



Move From Talk to Action on Diversity, Equity & Inclusion “ACT” Now Notes

A Areas of Surprise & Aha’s

C Concepts and Concrete Issues that Can be Addressed

(see pages 2-3)

T Transfer Aha’s and Concepts into Actionable Changes

Individual Action Plan (actions will you take to identify and interrupt your implicit biases):

1.

2.

3.

Addressing Unconscious Bias

Cognitive Bias	How Does the Bias Show Up?	Bias Busters
Illusion of Objectivity – we think we can be objective and control bias but that’s an illusion; this type of bias keeps us from fully acknowledging our biases		<p>Actively doubt your objectivity; remind yourself that you have unintentional unconscious biases</p> <p>Take one or more Implicit Association Tests to discover any implicit biases – www.projectimplicit.org.</p>
Affinity – you gravitate toward and form deeper trust relationships with people who are more like you and who share similar interests and backgrounds		<p>Find something you have in common with every colleague</p> <p>Reach out to anyone who is feeling like an outsider</p> <p>Make sure you don’t help foster hidden barriers by overinvesting in a few people in your affinity group; share intangible opportunities with everyone</p>
Attribution – used to infer causes of events and behaviors; you judge your in-group as individuals, giving them the benefit of the doubt while you judge people in your out-groups by group stereotypes		<p>Notice when you give some people second chances or the benefit of the doubt and extend that privilege to everyone equally</p> <p>Notice when group stereotypes pop up in your thinking and challenge their validity</p> <p>Ask yourself if you would make the same decision if it involved someone in a different group</p>
Availability Bias - top of mind – estimating what’s more likely based on availability in memory		<p>When considering someone for a work assignment, promotion or recognition, look at the entire list of people so you don’t forget anyone</p>
Anchoring – an initial valuation influences a later valuation		<p>In setting bonuses or pay raises, or even performance ratings, don’t expose yourself to past numbers so they don’t influence your decision</p>
Confirmation – you pay attention to information that confirms your beliefs and disregard contrary information		<p>Consistently seek out disconfirming information</p> <p>Appoint a rotating “devil’s advocate” on teams whose job it is to bring forth contrary information to help pressure-test ideas</p> <p>Make it safe for people to offer contrary information</p>

Addressing Unconscious Bias

10 Hidden Barriers That Increase Attrition Rates, Especially for People in Already Underrepresented Groups:

Hidden Barrier	How Can This Hidden Barrier Be Eliminated?
Networking	
Insider information	
Work assignments	
Mentoring & sponsors	
Training & development	
Client or customer contact	
Access to decision-makers	
Social isolation	
Inadequate feedback	
Promotions/succession	

Interrupt Unconscious Bias

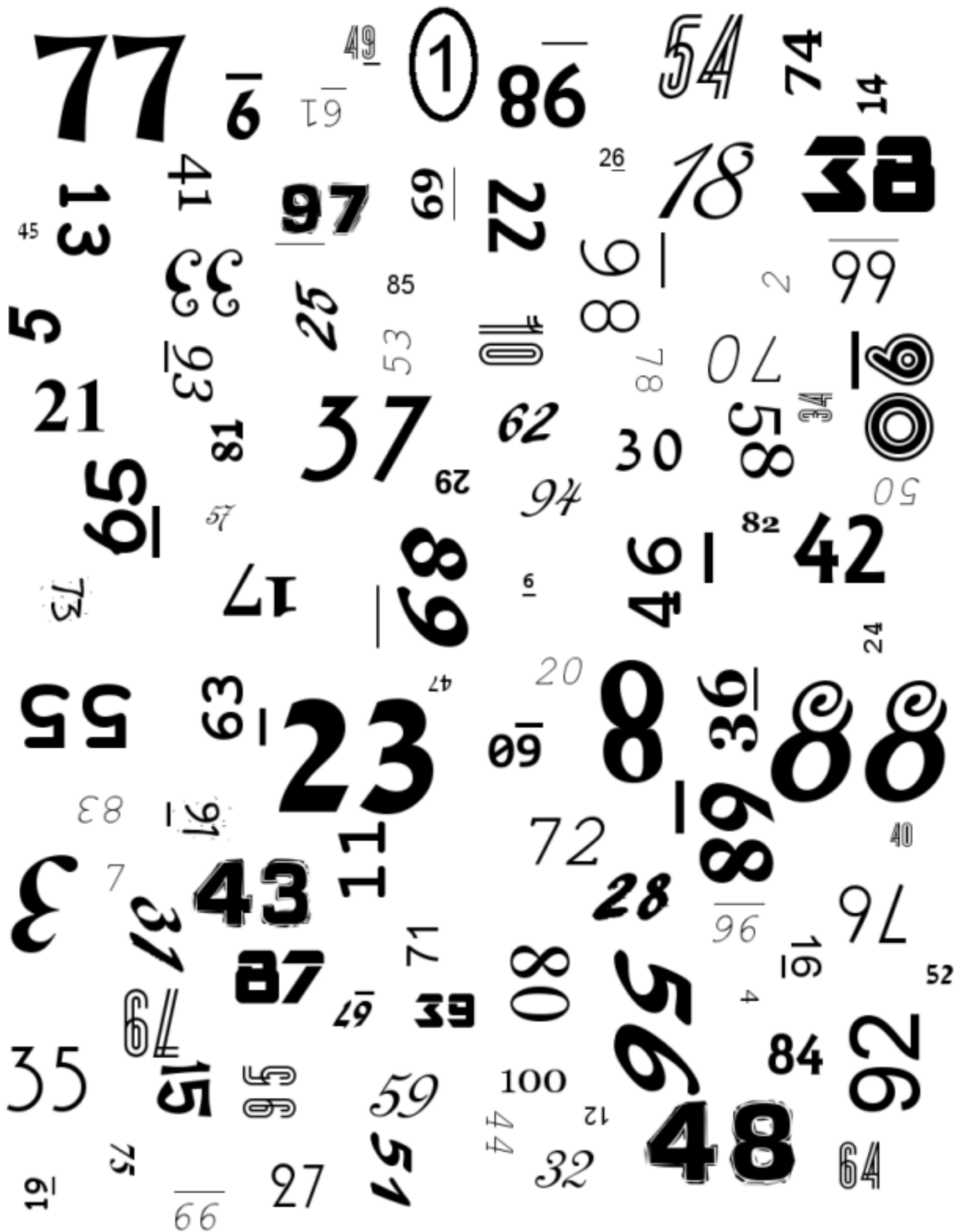
General Tactics:

- Remind yourself about the impacts of implicit bias
- Slow down decision-making
- De-stress—engage in mindfulness and meditation techniques
- Add structure to processes
- Embed bias-busters
- Add in oversight/accountability measures
-

Interrupt Unconscious Bias

Specific Research-Based Tactics (see the strategies worksheet):

- **Awareness**
 - Implicit Association Test—which tests will you take?
 - Surprise—when have you been surprised? Why?
 - Discomfort—when have you felt uncomfortable? Why?
- **Behavior Changes**
 - Cross-difference relationships
 - Engage in different cultural events
 - Challenge stereotypes—say no to stereotypes and yes to counter-stereotypes
 - Focus on being fair and unbiased
 - Challenge judgments that pop into your mind
 - Find something in common with the other person
 - Get others' perspectives by asking, not imagining what they are
 - Audit decisions for affinity bias
 - Appoint a bias Interruptive to call out bias in meetings
 - Mentors & sponsors
 - DEI competencies



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Unconscious Bias in the Legal Profession: Strategies for Uncovering and Interrupting Bias

Research shows that we all have unconscious bias; it is part of our human condition. But research also shows that exercising your “ABS” – (1) **A**wareness, (2) **B**ehavior change, and (3) **S**tructural change -- can interrupt and measurably reduce implicit or unconscious bias. You have learned to be biased from a wide variety of sources; you can unlearn these biases – but only by engaging in the following actions.

AWARENESS

Interrupting bias begins with awareness. Most people recognize that they have some measure of conscious bias for or against other groups – positive or negative attitudes and stereotypes -- that they can either hide or express, given the context. What few people realize is that everyone has unconscious or implicit bias – attitudes and stereotypes that the conscious mind is not even aware of, let alone able to control. Our unconscious is highly permeable and soaks up information, including stereotypes, from a variety of sources without our conscious awareness or permission. Those stereotypes can unintentionally influence our behaviors.

Review the following intervention strategies and list the action steps you will take to interrupt your unconscious biases:

Awareness - Intervention Strategies	Action Steps
<ol style="list-style-type: none">1. Take one or more implicit bias tests offered online at no cost at a website sponsored by Harvard University that measures reaction times and associations – https://implicit.harvard.edu/implicit/.2. Keep a “Surprise Journal” – track your surprises – assumptions made or expectations you have about another person or group that turned out to be wrong. The gap between your expectation (stereotype) and reality opens a window into the unconscious and reveals where you may harbor implicit bias.3. Pay attention to discomfort with people in different social identity groups. This can reveal your unconscious biases as well.4. Observe your first thoughts when interacting with others. Sometimes unconscious attitudes make their way into our conscious mind but we don’t pay attention to them at the time. Once you start paying attention, you can be more aware of areas where you may have unintentional biases. As you walk through a crowd, notice who you “trigger” on - who your attention is drawn to automatically. Then pay attention to whether there is a judgment that follows automatically. If a stereotype pops up, challenge its validity.5. Determine which of your social identities are not salient (you don’t think about them on a daily basis or view the world through those identities). Those “blind spots” can cause you to make unintentional mistakes in decision-making. Intentionally looking into those blind spots can also reveal hidden biases.	

BEHAVIOR CHANGE

Once you are aware of areas of implicit bias, you can break the potential link between the bias and your behaviors. You might not be able to completely eliminate unconscious biases but you can engage in bias-breaking activities that will help keep them from influencing your decisions and behaviors.

Behavior Change - Intervention Strategies	Action Steps
<p>1. Actively doubt your objectivity</p> <ul style="list-style-type: none"> • Research shows that people who claim they are objective are actually more biased compared to those who doubt their objectivity and work to interrupt bias. • Flip it to Test: Take the time to review your decisions (especially those related to talent management) and search for indicia of bias. Ask if your decision would be different if it involved a person from a different social identity group. • Slow down decision-making so your conscious mind is also engaged. Pause before you make a final decision. Question your assumptions and first impressions. Ask others for feedback to check your thought processes. • Justifying decisions in writing helps reveal and interrupt any biases. • Don't buy in to the popular notion that you should be "color blind" or "gender blind." You do see and react to visible differences on an unconscious level, even if you consciously believe you don't. Research demonstrates that believing you are "color/gender/age blind" actually makes you more biased. The better course is to acknowledge people's differences and work to ensure those differences aren't impacting you, consciously or unconsciously, in decision-making or your behaviors. <p>2. Increase your motivation to be objective and fair</p> <ul style="list-style-type: none"> • Research shows that people who are more motivated to be fair are less biased. Studies show that intentionally activating the part of your brain that seeks to be fair – the rostral anterior cingulate cortex (rACC) - helps reduce bias. <p>3. Actively reject stereotypes</p> <ul style="list-style-type: none"> • When a stereotype pops up in your thinking, actively reject it and say "no" or – even better – "that's wrong" – in order to re-script your implicit associations. • Decrease exposure to stereotypes. Change the channel or website page if material features stereotypes. <p>4. Expose yourself to counter-stereotypic examples</p> <ul style="list-style-type: none"> • Notice when someone or something triggers a stereotype in your mind and actively oppose it by thinking of a counter-stereotype in that situation. • Develop relationships with people who are different – cross-difference friendships, work relationships, mentor/sponsor relationships, etc. • Regularly expose yourself to counter-stereotypic individuals (i.e. male nurses, female construction supervisors, elderly athletes). Images (photos, mental visualizations) work too. Dr. Mahzarin Benaji, co-founder of the IAT, has rotating 	

photographs on her computer screensaver that are counter-stereotypical, including one depicting a female construction worker feeding her baby during a work break.

- Some organizations are [using virtual reality](#) in training on unconscious bias. When you take on the persona of someone who is different, that helps change your unconscious associations. Also, visualizing interactions with a member of a social “out-group” has been shown to help interrupt implicit bias.

5. Shift perspectives – alter the “us vs. them” mentality

- Put yourself in someone else’s shoes and look at the world through that perspective to notice things you may have never noticed before.
- If you’re really serious about reducing implicit racial bias, [research](#) shows that picturing yourself as having a different race results in lower scores on the race IAT.
- Perspective-taking might not be sufficient, though, if you have so little experience with the other group/person that you have to imagine what their experience is like. So go to the next level by engaging in “perspective-getting,” which requires engaging with others and learning what they think and prefer.
- Join a group that is different (i.e., be the male ally in the women’s affinity group).

6. Find commonalities with others

- [Research](#) shows that when you deliberately seek out areas of commonality with others, you will behave differently toward them, and exhibit less implicit bias so find something in common with every colleague.
- Re-categorize people - focus on a larger shared identity so that individuals in social “out-groups” are recast as members of the team or organization (“in-group”).

7. Reduce stress, fatigue, cognitive overload, snap decisions

- Implicit bias can affect decision-making and behaviors more easily when people are stretched to their limits and have to make quick decisions.
- [Research](#) demonstrates that engaging in mindfulness meditation reduces implicit bias because it strengthens the ability of your conscious mind to intervene in decision-making.

STRUCTURAL CHANGE

Awareness of implicit bias is not enough. Self-monitoring and personal behavioral changes can also be insufficient. Individual behavior changes often need to be supported by structural changes in order to have the greatest impact on interrupting implicit biases.

