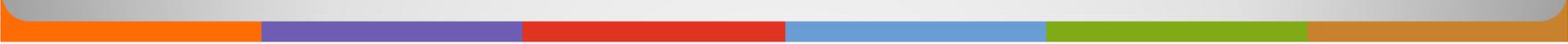


**IMPLICIT BIAS IN THE LEGAL PROFESSION, THE  
WORKPLACE, AND THE COURTROOM—  
RECOGNIZING IT AND INTERRUPTING IT IN  
OURSELVES AND OTHERS**



***METRO VOLUNTEER LAWYERS***

*March 29, 2023*

*Karen Steinhauser*

# Diversity

- DIVERSITY IS THE REPRESENTATION OF ALL OF OUR VARIED IDENTITIES AND DIFFERENCES (RACE, ETHNICITY, GENDER, DISABILITY, SEXUAL ORIENTATION, GENDER IDENTITY, NATIONAL ORIGIN, TRIBE, CASTE, SOCIO-ECONOMIC STATUS, THINKING AND COMMUNICATION STYLES, ETC) COLLECTIVELY AND AS INDIVIDUALS

# Equity

- EQUITY SEEKS TO ENSURE FAIR TREATMENT, EQUALITY OF OPPORTUNITY, AND FAIRNESS IN ACCESS TO INFORMATION AND RESOURCES FOR ALL.
- ONLY POSSIBLE IN AN ENVIRONMENT BUILT ON RESPECT AND DIGNITY.

# Inclusion

- INCLUSION BUILDS A CULTURE OF BELONGING BY ACTIVELY INVITING THE CONTRIBUTION AND PARTICIPATION OF ALL PEOPLE.
- EVERY PERSON'S VOICE ADDS VALUE (WHETHER WE AGREE WITH THAT VOICE OR NOT) AND WE HAVE TO DO EVERYTHING WE CAN TO CREATE BALANCE IN THE FACE OF POWER DIFFERENCES.

# Implicit Bias video

- [https://www.americanbar.org/news/abanews/abanews-archives/2016/02/hidden\\_injusticebi.html](https://www.americanbar.org/news/abanews/abanews-archives/2016/02/hidden_injusticebi.html)
- <https://player.vimeo.com/video/165006635>

# What is Implicit Bias?

IMPLICIT BIAS refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.

*Kirwan Institute – Ohio State University*

IMPLICIT BIAS is a term of art referring to relatively unconscious and relatively automatic features of prejudiced judgment and social behavior

*Stanford Encyclopedia of Philosophy*

EXPLICIT BIAS is a conscious bias that you are aware of. An implicit bias can turn into an explicit bias, but an explicit bias cannot turn into an implicit bias.

# IMPLICIT BIAS

Affects:

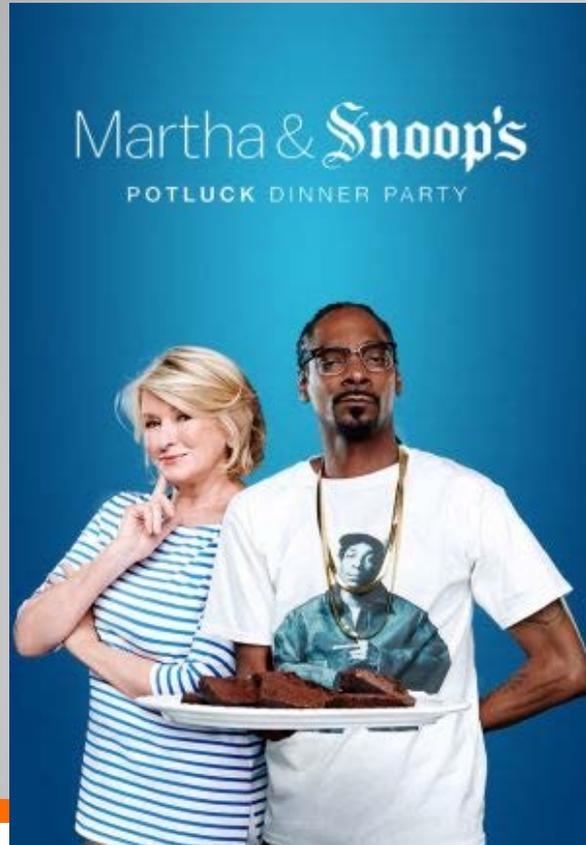
- The Administration of Justice
- The Public's perception of you, your courthouse, your office, your County, and your community
- Your reputation
- A Person's Career
- Your School

Can also be or perceived as being:

- racism, sexism, homophobia, classism, etc.
- discrimination or harassment

**THE IMPACT: IS HURTFUL!!!!!!  
CAN BE DEADLY!!!!!!!**

# HOW DO I ANSWER THESE QUESTIONS AND WHY???



- Who is the felon?
- Who served prison time?
- **HAVING AN IMPLICIT BIAS DOES NOT MAKE YOU A BAD PERSON!!**

# Unconscious Bias: In the News



AP - Tue Aug 30, 11:31 AM ET

AP caption:

A young man walks through chest deep flood water after **looting a grocery store** in New Orleans on Tuesday, Aug. 30, 2005. Flood waters continue to rise in New Orleans after Hurricane Katrina did extensive damage when it made landfall on Monday.

*(AP Photo/Dave Martin)*

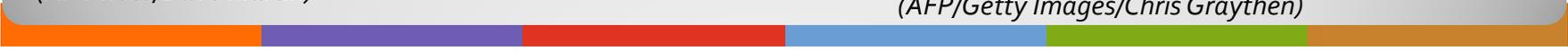


AFP/Getty Images - Tue Aug 30, 3:47 AM ET

AFP/Getty Images caption:

Two **residents** wade through chest-deep water after **finding bread and soda** from a local grocery store after Hurricane Katrina came through the area in New Orleans, Louisiana.

*(AFP/Getty Images/Chris Graythen)*



## Lena Olive Smith quote

“Perhaps the jurors were, with few exceptions, conscientious in their expressions of no race prejudice, yet it is common knowledge a feeling can be so dormant and subject to one’s sub-consciousness, that one is wholly ignorant of its existence.

But if the proper stimulus is applied it comes to the front end and more often than not, one is deceived in believing that it is justice speaking to him, when in fact it is prejudice, blinding him to all justice and fairness.”

# What Do You See? (What Do They See?)



# MICROAGGRESSIONS

Indirect, subtle or intentional discrimination against members of a marginalized group. Hidden messages may “communicate they are lesser human beings, suggest they do not belong with the majority group, threaten and intimidate, or relegate them to inferior status and treatment

- 1. Microassaults – Explicit racial derogations meant to hurt, such as using the N word.

### **MORE ABOUT**

### **MICROAGGRESSIONS**

- 2. Microinvalidation – Negating the thoughts feelings or experiences of someone such as “Don’t be so sensitive”, or “But that isn’t what I meant”.

## ABA Rule of Professional Conduct 8.4(g)

It is professional misconduct for a lawyer to:

- Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law....

## Model rule 8.4 – Comment 4

- Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law....

## COLORADO RULE OF PROFESSIONAL RESPONSIBILITY 8.4 (g)

It is professional misconduct for a lawyer to:

- (g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process.

## NEWLY ADOPTED COLORADO RULE OF PROFESSIONAL RESPONSIBILITY 8.4 (I)

- (i) engage in conduct the lawyer knows or reasonably should know constitutes sexual harassment where the conduct occurs in connection with the lawyer's professional activities.

## COMMENT TO 8.4 (i)

- “Sexual harassment may include, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that a reasonable person would perceive as unwelcome. The substantive law of employment discrimination, including anti-harassment statutes, regulations, and case law may guide, but does not limit application of paragraph (i). “Professional activities” are not limited to those that occur in an attorney-client relationship.”

# COMMON TYPES OF UNCONSCIOUS BIAS IN THE LEGAL PROFESSION

- CONFIRMATION BIAS – Paying more attention to information that confirms our existing beliefs.
- ATTRIBUTION BIAS – Giving more favorable assessments of behaviors and circumstances to those in our “in group”.
- AFFINITY BIAS – Paying more attention to those who are most like ourselves.

