

This issue of Voices of Excellence discusses the concept of intersectionality. Intersectional analysis may be used to understand how a combination of factors such as race and gender work together to affect an individual versus considering how each factor separately affects the individual. Consistent with Barclay Damon’s focus on diversity, equity, and inclusion (DEI), understanding intersectionality provides deeper insight into how race, gender, socioeconomic status, and other factors impact individuals within our communities as various factors often combine to create forms of oppression that are not apparent when analyzed separately. Intersectional analysis—along with the related concept of critical race theory, also discussed in this issue—leads to a greater understanding of individuals and their unique circumstances, which allows us to continue working toward a more diverse, equitable, and inclusive world.

QUOTE OF THE QUARTER

“The goal of [intersectional analysis] should be to facilitate the inclusion of marginalized groups for whom it can be said: ‘When they enter, we all enter.’”

—Kimberlé Crenshaw, Professor, UCLA School of Law and Columbia Law School



All Inequality Is Not Created Equal: An Overview of Intersectionality and the Law

by [Kyra Ganswith](#), Associate

“Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them.”¹

Intersectionality is a theoretical framework that recognizes the complexity of multiple social identities and the interconnectedness of various forms of oppression, such as racism, sexism, classism, homophobia, cisnormativity, ageism, and ableism, to name a few. Intersectionality aims to understand how these forms of oppression intersect and overlap, creating unique experiences of discrimination for individuals who hold multiple marginalized identities.

The concept has gained prominence in recent years, particularly in the legal field, but the term was coined by legal scholar Kimberlé Crenshaw in 1989. At its core, intersectionality recognizes that individuals belong to multiple social categories and that these categories can intersect to create unique experiences of oppression. For example, a woman of color may experience discrimination not only because of her gender but also because of her race, and the intersection of these two forms of oppression can create a distinct experience of marginalization. Similarly, an individual who is disabled and transgender may experience discrimination based on both their disability and their gender identity, with each form of oppression interacting to create a unique experience of marginalization inside and outside of those groups. Crenshaw explains

how discrimination occurs on various levels and how there are hierarchies of marginalized identities within society—an important topic that warrants a separate article.²

The law plays a critical role in addressing issues of intersectionality, as it shapes social norms, values, and behaviors that may perpetuate or challenge systems of oppression. Intersectionality in the legal field recognizes that individuals who belong to multiple marginalized groups may face distinct forms of discrimination that are not adequately addressed by traditional legal frameworks. For example, discrimination laws that aim to protect people with a certain sexual orientation may not adequately address the unique experiences of those who are also marginalized based on their gender identity or gender.³ Discrimination laws prohibiting certain conduct against women may not adequately address the unique experiences of women of color who may face discrimination based on both their gender and race. The list of possibilities goes on.

In the legal field, intersectionality has become an important consideration in cases involving discrimination and unequal treatment. In employment discrimination cases, courts may be required to consider the ways in which multiple forms of discrimination may be at play. Similarly, in cases involving police brutality, state violence, or targeted hate crimes, courts may need to consider the ways in which an individual’s race, gender, socioeconomic status, sexual orientation, gender expression, and other factors may have led to their mistreatment. We frequently see examples of this in the media and our own lived experiences.

In order to address these shortcomings, legal scholars and practitioners have called for a more intersectional approach to the law. Even the Lawyers’ Committee for Civil Rights Under the Law has filed amicus briefs on the topic.⁴ Certain courts have identified the need for intersectional analyses. For example, in *Bray v. Marriott Hotels*,⁵ an African American woman brought a claim of discrimination based on her race and gender against her employer. The employer chose a white female candidate for a promotion over the plaintiff despite her qualifications. The court recognized that the plaintiff’s claims were based on the intersection of both race and gender and that the plaintiff’s experiences of discrimination were shaped by the intersection of these two factors. There are many similar cases where courts have started using or identifying the need for intersectional analyses.⁶ As such, the legal field must take an intersectional approach and create legal frameworks that are sensitive to the complex and intersecting nature of discrimination and oppression. This ensures that all individuals, regardless of their

