

Recognizing and Eliminating Bias in the Legal Profession



Corporate Counsel Roundtable

*LCDR Brett Cook, US Navy
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The assertions expressed herein are those of the author and do not necessarily reflect the official policy or position of the Department of Defense or the Department of the Navy.



Life as a JAG

- **Criminal Defense Attorney**, San Diego
- **Detainee Hearings Counsel**, GTMO
- **General Counsel/International Law**, Greece
- **Deputy GC**, Navy Medicine HQ, DC
- **Federal Civil Litigator/ Lead Privacy Counsel**, JAG HQ, DC
- **Deputy GC**, Expeditionary Forces, Norfolk, VA
- **Law Student** (WOO-HOO!), Georgetown
- **General Counsel** Carrier Strike Group 3, Bremerton, WA
- **General Counsel**, Navy Information Warfare Reserve, Fort Worth, TX





“You Will Obey My Order!”

- Inaccurate perception of military leadership
- Similarities with corporate leaders

Crimson Tide, 1995

<https://youtu.be/aHMER1h4BNU>





Navy by the Numbers



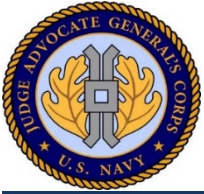
HEADCOUNT

- **Active Duty:** 383,542
 - Officers: ~54,263
 - Enlisted: ~273,832
 - Midshipmen: ~4,412
- **Ready Reserve:** 101,865
- **Navy Department Civilian Employees:** 274,854

SHIPS AND SUBMARINES

- **Deployable Battle Force Ships:** 289
- **Aircraft Carriers Underway:**
 - USS Dwight D. Eisenhower (CVN 69) - Atlantic
 - USS Harry S. Truman (CVN 75) - Atlantic
 - USS Ronald Reagan (CVN 76) - Pacific
- **Amphibious Assault Ships Underway:**
 - USS Wasp (LHD 1) - West Pacific
 - USS Kearsarge (LHD 3) - 5th Fleet





Diversity in the Military



U.S. NAVY DEMOGRAPHIC DATA												
As of 1 JANUARY 2019												
RACE/ETHNIC GROUP		AMERICAN INDIAN OR ALASKAN NATIVE	ASIAN	BLACK OR AFRICAN AMERICAN	DECLINE TO RESPOND	MULTIPLE RACES	NATIVE HAWAIIAN / PACIFIC ISLANDER	WHITE	TOTAL			HISPANIC
TOTAL FORCE END-STRENGTH												
	MALE	6,831	17,084	46,147	14,449	21,028	3,260	196,955	305,754		MALE	46,045
	FEMALE	1,628	4,413	19,183	4,220	6,427	960	40,957	77,788		FEMALE	14,335
	TOTAL	8,459	21,497	65,330	18,669	27,455	4,220	237,912	383,542		TOTAL	60,380
ACTIVE DUTY END-STRENGTH												
	MALE	6,065	14,939	41,583	12,612	18,824	2,941	172,738	269,702		MALE	40,336
	FEMALE	1,341	3,763	16,832	3,634	5,523	850	34,892	66,835		FEMALE	12,374
	TOTAL	7,406	18,702	58,415	16,246	24,347	3,791	207,630	336,537		TOTAL	52,710

Does the military have a diversity problem?
<https://www.youtube.com/watch?v=utZhdqKPsA8>



Types of Cognitive Bias



- Race
- Sexuality
- Arab Muslim – Other People
- Weight
- Gender – Career
- Gender – Liberal Arts vs. Sciences
- Disability
- Age
- Skin Tone

Harvard Implicit Association Test – What is your bias?



Bias is Pervasive in Our Work Lives



- “Mommy/Daddy Track” Bias
- Hiring Process
- Fair Performance Evaluations
- Mentoring
- Receiving High-Quality Assignments
- Networking Opportunities
- Receiving Fair Pay
- Promotion Opportunities



Have a Vision



- What do you want your office to look like?
- Your work product?
- The advice you provide to clients?
- Identify the gaps, set goals and work as a team.





Challenge the Status Quo



- Ask questions regarding the lack of diversity regarding roles, positions, business opportunities, success recognition.
- *You can't change what you can't see.* Solicit help from external organizations.
- Create bias interrupters for hiring, assignments, performance evaluations, compensation and mentorship.



Develop a Plan of Action



Three Step Approach

1. Use Metrics

- Identify and track: Who is doing what and for how long? Are there demographic patterns that indicate gender and/or racial bias is at play?

2. Analyze the Metrics

- Who is doing the office housework?
- Who is doing the glamour work?
- Who is doing the low-profile work?
- Create and analyze metrics by individual supervisor



Develop a Plan of Action (cont'd)



3. Implement Bias Interrupters

- Office Housework Interrupters
 - Don't ask for volunteers
 - Hold everyone accountable
 - Establish a rotation
- Glamour Work Interrupters
 - Avoid mixed messages (i.e. saying you value something but not rewarding employees with compensation or promotion)
 - Conduct a rollout meeting
 - Provide bounceback for the supervisor
 - Is the available pool for glamour work assignments diverse but is not being tapped fully?
 - Do only a few people have the requisite skills for glamour work assignments?

Toolkits available at biasinterrupters.org



Develop a Plan of Action (cont'd)



- Hiring
 - Resume Reviews
 - Commit to what is important
 - Grade resumes on the same scale
 - Remove extracurricular activities (i.e. pick-up soccer vs. sailing)
 - Use “blind auditions” (i.e. remove all indications of race or gender from resumes)
 - Interviewing
 - Use structured Interviews
 - Develop a consistent rating scale
 - Use a work-relevant definition of “culture fit”
 - Provide candidates and interviewers with a handout detailing expectations.



The Financial Benefits



Diversity of personnel:

- Attracts a diversity of clients
- Breeds innovation
- Strengthens reputation
- Attracts top talent
- Increases job satisfaction





References



- *“You Can’t Change What You Can’t See: Interrupting Racial and Gender Bias in the Legal Profession”* MCCA Executive Summary 2019.
- <https://biasinterrupters.org>
- *“Diversity and Its Impact on the Legal Profession”* *Law Practice Today*. Sept 14, 2016.
- FY19 US Navy Demographic Report
- Harvard Implicit Bias Test: “Project Implicit”
<https://implicit.harvard.edu/implicit/takeatest.html>



Discussion?

