



South Carolina Bar

Continuing Legal Education Division

2019 SC BAR CONVENTION

Diversity Committee & Young Lawyers Division

“Illumination of Bias”: Understanding
and Reducing the Impact of Implicit Bi-
as in the Practice of Law ”

Friday, January 18

SC Supreme Court Commission on CLE Course No. 190137

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“Illumination of Bias”:

Practical & Positive Steps to Uncovering Implicit Bias,
& Reducing Its Impact In the Practice of Law

- **Develop a more robust and thoughtful understanding of the role of bias in decision-making.** Bias, in the simplest terms, can be defined as a predisposition to prefer or favor one group, type of person, or culture over another. Understood this way, we all harbor biases. As Derald Wing Sue notes, “our gut instincts, first impressions and feelings of comfort are often the bases – and biases – by which we build relationships at work.” The problem, however, is that “[w]hat is held in our unconscious brain about groups of people often includes stereotypes; stereotypes that we would consciously reject but unconsciously still hold [as] part of the data stored on the hard drive in our unconscious brain.”
- **Commit to understanding the potential harm of subtle forms of bias.** As one prominent study has confirmed, the long, slow drip of pervasive exposure to subtle, seemingly “innocent” biased comments or reactions may be just as harmful as a few overt acts of deliberate prejudice. It is therefore crucial to identify our potentially harmful biases, and then to be mindful of their potential impact on others, and their influence in our everyday decision-making.
- **Strive for increased awareness of your own possible biases, and their impact on the people with whom you work and interact.** Eliminating bias is an unrealistic goal, but you may well be able to improve your own self-awareness. If you want to determine the level of influence that your biases may have on your thoughts or actions (and thereby to begin recognizing the negative effects they may be having on the people with whom you interact), try the following:
 - Pay attention to your reactions (thoughts, feelings, etc.) when interacting personally and professionally with individuals who are different from you. Do you notice a pattern? Do you have an automatic reaction that has little to



do with the person in front of you? Does it adversely impact the relationship even if the other person is unaware of your reaction?

- Consider the impact of formative events in your past. When have you felt similar discomfort, distaste, fear, anger? When have you felt (or been made to feel) inferior or superior to the type of person you are encountering. What about the present situation is similar, and what is perhaps different? What would it take for you to be able to let the events of the past loosen their grip on your present-day mind?
- **Be open to feedback or suggestions about how your actions are coming across to those who are different from you. Many of us act or speak out of subtle bias unconsciously and unintentionally, but remain unaware of the pain we have caused. If someone approaches you with a concern about a potentially inappropriate bias that may have influenced your speech or actions, here are some suggestions for how to benefit from the confrontation:**
 - Listen, without feeling the need to question the details of exactly how it “actually” occurred. Be grateful, if you can, even, for an opportunity to see how you come across to diverse colleagues and clients.
 - Ask open-ended questions, seeking more information about how the person felt or reacted to your actions or comments. Be “curious” about why they reacted as they did, before you get “furious” that they are being critical of you. (And above all, resist the urge to cross-examine!)
 - When tempted to discount a person’s perspective or viewpoint as an “overreaction” or “paranoia,” imagine the cumulative effect of similar incidents occurring on a daily or weekly basis for that individual.



- **Once you are aware of your biases or presumptions about a person, race, culture, etc., be willing to question them, and perhaps even challenge them.**
 - In *Essential Qualities of the Professional Lawyer* (ABA Publishing, 2013), lawyer and diversity consultant Dr. Arin N. Reeves of Nextions, suggests that lawyers “pay attention to surprises,” i.e., make note of those times when a person or group of persons behaves in a way that is significantly counter to your prediction or expectations. In this way, “the more you identify the sources of surprise, the better you get at recognizing and eventually interrupting your implicit biases.”
 - It has been said that “Bias is really when you see the present through the lens of the past.” Commit to begin each interaction or experience with a new person or group of any sort with a “clean slate.”
- **Seek out more direct, deliberate, and dignifying (and therefore effective) ways of learning about people of different races, cultures, religions, ethnicities, etc.** When we purposefully put ourselves in environments with people who don’t look or sound like us, it can be uncomfortable, and perhaps even stressful. The discomfort itself may be helpful, however, as the experience may well awaken or expose our subtle prejudices and give us a new level of awareness. And the process of interacting with real persons (in all their depth and variety) of a group will give a lot more data upon which to form any judgments or opinions. Moreover, we may actually learn something new, interesting and perhaps even useful in the process. (And likewise, they may learn a thing or two about you and your culture, and correct a few of their own stereotypes in the process.) Try some or all of the following:
 - Determine the validity of assumptions about different groups of people from sources *within the group*. Exposure to music, TV, films, poetry, artwork, books, or other writings from diverse authors can provide a more accurate view of the thoughts, hopes, fears, and aspirations of the people they represent, which may lead to greater understanding and identification of commonalities upon which bridges may be built.



- Make sure to seek out sources *beyond those that you run across in your work* and beyond the caricatures that tend to show up in the “lowest common denominator” of pop culture or mass media. Lawyers are often exposed to a small segment of the population that suffers from emotional distress, so it is easy to associate negative features to specific populations.
- Seek out businesses owned by those in marginalized groups. Also, consider inviting those regarding whom you hold stereotypes to your home. Or how about visiting churches, synagogues, temples, or other places of worship different from those that you usually frequent?
- Consider engaging a “cultural guide” – a member of the “different” group who is willing to introduce you to new experiences, answer questions, and dialogue openly about your reactions.
- **Help create a more genuinely inclusive culture in your firm, agency or organization:** The buzz-word in the area of diversity used to be “tolerance.” That may have been a good start, as far as it went, but it set the bar relatively low, so to speak. Navigating the changing cultural landscape of our country (especially for those of us who will be interacting with all different kinds of people through the legal system) will require us to strive for something more. The concept of “inclusion” is designed to recognize and leverage the value of the contributions that different cultures or people or groups can make towards a better product, system, or outcome. Acknowledgement, acceptance, and respect of differences can open doors to new avenues of collaboration and cooperation. Consider the following questions in assessing how your workplace is doing in this effort:
 - How are colleagues, staff and clients who are different treated in your practice? What is said about those individuals when they are not present?
 - How do you respond when you observe someone being talked about or treated inappropriately? What is your ethical responsibility as a lawyer?
 - Make note of whatever thoughts or concerns keep you from speaking up or intervening when you see someone being discriminated against or mistreated



based on their immutable characteristics. What concerns or fears lie behind your reticence? What might it cost to take a stand that may be unpopular? Might the cost be worth paying, in a given instance?



Questions to Ponder

1. How do any subtle biases or potentially stereotype-driven beliefs I may have show up in the way I work, think, act, or treat other people?

2. When I feel uncomfortable around people who are different from me, I can tell because:

3. What situations, places, behaviors, or people that I encounter most likely to cause me to feel uncomfortable?

4. In what other circumstances, or at what other times in my life, have I felt the same or a similar type or degree of discomfort? How are the feelings similar? How are they different? How might knowing the similarities and differences help you with the current interaction?

5. What is one thing that I commit to doing right now to reduce a bias or the impact of that bias?

6. What am I already doing well? Where have I had success?
