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# The Intersection of Racial Inequities and Estate Planning

*Reetu Pepoff\**

## I. INTRODUCTION

The world of estate planning is arguably one of the most important areas of the law as it deals with the fundamental right to control the disposition of property in the event of disability or death. Unlike forced heirship rules in civil law jurisdictions which require that a person's property be distributed to certain individuals, the ability to freely dispose of one's property is a fundamental right granted to individuals in common law jurisdictions like the United States.<sup>1</sup> Given the broad unrestricted right to determine how to dispose of one's assets, it would seem inevitable that most people in the United States would take full advantage of this right and execute estate planning documents. However, statistics show that this, in fact, is not the case, particularly among Black, Indigenous and People of Color ("BIPOC") in the United States.<sup>2</sup>

This paper will examine racial inequities in the Trusts and Estates field and in particular, the lack of estate planning by BIPOC and its corresponding impact on the racial wealth gap. This paper will also discuss the need to address the racial inequities due to shifting demographics in the context of the economic buying power of BIPOC as well as the changing landscape of investments. Finally, this paper will

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<sup>1</sup> The United States is a common law jurisdiction, except for the State of Louisiana which is a combination of common law and civil law jurisdiction. See *About Louisiana*, LA. Gov't, <https://www.louisiana.gov/about-louisiana/> [<https://perma.cc/2DWQ-AEMN>].

<sup>2</sup> For purposes of this article, BIPOC generally refers to people in the United States who are not White Americans. This includes, but is not limited to, people who identify as African Americans, African, Caribbean or West Indies descent, Native Americans, American Indians, Alaskan Natives, East and South Asian, Pacific Islanders, Latin Americans and Hispanics. See Sandra E. Garcia, *Where Did BIPOC Come From?*, N.Y. TIMES (June 17, 2020), <https://www.nytimes.com/article/what-is-bipoc.html> [<https://perma.cc/N98W-D9LH>].

offer guidance on ways in which estate planning attorneys can address racial inequities in the Trusts and Estates field by (i) actively pursuing BIPOC as estate planning clients and demystifying the concept of estate planning, (ii) engaging in thought-provoking dialogue with new and existing clients to ensure that an estate plan reflects the client's values as it relates to racial and/or social justice causes, and (iii) demonstrating strong Diversity, Equity and Inclusion initiatives within the estate planning attorney's own law firm.

## II. THE PROBLEM

### A. Lack of Estate Planning

The year 2020 was an unprecedented year as the entire world was hit with a deadly pandemic known as COVID-19. The busy lives of many came to a screeching halt as people navigated various ways in which to deal with the pandemic. It also became a ripe opportunity for people to focus on issues that had been previously ignored, namely their own mortality. It is not surprising then that one survey found that the pandemic increased people's desire to create a will.<sup>3</sup> However, the mere desire to create a will didn't necessarily mean that people created a will. The survey also found that despite the COVID-19 pandemic, two out of three adults still do not have a basic estate plan such as a will.<sup>4</sup> The survey found that while one out of three adults indicated that the COVID-19 pandemic caused them to see a greater need for an estate plan, only 31% of those that saw a greater need for an estate plan actually did something about it.<sup>5</sup> While this may be frustrating, though perhaps not surprising, to many estate planning attorneys, the statistics are far bleaker from a racial lens. It has been stated that 76% of African Americans do not have a will which is more than twice the percentage of White Americans.<sup>6</sup> Similarly, it has been stated that only about one-third of Hispanics have a will.<sup>7</sup>

This is a disparity that estate planning attorneys are well-positioned to address. In order to address this disparity, we need to consider the reasons why the disparity exists in the first place. Although procrastination is generally the number one cited reason why someone does not

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<sup>3</sup> Daniel Cobb, *2021 Wills and Estate Planning Study*, CARING.COM, <http://www.caring.com/caregivers/estate-planning/wills-survey/> [<https://perma.cc/5MKC-RCRT>].

