

Implicit Bias Basics (Ethics)

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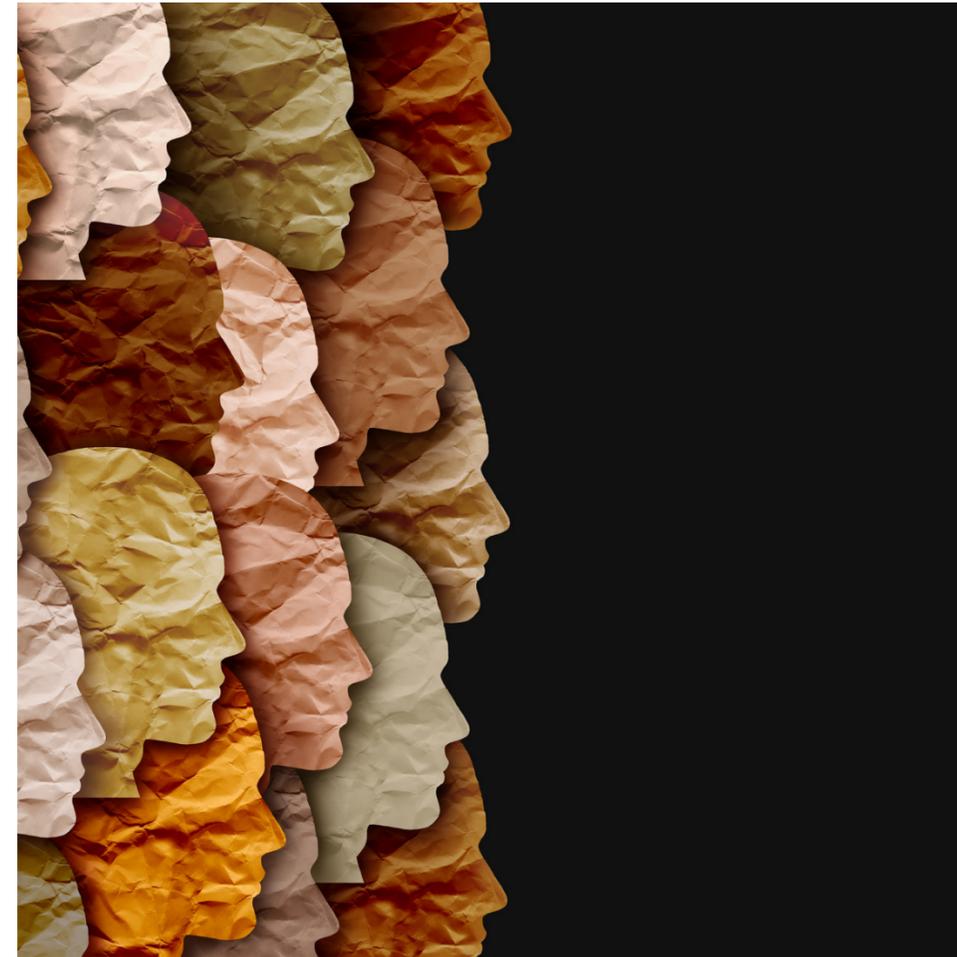
**Thursday, April 28th
2:00 – 2:50 p.m.**

Implicit Bias Basics for Attorneys

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Why does learning about implicit bias matter?

What is implicit bias?

What are ways that implicit bias
impacts our representation of clients?

What are some ways you can de-bias yourself?



Why does
this matter?

KRPC Preamble

A lawyer must:

Give their client an informed understanding of their rights.

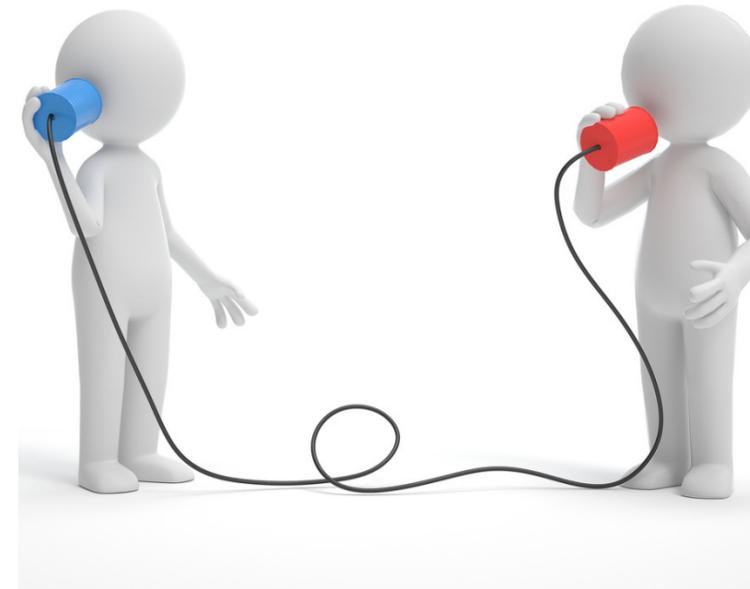
Explain the practical implications of those rights.