# PREDICTING MOMENTS OF BIAS

## EMPLOYEES AND *EMPLOYERS*

- Hiring
- Evaluations
- Promotion
- Discipline
- The Assignment
- Training and Networking opportunities

## TRIAL WORK AND THE COURTROOM

- Putting together the Trial Team
- Themes/ theories
- Jury Selection
- OTHER?

## DIVERSIFYING THE STAFF and BOARD

- DO YOU RECRUIT OR DO YOU WAIT FOR PEOPLE TO APPLY?
- IF YOU RECRUIT, FROM WHERE DO YOU RECRUIT?
- ARE THERE POTENTIAL BIASES IN YOUR JOB DESCRIPTIONS THAT MAY LIMIT YOUR ABILITY TO DIVERSIFY?
- BEWARE OF AFFINITY BIAS – LOOKING FOR THE “MINI-MES”
- WHAT DOES IT MEAN WHEN YOU ARE LOOKING FOR A “GOOD FIT”?

- **MENTORS VS. SPONSORS**

- mentors offer advice and support
- mentors give mentees suggestions on how to expand their network
- mentors offer insight on how a mentee can increase visibility through finding key projects and people.
- mentors can be anyone in a position with experience who can offer advice and support.

- Sponsors are senior level staff members invested in a protege's career success
- Sponsors give proteges their active network connections and make new connections for them.
- Sponsors champion their protégé's visibility, often using their own platforms and reputations as a way to do so.

- MENTORS ADVISE YOU
- SPONSORS ADVOCATE FOR YOU.



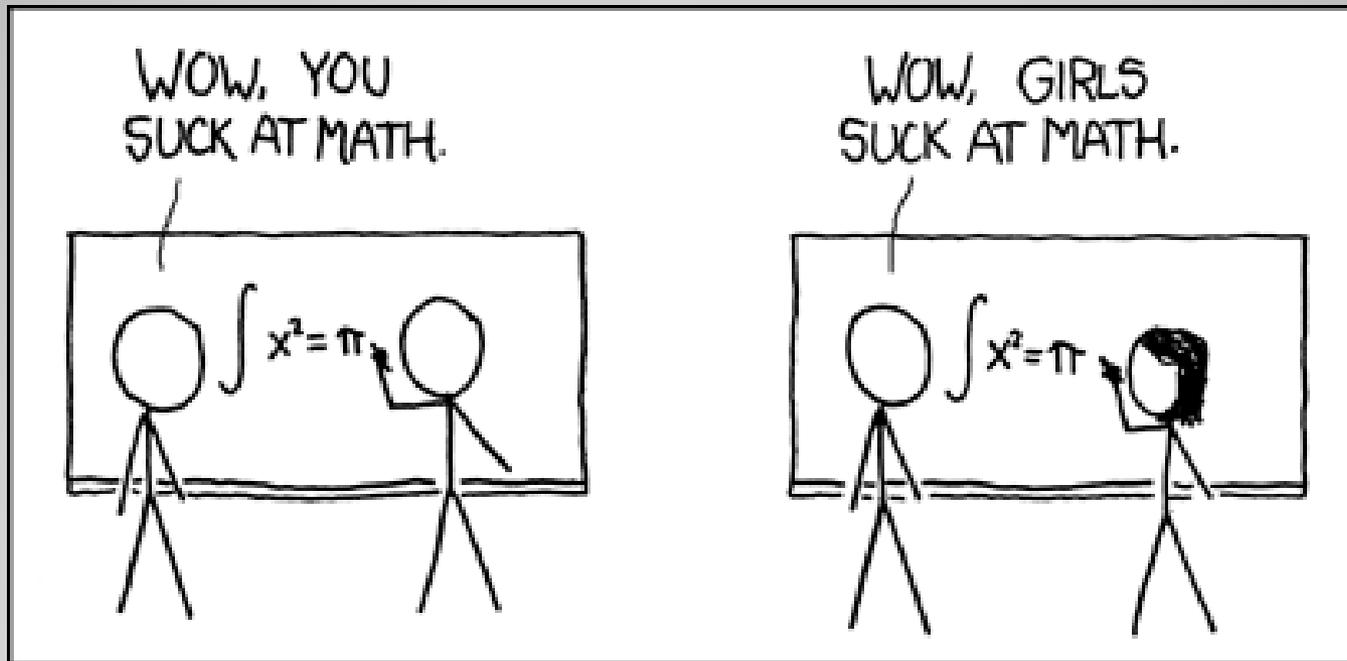
# Acting Out Bias



# Reinforcing Bias With the “Experiment of One”

Experiment

Take-Away



## HOW DO YOU RECOGNIZE THE BIAS?

Race

Gender

Religion

Culture

Profession

Education

Appearance (weight, dress, accent)

Sophistication

Accent

Age

Sexual Identity?/Sexual Orientation

Disability?

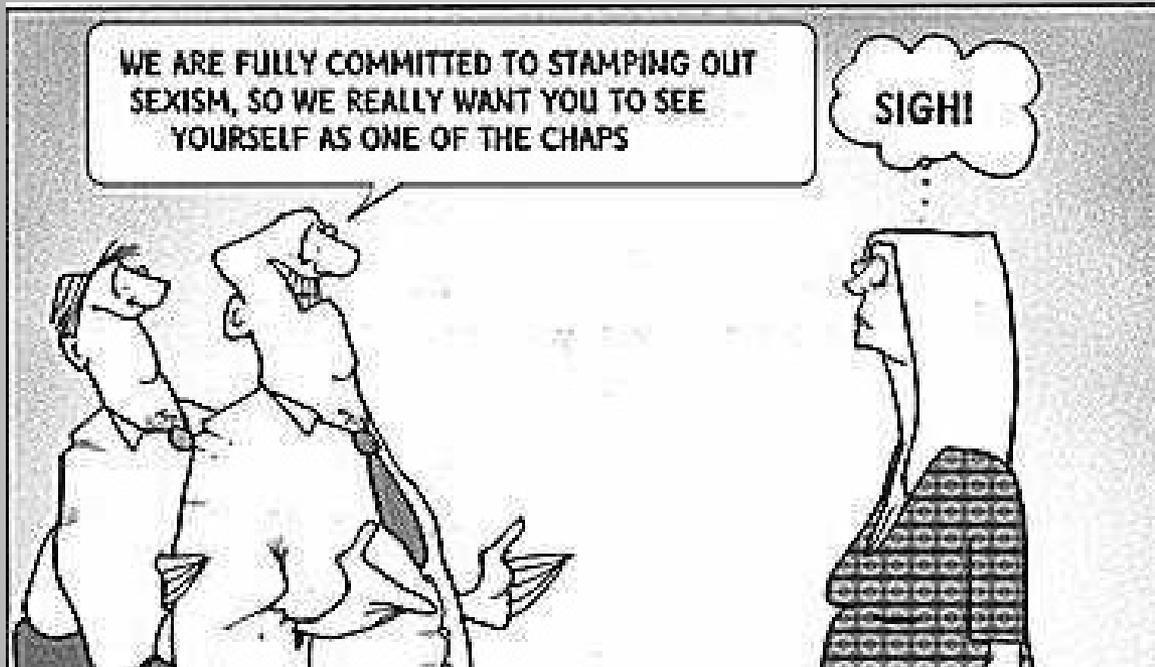
## Be aware of the signals you give:

- Facial Expressions
- Dismissing the idea of one only to embrace it when offered by another (or vice versa)
- Leaving someone off a group e-mail
- Addressing some employees by chummy nicknames
- Continually mispronouncing a co-worker, staff, opposing party, another student's or juror's name
- Mixing up individuals of same race, ethnicity or gender with another of the same.

## Other signals:

- Calling some people by last name and others by first name
  - Criticizing work or emails or dress or some other aspect of one employee but not another.
  - Applying rules differently to some than others.
  - Commenting on someone's clothing or appearance
  - Making assumptions about who the plaintiff is, who the defendant is, the attorney or clerk
  - Making assumptions about who the first chair is.
  - **RECOGNIZING THAT IT ALL MATTERS!**
- 

# Pass It On



When you see it,

- Call it out
- Choose how

## HOW DO YOU INTERRUPT BIAS?

- Recognize the bias
  - In yourself
  - In others
  - Beware of Microaggressions – Prejudices that leak out in many interpersonal situations experienced as slights, insults and denigrating messages
- Understand the source of the bias
- Confront the bias

# Implicit Association Test (IAT)

Measures the strength of associations between

- Concepts
- Evaluations
- Stereotypes



# Reflection of IAT test

- Were you surprised by the results of test?
- How can having this bias impact you or others - in your workplace; your home environment, your community, your decision-making?
- How can you interrupt this bias?
- Think of a bias situation where you were a:
  - Victim, or
  - Witness, or
  - Participant.

