SYMPOSIUM ON RACE AND ITS IMPACT ON THE PRACTICE OF LAW

THURSDAY, APRIL 28

and

REFERENCE GUIDE
AGENDA

9:00 a.m. Welcome
Eric Kearney, Esq.,
Attorney at Law &
Former Ohio State Senator,
Honorary Symposium Chair

Introduction
of Symposium
Topics
Sharon Davies, Esq.,
Director of the Kirwan Institute
for the Study of Race and Ethnicity
& Vice Provost for Diversity and
Inclusion at The Ohio State University

9:20 a.m. The Story of
Beavercreek
Ellis Jacobs, Esq.,
Senior Attorney,
Advocates for Basic Legal Equality

Sharon Davies, Esq.,
Moderator

10:00 a.m. The Influence
of Racism
in the Execution
of the Law
Alphonse A. Gerhardstein, Esq.,
Gerhardstein & Branch Co. LPA

10:30 a.m. Hidden Injustice:
Bias on the Bench
Video
William K. Weisenberg,
American Bar Association
Diversity and Inclusion 360 Commission
Paulette Brown, President
10:40 a.m.  Uncovering and Eliminating Implicit Bias in the Courtroom  

The Honorable Walter H. Rice, Federal Judge for the United States District Court for the Southern District of Ohio

William K. Weisenberg, Senior Policy Advisor Ohio State Bar Association, Moderator

11:00 a.m.  Exploring Confirmation Bias in Racialized Perceptions of Legal Writing and Lawyering Skills  

Kathleen Nalty, Esq., Kathleen Nalty Consulting, LLC

11:20 a.m.  Call to Action  

Eric Kearney, Esq.

11:30 a.m.  Closing  

John D. Holschuh Jr., Esq., President, Ohio State Bar Association

All registered guests, please join us for this afternoon’s Continuing Legal Education courses!
LET THE PEOPLE RIDE: BRINGING BUSES TO BEAVERCREEK AND REVITALIZING CIVIL RIGHTS ENFORCEMENT

By Ellis Jacobs, Advocates for Basic Legal Equality

When the city council voted 6-0 to reject the RTA’s application in March 2011, much of the larger community was shocked and disappointed. The Dayton Daily News, which had extensively covered the issue, wrote an editorial entitled, “B-creek vote against RTA embarrassing.” The editorial ended with these words, “...many recognize the objections council gave as a ruse for some people’s prejudices.”

That’s when the Leaders for Equality and Action in Dayton (LEAD) came to Advocates for Basic Legal Equality to see if we could help. LEAD is a church-based social action group that works to solve local problems. It was at the forefront of those encouraging the RTA to expand bus service to areas of high job growth like Beavercreek.

My co-counsel Stan Hirtle and I saw the significance of the problem and thought it was important to represent a community group that was actively working to address such a critical issue, particularly if we could do it in a way that would empower that group and expand its capability to address other issues in the future.
We agreed to investigate and discovered that over the years Beavercreek had received tens of millions of dollars of federal highway money to build and improve streets. In fact, at that time it had 14 projects scheduled to receive $10 million in federal funds. Indeed, the bridge over I-675, which the RTA bus would pass while driving from its existing stops to the proposed new stops in Beavercreek, was going to be widened using almost $1 million in federal money.

Despite the circumstances surrounding the Beavercreek decision, we knew that it would be difficult to prove that a public body intended to discriminate. So we began to consider filing an administrative complaint with the Federal Highway Administration (FHWA) focusing on the disparate impact of the city’s decision and decision-making process.

We filed that complaint with the FHWA and the U.S. Department of Transportation (DOT) in August 2011.

Read more in the March/April 2016 issue of Ohio Lawyer: www.ohiobar.org/NewsAndPublications/OhioLawyer/Pages/OhioLawyerOnline.aspx
Interrupting bias begins with awareness. Most people recognize that they have some measure of conscious bias for or against other groups, positive or negative attitudes and stereotypes, that they can either hide or express, given the context.

What few people realize is that everyone has unconscious or implicit bias, attitudes and stereotypes that the conscious mind is not even aware of, let alone able to control.

Our unconscious is highly permeable and soaks up information, including stereotypes, from a variety of sources without our conscious awareness or permission. Those stereotypes unintentionally seep into our thoughts and behaviors.
Effective ways to uncover your unconscious or implicit bias:

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<tr>
<th>AWARENESS - INTERVENTION STRATEGIES</th>
<th>ACTION STEPS</th>
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<tbody>
<tr>
<td>1. Take one or more implicit bias tests offered online, at no cost, through a website sponsored by Harvard University that measures reaction times and associations – <a href="http://www.projectimplicit.org">www.projectimplicit.org</a>.</td>
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<td>2. Keep a “Surprise Journal” – track your surprises during the week – assumptions or expectations you made about another person or group that turned out to be wrong. The gap between your expectation (stereotype) and reality is where you may harbor implicit bias.</td>
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<td>3. Determine which of your social identities are not salient (you don’t think about them on a daily basis or view the world through those identities). Those “blind spots” can cause you to make unintentional mistakes in decision-making in the workplace. Intentionally looking into those blind spots can also reveal hidden biases.</td>
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BEHAVIOR CHANGE

Once you are aware of areas of implicit bias, you can break the link between the bias and your behaviors. You might not be able to completely eliminate unconscious bias but you can engage in bias-breaking activities that will help keep biases from translating into behaviors.

