

LITIGATION



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2024 Litigation and Appellate Summit

The Supreme Court and Appellate Court Bias Prevention Committee: Why it Exists & Feedback from You

Friday, April 26, 2024
9:00am - 10:15am

Speakers: Justice Helen Bendix, Wendy Shiba, Justice Martin Jenkins, and Benjamin Shatz

Conference Reference Materials

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2024 CLA Litigation & Appellate Summit

Long Beach Marriott, 4700 Airport Plaza Drive

April 26, 2024, 9:00—10:15 a.m. (Panel #6)

The Supreme Court and Appellate Court Bias Prevention Committee:

Why it Exists & Feedback from You

A meeting with members of the Supreme Court and Appellate Court Bias Prevention Committee and DEI Expert Wendy Shiba

Panelists: Justice Martin Jenkins, California Supreme Court
Justice Helen Bendix, Second Appellate District, Div. 1
Wendy Shiba, Chair of ABA DEI Center
Benjamin Shatz, Manatt Phelps & Phillips, LLP

The Supreme Court and Appellate Court Bias Prevention Committee — Supreme Court Justice Martin J. Jenkins chairs the Supreme Court and Appellate Court Bias Prevention Committee. Its mission is to support the integrity and impartiality of the judicial system and promote an appellate court environment free of bias. The committee’s membership roster consists of six associate justices drawn from each of the Court of Appeal Appellate Districts, six attorney members from around the state, a representative from the California Appellate Program, and a Clerk/Court Executive Officer. The Bias Prevention Committee was established under the Standards of Judicial Administration, standard 10.20.

MISSION STATEMENT

Pursuant to Standards of Judicial Administration, standard 10.20, the Supreme Court and Courts of Appeal Bias Prevention Committee (Bias Prevention Committee) aims to support the integrity and impartiality of the judicial system and promote an appellate court environment free of bias and the appearance of bias. Standard 10.20. of the California Standards of Judicial Administration (a) Statement of purpose The California judicial branch is committed to ensuring the integrity and impartiality of the judicial system and to court interactions free of bias and the appearance of bias. Consistent with this commitment, each court should work within its community to improve dialogue and engagement with members of various cultures, backgrounds, and groups to learn, understand, and appreciate the unique qualities and needs of each group. The Bias Prevention Committee will be composed of representative members of the appellate court community, including judicial officers from the Supreme Court and each Appellate District, a court administrator, as well as attorneys practicing in those courts. The committee will facilitate a dynamic and interactive exchange with appellate court users to better recognize, prevent, and eliminate unconscious and explicit biases within appellate court interactions, while focusing on understanding the many forms, causes, and impacts of bias with the goal of improving how courts combat bias.

2024 California Rules of Court — Standard 10.20. Court's duty to prevent bias

(a) Statement of purpose

The California judicial branch is committed to ensuring the integrity and impartiality of the judicial system and to court interactions free of bias and the appearance of bias. Consistent with this commitment, each court should work within its community to improve dialogue and engagement with members of various cultures, backgrounds, and groups to learn, understand, and appreciate the unique qualities and needs of each group.

(Subd (a) amended effective January 1, 2022; previously amended effective January 1, 1994, January 1, 1998, and January 1, 2007.)

(b) Duty to ensure integrity and impartiality of the judicial system

Each court, its judicial officers, and its employees have the duty to ensure the integrity and impartiality of the judicial system.

(1) Refrain from and prevent biased conduct

In all court interactions, each court, its judicial officers, and its employees should refrain from engaging in conduct and should take action to prevent others from engaging in conduct that exhibits bias, including but not limited to bias based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal or state law, including Government Code section 12940(a) and Code of Judicial Ethics, canon 3(B)(5), whether that bias is directed toward counsel, court staff, witnesses, parties, jurors, or any other person. The court, judicial officers, and court employees may consider such classifications only if necessary or relevant to the proper exercise of their adjudicatory or administrative functions.

(2) Ensure fairness

Each judicial officer should ensure that courtroom interactions are conducted in a manner that is fair and impartial to all persons.

(3) Ensure unbiased decisions

Each judicial officer should ensure that all orders, rulings, and decisions are based on the sound exercise of judicial discretion and the balancing of competing rights and interests and are not influenced by stereotypes or biases.

(Subd (b) adopted effective January 1, 2022.)

(c) Creation of local or regional committees on bias

To assist in providing court interactions free of bias and the appearance of bias, courts should collaborate with local bar associations to establish a local or regional committee. Trial courts may choose to form a regional committee. Appellate courts may choose to form separate or joint appellate court committees or join a trial court committee or regional committee formed by or composed of trial courts within the appellate courts' districts. Each committee should:

(1) Be composed of representative members of the court community, including but not limited to judicial officers, lawyers, court administrators, and individuals who interact with the court and reflect and represent the diverse and various needs and viewpoints of court users;

(2) Sponsor or support educational programs designed to eliminate unconscious and explicit biases within the court and legal communities. Education is critical to developing an awareness of the origins of bias and the impact of bias on individuals, culture, and society. Education should include:

(A) Information as to bias based on the protected classifications listed in (b)(1);

(B) Information regarding how unconscious and explicit biases based on these classifications develop, how to recognize unconscious and explicit biases, and how to address and eliminate unconscious and explicit biases; and

(C) Other topics on bias relevant to the local community informed by the committee's independent assessment of the unique educational needs in that community.

