

Addressing Bias and Improving Diversity in the Practice of Law

June 2020

Downey Law Group LLC



Paige Tungate



Michael Downey

Questions:

PTungate@DowneyLawGroup.com

Warning on Scope and Language

- Cannot cover every group or issue in 50 minutes
- Need to use language to discuss issues – do not intend to alienate or offend

Introductory Scenarios

Scenario #1

- A city imposes a curfew to stop looting.
- A group of heavily armed individuals violate the curfew.
- What should the city's proper response be?

Scenario #2

- A 22-year-old woman goes to a party with her sister and becomes severely intoxicated
- A man then sexually assaults the woman while she is unconscious
- What should happen to the man?

Scenario #3

- 2 officers in a squad car responds to report of a “female screaming”
- As they are reporting all clear, a woman approaches the driver’s side, startling them
- Both officers draw guns. The passenger fires one shot, killing the woman
- Both officers say they feared an ambush, and the passenger said he was protecting his partner

- What should happen to the police officer?

Missouri Rules Against Bias, Prejudice and Harassment

Missouri Rule 4-8.4(g)

It is professional misconduct for a lawyer to: . . .

(g) **manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment**, including but not limited to bias, prejudice, or harassment **based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status**. This Rule 4-8.4(g) **does not preclude legitimate advocacy** when race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or other similar factors, are issues. This paragraph **does not limit the ability of a lawyer to accept, decline, or withdraw from a representation** in accordance with Rule 4-1.16.

Missouri Rule 18.01

- All court employees shall perform court duties without manifesting bias or prejudice or engaging in harassment.
- Court employees shall not, in the performance of court duties, by words or conduct, manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status.

Missouri Rule 15.05(a)(2)

[E]ach lawyer shall complete and report, during each reporting year, a total of at least 15 credit hours of accredited programs, seminars, and activities. For each reporting year:

- 1) at least three of the total 15 credit hours must be devoted exclusively to accredited ethics programs . . . ; and
- 2) at least one of the three ethics credit hours required under Rule 15.05(a)(1) must be **devoted exclusively to explicit or implicit bias, diversity, inclusion, or cultural competency.**

Missouri Rule 15.01.10

- Programs, seminars, and activities in the area of explicit or implicit bias, diversity, inclusion, and cultural competency shall focus on issues in the legal profession and in the practice of law.
- Such programs, seminars, and activities shall not include the substantive law of illegal discrimination except to the extent that the topics set forth above are directly and substantially discussed in relationship with such topics.

Explicit Bias and Prejudice



Charlottesville 2017



Implicit Bias

Stereotypes

- Us versus Them mentality
- Can be about a person's race, gender, social economic status, body weight, ethnicity, etc.
- Can be good or bad, justified or unjustified
- Even “lawyer” can be a stereotype that invokes a certain bias

Example – Irish

- Poet
- Drunk and disorderly
- Quarrelsome
- Rarely dabbling in counterfeit money, breaking into houses or swindling
- Women were “reckless breeders”
- “What you always have to remember with the Irish is they get mean. **Virtually every Irish I've known gets mean when he drinks.**” – President Richard Nixon

Implicit Bias

- When we **have attitudes towards people** or **associate stereotypes with them** **without our conscious knowledge**
- Can be positive or negative

British Media Treatment of Meghan Markle and Kate Middleton

Daily Mail Femail News

Not long to go! Pregnant Kate tenderly cradles her baby bump while wrapping up her royal duties ahead of maternity leave - and William confirms she's due 'any minute now'

By Siofra Brennan For Mailonline and Rebecca English Royal Correspondent For The Daily Mail
06:40 EST 21 Mar 2018, updated 03:43 EST 22 Mar 2018



Why can't Meghan Markle keep her hands off her bump? Experts tackle the question that has got the nation talking: Is it pride, vanity, acting - or a new age bonding technique?

By Mail on Sunday Reporter
18:58 EST 26 Jan 2019, updated 11:45 EST 28 Jan 2019



Daily Mail / 2018, Daily Mail / 2019

EXPRESS 6° NEWS SHOWBIZ FOOTBALL COMMENT

News Royal

Kate's morning sickness cure? Prince William gifted with an avocado for pregnant Duchess



News World

Meghan Markle's beloved avocado linked to human rights abuse and drought, millennial shame



...ex is a so-called 'avocado on toast'

Daily Mail MORE STORIES News

4.3k shares

Kate and Wills Inc: Duke and Duchess secretly set up companies to protect their brand - just like the Beckhams

By Rebecca English for the Daily Mail
22:04 17 Jan 2014, updated 23:14 17 Jan 2014



A right royal cash in! How Prince Harry and Meghan Markle trademarked over 100 items from hoodies to socks SIX MONTHS before split with monarchy - with new empire worth up to £400m

By Erica Tempesta For Dailymail.com and Mark Duell for MailOnline
04:05 EST 09 Jan 2020, updated 11:13 EST 09 Jan 2020



Intellectual Property Office

UK00003408516

Owner(s) name
Beechwood The Foundation Of The Duke And Duchess Of Sussex
7 Bury Court London, W12 9JX, United Kingdom
Company registration number
10717678
Company status
Active and up to date
Created on
17 Jan 2014

Daily Mail / 2014, Daily Mail / 2019



TWO RESIDENTS WADE THROUGH CHEST-DEEP WATER AFTER FINDING BREAD AND SODA FROM A LOCAL GROCERY STORE AFTER HURRICANE KATRINA CAME THROUGH THE AREA IN NEW ORLEANS, LOUISIANA. (AFP/GETTY IMAGES/CHRIS RAYTHEN)



A YOUNG MAN WALKS THROUGH CHEST DEEP FLOOD WATER AFTER LOOTING A GROCERY STORE IN NEW ORLEANS ON TUESDAY, AUG 30, 2005. (AP PHOTO/DAVE MARTIN)

HURRICANE KATRINA, 2005

Differing Treatment of Protestors in Michigan



May 1st



Donald J. Trump ✓
@realDonaldTrump



The Governor of Michigan should give a little, and put out the fire. These are very good people, but they are angry. They want their lives back again, safely! See them, talk to them, make a deal.

