and those who report overt-only vs. no discrimination (RRR = 1.007, 95% CI = 0.983 - 1.030).

¹¹²The main effect of private organization for reports of both types of discrimination vs. no discrimination (RRR = 0.673, 95% CI = 0.527 - 0.860), reports of subtle-only discrimination vs. no discrimination (RRR = 0.776, 95% CI = 0.620 - 0.970), and reports of overt-only discrimination vs. no discrimination (RRR = 0.538, 95% CI = 0.357 - 0.811) is statistically significant.

¹¹³The main effect of organization size for reports of subtle-only discrimination vs. no discrimination (RRR = 1.284, 95% CI = 0.989 - 1.667) is statistically significant, while it is not statistically significant for

Figure 1. Predicted Probability of Reporting Discrimination



Notes: We use Average Adjusted Predictions (AAP) to calculate the expected probability of reporting discrimination. These numbers represent the average predicted probabilities that would be observed for a specific variable, all else remaining as it is in the data.

C. PREDICTED PROBABILITIES OF REPORTS OF DISCRIMINATION

Both Types of Discrimination. Figure 1 displays the predicted probabilities for each type of discrimination report (both, subtle-only, and overt-only, and none) by individual identities. Reports of both types (i.e., the top left panel) are seven percentage points higher for people with disabilities than without (22% versus 15%), keeping other variables as they are in the dataset.

The probability of LGBQ lawyers reporting both types of discrimination is four percentage points higher than for heterosexual individuals (19% versus 15%). Women show a meaningfully higher probability of reporting both types of discrimination as compared to men (23% versus 8%), as do transgender lawyers as compared to men (24% versus 8%). Lawyers of color show a substantially higher probability of reporting both types of discrimination as compared to White individuals (24% versus 15%).

Subtle-Only Discrimination. The probability of reporting subtle-only discrimination is lower by four percentage points for lawyers with disabilities as compared to those without disabilities (19% versus 23%). In contrast, the probability of LGBQ lawyers reporting subtle-only is significantly higher than for heterosexual lawyers (32% versus 20%). Women show a substantially higher probability of reporting subtle-only discrimination as compared to men (28% versus 15%), as do transgender lawyers (21% versus 15%). Finally, the probability of reporting subtle-only discrimination is somewhat higher (26%) for racial/ethnic minorities as compared to White lawyers (21%).

Overt-Only Discrimination. Considering its overall low incidence, the probability of reporting overt-only discrimination is comparable for lawyers with and without disabilities (5% versus 4%). There is also little difference in the probability of reporting overt-only discrimination for LGBQ lawyers when compared to straight lawyers (3% versus 5%). Women show a relatively comparable probability of reporting overt-only discrimination as compared to men (5% versus 3%), while lawyers who identify as transgender show a higher probability of reports of overt-only discrimination as compared to men (11% versus 3%). There is little difference in the probability of reporting overt-only as between lawyers of color (5%) and White lawyers (4%).

No Discrimination. The probability of reporting no discrimination is lower for lawyers with disabilities compared to those without disabilities (54% versus 59%). The probability of LGBQ lawyers reporting no discrimination is meaningfully less than for straight lawyers (45% versus 60%). Women show a significantly lower probability of reporting no discrimination as compared to men (45% versus 73%), as do transgender lawyers as compared to men (44% versus 73%). Lawyers of color are meaningfully less likely to report no discrimination (46%) as compared to White lawyers (60%).

Summary. The findings suggest that lawyers with disabilities, who are people of color, and who are women or transgender show a higher probability of reporting both types of discrimination, as compared to other groups. Further, lawyers identifying as LGBQ, women, and people of color are more likely to report subtle-only discrimination. Transgender lawyers have the highest probability of experiencing overt-only discrimination.¹¹⁴ Finally, men are the least likely to report all three types of discrimination, and consequently show the highest probability of reporting no discrimination.

reports of both types of discrimination vs. no discrimination (RRR = 1.118, 95% CI = 0.818 - 1.527) and for reports of overt-only discrimination vs. no discrimination (RRR = 0.863, 95% CI = 0.488 - 1.525).

¹¹⁴However, the main effects for the transgender variable were not statistically significant when controlling for organizational and job characteristics, as well as taking into account the small cell size.

Age. The predicted probabilities for each group as a function of age show that the prospect of reporting both types of discrimination increases slightly with age for lawyers with and without disabilities, women/men/transgender, LGBTQ/straight, and people of color/White (as presented in Appendix Figure 1a). In contrast, the probability of reporting subtle-only discrimination markedly declines with age for all these groups (Figure 1b), and there is a less steep decline for overt-only discrimination for all groups (Figure 1c). Age increases the probability of not experiencing discrimination for all groups (Figure 1d).

These results suggest that while the risk of reporting discrimination is reduced with age, such a countering role of age does not show its effect in the probability of reporting both types of discrimination. Extant research shows that discrimination experiences and reports generally decline with age,¹¹⁵ which parallels our results for reports of subtle-only and overt-only discrimination. Other studies have, however, shown that particular forms of discrimination, such as disability-related discrimination, are more prevalent among older employees than younger ones.¹¹⁶

The general upward trend with age in reports of both types of discrimination requires future study, for example, to examine the particular duration, severity, and context of such experiences over time, along with organizational factors associated with application of antidiscrimination laws and company policies. Nonetheless, studies about reports of discrimination and age are, overall, mixed, with some previous studies showing that older workers are more likely to perceive workplace discrimination, possibly due to their greater interpersonal and workplace experiences.¹¹⁷

Intersectional Analyses. Exploratory intersectional analyses are presented in Figures 2, 3, and 4. These figures show predicted probabilities for combinations of individual identities comprising disability, sexual orientation, gender, and race/ethnicity. These analyses are exploratory at this stage because we do not know, for example, which of these identities may be considered primary or in unique combination, and how they might be affected across time, circumstance, and context.¹¹⁸

The far-right column of Figure 2 shows that straight men without disabilities have the highest probability of not reporting discrimination (80%), followed by straight men with disabilities (73%). For reports of both types of discrimination, straight women with disabilities show the highest probability (31%). For subtle-only, LGBTQ men and women

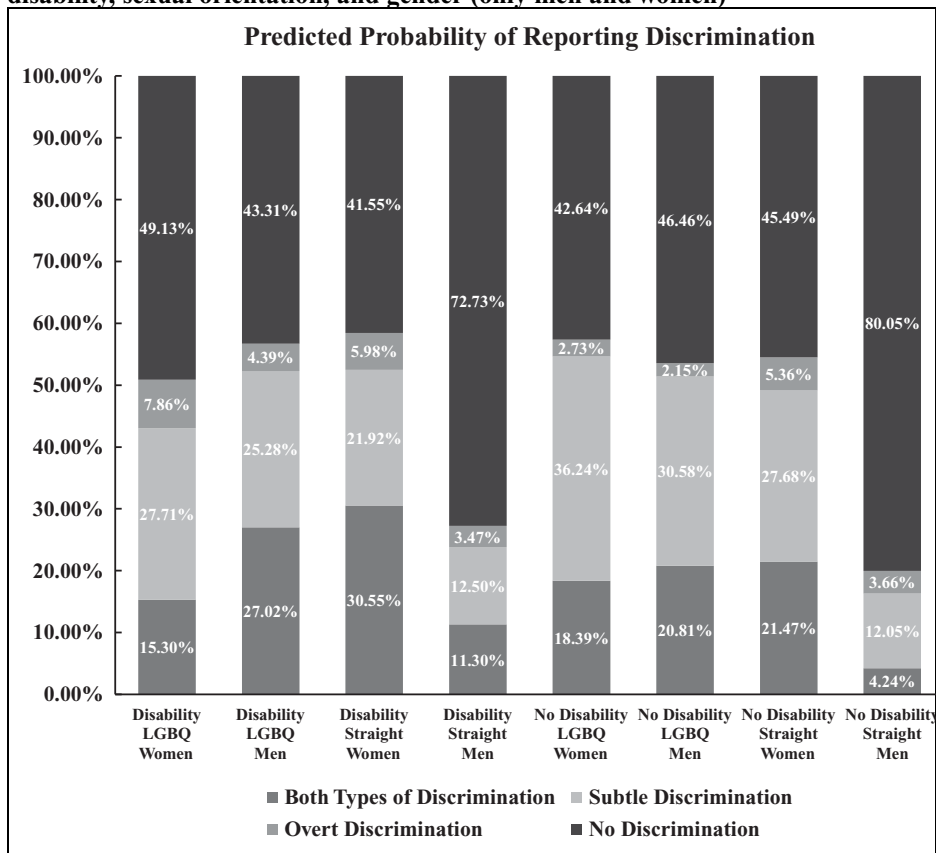
¹¹⁵See Teri A. Garstka et al., *How Young and Older Adults Differ in their Responses to Perceived Age Discrimination*, 19 PSYCHOL. & AGING 326, 331 (2004) (“[Our data] are among the first data to illustrate that group identification may be a response that enables older adults to avoid some of the negative effects of age discrimination.”); Eun Ha Namkung & Deborah Carr, *Perceived Interpersonal and Institutional Discrimination among Persons with Disability in the US: Do Patterns Differ by Age?*, 239 Soc. Sci. & Med., Art. 112521 (2019) (showing that the link between disability and perceived discrimination is less pronounced among older adults relative to younger adults).

¹¹⁶See, e.g., Shaw et al., *supra* note 90 at 86 (demonstrating that charging parties in the 35 to 43 age group had a higher harassment allegation rate than any other age group, including the 55-64 age group and the 65+ age group).

¹¹⁷See, e.g., Hirsh & Lyons, *supra* note 78, at 292 (“[W]e find support for the claim that the likelihood of invoking discrimination language to explain negative workplace experiences varies with a sense of entitlement and knowledge of the law. Although our data do not allow us to observe these processes directly, we argued that employees’ personal and workplace characteristics may structure feelings of entitlement or legal knowledge, and our results generally support these expectations. Education and age translate into greater odds of perceiving discrimination for some lower ascriptive status groups. Furthermore, workers with job authority, promotion experience, and union members are most likely to perceive workplace racial discrimination.”).

