This workshop was held at the 2019 Equal Justice Conference in Louisville, Kentucky.

Title:

I Get Diversity, But What is Inclusion? Recognizing Bias in Legal Aid

Presenters:

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Rhodia Thomas, MidPenn Legal Services, Harrisburg, PA
Miguel Willis, Law School Admission Council, Newtown, PA

This interactive workshop will examine the impact of implicit bias and explore how implicit bias manifests in our daily interactions. Strategies will address how implicit bias can manifest itself in the civil legal aid community and provide a framework for fostering and building inclusive and difficult dialogue.
I GET DIVERSITY, BUT WHAT IS INCLUSION?
Recognizing Bias in Legal Aid and Fostering Inclusive Dialogue
PANELISTS

Dina Shafey Scott, Legal Services Corporation, Training and Technical Assistance Program Manager

Rhodia Thomas, Mid Penn Legal Services, Executive Director
SESSION OBJECTIVES

1. UNDERSTAND THE CASE FOR INCLUSION
2. SHOW HOW IMPLICIT BIAS MANIFESTS IN LEGAL AID COMMUNITY
3. SHARE STRATEGIES TO INTERUPT BIAS
4. PRACTICE THROUGH DIALOGUE AND DISCUSSION
SELF CARE

USE “I” STATEMENTS

ALWAYS LEARNING

MAKE ROOM, TAKE ROOM

DISCOMFORT AND RISK
BASED ON YOUR EXPERIENCE OF HAVING CONVERSATIONS RELATED TO DIVERSITY AND INCLUSION, COMPLETE THE FOLLOWING STATEMENTS:

I FEEL MORE COMFORTABLE WHEN...

I FEEL LESS COMFORTABLE WHEN...

PROVIDE MULTIPLE RESPONSES!
Diversity and inclusion

**DIVERSITY**
Diversity is being asked to the party

**INCLUSION**
Inclusion is being asked to dance once at the party.
<table>
<thead>
<tr>
<th>THE CASE FOR INCLUSION</th>
<th>SOCIAL JUSTICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECONOMIC</td>
<td>MARKET</td>
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Implicit bias

Refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
Implicit Bias

- Pervasive and everywhere
- Do not necessarily align with our declared beliefs
- Often, favor our own in-groups
- Directly tied to microaggressions
How implicit bias can manifest itself in the civil legal aid community

• **In Hiring Practices**
  • The Recruitment and Hiring process See: *Bertrand & Mullainathan,* “Are Emily and Greg More Employable than Lakisha and Jamal?”
  • Gender See: Goldin and Rouse, *Orchestrating Impartiality: The Impact of “Blind” Auditions on Female Musicians*
  • Race
  • Age
  • Parental Status

• **With Employees**
  • Mentoring
  • Job Assignments
  • Training Opportunities
  • Performance Reviews
  • Promotions
How does Implicit Bias show up in applicants and Clients of Services?

• Economic status
• Dismissing the idea of client Board members only to embrace it when offered by attorney Board members
• Negative Facial expressions when interacting with applicants/clients
• Ability
• Education
• Elitism (I’m the attorney you are not)
• Age, Race, Gender, Ethnicity
• Language
• Citizenship status
• Parental Status
• Treatment in the judiciary
Where does Implicit Bias hang out?

▪ Physical Space
▪ Content (Mission, Website, policies/procedures, Social Media)
▪ Assessment
▪ Intake questions
▪ Tracking of social identity (macro/micro) dynamics
▪ Where else? And lots of other places/spaces/ways...
Typical Ways of Interacting with Diversity Issues

Maintain Norms:
- Majority wins
- Those with power win

Dismantle Norms:
- Eradicate evidence of difference (we are all the same)

Inclusion (Change or engage with norms):
- Reimagining our office
- Allowing for difference
Fostering Inclusive Dialogue Framework

- Acknowledge
  - Issue of Exclusion
  - Identity Matters
  - Need to Ask Tough Questions
- Prepare
  - Explore Solutions
  - Who Should Be There?
  - Set Goals
- ACT/Engage
  - Were Goals Met?
  - Process & Outcome
  - Change is Slow
  - Transparency
- Track
  - Follow-Through
  - Cross Bridge Halfway
  - Slow It Down
  - Dialogical (not debate)
Legal Aid and Implicit Bias Scenario

In small groups please listen to and observe the details of identity in the following case study scenario. In your smaller groups respond to the following questions:

1. What is the issue of identity or exclusion happening here?
2. What are the perceived instances of implicit bias and why may the perceived this way?
3. If you are a bystander to this bias how would approach situation?
4. Are there any other issues that you are identifying?
5. How would you enter into that dialogue if you were the recipient of this microaggression or a bystander to this microaggression?
Strategies to promote diversity & inclusion in Legal Aid

