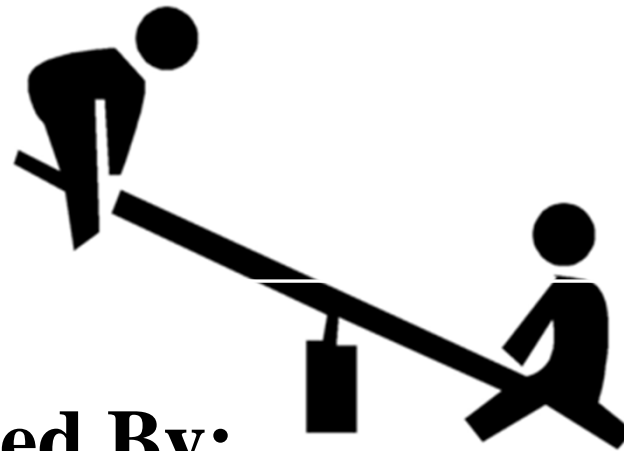


Recognizing & Interrupting **Implicit Bias** in the Legal Profession



Presented By:

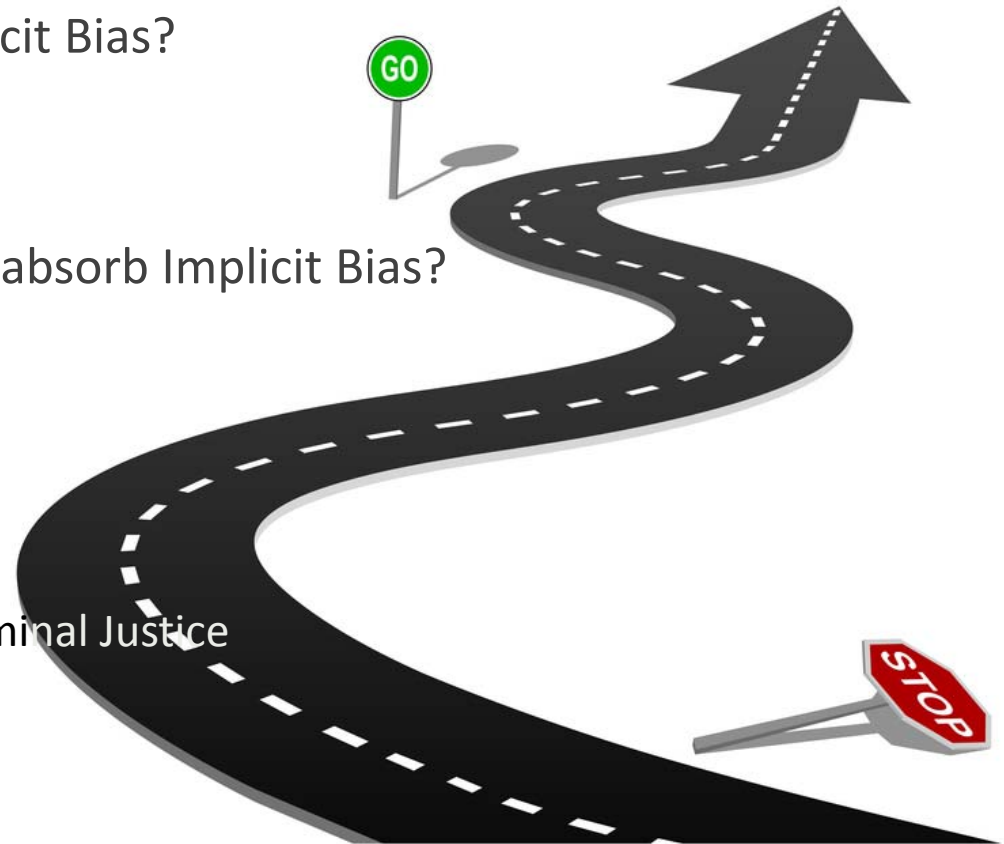
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Discussion Road Map

- What is Unintended or Implicit Bias?
 - Definition
 - Personal Demonstration
- How are we exposed to and absorb Implicit Bias?
 - Stereotypes
 - Socialization
- Why does it matter?
 - Implicit Bias in Education
 - Implicit Bias in Social and Criminal Justice
 - Implicit Bias in Employment
 - Implicit Bias in Life



Interrupting Implicit Bias

- Legislative and Judicial
 - Affirmative action
 - Civil Rights Act
 - Fair Chance Act
 - Marriage Equality
 - Equal Pay Act, etc.

- Practical Guide to Interrupting Bias in our Daily Lives
 - Specific ways to recognize and interrupt bias in our own lives

**"The way to stop
discrimination on the
basis of race is to stop
discriminating on the
basis of race."**

Chief Justice John Roberts,
2007



Implicit Bias: What is it?



“the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner”

What is Implicit Bias?


“Implicit biases are just that — subtle, often subconscious stereotypes that guide our expectations and interactions with people.”*

You see someone and immediately make certain assumptions...

What/who am I?

- Things you can see:
- Things you can't see but can guess at:

*<https://www.npr.org/sections/ed/2016/09/28/495488716/bias-isnt-just-a-police-problem-its-a-preschool-problem>



What is Implicit Bias?

What/who am I?

- Things you may never know unless I tell you:

What conclusions can you draw?

Who and what people are can affect their lives, their prospects, their compensation, etc.

Good People Still Have Biases

“Good” people can carry biases. **“Experts believe that the mind’s unconscious is responsible for 80% or more of thought processes.** Yet the conscious mind is simply not capable of perceiving what the unconscious is thinking. You can be two people at the same time: a conscious self who firmly believes you do not have any bias against others because of their social identities, and an unconscious self who harbors stereotypes or biased attitudes that unknowingly leak into decision making and behaviors.” <https://ncwba.org/wp-content/uploads/2016/11/Strategies-for-Confronting-Unconscious-Bias-The-Colorado-Lawyer-May-2016.pdf>

What is Implicit Bias?