(3) Engage in regular outreach to the local community to learn about issues of importance to court users. Specifically, committee members should be encouraged to:

(A) Inform local community groups regarding the committee's activities; and

(B) Seek information from the local community regarding concerns as to bias in court interactions and how the court can address those concerns.

(Subd (c) amended and relettered effective January 1, 2022; adopted as Subd (b) effective January 1, 1994; previously amended effective January 1, 1998, and January 1, 2007.)

(d) Information regarding complaint procedures

Each court should effectively communicate to its court users regarding existing procedures to submit complaints of bias in court interactions based on protected classifications, as listed in (b)(1). This should include information regarding how to submit complaints about court employees directly to the court and how to submit complaints about judicial officers either directly to the court or to the Commission on Judicial Performance. Possible methods of communication include providing this information on the court website, including the information in the court's local rules, displaying the information in courthouses, or any other similar method to ensure that courts are providing complaint procedure information to court users in a meaningful and accessible manner.

(Subd (d) amended and relettered effective January 1, 2022; adopted as Subd (c) effective January 1, 1994; previously amended effective January 1, 2007.)

(e) Application of local rules

The existence of the local committee, and its purpose should be memorialized in the applicable local rules of court.

(Subd (e) amended and relettered effective January 1, 2022; adopted as Subd (d) effective January 1, 1994; previously amended effective January 1, 2007.)

(f) Implementation

All courts should implement the recommendations of this standard as soon as possible.

(Subd (f) adopted effective January 1, 2022.)

Standard 10.20 amended effective January 1, 2022; adopted as sec. 1 effective January 1, 1987; previously amended effective January 1, 1994, and January 1, 1998; amended and renumbered effective January 1, 2007.

Advisory Committee Comment

The judicial officer duties stated in this subdivision are consistent with the California Code of Judicial Ethics, which addresses judicial officer responsibilities for performing judicial duties without bias, prejudice, or harassment (canon 3(B)(5)); for requiring attorneys in proceedings before the judicial officer to refrain from manifesting bias, prejudice, or harassment (canon 3(B)(6)); for discharging judicial administrative duties without bias or prejudice (canon 3(C)(1)); and for requiring staff and court personnel under the judicial officer's control to refrain from manifesting bias, prejudice, or harassment in the performance of their duties (canon 3(C)(3)).

An earlier version of this standard applied solely to judges and referred to "courtroom proceedings." "Judge" has been expanded to "judicial officers," which includes all judges as defined by California Rules of Court, rule 1.6, and all appellate and Supreme Court justices. The expanded phrase broadly covers any judge, justice, subordinate judicial officer, or temporary judge who might conduct a courtroom proceeding. Additionally, in subdivision (b)(1), "courtroom proceedings" has been changed to "court interactions" to expand the scope of proceedings and actions covered by this standard to include not only proceedings occurring in courtrooms but also interactions in other areas of the court, including in the clerk's office and at public counters.

Subdivision (d). An earlier version of this standard encouraged local bias committees to create informal complaint procedures for court users and members of the public to submit complaints regarding bias in court proceedings. The recommendation that local bias committees create informal complaint procedures has been eliminated in large part because of the many existing and updated avenues for making complaints regarding bias in court interactions, and to avoid creating conflicts between those procedures. For example, the authority and procedures for addressing complaints concerning judicial officers and subordinate judicial officers are outlined in rules 10.603 and 10.703 of the California Rules of Court and canon 3(D) of the California Code of Judicial Ethics. Similarly, rules 10.351 and 10.610 of the California Rules of Court, as well as Government Code section 71650 et seq., include authority and complaint resolution processes for addressing complaints against court employees. In practice, courts have developed robust procedures for addressing such complaints against judicial officers, subordinate judicial officers, and court employees, and the Commission on Judicial Performance provides detailed information on its website at cjp.ca.gov about how to file complaints and the procedures it employs for addressing such complaints.

In addition to the concerns regarding duplicative and conflicting complaint procedures, the recommendation that local bias committees adopt informal complaint procedures created additional concerns. For example, the earlier version of the standard envisioned using informal complaint procedures to resolve incidents that do not warrant formal discipline; however, it is often difficult to determine at the outset if a complaint is disciplinary in nature or can be ameliorated by education.

