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Fri, 6/18 9:47AM 1:06:20

SUMMARY KEYWORDS

people, bias, impacts, judges, stereotyping, study, decisions, person, asked, white, tend, shown, confirmation bias, images, hiring, black, case, anchoring, investigator, iits

Afternoon, folks out there. I am Amy Oppenheimer, and we are going to spend the next hour or a little bit more talking about unconscious biases. I am an attorney who specializes in doing workplace investigations, mediation, and expert witness work mainly about employment discrimination and harassment cases. And as an investigator and make a lot of decisions, I'm a retired administrative law judge. So I was always making decisions. And what I became really interested in is how bias impacts us in ways that we don't realize, you may have seen programs about diversity or harassment or discrimination, talking about the ways that people make discriminatory decisions. But what I'm going to be talking about is a little bit different than the unconscious end of what we do. So I'm going to have lots of slides to augment our discussion that you'll see next to me. And what we're going to go over are, what unconscious biases are implicit biases, stereotyping, and then other forms of cognitive biases that you may not have heard of how they impact our decisions in the legal profession, and then what we can do to eliminate them. Now I start with the premise that we didn't go into law to treat people poorly or to be unfair, if I asked all of you out there watching how many of you became lawyers, so that you could be unfair, I think probably none of you would say, Yep, that was my motivation. So if you start from the premise that most people approach things, with wanting to be fair to other people, then we have to look at what might get in the way of that, without are realizing it every day, just to get through our day, we are making hundreds if not 1000s, of decisions. And we do them very quickly without realizing it. And our decisions without our realizing it are being impacted by our level of attention, by our background, by our assumptions. And by these biases that we don't even realize are working. What I want to do is bring help you bring to consciousness, some of those unconscious decisions so that you can consciously be fair about the decisions that you're making. When you look at what a bias is a bias could just be a preference for something. Maybe it's based on a stereotype. Maybe it's based on your own history and experience, or just you like Chinese food better than Japanese food. That's a preference or bias. One of the ones that I'd like to talk about is wine, because I come from a family of opinionated people when it comes to wines and

happens to be something I know very little about. So I really don't have an opinion. But in my family, maybe there's going to be a debate, this wine is better than that. Some people like French, some people like California, maybe in a blind test, they couldn't tell the difference. But they have strongly held beliefs and biases about something like wine, or colors. My favorite color is blue. Maybe I'm therefore more drawn to somebody who's wearing blue. Most people I think have a favorite color. And you could call that a bias or a preference. But it's not based on stereotyping. It's not based on anything that we think of as being harmful to people. So what's the difference between a bias and a preference and a stereotype? And how do they come about? our biases, some of them? I don't know why I like blue, better than red? I don't know that I'll ever know the answer to that question. Other things like stereotyping may come from the media, our own experiences, which may change over time. But we may have a hard time adjusting the biases to those changes the experiences of people around us, our friends and our families, the things we've observed observed and the assumptions that we make. What I'd like you to do, as you get exposed to these materials, which hopefully which will be new to many of you, or at least some of them is avoid the

what I call not me effect, like Gee, this is interesting, what other people do. And the reality is that we all do this. And I encourage people not to be judgmental of ourselves or each other. Because this is human nature and having a bias Doesn't mean that you're acting from a bias. And the more that we know about our biases, the more we can do to change the ones that are wrongheaded. I like to start with a story from when my son was in preschool. And my son when he was two years old, started preschool in a school that had three two mom families. Each of those families had a minivan. And one day, the parents of Sarah mentioned that Sarah had come home and said, I wish I had two moms. And Sarah's parents who are good Berkeley liberals didn't get upset and said, How come Sarah, and Sarah said, well, then we could have a minivan. Now, Sarah's connection between being a two mom family and having a minivan was a very intelligent connection for two year old. She knew a universe of three two mom families, and all of those two mom families had minivans and so wanting a minivan, and being a two mom, family, intelligence, Sara said, Ah, here's what we can do. Sarah is now probably about 15 years old, and I'm quite sure she knows there's no connection between being a two mom family and having a minivan that if she didn't unlearn that could turn into a stereotype. And a stereotype that has little basis in reality, although it had a very good basis in her reality. But it would be unfair to say, gee, Sarah, two years old is stereotyping. She's organizing her world and understanding what's around her. And this is a human component that all of us do in order to understand and manage our worlds. The other thing that's really important to keep emphasizing is there's a difference between holding a bias and acting on that bias. I like to talk about the fact that even having heard the riddle of the Father and the Son who are in the automobile accident, more than once, I still without prompting, couldn't get the right answer. And probably many of you know that riddle the father and the son are in a serious automobile accident, the father dies instantly, they rushed the

