Understanding and Addressing Implicit Bias

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OBJECTIVES

• Define and understand implicit bias
• Recognize the impact of implicit bias
• Understand the ethical duty to address implicit bias
• Identify strategies for addressing implicit bias
What is Implicit Bias?
**DEFINITION**

**Implicit (Unconscious) biases** are attitudes or social stereotypes that affect our understanding, actions, and decisions in an unconscious manner.

- Everyone holds unconscious beliefs
- It is more prevalent than conscious prejudice
- Maybe more prevalent when working under pressure
TYPES OF BIASES

CONFIRMATION BIAS
◦ Is the inclination to draw conclusions about a situation or person based on your personal desires, beliefs and prejudices rather than on unbiased merit.

ATTRIBUTION BIAS
◦ Is a phenomenon where you try to make sense of or judge a person’s behavior based on prior observations and interactions you’ve had with that individual that make up your perception of them.

CONFORMITY BIAS
◦ Is the tendency people have to act similar to the people around them regardless of their own personal beliefs or idiosyncrasies — also known as peer pressure.

AFFINITY BIAS
◦ Is the tendency people have to connect with others who share similar interests, experiences and backgrounds.
Video

Unconscious Bias at Work - Making the Unconscious Conscious
For example, a study published by Nextions, LLC, found that partners who reviewed a memo written by a fictional African American male associate discovered more errors and provided more negative comments than an identical memo written by a fictional white male associate. The study included 60 partners from 22 different law firms, with about one-third being women and one-third being racial/ethnic minorities. Half of the partners received the memo written by the African American male associate while the other half received the memo written by the white male associate. On a scale from 1 to 5, with “1” indicating a poorly written memo and “5” a well-written memo, the memo written by the African American male associate received an average rating of 3.2/5 while the memo written by the white male associate received 4.1/5. Given that the memos were identical and in fact the fictional associates had the same name, Thomas Meyer, the only factor that could account for the significant difference in their scores was their race.
Case Study

A 2002 study by the National Bureau of Economic Research looked at the issue of whether there was a preference for white candidates when comparing the observably similar resumes of African-American and white applicants. Researchers submitted resumes in response to help-wanted ads in Chicago and Boston newspapers and measured call-backs for interviews for each resume sent. The researchers manipulated the perception of race by randomly assigning "typically white" names (e.g., Emily, Ashley) to half of the resumes and “typically black” names (e.g., Lakisha, Tamika) to the other half. Results showed that for two identical individuals engaging in identical job searches, resumes with "typically white" names received 50% more callbacks than those with "typically black" names, and average "typically white"-named candidates received more callbacks than highly skilled "typically black"-named candidates.²
How does implicit bias impact our work?
Video

Implicit Bias in Preschool

If preschool teachers have implicit bias towards their preschoolers, what kind of biases do firms have towards their associates?
How does implicit bias impact our work?

- Perpetuates discrimination and precludes diversity
- Contributes to disengagement
- Interferes with recruitment and hiring decisions
- Impedes innovation and creativity
- Impacts retention and stunts career development
Experts believe that the mind’s unconscious is responsible for 80% or more of thought processes.³

“You can be two people at the same time:

◦ a conscious self who firmly believes you do not have any bias against others because of their social identities, and

◦ an unconscious self who harbors stereotypes or biased attitudes that unknowingly leak into decision-making and behaviors.”
Many firms pay all of their first-year associates the same starting salary and some firms operate in a lockstep model, yet the legal profession has one of the largest gender gaps in terms of compensation.4

Median pay for full-time women attorneys is only 77.4% of the median pay for their full-time men counterparts.5

According to some sources, women attorneys bill an average of 24 minutes more each day than their male counterparts do, but are billed at much lower rates.4
Women outnumber men in law school and comprise nearly half of law firm associates. Yet for almost two decades, the percentage of female partners at law firms has hovered around 20% for both equity and non-equity partners, and women leave the legal profession in significantly greater numbers than men. Studies show that a primary reason for this attrition is the harassment and gender bias experienced by many women in the legal profession.6