2023 DIVERSITY PARTNER COMMITTEE MEMBERS



[Sharon Brown](#), Chair
Rochester



[Zach Forward](#)
Syracuse



[Jerry Mackey](#), at Large
Rochester



[Bob Heary](#)
Buffalo



[Mitch Katz](#), Pro Bono at Large
Buffalo



[Naresh Kannan](#)
Albany



[Jen Leonardi](#), Pro Bono at Large
Buffalo



[Penny Mason](#)
Major Markets



[Sanjeev Devabhakthuni](#)
Rochester

social categories or experiences of oppression, have equal and equitable access to the justice system.

Law firms can play a critical role in promoting intersectionality inside and outside their offices. Promoting intersectionality in the law is essential for creating a more just and equitable legal system for legal professionals, clients, and the community. This can be achieved by actively working toward DEI, providing education and training, incorporating intersectionality into legal work, supporting social justice initiatives, creating a culture of advocacy, and collaborating with other organizations.

Barclay Damon is dedicated to prioritizing intersectionality in the workplace and beyond. The firm strives to recruit and retain diverse legal talent; engage with communities; collaborate with other organizations, such as the Legal Aid Society; educate and train all professionals on DEI topics; and stay up to date on issues affecting diverse communities. The firm also recognizes the importance of having an ongoing commitment to DEI and adapts accordingly. In turn, the commitment leads to better client service, work product, and work environment.

The length of this article is not indicative of the importance or amount of published literature or cases regarding intersectionality in the law. Barclay Damon encourages everyone to read more about intersectionality by consulting the sources cited herein as well as the firm's [Anti-Racism Resources](#) document.

¹ Crenshaw, Kimberlé, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," University of Chicago Legal Forum: Vol. 1989: Iss. 1, Article 8. Available at: <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>.

² *Id.* (explaining how Black women suffer from a unique form of discrimination and how marginalized groups have a hierarchy in society).

³ See e.g., Konik, J., Cortina, L.M. Policing Gender at Work: Intersections of Harassment Based on Sex and Sexuality. *Soc Just Res* 21, 313–337 (2008). <https://doi.org/10.1007/s11211-008-0074-z>.

⁴ See e.g., *Bostock v. Clayton*, Brief amicus curiae of Lawyers' Committee for Civil Rights Under Law, The Leadership Conference on Civil and Human Rights, and 57 Civil Rights Origination, 3 July 2019, 140 S. Ct. 1731, <https://www.nclc.org/wp-content/uploads/2022/08/Bostock-v.-Clayton-County-US-Sup-Ct-7-3-19.pdf>.

⁵ *Bray v. Marriott Hotels*, 110 F.3d 986 (3d Cir. 1997).

⁶ See e.g., *Jefferies v. Harris Cty. Cmty. Action Ass'n*, 615 F.2d 1025 (5th Cir. 1980); *Hicks v. Gates Rubber Co.*, 928 F.2d 966 (10th Cir. 1991); *Hafford v. Seidner*, 183 F.3d 506 (6th Cir. 1999).



Personal Statement on Critical Race Theory

by [Olimata Jobe](#), 3L Intern

Critical race theory (CRT) is a framework that goes beyond simply examining race and instead focuses on understanding the intersectionality of our lived experiences. CRT is interdisciplinary in its scope and requires both depth and breadth when examining the intersection of race, sexuality, gender, and ableism, among others, within every aspect of the legal system. Someone once asked me, "Do you think that there are inequities in patent law?" Absolutely. The disparities that CRT assesses infiltrate every sector of the American legal system. The spirit of my activism is freedom, and the purpose of CRT is to honestly evaluate our current space and place in legal history so we can begin to manifest social, political, and economic equity in the American legal system.

