

IMPLICIT BIAS

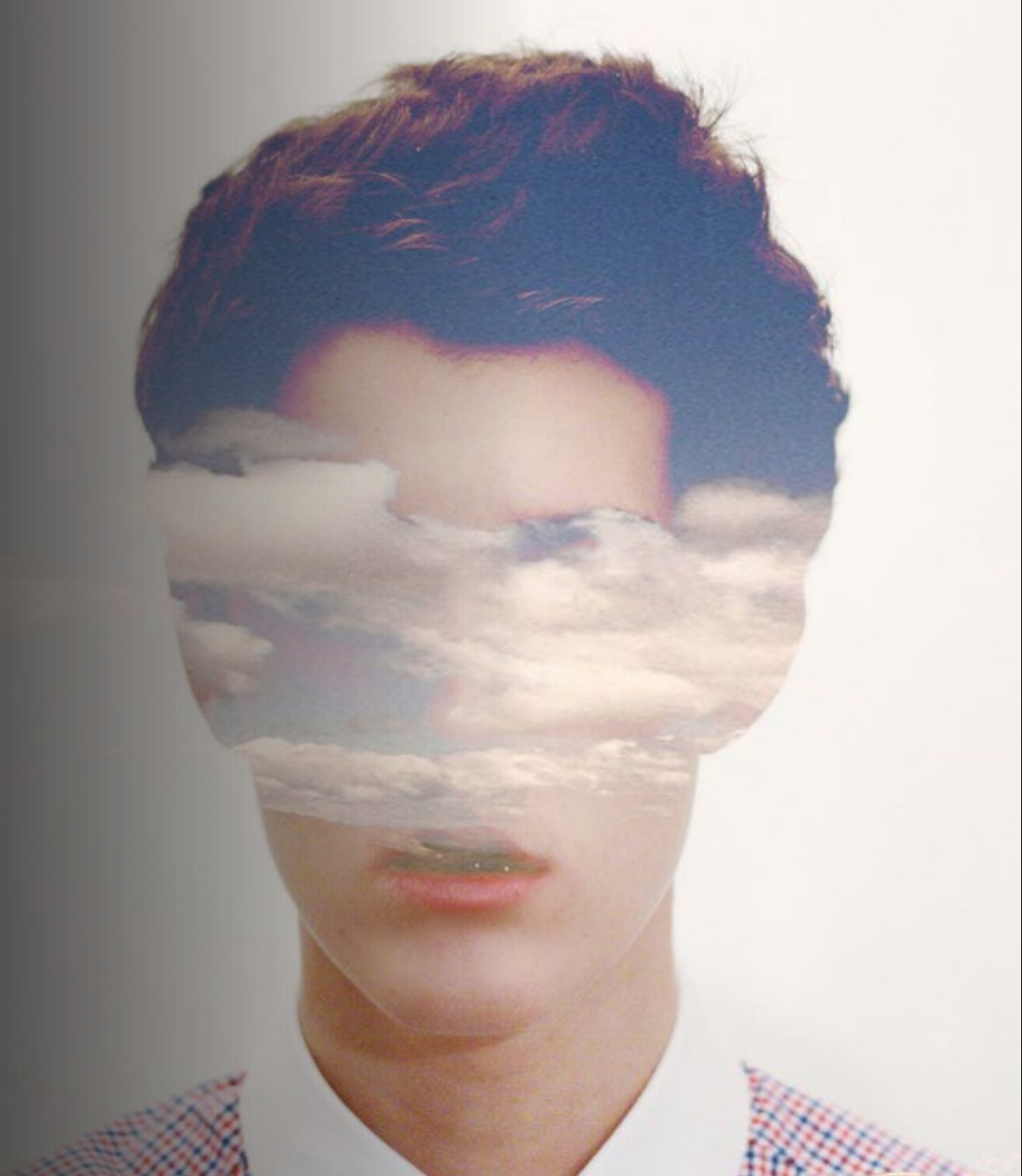
In the Practice of Law



Jason Bloom &
Emily McDonald, PhD

— Implicit Bias

Thoughts we don't know we think, that influence the perceptions we form about others.

