

Oregon
State
Bar

CLE
Seminars

Recognizing and Understanding the Impact of Bias on the Legal Profession



Friday, April 29, 2022
9 a.m.–12:15 p.m.

3 Access to Justice credits (ID 88358)

RECOGNIZING AND UNDERSTANDING THE IMPACT OF BIAS ON THE LEGAL PROFESSION

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SCHEDULE

- 9:00 Implicit Bias Overview
- 9:15 The Science of Implicit Bias: Definitions and Brain Function
- 9:45 The Impact of Implicit Bias: Sources, Expressing Bias, and the Effect
- 10:15 Break
- 10:30 The Real World Impact of Implicit Bias on the Oregon Legal Community
- 11:30 Mitigating Implicit Bias
- 12:00 Understanding the Communities Oregon Lawyers Serve
- 12:15 Adjourn

FACULTY

T.K. Floyd Foutz, *T.K. Floyd Consulting, San Antonio, Texas*. Ms. Floyd Foutz is a national speaker and writer on topics related to diversity and inclusion, including implicit bias in the legal profession. She has had a variety of professional experiences, including clerking for two federal judges, practicing as a commercial litigator, and managing her own law practice.

JB Kim, *Director of Diversity & Inclusion, Oregon State Bar, Tigard*. Ms. Kim is responsible for the leadership and oversight for the bar's initiatives and programs to advance diversity and inclusion within the legal profession. Prior to the bar, she was the Assistant Dean of Diversity & Inclusion at Lewis & Clark Law School. Her longstanding engagement in the Oregon legal community included working with affinity bars and serving on the OSB Advisory Committee on Diversity & Inclusion and the Diversity Section. She was a Deputy District Attorney in Malheur and Polk counties before returning to Lewis & Clark in 1998 to run its Academic Enhancement Program.

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Recognizing and Understanding the Impact of Implicit Bias on Legal Services

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Outline:

- ◆ Program **Overview**
- ◆ The **Science** of Implicit Bias
- ◆ The **Impact** of Implicit Bias
- ◆ The **Real World Impact** of Implicit Bias on the Oregon Legal Community
- ◆ **Mitigating** Implicit Bias
- ◆ **Understanding the Communities** Oregon Lawyers Serve
- ◆ Adjournment



PROGRAM OVERVIEW

Reflecting on the intersection of the OSB Mission Statement and implicit bias

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OSB Mission Statement

“The mission of the Oregon State Bar is to serve justice and the public interest by **promoting respect for the rule of law**, by **improving the quality of legal services**, and by **increasing access to justice**.”

Source: Oregon State Bar

Oregon State Bar

Mission

The mission of the Oregon State Bar is to serve justice and the public interest by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice.

Functions and Goals

Regulate the Legal Profession and Improve the Quality of Legal Services

Our goal is to protect the public by ensuring competence and integrity and by promoting professionalism in the legal profession.

Support the Judiciary and Improve the Administration of Justice

Our goal is to protect and advance the quality, integrity, and impartiality of the judicial system.

Advance a Fair, Inclusive, and Accessible Justice System

Our goal is to foster trust in, respect for, understanding of, and access to the justice system.

Values

Integrity | Fairness | Justice
Leadership | Accountability | Sustainability
Diversity | Excellence | Well-Being

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Diversity & Inclusion

The D&I Department serves the OSB's mission by striving to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, by educating attorneys about the cultural richness and diversity of the clients they serve, and by removing barriers to justice.

Diversity includes, but is not limited to: age; culture; disability; ethnicity; gender and gender identity or expression; geographic location; national origin; race; religion; sex; sexual orientation; veteran status; and socio-economic status. A diverse and inclusive bar is necessary to attract and retain talented employees and leaders; effectively serve diverse clients with diverse needs; understand and adapt to increasingly diverse local and global markets; devise creative solutions to complex problems; and improve access to justice, respect for the rule of law, and credibility of the legal profession.

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OREGON LEGAL COMMUNITY CLIMATE ASSESSMENT SUMMARY REPORT (2019)

QUANTITATIVE HIGHLIGHTS (SURVEY)
+
QUALITATIVE COMMENTS (FOCUS GROUPS)
=

Picture of Law Practice Climate for 5 non-dominant cohorts

- ◆ Asian/Pacific Islander (API)
- ◆ Person Experiencing Disability (PWD)
- ◆ Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual, Two-Spirit and other non-majority gender identities and sexual orientations (LGBTQIA2) → (LGBT)
- ◆ Black
- ◆ LatinX



THE SCIENCE OF IMPLICIT BIAS

Understanding how our brain functions and how our unconscious mind works

What Is Implicit Bias?

- ◆ **Bias** = evaluation of something or belief that is either favorable or unfavorable ~ pro-something bias (for) or an anti-something bias (against)
- ◆ **Implicit** = unconscious or unaware
- ◆ **Implicit bias** is neither good nor bad inherently ~ explains the inner workings of our minds



Source: Kirwan Institute for the Study of Race and Ethnicity

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Implicit Bias Defined

- ◆ “[T]he **unconscious attitudes and stereotypes** we hold about different groups of people that **influence our actions**.”
- ◆ “Operating **outside of conscious awareness**, the implicit associations we **form through a lifetime of direct and indirect messages** about groups of people can cause us to have **unconscious attitudes about people** based on characteristics like race, ethnicity, and gender.”



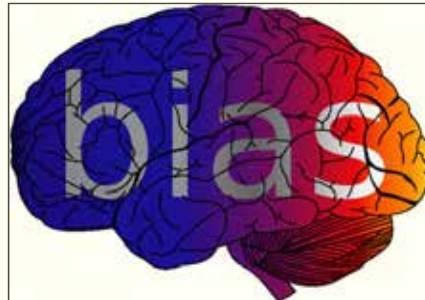
Source: Kirwan Institute

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Implicit Bias Defined (continued)

- ◆ “Whether we realize it or not, these associations, positive or negative, can **influence our behavior and decisions.**”
- ◆ “The biases and associations we have formed **can be ‘unlearned’** and **replaced with new mental associations.**”

