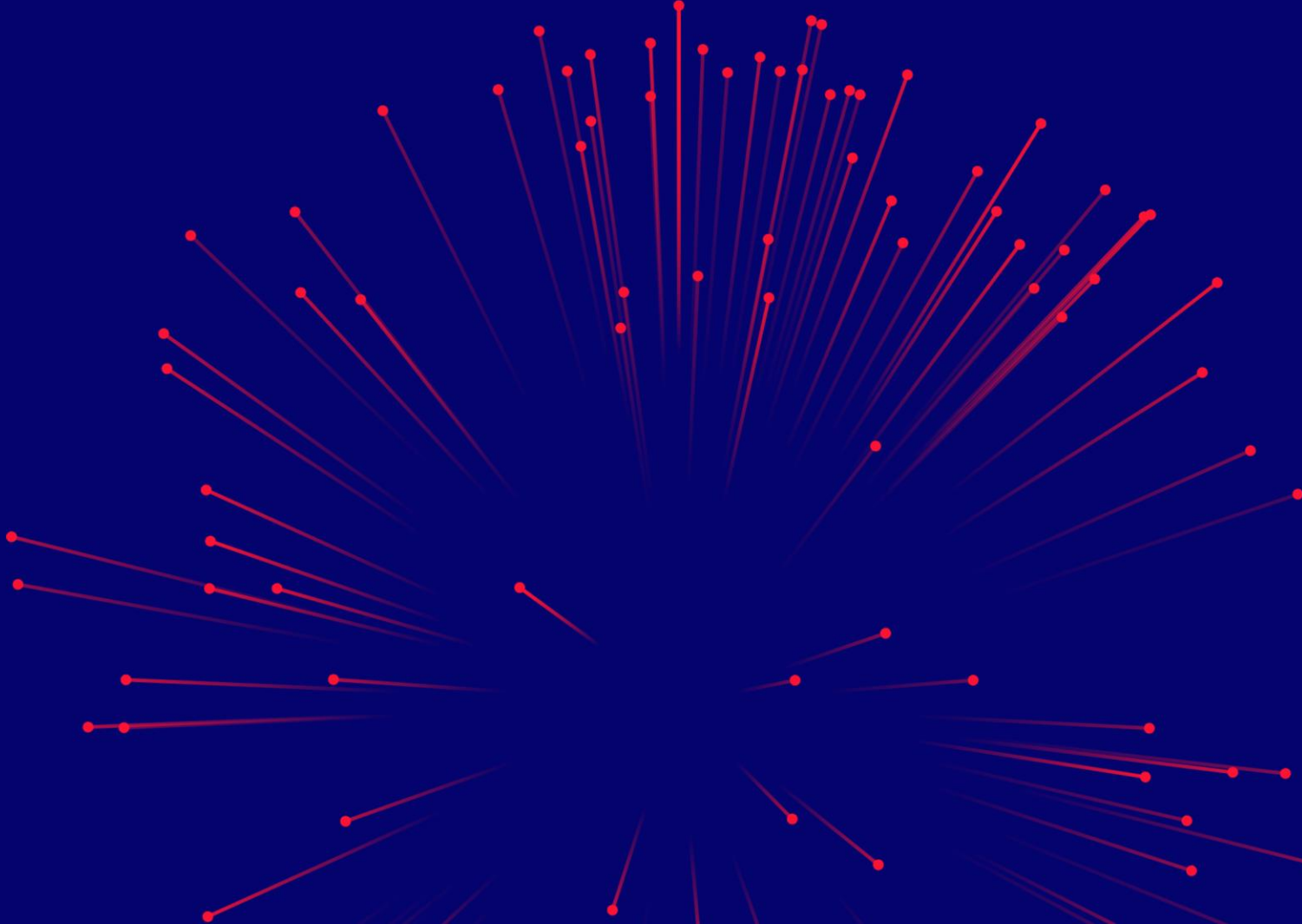


# Legal Insights

A CLE webinar series



attorney advertisement  
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Michelle Galloway

What Does It Take to Combat Bias in  
the Legal Profession in 2026?

# Your Presenter

Certificate in DEI from Cornell

Executive Committee, Litigation Section  
of California Lawyers Association (2018-  
2021)

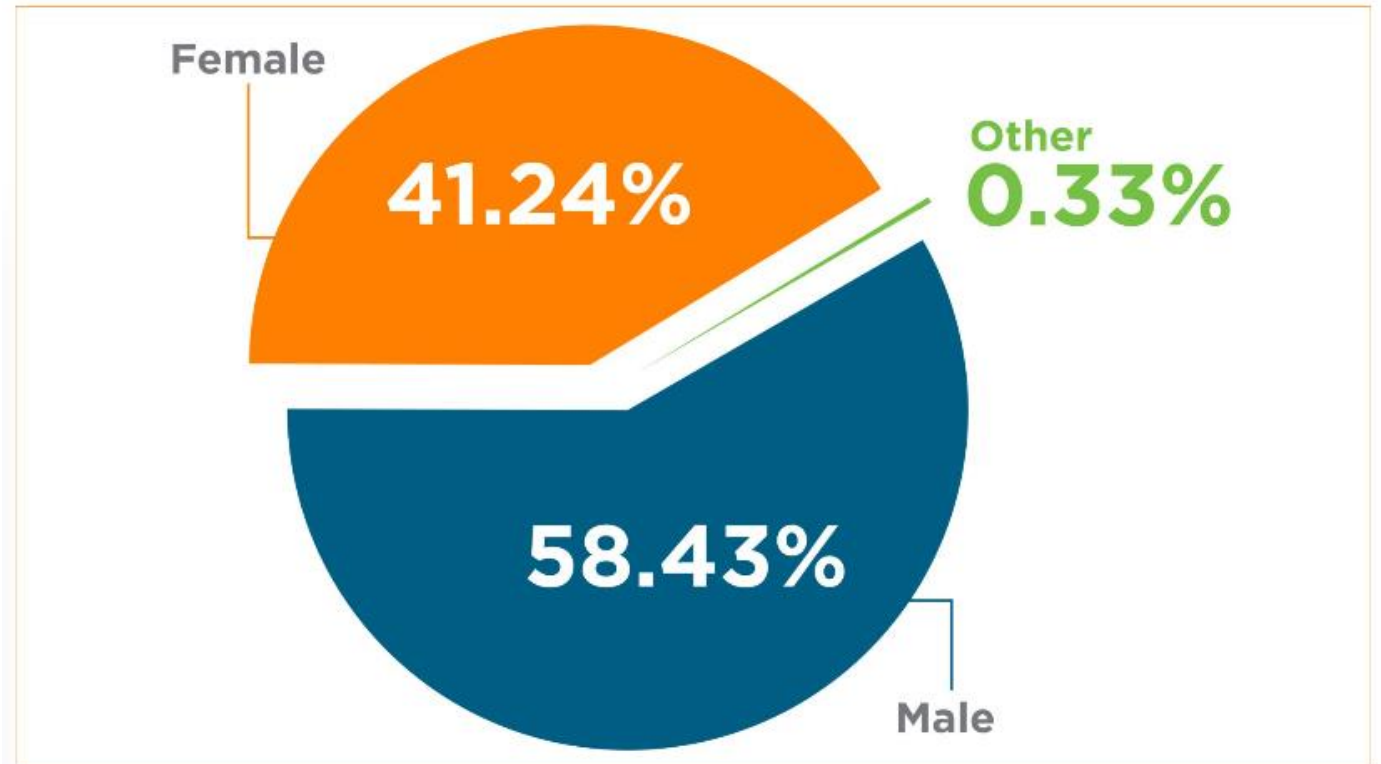
Past Chair, ABA Intellectual Property  
Section,  
Professional Ethics and Responsibility  
Committee

