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Today we're gonna talk about understanding and eliminating unconscious bias in the legal profession. And it's one of my favorite topics to talk about. Because the research that has been done about implicit biases and different forms of psychological biases is fascinating. We're learning things all the time about how biases impact us without our realizing it. And it's it's a very exciting and interesting topic that we, as we learn more about it, we find that it can really make a difference in our practice, there's lots of ways that it applies to the legal profession. So during the course of this hour, we'll be defining what unconscious biases are the difference between an implicit bias and a stereotype? What other types of cognitive biases are what I just called psychological biases, and then talk about how they impact decision making in the legal profession and elsewhere, and some ideas about how we can eliminate these biases. So, first of all, what do I mean about a bias? And let's go back to fairness. If I say to you, did you become a lawyer because you want it to be unfair? My guess is that everybody out there watching this would say, of course not. In fact, many of us became lawyers, because we want to be fair, we want to make fair decisions, we want to see that people are treated fairly, we believe in due process. And yet, even if we start with the understanding that people want to be fair, we know now from the research that has been done in the field of biases, that people make decisions that are infected by bias, and that are really not fair decisions all the time. They don't do it consciously. They don't do it because they want to be unfair. And really, I shouldn't say they, I should say we, because this isn't something that others do. This is something that everybody does. So what I would like you to do is believe the fact that unfair decisions happen, and that everybody makes some of those unfair decisions. And also hold on to the fact that it's not because people you want to be unfair, because to me, the interesting part of what we're looking at is, how does that happen? How do people with good intentions, still make decisions that are not objective, really thought out and neutral and end up having an impact that we didn't intend and we wouldn't want. So then, what I want you to do is let's think about the word bias. What is bias mean?

Because it's a word that can be very loaded, obviously, we don't want to make a bias decision. And yet, it also could simply apply to something that's a preference. It could be based on the stereotype. And those kinds of biases are problematic. But it also might not be. And so the example that I like to use is about wine because I have some family members who are very opinionated about wine, and I admittedly know nothing. I choose by the label, nice label, great wine, good enough. But there may be a debate in your family, as there are in many about is French wine better than California Wine. And maybe you have associations with being in France in the countryside and the wine and it was all great, and French wines gotta be better. Or maybe you're from California and your wine is much better than the French. If you gave somebody a blind test, they would not consistently choose one over the other. And yet, that doesn't mean we don't hold on to those preferences. Based on what our opinions are, what our history is, what our associations are. Are, let's take it to something even more basic, a favorite color,

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I have always had a favorite color effect. I'm wearing my favorite color blue. And sometimes when I do this program live, I can pick out all the people in the audience who are wearing blue and go, Hey, nice. I like that I feel warmly towards it. Now, is that a bias? Sure. I have a bias towards blue. Is it based on a stereotype? No, I have no idea what it's based on. And we all have preferences. We can't live our lives without having preferences for the type of food that we want to eat for the type of ambience we want in the restaurant. We choose for, do we want a modern house or a traditional house all of the choices that we make routes, you know, before ways I had my favorite route. Now I just do what was tells me but it wasn't necessarily the best route to get from here to there. But it was the one that I liked the one that I was used to. And in making decisions about how to drive to work about what to choose to wear in a given day, and what restaurant to eat at, we're going to be impacted by all of these preferences and biases that we couldn't live without. But biases become problematic when they are based on stereotypes. And when we are doing decision making that impacts other people. I can choose to have my whole wardrobe be blue, and it really doesn't impact anyone but me. But if we use that analogy to people, and I choose all blue people to be around me, then that's going to be a problem if I'm doing hiring and if I'm the decision maker, because it's impacting other people. Where do biases come from, they come from the media, they come from our own experiences and families, the experiences of people around us what we've observed, what we assume, we can't take in all information. And so we pick and choose based on experiences, and then that tends to solidify some of those biases. One of the things that I like to say before we start jumping into all of this is to try to refrain from what I call the knock me effect. And I developed that phrase based on a conversation I had with a colleague, where I was telling my colleague about some of these bias studies. And her response was to say, isn't it amazing what some people do? Well, those some people are us, we're humans. And if we are willing to look at ourselves as in perfectly human and therefore subject to these biases, and try to see it as something that's interesting, and that we could look at maybe do something

