

A New Tool to Address an Old Problem: Using Mindfulness to Deactivate Implicit Bias

by Denise A. Robinson

Using mindfulness as an intervention for implicit bias recognizes that meaningful change begins on the inside — and begins in the present.

Given the legal profession's fundamental charge to facilitate and advance justice for all in a diverse, global society, achieving diversity and inclusion within the profession is central to the profession's ability to serve and succeed. Yet, despite years of formal efforts to promote change in the legal profession in the United States, the struggle to crack the code to sustainable diversity and inclusion continues. As illustrated in NALP's [Diversity Through Infographics: From Law School to Partnership](#), these challenges cut across gender, race/ethnicity, sexual orientation, gender identity, and lawyers with disabilities, and include:

- a persistent glass ceiling in equity ownership of law firms, where women make up less than 20 percent of partners despite hovering around 50 percent of law school graduating classes for the last two decades;
- uneven growth in racial/ethnic diversity among law firm associates, with gains for Asian American associates but only tiny increases for Latino associates and decreases for African American associates since the Great Recession;
- significant increases in the share of lawyers identifying as openly lesbian, gay, or bisexual, but continued challenges with gathering data on transgender law students and lawyers; and
- marginal gains in the representation of differently-abled associates and partners in law firms, as well as ongoing challenges in gaining employment as compared to other under-represented groups.

While outright discrimination remains an issue in our society, anti-discrimination laws and the compliance-oriented efforts that accompany them (think sexual harassment training) make it unlikely that the story told in the statistics above is the product of explicit forms of bias alone. Today's exclusion is often hard to pinpoint, rooted in a neurological process outside of our conscious awareness called implicit bias. Also known as automatic social cognition, implicit bias refers to unconscious judgments, past associations, and beliefs that influence individuals' social behaviors. This type of bias is often different from our stated beliefs about others, and it has been found to be more predictive of prejudicial behavior than explicit judgments. In a [recent study](#) conducted by Paul Hastings and Bloomberg Law's *Big Law Business*, more than two-thirds of respondents identified implicit bias as the main barrier to advancing diversity and inclusion in their own law firms.

How Did We Get Here?

On an individual level, implicit bias has a significant influence on our interpersonal interactions, including with whom we choose to associate and form relationships. These relationships often reflect another form of automatic cognition called affinity bias, which is a preference for those who remind us of ourselves. Those affinities can and do translate into powerful social networks among those in majority groups that provide access to jobs, promotions, and other beneficial opportunities for some but not others. Broadening these affinities is what inclusion is all about, and many formal mentoring and sponsor-

ship programs are designed precisely to foster these expanded connections. When successful, these connections interrupt the social isolation that leads many attorneys and other professionals in under-represented groups to leave their employers disproportionately.

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Implicit bias also shows up in organizational processes, especially evaluative ones. These include everything from hiring to performance reviews to promotion decisions. Often, these processes look neutral on their face, but upon inspection differences emerge that give some groups a leg up while disadvantaging others. For instance, confirmation bias — an unconscious mental shortcut that leads us to seek information that confirms what we already believe despite evidence to the contrary — can lead evaluators to more harshly judge mistakes made by those in under-represented groups for which incompetence is a stereotype, even when the same mistakes are made by those in majority groups. This type of bias creeps in even more freely when standards and expectations are either vague or unenforced.

In recognition of the significant impact of these and other patterns of implicit bias in the workforce, implicit bias training has featured prominently in law firms with formal diversity and inclusion initiatives. Such training programs, however, are not limited to the private sector. A number of state bar associations facilitate continuing legal education programs on the topic, and just this past July, the [U.S. Department of Justice \(DOJ\)](#) [announced](#) a mandatory implicit bias training program for all of its law enforcement agents and prosecutors. Much of the focus in these types of training programs is on raising awareness about the existence of implicit bias and how it shows up in the workplace. Some take the important next step of providing

tools on how to interrupt the behaviors and even the policies and practices that flow from implicit bias. While raising awareness and learning how to interrupt the products of implicit bias are both critical and should be continued, the lack of advancement on diversity and inclusion issues within the profession suggests that these interventions are insufficient. Further, as recently highlighted in the *Harvard Business Review*'s "[Why Diversity Programs Fail](#)," there's evidence that making these trainings compulsory can be counterproductive, and worse, they may even activate bias in some participants.