How would you handle it now after today's discussion?



# Should I Say Something?

## WHO SHOULD I SAY SOMETHING TO?

- Awkward
  - Risky?
  - Beneficial?
- Implicit Bias Is Not “Cured”
  - Awareness Enables Self-Correction
  - Developing The Habit of Recognizing “Moments” for Implicit Bias That Would Hurt
  - Silence is Acceptance. Silence makes you a complicitor in the behavior.

# FINAL THOUGHTS

- Assessment: acknowledge your personal biases and understand what triggers them
- Slow down!!! Don't just rely on your gut to make decisions.
- Be aware of who/how often you engage in conversation with people who are different than you
- Surround yourself with a diverse mix of cultural and social situations/individuals; actively expose yourself to counter stereotypical examples

## FINAL FINAL THOUGHTS

Find commonalities

Share your own experiences with others,  
and **listen** to other's experiences.

Accept feedback without pushback or defensiveness.

Educate others about the elements of an inclusive work, school and community environment. Understand the difference between diverse and inclusive.

We all say or do things we wish we could take back – Just own it, apologize, move on, and CHANGE

# MORE FINAL THOUGHTS

- Beware of organizational cultures and biases.
- People need Mentors and Sponsors
- Language
- Blindspots – ie; White Savior Complex
- Always consider the “window and the mirror”
- Understand the Difference between Diversity and Inclusivity.

## **Implicit Bias Jury Instruction**

**By: Judge Mark W. Bennett**

Do not decide the case based on "implicit biases." As we discussed in jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is "implicit biases," that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions.

Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluations of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.

March 16, 2020

# Everyone Is a Little Bit Biased

Karen Steinhauser

Share this:



## IN BRIEF

- We all have biases that affect all aspects of our lives and the lives of others with whom we interact.
- How do we identify them and what steps can we take to overcome them?

Everyone has biases. It's true. Having a bias doesn't make you a bad person, however, and not every bias is negative or hurtful. It's *not* recognizing biases that can lead to bad decisions at work, in life, and in relationships.

My first reaction to this notion that we all have biases was, "Certainly not I!" After all, I grew up in a family where diversity and inclusion were part of our basic values. My father was head of the Anti-Defamation League (ADL), an organization whose mission is to secure justice and fair treatment for all people. I was an ADL board chair and helped train others to combat prejudice and discrimination. So how in the world could I have biases?

Although people have both explicit and implicit biases, the implicit ones are the most concerning because they are the ones we don't recognize we have.

## What Is Implicit Bias?

What exactly is an unconscious (or implicit) bias? The Kirwan Institute (for the study of race and ethnicity) at Ohio State University defines these biases as "the attitudes or stereotypes that affect our understanding, decisions and actions in an unconscious manner. These implicit biases we all hold do not necessarily align with our own declared beliefs."

I began analyzing how biases affect so many aspects of our jobs and our lives when I began teaching advocacy skills as they pertain to jury selection a number of years ago. We identified many biases associated with stereotypes: teachers were too soft; engineers and scientists too rigid; older people too judgmental; younger people too immature. These were the conscious parts of our brains at work —i.e., explicit biases. I then began noticing that when I was teaching a law school class and referring to expert witnesses and judges, I would always use the pronoun "he". This was in spite of being a judge and having testified as an expert witness myself. This is the implicit or unconscious bias at work.

As I was exploring biases in the legal profession, I began asking more questions of my colleagues and friends. I learned that gender bias was endemic in many professions, including:

- female lawyers, including myself, mistaken for someone other than the lawyer in a case
- female pilots mistaken for flight attendants
- male nurses frequently mistaken for doctors, and female doctors mistaken for nurses
- females in the construction industry generally not presumed to be contractors or general managers

The list goes on and on.

The issue of race and implicit bias has also been in the headlines recently, whether it is a group of African-American men asked to leave a Starbucks, or much worse, an African-American man shot under the assumption that he had a weapon. However, implicit bias isn't just about race or gender. We see implicit bias in many places, about many characteristics—age, religion, weight, appearance, disabilities, accents, gender identity, sexuality, single parents, stay-at-home moms and dads, kids with pink hair, people with tattoos and piercings, people with certain bumper stickers on their cars—again, the list goes on and on.

## Why Should We Care About Our Biases?

If we are litigators, these biases can impact how we pick juries, how we assemble our legal team, how we prepare our cases, how we deal with our clients and witnesses, and how we interact with our colleagues. As a judge, I work to ensure that the decisions I make, including credibility decisions, and the sentences I give out are based on appropriate facts, and not implicit biases of which I may not even be aware.

In a work-place environment, unconscious biases can affect hiring and promotion decisions, work assignments, and career tracks, and unfortunately can end up a part of harassment, hostile work environments, and discrimination law suits. These biases can also cause problems and damage relationships, as well as affect the reputations of businesses. In addition, these implicit biases have deadly consequences when they affect such individuals as police officers, who must assess situations quickly and make life-and-death decisions—decisions that may be the result of an implicit bias.

These biases can be incredibly painful for the victims of the biases. One of my dear friends who is a district court judge, formerly a public defender, shared a story with a group of lawyers. He told them how, as an African-American public defender in the courtroom, there were a number of occasions where judges and other lawyers and staff would ask him where his lawyer was, assuming that because he is an African-American, he must be the defendant in the case. The people who made those assumptions weren't necessarily racist or prejudiced, but there was clearly an implicit bias at work. As he shared this story, tears streamed down his face. Another friend of mine who is Hispanic shared his experience in court 15 years ago and being asked by a judge whether he spoke English (simply because of his last name). Regardless of the intent behind these questions, the pain was palpable for both of these individuals.

## Is It Possible to Overcome Our Implicit Biases?

How do we recognize and interrupt our own biases? First, we must be willing to admit we have biases. The more we convince ourselves how unbiased we are, the more of a blind spot we may have when it comes to recognizing our own implicit biases. A great place to start is by taking the [Harvard Implicit Association tests \(Project Implicit\)](#). These are on-line tests that are designed to measure implicit biases in about 28 different categories. Although the results may be shocking at first, the science suggests that the test is absolutely valid.

We must also recognize that the old adage, "trust your gut," may not prevent us from recognizing implicit bias. We must focus on how we form opinions about people. Sometimes it means asking ourselves whether our opinions would be the same if the person were a different race, gender, or religion or dressed in a different manner. In other words, would our opinion be the same if the individual were part of a different group? Studies suggest that we are most at risk of making a decision that is the result of an implicit bias when we are tired, under stress, and pressured to make quick decisions. How many lawyers do we know who fit that description? We may not be able to control how much sleep we get, or how much stress we feel, but we can control how quickly we make decisions that could be the result of an implicit bias.

Although we must be willing to identify and interrupt our own biases, we must also recognize and be willing to interrupt bias in others. This is probably the most difficult and the most uncomfortable part of overcoming bias.

The challenge with others is determining when to say something, how to say it, and to whom. I make every effort not to address another's bias in front of other people. I try to find a place to talk in private, and perhaps begin the conversation with something like,

"I know you didn't mean to make me (or another person) feel bad, but I need to share with you the effect that those words or actions had." I know it is easier said than done, but if someone isn't made aware that he or she has a particular bias, it will only continue to cause pain to another individual or group of individuals and could lead to significant problems for the employer or organization.