Who and what people are can affect their lives, their prospects, their compensation, etc.

Here in the United States, we had institutionalized racism, sexism and bigotry for a long time. What you looked like determined whether you were free. The color of your skin determined whether you were considered someone else's property. Your gender determined whether you could own property and/or vote. Later on, your national origin (i.e. Irish, Italian, Chinese, Polish) determined where you could live and work...







Right now ... in the 21st century...



Can YOU fill in the blanks?



Angry _____ Woman

Poor _____ Trash

Drunken _____

Bad _____ Driver

Cheap/Penny-pinching _____

Centuries and decades of institutionalized racism have been distilled into stereotypes ...

_____ Mafia/Mob

_____ Terrorist

Thug/Criminal _____

Illegal _____ Immigrant

Dumb _____

Gossip/fight/run like a _____



Also “Good” Stereotypes/Biases

Asians are _____

Black people are good at _____

White is _____

Jews are good _____

Mexicans are _____

Black don't _____



What do stereotypes tell us?

- Everyone carries implicit biases around.
- Bias is not a white thing or black thing or male thing or female thing.
- We have been socialized in a way that guarantees we ALL have biases.

Four Types of Implicit Biases

Confirmation Bias – paying more attention to information that confirms existing belief (the echo chamber)

Attribution Bias – making more favorable assessments of behaviors and circumstances for those in “your” group (giving them the benefit of the doubt)

Availability Bias – making judgments from “top of mind” information, i.e. automatically thinking of a man when someone speaks of a “leader” or says “judge.”

Affinity Bias – Creation of a “mirrortocracy,” instead of a meritocracy. Giving opportunities to only those who look like you.

<https://ncwba.org/wp-content/uploads/2016/11/Strategies-for-Confronting-Unconscious-Bias-The-Colorado-Lawyer-May-2016.pdf>

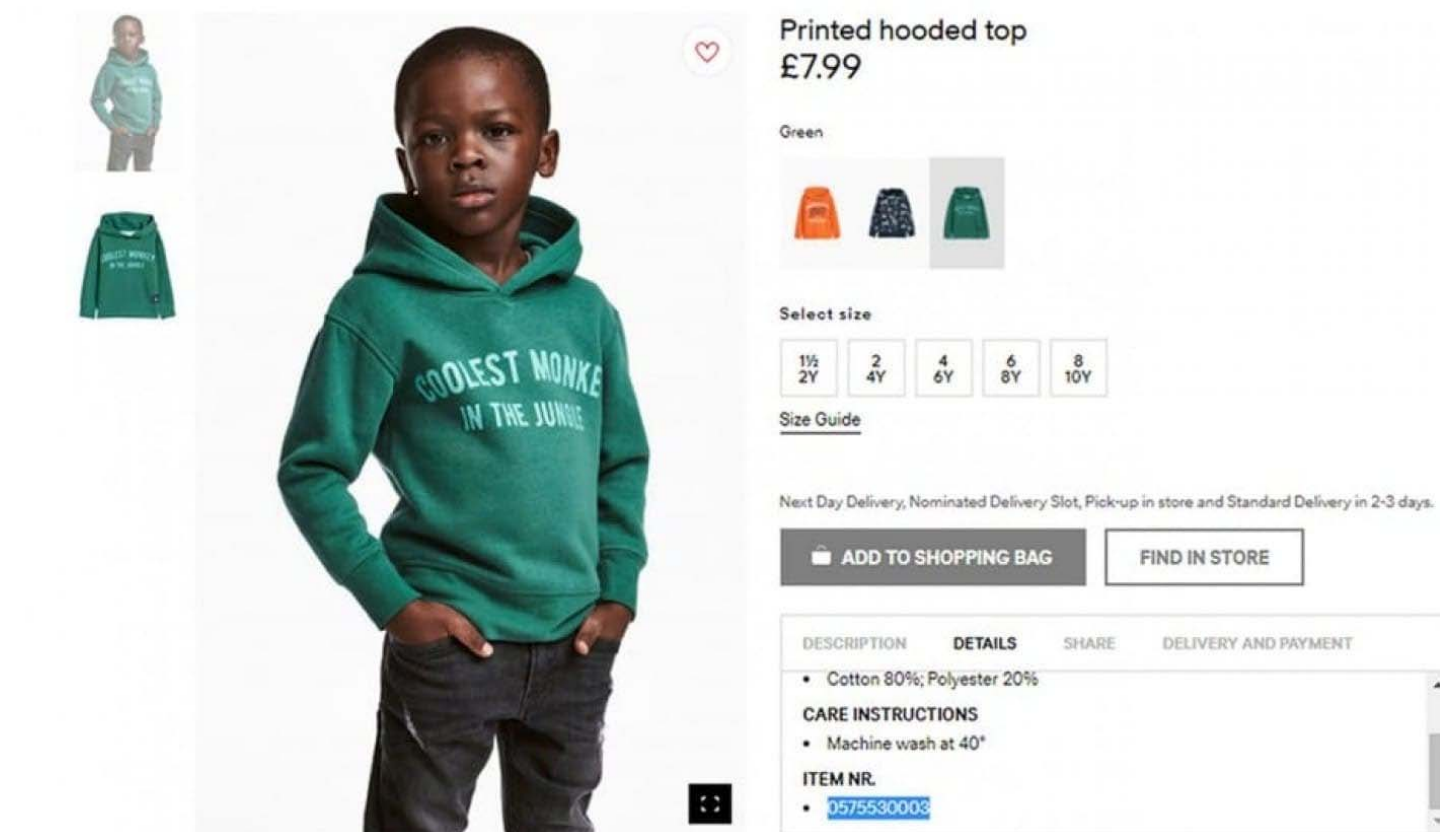
Ways we're exposed to and absorb implicit biases...



