



ABA Diversity and Inclusion 360 Commission Toolkit Introduction

Dear User,

The information provided in this Toolkit is designed to help you recognize some of the biases that we all have, including, specifically, the implicit biases of judges, prosecutors, and public defenders. The goals of this toolkit are to:

1. Explain the social science term *implicit bias*;
2. Provide some examples of where implicit biases live and thrive;
3. Explain how they exist;
4. Raise consciousness about the power of these unknown “mind bugs,” as some have called them, and their ability to negatively impact decision-making;
5. Help you identify some of your own implicit biases;
6. Examine how implicit biases might show up in the performance of your job;
7. Provide some tools to help you catch and correct snap decision-making that may be linked to harmful implicit biases; and
8. Provide you with the knowledge that will allow you to help others catch decision-making that might be based on implicit biases.

We all have biases. Every one of us. This is not a finger-pointing expedition. Rather, we are sharing with you the evidence of this science, offering strategies for you to find the implicit biases hidden within you to help you reduce their harmful effects. As you learn more about how these biases work in society and in your life, you will not only become more mindful and deliberate in your decision-making but also be able to help others in the profession with whom you interact regularly: court personnel, including law clerks, officers of the court, other lawyers, parties to litigation, witnesses, and jurors.

Implicit biases are unwitting and unconscious cognitions that include stereotypes, beliefs, attitudes, intuitions, gut feelings, and related intangibles that we categorize in our brains—without conscious effort—every fraction of a second.¹ For instance, if we think that a particular category of human beings is frail—the IAT (Implicit Association Test) indicates that many of us categorize the elderly in this way²—we will not raise our guard around them. That is a stereotype in action. If we identify someone as having graduated from our beloved alma mater, we will feel more at ease—that is an attitude in action.

Your ever-efficient brain automatically organizes all of the information it receives and places the information into cognitive boxes, shorthands, or schemas, if you will. A more colloquial way to think of a schema is the aforementioned “stereotype,” though the two terms are not entirely interchangeable. Consider some of the data collected about what many people think when they see an Asian male. The data shows that many people believe Asians and Asian-Americans are extremely smart, excellent students, excellent in mathematics, and pretty good at some martial art; play, *really well*, some musical instrument; and are also really polite, kind, and shy—in other words, the model minority.³ These labels have

1.) JERRY KANG, NAT'L CTR. FOR STATE COURTS, IMPLICIT BIAS: A PRIMER FOR COURTS 1 (Aug. 2009), available at <http://jerrykang.net/research/2009-implicit-bias-primer-for-courts/>.

2.) You will learn much, if you have not already, by taking an “implicit association test,” or “IAT” as it is commonly known. The IAT is explained in other parts of your Toolkit. One of the IATs deals with how people implicitly view the elderly. The fragile and the elderly are always paired together. For more about this result in particular or the IAT generally, visit <https://implicit.harvard.edu/implicit/>.

3.) <https://www.bing.com/videos/search?q=jerry+kang+ted+talk&view=detail&mid=C199BFAA2157E6F0C7FBC199BFAA2157E6F0C7FB&FORM=VIRE>; see also Bernadette Lim, “Model Minority” Seems Like a Compliment, but It Does Great Harm, N.Y. TIMES (Oct. 16, 2015), <http://www.nytimes.com/roomfordebate/2015/10/16/the-effects-of-seeing-asian-americans-as-a-model-minority/model-minority-seems-like-a-compliment-but-it-does-great-harm>.

implicit origins. Based on information that we are fed in society through television, movies, the media, work, and social exposures, our mind quickly creates schemas and puts these associations into one box. These social schemas form based on everything that we've ever consciously and unconsciously seen and heard. So when we see an Asian male, we immediately think of many of the characteristics and adjectives referenced above even though we do not know *that* individual. These judgments, assumptions, and attitudes require no contemplative, deliberate thought. It just happens.

Social scientists categorize our dual ways of thinking into two systems: System 1 and System 2. System 1 is the unconscious mode, which helps us make snap judgments and is where our schemas live. System 2 is our deliberative mind, i.e., the conscious mode that is active in explicit biases. The focus of this Toolkit is to get you more conscious of System 1, that place where, as it turns out, 90 percent of your mind operates.

In a similar vein, we also must think about coded words and microaggressions. Take coded language, for example. It is not uncommon for women to be referred to as aggressive or bossy, characteristics viewed positively with male employees but considered negatively with female employees.⁴ Is the woman “opinionated” or “sassy”? Why? And why are men not ever similarly categorized?⁵ Consider some race-related terms and words. *Inner city* and *urban education* are terms most quickly associated with predominantly black, brown, and poor areas.⁶ *Thugs* is a word almost exclusively used in connection with black men.⁷

Microaggression is another type of behavior the ABA is hopeful that this Toolkit will help reduce and ideally eliminate. Microaggressions are “commonplace daily indignities, whether intentional or unintentional, that communicate racial slights and insults towards [minorities].”⁸ Studies have shown that the recipients of microaggressions experience greater degrees of loneliness, anger, depression, and anxiety.⁹ There are many examples of microaggressions in daily life, some of which include assuming that a black student in an elite school is there because of affirmative action, confusing black attorneys for court staff, telling an LGBT person that s/he does not “look like” an LGBT person, telling a black person that s/he is “articulate,” touching someone else’s hair without permission, asking people of color where they are from, and assuming that all Asian-Americans are Chinese and/or speak an Asian language.¹⁰ An attempt to be aware of microaggressions and taking a thoughtful approach to language when speaking with minority groups are part of this process of consciousness raising, education, and correction.

