

# Eliminating Bias: Representing Clients with Brain Disorders



Presented by

The Disability Information Network  
[Disabinfo.net](http://Disabinfo.net)

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# What are brain disorders?

Any condition or disability that affects the brain caused by illness, genetics, or traumatic injury

Traumatic Brain Injury, Alzheimer's, ALS, tumors, depression, Parkinson's, PTSD, anxiety, ADD/ADHD, Schizophrenia, bipolar disorder, autism, intellectual disability, personality disorders

# HIV

Brain circuits can be damaged by opportunistic infection which can lead to changes in behavior and functioning.

<http://aids.gov/hiv-aids-basics/staying-healthy-with-hiv-aids/taking-care-of-yourself/mental-health/>.

# What they aren't

“Earlier notions of mental disorders as chemical imbalances or as social constructs are antiquated....We need to understand that Abnormal behavior and cognition may be late and convergent outcomes of altered brain development.” (Dr. Tom Insel, former Director, National Institute of Mental Health).

# ADA definition

Under the ADA, a disability is a physical or mental impairment . 42 usc 12102.

Regulations: any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. [29 CFR 1630.2(h)]

EEOC: Conditions that are almost always considered disability

# EEOC

deafness, blindness, intellectual disability, partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia. [Section 1630.2(j)(3)(iii)]

# Social Security

SSA blue book definitions:

[https://www.ssa.gov/disability/professionals/  
bluebook/AdultListings.htm](https://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm)

Section 10 Congenital disorders (Down)

Section 11 Neurological disorders

Section 12 Mental Disorders

Askjan.org

# Who has Brain Disorders

Anyone regardless of age, gender, income or other status. The US National Institute of Mental Health (NIMH) estimates that about 1 in 4 American adults suffer from a diagnosable mental disorder in any given year, with nearly 6% suffering serious disabilities as a result. Per the American Brain Foundation, 1 in 6 Americans is affected by a brain disorder. See <https://www.americanbrainfoundation.org>.



# Eliminating Bias

Implicit Bias: Also known as implicit social cognition or implicit stereotype.

An implicit bias is an unconscious association, belief, or attitude toward any social group.

Our brains' automatic processing of information to organize the world.

# Explicit Bias/Prejudice

Prejudice is more often equated with explicit bias, which is overt. Implicit bias comes from a deeper, unconscious place in our minds.

A person acting on implicit bias may not be aware of the bias and may even condemn the stereotype they are promoting.

# How does bias occur?

- Learned as children in our “ingroups”, i.e. from the people in the groups to which we belong.
- Learned from the environment, school, media.
- Experiences over time with “outgroups”, i.e. people in groups to which we do not belong.
- Begin when we’re young and strengthen over time if not challenged or corrected.

# Desire to organize

Implicit bias results from our brains' desire to organize information, and make decisions in an efficient manner by categorizing social groups.

We resort to stereotypes to fill in the blanks when we don't have enough information or when something makes us uncomfortable.

# Negative/Positive Bias

Bias can be expressed as a negative or a positive, but it can be both.

Boys are better at science

This is a positive bias toward boys, but it leads to the assumption that girls aren't as good at science which is a negative bias.

# Who is affected?

In general, biases may exist toward any social group. One's age, gender, gender identity, physical abilities, religion, sexual orientation, weight, and many other characteristics are subject to bias.

Bias against PWD (ableism) is the most common.  
<https://abilitymagazine.com/unconscious-bias-pwds-workplace/>

# Common Biases

A majority of people believe that PWD are less capable, less intelligent, more dependent and childlike than their non-disabled peers and are deserving of pity and condescension.

**See Mapping Ableism: A Two-Dimensional Model of Explicit and Implicit Disability Attitudes**

<https://cjds.uwaterloo.ca/index.php/cjds/article/view/509>

**Carli Friedman, PhD, Director of Research, The Council on Quality and Leadership**

# How to eliminate bias v. PWD

Educate yourself - Learn to recognize bias

American Bar Association Litigation section

**IMPLICIT BIAS TASK FORCE**

Unconscious Bias Test: Test yourself—Project  
Implicit, Implicit Association Test IAT.

<https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/implicit-bias-test/>



# New attitudes

Foster change through new attitudes and behaviors

Brain disorders are the result of a physiological process affecting an organ system, i.e., the brain. Brain Disorders are not a result of character flaws or moral weakness

# New behaviors

- Interact in the same way you would with your co-workers and friends
- Learn to recognize assumptions and challenge yourself to avoid them
- Focus your attention on what needs to change, e.g. negative reactions to difference, assumptions, judgements



Open in Acrobat

# DISABILITY ETIQUETTE

Tips On Interacting With People With Disabilities

# Etiquette

United Cerebral Palsy:

<https://ucp.org/resource-guide/disability-etiquette/>

- [People with Disabilities - General Interaction Tips](#)
- [Physical Disabilities](#)
- [Visual Disabilities](#)
- [Hearing Disabilities](#)
- [Speech Disabilities](#)
- [Cognitive Disabilities](#)

# Etiquette recommendations

- Speak directly to the person, not an aid or companion.
- Don't make assumptions about what the PWD can/can't do.
- Don't help without asking – don't finish sentences.

