

NORTH EAST JOURNAL OF LEGAL STUDIES

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NORTH EAST JOURNAL OF LEGAL STUDIES

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**An official publication
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The North East Journal of Legal Studies is a double-blind refereed journal, published annually. Its purpose is to encourage scholarly research in legal studies, taxation and pedagogy related thereto.

Articles should be submitted by October 1st each year. The review process takes up to 8 weeks. Notice to authors will occur between November 15th and December 1st. Accepted articles must be corrected and revised up to February 1st and submitted in the proper format by email. Articles will be published on or before May 1st on the NEALSB website.

Articles may be submitted simultaneously to this journal and others with the understanding that the author(s) will notify this journal if the article is to be published elsewhere. We will not publish an article that will be published in another journal.

Papers should relate to the field of Business Law (including recognized topics within Business Law, Taxation and the Legal Environment of Business) or to Legal Studies Education.

The Journal will consider submission of articles from those papers presented at the North East Academy of Legal Studies in Business Annual Conference. The paper designated the recipient of the Hoehlein Award for Distinguished Papers at the NEALSB Conference will serve as the lead article of the journal. Up to four articles from resources other than those presented at the NEALSB Conference may be published in the journal.

INFORMATION FOR CONTRIBUTORS

Articles offered for inclusion in the next issue of the journal shall be submitted to the editor by October 1st. There are 2 procedures for submitting papers for publication consideration:

- two Microsoft Word attachments (one with author-identifying information and one without author-identifying information emailed to nealsbjournal@gmail.com; or

- uploaded via Scholastica

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Format

1. Papers should be no more than 20 single-spaced pages, including footnotes. Use font 12 pitch, Times New Roman. Skip lines between paragraphs and between section titles and paragraphs. Indent paragraphs 5 spaces. Right-hand justification is desirable, but not necessary.

2. Margins: left- and right-hand margins should be set at 1 ¼ inches, top margin at 1 ½ inches and bottom margin at 1 ¾ inches.

3. Page Setup: Custom size your paper to have 6 ¾ inch width and a height of 10 inches. Your hard copy should be printed on a standard 8 ½" x 11" paper size. This will allow for the proper binding and trimming for printing purposes.

4. Upon acceptance, the first page must have the following format: the title should be centered, in CAPITAL LETTERS. Two lines down center the word "by" and the author's name, followed by an asterisk (*). Begin text three lines under the author's name. Two inches from the

bottom of the page, type a solid line 18 inches in length, beginning from the left margin. On the second line below, type the asterisk and the author's position of title and affiliation.

5. Headings

First Level (caps, flush with left margin)

Second Level (center, italics)

Third Level (flush with left margin, italics, followed by a colon [:],

Fourth Level (flush with left margin, italics, followed by a colon [:], with text immediately following).

6. Endnotes should conform to Uniform System of Citation, current edition, and should begin 3 lines after the end of the text.

7. All papers must be submitted using Microsoft Word.

8. Email a copy of your paper to the following email address: nealsbjournal@gmail.com

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In recent history, the acceptance rate ranges from 15%-20%; in overall history, the acceptance rate has been 20-30%.

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General correspondence, application for membership NEALSB or change of address notice should be addressed to the name above at the address therein stated.

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WHEN LEGAL SYSTEMS CLASH: WHY FOREIGN-BORN RESIDENTS FALL PREY TO UNSCRUPULOUS NOTARIES PUBLIC AND WHAT SHOULD BE DONE TO PREVENT IT

by Victor D. López, J.D., Esq.*

I. INTRODUCTION

United States citizens and long-term residents usually seek the services of a notary public when they need to have a signature authenticated in a document that requires it or when they need to have a document that is required to be executed under oath. And, although they may be largely unaware of the actual limited powers granted to notaries public under each state's law, it is highly unlikely that they will turn to a notary public for legal advice or representation in the mistaken belief that every notary public is also a highly trained lawyer. Alas, immigrants from most countries around the world whose legal systems are based on the dominant civil law rather than the much less prevalent common law system adhered to by the United States and most former British colonies have a very different view of the powers, competencies, and training of notaries public. In civil law jurisdictions, notaries are generally not only lawyers, but usually lawyers with significant additional training beyond their law degrees who must go through a very rigorous vetting process that often includes both competitive exams and internships supervised by a notary public.¹ In sharp contrast, there are 4.4 million notaries in the United States according to the National Notary Association (NNA).² And the requirements for becoming a U.S. notary public are extremely modest: "In general, Notary applicants must be 18 years old and a legal resident of the state with no criminal record."³ At present only California, Colorado, Florida, Missouri, Montana, Nevada, North Carolina, Ohio, Oregon and Pennsylvania require training as a prerequisite to becoming a notary public, and Delaware requires

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training and continuing education for electronic notaries according to NNA.⁴ Even when training is required, it too is very modest, usually limited to three to six hours of instruction.⁵ Moreover, most states do not require a notary to take and pass an exam; only California, Colorado, Connecticut, Hawaii, Louisiana, Maine, Montana, Nebraska, New York, North Carolina, Ohio, Oregon and Utah require prospective notaries to take and pass an exam that generally lasts about one hour.⁶ (Lawyers are exempt from having to take the exam in Louisiana,⁷ North Carolina,⁸ New York,⁹ and Ohio.¹⁰)

Because of the very different connotation that the term notary or notary public has for the typical U.S. citizen and citizens of most other countries around the world, unscrupulous notaries in the United States can easily prey upon unsuspecting foreign-born individuals in need of legal assistance or representation and fraudulently misrepresent themselves as authorized to provide legal advice, legal document preparation, and representation across a wide range of matters—all of which constitute the unauthorized practice of law subject to civil violation and/or criminal prosecution.¹¹

Commentators who write about the issue tend to concentrate on “notario fraud” in reference to undocumented immigrants from Mexico and other Latin American countries who fall prey to unscrupulous notaries public in the mistaken belief that notaries in the United States have similar qualifications to notaries in their countries of origin.¹² And there is no question that both legal and illegal immigrants who face deportation or who seek advice on changing their immigration status often fall victims to unscrupulous notaries.¹³ But undocumented immigrants and recent Latin America legal immigrants are by no means the only communities that can fall prey to unscrupulous notaries due to a misapprehension of their limited powers which are very different from those enjoyed by notaries in their countries of origin. The mistaken assumptions that immigrants from Mexico and Latin America make as to the training and competencies of U.S. notaries public are shared by citizens from most countries around the world, including Asia, Africa, and Europe.¹⁴

To better understand why unscrupulous notaries public are able to prey upon unsuspecting foreign-born populations, it is useful to survey the difference between U.S. jurisdictions and foreign jurisdictions as to the powers and authority invested in notaries public. In the next section, we will examine the functions notaries public are permitted to perform in all U.S. jurisdictions. In sections III-VII, we will take a close look at both the functions and qualifications of notaries public in other parts of the world in jurisdictions that follow the majority civil law system that is sometimes interchangeably referred to as Roman Law and Latin Law. Once the sharp contrast between U.S. notaries and notaries in most other parts of the world is better understood, it should be possible to suggest some effective means of protecting foreign born individuals who reside in the United States from becoming easy prey for unscrupulous notaries public.

II. AUTHORIZED FUNCTION OF NOTARIES PUBLIC BY STATE AND TERRITORY

The authorized function of notaries public in the United States is dictated by state law. Therefore, there are some differences in the specific functions that a notary public may perform in each state. However, these differences are relatively minor and in every state the functions of a notary public are very limited. To better understand the exact nature and strict limitations on the functions notaries public are authorized to perform, a quick survey of the law in all 50 states and U.S. territories may be instructive.

Table I: Powers of Notaries Public in U.S. States and Territories

Jurisdiction	Powers of Notaries Public
Alabama	(1) Administer oaths in all matters incident to the exercise of their office; (2) Take the acknowledgment or proof of instruments of writing relating to commerce or navigation and certify the same and all other of their official acts under their seal of office; and (3) Demand acceptance and payment of bills of exchange, promissory notes, and all other writings which are governed by the commercial law as to days of grace, demand, and notice of nonpayment and protest the same for nonacceptance or nonpayment and to give notice thereof as required by law. ¹⁵

Alaska	A notary public in Alaska may administer oaths and affirmations. ¹⁶ In addition, she/he may “take the acknowledgment of or proof of execution of instruments in writing, and give a notarial certificate of the proof or acknowledgment, included in or attached to the instrument; the notarial certificate shall be signed by the notary public in the notary public's own handwriting or by electronic means as authorized by regulations adopted by the lieutenant governor.” ¹⁷ Alaska also further clarifies the very limited nature of a notary public's authority by specifying that a “notary public who is not an attorney may complete but may not select notarial certificates, and may not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.” ¹⁸ A notary public is also prohibited from making “representations to have powers, qualifications, rights, or privileges that the office of notary public does not have.” ¹⁹
Arizona	Notaries public in Arizona may perform all of the following duties: Take acknowledgments and give certificates of the acknowledgments endorsed on or attached to the instrument; ²⁰ administer oaths and affirmations; ²¹ perform jurats; ²² and perform copy certification. ²³
Arkansas	Arkansas empowers notaries public to perform the following acts: Swearing witnesses; ²⁴ taking affidavits; ²⁵ taking depositions under Rule 28 of the Arkansas Rules of Civil Procedure and Rule 28 of the Federal Rules of Civil Procedure ²⁶ and taking acknowledgments of deeds and other instruments in writing and authorized by law to be acknowledged. ²⁷
California	California defines the duties of notaries public as follows: ²⁸ (a) It is the duty of a notary public, when requested: (1) To demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance and nonpayment, and, with regard only to the nonacceptance or nonpayment of bills and notes, to exercise any other powers and duties that by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by a notary. This paragraph applies only to a notary public employed by a financial institution, during the course and scope of the notary's employment with the financial institution. (2) To take the acknowledgment or proof of advance health care directives, powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of that proof or acknowledgment, endorsed on or attached to the

	<p>instrument. The certificate shall be signed by the notary public in the notary public's own handwriting. A notary public may not accept any acknowledgment or proof of any instrument that is incomplete.</p> <p>(3) To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board. Any deposition, affidavit, oath, or affirmation shall be signed by the notary public in the notary public's own handwriting.</p> <p>(4) To certify copies of powers of attorney under Section 4307 of the Probate Code. The certification shall be signed by the notary public in the notary public's own handwriting.</p> <p>(b) It shall further be the duty of a notary public, upon written request:</p> <p>(1) To furnish to the Secretary of State certified copies of the notary's journal.</p> <p>(2) To respond within 30 days of receiving written requests sent by certified mail or any other means of physical delivery that provides a receipt from the Secretary of State's office for information relating to official acts performed by the notary.</p>
<p>Colorado</p>	<p>Colorado defines notarial acts that are within the power of notaries public to perform as “taking an acknowledgment, administering an oath or affirmation, taking a deposition or other sworn testimony, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying a copy, and noting a protest of a negotiable instrument.”²⁹ Colorado also statutorily addresses practices specifically prohibited to notaries public in the state, including all of the following:³⁰</p> <p>(1) A commission as a notary public does not authorize an individual to:</p> <p>(a) Assist persons in drafting legal records, give legal advice, or otherwise practice law;</p> <p>(b) Act as an immigration consultant or an expert on immigration matters;</p> <p>(c) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters; or</p> <p>(d) Receive compensation for performing any of the activities listed in this subsection (1).</p> <p>(2) A notary public shall not engage in false or deceptive advertising.</p>

	<p>(3) A notary public, other than an attorney licensed to practice law in this state, shall not use the term “notario” or “notario publico”.</p> <p>(4) A notary public, other than an attorney licensed to practice law in this state, shall not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the internet, the notary public shall include the following statement, or an alternate statement authorized or required by the secretary of state, in the advertisement or representation, prominently and in each language used in the advertisement or representation: “I am not an attorney licensed to practice law in the state of Colorado and I may not give legal advice or accept fees for legal advice. I am not an immigration consultant, nor am I an expert on immigration matters. If you suspect fraud, you may contact the Colorado attorney general's office or the Colorado supreme court.” If the form of advertisement or representation is not broadcast media, print media, or the internet and does not permit inclusion of the statement required by this subsection (4) because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.</p> <p>(5) A notary public, other than an attorney licensed to practice law in this state, shall not engage in conduct that constitutes a deceptive trade practice pursuant to section 6-1-727.</p> <p>(6) Except as otherwise allowed by law, a notary public shall not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.</p> <p>(7) A notary public shall not perform any notarial act with respect to a record that is blank or that contains unfilled blanks in its text.</p>
<p>Connecticut</p>	<p>Notarial acts that notaries public are authorized to perform in Connecticut include “taking an acknowledgment, administering an oath or affirmation, witnessing or attesting a signature and completing a copy certification.”³¹</p> <p>Connecticut expressly prevents notaries public from giving immigration advice or representing persons in immigration proceedings unless they are also attorneys.³² Likewise, notaries</p>

	public in Connecticut cannot assume the title of or advertise themselves to be “notaries” or “notario publico” unless they are admitted to practice as attorneys or unless the advertisement states or the notaries public provide written notice that they are not admitted to practice as attorneys in the state. ³³
Delaware	The state of Delaware provides the following powers to notaries public: Taking an acknowledgment; ³⁴ taking a verification upon oath or affirmation; ³⁵ witnessing or attesting a signature; ³⁶ certifying or attesting a copy of a document; ³⁷ making or noting a protest of a negotiable instrument. ³⁸
Washington D.C.	A notary public in Washington D.C. is authorized to engage in the following acts: “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, noting a protest of a negotiable instrument, taking and certifying the acknowledgment or proof of powers of attorney, mortgages, deeds, other instruments of writing, and taking affidavits to be used before any court, judge, or officer within the District.” ³⁹
Florida	Notaries public in Florida are empowered to administer oaths, ⁴⁰ take acknowledgments of deeds and other instruments of writing for record, ⁴¹ and perform civil marriages. ⁴² Florida also recognizes civil law notaries (also referred to as “international notaries”). ⁴³ To qualify as a civil law notary public, an applicant must be a lawyer admitted to practice in the State for a minimum of five years. ⁴⁴ A three-day training session and subsequent examination must be completed and passed before an attorney can become a civil law notary public. ⁴⁵ In addition to the functions of regular notaries public, a civil law notary public has the power to authenticate an act and attest to the validity of documents. ⁴⁶ As attorneys, civil law notaries public can, of course, also give legal advice and represent clients.
Georgia	Notaries public in Georgia have the authority to witness or attest signature or execution of deeds and other written instruments; take acknowledgments; administer oaths and affirmations in all matters incidental to their duties as commercial officers and all other oaths and affirmations which are not by law required to be administered by a particular officer; witness affidavits upon oath or affirmation; take verifications upon oath or affirmation; Make certified copies, provided that the document presented for copying is an original document and is neither a public record nor a publicly recorded document certified copies of which are available from an official source other than a notary and provided that the document was photocopied under supervision of the notary; and perform such other acts as they are authorized to perform by other laws of this state. ⁴⁷ Georgia specifically prohibits notaries public from making claims to have or imply

	that they have powers they do not possess, including the power to counsel on immigration matters or give legal advice. ⁴⁸
Hawaii	Hawaii notaries public are empowered to “take acknowledgments, administer oaths and affirmations, witness the signing of documents, attest to the identity of the signer of a document, note protests, and perform any other act permitted by chapter 456, HRS.” ⁴⁹
Idaho	Idaho notaries public are empowered to perform the following notarial acts: taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing, or attesting a signature, certifying, or attesting a copy, and noting a protest of a negotiable instrument. ⁵⁰
Illinois	Notarial acts that a notary public in Illinois is authorized to perform include taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, and witnessing or attesting a signature. ⁵¹
Indiana	Notarial acts in Indiana include all of the following: Taking an acknowledgment; administering an oath or affirmation; taking a verification on an oath or affirmation; attesting to or witnessing a signature; attesting to or certifying a copy of a tangible document or record, or an electronic document or record; noting a protest of a negotiable record; and any other act authorized by common law or the custom of merchants. ⁵²
Iowa	Iowa defines notarial acts to include taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing, or attesting a signature, certifying, or attesting a copy, and noting a protest of a negotiable instrument. ⁵³
Kansas	Kansas defines notarial acts to include “taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, [and] certifying or attesting a copy and noting a protest of a negotiable instrument.” ⁵⁴
Kentucky	Kentucky permits notaries public to perform the following acts: Take acknowledgments; administer oaths and affirmations; take verifications of statements on oath or affirmation; certify that a copy of any document, other than a document that is recorded or in the custody of any federal, state, or local governmental agency, office, or court, is a true copy; certify depositions of witnesses; make or note a protest of a negotiable instrument; witness or attest signatures; and perform any other notarial act authorized by law. ⁵⁵
Louisiana	Notaries public in Louisiana have somewhat broader powers than their counterparts in other states. Louisiana Revised Statutes Title 35 Chapter 1 grants to notaries public the

	<p>following powers LSA-R.S. 35:2 grants to notaries public the following enumerated powers:</p> <p>A. (1) Notaries public have power within their several parishes:</p> <ul style="list-style-type: none">(a) To make inventories, appraisements, and partitions;(b) To receive wills, make protests, matrimonial contracts, conveyances, and generally, all contracts and instruments of writing;(c) To hold family meetings and meetings of creditors;(d) To receive acknowledgements of instruments under private signature;(e) To make affidavits of correction;<ul style="list-style-type: none">(f) To affix the seals upon the effects of deceased persons and to raise the same. <p>(2) All acts executed by a notary public, in conformity with the provisions of Civil Code Art. 1833, shall be authentic acts.</p> <p>(3) Notwithstanding any provision in the law to the contrary, a notary public shall have power, within the parish or parishes in which he is authorized, to exercise all of the functions of a notary public and to receive wills in which he is named as administrator, executor, trustee, attorney for the administrator, attorney for the executor, attorney for the trustee, attorney for a legatee, attorney for an heir, or attorney for the estate.</p> <p>B. However, each notary public of this state shall have authority to administer oaths in any parish of the state, to swear in persons who appear to give testimony at a deposition before a general reporter or free-lance reporter certified under the provisions of R.S. 37:2551 et seq., and to verify interrogatories and other pleadings to be used in the courts of record of this state. Such oaths, and the certificates issued by such notaries shall be received in the courts of this state and shall have legal efficacy for purposes of the laws on perjury.</p> <p>C. Every qualified notary public is authorized to certify true copies of any authentic act or any instrument under private signature hereafter or heretofore passed before him or acknowledged before him, and to make and certify copies, by any method, of any certificate, research, resolution, survey or other document annexed to the original of any authentic acts passed before him, and may certify such copies as true copies of the original document attached to the original passed before him.⁵⁶</p> <p>Although notaries public have somewhat broader authority in Louisiana than they do in other states, no doubt as a result of the State's original civil law roots when a French possession, it</p>
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	should be noted that they, along with everyone else in the state, are subject to the prohibition against unauthorized practice of law which in Louisiana carries a maximum penalty of \$1,000 and two-years imprisonment for violations by a natural person. ⁵⁷
Maine	<p>Maine notaries public may perform the following functions: administration of oaths or affirmations; certification of an affidavit or an acknowledgment of instruments related to real estate transfers; certification of copies of private documents; and solemnization of marriages.⁵⁸</p> <p>Notaries public who are not admitted to practice law in Maine and who advertise in any language other than English in the state must provide a notice in the language of the advertisement the fees they are authorized to charge for their services and the following statement in both English and the language of the advertisement:</p> <p><i>"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN MAINE AND MAY NOT GIVE LEGAL ADVICE ABOUT IMMIGRATION OR ANY OTHER LEGAL MATTER OR ACCEPT FEES FOR LEGAL ADVICE."</i>⁵⁹</p> <p>Notaries public may not use a direct translation into another language of the term notary public that implies in the foreign language the authority to practice law.⁶⁰ This prohibition effectively prevents a notary public from advertising as a "notario" or "notario publico" as that term in civil law jurisdictions, including Latin America, Spain (and most civil law jurisdictions generally) denotes an individual who is either a lawyer or has specialized training that allows her/him to provide legal services. Civil violations of this section can result in civil penalties of up to \$5,000⁶¹ and civil actions for actual damages, treble damages, attorney's fees, and court costs.⁶²</p>
Maryland	Maryland defines notarial acts to all of the following: taking an acknowledgment; administering an oath or affirmation; taking a verification on oath or affirmation; witnessing or attesting a signature; certifying or attesting a copy; and noting a protest of a negotiable instrument. ⁶³
Massachusetts	Notaries public in Massachusetts are empowered to administer oaths or affirmations in all cases in which an oath or affirmation is required and take acknowledgments of deeds and other instruments. ⁶⁴
Michigan	The powers of a notary public in Michigan include taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, and witnessing or attesting a signature. ⁶⁵
Minnesota	The notarial acts that a notary public is authorized to perform in Minnesota are defined to include taking an acknowledgment, administering an oath or affirmation, taking a verification on

	oath or affirmation, witnessing, or attesting a signature, certifying, or attesting a copy, and noting a protest of a negotiable instrument. ⁶⁶
Mississippi	Notaries public in Mississippi have the “power to receive the proof or acknowledgment of all instruments of writing relating to commerce or navigation, such as bills of sale, bottomries, mortgages, and hypothecations of ships, vessels or boats, charter parties of affreightment, letters of attorney, and such other writings as are commonly proved or acknowledged before notaries; and to perform all other duties required of notaries by commercial usage, and also to make declarations, including the filing of an affidavit as provided in Section 25-33-9, and certify the truth thereof, under his seal of office, concerning all matters done by him in virtue of his office.” ⁶⁷
Missouri	Notaries public in Missouri are empowered to take acknowledgments; administer oaths and affirmations; certify that a copy of a document is a true copy of another document; and perform any other act permitted by law. ⁶⁸
Montana	Montana defines notarial acts to include “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, certifying or attesting a transcript of an affidavit or deposition, and noting a protest of a negotiable instrument.” ⁶⁹
Nebraska	<p>Nebraska notaries public have the power “(1). [t]o administer oaths and affirmations in all cases; (2) to take depositions, acknowledgments, and proofs of the execution of deeds, mortgages, powers of attorney, and other instruments in writing, to be used or recorded in this or another state; and (3) to exercise and perform such other powers and duties as authorized by the laws of this state.”⁷⁰</p> <p>Nebraska also specifically addresses unauthorized practice of law by non-lawyer notaries public and prohibits the use of the term “notario publico” or equivalent foreign term as follows:⁷¹</p> <p>(1) A notary public who is not an attorney shall not engage in the unauthorized practice of law as provided in this section.</p> <p>(2) If notarial certificate wording is not provided or indicated for a document, a notary public who is not an attorney shall not determine the type of notarial act or certificate to be used.</p> <p>(3) A notary public who is not an attorney shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.</p> <p>(4) A notary public who is not an attorney shall not claim to have powers, qualifications, rights, or privileges that the office</p>

