

From Bias to Liability

California Minority Counsel Program

February 6, 2026

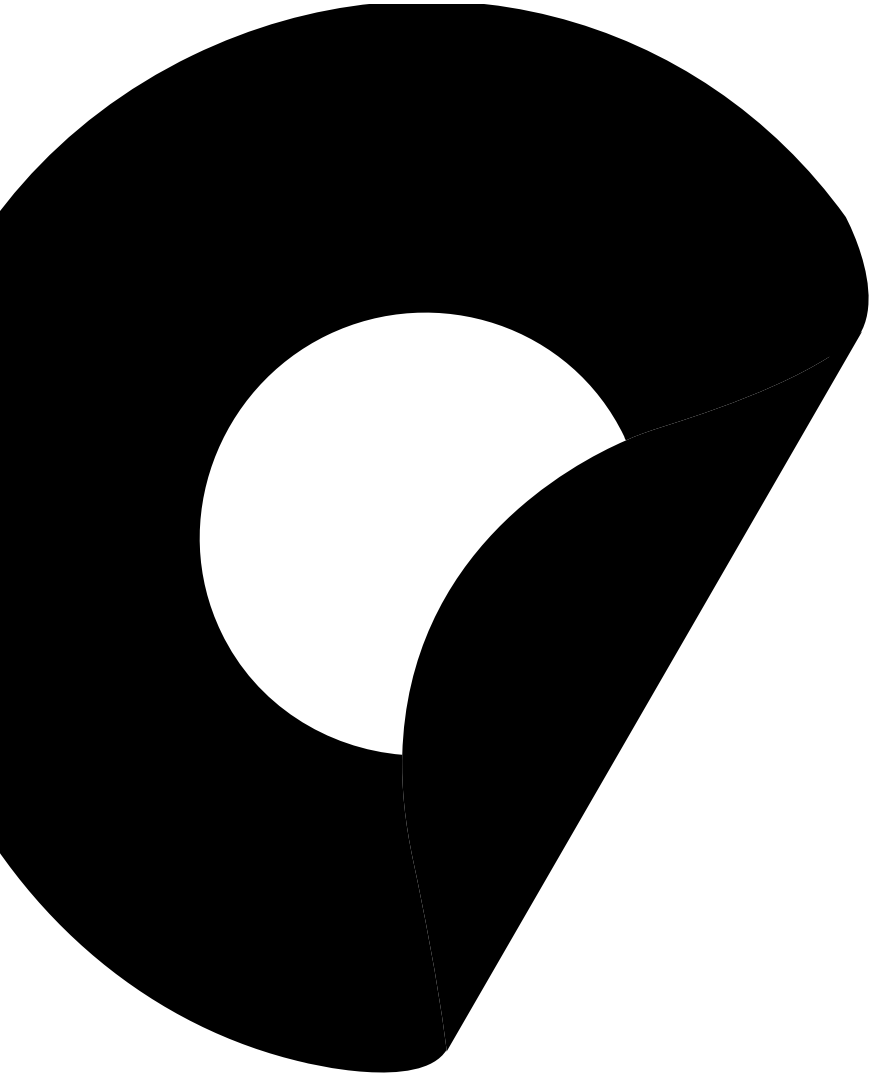
by: Vida Thomas

Managing Partner, OIG

www.oiglaw.com

Agenda

- Unconscious Bias
- Cognitive Biases
- Microaggressions
- Privilege
- Bias and Liability in the Workplace
- Reducing Our Biases



Unconscious Bias

What Is a Bias?

- An **implicit bias** is a prejudiced preference for one group over another. Usually, this is accompanied by prejudice against other groups.
- **Cognitive biases** are assumptions our brain relies on to make decisions more quickly

The Origin of a Bias

Stereotypes from the media

Our own experiences

The experiences of people around us

Observations

Assumptions

Intent vs. Impact

Bias is often unconscious and unintentional

BUT

It still impacts others in a significant way.

This is especially true when someone with a more powerful position makes decisions that impact others.

Stereotypes: Powerful and Harmful

Stereotype: An overgeneralized belief about a particular category of people or thing.

- “Positive” stereotypes are just as hurtful.
- Stereotyping has a lasting negative impact
- Stereotype Threat

Bottom Line: When you stereotype, you don’t really see me.
You see my “group.”

The “Not Me” Effect

We all have biases and act from these biases in unconscious ways.

This does not make us “bad” people.

The more open we are to this, the more we can overcome biases.

People who explicitly know they have biases and admit to them show **less** implicit bias.



Assumptions About What We Hear



Assumptions About What We Hear

How many of each animal did Moses put on the ark?

