

Implicit Bias Training

Professor Sarah E. Redfield, University of New Hampshire
The Honorable Bernice Donald, U.S. Sixth Circuit Court of Appeals
Professor Jason P. Nance, University of Florida Levin College of Law

Professor Redfield and her colleagues recommend a three part training as specified here but work with each constituency to design a program that suits their specific needs.

Recommended Training Schedule

Part I

Part I introduces the concept and science of implicit associations/biases and the related social and communication concepts of implicit group dynamics and unintended micromessaging.

Consideration is given to how implicit biases may manifest themselves in unintended behavior and in decision-making that can produce different treatment, disproportionalities, and related inequities, small and large. These are differences that are manifested throughout our legal and education systems and in society as a whole.

Recognition of the significance of implicit biases offers opportunity for de-biasing critical decisions and achieving change in seemingly-intransigent areas of social concern.

The training starts from a perspective of no blame. Emerging social and neuroscience research demonstrates that implicit biases are, simply put, part of being human. This Part provides non-confrontational opportunities for participants to develop awareness of implicit biases and responses, and includes a focus on the difference between our explicitly held and stated beliefs and our quick unconscious responses.

This is not the old diversity training. This is new science and a new approach. The training is highly-interactive with ample time for discussion. The takeaways for this session include several de-biasing strategies that can be used by the participants.

Each of the team has offered this training individually and together. By way of example, Professors Redfield and Nance are working with the Warren County Department of Human Services on joint training for educators and law enforcement; Professor Redfield and Judge Donald trained the Committee on the Federal Judiciary; Professor Redfield has trained faculty at Williams College, state court judges in Washington State, and federal court judges for the United States District Court for the Eastern District of California.

(Recommended timeframe: 4-6 hours)

Part II

Part II reviews and expands on the knowledge gained in Part I on implicit bias and de-biasing techniques. This Part focuses on manifestation and application of these concepts in real settings tailored to fit the needs of the specific audience. Group dynamics are a key focus as attention is given to, e.g., hiring and promotion decisions, group/staff interaction, decision making in public policy or legal and judicial contexts. The specific curriculum for this Part is developed in consultation with representatives of the participant group so as to focus on issues of relevance to the group. Like Part I, this session offers opportunity for pertinent discussion and provides continued de-biasing training with action takeaways for improved impartiality and effectiveness.

By way of example, training done by Professor Redfield and Judge Donald focused on manifestation of implicit bias in hiring considerations and de-biasing techniques that can be used in a judicial/attorney hiring review process.

(Recommended timeframe: 2-4 hours)

Part III

Part III reviews the previous Parts and intervening homework and provides opportunity to learn how an understanding of implicit bias and related unintended communication or actions can be put to use in wider community circles. The focus here is discussion of how further training and application can be used in real settings, again, tailored to fit the particular audience. This Part involves brainstorming and discussion among the group as to how prior learning about implicit bias and internal group dynamics can extend outward. Action checklists and other tools for further use are provided.

By way of example, training done by Professors Redfield and Nance for a county coalition of law enforcement, educators, and social workers focused on manifestations of the school to prison pipeline and using knowledge of de-biasing and other interventions to reverse these trends.

(Recommended timeframe: 2-4 hours.)

Homework

During the training sequence, opportunities are made available for continued exchange of observations and de-biasing interventions.

Cost estimate

This is a recommended approach that can be tailored to individual audiences and subject-matters. Costs are determined based on the modules and timing selected and on reasonable travel costs. Details and estimates are available on request.

About the Trainers

A training team is put together to match the particular setting with the strengths and experience of the trainers. Each has extensive teaching and training experience. Full resumes are available on request.

The Honorable Bernice B. Donald

Bernice B. Donald was appointed to the United States Court of Appeals for the Sixth Circuit in 2011. Prior to this appointment, Judge Donald served on the U.S. District Court for the Western District of Tennessee, Judge of the U.S. Bankruptcy Court for the Western District of Tennessee, and Judge of the Tennessee at General Sessions Criminal Court. She was the first African American woman to serve as a federal bankruptcy judge and first in the history of the State of Tennessee. Judge Donald has served as adjunct faculty at the University of Memphis and teaches regularly at the Federal Judicial Center and the National Judicial College. Judge Donald is the recipient of many awards for her trailblazing work for diversity. She is currently Chair of the ABA Criminal Justice Section and of the ABA committee authoring *Enhancing Justice by Reducing Bias: Theory and Practice*.

Judge Donald is a graduate of the University of Memphis and the University of Memphis Cecil C. Humphrey's School of Law.

Professor Nance

Jason P. Nance is an Associate Professor of Law and the Associate Director for Education Law and Policy at the Center on Children and Families at University of Florida Levin College of Law. Professor Nance teaches Education Law and focuses his research and writing on inequalities in the public education system, school discipline, the school-to-prison pipeline, and related school law issues. His scholarship is widely published and recognized as authoritative. Professor Nance currently serves as the reporter for the American Bar Association's Joint Task Force on Reversing the School-to-Prison Pipeline, where he is authoring a report and recommendations and proposing resolutions for the ABA to adopt to help dismantle the school-to-prison pipeline nationwide.

Professor Nance earned his J.D. at the University of Pennsylvania Law School and his Ph.D. in Education Administration at Ohio State. Before attending graduate school and law school, Professor Nance served as a public school math teacher in a large, metropolitan school district.

