



## **Unconscious Bias in Business and Litigation**

**Identifying it, Understanding it, Eliminating it**

# Who Am I? | Why is an insurance coverage lawyer talking about unconscious bias?

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**Insurance  
Coverage  
Lawyer**



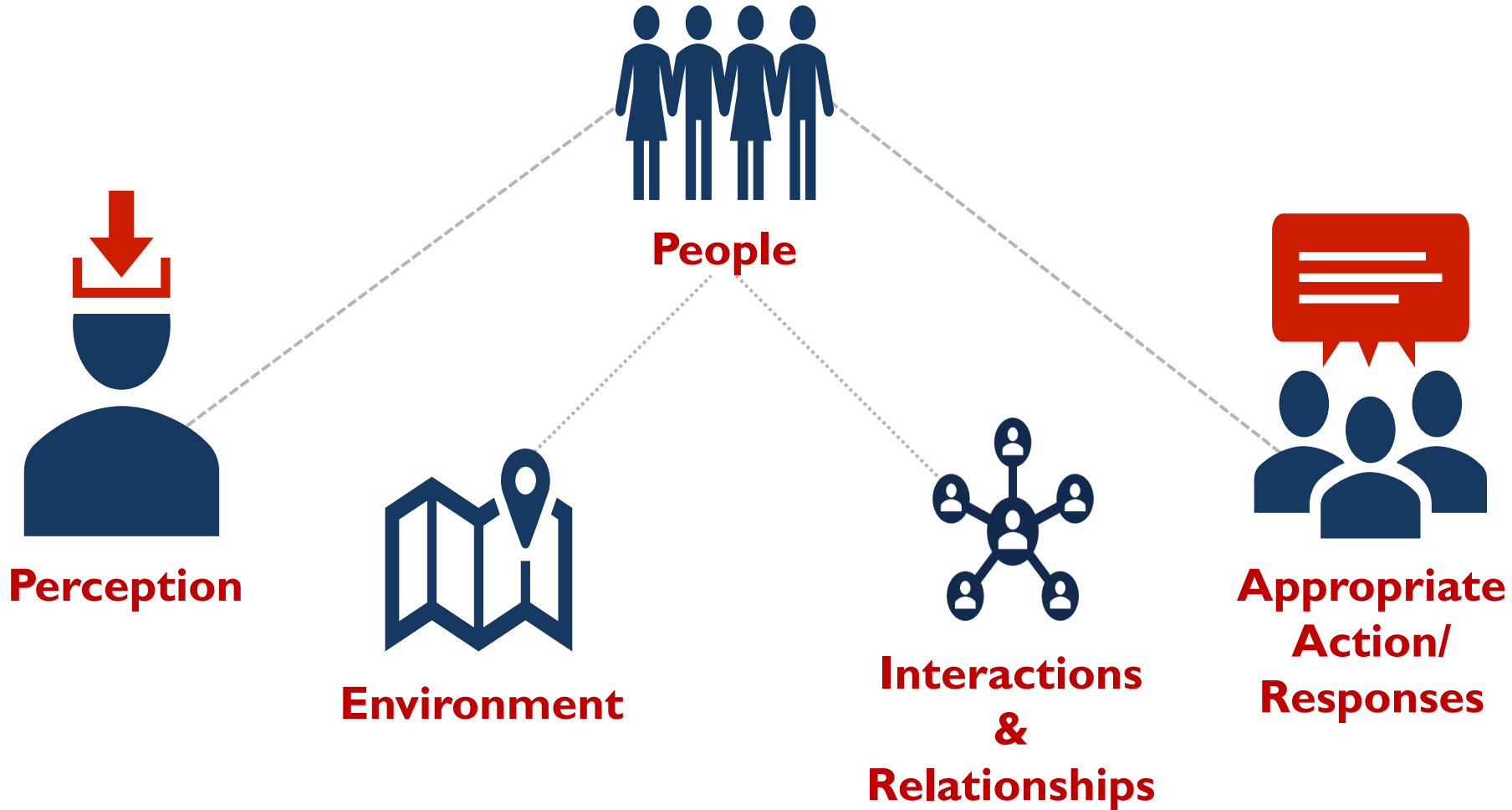
**Insurance  
Claims  
Professional**



**Studied for  
Master of  
Science in  
Forensic  
Psychology**

# Identifying Unconscious Bias | What Is It?

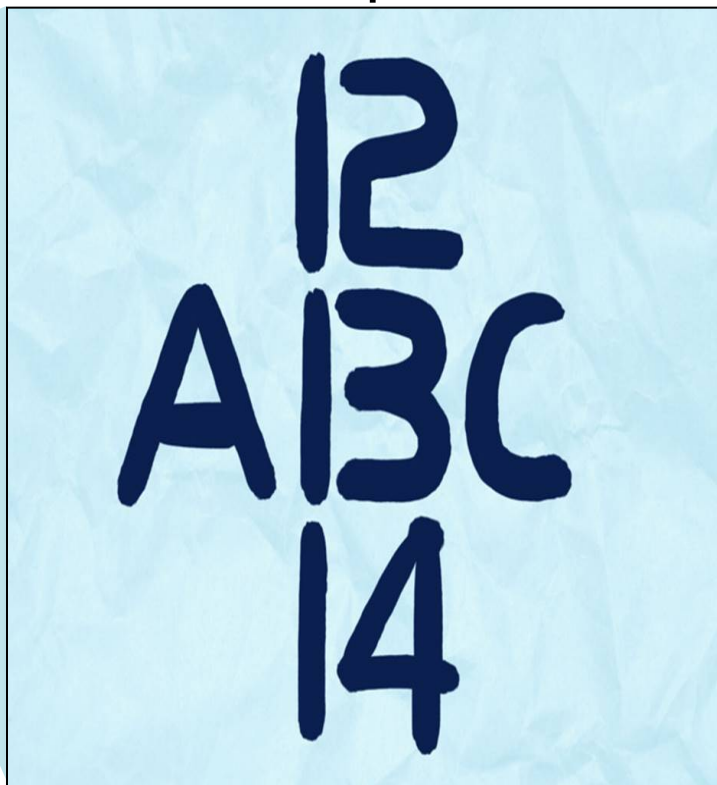
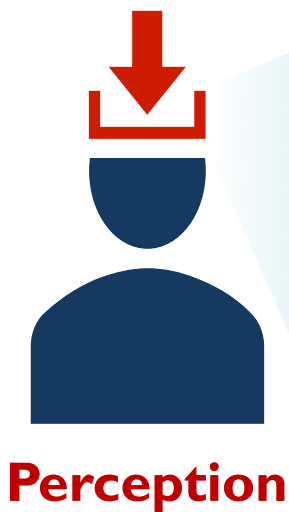
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# Identifying Unconscious Bias | Perception

