

Inclusion Nudges: Embedding Inclusive Practices into Organizational Structures to Interrupt Unconscious Biases

By Kathleen Nalty, Esq.¹

While there has been a great deal of activity aimed at advancing diversity and inclusion in the legal industry, outcomes have been poor. Most law firms have lists upon lists of programs and activities aimed at improving diversity and inclusion. Yet, there is very little to show for those efforts. Year after year, attorneys in already underrepresented groups, including female and racially/ethnically diverse lawyers, leave their law firms at higher rates. For example, according to the New York City Bar Association's 2015 survey of law firm members, attrition rates were 43 percent higher for female attorneys and 62 percent higher for racially/ethnically diverse attorneys compared to white male lawyers.² The 2015 Vault/MCCA Survey also documented higher attrition rates for attorneys in underrepresented groups.³

Eight national research studies point to the disparate impact of hidden barriers on female and racially/ethnically diverse lawyers as the major cause of higher attrition rates.⁴ According to these studies,⁵ key opportunities are shared unevenly by people in positions of power and influence, often without realizing that certain groups are disproportionately excluded, which causes them to remain on the margins in law firms. Specifically, the research shows that female, LGBTQ, disabled, and racially/ethnically diverse attorneys have less access to:

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

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

Unconscious bias is difficult to root out in organizations. But there is a new movement to institutionalize diversity and inclusion through what are called “inclusion nudges” which fight unconscious bias at a whole different level. The term “nudge” comes from the field of behavioral economics. In 2008, Richard Thaler and Cass Sunstein published “Nudge: Improving Decisions About Health, Wealth, and Happiness” which described how small changes in processes and procedures can nudge people to make better (and less biased) decisions. For example, research shows that school children will take and eat healthier food if it is placed more strategically in the cafeteria lunch line.⁶

The term “inclusion nudge”⁷ was first coined by Tinna Nielsen and Lisa Kepinski. They are leading the way in the diversity and inclusion field and encouraging advocates to design nudges for all kinds of systems and processes in organizations that help people interrupt their unconscious biases and foster an inclusive workplace where diversity can thrive.⁸ They define an inclusion nudge as “a mental push that will mitigate unconscious association to help the brain make more objective decisions, and promote more inclusive behaviors that will stick.”

Institutionalizing diversity and inclusion requires nudging all processes and procedures so that inclusion becomes a natural part of what people do every day. Below are examples of inclusion nudges in the recruiting and hiring process as well as promotions.

Inclusion Nudges: Structural Changes to Combat Unconscious Bias in the Legal Workplace

Recruiting & Hiring Processes	
Evaluate Job Descriptions	<p>Critically evaluate all job descriptions for evidence of exclusion and bias.</p> <ul style="list-style-type: none"> • A job description is, itself, a list of biases – aspects we assume are necessary to perform the job. But are they each really necessary? For example, does a particular job description require the ability to walk and lift a certain amount of weight if these requirements aren’t actually necessary for the job? Update all job descriptions by removing unnecessary requirements that exclude unnecessarily. <p>Also, consult with people in the organization who may not be directly involved in the hiring process but who are able to provide a fresh perspective about critical aspects of the position and what it takes to succeed.</p>
Evaluate Benefits Packages & Policies	<p>Determine what needs to be changed to attract a wider variety of people to your organization. What are other industry or sector leaders offering in terms of benefits and policies?</p>
Analyze Your Organization’s Website	<p>Take a fresh look at your organization’s website and how you are attracting or potentially repelling candidates from different social backgrounds.</p> <ul style="list-style-type: none"> • What kinds of pictures are featured on the site? Research shows that including equal numbers of pictures of men and women increases attractiveness of an organization to potential female candidates. • What policies and values statements are included? • How are diversity and inclusion messaged? Research shows that female and racially/ethnically diverse attorneys may respond differently to different statements about the organization’s diversity approach. Also, including comments from people in underrepresented groups in your organization about their experiences in their own words could help attract a wider pool of applicants. Video or written messages from leaders about the value of diversity and inclusion and specifics about how it is being advanced in the organization are important as well. • In describing the organization’s diversity and inclusion initiative, are specific actions included that advance the initiative? • Are diversity and inclusion woven throughout the website or are they addressed on one separate page?