Professor Redfield

Professor Redfield is a Professor of Law from the University of New Hampshire. Her teaching and research focus on education law and diversity. She is an experienced and respected trainer on implicit bias and de-biasing. Over the past five+ years, she has trained significant numbers of judges, lawyers, and educators. She developed the American Bar Association Section of Litigation training materials on implicit bias; and she served as the project leader for the ABA project on *Achieving an Impartial Jury*. She is currently serving as the editor of the ABA's book on implicit bias (working title *Enhancing Justice by Reducing Bias: Theory and Practice*) and as a co-chair of the ABA Reversing the School to Prison Pipeline Task Force, a major component of which focuses on implicit bias training. She is also a nationally-known author and presenter on education law (including special education law), pipeline issues, and diversity and inclusion. She is the recipient of the ABA Lifetime

Achievement Award for her work on diversity along the education pipeline.

Professor Redfield is a graduate of Mount Holyoke College and holds a JD from Northeastern and LLM from Harvard Law School.

Six Steps to Minimizing Gender and Minority Bias | Solo, Small Firm and General Practice Division (American Bar Association)

This article is included in the GOOD Guys Toolkit with permission from the author. The article, as printed by the ABA, can be found [here](#).

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Sheryl L. Axelrod

Sheryl L. Axelrod (saxelrod@theaxelrodfirm.com), President of The Axelrod Firm PC (www.theaxelrodfirm.com), a NAMWOLF law firm in Philadelphia, provides strategic, results-driven advice and representation to companies concerning their general and product liability, employment, commercial, and appellate litigation matters. While only 5% of lawyers are recognized by their peers as Super Lawyers, Ms. Axelrod was not only recognized as a Super Lawyer but rated one of the Top 50 Women Super Lawyers in Pennsylvania for the past two years in a row and selected a 2013 Top Rated Lawyer in Labor & Employment by American Lawyer Media and Martindale-Hubbell.

Women and minorities face unconscious bias at every rung up the workplace ladder. Few make it to the top.

As Malcolm Gladwell notes in his book *Blink*, 58% of Fortune 500 CEOs are not just white and male, but white, male, and 6' or taller. That's well over half the CEOs of the 500 largest companies in the country, whereas in the country, only about 14.5% of men (less than 1/7th of all men) are that tall.

The notion that white, tall men are more capable than other people is obviously absurd. People have unconscious preconceptions about what leaders look like, and, as a result, far more tall white men are made CEOs than women, men of color, and shorter white men. In fact, in the United States, only 3.9% of adult men are 6'2" or taller—less than 1 in 25. However, according to Gladwell, 30% of Fortune 500 CEOs are—nearly 1 for every 3 such CEOs.

[Click here to read a good summary of a study revealing gender bias among Yale scientists.](#) This is a quotation from the article:

[A] new study in *Proceedings of the National Academy of Sciences* offers evidence of bias among scientists—male and female scientists alike—against female students. The study was based on evaluations by scientists of hypothetical student applications for a lab manager position, with the application materials identical in every way, except that half of the pool received applications with a male name and the other half received applications with a female name. The faculty members surveyed—127 professors in biology, chemistry or physics—were told that their analyses of the applications would be used to help the students. And they were asked to evaluate the students' competence and "hireability" and to consider how large a salary they would recommend and how much mentoring they would offer the student if hired.

The scientists evaluating these applications (which were identical in every way except the gender of the "submitter") rated the male student more competent, more likely to be hired, deserving of a better salary, and worth spending more time mentoring. The gaps were significant.

Female scientists were as likely as male scientists to evaluate the students this way. We unfortunately all have some measure of unconscious bias.

In "[Managing our Unconscious Biases](#)," Roley Davis wrote in *HRmoz*:

Research has now emerged from the University of Wisconsin which has shown that giving people better cognitive strategies not only reduces unconscious bias, but that the bias levels continue to fall after intervention.

Davis writes that we should:

1. Test our unconscious bias using an Implicit Association Test. While Davis mentions Hogrefe's pricey Implicitly® test, [great testing is available for free at Harvard's Project Implicit](#).
2. Delay making key decisions about people until we have the time to challenge them. We should ask ourselves: is our unconscious bias playing a role in our decision making? Is the person we're considering truly the best fit for the job?
3. Avoid making key decisions when we're tired, stressed, or emotionally drained. In such moments, we are least able to check for possible unconscious bias.
4. Try justifying our decisions—to others or to ourselves in a mirror. We're more biased when we know our decisions probably won't get challenged, so try challenging them.
5. Not beat ourselves up over the fact we have biases. Everyone does. Feeling guilty can make it harder to manage these biases. Rather than feeling guilty, we should accept that we have biases and work to minimize them; and
6. Get to know people who are different, have different backgrounds, and bring different perspectives. They'll enrich our lives. Plus, the more we see people as individuals, the less likely we'll be to view them through our biases.

Banking on Diversity: Diversity and Inclusion as Profit Drivers-The Business Case for Diversity | Section of Litigation (American Bar Association)

This article is included in the GOOD Guys Toolkit with permission from the author. The article, as printed by the ABA, can be found [here](#).

June 12, 2014

[Sheryl L. Axelrod](#) is president of The Axelrod Firm PC, in Philadelphia, Pennsylvania.

The data is in and it's unassailable: diversity and inclusion are enormously profitable.