Finally, in terms of specific steps we can take when interrupting bias, it is important to remember that biases develop at a young age and are often the result of our tendencies to surround ourselves with people who are the most like us. In fact, research indicates that we tend to perceive anyone different from us as a threat because our brain tells us to do so. "The capacity to discern 'us from them' is fundamental in the human brain," wrote David Amodio, associate professor of psychology and neural science at New York University, in his 2014 paper, "The Neuroscience of Prejudice and Stereotyping." However, that doesn't mean that we can't begin to recognize and overcome our implicit biases. Here are some suggestions:

- Be aware of your initial thoughts about people and upon what those thoughts are truly based
- Stay attuned to people around you and notice how often you engage in conversations with people who are different than you
- Surround yourself with a diverse mix of cultural and social situations and individuals
- Share your own experiences of bias with others
- Educate others about the elements of an inclusive work, school, and community environment
- Look for commonalities that exist regardless of race, religion, gender, culture, etc.
- If you see something, say something, hopefully in a manner that is sensitive to the feelings of everyone involved
- Don't assume bad intent
- Slow down your decision-making process

The reality is that we all say things or do things that we wish we could take back. Unfortunately, the tendency is to pretend that it wasn't said, or that it didn't happen, or hope that perhaps the person didn't hear it. But it did happen, we did say it, and the person did hear it, so acknowledge it, apologize, MOVE on AND CHANGE. My experience has been that most people truly appreciate it and can move on when someone acknowledges a misstep and apologizes for it.

Finally, by challenging ourselves to identify and overcome our own implicit biases, and to help others recognize their biases, we can begin to lay the foundation for harmonious and productive work and personal environments.

*Karen Steihauser is a practicing attorney, judge, and adjunct law professor at the University of Denver Sturm College of Law in Denver, Colorado. She presents workshops and seminars to lawyers and nonlawyers, government offices, and private businesses in the area of implicit/unconscious bias.*

For more business law content, visit [businesslawtoday.org](https://www.businesslawtoday.org).

Authors



# Change is Upon Us: The Importance of Diversity and Inclusion Initiatives

*by Christine M. Hernandez, Olivia Serene Lee, and Nandini Nair*

**Christine M. Hernandez** is a shareholder at Hernandez & Associates, PC. and specializes in removal defense and family-based immigration matters. Hernandez & Associates, PC was awarded the Inclusiveness@Work Award (Law Firm Category) by the Center for Legal Inclusiveness in 2019. Christine was recognized as a Super Lawyers Rising Star from 2016-2018 and named a Colorado Super Lawyer in 2019. She has been recognized as a Top Latino Lawyer since 2017 and was named one of the Most Powerful Latinas in Law in 2018 by the Latino Leaders Magazine. She is the Immediate Past President of the Colorado Hispanic Bar Association and Chair of the Hispanic National Bar Association's Immigration Section. Christine serves on the Colorado Bar Association/Colorado Judicial Institute Diversity on the Bench Joint Initiative and the Colorado Supreme Court's Wellness Task Force, focusing on the wellness of diverse law students.

**Olivia Serene Lee** is a partner at Minami Tamaki LLP in the firm's Immigration and Nationality practice group, where her expertise is on startups and emerging companies in a variety of employment-based immigration matters. Olivia works with many companies in all stages of the startup process, including pre-formation, seed funding, accelerator/incubator programs, early and late stage, acquisitions and mergers, and public offering. Previously, Olivia served as the Chair of AILA Northern California Chapter (NorCal). She also regularly serves as faculty on local and national AILA CLE panels on topics such as O-1s, H-1Bs, and business immigration litigation in federal court. Olivia has been recognized as a Northern California Super Lawyers Rising Star from 2014-2020 and since 2018 listed in the Best Lawyers in America® for Immigration Law. In 2018, she was the recipient of the Unity Award from the Minority Bar Coalition advocating for diversity and inclusion for AILA NorCal. Olivia is the Chair of AILA's Diversity and Inclusion Committee, and she also serves on the Diversity Task Force for the Bar Association of San Francisco.

**Nandini Nair** is a partner in Greenspoon Marder's Immigration and Naturalization practice group and a member of the firm's management committee. She has over two decades in the field where her focus has been on business immigration specifically helping start-ups and multinational companies in the technology industry. Ms. Nair has written a number of articles on immigration, lectured nationally on immigration & D&I issues to bar associations and industry groups and has made several TV appearances on the topic of immigration. Ms. Nair is President of the NJ Advisory Board for the Tri-State Diversity Council, Member of the Diversity and Inclusion Task Force for the Federal Bar Association, Member of the Diversity Council for Greenspoon Marder LLP and member of AILA's Diversity & Inclusion Committee.

\*\*\*\*\*

## INTRODUCTION

Discussions of racism in the aftermath of the police killing of George Floyd and how businesses have responded highlight the importance of Diversity and Inclusion (D&I) efforts. A recent example of how a lack of understanding of diversity issues has impacted businesses, including CrossFit founder Greg Glassman's inflammatory remarks about the nationwide protests in support of Black Lives Matter, which resulted in CrossFit's loss of contracts with athletic companies and franchise deals and eventually in Glassman's resignation as CEO of the company.

Demands to increase D&I efforts within the legal profession have gained more prominence in recent years, and immigration practitioners especially those who work with corporate client companies must adopt D&I initiatives to remain competitive. It is now prudent for savvy business immigration practitioners to showcase their D&I efforts to impress not only their current and potential corporate clients, but also that they are not out of touch with the national discussion happening about inequality.

Diversity is about recognizing, respecting, and valuing differences based on ethnicity, gender, color, age, race, religion, disability, national origin and sexual orientation. It also includes a range of individual unique characteristics and experiences, such as communication style, career path, life

experience, educational background, income level, marital status, military experience, parental status and other variables that influence personal perspectives. Inclusion is the active, intentional, and ongoing engagement with diversity. Diversity and inclusion have been described by some experts as a two-step process. “Diversity is being invited to the party. Inclusion is being asked to dance.”<sup>1</sup>

Moreover, those who perceive diversity as exclusively a moral imperative or societal goal are missing the larger point. Decades of research confirm that diversity within the workforce, especially in leadership teams, lead to more and better innovation and improved financial performance.<sup>2</sup> Despite this, diversity gains in the law firm setting have not significantly improved.<sup>3</sup> For example, the Institute for Inclusion in the Legal Profession’s Review 2019-2020: The State of D&I in the Legal Profession confirms that compared to most other professions, the legal profession remains one of the least diverse of all professions in the US and that the aggregate minority representation among lawyers is significantly lower than minority representation in most other management and professional jobs. The 2019 Report on Diversity in U.S. Law Firms by the National Association for Law Placement (NALP) confirms that while women and people of color continue to be well represented in law school and in the summer associate class, at each year after that women and people of color leave the lawyer ranks at law firms at a higher rate than white men, and women of color remain the most underrepresented of all; and lawyers with disabilities of all sorts remain vastly underreported.

In response to the meager gains of diversity in the legal profession, recent trends indicate prominent initiatives to promote diversity in the legal profession, including the ABA Resolution 113, The Mansfield Rule, and GCs for Law Firm Diversity, among other initiatives.

The **ABA Resolution 113** was passed in August 2016, urging legal service providers to expand and create opportunities for diverse attorneys, and urges the buyers of legal services to direct a greater percentage of legal spend towards diverse attorneys. In the report supporting the Resolution, the following goals were stated:

- Increase diversity at all levels within the legal profession which will make the legal field a more appealing profession for diverse individuals
- Increase in the number of diverse attorneys and remediate the issues of implicit bias in the legal profession
- Encourage corporate clients to use a Model Diversity Survey in procuring and evaluating legal service providers

**The Mansfield Rule**, named after the first woman lawyer in the United States, Arabella Mansfield, challenges law firms to consider at least 30% women, attorneys of color, LGBTQ+ and lawyers with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions. To comply with the Mansfield Rule, participating law

---

<sup>1</sup> The Association of Legal Administrators Diversity Toolkit, IILP Review 40 (2017) (quoting Pauline Higgins, a leader in diversity education). The phrase was copyrighted by Verna Myers

<sup>2</sup> [www.bcg.com/en-us/publications/2018/how-diverse-leadership-teams-boost-innovation.aspx](http://www.bcg.com/en-us/publications/2018/how-diverse-leadership-teams-boost-innovation.aspx)

<sup>3</sup> See “2019 NALP Report on Diversity,” available at [www.nalp.org/uploads/2019\\_DiversityReport.pdf](http://www.nalp.org/uploads/2019_DiversityReport.pdf), and “IILP Review 2019-2020: The State of Diversity and Inclusion in the Legal Profession,” available at [www.theiilp.com/resources/Documents/IILP\\_2019\\_FINAL\\_web.pdf](http://www.theiilp.com/resources/Documents/IILP_2019_FINAL_web.pdf).

firms are required to establish metrics to assess their talent pipelines and measure their progress towards the 30% goal as well as identify areas for improvement. Law departments have supported the Mansfield Rule by encouraging more law firm participation. The Diversity Lab sponsors a program offering law firms that have successfully implemented the Mansfield Rule the opportunity to send their promoted diverse partners to a two-day Client Forum to forge relationships with, and learn from, influential in-house counsel. To date, 70 legal departments have committed to support the Mansfield Rule and attended these client forums. Recently, the Diversity Lab has opened the Mansfield Rule to legal departments within corporations, requiring participating in-house legal teams to consider at least 50% women, minority, LGBTQ+ attorneys, or attorneys with disabilities for key leadership roles and to consider at least 50% diverse lawyers for outside counsel hires for new or expanded work. The initial participants include BASF Corporation, Compass Minerals, Lending Club, MassMutual, PayPal, Symantec, thredUP, and U.S. Bank. Law departments should strongly consider implementing the Mansfield Rule given its promising initial results.