Source: Kirwan Institute



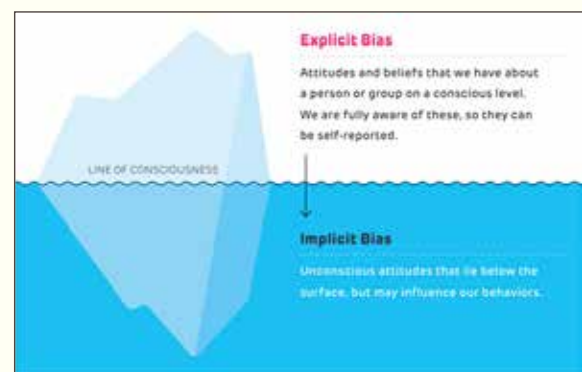
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Comparing Implicit and Explicit Bias

- ◆ **Explicit** biases ~ consciously accessible through introspection
- ◆ **Implicit** biases ~ exist beyond our conscious awareness
- ◆ **“We can have implicit biases that do not align with our identities or explicit beliefs.”**

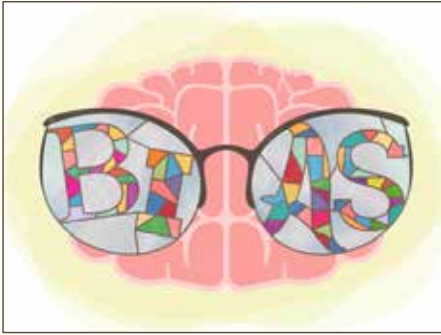
Source: UCLA Implicit Bias Video Series

Source: Kirwan Institute



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Contours of Implicit Bias



- ◆ Implicit biases are **NOT beliefs we conceal or suppress** in an effort to appear non-biased
 - ◇ By definition, ***implicit biases operate outside of our conscious awareness***
 - ◇ “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.***”

Source: Kirwan Institute

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Contours of Implicit Bias (continued)

- ◆ Implicit biases may be based on ***inaccurate information, distorted beliefs, or stereotypes***
 - ◇ For example, when faced with incomplete information or ambiguities, we rely on ***associative memory*** to fill in the gaps ~ those ***automatic associations may not align with reality***

Source: Kirwan Institute



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Example of Faulty Automatic Associations

The Stroop Test

- ◆ Directions given: As the colored words flash on the screen, say out loud the color that the word is printed in as quickly as you can

PART 1			PART 2	
Red	Black	Brown	Red	Black
White	Green	Red	Blue	Brown
Green	Brown	White	Green	White
Brown	White	Green	Brown	Green
Blue	Red	Blue	White	Blue

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Source: Farnsworth

Contours of Implicit Bias (continued)

- ◆ Actions and decisions resulting from our implicit biases can create **real-world barriers** to equity and opportunity
- ◆ Bias can also be **institutional/structural**
 - ◇ For example, **laws and the legal process** could be built on implicit biases

Source: Kirwan Institute



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We ALL Have Implicit Biases



- ◆ “Implicit biases are pervasive. **Everyone possesses them**, even people with avowed commitments to impartiality such as judges.”
- ◆ We all have a natural human tendency to categorize others as either ***in-group*** or ***out-group***

Source: Kirwan Institute

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Summary of Key Characteristics of Implicit Bias

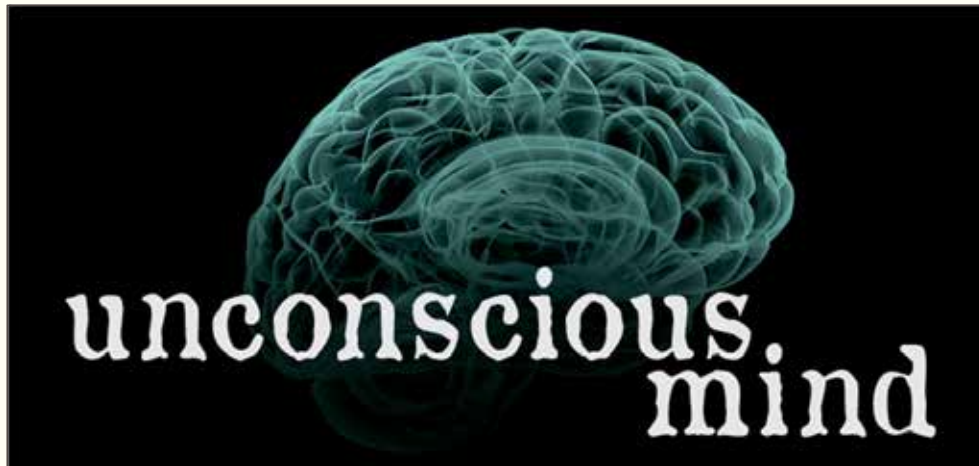
- ◆ ***Unconscious and Automatic*** ~ activated without intention or control
- ◆ ***Not always aligned with explicit beliefs***
- ◆ ***Real-world effects on behavior*** ~ impacts actions and decisions across domains (e.g., employment, education, healthcare, criminal justice, etc.)
- ◆ ***Pervasive*** ~ everyone has implicit biases, even people who claim to be “colorblind” or “impartial”
- ◆ ***Malleable*** ~ can be replaced with new associations

Source: Kirwan Institute

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Unconscious Mind

- ◆ To understand the nature of implicit bias, we must first understand the *unconscious mind*



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Awareness Test

- ◆ <https://youtu.be/Ahg6qcgoay4>
- ◆ Shows we have *limited conscious processing capacity* (e.g., when we are hyper-focused on counting the number of passes among teammates)
- ◆ “*Intense focusing on a task can make people effectively blind*, even to stimuli that normally attract attention.”

Source: Kahneman, “Thinking, Fast and Slow”

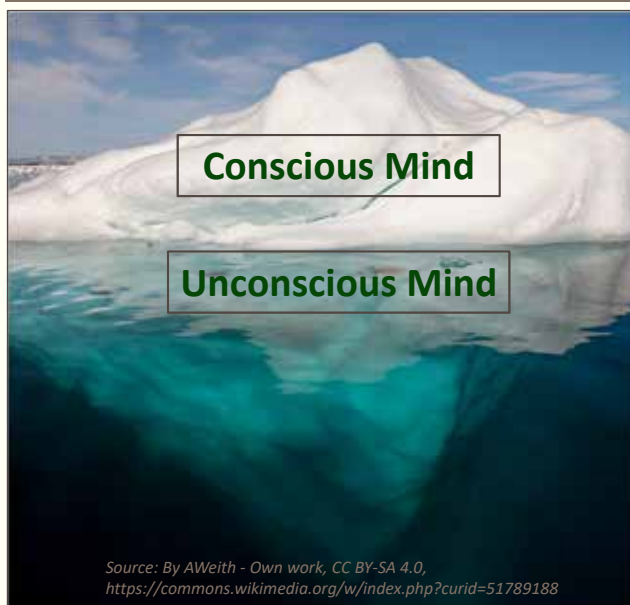
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Unconscious Mind



