



YOU CAN'T CHANGE WHAT YOU CAN'T SEE

Interrupting Racial & Gender Bias  
in the Legal Profession

EXECUTIVE SUMMARY





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## Interrupting Racial & Gender Bias in the Legal Profession

### EXECUTIVE SUMMARY

This report was prepared and written for the American Bar Association's Commission on Women in the Profession and the Minority Corporate Counsel Association by Joan C. Williams, Marina Multhaup, Su Li, and Rachel Korn of the Center for Worklife Law at the University of California, Hastings College of the Law.



Cover design by Amanda Fry/ABA Design.

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Printed in the United States of America.

22 21 20 19 18      5 4 3 2 1

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# Foreword

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For decades, the American Bar Association Commission on Women in the Profession (“the Commission”) and the Minority Corporate Counsel Association (“MCCA”) have worked tirelessly to combat gender and racial bias in the legal profession. Nonetheless, statistics on women’s advancement have not changed appreciably over the years. In 2016, the Commission and MCCA partnered with the Center for WorkLife Law at the University of California, Hastings College of the Law to conduct research to understand further law firm and in-house lawyers’ experiences of bias in the workplace. This new research confirms that many of the traditional diversity tools we have relied upon over the years have been ineffective, and the findings have served as the foundation in developing the next generation of diversity tools that you will find in *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession*.

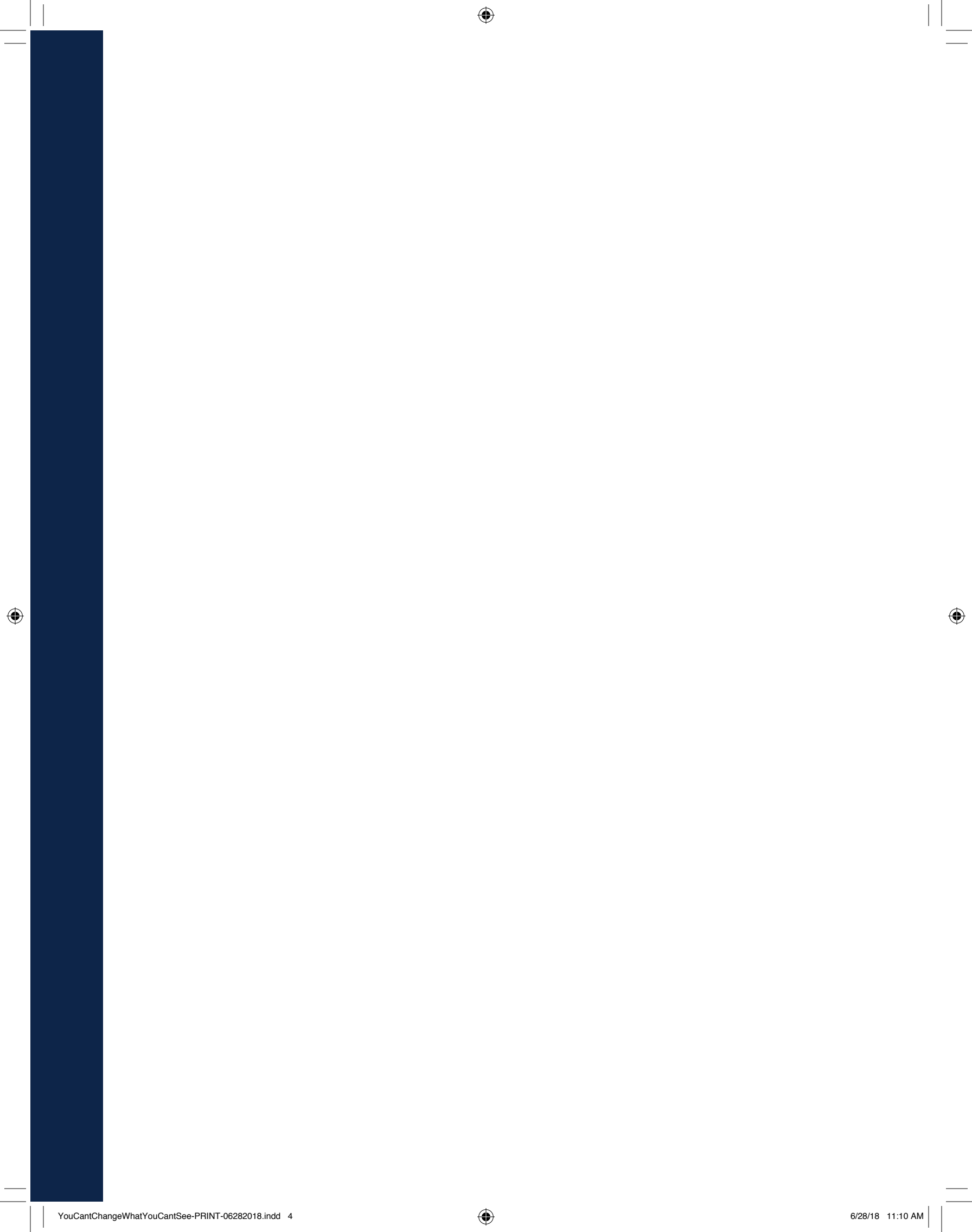
The first part of this research report details four main patterns of gender bias, which validate theories that women lawyers long have believed and feelings they long have held. Prove-It-Again describes the need for women and people of color to work harder to prove themselves. Tightrope illustrates the narrower range of behavior expected of and deemed appropriate for women and people of color, with both groups more likely than white men being treated with disrespect. Maternal Wall describes the well-documented bias against mothers, and finally, Tug of War represents the conflict between members of disadvantaged groups that may result from bias in the environment.

The second part of the research report offers two cutting-edge toolkits, one for law firms and one for in-house departments, containing information for how to interrupt bias in hiring, assignments, performance evaluations, compensation, and sponsorship. Based upon the evidence derived from our research, these bias interrupters are small, simple, and incremental steps that tweak basic business systems and yet produce measurable change. They change the systems, not people.

Considerable time, energy, and money were invested to develop persuasive proof of why we need to take a different approach to diversity issues and to develop the toolkits that can be used to make those changes. Taken together, the survey results serve as a reminder of the importance of the connections we make between individuals. Through sharing, we are reminded that we are not alone in our experiences in the workplace, and that is an important first step in making the work environment more inclusive and welcoming.

Jean Lee, President and CEO  
Minority Corporate Counsel Association

Michele Coleman Mayes, Chair, 2014–2017  
ABA Commission on Women in the Profession



# Acknowledgments

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The ABA Commission on Women in the Profession and the Minority Corporate Counsel Association would like to thank the following individuals for generously donating their time to this important project.

## Working Group Members\*

Ricardo Anzaldua, MetLife (Retired)  
Kara Baysinger, Dentons  
Lois Bingham, Yazaki North America, Inc.  
Jennifer Daniels, Colgate-Palmolive Company  
Kathryn Fritz, Fenwick & West LLP  
Julie Gruber, Gap Inc.  
Stasia Kelly, DLA Piper  
Kim Koopersmith, Akin Gump Strauss Hauer & Feld LLP  
Nancy Laben, Booz Allen Hamilton  
Wendi Lazar, Outten & Golden LLP  
Wally Martinez, Hunton & Williams LLP  
Erika Mason, Constangy Brooks, Smith & Prophete LLP  
Lorelie Masters, Hunton & Williams LLP  
Rick Palmore, Dentons  
Tom Sabatino, Aetna  
Mark Roellig, Massachusetts Mutual Life Insurance Company  
Tom Sager, Ballard Spahr LLP  
James Silkenat, World Justice Project  
Mary L. Smith, Illinois Department of Insurance  
Grace Speights, Morgan Lewis Bockius LLP  
Laura Stein, The Clorox Company  
D. Jean Veta, Covington & Burling LLP  
Robert Weiner, Arnold & Porter Kaye Scholer LLP  
Joseph K. West, Duane Morris LLP  
Kathleen J. Wu, Andrews Kurth Kenyon LLP

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\* Organizations listed were current as of 1/03/2018.

## Additional Acknowledgments

A heartfelt thank you to Michele Coleman Mayes and Jean Lee for their leadership in shepherding this project.

A special thank you to Joseph K. West for his support of this project, which allowed it to move forward.

Thank you to Michelle Gallardo and Elaine Johnson James for the energy and effort they devoted to this project as Co-Chairs of the Bias Interrupters Committee.

Thank you to staff members Melissa Wood and Lynnea Karlic for their indispensable assistance on the Bias Interrupters Project.

Thank you to Microsoft Corporation and Walmart for their early support in completing this project.



# Executive Summary

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This report is the first of its kind to provide a comprehensive picture of how implicit gender and racial bias—documented in social science for decades—plays out in everyday interactions in legal workplaces and affects basic workplace processes such as hiring and compensation.