Structural Change - Intervention Strategies	Action Steps
<ol style="list-style-type: none"> 1. Increase accountability <ul style="list-style-type: none"> • Institute systems where people have to count/measure outcomes so that no individuals or groups are systemically advantaged or disadvantaged. • Create systems where information is more transparent and processes are more objective (reduces implicit bias), including asking people to explain/justify their decisions. • Make a list of everyone in the group/section/department and go through the entire list to consider everyone before selecting people for opportunities (to avoid “top of mind” selections based on availability bias). • Empower everyone in the organization to point out areas of potential bias to enhance organizational performance by creating a psychologically safe environment. 2. Make decisions collectively and diversify decision-making groups <ul style="list-style-type: none"> • Fill in blind spots and amplify the variety of perspectives at the table by intentionally including people from different social identities and backgrounds to improve decision-making. 3. Build support systems <ul style="list-style-type: none"> • Help people reduce their stress, fatigue, mental overloads, and snap decisions by creating supportive structures and policies. 4. Continuous education <ul style="list-style-type: none"> • Offer regular training to raise everyone’s awareness and increase their knowledge about implicit bias and provide tools for interrupting bias. 5. Develop clear guidelines, processes and criteria <ul style="list-style-type: none"> • People implicitly move the goalposts when left to subjectively evaluate others who are different; interrupt this tendency with scorecards, pre-set interview questions, clear hiring and promotion criteria (decided beforehand), behavioral competencies, etc. 6. Institutionalize programs that provide exposure to diverse exemplars (e.g. Speaker’s Bureaus, outside activities, poster campaigns). 	

STRATEGIES FOR

KATHLEEN NALTY



Confronting Unconscious Bias



So—what’s in a name? Apparently, a lot. If you are named John, you will have a significant advantage over Jennifer when applying for a position, even if you both have the exact same credentials.¹ If your name is José, you will get more callbacks if you change it to Joe.² And if you’re named Emily or Greg, you will receive 50 percent more callbacks for job interviews than equally qualified applicants named Lakisha or Jamal.³

A three-part dialogue published in *The Colorado Lawyer* early last year raised awareness about the prevalence of conscious and unconscious biases in the legal profession.⁴ While we may be aware of our conscious attitudes toward others, we are typically clueless when it comes to our unconscious (or implicit) biases. This article will help you recognize your unconscious biases and provides research-based strategies for addressing them.

Why Does It Matter?

Research studies reveal just how much bias impacts decisions—not just on a conscious basis, but to a much greater extent, on an unconscious basis. Experts believe that the mind’s unconscious is responsible for 80 percent or more of thought processes.⁵ Yet the conscious mind is simply not capable of perceiving what the unconscious is thinking.⁶ You can be two people at the same time: a conscious self who firmly believes you do not have any bias against others because of their social identities, and an unconscious self who harbors stereotypes or biased attitudes that unknowingly leak into decision-making and behaviors.⁷ The good news is that we can work to redirect and reeducate our un-

conscious mind to break down stereotypes and biases we don’t agree with by engaging in the research-based activities outlined in this article.

This process is critical to making better decisions in general, and is particularly important as the legal industry struggles to play catch-up with respect to inclusiveness. In addition to eliminating the hidden barriers that keep the legal profession from being more diverse, recognizing and dealing with unconscious biases actually helps individuals become smarter, more effective lawyers. After all, this is a service industry, and our ability to interact with a diverse community and serve a wide variety of clients depends on making decisions free from fundamental errors. Finding the pitfalls in our thinking, taking them into account, and working to eliminate them leads to better decision-making. Individuals who make better decisions also help their organizations perform better. So there is a lot at stake in terms of whether you will invest the time to be more inclusive and become a more effective lawyer by attending to your unconscious biases.

Types of Unconscious Cognitive Biases

We all have unconscious cognitive biases

that can, and often do, interfere with good decision-making. There are too many to address in this article, but it is worthwhile to learn about a few that are particularly important with respect to diversity and inclusion.

Confirmation Bias

Confirmation bias is a type of unconscious bias that causes people to pay more attention to information that confirms their existing belief system and disregard that which is contradictory.

Clearly this can harm good decision-making. You can probably think of at least one instance when you advised a client or reached a decision and later realized you dismissed or unintentionally ignored critical information that would have led to a different and perhaps better outcome.

Confirmation bias can also skew your evaluations of others' work and potentially disrupt their careers. In *The Colorado Lawyer's* threepart dialogue, Professor Eli Wald briefly mentioned a research study on confirmation bias in the legal industry that I feel bears further elaboration here.⁸ In 2014, Dr. Arin Reeves released results of a study she conducted to probe whether practicing attorneys make workplace decisions based on confirmation bias.⁹ This study tested whether attorneys unconsciously believe African Americans produce

also found more technical and factual errors and made more critical comments with respect to African American Thomas Meyer's memo. Even more significantly, Reeves found that the female and racially/ethnically diverse partners who participated in the study were just as likely as white participants to be more rigorous in examining African American Thomas Meyer's memo (and finding more mistakes), while basically giving Caucasian Thomas Meyer a pass.¹⁰

The attorneys who participated in this study were probably shocked by the results. That is the insidious nature of unconscious bias—people are completely unaware of implicit biases they may harbor and how those biases leak into their decision-making and behaviors.

Attribution Bias

Another type of unconscious cognitive bias—attribution bias—causes people to make more favorable assessments of behaviors and circumstances for those in their “in groups” (by giving second chances and the benefit of the doubt) and to judge people in their “out groups” by less favorable group stereotypes.

Availability Bias

Availability bias interferes with good decision-making because it caus-

With the help of other practicing attorneys, Reeves created a research memo that contained 22 errors (spelling, grammar, technical writing, factual, and analytical). The memo was distributed to 60 partners working in nearly two dozen law firms who thought they were participating in a “writing analysis study” to help young lawyers with their writing skills.

inferior written work and that Caucasians are better writers.

With the help of other practicing attorneys, Reeves created a research memo that contained 22 errors (spelling, grammar, technical writing, factual, and analytical). The memo was distributed to 60 partners working in nearly two dozen law firms who thought they were participating in a “writing analysis study” to help young lawyers with their writing skills. All of the participants were told the memo was written by a (fictitious) third-year associate named Thomas Meyer who graduated from New York University Law School. Half of the participants were told Thomas Meyer was Caucasian and the other half were told Thomas Meyer was African American. The law firm partners participating in the study were asked to give the memo an overall rating from 1 (poorly written) to 5 (extremely well written). They were also asked to edit the memo for any mistakes.

The results indicated strong confirmation bias on the part of the evaluators. African American Thomas Meyer's memo was given an average overall rating of 3.2 out of 5.0, while the exact same memo garnered an average rating of 4.1 out of 5.0 for Caucasian Thomas Meyer. The evaluators found twice as many spelling and grammatical errors for African American Thomas Meyer (5.8 out of 7.0) compared to Caucasian Thomas Meyer (2.9 out of 7.0). They

es people to default to “top of mind” information. So, for instance, if you automatically picture a man when asked to think of a “leader” and a woman when prompted to think of a “support person,” you may be more uncomfortable when interacting with a female leader or a man in a support position, particularly at an unconscious level.

Affinity Bias

The adverse effects of many of these cognitive biases can be compounded by affinity bias, which is the tendency to gravitate toward and develop relationships with people who are more like ourselves and share similar interests and backgrounds. This leads people to invest more energy and resources in those who are in their affinity group while unintentionally leaving others out. Due to the prevalence of affinity bias, the legal profession can best be described as a “mirrortocracy”—not a meritocracy. A genuine meritocracy can never exist until individual lawyers and legal organizations come to terms with unconscious biases through training and focused work to interrupt biases.

How Unconscious Bias Plays Out in the Legal Profession

Traditional diversity efforts have never translated into sustained diversity at all levels. Year after year, legal organizations experience

disproportionately higher attrition rates for attorneys in already underrepresented groups—female, racially/ethnically diverse, LGBT, and those with disabilities.¹¹ Before 2006 and the first of eight national research studies,¹² no one was sure what was causing higher attrition rates for attorneys in these groups. Now the answer is clear: every legal organization has hidden barriers that disproportionately impact and disrupt the career paths of many female, LGBT, racially/ethnically diverse, and disabled lawyers.

According to the research studies, critical career-enhancing opportunities are shared unevenly by people in positions of power and influence, often without realizing that certain groups are disproportionately excluded. Hard work and technical skill are the foundation of career progress, but without some access to these opportunities, attorneys are less likely to advance in their organizations. Specifically, female, LGBT, disabled, and racially/ethnically diverse attorneys have disproportionately less access to the following:

- networking opportunities—informal and formal
- insider information
- decision-makers
- mentors and sponsors
- meaningful work assignments
- candid and frequent feedback
- social integration
- training and development
- client contact
- promotions

The studies all point to bias as the major cause of these hidden barriers. Certainly, overt discrimination still exists and contributes to this dynamic. But it turns out that a specific kind of unconscious (and thus unintentional) bias plays the biggest role. Affinity bias, which causes people to develop deeper work and trust relationships with those who have similar identities, interests, and backgrounds, is the unseen and unacknowledged culprit. When senior attorneys—the vast majority of whom are white and male—gravitate toward and share opportunities with others who are like themselves, they unintentionally leave out female, LGBT, disabled, and racially/ethnically diverse attorneys.

Strategies for Identifying and Interrupting Unconscious Bias

Having unconscious bias does not make us bad people; it is part of being human. We have all been exposed to thousands of instances of stereotypes that have become embedded in our unconscious minds. It is a bit unsettling, however, to think that good, well-intentioned people are actually contributing—unwittingly—to the inequities that make the legal profession one of the least diverse. The good news is that once you learn more about cognitive biases and work to disrupt the stereotypes and biased attitudes you harbor on an unconscious level, you can become a better decision-maker and help limit the negative impacts that are keeping our industry from being more diverse and inclusive.

The obvious place to start is with affinity bias; learning and reminding yourself about affinity bias should help you lessen the effect on people in your “out groups.” Affinity bias has been well documented in major league sports. A series of research studies analyzing foul calls in NBA games demonstrates the powerful impact of simply being aware of affinity bias. In the first of three studies examining

data from 13 seasons (1991–2004), researchers discovered that referees called more fouls against players who were not the same race as the referee, and these disparities were large enough to affect the outcomes in some games.¹³ Based on a number of studies documenting the existence of “in group” or affinity bias in other realms, the researchers inferred that the differential in called fouls was mostly happening on an unconscious level.

The findings of the first study, released in 2007, were criticized by the NBA, resulting in extensive media coverage. The researchers subsequently conducted two additional studies—one using data from basketball seasons before the media coverage (2003–06) and the other focusing on the seasons after the publicity (2007–10). The results were striking. In the seasons before referees became aware they were calling fouls disparately, the researchers replicated the findings from the initial study. Yet after the widespread publicity, there were no appreciable disparities in foul-calling.

The lesson to be learned from this research is that paying attention to your own affinity bias and auditing your behaviors can help you interrupt and perhaps even eliminate this type of implicit bias. Ask yourself the following questions:

- How did I benefit from affinity bias in my own career? Did someone in my affinity group give me a key opportunity that contributed to my success? Many lawyers insist they “pulled themselves up by their own bootstraps” but upon reflection have to acknowledge they were given key opportunities—especially from mentors and sponsors. Barry Switzer famously highlighted this tendency when he observed that “some people are born on third base and go through life thinking they hit a triple.”¹⁴
- Who are my usual favorites or go-to lawyers in the office or practice group?
- With whom am I more inclined to spend discretionary time, go to lunch, and participate in activities outside of work?
- Do I hold back on assigning work to attorneys from underrepresented groups until others vouch for their abilities?
- When I go on client pitches, do I always take the same people?
- Who makes me feel uncomfortable and why?
- Who do I avoid interacting with or giving candid feedback to because I just don’t know how to relate to them or because I’m afraid I’ll make mistakes?
- To whom do I give second chances and the benefit of the doubt (e.g., the people in my “in group”) and who do I judge by group stereotypes and, therefore, fail to give second chances?

It is easy for skeptics to dismiss inequities described by attorneys in underrepresented groups (or even the research studies documenting the disparate impact of hidden barriers) until they are presented with concrete evidence that some people simply have more access to opportunities that play a critical, but mostly unacknowledged, role in any attorney’s success. Thus, when implementing inclusiveness initiatives, it is important to actually count who has access to work-related opportunities, such as going on client pitches or participating in meaningful assignments, to counteract skeptics’ tendency to not believe what they don’t (or won’t) see.

Research scientists are learning more about how implicit biases operate, including methods for uncovering and interrupting them.¹⁵ While it is not yet clear whether implicit biases can be completely eliminated, certain techniques have been shown to lessen bias

and disrupt its impact. To rescript your unconscious thoughts and interrupt implicit biases, you have to work your “ABS”: first, develop Awareness of those biases, and then make the Behavior and Structural changes required to disrupt them.

Awareness

If you make conscious negative judgments about groups that are based on stereotypes, you can challenge your thinking by asking yourself why: Why am I bothered by people in that group? Why do I or why should I care about that? Why do I persist in thinking all members of that group engage in that stereotyped behavior? Then actively challenge those beliefs every time they are activated. Overriding stereotypes takes a conscious act of will, whereas the activation of stereotypes does not because they are often embedded in your unconscious mind.