Your **unconscious biases**

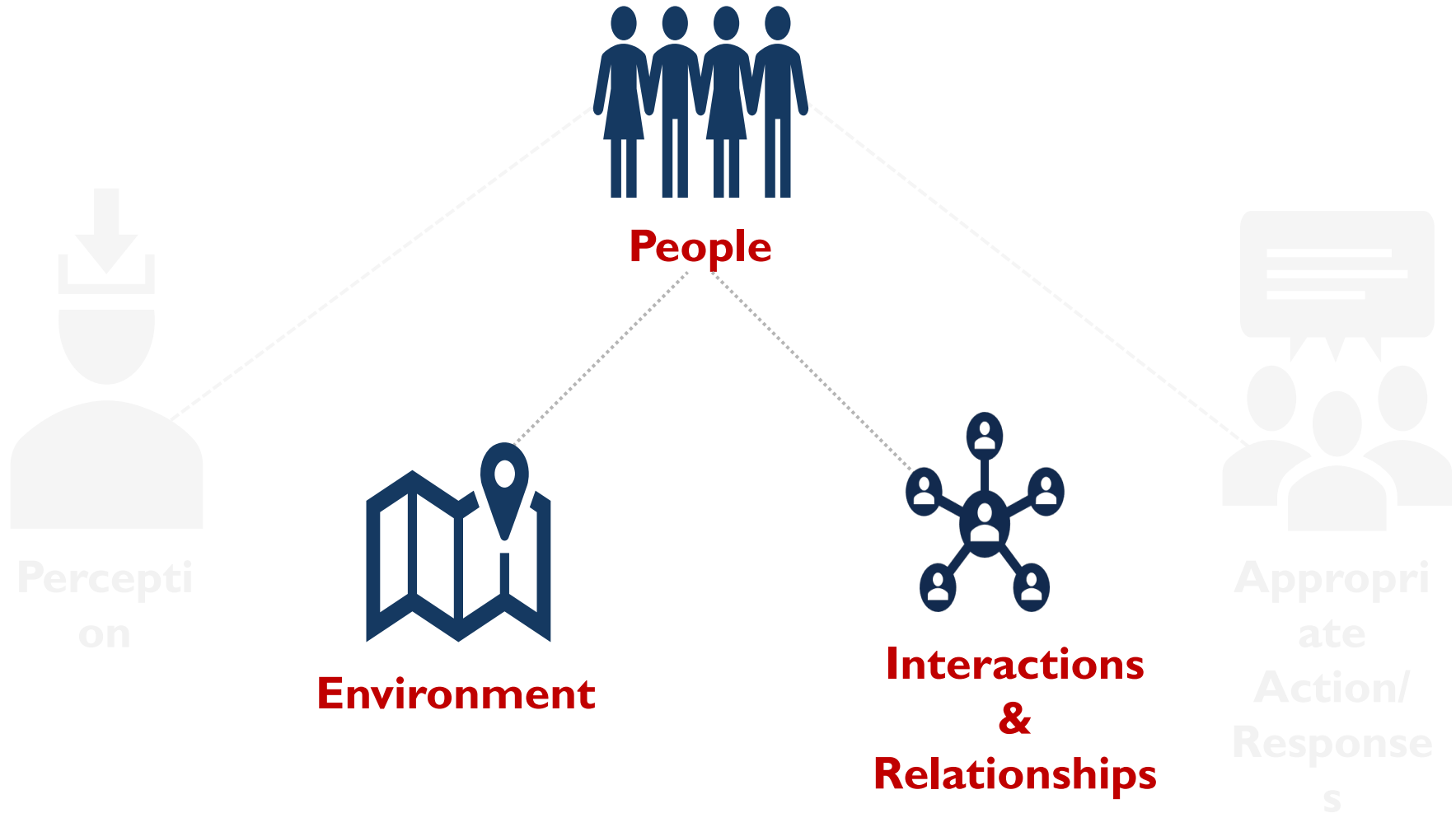
acts like an optical illusion



- Optical illusions are tools to help you see that your **perception** of something influences your opinion on that something
- **Perception** should always be questioned to avoid biased opinions and decisions being made

# Identifying Unconscious Bias | People

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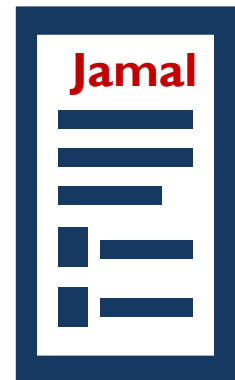


# Identifying Unconscious Bias | People

## RACE: Research Study #1

“Are **Emily** and **Greg** more employable than **Lakisha** and **Jamal**?”

- These names were calculated from birth certificates from 1974-1979; the data compares names with the highest ratio of frequency in one racial group to frequency in another
- 500 identical fictitious resumes were sent to 1,300 employers across Boston and Chicago
- **Results:** Individuals with the “white-sounding names” were 50% more likely to receive a call back for an interview
- The amount of discrimination was uniform across occupations and industries
- A “white-sounding” name is considered equivalent to about eight more years of experience



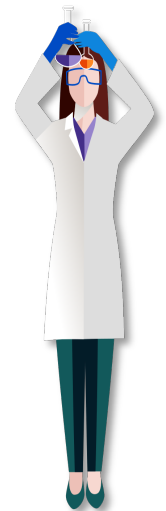
# Identifying Unconscious Bias | People

## GENDER: Research Study #2

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*“In STEM fields, many employers hire John over Jennifer.”*

- Researchers at Yale University asked more than 100 science faculty members across the country to evaluate one of two student resumes for the position of lab manager
- The resumes were identical except one was “John” one was “Jennifer”
- **Results:** “John” was perceived more competent and more likely to be selected
- Both female and male science faculty members offered “John” a higher starting salary and were more willing to offer him mentoring opportunities



# Identifying Unconscious Bias | People

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**Definition of Unconscious Bias:** Stereotypes and automatic judgments we form have about something (in this context, a group of people) outside of our conscious awareness