	<ul style="list-style-type: none"> • Is the word “qualified” used just on the diversity page of the website? • Get some feedback from a diverse group of disinterested parties about what your website communicates to them. Use the feedback to make improvements.
Evaluate and Rewrite Job Announcements	<p>Evaluate and rewrite job announcements to be more inclusive.</p> <ul style="list-style-type: none"> • Research demonstrates that women often don’t apply for jobs until they meet every criteria whereas men apply when they meet many, but not all, of the criteria. Do your job announcements include criteria that aren’t really essential and may be limiting applications by women? • Also, research shows that job announcements including more gendered terms can be subtly off-putting (e.g. “high-powered” or “relationship-oriented”). Do you really need those kinds of phrases? Can you reword the job announcement to be more inclusive of both men and women? Some companies are using web-based applications, like <i>Textio</i>, to flag words and phrases that are cliché, gender-based, or otherwise off-putting to certain groups. <ul style="list-style-type: none"> a. Further, does the job description include phrases that go to personal qualities or personality type that might keep an otherwise qualified candidate from applying (such as “outgoing”)? b. Are there additional phrases/statements that could be included that would encourage applications from a wide variety of people (like your organization’s commitment and efforts with respect to diversity and inclusion)? Research also shows that organizations that emphasize employee growth and development are more appealing to women than ones that boast about hiring people who are already highly-accomplished (rock stars). c. If your organization is working to advance diversity and inclusion, do you include statements about D+I competencies and cultural competence within your job criteria and announcement? After all, to foster an inclusive workplace where diversity thrives, everyone must play an active role so that would be a useful skillset to require of new hires.
Advertising Job Announcements	<p>Where do you advertise your job announcements? Do you make efforts to ensure they are visible to a wide variety of people? Think about asking specialty groups (professional associations, business chambers, and community groups) to disseminate your job announcements to their list-serves to broaden your organization’s reach. Add new organizations to your distribution list that serve or cater to people in underrepresented groups.</p>
Application Form	<p>Research shows that if a short video featuring people from your organization is included as a part of an online application form, it increases the pool of female applicants as opposed to an application form without a video.</p>
Direct Outreach	<ul style="list-style-type: none"> • Keep a “hot list” of potential diverse candidates for future job openings and directly solicit their applications. When you meet great people at conferences or meetings, hear about award-winners, or see diverse people profiled in publications, keep track of them and reach out when positions become available. • Participate in networking events and career fairs that attract high rates

	of participation by people in underrepresented groups.
Cultivate the Pipeline	<p>Research by the Corporate Executive Board shows that diverse candidates have greater trust for personal sources of information in the recruiting process (referrals from diverse employees, in-person campus recruiting, teachers and career advisers, family and friends, and employee resource group contacts) and have less trust for information sources that organizations use most in the recruiting process (diversity-focused job boards, diversity associations, LinkedIn, print media advertising, search firms, and Twitter and Facebook). So it is worth the time and effort to cultivate the pipeline with personal interactions.</p> <ul style="list-style-type: none"> • Develop relationships with career services personnel at schools (particularly those that have larger populations of students in underrepresented groups), as well as staff in the alumni offices, and ask them to keep your organization in mind with respect to great students or alumni from diverse groups, in particular. Leave branded literature with the schools to share with students. Arrange to make presentations at the schools about your organization. • Teach classes or road shows at schools with diverse student populations to gain exposure for your organization. • Offer to host field trips for students from schools with diverse populations to visit the organization. • Consider using <i>Door of Clubs</i>, a campus recruiting platform that provides recruiters the ability to search through a pool of students based on a variety of social identity groups, as well as school, major, location and skills. Recruiters can keep in touch with students until they graduate and become job candidates. More than 500 clubs from over 140 universities are on the platform (e.g. Carnegie Mellon National Society of Black Engineers).
Timing of Job Announcements	Extend the time that a position is open to help get the word out to the broadest range of people. Unconscious bias (especially affinity bias) is more apt to show up in rushed circumstances so make sure everyone has sufficient time during the entire recruiting process.
Reach Out to Personal Networks to Advertise a Job Opening	<ul style="list-style-type: none"> • Networking and outreach are critical because research by the Corporate Executive Board demonstrates that diverse candidates have greater trust for personal sources of information in the recruiting process (referrals from diverse employees, in-person campus recruiting, teachers and career advisers, family and friends, and employee resource group contacts). • Ask your organization’s affinity groups, especially those comprised of people in underrepresented groups, to disseminate job announcements to their networks. Be sure majority employees in your organization go beyond their own networks when they consider who they could share the job posting with or they’ll just replicate themselves (because most of our personal networks are pretty homogenous). • Consider modifying any referral bonuses to put a premium on diverse referrals.
Focus Recruiters on Ensuring a	Ensure that the recruiters your organization utilizes know you are interested in a broad pool of candidates for each position and that they can tap into a wide variety of people who could fill open positions. Ensure

