DIVERSITY & DELIBERATE DECISION-MAKING

Hon. Donald Johnson, 19th Judicial District of Louisiana
Hon. Joseph G. McGraw, 17th Circuit Court of Illinois
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Outline

- Part 1: The psychological science of implicit bias
- Part 2: A judge’s journey: Overcoming conscious & unconscious biases
- Part 3: How implicit associations affect case outcomes
- Part 4: Tools and strategies for promoting deliberativeness
Memory Test
Where does implicit bias come from?

- Implicit stereotypes and attitudes form in memory through repeated exposure to group stereotypes in everyday life.

- These implicit biases develop in memory even if you don’t personally endorse them.

- These implicit biases influence decision-making & behavior even if you don’t personally endorse them.
What do psychologists know about implicit bias?

- Many thoughts & behaviors happen outside awareness
- Implicit bias effects are not limited to the lab
- Judges are not immune
- The path from implicit bias to discriminatory behavior is not inevitable
  - With enough motivation and cognitive capacity, we can learn over time to override our implicit biases
Judicial Decision-Making Study

- Research question: How do race, gender, income, and representation status affect case outcomes?

- Method: controlled experiment
  - Participants read hypothetical cases with identical facts
  - Only race, gender, income, and representation were varied across conditions
Results: Race

- Implicit racial associations predicted sentencing outcomes
Probability of Probation for the Black Defendant

Probability of Probation

Minimal implicit bias  Moderate implicit bias  Strong implicit bias  Highest IAT score

100 95 90 85 80 75 70 65 60
Results: Gender

- Litigant gender influenced:
  - sentencing of criminal defendants
Results: Gender

- Litigant gender influenced:
  - sentencing of criminal defendants
  - summary judgment in an employment discrimination case
Probability of Summary Judgment against the Female Plaintiff

Weakest support for traditional gender roles

Strongest support for traditional gender roles
Results: Gender

- Litigant gender influenced:
  - sentencing of criminal defendants
  - summary judgment in an employment discrimination case
  - allocation of parenting time in a custody dispute
Allocation of Parenting Time

Extra Days Per Week for Female Litigant

- 16.69 extra days per year
- 29.72 extra days per year

Weak support for traditional gender roles

Strong support for traditional gender roles
Results: Gender

- Litigant gender influenced:
  - bond rulings for criminal defendants
  - sentencing of criminal defendants
  - summary judgment in an employment discrimination case
  - admission of expert testimony in an employment discrimination case
  - ruling on the merits of an employment discrimination case
  - allocation of parenting time in a custody dispute
Results: The role of judicial specialization

Allocation of Parenting Time

Number of Extra Days Awarded to Female Litigant Per Week

- 0.0
- 0.1
- 0.2
- 0.3
- 0.4
- 0.5
- 0.6

Family Cases are Small
Proportion of Caseload

Family Cases are Large
Proportion of Caseload
Results: The role of judicial specialization

![Graph showing damages for sex discrimination for White and Black plaintiffs in civil cases with small and large proportion of caseload.]
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- The path from implicit bias to discriminatory behavior is not inevitable
  - With enough *motivation* and *cognitive capacity*, we can learn over time to override our implicit biases
Overriding implicit bias

During decision-making, both implicit and explicit processing are happening **simultaneously**

Factors that increase the influence of implicit biases:

- *Limited cognitive capacity (time pressure, distraction, multitasking, fatigue)*
- *Habitual, intuitive, spontaneous decisions*
- *Ambiguous or subjective decision criteria*
Overriding implicit bias

- The most successful psychological interventions treat implicit bias like a **habit**
  - *It takes time and practice to learn to override our implicit biases*

Devine, Forscher, Austin, & Cox (2012); Devine, Plant, Amodio, Harmon-Jones, & Vance (2002); Forscher, Mitamura, Dix, Cox, & Devine (2017); Monteith, Ashburn-Nardo, Voils, & Czopp (2002)
Overriding implicit bias

- 1) Choose 1 situation in your judicial work that may be vulnerable to the influence of unintended bias

- What are the potential consequences of implicit bias in this decision?
  - For the individual litigant
  - For the group or for society
Overriding implicit bias

2) Identify the factors that may increase the influence of implicit bias in that decision

- Limited cognitive capacity (time pressure, multitasking, fatigue)
- Habitual, intuitive, spontaneous decisions
- Ambiguous or subjective decision criteria
Overriding implicit bias

3) Identify **one** thing you can do to address one of those factors
   
   – Make sure your plan is specific, measurable, and realistic
Overriding implicit bias

4) State your goal as an Implementation Intention:

If ________________, then I will ________________.

5) Post your implementation intention in a meaningful place and PRACTICE
THANK YOU!

Please remember to complete your evaluations.