Other due process concerns were raised that local committees were not necessarily resourced to make these determinations, and may not have had the expertise to investigate and resolve these complaints. Additional concerns were raised that having local committees oversee complaints against judicial officers and court employees created privacy and confidentiality concerns for both complainants and respondents because any inquiry by a local bias committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint, thereby significantly expanding the number of local individuals who were aware of the existence or details of the complaint. Ethical concerns were also raised for judicial officers who were members of the local bias committees because judicial officers who become aware of complaints against other judicial officers may have ethical obligations that require them to take appropriate corrective action, which may include reporting the information to the presiding judge or justice or the Commission on Judicial Performance. Finally, there were concerns that local bias committee complaint procedures would conflict with existing personnel policies and labor relations agreements if the local committee attempted to resolve complaints against court employees outside of the procedures outlined in these policy documents.

This standard does not prevent courts and local or regional bias committees from choosing to create informal complaint resolution procedures. Some local bias committees have established effective informal complaint resolution procedures for resolving complaints against judicial officers, and each local court and local or regional bias committee should work to find solutions that work best for that local community. If so, they should fully consider how best to address the above concerns. Because of the specific labor and employment laws governing courts and court employees, including the direction provided in rule 10.351 of the California Rules of Court, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local or regional bias committees resolve complaints against court employees is not recommended.

SUPREME COURT AND APPELLATE COURT BIAS PREVENTION COMMITTEE MEMBERS

Justice Martin J. Jenkins, Chair, California Supreme Court

Justice Helen I. Bendix, Court of Appeal Second Appellate District, Division One

Justice Stacy E. Boulware Eurie, Court of Appeal Third Appellate District

Justice Truc T. Do, Court of Appeal Fourth Appellate District, Division One

Justice Carin T. Fujisaki, Court of Appeal First Appellate District, Division Three

Justice Cynthia C. Lie, Court of Appeal Sixth Appellate District

Justice Rosendo Pena, Jr., Court of Appeal Fifth Appellate District

Justice Maria E. Stratton, Court of Appeal Second Appellate District, Division Eight

Mr. Amit Kurlekar, Deputy Attorney General Office of the Attorney General, San Francisco

Ms. Eva McClintock, Clerk/Executive Officer Court of Appeal Second Appellate District

Mr. Charles Ragland, Deputy Attorney General Office of the Attorney General, San Diego

Mr. Charles Sevilla Attorney, Law Offices of Charles Sevilla, San Diego

Mr. Benjamin Shatz, Attorney, Manatt, Phelps & Phillips, LLP, Los Angeles

Ms. Rasha Gerges Shields, Attorney, Jones Day, Los Angeles

Ms. Rupa Singh Attorney, Niddrie Addams Fuller & Singh LLP, San Diego

Ms. Laurel Thorpe Executive Director, Central California Appellate Program, Sacramento

Daily Journal, Oct. 3, 2023 — Queasy as ABC (Appellate Bias Committee)

Raising issues of judicial or court bias is understandably uncomfortable, especially for those who have to continue to live and work in the appellate courts. But that's no reason to keep quiet.

BENJAMIN G. SHATZ

Americans seem a bit uneasy these days, unhappy with many things, including their courts. Law.com recently published an article noting how judicial conduct bodies across the country received record numbers of misconduct allegations against judges in 2022. Furman, "Judicial Conduct Complaints Spiked Across the Country in 2022" (Law.com May 22, 2023). In addition to intense scrutiny of the federal courts, confidence in state courts is down, and bias complaints against judges are up. *Id.* In California, the Commission on Judicial Performance 2022 Annual Report noted over 1,200 complaints against judges last year. The top three types of conduct resulting in judicial discipline were demeanor/decorum issues; bias or appearance of bias (not directed toward a particular class); and decisional delay. Number ten on the list was bias or appearance of bias directed toward a particular class.

Appellate lawyers will be especially interested in pages 25-27 of the report, regarding the public admonishment of now-retired Administrative Presiding Justice Vance Raye of the Third District Court of Appeal for "delay in deciding approximately 200 appellate matters over a 10-year period" and "failing to properly exercise his authority as administrative presiding justice to prevent chronic delays in cases assigned to other justices on the court." As a result of Jon Eisenberg's charges of delay in the Third District, the Judicial Council adopted a new rule (the "Eisenberg Rule") effective Sept. 1, 2023, that is designed to promote the efficient, effective, and proper administration of the Courts of Appeal by increasing the accountability of administrative presiding justices and presiding justices. See Eisenberg, "Why I did it the way I did it: Going public on the Third District Court of Appeal," 36:2 Cal. Litigation 8-11 (Sept. 2023).

This new rule, California Rules of Court, rule 10.1014, allows anyone to submit a "contention" (anonymously, if submitted by snail mail to the Judicial Council), alleging that an APJ or PJ "has not properly addressed or managed an important matter related to the administration of a Court of Appeal or a division of a Court of Appeal." The group of six APJs (or five, if the contention is directed to an APJ) will then "review" that "contention" and "may take appropriate remedial action."

The Eisenberg Rule thus has at least created a procedure to raise and address certain appellate-court management problems. But what about just regular allegations of bias in the courts (and appellate courts in particular)?