8:42 AM · 5/1/20 · [Twitter for iPhone](#)

June 1st



Ed O'Keefe ✓
@edokeefe



MORE: Trump tells governors: "You've got to arrest people, you have to track people, you have to put them in jail for 10 years and you'll never see this stuff again," per audio obtained by [@CBSNews](#)

11:31 AM · 6/1/20 · [TweetDeck](#)

Presumption Against Bias

- Sampling of 600 US residents in 2015
- 85% believed they were less biased than average Americans
- 1 person believed he/she was more biased than average

“Bias Blind Spot”

- Easily identify when others are perpetuating stereotypes
- Struggle to recognize the same biases in ourselves

Implicit Association Test (IAT)

- Measures time differences between schema-consistent pairings and schema-inconsistent pairings of concepts represented by words or pictures

Project Implicit at Harvard University

www.implicit.harvard.edu

IAT Categories

- Asian
- Weight
- Gender-Career
- Disability
- Sexuality
- Skin-tone
- Age
- Religion
- Presidents
- Arab-Muslim
- Race
- Gender-Science
- Weapons

Written in Black & White

Exploring Confirmation Bias in Racialized Perceptions of Writing Skills

Lead Researcher
Dr. Arin N. Reeves

“Written in Black & White” (2014)

- Study in the legal profession conducted in 2014
 - 60 law firm partners at 22 firms were given identical memos to review
 - 37 men, 23 women
 - 39 Caucasian and 21 racial/ethnic minorities
 - All memos had the same author “Thomas Meyer,” a third-year associate from NYU Law School
 - 30 partners were told the memo was written by an **African American associate**
 - 30 partners were told the memo was written by a **Caucasian associate**

Memo written by NYU Law School 3rd year students

Scoring of Memo

“Caucasian”

4.1/5.0

“Generally a good writer but needs to work on . . .”

“has potential”

“good analytical skills”

“African American”

3.2/5.0

“needs lots of work”

“can’t believe he went to NYU”

“average at best”

41% more errors found in “African American” associate’s memo

| | “Caucasian” | “African-American” |
|-----------------------------------|-------------|--------------------|
| Spelling or grammar errors (of 7) | 2.9 | 5.8 |
| Technical writing errors (of 6) | 4.1 | 4.9 |
| Errors of fact (of 5) | 3.2 | 3.9 |
| Formatting edits/comments | 11 | 29 |

Distinction by Partner

- No significant correlation between race/ethnicity or gender and patterns above
- Female partners generally found more errors and wrote longer narratives

Suggestions

- Have some associate work blind-graded (and assess how blind grading changes evaluations)
- Implement implicit bias training for all evaluators
- If offering writing assistance, offer to everyone to avoid reinforcing bias

<https://nextions.com/wp-content/uploads/2017/05/written-in-black-and-white-yellow-paper-series.pdf>

Implicit Bias in the Courtroom

UCLA Law Review (2012)

Stages of a criminal trial where implicit bias can have an impact

1. Reporting of crime by witness/victim
2. Charging decision by prosecutor
3. Bail determination by judge
4. Acceptance of plea by defendant
5. Management of trial proceedings by judge
6. Determination of guilt by jury
7. Sentencing of defendant if guilty

Bias in Everyday Work Interactions

1. “Prove it again” – group required to do more to prove competency (In one study, “Jamal” needed 8 more years’ experience to be as qualified as “Greg”)
2. “Tightrope” – narrower range of behaviors accepted
3. “Maternal Wall” – commitment and competence of mothers challenged, or criticized for being career focused
4. “Tug of War” – pitting of one disadvantaged group against another, often based on different strategies for assimilation

Important to recognize when these forms of bias arise and address them accordingly

Reducing Effect of Implicit Bias

- Avoid common pitfalls in evaluations
- Eliminate artificial advantages
- Become self-aware of the implicit bias
- Be motivated to change
- Think about stereotyped groups as individuals

Tools for Reducing Effect of Implicit Bias

- Orchestra auditions
 - Skills-based assessments with no individual information attached
 - Model pioneered by a start-up called GapJumpers
- Commit to total inclusion
 - Including in relationships with co-workers, performance evaluations, and advancement opportunities

