

RACE AND BIAS

How they impact cases from the view of Fact Finders and Title IV-D Attorneys

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MEET THE PANEL:

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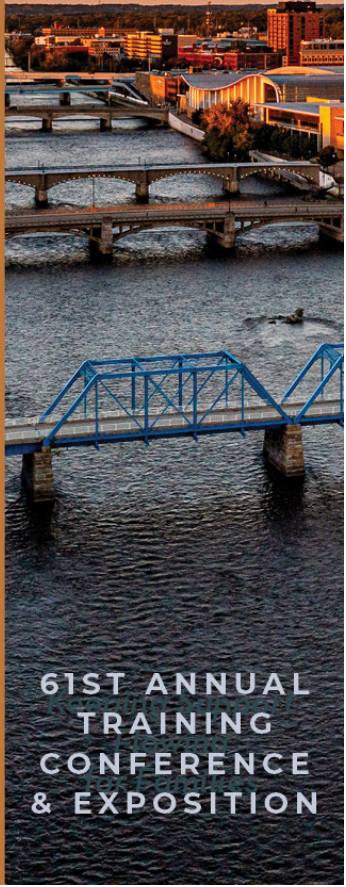
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GOAL OF THIS PANEL:

How Fact Finders and Attorneys, Identify, address, and prevent bias in their day-to-day operations

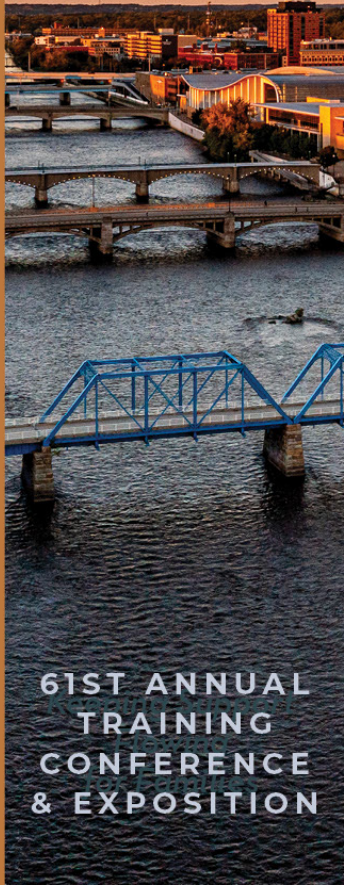
Section 1: Tools & techniques to identify bias in all forms

Section 2: Self-reflection to address internal implicit bias

Section 3: Identifying & addressing, in a safe way, bias with colleagues, litigants, and others



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SECTION 1: *Identifying Bias*

Definition of Bias (as per merriam-webster.com)

1. a. an inclination of temperament or outlook (a personal and sometimes unreasoned judgment : PREJUDICE)

[...]

- d. (1): deviation of the expected value of a statistical estimate from the quantity it estimates
(2): systematic error introduced into sampling or testing by selecting or encouraging one outcome or answer over others
2. a line diagonal to the grain of a fabric.

SECTION 1: *Identifying Bias*

Definition of Implicit Bias

(as per merriam-webster.com)

A bias or prejudice that is present but not consciously held or recognized.

(as per the American Psychological Association - <https://www.apa.org/topics/implicit-bias>)

A negative attitude, of which one is not consciously aware, against a specific social group.

SECTION 1: *Identifying Bias*

Definition of Implicit Bias

(as per the American Psychological Association - <https://www.apa.org/topics/implicit-bias>)

Implicit bias is thought to be shaped by experience and based on learned associations between particular qualities and social categories, including race and/or gender. Individuals' perceptions and behaviors can be influenced by the implicit biases they hold, even if they are unaware they hold such biases. Implicit bias is an aspect of implicit social cognition: the phenomenon that perceptions, attitudes, and stereotypes can operate prior to conscious intention or endorsement.

SECTION 1: *Identifying Bias*

Examples of types of biases?

SECTION 1: *Identifying Bias*

1. Race & Ethnicity: Overlooking a Hispanic employee for a task requiring strong English communication skills
2. LGBTQIA+: Assuming lesbians can't relate to men, or gay men have great fashion sense, or a nurse asking a female-presenting woman whether they have a boyfriend in discussing sexual history
3. Affinity: Hiring/promoting someone who shares the same race, gender, age, or educational background.
4. Ageism: Assuming someone above the age of 50 would not be good at social media.
5. Attribution: If women are less competent than men, undervaluing accomplishments and overvaluing mistakes
6. Beauty: The more attractive one is perceived, the more positively they are viewed and treated.
7. Confirmation : Look for or favor information that confirms beliefs we already hold.
8. Conformity: Your views are swayed or influenced by the views of others (like groupthink).
9. Gender: Presuming one gender is better equipped to handle a job
10. Name: In reviewing a resume, judging a person's name and perceived background
11. Weight: Judging a person negatively because they are larger or heavier than average.