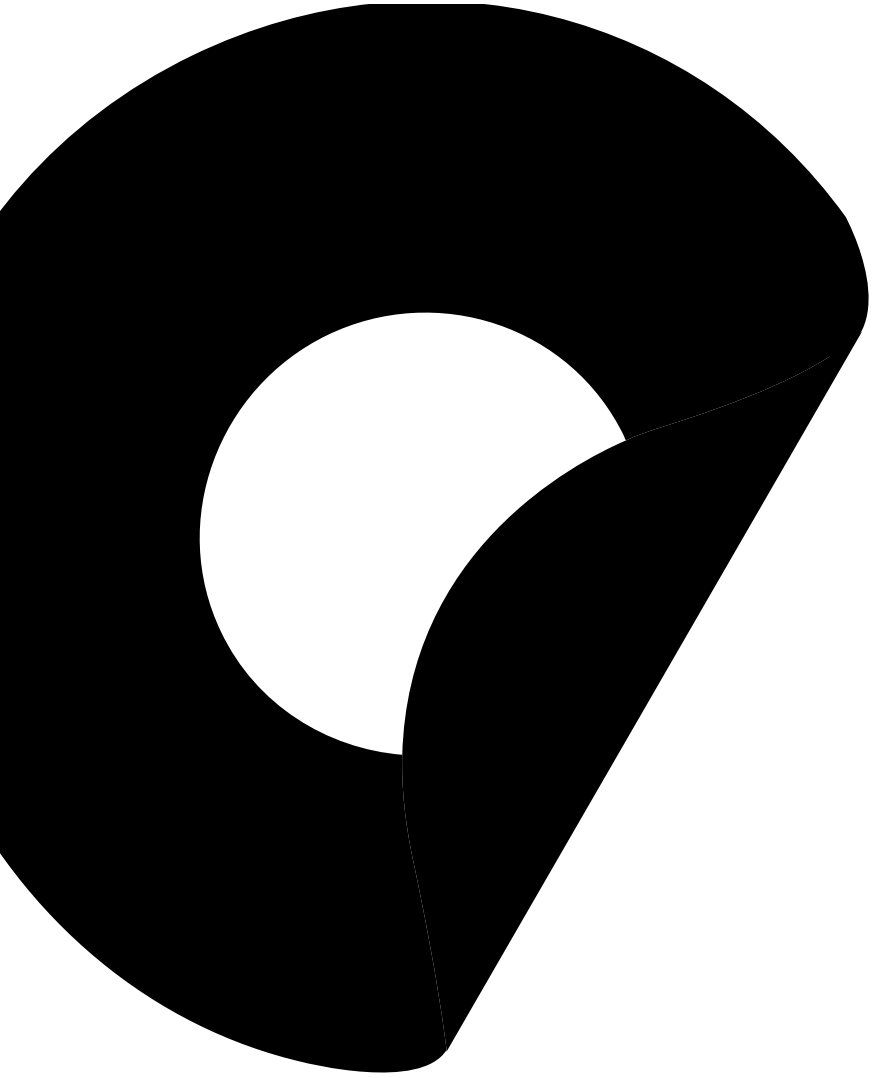


Correct Answer

NONE.

It was **Noah** who put animals on the ark.





Cognitive Biases

Confirmation Bias

- Tendency to bolster a hypothesis by seeking consistent evidence while minimizing inconsistent evidence.
- Done unconsciously.
- Impacts how we interpret information.

12
A B C
14

Confirmation Bias

- Participants were asked to form a hypothesis of guilt before reviewing all the evidence in a case.
- Doing so caused them to look for reasons to find this person guilty, even when evidence tending to exonerate the individual was introduced.
- Some participants were then asked to explain **why the initial hypothesis might be wrong**.
- Others were asked to generate additional suspects.
- Those who considered why the first suspect they named might be innocent showed less confirmation bias than those asked to name two additional suspects.

Reducing Confirmation Bias

Participants who concluded a suspect was guilty early on tended to unconsciously focus on finding more evidence to support that conclusion. They were also more likely to ignore information that contradicted it.

Simply being asked to consider why their first conclusion might be wrong reduced the affect of this bias on study participants.

O'Brien, Barbara, Prime Suspect: An Examination of Factors That Aggravate and Counteract Confirmation Bias in Criminal Investigations, Psychology, Public Policy, and Law (2009).

Observer Effects and Priming

How a “neutral” observer is impacted by extraneous information and/or attitudes.

The “Creativity” Study

How “nice” was the assistant?

Those **not** told the negative things: 9.33

Those who were told negative information: 6.58.

Those told the information and then told to disregard it - it was actually someone else they were thinking about: 8.09

Golding & Hauselt, *When Instruction to Forget Become Instructions to Remember*, 20 Personality & Soc. Psychol. Bull. 178 (1994).

Anchoring Effects

Based on same facts, group of judges who were told that the plaintiff wanted 10 million dollars awarded three times as much as those told the plaintiff wanted “a significant amount.”

Wistrich, Guthrie & Rachlinski, 93 Cornell L. Rev 101 (2007) and *Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding*, U. of Penn Law Review (2005)



The Halo/Horn Effect

- Tendency to assume like goes with like.
- Glinda to Dorothy: *“Only bad witches are ugly.”*
- High-energy employee
- Attractive employee
- A sharply-dressed coworker may be perceived as more competent than one wearing a t-shirt.
- An overweight co-worker may be perceived as lazy.



Conformity Effects

- Perceptions of others are influenced by the perception of relative social ranking.



Attribution Effect



Studies on Bias and Judges

A study that involved violent felons in Detroit found that both Black and White judges imposed harsher sentences on Black defendants than White ones.

Spohn, Cassia, *How do Judges Decide? The Search for Fairness and Justice in Punishment* (2009) See also Spohn, Gruhl and Welch, *The Effect of Race on Sentencing: A Re-Examination of an Unsettled Question*, 16 *Law & Society Review* 71 (1981-1982).

Bias: Bail and Death Penalty

- Other studies have revealed that judges set bail 25% higher for Black defendants than similarly situated White defendants and gave sentences that were 12% longer for Blacks than comparable Whites.
- Killers of White victims are more likely to be sentenced to death than killers of Black victims.

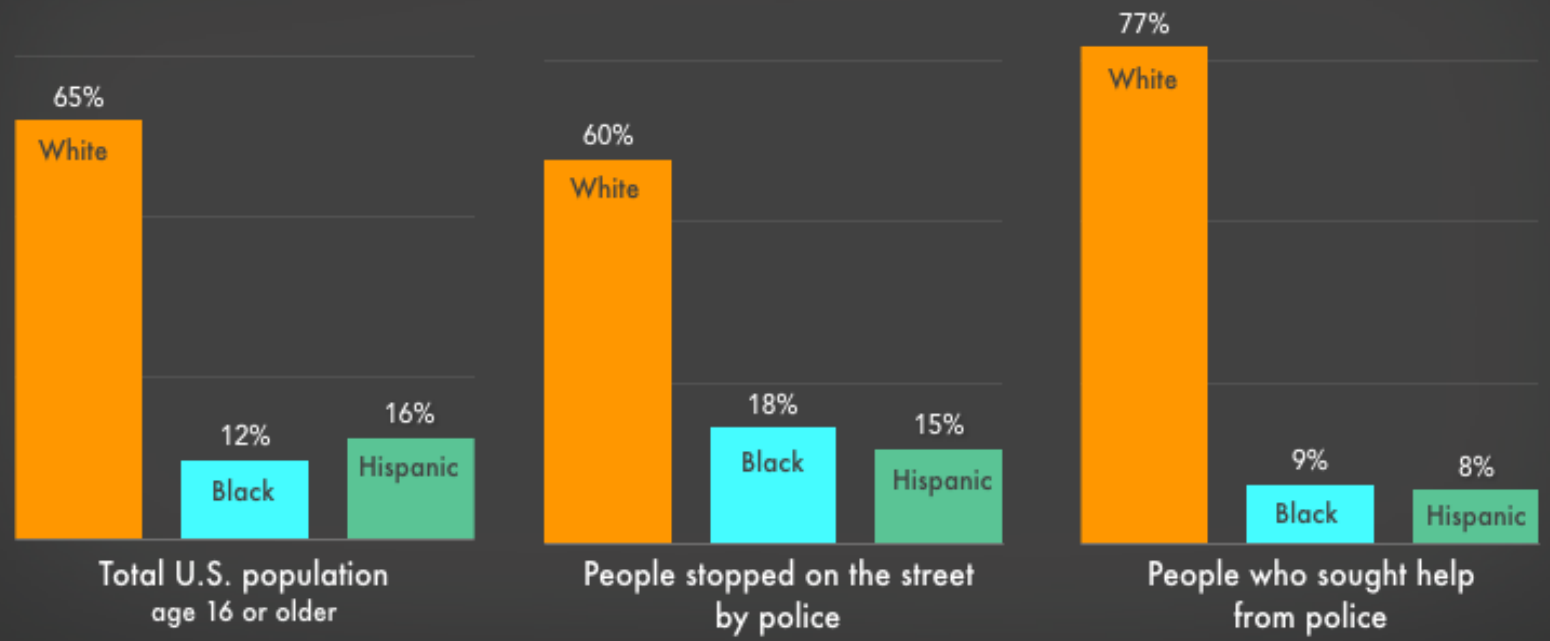
Rachlinski, Jeffrey J., Johnson, Sheri Lynn, Wistrich, Andrew J. & Guthrie, Chris, *Does Unconscious Racial Bias Affect Trial Judges?* Notre Dame Law Review, March 2009.

