

# LIFE, LIBERTY, AND THE PURSUIT OF EQUITY — OOPS, I DID IT AGAIN: IDENTIFYING AND RECTIFYING MICROAGGRESSIONS



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In addition to Sarah's legal practice, she manages the firm's Commercial Litigation Department, supporting the attorneys and staff in the department. On a more global level, she serves as the vice chair of Cozen O'Connor's Women's Initiative and as lateral integration coordinator for new litigation attorneys.

Sarah is committed to giving back to the community and has handled numerous pro bono matters throughout her career. She currently sits on the Board of Directors for Philadelphia's Anti-Defamation League and the Wolf Performing Arts Center.



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In addition to her work on Temple University's campus, Maya has worked as a public relations intern at Ceisler Media and Issue Advocacy, and a legislative intern at the Office of Representative Brian Sims.

Inspired by her experiences studying abroad in Cape Town, South Africa in the Spring 2020 semester, Maya hopes to incorporate civil rights advocacy into her career. She plans to attend law school next fall in the Philadelphia area.

Amidst the backdrop of the "Me Too" and the revitalized Black Lives Matter movements, our society has become hyperaware of the impact that our language and actions have on others. While it may be difficult and, at times, even uncomfortable, now is the time to focus on eradicating bias and equalizing the playing field in the legal profession. Retention and promotion rates for women in the profession are abysmal. Sadly, women of color are hit the hardest. Not only do they have higher rates of attrition, but women of color comprise a mere two percent of equity partners at large law firms—a statistic that has not budged in twenty years.<sup>1</sup> There is no single cause or quick fix for this multifaceted problem, but implicit biases and microaggressions play a major part in undermining women's confidence and sabotaging their upward mobility within the legal profession.

Put simply, implicit biases are "thoughts about people you didn't know you had."<sup>2</sup> These biases tend to target the same groups that are often the victims of overt discrimination. Failing to recognize and combat these biases can lead to discriminatory behaviors, whether intentional or unintentional, both in the workplace and in our daily lives. We must work to educate ourselves on this "new face of racism" and sexism—specifically microaggressions.<sup>3</sup>

Microaggressions are not blatant acts of bias that land people in trouble with HR, but rather everyday slights and snubs. While the term "microaggressions" is most commonly used, it really encompasses a wide range of behaviors. Some subgroups include:

**Microinequities:** Ignoring, overlooking, or discounting the contributions of an individual because of their race or gender.

**Microassaults:** Explicit derogations and purposeful discriminatory actions (essentially explicit racism, sexism, or discrimination).

**Microinsults:** Behavioral or verbal remarks that convey rudeness, insensitivity, and demean a person's heritage or identity. Often subtle snubs outside the level of awareness of the perpetrator, microinsults clearly convey a hidden insulting message to the recipient.

**Microinvalidations:** Verbal comments or behaviors that exclude, negate, or nullify the psychological thoughts, feelings, or experiential reality of another person.<sup>4</sup>

Microaggressions often stem from our implicit biases. Implicit biases are, unfortunately, impossible to eliminate. Therefore, we must be ever vigilant of the ways these biases manifest to ensure members of marginalized groups feel respected and welcome.

There are several forms of biases that we see frequently in workspaces. Likeability bias is rooted in age-old expectations associated with gender and assertiveness. Women who are assertive are often viewed as less likeable because they are expected to be more kind and communal. Performance or "prove it again" bias is the innate sexist belief that women are less capable than men so they have to do twice as much to prove their worth. Similarly, attribution bias is when women are given less credit for their accomplishments and more blame for their mistakes because we view them as less competent. Affinity bias addresses the fact that we gravitate towards people like ourselves in appearance, beliefs, and background, thus avoiding people who are different from us. And, finally, intersectionality describes biases that spring from some combination of race, gender, sexual orientation, and/or disability.<sup>5</sup>

The toll these biases and behaviors take on female and diverse attorneys is significant. They undermine confidence. They usurp mental and emotional space. They create self-doubt. One female senior associate, toiling away in a predominantly male dominated area of the law, opined that attrition of female attorneys may be, in part, due to a

culmination of microaggressions. Dealing with sexist and/or racist opposing counsel is hard enough. But when that is compounded by microaggressive comments and dismissive behavior from your own colleagues, there is no safe space at all. It is no wonder why so many female attorneys decide to chart a different course midcareer.