In April 2016, the American Bar Association’s Commission on Women in the Profession, the Minority Corporate Counsel Association, and the Center for WorkLife Law at the University of California, Hastings College of the Law launched a survey seeking to understand in-house and law firm lawyers’ experiences of bias in the workplace: 2,827 respondents completed the survey, and 525 respondents included comments.

The survey asked respondents whether they had experienced the patterns of gender and racial bias that have been documented in decades of experimental social psychology studies. In addition, the survey asked whether attorneys had experienced implicit bias in basic workplace processes (hiring, assignments, business development, performance evaluations, promotions, compensation, and support). Also included was a series of questions about sexual harassment.

To examine how bias affects workplace experiences in the legal profession, we compared the reported experiences of women of color, men of color, white women, and white men. This report shares the survey findings and paints a picture of how bias affects law firm and in-house attorneys. All differences discussed in the following text are statistically significant unless otherwise noted.

## Women and people of color reported Prove-It-Again (PIA) and Tightrope bias

*Prove-It-Again.* Women of color, white women, and men of color reported that they have to go “above and beyond” to get the same recognition and respect as their colleagues.

- Women of color reported PIA bias at a higher level than any other group, 35 percentage points higher than white men.
- White women and men of color also reported high levels of PIA bias, 25 percentage points higher than white men.
- Women of color reported that they are held to higher standards than their colleagues at a level 32 percentage points higher than white men.

Mistaken for janitors? Men of color and women of all races receive clear messages that they do not fit with people’s image of a lawyer.

- Women of color reported that they had been mistaken for administrative staff, court personnel, or janitorial staff at a level 50 percentage points higher than white men. This was the largest reported difference in the report.

- White women reported this bias at a level 44 percentage points higher than white men, and men of color reported this bias at a level 23 percentage points higher than white men.

*Tightrope.* Women of all races reported pressure to behave in feminine ways, including backlash for masculine behaviors and higher loads of non-career-enhancing “office housework.”

- White women reported doing more administrative tasks (such as taking notes) than their colleagues at a level 21 percentage points higher than white men, and women of color reported doing more of this type of office housework at a level 18 percentage points higher than white men.

## Significant bias against mothers reported—and against fathers who take parental leave

*Maternal Wall.* Women of all races reported that they were treated worse after they had children; that is, they were passed over for promotions, given “mommy track” low-quality assignments, demoted or paid less, and/or unfairly disadvantaged for working part-time or with a flexible schedule. Women also observed a double standard between male and female parents.

- White women reported that their commitment or competence was questioned after they had kids at a level 36 percentage points higher than white men. Women of color reported this at a level 29 percentage points higher than white men.

About half of people of color (47% of men of color and 50% of women of color) and 57% of white women agreed that taking family leave would have a negative impact on their career. 42% of white men also agreed, indicating that the flexibility stigma surrounding leave affects all groups, including majority men.

## Bias is pervasive throughout lawyers’ work lives

Most of the biggest findings of the survey had to do with bias existing in the basic business systems of attorneys’ workplaces. Women and people of color reported higher levels of bias than white men regarding equal opportunities to:

- Get hired
- Receive fair performance evaluations
- Get mentoring
- Receive high-quality assignments
- Access networking opportunities
- Get paid fairly
- Get promoted

In other words, gender and racial bias was reported in all seven basic workplace processes.

## Women of color often reported the highest levels of bias of any group

In almost every workplace process, women of color reported the highest levels of bias. For example:

- Women of color reported that they had equal access to high-quality assignments at a level 28 percentage points lower than white men.
- Women of color reported that they had fair opportunities for promotion at a level 23 percentage points lower than white men.

As a trend throughout the report, we often found that women of color reported the highest levels of bias overall.

## Bias in compensation

The gender pay gap in law has received significant media attention, but much less attention has been paid to bias in compensation systems. Large amounts of bias were reported by both white women and women of color, and these were some of the widest gaps in experience described in the report:

- Women of color agreed that their pay is comparable to their colleagues of similar experience and seniority at a level 31 percentage points lower than white men; white women agreed at a level 24 percentage points lower than white men.
- Similarly, when respondents were asked if they get paid LESS than their colleagues of similar experience and skill level, women of color agreed at a level 31 percentage points higher than white men, while white women agreed at a level 24 percentage points higher than white men.

The racial element of the gender pay gap is rarely discussed and demands closer attention.

In another surprising finding, in-house white women reported roughly the same level of compensation bias as their law firm counterparts. With so much attention placed on the partner pay gap, in house is thought to be a more equitable environment for women in terms of pay. These data suggest that may not be the case.

## Differences between law firm and in-house lawyers' experiences reported

Women of all races and men of color reported lower levels of bias in house than in law firms, whereas white men reported lower levels of bias in law firms than in house.

## Sexual harassment

About 25% of women but only 7% of white men and 11% of men of color, reported that they had encountered unwelcome sexual harassment at work, including unwanted sexual comments, physical contact, and/or romantic advances. Sexist comments, stories, and jokes appear to be widespread in the legal profession: more than 70% of all groups reported encountering these. Finally, about one in eight white

women, and one in ten women of color, reported having lost career opportunities because they rejected sexual advances at work.

## Although implicit bias is commonplace, it can be interrupted

Implicit bias stems from common stereotypes. Stereotype *activation* is automatic: we can't stop our brains from making assumptions. But stereotype *application* can be controlled: we can control whether we act on those assumptions. We've distilled that research in our Bias Interrupter Toolkits, available at the end of this report. These Toolkits provide easily implementable, measurable tweaks to existing workplace systems to interrupt racial and gender bias in law firms and in-house departments. Many bias interrupters will help individuals with disabilities, professionals from nonprofessional families ("class migrants"), and introverted men, in addition to leveling the playing field for women and attorneys of color.

Small Steps, Big Change

# Bias Interrupters Tools for Success

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Incremental steps can improve law firm and in-house diversity in ways that yield well-documented business benefits. Research shows that diverse workgroups perform better and are more committed, innovative, and loyal.<sup>1</sup> Gender-diverse workgroups have higher collective intelligence, which improves the performance of both the group and of the individuals in the group, and leads to better financial performance results.<sup>2</sup> Racially diverse workgroups consider a broader range of alternatives, make better decisions, and are better at solving problems.<sup>3</sup> Bias, if unchecked, affects many different groups: modest or introverted men, LGBTQ people, individuals with disabilities, professionals from nonprofessional backgrounds (class migrants), women, and people of color. We've distilled the huge literature on bias into simple steps that help you and your firm perform better.

We know now that workplaces that view themselves as being highly meritocratic often are *more* biased than other organizations.<sup>4</sup> Research also shows that the usual responses—one-shot diversity trainings, mentoring, and networking programs—typically don't work.<sup>5</sup>

**What holds more promise is a paradigm-changing approach to diversity: bias interrupters are tweaks to basic business systems that are data-driven and can produce measurable change. Bias interrupters change systems, not people.**

Printed here are two toolkits, one for law firms and one for in-house departments, with information for how to interrupt bias in the following business systems:

1. Hiring
2. Assignments
3. Performance Evaluations
4. Compensation
5. Sponsorship Best Practice Recommendation

For additional worksheets and information visit [BiasInterrupters.org](http://BiasInterrupters.org).

Our toolkits take a three-step approach:

1. **Use Metrics:** Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you've taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)
2. **Implement Bias Interrupters:** Bias interrupters are small adjustments to your existing business systems. They should not require you to abandon your current systems.
3. **Repeat as Needed:** After implementing bias interrupters, return to your metrics. If they have not improved, you will need to ratchet up to stronger bias interrupters.

Small Steps, Big Change

# Bias Interrupters

## Tools for Law Firms

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# Interrupting Bias in Hiring

## Tools for Law Firms

### *The Challenge*

When comparing identical resumes, “Jamal” needed eight additional years of experience to be considered as qualified as “Greg,” mothers were 79% less likely to be hired than an otherwise-identical candidate without children, and “Jennifer” was offered \$4,000 less in starting salary than “John.”<sup>6</sup> Unstructured job interviews do not predict job success,<sup>7</sup> and judging candidates on “culture fit” can screen out qualified diverse candidates.<sup>8</sup>

### *The Solution: A Three-Step Approach*

#### **1. Use Metrics**

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)

**For each metric, examine:**

- Do patterned differences exist between majority men, majority women, men of color, and women of color? (Include any other underrepresented group that your firm tracks, such as military veterans or LGBTQ people.)

**Important metrics to analyze:**

- Track the candidate pool through the entire hiring process: from initial contact, to resume review, to interviews, to hiring. Analyze where underrepresented groups are falling out of the hiring process.
- Track whether hiring qualifications are waived more often for some groups.
- Track interviewers’ reviews and/or recommendations to ensure they are not consistently rating majority candidates higher than others.

