

# Implicit Bias: What is it and How Does it Affect the Workplace?

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# Introductory Exercise

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# Objectives

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Learn more about implicit bias

Discuss how implicit bias can impact hiring, work assignments, promotions, and other decisions

Identify strategies and solutions to reduce the influence of implicit bias

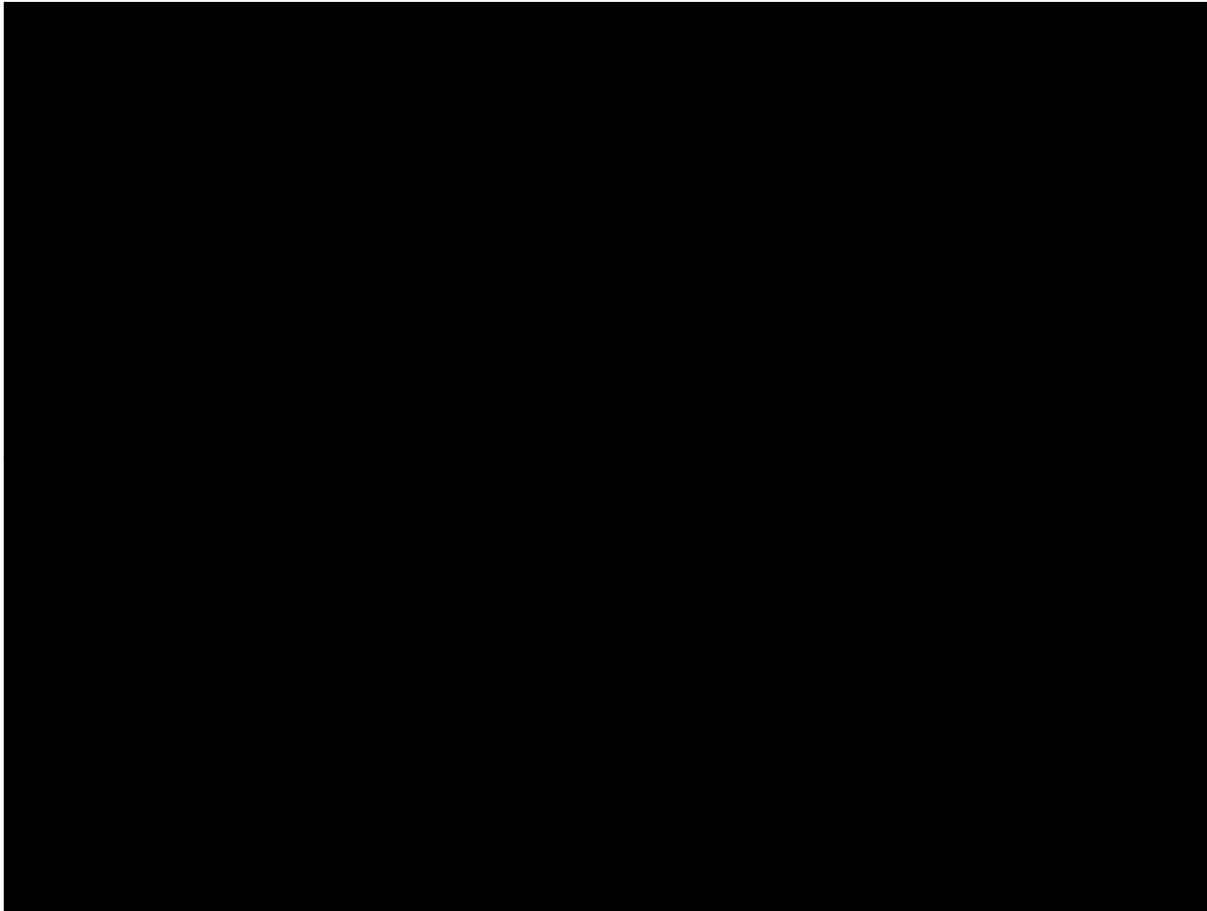
# What is Implicit Bias?

