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BEST PRACTICES FOR MEDIATING WITH LGBTQI PARTIES

COMMON TERMS

Sexual Orientation

A person's attraction to others of the same and/or different genders. Examples: heterosexual, lesbian, gay, bisexual, pansexual.



Gender Identity

Every person's internal understanding of themselves as male, female, in-between, or neither.

Gender Expression

Gender-related characteristics -- such as hairstyle, dress, or mannerisms -- that are perceived as masculine or feminine.

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LGBT = A member of the Lesbian, Gay, Bisexual, and Transgender community; i.e., someone who is not exclusively heterosexual and not cisgender

Note: "Queer" may be used as a synonym by members of the community, but not recommended for use by others.

LGBTQQIA = + Queer, Questioning, Intersex, Asexual

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Transgender or Trans

- Someone whose gender identity is different from their sex assigned at birth.

Nonbinary

- Someone whose gender identity is neither male nor female, or in between male and female.

Cisgender

- Someone whose gender identity matches their sex assigned at birth.

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Transgender man

- Someone assigned female at birth who identifies and lives as a man.

Transgender woman

- Someone assigned male at birth who identifies and lives as a woman.

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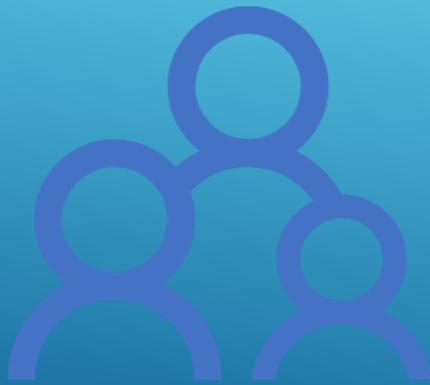
Gender Transition

The multi-step process of beginning to live in accordance with one's gender identity rather than the sex assigned at birth.

- ▶ An individualized process that can vary significantly.
- ▶ Can include social, medical, and legal components.

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TRANSGENDER CULTURAL
COMPETENCY



1. Use the Right Pronouns

- Rule of thumb: use “she” for transgender women and “he” for transgender men.
- Some people prefer gender-neutral pronouns such as “they.” Try to practice.
- If you don’t know a person’s gender identity or pronoun, it’s okay to ask.
- Make the question less awkward by sharing your own preferred pronouns.

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2. Respect Privacy

- Don’t ask unnecessary questions about a person’s medical treatment, medical history, or body parts.
- Don’t disclose a person’s transgender status to others.

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3. Don't Assume

- Transgender people can be straight, gay, bisexual, married, divorced, single, parents, children, old, young, unemployed, wealthy – every aspect of diversity.

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4. Make Your Office Welcoming

- Ensure intake forms ask for preferred name as well as legal name.
- Offer gender-neutral restrooms if possible.
- Train staff on cultural competency.

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IMPLICIT BIAS

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Implicit Bias - a "**relatively**" unconscious and "**relatively**" automatic feature of prejudicial judgment and social behavior. (Brownstein)



For example, explicitly, a judge may have a belief that men and women are equally suited to work as a lawyer, for example.



One might have an association or schema about women and *home* that could to have a higher trust level of a male—an "innate," or "gut-level reaction," that influences decision making.

UNDERSTANDING IMPLICIT BIAS

- ▶ Alief – a mental state that is *associative, automatic and arational*. They are typically affect-laden and action-generating. (Brownstein)



ASSOCIATIONS

BLACK CAT!

- ▶ Don't let it cross your path!
- ▶ Accident will Happen!

LGBT ALIEFS

- ▶ Pedophile
- ▶ Sexually deranged/deviant
- ▶ Diseased



NOT EVALUATIVE ATTITUDES.



CLUSTERS OF SHARED CONCEPTS AND BELIEFS.



ABSTRACT KNOWLEDGE STRUCTURES, "COLDLY" COGNITIVE.

