

# Cultural Competence

## Recognizing Implicit Bias

Wendy L. Patrick, JD, PhD

# Detecting Bias and Prejudice



**Education is a method whereby  
one acquires a higher grade of  
prejudices.**

**-Laurence J. Peter (1919-1988)**

# Definition of Bias (Merriam-Webster)

② Bent, tendency, an inclination of temperament or outlook; especially: a personal and sometimes unreasoned judgment: prejudice: an instance of such prejudice

# Social Climate Change



# Lawyers Quit Managers, Not Law Firms

- ❑ Position / Job description/ Workload
- ❑ Chemistry with superiors/ subordinates
- ❑ Comfort, inclusion, acceptance



# ABA Rule 1.1 Competence

- ② A lawyer shall provide competent representation to a client.
- ② Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

# Cultural Competence

“[B]ehaviors, attitudes, and policies that can come together on a continuum that will ensure that a system, agency, program, or individual can function effectively and appropriately in diverse cultural interaction and settings.

# Cultural Competence

Continued: “It ensures an understanding, appreciation, and respect of cultural differences and similarities within, among and between groups.”

--U.S. Department of Health & Human Services  
Health Resources & Services Administration

# Cultural Humility

② “a lifelong commitment to self-evaluation and critique, to redressing power imbalances . . . and to developing mutually beneficial and non-paternalistic partnerships with communities on behalf of individuals and defined populations”

--Tervalon & Murray-Garcia, 1998

**ABA Rule 2.1 Advisor** states that “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.”

# Early Detection



# Types of Unconscious Bias

- Affinity
- Attribution
- Conformity
- Confirmation
- Name, Gender
- Height, Weight

# Sources of Implicit Bias

- ❑ Misattribution
- ❑ Disambiguation
- ❑ Cognitive Load / Depletion
- ❑ Automatic Activation
- ❑ Causal Pathways

--Spencer, K., et al., 2016

# Where Does Implicit Bias Come From?



# Sources of Implicit Bias

- ❑ Personal Experience
- ❑ Stereotypes
- ❑ Unfamiliarity





# Strategies to Mitigate Implicit Bias

- ❑ Mindfulness
- ❑ Focus on Changing Behavior
- ❑ Exposure to Different Groups of People—mitigate Home Court Disadvantage



# Frame Theory



# Meet “Michael”



# LAWS

- ② Title VII of the Civil Rights Act of 1964:  
race, color, religion, national origin, sex.
- ② State Laws
- ② Disability Law
- ② Age Discrimination

