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**Checking Biases At The Courtroom Door**  
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## **Checking Biases At The Courtroom Door**

Prosecutors, public defenders warned about making snap judgments regarding defendants

By CHRISTIAN NOLAN

We're all familiar with the stereotypes.

Some people, without realizing they hold the viewpoint, might associate a black person with danger or aggressiveness. Someone else might believe women are more interested in having a family than working.

Recent studies suggest that nearly everyone has deep hidden biases, especially when it comes to race.

Experts say that these subconscious – or implicit – biases largely stem from our upbringing. We pick them up from family, friends, or even television. But problems occur when these biases manifest themselves in a setting that is supposed to be impartial, fair and fact-driven – the legal system.

In hopes of becoming more cognizant of these tendencies, Connecticut judges, prosecutors, public defenders and police officers convened for a training session on implicit bias earlier this spring.

"Recognizing implicit bias is vital to the preservation of our criminal justice system," said state Appellate Court Judge Lubbie Harper Jr., who, as chair of the Judicial Branch's Commission on Racial and Ethnic Disparity in the Criminal Justice System, organized the event. "It's really that basic," continued Harper. "For a democracy to work, people must have faith in their court system."

Harper said bias "can manifest itself in so many ways," including how police officers, public sector lawyers and judges read people's body language, view their clothing and listen to them speak. The conclusions they draw, said Harper, may "subconsciously interfere with how we approach a particular case."

For example, a guy with baggy pants and a backward ball cap might be viewed as a sure-fire criminal but could, in fact, be a Rhodes Scholar. Or a white defendant and minority defendant each charged with the same crime may face different sentences.

According to UCLA Law School professor Jerry Kang, who conducted the training session, these biases play more of a role in the criminal justice system than one might think. He described a video game exercise used in studies of police officers. The officer is supposed to shoot at photos of possible suspects, but only if they are holding guns. Time and again, said Kang, officers shoot more unarmed black suspects than white ones.

"We have particular stereotypes in our head that associate black men with criminality and threats so we're more likely to shoot them on accident," said Kang. "Black [officers] also show this kind of shooter bias."

### **Afro-Centric**

Kang said the same sort of thinking can prevail in courtrooms. A recent study in Florida indicated that, in addition to sentencing disparities between whites and minorities, blacks with "more Afro-centric facial features" received harsher sentences.

"Think about prosecutors cutting plea deals, bail being set, punishments being handed down, all these kinds of discretion-based decisions we should assume are affected at least in part by implicit biases," said Kang.

Kang said the only way to learn how to avoid being influenced by these biases is to recognize they exist. Judge Harper told the 200 or so prosecutors, public defenders and police chiefs in attendance to accept that, as human, they all have these biases.

Harper acknowledged he was impressed that both prosecutors and public defenders put aside the natural tendency to say, "Oh, I'm not biased," and readily agreed to take part in the session.

"I think when people actually hear the mention of the topic implicit bias, it causes some people to go on the defensive," said Hartford State's Attorney Gail Hardy. "They may think, 'I'm not biased when I deal with my cases, or when we're dealing with victims, or when we're dealing with persons accused of crimes.'"

But Hardy, Connecticut's first African-American state's attorney, says that implicit bias does exist in the criminal justice system, starting at the police end and working its way through the system. She provided an example that a colleague of hers shared after the training session. A defendant from the suburbs accused of a drug offense received a much lighter sentence than a minority defendant from the inner city accused of the same crime.

But this doesn't represent bias solely on the part of the judge or the prosecutor. Hardy noted that defense attorneys, doing everything they can to keep their clients out of jail, often bring up the fact a suburban client "is the product of a good family." She said lawyers for inner city defendants often can't make such an argument.

"A lot of people from inner-cities don't have the stable upbringing as a lot of persons from the suburban communities," said Hardy. "That sometimes factors in when you're looking at the two persons."

#### **'Bunch Of Factors'**

Chief State's Attorney Kevin Kane described Kang's presentation as a "good eye-opening experience" but stopped short of saying hidden bias regularly influences prosecutors' decisions.

"There are a whole bunch of factors that go into sentencing decisions...," said Kane. "I wouldn't say that sentences in individual cases are influenced substantially as a bias but there are a whole bunch of factors that occur in society in general which lead to a lot of the disparity that we see today in sentencing."

Kang, the UCLA professor, said public defenders are less likely to use implicit biases, because studies show that they tend to be more liberal and studies indicate that liberals tend to have fewer biases. But Kang didn't let public defenders completely off the hook. He said studies have shown that even public defenders in capital cases – who often see the worst crimes and deal with the most violent clients – can have similar biases as prosecutors.

"Often times public defenders are completely overworked and have a crushing case file and have to make judgments on the fly," said Kang. "Just because you're a public defender you don't get a free pass."

"Everyone is a product of their own environment," said Jim Pastore, an assistant public defender from Bridgeport who represented his office at the training. "You make certain assumptions in everyday life even when you go to the grocery store. Those assumptions that you make are not necessarily always right."

Pastore opined that biases may be more of a concern for prosecutors, but he also suggested that public defenders shouldn't make quick judgments about a defendant and should, instead, take some time to try to get to know them a bit better.

#### **Joint Training**

In general, Hardy said her office embraced the training, which also included a session about eyewitness identification procedures.

"Hopefully this was an opportunity for people to realize that we all have [biases] and we need to keep them in check to ensure that our recommendations are made fairly, and with equal treatment of all races, ethnic backgrounds and so on," said Hardy.

Kang's program was the first time anyone could remember that state prosecutors and public defenders trained together. Hardy said prosecutors told her that future joint training sessions would be beneficial for both sides.

"I think the fact that it gave us an opportunity to be outside of the office... where we're not in the litigious environment, we can all sort of let our hair down and deal with some topics that are important for both sides," said Hardy.

Pastore, the public defender, agreed. "It was nice to have public defenders and prosecutors in the same room together," he said, "although none of us sang 'Kumbaya.'" •