

**Friday, November 5, 2021  
10:30 AM – 11:45 AM**

**Seminar 17**

**Bias Busters – Changing Our Unconscious Bias Behaviors in the Workplace<sup>1</sup>**

Presented to

**2021 U.S. Law Conference  
San Francisco Marriott Marquis  
San Francisco, CA  
November 3-5, 2021**

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**I. Introduction**

Our awareness of unconscious bias is ever more critical, as we grapple with a growing awareness of inequities for people of color and marginalized groups in our society, and we endeavor professionally and personally to continue to recover from a global pandemic. The pandemic itself has exposed differences in outcomes to the disease and differing economic, physical and mental health effects on groups.<sup>2</sup>

Unconscious bias sets the stage to trap us in a complex system where actions are taken for granted. Some people are given different access and altered opportunities and others are denied access and opportunities based upon individual biases. It is the authors' hope that we will use this paper and time, to reflect on ourselves as individuals, the activities of our employers, and the role we play as principals in our firms and companies. Also, as lawyers we have the ability to advocate for all under our sworn oath to make our communities better. Addressing unconscious bias behaviors benefits us as humans, and strengthens our workplaces and the communities we live in. Learning and taking concrete actions will change biased behaviors and outcomes.

In this paper we will learn about unconscious bias in six steps. We will learn how knowing about unconscious bias will help us have a more stable, motivated and engaged work force making our organizations stronger economically as well as a better workplace. We will define what we mean by the term unconscious bias that some people refer to as "Implicit Bias." We will test ourselves to see how our responses and actions might exhibit unconscious bias behaviors. We will review a growing body of research on the harmful effects of unconscious bias. We will learn techniques from psychologists on how to change our personal and public behaviors. We will look at the human face to the statistics and research. We will find possible words we can use; even the words diverse, or people of color or African American can be misused no matter the good intent.<sup>3</sup> We will find concrete actions to disrupt bias. It is hard, continual, individual work if we want to change the way our culture manifests itself. It is the author's hope that this paper will challenge us to start conversations, to listen with open our minds to different views, to observe different actions, and to notice how others feel and are affected by our biases.

And if this seminar is a start to our disrupting and resetting the system and busting our bias, it will be a very worthwhile use of our time.<sup>4</sup> We know we cannot fix our bias from this seminar (or any program) or get a certificate

to show that we are now not biased. We know this work must be done consciously by all of us over time and on a continuing basis to create the benefits we all desire for our workplace, our country and ourselves.

## II. What Is The Impact On The Workplace?

Unconscious bias can impact our workplace by impairing diversity, undermining recruiting and employee development, and losing out on job applicant referrals.<sup>5</sup> Those that feel like they belong at their place of employment generally perform at a higher level, are more creative and innovative and are more likely to represent our organizations profitably.<sup>6</sup> For many diverse employees they are the “Only” representative of their group and this may lead to pressure to perform and a sense of isolation.<sup>7</sup> It can also create a significantly challenging work experience.<sup>8</sup> On the other hand, studies show that if diverse employees have experienced unfairness they are strongly disinclined to recommend their employer to other potential employees.<sup>9</sup> Also, one-third of people of color would stay at their employer if there was better management who recognized their abilities. Employees are more satisfied with their job when they feel that their company prioritizes gender diversity, compared to 57 percent of employees who do not feel like their company prioritizes gender diversity.<sup>10</sup> High turnover can be evidence of a work system that does not deal with repeated instances of bias.<sup>11</sup> Missing these recommendations can harm our ability to recruit top-notch talent. Millennials expect inclusion, and they will make up 75% of the workforce by 2025.<sup>12</sup>

What often gets the attention of management is the bottom line, and it is proven that disrupting bias improves performance. For example, Google found a flaw in a new video-downloading program that was the result of not considering left-handed users in the design.<sup>13</sup> According to a report by McKinsey, companies with the most ethnically diverse executive teams are 33% more profitable.<sup>14</sup> Also, a Catalyst study found that companies with more women in executive positions have a 34% higher return to shareholders than those that do not.<sup>15</sup> Diverse financial service teams outperform homogenous teams.<sup>16</sup> Other studies show that the financial judgments that professional investors make are influenced by racial and gender attitudes.<sup>17</sup> And the resulting deficit in funding minority teams is being recognized and corporate initiatives are being taken.<sup>18</sup> Companies are not alone in this, as online individual consumers are more likely to buy from white sellers.<sup>19</sup> What is at stake is not just profitability, but people and community recognition and acceptance, creativity and different perspectives.

## III. What Is Unconscious Bias?

In the first seven seconds we meet someone, we make 12 judgments about them, including about their dress, the way they speak, the way they shake our hand, their stare (or lack of eye contact). Malcolm Gladwell describes this as follows: “All of us have implicit biases [to] some degree. This does not necessarily mean we will act in an inappropriate or discriminatory manner, only that our first ‘blink’ sends us certain information. The judgments we make in these crucial first seconds include, if they have high status, are trustworthy, smart, dominant, successful, adventurous, aggressive, religious, extroverted, a competent leader, conscientious, and on their way to a promotion. Acknowledging and understanding this implicit response and its value and role is critical for us to make informed decisions and is particularly critical if our decisions are to embody fairness and justice.”<sup>20</sup>

Biases are automatically triggered by our brain making quick judgments about people and situations based on our background, cultural environment, and our experiences. We naturally assign people to social categories and these can be based on stories, books, movies, media, and culture. Bias is not isolated to a single gender, race, generation, or industry.<sup>21</sup> Having a bias does not make us bad people, it only makes us human.

Shortcuts or shorthand ways of thinking are efficient. We have to make decisions daily about what is safe or not, and an unconscious bias can operate as a “*danger detector*.”<sup>22</sup> We have to filter about 11 million pieces of information that we are exposed to at any one time because our brains can only functionally deal with about 40.<sup>23</sup>

We can only manage bias; unconscious biases are a fact of life. Our brains are hardwired for connection. Some even believe that Maslow’s Hierarchy got it wrong because belongingness is the most important human need. We tend to gather around those who are most like us – where we share identity, destiny, and values. We can widen the gap of inequality with this “similar to me bias”.<sup>24</sup> We naturally prefer to connect with people who look and behave like us. While we realize that those in our group are all different from each other, we tend to look at those in a different group as all the same.<sup>25</sup> We have each created mental categories that we use to quickly sort information. How fast can we scroll through a web site of items on sale? We “cherry pick” information that supports our opinions and views.<sup>26</sup> When we do this, we validate and reinforce our biases, making it that much harder to restructure our thinking to be neutral. We all have reactions which can be negative or positive based on past experiences that become our bias (both conscious and unconscious). **Unconscious bias is far more prevalent than conscious prejudice and often incompatible with one's conscious values.**<sup>27</sup> Certain scenarios can activate unconscious attitudes and beliefs. These incredibly quick judgments and assessments of people and situations impact our decisions and actions without us even realizing it. And in this age of Zoom calls, we are missing many non-verbal

cues in how to relate to others and especially how best to negotiate. Research shows that a typical video call impairs our natural ingrained ability to get the holistic picture of what is being conveyed by non-verbal cues. Are they slightly turned away? Did they inhale quickly before interrupting?<sup>28</sup> We must have intense attention to the words and miss hand gestures and minute facial expressions. Gallery views are a real challenge forcing us to decode many people at once. We cannot read the room while the screen only shows the one person who is speaking. This excess stimuli from being hyper-focused is taxing and can create a sense of being drained and not having accomplished anything.<sup>29</sup> Query whether video calls cause us to rely even more on our unconscious biases.

We take our unconscious biases into the workplace. And these unconscious biases in the workplace can hinder recruiting, hiring, and retention efforts, and unknowingly shape our organizations and the communities they serve. Unconscious bias can affect how we evaluate and promote people despite their talent and performance.

#### IV. How Can We Tell When We Have An Unconscious Bias?

There are tests to help determine a hidden or unconscious bias. One is the Implicit Association Test ("IAT")<sup>30</sup> that is a part of Project Implicit Social Attitudes<sup>31</sup>. Over a million people have taken IAT tests to measure preferences in connection with certain categories: age, weight, sexuality, race, skin tone, disability, religion, Asians, Native Americans, and Arab-Muslims. The results are interpreted based on research from the University of Virginia, Yale University, the University of Washington, and Harvard. The IAT measures the strength of associations between concepts. If I say peanut butter does the word jelly come to mind quickly? In the case of IAT would you link Black people, gay people with evaluations (e.g., good, bad) or with stereotypes (e.g., athletic, clumsy). The IAT score is based on how long it takes a person on average to sort the words. The main idea is that making a response is easier when the adjective is more closely related to the category items.

A person has an implicit preference for thin people relative to heavier people if they are faster to categorize adjectives such as Good with Thin People and Bad with Fat People, relative to the reverse. In fact, based on results taken so far, 75 % of people prefer thin people and only 9% prefer heavier people. The researchers have seen no evidence that your hand dominance influences the scores.<sup>32</sup>

## The Black - White Race Attitude Test



BEAUTY

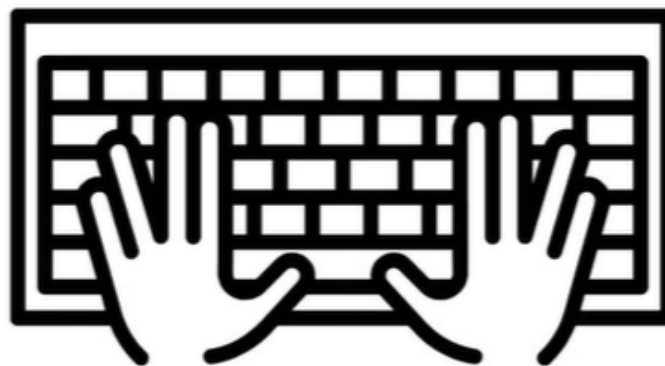
FILTH

HAPPY

SICK

JOY

GREED



There are those that argue the IAT is a weak predictor of behavior, and at least one IAT research team member warns against “leaping to applications that the evidence doesn’t yet support.”<sup>33</sup> Diversity training is full of good intentions and weak evidence and there definitely is a risk that training can make things worse. And there are those that say the best use of IAT tests is to open up a conversation and help people memorialize their priorities.<sup>34</sup> The Litigation Section of the American Bar Association has an Implicit Bias Initiative to present a toolbox to explore ways to “debias” the profession.<sup>35</sup> While, for the most part, real estate lawyers are not concerned with litigation and juries, our contracts require a meeting of the minds and our interactions with clients and other attorneys depend on open communication and fact finding.