son to the hospital call upon the senior surgeon, the senior surgeon says, I can't operate. This is my son. And the question is, who is the senior surgeon? What when you say senior surgeon, I do not see a woman. Many people can answer that real very easily. The senior surgeon is the mother, of course, the other parent, the one who didn't die in the automobile accident. And of course, nowadays, people say, Well, maybe the senior surgeon is the other same sex parent, because things have changed in that area as well. But the point is that, for me growing up in the 50s, and 60s, the only images I ever saw of doctors were men. And they were white men, and they had gray hair, and they had a little black satchel. And that's the image that I see when you say, doctor. But that doesn't mean that I go to men, male doctors, that doesn't mean that I think male doctors are better than are more qualified than female doctors. And it doesn't mean that if I am hiring, that I would only hire male doctors. And so again, the images and the stereotypes and biases that are part of who we are, don't have to rule what we do. And that's especially important when we think about the hiring decisions that we make in our firms.

Another concept I want to talk to you about is the fact that our brains fill in information. And the information that our brains fill in are also based on our own experiences. And what we learned is as children or culture, our values, we can't process every piece of information. And my guess is right now some of you are checking your emails while I'm talking to you. And so you're only processing a small part of each of those pieces of information as we move through our busy days. Well, that's true in terms of how we relate to people, how we process information. We have a selective lens that is somewhat unique to each of us, that we process the world with. So a little visual example of that that actually impacts everybody because of the perspective that it's drawn in. Are these two tables. When you look at these two tables, I think that everybody will agree that one table is longer, and one table is wider. But, in fact, if you take these two images and you put them together, it turns out that they're exactly the same. But you're I can't see that because of the perspective that this is drawn. Here's another little example. If I say to you, how many of each animal did Moses put on the ark, most of you are going to say to you hear Ark, you hear Bible story. And you have an association, probably a very early association with songs and images. But some of you were listening a little more carefully. And some of you heard that what I said is, how many of each animal did Moses put on the Ark? And good old Moses, he didn't put any animals on the ark. So really, the answer is zero. But the point is, you can't listen to every word. And how you approach what people say what their meaning is, comes from your own unique history, or maybe not so unique, maybe very similar to most people within a certain group or within a certain culture. But what that means is that those people who don't fit into that group or culture, we may be hearing something if we're from a different culture, that is a misunderstanding and misinterpretation, we may not be hearing the whole story or understanding the whole story.

I want to

talk to you about the IITs. I T stands for an implicit Association test. These tests were developed 20 or 30 years ago, they began by researchers at Harvard, marzin banaji, and Anthony Greenwald. And they have a recent book about the test that I can recommend you called hidden biases of good people. And what the IITs show us is how we all have biases that we don't recognize. Just sort of starting with a little bit about the research and the researchers. One of the things that these researchers found is that people fill in information about other people based on images alone. So for example, when the researchers showed people a picture of somebody and said, this is Helen, do you think Helen would rather go skiing or read a book? Nobody said, I don't know, Helen. I can't tell from a picture who Helen is. Rather people develop stories about people just based on very quick look at who they are and how they appear. These happened in milliseconds without any awareness. One of the first people who researched and wrote about bias was Gordon alport. And quote from him here, the human mind must think with the aid of categories. Once formed categories are the basis for normal prejudgment. We cannot possibly avoid this process. orderly living depends on it. And so when you think back to Sarah, and the two moms in the minivan, she is categorizing so that she can understand her world. The problem is that out of this categorization, comes stereotyping. It's what Gordon Alpert called, The unfortunate byproduct of what is otherwise an immensely useful human ability. Stare. stereotyping allows us to come to some very quick perceptions about strangers. But it's not distributed equally, we tend to stereotype groups, who we have less contact with less exposure to and usually people who are not in the group that will remember. Now I know that you're sitting there in your office, and like I said, probably multitasking because that's also human nature. But I want you to look for a moment at the screen that has some words and colors on it. And what I want you to do, sitting there alone in your office, or maybe with some colleagues, is to name the color that you see. Not the word but the color and say it out loud. So just go through it. Lu green, red, yellow, blue, green, red,

like that.