Contact Michelle at  
[michelleseminars@gmail.com](mailto:michelleseminars@gmail.com)



# The Legal Profession 2025

# Lawyers by Gender



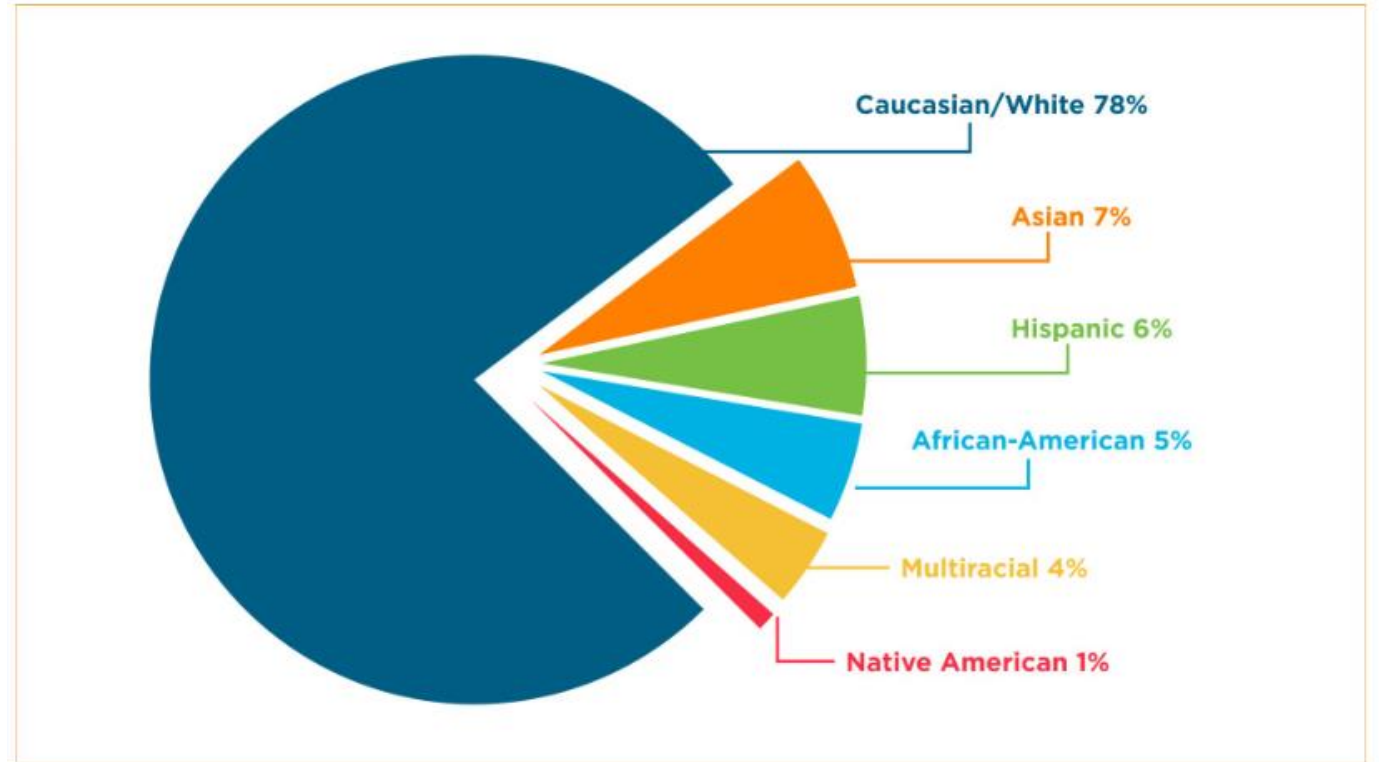
Lawyers by gender: 2024

Source: ABA National Lawyer Population Survey

# Lawyers By Race and Ethnicity

Majority of state bars to not ask members race and ethnicity.

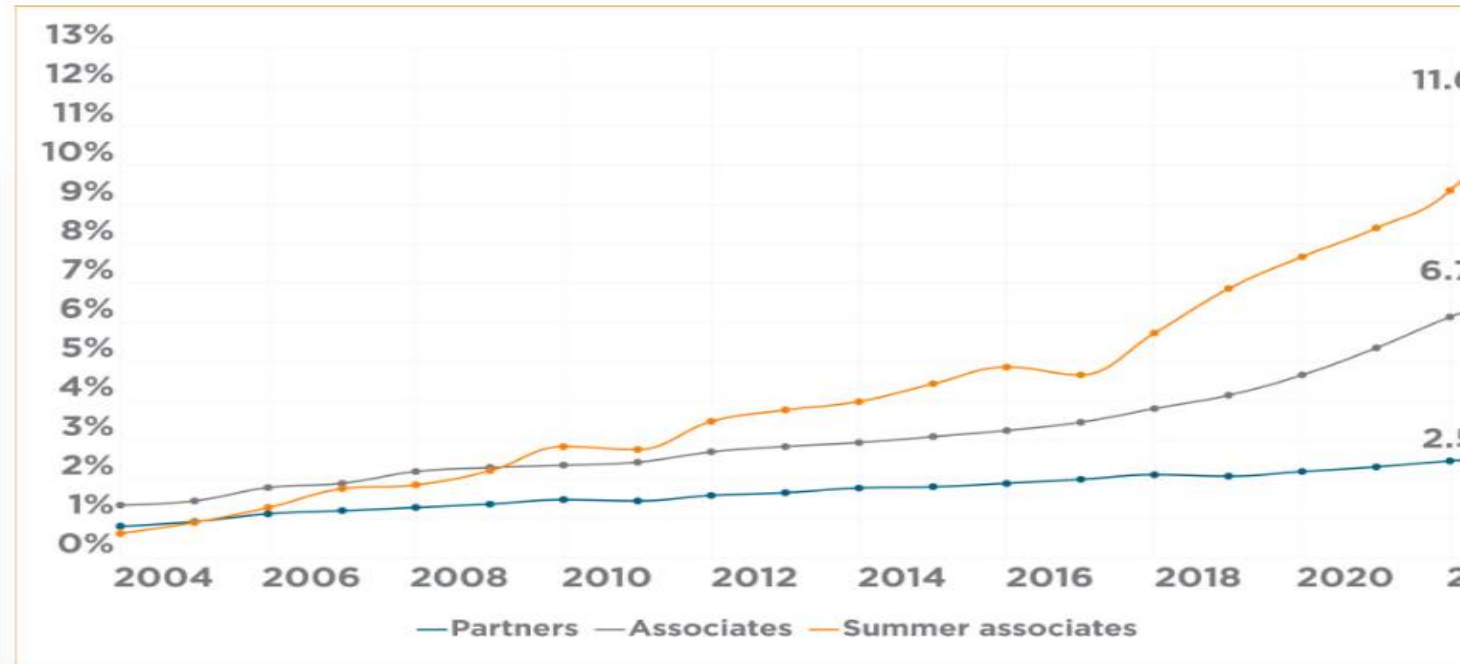
CA only began reporting in 2022.