Bias: Civil Law Matters

- In Title VII sex discrimination and harassment cases, female judges were significantly more likely than male judges to find for plaintiffs.
- Furthermore, panels with a female judge were significantly more likely to find for the plaintiff than panels with no female judge.

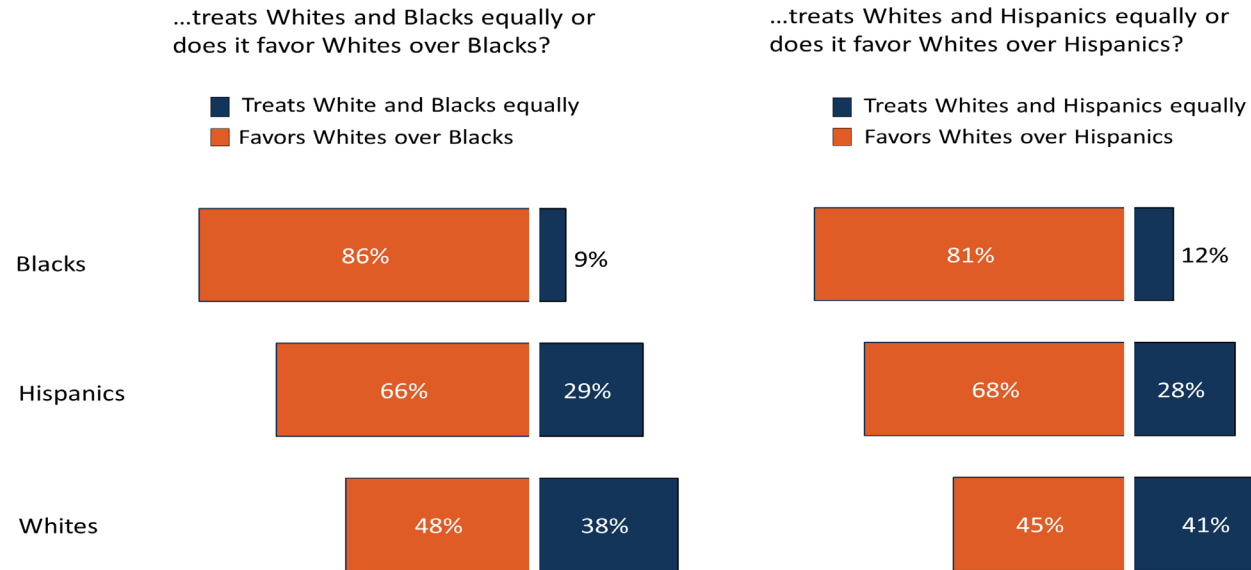
Jennifer L. Peresie, Female Judges Matter: Gender and Collegial Decision-making in the Federal Appellate Courts, Yale Law Journal, 1759 (2005)

Black people are disproportionately stopped on the street by police, while white people are much more likely to call the police for help



Large Majorities Of Blacks And Hispanics Say The Criminal Justice System Favors Whites

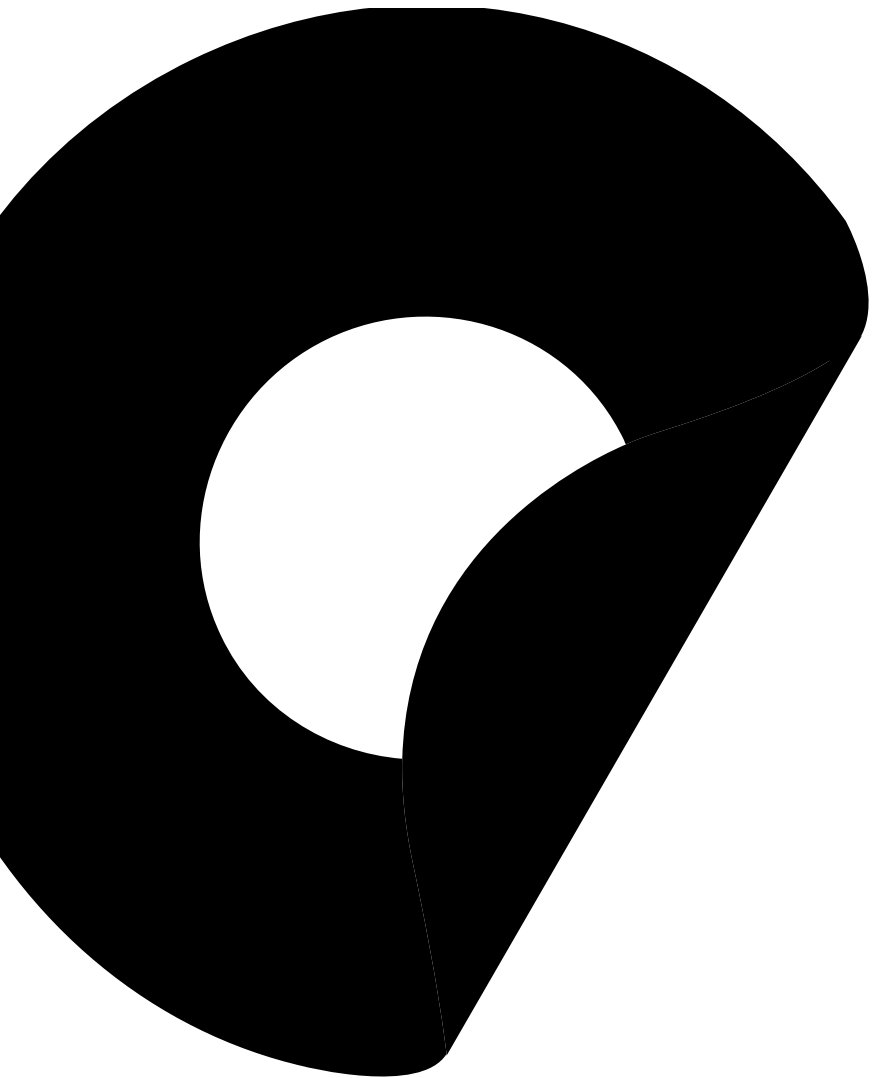
In general, do you think that the country's criminal justice system...