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

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

<sup>6</sup> Lizzie Presser, *Kicked Off the Land*, NEW YORKER (July 15, 2019), <https://www.newyorker.com/magazine/2019/07/22/kicked-off-the-land> [<https://perma.cc/7RKA-APL3>]. For purposes of this Article, White Americans refers to non-Hispanic Whites.

<sup>7</sup> Cobb, *supra* note 3.

have an estate plan, African Americans were more likely to state that they do not have enough assets as the most common reason for not implementing an estate plan.<sup>8</sup> However, this may not be the only reason why African Americans do not execute estate plans as there have been many wealthy and famous African Americans who have died intestate. For example, the actor Chadwick Boseman passed away in 2020 without a will in place.<sup>9</sup> In addition, the musician Prince died intestate in 2016 leaving a \$300,000,000 estate which resulted in a highly publicized dispute among his heirs.<sup>10</sup> In fact, the lack of estate planning may very well be intentional as it may be a result of an overall distrust of “the system.” One scholar concluded that “[t]he failure of African Americans to prepare wills is likely attributable to distrust of government, a belief that their children will ultimately inherit the land and reluctance to cause division within the family.”<sup>11</sup>

Many African Americans may intentionally choose to rely on the laws of intestacy based on the notion that the land will remain in the family indefinitely because it will be passed on to the decedent’s heirs. It is rooted in the belief that living on the property and paying the real estate taxes and expenses solidifies the ownership of the property.<sup>12</sup> Unfortunately, however, the lack of estate planning not only has a profound impact on the grieving family members who are left to sort out the decedent’s estate, but it also has a detrimental impact on the ability to effectively transfer generational wealth. This is evident when property is transferred to a decedent’s heirs as tenants-in-common. There is a misconception that this ownership structure grants the heirs a pro rata interest in the property when in fact, this ownership structure actually provides each tenant with an undivided interest in the property.<sup>13</sup> Since each tenant has an undivided interest in the property, such interest can then be sold to third parties, such as real estate developers. This allows developers to purchase a fraction of the property from one co-tenant and then petition the court to order partition by sale.<sup>14</sup> These forced partition sales are incredibly common in BIPOC communities and often

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

<sup>9</sup> See Sharon Epperson & Michelle Fox, ‘Black Panther’ Star Chadwick Boseman Died Without a Will. Here’s Why You Should Have an Estate Plan, CNBC, <https://www.cnbc.com/2020/10/21/black-panther-star-chad-boseman-died-without-a-will-why-you-need-one.html> (Oct. 26, 2020, 8:15 AM) [<https://perma.cc/76MH-M9NC>].

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

<sup>11</sup> Roy W. Copeland, *Heir Property in the African American Community: From Promised Lands to Problem Lands*, PRO. AGRIC. WORKERS J., June 1, 2015, at 1, 2, <https://tuspubs.tuskegee.edu/pawj/vol2/iss2/2> [<https://perma.cc/9M6P-F9PU>].

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

<sup>13</sup> *Id.*

<sup>14</sup> Greg Barlow, *Mitigating Property Loss Through Historic Partition Law Reform in the U.S.*, L. & Soc’y Ass’n (Aug. 26, 2020), <https://www.lawandsociety.org/2020/08/26/lisa->

result in the developer acquiring the entire property for less than its fair market value.<sup>15</sup> It has been suggested that forced partition sales represent one of the leading causes of land loss for African Americans.<sup>16</sup> However, African Americans are not the only racial minority group to be impacted by forced partition sales. It has been estimated that in the late nineteenth and early twentieth century, Hispanics in New Mexico alone lost more than 1,600,000 acres of land as a result of partition sales.<sup>17</sup> It has also been confirmed that Native Hawaiians have been negatively impacted by such partition sales.<sup>18</sup>

The significant property loss incurred by BIPOC as a result of forced partition sales has resulted in the promulgation of the Uniform Partition of Heirs Property Act (the "Act") which has been approved and recommended for enactment in all states by the Uniform Law Commission.<sup>19</sup> The Act, which is currently enacted in 19 states and being introduced in another 7 states, provides a number of due process protections to co-tenants who have inherited property through intestacy.<sup>20</sup> For example, the Act requires notice of a partition request to all other co-tenants and an independent appraisal of the fair market value of the property as a single parcel.<sup>21</sup> The Act also grants a co-tenant a right of first refusal to buy the interest of the co-tenant seeking the partition.<sup>22</sup> The Act is a monumental legislative step towards addressing the issues of racial inequities in the Trusts and Estates field. Similarly, it is time for estate planning attorneys to also consider racial inequities in their own practice of law.

