

A LOOK AT BIAS

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BIAS

- PREJUDICE IN FAVOR OF OR AGAINST A THING, PERSON, OR GROUP
- COMPARED WITH ANOTHER GROUP USUALLY IN A WAY THAT'S CONSIDERED UNFAIR
- INDIVIDUAL, GROUP OR INSTITUTION
- NEGATIVE OR POSITIVE CONSEQUENCES

ATTITUDE AND STEREOTYPE

- **ATTITUDE**
 - ASSOCIATION BETWEEN AN IDEA (LIKE A SOCIAL GROUP) AS BEING POSITIVE OR NEGATIVE
- **STEREOTYPE**
 - ASSOCIATION BETWEEN AN IDEA AND A TRAIT

CONSCIOUS BIAS

EXPLICIT BIAS

CONSCIOUS BIAS

EXPLICIT BIAS

- Can be accessed by the individual
- Believes they are **correct**/ appropriate
- **Stable** and held over time in different situations
- Can be automatic and impact decision-making

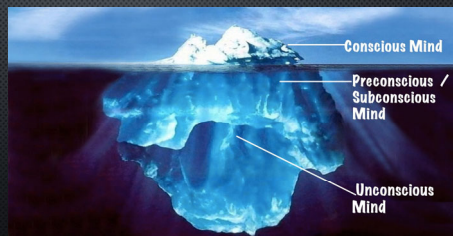
CONSCIOUS BIAS

EXPLICIT BIAS

- **Attitudes** and **stereotypes** held by an individual which can be thought about and endorsed as **appropriate**
- May be **concealed** if social norms/ social situations warrant

UNCONSCIOUS BIAS

IMPLICIT BIAS



UNCONSCIOUS BIAS

IMPLICIT BIAS

- **Attitudes** and **stereotypes** not consciously available
- May be **rejected** as inappropriate if we find that we have them

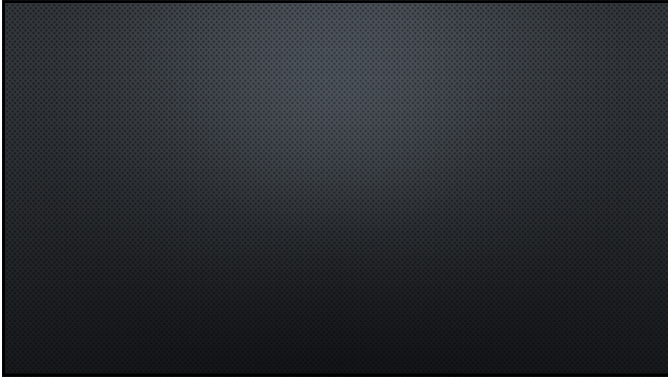
UNCONSCIOUS BIAS

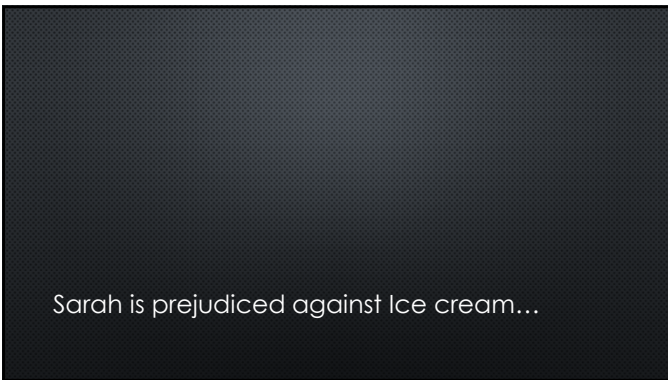
IMPLICIT BIAS

- Pervasive
- Large in magnitude
- Dissociated from explicit biases
- Predicts certain kinds of real-world behavior

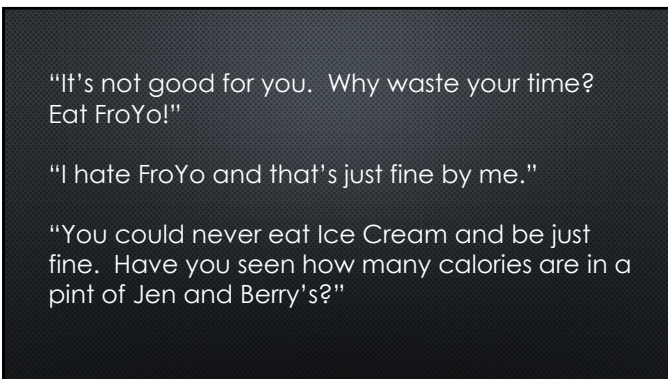
STRUCTURAL BIAS

- INSTITUTIONAL OR SOCIAL
- LOCKED IN PAST INEQUALITIES
- REPRODUCE THEM
- "INSTITUTIONAL UNFAIRNESS"





Sarah is prejudiced against Ice cream...



