

# CBA'S Master Class on Reducing Implicit Bias in the Courts and the Legal Profession

By Adam Sheppard

**T**he science and literature on implicit (unconscious) bias confirm that everyone has implicit biases. Members of the legal profession should especially be aware of its effects. To help educate the bench and bar, the CBA hosted and organized a well-attended master class on implicit bias as part of its signature series programming.

Implicit bias is generally defined as “[a] preference (positive or negative) for a group based on a stereotype or attitude we hold that operates outside of human awareness and can be understood as a lens through which a person views the world that automatically filters how a person takes in and acts in regard to information.” <https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/implicit-bias-toolbox/glossary/>. Numerous studies, including by the American Bar Association, have concluded that everyone, including judges and jurors, comes to the table with implicit biases that may influence how they interpret evidence, understand facts, and make judgment calls. See also <https://www.uclalawreview.org/pdf/59-5-1.pdf>.

Retired Professor Sarah Redfield from the University of New Hampshire Law School, a leading researcher and author on reducing implicit bias in the legal profession, educated the audience on “becoming aware” of implicit biases. For example, when you picture an astronaut in your head, what race is the astronaut? She then focused on becoming “implicit bias literate” such as by recognizing “micro messages:” subtle slights and snubs that devalue someone with whom you are interacting. For example, you shake a person’s hand, but barely make eye contact. You sit in on a colleague’s presentation and repeatedly glance down at your phone.

Next, she addressed “disrupting implicit bias.” Two ways to do this are by creating



The Chicago Bar Association hosted a special Signature Series event exploring the topic of implicit bias in the courts and the legal profession and examining the ways in which implicit bias affects lawyers, judges and the justice system. The program was headlined by University of New Hampshire Law Professor Sara Redfield, an author and presenter who speaks nationally about strategies for interrupting implicit bias in the decision making process for lawyers, judges and court staff. Participants in the panel discussion included (left to right) John C. Sciccotta of Aronberg Goldgehn, Adam Sheppard of the Sheppard Law Firm, Cook County Circuit Court Judge Kristal Royce Rivers and Illinois Appellate Court Justice Michael B. Hyman.

checklists about information that you are seeking, and setting criteria for judgments ahead of time. Finally, she discussed “take away” strategies and “homework” assignments for the audience, including taking the Implicit Association Test. The IAT measures attitudes and beliefs that people may be unwilling or unable to report. (Found at <https://implicit.harvard.edu/>).

Chicago criminal defense attorney Adam Sheppard lectured on implicit bias jury instructions, including Illinois Pattern Instruction 1.08. Sheppard cited authority in support of making an “implicit bias” instruction mandatory – not just discretionary – in both civil and criminal cases. He predicted that a mandatory instruction would be forthcoming. Many jurisdictions also show potential jurors a short video about implicit bias when they are waiting in the jury assembly room. Sheppard played a clip from one jurisdiction. The notes to

IPI 1.08 also suggest playing a video in Illinois courts.

First District Justice Michael B. Hyman and Circuit Court Judge Kristal Rivers gave real-life examples of how implicit bias may affect judging. John Sciccotta, of Aronberg Goldgehn, told of his experience with implicit bias in civil litigation. A lively question-and-answer session followed the presentation.

Presentations like the CBA’s master class on implicit bias are necessary to train lawyers and judges on how to incorporate anti-bias ideas and procedures in the courtroom. Nina Fain, of the CBA Board of Managers and the CBA Editorial Board, organized the program and introduced the panelists. ■

---

*Adam Sheppard is a partner at Sheppard Law Firm, P.C., a criminal defense firm. He is a member of the CBA Board of Managers and CBA Editorial Board.*