## B. Racial Wealth Gap

The lack of estate planning by BIPOC has a direct impact on the racial wealth gap. When considering the wealth disparity between White Americans and BIPOC, there is a general view that the issue primarily stems from the difference in income (i.e., wages earned from a job)

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stories-defying-great-odds-mitigating-property-loss-through-historic-partition-law-reform-in-the-u-s [<https://perma.cc/L52U-SYZ7>].

<sup>15</sup> *Id.*

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

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

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

<sup>19</sup> See UNIF. PARTITION OF HEIRS PROP. ACT (UNIF. L. COMM'N 2010).

<sup>20</sup> *Id.* at prefatory note. The Act has been enacted in Nevada, Georgia, Montana, Alabama, Connecticut, Arkansas, Hawaii, South Carolina, Texas, New Mexico, Iowa, Missouri, Illinois, U.S. Virgin Islands, Florida, New York, Mississippi, Virginia, and California and is currently being introduced in Kentucky, Utah, North Carolina, Massachusetts, Indiana, New Jersey and District of Columbia. *Partition of Heirs Property Act*, UNIF. L. COMM'N, <https://www.uniformlaws.org> [<https://perma.cc/9BYJ-ZXB6>].

<sup>21</sup> See UNIF. PARTITION OF HEIRS PROP. ACT § 6.

<sup>22</sup> *Id.* § 7 cmt.

rather than total wealth (i.e., the sum of one's assets minus debts).<sup>23</sup> However, studies have established that there are substantial disparities in both income and wealth between White Americans and BIPOC.

One study conducted by the Federal Reserve System in 2019 found that the median African American household had a net wealth of \$24,100 compared to \$188,200 for White American households.<sup>24</sup> The problem is further compounded when gender is factored in as single African American women had a median net wealth of approximately \$7,000 and were four times less likely to inherit assets compared to single White American men.<sup>25</sup> However, African American households are not the only racial minority group that have considerably less wealth than White American households. It has also been reported that Hispanic households had a net wealth of approximately \$36,100 in 2019.<sup>26</sup> While other racially diverse households, including Asian, American Indian, Alaska Native, Native Hawaiian and Pacific Islander, had higher wealth than African Americans and Hispanics, they still had less wealth than White American households.<sup>27</sup>

One reason why the racial wealth gap exists is because White American households are more likely to receive an inheritance or gift compared to BIPOC households. For example, almost 30% of White American households reported having received an inheritance or gift compared to 10% of African American households, 7% of Hispanic households and 18% of other racially diverse households, which include Asian, American Indian, Alaska Native, Native Hawaiian and Pacific Islander.<sup>28</sup> The impact of this statistic is significant as it is estimated that the discrepancy in large gifts and inheritances accounts for 12% of the wealth gap between White Americans and African Americans.<sup>29</sup> According to economists, inheritances and other intergenerational trans-

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<sup>23</sup> *Overall-Racial Wealth Gap Infographic (2019)*, ASSET BLDG. POL'Y NETWORK (June 14, 2019), [http://assetbuildingpolicynetwork.org/wp-content/uploads/2019/06/ABPN\\_The\\_Racial\\_Wealth\\_Gap\\_Infographic\\_FINAL.pdf](http://assetbuildingpolicynetwork.org/wp-content/uploads/2019/06/ABPN_The_Racial_Wealth_Gap_Infographic_FINAL.pdf).

<sup>24</sup> Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FED. RSRV. (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm> [<https://perma.cc/22QF-7LEJ>].