	<p>of notary public does not provide, including the power to counsel on immigration matters.</p> <p>(5) A notary public who is not an attorney and who advertises notarial services in a language other than English shall include in any advertisement, notice, letterhead, or sign a statement prominently displayed in the same language as follows: "I am not an attorney and have no authority to give advice on immigration or other legal matters".</p> <p>(6) A notary public who is not an attorney may not use the term notario publico or any equivalent non-English term in any business card, advertisement, notice, or sign.</p> <p>(7) This section does not preclude a notary public who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.</p> <p>(8) A violation of any of the provisions of this section shall be considered the unauthorized practice of law and subject to the penalties provided in section 7-101.</p> <p>Violations of the foregoing statute are punished as a Class III misdemeanors, the same as other forms of unauthorized practice of law in the state.⁷²</p>
Nevada	<p>Notarial acts in Nevada are defined to include taking an acknowledgment, administering an oath or affirmation, certifying a copy, executing a jurat, noting a protest of a negotiable instrument, and performing such other duties as may be prescribed by a specific statute.⁷³</p>
New Hampshire	<p>New Hampshire defines notarial acts to include taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing, or attesting a signature, certifying, or attesting a copy, and noting a protest of a negotiable instrument.⁷⁴</p>
New Jersey	<p>Notaries public in New Jersey are empowered to administer oaths and affirmations, take acknowledgments, take proofs of execution, jurats, and execute protests for non-payment or non-acceptance.⁷⁵</p> <p>The New Jersey Notary Public Manual explicitly prohibits notaries public under penalty of civil and criminal sanctions from preparing a legal document or giving advice on legal matters, or matters pertaining to land titles, preparing pleadings, affidavits, briefs, and any other submissions to the court, appearing as a representative of another person in a legal proceeding, or acting for others in the collection of delinquent bills or claims.⁷⁶</p>

New Mexico	<p>The general powers of notaries public in New Mexico include acknowledgments, oaths, and affirmations, jurats and copy certifications.⁷⁷</p> <p>As is true of many states, New Mexico specifically addresses the unauthorized practice of law by non-lawyer notaries public and prohibits these notaries from determining the type of notarial act or certificate to be used, assisting another person in drafting, completing, selecting or understanding a document or transaction requiring a notarial act, and claiming to have powers, qualifications, rights or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.⁷⁸ Notaries public are also prohibited from using the term “notario publico” or any equivalent non-English term in any business card, advertisement, notice or sign.⁷⁹</p>
New York	<p>New York notaries public are empowered to “administer oaths and affirmations, to take affidavits and depositions, to receive and certify acknowledgments or proof of deeds, mortgages and powers of attorney and other instruments in writing; to demand acceptance or payment of foreign and inland bills of exchange, promissory notes and obligations in writing, and to protest the same for non-acceptance or non-payment, as the case may require, and, for use in another jurisdiction, to exercise such other powers and duties as by the laws of nations and according to commercial usage, or by the laws of any other government or country may be exercised and performed by notaries public, provided that when exercising such powers he shall set forth the name of such other jurisdiction.”⁸⁰</p>
North Carolina	<p>Notaries in North Carolina may perform the following notarial acts: Acknowledgments, oaths and affirmations, verifications, or proofs.⁸¹</p>
North Dakota	<p>North Dakota defines notarial acts that notaries public may perform to include “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy except as provided in subsection 7 of section 44-06.1-23, and noting a protest of a negotiable instrument.”⁸²</p> <p>As is true of many other states, North Dakota specifically prohibits a notary public to “advertise or represent that the notary public may assist in drafting legal records, give legal advice, or otherwise practice law.”⁸³ In addition, a notary public who is not an attorney licensed to practice law in the state advertises or represents that she/he offers notarial services whether orally or through broadcast media, print media, and the internet, the notary public must include the following statement</p>

	prominently in the advertisement in the same language of the advertisement: "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities." ⁸⁴
Ohio	Notarial acts in Ohio may include "the administration of oaths and affirmations, taking proof of execution and acknowledgment of instruments, attesting documents, and executing a jurat." ⁸⁵
Oklahoma	Oklahoma defines acts that a notary public may perform to include "taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument." ⁸⁶
Oregon	Oregon defines notarial acts that notaries public may perform as "(a) Taking an acknowledgment; (b) Administering an oath or affirmation; (c) Taking a verification on oath or affirmation; (d) Witnessing or attesting a signature; (e) Certifying or attesting a copy; (f) Making, noting or recording a protest of a negotiable instrument; or (g) Any other act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state." ⁸⁷
Pennsylvania	Notarial acts in Pennsylvania are defined to include all of the following: "(1) taking an acknowledgment; (2) administering an oath or affirmation; (3) taking a verification on oath or affirmation; (4) witnessing or attesting a signature; (5) certifying or attesting a copy or deposition; and (6) noting a protest of a negotiable instrument." ⁸⁸
Rhode Island	Rhode Island defines notarial acts that notaries public may perform to include: "taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, noting a protest of a negotiable instrument and transact, do and finish all matters and things relating to protests and protesting bills of exchange and promissory notes, and all other matters within their office required by law, take depositions as prescribed by law, and acknowledgments of deeds and other instruments." ⁸⁹
South Carolina	South Carolina defines notarial acts to include "the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents." ⁹⁰
South Dakota	Notarial acts in South Dakota are defined to include "taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a

	signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.” ⁹¹
Tennessee	In Tennessee, a notary public has “the power to acknowledge signatures upon personal knowledge or satisfactory proof, to administer oaths, to take depositions, to qualify parties to bills in chancery, and to take affidavits, in all cases.” ⁹²
Texas	Texas gives notaries the authority to “(1) take acknowledgments or proofs of written instruments; (2) protest instruments permitted by law to be protested; (3) administer oaths; (4) take depositions; and (5) certify copies of documents not recordable in the public records.” ⁹³
Utah	Utah authorizes notaries public to perform the following acts: “(a) a jurat; (b) an acknowledgment; (c) a signature witnessing; (d) a copy certification; and (e) an oath or affirmation.” ⁹⁴
Vermont	Vermont defines notarial acts that notaries may perform to include: “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, attesting a signature, and noting a protest of a negotiable instrument.” ⁹⁵
Virginia	Virginia notaries public are “empowered to perform the following notarial acts: (i) take acknowledgments, (ii) administer oaths and affirmations, (iii) certify that a copy of any document, other than a document in the custody of a court, is a true copy thereof, (iv) certify affidavits or depositions of witnesses, (v) perform verification of fact, and (vi) perform such other acts as may be specifically permitted by law.” ⁹⁶
Washington	Washington notaries public are empowered to perform the following acts: “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, certifying the occurrence of an event or the performance of an act, and noting a protest of a negotiable instrument if the protest was prepared under the authority of an attorney licensed to practice law in this state or another state, or was prepared under the authority of a financial institution that is regulated by this state, another state, or the federal government.” ⁹⁷
West Virginia	West Virginia defines notarial acts to include “taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.” ⁹⁸
Wisconsin	Wisconsin notaries public have the power “to demand acceptance of foreign and inland bills of exchange and payment thereof, and payment of promissory notes, and may protest the same for nonacceptance or nonpayment, may administer oaths, take depositions and acknowledgments of deeds, and perform

	<p>such other duties as by the law of nations, or according to commercial usage, may be exercised and performed by notaries public.”⁹⁹</p> <p>Non-attorney notaries public are prohibited from stating or implying that they are attorneys or using the phrase “notario,” “notarizaciones,” “notarizamos,” or “notario publico,” unless an advertisement using such words also includes all in caps in the same size font as the advertisement the following statement: “<i>I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN WISCONSIN AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.</i>”¹⁰⁰ Violations of this section are punishable by a fine not to exceed \$10,000 and imprisonment to exceed 9 months for a first offense and a fine not to exceed \$10,000 and imprisonment not to exceed 6 years for any subsequent offenses.¹⁰¹</p>
<p>Wyoming</p>	<p>Notarial acts in Wyoming include: “(A) Taking an acknowledgment; (B) Administering an oath or affirmation; (C) Taking a verification upon oath or affirmation; (D) Witnessing or attesting a signature; (E) Certifying or attesting a copy; (F) Noting a protest of a negotiable instrument; (G) Performing a jurat; and (H) Performing other acts so authorized by the laws of this state.”¹⁰²</p>
<p>Guam</p>	<p>A notary public in Guam is “empowered to perform the following notarial acts: (a) Acknowledgments; (b) Oaths and affirmations; (c) Jurats; and (d) Copy certifications.”¹⁰³</p>
<p>Puerto Rico</p>	<p>Puerto Rico deviates from the rest of the U.S. in the function and training of notaries who do, in fact, conform to the traditional definition of notaries in Europe, Latin America and throughout most of the world.¹⁰⁴ Only lawyers may be notaries in Puerto Rico, a tradition that is doubtless traceable to its former status as a colony of Spain. Puerto Rico notaries must be members of the Puerto Rico Bar who are subsequently admitted to practice as notaries by the Supreme Court of Puerto Rico.¹⁰⁵ And the function of Puerto Rico notaries is very different from that of notaries public in the states and other U.S. territories as they perform a vital function in the creation and acknowledgment of public documents that include the execution and transfer of deeds,¹⁰⁶ creation of original deeds,¹⁰⁷ certification of wills,¹⁰⁸ and various other functions relating to the creation and certification of public documents.¹⁰⁹ It is worthy of note that notaries can charge the usual fees for the preparation of legal documents, and statutorily defines fees for the notarial service of certifying the documents they create (or are created by lawyers who are not notaries).¹¹⁰ And unlike the nominal statutory fees that notaries public are allowed to charge</p>

	for their services, the statutory fees allowed notaries in Puerto Rico can be significant, ranging from \$15 to \$40 for issuing certified copies of deeds (depending on the property value) to \$100 for executing notarial documents involving items or things with a determinate value under \$10,000 and 1 percent of the value of items with a determinate value above \$10,000 up to \$500,000, and 0.5 percent of the value in excess of \$500,000. ¹¹¹ When issuing notarial documents without a material value, the fee is whatever the notary and the client agree to. ¹¹²
U.S. Virgin Islands	Notaries public in the U.S. Virgin Islands are authorized to “take acknowledgments of deeds and other instruments, administer oaths and affirmations, and perform such other acts as may be authorized by law.” ¹¹³
Northern Mariana Islands	Notaries public in the Northern Mariana Islands have the power to perform the following notarial acts: “(a) Acknowledgments (such as powers of attorney, mortgages, grants, deeds and leases); (b) Oaths and affirmations to be used before any court, judge, officer or administrative agency in this Commonwealth; (c) Jurats; (d) Copy certifications and affidavits; (e) To take depositions and affidavits; (f) To keep a record of all official acts done by them; (g) To keep a record of the parties the date and character of every instrument acknowledged or proved before them; (h) When requested and upon payment of their fees therefor, to make and give a certified copy of any record in their office; (i) To provide and keep official seals or stamps, which shall be engraved as required by this chapter; and (j) To authenticate with their official seals all official acts.” ¹¹⁴

III. NOTARIES IN MEXICO

Notaries in Mexico (*notarios públicos*) are governed under Mexican state and federal law and there can be minor variations in the requirements for their training and functions. For purposes of illustration, I will focus on the requirements and function of notaries of *notarios públicos* in the Mexican State of Hidalgo. The requirements are translated by me into English from the original Spanish text.¹¹⁵ Notaries in the Mexican State of Hidalgo must meet the following qualifications:

- I. Be Mexican by birth, in plenary command of his rights, and of good conduct.;
- II. Be a citizen of the State of Hidalgo;
- III. Be at least 25 years of age;

- IV. Have an uninterrupted residence in the State of more than five years prior to the date of the exam;
- V. Have no permanent illness that can impede intellectual ability nor any physical disability that would impede the exercise of the notarial duties;
- VI. Have earned the title of Attorney at Law and been registered with the *Dirección General de Profesiones de la Secretaría de Educación*, have a minimum of five years of experience in the practice of law and completed a course on Notarial Law at any legally recognized University of the Republic, or provided by the College;
- VII. Have practiced a minimum of two years as a notary under the direction of a Notary Public in the State. The [supervising] Notary Public responsible for the practice must communicate the beginning and end of the practice of the person seeking to be appointed Notary Public to the Secretariat and to the College [Colegio de Notarios Públicos del Estado de Hidalgo], prior to the payment of the corresponding fees;
- VIII. Must not have been condemned of an international crime subject to corporal punishment by executive sentencing;
- IX. Must not be a member of the clergy, nor a minister of a religious sect; and
- X. Must pass an exam of theory and practice as required by this Law.¹¹⁶

In sharp contrast to the United States where the requirements to become a notary public seldom require more than being 18 years of age with no criminal convictions and passing a relatively simple exam with either nominal or no formal training required,¹¹⁷ Mexican *notarios públicos* are all lawyers with significant practical experience who had to take additional coursework beyond their law degrees to become notaries and work under the supervision of a notary for a number of years before qualifying for the distinction and powers accorded *notaries públicos*. This is a familiar pattern in civil law jurisdictions around the world as we will see in a sampling of Asian, Central and South American, European and African nations in the sections that follow. It is, therefore, unsurprising that so many immigrants—both legal and illegal—into the United States become

easy prey for unscrupulous notaries public who have neither the training, experience nor legal right to offer legal advice or representation to “clients”, assist in document preparation or even advise what legal forms to use for any civil or criminal matter. And though the problem of “notario fraud” is usually framed as one affecting illegal immigrants seeking assistance on immigration-related matters—and it certainly does that—it goes well beyond fraud perpetrated against those who need immigration-related advice and representation as individuals familiar with the role of notaries public in the international arena are also easy prey when they consult an unscrupulous notary public for other matters commonly performed by notaries with vastly different credentials, skills and authority overseas, including contract preparation, real estate deed preparation and transfers, matters relating to wills and trusts, divorce, and so on.

IV. A REPRESENTATIVE SAMPLING OF NOTARIAL PRERREQUISITES IN ASIA

China

Notaries in China must meet the following requirements: (1) having the nationality of the People’s Republic of China; (2) being between 25 and 65 years old; (3) being fair-minded [sic] and upright, observing laws and rules of discipline, and being of good moral character; (4) having passed the national judicial examination; and (5) having served as an intern in a notarial institution for two or more years, or having three or more years of experiences in another legal profession and having served as an intern in a notarial institution for one year or more, and being professionally qualified.¹¹⁸

Matters subject to notarization include: (1) a contract; (2) succession; (3) the power of attorney, statement, gift, and will; (4) division of property; (5) bid invitation, tendering, and auction; (6) marital status, kindred relationship, and adoption relationship; (7) birth, existence, death, identity, experiences, educational background, degree, job title, professional title, and having or not having illegal or criminal record; (8) articles of association of a company; (9) preservation of evidence; (10) signature, seal and date as indicated in a document, and duplicate or photocopy of a document conforming

with the original document; and (11) other matters for which a natural person, legal person or other organization voluntarily requests for notarization.¹¹⁹

India

Notaries in India are appointed by the central government and as a general rule must be lawyers in practice for at least ten years (seven years for members of certain casts and women).¹²⁰ Individuals who are members of the Indian Legal Services under the Central Government may also become notaries, as can individuals with 10 years of judicial service or service as an officer of the central or state governments requiring special knowledge of the law, or service as an officer in the department of the Judge Advocate General or in the legal department of the armed forces.¹²¹

Notaries in India have the authority to: (a) verify, authenticate, certify or attest the execution of any instrument; (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security; (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (26 of 1881), or serve notice of such note or protest; (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters; (e) administer oath to, or take affidavit from, any person; (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents; (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate; (h) translate, and verify the translation of, any document from one language into another; (ha) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority; (hb) act as an arbitrator, mediator or conciliator, if so required;] (i) any other act which may be prescribed.¹²²

Japan

Notaries in Japan have the following powers: (i) creating a notarized instrument with regard to a juridical act or any other fact concerning a private right; (ii) certifying a private instrument; (iii) certifying articles of incorporation pursuant to Article 30, paragraph (1) of the Companies Act (Act No. 86 of 2005) and the provisions pursuant to which Article 30, paragraph (1) of the Companies Act applies *mutatis mutandis*, as well as Articles 13 and 155 of the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006); and (iv) certifying electronic or magnetic records (records made in electronic form, magnetic form, or any other form that is impossible to perceive by the human senses (hereinafter referred to as an "Electronic or Magnetic Form"), which are used in information processing by computers; the same applies hereinafter); provided, however, that this applies only in cases of certifying electronic or magnetic records other than ones created by a government employee in performing said employee's duties.¹²³

The training requirements for non-lawyer notaries include being a Japanese national who has attained the age of majority who has completed practical training as an apprentice for at least six months after passing an examination as specified by the Minister of Justice.¹²⁴ Judges (excluding judges of summary courts), public prosecutors (excluding assistant public prosecutors) and attorneys at law may be appointed as a notary without having passed a notary examination or completed the associated practical training.¹²⁵

V. A REPRESENTATIVE SAMPLING OF NOTARIAL PRERREQUISITES IN CENTRAL AND SOUTH AMERICA

El Salvador

The requirements to be a notary in El Salvador are as follows (translated by the author from the original Spanish language applicable statute):¹²⁶ The notarial function may only be practiced by those authorized by the Supreme Court of Justice in conformity with the law. To obtain the authorization, it is required [that one be]: 1. Salvadoran; 2. Authorized to practice the profession of lawyer in the Republic; 3. Submit to an exam of sufficiency in the Supreme Court

of Justice for all Salvadorans who obtained foreign law degrees. Central Americans authorized to practice law in the Republic and with two years of residence in the Republic as long as they are not disqualified from practicing as notaries in their country of origin, and also as long as there is a reciprocity in recognizing the right of Salvadoran notaries to practice in their countries of origin.

Costa Rica

The requirements to be a notary in Costa Rica are as follows (translated by the author from the original Spanish language applicable statute):¹²⁷ In order to be a notary public and engage in the notarial practice, the following requirements must be met: a) Be of good conduct; b) Have no legal impediment to exercise the [notarial] charge; c) Be a licensed attorney with the postgraduate degree in Notarial Law and Registry, graduate of a university recognized by the relevant educational authorities. In addition, must be incorporated to the College of Lawyers of Costa Rica for a minimum of two years prior to soliciting the right to practice [as a notary public].

Honduras

The requirements to be a notary public in Honduras are as follows (translated by the author from the original Spanish language applicable statute):¹²⁸ To be a notary requires: 1) Being Honduran by birth and in free exercise of [his/her] civil rights; 2) Being a lawyer; 3) Being at least 30 years of age; 4) Being recognized as honorable and prestigious; 5) Being of a secular state [e.g., not a member of the clergy]; 6) Passing the notarial exam before the Supreme Court of Justice as provided by the Court; and 7) Obtaining the exequatur of notary.

Panama

The requirements to qualify as a notary in Panama are as follows (translated by the author from the original Spanish language applicable statute):¹²⁹ Article 2120. To be a Circuit Notary, Principal or Alternate, in Panama and Colon, requires the same qualifications as to be a Magistrate of the Supreme Court of Justice. To be a Circuit Notary, Principal or Alternate, in other places in the Republic, it is required to be Panamanian by birth or naturalization, with more than

ten years of residence in the Republic, be twenty-five years of age, be in full enjoyment of civil and political rights and be a graduate in Law in the country or abroad, or possess a certificate of suitability issued by the Supreme Court of Justice to practice Law in the Courts of the Republic. In the case of graduates abroad, it will also be necessary that the interested party has revalidated their degree at the University of Panama and that proof of same be registered in the Ministry or in the office that the Law shall indicate. No person who has been convicted and penalized for any common crime may become a principal or alternate notary.

Argentina

Notaries (alternately referred to as “notarios” or “escribanos”) in Argentina, as in many other countries, must generally meet the following requirements (translated by the author from the Spanish original):¹³⁰ a) Be native-born Argentine or naturalized with a minimum of six years of naturalization; b) Have a law degree either earned or revalidated by a national [Argentine] university or otherwise legally habilitated. A similarly obtained different degree may be substituted as long as the curriculum fully encompasses the totality of the coursework and analogous discipline to those that embody the study of law at the Universidad Nacional de Buenos Aires; c) Be accredited with good conduct at the point of matriculation, and possess good conduct, antecedents and unimpeachable morality; d) Have the ability to exercise the notarial function in accordance with that which is established in the last paragraph of article 3. [The relevant paragraph states that only those who have obtained ownership of a notarial registry or those who are in a position to be appointed as assigned, in accordance with the provisions of article 46, paragraph c), of this law may enroll.]

Brazil

The requirements to become a notary (*tabeliões*) in Brazil include: Brazilian nationality; civil capacity; fulfilment of electoral and military obligations; qualification of graduate in law; qualification in public competitive examination; conduct appropriate to performance of the profession.¹³¹

Chile

Notaries in Chile are appointed by the President, must be Chilean, possess the title of lawyer, have practiced law for a minimum of one year, and not be affected by any incapacity or legal disability.¹³²

Ecuador

The requirements to become a notary in Ecuador are as follows (translated by the author from the Spanish original):¹³³ a) Must be Equatorian by birth; must be inscribed in the Contraloría General de la Nación, after providing a bond of up to one hundred thousand sucres; b) Possess free exercise of citizenship rights; c) Enjoy good reputation and prove [her/his] suitability before a Tribunal made up of a Minister Judge delegate of the Superior Court, a delegate of the College of Notaries, and a delegate from the College of Lawyers; The delegates of the Colleges of Notaries and Lawyers must be members of the Honor Tribunal of their respective Colleges; and d) Must possess the title of Lawyer or Doctor in Jurisprudence.

Peru

The requirements in Peru to become a notary include the following (translated by the author from the Spanish original):¹³⁴ a) Must be Peruvian by birth; b) Must be a lawyer; c) Must have the capacity to exercise [his/her] civil rights; d) Must possess unimpeachable moral conduct; e) Must be physically capable to discharge the notarial duties; and f) Must not have been condemned of a crime of malice.