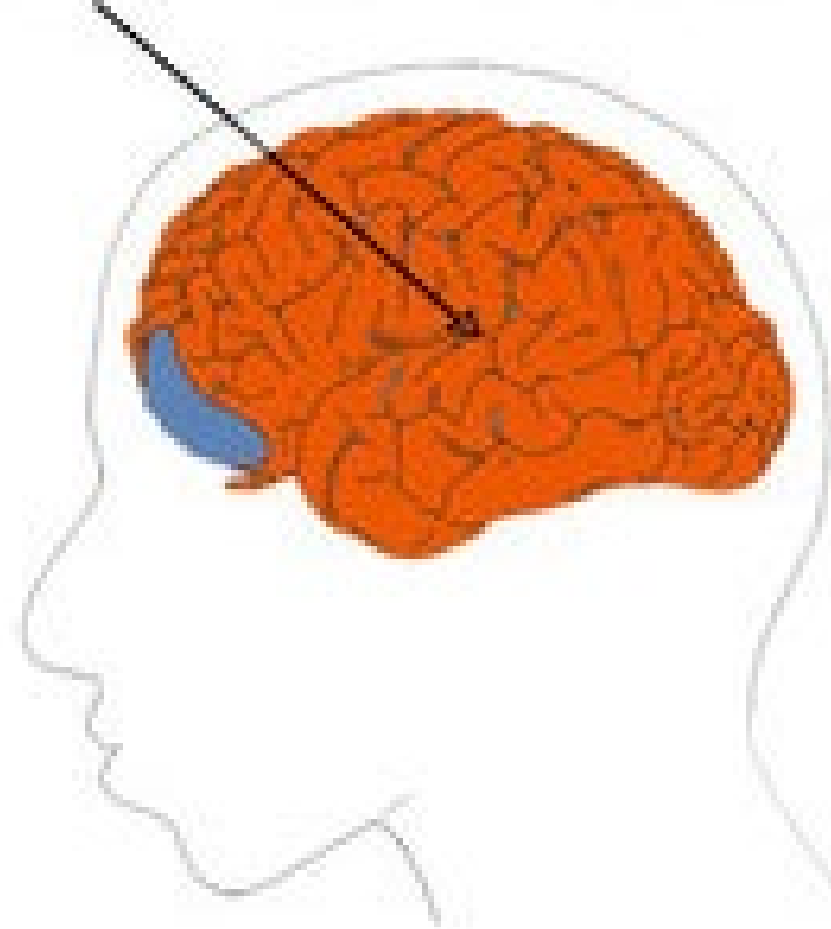


OVER STIMULATION

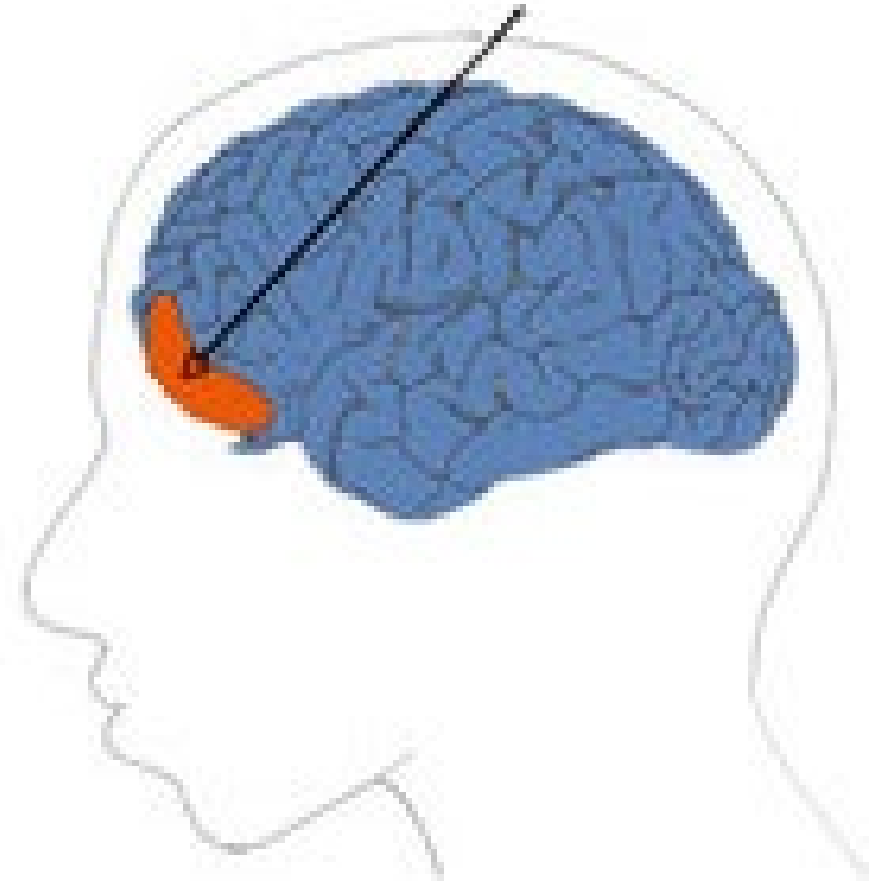
The brain is presented with millions of pieces of information in any one moment but can only consciously process about 40 pieces of that information.