My experience with CRT in my legal education has meant that a safe space exists for me to learn, process, and imagine a more equitable legal system. As a Black woman, I found CRT to be an essential tool in grounding me in my 1L doctrinal courses, especially when learning about historical legal doctrines that were created during the enslavement, mass genocide, and colonization of indigenous peoples and Africans in America. I was fortunate enough to have CRT applied in my 1L Property I & II and Introduction to Lawyering courses, where my professors acknowledged the morality and conscience of legal decisions as well as the impact that doctrinal law had on people's livelihoods. My 1L property professor would pause after covering topics such as discovery or racialized restrictive covenants and ask, "How do we feel?" The space to engage with the material in an honest way added a level of accountability for how the law has evolved to work for and against non-white peoples as well as our current place in perpetuating these rules. The implementation of CRT in law school gave me the audacity of hope for a legal system whose laws weren't created to protect people of color.

My activism has been subject to constant questioning and skepticism from people who don't seek to understand its purpose and value. What has helped me navigate the constant pushback on my activism is collectivism, allyship, and the spirit of gratitude. I find gratitude in remembering that I am connected to a legal community that wants to help—even when they don't know how. Working with allies who show up ready to work and move toward actualizing the vision of equity forward has been essential to my success. There are always opportunities for people to learn. Nonetheless, it's important to work in full force with what we have, no matter how limited our resources may seem.

As a 1L student, I petitioned and presented at a town hall for Albany Law School to integrate CRT into the 1L curriculum simultaneous to a faculty vote on a social justice requirement that included CRT. The result of these efforts was that the vote passed to amend the 1L curriculum.

As a 2L student, I initiated the CRT Dialogue at Albany Law School alongside Brenda Gonzalez, another 2L student at Albany Law School. The inaugural CRT Dialogue hosted judges from the Capital Region and California, attorneys, and Albany Law School professors who participated in a panel discussion about how their cultural identity has shaped their experience within the legal profession.

As a 3L, I co-hosted the Second Annual CRT Dialogue, a full-day symposium that included three continuing legal education courses on CRT at Albany Law School. The courses, which included topics on CRT and patent law, national security, and education, were provided to help legal practitioners fulfill the NYS Elimination of Bias credit requirement. The event was a success due to the solidarity and allyship among minority students and supportive staff and faculty as well as sponsoring partnerships with law firms in the Albany community, including Barclay Damon LLP, Whiteman Osterman & Hanna LLP, and Nixon Peabody LLP. I remain undeterred in this work because it serves a greater purpose. CRT fosters cultural competency in the legal profession and endeavors to work toward fulfilling my aspiration of collectively achieving equity in the American legal system. We are powerful in our choice to uplift each other. However, we must agree on a greater extent of examination and critical thinking needed to hold ourselves accountable for change.

Pro Bono Corner

Firm Pro Bono Achievements

The firm again achieved 100-percent pro bono participation by all full-time attorneys, working with firm paralegals, in 2022. As noted in our [press release](#), through our multi-award-winning pro bono program, last year the firm dedicated approximately 2,500 hours of time valued at nearly \$850,000 to pro bono efforts.

Once again, Barclay Damon has been named an Empire State Counsel® Law Firm Award honoree. The annual awards from the New York State Bar Association acknowledge the exemplary pro bono work of individual attorneys and law firms at its annual Justice for All Awards Luncheon. We are being honored based on the total number of pro bono hours completed by attorneys at our firm who performed 50+ pro bono hours in 2022. This is the sixth consecutive year we have been honored. [Sharon Brown](#), [Carolyn Trespasz](#), and [Oliver Young](#) attended the Justice for all Awards Luncheon, and Sharon accepted the award on the firm's behalf. She's shown here with Lynne Poster-Zimmerman, co-chair of the President's Committee on Access to Justice, and Edwina Frances Martin, immediate past chair of the committee.