Supposedly, the business case for diversity is weak. It's mainly "wishful thinking." That's what the Chicago-based Institute for Inclusion in the Legal Profession (IILP) concluded in its 2011 report "The Business Case for Diversity: Reality or Wishful Thinking?" The IILP's review of data was so comprehensive, the study was widely accepted as definitive. There's just one problem: the report never actually took a direct look at whether diversity is profitable.

The IILP considered a number of factors: whether corporate law departments incentivize law firm diversity; whether corporations disengage from law firms that fail diversity standards; whether corporate clients ask about law firms' performance in becoming diverse; and how many lawyers are told they received business as a result of their firm's diversity. These are all important issues, but they don't directly speak to the profitability of diversity. If you want to know whether one product is more profitable than others, you could ask consumers whether they will buy it, but that won't answer the question. You could ask them whether they will stop going to stores that don't sell it, but that won't answer the question, either. You need to look at customer, revenue, and profit numbers.

The same is true for the business case for diversity. The issue is whether diversity is more, less, or equally profitable than less diverse business models. Specifically, the issue is whether it is more profitable for law firms to have diverse leaders—people who look more like the composition of the legal community in terms of their gender, race, religion, sexual orientation, nationality, age, disability, and other metrics—or whether law firms with more homogeneous leaders are more profitable. You can't find out from asking in-house counsel whether they seek out diverse law firms. You have to look at which companies are more profitable.

Moving Past Assumptions: Diverse Companies Outperform Their Homogeneous Counterparts

Having Women at the Top Pays

A number of recent business studies including a 2011 research report in *Catalyst, Inc.* by Nancy M. Carter and Harvey M. Wagner entitled "The Bottom Line: Corporate Performance and Women's Representation on Boards (2004–2008)," looked at the financial returns of companies with three or more women on the board. The findings are astounding. Those companies outperform companies with all-male boards by 60 percent in return on invested capital, 84 percent in return on sales, and 60 percent in return on equity. These numbers suggest that diversity and inclusion are not just profitable; they have a *synergistic* impact on profits.

Compare the Fortune 500 companies with the most women on their boards with those with the least. The companies with the most outperformed those with the least by 66 percent in return on invested capital, 42 percent in return on sales, and 53 percent in return on equity. Firms with few to no women

at the helm should take stock of the enormous economic advantage had by their competitors with more women in charge.

You can see it looking at Fortune 500 companies. The positive influence of female board members is so strong that as the percentage of women board members of Fortune 100–500 companies drop, so does the success of the companies, according to the *Catalyst, Inc.* report “2010 Catalyst Census: Fortune 500 Women Executive Officers and Top Earners.” Of the most successful U.S. companies, the top Fortune 100 companies, women represent 18 percent (nearly one in five) board members. *Catalyst* found that as you move from Fortune 100 companies to their slightly less successful Fortune 200 counterparts, the number of women on the board decreases to 16.7 percent. Fortune 300 companies have slightly fewer women on the board, 14.9 percent, and so on down to Fortune 500 companies. Fewer women in leadership equates with less financial success.

This squares with what Jack Zenger and Joseph Folkman discussed in their 2012 article, “Are Women Better Leaders than Men?” in the *Harvard Business Review*. Looking at a 2011 study of 7,280 leaders in which 16 competencies that go into outstanding leadership were evaluated, Zenger and Folkman found “at all levels, women are rated higher in fully 12 of the 16 competencies” and that “the higher the level, the wider that gap grows.” In fact, “two of the traits where women outscored men to the highest degree—taking initiative and driving for results—have long been thought of as particularly male strengths. [M]en outscored women significantly on only one management competence in this survey”

Forward-thinking companies as trailblazing as The Coca-Cola Company are paying attention. *Catalyst* reports in “The Coca-Cola Company—Global Women’s Initiative: Women as the Real Drivers of the 21st Century” (2013), that Coca-Cola is engaged in enabling the economic empowerment of 5 million women entrepreneurs across its value chain by 2020.

Racial Diversity at the Top Pays, Too

Companies with greater racial diversity at the top leave their more homogeneous counterparts in the dust, too. According to research cited in a 2009 article, “Does Diversity Pay?: Race, Gender, and the Business Case for Diversity” by Cedric Herring in the *American Sociological Review*, on average, the most racially diverse companies bring in nearly 15 times more revenues than the least racially diverse. In fact, Herring found that for every percentage point increase in racial or gender diversity up to that represented in the relevant population, sales revenues increase approximately 9 and 3 percent, respectively. Again, the figures indicate that diversity and inclusion’s impact on revenues is synergistic.

Racial diversity, Herring found, is a better determinant of sales revenue and customer numbers than company size, age, or number of employees at a worksite. Companies with the highest rates of racial diversity reported having on average 35,000 customers, whereas companies with the least racial diversity reported having only 22,700. According to Herring, companies that even only marginally increase their racial diversity gain an average of over 400 customers.

IBM and RBC: Examples of Diversity and Growth

Diversity and inclusion represent a competitive advantage, and you can measure their financial benefits just as IBM did. As a result of implementing a diversity task force initiative, IBM grew its female executives ranks by 370 percent, its ethnic minority executives ranks by 233 percent, and the number of self-identified gay, lesbian, bisexual, and transgender executives by 733 percent. As David A. Thomas wrote in “Diversity as Strategy” in the *Harvard Business Review* in 2004, the result was stunning:

[T]he work of the women’s task force and other constituencies led IBM to establish its Market Development organization, a group focused on growing the market of multicultural and women-owned businesses in the United States. . . . **In 2001, the organization’s activities accounted for more than \$300 million in revenue** compared with \$10 million in 1998. Based on a recommendation from the people with disabilities task force, in October 2001 IBM launched an initiative focused on making

all of its products more broadly accessible to take advantage of new legislation—an amendment to the federal Rehabilitation Act requiring that government agencies make accessibility a criterion for awarding federal contracts. IBM executives estimate this effort will produce **more than a billion dollars in revenue during the next five to 10 years.** . . .

