

ADREvolution
ADR Services, Inc.
4th Annual MCLE Day

UNVEILING IMPLICIT

BIAS STRATEGIES FOR DETECTION AND REDUCTION IN THE LEGAL SYSTEM



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AGENDA



01

IMPLICIT BIAS: DEFINED,
DISCUSSED

02

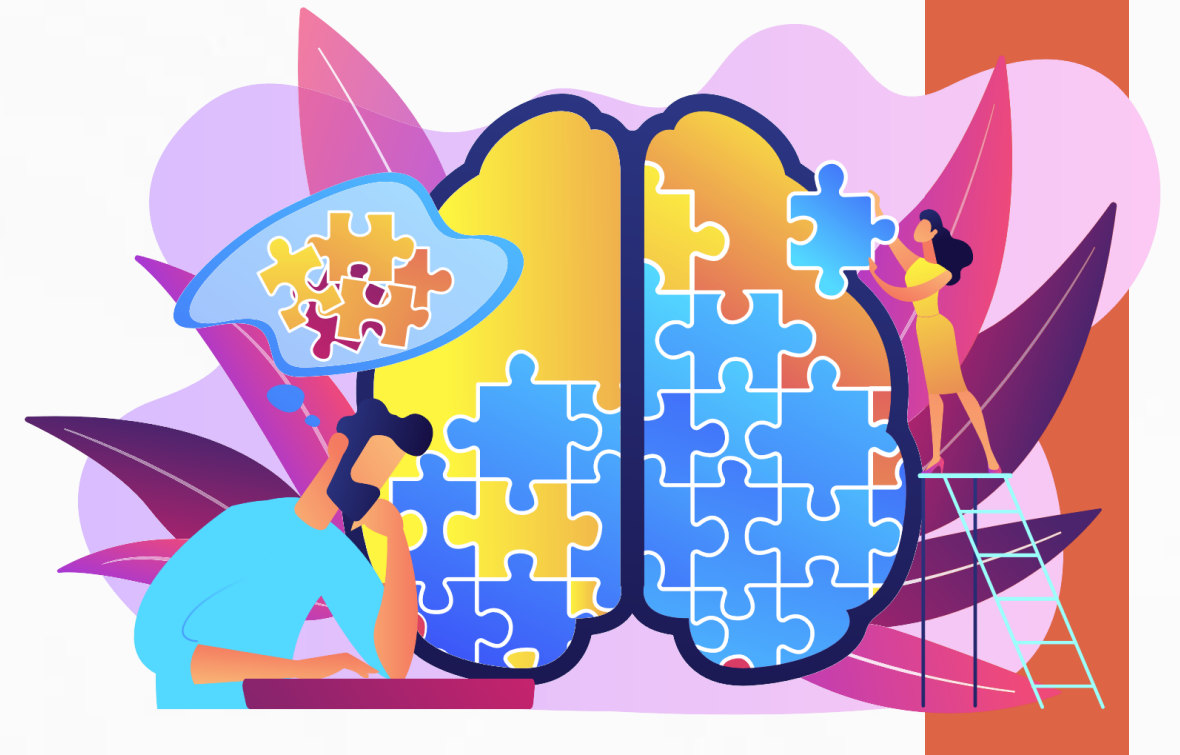
IMPLICIT BIAS IN LEGAL
SETTINGS

03

REDUCTION OF THE
IMPACT OF BIAS

WHAT IS IMPLICIT BIAS?

“Implicit Bias involves all the subconscious feelings, perceptions, attitudes, and stereotypes that have developed as a result of prior influences and imprints. It is an automatic positive or negative preference for a group based on one’s subconscious thoughts”



Source: Department of Justice Community Relations Toolkit

WHAT IS IMPLICIT BIAS?

SHORTCUTS

Implicit Biases are shortcuts that our brains create to efficiently function and process information

PROCESSING

Our brains receive millions of bits of information per second but our conscious minds are processing only a small fraction of this information. Our subconscious is doing the majority of the work.

INTERPRETATION

So we made associations, assumptions, judgments and develop feelings and preferences towards some individuals and groups over others

RESULT

These associations are implicit because we are not aware of them. They come to our minds automatically and without our conscious knowledge.