Keep metrics by (1) individual supervising attorney; (2) department; (3) country, if relevant; and (4) the firm as a whole.

#### **2. Implement Bias Interrupters**

All bias interrupters should apply both to written materials and in meetings, where relevant. Because every firm is different, not all interrupters will be relevant. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Hiring Worksheet,” available online at [biasinterrupters.org](http://biasinterrupters.org), which summarizes hundreds of studies.



### *A. Empower and Appoint*

- **Empower people involved in the hiring process to spot and interrupt bias.** Use the “Identifying Bias in Hiring Worksheet” (available at [BiasInterrupters.org](http://BiasInterrupters.org)). Read and distribute it to anyone involved in hiring.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the hiring process. Training is available at [BiasInterrupters.org](http://BiasInterrupters.org).

### *B. Assemble a Diverse Pool*

- **Limit referral hiring (“friends of friends”).** If your existing firm is not diverse, hiring from your current employees’ social networks will replicate the lack of diversity. If you use referrals, keep track of the flow of candidates from referrals. If referrals consistently provide majority candidates, consider limiting referrals or balance referral hiring with more targeted outreach to ensure a diverse candidate pool.
- **Tap diverse networks.** Reach out to diverse candidates where they are. Identify law job fairs, affinity networks, conferences, and training programs aimed at women and people of color and send recruiters.
- **Consider candidates from multitier schools.** Don’t limit your search to candidates from Ivy League and top-tier schools. This favors majority candidates from elite backgrounds and hurts people of color and professionals from non-professional backgrounds (class migrants)<sup>9</sup>. Studies show that top students from lower-ranked schools are often similarly successful.<sup>10</sup>
- **Get the word out.** If diverse candidates are not applying for your jobs, get the word out that your firm is a great place to work for women and people of color. One company offers public talks by women at their company and writes blog posts, white papers, and social media articles highlighting the women who work there.
- **Change the wording of your job postings.** Using masculine-coded words such as “leader” and “competitive” tends to reduce the number of women who apply.<sup>11</sup> Tech alternatives (see [Textio](http://Textio)<sup>12</sup> and [Unitive](http://Unitive)<sup>13</sup>) can help you craft job postings that ensure you attract top talent without discouraging women.
- **Insist on a diverse pool.** If you use a search firm, tell them you expect a diverse pool, not just one or two diverse candidates. One study found the odds of hiring a woman were 79 times greater if there were at least two women in the finalist pool; the odds of hiring a person of color were 194 times greater.<sup>14</sup>

### *C. Resume Review*

- **Distribute the “Identifying Bias in Hiring Worksheet”** (available at [BiasInterrupters.org](http://BiasInterrupters.org)). Before resumes are reviewed, have reviewers read the worksheet so they are aware of the common forms of bias that can affect the hiring process.
- **Commit to what’s important—and require accountability.** Commit in writing to what qualifications are important, both in entry-level and lateral hiring. When qualifications are waived for a specific candidate, require an explanation of why they are no longer important—and keep track to see for whom requirements are waived.<sup>15</sup>

- **Ensure resumes are graded on the same scale.** Establish clear grading rubrics and ensure that everyone grades on the same scale. Consider having each resume reviewed by two different people and average the score.
- **Remove extracurricular activities from resumes.** Including extracurricular activities on resumes can artificially disadvantage class migrants. A recent study showed that law firms were less likely to hire a candidate whose interests included “country music” and “pick-up soccer” rather than “classical music” and “sailing”—even though the work and educational experience was exactly the same. Because most people aren’t as aware of class-based bias, communicate why you are removing extracurricular activities from resumes.
- **Avoid inferring family obligations.** Mothers are 79% less likely to be hired than identical candidates without children.<sup>16</sup> Train people not to make inferences about whether someone is committed to the job due to parental status and don’t count “gaps in a resume” as an automatic negative.
- **Try using “blind auditions.”** If women and candidates of color are dropping out of the pool at the resume review stage, consider removing demographic information from resumes before review. This allows candidates to be evaluated based solely on their qualifications.

#### ***D. Interviews***

- **Use structured interviews.** Ask the same list of questions to every person who is interviewed. Ask questions that are directly relevant to the job for which the candidate is applying.<sup>17</sup>
- **Ask performance-based questions.** Performance-based questions, or behavioral interview questions (“Tell me about a time you had too many things to do and had to prioritize.”), are a strong predictor of how successful a candidate will be at the job.<sup>18</sup>
- **Try behavioral interviewing.**<sup>19</sup> Ask questions that reveal how candidates have dealt with prior work experiences. Research shows that structured behavioral interviews more accurately predict the future performance of a candidate than unstructured interviews.<sup>20</sup> Instead of asking “How do you deal with problems with your manager?” say “Describe for me a conflict you had at work with your manager.” When evaluating answers, a good model to follow is STAR<sup>21</sup>: the candidate should describe the Situation faced, the Task handled, the Action taken to deal with the situation, and the Result.
- **Do work-sample screening.** If applicable, ask candidates to provide a sample of the types of tasks they will perform on the job (e.g., ask candidates to write a legal memo for a fictitious client).
- **Develop a consistent rating scale and discount outliers.** Candidates’ answers (or work samples) should be rated on a consistent scale, with ratings for each factor backed up by evidence. Average the scores granted on each relevant criterion and discount outliers.<sup>22</sup>
- **If “culture fit” is a criterion for hiring, provide a specific work-relevant definition.** Culture fit can be important, but when it’s misused, it can disadvantage people of color, class migrants, and women.<sup>23</sup> Heuristics such as the “airport test” (Who would I like to get stuck with in an airport?) can be highly exclusionary and not work-relevant. Questions about sports and hobbies may feel

exclusionary to women and to class migrants who did not grow up, for example, playing golf or listening to classical music. Google's work-relevant definition of "culture fit" is a helpful starting point.<sup>24</sup>

- **"Gaps in a resume" should not mean automatic disqualification.** Give candidates an opportunity to explain gaps by asking about them directly during the interview stage. Women fare better in interviews when they are able to provide information up front rather than having to avoid the issue.<sup>25</sup>
- **Provide candidates and interviewers with a handout detailing expectations.** Develop an "Interview Protocol Sheet" that explains to everyone what's expected from candidates in an interview or use ours, available at Bias Interrupters.org. Distribute it to candidates and interviewers for review.
- **When hiring, don't ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.<sup>26</sup> (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.<sup>27</sup>)

### 3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change, you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the hiring process.**
- **Use an iterative process until your metrics improve.**

# Interrupting Bias in Assignments

## Tools for Law Firms

### *The Challenge*

Every workplace has high-profile assignments that are career enhancing (“glamour work”) and low-profile assignments that are beneficial to the organization but not the individual’s career. Research shows that women do more “office housework”<sup>28</sup> than men.<sup>29</sup> This includes literal housework (ordering lunch), administrative work (scheduling a time to meet), and emotion work (“she’s upset; comfort her”). Misallocation of the glamour work and the office housework is a key reason leadership across the legal profession is still male dominated. Professionals of color (both men and women) also report less access to desirable assignments than do white men.<sup>30</sup>

- **Glamour work.** More than 80% of white male lawyers but only 53% of women lawyers of color, 59% of white women lawyers, and 63% of male lawyers of color reported the same access to desirable assignments as their colleagues.<sup>31</sup>
- **Office housework.** Almost 50% of white women lawyers and 43% of women lawyers of color reported that at work they more often play administrative roles such as taking notes for a meeting compared to their colleagues. Only 26% of white male lawyers and 20% of male lawyers of color reported this.<sup>32</sup>

In law firms, when lawyers become “overburdened” with office housework, it reduces the amount of billable time that they can report, which can hurt their compensation and their career.<sup>33</sup>

Diversity at the top can only occur when diverse employees at all levels of the organization have access to assignments that let them take risks and develop new skills. If the glamour work and the office housework aren’t distributed evenly, you won’t be tapping into the full potential of your workforce. Most law firms that use an informal “hey, you!” assignment system end up distributing assignments based on factors other than experience and talent.

If women and people of color keep getting stuck with the same low-profile assignments, they will be more likely to be dissatisfied and to search for opportunities elsewhere.<sup>34</sup> The attrition rates for women and especially women of color in law firms are already extremely high, and research suggests that the cost to the firm of attrition per associate is up to \$400,000.<sup>35</sup> Law firms cannot afford to fail to address the inequality in assignments.

## *The Solution: A Three-Step Approach*

Fair allocation of the glamour work and the office housework are two separate problems. Some law firms will want to solve the office housework problem before tackling the glamour work; others will want to address both problems simultaneously. (A “Road Map for Implementation” is available at [BiasInterrupters.org](http://BiasInterrupters.org).)

### **1. Use Metrics**

#### *A. Identify and Track*

The first step is to find out if and where you have a problem.

