

What *is*  
Implicit Bias  
and  
How do I Address it?  
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# What is Implicit Bias?

- a preference for a group (positive or negative)
- often operating outside our awareness
- based on stereotypes and attitudes we hold
- tend to develop early in life and
- tend to strengthen over time

▶ **EVERYONE HAS IMPLICIT BIAS !!!**

# Implicit Bias

*Refers to:*

- Our beliefs, attitudes and behaviors over which we have no conscious control and most often of which we are not even aware;
- Occurs automatically and triggered by our System 1 thinking – which governs over 80% of our thinking;
- Can be both favorable & unfavorable or both positive and negative; and
- We ALL have them!

# Microaggression

- ▶ “The everyday slights, indignities, put downs and insults that people of color, women, LGBT populations or those who are marginalized experiences in their day-to-day interactions with people.”
- ▶ Phrase was coined in the 1970s by Harvard Univ prof Chester Pierce to describe the slights and insults he had witnessed against Black people. Term was revived around 2007 by Columbia Teachers College Prof Derald Sue

# Microaggressions – know it when you see (or do) it?

- ▶ White person crosses the street when a person of color approaches
- ▶ Woman talking during a meeting and being interrupted by a man
- ▶ Asking a person, “where are you from?”
- ▶ Saying to an Asian person, “you must be really good at math”
- ▶ Black person being followed by a security guard or employee in a store

# Microaggressions in the law firm setting

- ▶ Female lawyers interrupted by males;
- ▶ Male assuming a woman cannot take on a “hard” assignment because of child care issues;
- ▶ Time off policies: system assumes female will be the caregiver; and
- ▶ Assuming a female is a secretary or court reporter.

# Implicit Bias Examples

- Race
- Sex
- Ethnicity
- Language
- Culture
- Socioeconomics
- Religion
- Skin color
- Weight
- Gender identity
- National Origin
- Disability
- Political viewpoint
- Professions
- Marital status
- Physical appearance
- Height (57% of Fortune 500 CEO's are over 6'2" vs 16% of general male population)
- Hair styles (Crown Act)

# How Do These Biases Show Up?

- ▶ Prosecutorial Discretion
- ▶ Change of Venue Requests
- ▶ During Hearings
- ▶ Jury Selection
- ▶ Judge's Opinions
- ▶ Sentencing

# STEPS TO RECOGNIZE AND REDUCE BIASES

- ▶ Awareness & Intent: become aware of underlying limiting beliefs and assumptions, together with a conscious intent to not let them dominate your thoughts and actions.
- ▶ Cognitive Reframing: Ask specific questions to help evaluate the situation and your reactions.
- ▶ Take Action: In opposition to your negative beliefs commit to take some that knowingly contradicts the action you considered taking in response to the negative belief or assumption.

# How to respond to a microaggression when you *experience* it

- ▶ **Ask for more clarification:** “Could you say more about what you mean by that?” “How have you come to think that?”
- ▶ **Separate intent from impact:** “I know you didn’t realize this, but when you \_\_\_\_\_ (comment/behavior), it was hurtful/offensive because \_\_\_\_\_. Instead you could \_\_\_\_\_ (different language or behavior.)”
- ▶ **Share your own process:** “I noticed that you \_\_\_\_\_ (comment/behavior). I used to do/say that too, but then I learned \_\_\_\_\_.”
- ▶ One principle underlying these statements is helping the aggressor understand she or he is not under attack for their comment. “If we want people to hear what we’re saying and potentially change their behavior, we have to think about things that will not immediately make them defensive.”

# How to address a microaggression when you *see it*

- ▶ This is about being an ally or upstander (versus bystander)
- ▶ Amplify voices ie “as Amy was saying . . .”
- ▶ When and how

# How to address a microaggression when you see it

- ▶ The Sponsor; ie you have skin in the game (as opposed to a mentor)
- ▶ The Champion
- ▶ The Amplifier
- ▶ The Advocate
- ▶ The Scholar
- ▶ The Upstander
- ▶ The Confidant

# What You Can Do As an Ally

- ▶ Ten things you can do as an ally
  - ▶ Listen
  - ▶ Get educated
  - ▶ Get involved
  - ▶ Show up
  - ▶ Speak up
  - ▶ Intervene
  - ▶ Welcome discomfort
  - ▶ Learn from your mistakes
  - ▶ Stay engaged
  - ▶ Donate

# New Laws

- ▶ Implicit Bias Training- Attorneys
- ▶ Implicit Bias Training- Court Personnel
- ▶ Implicit Bias Training- Doctors
- ▶ Civil Code 3661- no calculation of earnings/ earning capacity based on race, gender or ethnicity
- ▶ One female director on public boards by 2019
- ▶ At least one board member from “underrepresented community” on public corporation by 2021; at least 2 directors by 2022 on boards of 4-9 directors and 3 directors on boards of 9+ directors
- ▶ Bars peremptory challenges Re: race, religion, gender identity;
- ▶ Judge may alter sentence if believes racial or ethnic discrimination
- ▶ Creates task force re: slave reparations

THE END!

- ▶ Questions? Comments?
- ▶ Thank you!

## MCLE BOG POSTS FOR IMPLICIT BIAS

Appellate Opinion (Marc Alexander)(see below)

Phyllis G. Pollack, Esq.

PGP Mediation

### **BLOG POSTS**

1. Left Digit Bias

<https://www.pgpmediation.com/left-digit-bias/>

2. Implicit Bias: How we Write

<https://www.pgpmediation.com/implicit-bias-how-we-write/>

3. Implicit Bias is Everywhere: Even in the ER

<https://www.pgpmediation.com/implicit-bias-is-everywhere-even-in-the-er/>

4. Overcoming Implicit Bias through Diversity

<https://www.pgpmediation.com/overcoming-implicit-bias-through-diversity/>

5. What ARE we afraid of?

<https://www.pgpmediation.com/what-are-we-afraid-of-1/>

6. Bias: the Fat Lady is Guilty

<https://www.pgpmediation.com/bias-the-fat-lady-is-guilty/>

7. Appearances Do Count!

<https://www.pgpmediation.com/appearances-do-count/>

**Appellate Opinion: *Martinez v O'Hara***

<https://loweringthebar.net/2019/03/succubustic.html>