# Educate yourself about the condition your client lives with

- <https://www.nih.gov/>: lead research agencies
- <https://www.nimh.nih.gov/index.shtml>: for mental health/brain disorders
- <https://www.ninds.nih.gov/>: neurological disorders and stroke
- University of Texas Neuroscience: <http://nba.uth.tmc.edu/neuroscience/m/s4/chapter06.html>

# The Bias in Language

- Offensive, derogatory terms like “psychotic” and “crazy” are deeply rooted in society and lead to implicit bias
- Don’t use outdated terms: mentally retarded, special needs
- Use of medical terms as adjectives to imply that the subject is flawed or faulty: bipolar or schizo
- Don’t say “suffers from”, “victim of” or “afflicted with”

# Preferred Language

- People First language
- Identity First language
- Be specific, *if it's relevant and actually diagnosed*
- National Center on Disability and Journalism Style Guide: <https://ncdj.org/style-guide/>
- AP Style Manual

WHEN IN DOUBT, ASK



# National Center on Disability and Journalism

- Disability Language Style Guide
- Refer to disability only when it's relevant
- People first language unless told otherwise
- Ask the person about language preference
- Avoid made up words like “handicapable”

# SB 1381 California 2012

- Previous law referred to mental retardation or a mentally retarded person.
- SB 1381 revised the B & P Code, Govt Code, Ed Code, etc. to refer instead to intellectual disability or a person with an intellectual disability.
- AB 46 2019: replaces derogatory terms in the state criminal and civil codes relating to mental health disorders.

# Federal law

Rosa's Law : Signed by Pres Obama in 2010.

Removes the words “mental retardation” and replaces them with “intellectual disability” or “intellectual disabilities.”

Amends federal statutes; IDEA, Rehabilitation Act of 1973, Education Code, etc.

# Fighting Bias

- Inclusion reduces bias
- Inclusion may require accommodations
- Accommodations depend on understanding
- BPAD causes unusual shifts in a person's mood, energy, activity levels, **and the ability to carry out day-to-day tasks.**  
<https://www.nimh.nih.gov/health/topics/bipolar-disorder/index.shtml>

# Accommodations

- Give the client more time to accomplish tasks.
- Give the client more information than form letters.
- Give extra time for discovery responses.
- Have secretaries follow up sooner.
- Return phone calls ASAP to alleviate stress and take advantage of optimum work times

# Interviewing a potential client

It is the level of abilities and of the functioning of the individual--not the simple determination of whether a disability exists--that must be assessed

# Recognize differences that may stigmatize clients

Behavioral and Cognitive differences  
problems with concentration, difficulty with movement or balance, and changes in hearing or vision, memory loss, personality changes, speech difficulty

# During the Interview

- Avoid outdated or negative terms or jargon - “retarded”, “challenged”.
- Control the environment: minimize distractions in the room, maintain eye contact, use encouraging body language, repeat back what the client says
- Say "It would help me to know more about..."
- Ask to repeat or repeat back: Make sure you understand.



# Issues to address

Ask the client to evaluate his/her own abilities: unusually high or low self-esteem?  
Able to admit weaknesses?

Throughout the screening interview, note any affects or behaviors which may lead judges, juries and others to be biased

# Confidentiality

Confidentiality and privacy concerns:  
Conserved/Unconserved adults.

Limited Conservatorships

Attorney/client privilege Cal. Evid. Code 954

Too much truth telling (autism, Down's, ID)?  
Waiver problems

# Information Resources

- Treating physicians
- Government program applications, interviews, assessments
- Regional Center, social workers, Rehab, Medi-Cal, Food Stamps, Welfare, Social Security, special ed IEPs.

# Your client as a witness

- Schedule visits to the courthouse to defuse anxiety and to prepare for any unusual reactions.
- Expand depo prep: Actually practice some questions and answers
- Expert testimony needed to explain behaviors or abilities?

# Testimony

- Ask general questions to acquaint jury with the way your client speaks.
- Is expert testimony needed to show ability to perceive, remember, and relate?
- TALK to your client, ask questions in conversational tone.

# Are medications a factor?

Types of meds, how they are taken, how people react, side effects, warnings, alternatives.

