

# Addressing Racial & Gender Bias In the Legal Profession

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**CLE SEMINAR FOR IN-HOUSE COUNSEL**  
SAN FRANCISCO | JANUARY 2020

## Agenda

- Two recent reports by the ABA show significant gender and racial bias in the legal profession
- Unconscious and implicit bias
- Why Diversity and Inclusion matters
- How in-house legal departments can interrupt bias
- How Dentons and Intel is fostering Diversity and Inclusion

## American Bar Association Report



## The 2018 report by ABA's Commission on Women in the Profession You Can't Change What You Can't See

- Report surveyed in-house and law firm lawyers' experiences regarding bias in the workplace.
  - 2,827 lawyers responded.
- The report revealed four patterns of gender, racial, and parenthood bias:
  - Needing to go "above and beyond."
  - Pressure to conform to gender expectations.
  - Women faring worse after having children and hitting a "maternal wall."
  - When bias against women or people of color results in conflict within those disadvantaged groups.

## Women and People of Color Need to Go Above And Beyond

- Bias rooted in fact that most people think of a white man when they think of a good lawyer.
  - People who do not fit that image then need to prove themselves more.
  - Women and people of color do not have the same privilege as white men who are “presumed to be competent, their mistakes understandable, and their work ethic unquestioned.”
  - Consequently women and people of color often need to repeatedly show their commitment and competence thereby causing them to feel exhausted and demoralized.
    - *“The disparity has made me regret ever going to law school. It [is] very disheartening to get to a point, know that you do excellent work, but are just not wanted and treated like crap because you are a black woman.”*

—Black woman, firm lawyer

The statistics and quotes provided here are from the 2018 ABA report.

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## Needing to go “Above and Beyond”

- Had to Prove Themselves More Than Their Colleagues
  - 28.17% white men.
  - 53.57% white women.
  - 53.60% men of color.
  - 62.94% women of color.
- Being Held to Higher Standards
  - 34.61% white men.
  - 51.95% white women.
  - 57.60% men of color.
  - 67.36% women of color.
- Mistaken for administrative, custodial, or court staff
  - 7.07% white men.
  - 50.85% white women.
  - 30.36% men of color.
  - 57.52% women of color.
- *“Old white men know what a successful lawyer looks like: an old white man. When they see a woman, or a person of color, they \*know\* that’s not a successful lawyer.” —Male, race unknown, firm lawyer*
- *“Being a minority woman means your intellect is systematically discounted and caucasian hetero men are unfailingly trusted no matter their competency. I felt like I was constantly trying to prove myself no matter how impeccable my work product was.” —Woman, race and workplace unknown*

The statistics and quotes provided here are from the 2018 ABA report.

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## Pressure to Conform to Gender Expectations

- Bias rooted in how certain groups should behave.
  - Stereotypes for women mandate that they be modest, self-effacing, nice, and team players.
  - Stereotypes for men mandate that they be direct, assertive, competitive, and leaders.
    - Thus the competitive and assertive behaviors needed to advance in a law firm is more readily accepted in men than women.
    - Women of all races and men of color feel less able to express anger at work compared to white men.
- Women and people of color are more likely than white men to report they are expected to be “worker bees” that keep their heads down and not seek the spotlight.

The statistics and quotes provided here are from the 2018 ABA report.

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## Pressure to Conform to Gender Expectations

- Rarely interrupted
  - 63.84% white men.
  - 51.15% white women.
  - 63.71% men of color.
  - 51.57% women of color.
- Free to express anger
  - 56.13% white men.
  - 44.47% white women.
  - 42.86% men of color.
  - 39.58% women of color.
- More administrative tasks than colleagues
  - 25.77% white men.
  - 46.70% white women.
  - 19.66% men of color.
  - 43.51% women of color.
- *“In the past year, I’ve been called ‘overconfident’ and ‘not deferential enough’ by co-counsel, another Asian American female. It was extremely frustrating as I was finally starting to feel confident and assertive and direct—acting as any normal white male attorney in a law firm would. I was subsequently removed from that case.” —Asian American woman, firm lawyer*
- *“Despite superior educational credentials and being a lateral transfer from a far more prestigious firm, I was given an appropriate title but slotted into the subservient, support role (i.e., expected to take notes, get coffee, hang men’s jackets, etc.).” —White woman, firm lawyer*

The statistics and quotes provided here are from the 2018 ABA report.

