THE LIABILITY IMPLICATIONS OF IMPLICIT BIAS

2019 NLC-RISC Trustees Conference
May 16, 2019 -- Ft. Lauderdale, Florida
Session overview

- Implicit, systemic, and institutional bias
- Impact of bias on cities and other local government units
- Implicit bias in the risk pool setting
  - Claims
  - Risk assessment
  - Litigation
- Case studies
To strengthen local leaders’ knowledge and capacity to eliminate racial disparities, heal racial divisions and build more equitable communities.
NLC REAL: RACE, EQUITY, AND LEADERSHIP –
OUR VISION

A nation in which every local official is equipped to effectively lead and serve an inclusive, thriving and healthy community.

Inclusive, Thriving and Healthy Communities are safe places where people from all racial, ethnic and cultural backgrounds thrive socially, economically, academically and physically...
What Does Racial Equity Require?

- “Closing the gaps” so that race does not predict one’s success, while also improving outcomes for all.
- Targeted strategies to focus on improvements for those worse off.
- Move beyond “services” and focus on root causes by changing policies, institutions, and systems.
Racial Disparities

From infant mortality to life expectancy, race predicts how well you will do.
Racial Disparities

6 in 10 of U.S. prisoners are Black/Latino (yet only comprise 30% of the U.S. population)

35% Black or Latino men won’t graduate from High School (80% of White males will)

57% of Blacks and Latinos spend more than 30% of their income on housing costs

Black and Native American unemployment is 2x that of Whites

LMC.org and NLC.org/REAL
Symptoms of a larger problem

**MEDIAN FAMILY WEALTH TODAY:**

- **LATINO FAMILY:** $6,600
- **WHITE FAMILY:** $147,000
- **BLACK FAMILY:** $3,600

*REPORT: DREAMS DEFERRED 2019*

LMC.org and NLC.org/REAL
Ignoring Race: Literally **Lethal**

**Racial disparity across incomes**

In recent years, as high rates of maternal mortality in the U.S. have alarmed researchers, one statistic has been especially concerning. According to the CDC, black mothers in the U.S. die at three to four times the rate of white mothers, one of the widest of all racial disparities in women's health. Put another way, a black woman is 22 percent more likely to die from heart disease than a white woman, 71 percent more likely to perish from cervical cancer, but 243 percent more likely to die from pregnancy- or childbirth-related causes. In a national study of five medical complications that are common causes of maternal death and injury, black women were two to three times more likely to die than white women who had the same condition.

**Black women face significantly higher maternal mortality risk**

Maternal deaths per 100,000 live births (2011-2013)

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<th>Black women</th>
<th>White women</th>
<th>Women of other races</th>
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<td></td>
<td>44 deaths</td>
<td>13</td>
<td>14</td>
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Source: Centers for Disease Control and Prevention
Effective National Practices

NORMALIZE
- Shared analysis and definitions
- Urgency / prioritize

ORGANIZE
- Internal infrastructure
- Partnerships

OPERATIONALIZE
- Racial equity tools
- Data to develop strategies and drive results
Normalizing
Equality provides the same thing for everyone. This only works when people start from the same place, history, and set of circumstances.

Equity is about fairness, and providing people with the resources and opportunities they need, given their history and set of circumstances.
**Equality = Sameness**
Equality provides the same thing for everyone. This only works when people start from the same place, history and set of circumstances.

**Equity = Justice**
Equity is about fairness, and providing people with the resources and opportunities they need, given their history and set of circumstances.
What is Bias?

- The evaluation of one group and its members relative to another.
- Inescapable reality of humanity
- We do have choice over how much we let bias influence our actions.
- Acting on bias can be discriminatory and create negative outcomes for particular groups

**Explicit**
- Expresed directly
- Aware of bias / operates consciously
- Example: Sign in the window of an apartment building noting “Mexicans need not apply”

**Implicit**
- Expresed indirectly
- Unaware of bias / operates sub-consciously
- Example: A property manager doing criminal background checks on Black applicants and not White applicants.
Socially Acceptable

Socially Unacceptable
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Socially Acceptable

Charleston Massacre
Racist Jokes
Noose images
Charlottesville
KKK
Black Face costumes
Socially Unacceptable

- Police murdering people of color
- Mass incarceration
- Expecting PoC to teach white people about racism
- Cultural Appropriation
- Police murdering people of color
- "But we’re just one human family"
- "Don’t blame me, I never owned any slaves"
- "I don’t see color"
- Assuming Good Intentions are Enough
- Believing we’re post racial

Socially Acceptable

- Tokenism
- Colorblindness
- Housing Discrimination
- Anti-Immigration Policies
- Predatory/Discriminatory Lending
- Stop + Frisk
- Not Challenging Racist Jokes
- Racist Mascots
- "I don’t see color"
- Colorblindness
- Believing we’re post racial
The **Unconscious Mind**

Schemas: the “frames” through which our brains help us understand and navigate the world

Shaped by our environment and largely reside in the sub-conscious.