# Unconscious Bias v. Conscious Bias

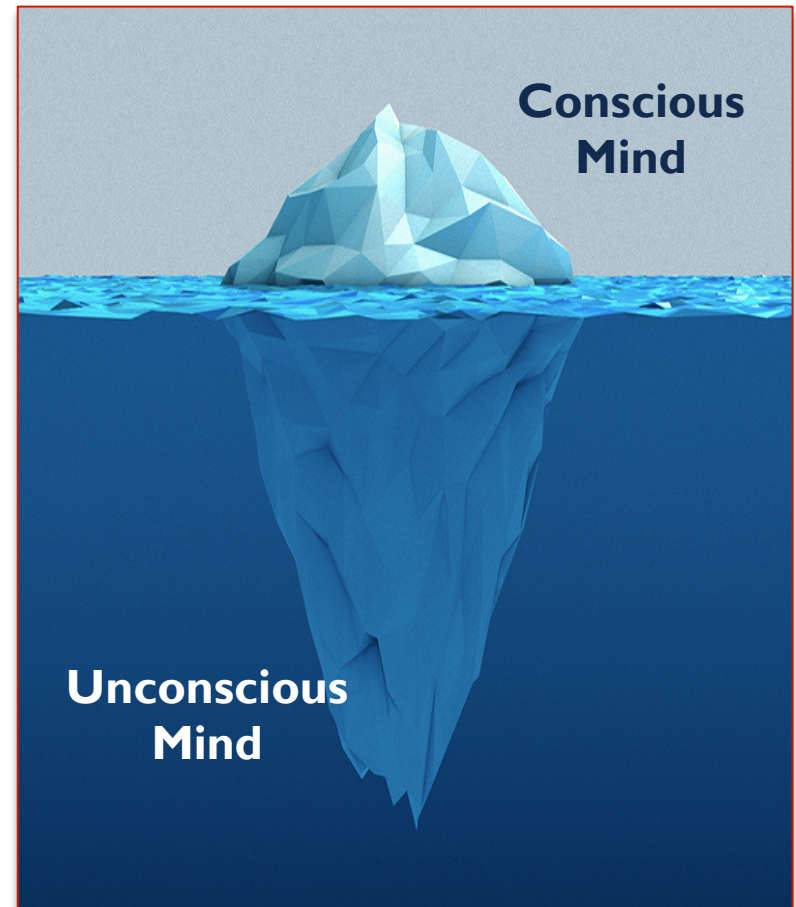
## Facts

- **Unconscious bias** is far more prevalent than **conscious bias**
  - Increased in times when we are multi-tasking, working under time pressure or during times of stress
- **Conscious bias** is rooted in logical and rational thoughts and actions
- **Unconscious bias** is a result of our feelings, urges and memories

## Why is it important to be aware?

- **Unconscious bias** can influence our decision-making and behavior towards the target of our bias, impacting diversity and inclusion in our workplace and during the litigation process

Freud compared the mind to an iceberg



# Understanding Unconscious Bias | Why Do We Have It?

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- Emanates from an individual's tendency to organize social worlds by categorizing.

It is the brain's way of making sense of the world

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- Most common examples: race, gender, physical ability, religion, sexual orientation, appearance.
- Many other characteristics we as individuals or as a society hold an unconscious bias, like left-handedness in Western society, i.e. writing, desks, scissors, computers, machinery.