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- An implicit bias is a positive or negative mental attitude towards a person, thing, or group that a person holds at an unconscious level.
  - In contrast, an explicit bias is an attitude that somebody is consciously aware of having. Research has found that our implicit and explicit biases often diverge.
  - For example, a person may consciously express a neutral or positive opinion about a social group that they unconsciously hold a negative opinion about.

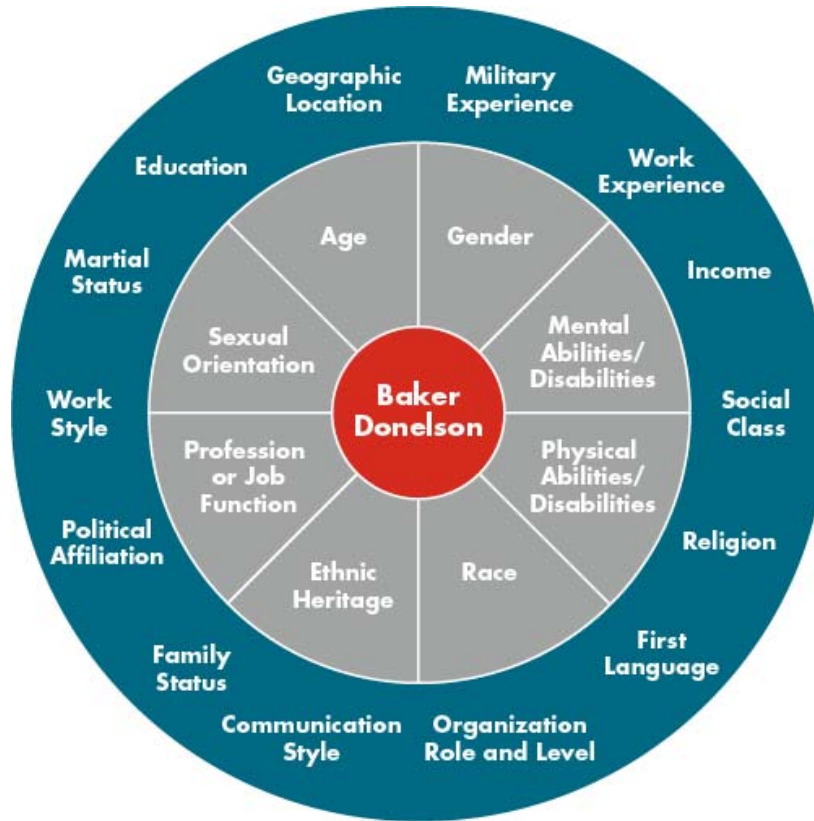
# Making the Unconscious Conscious

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# Your Conscious and Unconscious Beliefs Are Influenced By....

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# Implicit Bias...

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...is hidden and may unknowingly motivate explicit or conscious action

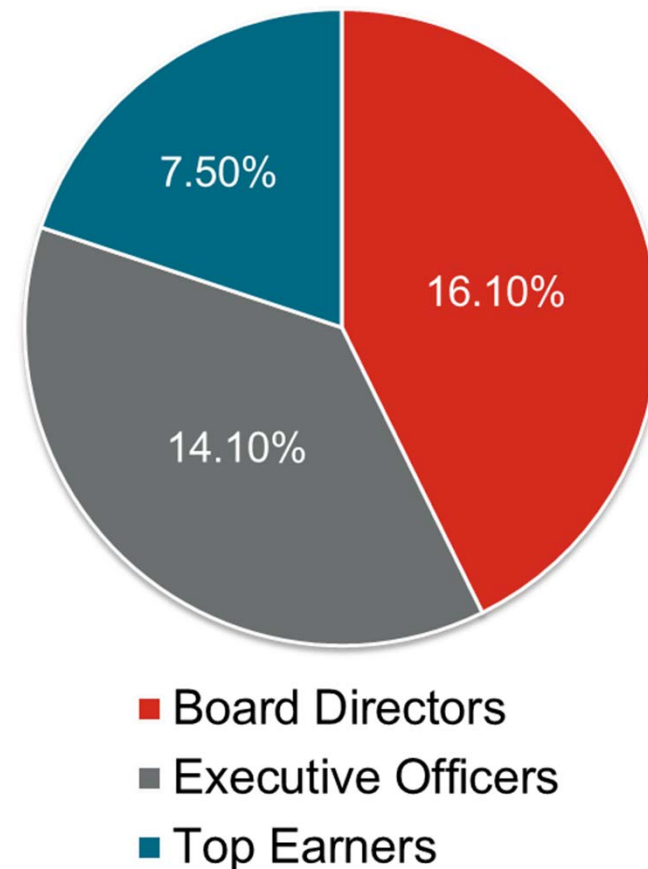
- Can Implicit Bias be accurately and reliably quantified?
- How is it formed?
- What individual experiences affect its formation and dimensions?
- Our Brain stores years of past experiences that cannot be set aside (Source: *Blind Spot*, Greenwald pg.36)
- Our brain is a giant computer that silently crunches all the data it can from experiences we've had, people we've met, movies we've seen, etc., and it forms an opinion. (Malcom Gladwell)