<sup>25</sup> Daan Struyven et al., *Black Womenomics: Investing in the Underinvested*, GOLDMAN SACHS 4, 6, 18 (Mar. 9, 2021), <https://www.goldmansachs.com/insights/pages/black-womenomics-f/black-womenomics-report.pdf>.

<sup>26</sup> Bhutta, *supra* note 24.

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

<sup>28</sup> *See id.*

<sup>29</sup> Struyven et al., *supra* note 25 at 17.

fers “account for more of the racial wealth gap than any other demographic and socioeconomic indicators.”<sup>30</sup>

It is important to note that the racial wealth gap is not just attributable to gifts, inheritances or income earned. Even when comparing families that have identical income streams, studies have found that the racial wealth gap is still present since wealth is generated by households with fewer debts and expenses. One study found that of those in the top 10% income bracket, the median net worth for White American families was \$1,789,300 compared to \$343,160 for African American families.<sup>31</sup> The lack of estate planning by BIPOC only serves to contribute to this problem. Therefore, estate planning attorneys must consider how they can proactively help narrow this racial wealth gap.

### III. WHY IT MATTERS

#### A. Shifting Demographics and Economic Buying Power

Ideally, the racial disparities prevalent in estate planning would trigger every estate planning attorney’s altruistic desire to change the way in which he or she practices law. However, beyond simply our humanitarian nature to address these racial disparities, it is also important to understand the need for immediate action based upon the current trends in the United States as it relates to BIPOC. As of July 1, 2019, the United States Census Bureau reported that White Americans made up 60.1% of the population while African Americans made up 13.4%, Hispanic or Latino Americans made up 18.5%, Asian Americans made up 5.9% and multiracial Americans made up 2.8% of the population.<sup>32</sup> However, it is estimated that by 2045, BIPOC will represent a majority of the United States population.<sup>33</sup> More specifically, it is estimated that in 2045, the White American population in the United States will be 49.7% compared to 24.6% for Hispanic Americans, 13.1% for African Americans, 7.9% for Asian Americans and 3.8% for multiracial Americans.<sup>34</sup> This shift in demographics is a result of continuing gains in racial minority populations, particularly among youth, combined with the declining population of aging White Americans due to more deaths than

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<sup>30</sup> Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> [<https://perma.cc/W7JE-FMST>].

<sup>31</sup> *Id.*

<sup>32</sup> *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045219> [<https://perma.cc/QT59-FVC2>].

<sup>33</sup> See ASSET BLDG. POL’Y NETWORK, *supra* note 23.

<sup>34</sup> William H. Frey, *The US Will Become ‘Minority White’ in 2045*, CENSUS PROJECTS, BROOKINGS, <https://www.brookings.edu/blog/the-avenue/2018/03/14/the-us-will-become-minority-white-in-2045-census-projects/> (Sept. 10, 2018) [<https://perma.cc/PDV8-5YK9>].

births in the White American population.<sup>35</sup> It is also estimated that African Americans will contribute to more than 20% of the total United States population growth from 2020-2060.<sup>36</sup>

This shift in population must be considered in the context of the economic buying power of BIPOC. It is estimated that the combined buying power of African Americans, Asian Americans and Native Americans is \$2.4 trillion while the spending power of Hispanic Americans is \$1.5 trillion, for a combined total of \$3.9 trillion of buying power of BIPOC.<sup>37</sup> African Americans alone have had a 114% increase in buying power since 2000 as a result of an increase in black-owned businesses, educational achievements and population growth.<sup>38</sup> Furthermore, Asian Americans account for approximately \$1 trillion or an estimated 6.2% of the United States' total buying power which has increased 267% since 2000.<sup>39</sup> While this makes Asian Americans the fastest growing minority market in the country, Hispanic Americans are not far behind as their buying power has increased 212% since 2000 and they are considered the second fastest growing minority market in the nation.<sup>40</sup> These trends will only continue to grow as the population shifts in favor of BIPOC and undoubtedly impact multiple areas of civic engagement. One report states that “[m]inorities will be the source of all of the growth in the nation’s youth and working age population, most of the growth in its voters, and much of the growth in its consumers and tax base as far into the future as we can see.”<sup>41</sup> Therefore, as the population and economic buying power continues to shift in favor of BIPOC, estate planning attorneys must be prepared to shift as well by focusing on estate planning for BIPOC.