Scenarios Revisited

Scenario #1 – Curfew Violators

- Trump and his advisors visiting the “President’s Church” for photo op

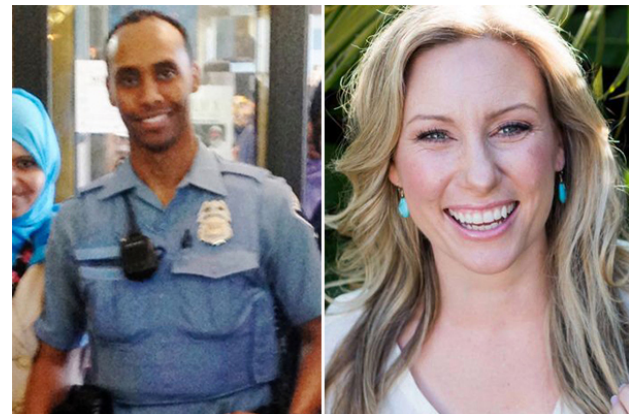


Scenario #2 – Sexual Assault on Unconscious Woman

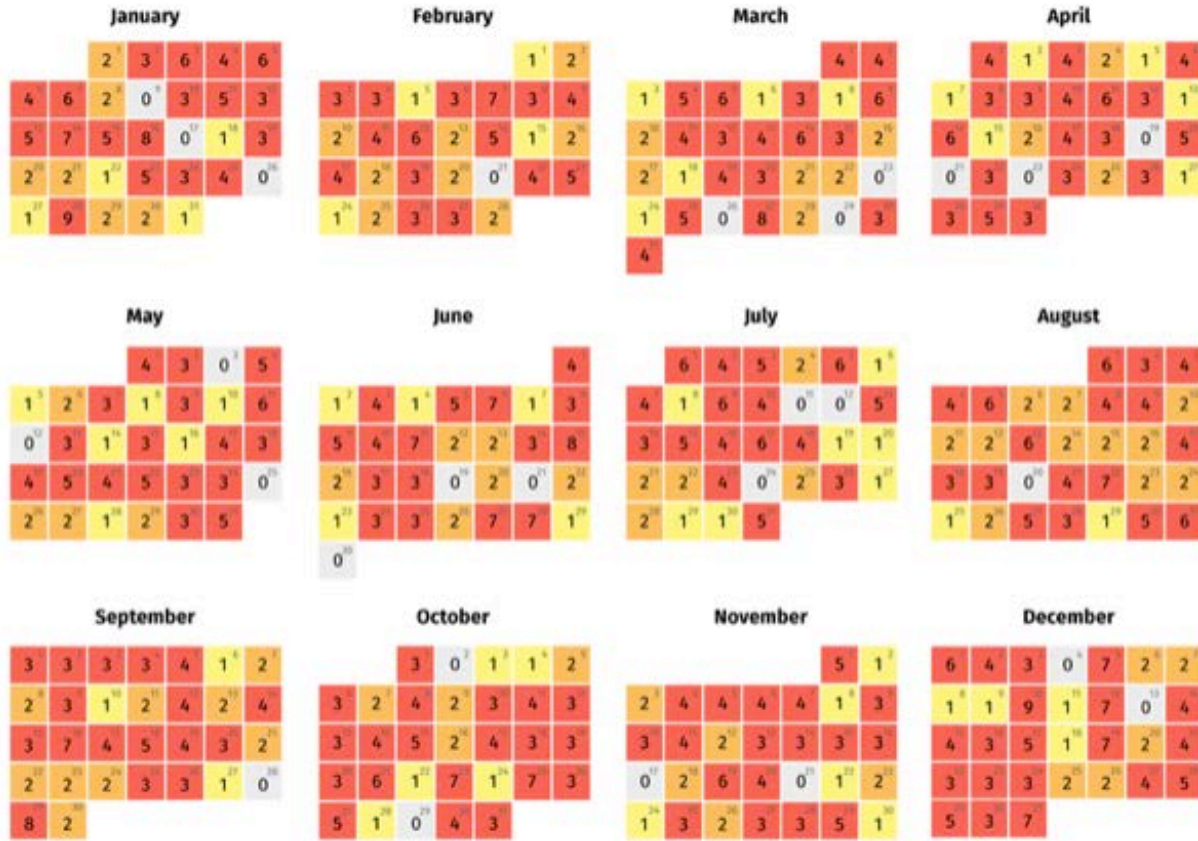
- *State v. Brock Turner*
 - Guilty of 3 felonies including assault with intent to rape and sexually penetrating an unconscious woman with a foreign object
 - 6-month sentence (served 3 months) plus 3 years probation

Scenario #3

- Scenario #3B – Mohamed Noor convicted of shooting Justine Damond in 2017
 - 12.5 year sentence
 - \$20M settlement paid



There were only 27 days in 2019 where police did not kill someone.



0 1 2 3+ killings by US police

Source: MappingPoliceViolence.org Last Updated: March 7, 2020

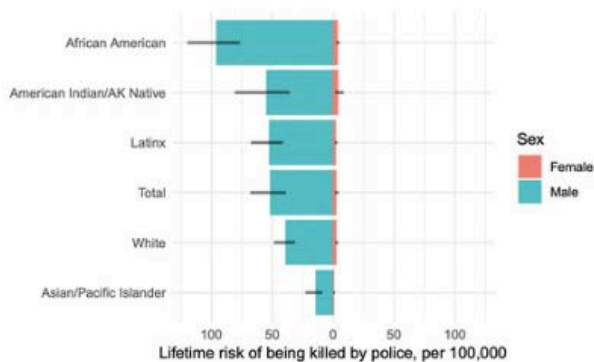
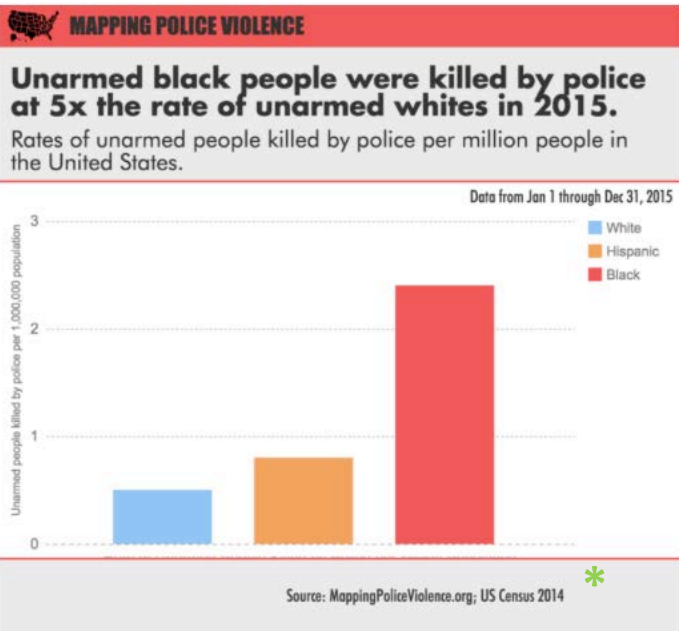


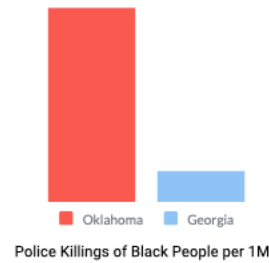
Fig. 1. Lifetime risk of being killed by the police in the United States by sex and race-ethnicity for a synthetic cohort of 100,000 at 2013 to 2018 risk levels. Dashes indicate 90% posterior predictive uncertainty intervals. Life tables were calculated using model-based simulations from 2013 to 2018 Fatal Encounters data and 2017 National Vital Statistics System data.

PNAS

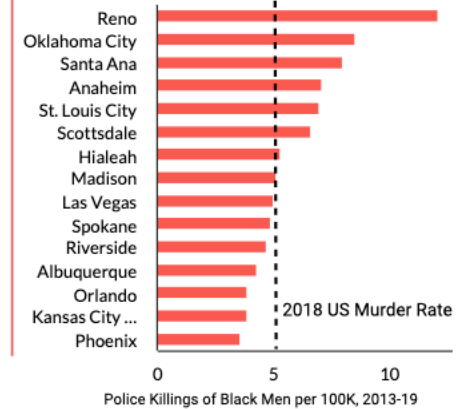


Where you live matters

6x more likely to be killed by police in Oklahoma than Georgia.

