

Implicit Bias: What is it? How to interrupt it?

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What we'll be discussing...

- What is Implicit Bias?
 - Definition
- What is Implicit Bias?
 - Personal Demonstration
- The hat game:
 - Who does society say we are?
 - How does society treat us based on the hat/label we wear?
 - How does that create or illustrate implicit bias?
- Stereotypes:
 - what do they teach us?
 - Why does it matter?

Things to Think About...

- Now that we know what implicit bias “is,” what are the types of implicit biases?
- How did we acquire our biases?
- Where do we encounter biases in our daily lives?
 - Bias in the profession
 - Bias in Society
- Ways we can interrupt bias:
 - Specific ways to recognize and interrupt bias in our daily lives
- Ways the legislature has tried/currently tries to interrupt bias:
 - Equal Pay Act
 - Fair Chance Act
 - Affirmative Action

**"The way to stop
discrimination on the
basis of race is to stop
discriminating on the
basis of race."**

Chief Justice John Roberts,
2007

Implicit Bias: What is it?



“the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner”

Hat Exercise – Part 1

7 hats

7 volunteers



What is Implicit Bias?

You see someone and immediately make certain assumptions...

What/who am I?

- Things you can see:
 - Black
 - Woman

- Things you can't see but can guess at:
 - Attorney
 - Middle-aged
 - Latina/Latinx-adjacent (last name)

What is Implicit Bias?

What/who am I?

- Things you may never know unless I tell you:
 - I speak Spanish/native speaker
 - I was born in another country; immigrant

What conclusions can you draw?

- Depends on what your own experiences, background and biases are.
- May dislike black people or women or immigrants..
- May think favorable of people who are multi-lingual...

Who and what people are can affect their lives, their prospects, their compensation, etc.



Hat Exercise – Part 2

7 labels

What have we learned?

- ❖ Everyone carries implicit biases around.
- ❖ Bias is not a white thing or black thing or male thing or female thing.
- ❖ We have been socialized in a way that guarantees we ALL have biases.
- ❖ Good people can carry biases. **“Experts believe that the mind’s unconscious is responsible for 80% or more of thought processes.** Yet the conscious mind is simply not capable of perceiving what the unconscious is thinking. 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.” <https://ncwba.org/wp-content/uploads/2016/11/Strategies-for-Confronting-Unconscious-Bias-The-Colorado-Lawyer-May-2016.pdf>

Angry _____ Woman

Poor _____ Trash

Drunken _____

Bad Stereotypes

Cheap, Penny-pinching _____

Bad _____ Driver

Dumb _____

_____ Mafia/Mob

_____ Terrorist

Thug/Criminal _____

Illegal _____ Immigrant

Also Good Stereotypes/Biases

Asians are _____

Black people are good at _____

White people are _____

Jews are good _____

Mexicans are _____

Black don't _____

Four Types of Implicit Biases

Confirmation Bias – paying more attention to information that confirms existing belief

Attribution Bias – making more favorable assessments of behaviors and circumstances for those in “your” group (giving them the benefit of the doubt)

Availability Bias – making judgments from “top of mind” information, i.e. automatically thinking of a man when someone speaks of a “leader” or says “judge.”

Affinity Bias – Creation of a “mirrortocracy,” instead of a meritocracy. Giving opportunities to only those who look like you.

<https://ncwba.org/wp-content/uploads/2016/11/Strategies-for-Confronting-Unconscious-Bias-The-Colorado-Lawyer-May-2016.pdf>

Ways we're exposed to and absorb implicit biases...

How we get biases in the first place?



Ways we're exposed to and absorb implicit biases...



We're exposed from childhood to racist/biased Imagery.



Why should we care???



Bias Within the Legal Profession

- Male partners earn 44% more.
- 85% female attorneys of color quit Big Law
 - 7 years
 - “no choice”
 - lack of support and mentorship

Women Summer Associates

The representation of women in the summer associate ranks reflects their representation among recent law school graduates.



In 2015, women comprised 47.78% of summer associates.



Average starting salary for women graduates of any age at their first post-graduation job was \$79,000 compared to \$84,000 for male graduates, reflecting the kinds of jobs taken by women.

Minority Partners



Minority Partners

Just 7.52% of partners at major law firms are minorities.



■ Minority Women Partners (3%) ■ Minority Men Partners (5%)
■ Non-Minority Partners (92%)

Equity Partners



■ Minority (6%) ■ Non-Minority (94%)

vs.