▪ Mirror test/rule in hiring

▪ Address unconscious bias in and before hiring

▪ Build teams that reflect clients

▪ Reflect on shifting and intersecting data points

▪ Advocate for internal decision making
ACTIVE STRATEGIES FOR INTERRUPTING OUR UNCONSCIOUS BIASES

- Empathy and Mindfulness (Brenae Brown)
- Self-Assess individual Bias (i.e. Harvard's Project Implicit)
- Exposure and Positive Exemplars
- Perceptive Taking (Fostering inclusive dialogue framework)
- Action: Auditing current spaces where implicit bias may reside (i.e. TEXTIO, Rainforest QA, Kanjoya - Ultimate Software, Diverst)
COMMON PITFALLS

“Similarity” (not wanting/allowing for difference)

Focus only on interpersonal (vs. policy, practice, etc.)

Focus on intent (vs. impact)

How far we have come (vs. How far we have to go)
Takeaway: we have to do the work!

WHAT IS ONE THING YOU WILL STOP DOING?

WHAT IS ONE THING YOU WILL START DOING?

WHAT IS ONE THING YOU LEARNED TODAY?
Resources

• Take the Harvard Project Implicit Test
• Practice your dialogue with included Interrupting Microaggressions tool by Peters & Bryant, “Talking about Race” in Transforming Legal Education tool.
• Practice Dialogue not Debate using this facilitation tool
<table>
<thead>
<tr>
<th>MICROAGGRESSION EXAMPLE AND THEME</th>
<th>THIRD PARTY INTERVENTION EXAMPLE</th>
<th>COMMUNICATION APPROACH</th>
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<td>Alien in One’s Own Land To a Latino American: “Where are you from?”</td>
<td>“I’m just curious. What makes you ask that?”</td>
<td>INQUIRE: Ask the speaker to elaborate. This will give you more information about where s/he is coming from, and may also help the speaker to become aware of what s/he is saying. KEY PHRASES: <em>Say more about that.</em> <em>Can you elaborate on your point?</em> <em>It sounds like you have a strong opinion about this. Tell me why.</em> <em>What is it about this that concerns you the most?</em></td>
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<td>Ascription of Intelligence To an Asian person, “You’re all good in math, can you help me with this problem?”</td>
<td>“I heard you say that all Asians are good in math. What makes you believe that?”</td>
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<td>Color Blindness “I don’t believe in race.”</td>
<td>“So, what do you believe in? Can you elaborate?”</td>
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<td>Myth of Meritocracy “Everyone can succeed in this society, if they work hard enough.”</td>
<td>“So you feel that everyone can succeed in this society if they work hard enough. Can you give me some examples?”</td>
<td>PARAPHRASE/REFLECT: Reflecting in one’s own words the essence of what the speaker has said. Paraphrasing demonstrates understanding and reduces defensiveness of both you and the speaker. Restate briefly in your own words, rather than simply parroting the speaker. Reflect both content and feeling whenever possible. KEY PHRASES: <em>So, it sounds like you think...</em> <em>You’re saying... You believe...</em></td>
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<td>Pathologizing Cultural Values/Communication Styles Asking a Black person: “Why do you have to be so loud/animated? Just calm down.”</td>
<td>“It appears you were uncomfortable when ___ said that. I’m thinking that there are many styles to express ourselves. How can we honor all styles of expression—can we talk about that?”</td>
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<td>Second-Class Citizen You notice that your female colleague is being frequently interrupted during a committee meeting.</td>
<td>Responder addressing the group: “___ brings up a good point. I didn’t get a chance to hear all of it. Can ___ repeat it?”</td>
<td>REFRAME: Create a different way to look at a situation. KEY PHRASES: <em>What would happen if...</em> <em>Could there be another way to look at this...</em> <em>Let’s reframe this...</em> <em>How would you feel if this happened to your...</em></td>
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<td>Pathologizing Cultural Values/Communication Styles To a woman of color: “I would have never guessed that you were a scientist.”</td>
<td>“I’m wondering what message this is sending her. Do you think you would have said this to a white male?”</td>
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<td>Second-Class Citizen Saying “You people...”</td>
<td>“I was so upset by that remark that I shut down and couldn’t hear anything else.”</td>
<td>USE IMPACT AND “I” STATEMENTS: A clear, nonthreatening way to directly address these issues is to focus on oneself rather than on the person. It communicates the impact of a situation while avoiding blaming or accusing the other and reduces defensiveness. KEY PHRASES: <em>I feel _____ (feelings) when you said or did ____ (comment or behavior), and it (describe the impact on you).</em></td>
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<td>Use of Heterosexual Language Saying “That’s so gay.”</td>
<td>“When I hear that remark, I’m offended too, because I feel that it marginalizes an entire group of people that I work with.”</td>
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<td>Second-Class Citizen A woman who is talked over. Making a racist, sexist or homophobic joke.</td>
<td>She responds: “I would like to participate, but I need you to let me finish my thought.”</td>
<td>USE PREFERENCE STATEMENTS: Clearly communicating one’s preferences rather than stating them as demands or having others guess what is needed. KEY PHRASES: <em>What I’d like is...</em> <em>It would be helpful to me if...</em></td>
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## Tool: Interrupting Microaggressions