SECTION 1: *Identifying Bias*

Examples of Bias in Different Environments – Orchestras & More

“Orchestrating Impartiality: The Impact of ‘Blind’ Auditions on Female Musicians” (2000) ¹

1. In an effort to study why orchestras were predominantly male, a screen was put up to see whether not seeing the auditioner increased the selection of female musicians
 - a. The initial results still skewed male
2. Auditioners were told to take off their shoes
 - a. Almost 50% of women made it past the first audition
 - b. The sound of their heels as they entered the audition unknowingly influenced the adjudicators

Translating this to the modern day: Women Wearing a Hijab ²

Yassmin Abdel-Magied, in her TED Talk she says: “Someone who looks like me walks past you in the street. Do you think they’re a mother, a refugee, or a victim of oppression? Or do you think they’re a cardiologist, a barrister, or maybe your local politician? Do you look me up and down, wondering how hot I must get or if my husband has forced me to wear this outfit? . . . I can walk down the street in the exact same outfit and what the world expects of me and the way I’m treated depends on the arrangement of this piece of cloth.”

¹ <https://www.upworthy.com/this-orchestras-blind-audition-proves-bias-sneaks-in-when-you-least-expect-it-hw>

² https://www.ted.com/talks/yassmin_abdel_magied_what_does_my_headscarf_mean_to_you?language=en

SECTION 1: *Identifying Bias*

Examples of Bias in Different Environments – School

Teachers were shown videos of students: (1) texting during a test and continuing after being asked to stop, (2) coming in late and slamming the door, (3) throwing objects **1**

1. 1,339 teachers (295 HS & MS across the US) asked to describe what they saw (knew study was about race/bias)
2. Responses were categorized as blaming, empathetic, or neutral
 - a. Black boys were perceived as more blameworthy vs white boys for same behavior (Latino vs White vs Black)

Over 3.5 million written teacher comments: Found implicit racial + gender bias in school discipline **2**

1. Teachers wrote more + used more negative emotions and verbs when describing behavior incidents of Black students compared to white (the opposite was true for Asian and Hispanic students vs white)
 - a. Negative emotions: “anger”, “hurt”, “disrespectful” & Negative verbs: “scraped”, “hit”, “spanked”
 - b. More words, negative emotions, verbs, and impersonal pronouns when describing incidents with boys vs girls
 - i. Impersonal pronouns (“it” + “this”) are depersonalizing (can reflect greater psychological distance)

“Challenging Behavior” Study: Teachers are told to look for & expect trouble with PRESCHOOL STUDENTS, eye-tracking technology found over 130 educators show a tendency to more closely observe Black students. **3**

When teachers were told about the child’s home life/family stressors, they “only reacted more empathetically if the teacher and student were of the same race. Otherwise, teachers rated the students more severely.”

1 <https://insights.som.yale.edu/insights/teachers-see-misbehavior-from-black-students-as-more-blameworthy>

2 <https://theconversation.com/we-analyzed-over-3-5-million-written-teacher-comments-about-students-and-found-racial-bias-215777>

3 <https://www.nbcnews.com/news/nbcblk/yale-study-finds-implicit-racial-bias-among-preschool-teachers-n656341>
<https://www.theguardian.com/world/2016/oct/04/black-students-teachers-implicit-racial-bias-preschool-study>

SECTION 1: *Identifying Bias*

Examples of Bias in Different Environments – Courts

New York State Bar Association hosted a CLE “Addressing Implicit Bias in the Criminal Justice System – Two Strategies” ¹

1. Outlines and explains that implicit bias is inherent in any case where race is an issue
2. It exists regardless of political identification, or how sensitive/insensitive we might be to race & gender
 - a. Decisions = Police work for how witnesses ID, Judges & Juries reaching verdicts, at sentencing
 - i. Black defendants = 19% more likely than whites to be offered plea deals with jail/prison time
 - ii. Black & Latino defendants = “much more likely” offered deals with time for misdemeanor drug offenses
 - b. 2019 NYCLU study: (1) 59% stopped by NY police are Black, 29% are Latinx, and (2) Black individuals are more likely to be pulled over than white people, but less likely to have illicit drugs on them

Andre Vitale (now Trial Chief, Hudson Trial Region at New Jersey Office of the Public Defender): “If we don’t talk about bias, we’re not doing our jobs. [...] You have to be willing to take on institutional racism. We know it exists in the court system. We also know that when race is an issue, jurors try to be fairer. When race is not an issue, jurors tend to be much less careful.”

