

**Judge The Merit Of My Argument, Not The Pitch Of My Voice:  
Addressing Systems That Reinforce Implicit Gender Bias In The Legal Profession**

“Halfway into your argument you got excited. You have to be careful with the pitch of your voice rising when that happens,” explained a mock trial judge to a participant post argument. This participant was the only one to get feedback on the pitch of her voice and she was also the only woman. What made this even more cringe-worthy was that the mock trial judge was also a woman.

I witnessed this as a 1L who came into law school with a passion for gender discrimination and a desire to work for the ACLU one day. This was exactly the type of gender bias I was disappointed to find in the legal profession which a young me had envisioned as the great gatekeepers of all that is fair and just. But I understood that it was not entirely this attorney’s fault. With the intention of helping this law student, she simply passed on an implicit message that she herself likely received during her time in the legal profession: keep the tone of your voice low, if your voice raises too high you will sound more feminine and will lose your credibility because our society does not value women’s voices and comments as much as men’s. This attorney had internalized the gender stereotypes that hold back her own gender, but worse, her implicit gender bias now reinforces those stereotypes in comments to the next generation of lawyers.

Gender bias is based on two interacting components, (1) a stereotype or trait associated with a specific gender and (2) a positive or negative attitude that attaches to that stereotype or trait.<sup>1</sup> Research shows that we are exposed to thousands of signals every day about what traits in each gender are “desirable.”<sup>2</sup> These signals are as simple as the guns and soldiers advertised to young boys and beauty dolls and kitchen sets advertised to young girls.<sup>3</sup> Gender bias is formed when children internalize these messages. According to a 2018 study from the Pew Research Center, Americans considered it a positive thing for men to be ambitious, strong and powerful.<sup>4</sup> For women, on the other hand, it was positive to be kind, responsible, compassionate and caring.<sup>5</sup> Leadership, ambition and power were all seen as a positive for men and negative for women.<sup>6</sup> This leads to great disparities in the way society views women attorneys; one study found that people view angry male attorneys with the highest confidence, while they view angry female attorneys with the lowest.<sup>7</sup>

When people take action unconsciously due to assumptions about the desirable traits of men and women, like critiquing the pitch of a woman’s voice, they are being guided by implicit bias. Implicit

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<sup>1</sup> Michele Struffolino, *The Devil You Don't Know: Implicit Bias Keeps Women in Their Place*, 38 PACE L. REV. 260, 266 (2018).

<sup>2</sup> See *Men and Masculinities*, COLORADO STATE UNIVERSITY, WOMEN AND GENDER ADVOCACY CENTER, (last visited January 2, 2019) <https://wgac.colostate.edu/education/gender-and-identity/men-and-masculinities/>.

<sup>3</sup> *Id.*

<sup>4</sup> Kristi Walker, Kristen Bialik and Patrick Van Kessel, *Strong Men, Caring Women: How American Describe what Society Values (and Doesn't) in Each Gender*, PEW RESEARCH CENTER, <http://www.pewsocialtrends.org/interactives/strong-men-caring-women/> (July 24, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Connie Lee, *Gender Bias in the Courtroom: Combatting Implicit Bias Against Women Trial Attorneys and Litigators*, 22 CARDOZO J.L. & GENDER 229, 240 (2016).

bias is defined as “the attitudes or stereotypes that affect [individual’s] understanding, actions, and decisions in an unconscious manner.”<sup>8</sup>

The “Report of the 2018 NAWL Survey on the Retention and Promotion of Women in Law Firms,”<sup>9</sup> and the 2018 ABA Report, “Interrupting Racial & Gender Bias in the Legal Profession,” have laid out multiple hurdles in the work force, most of which are either a result of implicit bias (maternal wall, Prove-It-Again) or are acting to reinforce implicit bias (boy’s club, sexual harassment).<sup>10</sup> To address these issues, we must first combat implicit bias by understanding it and recognizing it in the ordinary actions we take for granted.

#### **A. RECOGNIZE THAT WE HAVE IMPLICIT BIAS THAT WE WILL NEVER MASTER, AND INTERRUPT IT**

Implicit bias prevails most in two situations; (1) when individuals are unaware of their unconscious bias; and (2) when individuals think that they understand their implicit bias and fail to continue to educate themselves or consider it in their everyday decisions.<sup>11</sup> This means the first, and most basic way to address implicit bias, is to acknowledge and understand it. But that requires more than just understanding what bias is, but how bias impacts our thought processes, when we are most likely to lean on it, how to interrupt it and most importantly, that we may never master it but should continue to address it for the foreseeable future.