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Iceberg Analogy



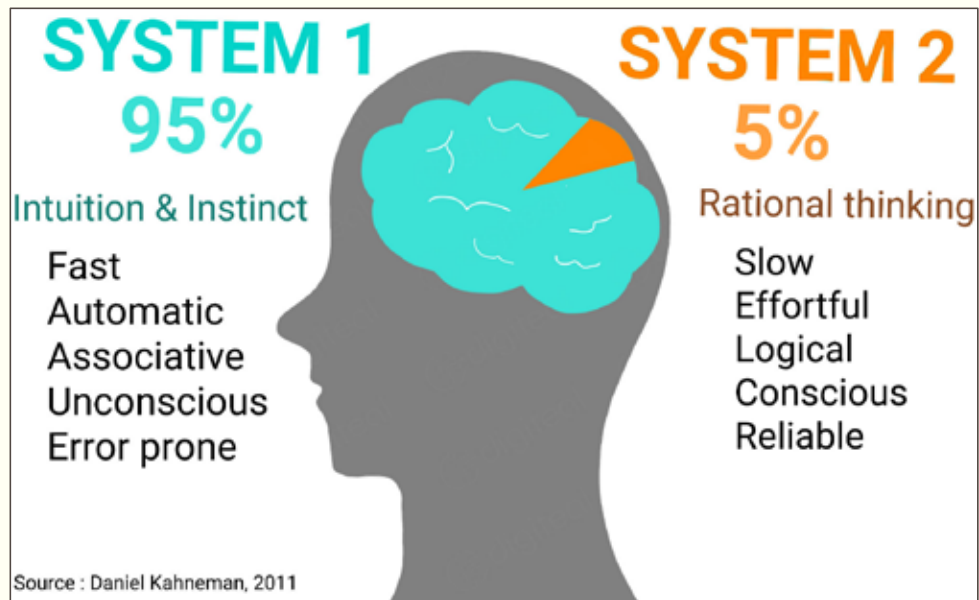
- ◆ Our **conscious** minds can handle 7 (+/-2) pieces of information at one time
- ◆ Our **unconscious** minds can handle unlimited pieces of information at one time
- ◆ “Our unconscious is a powerful force. But it’s **fallible.**”

Source: Kirwan Institute

Source: Gladwell, “Blink”

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Two Systems of Thinking



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How System 1 and System 2 Operate Together

- ◆ *“System 1 continuously generates suggestions for System 2: impressions, intuitions, intentions, and feelings. If endorsed by System 2, impressions and intuitions turn into beliefs, and impulses turn into voluntary actions.”*
- ◆ *“When all goes smoothly, which is most of the time, System 2 adopts the suggestions of System 1 with little or no modification. You generally believe your impressions and act on your desires, and that is fine—usually.”*

Source: Kahneman, “Thinking, Fast and Slow”

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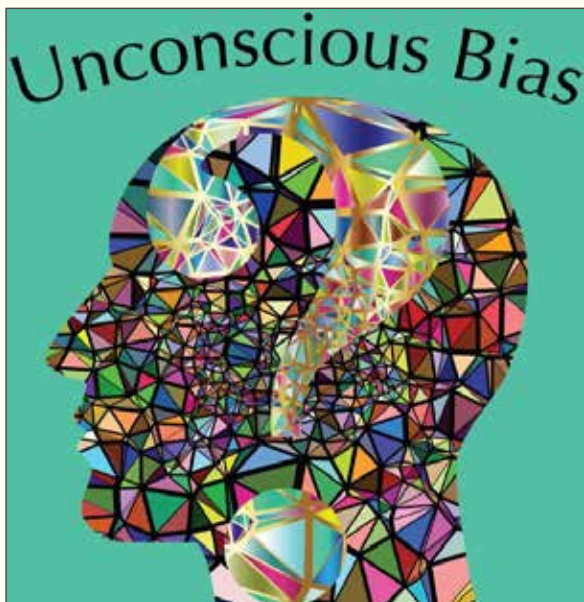
How System 1 and System 2 Operate Together (continued)

- ◆ Be careful not to “accept a *superficially plausible answer that comes readily to mind.*”
 - ◇ Intuitions from System 1 are accepted, without check, by System 2, which reflects the *laziness of System 2*
- ◆ “[W]hen System 2 is otherwise engaged, we will believe almost anything. System 1 is gullible and biased to believe, *System 2 is in charge of doubting and unbelieving, but System 2 is sometimes busy, and often lazy.*”

Source: Kahneman, “Thinking, Fast and Slow”

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Brain Functioning and Implicit Bias



- ◆ “Understanding two different systems of thinking helps explain where bias comes from and why it’s reluctant to go away. ... The *fast, automatic system [System 1] is responsible for biases.*”

Source: Psychology Today

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THE IMPACT OF IMPLICIT BIAS

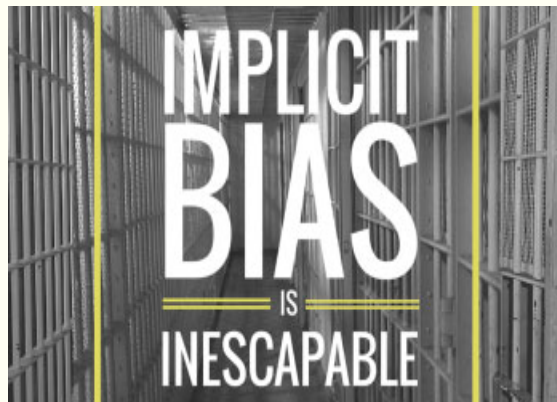
Recognizing how our implicit biases develop and manifest in our decision-making and interactions with others

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We're 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.”

Source: Kirwan Institute



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We're All Biased (continued)

- ◆ So, if I'm biased, *where did these implicit biases come from?*
- ◆ And *how do these biases manifest in my daily life*, as I interact with others?