Zealously assert the client's position.

Communication

Rule 1.4(b)

"A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."



Lawyer as an Advisor

Rule 2.1

"...In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."



What is implicit bias?

Implicit bias is when we have attitudes towards people or associate stereotypes with them without our conscious knowledge.

This is explicit bias.



Tell me about this
cowboy.





Brain Tricks - This Is How Your Brain Works



BRAIN



TRICKS



Watch on  YouTube

But even if we don't mean for it to,
implicit bias can impact how we
represent our clients.

Culture

You can advise your client better if you understand how they see the world.



What are your client's cultural understandings of time?

Do they come from a culture that values truth-telling or peace-keeping?

What is the role of emotion in their culture? What do expressions of guilt look like?



Virtual Hearings

We perceive people as less human when they are appearing through a screen.



Northwestern study found that call-in bail hearings resulted in a 51% increase in bail amounts over in-person hearings.

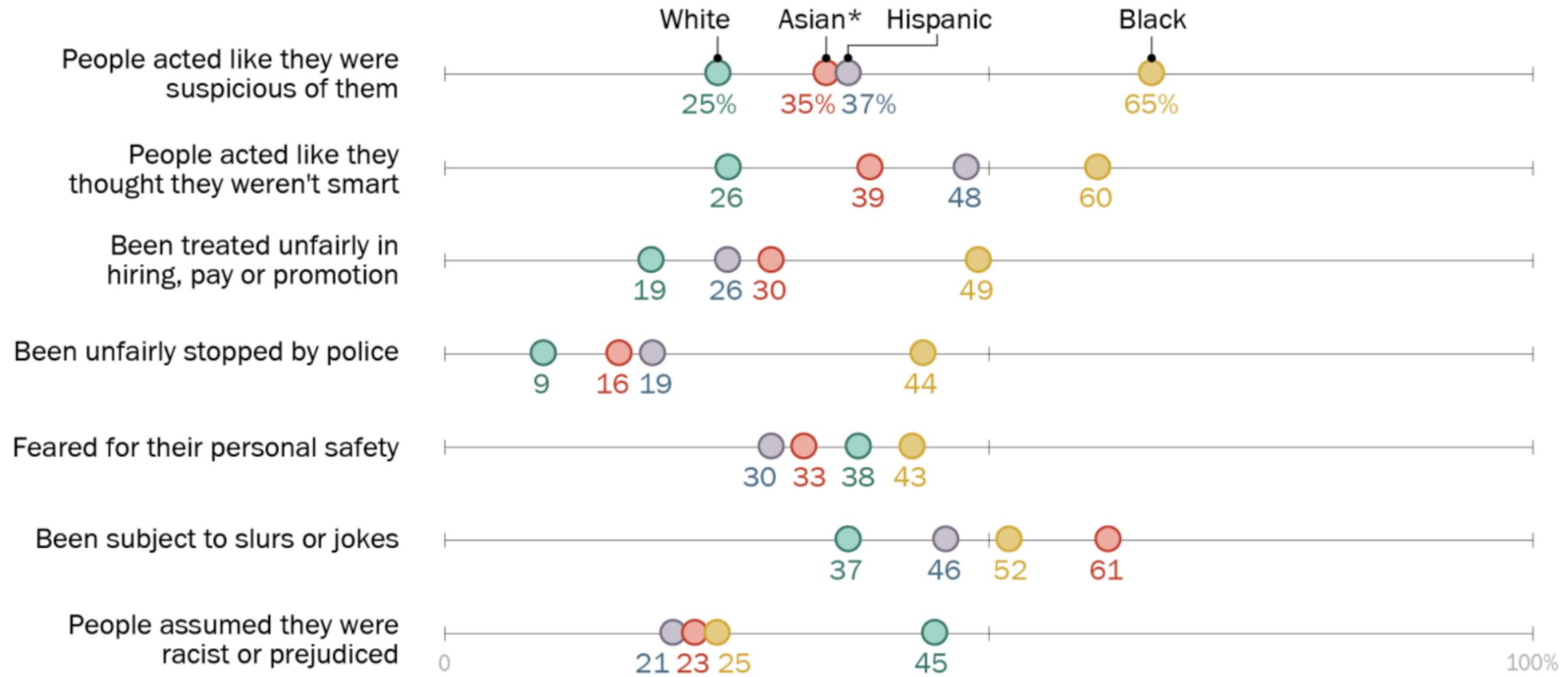
Georgetown Immigration Law Journal article found that asylum hearings over video resulted in more deportations.



"Reasonable Person" Standard

Who is that?