(Emphasis supplied.)

Workforce diversity helped IBM attract a more diverse base of customers that included women and minority-owned businesses. As Thomas put it:

IBM's efforts to develop the client base among women-owned businesses . . . quickly expanded to include a focus on Asian, black, Hispanic, mature (senior citizens), and Native American markets. The Market Development organization has grown revenue in the company's Small and Medium-Sized Business Sales and Marketing organization from \$10 million in 1998 to hundreds of millions of dollars in 2003."

When IBM became more diverse, its revenues skyrocketed.

RBC has likewise been focusing on creating a diverse and inclusive workforce. According to the January 30, 2014, article "Moving Past Diversity: RBC's Journey to Rid Its Upper Ranks of 'Unconscious Bias'" by Dan Ovsey in the *Financial Post*:

Current CEO Gord Nixon—who will be retiring later this year—has made diversity of gender, culture, age and professional experience a priority for the bank, believing it to be good for business. **If RBC's track record is any indication, he's right. The bank has generated \$58-billion in total profit during Mr. Nixon's 12-year tenure and saw its share price soar 164%.**

(Emphasis supplied.) RBC made diversity a company priority, and saw its share price go through the roof.

Diversity: The Potential for Much Higher Law Firm Profits

The benefits corporate America reaps from diversity apply to law firms. Douglas E. Brayley and Eric S. Nguyen, authors of "Good Business: A Market-Based Argument for Law Firm Diversity" in *The Journal of the Legal Profession* in 2009, studied the data from the 200 highest-grossing firms (the Am Law 200). Highly diverse law firms report, on average, much higher profits per partner and revenue per lawyer than the rest of the Am Law 200 firms.

Even controlling for hours, location, and firm size, the study's authors found that "differences in diversity are significantly correlated with differences in financial performance." In fact, according to the study, "a firm ranked in the top quarter in the diversity rankings will generate **more than \$100,000 of additional profit per partner** than a peer firm of the same size in the same city, with the same hours and leverage but a diversity ranking in the bottom quarter of firms." (Emphasis supplied.)

The most diverse of the Am Law 200 firms could be far more diverse and inclusive than they currently are. The \$100,000 per partner additional profit differential could presumably be even greater.

Money at law firms is not equally distributed among partners. Those at the top are paid far more than the partners below them. That means those in the highest positions of law firms, those in the best position to change the direction of their firms, have the greatest economic incentive to embrace diversity and inclusion. They stand to profit the most from them. To do so, they should not only recruit diverse talent, but retain it, engage it, promote it, and invite it to the management table.

The reason diversity works is that when a company's leadership becomes more diverse, far more changes than the fact the people in it become a melting pot microcosm of their community. Studies show the company performs better.

There may be a host of reasons why. Perhaps women and minorities see that they have a real opportunity for advancement and become more motivated to not only stay in the company, but invest themselves in its success.

Maybe when companies become more diverse, they are better able to solve problems and seize potential opportunities. There is data suggesting so. According to Scott E. Page, author of *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*, on almost every measure, greater racially, ethnically, and culturally diverse workplace teams function more effectively than more homogenous teams. In fact, Page found diverse thinkers (defined as those with different educational backgrounds, experience levels, and/or racial, gender, and ethnic identities) are markedly better at solving problems than teams selected for their intellectual ability. The diverse team's collective intelligence, he found, is generally significantly greater than a team whose individual members are uniformly "smart." According to Deloitte, *Only Skin Deep? Re-examining the Business Case for Diversity* (Sept. 2011), the most plausible explanation for these findings is that teams with members from diverse backgrounds, experiences, and perspectives avoid "groupthink," whereas nondiverse teams approach problems from the same angle.

This data suggests that diversity is not just good for profits. Diversity can enhance even nonprofit entities because it enhances group performance. In fact, diversity enhances profits in for-profit companies precisely because it enhances company performance.

Companies That Don't Diversify Face Greater Exposure

Diversity not only holds great potential to increase law firm profitability; openness to candidates from diverse backgrounds—for employment, raises, bonuses, equity, etc.—is essential to minimizing a law firm's exposure.

In December 2012, Sanford Heisler LLP announced that it was representing Francine Griesing, founder of Griesing Law LLC, in a discrimination suit against Greenberg Traurig LLP, where she had previously been a partner. Sanford Heisler had previously won a massive judgment against Novartis for gender discrimination. Ms. Griesing claimed that Greenberg Traurig officials denied her the compensation, promotions, and support that the firm gave to less-productive partners. Sanford Heisler sought class action certification for the 215 current and former female Greenberg Traurig partners who could join the lawsuit.

The lawsuit followed a multi-year investigation by the Equal Employment Opportunity Commission that concluded, according to a Sanford Heisler news release, that there is "reasonable cause to support class-wide claims of gender discrimination in compensation" and "reasonable cause to support claims that women are treated less favorably in the terms and conditions of their employment." The matter settled for an undisclosed amount in 2013.

