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Greetings. My name is Bruce Adelson and today we're going to do a program entitled what happens now, bias, race and tolerance at work, school and in society. Dr. A little bit of some housekeeping information first, and then we'll get into our substance. I'm the CEO of federal compliance consulting, LLC. I'm a former United States Department of Justice Civil Rights Division senior trial attorney. I'm also the testifying expert in several federal and state lawsuits, alleging violations of various federal civil rights laws. I teach cultural awareness, organizational culture and implicit bias as a faculty member of the Georgetown University School of Medicine, and the University of Pittsburgh School of Law. So let's start this way. The reason that I do this is through real let people understand that we all have biases, every human being has biases. It is a natural function, as we'll be explaining in a few minutes of the brain, so it is a biological process. The question though, is, what do we do with our biases, because sometimes biases depending on how they're manifested, can result in various illegal activity, whether it's employment discrimination, or a hostile work environment, or hostile learning environment. So that's the key question is, what do we do? That's what I asked my students. And that's what we're going to be focusing on today. Why don't we do we do with our biases? Of course, the first step is recognizing that we have them. We'll be discussing that in a few moments. But first, this is the key question the key rhetorical question, what do you do? And I wanted to start with something that is seemingly very innocuous. This was a Twitter advertisement, that the St. Louis Cardinals baseball team posted a couple of years ago, about a promotion. As you can see, on May 17, this was a some type of promotion involving jewelry. And there are two people in the screenshot man and a woman. The man, as you can see, is wearing a baseball cap, he has a Cardinals jersey, and he is intently looking at the field. The woman sitting next to him is not so tired and baseball garb. But she does have a right on right hand extended, and she's looking at her ring. So there are many messages that this sends. And part of the reason that I'm using it is to really emphasize the point

that our biases are often formed from Lifetime experiences and stereotypes. And here is a very clear message whether it's subliminal or otherwise, that baseball is for the man. jury is for the woman. And each one is has its own as his or her own interest. But they don't seem to be coinciding cardones got a lot of heat. When they posted this, they apologize, they took it down. But I think it is an example of when you look at it, and thinking about how you how you are reacting to what information your brain is processing. And that information often comes from stereotypes, images and experiences throughout our entire lives. So it's really it's a good way to get the discussion started today about what our biases, where do they come from, and then indeed added they reveal themselves. So this is another example this is from a federal lawsuit in 2017, alleging transgender discrimination, the there's a 14 year old boy Kyler, I believe, I believe he was 14 at the time, went to Children's Hospital in San Diego. He was the hospital staff was told by his his mother, that he was transitioning to male. And they asked that they use male pronouns and refer to him by the name of Kyler. Well, the staffs had some difficulty doing that. And instead they referred to him as you can see the bottom of the screen. This case has it's very tragic case Kyler had some significant mental health issues that he was dealing with. He did commit suicide a few weeks after the after he left the hospital. I think this is also a very, you know, kind of gut wrenching grabbing experience to show how bias can play out of people as here have biases regarding sexual orientation.

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People were transgender, how that might play out and here of course, sadly, they played out in a in a in an awful way and this lawsuit was alleging discrimination under the Affordable Care Act of The court did dismiss or that dismiss deny the hospital's attempt to dismiss the case. And the case continued with the court recognizing No, we're cognizable claims of discrimination. And the next few slides, I'm going to just let you read read them. And just the titles to show you some examples of hostile comments microaggressions. And indeed, the manifestations of biases and a couple of different situation. So I'm going to, I'm going to pause, not the screen, but just talking, as you can read for yourselves what these slides say.