¹¹⁸See Foster & Hirst, *supra* note 11, at 15 (“Findings indicate a significant proportion of disabled people in the legal profession have experienced forms of ill-treatment, bullying, or discrimination, the majority of which were associated with their disability. Our survey of solicitors and paralegals found 60% had experienced ill-treatment in the workplace and of these 80% believed it was related to disability. Among barristers 45% reported having experienced ill-treatment and 71% of these believed this was related to disability.”)

Figure 2. Predicted probability of reporting discrimination for all combinations of disability, sexual orientation, and gender (only men and women)



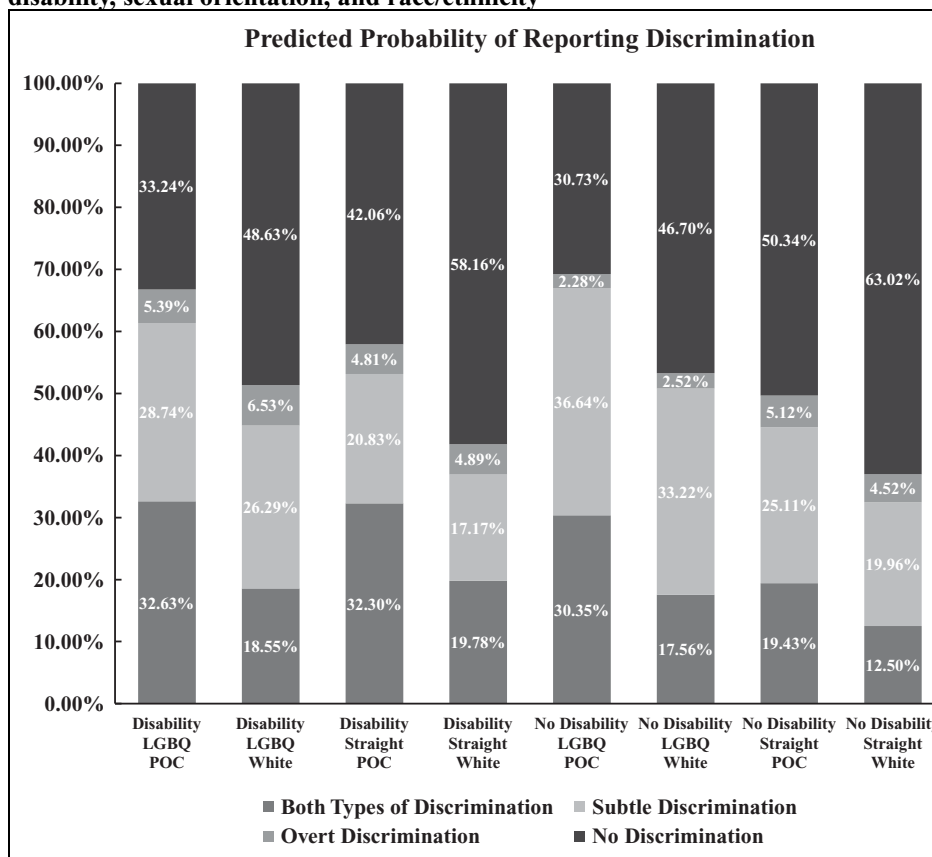
Notes: We use Average Adjusted Predictions at Representative values (APR) to calculate the expected probability of reporting discrimination. Specifically, we compute the average predicted probabilities at representative values of disability, sexual orientation, and gender, all else remaining as it is in the data.

without disabilities (the fifth and sixth columns from the left, at 36% and 31%), show among the highest relative probabilities of reporting. The overall incidence and range of overt discrimination is low, but LGBQ women with disabilities show the highest probability of reporting this type of discrimination (8%).¹¹⁹

The results in Figure 3 show predicted probabilities for a different set of identity combinations, in this case disability, sexual orientation, and race/ethnicity. Paralleling the findings in Figure 2, the far-right column of Figure 3 shows that straight White lawyers without disabilities have the highest probability of not reporting discrimination (63%), followed by straight White lawyers with disabilities (58%).

¹¹⁹See Nelson et al., *supra* note 5, at 1058 (“For LGBTQ respondents, men and women report similar levels of discrimination. LGBTQ women and non-LGBTQ women report similar levels of discrimination, suggesting that gender bias is equally [as] pervasive as sexual orientation bias for women. However, LGBTQ men report almost twice as much discrimination as do non-LGBTQ men.”).

Figure 3. Predicted probability of reporting discrimination for all combinations of disability, sexual orientation, and race/ethnicity

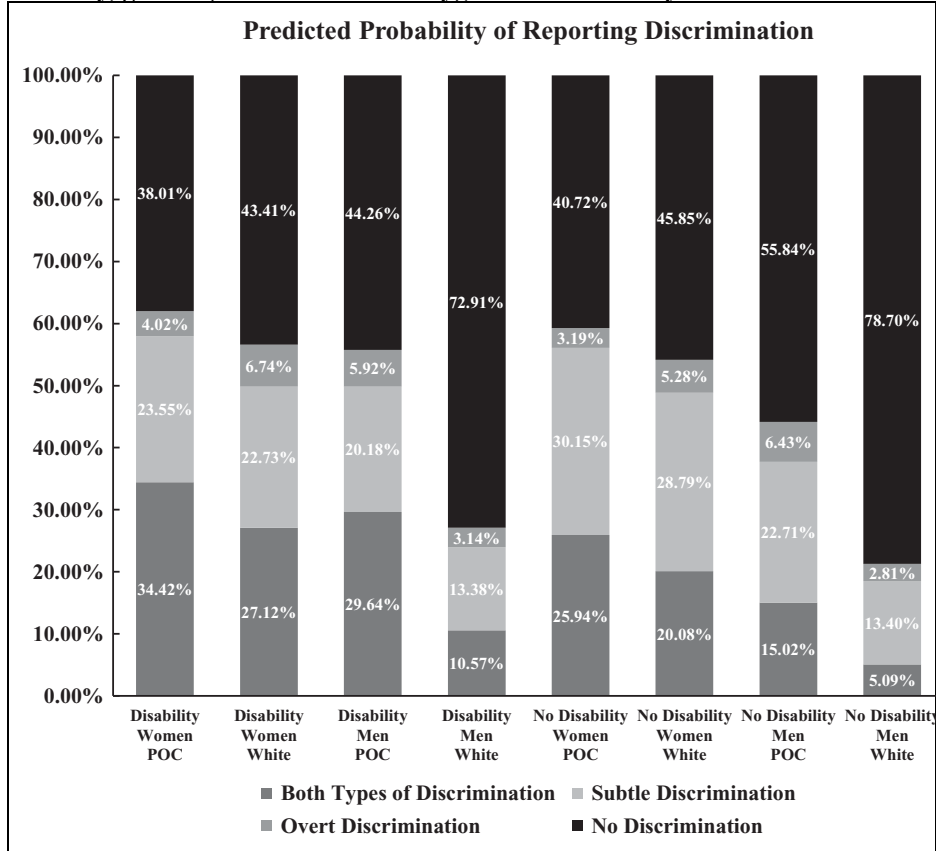


Notes: We use Average Adjusted Predictions at Representative values (APR) to calculate the expected probability of reporting discrimination. Specifically, we compute the average predicted probabilities at representative values of disability, sexual orientation, and race, all else remaining as it is in the data.

Figure 3 shows that for both types of discrimination, among the higher predicted probabilities for reporting are: LGBQ individuals who are racial/ethnic minorities with disabilities (33%), straight individuals who are racial/ethnic minorities with disabilities (32%), and LGBQ individuals who are racial/ethnic minorities without disabilities (30%). For subtle-only discrimination, among the higher predicted probabilities for reporting are: LGBQ individuals without disabilities who are racial/ethnic minorities (37%), LGBQ White individuals without disabilities (33%), and LGBQ individuals with disabilities who are racial/ethnic minorities (29%). For overt-only discrimination, the incidence is lower, and thus it is difficult to discern meaningful differences among the groups, but the highest relative probability for reporting is among LGBQ individuals with disabilities who are White (7%).

The results in Figure 4 display predicted probabilities for a last set of exploratory identity combinations: disability, gender, and race/ethnicity. As before, Figure 4 shows

Figure 4. Predicted probability of reporting discrimination for all combinations of disability, gender (women and men only), and race/ethnicity



Notes: We use Average Adjusted Predictions at Representative values (APR) to calculate the expected probability of reporting discrimination. Specifically, we compute the average predicted probabilities at representative values of disability, sexual orientation, and race, all else remaining as it is in the data.

that White men, with and without disabilities, have the highest predicted probabilities for reporting no discrimination (far right column at 79%, and fifth column from right at 73%).

By contrast, women of color with disabilities show the highest probabilities for reporting both types of discrimination (34%), with second highest for men of color with disabilities (30%). Women without disabilities who are racial/ethnic minorities show the highest probabilities for reporting subtle-only discrimination (30%).¹²⁰ For overt-only, the incidence is relatively low, and among those reporting the highest probabilities are White

¹²⁰Collins et al., *supra* note 7, at 1654 (“While it may be unsurprising that women will perceive more gender bias and racial minorities will perceive more racial bias by professional peers, our findings about minority women’s perceptions tell an important story that is often overlooked in the literature. Specifically, minority female attorneys, being part of two outgroups, occupy a distinctive place in a profession traditionally dominated by white males. Our results show that the women of color group is the only one that reports higher levels of unfair treatment based on race, gender, and age.”); Nelson et al., *supra* note 5, at 1074 (“Women, and especially women

women with disabilities (7%), men who are racial/ethnic minorities with disabilities (6%), and men who are racial/ethnic minorities without disabilities (6%).