# Where Do We Find Unconscious Bias?

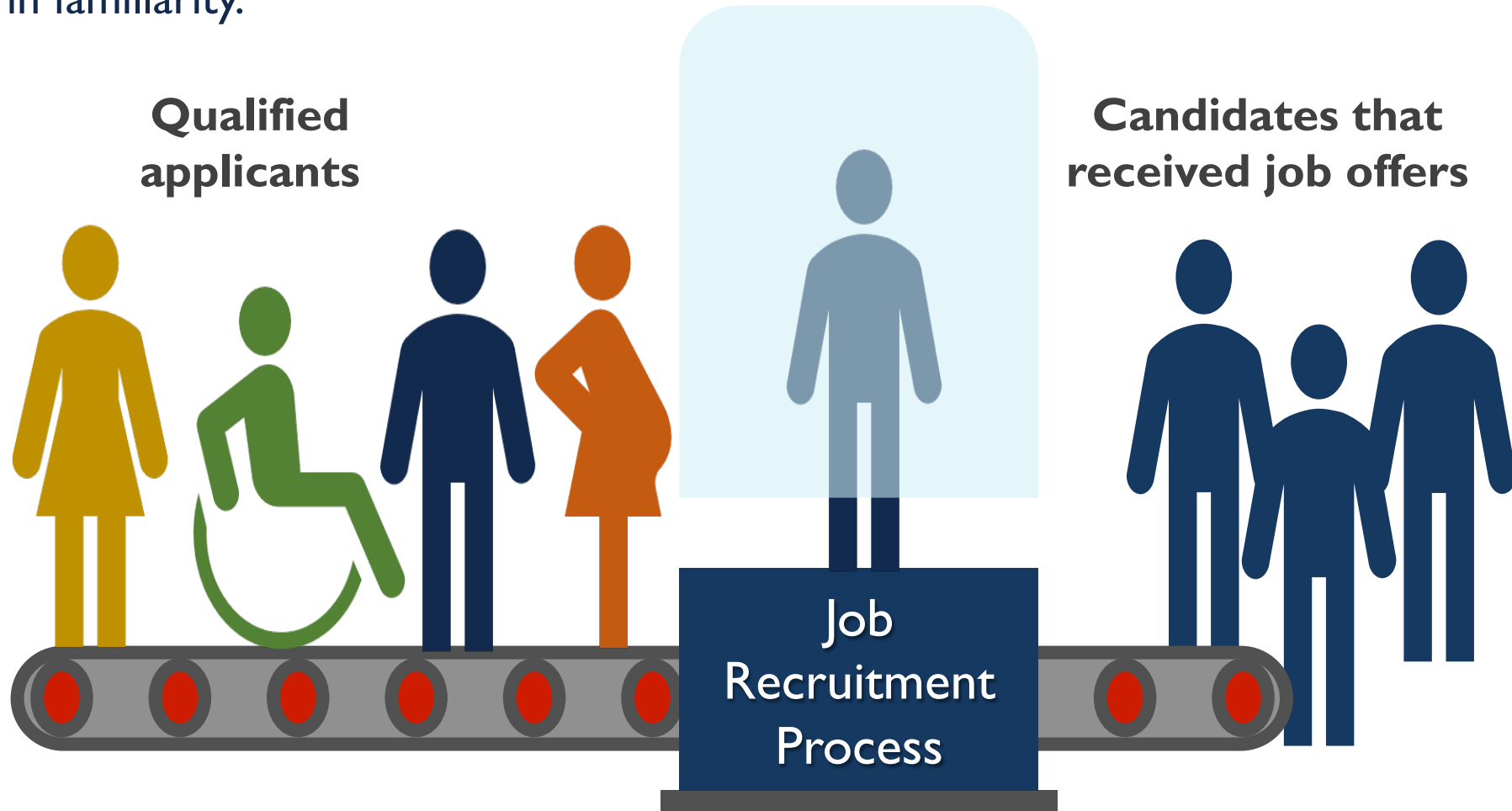
**EVERYWHERE**

## Today's Focus

- Workplace
- Claims Investigation / Litigation / Trial

# Where Do We Find Unconscious Bias? | The Workplace - Affinity Bias

**The Affinity Bias:** We like people who are perceived to be like us. Comfort in familiarity.



# Where Do We Find Unconscious Bias? | The Workplace - Affinity Bias

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**The Affinity Bias:** We like people who are perceived to be like us. Comfort in familiarity.

## Why is it a bad thing in the workplace?

- Perpetuates a lack of diversity in background and/or ideas/thoughts
- Referral systems (informal or formal/incentivized): Employees tend to refer people similar to themselves.  
Can create a very homogenous workforce.
- “Company Culture and fit” rhetoric: Pretext for unconscious bias? Operationalize.
  - “She is a good ‘cultural fit’ for this tech company. She has a background in engineering, with a minor in computer science. She has 4 years experience at Google.”
  - “He is a good “cultural fit” for this company. He was really easy to talk to. We talked an hour. He seems like a great guy, my younger brother was in his fraternity in college.

# Feedback | Assessment | Reviews

# Credibility Bias

## Gender Studies and the Double-Bind:

*“Is office politics considered a white man’s game?”*