Venezuela

Notaries public in Venezuela must be Venezuelan, or legal age, and lawyers with a minimum of five years of professional experience.¹³⁵

VI. A REPRESENTATIVE SAMPLING OF NOTARIAL PRERREQUISITES IN EUROPE

Belgium

The requirements to become a candidate civil-law notary in Belgium include: a master in notary practice (5 years of law + 1 year of notarial practice) and passing a comprehensive written and oral exam after an internship.¹³⁶ Meeting the requirements and passing the exam does not guarantee appointment as a junior civil-law notary as the process is competitive and a limited number of French- and Dutch-Speaking notaries are appointed every year.¹³⁷

Germany

Notaries in Germany must be under the age of 60 at the time of their appointment, have worked on a significant scale for various clients for a period of at least five years, at least three continuous years of which must be in the prospective notarial jurisdiction, passed the professional examination for notaries, and take part in a minimum of 15 hours of approved continuing training starting the year after they passed the professional examination for notaries.¹³⁸

Greece

Notaries in Greece are appointed from persons who pass an exam organized by the Ministry of Justice, Transparency and Human Rights and are law graduates from a Greek university or a foreign university which is recognized as of equal standing.¹³⁹ Applicants must also be at least 28 years of age and have practiced, for at least two years, the profession of a lawyer or a court officer of any sector or degree or of a non-stipendiary mortgage registrar.¹⁴⁰

France

A French notary must hold a Master 1 degree in law and then obtain a Master 2 degree in Notarial Law. A minimum one-month internship is also required along with four half yearly teaching assignments in a university in partnership with the *Institut National des Formations Notariales* – INFN, and write a report.¹⁴¹

Italy

The requirements for becoming a notary in Italy include having a law degree, an apprenticeship in a notary's office for 18 months (six months of which can be done in parallel with the last year of university), and entering the open competition run by the Ministry of Justice for the available notarial spots.¹⁴²

Russia

Notaries in Russia “are required to attain a higher legal education; complete an internship of at least a year in a public or private notary's office; pass a qualification examination; and receive a notary's license to practice, which is issued according to a procedure established by the Ministry of Justice.”¹⁴³

Spain

The requirements for becoming a notary in Spain include being a Spaniard or member of a European Union member nation having completed a bachelor's or doctoral program in law and completing a series of four competitive examinations—two written and two oral.¹⁴⁴ Open competitive exams are periodically staged by the Ministry of Justice to award the title of notary.¹⁴⁵

VII. A REPRESENTATIVE SAMPLING OF NOTARIAL PRERREQUISITES IN AFRICA

Statutory material in English relating to the prerequisites and processes for appointment of notaries in African countries is not readily available online or through Westlaw or Lexis/Nexis. It is, therefore, difficult to create a representative sampling of the requirements and functions of notaries in African nations that adhere to the civil law, Latin notarial system as opposed to the common law notarial system of Great Britain and most former British colonies. Nevertheless, through their membership in the International Union of Notaries, a non-government organization which aims to “[p]romote and apply the fundamental principles of the civil law notarial system and the principles of notarial deontology”,¹⁴⁶ one can surmise that the following African countries adhere to the requirement that their notaries be “professional lawyers and public officials appointed by the State to confer authenticity on legal deeds and contracts contained in

documents drafted by them and to advise persons who call upon their services”:¹⁴⁷ Member countries include Algeria, Benin, Cameroon, Central African Republic, Chad, Gabon, Guinea, Ivory Coast, Madagascar, Mali, Mauritania, Morocco, Niger, Republic of Congo, Senegal, and Tunisia.¹⁴⁸ Whatever specific requirements notaries may need to meet in their respective countries in order to qualify as a notary, all would at a minimum be required to be lawyers.¹⁴⁹

VIII. STEPS NEEDED TO ADDRESS THE ISSUE OF NOTARIAL FRAUD

A useful first step in preventing the fraudulent unauthorized practice of law by notaries public in the United States is one that some states are already undertaking: regulating advertising by non-attorney notaries public and requiring disclosure of the fact that they are not attorneys.¹⁵⁰ While these prohibitions vary in the states that impose them, every state should consider enacting regulations similar to Colorado’s which make a genuine attempt at preventing misleading advertising and informing the public about the inability of non-attorney notaries to use the misleading terms *notario* and *notario publico* in advertisements and signage, and makes clear notaries public are not authorized to give legal advice, draft legal documents, practice law, act as immigration consultants, represent persons in immigration-related matters or hearings, and requires disclosures to this effect in broadcast media advertisements and signage if print advertisements are used.¹⁵¹

Wide adoption of the types of regulations that Colorado has implemented would be an important first step in protecting the public from falling prey to unscrupulous notaries public who abuse their office. But regulations of themselves will not cure the problem. A second step that every jurisdiction must take to protect the public is the aggressive enforcement of criminal and civil sanctions for the unauthorized practice of law by notaries public and others who practice law without a license. Unscrupulous individuals will doubtless continue to engage in the unauthorized practice of law if it remains lucrative and they believe they can flaunt the law with impunity, or if the only punishment is a modest civil fine when caught.

A third step that every state should take to prevent notario fraud and the unauthorized practice of law by notaries public generally is better training of prospective notaries. Notaries public themselves need to be made aware of what constitutes unauthorized practice of law and the consequences therefore. Given the extraordinarily modest requirements to become a notary public in most states¹⁵² it is quite possible that many honorable, well-meaning notaries public are not aware of what constitutes unauthorized practice of law or the criminal and civil sanctions attendant to it in their states.

Finally, legislation and enforcement alone will not eliminate the misuse of notarial powers. The final and most critical step that needs to be taken by every state to curb both the intentional and unintentional unauthorized practice of law by notaries public is wider education of the general public as to the limited function of non-attorney notaries public in the United States and their inability and incompetence to provide legal advice or representation in any matter. In this regard, broadcast and print media that serve members of immigrant communities both in their native language and in English have a special role to play in preventing notario fraud through both investigative reporting and public service announcements.

IX. CONCLUSION

Given the radical difference in the function, training, and powers of U.S. notaries public and notaries public in most other countries around the globe, recent immigrants to our shores need and deserve to be informed about an issue that disproportionately affects them. If nothing else, this paper should make it clear that notario fraud is not an issue that only affects immigrants from Mexico and South America or undocumented immigrants as one may be led to believe from the current literature. It affects immigrants and visitors from all parts of the world who understandably believe notaries to be highly trained lawyers they can turn to with regard not only to immigration matters, but for advice and representation on a wide range of legal issues. Education and strict enforcement of criminal and civil sanctions against unauthorized practice of law are the most effective means of

protecting a vulnerable segment of our population from being preyed upon by unscrupulous individuals who abuse their trust.

¹ See *Infra* Sections III-VII.

² National Notary Association, “About the NNA” available online at [https://www.nationalnotary.org/about-the-nna#:~:text=The%20National%20Notary%20Association%20\(NNA.best%20practices%20for%20U.S.%20Notaries.](https://www.nationalnotary.org/about-the-nna#:~:text=The%20National%20Notary%20Association%20(NNA.best%20practices%20for%20U.S.%20Notaries.) (last accessed August 26, 2020).

³ National Notary Association, “Notary Requirements: Who can be a Notary Public” available online at <https://www.nationalnotary.org/knowledge-center/about-notaries/how-to-become-a-notary-public> (last accessed August 26, 2020).

⁴ National Notary Association, “Notary Training” available online at <https://www.nationalnotary.org/knowledge-center/about-notaries/how-to-become-a-notary-public> (last accessed August 26, 2020).

⁵ *Id.*

⁶ National Notary Association, “Taking the Notary Exam” available online at <https://www.nationalnotary.org/knowledge-center/about-notaries/how-to-become-a-notary-public> (last accessed August 26, 2020).

⁷ National Notary Association available at <https://www.nationalnotary.org/notary-bulletin/blog/2015/10/which-states-have-toughest-notary-exams#:~:text=New%20York%20has%20one%20of,material%20covered%20in%20the%20exam.> (last accessed August 26, 2020).

⁸ *Id.*

⁹ New York Division of Licensing Services, Notary Public Application, Application Instructions at par. 3 available online at <https://www.dos.ny.gov/forms/licensing/0033-f-l-a.pdf> (last accessed August 26, 2020).

¹⁰ Columbus Bar Association, Become an Ohio Attorney Notary, available online at http://www.cbahaw.org/CBA_PROD/Main/Resources/Public/Notary/Attorney_Notary.aspx#:~:text=Attorneys%20are%20not%20required%20to,the%20time%20of%20class%20registration. (last accessed August 26, 2020).

¹¹ See generally Victor D. López *Unauthorized Practice of Law in the U.S.: A Survey and Brief Analysis of the Law*, North East Journal of Legal Studies, Vol. 26, 60 (Fall 2011) available online at https://victordlopez.com/uploads/3/4/8/2/34829592/unauthorized_practice_of_law_-_final_published_version_-_v_lopez.doc (last accessed September 2, 2020).

¹² See, e.g., Jeffrey DeCristofaro, *A Closer Look at Notario Fraud: Perspectives from an Immigration Attorney*, 308-OCT N.J. Law. 44 (2017); Bianca Carvajal, COMBATING CALIFORNIA’S NOTARIO FRAUD, 35 Chicana/o-Latina/o L. Rev. 1 (2017); Lorelei Laird, LEGAL PREY, 104-MAY A.B.A. J. 52 (May 2018); Joseph M. Gietl, LIKE LAMBS TO THE SLAUGHTER: HOW UNREGULATED IMMIGRATION PRACTITIONERS HARM IMMIGRANTS, 19 Pub. Int. L. Rep. 66 (Fall 2013).

¹³ *Id.*

¹⁴ See Sections III-VII *infra*.

¹⁵ Ala. Code 1975 § 36-20-73 (1)-(3).

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- ¹⁶ AS § 44.50.060 (1).
¹⁷ AS § 44.50.060 (2).
¹⁸ AS § 44.50.061 (a).
¹⁹ AS § 44.50.061 (c).
²⁰ A.R.S. § 41-313 (1).
²¹ A.R.S. § 41-313 (2).
²² A.R.S. § 41-313 (3).
²³ A.R.S. § 41-313 (4).
²⁴ A.C.A. § 21-14-104 (1).
²⁵ A.C.A. § 21-14-104 (2).
²⁶ A.C.A. § 21-14-104 (3).
²⁷ A.C.A. § 21-14-104 (4).
²⁸ CA GOVT § 8205 (a)-(b).
²⁹ C.R.S.A. § 24-21-502 (6).
³⁰ See C.R.S.A. § 24-21-525 (1)-(7).
³¹ C.G.S.A. § 3-94a (4).
³² C.G.S.A. § 3-95a (a).
³³ C.G.S.A. § 3-95a (b).
³⁴ 29 Del.C. § 4322 (a).
³⁵ 29 Del.C. § 4322 (b).
³⁶ 29 Del.C. § 4322 (c).
³⁷ 29 Del.C. § 4322 (d).
³⁸ 29 Del.C. § 4322 (e).
³⁹ DC ST § 1-1231.01 (7).
⁴⁰ West's F.S.A. § 117.03.
⁴¹ West's F.S.A. § 117.04.
⁴² West's F.S.A. § 117.045.
⁴³ 2018 Florida Statutes, Chapter 118.
⁴⁴ *Id.* at Ch. 118.10 (1) (b).
⁴⁵ See Florida Department of State, Division of Corporations, Civil Law Notary, available online at <https://dos.myflorida.com/sunbiz/other-services/notaries/civil-law-notary/> (last accessed August 11, 2020).
⁴⁶ *Id.*
⁴⁷ Ga. Code Ann., § 45-17-8 (a) (1)-(7).
⁴⁸ Ga. Code Ann., § 45-17-8.2 (a).
⁴⁹ Haw. Admin. Rules (HAR) § 5-11-4.
⁵⁰ I.C. § 51-102 (5).
⁵¹ 5 ILCS 312/6-101 (a).
⁵² IC 33-42-0.5-18 (1)-(7).
⁵³ I.C.A. § 9B.2 (5).
⁵⁴ K.S.A. 53-502 (a).
⁵⁵ KRS § 423.310 (1) (a)-(h).
⁵⁶ LSA-R.S. 35:2 (A)-(C).
⁵⁷ LSA-R.S. 37:213 (C).

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- ⁵⁸ See Notary Public Handbook and Resource Guide, State of Maine, Department of the Secretary of State at 3, available online at <https://www.maine.gov/sos/cec/notary/notaryguide.pdf> (last accessed July 27, 2020).
- ⁵⁹ 4 M.R.S.A. § 960 (2) (A)-(B).
- ⁶⁰ 4 M.R.S.A. § 960 (3).
- ⁶¹ 4 M.R.S.A. § 960 (4).
- ⁶² 4 M.R.S.A. § 960 (5) (A)-(C).
- ⁶³ MD Code, State Government, § 18-201 (j) (2) (i)-(vi).
- ⁶⁴ M.G.L.A. 222 § 1A
- ⁶⁵ M.C.L.A. 55.265 (d) (i).
- ⁶⁶ M.S.A. § 358.52 Subd. 6.
- ⁶⁷ Miss. Code Ann. § 25-33-11.
- ⁶⁸ V.A.M.S. 486.250.
- ⁶⁹ MCA 1-5-602 (13).
- ⁷⁰ Neb. Rev. St. § 64-107
- ⁷¹ Neb. Rev. St. § 64-105.03
- ⁷² Neb. Rev. St. § 7-101.
- ⁷³ N.R.S. 240.004.
- ⁷⁴ N.H. Rev. Stat. § 456-B:1.
- ⁷⁵ New Jersey Notary Public Manual (Revised April 20, 2020) at pp. 4-6. Available online at <https://www.state.nj.us/treasury/revenue/pdf/NotaryPublicManual.pdf> (Last accessed July 30, 2020).
- ⁷⁶ *Id.* at 7.
- ⁷⁷ N. M. S. A. 1978, § 14-12A-7.
- ⁷⁸ N. M. S. A. 1978, § 14-12A-15 A-D.
- ⁷⁹ N. M. S. A. 1978, § 14-12A-15 E.
- ⁸⁰ McKinney's Executive Law § 135.
- ⁸¹ N.C.G.S.A. § 10B-20.
- ⁸² NDCC, 44-06.1-01 5.
- ⁸³ NDCC, 44-06.1-01 4.
- ⁸⁴ *Id.*
- ⁸⁵ R.C. § 147.51.
- ⁸⁶ 49 Okl. St. Ann. § 112.
- ⁸⁷ O.R.S. § 194.215 (8).
- ⁸⁸ 57 Pa. C.S.A. § 302.
- ⁸⁹ R.I. Gen. Laws 1956, § 42-30.1-2 (7).
- ⁹⁰ S.C. ST § 26-3-20.
- ⁹¹ SDCL § 18-1-1.1 (3).
- ⁹² T. C. A. § 8-16-112 9a).
- ⁹³ V.T.C.A., Government Code § 406.016 (a).
- ⁹⁴ U.C.A. 1953 § 46-1-6 (1).
- ⁹⁵ 26 V.S.A. § 5304 (7).
- ⁹⁶ VA Code Ann. § 47.1-12.
- ⁹⁷ West's RCWA 42.45.010 (8).
- ⁹⁸ W. Va. Code, § 39-4-2 (5).
- ⁹⁹ W.S.A. 137.01 (5).

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- ¹⁰⁰ W.S.A. 137.01 1(i)1, 4.
¹⁰¹ W.S.A. 137.01 1(k).
¹⁰² W.S.1977 § 34-26-101 (iii).
¹⁰³ 5 G.C.A. § 33301.
¹⁰⁴ See *infra* Sections III-VII
¹⁰⁵ 4 L.P.R.A. § 2011 (2004).
¹⁰⁶ 4 L.P.R.A. § 2022 (2004).
¹⁰⁷ 4 L.P.R.A. § 2031 (2004).
¹⁰⁸ 4 L.P.R.A. § 2123 (2004).
¹⁰⁹ See generally 4 L.P.R.A. § 2001 (2004).
¹¹⁰ 4 L.P.R.A. § 2131 (2004).
¹¹¹ *Id.*
¹¹² *Id.*
¹¹³ 3 V.I.C. § 777.
¹¹⁴ NMI Office of the Attorney General, Notaries Public Rules and Regulations § 5-30-201 Available online at <http://www.cnmilaw.org/pdf/admincode/T05/T05-30.pdf> (Last accessed August 1, 2020).
¹¹⁵ LEY DEL NOTARIADO PARA EL ESTADO DE HIDALGO, *Alcance al Periódico Oficial*, (January 25, 2010) available online at http://www.pjihidalgo.gob.mx/transparencia/leyes_reglamentos/leyes/85_ley_notaria_do.pdf (last accessed August 11, 2020).
¹¹⁶ LEY DEL NOTARIADO PARA EL ESTADO DE HIDALGO, TÍTULO I DE LA FUNCIÓN DEL NOTARIADO, ARTÍCULO 24, available at http://www.pjihidalgo.gob.mx/transparencia/leyes_reglamentos/leyes/85_ley_notaria_do.pdf (last accessed August 11, 2020).
¹¹⁷ See Section II *supra*.
¹¹⁸ Order of the President of the People's republic of China No, 39, Notarization Law of the People's Republic of China, Chapter III, Article 18 (August 28, 2005) available online at http://english.www.gov.cn/archive/laws_regulations/2014/08/23/content_281474983042417.htm (last accessed August 9, 2020).
¹¹⁹ *Id.* at Chapter II, Article 11.
¹²⁰ NOTARIES ACT, 1952 (53 OF 1952), THE NOTARIES RULES, 1956 (SRO.324, dt.14.2.1956) §4, available **online at** <https://web.archive.org/web/20160627192902/http://lawmin.nic.in/la/subord/notaryrules.htm> (last accessed August 9, 2020).
¹²¹ *Id.*
¹²² NOTARIES ACT, 1952 § 8, available online at https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_46_00007_195253_1517807328336&orderno=8 (last accessed August 9, 2020).
¹²³ Notary Act, (Act No. 53 of April 14, 1908), Article 1, available online at file:///Users/actvdl/Downloads/m41Aa000530206en8.0_h23A74.pdf (last accessed August 9, 2020).
¹²⁴ *Id.* at Article 12.
¹²⁵ *Id.* at Article 13.

¹²⁶ Republica de El Salvador, Ley de Notariado, Decreto N° 218, Art. 4 (available online at <http://www.ramajudicial.pr/EvaluacionFuncionNotarial/pdf/Republica-de-El-Salvador-LEY-DE-NOTARIADO.pdf> (last visited August 11, 2020).

¹²⁷ Código Notarial, Capítulo I, Artículo 3 available online at http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param2=NRTC&nValor1=1&nValor2=42683&strTipM=TC (last accessed August 12, 2020).

¹²⁸ Poder Judicial de Honduras, Poder Legislativo, Decreto 353-2005, El Congreso Nacional, ARTÍCULO 7 available online at <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Codigo%20del%20Notariado.pdf> (last accessed August 11, 2020).

¹²⁹ See Panama Titulo XVI Notario, Artículo 2120 available online at <http://www.ramajudicial.pr/EvaluacionFuncionNotarial/pdf/Panama-Notariado.pdf> (last accessed August 11, 2020).

¹³⁰ Ley 404 Reguladora de la Función Notarial: texto ordenado y decreto reglamentario. - 1a ed. - Buenos Aires: Colegio de Escribanos de la Capital Federal, 2012. Available at <https://www.colegio-escribanos.org.ar/normas/2012-05-21-Ley-404.pdf> (last accessed August 12, 2020).

¹³¹ J. Figueiredo Ferreira/L. C. Weizenmann, The Notarial Profession in Brazil, Notarius International 1-2/2006 at 1.1.1, 1.1.3. available online at http://212.63.69.85/Database/2006/notarius_2006_01_068_en.pdf (last accessed August 14, 2020).

¹³² Marco regulatorio de Notarios y Auxiliares de la Administración de Justicia en Chile, Biblioteca del Congreso nacional de Chile 80.674 at 1. Available online at <https://www.camara.cl/verDoc.aspx?prmTIPO=DOCUMENTOCOMUNICACION CUENTA&prmID=59064#:~:text=Para%20ser%20notario%20se%20exige.informe%20de%20la%20Corte%20Suprema>. (last accessed August 12, 2020).

¹³³ Ecuador, Ley Notarial, TÍTULO I, Art. 3, available online at <http://www.ramajudicial.pr/evaluacionfuncionnotarial/pdf/ecuador-ley-notarial.pdf> (last accessed August 13, 2020).

¹³⁴ LEY DEL NOTARIADO TÍTULO I, CAPÍTULO II, Artículo 10. Available online at http://www.oas.org/juridico/spanish/mesicic3_per_levnotariado.pdf (last accessed August 12, 2020).

¹³⁵ DECRETO CON RANGO< VALOR Y FUERZA DE LEY DE REGISTROS Y DEL NOTARIADO, TÍTULO IV, Capítulo I, Artículo 69, Par. 2 [as translated by the author from the Spanish original] available online at http://historico.tsj.gob.ve/gaceta_ext/noviembre/19112014/E-19112014-4232.pdf (last accessed August 14, 2020).

¹³⁶ See notaries.be, General info available online at <https://www.notaris.be/notaris/wetgevingheth-notariaat-in-belgie/hoe-wordt-men-notaris/benoeming-van-de-kandidaat-notarissen> (last accessed August 12, 2020).

¹³⁷ *Id.*

¹³⁸ Federal Code for Notaries in the consolidated version published in the Federal Law Gazette III, Index No. 303-1, as last amended by Article 4 of the Act of 30 October 2017 (Federal Law Gazette I, p. 3618), Section 6, translation from German

to English by Ute Reusch, available online at https://www.gesetze-im-internet.de/englisch_bnoto/englisch_bnoto.html (last accessed August 12, 2020).

¹³⁹ See Civil Law Notary Office, Civil Law Notary in Greece available at <http://www.vdeli.eu/civil-law-notary-in-greece/#:~:text=As%20notaries%20are%20appointed%20those,which%20is%20recognized%20as%20of> (last accessed August 12, 2020).

¹⁴⁰ *Id.*

¹⁴¹ See Notaires de France, Academic training, available online at <https://www.notaires.fr/en/trainings-jobs-notaires/n%C2%ADotaire> (last accessed August 12, 2020).

¹⁴² See Consiglio Nazionale del Notariato, Becoming a Notary, available online at <https://www.notariato.it/en/becoming-notary> (last accessed August 12, 2020).

¹⁴³ Ekaterina Mishina, Russia: Twenty Years of Private Notaries, IMR Institute of Modern Russia (April 22, 2013) available online at <https://imrussia.org/en/rule-of-law/440-russia-twenty-years-of-private-notaries#:~:text=According%20to%20the%20law%20on,issued%20according%20to%20a%20procedure> (last accessed August 14, 2020).

