

# Why A Diverse Bar is Paramount to Protecting the Constitution

## Introduction

On my first day at a public defender internship, I accompanied a senior trial attorney to the criminal court immensely excited about the opportunity to defend indigent clients against criminal charges. Little did I know that day, I would endure a humiliating phenomenon that occurred over and over again. When I entered the courtroom, the judges and court officers repeatedly confused me—a 303-certified law student—who could represent indigent clients in a limited capacity in criminal court with a defendant.

In one quite demeaning incident, a judge ordered the court officer to place an electronic monitoring device on my client. The client stepped out to the bathroom, and the court officer who returned into the courtroom with the tracking device erroneously assumed that the tracking device was for me—an African-American law student and not a defendant in a criminal case. The court officer began motioning towards my legs until I abruptly stated that I was a legal intern and not a defendant.

This humiliation was not an isolated occurrence. In another incident, my supervisor went to an entrance to a holding cell to meet with our clients. As I began to walk towards the door, a court officer tried to block me from entering by saying that the entrance was reserved exclusively for attorneys and law students. Yet again, the court officer made the unfounded assumption that I was not a law student but a criminal defendant.

White interns in our office never experience this humiliation even though there are white defendants in court. I confided to an African-American attorney in our office about my experiences. The young, African-American Harvard Law grad explained that even his

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impeccable credentials did not prevent him from experiencing the same humiliating treatment. He said judges and court officers often mistook him for a criminal defendant. Sadly, it was something many African-American attorneys must grow accustomed too.

I began to research this, and it is called "Lawyering while black."<sup>1</sup> A news story from Maryland highlighted an incident where the client of African-American Attorney Rashad James did not show up for a hearing.<sup>2</sup> The deputy sheriff apprehended Attorney James after mistaking him for his client.<sup>3</sup> When Attorney James explained he was the attorney, the deputy sheriff did not believe him and refused to release him.<sup>4</sup> Upon release, James filed a civil complaint, his attorney, Chelsea J. Crawford explained:

"If Mr. James were white, this would not have happened. He would have walked out of that courtroom without question about who he was and who he was representing."<sup>5</sup>

I began to think: If I, as an African-American law student and attorneys, could be repeatedly confused for a criminal defendant, then just how strong are constitutional protections protecting the presumption of innocence for actual African-Americans who have criminal charges?

### **What is Diversity in Bar?**

To fully understand the importance of a diverse bar requires a working definition of "diversity." A diverse bar cannot merely be defined as bringing more people of color attorneys to a law firm, having more judges of color, or having more prosecutors of color. This may be a necessary condition but it is certainly not a sufficient one. Why? Attorney Zulu Ali, an African-

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American criminal defense attorney explains in a talk titled *The Cost of Being a Black Lawyer*:

"There are a lot of attorneys of different walks of life but considering that many of what occurs in the justice system hasn't changed. How can so many people come from these communities and go out there and get involved but you don't see a more expansive change... If you're an African American who comes from the inner-cities... and you sit up there, and you have a robe, and everyone says "He's a Black Judge," but you don't see any changes, what does it matter?"<sup>6</sup>

Indeed, what matters is actively seeking to change and eradicate the social conditions and legacy fostered by hundreds of years of slavery, Black Codes, Jim Crow Laws, and de'facto structural racism in the form of blockbusting, redlining, and predatory lending. True diversity entails developing higher consciousness and awareness of how the law has historically been utilized to marginalize specific populations, deny them their humanity, and it entails being firmly committed to legal strategies and tactics to rectify the on-going legacy that these injustices created.

When we discuss working towards a "diverse bar," it must be remembered that for a significant period of American history, not only could African-Americans not be lawyers but the Supreme Court, the highest court in the land ruled that African-Americans could not even file lawsuits. In the infamous case of *Scott v. Sandford*, 60 U.S. 19 How. 393 393 (1856)., The Supreme Court held that African-Americans "had no rights which the white man was bound to respect; and that the Negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it."<sup>7</sup> The court held that the 'All men are created equal' in the declaration of independence had no applicability to Africans because "it is too clear for dispute,

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that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration.”<sup>8</sup> Thus, African-Americans could not even bring lawsuits.