## B. The Changing Landscape of Investing

Another reason why racial inequity within the estate planning field must be addressed is because of the changing landscape of investing.

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<sup>35</sup> *Id.* Within the BIPOC population, Multiracial, Asian and Hispanics account for the greatest growth. *Id.*

<sup>36</sup> *Nielsen's 10th-Year African American Consumer Report Explores the Power of the Black Community from Moment to Movement*, CISION PR NEWswire (Oct. 21, 2020, 8:00 AM), <https://www.prnewswire.com/news-releases/niensens-10th-year-african-american-consumer-report-explores-the-power-of-the-black-community-from-moment-to-movement-301156690.html> [<https://perma.cc/77ZZ-MW8J>].

<sup>37</sup> See Univ. of Ga., *Minority Markets Have \$3.9 Trillion Buying Power*, NEWSWISE (Mar. 21, 2019, 8:55 AM), <https://www.newswise.com/articles/minority-markets-have-3-9-trillion-buying-power> [<https://perma.cc/XX94-HUM3>].

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

<sup>39</sup> *Id.*

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

<sup>41</sup> Frey, *supra* note 34.

Environmental, Social and Governance (“ESG”) investing or Socially Responsible Investing (“SRI”) is gaining significant popularity among estate planning clients. SRI is a type of investment strategy that seeks to generate social change while also providing a financial positive return for the investor. Although SRI uses common metrics such as performance and expenses to select investments, it also considers whether a particular company is aligned with the investor’s own personal values. While historically ESG focused on the values of a company rather than the rate of return on investments, research has found that ESG strategies, in fact, pay off financially for the investor. Multiple studies have found that SRI mutual funds can match traditional mutual funds and can even outperform them.<sup>42</sup> A 2019 study conducted by Morgan Stanley found that 85% of individual investors are interested in sustainable investing compared to 75% in 2017.<sup>43</sup> As demand for SRI grows, so will the options available for SRI. Morningstar, an investment research company, indicated that in 2014, there were only 111 sustainable open-ended mutual funds and exchange traded funds (“ETFs”) and that number has already grown to 303 in 2019.<sup>44</sup> According to the 2020 Global ETF Investor Survey, almost 74% of global investors “plan to increase their allocation to ESG ETFs over the next year” and ESG investing was the top strategy ETF investors want to see more of in the market.<sup>45</sup>

While historically most ETFs focused on renewable energy, environmental services, and clean technology, there are now various types of ESG ETFs that address racial inequities.<sup>46</sup> For example, the Racial Justice Investing Coalition, which has more than 250 socially-responsible investors, seeks to hold companies accountable by ensuring that a company is diverse and fair in recruiting, promotions and compensation.<sup>47</sup> The coalition has said “it will review portfolios to identify companies that ‘reinforce systemic racism.’”<sup>48</sup> However, racial justice investing is

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<sup>42</sup> Arielle O’Shea & Alana Benson, *What is Socially Responsible Investing (SRI) and How to Get Started*, NERDWALLET (July 20, 2021), <https://www.nerdwallet.com/article/investing/socially-responsible-investing> [<https://perma.cc/NG7N-9EZY>].

<sup>43</sup> *Id.*

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

<sup>45</sup> Mina Reinckens, *Investing in a Better Future: ESG and Black Lives Matter*, BENEFIT CONSULTANTS GRP. (Apr. 21, 2021), <https://www.bcgbenefits.com/blog/esg-and-blm> [<https://perma.cc/65E9-7BQK>].

<sup>46</sup> See Jon Hale, *Sustainable Investing Interest Translating Into Actual Investments*, MORNINGSTAR (Oct. 29, 2019), <https://www.morningstar.com/articles/952254/sustainable-investing-interest-translating-into-actual-investments> [<https://perma.cc/7TKY-5AUB>].