¹⁴⁴ Consejo General del Notario, Cómo ser notario, available online [English version] at <https://www.notariado.org/portal/en/c%C3%B3mo-ser-notario> (last accessed August 1, 2020).

¹⁴⁵ *Id.*

¹⁴⁶ See International Union of Notaries, Mission, Aims available online at <https://www.uinl.org/mission> (last accessed August 15, 2020).

¹⁴⁷ See International Union of Notaries, Fundamental principles of the Latin type notarial system,

Notaries and their function, available online at <https://www.uinl.org/principio-fundamentales> (last accessed August 15, 2020).

¹⁴⁸ See International Union of Notaries, Member notariats, available online at <https://www.uinl.org/member-notariats> (last visited August 15, 2020).

¹⁴⁹ *Id.*

¹⁵⁰ See e.g., Section II supra (Colorado, Connecticut, Georgia, Maine, Nebraska, New Mexico, North Dakota, and Wisconsin.)

¹⁵¹ See C.R.S.A. § 24-21-525 (1)-(7).

¹⁵² See Section I supra.

**CORPORATE SUSTAINABILITY REPORTING:
EXAMINING THE RELATIONSHIP
BETWEEN
VALUATION, REGULATION AND MARKET LOGIC**

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ABSTRACT

This paper links three threads in the environmental economics, management and regulatory literatures: 1, environmental externalities and their impact on the demand and supply for environmental amenities; 2, ecosystem services and methods used to quantify their values; and 3, the impact of payments for ecosystem services on corporate balance sheets.

A foundational concept of environmental economics is that when firms decide how much to produce, or consumers how much to consume, they respond to “prices.” Externalities – e.g., pollution – are negative byproducts of production or consumption that are not reflected in the market price. When

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goods such as clean air and clean water are underpriced, they tend to be overused. The competition among generations for non-renewable resources establishes a peculiar externality since the current generation is the only one present when the relevant decisions are taken.

We argue that the preservation of environmental functions, services and infrastructure is the solution to intergenerational environmental externality. The valuation of environmental externalities is constrained by the temporal and spatial range within which individuals act. Corporations, however, are legal fictions whose scope of action can be global, and not bounded by the temporal constraints of individuals. When corporations determine how ecosystem services can be accurately accounted for on their balance sheets, the temporal and spatial range of their activities must be taken into account.

I. INTRODUCTION

When firms decide how much to produce, or consumers how much to consume, they respond to “prices.” Externalities – e.g., pollution – are negative byproducts of production or consumption that are not reflected in the market price; they are also termed “third-party effects.” Goods, such as clean air and clean water, that are underpriced tend to be overused (International Monetary Fund).

If air and water are “free goods”, then firms will overuse them, moreover, they will continue to pollute up to the point that the marginal product of pollution approaches zero. If we

“price” environmental goods properly (e.g., through pollution taxes or permits) then we can create incentives for optimal use. The first step in internalizing environmental externalities is to determine their value in monetary terms (Adams, et al. 2000).

The monetary cost of externalities should be absorbed by the party responsible for the environmental damages; this is often referred to as the “polluter pays principle” (London School of Economics and Political Science). Direct valuations are based on prices observed in real markets. Several methods analyze, modify, project, transfer and extrapolate market prices in order to give externalities a monetary value. Travel cost, hedonic prices, and so on, all work within this context. Indirect valuations of environmental externalities are based on stated preferences expressed in hypothetical markets. Contingent valuation and choice modeling studies ask the individual to value environmental impacts and environmental externalities (Adams, et al. 2000).

II. ENVIRONMENTAL IMPACTS ACROSS TIME AND SPACE

Valuation of individual ecosystems are limited in both time and space and some environmental impacts (climate change, storage of nuclear waste) are extremely long-lived. Valuation of individual systems tend to be limited by the human lifetime. In some cases, a premium inspired by concern for direct descendants. Individual valuations are similarly confined by the spatial range within which the individual acts and perceives. Altruistic considerations can

exist only at a limited level which cannot seriously alter aggregate estimates (Abdallah 2017).

The preservation of environmental functions, services and infrastructure is the solution to intergenerational environmental externality. This should be designed in environmental terms which cannot be expressed through economic valuations. By setting targets in biological–ecological terms, the environmental rights of future generations are preserved and externalities detrimental to sustainability are avoided (Beck and Martinot 2004).

Economists' preference for market-based instruments should be reassessed in the light of the demand for sustainability and the preservation of environmental rights of future generations. Intergenerational externalities can be remedied by (Nieuwlaar 2004):

- investing in manufactured capital (to replace non-renewable resources);
- bequeathing resource-saving technology to future generations;
- choosing an appropriate social discount rate for future utilities.

The competition among generations for non-renewable resources establishes a peculiar externality since the current generation is the only one present when the relevant decisions are taken. Although this externality cannot be eliminated, it probably can be moderated through the recognition of some property rights for the generation to come (Islam and Ryan 2016).

III. SUPPORTING SERVICES

According to the National Wildlife Federation, the Millennium Ecosystem Assessment (MA), a major UN-sponsored effort to analyze the impact of human actions on ecosystems and human well-being, identified the following categories of ecosystem services:

Provisioning Services include food, fresh water, wood, fiber and fuel.

Ecosystems Functions that are the foundation for other functions:

- ▶ **Primary production:** the synthesis of organic compounds from atmospheric or aqueous carbon dioxide. It principally occurs through the process of photosynthesis, which uses light as its source of energy, but it also occurs through chemosynthesis, which uses the oxidation or reduction of inorganic chemical compounds as its source of energy.
- ▶ **Nutrient Cycling:** the movement and exchange of organic and inorganic matter back into the production of matter. Energy flow is a unidirectional and noncyclic pathway, whereas the movement of mineral nutrients is cyclic. Mineral cycles include the carbon cycle, sulfur cycle, nitrogen cycle, water cycle, phosphorus cycle, oxygen cycle, among others that continually recycle along with other mineral nutrients into productive ecological nutrition.
- ▶ **Soil Formation:** organic matter, minerals, gases, liquids, and organisms together supporting life. a combination of effects including weathering,

structural development of the soil, differentiation of that structure into horizons or layers, and lastly of its movement or translocation. All of these functions, in their turn, modify the soil and its properties (Food and Agriculture Organizations of the United Nations 2024).

Regulating Services:

➤ Air Quality Regulation

- Ability of the atmosphere to cleanse itself of pollutants has declined since pre-industrial times but not by more than 10%

➤ Regional and Local Climate Regulation

- Changes in land cover have affected regional and local climates both positively and negatively, but there is a preponderance of negative impacts; for example, tropical deforestation and desertification have tended to reduce local rainfall

➤ Water Purification and Waste Treatment

- Globally, water quality is declining, although in most industrial countries' pathogen and organic pollution of surface waters has decreased over the last 20 years
- Nitrate concentration has grown rapidly in the last 30 years

➤ **Pest Regulation**

- In many agricultural areas, pest control provided by natural enemies has been replaced by the use of pesticides – such pesticide use has itself degraded the capacity of agroecosystems to provide pest control

➤ **Pollination**

- There is established but incomplete evidence of a global decline in the abundance of pollinators

➤ **Natural Hazard Regulation**

- The capacity of ecosystems to buffer from extreme events has been reduced through loss of wetlands, forests and mangroves. People increasingly are occupying regions exposed to extreme events.

➤ **Cultural Services** (Food and Agricultural Organization of the United Nations)

- Aesthetic – animals, plants and ecosystems, which inspire our arts, culture, design and science.
- Spiritual – natural heritage, spiritual sense of belonging, traditional knowledge and associated customs.
- Recreational – natural-based recreation opportunities, which play a significant role in maintaining mental and physical health.

(Food and Agricultural Organization of the United Nations).

IV. SUSTAINABILITY – WHAT ARE WE MEASURING?

Sustainability must be Integrated into Strategic Planning & Management (Chladek 2019) and built into:

- ▶ Economic/financial planning
- ▶ Environmental planning
- ▶ Social performance (labor rights)
 - ▶ Compensation and benefits
 - ▶ Diversity
- ▶ Human rights
- ▶ Products & services
- ▶ Product responsibility
- ▶ Society (overall impact)

The *UN Global Compact-Accenture CEO Study on Sustainability 2013* shows that CEOs recognize the sustainability challenge, but grapple with measuring and valuing their activities

Sustainability is perceived to be very important to the future success of their business:

- 93% believe that sustainability will be important to the future success of their business.

- 80% view sustainability as a route to competitive advantage to their industry.

However, CEOs find sustainability difficult to implement and quantify:

- 38% believe they can accurately quantify the value of their sustainability efforts.
- 37% see the lack of a link to business value as a barrier to accelerating progress.

The Sustainable Accounting Standards Board (SASB) has developed a complete set of 77 industry standards. In November 2018, SASB published these standards, providing a complete set of globally applicable industry-specific standards which identify the minimal set of financially material sustainability topics and their associated metrics for the typical company in an industry. SASB staff and Standards Board followed a Conceptual Framework and Rules of Procedure to develop these standards, which are designed to be cost-effective for companies to implement and decision-useful to both companies and investors. These standards are explained graphically through the Materiality Map, are available for individual sector download and may be viewed through the complete Standards Navigator database.

V. MARKET LOGIC AND CORPORATE SUSTAINABILITY

Corporate sustainability is defined as the contribution of business firms to sustainable development (Bansal 2005; Dyllick and Hockerts 2002). Conventional business firms predominantly follow a market logic that

focuses on generating profit. In contrast, sustainable business models follow a comprehensive sustainability logic that integrates economic, ecological and social considerations with regard to present and future generations. How business firms deal with sustainable development challenges depends on the information that is available for decision-making and how actual decisions are taken. Accounting constructs the reality that management refers to (Hines 1988) as well as how stakeholders perceive and organization (O'Dwyer 2005).

The dominance of market logic turns ecological and social performance into a means for the attainment of the objective of financial performance (Schneider 2015). Corporate sustainability is regarded by some as just another opportunity to advance economic objectives (Laine 2010). In order for business firms to embrace sustainability logic, there must be incentives based on market logic.

Sustainability reporting has markedly increased in the last several years. According to the KPMG Survey of Sustainability Reporting (2022), about 96% of global firms engage in sustainability reporting and that it is a worldwide standard practice to use Global Reporting Initiatives reporting standards (KPMG 2022). However, not all nations engage in the same level of sustainability reporting, for various reasons (Li, et al. 2018).

1. Comparing Turkey with Greece and Russia

The concept of sustainability reporting and corporate social responsibility emerged in Turkey in the late 1990s and early 2000s with the increasing integration of Turkish companies with the international economy (Akdogan et al. 2020) Turkish companies started to initiate environmental

protection, promotion of social welfare and justice to gain competitive advantages in the global arena. Yet, compared to two of its neighbors, Turkey lags in the number of companies preparing sustainability reports – Russia 35%, Greece 27%, Turkey 11%.

Why do Russian and Greek companies engage in more sustainability reporting than Turkish companies do? The Russian economy is dominated by the energy sector so Corporate Social Responsibility (CSR) focus on energy saving and environmental protection. Greek companies invest in environmental projects largely because of European Union regulations. Turkish companies invest in educational facilities and supporting women and disabled people in society. In other words, the Turkey's market logic is not dependent upon sustainability reporting; therefore, Turkey focuses on the educational and social services issues that affect its economy.

2. The Nordic Model

Nordic companies appear to be the pioneers in sustainability reporting. Hydro, a Norwegian company, was the first company in the world to produce an environmental report of its performance in 1989 (Laine et al. 2021). Denmark first introduced sustainability reporting policies in 1993 (Lueg and Pusheva 2021). Iceland began requiring polluting firms to report environmental issues in 2002 (Carrots and Sticks 2013).

This begs the question: Why are Nordic companies among the first in the world to engage in sustainability reporting? Generally, the Nordic model is well-known for its emphasis on social welfare and improving the lives of the citizenry (Gjølberg 2013; Strand et al. 2015); therefore,

sustainability reporting is seen as being consistent with the ideals of improving society. The Nordic market logic strongly encourages Nordic companies to improve and report their environmental performances, which results in greater corporate legitimacy (Anas et al. 2015; Bravi et al. 2020; Comoglio and Botta 2012; Nishitani et al. 2021).

3. The South Asian Experience

When it comes to sustainability reporting, South Asia has a comparatively weaker presence on a global scale. The relatively weaker South Asian presence in sustainability reporting is due to (Masud et al. 2018; Majeed et al. 2015; Farooque et al. 2007; Mukherjee-Reed 2002; Malik and Kanwal 2016; Lone et al. 2016; Shamil et al. 2014; Ganapathy and Kabra 2017):

- Companies being mostly controlled by family members
- A lack of effective regulation and enforcement
- High corruption and an absence of transparency
- A dependency on international loans and grants
- Little pressure from local and/or global environmental activists

In general, the South Asian market logic doesn't emphasize environmental performance and sustainability reporting.

VI. CONCLUSION

The monetary cost of externalities should be absorbed by the party responsible for the environmental damages. Several methods analyze, modify, project, transfer and

extrapolate market prices in order to give externalities a monetary value. Travel cost, hedonic prices, and so on, all work within this context. Indirect valuations of environmental externalities are based on stated preferences expressed in hypothetical markets. Contingent valuation and choice modeling studies ask the individual to value environmental impacts and environmental externalities.

The preservation of environmental functions, services and infrastructure is the solution to intergenerational environmental externality. This should be designed in environmental terms which cannot be expressed through economic valuations. By setting targets in biological–ecological terms, the environmental rights of future generations are preserved and externalities detrimental to sustainability are avoided.

Conventional business firms predominantly follow a market logic that focuses on generating profit. In contrast, sustainable business models follow a comprehensive sustainability logic that integrates economic, ecological and social considerations with regard to present and future generations. How business firms deal with sustainable development challenges depends on the information that is available for decision-making and how actual decisions are taken. Accounting constructs the reality that management refers to as well as how stakeholders perceive the organization.

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FALLING IN LOVE WITH THE LAW: A THEMED CLASS ACTIVITY TEACHING NOTE

Michael Conklin*

“The law is a jealous mistress and requires long and constant courtship.”

-Justice Joseph Story

INTRODUCTION

This Teaching Note provides numerous potential topics for an engaging and informative Valentines-themed Legal Environment of Business class activity. Each topic is in some way related to Valentine’s Day and can be used to illustrate a variety of legal and ethical principles. Instructors are encouraged to really lean into the theme. For example, you could wear pink, give out Valentine’s cards, play a sappy love song, lower the lighting and light candles, etc. A themed class serves as a welcome break from the traditional lecture for both instructor and students. There are enough potential topics listed in this Teaching Note to cover an entire class, or just a 15-minute, interactive, themed quiz

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using Kahoot!, Quizlet, or Poll Everywhere.¹ Note that this activity does not have to be limited to legal topics covered up to this point in the semester. The lighthearted, relaxed environment in which a variety of topics are casually discussed is an excellent method to get the class excited about—and considering the implications of—topics that will come later in the semester.

From personal experience, I can attest that this class activity is not only the highlight of the semester for myself and the students as far as entertainment value, but is also a powerful catalyst for sparking deeper interest in the law. Weeks after the activity, students will enthusiastically refer back to principles initially discussed in the Valentine's activity. And students frequently mention in their end-of-semester evaluations how much they enjoyed the activity. Teaching pedagogy research confirms these anecdotal finding as to how effective themed class periods that utilize pop culture are at engaging learners.² Note that this Teaching Note is a

¹ See, e.g., Alf Inge Wang & Rabail Tahir, *The Effect of Using Kahoot! for Learning — A Literature Review*, 149 COMPUTERS & EDUCATION 1 (2020).

² Ana M. H. Kehrberg, *Halloween as an Opportunity for Teaching Biological Psychology*, in 15 ESSAYS FROM E-XCELLENCE IN TEACHING: REDUCING UNDERGRADUATE WRITING APPREHENSION WITH THE BASIC PSYCHOLOGICAL NEEDS 23, (William S. Altman, Lyra Stein & Jonathan E. Westal eds., 2016), https://www.researchgate.net/profile/Jacqueline-Espinoza/publication/327190241_E-xcellence_in_writing_Reducing_undergraduate_writing_apprehension_with_the_basic_psychological_needs/links/5b7f18fca6fdcc5f8b6370c5/E-xcellence-in-writing-Reducing-undergraduate-writing-apprehension-with-the-basic-psychological-needs.pdf; Victoria Bryant, *Harry Potter and the Osteopathic Medical School: Creating a Harry Potter-Themed Day as a High-Yield Review for Final Exams*, 31 MED. SCI. EDUCATOR 819 (2021); Jeffrey M. Craig, Renee Dow & Mary Anne Aitken, *Harry Potter and the Recessive Allele*, 436 NATURE 776 (2005); Susan Hatters Friedman & Ryan C. W. Hall, *Teaching Psychopathology in a Galaxy*

resource for instructors and not a handout to students. Therefore, a moderate knowledge base of the law is assumed for the reader of this Teaching Note. Furthermore, this is intentionally not a step-by-step guide; rather, it is a list of topics with brief descriptions that can then be customized by the instructor to match his or her teaching style, along with unique constraints involving time, modality, and class size.

PUTTING A RING ON IT

While an engagement ring may have unique sentimental value, it is at its essence a piece of personal property. Traditionally it is purchased by the man and given to the woman, with only the promise to marry the man in return. When an engagement is broken off, who gets to keep the ring? Courts have traditionally viewed gifts in consideration of marriage, such as a wedding ring, as different from standard gifts.³ Since this topic is covered by state law, there are different standards—three to be exact. Under the fault approach courts make the determination based on which party was at fault for ending the engagement.⁴ Under the no-fault approach in favor of the donor, the ring is returned to the purchaser regardless of fault.⁵ And under the no-fault

Far, Far Away: The Light Side of the Force, 39 ACAD. PSYCHIATRY 719 (2015); Lisa Tessier & Jack Tessier, *Theme-Based Courses Foster Student Learning and Promote Comfort with Learning New Material*, 11 J. FOR LEARNING THROUGH ARTS 1 (2015); Renee Sorrentino et al., *Sex on the Silver Screen: Using Film to Teach About Paraphilias*, 42 ACAD. PSYCHIATRY 237 (2018).

³ Arielle L. Murphy, *Whose Fault is it Anyway: Analyzing the Role “Fault” Plays in the Division of Premarital Property if Marriage Does Not Ensue*, 64 CATH. U. L. REV. 463, 466 (2015).

⁴ *Id.* at 467.

⁵ *Id.*

approach in favor of the donee, the ring is treated as an inter vivos gift, allowing the person who received it to keep it.⁶

The unique nature of a wedding ring may elicit further discussion. What if the wedding ring was a family heirloom? What problems may arise from using the legal system to make highly subjective determinations such as who is at fault for a broken engagement? How may a judge's age, gender, and socioeconomic status lead to potential biases in making such a determination? Finally, on the topic of wedding rings and the law, a recent study found that a third of women remove their wedding ring before a job interview.⁷ It is clearly unlawful discrimination for a potential employer to consider this during a job interview, but does that justify the deceptive tactic? Conversely, would it be unethical for an unmarried man to wear a wedding ring to a job interview on the belief that it would cause him to be viewed as more stable and reliable?

WILL YOU GO TO ~~PROM~~ COURT WITH ME?

Prom is a special night for American teenagers. Consequently, when complications lead to the breaking off of a prom date, questions may arise regarding the availability of legal compensation for the harm incurred. This topic is likely of particular interest to college students given the

⁶ *Id.*

⁷ Sarah Young, *A Third of Women Remove Wedding Ring Before Job Interview, Study Finds*, INDEPENDENT (May 4, 2018 16:51), <https://www.independent.co.uk/life-style/women-wedding-ring-job-interview-remove-discrimination-workplace-marital-status-pregnancy-a8336531.html>.

recency of their prom. Furthermore, the topic allows for discussions surrounding a variety of legal concepts. Unfortunately, there appears to be no binding precedent for the matter, likely because of the low stakes implicated.

First, it must be discussed whether asking someone to prom creates a binding contract. This scenario is certainly not a traditional, bilateral contract where the guy asks the girl, “I promise to take you to prom if you promise to buy a prom dress.” However, a prom date arrangement strongly implies that the girl will acquire a prom dress. While the application of a reasonable person standard to two teenagers in love may be seem counterintuitive, the standard is useful. Contracts required the existence of an offer. To determine if an offer exists, we need to consider what a reasonable teenage girl would assume is entailed in such an offer. Is it a binding commitment where neither side is allowed to back out? Likely not.

The informal nature of asking someone to prom means that it would frequently be performed verbally. And with the cost of a new prom dress frequently exceeding \$500, one may be tempted to posit that the statute of frauds is implicated, thus barring enforcement. However, an agreement to take someone to prom is not a contract for the purchase of goods over \$500. It is also interesting to note that, in many jurisdictions, electronic communications satisfy the statute of frauds.⁸ Therefore, if a particularly timid boy used text messaging as the medium through which to ask his date to

⁸ See, e.g., *John Khoury v. Prentis B. Tomlinson*, 518 S.W.3d 568, 576–77 (Tex. App. 2017) (finding that just having your name in the “From” field of an email constitutes a signature for purposes of satisfying the Texas Statute of Frauds).

the prom, this would likely satisfy the written requirement under the statute of frauds.

Another issue that may arise when discussing the subject, is that some of the boys may be minors at the time they entered into the agreement to take their date to the prom. Generally, minors lack capacity to enter into contracts for non-necessities. While teenagers may perceive going to the prom as one of the most important “necessities” of their lives, it would not meet this legal definition.⁹ This lack of capacity could result in a voidable contract. However, if the boy turned 18 after the agreement but before the prom, he could be said to have affirmed the agreement by acting consistently with the nature of the agreement and therefore lose the ability to void the agreement.

Even if agreements to go to prom do not meet the requirements of a binding contract, courts could still choose to enforce them based on a theory of detrimental reliance. Essentially, the boy made a specific promise, the girl reasonably relied on that promise to purchase a prom dress, this resulted in harm since the dress was purchased but wasn’t worn, and out of a sense of fairness, the promise should be enforced.