V. DISCUSSION

Our program of investigation and our current study aim to provide an incremental step in understanding the non-monochromatic and intersectional aspects of individual identity in the legal profession, with particular focus on disabled and LGBTQ+ lawyers. The findings illustrate that individual minority identities—disability, sexual orientation, gender, race/ethnicity, and age—are associated with reports of discrimination in the legal workplace.¹²¹

Although context and circumstance are important and determinative, the findings show that lawyers with disabilities and who identify as LGBQ are at a significantly higher relative risk of reporting both types of discrimination (versus no discrimination) when compared to their peers. The findings support those of prior studies that individuals with these minority identities often experience forms of ill-treatment, oppression, and discrimination in the legal profession,¹²² as well as in other professions.¹²³

The findings further illustrate that the effects of disability on the reporting of discrimination vary by sexual orientation and gender. Thus, women lawyers with disabilities and LGBQ lawyers with disabilities show a lower risk of reporting both types of discrimination as compared to their counterparts. These findings, however, do not decrease significantly the overall probability of reporting discrimination for LGBQ individuals with disabilities, as shown in Figures 2 and 3. The trends align with those of Ryan Miller and colleagues who find that LGBTQ+ students with disabilities report high levels of microaggressions.¹²⁴ Nonetheless, the constraints of their study, similar to those of ours, mean that Miller and colleagues are not able to determine that such experiences are a direct response to disability or sexual orientation disclosure, or a unique response to the intersection of these two identities.

In an analogous manner, our findings are in accord with those of Carrie Griffin Basas, showing that lawyers with disabilities who are women evidence high relative rates of discrimination reports, and that they tend to self-accommodate to avoid drawing attention to their disabilities and the associated threats of stigma, despite their ADA

of color, men of color, and LGBTQ attorneys are substantially more likely to perceive that they have been the target of biased treatment than their white male counterparts. This pattern holds through all three waves corresponding to different stages of the respondents' careers. And it holds across employment contexts: in the public sector as well as in private practice; and in large organizations and small ones. And it holds despite controlling for a full range of other independent variables that might affect these perceptions.”)

¹²¹See Dinovitzer & Garth, *supra* note 6, at 339.

¹²²Blanck et al., *First Phase*, *supra* note 3, at 47; Foster & Hirst, *supra* note 11, at 15; Nelson et al., *supra* note 5, at 1074; see also Peter Blanck, *Thirty Years of the Americans with Disabilities Act: Law Students and Lawyers as Plaintiffs and Advocates*, 45 N.Y.U. REV. L. & SOC. CHANGE (Harbinger) 8 (2021) [hereinafter Blanck, *Plaintiffs and Advocates*] (providing anecdotes of individuals with disabilities experiencing forms of ill-treatment, oppression, and discrimination in the legal profession).

¹²³Chan et al., *supra* note 78, at 85; Dovidio et al., *supra* note 66, at 173; RICHARD M. KELLER & CORINNE E. GALGAY, *Microaggressive Experiences of People with Disabilities*, in MICROAGGRESSIONS AND MARGINALITY: MANIFESTATION, DYNAMICS, AND IMPACT 241, 248 (Derald Wing Sue ed., 2010). See generally M. V. Lee Badgett, *Employment and Sexual Orientation: Disclosure and Discrimination in the Workplace*, 4 J. GAY & LESBIAN SOC. SERVS. 29 (1996) (providing the discrimination experiences of people who identify as LGBTQ); M. V. LEE BADGETT ET AL., BIAS IN THE WORKPLACE: CONSISTENT EVIDENCE OF SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION (2007) (providing evidence of sexual orientation and gender identity discrimination).

¹²⁴See Ryan Miller et al., *LGBTQ+ College Students with Disabilities: Demographic Profile and Perceptions of Well-Being*, 18 J. LGBT YOUTH 60 (2021).

accommodation rights.¹²⁵ Yet other studies show that women with disabilities have a higher likelihood of reporting unmet workplace support needs compared to nondisabled men.¹²⁶ Similar complex psychological mechanisms and stigma-avoidance strategies involving identity disclosure likely are present in regard to the reporting of workplace discrimination, which also may be highly situationally dependent.¹²⁷ In our forthcoming studies on identity disclosure in the legal profession, we are examining such considerations as associated, for example, with less and more stigmatized disability identities.¹²⁸

As said, individuals who identify as LGBTQ are more likely to report both types of discrimination, as well as subtle-only discrimination, when compared to those who identify as straight. Studies show, however, that LGBTQ individuals also experience overt forms of workplace discrimination, including harassment, bullying, abuse, and vandalism.¹²⁹ Lee Badgett and colleagues estimate that between 12% and 30% of heterosexual co-workers reported witnessing discrimination in the workplace against LGB individuals.¹³⁰ Other studies show that prejudice and discrimination against LGBTQ employees often manifest as microaggressions and other less overt forms of discrimination,¹³¹ trends supported by our findings.

Reported discrimination on the basis of sexual orientation also varies by gender and disability. As predicted, it appears that the degree of identity “visibility,” whether for disability or LGBTQ individuals, is associated with identity disclosure (e.g., when disclosure is made for request and provision of workplace accommodations)¹³² and with likelihood of stigma and discrimination at the time of disclosure and subsequently.¹³³

In a thoughtful review of this Article and its implications for diversity and inclusion in the legal profession going forward, Ryan H. Nelson and Michael Ashley Stein offer their suggestion that close future attention be paid to how workplace discrimination (perhaps as reflected by a culture tolerating such behavior) serves to deter workers from disclosing their multiple minority identities.¹³⁴ Indeed, Nelson and Stein point out

¹²⁵Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 BERKELEY J. GENDER, L. & JUST. 32, 39 (2010).

¹²⁶Arif Jetha et al., *Disability and Sex/Gender Intersections in Unmet Workplace Support Needs: Findings from a Large Canadian Survey of Workers*, 64 AM. J. INDUS. MED. 149, 149 (2020).

¹²⁷See, e.g., Bizzell, *supra* note 7, at 71 (“Clearly, LGBTQ+ individuals continue to confront challenges both in our society at large and in the workplace. The Out Now Global LGBTQ2020 Study, which surveyed more than 100,000 LGBTQ+ individuals, found that 24% of lesbians, 30% of gay men, 40% of bisexuals, and 55% of transgender employees in the U.S. believed that coming out could negatively impact future promotions. Thus, it is not surprising that a 2016 report from Credit Suisse reports that 41% of LGBTQ+ workers in the U.S. and 72% of senior LGBTQ+ executives say they have not come out openly at work.”); see also Blanck, Hyseni, & Wise, *supra* note 3 (many LGBTQ+ attorneys have reason to share similar concerns).

¹²⁸Fitore Hyseni & Peter Blanck, *Diversity and Inclusion in the American Legal Profession: Determinants of Identity Disclosure for Lawyers with Disabilities and Who Identify as LGBTQ+*, J. CANCER SURVIVORSHIP (forthcoming 2021).

¹²⁹Nelson et al., *supra* note 5, at 1076; see also Badgett, *supra* note 123, at 40; BADGETT ET AL., *supra* note 123, at 2.

¹³⁰BADGETT ET AL., *supra* note 123, at 2.

¹³¹Blanck et al., *First Phase, supra* note 3, at 47; Kevin L. Nadal et al., *Sexual Orientation Microaggressions: “Death by a Thousand Cuts” for Lesbian, Gay, and Bisexual Youth*, 8 J. LGBT YOUTH 234, 235 (2011); see also Melanie A. Morrison, Todd G. Morrison & Randall Franklin, *Modern and Old-Fashioned Homonegativity Among Samples of Canadian and American University Students*, 40 J. CROSS-CULTURAL PSYCHOL. 523, 524-25, 540 (2009); DeSouza et al., *supra* note 78, at 122-123.

¹³²See, e.g., Blanck et al., *Workplace Accommodations, supra* note 3; see also Alecia M. Santuzzi et al., *Invisible Disabilities: Unique Challenges for Employees and Organizations*, 7 INDUS. & ORGAN. PSYCHOL. 204, 207-08 (2014).

¹³³Hyseni & Blanck, *supra* note 128.

¹³⁴Ryan H. Nelson & Michael Ashley Stein, *Erasing Workers’ Identities*, 47 AM. J.L. & MED. 76, 77 (2021).

that the disclosure process itself, for less visible identities, may be associated with subsequent reports of overt and subtle discrimination.¹³⁵

Shain A. M. Neumeier and Lydia X. Z. Brown, in their insightful review of this Article, additionally call for close exploration of individual differences in the disclosure process, particularly when individuals with less obvious identities request unique forms of workplace accommodation.¹³⁶ Our next planned studies will be more detailed and comprehensive as to information on the accommodation interactive process. We will examine moderating variables associated with common and less customary accommodation requests, and factors of individual self-advocacy, manager attitudes and experience, organizational trust and culture, and perceived costs and benefits over time. This line of study will enable closer exploration of the multifaceted reasons for accommodation request and provision, as well as the development of individual and systemic interventions designed to enhance the efficacy of the accommodation interactive process and its outcomes.¹³⁷

In accord, studies by Anna Brzykcy and Stephan Boehm, and others, show that, alone, the categorization of individuals with differing disabilities, often required to make an individualized assessment for the provision of effective workplace accommodations and supports, actually leads to perceptions and experiences that result in fewer opportunities for relationship-building and trust in the workplace.¹³⁸ The tricky calculus is to incentivize positive and proactive ways to encourage meaningful and fair disclosure of invisible and potentially stigmatized individual identities in ways that encourage productive, respectful, and effective supports in work tasks, work groups, and workplace cultures, and in accord with civil rights laws and policies.¹³⁹

We also find a generally higher relative risk of reports of discrimination to be associated with women and people of color. The results in this study comport with other

¹³⁵ *Id.*

¹³⁶ Neumeier & Brown, *supra* note 13, at 86-87 (“All disabled people face the prospect of misunderstanding, refusal of accommodations, and denial of access needs. Nonetheless, those of us whose access needs are harder to explain than asking for access to a ramp or to Brailled text (both of which are not necessarily guaranteed or even widely available) often face constant refusal or denial of lesser known or recognized accommodation requests like needing a private office space with a door due to sensory issues, chemical sensitivities, or psychosis, needing assistance with completing routine paperwork due to ADD, traumatic brain injury, or chronic fatigue, or needing a change of lighting because of photosensitive epilepsy, vision processing disabilities, or migraines. Refusal to even recognize that these access needs are legitimate or real can and does lead to sidelining and pushout for disabled legal professionals whose disabilities do not prevent them from doing the work but do mean that they must do the work differently than nondisabled colleagues. ... Similarly, not all LGBTQ+ people are represented equally in the legal profession or in research about our lives and experiences. Groups of people within the LGBTQ+ community who face particular marginalization include transfeminine people – especially trans women – and Two Spirit people, asexual and aromantic people, as well as LGBTQ+ people who have done sex work, who have been homeless, who have been incarcerated, or who are living with HIV (which is also a disability). People from all of these communities or who have had all of these experiences can want to and do enter the legal profession. Not surprisingly to us, multiply marginalized people within LGBTQ+ communities, including disabled people, fat people, immigrants, and people of color, face oppression both within and outside the LGBTQ+ community.”)