We're exposed from childhood to racist/biased Imagery.



Ways we're exposed to bias... the list goes on and on...



The screenshot shows a product page for a 'Printed hooded top' priced at £7.99. The main image features a young boy wearing a green hoodie with the text 'COOLEST MONKE IN THE JUNGLE'. To the left, there are two smaller images: one of the boy in the hoodie and another of the hoodie itself. The product title and price are at the top right. Below the title, there is a color selection section labeled 'Green' with three color swatches: orange, dark blue, and green. A 'Select size' section offers five size options: 1½ 2Y, 2 4Y, 4 6Y, 6 8Y, and 8 10Y. Below the sizes is a 'Size Guide' link. A delivery note states: 'Next Day Delivery, Nominated Delivery Slot, Pick-up in store and Standard Delivery in 2-3 days.' There are two buttons: 'ADD TO SHOPPING BAG' and 'FIND IN STORE'. At the bottom, there is a table with tabs for 'DESCRIPTION', 'DETAILS', 'SHARE', and 'DELIVERY AND PAYMENT'. The 'DETAILS' tab is active, showing the following information:

DESCRIPTION	DETAILS	SHARE	DELIVERY AND PAYMENT
	<ul style="list-style-type: none">Cotton 80%; Polyester 20%		
	CARE INSTRUCTIONS <ul style="list-style-type: none">Machine wash at 40*		
	ITEM NR. <ul style="list-style-type: none">0575530003		

Why should we care???



Implicit Bias in Education



- Research shows that African American students, and especially African American boys, are disciplined more often and receive more out-of-school suspensions and expulsions than White students.
<http://kirwaninstitute.osu.edu/racial-disproportionality-in-school-discipline-implicit-bias-is-heavily-implicated/>
- 2010 finding that over 70% of the students involved in school-related arrests or referred to law enforcement were Hispanic or Black (Education Week, 2013).
- Research suggests that Black students as young as age five are routinely suspended and expelled from schools for minor infractions like talking back to teachers or writing on their desks. In a simple analysis of this phenomenon, the over-zealous application of “zero tolerance” policies gets all the blame, but a deeper dig will show a far more complex scenario.

<http://www.shankerinstitute.org/blog/what-implicit-bias-and-how-might-it-affect-teachers-and-students-part-i>

Implicit Bias in Education

Bias Isn't Just A Police Problem, It's A Preschool Problem

<http://www.npr.org/sections/ed/2016/09/28/495488716/bias-isnt-just-a-police-problem-its-a-preschool-problem> (Study of pre-school teachers showed that 42% “saw” challenging/disruptive behavior by black children when there was none.)

For boys of color, bias against them starts early. At a pre-K teachers’ conference, 135 educators were asked to watch a video of four children with the intended purposes of identifying “challenging” behavior. The four children were a black boy and girl and a white boy and girl. In actuality, the video was carefully edited so there was NO challenging behavior. Yet, 42% of the teachers said the black boy exhibited challenging behavior. 34% identified challenging behavior in the white boy. While only 13% and 10% said the girls (white and black) were exhibiting challenging behavior.

(This falls in line with the Education Department’s data for the 2013/2014 showing that black students — from kindergarten through high school — are 3.8 times more likely to be suspended than white students.)



Implicit Bias in Education

Implicit bias in education has real world implications on the lives of children of color who are disproportionately punished (suspended or expelled) for the same infractions committed by their white counterparts:

In 2008, the American Civil Liberties had this to say about school suspensions:

Suspensions, often the first stop along the pipeline, play a crucial role in pushing students from the school system and into the criminal justice system. Research shows a clear correlation between suspensions and both low achievement and dropping out of school altogether. Such research also demonstrates a link between dropping out of school and incarceration later in life. Specifically, students who have been suspended are three times more likely to drop out by the 10th grade than students who have never been suspended. Dropping out in turn triples the likelihood that a person will be incarcerated later in life. In 1997, 68 percent of state prison inmates were school dropouts

<https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline?redirect=racial-justice/what-school-prison-pipeline>

Implicit Bias in Social Justice



Incarceration Rates for African-Americans is six times that of Whites and sentences are 20% longer than whites with similar crimes.

LGBTQ people are twice as likely to be victims of hate crimes.



Only 21 states have anti-discrimination statutes to protect LGBTQ individuals. Transgendered individuals can be denied employment.





CALL OUR HOTLINE:
[212-714-1141](tel:212-714-1141)

[DONATE NOW](#)

A CRISIS OF HATE

A REPORT ON LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER HATE VIOLENCE HOMICIDES IN 2017

In just August of 2017, NCAVP had recorded the highest number of anti-LGBTQ homicides in our 20-year history of tracking this information, and decided to release a mid year report to raise awareness of this striking increase. Since the release of the Crisis of Hate report in August of 2017, the number of reported homicides continued to increase, reaching a total of **52 reported anti-LGBTQ homicides in all of 2017**. This report provides a comprehensive look at all 52 of the hate violence, anti-LGBTQ homicides NCAVP reported in 2017.

We are releasing this report during a time when our communities are witnessing the few civil rights protections and policies being rolled back and discrimination being instituted into law, and media organizations and organizations working with survivors are receiving an unprecedented number of stories of hate fueled attacks.

While much of this violence is not new, but rather amplified, this past year has sparked a national conversation about the escalation of hate violence against so many marginalized communities. NCAVP hopes that sharing this information now will encourage people to reject anti-LGBTQ bias whenever it occurs, and to resist any hateful rhetoric or policies put forward by this administration or by legislators.