NOTE: Don't know/Refused responses not shown. Items asked of a half sample of Whites.
SOURCE: CNN/Kaiser Family Foundation Survey of Americans on Race (conducted August 25-October 3, 2015)

Implicit Bias – Some Conclusions

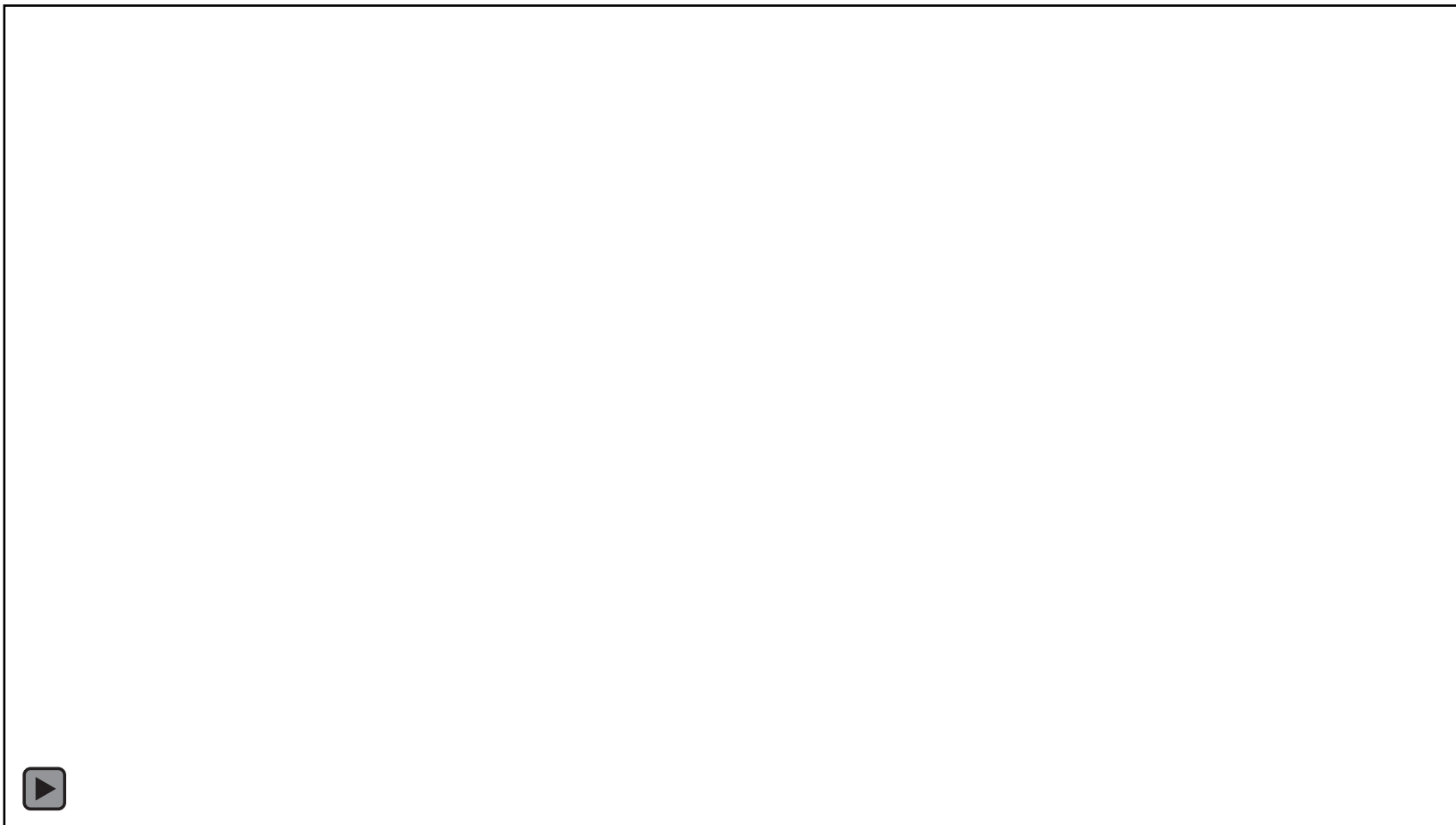
- A normal way our brains work without our being aware.
- Often hidden from one's own conscious awareness.
- Most people have an implicit or unconscious bias against members of traditionally disadvantaged groups.



Microaggressions

What are they and why do they hurt so much?

