

When Bias Compounds: Women of Color in the Courts

**Short Program
Discussion Guide
Participant Materials**

**Washington State
Gender and Justice Commission
2002**

Prepared by
Margaret Fisher
Administrative Office of the Courts
for the
Gender and Justice Commission

This material was adapted from *When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts—A Model Judicial Education Curriculum* developed by the National Judicial Education Program to Promote Equality for Women and Men in the Courts, Lynn Hecht Schafran, Esq., Director. The National Judicial Education Program is a project of the NOW Legal Defense and Education Fund in cooperation with the National Association of Women Judges. This curriculum was made possible by a grant from the State Justice Institute.



State
Justice
Institute

The model curriculum was adapted for a three-hour judicial education program in Washington State, September 2000, by the Gender and Justice Commission and the Minority and Justice Commission and their consultants, Peggy Nagae, Total Diversity Management, and Benita Horne, Achievement Architects North. In 2001, Margaret Fisher, Administrative Office of the Courts, prepared this discussion guide for a 45-minute version of the program. For further information about these materials, contact Gloria C. Hemmen, Executive Director, Gender and Justice Commission at the Administrative Office of the Courts, (360) 705-5290 or gender.justice@courts.wa.gov.

When Bias Compounds: Women of Color in the Court System

Description:

This lesson explores one of the most important issues affecting the quality of justice in the courts: how women of color are perceived and treated by jurors, court personnel, lawyers, and judges.

This is a shortened lesson that derives from the model program, *When Bias Compounds: Insuring Equal Justice for Women of Color in the Courts* developed by the National Judicial Education Program to Promote Equality for Women and Men in the Courts, Lynn Hecht Schafran, Esq., Director. It was adapted for use in Washington State and presented at a variety of settings during 2001. Contact Gloria Hemmen at the Administrative Office of the Courts, 360 - 705-5290 or gender.justice@courts.wa.gov for more information

This lesson examines the impact of such bias – how it occurs often through unconscious stereotyping, its effects on women who experience this compound bias, and its impact on the justice system.

Participants examine a video clip of judges, an attorney, and court personnel describe personal examples of stereotyping. The participants then study and apply a learning model related to race and gender consciousness to scripted scenarios and their own life experiences. The last phase of the lesson involves the participants in considering tools and techniques for overcoming the negative effects of such bias, so as to insure equal justice in the courts for women of color.

Note:

This lesson plan was designed with one person taking the lead in organizing the session, but not taking a presentation role. Instead, the organizer will make sure that there are handouts for each participant, that the group follows the steps listed here, and the lesson proceeds generally within the time frames indicated. In addition, the organizer will select the most appropriate scenario for discussion by the particular group. It is hoped that this session will be offered as part of a brown bag lunch event and in other similar settings.

Audience: Judges, court personnel, attorneys

Objectives:

At the end of this session, participants will be better able to:

1. Identify examples of stereotyping of women of color in the courts.
2. Explain and apply the learning model from unconscious incompetence to unconscious competency.
3. Identify the impact of the lack of institutional and individual competency on adults in the courts.
4. Develop tools and techniques to eliminate stereotyping of women of color.

Time: 45 minutes

Materials:

- Notes During the Video Handout
- Video Tape: "Cultural Competency" – 6 minutes
- Learning Model Diagram
- Scripted Hearings – Select one for discussion prior to session.

Procedures:

[10 minutes] View Video and complete the *Notes During the Video Handout*

[10 minutes] Discuss the *Learning Model Handout*

[10 minutes] Complete the *Stereotypes Chart*.

Compare where the stereotypes are similar and where different.

[10 minutes] Read the scenario, assigning roles to individuals in their group.

Discuss the various stereotypes about women of color. Consider what the players did well and what they should or could have done differently or better.

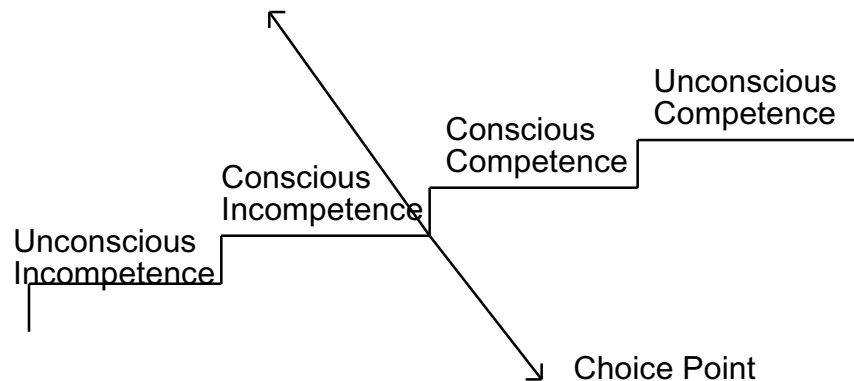
[5 minutes] Conclude with a discussion of what tools and techniques are needed to reduce and eliminate the use of stereotypes of women of color in the court.

