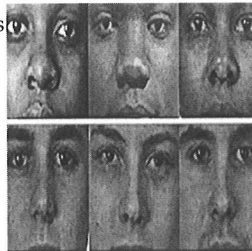


Speech and Action: Words and Deeds to Reduce Implicit Bias in the Legal Profession

*Ventura County Barristers
Bridging the Gap 2016
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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



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*Everything that we see is a shadow cast by
that which we do not see.*

Martin Luther King, Jr.

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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

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Why Talk about Reducing Bias?

- ☐ Laws and regulations already prohibit discrimination
- ☐ Society has come a long way in reducing bias
- ☐ 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)
- ☐ Americans 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.**

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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.

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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.

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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 Am	Asian	White	Other
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 govt.*	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

RACE / ETHNICITY 2000* 2010*

☐ 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%	----

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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 Partners	Lg. Managing	Associate
	20.2%	4%	44.8%
☐ Fortune 500 General Counsel			21.0%
☐ Fortune 501-1000 General Counsel			16.8%

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The Conflict

- Integration
- vs.
- Diversity

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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 decision-making 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?



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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

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Manifestations of Bias in Particular Settings

Law Office Environment
Interviews and Recruiting
Promotions and Advancement
Outside Interactions

Implicit Bias Lessons with
Meaning Social Contact

Hiring & Retaining
Highlighting Transparent
Privilege
Succession & Leadership

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Instances of Implicit Bias by Attorneys & Judges

- Gender Bias
- Racial Bias
- Sexual Orientation Bias
- Examples in Ventura County

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-
-
-
-
-
-

EXPAND PERCEPTIONS

NOTICE RACE and Gender



NOTICE other Categories

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ENHANCE INCLUSIVENESS



**Augment Networks
Provide Mentors
Use Peer Groups
Notice Your Messaging**

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COMMUNICATION STRATEGIES

- ☐ Listen
- ☐ Empathize
- ☐ Assume Goodwill
- ☐ Be Civil

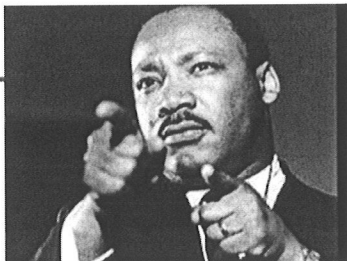
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The good news is:

**"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.

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Conclusions, Questions and Comments

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Selected Sources Continued (final slide)

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