Lawyers by race and ethnicity: 2024

Source: ABA National Lawyer Population Survey

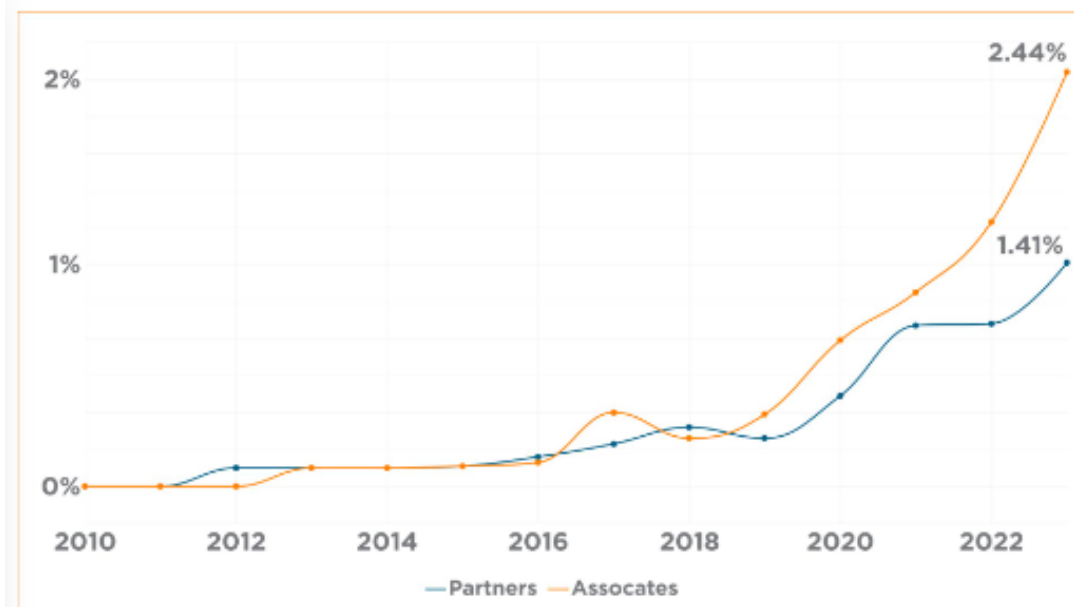
# LGBTQ+ Lawyers



LGBTQ partners, associates and summer associates: 2024-2023

Source: [National Association for Law Placement 2023 Report on Diversity in U.S. Law Firms](#)

# Lawyers with Disabilities



Partners and associates with disabilities: 2010-2023

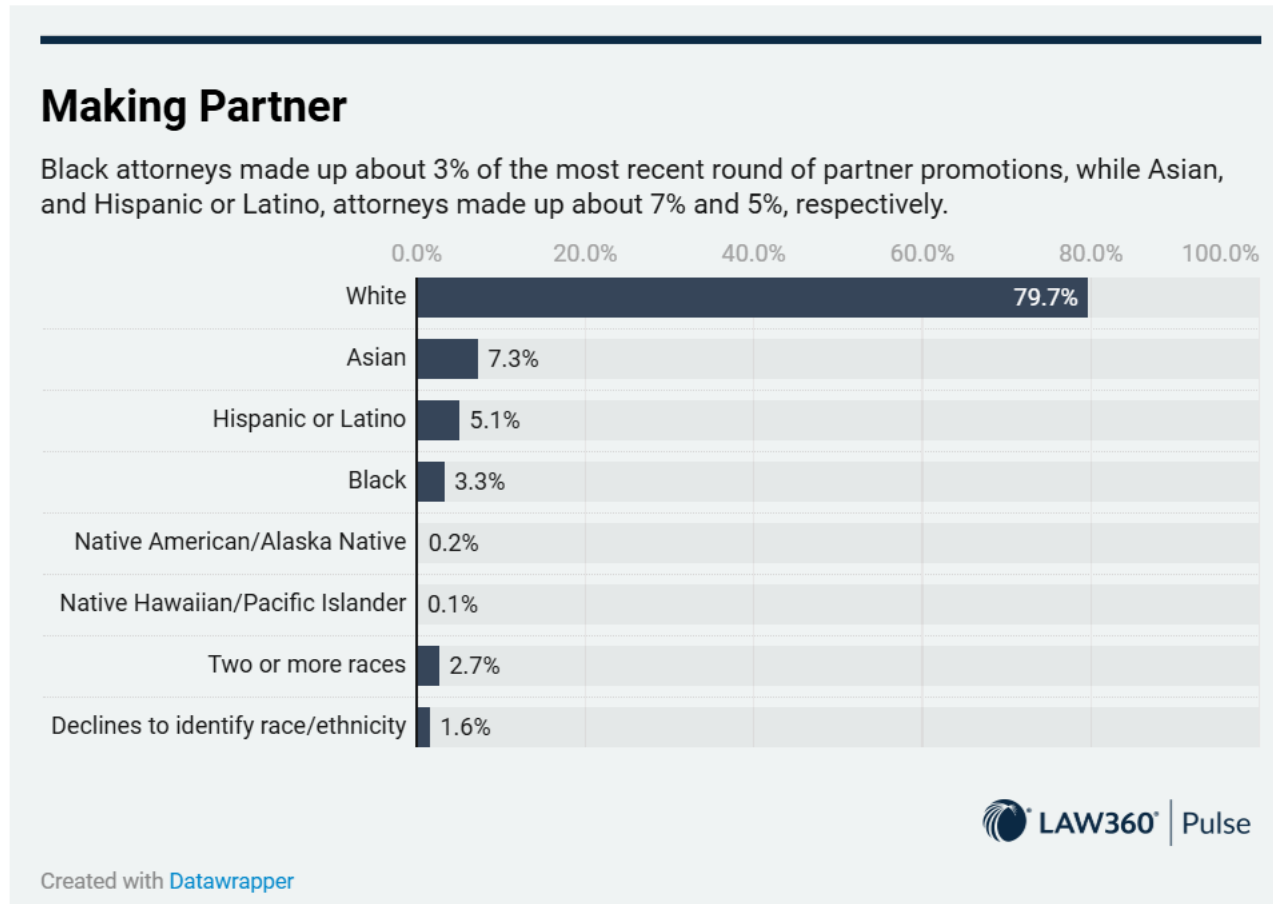
Source: [National Association for Law Placement 2023 Report on Diversity in U.S. Law Firms](#)

# Law 360 2025 Diversity Report

“The latest data tells a familiar story: While law firms continue to make incremental progress on diversity, representation declines sharply as attorneys rise through the ranks, with leadership remaining overwhelmingly white.”

- Xiumei Dong and Gerald Schifman, *The Diversity Snapshot: Representation in the Ranks*, law360.com (Sept. 9, 2025)

# Making Partner



Xiumei Dong and Gerald Schifman, *The Diversity Snapshot: Representation in the Ranks*, law360.com (Sept. 9, 2025)

# Executive Orders Targeting Firms

“To extent permitted by law”

- Suspend security clearances
- Review/terminate contracts with firm AND with entities doing business with firm
- Limit access to federal buildings

# Firms that Reached “Deals”

## After Executive Orders

- Paul Weiss

## In Advance of Executive Orders

- A&O Shearman
- Cadwalader, Wickersham & Taft
- Kirkland & Ellis
- Latham & Watkins
- Milbank
- Simpson, Thatcher & Bartlett
- Skadden, Arps
- Willkie Farr
- \$940M in “pro bono services”

# Overview: Implicit Bias

Are We Aware of Differences?

Our Brains: Neuroscience and Implicit Bias

In-Group/Out-Group Bias

Can We Assess Implicit Bias?

Research re De-Biasing at Organizational, Team, and Individual Levels?

# Our Brains

Reality?



Rational  
Thought



Rational  
Behavior

# Brains Conserve Energy



3% of body weight

25% of energy consumed

Mental shortcuts

# Perception is . . .

Rapid cognition

May be incompatible with our conscious values

- Paradox: We feel more confident and effective in homogeneous teams
  - Diverse and inclusive teams improve problem solving, i.e., are smarter

# Brain Tendencies

Affinity bias – prefer those similar to you

In group bias – perceive those similar to you in positive way

Out group bias – perceive those different from you in a negative way

Halo effect – because of positive qualities in one area, view person positively overall

Fundamental attribution error – attribute actions of others to their fixed traits rather than to external situational factors

# Can Lawyers Have Implicit Bias

Do lawyers make decisions under

- time pressure
- conditions of ambiguity
- with limited information?