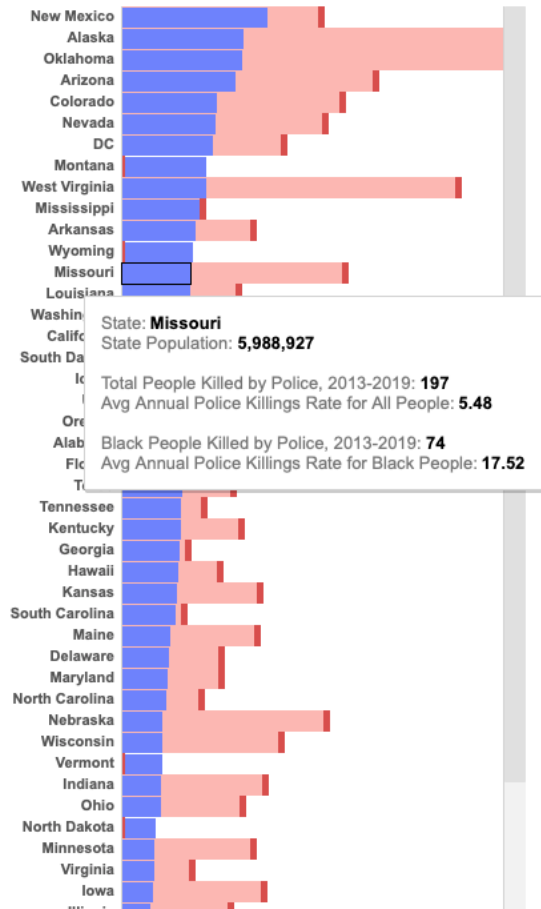


8 of the 100 largest city police departments kill black men at higher rates than the US murder rate.



Rates of Police Killings by State

Data from Jan, 2013 through Dec, 2019
 Rates shown for **All People** and for **Black People**



Police Killings by the St. Louis Metropolitan Police De

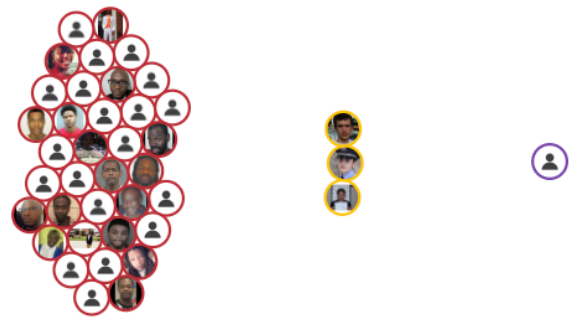
From 2013-2019, the St. Louis Metropolitan Police Department (MO) killed 40 people.

Do you know their names?

Click for more information on an incident.

- All
- By Race**
- By Sex
- By Armed Status
- By Mental Illness
- By Cause of Death
- By Year

- Black**
- White
- Unknown Race



Police Killings by the Kansas City Police Department

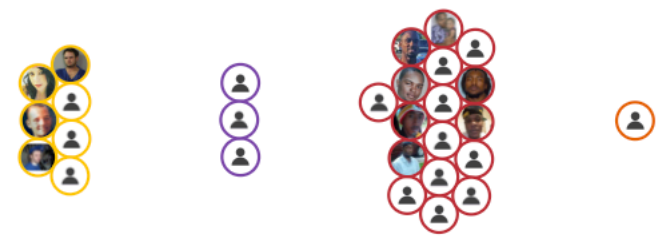
From 2013-2019, the Kansas City Police Department (MO) killed 28 people.

Do you know their names?

Click for more information on an incident.

- All
- By Race**
- By Sex
- By Armed Status
- By Mental Illness
- By Cause of Death
- By Year

- White
- Unknown Race
- Black**
- Pacific Islander



99% of killings by police from 2013-2019 have not resulted in officers being charged with a crime.



■ No Criminal Charges ■ Officer(s) Charged ■ Officer(s) Convicted





Diversity

 PEOPLE

Population

| | |
|-----------------------------------------------------------------------------------------------|-------------|
| i Population estimates, July 1, 2019, (V2019) | 328,239,523 |
| i Population estimates base, April 1, 2010, (V2019) | 308,758,105 |
| i Population, percent change - April 1, 2010 (estimates base) to July 1, 2019, (V2019) | 6.3% |
| i Population, Census, April 1, 2010 | 308,745,538 |

Age and Sex

| | |
|---------------------------------------------|-------------------------------------------------------------------------------------------|
| i Persons under 5 years, percent |  6.1% |
| i Persons under 18 years, percent |  22.4% |
| i Persons 65 years and over, percent |  16.0% |
| i Female persons, percent |  50.8% |

Race and Hispanic Origin

| | |
|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| i White alone, percent |  76.5% |
| i Black or African American alone, percent (a) |  13.4% |
| i American Indian and Alaska Native alone, percent (a) |  1.3% |
| i Asian alone, percent (a) |  5.9% |
| i Native Hawaiian and Other Pacific Islander alone, percent (a) |  0.2% |
| i Two or More Races, percent |  2.7% |
| i Hispanic or Latino, percent (b) |  18.3% |
| i White alone, not Hispanic or Latino, percent |  60.4% |



ABA National Lawyer Population Survey

10-Year Trend in Lawyer Demographics

Year 2018

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Change from 2008 |
|------------------------------------------------------|------|------|------|------|------|------|------|------|------|------|------|------------------|
| Resident Active Attorney Demographics: Gender | | | | | | | | | | | | |
| Gender | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Change from 2008 |
| 10 Male | 68% | 69% | 69% | 67% | 67% | 66% | 64% | 65% | 64% | 65% | 64% | -4.8 pp |
| 11 Female | 32% | 31% | 31% | 33% | 33% | 34% | 36% | 35% | 36% | 35% | 36% | 4.5 pp |
| 12 Other (1) | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | 0% | 0% | 0% | 0.3 pp |
| 4 Count of States Reporting Statistic | 39 | 40 | 41 | 42 | 44 | 43 | 43 | 43 | 45 | 46 | 45 | 6 |
| 13 % of Lawyers with Reported Statistic | 54% | 55% | 57% | 57% | 59% | 59% | 61% | 63% | 66% | 61% | 63% | 9.0 pp |