¹ <https://nysba.org/confronting-implicit-bias-in-the-courtroom/>

SECTION 2: *Self-reflection*

National Institutes of Health

5 Tips to Addressing Personal Biases:

- #1 Acknowledge your bias. Be honest with ourselves.
- #2 Learn more about you. Ask a trusted friend or colleague for candid feedback. Willingness to examine our own possible biases is an important step in understanding the roots of stereotypes and prejudice.

SECTION 2: *Self-reflection*

- #3 Extend your comfort zone. Personal biases can be combatted by getting to know people on an individual level. Biases can derive from stereotypes and generalizations; getting to know individuals can lead to proving them wrong.

Stereotype: something conforming to a fixed or general pattern
especially: a standardized mental picture that is held in common by members of a group and that represents an oversimplified opinion, prejudiced attitude, or uncritical judgment

Generalization: the act or process of generalizing

Generalizing: (a) to derive or induce (a general conception or principle) from particulars; or (b) to draw a general conclusion from

SECTION 2: *Self-reflection*

- #4 Take responsibility for mitigating bias. Once you become aware of potential biases, practice self-monitoring. Through self-monitoring and self-regulation, you can interrupt biased thinking and generate non-discriminatory behavior.
- #5 Admit mistakes. Don't be afraid to acknowledge, and apologize for, mistakes. Everyone makes a misstep on occasion, use mistakes as an opportunity to better yourself and strengthen your relationship with others.

SECTION 2: *Self-reflection*

Examples?

What do you do to check in with yourself?

SECTION 3: *Identifying and Addressing*

There is no 1 answer and no answer is more right than another, it all depends on the circumstances.

However, all actions must be educated and informed and that education *never* ends!

SECTION 3: *Identifying and Addressing*

What does this look like in our day to day?
(Questions to keep asking ourselves)

At the Courthouse

1. How are individuals greeted when they come in?
2. Are they asked if they need assistance?
3. Are staff members cordial?
4. Are individuals pointed in the right direction?
5. Are individuals pointed in the right direction?
6. Do staff make assumptions on what is being sought?

SECTION 3: *Identifying and Addressing*

Child Support Enforcement Unit Intake: WORKERS WITH PARENTS

1. Are all individual parents treated equally?
2. How much help is given before a case is assigned?
3. Knowing that workers may be assigned in a specific order, and that workers should not be micromanaged, is there any checking in to ensure equity?

Equality: the quality or state of being equal (of the same measure, quantity, amount, or number as another)

Equity: something that is equitable [having or exhibiting equity (dealing fairly and equally with all concerned)]

SECTION 3: *Identifying and Addressing*

Child Support Intake: PERCEPTION OF PARENT(S)

(Things to keep in mind)

1. In a world where people are taken advantage of, or prejudice has influenced their treatment, they may not be as patient.
2. By the time they get to you, they may have high expectations that have already been crushed.
3. You may not understand why they think the way they do based upon your experiences, but empathy is needed to put yourself in *their* shoes.
4. Do not perpetuate the self-fulfilling prophecy: They expect to be treated poorly, so they come in with “an attitude” or are uncooperative, but your reaction can affirm their beliefs

SECTION 3: *Identifying and Addressing*

In the Courtroom THE STAFF INTERACTING WITH LITIGANTS

1. Court Officer
2. Clerk/Clerical Staff
3. Jurist

In the Courtroom: ACTIONS OF PARENTS

1. How the parties respond may be based on many different factors, but how we react may be influenced by implicit bias.
2. Do you raise your voice? If so, see if it may be with any group of individuals more than another.
3. LGBTQIA: Misgendering? Not respecting pronouns? Assuming parties will be Mother + Father?
4. Refusal to learn someone's name or giving up on trying?

SECTION 3: *Identifying and Addressing*

National Institutes of Health's Strategies used to address bias in public and private industries at the organization level:

Create structure. Develop clear rating metrics, try to identify sources of ambiguity, and employ structured control management of decision-making measures when possible.

Evaluate decisions. Conduct external review of decisions in order to detect and correct potentially biased results.

Normalize the conversation around bias. Senior management should model ideal behaviors and discuss the importance of unconscious bias with their employees.

CONCLUSION

Now the work is up to us.

Any questions?

Examples (of yourself or others)?



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