The issue becomes even more complex when one considers the duty to mitigate damages. After being notified of the intent to breach a contract, there exists a duty to act in a reasonable manner to mitigate the damages from the

⁹ Cheryl B. Preston & Brandon T. Crowther, *Infancy Doctrine Inquiries*, 52 SANTA CLARA L. REV. 47, 53 (2012) (providing the definite examples of food and shelter and the borderline examples of transportation and communication devices).

breach.¹⁰ But how would this principle play out in a prom date scenario? If the boy dumped the girl two weeks before prom, would the girl be required to ask out other boys to try and get a date for the prom where her dress could still be worn? Finally, the topic of prom provides the potential to discuss numerous other legal topics involving searches,¹¹ LGBTQ rights,¹² and racial segregation.¹³

CORPORATIONS NEED LOVE TOO

The law treats corporations as persons in numerous contexts.¹⁴ Therefore, corporate mergers and acquisitions are somewhat like a marriage between two people. They both involve predictions about the value of the other party and how compatible they will be together in the hopes of a synergistic effect that makes each party better off. Both involve gaining economies of scale. Both involve a

¹⁰ See, e.g., Collen L. Steffen, *The Duty Dilemma: When the Duty to Mitigate Damages and the Duty to Preserve Evidence Collide*, 71 OKLA. L. REV. 923, 941–44 (2019).

¹¹ See, e.g., Jessica Feinberg, *The Clash Between Safety and Freedom of Association in the Regulation of Prom Dates*, 17 KAN. J.L. & PUB. POL'Y 168 (2008).

¹² *ACLU Sues Mississippi School that Canceled Prom Rather than Let Lesbian Couple Attend*, ACLU (mar. 11, 2010), <https://www.aclu.org/press-releases/aclu-sues-mississippi-school-canceled-prom-rather-let-lesbian-couple-attend>.

¹³ See, e.g., Rea J. Harrison, *Black and White Prom Nights: The Unconstitutionality of Racially Segregated High School Proms in the 21st Century*, 10 J. GENDER RACE & JUST. 505 (2007).

¹⁴ Nina Totenberg, *When Did Companies Become People? Excavating the Legal Evolution*, NPR (July 28, 2014, 4:57 AM), <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution>.

contractual agreement that may affect tax rates. Both frequently involve cultural and communication difficulties. Both may involve dubious motivations such as a marriage between plutonic friends to gain spousal benefits or a corporate inversion to avoid taxes.¹⁵ Both often involve miscalculations regarding compatibility which may ultimately lead to ending the relationship. Finally, both have high failure rates—about eighty percent for mergers and slightly over fifty percent for marriages.¹⁶

ATTRACTIVENESS DISCRIMINATION

Naturally, people engage in attractiveness discrimination when choosing their romantic partners. But is it lawful to do so when making hiring and promotion decisions? This topic elicits engaging discussions regarding fairness, what can be proved in court, and the expansive nature of workplace antidiscrimination protections.

¹⁵ In a corporate inversion—also known as a tax inversion—a domestic corporation reincorporates abroad by having a foreign company purchase its current operations. Julia Kagan, *Corporate Inversion: What it is, How it Works, Example*, INVESTOPEDIA (Aug. 7, 2022), <https://www.investopedia.com/terms/c/corporateinversion.asp#:~:text=A%20corporate%20inversion%E2%80%94also%20called,reduce%20the%20income%20tax%20burden..>

¹⁶ Graham Kenny, *Don't Make This Common M&A Mistake*, HARVARD BUS. REV. (Mar. 16, 2020), [https://hbr.org/2020/03/dont-make-this-common-ma-mistake#:~:text=According%20to%20most%20studies%2C%20between,integrating%20the%20two%20parties%20involved.](https://hbr.org/2020/03/dont-make-this-common-ma-mistake#:~:text=According%20to%20most%20studies%2C%20between,integrating%20the%20two%20parties%20involved.;); Christy Bieber, *Revealing Divorce Statistics in 2023*, FORBES (Aug. 8, 2023, 10:47 AM), <https://www.forbes.com/advisor/legal/divorce/divorce-statistics/>.

The effects of attractiveness discrimination are surprisingly pervasive and profound. Studies have found significant attractiveness discrimination in college grading, adjudicating the guilt of a criminal defendant, obtaining a bank loan, being elected as a politician, and attorney salaries.¹⁷ Even attractive quarterbacks in the NFL receive a salary premium over their less-attractive counterparts.¹⁸

While attractiveness discrimination is not currently an explicitly protected class,¹⁹ the practice could potentially be covered by linking it to existing protected classes such as age, race, gender, and disability.²⁰ For example, if a white male employer only hires people he is attracted to, and he is only be attracted to young, white women, this form of attractiveness discrimination would function as discrimination against the protected classes of age, race, and gender.

¹⁷ Michael Conklin, *Unlocking the Beauty from Within Title VII: Arguing for An Expansive Interpretation of Title VII to Protect Against Attractiveness Discrimination*, 31 AM. U. J. GENDER, SOC. POL'Y & L. 25, 29–30 (2023).

¹⁸ David J. Berri et al., *What Does It Mean to Find the Face of the Franchise? Physical Attractiveness and the Evaluation of Athletic Performance*, 111 Econ. Letters 200, 200–02 (2011).

¹⁹ James Desir, *Note, Lookism: Pushing the Frontier of Equality by Looking Beyond the Law*, 2010 U. ILL. L. REV. 629, 648 (2010).

²⁰ William R. Corbett, *The Ugly Truth About Appearance Discrimination and the Beauty of our Employment Discrimination Law*, 14 DUKE J. GENDER L. & POL'Y 153, 157 (2007).

GUARDIANS OF THE SOCIAL CONTRACT

In 2017, a man sued his date for her \$17.31 ticket to see *Guardians of the Galaxy Vol. 2* because she texted during the movie.²¹ The pleadings describe how cell phone use during a movie is a “direct violation” of theater policy and “adversely” affected the plaintiff’s viewing experience.²² The man even went so far as to claim that texting during a movie is a “threat to civilized society.”²³

Although the case quickly settled,²⁴ it is interesting to consider the legal implications. The two parties did not stipulate in advance that texting during the movie was prohibited, but is that something that is implied when two people agree to go on a movie date? The lawsuit was only for the woman’s \$17.31 ticket, not the man’s. Would he have had a stronger case suing for the loss of his enjoyment of the movie? It is also interesting to note that, after being asked to stop texting, the woman left the theater during the first half of the movie, leaving the man stranded since they took her car.²⁵ Is someone contractually obligated to give their date a

²¹ Matthew Diebel, *Texas Man Sues His Date—For Texting During ‘Guardians of the Galaxy, Vol. 2,’* USA TODAY (May 17, 2017, 1:22 PM), <https://www.usatoday.com/story/news/nation/2017/05/17/texas-man-sues-his-date-texting-during-guardians-galaxy-vol-2/101786452/>.

²² *Id.*

²³ *Id.*

²⁴ Claire Osborn, *Man Plans to Drop His Lawsuit Against Woman Who Texted During Movie*, AUSTIN AMERICAN-STATESMAN (Sept. 22, 2018, 12:59 AM), <https://www.statesman.com/story/news/local/2017/05/18/man-plans-to-drop-his-lawsuit-against-woman-who-texted-during-movie/10422101007/>.

²⁵ Diebel, *supra* note 21.

ride home? What if the date was in a dangerous neighborhood?

ALL'S FAIR IN LOVE AND THE ONLINE DATING BUSINESS

In 2019 the Federal Trade Commission (FTC) sued Match Group, the owners of online dating services Match.com, Tinder, OKCupid, and PlentyOfFish.²⁶ The FTC alleged that the dating sites used fake love interest advertisements to trick consumers into purchasing a Match.com subscription.²⁷ The FTC further alleged that Match.com offered false “guarantees” and made it too difficult for users to cancel their subscriptions.²⁸ Setting aside the issue of whether there could ever be a “guaranty” in love, a Texas federal district court granted Match Group’s motion to dismiss.²⁹ The court held that Section 13(b) of the FTC Act requires the pleading of facts that a defendant “is violating” or “is about to violate” the law, and at the time of the lawsuit, Match.com was no longer engaging in these practices.³⁰

²⁶ <https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3013-match-group-inc>

²⁷ *Id.*

²⁸ *Id.*

²⁹ <https://www.jdsupra.com/legalnews/ftc-v-match-group-inc-court-gets-cold-1863742/>

³⁰ *Id.* Explaining that Congress’s clear choice of the terms “is violating” and “is about to violate” rather than “has violated.”

LEGAL REPRESENTATION AND MUCH MORE!

The majority of state bars prohibit lawyers from engaging in sexual relations with clients.³¹ The ABA Model Rule 1.8(j) provides only one exception which pertains to instances where the sexual relationship predates the attorney-client relationship.³² The general rationale for the ban is that sex is often about power and in an attorney-client relationship, there is a power imbalance; clients seeking an attorney are often in a state of heightened vulnerability.³³ Advocates for the rule also point out that sex may cloud the judgment of the attorney.³⁴

LOVE SONG LAWSUITS!

There is no shortage of popular love songs that have been the topic of litigation. These provide a springboard to discuss various legal topics. Furthermore, they provide an opportunity to play parts of the songs to enhance the experience of the themed class.

³¹ *Texas Lawyers Divided Over 'Sex with Clients' Rule*, DALLAS MORNING NEWS (Oct. 4, 2010, 1:33 AM), <https://www.dallasnews.com/news/texas/2010/10/04/texas-lawyers-divided-over-sex-with-clients-rule/#:~:text=Unlike%20the%20large%20majority%20of,social%20workers%20to%20massage%20therapists.>

³² ABA Model Rule 1.8(j)

³³ *Attorney-Client Sex: A Bad Idea That's Also Unethical*, MCCABE ALI LLP, <https://ipethicslaw.com/attorney-client-sex-a-bad-idea-thats-also-unethical/> (last visited Sept. 1, 2023).

³⁴ *Id.*

At a concert in November of 2014, Ed Sheeran seamlessly transitioned from his song “Thinking Out Loud” to Marvin Gaye’s “Let’s Get it On” and then back to “Thinking Out Loud” without changing the cords or the harmonic rhythm.³⁵ This was perhaps a bad idea as a few years later the Marvin Gaye Estate sued Sheeran for copyright infringement.³⁶ At trial, Sheeran tried to explain, “You can kind of play most pop songs over most pop songs.”³⁷ An N.Y.U. professor of music was an expert forensic musicologist for the defense who pointed out that Marving Gaye’s chord progression was so common that it is found in elementary music-method books published in the 1960s.³⁸ This would be highly relevant in a copyright infringement case because that is before “Let’s Get it On” came out in 1973. While Sheeran ultimately won the case—he was not so lucky in other copyright infringement suits³⁹—it is interesting to note that the judge presiding over the case regarding pop music was ninety-five years old.⁴⁰ This demonstrates the intangible aspects of litigation; namely, how variables such as venue and judge assignments can have a significant effect on trial outcome. There is even evidence to suggest that legal

³⁵ John Seabrook, *The Case for and Against Ed Sheeran*, NEW YORKER (June 5, 2023), <https://www.newyorker.com/magazine/2023/06/05/ed-sheeran-copyright-infringement-lawsuit-marvin-gaye>.

³⁶ *Id.*

³⁷ *Id.* For a humorous demonstration on how nearly any pop song can fit within the same four chords, see... Axis of Awesome – 4 Chord Song (with song titles), YouTube <https://www.youtube.com/watch?v=5pidokakU4I>.

³⁸ Seabrook, *supra* note 35.

³⁹ *Id.*

⁴⁰ *Id.*

outcomes are affected by whether the judge is hungry, the weather, and the result of the local sports team.⁴¹

George Harrison faced a lawsuit alleging that his love song to the creator, *My Sweet Lord*, infringed on the copyright held by The Chiffon's song, *He's So Fine*.⁴² The jurors in the case were treated to a semi-private concert from former Beatle George Harrison, trying to demonstrate the nuanced aspects of how his song was distinguishable from the Chiffon's.⁴³ Nevertheless, the jury returned a verdict of "subconscious plagiarism" and awarded the plaintiffs \$1.6 million.⁴⁴ This case demonstrates the significance of mental states under the law.

LADIES' NIGHT LEGALITY

At first glance, ladies' nights promotions at bars and night clubs appear to be a win-win. The ladies get discounts and, consequently, the men get more ladies to talk to. Unfortunately, it could be argued that the practice violates the Equal Protection Clause of the Fourteenth Amendment

⁴¹ Michael Conklin, *The Alford Plea Turns Fifty: Why It Deserves Another Fifty Years*, 54 CREIGHTON L. REV. 1, 4 (2020) ("Variables such as the makeup of the jury, officer errors in gathering evidence, jurisdiction where the [incident] occurred, and quality of legal representation all affect legal outcomes. Even factors as trivial as how hungry the judge is, the recent performance of a local sports team, and the weather affect trial outcomes.").

⁴² Bill DeMain, *George Harrison's My Sweet Lord: The Love Song to a Higher Power that Spurred a \$1.6m Lawsuit*, LOUDER (June 8, 2023), <https://www.loudersound.com/features/george-harrison-my-sweet-lord>.

⁴³ *Id.*

⁴⁴ *Id.*

and various state anti-discrimination statutes.⁴⁵ Regardless, attempts to pursue such litigation are rarely successful.⁴⁶ The federal public accommodations law, Title II of the Civil Rights Act of 1964, does not include sex as a protected class.⁴⁷ Therefore, these cases are generally decided based on state law.⁴⁸

It is interesting to discuss the pragmatic aspects of such a practice, as well as the legal aspects. For example, feminist icon Ruth Bader Ginsburg famously represented male plaintiffs in gender discrimination claims as part of her pursuit of women's rights.⁴⁹ Ginsburg even fought against anti-male discrimination that was rooted in positive stereotypes of women.⁵⁰ As applied to ladies' nights, perhaps it is not productive to promote the stereotype of women as lures to entice men.

⁴⁵ U.S. CONST. art. 14.

⁴⁶ See, e.g., Bethany M. Coston & Michael Kimmel, *White Men as the New Victims: Reverse Discrimination Cases and the Men's Rights Movement*, 13 NEV. L.J. 368, 374 (2013).

⁴⁷ 42 U.S.C. § 2000a (2000).

⁴⁸ See, e.g., Jessica E. Rank, *Is Ladies' Night Really Sex Discrimination: Public Accommodation Laws, De Minimis Exceptions, and Stigmatic Injury*, 36 SETON HALL L. REV. 223, 226–27 (2005).

⁴⁹ Mary Beth Ferrante, *Let's Honor Ruth Bader Ginsburg by Recognizing Men as Caregivers*, FORBES (Sept. 24, 2020, 2:47 PM), <https://www.forbes.com/sites/marybethferrante/2020/09/24/lets-honor-ruth-bader-ginsburg-by-recognizing-men-as-caregivers/?sh=7f98d8f77fb5>; Stephanie Buck, *The On the Basis of Sex Story Wasn't the Only Time Ruth Bader Ginsburg Used Cases About Men to Argue for Women's Equality*, TIME (Dec. 24, 2018, 12:00 PM), <https://time.com/5481422/rbg-movie-male-plaintiff-history/>.

⁵⁰ See, e.g., *Craig v. Boren*, 429 U.S. 190 (1976) (striking down higher drinking ages for men based on the theory that women matured faster than men and therefore could drink at an earlier age).

A COSTLY AFFAIR

When someone's actions cause someone else great harm, the injured party may be able to seek compensation in tort law. But what about when someone's actions cause a married person to have an affair? Certainly, this can result in great harm to the innocent spouse, but should the principles of tort law apply to such an occurrence?

A few states recognize an alienation of affection cause of action.⁵¹ This generally requires proving the three elements of 1) Love and affection existed in the marriage (an incredibly subjective standard to prove), 2) This love was alienated and destroyed, and 3) The malicious conduct of a third party contributed to its loss.⁵² This jurisprudence is rooted in the colonial era when wives were viewed somewhat as property.⁵³ During this time period men could even sue their mothers-in-law for interfering with a wife's affection.⁵⁴

There are also other potential theories under which compensation could be sought. In extreme scenarios, some states allow recovery under a theory of intentional infliction of emotional distress.⁵⁵ A theory of tortious interference with

⁵¹ *Can You Sue Your Spouse's Lover*, RECH LAW (Mar. 4, 2021) <https://www.rechlaw.com/blog/2021/march/can-you-sue-your-spouse-s-lover/> (As of 2021 this cause of action was recognized in North Carolina, Mississippi, South Dakota, New Mexico, Utah, and Hawaii.).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Adultery: The Law in Texas*, BEAL LAW FIRM, <https://www.dfwdivorce.com/adultery-the-law-in-texas> (last visited Sept. 14, 2023).

a contractual relationship could be pursued.⁵⁶ Loss of consortium is another option.⁵⁷ Finally, a theory of criminal conversion could be pursued.⁵⁸

CATFISHING LIABILITY

“Catfishing” is the act of using a fictional online persona to lure the victim into the false belief of a potential, romantic relationship.⁵⁹ It is easy to see how this could cause harm to the person being deceived. However, it is far easier for the person whose images were used to perpetrate the fraud to receive compensation than the person who was deceived. Some states have enacted online impersonation laws which protect the real-life person whose images were used.⁶⁰ An invasion of privacy claim under the misappropriation of name or likeness theory/subset/_____ is another potential cause of action for the person whose images were used.⁶¹ Depending on how the images were used, there would also

⁵⁶ Lance McMillian, *Adultery as Tort*, 90 N.C. L. REV. 1987, 2007 (1987).

⁵⁷ *Id.* at 1994.

⁵⁸ *Can I Sue My Spouse's Lover in Any State*, FINDLAW <https://www.findlaw.com/litigation/filing-a-lawsuit/can-i-sue-my-spouse-s-lover-in-any-state-.html#:~:text=Criminal%20conversation%20is%20a%20tort,your%20spouse%20during%20your%20marriage> (last visited Sept. 14, 2023).

⁵⁹ *What is Catfishing Online: Signs & How to Tell*, FORTINET, <https://www.fortinet.com/resources/cyberglossary/catfishing> (last accessed Oct. 19, 2023).

⁶⁰ Armida Derzakarian, *The Dark Side of Social Media Romance: Civil Recourse for Catfish Victims*, 50 LOY. L.A. L. REV. 741, 745 (2017) (Referencing as an example the Oklahoma Catfishing Liability Act).

⁶¹ Armida Derzakarian, *The Dark Side of Social Media Romance: Civil Recourse for Catfish Victims*, 50 LOY. L.A. L. REV. 741, 755–57 (2017)

be a potential defamation cause of action.⁶² The best cause of action for the deceived party would likely be under anti-cyberbullying legislation.⁶³ The social media websites and apps where the act of catfishing occurs are largely immune from liability under Section 230.⁶⁴

WEIRD LOVE SONGS

Weird Al Yankovic has parodied numerous love songs. He turned “Addicted to Love” into “Addicted to Spuds,” “I Want it That Way” to “eBay,” “Jack & Diane” to “Homer & Marge,” “I Think We’re Alone Now” to “I Think I’m a Clone Now,” “Like a Virgin” to “Like a Surgeon,” “You Belong with Me” to “TMZ.”⁶⁵ The original artists, Robert Palmer, Backstreet Boys, John Mellencamp, Madonna, and Taylor Swift, respectively, received no royalties and might not have appreciated being parodied. Unfortunately for them, parody law allows this type of artistic recreations. The right to parody the creations of other people is protected by the First Amendment and more specifically, it is covered under the fair use exception of the Copyright Act.⁶⁶ This involves considering the following four prongs:

⁶² *Id.* at 759–61.

⁶³ *Id.* at 748–49.

⁶⁴ *Id.* at 747.

⁶⁵

https://en.wikipedia.org/wiki/List_of_songs_recorded_by_%22Weird_Al%22_Yankovic

⁶⁶ 17 U.S.C. § 107 Limitations on Exclusive Rights: Fair Use

- 1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;⁶⁷
- 2) the nature of the copyrighted work;⁶⁸
- 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and⁶⁹
- 4) the effect of the use upon the potential market for or value of the copyrighted work.⁷⁰

This topic provides an excellent opportunity to demonstrate the subjective nature of the law and the process of performing a multi-pronged test.

LEGAL SPEED DATING CLASS ACTIVITY

A fun, interactive classroom exercise is to schedule a legal “speed dating” activity. Before class, each student is assigned either a case, legal principle, or Supreme Court justice. They research their topic and come to class prepared to give a 45-second elevator pitch explanation. In class, students get matched up in groups of two to quickly present their explanation to each other. Every two minutes, a bell rings and the students partner up with someone new and repeat the process. After a fixed number of rounds, the activity can either be concluded with a class debriefing and/or a vote can be conducted to see who had the most engaging presentation.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

LOVE LETTERS CLASS ACTIVITY

This is another fun class activity that takes up less time and does not require any prep work on behalf of the students. Using heart-themed PowerPoint templates, simply write brief love letters to the cases or principles covered in class and have the students identify the cases / principles Here are some examples:

CASES

“I love how you allowed Starbucks employees to wear pro-union buttons to work.” (*NLRB v. Starbucks Corp.*)

“I love how you forced a corporation to focus on paying out dividends rather than donating to charity.” (*Dodge v. Ford Motor Co.*)

“I love how you allowed a Muslim woman to wear her hijab to work.” (*EEOC v. Abercrombie & Fitch Stores*)

“I love how you enshrined the right to corporate free speech.” (*Citizens United v. FEC*)

“I love how you required ‘minimum contacts’ to force a defendant to defend themselves in an out-of-state venue.” (*World-Wide VW v. Woodson*)

PRINCIPLES

“I love how you hold employers liable for the actions of employees.” (respondeat superior)

“I love how you allow me to reach into another state and bring a defendant to court in my state.” (long-arm jurisdiction or minimum contacts)

“I love how you can put an end to litigation after discovery if the facts are not in dispute.” (summary judgment)

“I love how fancy your name is, even though it just refers to the jury selection process.” (voir dire)

“I love how you are like mediation, but binding.” (arbitration)

“I love how your purpose is to punish, and how you allow me to sue for more money than I need to compensate for the actual damages.” (punitive damages)

“I love how you let plaintiffs win their negligence case without even having to show causation.” (res ipsa loquitur)

“I love how you bar any recovery if the plaintiff is even 1% at fault for his injuries.” (comparative negligence)

“I love how you allow the enforcement of a promise even if all of the elements of contract formation are not present.” (promissory estoppel)

“I love how you require certain contracts to be in writing to be enforceable.” (statute of frauds)

“I love how you stop people from introducing prior statements to alter the language of a signed contract.” (parol evidence rule)

MISCELLANEOUS

The theme of Valentine's Day is so expansive that many more topics could be covered. The following are some additional topics to consider:

Spousal Privilege

Office romance policies

The Tinder Swindler documentary on Netflix

A trademark dilution case from Victoria's Secret against "Victor's Secret."⁷¹

A case involving a hospital that transplanted the heart out of a deceased Black man and into a white man without consent.⁷²

A California man who was found not guilty for/of DUI after a necessity defense because he was fleeing his wife who caught him cheating.⁷³

⁷¹ Jeffrey Pietsch, *Trademark Dilution and Sex: Victor's Secrets v. Victoria's Secrets*, THE IP L. BLOG (June 18, 2010), <https://www.theiplawblog.com/2010/06/articles/trademark-law/trademark-dilution-and-sex-victors-secrets-v-victorias-secrets/>.

