



Implicit Bias

Moving Beyond Awareness to Knowledge and Skills

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Dedicated to Susan
Hammer
who walked her talk

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Is Implicit Bias Training Effective?

- Does not have a long term impact if:
 - It is mandatory and created for “external” reasons and outside pressure.
 - It is short term with no follow through.
 - It focuses only on awareness (empathy, imagined contact, and perspective-taking techniques.)
 - Good intentions do not translate into action.
 - It creates the feeling that you can rid yourself of bias which then leads to false confidence.
 - It targets only individual behavior not systemic racism.


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Implicit Bias Training Can Be Effective If...


- It is primarily internally motivated.
- It focuses on intentional cognitive skills and specific interventions which change behavior.
- It addresses the *systems* that inhibit diversity, inclusion, and equity.
- It includes diverse groups.
- It is ongoing and provides feedback, analysis and mentoring.
 - Participants have a growth mindset rather than a status quo mindset.

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Awareness and Knowledge


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Implicit (Unconscious) Bias


- Implicit bias:
 - A natural process of the brain that automatically organizes the 11 million bits of information that we receive each moment into “chunks” and categories
 - We only consciously process 40 bits of that information.
 - We screen out much of it – “attentional blindness.”
 - 99.999996% takes place on the unconscious level.

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- Implicit bias comes from your personal experiences:
 - Culture and ethnicity, gender, age, sexual orientation, neighborhood, job, family, friends, social circle, training and education...everywhere
 - "Bounded awareness" (lack of exposure) creates a greater likelihood of implicit bias.
 - Our "chunks" and "groups" create stereotypes leading to biased judgment and biased behavior.
 - "Me" or "you", "them" or "us", "same" or "different", "normal" or "abnormal", "right" or "wrong"

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- Everyone has implicit bias
 - No one is "bias free", but we can become "bias aware."
 - Our implicit biases are often quite different than our stated beliefs especially in "socially charged" topics. (race and gender)
 - Implicit bias is different than prejudice which is a conscious attitude or belief that discriminates towards a person or group.

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Color Blind Racial Attitudes (CoBRAs) “I don’t see color.”

- “Color blindness” comes from a lack of awareness of racial privilege and a lack of understanding of how cultural differences and stereotypes can impact someone’s life – both from an individual and institutional / systemic perspective.
 - “If you don’t see my color, you deny who I am, what is wonderful about me, and the struggles I’ve been through.”
 - Color blindness assumes color does not affect the experiences that people have.
 - Tailwinds and headwinds
 - It is difficult to claim that you care about equality if you are blind to the realities of inequality.

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“Color blindness” fails to account for:

- Ethnic identity status
- History of oppression
- Rates of acculturation
- Societal/familial pressures
- Different world view based on cultural experiences, etc.
- Communication patterns

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- Implicit bias usually occurs when:
 - We are thinking quickly.
 - We are making snap judgments and taking short cuts.
 - We are under stress.
 - We make assumptions
 - We are “following our gut” or our “instinct.”

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The Mediators Mindset and Implicit Bias

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- “The neutrality requirement (in mediation) is neither practical nor attainable in real life.”

Carol Izumi

<https://scholar.smu.edu/cgi/viewcontent.cgi?article=4696&context=smulr>

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In Mediation Implicit Bias Can Lead To...

- Assumptions
 - Credibility and truth telling
 - Amount of appropriate settlement figures
 - Whether we perceive someone to be deserving
 - How we manage the distributive dance
 - Level of competence of parties /attorneys
- Body language / Tone and inflection
 - How long we smile at someone
 - Whether we make eye contact, blinking
 - Our tone of voice
 - Whether we perceive someone to be angry

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Origin of the Mediator's Mindset

- What is the origin of my mindset?
 - Life in general
 - Training
 - Experience in mediation
 - My level of exposure to diverse cultures, genders, etc.
- Has my mediator mindset changed over time?
 - How? Why?
- Where do my own implicit biases show up?