A growth mindset will ensure that we continue to look for implicit bias and do not become complicit in our understanding of our personal bias. As long as we are aware of our bias then we may be able to identify it and attempt to change our behavior to reflect the specific situation and not a stereotype.

#### **B. DISCOVER AND UNDERSTAND THE FOUNDATIONAL STEREOTYPES OF IMPLICIT GENDER BIAS**

Implicit bias is founded on stereotypes, quick assumptions and judgements that our brains can rely on subconsciously. Therefore, if we can understand those stereotypes, we may be able to chip away at the core of implicit bias.

Understanding systems that reinforce gender stereotypes is incredibly difficult because they are ingrained in our culture and many do not directly mention gender. It is easy to recognize gender bias when someone says, “women are dumb.” It is harder to recognize it in an educational system that

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<sup>8</sup> Implicit bias can be rooted in stereotypes about many other categories beyond gender. This essay will focus mainly on implicit gender bias but does acknowledge the implications other forms of implicit bias have as well. *Understanding Implicit Bias*, OHIO STATE UNIVERSITY: KIRWAN INSTITUTE FOR THE STUDY OF RACE AND ETHNICITY, <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/> (last visited Jan. 9, 2019).

<sup>9</sup> Destiny Peery, *Report of the 2018 NAWL Survey on the Retention and Promotion of Women in Law Firms*, NATIONAL ASSOCIATION OF WOMEN LAWYERS, <https://www.nawl.org/page/2017>.

<sup>10</sup> Joan Williams, Marina Multhaup, Su Li and Rachel Korn, *Interrupting Racial & Gender Bias in the Legal Profession*, AMERICAN BAR ASSOCIATION’S COMMISSION ON WOMEN IN THE PROFESSION, [http://www.abajournal.com/files/Bias\\_interruption\\_report-compressed.pdf](http://www.abajournal.com/files/Bias_interruption_report-compressed.pdf).

<sup>11</sup> See Robin Diangelo, *White Fragility: Why its so hard for white people to talk about racism* 9 (2018). (Explaining how thinking one understands their bias ends the conversation on it. Diangelo argues that incredible harm comes from thinking that we are not part of the problem because we understand bias. That assumption blocks uncomfortable but necessary conversations about bias that allow us to continually be conscious of ever evolving bias.)

meticulously pushes young men into engineering and pre-med, while pushing young women into education and nursing, careers that typically pay less and carry less prestige.<sup>12</sup>

Sexual harassment is another system that does not explicitly state that women are not fit for first chair or partner yet has the same impact. The 2018 ABA Report found that about one quarter of women reported experience some form of workplace sexual harassment.<sup>13</sup> This system allows men to fill the ultra-masculine role of dominator while reinforcing gender bias constructs that women are valued for their body and not their mind. In doing so, it unconsciously reinforces the “boy’s club” that is the legal profession, pushing women to the bottom if not out of it completely.

The differences between men and women’s professional clothing, asking women associates to make the coffee runs, and accommodating a client’s request for male counsel, are just a few more systems that implicitly communicate women’s second tier place in the legal profession. Until we understand each one’s motivation and participation in the low retention rate for women in the legal profession, we will not truly understand the structures of our own implicit bias. We continue to internalize these messages, and we will pass them on to the next generation of law students who will learn that their voice is unprofessional because it is not as deep as a man’s voice.

Despite the discouraging results of implicit gender bias, I am determined to raise my voice even louder should I encounter these problems in the legal profession. These are the exact issues that I hope to impact in my legal career, experiencing them first-hand will just give me a jump start on identifying them. Moving forward as a profession, we need the humility to acknowledge that we are all guided by implicit gender bias, the courage to decide to do something about it, and the skepticism to look beyond the innocent nature of the common events to address true implicit bias.

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<sup>12</sup> Motoko Rich, *Why Don’t More Men Go Into Teaching?* THE NEW YORK TIMES (Sept. 6, 2014), <https://www.nytimes.com/2014/09/07/sunday-review/why-dont-more-men-go-into-teaching.html>.

<sup>13</sup> Joan Williams, Marina Multhaup, Su Li and Rachel Korn, *Interrupting Racial & Gender Bias in the Legal Profession*, AMERICAN BAR ASSOCIATION’S COMMISSION ON WOMEN IN THE PROFESSION, [http://www.abajournal.com/files/Bias\\_interrupters\\_report-compressed.pdf](http://www.abajournal.com/files/Bias_interrupters_report-compressed.pdf).