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Change from 2008 |
|--------------------------------------------------------------|------|------|------|------|------|------|------|------|------|------|------|------------------|
| Resident Active Attorney Demographics: Race/Ethnicity | | | | | | | | | | | | |
| Race/Ethnicity (2) | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Change from 2008 |
| 26 African-American | 4% | 5% | 5% | 5% | 5% | 5% | 5% | 5% | 5% | 5% | 5% | 0.4 pp |
| 27 Asian | 2% | 2% | 2% | 2% | 2% | 2% | 2% | 2% | 3% | 2% | 3% | 1.1 pp |
| 25 Caucasian/White | 89% | 88% | 89% | 88% | 88% | 89% | 88% | 86% | 85% | 85% | 85% | -4.5 pp |
| 30 Hawaiian/Pacific Islander | 1% | 0% | 1% | 0% | 1% | 0% | 0% | 1% | 0% | 0% | 0% | -0.4 pp |
| 29 Hispanic | 3% | 5% | 4% | 4% | 3% | 4% | 4% | 5% | 5% | 5% | 5% | 1.8 pp |
| 31 Multiracial (1) | N/A | N/A | N/A | N/A | N/A | N/A | 0% | 0% | 1% | 2% | 1% | 1.5 pp |
| 28 Native American | 1% | 1% | 1% | 1% | 1% | 1% | 1% | 1% | 0% | 1% | 1% | 0.1 pp |
| 15 Count of States Reporting Statistic | 15 | 16 | 19 | 17 | 16 | 16 | 17 | 18 | 19 | 22 | 20 | 5 |
| 32 % of Lawyers with Reported Statistic | 15% | 19% | 22% | 21% | 21% | 21% | 21% | 25% | 30% | 29% | 28% | 13.1 pp |

* Data Source: American Bar Association's National Lawyer Population Survey

Table 3. Women and Minorities at Law Firms —Partners and Associates —2018

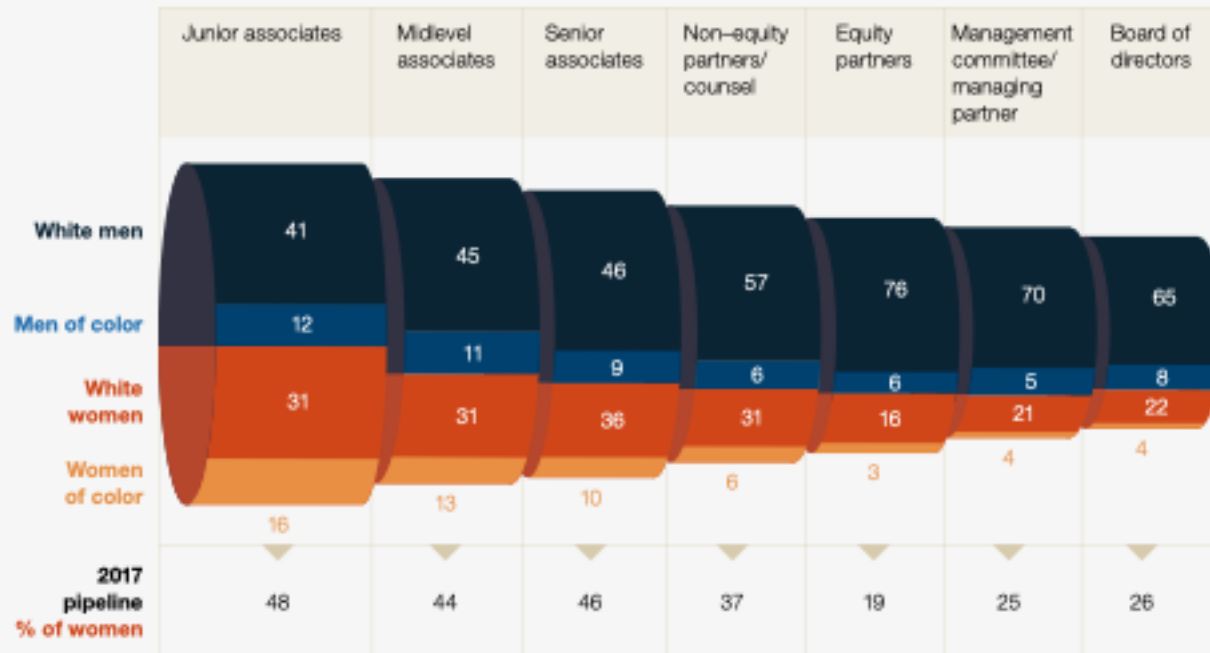
| | Partners | | | | Associates | | | | # of Offices |
|--------------|---------------|--------------|-------------|------------------|---------------|--------------|--------------|------------------|--------------|
| | Total # | % Women | % Minority | % Minority Women | Total # | % Women | % Minority | % Minority Women | |
| Total | 47,625 | 23.36 | 9.13 | 3.19 | 45,807 | 45.91 | 24.22 | 13.52 | 1,009 |

| | | | | | | | | | |
|------------------|-------|-------|-------|------|-------|-------|-------|-------|----|
| Indianapolis | 335 | 24.48 | 2.99 | 1.19 | 162 | 50.62 | 14.20 | 9.26 | 6 |
| Kansas City, MO | 493 | 24.54 | 3.85 | 1.22 | 274 | 47.08 | 13.50 | 7.30 | 7 |
| Los Angeles area | 1,832 | 24.45 | 16.65 | 6.33 | 2,294 | 48.78 | 32.13 | 18.09 | 72 |

| | | | | | | | | | |
|--------------|-----|-------|-------|------|-----|-------|-------|-------|----|
| Seattle area | 831 | 28.76 | 10.11 | 3.85 | 551 | 46.28 | 24.68 | 14.16 | 23 |
| St. Louis | 774 | 24.81 | 5.43 | 1.42 | 394 | 45.69 | 16.75 | 9.39 | 11 |
| Tampa | 145 | 15.86 | 5.52 | 0.69 | 88 | 43.18 | 12.50 | 6.82 | 7 |

| | | | | | | | | | |
|----------------|-------|-------|-------|------|-------|-------|-------|-------|----|
| Washington, DC | 1,558 | 28.58 | 18.11 | 8.88 | 1,917 | 48.84 | 28.17 | 18.18 | 88 |
|----------------|-------|-------|-------|------|-------|-------|-------|-------|----|

Representation in law firms' pipeline by gender and race, % of attorneys by level in 2017¹



Women of color are the most underrepresented group in the pipeline at post-associate levels—behind white men, white women, and men of color.