05:55

Okay, so again, this is one of the key rhetorical questions today and something that I recommend being an important part of your practice porn part of how you go about situations Did you encounter every day? What do you do we all encounter situations where we have some type of reaction or response that may be biased. But before we actually act and do something outside of our thought process, that's when this question really kicks in, to inform indeed, what do we do? This is just another example. This was my son's High School in Maryland. And this particular High School has several bias and hate incidents, including, as you can see here, students distributing what they described as N word passes, intended to give other students who receive these passes

or these pieces of paper, permission to use the the N word racial slur. This provoked significant conversations about tolerance and bias, hostile learning environments, it was a very important conversation for the school and the community to have been thinking about, well, how do you think about how do these things happen? But also, what do you do with them? How do you react to them? Here the school did take some disciplinary action against the students and this was a school one, my son was a student, as the PTA president and and worked with the school in the school district to address the bias related issues surrounding the use of N word passes. And also, as you could see, there were some issues at the school about swastikas being scrawled on restroom doors and on desks and in other places. So my son and I are big fans of the show the office and I think that this is a good segue into something that that often occurs when we get to this point in the presentation. What do we do about this? What are the keys for resolving and dealing with effectively, these situations, it all starts with organizational culture and leadership. Leadership. As you can see, there's a quote from an employment discrimination case, a supervisor's use of certain unambiguous racial epithets, is likely to alter the conditions of employment and create a hostile working environment weighing heavily in the severity factor. So whether or not certain whether leadership supervisor, manager director creates a hostile environment using certain terms microaggressions hostile comments, that really sets the tone for the organization, the workplace, the classroom, anything, it really starts with leadership, leadership, sets, the rules sets, the conditions of employment or of learning, and everything really flows from that. So I really have to stress that, unlike Michael Scott in the office, having an effective leadership role or leadership that understands how bias can manifest itself, how bias can result in illegal activity, how bias can create discriminatory conditions. And this is a excellent case is the Seventh Circuit Court of Appeals case, that involved a health care patient who said that he did not want to be treated or touched by African American staff. The one of the many issues that were revealed in this case is how did the healthcare entity deal with that? What did leadership do? And as you can see from the next couple of slides, it didn't deal with it very well, is the leadership struggled with racist preferences that were expressed by patients and how to deal with them. So rather than as I teach my students step in, and unequivocally say that is not going to be tolerated. We we have a diverse workforce, for example, and you will be treated by highly qualified people. And some of them may look different than that I do, some may not and they are all highly capable, qualified and skilled. They will be treating you we do not tolerate comments like that. One of the difficulties in this situation is that the healthcare entity the leadership did not take strong enough steps to inform staff that hostile comments racist comments intolerant comments are not tolerated. Instead, staff felt somewhat empowered to call this particular plaintiff in this case was a nurse, various racial slurs because they did not. They weren't getting any pushback from managers or leadership. So they let their biases manifest themselves manifest themselves in ways that you can see here.

11:01

And I ended up pause for a couple of seconds. So you can read this, this screen, particularly the second paragraph.

11:13

So here you have a situation where management was told that there was a problem. But management didn't address this effectively. So what happened essentially the each day, there was a an assignment sheet about where staff would be assigned, whether it's floors or rooms. And there were notations on the sheet that the idea here Ms. Cheney could not have any involvement with certain patients because she's because of her race, because she's African American. So we think about just imagine that being in your workplace or your classroom, or really, in any organization, something posted on a wall or on a computer that basically says, You can't go there. You can't go there because of your race. To say that that had deleterious effects is an understatement. So as you can see, at the bottom of the second paragraph, on like white aids on like white healthcare professionals, cheney was restricted in the room, she could enter the care that she could provide, and the patients that she could assist. So clearly, there was a disparate treatment of Miss cheney because of a race but also the slurs and slides, insults, racist comments, were persistent and pervasive, and management didn't do anything to eliminate them. And in this lawsuit did not go well for them. So this is, I think, a very important key in in looking at buyers, and then its potential manifestations that microaggressions you can see are defined at the bottom of the page, bottom of the screen. According to Psychology Today, microaggressions are brief and everyday slides, insults, indignities. And denigrating messages, I have an issue with calling them microbe is of course micro suggests that something is small or insignificant. This was a term that was applied back in the 1970s. So I'm using it because it's part of the literature. I don't agree with it, because as you can see in the first paragraph microaggressions are clearly manifestations of bias. They are hostile comments as defined by federal law. They can create hostile work and learning environments. And if they do, that is illegal discrimination under federal laws. So you want to get a handle on these comments, just like we saw that in that high school situation or using the N word pass, as we saw in the cheney case, about the regularize use of racial slurs, indignities and insults, you want to get a handle on that. You want to reduce liability, you want to advise your clients correctly and appropriately about lessening their risk. Stop the microaggressions that's a great way to begin the process of really getting a handle on problematic and illegal manifestation of bias. That's certainly what I saw many times during my department of justice career and all the investigations that I did that often they would start or they would be highlighted by these hostile comments. Every single investigation I did then. And in the work that I do now when I uncover or learn about hostile comments. I know that there's more going on and they invariably lead to situations of illegal discrimination. According to The New York Times is an article from August 2020 microaggressions are all too familiar as quoted in the article about for doctors of color this particular Doctors quoted saying they asked you if you're coming in to take the trash out stuff that they wouldn't ask a physician who was a white male.

