

# Discrimination In The Workplace: Talking About Racial Bias Is Hard But Must Be Done

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By Beth Robinson

I generally don't like talking about race in any setting, but racial bias in the workplace is an especially fraught issue. Gender is a neater topic for bias because of the sheer numbers, and because all of the stereotypes don't have legs. Women get [more college degrees](#) than men, and on average [do better in school](#). Despite these factors, even gender bias is [hard to pin down](#), even for women who experience it. But as the ultimate irony, men with children tend to do [better than everyone else](#). There are more [Fortune 500 CEOs named John](#) than women. But [intersectionality is real](#). And when one of the factors is race, that's where things get tricky.



Race is not nearly as neat as gender, which is neater but still not clear cut enough for most. First, while I believe, mostly from anecdotal experiences and raw data, that most of the discrepancy we see in the workplace between where things should be and where they are is due to racial bias, because the largest minority groups in the country have [less educational attainment](#), the sheer amount of factors to take into account make a discussion difficult. Add to it the historical disadvantages people of color faced (access to education, access to housing, access to employment, immigrant status, etc.), and the discussion gets really difficult. Generational wealth allows an individual to make different choices that equal different employment opportunity. Pushing back against stereotypes isn't enough if the numbers and other factors make it easy to deny opportunity. But despite all of this, I believe the biggest impediment to anything meaningful moving the needle of diversity is the lack of honest discussion around the topic.

## What Does An Honest Discussion Look Like?

I recently read the excellent report done by Eric Chung, Samuel Dong, Xiaonan April Hu, Christine Kwon, and Justice Goodwin Liu, for the Yale Law School and the National Asian Pacific American Bar Association, about [Asian attorneys and their experiences as students and lawyers](#), including the explosive growth of Asian students in law schools. This report is telling for what it says, and doesn't say, about Asian Americans in the field of law. Just in case people thought it was just black attorneys who struggle (when talking about "race"), this report should put that notion to bed.

Asian Americans have the [highest rate of degree attainment](#) of any group in the U.S. (when you use the labels we like to use that loosely, but not quite, correlate with "race"). But like every other "minority" group in the U.S., they have faced some of the same issues of bias against them in the legal field.

A few statistics really stuck out in the NAPABA report for me: "Although Asian Americans comprised 10.3% of graduates of top-30 law schools in 2015, they comprised only 6.5% of all federal judicial law clerks." I think the reason for this is simple: judges pick clerks who are like them. "Like them" can include race. The report goes on to say: "Despite recent progress, only 25 Asian Americans serve as active Article III judges, comprising 3% of the federal judiciary. Asian Americans comprise 2% of state judges." And therein lies the problem with clerkships. But it's not just clerkships: the report also found Asian American lawyers have the highest ratio of associates to partners of any group.

The curiously effective thing about racial bias is it functions in two ways that have maximum impact on the victim: you lack the exposure to even think you can do something in a field where no one looks like you, and because no one looks like you, the people in the field don't think you would be a good fit. So the few who dare to challenge the status quo don't make it far (like the many "line prosecutors" and associates who are Asian and can't get a promotion, as was also noted in the report). If they don't make it far, they can't bring others with them. This is particularly important for judges and law firm partners.

The lack of diversity in the legal field is worse than many other fields. Even in the face of rising law school enrollment by students of color. But likely because of bias and the realities of doing everything right and still not getting ahead, Asian students have very recently been attending law school in fewer and fewer numbers. Which may signal a future trend for minority students overall, particularly those who go to "good" schools, if law doesn't figure out how to do something about racial bias.

### **How Should We Address Racial Bias in the Workplace?**

For employers who think they may have a problem (pro tip: almost all of you do), and who want to fix it, here is how you can get started making your company a diverse place that recruits and retains top talent:

1. **Be honest about the problem.** If your numbers of female employees or employees of color are substantially lower than they should be, you have a bias problem, [not a pipeline problem](#). And don't just look at new or recent hires; assess the organization from top to bottom. As the recent NAPABA findings for Asian American attorneys show, "pipeline" isn't the culprit. If you have a bias problem, no matter how qualified the candidate, they will not succeed.
2. **Ask hard questions.** If, after you take an honest look at your work environment and are willing to admit there are problems, start with specific factors that are indicators of what it's like to work there. Take an honest look at your review process. If you see that the only people getting good reviews are white and male, you have a problem with your review process. Ask why the process is working out that way, and identify specific aspects that need to be changed. If you find you can't retain female employees, you have a problem with your work environment. Either you are valuing things that make female employees feel unwanted, or worse. Ask what is happening from the hire date to the exit date that impacts female employees differently. If you find you don't promote employees of color, you have a problem with your promotion system. Ask what is causing the problem. Yes, your only star performers could be white males. Yes, all your employees of color could be slackers and poor performers. Yes, all of your female employees could in fact just be awful employees. But the odds are, none of that is true. So ask that hard question of why things aren't working out for employees of color at your company. The sad part is, in most legal environments, all of these factors are present (don't promote or retain diverse attorneys/staff), particularly at big firms. But I think that at most big firms, and even government employers, they don't care to ask why this trend continues year after year. And so things never change, no matter how many diverse hiring initiatives they have.
3. **Face bias head on.** After you ask the questions, and learn the answers, you will find that you must deal with the issue of bias. There is a real fear I think of calling out bias. Excuses are made. Confrontations are avoided. I understand no one wants to be called sexist or racist, or both, but you don't have to use either of those words to get at the problem of bias. And while it may be terrifying from a legal perspective to acknowledge someone is a problem, or part of the system is biased against employees who are female or of color, the cost of good talent walking out the door is far higher. An employer must do right by all employees, if they want diverse talent to be successful.

I am an optimist, so I feel that we are headed in the right direction as a profession and as a society. I believe that women employees will close the gap, and employees of color will get a fair shake. But it will be an uphill climb, and the climb isn't made by the female employees, no matter how much they lean in, or the employees of color, no matter how much they try to fit in. Law won't get better, and our use of talent overall in business and government won't improve, until we admit our bias and do something about it.

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