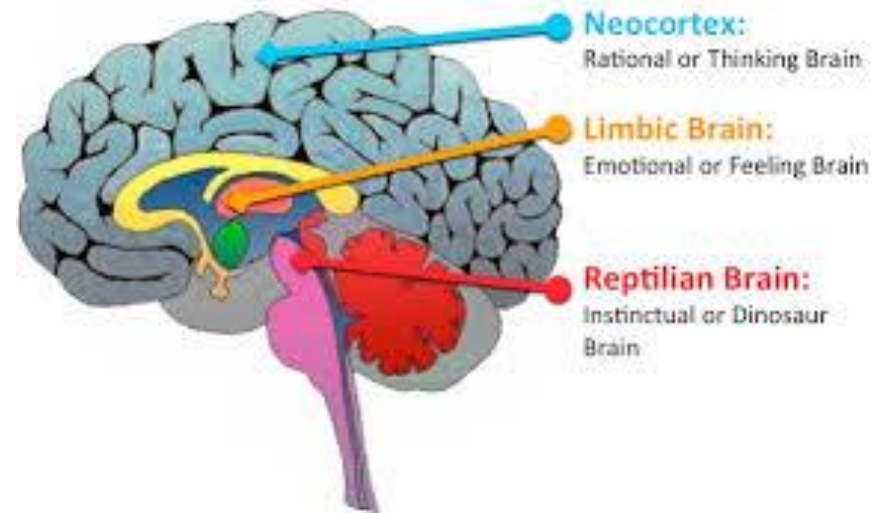
And therefore lawyers may have

- increasing reliance on intuitive judgement and mental shortcuts

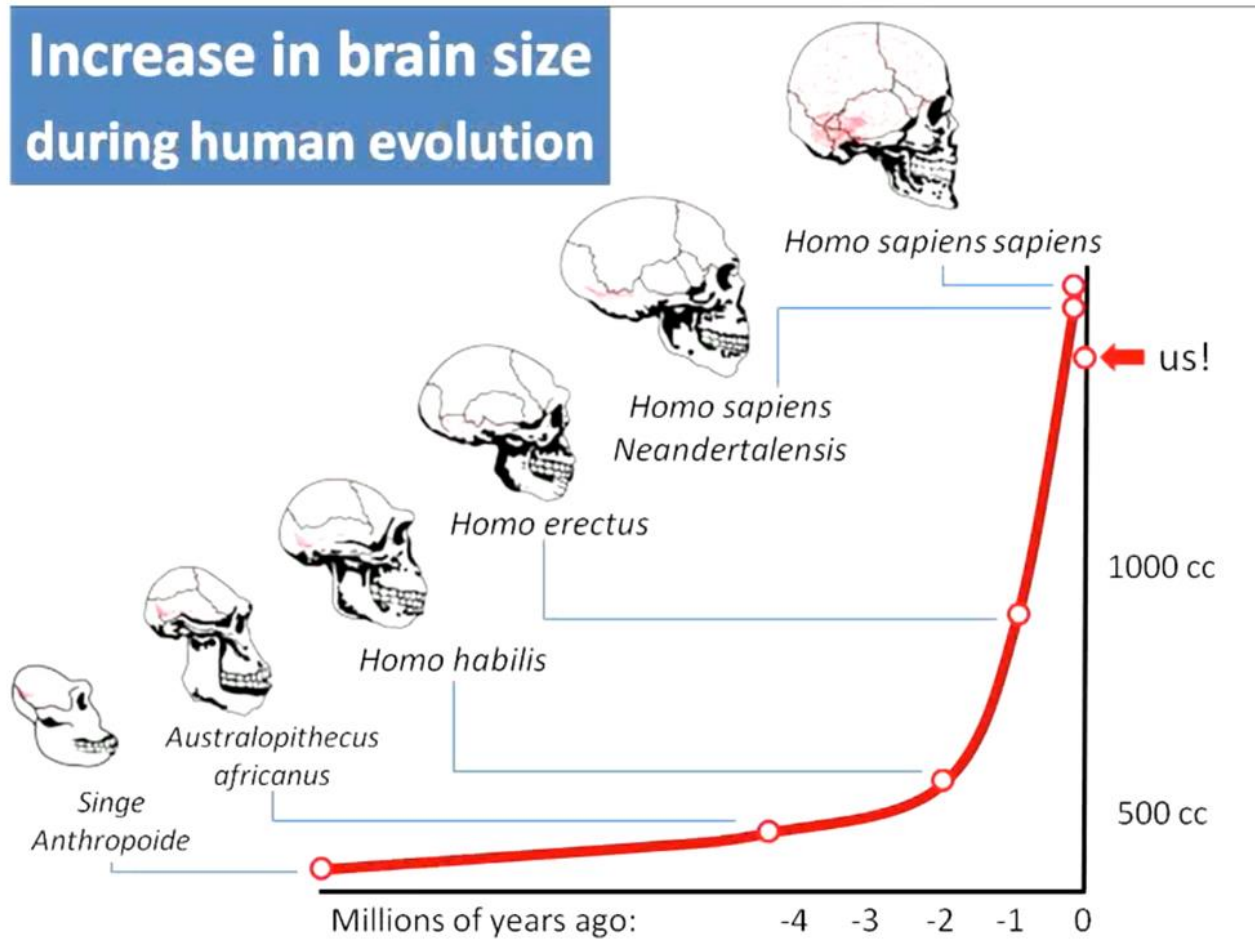
See Isabela Merla, Fiona Gabbert and Adrian J. Scott, *Interventions to Reduce Implicit Bias in High-Stakes Professional Judgements: A Systematic Review*, Behav. Sci. 2025 (Abstract)

# In-Group and Out-Group Bias

# Triune Brain



# Human Brain – Wired For Social Interaction



# Who Gets Cookies?



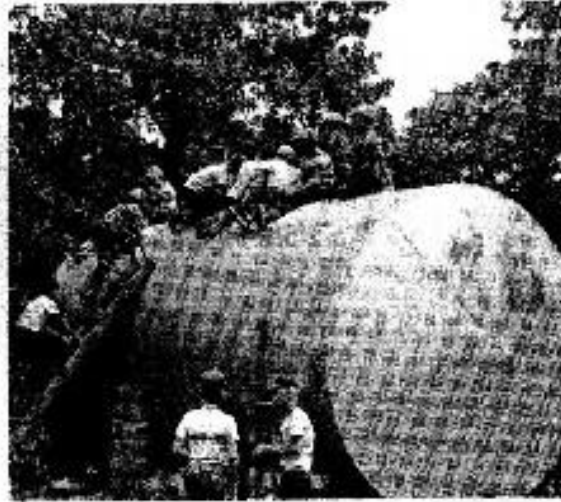
# In Group Bias Starts YOUNG

In study of 1.5-2.5 year olds:

- “Our work provides new evidence that infants’ reasoning is guided by principles of fairness and ingroup support and, for the first time, demonstrates that infants also follow a context-sensitive ordering of these principles,” Bian said. “When there is enough to go around, fairness is expected to prevail; when there is not enough to go around, however, ingroup support is expected to prevail.”
- See Melissa De Witte, *Stanford study shows that when resources are limited, infants will favor group loyalty over fairness*, Stanford News (Feb. 26, 2018)

# Robbers Cave Experiment

(Below) Intergroup interaction after the introduction of superordinate goals.



Members of both groups climb up to see if the water tank is empty.



Members of both groups cluster around and take turns trying to clear the faucet.