<sup>47</sup> Saijel Kishan, *Socially-Responsible Managers Commit to Investing Against Racism*, BLOOMBERG (June 18, 2020, 10:30 AM), <https://www.bloomberg.com/news/articles/2020-06-18/socially-responsible-managers-commit-to-investing-against-racism> [<https://perma.cc/49KK-NBSU>].

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

not the only way investors are able to have a positive impact on BIPOC as investing in environmental causes can also make a difference. As Dr. Robert Bullard, a Distinguished Professor of Urban Planning and Environmental Policy at Texas Southern University stated, “‘I can’t breathe’ resonates with today’s social injustice, and it’s also what communities of color were saying in the early 1980s because of exposure to toxic fumes and environmental injustice” and “[i]f we don’t address climate change and global warming, we’ll see historically marginalized populations becoming further marginalized.”<sup>49</sup>

As social justice reform is at the forefront of our minds, the interest in SRI will only continue to grow among estate planning clients. Individual investors are now putting their money where their mouth is and estate planning attorneys must be prepared to discuss these investment options with their clients.

#### IV. THE SOLUTION

##### A. Actively Pursue BIPOC as Clients and Demystify Estate Planning

There are various strategies that estate planning attorneys can utilize to help combat racial inequities within the Trusts and Estates field. The most effective method is to actively pursue BIPOC as clients and demystify the estate planning process, especially as BIPOC are accumulating wealth. In 2018, minority-owned business made up approximately 18.3% of all United States businesses and this number is only growing.<sup>50</sup> In 2018, there were approximately 124,551 African American-owned businesses, 577,835 Asian-owned businesses and 331,625 Hispanic-owned businesses.<sup>51</sup> Hispanic-owned businesses alone reflected a 3% growth from 2017 to 2018.<sup>52</sup> While it is impossible to know how many of these businesses have succession planning, the current statistics related to estate planning and the racial wealth gap suggests that a majority of these businesses could very well be without any secure business succession planning.

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<sup>49</sup> Keesa Schreane, *Sustainable Business and the Importance of Black Lives Matter*, REFINITIV (June 18, 2020), <https://www.refinitiv.com/perspectives/future-of-investing-trading/sustainable-business-and-the-importance-of-black-lives-matter/> [<https://perma.cc/FC8C-BQUZ>].

<sup>50</sup> *Annual Business Survey Release Provides Data on Minority-Owned, Veteran-Owned and Women-Owned Businesses*, U.S. CENSUS BUREAU (Jan. 28, 2021), <https://www.census.gov/newsroom/press-releases/2021/annual-business-survey.html> [<https://perma.cc/YY2N-D7DQ>].

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

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

Since BIPOC have demonstrated a reluctance to create an estate plan, estate planning attorneys must proactively demystify the estate planning process. Estate planning attorneys must emphasize the importance of creating a simple yet effective estate plan, particularly one that is designed to evolve with family expansion and wealth accumulation. These discussions must focus on ways to preserve a legacy for future generations.

As Earl G. Graves, Sr., the Founder and Publisher of *Black Enterprise Magazine* noted,

Estate planning means future generations not having to start from scratch to launch their businesses, or to finance the growth of those we leave to them. It means lessening our children's and grandchildren's dependence on student loans. It means providing the resources necessary to support the institutions, including historically black colleges and universities, necessary for the continued progress of African Americans. To achieve all of this and more requires us to establish a will and estate plan—not tomorrow, or someday, but now. And once those are in place, it also means reviewing and updating these documents as necessary, as births, deaths, changes in marital status, and other life transitions take place. Wealth building is not just about financing our lives; it's about leaving a legacy for our children, and their children, to build upon. Our commitment to black financial empowerment requires us to put in place the tools and measures necessary for preserving and transferring our wealth, no matter how much—or how little—we believe we have, to future generations.<sup>53</sup>

In order to seek out BIPOC clients, estate planners should familiarize themselves with financial advisors and accountants that are also focused on BIPOC as clients and have demonstrated inclusiveness. Estate planning attorneys should consider collaborating with professional organizations such as the Association of African American Financial Advisory, the National Association of Black Accountants, Inc., the Asian Pacific CPA Association and the American Association of Hispanic Certified Public Accountants, to develop effective strategies aimed at engaging BIPOC as clients.