Ms. Griesing's lawsuit should be a wake-up call to law firms engaging in discriminatory practices. Many law firms fall into that category. According to "A Current Glance at Women in the Law" (Feb. 2013) by the American Bar Association Commission on Women in the Profession, one-third of lawyers are women (33.3 percent). However, according to the National Association of Women Lawyers (NAWL®) and The NAWL Foundation's® "Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms" (Feb. 2014), only 17 percent of equity partners are women, and many of those equity partners are being paid between 85 and 89 percent of what their male peers are.

In "Compensation in Law Firms: Why Women Equity Partners Are Compensated Less for the Same Billable Hours and Business Origination as Male Equity Partners," Harry Keshet, PhD. and Angela A. Meyer, PhD., PE reported on the results of their groundbreaking attorney compensation study of 1,729 lawyers. They found:

[C]ompensation is gender based with male equity partners receiving more compensation than women equity partners do. **This fact is true when women and male equity partners bill the same number of hours, generate the same levels of origination, have the same level of law firm tenure and work in the same size of law firms.**

(Emphasis supplied.) The fact that women in the profession are not being paid the same as men and are not being equally credited for the business they generate isn't because they're not putting in as many hours, have less business, or are more junior. Women lawyers are compensated less even when they bill the same number of hours, have the same amount of business, and are equally tenured.

In fact, Sky Analytics' comprehensive "White Paper / Gender Study" of \$3.4 billion of legal spending shows that the hourly billing rate for female attorneys is significantly lower than that of male attorneys from the start of their careers, and that where male and female lawyers bill the same number of hours to complete a task and bill the same amount of hours per day, female associates' work is more often discounted than male associates' work. Not only are female attorneys underpaid, their work product is undervalued by their firms. As a result of this discounting of their work, women lawyers have to bill more hours to generate the same amount of revenues as male lawyers.

Minority lawyers are not being treated fairly, either. In the piece "Representation of Women Associates Falls for Fourth Straight Year as Minority Associates Continue to Make Gains—Women and Minority Partners Continue to Make Small Gains" (Dec. 2013), NALP reported that minorities accounted in 2013 for 7.1 percent of the partners in the nation's major firms, whereas as of 2013, minorities made up 13.36 percent of the lawyers—nearly double the number of lawyers—at those firms.

On average, law firms are failing to promote women and minorities to partnership in representative numbers, law firms are underpaying those that are partners relative to their white, nondiverse male counterparts, and law firms are discounting the work of women lawyers who are just as productive as men, causing women lawyers to have to work longer hours to generate the same revenues.

I minimize companies' exposure to employment and general liability matters for a living. A great way companies can lower their exposure and increase their retention of women and minority lawyers is by implementing practices to correct these discrepancies.

RBC Chief Human Resources Officer, Zabeen Hirji, is quoted as saying in the 2014 "Moving Past Diversity" *Financial Post* piece, "If you start with the belief that men and women and people from different backgrounds have come in with the same experience, skills, education and we've given them the same opportunities, they're going to be equally qualified . . ." This thinking applies to law firms. If women and minorities come into law firms with comparable educational backgrounds, skills, and experience—and there is no data to suggest otherwise—and are given comparable opportunities, they are equally qualified as well. If they are not advancing at the same rate as white, nondiverse male lawyers, and/or are being paid less, then they are not being given comparable opportunities and/or are not being fairly and equally evaluated, promoted, and compensated.

To correct this, law firms need to put representative numbers of women and minorities on their compensation committees and in governance and other leadership positions. If 30 percent of a firm's attorneys are women, 30 percent of the members of its compensation committee and other leaders should be. Likewise, if 15 percent of a firm's attorneys are minorities, 15 percent of its compensation committee members and other leaders should be.

Law firms should conduct internal audits of their hiring, pay, evaluations, and promotions as part of a comprehensive program to identify and minimize gender and minority bias. They should check how assignments, networking opportunities, and client development resources (including in dollars) are distributed along gender and minority lines among firm lawyers. Firms should institute flexible working arrangements to minimize the drain of talented female and minority lawyers. If a male lawyer is given funds for a golf outing to attract a client and a female lawyer seeks funds for a luncheon, show, wine tasting, or other outing to attract one, she should receive equal funding.

The call for these measures must come from the top. The fact diversity drives law firm profits and performance shows that those at the top should call for them. Increased performance will enhance a firm's brand in the marketplace. Given the huge positive financial impact diversity and inclusion can have, law firm partners should be required to take ownership of the impact of their actions on diversity. They should have to pay in dollars--out of their pockets--for the women and minorities under them who leave. Partners who better retain them should receive additional compensation. Such measures have the added effect of showing lawyers within the firm, as well as clients, the importance the firm places on diversity.

From corporate America to American law firms, the business case for diversity is overwhelming. Law firms that hold women and minorities back from their full potential not only expose themselves to liability, they prevent themselves from potentially multiplying their customer base and earning greatly increased profits. They lose out on the synergistic financial competitive advantage that diversity and inclusion represent.

[Note from ABA printing] Although the title and certain content within this piece has changed, it has been reprinted substantially in its original form. The original piece, "Disregard Diversity at Your Financial Peril: Diversity as a Competitive Financial Advantage," was published by the Minority Corporate Counsel Association in the May/June 2013 issue of Diversity & the Bar.



