



# Moving Toward a Culturally Diverse World: Guidance for Professionals

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As many of us know, the United States is rapidly becoming more racially and ethnically diverse. It is estimated that by 2040 or sooner, the United States will be more than 50% comprised of members of racial and ethnic minority groups. In other words, by 2040, no one group will represent 51% or more of the population.

The legal profession is becoming more diverse as well—just much more slowly. The profession is one-third female.<sup>1</sup> It is also approximately 14.4% racial and ethnic minorities—a much

smaller percentage than current population demographics which is approximately 38% minority.<sup>2</sup> However, law school graduating classes are more diverse than the legal profession—approximately 26.9% racial and ethnic minority and very close to 50% female. Fortune 500 General Counsel are approximately 22% female and 8% minority. In-house legal staffs (General Counsel) are 41% female and 15% minority.<sup>3</sup> As jurors, new hires, and clients become more diverse, issues of bias and fairness become more important to professional success.

These demographic changes provide context for the explanation of unconscious bias and how it operates in our decision-making process. This article focuses on steps to reduce the presence of unconscious bias in hiring decisions, the workplace, and other aspects of the legal profession.

## Unconscious Bias: What Is It and How to Reduce Bias in Decision Making

We all know what conscious bias is—an intentional discriminatory/prejudicial thought about a group. Unconscious bias is entirely different. It operates automatically without any intentional thought so it is much harder to control.<sup>4</sup> So, what is unconscious bias? How do you know it exists?

Our brain forms schemas to understand the millions of inputs it receives at any one time. A schema is a type of mental shortcut. You can think of it as a framework for information. Some of these schemas include stereotypes. Implicit bias or unconscious bias (I will use these terms interchangeably—they are synonyms) includes both stereotypes and implicit attitudes. Ninety-eight percent of our brains work without express cognition or express thought. Unconscious bias is a phrase describing the automatic processes that influence the way we perceive and make determinations about people.

Where do we get the data that our mind uses to form these schemas or frameworks about people? We get the data from the media, movies, books, and magazines as well as our own experiences and lack of experience. For those who doubt that unconscious bias exists, take the Implicit Association Test, which deals with unconscious bias.<sup>5</sup> The Implicit Association Test is a sophisticated and methodologically rigorous computer administered test that often reveals unconscious bias—even among people who believe they are free of bias. Remember 98% of our brain works without express cognition—or in other words—automatically. This test is needed because you cannot measure implicit bias through self-reporting.<sup>6</sup>

One example of unconscious bias and approaches to disrupt it can be found in the context of symphony orchestras. In the old days, the musician would walk out in front of the judges and play, and then the judges would vote on his or her performance. More recently, some orchestras have made a structural change in auditions in which the musicians play behind a screen, and the judges then judge the performance by the purity of the music and not any conscious or unconscious biases that they may have held. What resulted from this change? Many orchestras now use the blind audition approach and have become much more diverse. The moment the auditions became blind auditions any unconscious bias was disrupted and could no longer impact the decision-making process.

Another example is what's known as the Rooney Rule, which was used in football to diversify coaching staffs. The Rooney Rule is that every team should make sure when they are interviewing for an Assistant Coach or Coach that they have a racial/ethnic minority member in the mix of candidates being interviewed. The team could pick whoever they wanted. The Rooney Rule just required that the final interview slate be diverse. Several minority coaches have been added to the National Football League through the use of the Rooney Rule, which illustrates another structural change designed to increase diversity and keep unconscious biases in check.

The key takeaway: Implicit bias research tells us that there doesn't have to be negative intent to have discriminatory outcomes.

## How to Attract Diverse Talent—Be Intentional About the Hiring Process and Its Goals

Unconscious bias makes us seek relationships with people just like us. In the hiring context, if you want a diverse workplace, it is important to cast a broader net. So, you need to be intentional about what the contents of your employment net are. Unconscious bias will lead you to hire people in the same ways you always have. Why? Because they fit? They make you comfortable because they are usually very homogenous. Be very careful about the term “fit.” It should be an alarm that unconscious bias is running the decision-making process. If you cannot articulate the bias free objective components of “fit,” don't use it or rely on it in your hiring process.

Be very intentional with search firms for lateral hires. Tell them you want a diverse slate to consider. Be specific. I also recommend diverse interview teams to provide different perspectives on a candidate. You also communicate to the candidate that your environment is diverse and inclusive.

Tracking the hiring process also can highlight unconscious bias. How many women send in resumes? How many get screening interviews? How many make it to the next level? Compare that with the outcomes for men in general and, in particular, by school if possible. Compare it with minorities—ask the same questions. Are all of the diverse people being screened out at the beginning of the process?

Posting job listings with minority bar associations is another great way to significantly diversify your hiring net.

## Steps to Create a More Diverse and Inclusive Workplace

For many organizations, the challenge is not only attracting but also retaining diverse talent, which requires creating the most inclusive workplace culture possible. The discussion below highlights some ways for achieving that aim.

