

Strength in Diversity

BY NATALIE WILSON

What Can the Remake of *The Little Mermaid* Teach Lawyers About Diversity, Equity and Inclusion?



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In August 2022, Disney released the trailer for its live-action remake of its 1989 classic *The Little Mermaid*. In case you are not an elder millennial who wore out the VHS tape of that fine film, the main character (Ariel) is a willful and romantic 16-year-old mermaid with pale skin and vivid red hair. In the upcoming remake, the title role will be portrayed by Halle Bailey, a Grammy-winning singer and songwriter. Bailey is Black, and in some vociferous corners of the internet, seeing her as Ariel caused a great deal of distress. These “critics” simply could not accept the idea that a mermaid who had previously been drawn as a pale-skinned redhead would now be portrayed by a Black woman. To them, Bailey simply does not fit the mold of what Ariel is supposed to look like.

Now, I am sure that only a small number of people are actually upset about a Black woman portraying Ariel. And the question of whether it matters to adhere to the “source material” when we are talking about mythological or purely fictional characters seems trivial at best.¹ But it does point to an important question that lawyers and law firms that care about diversity, equity and inclusion should be asking: Do we have similar mental blocks when it comes to the question of what a lawyer looks like? If the answer is “yes,” what do we do about it?

For many, many years, it was easy to describe what a lawyer looked like. He was a White² man. Even today, when women make up more than 50 percent of law students,³ and the class admitted in 2021 was the most diverse in history,⁴ I would suggest that the default image of a lawyer is a White

man. This is especially true in certain sectors of the profession that remain predominantly the domain of White men. I do not know a single female lawyer who has not been asked (on multiple occasions) if she is the court reporter or which lawyer she works for, the assumption being that she is a legal assistant or paralegal. Emails to all counsel are addressed to “Gentlemen,” despite the clear presence of women in the “To” line. Black lawyers are assumed to be defendants when they try to enter courtrooms.⁵ None of these instances may seem like a big deal on their own, but over time, they add up to death by a thousand cuts. The implicit message is clear: Lawyers who do not fit the default image of White and male have to prove repeatedly that they belong in the bar and their organizations.⁶

Lawyers who do not fit that default image have tried for decades to prove that they belong by acting more like their White, male peers. There is a reason that women’s “power suits” in the 1980s and 1990s featured broad shoulders and boxy cuts that gave women silhouettes more like men. “Diverse”⁷ lawyers, especially Black lawyers, engage in code-switching at work to emphasize their belonging.⁸ In one *Harvard Business Review* article, the authors argued that while code-switching has become normalized as “necessary” for professional success, it comes with significant costs, including reducing performance and contributing to burnout.⁹

1 There was similar “outrage” accusing the producers of Lin-Manuel Miranda’s smash Broadway hit *Hamilton* of racism because they specifically sought non-White actors to portray actual historical figures who were known to be light skinned and of European descent. See Jayme Deerwester, “‘Hamilton’ Producers Defend Diverse Casting,” *USA Today* (March 31, 2016), available at [usatoday.com/story/life/theater/2016/03/31/producer-diverse-casting-key-hamilton/82461036](https://www.usatoday.com/story/life/theater/2016/03/31/producer-diverse-casting-key-hamilton/82461036) (unless otherwise specified, all links in this article were last visited on Nov. 21, 2022). It is interesting, however, that there was not a similar uproar when it was announced that Cynthia Erivo (a dark-skinned, queer Black woman) would portray Elphaba (a bright-green-skinned high school student who eventually becomes the Wicked Witch of the West) in the upcoming *Wicked* films.

2 Throughout American history, the definition of “White” has shifted in response to social, political and economic events. See, e.g., “Historical Foundations of Race,” Smithsonian, available at nmaahc.si.edu/learn/talking-about-race/topics/historical-foundations-race.

3 Women made up 50 percent of law students at ABA-accredited schools for the first time in 2016, and that percentage increased to 54 percent by 2020. “Law School Rankings by Female Enrollment (2020),” Enjuris, available at enjuris.com/students/law-school-women-enrollment-2020 (gender representation in U.S. law schools).