Implicit Bias in Law Enforcement & Criminal Justice

“By far the most extensive empirical research demonstrating the effects of implicit racial bias on the American criminal justice system concerns the individuals on its front lines: law enforcement officers. Police officers' patrol activities regularly demand the kinds of decisions most affected by implicit racial bias; officers must make lightning-quick, high-stakes judgments about individuals' propensity for criminality and violence with very little individuating information. **Effective police officers frequently speak of relying on their "gut instincts" and "hunches"--inarticulable suspicions based on split-second observations of individuals' appearances and behaviors in determining whom to stop for further investigation.** Of course, such hunches are highly susceptible to influence from subconscious associations between race--an immediately identifiable characteristic--and criminality. **Not surprisingly, therefore, the data consistently demonstrate that police officers stop and search black Americans at disproportionate rates.**

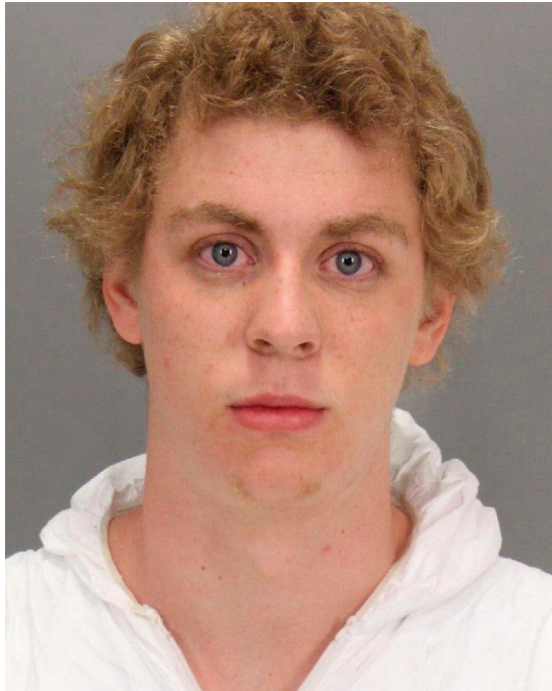
“Even more disturbingly, a number of empirical studies demonstrate that implicit racial bias influences police decisions about whether to use deadly force against a suspect.”

Blind injustice: the Supreme Court, implicit racial bias, and the racial disparity in the criminal justice system, American Criminal Law Review, Summer 2014

Implicit Bias in Criminal Justice

BROCK TURNER –

6 months for Sexual Assault on an unconscious woman



ETHAN COUCH –

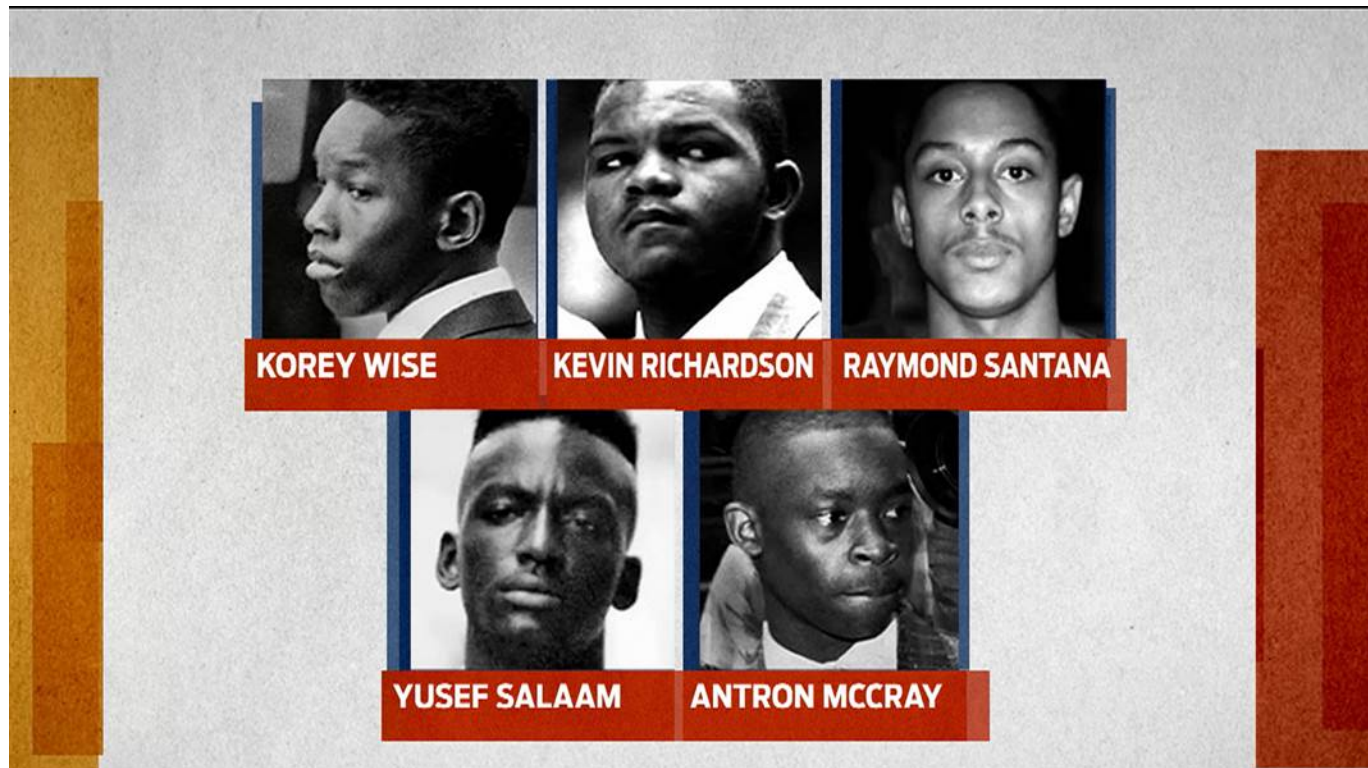
Given probation after killing 4 people while under influence of drugs and alcohol



Implicit Bias in Criminal Justice

CENTRAL PARK FIVE

Sentenced to up to 15 years for the rape, assault and robbery of the Central Park jogger based on coerced confessions. The convictions were later vacated after a convicted murderer and serial rapist confessed to the crime.



