

THE LIABILITY IMPLICATIONS OF IMPLICIT BIAS

2019 NLC-RISC Trustees Conference

May 16, 2019 -- Ft. Lauderdale, Florida

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NLC NATIONAL
LEAGUE
OF CITIES
CITIES STRONG TOGETHER

Session overview

- Implicit, systemic, and institutional bias
- Impact of bias on cities and other local government units
- Implicit bias in the risk pool setting
 - Claims
 - Risk assessment
 - Litigation
- Case studies

NLC REAL: RACE, EQUITY, AND LEADERSHIP – *OUR MISSION*

**To strengthen local
leaders' knowledge and
capacity to eliminate racial
disparities, heal racial
divisions and build more
equitable communities**

NLC REAL: RACE, EQUITY, AND LEADERSHIP – OUR VISION

A nation in which every local official is equipped to effectively lead and serve an inclusive, thriving and healthy community.

Inclusive, Thriving and Healthy Communities are safe places where people from all racial, ethnic and cultural backgrounds thrive socially, economically, academically and physically...

What Does Racial Equity **Require**?

- “Closing the gaps” so that race does not predict one’s success, while also improving outcomes for all.
- Targeted strategies to focus on improvements for those worse off.
- Move beyond “services” and focus on root causes by changing policies, institutions, and systems.

Racial Disparities

From infant mortality to life expectancy, race predicts how well you will do.



Racial Disparities

6 in 10

of U.S. prisoners
are Black/Latino
(yet only comprise
30% of the U.S.
population)



35%

Black or Latino men
won't graduate from
High School

(80% of White males
will)



Black and Native
American
unemployment is

2x

that of Whites

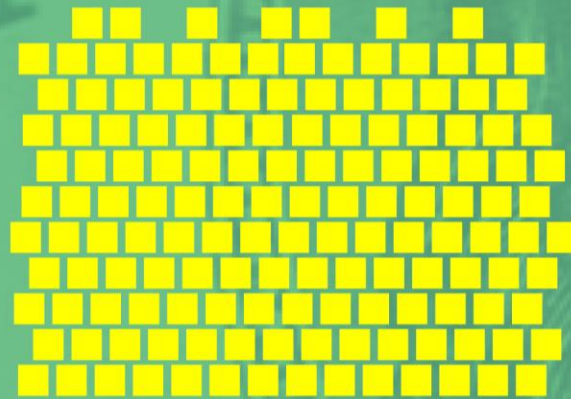
57%

of Blacks and
Latinos spend more
than 30% of their
income on
housing costs



Symptoms
of a larger
problem

MEDIAN FAMILY WEALTH TODAY:



**WHITE
FAMILY:
\$147,000**



**LATINO
FAMILY:
\$6,600**



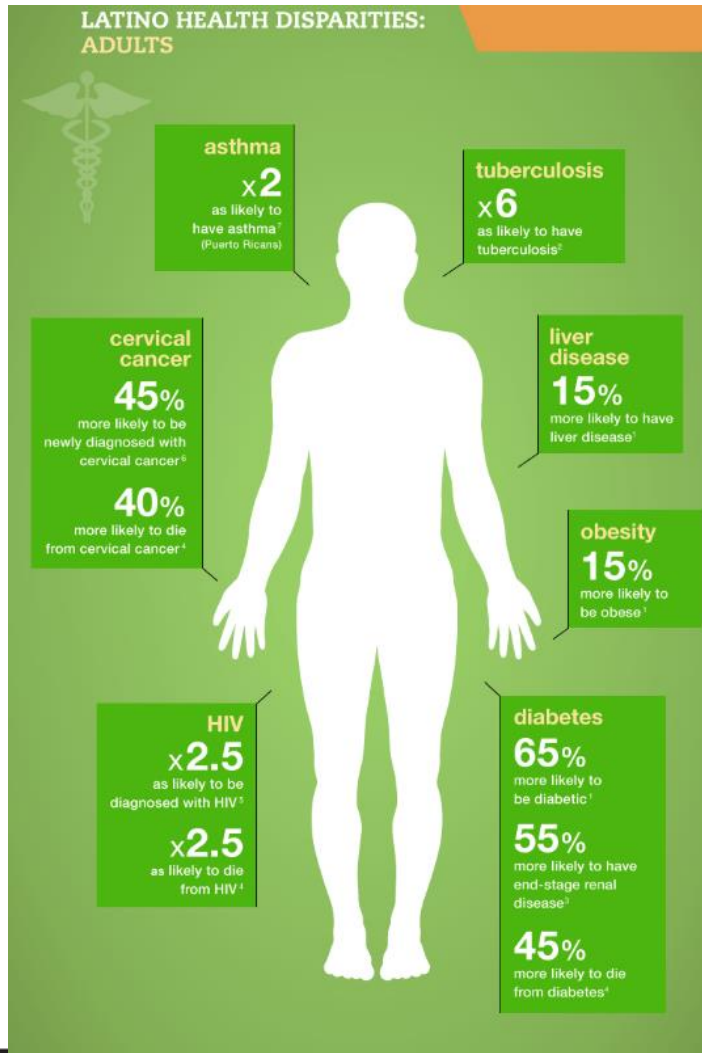
**BLACK
FAMILY:
\$3,600**

**REPORT: DREAMS
DEFERRED 2019**

INEQUALITY.ORG
AN INSTITUTE FOR POLICY STUDIES PROJECT

 Institute for
Policy Studies

Ignoring Race: Literally Lethal



Racial disparity across incomes

In recent years, as high rates of maternal mortality in the U.S. have alarmed researchers, one statistic has been especially concerning. According to [the CDC](#), black mothers in the U.S. die at three to four times the rate of white mothers, one of the widest of all racial disparities in women's health. Put another way, a black woman is 22 percent more likely to die from heart disease than a white woman, 71 percent more likely to perish from cervical cancer, but 243 percent more likely to die from pregnancy- or childbirth-related causes. In a [national study](#) of five medical complications that are common causes of maternal death and injury, black women were two to three times more likely to die than white women who had the same condition.

Black women face significantly higher maternal mortality risk

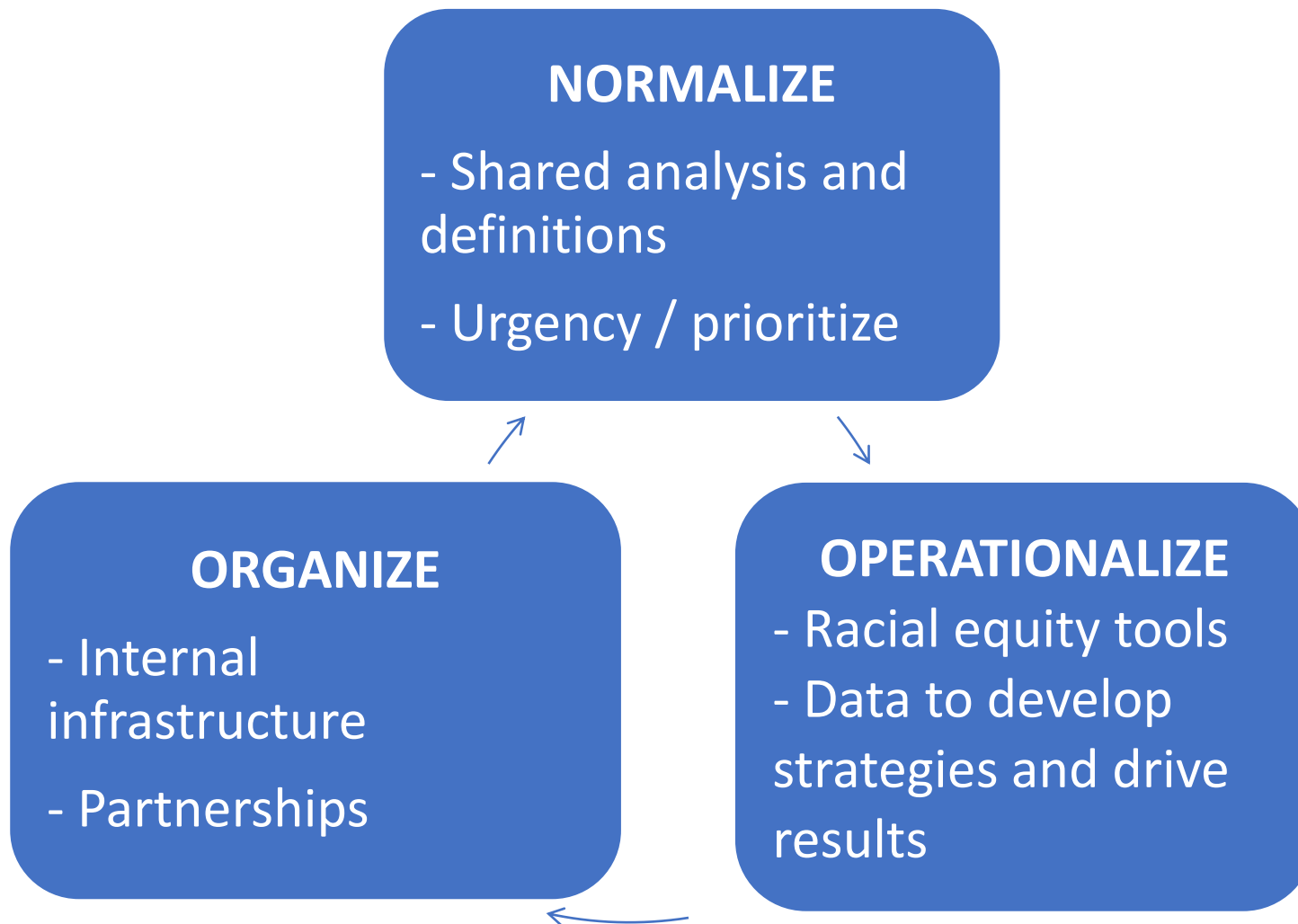
Maternal deaths per 100,000 live births (2011-2013)