¹³⁷ *See id.* at 91 (“Research can include educating oneself on specific types of disabilities and relevant accommodations as well as universal design practices. Human resources and diversity professionals should also take the time to learn more about the communities they are seeking to recruit from, and especially about the experiences (in the workplace and more generally) of people living at the intersection of multiple forms of structural oppression. Organizations can and should pay members of the affected communities for professional consultations where possible.”)

¹³⁸ Anna Z. Brzykcy & Stephan A. Boehm, *No Such Thing as a Free Ride: The Impact of Disability Labels on Relationship Building at Work*, 2021 HUMAN REL. 1, 18-19, 22.

¹³⁹ *See generally* BLANCK, DISABILITY, *supra* note 2; Blanck, *Emerging*, *supra* note 12; Blanck, *ADA at Thirty*, *supra* note 12; Blanck, *America Better Off*, *supra* note 12.

research examining the workplace experiences of people of color and women.¹⁴⁰ Our findings that women experience all three types of discrimination at a higher relative rate than men comport with the recent exploratory findings of Caroline Jalain showing that women are more likely to experience one or more forms of discrimination in the workplace as compared to their male counterparts.¹⁴¹ As could be expected, straight White men without disabilities report among the lowest probabilities of discrimination and evidence the highest probability of not reporting discrimination.¹⁴²

Individual and organizational factors, such as tenure, and type and size of organization, are important.¹⁴³ For instance, our results suggest that working in a private organization reduces the likelihood of reporting discrimination, while working for a large organization increases the risk of reporting subtle-only discrimination. Longer tenure generally is associated with a higher rate of reporting subtle-only discrimination, but not with the other types of discrimination assessed. These trends correspond with findings from Debbie Foster and Natasha Hirst on the role of seniority in the United Kingdom's legal profession.¹⁴⁴ Currently, we are examining associations with variations in organization type and size, and particular organizational characteristics will be of focus in the next survey phase.

The findings here are both exploratory and illustrative, and as such must be considered with caution. We could not, and did not, delve fully into the underlying myriad reasons and circumstances associated with reported discrimination, such as those linked to issues of remuneration, disclosure,¹⁴⁵ identity visibility, personality characteristics, work team structure and task, firm culture, and support for D&I by leadership at the organization.¹⁴⁶

¹⁴⁰Nelson et al., *supra* note 5, at 1076; *see generally* Williams et al., *supra* note 24; Hansen, *supra* note 68, at 62. Our basic regression models, without inclusion of covariates and interaction terms, suggest that transgender lawyers, as compared to men, have a higher relative risk of experiencing both types of discrimination as well as overt discrimination, as compared to no discrimination, and this result is in accord with prior studies. Workplace discrimination is a major challenge for transgender people. In six studies conducted between 1996 and 2006, transgender people reported that they were fired (13% - 56%), denied employment (13% - 47%), harassed (22% - 31%), and denied a promotion (19%) based on their gender identity. BADGETT ET AL. *supra* note 123, at 3. Prior studies show that transgender people are almost three times more likely to experience forms of discrimination than are those who do not identify as transgender. *See* E. L. Lombardi, R. A. Wilchins, D. Priesing & D. Malouf, *Gender Violence: Transgender Experiences with Violence and Discrimination*, 42 J. HOMOSEXUALITY 89, 90 (2002); Rosich, *supra* note 74, at 1; *see also* Shanna K. Kattari et al., *Policing Gender through Housing and Employment Discrimination: Comparison of Discrimination Experiences of Transgender and Cisgender LGBQ Individuals*, 7 J. SOC'Y FOR SOC. WORK & RES. 427, 428; Davidson, *supra* note 74, at 10; Waite, *supra* note 74, at 21.

¹⁴¹Caroline Jalain, *Gender-Differential Effects of Perceived Discrimination on Lawyers' Job Satisfaction: A General Strain Theory Approach* (May 2020), <https://ir.library.louisville.edu/etd/3411> [<https://perma.cc/4RJU-QJ3C>] (Electronic Doctoral Dissertation, Paper 3411, University of Louisville).

¹⁴²Kimberly Jade Norwood, *Gender Bias as the Norm in the Legal Profession: It's Still a [White] Man's Game*, 62 WASH. U. J. L. & POL'Y 25 (2020).

¹⁴³*See* Saks, *supra* note 40.

¹⁴⁴Foster and Hirst, *supra* note 11, at 12-15 ("Ill-treatment or fear of discrimination associated with disability did not always decline with seniority, which contradicts what is often commonly assumed. The report refers to adjustments requested by successful and profitable senior staff that were either denied or only secured with difficulties and ill-will. Because identifiable senior disabled people are numerically few, the profession lacks established precedents for making adjustments to senior roles, which means that, without intervention, this situation will persist.")

¹⁴⁵Raymond N. C. Trau, *The Impact of Discriminatory Climate Perceptions on the Composition of Intraorganizational Developmental Networks, Psychosocial Support, and Job and Career Attitudes of Employees with an Invisible Stigma*, 54 HUM. RES. MGMT. 345, 359 (2015) ("[I]ndividuals in nondiscriminatory climate were more likely to disclose their stigmatized identity and had higher psychosocial support from their developmental networks, signaling that this kind of climate may foster reciprocated trust and positive treatments between the target (i.e., employees with an invisible stigma) and the observer (their network members).")

¹⁴⁶For excellent analyses of the importance of organizational D&I policies and culture in the legal profession and in relation to the findings herein, *see* Angela C. Winfield, *Upending "Normal": Toward an Integrated and Intersectional Approach to Diversity, Equity, and Inclusion in the Legal Profession*, 47 AM. J.L. &

We do, however, expect to look into some of the circumstances. For example, we are currently examining the relationship between reports of discrimination and wage levels over time. We may expect that lawyers with lower relative wages, indicating less economic security and power in the organization, experience higher risks such as job turnover or accommodation-request rejection when reporting workplace discrimination. Conversely, as salaries increase, individuals with minority identities may increase their likelihood of calling out discrimination in their firms.¹⁴⁷ These ideas for future study are supported by our preliminary findings showing substantial pay gaps for individuals with minority identities.¹⁴⁸

In our ongoing studies, we are examining factors in firms that may mitigate discrimination and bias experienced and reported by individuals with multiple minority identities, both at the individual, team/work-group, and organizational levels, and in terms of attitudinal and structural barriers to equal work opportunities.¹⁴⁹ Extant studies show disability employment inclusion strategies and practices to be beneficial, especially in relation to hiring.¹⁵⁰ Our future research will directly consider and address disability inclusion strategies and employment outcomes in the legal profession.

The current study was conducted during the year and one-half before the global health and economic emergency of 2020. The issues identified have been further complicated

MED. 109 (2021), and the discussion of the implications of specific inclusive policies in the legal workplace in Nelson & Ashley, *supra* note 134, at 79. See also Miller et al, *supra* note 124, at 72 (“Students reported higher frequency of environmental (e.g., seeing or hearing negative or inaccurate messages about being LGBTQ) than interpersonal (e.g., being targeted directly/individually for insults and invalidations) microaggressions in their experiences on campus, which aligns with previous findings among LGBTQ+ college students with disabilities.”).

¹⁴⁷For discussion of the relationship between reports of discrimination and earnings disparity in the legal profession, see Heather Antecol, Deborah A. Cobb-Clark & Eric Helland, *Bias In the Legal Profession: Self-Assessed versus Statistical Measures of Discrimination*, 43 J. LEGAL STUD. 323, 351 (2014) (“In moving forward, we need to know more about the pervasiveness of intangible (that is, unrelated to income) forms of bias and their consequences for individuals’ legal careers. If self-assessed bias is not the result of earnings disparity, then what drives it? In particular, do the new complex organizational structures and compensation schemes in law firms provide opportunities for more intangible bias to occur? Unlike the lockstep nature of the old-style partnership track, these new arrangements foster earnings diversity among colleagues doing similar work. To the extent that the source of this diversity is not fully transparent, information asymmetries may provide law firms with additional opportunities to discriminate among their employees. We also need to understand the consequences of self-assessed bias for individuals’ future legal careers. How does believing that one has been subject to discrimination or harassment from ones’ employers, colleagues, or clients affect lawyers’ satisfaction with their legal careers? Will those who believe they have experienced bias leave the legal profession to pursue opportunities elsewhere?”) (citation omitted).

¹⁴⁸See Blanck et al., *First Phase*, *supra* note 3, at 48, 49.

