

Guide for Law Schools in Preparing Law Students for Handling and Addressing Gender Bias in the Practice of Law

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Table of Contents

Introduction to the Issue	2
Goals of Law School Involvement	3
Introduction to Guide	4
Law School Programming – Generally	4
Law School Programming – Specific Topics	4
Resources	8
Broader Diversity Issues	8
Finding Speakers	8
Messaging and Student Interest	8
Law School Perspective	9
Future Resource for Law Schools	9

Introduction to the Issue

Lawyers in the U.S. are not nearly representative of the population we serve. Discrimination and implicit bias significantly contribute to this lack of diversity and limit the effectiveness of our profession. Previous efforts to increase diversity among lawyers are not enough to address the problem.

Gender bias in the practice of law is a significant part of the diversity issue threatening our profession. For decades, the discussion of advancing women in the legal industry has taken place primarily among women. At women's bar events and conferences for women lawyers, women share staggering statistics demonstrating gender inequality in legal practice, women discuss the differences between the perspectives of women and men in legal practice, women analyze the way women communicate differently, and women share tips for thriving in the male-focused culture of the legal industry.

These women are working hard in the hopes that women will stay in the practice of law long enough to increase the number of women leaders and that those women leaders will effect broader change for other women lawyers, moving the profession toward gender equality. In the meantime, to succeed in the legal industry, women lawyers must spend time learning how to navigate a culture not built for their success and to minimize, where possible, the effects of implicit bias and blatant discrimination on their careers.

Women lawyers work to survive in a culture reflecting a history of the practice of law by men. The number of women graduating law school now equals, and sometimes exceeds, the number of men, but we know the percentage of women partners, women in-house counsel, and other women leaders does not come close to reflecting the percentage of women graduating law school. Although women may comprise around 50% of lawyers entering the profession, the culture of legal practice has not changed to eliminate discrimination or to reflect the number of women lawyers. In turn, the number of women partners and other women leaders in the legal industry has not increased at the rate one might expect when looking at years of law school graduating classes.

Approximately half of all law school graduates are women and that has been the case for at least 20 years.¹ However, approximately 65% of attorneys are men, and 35% of attorneys are women.² Over the past 25 years, the change in the number of women attorneys has been small, particularly in comparison to makeup of law school graduates and the population as a whole. Women attorneys represented 12.27% of partners in 1993 and now represent approximately 22.70% of partners.³ “While the number of women equity partners has increased from 16% in 2007, it remains largely unchanged in the last 10 years.” In addition, women make up only 25%

¹ “After entry-level, the representation of women at firms shrinks each subsequent year,” [NALP Diversity Infographic: Women, 2015-2016](#).

² [ABA 2017 National Lawyer Population Survey](#).

³ NALP [2017 Report on Diversity In U.S. Law Firms](#).

of high-level governance roles, such as serving on a compensation committee or as practice group leader.⁴ “Only four of the 112 Justices ever to serve on the highest court in the land have been women.” 36% of active judges currently sitting on the thirteen federal courts of appeal are women. 33% of active United States district/trial court judges are women.⁵ In a Florida Bar survey, 6% of women reported leaving an employer because of gender bias and 5% because of harassment. 43% reported experiencing gender bias in their careers and 17% reported experiencing harassment. In addition, 10% listed gender bias as one of the top three significant challenges faced as an attorney.⁶

Goals of Law School Involvement

Law schools can play a major role in tackling gender bias in our profession by solving two major issues that stall gender equity progress in the practice of law:

- First, female law students typically graduate law school unaware of the lack of gender equity in the practice of law, a damaging result. It often takes new women lawyers years to realize the issues they face our profession. By that point, their careers are typically already impacted by implicit bias, and they have lost countless opportunities to mitigate that damage. If law students instead built an awareness of gender bias in our profession before graduating law school, as well as tools for mitigating its impact, they would be empowered to protect their own advancement.
- Second, men graduating law school are also typically unaware of the gender bias awaiting their colleagues. Even in the best situations, where there is some awareness of gender equity issues, men are often unfamiliar with the specific challenges women face in the practice of law. As a result, both men and women are ill-prepared to avoid contributing to gender bias and are left without a strategy for handling situations where gender bias is present. By building awareness and providing tools for all law students, law schools can prepare the next generation of lawyers to spread awareness, serve as allies, and play a key role in more quickly eliminating gender bias in the practice of law.

