

# RECOGNIZING & RESPONDING TO MICROAGGRESSIONS

in the Legal Profession



GOALS & GROUND RULES



RESPONDING TO MICROAGGRESSIONS



CONCLUSION & QUESTIONS

INTRODUCTORY EXERCISE



TRAINING TEAM



## **Presenters:**

- Michelle Kraus, Senior Social Worker for the Disability Justice Program at New York Lawyers for the Public Interest
- Emile (“Milo”) Primeaux, Esq., solo civil rights practice with a focus on LGBTQ+, also founder of Just Roots Consulting, LLC
- Tanya Douglas, Director of the Disability Advocacy Project and Veterans Justice Project Coordinator at Manhattan Legal Services, a program of Legal Services NYC

## **Moderator:**

- Lillian Moy, Executive Director of Legal Aid Society of Northeastern New York

# Goals for the afternoon

- Help participants identify microaggressions
- Offer a basic understanding of why microaggressions are harmful
- Provide space for people to share experiences as recipients and observers of microaggressions
- Offer tools/strategies to help understand the full range of responses available to a recipient or observer
- Help participants articulate how they might support a colleague or client who experiences a microaggression

# A Special Thank you

- Parts of this presentation have been adapted, with permission, from an original PowerPoint by Professor Sue Bryant and Professor Jean Koh Peters

# Ground Rules

- Stay present – turn off AND put away electronic devices
- Step up, step back
- Keep an open mind and open heart – think before you respond
- Confidentiality of today's discussions
- Safe space, brave space – things people share may make the vulnerable
- Be respectful of others thoughts, opinions, words, etc.
- Check your roles at the door – everyone is an equal in the room
- Others?

# Introductory Exercise

- Take a moment to write down three identity groups you belong to
- Then come up with three positive traits (or privileges) and three negative traits (burdens or challenges) which come with membership in that group

This exercise is taken from Chapter 6 of Margaret Reuter & Carwina Weng's book, *Navigating Cultural Differences, LEARNING FROM PRACTICE* (3d, Ed.) (2015)

# Introductory Exercise - *example*

- **Identity:** Mother
- **Positive Traits/Privileges:** Unselfish, caring, recognized as “feminine”
- **Negative Traits/Burdens:** Won't pull her weight at work, responsible for the house even if she works outside the home, will “ruin” her children by too much attention...or too little attention

# Introductory Exercise

## – Reflect & Debrief

- Take a moment to consider:
  - Which traits (positive or negative) came from your experience as a person in that group?
  - Which of them come from outside of that group?
- If you're comfortable, share a trait you listed and let us know whether it comes from your/your identity, or from outside of you/your identity
- WHY IS IT IMPORTANT?





## MICROAGGRESSION

The term was coined by psychiatrist and Harvard University professor Chester M. Pierce in 1970 to describe insults and dismissals which he regularly witnessed non-black Americans inflicting on African Americans.



## Microaggression explained by Dr. Derald Wing Sue, Ph.D.

“Microaggressions are the everyday verbal, non-verbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership.

In many cases, these hidden message may invalidate the group identity or experiential reality of target persons, demean them on a personal or group level, communicate they are lesser human beings, suggest they do not belong with the majority group, threaten and in intimidate, or relegate them to inferior status and treatment.”

# Identity or Experiential Reality

Microaggressions may be based on race, gender, age, sexual orientation, ethnicity, religion, ability, and/or class.

# Quickwrite: 60 seconds

- Put your head down.
- Take the next 30 seconds to think about the first experience that comes to mind of a time when you experienced or observed a microaggression. Put your head up when you are done.
- Take the next 30 seconds to quickly summarize that experience on an index card at your table.
- Put the index card in your pocket for a safe place for later!

# Types of Microaggressions

**Microassault:** Microassaults are explicit derogations and purposeful discriminatory actions (essentially explicit racism or discrimination).

**Microinsult:** Microinsults are behavioral or verbal remarks that convey rudeness, insensitivity, and demean a person's heritage or identity. Often subtle snubs outside the level of awareness of the perpetrator, microinsults clearly convey a hidden insulting message to the recipient.