4 Susan L. Krinsky, “The Incoming Class of 2021 — The Most Diverse Law School Class in History,” Law School Admission Counsel (Dec. 15, 2021), available at lsac.org/blog/incoming-class-2021-most-diverse-law-school-class-history.

5 Bryan Stevenson, renowned civil rights lawyer, founder of the Equal Justice Initiative, and author of *Just Mercy*, has recounted being mistaken for a defendant on multiple occasions. See also Brooklyn Crockett, “Why I Know Anti-Blackness Doesn’t Define Ketanji Brown Jackson,” Roger Williams University School of Law (March 22, 2022), available at law.rwu.edu/news/news-archive/why-i-know-anti-blackness-doesnt-define-ketanji-brown-jackson.

6 I recognize, and want to explicitly state, that this article does not fully address all the ways that a lawyer might be characterized as “diverse” or all the ways that lawyers who are not White men may experience othering in professional settings. I do not intend to imply that religious “diversity” (i.e., non-Christian or even non-Protestant), sexual orientation or gender “diversity,” disability or any other metric does not deserve the same consideration. This article focuses more on the ways that women and Black lawyers can feel excluded in the profession, because the reaction to Bailey portraying Ariel inspired it.

7 I put “diverse” in quotations because the connotation is that White and male is the standard from which all lawyers are measured. As noted, more than 50 percent of law students are women, and law students are increasingly diverse. Although people who identify as White are still vastly overrepresented compared to their proportion of the general population (see “Lawyers by Race & Ethnicity,” ABA The Men of Color Project, available at americanbar.org/groups/young_lawyers/projects/men-of-color/lawyer-demographics), in the near future, lawyers who present as White and male will not make up the majority of all lawyers. To continue referring to non-White and/or non-male lawyers as “diverse” presumes the exact default this article seeks to deconstruct.

8 See Courtney L. McCluney, et al., “The Costs of Code-Switching,” *Harvard Bus. Review* (Nov. 15, 2019), available at hbr.org/2019/11/the-costs-of-codeswitching.

The effort to fit into a White, male world can even have physical repercussions. For many Black women, chemically straightened hair has been deemed the preferred “professional” look. Consider the Black women you know and famous Black women like Anita Hill, Condoleezza Rice, Oprah Winfrey, Michelle Obama, Kamala Harris, Whitney Houston, Beyonce, Halle Barry and Viola Davis. They all rock relaxed hair. For people not blessed with natural curls, this might just seem like a personal style choice, and to some extent, it may be. Again, my elder millennials with curly hair will probably remember hours spent with a blowdryer, straight iron and large-barreled curling iron trying to get the “Rachel Green” hairstyle. Straight hair can be easier to deal with, even if the process of getting it straight is an ordeal. However, the choice to straighten hair may be driven by more than personal preference or fashion trends.

Curls are often associated with adjectives like “wild,” “unruly,” “untamed” or “unmanageable” — not exactly how a female attorney (who already faces accusations of being “shrill,” “unreasonable” and “too emotional” on a regular basis) wants to be described. In addition, traditionally Black hairstyles like dreadlocks, cornrows, twists and knots are associated with even more derogatory adjectives and are consistently deemed “unprofessional” in dress codes.

For example, in 2020, a federal judge declared a Houston-area school district’s dress code ban on dreadlocks to be discriminatory.⁹ In response to similarly discriminatory workplace dress codes, several states have passed versions of the CROWN Act. The federal CROWN Act, H.R. 2116, has passed in the House of Representatives and been transmitted to the Senate, where it was referred to the Judiciary Committee.¹⁰ CROWN stands for “Creating a Respectful and Open World for Natural Hair,” and the federal law would prohibit discrimination based on a person’s hair texture or hair style if that hair texture or style “is commonly associated with a particular race or natural origin.” It lists specific styles that are protected.¹¹ Chemical relaxers have recently been linked to increased cancer risks,¹² making it all the more urgent to redefine what looks “professional” to be more inclusive.

