

# **How Implicit Bias Affects the Practice of Law and CLE Programs**

Presented By:

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# EXAMINING THE CHARACTERISTICS AND CONSEQUENCES OF IMPLICIT BIAS IN THE LEGAL PROFESSION



Presenter: T.K. Floyd Foutz, JD  
St. Mary's University School of Law  
National Diversity Council




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## WELCOME TO SAN ANTONIO!!




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### OUTLINE:

- ☐ EXAMINING THE CHARACTERISTICS OF IMPLICIT BIAS
- ☐ EXAMINING THE CONSEQUENCES OF IMPLICIT BIAS
- ☐ EXAMINING WAYS TO COUNTER IMPLICIT BIAS

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### *Understanding our unconscious mind*

11 Unconscious Bias: do race and gender really matter?

## The unconscious mind

Unconscious bias happens in the unconscious mind. Let's look at that concept to begin. It's useful to think of your mind as having two parts! The first part thinks fast, automatically and frequently. It's an emotional creature though and tends to employ stereotypes for ease. This part is the unconscious mind.

The second part is slow, effortful, logical and calculating. It's the voice you can hear in your head. This is the conscious part. It's easily overloaded though, so most of the time it relies on the information supplied to it by your unconscious mind. Understanding that we have unconscious thought is the first part of understanding unconscious bias!

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## How does the brain process information?

- ☐ Different areas of the brain influence unconscious thought
- ☐ "Neuroimaging shows that decision-making automatically triggers specific regions of the brain responsible for unconscious processing."

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## Implicit Bias

- ☐ "By definition, implicit biases are those we carry ***without awareness or conscious direction.***"
- ☐ "Implicit bias refers to the ***attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.*** These biases ... are ***activated involuntarily*** and without an individual's awareness or intentional control."
- ☐ "We can think of implicit bias as a lens through which we view the world — a lens which ***automatically filters*** how we take in and ***act on*** information, a lens that is ***always present.***"

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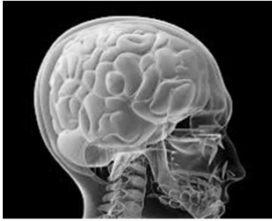
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## Unconscious (Implicit) Bias

*We are all biased*



- "Implicit biases are pervasive. **Everyone** possesses them, **even people with avowed commitments to impartiality such as judges.**"
- "Humans are **hardwired to be biased**. It is human nature to seek the company of others who fall within our **'comfort zone'** and to flee from those who trigger our **'danger detectors.'**"
- **But I'm not biased! Yes, you are... We ALL are biased...**
  - [https://www.youtube.com/watch?v=oJf\\_bK1vYsQ](https://www.youtube.com/watch?v=oJf_bK1vYsQ) (video on implicit bias and the Implicit Association Test)
  - [https://implicit.harvard.edu/implicit/ta\\_keatest.html](https://implicit.harvard.edu/implicit/ta_keatest.html) (Project Implicit – source of Implicit Association Test)
  - <https://youtu.be/12TY110t8PY> (video of judges discussing implicit bias)

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## Sources of Implicit Bias

- ☐ What are the possible origins or sources of implicit bias?
  - *Past experiences*
  - *Cultural norms*
  - *Media and advertising*
- ☐ "We are all exposed to **direct and indirect messages** throughout the course of our **lifetime** that can implicitly influence our thoughts and evaluations of others."

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## THE CONSEQUENCES OF IMPLICIT BIAS

*Recognizing the impact of implicit bias*

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## We are all biased

- ❑ "Bias is a *natural phenomenon* in that our brains are constantly forming *automatic associations* as a way to better and more efficiently understand the world around us."

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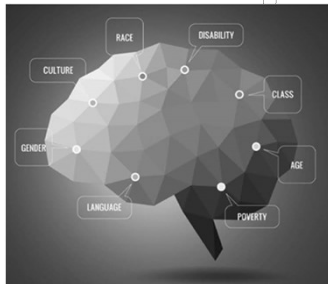
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## Possible categories of implicit bias



### What other categories would you add?

- ❑ Physical Appearance?
- ❑ Style of Dress?
- ❑ Educational Attainment?
- ❑ Marital Status?
- ❑ Religion?
- ❑ Gender Identity?

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## Implicit bias in your organization

- ❑ "*Unconscious behavior* is not just individual; it *influences organizational culture* as well."
- ❑ "*Unconscious organizational patterns*, or 'norms' of behavior, exert an enormous influence over organizational decisions, choices, and behaviors."

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## How might implicit bias impact CLE programming?

- ☐ Selection of Speakers?
- ☐ Selection of Topics?
- ☐ Identification of Target Audience?



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## How might implicit bias operate?