¹⁴⁹See generally Rose L. Molina et al., *Creating a Culture of Micro-Affirmations to Overcome Gender-Based Micro-Inequities in Academic Medicine*, 132 AM. J. MED. 785, 786 (2019); Nan M. Seuffert, Trish Mundy & Susan Price, *Diversity Policies Meet the Competency Movement: Towards Reshaping Law Firm Partnership Models for the Future*, 25 INT’L J. LEGAL PRO. 31, 47 (2018); Alain Topor, Tore Dag Bøe1 & Inger Beate Larsen, *Small Things, Micro-Affirmations and Helpful Professionals Everyday Recovery-Orientated Practices according to Persons with Mental Health Problems*, 54 CMTY. MENTAL HEALTH J. 1212, 1218 (2018).

¹⁵⁰See Jill Bezyak et al., *Disability Inclusion Strategies: An Exploratory Study*, 53 J. VOCATION. REHABIL. 183, 186 (2020) (“Disability inclusion policies and procedures were identified as the most important strategy and has the strongest correlation with hiring intention.”); see also Neumeier and Brown, *supra* note 13, at 84 (positing a relationship among organization culture, commitment, and reputation for D&I and discrimination experiences, and calling for qualitative research to explore how such discourse may hamper an individual’s ability to recognize and report bias and discrimination); *id.* (“Alternately, researchers could take a more open-ended approach of collecting narratives from disabled and queer attorneys about their experiences working in nonprofit organizations and government agencies, and identifying common experiences that could form the basis for more targeted empirical research. It would be particularly interesting to learn the extent to which the reputation of public interest organizations as progressive and inclusive spaces influences marginalized attorneys’ ability to recognize workplace bias and discrimination as it is happening, and the legal profession’s willingness to believe that it is occurring there.”).

by the pandemic and the resulting reevaluation of how work is performed and structured in the legal and other professions.¹⁵¹ The pandemic is drastically affecting the personal, health-related, and social experiences of persons with disabilities, especially those with multiple minority identities of race, ethnicity, class, sexual orientation, gender identity, and age.¹⁵²

Research is necessary to examine the extent to which the new norms about work and the workplace resulting from the ongoing pandemic, such as working remotely and from home, affect identity disclosure, individual and team work, collaboration and leadership, and potential workplace discrimination on the basis of physical and mental disability, as well as other individual characteristics.

Our preliminary and forthcoming findings suggest that lawyers reporting mental health conditions are less likely to disclose their conditions in the legal workplace, and that they are more likely to report certain types of discrimination, as compared to individuals with other conditions such as sensory disabilities.¹⁵³ Our findings are supported by keen observations from leading scholars—such as Elyn Saks, who commented on this Article—describing the unique and pervasive stigma and discrimination experienced by individuals living with mental health conditions.¹⁵⁴ The stigma associated with mental health and other less visible conditions, in light of public health restrictions that limit social interactions within and outside the workplace, may exacerbate tendencies for subtle and other forms of discrimination.¹⁵⁵ If not addressed, these trends may negatively affect career opportunities for lawyers with multiple minority identities and further impact their physical and mental health.¹⁵⁶

In light of the impact of COVID-19 on the nature of work, the workplace, and organizational culture, future studies are needed to explore the provision of workplace accommodations and supports during and after the pandemic. Prior to the pandemic, among the most commonly reported workplace accommodations for persons with physical disabilities were modifications of job responsibilities, changes in workplace policies, flexible scheduling, and the provision of assistive technology.¹⁵⁷ We still do not know how the new work norms necessitated by the pandemic will affect the provision of workplace accommodations for individuals across the spectrum of disabilities.

¹⁵¹See, e.g., Peter Blanck, Principal Investigator, *Rehabilitation Research Training Center on Employment Policy*, funded by the U.S. National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) (2020), <https://bbi.syr.edu/2020/09/congratulations-on-bbis-new-nidilrr-disability-inclusive-employment-policy-rehabilitation-research-and-training-centers-rrtcs-grant/> [<https://perma.cc/FQ5F-MWCY>].

¹⁵²See generally Blanck, *ADA at Thirty*, *supra* note 12. For a literature review on the COVID-19 pandemic and its effects on the disability community, see Emily M. Lund, et al., *The COVID-19 Pandemic, Stress, and Trauma in the Disability Community: A Call to Action*, 65 *REHAB. PSYCHOL.* 313 (2020); see also Valerie J. Bradley, *How COVID-19 May Change the World of Services to People with Intellectual and Developmental Disabilities*, 58 *INTELL. & DEV. DISABILITIES* 355, 356 (2020); Vida Abedi et al., *Racial, Economic and Health Inequality and COVID-19 Infection in the United States*, *J. RACIAL & ETHNIC HEALTH DISPARITIES* (2020), DOI: 10.1007/s40615-020-00833-4. For an example of discrimination concerns raised even before the pandemic, see Amie O'Shea et al., *Experiences of LGBTQIA+ People with Disability in Healthcare and Community Services: Towards Embracing Multiple Identities*, 17 *INT'L J. ENV'T RES. & PUB. HEALTH* 1, 12 (2020), DOI: <http://dx.doi.org/10.3390/ijerph17218080> (appraisal of discrimination in health care provision for LGBTQIA+ people).

¹⁵³Hyseni & Blanck, *supra* note 128.

¹⁵⁴Saks, *supra* note 40.

¹⁵⁵See Muhammad Rahman et al., *Mental Distress and Human Rights Violations during COVID-19: A Rapid Review of the Evidence Informing Rights, Mental Health Needs, and Public Policy around Vulnerable Populations*, 11 *FRONTIERS IN PSYCHIATRY* 1, 11-12 (2021).

¹⁵⁶Kevin Kniffin et al., *COVID-19 and the Workplace: Implications, Issues, and Insights for Future Research and Action*, 76 *AM. PSYCHOL.* 63, 69 (2021), DOI: 10.1037/amp0000716.

¹⁵⁷Jasin Wong et al., *Job Accommodations, Return to Work and Job Retention of People with Physical Disabilities: A Systematic Review*, *J. OCCUPATIONAL REHAB.* (forthcoming 2021), DOI: <https://doi-org.libezproxy2.syr.edu/10.1007/s10926-020-09954-3>.

Do pervasive attitudinal stigma and prejudice, as well as structural discrimination, imposed on individuals with multiple marginalized identities still exist today in the United States and in the legal profession? Of course they do; our findings here support this conclusion.¹⁵⁸ But discrimination takes many forms, from simple avoidance, to implicit and subtle bias, to overt discrimination, exclusion, and hostility. As lawyers, we seek to redress discrimination and oppression in society at large. The current study is one helpful (and hopeful) step towards eradicating workplace discrimination, in all its pernicious forms, in the legal profession and elsewhere.¹⁵⁹

A. LIMITATIONS AND NEXT STEPS

This study relies upon individual lawyers to report their experiences of perceived bias and discrimination in the workplace. There are recognized limitations to studies involving self-reports about personal experience with discrimination, such as not being able to observe the purported injustice or discrimination in context and in real time.¹⁶⁰ Still, relying on co-workers' or managers' reports of such experiences, or on official records from complaints or litigation, does not necessarily capture the deeply personal and unique perceptions and experiences of discrimination and bias, in all their forms. In forthcoming studies, we will make a more individualized analysis of the experiences of our respondents through qualitative survey responses to offer additional insights into our respondents' perceptions and workplaces. This approach is meant to advance our longer-term objective of improving knowledge and efficacy of organizational D&I+ efforts and promoting them.

Due to underlying systems and organizational structures that produce and allow discrimination to continue in the workplace, we would expect parties to underreport experiences of discrimination. In our current efforts, we are considering new ways to capture the multifarious nature of discrimination and bias in the profession, such as using multiple perspectives from team or work groups and exploring the associations of workplace discrimination with remuneration and benefits, promotions, assignments, hours worked, aspects of job satisfaction, and quality of work/life balance.¹⁶¹

We again recognize that the use of overly broad terms such as "disability," "LGBTQ+," and "racial/ethnic minority" or "person of color" does not adequately acknowledge the unique individual and multiple identities, often associated with inequality and oppression, that exist across and within these individual categories of convenience. In this investigation, we collect qualitative responses to document the experiences of individuals with multiple marginalized identities. Our forthcoming articles present such

¹⁵⁸Blanck, *Plaintiffs and Advocates*, *supra* note 122.

¹⁵⁹Winfield, *supra* note 146, at 113 ("Based on my professional knowledge and experience, the Blanck et al. research can provide the beginnings of a basis for developing a more unified approach to diversity, equity and inclusion in at least three respects. First, it can help DEI practitioners in the legal industry understand and interrupt bias across multiple identities rather than focusing exclusively on one identity at a time.").

¹⁶⁰*See* Major & Kaiser, *supra* note 79, at 286. As for other studies that rely on self-reports of discrimination, our study cannot fully address or eliminate issues resulting from social disability or recall bias. Nonetheless, we have attempted to minimize such effects by not relying on an in-person interviewer, and the survey was anonymously, individually, and confidentially disseminated. In addition, given that attorneys generally are informed about issues of bias and discrimination through education and practice, recall bias likely is further minimized as those instances that are considered to be "discrimination" likely will stick out.

¹⁶¹*See, e.g.*, Jalain, *supra* note 141, at 71 ("Further, as workplace discrimination impacts productivity, performance and job satisfaction, programs must be put in place to reduce the incidence of workplace discrimination, especially for women.").

information, further illuminating the complex ways in which discrimination is experienced, reported, and addressed for individuals with multiple minority identities.¹⁶²

The same lack of nuance is found in our reports of individual “discrimination” and “bias” as “overt and subtle” and “intentional and unintentional.” This labeling scheme is a place to start, but it is overly simplistic. That is why we are now examining in detail the quantitative measures and rich qualitative descriptions of reports of discrimination and bias that we have generated from the surveys deployed.