⁷² Theresa Vargas, *A Black Man's Stolen Heart and a Family's Long Wait for Justice*, WASH. POST (September 30, 2023, 11:00 AM), <https://www.washingtonpost.com/dc-md-va/2023/09/30/bruce-tucker-heart-transplant-vcu/>.

⁷³ Jessica Flores, *California Man Won DUI Case with Unique Defense: Better to Drive Drunk than Face 'Two Angry Women,'* SAN FRANCISCO CHRONICLE (Feb. 9, 2023, 2:44 PM), <https://www.sfchronicle.com/california/article/ukiah-man-not-guilty-17774009.php#:~:text=A%20Northern%20California%20jury%20found,according%20to%20Mendocino%20County%20prosecutors.>

A man in Singapore who sued the woman who put him in the ‘friend zone.’⁷⁴

The constitutionality of legislation limiting “adult” businesses in New York City.⁷⁵

The lawsuit filed by Tiger Woods’s ex-girlfriend implicates the statute of frauds—she alleged an oral agreement whereby she could continue living in Woods’s mansion for five years after breaking up—and the ability to break the nondisclosure agreement she entered into while an employee of Woods’s restaurant.⁷⁶

A hypothetical case where a husband sues his wife for producing unattractive children because she deceived him by not disclosing that she had undergone extensive plastic surgery.⁷⁷

⁷⁴ *Singapore Man Sues Woman for Just Wanting to be Friends, Not Partners*, THE GUARDIAN (Feb. 3, 2023, 8:06), <https://www.theguardian.com/world/2023/feb/03/singapore-man-sues-woman-for-just-wanting-to-be-friends-not-partners>.

⁷⁵ Jonathan Stempel, *New York City Curb on Sex Shops is Constitutional: NY Top Court*, Reuters (June 6, 2017, 12:09 PM), <https://www.reuters.com/article/us-new-york-adultentertainment/new-york-city-curb-on-sex-shops-is-constitutional-ny-top-court-idUSKBN18X2A1>.

⁷⁶ Brent Schrotenboer, *Tiger Woods Sued by Ex-Girlfriend Erica Herman in Larger Domestic Dispute over Hom, Money*, USA TODAY (Mar. 10, 2023, 5:59 PM), <https://www.usatoday.com/story/sports/golf/2023/03/08/tiger-woods-erica-herman-court-claims-ex-girlfriend-home-money/11428984002/>.

⁷⁷ Note, this was an urban legend that never happened but it still elicits interesting aspects of contracts and fraud/misrepresentation. David Mikkelson, *Did a Man Sue His Wife Over Ugly Children*, SNOPE (Nov. 7, 2013), <https://www.snopes.com/fact-check/man-sues-wife-ugly-children/>.

CONCLUSION

Themed classes such as this Valentines-themed one provide multiple positive benefits. They serve as a welcome break from traditional lectures for both the instructor and the students. The fast-action jumping from one topic to another and the provocative subject matter keeps the class engaged. The activity also reignites interest in previously covered topics and sparks curiosity for topics that will come later in the semester. Finally, as mentioned in the introduction, this Teaching Note is intentionally not a step-by-step guide for conducting the activity. Instead, instructors are encouraged to experiment with different combinations of the topics provided to experiment with creative methods for implementation.

**THE PARADOX OF DEI:
HOW LOFTY IDEALS BECAME HATED**

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1. INTRODUCTION

There are numerous terms that should be seen as positive values but have been co-opted by today's culture wars. These terms include "woke," "social justice," "cancel culture," "identity politics," "politically correct," "Black Lives Matter," and DEI. Surprisingly, the term DEI, which stands for diversity, equity, and inclusion, has negative connotations today, although these are noble values that anyone with a soul should admire. This paper is an examination of what went wrong and how to fix the problem. Moreover, a biblical approach to DEI is discussed. Leaders need to understand the correct way to advocate for the ideals of diversity, equity, and inclusion in a way that brings people together and does not offend.

Workplace DEI efforts are increasingly important in today's globalized world. Diversity refers to various aspects of identity, including race, gender, age, religion, sexual orientation, ethnicity, nationality, socioeconomic status, weight, height, attractiveness, language, (dis)abilities, parental status, education, values, beliefs, and other social identities. Diversity ensures that a variety of voices, experiences, and knowledge contribute to building an organization or community. Diversity also refers to a diversity of minds, ideas, and approaches, and it allows teams to find a solution that considers multiple angles of the problem, thus making the solution better, stronger, and more optimal. Teamwork and collaboration are essential in today's globalized and information-driven workforce comprising diverse individuals.

Equity refers to fair treatment for all people, so that the practices and policies in place ensure fairness in compensation and opportunities for advancement. In many firms, historically disadvantaged groups have been underpaid and had to struggle for promotions. Inclusion ensures that diverse individuals feel

like essential parts of the team and have fair opportunities to grow and contribute. In addition to the DEI terms, some firms include accessibility, stressing their organization's emphasis on DEIA (diversity, equity, inclusion, and accessibility).

DEI is an integral part of a successful revenue-generating business and brings both moral and financial benefits. DEI is also essential for recruiting and retaining top talent.¹ In the workplace, DEI is vital for long-term progress, and companies committed to it can attract and retain premium talent. DEI has been found to improve financial performance, creativity, and customer and employee satisfaction.² Duarte *et al.*³ maintained, "Psychologists have demonstrated the value of diversity—particularly diversity of viewpoints—for enhancing creativity, discovery, and problem solving." There is evidence that diversity makes us brighter.⁴ For instance, immigrants were responsible for 23% of the U.S. patents granted between 1990 and 2016.⁵

There is a strong correlation between diversity and high-technology growth. Regions that scored high on composite diversity (gays, foreigners, and bohemians) also scored high on the Milken Institute's measure of high-technology growth. Creative people in technology fields are attracted to regions where people who are tolerant, open-minded, and accepting of others reside, and countries that discriminate against women have seriously hurt their economic growth rates. This should not be surprising given that these countries did not have access to the brainpower of approximately 50% of the population. Even in the United States, research has indicated that racial discrimination resulted in a 4% reduction in GDP.⁶

Edmans, Flammer, and Glossner⁷ found that the best way to determine the true DEI of a firm is to do more than simply examine traditional measures of demographic diversity. The

ideal DEI measure must also consider whether a workplace is inclusive and equitable; this requires learning about the attitudes of the firm's employees and managers. To measure the true DEI, the researchers examined proprietary data from the Trust Index used in the Great Places to Work (GPTW) scale, which is used to create the 100 Best Companies to Work for in America list. The types of questions employed in the Trust Index (e.g., "I can be myself around here," "Managers avoid playing favorites," and "This is a psychologically and emotionally healthy place to work") tap into the equity and inclusion dimensions of DEI. The authors found that their measure of DEI was positively correlated with seven out of eight measures of profitability (as well as Tobin's Q, a measure of valuation). Diversity is not the only feature associated with profitability.

It is astonishing that the term DEI has become so contentious. Several red states, including Florida and Texas, have passed legislation abolishing DEI initiatives in higher education, and many more are in the process of doing so. This paper will focus on the good, the bad, and the ugly of how DEI is being applied today and why it has become so controversial.

2. THE GOOD, THE BAD, AND THE UGLY OF DEI

The problem with DEI is that it focuses too much on demographic diversity and ignores many other kinds of diversity. While, there should be more ethnic minorities and women on the boards of organizations, that is not sufficient by itself. Recruiting minorities to diversify the recruitment pool or hiring people of color to check off a box does not improve DEI. As noted above, demographic diversity is only weakly correlated with DEI. An organization's culture has to be changed to create a true climate of equity and inclusion.

Rowinski⁸ asserted the following:

Advancing the opportunities of women and minorities is important, but these are not the only two faces of diversity. People from different countries with varied political and economic backgrounds develop unique expectations and approaches to solving problems. Even neurodivergence and disability bring new perspectives to business discussions. And the result is often impactful business decisions that take more people into consideration so we can solve more (and bigger) problems.

There are many kinds of bigotry, and it is a mistake to focus only on discrimination based on skin color or gender. Many feel that racial categorization itself is problematic and may result in intense battles among various ethnic groups. It should be highlighted that race is a biological myth that is socially constructed. This paradigm shift is the first step in moving away from racism and bigotry. There are six arguments supporting the view that race is not biology:

1. People cannot be reliably divided into racial groups.
2. There are no relationships between traits that are used to categorize people into races (like skin color) and associated stereotypes.
3. Over time, geography and environment influence the genetic structures of human populations through natural selection.
4. There is more diversity within racial groups than between racial groups.
5. All people living today are descended from populations that originated in Africa.
6. All people living today are one biological species.⁹

Moreover, classification by race is often misleading given that ethnic groups do intermarry. Indeed, 35% of Americans have close relatives who married someone from another race, and approximately 30% of Asians marry someone from a different ethnic group.¹⁰

3. OTHER KINDS OF DISCRIMINATION

Prejudice based on skin color and gender may be common, but other biases exist, and all are morally reprehensible. Let us focus on just a few types of discrimination.

Neurodiversity in the workplace is essential, and firms should do their utmost to hire people with autism spectrum disorder, dyslexia, or ADHD.¹¹ Neurodiverse people have different neurological functioning than neurotypical people, which can benefit a firm through the way they see the world and solve problems differently, which can lead to new perspectives and solutions.

Temple Grandin¹² has called attention to the fact that diversity also includes being aware of the different kinds of minds that exist. Grandin is autistic and a visual thinker, so she processes information differently from most people. Historically, it was difficult for visual thinkers to do well in school and later get jobs. Many cannot sit still or do abstract math, yet they can be highly creative. Thomas Edison did very poorly in school — he was at the bottom of the class and had to be homeschooled. One way of increasing creativity is to put different kinds of thinkers together and allow them to use different approaches to come up with solutions.

Another type of discrimination relates to weight. According to the Centers for Disease Control and Prevention (CDC), in 2020, 41.9% of American adults were obese.¹³ It is

morally wrong to deride overweight people; it is well known that diets do not work, and the obese are not responsible for their conditions. Yet, obesity is stigmatized in society, and people with excess weight are often discriminated against in many places, such as the workplace, school, health-care settings, and even in personal relationships. Women are more likely to experience weight discrimination than bias based on ethnicity, sexual orientation, or physical disability.¹⁴

It bears mentioning that neurological issues such as autism and obesity are considered to be disabilities. About 27% of Americans have some kind of disability (CDC, 2023) and have faced discrimination in employment, housing, or education. The Americans with Disabilities Act (ADA) of 1990 is a federal law that protects the civil rights of individuals with disabilities by prohibiting discrimination against them in everyday activities.

Similarly, more than 50% of the complaints concerning discrimination in Canada deal with ableism. Only 4% of Canadian firms consider disability in their DEI efforts. There is something seriously wrong with DEI initiatives if 22% of Canadian workers with disabilities can be ignored.¹⁵

In another area of bias, there is a large body of research demonstrating that there is an attractiveness bias, also known as lookism.¹⁶ People seen as more attractive earn higher salaries and receive better treatment in schools and the workplace than plain-looking individuals. Moreover, those who are not seen as attractive (e.g., those who are short or obese) are discriminated against. There is a problem in our society with body shaming and appearance mocking, which Donald Trump is known for doing, especially when dealing with women.¹⁷

DEI is a concept that aims to create a more inclusive environment where everyone feels respected and valued. However, in recent years, DEI has been criticized for promoting hate and racism. This may result from overstressing prejudice based on race and ignoring other kinds of bias. Some believe DEI training courses reinforce stereotypes and “backfire” by increasing or renewing biases or even by fostering new sensitivities. There is evidence supporting these criticisms. Several researchers have found that DEI training has little or no positive effect.¹⁸ People of all races resent hearing about a “white supremacy culture” or that there is something insidious in stating that “America is a melting pot.” Rufo¹⁹ argued that DEI programs on college campuses have become highly ideological political programs designed to promote a specific radical political agenda; they do not make universities more tolerant and receptive to open debate.

Some bias researchers advocate for a focus on changing behavior rather than people’s attitudes. Introducing white fragility workshops into an organization probably accomplishes considerably less than finding ways to widen the net when hiring managers. Some companies are talking about “diversity and belonging” rather than “diversity and inclusion” because the latter reduces individuals to “victim or villain” and often alienates coworkers.²⁰ We must be careful not to let DEI become a tool for promoting hate and division. Instead, we should use it as an opportunity to build a more inclusive and equitable society for everyone.

Lily Zheng, DEI strategist, consultant, and author of several books on DEI, emphasizes that DEI training often does not work because of employee fatigue with these initiatives, which often accomplish nothing. To engage workers, they must feel that DEI initiatives are needed and will result in concrete, visible results. Zheng stated:

To address backlash, companies need to frame DEI efforts as resolving inequities and achieving justice. We need to frame DEI less like we are attacking people and more in a way that people can see a role for themselves in these efforts.²¹

Most organizations virtually ignore one kind of diversity: diversity of opinion. Demographic diversity alone may not be sufficient to ensure this. Today's Supreme Court is the most demographically diverse in history: four women, two Blacks, and a Latina. Despite this, it is not very diverse when it comes to opinions. Indeed, the Supreme Court is expected to question the value of diversity and reverse affirmative action.

Another kind of discrimination is workplace bullying. It has been well-documented how harmful workplace bullying can be to an organization. About 11% of workers have been victims of bullying, and many are blue-collar and unskilled workers.²² A leader must create zero tolerance for deriding or insulting by any person.

In summary, many kinds of bias should be addressed, because focusing exclusively on one type of discrimination and ignoring others can devastate an organization. The emphasis should be on removing all types of bigotry. What is at the root of all types of discrimination, whether against gay people, Asians, Jews, stutterers, dwarfs, unattractive people, people with disabilities, or intellectuals? What can be done to eliminate all of these types of bias? There is no reason for managers in charge of diversity to believe the problem will be solved only by hiring more Blacks and Latinos. First, as stated above, it is the CEO's responsibility to change the organization's culture. Second, the refrain of fictional detective Harry Bosch in Michael Connelly's novel *Everybody Counts or Nobody Counts* should be the

philosophy of every leader. It is about changing an organization into one where all people are respected.

4. PROBLEMS WITH DEI IN EDUCATION AND SCIENCE

Scholars with different opinions who raise evidence-based questions about the views of the extreme left are often banned from campuses. Hooven²³ is concerned with journal guidelines such as “Science must respect the dignity and rights of all humans.” This seems like a laudable standard but can be used to suppress research demonstrating group differences. Would we want to silence research that shows that some drugs work better on women than men (or white rather than Black) because of biological differences? There is, in fact, evidence of sex differences when it comes to the body’s response to various medications.²⁴ Carole Hooven was attacked as transphobic and dangerous for stating that there are two sexes—male and female—and that “those sexes are designated by the kinds of gametes we produce.” She emphasized that “understanding the facts about biology doesn’t prevent us from treating people with respect.”²⁵ Hooven challenged those who argue that one must be ready to subvert science and deny reality to protect the rights of oppressed minorities. In this area, university administrators are part of the problem.

Another force inhibits administrators: the now-ubiquitous acceptance of vague and subjective principles of diversity, equity, and inclusion, and the consequent investment of vast quantities of time and money in ensuring that these principles guide all the actions of the university community. While these initiatives have improved the campus environment in some respects, they have harmed it in others. Students have become

conditioned to believe that it is their right to be free from offense, whether in the classroom or even the dining hall, and they have framed ringing endorsements of academic freedom as covert defenses of bigotry and injustice.²⁶

Lukianoff and Haidt²⁷ have written about the danger of teaching students such untruths and cognitive distortions as “What doesn’t kill you makes you weaker,” “Always trust your feelings,” and “Life is a battle between good people and evil people.” These beliefs are related to three cognitive biases: overgeneralization, emotional reasoning, and black-and-white thinking. If schools teach students to listen and be receptive to new ideas, they can become critical thinkers and appreciate different perspectives. Instead, we are seeing students attacking lecturers who present ideas they consider offensive. This is increasing the polarization of society and making students less adaptable and resilient, essential attributes for thriving in the real world.

DEI has not only spread across college campuses but is now a part of K–12 education in many schools.²⁸ There is a great deal of conflict over how educators indoctrinate students and teach them controversial topics sometimes linked to DEI, such as critical race theory and critical social justice. There are elementary schools where K–3 children are taught to “break the binary of gender” or to “deconstruct their racial and sexual identities” and identify themselves according to power and privilege. Terms such as “white colonizers” and “infinite gender spectrum” are used indiscriminately as facts.²⁹

Along the same lines, injecting DEI into science can create all kinds of problems. There is now a movement for citation justice, defined as “the act of citing authors based on identify [sic] to uplift marginalized voices with the knowledge

that citation is used as a form of power in a patriarchal society based on white supremacy.”³⁰ Some DEI activists have been encouraging researchers to consider the gender and race of authors when deciding which researchers to cite. Many feel that citation justice corrupts science rather than enhances it.³¹ An example is the view that the disparity in science of not enough females in STEM areas may not be problematic if there is no discrimination. Regardless of what some believe, not everything is about power. Women should be encouraged to enter STEM fields, and any discriminatory barriers should be eliminated; but is it a problem if women prefer nursing to engineering? It might be impossible to ensure that the distribution of ethnic groups in every discipline matches society’s demographics.³² Should we be concerned if there are too many Asians in the sciences?

John Staddon believes that the focus should be on the real problems in science, not topics that are popular fads:

Most dramatic is the replication crisis, which is still going on almost twenty years after it was first identified. At least fifty percent of results in social and biomedical science turn out not to be replicable. The main reason is a misapplication of statistical methods so as to get positive, publishable results, which are necessary for career advancement because of the citation/publication/grants-awarded evaluative criteria that are used. Another error is the widespread application to, say, individual psychology of data obtained from groups (we are all subject to “confirmation bias”; well, no we’re not, but you wouldn’t know it from most reports). Fraud is also skyrocketing; papers with fake data, imaginary clinical trials, and the like grow in number every year. Correlations (easily obtained

by appropriate statistical tests) are almost always presented as causes; just look for the phrase “linked to.”³³

5. CRITICAL THINKING AS AN ANTIDOTE TO DUALISTIC THINKING

Dualistic thinking, also known as black-and-white or polarized thinking, is a general tendency to see things as good or bad, right or wrong, and us or them, without room for compromise and shades of gray. This all-or-nothing cognitive approach leads to poor decision-making. It also creates polarized groups (think of today’s Democrats and Republicans) and encourages discrimination and prejudice by creating the “us vs. them” approach to life. It interferes with one’s ability to be an innovator, which requires one to be open-minded.

This type of dualistic thinking is known in the mental health field as “splitting,” which is a “defense mechanism in which people unconsciously frame ideas, individuals, or groups in all-or-nothing terms (e.g., . . . all-powerful vs. 100% powerless).”³⁴ It is often seen in people who have borderline personality disorder.³⁵ Splitting is a severe problem when dealing with people with different opinions or interacting with those from other races or religions.

Splitting is also emotionally dysregulating, fostering behavioral problems like aggression and leading to psychic pain and mental illness. It also makes it hard for people to have productive dialogue, and it works against our shared ideals as a society, like love, peace, justice, and unity.³⁶

Ironically, some strong advocates of DEI would employ a kind of binary thinking that harms values such as “love, peace, justice, and unity.”

Brooks³⁷ demonstrated the dangers and challenges of extreme wokeness. Wokeness combines perceiving and proposing, so one must see any injustice in maximalist terms. One can be canceled for not considering a problem in the most pessimistic way and as having absolutely no solution. It is almost as if the goal is to get everyone to give up hope, become cynical and aggressive, and be filled with rage and negativity. Brooks concluded, “But in its extreme form, whether on left or right, wokeness leads to a one-sided depiction of the present and an unsophisticated strategy for a future offensive.”³⁸

Former President Obama warned of the dangers of a “purist” approach by some progressives that he compared to a circular firing squad. For example, he asserted that it is wrong to characterize every individual concerned about immigration as a racist. The all-or-nothing approach does not work and can cause more harm than good.

One of the things I do worry about sometimes among progressives in the United States—maybe it’s true here as well—is a certain kind of rigidity where we say, “Oh, I’m sorry, this is how it’s going to be.” . . . And then we start sometimes creating what’s called a “circular firing squad” where you start shooting at your allies because one of them is straying from purity on the issues.³⁹

Facione⁴⁰ provided good reason for the encouragement of learning critical thinking rather than dualistic thinking:

Education which includes a good measure of critical thinking skills and dispositions like truth-seeking and open-mindedness, is a problem for terrorists and extremists of every stripe because terrorists and extremists want to control what people think. They are ideologists of the worst kind. Their methods include indoctrination, intimidation, and the strictest authoritarian orthodoxy. In the “black-and-white” world of “us vs. them” a good education would mean that the people might begin to think for themselves. And that is something these extremists do not want.⁴¹

6. NO SECOND CHANCE?

President George W. Bush declared, “America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life.” This is consistent with the value of inclusion in DEI. Rinderle⁴² underscored that “cancelling has no place in creating a more equitable and inclusive environment.” She asserted, “To cancel is to expose your own fragility and intolerance, and to reveal your commitment to victimhood.”⁴³ We all make mistakes, and if one shows remorse, why should that person be ostracized or destroyed? Creating an environment where everyone walks on thin ice and is terrified of saying the wrong thing is the enemy of equity and inclusiveness.

Moreover, people should be allowed to express different opinions without fear of being scorned. Diversity is almost meaningless if everyone is expected to have the same viewpoint. Diversity of thought is the essence of what diversity is all about. The following summarizes what is needed:

Cancelling, consensus, and perfection have no place in true DEI work. The seven Cs of commitment, consciousness, curiosity, courage, compassion, choice, and changeability are what's needed to create a world that works better for more of us. They're what's needed to ensure we don't replicate the dynamics of oppression and inhumanity that got us here.⁴⁴

Friedman and Lipman⁴⁵ contend that we should cancel the cancel culture because it results in people losing sight of the outstanding accomplishments of many historical figures, including Thomas Jefferson (a slave owner, famously of Sally Hemmings, who putatively bore some of his children), Abraham Lincoln (early in his career he favored a gradual freeing of the slaves), Rev. Martin Luther King, Jr. (several extramarital affairs), as well as great biblical personalities such as Abraham, Judah, Moses, and David. No human being is perfect, and much can be learned from flawed individuals. There are several websites dedicated to demonstrating that great people we idolize have ugly, dark sides to their personalities.⁴⁶

Should we cancel the United States, one of the greatest countries in the history of the world, because of its horrific misdeeds? These wrongs include committing genocide against Native Americans; the Dred Scott decision by the Supreme Court; being among the last countries to abolish slavery; placing Japanese Americans and Italian Americans in internment camps during the Second World War; sending back the St. Louis, a ship filled with Jewish refugees from Nazi Germany; and much more.