about, we are much more able to change our behavior, than if we see it as something that somebody else does or something outside of ourselves. I also try not to judge it, I try to notice it, and not think of it as I am now a bad person. As opposed to as I said, I am in a perfectly human person. And I tell the story when we talk about how biases come about from when my son was in preschool. He was two or three years old. And at the preschool where he went, there were three to mom families. And I live in Berkeley, California, and so maybe not so unusual where I am. And it happened that each of those two mom families had a minivan. So one day, we heard from a friend of his who we heard from the mom of a friend of his. And this little girl had a mom and a dad, that she came home one day and said, sort of sadly, I wish I had two moms and her family, a good liberal. Berkeley family responded by saying how come not getting upset, gathering information. And she said, Well, then we could have a minivan, which was actually a very smart conclusion she made because when you're two or three years old,

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your little human brain is working hard to make connections between things. And in her life. All the two month families had minivans and nobody else had a minivan. And so she had a perfect set and was able to make a very logical conclusion for a two or three year old. Well, this little girl now goes to Berkeley, I'm sure she no longer thinks there is any connection between being a two mom family, and a minivan. That is a something that could have been a stereotype. That doesn't have to be a stereotype as you learn more information, but we don't always learn contradictory information to our stereotypes. And so they become more ingrained and more problematic if we don't unlearn them. Now another example that I like to say, because I'm sort of telling on myself is that despite my many, many years of being a feminist, when I was asked the riddle about the father and son who were in an automobile accident, where the father is instantly killed and the son is rushed to the hospital. And they call upon the senior surgeon to operate. And the surgeon says, Oh, no, I can't operate. This is my son, who is the surgeon, I find that that many people who are younger than me immediate will say, Well, of course, the surgeon is the mother. And people who are even younger might say, well, the surgeon is the same sex spouse of the, of the father who died. But from my generation, when I heard a senior surgeon, I saw and still see a man. And so my mind goes blank. If the father is dead, the Father, and then I don't know who that other parent might be. Now, that doesn't mean that I don't go to women doctors, that doesn't mean that I can't override those pictures in my head. When you tell me you went to see your doctor, I will see a male. But I will re correct for that rather quickly. Because despite my instinctive, implicit bias, I have the knowledge and experience to realize that that is simply a bias that I learned when I was young, that really doesn't have a an impact on the reality. So there's a difference between holding a bias and acting on that bias, we can we can override the pictures in our head. Another concept that's important to understand is that our brains can't hold everything at once. And so we filter out what we think might be extraneous. And we were listening only for the the high points, because we have to make choices about how much information we can let him. Now, you

know, maybe some of us can let him more than others. But I'm finding that I'm pretty, pretty much have to pick and choose in order for my brain to function well. And so if we're not processing all the information, then we have to be aware that there may be information that we're not processing that might be important, and be willing to relook at things in that light as we find out that we could be making some mistakes in our decision making in our thinking. So for example, if I say to you, how many of each animal did Moses put on the Ark? Most of you immediately will say to the problem is I said, Moses, not Noah. And the reason I had to stop myself as I was about to say no, because we associate Noah and the ark. And given that association, once you see the picture of the ark, once you start hearing about the ark and the two animals, you don't feel you have to listen to every word. It's not that you're consciously saying, Oh, I don't have to listen to every word. It's your unconscious. Okay, this is something that's familiar. I know this story, I know how to frame it. And rather than listen to every word, you're getting the gist, which works a lot of the time, but doesn't work all of the time.

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One of the first people who did a lot of research and study about stereotyping, and biases is Gordon alport. And so there's a quote from him, the human mind must think with the aid of categories, once formed categories are the basis for normal pre judgment, we cannot possibly avoid this process, orderly living depends on it. And that's what I was talking about earlier. But stereotyping is a byproduct of this type of generally useful ability for humans to categorize. While stereotyping might achieve the desirable effect of allowing us to rapidly perceive strangers as distinctive individuals, they're not distributed equally. People tend to stereotype people who are not in their own in group. So what that means is, the less familiar outtie you have with somebody, the more likely you are to stereotype them. And that's what leads them to in group bias and favoritism that we'll be talking about. A little later. I have another story that that goes with this. Friend of mine, an intelligent thoughtful person was telling me about a friend of hers struggles with her supervisor because when you do employment law people tell you those stories So she told me about her friend who had a supervisor who was a micromanager and how difficult it was for her to work with this person. And then said the end of the story, and you know, her supervisor is an Asian woman. And she's, you know, 35 years ago, when I first entered the workforce, I had a supervisor who was an Asian woman, and she did the same thing. And then said to me, what is it about Asian women. And I was amazed, I mean, the little girl, the two or three year old in my son's preschool had a set of three, before she made that generalization, the stereotype, my friend only had a set of two and was in her 50s, and rather sophisticated. And, again, I'm sure she wasn't aware of the implicit stereotyping that she was doing. And obviously, also wasn't somebody who had a lot of contact with Asian women, because if both of she is white, and if both of these supervisors had been white women, she would never have said, What is it about white women, right. But because of her lack of exposure and experience, she turned these two similar traits, totally disparate time and circumstances, totally different people into a stereotypical