Two easy ways to develop awareness of your unconscious biases are:

1. Keep track of your surprises (i.e., instances when something you expected turned out to be quite different).¹⁶ Those surprises offer a window into your unconscious. For example, when you pass a slow-moving car impeding the flow of traffic, do you expect to see a very elderly driver behind the wheel? When you see that the driver is actually younger, does that surprise you? You may truly believe you are not consciously biased against the elderly, but you reflexively presumed that the slower driver was elderly. That is a product of unconscious bias. How could that attitude influence decision-making in other areas, such as in interactions with more senior colleagues, witnesses, jurors, or clients?
2. Take a free, anonymous implicit association test (IAT) online at implicit.harvard.edu/implicit/selectatest.html. This series of tests, sponsored by Harvard University and taken by millions of people since the late 1990s, can reveal areas where you unknowingly harbor unconscious biases. There are over a dozen different tests, measuring unconscious bias with respect to disability, race, age, gender, gender roles, mental health, weight, sexual orientation, religion, and more. The tests measure how quickly or slowly you associate positive or negative words with different concepts. Your unconscious, immediate assumptions reveal themselves in the delayed responses measured by the computer when you struggle to connect words and concepts that are not as readily associated. You might not like, or be in denial with respect to, some of the test results, but they can be useful in revealing often uncomfortable truths about what your unconscious mind is up to.

While awareness is necessary, it is not sufficient, by itself, to interrupt unconscious bias. Behavior changes are also essential.

Behavior Changes

Like correcting a bad habit, you can retrain yourself to think in less biased and stereotyped ways.¹⁷ Motivation is key; research shows that people who seek to be fair and unbiased are more likely to be successful in purging their biases.¹⁸

Researchers have identified strategies people can use to change their behaviors to overcome bias. They include the following:

Retrain your brain. “The ‘holy grail’ of overcoming implicit bias is to change the underlying associations that form the basis of implicit bias.”¹⁹ To do so, you need to develop the ability to be self-observant. Pay attention to your thinking, assumptions, and behaviors and then acknowledge, dissect, and alter automatic responses to break

the underlying associations.

Actively doubt your objectivity. Take the time to review your decisions (especially those related to people and their careers) and search for indicia of bias; audit your decisions to ensure they don’t disparately impact people in other groups. Pause before you make a final decision.

Question your assumptions and first impressions. Ask others for feedback to check your thought processes. Ask yourself if your decision would be different if it involved a person from a different social identity group. Finally, justify your decision by writing down the reasons for it. This will promote accountability, which can help make unconscious attitudes more visible.

Be mindful of snap judgments. Take notice every time you jump to conclusions about a person belonging to a different social identity group (like the slow driver). Have a conversation with yourself about why you are making judgments or resorting to stereotypes. Then resolve to change your attitudes.

Oppose your stereotyped thinking. One of the best techniques seems odd but has been shown to have a lasting effect: think of a stereotype and say the word “no” and then think of a counter-stereotype and say “yes.” People who do this have greater long-term success in interrupting their unconscious bias with respect to that stereotype.²⁰ To decrease your implicit biases, you might also want to limit your exposure to stereotyped images; for instance, consider changing the channel if a TV show or song features stereotypes.

Deliberately expose yourself to counter-stereotypical models and images. For example, if it is easier for you to think of leaders as male, study successful female leaders to retrain your unconscious to make the connection between leaders and both women and men. Research has shown that simply viewing photos of women leaders helps reduce implicit gender bias.²¹ Even the Harvard professor who invented the IAT—Mahzarin Banaji—acknowledged that she has some gender bias. To interrupt it, she put rotating photographs on her computer screensaver that are counter-stereotypical, including one depicting a female construction worker feeding her baby during a work break.

Look for counter-stereotypes. Similarly, pay more attention and be more consciously aware of individuals in counter-stereotypical roles (e.g., male nurses, female airline pilots, athletes with disabilities, and stay-at-home dads).

Remind yourself that you have unconscious bias. Research shows that people who think they are unbiased are actually more biased than those who acknowledge they have biases.²² There is a Skill Pill mobile app on managing unconscious bias available for enterprise usage (skillpill.com). If you play this short app before engaging in hiring, evaluation, and promotion decisions, it could help you interrupt any unconscious biases. But you don’t need an app to prompt yourself to be mindful of implicit bias and its impact. You could create a one-page reminder sheet that accompanies every evaluation form or candidate’s résumé, for instance.

Engage in mindfulness exercises on a regular basis, or at least before participating in an activity that might trigger stereotypes (e.g., interviewing a job candidate).²³ Research shows that mindfulness breaks the link between past experience and impulsive responses, which can reduce implicit bias.²⁴

Engage in cross-difference relationships. Cultivate work relationships (or personal relationships outside of work) that involve people with different social identities.²⁵ This forces you out of your

comfort zone and allows your unconscious to become more comfortable with people who are different. Those new relationships will also force you to dismantle stereotypes and create new types of thinking—both conscious and unconscious. So find ways to mentor junior colleagues who are different from you in one or more dimensions (e.g., gender, race, age, religion, parental status, etc.), and ask them how they view things. This will open you up to new ways of perceiving and thinking.

Mix it up. Actively seek out cultural and social situations that are challenging for you—where you are in the distinct minority or are forced to see or do things differently. For example, go to a play put on by PHAMILY (an acting troupe of people with mental and physical disabilities) or attend a cultural celebration that involves customs and people you have never been exposed to. The more uncomfortable you are in these situations, the more you will grow and learn.

Research demonstrates that believing you are blind to people's differences actually makes you more biased.³² The better course is to acknowledge these differences and work to ensure they aren't impairing your decision-making—consciously or unconsciously. The world has changed. In the 20th century, we were taught to avoid differences and there was an emphasis on assimilation (the “melting pot”). In the 21st century, we know that being “difference-seeking” and inclusive actually causes people to work harder cognitively,³³ which leads to better organizational performance and a healthier bottom line. Today's mantra should be: “I need your differences to be a better thinker and decision-maker, and you need mine, too.”

Awareness of implicit bias is not enough. Self-monitoring is also insufficient. Individual behavior changes often have to be supported and encouraged by structural changes to have the greatest impact on interrupting implicit biases.

Highly skilled, inclusive leaders make concerted efforts to ensure that hidden barriers are not thriving on their watch. Because bias flourishes in unstructured, subjective practices, leaders should put structured, objective practices and procedures in place to help people interrupt their unconscious biases. Just knowing there is accountability and that you could be called on to justify your decisions with respect to others can decrease the influence of implicit bias.

Shift perspectives. Walk in others' shoes; look through their lenses to see how they view and experience the world. Join a group that is different (e.g., be the male ally in the women's affinity group). This will help you develop empathy and see people as individuals instead of lumping them into a group and applying stereotypes.²⁶ And if you're really serious about reducing implicit racial bias, research shows that picturing yourself as having a different race results in lower scores on the race IAT.²⁷

Find commonalities. It is also useful to look for and find commonalities with colleagues who have different social identities from you.²⁸ Do they have pets? Are their children attending the same school as your children? Do they also like to cook, golf, or volunteer in the community? You will be surprised to discover how many things you have in common. Research shows that when you deliberately seek out areas of commonality with others, you behave differently toward them and exhibit less implicit bias.²⁹

Reduce stress, fatigue, cognitive overload, and time crunches. We are all more prone to revert to unconscious bias when we are stressed, fatigued, or under severe cognitive load or time constraints.³⁰ Relax and slow down decision-making so that your conscious mind drives your behavior with respect to all people and groups.³¹

Give up being color/gender/age blind. Don't buy into the popular notion that you should be blind to differences; it is impossible and backfires anyway. Your unconscious mind sees and reacts to visible differences, even if you consciously believe you don't.

Structural Changes

Highly skilled, inclusive leaders make concerted efforts to ensure that hidden barriers are not thriving on their watch. Because bias flourishes in unstructured, subjective practices, leaders should put structured, objective practices and procedures in place to help people interrupt their unconscious biases. Just knowing there is accountability and that you could be called on to justify your decisions with respect to others can decrease the influence of implicit bias.³⁴

Leaders, in conjunction with a diversity and inclusiveness (D+I) committee, can examine all systems, structures, procedures, and policies for hidden structural inequities and design action plans to make structural components inclusive of everyone. Structural changes should be designed to address the hidden barriers first, because research shows that these are the most common impediments.

To make the invisible visible with respect to mentorship and sponsorship, one firm simply added the following question to its partners' end-of-year evaluation form: “Who are you sponsoring?” This simple but profoundly illuminating question allowed firm leaders determine who was falling through the cracks. The firm then created a D+I Action Plan with a focus on mentorship and sponsorship. The firm is currently implementing a “Culture of Mentorship” to ensure that all attorneys receive equitable development opportunities so they can do their best work for the firm. After all, a business model where some attorneys are cultivated and others are not makes no sense; the organization could accomplish so much more if every one of its human

capital assets operated at the highest level possible. Imagine the enhancement to the bottom line for organizations that are inclusive and have eliminated hidden barriers to success for everyone.

There are dozens of structural changes that can be made, ranging from small to large. But the structural change with the most potential for lasting change is a D+I competencies framework. Recently, a two-year study of more than 450 companies by Deloitte determined that the talent management practices that predicted the highest performing companies all centered on inclusiveness.³⁵ Many companies that have instituted D+I competencies and hold employees accountable for inclusive behaviors in their job duties and responsibilities are making real progress with respect to diversity. For example, at Sodexo, implementation of D+I competencies resulted in “double digit growth in representation of women and minorities.”³⁶

This type of framework is critical in any legal organization. Many people would do more with respect to inclusiveness if they just knew what to do. Competencies define behaviors along an easily understandable scale—are you unskilled, skilled, or highly skilled in inclusiveness (and, therefore, contributing to the organization’s success in more meaningful ways)? This key component was lacking in the legal industry, so I wrote and published a book in 2015: *Going All In on*

observed the members during prayer. His experience gave him more familiarity and comfort with a group of people that is currently widely disparaged and stereotyped.

After taking an IAT that revealed an unconscious bias against older people and consciously acknowledging he avoids his older colleagues at work, another student decided to confront this tendency by finding commonalities with them. Specifically, the student knew that he shared an interest in gardening with an older colleague with whom he would be working on an upcoming project. So he deliberately struck up a conversation with this co-worker about gardening and found it was then easier to work with him on the project.

Another student decided to consciously observe his reflexive thought processes by noticing what he was thinking or how he reacted to different people and then opposing any stereotyped thoughts. While attending a basketball game, he saw a black man dressed in medical scrubs enter the gym. Immediately, the student observed that he was trying to figure out what the man did for a living. The student noticed that he assumed the man worked as an X-ray technician or medical assistant. At that point, he realized that the man’s race and gender might be triggering these assumptions and the student then visualized the man as a nurse, a home health-aid worker,

Many attorneys, judges, and other law professionals in the Colorado legal community are pioneers when it comes to diversity and, particularly, inclusion. Ten years ago, with the establishment of the Deans’ Diversity Council, this legal community was the first in the country to focus on the new paradigm of inclusiveness and how it must be added to traditional diversity efforts to make diversity sustainable.

Diversity and Inclusion: The Law Firm Leader’s Playbook. This book contains individual and organizational competencies frameworks, as well as the tools and strategies law firm leaders need to address the hidden barriers, identify the unconscious biases that allow those barriers to thrive, and make genuine progress on diversity and inclusion.

Examples of Bias-Breaking Activities: Stories From the Front Lines

Implementing the de-biasing strategies outlined above is not a “one and done” proposition. It is an ongoing process and must become second-nature to be most effective. Once you start implementing these strategies, the lessons learned will be impactful.

I teach a class at the University of Denver Sturm College of Law on “Advancing Diversity and Inclusion,” which includes a session on unconscious biases. As part of their learning experience, I ask my students to engage in some of the activities outlined above and write short essays on what they discovered or learned. They had some eye-opening experiences that will help them interrupt their own implicit biases and make them better decision-makers as practicing lawyers.

For instance, one student who is not very religious visited a local mosque to learn more about Muslim people and their faith. The student attended a presentation on Islam during an open house and

or a physician. This student wrote that the exercise made him aware of how often he jumps to conclusions about others based on visible cues and makes assumptions that might be completely wrong.

A female student decided to doubt her own objectivity with respect to how she viewed the support staff at her company. She believes she’s a gender champion but was surprised to realize that she really doesn’t view the support staff (mostly women) as favorably as the sales staff (mostly men). She decided to picture women in sales positions and men in support positions to try to retrain her unconscious mind and the assumptions she was used to making.

Another student, who is white and grew up in an all-white community, chose to observe the “Black Lives Matter” demonstration and participate in the Martin Luther King Day parade. She also later attended a Sunday service at an all-black church and wrote this about the experience:

Overall it was a good experience because I think being uncomfortable can be good for a person. Looking back, I really had no reason to be uncomfortable because everyone was very nice and welcoming; my uneasiness was made up in my head based on assumptions I feared people would make about me.

Putting yourself in situations that are uncomfortable and observing your own attitudes, judgments, and behaviors can flip a switch in your brain and help you learn new ways of thinking and interacting with others. The real-world impact of this is illustrated by a story told to me by an in-house attorney who reassessed a biased assumption before it had an impact on someone else's career. The attorney met with a group of people at her company to discuss staffing a challenging position that would require a lot of travel. The name of a qualified female employee candidate was proposed. The lawyer knew the candidate was a single mother of a toddler and immediately suggested to the group that it might be very difficult for a single mother to handle the extensive travel required. Effectively, this comment removed the woman from consideration. Later, the lawyer attended a workshop on unconscious bias. She realized that she'd made assumptions that might not be true. The lawyer met with the female employee and asked her if she was able to travel for business. The female employee said that travel wasn't an impediment because she had several family members nearby who could help care for her child while she was out of town. The lawyer immediately went back to the group and explained her mistake, asking that the female employee's name be included for consideration for the position.

