

Interrupting Bias: Inside and Outside the Courtroom

By

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In U.S. law firms surveyed last year, only one in five (19.6%) equity partners were women, and only about 6% were racial/ethnic minorities (including men and women).¹ Statistics from 2017 show that openly lesbian, gay, bisexual, and transgender (LGBT) lawyers make up less than 3% of all law firm attorneys, and lawyers with disabilities are counted in at less than 1%. It is clear, the legal profession has a problem with diversity, equity, and inclusion.

In 2018, Joan C. Williams co-authored *You Can't Change What You Can't See: Interrupting Gender and Racial Bias in the Legal Profession* in partnership with the American Bar Association's Commission on Women in the Profession and the Minority Corporate Counsel Association. The study found that women and people of color are experiencing bias in numerous workplace processes, from hiring and compensation to promotion and mentorship – women and people of color have been persistently held back from advancement. They don't have to be.

Promoting diversity is not just The Right Thing, it makes good business sense. Diverse workgroups perform better and are more innovative than homogenous ones.² Gender diverse work-

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¹ *Representation of Women and Minority Equity Partners Among Partners Little Changed in Recent Years*, NALP BULL. (Apr. 2019), <https://www.nalp.org/0419research?print=Y>.

² See generally Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Effects of Diversity Perspectives on Work Group Processes and Outcomes*, 46 ADMIN. SCI. Q. 229, 229-73 (June 2001); Karen A. Jehn, Gregory B.

groups have stronger collective intelligence and racially diverse ones are more likely to consider a broader range of alternatives, resulting in better decision making and thoughtful problem solving.³

This article will first provide readers with an overview of how to identify bias in the workplace, whom it affects, and how it presents in the legal field. It will also give a brief summary of how workplace sexual harassment affects lawyers. Following these summaries will be an introductory guide to research-backed interventions for workplace bias called “bias interrupters.” With this context, the final section will offer a look at the role of family courts and attorneys in recognizing the value of domestic work in two-partner, sole-breadwinner relationships. This article ultimately offers concrete ways family law attorneys can navigate everyday biases from the office conference room to the courtroom.

I. Bias 101

Bias affects a broad range of people, including, but not limited to: modest or introverted men, the LGBTQ+ community, individuals with disabilities, first-generation professionals, women, and people of color.⁴ People who identify with more than

Northcraft, & Margaret A. Neale, *Why Differences Make a Difference: A Field Study of Diversity, Conflict, and Performance in Workgroups*, 44 ADMIN. SCI. Q. 741, 741-63 (Dec. 1999).

³ See generally Anthony Lising Antonio, et al., *Effects of Racial Diversity on Complex Thinking in College Students*, 15 PSYCHOL. SCI. 507, 507-10 (Aug. 2004); Katherine W. Phillips, Gregory B. Northcraft & Margaret A. Neale, *Surface-Level Diversity and Decision-Making in Groups: When Does Deep-Level Similarity Help?*, 9 GROUP PROCESS & INTERGROUP RELATIONS. 467, 467-82 (Oct. 2006); Orlando C. Richard, et al., *Cultural Diversity in Management, Firm Performance, and the Moderating Role of Entrepreneurial Orientation Dimensions*, 47 ACAD. MGMT. J. 255, 255-66 (Apr. 2004); Anita Woolley & Thomas W. Malone, *Defend Your Research: What Makes a Team Smarter? More Women.*, HARV. BUS. REV. (June 2011), <https://hbr.org/2011/06/defend-your-research-what-makes-a-team-smarter-more-women>.

⁴ See generally BRAD SEARS & CHRISTY MALLORY, GENDER IDENTITY AND SEXUAL ORIENTATION DISCRIMINATION IN THE WORKPLACE 40-1 – 40-19 (Christine Michelle Duffy et al. eds., 2014); JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER (2010); JOAN C. WILLIAMS & RACHEL DEMPSEY, WHAT WORKS FOR WOMEN AT WORK (2014); Mason Ameri et al., *The Disability Employment Puzzle: A Field Experiment on*

one of these groups often face a combination of biases that cannot be captured by fusing the experiences of two different groups together. Scholar Kimberlé Crenshaw coined the term *intersectionality* to describe this phenomenon.⁵