In a 2016 survey of the Florida Bar’s Young Lawyer’s Division, 43% of its women members reported experiencing gender bias related to such issues as salary discrepancies in comparison to male counterparts, insensitive comments by partners and clients, lack of advancement opportunities, and family leave policies.7
Racial and ethnic minority groups made up 14.5% of attorneys in 2015, while accounting for almost 30% of the population. In comparison to other professions, racial and ethnic minority groups made up 44.2% of software developers, 31.2% of physicians, and 27.3% of the overall labor force. As a percentage of law firm partners, minority groups made up 7.5% of all partners and 5.6% of equity partners despite making up more than 20% of law school graduates (and between 30-40% at elite law schools) since 2002.
According to the American Bar Association (ABA) annual report published in January 2017, women occupy 24.8% of General Counsel positions in the top Fortune 500 companies.\textsuperscript{8}

Among minority lawyers, 47 companies on the 2012 Fortune 500 list employed minorities as general counsel, which is an increase of 4 since 2011 and an increase of 10 since 2008.\textsuperscript{7}

Accenture asked 40 firms on its preferred provider list to fill out a lengthy diversity questionnaire and required the firms to take actions. Walmart sent a letter to the top 100 law firms notifying it would end or limit their relationship if diversity was not addressed.\textsuperscript{9}
Ethical Considerations
Do we have an ethical responsibility to identify and interrupt implicit bias?
Professional Conduct

Rule 8.4 of the American Bar Association’s Model Rule of Professional Conduct includes within its definition of professional misconduct a lawyer that “engage[s] in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.”
Helpful Strategies

I finally have a team that thinks like me.
INTERRUPT BIASES

ABA in partnership with the Minority Corporate Council Commission created a toolkit to assist law firms and in-house offices with a number of items to interrupt these biases in the following business systems:

1. Hiring
2. Assignments
3. Performance Evaluations
4. Compensation
5. Sponsorship Best Practice Recommendation

Toolkit uses a three step-step approach:

1. Use Metrics
2. Implement Bias Interrupters
3. Repeat as Needed
A Three-Step Approach (Interrupting Bias in Hiring):

1. Use Metrics
   a) Examine if a pattern exists between majority men, majority women, men of color and women of color. Include any other underrepresented groups as well.
   b) Track whether hiring qualifications are waived more often for some groups
   c) Track interviewers reviews and ratings
   d) Track candidates through the entire process

2. Implement Bias Interrupters
   a) Appoint Bias Interrupters
   b) Assemble a Diverse Pool
   c) Ask the same questions for every candidate, consider removing demographic information, culture fit (needs to be defined)

3. Repeat as Needed
   a) Tweak the Process
A Three-Step Approach (Interrupting Bias in Assignments):

1. Use Metrics
   a) What is “office housework” and “glamour work” in your department?
   b) Are there demographic patterns that gender and/or racial bias at play?
   c) Do women’s ratings fall after they have children?
   d) Do the same performance rating result in different promotions?

2. Implement Bias Interrupters
   a) Don’t ask for volunteers, studies show women are more likely to volunteer because of pressure
   b) Use admins (don’t ask attorneys to plan birthday parties, schedule meetings, order lunch)
   c) Announce your expectations and goals on glamour projects
   d) Develop a plan to train attorneys not ready for glamour projects

3. Repeat as Needed
   a) Tweak the Process
ADDITIONAL TOOLS FOR LAWYERS

◦ Seek Awareness
◦ Promote Sponsorship
◦ Engage in Mentorship
◦ Participate in Trainings (Cultural Competency and Professional/Skills Development)
◦ Connect through Networking/Opening Doors of Opportunity
◦ Attend Events/Cultural Events
◦ Continue the Dialogue
◦ Never Stop Self-Educating
BENEFITS OF DIVERSITY

1. TALENT
   a) Diversity Breeds Innovation
   b) Inclusive Teams

2. CLIENT RELATIONSHIP
   a) More Clients
   b) Meeting Needs

3. MARKETING
   a) Progressive
   b) In-House Perspective
RESOURCES


RESOURCES


7) Courageous Collaboration by Dana Tippin Cutler http://courageouscollaboration.mobar.org/

8) Practical tools: https://implicit.harvard.edu/implicit/index.jsp ; BiasInterrupters.org
CONTINUE THE CONVERSATION

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