Conclusion

Many attorneys, judges, and other law professionals in the Colorado legal community are pioneers when it comes to diversity and, particularly, inclusion. Ten years ago, with the establishment of the Deans' Diversity Council, this legal community was the first in the country to focus on the new paradigm of inclusiveness and how it must be added to traditional diversity efforts to make diversity sustainable. The three-part dialogue on unconscious bias featured in *The Colorado Lawyer* was truly ground-breaking because it addressed challenges not often discussed openly.

The next step is to take action, on an individual and organizational basis, to eliminate hidden barriers and interrupt the unconscious biases that fuel those barriers. It should be deeply concerning to everyone that good, well-meaning people are doing more to foster inequities in the legal workplace—unintentionally and unknowingly—just by investing more in members of their affinity or “in groups” than the harm caused by outright bigotry. This unfortunate dynamic will change only when we come to terms with the fact that we all have biases—conscious and unconscious—and begin to address those biases. Good intentions are not enough; if you are not intentionally including everyone by interrupting bias, you are unintentionally excluding someone.

So now, ask yourself, are you up to this challenge? ☺



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Endnotes

¹In a randomized, double-blind study, science faculty rated John, the male applicant for a lab manager position, as significantly more competent than Jennifer, the female candidate, awarding him an average starting salary more than 10 percent higher and volunteering to mentor him more often than Jennifer, even though she had the exact same credentials and qualifications. The insidious role of unconscious bias was revealed in the finding that the female evaluators were equally as likely as their male colleagues to exhibit bias for John and against Jennifer. Moss-Racusin et al., *Science faculty's subtle gender biases favor male students*, Proceedings of the National Academy of Sciences (Sept. 2012), www.pnas.org/content/109/41/16474.abstract.

²Matthews, *He Dropped One Letter in His Name While Applying or Jobs, and the Responses Rolled In*, Huffington Post (Sept. 2, 2014), www.huffingtonpost.com/2014/09/02/jose-joe-job-discrimination_n_5753880.html.

³Bertrand and Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, The National Bureau of Economic Research (July 2003), www.nber.org/papers/w9873.

⁴Sandgrund, *Can We Talk? Bias, Diversity, and Inclusiveness in the Colorado Legal Community: Part I—Implicit Bias*, 45 The Colorado Lawyer 49 (Jan. 2016), www.cobar.org/tcl/tcl_articles.cfm?articleid=9166; Sandgrund, *Can We Talk? Bias, Diversity, and Inclusiveness in the Colorado Legal Community: Part II—Diversity*, 45 The Colorado Lawyer 49 (Feb. 2016), www.cobar.org/tcl/tcl_articles.cfm?articleid=9155; Sandgrund, “Can We Talk? Bias, Diversity, and Inclusiveness in the Colorado Legal Community: Part III—Inclusiveness,” 45 *The Colorado Lawyer* 67 (Mar. 2016), www.cobar.org/tcl/tcl_articles.cfm?articleid=9179.

⁵Banaji and Greenwald, *Blindspot: Hidden Biases of Good People* 61 (Delacorte Press, 2013).

⁶*Id.* at 55.

⁷*Id.* at 20.

⁸Sandgrund, Part I, *supra* note 4 at 48.

⁹Reeves, *Yellow Paper Series: Written in Black & White—Exploring Confirmation Bias in Racialized Perceptions of Writing Skills* (Nextions Original Research, 2014), www.nextions.com/wp-content/files_mf/14468226472014040114WritteninBlackandWhiteYPS.pdf.

¹⁰*Id.* at 5.

¹¹See New York City Bar Association, *2014 Diversity Benchmarking Report* (2015), www.nycbar.org/images/stories/pdfs/diversity/benchmarking2014.pdf.

¹²American Bar Association (ABA), *Visible Invisibility: Women of Color in Law Firms* (2006), <http://bit.ly/1DNJRza>; ABA, *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms* (2009), www.americanbar.org/content/dam/aba/administrative/diversity/Convocation_2013/CWP/VisiblySuccessful-entire-final_authcheckdam.pdf; ABA, *Visible Invisibility: Women of Color in Fortune 500 Legal Departments* (2013), <http://bit.ly/1bZFxWQ>; Bagati, *Women of Color in U.S. Law Firms*, Catalyst, Inc. (2009), <http://bit.ly/1EvTogK>; Cruz and Molina, *Few and Far Between: The Reality of Latina Lawyers*, Hispanic National Bar Association (Sept. 2009), <http://bit.ly/1dxLPxh>; Women's Bar Association of the District of Columbia, *Creating Pathways for Success for All:*

Advancing and Retaining Women of Color in Today's Law Firms (May 2008), <http://bit.ly/1DZYgYa>; Minority Corporate Counsel Association, *Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity and Inclusion in Large Law Firms* (2009), <http://bit.ly/1biQdyh>; Corporate Counsel Women of Color, *The Perspectives of Women of Color Attorneys in Corporate Legal Departments: Research Report* (2011).

¹³Pope et al., *Awareness Reduces Racial Bias*, Economic Studies at Brookings (Feb. 2014), www.brookings.edu/~media/research/files/papers/2014/02/awareness-reduces-racial-bias/awareness_reduces_racial_bias_wolfers.pdf.

¹⁴See Shatel, *The Unknown Barry Switzer: Poverty, Tragedy Built Oklahoma Coach Into a Winner*, The Chicago Tribune (Dec. 14, 1986), http://articles.chicagotribune.com/1986-12-14/sports/8604030680_1_big-eight-coach-aren-t-many-coaches-oklahoma.

¹⁵One of the best resources for information on bias is an annual review by the Kirwan Institute for the Study of Race and Ethnicity at The Ohio State University: Staats et al., *State of the Science: Implicit Bias Review 2015* (Kirwan Institute, 2015), <http://kirwaninstitute.osu.edu/wp-content/uploads/2015/05/2015-kirwan-implicit-bias.pdf>; Staats, *State of the Science: Implicit Bias Review 2014* (Kirwan Institute, 2014), <http://bit.ly/Sabh1y>; Staats and Patton, *State of the Science: Implicit Bias Review 2013* (Kirwan Institute, 2013), <http://bit.ly/1KynIcC>.

¹⁶Reeves, *The Next IQ: The Next Level of Intelligence for 21st Century Leaders* (ABA, 2012). See also Lieberman and Berardo, *Interview Bias: Overcoming the Silent Forces Working against You*, Experience, <http://bit.ly/1GLnTD1>.

¹⁷"Implicit biases are malleable; therefore, the implicit associations that we have formed can be gradually unlearned and replaced with new mental associations." Staats et al., *supra* note 15 (citing Blair, 2002; Blair et al., 2001; Dasgupta, 2013; Dasgupta and Greenwald, 2001; Devine, 1989; Kang, 2009; Kang and Lane, 2010; Roos et al., 2013).

¹⁸Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?* 84 NOTRE DAME L.REV. 1195 (Mar. 2009).

¹⁹Staats and Patton, *supra* note 15.

²⁰Kawakami et al., *Just Say No (to Stereotyping): Effects of Training in the Negation of Stereotypic Associations on Stereotype Activation*, 78 J. of Personality and Social Psychology 871 (May 2000).

²¹See Jolls and Sunstein, *The Law of Implicit Bias*, 94 CALIFORNIA L.REV. 969-96 (2006). See also Blair and Lenton, "Imaging Stereotypes Away: The Moderation of Implicit Stereotypes through Mental Imagery," 8 J. of Personality and Social Psychology 828 (May 2001).

²²Uhlmann and Cohen, *'I Think It, Therefore It's True': Effects of Self-Perceived Objectivity on Hiring Discrimination*, 104 Organizational Behavior and Human Decision Processes 207 (2007).

²³Mindfulness helps you be more aware; to identify, tolerate, and reduce unproductive thoughts and feelings; to resist having your attention pulled away from what is happening in the moment; to have some mastery over your thought processes; and to reduce stress. For examples of mindfulness exercises, visit the Living Well website at www.livingwell.org.au/mindfulness-exercises-3. Also recommended is Stanford professor Shirzad Chamine's book, *Positive Intelligence: Why Only 20% of Teams and Individuals Achieve Their True Potential and How You can Achieve Yours* (Greenleaf Group Book

Press, 2012) and website, www.positiveintelligence.com.

²⁴Suttie, *Can Mindfulness Help Reduce Racism?* Greater Good: The Science of a Meaningful Life (Dec. 9, 2014), <http://bit.ly/1zL2oLf>; Torres, *Mindfulness Mitigates Biases You May Not Know You Have*, Harvard Business Rev. (Dec. 24, 2014).

²⁵Brannon and Walton, *Enacting Cultural Interests: How Intergroup Contact Reduces Prejudice by Sparking Interest in an Out-Group's Culture*, 79 J. of Personality and Social Psychology 631 (Aug. 2013); Kellogg Insight, *Stacking the Deck against Racism* (Oct. 1, 2008), <http://bit.ly/1bZUB6H>. See also Pettigrew, "Generalized Intergroup Contact Effects on Prejudice," 23 *Personality and Social Psychology Bulletin* 173 (Feb. 1997); Pettigrew and Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. of Personality and Social Psychology 751 (May 2006).

²⁶Galinsky and Moskowitz, *Perspective-Taking: Decreasing Stereotype Expression, Stereotype Accessibility, and In-Group Favoritism*, 78 J. of Personality and Social Psychology 708 (Apr. 2000); Todd et al., *Perspective Taking Combats Automatic Expressions of Racial Bias*, 100 J. of Personality and Social Psychology 1027 (June 2011). See also Shih, *Perspectivetaking and empathy: Generalizing the reduction of group bias towards Asian-Americans to general outgroups*, 4(2) Asian-American J. of Abnormal Psychology 79 (June 2013) (empathy reduces implicit bias).

²⁷Almendrala, *When White People See Themselves With Black Skin, Something Interesting Happens*, Huffington Post (Dec. 15, 2014), www.huffingtonpost.com/2014/12/15/virtual-body-swapping-racism_n_6328654.html.

²⁸Gaertner, *Reducing Intergroup Bias: The Common In-group Identity Model* (Psychology Press, 2000) (When we re-categorize others according to features or characteristics we share, we are more likely to see them as part of us and are less likely to discriminate against them as an out group).

²⁹Gaertner and Dovidio, *Common Ingroup Identity Model*, The Encyclopedia of Peace Psychology (2011).

³⁰Stepanikova, "Racial-Ethnic Biases, Time Pressure, and Medical Decisions," 53(3) J. of Health and Social Behavior 329 (July 2012).

³¹Kang, *Communications Law: Bits of Bias*, in Levinson and Smith, eds., *Implicit Racial Bias across the Law* 132 (Cambridge University Press, 2012).

³²Richeson and Nussbaum, *The impact of multiculturalism versus color-blindness on racial bias*, 40 J. of Experimental Social Psychology 417 (2004), http://groups.psych.northwestern.edu/spcl/documents/colorblind_final_000.pdf.

³³Phillips, *How Diversity Makes Us Smarter: Being Around People Who Are Different From Us Makes Us More Creative, More Diligent and Harder-Working*, Scientific American (Oct. 1, 2014), www.scientificamerican.com/article/how-diversity-makes-us-smarter.

³⁴Green and Kalev, *Discrimination-Reducing Measures at the Relational Level*, 59 Hastings L.J. 1435 (June 2008); Kang et al., "Implicit Bias in the Courtroom," 590 UCLA L.REV. 1124 (2012).

³⁵Bersin, *Why Diversity and Inclusion Will Be a Top Priority for 2016*, Forbes (Dec. 6, 2015), www.forbes.com/sites/joshbersin/2015/12/06/why-diversity-and-inclusion-will-be-a-top-priority-for-2016/#aea220f4bd40.

³⁶Whyte, *Tying Diversity to Compensation*, Diversity Executive (Dec. 11, 2015), <http://bit.ly/1J7iovb>.



Unconscious/Conscious Bias Resources

Online Test:

- Project Implicit: <https://implicit.harvard.edu/implicit/> - test your own unconscious biases with this free online test sponsored by Harvard University and taken by millions of people since 1998.

Lists of Bias Interrupters:

- Bias Interrupters – www.biasinterrupters.org – toolkits with bias interrupters for individuals and organizations.
- Inclusion Nudges – <https://inclusion-nudges.org/> – examples of bias interrupters.

Other Resource Lists:

- American Bar Association, Section of Litigation, Task Force on Implicit Bias, <http://bit.ly/1LD4wh9>.
- “State of the Science: Implicit Bias Review,” Kirwan Institute for the Study of Race and Ethnicity, Ohio State University (2015), <http://bit.ly/1LQM6Xr>; (2016) - <http://bit.ly/2aMHIRR>, (2017) - <https://kirwaninstitute.osu.edu/article/2017-state-science-implicit-bias-review>.

Educational Videos & Podcasts:

- “Diversity Makes You Smarter” – TEDx – Kathleen Nalty - April 2017.
- “100 Humans – Episode 4 - Are You Biased” - Netflix
- “Bias” – video on bias - <https://vimeo.com/200087408>.
- “Invisibilia” - <http://www.npr.org/programs/invisibilia> – NPR podcasts on unconscious bias topics.
- “Managing Unconscious Bias,” Facebook employee training video (2015), <http://managingbias.fb.com/>.
- UCLA Office of Equity, Diversity & Inclusion – <https://equity.ucla.edu/programs-resources/>
- PwC – Understanding Blind Spots Series - <https://www.pwc.com/us/en/about-us/blind-spots.html>; Outsmarting Human Minds Series - <https://pwc.to/2rqzDKr>.
- “Continuing the Dialogue –The Neuroscience & Psychology of Decision-making –CA Judicial Council
 1. Part 1 – “A New Way of Learning,” (October 28, 2009), <http://bit.ly/2Dmznhd>.
 2. Part 2 – “The Media, the Brain, and the Courtroom,” (March 30, 2010), <http://bit.ly/2BiFAJq>.
 3. Part 3 – “Dismantling and Overriding Bias,” (October 28, 2009), <http://bit.ly/2h12Mmc>.