Some snippets of history help set the stage. In 1982, the New Jersey Supreme Court formed a Gender Bias Task Force. Over time, 40 other states formed similar task forces. In 1987, the Judicial Council adopted California Standards of Judicial Administration section 1, stating that judges have a duty to ensure that courtroom proceedings are conducted fairly and impartially, to refrain from any conduct (and prohibit others in the courtroom from engaging in conduct) that exhibits bias, and to ensure that all decisions are free of bias. In 1987 and 1988, two successive Chief Justices (Bird and Lucas) appointed Judicial Council Advisory Committees on Gender Bias in the Courts. This accorded with a resolution by the Conference of Chief Justices in 1988 urging all chief justices to establish task forces devoted to studying "(1) gender bias in the court system and (2) minority concerns as they related to the judicial system."

In 1992, the California Judges Association adopted canons imposing affirmative duties on judges to perform all judicial duties without bias or prejudice and to require those under a judge's direction to similarly refrain from such conduct. The following year, the Conference of Chief Justices urged further efforts toward equal justice by "establishing task forces to remedy any discrimination," and the Commission on the Future of the California Courts designated gender fairness as a high priority. Also in 1993, the Judicial Council amended Standard §1 to recommend that courts create local bias committees and adopt informal complaint procedures.

In 1997, the Judicial Council amended Standard §1 to specify that bias is prohibited on the basis of "disability, gender, race, religion, ethnicity, and sexual orientation." A decade later, Standard §1 was renumbered as Standard §10.20.

Jumping to 2020, Justice Jeffrey Johnson of the Second District was removed for misconduct based on disrespectful treatment of women, and the Supreme Court issued a Statement on Equality and Inclusion in the wake of George Floyd's murder. There were also a number of reports and articles pointing out that very few courts were actually complying with §10.20. E.g., Mach, "22 Counties Not Complying With Bias Committee Recommendation," Daily Journal July 6, 2020; Mach, "Bias Committees Are Enigmas, Attorneys Say," Daily Journal Aug. 3, 2020; Mach, "Court Leaders Developing Judicial Guidelines," Daily Journal Sept. 1, 2020.

In November 2020, the Chief Justice appointed a Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings to identify improvements and amendments for §10.20. The following year, that Work Group issued a report with many recommendations, e.g., to emphasize that courts should "prevent" bias, rather than simply "prohibit" bias; that the Standard should be broadened to apply to all court interactions (not just what happens inside a courtroom); to update the list of protected classifications; to define and outline the roles for local or regional bias committees; and to ensure that court users can access information about how they can submit bias complaints about court employees and judicial officers.

With that history, where are we today? In March of this year, Chief Justice Patricia Guerrero appointed a Supreme Court and Courts of Appeal Bias Prevention Committee, chaired by Supreme Court Justice Martin Jenkins, and composed of justices from each appellate district, a court administrator, and appellate attorneys from around the state covering a variety of practice areas. On July 27, the website for each district posted the name of its representative and the Committee's full roster (i.e., Justices Fujisaki, Bendix, Bouleware, Eurie, Do, Peña, and Lie). The Committee's mission statement provides: "Pursuant to Standards of Judicial Administration, standard 10.20, the Supreme Court and Courts of Appeal Bias Prevention Committee aims to support the integrity and impartiality of the judicial system and promote an appellate court environment free of bias and the appearance of bias."

The committee will focus on how bias manifests in various court interactions, with a goal of identifying practical objectives and programs aimed at the prevention of bias in the appellate courts. To do this, however, the committee needs information and ideas. In a very real sense, every appellate lawyer in the state is part of this journey toward making the appellate courts as fair and unbiased as possible. Raising issues of judicial or court bias is understandably uncomfortable, especially for those who have to continue to live and work in the appellate courts. But that's no reason to keep quiet. If you have something to share, reach out to a Committee member in any way that seems appropriate (including an

anonymous letter). It's important--and easy, so don't feel queasy. The Committee wants to hear what you have to say.

Benjamin G. Shatz co-leads the Appellate practice at Manatt, Phelps & Phillips, LLP in Los Angeles. He serves on the Supreme Court and Courts of Appeal Bias Prevention Committee. Exceptionally Appealing appears the first Tuesday of the month.