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| <input type="checkbox"/> Selective Attention | <input type="checkbox"/> Priming Effect          |
| <input type="checkbox"/> Diagnosis Bias      | <input type="checkbox"/> Commitment Confirmation |
| <input type="checkbox"/> Pattern Recognition | <input type="checkbox"/> Stereotype Threat       |
| <input type="checkbox"/> Value Attribution   | <input type="checkbox"/> Anchoring Bias          |
| <input type="checkbox"/> Confirmation Bias   | <input type="checkbox"/> Group Think             |
| <input type="checkbox"/> Affinity Bias       | <input type="checkbox"/> Micro-Aggressions       |

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## Implicit Bias – Examples

- ☐ **Micro-aggressions/micro-inequities**
  - “Micro-inequities (also called micro-aggressions) are **subtle**, sometimes seemingly harmless, comments or actions that devalue others. No matter how kind or aware we may consider ourselves to be, we all have the capacity to harmfully impact others by practicing micro-inequities. ***The challenge with micro-inequities is they often are not meant to intentionally cause hurt or harm, and they arise from a semi-conscious state.***”

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## Implicit Bias — Examples

### □ Ways micro-aggressions/micro-inequities might manifest:

- Continuously mispronouncing or misspelling someone's name
- Rolling your eyes even when you think no one is looking
- Cutting down ideas before they can be entertained
- Sarcasm and disparaging jest
- Interrupting or completing sentences for people
- Acting disinterested in meetings

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## Implicit Bias — Examples

### □ Writing Sample Study — Confirmation Bias

- Researchers crafted a fictitious legal research memo that 60 law firm partners reviewed under the guise of a **"writing analysis study"**
- Half of the memos listed the author as a third-year student at NYU who was African American; the other half noted a Caucasian author — both authors were named **Thomas Meyer**
- **All of the memos were identical**, but the partners' evaluation of the memo hinged on the perceived race of the memo author.
- The partners found more errors and **rated the memo as lower quality** (3.2/5.0) **when the author was perceived to be African American** rather than Caucasian (4.1/5.0)

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## Implicit Bias — Examples

### □ Writing Sample Study (continued)

- Evaluations of the Caucasian author included comments such as "has **potential**," "**good analytical skills**," and "**generally good writer** but needs to work on X"
- Evaluations of the African American author included comments such as "**needs lots of work**," "**average at best**," and "**can't believe he went to NYU**"

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## Implicit Bias — Examples

### ☐ Hiring Decisions — Affinity Bias

- You're conducting interviews with Sally and John.
- John reminds you of yourself or someone you know and like — **you feel a sense of familiarity with him**. You instantly like him. He's visibly nervous, so you encourage him to relax.
- With Sally, **there's no real connection**. You don't have any negative reactions towards her — you have a very "business-like" interaction. Sally is nervous too, but you don't encourage her to relax.
- You hire John — but **you don't realize that your affinity for John influenced your decision**.

☐ [https://youtu.be/i\\_52T8ufdZM](https://youtu.be/i_52T8ufdZM) (snippet of training on "like me" bias)

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## Implicit Bias — Examples

### ☐ Resume Examples

- Candidate changed his name on his resume from **José to Joe** — he left the rest of his resume the same — and received more responses as Joe.
- Resumes with "**typically white**" names received 50 percent more callbacks than those with "**typically black**" names, despite the resumes with "typically black" names reflecting more highly-skilled candidates.

☐ What examples of implicit bias would you add?

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## WAYS TO COUNTER IMPLICIT BIAS

*Recognizing and overcoming our biases*

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## Is it possible to overcome implicit bias?



- ☐ Yes! We have to move our unconscious biases into our conscious mind.
  - [https://youtu.be/NW5s\\_-NI3JE](https://youtu.be/NW5s_-NI3JE) (Google video)
- ☐ "Just because bias is a natural tendency does not mean that we are helpless to combat it. Indeed, **unwanted implicit biases can be mitigated.**"
- ☐ "One solution is to **seek experiences that could reverse or undo the patterns** that created the unwanted preference."
- ☐ "The **key isn't to feel guilty about our [implicit] biases** — guilt tends toward inaction."

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## But I'm not biased!

- ☐ Yes, you are... We **ALL** are biased... But we can identify our biases through the **Implicit Association Test**
  - <https://www.youtube.com/watch?v=oJfbKj1vYsQ> (video on implicit bias and IAT)
- ☐ Implicit Association Test (IAT)
  - <https://implicit.harvard.edu/implicit/selectatest.html>




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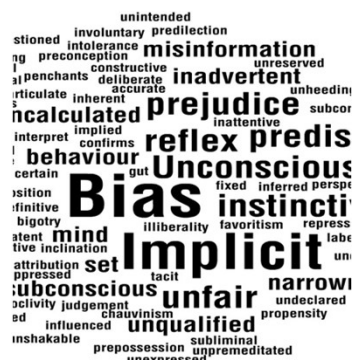
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## Resolving implicit bias

- ☐ Intergroup contact
- ☐ Taking the perspective of others
- ☐ Counter-stereotypical exemplars




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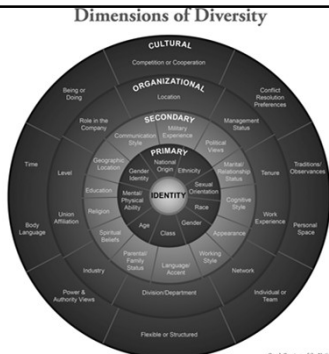
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Consider the various dimensions of diversity

Source: Adapted from Worldwide America's Marketing Update and July Research, 1997; Diversity Forum at IBM



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