"It's not good for you. Why waste your time?
Eat FroYo!"

"I hate FroYo and that's just fine by me."

"You could never eat Ice Cream and be just
fine. Have you seen how many calories are in a
pint of Jen and Berry's?"

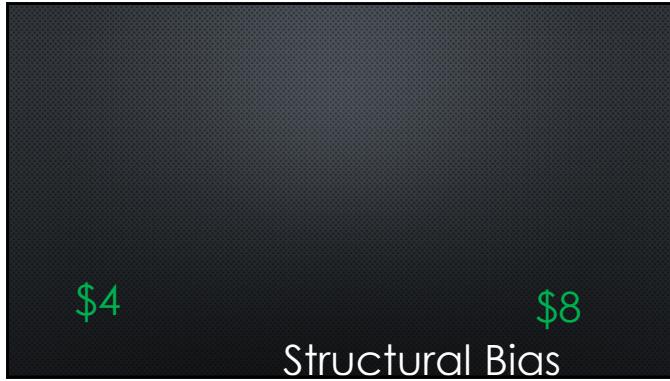


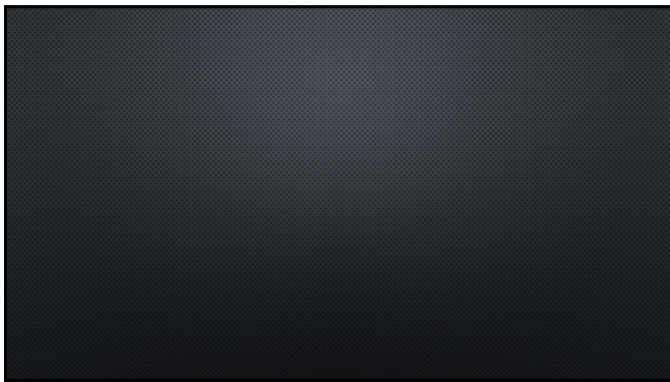
I love this! (Vote for me)

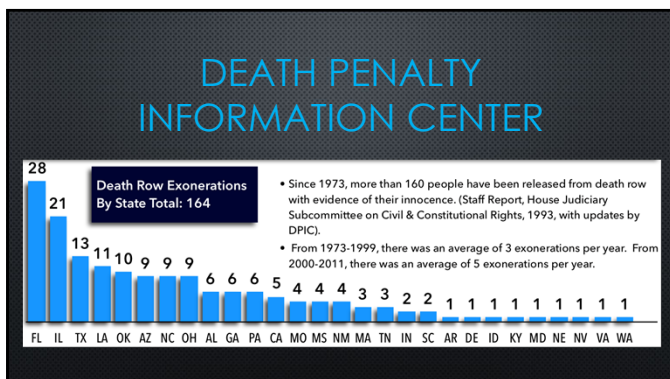
Concealed bias...

Implicit bias (positive)

- Tim hates ice cream too...
- Lactose intolerant
- Best selling author and lecturer "Ice Scream! The Scourge of Ice Cream"
- But, fondly remembers family picnics sharing ice cream with his family







We potentially "are at the beginning of an exciting new period of American criminal justice, one directly related to the acknowledgement that we convict innocent people."

Richard Rosen *Reflections on Innocence*, 2006

FAULT-BASED BLAMING

- INTENTIONAL WRONGDOING
- OVERZEALOUS
- FLAWED CULTURAL VALUES
- FLAWED INDIVIDUAL VALUES
- "LACK OF MORAL COURAGE"

"In the criminal justice system, neither side wins when an innocent person is convicted."