Articles/White Papers/Blog Posts:

- Kang, J. “What Judges Can Do About Implicit Bias,” 57 Court Review 78 (2021) <http://jerrykang.net/research/2021-what-judges-can-do-about-implicit-bias/>.
- Nalty, K. “Strategies for Confronting Unconscious Bias.” The Federal Lawyer (Jan/Feb 2017), <http://bit.ly/2zVtxkA>.
- Grant Halvorson, H. & Rock, D. “Beyond Bias: Neuroscience Research Shows How New Organizational Practices Can Shift Ingrained Thinking,” Strategy + Business (July 13, 2015), <http://bit.ly/1HZDOil>.
- Negowetti, N. “Implicit Bias and the Legal Profession’s ‘Diversity Crisis’: A Call for Self-Reflection.” Boyd School of Law Journal, University of Nevada Las Vegas, Vol. 15, No. 2 (2015), <http://bit.ly/1ZlmFI6>.
- Soll, J.B., Milkman, K.L. & Payne, J.W. “Outsmart Your Own Biases.” Harvard Business Review (May 2015), <http://bit.ly/1OaA6zG>.



Kathleen Nalty Consulting

- Porter, Jane. "You're More Biased than You Think," Fast Company, <http://bit.ly/1LD5gD1>.
- Kristof, Nicholas. "Is Everyone a Little Bit Racist?" New York Times (August 27, 2014), <http://nyti.ms/1AXv8lm>.
- Reeves, A. "What Does Your Brain 'See'?", Chicago Lawyer (November 2012), <https://nextions.com/wp-content/uploads/2017/05/dip-what-does-your-brain-see-chicago-lawyer.pdf>.
- Ross, Howard. "3 Ways to Make Less Biased Decisions." Harvard Business Review (April 16, 2015), <http://bit.ly/1FRxAdk>.
- Bailey, S. "Can You Overcome Inbuilt Bias?" Forbes Blog Post (August 14, 2014), <http://onforb.es/XnGzEF>.
- Papillon, K. "The Neuroscience of Decision-Making Curriculum: Twelve Steps & Strategies for Increasing Fairness & Eliminating Unconscious/Implicit Association in Decision-Making," National Center for State Courts, https://www.nawj.org/uploads/files/annual_conference/session_materials/neuroscience/san-antonio_12-steps-for-fairness.pdf.
- Lee, Samantha & Baer, Drake. "20 Cognitive Biases That Screw Up Your Decisions," Business Insider (August 27, 2015), <http://www.businessinsider.com.au/cognitive-biases-that-affect-decisions-2015-8>.

Books:

- Williams, J. Bias Interrupted: Creating Inclusion for Real and for Good (2021).
- Nordell, J. The End of Bias: A Beginning (2021)
- Eberhardt, J. Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do (2019).
- Banaji, M.R. & Greenwald, A.G. Blind Spot: Hidden Biases of Good People (2013).
- Casey, M.E. & Murphy Robinson, S. Neuroscience of Inclusion (2017).
- Bargh, J. Before You Know It: The Unconscious Reasons We Do What We Do (2017).
- Kahneman, D. Thinking, Fast and Slow (2012).
- Reeves, A.N. The Next IQ: The Next Level of Intelligence for 21st Century Leaders (2012).
- Gladwell, M. Blink: The Power of Thinking Without Thinking (2005).
- Fine, C. A Mind of Its Own: How Your Brain Distorts and Deceives (2006).
- Vedantam, V. The Hidden Brain: How Our Unconscious Minds Elect Presidents, Control Markets, Wage Wars, and Save Our Lives (2010).
- Ross, H. Everyday Bias: Identifying and Navigating Unconscious Judgments in Our Daily Lives (2014).
- Steele, Claude M. Whistling Vivaldi: How Stereotypes Affect Us and What We Can Do (2010).
- Nielssen, T. & Kepinski, L. Inclusion Nudges Guidebook (2016).

Television Productions:

- "The Brain with David Eagleman" – PBS Series – <http://www.pbs.org/the-brain-with-david-eagleman/home/>.
- "Brains on Trial" - PBS Series hosted by Alan Alda, <https://www.amazon.com/Brains-Trial-Alan-Alda/dp/B00EE8AIWO>.
- "Born good? Babies help unlock the origins of morality." 60 Minutes (November 18, 2012), <https://www.cbsnews.com/news/born-good-babies-help-unlock-the-origins-of-morality/>.



Structural Changes

By Kathleen Nalty

The legal industry will remain one of the least diverse professions unless lawyers and legal staff become knowledgeable about unconscious bias and then put interrupters into place to help limit the effect of implicit biases.

Interrupt Unconscious Bias Through Inclusion Nudges



■ Kathleen Nalty is a consultant focused on diversity and inclusion in the legal industry. In 2015, she wrote *Going All-In on Diversity & Inclusion: The Law Firm Leaders' Playbook*, which includes new tools to advance diversity and inclusion. Previously, Ms. Nalty founded the Center for Legal Inclusiveness in Denver and led the nonprofit as its executive director from October 2007 to January 2013. She started her legal career as a federal civil rights prosecutor at the U.S. Department of Justice.

While there has been a great deal of activity aimed at advancing diversity and inclusion in the legal industry, outcomes have been poor. Most law firms have numerous programs and activities aimed at improving diversity and

inclusion. Yet there is very little to show for those efforts. Year after year, attorneys in already underrepresented groups, including female and racially or ethnically diverse lawyers, leave their law firms at higher rates than other attorneys. For example, the New York City Bar Association reported that attrition rates in 2015 for member law firms were 43 percent higher for female attorneys and 62 percent higher for racially or ethnically diverse attorneys compared to white male lawyers. The 2015 Vault and Minority Corporate Counsel (MCCA) Survey also documented higher attrition rates for attorneys in underrepresented groups.

Several national research studies point to the disparate impact of hidden barriers on female and racially or ethnically diverse lawyers as the major cause of higher attrition rates. According to these studies, key opportunities are shared unevenly by people in positions of power and influence, often without realizing that certain groups are disproportionately excluded, which causes attorneys in the excluded groups to remain on the margins in law firms. Specifically, research shows that female, LGBTQ, disabled, and racially or ethnically diverse attorneys often have less access to critical but intangible opportunities, including the following:

1. Networking—informal and formal
2. Insider information
3. Access to decision makers
4. Mentors and sponsors
5. Meaningful work assignments
6. Candid and frequent feedback
6. Social integration
7. Training and development
8. Client contact
9. Promotions

Research studies point to bias as the major cause of these hidden barriers. Certainly, conscious, overt discrimination still exists and contributes to this dynamic. But it turns out that a specific kind of unconscious and unintentional bias plays the biggest role. Affinity bias, which is a bias for others who are more like you, causes

people to develop deeper work relationships with those who have similar identities, interests, and backgrounds. When senior attorneys (the majority of whom are straight, white, and male) gravitate toward and share opportunities with others who are like themselves, they unwittingly leave out female, LGBTQ, disabled, and racially or ethnically diverse attorneys.

A New Movement: Inclusion Nudges

Unconscious bias is difficult to root out in organizations. But there is a new movement afoot to institutionalize diversity and inclusion through “inclusion nudges,” which fight unconscious bias at a whole new level. The term “nudge” comes from the field of behavioral economics. In 2008, Richard Thaler and Cass Sunstein published the book *Nudge: Improving Decisions About Health, Wealth, and Happiness*, which described how small changes in processes and procedures can nudge people to make better and less biased decisions. A classic example of a nudge involves switching the default from “opt-in” for 401(k) contributions to “opt-out,” which dramatically increases savings rates while still giving employees a choice.

The term “inclusion nudge” was first coined by Tinna Nielsen and Lisa Kepinski in their book *Inclusion Nudges Guidebook* (2015). They encourage advocates to design nudges for all kinds of systems and processes in organizations—to help people interrupt their unconscious biases and to foster an inclusive workplace in which diversity can thrive. They define an inclusion nudge as “a mental push that will mitigate unconscious association to help the brain make more objective decisions, and promote more inclusive behaviors that will stick.”

Inclusion nudges can also be called “bias interrupters” because they help people recognize and mitigate biases. Unconscious biases, in particular, are very difficult to root out because they are almost completely hidden from us. Training on unconscious bias can help people recognize how

to become aware of unintentional social and cognitive biases, as well as techniques for addressing them. But training alone is not enough. The real work involves intentional and repeated individual efforts to implement research-based tactics to interrupt bias as it occurs.

Unconscious bias thrives in situations that are high pressure, fast paced, and

Affinity bias, which is a bias for others who are more like you, causes people to develop deeper work relationships with those who have similar identities, interests, and backgrounds.

stressful, which pretty much describes the typical lawyer’s daily life. This is compounded particularly in law firms, where supervising attorneys have limited training in managing people and operate with considerable leeway in how they interact with talent. Some experts recommend slowing down decisions to limit the effect of unconscious bias. But that is just not always practical for lawyers.

Thus, it is up to legal organizations to change systems and processes and embed bias interrupters into them to help lawyers and staff live up to their good intentions. Institutionalizing diversity and inclusion requires nudging all processes and procedures so that inclusion becomes a natural part of what people do every day.

Any process or procedure in an organization can be nudged. In fact, no organization can achieve full inclusion without nudging *all* structural elements so that diversity and inclusion become woven into the fabric of the organization and a natural part of how everything operates. To “nudge” a system or process, you break it down into its smallest components and then reverse-engineer it, asking how each component could be conducted differently



to interrupt unconscious bias. It is especially important to focus on building in accountability and oversight mechanisms, which are powerful bias interrupters.

Initially, a nudged process might feel taxing. All new processes require some adjustment. After a while, though, following the new protocol should become second nature. That's when diversity and inclu-

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sion become embedded into an organization—when all processes and procedures are reworked to be fair and as bias-free as possible.

Introducing Inclusion Nudges into Recruiting and Hiring

Imagine, for the purpose of introducing nudges into a recruiting and hiring process, that your organization has identified 18 components, all of which play a part in recruiting and hiring. These components could include the obvious, such as job announcements, application forms, and applicant screening. A job description, after all, is by nature a list of biases—aspects that we assume are necessary to perform a job. Some components may seem less obvious, such as employee benefit packages. But evaluating benefit packages has a place. What does your organization need to change in its benefit packages to attract a wider variety of candidates? What do other industry or sector leaders offer as benefits and in employee policies?

Space limits here will not permit considering how your organization might introduce nudges into all the potential recruiting and hiring components by reverse-engineering them; however, four examples are discussed below.

Job Announcements

First, to begin the reverse-engineering, your organization would evaluate and rewrite job announcements to be more inclusive. Research indicates that women may not apply for jobs until they meet all the criteria, whereas men apply when they meet many, but not all, of the criteria. Do your job announcements include criteria that aren't really essential?

Also, research shows that job announcements that include more gendered terms can be subtly off-putting. E. Peck, *Here Are the Words That May Keep Women from Applying for Jobs*, Huffington Post (June 2, 2015). Can a job announcement be reworded so that it is more inclusive of both genders? Use web-based applications, such as Textio, to flag words and phrases that are cliché, gender based, or otherwise off-putting to certain groups.

Does a job description include phrases that go to personal qualities or a personality type that might keep an otherwise qualified candidate from applying (e.g., "outgoing")?

If your organization is working to advance diversity and inclusion, do you include statements about diversity and inclusion competencies and cultural competence within your job criteria and announcements? After all, to foster an inclusive workplace where diversity thrives, everyone must play an active role, which means that this competence would be useful to add to the skillset required of new hires.

Where do you advertise your job announcements? Do you make efforts to ensure that they are visible to a wide variety of people? Think about asking specialty groups (bar affinity groups, professional associations, business chambers, and community groups) to disseminate job announcements. Draw on employee personal networks to advertise a job announcement. Ask employees in underrepresented groups to disseminate job announcements to their networks routinely. Because most people's networks are fairly homogenous, make sure that majority employees go

beyond their own networks or else they'll just replicate themselves. Consider modifying employee referral bonuses to put a premium on diverse referrals.

Finally, extend the time that a position is open to help get the word out to the broadest range of people. Unconscious bias (especially affinity bias) is more apt to show up in rushed circumstances. So make sure that everyone has sufficient time during the entire recruiting process.

Organization Website

To reverse-engineer here, your organization would first and foremost analyze its website. You would take a fresh look at the website and how it may attract, or potentially repel, diverse candidates. What kinds of pictures are featured on the site? Research shows that including equal numbers of pictures of men and women increases an organization's attractiveness to potential female candidates. P. Cecchi-Dimeglio, *Does Your Firm's Website Repel Women?*, The American Lawyer, Nov. 28, 2016.

What policies and values statements are included in the information on the website about your organization? How are diversity and inclusion messaged? Female and racially or ethnically diverse attorneys may respond differently to statements about the organization's approach. E. Apfelbaum, *Why Your Diversity Program May Be Helping Women but Not Minorities (or Vice Versa)*, Harvard Business Review (Aug. 8, 2016). Also, including comments from people in underrepresented groups in your organization about their experiences in their own words, as well as video messages from leaders about the value of diversity and inclusion, could help attract a wider pool of applicants.

In describing your organization's diversity and inclusion initiative, are specific actions included? Are diversity and inclusion woven throughout the website, or are they addressed on one separate page? Is the word "qualified" used just on the diversity page of the website?

Get some feedback from a diverse group of disinterested parties about what your website communicates to them. Use the feedback to make improvements.