Now having done that, and I'm sure you all did an excellent job, I want you to do that again, on the next screen, and again, just name the color. Now, hopefully you have accomplished that task. And you've also experienced the fact that the second time you tried that, it was harder than the first, you made some mistakes, it took longer you hesitate. Why? Because different parts of your brain are in conflict with each other. When the color and the word matches, it's seamless. When the color and the word don't match, your mind is going in two directions, and you make mistakes. Now, there is a reason that I asked you to do this. And the reason is, that is how the IIT works, the Implicit Association test and those of you who have never taken an IIT, I invite you to go online and do so there's information in your materials, you go to implicit.harvard.edu. And you can take many of these tests. What the AI t does is it shows you different images and words. And it asks

you to key in with one hand, one type of image and word and with the other hand, another type of image and word and then it mixes it up. So for example, something that we can all probably relate to is if you see pictures of flowers, and you have words like beautiful, lovely, and you have pictures of insects, and you have words like yucky disgusting. And you're asked with your left hand every time you see a picture of a flower kit with your left finger. And every time you see a word like beautiful, lovely cute with your left finger. And every time you see an insect key it with your right finger and every time you see yucky horrible key with your right finger. And then the test has you say well, every time you see a flower kit with your left, and every time you see yucky horrible words, key it with your left. And every time you see an insect, key it with your right finger and every time you see lovely, beautiful cute with your right finger. Well, when you do it the first way, when flowers go with lovely and beautiful and sing and insects go with yucky horrible, it's really easy. Just like when the words and the colors matched. People don't make mistakes, people go through it with no problem. But when they have to key in with the same hand, flowers with words like yucky and horrible. And insects with words like beautiful, lovely, they make mistakes. They take longer, because that doesn't go together in our mind. Now we take it to the next step. And you show people images of people who look different, older people versus younger people, black people versus white people, different religious symbols, that people versus then people. And it shows that even though we start out thinking we don't have biases, we're making more mistakes, we're hesitating more in making connections, positive connections with certain types of people versus negative connections with certain types of people. Let's talk about age. If I asked a group of people, how much bias Do you think you have for young people over old? for old people over young? Do you have a strong preference young over old or moderate or slide no preference at all, or maybe a preference for old over young? Now I did a live webinar where there were hundreds of people present and ask them what they thought their biases were in this area? And the answer is on this screen. It was interesting because most people thought they had either no preference between young and old, or they had a preference for old people over young people. Only 5% said that maybe they had a slight preference for young over old but in the IoT that shows young faces versus old faces and has positive words versus negative

words. The finding is that most people, the huge percentage of people have a preference for young or old. And that, that only 14% of people have really no preference. And 6.4 a preference for old over young. And so here's an example where we may think, of course, I love old people, I have my grandmother, I have my, I know our I hope that I'll become old someday myself, I don't feel threatened by old people, what a nice, lovely image. And yet,

we don't realize that as a result of, of the media about the vigor that we associate with youth, that it's harder for us to make positive associations with old images than it is with younger images. The Implicit Association test, some of the positive types of words are joy, love, peace,

wonderful negative words, or agony, terrible, horrible, nasty, and also test things like bias based on women and the humanities and males in science. I gave a talk to senior women scientists at a large corporation that does scientific research. And even with these female leaders, taking the IoT, they had a bias towards women with humanities and men towards science. So even being a member of a group doesn't mean that we don't have an implicit bias. The Implicit Association test has been taken by millions of people. First, the subjects rate themselves as to how biased they think they are, and then they take the IIT, and it shows a significant difference between those. And the takeaway is that we all have more bias than we realize. It's normal. It's often hidden from our own consciousness. And it's often against members of traditionally disadvantaged groups. So what does this mean in the real world? I want to talk about some studies that help answer that question. There have been a number of studies about hiring. Almost 10 years ago, now 2004 identical resumes were sent in Chicago for Help Wanted ads, and the only difference in the resumes were the names. Some of the names were traditionally African American, like Tamika, Jones, and others were traditionally Anglo names, like Emily Ryan. And what it found is that the white names received 50% more response across the board. No one asked people what they think is operating here, of course, you know, somebody says racism? Well, sure. But if we go back to the fact that most people don't intend to discriminate, and Sure, there are people out there who may intentionally discriminate, but if the wide majority of people aren't intending it, how subconsciously does the discrimination work? In fact, in one of these studies, they were scripts by playwrights, and they were sent with female names and male names. And they found that the female reviewers were harder on the female writers than the male reviewers. So it's not simply people who are different, who are impacted by the bias. In the case of the resumes in Chicago, if there's a weakness in that resume, does the reviewer tend to assume that if it's white name, that that that weakness won't be a problem, whereas if they see a name that's associated with an African American person, they're more concerned about that weakness again, all of this happening on an unconscious level? A new study does help shed some light on that. Recently, there was a study of resumes of recent PhD graduates for positions for an associate professor, and they the same resume was presented to Raiders part half of them with female names and half of them with male names. Almost 80% of the male names, the Raider said yes. This person should be considered should go to the next step should be hired. Whereas only about 50% of the female name, so a very significant difference. The thing that really helps shed more light on this is that, in addition to that, the Raiders were asked to provide some feedback, what, what they thought what their concerns were. And there were four times as many what they called doubt rating comments about the female applicants than the male,