generalization. And, like I said, we're, we're well intended good people. And yet we do that. So now what I would like you to do with me, sitting there at your desk, or wherever you are, say out loud, you're going to see a screen with the neck with names and colors. And what I want you to do is, say the name of the color. That is, but not the word. And so if we look at the screen together, we would say, blue, green, red, yellow, blue, green, red, yellow, etc. And we are naming the color. Now you're going to look at a second screen. And it's going to again, show you a word in a color. And I want you to name the color, not the word. And I'm not I'm gonna stay silent as you do the exercise on your own.

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Those of you who tried to do this will have found that you had a much harder time the second time around the first time the name and the color matched, you didn't have to think about it, it was an automatic response. The second time the name and the color didn't match. And what happened is, you have to use two parts of your brain, you have to focus on one thing while ignoring something else. And as a result, you probably made mistakes, you went slower, you hesitated because your your mind was conflicted with those images and words. The reason that I just showed you that is that there is something called an implicit bias test, the i 80, or the I'm sorry, the Implicit Association test if it was an implicit bias test, the IBT, the Implicit Association test, which was developed, oh, maybe 30 years ago, by researchers at Harvard as a way to test if people hold biases that they're not aware of. So that that's why they are called implicit. And the way that they test for that is what kind of associations people make with different images. So, for example, if people are shown images of flowers, and people are shown images of bugs, and when you're showing the images of the flowers, interest, and the bugs interspersed with those are words like wonderful, beautiful, glorious and nasty, disgusting, icky. If people are asked when you see a flower, or when you see the word glorious, beautiful, lovely. With your right indicate with your right hand on the keep Bored. If on the other hand, you see a bug, or you see the word icky, disgusting, terrible, then indicate with your left hand on a keyboard. And when they're showing the images and those words, it's very easy for people to go. Oh, sour, wonderful. flower, beautiful, bug, disgusting. bug. icky. If people are then asked, with your right hand, if you see a flower, put in with your right hand. And if you see the word icky, disgusting, terrible, use your right hand. And on the other hand, if you see a flower, or if you see the word, one icky, disgusting, did I just say that backwards, but hopefully you understand what I'm saying. Then do it with your left hand. Suddenly, people make mistakes, it's much harder to go flour, icky, bog, wonderful than it is the other way around. Because that's not our association, we're going contrary to our association. What the Implicit Association test shows is that we do that with people that sadly, most people when they see a black face, and need to key in a positive word like wonderful, authoritative, whatever it is, they have a harder time keying in that association between a black face and those positive words, or a white face and more negative words than the other way around. And that's that gap, the gap that shows that these biases are going on under the surface, even when we are

not aware of it.