We further recognize that, although in certain aspects the current sample is consistent with national labor demographics, in other aspects it is not. This is due, in part, to our purposeful oversampling of legal professionals with disabilities and who identify as LGBTQ+, which was the primary focus of phase one of this investigation.¹⁶³ Nonetheless, these and other multiple-identity marginalized groups remain underrepresented in the literature on discrimination in the legal profession. In our phase two survey of this longitudinal investigation, we aim to explore in additional detail the experiences of individuals with multiple marginalized identities from an intersectional perspective.¹⁶⁴

No study released during this era can ignore how the pandemic is changing all our life experiences, and rarely for the better. As noted earlier, our survey was distributed, and the data collected, shortly before the pandemic. Future study will need to look closely, among other things, at how the pandemic has affected the lives of a profession in which many members already struggle with stress and discriminatory approaches to mental health issues of various kinds.¹⁶⁵ It is a profession that increasingly must be mindful of the value of the inherent diversity of its members, and its members must call out and address the uneven effects of the pandemic on historically marginalized members of the profession.¹⁶⁶

¹⁶²See, e.g., Neumeier & Brown, *supra* note 13, at 85 (“Many disabled and LGBTQ+ legal professionals are multiply marginalized because of race, class, immigration status, religion, or other aspects of their identities or experiences. Our experiences are not adequately captured in the current study, but future research driven by scholars and advocates with lived experience can begin to identify ways that disabled and LGBTQ+ legal professionals experience across different marginalized identities and experiences. It would be helpful to have disaggregated and disambiguated data identifying differences in experiences of discrimination between, for instance, Southeast Asian attorneys with disabilities and Indigenous Latinx attorneys with disabilities, or between trans attorneys with physical disabilities and neurodivergent trans attorneys. In particular, it would be helpful to have specific data about the ways that oppressive systems, processes, and policies impact multiply marginalized people on the basis of multiple marginalized identities.”).

¹⁶³For a critique of this type of sampling method, see Yair Listokin & Ray Noonan, *Measuring Lawyer Well-Being Systematically: Evidence from the National Health Interview Survey*, J. EMPIRICAL LEGAL STUD. (2021), DOI:10.1111/jels.12274. See also Tweedy & Yescavage, *supra* note 11, at 735 (“[O]ur approach of contacting listservs and LGBT and bisexual organizations probably resulted in our attracting respondents who were much more likely to be out about their sexuality than bisexuals in general, which in turn would make our respondents more likely to be targets of discrimination. However, due to the difficulty of finding bisexual respondents, this appears to be a common method of survey distribution when attempting to study bisexuals.”).

¹⁶⁴See, e.g., Neumeier & Brown, *supra* note 13, at 87, (“Researchers should intentionally seek out experiences of hyper-marginalized and multiply-marginalized LGBTQ+ people, including data on actual hiring and retention practices, as well as narratives of discrimination. Otherwise, research will continue to prioritize and privilege the experiences of wealth-privileged, white, abled, thin, and masculine-presenting people within the LGBTQ+ community – groups that are almost certainly the most likely to attain long-term success within the legal profession.”).

¹⁶⁵For articles addressing stress-related mental health issues related to the pandemic, see Emma E. McGinty et al., *Psychological Distress and Loneliness Reported by US Adults in 2018 and April 2020*, 324 J. AM. MED. ASSOC. (JAMA) 93 (2020) (Research Letter); see also Ling Liu et al., *Perceived Discrimination and Mental Distress amid the COVID-19 Pandemic: Evidence from the Understanding America Study*, 59 AM. J. PREVENTIVE MED. 481 (2020); E. Alison Holman et al., *The Unfolding COVID-19 Pandemic: A Probability-Based, Nationally Representative Study of Mental Health in the United States*, 6 SCI. ADVANCES 1 (2020).

¹⁶⁶For discussion of the importance of considering the disproportionate impact of COVID-19 on certain groups in relation to the legal profession, see Winfield, *supra* note 146, at 110; Margaret Turk & Monika

A further note is in order: while the legal profession is often a stressful and competitive one, it is also a distinctive, and generally privileged, profession. Lawyers, as a group, are relatively higher paid and educated professional workers, and they are often in positions that offer relatively greater access to job security and economic power.¹⁶⁷ Presumably, for this cohort there would be relatively enhanced access to workplace accommodations and other benefits of employment, and an overall mitigation within the profession of discrimination and bias.¹⁶⁸ Unfortunately, we are not able to support that position at this time based on the responses of this cohort.¹⁶⁹ We currently are examining concurrent data collected from about 800 legal support professionals, primarily paralegals, as a comparator to the cohort of lawyers.

Lastly, despite efforts to sample underrepresented and marginalized groups, and despite attaining a relatively large sample in relation to prior studies, generalizing the current findings must proceed with caution given the relatively small number of respondents with multiple minority identities. Nonetheless, as mentioned, in phase two of this longitudinal investigation we will closely examine these complex personal experiences over time.¹⁷⁰ We will also study, as suggested by Neumeier and Brown, changes over time in D&I and D&I+ policies and practices across and within organizations, and the implications for attorneys identifying as disabled and LGBTQ+, along with their other individual identities.¹⁷¹ This will shine additional light on largely unreported cohorts and carry important implications for the development of future research *and* the efficacy of potential intervention strategies in this program of study and others, as well as on the associated development of organizational culture and relevant case law.¹⁷²

Mitra, *ADA 30 and Beyond: The Urgent Need for Intersectional Research*, 13 DISABILITY & HEALTH J. (2020), DOI: 10.1016/j.dhjo.2020.100984.

¹⁶⁷BUREAU OF LABOR STATISTICS, HOUSEHOLD DATA ANNUAL AVERAGES: MEDIAN WEEKLY EARNINGS OF FULL-TIME WAGE AND SALARY WORKERS BY DETAILED OCCUPATION AND SEX (2020).

¹⁶⁸We are examining the association between discrimination reports and likelihood of disclosing. See, e.g., Hyseni & Blanck, *supra* note 128. For additional discussion, see Miller et al., *supra* at 124 (“Because a majority of students reported they did not use disability accommodations, institutions should evaluate disability service provision on campus, including the language used to describe and promote accommodations—noting, for instance, that psychological and psychiatric disabilities can be accommodated and that students of all genders and sexualities are welcome—and creating an inclusive environment that acknowledges students’ multiple, intersecting identities.”).

¹⁶⁹For discussion of the challenges of requesting workplace accommodations for those without a “documented” ADA disability, see Katherine A. Macfarlane, *Disability without Documentation* 36 (Feb. 7, 2021) (“I began this project in 2019, interested in uncovering the origins of the medical documentation requirement. But the project took on greater significance as people around the country struggled to convince their employers that because they are high-risk for serious illness from COVID-19, they must work from home. Based on my own anecdotal experience assisting friends, students, and colleagues, employers did not relax medical documentation requirements during the pandemic. And, perhaps due to politics or sheer burnout, some doctors were unwilling to back up a work-from-home request.”).

¹⁷⁰Jalain, *supra* note 141, at 70 (“Future research should try to interview every respondent who participated in the project. This would provide extensive knowledge about how lawyers truly feel about their job and how their feelings and perceptions may have evolved in the course of their first ten years of practice.”).

¹⁷¹See, e.g., Neumeier & Brown, *supra* note 13, at 88 (“Future research could examine whether and to what extent disabled and LGBTQ+ employees’ perceptions of their workplace’s climate, infrastructure, and culture have changed after implementation of these types of equity and diversity-focused policies. Where research shows that such policies have not necessarily resulted in improved experiences, researchers could align with directly impacted community members to identify what policy and programmatic changes, if any, could have greater and/or longer-term positive effect. Such research will be useful regardless of whether it shows that such policies have worsened conditions such as by leading to increased harassment or ostracism of marginalized people, made no significant changes to the working environment, or have significantly improved marginalized people’s experiences.”).

¹⁷²Two recent U.S. Supreme Court decisions illustrate how the area of multiple minority rights is evolving right now and is likely to continue to do so in the future—in ways that it is hard to predict. In *Our Lady of*

VI. CONCLUSION

This study examined discrimination and bias reported by lawyers with multiple marginalized identities in a conceptual framework of enhanced D&I+ practices in the legal profession. The body of study considers the dynamic and multidimensional experiences of people with disabilities and those who identify as LGBTQ+, along with other identities across race/ethnicity, gender, and age.

Future articles in this series will examine considerations over time associated with how identity disclosure, stigma, and reported discrimination and bias play out in the legal workplace.¹⁷³ The longer-term objective is to contribute to efforts to mitigate bias and discrimination facing persons with minority identities and to further a culture of inclusion—D&I+, as we call it—in the legal profession.¹⁷⁴

Guadalupe School v. Morrissey-Berru, 140 S. Ct. 2049 (2020), the Court narrowed the rights of people with disabilities under the ADA by broadening the “ministerial exception” that exempts religious institutions from complying with certain aspects of the ADA. In contrast, in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Court broadened the protections provided by Title VII of the Civil Rights Act by holding that the Act’s prohibition of discrimination against employees on the basis of “sex,” *inter alia*, does include sexual orientation.

¹⁷³Compare Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1142 (2011) (“Diversity, therefore, should not only be aspired to; it must be pursued in concrete steps. It should not be left to voluntary pursuits; it must be mandatory upon all segments of the profession.”); Alex B. Long, *Employment Discrimination in The Legal Profession: A Question of Ethics?* 2016 U. ILL. L. REV. 445, 485 (“The lack of diversity within the legal profession remains a serious problem. But existing employment discrimination statutes are poorly equipped to address the structural causes of workplace discrimination that often occur. It is therefore unrealistic to expect rules of professional conduct based on these laws to root out discrimination and increase diversity in the legal profession in the traditional sense. But that is not a reason to reject the adoption of ethics rules that speak to the problem of employment discrimination and, more generally, the problems of bias, access to justice, and underrepresentation in the legal system. By adopting such rules, the legal profession could take a soft regulatory approach to these problems in an attempt to educate and motivate lawyers and law firms with regard to the problems. This type of gentle regulatory nudge might potentially yield more dividends than reliance on legal rules alone.”); Kristy D’Angelo-Corker, *Don’t Call Me Sweetheart: Why the ABA’s New Rule Addressing Harassment and Discrimination Is So Important for Women Working in the Legal Profession Today*, 23 LEWIS & CLARK L. REV. 263, 303 (2019) (“In order to ensure that the progress that women have made, and are currently making, does not slow down or stop entirely, it is necessary to not only put rules into effect banning the discriminatory or harassing behavior, but also to establish education and training initiatives in law school, at the start of a lawyer’s career, and to continue that training once attorneys enter the work force through firm training and CLE requirements.”).