**GCs for Law Firm Diversity** reflects an open letter in January 2017 signed by 170 general counsel and corporate legal officers to big law firms, lamenting new partner classes that “remain largely male and largely white”. The letter confirms their companies will prioritize their legal spend on those firms that commit to D&I. The letter has been signed by chief legal officers in a variety of industries, including those in technology, retail, media, hospitality and financial services. The companies range from small tech outfits to large corporations, such as Google Fiber, Etsy, Heineken USA, Chobani Global Holdings, Waymo, Lyft, Vox Media, S&P Global Ratings and Booz Allen Hamilton. An excerpt of this letter reads:

“We, as a group, will direct our substantial outside counsel spend to those law firms that manifest results with respect to D&I, in addition to providing the highest degree of quality representation. We sincerely hope that you and your firm will be among those that demonstrate this commitment.”<sup>4</sup>

Adopting a D&I plan needs to be viewed as a competitive advantage and a business opportunity - and it will impact your bottom line.

## **TANGIBLE BENEFITS OF DIVERSITY FOR YOUR FIRM**

Many successful companies regard D&I as a source of competitive advantage, workplace equality has become a conscious initiative for businesses. Thus, companies that don't focus on this are at great risk of being out of date. Law firms specifically have been slow to embrace the benefits of diversity. But are there tangible benefits of diversity for the law firms? You bet there are!

Diversity and inclusion provides law firms and all organizations with at least 3 tangible benefits, if not more:

- ***Diversity Helps Fill the Talent Gap***

Today, one of the biggest concerns for organizations, including law firms, is not having the right people to run and grow their businesses. So, they're starting to look to diverse

---

<sup>4</sup> [www.theiilp.com/resources/Documents/GCStatementDiversity.pdf](http://www.theiilp.com/resources/Documents/GCStatementDiversity.pdf)

applicants as a way to address this issue. An organization that embraces diversity will be able to attract a wider range of candidates for their vacancies, as it will be viewed as a more progressive organization and will appeal to individuals from all walks of life. People always want work in an environment which is accepting of all backgrounds and advocates for equality. Individuals from diverse backgrounds can bring to the table different skill sets, talents, perspectives and experiences that may benefit the organization. In addition, Of course, the more applicants you receive, the chances of finding a great employee also increases!

- ***Diversity Drives Innovation***

Increased creativity is another byproduct of capitalizing on differences. “Diversity jolts us into cognitive action in ways that homogeneity simply does not”, wrote Columbia Business School Professor, Katherine Phillips as she described hers and other research for Scientific American in “How Diversity Makes Us Smarter”.<sup>5</sup> Historically, some of the most creative periods in civilization have emerged when people of different backgrounds have contact and work together. America's inventiveness and growth have been attributed to the diversity of thought born from this nation of immigrants.

By working alongside people of different backgrounds, experiences and working styles, creative concepts can be born from bouncing ideas off of each other and offering feedback and suggestions. More recently, research has shown that effective diversity management coupled with inclusive work environments improves organizational performance and innovation.

- ***Your Clients Will Feel More Connected to You***

As an immigration practitioner, we are interacting daily with individuals from all over the world. In the same way that it is important for a diverse workforce to see themselves represented and spoken for in your firm, it’s just as important for your clients to feel understood, catered to, and feel represented. No matter your specific immigration practice area, diversity inherently exists in your client base. In other words, when it comes to your clients, a one-size-fits-all approach is a thing of the past.

It takes diverse thinking and backgrounds to authentically understand the journey of your clients which has the potential to open new ones. The more your clients have the opportunity to see themselves authentically represented within your firm and by the people they come into contact with, the more they’ll be able to relate to you which drive meaningful connection and better business results.

## **OBSTACLES LEGAL PROFESSIONALS ENCOUNTER AS THEY SEEK TO ELIMINATE IMPLICIT BIAS AND SOLUTIONS**

Partners at large firms often lament that the reason their law firm lacks diversity is because there “just aren’t enough qualified applicants”. According to a 2018 ABA study, the student body of

---

<sup>5</sup> K. Phillips, How Diversity Makes Us Smarter (Sept. 28, 2015).

ABA-accredited law schools was comprised of 6.17% Asian, 12.8% Hispanic, .56% Native American, and 8.11% Black students<sup>6</sup>. Putting aside these percentages, all law firms, big and small, should be looking at their hiring practices and evaluating whether they allow for qualified diverse applicants to make it to their applicant pool.

For example, does your firm tend to hire males, whites, graduates from a particular law school, fraternity/sorority members, golfers? The truth is, it is our natural tendency to look for applicants who look like us or share our backgrounds, this is implicit bias!

So, what is the solution, how does a law firm break through implicit bias and succeed in becoming diverse? There is no silver bullet, but there are a number of strategies that can easily be undertaken. Most importantly, senior leadership and management needs to have bought into the idea of diversifying a law firm. Senior leadership/management has to be actively involved and participate meaningfully in diversity efforts. Without senior leadership's involvement, the result will be a diverse law firm that is NOT inclusive, which in the long term will translate into a loss of diverse talent and return to a non-diverse law firm.

Below you will find a number of strategies to implement in your law firm to ensure diversity AND inclusion:

- Ensure that your hiring committee is diverse.
- Do not limit your talent search to just the top ranked law schools, branch out to lower tiered schools.
- Consider factors other than grades, such as: strong academic performance at a recognized undergraduate institution; military service; volunteer work; writing ability/writing awards; law journal experience; and involvement in student bar activities.
- Implement a first-year summer clerkship program.
- Participate in diversity job fairs.
- Delete grades/GPAs from résumés of students coming in for in-office interviews.
- Include diverse attorneys when conducting interviews.
- When pairing law students with attorney "mentors" or "liaisons," do not automatically pair diverse students with diverse lawyers, instead look for shared interests/experiences.
- Use Fall and Spring clerkships to hire diverse law students. You may find that their work product is more representative of their future success as an attorney than their grades.
- Get your firm involved in diverse law student association activities, as well as the diversity bar associations.

## **HOW YOUR FIRM CAN DEVELOP SUSTAINABLE DIVERSITY AND INCLUSION PRACTICES**

“Diversity gets people of color in the room. Inclusion is what makes people really part of the room and makes people want to stay.”<sup>7</sup>

---

<sup>6</sup> [www.enjuris.com/students/law-school-race-2018.html](http://www.enjuris.com/students/law-school-race-2018.html)

<sup>7</sup> N. Norfleet, Lack of Diversity Drives Professionals of Color Out of Twin Cities, Star Tribune (Minn.), Jan. 7, 2017.

Now that you have successfully gotten senior leadership on board with diversity initiatives in your law firm, how do you convert those efforts into an inclusive law firm. First, senior leadership must understand that diverse attorneys have to be shown that they belong and that their voice is valued. How do you show your diverse attorneys that are valued—invest in their future. For example, make sure your diverse attorneys are getting the following:

- Training
- Constructive feedback with opportunities to correct
- Equitable work distribution
- Real client-facing opportunities
- Stretch assignments
- Increased responsibilities, and
- Access to key-decision makers

A sink or swim mentality is NOT going to cut it. Employing the above strategies will ensure that diverse lawyers have equal access to advancement opportunities, and that merit and work ethic will be recognized over nepotism. Attorneys with more traditional backgrounds (white males) may be able to more quickly find mentors and sponsors than diverse attorneys. For this reason, law firms have to be intentional about setting up their diverse attorneys for success, by providing them the tools they need to be successful.