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Actions in Mediation

- Do you pride yourself on being a "quick thinker."
- Do you make assumptions about credibility of parties and attorneys?
- Do you have time pressures in your mediations?
- Do you get irritated, overwhelmed, or frustrated?
- Do you try to persuade parties to take a deal?
- Do you state your opinion about possible outcomes in process and/or substance?
- Do you "trust your gut"?
- Do you manage the "distributive dance" of negotiation?

All of these situations create a likelihood of acting on your implicit biases.

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Lack of Curiosity Danger Signs

- "I had a case like this last week."
- "Nothing surprises me in mediation anymore."
- "I can usually predict where we will settle in the first 20 minutes."
- "My style of mediation is _____."
- "It's really just about the money."
- "People are people. In general, they all want the same thing."

"When we only perceive what we expect, we create an echo chamber where there are few surprises." Chugh

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Fairness Mindset

- Legal standard of fairness
 - Codes, statutes, guidelines, objective criteria
 - Mindset: Law is our default; it will determine fairness
- Equitable standard of fairness
 - Energy, time, money, effort
 - Mindset: Contribution matters
- Needs based standard of fairness
 - Personal situation, income, hardship
 - Mindset: What you need should determine what is fair
- Faith based standard of fairness
 - Bible, Koran, what God would say
 - Mindset: Faith and religious beliefs guide our life

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Origin of Legal Standard of Fairness Mindset

“The law is not necessarily good; if something is illegal it is not inherently bad.”

Hard to understand (Swiss, Swedish, German cultures)

Not as difficult to understand (American, Hungarian, Korean, Australian cultures)

Easy to understand from the beginning (Latin, Middle Eastern, Polynesian, African, Russian cultures)

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Deal Mindset

- “My job is to get a deal, not necessarily to resolve the conflict.”
- “We need this in writing tonight so it’s enforceable.”
- “Is there anyone else you need to talk to before you sign the contract?”
- “A handshake is the best insurance that the terms will be followed.”
- “Let’s bring everyone together to sign the document.”
- “It was not a successful mediation because they didn’t sign the agreement.”

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Origin of the Deal Mindset

- A deal is a deal – once a deal is in writing you are agreeing to follow the terms.
- Signing a document does not necessarily signal a commitment to follow through.
- The obligation between the parties is greater than the words in the written agreement.
 - “Responsibility based ” vs. “rights based” mindset
- The “party” may not always be the decision maker.
 - Group (collective) vs. individual (individualistic)

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Skills


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First Steps in Working with Implicit Bias

- Do not deny it, ignore it, or excuse it.
 - It's hard to solve a problem without acknowledging there is a problem.
- Acknowledge the cognitive dissonance.
 - The more we worry about not being a "good person", the higher the level of self-threat if we admit bias.
 - The higher the level of self-threat the greater the stress.
 - The higher the level of stress the greater the implicit bias
- Be internally motivated to change.

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- Seek to change the biases and stereotypes that are harmful to you and to others.
 - Learn specific skills to offset the bias.
 - Have a growth mindset instead of a status quo mindset.
 - "Stumbling upward rather than falling backward"
 - Each of us will always be a "work in progress."
 - Notice more, focus less.


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Cultural Curiosity

- Remember a prototype should never become a stereotype.
 - Every person has both unique and shared traits.
- Be conscious of fundamental attribution error.
 - The error of “stepping into someone else’s shoes.”
- Be flexible, be open, be curious, be humble.
 - “I wonder if” instead of “I know that.”

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- Be willing to feel uncomfortable and to be challenged.
 - Acknowledge mistakes and express willingness to grow.
 - “That was not my intention. Would you be willing to tell me what I did wrong?”
 - Be kind to yourself; we are all learning. However be conscious of the “honeymoon of acquaintance.”