Microaggressions: A Thousand Mosquito Bites

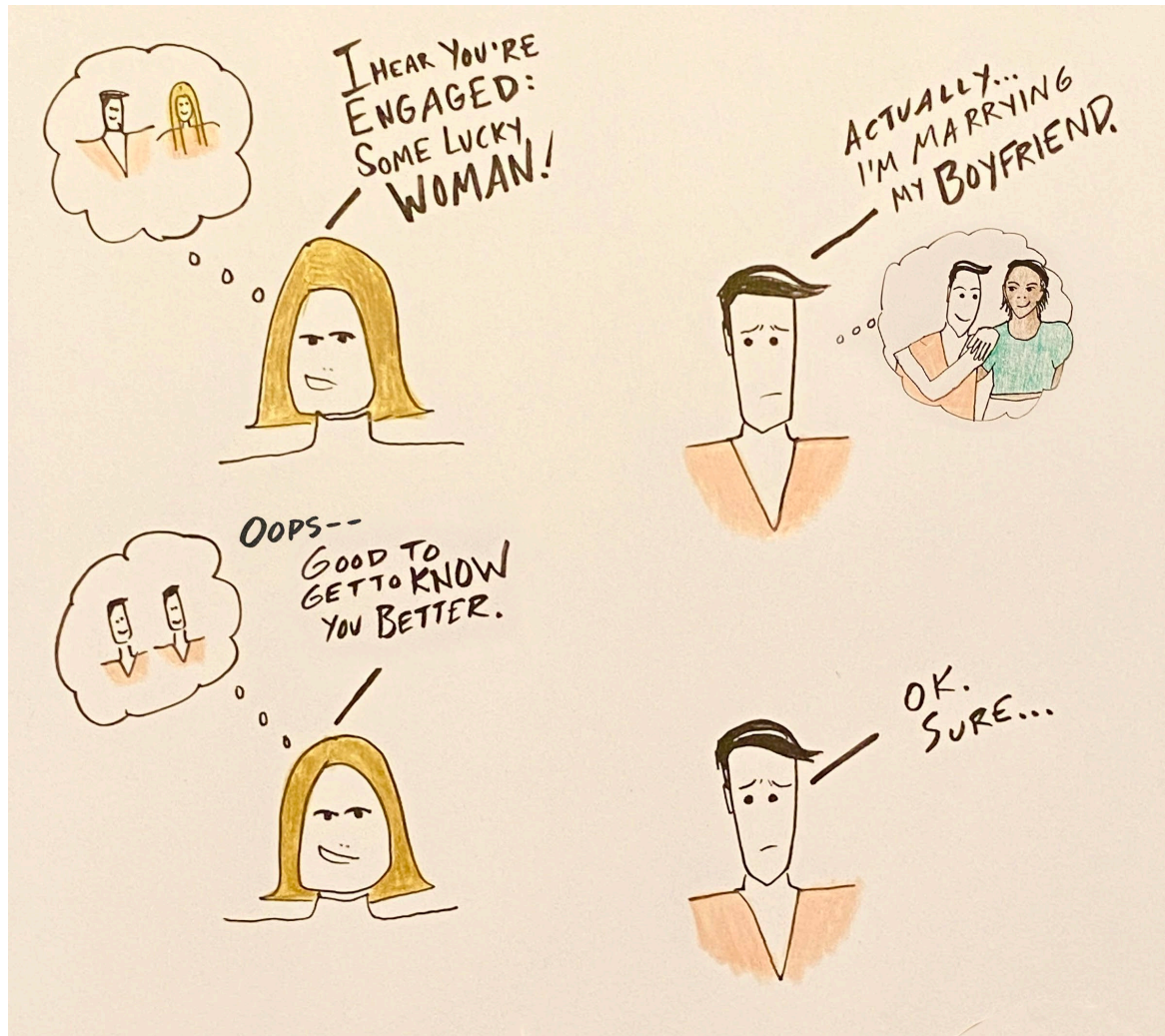


Source: Aldersgate Camp & Retreat Center, available at
<https://www.youtube.com/watch?v=emz49wSnNcs>

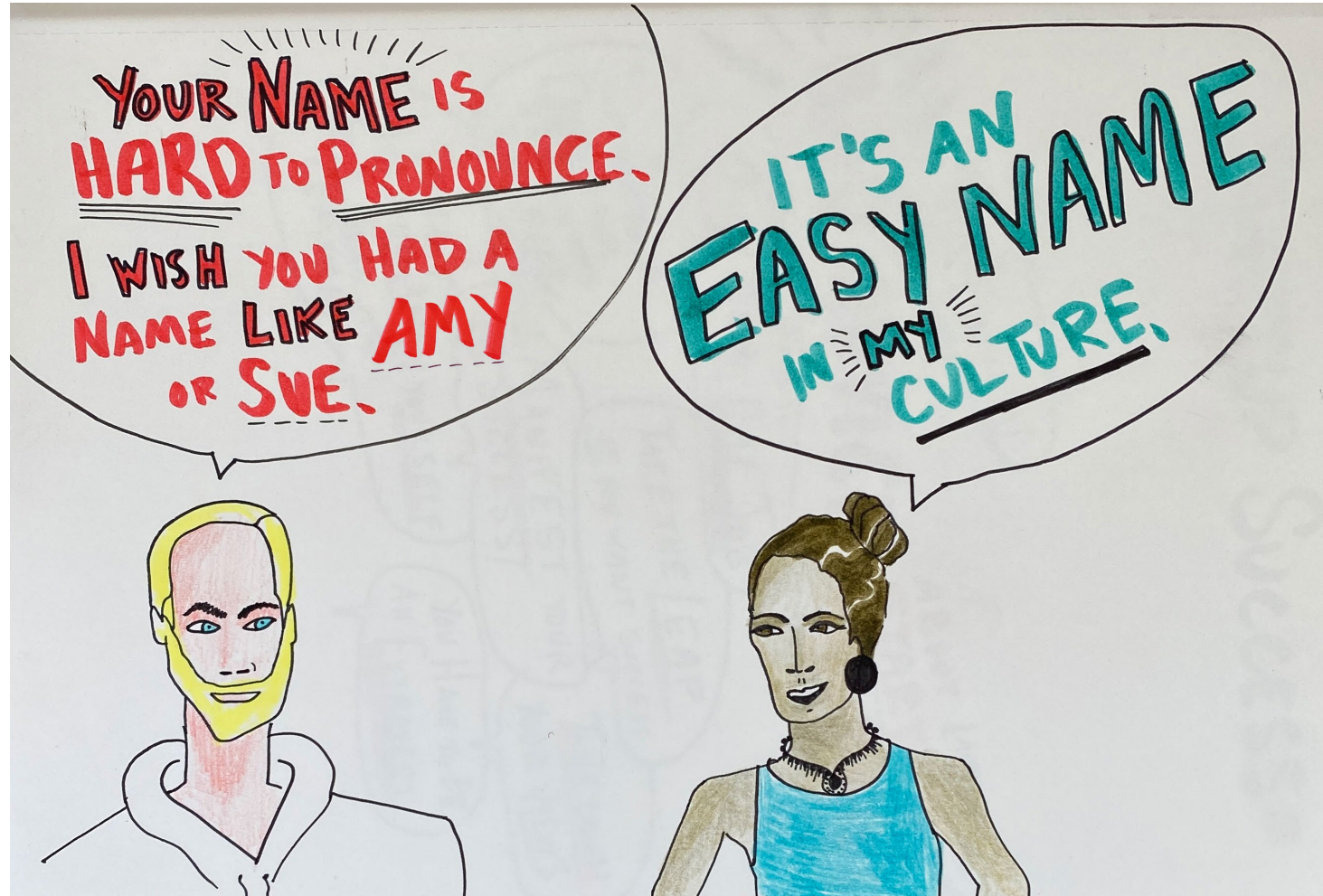
A Heavy Burden . . .