African-American victims of white violence received no justice in court. In a lesser well-known case of *North Carolina vs Mann*, John Mann brutally lashed his slave, Lydia.<sup>9</sup> She attempted to escape, Mann shot and wounded her. John Mann was indicted for assault and battery. The court dismissed the charges, and Judge Thomas Ruffin declared, “The power of the master must be absolute, to render the submission of the slave perfect.”<sup>10</sup> He postulates a ‘slippery slope’ argument stating that if white slave masters can be brought up on charges for shooting slaves, they could theoretically be brought on charges for any form of abuse, and this would undercut the very purpose of slavery.<sup>11</sup> In light of John Mann shooting a black woman, the court declared, “There is no remedy.”<sup>12</sup>

Thus, for a large portion of American history, African-Americans and other minorities were considered property who had no right even to become a lawyer. Large efforts were made to deny African-Americans entry into law schools and were not expected to enter into the law profession.<sup>13</sup> This is famously demonstrated in the Autobiography of Malcolm X.<sup>14</sup> When young Malcolm says he wants to be a lawyer, he was told that it was “no job for a N----.”<sup>15</sup> African-Americans were historically denied entry into law school.<sup>16</sup> Macon Bolling Allen is largely believed to be the first African-American to acquire a license to practice law. He learned to practice law by studying under a local abolitionist lawyer from Maine.<sup>17</sup> Allen amazingly walked fifty miles to the bar exam test site due to a lack of transportation.<sup>18</sup> He still managed to pass the intensive exam.<sup>19</sup> John Mercer Langston, another great African-American attorney, studied law

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under the abolitionist lawyer Sherlock James and would serve as the first dean of Howard Law School.<sup>20</sup> Charlotte E Ray, Thurgood Marshall, Charles Hamilton, and other great African-American legal minds worked to challenge unjust interpretations of the Constitution that facilitated the oppression of Black people.

African-American lawyers were essential to the Civil Rights Movement, and though great strides were made, African-Americans continue to face discriminatory treatment in certain areas of life. The Economic Policy Institute found that “the share of African Americans in prison or jail almost tripled between 1968 and 2016 and is currently more than six times the white incarceration rate.”<sup>21</sup> The fact that the incarceration of African-Americans has tripled three times between 1968 and 2016 compels us to look at how the lack of appreciation for diversity in the judicial system contributes to the unjust treatment of African-Americans.<sup>22</sup>

### **The Lack of Diversity in the Judiciary and Its Consequences**

The Model Code of Judicial Conduct enshrines judicial ethics that obligates judges to uphold integrity and impartiality.<sup>23</sup> Thus, judges must act in a manner that promotes public confidence in the independence, integrity, and fairness of the judiciary.<sup>24</sup> These rules are essential to the functioning of a just society and the rule of law. Judges play a crucial part in the judicial system. They have the responsibility of interpreting the law, and they dictate how hearings and trials unfold. Judges are supposed to be impartial decision-makers in the pursuit of justice. Yet, a study by the Center for American Progress (CAP) on African-American judges in the Federal Judiciary highlights the dearth of the diversity of the bench,<sup>25</sup> Eighty percent of federal judges are white, and 73 percent are male.<sup>26</sup> African-Americans make up 9.9 percent of

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sitting judges in the federal judiciary, and African-American women make up just 3.4 percent of sitting judges.<sup>27</sup> In terms of the Federal Court of Appeals, 22 African-American judges are sitting in the U.S. Court of Appeals, meaning African Americans constitute just 7.6 percent of all sitting U.S. circuit judges.<sup>28</sup> The study *Does Unconscious Racial Bias Affect Trial Judges* found that:

“The proportion of white judges in our study who revealed automatic associations of white with good and black with bad was, if anything, slightly higher than the proportion found in the online surveys of white Americans. Thus, a professional commitment to equality, unlike a personal commitment to the same ideal, appears to have a limited impact on automatic racial associations, at least among the judges in our study. Alternatively, the overrepresentation of black Americans among the criminal defendants who appear in front of judges might produce invidious associations that overwhelm their professional commitment.”<sup>29</sup>

Prosecutors in the United States are also overwhelmingly white.<sup>30</sup> A study from the Center for Technology found that 95 percent of elected prosecutors are white, 79 percent are white men, three in five states have no elected black prosecutors, 14 states have no elected prosecutors of color, and just 1 percent of elected prosecutors are minority women.<sup>31</sup> A recent study from Vera Institute found that when the prosecution could exercise discretion, at every level from case screening, bail recommendation, charging, and sentences in the plea, black defendants were subjected to more severe outcomes in comparison to whites.<sup>32</sup> Next, we will look at the ways this lack of diversity in the judiciary actively erodes the constitutional rights of African-Americans.