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## Hitting a “Maternal Wall”

- Bias rooted in motherhood.
  - One of the strongest types of bias.
  - Studies show motherhood can lead to negative competence and commitment assumptions
  - Catch-22
    - Mothers who work too much can be seen as bad mothers
    - If the mother works too little than they can be seen as bad workers
- Fathers can also be impacted by this bias
- *“It is impossible to find ‘work/life balance’ as a mother when our jobs simply do not allow you to leave at 5 pm—even if you are told that it is ok. In reality, there is a stigma attached with leaving earlier than 7ish or coming in after 8:45 am—people look at you and you are talked about. I don’t see my son awake Monday through Friday. It makes you hate the fact that you became a litigator, but you just don’t know what other field you can get into.”—Asian American woman, firm lawyer*

The statistics and quotes provided here are from the 2018 ABA report.

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## Hitting a “Maternal Wall”

- Parenthood did not hurt perceived competence
  - 80.00% white men.
  - 44.48% white women.
  - 79.45% men of color.
  - 51.09% women of color.
- Asking for flex schedule will not hurt my career
  - 50.44% white men.
  - 36.23% white women.
  - 38.10% men of color.
  - 32.16% women of color.
- Expected to stay home or put career on hold after having children
  - 5.35% white men.
  - 20.09% white women.
  - 12.12% men of color.
  - 18.91% women of color.
- *“I have had male firm owners ask me if I was single or planning on getting married, etc. Completely illegal questions, because they still don’t want to hire and/or promote women in case they go out on maternity leave. Unbelievable!” —White woman, firm lawyer*
- *“I was passed over for partner because I had a child. The two male attorneys who were hired at the exact same time as me, who had comparable prior experience, and same job responsibilities were made partner but I was not. When I asked why, I was told it was because I had given birth to a child.” —White woman, firm lawyer*

The statistics and quotes provided here are from the 2018 ABA report.

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## Bias Results in Conflict Within Disadvantaged Groups

- Bias triggered when bias against women or people of color causes conflict within the groups.
  - For instance, when gender bias creates only one available position for a minority, then the minorities may compete against each other to claim that one slot
- *“My relationships with women lawyers in the generations ahead of me have often been competitive or have not involved the degree of support that I would expect. Among my peers and with a trusted male mentor, I have commented that older women in leadership roles climbed the ladder and pulled it up behind themselves.”—Woman lawyer, race unknown, in-house*

The statistics and quotes provided here are from the 2018 ABA report.

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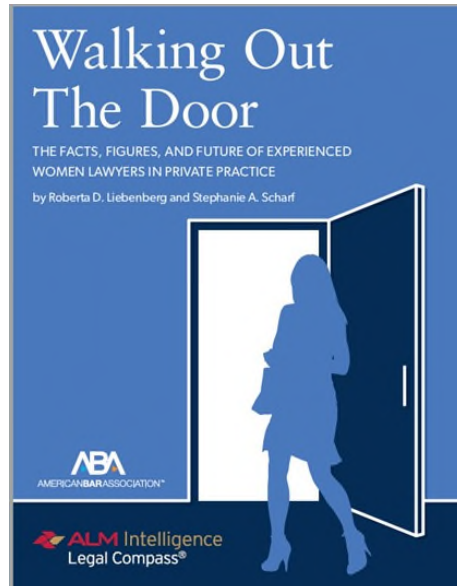
## Bias Results in Conflict Within Disadvantaged Groups

- Tokenism: feeling there is a “women’s slot” and regularly competing for it
  - 28% white women.
  - 27% women of color.
- Pushback from administrative staff
  - 16.81% white men.
  - 34.31% white women.
  - 20.54% men of color.
  - 34.47% women of color.
- My female colleagues support each other
  - 72% white women.
  - 66% women of color.
- *“Sometimes women of color are literally referred to as ‘two-fers’—i.e., they count in diversity statistics as both women and as lawyers of color. This demeans them, and reduces opportunity for white women, because the white men are using the double-counting to make the workplaces they still control look more diverse on paper than they actually are.” —White woman, in-house lawyer*
- *“Females are harder on their female assistants, more detail oriented, and they have to try harder to prove themselves, so they put that on you.” —Legal secretary on female attorneys.*

The statistics and quotes provided here are from the 2018 ABA report.

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## American Bar Association Report



## The 2019 report by ABA

### Walking Out The Door

### The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice

- Report surveyed more than 1,200 big law firm senior men and women lawyers.
- The report focused on three questions:
  - What are the everyday experiences that contribute to success for the lawyers in firm practice?
  - Why do experienced women stay in big law and why do they leave?
  - What are law firms doing to advance women in senior level positions and what works?