The California Appellate Law Podcast (Season 1, Episode 90, June 13, 2023):

Got Bias? The New Bias Prevention Committee Wants Your Help, with Ben Shatz, online at:

<https://www.calpodcast.com/1093703/13031265-got-bias-the-new-bias-prevention-committee-wants-your-help-with-ben-shatz>

EXAMPLE EDUCATIONAL VIDEOS AVAILABLE TO COURT PERSONNEL VIA CJER RELATED TO BIAS

1. Are You Making Rational Decisions? (11/2018)
2. Building and Leading Effective Multigenerational Teams (3/2012)
3. Effective and Unbiased Interviewing (4/2018)
4. Exploring Implicit Bias (3/2017)
5. First Impressions: Communication in the Courthouse (5/2006)
6. Gender Identity (8/2019)
7. Gender Inclusivity in the Courts (Nat'l Center for State Courts)
8. Managing a Diverse Workforce (5/2018)
9. Managing Bias (1/2017)
10. Neuroscience and the Psychology of Decision-Making (Parts 1 to 3, 10/2009, 3/2010, 6/2010)
11. Overcoming Implicit Bias (4/2015)

Example Bias, Cultural Awareness, Cal. Legal History Videos

1. Continuing the Dialogue — A video series that explores issues of California's diverse population that affect judicial branch employees, including unconscious bias, gender, disabilities, and race, like the practice of redlining, the Oscar Grant and Trayvon Martin cases, the Indian Civil Rights Act, the *Mendez v. Westminster School District of Orange County* case, and the Fred Korematsu story. This series provides opportunities for judicial branch employees to learn about different perspectives as well as explore and discuss issues and topics that impact them and the people who use the courts.
2. Cultural Considerations for Court Interactions with Muslims (3/2023)

RECENT ARTICLE OF NOTE

Kira L. Klatchko & Quinn A. Keefer, *Judicial Backgrounds Influence the Standard of Review*, 55 U. Pac. L. Rev. 1 (2023) <<https://scholarlycommons.pacific.edu/uoplawreview/vol55/iss1/7>>

Justice Martin J. Jenkins was confirmed to his current position as an Associate Justice of the California Supreme Court on November 10, 2020. Previously, he served as Senior Judicial Appointments Advisor to Governor Gavin Newsom and advised the governor on the appointment of judges across California. Preceding his work for Governor Newsom, he served as an Associate Justice of the California Court of Appeal. Justice Jenkins was nominated for the position of district judge for the Northern District of California in May 1997, by President William Clinton, and confirmed by the United States Senate in November 1997. Justice Jenkins' judicial experience includes service as a federal district judge, associate justice of the California Court of Appeal and as a trial judge on the Oakland Municipal and Alameda County Superior Court.

Justice Jenkins graduated from Santa Clara University. He obtained his law degree from the University of San Francisco School of Law (USF) in 1980, and upon graduation was the recipient of the law school's Judge Harold J. Haley Award for "exceptional distinction in scholarship, character and activities." After law school, Justice Jenkins worked as a prosecutor for the Alameda County District Attorney's Office, served as a trial attorney for the United States Department of Justice (DOJ), Civil Rights Division-Criminal Section in Washington D.C., was an attorney in Pacific Bell's Legal Department handling a wide variety of litigation matters.

Justice Jenkins has been the recipient of numerous awards, among them: "The St. Thomas More Award," given annually by the St. Thomas More Society of San Francisco, "In Recognition of His Distinguished Record of Service to His Church, His Community and His Family," and the "2009 Children's Advocacy Award" awarded annually by Legal Services for Children for "Outstanding leadership in public policy that protects children and youth from abuse and exploitation. In 2018, The University of San Francisco, Board of Trustees conferred upon Justice Jenkins an honorary degree: "The Degree of Doctor of Humane Letters Honoris Causa." In July 2022, The American Inns of Court selected Justice Jenkins as its 2022 Lewis F. Powell Jr., Award winner. The Lewis F. Powell Jr., award is given annually, "In recognition of exemplary service in the areas of professionalism, ethics, civility and excellence."

Wendy Shiba is a corporate attorney and principal with the Red Bee Group. She has served in C-level executive positions for three NYSE-listed companies, including Executive Vice President, General Counsel & Secretary of KB Home; Senior Vice President, Chief Legal Officer & Secretary of PolyOne Corporation; and Vice President, Secretary & Assistant General Counsel of Bowater Incorporated. In these roles, she managed Compliance and Risk Management; Environmental, Health and Safety; Government and Public Affairs; Internal Audit; Legal; and Product Stewardship.

Earlier in her career, Wendy was Corporate Chair of the City of Philadelphia Law Department; a tenured Associate Professor of Law at Temple University School of Law; in private practice with O'Melveny & Myers; and law clerk to Justice Stanley Mosk on the Supreme Court of California.

Wendy is a member of the American Bar Association's (ABA) House of Delegates; Chair of the Diversity, Equity, and Inclusion (DEI) Center and Chair of the DEI Advisory Council; and Vice Chair of the Committee on Rights of Women of the Section on Civil Rights and Social Justice. Her prior ABA service includes the Presidential Task Force on the Law, Society, and the Judiciary; Standing Committee on Bar Activities and Services; Board of Directors of the Rule of Law Initiative; Commission on Women in the Profession, where she chaired the Women of Color Research Initiative; and the Presidential Diversity & Inclusion 360 Commission. Wendy is a past President of the National Asian Pacific American Bar Association (NAPABA) and a co-founder of the Collaborative Bar Leadership Academy. She serves on the Board of Trustees for the Japanese American National Museum and has held board and leadership positions with numerous professional and nonprofit organizations.