This post originally appeared on Ms. JD's blog which can be found at www.ms-jd.org. Walk a Mile in My Heels is a feature column on Ms. JD's blog which is generated by individual women who contribute their true stories about occurrences in their lives. If you would like to read more, contribute your own story, or otherwise blog for Ms. JD, please go to <http://ms-jd.org/join-us/write/>.

Walk a Mile in My Heels, by Anonymous Woman Attorney

By *Anonymous* • April 09, 2013

Today is Equal Pay Day. That is the date the salaries of women catch up with the salaries their male counterparts earned in 2012. There is much public discussion about why it is that women do not succeed at the same levels as men and about the dissatisfaction many young women have with their careers. The reasons for these situations might just stem from the fundamentally different experience that women and men have on the job. With respect to the legal profession, it is difficult for many male attorneys to understand the work environment of most female attorneys. Imagine, though, that the roles in most law firms were reversed.

Reverse the Roles. Picture a male attorney fresh from law school, beginning to look for his first job. More of his law professors than not were women, but his class was about 50 / 50 men and women. He hadn't given much thought to gender differences in the job market, but he shines up his shoes and heads out . . .

Interviewing. With few exceptions, the lawyers interviewing him are female, and all of the firm names bear the names of women attorneys. Even when he is interviewed by male attorneys, they are not partners, and the few that are partners are in lower level roles – they are not the decision makers – the women are. The women attorneys ask how well he will be able to work with women, and whether he will be able to overcome his ego and work cooperatively. He has a vague sense that these types of questions are sexist. He really wants and needs a job, so he overlooks these issues. As he is interviewing, he realizes not very many people are looking forward to working with him. Men attorneys have a reputation for being difficult to work for. Some secretaries refuse to work for men attorneys. They describe men attorneys as “assholes” and “tight asses.” He knows he is very pleasant and helpful, and there is no reason anyone should think he is hard to work for, but the stereotype is embedded. He will have to work extra hard to show he will not behave like he is expected to. He feels like the cards are stacked against him from the very beginning.

First Job. He finally gets two job offers and he has to pick one. One firm seems to be more of a fit for him than the other. This particular firm seems to be committed to increasing the number of men attorneys in the firm. They advertised as an equality opportunity employer. They have had one or two men work there before, and they offered to provide new male hires with a mentor. The other firm seemed committed to hiring men also but during the interview, the women partners at that firm joked about men who like to talk about sports which made him feel unwelcome. So he chooses the first firm.

Early Years in Career. Things go well for a few years. He seems to get along with all of the women partners. He seems to be catching on. More lawyers are hired at the firm – mostly more women. He is still very much a minority at the firm. In fact, he is the minority everywhere. In court, the judges are almost all women and the other lawyers are almost always all women. Other firms seem to be made up mostly of women attorneys too.

Almost without exception the partners in other firms are also women. When he goes to seminars, the speakers are almost always all women. In the lawyer magazines he reads, the authors of articles



are almost all women, and the photos of are almost all of women attorneys. References to male lawyers and male judges are usually negative stories. There are even stories about proper clothing for male attorneys . . . he's heard awful jokes about the ties most male attorneys wear. He feels isolated, so he joins a group of men lawyers. It is assuring to attend the group's meetings where he meets male judges and successful male attorneys. This is a place he can go to and feel assured that he too can be successful one day. His firm does not see the value of his membership in the group though, and does not support it financially.

Early Client Development. A few years pass and he is reaching a point where he needs to bring clients to the firm. He is upset once when he realizes that some of the women attorneys hired after him were included in a client development event and he was never even told about it. His mentor is not really much help explaining things to him; she just says to keep working hard. Of course he knows he is working hard, harder than the new women in fact, because he has to prove himself. He spends a lot of mental energy trying to prove he is cooperative so he will fit in. He is also trying to develop clients but it is difficult because all of the clients are overwhelmingly women and they seem to want only women partners working on their matters. His male attorney friends at other firms joke about how they need to take a grey haired woman with them to client pitch meetings because all clients seem to want some assurances that experienced women attorneys will work on their matters. The new client he did recruit ended up being credited to one of the women somehow.

Isolation. He seems to grow isolated in the firm. As the years go by, most of the firm's male lawyers leave the firm for other jobs. A few times these male lawyers leave the practice of law completely. Usually though, they find jobs they think have more potential for advancement. He is one of the few men attorneys to stay with the firm. He tries to mentor younger men attorneys but they seem to instinctively know he is not a power at the firm. At lunchtime, the women attorneys all have things to talk about that he isn't necessarily interested in or knowledgeable about. They talk about the male lawyers and judges who they think are "assholes". He likes to talk about sports but they are not into sports at all. The women like to meet at a frozen yogurt shop across the street after work but he can't stand frozen yogurt. Sometimes he tags along anyway, and buys a bottle of water. The women attorneys all seem to go together for lunch, too. They never ask him to come. He wants to be part of the group but becoming part of the group seems impossible. When he tries to join conversations, the women attorneys seem to exchange knowing glances about what an idiot he is, and their comments seem to mock him.

Sometimes the women partners make jokes about men. He forces himself to laugh at the jokes like he doesn't care, and in the beginning he didn't care. But now, the jokes are painful. They exemplify how different he is to them.

Gender Bias. When he goes to take depositions in other offices, it is common for women in other offices to mistakenly believe he is a security officer. People seem to jump to conclusions that he is a blue collar worker of some type. He often has to explain that he is actually an attorney.