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When people are asked how bias do you think you are? Generally people think we don't have bias. So for example, the next slide asks how bias do you think you are? towards an in favor of or against younger people versus older people? Do you have a strong preference for young over old, moderate or a slight you have no preference between young and old, a slight for old over young, moderate or strong. And when I asked when I did this with a program with a couple 100 people present and people keyed in their responses, and I kept track, that sampling 37% said they had no preference at all. And then almost 50% said they had a preference for old over young. Only 5% said they had a slight preference for young over old. However, they're the IHT that deals with young people and old people and shows you images and has the words associated with it shows the opposite. It shows that of the millions of people tested and the it has been administered to millions of people by now that there is a strong automatic preference for young people over old 35% of the time and almost 30%, a moderate 16%. A slight. And so you're talking about 75 70% of the time, or 70% I should say if people have an implicit bias in favor of views. Why is that? I mean, look at advertising, look at how we think about becoming old. Look at some of the realities of becoming old. I'm not saying so this isn't based in and the reality of people being physically weaker, more having more illness. And so what we would like to think is not necessarily what's really going on under the surface, the IoT there, there must be 20 or 30 of them now in all kinds of different topics areas, race, age, sexual orientation, religion, etc. And, as I said, they there's one, for example on the association between women of women versus men in the social sciences versus the hard sciences. And so some of that information is on the next slide for you to look at. And a little more explanation of the IHT and also a place where you can go and take it yourself and learn a little bit more about it and what's going on. So some conclusions from the IHT is that bias is a normal cognitive process, it operates without conscious intent. It's often hidden from our own conscious awareness, and that most people have implicit biases against members of traditionally disadvantaged groups. Soon Now, what I want to look at is how does this play out? If we know this is going on? What is the impact in the real world? There have been so many interesting studies. And I can only tell you about a few of them in the time we have. One of the first in earlier studies that was done sent resumes. to people, I believe it was in Chicago with identical information on the resume, but the names were different. And half of the names were associated with traditionally with African American like Tamika Jones. Whereas half of them were more typically associated with white people like Emily Ryan. And what the study found is that the white names receive 50% more responses than the ones that were associated with African American.

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And so here, the reviewer doesn't know the person's race, but implicitly is assuming race, and then looking at these resumes and making a determination about whether they're going to get a call back. And, again, I'm sure if you ask the reviewers, how did race impact your decision? They would say not at all. And yet, statistically, clearly, that wasn't true. And what we don't know is, is it just the name? Or does the person then start looking for mistakes in that resume? Or let's say there are a few mistakes in the resume? Do they implicitly think that the white person it's just an anomaly, it's not a big deal, but with the black person? Oh, this shows that there's a problem. It because this is all happening on an unconscious level. It's it's hard to know exactly what what the thought process is, but those are the sorts of things that might be going on under the surface. In this more recent study, again, using names on resumes, here, what the people doing the study were looking at was gender issues. And so the Raiders were given what they were told were recent PhD graduates who were applying for an assistant professor position, half of them had female names, and half had male names. The Raiders were supposed to determine whether the particular individual was worthy of hire, and also what concerns they might have about this person's credentials. 79% said that the male was worthy of higher 49%, the female again, they are looking at the same resume. So you've got a 30% spread there. And there were four times as many what they called downgrading comments for the female applicants. downgrading would be something like well, I would need to see more proof about the scholarship before they were advanced, or, you know, other things I had concerns about. So this is a significant difference. And again, if you said to these Raiders, how to gender impact you I'm sure they would say not at all, of course not. I was totally objective. But clearly they weren't. I don't know how many of you are aware that for many years now major orchestras do. Part of the of their hiring process, quote unquote, blind, meaning they listened to the audition without knowing who is behind that screen. And my my understanding of how it came about was that the they were concerned that the people who were advancing to the next round were more often the students of well known teachers. And so it was done to prevent that. And the unintended consequence is that women advanced from the preliminary rounds to the next level 50% more. And so what they found out is that there was an unconscious bias that women We're not as proficient did not make as big or as good a sound as men did, as musicians. And then the most recent study that about hiring hits close to home, it was done by the American Bar Association just a few years ago. And it studied partners at law firms who are evaluating a legal memo. The partners, were given a legal memo that had embedded in it 22 errors, seven minor spelling errors or grammatical errors, six substantive technical writing errors, five errors, in fact, and four errors and analysis. And they were told that they were participating in a writing analysis study, half were told that the memo was written by an African American male and half by a white male, the average score for the white male was 4.1, out of five, and the average score for the African American male was 3.2, out of five. And there were significantly more errors that were found in the memo that was thought to be written by an African American male. And so I think we can conclude we haven't come as far as we would have liked. And again, it is it's a we not a day, because it is behavior that we all engage in. And even by the way, studies have shown that individuals have a bias against members of their