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<tr>
<th>BEHAVIOR CHANGE - INTERVENTION STRATEGIES</th>
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<tr>
<td><strong>1. Increase your motivation to be objective and fair</strong></td>
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<td>• Research(^1) shows that people who are more motivated to be fair have less bias translated into behaviors. Studies(^2) show that intentionally activating the part of your brain that seeks to be fair, the rostral anterior cingulate cortex (rACC), helps reduce bias.</td>
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<td><strong>2. Expose yourself to counter-stereotypic examples</strong></td>
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<td>• Reframing: Notice when someone or something triggers a stereotype in your mind and actively oppose yourself by thinking of a counter-stereotype in that situation (i.e. “I see two Middle-Eastern men getting on the plane; maybe they are terrorists. No, I bet one is an accomplished doctor and the other is a world-renowned philanthropist. They are travelling to a conference to speak about Doctors Without Borders.”).</td>
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<tr>
<td>• Develop relationships with people who are different – cross-difference friendships, work relationships, mentor/sponsor relationships, etc.</td>
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<td>• Regularly expose yourself to counter-stereotypic individuals (i.e. male nurses, female construction supervisors, elderly athletes). Images (photos, mental visualizations) work too. Dr. Mahzarin Benaji, co-founder of the IAT, has rotating photographs on her computer screensaver that are counter-stereotypical, including one depicting a female construction worker feeding her baby during a work break.</td>
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<tr>
<td>• Another technique for people who like to play video games: create a game where you are on a team with people who are different from you and playing against a team comprised of people who are like you; collaborating with people in your “out-group” will help reduce bias.</td>
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\(^1\)www.ncbi.nlm.nih.gov/pubmed/16881764  
\(^2\)povertylaw.org/sites/default/files/images/clearinghouse-review/free/implicit-bias.pdf
| ACTION STEPS |
### BEHAVIOR CHANGE - INTERVENTION STRATEGIES

#### 3. Shift perspectives
- Put yourself in someone else’s shoes and look at the world through that perspective to notice things you may have never noticed before.
- If you’re really serious about reducing implicit racial bias, for example, research\(^3\) shows that picturing yourself as having a different race results in lower scores on the race IAT.
- Join a group that is different (i.e. be the male ally in the women’s ERG).

#### 4. Find commonalities with others
- Research\(^4\) shows that when you deliberately seek out areas of commonality with others, you will behave differently toward them and exhibit less implicit bias.

#### 5. Reduce stress, fatigue, cognitive overload, snap decisions
- Implicit bias leaks into decision-making and behaviors more easily when people are stretched to their limits and have to make quick decisions.
- Research\(^5\) demonstrates that engaging in mindfulness meditation reduces implicit bias.

#### 6. Decrease exposure to stereotype-inducing stimuli
- Change the TV channel/turn off the music if the program/song features stereotypes.

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\(^3\) [www.huffingtonpost.com/2014/12/15/virtual-body-swapping-racism_n_6328654.html](http://www.huffingtonpost.com/2014/12/15/virtual-body-swapping-racism_n_6328654.html)


\(^5\) [hbr.org/2014/12/mindfulness-mitigates-biases-you-may-not-know-you-have](http://hbr.org/2014/12/mindfulness-mitigates-biases-you-may-not-know-you-have)
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## STRUCTURAL CHANGE

### STRUCTURAL CHANGE - INTERVENTION STRATEGIES

1. **Increase accountability**
   - Institute systems where people have to count/measure outcomes so that no individuals or groups are systemically advantaged or disadvantaged.
   - Create systems where information is more transparent and processes are more objective (reduces implicit bias), including asking people to explain/justify their decisions.
   - Make a list of everyone in the group/section and go through the entire list to consider everyone before selecting people for opportunities (to avoid “top of mind” selections).
   - Empower everyone in the organization to point out bias to enhance organizational performance.

2. **Make decisions collectively and diversify decision-making groups**
   - Fill in blind spots and amplify the perspectives at the table by intentionally including people from different social identities and backgrounds to improve decision-making.

3. **Build support systems**
   - Help people reduce their stress, fatigue, mental overloads, and snap decisions by creating supportive structures and policies.