<p>Diverse Pool of Candidates</p>	<p>they are not eliminating candidates before you ever see them based on their own implicit biases of who is the “ideal candidate.” Consider implementing the “Rooney Rule” (from the NFL) and requiring that the final candidate pool include people from underrepresented groups. As an alternative, require reporting on hiring pipeline diversification efforts.</p>
<p>Ensure Fluency in D+I Among Recruiters</p>	<p>Educate every person involved in the recruitment and hiring process about diversity and inclusion so that they can answer questions knowledgeably about your organization’s D+I efforts, including representation of people from a wide variety of backgrounds at all levels of the organization and specific efforts to remove hidden barriers to success for people in underrepresented groups. Train marketing and recruiting professionals on D+I and work with them to highlight not just the organization’s traditional diversity efforts (i.e. memberships, sponsorships, scholarships, 1L programs, job fair participation, affinity groups) but inclusiveness efforts as well. Diversity and inclusion efforts are becoming the expected norm; organizations are modernizing talent management systems just as they would their IT systems. Potential candidates from all backgrounds prefer and expect to work in environments that incorporate good talent management practices.</p>
<p>Ensure Fluency and Competency in Unconscious Bias Concepts for Everyone Involved in Recruiting and Hiring Process</p>	<p>Fluency in unconscious bias concepts is critical for everyone involved in the hiring process.</p> <ul style="list-style-type: none"> • Ensure that all recruiters, screeners, interviewers, hiring personnel, and supervisors have training in unconscious bias and that it is constantly referenced and made salient during the recruiting and hiring process. • Follow up on training by asking all stakeholders to report their progress on completing tasks that will help them interrupt their own unconscious biases. • Have a discussion among those involved in hiring and recruiting about how availability, attribution, confirmation, anchor, and affinity bias can show up and create a 1-page bias interrupter sheet for everyone to review before the process begins (e.g., before interview candidates are selected, before the interviews, before discussions about candidates). • Have regular discussions about what “ah-ha’s” they are experiencing and new awareness they have about the associations they make, including stereotypes and attitudes. • Incorporate a discussion about unconscious bias as a regular part of the process for every new hire. This will help people interrupt and be more accountable with respect to their own biases as well as institutional biases (e.g., “we only hire from certain schools”). • Ask people involved to be honest with themselves and others about whether they feel “affinity bias”, in particular, with respect to any candidate (“she’s like me; we have things in common”). • Ask people to own up to any triggers they have that are automatic disqualifiers in their mind – like a less than firm handshake, or groomed fingernails, or manners of speech or dress – that have nothing to do with a person’s competence. • Have a conversation about whether people involved in the