Identical resume studies shed light on the biases that shape the experience of out-group members. In one such study, “Jamal” needed eight additional years of experience to be viewed as equally qualified as “Greg.”⁶ Another found that men from elite backgrounds were twelve times more likely to be called back for an interview when compared to identically qualified candidates from non-elite backgrounds.⁷ Other studies have found that women, individuals with disabilities, LGBTQ+ candidates, women in headscarves, and older individuals are less likely to be hired than their more privileged peers.⁸

Unexamined biases shape workplaces beyond the hiring process. Williams and her coauthor (and daughter), attorney Rachel Williams Dempsey, identify four key patterns of workplace bias using four decades of social science research in their

Employer Hiring Behavior, 71 ILR REV. 329 (June 23, 2017); Michael W. Kraus, Brittany Torrez, Jun Won Park & Fariba Ghayebi, *Evidence for the Reproduction of Social Class in Brief Speech*. *Proceedings of the National Academy of Sciences of the United States of America*, 116 PNAS. 22998, 22998 (Oct. 21, 2019); Laurie A. Rudman, *Self-promotion as a Risk Factor for Women: The Costs and Benefits of Counterstereotypical Impression Management*, 74 J. PERSONALITY & SOCIAL PSYCHOL. 629, 629-45 (1998); András Tilcsik, *Pride and Prejudice: Employment Discrimination Against Openly Gay Men in the United States*, 117 AM. J. SOCIOLOGY 586, 586 (Sept. 2011).

⁵ See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination, Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 139-50.

⁶ Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991, 997 (2004).

⁷ Lauren A. Rivera & András Tilcsik, *Class Advantage, Commitment Penalty: The Gendered Effect of Social Class Signals in an Elite Labor Market*, 81 AM. SOCIOLOGICAL REV. 1097, 1097-131 (Oct. 12, 2016).

⁸ See generally *supra* note 4; Amy J. Cuddy, Michael L. Norton, & Susan T. Fiske, *This Old Stereotype: The Pervasiveness and Persistence of the Elderly Stereotype*, 61 J. SOC. ISSUES 265, 265-83 (2005); Eva Derous & Jeroen Decoster, *Implicit Age Cues in Resumes: Subtle Effects on Hiring Discrimination*, 8 FRONTIERS PSYCHOL. 1, 1-15 (Aug 10, 2017); Doris Weichselbaumer, *Discrimination Against Migrant Job Applicants in Austria: An Experimental Study*, 18 GERM. ECON. REV. 237 (May 16, 2016).

book, *What Works for Women at Work*.⁹ Soon after publishing this book, Williams co-authored a study focusing on the ways racial stereotypes interact with gender bias among women in STEM fields.¹⁰ The article *Double Jeopardy?* provides an intersectional lens on how racial and gender biases impact women in the workplace. The book *You Can't Change What You Can't See* is a continuation of this work. Identifying bias is the first step to intercepting it. What follows below is how the four patterns Williams and Dempsey identified play out in workplaces:

A. *Prove-It-Again*

In-group members are seen as a better fit in the workplace, are stereotyped as more competent, and benefit from the in-group favoritism majority group members enjoy. These factors mean that out-group members often have to prove themselves repeatedly in the workplace. This impacts women, people of color, persons with disabilities, older employees, LGBTQ+ community members, and first-generation professionals.¹¹ In the workplace this means Prove-It-Againers need to show more evidence of competence in order to be viewed as comparable to their peers. Survey data from the legal profession demonstrates exactly this: the majority of white women (51%), men of color (57%), and women of color (67%) report being held to higher expectations than their peers, while only a third (34%) of white men say the same.¹² As one white woman who works as a firm lawyer put it: “The bar to advancement has been moved several times. . . there is no ‘credit’ given for the fact that I was there when the expectations were very different. . . so I feel like I am always running to stay still.”¹³

When most people call to mind a hard-working lawyer, a white man comes to mind. Others do not seem as good a fit. Most

⁹ See generally WILLIAMS & DEMPSEY, *supra* note 4.

¹⁰ Joan C. Williams, Katherine W. Phillips, & Erika V. Hall, *Double Jeopardy: Gender Bias Against Women in Science* (2014), https://worklifelaw.org/publications/Double-Jeopardy-Report_v6_full_web-sm.pdf.

¹¹ See generally *supra* note 8.