Senior leadership also has to lead by example in creating and maintaining a culture and work environment that is welcoming and allows all attorneys to bring their full self to the workplace. Providing training on implicit bias, signals a law firm's awareness of the issue and willingness to tackle it. Encouraging and supporting an attorney's involvement in the community or a diverse bar association, are ways law firm can signal "we are diverse through our actions, not just our words."

## **HOW ADOPTING THESE INITIATIVES COULD MAKE YOUR FIRM MORE ATTRACTIVE TO CORPORATE CLIENTS**

According to Business News Daily, "Today's consumers are looking for more than just high-quality products and services when they make a purchase. They're prioritizing Corporate Social Responsibility (CSR), and holding corporations accountable for effecting social change with their business beliefs, practices and profits." For successful companies, they are increasingly looking at D&I as essential for their growth strategy and as a source of competitive advantage.<sup>8</sup> Legal departments within corporations now see their legal vendors as strategic partners in achieving D&I goals. As such, when corporate companies are seeking law firms for their legal work, they are now increasingly requesting for D&I information, including social justice, growth strategy, corporate social responsibility. In responding to corporate Requests for Proposals (RFPs), potential clients will want to see where your D&I plans, and it is now imperative to include details that encourage the retention, development, and promotion of diverse attorneys, including:

- D&I Strategic Plan

---

<sup>8</sup> [www.mckinsey.com/~media/McKinsey/Business%20Functions/Organization/Our%20Insights/Delivering%20through%20diversity/Delivering-through-diversity\\_full-report.ashx](http://www.mckinsey.com/~media/McKinsey/Business%20Functions/Organization/Our%20Insights/Delivering%20through%20diversity/Delivering-through-diversity_full-report.ashx).

- Metrics for diverse attorneys and partners, including how to track, measure, and benchmark D&I efforts at both the leadership and practice group levels;
- Initiatives to promote diverse attorneys, including placing diverse attorneys on pitch and client teams, ensuring that diverse attorneys are given meaningful opportunities to lead projects, cases, or client teams
- Commitment to D&I outside of the law firm, including philanthropic efforts for community and social justice causes and engagement with minority bar groups or affinity bar groups

## **Marketing Your D&I Initiative**

You or firm have developed D&I initiatives and practices, how do you go about marketing that?

### ***Be Clear About Your Message***

Messaging is one of the most important aspects in any marketing strategy. If done well, it will get you the results you are looking for. When it comes to D&I, pictures are a stronger proof point than words on your website or your social media platforms. Candidates not only want to know what it is like to work at your company, they also want to see who works at your company. Most marketing departments will strongly advise you against using stock photography, rather they will recommend using the most diverse and inclusive photos you can of your own employees. The goal is to try to mirror your target audience but do so in an authentic way.

But words are important too, especially words that can exclude people due to unconscious bias. You can use something like Textio, the augmented writing platform to help remove unconscious bias from their job descriptions and ensure your language is gender neutral and inclusive.

### ***Include and Engage Leadership in Marketing of D&I Initiatives***

Any programs you developed to promote your D&I goals will be most effective if you tap the resources of your leadership. The senior leadership must be involved and visible throughout the whole diversity project, speeches alone have little impact. The CEO and other senior leaders should be visible at workshops, training programs and during Q&A sessions on diversity, they need to be seen as invested and engaged in these initiatives.

### ***Do You Have a Diversity Statement?***

What the heck is this? A diversity statement is a written document, maybe posted on your website that declares your commitment to encouraging D&I. How do you create an effective Diversity statement? Well here are some tips:

- Keep it short: 45 to 75 words is all you really need.
- Keep it positive. Use positive words such as “inclusive,” “commitment,” “celebrate,” “growth,” “freedom,” “experience,” etc.
- Mention your mission in clear terms

- Be specific as to how you promote diversity in your firm. For example, do you have Employee Resource Groups? If yes, name them.

## CONCLUSION

A national discussion regarding inequality and inequities has erupted following the police killing of George Floyd during a global pandemic that has significantly impacted minority communities.<sup>9</sup> The time is ripe for all organizations to adopt D&I initiatives. The authors of this article also encourage practitioners to explore systemic injustices and examine the difference of equality and equity. Also, these D&I discussions should never be abandoned to only be picked up again when there is another national outrage on inequality issues. Instead, these discussions and the actions implemented from D&I initiatives must always continue to happen.

---

<sup>9</sup> COVID-19 disproportionately impacts communities of color, including elevated risk of infection and death for Black Americans, Latinos, and Native Americans, as well as more than 1700 hate incidents on Asian Americans. See <https://ehe.amfar.org/inequity>, <https://www.cnn.com/2020/05/27/health/latino-impact-covid-19/index.html>, <https://www.theatlantic.com/ideas/archive/2020/04/disease-has-never-been-just-disease-native-americans/610852/>, and [http://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/Press\\_Release\\_5\\_13\\_20.pdf](http://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/Press_Release_5_13_20.pdf).

**‘One Love’: Diversity & Inclusion and Elimination of Bias in the Workplace**  
*By Hudaidah Bhimdi, Christine M. Hernandez, Patricia Ice, and Olivia Serene Lee*

**Hudaidah F. Bhimdi** is a partner at Murray Osorio PLLC, where she focuses on business immigration and I-9 compliance for US and Global corporations. Hudaidah advises businesses and professionals in all sectors of the economy by providing them with immigration strategies and representing them before various U.S. government agencies within the U.S. and abroad. She also represents companies facing government investigations or audits and she works proactively with businesses to develop immigration and compliance policies and conduct internal assessment. Hudaidah is also very active locally, nationally, and internationally in immigration law education, immigration advocacy and governance. She currently serves on the Executive Committees of the AILA DC Chapter and the AILA Rome District-EMEA Chapter. She is currently a member of AILA’s Diversity and Inclusion committee. Hudaidah’s involvement in the community is not limited to legal services. She was appointed by the Governor of Virginia to serve as a Board member for the Virginia Asian Advisory Board (VAAB). She has also served as a Board member and Secretary for the Pakistani Association of Central Virginia and for the Asian American Society of Central Virginia. She is also an active member of the Pakistani American Business Association and serves on its Development Committee.

**Christine M. Hernandez** is a shareholder at Hernandez & Associates, PC. and specializes in removal defense and family-based immigration matters. Hernandez & Associates, PC is the largest immigration firm in Colorado and was awarded the Inclusiveness@Work Award (Law Firm Category) by the Center for Legal Inclusiveness in 2019. Christine was recognized as a Super Lawyers Rising Star from 2016-2018 and has been named a Colorado Super Lawyer since 2019. She has been recognized as a Top Latino Lawyer since 2017 and was named one of the Most Powerful Latinas in Law in 2018 by the Latino Leaders Magazine. She is the Immediate Past President of the Colorado Hispanic Bar Association and Chair of the Hispanic National Bar Association’s Immigration Section. Christine serves on the Colorado Bar Association/Colorado Judicial Institute Diversity on the Bench Joint Initiative and the Colorado Supreme Court’s Wellness Task Force, focusing on the wellness of diverse law students. She also serves as co-chair of the Colorado Lawyers Committee’s Racial Justice Taskforce.

**L. Patricia Ice** is the Legal Project Director of the Mississippi Immigrants Rights Alliance (MIRA), an independent 501(c)3 non-profit organization that provides legal services to immigrant families in selected cases. She also advocates on behalf of immigrants in the community, at the state legislature and on Capitol Hill in Washington, DC. Patricia developed an interest in immigration law after serving as a United States Peace Corps volunteer English teacher in Porto Novo, Benin in the 1980s and after teaching English in the Philippines and in Haiti Honduras, as a U.S. Information Agency English Teaching Fellow. A native of Detroit, and a graduate of Spelman College (B.A.), Ohio University (M.A.) and Wayne State University (J.D. and M.L.I.S.), Ice is an attorney admitted to practice law in Michigan, Mississippi, New Mexico and the U.S. Supreme Court. She is married to long time labor activist and MIRA co-founder and executive director, Bill Chandler. She and Chandler live in Jackson with their three dogs and two cats.