- What is the office housework and glamour work in your organization?
- Who is doing what and for how long?
- Are there demographic patterns that indicate gender and/or racial bias is at play?

#### **To do this:**

1. Distribute the “Office Housework Survey” (available at [BiasInterrupters.org](http://BiasInterrupters.org)) to your employees to find out who is doing the office housework and how much of their time it takes up.
2. Convene relevant managers (and anyone else who distributes assignments) to identify the glamour work and the lower-profile work in the law firm. Use the “Assignment Typology Worksheet” to create a typology for assignments and the “Protocol” for more details (both available at [BiasInterrupters.org](http://BiasInterrupters.org)).
3. Input the information from the typology meeting into the “Manager Assignment Worksheet” and distribute this to managers (available online at [BiasInterrupters.org](http://BiasInterrupters.org)). Have managers fill out the worksheets and submit them, identifying to whom they assign the glamour work and the lower-profile work.

#### *B. Analyze Metrics*

Analyze survey results and worksheets for demographic patterns, dividing employees into (1) majority men, majority women, men of color, and women of color, (2) parents who have just returned from parental leave, (3) professionals working part-time or flexible schedules, and (4) any other underrepresented group that your organization tracks (veterans, LGBTQ people, individuals with disabilities, etc.).

- Who is doing the office housework?
- Who is doing the glamour work?
- Who is doing the low-profile work?
- Create and analyze metrics by individual supervising attorney.

### **2. Implement Bias Interrupters**

#### *A. Office Housework Interrupters*

- **Don’t ask for volunteers.** Women are more likely to volunteer because they are under subtle but powerful pressures to do so.<sup>36</sup>

- **Hold everyone equally accountable.** “I give it to women because they do it well and the men don’t” is a common sentiment. This dynamic reflects an environment in which men suffer few consequences for doing a poor job on office housework, but women who do a poor job are seen as “prima donnas” or “not team players.” Hold men and women equally accountable for carrying out all assignments properly.
- **Use admins.** If possible, assign office housework tasks to admins (e.g., planning birthday parties, scheduling meetings, ordering lunch).
- **Establish a rotation.** A rotation is helpful for many administrative tasks (e.g., taking notes, scheduling meetings). Rotating housework tasks such as ordering lunch and planning parties is an option if admins are unavailable.
- **Shadowing.** Another option for administrative tasks is to assign a more junior person to shadow someone more senior—and take notes.

### *B. Glamour Work Interrupters*

- **Avoid mixed messages.** If your law firm values mentoring and committee work (such as serving on the Diversity Initiative), make sure these things are valued when the time comes for promotions and raises. Sometimes law firms say they highly value this kind of work—but they don’t. Mixed messages of this kind will negatively affect women and people of color.
- **Conduct a roll-out meeting.** Gather relevant managing and supervising attorneys to introduce the bias interrupters initiative and set expectations. “Key Talking Points for the Roll-Out Meeting” are available at [BiasInterrupters.org](http://BiasInterrupters.org).
- **Provide a bounceback.** Identify individual supervising attorneys whose glamour work allocation is lopsided. Hold a meeting with that supervisor and bring the problem to his or her attention. Help the supervisor think through why he or she only assigns glamour work to certain people or certain types of people. Work with the supervisor to figure out (1) if the available pool for glamour work assignments is diverse but is not being tapped fully or (2) if only a few people have the requisite skills for glamour work assignments. Read the “Responses to Common Pushback” and “Identifying Bias in Assignments” worksheets (available at [BiasInterrupters.org](http://BiasInterrupters.org)) before the bounceback meetings to prepare. You may have to address low-profile work explicitly at the same time as you address high-profile assignments; this will vary by law firm.

#### **If a diverse pool has the requisite skills . . .**

- **Implement a rotation.** Have the supervisor set up a rotation to ensure fair access to plum assignments.
- **Formalize the pool.** Write down the list of people with the requisite skills and make it visible to the supervisor. Sometimes just being reminded of the pool can help.
- **Institute accountability.** Have the supervisor track his or her allocation of glamour work going forward to measure progress. Research shows that accountability matters.<sup>37</sup>

If the pool is not diverse . . .

- **Revisit the assumption that only one (or very few) employees can handle this assignment.** Is that true, or is the supervisor just more comfortable working with those few people?
- **Analyze how the pool was assembled.** Does the supervisor allocate the glamour work by relying on self-promotion or volunteers? If so, that will often disadvantage women and people of color. Shift to more objective measures to create the pool based on skills and qualifications.

If the above suggestions aren't relevant or don't solve your problem, then it's time to **expand the pool**:

- **Development plan.** Identify what skills or competencies an employee needs to be eligible for the high-profile assignments work and develop a plan to help the employee develop the requisite skills.
- **Succession planning.** Remember that having "bench strength" is important so your department won't be left scrambling if someone unexpectedly leaves the company.
- **Leverage existing HR policies.** If your organization uses a competency-based system or has a Talent Development Committee or equivalent, use that resource to help develop competencies so career-enhancing assignments can be allocated more fairly.
- **Shadowing.** Have a more junior person shadow a more experienced person during the high-profile assignment.
- **Mentoring.** Establish a mentoring program to help a broader range of junior people gain access to valued skills.

If you can't expand your pool, **reframe the assignment** so that more people could participate in it. Could you break up the assignment into discrete pieces so more people get the experiences they need?

If nothing else works, **consider a formal assignment system.** Appoint an assignments czar to oversee the distribution of assignments in your organization. See examples of what other law firms have done at [BiasInterrupters.org](http://BiasInterrupters.org).

### 3. Repeat as Needed

- **Return to your metrics.** Did the bias interrupters produce change?
- **If you still don't have a fair allocation of high- and low-profile work, you may need to implement stronger bias interrupters or consider moving to a formal assignment system.**
- **Use an iterative process until your metrics improve.**



# Interrupting Bias in Performance Evaluations

## Tools for Law Firms

### *The Challenge*

In one study, law firm partners were asked to evaluate a memo by a third-year associate. Half the partners were told the associate was black; the other half were told the identical memo was written by a white associate. The partners found 41% more errors in the memo they believed was written by a black associate as compared with a white associate.<sup>38</sup> Overall rankings also differed by race. Partners graded the white author as having “potential” and being “generally good,” whereas they graded the black author as “average at best.”

### *The Solution: A Three-Step Approach*

#### **1. Use Metrics**

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)

#### **For each metric, examine:**

- Do patterned differences exist between majority men, majority women, men of color, and women of color? Include any other underrepresented group that your firm tracks, such as military veterans, LGBTQ people, or individuals with disabilities.
- Do patterned differences exist for parents after they return from leave or for lawyers who reduce their hours?
- Do patterned differences exist between full-time and part-time employees?

#### **Important metrics to analyze:**

- Do your performance evaluations show consistent disparities by demographic group?
- Do women’s ratings fall after they have children? Do employees’ ratings fall after they take parental leave or adopt flexible work arrangements?
- Do the same performance ratings result in different promotion or compensation rates for different groups?

Keep metrics by (1) supervising attorney; (2) department; (3) country, if relevant; and (4) the law firm as a whole.



## 2. Implement Bias Interrupters

All bias interrupters should apply both to written evaluations and in meetings, where relevant. Because every firm is different, not all interrupters will be relevant. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Performance Evaluations Worksheet,” available online at [BiasInterrupters.org](http://BiasInterrupters.org).

### A. *Empower and Appoint*

- **Empower people involved in the evaluation process to spot and interrupt bias.** Use the “Identifying Bias in Performance Evaluations Worksheet,” available online at [BiasInterrupters.org](http://BiasInterrupters.org). Read and distribute.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the performance evaluation process. Training is available at [BiasInterrupters.org](http://BiasInterrupters.org).

### B. *Tweak the Evaluation Form*

- **Begin with clear and specific performance criteria directly related to job requirements.** Try “He is able to write an effective summary judgment motion under strict deadlines” instead of “He writes well.”
- **Require evidence from the evaluation period that justifies the rating.** Try “In March, she argued X motion in front of Y judge on Z case, answered his questions effectively, and was successful in getting the optimal judgment” instead of “She’s quick on her feet.”
- **Consider performance and potential separately for each candidate.** Performance and potential should be appraised separately. Majority men tend to be judged on potential; others are judged on performance.

**Separate personality issues from skill sets for each candidate.** Personal style should be appraised separately from skills because a narrower range of behavior often is accepted from women and people of color. For example, women may be labeled “difficult” for doing things that are accepted in majority men.