2019 Pew Research Center Data

Criminal Legal System Decision Points

Defenders, Prosecutors, &
Judges all have
tremendous discretion.



In 2018 in Kansas, almost 48% of homicide victims were white. Of the 15 cases that have resulted in death sentences in Kansas, 86% of the victims were white.

Nationally, in 96% of places reviewed, including every major death penalty state, there is a pattern of either race-of-victim or race-of-defendant discrimination in death sentencing, or both.



Health Care Law

Standards of care and assumptions about risk are based on white men.



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- Non-white patients receive fewer cardiovascular interventions and fewer renal transplants.
 - Black women are more likely to die after being diagnosed with breast cancer.
 - Non-white patients are less likely to be prescribed pain medications (non-narcotic and narcotic).
 - Black men are less likely to receive chemotherapy and radiation therapy for prostate cancer and more likely to have testicle(s) removed.
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- Patients of color are more likely to be blamed for being too passive about their health care
 - Hispanic patients significantly less likely to receive analgesia in the ER
 - Women have longer wait times in ER for cardiac and stroke events.
 - Women less likely to be offered surgical interventions and drugs for prevention of heart disease.
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Property Law

What is a "good"
neighborhood?

How does it get that way?



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- What makes buyers see a neighborhood as "safe"?
 - What do appraisers use to establish the value of a home?
 - How do lender's evaluate credit-worthiness?
 - Where do local governments decide to invest?
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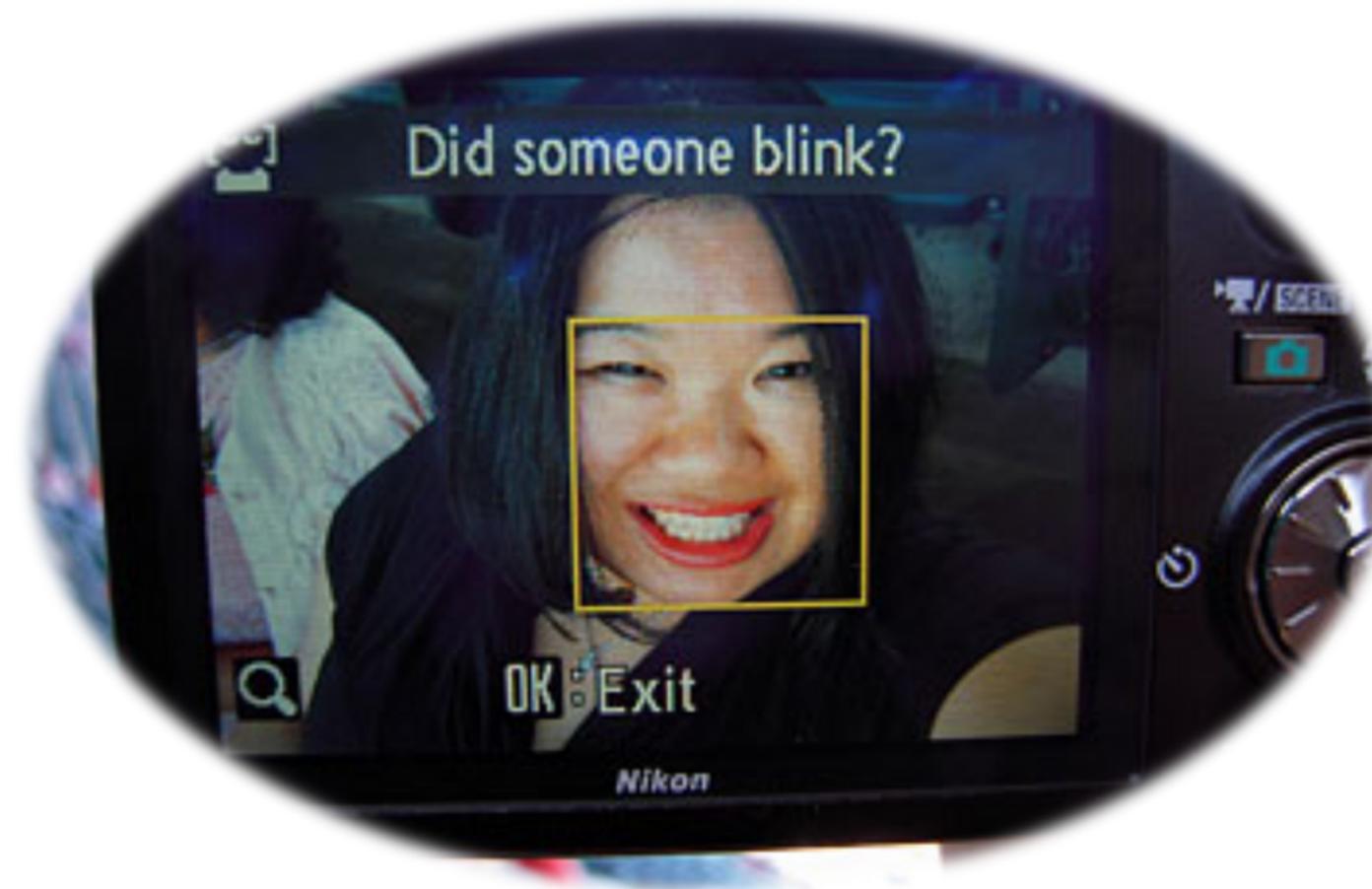
Education Law

Which kids are "good" and
which ones are "bad"?