15:07

So it certainly in healthcare, micro aggressive behavior bias and discrimination are significant issues. Of course, it's not limited to healthcare that behavior, such as, as what you see in the first paragraph, and as we've already discussed, really are are, are relatively commonplace in many different organizations and situations throughout the United States. So this is the the way I look at and how I advise organizations and also advise my students when it comes to leadership and organizational culture. So increased awareness and understanding that these behaviors, these hostile comments, these microaggressions are inappropriate, disturbing, and may well be illegal under our civil rights laws. So there's not something like, Oh, you know, just forget about it. You're overreacting. Not true. You know, as lawyers, I think it's important that we recognize these red light signs, these danger, these warnings, and inform clients and people who were seeking advice and counsel about the dangers, that legal dangers that these comments activities can lead to. So indeed, as you can see, at the bottom of the screen, micro aggressive behavior invariably is part of a macro organizational pattern and practice that enables hostile work and learning environments to exist and maintain themselves. It's really just not a question of, you know, you're too sensitive or, you know, why does it you let this bother you. And I'm going to give you an example. I have a higher education colleague who is Asian American. She was born in the United States just like I was her English. She speaks English the same way that I do. But she is regularly asked or regularly. People comment while you speak English. So well. You have no accent? Where did you learn English? This has been happening for years the weather she encounters these comments from various people. And as she's described to me, they have a an accretive effect, they have a over time, you just she just feels like you know, beaten down and being treated differently. So what does that mean? That affects her ability to perform in a in a workplace that is not hostile, where she is not being questioned, or people don't wonder about are just because of the color of her skin and in addition to add addition to gender, but I think particular her race, color of her skin and where said where people imagine she's from anywhere other than the United States. So I think that's, I think that that's a very powerful example, to explain how these are just they're not one off comments. This is not a matter of, you know, you know, suck it up, take a deep breath and deal with it. No, these are indicative of significant legal issues that are violative of various federal civil rights laws, and indeed, may be violative of state civil rights laws. Here's an example. I'm also going to pause here for a few seconds, so you can read the comments of directed at Muhammad, and then I'll address them momentarily. So I'm going to stop speaking for a few seconds.

18:49

So this was a large automobile dealership, and these comments were made pretty regularly on the selling floor. Everyone heard them leadership heard them, the sales director manager them, and they'll comments were allowed to continue. So I think that there are several things that you can ask yourselves as lawyers here. Why were the comments being made? Why were the

comments abetted by leadership? Why were the comments allowed to continue? Clearly, these comments are not just saying, you know, Bruce, I don't, I don't really like you because you're a Yankees fan. These comments go a little further than that. And they reveal serious workplace hostile environment situations. And as you can see, at the bottom, the EEOC, the US employment, Equal Employment Opportunity Commission found reasonable cause to believe that this constant ridicule ridicule made it difficult for Muhammad to do his job and indeed created a hostile work environment in violation of title seven of the Civil Rights Act of 1964. So The in. This is also a good example of these three expressions where people might think, you know, we're just kidding around and we don't really mean anything and Mohamed's, a good friend of ours. Well, you know what good friends will call their friends words like this. And just think about in a workplace, in front of customers in front of the boss and bosses, what are they going to be thinking? So this is something that the that motors the dealership could have gotten a handle on immediately because these comments were not said in in in private, they weren't said in like an employee break room, they were said on the floor in earshot of everyone, they could have taken steps immediately to deal with this, but they didn't. And the situation, continue, continued, worsened, and then eventually, essentially got out of control. So I'll pause here that's the slides are some good excerpt from psychology today about what exactly is implicit bias. So I'll pause for a few seconds here. So you can read the screen.