### C. *Tweak the Evaluation Process*

- **Level the playing field.** Ensure that all candidates know how to promote themselves effectively and send the message that they are expected to do so. Distribute the “Writing an Effective Self-Evaluation Worksheet,” available online at [BiasInterrupters.org](http://BiasInterrupters.org).
- **Offer alternatives to self-promotion.** Encourage or require supervisors to set up more formal systems for sharing successes, such as a monthly e-mail that lists employees’ accomplishments.
- **Provide a bounceback.** Supervisors whose performance evaluations show persistent bias should receive a bounceback (i.e., someone should talk through the evidence with them).
- **Have bias interrupters play an active role in calibration meetings.** In many law firms and legal departments, the Executive Committee or another body meets

## What's a bounceback?

An example: in one organization, when a supervisor's ratings of an underrepresented group deviate dramatically from the mean, the evaluations are returned to the supervisor with the message: either you have an undiagnosed performance problem that requires a Performance Improvement Plan (PIP), or you need to take another look at your evaluations as a group. The organization found that a few people were put on PIPs, but over time, supervisors' ratings of underrepresented groups converged with those of majority men. A subsequent survey found that employees of all demographic groups rated their performance evaluations as equally fair (whereas bias was reported in hiring—and every other business system).

to produce a target distribution of ratings or to cross-calibrate rankings. Have participants read the “Identifying Bias in Performance Evaluations Worksheet” on bias before they meet (available at [BiasInterrupters.org](http://BiasInterrupters.org)). Have a trained bias interrupter in the room.

- **Don't eliminate your performance appraisal system.** Eliminating formal performance evaluation systems and replacing them with feedback on the fly creates conditions for bias to flourish.

## 3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the performance evaluation process.
- **Use an iterative process** until your metrics improve.

# Interrupting Bias in Partner Compensation

## Tools for Law Firms

### *The Challenge*

The gender pay gap in law firms has been extensively documented for decades. A 2016 report by Major, Lindsey, and Africa found a 44% pay gap between male and female law firm partners.<sup>39</sup> The report also found a 50% difference in origination credit, which many use to explain the pay gap: men earn more money because they bring in more business. Studies show the picture is much more complicated.

- One study found that even when women partners originated similar levels of business as men, they still earned less.<sup>40</sup>
- Another study found that 32% of white women income partners and 36% of women partners of color reported that they had been intimidated, threatened, or bullied out of origination credit.<sup>41</sup>
- The same study found that more than 80% of women partners reported being denied their fair share of origination credit in the previous three years.<sup>42</sup>
- Doesn't everyone think their compensation is unfair? Not to the same degree: a recent survey of lawyers found that male lawyers were about 20% more likely than white women lawyers and 30% more likely than women lawyers of color to say that their pay was comparable to their colleagues of similar experience.<sup>43</sup>

### *The Solution: A Three-Step Approach*

#### **1. Use Metrics**

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you've taken. (Whether metrics are made public will vary from firm to firm and from metric to metric.)

**For each metric, examine:**

- Do patterned differences exist between majority men, majority women, men of color, and women partners of color? (Include any other underrepresented group that your firm tracks, such as military veterans or LGBTQ people.)
- Are partners disadvantaged for taking parental leave? Are parents or others with caregiving responsibilities excluded from future opportunities?
- Do part-time lawyers receive less than proportionate pay for proportionate work? Are they excluded from future opportunities?

### Important metrics to analyze:

- **Compare compensation with a variety of lenses and look for patterns.** Lenses include relationship enhancement, hours and working time revenues, and so forth. Do separate analyses for equity and income partners.
- **Succession.** Analyze who inherits compensation credit and client relationships and how and when the credit moves.
- **Origination and other important forms of credit.** Analyze who gets origination and other important forms of credit, how often it is split, and who does (and does not) split it. If your firm does not provide credit for relationship enhancement, analyze how that rule affects different demographic groups—and consider changing it.
- **Comp adjustments.** Analyze how quickly compensation falls, and by what percentage during a lean period and how quickly compensation rises during times of growth. (When partners lose key clients, majority men often are given more of a runway to recover than other groups.)
- **De-equitization.** Analyze who gets de-equitized.
- **Pitch credit.** Analyze who has opportunities to go on pitches, who plays a speaking role, and who receives origination and other forms of credit from pitches.
- **Lateral partners.** Analyze whether laterals are paid more in relation to their metrics. This is a major factor in defeating diversity efforts at some firms.

Keep metrics by (1) individual supervising lawyer; (2) department; (3) country, if relevant; and (4) the firm as a whole.

## 2. Implement Bias Interrupters

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Partner Compensation Worksheet,” available online at [BiasInterrupters.org](http://BiasInterrupters.org).

### *A. Find Out What Drives Compensation—and Be Transparent about What You Find*

- **Commission an analysis.** Although firms may say they value a broad range of factors, many experts agree that origination and billable hours account for almost all variance in compensation.<sup>44</sup> Hire a law firm compensation consultant or statistician to find out what factors determine compensation at your firm.
- **Be transparent about what drives compensation.** This is a vital first step to empowering women and people of color to refuse work that does not enhance their compensation and focus on work that positions them to receive higher compensation. Studies show that reducing ambiguity reduces gender bias in negotiations—and law firm compensation often involves negotiation among partners.<sup>45</sup> If only those “in the know” understand what’s really valued, that will benefit a small in group that typically reflects the demography of your existing equity partnership.
- **Value everything that’s valuable.** Give credit for nonbillable work that is vital to sustaining the long-term health of the firm—including relationship enhancement credit, credit for lawyers who actually do the client’s work, and talent manage-

ment. If the firm says it values mentoring and greater diversity but does not in fact do so, this will disadvantage women and lawyers of color.

### ***B. Establish Clear, Public Rules***

- **Establish clear rules governing granting and splitting origination and other valuable forms of credit.** Research suggests that men are more likely to split origination credit with men than with women and that women may get less origination credit than men even when they do a similar amount of work to bring in the client.<sup>46</sup> Set clear, public rules addressing how origination credit should be split by publishing and publicizing a memo that details how partners should split credit under common scenarios.
- **Establish a formal system of succession planning.** If your firm allows origination credit to be inherited, institute a formal succession planning process. Otherwise, in-group favoritism means that your current pattern of origination credit will be replicated over and over again, with negative consequences for diversity.
- **Pitch credit.** Women attorneys and attorneys of color often report being used as “eye candy”—brought to pitches but then not given a fair share of credit or work that results. Establish rules to ensure this does not occur. The best practice is that if someone does the work for the pitch, he or she should be recognized with credit that accurately reflects his or her role in doing and winning the work.
- **Parental leave.** Counting billables and other metrics as “zero” for the months women (or men) are on parental leave is a violation of the Family and Medical Leave Act, where applicable, and is unfair even where it is not illegal. Instead, annualize based on the average of the months the attorney was at work, allowing for a ramp-up and ramp-down period.
- **Part-time partners.** Compensation for part-time partners should be proportional. Specifics on how to enact proportional compensation depends on which compensation system a law firm uses. See the “Best Practices for Part-Time Partner Compensation” paper for details, available at [BiasInterrupters.org](http://BiasInterrupters.org).

### ***C. Establish Procedures to Ensure the Perception and Reality of Fairness***

- **Institute a low-risk way partners can receive help in disputes over credit.** Set up a way to settle disputes over origination and other forms of credit that lawyers can use without raising eyebrows.
- **Provide templates for partner comp memos—and prohibit pushback.** Some firms provide opportunities for partners and associates to make their case to the compensation committee by writing a compensation memo. If your firm does this, distribute the worksheet (online at [BiasInterrupters.org](http://BiasInterrupters.org)) on how to write an effective compensation memo and set rules and norms to ensure that women and minorities are not penalized for self-promotion. If not, give partners the opportunity to provide evidence about their work: research shows that women’s successes tend to be discounted and their mistakes remembered longer than men’s.
- **Institute quality control over how compensation is communicated to partners.** Design a structured system for communicating with partners to explain what factors went into determining their compensation.

- **When hiring, don't ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.<sup>47</sup> (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.<sup>48</sup>)
- **Have a bias interrupter at meetings where compensation is set.** This is a person who has been trained to spot the kinds of bias that commonly arise.
- **Training.** Make sure that your compensation committee, and anyone else involved in setting compensation, knows how implicit bias commonly plays out in law firm partner compensation and how to interrupt that bias. Read and distribute the “Identifying Bias in Partner Compensation Worksheet” (available at [BiasInterrupters.org](http://BiasInterrupters.org)).

### 3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the compensation process.
- **Use an iterative process** until your metrics improve.

Small Steps, Big Change

# Bias Interrupters Tools for In-House Departments

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# Interrupting Bias in Hiring

## Tools for In-House Departments

### *The Challenge:*

When comparing identical resumes, “Jamal” needed eight additional years of experience to be considered as qualified as “Greg,” mothers were 79% less likely to be hired than an otherwise-identical candidate without children, and “Jennifer” was offered \$4,000 less in starting salary than “John.”<sup>49</sup> Unstructured job interviews do not predict job success,<sup>50</sup> and judging candidates on “culture fit” can screen out qualified diverse candidates.<sup>51</sup>

### *The Solution: A Three-Step Approach*

#### **1. Use Metrics**

Businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you’ve taken.