	<p>recruiting/hiring process have a gut reaction of dislike for a candidate and ask them to articulate – verbally or in writing – why they disliked the candidate. Accountability measures help interrupt unconscious bias.</p>
Foster a “Speak Up” Environment	<p>Create an environment where people involved in the hiring process feel comfortable discussing and, more importantly, challenging perceived biases – both individual and institutional. Consider appointing one or more people to act as “devil’s advocates” and punch holes in decisions to pressure test them.</p>
Determine Selection Criteria and Stick With Them	<p>Sticking with pre-determined criteria is important. In one study, interviewers implicitly “moved the goalposts” to select the male candidate for the job of police chief over the female candidate. When asked why they chose the male candidate, interviewers in the study focused on the male candidate’s “street smarts” over education when the female candidate’s resume was strong on education but had less time as a street cop; conversely, interviewers in the study emphasized “education level” over “street smarts” when the male candidate had a stronger education background than the female candidate.</p>
Adopt a “Blind” Approach	<p>In screening applicants, make the process anonymous by masking information in resumes and application forms that signal group identities. Resume studies have demonstrated that gender and race, in particular, cause disparate outcomes in call-backs, assessments of competence, salaries, and mentoring decisions. Some companies are using software from <i>GapJumpers</i> or <i>Blendoor</i> to scrub identifying information from resumes.</p>
Selection of Interviewers	<p>It is best to have as many different types of people from different positions involved in the interviewing process so that there are a wide variety of perspectives represented and integrated into the process. Researchers recommend individual interviews as opposed to panel interviews, which would better preserve interviewers’ unique perspectives. Another recommendation is for at least one interviewer to participate in the interview remotely so he or she won’t be swayed, on an unconscious level, by nonverbal behaviors or appearance of the candidate.</p>
Mechanics of Evaluating Candidates	<ul style="list-style-type: none"> • A standard review form should be used for each candidate with space devoted to each key criteria. Evaluators should submit their assessments before they meet to discuss a candidate so they aren’t swayed by what others think in their initial assessments. • Use narrative assessments over numerical rating systems because different evaluators will use numerical ratings differently.
Standardize the Interview Process to Eliminate Subjectivity and Neutralize Unconscious Bias	<ul style="list-style-type: none"> • Determine the interview questions ahead of time (that are tied to the pre-determined job competencies to ensure more objectivity) and ask the same questions of each candidate by the same people in the same setting in the same order. This will reduce implicit biases from contaminating the process. • Consider disseminating the interview questions ahead of time to diminish the biases involved with personality type – introverts like to think about things before answering whereas extroverts “talk to think.” • Ask behavioral interview questions and avoid questions designed to measure whether the candidate is a good “fit” (which invokes affinity bias).

	<ul style="list-style-type: none"> • Also, incorporate a problem-solving exercise in the interviewing process that measures skills needed in the position; grade them on a “blind” basis, without attached names or demographic information. • With respect to the interview process itself, try to make the experience the same for each candidate – same room, same amount of time, same interviewers – so that one candidate doesn’t have an advantage over another. • If candidates are interviewed by panels, consider conducting the interviews in two parts; end the first part of the interview 10 minutes early and have interviewers leave the room for 5 minutes to compare notes on first impressions, strengths & weakness, and possible areas of bias (“If he was a she, would we make the same judgments?”, or “If she hadn’t had a 2 year break, would we feel the same?”, or “If he had the same educational background as me, would I view him differently?”, or “If her handshake hadn’t been soft, would I consider her more viable?”), and decide on follow-up questions. Then re-enter the interview room and finish the interview.
Interview Questions	<p>Hire for inclusive behaviors: If your goal is to embed diversity and inclusion throughout the organization, you would want to hire people who have some demonstrated competency or at least knowledge with respect to D+I concepts. So consider including questions about D+I and specific competencies that others in the organization may have in their job duties and responsibilities. Examples:</p> <ul style="list-style-type: none"> • How important is workforce diversity and inclusion to you? • What are the benefits of team diversity and inclusion? • Why is it important for the organization you work for to demonstrate its diversity and inclusion values? • What experiences do you have that equip you to work effectively with people from all different backgrounds, cultures, personality types, etc.? • What efforts have you made, or been involved with, to foster/cultivate your own diversity and inclusion competencies and understanding? • Tell me about a time when you achieved superior outcomes by incorporating divergent perspectives? • How have you handled a situation when a colleague was not accepting of others’ diverse backgrounds? • What have you done to further your knowledge about diversity and inclusion? How have you demonstrated or used what you’ve learned?
Allow Sufficient Time for Interviews and Decision-Making	<p>Unconscious bias is more prone to impact decisions in rushed circumstances so ensure adequate time for interviews. More time means additional information for both sides to factor into decisions.</p>
Interview Without the Resume	<p>Consider reviewing the candidate’s resume AFTER the interview. There is some research to suggest that we all make initial decisions about candidates based on their resume and the interview is used (even on an unconscious basis) to confirm a decision that has already been made.</p>
Track Recruitment and Hiring Data	<p>Track recruitment and hiring data from the outset of the process to illuminate hidden patterns of implicit bias:</p> <ul style="list-style-type: none"> • How much traffic on the website regarding diversity and inclusion?