**Olivia Serene Lee** is a partner at Minami Tamaki LLP in the firm’s Immigration and Nationality practice group, where her expertise is on startups and emerging companies in a variety of employment-based immigration matters. Olivia works with many companies in all stages of the startup process, including pre-formation, seed funding, accelerator/incubator programs, early and late stage, acquisitions and mergers, and public offering. Previously, Olivia served as the Chair of AILA Northern California Chapter (NorCal). She also regularly serves as faculty on local and national AILA CLE panels on topics such as O-1s, H-1Bs, and business immigration litigation in federal court. Olivia has been recognized as a Northern California Super Lawyers Rising Star from 2014-2020 and since 2018 listed in the Best Lawyers in America® for Immigration Law. In 2018, she was the recipient of the Unity Award from the Minority Bar Coalition advocating for diversity and inclusion for AILA NorCal. Olivia is the Chair of AILA’s Diversity and Inclusion Committee, and she also serves on the Diversity Task Force for the Bar Association of San Francisco. She is also a member of the National Implicit Bias Network.

**Introduction**

There are many people who are sincere in their renunciation of prejudice; yet they are vulnerable to habits of mind. About thirty years ago, Patricia Devine conducted a series of experiments that

laid out the psychological case for implicit racial bias - the idea is that it's possible to act in prejudicial ways while sincerely rejecting prejudiced ideas.<sup>1</sup> This implicit bias is hidden and unconscious, and tends to develop early in life and strengthen over time. The implicit social cognitions that guide our thinking come from experiences with other people, some of them direct (i.e., real-world encounters) but most of them vicarious (i.e., relayed to us through stories, books, movies, media, and culture).<sup>2</sup>

This practice advisory will introduce forms of unconscious bias and its impact on the legal profession, explore strategies to recognize bias and to improve relationships with colleagues and clients, as well as developing cultural sensitivity and understanding, which will in turn foster better relationships with your clients.

### **Forms of Unconscious Bias and Its Impact in the Legal Profession**

There are many forms of unconscious bias, including the most commonly discussed: race bias and gender bias. Below are forms of other unconscious biases:

- Affinity Bias: Also called like-likes-like, this bias refers to our tendency to gravitate toward people similar to ourselves. That might mean hiring or promoting someone who shares the same race, gender, age, or educational background.
- Ageism: Discriminating against someone on the basis of their age. Ageism tends to affect women more than men, and starts at younger ages.
- Attribution Bias: Because some people see women as less competent than men, they may undervalue their accomplishments and overvalue their mistakes.
- Beauty Bias: Judging people, especially women, based on how attractive you think they are is called beauty bias. People perceived as attractive can be viewed more positively and treated more favorably.
- Confirmation Bias: Confirmation bias refers to the tendency to look for or favor information that confirms beliefs we already hold.
- Conformity Bias: Very common in group settings, this type of bias occurs when your views are swayed or influenced by the views of others. This is similar to groupthink.
- The Contrast Effect: This bias refers to evaluating the performance of one person in contrast to another because you experienced the individuals either simultaneously or in close succession.
- The Halo/Horns Effect: The tendency to put someone on a pedestal or think more highly of them after learning something impressive about them, or conversely, perceiving someone negatively after learning something unfavorable about them.
- Name Bias: When you judge a person based on their name and perceived background. This is especially important when reviewing resumes.
- Weight Bias: Judging a person negatively because they are larger or heavier than average.

There is increasing evidence that implicit biases do predict behavior in the real world - in ways that can have actual effects on real lives as well as the legal profession. For the legal profession,

---

<sup>1</sup> Devine, Patricia G. (1989). "Stereotypes and prejudice: Their automatic and controlled components". *Journal of Personality and Social Psychology*. 56(1), 5-18.

<sup>2</sup> Jerry Kang, "Implicit Bias: A Primer for Courts," National Campaign to Ensure the Racial and Ethnic Fairness of America's State Courts (August 2009).

despite goals to increase diversity in the legal profession for the last few decades, the advances in diversity have been meager. For example, the Institute for Inclusion in the Legal Profession's Review 2019-2020: The State of D&I in the Legal Profession confirms that compared to most other professions, the legal profession remains one of the least diverse of all professions in the US and that the aggregate minority representation among lawyers is significantly lower than minority representation in most other management and professional jobs. The 2019 Report on Diversity in U.S. Law Firms by the National Association for Law Placement (NALP) confirms that while women and people of color continue to be well represented in law school and in the summer associate class, at each year after that women and people of color leave the lawyer ranks at law firms at a higher rate than white men, and women of color remain the most underrepresented of all; and lawyers with disabilities of all sorts remain vastly underreported.

Specifically in the area of immigration, although women comprise of a third of the legal profession, more than half of immigration attorneys are women.<sup>3</sup> There is a lingering question of whether immigration law practice holds itself in high regard compared to other areas of legal practice, and whether the disparity stems from bias.

Implicit bias can also affect your legal practice in the workplace among your colleagues, as well as your clients. Taking steps to understand implicit bias and build cultural understanding can foster a better workplace experience as well as relationships with clients. We explore this in the following sections of this article.

### **Assessing and Improving Diversity and Inclusion in Your Workplace**

Workplace diversity is an issue experienced by many organizations, even highly developed and advanced ones. By properly assessing your organization's workplace diversity, you can confidently take the necessary steps to improve it.

#### **Testing your own Implicit Bias**

One concrete thing we can all do to try to uncover our own implicit biases is to take an online self-assessment. There are many tests that have been developed, but one of the earliest and perhaps one that is most influential and recognized among the public, partly thanks to Malcom Gladwell's best-selling book *Blink*, is the Implicit Association Test (IAT).<sup>4</sup> More than 20 million people around the world have taken the test.<sup>5</sup> The test can be found on Harvard University's Project Implicit Website.<sup>6</sup> The purpose of the test is to "evaluate unconscious social attitudes towards a particular

---

<sup>3</sup> Marcia Brown, "The Loneliness of the Immigration Lawyer: Immigration attorneys say they're battling Trump's 'war of attrition.' If he's re-elected, some may reconsider the work altogether." The American Prospect, October 29, 2020. <https://prospect.org/justice/loneliness-of-the-immigration-lawyer/>

<sup>4</sup> Lopez, German. (2017, March 7). For years, this popular test measured anyone's racial bias. But it might not work after all." Vox. Retrieved from <https://www.vox.com/identities/2017/3/7/14637626/implicit-association-test-racism>

<sup>5</sup> Project Implicit Test can be found at <https://implicit.harvard.edu/implicit/takeatest.html> "Project Implicit is a non-profit organization and international collaboration between researchers who are interested in implicit social cognition - thoughts and feelings outside of conscious awareness and control. The goal of the organization is to educate the public about hidden biases and to provide a "virtual laboratory" for collecting data on the Internet. Project Implicit was founded in 1998 by three scientists - Tony Greenwald (University of Washington), Mahzarin Banaji (Harvard University), and Brian Nosek (University of Virginia). Project Implicit Health (formerly Project Implicit Mental Health) launched in 2011 and is led by Bethany Teachman (University of Virginia) and Matt Nock (Harvard University)."

<sup>6</sup> Id.

characteristic, such as weight, age, gender, sexual orientation, or race.”<sup>7</sup> And, “they work by measuring how quick you are to associate certain words with certain groups.”<sup>8</sup> While there are many critiques of the test, including that it should not be used to judge one individual’s biases, defenders argue that the test in the aggregate amongst groups of people can be used to predict unconscious behavior.

## **Obstacles legal professionals encounter as they seek to eliminate implicit biases and solutions**

Partners at large firms often lament that the reason their law firm lacks diversity is because there “just aren’t enough qualified applicants”. According to a 2018 ABA study, the student body of ABA-accredited law schools was comprised of 6.17% Asian, 12.8% Hispanic, .56% Native American, and 8.11% Black students.<sup>9</sup> Putting aside these percentages, all law firms, big and small, should be looking at their hiring practices and evaluating whether they allow for qualified diverse applicants to make it to their applicant pool.

For example, does your organization tend to hire males, whites, graduates from a particular law school, fraternity/sorority members, golfers? The truth is, it is our natural tendency to look for applicants who look like us or share our backgrounds, this is implicit bias!

So, what is the solution, how does a law firm break through implicit bias and succeed in becoming diverse? There is no silver bullet, but there are a number of strategies that can easily be undertaken. Most importantly, senior leadership and management needs to have bought into the idea of diversifying a law firm. Senior leadership/management has to be actively involved and participate meaningfully in diversity efforts. Without senior leadership’s involvement, the result will be a diverse law firm that is NOT inclusive, which in the long term will translate into a loss of diverse talent and return to a non-diverse law firm.