4. **Continuous education**
   - Offer regular training to raise everyone’s awareness and increase their knowledge about implicit bias, including tools for interrupting bias.

5. **Develop clear guidelines and criteria**
   - People implicitly move the goalposts when they are left to subjectively evaluate others who are different; interrupt this tendency with scorecards, pre-set interview questions, clear hiring and promotion criteria (decided beforehand), behavioral competencies, etc.

6. **Institutionalize programs that provide exposure to diverse exemplars (e.g., Speaker’s Bureaus, outside activities, poster campaigns).**
Awareness of implicit bias is not enough. Self-monitoring is also insufficient. Individual behavior changes often have to be supported and encouraged by structural changes in order to have the greatest impact on interrupting implicit biases.
Aligning Organizational Processes and Systems by Embedding Diversity and Inclusiveness

Law Firm Diversity-Inclusiveness Maturity Model © 2015
by Kathleen Nalty Consulting, LLC

The end game for an inclusiveness initiative is to reach a point where all in the organization are participating, all are held accountable through competencies, and everyone works to align the firm’s organizational processes and systems to create a fully inclusive organization. Individual competencies and action plans help drive systemic changes needed to embed diversity and inclusiveness throughout the firm and make it part of the DNA of the organization.

The first step in aligning organizational processes and systems is to find and eliminate any hidden barriers that have a disparate negative impact on career paths of attorneys—especially those from underrepresented groups who often are disproportionately impacted.

While conscious, overt discrimination may have diminished in the workplace, inequities have not vanished; they operate in the background and are invisible to most people in the organization. Modern-day bias (also called “second-generation bias”) is largely unconscious and is hidden in existing systems and processes:

They are common and mundane—and woven into the fabric of the organization’s status quo—which is why most people don’t notice them, let alone question them. But they create a subtle pattern of systemic disadvantage which blocks all but a few [people in underrepresented groups] from career advancement.¹¹⁵

How do law firm leaders identify these barriers? The Diversity-Inclusiveness Maturity Model outlined on the following page can be used to reveal barriers and as a way to benchmark diversity and inclusion efforts. Most law firms are actively seeking ways to take their D+I efforts to the next level but do not have a clear understanding of where they are currently, where they need to go, and what they need to do to get there. Once areas of weakness are identified, law firm leaders and
D+I committees can work together to create actionable plans for realizing a greater return on investment in D+I.

The maturity model below describes four distinct levels of diversity and inclusion in law firm.

A law firm at the lowest level—**Level 1**—does not recognize any value in diversity. A firm in this category has no diversity programs and thinks about diversity only when prompted by an outside entity (like a client). There are few (if any) female, LGBTQ, disabled, and racially/ethnically diverse attorneys in such firms.

A **Level 2** organization is committed to increasing diversity but mistakenly believes that traditional diversity efforts (e.g., recruiting, sponsorships) will lead to success. A law firm in this category is frustrated that efforts to recruit people from underrepresented groups result in a revolving-door syndrome with higher attrition rates for these groups. Poor retention leads to few female, LGBTQ, disabled, and racially/ethnically diverse attorneys (and staff) in positions of leadership or influence in this type of organization.

A **Level 3** organization recognizes that an inclusiveness initiative must be implemented to make diversity sustainable. Law firms in this category continue traditional efforts to increase diversity but work to restructure the diversity committee, get active leader investment, and develop inclusiveness-related goals and actions. Leaders and the D+I committee collaborate to find hidden barriers and implement structural, cultural, and behavioral changes to eliminate those barriers to success.

A **Level 4** law firm is fully inclusive; underrepresentation is a thing of the past since hidden barriers to success have been removed. Everyone has equitable opportunities and equal rates of retention and advancement. In law firms that are fully inclusive, everyone views diversity as a business driver and seeks to leverage all aspects of the firm’s diversity to maximize business results. Additionally, everyone in the firm is responsible for diversity and inclusion and works to embed it into everything they do every day. Benchmark your law firm’s progress in diversity and inclusiveness by using this maturity model to identify the level that represents your firm’s current status in the various categories. This will help firm leadership and management identify areas that require improvement.

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WRITTEN IN BLACK & WHITE EXPLORING CONFIRMATION BIAS IN RACIALIZED PERCEPTIONS OF WRITING SKILLS

Lead Researcher Dr. Arin N. Reeves, Nextions — 4/4/14

RESEARCH QUESTION: Given our finding in a previous study that supervising lawyers are more likely than not to perceive African American lawyers as having subpar writing skills in comparison to their Caucasian counterparts, we asked if confirmation bias unconsciously causes supervising lawyers to more negatively evaluate legal writing by an African American lawyer.