Friedman and Lipman spotlighted the danger of being too quick to cancel people.

In 1822, Heinrich Heine, a Jewish-born poet who converted to Christianity to advance in German society, wrote the prophetic words, “Where they burn books, they will, in the end, burn human beings, too.” Today, one might say, “Where they cancel people, they will, in the end burn them.”⁴⁷

7. A BIBLICAL APPROACH TO DEI

Many terms related to DEI have been co-opted by today’s culture wars, including “woke,” “social justice,” “cancel culture,” “identity politics,” “politically correct,” “Black Lives Matter,” and DEI. These words and phrases are used in widely varying contexts, and their implications are different depending on the speaker’s perspective. Thus, right-wing politicians use many of the above phrases as symptoms of a dangerous philosophy that can destroy the country. Ron DeSantis, Governor of Florida, asserted: “We fight the woke in the legislature. We fight the woke in the schools. We fight the woke in the corporations. We will never, ever surrender to the woke mob. Florida is where woke goes to die.” Interestingly, because the term has been weaponized, very few people even use the expression today.⁴⁸

The majestic ideas behind these phrases have their roots in the Bible. Thus, the idea of not oppressing the stranger is mentioned dozens of times in Scripture.⁴⁹ The “stranger” is anyone who is different and includes everything from racism to xenophobia. A crucial message of Scripture and all the prophets is the importance of repentance (*teshuvah*). The purpose of punishment was to get people to repent of their evil ways. This was the primary reason for sending prophets to the people. They were preachers whose job was to get the people to repent and who were told of the consequences of not heeding the word of God. Leaders understood that their job was to lead with justice

and compassion, especially for the indigent members of society.⁵⁰

All humankind was created in the image of God (*Tzelem Elohim*) (Genesis 9:6) and deserving of dignity and respect. This is why human dignity is a crucial belief in all theistic religions and is emphasized in Islamic theology.⁵¹ Human dignity is based on the idea that we were all created in God's image, a core value of the Abrahamic religions. Malachi said (2:10), "Have we not all one father? Has not one God created us? Why do we deal treacherously every man against his brother?" This philosophy "invests all human life with intrinsic sanctity and immeasurable value."⁵²

The great prophets Isaiah, Amos, and Micah envisioned a world of full employment, tolerance, and love. In this utopian Messianic world, the lamb and lion could lie down together, and exploitation, bias, and racism would vanish. It would be a world of true diversity, equity, and inclusivity. A spiritual world where those who want jobs will find them, and those unable to work will receive assistance. Problems such as racism, poverty, pollution, warfare, and oppression would be drastically reduced or even eliminated. Their vision was of a beautiful, peaceful, idyllic, spiritual world where humanity lives in harmony with tolerance for others.

The wolf will live with the lamb, the leopard will lie down with the goat; the calf, the lion cub, and the fatling [will feed] together, and a small child will lead them. A cow and bear will graze together, and their young will lie down together. The lion will eat straw like the cattle. An infant will play over a viper's hole, and a newly weaned child will stretch forth his hand over an adder's den. They will do no harm or damage anywhere

in all of My sacred mountain; for the earth will be filled with knowledge of God, as water covers the sea (Isaiah 11:6–9).

He will judge between many peoples and will settle the disputes of mighty nations far and wide. They will beat their swords into plowshares and their spears into pruning hooks. Nation will not lift up sword against nation, nor will they learn war anymore (Micah 4:3).

Behold, the days are coming, says the Lord, When the plowman shall overtake the reaper, and the treader of the grapes the one who sows the seed; The mountains shall drip with sweet wine, and all the hills shall flow with it (Amos 9: 13).

A foundational value of the Bible is helping the needy and powerless (the proverbial “widows, orphans, strangers, and the poor”; see, for example, Zechariah 7:10). The above prophets use the metaphor of people working the soil, meaning that everyone capable will be employed.⁵³ Humankind’s role is to improve the world and make it better for all. Rae points out that God put Adam in the Garden of Eden (Genesis 2:15) “to work it and protect it” even before sin entered the world. Work was always part of God’s plan for humankind. The Messianic world is one where “the Lord will be king” (Obadiah 1:21). Obadiah sees the saviors on Mount Zion judging the Mountain of Esau (Obadiah 1:21). In the end, “the kingdom will belong to the Lord” (Obadiah 1:21). Empires, such as Esau, that are built on plunder, exploitation, discrimination, and robbery will not last. Zechariah (2:14–15) proclaims: “Rejoice and sing, O daughter of Zion! For I am coming to live among you, says the

Lord. And many nations will join themselves to the Lord on that day, and they will be my people, and I will live among you.”

The most important word in the Hebrew Bible is *chesed* which appears 248 times.⁵⁴ It is not easy to translate (it has been translated as mercy, kindness, steadfast love, unfailing love, and more). The best definition of *chesed* is probably lovingkindness, a principal value in most religions. It includes ideals such as love, compassion, tolerance, and forgiveness. A person filled with *chesed* is one with compassion for the weakest members of society and who does everything possible to elevate them and restore their dignity. Political and corporate leaders must ensure that their countries and organizations are based on *chesed*. Organizational compassion is a litmus test of whether one’s organization has a soul.⁵⁵ To be spiritually woke is to be filled with *chesed* and love for all people. The foundation of all DEI initiatives has to be *chesed*.

The social justice advocated by the ancient prophets did not blame everyone for the oppression of society’s vulnerable and powerless members. They indicated who was responsible (often the rulers) and rebuked them. Today’s so-called social justice warriors have no problem admonishing innocent people who did not participate in or contribute to the problem. An alleged characteristic of today’s social justice movement is the right to defame and demonize everyone, whether innocent or guilty. Tarring everyone with the same brush is wrong from a justice or social justice point of view, such as by assuming that everyone from a particular group (e.g., white, Jewish, male, heterosexual, etc.) is automatically “privileged,” unteachable, irredeemable, and guilty of all kinds of misbehaviors, as well as that they go against everything the prophets preached. The prophets showed that people could be penitent and turn over a new leaf. This may be a key reason many leaders have repudiated critical race theory. Provocative terms such as “white

privilege,” “gaslighting,” “cancel culture,” “systemic racism,” “decolonizing the curriculum,” “critical race theory,” “abolitionist pedagogy,” and many others do not help bring people together.

8. CONCLUSION

Sacks⁵⁶ underscored that the solution to the problem of intolerance is not universalism. The idea that there is one truth, and you must accept it (or we will kill you!) has caused as much harm to society as tribalism. If the overarching values underlying DEI are to be accepted by the public, those advocating it must reject dualistic thinking, an approach that can only have dire consequences and further polarize society. They should stress that everybody counts or nobody counts. The idea of “no second chance” and rejection of the “one strike and you’re out” philosophy must be discarded; demanding perfection from people is not realistic. People should be critical thinkers who recognize that the world consists of many gray areas. For organizations to thrive, their leaders must realize that the foundations of DEI initiatives must be compassion, empathy, and humility rather than anger and victimization.

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**OVERCOMING COGNITIVE BIASES:
THE KEY TO REDUCING
BIGOTRY AND VICTIMIZATION**

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ABSTRACT

People often act irrationally, and one example of this is bigotry. For instance, the statement that “obese people are all lazy and have no willpower” is not supported by facts but by prejudice. We should aim to eradicate all kinds of bias, which are harmful and rooted in irrationality. It is not enough to focus on one type of discrimination and neglect others. The authors posit that cognitive bias is one possible cause of nonsensical beliefs, including prejudice. People who use logic better understand the foolishness of any form of bias. This paper discusses the main cognitive biases that might lead to bigotry and the ways to overcome them.

Keywords: rational man, cognitive biases, heuristics, bigotry, dualistic thinking, victimization

INTRODUCTION

Human rationality has been a subject of much debate among philosophers, economists, and psychologists for a long time. However, the definition of rationality is not clear-cut. People often rely on their feelings, emotions, and instincts rather than their reasons when acting. The rational man theory, or homo economicus, is a popular economic model that assumes that people are rational and self-interested; that is, they make decisions that will give them the most benefit or satisfaction (maximize their utility). However, the rational man model may be a dead or rapidly dying theory. Kahneman asserts, “Theories can survive for a long time after conclusive evidence falsifies them, and the rational-agent model certainly survived the evidence we have seen, and much other evidence as well.”¹

Kahneman describes how he was handed an essay written by the Swiss economist Bruno Frey that stated: “The agent of economic theory is rational, selfish, and his tastes do not change.”² Kahneman was astonished that economists could believe this given that it was apparent to psychologists that “people are neither fully rational nor completely selfish, and that their tastes are anything but stable. Our two disciplines seemed to be studying different species, which the behavioral economist Richard Thaler later dubbed Econs and Humans.”³

A growing body of evidence demonstrates that people are predictably irrational; they use heuristics or rules of thumb to make decisions.⁴ Using rules of thumb may help a person make quick decisions but might lead to a systematic bias. There are about 200 known cognitive biases, and the list continues to grow.⁵

Why do people use heuristics to make decisions? Benson summarizes the four problems cognitive biases address: (1) we are drowning in information overload and use these “cognitive shortcuts” to make decisions, (2) we try to construct meaning out of bits and pieces of information that we are aware of, (3) we need to act fast when time and money are limited, and (4) to be efficient, our brains need to remember what we believe are the most important and useful pieces of information; it is impossible to recall everything.⁶ Similarly, Heick places the 180+ biases into a graphic consisting of four categories: Too Much Information, Not Enough Meaning, Need to Act Fast, and What Should We Remember?⁷ According to Benson, these are the downsides of cognitive biases:

We don't see everything. Some of the information we filter out is actually useful and important.

Our search for meaning can conjure illusions. We sometimes imagine details that were filled in by our assumptions, and construct meaning and stories that aren't really there.

Quick decisions can be seriously flawed. Some of the quick reactions and decisions we jump to are unfair, self-serving, and counter-productive.

Our memory reinforces errors. Some of the stuff we remember for later just makes all of the above systems more biased, and more damaging to our thought processes.⁸

One of the problems of using heuristics to make decisions is that it may result in bigotry and prejudice. Bigotry is intolerance or prejudice toward people who are different from oneself in terms of race, ethnicity, social class, neurodiversity, religion, gender, looks, weight, sexual orientation, or other characteristics. It also includes being intolerant of someone with different opinions or beliefs.

What causes people to discriminate against others based on their race, ethnicity, gender, nationality, social class, sexual orientation, religion, appearance, weight, disability, neurodiversity, speech, or intelligence? Focusing only on one kind of discrimination and ignoring the rest can damage an organization. The purpose of this research is to show that all forms of prejudice are harmful and should be tackled at their roots, with the goal of eliminating them all.

This paper is an extension of the research “Teaching Diversity Correctly: Either Everyone Counts or Nobody Counts”⁹. It focuses on several significant cognitive biases that can cause or contribute to prejudice and bigotry and also

suggests ways to overcome them and improve decision-making. There is a need to review and discuss the literature on cognitive biases to understand how people make decisions (additional cognitive biases that distort judgment are discussed in Friedman¹⁰). In addition, this paper intends to show how bigotry can be influenced by various cognitive biases that affect how we judge, perceive, relate, and interact with others. It may be impossible to eliminate bigotry without removing underlying cognitive biases, many of which are unconscious.

I. DUALISTIC THINKING

Some cognitive biases encourage discrimination and prejudice; one of the worst is dualistic thinking, which produces an “us vs. them” approach to life. Dualistic thinking, also known as black-and-white, binary, or polarized thinking, is a general tendency to see things as good or bad, right or wrong, and us or them, without room for compromise and seeing shades of gray. This all-or-nothing cognitive approach leads to poor decision-making and creates polarized groups (think of today’s Democrats and Republicans). It interferes with one’s ability to be an innovator, which requires one to be open-minded.

This type of dualistic thinking is known in the mental health field as “splitting,” which is a “defense mechanism in which people unconsciously frame ideas, individuals, or groups in all-or-nothing or either-or terms (e.g., all-powerful vs. 100% powerless).”¹¹ It is often seen in people who have borderline personality disorders.¹² Splitting is a severe problem when dealing with people with different opinions or interacting with those from other races or religions. It is emotionally dysregulating, fostering behavioral issues like aggression and leading to psychic pain and mental illness. It also makes it difficult for people to have constructive dialogue and work against our shared ideals as a society, like love, peace, justice,

and unity.¹³ Haidt is also concerned that America's political parties have become more Manichean and see the world as a battle between pure good and pure evil and compromise as a sin¹⁴.

II. STEREOTYPING BIAS

Stereotyping is a mental shortcut people use when making decisions about strangers. When stereotyping, we may have certain expectations about a group's attributes, characteristics, and qualities (e.g., Asians, obese people, autistic people, women, Blacks, Jews, trans, homosexuals, Hispanics, and Muslims); these are overgeneralizations. Benson notes that people prefer generalizations over specifics because the latter takes up more space in the brain; it is easier to remember a simplified overview. Some stereotypes may have validity.¹⁵ One might make certain assumptions about a person who identifies as a liberal Democrat or conservative Republican. However, many stereotypes are incorrect and are based on inaccurate beliefs about certain groups. In any case, there is a great deal of variability among individuals that comprise a group. One should be very careful with the use of terms such as "All ___ are ..."

In particular, there is something quite insidious about humor that stereotypes certain groups, such as blondes, lawyers, Polish people, Jews, Rednecks, and Blacks. Only a fool believes that all blondes are unintelligent. Society and the media have frequently discussed stereotypes concerning Asian women. These stereotypes often portray Asian women as either submissive, which may contribute to the concept of "yellow fever" among white men, or as strong and assertive, leading to the label of "tiger mom." Pauwels believes that racial stereotype humor can sometimes act as a social justice tool to mock racism but might sometimes encourage bigotry.¹⁶

One type of stereotypical joke that caused much harm was the Jewish American Princess (“JAP”) joke. [Some examples: Q: How does a Jewish American Princess get exercise? A: “Waitress!” (waving one’s arm frantically). Q: Did you hear about the new Jewish porno movie? A: It’s called “Debbie Does Nothing.” Q: Why do JAPs like circumcised men? A: They like anything with 20% off.] These jokes may have started with Jewish comics (e.g., Joan Rivers), but non-Jews felt it was also acceptable for them. Some believe that it increased intermarriage.¹⁷

These antisemitic and misogynistic jokes resulted in verbal assaults and public shaming on various campuses throughout the United States during the 1980s. There were signs on college campuses warning, “No JAPS.” Colleges were filled with graffiti, such as “Have you slapped a JAP today?” and “JAPS are people too; they just don’t act like it.” The JAP joke was based on the ethnic stereotype that Jewish women are materialistic, shallow, manipulative, self-centered, and sexless.¹⁸ It is interesting to study the JAP joke phenomenon since this is an excellent example of how jokes can have many negative consequences. One could say that JAP jokes did as much—or even more—harm than jokes told by antisemites to tarnish the image of Jews.

III. BASE RATE FALLACY

The base rate fallacy is a cognitive bias that occurs when people focus too much on the specific, specialized details of a situation (the individuating information that is distinct) and disregard the overall, general frequency or probability of something occurring (the base rate). In a nutshell, the overall probability is overlooked in favor of the specific probability. The specific probability might focus on a particular case or a small sample. This can lead to people making inaccurate judgments or

decisions. The base rate fallacy is one of six examples of the problem of representativeness or similarity examined by Tversky and Kahneman.¹⁹

The following experiment is discussed in Kahneman: Subjects were told the following about Tom W., a graduate student:

*Tom W. is of high intelligence, although lacking in true creativity. He has a need for order and clarity and for neat and tidy systems in which every detail finds its appropriate place. His writing is rather dull and mechanical, occasionally enlivened by somewhat corny puns and flashes of imagination of the sci-fi type. He has a strong drive for competence. He seems to have little feel and little sympathy for other people, and does not enjoy interacting with others. Self-centered, he nonetheless has a deep moral sense.*²⁰

The above description led people to ignore prior probabilities regarding the relative size of majors in different disciplines. Subjects asked to rank nine fields of specialization indicated that Tom W. was most likely majoring in computer science and engineering. Essentially, the similarity to a stereotype of a group trumps the actual size of the group (the prior probability).

When George H. W. Bush ran against Michael Dukakis for president, the infamous Willie Horton advertising campaign was used to distort the reality of furlough programs for prisoners. All 50 states, including California, where Ronald Reagan was governor, had these programs. The advertisement—

considered among the top 10 campaigns ever—stated that Dukakis:

[A]llowed first-degree murderers to have weekend passes from prison. One was Willie Horton, who murdered a boy in a robbery, stabbing him 19 times. Despite a life sentence, Horton received 10 weekend passes from prison. Horton fled, kidnapped a young couple, stabbing the man and repeatedly raping his girlfriend. Weekend prison passes—Dukakis on crime.²¹

This ad had a huge adverse impact on criminal justice reform by focusing people's attention on one case and ignoring the base-rate information. The truth was that furlough programs had been around for a long time, and the Horton case was an exception.

Donald Trump used a similar approach when running for president and made the following horrible statement regarding illegal Mexican immigrants:

When Mexico sends its people, they're not sending the best, they're sending people that have lots of problems and they're bringing those problems. They're bringing drugs, they're bringing crime. They're rapists and some, I assume, are good people, but I speak to border guards and they're telling us what we're getting.²²

It should be noted that *representativeness/similarity* is a general, shared term that describes the various errors individuals make when judging probabilities. Tversky and Kahneman²³ identified six situations where representativeness/similarity

caused fallacious reasoning: (1) insensitivity to the prior probability of outcomes, (2) insensitivity to sample size, (3) misconceptions of chance, (4) insensitivity to predictability, (5) the illusion of validity, and (6) misconceptions of regression (to the mean). The conjunction fallacy discussed infra is also an example of this problem.

IV. CONJUNCTION FALLACY

According to probability theory, the probability of a conjunction, the joint probability of A and B [$P(A \text{ and } B)$], cannot exceed the likelihood of either of its two individual constituents, $P(A)$ or $P(B)$. In other words, $P(A \text{ and } B) \leq P(A)$ and $P(A \text{ and } B) \leq P(B)$. For example, the probability of being a man with red hair is less than or equal to the likelihood of being a man; the probability of being a man with red hair is less than or equal to the chance of having red hair.

Despite this, people will make this mistake with the so-called “Linda Problem.” This study was discussed in Kahneman²⁴ but was initially published by Tversky and Kahneman.²⁵

Linda is 31 years old, single, outspoken, and very bright. She majored in philosophy. As a student, she was deeply concerned with issues of discrimination and social injustice, and also participated in antinuclear demonstrations. Which one of these is more probable?

(a) Linda is a bank teller.

(b) Linda is an insurance salesperson.

(c) Linda is a bank teller and is active in

*the feminist movement.*²⁶

Logically, as noted above, option (c) cannot be more likely than option (a), but Kahneman²⁷ found that about 85% of respondents claimed that it was. Even advanced graduate students who had taken several statistics courses made this mistake. Tversky and Kahneman posit that most people get this wrong because they use a heuristic called representativeness. Representativeness (or similarity) refers to the tendency of people to judge the likelihood of an event occurring by finding something similar and then assuming (often incorrectly) that the probabilities of the two events must be similar. Option (c) appears to be more representative and better resembles Linda's behavior. People do not think of a bank teller as a political activist. This example further highlights how representativeness/similarity may be misapplied in judging people.

V. IMPLICIT (UNCONSCIOUS) BIAS

Stereotypes are deliberate and conscious forms of bias. Implicit biases are unconscious, unintentional, and automatic judgments that are not based on facts but on prejudice, mental associations, and speculation. These hidden, involuntary associations can lead people to behave in discriminatory ways without realizing them. One way to reduce this type of bias is to bring it to people's attention. Thus, people might unconsciously discriminate against obese people, erroneously believing they are lazy, unproductive, stupid, have no willpower, and are unhealthy. As awareness of weight bias and its adverse consequences grows, some organizations are taking steps to prevent it in their workplaces. In May 2023, New York City enacted a law prohibiting discrimination based on weight and height, along with other protected categories, such as age, gender, race, religion, and sexual orientation. Several states are

considering legislation to make it unlawful to discriminate based on weight and height.²⁸

VI. REPRESENTATIVENESS HEURISTIC

This cognitive bias is a mental shortcut that we use when estimating probabilities. As noted above, the base rate fallacy is a special case of the representativeness heuristic. We make decisions regarding the likelihood of a particular event based on calculating how similar it is to an existing belief, stereotype, or mental prototype. The problem with this heuristic is that it may result in disregarding important information and thus making a poor decision. For example, one researcher found that decisions made by jurors could be affected by the wearing of eyeglasses, which increases the intelligence ratings of defendants and decreases guilty verdicts. The authors also found several interaction effects between the defendant's race and the wearing of eyeglasses.²⁹ Facial tattoos can probably also influence how we perceive someone.

VII. IN-GROUP BIAS

In-group bias refers to the tendency to favor members of one's own group over those of other groups. This bias can manifest in different ways, such as giving more resources, praise, or opportunities to in-group members or discriminating against out-group members based on their political, religious, ethnic, or national affiliations.³⁰ Regardless of the nature of the group, we tend to like our in-group members and dislike out-group members.³¹ People tend to empathize more with those who share their values and beliefs, thus showing more positive attitudes and behaviors toward them. This bias can lead to problems such as nepotism, favoritism, or tribalism.

