# Speech and Action: Words and Deeds to Reduce Implicit Bias in the Legal Profession

Ventura County Barristers
Bridging the Gap 2016
January 16, 2016
Professor Chris Chambers Goodman, Esq.

### Presentation Overview

- Program Objectives
- → Anti-Discrimination Laws
- Statistics in the Legal Profession
- ➡ Identifying Bias
- Strategies for Reducing Bias
- → Communication Tips
- → Conclusion / Q & A





Everything that we see is a shadow cast by that which we do not see, Martin Luther King, Jr.

# **Presentation Objectives** ■To show you how to identify manifestations of implicit bias ■To provide concrete strategies for addressing and responding to bias ■To demonstrate communication tips as potential solutions Why Talk about Reducing Bias? Laws and regulations already prohibit discrimination □ Society has come a long way in reducing ☐ The legal profession has made progress in reducing discrimination and bias Selected Anti-Discrimination Laws Title VII: Employment Discrimination □ Equal Pay Act □ Executive Order 11246 (1978 Amendments) namericans with Disabilities Act □ Age Discrimination in Employment Act California Fair Employment & Housing Act □The Unruh Act □ Executive Order 13672 (Sexual Orientation) California Fair Pay Act (2015)

### **Executive Order 13672**

- Prohibits federal contractors from discriminating on the basis of sexual orientation or gender identity.
- Amends Executive Order 11246, adding sexual orientation and gender identity to the list of protected categories covering federal contractors.
- Ensures that federal employees –already protected on the basis of sexual orientation – will now formally be protected from gender identity discrimination.

7

# Fair Pay Act

- broadens existing protections to prohibit paying employees less than those of the opposite sex for "substantially similar work,"
- even those with different titles or work sites.
- Employers have the burden to show that wage differences are due to factors other than sex, such as merit or seniority; that they are job-related and reasonable.
- Bans employers from retaliating against employees who discuss pay.

# California Rules of Professional Conduct 2-400 (B)

- (B) In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in:
- (1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or
- □ (2) accepting or terminating representation of any client.

# Proving Discrimination is Difficult

- □ Usually requires evidence of intentional discrimination, because of race, gender, sexual identity, orientation or other protected category
- ☐ "Easy cases:" explicit, overt discrimination
- ☐ Most pernicious biases are implicit
- □ Disparate Impact in Employment
- □ Examples

Why do we still need to talk about Reducing or Eliminating Bias?

The legal profession is not "post-bias."

Percentages of Lawyers in Selected Full Time Work Settings

Total	Black	Hispanic	Native	2 Am	Asian	White	Othe
Solo practice	9	8	9	6	5	10	5
Private law firm	48	54	51	58	66	59	63
Federal govt.*	6	6	5	5	4	3	4
State/local gov't*	21	15	24	9	12	13	12
Legal serv. /pub. def	3	5	0	4	3	5	3
Public interest	2	<1	3	3	<1	1	1
Other nonprofit	2	<1	0	<1	1	<1	1
Educational inst.	<1	<1	3	3	1	1	<1
Profess, service firm	2	4	0	2	3	<1	3
Other Fortune 1000	1	2	0	4	2	2	2
Other bus./industry	3	2	4	8	4	4	4
Labor un./trade asso.	<1	2	0	0	>1	0	<1
Other	<1	<1	0	0	<1	0	<1
Total	5	3	<1	6	81	4	100

□ White, not Hispanic	88.8%	88.1%
□ Black, not Hispanic	4.2%	4.8%
□ Hispanic	3.4%	3.7%
☐ Asian Pacific American	2.2%	3.4%
□ American Indian	0.2	
□ Native Hawaiian or		
Pacific Islander	.04%	

### GENDER Over Time (2014/15)

1980	1991	2000	2005	2012	2015	
Male	92%	80%	73%	70%	67.7%	65%
Female	8%	20%	27%	30%	33.3%	35%
2014 Percentages of Female lawyers:						
Firm Parters	Lg. Managing	Associate				
20.2%	4%	44.8%				
Fortune 500 General Coursel	21.0%					
Fortune 501-100 General Coursel	16.8%					

\_

# The Conflict

- Integration vs.
- Diversity

15

# Where do biases begin? With Generalizations **□Save Time** □Often have a basis in reality □Are useful in our everyday lives □Help us make decisions, based on appropriate biases **But Generalizations also** □Can rely upon stereotypes □Focus more on reputations and opinions □May ignore specific instances of conduct □ And therefore lead to decisionmaking based on Implicit Biases While the laws prevent discrimination, The numbers are out of sync Some statistics are not well-tracked: Physically Challenged (1.2%) **LGBT** (2.34%)**Emotionally Challenged?**

# Improper Bias and Examples

- □Bias is the pre-judging of a person based on his or her (perceived or actual) group status
- □Explicit express, aware, animus, deliberate, will admit
- □Implicit intuitive, reactive, immediate, unintentional, deny