Implicit Bias in Criminal Justice

OJ SIMPSON

Found not guilty of murder for the deaths of his ex-wife Nicole Brown and Ron Goldman



Implicit Bias in Criminal Justice

Sentences and paroles for different classes of crime, 1986 (14)

	Average sentence (months)	Average time served (months)

Crimes of the poor:		
Robbery	128.5	46.5
Larceny/theft	36.9	18.3
Burglary	35.6	17.9
Crimes of the rich:		
Fraud	27.8	13.6
Embezzlement	23.8	11.4
Income tax evasion	18.3	10.3

<http://www.huppi.com/kangaroo/L-CJSpoor.htm>

Bias Within the Legal Profession

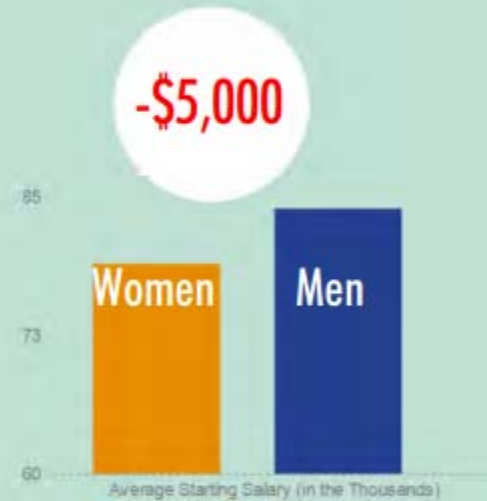
- Male partners earn 44% more.
- 85% female attorneys of color quit Big Law
 - 7 years
 - “no choice”
 - lack of support and mentorship

Women Summer Associates

The representation of women in the summer associate ranks reflects their representation among recent law school graduates.



In 2015, women comprised 47.78% of summer associates.



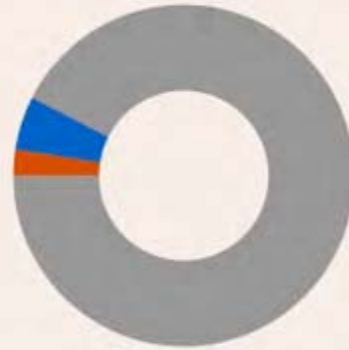
Average starting salary for women graduates of any age at their first post-graduation job was \$79,000 compared to \$84,000 for male graduates, reflecting the kinds of jobs taken by women.

Minority Partners



Minority Partners

Just 7.52% of partners at major law firms are minorities.



■ Minority Women Partners (3%) ■ Minority Men Partners (5%)
■ Non-Minority Partners (92%)

Equity Partners



■ Minority (6%) ■ Non-Minority (94%)

vs.

Non-Equity Partners



■ Minority (9%) ■ Non-Minority (91%)

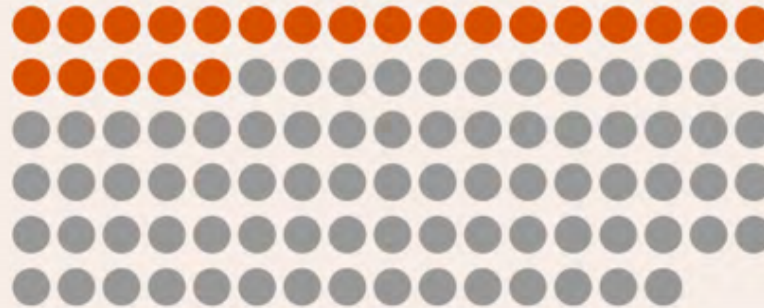
Because minority women leave law firms at a higher rate than minority men, only 2.5% of all partners are minority women.

Source: 2015-2016 NALP Directory of Legal Employers For more information, go to www.nalp.org/minoritieswome

Minority Associates



Minorities make up almost 22% of associates in large law firms.



■ Minority (22%) ■ Non-Minority (78%)

Recent gains in minority representation at the associate level can be largely attributed to an increase in Asian associates who now make up nearly 11% of all associates.

Representation of African-Americans at the associate level has declined every year since 2010.