ORIGINS OF JUDICIAL TRAINING

JUDICIAL CANNON 3(B)(5)

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not . . . engage in . . . conduct that would reasonably be perceived as bias, . . . prejudice or harassment.



Upbringing

Family, Friends,
Community

Past Experiences

Culture

Background

Exposure to Media

WHERE DO
IMPLICIT
BIASES COME
FROM?

TYPES OF IMPLICIT BIAS

THERE ARE MANY TYPES OF IMPLICIT
BIAS SUCH AS:

STEREOTYPE BIAS

An unconscious association, belief,
or attitude toward any social
group.

CONFIRMATION BIAS

Favors information that confirms
your previously existing beliefs or
biases.

AFFINITY Bias

Tendency to favor people who
share similar interests,
backgrounds, and experiences with
us.

BENEVOLENT BIAS

Limit an individual or group's
autonomy by presuming what's
best for them.



WHY DOES IMPLICIT BIAS MATTER?

Implicit Bias can influence how we see, feel, remember, “know”, make decisions, judge others and act in general.

You can act on the basis of stereotypes and prejudice without intending to do so.

These thoughts stick in our minds even when we consciously “know better”

IMPLICIT BIASES IN LEGAL SETTINGS

- Jury Selection
- Prosecution and sentencing
- Recruitment and hiring
- Mentoring, work assignments and promotions



JURY SELECTION

WHAT YOU NEED TO KNOW.