As lawyers, we can always look to precedent. If Justice Ketanji Brown Jackson can sit on the highest court in the land with sisterlocks, surely natural hair and protective styles should be professional enough for the rest of us.

Feeling out of place in one’s chosen profession can be stressful and demoralizing. Our work is demanding and stressful by its very nature, so having colleagues one enjoys and a workplace that is welcoming and supportive can make a huge difference in satisfaction and therefore retention. Unfortunately, we cannot magically blast away centuries of ingrained beliefs about who “looks like” a lawyer or a judge, but there are relatively simple changes we can make in our daily habits to be more inclusive and ensure that “diverse” lawyers do not feel like mere tokens.

Getting into new habits about the way we address people is a good start. Using a salutation like “Counsel” when addressing a group will prevent a mishap of greeting only the “Gentlemen” in the group and leaving out the women. “Counsel” is preferable even to “Ladies and Gentlemen” in the event that any lawyer on the distribution list is nonbinary, which might not be readily apparent to the sender. Being cognizant of when we use last names versus first names is also important. Studies have shown that female professionals are more often called by their first names than men are,¹⁴ and I would hazard a guess that the same is true for lawyers of color. This subtly undermines the credibility and authority of whoever is treated less formally. Depending on your jurisdiction and the closeness of your relationship with people, given names or surnames may be deemed more appropriate, but if you are not sure, being more formal (or respectful, as Southerners might say) is rarely a bad choice.

These subtle, thoughtful ways of addressing people extend to how we introduce others and ourselves. I have a partner who always explicitly states someone’s role when introducing them (*e.g.*, “This is my law partner, Natalie Wilson”). This avoids any awkwardness by preventing someone from making an incorrect assumption.

Seeing how deftly my partner establishes the credibility and authority of his colleagues and acquaintances empowered me to do the same thing for myself. When I introduce myself, I do not shy away from establishing my role. In networking situations, instead of saying simply “I work at Langley & Banack,” I say, “I am a shareholder at Langley & Banack” (work) or “I’m a lawyer at a firm called Langley & Banack” (social). When I arrive for a deposition or speak to someone’s receptionist or other staff who might not recognize me, I state my name followed by, “I represent such-and-such client.” I also try to follow his example and make sure I am clarifying someone’s role or position from the outset, not leaving it up to guesses.

If someone is not introduced to you, or they do not offer their title or role, work to retrain your brain’s default assumptions. In a courtroom, deposition or mediation, assume that everyone is a lawyer until they state otherwise or it is obvious (*e.g.*, the court reporter is already sitting behind the steno machine). If you ask someone whom they represent and they identify themselves as the court reporter, videographer or interpreter, a little self-deprecating humor (“Oh, I hope I didn’t offend you by assuming you were one of the lawyers”) easily smooths over any awkwardness and (hopefully) avoids any hard feelings. In some situations, asking open-ended questions may be even better. “How did you become involved in this organization?” “Are there any panels or presentations you’ve especially enjoyed?” “How did you meet so-and-so?” (This one is useful for events where lawyers bring guests who might or might not be lawyers and who might or might not be significant others or relatives.) These types of questions may give you clues about your new acquaintance so that you avoid relying on assumptions that could lead to embarrassing or hurtful gaffes.

9 *Id.*

10 Raga Justin, “Texas School District’s Dreadlocks Ban Discriminatory, Federal Court Rules,” *Texas Tribune* (Aug. 19, 2020) available at texastribune.org/2020/08/18/texas-school-dreadlocks-ban.

11 “Creating a Respectful and Open World for Natural Hair Act of 2022,” available at congress.gov/bills/117/congress-house-bill/2116/text.

12 *Id.*

13 “Hair Straightening Chemicals Associated with Higher Uterine Cancer Risk,” Nat’l Insts. of Health (Oct. 17, 2022), available at [nih.gov/news-events/news-releases/hair-straightening-chemicals-associated-higher-uterine-cancer-risk](https://www.nih.gov/news-events/news-releases/hair-straightening-chemicals-associated-higher-uterine-cancer-risk).