<http://www.nimh.nih.gov/health/publications/mental-health-medications/index.shtml>

Guide to prescription and over-the-counter meds:  
Medline Plus Drug Information, National Library  
of Medicine,  
[www.nlm.nih.gov/medlineplus/druginformation.html](http://www.nlm.nih.gov/medlineplus/druginformation.html)

# Accommodations

What accommodations does your client need?

- Auxiliary aides and services, interpreters
- Extra rest, extra food/drinks, a place to lay down
- Fatigue and stress may require longer or more frequent breaks, bathroom breaks

# Specific Disorders

- PTSD
- Avoid aggressive cross-examination
- Sit in position that doesn't make you feel like someone will surprise you from behind
- ANXIETY
- Trusted person to sit at counsel table and help take notes
- More frequent breaks



# Specific Disorders, Continued

## AUDITORY PROCESSING DISORDER

- Smaller or quieter courtroom (closed?)
- Trusted person to help organize paperwork and take notes
- Opportunities to mediate case
- Limit ambient noise

# Cal Rules of Court

California Rules of Court 1.100.

Specifics required – Rule 1.100(c)(2): Requests for accommodations must include a description of the accommodation sought, along with a statement of the medical condition that necessitates the accommodation

# Make accommodation requests

Written requests may be made on Judicial Council form MC-410 to the ADA coordinator 5 days before court appearance. (Letter and oral requests also possible)

(ADA, or access, coordinator is required for all superior and appellate courts pursuant to Rule 1.100(b))

# CRC 1.100 and written requests

“where the need for accommodation is obvious, (or required by statute or regulation), the public entity is on notice that an accommodation is required, a” *Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001)

# Observable disabilities

Our case law is clear on this point: there may be situations where a public entity's duty to look into and provide a reasonable accommodation may be triggered when "the need for accommodation is obvious," and the public entity is on notice about a need for accommodation. *Updike v. Multnomah Cnty., Corp.*, 870 F.3d 939, 951 (9th Cir. 2017), citing *Duvall*

# Oral requests

No record. No evidentiary hearing required; court may waive time limit. For more information on requesting accommodations while court is in session see:

<https://www.courts.ca.gov/documents/paf-20191219-materials.pdf>

# Response required

Failing to respond to a request for accommodations may result in reversal on appeal. (See *Biscaro v. Stern* (2010) 181 Cal.App.4th 702.)

“Wrongful denial of an accommodation, or a failure to rule on the request, is structural error that does not require prejudice for reversal.”

# Types of Accommodations

Neuropsychologist wouldn't burden the court any differently from the appointment of other facilitators. *Biscaro v. Stern*, 181 Cal.App.4th 702, 709 (Cal. Ct. App. 2010)

Appointment of counsel?

Does not include changing the law, e.g., extending the statute of limitations.



# Continuances

When a person with a mental disability is unable to proceed, a continuance may be required as the only reasonable accommodation under the circumstances. (See *In re Marriage of James M. & Christine C.* (2008) 158 Cal.App.4th 1261.

Not open ended. Trial Delay Reduction

# Collaborative Justice Courts

[https://www.courts.ca.gov/documents/CollaborativeCourts\\_factsheet.pdf](https://www.courts.ca.gov/documents/CollaborativeCourts_factsheet.pdf)

- Mental Health Courts – transfer criminal cases for treatment and rehabilitation
- Veterans Courts – treatment for illegal behavior
- Dual Diagnosis Courts – diversion for defendants with co-occurring conditions

# Mental Health Courts

Dedicated calendar and judge

Multidisciplinary, non-adversarial team

Court, attorneys, law enforcement, community treatment, and service agencies

It's county by county

Referral process is different

It's still a criminal justice approach

Sac county DA: "These clients often just need to take their medications and avoid illegal drugs/alcohol."

# Veterans Courts

File ML-100 Notice of Military Status

Veterans Justice Outreach:

[www.va.gov/homeless/vjo.asp](http://www.va.gov/homeless/vjo.asp)

Stand Down Homeless Courts

- <https://www.calvet.ca.gov/VetServices/Pages/Stand-Downs.aspx>
- <https://www.va.gov/homeless/events.asp>

# Veterans resources

- <http://veterans.networkofcare.org> More than 30,000 articles targeted to service members, veterans and family, including fact sheets and interactive tools for PTSD, TBI, and Benefits
- [www.Veteranscrisisline.net](http://www.Veteranscrisisline.net). The Veterans Crisis Line connects Veterans in crisis, families and friends with qualified Department of Veterans Affairs responders

# Eliminating Bias

Retraining our brains will require an intentional effort to see others in a different way, practiced over a significant period of time.

Until then, use strategies to deny bias the chance to operate.

Start with Education and Self-Awareness

# Evaluation Form

MCLE Evaluation Form:

<https://www.calbar.ca.gov/Portals/0/documents/forms/Sample-Evaluation-Form.pdf>