Subconscious Mind



Conscious Mind



The Mind

It is possible for the unconscious mind to reach an entirely different conclusion than the conscious mind.





Video:
The Monkey Business Illusion

Schema

- Schema – frameworks of knowledge that help us to quickly process information



ELEMENTS OF IMPLICIT BIAS

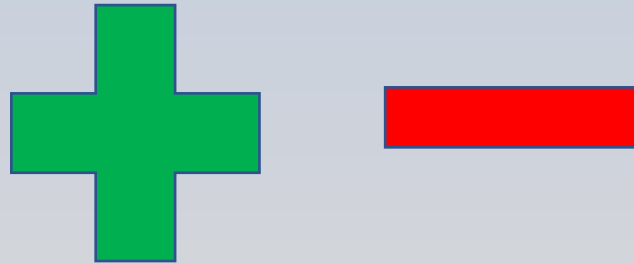
Schema

Template of knowledge that sorts information into broader categories



Attitude

Gut feeling or evaluative valence



Stereotype

Oversimplified trait associated with a category or group

“All cats are lovely!”.

“All Cats are unfriendly.”

Micro expression-
involuntary emotional
leakage of emotion

Implicit Bias

Unconscious
thoughts

that steer an
individual's
attitudes,
beliefs, and
behaviors
toward
others

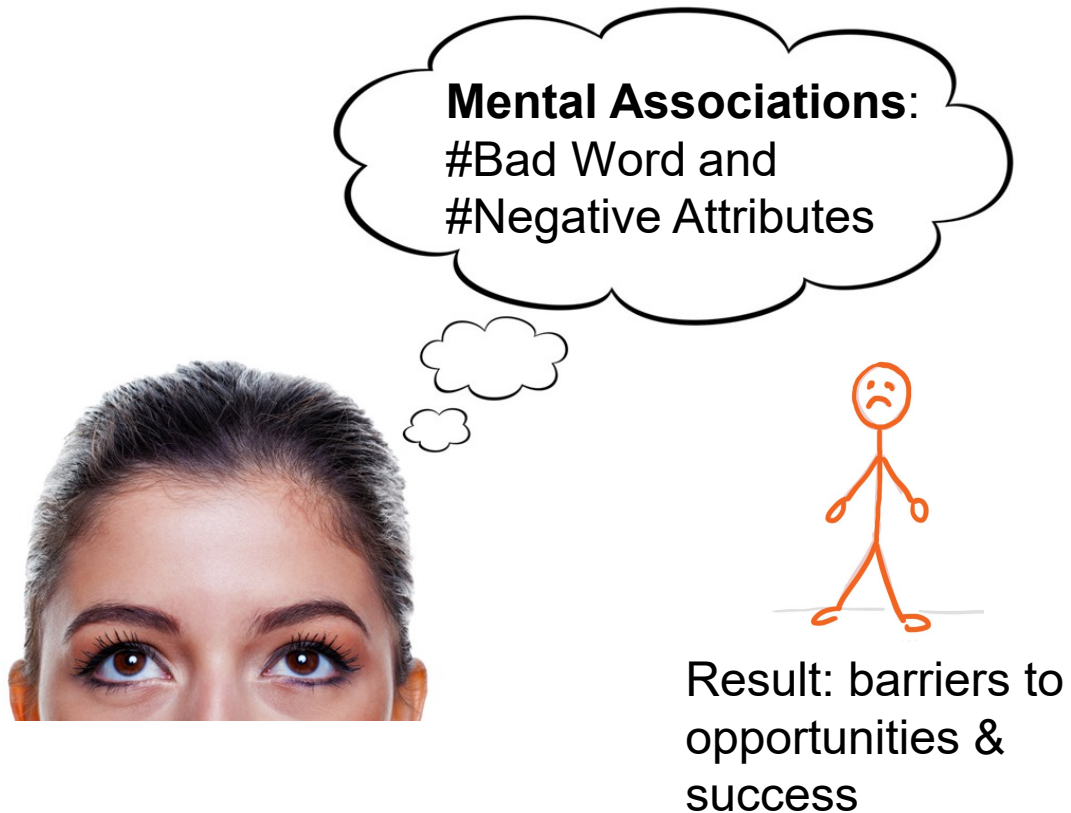


Video: Implicit Association Test

[Implicit Association Test \(www.Implicit.Harvard.edu\)](http://www.Implicit.Harvard.edu)