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Sources of Implicit Bias

- ◆ “Our implicit biases are the result of mental associations that have formed by the *direct and indirect messaging* we receive, often about different groups of people.”
- ◆ Associations may be formed based on *skewed, overgeneralized, or distorted stereotypes or beliefs*
- ◆ Associations develop as early as *age 4*



Source: Kirwan Institute

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Sources of Implicit Bias (continued)



- ◆ Possible sources of direct and indirect messaging:
 - ◇ Past experiences
 - ◇ Cultural norms
 - ◇ Media and advertising
- ◆ **Repeated exposure** to messaging can implicitly influence our thoughts and evaluations of others

Source: Kirwan Institute

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Consequences of Messaging



- ◆ “When we are constantly exposed to certain identity groups being paired with certain characteristics, we can begin to **automatically and unconsciously associate** the identity with the characteristics, **whether or not that association aligns with reality.**”

Source: Kirwan Institute

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Possible Categories of Implicit Bias



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Ways We Might Express Our Implicit Biases

- ◆ Selective Attention
- ◆ Diagnosis Bias
- ◆ Pattern Recognition
- ◆ Value Attribution
- ◆ Confirmation Bias
- ◆ Affinity Bias
- ◆ Priming Effect
- ◆ Commitment Confirmation
- ◆ Stereotype Threat
- ◆ Anchoring Bias
- ◆ Automatic Perception
- ◆ Micro-Aggressions

Source: Ross

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Implicit Bias ~ Examples



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Implicit Bias ~ Examples

◆ Micro-aggressions

- ◇ “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.”

Source: Mindfulness at Work

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Implicit Bias ~ Examples

- ◆ Ways micro-aggressions may 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

Source: Mindfulness at Work

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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.

Source: Reeves

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Implicit Bias ~ Examples

◆ Writing Sample Study (continued)

- ◇ 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)
- ◇ 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**”

Source: Reeves

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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**.

Source: Ross

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Implicit Bias ~ Examples

- ◆ Resume Examples ~ Automatic Perception
 - ◇ 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.

Source: Ross

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How Implicit Bias Impacts the Legal Profession

- ◆ Hiring Decisions
- ◆ Employee evaluations
- ◆ Interactions with potential clients
- ◆ Client Representations
- ◆ Promotion/professional advancement
- ◆ Employee retention/attrition



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Example ~ Law Firm Demographics

- ◆ “Without doubt, this **[2021] summer associate class was the most diverse ever measured in every way**, and it holds the **promise of a law firm world that is truly more diverse, equitable, and inclusive.**”
- ◆ “The challenge for the industry is to **retain, train, develop, and promote this talented and diverse pool of new lawyers** so that 5 years from now the **associate ranks** as a whole **reflect similar diversity and representation**, and 10 or 15 years from now we can celebrate a **partnership class that is similarly diverse.**”
- ◆ “Closing the outcome gaps in the **pipeline from summer associate to law firm partner** remains the **biggest talent challenge** facing the profession.”

Source: NALP (2022)

Source: NALP (2022)

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Example ~ Law School Demographics

- | | | |
|----------------------|------------------|-------------------------------|
| ◆ Faculty: | ◆ All Students: | ◆ 1L Students Total = 42,718: |
| ◇ Male = 57.9% | ◇ Male = 44.4% | ◇ Male = 18,494 [43.3%] |
| ◇ Female = 41.9% | ◇ Female = 55.3% | ◇ Female = 24,032 [56.2%] |
| ◇ Minorities = 19.1% | ◇ Other = 0.3% | ◇ Other = 192 [0.45%] |

Source: AALS (2022)

Source: ABA (2021)

- ◆ “According to data from the American Bar Association (ABA), since 2000, **the percentage of graduates of color has ranged from 20%-32%, while women have accounted for 46%-53% of graduates, with the Class of 2020 representing a new high-water mark.**”

Source: NALP (2022)

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OSB Demographics(March 2022)

- ◆ Active Member Total = 15,135:
 - ◇ Male = 9,111 [60.23%]
 - ◇ Female = 6,016 [39.77.2%]
 - ◇ Gender ID (Trans or other)= 24 [0.16%]
 - ◇ Minorities = 1300 [11.6%]



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THE REAL WORLD IMPACT OF IMPLICIT BIAS ON THE OREGON LEGAL COMMUNITY

Discussing the results of the 2019 Climate Assessment

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OREGON LEGAL COMMUNITY CLIMATE ASSESSMENT SUMMARY REPORT

Findings from Quantitative and Qualitative Climate Research Through a
Diversity, Equity and Inclusion Lens

KNOWHY

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Source: Oregon State Bar

A Challenging Climate for OSB Members

Data suggests that only about a quarter of OSB members feel highly satisfied, safe and established looking at four workplace metrics:

- Job satisfaction
- Company satisfaction
- Likely to stay 5 yrs
- Likely to Recommend

Non-dominant groups face shared set of DEI challenges although often to different degrees

Common Examples

- ◆ Acculturation Demands
- ◆ Isolation
- ◆ Difficulty Fitting in
- ◆ “Tightrope”
- ◆ “Prove It”
- ◆ Microaggressions

Acculturation

Feel we have to blend in to be successful:

- API 78%
- Black 58%
- PWD 55%
- LGBT 64%
- LatinX 68%

“I did not grow up in this kind of world. And it can be frustrating, especially when I was a younger lawyer. It was hard because people would see you and they wouldn’t expect you.” (LatinX)

ISOLATION

work with people who are like me/had mentors who looked like me

- **API** 14%/29%
- **BLACK** 11%/ ?
- **PWD** 33%/39%
- **LGBT** ?/45%
- **LATINX** 23%/25%

“... tokenization – I’ve felt that a lot. I have often been the only non-White person, basically now I’ve just come to expect it.” (API)

DIFFICULTY FITTING IN

In addition to Acculturation (need to blend):

- Ease of fitting in with colleagues + classmates
- Need to change who we are in order to fit in
- Believe anyone who is “different” will experience problems fitting in

61% of us have been told to “tone it down” (PWD)

- “[They] don’t mind it if we’re maybe meeting a quota or it you are more aligned with the culture here (e.g., outdoorsy) ... it helps if you seem more aligned with ‘you can get along with us’... and when you aren’t it’s kinda like ‘gosh, you’re not that friendly’” (Black)
- “I always felt a little bit out of place. and even today, today I feel a little bit out of place [in my worklife] because I’m typically the only one that looks like me.” (LatinX)

TIGHTROPE BIAS

Changing behaviors to avoid activating prejudices of others

- API 40%
- BLACK 47%
- PWD 48%
- LGBT (COSTS OF COMING OUT)
- LATINX 51%

“It’s exhausting pretending everything is great. But if they know what’s going on I’ll spend all my time helping them feel better about it and I won’t get anything done.” (PWD)

