

# Reconciling Diversity, Inclusion & Meritocracy: Challenges & Opportunities

National Association of Law Placement  
April 29, 2010

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# “Reconciling Diversity, Inclusion & Meritocracy: Challenges & Opportunities

## Why this topic?

- Meritocracy and diversity are core values at most law schools and law firms
- Too often diversity is associated with lowering standards and thereby threatening the concept of meritocracy
- Diversity is not inconsistent with meritocracy -- bias is what often undermines inclusion and meritocracy
- Bias exists everywhere; law schools and law firms are not immune
- Identifying and shifting the underlying paradigms -- getting to a “both/and” mindset is essential

## Objectives

- Foster open conversation about the tension between diversity and meritocracy
- Provide tools to defend against assertions that diversity = lowering standards
- Engage in a conversation about shifting from the “either diversity OR meritocracy” paradigm to a “diversity AND meritocracy” framework

## Defining terms

Meritocracy:        A system in which advancement is based on individual ability or achievement

Diversity:           All of the similarities and differences that exist within people

Inclusion:            An environment that acknowledges and respects differences, allows everyone to feel valued and to make their best contribution

## Preparing for the discussion: shifting our approach

| From                                                                                                                                                                                       | To                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>▪ Arrogance – “I know”</li> <li>▪ Advocacy</li> <li>▪ My way – THE way</li> <li>▪ Either/or thinking</li> <li>▪ Diversity OR Meritocracy</li> </ul> | <ul style="list-style-type: none"> <li>▪ Humility – “I want to learn”</li> <li>▪ Inquiry</li> <li>▪ My way – ONE way</li> <li>▪ Both/and thinking</li> <li>▪ Diversity AND Meritocracy</li> </ul> |

## 26 Factors related to lawyer success/effectiveness

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>▪ Analysis and Reasoning</li> <li>▪ Creativity/Innovation</li> <li>▪ Practical Judgment</li> <li>▪ Researching the Law</li> <li>▪ Passion and Engagement</li> <li>▪ Questioning and Interviewing</li> <li>▪ Influencing and Advocating</li> <li>▪ Writing</li> <li>▪ Speaking</li> <li>▪ Integrity/Honesty</li> <li>▪ Able to See the World Through the Eyes of Others</li> <li>▪ Self-Development</li> <li>▪ Negotiation skills</li> </ul> | <ul style="list-style-type: none"> <li>▪ Networking and Business Development</li> <li>▪ Organizing and Managing (Own) Work</li> <li>▪ Developing Relationships</li> <li>▪ Evaluation, Development and Mentoring</li> <li>▪ Problem Solving</li> <li>▪ Stress Management</li> <li>▪ Fact Finding</li> <li>▪ Diligence</li> <li>▪ Listening</li> <li>▪ Community Involvement and Service</li> <li>▪ Organizing and Managing Others (Staff/Colleagues)</li> <li>▪ Strategic Planning</li> <li>▪ Building Client Relationship and Providing Advice and Counsel</li> </ul> |
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Source: Prof. Marjorie Shultz and Prof. Sheldon Zedeck, UC Berkeley

## Shifting from an EITHER/OR mindset to the BOTH/AND paradigm

| Old Paradigm<br>Tyranny of the “OR”                                                                                                                                                                                                                                                                                                                                                                                     | New Paradigm<br>Genius of the “AND”                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>▪ Diversity “OR” qualified candidates</li> <li>▪ Diversity “OR” excellence</li> <li>▪ Diversity as problem/sacrifice</li> <li>▪ Adherence to narrow set of norms and behaviors; over-reliance on traditional hiring criteria (pedigree)</li> <li>▪ Denial of impact of underlying assumptions</li> <li>▪ Satisfaction with hiring a few diverse candidates (tokenism)</li> </ul> | <ul style="list-style-type: none"> <li>▪ Diversity “AND” expanded competencies</li> <li>▪ Diversity “AND” productivity</li> <li>▪ Diversity as a resource</li> <li>▪ Development of selection criteria based on desired competencies and proven attributes</li> <li>▪ Recognition and examination of personal and institutional assumptions</li> <li>▪ Development of a process that seeks to consistently build a diverse applicant pool</li> </ul> |

Above chart developed by Mitchell Karp and Verna Myers

## Defining Unconscious Bias

A preference FOR or AGAINST a person, perspective or group – that one is not aware of – but nevertheless is communicated through statements or actions.

## Strategies for Reducing Unconscious Bias

Awareness alone will not eliminate the challenge of unconscious bias. Here are four steps that we have found to be useful in reducing unconscious bias.

**Step 1: Notice, listen and ask questions.** The goal is to help the individual and/or the firm become more self-aware but not self-conscious. Being willing to listen to (and not attack) the person who raises the concern opens the door to share observations and explore patterns of behavior. Acknowledging that bias may exist also helps those in the minority feel like their colleagues are receptive to hearing their perceptions and experiences.

**Step 2: Explore choices and assumptions.** It is important to begin asking “why” particular decisions are being made to see if any underlying assumptions or patterns can be identified. Sometimes it’s about knowing what questions to ask (e.g., “What are we overlooking?” “What assumptions are we making and what biases might we have in relying on those assumptions in this situation?” “Who’s benefitting from these assumptions and who is being excluded?”).

**Step 3: Identify different options and modify behavior.** Expanding the pool, trying new techniques for selecting people for assignments and teams, being deliberate and intentional about giving constructive feedback across difference--- are just some of examples of what modifying behavior might entail.

**Step 4: Monitor the impact.** The goal is to create a more inclusive firm culture and opportunities for professional development of *all* attorneys and ultimately increase the likelihood that a demographically diverse population of attorneys will succeed. Tracking numbers (utilization rates, attrition rates, offer acceptance rates, etc.) is one way to assess whether these changes are having the desired impact.

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