¹⁷⁴As suggested by the review earlier in this article of prior studies, we are not alone in our efforts to mitigate bias and discrimination facing persons with minority identities and to further a culture of inclusion. And these efforts are not limited to academics and institutional observers. For example, in the fall of 2020, the international law firm of Reed Smith held, virtually, its fourth *Diversity, Equity and Inclusion Summit*, during which the firm and its clients discussed the need for greater awareness and support of the unique issues facing lawyers with differing disabilities over their professional careers. An author of this article, Blanck, was a speaker at the summit, which included a specific focus on people of multiple intersectional backgrounds. The Key Takeaways from this summit highlighted many of the issues discussed in this article, including, “The ABA study on LGBT+ and lawyers with disabilities highlights that intersectionality of nonvisible diversity (LGBTQ and disability) lawyers experience higher levels of discrimination especially where mental health is involved,” and the need for “Inclusion of Mixed-Visible and Nonvisible Diversity.” Reed Smith, 2020 Diversity, Equity and Inclusion Summit—Key Takeaways Report 20 (Oct. 2020), <https://communications.reedsmith.com/111/4041/uploads/dei-summit-key-takeaways-report.pdf> [<https://perma.cc/5ZPU-BEYB>]; Bizzell, *supra* note 7, at 73-74 (“No single policy, program, or practice will eliminate workplace bias and discrimination against LGBTQ+ individuals, or any other individual. Instead, creating an inclusive and welcoming workplace requires a holistic approach that utilizes thoughtful research and good data. Utilizing a three-pronged, macro- and micro-level research approach focused on data-based problem identification will help corporations and law firms develop programs and practices that ensure all LGBTQ+ attorneys have a workplace experience that is not only free from discrimination and bias but that also helps LGBTQ+ attorneys succeed”).

APPENDIX

Table 1A. Determinants of Reporting Discrimination in the Workplace (Multinomial Logistic Regression with Subtle Discrimination as Base Outcome)

| | Model 1 | | Model 2 | | Model 3 | |
|---|----------|----------------|----------|---------------|----------|----------------|
| | RRR | 95% CI | RRR | 95% CI | RRR | 95% CI |
| Both Subtle and Overt Discrimination | | | | | | |
| Individual Characteristics | | | | | | |
| Disability | 1.818*** | 1.352 - 2.445 | 1.750*** | 1.296 - 2.362 | 2.631*** | 1.380 - 5.017 |
| LGBQ | 0.783 | 0.559 - 1.097 | 0.761 | 0.541 - 1.069 | 2.027** | 1.097 - 3.745 |
| Women | 1.552*** | 1.138 - 2.116 | 1.479** | 1.082 - 2.022 | 2.570*** | 1.569 - 4.210 |
| Transgender | 2.521* | 0.871 - 7.296 | 2.407 | 0.830 - 6.981 | 1.570 | 0.525 - 4.693 |
| Race/Ethnicity | 1.340* | 0.980 - 1.831 | 1.296 | 0.946 - 1.776 | 1.870** | 0.999 - 3.500 |
| Age | 1.020*** | 1.010 - 1.031 | 1.031*** | 1.017 - 1.044 | 1.030*** | 1.017 - 1.044 |
| Covariates | | | | | | |
| Tenure | — | | 0.978*** | 0.961 - 0.994 | 0.979** | 0.962 - 0.995 |
| Private Org | — | | 0.865 | 0.658 - 1.136 | 0.867 | 0.660 - 1.139 |
| Large Org | — | | 0.902 | 0.648 - 1.257 | 0.871 | 0.623 - 1.216 |
| 2x2 Interactions | | | | | | |
| Disability x LGBQ | — | | — | | 0.606 | 0.283 - 1.297 |
| Disability x Women | — | | — | | 0.688 | 0.342 - 1.383 |
| LGBQ x Women | — | | — | | 0.320*** | 0.156 - 0.658 |
| Women x Race/Ethnicity | — | | — | | 0.659 | 0.321 - 1.354 |
| Constant | 0.472*** | 0.352 - 0.633 | 0.712* | 0.478 - 1.059 | 0.426*** | 0.250 - 0.724 |
| Overt Discrimination Only | | | | | | |
| Individual Characteristics | | | | | | |
| Disability | 1.614** | 1.017 - 2.562 | 1.466 | 0.918 - 2.339 | 0.925 | 0.380 - 2.249 |
| LGBQ | 0.489** | 0.264 - 0.906 | 0.482** | 0.259 - 0.898 | 0.234** | 0.071 - 0.764 |
| Women | 0.854 | 0.544 - 1.341 | 0.788 | 0.500 - 1.243 | 0.713 | 0.393 - 1.295 |
| Transgender | 2.015 | 0.377 - 10.769 | 1.816 | 0.337 - 9.788 | 2.568 | 0.400 - 16.479 |
| Race/Ethnicity | 0.852 | 0.495 - 1.464 | 0.799 | 0.464 - 1.378 | 1.202 | 0.505 - 2.861 |
| Age | 1.016* | 1.000 - 1.032 | 1.020* | 0.999 - 1.041 | 1.020* | 1.000 - 1.041 |

(Continued)

Table 1A (Continued)

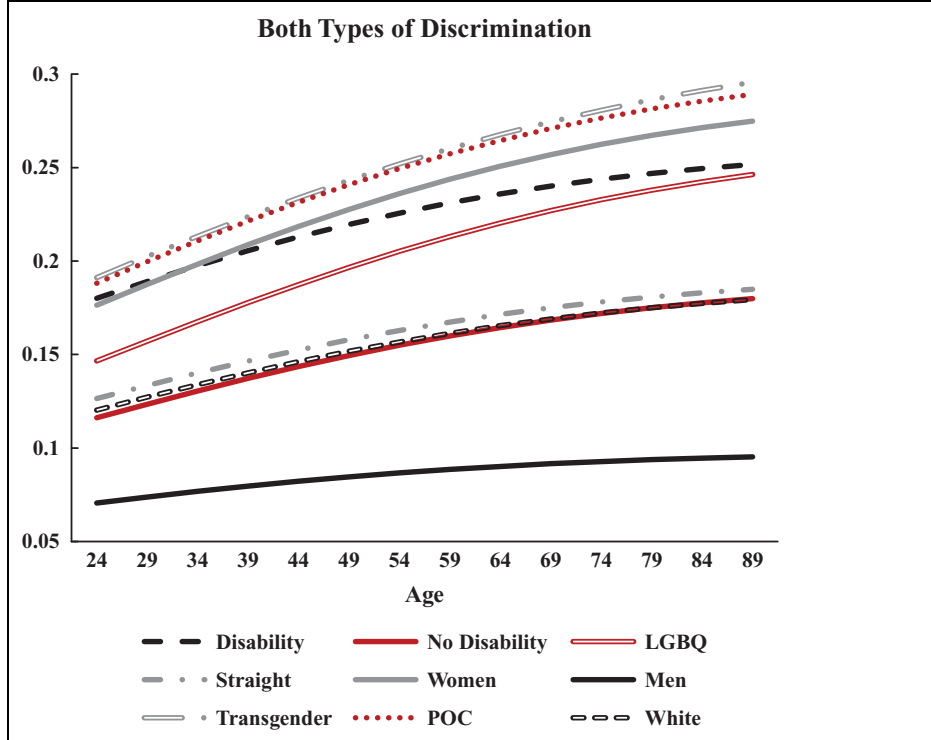
| | Model 1 | | Model 2 | | Model 3 | |
|-----------------------------------|----------|---------------|----------|---------------|----------|----------------|
| | RRR | 95% CI | RRR | 95% CI | RRR | 95% CI |
| Covariates | | | | | | |
| Tenure | — | | 0.990 | 0.965 - 1.015 | 0.990 | 0.966 - 1.015 |
| Private Org | — | | 0.693* | 0.450 - 1.065 | 0.694* | 0.450 - 1.068 |
| Large Org | — | | 0.642 | 0.357 - 1.154 | 0.672 | 0.373 - 1.209 |
| 2x2 Interactions | | | | | | |
| Disability x LGBQ | — | | — | | 2.697 | 0.786 - 9.255 |
| Disability x Women | — | | — | | 1.531 | 0.552 - 4.248 |
| LGBQ x Women | — | | — | | 1.646 | 0.426 - 6.357 |
| Women x Race/Ethnicity | — | | — | | 0.478 | 0.156 - 1.464 |
| Constant | 0.242*** | 0.161 - 0.363 | 0.394*** | 0.223 - 0.695 | 0.441** | 0.232 - 0.837 |
| No Discrimination | | | | | | |
| Individual Characteristics | | | | | | |
| Disability | 1.111 | 0.860 - 1.436 | 1.113 | 0.858 - 1.442 | 0.850 | 0.536 - 1.349 |
| LGBQ | 0.413*** | 0.312 - 0.546 | 0.427*** | 0.322 - 0.567 | 0.204*** | 0.130 - 0.321 |
| Women | 0.302*** | 0.242 - 0.377 | 0.299*** | 0.239 - 0.375 | 0.202*** | 0.150 - 0.273 |
| Transgender | 0.437 | 0.156 - 1.225 | 0.441 | 0.157 - 1.241 | 0.693 | 0.238 - 2.013 |
| Race/Ethnicity | 0.618*** | 0.469 - 0.814 | 0.626*** | 0.474 - 0.827 | 0.363*** | 0.224 - 0.589 |
| Age | 1.026*** | 1.018 - 1.035 | 1.033*** | 1.022 - 1.044 | 1.032*** | 1.021 - 1.043 |
| Covariates | | | | | | |
| Tenure | — | | 0.985** | 0.972 - 0.997 | 0.984** | 0.971 - 0.997 |
| Private Org | — | | 1.285** | 1.028 - 1.605 | 1.289** | 1.031 - 1.612 |
| Large Org | — | | 0.755** | 0.583 - 0.977 | 0.779* | 0.600 - 1.012 |
| 2 x 2 Interactions | | | | | | |
| Disability x LGBQ | — | | — | | 1.318 | 0.708 - 2.453 |
| Disability x Women | — | | — | | 1.361 | 0.794 - 2.332 |
| LGBQ x Women | — | | — | | 3.468*** | 1.984 - 6.064 |
| Women x Race/Ethnicity | — | | — | | 2.326*** | 1.298 - 4.166 |
| Constant | 6.587*** | 5.412 - 8.017 | 7.161*** | 5.313 - 9.651 | 9.271*** | 6.609 - 13.005 |