Because microaggressions are not overt or intentional, they can be difficult to eradicate. It is like the old adage—you know it when you see it. Nevertheless, the following list of examples may help:

- A major rainmaker at the firm, who is a man, often meets the men on his team for dinner or drinks—but rarely meets with the women on his team outside of work.
- An attorney commonly refers to female associates as "kiddo."
- Counsel jokingly comments that an obstinate witness must be a "wife beater."
- A white coworker says they aren't privileged because they grew up poor.
- The female associate gets tasked with taking notes during a meeting.
- A female attorney gets passed over for an opportunity to second chair a trial because the more senior partner assumes that she would not want to do so because she recently had a baby.
- During a performance evaluation, a Black woman is told that she is too abrasive.
- Other attorneys speak over or interrupt their female colleague.

Recognizing and acknowledging that implicit biases exist, and how they manifest, is the first step toward preventing them. Whether a microaggression is addressed directly with the person when it occurs, or later with a manager or other team member, all employees in any workspace should feel comfortable calling out microaggressions. By considering contrasting viewpoints we can begin to create workspaces that are not only comfortable for members of marginalized groups, but spaces in which they can thrive.

Educate co-workers about implicit bias and micro-aggressions so that they can recognize and confront them head on. International Women’s Day (IWD) developed the IWD Lean In 50 Ways to Fight Bias program which can be downloaded and presented for free. The materials include a video explaining the various types of biases, as well as a detailed Power-Point presentation.<sup>6</sup>

Educate others through your own actions. Call out bias when you see it. Whether you are the direct target or merely a bystander, your words matter. There are a variety of approaches depending on your comfort level—from directly calling out an offensive remark, to asking “for clarification” of an inappropriate comment, to gently suggesting a more inclusive solution.

Finally, if you personally make a mistake, acknowledge it. By recognizing and admitting your own imperfections, you allow others to learn from your mistakes, create a safe space for dialogue to occur, and remove the stigma associated with being an

offender. If someone confronts you about being insensitive, try not to become defensive. This limiting reaction, built on feelings of shame and embarrassment, could revictimize the individual and have a chilling effect on constructive feedback. Instead of debating or justifying the offensive nature of a comment, consider the recipient’s viewpoint. Apologize when appropriate (which is almost always). Perhaps even ask if there is a more sensitive way to handle things in the future. Use the mishap to move from offender to ally.

Some people will inevitably find the topic of micro-aggressions too extreme. Some may argue that we are erring on the side of becoming *too* politically correct. While it is important to strike the balance between a culture of inclusion and “victimhood culture,” it is evident that microaggressions lead to macroaggressions. And in order to cultivate diverse and equitable spaces, microaggressions can no longer be ignored. 🔥

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## Notes

- 1 Debra Cassens Weiss, Majority of minority female lawyers consider leaving law; ABA study explains why, ABA Journal, June 22, 2020, available at <https://www.abajournal.com/news/article/most-minority-female-lawyers-consider-leaving-law-aba-study-explains-why>
- 2 Jenée Desmond-Harris, Implicit bias means we’re all probably at least a little bit racist, Vox, August 15, 2016, available at <https://www.vox.com/2014/12/26/7443979/racism-implicit-racial-bias>
- 3 Teresa Watanabe and Jason Song, College students confront subtler forms of bias: slights and snubs, Los Angeles Times, November 12, 2015, available at <https://www.latimes.com/local/education/la-me-college-microaggression-20151112-story.html>
- 4 Michelle Kraus, Emile (“Milo”) Primeaux, Tanya Douglas, and Lillian M. Moy, Recognizing and Responding to Microaggressions in the Legal Profession, available at [https://nylpi.org/wp-content/uploads/2019/05/WSR\\_102-Microaggressions-workshop.pdf](https://nylpi.org/wp-content/uploads/2019/05/WSR_102-Microaggressions-workshop.pdf)
- 5 50 Ways to Fight Bias, International Women’s Day 2021, LeanIn.Org, LLC, available at <https://internationalwomensday.s3-us-west-2.amazonaws.com/resources/IWD-2021presentation-50WaystoFight%20Bias.pdf>
- 6 Id.