Nextions, along with the assistance of 5 partners from 5 different law firms, drafted a research memo from a hypothetical third year litigation associate that focused on the issue of trade secrets in internet start-ups. We followed a simple Question Presented, Brief Answer, Facts, Discussion and Conclusion format for the memo, and we deliberately inserted 22 different errors, 7 of which were minor spelling/grammar errors, 6 of which were substantive technical writing errors, 5 of which were errors in fact, and 4 of which were errors in the analysis of the facts in the Discussion and Conclusion sections.

This memo was then distributed to 60 different partners (who had previously agreed to participate in a “writing analysis study” from 22 different law firms of whom 23 were women, 37 were men, 21 were racial/ethnic minorities, and 39 were Caucasian). While all of the partners received the same memo, half the partners received a memo that stated the associate was African American while the other half received a memo that stated the associate was Caucasian. Specifically, the memo stated the following: Name: Thomas Meyer, Seniority: 3rd Year Associate, Alma Mater: NYU Law School, Race/Ethnicity: African American OR Name: Thomas Meyer, Seniority: 3rd Year Associate, Alma Mater: NYU Law School, Race/Ethnicity: Caucasian.
The 60 partners in the study received the memo electronically (an attached pdf) along with the research materials used in the preparation of the memo. The cover email thanked each of them for participating in a study on “writing competencies of young attorneys,” and asked them to edit the memo for all factual, technical and substantive errors. The partners were also asked to rate the overall quality of the memo from a 1 to 5, with “1” indicating the memo was extremely poorly written and “5” extremely well written. The partners were originally given 4 weeks to complete the editing and rating, but we had to extend deadline to 7 weeks in order to obtain more responses. 53 partners completed the editing and rating of the memo. Of the 53 completed responses, 24 had received the memo by the “African American” Thomas Meyer, and 29 had received the memo by the “Caucasian” Thomas Meyer.

The exact same memo, averaged a 3.2/5.0 rating under our hypothetical “African American” Thomas Meyer and a 4.1/5.0 rating under hypothetical “Caucasian” Thomas Meyer. The qualitative comments on memos, consistently, were also more positive for the “Caucasian” Thomas Meyer than our “African American” Thomas Meyer. For example, “Caucasian” Thomas Meyer “generally good writer but needs to work on…,” “has potential,” and “good analytical skills,” while “African American” Thomas Meyer “needs lots of work,” “can’t believe he went to NYU,” and was “average at best.”
CONFIRMATION BIAS  by Dr. Arin N. Reeves, Nextions

A mental shortcut – a bias – engaged by the brain that makes one actively seek information, interpretation and memory to only observe and absorb that which affirms established beliefs while missing data that contradicts established beliefs.

KEY TAKEAWAYS
There are commonly held racially-based perceptions about writing ability that unconsciously impact our ability to objectively evaluate a lawyer’s writing. Most of the perceptions uncovered in research thus far indicate that commonly held perceptions are biased against African Americans and in favor of Caucasians. These commonly held perceptions translate into confirmation bias in ways that impact what we see as we evaluate legal writing. We see more errors when we expect to see errors, and we see fewer errors when we do not expect to see errors.

RECOMMENDATIONS FOR NEXT ACTIONS
Infusing the point at which unconscious thought has greatest impact with objective mechanisms that force the conscious brain to add input, decreases unconscious bias greatly. We have worked with many employers to revise their formal and informal evaluation processes to be more infused with objective interrupters that compel unconscious biases to be filtered through conscious analysis, and we have seen many success stories. So, make the subjective more objective in order to make the unconscious more conscious.

EXAMPLE: In one law firm where we found that minority summer associates were consistently being evaluated more negatively than their majority counterparts, we created an interruption mechanism to infuse the subjective with objective.

We worked with the firm to create an Assignment Committee, comprised of 3 partners through whom certain assignments were distributed to the summer associates and through whom the summer associates submitted work back to the partners who needed the work done. When the work was evaluated, the partners evaluating the work did not know which associate had completed the work.

The assignments for this process were chosen judiciously, and there was a lot of work done to ensure buy-in from all partners. At the end of the summer, every associate had at least 2 assignments that had been graded blindly.
The firm then examined how the blind evaluations compared with the rest of the associate’s evaluations and found that the blind evaluations were generally more positive for minorities and women and less positive for majority men.

IDEAS FOR INCLUSION

- Distribute and discuss this study with senior lawyers in your organization to gather their reactions and perspectives. Ask them how they would recommend making the subjective more objective in order to reduce confirmation bias in their evaluation processes.

- If racial/ethnic/gender minorities are deemed to be subpar in writing skills, send out samples of a minority lawyer’s writing and a sample of a majority lawyer’s writing without any identifying information attached. Ask a few senior lawyers to evaluate both samples. Explore how the samples may be evaluated differently when the lawyer’s background is not available.

- Implement training on unconscious bias for everyone who is in an evaluative position. Our unconscious bias trainings have proven effective in reducing bias through raising awareness and insights into how unconscious biases operate and can be interrupted.