like,

I would need to see proof of this scholarship before I would want to hire this person. And the bias

there that the female doesn't really have these credentials, whereas the male does, again, happening on an unconscious level. Now, in our law offices, when we're doing hiring, are we doing it blind? Or are we looking at names and how does looking at names or the law school that somebody went to impact us and I'll talk about that a little bit later. The, I don't know how many of you know that now in major orchestras. The auditions are done blind, meaning that the musician comes in walks behind a screen so that they are not seen at all has taken off their shoes so that you don't hear the clickety clack of high heels versus a and the thought of an Oxford and plays their music. This actually was developed not because of a concern for gender bias, but rather because more people were advancing who had studied with some very renowned teachers. But the result, the unintended result is that women are now advancing from preliminary preliminary rounds by 50% more than they did before the blind auditions. So the likelihood now of women being brought in for major orchestras has increased significantly. Other studies say something about how we value people about compensation equal pay and worth. For example, there have been a number a number of tipping studies one using in Boston using cab drivers showing the passengers were tipping white drivers 60% more than drivers of other races. Black and White passengers are both tipping white drivers, 48% more and Hispanics giving white dry drivers 146% more. Black drivers are 80% more likely to be stiffed and all passengers were tending to round up for white drivers and round down for black drivers. This is consistent with studies on tipping in restaurants as well. And again, speaks to our unconscious belief

about

what people are worth and what they shouldn't be paid. Very interesting study was done a number of years ago that impacts directly our hiring, and our relationships with the people around us. And therefore how we do mentoring and how people move ahead in organizations. What this study did was videotape people doing interviews so they had interviews with both white and black job applicants that were done by white interviewers. And what the videotape showed was that when the white interviewers were interviewing the white interviewees, they spent more time they made more eye contact, they they were more comfortable in their gestures in their speech, they built rapport. They had a comfort level that allowed them to develop a relationship with this person. Whereas when they were interviewing the black applicant, they were making more speech errors. They were sitting back, they weren't weren't making as much eye contact. They were giving shorter interviews. Now one thing that happens when somebody wants to develop rapport, is they unconsciously mirror so you may find yourself talking with a friend and you see that you're gesturing like them without even realizing it or intending to. During the interviews between the white interviewers and the black interviewees, the white interviewers who are not so comfortable, began to make speech errors which is something that you do when you're not as comfortable giving a speech I probably made some here myself. The Black interviewees

unconsciously started to mirror that. At the end of the interview, one of the things the white interviewer said was, well, that applicant was making speech errors, not realizing that they themselves had initiated that process. So in this study, they went back, and they trained the white interviewers to act towards the white interviewees the same way they had towards the black months, that is, lean back more don't make so much eye contact. Don't do all of those little things that you've done to establish rapport. And indeed, those interviews were shorter, the white applicants didn't perform as well. And they felt that they, the white interviewer was less friendly and that they hadn't done well. So the takeaway from this is how important it is to be able to establish rapport with people who are seemingly different from us. And that difference could be age or race, it could be how the five foot tall interviewer feels with the six foot four interviewee it could be the person who has tattoos all over them. And maybe this was in the the book that I mentioned about hidden biases or, but I read a story in a book recently about the author seeing somebody getting on a flight, covered in tattoos, and how hard that was for them how much they assumed that that person was a skinhead or, or an angry person, the kinds of associations that that individual made with these tattoos, and waiting in line to get on the flight. A child who was traveling alone started to cry. And there was no person from the flight to help them. And everybody was standing there seeing the child cry, wondering what to do. And it was the person who was full of tattoos, who squatted down and got on the child's level, and talk to them and calm them down. And how much that impacted the bias that they had about this person suddenly being blown apart by the actions. And so, as we approach people, and when we do hiring, when we do promotions, and we're evaluating our staff, it becomes crucial that we can see the real person not the stereotype, the term for stranger and enemy are the same in many societies.

