

Follow ABA



AMERICAN BAR ASSOCIATION

myABA | Log In

JOIN THE ABA

SHOP ABA

CALENDAR

Membership

ABA Groups

Resources for Lawyers

Publishing

CLE

Advocacy

News

About Us

Section of  
**Litigation** Woman Advocate

[Home](#) > [The Woman Advocate](#) > [Articles](#)

## The Courage to Pay Heed: Knowing and Responding to Implicit Bias

By Sarah Redfield – August 28, 2012

In 1988, *Punch* magazine published a cartoon by Rianna Duncan, showing a meeting around a big boardroom table. All of the participants, save one, were men. The chairman of the board (and it is *chairman*) is shown as saying, "That's an excellent suggestion, Miss Triggs. Perhaps one of the men here would like to make it." Many of us laughed when we first read this, and we recognized our own experiences in the humor. On reflection, the cartoon is not really funny, and in many ways, it rings as true in 2012 as it no doubt did in 1988.

The ABA's Commission on Women reports that women are just 31 percent of the legal profession. Women hold 26 percent of federal and state judgeships. In private practice, women represent 19.4 percent of partners, 15 percent of equity partners, and 6 percent of the 200 largest law firm's managing partners. In Fortune 500 companies, women hold 18.8 percent of the general counsel positions; in the Fortune 501–1000, 16 percent. On average, women's weekly salaries are 20 percent to 30 percent lower than their male counterparts', and there is extensive research documenting the so-called motherhood or pregnancy penalty. As Dr. Stephen Benard recently testified before the Equal Employment Opportunity Commission, women with children are perceived as the least competent of applicants, are least likely to be allowed to be late for work without penalty, and are least likely to be recommended for hire or promotion. Even in the ABA, women hold well fewer than half the leadership appointments and positions. Although significant progress has been made in the diversity count as these numbers and other related data show, women and diverse lawyers remain far from parity with our representation in the population. Progress is slow in the diversity count and even slower in terms of meaningful and equal inclusion.

Borrowing the title from Virginia Valian's book on the progress of women in the academy, we need to ask *Why So Slow?* Many of us who pioneered the way as early partners, faculty, and judges thought that as our numbers and visibility increased, our positions and security in the workplace would increase as well in terms of power, pay, and equity. But for many, this has not been the case. Is there a place for us to achieve equal numbers and meaningful and fair inclusion with more speed? Prior work on in-group and out-group dynamics and micro-inequities, coupled with emerging neuroscientific research on implicit bias, offers an answer.

Starting in the mid-1970s, Dr. Mary Rowe, then special assistant to the president and chancellor for women and work (and now MIT ombudsperson and adjunct professor of negotiation and conflict management at the MIT Sloan School of Management), began writing about her observations at MIT concerning the negative impact of "micromessages" and the lack of equitable progress of women and minorities. Micromessages are small messages, typically sent without conscious thought or intent. These messages often would be unidentified at first, even by the recipient, or—once identified—seen as *trivial* or *petty*. We are all familiar with this kind of message—being the only one called by her first name, the one left off a list to receive announcements of new positions, the one not introduced or invited, the one whose time is taken up by "service" and "caring assignments." Dr. Rowe further described how women may well be doubly misused in these situations because many women are socialized to "respond disproportionately swiftly to disapproval." All of this is apt to result in self-doubt at the least, and all apt to reflect a downward spiral or Pygmalion effect—where lower expectations lead to lower results, while micro-affirmations and higher expectations signaled to others lead to higher results for those being affirmed.

Research also shows that these "small" messages have power for insiders and outsiders. For example, when a person with higher status acknowledges someone at a meeting, that acknowledgment influences others to think better of that acknowledged person. All in all, such messages are cumulative, so much so that some researchers have called this pattern of accumulation of positive messages the "Matthew effect" from the biblical quotation "For whomsoever hath, to him shall be given, and he shall have more abundance; but whomsoever hath not, from him shall be taken away even that he hath."

Some 25 years after Dr. Rowe's groundbreaking work and 15 years after the enactment

of Title IX, Dr. Virginia Valian wrote *Why So Slow? The Advancement of Women*. Later she was part of the 2007 Barnard conference, *Women, Work & the Academy: Strategies for Responding to "Post Civil Rights Era" Gender Discrimination*, that observed "women continue to face gender discrimination in this 'post-civil rights era' but that it does not operate through the kinds of overt barriers to participation that mobilized activists in the 1960s; it is embedded in the fabric of everyday interaction." Barnard Center for Research on Women, *Women, Work & the Academy: Strategies for Responding to "Post-Civil Rights Era" Gender Discrimination 2* (2007). Drs. Rowe and Valian wrote about the academy generally, though their comments are apt specifically for the legal academy as well. Today, according to the ABA's statistics on legal education, 31 percent of tenured law school faculty are women; by comparison, 26 percent of law school deans are women, and 72 percent of full-time skills and writing faculty are women.