- If you offer writing assistance in the form of coaches, workshops and such, offer the assistance to everyone, not just racial/ethnic/gender minorities in order to prevent the reification of the bias.

Read more about this study at:
# DIVERSITY-INCLUSIVENESS MATURITY MODEL SCORECARD

<table>
<thead>
<tr>
<th>Category</th>
<th>Level 1 Complacency</th>
<th>Level 2 Diversity</th>
<th>Level 3 Diversity + Inclusion</th>
<th>Level 4 Full Inclusion</th>
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<tr>
<td>General Description of the Firm</td>
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<td>Focus of Efforts</td>
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<td>Prevailing Attitudes toward Diversity and Inclusion</td>
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<td>Typical Programs</td>
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<td>Talent Outcomes</td>
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<td>Rank in the Firm</td>
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<td>Hidden Barriers to Success</td>
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<td>Hidden Barrier #1—Networking</td>
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<td>Hidden Barrier #2—Information from Internal Networks</td>
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<td>Hidden Barrier #3—Work Assignments</td>
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<td>Hidden Barrier #4—Mentors and Sponsors</td>
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<td>Hidden Barrier #5—Training and Development</td>
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<td>Hidden Barrier #6—Substantive Client Contact</td>
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<td>Hidden Barrier #7—Access to Decision-Makers, Seat at the Table</td>
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<td>Hidden Barrier #8—Social Isolation</td>
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<td>Hidden Barrier #9—Feedback and Evaluations</td>
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<td>Hidden Barrier #10—Promotions</td>
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<td>Aggregate Score (add 4 column subtotals)</td>
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<td>Average Score (divide aggregate by 21 to get average on scale of 1–4)</td>
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PERFORMANCE EVALUATIONS

Another employment-focused study considered how confirmation bias can unconsciously influence the evaluation of employees’ work products. Nextions researchers crafted a fictitious legal research memo that 60 law firm partners reviewed under the guise of a “writing analysis study” (Reeves, 2014, p. 3). All partners received the same memo that contained deliberate errors. Half of the memos listed the author as a third year associate who was African American; the other half noted a Caucasian author. While all of the memos distributed were identical, the partners’ evaluation of the memo hinged on the perceived race of the memo author. Specifically, when the author was perceived to be African American, the evaluators found more of the embedded errors and rated the memo as lower quality compared to when the author was listed as Caucasian (Reeves, 2014). These findings suggest that unconscious confirmation bias affected the evaluators’ perceptions of the memo; despite the intention to be unbiased, “we see more errors when we expect to see errors, and we see fewer errors when we do not expect to see errors” (Reeves, 2014, p. 6). This study echoes other work discussing how confirmation bias can shape employment outcomes (Curcio, Chomsky, & Kaufman, 2014).

In a late 2013 article, utilizing a computer-based study to assess the effects of a participant’s workload, feedback (whether positive or negative), and the racial distance between group members, Triana, Porter, DeGrassi, and Bergman studied helping behaviors (Triana, Porter, DeGrassi, & Bergman, 2013). Results demonstrated a three-way interaction between amount of work, type of feedback and, racial distance. Specifically, individuals who were racially different from the group were less likely to receive help than their racially-similar counterparts when their workload was heavier and they received negative feedback. The authors made note of implicit bias as a potential cause for these results, as the participants were not consciously aware that they had treated team members differently.

PERCEPTIONS OF LEADERSHIP

With the existing literature establishing the association between perceptions of leadership and Whites (Rosette, Leonardelli, & Phillips, 2008; Sy et al., 2010), Gündemir and colleagues examined the implicit association between leadership roles and ethnicity of Dutch university students. As hypothesized, participants held stronger implicit associations between organizational leadership and Whitemajority group members versus ethnic-minority individuals (Gündemir, Homan, deDreau, & vanVugt, 2014). In the interest of decreasing the strength of this association, another study in this article found that increasing dual levels of identification (i.e., recategorizing individuals into an overarching, common identity) can help suppress implicit pro-White leadership biases in the context of employment promotions. The authors suggest that the association of valued leadership traits with White individuals may provide a partial explanation for the challenges nonWhites have experienced when seeking to rise to leadership positions.
What is Implicit Bias?

**MYTH:** Implicit bias is nothing more than beliefs people choose not to tell others. They know how they feel; they just know they cannot or should not say those beliefs aloud, so they hide them.

**BUSTED** Implicit bias differs from suppressed thoughts that individuals may conceal for social desirability purposes. **Implicit biases are activated involuntarily and beyond our awareness or intentional control.** Implicit bias is concerned with unconscious cognition that influences understanding, actions, and decisions, whereas individuals who may choose not to share their beliefs due to social desirability inclinations are consciously making this determination.