And there was a time many, many hundreds of years ago, when being a member of a tribe, you needed to know who was who was the enemy, and who wasn't based on these quick appearances. That was survival. But we don't live in that society anymore. We have a global society where we work with lots of different kinds of people. And so some of the historical ways that we are hardwired to see difference, we have to re learn so that we can see the person, not a stranger or enemy, but as colleague. So I've just spent some time talking about what we call implicit biases, based on stereotyping or being a member of a group. But there's other ways that bias impacts us on an unconscious level that I also want to discuss. A lot of the work that I do is being brought in as an impartial investigator of an employee complaint. And so I want to be particularly aware of how external forces may work to bias me, and then counteract those so that I can make a decision that is free from bias. And I spent many years as an administrative law judge. So obviously, judges have to be very concerned about that. And as an attorney, you're an advocate. You don't necessarily have to be so concerned about those biases. And yet, you have to understand how they work so that you can really make a decision

without the bias impacting you. So some of the biases I'm going to talk about

are confirmation bias, observer effects, priming, the halo effect, anchoring effects, and how we make decisions. And it's amazing to me that so many interesting studies have been done in this area, how something seemingly so innocuous, can impact how we see something recent study where the suppose that assistant who is meeting the person who's participating in the study by the elevator, gets in the elevator with them, and asked if they would mind holding their coffee. So the assistant can go through some papers and of course, the participants takes the coffee, half of the people are given hot coffee and half of the people are given iced

coffee,

then at the end of the study, and the people are, of course, not realizing that really what's being studied is their reaction to the assistant. they're asked to rate the assistant and discuss the assistance personality. The people who are given the hot coffee rated the assistant as being more generous, social, happier and better natured than the participants given the cold coffee. Now, these are things that we wouldn't even think about the influence, or be aware of for a moment how we're influenced. And yet, little things like this do have an impact on how we view people. The symbol that you see now in front of you, is become the universal symbol for confirmation bias. Confirmation bias is the tendency to bolster hypothesis by seeking consistent evidence, while minimizing inconsistent evidence. It's done unconsciously, and it impacts how we interpret information. So in the symbol that you see in front of you, the middle symbol is ambiguous. And if you're looking horizontally, then that middle symbol, you're going to fill in as a, b. And if you're looking vertically, you're going to fill in that middle symbol as a 13. Because you're looking to confirm either numbers or letters based on that context, and of course, you're usually going to be correct. And yet, you're not always going to be correct, because, of course, sometimes things are anomalous. And it could be even looking horizontally, that what's being communicated is a 13 safe. Your ability to see that things may not be what you first assume that your confirmation bias may not be correct, is going to allow you to make better decisions. Another thing that our mind does is justify once you make a decision, you want to justify it. And justification and confirmation bias work together. Because if you have made the immediate decision that that middle symbol is a B, when in fact it's a 13. You're not just working with that confirmation bias, you want to justify being correct. And so if you are a prosecutor looking for evidence to convict somebody, or the defense attorney looking for the evidence of innocence, the way that you interpret data is going to be based on what you want to confirm. Now that may lead to you having many blind spots about that information that you're taking in. One of the things that has really shed light about how bias works is the fact that we can now do MRI studies. I shouldn't say Wait, because I sure

can't do. But there are scientists out there doing some really interesting work with MRI studies of the brain. One study shows that somebody's watching a debate on an issue they feel strongly about. When the person is given the arguments, they agree with one part of their brain lights up. And when they are hearing the arguments that they disagree with that part of the brain is not lit up. Another part of the brain is impacted. They're not listening. They're not taking it in, we can't take in so easily information that contradicts what we believe. Studies also show that a person hearing a debate when the debate ends remembers the strong points in favor of what they believe in and the weak points in favor of the opposing view. Conference confirmation bias impacts things that we think of is pure science or I used to think of as pure science fingerprint experts. If If the police investigator says To the fingerprint expert. You know, I really think we got them this time, then that person is more likely to find a match than if the investigator says I'm not so sure. There's a really interesting study about confirmation bias that that has a direct impact on my work as an investigator. And I think generally on the work that we do as attorneys, participants here, we're asked