For in-house departments, some metrics may be possible to track; others may require HR or can only be tracked company-wide. Depending on the structure and size of your in-house department, identify what’s feasible.

Whether metrics are made public will vary from company to company and from metric to metric.

#### **For each metric, examine:**

- Do patterned differences exist between majority men, majority women, men of color, and women of color? (Include any other underrepresented group that your department/company tracks, such as veterans, LGBTQ people, etc.)

#### **Important metrics to analyze:**

- The goal is to track the candidate pool through the entire hiring process—from initial contact, to resume review, to interviews, to hiring—and then to analyze where underrepresented groups are falling out of the hiring process. How much you can track will depend on how your company’s systems are set up, as will the extent to which you will need help from HR.
- Track whether hiring qualifications are waived more often for some groups. You may be able to do this only for those parts of the hiring process that are done at a departmental level, such as final-round interviews.
- Track interviewers’ reviews and recommendations to look for demographic patterns. Again, your department’s ability to do this will depend on what is handled at a departmental level, or your HR department may be willing to do this tracking.



Keep in-house metrics by (1) individual supervisor; (2) department, if your in-house department is large enough to have its own departments; and (3) country, if relevant.

## 2. Implement Bias Interrupters

All bias interrupters should apply both to written materials and in meetings, where relevant.

Because in-house departments are all different and vary in size and structure, not all interrupters will be relevant. Depending on how much of the hiring process is done by the in-house department versus HR, some of the interrupters may be more feasible than others. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Hiring Worksheet,” available online at [BiasInterrupters.org](http://BiasInterrupters.org), which summarizes hundreds of studies.

### A. Empower and Appoint

- **Empower people involved in the hiring process to spot and interrupt bias.** Use the “Identifying Bias in Hiring Worksheet,” available online at [BiasInterrupters.org](http://BiasInterrupters.org), and distribute this to anyone involved in hiring.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the hiring process. Training is available at [BiasInterrupters.org](http://BiasInterrupters.org).

### B. Tips to Help You Assemble a Diverse Pool

- **If your department hires by referral, keep track of the candidate flow from referrals.** Hiring from current employees’ social networks may well replicate lack of diversity if your department is not diverse. If your analysis finds that referrals consistently provide majority candidates, consider limiting referrals or balance referral hiring with more targeted outreach to ensure a diverse candidate pool.
- **Recruit where diverse candidates are.** If your department handles recruiting, make sure to reach out to diverse candidates where they are. Identify law job fairs, affinity networks, conferences, and training programs aimed at women and people of color and send recruiters. If your department does not do recruiting, consider asking the people in charge to do more targeted recruitment.
- **If recruitment happens mostly at law schools, consider candidates from multi-tier schools.** Don’t limit your search to candidates from Ivy League and top-tier schools. This practice favors majority candidates from elite backgrounds and hurts people of color and professionals from nonprofessional backgrounds (class migrants).<sup>52</sup> If another department handles recruiting, let them know that your department would like to consider candidates from a broader range of law schools.
- **If your department writes its own job postings, make sure you are not using language that has been shown to decrease the number of women applicants** (words such as *competitive* or *ambitious*). If HR is in charge of the job postings, suggest that they review job posts in the same way. Tech companies such as Textio and Unitive can help.

- **Insist on a diverse pool.** If HR creates a pool for your department, tell them that you expect the pool to be diverse. One study found the odds of hiring a woman were 79 times greater if there were at least two women in the finalist pool; the odds of hiring a person of color were 194 times greater.<sup>53</sup> If HR does not present a diverse pool, try to figure out where the lack of diversity is coming from. Is HR weeding out the diverse candidates, or are the jobs not attracting diverse candidates?

### *C. Interrupting Bias While Reviewing Resumes*

If your in-house department conducts the initial resume screening, use the following bias interrupters. If HR does the initial screening, encourage them to implement the following tips to ensure that your department receives the most qualified candidates.

- **Distribute the “Identifying Bias in Hiring Worksheet” before resumes are reviewed** (available at [BiasInterrupters.org](http://BiasInterrupters.org)) so reviewers are aware of the common forms of bias that can affect the hiring process.
- **If candidates’ resumes are reviewed by your department, commit to what qualifications are important—and require accountability.** When qualifications are waived for a specific candidate, require an explanation of why the qualification at issue is no longer important—and keep track to see for whom requirements are waived.<sup>54</sup> If HR reviews the resumes, give HR a clear list of the qualifications your department is seeking.
- **Establish clear grading rubrics and ensure that all resumes are graded on the same scale.** If possible, have each resume reviewed by two different people and average the scores. If HR reviews resumes, encourage them to review resumes based on the rubric that you provide to them.
- **Remove extracurricular activities from resumes.** Including extracurricular activities on resumes can favor elite majority candidates.<sup>55</sup> Remove extracurriculars from resumes before you review them or ask HR to do this.
- **Watch out for Maternal Wall bias.** Mothers are 79% less likely to be hired than an identical candidate without children.<sup>56</sup> Train people who review resumes not to make inferences about whether someone is committed to the job due to parental status. Instruct them not to count “gaps in a resume” as an automatic negative. If HR reviews resumes, ask them to do the same.
- **Try using “blind auditions.”** If women and candidates of color are dropping out of the pool at the resume review stage, consider removing demographic information from resumes before review—or ask HR to do it.

### *D. Controlling Bias in the Interview Process*

- **Ask the same questions to every person you interview.** Come up with a set list of questions you will ask each candidate and ask them in the same order to each person. Ask questions that are directly relevant to the job for which the candidate is applying.<sup>57</sup>
- **Ask performance-based, work-relevant questions.** Performance-based questions, or behavioral interview questions (“Tell me about a time you had too many things to do and had to prioritize.”), are a strong predictor of how successful a

candidate will be on the job.<sup>58</sup> Ask questions that are directly relevant to situations that arise in your department.

- **Require a work sample.** If applicable, ask candidates to demonstrate the skills they will need on the job (e.g., ask candidates to write an advisory letter to the sales team about a new product.)
- **Standardize the interview evaluation process.** Develop a consistent rating scale for candidates' answers and work samples. Each rating should be backed up with evidence. Average the scores granted on each relevant criterion and discount outliers.<sup>59</sup>
- **Try behavioral interviewing.**<sup>60</sup> Ask questions that reveal how candidates have dealt with prior work experiences. Research shows that structured behavioral interviews can more accurately predict the future performance of a candidate than unstructured interviews.<sup>61</sup> Instead of asking "How do you deal with problems with your manager?" say "Describe for me a conflict you had at work with your manager." When evaluating answers, a good model to follow is STAR<sup>62</sup>: the candidate should describe the Situation faced, the Task handled, the Action taken to deal with the situation, and the Result.
- **If you use culture fit, do so carefully.** Using culture fit as a hiring criterion can thwart diversity efforts.<sup>63</sup> Culture fit ("Would I like to get stuck in an airport with this candidate?") can be a powerful force for reproducing the current makeup of the organization when it's misused.<sup>64</sup> Questions about sports and hobbies may feel exclusionary to women and to class migrants who did not grow up playing golf or listening to classical music. If culture fit is a criterion for hiring, provide a specific work-relevant definition. Google's work-relevant definition of culture fit is a helpful starting point.<sup>65</sup>
- **Ask directly about "gaps in a resume."** Women fare better in interviews when they are able to provide information up front rather than having to avoid the issue.<sup>66</sup> Instruct your interviewing team to give, in a neutral and nonjudgmental fashion, candidates the opportunity to explain gaps in their resumes.
- **Be transparent to applicants about what you're seeking.** Provide candidates and interviewers with a handout that explains to everyone what's expected from candidates in an interview. Distribute it to candidates and interviewers for review so everyone is on the same page about what your in-house department is seeking. An example "Interview Protocol Sheet" is available at BiasInterrupters.org.
- **Don't ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.<sup>67</sup> (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.<sup>68</sup>)

### 3. Repeat as Needed

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don't see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the hiring process.
- **Use an iterative process** until your metrics improve.

# Interrupting Bias in Assignments

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## Tools for In-House Departments

### *The Challenge*

Diversity at the top can only occur when diverse employees at all levels of the organization have access to assignments that let them take risks and develop new skills. A level playing field requires that both the glamour work (career-enhancing assignments) and the office housework (the less high-profile and back-office work) are distributed fairly. If your department uses an informal “hey, you!” assignment system to distribute assignments, you may end up inadvertently distributing assignments in an inequitable fashion.

If women and people of color keep getting stuck with the same low-profile assignments, they will be more likely to be dissatisfied and to search for opportunities elsewhere.<sup>69</sup>

### *The Solution: A Three-Step Approach*

Fair allocation of the glamour work and the office housework are two separate problems. Some in-house departments will want to solve the office housework problem before tackling the glamour work; others will want to address both problems simultaneously. This will depend on the size of your in-house department and how work is currently assigned.