[Genevieve Halpenny](#) represented a freelance mechanic in a pro bono matter. Our client planned to lease the defendant's garage for tool storage and other uses for a year and then purchase the garage. Our client paid a deposit and certain costs in anticipation of the purchase. The parties quickly abandoned business formalities, though our client continued to pay certain expenses. He ended up having very little use of the garage, and once the relationship had deteriorated and it was clear he wouldn't

be able to purchase the property, our client vacated the space and asked that his tools be returned to him. The defendant refused our client access to the space. Barclay Damon brought an action to get the tools back and for damages. The defendant counterclaimed for back rent and other issues. After a year and a half of painstaking motion practice to extract discovery from the recalcitrant pro se defendant and exclude irrelevant character evidence, the judge followed our pre-trial memorandum as a roadmap for the January trial. Our client worked extensively with Genevieve on his testimony, and she reports he did an excellent job testifying. After a years-long emotional rollercoaster and the trial, our client was awarded replevin of his tools, and the judge reduced an award to the defendant on his counterclaim from \$10,000 to \$2,500 based on the evidence and equitable considerations. [Brian Whiteley](#) supervised this matter, and [Kayla Arias](#), [Julie Cahill](#), [Margaret Talt](#), [Mitch Katz](#), and [John Cook](#) were instrumental to this success.

[James Ko](#) was appointed to represent a defendant in a domestic violence contempt matter in front of the Superior Court of New Jersey. The defendant faced two charges: (1) harassment and (2) contempt. The defendant's wife alleged that the defendant violated a temporary restraining order and a final restraining order. Initially, James reviewed all the discovery material with the defendant, then he discussed the matter with the prosecutor for a possible plea deal. The defendant was offered a plea deal and could have walked away by paying a mere \$250. However, the defendant did not accept the plea, claiming he was innocent. The matter was set for a trial. After the trial, James's very first one to try, he secured a non-guilty verdict for both counts. The defendant and James were both ecstatic. James is hoping to stay 1-0 for the remainder of his career. The trial ended with this good outcome just before James joined Barclay Damon's New York City office.

[George Pond](#), working with [Dena DeFazio](#), successfully assisted an individual in petitioning for a name change to correct their name on New York State's official records.

Firm Updates

Passing the DEI Baton

[Sharon Brown](#) has been appointed Barclay Damon's diversity partner and chair of the Diversity Partner Committee, effective April 3, 2023. Sharon takes over the role from [Sheila Gaddis](#). Read the firm's [press release](#) to learn more.

On a Mission to Review Our DEI Mission Statement

Barclay Damon has formed a Mission Statement Committee to review the firm's DEI mission statement. The statement was last reviewed five years ago.

New Talent, New Perspectives

Barclay Damon has filled all five of its 1L summer associate positions. The five highly qualified students comprise an interesting and impressive group. The firm will also welcome 10 2L summer associates this year. [Meghan Dwyer](#), co-summer associate partner, noted that we are doing well with our goal of increasing diversity in the summer-associate ranks. Of the 15 2023 summer associates, 11 are diverse—an impressive 73 percent. We're excited for them to join us!

NYSBA Happenings

[Sharon Brown](#), [Oliver Young](#), and [Dena DeFazio](#) were part of a task force that created the New York State Bar Association's recently released "[Report and Recommendations of the New York State Bar Association Task Force on Racism, Social Equity, and the Law.](#)"

Barclay Damon was a sponsor of the Constance Baker Motley Symposium, "*Fitisemanu v. United States: The Argument That Could Have Been,*" and the Diversity Awards Program at the 2023 New York State Bar Association annual meeting, which was sponsored in part by the Committee on Diversity, Equity, and Inclusion. [Dena DeFazio](#) was a program chair for the event, which explored how the applicability of the Constitution to US territories impacts US nationals and the rights of US citizens. The program was presented by the Committee on Diversity, Equity, and Inclusion and the Task Force on US Territories. Here are links to view videos of the [symposium](#) and the [ceremony](#). Two law students, who represented the United States and American Samoa, received awards for best arguments.

Continued on page 4

Office Updates

ALBANY

Gaining Invaluable Experience

[Olimata Jobe](#) successfully completed the Albany County Bar Association program and gained considerable experience in regulatory and land use law. Olimata also contributed to the firm's Albany office Diversity Leadership Team.