Implicit biases perpetuates inequality in two fundamental ways:

Negative Preference



Positive Preference



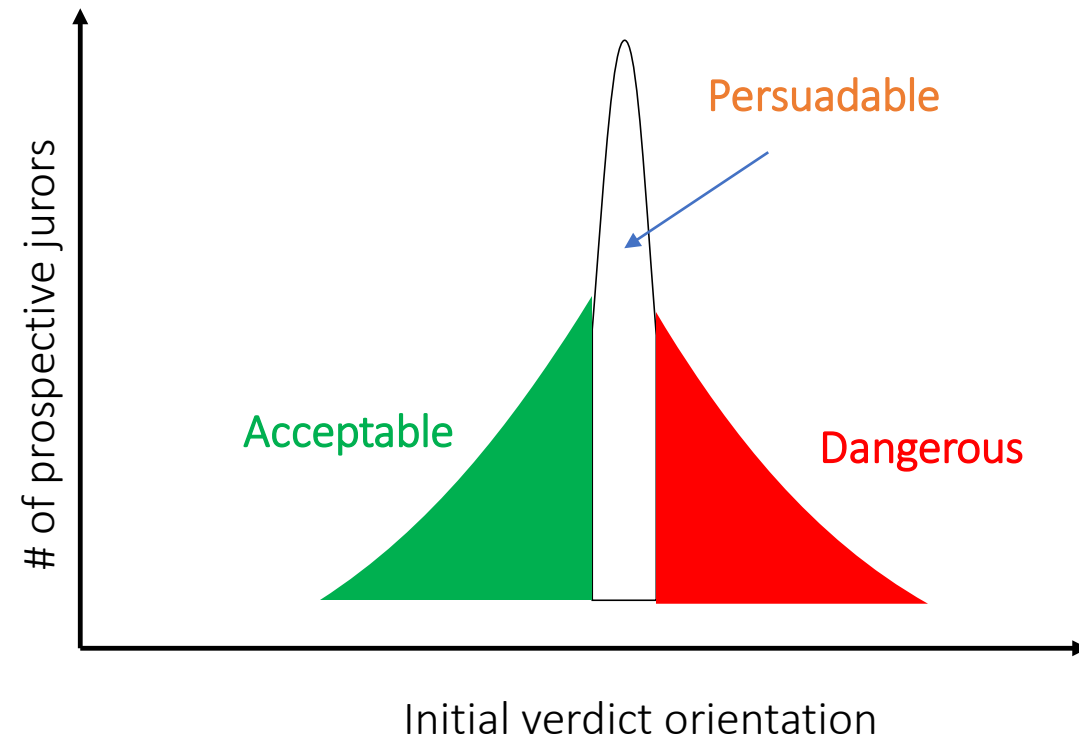
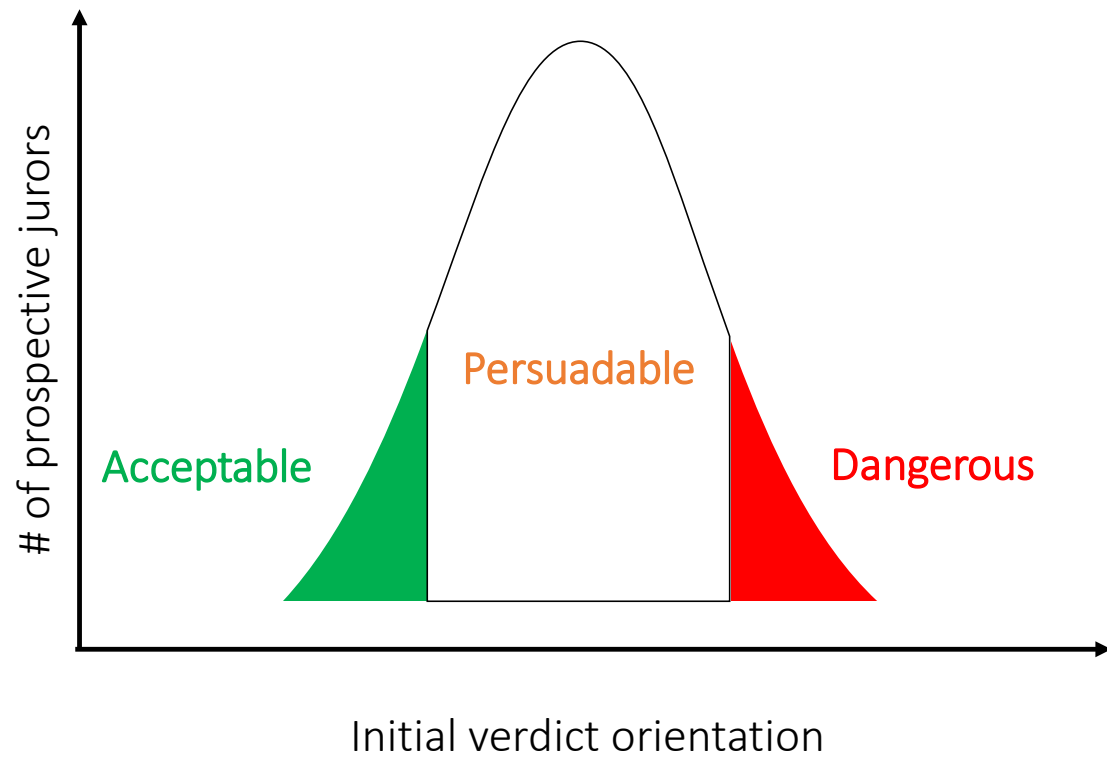