21:24

Scientists have discovered that implicit biases is actually measurable inside the human brain, it is widespread and disassociated from conscious bias, meaning that we take certain very explicit actions that reveal bias, implicit bias is that gut instinct gut reaction, immediate Fight, fight flight experience, so to speak, that is relative instinct, instinctual. So it is reflected in attitudes or stereotypes that affect our understanding decision making behavior, without realizing that it's happening. The first step of course, in in solving any problem and certainly dealing with any situation is to recognize that it exists, it is non debatable. 100% scientifically proven that implicit bias is a function of the human brain, understanding the science related to identifying bias, and then kind of conceptualizing and understanding it helps us to recognize that it exists. And importantly, from the legal side, understanding its possible effects. So we'll see it in the next few slides. How science has measures bias and what parts of the brain it is identified to manifest itself. So as you can see,

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reinforcing what I had said earlier about that St. Louis Cardinals advertisement that our biases can also be formed in ways over our lifetimes that we just don't know. As we are bombarded with images, we experience things over and over again, we develop our own responses, our own reactions, that may or may not be stereotype may or may not be biased, we just don't know sometimes until the biases are upon us. And they we are acting, acting them out and sent in some way just like the motors example with a car dealership, and the situation involving Kyler and Children's Hospital. Calm and micro aggressive comments, hostile comments, are really great indications of how bias actually begins to show itself in a sense. So the amygdala is the emotional center of the brain, and that reacts to fear and threat and relates or relates to our senses. That's where science has found a measurable correlation between the amygdala brain electric activity, and implicit racial bias. The point again, being that there is an actual visual brain response, whether or not we know of course that it's happening or we're conscious of it, that shows the these, these bias, the bias reaction in here in particularly, particularly in the amygdala, but it's not the only part of the brain involved in implicit bias. The frontal cortex has been identified as important in forming impressions of others. And in measuring empathy. Our memories such as dates and facts, also subconsciously steer us toward choosing one option over another instinctively in dealing with different situations. So we as I said, we all have our lifetime of experiences, or lifetime of being exposed to certain images like the St. Louis Cardinals advertisement about jewelry, she likes jewelry, you like baseball, it's a great win win for both of you, that informs our reactions in various situations. So I'll pause here, this is from my colleagues at Georgetown medical school, pause a few seconds, so you can read this.

25:37

So indeed, medical research does reveal that implicit bias is found throughout the brain and may be found significantly in the amygdala and the frontal cortex, for example. But it's something that is a essentially a natural brain response, natural brain activity. There are of course, useful aspects of this bias, that relate to our instinctive behavior, environmental add that to adaptation and survival, being able to quickly assess a situation and respond to dangerous stimuli effectively, that fight flight reaction. So there are useful aspects to the triggering of bias in the brain. But these automatic responses that we're not necessarily aware of, they can be responsive to facial stimuli, how someone is dressed how someone looks. And that combined with social conditioning over time, can result in our acting out of bias against certain people, often based on race. But the key here is acknowledging that, again, this is a natural process. We all have it. But the next step is, of course, well, what do we do with it, rather than reduce our reliance on the generalizations we make and on various stereotypes? So I think that this is all this is really good as this is also I take my colleagues at Georgetown for this, that the hour the possibility of acting in a biased way, acting in a micro aggressive, hostile comment way, is increased. When we feel on as we see on the left hand side stress, time pressure, when we're multitasking, trying to do a lot of different things. At the same time. There's a lack of clear criteria for how do we go about making decisions