own group, there was a study of scripts,

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play place, play writers who had written a script and which ones the Raiders thought wouldn't be publishable are they worthy of production, and some had women's names and some had male names. And the study found that the women who were writing them were as harder by some percentage points harder on the women than the men. So that they they found more that the men's the male scripts, which of course, were the same scripts, were more worthy of advancement. And so we're we're not immune from bias against our own group. There's a an older study that I think is really an important one, because it does tell us something about how these biases work. And this study involved white interviewers who were videotaped doing a employment hiring interview with both white and African American applicants. And what the videotapes showed, was that when interviewing the white applicants, they engaged in more behavior that was friendly and warm, and would make somebody open up, they smiled more, they looked more directly at them, they leaned in. Whereas with the black applicants, they did the opposite, they lean back further they, and they hesitated more, it showed a level of just discomfort. And one of the things that happens, and you'll notice in public speaking, or here today, I've made some speech errors. If I don't have everything prepared, I might not be as fluid as if I was just talking to you in a social setting. Because as we get more anxious, as we have less comfort, we tend to hesitate more, we tend to make errors in our speech. And what this study showed was that these white interviewers, in interviewing the African American applicants did that. They were hesitating and making speech errors. While another phenomena is that in order to establish rapport people, subconsciously, mirror behavior, you ever noticed when you're talking to a friend, they lean in and you lean in, they go like this, and you go like this. And it's almost like you can't stop yourself. You don't intend to, but it's part of that process of relating to somebody. And so, unconsciously, the white interviewers are making speech errors, and the black interviewees start to mirror that without realizing it. They start making speech errors and hesitating. And so all of this has this effect of things, starting out uncomfortable and getting worse. After the interview, when the interviewers were asked to how did the applicants do one of the things that the interviewer said as well, that applicant made speech errors, they didn't realize that they had actually initiated that process all they heard Where the errors that were made. And, of course, the African American applicants didn't do as well. They had shorter interviews, they weren't as warm and friendly, they weren't as fluid. They didn't provide as much information, they didn't establish rapport. But it really wasn't. Because of them. That was because of the white interviewers inability to do that. So the next thing this study did was train the white interviewers to treat the white interviewees the same way they treated, the black ones, sit back, don't make as much eye contact, do all of those things that distance themselves. And then when they were video doing the interviews, that way, the white applicants look just as bad as those previous black applicants. And afterwards, when interview the white applicants that that didn't go very well that

that person didn't like me. I don't know why, but they weren't very friendly. And of course, that's how it feels. Our discomfort with people who are different feels to them, like dislike and distance and all of the things that we communicate in our discomfort. The reason that I like this study is it really shows how we're impacting an outcome.

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That is not the outcome that we would have thought we wanted, that it's a bad outcome for the people who are different from us. And how we have to be able to recognize and change our behavior if we're going to have a different outcome. In my line of work, I'm my primary work that I do is workplace investigations where people are bringing discrimination claims, and I have to be able to develop rapport with a very wide range of people and, and treat people in a least roughly equal manner to get information from them, and then be able to evaluate the credibility of that information. And so my ability to recognize my own hesitancies, my own inability to do that with people who may seem different, is so important. And then to find a way to cut through that, because if I don't, I'm not going to be able to do a good interview and a good investigation. There are many other ways, though, that we are biased that are not based on somebody being a member of a protected or category or a different category are different from ourselves. And so I want to talk about those now. And we'll talk about confirmation bias observer effects, the halo effect anchoring, how we make decisions, just kind of a brief overview of these different types of bias. And the first one is confirmation bias. And that symbol that you see, has become the international symbol for confirmation bias, because the middle symbol is ambiguous. And if we look at this horizontally, the middle symbol seems clearly to be a B. And if we look at it vertically than the middle symbol seems clearly to be 13. Because we look at things in context. And we are looking to confirm what we believe must be true that I must have said no one not Moses, that horizontally, I'm showing you the alphabet. And vertically, I'm showing you numbers in order. But while that may be true, it may not be true. Confirmation bias is a tendency to bolster hypothesis by looking for consistent evidence while minimizing the inconsistent evidence. And we do it unconsciously. And it impacts how we interpret information. One of my favorite quotes, which I read an excellent book on this topic called mistakes were made, but not by me. And the site is on the slide. And then one of the quotes they use is I will look for any additional evidence to confirm the opinion to which I have already come. And isn't that something that we all do? We have an opinion and we want to justify your opinion. And we work to confirm it and justify it by looking for information that will confirm and minimizing information that will not recently there have been MRI studies that show that if you watch a debate on a topic you feel strongly about that. Different parts of your brain light up when you're when there's information that's consistent you With what you agree with, then with information that's inconsistent, and that afterwards, people tend to remember the, the strong arguments for the position that they believe in, but only the weakest arguments for the positions that they are opposed to. And so we, we take in information selectively, regardless of what perspective we're coming from. And all of this impacts our work. So

for example, One study showed that if you are looking for forensics, and you're giving a set of fingerprints to a forensics examiner to see if they have a match, if the police investigator says, Here, I want you to see if we got a match, I think we got our guy this time, they are more than the forensics examiner is far more likely to find a match than if the police investigator says, Hey, I want you to see if these match because we have some concerns that that this is not the right person. And so what we think of is science is not just objective science, their their their choice points. And what we're told about them impact the outcome. Very good law review article about confirmation bias, where a study is done, and participants are given