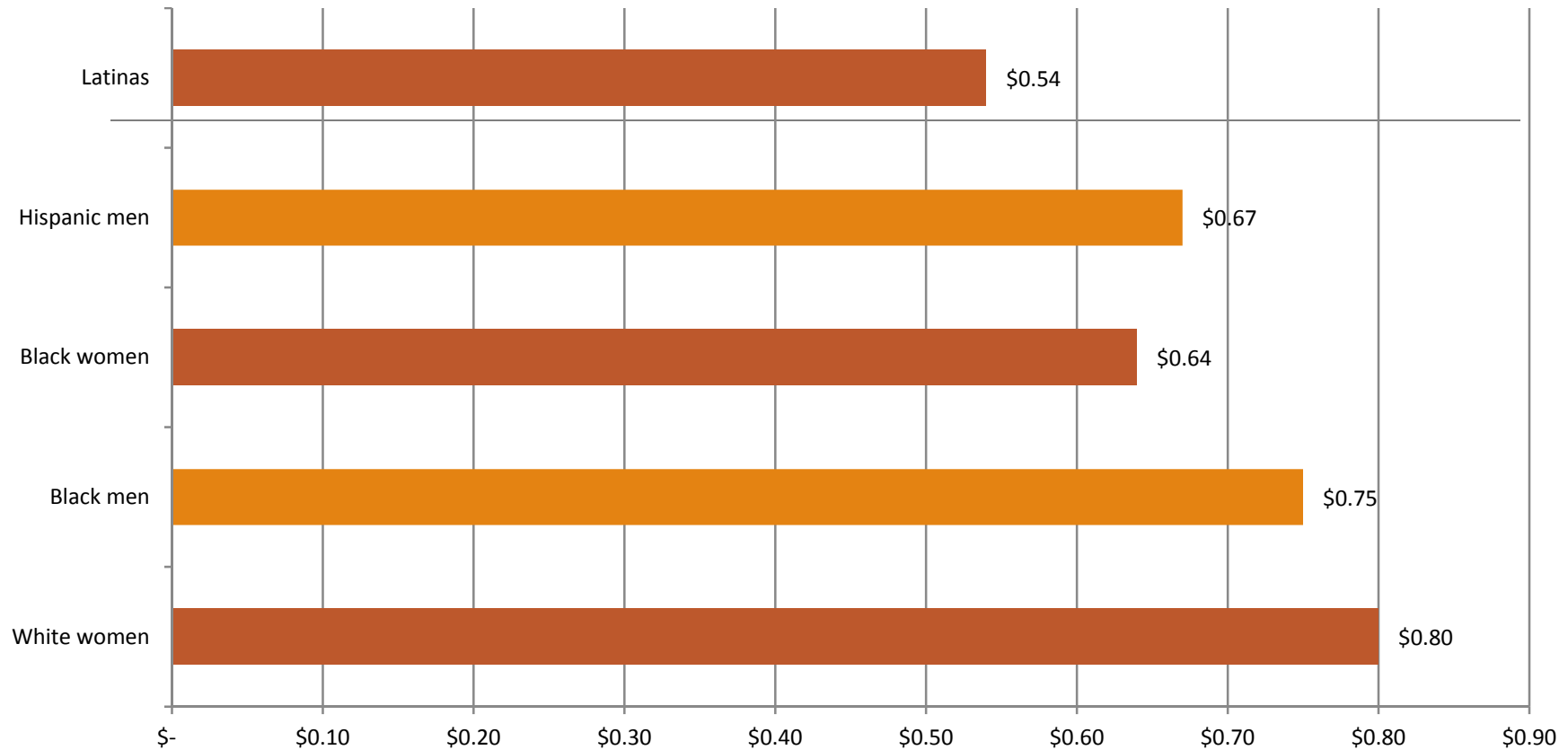
Hispanics now slightly outnumber African-Americans among associates at 4.28%, however, Hispanic representation has increased only one half of one percent since 2009.

The Bench in New York

“Women account for 52% of New York’s total population, yet on the bench only 35% are women. In the First Department the Caucasian population comprises only 44% of the total population, but represents 65% of the judiciary, with 46% women. In the Second Department, Caucasians comprise 59% of the total population but represent 78% of the judiciary, with 38% women judges. Caucasians comprise 89% of the total population in the Third Department but account for 99% of the judiciary, with only two minorities serving on the bench in the entire Department, and no minorities on the Supreme Court. Women are also vastly under-represented, comprising only 19% of the judiciary in the Third Department. In the Fourth Department, Caucasians comprise 85% of the population and 94% of the judiciary, with 26% women judges.”

