The Mischief Bias Plays in Life and Law
By Kimberly Jade Norwood, Professor of Law
Washington University School of Law
Springfield, March 2016

I will conduct a two hour presentation on: The Mischief Bias Plays in Life and in the Legal Profession. It will include a Q&A period.

I will start with implicit biases generally. We will discuss the implicit associate test (IAT) a bit and spend some time exploring various kinds of implicit biases. After establishing the *normalcy of biases*, I will provide examples of how bias manifests in the legal profession. We will spend most of our time discussing the impact of biases on lawyering: how it affects how we choose jurors, make judgments about clients and witnesses, evaluating judges, hiring, mentoring, evaluating, paying and promoting other lawyers. I typically cover race, skin color, ethnicity, disability, gender, sexual orientation, gender conformity/identity and sometimes discuss height, weight, age and other "lookism" issues. We will also discussion how one should unchecked implicit biases *might* find one facing ethical challenges under the Missouri Rules of Ethics. We will also discuss ethical rules from other states that actually include discrimination (whether knowingly or not) in their ethical rules. I will discuss a proposal before the ABA to deal with a similar rule for the ABA Model Rules of Professional Conduct.

The presentation will be laid out in 3 categories: The problem in life, the problem as it manifests in one's legal practice and the connection to the Rules of Ethics 3) next steps.

I would like each participant to take at least 2 of the implicit bias tests located at https://implicit.harvard.edu/implicit/takeatest.html. The test on race and weapons and the test on Gender/Career are suggested. It would be wonderful if people could take more: the test on sexual orientation, able-bodiness, age, skin color, etc., all are just phenomenal. Each takes about 8 minutes to complete. I do not have access to results so people can rest assured that their secrets are safe! Information about the test, the data gathered and the answers to other frequently asked questions can be found at https://implicit.harvard.edu/implicit/demo/background/faqs.html.

Agenda:

PART 1: Bias Generally

IAT discussion
Bias in life/society
Bias in individuals

PART 2: Bias in Law Firms:

Screening of resumes
Interviews/call backs/hiring
Salary/raises/promotions
Mentoring

Performance evaluations
Mommy track/marriage penalty/Gender Pay Gap/Power committees
Bullying/sexual harassment issues
Who inherits work upon partner retirement?
What clients you take
How you assess credibility of witnesses
Law catching up to social science problem: EX: Intentional discrimination standards despite judicial recognition of unintentional bias
Decisionmaking by Judges (extensions, granting of motions, etc.)
Lawyers and screening of potential jurors
Evaluation of judges by lawyers
Criminal justice system vis-à-vis prosecutors (charges/plea deals/ picking juries) and public defenders and clients
Discussion on how Rules of Ethics might be interpreted (and actually are applied in some states) to hold lawyers ethically accountable for both explicit and implicit harmful biases.

Part 3: Next Steps:

Discussion on challenging ourselves
Discussions on the concept of see something say something (in various contexts)
Rethink messages top down
Breaking out of in-group favoritism box
What obligation do you have to address client's request to discriminate (ex: "I don't want any black lawyers working on my case")
Inclusion in your firm; what does it look like
Update on proposals before the ABA (ethical rule changes as well as potential jury charge suggestions)