In other words, with the active participation of law schools, we can finally start to see real, sustainable, faster progress for women in our field.

⁴ 2017 National Association of Women Lawyers Survey on Promotion and Retention of Women in Law Firms [Summary](#).

⁵ National Women’s Law Center 2016 Report on [Women in the Federal Judiciary](#).

⁶ Florida Bar *Results of the 2015 YLD Survey on Women in the Legal Profession*; See also the ABA Commission on Women in the Profession’s [A Current Glance at Women in the Law January 2017](#).

Introduction to Guide

The following guide represents the collective experience and wisdom of many attorneys and gender equity thought leaders throughout the United States and Canada and will serve as a best practices guide for any law school committed to addressing gender bias in our profession by offering a series of programming to its students. The guide includes key topics to be addressed in programming, important issues to cover when addressing each topic, and additional issues a law school may face, such as its own perspective on tackling gender bias issues and building student interest in related programming.

Law School Programming – Generally

It would be very difficult for a law school to cover in one program/event all of the topics and issues required to fully address and prepare students for facing gender bias issues in practice. Instead, a series of programs, spaced throughout a student's law school career, would be more manageable for the law school and would give a student the opportunity to consider and reflect on each program as well as to hear from a variety of thought leaders. In addition, one program that informs students about gender bias would make small progress by building awareness. However, a series of programming that goes further, preparing students to address and interrupt gender bias in our industry, can change the culture of our profession, a much needed step to reach gender equity.

Law School Programming – Specific Topics

A series of law school programming preparing students to address gender equity issues in practice should include the following topics:

Introduction to the Issue. Unfortunately, law students often view gender equity issues as solved or somewhat outdated. They look to their peers and see women represented equally in their law school classrooms, often not realizing the subtle gender bias appearing even in classrooms settings. They find it difficult to relate to gender bias speakers who describe facing blatant gender bias or gender bias in a decades-old setting. Students need to understand this issue is still real, current, and significant. An introduction to the issue can include topics such as:

- Statistics about the representation of women in the profession (see intro to this guide as an example)
- How this issue will affect them personally
- This is a current issue
- Concrete, current, real stories of gender bias, including stories from attorneys who are newer to practice so law students will find more relatable

- Help students understand how recent the history of women in practice really is overall. For example, several states are celebrating the 100th anniversary of the first woman to pass the bar in their states. Watching documentaries and consulting with state women's bar associations regarding their histories of women in practice may help
- Stress the concept of “being invited to the dance versus being invited to dance,” i.e., women may be present but are not receiving equal treatment or opportunities to advance
- Contrast the often gender-balanced law school world with the realities of practice; Law school classes typically include equal numbers of women and men; Women may meet and exceed the academic accomplishments of their male colleagues, and they may get jobs right out of law school in equal numbers to men; The issues for women typically start a few years into practice; After the first few years, there will be very few female associates and even fewer will make it into partnership
- There is a temptation to think maternity and children are the issue – that is, women have children and cannot handle the hours that law practice requires; However, while maternity leave may affect a woman’s desire to continue in practice, it is typically their experience in law firms and the gender bias they face, rather than family obligations, that cause them to leave practice
- Women heading into practice are typically unaware that gender bias is playing a role from their first moments in practice; In other words, they never had the same opportunities or equal access to advancement as their male colleagues; It usually takes at least a few years of practice, after damage has been done, before they realize the impact
- Law firms are still primarily and overwhelmingly run by men; This gives men an advantage; For example, senior male partners are often more comfortable mentoring a younger man who reminds them of their younger selves; Senior male partners “grandfather” work and clients to young male associates

What is Actually Happening. Once law students have a picture of the disparities in the legal industry, they need insight into the cause. They need an introduction to issues such as unconscious bias, implicit bias, and the “Goldilocks” issue.