**MYTH:** Implicit bias is nothing more than stereotyping.

**BUSTED** Implicit biases and stereotyping are closely related concepts that can be easily confused. Both implicit biases and stereotypes are types of associations that can be positive and negative. While it is true that implicit associations may form as a result of exposure to persistent stereotypes, **implicit bias goes beyond stereotyping to include favorable or unfavorable evaluations toward groups of people.** Additionally, implicit biases are activated involuntarily, whereas stereotyping may be a deliberate process of which you are consciously aware.

**MYTH:** Having implicit biases makes me a bad person.

**BUSTED** 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. **No one is a "bad" person for harboring implicit biases; these are normal human processes that occur on an unconscious level.** Some implicit biases are even positive in nature. In terms of the existence of unwanted, negative implicit biases, fortunately our brains are malleable, thus giving us the capacity to mitigate their effect through research-based debiasing strategies.
How Does It Operate?

**MYTH:** I am not biased; I have diverse friends and I believe in equal treatment.

**BUSTED** Actually, we all have implicit biases. Research shows that all individuals are susceptible to harnessing implicit associations about others based on characteristics like race, skin tone, income, sex, and even attributes like weight, and accents. Unfortunately, these associations can even go as far as to affect our behavior towards others, even if we want to treat all people equally or genuinely believe we are egalitarian.

**MYTH:** I am fully aware of my thoughts and actions, and I make all of my decisions based on facts and evidence; therefore, implicit bias does not affect my behavior.

**BUSTED** By their very nature, implicit biases operate outside of our conscious awareness. Thus, it is possible that your thoughts and actions are being influenced by implicit associations beyond your recognition. In fact, researchers have found that sometimes implicit associations can more accurately predict behavior than explicit beliefs and thoughts.

**MYTH:** I’m Black; I can’t have bias against Black people. I’m also a woman, so it does not make sense that I would have implicit biases against my own sex.

**BUSTED** Researchers have discovered that many Americans, regardless of race, display a pro-White/anti-Black bias on the Implicit Association Test. Similarly, some research has documented the prevalence of pro-male/anti-female implicit biases in both men and women. This occurs because implicit biases are robust and pervasive affecting all individuals, even children. We are all exposed to direct and indirect messages throughout the course of our lifetime that can implicitly influence our thoughts and evaluations of others.

What Can We Do About It?

**MYTH:** If bias is natural, there is obviously nothing we can do about it.

**BUSTED** Just because bias is a natural tendency does not mean that we are helpless to combat it. Indeed, unwanted implicit biases can be mitigated. Researchers have demonstrated the efficacy of various intervention strategies, such as intergroup contact, perspective-taking, and exposure to counter-stereotypical exemplars. By taking the time to understand your personal biases, you can begin to mitigate their effects.

**MYTH:** It’s a waste of time to try to mitigate my implicit biases. They do not impact anyone anyways.

**BUSTED** Extensive research has documented the real-world effects of implicit biases in the realms of health care, criminal justice, education, employment, and housing, among others. For example, implicit biases can affect the quality of care a patient receives, the level of encouragement students receive from their teachers, whether or not an individual receives an interview or promotion, and more. Implicit biases have huge implications; thus, it is important to identify your own biases and then actively engage in debiasing techniques to address them.
Real World Implications:

**JOE IS A 33-YEAR-OLD WHITE MALE** that lives in small suburban community. He was recently given a promotion and used this opportunity to purchase a new vehicle. He celebrated the promotion and the purchase by spending his afternoon cruising though the surrounding neighborhoods and listening to music. Joe particularly enjoyed driving though the affluent, mainly White neighborhood of Straydenstown as he admired the avant-garde architecture and immaculate landscaping. He returned home for a celebration dinner with his family feeling relaxed and pleased with his joyride.

**SAMUEL IS A 35-YEAR-OLD AFRICAN AMERICAN MALE** who lives in a medium-sized suburb. Samuel was recently hired by a competitive marketing firm, and after years of saving, he was able to use his first paycheck to help purchase a new car. Samuel enjoyed his afternoon by testing out his new car and listening to music on a long drive around the area. Samuel made his way around Straydenstown and was pulled over by police Officer Webb.
AS ONE OF THE MORE ROBUST AREAS OF IMPLICIT BIAS RESEARCH IN 2014, criminal-justice related research addressed multiple contexts, encompassing both policing and courtroom procedures.