¹² JOAN C. WILLIAMS, ET AL., *YOU CAN'T CHANGE WHAT YOU CAN'T SEE: INTERRUPTING GENDER & RACIAL BIAS IN THE LEGAL PROFESSION* 16 (2018), <https://www.americanbar.org/products/ecd/ebk/358942050/>.

¹³ *Id.* at 14.

dramatically, more than half of women and nearly one-third of men of color (30%) report being mistaken for administrative, custodial staff, or court personnel, as compared with only 7% of white men.¹⁴ Overcoming negative competence assumptions is especially challenging when women find their ideas being credited to others, a phenomenon noted across many industries, from White House staffers to women in C-suites.¹⁵ The legal community is no different: about half of women surveyed reported that their contributions were at times attributed to someone else.¹⁶

In the courtroom, women attorneys face Prove-It-Again pressures from opposing counsel, judges, clients, and juries. In 2018 *The Atlantic* published an article on women litigators and sexism in the courtroom, rich with examples. The author describes the experience of Kadisha Phelps, an African American attorney who often brings along a white colleague who is also a man to help heighten her perceived credibility in the courtroom when she is acting as first chair. In one instance, Phelps was debating how many depositions she would be permitted with the judge when he pushed back on her argument, turned to her silent white colleague and said to him: “Maybe you should take a few minutes and walk out and try to calm your associate down.”¹⁷ Women attorneys face similar examples of Prove-It-Again bias at the hands of clients, even when, like Phelps, they have earned the more senior role on a case.

B. Tightrope

Groups facing tightrope bias are limited to a narrower range of acceptable behavior than their majority-member peers. All too often prescriptive stereotypes dictate how people behave, and those who push back often do so at their own risk. Women

¹⁴ *Id.* at 19.

¹⁵ See generally Cassie Werber, *Women at the White House Have Started Using a Simple, Clever Trick to Get Heard*, QUARTZ (Sept. 14, 2016), <https://qz.com/781404/women-at-the-white-house-have-started-using-the-simple-trick-of-amplification-to-get-heard-not-interrupted/>.

¹⁶ WILLIAMS, ET AL., *supra* note 12, at 18.

¹⁷ Lara Bazelon, *What It Takes to Be a Trial Lawyer If You're Not a Man*, ATLANTIC (Sept. 2018), <https://www.theatlantic.com/magazine/archive/2018/09/female-lawyers-sexism-courtroom/565778/>.

find themselves walking a tightrope: if they behave demurely, they are too feminine and not tough enough, if they are more assertive, they are seen as too masculine and overly aggressive. Tightrope bias also affects people of color and LGBTQ+ community members. To quote one Black in-house attorney surveyed: “I have experienced the most push back from being an assertive and authoritative woman (and minority woman); so there is resentment of my perceived ‘masculinity’ such that people accuse me of wanting to be feared, when men [are] deemed to simply be ‘demanding’ or as having ‘high standards.’”¹⁸

The data back her up. Among lawyers surveyed, over 60% of white men reported not being penalized for assertive behavior, while less than half of women reported the same.¹⁹ Similarly, white men reported feeling free to express anger at a significantly higher level than other groups: fewer than half of white women and men of color, and only four in ten women of color felt they had the room to show anger at work.²⁰

In the courtroom, this means men are free to be “tough zealous advocates,” while women must refrain from being viewed as “emotional.”²¹ Attorney Elizabeth Faiella told *The Atlantic* of the regularity with which opposing counsel will file a motion to “preclude emotional displays” during trials, insisting that her “proclivity for displays of anguish in the presence of the jury, including crying,” are “calculated” in their intent to sway the jury.²² While judges deny these motions, the tone is set, and Faiella is pushed to walk an even narrower tightrope to avoid being seen as using her sensitive femininity to manipulate a jury *and* she must continue to prove that she is able to hold her own in court without succumbing to these negative competence stereotypes. Attorneys of color may walk a similar tightrope, particularly if they show anger (or assertiveness that is interpreted as anger).

¹⁸ WILLIAMS, ET AL., *supra* note 12, at 23.

¹⁹ *Id.*

²⁰ *Id.* at 25.

²¹ Bazelon, *supra* note 17.