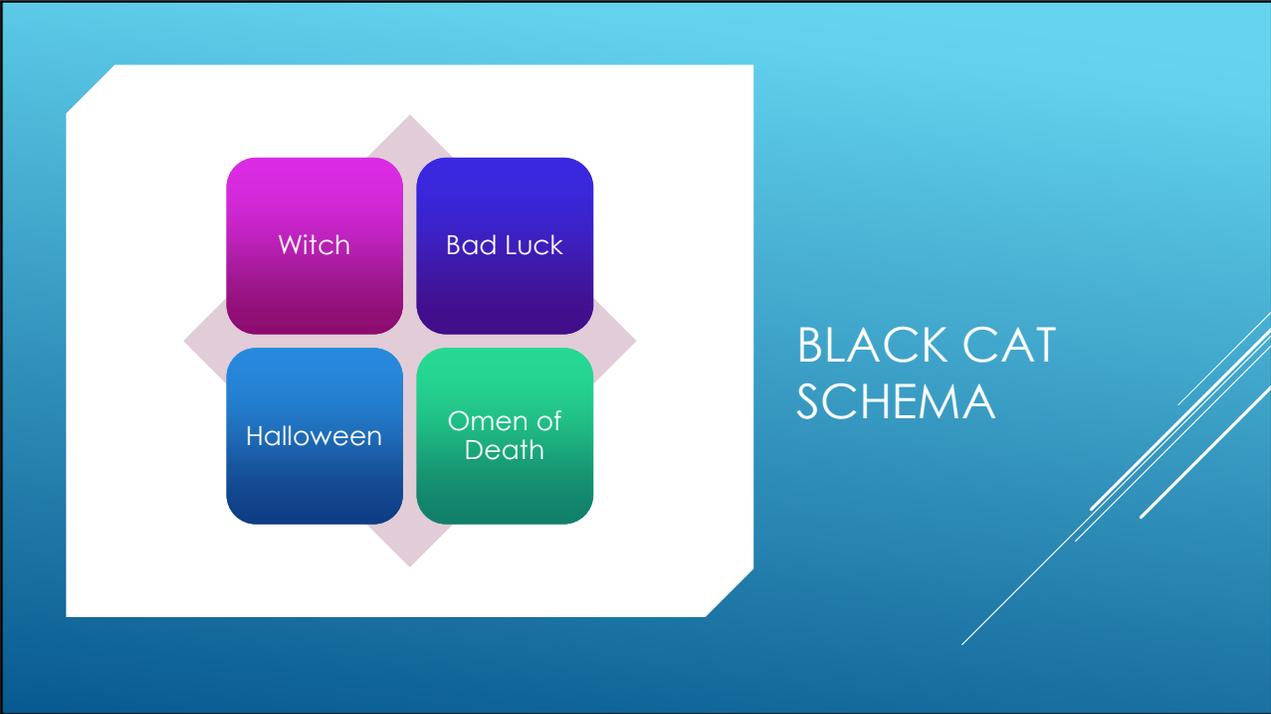


TOOLS FOR SOCIAL CATEGORIZATION.



NOT A STRAIGHTFORWARD ANTI-PATHY TOWARD MEMBERS OF SOCIALLY STIGMATIZED GROUPS. (BROWNSTEIN).

COGNITIVE SCHEMA



LGBT SCHEMA

Good dressers
 Good decorators
 Childless
 Different
 Tough life
 Sexuality
 Man-hater
 Ugly
 Want to be a man
 Angry
 Sexually loose
 Mentally ill



Sociological Level



Certain areas of the country or even whole countries will have stronger associations or schemas than others.



Thumbprint of the culture on the minds of individuals in the community. (Hidden Brain NPR Podcast).

COMMUNITY DRIVEN



- ▶ In 1929, after a wave of molestations of children in St. Paul, Minnesota enacted psychopathic offender law.
- ▶ Psychopathic Offender was defined to be any person of such conditions or emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his act, or a combination of any such conditions, as to render such a person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons.

ORIGINS OF COMMUNITY IMPLICIT ASSOCIATION

- ▶ Percentage of LGBT attorneys is low compared with the percentage of this community in the general population.
- ▶ Explicit and implicit bias are likely contributors to this outcome. (Courson).
- ▶ Statistically less than 3% in law firms.
- ▶ Population that self identifies is 4.1%.

SELF IDENTIFIED LEGAL PROFESSIONALS

In time reminders.

Promoting an appreciation of group differences has a positive impact.

A color blind approach has a negative impact and produces greater implicit bias.

Promoting a mindful and deliberative process increasing perspective.

Promote an individuating process to reduce reliance on stereotyping.

Encourage Note taking. Reduce time pressure for deliberation.

Exposure to stigmatized group members - in socially valued roles.

MITIGATION

Anxiety

Stress

Sleep Deprivation

Ambiguity

Color-blind approach (avoiding or ignoring race, not being aware or sensitive to differences between social groups)

Coercive pressure can elicit hostility from some types of individuals.

FACTORS THAT EXACERBATE IMPLICIT BIAS



MEDIATOR

- ▶ As a mediator, how will you be seen?
- ▶ Do you take mitigating measures if you are of a group that is not perceived positively in the implicit bias of the community?
- ▶ What techniques can you use to get a positive cognitive response if your listener has implicit bias that would hold you in a negative light?

PARTICIPANTS

- ▶ What measures would you take for participants, if participants are not perceived positively in the implicit bias of the community?

MEDIATING WITH MEMBERS OF MARGINALIZED COMMUNITIES AND NAVIGATING POWER IMBALANCES

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► You are mediating a case brought by a lesbian woman against her employer in a jurisdiction and circuit which do not protect LGBTQ+ people, for example North Dakota/Eighth Circuit. Plaintiff has sued and demanded a million dollars. Defendant has offered \$25,000, says it will convert it to an offer of judgment for \$10,000 if the case does not settle. The plaintiff wants to have her day in court.

HYPOTHETICAL

- ▶ Tom is a high school football player who left his school in senior year because he was bullied by teammates and classmates. He is called slurs that suggest he is feminine and gay. He is physically pushed around, subject to cheap shots on the field that cause him pain and put him at risk of permanent injury, and his property is stolen and damaged. The school says that the name calling was isolated and that Tom also engaged in name calling.
- ▶ You are mediating the case the player brought against the school, which includes discrimination claims and negligence claims for emotional pain and suffering.
- ▶ How do you approach the case if you know the player who brought the case identifies as gay? What if the student identifies as straight? What if you don't know?
- ▶ What implicit biases fill in the story when you think you know the student's sexual orientation? What do you do to check those biases? Do the biases impact your "neutrality?"

HYPOTHETICAL

- ▶ You are assigned to mediate a discrimination case involving a transgender person who was prohibited from using the restroom at a restaurant, in a state that has a gender-identity nondiscrimination law. You hold the mediation at your office. Only the restaurant owner has an attorney.
- ▶ From the facts you have, you are not sure what the plaintiff's gender identity is. How would you determine what pronouns you should use to refer to them?
- ▶ In your initial phone conversation, the restaurant owner's attorney keeps using the wrong pronoun to refer to the plaintiff. What do you do? What if they persist in using the wrong pronouns during the joint opening session?
- ▶ What would you advise the plaintiff about what restroom to use in your office building? Would you do anything to prepare your staff?

HYPOTHETICAL

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QUESTIONS?