http://www.nysba.org/Sections/Judicial/2014_Judicial_Diversity_Report.html

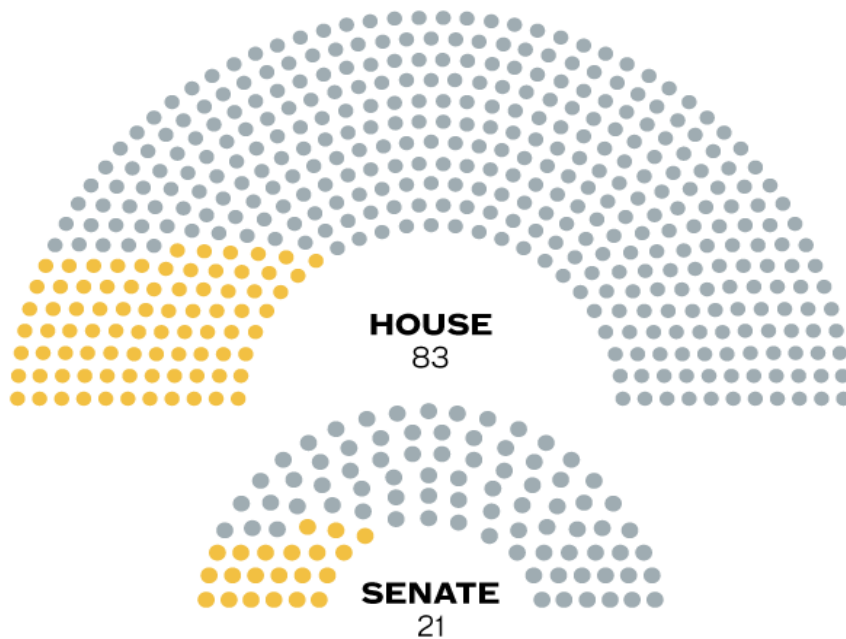
Bias Outside the Legal Profession



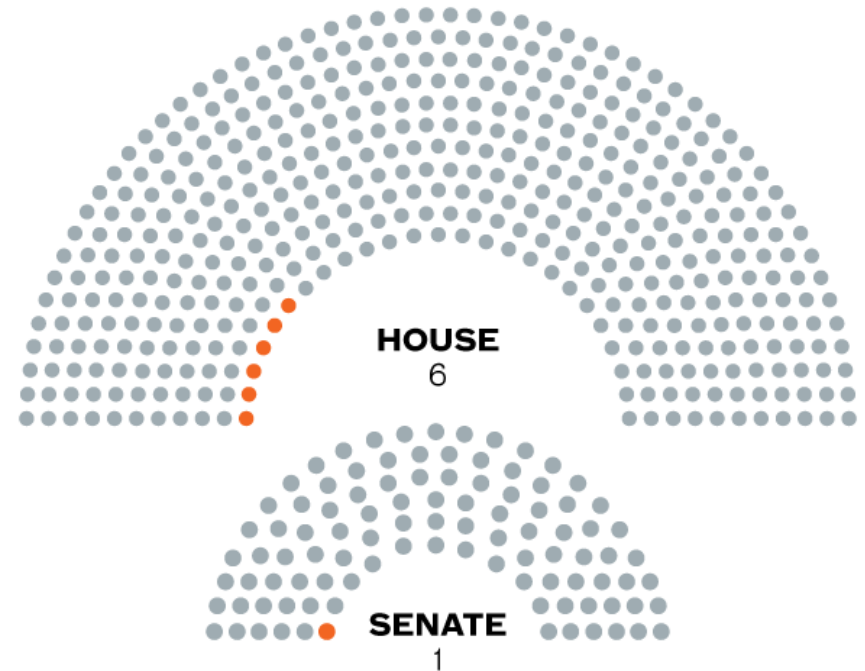
It will take women until 2059 to reach pay parity

Implicit Bias in our Legislature

WOMEN: 104 total



LGBT: 7 total

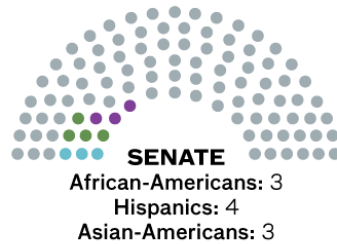
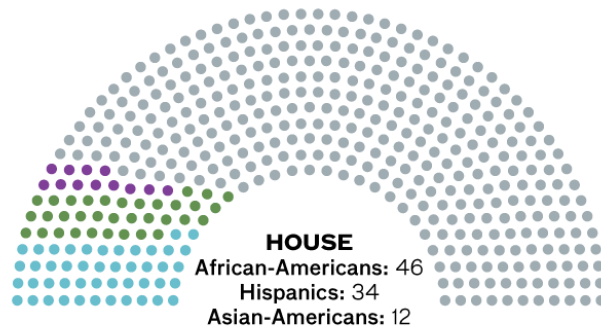


<http://thehill.com/homenews/house/306480-115th-congress-will-be-most-racially-diverse-in-history>

Implicit Bias in our Legislature

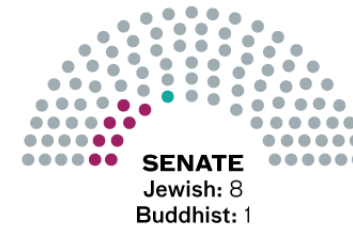
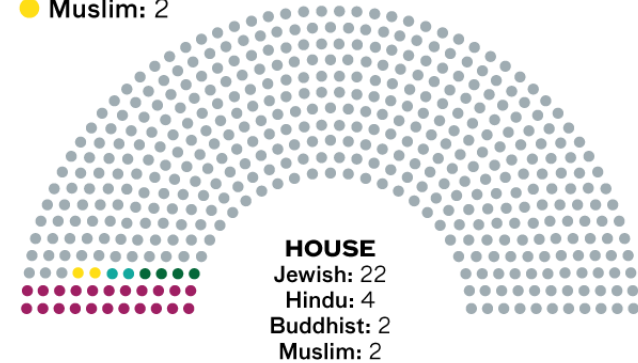
MINORITIES: 102 total

- African-Americans: 49
- Hispanics: 38
- Asian-Americans: 15

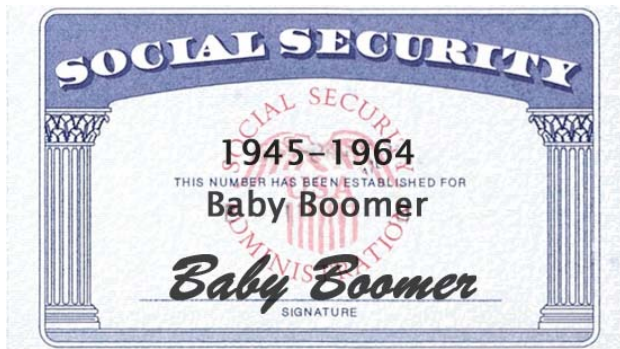


NON-CHRISTIAN: 39 total

- Jewish: 30
- Hindu: 4
- Buddhist: 3
- Muslim: 2



The Changing Demographics



10,000 retire everyday

**1 in 45
Children**

AUTISM



50.2% children born are minorities

**Disabled
Veterans
Re-entering
Civilian life**



All of the members included in these groups are considered diverse.

Implicit Bias is Pervasive

Affects our professional and personal lives and must be confronted and interrupted every chance we get.

http://www.huffingtonpost.com/2014/09/02/jose-joe-job-discrimination_n_5753880.html

<http://gap.hks.harvard.edu/orchestrating-impartiality-impact-%E2%80%9Cblind%E2%80%9D-auditions-female-musicians>

<http://www.abajournal.com/news/article/hypothetical-legal-memo-demonstrates-unconscious-biases>

Statutory and Judicial Attempts at Interrupting Bias

- Affirmative Action
- Civil Rights Act
- Equal Pay Act
- Fair Chance Act
- Marriage Equality
- Laws banning employers from asking about past salary
 - Illinois, Maine, Maryland, New Jersey, New York (New York City and Albany County and State agencies – per Gov. Cuomo’s executive order of January 2018), Pennsylvania, Rhode Island, Vermont, Massachusetts

Simple Strategies for Interrupting Implicit Bias

- **Don't be afraid to look bias in the eye.**
 - Don't be "color blind." Before you can fix a "problem," you have to acknowledge there is a problem.
- **Welcome differences in others.**
 - No such thing as a post-racial world. Differences are good. Diversity is good. It's okay to acknowledge that people are different.