I can only wish that I'd been reading Mary Rowe and Virginia Valian instead of some of my law school's assignments. It might have saved me from years of not noticing, of thinking my concerns only petty, of not understanding that the Matthew effect was alive and well. Many of us have been in meetings like the one Ms. Duncan illustrated in her 1988 cartoon and have comforted ourselves with the adage that it is a form of flattery if someone copies or takes our idea as his own and runs with it: It's the idea that counted. Others of us have been the leaders of meetings, but when we have taken our places, even the place at the obvious head of the table, we have not been so acknowledged. In fact, there is a research experiment that shows exactly this phenomenon.

Ms. Duncan and Drs. Rowe and Valian were not lawyers, but they captured the experiences of many women working in the legal academy and the legal profession. Reading the work of these foresighted women in 2012, one could easily think it was hot off the press. Putting the work on micromessaging together with the emerging research on implicit bias offers an answer to the question why so slow. Progress is slow because of the now-measurable implicit biases we all hold. Such biases predispose us to those in our in-group and against those in our out-group, and they trigger the kind of micro-iniquities Dr. Rowe first described.

Implicit bias is, as the term suggests, a bias that we hold without our conscious knowledge. Although none of us would now voice the explicitly biased statement "We can't hire/promote Karen because she is a woman," many still hold the implicitly biased view that women are more suited to homerooms than boardrooms. The actions and decisions of those so biased may well be, albeit unwittingly, influenced by that perception. Indeed, the research data show that when encountering someone new, we first identify gender, then identify whether the person is visibly generally like us (e.g., is the person in a wheelchair), then race, culture, or nationality. Think about the new client or contact who speaks to your male associate as if he is in charge.

The research on implicit bias is relatively recent, focused in large part on the work of psychologists with a test called the Implicit Association Test, which can measure our response time to visual cues. The theory of this work is that we respond more quickly to categorizations and combinations with which we are familiar and inherently more comfortable. These responses are likely to differ from our self-reported attitudes and biases. When asked to categorize male and female with career and family, most Americans respond more quickly to women paired with family: Seventy-six percent of people taking the Implicit Association Test on Gender—Career show an implicit bias toward women and families. For 20 percent, the automatic preference for male with career, female with family is slight; 32 percent show a moderate automatic preference this way; and 24 percent show a strong automatic preference this way. Although it is true that, as psychologist Brian Nosek observes, "[p]eople may possess associations with which they actively and honestly disagree," there is increasing research suggesting that our implicit biases correlate with our actions. (Readers can take the test in a variety of categories at the [Harvard website](#).)

We are acting at least in part on our implicit biases when we exercise the human preference for our own in-group, a preference that translates to loyalty to our own group and lesser value for those in the out-group. Some scientific research has shown we have this loyalty even when the group is based on something as small as whether we are wearing tied shoes. The combination of implicit bias, group preferences, and the kind of micromessaging described by Mary Rowe and others is triply damning.

These implicit attitudes and responses occupy a significant space in the workplace. For example, in their aptly titled article *Exploring the Color of Glass: Letters of Recommendation for Female and Male Medical Faculty*, Frances Trix and Carolyn Psenka describe the weaker recommendation letters written for women—shorter, subtly raising doubts, and understating status. The telling research by Marianne Bertrand and Sendhil Mullainathan on résumés circulated with black names (Jamal and Lakisha) as compared with white names (Greg and Emily) now echoes earlier research by Michael Hitt and William Zikmund on male/female names and further evinces the power of quick, albeit thinly based, perceptions. Once an employee is hired, implicit bias and in-group preference continue to play a role: The hiring partner has a stake in the person he or she interviewed and will make allowances for behavior that would not be made for those who are not part of this in-group. The real-life experiences of many women practicing law and the numbers on position and pay all support this understanding of the role of implicit bias. The *Prove It. Prove it Again!, Gender Bias Learning Project* offers further interactive illustration. And for anyone who doubts the power of implicit assumptions, consider the story of Dr. Ben Barres, Ph.D., professor of neurobiology and chair of the Department of Neurobiology at Stanford University School of Medicine. Dr. Barres was born female and changed sex at age 40. He offers this striking story: "Shortly after I changed sex, a faculty member was heard to say 'Ben Barres gave a great seminar today, but then his work is much better than his sister's work.'" Surely, Dr. Barres's brain and academic acumen were the same, but his work (and he) were perceived differently (and more positively) based on his gender.