There is nothing simple or standard about making the choice to “come out,” even though the cost of *not* coming out is high

“Hiding is ... exhausting. You have to build the way you communicate with people at work around the idea of concealing your identity. You end up spending your time at work focused on how you hide yourself from other people ... passing is always harder.” (LGBT)

“PROVE IT” BIAS

consistently provide evidence of competence and expertise – far more than others do

- API 45%
- BLACK 58%
- PWD 35% (52% if 10+ others)
- LGBT (Costs of coming out)
- LatinX 38%

***“Yes, they’re [friendly] but it comes out in more subtle ways... other attorneys underestimate you and try to take advantage of you. So you have to work harder to show that you are level with them, so that they can respect you when you’re dealing with them...”
(API)***

"...here [in Oregon as opposed to the East Coast] there's no expectation of seeing black people in these positions...that is, that masked pleasantries over an underlying belly of 'Why are you here?' I'm surprised you're here;' 'I'm surprised to see you in a position that maybe garners more authority over my position.' 'How'd you get in the room?' 'Who invited you?'"
(Black)

"They wouldn't expect you to be as smart is the feeling I would get, or as competent."

"I often get the, 'Are you a paralegal or a legal assistant?' A lot. I get asked that a lot."

(both LatinX)

MICROAGGRESSIONS

witnessed regularly/are frequent targets
(as percentages)

- API 57/33 (+)
- BLACK 84/63
- PWD 63/43
- LGBT 62/22* (Trans 75%)
- LATINX 76/46

“Sure, it happens a lot. But I never know if it’s about power, or what the item/event is about. So is that a microaggression then or something else?” (API)

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MICROAGGRESSIONS

“my reaction to the microaggression slide data was envy. I remember learning what people meant by microaggression and feeling upset that that had a name because I feel like ‘that’s just life. That’s just everyday.’...The realization process of ‘No, that’s not everyday for everyone and it has a name because it’s unusual, even if it’s happening to me all the time’...I’m surprised how low that number is.” (API)

PORTLAND “NICE” “Masked Racism”

- Black members describe racism in Portland as being either deliberate or a result of well-intentioned ignorance.
- Portland/Oregon “nice” contributes to Black members questioning their own perceptions of microaggressions
- Black members discussed different preferences for Oregon’s implicit racism versus the explicit and overt racism they experienced in other cities

“The problem is not only that they think they’re super liberal and progressive... but they don’t know that they’re not super liberal. They’re not aware of the actions where they in fact deep within think that Black folks are inferior – that they’re not as capable as others... that’s the part that’s hard to grasp and hard to get folks to see. It’s not true for everyone, but there’s enough of it...” (Black)

PWD FACE BOTH STRUCTURAL AND INTERPERSONAL MICROAGGRESSIONS

Some examples:

- Architectural choices
- Lack of viable accessibility options
- Unwelcome spaces not build with them in mind nor retrofitted to suit them

“You can’t go into court without [microaggressions] at every turn. No parking. Or someone is in the one space or across it. Uncomfortable seats. Rules about when you can eat and where, and most without enough time. Just getting into the building can be trying.” (PWD)



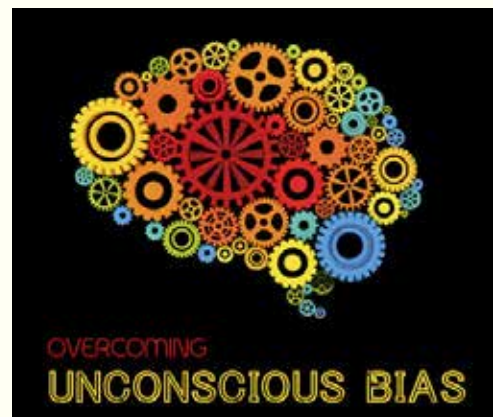
MITIGATING IMPLICIT BIAS

Identifying and countering our implicit biases

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Is It Possible to Reduce the Impact of Implicit Bias?

- ◆ Yes! We have to become **aware** of our **implicit biases** and the **conditions that foster** those biases
- ◆ One way to become aware of our implicit biases is by taking one or more versions of the **Implicit Association Test**—we **cannot uncover** our implicit biases **through mere introspection**



Source: Kirwan Institute

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Recognizing Our Implicit Biases

- ◆ The **Implicit Association Test (IAT)** can help us identify our biases
 - ◇ Available through *Project Implicit* at <https://implicit.harvard.edu/implicit/>
 - ◇ Taking several tests is a great follow-up activity to this presentation



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Implicit Association Test ~ Website



Source: Project Implicit

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Implicit Association Test ~ Website (continued)

The screenshot shows the Project Implicit website interface. At the top, there is a navigation bar with links for Home, About Us, Contact Us, Help, and Privacy Policy. Below the navigation bar is a list of IAT tests, each with a blue button and a brief description:

- Presidents IAT**: Presidents ('Presidential Popularity' IAT). This IAT requires the ability to recognize photos of Joseph Biden and one or more previous presidents.
- Gender-Career IAT**: Gender - Career. This IAT often reveals a relative link between family and females and between career and males.
- Disability IAT**: Disability ('Disabled' - 'Able' IAT). This IAT requires the ability to recognize symbols representing blind and disabled individuals.
- Weight IAT**: Weight ('Fat - Thin' IAT). This IAT requires the ability to distinguish faces of people who are obese and people who are thin. It often reveals an automatic preference for thin people relative to fat people.
- Race IAT**: Race ('Black - White' IAT). This IAT requires the ability to distinguish faces of European and African origin. It indicates that most Americans have an automatic preference for white over black.
- Age IAT**: Age ('Young - Old' IAT). This IAT requires the ability to distinguish old from young faces. This test often indicates that Americans have automatic preference for young over old.
- Arab-Muslim IAT**: Arab-Muslim ('Arab Muslim' - 'Other People' IAT). This IAT requires the ability to distinguish names that are likely to belong to Arab-Muslims versus people of other nationalities or religions.
- Asian IAT**: Asian American ('Asian' - 'European American' IAT). This IAT requires the ability to recognize White and Asian-American faces, and images of places that are either American or Foreign in origin.
- Transgender IAT**: Transgender ('Transgender People' - 'Cisgender People' IAT). This IAT requires the ability to distinguish photos of transgender celebrity faces from photos of cisgender celebrity faces.
- Sexuality IAT**: Sexuality ('Gay - Straight' IAT). This IAT requires the ability to distinguish words and symbols representing gay and straight people. It often reveals an automatic preference for straight relative to gay people.
- Skin-tone IAT**: Skin-tone ('Light Skin' - 'Dark Skin' IAT). This IAT requires the ability to recognize light and dark-skinned faces. It often reveals an automatic preference for light-skin relative to dark-skin.
- Religion IAT**: Religion ('Religious' IAT). This IAT requires some familiarity with religious terms from various world religions.
- Gender-Science IAT**: Gender - Science. This IAT often reveals a relative link between liberal arts and females and between science and males.
- Weapons IAT**: Weapons ('Weapons - Harmless Objects' IAT). This IAT requires the ability to recognize White and Black faces, and images of weapons or harmless objects.