SHOOTER / WEAPONS BIAS

Reflecting on a decade of research focused on shooter bias, Correll and colleagues reviewed sociological, correlational, and experimental research on how a target’s race can influence the decision to shoot (see, e.g., Correll, Park, Judd, & Wittenbrink, 2002; Correll et al., 2007; Plant & Peruche, 2005; Plant, Peruche, & Butz, 2005; Sadler, Correll, Park, & Judd, 2012). Looking across this robust body of scholarship, much of which focuses on laboratory simulations, Correll et al. acknowledged differences in shooter bias results for studies with police officer participants as opposed to laypeople. Generally speaking, while community members showed implicit racial bias with respect to both the errors they committed (i.e., “shooting” an unarmed target or refraining from “shooting” an armed target in video game scenarios) and their response times (i.e., how quickly they decide whether to “shoot”), police officers’ biases only emerged with respect to response times. Seeking to explain how police officers’ refrained from allowing racial biases or stereotypes to affect their shooting decisions, Correll and colleagues considered the role of cognitive control, suggesting that even though officers’ may share laypersons’ inclinations to “shoot” Black targets, their ability to exercise cognitive control may allow them to minimize bias (Correll, Hudson, Guillermo, & Ma, 2014). Cognitive control may be impeded by circumstance such as high cognitive load, fatigue, and feelings of fear and high arousal (e.g., panic) (Correll et al., 2014). On the cognitive control front, related research suggests that “effortful, deliberative processing” can help mitigate the influence of implicit bias (J. Kang et al., 2012, p. 1177).

Though Officer Webb sincerely believed he possessed egalitarian values, his lack of interpersonal contact with members of other racial groups in this predominantly White neighborhood continued to enhance his negative implicit biases toward Blacks. Because of his implicit bias associating Black drivers with criminal activity, Officer Webb searched Samuel’s vehicle. Though no incriminating items were found in his possession, Samuel was eventually given a ticket.

Two weeks later, Samuel took an unpaid half-day at work to contest his ticket in front of a White female judge, Judge West. Though Judge West is a firm believer in upholding the highest degree of justice for all people in her courtroom, she is still susceptible to the influence of implicit bias in her decision making, specifically in the presence of an outgroup member. Because of her implicit racial biases, Judge West believed the officer’s report was more credible than Samuel’s testimony. She required Samuel to pay the full extent of the ticket as well as an additional court fee.
In light of the many studies cited in the previous paragraph demonstrating race related effects on decisions to shoot in mock police scenarios, researchers James, Klinger, and Vila desired to address limitations of previous findings’ external validity (James, Klinger, & Vila, 2014). To do so, they recruited 48 individuals to participate in an innovative study that immersed subjects in vivid, real-life scenarios. Participants viewed a life-sized movie portrayal of an event that a police officer would typically observe and made a decision on whether or not to “shoot” using a mock-gun that recorded reaction times when the trigger was pulled. During the trials, participants’ alpha waves were measured to provide information on perceived threat. Alpha wave analysis showed that participants exhibited higher levels of threat when encountering Black individuals than Hispanic or White individuals; however, the level of threat was not related to increased shooting behavior when encountering Black subjects. In fact, reaction times were slower when participants shot at a Black individual than a Hispanic or White individual (James et al., 2014). The authors mentioned counter-bias (e.g., reservations about shooting Black individual regardless of weapon possession due to one’s awareness of racial bias in the justice system) as a possible explanation for the counterintuitive results. Additionally, the authors noted that education on the parameters for what necessitates shooting behavior and exposure to realistic scenarios could mitigate the race-related disparities evidenced in other bodies of research (James et al., 2014).

**POLICE OFFICERS AND IMPLICIT BIAS TRAINING**

A 2014 report by The Portland Police Bureau acknowledged that traffic stop and search records exhibited race-related discrepancies (e.g. Blacks were searched at a higher rate than Whites) and documented the Bureau’s response (Stewart & Covelli, 2014). The Portland Police Bureau and the Community Police Relations Committee (CPRC) recommendations included a multifaceted training process directed toward decreasing officers’ implicit biases as the primary method for decreasing acts of racial profiling overall.

A report by Baumgartner, Epp, and Love analyzed data from 250,000 recorded traffic stops that occurred over 13 years in Durham, North Carolina. Findings revealed that Black males were stopped and searched at double the rate of White males and ten times the rate of White females (Baumgartner, Epp, & Love, 2014). The authors noted implicit bias as an explanation for the data, particularly if police held false beliefs about the rate at which minorities engage in criminal behavior. To advise their audience, the authors suggested that “all departments utilize the growing research on implicit bias and systemic and cultural racism to explore how the department on a whole is creating racially inequitable outcomes, in spite of intent to the contrary” (Baumgartner et al., 2014, p. 30).

**REDUCING IMPLICIT BIAS IN THE COURT SYSTEM**

With an eye towards minimizing the influence of implicit bias in the judicial system (Casey, Warren, Cheesman, & Elek, 2013; National Center for State Courts), a few contributions continued this conversation in 2014.
A new publication by The Sentencing Project on racial perceptions and punishment explored implicit bias as a source for Whites’ associations between minorities and crime and the legal ramifications that follow (Ghandnoosh, 2014). Taking a broad perspective, the author poignantly stated, “Disparities in police stops, in prosecutorial charging, and in bail and sentencing decisions reveal that implicit racial bias has penetrated all corners of the criminal justice system” (Ghandnoosh, 2014, p. 4). Additionally, the report provided an overview of key findings in implicit bias research and included a thorough description of the IAT and its implications for informing the literature, closing with a number of bias-reduction strategies for the media and researchers, as well as policymakers.