*The Robbers Cave Experiment*, Muzafer Sherif, et al (1954)

# Pop Quiz

# Stroop Test

Ignore Word



Say Color



# Ignore Word, Say Color

<b>AFGH</b>	<b>HMGL</b>	<b>DRHN</b>
<b>JKMD</b>	<b>WMGR</b>	<b>HMGL</b>
<b>DRHN</b>	<b>AFGH</b>	<b>JKMD</b>
<b>HMGL</b>	<b>JKMD</b>	<b>WMGR</b>

# Ignore Word Say Color

RED	BLUE	GREEN	BLUE	BLACK
YELLOW	GREEN	ORANGE	GREEN	RED
PINK	BLACK	BROWN	YELLOW	GRAY
BLUE	RED	GREEN	PINK	BROWN
ORANGE	BLACK	BLUE	GREEN	RED

# Ignore Word Say Color

RED	BLUE	GREEN	BLUE	BLACK
YELLOW	GREEN	ORANGE	GREEN	RED
PINK	BLACK	BROWN	YELLOW	GRAY
BLUE	RED	GREEN	PINK	BROWN
ORANGE	BLACK	BLUE	GREEN	RED

# Assessing Implicit Bias

# Implicit Association Test

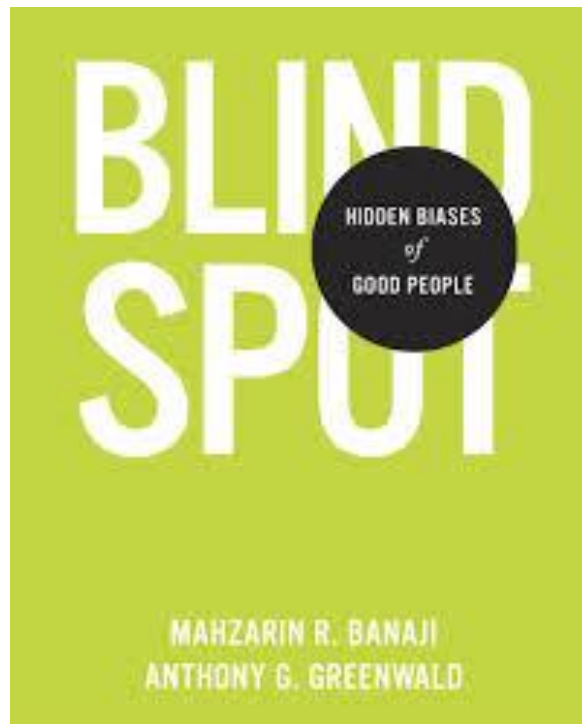
## Project Implicit

- The Implicit Association Test
  - Takes 2 social and 2 evaluative categories
  - Examines which words and concepts are strongly associated (paired) in people's minds
  - Time difference in the associations are quantified
    - Takes longer for mind to connect concepts you perceive as incompatible
  - [www.implicit.harvard.edu](http://www.implicit.harvard.edu)

# Blind Spot

Anthony G. Greenwald, et al., “*The Implicit Association Test At Age 20: What Is Known And What Is Not Known About Implicit Bias*” (March 2019)

Preprint available at [psyarxiv.com/bf97c](https://psyarxiv.com/bf97c)



# The Critique of IAT

Some researchers argue IAT is not predictive of behavior

- Patrick Forscher, Clavin Lai, et al. “*A Meta-Analysis of Procedures to Change Implicit Measures*” (August 2019) argues “Our findings suggest that changes in implicit measures are possible, but those changes do not necessarily translate into changes in explicit measures or behavior.”

Contrast to another recent meta-analysis concluded that:

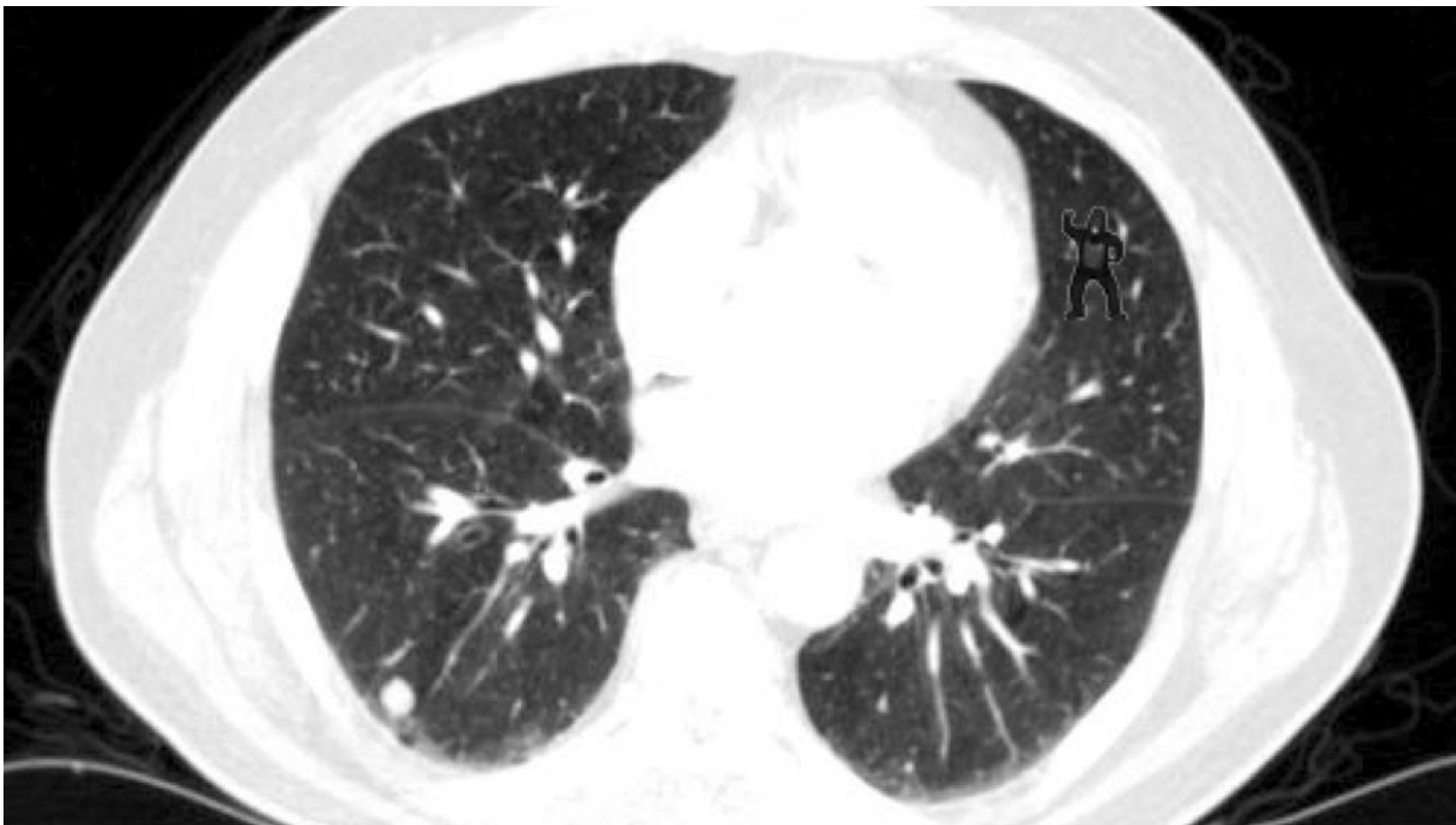
- “Unlike explicit measures, implicit measures predicted for all target groups and types of behavior, and implicit, but not explicit, measures were equally associated with behaviors varying in controllability and conscious awareness.”
- See Kurdi, et al., *Relationship Between the Implicit Association Test and Intergroup Behavior: A Meta-Analysis*, American Psychologist Association (2018)

# Change is Hard and Unpredictable

“How did explicit (self-reported) and implicit (automatic) attitudes toward five social categories (age, body weight, sexuality, skin tone, and race) change across 33 countries between 2009 and 2019? Harnessing advances in statistical techniques and the availability of large-scale international data sets, *we show that all five explicit attitudes became less negative toward stigmatized groups. Implicit attitudes showed more variation by target:* Implicit sexuality attitudes also decreased in bias, but implicit age, body weight, and race attitudes did not change, and implicit skin tone attitudes even increased in bias favoring light-skinned over dark-skinned people. These findings underscore the possibility of widespread changes in a direction of more positivity toward stigmatized social groups, even at an automatic level. However, increasing bias in certain domains suggests that these changes are far from inevitable. As such, more research will be needed to understand how and why social group attitudes change at the cultural level.”