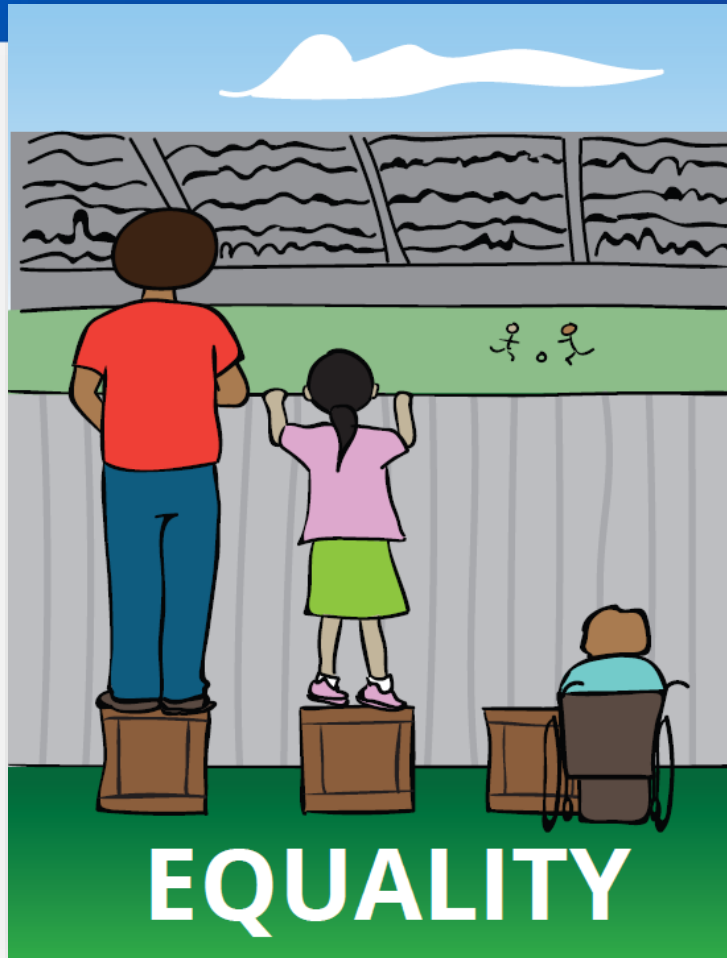
Source: [Centers for Disease Control and Prevention](#)

Credit: [African Health](#)

