



It's True. Everyone's A Little Bit Biased...

Implicit Bias in and Out of the Courtroom

BY KAREN STEINHAUSER



It's true. Everyone has biases. However, having a bias doesn't make you a bad person. And not every bias is negative or hurtful. It's the failure to recognize biases, however, that can lead to bad decisions at work, in life, and in relationships.

My first reaction to this notion that we all have biases was "Certainly not I!" After all, I grew up in a family where diversity and inclusion were part of our basic values. My father was head of the Anti-Defamation League (ADL), an organization whose mission is to secure justice

and fair treatment for all people. I was an ADL board chair and helped train others to combat prejudice and discrimination. So how in the world could I have biases?

While people have explicit and implicit biases, the implicit ones are the most concerning, because they are the ones we don't recognize we have.

What is Implicit Bias?

What exactly is an unconscious or *implicit* bias? The Kirwan Institute for the Study of Race and Ethnicity at Ohio State University defines these biases as "the attitudes or

stereotypes that affect our understanding, actions, and decisions in an unconscious manner. The implicit associations [biases] we hold do not necessarily align with our declared beliefs."

I started analyzing how biases affect so many aspects of our jobs and our lives when I began teaching advocacy skills as they pertain to jury selection several years ago. We identified many biases associated with stereotypes: teachers were too soft, engineers and scientists were too rigid, older people were too judgmental, younger people too immature. These were the unconscious parts of our brains at work — implicit or unconscious biases.

As I was exploring biases in the legal profession, I began asking more questions of my colleagues and friends. I learned that gender bias was endemic in many professions, including:

- Women lawyers (including myself) being mistaken for someone other than the lawyer in a case.
- Female pilots mistaken for flight attendants.
- Male nurses frequently mistaken for doctors, while women doctors are mistaken for nurses.
- Women in the construction industry are generally not presumed to be the contractors or general managers of the site.

The list goes on and on.

The issue of race and implicit bias has also been in the headlines recently, whether it is a group of African American men being asked to leave a Starbucks or, much worse, an African American man being shot for being assumed to have a weapon.

But implicit bias isn't just about race or gender. We see implicit bias in many places, about many characteristics — age, religion, weight, appearance, disabilities, accents, gender identity, sexual orientation, single parents, stay-at-home moms and dads, kids with pink hair, people with tattoos and piercings, people with certain bumper stickers on their cars — again the list goes on and on.

Why Should We Care About Our Biases?

So why should we care about our biases? If we are litigators, these biases can impact

how we pick juries, how we assemble our legal team, how we prepare our cases, how we deal with our clients and witnesses, and how we interact with our colleagues. As a judge, I work to ensure that the decisions I make (including credibility decisions) and the sentences I give out, are based on appropriate facts and not implicit biases I may not even be aware of possessing.

In a workplace environment, unconscious biases can affect hiring and promotion decisions, work assignments, career tracks, and can end up being part of harassment, hostile work environment, and discrimination lawsuits. These biases can also cause problems and damage relationships and affect the reputations of businesses. These implicit biases can also have deadly consequences when they affect individuals such as police officers who must assess situations quickly and make life and death decisions — decisions that may end up being the result of an implicit bias.

These biases can be incredibly painful for victims. One of my dear friends, a district court judge and former public defender, shared a story with a group of lawyers. He told them how, as an African American public defender in the courtroom, there were several occasions where judges and other lawyers and staff would ask him where his lawyer was, assuming that because he was an African American, he must be the defendant in the case. The people who made those assumptions weren't necessarily racist or prejudiced, but there was clearly an implicit bias at work. As he shared this story, tears started streaming down his face. At that moment, I truly understood the pain that these hidden biases can have on all of us.

Is it Possible to Overcome Our Implicit Biases?

So how do we recognize and interrupt our own biases? First, we must be willing to admit we have them. One great place to start is by taking the Harvard Implicit Association Test constructed by Project Implicit (www.implicit.harvard.edu).



Want to learn more about your own unconscious biases? Take the Harvard Implicit Association Test constructed by Project Implicit
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These are online tests that are designed to measure implicit biases in about 28 different categories.

We also must recognize that the old adage “trust your gut” may not prevent us from recognizing implicit bias. We need to focus on how we form opinions about people. Sometimes, it means asking ourselves whether our opinions would be the same if the person were a different race or gender or religion or dressed in a different manner? In other words, would our opinion be the same if the individual were part of a different group?

While we have to be willing to identify and interrupt our own biases, we also have to recognize and be willing to interrupt bias in others. This is probably the most difficult and the most uncomfortable part of overcoming bias.

The challenge with others is determining when to say something, how to say it, and to whom. I make every effort not to address another's bias in front of other people. I try to find a place to talk in private, and perhaps start the conversation with something like “I know you didn't mean to make me (or another person) feel bad, but I need to share with you the effect that those words or actions had.” I know it is easier said than done, but if someone isn't made aware that they have a particular bias, it will only continue to cause pain to another individual or group of individuals, and could lead to significant problems for the employer or organization.

Finally, in terms of specific steps we can take when interrupting bias, it is important to remember that biases develop at a very young age and are often the result of our tendencies to surround ourselves with people who are the most like us.

In fact, research indicates that we tend to perceive anyone different from us as a threat because our brain tells us to do so.

“The capacity to discern ‘us from them’ is fundamental in the human brain,” wrote David Amodio, associate professor of psychology and neural science at New York University, in his 2014 paper, “The Neuroscience of Prejudice and Stereotyping.”

That doesn't mean that we can't begin to recognize and overcome our implicit biases. Here are some suggestions:

- Be aware of your initial thoughts about people and what those thoughts are truly based upon.
- Stay attuned to people around you and notice how often you engage in conversations with people who are different from you.
- Surround yourself with a diverse mix of cultural and social situations and individuals.
- Share your own experiences of bias with others.
- Educate others about the elements of an inclusive work, school, and community environment.
- Look for commonalities that exist regardless of race, religion, gender, or culture.
- If you see something, say something in a manner that is sensitive to the feelings of everyone involved.
- Don't assume bad intent.

By challenging ourselves to identify and overcome our own implicit biases, we can begin to lay the foundation for harmonious and productive environments at work and in our personal lives. 🍷

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