



# Neutrality Beyond

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Bias:

## **IMPLICIT BIAS IN MEDIATION**

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A father and son get in a car crash and are rushed to the hospital. The father dies. The boy is taken to the operating room and the surgeon says, "I can't operate on this boy, because he's my son."

**How is this possible?**

Did you guess it was the son's Mother?

*Don't worry. You are not alone! In one study by researchers, 85% of participants did NOT guess the boy's mother. Only 22% of the self-proclaimed feminists that participated guessed that the surgeon was his mother.*

# Objectives

- **Understand what implicit bias means and how it may influence our decisions.**
- **Understand that being implicitly biased does not necessarily mean we act in explicitly biased ways.**
- **Learn to recognize some behaviors that may suggest bias or differential treatment.**
- **Learn some techniques that help debias perceptions and improve interactions.**



# What is implicit bias? And why should we, as mediators, care about it?

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An implicit bias is an unconscious association, belief, or attitude toward any social group.

People may often attribute certain qualities or characteristics to all members of a particular group. Implicit biases operate almost entirely on an unconscious level.

While explicit biases and prejudices are intentional and controllable, implicit biases are less so. A person may even express disapproval of a certain attitude or belief while still harboring similar biases on a more unconscious level.

**As mediators, it is our job to be aware of these biases in order to maintain neutrality.**

# IMPLICIT BIAS

WHAT WE DON'T THINK WE THINK



Okay, so I get why awareness of any unconscious biases is important for us as neutrals, but is it really relevant outside of my capacity as a mediator?

Implicit bias has a huge place in our social discussions with the growing concern for racial and gender bias as seen with social movements like #MeToo, Time's Up, and Black Lives Matter. All of these movements aren't just concerned with explicit bias, but also want to address what is going on in the unconscious that is affecting social change.

Attorneys, parties to a lawsuit, colleagues, and any other people you may work with in your business all have their own implicit biases. The more awareness we have, the more we are able to self-regulate our own biases and behaviors.

<https://youtu.be/1JVN2qWSJF4>



# Statistics

- In a George State University study on analyzing racial bias in email responses from mortgage loan originators, the researchers calculated inquiries with Black-sounding names would need to have a credit score that is **71 points higher** just to receive the same response rate as identically situated whites. To illustrate, lenders responded to whites with a credit score of 700 at the same rate as they did to Blacks with a credit score of 771.
- Marquette University did a similar study. Their findings showed that on average, landlords exhibited a bias toward white-sounding names; they responded to them **6.3 percent** more frequently than to Black-sounding names. This bias was most pronounced if both applicants were of low economic class. In that case, landlords responded to equivalent emails from white-sounding names **17.5 percent** more often.
- A study through the Clayman Institute of Gender Studies concluded that the total of women musicians in orchestras went up from **5% to 25%** since the 1970s—a shift that happened when judges began auditioning musicians behind screens so that they could not see them.

# Mediator Neutrality

What do the rules say?



## **Rule 10.210 Mediation Defined**

Mediation is a process whereby a **neutral and impartial** person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be.

## **Rule 10.330 Impartiality**

A mediator shall maintain **impartiality** throughout the mediation process. Impartiality means freedom from favoritism or **bias** in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

## **What is a mediator can no longer maintain their neutrality?**

A mediator shall **withdraw** from mediation if the mediator is no longer impartial. Rule 10.330(b)

# ELEMENTS OF NEUTRALITY

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1. NO CONFLICT OF INTEREST



2. PROCEDURAL EQUALITY



3. OUTCOME NEUTRALITY



4. LACK OF  
BIAS/PREJUDICE/FAVORITISM



# IMPLICIT ASSOCIATION TEST

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1954 landmark civil rights case *Brown v. Board of Education* and the “Doll Test”

The modern method of assessing attitudes on race is the [Implicit Association Test, or IAT](#), which tests unconscious bias regarding more than just race and gender.

According to a recent study, 70 percent of whites have an anti-black bias, as do 50 percent of blacks.