**Microinvalidation:** Microinvalidations are verbal comments or behaviors that exclude, negate, or nullify the psychological thoughts, feelings, or experiential reality of a person; they are likely unintentional.

# Microaggression Examples

## **Microassaults:**

- Landlord does not rent to potential tenant based on race, gender, age, sexual orientation, ethnicity, religion, ability and/or class
- Person of color pulled over by law enforcement without reasonable suspicion or probable cause
- Attorney for the child referring to a child client as a “cross dresser”

# Microaggression Examples

## Microinsults:

- Assuming a person was not born in the U.S. based on appearance – “Where are you from? Where are you *really* from?”
- Assuming a person speaks a language based on appearance – “Can you go talk to my client who is from Korea because I don’t think she understands me?”
- Complimenting a person for speaking English “so well”
- Assuming a young woman is not an attorney – “Are you a secretary? The interpreter? This Defendant?”
- Assuming a person is heterosexual – “When did you marry your husband?”

# Microaggressions Examples

## Microinsults - *continued*

- Using the term “gay” to describe something a person does not like
- Speaking more loudly and more slowly when a person using a wheelchair enters the room
- A female senior attorney is labeled as pushy, bossy, a “diva” and difficult to get along with and her male counterpart is described as forceful and someone who sets high standards
- Believing a person receiving public benefits is not entitled to or is misusing benefits - “Who pays your rent - you or ‘welfare’?” “That person is using the SNAP benefits for soda and junk food.”
- Using incorrect pronouns to refer to an individual



# Microaggression Examples

## **Microinvalidation**

- Dismissing concerns about microaggressions when they are raised – “You’re overreacting” “I think he meant it as a compliment”
- Speaker refusing to use a microphone under the assumption that all participants are able to hear the speaker (even disregarding feedback from audience that they are unable to hear)



## Why Do Microaggressions Happen?

- Implicit bias
- Stereotyping
- Failure to recognize another person's experience
- Clash of racial, identity, or other realities
- Belief in post-racial world and denial of race discrimination
- Belief that microaggressions are minor and not harmful

# Harmful Impact

**Far from being benign slights, microaggressions have a major detrimental consequences because they:**

- Assail the mental health of recipients (Sue, Capodilupo, & Holder, 2008)
- “Sap[s] the psychic and spiritual energy of recipients and [creates] inequities.” (Franklin, 2004; D.W. Sue 2004)
- Lower work productivity and problem solving abilities (Dovidio, 2001; Salvatore & Shelton, 2007)
- Create physical health problems (Clark, Anderson, Clark, & Williams, 1999)
- Perpetuate stereotype threat (Steele, Spencer, & Aronson, 2002)
- Create a hostile and invalidating campus climate (Solórzano, Ceja, & Yosso, 2000)
- Saturate the broader society with cues that signal devaluation of social group identities (Purdie-Vaughns, Steele, Davies, & Dittmann, 2008)

Slide adapted from:  
Derald Wind Sue, Overcoming Microaggressions in Educational Institutions, Colum. U. (November 10, 2010),  
<http://www.slideshare.net/ralphkennedy/sue-overcoming-microaggressions-11706852>

# Ponder for a Minute

- Pull the index card out of your pocket (or other safe place)
- Decide whether you (or a colleague or a client), in retrospect, gave a satisfactory or unsatisfactory response (including no response)
- Was the response satisfactory or unsatisfactory? How could the response have been better?
- We may ask for volunteers to share some of these moments with the group

# Goal of This Session

*Promote our own conscious competence on matters of microaggression, implicit bias, and talking about race.*

