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Addressing Implicit Bias in the Legal Services Office

By Lauren Breen, Executive Director¹
 Neighborhood Legal Services, Inc.

Bias in the workplace is a timely and controversial issue at the office water cooler and lunch table given recent events at Starbucks, which announced its widely



publicized commitment to close its more than 8000 stores on May 29th for racial-bias training in response to the April 2018 arrest of two African-American men, absent probable cause, in one of its Philadelphia stores. The racial-bias training for almost 175,000 Starbucks employees, which will have been conducted by the time this

article is published, is expected to become part of its new employee onboarding process. Criticism of this response as inadequate and general interest in workplace bias have abounded in the aftermath of the arrests and the company's response. Prior to these recent news



Lillian Moy (L); Tanya Douglas (Middle); Milo Primeaux (R).

events, at the December 2017 NLADA Annual conference, *Safeguarding Justice for All*, three prescient legal services attorneys offered a workshop entitled "Implicit Bias in the Workplace: Managing Skepticism, Belief and Micro-Aggressions." These attorneys are Tanya Douglas, Director, Disability Advocacy Project, Legal Services NYC; Lillian Moy, Executive Director, Legal Aid Society of Northeastern New York, Inc.; and Milo Primeaux, LGBT Rights Attorney, Empire Justice Center.² I recently interviewed Tanya, Lillian and Milo to help legal services managers better understand this hidden issue and its impact in our offices. I also spoke with

Assistant Professor Calvin Lai, of Washington University in St Louis, who serves on the Executive Committee of *Project Implicit*, about strategies to reduce the impact of implicit bias in the workplace.³

Lauren: How did you three legal services lawyers come together to create an Implicit Bias Workshop?

Lillian: In 1997, a number of legal services organizations started the New York State Diversity Coalition. The Diversity Coalition is a committee of staff and management from the legal services community in New York. Regular meetings are held in New York City and via conference call to allow for statewide participation.

Tanya: (Laughing) I got involved when I inadvertently established eye contact with Lillian at a conference some years ago. After the session, she convinced me to join the Diversity Coalition, lamenting that there were no attorneys from the Bronx involved. Now diversity awareness, training and how oppression works are core parts of my legal services work.

Milo: I met Lillian at an Equal Justice Works conference in D.C. and since that time we have done a few road shows together on diversity issues, most recently through NLADA on "Implicit Bias in the Workplace."

Lauren: What is implicit bias?

Tanya: Implicit Bias is a lack of social cognition of our attitudes and beliefs; it's how we unconsciously stereotype. It's the socialization that we have experienced through media and what we read, which goes into our psyche. It impacts our ability to create a racially just environment both for our legal services colleagues and our clients. Explicit bias, on the other hand, is what we consider actionable under the law, for example, in employment and housing discrimination cases.

Lillian: I have been working on implicit bias training for a long time. Working with and learning from

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Professor Susan Bryant at CUNY Law School is one of my earliest experiences examining implicit bias. Professor Bryant advocates for frank conversations in law school clinics around implicit bias, micro aggressions and race. She describes the concept of implicit bias as explaining how discrimination operates to oppress in unintended ways.

Milo: The mind functions with capacity and speed in a such a way that it forms a set of assumptions or stereotypes that we come to believe are true, but of which we are not aware. Nor are we aware of the ways in which these assumptions affect our behavior. Such assumptions may come from our parents, our culture or our teachers. These mental “shortcuts” that help us get through the day have resulted in harmful systems of oppression and historically marginalized groups of people, and they prevent us from seeing people outside of this framework. In contrast, explicit bias is a conscious thing that we see in micro and macro aggressions, mockery and snide comments. Implicit bias is scary. Even naming this thing helps to come to grips with our biases rather than allowing them to continue unchecked. Being mindful, self-aware, self-regulating, and self-reflective of implicit biases (e.g., maybe I am this way because of my upbringing) allows one to say, “This is harmful. What am I going to do about it?” and to move into action to address our personal and professional implicit biases.

Lauren: What steps can legal services managers take to reduce bias in the workplace?

Tanya: It’s important to realize that reducing our biases is a lifelong process, a lifelong journey aiming toward anti-oppression and anti-racism. How do we dismantle implicit bias? Training in this area can help.

Harvard psychology professor, Dr. Mahzarin Banaji, says that implicit biases are malleable and that we should always be aware of and regulate our responses. For example, to change our responses to women of color, we can surround ourselves with pictures of leaders who are women of color. Using “bias interrupters” in the hiring process and in personnel management can also help reduce the negative impact of implicit biases. By developing a standard set of questions for those to be interviewed or promoted, assuring that each candidate is asked the same questions, we can reduce the likelihood that one candidate will be favored over

another due to implicit bias.

