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PERSPECTIVE

Microaggression and gaslighting in the legal profession

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The legal world has devoted considerable effort in recent years to broadening its ranks to reflect the larger society. Law school classes, once almost exclusively white male bastions, now have more women enrollees. Law firms have embraced diversity, equity, and inclusion (DEI) programs designed to integrate, mentor, and foster the careers of traditionally underrepresented groups.

But the legal profession - and corporate America at large - was suddenly forced to reconsider DEI efforts in the wake of the Supreme Court's decision in *Students for Fair Admissions, Inc. v President and Fellows of Harvard College*. That ruling shook the very framework of diversity programs adopted and celebrated not just within the educational community but in a wide range of industries and professions across the nation.

Lawsuits filed against major law firms caused the profession to rethink how it should address disparities between groups of workers. "Preferential" treatment for underrepresented or minority groups would no longer be tolerated. Numerical quotas would become a thing of the past.

Did this signal the end of "different" treatment of different groups? Alas, no. As long as human beings work alongside each other, there will be differences in the way they are treated. Those differences may be benign or uplifting - such as when good work is rewarded - but they may also be hurtful and harmful - such as when a disabled worker is denied the accommodation needed to perform his or her job.

The California Rules of Professional Conduct prohibit discriminatory behavior in the practice of



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law. Attorneys must complete bias training with "at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation."

Training is important, but it can never completely eliminate bias - not by a long shot. In its First Annual Report Card on the Diversity of California's Legal Profession, the California State Bar found that despite higher numbers of women and minorities in the profession and in leadership roles, gaps remain. Among attorneys in California law firms, "Women, people of color, LGBTQIA+ and people with disabilities consistently report lower levels of satisfaction with workplace experiences than white men."

Thus, even when there isn't overt discrimination, marginalized groups see themselves as "different" or "other" because of the way they are looked at, talked to, judged, and otherwise treated by colleagues, supervisors, clients and others **within the profession.**

Microaggression

Bias is everywhere. If you have a brain, you have bias. Human beings receive 11 million bits of information every moment, but they can consciously process only 40 bits of data at one time. This means that 99.999996% of our thoughts are unconscious; we're acting in response to those unconscious thoughts all the time.

Because everyone is biased, people from marginalized groups are more apt to face chronic, continuing, and daily microaggressive stressors

- usually from well-intentioned individuals who are unaware of their insults, slights, and demeaning actions. The good news is that, with insight and effective strategies, these stressors can be turned off.

Merriam-Webster Dictionary defines "microaggression" as a "comment or action that subtly and often unconsciously or unintentionally expresses a prejudiced attitude toward a member of a marginalized group such as a racial minority."

Many microaggressions are non-verbal. They are facial expressions, hand gestures, tones of voice, and other acts that convey judgment or censure. Imagine the implicit message received when a Black person's hair is touched, when he or she is followed through a store, or when others clutch their purses or cross the street as they approach. The message is loud and clear:

You are different, you are untrustworthy, you are other.

Microaggressions can also be verbal expressions of bias toward the person being addressed. To an American-born person of color: "You speak English so well." To an advocate for equal justice: "All lives matter." To a person of color subjected to a racial slur: "I have Black family members, or Black friends, so I can't be racist." These comments, whether intentionally or not, belittle or demean the person.

At law firms, microaggressions are usually not so overt or rudimentary. They can manifest in the way projects are assigned among attorneys. When an attorney of color is asked to work just on matters involving minority clients but is passed over for other projects, the unspoken message is that his or her primary value is as a minority, not as an attorney. The same holds true when a person of color is tasked with heading up the DEI committee and handling all diversity issues in the workplace.

The underlying but unspoken assumption is that the person of color is not as smart or intellectually capable as his or her Caucasian peers, that the person of color is not capable of taking on complex or intellectually challenging matters.

A minority attorney may be subjected to comments about her wardrobe. A White colleague would never face such comments or - heaven forbid - have others touching her hair. The implicit message is that the person of color is judged based on looks and style as opposed to talents and capabilities.