1) Sort into categories
2) Create associations
3) Fill in the gaps
Examples of Implicit Bias

Job search:

• Identical resumes, apart from names.
• White sounding names received 50% more callbacks than African-American sounding names.
Implicit Bias

When we are exposed or socialized to certain identity groups being paired with certain characteristics, we automatically and unconsciously associate the identity with the characteristics...

whether or not that association aligns with reality.

Source: Kirwan Institute Implicit Bias Report 2016

In the U.S., there is a strong implicit association between African Americans and criminal activity.
What to **DO** with Bias

Suppressing or denying biased thoughts can actually *increase prejudice* rather than eradicate it.

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**Be Accountable:** Take the time to examine your actions or beliefs.

**Take Action:** Increase contact with people outside of your own demographics, experiences, and thought groups.

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Adapted from Kirwan Institute Implicit Bias Report 2016
Differentiating Implicit & Explicit Bias

a. Institutional / Explicit
• Policies which explicitly discriminate against a group.

   Example: Police department refusing to hire people of color.

b. Institutional / Implicit
• Policies that negatively impact one group unintentionally.

   Example: Police department using “stop and frisk” style racial profiling.

c. Individual / Explicit
• Prejudice in action – discrimination.

   Example: Police officer calling someone an ethnic slur while arresting them.

d. Individual / Implicit
• Unconscious attitudes and beliefs.

   Example: Police officer calling for back-up more often when stopping a person of color.
### Differentiating Implicit & Explicit Bias

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“The key to moving forward is what we do with our discomfort. We can use it as a door out—blame the messenger and disregard the message. Or we can use it as a door in by asking, Why does this unsettle me? What would it mean for me if this were true?”

-Robin DiAngelo
IMPLICIT BIAS AND ITS IMPACT ON RISK POOL MANAGEMENT

- Internally & Managing the Litigation

Portrait of James Batson from the website of the “More Perfect” Podcast
RECENTLY IN MINNESOTA…

Courtroom sketch from inside current police shooting case in MN
CONCERNS OF IMPLICIT BIAS PERMEATED THE PROCEEDINGS – FROM CHARGING TO CLOSING ARGUMENT

- **Critics of Hennepin County Attorney Mike Freeman** say he wouldn't have prosecuted the case so aggressively if the roles had been reversed. Freeman has denied race had anything to do with his prosecuting decisions and insisted he has charged white officers with other crimes.

- **Race came out in key moments of the trial. Potential jurors were asked about their experiences with Somali-Americans. And while cross-examining Noor, the prosecuting attorney implied Ruszczyk could not have been perceived as dangerous:** "The whole blonde hair, pink T-shirt and all is a threat to you?"
This courtroom sketch depicts former Minneapolis police officer Mohamed Noor, on the witness stand Thursday, April 25, 2019 in Minneapolis, Minn., during his trial in the fatally shooting of an unarmed Australian woman, Justine Ruszczyk Damond, in July 2017.
ADDRESSING IMPLICIT BIAS
EXAMPLES OF SOME STEPS RISK POOLS CAN TAKE TO ADDRESS IMPLICIT BIAS IN CLAIM HANDLING AND DECISION-MAKING

**Internally**

- Recognition, Training, and Testing
- Legal Writing Counter-Stereotypical Examples
- Cognitive Correction

**Managing the Litigation**

- Addressing in Voir Dire
- Batson Challenge Process
- Trial themes and storytelling
QUESTIONS?
ADDITIONAL RESOURCES

TAKE THE TEST
• PROJECT IMPLICIT AT HARVARD UNIVERSITY
• SEARCH FOR: “PROJECT IMPLICIT” OR GO DIRECTLY TO: HTTPS://IMPLICIT.HARVARD.EDU

GOOD ADDITIONAL READING
• UNRAVELING THE GORDIAN KNOT OF IMPLICIT BIAS IN JURY SELECTION: THE PROBLEMS OF JUDGE-DOMINATED VOIR DIRE, THE FAILED PROMISE OF BATSON, AND PROPOSED SOLUTIONS.
• BY JUDGE MARK W. BENNETT
QUESTIONS? GET IN TOUCH.

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WHO WE ARE

The National League of Cities (NLC) is the voice of America’s cities, towns and villages, representing more than 200 million people across the country.
OUR MISSION

To strengthen local leadership, influence federal policy and drive innovative solutions.