Lack of Advancement. At his firm, he doesn't seem to get assignments that will advance his skills. He doesn't understand why he is not chosen to work on high profile cases – the women associates are always chosen instead. He has done some great work – he even won an arbitration and a trial - and clearly he is a skilled and talented lawyer, but the women partners just don't want to give him credit. He once went to a seminar and brought his golf clubs thinking he would put together a foursome with some of the other attorneys or firm clients who attended. All of the women stared at him as if he were a freak. He felt so out of place.



He is evaluated every year by the women partners. It is always a very trying time. When he tries to outline his contributions, he is told he thinks too highly of himself. When he doesn't outline his contributions, he is minimized. He can't win. He feels he can never completely live up to the expectations of the women partners. When he tries to mimic the qualities of the women associates, he is criticized. He is not sure what he needs to do in order to be considered an equal. The partners cut him less slack than the women attorneys. They judge him more harshly. They remember his mistakes forever. While the women attorneys are heralded for having potential, he has trouble getting credit for the actual revenue he brings to the firm.

Advanced Client Development. He is trying to bring in even more clients because he feels if he can just bring in more business, then the partners will finally appreciate his worth, but getting more clients is hard. Potential clients don't seem to view him as someone who is knowledgeable even though he does all of the work on cases. So he tries to do even more. He joins more groups, writes articles, speaks at seminars, and markets intensely. This does little good. The women partners actually tell him they would prefer it if he spent his time just working on cases. They seem to want him to do nothing but work and to have no aspirations for more. He becomes a partner eventually because he has a client base and a good solid book of business but he earns far less than all of the women partners. He is not sure but suspects he makes at least 40% less than female partners with similar contributions. Their lives are so different.

Income Differences. He makes a good living. The women partners, though drive nicer cars, have multiple vacation homes, send their children to private school and colleges, and take vacations in Europe. He bought a nice home a few years ago when he thought he was on his way up. He was wrong, and he has not continued to advance even though his contributions seem to justify further advancement. As a result, he is in poor financial shape. He doesn't understand why . . . He might not be able to help his kids through college, and he expects he will have to work to at least the age of 70 before he can retire.

Opting Out. After more than a decade with his firm, he realizes that quite possibly wasted his time all these years. Maybe he should have left the firm years ago. He cannot make the women partners see him as anything more than a worker bee. Even though they started as 50/50, now the Commission on Men is reporting that men are only 31% of the practicing profession, and even less are partners. He knows now why so many men give up on private practice. Maybe he should have also. The unfairness of the situation is so depressing, so intolerable. Although he loves his job, the jokes and criticism, and the lack of appreciation sap his strength every day. But he stays, and continues the struggle. He does not know what else he can do.

What Would Men Do? What would men do in this situation? Working an entire career in an environment that sends you subtle messages every day that success does not look like you, or talk like you, or think like you would make any normal person lose their spirit entirely. Perhaps most men would begin to opt out of practicing law. Maybe they would decide that their families were more important than the potential of succeeding in such a biased and difficult environment. Maybe they would decide it wasn't worth the effort to aim high. Maybe they would share their experience with other men and influence them to opt out of law school altogether. It would be understandable, wouldn't it?

Walk a Mile in My Heels. I am every woman attorney you work with or for. I am leaning in all the way, and have been for years. I put on my heels every day and with as much boldness as I can



muster, I face a profession which, though great strides have been made, still does not view me as an equal to my male partners. I've put my heels on every day for years, in the face of both outright harassment and subtle discrimination, which has deprived me of the same opportunity my male colleagues have enjoyed. I put on my heels every day and keep going even though I did not receive the same mentoring my male colleagues received, and even though I seem to work twice as hard to bring in half as much revenue for half as much compensation as my male counterparts. It is not easy to keep putting my heels on every day and to keep striving to do more and more so that one day, perhaps, I might be considered an equal of my male partners. It's hard to keep putting on my heels when I see that my mistakes are remembered longer, my accomplishments are minimized, and there seems to be a belief that I am not serious about my career since I also have a family. When I've asked for fair compensation, I've been reminded how grateful I should be that I've been able to have a family and a career – as if that somehow renders me less entitled to fair compensation. When I think I have struggles, though, I remember my sister lawyers who are also women of color. My isolation and my battles are nothing compared to theirs.

According to the Department of Labor, on average, women earn less than men, but this effect grows over time for women. As men gain experience in the labor force their wage gains typically exceed those experienced by women. Taking the wage gaps by age in 2010, if these were the gaps that all cohorts of women faced at each age, then by age 25 a woman working full-time, full-year will have earned \$6000 less than a man working full-time full-year. By age 35, a woman who experiences the typical gap at each age in 2010 has earned \$28,000 less than a man earning median earnings at every age. By age 65 the earnings gap has ballooned to \$379,000. These facts portray better than any woman can describe the everyday actions which build into the tremendous pay gap between men and women, and it is these every day events that are holding women back from achieving their full potential. It is understandable that many women make decisions to not “lean in” to the work force. The challenges are significant, and it is hard to keep putting those heels on every day when we know the struggle will continue, and that magical day when we are viewed as equals still seems so far away.