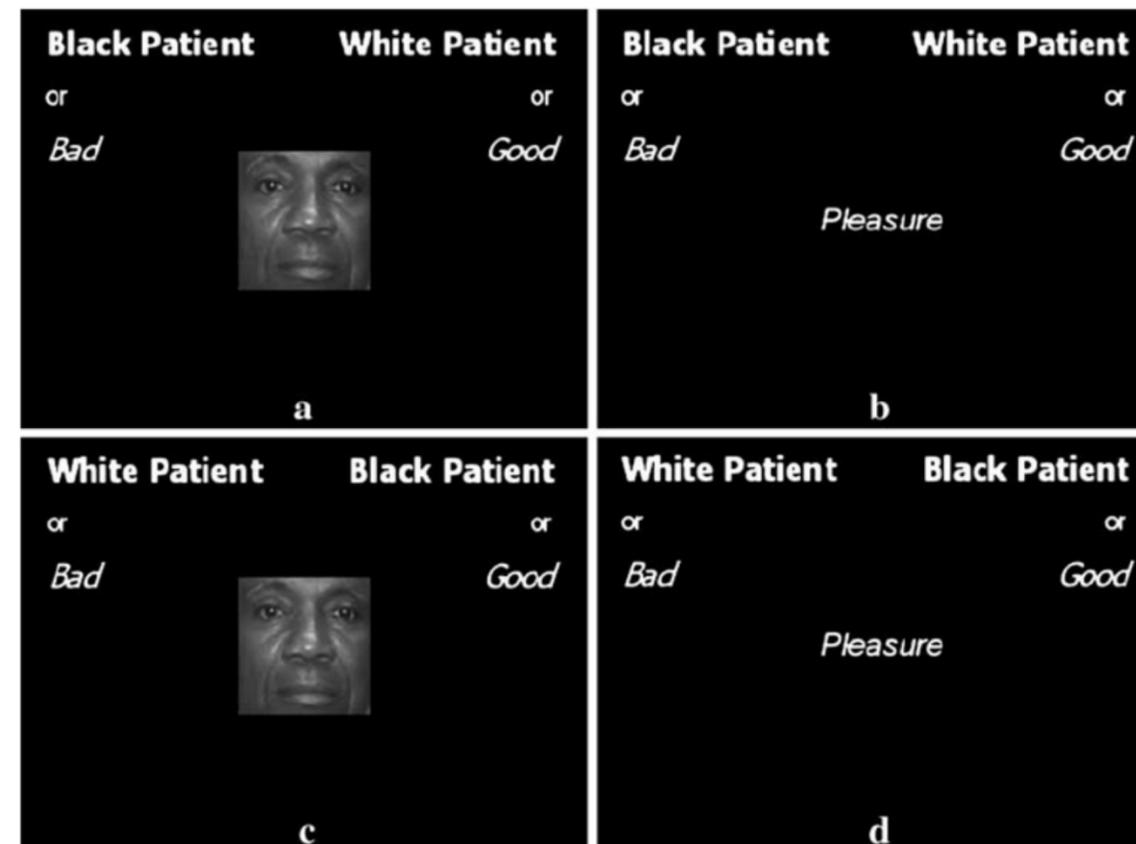
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- 2017 Kansas school funding decision noted that 15,000 Black students and 33,000 Hispanic students are struggling math and reading.
 - Teachers commonly perceive Black students to have more negative demeanors. They are more likely to be labeled "troublemakers" after minor indiscretions.
 - Read The Rage of Innocence by Kristin Henning
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Software Development & Tech Law



Way to De-Bias Yourself

Know that no one is immune from unconscious bias.



<https://implicit.harvard.edu/implicit/>

RED GREEN BLUE YELLOW PINK
ORANGE BLUE GREEN BLUE WHITE
GREEN YELLOW ORANGE BLUE WHITE
BROWN RED BLUE YELLOW GREEN

Slow down!

Be thoughtful about
the language &
imagery you use.

...**AROUND BLACKS**



...**NEVER RELAX!**



Ask "why" or use
race-switching to
catch yourself.



Use data to catch yourself.

You can't manage what you aren't measuring!



Empower your
colleagues &
clients to call
you out.



Call attention to
implicit bias for others
who have less power
than you.





Surround
yourself with
diversity.