to form a hypothesis of guilt, before they heard all the evidence in a case. And the information they were given, tended to show that one individual was, was probably guilty of this particular crime, then they were given more information that would tend to exonerate that person. However, by having been asked to come to a conclusion before they heard that other information, they they would ignore it because of that confirmation bias. Participants were then asked why they might be wrong. other participants were asked to develop additional suspects. The participants who were asked why they might be wrong about their initial conclusion, reduced their confirmation bias, that is, they could then see that perhaps there was another suspect, and they were incorrect. Whereas the ones who were simply asked to produce additional suspects did not reduce their confirmation bias. They went with that first belief about guilt. Now, as an investigator, when I'm coming to a determination, or as an administrative judge and making a decision, what I would want to do then is look at it both ways. What would tend to show that this theory is correct? And what would tend to show that this other theory was correct, in terms of credibility and truth telling, sometimes even writing a decision to different ways? And seeing which way really seems to make more sense? Because of course, even if we're asked, don't come to a conclusion before you hear all the evidence that counteracts human nature, we're constantly thinking and coming to some determinations. The point is, can we wait until we've heard everything to come to our final decision, rather than simply going with the initial response, and then trying to confirm it with facts that don't necessarily fit the initial response? observer effects and priming operate in some similar ways. I know that when I get a case in and I'm supposed to be impartial, my client has an opinion. And often I can tell what my client's opinion is. It's hard, your biases and your beliefs leak out even when you don't want them to. And so really, what my client unconsciously might like to do, is to prime me, for certain result, we'd like you to do this investigation, because we've dealt with this complaint before. And we think it's time to get an

outsider's viewpoint, because we already know what we think let's see what you think. I can have an idea, a pretty good idea often have what they think, just turn that amount of information. And so our jobs if we're acting as a neutral, or even acting as an advocate is to try to look at all of the facts without being impacted by those effects. It impacts office politics, it impacts how we think about colleagues, there was a study done, again, where the assistant is really the point of the study. In this study, which was supposed to be about creativity. At the end of the study, people are asked how nice the assistant was. Now, a third of the group had not been told anything about the assistant. But another group of people had been told that assistant is not very nice. And yet another group of people had been told that assistant is not very nice. Oh, I'm sorry. I'm thinking somebody else. ignore what I said. And at the end, when they had to evaluate how nice this assistant was, the group that wasn't told anything negative, thought she was pretty perfect. She almost got a 10 a 9.3. Yet those who were told the negative information who themselves had had no experience with her differed from the group that was told that that evaluated her as a 9.3 gave her a 6.5. And even the group that was told, oh no, I'm thinking about somebody else, evaluated her as not being as nice as the group that was not told anything at all. It's very hard to unring the bell. Another study on observer effects has to do with the study of worms. One group who's studying the worms, and they are supposed to record every time the worm contracts are turns its body, or head. And one group is told, these worms do not do much. Don't expect to see a whole lot. And another group is told Oh, these are very busy worms, they do a lot of head contractions and or body contractions and head moves.

The group that is told to expect a lot of movement records five times the head turns and 20 times the number of body contractions as the group that's told, the worms don't do that much, which, of course, brings into question all scientific research. And makes you question, how much are you being impacted by information that has nothing to do with the objective data? anchoring effects. anchoring effects are about how we look to somebody else's opinion to give us some idea of where we're going. I don't know how many of you fill out those how many jellybeans in a jar kind of survey, but I know that I am somebody who has absolutely no concept of how many jelly beans might be in a jar. And if somebody asked me, I wouldn't look at what someone else said, to anchor me. So I didn't look quite so foolish. And I didn't say 2000, when really it would be closer to 100. And so that's how people use anchoring effects. But of course, what's interesting is that even professionals in our own work in our own line of work are impacted by these anchoring effects. There was a study of judges, where the judges were told that liability has been decided, in this case, serious automobile accident with very severe damages. as judges, you're to determine the amount of damages only. Now one group of judges is told, the plaintiff is looking for $10 million for this very serious injury. And another group is told the plaintiff is looking for a very significant amount for this very serious injury. The judges who were given a high anchor of $10 million, awarded three times as much as those who were just told the plaintiff is looking for a significant amount. And so, these effects are impacting our work, not just as laypeople. The halo effect this is

the tendency to assume that people who look sharp or good looking or tall or attractive, are also smart and capable. Whereas people who are, are short, who were to have physically what we consider unattractive traits are more likely to be mean or dumb or incapable. Most CEOs are tall, and yet there is no correlation between height and IQ. And why is it that certain people tend to get hired for jobs based on appearance, rather than simply their abilities, conformity effects perceptions of people are influenced by other people around us. Usually people with higher rankings are assumed to be more intelligent, more knowledgeable, and therefore, they're given more credibility even in areas where there is no reason to believe they would be more credible as a witness for an accident, and ability to recall information which really isn't linked to high performing individual.