	<ul style="list-style-type: none"> • How many people from different social identity groups made inquiries about open positions? • How many applications were received from people from different groups? • Of those, how many were selected for interviews? • Who was actually hired? • Who was involved in the hiring of those people?
Analyze Data	<p>Analyze the data for patterns and possible hidden barriers. Kimberly Clarke analyzed HR data to find out why only 17% of its executives were women. The data revealed that female employees were hitting the glass ceiling at two points: after the first professional promotion and again just below the director level. It was discovered that women simply weren't applying for promotions or certain jobs because they did not meet every criteria and some job descriptions were more aligned with men's work experience. When hiring managers started looking for transferable skills and rewriting job descriptions, women gained more promotions and now comprise 30% of executive ranks at the company. Similarly, at Google, hiring managers found they had more success in getting women into higher-level positions if they actively encouraged women to apply.</p>
Decision-Making Process – Evaluating Candidates	<p>a. Have a discussion among participants regarding the following questions:</p> <ul style="list-style-type: none"> • Does anything about this person remind you of anyone? Is that a positive or negative association? • Is there anything on the applicant's materials that you react strongly to – either positively or negatively? • What similarities or differences does the candidate have to your own experiences? How does this affect you (and possibly your decision-making)? • How are we valuing each applicant's experiences? Are we emphasizing one thing when we really like the person as opposed to a different aspect with a different candidate? Are we moving the goalposts to achieve a certain result that lines up with our own personal preferences? • Did the candidate say something in the interview that caused you to cringe or otherwise make you uncomfortable? Why? • Have some honest discussions about "merit" and "meritocracy." Who is the better candidate: the more privileged candidate with higher grades from a better school who didn't have to work during school and whose parents could afford to send him/her to a more expensive/"better" school or the first generation candidate whose parents don't speak English and who went to the local school s/he could afford but only by working 30 hours a week which impacted study time and grades. What are some characteristics we should be looking for in candidates beyond grades and school attended? What questions can be included during the interview process to elicit information about these attributes? • How are we reacting to the candidate's references or person(s) who referred the candidate? Are we implicitly giving the candidate more or less weight based on our reaction to these other people? • Are we rushing this decision (implicit bias is more apt to influence

	<p>the decision in such circumstances)?</p> <ul style="list-style-type: none"> • Is my own agenda influencing my evaluation of the candidate? <p>b. Ensure that the concept of “groupthink” is salient for the group of interviewers by reminding them that each of their assessments is important and not to get lazy in their cognitive functioning by defaulting to others’ views or a dominant person during the discussions about the candidates.</p> <p>c. Some researchers recommend scoring the candidates on each question immediately after they give the answer and not waiting until the end of the interview to neutralize several biases. For example, we are more likely to remember answers with vivid examples and answers that are most recent. “Evaluators who wait until the end of the interview to rate answers risk forgetting an early or less-vivid but high-quality answer, or favoring candidates whose speaking style favors storytelling.”</p> <p>d. Researchers also recommend evaluating all candidates horizontally, comparing them all at once on one question at a time. This helps reduce the chance that discussion on one answer will impact scores on other answers for a particular candidate. It also helps neutralize an unconscious bias that causes us to think stereotypically (e.g. expecting women to be better at stereotypically female jobs or thinking about whether a candidate “looks the part”).</p>
Reference Checks	Standardize the reference checking process so that individual variations don’t inject bias into the process.
Review Hiring Decisions	Appoint someone to review hiring decisions and make sure everyone involved knows that their decisions will be reviewed and analyzed for evidence of bias. This will help them neutralize any unconscious biases during the process and provide a checks and balances system.