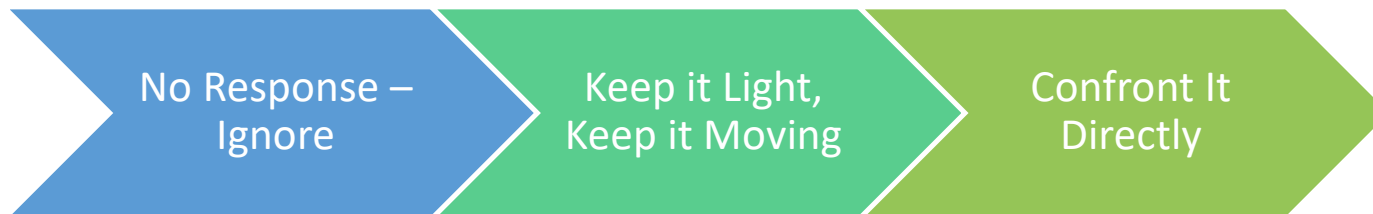
# A Spectrum of These Responses

0 -----> 100

<b>No response In your own head Stereotype tax</b>	<b>“Keep it Light, keep it moving”</b>	<b>Confront it Directly</b>
<i>Possible Benefits:</i> <ul style="list-style-type: none"> <li>• Keep on track</li> <li>• Save time and energy</li> <li>• Self-protection: show no vulnerability</li> </ul>	<i>Possible Benefits:</i> <ul style="list-style-type: none"> <li>• Keep on Track</li> <li>• Lay down a marker</li> <li>• A Warning Shot</li> <li>• Other side can save face</li> </ul>	<i>Possible Benefits:</i> <ul style="list-style-type: none"> <li>• <i>Act of self-esteem</i></li> <li>• <i>Attack it head on</i></li> <li>• <i>Deter future misbehavior</i></li> <li>• <i>Inspire change</i></li> </ul>
<i>Possible Risks:</i> <ul style="list-style-type: none"> <li>• Allowing yourself to be harmed (esp. longterm)</li> <li>• No change to environment</li> </ul>	<i>Possible Risks:</i> <ul style="list-style-type: none"> <li>• Too subtle—no impact</li> <li>• Too strong—stops activity already moving in your favor</li> </ul>	<i>Risks:</i> <ul style="list-style-type: none"> <li>• Stops activity</li> <li>• May not be worth it</li> <li>• Picking the Wrong Battle?</li> </ul>

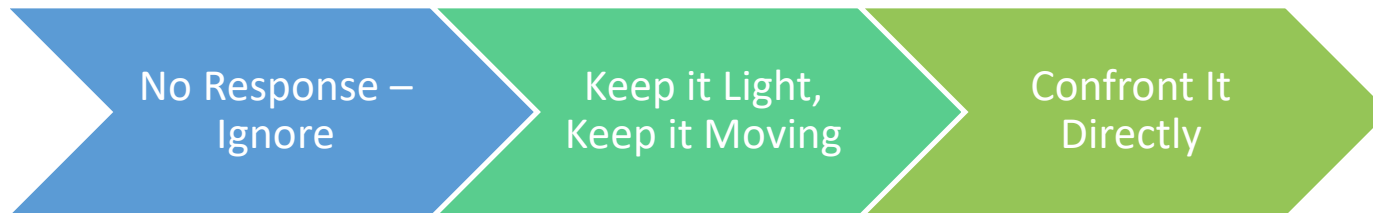
# Bystander v. Target

*You are an attorney of Caucasian descent and you and your colleague of African-American descent have been preparing for a criminal trial for weeks. On the first day of the trial, you and your colleague enter the courtroom, both dressed in your best suits, and the judge assumes your colleague is the defendant and directs him to the defendant's seat at the table.*



# Bystander v. Target

*You are an attorney in a public interest law firm. You join your supervisor in an interview of a law school student for a summer externship. Despite the student, who is of Latino descent, having been born in the U.S., your supervisor expresses admiration for his command of the English language, “complimenting” him for being so articulate and well spoken.*

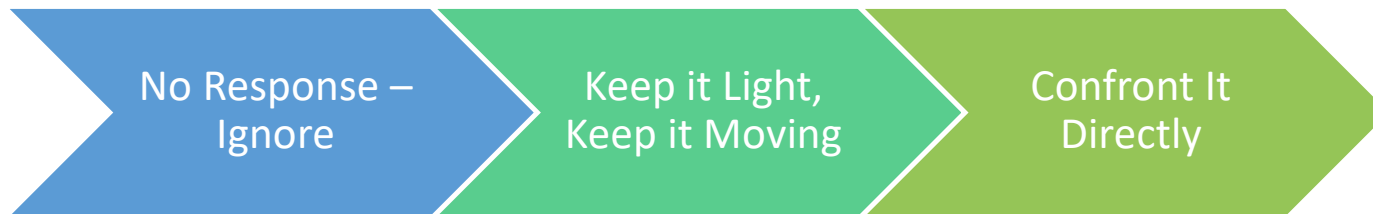




# Bystander v. Target

*You are a mediator in a landlord/tenant matters. An attorney in a small law firm, who has been out of law school for about two years, is negotiating a settlement for a client. The opposing counsel is roughly 20 years older.*