### **How the Lack of Diversity Erodes Sixth Amendment Protections**

- **Unequal Assistance of Counsel**

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The Sixth Amendment states that "in all criminal prosecutions, the accused shall ... have the assistance of counsel for his defense."<sup>33</sup> In the case of *Edwards v. Arizona*, 451. U.S. 477 (1981), the U.S. Supreme Court ruled that when a suspect asks for an attorney, the interrogation must end and that a lawyer must be provided.<sup>34</sup> The judicial enforcement of this case is paramount to protecting the Sixth Amendment rights of criminal suspects under the Constitution. However, there have been instances in which the lack of appreciation for diversity has eroded this constitutional right for criminal suspects who speak ethnic dialects of English.

In Louisiana, an African-American Warren Demesme was arrested. During the interrogation, he stated, "I know that I didn't do it, so why don't you just give me a lawyer dog 'cause this is not what's up."<sup>35</sup> The police did not provide him with a lawyer and continued to question him. Demesme moved to have these statements suppressed, in violation of his Sixth Amendment Rights. However, the judge ruled that the defendant's ambiguous and equivocal reference to a "lawyer dog" does not constitute an invocation of counsel that warrants termination of the interview, and the police's action did not violate the Sixth Amendment.<sup>36</sup>

The decision, in this case, demonstrates a lack of understanding of African-American vernacular English in which "dog" can refer to a person not a canine and in which what appears to be an interrogative question prefaced by "why" can still function in a declarative sense.<sup>37</sup> In *African-American English: A Linguistic Introduction*, Dr. Lisa J. Green explains the usage of rhetorical questions in the African-American vernacular, stating "[q]uestions like this may be rhetorical in that they will not require an answer. That is to say that the questions may be asked with an answer in mind, so all the speaker is really asking is that the listener agree with or affirm what the speaker expects to be the case."<sup>38</sup>

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Demesmee's statement would not have been seen as ambiguous by a judicial system that recognizes the nuances and intricacies of African-American English. The decision, in this case, was a flagrant violation of Demesme rights as the court ruled that he did not have to be granted a lawyer based upon the court's misunderstanding of African-American English.

Public defenders are obligated to defend their clients to fulfil the promise of Gideon zealously. However, a recent study titled *Implicit Racial Bias in Public Defender Triage* found that the promise of Gideon is being harmed due to the excessive caseloads given to public defenders and drastic underfunding of public defender offices. Song Richardson and Phillip Atiba Goff explain that "many public defenders are committed to zealous and effective advocacy, there is abundant reason for concern that implicit racial biases may affect their decisions."<sup>39</sup>

Their thesis is that because public defenders must prioritize cases due to the immense workload they tend to prioritize cases in which they feel confident the defendant is not guilty and in which they believe the government cannot prove their case beyond a reasonable doubt.<sup>40</sup> They hypothesize that due to implicit studies tying blackness to criminality that African-American criminal suspects may have their cases less prioritized by their public defender.<sup>41</sup>

Bolstering this is an article titled *Public Defenders Can Be Biased, and It Hurts Their Non-White Clients*, which provides an example of a 19-year-old, African-American, who was charged with illegal possession of a weapon.<sup>42</sup> He explained that he carried the weapon because a rival gang had just killed his friend and feared he could be next. His attorney, who grew up in an upper-class neighborhood and graduated from a privileged school, was skeptical of this



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explanation and wondered why he simply did not call the police.<sup>43</sup> The article explains that when lawyers doubt their client, they will be unable to convince a jury of their client's innocence and push clients to plead guilty.<sup>44</sup> The attorney's skepticism about his client's defense demonstrates a lack of understanding of the dynamics within many low-income, urban communities in which calling the police to handle disputes is stigmatized.<sup>45</sup> This lack of thought diversity and cultural dynamics within specific communities can lead to unjust outcomes in criminal trials.<sup>46</sup>

### **How Lack of Diversity Erodes Eighth Amendment Protections**

- **Excessive Bails for African-Americans**

The Eighth Amendment prohibits the federal government from imposing excessive bail, excessive fines, or cruel and unusual punishments.<sup>47</sup> The Constitution protects the presumption of innocence, allowing for a person to be afforded the opportunity to post bond in an amount that would guarantee the person would be released from custody with the condition of showing up to their court date. Yet, the lack of respect for diversity in the judiciary has dire consequences upon African-American criminal defendants.