Promotions	
Evaluate Promotion Criteria	Critically evaluate all promotion criteria for evidence of exclusion and bias. Promotion criteria are essentially a list of biases – aspects we assume are necessary to perform the new job. But are they each really necessary? Take a fresh look. Update all promotion criteria by removing unnecessary requirements. Also ask whether the definition of success is skewed toward one group – e.g. does success reflect mostly male norms?
Ensure Fluency and Competency in Unconscious Bias Concepts for Everyone Involved in Promotions Process	<p>Fluency in unconscious bias concepts is critical for everyone involved in the promotions process.</p> <ol style="list-style-type: none"> a. Ensure that everyone involved in the promotions process is trained in unconscious bias and that it is constantly referenced and made salient during the promotion process. b. Create a 1-page “bias breaker” worksheet to remind evaluators about key aspects of unconscious bias and have them review it before decision-making begins. c. Follow up on training by asking all evaluators to report their progress on completing tasks that will help them interrupt their own unconscious biases. d. Have regular discussions about what “a-ha’s” they are experiencing and new awareness they have about the associations they make, including stereotypes and attitudes. e. Incorporate a discussion about unconscious bias as a regular part of the process for every new promotion. This will help people interrupt and be more accountable with respect to their own biases as well as institutional biases (e.g., “Only candidates from certain schools have been successful as partners here.”). f. Ask people involved to be honest with themselves and others about whether they feel “affinity bias”, in particular, with respect to any candidate (“she’s like me; we have things in common”). g. Ask people to own up to any triggers they have that are automatic disqualifiers in their mind – like a less than firm handshake, groomed fingernails, manners of speech or dress – that have nothing to do with a person’s competence. h. Have a conversation about whether people involved in the promotion process have a gut reaction of dislike for a candidate and ask them to articulate – verbally or, even better, in writing – why they disliked the candidate. Accountability measures help interrupt unconscious bias.
Foster a “Speak Up” Environment	<p>Create an environment where people involved in the promotion process feel comfortable discussing and, more importantly, challenging perceived biases – both individual and institutional. Consider appointing one or more people to act as “devils advocates” and punch holes in decisions to pressure test them.</p> <p>Consider appointing someone as an observer in the discussions and empower that person to interrupt the meeting (hit the “pause” button) to point out possible areas where the discussion touches on biases – many of which the participants may be unaware they’ve said.</p>
Determine Selection Criteria and	Sticking with pre-determined criteria is important. In one study, interviewers implicitly “moved the goalposts” to select the male candidate for the job of police chief over the female candidate. When asked why

Stick With Them	they chose the male candidate, interviewers in the study focused on the male candidate's "street smarts" over education when the female candidate's resume was strong on education but had less time as a street cop; conversely, interviewers in the study emphasized "education level" over "street smarts" when the male candidate had a stronger education background than the female candidate.
Selection of Candidates	Require submission of a list of every remotely eligible person for promotions rather than relying on a mental list, which is prone to corruption by implicit biases. Put everyone who is remotely eligible on the list for the promotion opportunity; ask "Why not?" instead of assuming they aren't ready or interested. Women, in particular, underestimate their readiness and sometimes automatically take themselves out of the running for promotions. Organizations have been successful in increasing women in higher positions by tweaking the processes that go into selection or self-nomination. At the very least, require supervisors to recommend two people to force them to evaluate the available candidates comparatively. Requiring written justifications for not putting forward a particular candidate can also help interrupt bias.
Selection of Evaluators	It is best to have as many different types of people from different positions involved in the promotion process so that there are a wide variety of perspectives.
Mechanics of Evaluating Candidates	<ol style="list-style-type: none"> a. A standard review form should be used for each candidate with space devoted to each key criteria. Evaluators should submit their assessments before they meet to discuss a candidate so they aren't swayed by what others think in their initial assessments. b. Use narrative assessments over numerical rating systems because different evaluators will use numerical ratings differently.
Standardize the Promotion Process to Eliminate Subjectivity and Neutralize Unconscious Bias	<ol style="list-style-type: none"> a. If interviews are involved, determine the interview questions ahead of time (that are tied to the pre-determined job competencies to ensure more objectivity) and ask the same questions of each candidate by the same people in the same setting in the same order. This will reduce implicit biases from contaminating the process. b. Consider disseminating the interview questions ahead of time to diminish the biases involved with personality type – introverts like to think about things before answering whereas extroverts "talk to think." c. Ask behavioral interview questions and avoid questions designed to measure whether the candidate is a good "fit" (which invokes affinity bias). d. Also, incorporate a problem-solving exercise in the interviewing process that measures skills needed in the position; grade them on a "blind" basis, without attached names or demographic information. e. With respect to the interview process itself, try to make the experience the same for each candidate – same room, same amount of time, same interviewers – so that one candidate doesn't have an advantage over another.
Allow Sufficient Time for Interviews and Decision-Making	Unconscious bias is more prone to impact decisions in rushed circumstances so ensure adequate time for interviews. More time means additional information for both sides to factor into decisions.