And

lastly, how do we make decisions? If we're in the legal field, we tend to think that we deliberate certainly we hope that our judges are deliberating and not just making decisions by intuition. And yet most of us decide things intuitively and often then simply Look for the data to support that, rather than deliberating first. There's something called the cognitive reflection test. And it has one correct answer that would take more time to work through. But an easy answer that we tend to go to through intuition. There are three math questions. And I, I hesitate to ask anybody in the legal field to do math, I think if we were good in math, we'd be in another field. But I'm going to subject you to one of the questions. The question is a bat and a ball cost $1.10. In total, the bat costs $1 more than the ball, how much does the ball cost? Now, many of you are probably going to say 10 cents. And that, in fact, is the intuitive answer that most people come up with and it is incorrect. The answer is a nickel, five cents. And if you look at the math again, $1.05 and five cents is $1.10, which is $1. More, if the ball was 10 cents, it would be 90 cents more. And so if you take the time to deliberate and you do the math that many of us do not want to do you come up with the right answer. Now that gave this test the three questions to a lot of judges that they've given this test to many people. And the judges average response was 1.23, correct out of the possible three questions, which was a little bit better than the average student at the University of Michigan and a little bit less than the average student at Harvard. So these results suggest that judges along with lay people tend to favor intuition, over deliberation, and in fact, there have been a lot of bias studies involving judges showing that decision making can often be biased. A study involving violent felons in Detroit found that both black and white judges were imposing harsher sentences on the black defendants. Other studies have shown that judges are setting bail 25% higher for black defendants and similarly situated white defendants and giving sentences that are 12% longer for blacks versus whites. killers of white victims are more likely to be to death than killers of black victims. The Myth of a colorblind judge is exploded by the studies that show that in racial harassment cases plaintiffs are more successful. If there is an African American judging judge who

is presiding, versus no African American judge, the difference between republican appointments and democratic appointments actually is relatively small as compared to the difference in decisions of African American versus white judges. And Other studies have shown the impact of gender of judges in title seven sex discrimination and harassment cases, female judges were significantly more likely than males to find for plaintiffs. And a panel that included a female judge was significantly more likely to find for the plaintiff than panels with no female judges. In voting rights cases, African American judges were more than twice as likely than non African American judges to vote for liability. And again, the presence of an African American judge on a panel affected the votes of his or her colleagues voting in favor of liability. The concept is that a lot of the ways that we're biased isn't being biased against so much as being biased for meaning that people tend to be more willing to help someone who seems like them than someone who seems different than them. So for example, in a study

involving Hispanic judges versus Anglo judges, in sentencing, it found that the Hispanic judges and the white judges were imposing similar sentences on Hispanics. But the white judges were imposing a lesser sins on whites. So the Hispanic judges were being consistent. And what the white judges were doing was essentially helping someone who looked like that And it's important concept for people to understand because again, in our practice and in our work, we may think, mentoring the person who reminds us of ourselves, that's a good thing to do. And it is a good thing to do. But it may lead to unequal assistance of people who seem different from who we are. And so being aware of that, and the impacts of it can have a real impact on the kind of work that we do. And another bias study I want to talk about because it impacts litigators, and how people think about who is a good advocate and a strong advocate is a study that was done recently, by some attorneys in Southern California, comparing what's considered a quote unquote, model minority and Asian litigator with a white litigator, they developed a study asking people who they'd want to represent them based on images, and then also had them evaluate a clip from a deposition done one by the white litigator and one by the Asian, where, despite the similarity, the observers found that the white was more likely to be hired and was more effective than the Asian litigator. Going back a little bit to the concept that I talked about right before that, though, of bias for versus bias against. Really, what we're talking about is an unconscious favoritism. And I recently read a book mistakes were made, but not by me. excellent book. And now this story, not now that I'm saying it, though, I think, comes from the other book that I referenced earlier about the IITs and gives the story of Carla, a Ivy League university professor, either Yale or Harvard, I don't remember which, whose avocation was a quilter. And at home one day, she broke a crystal glass and severed her wrist and her husband rushed her to the hospital, and said, my wife is a quilter, she really needs to be able to use her fine motor skills for hand, please get her surgery right away and do everything you can to repair her hand. And she essentially was told to take a number. And as they were sitting down, somebody recognized her from the university and said, Professor, what do you do, and suddenly, everybody looked at attention, realized that she was the