Richard Rosen *Reflections on Innocence*, 2006

PROSECUTORIAL BIAS

CONFIRMATION BIAS

- SEEK OUT AND PREFER INFORMATION THAT CONFIRMS AN IDEA
- "THIS PERSON IS GUILTY!"
- FOCUS ON EVIDENCE THAT PROVES THIS...
 - CONFESSION = GOOD EVIDENCE
 - EYEWITNESS WITH ANOTHER DESCRIPTION = BAD EVIDENCE

TUNNEL VISION

- HONE IN ON ONE SUSPECT
- SEARCH FOR EVIDENCE THAT INDICATES POSSIBLE GUILT
 - LESS SCRUTINY
- DEVALUE EVIDENCE THAT INDICATES INNOCENCE
 - MORE SCRUTINY

BELIEF PERSEVERANCE

- ADHERENCE TO BELIEF EVEN...
- WHEN EVIDENCE THAT LED TO THAT BELIEF IS PROVEN INCORRECT.

"STICKY BELIEF"

"STICKY BELIEF"

- CULTURE THAT MAY REINFORCE THAT DEFENDANTS ARE ALL GUILTY
- CRIME VICTIMS, POLICE OFFICERS AND OTHER PROSECUTORS
- PRESUMPTION OF GUILT

"STICKY BELIEF"

- MOST CASES END IN SOME KIND OF CONVICTION (TRIAL OR PLEA)
- GUILT VALIDATES INITIAL GUILT THEORY
- MANY TIMES LITTLE EVIDENCE TO CONTRARY MAY BE PRESENTED

BURDEN OF INNOCENCE

- ESPECIALLY POST-CONVICTION
- FEELINGS OF GUILT/ COGNITIVE DISSONANCE
- POWERFUL MOTIVATION TO CONTINUE TO BELIEVE SOMEONE IS GUILTY
- CANNOT DWELL ON THOUGHTS THAT AN INNOCENT PERSON WAS CHARGED AND CONVICTED

POLICE BIAS

POLICE BIAS

- SOCIETY (WHICH INCLUDE POLICE) MAY IMPLICITLY ASSOCIATE CERTAIN GROUPS WITH CERTAIN ATTRIBUTES INCLUDING CRIMINALITY

POLICE BIAS

- MORE LIKELY TO STOP AN INDIVIDUAL FOR QUESTIONING?
- LENGTH OF INTERROGATION?
- FRISK THE INDIVIDUAL?
- ARREST VS WARNING?

JUROR BIAS

JUROR BIAS

- **EXPLICIT**
 - "I DON'T TRUST PEOPLE OF COLOR."
- **IMPLICIT**
 - "I DON'T SEE COLOR."
 - (UNCONSCIOUSLY DOESN'T TRUST PEOPLE OF COLOR)

JUROR BIAS

- JURORS OF ONE RACE TEND TO SHOW BIAS AGAINST DEFENDANTS OF ANOTHER RACE
- MAY INFLUENCE VERDICTS AND SENTENCING

JUROR BIAS

- WHAT ABOUT IN RACIALLY-CHARGED CRIMES?
- RESEARCH DEMONSTRATES LESS BIAS
- JURORS, WANTING TO BE FAIR, RESPOND BY BEING MORE CAREFUL AND THOUGHTFUL ABOUT THEIR ASSUMPTIONS
- NOT RACIALLY-CHARGED? MIGHT NOT BE AS THOUGHTFUL.

BIAS OF JUDGES

BIAS OF JUDGES

- SETTING BAIL
- DECIDING MOTIONS
- CONDUCTING/ DECIDING WHAT CAN BE ASKED IN JURY SELECTION
- RULING ON ADMISSIBILITY OF EVIDENCE
- PRESIDING OVER THE TRIAL AND RENDERING VERDICTS

BIAS OF JUDGES

- 97% OF JUDGES BELIEVED THEY WERE IN THE TOP QUARTILE (25%) IN AVOIDING RACIAL PREJUDICE IN DECISION-MAKING (RACHLINKSI)
- 97.2% ADMINISTRATIVE AGENCY JUDGES PUT THEMSELVES IN THE TOP HALF OF ALL JUDGES IN AVOIDING BIAS (GUTHRIE)

DOUBT YOUR OBJECTIVITY

- WHEN SOMEONE BELIEVES THEY ARE OBJECTIVE
- THEY MAY ACT ON IMPLICIT BIAS
- "BIAS BLINDSPOT"
 - OTHERS ARE BIASED BUT WE ARE NOT

APPROACHES TO EDUCATION

- THIS IS NOT AN ATTACK!
- MANDATORY TRAINING MAY HAVE A BACKLASH
- EARLY CAREER MAY RESULT IN INDIVIDUALS BEING MORE RECEPTIVE