### The Work Assignment Process

A key area that impacts professional success is the internal work assignment system. In law firms, both the *quality* and the *quantity* of work that diverse lawyers (both women and minorities) receive are important to their career success. Law firms must be very intentional to eliminate disparities in work assignment based on diverse factors.

Work assignments systems that allow people to choose with whom they will work without any monitoring or oversight are often work assignment systems where unconscious bias runs amok. If it is a system where hours matter, monitor the quantity of hours worked by diverse groups to highlight any disparity based on a diverse characteristic. Quantity matters because it is a proxy for expertise in law firms for associates. I often hear diverse associates say they have problems getting work in year one—from the moment they arrive at the firm—before their work has been evaluated.

The other measure is the *quality* of the work—the work can't be only document reviews, it needs to be high-quality work and high-profile work for top clients. Make sure there is no disparity in the quality of work based on diverse characteristics.

Monitoring fairness of the work assignment process—either by a subcommittee of the Diversity Committee, a Practice Group leader, or another designated individual—should include monthly or quarterly reviews of diverse lawyers’ work in terms of quantity and quality.

### Management Accountability for Achieving Diversity and Inclusion Goals/Targets

It is a truism that you measure the things that matter. This statement is equally true in the area of diversity and inclusion. It is important to set goals or targets for achieving diversity and to track progress against those goals/targets. Managers should be held accountable, in part, for their success in meeting those diversity goals/targets. So, what are some benchmarks for diversity and inclusion goals/targets?

- The entering first year associate class should at a minimum reflect the law school graduation pool—if not better than that pool to increase diversity.
- Numbers should at least match if not exceed NALP’s numbers for your city ([www.nalp.org](http://www.nalp.org)).
- No disparity in attrition rates based on gender or for racial/ethnic minorities.
- The promotion rate should be at least equal for gender and race. Lateral hires should be used to increase diversity if necessary.

While such goals and targets are a must, holding individuals accountable (whether using a carrot or a stick—i.e., more money, less money, loss of position, etc.) is the other key driver for creating change.

### Work to Eliminate Micro-inequities

Mary Rowe, a researcher at MIT, coined the term micro-inequities in 1973. Micro-inequities are not a one-time event, they are an accumulation of repeated behaviors that have a negative effect on performance in the workplace. They can be verbal or non-verbal. They are often subconscious small messages of prejudice. Diverse people experience micro-inequities every day. Some learn to cope and some decide to opt out of environments that have too many micro-inequities.

What can be done to eliminate micro-inequities in the workplace? Survey or provide forums for people in the workplace to share their experiences. Diversity and inclusion training is often helpful to create a common dialogue for discussing diverse topics. It can also create heightened awareness that may disrupt some micro-inequities. It is often the little things that signal an inclusive environment that is free from bias. Take steps to make it so.

### Succession Planning and Affinity Groups

One large firm is working to create sponsor relationships between junior partners and members of the management team. This is being done through the diverse partners’ affinity group. The goal is to create a pipeline of future diverse leaders and to make sure these diverse partners have sponsors. Remember, contact is how to break down stereotypes and change schemas.

Affinity groups or employer resource groups (ERGs) also can be used to present and highlight positive stories and images to counter negative stereotypes—by highlighting speakers,

employees, clients, or all the above. Such groups can provide opportunities for developing multicultural competencies by senior management who may be the executive liaison for the group. It is great to create leadership liaisons across lines of difference. Give these groups a budget and make sure they have a mission. Use these affinity groups/ERGs as valuable partners in the diversity and inclusion initiative.

### Conclusion

Having a desire not to discriminate does not prevent unconscious bias from entering the decision-making processes. Since 98% of our decision making occurs unconsciously, there are numerous opportunities for unconscious bias to play a role. The easiest way to disrupt the automatic decision-making process is to create structural changes that make it less likely that unconscious bias can operate. Some examples are blind auditions and blind resume processes. Diverse interview teams tend to create circumstances where unconscious bias will be observed by others and appropriately identified. The more objective the evaluation processes can be, the less likely that unconscious bias will play a role. Maximizing experiences with diverse people over time will serve to alter the unconscious bias framework and build more multi-cultural competencies. **C**

### About the Author



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### Endnotes

- 1 See Bureau of Labor Statistics (2013).
- 2 *Id.*
- 3 See Association of Corporate Counsel, Census of U.S. In-House Counsel (2012).
- 4 See, e.g., Daniel Kahneman, *Thinking, Fast and Slow* (Farrar 2011).
- 5 See [www.implicit.harvard.edu](http://www.implicit.harvard.edu).
- 6 See Rachel D. Godsil, *Answering the Diversity Mandate: Overcoming Implicit Bias and Racial Anxiety*, NEW JERSEY LAWYER 25, 26 (Feb. 2014).