Source: Project Implicit

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Implicit Association Test ~ Website (continued)

The screenshot shows a 'HEALTH' themed IAT test page. The page title is 'HEALTH' and it includes a sub-header 'These Tests Work On a Computer with a Keyboard and Mouse'. Below this, there is a 'Featured Task' section with a task: 'COVID-19: Do you implicitly associate COVID-19 with danger? Do you think the precautions are reasonable?'. There is also a 'Tasks' section with several tasks, each with a button: 'Exercise IAT: Do you implicitly associate exercise with positivity or negativity?', 'Mental Illness IAT: Do you implicitly associate people with mental illnesses with danger?', 'Depression IAT: Do you implicitly associate yourself with being happy or sad?', 'Eating Illness IAT: Do you implicitly associate eating high-fat food with disease?', 'Healthy Food IAT: Do you implicitly associate good foods with healthy or unhealthy food?', 'Marijuana Risk IAT: Do you implicitly associate marijuana with risk?', 'Treatment IAT: Do you implicitly associate medication or talk therapy with effectiveness?', 'Healthy Self IAT: Do you implicitly associate yourself with healthy or unhealthy?', 'Anxiety IAT: Do you implicitly associate yourself with being anxious or calm?', and 'Alcohol IAT: Do you implicitly associate yourself with having a drink?'. There is also a 'Special Tasks' section with a task: 'Self-harm IAT: Do you implicitly associate yourself with dying?'. At the bottom, there is an important note: 'Important: PMI does not provide diagnosis, clinical assessment, or treatment services. The tests and feedback available on this website are for educational purposes only. If you have concerns about your mental health, we encourage you to speak with a licensed treatment provider.'

Source: Project Implicit

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What Does the IAT Measure

- ◆ “The IAT measures the **strength of associations** between concepts (e.g., black people, gay people) and evaluations (e.g., good, bad) or stereotypes (e.g., athletic, clumsy).”

Source: Project Implicit

- ◆ IAT helps to identify implicit biases by **measuring reaction time**
 - ◇ Sorting speed (how quickly we sort concepts and images) reflects how tightly we associate any two concepts
 - ◇ Quicker sorting = stronger associations

Source: UCLA Implicit Bias Video Series

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What Does the IAT Measure (continued)

- ◆ “We make connections much more quickly between **pairs of ideas** that are **already related in our minds** than we do between pairs of ideas that are unfamiliar to us.”
- ◆ “The giant computer that is our **unconscious silently crunches all the data it can from the experiences we’ve had**, the people we’ve met, the lessons we’ve learned, the books we’ve read, the movies we’ve seen, and so on, and it forms an opinion. **That’s what is coming out in the IAT.**”

Source: Gladwell, “Blink”

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Implicit Association Test ~ Results

- ◆ “The disturbing thing about the [IAT] is that it shows that our *unconscious attitudes may be utterly incompatible with our stated conscious values.*”

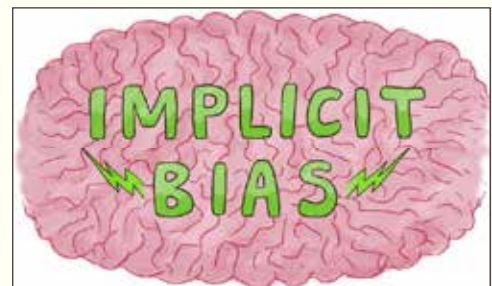
Source: Gladwell, “Blink”



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Conditions Fostering Expression of Our Implicit Biases

- ◆ Certain *emotional* states
- ◆ *Ambiguity*
- ◆ More *easily accessible* social categories
- ◆ *Low-effort* cognitive processing
- ◆ *Distracted* or *pressured* decision-making circumstances



Source: National Center for State Courts

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Conditions Fostering Expression of Our Implicit Biases

(continued)

- ◆ **Limited exposure to those different from us** can **increase** likelihood of **reliance on stereotypes**, rather than experience, to make judgments
- ◆ **Overconfidence** in your ability to make objective or inclusive decisions may make it **hard to correct for prejudice or bias**
- ◆ When there is **cognitive strain**, “the lazy System 2 will adopt the suggestions of System 1 and march on”

Source: Kirwan Institute

Source: Kahneman, “Thinking, Fast and Slow”

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Mitigating Implicit Bias

- ◆ “Having biases doesn’t make you a bad person—it only makes you human. Fortunately, our **implicit biases are not permanent; they can be changed.**”
- ◆ Take Action!
 - ◇ “The **key isn’t to feel guilty about our [implicit] biases—guilt tends toward inaction.**”
 - ◇ “It’s to become **consciously aware of them, minimize them** to the greatest extent possible, and **constantly check in with ourselves** to ensure we are acting based on a rational assessment of the situation rather than on stereotypes and prejudice.” ~ Neill Franklin

Source: Kirwan Institute

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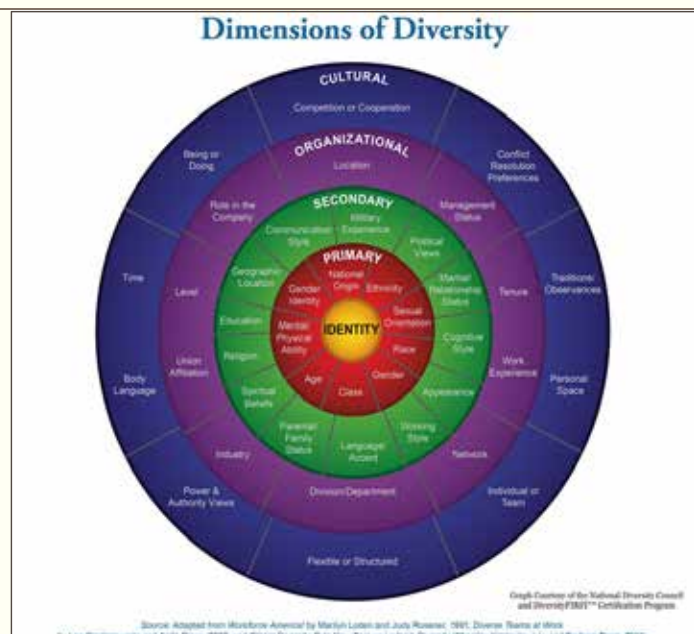
Mitigating Implicit Bias (continued)