²² *Id.*

C. Maternal Wall

Sometimes labeled the “motherhood penalty,” women often see their commitment and competence questioned after becoming a parent. As one attorney explains: “I made partner in the shortest time of any female. Things were great. I had my son. I worked part time during leave and came back in 9 weeks. My work was gone. It has taken 2 years and a change in focus to get back to the level I was.”²³

In some cases, women with children can face backlash for being too career-oriented by their workplace peers and courtroom colleagues. This bias takes a toll on nonparents too; women lawyers surveyed were more likely to report having to work harder to compensate for their parenting peers.²⁴ Anyone who seeks out workplace flexibility, for caregiving or simply *I-have-a-life* reasons, can face pushback in environments that enshrine the ideal worker who is available around the clock.

In the courtroom, this may present as judges denying schedule changes that are based on parental leave reasons. This is exactly what happened to immigration attorney Stacy Ehrisman-Mickle, who asked that a hearing scheduled during her leave be postponed. When the judge denied the rescheduling request and Ehrisman-Mickle showed up with a crying four-week-old baby, the judge scolded her in open court.²⁵

According to a study of opposite-sex couples by the U.S. Census Bureau, between the two years before the birth of a couple’s first child and the year following, the spousal earnings gap *doubles*; for the next five years that gap gets even bigger.²⁶ This shows that the expectations on men to be breadwinners and women to be caregivers continue. Among lawyers, more than half of white women and nearly half of women of color reported that parenthood harmed their perceived competence at work, only about 20% of men said the same.²⁷ And a mere 5% of white

²³ WILLIAMS, ET AL., *supra* note 12, at 37.

²⁴ *Id.* at 38.

²⁵ Kate Brumback, *Attorney Denied Hearing Delay Appears with Baby*, AP (Oct. 15, 2014), <https://apnews.com/0fb31208581d49e1b92d357aa4a110b3>.

²⁶ Yoon Kyung Chung, Barbara Downs, Danielle H. Sandler & Robert Sienkiewicz, *The Parental Gender Earnings Gap in the United States*, CTR. ECON. STUD. 17-68 (Nov. 2017).

²⁷ WILLIAMS, ET AL., *supra* note 12, at 32.

men surveyed said they were expected to stay home or put their careers on hold after having children, making women four times more likely to feel this pressure.²⁸

D. *Tug of War*

Because tokenism has been pervasive in industries like the legal profession, there are times when bias in the workplace brews conflict within minority groups. Women and people of color surveyed reported feeling that there is only one slot for people like them, resulting in a need to compete with others in their sub-group in order to get ahead.²⁹ This can lead to a tug-of-war in the workplace among out-group members, as can differences in opinion on how to assimilate with the dominant group. Consider for example this story from a firm attorney:

“In the past year, I’ve been called ‘overconfident’ and ‘not deferential enough’ by co-counsel, another Asian American female. It was extremely frustrating as I was finally starting to feel confident and assertive and direct – acting as any normal white male attorney in a law firm would. I was subsequently removed from that case.”³⁰

Tug of War bias is used to pass through other bias types previously mentioned, like when a woman supervisor offers to pay for a makeover for a junior associate or when a woman juror expresses distaste for a woman attorney’s footwear choice.³¹ Additionally, women of color are more likely than their white peers to report that they did not feel supported by other women.³²

II. What About Sexual Harassment?

The #MeToo movement has been a long overdue watershed moment.³³ What might have passed as *boys-being-boys* a few years ago no longer holds up in a climate where 88% of Americans believe sexual harassment is a serious problem.³⁴ The over-

²⁸ *Id.* at 37.

²⁹ *Id.* at 43.

³⁰ *Id.* at 21.

³¹ Bazelon, *supra* note 17.

³² WILLIAMS, ET AL., *supra* note 12, at 43.

³³ See generally Joan C. Williams & Suzanne LeBsock, *Now What?*, HARV. BUS. REV. (Jan. 2018), <https://hbr.org/cover-story/2018/01/now-what>.

³⁴ 60% of U.S. Women Say They’ve Been Sexually Harassed *Quinnipiac University National Poll Finds; Trump Job Approval Still Stuck Below 40%*,

whelming majority of Americans (87%) now favor zero-tolerance policies.³⁵

On average, more than one-third of women will experience sexual harassment by the time they are 26, and that number jumps to 46% when women reach 31 years of age.³⁶ For the last few years, men have filed about 16-17% of all sexual harassment complaints with the EEOC.³⁷ In the legal profession specifically, about one-quarter of women and 8% of men reported unwanted sexual or romantic attention and/or touching while at work.³⁸ Additionally, women surveyed were almost three times as likely as men to say they had lost work opportunities because of sexual harassment.³⁹

Attorneys may encounter unwanted sexual attention by not only colleagues, but also clients or courtroom officials. Professor Lara Bazelon shared in *The Atlantic* a story of one humiliating instance during her trial lawyer days when she took off her suit jacket in an overly warm Los Angeles courtroom, when the judge, an older man, startled her by saying loudly in open court, “Are you stripping in my courtroom, Ms. Bazelon?”