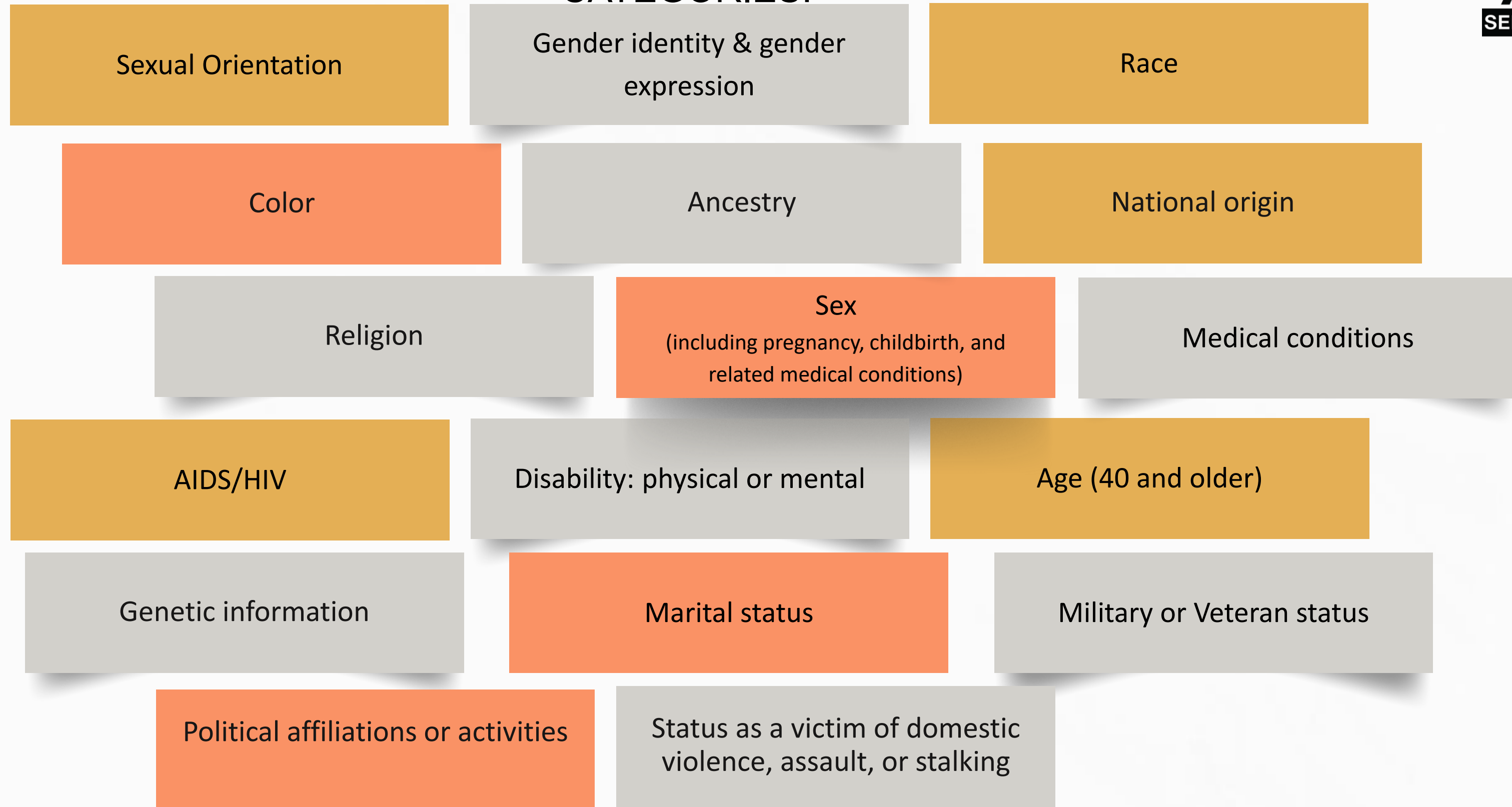


O.J. SIMPSON CASE



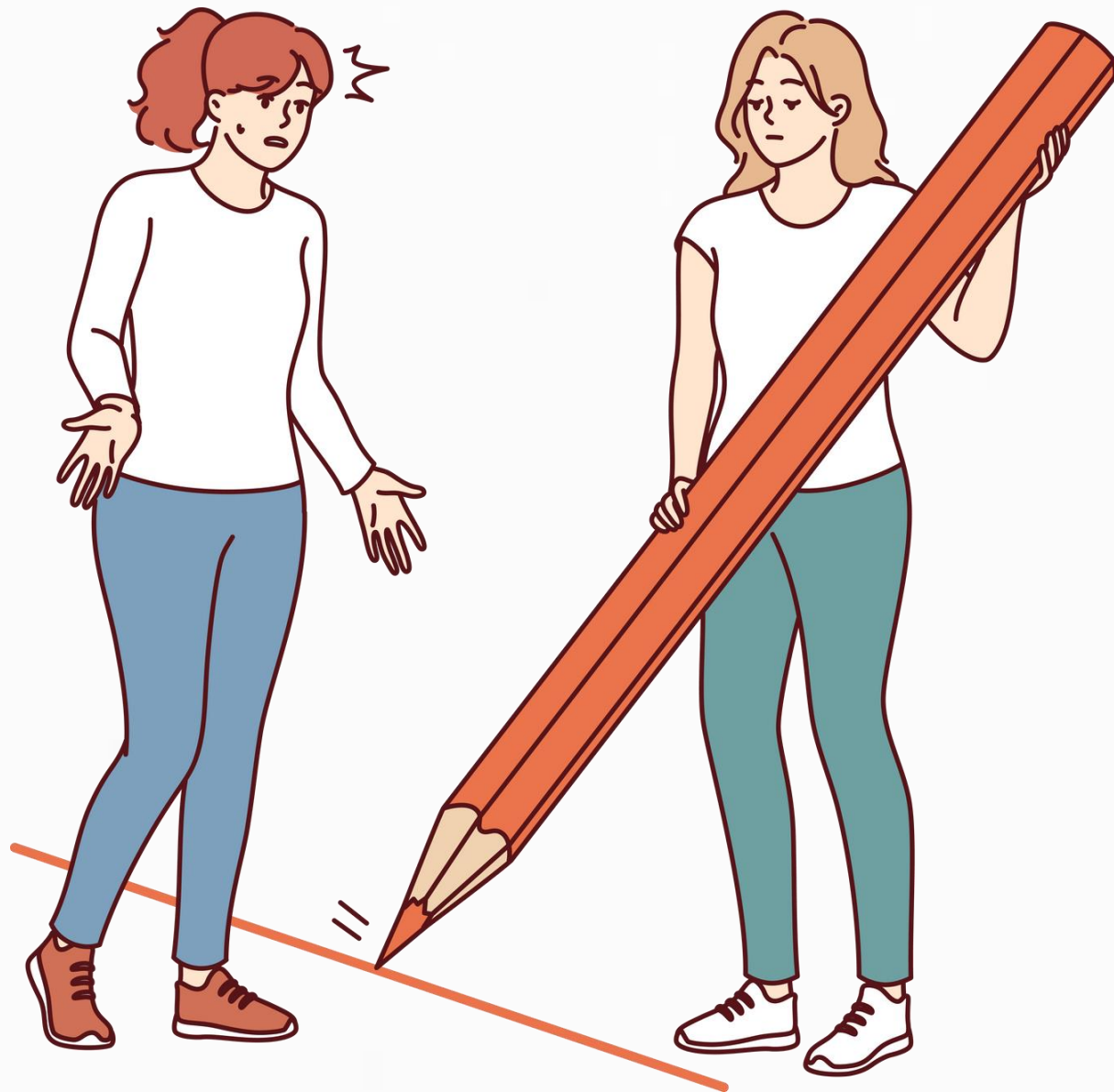
CCP231.7 (a) A party shall not use a peremptory challenge to remove a prospective juror on the basis of the prospective juror's race, ethnicity,[etc.] . or the perceived membership of the prospective juror in any of those groups. . . .