- ◆ Some **strategies for reducing** implicit bias:
 - ◇ Become aware of your biases (e.g., take several IATs)
 - ◇ Try to understand the perspective of others
 - ◇ Have meaningful interactions with people who are different
 - ◇ Monitor the information you take in (e.g., are you watching TV shows that reinforce stereotypes?)
- Source: Kirwan Institute*
- ◆ Because we can have **“illusions of remembering,”** we should take notes during meetings/interviews (e.g., judges, jurors, and attorneys should take notes during trials/hearings)
- Source: Kahneman, “Thinking, Fast and Slow”*

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Mitigating Implicit Bias (continued)

- ◆ View others from the various **dimensions of diversity**



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Mitigating Implicit Bias ~ Practical Example

- ◆ Micro-affirmations ~ opposite of micro-aggressions
 - ◇ “Micro-affirmations are tiny acts of **opening doors to opportunity, gestures of inclusion and caring, and graceful acts of listening.**”
 - ◇ “Many micro-inequities are not conscious—but **affirming others** can become a conscious as well as unconscious practice that prevents unconscious slights.”

Source: *Mindfulness at Work*

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Mitigating Implicit Bias ~ Practical Example (continued)

- ◆ Examples of micro-affirmations
 - ◇ Saying hello
 - ◇ Introducing people to each other
 - ◇ Listening without interrupting
 - ◇ Acknowledging and making sure you fully understand someone’s idea or opinion
 - ◇ Acknowledging someone’s good work to others

Source: *Mindfulness at Work*

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Mitigating Implicit Bias in American Courts

◆ American Bar Association resources

- ◇ *Hidden Injustice: Bias on the Bench* ~ available at <https://vimeo.com/165006635>
- ◇ *Hidden Injustice: The Prosecutor's Paradox* ~ available at <https://vimeo.com/176681786/5a69f94cf3>
- ◇ *Hidden Injustice: Toward a Better Defense* ~ available at <https://vimeo.com/175897153/891b9eacde>

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Mitigating Implicit Bias in American Courts (continued)

◆ Implicit Bias Bench Card

- ◇ Available at <https://courts.michigan.gov/Administration/SCAO/Documents/General-Administrative/MN-ImplicitBias.pdf> (Minnesota)
- ◇ *See also* <https://bostonbar.org/docs/default-document-library/combined-bench-cards.pdf?sfvrsn=2> (Massachusetts)
- ◇ *See also* https://courts.illinois.gov/CivilJustice/Training_Education/Achieving_Fairness_Free_of_%20Unconscious_Bias.pdf (Illinois)
- ◇ *See also* <https://njdc.info/wp-content/uploads/2018/07/Addressing-Bias-Bench-Card-1.pdf> (Juvenile Courts)

IMPLICIT BIAS BENCH CARD

Act Consciously and Deliberately

- Allow more time for cases in which implicit bias may be a concern.
- Avoid decisions under rushed, stressed, distracted or pressured circumstances.
- Engage in thoughtful information processing - objectively and deliberately consider the facts at hand. Avoid low-effort decisions or decision made on auto-pilot.
- Take special care in situations when you must respond quickly to avoid making snap decisions.
- Articulate the reasoning behind your decision before committing to a decision to allow yourself to critically review your decision-making process.

Be Self-Aware

- Analyze your emotional state. Do the negative or positive emotions you are feeling pertain to the case?
- Consider whether you are requiring more or less from a person than you would from others.
- Ask yourself if your opinion of the parties, witnesses, or case would be different if the people presenting belonged to a different social/racial group.
- Consider how the person is different from others in his/her same social/racial group or gender.
- Be mindful of your decision-making process, not just the resulting decision.


Create Processes to Serve as a Check on Unintended Bias

- Take notes and rely on those notes over memory.
- Consider what evidence supports the conclusions you have drawn and how you have challenged unsupported assumptions.
- Seek feedback from others. Would others perceive or handle the situation differently?
- Track your decisions and periodically examine them for any pattern of bias.

Source: Patricia M. Casey, et al., *Addressing implicit bias in the courts*, 48 *Georgetown Journal of Legal Ethics* 1033-41, National Center for State Courts, *Strategies to Reduce the Influence of Implicit Bias, Stereotyping, and Anxious Bias in the Courtroom*, 58 *UCLA Law Review* 1351-1352; National Council of Juvenile and Family Court Judges, *Agree From the Start: The U.S. Probationary Institute Training Manual*

Issued by the Committee for Equality and Justice of the Minnesota Judicial Branch, April 2015

Questions? Contact Committee for Equality and Justice, <http://cej.mtjdc.org> or <http://mtjdc.org/cej>

 **MINNESOTA JUDICIAL BRANCH**

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Model for Mitigating Implicit Bias

- ◆ Raise awareness through **training**
- ◆ Acknowledge **differences**
 - ◇ Being “colorblind” does NOT address implicit biases
- ◆ Check your **decisions** and **thoughts routinely**
 - ◇ Do not rely solely on intuition/gut
 - ◇ Collect data and analyze trends
- ◆ Eliminate **stressors** and **distractions** during the decision-making process
- ◆ Establish concrete standards **before** making decisions
- ◆ Increase your **exposure** to members of “out” groups
- ◆ Ask for **feedback**

Source: National Center for State Courts

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UNDERSTANDING THE COMMUNITIES OREGON LAWYERS SERVE

Discussing the results of the 2018 Civil Legal Needs Study

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Barriers to Justice

A 2018 STUDY MEASURING THE CIVIL LEGAL NEEDS
OF LOW-INCOME OREGONIANS

Source: Oregon Law Foundation

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2018 OR Civil Needs Study

Approximately one in five Oregonians (807,000 people) has a household income below 125% of the poverty level. For a family of four, 125% of the 2018 Federal Poverty Level was \$31,375 per year. Low-income households struggle to afford even basic living expenses of food, shelter, and clothing. Poverty is pervasive in both urban and rural communities. People of color, single women with children, persons with disabilities, and those who have not obtained a high school diploma are overrepresented in the poverty population.

