

**Lawyers with Bias:
A Look at Implicit Bias in the Legal Profession
A talk with Paulette Brown**

I. The Problem of the Lack of Diversity and Inclusion in the Profession

- A. Despite the increased emphasis on diversity and inclusion in the legal field over the past decade, the legal profession still remains one of the least diverse of any profession.
- B. Prevailing racial, gender, sexual orientation, and other class-based biases play a role in contributing to low diversity and inclusion rates.
- C. Types of biases
- “Implicit bias” refers to involuntary assessments of other individuals or situations that can influence decision-making, actions, and attitudes.¹
 - Confirmation bias²: the tendency to only process information that confirms one’s preconceived beliefs.
 - Maternal wall bias³: stereotypes encountered by working mothers or those taking parental leaves. Forms include perception that they are less proficient, less committed, or less available and willing to take on work.
 - Leniency bias: occurs when supervisors are more lenient over others with a certain group based on gender, race, educational level, etc. Can be counter-productive when an employee is never given an opportunity to learn, correct, and grow from their mistakes. This can create a self-perpetuating cycle feeding into forms of confirmation bias.
- D. Current lay of the land in the legal profession generally
- According to the National Association for Law Placement’s 2018 Report on Diversity, minority women remain the most poorly represented group in Big Law partnerships. From the report: “[A]t just 3.19% of partners in 2018, minority women continue to be the most dramatically underrepresented group at the partnership level, a pattern that holds across all firm sizes and most jurisdictions.”⁴
 - 4 percent of active attorneys identified as Black or African American in 2007 and 4 percent identified as Hispanic or Latino. By 2017, those numbers rose

¹ Ohio State University Kirwan Institute for the Study of Race and Ethnicity - <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>

² Heshmat, Shahram PhD “What is Confirmation Bias?” - <https://www.psychologytoday.com/us/blog/science-choice/201504/what-is-confirmation-bias>

³ Harvard Business Review “The Maternal Wall” - <https://hbr.org/2004/10/the-maternal-wall>

⁴ 2018 Report on Diversity in U.S. Law Firms, NALP, available at <https://www.nalp.org/reportondiversity>

- only slightly to 5 percent each. Yet, data collected by the U.S. Census Bureau indicate that, as of 2016, Black or African American individuals made up 13.3 percent of the total U.S. population and Hispanic or Latino individuals made up 17.8 percent of the total U.S. population. The percentage of active attorneys identifying as Asian remained steady at 2 percent, and those who identified as Native American remained around 1 percent.⁵
- Despite small increases in both 2016 and 2017, representation of Black/African-American associates remains below its 2009 level of 4.66% and is now 4.28%.⁶

E. Bias in the pipeline

- Diversity rates among law school applicants in 2018: 57.26% of law school applicants were white, 13.31% of applicants were Black or African American, 11.99% were Hispanic/Latino, and 9.98% of applicants were Asian. 53.65% of applicants were women.⁷
- Implicit bias creeps in during recruitment as well. Seemingly innocuous questions highlight disparity in opportunity and hidden privileges.
- Once in the profession, minorities and women face higher rates of attrition.
- Even if a firm or company may be adequately addressing diversity rates during recruitment, if there are not additional structural efforts to address high attrition rates among these groups, the firm/company will not have a sufficiently diverse and inclusive workforce. Diversity will thin out at the top of the organization.
- High rates of attrition generally are costly to both firms and clients. As more and more clients find diversity and inclusion in the workforce essential, they consider diversity rates when selecting a firm.

II. A Path Forward

A. Learning to Recognize Your Own Biases

- Implicit biases are hidden and unconscious. The first step is to recognize the types of biases you may hold.
- Recognizing personal biases

⁵ See Allison E. Laffey & Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives*, ABA (May 8, 2018), <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/> (citing American Bar Association's National Lawyer Population Survey).

⁶ *Id.*

⁷ LSAC Current Volume Summary - <https://report.lsac.org/VolumeSummaryOriginalFormat.aspx>

- Tests like the Implicit Associations Test (IAT)⁸ may help by indicating how strong your connections are between concepts of certain groups of people and stereotypes.
 - Attending panels and meetings and having conversations with diverse groups about implicit biases can help uncover personal biases as well.
 - Analyzing diversity at the institutional level
 - The ABA Model Diversity Survey⁹ was designed to help firms and clients analyze the role of minorities, women, LGBT, and disabled lawyers in law firms. By continually collecting and analyzing this information, firms and clients can better understand the specific ways they can improve and evaluate their progress over time.
- B. Other programs for change
- ABA Resolution 113¹⁰: urges firms and companies to encourage and expand opportunities to diverse attorneys.
 - ABA passed a new mandatory rule taking effect in 2017 requiring all ABA sponsored CLE panels to include at least one diverse speaker or moderator.
 - Firms and companies have started appointing and hiring diversity officers to address diversity and inclusion and to craft specialized programs to address these issues.

⁸ Project Implicit, About the IAT - <https://implicit.harvard.edu/implicit/iatdetails.html>

⁹ 2018 ABA Model Diversity Survey - <https://www.americanbar.org/content/dam/aba/administrative/diversity-portal/2018-aba-mds-final.authcheckdam.pdf>

¹⁰ ABA Resolution 113 - https://www.americanbar.org/news/reporter_resources/annual-meeting-2016/house-of-delegates-resolutions/113.html