Benedek Kurdi, Tessa E. S. Charlesworth, and Patrick Mair, International Stability and Change in Explicit and Implicit Attitudes: An Investigation Spanning 33 Countries, Five Social Groups, and 11 Years (2009–2019), *Journal of Experimental Psychology: General* (2025) (emphasis added)s

# Inattention Blindness – Lung Cancer



Can Implicit Bias  
“Leak” Out?

# Implicit Bias and Interpersonal Interaction

What happens when implicit bias “leaks out” without awareness?

# Example: Role Incredulity

“Role incredulity is a form of gender bias where women are mistakenly assumed to be in a support or stereotypically female role ... rather than a leadership or stereotypically male role ....”

- Amy Diehl and Leanne M. Dzubinski, *When People Assume You're Not in Charge Because You're a Woman*, HBR (Dec. 22, 2021)

# Responding

Describe what is happening – label it

Express disagreement

Use an exclamation (wow; that was unexpected)

Use non-verbal communication

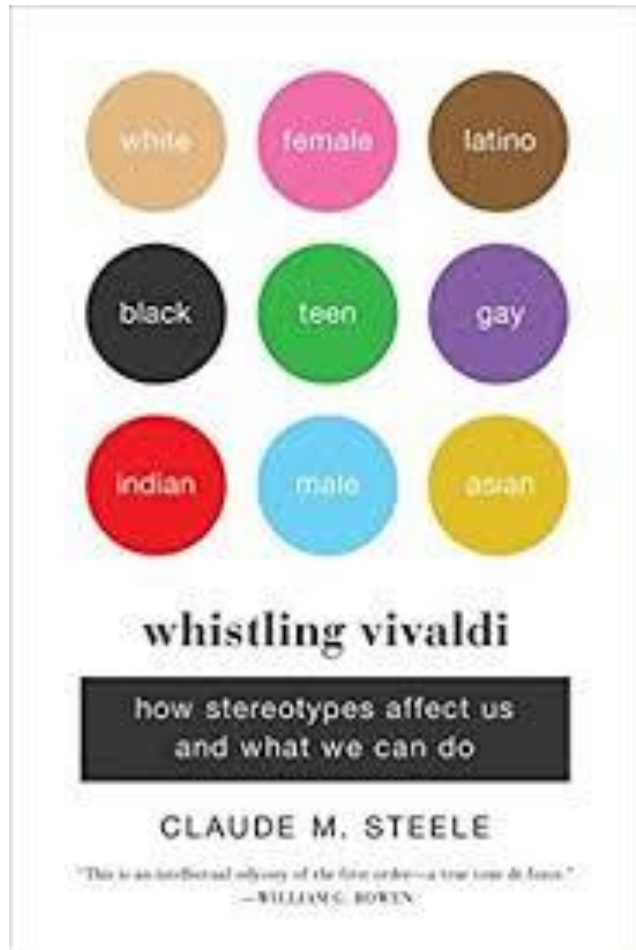
Interrupt and redirect

Emphasize commonality

Distinguish intention and impact

- See Ella F. Washington, Alison Hall Birch and Laura Morgan Roberts, *When and How to Respond to Microaggressions*, Harvard Business Review (July 3, 2020); Derald Wing Sue, Sarah Alsaedi, Michael N. Awad, Elizabeth Glaeser, Cassandra Z. Calle, and Narolyn Mendez, *Disarming Racial Microaggressions: Microintervention Strategies for Targets, White Allies, and Bystanders*, 24 American Psychologist 128 (2019)

# Impacts: Stereotype Threat

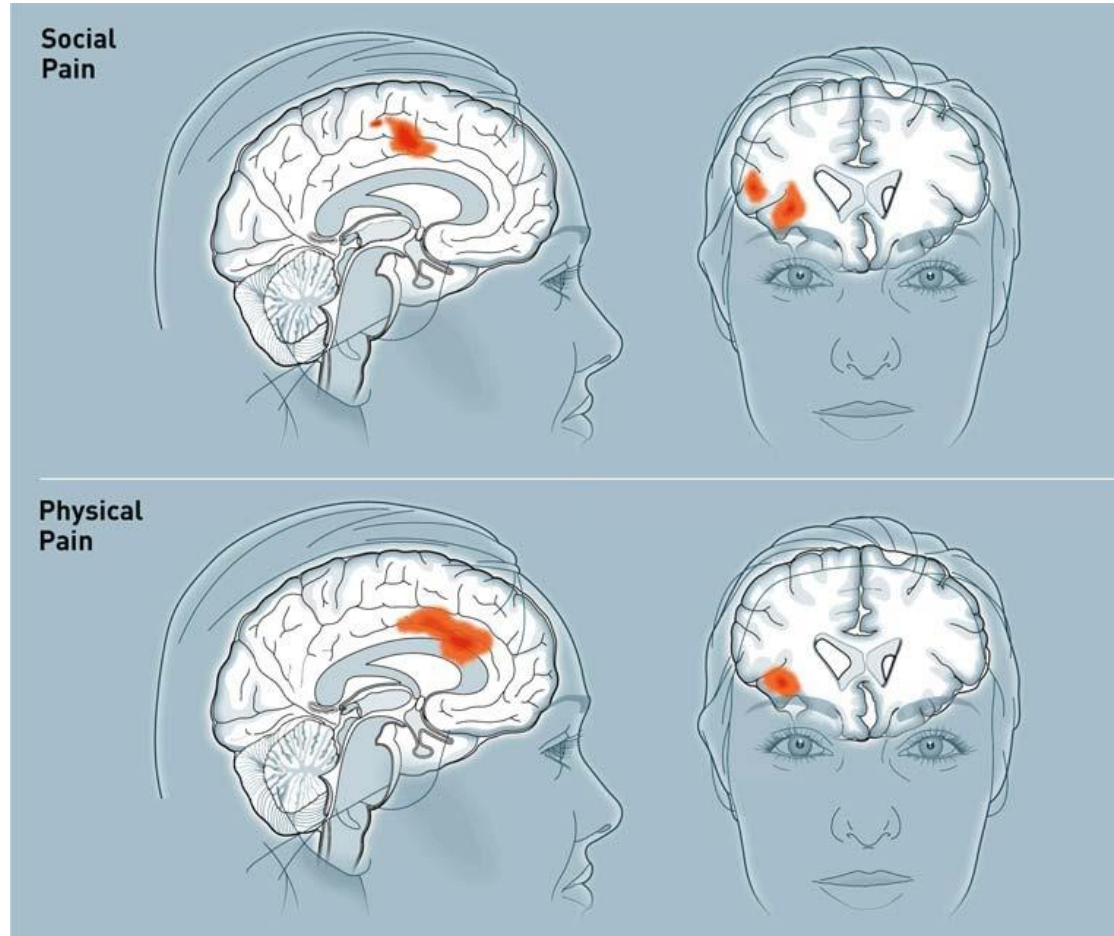


Identity in a group comes with a set of stereotypes or expectations – things you have to deal with given your social identity

Stereotype threat occurs when individuals feel they are at risk of conforming to **stereotypes** about their social group

- It changes brain activity and damages functioning and performance

# Similar Neural Response to Social & Physical Pain



Rock, David, *Managing with the Brain in Mind*, strategy+business, issue 56, Autumn 2009, p. 4.