¹Total % of women and men per level in race and gender pipeline may not sum to overall pipeline totals, as the race pipeline only includes firms that were able to supply race data. Due to rounding, representation by race may sum to 101 within some levels

Exhibit 2 Fewer women than men advance to the first required level of partnership.

For every 100 women promoted to partner, 141 men are promoted

Women Men



| Position | % LGBTQ | % with Disability |
|-------------------------------------|---------|-------------------|
| All Lawyers (at reporting firms) | 2.86 | 0.53 |
| Partner | 2.11 | 0.52 |
| Associate | 3.80 | 0.46 |
| Other Lawyers | 2.86 | N/a |

How Does the Legal Profession Measure Up?

| Profession | Percent African-Americans | Percent Asian | Percent Hispanic or Latino | Total Percent Racially Diverse |
|----------------------|---------------------------|---------------|----------------------------|--------------------------------|
| Physicians/Surgeons | 7.2 | 18.1 | 5.2 | 30.5 |
| Accountants | 9.7 | 12.0 | 6.8 | 28.5 |
| Electrical Engineers | 3.5 | 16.6 | 6.7 | 26.8 |
| Financial Managers | 8.6 | 5.7 | 10.3 | 24.6 |
| Mechanical Engineers | 6.3 | 12.3 | 4.9 | 23.5 |
| Chemists | 4.0 | 9.2 | 9.4 | 22.6 |
| Psychologists | 6.0 | 3.9 | 6.3 | 16.2 |
| Architects | 1.3 | 6.2 | 8.2 | 15.7 |
| Attorneys | 4.4 | 4.3 | 4.0 | 12.7 |
| CEOs | 3.7 | 4.2 | 4.7 | 12.6 |

What Is Diversity

- Race
- Sexuality
- Culture
- Values
- Religion
- Gender

Why Is Diversity Important?

- Diverse perspectives → avoid “groupthink”
 - Different talents, skills, experiences
- Reflect communities being represented
- Increased talent pool
- Inclusivity can lead to better performance by employees

“Walking Out the Door” Study

>50% of law students are women

45% of entering associates are women (for last several decades)

30% of non-equity partners are women

20% of equity partners are women

“Walking Out the Door”

- Overlooked for advancement
- Denied salary increase/bonus
- Denied equal access to business development
- Perceived as less committed to careers

Unintended Gender Impacts

- Conflating long hours with passion and dedication
 - Women handle more childcare and family responsibilities
- Women asked to do more administrative tasks
- Women presumed to be court reporters, staff, non-professionals, etc. (58% women attorneys of color versus 7% white men)
- Women don't get top opportunities – and receive less performance-based feedback
- Women do not self-promote as much as men . . . And do so in different ways

Promotion by Firm

90% of men believed their firms were “active advocates of gender diversity”

62% of women agree

75% of men thought managing partners at firms promoted women into leadership

55% of women agreed

Why Women Report a Drop in Confidence About Work Opportunities

They say they don't match the stereotypical corporate ideal or have supervisor support.

PERCENTAGE THAT AGREE/STRONGLY AGREE:



NOTE GRAPHS SHOW EMPLOYEES' ASPIRATIONS AND CONFIDENCE IN THEIR ABILITY TO REACH TOP MANAGEMENT IN A LARGE COMPANY WITH MORE THAN 1,000 EMPLOYEES; NEW EMPLOYEES ARE THOSE WITH LESS THAN TWO YEARS OF EXPERIENCE; EXPERIENCED EMPLOYEES ARE THOSE WITH MORE THAN TWO YEARS OF EXPERIENCE OR WHO ARE JUNIOR MANAGERS

SOURCE BAIN & COMPANY

FROM "COMPANIES DRAIN WOMEN'S AMBITIONS AFTER ONLY 2 YEARS," BY ORIT GADIESH AND JULIE COFFMAN, MAY 2015 © HBR.ORG

Sponsorship

- Sponsor = Advocate who has power and influence
- Advance protégé's career
 - Opportunities for development and support
 - Sponsor risks reputation for the advancement of the protégé

SPONSORS vs. MENTORS

What's the Difference?

SPONSORS ACT

Sponsors...

- connect protégés to career opportunities.
- advocate for protégé's advancement.
- support risk-taking.
- publicly endorse protégés.
- expect high performance in return.
- help protégés confront and interrupt bias.

MENTORS ADVISE

Mentors...

- reduce isolation and stress.
- navigate unwritten rules.
- build confidence.
- provide tips and strategies.
- promote inclusion to company.

WHY IT MATTERS FOR WOMEN AND FOR BUSINESS

“Women are over-mentored and under-sponsored relative to their male peers (Ibarra, Carter, & Silva, 2010).”



Men are **45% more likely** to have a sponsor than women across industry sectors (CTI, 2015).



BETTER PAY

38% of sponsored women vs. **30%** of unsponsored women will ask for a raise — sponsored women are likely to get it.



IMPROVE ADVANCEMENT

68% of sponsored women vs. **57%** of unsponsored women report satisfactory pace in promotions.



MORE HIGH PROFILE ASSIGNMENTS

44% of sponsored women vs. **36%** of unsponsored women will ask for high-visibility work.



