

# Improve Our Profession with Unconscious Bias Awareness and Correction



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**A**my and Susan are first-year students at Tulane Law School in New Orleans. Amy is from Baton Rouge, Susan from Des Moines. Both women are passionate about equality and volunteered for student rights organizations during their undergraduate careers. The first Sunday morning after classes begin, Susan and Amy go out for breakfast and review their notes from their Constitutional Law class. They arrive at a popular diner where the waiter seats them, pours steaming cups of brew, and hands them menus.

Amy glances at the menu and quickly announces, "I'm having a couple of beignets."

"What's a beignet?" Susan asks.

"Only the most scrumptious food on planet Earth," Amy answers matter-of-factly. "It's a square of fried dough, eaten hot, sprinkled with powdered sugar. You've got to try it."

"Gross," Susan grumbles. "I'll pass." She orders the French toast.

Amy grew up having Sunday brunch at her beloved Grandma June's house until her grandmother passed away a few years ago. Grandma June always made home-

made beignets. For Amy, the little calorie bombs conjured thoughts of love, relaxation, and happiness.

Susan also had fond breakfast memories: her father used to make French toast for her and her sister most mornings before they would get on the school bus.

Neither woman was consciously thinking about these memories during this apparently innocuous breakfast selection process. But subconsciously, their minds actively pursued familiar comfort foods. Susan rejected something foreign to her—something she hadn't grown up with.

If you have ever enjoyed a piping hot beignet, you know Susan missed an opportunity to broaden her culinary repertoire with a sinfully fabulous bite of heaven. But she has an implicit bias for French toast and against beignets—a bias stemming from subconscious childhood memories.

According to experts, we all have unconscious biases. It does not mean we are bad; the phenomenon is a function of the brain used to conserve energy and make quick decisions. According to the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University,<sup>1</sup> unconscious or "implicit social cognition" refers to

the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These

biases, which accompany both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control. Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for social and/or political correctness....

The implicit associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance. These associations develop over the course of a lifetime beginning at an early age through exposure to direct and indirect messages.<sup>2</sup>

Susan's unconscious bias against beignets is trivial, but unconscious bias against people can be offensive and damaging to the person who is the target of bias and gravely self-undermining to the person or entity demonstrating it. A recent example involves a 14-year-old Texas student named Ahmed Mohamed who was handcuffed and arrested at MacArthur High School in September because his teacher apparently thought a clock he made in robotics club might be a bomb. The news story drew words of encouragement directed to Ahmed from President Obama, Mark Zuckerberg, MIT, and many others who lit up Twitter with the hashtag #IStandWithAhmed.<sup>3</sup>

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Following this incident and years of being falsely accused of being a terrorist by his classmates, Ahmed, clearly an ingenious, energetic, self-directed future engineer, ditched his high school and enrolled at another school. That was MacArthur High School's loss. The apparent lack of training in bias based on religion, appearance, name, and ethnic origin probably cost them a potential alumnus who may have brought them accolades, financial contributions, and inspiration to future students.

Also in September, a mistrial was declared in the trial of a police officer accused of attacking a grandfather from India visiting his son in Atlanta last February. The grandfather ended up partially paralyzed. Georgia's governor described what happened as "the unfortunate use of excessive force" in response to a neighbor's report of a "skinny black guy" walking in the neighborhood.<sup>4</sup> Beyond the tragic injuries to the grandfather, the story also injures Atlanta's reputation for fairness and equality, characteristics that demonstrably have special attraction for minority-owned businesses and millennials and can increase the employment rate and boost the local economy. Atlanta's loss.

Being brown is one of a host of characteristics that stimulate discrimination. "Sizeism" is size discrimination based on physical size, such as being very tall, short, thin, or fat. Sizeism perpetuates stereotypes. A researcher at Johns Hopkins University found doctors were far less empathetic with overweight patients.<sup>5</sup> As a short person and a woman, I have occasionally experienced unconscious bias. Early in my career, I appeared to take an expert's deposition at a law office in Oakland County and was asked by the receptionist (a female, no less) if I wanted to "set up in the conference room." She thought I was the court reporter, though I had no court reporting equipment with me. Another time, I appeared for a pretrial conference in a rural county where I rarely appear and was asked by the judge to see my bar card to verify I was really a lawyer. Would an unknown male attorney have been subjected to the same skepticism? I'm only the sixth female president of the State Bar of Michigan out of 81. I can only imagine that results in part

from decades of unconscious bias, ironically, by those of us who are educated in the Fourteenth Amendment.