What About AI Use  
in Decision  
Making?

# AI “Advice”

“In our study, we prompt the models for advice involving a named individual across a variety of scenarios, such as during car purchase negotiations or election outcome predictions. We find that the advice systematically disadvantages names that are commonly associated with racial minorities and women. Names associated with Black women receive the least advantageous outcomes.”

Alejandro Salinas, Amit Haim, and Julian Nyarko, *What’s in a Name? Auditing Large Language Models for Race and Gender Bias (2025)*, Assoc. for Computational Linguistics available at <https://doi.org/10.48550/arXiv.2402.14875>

# AI and Images

“While our evaluations on five popular VLMs show relatively modest explicit bias in direct multiple choice or yes-no scenarios, more subtle, implicit biases persist—most prominently in tasks like image description and form completion. These tasks reveal troubling patterns, such as rigid associations between demographic attributes (e.g., certain ethnicities and specific religions) and gender-linked stereotypes in occupational or personality inferences. . . . By highlighting both forms of bias through VISBIAS, we emphasize the need for comprehensive mitigation strategies that address not only conspicuous, intentional discrimination but also the subtler, unconscious biases woven into VLM outputs.”

- Jen-tse Huang, Jiantong Qin, Jianping Zhang , Youliang Yuan, Wenxuan Wang, and Jieyu Zhao, VISBIAS: Measuring Explicit and Implicit Social Biases in Vision Language Models, presented to 2025 Conference on Empirical Methods in Natural Language Processing and available at <https://arxiv.org/html/2503.07575v1>

Implicit Bias:  
Individual  
Approaches to  
Changing  
Ourselves

# Remind Yourself

You are a fallible human being  
Mutually dependent on others

# Things to Do

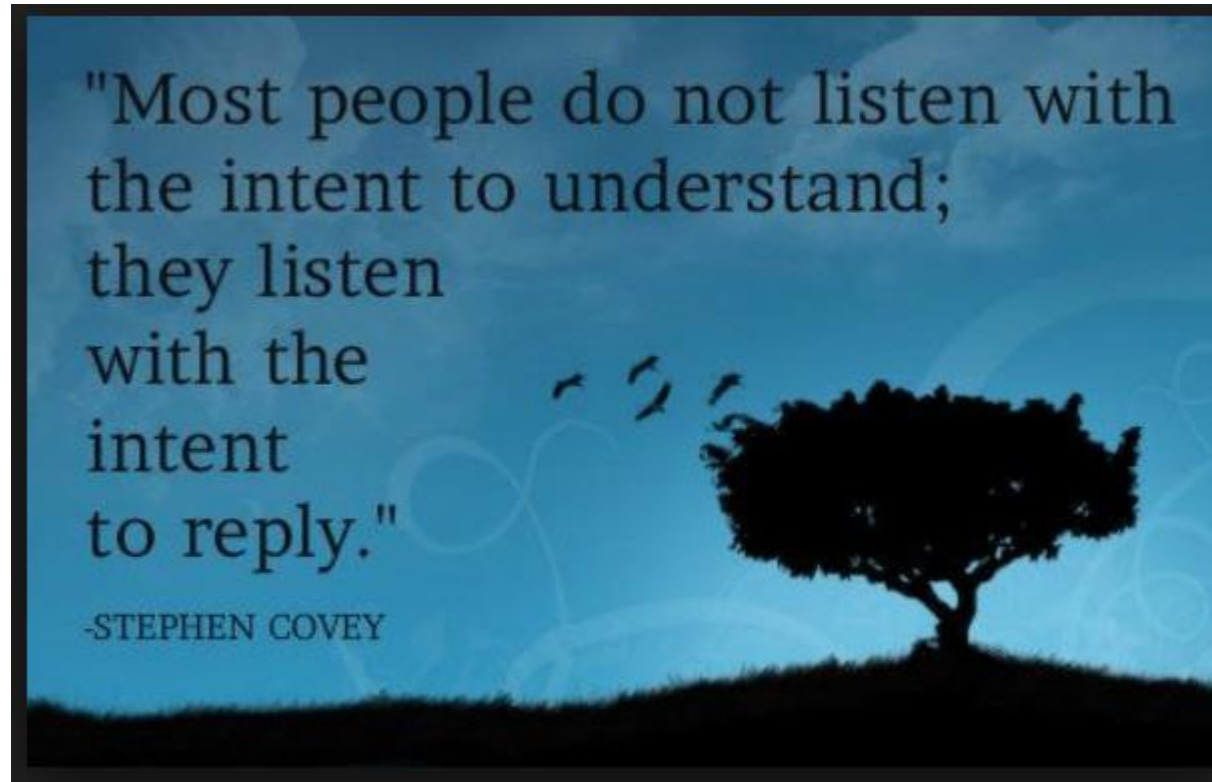
## Educate

- Yourself about identity and experiences of the group you want to support

## Empathize

- Awareness of and understanding the feelings, thoughts, and experiences of others
- Research has shown that self-reflection can be an effective intervention

# Listen to Understand -- Empathy



# Mix It Up!!!

Exposure to new and different people and ideas

# Communicate Clearly

Are you being specific and sincere in your words, non-verbal cues, and conduct?

# Other Steps

Don't decide for someone else – offer the opportunity

Give “nudges” reminding others of their own opportunities and voice

# Mindfulness and Implicit Bias

“We focused on the impact of mindfulness on implicit age and racial bias as measured by implicit association tests (IATs). Participants listened to either a mindfulness or a control audio and then completed the race and age IATs. Mindfulness meditation caused an increase in state mindfulness and a decrease in implicit race and age bias. Analyses using the Quad Model showed that this reduction was due to weaker automatically activated associations on the IATs.”

- See Lueke and Gibson, “*Mindfulness Meditation Reduces Implicit Age and Race Bias: The Role of Reduced Automaticity of Responding*,” *Social Psychological and Personality Science* (Nov. 24, 2014); see also Danielle L. Oyler, Mollie A. Price-Blackshear, Steven D. Pratscher and B. Ann Bettencourt, *Mindfulness and Intergroup Bias: A Systematic Review*, 25(4) *Group Processes & Intergroup Relations* 1107-1138 (2022) (finding a small but significant effect of mindfulness in reducing bias)

# Implicit Bias: Organizational Level

# Systemic Interventions/Inclusion Nudges

“The findings show a clear pattern of intervention effectiveness by intervention approach. Systemic-level strategies, which target the decision environment, accounted for most strong effects . . . .”

Isabela Merla, Fiona Gabbert and Adrian J. Scott, *Interventions to Reduce Implicit Bias in High-Stakes Professional Judgements: A Systematic Review*, Behav. Sci. 2025 (Abstract)

“Nudges” to get unconscious mind to make inclusive decisions

“Moreover, nudges can be developed by organizations themselves based on their specific antidiscrimination and DEI needs”

See Leora F. Eisenstadt & Todd Haugh, *Nudging Diversity: Merging Law and Behavioral Science to Reduce Workplace Discrimination and Increase Diversity*, 74 Emory L. J. 249 (2024)

# Organizations

Review, Evaluate, Revise practices related to

- Hiring
- Evaluations/Advancement
- Compensation

Challenge: analyzing/measuring

- Talent development
- Sense of belonging/retention

# Deliberative Decision-Making

Develop a process that is

- Repeatable
- Analytic

Characteristics

- Slow down
- Write it down

Checklists

Perspective taking

# Implicit Bias: Interpersonal Level

# Google Study: How Not Who

180 teams

“*Who* is on a team matters less than *how* the team members interact, structure their work, and view their contributions.”

