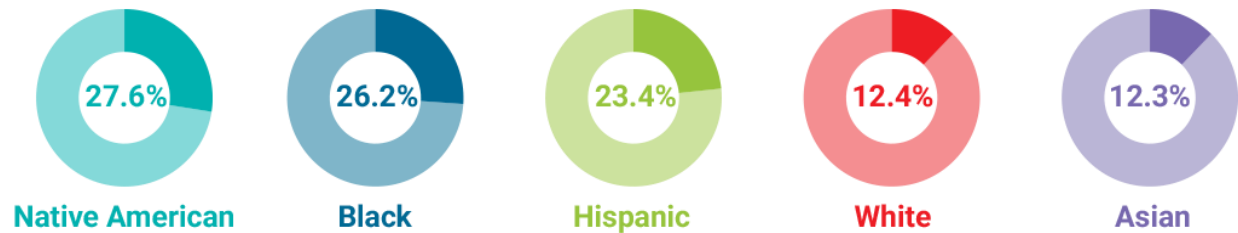


IMPLICIT BIAS INSIGHTS FOR IOLTA PROGRAMS

By Sandra S. Yamate

I don't have to tell YOU that IOLTA is a vital way 1) to increase access to justice for those living in poverty and 2) to improve our justice system. What's often left unsaid is that IOLTA is intended to do these things for a broad spectrum of the population in the state who eligible for that assistance, not just a portion of the population. But who are those people living in poverty? What do IOLTA programs need to know to better serve them? How does diversity fit into all of this? How can an IOLTA program best ensure that not only are its grantees making diversity and inclusion a fundamental component of their efforts but that the IOLTA program itself – its Commissioners, staff, work, etc. – is also diverse and inclusive?

According to the US Census, the highest poverty rates by race is found among Native Americans (27.6%), with Blacks (26.2%) having the second highest poverty rate, and Hispanics (of any race) having the third highest poverty rate (23.4%). Whites had a poverty rate of 12.4%, while Asians had a poverty rate at 12.3%.



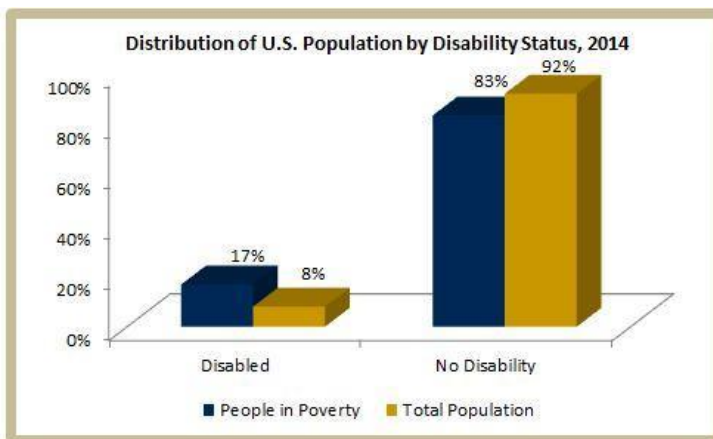
One caveat needs to be offered here: it would be a mistake to assume that because of these demographics that we should assume that people of color are generally impoverished and that who are White are not. Poverty doesn't discriminate along racial lines. But demographics do suggest that if IOLTA truly wishes to fulfill its charge of increasing access to justice for those who live in poverty and to improve our justice system, it's critical that IOLTA be prepared to take measures to ensure that it is able to reach those individuals of color who do live in poverty so as to increase the likelihood that they, too, will have access to justice.

But poverty is not restricted to racial/ethnic minorities. Given media stereotypes, it might surprise you to know that some LGBT people are poor. According to a UCLA study¹, after controlling for a number of factors associated with poverty, rates for LGB adults are higher than for heterosexual adults. 24% of lesbians and bisexual women live in poverty compared to 19% of heterosexual women. (Gay and bisexual men's poverty rates are roughly equal to those of heterosexual men.) Transgender people are four times as likely to have a household income under \$10,000 and twice as likely to be unemployed as

¹ "Beyond Stereotypes: Poverty in the LGBT Community" published by The Williams Institute of UCLA School of Law, June, 2012 <https://williamsinstitute.law.ucla.edu/williams-in-the-news/beyond-stereotypes-poverty-in-the-lgbt-community/>

the typical person in the US and studies suggest that almost one in five have been homeless at some point in their lives.