about choosing that various things, we have an ambiguous or incomplete information. So when that happens, we rely on instinct. That instinct may be may be influenced by the bias reactions in the brain that we're we've been talking about. lack of familiarity with individual people from a specific group, let's say a specific group of a race that's different than mine. bias is not decreased by thinking that why I acted with the best of intentions. I'm a nice person, I can't be biased. And again, that's impossible. All human beings are biased, I think that it's crucial to understand that right off the bat. And this, this isn't a judgement issue. This isn't about good or bad. We all have biases, but just saying that I can have them. Because I'm a good person, I have good intentions, I'm sorry, that is scientifically impossible. someone telling you that you have to reduce your bias, you know, again, that that is suggestive of making judgments about you that saying, well, you're bias, you're bad, you're acting negatively, you have to change that that's really doesn't work very well. Studies have shown that pretty consistently, that we tried to suppress bias, we're having some type of bias response, let's look at how Muhammad was treated at the dealership, for example, where we know we're feeling a certain way negatively. And we try to like squelch it down and prevent it from coming out. But that's not really gonna solve anything it remains. We're just avoiding the issue when we're not resolving the bias, avoiding people from other groups. That's also does that what does that what does that do? If you react if your reaction and dealing with people from other groups is a possibly a biased one, just avoiding them, you're just avoiding the having to deal with something until another day? Because your bias is still there. You're just not acknowledging it. And then of course, the last one, thank you, you don't have bias. Again, that's impossible, that is scientifically medically impossible for a living human being. So that if you start from that premise, it's likely you're that You're gonna get in trouble and be in a legally problematic situation. I take the quote from eBay to the bottom right side. very seriously, I think it's it's a great description. Prejudice is a great time saver, you can form opinions without having to get the facts. And I think that you as you can see from our discussion today, if we go with the, our bias reaction, in certain situations, like with mom, and for example, without realizing them without addressing them, then we're just going to be repeating the same mistake over and over and over again. And to use a phrase which reveals my

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own length of my life, it's the proverbial broken record, it's just going to keep happening over and over again, without any resolution, or at least without a positive, non problematic resolution. And this kind of gives you a as a good example of just how the brain operates with the, you can see the key parts that we talked about the frontal cortex is purplish amygdala is yellow. And then the temporal lobes also have a role in bias, because they store basic information about individuals and social stereotypes. And I think my colleague, the bottom right, eyes is very illustrative of these instinctive reactions, just looking at the same person, but dress differently, one in hoodie, and one in his medical scrubs. And as you can see, on the left, he says, If you celebrate me in my scrubs, donate me and my hoodie. And I think that that goes through all the things that we've been

talking about these bias reactions is triggering things in the amygdala, for example, that may be based on stereotypes, life experiences, without an awareness of exactly, exactly that. But that's why that rhetorical question, what do you do? Well, you know, I'm thinking this, why am I thinking it, and then not, and hopefully, then not acting on it, because then you get into the legal space. That's where things become problematic. And where people find themselves in a courtroom or writing a big check how fast our brains work, as you can see, this paragraph is kind of gobbledygook, II that the words are not as we're used to them, but we can still read it quickly. And understand it. Now. That's not something we're conscious of. But it kind of gives you a sense that literally within microseconds, we're able to decipher this, the same way our brains react in within microseconds to deciding whether or not we can trust someone what how we feel about someone just based on how they look, how they sound, and what behavior they may be demonstrating. So having an awareness of this is like it happens like this. It's fast. But realizing before things, get out of control, before things become problematic, that can take a step back, understand what's happening, and then hopefully stop the problematic behavior that we saw with Muhammad, for example. Though, yes, as I said, that, even though it took may have taken you a couple of extra seconds to read our unconscious cognate cognitive parts of our brain made sense of the paragraph so we could understand it. And that kind of is related to to general how people think, and this is a material from the book, how doctors think, but it really applies to all of us that we are dealing with, in certain situations, time sensitive details, that our brain is sorting out really fast, that whether they're clinical or professional conditions is sorted through the overall picture that's stored in our memory. And sometimes given the stress, for example, that I mentioned a few minutes ago. Time crunches multitasking, we remember drawing on stereotypes to help us make decisions rather than relying on what's happening in the here and now. And by realizing that we may be doing that, then we also may be improving our decision making, not relying on stereotypes problematically and then staying essentially staying out of legally difficult situations. Which leads me to this. This is one of my favorite quotes. This is from US Court of Appeals decision 1983 doubt Dell versus the city of Apopka, Florida. This case involved African Americans Residents primarily of one side of town, who argue that they were being discriminated against because of race and color. In the provision of municipal services, they claim that the services are predominantly African American, in a predominantly African American part of the city are not as reliable then services that were provided in a predominantly white part of town. They won. And in you'll see in the next couple of slides, in part why, but I think that this quote really gets to the the legal, the crux of the legal issue