Internal Diversity and Inclusion

Education and Training

Ensure fluency in diversity and inclusion

among your employees. Start with your recruiters. Educate every person involved in the recruiting and the hiring processes about diversity and inclusion so that they can answer questions knowledgeably about your organization's efforts, including representation in the organization of people from a wide variety of backgrounds, at all levels, and specific efforts to remove hidden barriers to success for people in underrepresented groups.

Train marketing and recruiting professionals on diversity and inclusion and work with them to highlight not just your organization's traditional diversity programs (i.e., memberships, sponsorships, scholarships, IL programs, job fair participation, affinity groups) but inclusiveness efforts as well.

Ensure fluency and competency in unconscious bias concepts widely among employees by training all recruiters, screeners, interviewers, hiring personnel, and supervisors in unconscious bias and make sure that the training is constantly referenced during the recruiting and hiring process. Then follow up on training by asking all stakeholders to report on their progress with respect to actions that interrupt their own unconscious biases. Have a discussion among those involved in recruiting and hiring about how both implicit social and cognitive biases such as availability, attribution, confirmation, anchor, and affinity bias can show up, and create a one-page "bias interrupter sheet" for everyone to review before the process begins (e.g., before interview candidates are selected, before the interviews, before discussions about candidates).

Have regular discussions while recruiting and hiring about the "aha" moments that they are experiencing and the new awareness that they have about stereotypes and attitudes (without revealing specific biases about protected groups, of course). Ask people involved to be honest with themselves and others about whether they feel "affinity bias" in particular with respect to any candidate. ("She's like me; we have things in common.") Ask people to acknowledge any triggers that candidates may have that prompt their automatic disqualification, such as a less than firm handshake or manners of speech or dress, which have nothing to do with a person's competence. Discuss whether anyone had a nega-

tive gut reaction about a candidate and why he or she disliked the candidate.

In short, foster a "speak-up" environment in which people involved in the recruiting and hiring processes feel comfortable discussing, and more importantly, challenging perceived biases—both individual and institutional. Consider appointing one or more people to act as "devil's advocates" to challenge decisions, or to act as "bias interrupters" to call out possible bias during the processes.

Pipeline Cultivation

Research by the Corporate Executive Board shows that diverse candidates have greater trust for personal sources of information in the recruiting process (referrals from diverse employees, in-person campus recruiting, teachers and career advisers, family and friends, and employee resource group contacts) and less trust for information sources that organizations use more often (diversity-focused job boards, diversity associations, LinkedIn, print media advertising, search firms, and Twitter and Facebook). CLC Human Resources, *Creating Competitive Advantage Through Workforce Diversity 33* (Corporate Executive Board 2012). So take the time and effort to cultivate the pipeline with personal interactions.

Develop relationships with career services personnel at schools (particularly those that have larger populations of students in underrepresented groups), as well as staff in alumni offices, and ask them to keep your organization in mind with respect to students or alumni from diverse groups. Leave branded literature with the schools to share with students. Arrange to make presentations at the schools about your organization.

Teach classes or road shows at schools with diverse student populations to gain exposure for your organization. Host field trips for students from schools with diverse populations.

Consider using Door of Clubs, a campus recruiting platform that gives recruiters the ability to search through a pool of students based on a variety of social identity groups, as well as school, major, location, and skills.

Introducing Inclusion Nudges into Employee Promotions

Any process can be nudged. Examples of how to introduce inclusion nudges into

three components of an employee promotions process by reverse-engineering them are discussed below.

Promotion Criteria

Promotion criteria, similar to job description criteria, are essentially a list of biases— aspects that we presume are necessary to perform a new job. But are they all nec-

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essary? Take a fresh look. Update all promotion criteria by removing unnecessary requirements. Also ask whether the definition of success is skewed toward one group: does success reflect mostly male norms? Then stick with the predetermined criteria to help prevent interviewers from implicitly "moving the goalposts" to select a preferred candidate.

If your organization seeks to advance diversity and inclusion, just as you would seek new employees with demonstrated competency in diversity and inclusion, the people promoted should have some demonstrated competency in diversity and inclusion. So consider including criteria about diversity and inclusion that measure whether a candidate is "unskilled," "skilled," or "highly skilled." Examples of questions that you could ask promotion candidates to measure skill level include the following:

- What efforts have you made to identify and to eliminate hidden barriers to success in our organization?



- What have you observed in our organization with respect to the benefits of diversity and inclusion?
- Why is it important for the organization to advance diversity and inclusion?
- What efforts have you made to develop meaningful and productive relationships with colleagues from different backgrounds?
- Tell me about a time when you achieved superior outcomes by incorporating divergent perspectives.
- Tell me about a time when you engaged in behaviors that made a team member feel that he or she could be his or her true, authentic self at work.
- What have you done to mentor and sponsor someone in the organization who is different from you?
- How have you handled a situation when a colleague was not accepting of others' diverse backgrounds?
- What have you done to further your knowledge about diversity and inclusion? How have you demonstrated or used what you've learned?
- What processes have you changed in meetings to be more inclusive of others?
- What do you do to foster a "speak-up" environment?

Promotion evaluation mechanics do matter. Your organization should use a standard review form for each promotion candidate that devotes a space to each key criterion. In addition, the form should use narrative assessments, such as the "unskilled," "skilled," and "highly skilled" ratings mentioned above, over numerical rating systems because different evaluators may use numerical ratings differently. In fact, in one research study, male associates at a Wall Street law firm received higher numerical ratings in performance reviews than female associates even though the women's narratives were as strong or stronger than their male counterparts. Promotions at this firm were based on the numerical ratings, which unfairly advantaged the male attorneys. D. Cassens Weiss, *Study Finds Disconnect Between Numbers and Narratives in Associate Job Reviews—But Only for Women*, ABA Journal (October 26, 2011).

Promotion Candidate Selection

Require submission of a list of every remotely eligible person for a promotion

rather than relying on a mental list, which is prone to corruption by implicit biases (especially availability bias). Put everyone who is remotely eligible on the list for the promotion opportunity. Ask, "why not?" instead of assuming that someone isn't ready or interested. Women, in particular, underestimate their readiness and sometimes automatically take themselves out of the running for promotions. Organizations have been successful in increasing how many women hold higher positions by tweaking the processes that go into selection or self-nomination. At the very least, require supervisors to recommend two people to force them to evaluate the available candidates comparatively. Requiring written justifications for not putting forward a particular candidate can also help interrupt bias.

Promotion Decisions

Appoint someone or a group other than the promotion candidate-evaluating group to review promotion decisions and make sure that everyone involved knows that their decisions will be reviewed and analyzed for evidence of bias. This will help them neutralize any unconscious biases during the evaluation process and provide a checks and balances system. Just as you would select promotion evaluators with different social identities, backgrounds, and positions to involve in the promotion process, to ensure widely various perspectives, your organization should select promotion-decision reviewers with different social identities, backgrounds, and positions.

Inclusion Nudges in the Legal Profession

Legal organizations intent on getting ahead of the curve on diversity and inclusion are instituting inclusion nudges. Corporate law departments, law firms, and state bar associations have joined the movement.

Corporate Law

One global corporate law department engaged in introductory training sessions on unconscious bias and then held quarterly forums on discreet areas of unconscious bias, with the goal of creating tools to interrupt bias. The law department started with a session on presence disparity and location bias, which are common

when teams are dispersed geographically and have to interact frequently on telephone calls or videoconference platforms. This law department also held forums on personality differences, generational diversity, and gender bias. After learning about these types of biases, attendees brainstormed actions—specifically, changes to processes and procedures—that would help limit bias. For instance, they created a tips sheet to combat gender bias in meetings, which included setting clear ground rules for dealing with interruptions during meetings, which disproportionately affect women.

The law department also embedded diversity and inclusion competencies into all employees' job duties and responsibilities so that everyone was contributing to the department's efforts to advance diversity and inclusion. Additionally, law department leaders developed a one-page bias interrupter sheet that was attached to each employee's annual evaluation packet to remind supervising attorneys about how unconscious bias can influence their decisions, which helps try to interrupt any bias that might make its way into the process.

Law Firms

Law firms are also creating inclusion nudges to combat bias. Goodwin, a global 50 law firm, has been embedding bias interrupters into talent management processes. For example, the firm is piloting a structured interview process, with questions tied to core competencies to avoid the subjectivity that allows unconscious bias to take over. The firm also uses Tableau, an interactive data visualization tool, to track and understand diversity metrics.

The firm is also working to interrupt the bias that can creep into annual evaluations. Unconscious bias education and tools have been provided to reviewers and review committee members. The firm's partner promotion committee engaged in a workshop on bias elimination and brainstormed the ways that different types of cognitive biases might show up in decision making. This led to the creation of a bias interrupter "cheat sheet" for the annual promotion process. Additionally, assessment forms have been updated to include priming statements at the top to remind evaluators to slow down their

decision making and watch for the different types of cognitive biases that can skew evaluations. Senior professionals, who have been trained in unconscious bias principles, also sit in on the firm's attorney review, partner promotion, and compensation processes to act as "bias disruptors" and call attention to any potential biases that might make their way into those processes.

Goodwin is also nudging its allocations process to embed bias interrupters. The firm used the "ABA Toolkit for Gender Equity in Partner Compensation" to assess the firm's allocations practices and find areas that could be nudged. Based on the resulting recommendations, firm management is considering developing an initiative to diversify pitch and matter teams; enhancing tracking of data on pitch and matter team diversity, client relationships, and succession; and changing the firm's client origination credit default from 100 percent to a selection of drop-down alternatives.

Finally, the firm is using the Diversity & Inclusiveness Maturity Model created by the author of this article to assess the firm's culture and initiatives. The Maturity Model is designed to make hidden barriers more visible, which then allows firms to address and eliminate them.

State Bar Associations

Diversity and inclusion have become critical strategic imperatives for the Minnesota State Bar Association (MSBA), which, similar to most bar associations, has experienced declining membership. The MSBA leaders view diversity and inclusion as a critical pathway for enhancing organizational performance, increasing membership, and improving the value of bar membership. Thus, the bar association has made concerted efforts to embed diversity and inclusion into all of its processes—staff functions, leadership selection, and council, committee, and section work. As evidence of its deep commitment, the MSBA hired a full-time diversity and inclusion director dedicated to making institutional changes to advance its diversity and inclusion efforts.

The MSBA's volunteer leaders have set the tone at the top that diversity and inclusion are business imperatives and are

driving that message through the organization in various ways. For instance, bar leaders and staff engaged in a full day of training on diversity, inclusion, and unconscious bias and have participated in follow-up workshops throughout the year. Section and committee leaders are encouraged to institute diversity and inclusion-related goals and action plans. In their annual reports, sections and committees now respond to the following question: "What diversity and inclusion goals did your section/committee include in your 2016–2017 work plan, how did you approach these goals, and what was the result?" Sections and committees have identified goals, ranging from raising awareness of a section's commitment to diversity and inclusion and sharing best practices, to increasing diversity in leadership, membership, and programming, while continuously identifying avenues for improvement. One particular committee is focusing on inclusion and striving to engage members from underrepresented backgrounds in subcommittees, meetings, and all initiatives. This committee has created a robust mentorship program to pursue this goal.

The MSBA staff created a "Diversity and Inclusion Toolkit" to assist members in advancing diversity and inclusion. Staff and leadership revised the Qualifications and Interests Form used by the Elections and Appointments Committee to integrate diversity and inclusion by adding the following question:

The MSBA recognizes diversity as a core value and defines it as "recognizing the power of diversity of persons, viewpoints, beliefs, and human understanding." Explain what makes you a unique candidate for this board position (including aspects of your background that relate to diversity) and how you think your uniqueness will add value to this board.

Bar leaders examine what they do through the lens of diversity and inclusion by asking, for every council agenda item, whether and how it affects the MSBA's diversity and inclusion mission and objectives.

The diversity and inclusion director consults with the Minnesota CLE (MCLE) staff about how to integrate diversity and inclusion into their programming and


operations better by brainstorming ways to collect demographic data about past faculty, sharing contact lists and diversity and inclusion resources in an effort to support MCLE's ongoing work in this area, and assisting in identifying particular CLE faculty from diverse backgrounds, as well as CLE topic areas related to diversity.

Legal organizations

intent on getting ahead of the curve on diversity and inclusion are instituting inclusion nudges. Corporate law departments, law firms, and state bar associations have joined the movement.

Additionally, the MSBA revised staff evaluations to include the following diversity and inclusion competency: "Contributes to a positive and inclusive environment for all staff and members by striving to manage differences with skill and sensitivity, seeking out and valuing diverse ideas and differing points of view, and exhibiting respect for all."

Conclusion

Each of the organizations discussed above is leading their sectors on diversity and inclusion—not just because it is the right thing to do but also because it a critical business imperative. Making structural changes, by nudging processes and procedures, is essential to creating an inclusive environment in which diversity can thrive. The legal industry will not make any meaningful progress on diversity and will remain one of the least diverse professions unless lawyers and legal staff become knowledgeable about unconscious bias and then put bias interrupters into place within structures and procedures to help people limit the effect of their implicit biases. 

Outsmart Your Mind:

Addressing Unconscious Bias in Dispute Resolution

by Kathleen Nalty¹ and Lucy Greenwood²

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Most judges, arbitrators and mediators firmly believe that they make rational and unbiased decisions. But is that belief justified? Science would say this is unlikely.

Despite our good intentions, everyone has unconscious biases. “Implicit bias is a kind of distorting lens that’s a product of both the architecture of our brain and the disparities in our society.”³ While we may be aware of our conscious attitudes toward others, we are typically clueless when it comes to our unconscious (or implicit) biases.