A study titled *Does Unconscious Racial Bias Affect Trial Judges* found that white trial judges were impacted by implicit racism. Judges set bail at amounts that were twenty-five percent higher for black defendants than for similarly situated white defendants.<sup>48</sup>

A study by the National Bureau of Economic Research titled *Racial Bias in Bail Decision* found that white defendants marginally released on bail were 9.7 percent more likely to be rearrested for a drug crime before case disposition than marginally released black defendants

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and 8.2 percent more likely to be rearrested for a violent crime before disposition than marginally released blacks.<sup>49</sup>

The study explains that “results indicate that even after accounting for differences in other observable characteristics by defendant race, bail judges appear to be directly racially biased against black defendants.”<sup>50</sup> Analyzing the data of various bail hearings, the study indicates that racial bias was significantly higher among both part-time judges and inexperienced judges demonstrating more experienced judges could better predict misconduct risk for defendants.<sup>51</sup> Ultimately, the study concluded that “Taken together, these results are most consistent with bail judges relying on race-based heuristics that exaggerate the relative danger of releasing black defendants versus white defendants at the margin.”<sup>52</sup> This is a consequence of a lack of appreciation for diversity.

- **Excessive Sentencing for African-American Defendants**

One of the significant consequences for the lack of appreciation of diversity is disparate racial sentences. In *U.S. V Clary*, 846 F. Supp. 768, 783(1994), an African-American was arrested for possession with the intent to distribute 770 grams of crack cocaine.<sup>53</sup> Edward Clary, filed a motion challenging the constitutionality of the crack statute by stating it violated his equal protection guaranteed by the Fifth Amendment.<sup>54</sup> The defendant argued that the longer sentences for possession of cocaine base than for the identical amount of cocaine powder treated similarly situated defendant in a different manner, which violated his right to equal protection under the law.<sup>55</sup> The laws penalized crack cocaine 100 times more than powder cocaine.<sup>56</sup> In its

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decision, the court noted that there was no concrete scientific basis for criminalizing crack cocaine more than powdered cocaine:

“The prospect of black crack migrating to the white suburbs led the legislators reflectively to punish crack violators more harshly than their white, suburban, powder cocaine dealing counterparts. The outcome resulted in the legislators drafting the crack statute with its Draconian punishment.”<sup>57</sup>

The court cited how the media projected images of African-American males led to the enactment of the crack statute with devastating prejudices being foisted upon African-Americans.<sup>58</sup> The sentencing disparities for crack vs. cocaine are a prime example of when a lack of diversity infringes upon the constitutional rights of people.

There is no scientific basis for sentencing crack more harshly than cocaine. The American Medical Association study *Crack Cocaine and Cocaine Hydrochloride Are the Difference Myth, or Reality* found that “The physiological and psychoactive effects of cocaine are similar regardless of whether it is in the form of cocaine hydrochloride or crack cocaine.”<sup>59</sup> The study also concluded that the propensity for addiction was not based on the form of the drug but on the amount used, frequency, and the method of use.<sup>60</sup> Despite this, crack has been punished more heavily than cocaine hydrochloride.<sup>61</sup> The decision to punish crack more harshly than cocaine was rooted purely in anti-Black discrimination.

### **How Lack of Diversity Erodes Fourth Amendment Protections**

- **Reasonable Searches**

The case of *Map. vs Ohio* was a groundbreaking case that prohibits prosecutors from using evidence that was obtained by violating the Fourth Amendment protections against

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unreasonable searches and seizures.<sup>62</sup> Criminal defense attorneys can argue during suppression hearings why specific evidence was obtained from an illegal seizure without reasonable suspicion. One issue that emerges is how "seizure" is defined. The standard definition adopted by courts is a seizure that occurs within the Fourth Amendment when the police's conduct indicates to a reasonable person, taking into account their circumstances, the person is not free to ignore the police presence and leave at will.<sup>63</sup>