## V. What Does The Research Say?

Robert Rosenthal's Research in 1963 was one of the first studies to recognize that how we treat others affects what they think of themselves and their ultimate success.<sup>36</sup> In the first part of the study, three children were picked at random and the teachers were told that those three children (the bloomers) were very smart but not to tell the children. The bloomers performed much better than other students in their class. In fact, the bloomer children were picked at random and not based on higher test scores. The teachers were emphatic they did not do anything different with the bloomer children. In the second part of the study, Rosenthal filmed the class. When the identified bloomer child said something good, the teacher would nod three times. When the bloomer child said something bad, the teacher would encourage the student to try again. The teacher would blame the mistake on a situation such as the bloomer child had not slept well. There are other studies of educational outcomes based on explicit and implicit racial bias that put students at higher risk for negative life outcomes<sup>37</sup>

Another study of how unconscious bias impacts business decisions was the Resume Study.<sup>38</sup> Researchers sent out 13,000 fake resumes for 3,000 job postings using names that were “typically white” or “typically black.” Resumes with “typically white” names received 50% more callback than “typically black” names and average “typically white” named candidates received more callbacks than highly skilled “typically black” named candidates. Whereas the highly skilled candidates received more callbacks than average candidates if the names were “typically white”, but if the names were “typically black” there was no difference in call backs between highly skilled and average candidates. In a 2017 study, those with Chinese, Indian or Pakistani-sounding names were 28% less likely to get invited to an interview than fictitious candidates with English-sounding names, even when their qualifications were the same.<sup>39</sup> Research in gender and racial implicit bias by 251 physics and biology faculty members at eight U.S. research universities also showed differences in how applicants were rated. Where the CV was identical, but the name was manipulated to indicate the applicant’s gender, race and ethnicity, male physics applicants were more highly rated, and the lowest ratings were given to Black and Latina women.<sup>40</sup> Some countries are pushing for resumes to be sorted without names or identifying features to make them “name-blind recruitment” and some large UK companies (HSBC, KPMG and Deloitte) have implemented this. However, one study in Sweden found no increase in the rate at which ethnic minority candidates were hired after the use of anonymous résumés.<sup>41</sup> Another study found that candidates from elite schools received 12 times more call backs than other schools.<sup>42</sup>

Bias in the arts has been studied and shows identifying gender can make a difference in who is selected to be in an orchestra or whose art museums buy. Orchestras have been able to change the way they hire musicians and increase the number of women. As late as 1970, the top five orchestras in the U.S. had fewer than 5% women. It was not until 1980 that any of these top orchestras had 10% female musicians. But by 1997 they were up to 25%, and today some orchestras have 30+%. What is the source of this change? The answer is blind auditions. Symphony orchestra auditions are now typically held behind a curtain so that those making the decisions cannot be influenced by gender, nationality, or appearance. Sometimes women must take off shoes so their heels cannot be heard as they walk across the stage. Now it is 50% more likely that a woman will advance to final auditions.<sup>43</sup> Similarly for art, museums noted that 87% of art in major museum collections is from men. And art from men is sold at much higher prices (on average 40% less than work by male artists and a 90% difference in one example comparing a famous woman and male painter)<sup>44</sup> Oxford University did a study to determine if people could tell if art were made by a man or a woman when shown a variety of paintings picked at random and the experiment subjects could not guess the gender. However, if they guess the painting was by a woman, they like the painting less.<sup>45</sup> The notion that the market never lies is undercut by this study by Oxford and some museums are changing the focus of purchases. One danger, however, is to just purchase art by women whose art has the highest price. What this creates is a tiny number of women becoming the symbol or token.<sup>46</sup>

Like gender, race impacts our perceptions about an individual’s competence and ability. Formal requirements are applied more rigorously to low status groups and more leniently to high status groups. A study of whether there was a bias in the perceptions of writing skills of White and Black law firm associates was conducted by Dr. Arin Reeves involving 60 partners at 22 major law firms. The partners were given a memo with numerous mistakes to review. When the partners thought the author was White the memo scored a 4.1 and one comment was “potential”. When the partners thought the author was Black the memo scored a 3.2 with one comment of “I can’t believe he

went to NYU<sup>47</sup> <sup>48</sup> Lawyers it appears like cognitive closure (clear answers over ambiguity), and this can be distorted by unconscious bias. Lawyers want to be valued for our accuracy and objectivity. Strong feelings and hostile attributions to the parties on the other side can impair objectivity. One study has shown evidence that counter-attitudinal thinking is necessary to improve predictive thinking. <sup>49</sup>

The persistent under-representation of female CEOs across different countries suggests that women face significant gender bias in the hiring and promotion of leaders. A December 2019 study found that CEO positions at S&P 500 companies are held by 29 women.<sup>50</sup> Research from the University of Kent looked for evidence that male and female candidates' leadership potential and leadership performance are evaluated differently. This research may show that there is a bias in the hiring process: assessing men as having leadership *potential* and evaluating women on having *demonstrated leadership performance*.<sup>51</sup>

Bias is not just about race and gender. Is there such a thing as height bias? Only 14.5% of American men are six feet or over, yet almost 60% of corporate CEOs are six feet tall or over.<sup>52</sup> Why does this happen? We do not think we treat taller people any differently than shorter people. There is evidence to suggest that height, particularly in men, does trigger a certain set of very positive, unconscious associations. What is being tall worth? Research shows that when corrected for age and gender, an inch of height is worth approximately \$789 per year in salary. A six-foot person would earn \$5,525 more each year than someone who is 5'5".<sup>53</sup> On the positive side, if we wear glasses, there may be a bias that we are smarter. In fact, a recent research study suggests there may be a genetic association of greater cognitive function with myopia.<sup>54</sup>

It also appears that US corporations may have a bias in favor of extroverts.<sup>55</sup> Describing an introvert as shy, quiet, socially awkward and reserved in fact may be incorrect and misleading.<sup>56</sup> CBRE Executive Vice President and General Counsel Larry Midler oversees approximately 150 lawyers globally and identifies himself as an extrovert, and he noted "that we have been conditioned to assign greater value to extroverted behavior, often confusing this with good performance."<sup>57</sup> One author says we have moved away from valuing character and shifted to valuing personality. She points out that no research shows a correlation between the most talkative person in the room and the one with the best ideas.<sup>58</sup> If introversion is viewed as a pathology rather than a temperament, then it is no wonder that many introverts masquerade as extroverts. If our teams are best when members bring diverse approaches and present themselves authentically, then we should embrace and value differing temperaments. Rather than personality, key leadership skills are thought to be perceived as trustworthy and fair, making tough decisions, and having a grounded and thoughtful demeanor.<sup>59</sup>

Having a foreign accent has also been shown to elicit unconscious bias. University of Chicago psychologists hypothesized that the difficulty in understanding speech that is accented would affect the speaker's credibility that was unrelated to stereotype about foreigners.<sup>60</sup> Native and non-native English speakers recited a trivia statement such as, "A giraffe can go without water longer than a camel can" and the subjects were told was written by the researchers. The subject tended to doubt the statements when recited with an accent. In the second part of the study the subjects were explicitly told the goal was to learn how the difficulty of understanding people's speech might affect the perceived credibility of their statements. The statements were still judged as less truthful when spoken with a heavy accent. However, when there is cognitive disfluency, people are prompted to slow down and think more critically.

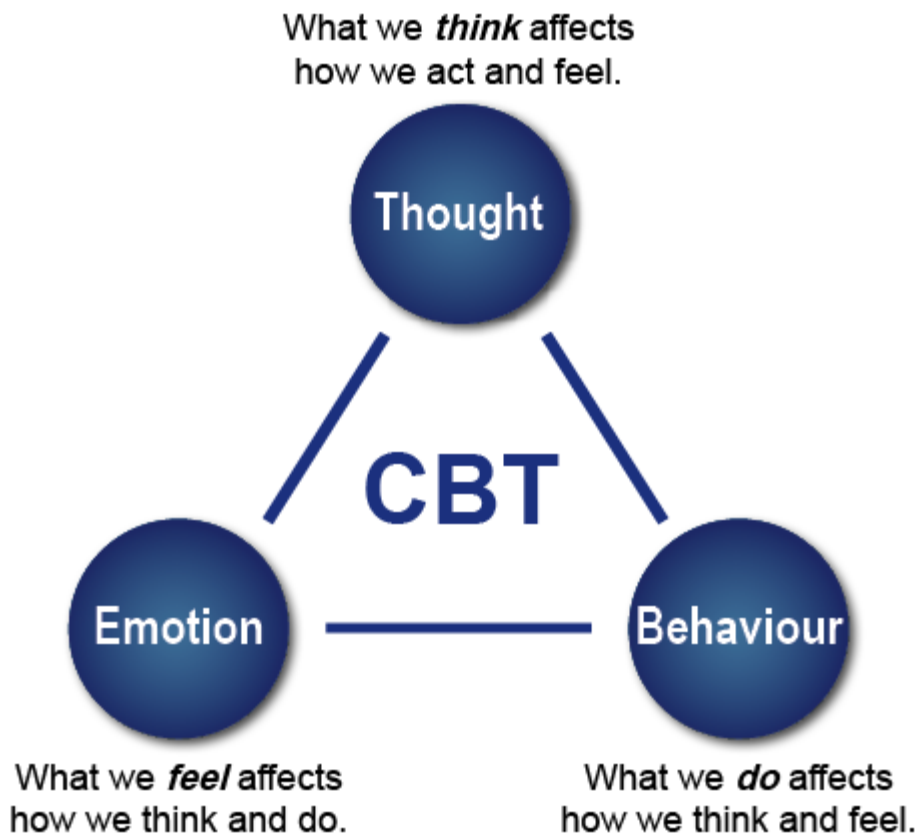
Data measuring anti-Asian bias during the pandemic indicates there has been a steady rise in reports of harassment and assaults against Asians since mid-March 2020, and police data shows that attacks on Asians in 16 of America's largest cities has risen 164% during the first quarter of 2021.<sup>61</sup> Sociologists say people are worried about the transmission of a disease that they associate with foreignness and Asian faces and people cannot change how their faces look.<sup>62</sup> The use of words such as "Kung-Flu" or "China Virus" make the association with an Asian appearance and the negative emotions and fear during the pandemic closer.<sup>63</sup>