- If they behave in ways that are stereotypically “feminine” (not “taking charge” of a meeting or showing emotion) seen as ineffective.
- If they operate in a stereotypical “masculine” way (giving directions, appear confident, or are competitive, decisive they are judged negatively).
- Research indicates credibility is more often presumed in white males, while women or people of color frequently feel they must prove or earn it.
- Research has shown women and people of color are held to a higher standard than men in evaluations.



# Marketing / Business Development

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**Marketing / business development / rainmaking is directly correlated with promotional opportunities**

- Generating new business

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- Retaining business

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- Developing and expanding existing client relationships



# Marketing / Business Development

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**The Road to Rainmaker Paved with Mentorship.  
What is the mentor's role and power?**



# Marketing / Business Development | Revisiting Affinity Bias

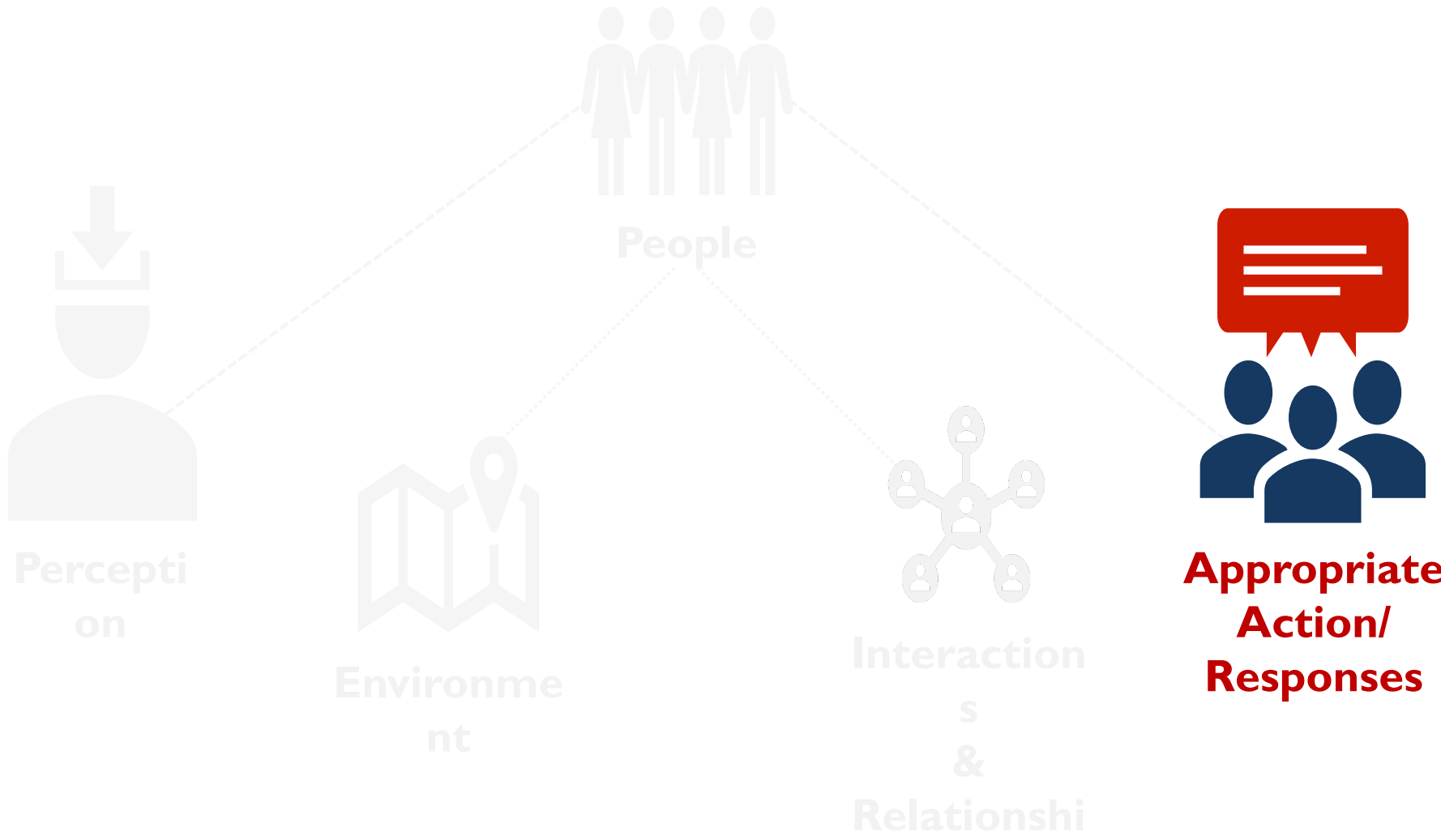
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## Other reasons woman are excluded from mentor relationships and networking functions:

- Uncomfortable to meet (or travel with) women alone.
- Traditional male activities (golf).
- Men more time for networking business development because woman shoulder the burden of childcare.



# Eliminating Unconscious Bias in the Workplace | How?



# Eliminating Unconscious Bias in the Workplace

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**First step to unraveling unconscious bias, because it allows employees to recognize that everyone has unconscious bias and it allows people to and identify their own.**

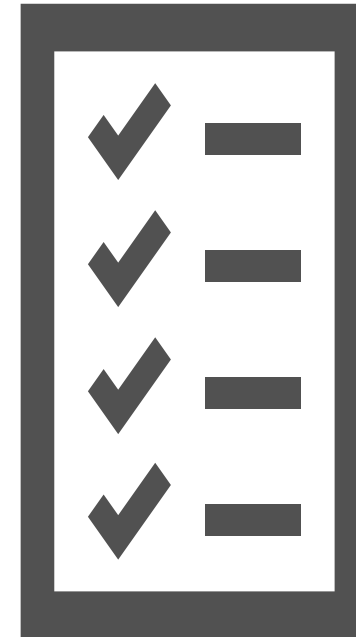


# Eliminating Unconscious Bias in the Workplace

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## Recruitment

- **Review referral programs** to protect against affinity bias
- **Review word choices in job listings:** Studies show that subtle word choices can have a strong impact on the application pool. “Competitive” v. “Collaborative.”
- **Have several diverse interviewers** in the interview process.
- **Use a “structured interview style.”**  
[Clearly define the qualities you’re looking for in candidates.](#)  
Standardize questions.
- **Use work sample test** which mimic the kinds of tasks the candidate will be doing in the job.



# Feedback | Assessment | Reviews

# Eliminating Unconscious Bias in the Workplace

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- Ensure women and people of color receive candid, helpful, and equal [feedback](#).  
***Research shows that women don't receive the same amount of feedback as men, without objective feedback, there is a disadvantage to advancement.***
- Create systems that assure that choice work is distributed with inclusion in mind.
- Create mentoring programs using a rotation system.
- Choose social activities that are of interest to most everyone.
- Include people of varying background in client meetings, work teams, and pitches.