Moving forward, law firms must take into account the ways sexism in the workplace acts as a foundation for sexual harassment. Among lawyers surveyed, more than 70% said they heard sexist remarks in their workplace.⁴⁰ Laying the groundwork from the beginning with all employees is key in creating a safe work environment where everyone understands the norms and explicit rules they are expected to follow. As an individual, speak up when you hear inappropriate talk about a colleague and reach out directly when you see someone may have crossed a line. Not

QUINNIPIAC U. POLL (Nov. 2017), <https://poll.qu.edu/national/release-detail?ReleaseID=2502>.

³⁵ Danielle Kurtzleben, *Poll: Americans Overwhelmingly Support ‘Zero Tolerance’ on Sexual Harassment*, NPR (Dec. 14, 2017), <https://www.npr.org/2017/12/14/570601136/poll-sexual-harassment-ipsos>.

³⁶ Heather McLaughlin, *Who’s Harassed, and How?*, HARV. BUS. REV. (Jan. 31, 2018), <https://hbr.org/2018/01/whos-harassed-and-how>.

³⁷ U.S. EEOC, *Charges Alleging Sex-Based Harassment FY 2010-FY2018*, https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm.

³⁸ WILLIAMS, ET AL., *supra* note 12, at 65.

³⁹ *Id.* at 67.

⁴⁰ *Id.* at 66.

being a perpetrator is not enough; to stop harassment will require allies to take action.

III. Interrupting Bias

Conventional tools for promoting diversity in the legal profession, like women's initiatives, focus on capacity building, but they are often undercut by the way subtle forms of bias are constantly being transmitted through basic business systems such as performance evaluations, hiring, promotions, etc.⁴¹ To achieve diversity, organizations must first create inclusive and equitable workplace processes. This is not as hard as it sounds. Williams and her co-authors spelled out an evidence-based model in the 2018 report, *You Can't Change What You Can't See*, which offers systemic solutions to interrupt bias. These "bias interrupters" are intervention action steps that take the research from decades of social science lab studies and data from workplace studies, and condense key takeaways into actionable strategies to reduce bias in basic business systems.⁴² These interventions work from a variety of vantage points; individuals, managers, and organizational leaders can all play a role in implementing tailored solutions for an organization. The following section breaks down how bias can be intercepted on an individual level.

A. When Hiring

Among lawyers surveyed, more than 80% of white men reported that someone like themselves had a fair chance at getting hired in their place of work, but only 61% of women of color felt the same.⁴³ The odds of hiring a woman are 79 times greater if there are at least two women in the finalist pool and more than that, the chances of hiring a non-white candidate are 194 times higher when there are at least two finalists who are non-white.⁴⁴

⁴¹ See generally Joan C. Williams, *Hacking Tech's Diversity Problem*, HARV. BUS. REV. (Oct. 2014), <https://hbr.org/2014/10/hacking-techs-diversity-problem>; Joan C. Williams & Sky Mihaylo, *How the Best Bosses Interrupt Bias on Their Teams*, HARV. BUS. REV. (Nov. 2019), <https://hbr.org/2019/11/how-the-best-bosses-interrupt-bias-on-their-teams>.

⁴² See generally, Williams, *supra* note 41.

⁴³ WILLIAMS, ET AL., *supra* note 12, at 45.

⁴⁴ Stefanie K. Johnson, David R. Hekman, & Elsa T. Chan, *If There's Only One Woman in Your Candidate Pool, There's Statistically No Chance*

Here are three simple ways to better the odds within an organization:

1. *Limit referral hiring.*

If the organization is homogenous, then referral hiring will likely reproduce more of the same. Look to collaborate with identity affinity groups on law school campuses, and seek out networking and recruiting events that center on diversity in the legal profession.

2. *Use objective criteria and stick to them.*

By defining what you want in a candidate ahead of time you are more likely to find the right pick and less likely to bend expectations for someone with whom you jive better because of their personal (not professional) background.