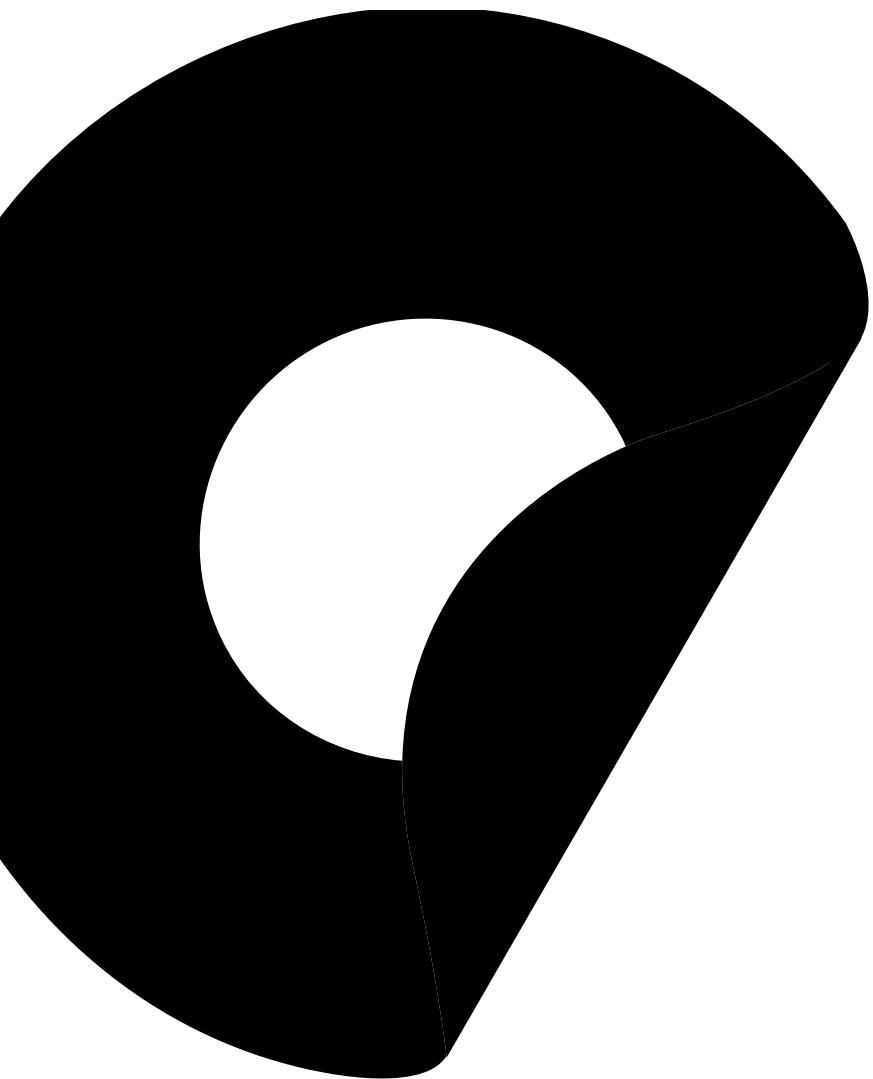


Try. Try Again.



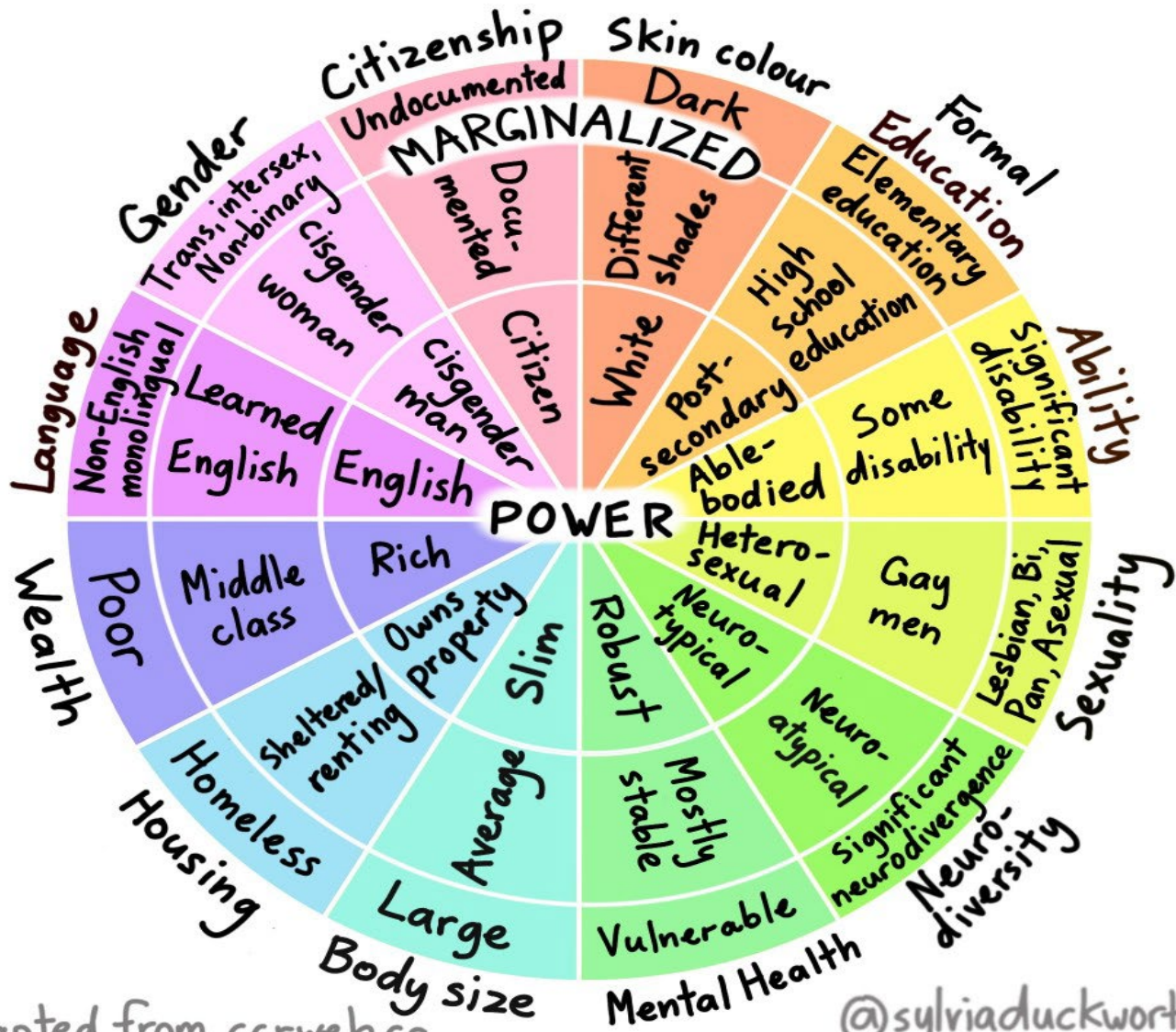
What's In A Name?





Privilege

WHEEL OF POWER/PRIVILEGE



Adapted from ccrweb.ca

@sylviaduckworth



PRIVILEGE

What It Means and How It Shapes Our Lives

Privilege isn't about guilt—it's about awareness.