For those with disabilities, the poverty rates hover around 29% while it is closer to 12% for those without a disability. Digging deeper into the data, we discover that some 17% of the US population has one or more forms of a disability and just under half of those are people with disabilities.²



Bear in mind, too, one of the facets of diversity that our Millennials and Gen Z are embracing: intersectionality. It's not a new concept but it is certainly one that the younger generations are grabbing hold and running with. For those unfamiliar with the concept, intersectionality is the combination of two or more types of diversity. Thus, a gay, white man who has cancer reflects the intersection of sexual orientation and disability or a Latina reflects the intersection of ethnicity and gender.

What all of this means is that if IOLTA programs want to best serve their intended beneficiaries, they can no longer rely upon the most traditional avenues of serving individuals or families who fall under the heading of those living in poverty. Why? Because the traditional avenues may not be positioned, through no particular fault of their own, to serve as large a segment of the underserved as they did in the past.

In the IOLTA arena, diversity and inclusion play out in four primary categories:

1. Diversity among the IOLTA Commission members;
2. Diversity among the IOLTA staff;
3. Access to justice for people of color, LGBT+, have disabilities, etc. who are living in poverty; and,
4. Improving the justice system for all citizens, including those who are people of color, LGBT+, have disabilities, etc.

² "How is Poverty Status related to Disability?" published by Center for Poverty Research at the University of California, Davis <https://poverty.ucdavis.edu/faq/how-poverty-status-related-disability>

Diversity among the IOLTA Commission members

There is research aplenty to support the conviction that with diverse teams, you are more likely to get better, sounder results. So, too, with IOLTA programs. Effort can and should be made to ensure that programs reflect diversity in many manifestations. This might mean preparing and encouraging diverse people to serve on IOLTA Commissions or encouraging the Commission members to educate themselves about diverse populations.

IOLTA Commissions, however, generally are not self-selected or self-appointed. In many states, IOLTA Commissions are comprised of individuals who may be appointed by different representative legal professional organizations, political leaders, the State Supreme Court, or other bodies that have an interest in IOLTA work. That means that the desired diversity among the members of the Commission may not be any one person's or any single body's responsibility. Therefore, it is important that when the Commission (or its senior staff, if they have any input) does interact with those who make these appointments, that they remind everyone that diversity ought to be included among the criteria used to evaluate anyone considered for appointment.

Diversity among the IOLTA staff

No one wants to see a lot of staff turnover. Stability among IOLTA program staff preserves institutional memory and allows relationships with current and former Commissioners and the other organizations with which IOLTA works to take root. So, while no one is suggesting that there be a complete overhaul of staff, it might be a good long-term investment to seek out diverse applicants when job openings do occur. The legal profession has embraced the Mansfield Rule with regard to hiring and promotion of lawyers, but it is a policy that can easily be translated to other settings such as IOLTA.

But, having said that, let me also remind you that simply hiring diverse staff members will not ensure that they will remain. I have seen way too many well-intentioned bar associations and other not-for-profit groups herald their hiring of a diverse staff person only to see the person not work out. It has nothing to do with competence or ability and everything to do with the same points we've touched on before: Ignorance. Inertia. Implicit Bias.

If your staff is unused to working closely with people who are different from them, or dealing with values and beliefs that differ from theirs, or who have different ways of doing things, they need to be prepared to adjust or your diversity hiring is going to fail. One not-for-profit organization I know was so proud of the fact that they had hired an African American woman to fill an administrative assistant position. Six months later they were complaining that she wasn't working out. Might it have something to do with the fact that the rest of the staff would regularly go out to lunch together and socialized outside of work but failed to include the African American woman. Or that the African American woman did not live in the same suburban environment or that her children did not participate in the same sorts of after-school activities as the others? Could it be that she was given assignments without information about how these assignments were supposed to fit into the work of other staff members? Mind you, no

one was trying to be deliberately mean or exclusionary. But it does serve to highlight that hiring for diversity will not, by itself, ensure staff diversity.