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<th>Third Party Intervention Example</th>
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<td><strong>Color Blindness</strong>&lt;br&gt;&quot;When I look at you, I don't see color.&quot;&lt;br&gt;Myth of Meritocracy&lt;br&gt;&quot;Of course he'll get tenure, even though he hasn't published much—he's Black!&quot;</td>
<td><strong>&quot;So you don’t see color. Tell me more about your perspective. I'd also like to invite others to weigh in.&quot;</strong>&lt;br&gt;<strong>&quot;So you believe that _____ will get tenure just because of his race. Let's open this up to see what others think.&quot;</strong></td>
<td><strong>RE-DIRECT</strong>&lt;br&gt;Shift the focus to a different person or topic.&lt;br&gt;(Particularly helpful when someone is asked to speak for his/her entire race, cultural group, etc.)&lt;br&gt;<strong>KEY PHRASES:</strong>&lt;br&gt;&quot;Let's shift the conversation...&quot;&lt;br&gt;&quot;Let's open up this question to others....&quot;</td>
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<td><strong>Myth of Meritocracy</strong>&lt;br&gt;In a committee meeting:&lt;br&gt;&quot;Gender plays no part in who we hire.&quot;</td>
<td><strong>&quot;How might we examine our implicit bias to ensure that gender plays no part in this and we have a fair process? What do we need to be aware of?&quot;</strong>&lt;br&gt;<strong>&quot;How does what you just said honor our colleague?&quot;</strong>&lt;br&gt;<strong>&quot;What impact do you think this has on the class dynamics? What would you need to approach this situation differently next time?&quot;</strong></td>
<td><strong>USE STRATEGIC QUESTIONS</strong>&lt;br&gt;It is the skill of asking questions that will make a difference. A strategic question creates motion and options, avoids &quot;why&quot; and &quot;yes or no&quot; answers, is empowering to the receiver, and allows for difficult questions to be considered. Because of these qualities, a strategic question can lead to transformation. Useful in problem-solving, difficult situations, and change efforts.&lt;br&gt;<strong>KEY PHRASES:</strong>&lt;br&gt;&quot;What would allow you...&quot;&lt;br&gt;&quot;What could you do differently....&quot;&lt;br&gt;&quot;What would happen if you considered the impact on...&quot;</td>
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<td><strong>Second-Class Citizen</strong>&lt;br&gt;In class, an instructor tends to call on male students more frequently than female ones.</td>
<td>To the adviser: &quot;I wanted to go back to a question you asked yesterday about her plans for a family. I'm wondering what made you ask that question and what message it might have sent to her.&quot;&lt;br&gt;To the student: &quot;I heard what your advisor said to you yesterday. I thought it was inappropriate and I just wanted to check in with you.&quot;</td>
<td><strong>REVISIT</strong>&lt;br&gt;Even if the moment of a microaggression has passed, go back and address it. Research indicates that an unaddressed microaggression can leave just as much of a negative impact as the microaggression itself.&lt;br&gt;<strong>KEY PHRASES:</strong>&lt;br&gt;&quot;I want to go back to something that was brought up in our conversation/meeting/class ....&quot;&lt;br&gt;&quot;Let's rewind _____ minutes...&quot;</td>
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| **Traditional Gender Role Prejudicing and Stereotyping**<br>In the lab, an adviser asks a female student if she is planning to have children while in postdoctoral training. | **CONSIDERATIONS:**<br>- The communication approaches are most effective when used in combination with one another, e.g., using impact and preference statements, using inquiry and paraphrasing together, etc.<br>- Separate the person from the action or behavior. Instead of saying "you're racist", try saying "that could be perceived as a racist remark." Being called a racist puts someone on the defensive and can be considered "fighting words."
- Avoid starting questions with "Why"—it puts people on the defensive. Instead try how "what made you ....."
- When addressing a microaggression, try to avoid using the pronoun "you" too often—it can leave people feeling defensive and blamed. Use "I" statements describing the impact on you instead of refer to the action indirectly, e.g., "when _____ was said..." or "when _____ happened..."*
- How you say it is as critical as what you say, e.g., tone of voice, body language, etc. The message has to be conveyed with respect for the other person, even if one is having a strong negative reaction to what's been said. So it is helpful to think about your intention when interrupting a microaggression—e.g., do you want that person to understand the impact of his/her action, or stop his/her behavior, or make the person feel guilty, etc. Your intention and the manner in which you execute your intention make a difference.
- Sometimes humor can defuse a tense situation. | |