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here, discriminatory intent, our acting discriminatorily is the cumulative evidence of our action and inaction, which objectively manifests this intent. So essentially, discriminate you can prove discrimination, discriminatory intent is proven by what we do. And what we do not do. And you'll see a couple of examples of that. But the, the court had some interesting approaches. But this is

also another rhetorical question that I strongly recommend that in the workplace, in the classroom, in other situations, are your encounters different with a particular person, because of that person's race, color, language, sex, religion, sexual orientation, sexual identity, age, or national origin? These are all federally protected categories under federal civil rights laws. So that's why I use them. But this this is a question that I asked myself if I think I'm having some type of bias response, or am I reacting differently because this person looks differently than I do? has a different accent that I do speaks a different language than I do. And if the answer is yes, that usually means that the my response is a negative one. And it's something that I can deal with. So the what do you do question and then this question, rhetorical questions are really very helpful in dealing with effectively dealing with bias and avoiding legal difficulty. This is part of the also part of the Court of Appeals decision. I'm going to pause for a few seconds. So you can read this

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chord, as you can see, was quite strong in its opinion that there is racially cognizable does racially cognizable discrimination here. So they clearly finding intent purposefulness that there was discriminatory intent, which here also involved finding violations of the US Constitution's 14th amendment. So the court said, as you can see, in the last sentence, nearly every factor, which has been held to be highly probative, of discriminatory intent is present in this case, in the city in Florida. And the court went on, I'll pause a few seconds there, you can read this.

38:23

I like I just happened to like this quote, because of the use of the word cognitive, which of course relates to all the our discussion about the bias response in the brain. So the court clearly held that the city engaged in this systemic pattern of actual intense intent, intentional acts and omissions that essentially the city knew exactly what it was doing in creating this disparate treatment between different parts of town based on race. So that I think this case is really helpful in understanding how intentional discrimination manifests itself. And then, of course, how bias then is the trigger for the occurrences in here the repeated pattern and practice occurrences of discrimination. This is an example I mentioned a few moments ago about our discriminatory intent is basically the cumulative evidence of what we do when we do not do focus on the first paragraph in red. And I'm gonna pause for a few seconds there you can read that.

39:41

This involves an American Americans with Disabilities Act discrimination case against the hospital in upstate New York. This is a federal court of appeals decision from 2019. Here the patient beyond though was deaf and primarily she's be communicated by American Sign Language, she informed the staff that she needed an American Sign Language interpreter to communicate that

writing didn't wasn't effective for her that she was mostly illiterate in English. So she was she, I believe she stayed in the hospital for about a week, over several days, she would ask staff over and over and over again to that she couldn't communicate. And she needed a sign language interpreter to communicate and understand what the doctors and nurses were telling her. No one did anything. And as you can see, in the last clause, they deliberately failed to act to actually call for an interpreter. Despite her repeated requests, the court found this is one of the worst cases that the court had encountered like this. But it shows you how discrimination of discriminatory intent, illegal under federal law in this particular context, reveals itself that here, they just they did nothing. But they're doing nothing informed their intent and created this discriminatory situation. This is also an employment discrimination case. And I always use this, I think it's a great example of the bias responses that we've discussed, and also the creating, or leadership not acting to eliminate manifestations of bias and hostile comments in the workplace. So I'm going to pause for a few seconds, you can read through the screen, this is a true story. This is from the archives of the US EEOC at very instructive and while we've been discussing, so I'm going to pause now. So you can read through this.