Experts believe that the mind’s unconscious is responsible for 80% or more of thought processes.⁴ Yet the conscious mind is simply not capable of perceiving what the unconscious is thinking.⁵ You can be two persons at the same time: a conscious self who firmly believes you do not have any bias against others because of their social identities, and an unconscious self who harbors stereotypes or biased attitudes that can unknowingly influence decision-making and behaviors.⁶ The good news is that we can interrupt bias by consciously challenging and breaking down stereotypes and biases we don’t agree with and implementing other research-based de-biasing tactics.

This article will help you recognize your unconscious cognitive biases and provide research-based strategies for addressing them.

Why Does It Matter?

This process is critical to making better decisions in general but indispensable in legal adjudications. Our entire system of justice rests on the notion that judges and neutrals act impartially.

As highly educated professionals who are paid to make good (and unbiased) decisions, most judges and neutrals are skeptical that their decision-making could be infected by bias. In one

study, 97 percent of judges rated themselves as better than the median judge in avoiding racial bias.⁷ Yet, research shows that judges aren't any less likely than a lay person to have unconscious racial bias.⁸

Can judges and neutrals act impartially? Or are their decisions riddled with social biases and fundamental cognitive errors? If so, what can be done about it?

Addressing Social Biases

We all have social biases based on people's social identity groups, like race, gender, class, disability, sexual orientation (and more) that can operate consciously or unconsciously.

Gender bias starts very early. Research has shown that we react differently to babies if we know their sex.⁹ Children of different sexes are often given different toys, clothes, opportunities, and messages. These messages have an early impact, causing girls to turn their backs on science, technology, engineering, and mathematics (STEM) subjects after grade school.¹⁰

They also have a delayed impact both on whom we choose as our neutral and, just as importantly, who is available to choose from. The headwinds women face in the legal profession are well-documented. The American Bar Association's 2019 study "Walking Out the Door"¹¹ illustrates how female lawyers have a materially different experience practicing law, which leads to higher attrition and their under-representation in all areas of legal practice, especially at the highest levels.

While implicit biases can be developed at a very early age, they can also be reinforced by the use of language, in particular by the way different vocabulary is used to describe identical behaviors demonstrated by men and women. For example, men who are engaged in so-called "social bonding behavior" (better known as talking over coffee or a beer) are more likely to be seen as "mentoring or rainmaking," whereas women are seen to be "chatting or gossiping".¹²

Recent articles authored by a federal circuit court judge and two researchers¹³ as well as by a law professor¹⁴ outline many of the research-based techniques recommended for judges to tackle unconscious bias. These are just as applicable for neutrals. Many are summarized below:

Awareness:

- participate in education programs on unconscious bias.
- take one or more Implicit Association Tests sponsored by Harvard University.¹⁵
- Remind yourself frequently that you have implicit biases.

Behavioral & Structural Changes:

- ***Motivation:*** Write a personal statement of commitment to making unbiased decisions and review it (as well as ethical obligations) before each case.¹⁶
- ***Cognitive Equilibrium:*** Optimize your state of mind by reducing cognitive overload, taking adequate time for decisions, engaging in meditation and other well-being efforts. The goal here is to maximize conscious decision-making and minimize reliance on your unconscious.
- ***Accountability:*** If your decisions will be reviewed, that can help reduce implicit bias because it makes you more careful. But in situations where decisions aren't appealed, oversight measures are even more critical.
 - Write an opinion (which forces you to reflect more deeply),
 - Issue preliminary rulings and welcome motions for reconsideration,
 - Post a pair of eyes that are looking at you during the adjudication as well as decision-making,¹⁷ and
 - Audit performance by gathering data on rulings to identify any disparities.
- ***Structure:*** Use checklists,¹⁸ spreadsheets,¹⁹ and objective criteria to reduce subjectivity and ambiguity, where unconscious bias thrives.
- ***Exposure:***
 - Put up photos of people from underrepresented groups in your office and expose yourself to a wider variety of people and cultures in the community.
 - If you're concerned about in-person events due to COVID, read more about people from different backgrounds or watch programs like "Home Sweet Home" that depict families from a variety of social identities.
- ***Flip it to Test:*** Engage in perspective-taking by putting yourself in the shoes of the various parties.
 - Actively contemplating the feelings and experiences of others, especially those in perceived outgroups, can weaken implicit bias.²⁰
 - Also ask yourself if your initial decision would be different if the person in question was from a different social identity group.

Types of Unconscious Cognitive Biases

In addition to social biases, our brains regularly produce glitches, called cognitive biases, that can, and often do, interfere with good decision-making. There are too many to address in this article, but it is worthwhile learning about a few that can lead to biased decision-making in arbitrations and mediations, as how to counter those biases.

Confirmation Bias

Confirmation bias is a type of unconscious bias that causes people to pay more attention to information that confirms their existing belief system and disregard that which is contradictory. Clearly this can harm good decision-making. You can probably think of at least one instance when you reached a decision and later realized you dismissed or unintentionally ignored critical information that would have led to a different and perhaps better outcome.

Confirmation bias can be seen as an umbrella term for a number of related biases in reasoning including:

- (1) skewed search for evidence – in particular, searching for argument-consistent evidence when reviewing pleadings and ignoring contrary evidence;
- (2) biased evaluation of evidence - points that are consistent with a preliminary view are not scrutinized as carefully as contradictory evidence;
- (3) distorted recall of evidence - remembering facts which support the initial view more easily than facts which contradict.

Confirmation bias can also skew your evaluations of others' work and potentially disrupt their careers. A research study on confirmation bias conducted in the legal profession reveals shocking race-based disparities.²¹ This study tested whether attorneys unconsciously believe African Americans produce inferior written work and that White people are better writers.

The researchers created a research memo that contained 22 errors (spelling, grammar, technical writing, factual, and analytical). The memo was distributed to 60 partners working in nearly two dozen law firms who thought they were participating in a "writing analysis study" to help young lawyers with their writing skills. All of the participants were told the memo was written by a (fictitious) third-year associate named Thomas Meyer who graduated from New York University Law School. Half of the participants were told Thomas Meyer was White and the other half were told Thomas Meyer was African American. The law firm partners participating in the study were asked to give the memo an overall rating from 1 (poorly written) to 5 (extremely well written). They were also asked to edit the memo for any mistakes.

The results indicated strong confirmation bias on the part of the evaluators. African American Thomas Meyer's memo was given an average overall rating of 3.2 out of 5.0, while the exact same memo garnered an average rating of 4.1 out of 5.0 for White Thomas Meyer. The evaluators found twice as many spelling and grammatical errors for African American Thomas Meyer (5.8 out of 7.0) compared to White Thomas Meyer (2.9 out of 7.0). They also found more technical and factual errors and made more critical comments with respect to

African American Thomas Meyer's memo. Even more significantly, the researchers found that the female and racially/ethnically diverse partners who participated in the study were just as likely as white male participants to be more rigorous in examining African American Thomas Meyer's memo (and finding more mistakes), while basically giving White Thomas Meyer a pass.²²

The attorneys who participated in this study were probably shocked by the results. That is the insidious nature of unconscious bias—people are completely unaware of implicit biases they may harbor and how those biases can make their way into their decision-making and behaviors.

How could confirmation bias influence your decisions in arbitrations and mediations? Do you overlook critical information because it may seem irrelevant or unimportant (to your unconscious)? Is your attention triggered and then hyper-focused by mistakes or aberrations?

In a workplace situation, this bias can be mitigated by blinding the process - having lawyers turn in work assignments anonymously. Legal organizations are fighting bias by blinding many of their processes.

One of the most frequently cited examples of successfully addressing implicit bias by blinding the process is demonstrated by actions taken in the 1970s to address underrepresentation of women in professional orchestras. Simply installing a screen that hid the auditioner's identity led to an increase of female musicians from 10% to around 35%.²³ A more recent example involves applications for research projects using the Hubble Telescope. NASA saw disparities in who was awarded research time using the telescope with female scientists' applications accepted at a lower rate than male scientists until a blinding process was implemented, which eliminated the disparities.²⁴ In yet another study, when academic papers were blind peer reviewed, the number of papers written by women accepted for publication went up significantly. Not surprisingly there have been calls for blind reviews to become standard procedure in relation to Law Review articles.²⁵

If, as seems likely from the research studies, women are penalized when their name appears on a list of potential neutrals, then one way to confront this is to remove all names from the proposed list of arbitrators and for the resumes to be standardized and reviewed at face value. For example, an institution could identify its list of suitable arbitrators for the dispute, standardize the resumes, and remove the names from the list. It could then forward the list to counsel for the parties to make their selection. In the event that further research into a preferred

candidate was needed, the party could contact the institution to find out the name of the arbitrator in order to review his or her publications, published awards, and so on. However, the preliminary ‘blind’ process might have prevented at least some of the potential implicit gender bias on part of the decision maker.

Attribution Bias

Another type of unconscious cognitive bias—attribution bias—causes people to make more favorable assessments of behaviors and circumstances for those in their “in groups” (by giving second chances and the benefit of the doubt) and to judge people in their “out groups” by less favorable group stereotypes. A workplace example of this would be firing an employee from a social identity group that you may unconsciously perceive as an “outsider” for making a mistake but retaining another employee from an “insider” group who makes the same mistake and giving them a chance to improve.

One way to break attribution bias is to start noticing when you give more leeway to some people (especially those in groups similar to your own) and ask yourself whether you would do the same for people you may unconsciously consider to be different (flip it to test).

In arbitrations and mediations, it is important to evaluate who you might - even unconsciously - view as insiders and outsiders. If you are a former plaintiffs’ lawyer, could you be unknowingly giving plaintiffs greater leeway? If you are in a higher socio-economic group, could you be over-scrutinizing the credibility of a party or witness from a lower socio-economic group?

Attribution bias can particularly arise in the arbitration hearing room. Arbitration practitioners are part of a close-knit community and often neutrals will be familiar with those appearing before them. It is likely that neutrals may, unwittingly, give greater weight to arguments propounded by counsel who are perceived as significant and established players in the market, which can, of course, disadvantage newer participants.

Availability Bias

Availability bias interferes with good decision-making because it causes people to default to “top of mind” information. So, for instance, if you automatically picture a man when asked to think of a “leader” and a woman when prompted to think of a “support person,” you may be

more uncomfortable when interacting with a female leader or a man in a support position, particularly at an unconscious level.

Availability bias also comes into play when selecting people for opportunities, such as work assignments, awards/recognition, or to attend client meetings. In one study²⁶ participants were asked to come up with an informal shortlist of three candidates for a male-dominated role. Not surprisingly, few women were included. But when asked to add three more people to the list, the percentage of women increased quite a bit. The lesson is to challenge people to go beyond their initial “top of mind” assessment and extend the shortlist. That is a tactic that could be used in selecting lawyers for class-action cases (or simply requiring they fully represent the members of the class).

Another technique is to simply make a list of everyone who could possibly be eligible, which takes you past “top of mind” selections. One managing partner of a Midwest firm is doing this when he visits regional offices so that he doesn’t spend most of his time with the attorneys who pop into his head.

Changing the automatic and unconscious associations in your brain is another debiasing tactic. For instance, a female judge who presides in criminal cases in a jurisdiction where most criminal defendants are people of color spends vacation days sitting in the back of courtrooms in a neighboring jurisdiction where most criminal defendants are white to try to interrupt her availability bias so that she isn’t automatically thinking “criminal” when she encounters defendants of color in her courtroom.

In contentious proceedings, counsel can use the effect of availability bias through deliberate selection and repetition of certain incidents in the recitation of background facts, leading the decision maker to focus on the “available” information and ignore the suppressed information. Being aware of the brain’s tendency to falsely identify a robust course of conduct by joining up a number of isolated incidents will assist the decision maker in taking all relevant evidence into account in reaching their decision. The ability to take a step back from the “top of mind” information comes from an appreciation of our strong bias towards easily accessible and available information.

Anchoring Bias

Anchoring bias occurs once you have been exposed to a number or value. Your unconscious gets stuck on or anchored to that numerical reference point, and that influences a later decision

involving a completely different number or value. There have been dozens of studies that document this bias but one that is particularly relevant involves 167 U.S. Magistrate Judges who were asked at one of their bi-annual conferences to read a fictitious case scenario and make an award of damages to the plaintiff.²⁷ Half of the judges were also informed that the defendant moved to dismiss because the case didn't meet the jurisdictional minimum for a diversity case of \$75,000. The judges who saw the motion awarded an average of \$882,000 while the other judges awarded an average of \$1.249 million. The \$75,000 number acted as an anchor, reducing the damages award made by the judges who saw it.

How can you counter anchoring bias? Studies show that anchoring bias is robust and powerful. Eliminating it entirely probably isn't possible. But that doesn't mean that neutrals shouldn't try since it causes biased decisions and outcomes. Some of the suggested tactics include:

- Consciously and actively challenge the basis for any anchor presented in the case.²⁸ Explicitly ask if the anchor is wrong – either over- or under-inflated. Look at awards in previous cases with similar facts and determine if the parties' estimates are reasonable or not. If not, consciously counter-argue and debunk the number, which might help break your gravitation to that reference point.
- Consider how you could keep anchors out of the process in the first instance. Can you prohibit litigants from mentioning numbers that might operate as anchors?

Affinity Bias

The adverse effects of many of these cognitive biases can be compounded by affinity bias, which is the tendency to gravitate toward and develop relationships with people who are more like ourselves and share similar interests and backgrounds. This bias could cause mediators and arbitrators to feel more comfortable with parties, advocates, witnesses, experts, and co-panelists who are within their own affinity group, whether it is based on social identities such as age, race, class, gender, etc. or on role, such as previously serving as plaintiffs' or defense counsel.