## Quantitative Gender Disparities: Cut Across Most Industries

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Women comprise nearly 50% of the workforce in most industries, yet only represent:

**What might be the implicit biases that result in these statistics?**





# How implicit bias works: Schema = Mental Framework

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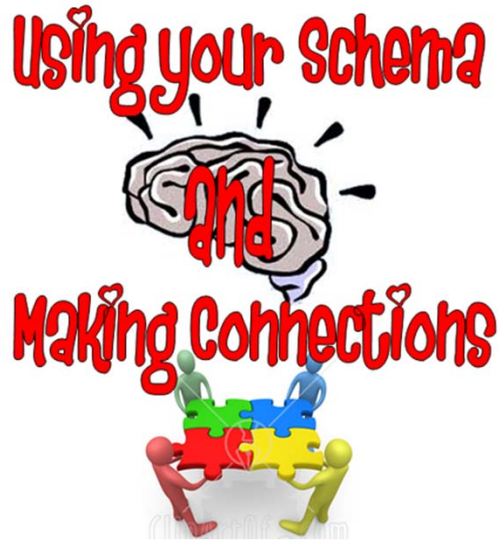
## Schema

- Mental framework or concept, mental shortcut
- Way to organize data into broad categories
- Schemas for objects (chair) and for behaviors/ processes



# Short Hand Schemas/Categories: Also Applies to Processes/ People

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Helpful in some situations....

Could help you quickly and accurately  
assess a situation

Harmful in other situations.....

But could also lead to inadvertent,  
costly, and poor decision-making

# What Does This Headscarf Mean to You?

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# What Does This Headscarf Mean to You?

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# EEOC v. Abercrombie

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# “Like a Girl” Video

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# Wal-Mart Stores v. Dukes

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Theories of Implicit Bias and social framework analysis and Supreme Court holding:



*"Relying on 'Social Framework' analysis, [Dr. William Bielby, Dukes Sociological expert] testified that Wal-Mart has a 'strong corporate culture' that makes it 'vulnerable' to 'gender bias' ...He could not, however, 'determine with any specificity how regularly stereotypes play a meaningful role in employment decisions at Wal-Mart.'"*

...



## Wal-Mart Stores v. Dukes (Cont'd)

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### Theories of Implicit Bias and social framework analysis and Supreme Court holding:

...

*"Dr. Bielby conceded that he 'could not calculate whether 0.5 percent or 95 percent of the employment decisions at Wal-Mart might be determined by stereotypical thinking.'"*

...

*"If Bielby... 'has no answer to that question, we can safely disregard what he has to say. It is world's away from 'significant proof that Wal-Mart 'operated under a general policy of discrimination.'" [Bracketed text and underlining added. ]*



# Pippen v. State of Iowa

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## Judge Blink's holding on theories of Implicit Bias and Social Framework Analysis:

*"Plaintiffs' social science evidence was presented through the testimony of two psychology professors...Dr. Anthony Greenwald and Dr. Cheryl Kaiser."*

*"Dr. Greenwald invented the Implicit Association Test..."*

*"Plaintiffs seek to bridge the gap between disparate social outcomes and discriminatory subjective decision-making through reliance on implicit bias. ...**The mere fact that a discretionary system produces a bottom line disparity is not enough. A specific employment practice must be identified as the culprit.**"*