Notes During Video Handout

Review the definition at the top of the chart below. Then jot down examples of stereotyping described in the video.

	Stereotypes: A set of attributes ascribed to a group and imputed to its individual members simply because they belong to that group.
Of Judges?	
Of Attorneys?	
Of Court Personnel?	
Of Jurors?	
Of Others?	

Learning Model



- **Unconscious Incompetence:** We might make comments or jokes or remark that are assumptions or stereotypes about others who are different from us without being aware of the possible negative or hurtful impact of our words. *“Clueless”*
- **Consciousness Incompetence:** Someone (or something) has made us aware of our words or deeds and we begin to realize the impact. We become conscious that what we said may not have a positive effect. *“Given the gift of feedback.”*
- **Conscious Competence:** At this stage we are changing our own behavior by being intentional and mindful. We made a choice and we practice our new behavior by changes in words or actions. *“Practice, practice, practice.”*
- **Unconscious Competence:** We have fully integrated the new behavior and don’t have to think about it; it simply has become a part of us. *“A new habit is born.”*

Stereotypes

Please list stereotypes **THAT YOU HAVE HEARD** about each of the groups in general and women in that group in particular. **This is not about your personal beliefs.**

African Americans	African American Women
Asian Americans	Asian American Women
Latinos	Latinas
Native Americans	Native American Women
White Americans	White Females

JUDGES' SCENARIO #1

PERSONNEL ISSUES: THE INTERN

ROLES:

- White Male Judge
- Native American Female Intern

THE SETTING:

The judge's chambers. A table and 4 chairs.

The judge and intern are sitting at the table. Both are in business dress.

Intern:

"I've really appreciated the opportunity to intern with you this semester. It's been a wonderful experience so far—at least in your courtroom. I've learned a lot about the practical aspects of practicing law."

"Unfortunately, I don't think that I can continue. I've been having problems with several people in the clerk's office, and it's affecting my ability to do my job."

Judge:

(Clearly concerned) "I'm very concerned about this. I certainly don't want to lose your valuable contribution and I can't believe anyone in the clerk's office would do anything wrong. I've known them for a long time. You must be misinterpreting them."

Intern:

(Still reluctant) "Well . . . I'd rather not go into detail, but, some of them seem to take issue with the fact that I'm Native American."

Judge:

"I don't believe it. Really?"

Intern:

(Speaking slowing) "... They asked me why I bother to go to law school when I'll just end up working back on the reservation making fry bread for my little Indians. They've called me squaw, and I overheard them say that my braid is so unprofessional."

Judge:

"You're taking this too personally. I know you're used to being quiet and not making any waves. But if you're going to be a lawyer in this courthouse, you have to learn to stand up for yourself. Now, I don't want to hear any more nonsense about you quitting over this little misunderstanding."

Intern leaves the room. Judge opens the folder in front of him.

End of Scenario

JUDGES' SCENARIO #2 THE HIRING COMMITTEE

ROLES:

- 2 White Male Judges
- 1 White Female Judge
- 1 African American Female Judge

THE SETTING: -

One male judge is sitting at the table, looking at the papers in an open folder. The other 3 judges walk in with folders talking amongst themselves. They sit down and open up their folders, waiting for the meeting to begin. All are in business dress.

White Male Judge A:

“Let’s call this meeting to order. As you all know, we’re here to hire a new Court Administrator. We’ve all reviewed the candidates’ credentials. We’ve all participated in all the rounds of interviews. From our preliminary discussions, we’ve narrowed down the field to two: Mary Catherine Kennedy and Luther Johnson. It’s good that our choice is between a White woman and an African-American man. No one can say we stuck to the “old boy” network. Any comments about either candidate?”

African American Female Judge:

“I have a real problem with Mary Catherine Kennedy. During the course of our panel interviews with her, I noticed that she referred to each of you as “Judge” and used your last name, but she consistently referred to me by my first name. I don’t know her. More to the point, she doesn’t know me. Even if she did, that kind of familiarity was inappropriate in that situation.”

White Male Judge B:

Maybe she was just trying to be friendly. She’s eminently qualified for the position. Isn’t that the main issue?