This program is designed to help with all of these areas. It includes a PowerPoint presentation that focuses on the aforementioned goals. It includes a video, too—just a short 10 to 12 minutes, designed to allow you to hear from experts and others who perform the very same role that you do in the judicial system. Implicit biases are analyzed in the video; and others, whether judge, prosecutor, or public defender, share their own implicit biases and strategies for how they work to be continually mindful of them in order to interrupt them. Finally, this Toolkit contains a comprehensive bibliography and resource list, including a large category of books, articles, and websites that focus on implicit bias generally for those who want to learn more about this fascinating social science; material specifically addressed to judges; material specifically addressed to prosecutors; and material specifically addressed to defenders.

Whether you are a judge, a prosecutor, or a defender, we hope that you find this Toolkit useful. This is fascinating yet challenging work. It is not rocket science, but because biases are in our DNA, will require great determination and conscious effort to catch assumptions that are made and applied automatically. The Toolkit will reveal the benefits of deliberation, i.e., slowing down to take a few extra moments to focus on the person in front of you before making decisions that will or might affect that person.

We are confident that you will not only learn about that stranger that lives within you but also actually enjoy the materials contained herein and this journey.

Thank you



4.) See Claire Cain Miller, *Is the Professor Bossy or Brilliant? Much Depends on Gender*, N.Y. TIMES (Feb. 6, 2015), available at <http://www.nytimes.com/2015/02/07/upshot/is-the-professor-bossy-or-brilliant-much-depends-on-gender.html>.
5.) See Caroline Turner, *Women in the Workplace 2015: Is Gender Bias Part of the Story?*, HUFFINGTON POST (Oct. 7, 2015), http://www.huffingtonpost.com/caroline-turner/women-in-the-workplace-20_b_8255008.html.
6.) *Is the System Racially Biased?*, PBS FRONTLINE (2014), available at <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/bench/race.html>; see also Jenee Desmond-Harris, *8 Sneaky Code Words and Why Politicians Love Them*, ROOT (Mar. 15, 2014), http://www.theroot.com/articles/politics/2014/03/_racial_code_words_8_term_politicians_love.html.
7.) *Id.*
8.) *Microaggressions: Be Careful What You Say*, NATIONAL PUBLIC RADIO (Apr. 4, 2014, 10:23AM), available at <http://www.npr.org/2014/04/03/298736678/microaggressions-be-careful-what-you-say>.
9.) *Id.*
10.) See Tanzina Vega, *Students See Many Slights as Racial “Microaggressions.”* N.Y. TIMES (Mar. 21, 2014), <http://www.nytimes.com/2014/03/22/us/as-diversity-increases-slights-get-subtler-but-still-sting.html>; Heben Nigatu, *21 Racial Microaggressions You Hear on a Daily Basis*, BUZZFEED (Dec. 9, 2013, 10:27AM), <http://www.buzzfeed.com/hnigatu/racial-microaggressions-you-hear-on-a-daily-basis#.ouAPDQo8L>.

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C.) UCLA LAW PROFESSOR JERRY KANG'S WEBSITE

Professor Kang has worked with courts to create implicit bias primers for the court system; has written many law review articles on the subject; and conducts CLEs, etc. See <http://jerrykang.net>. In particular, see Jerry Kang, Nat'l Ctr. for State Courts, *Implicit Bias: A Primer for Courts* (Aug. 2009), available at <http://jerrykang.net/research/2009-implicit-bias-primer-for-courts/>. See also his TED talk and other relevant videos of his work in this area:

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D.) THE NATIONAL CENTER FOR STATE COURTS WEBSITE

Contains a lot of information on working with implicit bias: <http://www.ncsc.org/Search.aspx?q=implicit%20bias>. A particular work of interest is Pamela M. Casey et al., Nat'l Ctr. for State Courts, *Helping Courts Address Implicit Bias: Resources for Education* (2012), available at http://www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_report_033012.ashx.

E.) MATERIALS SPECIFIC TO JUDGES, PROSECUTORS, AND DEFENSE COUNSEL

Judges:

Videos produced by the ABA Diversity and Inclusion 360 Commission: Video for Judges; Video for Prosecutors; Videos for Public Defenders. Please visit: www.ambar.org/360commission to access the videos.

Prosecutors:

Prosecutor TED Talk: http://www.ted.com/talks/adam_foss_a_prosecutor_s_vision_for_a_better_justice_system?language=en#t-421101.

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F.) COGNITIVE REFLECTIONS TEST (CRT) WEBSITE

The CRT is designed to assess an individual's ability to suppress an intuitive and spontaneous wrong answer in favor of a reflective and deliberative answer. The test is available at [http://www.sjdm.org/dmidi/Cognitive_Reflection_Test.html#x-Cognitive_Reflection_Test_\(CRT\)](http://www.sjdm.org/dmidi/Cognitive_Reflection_Test.html#x-Cognitive_Reflection_Test_(CRT)).

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H.) KIRWAN INSTITUTE WEBSITE

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