



## Shaking implicit bias

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**The first ‘global women litigators’ breakfast’ was hosted by the litigation committee at the IBA’s annual conference in Washington, DC, last week, with the event addressing implicit bias, a burden which affects both male and female lawyers.**

According to a recent story in *The Times*, women lawyers earn 19% less than their male counterparts. While disparate earning, low female representation in law firm partnerships, along with explicit and implicit bias in the workplace, is not unique to the legal profession, it is nonetheless a matter being addressed seriously by law firms and arbitral institutions.

Earlier this year, **ArbitralWomen**, an organisation bringing woman disputes practitioners together, launched the ‘Equal Representation in Arbitration Pledge’ which aims to improve “the profile and representation of women in arbitration”.

The Pledge has attracted widespread interest among the profession, with the **London Court of International Arbitration** among its signatories, along with Magic Circle firm **Freshfields Bruckhaus Deringer** which has also just recently announced that it has dropped the term ‘dear sirs’ in all of its internal and external communications in an aim to shedding light on implicit bias that may alienate staff and clients.

### PRACTICAL STEPS

The IBA breakfast brought together around 80 attendees, both male and female, and took a roundtable format which encouraged open discussion among the groups, with collective views later presented to all.

Groups were first asked to consider and discuss ‘war stories’ – real-life examples of implicit bias they had witnessed either against themselves

or to others – with most admitting to having experienced implicit bias first-hand; one example revealing a female lawyer being asked at a conference function if she was there with her spouse.

Next they considered the question of what they could do to cultivate change, and then looked at the ‘bold game’, where examples where action was taken were discussed, like asking for a pay rise, starting a new firm or making a stand against feeling compelled to go out drinking alcohol with the partners.

Small steps that litigators can take to change that culture are incredibly important and powerful to inspire better and conscious behaviour, IBA litigation committee co-chair **Bettina Knoetzl**, also partner at Austrian disputes boutique **Knoetzl**, tells *CDR*.

The first step is to make yourself aware that implicit bias exists and that it significantly impacts the decisions we make, she says. “Awareness is the first step in developing the ability to address it.”

Once it is realised, one needs to explore “how, in what way, do they influence my decision? What would I do differently if I were free of these biases? What would x, y or z do if he/she were in my shoes?” This little trick, Knoetzl says, helps to open the mind.

How this translates into a practical measures that can be taken can be as simple as asking which seat would x, y or z select at this table. If that seat is different than the one you would select yourself, why did I/he or she decide to choose that one?

Finally, you make a ‘conscious’ decision; for example, you may decide to sit at the head of the table because you realise that people would expect this in the role that you have, or you may stick to your first reaction. “Both alternatives are possible; rather often you might prefer to modify your own behaviour. By modifying your own behaviour and freeing yourself to a certain extent from implicit biases, you modify the [culture],” Knoetzl says.

Additionally, **Jane Colston**, partner at **Brown Rudnick** in London, who co-chaired the breakfast and is a member of the IBA litigation committee, identified further ideas discussed at the breakfast in which to influence change, like linking senior executive’s bonuses to hitting diversity targets or simply proactively supporting and developing women in the legal world.

“These discussions are important,” Colston explains, “it’s not just a question of saying the right things, you need to show a real commitment to making sure it’s a whole waterfall right the way through from recruiting to leadership”.

**Sandrine Giroud**, counsel at **LALIVE** in Geneva, also co-chair of the event and member of the IBA litigation committee, underlined the importance of being individually an actor of change but also of working collectively towards that goal. As an illustration she

mentioned the 'Shine theory' that female aides to US President Barack Obama used to make sure that their voices were being heard. This involves amplification by repeating each other's suggestions and crediting one another to prevent others claiming the ideas as their own.

## **WALKING THE TALK**

Colston's firm, like many others, has implemented a formal scheme which addresses diversity and inclusion issues.

**Sunni Beville**, diversity partner at Brown Rudnick based in Boston, suggests ways in which the firm seeks to empower and engender a diverse and inclusive culture.

"We have worked to raise the level of internal dialogue concerning diversity and support our lawyers in creating an external dialogue."

Beville states that, while it remains critical to continue fostering increasingly expansive, thoughtful and empathic discussions, "we also want to develop and launch actionable steps designed to lead to an even more diverse firm".

In this vein, and including Beville's appointment as diversity partner, as well as hiring a director of diversity, the firm has zeroed in on a sponsorship programme which sees senior partners invest more of their professional capital in supporting the development of female lawyers, and it also runs an unconscious bias workshop, conducted by the managing partner, aimed at recognising and interrupting unconscious bias in the workplace.

Giving feedback on the IBA committee initiative, breakfast attendee **Robert Johnson**, co-founder of Australian law firm **Johnson, Winter & Slattery**, commented: "Diversity in the law and in law firms is a continuing issue we all [grapple] with. Gender discrimination, consciously and sub-consciously, is one aspect of that problem. It is just as important for men to be involved in those conversations as women."