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information about a case and asked to form a hypothesis about guilt, before reviewing all the evidence, and at that point, it looks like one individual was probably guilty. And most people think that then, when they're given all the evidence, there's a tendency to still believe that it's that person, despite the contradictory evidence. So the study was to also look at how could we reduce that one group of people was asked to develop other hypothesis who else might be guilty. Whereas the second group of people were asked why their initial hypothesis might be wrong to do that analysis. And what the study found is, the group who was asked to simply generate additional suspects didn't lessen their confirmation bias for their suspect. But the ones who were asked why the hypothesis might be wrong, were able to counteract that initial hypothesis. So that's the lesson for us in really analyzing facts both ways, in a rigorous way, not in a while, I'm only going to look at the weak argument way. observer effects. This is is similar to confirmation bias. It's how extraneous information impacts how we make decisions. So the creativity study, group is told they're studying creativity. Some members of the group are told at some point that the assistant working with them is not very nice. Another group of people is told at some point, that assistant is not very nice. Oh, I'm sorry, I was thinking about somebody else. And the third group is not told anything. At the end of the study, as part of the evaluation, they're asked about the assistant, How nice is that assistant, the group who hasn't been told anything, rates, the assistant is very nice out of a 10 out of 10, the Assistant got a 9.3. Those who were told, oh, that assistant isn't very nice, who had the same direct experience with that person rated the assistant as a 6.58, significantly lower than the group that's not told anything, and yet they're not using any of their direct experience to conclude that. And the third group, the ones who were said, Oh, no, I'm thinking about somebody else, still gave the assistant a ding 8.8 point oh, 9% or 8.09 out of 10. More than those who weren't told it was a mistake, but less than those who were not told anything. And so we are obviously influenced by what we're told, even when we are told what we're told is wrong. And even when we don't have direct experience this this next slide is about a study of worms. fascinating study about worms, one group is told, both groups are told you have to record how many times there is a contraction and how many times there is a head turn who knew that you could study these things. And one group is led to believe that the would be a high incidence they're told Oh These are really busy worms, you're gonna see a lot of this, the other

group is told, they don't do much, the group that is led to believe that these worms would be moving a lot recorded five times the amount of head turns and 20 times the amount of body contractions, as the group that was told not to expect much. And so we are being influenced in ways that we really don't realize, by the information that we are given. Another bias is called anchoring effects. And there's a direct impact on that in the legal area. The anchoring effects is the way that we use the information or numbers that somebody puts out to give us an idea of where our starting point is. So if somebody wants you to estimate the pennies in the jar, you're looking at what other people think so that you're not too far off with a think and not really concerned about the fact that they might be totally wrong.

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A study that applies in the legal arena is a study where judges were told in this personal injury case that liability had been agreed on, they only had to decide damages. And the group that was told, the plaintiff wanted $10 million for these very serious injuries, awarded three times as much as the group that was told the plaintiff wanted a significant amount. And so by giving a high anchor, the attorney was able to have an influence a significant influence on the outcome. And while we may use that in clever ways, we should be careful about how it's used and on the other side, and how we're using it and how it's impacting us in the decisions that we make. The halo effect is a tendency to assume that if somebody is presents, well, then they are smart and accomplished. So if somebody is tall and attractive, has good social skills, and they must be smart and capable. And people who are shorter, heavier, less what's considered traditionally attractive, must be therefore not as capable, not as smart, not as nice. And in fact, the two don't go together. And, you know, I actually have a memory of meeting somebody my first year of college who was not at all attractive, and the way that we are taught that people are attractive, and have the nicest personality and making that realization that people's looks don't go with their personality. And yet, it's something that unconsciously we believe, and studies have shown that most c CEOs are of above average height, and yet there is no correlation between intelligence and height. conformity of facts affects the perception that people's intelligence worth information conforms with their social status. And this has a big impact on how we see people and again, we're varying degrees of conscious as to that impact. attribution effect is how we ascribe motive to other people, we tend to attribute a bad motive to other people, and sometimes to some other people than we do to ourselves or people who are more like ourselves. So for example, I think of this as the the driver pedestrian phenomena. When I'm driving. pedestrians are not watching they're lurching out into the walkway. And it's frustrating to me. Well, the moment I get out of my car, I'm a pedestrian and the cars are whizzing by and not looking where they're going and not safe. We we have a different perspective, depending on our position, and then we attribute a bad motive. people not being concerned about somebody else's safety people rushing too much to other people when we might be in that other position just a moment later. How we make decisions. We like to think that as lawyers, we are making objective decisions those of us who are arbitrators or