In the case of *United States v. Mendenhall*,<sup>64</sup> an African-American woman, was walking through a concourse of the Detroit Metropolitan Airport after a commercial flight from Los Angeles.<sup>64</sup> During her walk through the airport, Drug Enforcement Administration agents suspected that she was unlawfully transporting narcotics.<sup>65</sup> They asked Sylvia Mendenhall a series of questions, asked to search her handbag, and then strip-searched her. Before the search, the police informed her that she had the right to decline the search. She submitted to the search, and heroin was found in her possession.<sup>66</sup> Her defense attorney argued that the heroin should be suppressed as the fruits of an illegal search.<sup>67</sup> Furthermore, her defense argued due to her status as a Black woman, she "felt unusually threatened by the officers, who were white male," and as such, her agreement to be searched was coerced and not valid.<sup>68</sup>

In other words, the standard "reasonable person" standard does not take into account how race may impact a person's perception that they are not, in fact, free to leave. The case of *Commonwealth v. Warren*, 475 Mass. 530 recognized this Reality though not under the Fourth Amendment but under Massachusetts Declaration of Rights.<sup>69</sup> In this case, two African-American men began to flee as police approached them, saying "hey fellas." After commanding them to stop, the men continued to run. The police pursued them apprehended them, searched

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them, and found a firearm.<sup>70</sup> The issue in the case was whether the flight of the individuals gave the police sufficient reasonable suspicion to search them. In a highly progressive decision, the court ruled it did not:

Instead, the finding that black males in Boston are disproportionately and repeatedly targeted for FIO [Field Interrogation and Observation] encounters suggests a reason for flight unrelated to consciousness of guilt. Such an individual, when approached by the police, might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity.<sup>71</sup>

Though this case was decided under the Massachusetts Declaration of Rights, legal scholars have noted that there are flaws in the Supreme Court's treatment of race in Fourth Amendment decisions. Too often, race is not considered as a significant factor in determining whether an individual has been sufficiently seized and what constitutes to a “reasonable person” whether they would not feel free to ignore police presence can differ significantly by their race.<sup>72</sup>

### **Rule of Law and Differing Visions**

The Memphis Riots of 1866 ravaged the African-American community. Though slavery was over, the riots wanted to drive free blacks back to the slave plantation.<sup>73</sup> Black people were killed, injured, raped, and the homes as well as schools of African-Americans were burned.<sup>74</sup> Those dedicated to protect and serve proved to African-Americans that they could not trust the police for protection nor firefighters to put out the fires.<sup>75</sup> There was never any criminal prosecution of those who partook in these attacks against African-Americans.<sup>76</sup> In analyzing the Memphis Race Riots, The Honorable Judge Bernice B. Donald, in her law review article, explains that for white people, the rule of law meant the restoration of white supremacy<sup>77</sup>. Still,

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for African-Americans, the rule of laws means holding America to fulfill the promises of the declaration of independence--that all men are created equal.<sup>78</sup> The congressional record of the riot in Memphis notes:

The fact that . . . not a single step had been taken to vindicate the law by the civil authorities, which is considered to be one of the most alarming signs of the times. That no effort should have been made by the civil authorities to bring to justice the perpetrators . . . is a burning and lasting disgrace to the officers of the law, and a blot on the American name.<sup>79</sup>

Though a tragic event, it would lead to the passage of the Fourteenth Amendment, which held "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."<sup>80</sup>

Despite the passage of the 14<sup>th</sup> amendment, the perception that African-Americans cannot be treated fairly in court still lingers. During the '60s, the United States endured numerous riots within African-American communities due to their mistreatment. The Watts Riots of 1965 was provoked after white police officers physically assaulted a pregnant African-American woman. There were over 34 deaths from this riot and \$40 million in property damage. Dr. Martin Luther King, Jr. speaking on the race-related riots in the sixties, stated these powerful words:

"It is not enough for me to stand before you tonight and condemn riots. It would be morally irresponsible for me to do that without, at the same time, condemning the contingent, intolerable conditions that exist in our society. These conditions are the things that cause individuals to feel that they have no other alternative than to engage in violent rebellions to get attention. And I must say tonight that a riot is the language of the unheard."<sup>81</sup>

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Dr. Martin Luther King's powerful words underscore a critical point. When people do not believe the judicial system can provide them with justice, treat them impartially, and with dignity, they can and will resort to extra-judicial means. Today, African Americans continue to be more likely to report that they will not receive fair and equal treatment in civil or criminal cases than white Americans.<sup>82</sup> The lack of diversity in the judicial system significantly impacts the ability of minorities to trust the legal system.