## 1. Use Metrics

### *A. Identify and Track*

For each metric, examine:

- What is the office housework and glamour work in your department?
- Who is doing what and for how long?
- Are there demographic patterns that indicate gender and/or racial bias at play?

Important metrics to analyze:

1. Distribute an office housework survey to members of your department to find out who is doing the office housework and how much of their time it requires. Create your own survey or use ours, available at [BiasInterrupters.org](http://BiasInterrupters.org).
2. Convene relevant managers (and anyone else who distributes assignments) to identify what is the glamour work and what is the lower-profile work in the department. Worksheets and protocols to help you are available online at [BiasInterrupters.org](http://BiasInterrupters.org).

3. Once you have identified what the glamour work is in your department, ask managers to report which employees have been doing the glamour work. Worksheets are also available at [BiasInterrupters.org](http://BiasInterrupters.org).

### ***B. Analyze Metrics***

Analyze office housework survey results and glamour worksheets for demographic patterns, dividing employees into (1) majority men, majority women, men of color, and women of color, (2) parents who have just returned from parental leave, (3) professionals working part-time or flexible schedules, and (4) any other underrepresented group that your organization tracks (e.g., veterans, LGBTQ people, individuals with disabilities). (This will also depend on the size of your in-house department. If there are only one or two people in a category, the metric won't be scientifically viable.)

- Who is doing the office housework?
- Who is doing the glamour work?
- Who is doing the low-profile work?
- Create and analyze metrics by individual supervisor.

## **2. Implement Bias Interrupters**

Because every in-house department is different and varies so much in size and structure, not all interrupters will be relevant. Depending on how much of the hiring process is done by the in-house department versus HR, some of the interrupters may be more feasible than others. Consider this a menu.

### ***A. Office Housework Interrupters***

- **Don't ask for volunteers.** Women are more likely to volunteer because they are under subtle but powerful pressures to do so.<sup>70</sup>
- **Hold everyone equally accountable.** "I give it to women because they do it well—men don't." This dynamic reflects an environment in which men suffer few consequences for doing a poor job on less glamorous assignments and women who do the same are faulted as "not being team players."
- **Use admins.** Assign office housework tasks (e.g., planning birthday parties, scheduling meetings, ordering lunch) to admins if your department has enough admin support to do so.
- **Establish a rotation.** A rotation is helpful for many administrative tasks (e.g., taking notes, scheduling meetings). Rotating housework tasks (e.g., ordering lunch and planning parties) is also an option if admins are unavailable, making it a good option for in-house departments.
- **Shadowing.** Another option in larger departments is to assign a more junior person to shadow someone more senior—and to do administrative tasks such as taking notes.

### ***B. Glamour Work Interrupters***

- **Value what's valuable.** If your department values such things as mentoring and committee work (such as serving on the Diversity Initiative), make sure these things are valued when the time comes for promotions and raises. Sometimes

companies say they highly value this kind of work—but they don’t. Mixed messages of this kind will negatively affect women and people of color. If your department doesn’t have complete control over promotions and raises, work with relevant departments to ensure that communicated values are being rewarded appropriately. When members of your in-house department take on diversity work, make sure they have suitable staff support.

- **Announce your goals of equitable assignments.** Gather your team (or the members of your team who distribute assignments) to introduce the bias interrupters initiative and set expectations. Key talking points for the roll-out meeting are available online at [BiasInterrupters.org](http://BiasInterrupters.org).
- **Provide a bounceback.** If your metrics reveal that some members of your department distribute assignments inequitably, hold a bounceback meeting. Help the person in question think through why he or she assigns glamour work to certain people or certain types of people. Work with the person to figure out whether (1) the available pool for glamour work assignments is diverse but is not being tapped fully or whether (2) only a few people have the requisite skills for glamour work assignments. Use the “Responses to Common Pushback” and “Identifying Bias in Assignments” worksheets (available at [www.BiasInterrupters.org](http://www.BiasInterrupters.org)) to prepare for bounceback meetings.

#### If a diverse pool has the requisite skills . . .

- **Implement a rotation.** Set up a system where plum assignments are rotated between qualified employees.
- **Formalize the pool.** Write down the list of people with the requisite skills and make it visible to whomever distributes assignments. Suggest or require anyone handing out plum assignments to review the list of qualified legal professionals before making a decision. Sometimes just being reminded of the pool can help.
- **Institute accountability.** Require people handing out assignments to keep track of who gets plum assignments. Research shows that accountability matters.<sup>71</sup>

#### If the pool is not diverse . . .

- **Revisit your assumptions.** Can only one (or very few) employees handle this type of assignment, or is it just that you feel more comfortable working with those few people?
- **Revisit how the pool was assembled.** When access to career-enhancing assignments depends on “go-getters” who ask for them, women, people of color, and class migrants may be disadvantaged because self-promotion is less acceptable to them or less accepted when they do it.

If these suggestions aren’t relevant or don’t solve your problem, then it’s time to **expand the pool**. Small in-house departments may have to find creative ways to do this.

- **Development plan.** For the attorneys or other legal professionals who aren’t yet able to handle the plum assignments, what skills would they need to be eligible? Identify those skills and institute a development plan.

- **Succession planning.** Remember that having “bench strength” is important so that your department won’t be left scrambling if someone unexpectedly leaves the company.
- **Leverage existing HR policies.** If your company has a Talent Development Committee or professional development resources, use this resource to help your legal professionals develop the skills they need to handle plum assignments.
- **Shadowing.** Have a more junior person shadow a more experienced person during a high-profile assignment.
- **Mentoring.** Establish a mentoring program to help a broader range of junior people gain access to valued skills.

**If you can’t expand your pool, reframe the assignment.** Can you break up the assignment into discrete pieces so more people can participate and get the experiences they need?

**If nothing else works,** consider a formal assignment system.

### 3. Repeat as Needed

- **Return to your metrics.** Did the bias interrupters produce change?
- **If you still don’t have a fair allocation of high- and low-profile work,** you may need to implement stronger bias interrupters or consider moving to a formal assignment system.
- **Use an iterative process** until your metrics improve.



# Interrupting Bias in Performance Evaluations

## Tools for In-House Departments

### *The Challenge*

Bias in performance evaluations has been well documented for decades.<sup>72</sup>

In one study, law firm partners were asked to evaluate a memo by a third-year associate. Half the partners were told the associate was black; the other half were told the identical memo was written by a white associate. The partners found 41% more errors in the memo they believed was written by a black associate as compared with a white associate.<sup>73</sup> Overall rankings also differed by race. Partners graded the white author as having “potential” and being “generally good,” whereas they graded the black author as “average at best.”

The problem isn’t limited to law firms. One informal study in tech revealed that 66% of women’s performance reviews but only 1% of men’s reviews contained negative personality criticism.<sup>74</sup> Bias in the evaluation process stretches across industries.

### *The Solution: A Three-Step Approach*

#### **1. Use Metrics**

For in-house departments, some metrics may be possible to track; others may require HR or can only be tracked company-wide. Depending on the structure and size of your department, identify which metrics you are able to track.

**For each metric, examine:**

- Do patterned differences exist between majority men, majority women, men of color, and women of color? Include any other underrepresented group that your company tracks, such as veterans, LGBTQ people, or individuals with disabilities.
- Do patterned differences exist for parents after they return from leave or for employees who reduce their hours?
- Do patterned differences exist between full-time and part-time lawyers and other legal professionals?

**Important metrics to analyze:**

- Do your performance evaluations show consistent disparities by demographic group?
- Do women’s ratings fall after they have children? Do ratings fall after professionals take parental leave or adopt flexible work arrangements?



- Do the same performance ratings result in different promotion or compensation rates for different groups?

Keep in-house metrics by (1) individual supervisor; (2) department, if your in-house department is large enough to have its own departments; and (3) country, if relevant.

## 2. Implement Bias Interrupters

All bias interrupters should apply both to written materials and in meetings, where relevant.

Because in-house departments vary so much in size and structure, not all interrupters will be relevant to every company. Also, some interrupters will not be feasible, depending on how much of the hiring process is done by the in-house department versus HR. Consider this as a menu.

To understand the research and rationale behind the suggested bias interrupters, read the “Identifying Bias in Performance Evaluations Worksheet,” available online at [BiasInterrupters.org](http://BiasInterrupters.org), which summarizes hundreds of studies.

### A. Empower and Appoint

- **Empower people involved in the evaluation process to spot and interrupt bias.** Use the “Identifying Bias in Performance Evaluations Worksheet,” available at [BiasInterrupters.org](http://BiasInterrupters.org), and distribute it to those involved in the evaluation process.
- **Appoint bias interrupters.** Provide HR professionals or team members with special training to spot bias and involve them at every step of the performance evaluation process. Training is available at [BiasInterrupters.org](http://BiasInterrupters.org).