Negowetti helped bridge the gap between the growing significance of implicit bias in the cognitive science literature and its application in the legal community by conducting an empirical literature review (Negowetti, 2014). The article reviewed the methods by which implicit bias influences attorney and judicial decision making and provided personal anecdotes from legal professionals who have experienced the effects of implicit bias in their occupation. Negowetti concluded with an overview of ways to diminish the power of implicit bias in courtroom decisions, such as using effortful, deliberative processing (J. Kang et al., 2012), uplifting egalitarian motivations (Dasgupta & Rivera, 2006; Moskowitz, Gollwitzer, Wasel, & Schaal, 1999), and education and awareness raising on implicit bias (J. Kang et al., 2012).

In his article outlining racial disparities in the justice system, Clemons referenced specific cases and policies in terms of how they served to perpetuate implicit bias (Clemons, 2014). Special emphasis was given to NYPD’s “stop and frisk” policy for operating under the rationale of “reasonable suspicion” which allows key members of the legal system the discretion to act on their biases (Clemons, 2014). Clemons closed the article by acknowledging that efforts to decrease instances of racial disparity in the justice system will ultimately require the courts to consider implicit bias when interpreting cases regarding equal protection, and he calls for more research to support this notion.

Finally, Sterling dedicated an entire section to the implications of implicit bias in her recent work regarding the history of the right to counsel and the overrepresentation of minorities in the criminal justice system, arguing that public counsel representation is inadequate to address racial and systemic injustice (Sterling, 2014). Here, she outlined some of the relevant research on implicit racial bias in the criminal justice system and provides two solutions to decreasing the effects of bias. First, Sterling described the use of narrative as a method for transforming the jurors’ perception of a defendant from a stereotyped version to multi-dimensional view of the individual. Additionally, she advocated for the use of jury instructions that explicitly describe implicit bias and how jurors can act against it, which resonates with previous articles by scholars encouraging implicit bias education and awareness for those who serve on juries (Bennett, 2010; Larson, 2010; Reynolds, 2013; Roberts, 2012).
Vulnerable Decision Points for Adults: Slow Down (When It’s Safe)

A specific decision that is more vulnerable to effects of implicit bias:

- Ambiguous judgments
- Snap decisions (including fatigue, anger)
- Unconscious behaviors

(McIntosh, Girvan, Horner, & Smolkowski, 2015)
THE 6 STAGES OF CULTURAL COMPETENCE IN LAWYERS

By Jatrine Bentsi-Enchill, Esq. — 11/17/05

From the American Bar Association’s Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System

How culturally competent are you?

The most effective way to determine your level of cultural competence is to take an assessment. Absent such an assessment, Dr. Milton Bennett, who developed the Developmental Model of Intercultural Sensitivity provides a good starting place to review current perspectives around culture and difference. The model outlines 6 stages that give insight into an individual’s level of intercultural sensitivity and cultural competence.

THE 6 STAGES OF CULTURAL COMPETENCE

STAGE ONE: Denial

STAGE TWO: Defense

STAGE THREE: Minimization of Difference

STAGE FOUR: Acceptance of Difference

STAGE FIVE: Adaptation to Difference

STAGE SIX: Integration of Difference

For more details on each stage of cultural competence visit: http://esqdevelopmentinstitute.blogspot.com/2005/11/6-stages-of-cultural-competence-in.html

Based on the Developmental Model of Intercultural Sensitivity developed by Dr. Milton Bennett
RESOURCES

TEST YOURSELF

Project Implicit
Implicit Association Test (IAT) sponsored by Harvard University
https://implicit.harvard.edu/implicit/takeatest.html

TOOLKITS

American Bar Association – Section of Litigation, Task Force on Implicit Bias

National Center for State Courts
Helping Courts Address Implicit Bias: Resources for Education
http://bit.ly/1fZyI9e

Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University
State of the Science: Implicit Bias Review
http://bit.ly/1LQM6Xr

Kathleen Nalty Consulting, LLC – (303) 770-2563 (Denver, CO)
kathleennaltyconsulting.com

Dr. Arin N. Reeves, Nextions – (312) 922-0226 (Chicago, IL)
www.nextions.com

EDUCATIONAL VIDEOS

Managing Unconscious Bias
Facebook employee training video (2015)
http://managingbias.fb.com

Continuing the Dialogue – The Neuroscience and Psychology of Decision-making –
A New Way of Learning
Judicial Council of California (October 28, 2009)

You’re More Biased Than You Think with Google video embedded
Fast Company
Porter, Jane.
http://bit.ly/1LD5gD1