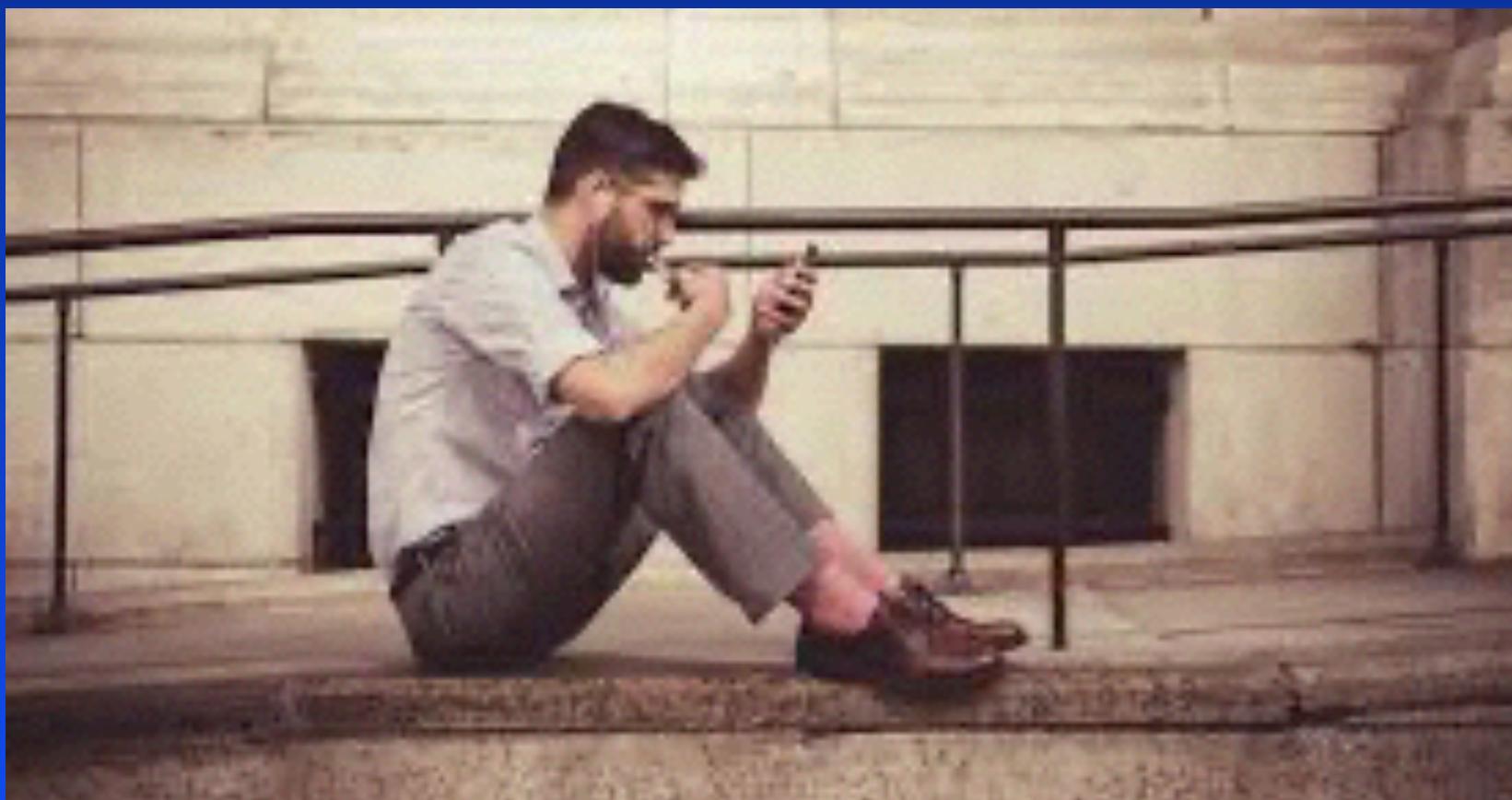
# Turbans in the Courtroom

② *Jensen v. Superior Court of San Diego* (1984): Test is whether it “interferes with courtroom decorum by disrupting justice, i.e., whether it tends to cause disorder or interfere with or impede the functioning of the court.”

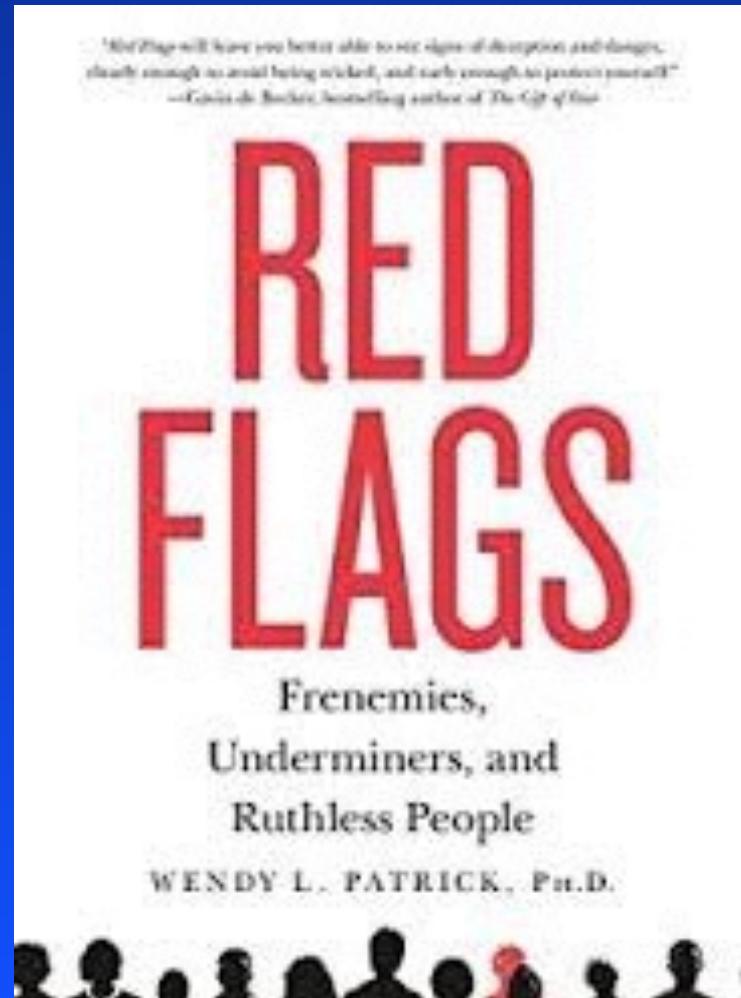
# “Parading a freakish hat before a jury” - Courtroom Exhibitionism



# The Fashion Felony: No Socks No Service



# Detecting Implicit Bias



# Reading Red Flags



- ④ Focus: Self or others
- ④ Lifestyle: Personality revealed
- ④ Associations: What sort of company do they keep? To what organizations do they belong?
- ④ Goals: Profile in priorities

# Focus: Self or Others

- ❑ Entitlement mentality
- ❑ Displaced responsibility
- ❑ Morally aloof



# The Bold and the Brazen



# Lifestyle: Personality Revealed

- ④ Social media “likes”
- ④ Cell phone photos
- ④ Books on nightstand—or office bookshelf
- ④ Identity claims and behavioral residue



# Rogue Traits



# Rigid Social Beliefs

- ❑ Gender roles
- ❑ Immigrants
- ❑ English as second language



# Avoid Jumping to Conclusions



# Break Room Banter



# Conference Room Code of Conduct

## Boardroom Eyes



# Associations: Friends, Fans, and Followers



# Company Culture



# Goals: A Profile in Priorities



# ABA Rule 8.4 (g)

## Professional Misconduct

- ☒ To engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.

# ABA 8.4 Comment [4]

② Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law.

# ABA 8.4 Comment [4]

④Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

# **Model RPC 8.3(a) Reporting Misconduct**

② (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

# Modern Supervision



**Rule 5.1 Responsibilities Of Partners, Managers, And Supervisory Lawyers** states that law firm partners and lawyers within management in a law firm “shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.”

**Rule 5.1 Responsibilities Of Partners, Managers, And Supervisory Lawyers** (b) states that “ A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.”

# **Maximize First Impressions:**

Perceive as much as you can when you are most objective



# Be Wary of Underexposure



# Time-Lapse Photography: Observe behavior over time



Use a Wide-Angle Lens: View behavior in context, and in different settings



# The Ultimate Goal



# Cultural Competence

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