the Harvard or Yale professor and rushed her into surgery. And in fact, she was able to restore full use of her hand. And it was a wonderful situation for her. And, of course, very frightening story for everybody who's not her. And, again, we tend to think of these things as being a positive, helpful thing to the person who's being helped without thinking about the fact that there's an impact for all of the people who are not helped by that sort of favoritism. So let's look now at how does it impact us as lawyers. And these sorts of biases are impacting who we're hiring, who we're mentoring who we're giving certain assignments to? How often do we see that the person the minority attorney gets to go to litigation in the case where they're minorities involved, but not the case involving a lot of money or involving other important issues, who were promoting. It's impacting us as decision makers. When we are using our into our intuition without deliberating it tends to lead to errors.

Confirmation bias and priming is impacting who we believe who who who are making decisions about in terms of guilt and innocence. And Other studies have shown that the heavier our workload, the worse our decision making is, the more we tend to make snap decisions and go with that intuition versus deliberation. And so if we are asking our decision makers are our attorneys in public practices that are taking on more and more cases to operate and enter judges, of course, to operate under these heavy workloads. What is the impact then, on the decisions that are coming out of that? In trying to reduce bias? People often say, well, are these biases malleable, the IITs are they always the same. And in fact, studies have shown that the more we expose ourselves to difference, the more that we can and will change. There was a study of infants, showing a preference for both familiar faces and also familiar sounds, language and accents. But the more that they were exposed to other faces and sounds, the more they were open and responded positively to those. A study of college students showing that before they took an iehp on the issue of women being strong versus weak, if they were exposed to images of women doing strong tasks, if they were asked to imagine what a strong woman would be capable of, it reduced the bias on the IHT. Very interesting study that impacts our hiring, where a group of people were asked to be make decisions about hiring for a police chief, and are shown two resumes, one with a female name one with a male name. And the resumes in different iterations had more, one had more education, and one had more experience. If the decision makers were to show them the resumes and asked which one do you think would be better for police chief, they tended to go with a male, whether the male resume was the one for this particular iteration who had more experience or had more education. But if they were asked first, what's more important for police chief isn't more important that we find someone with more education or we find someone with more experience, then they tended to go with whichever gender had the quality that they had already decided was more important. So it reduced their bias in favor of the male by asking them to decide before they worked. What are you looking for that is so crucial to the kinds of decision making that we make, that we're deciding this criteria without looking at who we have to choose from? Because the confirmation bias can always work along with that implicit bias and say, oh,

here's a better candidate happens to be the white male. And here's the reason why. But if we make a decision of what we want, then we can't use that confirmation bias to bolster it in the same way. People use the term cultural competency, and what does that mean? How do we be culturally competent about some of the many cultures that we run into? And again, as an investigator? I'm investigating disputes between people from all over the world and cultures that I've had little exposure with. So

how can I educate myself through reading through being open and asking questions through gathering information and exposure, so that I can work with people who are coming to work perhaps with some different assumptions and understandings and templates. Other ways to reduce bias pursuing relationships with different types of people, especially at work, where we are exposed to so many different types of people, reading and learning about different groups, surrounding yourself with those images that defy stereotypes, even little things like that have shown to reduce implicit bias. As an investigator, I am trained and I train others to always ask open ended questions not make assumptions about people find out how they want to portray something what they have to say, rather than making assumptions about who they are and what their story is. Considering alternative theories, checking and rechecking the assumptions that we make about people,

using our active listening skills in interviewing and making decisions and being a being able to back up intuition With deliberation, the more we can bring in other people to work with us who come from different backgrounds, that can be our check on the decisions that we make, whether it's in our firms about hiring, about the cases that we take about the evidence and how we evaluate that evidence. All of those things can serve to help reduce bias. And really, what I want to leave you with is to take away the judgments, to be able to see biases as something that we all have and that are both interesting and limiting our ability to be as effective as we would like to be. So that the more that we see and understand our own biases, the more we can choose to ignore them and to deliberate and make a decision that is free of bias, and none of us will ever be truly free of bias, but we can all work towards reducing them and making better decisions.

Thank you for your attention. And if any of you have questions or want to contact me, my contact information is available.