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You can see starting in the middle, that executive of this particular company, this large retailer, told janaza that about her promotion is a great achievement, considering where you came from. Well, that's already like stop right there. So your conditioning, recognizing an achievement based on how where janaza comes from. So let's look at that last paragraph. So you can see these quotes, the executive asked janaza to speak more like an American, be careful about her demeanor, because in his opinion, Africans are known to be brash and aggressive. Well, these are the types of micro aggressions and hostile comments we talked about earlier. They're all indicative of bias. And they're setting up some very clear problems legally, as far as hostile work environment. So I'll pause briefly. So you can read this particularly the first paragraph, please focus on the information in quotes. And also the what happened to NASA, NASA was terminated. And please look at the end of the first paragraph about why you can see she was told by her employer by the executive that she was a quote poor fit, unquote. And he was sorry that she did not speak quote, more like an American. Unquote. Not surprisingly, the US Equal Employment Opportunity Commission found reasonable cause of national origin discrimination discrimination based on Genesis family origins in Nigeria, but to make these comments about being a poor fit, speak more like an American, that bad or ugly, aggressive demeanor, because she's an African with those are pattern and practice examples of microaggressions leading to showing themselves manifesting bias, creating hostile comments and setting up one major liability problem for this company, you can see the name of the company in the case citation at the bottom of the screen. So again, well what do you do? What do you do? What do you do have these situations come up for your client? What did they come up in the workplace? What have they come up in the classroom? Well of course, like anything else, according to the Annals of Internal Medicine, just

understanding that this these are issues is the first place to start examining and understanding attitudes such as mistrust, implicit subconscious bias, stereotyping. Gay gain knowledge of in the health context of the existence and magnitude of health disparities, and if that can be translated to other areas, meaning that just have awareness that you know what, there are issues of bias, there are issues of intolerance. There are issues of discrimination that are present in society, not pretending that they don't exist, that ignoring them, but as lawyers understanding that they do exist, but also understanding how they may create problematic legal situations. And the third one, acquire the skills to effectively communicate and negotiate across these issues. And I hopefully, that's something that we're beginning to get today, to understand the origins of bias, understand potential bias responses, and then being able to resolve them and deal with them in a way that does not create legal jeopardy. I think one of the things is also very interesting is that I've encountered folks suggesting that well, you know, what, you know, what you're talking about is really like, political correctness. And you know, I don't really know how seriously to deal with it. But what I think is really interesting, according to the Harvard Business Review, and other similar entities, that diversity and tolerance actually pays, meaning that it paid not only pays for itself, but they can be profit centers. Diversity, according to HBr, unlocks innovation, and drives market group a growth, a finding that should intensify and enable and empower our efforts to ensure that leadership embody and embrace, essentially, as the Harvard Business Review says here, the power of differences so having diverse tolerant workplaces create more productive workforces increase profit, drive market growth. So this is not just some aspirational. Well, you know, sounds good, but I don't know or pollyannish kind of wish for the future

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is pays it makes money. As you can see here that the also according to the Harvard Business Review, employees had companies that embrace diversity and tolerance, and have genuinely tolerant and diverse workplaces. Report, as you can see here, increased market market share. And the 70% of those organizations are likely to report that they captured a whole new market. So again, diversity, tolerance, awareness of bias, dealing with these issues effectively, is a moneymaker. It creates workforces with increased loyalty, and also workforces that are likely to maintain relationships with your company for a longer period of time. I'll pause here to I think this is a really interesting study from catalysts and the Chubb Corporation. This focus is on diversity of gender diversity of board of directors. But the diversity that's mentioned here really transcends all entities, all sectors, but also is is relevant for issues concerning race, color, language, national origin. So I'll pause again for a few seconds. So you can read the paragraphs that are highlighted with underlining.

48:41

So let's look at the the key phrases here return on equity return on sales, return on invested