The Center for WorkLife Law at UC Hastings College of the Law promotes the use of “bias interrupters” to reduce implicit bias in the performance evaluation. For these trainings, it’s important to bring in outside people. In advance of the training, create an email inbox to the trainers where employees can send examples of implicit bias they have witnessed or otherwise experienced in the office.

My program, Legal Services NYC, made the decision that program wide Diversity, Equity and Inclusion (DEI) training is mandatory training. DEI should be thought of as “required training” in the same way that continuing legal education (CLE) is required to practice law. Taking CLE is not voluntary for lawyers and neither should participating in DEI training be considered optional for legal services advocates. DEI trainings should be done in small groups of 12-40 people for the best results.

Lillian: I consider Legal Services NYC as the gold standard for trying to overcome bias in the legal services workplace. Instead of calling people out because they are not receptive to DEI approaches, let’s “call people in” to try to overcome bias in the office by finding ways for people to join us and let them know that we want everyone to be a part of this. Our office is considering racism training for the board and staff as part of an effort to make race justice/race equity a top program priority. It’s important to be mindful of the Prove It Again (PIA) phenomena where those stereotyped as less competent, such as women, people of color and individuals with disabilities, often have to prove themselves over and over. Our office now refers to DEI awareness not as cultural competence but as cultural humility. I think that is from the healthcare industry.

Milo: We all have issues in our own offices. Nobody is perfect. The Empire Justice Center’s Diversity Committee is working on a host of things to increase DEI in our workplace. It often can be a long process to do this.

Lauren’s interview with Professor Calvin Lai of Project Implicit:

Implicit bias research to date primarily has focused upon ways to identify it. Researchers are now beginning to focus upon changing implicit bias and formulating strategies to reduce its harmful impact.

Three lines of attack for implicit bias noted in Professor Lai’s recent scholarship are Redesigning the Situation; Changing Implicit Associations; and

Self-Regulating Behavior. Of these three approaches, Professor Lai recommends focusing upon Redesigning the Situation in the hiring process as a practical means to reduce implicit bias as we build our employee teams in the legal services industry.

Redesigning situations can reduce unwanted biases in the hiring process. For example, blinding names in job applications and using objective criteria for a particular position can avoid hiring on the basis of gut instincts, which often are influenced by social knowledge and biases. Redacting names on resumes and identifying the objective qualities sought in candidates in advance of initiating the hiring process may prevent evaluators from acting on race, gender, age, social class and other biases.

Lauren: What do you think about the recent Starbucks incident and announcement of unconscious bias training for its employees?⁴

Tanya: Increasing DEI and reducing implicit bias are part of a journey. I hope to see that this Starbucks training is not a one-time event. Maybe Starbucks can be a leader for diversity efforts and send a message to other corporations to do the same.

Lillian: Good corporate response. They had to do something.

Milo: I used to work at Starbucks! They are known for very intensive and thorough employee training to ensure a quality customer experience, so this response did not surprise me. It is too bad that it took a terrible public incident to get Starbucks to initiate this training. I do wonder if this had happened ten years ago, before the onset of social media, whether the response would have been the same. I am tired of companies being reactive. Would like to see more corporations, like Walmart and McDonalds, take a proactive approach to DEI training and awareness.

Conclusion

It is clear that our biases can affect the legal services hiring process (recruiting people, making hiring decisions, conducting interviews) without managers being aware of it. They can also affect other decisions that legal services managers make in the course of performing our jobs, such as in the way we mentor employees; make job assignments; give people training opportunities; listen to people's ideas and suggestions; make promotional choices; give performance reviews; decide organizational policy; conduct marketing campaigns; and choose board members.

Seven Powerful Bias Interrupters in Performance Evaluations⁵

1. Give evidence (from the evaluation period) to explain and back up your rating.
2. Make sure to give everyone—or no one—the benefit of the doubt.
3. If you waive objective rules, do so consistently.
4. Don't insist on likeability, modesty, or deference from some but not others.
5. Don't make assumptions about what mothers—or fathers—want or are able to do.
6. If you comment on “culture fit,” “executive presence,” or other vague concepts, start with a clear definition and keep track to ensure such concepts are applied consistently.
7. Give honest feedback to everyone who is evaluated—otherwise some groups won't get notice of problems in time to correct them.

For more information about implicit bias and to take Implicit Association Tests online, go to “Project Implicit” <https://implicit.harvard.edu/implicit/aboutus.html>. Project Implicit is a nonprofit organization and international collaboration among researchers who are interested in implicit social cognition — thoughts and feelings outside of conscious awareness and control. The goal of the organization is to educate the public about hidden biases and to provide a “virtual laboratory” for collecting data on the internet.