judges especially care that we are really weighing the evidence, and coming to a deliberative determination rather than going by instinct. There's something called the CRT cognitive reflection test. And it's three simple math questions that have an instinctive answer that's incorrect, and a correct answer that takes working it through. And if you give people this test, what it shows is that most people go with instinct over reasoning. And so I'm going to go over the first question to illustrate, I will not subject you to three math questions, a bat and a ball cost $1.10. In total, the bat costs $1 more than the ball. How much does the ball cost? Well, most people look at that.

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don't really want to think it through and say 10 sets. But the answer is five sets up the bat. And if you do the math, as the math is done for you on the slide, a bat and a ball is $1.10. Meaning that $1.05 for the bat, a nickel for the ball adds up to $1.10. If it was 10 cents, it would be 90 cents more, not $1 more. This was given to a group of judges and the judges averaged a correct 1.23 out of the possible three, which is a little bit higher than the average student at the University of Michigan and a little bit lower than the average student at Harvard, suggesting that judges just like most people tend to favor intuition over deliberation. And so what does that mean? That means that studies on bias and judges show that judges make bias decisions again, of course without being conscious of it. A study involving violent felons in Detroit showed that both black and white judges imposed harsher sentences on black defendants than whites. That bail is set higher for black defendants than similarly situated white defendants that sentences tend to be longer for blacks, compared to whites. That killers of white victims are more likely to be sentenced to death than killers of black victims. All of these differences within our criminal justice system by well intended folks like us who try to make fair decisions and are not delivering on it without realizing it. Other studies about judges the the myth, the judges are colorblind, which is contradicted by these studies showing that in the civil arena, racial harassment plaintiffs are more successful, on average 22% of the time with an African American judge presiding it goes up to 45% of the time. So the chances of success are doubled in a racial harassment case with an African American judge, as opposed to a wide judge that there is some differential based on political affiliation, but not as much of a differential and a little bit of a differential based on gender, but not a significant differential. There are studies of the impact of gender and sex discrimination cases showing that female judges are significantly more likely than males to find for plaintiffs. And if there is a panel that has at least one female judge, that panel is more likely to find for a plaintiff than a panel with no female judge. One of the things that the studies have looked at is what is bias versus what is favoritism. Bias implies a bias against a group favoritism implies giving a leg up to one group, a bias in favor of a group. And the two may end up with the same result. But they emanate from a different place. So for example, there was a study with sentencing, and I think it was in New Mexico. It was in a Southwestern state, and it was comparing the sentencing of Hispanic and Anglo defendants and what it showed is that the Hispanic judges were giving similar senses to both Hispanic and white defendants. And the white judges were giving the same sentence as

Hispanics did to the Hispanic defendants, but I lighter sentence to the white attendance. So they're favoring their own group, they're giving more of a break to someone who looks more like them. And what's important about that is understanding, I'm going to skip this slide and go to the next one. That favoritism may be where a lot of different treatment comes from the instinct to want to help somebody. But then to want to help the person who reminds you of yourself or of your daughter or your son, or some other relative who therefore looks more like you, as opposed to that instinct to help someone who seems more different.