White Female Judge:

“I noticed what she said, but I’m sure she didn’t mean anything by it. I think Mary Kennedy is charming. I was very comfortable with her. I think she’d fit in very well around here. Really, Shirley, you’re overreacting.”

African American Female Judge:

“Well, if we’re going to have “comfort level” as a standard, I was much more comfortable with Luther Johnson. He’s also eminently qualified. He has strong ties to the court management community. And he seems very capable of dealing with many different kinds of people, on many different levels. I can’t say that about Mary Kennedy. If she disrespects me, in an interview, no less, how will she treat the secretaries who are African American women? Or the African American women attorneys she comes in contact with? Or the County Commissioners of color? I’d prefer Luther Johnson.

White Male Judge A:

“Is this Johnson fellow a friend of yours?”

African American Female Judge (wearily):

“No. And before you even go there, he’s not a relative, either.”

White Male Judge A:

“How do the rest of you feel about Mr. Johnson?”

There’s a brief, awkward silence. No one speaks, then hesitantly . . .

White Female Judge:

“I don’t want to say the wrong thing, but he didn’t relate very well and seemed uncomfortable.”

White Male Judge B:

“Well, I think we can all agree that Mr. Johnson and Ms. Kennedy are both qualified for the position. But looking at it objectively, I have to give the edge to Ms. Kennedy. Shirley, I wonder if you are really being objective.”

African American Female Judge: Glares

White Male Judge A:

“Then it’s settled. I’ll call Mary Kennedy to let her know when she can start.”

End of Scenario

JUDGE AND ATTORNEY SCENARIO NO. 3: DOMESTIC VIOLENCE/DOMESTIC RELATIONS

ROLES:

- White male Judge
- African American female petitioner: Constance Jones
- Latina female attorney for petitioner: Rose Marie Castanada
- African American male respondent: Fred Jones
- White male attorney for respondent: Mark Collier

THE SETTING:

Domestic relations case with allegations of domestic violence. African American female petitioner is on the stand and the white male attorney is questioning her. The judge is seated on the bench. The African American male respondent is seated at counsel table.

White Male Attorney:

“Isn’t it true, Constance, that violence is culturally acceptable in your culture?”

Latina Female Attorney:

(Strong, forceful voice) “**OBJECTION**, your honor, I’d ask that counsel address my client as Ms. Jones. Second, counsel’s question calls for speculation and infers a stereotype. This type of questioning is prejudiced and . . .”

Judge:

(Interrupting Latina Female Attorney) “Overruled. I’ve heard similar accounts about violence in the African American community. And, counsel, I’d like you to be a little less aggressive with your objections. This hearing will be conducted in a civil manner. Proceed, Counsel.”

White Male Attorney: (Forceful, Intimidating, Sneering)

“You appear to be a strong individual; even if there might have been some physical contact, it does not appear to have had any lasting impact on you. In fact, there was little or no bruising. Let’s discuss that evening, what did you do to provoke Mr. Jones’ contact?”

African American Female Petitioner: (Composed, strong, forceful)

“I resent being accused of provoking his attack. I did nothing but answer his question. Nothing, whatsoever. And as for being strong, I am a strong individual, but that doesn’t mean I deserve to be hit. He was in the wrong and he still can’t admit that he hit me.”

“And let me tell you another thing, just because I’m not crying and carrying on doesn’t mean I’m not upset. That is ALSO a part of MY CULTURE, if we’re talking about culture. Besides, the fact that my skin doesn’t show bruises the same way that white skin does, doesn’t mean I wasn’t injured.”

Judge:

“Constance, I know that this may be upsetting to you, but I would advise you to respond to Mr. Collier’s questions without animosity or aggressiveness. He’s only doing his job.” Counsel, let us proceed. This is taking far more time than necessary.

**JUDGE AND ATTORNEY SCENARIO NO. 4:
CRIMINAL CASE: STATE v. GLORIA RODRIQUEZ- DOMINGUEZ,
“WHAT IS FAIR AND IMPARTIAL?”**

ROLES:

- Judge: White female: Suzanne Holt middle age (45 to 50)
- Defense attorney: Asian American female: Jennifer Zia, 28 or 29
- Prosecutor: White male: Sam Brown, middle age (50 — 55)

THE SETTING:

Theft case set in Yakima. One table is in the center with 1 chair. 2 side tables with 1 chair each are angled to face the center table. The female attorney is at counsel’s table on the left when the Judge and prosecutor enter the courtroom from the right. They obviously have been back in her chambers. Female judge sits at the center table. Male counsel sits at the right table.