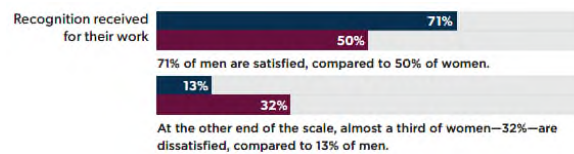
## What are the everyday experiences that contribute to success for the lawyers in firm practice?

### Job Satisfaction

- Men and women report similar levels of job satisfaction as it relates to the nature of their work:



- But, men and women differ on their levels of satisfaction when it comes to recognition received for their work and opportunities for advancement:



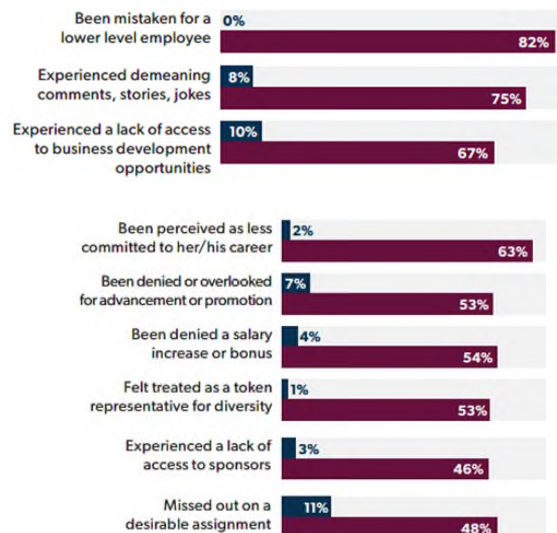
The statistics and quotes provided here are from the 2019 ABA report.

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## What are the everyday experiences that contribute to success for the lawyers in firm practice?

- Women experience two major impediments:
  - Unequal access to experiences that help build success
  - Negative gender stereotypes and biases

Men Women



The statistics and quotes provided here are from the 2019 ABA report.

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## What are the everyday experiences that contribute to success for the lawyers in firm practice?

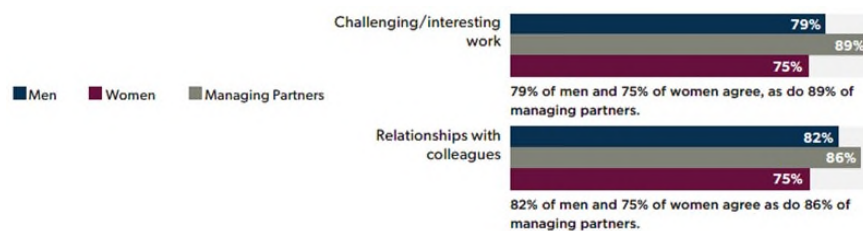
- Senior women in law firms experience sexual harassment at much greater rates compared to senior men
  - 50% of women compared to 6% of men have received unwanted sexual conduct at work (i.e. one in two women said they experienced sexual harassment).
  - 16% of women compared to 1% of men lost work opportunities because of rebuffing sexual advances.
  - 28% of women avoided reporting sexual harassment for fear of retaliation compared to 1% of men reporting similar avoidance behavior.

The statistics and quotes provided here are from the 2019 ABA report.

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## Why Do Experienced Women Lawyers Stay Or Leave Their Firm?

- Men, women, and managing partners generally agree on the reasons for why experienced women lawyers stay at their firms.



The statistics and quotes provided here are from the 2019 ABA report.

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## Why Do Experienced Women Lawyers Stay Or Leave Their Firm? (contd.)

- They also generally agree on the reasons why experienced women lawyers leave their firms.



The statistics and quotes provided here are from the 2019 ABA report.

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## Why Do Experienced Women Lawyers Stay Or Leave Their Firm?

- Women need to “do it all.”
- Top reasons experienced women find are important factors for leaving their firm
- Senior women lawyers are more likely than their male counterparts to be responsible for different aspects of child care



ACTIVITY	PERCENTAGE OF WOMEN WHO SAY THIS IS THEIR FULL RESPONSIBILITY	PERCENTAGE OF MEN WHO SAY THIS IS THEIR FULL RESPONSIBILITY
ARRANGING CHILDCARE	54%	1%
LEAVING WORK FOR CHILDCARE	32%	4%
CHILDREN'S EXTRACURRICULARS	20%	4%
EVENING CHILDCARE	17%	4%
DAYTIME CHILDCARE	10%	1%

The statistics and quotes provided here are from the 2019 ABA report.