- The book [Breaking Through Bias](#), by Andrea Kramer and Al Harris, a husband and wife attorney duo, serves as an ideal introduction to these issues and helps women navigate them as well.
- Examples of issues taking place in the legal industry every day:
 - The “Goldilocks” Issue: “...To simplify greatly, men are (or are expected to be) agentic: providers, decisive, and ambitious, even driven. Women in contrast are (or are expected to be) communal: caregivers, sensitive, and concerned with others. Women lawyers that understand these stereotypes and the biases that flow from them have the power to handle these biases by avoiding them, working around them, or tackling them head on... These stereotypes are at the very heart of why women are held back — by others and by themselves. Women become aware at a young age that when they act forcefully or competitively, they are diverging from gender stereotypes. If they push to get a job done, if they focus on results rather than pleasing others,

they are acting like a man. If they act like a man, people dislike them. And, women don't like not being liked. So they hold back. We call this the Goldilocks Dilemma. Women are viewed as too tough, too soft, but rarely just right. If they defy expectations, behave against stereotype and grab those opportunities, they are viewed as pushy, selfish, and just plain not nice. If they act in stereotypically feminine ways, they have great difficulty in reaching for and taking advantage of the same opportunities as men. In other words, women are literally damned if they do and damned if they don't." - Andrea Kramer & Al Harris

- "Men are presumed to be competent and get judged on their potential. Women, are presumed not quite up to snuff and must prove their competence – over and over and over again. How many times have we heard something like: 'She's just lucky. He's skilled.' 'She's hesitant. He's thoughtful.' 'She's impulsive. He's decisive.' 'She has trouble balancing work with her family. He's busy.'" - Andrea Kramer & Al Harris
- "Women in traditionally male careers – lawyers, doctors, tech entrepreneurs, fighter pilots – just about all, high status high financial rewarded careers – face negative stereotypes about women, family, job commitment, and leadership. As the stereotypes go: A woman just doesn't have the right set of characteristics to be an effective successful lawyer. And if she does, then there is something wrong with her: she is not a nice person, she is a b*tch, she is a bad mother, and she is certainly not feminine." - Andrea Kramer & Al Harris
- So-called "benevolent sexism" happens when someone says or does something that appears to be positive but can actually hurt women. For example, a female junior partner being left out of networking events where potential clients would be. When she expresses an interest in joining, the leaders of her practice group tell her they were trying to be helpful – they assumed she wouldn't want to be away from home in the evenings. This can also show up in assignments; women may be given less challenging assignments than men, based on the assumption they are not as competent. Come time for compensation changes or advancement, women will not be rewarded as much because, although they did well on all assignments, they were never given assignments as challenging as their male colleagues and did not have the opportunity to prove their capabilities.
- Women then need an introduction to techniques for identifying gender bias and managing its impact on their careers. The Breaking Through Bias book does exactly this and serves as a powerful starting point.

Equal Pay Issues. Looking at the pay disparity between male and female lawyers is one way to draw attention to the concrete impact of gender bias in our profession, and law students should be aware of this disparity.

- All law students should be given information about pay disparity, including women are likely to get lower offers right out of law school. This is a huge problem - initial pay disparity compounds over time and is difficult to correct.

- Women should also understand how to negotiate for more and what to say to help ensure their value is understood.

How to Handle Gender Bias. While women should understand how to navigate the gender bias they will face in practice, all law students should understand how to identify and address gender bias to help build awareness and start to reduce its impact.

- For example, the National Conference of Women’s Bar Associations (NCWBA) runs a creative program called “[GOOD Guys](#)” (Guys Overcoming Obstacles to Diversity) featuring panels of men who talk to an audience about why they value diversity and how to be an ally in addressing gender bias. NCWBA offers a toolkit organizations can use to host their own GOOD Guys event.
- The ABA Commission on Women in the Profession and Minority Corporate Counsel Association [Bias Interrupters project](#) is a great resource as well.
- This discussion should include concrete examples, such as strategies for handling gender bias in the moment, e.g., “mansplaining,” idea stealing, interruptions.