JENNIFER ZIA:

(Looks up and sees them enter. She is obviously upset, stands up, and starts speaking as soon as the judge sits down.) “Your Honor, Mr. Brown, I am glad that we are all here. I was just told by the clerk that Mr. Brown took our motion off the docket. I intended to argue that motion to the court this morning.”

SAM BROWN:

(Mumbles) “I thought our last call settled the issue. . . and that you had reconsidered. . .”

JENNIFER ZIA:

(Explodes Assertively) “You know that’s not true! I said we’ll let the judge decide.”

JUDGE HOLT:

(Firm) “Jennifer, you need to calm down. I advise you to conduct yourself in a professional manner. I’m sure that Mr. Brown had no intention of ‘slighting’ you and there is a ready explanation for what happened.”

“Let’s move on to the real issue at hand. I see that you want me to *voir dire* the jury pool about their attitudes toward Spanish people; I mean Hispanics, and their attitudes toward immigrant women of color on welfare who need an interpreter. I also see that the prosecutor objects to these questions. I am going to hear from Mr. Brown first. Go ahead, Mr. Brown.”

SAM BROWN:

“Your Honor, this is not a case about race. It is not a case about Hispanics or about welfare. It is a straightforward case about theft. The defense attorney is trying to play some kind of *race card*. Perhaps she thinks bringing this up will make any jurors who might feel negatively about Hispanics on welfare— and I don’t concede that there are those kind of people in the jury pool — feel guilty so they’ll bend over backward to find Rodriguez-Dominguez not guilty. Injecting race into this case is totally uncalled for and goes against the Court’s duty to be color blind and gender blind.”

JUDGE HOLT:

“How do you answer that, Ms. Zia?”

JENNIFER ZIA:

“Your Honor, I am not trying to ‘play the race card,’ as Mr. Brown so cavalierly suggests. I am trying to ensure that my client gets a fair and impartial trial, which is not possible without addressing these issues.

“Even though hundreds of Latinos are contributing members of our community, they are often called derogatory names and told to ‘go back where they came from.’ People also have strong feelings about women of color on welfare. Add my client’s accent and there is the strong possibility of stereotyping.”

SAM BROWN:

(Sneering) “Judge, this is ridiculous. The defendant’s background has no relevance to this case. And jurors are not going to hold it against the defendant that English is her second language. Many of us have ancestors from Ireland, Germany and other parts of Europe who came here speaking a foreign language. Defense counsel does not give enough credit to the fair citizens of this county.”

JENNIFER ZIA:

(Forcefully) “Your Honor, if you don’t *voir dire* the jury pool about their attitudes, Ms. Rodriquez-Dominguez is in jeopardy of not receiving a fair trial.”

“My client faces compound biases of race and sex, which could further be compounded because she is on welfare, speaks Spanish, and will need an interpreter.”

JUDGE HOLT:

(Obviously irritated) “Hold on now, Miss. First of all, you need to calm down. Your aggressive manner is not getting us anywhere. Let’s slow down and consider Mr. Brown’s argument.

SAM BROWN:

“Defense counsel’s proposed *voir dire* questions are a blatant appeal to racial prejudice. Canon 3 of the Code of Judicial Conduct states that ‘Judges shall perform judicial duties without bias or prejudice.’ By requesting these questions, Jennifer is asking this court to violate that Canon.”

JENNIFER ZIA:

“Your Honor, Mr. Brown is turning the Code inside out. He is attempting to argue that preventing stereotyping is an act of bias. Such an argument is exactly why . . .

SAM BROWN:

(Interrupting) “Now, she is accusing me of bias and prejudice. Next she will . . . “

JENNIFER ZIA:

(Overriding the interruption) “What I was saying, Your Honor, before I was interrupted, is that the jurors are under your control. Since this case brings together compounded biases, these issues must be brought out during *voir dire*, if my client is to receive a fair trial. I again request that you ask the *voir dire* questions I have submitted.”

JUDGE HOLT:

(Sternly) “You have, indeed, repeated and repeated your very strong opinions. I am uncomfortable with your motion because the court must be gender and color blind. Your questions, Jennifer, flag, rather than obscure these issues.

However, you have both raised some interesting points. I am going to reserve judgment until the trial begins. We are adjourned for now.”

End of Scenario

Gchem/gjcom/when bias compounds/women of color participant materials.doc

© 2000, Peggy A. Nagae. † Designed Specifically for Gender & Justice and Minority & Justice Commissioners’ Program, “When Bias Compounds.”