

# How White Privilege Helped Me Succeed In BigLaw

By **Scott McLaughlin** (June 13, 2020, 5:31 PM EDT)

The murder of George Floyd seems to have finally awakened some of white America to the idea of white privilege.

As a straight, white Boomer-generation man, I have a lot of experience with white privilege because I have enjoyed its benefits for my entire life — including in my legal career. It follows me around like my white skin and I have allowed myself to become so used to it that I have to make myself notice it.

The legal industry, also, has become complacent about privileging whiteness. It has long failed to create a level playing field for minority and female lawyers. We are, as always, a microcosm of society.

I write this article to discuss the legal industry and the benefits conferred upon me within it because of my race. I do not pretend to know the experiences of my black colleagues and will not offend them by attempting to speak to that experience.

I grew up blue collar-ish. I played college football and that is how my family and I paid for my education. After a failed National Football League training camp, I coached college football and then went to law school, financing it with loans, various law clerk jobs and some help from my parents.

After law school, I landed a job in BigLaw in 1994. I made the grades necessary to qualify for the position; but my whiteness, my college football career and the fact that my uncle knew a very powerful partner within that firm are really the things that got me the job.

Being a white man has greased the skids in all aspects of my professional life. I worked for white men in my athletic career and in my legal career — at least for as long as I "worked for" anyone. They hired me because I was like them, as near as they could tell. There was nothing different about me and that made me a good candidate.

Anyone who has spent any time studying unconscious bias — assuming bias is ever truly unconscious — knows that people are inclined to hire and mentor people like themselves. When I was a new lawyer in BigLaw, the white male partners for whom I worked accepted me because they thought I was like them. My membership in this club had tangible benefits.

For example, as an associate, I did not attend law firm practice group happy hours, which were a weekly thing at a minimum. I also largely avoided practice group lunches. I did not care to endear myself to my bosses, due to an inherent rebellious streak somewhere within my DNA. I preferred to see my family, and when I had to work late, worked from home. I thought I was anti-establishment and was quite proud of myself for my "courage."

As I write this now, however, I realize that the only reason I had the luxury of pretending to be anti-establishment was because I was so much a part of the establishment. I could only flout the rules of the club because I was in the club. The partners for whom I worked treated me well, despite my own self-defeating tendencies and behaviors, because of my race and gender.

As I began to develop and build my own practice, being part of the white male power structure continued to benefit me. I was included in the usual white male social activities that lead to opportunities, if I deigned to participate. I found, however, that I could succeed largely on my own terms, although perhaps less so than had I been a conformist.

But here is the rub; white privilege allowed me to succeed in spite of myself. If I were not white and had acted the way I did, I have no doubt that I would have struggled to ever establish a practice or hold a position within



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BigLaw.

I can recall one specific example where a BigLaw partner thoroughly demeaned and belittled me, yelling at me in his office. I stood up, stepped up to his desk and yelled right back at him. It was an ugly scene and one I could not have pulled off but for my white maleness.

I can recall another time where I raised my concerns about racist comments shared with me about one of my colleagues. To say that this turned some heads — a white man and former jock making an allegation of racism against another white man — would be an understatement. Yet, I do not believe I suffered any career detriment or consequences for making this complaint and neither, as far as I know, did the colleague who was the subject of the comments. Any concerns I had about sticking my neck out were mitigated by my membership in the club — a fact I only now realize.

Later in my career, as I became more involved in the internal affairs of the various firms where I worked, I continued to enjoy admittance to the club, and I observed its workings. I also witnessed our industry's refusal to truly embrace diversity and inclusion.

Whatever my law firm, it was dominated by straight, white male lawyers even if the appearance of diversity was present. (Truly — and I am not pandering or advertising — I do not believe this to be the case at my current firm.) This appearance of diversity — the misuse of diversity — served as a protective cover for the white male power structure to continue to dominate law firm management, and thus to continue to grease the skids for white male lawyers.

Specifically, over the years, I have been appalled at the statistical disparities I have seen where, somehow, white male associates generally had more billable hours than their female or black counterparts. These disparities were clear and consistent, year in and year out, and yet no one cared to discuss, much less address, the root causes of this problem.

One of those root causes was simply that the rainmakers and partners distributing work within my demographic like to work with younger versions of themselves, along with golfing or playing tennis together on the weekends.

Another obvious cause was the simple fact that lawyers who took parental leave, mostly female lawyers, generally tended to bill fewer hours, even with annualization policies, as lawyers who did not take parental leave.

These statistical disparities are very easy to correct, for firms that care to do so — it is a simple matter of ensuring a fairer distribution of work and recognizing the realities of parental leave.

I have marveled, over the years, at how law firms that propagate these statistical disparities — setting up their minority and female lawyers for ultimate failure — advertise their diversity efforts on LinkedIn and elsewhere. They tout their deep respect for, and commitment to, diversity and inclusion from one side of their mouths, while ensuring that diversity and inclusion do not flourish from the other; internally pontificating on the failure of certain associates to bill a sufficient number of hours each year, as though associates produce their own work and opportunity.

The attorneys who control the work at these firms refuse to be accountable for this problem and blithely continue giving work to nondiverse associates. The law firms steadfastly maintain the status quo by failing to attract and retain minority lawyers, and particularly black lawyers. Why, some 25 years after I entered the practice of law, do these conditions persist?

The answer, bluntly, is because I have allowed them to persist. My demographic has allowed them to persist — and frankly has ensured that they persist. As an industry, much like our society as a whole, we simply do not want change badly enough to make it happen. As we cry out for change, we cross our fingers behind our backs and whisper to ourselves, "But please not too much change — or at least after I retire." If we were sincere in our call for change, it would have happened already.

I will close with the following thoughts.

What is the participation rate of nondiverse lawyers on diversity committees within BigLaw? I have never served on a diversity committee. I ask myself why, and I will ask my firm for a seat at that table. As someone whose specific demographic is largely responsible for this societal and industry catastrophe, I should spend the rest of whatever career I have left trying to fix it.

Why doesn't law firm management simply require its partners, who distribute work, to distribute a certain portion of work and opportunity to minority and female lawyers? If compensation drives behavior, then use it to drive all desirable behaviors, not just productivity. This is bright line stuff and there is no room for equivocation. I have heard all of the excuses from my demographic about why this can't work. They are wrong. They are

protecting the status quo. They should just stop.

Independently, my demographic should consciously abandon the habit of only giving meaningful work — which is the real mentoring — to other white men. If, individually, white male partners would simply take responsibility for the career success of minority colleagues, as we do for our white male colleagues, diversity within the legal profession and partnership ranks would finally take hold. This is as simple as taking work from my own plate and moving it to that of others. This has been my practice throughout my career, but I can and will do better.

The white male power structure within law firms needs to begin the process of dismantling itself. We, the white male law firm leadership, who bring in business, can help our minority colleagues by introducing them to our clients and staffing them on meaningful projects, allowing them to develop their careers and assume the mantle of leadership.

I have said things here that are likely to anger some people. But I do not believe there is a risk-free way to address these issues and so I suppose it goes with the territory. My fundamental point is simple. My demographic is in the best position to render real change within our industry, and our society. To do that, all we really have to do is talk a lot less — yes, I am aware of the irony — and listen a lot more to our minority friends and colleagues.

Then, we need to act and act decisively, applying the talent and wisdom of our generation to an idea beyond our own immediate self-interest, burning the bridges of the past behind us to ensure that we cannot return from where we have come. In other words, we should do the right thing.

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