55:47

And there's a story for again, I believe it was from the book that I just told you about, maybe from a different book about a professor from an Ivy League school, who is also a quilter. And who severely injured her hand with a broken glass, she's at the emergency room and basically told to take a number until somebody comes out and recognizes her as being a I don't remember was Harvard or Yale professor and says, you know, Professor, what are you doing here and, and there's a realization that this person with his hand injury was somebody distinguished and important. And she suddenly went to the top of the line and had a good outcome, her, the nerve in her hand was able to be repaired, she was able to quilt again, it was so her avocation of quilting was not impacted by this injury, which it might have been. And wonderful for her. But what if she wasn't a professor at an Ivy League school? Shouldn't everybody be treated that way? And how do we counteract that? How do we how do we give that kind of positive treatment to everyone on an equal basis? When we start turning from this to the impact of these behaviors, it impacts who we hire, who we mentor, who gets certain assignments, who gets certain promotions. And when you look at how you're impacted as a decision maker, we have to look at what errors we're making. If we are going by intuition, rather than deliberation, where our mistakes because we are bound to make mistakes. One of the things that I advise is, of course, you're going to use your intuition. But you still have to go through a rigorous analysis and be open to the fact that your intuition may be wrong. If your intuition says this, then let's analyze the facts going back to that earlier study both ways. What are the facts that would support that? And what are the facts on the other side, and if you can't use the deliberative process, to either confirm or deny that intuition, then you're going to be making mistakes. Inevitably, one of the studies of judges showed that judges were more likely to let someone out wasn't on bail, and I don't have the study in front of me, but who had been in jail to let them out a little bit earlier on. And making those decisions, of course, are difficult decisions to make. And they were more likely to make them first thing in the morning or right after lunch. And the implication being that if we don't have enough calories in our system to be really thinking hard and and putting our best behind those decisions, we're going to go for the easy decision. And the easy decision is let them stay in jail. And we have to have time to make those decisions. A heavy workload is going to militate against making the right decision because a heavy workload is going to force us to go more by intuition. And when we are making important decisions, making sure that we have the time and the bandwidth to make those hard decisions is

really crucial. How do you reduce bias some studies show that just exposing infants to different faces may make them more open to different kinds of faces in a positive way. A study showed that with college age individuals, if they were asked to imagine something that went against stereotype before taking the IIT, it would be more likely that they would reduce their bias. So images of Women firefighters is more likely to reduce a stereotype as women not being as strong as men. Images of African Americans arguing before a court is more likely to reduce our stereotype of African Americans being in certain positions and not others.

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When you're working with different people finding something that puts you in the same category as the person, what do you have in common? How do you how do you relate to that person, whether it's through family or something, something cultural music, surrounding yourself with these images that defies stereotypes, pursuing relationships with different kinds of people, and just socially making a decision, when you're at a mixer that you're not going to always go for the person who looks most like you, and you're gonna have most in common with but you're gonna find out a little bit about the person who's different from you in age, and gender, and sexual orientation, and race and background. And you may find you have more in common than you think. And it may just be another opening to seeing what, what is different. And what is the same about people who might seemingly seemingly be different. Making connections with different people focusing on on the positive. And finding ways to team up with people who come from a different background than you listening to their input in your decision making may make you learn that you're not as objective or thorough as you thought and that a different perspective is going to round things out and make your perspective, a more complete one. An important study in terms of hiring that I want to end with is that when you decide what criteria you're looking for, and somebody, studies show that if you decide that criteria ahead of time, and then you follow that you're more likely to reach an unbiased decision and be less subject to bias. Now, some hires now we're done, at least initially anonymously. So that gender, age, race, the college and law school that somebody graduated from, would be eliminated so that people can really look at the content without any implicit bias impacting them. In my office, now, I am evaluating writing samples. And I'm doing that I'm asking my team, to give me their evaluation without knowing who wrote it. Even if they weren't impacted by external factors like gender, age or race, they know a little bit about the person, they may have an implicit bias as to who they had a positive interaction with. And I want to get an unvarnished opinion, the study that I was referring to involve the hiring for a police chief. And in one group, the they were told what criteria they were going to use that. And the, the criteria that was important was, are they going to look more to education or more to background, because some of the resumes were stronger in education, and some of the resumes were stronger on background. And the groups that were told or agreed that they were going to really focus on either background is more important, or education is being more important, made the hires based on that, regardless of gender. The groups that didn't

decide on that ahead of time, were given resumes, some of which were more weighted towards experience and some of which were weighted more towards education. But they tended to decide on the male or the female regardless. And so by deciding the criteria ahead of time, the group was able to ignore the gender aspect and follow through on the criteria. There are so many ways that we can look at how to counteract our biases, and I hope that by going through this material, it helps you in a concrete way. Do that in your own work. Thank you for your attention.