

Water Cooler Talk: Bias Lessons From 'Partner Track'

By **Tracey Diamond and Evan Gibbs** (May 19, 2023)

According to a 2020 "Report on Diversity in U.S. Law Firms" from the National Association for Law Placement, only 10% of all law firm partners are people of color. Of all associates, 12% are Asian Americans, 5% are Black, and 6% are Latino.[1]

These numbers are low, but there has been a noticeable shift in how organizations have prioritized their approach to diversity, equity and inclusion initiatives. When Paradigm collected data from 48 companies last year, 60% reported that they have a DEI strategy in place.[2]

The popular Netflix show "Partner Track" is rife with examples of both conscious and unconscious bias and sets the stage for a compelling discussion on how to avoid them. Some key observations for employers include:

- While most companies know they can't demote or fire an employee because of their race or religion, it's much harder to determine if decisions are made based on unconscious bias.
- For a company to succeed, human resources must have a seat at the table.
- Companies need strong mentorship programs that pair people of diverse backgrounds and experiences to help create a more inclusive workplace.



Tracey Diamond



Evan Gibbs

Q&A

We spoke with Ying Wong, vice president of people at CyberRisk Alliance LLC, about "Partner Track," workplace diversity and unconscious bias.

Evan Gibbs: "Partner Track" centers around Ingrid Yun, a young associate trying to make partner. As a female Asian American, she faces sexism and racism from colleagues and clients. How can women and women of color maintain equal footing in industries that tend to be made up of primarily white males?

Ying Wong: Being a woman of color, it's a challenge. My personal belief is that hard work goes a long way. I've also been lucky to work with wonderful people who mentored me and helped me grow to where I am today. If you find yourself in a situation that doesn't feel right, look elsewhere because there are opportunities out there.

Evan: Have you seen corporate culture change over the years with respect to opportunities and/or treatment of women and minorities?

Ying: I can tell you without a doubt that there's been a change. I've seen a shift with how organizations approach diversity initiatives. In the past, there never would have been employee resource groups to promote women or a certain ethnicity. It was not a priority then.

HR has also evolved tremendously. The role now really takes a hard look at the organization and talks to its people to build an inclusive culture.

Tracey Diamond: "Partner Track" deals a lot with HR. Is HR taking a more active role in pushing diversity initiatives or is it just generally more cognizant of the issue?

Ying: As HR professionals, we go through certifications and educations and learnings to be the best we can be in looking at how to improve our organizations.

I believe your average worker is a lot more aware of DEI. Managers and executives are a lot more aware of how diverse backgrounds and perspectives can be beneficial. We always talk about employees being the most important asset within an organization. It's true. Conversations have shifted to how do we grow revenue by enhancing our workforce and bringing everyone along in that journey.

Evan: I'm seeing a lot more, "We want to make these changes as an organization and develop an inclusive culture" versus "This is something we have to do."

Tracey: In the show, the company's human resources representative investigates an incident that occurred at a corporate retreat where Dan, a white male associate, mocks Tyler, a Black associate, and the whole concept of white fragility. When HR does an investigation, should the investigation be limited to the conduct at hand or should the HR representative delve into some of the conduct leading up to it?

Evan: Context is always important anytime you're conducting an investigation because if you just focus solely on this one statement and you exclude the broader context, the investigation is going to leave a lot on the table and may not reach an accurate conclusion. It may appear that it was not a genuine effort to investigate whatever the conduct was.

Ying: In the show, there were certain things that were done right, in particular that the investigation was launched immediately and made it clear that there is zero tolerance. But the HR representative should not have attempted to negotiate the resolution with the person who made the complaint. By doing so, the HR representative set certain expectations of what the result would be, and she didn't have the final say, as she could only recommend.

Tracey: In the show, the firm then tries to buy Tyler's silence with a severance package. Evan, from a legal perspective, are there any rules that prohibit that type of deal?

Evan: Some jurisdictions have certain rules around that. There are certain disclosures that must be made, and some jurisdictions prohibit requiring a confidentiality or nondisclosure provision in a severance agreement as it would silence employees with complaints of discrimination.

Tracey: There is also the federal Speak Out Act that prohibits employers from entering into or forcing their employees to enter into nondisparagement and nondisclosure provisions that prohibit employees from speaking out about sexual assault and sexual harassment prior to

a dispute having arisen.

Tracey: How do you think the lack of diversity in the legal industry and beyond contributes to the issues we've discussed today?

Ying: It's human nature to gravitate to those who are like you. So, it's about mentorship, about sharing, understanding, being cognizant of our differences, because our differences are what make us unique. It's understanding there are different people from different backgrounds that you can learn from who would also benefit from your experiences. We have a duty to ourselves to grow as individuals. And it starts there.

Conclusion

Employers and their HR departments seem to be much more aware of unconscious bias and the legal and reputational repercussions of allowing it to exist within the company. While there is still work to be done, understanding the very real benefits of opening a company and its workforce to more diverse viewpoints is a good start.

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This article is part of a monthly column that will connect popular culture to hot-button labor and employment law issues.

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[1] https://www.law.berkeley.edu/wp-content/uploads/2021/02/2020_NALP_Diversity_Report.pdf

[2] <https://hbr.org/2022/11/to-sustain-dei-momentum-companies-must-invest-in-3-areas#:~:text=A%20good%20strategy%20is%20connected,a%20DEI%20strategy%20in%20place.>