Applying CRT to Patent Law

[Naresh Kannan](#) was invited as a speaker at the Critical Race Theory Dialogue at Albany Law School on April 14, 2023. Naresh presented "Racial Disparities & Patent Law" and was part of a panel discussion.

BUFFALO

Summer Associate Program News

As part of the 2023 summer associate recruitment efforts coordinated by [Sharon Brown](#) and [Meghan Dwyer](#), Meghan and [Andrew Carroll](#) represented the firm at the University at Buffalo School of Law 2023 Law Career Fair, where they met with UB law students—1Ls, 2Ls, and 3Ls—looking for immediate and summer positions. Shared Meghan, "It was the first time the fair has been in person since the pandemic, and there was a wait list for employers. We did not sit down or stop talking for two hours and spoke with so many students—I want to say in the neighborhood of 200."



BOSTON | NEW HAVEN | NEW YORK

Promoting Diversity: 2022 Hot List

[Sarah Capungan](#) was named to the *Lawyers of Color* 2022 Hot List, which recognizes junior- and mid-level attorneys who exemplify integrity, high achievement, leadership, and a passion for diversity. See our website News item about it [here](#), including a link to Sarah's profile in the list.

2023 LEAP Year Event

Barclay Damon sponsored the 2023 LEAP Year Event on February 23, 2023. The event is Leadership, Education & Athletics in Partnership's (LEAP's) annual fundraiser, where the community comes together to make LEAP's free after-school and summer programs for youth from underserved New Haven neighborhoods possible. The event raised over \$350,000 in support of LEAP's mission to create a New Haven for our children.

DESK Networking

[Penny Mason](#) attended a fundraiser for the Downtown Evening Soup Kitchen (DESK), an organization where the New Haven Diversity Leadership Team and others from the New Haven office regularly volunteer. "The event was an excellent opportunity to mingle with influential people from the area," reported Penny afterward. "I sat next to a promising mayoral candidate and across from a DESK board member who is also active in the George W. Crawford Black Bar Association."



During the course of the event, I was able to share information with other attendees about Barclay Damon and our major markets presence."

Increasing Diversity in Tax Law

[Sharon Brown](#) presented "Diversity in Tax Practice" for law students at New York Law School.



Helping Feed Neighbors

Over the course of three days, attorneys and staff from Barclay Damon's New York City office volunteered at a soup kitchen hosted at St. Bartholomew's Church setting up and serving meals. On the first day, volunteers included [Naomi Levin](#), [Keith Costa](#), [James Ko](#); on the second day, volunteers included [Sara Dorchak](#) and [Meghan Tuma](#); and, on the third day, volunteers included [Sharon Brown](#), [Carolyn Trespasz](#), [Gabrielle Figueroa](#), and [Merrill Bergenfeld](#). There were also donations made, including by [Michael Lane](#). Thanks to [Megan Glynn](#) for organizing the event.



New Haven colleagues also volunteered in shifts at Downtown Evening Soup Kitchen (DESK) participating in food prep, clean up, restocking, and distribution. Those volunteering included [Lizz Acee](#), [Charles Andres](#), [Karen Francis](#), [Megan Glynn](#), [Chanda Kauffman-Harley](#), [Ilan Markus](#), [Penny Mason](#), [Sherrie Monaco](#), and [Brian Rich](#).



ROCHESTER

World of Inquiry Capstone Project

Volunteers from Barclay Damon—[Patrick Burke](#), [Terry Emmens](#), [Paul Sanders](#), and [Jessica Tariq](#)—were present for the morning panel session of the senior capstone project at Rochester's World of Inquiry School. Each senior presented their proposal for review and approval to a committee that included a community member, a teacher, and a junior or two from the high school. Barclay Damon will be further involved in the capstone project as it develops throughout the school year, culminating in a final presentation of each project in April.

SYRACUSE

Preparing Law Students for Job Interviews

On January 26, 2023, [Meghan Dwyer](#), [Zach Forward](#), and [Sharon Brown](#) gave a presentation on behavioral-based interviewing for students at Syracuse University Law School.