INCREASE RETENTION

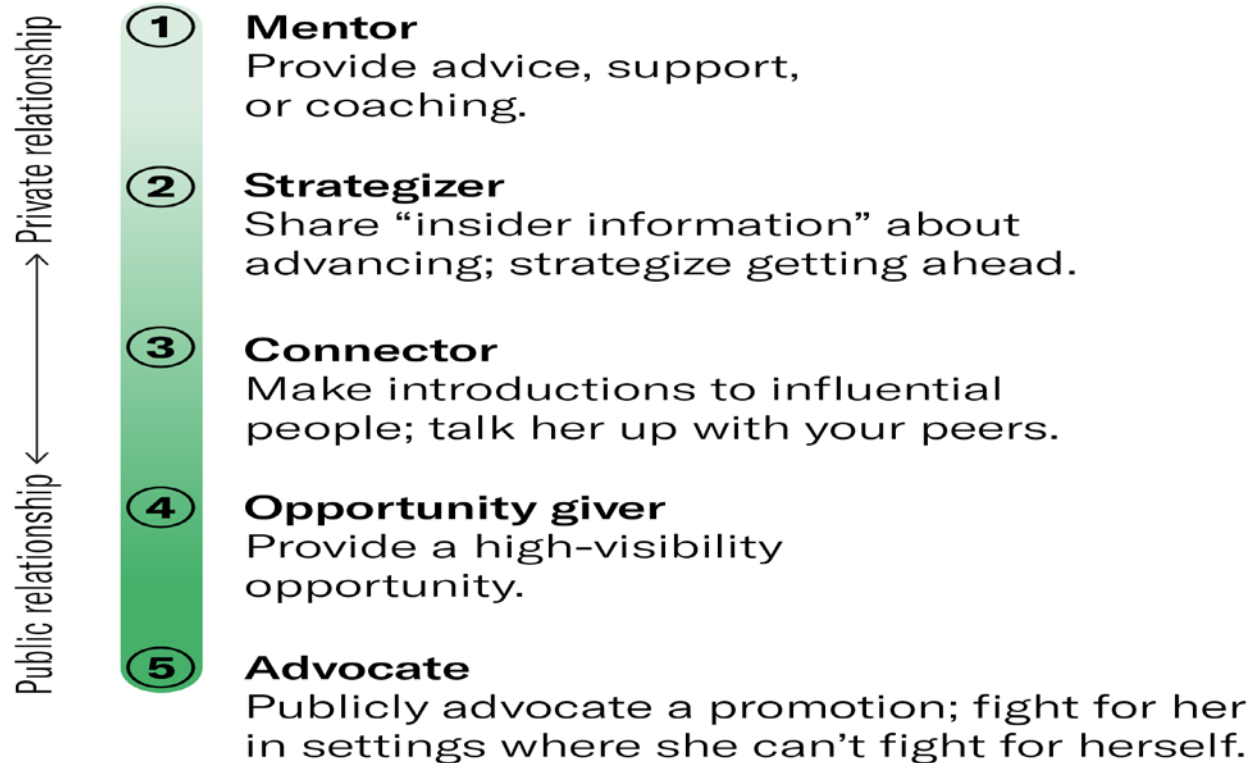
85% of mothers who are sponsored stay employed vs. only **58%** without sponsors.



Mentoring helps traverse the organizational maze but **sponsoring helps to change it.**

A New Way of Thinking About Sponsorship

Sponsorship is not an either/or role—either committing fully or not at all. It’s a spectrum of different kinds and degrees of support.



Source: Herminia Ibarra

 HBR

Call to Action – Sara Lee’s General Counsel: Making Diversity A Priority

BY MCCA | OCT 24, 2004 | SURVEYS



“Intel Rule” – Announced November 2019

Beginning Jan. 1, 2021, Intel will not retain or use outside law firms in the U.S. that are average or below average on diversity. Firms are eligible to do legal work for Intel only if, as of that date and thereafter, they meet two diversity criteria: at least 21% of the firm’s U.S. equity partners are women and at least 10% of the firm’s U.S. equity partners are underrepresented minorities (which, for this purpose, we define as equity partners whose race is other than full white/Caucasian, and partners who have self-identified as LBGTQ+, disabled or as veterans).

Mansfield Rule

- Adopted by 100+ major law firms
- Goal: increase representation of diverse lawyers in leadership
 - Women
 - LGBT+ lawyers
 - Lawyers with disabilities
 - Racial/ethnic minority lawyers

Mansfield Certification:

- Consider at least 50% historically underrepresented lawyers for 70% or more of firm leadership roles

The “Move the Needle” Fund

- Collaborative effort by five founding law firms
 - Eversheds
 - Goodwin (Proctor)
 - Nixon Peabody
 - Orrick
 - Stoel Rives
- Investing more than \$5 million in diversity efforts over five years
- Aggressive, measurable diversity goals
- Public reports of progress

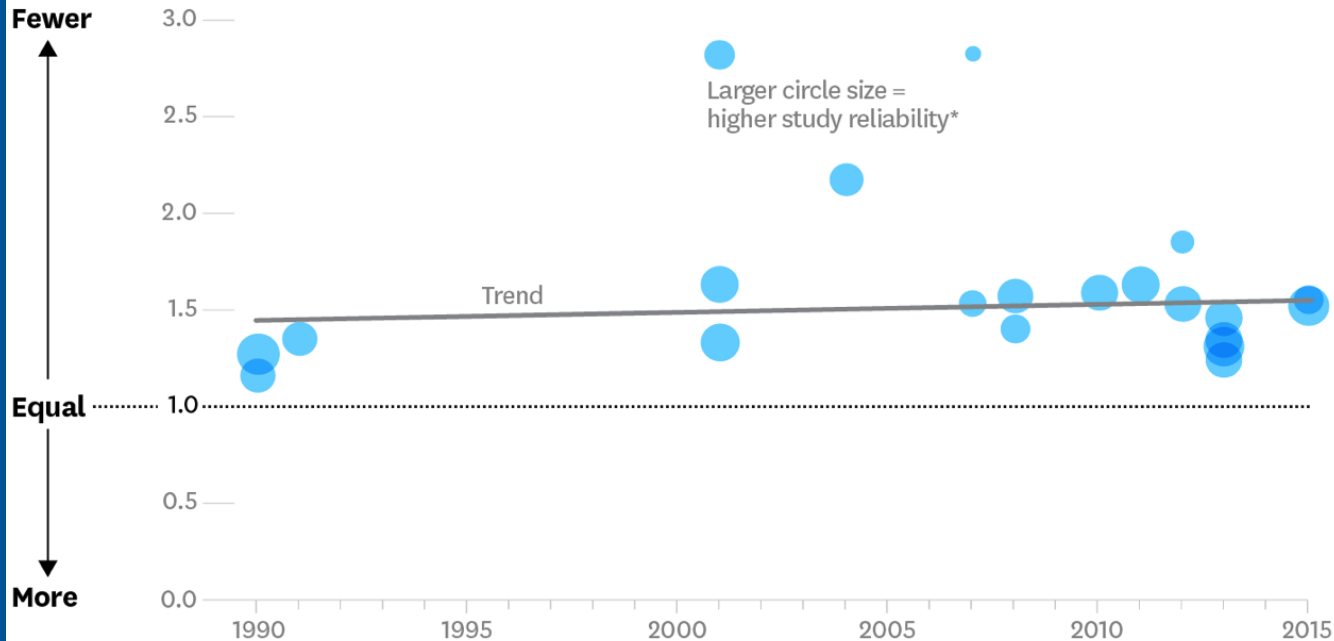
“Treat Everyone Equally”

- 50-50 bathroom space – but women spend 2.3 times longer in bathroom on average
- Bus routes and snow clearance patterns favor men, not women
- Maternity/paternity leave impedes progress and promotions
- Use of Braille
- Everyone must walk same distance
- Use same communications/encouragement for everyone

Black Americans Have Faced the Same Amount of Hiring Discrimination for the Past 25 Years

An analysis of 21 field experiments contrasting white and black Americans, based on 42,708 applications for 20,990 positions.