Microaggressions can even show up in the way a minority attorney's work product is judged. Documents prepared by a person of color might be reviewed with a far more critical eye than would be cast on the work of a White cohort. A Black staff member might find themselves jumping through hoops to prove their value, having to justify taking time off, even though a White coworker would face no such inquiries or reviews.

Perhaps more sadly, minority attorneys or staff members might not be invited to or included in social and development opportunities that could help them grow and excel within the firm. Yes, we get to choose our friends, but we cannot always choose our coworkers. Wouldn't it be nice if everyone had the same opportunity to develop

friendships with their coworkers?

Believe it or not, implicit biases and microaggressions even show up in the world of mediation and arbitration. Do we only pick neutrals of color when the matter involves parties or persons of color? Or do we also consider neutrals of color for matters that might be deemed more complex or of a higher dollar value? Do we trust the insights and guidance of the neutral of color in the same way that we trust the insights and guidance of the Caucasian neutral?

Whether intended or not, such exclusion confirms a perception among minorities that they are not truly part of the team. And microaggressions are not limited to attorneys. Clients may assume that the person of color in the room is support staff waiting to serve coffee.

These microaggressions happen daily, but we rarely take the time to identify and acknowledge them. And this causes them to grow into macroaggressions. Overtime, microaggressions in the workplace have a significant impact on a person's mental health, leading to increased rates of depression, as well as prolonged stress and trauma. Over the course of a career, they can produce burnout, lack of job satisfaction, and job turnover. According to a 2022 Harvard Business Review article, as many as seven in ten workers leave their jobs due to microaggressions.

Critics of diversity training and other workplace programs, as well as the heightened focus on issues such as "implicit bias" and "microaggressions," may argue that we are living in a "hypersensitive" culture. Such arguments are ironic, if not hypocritical: The same critics exhibit remarkable sensitivity when they attack school curricula that, they contend, make them feel bad about their ancestry or when they condemn the singing of "Lift Every Voice" during the pre-Super Bowl ceremonies.

The reality is that the use of microaggressions in engaging with our colleagues and coworkers is a sign of disrespect. It devalues people who are different from ourselves, diminishing who they are and what they have experienced.

Gaslighting

Another way in which underrepresented workers may be further marginalized is through gaslighting

by their peers. Gaslighting in relationships is an emotionally manipulative abuse tactic in which a survivor begins to question his or her own reality. The abuser questions facts, denies the survivor's memories, and undermines the survivor's judgment.

A gaslighter is essentially a bully who manipulates facts in such a way that the survivor begins to believe the abuser's story. Gaslighters invalidate their victims' feelings by telling them that they are "too sensitive" or that they "shouldn't feel that way." They refuse to accept responsibility for their part in any incident, making the victim out to be the "bad person."

The goal of a gaslighter is to retain power in the relationship. They do this by making the victim question his or her own truth. When pain and hurt are trivialized and ignored, the victim is left without any anchor to hold onto. No wonder that so many underrepresented attorneys reported that they had low levels of workplace satisfaction.

How to address unconscious bias in the workplace

As we have seen, unconscious bias leads to exclusionary behaviors in the workplace. How to address this? Stepping back and pausing are the most effective tools for combating bias. Take the time to focus on the

impact of words and actions.

Intentionally seek out feedback and be open about the ways our words and actions have impacted others. Focus less on proving that you are an ally and spend more time just listening and trying to understand what your colleagues are hearing, seeing and experiencing.

Be willing to apologize for infractions against colleagues, whether they were done knowingly or not. A simple apology is enough; apologies rarely need a "but, I was just trying...let me explain."

We can all commit to expanding our self-awareness, but guidance should come from the top level of legal organizations. Management must set an expectation that such behavior is not tolerated within the firm or organization. Leaders should show a commitment to actively address these issues through policies, training, follow-up, and engagement.

It starts with creating an environment conducive to candid and authentic conversations on sensitive subjects such as race. It also means doing away with the use of terms such as "blacklist," "peanut gallery," "man-up," and "don't be so sensitive." It also means reevaluating recruitment and hiring practices and creating a safe environment to actively respond when a situation goes awry. We must all own the problem and be willing to self-educate.

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