Law Practice Training. To level the playing field, women should understand how law practice actually works. In other words, because men are often taken under the wing of senior male supervisors and given credit for potential, failing to appreciate how law practice works has less of an impact on men. However, when women do not understand and master issues such as billable hours, law firm hierarchy and politics, and marketing, they are at a significant disadvantage. (This also helps level the playing field between those who come from educated families and families that include lawyers and those who come from a less privileged background.) Topics covered should include:

- Billable hours
- Law firm hierarchy, politics, and unspoken codes of behavior
- How law firms work, e.g., structure, importance of origination credit, rising through the hierarchy
- Pay equity and negotiating compensation (for example, see the ABA Commission on Women in the Profession’s [resources on negotiating compensation](#))
- Finding and working with sponsors and mentors, and the difference between the two
- Building confidence
- Building a support group and finding resources
- Getting quality, challenging assignments
- Maximizing the type of work that will count, knowing what will not count
- Building a competitive resume
- How to be successful in the review and evaluation process
- Marketing and networking (research shows marketing and growing a book of business are flagged by law firms as a key reason why women do not advance as much as men)

Resources

Students should also be provided with resources to help them continue their education on these issues during law school and as they head into practice. For example, they should be aware of local and national organizations providing support and further education (e.g., [NCWBA](#), local [women's bar associations](#), [Ms. JD](#)), be given further reading to help them dig deeper on the issues covered in their law school programming, and be introduced to national gender equity thought leaders.

Broader Diversity Issues

Note: the law school programming described in this guide could easily be modified to include a discussion of broader diversity issues throughout the series of programming.

Finding Speakers

In addition to drawing on the expertise of law school alumni, law schools should reach out to their local women's bar association and to national organizations, such as NCWBA, for assistance in finding program speakers.

Messaging and Student Interest

Law schools may point to student interest as a challenge in implementing programming. As mentioned previously, this problem largely stems from students' lack of awareness about the seriousness of gender bias in practice and how it is likely to directly impact them. Appropriate messaging (to help students understand the importance of that first program introducing the issue) will go a long way. From there, the first program should capture interest and inspire students to continue learning at future programming. Additional thoughts regarding student interest:

- Some law schools may consider giving credit or otherwise including programming as part of their curriculum
- Students may be motivated by the “business case for diversity,” i.e., how diversity positively impacts the bottom line.
- Efforts by in-house counsel to build diversity by requiring diverse teams of outside counsel
- Recruit students who do have an interest in diversity to bring in friends; students can serve as ambassadors to help build initial interest

- This programming could be part of a larger series focused on professional development and what it takes to succeed as a lawyer, where this programming is one key element
- Messaging should make very clear programming is for all law students, not just women (even if law school chooses to tailor a subset of its programs specifically for women)

Law School Perspective

Some suggest that law schools may be concerned about addressing gender bias on the theory that raising these issues highlights the issues for incoming students and may not paint the practice of law in a positive light. First, these issues arise in professional environments across industries and are not unique to the practice of law. Second, given the current environment, many people are attracted to the law school path because they want to help address issues such as lack of diversity and inequality in our society. It is therefore unreasonable to think that such incoming students would expect those issues do not exist in the practice of law or that they would be deterred by awareness of these issues. Failing to address equality issues or pretending they do not exist is of course not an appropriate or ethical approach.

Looking at it another way, being able to showcase concrete, impactful programming raising awareness and preparing students to address bias in practice can be a potential advantage not only to law school admissions but to law school career services as well. In addition, this programming can increase the likelihood and level of student success, building among alumni not only a stronger connection and commitment to their law school but also more capacity to give back to their law school, financially and otherwise.

Future Resource for Law Schools

This guide will serve as an important resource for law schools who are committed to playing a role in tackling gender bias in the practice of law. However, please note a full toolkit offering sample programming is also currently in development. That toolkit will pair well with this guide to assist law schools further. Please stay tuned.