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<sup>53</sup> Earl G. Graves, *Lack of Estate Planning Puts Black Wealth at Risk*, BLACK ENTER. (Nov. 3, 2015), <https://www.blackenterprise.com/lack-of-estate-planning-puts-black-wealth-at-risk/> [<https://perma.cc/5ZHS-5CX3>].

## B. Engage in Thought-Provoking Dialogue with New and Existing Clients

With an increase in ESG investing, estate planning attorneys must also engage in thought-provoking dialogue with new and existing clients (both BIPOC and non-BIPOC clients) to ensure an estate plan reflects the client's values as it relates to racial and/or social justice causes. Although engaging in racial justice dialogue may be uncomfortable, there are resources to help guide estate planning attorneys through that process. For example, there are estate planning questionnaires that can help both estate planning attorneys and clients have an open and honest dialogue about racial justice issues which may ultimately impact how an estate plan is constructed. These questions prompt clients to consider whether race played a role in the accumulation of their wealth and what wealth stewardship means to them.<sup>54</sup>

In order to extract value from these discussions, it may be useful for estate planning attorneys to consider their own implicit biases. There are various training modules and tests which can help someone recognize their own implicit biases. For example, Harvard University has created Project Implicit which is a non-profit organization that is designed to educate the public about implicit bias.<sup>55</sup> They have created an Implicit Association Test to report one's attitudes and beliefs about various topics, including race, skin-tone, Asian Americans and Arab-Muslims.<sup>56</sup> Recognizing implicit bias can better prepare estate planning attorneys to have these sensitive discussions with their clients.

It will also be important for estate planning attorneys to familiarize themselves with national organizations and local community foundations that focus on racial justice causes in order to have a meaningful dialogue with clients who have expressed an interest in such causes. A few well-established national organizations include The National Association for the Advancement of Colored People, American Civil Liberties Union, and Asian American Center for Advancing Justice.

## C. Demonstrate Strong Diversity, Equity and Inclusion Initiatives

In order to effectively combat the racial inequities in the Trusts and Estates field from all angles, it is also critical that estate planning attorneys reflect on Diversity, Equity and Inclusion initiatives within their

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<sup>54</sup> See *Estate Planning Through a Social and Racial Justice Lens*, LEGAL FOUND. OF WASH. 1, <https://legalfoundation.org/wp-content/uploads/2020/09/Estate-Planning-with-a-Social-Justice-Lens-Handout.pdf>.

<sup>55</sup> See *About Us*, PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/aboutus.html> [<https://perma.cc/657T-QSRT>].

<sup>56</sup> See *Education*, PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/education.html> [<https://perma.cc/XT4A-AMJD>].

own law practice in order to attract BIPOC attorneys to this area of the law. For the past decade, law school graduating classes have had approximately 33% racial and ethnic minorities, yet racial and ethnic minorities only account for approximately 9% of equity partnerships in most large law firms.<sup>57</sup> The lack of diverse equity partners can be attributed, at least in part, to the increased rate at which diverse attorneys leave law firms compared to non-diverse attorneys. Attrition rates for diverse attorneys at the associate level are 33% higher than for White American attorneys.<sup>58</sup> It has also been estimated that the racial demographics of equity partnership within the largest 200 law firms will not match law school graduating classes until 2084.<sup>59</sup> Therefore, estate planning attorneys must carefully review their own pipeline for talent to assess how they are impacting BIPOC attorneys at the highest level.

In order to attract BIPOC attorneys to practice in the Trusts and Estates field, estate planning attorneys should actively recruit at Historically Black Colleges or Universities (HBCU). There are currently six HBCU law schools, namely Howard University, Florida A&M University, Southern University, North Carolina Central University, Texas Southern University and University of the District of Columbia.<sup>60</sup> In addition, estate planning attorneys should network with local and national minority bar associations such as Hispanic National Bar Association, National Asian Pacific American Bar Association and Native American Bar Association.