*Opposing counsel repeatedly refers to the junior attorney as “young man,” interrupts him, asks when he got out of law school, and continuously references his inexperience: “When you have tried as many cases as I have, you will understand . . . .”*



# How Do We Respond?

## **AMBIGUITY**

- Did something just happen? - Am I imagining it? - Is it an intentional slight? -

## **RANGE OF RESPONSES**

- Confront the person? How to disrupt?
- Ignore it and potentially stew on it:
  - If I am unlikely to persuade that it is offensive, is it worth the effort?
  - Should I just drop the matter?
- If I bring the topic up, will the other person see it as a slight or think I am hypersensitive? "You're overreacting."
- Look how much time and energy I've just spent on this random comment that the other person barely remembers making!

# Wisdom of the Group

More responses?

More responses?

More responses?

# Potential Responses

- “Ouch”
- Quizzical look
- Ask for clarification: “What do you mean?”
- “Don’t you mean \_\_\_\_\_?”
- “Could you repeat that?”
- Focus on the event/behavior (not person)
- “That’s not my experience/the experience of many people”

# With Microaggressions, THINK

When someone “calls us out” as a microaggressor we should:

- Respond with humility and gratitude
- View it as a gift

How would you like to be corrected (or told) that you have committed a microaggression?



# How do we avoid perpetuating Microaggression?

- Slow down (example from students)
- Problem-solve outside of the movement
- Apologize
- Be willing to talk about it in the moment, and after reflection
- Other ideas?

# Legal Resources

## Standards of Civility – October 1997 by Judith Kaye

### *Preamble*

The New York State Standards of Civility for the legal profession set forth principles of behavior to which the bar, the bench and court employees should aspire. They are not intended as rules to be enforced by sanction or disciplinary action, nor are they intended to supplement or modify the Rules Governing Judicial Conduct, the Code of Professional Responsibility and its Disciplinary Rules, or any other applicable rule or requirement governing conduct. Instead they are a set of guidelines intended to encourage lawyers, judges and court personnel to observe principles of civility and decorum, and to confirm the legal profession's rightful status as an honorable and respected profession where courtesy and civility are observed as a matter of course. The Standards are divided into four parts: lawyers' duties to other lawyers, litigants and witnesses; lawyers' duties to the court and court personnel; court's duties to lawyers, parties and witnesses; and court personnel's duties to lawyers and litigants.

# More Standards of Civility

## LAWYERS' DUTIES TO OTHER LAWYERS, LITIGANTS & WITNESSES

- Lawyers should be courteous and civil in all professional dealings with other persons
- Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others
- Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. Whether orally or in writing, lawyers should avoid vulgar language, disparaging personal remarks or acrimony toward other counsel, parties or witnesses.
- Lawyers should require that persons under the supervision conduct themselves with courtesy and civility



# Rules of Professional Conduct

**“DISCRIMINATION AND HARASSMENT ON THE BASIS OF GENDER, RACE, ETHNICITY, SEXUAL ORIENTATION, DISABILITY, MARITAL AND SOCIOECONOMIC STATUS IS, AND UNFORTUNATELY CONTINUES TO BE, A PROBLEM IN OUR PROFESSION AND IN SOCIETY.”**

**PAULETTE BROWN, IMMEDIATE PAST-PRESIDENT,  
AMERICAN BAR ASSOCIATION**

# Model Rule 8.4 - Misconduct

“It is professional misconduct for a lawyer to:

- Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- **Engage in conduct that is prejudicial to the administration of justice;**
- State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.”