*"Subjective decision-making alone is not a bad thing." Citing Wal-Mart v Dukes*

## Pippen v. State of Iowa (Cont'd)

### Judge Blink's holding on theories of Implicit Bias and Social Framework Analysis:

*"... [N]either [Dr. Greenwald] nor Dr. Kaiser offered a reliable opinion as to how many, or what percentage, of the discretionary subjective employment decisions made ...in the State system were the results of stereotypical thinking. ..."*

*"The closest Dr. Greenwald came to such an opinion was extrapolating data from the internet based site relating to the IAT. From the uncontrolled response to this website, he opined that 70 to 80% of the respondents in the United States had an 'automatic preference for whites.'" [Underlining added]*

....

*"This is a fatal flaw in the proof of a social scientist in a case of this nature.... "*

***[insert short quote to be supplied]***

# Meta-analysis and Its Claim of Support of Implicit Bias in General Population

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- What is a meta-analysis and its role in Implicit Bias Research, *Wal-Mart v. Dukes*
- *Meta analysis: a statistical technique by which aggregated results of many studies from different sources are analyzed together to determine the weight of evidence supporting a particular hypothesis.*
- *Studies must repeatedly demonstrate consistent results; i.e. same person taking test should repeatedly yield consistent results. Note: Prof. Greenwald testified his IAT results varied.*
- *Pippen v. Iowa* comment on meta-analysis



# Should Implicit Bias Become Part of Current Employment Law Jurisprudence?

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If yes, why?

If no, why not?

- Disparate treatment cases
- In light of decades of reliance upon proof of motive and intent
- Disparate impact cases
- Vast number of individual variables influencing IAT results
- Deficiencies in meta-analysis per *Pippen v. Iowa*

## The Coming Storm

- Plaintiffs argue that “the law and science are at odds,” and “anti-discrimination doctrine lags far behind the psychological science of inter-group bias.” “To ensure the promise of anti-discrimination law is fulfilled, legal models of decision making in the work place should recognize and incorporate the empirical scientific understanding about the influence of unwitting bias.”
- The likelihood that an individual decision maker may be influenced by stereotype may be addressed by requiring the IAT to be administered to the decision maker pursuant to Rule 35 Fed. R. Civ. P. The underlying theory is that there is a correlation between IAT scores reflecting bias and biased action. (J. Finberg, citing Greenwald, et al. Understanding and Using the IAT, *Journal of Personality and Social Psychology*, 27 (July 2009))

# Implicit Bias in the Courtroom

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- Administered to
  - judges?
  - lawyers?
  - witnesses?
  - attorneys?
  - jurors?
  
- Is it practical?
- How, when and if discussed?



# De-Biasing Stereotyping, Implicit Bias through Diversity Management Initiatives

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- Diversity Management Roots
  - Civil Rights Movement
  - Anti-Discrimination Statutes, advancing equal employment opportunity
- Why Diversity Training: Benefits
  - De-Biasing employment-related personnel decisions
  - Advances equality of opportunity internally
  - Facilitates career development of employees
  - Enables communication in external, national and global community
  - Cultivate understanding, compatibility, collegiality, civility and teamwork
    - a productive pleasant workplace environment
  - Good for business

# De-Biasing Stereotyping, Implicit Bias through Diversity Management Initiatives *(cont.)*

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- Objectives of Diversity Management
  - Individualize personal qualities such as knowledge, skill and ability
  - Cultivate awareness of potential bias
  - Encourage co-employees to learn more about one another
  - Emphasize teamwork and shared goals
  - Eliminate/minimize biases through awareness. No more Jim Crowism
- How to Reduce Bias – Samples
  - Cultivate egalitarian relationships
  - Identify and publicise successful and admired members of so-called “out groups.”
  - Define individuals without reference to minority status
  - Discourage reliance on stereotypes
  - Mentoring

# De-Biasing Stereotyping, Implicit Bias through Diversity Management Initiatives *(cont.)*

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- Do De-Biasing Programs Work?
  - Not overnight
  - Policy statements alone do not work
  - Requires leadership
  - Requires commitment, organizational and individual
  - Continuous, consistent awareness training



# Discussion? Q's and A's?

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