Challenging Implicit Bias in the Courtroom

**Jury Decision-Making
Presentation of Evidence
Testimony**



Jurors are like
icebergs



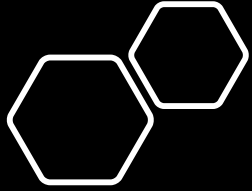
Practice Tips :

Voir Dire

- Talk about bias and implicit bias
- Make it safe to consider personal bias
- If disengagement is not possible, give them airtime and see who agrees
- Identify the motivated reasoners and discover the motivation (Follow up: “Tell me more about that”)
- Discover world views, core values (“Has something similar happened to you before?”)
- Identify blank slates (persuadable)
- Embrace that life experiences often trump demographics

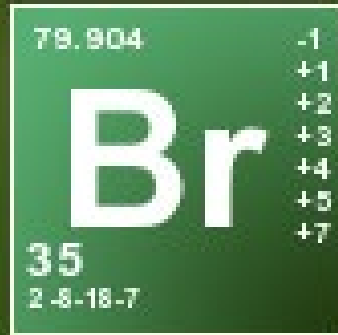
Practice Tips: Opening and Closing

1. Remind jurors that they don't have to make up their minds until deliberations (rather than jumping to conclusions or relying on blind spots)
2. Develop a clear and captivating trial narrative (build suspense, draw them in)
 - Receptive mindset (reduce motivated reasoning)
 - Connect jurors with characters (witnesses)
 - Story vs lecture
 - Talk WITH the jury not TO the jury
3. Fill the gap. It is easier to believe an incorrect story than an incomplete story.
If it didn't happen as opposing counsel claims, how did it happen?

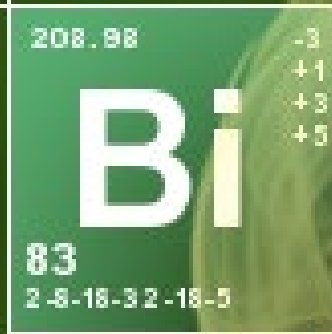


Practice Tips: Presentation of Evidence

- Make testimony a conversation rather than a transaction
- Caution the tendencies to jump to conclusions or make implicit associations
- Its not enough to make aware of implicit bias, must replace bias with factual information
- Allow the jurors to sniff out the parties on their own



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Good News: Deliberation
Breaks the Bias

- NEED: Judge and Advocates to break the ice for the conversation to continue in private
- Implicit bias reduced in the group
- Discussions with others expose bias- in self as well as others

Bottomline: Must give juror advocates permission and priming to create their own persuasive narrative in the jury room.