Simple Strategies for Interrupting Implicit Bias

- **Doubt your objectivity.**
 - Ask yourself “why.” Why do you want to hire THAT person? Why do you think THAT person is a screw up or does bad work?

- **Question other people’s biases and judgments.**
 - Do not engage in “group think.” Question why the people around you are making the judgments they’re making and do not rush blindly to justify another’s prejudices or biases just because they look like you.

Simple Strategies for Interrupting Implicit Bias

- **Shift perspectives – Walk in someone else’s shoes; wear their hats; etc. See the world through someone else’s eyes.**
- **Deliberately expose yourself to counter-stereotypical models.**
 - View pictures of women leaders, for example. Seek out male nurses.

Simple Strategies for Interrupting Implicit Bias

- **Be an ally.**

- Join a group that's not an "affinity" group. Be the male ally in the Women in the Law Committee. Be the Black woman in the Puerto Rican Bar Association. Join the Metropolitan Black Bar Association, even if you are not Black. Ask how you can help. And actually listen when someone tells you.

Be an Ally?



She replaced the original tweet with this one:



Simple Strategies for Interrupting Implicit Bias

- **Stand up for structural change.**
 - Demand accountability from those who are able to make change.
 - You might have to be the test case. Originate the march or the petition. Call or write your representatives.

Be an Ally/Stand up for Change



Simple Strategies for Interrupting Implicit Bias

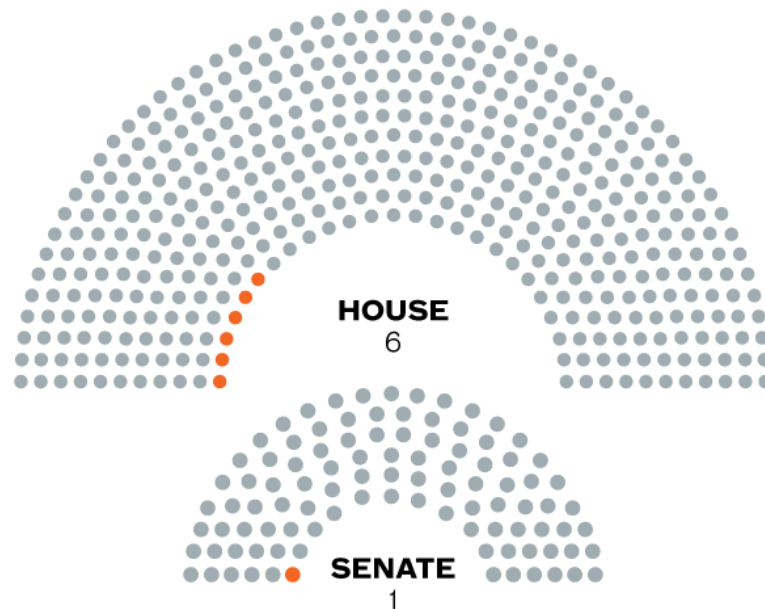
- In every space you enter, look around and ask yourself: “Who is in this room? Then ask “Who is missing?”
 - For most people of color, they are almost always “the only” or the “token” in a room. Ask yourself how that must feel day in and day out.



Simple Strategies for Interrupting Implicit Bias

- This might sound odd, but ... be willing to BE the “token.”
 - Be willing to create the path that others can walk on. It’s not always fun, but someone has to do it.

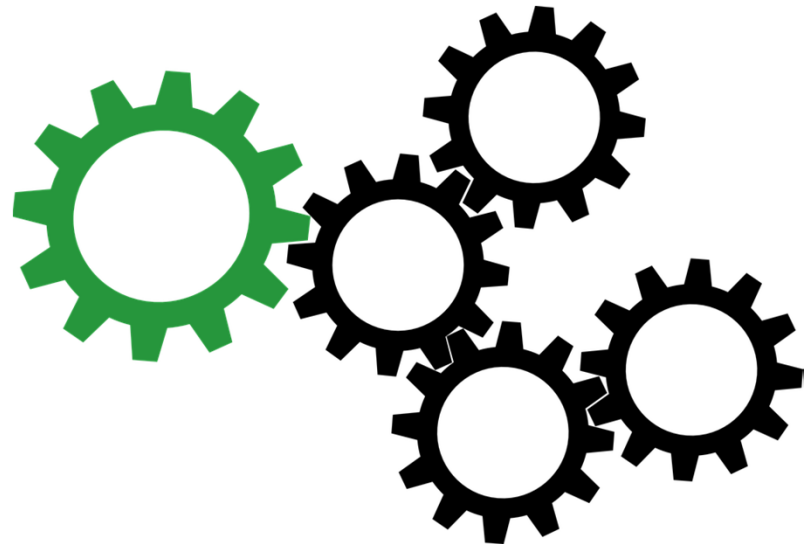
LGBT: 7 total



<http://thehill.com/homenews/house/306480-115th-congress-will-be-most-racially-diverse-in-history>

Simple Strategies for Interrupting Implicit Bias

- Demand REPRESENTATION and INCLUSION, not just DIVERSITY
 - If you have a revolving door of marginalized and underrepresented people at your firm/company/organization, odds are that you're paying lip service to "diversity" and not "representation."
 - A wise person once said, "diversity is being invited to a party; inclusion is being asked to dance."



Simple Strategies for Interrupting Implicit Bias

- Check your assumptions



- Are all your thoughts “assuming”?
 - White assuming
 - Male assuming
 - Hetero assuming, etc.

Simple Strategies for Interrupting Implicit Bias

- Check bias when you see it in others.
 - Can do it nicely, professionally, but do NOT let it pass.
- Check your own privilege.
 - Be grateful for every privilege you enjoy (e.g. being able bodied, employed, etc.)





Any Questions???