Moreover, in-group bias can result in an “us vs. them” mentality. This can cause us to associate only with people who are similar to us and distance ourselves from those who are different. However, taking it to its extreme, in-group bias can have serious consequences, resulting in discrimination, xenophobia, and racism. Furthermore, in-group bias can also have more serious consequences. In-group bias suggests that the group membership of both the witness and the perpetrator of a crime can have a significant impact on witness testimony. The potential effect of in-group/out-group membership should be considered when witness testimonies are evaluated in court proceedings.³²

VIII. OUT-GROUP HOMOGENEITY EFFECT

Out-group homogeneity bias is the tendency to view members of other groups (out-groups) as more alike and undifferentiated than members of our own in-group. This bias can cause problems because it makes us more likely to overlook the diversity and uniqueness of people from different groups. We may then judge or stereotype them based on relatively few characteristics and develop racism, xenophobia, sexism, or other forms of prejudice. One might think that having extensive contact with another group should reduce or eliminate this bias, but this is not necessarily the case. Even groups that have widespread contact with each other, for example, men and women, will still be guilty of this bias and say that “all men are alike” or “all women are the same.”³³

IX. CONFIRMATION AND SELECTIVE PERCEPTION BIAS

Confirmation bias and selective perception are related concepts that overlap somewhat but are each distinct. With selective perception, people tend to allow their expectations or

preexisting beliefs to influence how they perceive the world. Thus, information that contradicts existing beliefs will tend to be overlooked or forgotten; information in agreement with their expectations will be noticed and retained (selective retention). Confirmation bias and selective perception make it very difficult for people to consider other points of view.

Confirmation bias refers to the tendency to seek, interpret, and embrace information that confirms our existing views and beliefs while ignoring or rejecting information that contradicts or challenges them. We easily spot flaws in the arguments of those who disagree with us, but we are blind to errors in our own reasoning. We are more likely to accept or exaggerate evidence that supports or validates our opinions; we become prisoners of our beliefs. Individuals are much less likely to seek out information that challenges their viewpoints than to listen to other perspectives. Confirmation bias can lead to inflexibility, rigidity, and an inability to modify one's beliefs even when presented with new information. It also reinforces negative attitudes and bigotry toward various groups because one selectively finds information that supports preexisting stereotypes.

Kahneman speaks of “adversarial collaboration,” which means bringing together two researchers who disagree and having them conduct an experiment jointly.³⁴ This is a way to reduce the confirmation bias that arises when a researcher consciously or unconsciously designs an experiment in such a way as to provide support for a particular position.³⁵

Given the vast amount of research available to scholars, it is not difficult for a researcher to cherry-pick the literature and only reference studies that support a particular opinion (confirmation bias) and exclude others.³⁶ Even if individual studies are done correctly, this does not guarantee that a

researcher writing a state-of-the-art review paper will write an accurate, undistorted synthesis of the literature. Indeed, Celia Mulrow demonstrated that many review articles were biased.³⁷

X. CONSERVATISM BIAS

People tend to favor a prior view even when presented with new information or evidence; that is, there is a tendency to overweigh and stick to old information and a reluctance to accept something new. Conservatism bias is related to status quo bias. Azzopardi³⁸ makes this distinction: “The status quo bias is emotional and causes people to hold on to how things are. The conservatism bias is cognitive and causes people to hold on to their previous opinions and idea frames even though facts have changed.” This bias makes people resist change and affects decision-making in areas including business and politics.

Conservatism bias may help explain why HR professionals are reluctant to consider candidates with different backgrounds and qualifications; this has hurt minorities. Requiring unnecessary college degrees has significantly impacted millions of workers, especially Blacks and Latinos (about two-thirds of American workers do not have college degrees). Several nonprofit organizations, including OneTen, Rework America Business Network, Opportunity@Work, National Skills Coalition, and Skillful, convince companies to change their policy and drop screening by college degree and instead adopt skills-based hiring. This is a crucial way to increase diversity in the workplace.³⁹

XI. CONGRUENCE BIAS

Congruence bias is similar to confirmation bias. It is a tendency to test a given hypothesis (usually our own beliefs) rather than to consider alternative theories that might actually

produce better results. In effect, someone guilty of congruency bias tries to prove that they are right. This is why alternative hypotheses are not considered. From the quotes below, it is clear that Arthur Conan Doyle, creator of Sherlock Holmes, understood the importance of being aware of the potential existence of several alternative hypotheses rather than starting with one. After the facts are collected, a detective or researcher selects the theory that does the best job of fitting the facts.

The following three quotes from Arthur Conan Doyle's Sherlock Holmes stories describe how research should be done:

It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts (A Scandal in Bohemia).

One should always look for a possible alternative and provide against it. It is the first rule of criminal investigation (Adventure of Black Peter).

When you have excluded the impossible, whatever remains, however improbable, must be the truth (Sign of the Four).⁴⁰

Some researchers are convinced that marijuana is a gateway drug leading to addiction to harder drugs, such as heroin. Indeed, there is evidence that a large percentage of addicts did start with marijuana when they were adolescents. However, there is an alternative hypothesis suggested by the National Institute on Drug Abuse:

An alternative to the gateway-drug hypothesis is that people who are more

*vulnerable to drug-taking are simply more likely to start with readily available substances such as marijuana, tobacco, or alcohol, and their subsequent social interactions with others who use drugs increases their chances of trying other drugs. Further research is needed to explore this question.*⁴¹

XII. MOTIVATED REASONING

Motivated reasoning is related to confirmation bias. Marcus defines motivated reasoning as “our tendency to accept what we wish to believe (what we are motivated to believe) with much less scrutiny than what we don’t want to believe.”⁴² Marcus makes the following distinction between motivated reasoning and confirmation bias: “Whereas confirmation bias is an automatic tendency to notice data that fit with our beliefs, motivated reasoning is the complementary tendency to scrutinize ideas more carefully if we don’t like them than if we do.”⁴³ Needless to say, people’s reluctance to scrutinize and analyze contrary ideas makes it difficult for them to change their beliefs. This may contribute to status quo bias.

XIII. AVAILABILITY BIAS

Availability bias refers to the overestimation of risks that are readily available in memory. How easily things come to mind is a heuristic that makes people overestimate the importance of certain kinds of information. If something is difficult to remember, one will assume it is less likely to occur. Availability bias means there is a tendency to overestimate the risks of accidents that are easy to recall. Why are people more worried about being killed with a gun than about drowning in a

pool? Or, why do we think more people die of homicides than suicides?

According to Thaler and Sunstein people “assess the likelihood of risks by asking how readily examples come to mind.”⁴⁴ Therefore, familiar risks (e.g., those reported in the media) are more frightening to people than unfamiliar ones. Thousands die yearly from injuries resulting from falling in the shower, yet people are more worried about being killed by terrorists. The danger of being hurt by texting while driving (or even walking) is sizable. According to Thaler and Sunstein “easily remembered events may inflate people’s probability judgments.”⁴⁵ It works both ways, and events we cannot readily bring to mind will be assumed to have lower probabilities of occurring. Of course, a marketer can make risks familiar by showing them in advertisements.

Availability bias can affect bias by letting us overestimate the likelihood of adverse events, such as terrorism, violent crime, and financial crimes in certain out-groups. The more exposed the public is to media reports about crimes involving a particular group, the more people will believe that these groups are dangerous—and much more than they actually are.

XIV. CERTAINTY BIAS

Certainty bias is cognitive bias that makes us overestimate the accuracy of our beliefs, judgments, and opinions. People resist new information that challenges or contradicts their preexisting ideas, attitudes, thoughts, and beliefs. This is because people stick to their views, even when there is a preponderance of evidence indicating that they are wrong. Consider the amount of scientific evidence that the planet is experiencing climate change and that vaccines do not

cause autism. Millions of people still cannot accept that they are wrong.

Overconfidence bias is a type of certainty bias. However, certainty bias focuses on our beliefs; overconfidence bias focuses on our knowledge and talents. People tend to overestimate their abilities and are overconfident. Kolbert highlights, “People believe that they know way more than they actually do.”⁴⁶ Slovic and Fernbach also speak of the “knowledge illusion”⁴⁷; we simply do not understand how little we actually know. With certain kinds of questions, answers that people feel that their response is 99% certain to be correct turn out to be incorrect 40% of the time.⁴⁸

Overconfidence bias is an even more considerable problem with experts. Several books have been written about expert predictions, which usually turn out to be wrong. Experts do only slightly better than random chance. Kahneman cites research conducted by Tetlock⁴⁹ that demonstrates how poorly experts who make a living “commenting or offering advice on political and economic trends”⁵⁰ actually perform. They do not do better than monkeys throwing darts on a board displaying the various possible outcomes.⁵¹

XV. BACKFIRE EFFECT

One would think that people would change their beliefs and opinions when presented with facts that contradict them. The truth, however, is that what often happens when people’s beliefs—especially those firmly held—are challenged by contradictory evidence, these incorrect beliefs get even more robust. It is a type of confirmation bias that results in people favoring information consistent with their ideas and rejecting views that challenge them. It is very challenging to change people’s beliefs with facts. Certainty and misinformation are

convincing and compelling, making it difficult for facts to change people's minds. Evidence shows that facts do not correct misinformation but make it more persistent and potent.⁵²

There is no question that it is considerably more challenging to change people's opinions who are misinformed rather than simply uninformed. This is why teaching people to be critical thinkers is essential. Critical thinking aims to solve a problem honestly and not be unreceptive to new approaches and different opinions. Knowing how to resolve conflicts has become a valuable skill, and it often requires the ability to help people see the truth. The following are some rules for changing opinions:

*Provide people with a narrative that replaces the gap left by false information; Focus on the facts you want to highlight, rather than the myths; Make sure that the information you want people to take away is simple and brief; Consider your audience and the beliefs they are likely to hold; and strengthen your message through repetition.*⁵³

XVI. BIAS BLIND SPOT

People tend to have a bias blind spot, meaning they are likelier to rate themselves as less susceptible to biases (including cognitive biases) than others. We can also detect biases in others more than in ourselves.⁵⁴ Thus, a bias blind spot can result in superiority, hypocrisy, and a double standard concerning people who disagree with us. According to one researcher:

People seem to have no idea how biased they are. Whether a good decision-maker or a bad

one, everyone thinks that they are less biased than their peers ...This susceptibility to the bias blind spot appears to be pervasive, and is unrelated to people's intelligence, self-esteem, and actual ability to make unbiased judgments and decisions. ⁵⁵

Thus, physicians believe that gifts from pharmaceutical companies are likely to unconsciously bias decisions made by other doctors. These gifts, however, will not prejudice their own medical decisions. Amazingly, only one person out of 661 stated that they were more biased than the average individual. ⁵⁶

XVII. SELF-SERVING BIAS

Self-serving bias is a cognitive bias that involves attributing one's successes to internal, personal characteristics (internal attributions) and blaming one's failures on outside forces or environmental factors beyond one's control (external attributions). It is a type of attributional bias, enabling people to see themselves positively. ⁵⁷ In other words, we take personal credit when we succeed (e.g., getting an A+ in a course), but if something does not work out (e.g., getting a D in a course), we tend to deny responsibility and blame outside factors, such as a poor teacher or an unfair test. One thing self-serving bias accomplishes is improving one's self-esteem and strengthening the ego. However, it makes it difficult for people to desire to improve if they believe all failures are due to outside forces. This bias might be the source of the racist belief that white European people are superior to Africans and Asians.

XVIII. BANDWAGON EFFECT BIAS

This bias refers to the tendency of people to adopt a specific behavior, belief, attitude, or style if a large number of people have also accepted it. ⁵⁸ It is a type of groupthink. People

tend to conform with others out of a desire to fit in with the crowd and gain approval from others. The fact that a large number of people believe something does not make it true. Bandwagon serves as a mental shortcut, or heuristic, allowing for decisions to be made quickly. It is much faster and easier to adopt others' opinions, especially if those beliefs are popular and consistently reoccurring.

The bandwagon effect may have an impact on how people vote. People want to vote for winners and may vote for someone perceived (polls may affect this) as being far ahead in polls. In the 20th century, bandwagons were commonplace in political campaigns, and "jump on the bandwagon" has become a derogatory term used to describe the social phenomenon of wanting to be part of the majority, even when it means going against one's principles or beliefs.⁵⁹

XIX. OMISSION BIAS

Omission bias is the tendency to judge commissions—active, harmful actions that hurt others—as being worse and more immoral than otherwise equivalent omissions (e.g., allowing others to die). We think it is worse to directly and actively harm others than to cause harm passively by not doing something, even when the same number of people are hurt. The famous "Runaway Trolley" case is reminiscent of this bias. Approximately 90% of subjects are willing to pull a lever that diverts the runaway trolley and kills one person but saves the lives of five people. On the other hand, very few people would be willing to throw a fat man off a bridge to stop the runaway trolley and save five people (known as "Would you kill the fat man?"). The math is the same in both cases: one person dies to save five.⁶⁰

Omission bias is an issue when it comes to implicit bias. One might not accept responsibility for implicit bias because it

is not done intentionally or unconsciously. However, Van Loon⁶¹ posits that people may be held responsible for their implicit bias if they fail to take steps to reduce its impact on their actions. Implicit biases can cause serious harm. Van Loon gives an example of how healthcare outcomes can be affected by implicit racial bias. Childbirth complications are more likely to be fatal for black women than for white women. This may result from several factors, including implicit bias among healthcare providers. They tend to pay more attention to the pain complaints of white women and ignore the pain of black women.

XX. FALSE CONSENSUS EFFECT

People tend to overestimate how much others share their attitudes, behaviors, beliefs, preferences, and opinions. We tend to think that others think the same way we do.

Ross et al.⁶² invented the term false consensus effect to describe participants' tendency to "see one's own behavioral choices and judgments as relatively common and appropriate to existing circumstances while viewing alternative responses as uncommon, deviant, or inappropriate." The false consensus effect tends to be stronger in certain situations. If we consider something really important or feel confident in our point of view, we are most likely to assume that more people agree with us.⁶³

If we are very concerned about the environment, for example, we will probably be more likely to overestimate the number of people who are also very concerned about environmental issues.

XXI. MOTIVATED BLINDNESS

Motivated blindness provides a psychological reason why many people engage in unethical behavior. It refers to individuals' psychological tendency to overlook unethical behaviors when it is in their interest to remain ignorant. Once

people have a vested interest in something, they can no longer be objective. This is why conflicts of interest are such a problem; it is almost impossible to behave ethically when a conflict of interest exists. Bazerman and Tenbrunsel demonstrate how motivated blindness caused many ethical failures, including the Great Recession of 2008.

*It's well documented that people see what they want to see and easily miss contradictory information when it's in their interest to remain ignorant—a psychological phenomenon known as motivated blindness. This bias applies dramatically with respect to unethical behavior.*⁶⁴

Bazerman and Tenbrunsel stated, “Most of us dramatically underestimate the degree to which our behavior is affected by incentives and other situational factors.”⁶⁵ On the other hand, we overestimate how others will be influenced by incentives (e.g., paying people to donate blood).

XXII. INTERPRETATION BIAS, MEMORY BIAS, JUST-WORLD BIAS

Interpretation bias is a type of “cognitive bias in which ambiguous situations are appraised as negative or threatening.”⁶⁶ Thus, those with a victim mentality might mistakenly assume that a boss who is unhappy with the quality of their work is a sexist or bigot when it is a valid criticism.

Memory biases are cognitive biases that involve the tendency to remember past events in a way that matches one’s current feelings, thoughts, or beliefs. They can occur with positive or negative stimuli.⁶⁷ For example, someone who feels like a victim might only remember the times others from a

different group harmed them and ignore the times they were helped or supported by them.

Just-world cognitive bias is a heuristic used to make sense of the world. It is the belief that the world is fair and that people generally get what they deserve. This bias can cause individuals to blame victims for their own misfortune or attribute success or failure to a character trait rather than bad luck or external factors. A common prejudice against homeless people is that they are responsible for their plight because of their lack of work ethic or substance abuse. People might see the high unemployment of minorities as being due to personal characteristics rather than discrimination. One of the most promising ways to beat victim blaming is to put yourself into the other person's shoes and actively try to imagine how they must have experienced the situation.⁶⁸

XXIII. SPOTLIGHT EFFECT

The spotlight effect is a cognitive bias that describes the tendency that makes individuals overestimate the degree to which they are observed and noticed by others. If people believe they are in the spotlight and are being watched more than they actually are, they become more self-conscious and worried about their behavior and appearance.⁶⁹ The spotlight effect can lead to the illusion of transparency and can make people more self-conscious, which increases their social anxiety. People who experience the spotlight effect feel uncomfortable in public. Moreover, it can cause people to make decisions based on the incorrect assumption that they are being constantly sized up by other people. However, the reality is that others often do not notice or care about things that we are highly conscious of ourselves.⁷⁰ Nevertheless, awareness of this bias can help one be more accurate in evaluating social situations.

XXIV. FUNDAMENTAL ATTRIBUTION ERROR

The fundamental attribution error refers to the tendency of a person observing another person's behavior to attribute it to internal factors or personality and to underestimate the effect of situational causes (i.e., external influences). In other words, we believe others do what they do because of their internal disposition. Thus, if you see someone fighting with another person, you will probably attribute it to the fact that the person has a violent temper (an internal characteristic) rather than something situational. Of course, it is quite possible that she is the victim of a mugging attempt and is trying to defend herself. Sherman provides the following example of the fundamental attribution error:

*A classic example is the person who doesn't return your call. You could go the usual route and think, "He is an inconsiderate slob and my parents were right years ago when they said I should have dropped him as a friend." But the fundamental attribution error would remind you that there might very well be other reasons why this person hasn't called you back. Maybe he is going through major issues in his life. Maybe he is traveling for work. Maybe he honestly forgot.*⁷¹

XXV. MORAL LICENSING

Moral licensing is a cognitive bias that allows people to act unethically or immorally without feeling that they are contradicting their ethical values or compromising their self-image of being a moral individual. It makes people feel morally justified in engaging in bad behavior (e.g., cheating on taxes) after doing something good before (e.g., donating to charity). After all, the good deeds done in the past make them feel morally

superior and entitled to behave unethically because they have proven that they are righteous from the previous act.

Men who publicly identify as feminists and contribute to women's rights causes often face allegations of sexual harassment or sexual abuse. Indeed, this is what happened to celebrities such as Harvey Weinstein and others. They were later exposed as sexual predators. Most likely, they used moral licensing to justify this. Therefore, people can claim to oppose sexist hiring practices in writing but still favor a male applicant for a position and even ignore harassment. Companies with diversity and inclusion programs may believe this is enough to show their morality. This may lead them to justify their discriminatory actions toward their minority employees. Moreover, employees who reluctantly participate in seminars or talks on diversity and inclusion may feel they have done their good deeds and then bully or mistreat coworkers from minority groups.⁷²

Marketers use this bias to increase sales. For example, airlines might donate some of their profits to charities, so people will ignore how poorly they treat their employees. In the same way, consumers who make a green purchase may feel morally entitled to indulge in a luxury purchase later, using their eco-friendly choices as an excuse for their lavish, self-indulgent spending.⁷³

XXVI. NEGATIVITY BIAS

Negativity bias is a cognitive bias that causes us to pay more attention to negative information and things than to positive ones and dwell on them. This means we are more likely to notice and recall negative experiences, respond more strongly to bad news than good news, and focus more on insults than praise. We are much more likely to relive painful memories than

blissful ones. Negativity makes us recall traumatic experiences better than happy ones and thus makes us less joyful and stressed. People focus more on an event's downsides (e.g., potential losses) than the upsides when deciding what to do.⁷⁴ Moore⁷⁵ maintains that this bias can affect the impressions we form of colleagues in the workplace. One bad experience with one member of a minority group is more likely to be recalled than numerous positive experiences with the same group.

XXVII. VICTIM MENTALITY

Victim mentality is not actually a cognitive bias but results from several of the abovementioned biases. In particular, the spotlight effect, interpretation bias, memory bias, and fundamental attribution error can enhance victim mentality. Distorting how people perceive and interpret reality makes them more likely to see themselves as victims. Indeed, victimization becomes a core part of their identity and how they see the world.

Kaufman⁷⁶ opines that social interactions are full of vagueness. Coworkers and friends might look annoyed, not smile back when you smile at them, or not respond to a text message. These situations do not have to be interpreted negatively. Interestingly, individuals with a strong tendency toward victimhood are less likely to forgive others after an offense and more likely to seek revenge. He underscores that:

[A] perpetual victimhood mindset leads us to see the world with rose-tinted glasses. With a clear lens, we'd be able to see that not everyone in our out-group is evil, and not everyone in our in-group is a saint. We're all human with the same underlying needs to belong, to be seen, to be heard and to matter.⁷⁷

CONCLUSION AND RECOMMENDATIONS

One of the most ancient and persistent forms of hatred is the one directed at the “stranger,” that is, those who are different. This is why the Bible repeatedly emphasizes the importance of treating them fairly and even loving them as ourselves. For instance, it says, “When a stranger dwells among you in your land, do not oppress him. The stranger who dwells with you shall be to you as one born among you; you shall love him as yourself ...”⁷⁸

What causes people to discriminate against others based on their race, ethnicity, gender, nationality, social class, sexual orientation, religion, appearance, weight, disability, neurodiversity, speech, or intelligence? How can we stop this behavior? Focusing only on one kind of discrimination and ignoring the rest can cause more harm than good and damage an organization. For example, according to the CDC, 27% of American adults have a disability; almost 42% are obese.⁷⁹ It makes no sense to ignore bias against them. All forms of prejudice are harmful and should be eliminated. This is not a small problem.

This paper highlights that cognitive bias is one possible source of irrational beliefs, including prejudice. People who think rationally realize the absurdity of any form of bigotry. Admittedly, other factors result in people holding prejudiced views. Some might have insecurities, fears, uncertainties, or interests that bias their perception of reality. For example, some feel that immigrants will take away their jobs. Evidence suggests that prejudice is more emotional than cognitive.⁸⁰ However, some scholars assert that “the key to creating a more just society starts with understanding where biases come from and how to counteract them.”⁸¹

Cognitive biases are often hard to detect and overcome because they are ingrained in our thinking and influenced by various factors, such as emotions, motivations, social norms, and cultural values. They can distort our thinking and lead to prejudice, but their impact may be reduced or eliminated by following certain steps. These steps are as follows: (1) being aware of our own biases and how they affect our choices—we must contemplate how our past experiences may have influenced our views; (2) seeking different sources of information and perspectives that can enhance and enrich our knowledge and understanding; (3) asking for feedback from others who can challenge and question our beliefs, assumptions, and viewpoints; (4) having respectful and constructive conversations with people who are different from us and learning from their experiences, knowledge, insights, and perspectives; and (5) enhancing our critical thinking and reasoning skills that help us evaluate evidence fairly, objectively, and rationally. Challenge beliefs and assumptions and consider alternative explanations. Using algorithms and tools such as AI to assist in decision-making will help overcome irrational conclusions. We must always be open-minded and ready to change our opinions when presented with new evidence.

Why do we care? It is about creating an organization—business, community, country, and family—where everyone is valued and no one feels disrespected. The motto of the fictional detective Harry Bosch in Michael Connelly’s novels is “Everybody counts or nobody counts.” This should be the guiding principle of every individual and leader.

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