# Unconscious Bias in Claims Investigation / Litigation

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**There are many ways unconscious bias finds its way into the claims investigation, litigation and trial process**

- Exposure Effect Bias

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- Cognitive Dissonance Bias

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- Confirmation Bias

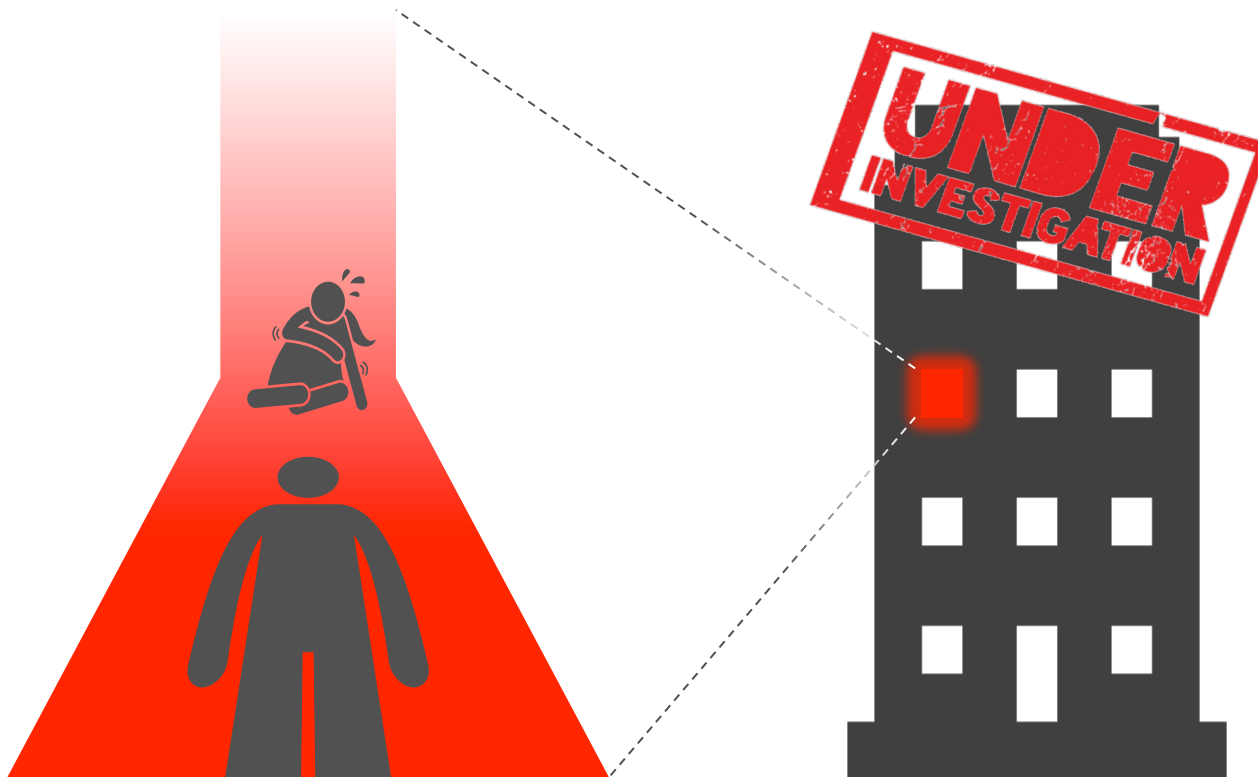


# Unconscious Bias in Claims Investigation/Litigation

# Unconscious Bias in Claims Investigation / Litigation

## Exposure Effect Bias | “Falling in love with a case and/or defenses”

**Example:** Violent third-party act on insured premises (rape at apartment complex, allegations of poor security). Defense convinced itself of defenses. Did not focus on sympathy factors.



# Unconscious Bias in Claims Investigation / Litigation

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**Cognitive Dissonance Bias** | Discomfort when beliefs contradict your attitudes/actions

## Example:

Smoker: “I believe in a healthy lifestyle.”

Smoker: “I smoke because I have anxiety and anxiety is not healthy.”

## What does this mean?

Conflict between attitudes (healthy living) and actions (smoking) are in conflict.