In the 1940s, psychologists Kenneth and Mamie Clark designed and conducted a series of experiments known colloquially as “the doll tests” to study the psychological effects of segregation on African-American children.

Drs. Clark used four dolls, identical except for color, to test children’s racial perceptions. Their subjects, children between the ages of 3 to 7, were asked to identify both the race of the dolls and which color doll they prefer. A majority of the children preferred the white doll and assigned positive characteristics to it. The Clarks concluded that “prejudice, discrimination, and segregation” created a feeling of inferiority among African-American children and damaged their self-esteem.

The doll test was part of Dr. Clark’s testimony in the case of *Brown v. Board of Education*.

<https://youtu.be/PZryE2bqwdk>

# MICRO AGGRESSIONS

## What are Microaggressions really?

They can be deliberate /conscious or good intention/unconscious

### 3 Types:

1. Microassaults
2. Microinsults
3. Microinvalidation

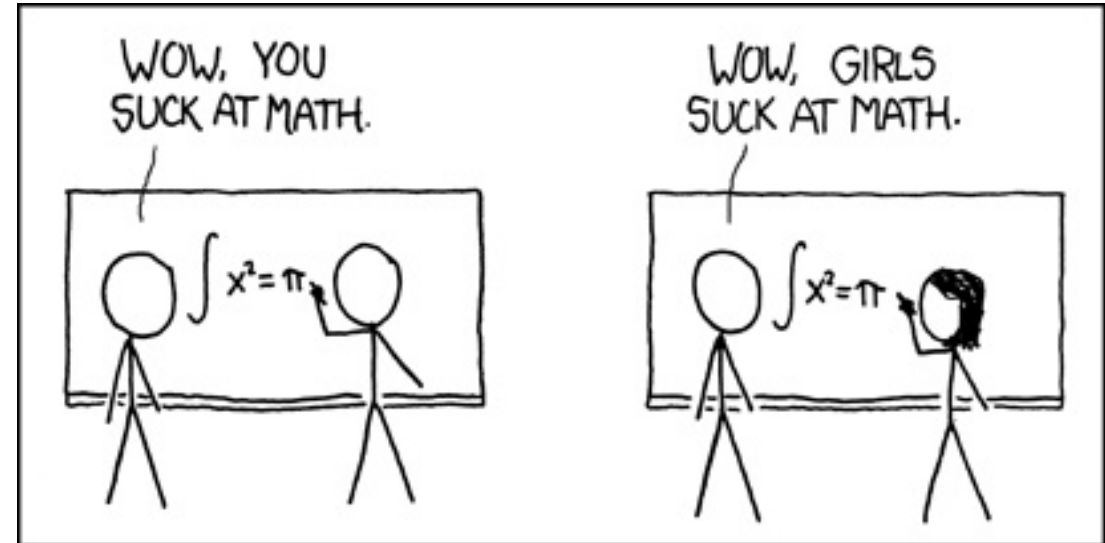
Racial microaggressions

Sexual orientation microaggressions

Disability microaggressions

Gender microaggression

Environmental Microaggressions.



## What are the effects of microaggressions?

Being the victim of microaggressions over time can hurt your health and self-esteem, and put you at a disadvantage at work and in school.

<https://youtu.be/hDd3bzA7450>

# BIAS REDUCTION STRATEGIES



1. Intention



2. Attention



3. Effort



4. Diverse mediators



Awareness and motivation, salience and cognitive resources, exposure and enhanced practices

# REAL LIFE EXAMPLES

1. Circuit-Civil
2. Family

# HARVARD UNIVERSITY IMPLICIT ASSOCIATION TESTS



# 7 DAY BIAS CLEANSE



Open the camera on your smart phone and point it at one of these boxes until your phone asks if you want to open the link. You can also find these links on your handouts.

We hope you enjoyed our presentation today, and have gained some insight into your own implicit biases. Please let us know if you would like additional materials or have questions: [miamimediatingroup@gmail.com](mailto:miamimediatingroup@gmail.com) or [hello@orlandomediatingroup.com](mailto:hello@orlandomediatingroup.com)