BASED ON BOTH FEDERAL & CA STATE STATUTES, THESE ARE THE PROTECTED CATEGORIES:



CCP 231.7

Some presumptively invalid reasons:



- Dress, attire or personal appearance
- Not being a native English speaker
- One's neighborhood
- Close relationship with someone who has been stopped by police
- Having a child outside of marriage
- Lack of employment
- Friendliness with other prospective juror

WHAT CAN WE DO ABOUT IMPLICIT

BIAS?



“Nothing can be
change until it’s
faced.”

-James Baldwin.

SELF-AWARENESS

Recognize that having a bias does not mean that one lacks in character, but it does mean one may be incapable of objectivity in certain situations.

Challenge stereotypes, norms and your own deeply rooted biases, by identifying them, questioning their origin, seeking out additional information, committing to ongoing learning, and remaining open to feedback.

Always question your first impressions.

SOURCE: CA STATE BAR BEST PRACTICES FOR DISRUPTING BIASES

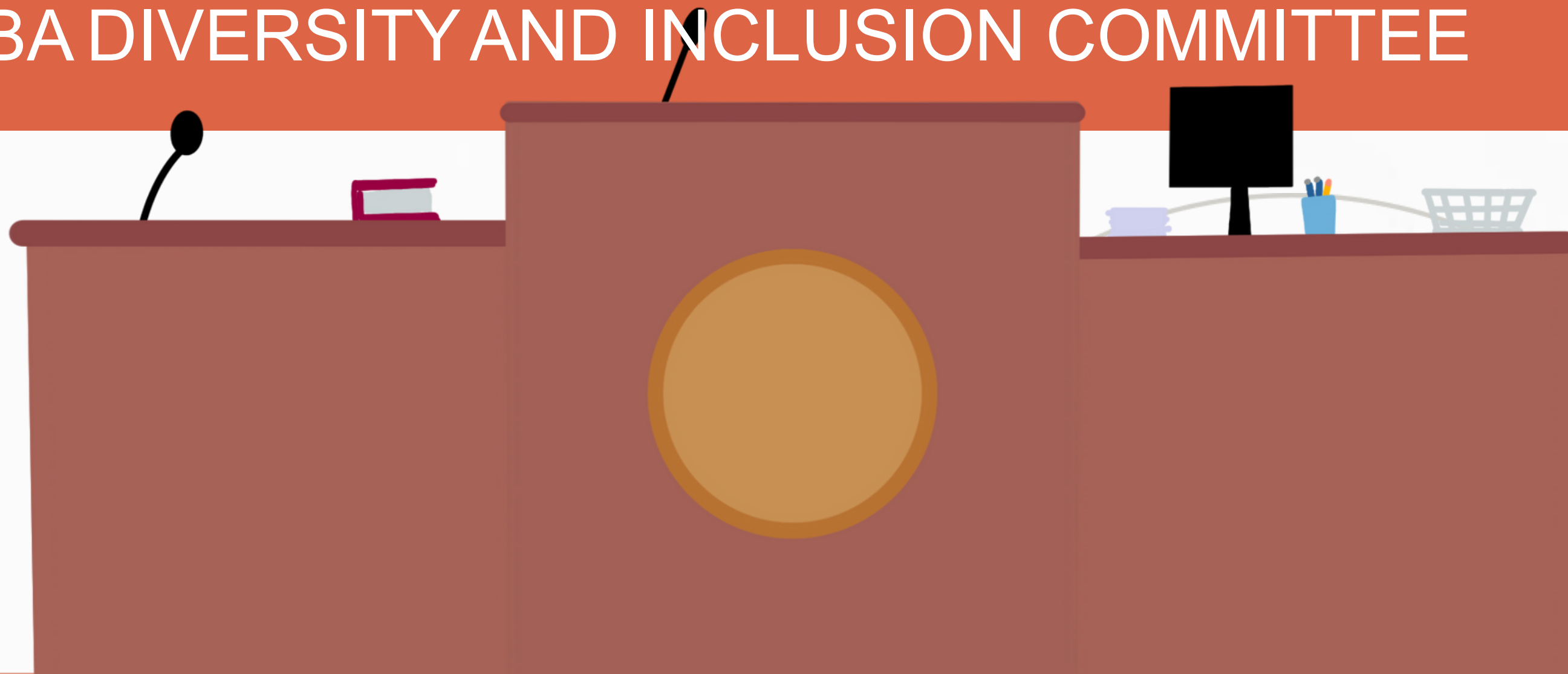
Take one Harvard's Project
Implicit Tests

One well-known
instrument is the Implicit
Association Test (IAT)



HIDDEN INJUSTICE: BIAS ON THE BENCH

BY ABA DIVERSITY AND INCLUSION COMMITTEE



SELF-REGULATION

Ability to control or redirect disruptive impulses, biases, and behavior.

Knowing that one may be subject to bias is one thing; being able to correct it is another.

If you have an emotional reaction to something, stop and pause or think about it. What is the emotion, and why are you triggered?

WHAT WE CAN DO TO SELF-REGULATE



1

Learn your trigger points and strive to set aside personal predispositions, preferences, and attitudes

2

We must accept that we are all the product of environmental factors that are permeated with implicit assumptions and do our best to counteract their prejudicial effects.

3

We all have the personal responsibility to keep our biases in check so as to not harm or prejudice anyone.

SPEAK UP IF POSSIBLE

If you are impacted by a biased behavior or witness a biased behavior which is impacting someone else: speak up if possible.

Being more empathetic

Don't be a bystander; be an ally!



DEVELOP CULTURAL COMPETENCY

Cultural competency building starts with becoming aware of one's own culture, values, and worldview.

Learn about other cultures and what's important to them



DEVELOP CULTURAL COMPETENCY

Openness to different
backgrounds, cultures and
viewpoints

Expand your network and go
beyond the people that you
normally go to. Find opportunities
to get to know people from
different groups in informal or
social environments (i.e., during
networking events and not during
an interview or client meeting)
and establish common ground.

Be curious and take the
time to learn before
judging or making
assumptions

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CRPC 8.4.1 LAWYERS CAN'T DISCRIMINATE BASED ON PROTECTED CLASS.

b) In relation to a law firm's operations [or] . .
.unlawfully discriminate or knowingly permit
unlawful discrimination;

ORGANIZATIONAL STEPS for Disrupting Biases

Source: Best Practices for Disrupting Biases CA State Bar



1

Review organizational policies and practices for equity and revise as necessary to ensure fairness and accountability.

2

Provide training and education about having difficult conversations with colleagues and peers, as well as with those who report to us.

3

Regularly offer implicit bias trainings to reinforce learning and update the trainings with current research. Give constructive feedback and help people develop substantive expertise and grow professionally

It's good for
business.



THANK YOU

QUESTIONS?



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Unzueta v. Akopyan

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