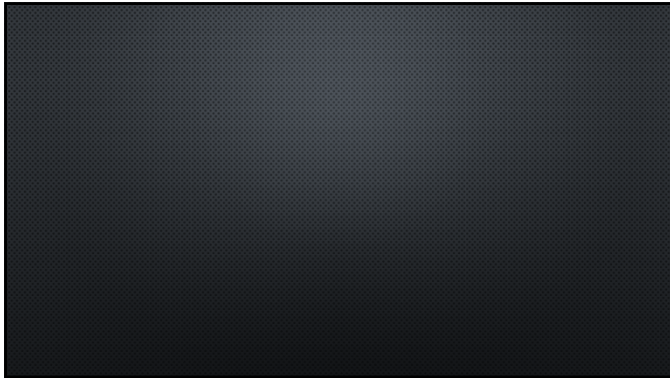
APPROACHES TO EDUCATION

- COGNITIVE BIAS IS STUBBORN AND ENTRENCHED
- EDUCATION IS ONLY ONE APPROACH... AND MAY NOT WORK.

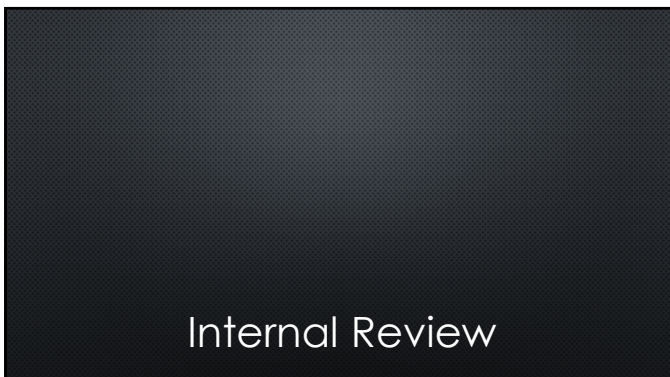
"Cavernous Thinking"

"CAVERNOUS THINKING"

- **INDIVIDUAL** — SELF-CHECKING DEVIL'S ADVOCATE
- **COLLECTIVELY** — USE OF INTERNAL REVIEW PROCESS
- **INSTITUTIONALLY** — SUBMITTING TO EXTERNAL REVIEW



- ARTICULATE ARGUMENTS THAT CONTRADICT THEIR EXISTING BELIEF
- “SWITCH SIDES” ON THEIR FILE REVIEW (BE THE DEFENSE!)
- ARTICULATE SKEPTICISM
- DO NOT ASSUME THAT EXCULPATORY EVIDENCE IS FABRICATED/ UNRELIABLE
- FORCE YOURSELF TO ANTICIPATE ITS VALUE TO THE DEFENSE



- "FRESH LOOK" BY ATTORNEYS UNASSOCIATED WITH CHARGING DECISIONS
- CASES WHERE ORIGINAL EVIDENCE EXCLUDED, NEW EYES LOOKING AT ONLY AVAILABLE EVIDENCE (CONFESSION OR AN EYEWITNESS EXCLUDED)
- MAY NOT HAVE AS MUCH OF AN "INNOCENCE BURDEN"
- FORMAL/ INFORMAL
- INFORMAL DEBATE/ MOCK ADVERSARIES



EXTERNAL REVIEW

- PRESSURE TO CONFORM OPINIONS TO COLLOQUES MAY EXIST
- "FRESH LOOK" COMMITTEES
- CIVILIAN REVIEW BOARDS, JUDGES, CIVIL PRACTITIONERS, DEFENSE ATTORNEYS (YIKES!)

While some of the prosecutorial behavior leading to wrongful convictions "involves lying, deliberately withholding evidence, and other bad faith behavior . . . [m]uch of it ... involves prosecutors simply trying to do their job as they see it."

-Susan Bandes

EDUCATION OF OTHERS

- U.S. DISTRICT COURT JUDGE
IN SIOUX CITY
- 40 YEAR CAREER IN LAW
- RETIRED AND NOW FULL-TIME
FACULTY AT DRAKE
UNIVERSITY LAW SCHOOL

Do not decide the case based on "implicit biases." As we discussed in jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is, "implicit biases," that we may not be aware of.

These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases.

The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.

Judge Mark Bennett