Wendy has been honored with several national awards for her professional excellence, leadership, and impact in DEI, including the ABA Margaret Brent Women Lawyers of Achievement Award (2022), Warren Christopher Values Award from O'Melveny & Myers (2019), ABA TIPS Liberty Achievement Award, sponsored by Thomson Reuters (2016), ABA Spirit of Excellence Award (2014), Corporate Counsel Women of Color's Diamond Award (2014), NAPABA Trailblazer Award (2009), and YWCA Woman of Achievement Award (2007). In 2010, she was recognized as one of the Most Powerful and Influential Women in California. She is a frequent speaker on corporate and board governance, women's leadership, and DEI in the legal profession. Wendy earned her B.S. from Michigan State University and her J.D. from Temple University School of Law, where she graduated first in her class, served as Articles Editor of the Temple Law Review, and was a member of the Moot Court Board.

Associate Justice Helen I. Bendix was appointed by Governor Jerry Brown to the Court of Appeal, Second District, Division One, on April 17, 2018, after having served on the trial court for almost 21 years.

Her judicial career began when Governor Pete Wilson appointed her to the Municipal Court in 1997, where she presided over a misdemeanor trial court. She was elevated to the Superior Court in 2000, where she was assigned to a general jurisdiction civil trial court and then a settlement court. As a Superior Court judge, she presided over constitutional, commercial and personal injury cases, including a constitutional challenge to public pension rights, employment, real estate, intellectual property and products liability cases. Prior to her appointment as an appellate justice, she was the Supervising Judge of the Los Angeles Superior Court settlement courts. In that capacity, she settled over 1000 cases from the complex and general civil jurisdiction courts.

She attended Cornell University as a scholarship student. At Cornell, she earned high academic honors including membership in Phi Beta Kappa in her junior year. She earned her law degree from Yale Law School. After law school, Justice Bendix clerked in Los Angeles for the Honorable Shirley Mount Hufstедler on the Ninth Circuit Court of Appeals. She then moved to Washington, D.C. for eight years, where she worked on a wide variety of legal matters, including an administrative appeal before the United States Supreme Court, negotiating an agriculture treaty with an African country, obtaining refugee status for an employee of a South American embassy, and litigation on behalf of a subcontractor regarding construction of the major military hospital in the area. She also started a program that provided free legal services to the elderly. She returned to Los Angeles in 1985 and worked at Gibson, Dunn and Crutcher, and later as a partner in Heller, Ehrman, White, and McAuliffe. At these firms, she handled antitrust, securities, and corporate matters, and at Heller, Ehrman, headed the Los Angeles office's committee to provide free legal services to those in need, and was active in other public service work.

Justice Bendix has taught in American University's law school in Washington, D.C. (Japanese Law), UCLA (Public International Law, Japanese Law, Civil Procedure, and Remedies), and the Straus Institute at Pepperdine University (Mediation). She is the author of several articles on civil procedure, alternative dispute resolution, and international law.

Throughout her judicial career, Justice Bendix has been active in court committees involving access to justice, civil rulemaking, and alternative dispute resolution. She taught courses to other judges on many topics including privacy law, arbitration, and alternative dispute resolution. Justice Bendix has also been active in bar association activities. She was Chair of the California State Bar's International Law Section in 1990-1991 and was a member of the Los Angeles Bar Association's Board of Trustees in 1994-1997. She served on several committees of that bar association regarding diversity, governance issues, and alternative dispute resolution. She is a member of the American Law Institute.

Benjamin G. Shatz is a partner in the Appellate practice in the Firm's Los Angeles office. Certified as a specialist in Appellate Law by the California Bar, he is a member of both the American and California Academies of Appellate Lawyers. He has handled hundreds of civil appeals, writs, and petitions in courts including the U.S. Supreme Court, U.S. Courts of Appeals, California Supreme Court, and California Courts of Appeal, covering areas of law including complex commercial litigation, entertainment, copyright, employment, real estate, land use, banking, insurance, product liability, professional liability, wrongful death, punitive damages, class actions, unfair competition, and anti-SLAPP.

He served as law clerk to the Honorable Robert J. Johnson, United States Magistrate Judge for the District of Nevada and as an extern to the Honorable Dorothy W. Nelson, United States Court of Appeals for the Ninth Circuit. He has been named in Chambers, Best Lawyers, and other ranking entities. He is a frequent lecturer and author, with publications in California Litigation, California Lawyer, Los Angeles Lawyer, CEB Civil Litigation Reporter, and many other legal publications. Since 2018 he has written a monthly column in the Daily Journal titled Exceptionally Appealing. Since 2013 he has been the editor-in-chief of California Litigation journal. He blogs at [Southern California Appellate News](#).



You Can't Change What You Can't See

Implicit Bias and Tools for Disrupting It

Wendy C. Shiba
2024 CLA Litigation & Appellate Summit
April 26, 2024

What is Implicit Bias?