Introducing a New Approach

A. The Research

Getting different results will require innovative approaches, and the research of Adam Lueke and Bryan Gibson offers one that focuses on addressing implicit bias at its neurological roots. In their [2014 study](#), Lueke and Gibson investigated the impact of mindfulness on out-group implicit bias based on race and age. The subjects were 72 white college students, split into two groups. One group listened to a ten-minute recorded mindfulness exercise focused on becoming aware of one's breathing and heart rate ("mindfulness cohort"), and the other listened to a recorded history lesson ("control group") of the same length. Both groups took the race and age [Implicit Association Test \(IAT\)](#), which measures the strength of associations between images of something (or someone) and value judgments (e.g., whether something is good or bad). Lueke and Gibson found that the mindfulness cohort showed significantly lower scores on both the race and age IAT tests as compared to the control group, translating to less bias against out-group racial identities (namely, black people) and older individuals. Notably, neither the mindfulness exercise nor the history lesson had anything to say about race or age.

These results are significant, not just for the outcome itself, but for what the researchers had to say about the mechanism by which mindfulness reduced implicit bias in this study. While the term "implicit bias" connotes something that is negative

and to be avoided, the underlying neurological process common to all of us known as automaticity is cognitively beneficial for organizing information in a complex environment in an efficient and strategic way. Unfortunately, that process can be over-reliant on stereotypes and other negative associations stored in our memory, some of which are erroneous or incomplete. In this study, the students who listened to the mindfulness recording showed less automatic *activation* of past associations between the faces of both black people and older people and negative stereotypical terms. In other words, whatever past associations and stereotypes the mindfulness cohort participants may have had about black or older people did not get triggered in the first place. Instead, their responses to the IAT were much more dependent on the information available to them in the moment of taking the test. In addition, the research found that the mindfulness cohort was less able to discriminate between black and white faces, and old and young faces within the IAT. Arguably, the latter finding suggests that mindfulness led to a kind of “colorblindness,” but a clearer understanding of mindfulness can lead to an alternative perspective that helps explain both findings.

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B. The Tool

Mindfulness, simply put, is the state of being aware of what is happening right now, both within and without, and of being aware without judgment of what we observe. Mindfulness encourages us to see what is, rather than what something was, could, or should be. Internally, mindfulness allows us to observe physical sensations (e.g., hot or cold), emotions (e.g., fear or contentment), and other states, and to more clearly name them while letting go of the urge to place a value judgment on them. For example, one might observe the emotion of happiness, but the non-judgmental quality of mindfulness would release the desire to label that as good or bad; it just is

happiness. Externally, non-judgment allows individuals to stay open to their environment and to others, and, by doing so, it expands what we can attend to and the information we acquire. This includes seeing more about others than just their social identities (such as race or gender), which helps to explain what happened with the mindfulness cohort in Lueke and Gibson’s study. Absent mindfulness or similar tools to expand our attention of what’s within us and before us right now, the social identities of others are far more likely to activate past associations and outrun our attention at a subconscious level, influencing our behavior in ways we may not have selected based upon our explicit judgments. Mindfulness cultivates the ability to respond rather than simply react to ourselves and the world around us.

It is important to note that the students exposed to mindfulness in Lueke and Gibson’s study did not show the absence of implicit bias against out-groups based on race and age. Rather, mindfulness helped to *reduce* the *activation* of the automatic association between out-groups and negative words relative to the control group. Just a ten-minute mindfulness exercise achieved this result. While they did not investigate the issue in this study, the researchers acknowledged that the result is likely to wane as time passes between listening to the exercise and taking the IAT. This suggests that achieving sustainable results requires practice.

It’s a Practice, Not a Destination

Mindfulness is often connoted as and conflated with mindfulness meditation, which is one of numerous types of meditation. To be sure, the practice of being present without judgment of what is observed can be facilitated through mindfulness meditation, but meditation is only one means toward mindfulness. Mindfulness can be pursued through a variety of exercises and activities known as *contemplative practices*. A non-exhaustive collection of these practices can be seen in the Center for Contemplative Mind in Society’s [Tree of Contemplative Practices](#). While the practices listed are as diverse as journaling and improvisation, what makes something a contemplative practice

is its intention, which is to gain insight into what is meaningful for yourself and others. Gaining those insights effectively requires presence and staying open to information, which, as discussed, are the key features of mindfulness. It also requires regular and repeated engagement with these activities.

While these practices may represent a departure from how things are typically done, the goal of achieving a more diverse and inclusive profession cannot be reached through business as usual.