Non-Equity Partners



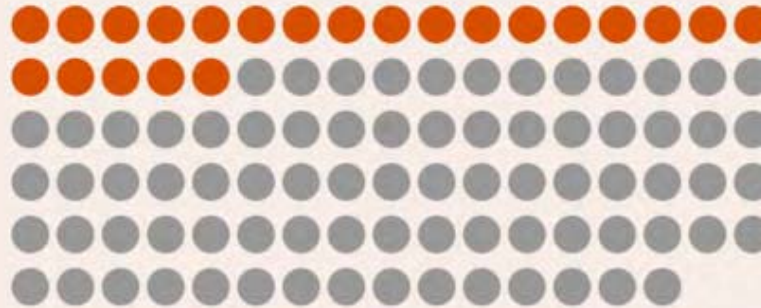
■ Minority (9%) ■ Non-Minority (91%)

Because minority women leave law firms at a higher rate than minority men, only 2.5% of all partners are minority women.

Minority Associates



Minorities make up almost 22% of associates in large law firms.



■ Minority (22%) ■ Non-Minority (78%)

Recent gains in minority representation at the associate level can be largely attributed to an increase in Asian associates who now make up nearly 11% of all associates.

Representation of African-Americans at the associate level has declined every year since 2010.

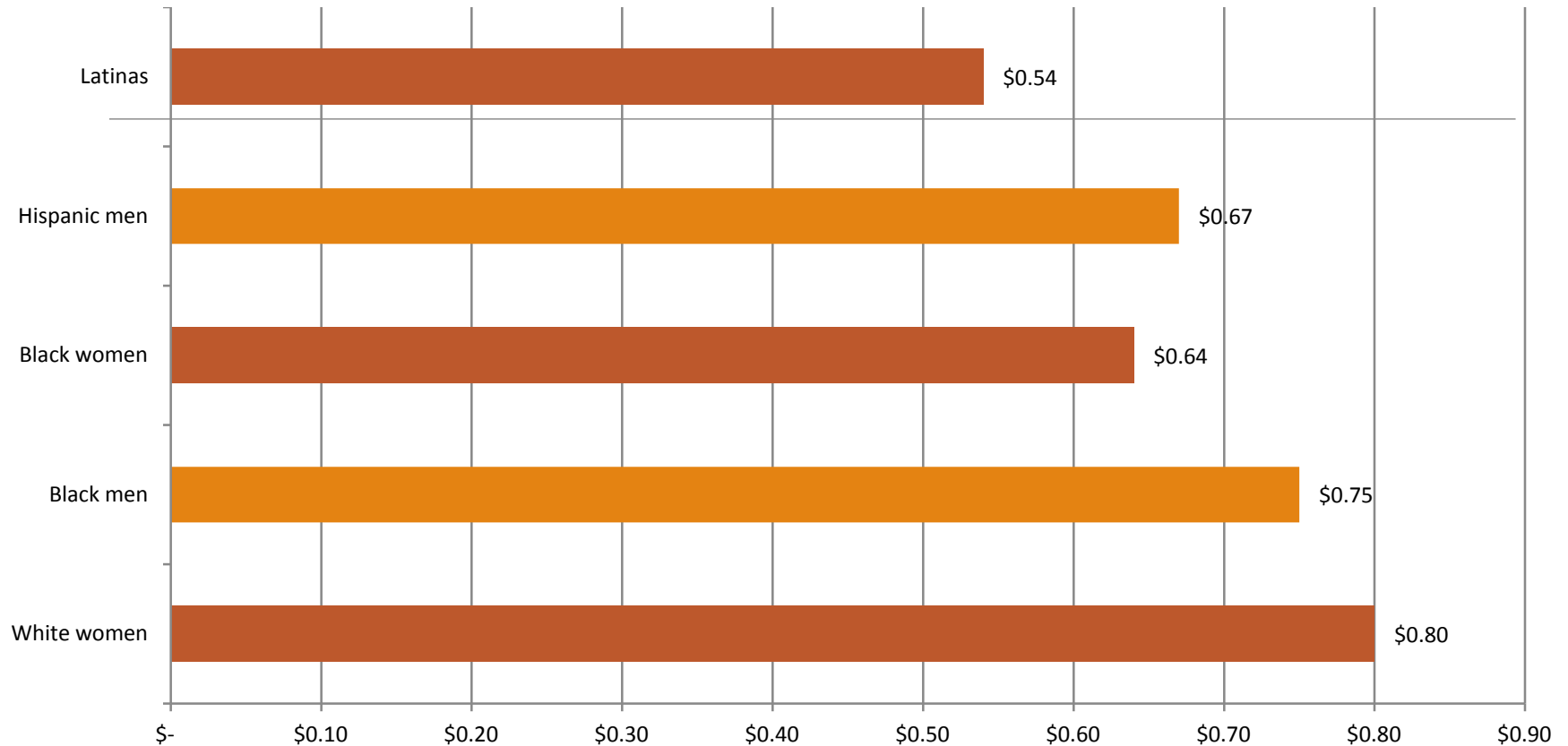
Hispanics now slightly outnumber African-Americans among associates at 4.28%, however, Hispanic representation has increased only one half of one percent since 2009.