It's the invisible advantage some carry based on race, gender, class, education, ability, and more.

It doesn't mean life is easy—it means some obstacles never appear on your path.

Defining Intersectionality

Professor Kimberle' Crenshaw explains,

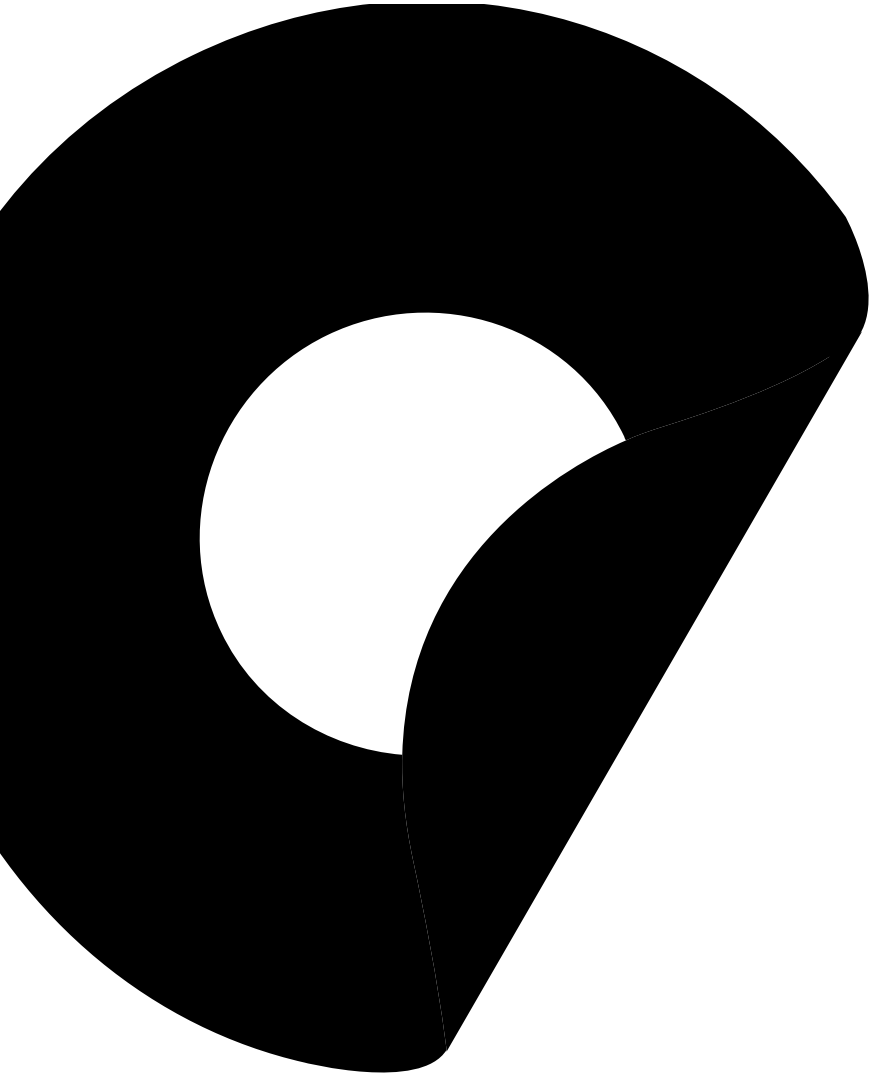
“Intersectionality is a lens through which you can see where power comes and collides, where it interlocks and intersects. It’s not simply that there’s a race problem here, a gender problem here, and a class or LBGTQ problem there.”

It examines the interactions between categories of difference, their influence on lives and the law.

Intersectionality

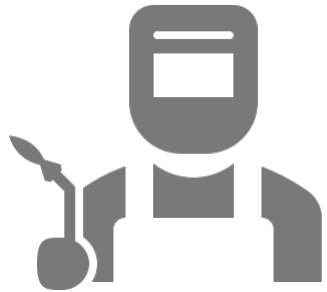
This concept recognizes that each combination of multiple identity factors (e.g. a wealthy white woman) has its own unique experience of privilege and oppression.

For example, Tom and Megan are both Black, and Megan and Rachel are both women, but Megan's lived experience as a Black woman is different than Tom's and Rachel's.



Bias & Liability in the Workplace

Impacts of Bias at Work



Who gets
hired?



Who gets
mentored?



Who gets the
plum
assignments?



Who gets
promoted?

Impacts on Decision-Makers



Intuition without deliberation leads to errors.



Confirmation bias and priming impact not just “lay people.”



Heavy workloads necessitate quick decisions that may be made using mental shortcuts.

Implications for Hiring: Names on Resumes

Identical resumes, different names

Traditionally African American names

(e.g., Tamika Jones)

Traditionally white names

(e.g., Emily Ryan).

The white names received

50% percent more responses.



Bertrand, M. and Mullainathan, Sendhil, *Are Emily and Greg More Employable than Lakisha and Jamal, A Field Experiment on Labor Market Discrimination*, *The American Economic Review*, 94(4), 1-31 (2004)

Implications for Auditioning: Blind Orchestra Selection

Blind auditions increased the probability that a woman would advance from preliminary rounds by 50 percent.

Study by Cecilia Rouse, and Claudia Goldin, American Economic Review, 2000.



The Hiring Interview: Nonverbal Behavior and Race

White interviewers:

- Spoke to and smiled more at the White applicants.
- Hesitated more and made more speech errors when speaking to the Black applicant (leading to the interviewee making speech errors due to “mirroring”).
- Sat further back, leaned away, gave shorter interviews with the Black applicants.

The Hiring Interview: Nonverbal Behavior and Race

When White interviewers were trained to act towards the White applicants the way they had towards the Black applicants, the White applicants performed worse, were more uncomfortable, and judged the White interviewer to be less friendly.

Word, Carl O., Zanna, Mark P. and Cooper, Joel, *The Nonverbal Mediation of Self-Fulfilling Prophecies in Interracial Interaction*, 10 J. Experimental Soc. Psychol. 109 (1974).

McConnell, A. R., & Leibold, J. M. (2001). *Relations Between the Implicit Association Test, Explicit Racial Attitudes, and Discriminatory Behavior*, Journal of Experimental Social Psychology, 37, 435–442.

Implicit Bias in Employee Evaluation

- Memo containing 22 errors – 7 minor spelling or grammar, 6 substantive technical writing errors, 5 errors in fact and 4 errors in analysis.
- Reviewers (law firm partners) participated in a “writing analysis study” – half were told the memo was written by an African American male and half by a White male.
- The White male received a 4.1 out of 5.
- The African American male received a 3.2 out of 5.
- More errors were found in the memo that was thought to be written by the African American.

