

ELIMINATION OF BIAS-IMPLICIT BIAS CLE

**“EXCUSE ME?” INTERRUPTING RACIAL,
GENDER, AND ETHNIC BIASES
IN ADMINISTRATIVE PROCEEDINGS**

NATIONAL ASSOCIATION OF HEARING OFFICERS

Fall 2022 VIRTUAL CONFERENCE

NOVEMBER 17, 2022

PRESENTATION OVERVIEW

- I. Introduction & Review of the Science of Implicit Bias
- II. Micro-inequities as Manifestations
 - In the Office
 - In Hearings
 - With the public
- III. Concrete Strategies for Interrupting Biased Speech and Actions
- IV. Q & A and Wrap-Up



I. INTRODUCTION

The purpose of this Workshop is not to de-bias people. Instead, our goal is three-fold:

- A: To enhance your awareness of the implicit bias in and around you, your work, and society
- B: To augment the conversations some of you are already engaging in, to promote greater understanding across groups
- C: To prompt thoughtful consideration of how biases can impact interactions in your workplace, and with the public

TYPES OF BIAS

Bias is the pre-judging of a person based on his or her (perceived or actual) group status. It can be:

Explicit

Implicit

Unconscious

THE SCIENCE OF IMPLICIT BIAS



- Pathways in our Brains
- Processing information

RELYING UPON GENERALIZATIONS

- Saves Time
- Often has a basis in reality
- Is useful in our everyday lives
- Helps us make decisions, based on appropriate biases
- Can rely upon stereotypes
- Focuses more on reputations and other people's opinions
- May ignore specific actions or conduct
- And therefore can lead to biased conduct and decision-making



WHAT IS NOT IMPERMISSIBLE BIAS?

- Neutral evaluations of performance
- Bona fide occupational qualifications
- Serving legitimate institutional and constituent needs and expectations
- Selecting those with demonstrated potential for leadership positions

THE TRANSPARENCY OF PRIVILEGES MAKES IT EVEN MORE DIFFICULT TO PROVE

- What are some “unseen” or “unspoken” privileges that we take for granted?
- Which transparent privileges apply in your work space?
- Keep in mind that these privileges are a **SHORT-CUT** for those who enjoy them
- And a **HURDLE** for those who do not

Green Red Blue

Purple Blue Purple

Blue Purple Red

Green Purple Green

We all have biases!

WHAT BIASES WERE REFLECTED in this exercise?

- Implicit Bias for Pathways
- Literacy
- Able-ism
- Learning Styles
- Native Language

II. MANIFESTATIONS OF IMPLICIT BIAS: MICRO-INEQUITIES

- **Micro-Aggressions:**
 - “Minor” discourtesies or inconveniences
 - Daily or frequently occurring
 - Unintentional to a point
 - Verbal and non-verbal
 - Individual and Institutional
- **Micro-Invalidations**
- **Micro-insults**
- **Cumulative impact can lead to racial “battle fatigue”**

**TAKE A FEW MOMENTS TO
REFLECT ON
MANIFESTATIONS OF BIAS
AND MICRO-INEQUITIES IN
THE OFFICE/WORKPLACE**

- 1. Do you experience any?
- 2. Do you perpetrate any?
- 3. How can YOU minimize the impact of these micro-inequities for your colleagues?

DEBRIEF MANIFESTATIONS

- Micro-aggressions, -insults, and micro-invalidations
- Confirmation Bias
- Expectation Bias
- Availability Bias
- Attribution Bias
- Team-building (in-group preferences and diversifying)
Informal mentoring and sponsoring

SPECIFIC MANIFESTATIONS OF IMPLICIT BIAS IN THE WORKPLACE

- How Looks Matter (personal: hair, clothing, office décor)
- Voice Modulation and Tone
- Do I Belong?
- The Institutional “Look”—whose photographs and mementos are prominently displayed?