3. *Structure interviews with skills-based questions.*

Every interviewee should be asked the same questions and they should be directly related to the required knowledge and skills you have identified. Use skills-assessments, rather than asking, “What do you know about case databases?” Give them a task outlining what you want them to find, then give that same task to every candidate you interview. For more complex requirements, like managerial skills, ask them how they would handle a detailed scenario they are likely to encounter on the job.

B. *When Handing Out Assignments*

Women attorneys were more likely to report doing more administrative tasks, like scheduling, and office housework, such as cleaning up after a meeting, than their colleagues. Asian women specifically reported doing this more often than any of their peers surveyed.⁴⁵ Saddling women and people of color with tasks that do not advance their careers or fully utilize their skills is not the best use of their time or company dollars. Similarly, pay close

She'll Be Hired, HARV. BUS. REV. (Apr. 26, 2016), <https://hbr.org/2016/04/if-theres-only-one-woman-in-your-candidate-pool-theres-statistically-no-chance-shell-be-hired>. (Experimental studies show that these odds hold in finalist pools ranging from three to eleven candidates.)

⁴⁵ WILLIAMS, ET AL., *supra* note 12, at 26-27.

attention to who is getting the promotion-enabling glamour work. Only about half (52%) of women of color reported having equal opportunities for high-quality assignments, compared to 81% of white men surveyed.⁴⁶ Assignments allocation can be complicated, so start small with these three steps:

1. *Use a rotation, not volunteers.*

Because they are under pressure to be team players, women are more likely to volunteer for office housework. When tasks come up that administrative staff cannot handle, instead of asking for volunteers, set up a rotation to ensure everyone spends the same amount of time pitching in.

2. *Expand the pool for glamour work.*

Track who is getting the high-quality assignments, and ask whether the pool of usual suspects reflects everyone who has the requisite skills to do them. It is in everyone's best interest to have more team members ready for high-stakes assignments. Visit BiasInterrupters.org for worksheets to get started.

3. *Walk the [diversity] talk.*

Sometimes management teams say they value diversity, but when it comes time for promotions or raises, team members who spend time on these "valued" initiatives do not see the pay-off. If your organization values these contributions, make sure that value is reflected in compensation and promotion decisions.

C. *In the Meeting Room*

In one study about meetings that included more men than women (a common situation in many offices), women participated on average about 25% less than peer men.⁴⁷ This may be because when women do speak up they are often interrupted. In the 2018 report, almost half of women attorneys surveyed reported being interrupted in meetings, while only about one-third

⁴⁶ *Id.* at 47.

⁴⁷ Christopher F. Karpowitz, Tali Mendelberg, & Lee Shaker, *Gender Inequality in Deliberative Participation*, AM. POL. SCI. REV. (Aug. 2012), <https://www.bu.edu/wgs/files/2014/12/Karpowitz-et-al.-2012.pdf>.

of men did.⁴⁸ You may not always be running the meeting, but here are three ways to curb bias when you're in them:

1. *Return stolen ideas and spot interrupters.*

If you see someone's idea get skipped over, or worse yet repeated by someone else without credit, chime in: "Thanks for flagging that, Phil, I've been thinking about it since Magdalena brought it up earlier. . ." And if you notice someone's ideas are getting truncated because of interrupters, create the space for them to finish their thought: "I'm eager to hear what you have to say, but first let's hear the rest of Carol's point."

2. *Plan inclusively.*

Stick to working hours and the office. Make sure everyone who needs to be at the meeting is able to attend and has a seat at the table (literally).

3. *Invite people into the conversation.*

If you know someone has value to add, but is not chiming in, call them into the conversation, "Amber, I know you worked on a similar project, do you have any advice for us moving forward?" If you are worried about putting an introvert on the spot, talk to them after the meeting or during a coffee.

D. *During Performance Reviews*

While nearly three-quarters of white men report having fair opportunities for advancement, only 61% of men of color feel the same and white women and women of color report even lower levels, 58% and 52% respectively.⁴⁹ People of color were the least likely to report receiving constructive feedback, with a whopping 40% of men of color saying they did not receive constructive feedback. A different study of tech found 66% of women's evaluations contained negative personality criticism, but only 1% of men's reviews did.⁵⁰ This can be prevented, and here is how:

⁴⁸ WILLIAMS, ET AL., *supra* note 12, at 22.