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## What firms are doing to advance women in senior level positions and what works?

- At least 70% of senior women in law firms believe the following are important to advancing experienced women
  - Work from home policy (78%)
  - Paid parental leave (76%)
  - Formal part-time policy for partners (75%)
  - Clear, consistent criteria for promotion to equity partner (75%)
  - Client succession planning policy emphasizing greater inclusion of women lawyers (71%)
  - Training female lawyers/business development (70%)
  - Client networking/female lawyers and clients (70%)

The statistics and quotes provided here are from the 2019 ABA report.

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## Unconscious and Implicit Biases



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## Several studies have found unconscious or implicit biases in the hiring process

- In the 2000 article, *Orchestrating Impartiality: The Impact of “Blind” Auditions on Female Musicians*, the research found the institution of blind auditions from 1970 to 1990s can explain 30% of the increase in the proportion of female hires and possibly 25% of the increase in the percentage of females in symphony orchestras.
- In a 2003 paper entitled *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, researchers responded to help-wanted ads using fictitious resumes and found resumes with white names got 50% more callbacks for interviews than resumes with black names.
  - Also a white name with a higher quality resume got 30% more callbacks than a white name with a lower quality resume. In contrast, a black name with a higher quality resume saw a much smaller effect.
- Contributing to Research - Taking an Implicit Association Test
  - Results of the test is based on research done at universities including Harvard and Yale
  - Test available at <https://implicit.harvard.edu/implicit/takeatest.html>

## Why Diversity and Inclusion Matters

McKinsey & Company



Diversity Matters

Vivian Hunt  
Dennis Layton  
Sara Prince  
February 2, 2015

## Why Diversity And Inclusion Matters

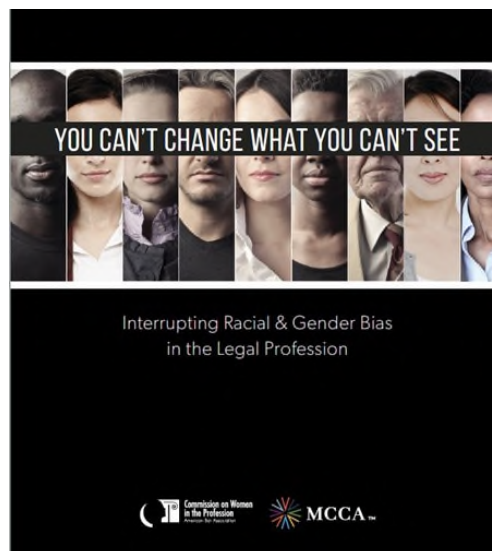
- 2015 and 2018 Reports by McKinsey & Company
  - Statistically significant correlation between more diverse team and better financial performance
    - Companies in top-quartile for gender diversity on executive teams 21% more likely to outperform on profitability and 27% more likely to have superior value creation
    - Companies in top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability.
  - **Penalty for missing out.** The bottom-quartile companies for gender and ethnic/cultural diversity were 29% less likely to achieve above-average profitability.
- Bottom line: better work product based on diverse experiences.

The statistics provided here are from the 2015 and 2018 reports by McKinsey & Company entitled "Delivering through Diversity" and "Diversity Matters."

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## Bias Interrupters for In-House Legal Departments



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## Addressing Bias in Hiring

### A Three Step Approach

- Using Metrics
  - Track candidates through entire hiring process and then analyze where underrepresented groups are dropping out of the process
  - Determine if qualifications are being waived more for one group
- Using Bias Interrupters
  - Empower people in hiring process and appoint bias interrupters
  - Go where diverse candidates are
  - Consider candidates from a broader tier of law schools
  - Establish clear grading matrix and ensure resumes are graded on same scale
  - Ask the same questions to every candidate that is interviewed
- Repeat

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## Addressing Bias in Assigning Work

### A Three Step Approach

- Using Metrics
  - Determine what is office housework and what is glamour work in the department.
  - Determine who is doing what and how long.
  - Analyze office housework and glamour work survey results and look for demographic patterns.
- Using Bias Interrupters
  - Office housework. Avoid asking for volunteers, use administrative staff, and create a rotation
  - Glamour work. Announce your goal for equitable assignments and provide a follow-up/check-in; and if feasible create a rotation
  - Smaller departments. Development plans for the less experienced attorneys; succession planning; and shadowing and mentoring
- Repeat