- Defense Mechanisms
- Expecting the (Traumatized) Victim to explain/Educate before treating the harm

SPECIFIC MANIFESTATIONS OF GENDER BIAS IN THE WORKPLACE

- Assertive v. Aggressive
- Righteously Indignant v. Emotional
- How Looks Matter
- The Impact of Chivalry
- Voice Modulation, Tone, Tag Questions
- Mary, Eve, Wonder Woman



SOME CATEGORIES OF BIASES AND MICROAGGRESSIONS

RACE AND NATIONALITY

Country of Origin/Nationality
Accent
Racial
Ethnic
Immigration status

OTHERS

Family of origin
Physical Ability
Religion
Education level
Socio-economic
Gender

THE IMPACT OF DOUBLE AND TRIPLE BIAS

Adding a layer of racial bias, to gender and other biases;

Stereotypes, presumptions and assumptions of:

- Competence,
- Intelligence,
- Emotions,
- Communication abilities

Reactions and Responses

Choices and the Benefit of the Doubt

DISCUSSIONS ON MANIFESTATIONS IN HEARINGS

- Observations:
 - 1. Have I observed bias in hearings?
- Actions:
 - 2. Have I perpetuated bias in hearings?
 - 3. What can I do to minimize the impact of bias in hearings?

BIASES IN HEARINGS

Pre-existing biases

Priming

Signals and Responses

Impacts on:

- Claimants
- Counsel
- Judges
- Hearing Officers
- Court Personnel

NOW SPEND A FEW MOMENTS THINKING ABOUT YOUR INTERACTIONS WITH THE PUBLIC

- Observations: 1. Have I observed bias?
- 2. Have I observed members of the public feeling unheard, or unwelcome?
- Actions:
 - 2. Have I perpetuated bias with the public?
 - 3. What can I do to minimize the impact of bias on the public?

III. CONCRETE STRATEGIES FOR INTERRUPTING BIASED SPEECH AND ACTIONS

Awareness

Knowledge-based interventions

Communication Strategies

Mindful Messaging

AWARENESS MATTERS

Consider ABA Model Rule 8.4, which states that It is professional misconduct for a lawyer to ...

“(g) 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.”

AWARENESS MAKES AN IMPACT

- **Interrupt bias at every turn**
- **Enhance exposure to counter-stereotypical examples**
- **Be vigilant to avoid acting on mere assumptions**
- **Activate consciousness of decision-making rationale**
- **Be deliberative to avoid defaults to bias**

KNOWLEDGE-BASED INTERVENTIONS FOR REDUCING IMPACTS OF IMPLICIT BIAS

1. Stereotype Replacement
2. Counter-stereotyping
3. Individuating
4. Shift Perspectives
5. Increase intergroup contact

COMMUNICATION STRATEGIES

- Listen
- Empathize
- Assume Goodwill
- Be Civil

WAYS (NOT) TO TALK ABOUT MANIFESTATIONS OF BIAS -- APPROACHES TO AVOID

- A. **Do not regulate the content**
 - 1. Correcting other's perceptions
 - 2. That's not what I meant (intent v. impact)
 - 3. Do not ask the Victim to teach you
- B. **Do not minimizing feelings**
 - 1. You're being overly sensitive (toxic stress)
 - 2. Deflecting/ Avoiding (blaming victim)
- C. **Avoid Defensiveness**

APPROACHES TO TRY

- ✓ Be(come) aware of your own biases
- ✓ Focus on what YOU are doing NOW,
- ✓ Acknowledge what “THEY did THEN”
- ✓ Acknowledge differences in communication styles
- ✓ Listen with openness and the expectation that you may be wrong and the other may be right.
- ✓ Recognize the meaning within your own and others’ emotions
 - ✓ Guilty (I could be doing more)
 - ✓ Overwhelmed (its too much to do)
 - ✓ Angry (I don’t like to be wrong)

Notice Your
Messaging

Recognize
Race,
Gender &
other
Identities

Motivation
to be fair
makes a
difference



WHEN WE TALK ABOUT BIAS, ASK WHO IS DOING THE JUDGING?



Judges
Hearing Officers
Managers
Supervisors
Staff
Peers
Law Clerks

VI. QUESTIONS, COMMENTS, SOURCES & CONTACT INFORMATION

Nevertheless She Persisted: From Mrs. Bradwell to Annalise Keating, Gender Bias in the Courtroom, 24 William & Mary Journal of Women and the Law 167 (2017).

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ADDITIONAL SOURCES

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Sarah E. Redfield, *Diversity Realized: Putting the Walk with the Talk for Diversity in the Legal Profession*, (Vandeplas Publishing 2011).

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Connie Lee, *Gender Bias In The Courtroom: Combating Implicit Bias Against Women Trial Attorneys And Litigators*, 22 *Cardozo J.L. & Gender* 229 (2016)