*Why So Slow?* Implicitly held views—and the accompanying biased assumptions, group dynamics, and micromessaging, which reinforce and augment them—are formidable

reasons. Think about how many places are laden with pictures of former (and current) leaders. Think about the rows of former deans, former bar presidents, former commissioners of one agency or another. All, or almost all, are men. What message flows from walking by those men every day? Think about the message that flows from the dean or senior partner who doesn't acknowledge our Ms. Triggs at a meeting, brushing off her ideas with a quick thank-you and elaborating on others. Think about that same leader who walks down the hall, chatting with David and Michael, but engrossed in other conversation when he walks by Leanne. Think about the message being sent when the leadership sends out a firm-wide email congratulating Harry for a job well done, case well won, article well written, but remains silent when Tess does likewise.

Consider, too, the halo effect. Once you've done something well, you are expected to continue to do well. Went to an Ivy. . . . Won a prestigious award. . . . If the buzz about a certain professor is great, and if that professor is late for class, doesn't get his grades in on time, and misses office hours, it takes a long time for the buzz to change. But if the first impression bandied about is that a professor isn't that good, then any slip is a big slip. These differences aren't the kinds of things that merit complaint. If we were to complain, we would be seen as petty. Oh, Sarah, I was just engrossed in conversation. Oh, Sarah, of course I know you wrote an article too. Oh, Sarah, it's just not a big deal. Or, even worse: Oh, Sarah, you're acting just as we expected, making an emotional mountain out of nothing.

What to do? There is no simple answer, of course. In her writing and in conversation, Dr. Rowe suggests that there is not much that the recipient of micro-inequities can do to spin them around to her advantage. But with mindfulness and some courage, there are some possibilities. I regret not having shown more courage in the past, but I plan to be ever more mindful going forward and invite you to join me. Let us

- have the courage to urge our organizations to bring debiasing training into the workplace;
- take advantage of the research on the value of familiarity and meaningful social contact as means to lessen implicit bias, by doing what we can to encourage more common working opportunities and meaningful social contact among differing groups;
- have the courage to heed the micromessages for what they are. Perhaps it is petty to note that our work isn't counted, that we weren't the ones sent to make the presentation to the European clients, but understand it in context, rather than beginning the self-questioning;
- be mindful, too, of the messages we can observe being sent to others, including those that have become so routine as to be normal—for example, the lovable white male professor who consistently describes his women students by hair color and looks;
- heed implicit bias and micro-inequities around us and, especially if we are in a secure position, provide bystander support for the recipient of a micro-inequity. For example: Mr. Chairman, I think that was Ms. Triggs's idea. Dean, let's include Professor Carolyn Finch in the list of candidates for associate dean;
- be willing to offer microaffirmations when we can.

In his book *Micromessaging: Why Great Leadership Is Beyond Words*, author and consultant Steven Young describes an exercise he does with his clients, "Catch Me If You Can." After his clients receive debiasing training, they readily engage in a "game" to catch out and name micro-inequities. Let's all have the courage to learn and to play the next round.

\* Author's note: This piece is a cumulation of and reflection on my work on these topics over the past two years. I am grateful to the organizers of this issue for offering the courage theme and allowing me the opportunity to find some of that courage and recommit myself to achieving a more equitable workplace. Those interested in further reading might want to consider two recent popular press books, Malcolm Gladwell, *Blink: The Power of Thinking Without Thinking* (2007); Nobel laureate Daniel Kahneman, *Thinking Fast and Slow* (2011), as well as Claude Steele's recent work, *Claude M. Steele, Whistling Vivaldi and Other Clues to How Stereotypes Affect Us* (2010). Consistent with the formatting requirements, footnotes and citations are not included. A full list of citations is available on request to the author.

**Keywords:** woman advocate, litigation, bias, women, courage

[Sarah Redfield](#) is a professor of law at the University of New Hampshire School of Law in Concord, New Hampshire.

---

Copyright © 2014, American Bar Association. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. The views expressed in this article are those of the author(s) and do not necessarily reflect the positions or policies of the American Bar Association, the Section of Litigation, this committee, or the employer(s) of the author(s).

More Information  
 » [Woman Advocate Home](#)  
 » [News & Developments](#)  
 » [Articles](#)  
 » [Words of Wisdom](#)