(Continued)

Table 1A (Continued)

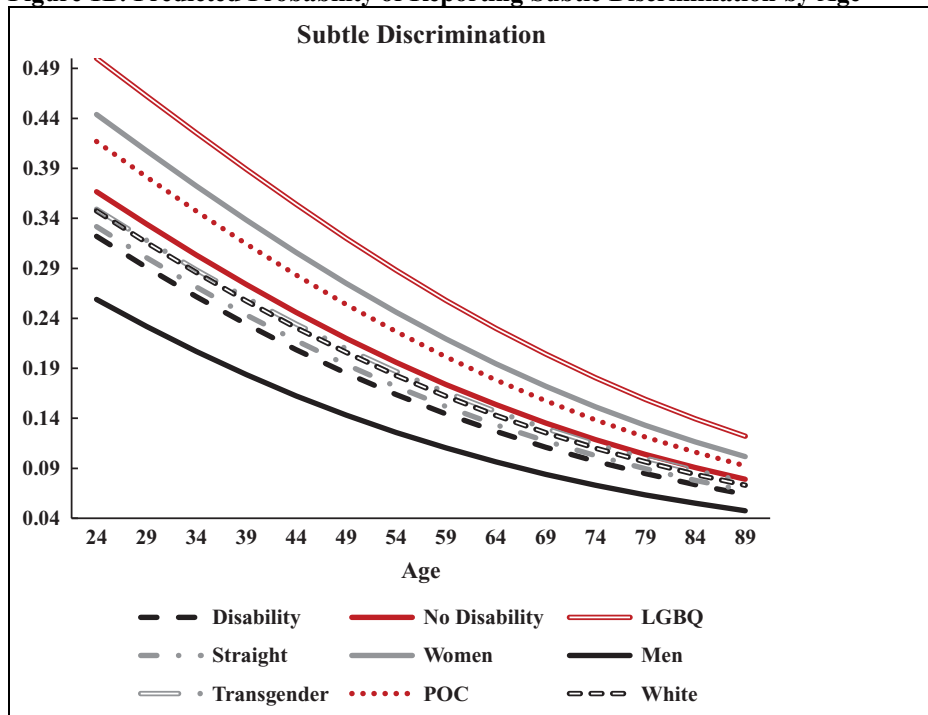
| | Model 1 | | Model 2 | | Model 3 | |
|--|---------|--------|---------|--------|---------|--------|
| | RRR | 95% CI | RRR | 95% CI | RRR | 95% CI |
| Subtle Discrimination Only (base outcome) | | | | | | |
| Number of observations | 2,577 | | 2,577 | | 2,577 | |
| Pseudo R2 | 0.0811 | | 0.0867 | | 0.1014 | |
| LR chi2 | 451.81 | | 30.73 | | 82.37 | |
| LR test p-value | 0.0000 | | 0.0003 | | 0.0000 | |

Notes: ***p-value < 0.01; **p-value < 0.05; *p-value < 0.1. Subtle discrimination is the base outcome. Age is mean centered at 49 years.

Figure 1A. Predicted Probability of Reporting Both Types of Discrimination by Age

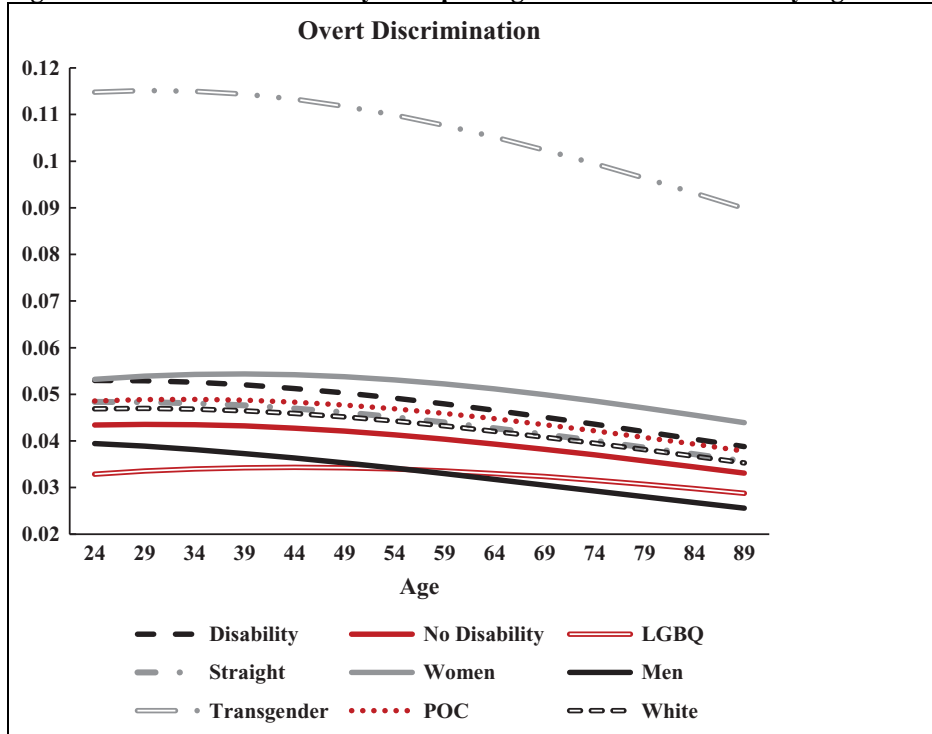
Notes: We use Average Adjusted Predictions at Representative values (APR) to calculate the expected probability of reporting discrimination. Specifically, we compute the average predicted probabilities at representative values of age (from 24 to 89), all else remaining as it is in the data.

Figure 1B. Predicted Probability of Reporting Subtle Discrimination by Age



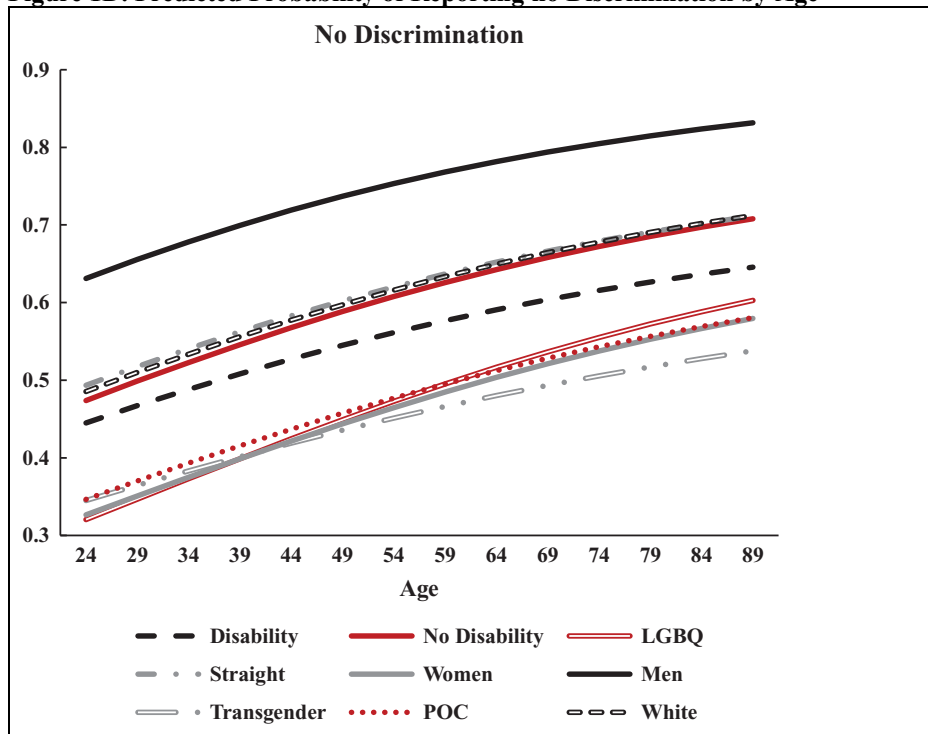
Notes: We use Average Adjusted Predictions at Representative values (APR) to calculate the expected probability of reporting discrimination. Specifically, we compute the average predicted probabilities at representative values of age (from 24 to 89), all else remaining as it is in the data.

Figure 1C. Predicted Probability of Reporting Overt Discrimination by Age



Notes: We use Average Adjusted Predictions at Representative values (APR) to calculate the expected probability of reporting discrimination. Specifically, we compute the average predicted probabilities at representative values of age (from 24 to 89), all else remaining as it is in the data.

Figure 1D. Predicted Probability of Reporting no Discrimination by Age



Notes: We use Average Adjusted Predictions at Representative values (APR) to calculate the expected probability of reporting no discrimination. Specifically, we compute the average predicted probabilities at representative values of age (from 24 to 89), all else remaining as it is in the data.