Encourage your legal services management team to take some or all of the below listed Implicit Association Tests (IATs). The Implicit Association Test (IAT) measures the strength of associations between concepts (e.g., black people, gay people) and evaluations (e.g., good, bad) or stereotypes (e.g., athletic, clumsy). The main idea is that making a response is easier when closely related items share the same response key. <https://implicit.harvard.edu/implicit/faqs.html>. Just because we have not yet perfected bias elimination training is no excuse for not increasing bias awareness and creating structures for reducing unintentional bias that negatively impacts our prospective employees, and, ultimately, our legal services clients.

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<https://implicit.harvard.edu/implicit/selectatest.html>

- Sexuality ('Gay-Straight' IAT)
- Weight ('Fat - Thin' IAT)
- Gender - Career
- Arab-Muslim ('Arab Muslim - Other People' IAT)
- Gender - Science
- Race ('Black - White' IAT)
- Presidents ('Presidential Popularity' IAT)
- Native American ('Native - White American' IAT)
- Disability ('Disabled - Abled' IAT)
- Religion ('Religions' IAT)
- Age ('Young - Old' IAT)
- Skin-tone ('Light Skin - Dark Skin' IAT)
- Weapons ('Weapons - Harmless Objects' IAT)
- Asian American ('Asian - European American' IAT)

- 1 Lauren Breen is the Executive Director of Neighborhood Legal Services in Buffalo, NY. In 2016, Lauren is a former clinical law professor with the University at Buffalo School of Law, focusing on community development. She was supervising attorney at the Western New York Law Center from 2010-2013. She started her legal career at NLS and served on its board from 1993-1999. Lauren may be reached at lbreen@nls.org.
- 2 Tanya Douglas is the director of the Disability Advocacy Project (DAP) at Manhattan Legal Services (MLS) and coordinates the Veterans Justice Project at MLS, which is a program of Legal Services NYC (LSNYC). Tanya is a graduate of Cornell University and Cornell Law School. Tanya has spent her entire twenty-four year legal career as a public interest attorney with Legal Services NYC working on Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), and education cases as well as focusing on veterans' issues. Tanya has spent a significant amount of her legal career focused on diversity and cultural competency matters for legal services/legal aid programs. Tanya was the first chair of the LSNYC Diversity Committee, the Committee focused on issues such as recruitment and retention and offered trainings on cultural competency. Tanya is co-facilitator of the New York State Legal Services/Legal Aid Diversity Coalition whose mission is to increase diversity in the legal services/legal aid and increase cultural competency of legal services/legal aid staff. The coalition has offered trainings on cultural competency, diversity, and language access issues at local and national conferences as well as provided professional develop-

ment opportunities. She is a member of the Management Information Exchange (MIE) training committee and offers trainings for public interest managers on such topics as cultural competency and supervision across racial and gender differences and basic management tools. Tanya may be reached at tdouglas@lsnyc.org.

Lillian M. Moy became the Executive Director of the Legal Aid Society of Northeastern NY in 1995. She is a 1981 graduate of Boston University School of Law. She is a former member of the Board of NLADA and past Chair of NLADA's Civil Policy Group. Lillian is a member of the ABA's Coalition on Racial & Ethnic Justice and Public Service and the Legal Access Job Corps Task Force. She is the immediate past chair of the New York State Bar Association's Committee on Attorney Professionalism and serves on the Board of Directors for the Albany Medical Center. Lillian may be reached at lmoy@lasnny.org.

Milo Primeaux, Esq., is a queer, transgender man and long-time transgender rights advocate. As the LGBT rights staff attorney at Empire Justice Center in Rochester, NY, Milo provides direct legal services, cultural competency and substantive legal trainings, and policy advocacy to advance the rights of low-income LGBTQ people across upstate New York. He focuses in large part on anti-LGBTQ discrimination occurring in employment, education, public accommodations, access to health care and health insurance, and judicial processes. He has also provided legal name change assistance to more than 150 low-income transgender clients across upstate New York. Previously, he served as an Equal Justice Works AmeriCorps Legal Fellow at Whitman-Walker Health in Washington, D.C., where he managed a free monthly Name & Gender Change Legal Clinic and reduced legal barriers to employment for more than 250 transgender residents of D.C., Maryland, and Virginia. He is also the founder and former director of OTHER (Organization for Transgender Health Empowerment Resources), a not-for-profit dedicated to increasing access to respectful and competent health care for all transgender and gender-nonconforming people. He chairs the Monroe County Bar Association's LGBT Committee and serves on the board of the Gay Alliance of the Genesee Valley. He is a graduate of CUNY School of Law. Milo may be reached at mprimeaux@empirejustice.org.

- 3 Calvin Lai, PhD, is Assistant Professor and Director of Research, Washington University in St. Louis, and Executive Committee Member, Project Implicit. Professor Lai studies how people create, interpret, and maintain social group distinctions. He is particularly interested in implicit biases: automatic or unconscious mental processes that

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