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Start Noticing How Your Biases Affect the Sessions

- Evaluate your reaction to the sources of information.
 - Think about your reactions to people / communication styles / behaviors.
 - Who has more credibility? Whose voices do you “mute”?
- Be aware of your body language – implicit bias in eye contact, body posture, and “connection.”
- Check your thoughts.
 - Say a sentence to yourself. Replace “she” with “he” or “black” with “white.” See if it sounds weird/wrong?

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Timing and Organization

- Be aware of timing.
 - Slow down when evaluating and summarizing information, making process decisions, etc.
- Analyze what you are prioritizing (in process and substance) and why.
- Write things down – preferably by hand.
 - The more senses you use, the better.
- Reduce distractions
 - Put away the **** phone.

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Credit Sharing

- Who gets credit?
 - Who proposed an idea that was ignored or discounted, and then 10 minutes later someone else proposed it and it was a great idea?
- Over-crediting ourselves is something that many of us do. "I settled the case." Under-crediting people from groups that face bias is common.

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Be Deliberate in Your Mediation

- Who gets invited? Who does not get invited?
- Where are people sitting? (session design/view)
- Is subtle power being asserted? (race/gender)
 - Who spoke? Who talked the most? Who did you not hear from?
 - Who was interrupted? Who interrupted?
 - Whom did you believe? Why?
- Are passion and conviction received the same from everyone?
 - Does everyone have the same range of emotions available without judgment from others?

The Person You Mean to Be, Dolly Chugh

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Dialogue not Monologue

- Ask questions instead of making statements.
- Create a place of psychological safety for the parties/attorneys.
 - People are more likely to speak up, ask for help, admit mistakes, propose ideas, take blame, confess uncertainty, disclose inability, learn more, perform better.

Edmonson

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Expand Your Exposure

- Expand your personal and work “circle” to include other cultures, genders, ways of life, communication styles etc.
 - “Nudge” yourself and others.
- Change “bounded awareness” to “willful awareness.”
- Reverse mentoring
 - Both sides “prepare” so that no one does all the “work.”

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Provide Both Gateways (diversity) and Pathways (inclusion)

- A gateway provides access
 - About who gets in
 - Data - more formal, easier to track
 - Happens occasionally
- A pathway provides inclusion
 - Both before and after the gateway
 - More informal, harder to track, not numbers
 - About behavior
 - Could happen all the time

The Person You Mean to Be, Dolly Chugh

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Examples of pathways

- Co-mediation
- Office sharing
- Joint networking
 - Official functions
 - Marketing

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Educate Others

- Silence is complicit and part of the problem.
- Watch out for the “bystander effect.”
- Be reflective – not reactive.
- Ask questions.
 - “What does ‘a good fit’ mean?”

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Easier to Change Behavior than Change Belief

- External rather than internal motivation (changing norms) may not change beliefs but it can change behavior.
 - Personal
 - Interpersonal
 - Programs
 - Organizational
 - Systems
 - Environment


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Resources

- Why Doesn't Diversity Training Work? Frank Dobbin and Alexandra Kalev
<https://scholar.harvard.edu/files/dobbin/files/an2018.pdf>
- Implicit Bias Test <https://implicit.harvard.edu/implicit/takeatest.html>
- Implicit Bias and Mediator Neutrality, Carol Izumi
<https://scholar.smu.edu/cji/viewcontent.cgi?article=4696&context=smulr>
- Interventions designed to reduce implicit prejudices and implicit stereotypes in real world contexts: a systematic review, Fitzgerald, Martin, Berner and Hurst
<https://bmcpyschology.biomedcentral.com/articles/10.1186/s40359-019-0299-7>
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 - ABA Diversity and Inclusion 360 Commission Implicit Bias Bibliography
https://www.americanbar.org/content/dam/aba/administrative/diversity-portal/implicitbias_toolkit.pdf
 - The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases, 30 LAW & SOC'Y REV. 767 (1996) Gary LaFree & Christine Rack,
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