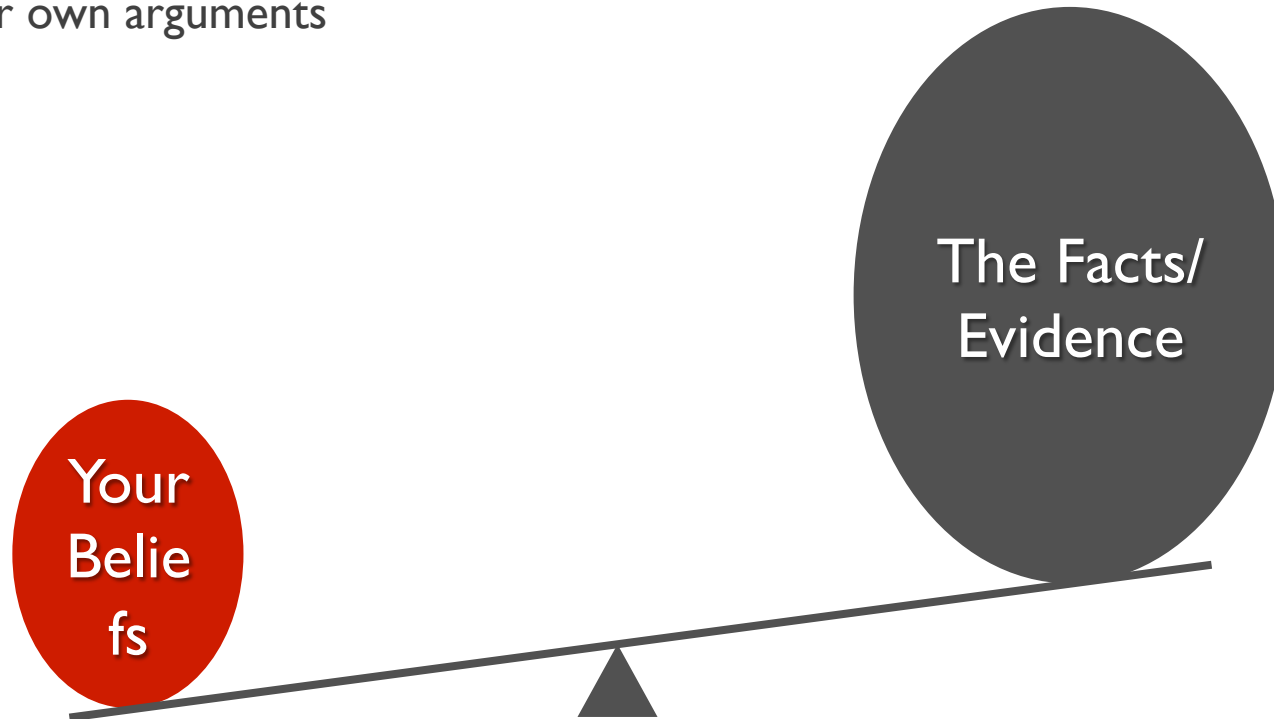
Therefore, a belief about smoking mitigating the unhealthy feeling of anxiety aligns actions and beliefs and allows the smoker internal harmony: “see I really believe and practice good health.”

# Unconscious Bias in Claims Investigation / Litigation

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## Confirmation Bias | Seeking information that confirms preexisting beliefs

**Example:** Politics. Followers of a political party will register the positive points of the leader and proudly speak and ignore the negative. In litigation, this means: ignoring, disregarding or dismissing strong arguments of your adversary while overvaluing, and inflating your own arguments



# Unconscious Bias at Trial

# Unconscious Bias at Trial

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## Voir Dire and Social Desirability Bias

- We present a version of ourselves that comports with social expectations. Researchers: Biggest barrier between you and honest answers in voir dire.
- When surveyed for example, people will tell you that they eat healthier, vote more often, and spend more quality time with their children than they actually do.
- Not consciously lying. Instead, they are providing you with their own self-image which is colored by selective perception. Social desirability is a type of cognitive dissonance.
- Success in using voir dire requires uncovering the authentic attitudes.
- Research has shown self-reporting for bias does not work and is not indicative of real juror attitudes.

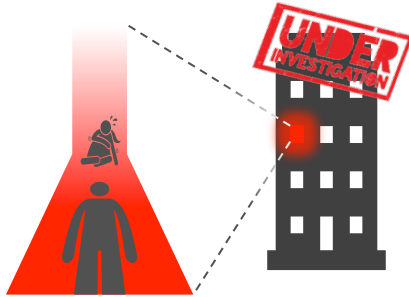
# **Eliminating Unconscious Bias during Claims Investigation/Litigation and at Trial**

# Eliminating Unconscious Bias in Claims Investigation / Litigation

## During Litigation

- **Combating**

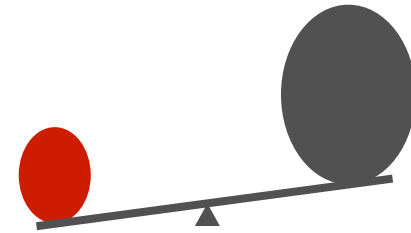
### Exposure Effect Bias



### Cognitive Dissonance Bias



### Confirmation Bias



- **Be receptive and open to criticism.**
- **Engage in exercises to get a neutral opinion (formal: mock trial/focus group or informal).**
- **Write down the worst points about your case, and the best points of your adversary's case.**



# Eliminating Unconscious Bias at Trial

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## Voir Dire

**Get a written questionnaire**

**Get attorney-conducted voir dire**

**Normalize the notion of 'bias' at the start of voir dire:**

When the attorney does have the opportunity to conduct oral voir dire, it is wise to begin with some expectation setting, i.e...

*We all go through life forming some deeply held opinions based on our experiences. That is normal. But it means that not every juror is right for every case.*

**Frame questions to avoid telegraphing a correct or incorrect response:**

Give permission to be honest and express a bias

Compare the following two questions:

- 1. How many of you would feel some bias against a plaintiff who is not a U.S. citizen?*
- 2. If you had to choose, which of the following two views would you lean toward: one, U.S. courts should primarily be for U.S. citizens, or two, U.S. courts should be open to all?*

# Conclusions | Unconscious Bias

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