It is a tenet for all lawyers that language matters. The word "woke" was originally a Black word to signify Black consciousness and to call for the world to wake up to systemic racism. Merriam-Webster defines woke as being aware to important facts and issues (especially issues of racial and social justice). Now "woke" sometimes is used in a derogatory manner to criticize people who aspire to these values and saying a "woke culture" seeks to revise American history and culture as racist.<sup>64</sup> <sup>65</sup>Likewise the movement Black Lives Matter is disparaged as meaning only Black Lives Matter by saying the phrase should be "All Lives Matter." Founders of the Black Lives Matter say rather it is a statement that if Black people who are marginalized are raised up, then in fact in our society all lives will matter.<sup>66</sup><sup>67</sup>

Takeaway: We do not think that we think anyone is more capable or smarter because of their accent, height, looks, dress, or weight, but research shows that many unknowingly make decisions based on these factors.

VI. How Can We Change Our Behaviors?

We all have behaviors we want to change, from smoking to exercising to being organized. If we think about changing unconscious bias behaviors as a New Year's Resolution, we are doomed to fail. The first thing we need to do is to realize who we are: we are Americans. We believe in liberty, justice and freedom for all. If we agree with that statement, we are able to position ourselves to do the work needed to change behaviors, knowing we are not perfect. If we recognize that each one of us has worth, we can resolve to change our behavior to reflect this. Fortunately, the study of psychology can help us process our resolve. While the psychology that underlies changing behaviors is complex, there are several theories and models and these can help us plan, enact, measure and maintain behavioral changes.<sup>68</sup> Cognitive Behavioral Therapy or CBT is widely accepted and used to change behaviors and actions. This form of therapy focuses on the interrelationship between thoughts, feelings and our behaviors and actions. Identifying a thought can reveal how we will behave, and we can shift how we behave. Conversely changing how we behave will also change our thoughts and feelings. The CBT diagram below shows how automatic thoughts and assumptions directly can change our behaviors and actions.<sup>69</sup>



The key is challenging the thoughts we have. If we dispute and challenge the thought, we can create new consequences. These new consequences will affect new beliefs that we can adopt and implement. Before we heard about unconscious bias<sup>70</sup> we may not have thought about needing to change behaviors, and we would be in the stage some psychologists call precontemplation.<sup>71</sup> If reading this paper or attending this seminar allows us to openly receive the message that unconscious bias creates harmful behaviors, we can begin to actively contemplate the need to change our behaviors. Each one of us will have a different way of being motivated to believe there is a need to make a change. We may not decide to exercise to lose weight to be healthy, but rather we may be motivated to fit into clothes we wore ten years ago. The next step to effecting behavioral change is to be determined and to prepare ourselves - mentally and sometimes physically -to take action and to continue to maintain these actions. To help make changes in our thinking and behaviors, we will look at specific actions, namely what we can say and what we can do in the workplace.

VII. What Could We Say?

In a real-life situation, when we encounter an unconscious bias, there are methods we can consider using when responding. Some of these include the following:

- **Assume Good Intent/Explain Impact**  
“It sounds like you’re trying to give me a compliment, but it feels a little more like an insult.”
- **Ask A Question**  
“I’m surprised to hear you say that about Jennifer. What makes you say that about working with women with young children?”
- **Interrupt and redirect**  
“We have a funding deadline; do we have all the signature pages we need?”
- **Reveal the contradiction**  
“Abby is one of our highest ranked associates. Forbes just named her to 30 Under 30: The Top Young Lawyers.”
- **Support**  
“Reginald, what are we missing? What do you think our best course of action is? Let’s go talk with the client in the next room.”  
  
“I’d like to invite Matt to attend the axe throwing event; I think he would feel left out if all the other guys are going even if you don’t think it’s his kind of thing.”
- **Humor**  
“I know that statement didn’t come from this room.”

#### VIII. What Personal Action Plan Can And Should We Make?

There is need for action plans when 65% of professionals surveyed in one real estate industry study said they had experienced or observed gender bias against women in their commercial real estate workplace in the last five years.<sup>72</sup> According to one report, attrition is not the problem. Women and men are leaving their companies at similar rates and have similar intentions to remain in the workforce. More than half of all employees plan to stay at their companies for five or more years and of those that intend to leave, 81% say they plan to stay in the workforce.<sup>73</sup>

Ninety-six percent of participants in unconscious bias training leave with the intent to change behaviors and reduce bias.<sup>74</sup> To change behaviors and outcomes, specific and realistic goals need to be set, and tactics need to be formulated. Below are some suggestions. For more information, one source on what actions can be taken is Diversity Best Practices.<sup>75</sup>

This is a voluntary process. At one unnamed company White males entered a training with bullseyes taped to their backs.<sup>76</sup> We cannot outlaw bias and in fact studies show a backlash when programs are mandatory.<sup>77</sup> There may, however, be a benefit for firms that do work to improve their performance, especially if they provide legal services to governmental agencies.<sup>78</sup> Experimenting with diversity training and collecting data on the attitudes and behaviors of employees who attend training may make a difference. One study created three versions of the training; one that focused on gender, one that focused on all sorts of biases and a control that did not mention bias.<sup>79</sup> Behavior was measured over the next 20 weeks. After the training, those that prior were least supportive of women based on initial assessment were more likely to acknowledge discrimination against women and express support for policies designed to help women. Those in the gender only training also had positive attitudes toward racial minorities even though their training had no mention of racial bias. Also, senior women nominated more junior women for mentorship after the training and more junior women sought out mentorship. The study found little evidence, however, of a change in behavior of men or White employees overall. Companies do better at diversity when contact among different groups is increased and people are engaged. Small and consistent actions have a huge impact.

## IX. What Are Bias Busters?<sup>80</sup>.

### Start simple.

Take someone outside of our normal circle at the office out to coffee or lunch and start to get to know them.<sup>81</sup> Think about how we can make a positive introduction by presenting some detail about their background, skills and potential contribution. Become an astute observer – watch people. Listen more than we talk and listen with an open mind. Also allow some grace for those who are working to shift their mind set.<sup>82</sup> Don't be quick to judge. Watch our silent messages; body language counts. Small and consistent actions will have a huge impact. We need to “just do it” and not say we are going to try. Businesses do not say they are going to try to make a profit and diversity efforts should not be any different.

### How do we post the job?

Be intentional about the language we use in job descriptions to make sure we are using inclusive language and gender-neutral descriptions. Avoid gender-coded words. Shorter is better. Research has shown that women are less likely to apply for jobs with a very long list of desirable qualities for fear they are not perfectly suited for the role. Professional networks have increasingly become important in securing a job with one article saying 50-80% of jobs are secured by networking.<sup>83</sup> Should our firm only hire from online applicants? Should we be suspect of hiring just from employee referrals.<sup>84</sup>

### How should we handle resumes?

Based on the research, diverse candidates do not get as many call backs without a system in place to sort out name and identity information.<sup>85</sup> Do we make call backs on a random basis for a certain percentage of candidates?

### How do we conduct interviews?

Are our interview questions structured task-based questions to help reduce bias during the hiring process? If initial impressions are written down, then the interviewer can evaluate and assess her own biases and reconfigure her impressions. The interviewer should evaluate each candidate on her own individual merits and suitability to the job. Do not try to compare and contrast different candidates.<sup>86</sup> Also according to one study, if there is only one woman in our candidate pool, there is statistically no chance she'll be hired.<sup>87</sup> This 2016 study found that the candidate recommended to be hired was from the majority group of the pool of candidates. This was true if the majority race was black or white. However, a second study that focused on gender for a job of nurse manager found that if two of the three finalists were men, then a man was recommended to be hired. When at least two women or two minority candidates were in the finalist pool, the chance of being hired increased. If there were at least two women candidates, the chances increased to 79 times more likely a woman would be hired. If there were at least two minority candidates, the chances increased to 193 times more likely a minority candidate would be hired.

From this research, major law firms and corporate legal departments have adopted the “Mansfield Rule” named for Arabella Mansfield, the first American woman admitted into the legal profession in 1869.<sup>88</sup> The Mansfield Rule requires firms and departments to actively consider diverse candidates for at least 30% of open leadership and governance roles. If there are ten applicants, then three of them would be diverse. And there are ways to help identify and encourage diverse applicants. The Shook Scholars Institute at Shook, Hardy & Bacon was designed to bring a diverse group of students into the law firm, provide career development and mentoring and prompting many of them to apply for summer associate positions.<sup>89</sup>

European countries are ahead of the US in this. In 2008 Norway required listed companies to reserve at least 40% of their director seats for women or be dissolved. More than a dozen countries since then have set similar quotas at 30% to 40%. In Belgium, France and Italy, firms that fail to comply can be fined, dissolved, or banned from paying existing directors. Germany, Spain, and the Netherlands have soft quotas, with no sanctions. Britain has guidelines.<sup>90</sup>

In commercial real estate, it is noteworthy that at JLL, 40% of the company's board of director seats are held by women, which is more than twice the average of the Fortune 1,000.<sup>91</sup> It is possible that companies may stop focusing on gender diversity once they have two women board members. A recent analysis found that S&P 1,500 companies are more likely to have just two women on their board of directors than would be expected by chance.

<sup>92</sup>

It is not just about seats on the Board. Only about 1 in 5 C-suite leaders is a woman, and only 1 in 25 is a woman of color.<sup>93</sup> There is a difference of opinion about what it looks like to say women are well represented in leadership.



According to the 2018 report from McKinsey, 45% of men think this is so if 1 in 10 senior leaders in their company is a woman. By comparison, only 28% women think 1 in 10 is being well represented.<sup>94</sup> The 2019 report from McKinsey shows that fewer than half of men and women think the best opportunities go to the most deserving employees and less than a quarter say the most qualified candidates are promoted to manager.<sup>95</sup> Women are less optimistic than men in all these measures. The progress to the top is constrained by a “broken rung” where the first step up to manager is more available to men than women.<sup>96</sup> It is noteworthy that 87 percent of companies are highly committed to gender diversity in the 2019 McKinsey study versus 56% in the 2012 study.<sup>97</sup> If our clients are having this focus, we should expect them to view their legal providers having a similar commitment.

#### How do we handle meetings, sponsorship, mentoring and skills development?

How we conduct meetings can also reinforce or confirm a bias. One study of lawyers found that half of women report being interrupted in meetings at a higher rate than their male peers are.<sup>98</sup> In meetings where there are more men than women, women typically participated about 25% less than their male coworkers.<sup>99</sup> And if a woman participates a lot, she is thought to have dominated the conversation. Tracking airtime in meetings can help with this. Keeping track of those that drown others out and explaining to them in private the importance of getting contributions from the entire group can disrupt this behavior. Calling out when majority-group members take credit for ideas of others will showcase the talents of all team members. Also, when and where meetings are scheduled makes a difference. Scheduling meetings outside of work hours can be a disadvantage to caregivers (both for eldercare as well as childcare). The location of the meeting may also have an impact. It might seem positive to meet at the country or university club, but some attendees may not feel like this is a home turf for them or gives others an artificial advantage in a setting more comfortable to them.<sup>100</sup>

It is not just about having a mentor. Having a more senior mentor is fundamental to career success and can result in more promotions and greater compensation.<sup>101</sup> Studies show that men have benefited more from mentorship than women, but the men’s mentors were more senior. The benefits of mentoring continue past the time of mentorship. Women who have been mentored become mentors themselves.<sup>102</sup> A sponsor vouches for a person’s competency and leadership abilities. A person with a sponsor is motivated to achieve. One study showed that women with sponsors are 27% more likely than their peers who were not sponsored to ask for a raise, and they were 22% more likely to ask for assignments that would build their reputations.<sup>103</sup> If they had a sponsor, they also aspired to be a leader.<sup>104</sup> Mentees want to have a manager that respects and values their opinions and to be asked: “what are your thoughts?” “We’re having this meeting. Can I pull you in on this?”<sup>105</sup> In reality there are not that many sponsors; fewer than one in four employees has a sponsor.<sup>106</sup> Also consider access. Do certain team members have more access to senior attorneys? It may be that some associates feel comfortable coming into our offices. If we notice this trend, seek out the attorneys who are not getting this access.<sup>107</sup>

When assignments are made, make sure administrative and non-credit assignments are shared equally and not given to diverse attorneys who volunteer to show they are team players.<sup>108</sup> Women report doing 20% more “office housework” on average and an expectation to be the “worker bee.”<sup>109</sup> Frequently, repeat high profile or good work is given to a trusted colleague because there is time pressure. Realize that doing this with important assignments can exclude diverse employees and prevent them from showcasing their talents. Take a long-term view and train diverse candidates, allowing them to develop their careers. This may take more time but helps to create a deeper bench and will save time and money in the long run.<sup>110</sup> When difficult assignments are available, consider whether we assume an employee with children will not want to be given them. It is better to ask the employee and give them the opportunity. If they take the assignment, check to see if we start to worry about the children and think less of the employee. If they do not take the assignment, check to see if we think the employee is less committed.

#### How do we handle performance reviews?

When it comes to performance reviews, beware of “prove it again,” “tug of war,” the “maternal wall,” and the “tight rope.”<sup>111</sup> Studies show that different words are used for different types of people. Do we critique on personality traits or work? Do we say a woman is detail oriented and supportive of people in the group and a man is a leader and strategic? Do we say a man is direct and assertive, but a woman is difficult or abrasive? Do we praise an older worker for eagerly adopting new technology? And watch if we are giving criticism based on personality. There are racial stereotypes at play as well. Asian people are categorized as passive and lacking in social skills but also being more intelligent. Black people are stereotyped as angry or too aggressive, and Latino people are labeled as hot headed or emotional.<sup>112</sup> If we make a statement that leaves an impression of judgment on personality, we will influence how other people think of that person unconsciously. Studies have found that when senior managers evaluate the work product of a group of male and female subordinates they automatically assume that the men contributed to a greater degree and took on more of a leadership role than the women.<sup>113</sup> Also when we give repeat assignments to one individual that showcase that person’s talents, that person can be viewed as a superstar and we can create an atmosphere where others in our group are not evaluated evenly. Low status groups who have

not been given these assignments are viewed as not being ready and when they do succeed their success can be attributed to luck. Mistakes by a superstar may be overlooked but mistakes by a low status person are noticed and remembered.<sup>114</sup> If we are in an underrepresented group, consider if we hold others in our group to a higher standard or if we may distance ourselves from our group. Studies have shown that women fault each other for being too feminine or too masculine. People of color may fault each other for being “too white” or not “white” enough.

Parents may fault other parents for taking too much time off or too little.<sup>115</sup> And there is a ‘maternal bias’ that stems from stereotypes. The Journal of Social Issues has reported that given two identical CVs with the one difference being one candidate was identified as a mother versus a father, participants were rated differently. Both mother and father candidates were rated as warmer than childless male and female candidates, but only the mother was rated as less competent.<sup>116</sup> Participants expressed less interest in hiring, promoting and educating the working mother compared to the childless woman.<sup>117</sup> And fathers were held to more lenient standards than men without children.<sup>118</sup> In interviews, powerful employers would socialize more with candidates perceived as warm, but were not more likely to hire them.<sup>119</sup> Further studies have shown that, compared to women with identical resumes except for having children, mothers were: 50% less likely to be promoted; offered less in salary for the same position and held to higher performance and punctuality standards. Bias against mothers stems from assumptions about how a mother should behave, from whether a mother should stay at home or the party giving the assignment benevolently thinking a time-consuming project should not go to the mother.

The best reviews solicit consistent data from all users.<sup>120</sup> Having an “open box” on a review form to fill in how a person thinks they have performed or for the reviewer to fill in how the person has performed invites ambiguity and bias can be exhibited.<sup>121</sup> Research show men get longer and more detailed reviews than women.<sup>122</sup> One study looks at the types of questions male entrepreneurs and women entrepreneurs are asked. Male entrepreneurs were asked promotion-focused questions highlighting upside and potential gains and women entrepreneurs were asked risk focused questions highlighting potential losses and risk mitigation. The study showed the male entrepreneurs raised at least six times more money than the women entrepreneurs who were asked risk-focused questions.<sup>123</sup> Developing a check list of agreed criteria or qualities to look for in assessing performance and whether expectations were met allows for a more balanced review process. Creating a list as a group of qualities that would make a new or existing team member successful such as client focused, identifies risks, identifies opportunities for new or increased work, helps reviewers pinpoint behaviors. Often having prompts such as “describe the way the associate met your expectations” can invite a better response. Asking for specific measurable outcomes helps ensure a fairer review.<sup>124</sup> Even the use of words such as “good” invites subjectivity.<sup>125</sup> There is software to detect language bias.<sup>126</sup> One is the Textio software that can scan thousands of documents for bias. This data can help teams see the actual use of these words and learn to make corrections.

#### How do we communicate about compensation?

Studies show disparity of compensation between women and men in the commercial real estate industry. In a 2018 study, the top two concerns were equal pay and lack of promotion opportunities which results in higher pay.<sup>127</sup> In 2015, the industry median annual compensation was \$115,000 for women and \$150,000 for men – an average income gap of 23.3%. The income gap was widest in the C-Suite at 29.8%.<sup>128</sup> One cause for this has been the notion that women do not ask for raises. A 2016 study showed that women do ask for raises as often as their male counterparts, but they get what they want 25% less often.<sup>129</sup>

Knowing what the compensation levels are may also influence whether diverse employees ask for higher salaries. Sixty-two percent of respondents in the CREW Network 2016 survey believe that if employers were required to share compensation information, pay would be more equitable.<sup>130</sup>

#### How do we make a diverse person feel they are in the “in group”?

Being mindful of our power and privilege is a good start. Consider if we send messages about who is in the “In-Group.” Do we have a wall of pictures of partners or CEOs? What does that say about who belongs.<sup>131</sup> Think about how we can adapt to others, rather than expecting others to adapt their differences to fit in with us. Finding a common interest helps people move from the out-group to the in-group. Being curious about our colleagues and finding ways to connect will help guide us. Also being ourselves and sharing some of our personal self will allow team members to be more open about themselves. Trying not to spend all our social time with the same group will allow us to widen our circle to include people different from us. Widening the trusted circle of go-to people we seek out for advice and perspective will show that we value them. And research shows that as diversity increases, people see social groups as more similar and there are fewer stereotypes.<sup>132</sup> There have been some notable improvements in the IAT scores.<sup>133</sup> And perhaps in this time of extreme polarization it is hopeful to note that the investigators found that this change in perspective also correlated with greater subjective wellbeing.<sup>134</sup>

## IX. Conclusion.

This paper contains a lot of information. Hopefully, it will initiate many conversations about unconscious bias among our colleagues and communities. We likely will find ourselves outside of our comfort zone as we question our own individual unconscious bias. We may reach conclusions and realizations that hopefully will help us improve our respective firms and communities. We recognize this is hard individual and corporate work. We need to remind ourselves that this is not theoretical – there is a human face to these studies and statistics. We live and work in a complex system where some are given different access and opportunities based upon our individual biases. The results of all of our collective unconscious bias can affect lives, limit careers, and create real harm not only in our workplaces, but also across our communities and our nation. This is a collaborative and reciprocal effort. We are truly all in this together. To do this work, we need to accept we all make mistakes, we can yield where we can to others, we can mutually affirm our differences, we can advocate and promote change in ourselves, and we can work to reform policies.<sup>135</sup> If we want to change the way our culture manifests itself, we need to work continually, and hopefully this seminar assists us in improving our workplace and our cultural system.<sup>136</sup>

## Appendix I

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<sup>1</sup> This paper is edited from a paper presented by Jane Snoddy Smith at the State Bar of Texas Advanced Real Estate Law Drafting 32<sup>nd</sup> Annual Program March 18-19, 2021 and the State Bar of Texas Advanced Real Estate Law 42<sup>nd</sup> Annual Program, March 19, 2020 entitled *Do We Need to Rethink the Rodeo? Unconscious Bias and the Commercial Real Estate Law Practice*. It is also updated and revised from papers presented by Jane Snoddy Smith, Founding Partner at JAE Law Group in Austin, Texas, Oscar R. Rivera, Shareholder at Siegfried Rivera in Plantation, Florida and Terri K. Simard, Vice President Law at Target, Minneapolis, MN at the Workshop entitled *Did I Hear That? What Was I Thinking? Unconscious Bias – How to Spot It, Redirect It and Become an Inclusive Leader* on October 15, 2020 at the U.S. Shopping Center Law Conference, and at a Peer-To-Peer session on October 25, 2019 at the 2019 U.S. Shopping Center Law Conference in San Diego, CA, entitled *Do I Think That? Unconscious Bias – How to Spot it and Become an Inclusive Leader*. The authors would also like to thank Collete English Dixon, Executive Director, Marshall Bennett Institute of Real Estate, Roosevelt University and Nina Adil Godiwalla, Director of Diversity & Inclusion, at Norton Rose Fulbright, US LLP for their contributions to our thinking on unconscious bias and their encouragement to engage with audiences on this topic.

<sup>2</sup> The loss of life has been greatest with people older than 65 (8 out of 10 deaths) and the rest of the dead are disproportionately Black people. Khazan, Olga. "A Failure of Empathy Led to 200,000 Deaths. It Has Deep Roots." *The Atlantic* (September 22, 2020). Gill, Julian. "Women report more COVID-related anxiety than men, UH study finds." *Houston Chronicle*. October 5, 2020. Workers who are Black or Latino have borne the greatest impact of job loss, furloughs and salary reductions. Overall, respondents reported that 20.6 percent had lost a

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job, but job loss was 24 percent for Latino residents and 26 percent for Black residents. And when it comes to helping children deal with online schooling, while half of participants reported spending 8 hours a week, Black and Asian/Pacific Islander respondents reported spending 40 hours a week. And from a mental health perspective, 34% of women (compared to 25% of men) felt anxious nearly every day or more than half of each week.

<sup>3</sup>Grady, Constance. "Why the term "BIPOC" is so complicated, explained by linguists." Vox. June 30, 2020.

BIPOC stands for Black, Indigenous, People of Color. In this article, Deandre Miles-Hercules, a PhD student in sociocultural linguistic research on race, gender and sexuality suggests using the wrong words is a form of linguistic violence. Adrienne Dixson, a professor of critical race theory at the University of Illinois Urbana-Champaign said, "People want to be named and recognized, not as part of an amalgam." Loretta Ross, the co-founder of SisterSong Women of Color Reproductive Justice Collective, says the goal is to reshape the narrative and just adding a new label is not the solution in itself. She argues for a broader discussion and for collective action not focusing on this bad cop who killed this Black person. People want to be named and recognized, and any category of people has a risk. Jonathan Rosa, a sociocultural and linguistic anthropologist at Stanford, has said: "It presupposes a kind of solidarity and a shared positionality that doesn't play out in practice for a lot of people, and in fact obscures more than it reveals from some perspectives."

<sup>4</sup> The authors wish to acknowledge their thoughts are influenced and taken from this quote from Scott Woods:

The problem is that white people see racism as conscious hate, when racism is bigger than that. Racism is a complex system of social and political levers and pulleys set up generations ago to continue working on the behalf of whites at other people's expense, whether whites know/like it or not. Racism is an insidious cultural disease. It is so insidious that it doesn't care if you are a white person who likes Black people; it's still going to find a way to infect how you deal with people who don't look like you. Yes, racism looks like hate, but hate is just one manifestation. Privilege is another. Access is another. Ignorance is another. Apathy is another. And so on. So while I agree with people who say no one is born racist, it remains a powerful system that we're immediately born into. It's like being born into air: you take it in as soon as you breathe. It's not a cold that you can get over. There is no anti-racist certification class. It's a set of socioeconomic traps and cultural values that are fired up every time we interact with the world. It is a thing you have to keep scooping out of the boat of your life to keep from drowning in it. I know it's hard work, but it's the price you pay for owning everything.

<sup>5</sup> Berger, Laura. "Unconscious Bias in the Workplace: You Can't Afford to Ignore It." Forbes. March 23, 2018.

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<sup>6</sup> Ross, Howard J. and Tartaglione, Jon Robert. *Our Search for Belonging: How Our Need to Connect is Tearing Us Apart*. Berrett-Koehler Publishers. (2018)

<sup>7</sup> Twenty-five percent of all employees are an Only on some dimension and companies need to be thoughtful about how they put teams together. Individuals report that they feel like they must represent their entire race. They feel excluded ("bit of a boy's club"). "Women in the Workplace 2018" report by McKinsey & Company and LeanIn.Org, 21, 25-27.

<sup>8</sup> Ibid, 12 Senior-level women are 40% of the women Onlys. They have their judgment questioned 51% of the time compared to men Onlys at 20% and are mistaken as someone at a lower level 35% compared to men Onlys at 15%.

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<sup>13</sup> Anderssen, Erin. "How 'Unconscious Bias' Could Stand in the Way of Your Promotion." *The Globe and Mail*, October 30, 2004, updated May 12, 2018. Accessed June 14, 2018.

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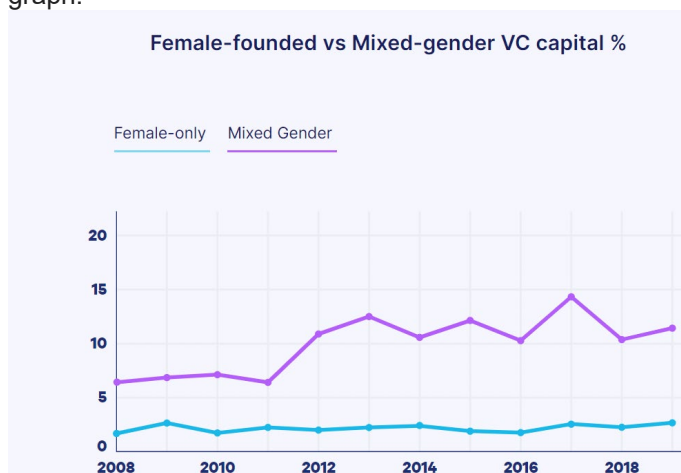
Fiona Macfarlane, a managing partner and the chief inclusiveness officer at Ernst & Young, says tackling unconscious bias isn't just important for landing the best people in a competitive global market. It also recognizes that, in a complex, knowledge-driven economy, there are no longer "solutions to problems, there are perspectives on dilemmas." She cites research showing that diverse teams with people from a variety of backgrounds are the most innovative.

<sup>14</sup> Hunt, Vivian, Sara Prince, Sundiatu Dixon-Fyle, and Lareina Yee. "Delivering Through Diversity." January 2018. Accessed June 14, 2018. [https://www.mckinsey.com/~media/McKinsey/Business Functions/Organization/Our Insights/Delivering through diversity/Delivering-through-diversity\\_full-report.ashx](https://www.mckinsey.com/~media/McKinsey/Business Functions/Organization/Our Insights/Delivering through diversity/Delivering-through-diversity_full-report.ashx).

<sup>15</sup> Ross, *Unconscious Bias*, 14.

<sup>16</sup> National Association of Investment Companies, Examining the returns: The financial returns of diverse private equity firms (2017) <http://naicpe.com/wp-content/uploads/2017/10/2017-performance-report.pdf>. Accessed 28 March 2019.

<sup>17</sup> Less than 1.3% of the \$69.1 trillion global financial assets under management across mutual funds, hedge funds, real estate, and private equity are managed by women and people of color. Although firms owned by women and people of color produce returns equivalent to those of White-male-owned firms, they are underrepresented across every asset class. In a Stanford experiment race influences professional investors' financial judgments. Asset allocators rated venture capital funds based on a summary of the fund's performance history and where the race of the managing partner (White or Black) and strength of the credentials (strong or weak) were manipulated. The White led teams were favored when the credentials were stronger, and these teams were rated more competent where there was the prediction of future performance (money raised) was higher. Asset allocators preferred racially diverse teams at weaker performance levels but did not express a high likelihood of investing in these teams. The authors suggest that this result comes from the asset allocators penalizing the underperforming White-male-led teams. Also, the authors think the asset allocators gave the lower performing Black-male-led teams the benefit of the doubt but without any obligation to invest in these teams. Anecdotally, managers of color report getting early-stage meetings with investors but not being funded. Sarah Lyons-Padilla, Hazel Rose Markus, Ashby Monk, Sid Radhakrishna, Radhika Shah, Norris A. "Daryn" Dodson, Jennifer L. Eberhardt. Proceedings of the National Academy of Sciences August 2019, 116 (35) 17225-17230; DOI: 10.1073/pnas.1822052116. Further, this research shows that groups stereotyped as less competent encounter more barriers the closer they come to obtaining professional opportunities. M. Biernat, K. Fuegen. "Shifting standards and the evaluation of competence: Complexity in gender-based judgment and decision making." J. Soc. Issues 57, 707–724 (2001). This study finds gender stereotypes regarding task competence may lead perceivers to set different standards for diagnosing competence in women versus men. There are lower minimum initial screening standards but higher confirmatory standards for women than men (Biernat & Kobrynowicz, 1997). In two studies simulating hiring decisions, predictions were that women would be (1) more likely than men to make a short list for a job but (2) less likely than men to be hired for the same job. Further studies show older women are viewed not only as not attractive, but also not competent. Ford, Tamasin. "Why do women appear to bear the brunt of ageism at work? BBC News. September 12, 2020. In 2018, only 3% of venture capital in the US went to companies with a female CEO. Hassan, Kamal, Monisha Varadan, and Claudia Zeisberger. "How the VC Pitch Process Is Failing Female Entrepreneurs. Harvard Business Review. January 13, 2020. Companies founded solely by women garnered only 2.3% of the total capital invested in venture-backed startups in the US. And female partners are still a minority at 9%. Most dollars go to male-founded or mixed-gender startups. For every dollar of funding, women-founded startups generated 78 cents where male-founded startups generated only 31 cents. If the company is female founded versus male founded or mixed gender founded, funding levels are not equal and for women led fairly flat as shown on this graph.



"Where Female Founders Are Gaining Ground in Venture Capital." Embroker. January 19, 2021

<sup>18</sup> Apple's Racial Equity and Justice Initiative will provide venture funding for companies led by minority entrepreneurs. Meek, Andy. "Apple just made a huge announcement that no one saw coming. BGR, January 13, 2021. PREA (pension real estate association) recently formed a foundation to further the interests and values



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of the institutional real estate investment community by advancing industry-wide diversity and inclusion and the donors are top investors, investment managers and a few law firms

<sup>19</sup> Edelman, Benjamin, Michael Luca, and Dan Svirsky. 2017. "Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment." *American Economic Journal: Applied Economics*, 9 (2): 1-22. In an experiment on Airbnb, applications from guests with distinctively African American names are 16 percent less likely to be accepted relative to identical guests with distinctively White names. Also, when a seller's race is evident in an online classified ad for an iPod nano, Black sellers receive fewer offers and less money than White sellers. Bergeron, Louis. "Online shoppers more likely to buy from White seller than Black, Stanford researchers say." Stanford Report, July 19, 2010.

<sup>20</sup> Gladwell, Malcolm. *Blink: The Power of Thinking without Thinking*. New York: Back Bay, 2005.

<sup>21</sup> Bosch, Rachael. "Walking The Talk Of Unconscious Bias Training." *Forbes*. December 26, 2019. Accessed January 22, 2020.

<sup>22</sup> Ross, Tartaglione, *Our Search for Belonging*, 107.

<sup>23</sup> *Ibid*, 16.

<sup>24</sup> Gassam, Janice. "Your Unconscious Bias Trainings Keep Failing Because You're Not Addressing Systemic Bias." *Forbes*. December 29, 2019 Accessed January 22, 2020.

<sup>25</sup> *Ibid*, 32.

<sup>26</sup> Ross, *Unconscious Bias*, 1.

<sup>27</sup> *Ibid*.

<sup>28</sup> Sklar, Julia. "Zoom fatigue is taxing the brain. Here's why that happens." *National Geographic*. April 24, 2020.

<sup>29</sup> *Ibid*.

<sup>30</sup> "Project Implicit." Select a Test. Accessed May 22, 2020. <https://implicit.harvard.edu/implicit>.

<sup>31</sup> Project Implicit is a non-profit organization and international collaboration between researchers who are interested in implicit social cognition - thoughts and feelings outside of conscious awareness and control. The goal of the organization is to educate the public about hidden biases and to provide a "virtual laboratory" for collecting data on the Internet. Project Implicit was founded in 1998 by three scientists – Tony Greenwald (University of Washington), Mahzarin Banaji (Harvard University), and Brian Nosek (University of Virginia). Project Implicit Mental Health launched in 2011, led by Bethany Teachman (University of Virginia) and Matt Nock (Harvard University). Project Implicit also provides consulting services, lectures, and workshops on implicit bias, diversity and inclusion, leadership, applying science to practice, and innovation. If you are interested in finding out more about these services, visit <https://www.projectimplicit.net>.

<sup>32</sup> <https://www.youtube.com/watch?v=hr9xAcWv790>. Accessed May 23, 2020.

<sup>33</sup> Devlin, Hannah. "Unconscious bias: what it is and can it be eliminated?" *The Guardian*. December 2, 2018. Professor Brian Nosek of the University of Virginia, who was part of the team that developed the IAT said that the mind isn't that stable that there can be a high consistency but estimates that about 4% of the variation in someone's behavior might be accounted for by an IAT score – a big enough margin to make a difference over thousands of hiring decisions, for examples.

<sup>34</sup> *Ibid*. One Canadian study by Jacquie Vorauer, looked at the impact on interactions between White and Aboriginal Canadians. Before meeting the White participants took an IAT focused on attitudes towards Aboriginal people and the control group took a non-race IAT. The Aboriginal participants reported feeling less valued by the White participants hinting that alerting people to their supposed biases could make them unusually cautious or inhibited.

<sup>35</sup> <http://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/> Accessed May 22, 2020. The medical profession is also adopting new implicit bias standards as evidence by the recently passed California Senate Bill 464 (approved by Governor Newsom on October 7, 2019 and Chapter 533, Statutes of 2019).

<sup>36</sup> Rosenthal, Robert, and Lenore Jacobson. "Teachers Expectancies: Determinants of Pupils IQ Gains." *Psychological Reports* 19, no. 1 (1966): 115-18.

<sup>37</sup> Studies have looked at the disparity in school discipline for Black and White students, with Black students having much higher rates of disciplinary actions than their White student counterparts. One study attempted to use the Project Implicit data on a county level to look at both implicit bias and explicit bias finding that county-level estimates of explicit and implicit racial bias was associated with racial disciplinary disparities (the role of implicit bias was less pronounced). Riddle, Travis, Stacey Sinclair. "Racial disparities in school-based disciplinary actions are associated with county-level rates of racial bias." *Proceedings of the National Academy of Sciences* Apr 2019, 116 (17) 8255-8260; DOI: 10.1073/pnas.1808307116.

<sup>38</sup> Bertrand, Marianne, and Sendhil Mullainathan. "Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination." *The American Economic Review* 94, no. 4 (2004): 991-1013. <http://www.jstor.org/stable/3592802>.

<sup>39</sup> Thomson, Stéphanie. "Here's Why You Didn't Get That Job: Your Name." World Economic Forum. May 23, 2017. Accessed June 14, 2018. <https://www.weforum.org/agenda/2017/05/job-applications-resume-cv-name-discrimination/>.

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The article cites researchers at Ryerson University and the University of Toronto who sent out 13,000 fake resumes for 3,000 job postings.

<sup>40</sup> Eaton, A.A., Saunders, J.F., Jacobson, R.K. *et al.* "How Gender and Race Stereotypes Impact the Advancement of Scholars in STEM: Professors' Biased Evaluations of Physics and Biology Post-Doctoral Candidates." *Sex Roles* **82**, 127–141 (2020). <https://doi.org/10.1007/s11199-019-01052-w> as reported by Langin, Katie. "Racial and gender biases plague postdoc hiring." *Science*. June 3, 2019. This study replicates a study by Corinne A. Moss-Racusin, John F. Dovidio, Victoria L. Brescoll, Mark J. Graham, Jo Handelsman. "Faculty's subtle gender biases favor male students."

Proceedings of the National Academy of Sciences Oct 2012, 109 (41) 16474-16479; DOI: 10.1073/pnas.1211286109, that found biology, chemistry, and physics faculty members who reviewed applications for a lab manager position favored applicants named John over otherwise identical applicants named Jennifer.

<sup>41</sup> *Ibid.*

<sup>42</sup> Williams, Joan C., and Sky Mihaylo. "How the Best Bosses Interrupt Bias on Their Teams." *Diversity*. November-December 2019 issue.

<sup>43</sup> Rice, Curt. "How Blind Auditions Help Orchestras to Eliminate Gender Bias." *The Guardian*. October 14, 2013. Accessed June 14, 2018. <https://www.theguardian.com/women-in-leadership/2013/oct/14/blind-auditions-orchestras-gender-bias>.

<sup>44</sup> "Can You Name Five Fine Artists That Are Women?? *Planet Money*. NPR broadcast transcript. January 21, 2020. Highest sale of Jackson Pollock compared to highest sale of Joan Mitchell.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.* This tokenism is reflected in the numbers. Two percent of art at the Baltimore Museum of Art is by women but 40% of that two percent is by five women.

<sup>47</sup> Reeves, Arin N. *Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills*. Nextions, April 4, 2014. Accessed June 14, 2018. <http://nextions.com/wp-content/uploads/2017/05/written-in-black-and-white-yellow-paper-series.pdf>.

<sup>48</sup> In *Dismantling Racism: A Workbook for Social Change Groups* (2001), Dr. Tema Okun and the late Kenneth Jones wrote that perfectionism was a characteristic of white culture.

<sup>49</sup> Stark, James H., and Maxim Milyavsky. "Towards a Better Understanding of Lawyers' Judgmental Biases in Client Representation: The Role of Need for Cognitive Closure." *Journal of Law & Policy*. Vol. 59:173 (2019).

<sup>50</sup> Catalyst, *Women CEOs of the S&P 500* (May 1, 2020). Accessed May 22, 2020: <http://www.https://www.catalyst.org/research/women-ceos-of-the-sp-500/>.

<sup>51</sup> Player, Abigail, Georgian Randlsey de Moura, Ana C. Leite, Dominic Abrams and Fatima Tresh. "Overlooked Leadership Potential: The Preference for Leadership Potential in Job Candidates Who are Men vs Women." *Frontiers in Psychology*, April 16, 2019.

<sup>52</sup> Ross, *Unconscious Bias*, 14.

The average American man is 5'9" and only 3.9% of U.S. men are 6'2" or taller.

<sup>53</sup> *Ibid.*

<sup>54</sup> Dodgson, Lindsay. "Wearing Glasses Could Really Mean You're Smarter, According to a New Study." *Business Insider*. May 31, 2018. Accessed June 14, 2018. <http://www.businessinsider.com/wearing-glasses-may-mean-youre-smarter-2018-5>.

References Gail Davies et al. research published in *Nature Communications*: "Study of 300,486 individuals identifies 148 independent genetic loci influencing general cognitive function."

<sup>55</sup> Raza, Syeda and Cara Patton Liu, "Bringing Your Whole Self to Work, Unapologetically – Temperaments and the Role of a Leader." *Association of Corporate Counsel* 36 No. 6 ACC Docket 42, July/August, 2018. The definition of an extrovert is someone who gains energy from socializing and needs outside stimulation to feel content. An introvert loses energy in social interactions and highly stimulating environments and requires time alone to recharge. Some report that one-third to one half of the population is introverted and being equally divided women and men. In an interview of ten general counsel and other leaders, respondents said "absolutely, there was a strong bias in favor of extroverts."

<sup>56</sup> *Ibid.* Shyness and introversion are separate aspects of a personality with introversion being a preference for solitude or intimate settings and shyness being an anxiety or discomfort in social situations.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.* Cain, Susan. *Quiet: The Power of Introverts in a World That Can't Stop Talking*. January 29, 2013.

<sup>59</sup> *Ibid.*

<sup>60</sup> McGlone, Matthew S., and Barbara Breckinridge. "Why the Brain Doubts a Foreign Accent." *Scientific American*, September 21, 2010. Accessed June 14, 2018. <https://www.scientificamerican.com/article/the-brain-doubts-accent/>.

<sup>61</sup> Farivar, Masood. "Attacks on Asian Americans Spiked by 164% in First Quarter of 2021." April 30, 2021. *VOA News* Accessed June 20, 2021. <https://www.voanews.com/usa/attacks-asian-americans-spiked-164-first-quarter-2021> According to Russell Jeung, chair of the Asian American studies department at San Francisco State

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University as reported in “Asian American Health Workers Are Fighting Racism.” *The Washington Post*, May 19, 2020. The FBI has warned of a potential surge in hate crimes against Asians. Prof. Jeung has recorded more than 1,800 reports since March 19<sup>th</sup> on its website set up in partnership with civil rights groups.

<sup>62</sup> Ibid. Grace Kao, Yale University sociologist.

<sup>63</sup> Ibid.

<sup>64</sup> January 7, 2021 Twitter comment by Josh Hawley: “My statement on the woke mob @simonschuster. Burnett III, Zaron. “How the word “woke” became an anti-Black dog whistle.” MEL Magazine. January 11, 2021.

<sup>65</sup> Rose, Stev. “How the word ‘woke’ was weaponized by the right.” *The Guardian US Edition*, January 21, 2020.

<sup>66</sup> Kendi, Ibram X., Director for Center for Antiracist Research at Boston University. Frank Leo Roberts, NYU professor states that Black Lives Matter is a human movement that intersects with all marginalized people to build a new system that remembers the struggle and affirms these groups. “5 Ways of Understanding Black Lives Matter (YouTube) August 2, 2016. <https://www.youtube.com/watch?v=D7ERPOddqZw>.

<sup>67</sup> Beverly Tatum Daniel, psychologist, former president of Spelman College and author, says having a racist friend doesn’t keep us from engaging in discriminatory behavior. She states saying we are all one human race doesn’t mean socially we behave as if we are one race. She also explains no matter how well intentioned we are when saying we are color blind, it may imply we are not sensitive to how others experience the world. Rogers, N. Kristen. “How to be Anti-Racist: Speak Out in Your Own Circles.” *CNN*, June, 4, 2020

<sup>68</sup> Jarreau, Paige Brown. “10 Science-backed Tips to Making a Health Behavior Change that Sticks.” April 11, 2018. Accessed January 18, 2021. <https://medium.com/lifeomic/10-science-backed-tips-to-making-a-health-behavior-change-that-sticks-8655c3bbde50>.

<sup>69</sup> There are many triangular diagrams to display CBT. This image is from Pacific CBT in San Francisco, California, [pacificcognitivebehavioraltherapy.com](http://pacificcognitivebehavioraltherapy.com).

<sup>70</sup> The first time many people heard about unconscious bias was when Hilary Clinton raised it during the first presidential debate of 2016 at Hofstra University in Hempstead, N.Y. : “I think implicit bias is a problem for everyone, not just police.”

<sup>71</sup> Lickerman, Alex. “5 Steps to Changing Any Behavior.” *Psychology Today*, October 12, 2009. Accessed January 18, 2021.

<sup>72</sup> Alexander-Johnson, Tamara; Pulis, Isabelle Co-Chairs. Closing Network White Paper: “Closing the Gap: Addressing Gender Bias and Other Barriers for Women in Commercial Real Estate.” 2016. Accessed June 14, 2018. <https://crewnetwork.org/getmedia/60d6fafd-e715-457e-bae1-8a69a261715b/crew-network-white-paper-closing-the-gap-addressing-gender-bias-and-other-barriers-for-women-in-commercial-real-estate.pdf.aspx>.

<sup>73</sup> “Women in the Workplace 2018” report by McKinsey & Company and LeanIn.Org, 6-7.

<sup>74</sup> Emerson, Joelle. “Don’t Give Up on Unconscious Bias Training – Make It Better.” *Harvard Business Review*, April 28, 2017.

<sup>75</sup> Div.BestPractices@DBP\_News. Twitter account. Accessed June 14, 2018.

<sup>76</sup> Zelevansky, Nora. “The Big Business of Unconscious Bias.” *The New York Times*, November 20, 2019. Accessed January 22, 2020.

<sup>77</sup> Dobbin, Frank, and Alexandra Kalev. “Why Diversity Programs Fail.” *Harvard Business Review*, July-August, 2016. This study found that the positive effects of diversity training rarely last beyond a day or two.

<sup>78</sup> Stewart, Mariah. “Special Report: Law Schools. “The Government Plans to Audit Law Firms for Diversity, and Universities Can Help Them Improve.” *Insight into Diversity*. July/August 2019.

<sup>79</sup> Chang, Edward H., Katherine L. Milkman, Laura J. Zarrow, Kasandra Brabaw, Dena M. Gromet, Reg Rebele, Cade Massey, Angela L. Duckworth, and Adam Grant. “Does Diversity Training Work the Way It’s Supposed To?” *Harvard Business Review*. Accessed HBR.Org, January 22, 2020.

<sup>80</sup> Huang, Jess, Alexis Krivkovich, Irina Starikova, Lareina Yee, and Delia Zanoschi, *Women in the Workplace 2019* extract of the “Women in the Workplace 2019” report by McKinsey & Company and LeanIn.Org, October 15, 2019, Accessed May 22, 2020: <https://www.mckinsey.com/featured-insights/gender-equality/women-in-the-workplace-2019> (21% at the C-suite and only).

<sup>81</sup> Ross, Tartaglione, *Our Search for Belonging*, 56.

<sup>82</sup> Prince Harry has been vocal about his ignorance to unconscious bias saying he had no idea what it was. He learned a little bit living a day in his wife’s shoes. Jameta Barlow, community health psychologist and Assistant Professor of Writing in the George Washington University’s University Writing Program and Women’s Leadership Program, says “it’s not the marginalized person’s job to teach the privileged person about a system that benefits the privileged person.” Russell, Tonya. “Prince Harry admits his unconscious bias. Can other now acknowledge their privilege, too? NBC Opinion. October 30, 2020. <https://www.nbcnews.com/think/opinion/prince-harry-admits-his-unconscious-bias-can-others-now-acknowledge-ncna1245410>

<sup>83</sup> Gassam, Janice. “Your Unconscious Bias Trainings Keep Failing Because You’re Not Addressing Systemic Bias.” *Forbes*. December 29, 2019 Accessed January 22, 2020.

<sup>84</sup> Ibid.

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- <sup>85</sup> Thomson, Stéphanie. "Here's Why You Didn't Get That Job: Your Name." World Economic Forum. May 23, 2017. Accessed June 14, 2018. <https://www.weforum.org/agenda/2017/05/job-applications-resume-cv-name-discrimination/>.
- <sup>86</sup> Agarwal, Pragma. "How to Minimize Unconscious Bias During Recruitment." *Forbes*, February 20, 2019.
- <sup>87</sup> Johnson, Stefanie K., David R. Hekman, and Elsa T. Chan. "If There's Only One Woman in Your Candidate Pool There's Statistically No Chance She'll Be Hired." *Harvard Business Review*, April 26, 2016.
- <sup>88</sup> McGirt, Ellen. "How Lawyers Are Working to Change Their Industry's Diversity Problem." *Fortune*, August 30, 2017. The Mansfield Rule was developed looking at the effect of the Rooney Rule. The Rooney Rule as adopted by the NFL in 2003, and is named for Dan Rooney, former owner of the Pittsburgh Steelers, and it required the NFL teams to interview at least one minority candidate to fill head coaching vacancies. It was expanded later to include general manager positions and female candidates. Initially there were gains with the Rooney Rule, but these gains have not been sustained. According to Caren Ulrich Stacy, the CEO of Diversity Lab, it was clear the Rooney Rule did not go far enough.
- <sup>89</sup> Williams, Joan C., and Sky Mihaylo. "How the Best Bosses Interrupt Bias on Their Teams." *Diversity*. November-December 2019 issue.
- <sup>90</sup> "The Spread of Gender Quotas for Company Boards." *The Economist*. March 25, 2014. Accessed June 14, 2018. <https://www.economist.com/the-economist-explains/2014/03/25/the-spread-of-gender-quotas-for-company-boards>.
- <sup>91</sup> "Where CRE Could Improve on Diversity and Inclusion." *GlobeSt.com*. April 9, 2018. [https://www.globest.com/2018/04/09/where-cre-could-improve-on-diversity-and-inclusion/?](https://www.globest.com/2018/04/09/where-cre-could-improve-on-diversity-and-inclusion/)
- <sup>92</sup> Huang, Jess, Alexis Krivkovich, Irina Starikova, Lareina Yee, and Delia Zanoschi, *Women in the Workplace 2019* extract of the "Women in the Workplace 2019" report by McKinsey & Company and LeanIn.Org, October 15, 2019. Accessed May 22, 2020: <https://www.mckinsey.com/featured-insights/gender-equality/women-in-the-workplace-2019>.
- <sup>93</sup> "Women in the Workplace 2018" report by McKinsey & Company and LeanIn.Org, 6
- <sup>94</sup> *Ibid*, 30.
- <sup>95</sup> Huang, Jess, Alexis Krivkovich, Irina Starikova, Lareina Yee, and Delia Zanoschi, *Women in the Workplace 2019* extract of the "Women in the Workplace 2019" report by McKinsey & Company and LeanIn.Org, October 15, 2019, 10. Accessed May 22, 2020: <https://www.mckinsey.com/featured-insights/gender-equality/women-in-the-workplace-2019>.
- <sup>96</sup> For every 100 men promoted and hired to manager, only 72 women are promoted and hired. This number is 68 for Latina women and 58 for Black women. The result is men hold 62 percent of manager-level position while women hold 38 percent. Huang, Jess, Alexis Krivkovich, Irina Starikova, Lareina Yee, and Delia Zanoschi, *Women in the Workplace 2019* extract of the "Women in the Workplace 2019" report by McKinsey & Company and LeanIn.Org, October 15, 2019, 6 Accessed May 22, 2020: <https://www.mckinsey.com/featured-insights/gender-equality/women-in-the-workplace-2019>.
- <sup>97</sup> *Ibid*, 14.
- <sup>98</sup> Williams, Joan C., and Sky Mihaylo. "How the Best Bosses Interrupt Bias on Their Teams." *Diversity*. November-December 2019 issue.
- <sup>99</sup> *Ibid*.
- <sup>100</sup> *Ibid*.
- <sup>101</sup> Carter, Nancy M., and Christine Silva. *Mentoring: Necessary but Insufficient for Advancement*. Catalyst, 2010. Accessed at <http://www.catalyst.org/knowledge/>, June 14, 2018.
- <sup>102</sup> Dinolfo, Sara, Christine Silva, and Nancy M. Carter. *High Potentials in the Pipeline: Leaders Pay It Forward*. Catalyst, 2012. [http://www.catalyst.org/system/files/High\\_Potentials?In?the\\_Pipeline\\_Leaders\\_Pay\\_It\\_Forward.pdf](http://www.catalyst.org/system/files/High_Potentials?In?the_Pipeline_Leaders_Pay_It_Forward.pdf).
- <sup>103</sup> Ibarra, Herminia, Nancy M. Carter, and Christine Silva. "Why Men Still Get More Promotions than Women." *Harvard Business Review*, September 2010.
- <sup>104</sup> "Women in the Workplace 2018" report by McKinsey & Company and LeanIn.Org, 14. Women are 1.5 times more likely to aspire to be a top executive themselves.
- <sup>105</sup> *Ibid*, 16.
- <sup>106</sup> *Ibid*.
- <sup>107</sup> Williams, Joan C., and Sky Mihaylo. "How the Best Bosses Interrupt Bias on Their Teams." *Diversity*. November-December 2019 issue.
- <sup>108</sup> Center for WorkLife Law. Bias Interrupters, <http://biasinterrupters.org/>
- <sup>109</sup> Williams, Joan C., and Sky Mihaylo. "How the Best Bosses Interrupt Bias on Their Teams." *Diversity*. November-December 2019 issue.
- <sup>110</sup> *Ibid*.
- <sup>111</sup> *Ibid*.
- <sup>112</sup> *Ibid*.

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- <sup>113</sup> Heilman, Madeline E., and Michelle C. Haynes. "No Credit Where Credit is Due: Attributional Rationalization of Women's Success in Male-Female Teams." *Journal of Applied Psychology* 90, no. 5 (2005): 905.
- <sup>114</sup> Center for WorkLife Law. Bias Interrupters, <http://biasinterrupters.org/>.
- <sup>115</sup> Ibid. Citing Carbado & Gulati for research in 2013, and Benard & Correll for research in 2010.
- <sup>116</sup> Cuddy, Amy J. C, Susan T. Fiske, and Peter Glick. "When Professionals Become Mothers, Warmth Doesn't Cut the Ice." *Journal of Social Issues, Vol. 60, No. 4, 2004, pp. 701-718.*
- <sup>117</sup> Ibid, 711.
- <sup>118</sup> Fuegen, Kathleen, Monica Biernat, Elizabeth Haines, and Kay Deaux. "Mothers and Fathers in the Workplace: How Gender and Parental Status Influence Judgments of Job-Related Competence." *Journal of Social Issues, Vol. 60, No. 4, 2004, pp. 737-754, 749.*
- <sup>119</sup> Cuddy, Amy J. C, Susan T. Fiske, and Peter Glick. "When Professionals Become Mothers, Warmth Doesn't Cut the Ice." *Journal of Social Issues, Vol. 60, No. 4, 2004, 712.*
- <sup>120</sup> Bosch, Rachael. "Walking The Talk Of Unconscious Bias Training." *Forbes*. December 26, 2019. Accessed January 22, 2020.
- <sup>121</sup> Mackenzie, JoAnne Wehner, and Shelley J. Correll. "Why Most Performance Evaluations Are Biased, and How to Fix Them." *Harvard Business Review*. January 11, 2019. Accessed January 22, 2020.
- <sup>122</sup> Ibid.
- <sup>123</sup> D. Kanze, L. Huang, M. A. Conley, E. T. Higgins. "We ask men to win and women not to lose: Closing the gender gap in startup funding." *Acad. Manage. J.* 61, 586–614 (2017).
- <sup>124</sup> Ibid.
- <sup>125</sup> Bosch, Rachael. "Walking The Talk Of Unconscious Bias Training." *Forbes*. December 26, 2019. Accessed January 22, 2020.
- <sup>126</sup> Zelevansky, Nora. "The Big Business of Unconscious Bias." *The New York Times*, November 20, 2019. Accessed January 22, 2020.
- <sup>127</sup> RETS Associates survey of 618 women in entry to senior level positions. 87.2% said equal pay was the largest obstacle and the next was lack of promotion opportunities at 79.2%. "The Major Challenges Faced by Women in the Commercial Real-Estate Industry." <http://entrepreneur.com/article/316015>. June 19, 2018.
- <sup>128</sup> Ibid.
- <sup>129</sup> Ibid. Citing research by London's Cass Business School, the University of Warwick, and the University of Wisconsin.
- <sup>130</sup> Ibid.
- <sup>131</sup> *BMJ* 2019;365:l1668. Published April 12, 2019. Accessed January 22, 2020. <https://soi.org/10.1136/bmj.l1668>; *JAMA*. Vol. 320, No. 6 (August 14, 2019). Harvard Medical School #WallsDoTalk contest in 2017.
- <sup>132</sup> Bai, Xuechuzi, Miguel R. Ramos, and Susan T. Fiske. "As diversity increases, people paradoxically perceive social groups as more similar." *Proceedings of the National Academy of Sciences* Jun 2020, 117 (23) 12741-12749; DOI: 10.1073/pnas.2000333117. This research conducted at Princeton, the University of Birmingham, UK and Univesitario de Lisboa, Lisboa, Portugal looked at data in 46 countries and from 50 states in the U.S. and found that the more the jurisdiction was ethnically diverse, the more participants mentally represent social groups as being close to each other on warmth and competence dimensions.
- <sup>133</sup> In 1994 one half of IAT scores were negative for LGBTQ and in 2019, negatives scores were reduced to 21%. There has been a 17% drop in negative race attitudes. There has not been any change for age, disability and body weight attitudes. Goldberg, Carey. "Study: Bias Drops Dramatically for Sexual Orientation and Race – But Not Weight." *WBUR CommonHealth*. January 11, 2019. <https://www.wbur.org/commonhealth/2019/01/11/implicit-bias-gay-black-weight> Accessed January 30, 2021. Also, same-sex marriage legalization has been associated with reduced implicit and explicit antigay bias. Eugene K. Ofofu, Michelle K. Chambers, Jacqueline M. Chen, Eric Hehman Same-sex marriage legalization associated with reduced implicit and explicit antigay bias, *Proceedings of the National Academy of Sciences* Apr 2019, 116 (18) 8846-8851; DOI: 10.1073/pnas.1806000116. It can also be noted that the response to use of health resources for younger COVID-19 patients over using these resources for older patients is where there is a shortage. The Moral Machine experiment showed that people preferred to spare young lives. The only places that showed a weaker preference for killing the old were East Asian countries, such as Japan and Taiwan and in majority Muslim countries, such as Pakistan and Saudi Arabia. The only American cultures that have consistently positive views of the elderly are Black and indigenous people. But the Moral Machine experiment says the findings show people do not like dilemmas and would prefer to treat everyone equally (but not criminals) and choose to not kill young people when pressed. Khazan, Olga. "A Failure of Empathy Led to 200,000 Deaths. It Has Deep Roots." *The Atlantic* (September 22, 2020). Also, the theory in psychology of psychic numbing may account for how we seem to show apathy as the numbers of deaths get larger and larger. "Afraid of the Wrong Things." *Hidden Brain*. January 25, 2021. Slovic, Paul. "Psychic Numbing and Genocide." *Psychological Science Agenda, American Psychological Association* (November 2007) <https://www.apa.org/science/about/psa/2007/11/slovic>. Accessed January 31, 2021.

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<sup>134</sup> Ibid.

<sup>135</sup> Ibrahim, Andrew M. MD, MSC, Chief Medical Officer at HOK. Visual Mental Model – Becoming Anti-Racist 2020.

<sup>136</sup> See End Note 2.