- See <https://rework.withgoogle.com/blog/five-keys-to-a-successful-google-team/>

# Reclaim Your Power

You have choice

- About how you feel
- About how you let it impact/influence you
- About how you act

# State Your Position

Factually

Respectfully

Examples:

- I think we can resolve this without raising voices
- The report had all of the components you listed in your email
- I prefer direct feedback – whether positive or negative. In the future, please talk to me about it

# Key Questions

Help me to understand . . . .

“I’m curious, what evidence brought you to that conclusion?”

- See Mark Murphy, *9 Words to Stop Negative People from Sucking the Energy Out of the Room*, Forbes (Apr. 22, 2018)

What did you mean by that?

# Be Direct

Be direct

- That was unexpected
- That makes me uncomfortable
- What you said could be interpreted as \_\_\_\_\_

# Stay on Your Side of the Net

**You:**  
Intent  
Needs  
Motives  
Situation



**Net:**  
Observable Behavior  
Verbal & Non-verbal

**Other Person:**  
Impact  
Feelings  
Reactions  
Responses

# Other Options

Interesting. I'm going to think on that and get back to you.

What would you like to see? Think about it and schedule a time to discuss.

When you say \_\_\_\_ I feel you are attempting to prevent me/our team from \_\_\_\_\_.

Action: What Will I  
Do?

# We Can Be

Open to new experiences and ideas

Aware (self and others)

Without judgment

- Quash reaction that differences are “bad”

Accepting and respecting differences

# Individual Change – Implementation Intention

Implementation intention is the receiver turning toward implementation

- If \_\_\_\_\_ then \_\_\_\_\_.
- If --- when they need to be aware to enact new behavior
- Then --- what they will do (action)
- This creates a mental “cue” for the future
  - See Peter Gollwitzer (1999)

Creating new habits

# Additional Resources

# Data Re Diversity and Inclusion in Legal Profession

ABA Profile of the Legal Profession 2025

NALP Report on Diversity (produced annually)

ACC DEI Maturity Model and Assessment available at  
<https://www.acc.com/diversity-equity-inclusion>

State Bar annual reports

# Resources: Bias in the Legal Profession

Kimberly Coleman, "*Why Top Law Schools Have Fewer Women Law Professors*," University of the District of Columbia David A. Clarke School of Law Law Review 28 (2025) (women make up "an average of 39.8% of faculty at the top 20 law schools, compared to 47.7% at the 20 lower-ranked law schools, a stunning 7.9 percentage point difference. My data includes both non-tenured and tenured law school professors).

*"In Their Own Words: Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession,"* ABA (May 3, 2021)

ABA Report, *Left Out and Left Behind, The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color* (2020)

*You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession*, American Bar Association Commission on Women in the Profession and Minority Corporate Counsel Association (2018) available at <https://mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf>

*Visible Invisibility, Women of Color in Fortune 500 Legal Departments*, ABA Commission on Women in the Profession (2012)

# Recent Law Journal Articles re Criminal Justice and Implicit Bias

Shari Seidman Diamond and Valerie P. Hans, *Fair Juries*, U. Ill. L. Rev. 879 (2023)

Bernice B. Donald (6th Cir), *Implicit Bias: The Science, Influence, and Impact on Justice*, 22 Sedona Conf. J. 583 (2021)

Jerry Kang, *What Judges Can Do about Implicit Bias*, 57 Ct. Rev. 78 (2021)

Catie Wheatley, *Honesty Is the Best Policy: Addressing Implicit Bias in the Judiciary*, 9 Ind. J.L. & Soc. Equal. 94 (2021)

Glen M. Vogel & Robert Costello, *Implicit Bias Is Not a Fairytale: From the Classroom to the Courtroom: The Connection between Racial Bias in Early Education and Its Impact on Stereotypes and Interactions with the Criminal Justice System*, 20 Seattle J. Soc. Just. 695 (2022)

Mary Nicol Bowman, *Confronting Racist Prosecutorial Rhetoric at Trial*, 71 Case W. Res. L. Rev. 39 (2020)

Bernice Donald, Jeffrey Rachlinski & Andrew Wistrich, *Getting Explicit about Implicit Bias*, 104 Judicature 75 (2020)

# Recent Study of Juror Implicit Bias in Civil Cases

Study had White mock jurors randomly assigned a civil case with Black or White plaintiff; Study 2 had them also randomly assigned to implicit bias education video or Judge delivering implicit bias instructions

“Results: As hypothesized, mock jurors’ increased explicit racial biases predicted less favorable verdicts for Black plaintiffs but not for White plaintiffs. *Implicit bias judicial instructions increased pro-plaintiff verdicts and mock jurors’ trust in the courts in cases with Black plaintiffs*. However, we did not find evidence that educational videos impacted these outcomes, which warrants further study. Neither intervention reduced the relationship between explicit racial bias and verdicts for Black plaintiffs. Conclusions: Anti-bias judicial instructions might hold some promise but need further testing; implicit bias videos had no impact. In the meantime, court systems must explore additional remedies to achieve an impartial jury.”

Megan L. Lawrence, Kristen L. Gittings, Valerie P. Hans, John C. Campbell, and Jessica M. Salerno, *The Effects of Implicit Bias Interventions on Mock Jurors’ Civil Trial Decisions and Perceptions of the Courts*, American Psychological Association, Law and Human Behavior (2025) (emphasis added)

# Judicial Opinions Re Implicit Bias Training

Teyah S. Giannetta; Audrey L. Cerfoglio; Monica K. Miller, *Eliminating Bias in the Courtroom? A Content Analysis of Judges' Opinions regarding Implicit Bias Training*, University of Memphis Law Review 54, no. 1 (Fall 2023) (Majority of judges (67%) believe judicial education can help reduce implicit bias, though many express hesitations.)

# Resources: DEI Practices in Law

ABA Diversity and Inclusion Center Resources: Toolkits, Trainings & Other Resources available at

<https://www.americanbar.org/groups/diversity/resources/toolkits/>

NALP Diversity Best Practices Guide (2020) available at

[https://www.nalp.org/uploads/2020\\_DiversityBestPracticesGuide.pdf](https://www.nalp.org/uploads/2020_DiversityBestPracticesGuide.pdf)

# Recent Law Journal Articles re Implicit Bias and Lawyer Training

Donald J. Polden & Jenna M. Anderson, *Leadership to Address Implicit Bias in the Legal Profession*, 62 Santa Clara L. Rev. 63 (2022)

Phyllis C. Taite & Nicola Boothe, *Teaching Cultural Competence in Law School Curricula: An Essential Step to Facilitate Diversity, Equity, & Inclusion in the Legal Profession*, 2022 Utah L. Rev. 813 (2022)

Alina Ball, *Minimizing the Impact of Cognitive Bias in Transactional Legal Education*, 52 Conn. L. Rev. 1139 (2021)

# Resources for Lawyers: Toolkits

Ally Toolkit Page available at

[https://www.americanbar.org/groups/diversity/sexual\\_orientation/resources/how-to-be-an-ally-toolkit/](https://www.americanbar.org/groups/diversity/sexual_orientation/resources/how-to-be-an-ally-toolkit/)

GOOD Guys™ Project available at

[https://www.americanbar.org/groups/young\\_lawyers/projects/no-limits/good-guys/about/](https://www.americanbar.org/groups/young_lawyers/projects/no-limits/good-guys/about/)

21-Day Habit Building Challenges available at

<https://www.americanbar.org/groups/diversity/leadership/diversity-and-inclusion-advisory-council/21-day-challenges/>

Questions?

# Conclusion

These materials are intended as an introduction to the subject matter covered in the presentation. The presentation and the materials contained herein do not attempt to provide legal advice for any particular situation. Each particular situation must be analyzed individually in light of all of the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the subject matter hereof, it is critical that counsel be involved. These materials are provided for educational and discussion purposes only and are not to be copied, used or distributed outside of this seminar without the express written consent of Michelle Galloway. Copyright Michelle Galloway 2025.

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