The Bench in New York

“Women account for 52% of New York’s total population, yet on the bench only 35% are women. In the First Department the Caucasian population comprises only 44% of the total population, but represents 65% of the judiciary, with 46% women. In the Second Department, Caucasians comprise 59% of the total population but represent 78% of the judiciary, with 38% women judges. Caucasians comprise 89% of the total population in the Third Department but account for 99% of the judiciary, with only two minorities serving on the bench in the entire Department, and no minorities on the Supreme Court. Women are also vastly under-represented, comprising only 19% of the judiciary in the Third Department. In the Fourth Department, Caucasians comprise 85% of the population and 94% of the judiciary, with 26% women judges.”

http://www.nysba.org/Sections/Judicial/2014_Judicial_Diversity_Report.html

Bias Outside the Legal Profession



It will take women until 2059 to reach pay parity



Incarceration Rates for African-Americans is six times that of Whites.

LGBTQ people are twice as likely to be victims of hate crimes.



Only 21 states have anti-discrimination statutes to protect LGBTQ individuals. Transgendered individuals can be denied employment.

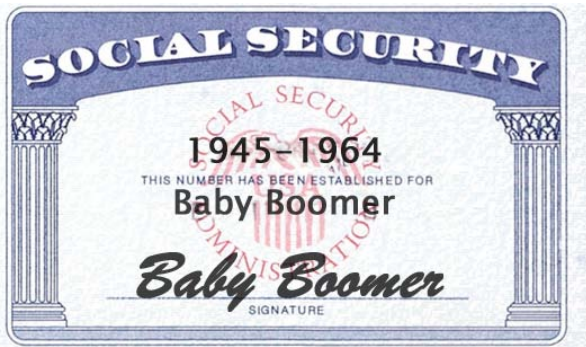
Implicit Bias and Law Enforcement

“By far the most extensive empirical research demonstrating the effects of implicit racial bias on the American criminal justice system concerns the individuals on its front lines: law enforcement officers. Police officers' patrol activities regularly demand the kinds of decisions most affected by implicit racial bias; officers must make lightning-quick, high-stakes judgments about individuals' propensity for criminality and violence with very little individuating information. Effective police officers frequently speak of relying on their "gut instincts" and "hunches"--inarticulable suspicions based on split-second observations of individuals' appearances and behaviors in determining whom to stop for further investigation. Of course, such hunches are highly susceptible to influence from subconscious associations between race--an immediately identifiable characteristic--and criminality. Not surprisingly, therefore, the data consistently demonstrate that police officers stop and search black Americans at disproportionate rates.

“Even more disturbingly, a number of empirical studies demonstrate that implicit racial bias influences police decisions about whether to use deadly force against a suspect.”

Blind injustice: the Supreme Court, implicit racial bias, and the racial disparity in the criminal justice system, *American Criminal Law Review*, Summer 2014

The Changing Demographics



1 in 45
Children



10,000 retire everyday



50.2% children born are minorities

**Disabled
Veterans
Re-entering
Civilian life**



All of the members included in these groups are considered diverse.

Implicit Bias is Pervasive

Affects our professional and personal lives and must be confronted and interrupted every chance we get.

http://www.huffingtonpost.com/2014/09/02/jose-joe-job-discrimination_n_5753880.html

<http://gap.hks.harvard.edu/orchestrating-impartiality-impact-%E2%80%9Cblind%E2%80%9D-auditions-female-musicians>

http://www.abajournal.com/news/article/hypothetical_legal_memo_demonstrates_unconscious_biases

Statutory Attempts at Interrupting Bias

- Affirmative Action
- Civil Rights Act
- Equal Pay Act
- Fair Chance Act
- Laws banning employers from asking about past salary
 - Illinois, Maine, Maryland, New Jersey, New York, Pennsylvania, Rhode Island, Vermont

Strategies for interrupting implicit bias

- Don't be afraid to look bias in the eye.
 - Before you can fix a “problem,” you have to acknowledge there is a problem.
 - Exercises like we just did help.
- Doubt your objectivity.
 - Ask yourself “why.” Why do you want to hire THAT person? Why do you think THAT person is a screw up or does bad work?
- Question other people's biases and judgments.
 - Do not engage in “group think.” Question why the people around you are making the judgments they're making.
- Deliberately expose yourself to counter-stereotypical models.
 - View pictures of women leaders, for example. Seek out male nurses.

Strategies for interrupting implicit bias

- Forget about being “color blind” and actually welcome differences.
 - No such thing as a post-racial world. Differences are good. Diversity is good. It’s okay to acknowledge that people are different.
- Be an ally.
 - Join a group that’s not an “affinity” group. Be the male ally in the Women in the Law Committee. Be the Black woman in the Puerto Rican Bar Association. Ask how you can help.
- Stand up for structural change.
 - Speak up for those who are not being heard. Demand accountability from those who are able to make change.
- Shift perspectives – Walk in someone else’s shoes; wear their hats; etc. See the world through someone else’s eyes.



Any Questions???