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Deborah Johnson's Post

Implicit Bias and the Law

Posted by Deborah Johnson on 04/12/2016 at 02:27 PM



RWU Law is very excited to present the seventh installment in its biennial [Thurgood Marshall Memorial Lecture series this week](#). This lecture honors the memory and legacy of our nation's first African American United States Supreme Court Justice.

Our featured speaker this year is famed Harvard professor, **Dr. Mahzarin Banaji**, the Richard Clarke Cabot Professor of Social Ethics in the Department of Psychology at Harvard University. Dr. Banaji has done pioneering work in the area of **implicit bias** and is one of the architects of the **Harvard Implicit Association Test** ("IAT"). During her lecture, Dr. Banaji will address, among other things, the question of how well-intentioned people behave in ways that deviate from their own intentions and values, and how this can compromise our decisions in legal and other contexts.

Although not a new concept, the issue of implicit (or unconscious) bias is a hot topic these days; one that is often discussed as part of the conversation around the factors that often thwart greater forward movement in diversity and inclusion efforts.

"Implicit bias" has been described by the National Center for State Courts as "the bias in judgment and/or behavior that results from subtle cognitive processes (e.g., implicit attitudes and implicit stereotypes) that often operate at a level below conscious awareness and without intentional control. The underlying

implicit attitudes and stereotypes responsible for implicit bias are those beliefs or simple associations that a person makes between an object and its evaluation that ‘...are automatically activated by the mere presence (actual or symbolic) of the attitude object’ (Dovidio, Gaertner, Kawakami, & Hudson, 2002, p. 94; also Banaji & Heiphetz, 2010).” Implicit bias is not about whether someone is good or bad; and it does not automatically translate into defining someone as racist, sexist, homophobic, xenophobic or otherwise prejudiced or bigoted. Still, the impact that implicit bias has on one’s behavior and decisions can have far-reaching and deep-impacting effects on others.

Obviously this week’s lecture will focus on **how implicit bias impacts lawyers and others in the legal profession**, but it can shape any individual’s behavior and decision-making in just about any context. It can impact a police officer’s decision to shoot, a doctor’s decision about how to treat her patient, a hiring manager’s decision about an employment candidate, a teacher’s approach in conducting his class, a lawyer’s representation of her client, and a judge’s or juror’s decision about a defendant’s guilt or innocence or a witness’ credibility. Consequently, it can mean the difference between sickness and health, getting a job or not, being deemed credible or not, excelling in school or not, and, in extreme cases, between life and death.

For lawyers, implicit bias can impact how a deal is negotiated and whether or not it closes; whether or not a client wins his civil suit, what remedies are permitted and how much in damages is awarded; and how a criminal case is prosecuted or defended. In the larger legal profession context, it can also influence which law students get certain opportunities and which students, graduates or lawyers get hired for the most elite positions. It can even affect who is deemed a suitable lawyer for or by a client. Because these decisions can have far-reaching effects, it is critical that we understand all the factors that are at play as we function as legal advocates, scholars, teachers and decision-makers.

Whether or not you attend the Thurgood Marshall Lecture, I encourage you to **take one or more of the IATs** and learn how your completely unconscious thoughts or attitudes may be affecting the way you see the world and interact with the people in it. Having such knowledge can only help to make you a better lawyer, a better advocate, a better defender of justice.