In *Racism in American Courts: Cause for Black Disruption or Despair*, Derrick A. Bell Jr. writes that during judicial proceedings, "Black defendants were more likely than whites to have received no proper indication of the charge, the right to testify, or the right to call and cross-examine witnesses."<sup>83</sup> Bell explains that "many African Americans in ghettos do not believe they will obtain a fair trial."<sup>84</sup> He states, "Lower courts in urban communities dispense 'assembly line' justice, that from arrest to sentencing, the poor and uneducated are denied equal justice with the affluent. Further, procedures such as bail and fines perpetuate class inequities."<sup>85</sup> Black Americans are also seven times more likely to be wrongfully convicted of murder and three times more likely to be wrongly convicted of sexual assault than white people.<sup>86</sup>

Adverse perceptions of the judicial system can only be resolved through a judiciary that genuinely understands and appreciates diversity. People deserve a legal system in which they can be confident in which they will be treated equitably regardless of their race or economic status, whether it be someone from the Rodney King riots of the '90s, the Ferguson riots of 2014, or the Baltimore' uprising. There will continue to be dire consequences if the system continues to be unjust. Former Director of Neighborhood Defender Services in Harlem, Leonard Noisette said, "A justice system which tolerates injustice is doomed to collapse."<sup>87</sup>

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<sup>1</sup> Ryan W. Miller, 'Lawyering while black': Attorney says Deputy Profiled Him as a Suspect at Courthouse, Herald-Mail Media, (Mar. 29, 2019), [https://www.heraldmillmedia.com/news/usa\\_today/lawyering-while-black-attorney-says-deputy-profiled-him-as-a/article\\_b1007b43-f812-5c6b-a416-ddfec9a7528e.html](https://www.heraldmillmedia.com/news/usa_today/lawyering-while-black-attorney-says-deputy-profiled-him-as-a/article_b1007b43-f812-5c6b-a416-ddfec9a7528e.html)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Zulu Ali, The Cost of Being a Black Lawyer Fighting for Justice, YouTube, (Aug 19, 2019), [https://www.youtube.com/watch?v=M5C4lqkO4\\_Q](https://www.youtube.com/watch?v=M5C4lqkO4_Q)

<sup>7</sup> Scott v. Sandford, 60 U.S. 19 How. 393 393 (1856).

<sup>8</sup> *Id.*

<sup>9</sup> North Carolina v. Mann, 13 N.C. 263, (1829).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> R. SCOTT BAKER, PARADOXES OF DESEGREGATION: AFRICAN AMERICAN STRUGGLES FOR EDUCATIONAL EQUITY IN CHARLESTON, SOUTH CAROLINA, 1926-1972 ,84 (2020)

<sup>14</sup> MALCOLM X & ALEX HALEY, THE AUTOBIOGRAPHY OF MALCOLM X 43 (1966 ).

<sup>15</sup> African-American Registry, Macon B. Allen, one of America's first Black Lawyers, (Aug, 4, 2019) <https://aaregistry.org/story/americas-first-black-lawyer-macon-b-allen/>

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> WILLIAM F CHEEK & AIMEE LEE CHEEK, JOHN MERCER LANGSTON AND THE FIGHT FOR BLACK FREEDOM, 1829-95, 132 & 456.

<sup>21</sup> Economic Policy Institute, 50 Years after the Kerner Commission, African Americans are better off in many ways but are still disadvantaged by racial inequality, (Feb, 26th, 2018) <https://www.epi.org/publication/50-years-after-the-kerner-commission/>

<sup>22</sup> *Id.*

<sup>23</sup> Model R. Prof. Canon 1 (ABA 2020)

<sup>24</sup> *Id.*

<sup>25</sup> Center for American Progress; RELEASE CAP Report Highlights Troubling Lack of Diversity Among Federal Judges (Feb. 13, 2020).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Jeffrey J. Rachlinski et al., Does Unconscious Bias Affect Trial Judges?, 786 Cornell Law Faculty Publications (Mar. 2009),



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<sup>30</sup> Nicholas Fandos, [A Study Documents the Paucity of Black Elected Prosecutors: Zero in Most States](https://www.nytimes.com/2015/07/07/us/a-study-documents-the-paucity-of-black-elected-prosecutors-zero-in-most-states.html?_r=0), The New York Times (2015), [https://www.nytimes.com/2015/07/07/us/a-study-documents-the-paucity-of-black-elected-prosecutors-zero-in-most-states.html?\\_r=0](https://www.nytimes.com/2015/07/07/us/a-study-documents-the-paucity-of-black-elected-prosecutors-zero-in-most-states.html?_r=0).

