

# PUBLICATION

---

## Implicit Bias in the Legal Industry: How ALA Members Can Take Action

October 01, 2018

***Previously Published in the Association of Legal Administrators, New Orleans Chapter 3rd Quarter 2018 Newsletter***

**Like it or not, implicit bias creeps into the hearts and minds of all humans, no matter how well intentioned or how committed to fairness and equality someone may be. Implicit biases are an unconscious product of our encounters from childhood through adulthood, influenced by everything from geographic location, to social class, mental abilities, profession, age, gender, family and marital status. These biases are further colored by our own observations, the media and stereotypes.**

It works like this: our brains develop what are called "schema" or mental frameworks to allow our minds to apply shortcuts in sorting data into broad categories for quick mental processing. For example, no matter what shape, the human eye can generally recognize a chair, and an individual need not process and determine what a chair is each time he or she encounters one. The ability to quickly characterize objects and things in one's everyday life is essential. However, what science is finding is that these schema also operate below the conscious radar, influencing how we see and treat other people and groups, no matter our determination to be fair and objective. These biases have a real impact on individuals who may be associated with a less than favorable implicit association. Police shootings have been the target of much of the discussion around implicit bias in the media. Most recently, as a result of an incident in which two black men were arrested at a Starbucks in Philadelphia after failing to make a purchase and asking to use the restroom, Starbucks closed nearly 8,000 stores for a day to train all employees on identifying and addressing implicit bias.

The impact of implicit bias on employment-related decisions, including in the legal industry, is significant and deserves increased attention. Nextions, LLC performed a study in which it asked law firm partners to review a legal memo written by an African-American male associate and one written by a fictitious white male associate. The two memos were identical. The memo was distributed to 60 law firm partners from 22 firms. Of the 60 partners, 23 were women, 37 were men; 21 were racial or ethnic minorities, and 39 were Caucasian. Half of the evaluating partners received the memo identifying the author as African-American, while the other half received the memo identifying the author as Caucasian. The results of the study showed that the partners rated the memo ostensibly written by the white associate an average of 4.1/5, while those rating the same memo with an African American author rated the memo an average of 3.2/5. Comments about the white associate's writing included that the associate "has potential" and "good analytical skills," while the comments relating to the African-American's writing included "needs a lot of work" and "average at best."<sup>1</sup>

Another study conducted for the *American Sociological Review* examined law firm's selection of associate candidates by sending fictitious resumes to the nation's top firms. Some of the fictitious resumes included extra-curricular activities that traditionally denote a higher class background (university athletic award, sailing team, and interests in polo and classical music), while others signaled a lower class background (award for top athlete on financial aid, first generation college student, track and field, and pick-up soccer). The study found that even though all educational and work-related histories were identical, law firms overwhelmingly favored the higher class man, who received more than four times the number of callbacks. Further studies showed that women from higher class backgrounds were the least favored to receive an interview because they were

perceived to be the least committed to a demanding job and most likely to be a "flight risk" because of family obligations.<sup>2</sup>

These two studies only scratch the surface on the ways in which implicit bias may impact law firm hiring, evaluation and retention. Given these findings, it is perhaps easier to understand why women and minorities represent only 23% and 8%, respectively, of partners at major law firms.<sup>3</sup>

While the solutions are not easy, there are things ALA members and law firm leaders can do to lessen the negative impact of implicit bias. Best practices for combating implicit bias include: (1) avoiding "first impressions" and "gut response" decision making; (2) slowing down and making more deliberate decisions using objective criteria; and (3) fighting the natural instinct to prefer those who "fit in" or are "like me."

Every time I have conducted implicit bias training, the response has been overwhelmingly positive. The training, which includes breakout discussions of hypothetical scenarios, allows individuals to express themselves and discuss their own experiences regarding implicit bias. It demonstrates to employees that the company cares about them as individuals and desires to treat everyone fairly, while also recognizing that it is human nature for these biases to exist. And it gives attorneys and staff the tools to recognize, explore and expose implicit bias when they encounter it.

Implicit bias training demonstrates a firm's commitment to a professional culture that encourages the best in its employees, both at work and in their communities. ALA members should arm themselves and their organizations with the tools to meaningfully address implicit bias to improve employees' experience and to enhance the legal profession overall.

---

<sup>1</sup> Dr. Arin N. Reeves, *Nextions*, "Written in Black and White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills," available at [nextions.com](http://nextions.com).

<sup>2</sup> Lauren River and Andras Tilcsik, "Research: How Subtle Class Cues Can Backfire on Your Resume," *Harvard Business Review*, December 21, 2016.

<sup>3</sup> NALP *Report on Diversity in U.S. Law Firms in 2017*