Fact Sheet: Implicit Bias in Moot Judging

What is implicit bias?

Implicit bias is the unconscious or subconscious associations that people make about groups of people that are based on stereotypes. Implicit bias is not the same as overt racism, sexism, or other forms of discriminatory behaviour. Many people who are engaging in thought processes or behaviours that are influenced by implicit bias are unaware that it is operating, and do not have bad intentions towards the individuals they are categorizing based on deeply held internal stereotypes. Having implicit biases is a very common human trait. It is not intentional, but a conditioned response to repeated exposure to associations perpetuated by cultural and societal norms. In relation to a Moot Court Competition, however, it does mean that judges in particular must be cautious and implement strategies to be aware of when implicit bias is influencing their perceptions of mooters and their ability to judge fairly.

Relevant examples would include a perception that female mooters need to smile when presenting their arguments, or a perception that students of colour are "too aggressive" when delivering their arguments. Unless these mooters are engaging in behaviour that is clearly misconduct or rule violations, judges must be aware that implicit bias may in fact be tainting their perception of the mooter's presentation style and must not let this bias affect their scoring or feedback for mooters.

How can I avoid allowing implicit bias to influence my moot judging?

There are some very common stereotypes that are experienced by many students. Two examples are given above; there are many others.

Judges can avoid allowing implicit bias to influence their judging by checking themselves before they allow a perception based on stereotyping to shape their comments or assessment of mooters. For example, if you are watching a female mooter and find yourself wishing that she would be more pleasant, smile more, or be more upbeat, it is very likely that your own implicit bias about the way women should behave is at work. Before critiquing a mooter, consider whether you would feel compelled to provide the same critique to every other mooter you witness in otherwise similar circumstances. The Price Media Law Moot Court Competition's judging criteria in the Oral Rounds Scoresheet make no mention of appearance, facial expression, or even presentation style. Mooters are to be judged on the quality of their legal arguments. Leave your observations about their demeanour or appearance at the door. This can help enormously to minimize the operation of implicit bias in moot judging.

It is particularly important to note that mooters may have disabilities that render them unable to engage in certain activities, like smiling, standing up straight, or gripping the podium, that are traditionally associated with successful mooting. This must not inhibit them from participating, and judges must ensure that they do not engage in any behaviour that has this effect.

What are some statements to be conscious of that may reflect implicit bias at work?

- Comments about facial expressions, particularly those that are gendered.
- Commenting that a student is "too aggressive" unless that student is acting in a disrespectful manner towards judges.
- Any comments about physical appearance, including hairstyle, clothing, posture.
- Culturally inappropriate comments, or comments rooted in a cultural or racial stereotype.
- Comments regarding use of the English language for Oxford Price mooters for whom English is not a first language.

Recommended Resources/Reading

For those judges wishing to explore more deeply the causes, nuances, manifestations, experiences, and effects of implicit bias, the following resources may provide additional insight:

- Project Implicit (The Harvard Implicit Assumption Test), provides a variety of tests to gauge implicit and unconscious bias on a range of topics: https://implicit.harvard.edu/implicit/takeatest.html
- Morrison, Mairi N. "May It Please Whose Court: How Moot Court Perpetuates Gender Bias in the Real World of Practice." *UCLA Women's Law Journal* 6:1 (1995).
- Pay, Cynthia. "Teaching Cultural Competency in Legal Clinics." *Journal of Law and Social Policy* 23 (2014): 188-219.
- RICHARDSON, L. SONG, and PHILLIP ATIBA GOFF. "Implicit Racial Bias in Public Defender Triage." *The Yale Law Journal* 122, no. 8 (2013): 2626-649. http://www.jstor.org.ezproxy.library.yorku.ca/stable/23528687.
- Toribio, Josefa. "Implicit Bias: From Social Structure to Representational Format." *Theoria: An International Journal for Theory, History and Foundations of* Science 33:1 (2010): 41-60.

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