Access to justice for people of color, LGBT+, have disabilities, etc. who are living in poverty

In order to increase IOLTA's ability to provide access to justice for people of color, LGBT+, have disabilities, or are otherwise diverse, it might be best to consider a two-pronged approach:

- Direct outreach to potential grantee organizations more likely to be in contact with diverse individuals who are living in poverty; and,
- Encouraging/Supporting such outreach to potential organizations more likely to be in contact with diverse individuals who are living in poverty by those grantee organizations with which IOLTA more traditionally works.

In a way, both prongs are two sides of the same coin: connect with non-traditional partners who can facilitate IOLTA's access to the diverse communities these non-traditional partners serve. It sounds easy and straight forward but it can prove more challenging than you might expect.

Why? Some of the persistent challenges that diversity and inclusion efforts encounter: Ignorance. Inertia. Implicit Bias.

Ignorance

Have you ever heard the phrase, "You can't come up with the right solution when you don't even know the questions to ask?" That's sort of the situation some IOLTA groups face. How can they reach out and connect with organizations that can give IOLTA exposure to diverse individuals if they don't know where or how to find those organizations? There are likely any number of potential grantee organizations that are serving the diverse population you wish to have included in your work. The challenge can be to find them, connect with them, and maintain contact with them.

In part, this results because it's easy to buy into stereotypes about the diversity of the community being served. Let me provide an example: I work with state, local, and metro bar associations around the country. A frequent question I hear asks how these bar associations can increase diversity among their members and leaders when there aren't that many diverse attorneys in their area. There is some truth in that; data and demographics illustrate the glaring lack of diversity among America's lawyers. But that doesn't mean there aren't ANY.

Thus, IOLTA programs need to identify the diversity in their respective states. Certainly, some states have larger populations of some types of diverse people than others, but no state lacks diversity. There is diversity in a variety of types in every state. Sometimes the population may be very small, but it still exists. I was at a networking reception in Salt Lake City where I met an African American man. It turned out that he was with the NAACP. He was responsible for NAACP activities in Utah, Idaho, Nevada, and Wyoming. None of those are states where you might expect to find a large population of African

Americans. Nevertheless, there he was, working with the population of African Americans that do live in that area. Who knew?

So, if you're from a state that supposedly isn't very diverse, how do you connect with the diverse populations that do reside there? Here are a few suggestions:

- Reach out to the national organizations that serve these communities and seek local contacts.
- Query the diverse lawyers you know. While just being diverse themselves certainly doesn't make them expert, they may have ideas or contacts they can offer to help you make the connections you seek. The various national specialty bar associations can also help you connect with those of their members in your state who, in turn, might be able to assist you.
- Talk to your local news organizations. Where do they go, and to whom do they talk when they need to offer a diverse local perspective on a news story?

Inertia

This sort of outreach to expand IOLTA's reach is time-consuming and requires effort. It's much easier to rely upon the usual suspects and just hope that they will help you serve a more diverse population. But what do they say if you keep doing the same thing and expect a different result? If your IOLTA Commission is overworked, lacking in resources, limited in support you can justify the lack of diversity in your work. Or can you?

Implicit Bias

Implicit or unconscious bias has been a popular topic in diversity and inclusion in recent years. For those unfamiliar with the concept, it generally refers to a bias of which we are unaware, so that actions based upon it are not readily acknowledged as being biased, and thus its impact can be outside our control. Everyone has these biases. That, however, is not an acceptable excuse for not attempting to raise them to our consciousness and to combat them.

How might implicit biases play out in IOLTA programs? Of course, IOLTA programs want to ensure that they are serving diverse populations in their states. But sometimes their outreach efforts can be limited by those very implicit biases. Perhaps in thinking about integrating diversity into IOLTA's work an assumption was made that we were only talking about African Americans. Or racial/ethnic diversity to the exclusion of the LGBT+ or disabilities communities. The danger of implicit biases is that they are so pervasive and so invisible absent a concerted effort to recognize and address them.

Allow me to give you an example: I was serving on the nominating committee of an organization with ties to the ABA. One day, I received a call from a former ABA President who had nominated some of the board candidates under consideration.

"Sandra," he says, "I heard that you're planning to vote against So-and-So. Is that true?"

“Yes,” I say.