Large and midsize law firms should also strongly consider participating in the Diversity Lab's Mansfield Rule.<sup>61</sup> The Mansfield Rule assists law firms with developing a diverse pipeline for leadership roles within such law firm. The goal of the Mansfield Rule is to diversify law firm leadership by measuring whether law firms have affirmatively considered at least 30% diverse attorneys, including women and BIPOC lawyers, for leadership roles, equity partner promotions, formal client pitch opportunities and senior lateral positions.<sup>62</sup> The benefits of partici-

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<sup>57</sup> *Boosting Diversity, Equity & Inclusion Through Experimentation, Accountability, Transparency & Results Measurement*, MOVE THE NEEDLE FUND, <https://www.mtnfund.com> [https://perma.cc/KH5S-R6NB].

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

<sup>59</sup> *Id.*

<sup>60</sup> *Black Enrollments at the Law Schools at Historically Black Universities*, J. BLACKS HIGHER EDUC. (Dec. 23, 2019), <https://www.jbhe.com/2019/12/black-enrollments-at-the-law-schools-at-historically-black-universities> [https://perma.cc/H5Y9-43AN].

<sup>61</sup> *Mansfield Rule 5.0 & UK Expansion (2021-2022)*, DIVERSITY LAB, <https://www.diversitylab.com/pilot-projects/mansfield-rule-5-us-uk-canada> [https://perma.cc/VNS6-N4FA].

<sup>62</sup> *Mansfield Rule 4.0*, DIVERSITY LAB, <https://www.diversitylab.com/mansfield-rule-4-0> [https://perma.cc/YF2A-UMSU].

pating in the Mansfield Rule speak for themselves. Results have shown that law firms that have joined the Mansfield Rule since inception have diversified their Management Committee at more than 30 times the rate of law firms that did not participate in the program.<sup>63</sup> In fact, while racial and ethnic diversity of Partner Nomination Committees within law firms has generally declined since 2017, law firms that participated in the Mansfield Rule have increased their diversity nearly 4% during the same timeframe.<sup>64</sup> There are currently 166 law firms that have joined the Mansfield Rule and participation is still growing.<sup>65</sup> By implementing these initiatives, estate planning attorneys can visibly demonstrate a strong commitment to addressing racial inequities within the estate planning attorney's own law practice.

## V. CONCLUSION

The racial inequities in the Trusts and Estates field that occur due to the lack of estate planning is evident by the current racial wealth gap. Although estate planning attorneys cannot unilaterally stop the racial inequities within the Trusts and Estates field, they are best positioned to mitigate the impact of such inequities by not only recognizing the need for change but also taking affirmative steps to effectuate such change.

Estate planning attorneys must actively pursue BIPOC as estate planning clients and engage in sensitive discussions centered around racial equality with all clients. In addition, estate planning attorneys must implement Diversity, Equity and Inclusion initiatives within their own law firms to ensure that racial inequities are addressed at every level. Charles Hamilton Houston, an iconic civil rights attorney, famously said that "a lawyer's either a social engineer or he's a parasite on society."<sup>66</sup> It is incumbent upon all of us to strengthen the integrity of this profession by choosing wisely.

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<sup>63</sup> *Mansfield Rule Early Adopter Outcomes*, DIVERSITY LAB, <https://www.diversitylab.com/pilot-projects/mansfield-rule-early-adopter-firm-results> [<https://perma.cc/KQ43-CBH2>].

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

<sup>65</sup> See DIVERSITY LAB, *supra* note 61.

<sup>66</sup> Steven D. Jamar, *Brown@50 Biographical Sketches: Charles Hamilton Houston*, HOW. UNIV. SCH. L., <http://law.howard.edu/brownat50/BrownBios/BioCharlesHHouston.html> [<https://perma.cc/NN6L-PJ8T>].