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## Addressing Bias in Performance Evaluations

### A Three Step Approach

- Using Metrics
  - Do the evaluations show consistent disparities for demographic groups?
  - Do women's ratings drop after having children? Do ratings fall after the employee takes parental leave or adopt a flex work schedule?
- Using Bias Interrupters
  - Empower people in evaluation process and appoint bias interrupters
  - For the evaluation form, have clear and specific criteria related to job requirements and hold reviewers accountable and make them justify the ratings.
  - Offer alternatives to self-promotion requirements
  - Retain formal appraisal systems.
- Repeat

## Addressing Bias in Compensation

- A 2017 report from the Association of Corporate Counsel stated that there is a “dramatic” gender pay disparity for in-house counsel and finding a higher proportion of men in six or seven salary bands above \$199,000.
- Ways to Reduce Bias
  - Communicate the compensation strategy
  - Do not ask job candidates for prior salary
  - Encourage HR to do pay equity audits under Legal's direction or through outside lawyers to try to get attorney-client privilege for the data collected
  - If pay disparity is found, work to address the disparity within a reasonable amount of time

## Intel Diversity and Inclusion

- [Intel Legal Diversity and Inclusion](#) - focus on diversity in recruiting, retention and promotion.
- [Intel Outside Counsel Program](#) - focus on diversity of Intel outside counsel teams.
- [Intel Rule](#) - focus on diversity of outside law firms at equity partner level.

## Dentons US Diversity and Inclusion





## Professional Development and Advancement Programs

### Emerge Sponsorship Program

- Designed to advance high-potential diverse lawyers towards partnership and leadership.
- Undertakes individual and teaming assessments, sponsorship training, career planning, and business development coaching for protégés and sponsors.



50% of 2018-2019 protégés promoted to partner in 2019

### Preparing for Rain

- Dedicated to help women lawyers hone their rainmaking skills.
- Guides women lawyers through their "five-year moment"—the years immediately preceding and following promotion to partner—by addressing systemic and individual barriers to business development success often faced during this time.

## Recruiting and Retaining Diverse Lawyers

- Participation in diversity and inclusion industry initiatives such as the Mansfield Rule, the CEO Action for Diversity and Inclusion Pledge and the Diversity in Law Hackathon.
  - Dentons US achieved Mansfield Rule Certification Plus for 2019. Certified Plus status indicates that we considered at least 30% women and minorities for leadership positions and senior level recruiting over the year and we have achieved representation of at least 30% women and minorities in a large number of our key leadership roles and with lateral hires. Dentons has achieved Mansfield Certification for two consecutive years and is committed to participate in the next round of certification, Mansfield 3.0, which runs from July 2019 to July 2020.
- Forming alliances with key organizations and participation in diversity and inclusion events.



## Diversity and Inclusion Initiatives

- **Affinity Groups:** Dentons' Asian, Black, Latino, LGBT+, Native American and Parent Affinity Groups help foster an inclusive culture by supporting the professional advancement of diverse members through networking, training and business development initiatives.
- **WomenLEAD:** Dentons' WomenLEAD Committee supports women through networking opportunities, training initiatives, business and client development events and strategic partnerships.
- **Diversity and Inclusion Speaker Series:** Ongoing conversations with employees, clients, diversity leaders and other industry champions throughout the legal profession addressing a wide range of diversity and inclusion topics.
- **Unconscious bias awareness trainings:** designed to help Dentons' colleagues become more thoughtful about how they interact with others.

## Diversity and Inclusion Initiatives

- **Global Inclusion Day:** Dentons hosts an annual Inclusion Day, featuring a range of firmwide discussions and events.



In 2018, Dentons invited all colleagues to **The Big Inclusion Conversation** to discuss experiences, ideas and potential action steps to create a more inclusive Firm.



Building on that success, Dentons launched **The Big Inclusion Project** in 2019. Participants from across the globe worked in teams to develop an innovative implementation plan, to build inclusion across every part of our firm.

## Achievements

### Striving to be as diverse and inclusive as our clients, worldwide

- Dentons is dedicated to fostering a tolerant, inclusive and dynamic work environment. Our diverse workforce is our competitive advantage and we strive to identify and recruit diverse talent with the skills and perspective that represent our Firm and culture.



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## Speaker Bios



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# Thank you

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