“Well, you know that I nominated So-and-So. I thought you’d be sure to support the nomination. You always want to see more diversity and So-and-so is diverse, comes from an especially underrepresented group.”

“I appreciate that you were looking for diverse candidates, but I don’t think So-and-So would be a good selection.”

“But why? I asked around the ABA, both members and staff, and everyone agrees that So-and-So is a great person, has held all sorts of positions in the ABA.”

“I’ve had occasion to work with So-and-So. So-and-So is a delightful person, great to have at a reception and no doubt popular. But So-and-So also has a tendency to overpromise and under-deliver, never follows through, and is unreliable.”

Anyway, that was the gist of the rest of the conversation. Where it exposes any implicit biases lies in that former ABA president’s well-intentioned effort to seek out diversity but only relying on the attitudes and opinions of ABA insiders. Implicit biases can be insidious.

Improving the justice system for all citizens

This facet of IOLTA’s mission is extremely important. Supporting the improvement of the justice system for all citizens, including those who are people of color, LGBT+, have disabilities, etc., can seem daunting. Many of the same issues discussed above can come into play: Ignorance. Inertia. Implicit Bias.

Ignorance

Have you ever been in a class or a program where suddenly someone runs in and commits certain acts or says certain things and afterwards throughout the audience, there are differing accounts of what happened, or what was said. Criminal law professors like to use these scenarios to demonstrate the unreliability of eyewitnesses. They can, however, serve a purpose for IOLTA, too.

While we can be proud of our American system of justice, there is certainly room for improvement; hence IOLTA’s commitment to support improvement of the justice system by providing civil legal aid funding. But what that improvement should look like, or how priorities ought to be established, might differ dramatically depending upon one’s point of view which ties into one’s diversity.

It is crucial that if IOLTA is to support improvements to the justice system for all citizens, that it make every effort to recognize and understand who those citizens are and their myriad needs.

Inertia

Inertia can be just as harmful as active malicious acts. Improving the justice system so that it indeed offers improvements that are relevant to a diverse population requires more energy than not. It might entail making the effort to research community needs and interactions with the justice system. It could involve connecting and working with individuals and organizations with which one is unfamiliar or even uncomfortable. Or it might require us to set aside our notions of what is needed and necessary in favor of someone else's differing opinion.

In any event, for IOLTA, it can serve as a reminder that success in integrating diversity into efforts to improve the justice system will require additional effort and recognizing that is the first step in making those improvements.

Implicit Bias

Business hours are Mondays through Fridays, nine to five (or thereabouts). Need to get somewhere? Hop into your car or order a rideshare service. Confused about something? Ask a question. Or Google it. Improving the justice system can take many forms, but one of particular relevance for IOLTA is the simple physical access to justice for diverse individuals. As lawyers and professionals, it is easy to assume that everyone has access to the same modern conveniences that we do. Yet for many diverse individuals who live in poverty that is not the case. Improving the justice system can range from First World challenges such as cyber and Courthouse security, to the simple challenge of being able to arrive at the courthouse in an inexpensive and timely fashion without having to lose a day's pay while being assured that if one is not English-proficient, reliable and professional translators will be available.

It is important that we not assume that improving the justice system is only about the quality of the justice being meted out.

One justice system innovation we've seen in Chicago which is aimed at addressing the implicit biases about access to justice is something called Flex-Court. It was the brainchild of a local judge, Hon. E. Kenneth Wright, who saw that one way to improve the justice system for many diverse litigants was to make court more accessible. He has set up a program where he and other judges will convene court early in the morning or after traditional working hours so that people need not lose a day's paycheck in order to seek justice. He has corralled court personnel, pro bono lawyers, and others to make this work. And that's just one man.

Therefore, when IOLTA is considering how best to direct support to efforts to improve the justice system, it cannot do so in a vacuum. Diversity factors may not be readily apparent, but they exist and a conscientious IOLTA Commission will make efforts to recognize them.

Conclusion

IOLTA fills a vital role in the legal profession. As the demographics of the country continue to change and evolve, so, too must IOLTA's integration of diversity and inclusion efforts at all levels of its work, if it is to

serve its mission. It will be challenging because there is no single magic silver bullet that will eliminate diversity and inclusion challenges. But it starts here. Today. With you.