Track Data	Track data to illuminate hidden patterns of implicit bias with respect to each criteria for promotion.
Analyze Data	Analyze the data for patterns and possible hidden barriers. Kimberly Clarke analyzed HR data to find out why only 17% of its executives were women. The data revealed that female employees were hitting the glass ceiling at two points: after the first professional promotion and again just below the director level. It was discovered that women simply weren't applying for promotions or certain jobs because they did not meet every criteria and some job descriptions were more aligned with men's work experience. When hiring managers started looking for transferable skills and rewriting job descriptions, women gained more promotions and now comprise 30% of executive ranks at the company. Similarly, at Google, hiring managers found they had more success in getting women into higher-level positions if they actively encouraged women to apply.
Adopt a "Blind" Approach	In discussing and making decisions about candidates for promotion, make the process anonymous by masking information in the promotion materials that signal group identities. Compare candidates based on an anonymous basis – at least through preliminary decision processes.
Decision-Making Process – Evaluating Candidates	<p>a. Have counter-stereotypical exemplars visible during the decision-making process – either a list of names or pictures of people in the organization who have been successful but wouldn't be considered "typical" or fitting the "ideal" candidate. Consider discussing these atypical people before discussing the candidate pool.</p> <p>b. Have a discussion among participants regarding the following questions:</p> <ul style="list-style-type: none"> • Be frank about which candidates may have been impacted by hidden barriers and have faced headwinds compared to those who benefitted from affinity bias and whose path may have benefitted from tailwinds. • Does anything about this person remind you of anyone? Is that a positive or negative association? • Is there anything on the applicant's materials that you react strongly to – either positively or negatively? • What similarities or differences does the candidate have to your own experiences? How does this affect you (and possibly your decision-making)? • How are we valuing each applicant's experiences? Are we emphasizing one thing when we really like the person as opposed to a different aspect with a different candidate? Are we moving the goalposts to achieve a certain result that lines up with our own personal preferences? • Did the candidate say something in the interview that caused you to cringe? Why? • Have some honest discussions about "merit" and "meritocracy." Who is the better candidate: the more privileged candidate who has an influential sponsor in the organization or one who hasn't had the same access to critical career opportunities because his or her sponsor isn't as influential or involved? What are some characteristics we should be looking for in candidates beyond achievements or technical skills? What questions can be included

	<p>during the interview process to elicit information about these attributes?</p> <ul style="list-style-type: none"> • How are we reacting to the candidate based on the person(s) who are recommending him or her for promotion? Are we implicitly giving the candidate more or less weight based on our reaction to these other people? • Are we rushing this decision (implicit bias is more apt to influence the decision in such circumstances)? • Are we giving more weight to one factor over another for one candidate but not others? • Does the candidate’s particular work situation (geography, family status, children, maternity/paternity leave, flex-time, tele-commuting) affect the promotion decision in any way? • Are we letting any of our personal standards or values or the way we did things influence our decision? • Are assessing groups differently? If we substituted a man for a woman in this case, would the result change? If we substituted a person of Asian descent for a Caucasian person, would the decision be different? <p>c. Ensure that the concept of “groupthink” is salient for the group of interviewers by reminding them that each of their assessments is important and not to get lazy in their cognitive functioning by defaulting to others’ views or a dominant person during the discussions about the candidates.</p> <p>d. Some researchers recommend scoring the candidates on each criteria individually before discussing the candidate in a group meeting.</p> <p>e. Researchers also recommend evaluating all candidates horizontally, comparing them all at once on one criteria at a time. This helps reduce the chance that discussion on one answer will impact scores on other criteria for a particular candidate. It also helps neutralize an unconscious bias that causes us to think stereotypically (e.g. expecting women to be better at stereotypically female jobs or thinking about whether a candidate “looks the part”).</p>
<p>Promotion Criteria – Competency in Diversity & Inclusion</p>	<p>Promote for inclusive behaviors. If your goal is to embed diversity and inclusion throughout the organization, you would want to promote people who have some demonstrated competency in D+I. So consider including criteria about D+I that measure whether a candidate is “unskilled”, “skilled”, or “highly skilled”. Examples:</p> <ul style="list-style-type: none"> a. What efforts have you made to identify and eliminate hidden barriers to success in our organization? b. What have you observed in our organization with respect to the benefits of team diversity and inclusion? c. Why is it important for the organization you work for to demonstrate its diversity and inclusion values? d. What efforts have you made to develop meaningful and productive relationships with colleagues from different backgrounds? e. Tell me about a time when you achieved superior outcomes by incorporating divergent perspectives. f. Tell me about a time that you engaged in behaviors that made a team