How can affinity bias affect decisions in mediations and arbitrations? Obviously, feeling more akin to a party, witness, expert, or lawyer based on affinity bias might lead to differing perceptions of credibility. Are you actively and consciously trying to uncover any affinities or affiliations you may have with and working to counter-steer away from the cognitive bias those affinities might trigger?

Simply reminding yourself about the impact of affinity bias might lessen any impact on parties or lawyers you unconsciously view as being in “out-groups.” A series of research studies analyzing foul calls in NBA games demonstrates the powerful impact of simply being aware of affinity bias. In the first of three studies examining data from 13 seasons (1991–2004), researchers discovered that referees called more fouls against players who were not the same race as the referee, and these disparities were large enough to affect the outcomes in some games.²⁹ Based on a number of studies documenting the existence of “in group” or affinity bias in other realms, the researchers inferred that the differential in called fouls was mostly happening on an unconscious level.

The findings of the first study, released in 2007, were criticized by the NBA, resulting in extensive media coverage. The researchers subsequently conducted two additional studies—one using data from basketball seasons before the media coverage (2003–06) and the other focusing on the seasons after the publicity (2007–10). The results were striking. In the seasons before referees became aware they were calling fouls disparately the researchers replicated the findings from the initial study. Yet after the widespread publicity, there were no appreciable disparities in foul-calling.

The lesson to be learned from this research is that paying attention to your own affinity bias and auditing your behaviors can help you interrupt this type of implicit bias.

There is another very compelling reason to interrupt affinity bias. Research shows that diversity leads to better decision-making. Being exposed to others who are socially different (outside our affinity groups) causes us, as individuals, to work harder cognitively, thereby making better, more accurate decisions.

There have been multiple studies documenting this effect.³⁰ One study³¹ looked at the value of cognitive diversity in solving problems. Teams were given the task of solving a murder mystery. They were given plenty of complex material to assimilate, including alibis, witness statements, list of suspects, forensics and so on. In half the cases the groups were composed of four friends, the other half were composed of three friends and a stranger. This stranger was selected from social media profiles as someone with a different perspective than the others on the team. The teams with an outsider performed much better than the other teams. They got the right answer 75% of the time compared with 54% from those in the other group and 44% for individuals working alone. But note one important issue, participants in the two groups had very different experiences of the task. Those in diverse teams found the discussion cognitively

demanding. There was plenty of debate and disagreement because different perspectives were aired; they got to the right decisions, but they were not wholly certain about the decision they reached. Yet the homogeneous teams' experiences were very different. They found the session more agreeable because they spent most of the time agreeing with each other. They were mirroring each other's perspective and although they were more likely to be wrong, they were far more confident about being right. They were not challenged on their blind spots so didn't get a chance to see them. They were not exposed to other perspectives so became more certain of their own. This is the danger with homogenous groups: they are more likely to form judgments that, in the words of the study, "combine excessive confidence with grave error."

This dynamic should prompt greater diversity in adjudication panels. But that begs the question of whether the legal profession is doing the work necessary to create the broadest pools of candidates from which to select for appointments?

According to several national research studies,³² there are hidden barriers to success in most legal organizations for lawyers in already under-represented groups (female, LGBTQ, racially/ethnically diverse, or those with disabilities). Attorneys in these groups are disproportionately excluded from opportunities that are critically important, such as networking (formal and informal), insider information, access to decision-makers, mentors and sponsors, training and development, high profile work assignments, feedback, social integration, client contact, and promotions. These opportunities are shared unevenly by those with power and influence in legal organizations, often without realizing it.

A 2018 study by the American Bar Association and the Minority Corporate Counsel Association³³ reveals how the hidden barriers are impacting lawyers in underrepresented groups and causing them to have materially different experiences in law firms, with female attorneys of color consistently facing the highest rates of exclusion:

Hidden Barrier	White Men	White Women	Men of Color	Women of Color
Socially isolated	28%	36%	34%	39%
Have good mentors	68%	63%	61%	57%
Have equal access to networking opportunities	82%	57%	62%	56%
Have equal access to business development opportunities	78%	60%	60%	56%
Have equal opportunities for high quality work assignments	81%	63%	59%	53%

Do more administrative tasks than colleagues	26%	47%	20%	44%
Don't get constructive feedback	21%	26%	40%	35%
Have fair opportunities for promotions	75%	58%	62%	52%
Paid less than colleagues with similar qualifications & experience	36%	60%	44%	67%

Certainly, hard work and technical skill are the foundation for career progress, but without equitable access to these opportunities, attorneys are far less likely to advance and gain the credentials necessary for selection as neutrals.

While conscious bias can certainly play a role, experts point to unconscious affinity bias as the major cause of these hidden barriers to success. When senior lawyers (the vast majority of whom are white and male) gravitate toward and share more opportunities with others like themselves, they unwittingly leave out lawyers from underrepresented groups. Addressing bias in the legal profession and the lack of diversity among arbitrators and mediators has to account for the role affinity bias plays.

Conclusion

Bias must be addressed by mediators and arbitrators who, like everyone else, have conscious and unconscious social as well as cognitive biases. The fact that we have unconscious, unintentional biases, in particular, does not make us bad or flawed; it is just a reality of how our brains operate. Becoming aware of your implicit biases is necessary but not enough. If you want to live up to your personal commitment and ethical obligations to make unbiased decisions, you have to do the work to uncover your implicit biases and engage in behavioral and structural changes to interrupt or at least limit those biases.

So now, ask yourself, are you up to this challenge?

¹ Kathleen Nalty is a lawyer, author and expert in diversity, equity and inclusion. Much of the content of this article is taken from her book *Going All In on Diversity and Inclusion*:

The Law Firm Leader's Playbook (Kathleen Nalty Consulting LLC, 2019). Visit www.kathleennaltyconsulting.com for more information.

² Lucy Greenwood is an independent international arbitrator, qualified in the United States and the United Kingdom, specializing in commercial and investment treaty arbitrations with a particular focus on energy related disputes. She has published extensively on the impact of unconscious bias on the appointment of arbitrators and on diversity and inclusion more generally. Visit www.greenwoodarbitration.com for more information.

3. Eberhardt, *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do* (Penguin Random House, 2019).

4. Banaji and Greenwald, *Blindspot: Hidden Biases of Good People* 61 (Delacorte Press, 2013).

5. *Id.* at 55.

6. *Id.* at 20.

7. Guthrie, C. et al. "The 'Hidden Judiciary': An Empirical Examination of Executive Branch Justice," 58 *Duke L.J.* 1477 (2009).

8. Donald, B. et al. "Getting Explicit About Implicit Bias," *Judicature*, Vol. 104, No. 3 (Fall/Winter 2020-21), available at <https://judicature.duke.edu/articles/getting-explicit-about-implicit-bias/>.

9. Why parents may cause gender differences in kids, Sharon Begley
<https://www.newsweek.com/why-parents-may-cause-gender-differences-kids-79501>

10. A study commissioned by Microsoft of 1,000 girls and young women in the UK aged between 11 and 30 showed that, on average, there is just a five-year window to foster their passion for STEM subjects. The research also found that gender stereotypes hold young women back the most. 70% of girls in the UK said they would feel more confident pursuing STEM careers if they knew men and women were equally employed in these professions. <https://edtechnology.co.uk/Article/why-arent-more-girls-in-the-uk-studying-stem-subjects>.

11. Liebenberg, R. & Scharf, S., "Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice," *American Bar Association & ALM Intelligence* (2010), https://www.americanbar.org/groups/diversity/women/initiatives_awards/long-term-careers-for-women/walking-out-the-door/.

12. See Williams, J., “Litigating the Glass Ceiling and the Maternal Wall: Using Stereotyping and Cognitive Bias Evidence to Prove Gender Discrimination: The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination Cases and Defang the “Cluelessness” Defense,” 7 *Empl.Rts & Employ. Pol’y J.* 410 (2003).

13. Donald, B. et al. “Getting Explicit About Implicit Bias,” *Judicature*, Vol. 104, No. 3 (Fall/Winter 2020-21), available at <https://judicature.duke.edu/articles/getting-explicit-about-implicit-bias/>.

14. Kang, J. “What Judges Can Do About Implicit Bias,” 57 *Court Review* 78 (2021), <http://jerrykang.net/research/2021-what-judges-can-do-about-implicit-bias/>.

15. Project Implicit offers a variety of online tests to uncover implicit biases - <https://implicit.harvard.edu/implicit/takeatest.html>.

16. Research studies show that people who are more internally motivated to interrupt bias, even implicit bias, are more successful in doing so. See Rachlinski, J. et al., “Does Unconscious Racial Bias Affect Trial Judges?” *Notre Dame Law Review* 84, no. 3, p. 1202 (2009).

17. Kathleen’s late husband, Craig Shaffer, served as a U.S. Magistrate Judge in Denver for 18 years. After learning about a study where researchers implicitly nudged employees to contribute more to the coffee fund by posting a pair of eyes on the collection cup, Judge Shaffer printed off a pair of eyes and taped them to the back of his bench to provide an extra measure of oversight and accountability. Even though he wasn’t consciously aware of the eyes after the novelty wore off, he was hopeful his unconscious mind would be put on alert and cause him to make better decisions. See Mackenzie, D. “Big Brother eyes make us act more honestly,” *New Scientist* (June 27, 2006).

18. See the “Benchcard” included in the appendix to UCLA Law Professor Jerry Kang’s article - Kang, J. “What Judges Can Do About Implicit Bias,” 57 *Court Review* 78 (2021), <http://jerrykang.net/research/2021-what-judges-can-do-about-implicit-bias/>.

19. Professor Kang recommends that judges (and neutrals) create spreadsheets that “cabin” decision-making; otherwise, decision criteria can shift or creep toward justifying gut or automatic thoughts. See Kang, J.

“What Judges Can Do About Implicit Bias,” 57 Court Review 78, 85-86 (2021),

20. Perspective taking increases psychological closeness to the stigmatized group, which helps diminish automatic group-based evaluations, stereotypes, and bias. See Galinsky, A. & Moskowitz, G., “Perspective-taking: decreasing stereotype expression, stereotype accessibility, and in-group favoritism,” *J. Pers. Soc. Psychol.* 78(4), 708-24 (April 2000).

21. Reeves, A. “Yellow Paper Series: Written in Black & White—Exploring Confirmation Bias in Racialized Perceptions of Writing Skills,” Nextions Original Research, (2014).

22. *Id.* at 5.

23. As reported in “Willful Blindness: Why We Ignore the Obvious at Our Peril” by Margaret Heffernan (Walker & Co, 2011), see also “Orchestrating Impartiality: The Impact of “Blind” Auditions on Female Musicians” Claudia Goldin and Cecilia Rouse 1997 “Using data on orchestra personnel, the switch to “blind” auditions can explain between 30% and 55% of the increase in the proportion female among new hires and between 25% and 46% of the increase in the percentage female in the orchestras since 1970”. The Vienna Philharmonic did not accept women to permanent membership until 1997.

24. Bartels, M. “Hubble Telescope Test Inspires Changes at NASA to Combat Gender Bias,” *Scientific American*, (February 25, 2020), <https://www.scientificamerican.com/article/hubble-telescope-test-inspires-changes-at-nasa-to-combat-gender-bias/>.

25. Gingerich, J., “A Call for Blind Review: Student Edited Law Reviews and Bias” 59 J. Legal Educ. (2009). “Research suggests that non-blind review of journal submissions makes it harder for women and non-U.S. scholars to publish, leads to prestige bias that hurts younger scholars, and undermines the perceived fairness of the submission review process among authors.”

26. Lucas, et al., “Research: To Reduce Gender Bias in Hiring, Make Your Shortlist Longer,” *Harvard Business Review*, (February 16, 2021).

27. Guthrie, C. et al., “Inside the Judicial Mind,” 86 *Cornell Law Review* 776 (May 2001).

28. Mussweiler, T. et al., "Overcoming the Inevitable Anchoring Effect: Considering the Opposite Compensates for Selective Accessibility," *Personality and Social Psychology Bulletin*, Vol. 26, Issue 9 (2000).

29. Pope et al., "Awareness Reduces Racial Bias," *Economic Studies at Brookings* (Feb. 2014), www.brookings.edu/~media/research/files/papers/2014/02/awareness-reduces-racial-bias/awareness_reduces_racial_bias_wolfers.pdf.

30. Phillips, K., "How Diversity Makes Us Smarter," *Scientific American* (October 2014).

31. Phillips, K. et al., "Is the Pain Worth the Gain? The Advantages and Liabilities of Agreeing With Socially Distinct Newcomers," *Personality and Social Psychology Bulletin*, Vol 35(3): 336-50 (March 2009).

32. There have been over a dozen national research studies since 2006 by the American Bar Association, Catalyst, McKinsey & Co., the Minority Corporate Counsel Association, the Women's Bar Association of the District of Columbia, Corporate Counsel Women of Color, and Vault. The ABA issued three studies in three years: 1) Joan Williams et al., "You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession," *American Bar Association & Minority Corporate Counsel Association*, (2018), http://www.abajournal.com/files/Bias_interrupters_report-compressed.pdf; 2) Liebenberg, R. & Scharf, S., "Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice," *American Bar Association & ALM Intelligence* (2010), https://www.americanbar.org/groups/diversity/women/initiatives_awards/long-term-careers-for-women/walking-out-the-door/; and 3) Peery, D. et al., "Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color," *American Bar Association* (2020), <https://www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf>. 15

33. Joan Williams et al., “You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession,” *American Bar Association & Minority Corporate Counsel Association*, (2018), http://www.abajournal.com/files/Bias_interrupters_report-compressed.pdf.