Below you will find a number of strategies to implement in your law firm to ensure diversity AND inclusion:

- Ensure that your hiring committee is diverse.
- Do not limit your talent search to just the top ranked law schools, branch out to lower tiered schools.
- Consider factors other than grades, such as: strong academic performance at a recognized undergraduate institution; military service; volunteer work; writing ability/writing awards; law journal experience; and involvement in student bar activities.
- Implement a first-year summer clerkship program.
- Participate in diversity job fairs.
- Delete grades/GPAs from résumés of students coming in for in-office interviews.
- Include diverse attorneys when conducting interviews.
- When pairing law students with attorney "mentors" or "liaisons," do not automatically pair diverse students with diverse lawyers, instead look for shared interests/experiences.

---

<sup>7</sup> Goldhill, Olivia. (2017, December 3). The world is relying on a flawed psychological test to fight racism. Quartz. Retrieved from <https://qz.com/1144504/the-world-is-relying-on-a-flawed-psychological-test-to-fight-racism/>

<sup>8</sup> Id.

<sup>9</sup> [www.enjuris.com/students/law-school-race-2018.html](http://www.enjuris.com/students/law-school-race-2018.html)

- Use Fall and Spring clerkships to hire diverse law students. You may find that their work product is more representative of their future success as an attorney than their grades.
- Get your firm involved in diverse law student association activities, as well as the diversity bar associations.

### **Developing Cultural Sensitivity with Clients<sup>10</sup>**

Working with immigrant clients can require a tremendous amount of cultural sensitivity. There are things you can do to develop it. First, you can try to become aware of why you want to learn more about other cultures. In the immigration law context it can be because you are truly interested in learning about various cultures, and it can also be because you want to get along with and do our best job for our clients. Oftentimes learning about and accepting other cultures is challenging. We have to view aspects of other cultures (i.e. religion, language, family structures, etc.) on the same level as our own. That is not always easy. It is important to always keep in mind and understand one basic premise: as human beings we are all equal.

We can educate ourselves on intercultural communication. There are many ways to do this. Some lawyers take formal courses on the subject. Some of us have learned by experience by living among other cultures for long periods of time. We can also learn by reading books by diverse authors, watching movies and or TV shows, especially documentaries that come from places other than Hollywood. When we dive into another's cultural world of entertainment, we can start to empathize with people different from ourselves. We can also see that we may have things in common.

We can become aware of our own cultural biases. This may be the most difficult aspect of becoming more culturally conscious. Probably because we have a hard time questioning our own beliefs and worldview within our cultural bubble. If we choose to get out of it, we can become more aware of who we are and why we carry certain prejudices against specific groups of people. This is very tough to do. And even if we understand these biases, it can still be difficult to accept certain practices that other cultures have and to change our ideas. It can require constant work on our parts.

We can try to let go of certain ethnocentric beliefs by realizing what we like and do not like about our own culture. If you study other religions, for example, you may like some aspects of them better than your own. When you open yourself up to these feelings you may find that you can learn so much from others if you let go of the belief that your culture is the best one. It can be cool to start to admire the way others live and think without it being from a place of superiority.

Finally, you can ask questions about how clients feel during intercultural exchanges. As immigration lawyers, we have to ask clients a lot of personal questions in order to do our work and understand their cases. Sometimes they don't feel comfortable sharing certain information. We can explain to them why we must ask and give them time to digest this. This often takes a LOT

---

<sup>10</sup> Adapted from 5 steps anyone can take to become more culturally sensitive by Maria Garcia-Arrazola July 24, 2016.

of time and we have to have conversations over several days or weeks. Of course, this is extremely difficult when we have strict deadlines to meet.

Becoming truly culturally conscious is an ongoing process and we must be gentle with ourselves and our clients when we are going through the process. We are all only humans and sometimes we make mistakes and falter. However, engaging with people from other cultures can be fun and is perhaps the only way to actually understand another person.

### **Cultural Understanding and Fostering Better Relationships with Clients**

Cultural competence is the ability to understand, communicate with and effectively interact with people across cultures. Cultural competence involves 1) being aware of your own world view, 2) developing positive attitudes toward cultural differences, 3) gaining knowledge of different cultural practices and world views, and 4) developing skills for communication and interaction across cultures.<sup>11</sup>

#### **The reluctant storyteller**

Cultural competency goes hand and hand with fostering better relationships with your clients and building trust. The most important rule to remember when embarking on a new client relationship, is to put aside your world views and try to put yourself in their shoes. As frustrating as it can be, asking what you think are straightforward questions, may not be so straightforward depending on your client's upbringing, education, and socioeconomic status.

Trust and social norms in their home country play a huge role in the information a client relays to you. For example, in most countries, domestic violence is considered "a family issue" that the police do not get involved in. Therefore, of course your client is not going to divulge all the information you need in the first meeting, simply because they are new to the concept that domestic violence is a crime for which they can receive protection for in the US. Put yourself in their shoes, would you feel comfortable talking to a stranger in a foreign country about the sexual and physical assault you experienced in your home country, probably not. Would you think to tell your attorney details about the police in your town or how your parents treated you growing up, probably not, simply because it was just a normal part of your everyday life to endure abuse due to your gender, for example. As your client becomes better educated about their legal rights, enjoys financial stability, and builds a relationship with you, their story will unfold.

Through empathy and cultural understanding, you will build trust with your client. Most important, you cannot enter a client relationship expecting your client to have walked in your shoes.<sup>12</sup>

#### **What criminal record?**

---

<sup>11</sup> ACECQA, "What does it mean to be culturally competent?", July 10, 2014 - [What does it mean to be culturally competent? – We Hear You \(acecqa.gov.au\)](http://www.acecqa.gov.au).

<sup>12</sup> ABA, "Cultural Competency and the Practice of Law in the 21st Century", March 1, 2017 - [Cultural Competency and the Practice of Law in the 21st Century \(americanbar.org\)](http://www.americanbar.org).

And the client that claims to have never been arrested, except for that one DUI that they paid for and completed all the classes - again you cannot approach the situation thinking your client is purposely making your life difficult. Some clients are embarrassed or too nervous, other clients just do not understand how the US criminal system works. Many will try to convince you that they want to talk to the judge and just explain their story and then the case will get dismissed. That might work in civil code countries, but not here. They may also believe that once they completed the classes and paid the fine, the case was “dismissed”/no longer exists.

Conversely, you may be inquiring as to a client’s U visa eligibility when you ask if they have ever had to contact the police for help/if they were a victim of crime. The response typically is “no”. But then toward the end of the conversation they ask you “does it matter that I was held at gunpoint at work”.

Your client may come from a country in which law enforcement and legal counsel are not to be trusted, especially if they are a minority or of a lower economic status.<sup>13</sup> Most times it simply boils down to the actual words you are using to ask the question.

An important aspect of culture competence is communication. Effective communications with your clients include “listening actively, assessing the client’s body language, and asking questions”.<sup>14</sup> Rather than get frustrated by your client’s lack of responsiveness to your questions, make sure you have a line of questioning that elicits the information you need. The client may not be evasive, but may simply believe the information is irrelevant.<sup>15</sup>

There are a number of reasons why your client may not respond in the manner that you expect. A good rule of thumb is to *not* assume they are trying to hide information. Chastising a client or calling them a liar most definitely does nothing to build a better attorney/client relationship. Always try to put yourself in your client’s shoes and remember to view their world through their eyes and experiences. With a positive attitude toward cultural differences and being open to learning about different cultures, you will be well on your way to many positive relationships with your clients.

---

<sup>13</sup> ABA, “Cultural Competency and the Practice of Law in the 21st Century”, March 1, 2017 - [Cultural Competency and the Practice of Law in the 21st Century \(americanbar.org\)](#).

<sup>14</sup> ABA, “Cultural Competency and the Practice of Law in the 21st Century”, March 1, 2017 - [Cultural Competency and the Practice of Law in the 21st Century \(americanbar.org\)](#).

<sup>15</sup> ABA, “Cultural Competency and the Practice of Law in the 21st Century”, March 1, 2017 - [Cultural Competency and the Practice of Law in the 21st Century \(americanbar.org\)](#).