DISCRIMINATION RATIO: CALLBACKS FOR BLACK APPLICANTS RELATIVE TO WHITE APPLICANTS



*Study reliability indicates the reliability of the study's estimate of discrimination relative to other studies, influenced by the number of applications a study sends out, among other factors.

SOURCE "META-ANALYSIS OF FIELD EXPERIMENTS SHOWS NO CHANGE IN RACIAL DISCRIMINATION IN HIRING OVER TIME," BY LINCOLN QUILLIAN ET AL., PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES, 2017

© HBR.ORG

Poor Returns on the Usual Diversity Programs

The three most popular interventions make firms less diverse, not more, because managers resist strong-arming. For instance, testing job applicants hurts women and minorities—but not because they perform poorly. Hiring managers don’t always test everyone (white men often get a pass) and don’t interpret results consistently.

% CHANGE OVER FIVE YEARS IN REPRESENTATION AMONG MANAGERS

| Type of program | White | | Black | | Hispanic | | Asian | |
|------------------------------|-------|-------|-------|-------|----------|-------|-------|-------|
| | Men | Women | Men | Women | Men | Women | Men | Women |
| Mandatory diversity training | | | | -9.2 | | | -4.5 | -5.4 |
| Job tests | | -3.8 | -10.2 | -9.1 | -6.7 | -8.8 | | -9.3 |
| Grievance systems | | -2.7 | -7.3 | -4.8 | | -4.7 | -11.3 | -4.1 |

NOTE GRAY INDICATES NO STATISTICAL CERTAINTY OF A PROGRAM’S EFFECT.

SOURCE AUTHORS’ STUDY OF 829 MIDSIZE AND LARGE U.S. FIRMS. THE ANALYSIS ISOLATED THE EFFECTS OF DIVERSITY PROGRAMS FROM EVERYTHING ELSE GOING ON IN THE COMPANIES AND IN THE ECONOMY.

FROM “WHY DIVERSITY PROGRAMS FAIL,” BY FRANK DOBBIN AND ALEXANDRA KALEV, JULY–AUGUST 2016

© HBR.ORG

Diversity Programs That Get Results

Companies do a better job of increasing diversity when they forgo the control tactics and frame their efforts more positively. The most effective programs spark engagement, increase contact among different groups, or draw on people's strong desire to look good to others.

% CHANGE OVER FIVE YEARS IN REPRESENTATION AMONG MANAGERS

| Type of program | White | | Black | | Hispanic | | Asian | |
|-----------------------------------|-------|-------|-------|-------|----------|-------|-------|-------|
| | Men | Women | Men | Women | Men | Women | Men | Women |
| Voluntary training | | | +13.3 | | +9.1 | | +9.3 | +12.6 |
| Self-managed teams | -2.8 | +5.6 | +3.4 | +3.9 | | | | +3.6 |
| Cross-training | -1.4 | +3.0 | +2.7 | +3.0 | -3.9 | | +6.5 | +4.1 |
| College recruitment: women* | -2.0 | +10.2 | +7.9 | +8.7 | | +10.0 | +18.3 | +8.6 |
| College recruitment: minorities** | | | +7.7 | +8.9 | | | | |
| Mentoring | | | | +18.0 | +9.1 | +23.7 | +18.0 | +24.0 |
| Diversity task forces | -3.3 | +11.6 | +8.7 | +22.7 | +12.0 | +16.2 | +30.2 | +24.2 |
| Diversity managers | | +7.5 | +17.0 | +11.1 | | +18.2 | +10.9 | +13.6 |

*College recruitment targeting women turns recruiting managers into diversity champions, so it also helps boost the numbers for black and Asian-American men.

**College recruitment targeting minorities often focuses on historically black schools, which lifts the numbers of African-American men and women.

NOTE GRAY INDICATES NO STATISTICAL CERTAINTY OF A PROGRAM'S EFFECT.

SOURCE AUTHORS' STUDY OF 829 MIDSIZE AND LARGE U.S. FIRMS. THE ANALYSIS ISOLATED THE EFFECTS OF DIVERSITY PROGRAMS FROM EVERYTHING ELSE GOING ON IN THE COMPANIES AND IN THE ECONOMY.

FROM "WHY DIVERSITY PROGRAMS FAIL," BY FRANK DOBBIN AND ALEXANDRA KALEV, JULY-AUGUST 2016

© HBR.ORG

Improving Diversity - Organization

1. Set diversity goals and track progress
 - Include lawyers, professional staff, external vendors, businesses and firms that are minority or women owned entities
2. Hire diverse attorneys at the associate level
3. Expand scope of reach for recruiting
4. Invest in diverse attorneys
5. Celebrate differences

Improving Diversity - Individual

1. Be aware of (and honest about) biases
2. Show respect and support – and accept correction
3. Champion and invest in those otherwise excluded from success
4. Leave your silo, lean into spaces of discomfort
5. Socialize with diverse colleagues
6. Challenge assumptions (ask for data)
7. Be an “up-stander” not a “by-stander”

“All Lives Matter”

- “Black Lives Matter” too, not “Only Black Lives Matter”



- More information at <https://www.vox.com/2016/7/11/12136140/black-all-lives-matter>

Additional Resources

- Seek out resources regarding implicit bias/diversity
 - Scientific literature
 - Take an IAT test
- Identify and consciously acknowledge differences
 - Appreciate group differences and multi-cultural viewpoints
 - Make egalitarianism the norm
- Anti-racism resources – <https://bit.ly/2MquiKY>

CLE credits available for this presentation:

Approved for MO Diversity and Implicit Bias Ethics 1.0

SHRM 20-EFD4U

HRCI – 524787

Thank You



Downey Law Group LLC
(314) 961-6644
(844) 961-6644 toll free
info@DowneyLawGroup.com