Given the range of contemplative exercises that provide opportunities to practice mindfulness, law schools and legal employers can provide a range of options to cultivate the present moment awareness and non-judgment that have been shown to reduce the triggering of implicit bias. These include the excellent suggestions offered by Donna Branca and Diane Costigan in their August 2016 *PD Quarterly* article, “Imagining the Possibilities: Mindfulness, Focused Goal Attainment, and the Transformation of the Legal Practice.” In addition, there are specific contemplative facilitation approaches and tools that may be particularly well-suited for student development and talent management professionals to nudge others toward expanded awareness and reduced reliance on preset notions. While these practices may represent a departure from how things are typically done, the goal of achieving a more diverse and inclusive profession cannot be reached through business as usual. Some examples include:

- **The Power of Pausing:** Before launching into any evaluative or decision-making process about others, whether it involves associate reviews, hiring committee meetings, or even reviewing the work of a supervisee, pause. A simple practice for this, known by the acronym S.T.O.P., is to: (1) stop what you are doing; (2) take a few conscious breaths; (3) observe what is present, internally and externally; and (4) proceed with intention-based action. Given that aspiring and practicing legal professionals are engaged in intellectually

demanding work, it also can be helpful to add physical exercises to these moments of stillness. Simple examples include adjusting posture while sitting by uncrossing one’s legs and bringing feet to the floor, and progressive relaxation movements, such as scrunching toes or balling fists on an inhale and releasing them on an exhale. Taking a few seconds to engage in short mindfulness practices such as these can be a powerful way to mark transition between activities and ensure one’s attention is on the task at hand.

- **Mind Your Task:** Many job postings, including those in the legal profession, list the ability to multitask as a must-have qualification. According to neuroscientists such as [Dr. Daniel Levitin](#), however, the brain does no such thing. Instead, when we think we are doing two or more things that require our attention at once, our brains are switching back and forth between those tasks, quickly at first, but exhaustingly over time. Doing one thing at a time gives our minds the opportunity to work optimally and get more done with greater accuracy and efficiency than when our attention is divided. Encouraging others to try this out in meetings, counseling sessions, training programs, and other interactions may not be easy, but removing electronic devices from the equation can certainly help. This can be achieved through a workplace version of “phone stacks,” which involves having meeting participants put their phones in the middle of the table or otherwise out of reach, or providing timed technology breaks.
- **Active Listening and Talking Pieces:** Have you ever attended a meeting where people are constantly interrupted, or notice that you are thinking about how to respond to what someone else is saying as they are talking? In addition to the potential negative impact on the individual being interrupted or not being attended to (people notice!), those doing the interrupting or evaluating their responses limit the amount of information they receive, which then impacts their actions or responses. In meetings where this is an issue, a contemplative facilitation tool called a “talking piece” can help individuals attend to the person speaking and the

information being conveyed. The “talking piece” can be any simple object that fits in a hand and is easily passed from one person to another. For instance, it could be a coffee cup, large marker, paperweight, small ball, an item from nature, or any non-personal, non-threatening item available. The item is used to signify who has the floor to speak, and when they are speaking no one is to interrupt. It is then passed, often in a circle, to provide others the opportunity to speak. With practice, the piece may no longer need to be used to facilitate presence with the speaker, and its benefits can spread to greater active listening (and information acquisition) in one-on-one conversations.

Summarizing the Possibilities

As in Lueke and Gibson’s study, these mindfulness practices need not be labeled as implicit bias interventions; they do, however, provide an opportunity to spread the responsibility for engaging in actions to help reduce the impact of bias throughout the organization. This is appropriate because the social exclusionary behaviors that flow from implicit bias are organization-wide problems to be addressed with expert guidance from diversity and inclusion practitioners, but not to be solved by them alone. In addition, the bias interruption benefit of mindfulness practice can provide additional incentive to the growing number of legal employers and law schools considering or implementing mindfulness programs as part of their wellness initiatives.

Using mindfulness as an intervention for implicit bias recognizes that meaningful change begins on the inside. These changes within influence our interactions with each other, and ultimately, shape our institutions and culture. Imagine the possibilities for diversity and inclusion in the legal profession should we practice relying less on past notions and more on what is present.

About the Author



Denise A. Robinson is the Founding Principal of The Still Center, where she combines expertise in advancing diversity and inclusion in the workplace with experience in teaching mindfulness-oriented practices to lawyers, law students, and other professionals. After graduating from the University of Chicago Law School, Denise practiced labor and employment law, and later transitioned to promoting harmonious and innovative workplaces as a diversity and inclusion advocate, including as the former Director of Diversity & Inclusion for O’Melveny & Myers LLP, and former Diversity Officer for the International Monetary Fund. She is also a registered yoga teacher and an active blogger on issues of diversity and well-being.