⁴⁹ *Id.* at 54.

⁵⁰ Kiernan Snyder, *The Abrasiveness Trap: High-Achieving Men and Women Are Described Differently in Reviews*, FORTUNE (Aug. 26, 2014), <https://fortune.com/2014/08/26/performance-review-gender-bias/>.

1. *Use evidence-based ratings.*

If you write evaluations, back up every rating or comment with an example, and make it a detailed one. “He writes well,” does not mean much, but “he is able to write an effective brief under strict deadlines, such as in x case” does. When you are reviewing your own performance evaluations, hold your evaluators to the same expectation when possible.

2. *Skip the personality talk and be wary of potential.*

When performance reviews rely on personality comments, evaluators risk missing out on key information *and* often end up holding women and people of color to different standards. Saying someone is “friendly” might seem like a nice thing to say, but pointing out that they have “exceptional networking skills when it comes to securing and retaining clients” is more informative and accurate. Similarly, potential is often reserved for in-group members, while out-group members are expected to be exceptional in order to get ahead. If your organization values potential, it should be separately assessed in evaluations with clear guidelines for all employees. Then, track it. If there is a pattern in who has “potential,” reassess how you are coming to those conclusions.

3. *Establish expectations and make sure everyone knows them.*

Make it clear from the beginning what the path to promotion looks like and what is expected in terms of self-promotion. Hold evaluators to these criteria, too. If you want more ideas or support visit BiasInterrupters.org to learn more.

IV. The Role of Family Courts and Attorneys

Beyond the legal profession, family law attorneys are poised to play a role in turning around a shameful fact: divorce courts are a key engine of maternal and child poverty in the United States. For decades, scholars have documented that the standard of living typically falls in mothers’ households after divorce,

while the standard of living in fathers' rises.⁵¹ A study looking at British marital splits found that while a mother's income dropped after separation, fathers saw their available income increase by almost one-third.⁵²

This pattern reflects neo-traditional families in which, even if mothers are in the labor force, fathers' careers are favored.⁵³ Far more families move for a man's job than for a woman's.⁵⁴ In middle-class families with women working outside the home, men contribute more than 60% of the family's total earnings.⁵⁵ Most dramatically, 70% of men in the top 1% of households have stay-at-home partners.⁵⁶ While it is true that a higher proportion of women are now earning more than their husbands, on average husbands continue to earn more than their wives do.⁵⁷ Even in families where both parents are employed, mothers do more unpaid work at home than fathers, and are more likely to report challenges in advancing at work due to caregiving responsibilities, work part time, or take career breaks – and it remains extremely difficult to regain momentum in many careers once one has taken a career break.⁵⁸ Despite all the gains in wo-

⁵¹ See generally LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* (1985); Stephen P. Jenkins, *Marital Splits and Income Changes over the Longer Term*, INST. FOR SOC. & ECON. RES., Working Paper No. 2008-07 (2008).

⁵² See generally Jenkins, *supra* note 51.

⁵³ Maria Branden & Karen Haandrikman, *Who Moves to Whom? Gender Differences in the Distance Moved to a Shared Residence*, 35 EUR. J. POPULATION 435, 435-58 (2019).

⁵⁴ Alan Benson, *Rethinking the Two-Body Problem: The Segregation of Women into Geographically Dispersed Occupations*, 51 DEMOGRAPHY 1619, 1619-39 (2014).

⁵⁵ STAFF OF DEMOCRATIC JOINT ECON. COMM., 114TH CONG., *GENDER PAY INEQUALITY CONSEQUENCES FOR WOMEN, FAMILIES, AND THE ECONOMY* (Comm. Print 2016).

⁵⁶ Lila MacLellan, *70% of Top Male Earners in the US Have a Spouse Who Stays Home*, QUARTZ (Apr. 30, 2019), <https://qz.com/work/1607995/most-men-in-the-top-1-of-us-earners-have-a-spouse-who-stays-home/>.

⁵⁷ Eileen Patten, *How American Parents Balance Work and Family Life When Both Work*, PEW RES. CTR. (Nov. 4, 2015), <https://www.pewresearch.org/fact-tank/2015/11/04/how-american-parents-balance-work-and-family-life-when-both-work/>.