### B. Tips for Tweaking the Evaluation Form

Many in-house departments do not have control over their performance evaluation forms, so some of these suggestions will not be feasible.

- **Begin with clear and specific performance criteria directly related to job requirements.** Try “He is able to write clear memos to leadership that accurately portray the legal situations at hand” instead of “He writes well.”
- **Instruct reviewers to provide evidence to justify their rating and hold them accountable.** Global ratings, with no specifics to back them up, are a recipe for bias and do not provide constructive advice to the employee being reviewed.
- **Ensure that the evidence is from the evaluation period.** The evaluation form should make it clear that a mistake an employee made two years ago isn’t acceptable evidence for a poor rating today.
- **Separate discussions of potential and performance.** There is a tendency for majority men to be judged on potential and others to be judged on performance.
- **Separate personality issues from skill sets.** A narrower range of behavior often is accepted from women and people of color than from majority men.

### *C. Tips for Tweaking the Evaluation Process*

- **Help everyone effectively advocate for themselves.** Distribute the “Writing an Effective Self-Evaluation,” available online at [BiasInterrupters.org](http://BiasInterrupters.org).
- **If the evaluation process requires self-promotion, offer alternatives.** Set up more formal systems for sharing successes within your in-house department, such as a monthly e-mail that lists employees’ accomplishments.
- **Provide a bounceback.** If possible, ask HR for an analysis (or do your own) to ensure that individual supervisors’ reviews do not show bias toward or against any particular group. If they do, hold a meeting with that supervisor to help the person in question think through why certain types of people are getting lower performance evaluations. Work with the supervisor to figure out whether (1) the individuals in question are having performance problems and should be put on Performance Improvement Plans or whether (2) the supervisor should reexamine how employees are being evaluated.
- **Have bias interrupters play an active role.** If your in-house department holds calibration meetings, make sure there is a bias interrupter in the room to spot and correct any instances of bias. If a bias interrupter can’t be in the room, have participants read the “Identifying Bias in Performance Evaluations Worksheet” before they meet, available online at [BiasInterrupters.org](http://BiasInterrupters.org).
- **Don’t eliminate your performance appraisal system.** To the extent that you have a say in the HR operations in your company, encourage your company not to eliminate formal performance appraisal systems. Informal, on the fly performance evaluation systems are becoming more popular, but they have a tendency to reproduce patterns of bias.

### **3. Repeat as Needed**

- **Return to your key metrics.** Did the bias interrupters produce change?
- **If you don’t see change,** you may need to implement stronger bias interrupters, or you may be targeting the wrong place in the performance evaluation process.
- **Use an iterative process** until your metrics improve.

# Interrupting Bias in Compensation

## Tools for In-House Departments

### *The Challenge*

The in-house gender pay gap has not been well studied, but a 2017 report from the Association of Corporate Counsel described a “dramatic” gender pay disparity based on a survey taken by 1,800 in-house counsel. The report found that there is a higher proportion of men in six of seven salary bands above \$199,000—yet only 8% of male respondents believed that a pay gap existed.<sup>75</sup>

Interrupting bias in compensation for in-house departments can be tricky because decisions and policies around compensation typically are made at the company level, but there are steps your department can take to begin to address the problem.

### *The Solution*

The following recommendations can be implemented at the departmental level to reduce bias in compensation.

- **Communicate your organization’s compensation strategy.** If only those “in the know” understand what’s really valued, that will only benefit a small in group.
- **When hiring, don’t ask candidates about prior salary.** Asking about prior salary when setting compensation for a new hire can perpetuate the gender pay gap.<sup>76</sup> (A growing legislative movement prohibits employers from asking prospective employees about their prior salaries.<sup>77</sup>)
- **Read and distribute the “Identifying Bias in Compensation Worksheet” to anyone involved in compensation decisions in your department** (available online at [BiasInterrupters.org](http://BiasInterrupters.org)).
- **Obtain surveys and benchmarking data at regular intervals.** Assess whether compensation in your in-house department is competitive with the relevant market. SHRM and similar organizations provide guidance to help you choose reputable compensation surveys and benchmarking data. Typically these data are behind a pay wall.
- **Encourage HR to implement pay equity audits under the direction of the legal department or outside lawyers to maximize the chance that the data collected is not discoverable under attorney–client privilege.**
- **When pay disparity is discovered, work with HR or the equivalent department to address the disparity within a reasonable period of time.**
- **Institute a low-risk way people can get help in disputes over compensation.** Set up a way to settle disputes over compensation that lawyers and legal professionals can use without raising eyebrows.

# Best Practice: Sponsorship

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## Based on Ricardo Anzaldua's MetLife Sponsorship Program

These Best Practice recommendations are based on conversations with Ricardo Anzaldua, GC of MetLife, who implemented a similar program in his department.

**Identify top talent.** Create a system that controls for unconscious bias to identify top talent (including nondiverse talent) to defeat arguments that the program is designed to unfairly advantage or disadvantage particular groups. To identify top talent early, MetLife used existing talent-identifying tools and introduced survey techniques to control for unconscious bias. Make sure that your system:

- Draws input from many different sources (not just managers; also include clients, peers, subordinates, etc.)
- Seeks assessments of both performance and potential from varying perspectives

**Pair each top-talent candidate with a trained senior-level sponsor who is held accountable.**

- Tie effective sponsorship with manager performance evaluations, compensation, and ability to be promoted.
- To ensure that sponsorship does not come to be regarded as a risk of being considered a poor performer with little reward, either (1) enlist *all* officer-level managers to be sponsors or (2) create upside rewards available only to effective sponsors. (Note: enlisting all managers to be sponsors is simpler and helps get buy-in to the program.)
- Create and inculcate leadership competencies for managers that they can also use to advance.
- All top talent should be paired with sponsors, but pair diverse top-talent candidates with senior management.
- Make sure each protégé has a *mentor* (preferably not the sponsor).

**Develop goals and milestones for protégés.**

- Each sponsor-protégé pair creates a mutually agreed-upon career goal that can be accomplished in three to five years.
- Each sponsor creates a development plan that includes milestones along the way (opportunities and experiences needed to accomplish the career goal). Milestones may include presentations, managing/leading a team, communication training, leading a significant project (e.g., transaction, litigation, regulatory examination), and executive presence coaching.

**Create action learning teams (ALTs).**

- Create small teams of protégés and sponsors (pair sponsors with different groups of protégés).
- Give ALTs senior-management-level problems and task them with formulating, in three to six months, written proposals to solve the issues, including how to involve non-legal resources.
- Bring in SMEs to facilitate the more technical aspects of specific problems.
- At various points in the process, ALTs should brief senior management on the status of their work.

**Bake sponsorship and ALTs into existing talent development systems, performance evaluations systems, and HR processes.**

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## About the ABA Commission on Women in the Profession

As a national voice for women lawyers, the ABA Commission on Women in the Profession forges a new and better profession that ensures that women have equal opportunities for professional growth and advancement commensurate with their male counterparts. It was created in 1987 to assess the status of women in the legal profession and to identify barriers to their advancement. Hillary Rodham Clinton, the first chair of the commission, issued a groundbreaking report in 1988 showing that women lawyers were not advancing at a satisfactory rate.

Now entering its fourth decade, the commission not only reports the challenges that women lawyers face, it also brings about positive change in the legal workplace through such efforts as its Grit Project, Women of Color Research Initiative, Bias Interrupters Project, and the Margaret Brent Women Lawyers of Achievement Awards. Drawing upon the expertise and diverse backgrounds of its 12 members, who are appointed by the ABA president, the commission develops programs, policies, and publications to advance and assist women lawyers in public and private practice, the judiciary, and academia.

For more information, visit [www.americanbar.org/women](http://www.americanbar.org/women).

## About the Minority Corporate Counsel Association (MCCA)

The preeminent voice on diversity and inclusion issues in the legal profession, MCCA is committed to advancing the hiring, retention and promotion of diverse lawyers in law departments and law firms by providing research, best practices, professional development and training, and pipeline initiatives.

MCCA's groundbreaking research and innovative training and professional development programs highlight best practices and identify the most significant diversity and inclusion challenges facing the legal community. MCCA takes an inclusive approach to the definition of "diversity" including race and ethnicity, gender, sexual orientation, disability status and generational differences.

Since MCCA's founding 20 years ago, it has been recognized and honored by the Association of Corporate Counsel, the National LGBT Bar Association, the National Minority Business Council, Inc. and the U.S. Equal Employment Opportunity Commission, among others. MCCA's vision, "To make the next generation of legal leaders as diverse as the world we live in," is what drives the organization and our passionate and committed partners.

For more information, visit [www.mcca.com](http://www.mcca.com).



