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Challenging the Myths About Women and Minority Lawyers

BY SHERYL L. AXELROD ON MARCH 13, 2015 ·



(This is a sidebar to the concurrently listed article, "Oh, The Times of Inequality, They Are A-Changin'.")

Some myths about why women and minority lawyers are underrepresented in the top ranks of Big Law continue to endure, despite serious research challenging these myths.



For example, many people assume that women are promoted and paid less in the profession because they work fewer hours. That is a myth, as shown by an excellent study on the subject, "Compensation in Law Firms: Why Women Equity Partners Are Compensated Less for the Same Billable Hours and Business Origination as Male Equity Partners" by Harry Keshet, PhD. & Angela A. Meyer, PhD., PE. Keshet and Meyer are top-notch researchers who performed a large and comprehensive study of 915 male respondents and 814 female respondents. Of those participants, 1,269 were white, 420 were non-white, 856 were equity partners, 342 were non-equity partners, and 463 were associates. The study showed that "compensation 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." (See for yourself: [download](#) a free copy of the study's Executive Summary.)

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, and as a corollary to that, are not being promoted equally to equity partnership—isn't because they're not putting in as many hours.

Another myth is that women are responsible for the pay gap because they aren't as confident as their male counterparts and aren't equal with men at negotiating for higher pay. The data emphatically shows that the

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problem isn't that women lack confidence, but that men and women are unconsciously harsher to women who seek higher pay as compared to men. See, "[Lean Out: The Dangers for Women Who Negotiate.](#)"

From the piece, we learn that: "[i]t's not that men are immune from being seen as tough or unlikeable when they make aggressive demands. Attempting to negotiate can make anyone seem less nice, researcher Hannah Riley Bowles of Harvard University repeatedly found. But it's only women who subsequently suffer a penalty: people report that they would be less inclined to work with them, be it as coworkers, subordinates, or bosses. The effect is especially strong, Bowles has found, when people observe women who engage in salary negotiations."

Minority lawyers, too, are subject to enduring erroneous myths. Perhaps the most pernicious is the notion that lawyers of color are less skilled than their white colleagues.

In truth, there is no difference in competency—attorneys of color are not being fairly evaluated. A study by Nextions proving this, "Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills," summarizes an eye-opening study by Dr. Arin N. Reeves on confirmation bias, the fact that when people unconsciously disfavor a group, they confirm their unconscious beliefs through their actions. This study indicates that when people unconsciously think less of a certain group, and expect to find a poorer work product from people in that group, they find just that. Doing so confirms their prejudice against them as less capable. Likewise, when people unconsciously think more of a certain group and expect to find a better product from it, they find just that, and in the process, confirm their bias for them as more capable.

The study underscores the importance of addressing and minimizing unconscious bias. In the study, a research memo was drafted that was purported to be by a junior associate. Minor spelling and grammatical mistakes as well as errors in analysis were inserted into it on purpose. The memo was then distributed to 60 partners from 22 firms who had agreed to participate in a "writing analysis study." The partners were told the memo was written by Thomas Meyer, a third-year associate who graduated from NYU, but half of the partners were told Thomas Meyer was Caucasian and the other half were told that he was an African American. The 60 partners were asked to edit the memo for all factual, technical, and substantive errors, and to rate its overall quality from 1 (the worst) to 5 (the best).

The partners found more errors in the exact same memo written by the hypothetical "African American" Thomas Meyer, and they wrote more positive comments on the piece that was by the hypothetical "Caucasian" Thomas Meyer. The "Caucasian" Thomas Meyer comments were generally positive ("generally good writer but needs to work on...," "has potential," etc.) while the feedback for "African American" Thomas Meyer included that he "needs lots of work," that his memo was "average at best," and even, "can't believe he went to NYU." The hypothetical "African American" Thomas Meyer got an average score of 3.2 out of 5 on his memo as compared to a 4.1 out of 5 rating that was given for the exact same piece by the "Caucasian" Thomas Meyer. As we see in other studies on unconscious bias, there was no significant correlation between the race/ethnicity or gender of the partners and the amount of errors they saw in the memo.

To get a fuller picture of what is happening, watch this [video](#) on unconscious racial bias.

The reason we see so few women and minority lawyers in power is because women and minorities in law firms, and in the workplace in general, face largely unfettered unconscious bias at every rung of the workplace ladder. The overwhelming majority of those running American companies and law firms are white, non-diverse (not disabled, not openly LGBT+, born in this country, Christian, etc.) men.

To give you a striking example of the results of our unconscious bias, as Malcolm Gladwell notes in his book *Blink*, 58 percent of *Fortune* 500 CEOs are not just white and male, but white, male, and six feet tall or more. In the U.S., only about 14.5 percent of men are that tall. The notion that white, tall men are more capable than other people is obviously absurd. However, women and minorities, and even white men under six feet tall, are largely shut out of the top management spot of our largest companies due to an unconscious bias favoring tall, white, male leaders.

In other words, people have unconscious preconceptions about what leaders look like, so far more tall white men are made CEOs than women, men of color, and shorter white men. To see even more unconscious bias, factor in that in the U.S., only 3.9 percent of adult men are 6'2" or taller, but according to Gladwell, 30 percent of *Fortune* 500 CEOs are.

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The following excerpt from the article, "Smoking Gun on Sexism?" by Scott Jaschik in *Inside Higher Ed* discusses a study on gender bias entitled, "Science faculty's subtle gender biases favor male students," by Corinne A. Moss-Racusina, John F. Dovidio, Victoria L. Brescoll, Mark J. Grahama, and Jo Handelsman:

"[A] new study... offers evidence of bias among scientists. The bias is held by both 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."

While most of us want to treat everyone fairly and equally, we all have some measure of unconscious bias. We need to take steps, and companies need to take institutional measures, to minimize the chance for unconscious bias to impact how we recruit, train, utilize, and promote people—especially minorities and women.

About the Author

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