<sup>31</sup> <https://www.theguardian.com/law/2015/jul/07/us-elected-prosecutors-white-men-criminal-justice-system>

<sup>32</sup> Erica Bryant, Alicia Fullard & Melissa Garlick, [Race, and Prosecution in Manhattan](https://www.vera.org/publications/race-and-prosecution-in-manhattan), Vera Institute of Justice, (2020), <https://www.vera.org/publications/race-and-prosecution-in-manhattan>.

<sup>33</sup> U.S. Const. amend. VI, § 1.

<sup>34</sup> [Edwards v. Arizona](#), 451 U.S. 477 (1981).

<sup>35</sup> Debra Cassens Weiss, [Debra Cassens Weiss, Did Suspect ask for a 'lawyer dog' or a 'lawyer, daw?'" Request was ambiguous justice says](#), American Bar Association(Nov, 1, 2017),

<sup>36</sup> [State v. Demesme](#), 228 So. 3d 1206

<sup>37</sup> See: Lisa Green, [African American English: A Linguistic Introduction](#), (2002)

<sup>38</sup> *Id.* At 128

<sup>39</sup> Jeff Adachi, [Public defenders, can be biased, too, and it hurts their non-white clients](#), The Washington Post (Jun. 7, 2016), <https://www.washingtonpost.com/posteverything/wp/2016/06/07/public-defenders-can-be-biased-too-and-it-hurts-their-non-white-clients/>

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Jeffrey J. Rachlinski et al., [Does Unconscious Bias Affect Trial Judges?](#), 786 Cornell Law Faculty Publications (Mar. 2009),

<sup>43</sup> David Arnold & Will Dobbie & Crystal S Yang, [Racial Bias in Bail Decisions](#), 133 The Quarterly Journal of Economics 4, 1885-1932 (2017), <https://www.nber.org/papers/w23421>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> [United States v. Clary](#), 846 F. Supp. 768 (E.D. Mo. 1994)

<sup>54</sup> *Id.* at 770.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 784.

<sup>58</sup> *Id.*

<sup>59</sup> D. K. Hatsukami & M.W. Fischman, [Crack Cocaine, and Cocaine Hydrochloride. Are the Differences Myth or Reality?](#), 276 The Journal of the American Medical Association, 1580–1588 (1996), <https://www.ncbi.nlm.nih.gov/pubmed/8918856>.

## Why A Diverse Bar is Paramount to Protecting the Constitution

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<sup>60</sup> *Clary*, 846 F. Supp. at 768.

<sup>61</sup> *Id.*

<sup>62</sup> Mapp v. Ohio, 367 U.S. 643 (1961).

<sup>63</sup> United States v. Mendenhall, 446 U.S. 544 (1980).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Commonwealth v. Warren, 475 Mass. 530 (2016).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Hon. Bernice Bouie Donald, When the Rule of Law Breaks Down: Implications of the 1866 Memphis Massacre for the Passage of the Fourteenth Amendment, 98 Boston University Law Review 1607-1676 (2018)

<sup>74</sup> *Id.* at 1368.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 1611.

<sup>78</sup> *Id.*

<sup>79</sup> E. B. Washburne, Memphis Riots and Massacres. US 39th Cong., 2nd sess. H. Rept. 101. (1866).

<sup>80</sup> *Id.*

<sup>81</sup> Rev. Dr. Martin Luther King, Jr., "The Other America", (March, 14<sup>th</sup>, 1968),

<https://www.gphistorical.org/mlk/mlkspeech/>

<sup>82</sup> Derrick A. Bell, Racism in American Courts: Cause for Black Disruption or Despair?, 61 California Law Review 1, 165–203 (Jan. 1973).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Alicia Maule, #BlackBehindBars: Sparking a conversation on the black wrongful conviction experience in the U.S., Innocence Project (Feb. 4, 2019),

<https://www.innocenceproject.org/blackbehindbars-sparking-a-conversation-on-the-black-wrongful-conviction-experience-in-the-u-s/>

<sup>87</sup> The Sentencing Project, Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers, Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers, (2008),

<https://www.sentencingproject.org/wpcontent/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf>.