# Model Rule 8.4 – *Comment 3*

*“A lawyer who, **in the course of representing a client**, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are **prejudicial to the administration of justice.**”*

# New Model Rule 8.4(g)

*“It is professional misconduct for a lawyer to:*

*...*

*(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in **conduct related to the practice of law.**”*

# New Model Rule 8.4 – *Comment 4*

*“Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law.”*

# Misconduct – Caselaw

Case law of misconduct:

- Matter of Chiofalo, 78 A.D.3d 9 (2010)
- See also, Alexander Interactive Inc. v Adorama Inc. 2014 WL 4058705 (finding that counsel prejudiced the administration of justice by hurling “a personal invective at opposing counsel”)
- Matter of Schiff, 190 A.D. 2d 293 (1993) (censuring attorney who directed vulgar and sexist epithets at opposing counsel”)

Are there internal policies in  
your workplace to assist?

# What Next?

If you have been a microaggressor or,  
as an observer did not respond:

## ***As an individual – everyone should:***

- Recognize that dismissive attitudes are harmful
- Engage in self-reflection to identify times that you may have been microaggressive in your person and work life
- Participate in continuing education activities
- Avoid making assumptions and labelling people

## ***As an Institution – your workplace should:***

- Foster an inclusive and supportive environment
- Collaborate with groups and organizations who are committed to addressing issues of diversity and inclusion
- Offer trainings and opportunities for continuing education and diversity workshops



# What Next?

As colleagues we should:

- Recognize that we all experience Microaggressions – as subject or observer
- Contribute to an environment that encourages open and meaningful communication
- Recognize, approach, and acknowledge Microaggressions

Other suggestions?

# Resources

- Derald Wing Sue et al. Racial Microaggressions in Everyday Life: Implications for Clinical Practice, 62 *Am. Psychologist* 271 (2007), <http://www.consumerstar.org/resources/pdf/RacialMicroaggressions.pdf>.
- Derald Wing Sue, *Microaggressions in Everyday Life: Race, Gender and Sexual Orientation* (2010).
- Derald Wing Sue, *Microaggressions and Marginality: Manifestation, Dynamics and Impact* (2010).
- Derald Wing Sue, Race Talk: The Psychology of Racial Dialogues, 68 *Am. Psychologist* 663 (2013), <http://psycnet.apa.org/journals/amp/68/8/663.pdf>.
- Derald Wing Sue et al. Racial Microaggressions and Difficult Dialogues on Race in the Classroom, 15 *Cultural Diversity and Ethnic Minority Psychology* 183 (2009), [https://cepts.washington.edu/anthweb/resources/diverse\\_pdfs/diversity\\_microaggressions\\_11.pdf](https://cepts.washington.edu/anthweb/resources/diverse_pdfs/diversity_microaggressions_11.pdf).
- Derald Wing Sue et al. Racial Dialogues: Challenges Faculty of Color Face in the Classroom, 17 *Cultural Diversity and Ethnic Minority Psychology* 331 (2011), <http://psycnet.apa.org/journals/cdp/17/3/331.pdf>.
- Derald Wing Sue, *Overcoming Microaggressions in Educational Institutions*, Colum. U. (Nov. 10, 2010), <http://www.slideshare.net/ralphkennedy/sue-overcoming-microaggressions-11706852>.
- Jody Gray, *Identifying and Responding to Microaggressions*, U. Minn., <https://www.minitex.umn.edu/Training/DisplaySessionHandout.aspx?Title=Identifying%20and%20Responding%20to%20Microaggressions&SessionID=580>.
- Aliya Khan, *6 Ways to Respond to Sexist Microaggressions in Everyday Conversations*. *Everyday Feminism* (Jan 18, 2015), <http://everydayfeminism.com/2015/01/responses-to-sexist-microaggressions>.
- Anna Giraldo Kerr, *5 Tips to Handle Microaggressions Effectively*, *Huffington Post* (Aug. 8, 2014). [http://www.huffingtonpost.com/anna-giraldo-kerr/5-tips-to-handle-microagg\\_b\\_5658351.html](http://www.huffingtonpost.com/anna-giraldo-kerr/5-tips-to-handle-microagg_b_5658351.html).

# Question Time

- What?
  - Why?
  - When?
  - Who?



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