Implicit Bias \approx Unconscious Bias

But

Implicit Bias \neq Racism,
Homophobia, Misogyny, etc.

Some Definitions / Implicit Bias Is:

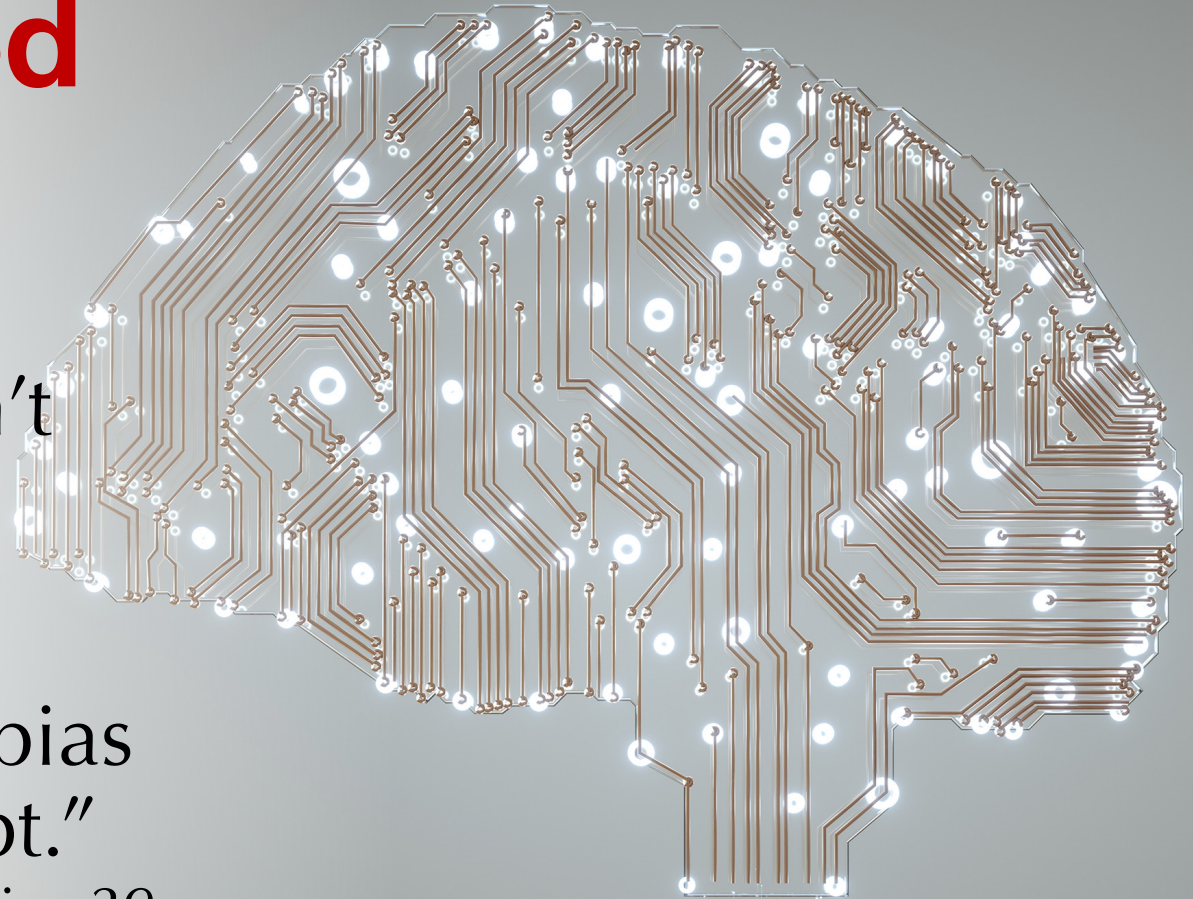
“a negative attitude, of which one is not consciously aware, against a specific social group . . . the phenomenon that perceptions, attitudes, and stereotypes can operate prior to conscious intention.” ~ *The American Psychological Association*

“our tendency to make judgements (*sic*) based on prejudice and assumptions, rather than indisputable facts and data.” ~ *Applied (recruiting software platform aimed at reducing bias in screening applicants)*

But I'm not biased . . . Really!

Having implicit bias doesn't
make you a bad person.

"The existence of implicit bias
is beyond reasonable doubt."
~*Research in Organizational Behavior* 29
(2009) 39-69





“Unconscious Bias is a Human Condition”

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8784036/>

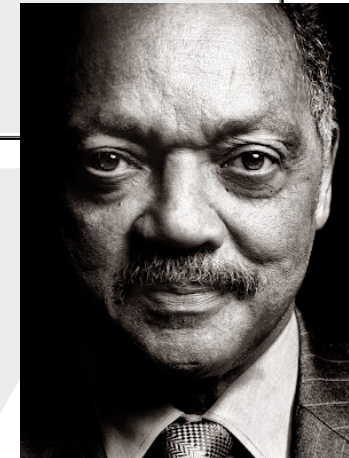
I THINK UNCONSCIOUS
BIAS IS ONE OF THE
HARDEST THINGS TO
GET AT.