We lose out if we make no conscious effort to be aware of and adjust our unconscious biases. Conversely, the opportunities for improving our profession when we recognize this phenomenon are endless. For example, we decrease the risk of prosecuting the wrong person and letting the actual criminal go; we increase the likelihood juries are fair and impartial; we hire the best and brightest associates; we elevate our most valuable firm members to partnership regardless of whether they "fit in" with other partners' cultures and lifestyles; we increase fairness within the judiciary; and so on. When we don't notice our implicit biases, we end up with a lack of diversity in our boardrooms and courtrooms. And that calls into question the appearance of the integrity of our judicial system to the public, which places society as a whole at risk of instability.

Let's make the best decisions and maximize the performance of our profession. Consider study-based tools for building systemic bias consciousness reminders into our workplaces.<sup>6</sup> Educate others through bias awareness testing and training. Build questions into every internal employment and promotion process to help decision makers identify biases. Analyze who applies for jobs, who gets offers, who remains, and who succeeds. Where is the pipeline broken? How can it be fixed? Maintain metrics to measure progress.<sup>7</sup>

Determine whether unconscious bias could affect the advice you give your clients or the way you treat them. Are you like the doctors who are not as nice to overweight people? Are you stereotyping clients because of their age? Their educational background? Their country of origin? Their accent?

While practicing matrimonial law for many years, I have been blessed to have clients from all around the world including China, Jordan, Turkey, Germany, Mexico, India, and central Europe. It is a privilege to represent these clients because it provides me the opportunity to learn about their cultures, beliefs, and ideals. I have also had the privilege of doing pro bono work

for some incredibly poor people; as a white, middle-class woman from Ann Arbor who grew up in Grand Blanc, a mostly white suburb of Flint, this has been an eye-opening experience. But meeting one, two, or even a handful of people from a particular race, country, or socioeconomic background does not really allow us to fully appreciate their cultures. So although I may be less ignorant than I would be had I not met these wonderful individuals and gotten to know them well, by no means do I think I am free of implicit bias. I fall among those of us who need to implement these protocols to protect and improve myself, my firm, and my clients.

Writing this article has already increased my awareness of my implicit biases, and I look forward to continuing the process as I meet many new people throughout the coming year during my service to our bar. Our seminar, "Blind Spots: How to Avoid Poor Decisions and Bad Outcomes," on November 9 from 8:30 a.m. to 1:00 p.m. at the DoubleTree Suites at 525 W. Lafayette in Detroit will surely be helpful! ■

## ENDNOTES

1. If you flinched at "Ohio State University," that's probably a conscious, not unconscious, bias.
2. Kirwan Institute for the Study of Race and Ethnicity, *Implicit Bias Review 2015* <<http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>>. All websites cited in this article were accessed October 16, 2015.
3. Wang, *No Charges for Ahmed Mohamed, Teen Arrested After Bringing Homemade Clock to School* <<http://www.nbcnews.com/news/asian-america/texas-teen-arrested-after-bringing-homemade-clock-school-n428356>>.
4. Fausset, *Alabama Police Officer Indicted in Confrontation with Unarmed Indian Man* <<http://www.nytimes.com/2015/03/28/us/alabama-police-officer-indicted-in-confrontation-with-unarmed-indian-man.html>>.
5. Brooks, *Do doctors lack empathy for overweight patients?*, Johns Hopkins Magazine (Fall 2013).
6. See, e.g., State Bar of Michigan, *Blind Spots: How to Avoid Poor Decisions and Bad Outcomes* <<http://www.michbar.org/diversity>>.
7. Information in this article comes in part from the website of Cook Ross, a consulting firm whose mission is to provide powerful solutions to organizations around the world in the areas of diversity, inclusion, cultural competency, leadership development, and organizational change management. The link to their website, which contains a significant amount of other material on these subjects, is <<http://cookross.com>>.