⁵⁸ See generally *Are You Hurting Your Future by Taking a Career Break?*, PAY SCALE (Nov. 15, 2016), <https://www.payscale.com/career-news/2016/11/>

men's labor force participation, still only 61% of married mothers with children under age six work full-time.⁵⁹

Breadwinners depend on at-home support, especially in households where men work full-time but women do not, but even in households where both parents work full-time. Many men in high-stakes high-status jobs continue to be supported by a flow of family work from their wives. According to the Pew Research Center, in American households where both parents are working full-time, mothers continue to be more likely to manage the children's schedules and activities.⁶⁰ In a study of married/partnered physician researchers with children, women spent 8.5 more hours per week on domestic tasks than peer men.⁶¹ The same study found that in cases where both partners worked full-time, women were more likely than men to take time off when their usual child care arrangements did not pan out.⁶²

A crucial, often overlooked, fact is that the ideal worker can only perform as an ideal worker because they are being supported by a flow of family work from a spouse. Courts tend to overlook this and treat the ideal-worker's wage as their sole property, using an implicit *he who earns it, owns it* rule. But, if

hurting-future-career-break; Youngjoo Cha, *Reinforcing Separate Spheres: The Effect of Spousal Overwork on Men's and Women's Employment in Dual-Earner Households*, 75 AM. SOC. REV. 303, 303-29 (2010); *Chapter 4: How Mothers and Fathers Spend Their Time*, PEW RESE. CTR. (Mar. 14, 2013), <https://www.pewsocialtrends.org/2013/03/14/chapter-4-how-mothers-and-fathers-spend-their-time/>; Juliana Menasce Horowitz, *Despite Challenges at Home and Work, Most Working Moms and Dads Say Being Employed Is What's Best for Them*, PEW RES. CTR. (Sep. 12, 2019), <https://www.pewresearch.org/fact-tank/2019/09/12/despite-challenges-at-home-and-work-most-working-moms-and-dads-say-being-employed-is-whats-best-for-them/>.

⁵⁹ *A Snapshot of Working Mothers*, NAT'L WOMEN'S L. CTR. (Apr. 2017), <https://nwlc.org/wp-content/uploads/2017/04/A-Snapshot-of-Working-Mothers.pdf>.

⁶⁰ *Raising Kids and Running a Household: How Working Parents Share the Load*, PEW RES. CTR. (Nov. 4, 2015), <https://www.pewsocialtrends.org/2015/11/04/raising-kids-and-running-a-household-how-working-parents-share-the-load/>.

⁶¹ Shruti Jolly, et al., *Gender Differences in Time Spent on Parenting and Domestic Responsibilities by High-Achieving Young Physician Researchers*, 160 ANNALS INTERNAL MED. 344, 353 (2014).

⁶² *Id.*

the ideal worker's wage embeds the work of two adults, it makes no sense to award ownership to only one of them.⁶³

This "joint property" theory has been applied by some family law courts (though typically not by that name).⁶⁴ Williams has served as an expert witness in a number of "executive divorce" cases, including one where the wife was awarded in the neighborhood of half a billion dollars based in part on the joint property theory. In cases involving wealthy families, the joint property theory can inform marital property distribution. In other cases, it could inform alimony awards.⁶⁵

V. Conclusion

Gender and racial bias is not going away overnight, but the practice of ignoring and perpetuating it can. The team at the Center for WorkLife Law collaborated with Monica Biernat, professor of psychology at the University of Kansas, to conduct an experiment examining the impact of the performance evaluations toolkit. All participants completed reviews for hypothetical employees (white and black men and women), but half of the participants were randomly assigned to receive the toolkit and listen to a brief audio recording of the main messages. Preliminary findings suggest that using the toolkit leads to reviewers giving higher ratings, monetary bonuses, and promotion recommendations for both women and black workers. All this from a brief toolkit freely available, along with other resources, at BiasInterrupters.org.

There's plenty left to do when it comes to tackling biases among individuals and within workplaces, but everything outlined above can be used as a roadmap for action today.

⁶³ Joan C. Williams, *Is Coverture Dead? Beyond a New Theory of Alimony*, 82 GEO. L.J. 2227 (1994).

⁶⁴ See generally *Arneault v. Arneault*, 639 S.E. 720 (W. Va. 2006) (splitting marital property 50/50 based on the wife's family work, which allowed the husband to pursue his career full bore).

⁶⁵ See generally *Chen v. Warner*, 695 N.W.2d 758 (Wis. 2005).