NOTORIOUS RBG



There is nothing more
painful to me at this stage in
my life than to walk down
the street and hear
footsteps... then look around
and see somebody white
and feel relieved.

Rev. Jesse Jackson



See for yourself by taking the Implicit Association Test (IAT)

<https://www.projectimplicit.net/>



Examples of Implicit Associations

Group Identity


Tall
Women
Black
LGBTQ+
White
Men
Asian

Attributes

Athletic
Math
Reliable
Golf
Creative
Basketball
Leader

Some Real-World Examples

- “Blind” orchestra auditions
- Evaluations of law firm memo
- Screening of fictitious law student resumes



MEMORANDUM
CONFIDENTIAL
Attorney Work Product

TO: Idyll Unified School District, Supervising Attorney
FROM: Anah Raturi, Hastings Summer Associate
RE: Casey McNeill; School Suspension
DATE: Monday, November 3, 2014

FACTS

Casey McNeill is a senior at Pacific High School in an extremely conservative neighborhood near Los Angeles. Mr. McNeill was the star of his school's recent musical production of Hair. Mr. McNeill cultivated a long but well-maintained hairstyle for the show. Following the show, he continued to let his hair grow. Because of his long hair, Mr. McNeill was the subject of harassment by peers, including gender-related taunts. A school teacher warned Mr. McNeill that his long hair violated the school's dress code. The Idyll Unified School District, where Pacific High School is located, has a dress code that in part provides: "All students, teachers, and staff shall meet basic standards of good grooming consistent with the health and safety of the school environment." The school was concerned that Mr. McNeill's long hair would cause more bullying and catch fire in shop class. Mr. McNeill refused to cut his hair.

In response to alarming statistics of drug use among high school students nationwide, and the spread of drug use from urban areas such as the city of Los Angeles, the district has implemented a drug testing policy. The district's drug policy requires student who wish to participate in school extracurricular activities to consent to a hair analysis to detect the presence of illicit drugs. The testing procedure includes taking the sample and assigning a unique

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SUMMARY
Dedicated third-year law student concerned with environmental issues. Prior internships with the Virginia Attorney General's Office and the EPA. Proficient in quickly identifying and researching crucial environmental issues such as pollution and illegal dumping. Seeking environmental law experience with a professional firm.

HIGHLIGHTS

- Developed EPA presentation to help companies prevent violations
- Conducted legal research on Virginia environmental issues
- Assistance with depositions and discovery
- Classes on issues such as impact of pesticides, air pollution, urban sprawl, food safety, water safety
- Sitting for (month, report) Virginia Bar Examination
- Excellent research and analytical skills
- Well-rounded communicator and collaborator

EXPERIENCE
Legal Research Intern
6/1/2015 - 8/1/2015
Virginia Attorney General's Office - Richmond, VA

- Researched case law to help attorneys with depositions and discovery.
- Prepared deposition and discovery files.
- Focused on issues such as solar power and protecting Virginia's rivers.
- Developed possible lines of argument based on research.
- Presented ideas to attorney.

Legal Research Intern
6/1/2014 - 8/1/2014
Environmental Protection Agency - Washington, D.C.

- Researched common ways that companies commit EPA violations.
- Created presentation to help companies prevent violations.
- Developed one-page, easy-to-read version of EPA presentation.
- Conducted research on Resource Conservation and Recovery Act/pollution cleanup files.
- Aided attorneys with Clean Air Act and Clean Water Act prosecutions.

EDUCATION
Doctor of Jurisprudence candidate, 06/2016
Mead Law School, Roanoke, VA
Bachelor of Arts in English, 08/2013
Bethlehem University, Bethlehem, PA

So, what are we going to do about it?

- ✓ Step 1: Acknowledge
- ❑ Step 2: Build Awareness
- ❑ Step 3: Learn Techniques
- ❑ Step 4: Practice, Practice, Practice



✓ Step 2: Build Awareness



“Peanut Butter, Jelly,
and Racism”

NY Times series of short
videos (2-3 minutes):

<https://www.nytimes.com/video/us/100000004818663/peanut-butter-jelly-and-racism.html>

Ramifications for Legal Profession

- Professional Development / Career Opportunities
- Integrity of the Justice System





✓ **Step 3: Learn Techniques**

Some current terminology:

- Interrupting Bias
- Debiasing
- Individuating
- Mindfulness

✓ **Step 4: Practice, Practice, Practice**

- Self audit of friendships, professional & social networks
- Ask a friend/colleague to observe you in real world settings
- Take ownership
- Implement changes in behavior



It's a Journey, Not a Destination

Onward and Upward!



Wrapping Up

What is a key concept that resonates with me?

What is a takeaway from today that I will share with others?



Stay in touch!

Wendy Shiba

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