### What is NOT Impermissible Bias?

- □Neutral evaluations of performance □Avoiding appearance of impropriety
- □Bona fide occupational qualifications
- □Serving legitimate client needs and expectations
- □ Selecting those with demonstrated potential for leadership positions

20

# Manifestations of Bias in Particular Settings

Law Office Environment
Interviews and Recruiting
Promotions and Advancement
Outside Interactions

# Implicit Bias Lessens with Meaning Social Contact

Hiring & Retaining
Highlighting Transparent
Privilege
Succession & Leadership

Instances of Implicit Bias by Attorneys & Judges	
□Gender Bias	
□Racial Bias	
□Sexual Orientation Bias	
□Examples in Ventura County	23

# **EXPAND PERCEPTIONS**

NOTICE RACE and Gender



NOTICE other Categories

24

# **ENHANCE INCLUSIVENESS**



Augment Networks
Provide Mentors
Use Peer Groups
Notice Your Messaging

25

# COMMUNICATION STRATEGIES

□Listen

 $\blacksquare$ Empathize

□Assume Goodwill

□Be Civil

26

# The good news is:

"Motivation to be fair makes a difference."

# Summary of Reasons to Reduce Bias

□Anti-discrimination Laws
□Societal or community interests
□Firm or Organization's interests
□Self interest
□It's the Right thing to do



In the End, we will remember not the words of our enemies, but the silence of our friends.

Martin Luther King, Jr.

29

# Conclusions, Questions and Comments

Chris Chambers Goodman, Esq. Professor, Pepperdine University School of Law 310-506-6605

christine.goodman@pepperdine.edu Web: Law.goodman@pepperdine.edu

30

# Selected Sources ☐ ABA Commission on Women in the Profession, a current Glance at Women in the Law gan. 2013)http://www.americanbar.org/content/dam/aba/marketing/women/current\_glance\_statistics\_feb2013.authcheckdam.pdf ABA Lawyer Demographics (2013) http://www.americanbar.org/content/dam/aba/administrative/market\_resea rch/lawyer\_demographics\_2013.authcheckdam.pdfStephen L. Carter, Civility: Manners, Morals and Etiquette of Democracy (Harper Perennial 1998) Verna A. Myers, Moving Diversity Forward: How to do from well-Meaning to Well-Doing (ABA Center for Racial & Ethnic Diversity 2011) Sarah E. Redfield, Diversity Realized: Putting the Walk with the Talk for Diversity in the Legal Profession, (Vandeplas Publishing 2011) □ Zedeck & Shultz, What Marks Good Lawyering Transcript Summer 2005. National Law Review on California Fair Pay Act(2015)http://www.natlawreview.com/article/strict-new-california-fair-pay-act-will-become-effective-january-1-2016) Selected Sources Continued ericanbar.org/content/dam/aba/administrative/market\_research/lawyer-Adam will 2015 Gender Stats- http://www.air respirat Demographics Chart by for 2014 \* http://www.natic.org/Chineson behabet Specifics of firm's demographic orgonic in the control of the c D Helpful Demographics Chart by for 2014 Department of Justice 2014 Diversity Stats Department of Justice 2014 Diversity Stats \* https://www.expungers/policy-dute-newer-foll/diversity-and-nechusen/indexal-work-forse-sta-admine/ Fair Employment and Housing Act citation \* http://www.nifec.ag.worl/indexal-work-foll/diversity-indexal-work-foll-workibu.org/conlent/dam/abs/marketing/women/current\_glance\_statistics\_july2014.authch D LGBT attorney stats in 2014/15 http://www.nalp.neg/1215rssearch Disable attorneys in 2009 http://www.nalp.org/de/tb/disabled 32 Selected Sources Continued AG Kamala D. Harris Announces New Law Enforcement Reporting Requirements for Citizen Complaints Against Peace Officers Peace Officer \* Integrabant constallations Act Annual D. Harris, Amunances New Law Entercement Experting, Engineering of Citizens Complaints Against Proce Officers phys. Vend MaliAst Center Bis Brample \* Integration of Citizens Complaints Against Proce Officers phys. Vend MaliAst Center Bis Brample \* Integration of Citizens Complaints Against Proce Officers phys. Vend MaliAst Explores how higher court judges evaluate opinions written by todage of color, and at his clear implications despite attempts to make judiciny more effective of the general population, racial dispartites within the legal system continue to period \* Integration of Comment \* Integrat Sexual Orientation Bias # http://www.bna.com/lebt-bias-serx-b579s2or3e07/ Judicial Bas Hely-distantishedar-hip-unite eductor's precontent of Particles 1000 context-political science, articles Judicial Abuse of Discretion | http://www.lamilylawcouts.com/abuse\_of\_discretion.html | Previous Bias training in Ventura County | http://www.lamilylawcouts.com/abuse\_of\_discretion.html | http: http://www.costat.commes.cr.entura.comity.atterprec to speak on hilden blas an the workplace.at. Jhvrsliy.vummil.ep.37119753-35668451.html 33

# Selected Sources Continued (final slide) Displantic latines and Proposition Market State of the State of the