14 Linda B. Glaser, “When Last Comes First: The Gender Bias of Names,” *Cornell Chronicle* (July 2, 2018), available at news.cornell.edu/stories/2018/07/when-last-comes-first-gender-bias-names.

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For those of us in positions of authority within our organizations, including hiring, promotion and compensation committees, be aware of the subtle ways that “diverse” lawyers are penalized or marginalized. If a Black candidate who wears their hair naturally or in protective styles is described as “unpolished,” ask the evaluator exactly what he/she meant by “unpolished.” If you have input on firm policies, consider whether the dress code uses vague words like “well-groomed” or “neat” that could be applied in a discriminatory manner. If a woman (especially a woman of color) is described as “abrasive,” “aggressive” or “difficult,” dig in for specific examples of behavior and consider whether a (White) man or other lawyers with more societal privilege would be praised or penalized for the same behavior.

Creating an inclusive organization or larger legal community requires leaders who consider the needs and circumstances of all, without the “diverse” lawyers constantly having to pipe up. Checking to ensure that major/mandatory meetings or seminars do not conflict with important religious or cultural holidays, striving to recognize all major religious or culturally important celebrations, proactively changing a dress code to counteract implicit bias, and treating all people with the same degree of formality and respect all contribute to a more inclusive environment.

Each of us can contribute to shifting the assumptions about what it means to “look like a lawyer.” Ultimately, it requires curiosity on our parts about the ways in which the default image of a lawyer is reinforced and the ways in which anyone who does not fit that stereotype — whether because of race or ethnicity, gender or gender identity, sexual orientation, religion, disability, or any combination of these — does not belong. There are many resources to engage in the conscientious study of inclusion in virtually every format. Books (and easy-to-find lists of recommended books to read!), TED Talks, blogs, newsletters, podcasts (definitely check out *Corporate Homie*, hosted by **Demetra**

Liggins of McGuireWoods LLP (Houston) and her twin sister, Bemetra Simmons, a leader in the financial services and nonprofit space) and social media accounts (Clare Brown’s TikToks imagining if microaggressions were aimed at White people — a.k.a. “European-Americans” — are always hilarious and thought-provoking).

Doing this work within ourselves and our organizations is not always easy, and it is sometimes painful when we recall things we have said or done that were unintentionally hurtful or offensive. But when we know better, we do better. The U.S. Census Bureau predicts that “White” will become a minority race in the U.S. by 2045.¹⁵ For Generation Z (born from about 1995-2009), that shift will occur in this decade; Generation Alpha (born 2010 and after) is already “majority minority.”¹⁶ According to a Gallup poll, between 2012-21, the number of American adults identifying as LGBTQ+ doubled to just over 7 percent.¹⁷ As of 2021, fewer than half of American adults belong to a religious congregation,¹⁸ and 30 percent of American adults report that they are “non-religious,” including atheists and agnostics.¹⁹

By and large, the pipeline of future lawyers and judges does not look like Ben Matlock, Atticus Finch or Jack McCoy. The sooner we retrain our brains not to rely on their images of what a lawyer or judge “looks like,” the better able we will be to recognize and attract great lawyers who will enhance our ability to serve clients and make our workplaces and lives richer and more interesting. **abi**

15 William H. Frey, “The U.S. Will Become ‘Minority White’ in 2045, Census Projects,” Brookings Inst. (March 14, 2018), available at brookings.edu/blog/the-avenue/2018/03/14/the-us-will-become-minority-white-in-2045-census-projects.

16 *Id.*

17 Jeffrey M. Jones, “LGBT Identification in U.S. Ticks Up to 7.1%,” Gallup (Feb. 17, 2022), available at news.gallup.com/poll/389792/lgbt-identification-ticks-up.aspx.

18 Scott Neuman, “Fewer Than Half of U.S. Adults Belong to a Religious Congregation, New Poll Shows,” NPR (March 30, 2021), available at npr.org/2021/03/30/982671783/fewer-than-half-of-u-s-adults-belong-to-a-religious-congregation-new-poll-shows.

19 Gregory A. Smith, “About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated,” Pew Research Ctr. (Dec. 14, 2021), available at pewresearch.org/religion/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated.