

TEXAS LAWYER

An **ALM** Publication

texaslawyer.com | August 26, 2016

Bias Interrupters: Confusing Name. Important Mission

BY KATHLEEN J. WU

A FRIEND OF MINE ONCE coined the term “spontaneous ubiquity” to describe the phenomenon in which you learn of a new word or concept and, suddenly, it’s everywhere. It was always there, but you didn’t realize it. Once you know about it, though, you can’t help seeing it all around you.

That has been the case for me with unconscious bias. I had always known about bias, but I had never thought about it being baked into our DNA, so much so that most people aren’t even aware they’re basing their decisions on biased judgments. Having been awoken to unconscious bias a few years ago, I now can’t help seeing it everywhere—in the workplace, in the presidential election and, most recently, during the Olympics.

Most of these incidents have been well publicized, but in case you missed them, these were some of the most egregious examples from the Rio Olympics:

- Trap shooter Corey Cogdell won a bronze, but instead of saying that, the Chicago Tribune tweeted “Wife of a Bears’ lineman wins a bronze medal today in Rio Olympics.”

Because who are women if not extensions of their spouses?

- Tennis great Andy Murray won his second Olympic gold in the men’s singles tennis tournament, and a newscaster commended him for being the “first person ever to win two Olympic tennis gold medals.” He clearly forgot that both Venus and Serena Williams have won four each (and fortunately Murray immediately corrected him).

- Swimmer Katie Ledecky broke her own world record in the 800-meter freestyle—in a performance that left the world slack-jawed—but the Bryan College Station Eagle’s headline read “Phelps ties for silver in 100 fly” with a much smaller subhead reading “Ledecky sets world record for women’s 800 freestyle.” One Twitter user summarized her frustration this way: “This headline is a metaphor for basically the entire world.”

- Hungarian swimmer Katinka Hosszu took home a gold, breaking a world record in the process. In the aftermath, NBC’s cameras turned to her husband/coach and the commentator called him “the man responsible” for her medal.

It’s doubtful that those commentators or headline writers were



Kathleen J. Wu, a partner in Andrews Kurth in Dallas

consciously demeaning the women they were talking about. But the effect was the same as if they had been.

The same unconscious bias that downplays female athletes’ accomplishments also has a profound impact on women in the legal profession. Most recently, ALM columnist Vivia Chen reported on research showing that the biggest exodus from law firms doesn’t

happen when women are in their 30s (when most childbearing happens), but in their 40s. Between the ages of 30 and 50, the percentage of women at BigLaw drops from 45 percent to 27 percent.

One possible explanation: disparities in promotion and compensation and the general sense that the game is rigged against them.

How do we, as a profession, address these disparities? Well, there are hopeful generational signs. Even Donald Trump, no champion of feminism, seems to have one standard for his wives (there have been three) and another for his daughters. He prefers to have a “traditional” wife who will care of hearth and home (“I’ll supply funds and she’ll take care of the kids.”) But he has been extremely supportive of his daughter Ivanka’s career and lauded her entrepreneurial spirit.

Unconscious bias transcends generations, however, so we need to find ways to address it in the here and now. One possible solution is by instituting bias interrupters. Opaque name notwithstanding, bias interrupters have the potential to drastically improve the recruitment, retention, promotion and compensation of women lawyers. (It also has the potential to address other forms of bias, including racial and ethnic bias.)

What are bias interrupters? They’re systemic changes that attempt to short circuit unconscious bias. The most successful example comes from the music world. Frustrated by the low numbers of women in major symphony orchestras, several of them began holding blind auditions in which the musician would audition behind a curtain. Some even went so far as to require the musicians

to remove their shoes so that listeners couldn’t tell the gender (or anything else about the musician) simply from the sound of their shoes.

After that change was made, the number of women in major symphonies went from 5 percent to about 30 percent.

Bias interrupters have already proven their worth in the business world. Comedian and now TV host Samantha Bee enacted a blind résumé policy when her new show, *Full Frontal*, was seeking writers (late night comedy’s writers’ rooms are notoriously white and male). Not only were names and gender-identifying information removed from the résumé, but the show also didn’t ask for previous writers’ experience and gave specific information about how the writing samples should look (fonts, spacing, etc.), to ensure that their show’s hiring didn’t perpetuate the industry’s pre-existing hiring discrepancies.

The result was a writer’s room with 50 percent female writers and 30 percent people of color. And *Full Frontal* has been a ratings hit and is already renewed for a second season.

Other examples of successful bias interrupters from the business world:

- Including the phrase “salary negotiable” in job ads decreased the salary differential between men and women. The addition apparently signaled to women applying for those jobs that it was OK to negotiate their salaries. Otherwise, women defaulted to their non-negotiating stance, knowing that women are usually penalized for trying to negotiate a higher salary.

- Noticing that men at Google were more likely to apply for in-

house promotions than women—despite similar qualifications for the positions—Google enacted a program to encourage all employees who were eligible for a promotion to apply for the job. The gender difference for self-nomination decreased drastically.

How can we translate bias interrupters to the legal profession? Well, we’re working on it. The American Bar Association’s Commission on Women in the Profession, the Center for WorkLife Law at UC Hastings College of the Law and the Minority Corporate Counsel Association have created a Bias Interrupters Working Group dedicated to finding ways to short circuit bias in our profession.

The best interrupters don’t attempt to “raise awareness” or teach people how to avoid their own biases. They aim to stop bias before it can get started—to prevent us from letting bias interfere with hiring, retaining and promoting the best lawyers we can. The Working Group will also attempt to address bias in partner compensation, which is key to keeping the profession’s best and brightest.

The Working Group (of which I’m a member) is under no illusions that its work will be easy. Because law firms have such unique cultures and drastically different compensation structures, there will be no “one-size-fits-all” solution.

But if we want to ensure that the profession will be able to retain the talented women who are, as I write this, planning their exit strategies, as well as the young women starting law school this month, it’s high time we start interrupting some biases.

Kathleen J. Wu is a partner in Andrews Kurth in Dallas. Her practice areas include real estate, finance and business transactions.