How Do We Keep Putting Our Heels On? So how do we do it? For some of us, we are the main wage earners for our families and we simply must keep going. For others, we are doggedly determined to overcome these obstacles. For me, it is the right thing to do. “[I]n the nineteenth century a woman was not encouraged . . . On the contrary, she was snubbed, slapped, lectured and exhorted. Her mind must have been strained and her vitality lowered by the need of opposing this, of disproving that. . . Among your grandmothers and great grandmothers, there were many who wept their eyes out [because girls who tried to use their intellectual gifts were thwarted].” (From *A Room of One's Own*, Virginia Woolf, 1929.) Each generation of women has had its challenges, and we are higher up on the ladder because we stand on the shoulders of many brave women whose sufferings were far greater than our own. We need to stay in the game so that those who come after us will move even further up the ladder. And we do it by joining women's organizations for support, mentoring other women, learning about our businesses so that there is no mystery and no magic about what is needed to advance, by working hard and working smart, and by taking our women friends and colleagues along with us as we advance in our careers. It is too easy to get discouraged, and therefore it is mandatory to have friends who will serve as sounding boards and to give inspiration. These are the ways women keep putting those heels on!

Close the Pay Gap. If we can close the pay gap, we can change the world. If a pay gap existed for men, we would see immediate legislation and severe penalties. Walk a mile in my heels and you should see that a pay gap in the United States of America in the year 2012 is not right. It is time for



immediate and effective change for the spouses, daughters, sisters, women friends, nieces, granddaughters, and the little girls and teen girls in our lives. Equal Pay Day is April 9, 2013. Raise your voice. Close the gap. And tell us what it is like to walk a mile in your heels, or your boots, tennis shoes, sandals, or loafers. Let's make our stories go viral! Like Anne Marie Houghtailing of the Millionaire Girls Movement said once, "You know that small voice that tells you that you are made for greatness and something bigger? It's true. It doesn't lie. Be very still, listen, and TAKE ACTION!"



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Walk a Mile in My Heels: My Secretary Says I Stress Her Out, But My Two Male Partners Don't

By Anonymous • February 20, 2015

Today I am a bit heartbroken. My secretary of many years had the opportunity to switch out attorneys when a current secretary quit, and she has indicated she would like to keep the two male partners she has and dump me (my words). I have prayed for her family, she has prayed for mine, we have been friends and supporters, but this move makes evident an underlying issue she must have always had with me which I feel has some gender connotations, and which to be honest really hurts my feelings. I am a very busy partner, and grouping three partners with one secretary was a bad idea from the start which I voiced; and I know my male partners can be VERY difficult to work with - yet she has indicated she would prefer to let me loose, and not them. One of the male partners is above me in seniority, one is below.

Anyway, just sharing my feelings and wondering if other women lawyers have had similar experiences.



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Walk a Mile in My Heels: The Guys Get Congratulated on New Business but I Get Questioned...

By Anonymous • July 17, 2014

I have noticed a trend in my law firm. The guy partners get new business, and a name partner emails the entire office to say congratulations. I am a female, and I don't get any kudos at all when I open new files. In fact, recently, I got a new client from a new source, and the same name partner said he thought maybe the client sent the case to me by mistake. BY MISTAKE!!! How do we deal with this??



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Walk a Mile in My Heels: No, Two Court Reporters Did Not Show Up for the Deposition!

By Anonymous • June 23, 2014

The assumptions other make about us (and vice versa) are so powerful. Just a few days ago, I appeared for a deposition. I had flown to another city for the deposition, and like many men attorneys (whether you have flown in or not), I was dragging a rolling briefcase. Of course I was dressed in a suit. The receptionist was somewhat baffled when I told her I was there for the deposition. She apologized and told me they already had a court reporter for the deposition! Of course, I immediately advised I was counsel for one of the parties. Interesting, isn't it though, that the receptionist was more willing to believe that two court reporters showed up for the same deposition than that I was a lawyer!!?? I have a friend who says she purposefully prevents these misunderstandings from happening by always introducing herself as the lawyer for whoever in such situations. I suppose I could do that too, but it is far more interesting to see what people assume!



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Walk a Mile in My Heels: The Joker

By Anonymous • May 20, 2014

I'm sitting in a mediation, when a male attorney across the table launches into a joke--one of those obscenely long jokes that contains way too much backstory. The mediator and the attorneys sit and listen, all of us waiting for the punchline.

As the joke nears the finish and as I prepare to laugh (or fake-laugh while wishing I could roll my eyes, anyway), it starts to become very clear that the punchline is going to be completely sexist. And, sure enough, there it is--an offensive and inappropriate sexist joke finale. What I did was: I didn't laugh.

I guess not laughing at the joke was *something*--sitting stoney and straight-faced at the end of this guy's comedy routine surely made a point (either that I disapproved, or perhaps that I just didn't *get* it)--but I can't help wonder if I should have done something more. And, if so, what?

I'd love to know: how would *you* have reacted if you were in my heels?



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Walk a Mile in My Heels: I'm the Legal Expert, not the Court Reporter!

By Anonymous • May 20, 2014

I recently was asked to testify for the first time as a legal expert in a case. I was excited (and nervous) when I showed up at counsel's office for my deposition. The receptionist at the national law firm where I was deposed greeted me. I advised I was there for the deposition in the particular case, and she began to advise me where I could set up my court reporting equipment. (Interestingly, I did not have a rolling briefcase or any court reporting equipment - just a notebook and my expert file to produce.) I was placed in the awkward position of having to explain I was the expert, not the court reporter! Very uncomfortable and embarrassing, but a lesson learned for all of us that we cannot assume what role the people we meet will play. And not all women are court reporters - some of us are lawyers, and experts!