capital, the first one return on equity, companies with the highest percentages of women Board of Directors outperform those with the least by 53%. On average, companies with the highest percentages of women Board of Directors outperform those with the least by 42% in it concerning the return on sales return on invested capital. On average, companies with the highest percentages of women Board of Directors outperform those with the least by nearly 70% You know, we're not talking about half percent 1% 3% these are significant numbers, and really reveal quite clearly how the issues that we're talking about from a litigation standpoint, risk management standpoint, but also from a profit standpoint, they're all that win win win. They all favor themselves. And as you can see, the conclusion is that the correlation between gender diversity on boards and corporate performance can be found across most industries, whether it's consumer discretionary products to infer technology. So this is not industry specific. This applies across all industries. The same can be said for diversity based on race, based on language or national origin, color. Age, diversity pays diversity cells. This is a very interesting study from 2017. About that the researchers wanted to focus on is does diversity valuing behavior result in diminished performance ratings for non white and female leaders. So as you can see here, the researcher sought to help solve the puzzle of why top level leaders are disproportionately white men. Their conclusion is that the race and sex based status and power gap persists in part because the leaders who are rewarded or valued for engaging in empowering recommending diversity, value behavior, valuing behavior are white men, so white men are rewarded, but people of color and women or not, as you can see here, I'll pause so you can read this but to really both paragraphs will get that first paragraph that ethnic minority or female leaders who engage in diversity valuing behavior are penalised. According to the study, with worst performance ratings, while white or male leaders who engage in diversity valuing behavior are not. So we find this divergent effect results from two traditional negative race and sex stereotypes, implicit bias, placed upon diversity valuing ethnic minority and female leaders. So here's an example of, you know, you advocate for diversity, you're a member of a person of color, for example, you're a woman, and you are advocating for more diversity, more tolerance in the workplace. And you are According to the study, you're punished for that. I think that this is also this is a great example of how bias really works in insidious ways, here by punishing the very people whom you would want to be hold out as champions for diversity, exam exemplars of diversity. And going back to the Harvard Business Review study, really helping your company become even more profitable, productive and increasing market share. This is also very revealing very helpful study, I think, originally from the New England Journal of Medicine that was also published by the Harvard Business Review. So I'm going to pause here. So you can read this, and I'm going to flip to the next screen. So you see the next part of the story, then I'm gone. Then I will come back and I'll speak to it. So I'll pause for a few seconds. Read this, then I'll go to the next slide.

53:37

I'm going to go to the next slide. was most interesting here. Dr. Rabinowitz is the senior resident

the lead doctor in this in intensive care unit, and just had a difficult conversation with a particular patient's family. She sat down to write some notes about the conversation. And then the phone rang. I was the wife of the patient, someone she had just spoken to. And the wife asked to speak to her husband's doctor. Dr. Rabinowitz is male intern. It's someone that she was supervising. So the wife knew the doctor Rabinowitz as a woman, of course, was the doctor, the lead doctor in the intensive care unit, but she actually said, I'd like to speak to you I want to talk to you. I want to talk to my husband's doctor, but was then most interesting. The male intern did not correct us didn't say to the wife. Well, you know what? I'm not your husband's doctor. That's Dr. Rabinowitz. Please Hold on, I'll get her on the phone. But was also very revealing here as both of these physicians had gone through medical school lectures and training on implicit bias, as it relates to patients, they understood healthcare disparities, they had been educated about that. But until that day, that phone conversation in the intensive care unit, it never occurred to either of them to apply all this, to not just patients, but to their peers and colleagues so that these issues arise, not just in dealing with a patient, but in dealing with a colleague, a supervisor, a subordinate, a student, all kinds of situations. And that was what I know that, that in reading this, I use this in my scholarship a lot. That it it's something that they just didn't see coming and really affected them. So as you can see, in the bottom paragraph, that moment of mutual acknowledgment that we all have blind spots, and wrestle with how we perceive and are perceived by others will be among the most important aspects are of our work experience and education. But it really reveals that you could have great information you could have gone through various training sessions seminars, have an awareness of it, but that still doesn't mean that you're not going to act out of some type of bias. So that's where the questions that we've talked about, what do you do, thinking through the IMEI treating somebody differently because of sex, for example, really can help identify when bias is triggered and help us not have bias manifests itself in illegal or discriminatory way. So as we wrap up, the wisdom of the 11th circuit I come back to you're discriminating against people your intent to discriminate comes from everything you do everything we do, and what we don't do, like that lawsuit in New York state, where the medical staff did nothing to obtain a sign language interpreter even though the patient was effectively begging for help and understanding what the medical staff was trying to explain to her. And this all, as I said, this rhetorical question to remembering the federally protected categories. Are your encounters different because of someone's race, color, language, sex, religion, sexual orientation, sexual identity, age or national origin? The answer is yes. That could very well indicate that there is some type of illegal discrimination bias response that is legally problematic. That is our presentation. I hope that you found the information conveyed today helpful. That is all my contact information. So again, thank you so much for attending today's session. Best wishes, stay safe, stay well, and thank you