	<p>member feel they could be their true authentic self at work.</p> <p>g. What have you done to mentor and sponsor someone in the organization who is different from you?</p> <p>h. How have you handled a situation when a colleague was not accepting of others' diverse backgrounds?</p> <p>i. What have you done to further your knowledge about diversity and inclusion? How have you demonstrated or used what you've learned?</p> <p>j. What processes have you changed in meetings to be more inclusive of others?</p> <p>k. What do you do to foster a "speak up" environment?</p>
Review Promotion Decisions	<p>Appoint someone or another group to review promotion decisions and make sure everyone involved knows that their decisions will be reviewed and analyzed for evidence of bias. This will help them neutralize any unconscious biases during the process and provide a checks and balances system.</p>

¹ Kathleen Nalty has 15 years of experience in diversity and inclusiveness (D+I) in the legal industry. She specializes in assisting legal organizations in creating inclusive workplaces to retain, develop and advance diverse talent. In 2015, she published a book on D+I for law firm leaders: *Going All-In on Diversity & Inclusion: The Law Firm Leaders' Playbook*. Previously, Kathleen founded the Center for Legal Inclusiveness (CLI) in Denver, Colorado and led the nonprofit as its Executive Director from October 2007 through January 2013. In this role, Kathleen developed a "how to" manual for legal organizations that has a comprehensive step-by-step process for removing hidden barriers to retention and creating an inclusive workplace.

² "Diversity Benchmarking Report 2015," New York City Bar Association, October 2016, http://documents.nycbar.org/files/NYC_Bar_2015_Diversity_Benchmarking_Report.pdf. "Voluntary attrition continues to disproportionately impact minority and women attorneys, with 18.4% of women and 20.8% of minorities leaving signatory firms in 2016 – a slight decrease from 2014, but still well above the 12.9% rate for white men."

³ "2015 Vault/MCCA Law Firm Diversity Survey Report," p. 4, http://www.mcca.com/_data/global/downloads/research/reports/VaultMCCA_Survey-2015-v03.pdf.

⁴ American Bar Association, "Visible Invisibility: Women of Color in Law Firms," 2006; American Bar Association, "From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms," 2009, <http://bit.ly/1DNJRza>; American Bar Association, "Visible Invisibility: Women of Color in Fortune 500 Legal Departments," 2013, <http://bit.ly/1bZFxWQ>; Minority Corporate Counsel Association, "Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity and Inclusion in Large Law Firms," 2009, <http://bit.ly/1biQdyh>; Deepali Bagati, "Women of Color in U.S. Law Firms," *Catalyst, Inc.*, 2009, <http://bit.ly/1EvTogK>; Jill L. Cruz and Melinda S. Molina, "Few and Far Between: The Reality of Latina Lawyers," *Hispanic National Bar Association*, September 2009, <http://bit.ly/1dxLPxh>; Corporate Counsel Women of Color, "The Perspectives of Women of Color Attorneys in Corporate Legal Departments: Research Report," 2011, <http://bit.ly/1EUwQJZ>; Women's Bar Association of the District of Columbia, "Creating Pathways for Success for All: Advancing and Retaining Women of Color in Today's Law Firms," 2008, <http://bit.ly/1DZYgYa>.

⁵ Ibid note 4.

⁶ Thaler, R. & Sunstein, C. "Nudge: Improving Decisions About Health, Wealth, and Happiness," p. 2 (2008).

⁷ The term was coined by T. Nielsen and L. Kapinski in their book *Inclusion Nudges Guidebook* (2015). Inclusion nudges are mental pushes that mitigate/interrupt unconscious associations to help people's brains make more objective decisions and promote more inclusive decisions.

⁸ Paola Cecchi-Dimeglio, a professor at Harvard Law School's Center on the Legal Profession, is studying and writing about inclusion nudges. See Cecchi-Dimeglio, P. "To Hire More Women, Follow These Steps," *The American Lawyer* (August 15, 2016) and Cecchi-Dimeglio, P. "Does Your Firm's Website Repel Women?" *The American Lawyer* (November 28, 2016). Tinna Nielsen and Lisa Kapinski have compiled dozens of examples of inclusion nudges being implemented in companies and nonprofits around the world in their book *Inclusion Nudges Guidebook* (2015). See also Morse, G. "Designing a Bias-Free Organization: It's Easier to Change Your Processes than Your People," *Harvard Business Review*, pp. 63-67, July-August 2016.