Study published by the ABA Journal: Weiss, Debra, *Partners in study gave legal memo a lower rating when told author wasn't white*, April 21, 2014.

How Bias May Lead to Liability

- **Discrimination.** If a certain business decisions impacting applicants or staff are found to have been based on a protected characteristic, or disproportionately impact a group with a protected characteristic, this could make an employer liable.
- **Harassment.** A type of employment discrimination. Unwelcome conduct that is based on a protected characteristic, once it reaches a certain threshold, could lead to an employer being liable. This is also true when harassment is done by staff if the employer should have known about it and failed to act appropriately.
- **Retaliation.** If an employer takes a materially adverse action against an applicant or an employee for engaging in a protected activity, like reporting discrimination, an employer can become liable.

Reducing Bias in Employment Decisions



Determine	Determine criteria before making a decision. <ul style="list-style-type: none">• Job descriptions• Interview questions• Rating criteria• Rules of conduct• Discipline rules
Build	Build in a robust review process.
Objective	Base decisions on objective, job-related criteria.
Review	Have someone review your decision.

Hiring Example

- Recruit from a wider range of schools or sources.
- Where it makes sense, choose objective, preferably measurable traits, and their respective weight to the decision before reviewing applicants.

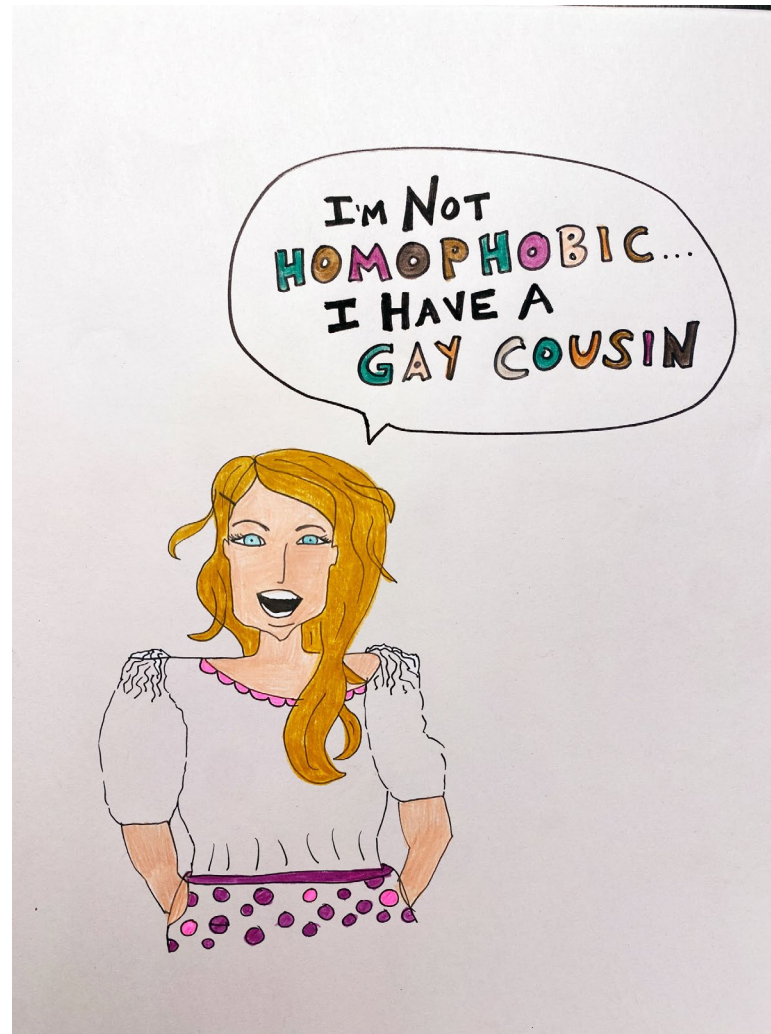


- Anonymize applications. Consider phone screening applicants first.
- Make sure a diversity of perspectives are included in the hiring process.
- When possible, have more than one interviewer or more than one application reviewer.



Reducing Our Biases by Developing Cultural Awareness

But I'm Not Biased!



Reducing Bias

Be More Intentional

- Bias is often unintentional, so the quickest way to avoid acting on bias is to become more mindful/intentional.
 - Learn about common biases, when they occur, and their impact
- We can also reduce the power of a bias by consciously counteracting it.
 - Confirmation bias can be counteracted simply by consciously considering why a first impression was wrong.
- We can also intentionally pay attention to things we would otherwise ignore.

Reducing Bias: Seek Exposure to Difference

- Studies show that infants prefer familiar faces and sounds, but exposing them to different faces and accents extends their ability to process different faces and their repertory of preferences.
- Another study showed that if college age individuals are asked to take a few minutes to imagine what a strong woman is like, why she is considered strong and what she is capable of and enjoys doing, this exercise reduces the “male = strong” stereotype.
- Surround yourself with images that defy stereotypes.
 - **Ex:** Find TV shows, movies, books, articles, radio, podcasts, etc., highlighting perspectives that are unfamiliar to you.

Reducing Bias Find Connections

- Surround yourself with images that defy stereotypes.
- Actively try to interact with different types of people.
- Make connections and focus on the positive!
 - **Empathy:** Find something that places the person in the same category as you.
 - Studies show: Working with someone who is a member of a group you harbor biases against reduces bias.

Reducing Bias Self Check-In

Ask yourself the following question:

**“If this were a [man/woman, younger person/older person, gay person/
straight person] would I think the same thing or reach the same
conclusion?”**

If your answers changes, think about why.

We are all biased occasionally and that does not make us bad people. At the same time, we are responsible for our actions and fairness demands trying to overcome our biases as best we can.

Self-Reflection Prompts

"Why am I thinking this?" and "Where does this belief come from?"

"What have I missed in this client's story because I think I already know the solution?"

"What input/feedback have I sought from others (supervisors) to see my blind spots?"

Hold Yourself Accountable!

If you can't stand the heat, you'd better get out of the kitchen.
— Harry S. Truman.

Accountability breeds response—ability.
— Stephen R. Covey



Wisdom stems from personal accountability. We all make mistakes; own them... learn from them. Don't throw away the lesson by blaming others.
— Steve Maraboli

Intentions do not insulate us from the consequences of our actions.
— Jon D Harrison

Accountability is the glue that ties commitment to the result."
— Bob Proctor

What Accountability Looks Like

- **Be willing to do the following:**
 - Examine your own biases. We all have them!
 - Invite feedback. Feedback ≠ Criticism. Feedback = Information.
 - Say, “I’m sorry.”
 - Ask yourself, “Might I be wrong?”

Questions?



Thank you!

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