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Summary of Findings

Legal Problems are Widespread

75% of survey participants live in a household that experienced a legal problem in the previous 12 months.

Legal Problems Multiply

5.4 legal problems were experienced by the typical low-income household in Oregon in the last 12 months.

The Need for Legal Aid Outpaces Resources

84% of people with a legal problem did not receive legal help of any kind.

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Systemic Discrimination

- ◆ **African Americans were:**
- ◆ 2.3 times more likely to experience homelessness
- ◆ 2.1 times more likely to experience an education issue
- ◆ 1.8 times more likely to experience an issue with policing
- ◆ 1.6 times more likely to experience a rental housing issue

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Discrimination con't:

Native Americans were:

- ◆ 2.7 times more likely to experience a veteran status issue than non-Native Americans
- ◆ 1.9 times more likely to experience an elderly or disability-related issue
- ◆ 1.9 times more likely to experience a mobile home issue
- ◆ 1.5 times more likely to experience homelessness
- ◆ 1.5 times more likely to experience a health care issue

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Discrimination con't:

Latinx participants were:

- ◆ 15 times more likely to experience immigration issues than non-Latinx Oregonians
- ◆ 1.8 times more likely to experience homelessness
- ◆ 1.7 times more likely to experience an education issue
- ◆ 1.3 times more likely to experience rental issues

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Discrimination con't:

Asian Americans were:

- ◆ 2.6 times more likely to experience a homeownership issue than non-Asian Americans
- ◆ 2.4 times more likely to experience a veterans' issue
- ◆ 2.1 times more likely to experience an immigration issue

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“When People are Denied Access to Justice, Their Faith in the Legal System Erodes”

“There are costs and consequences to administering a system of justice that denies large segments of the population the ability to assert and defend their core legal rights. When someone needs an attorney and cannot obtain one, they are forced to navigate a complicated civil justice system on their own. The results are most often detrimental to the people involved. This leads to cynicism and distrust of the system, as well as a likelihood that even those with a strong chance of successfully resolving their issue will choose not to engage with the system.”

- OR Civil Legal Needs Study

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“Every Oregonian deserves a justice system that is accessible and accountable. The legitimacy of our democracy depends on the premise that injustices can be addressed fairly within the bounds of the law, no matter who you are or where you live. Let us work together in Oregon, to ensure that justice is a right, not a privilege—for everyone.”

Martha Walters, Chief Justice, Oregon Supreme Court

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ADJOURNMENT

Thanks for joining us today!

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Thank You!

JB Kim

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Principal
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Sources

- ◆ Association of American Law Schools, *Legal Education at a Glance: 2021* (2022) [available at <https://www.aals.org/wp-content/uploads/2022/01/2021-Legal-Ed-at-a-Glance.pdf>]
- ◆ American Bar Association, *Enrollment Data: 2021 1L Enrollment by Gender & Race/Ethnicity (Aggregate)* (2021) [available at https://www.americanbar.org/groups/legal_education/resources/statistics/]
- ◆ American Bar Association, *Implicit Bias Videos and Toolkit* (2016) [available at <https://www.americanbar.org/groups/diversity/resources/implicit-bias/>]
- ◆ Bryn Farnsworth, *The Stroop Effect – How it Works and Why* (2019) [available at <https://imotions.com/blog/the-stroop-effect/>]
- ◆ Malcolm Gladwell, “Blink: The Power of Thinking Without Thinking” (2005)
- ◆ Daniel Kahneman, “Thinking, Fast and Slow” (2011)
- ◆ Kirwan Institute for the Study of Race and Ethnicity (Ohio State University), *Implicit Bias Module Series* (video training) (2018) [available at <http://kirwaninstitute.osu.edu/implicit-bias-training/>]
- ◆ Kirwan Institute for the Study of Race and Ethnicity (Ohio State University), *I.N.C.A.S.E. of Bias Emergence Framework* (video training) (2019) [available at <http://kirwaninstitute.osu.edu/new-implicit-bias-presentations/>]
- ◆ Kirwan Institute for the Study of Race and Ethnicity (Ohio State University), *Mitigating Implicit Bias: Creating Equitable and Just Leaders* (video training) (2019) [available at <http://kirwaninstitute.osu.edu/new-implicit-bias-presentations/>]
- ◆ Kirwan Institute for the Study of Race and Ethnicity (Ohio State University), *State of the Science: Implicit Bias Review* (2013, 2014, 2015, 2016, 2017)
- ◆ Korn Ferry Institute, *Understanding Bias and the Brain* (2015)

94

Sources (continued)

- ◆ National Association for Law Placement, *2021 Report on Diversity in U.S. Law Firms* (2022) [available at <https://www.nalp.org/reportondiversity>]
- ◆ National Center for State Courts, *Helping Courts Address Implicit Bias: Resources for Education* (2012)
- ◆ Oregon Law Foundation, *Barriers to Justice: the 2018 Oregon Civil Legal Needs Study* [available at <https://olf.osbar.org/files/2019/02/Barriers-to-Justice-2018-OR-Civil-Legal-Needs-Study.pdf>]
- ◆ Oregon State Bar, *Mission Statement* [available at <https://www.osbar.org/docs/resources/OSBMissionStatement.pdf>]
- ◆ Oregon State Bar, *Oregon Legal Community Climate Assessment Summary Report* [available at https://www.osbar.org/docs/resources/ClimateSurvey/2019ClimateSurvey_Final.pdf]
- ◆ Project Implicit [available at <https://implicit.harvard.edu/implicit/index.jsp>]
- ◆ Psychology Today, “The Neuroscience of Racial Bias” (2012)
- ◆ Arin N. Reeves, *Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills* (2014)
- ◆ Howard Ross (Cook Ross, Inc.), *Exploring Unconscious Bias* (2008)
- ◆ Howard Ross (Cook Ross, Inc.), *Everyday Bias: Further Explorations into How the Unconscious Mind Shapes Our World at Work* (2014)
- ◆ The Wandering Yogi, *Mindfulness at Work: Micro-inequities and Micro-affirmations* (2015)
- ◆ UCLA Office of Equity, Diversity, & Inclusion, *Implicit Bias Video Series* [available at <https://equity.ucla.edu/know/implicit-bias/>]