Effective National Practices

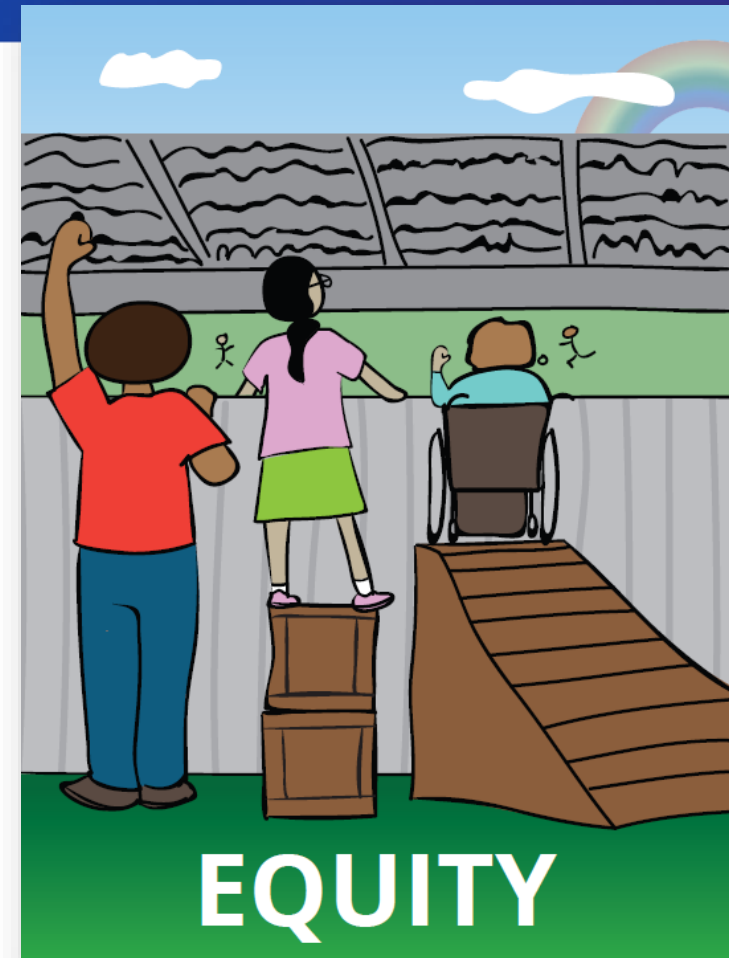


Normalizing



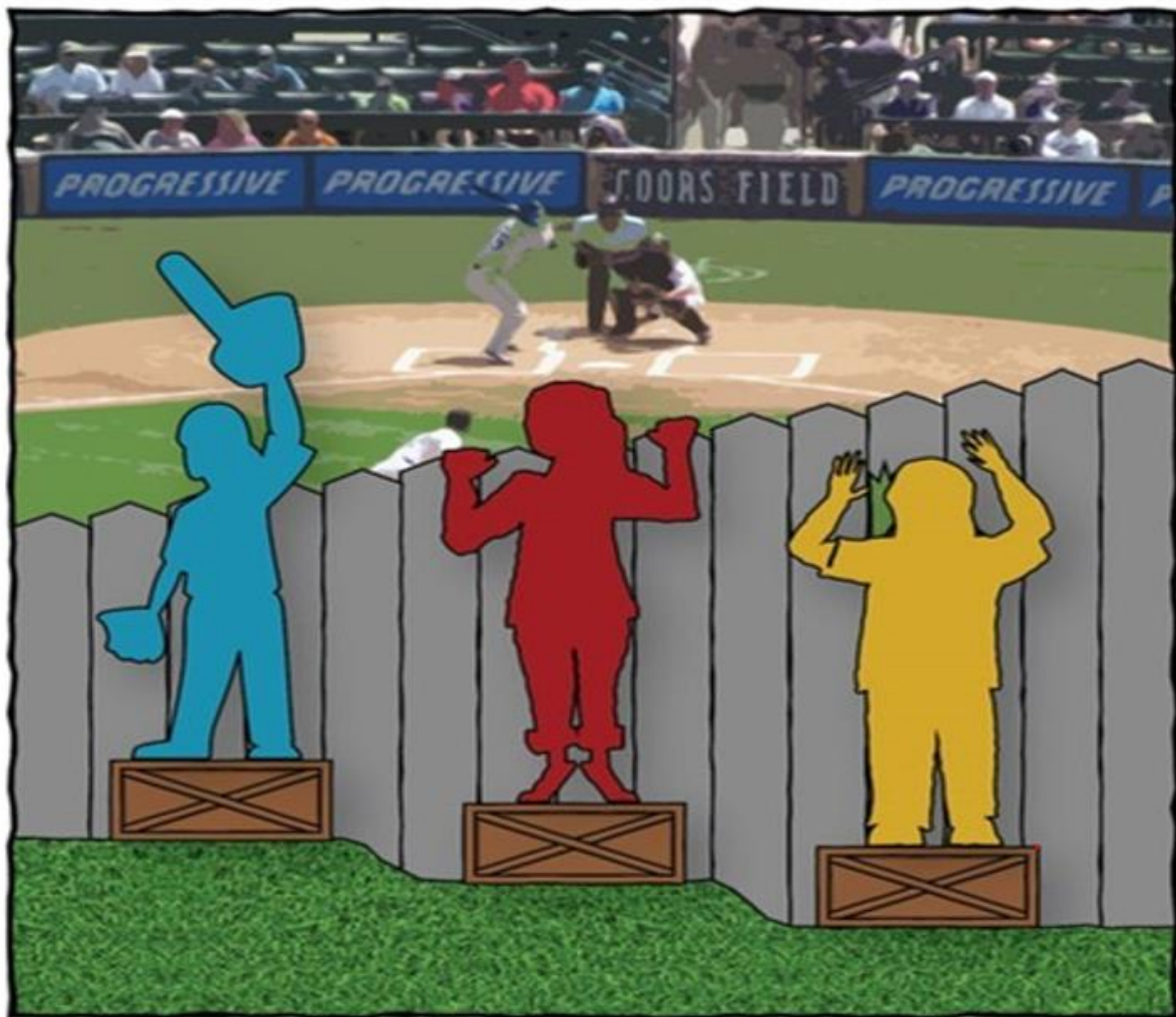
EQUALITY = SAMENESS

Equality provides the same thing for everyone.
This only works when people start from the same place, history and set of circumstances.



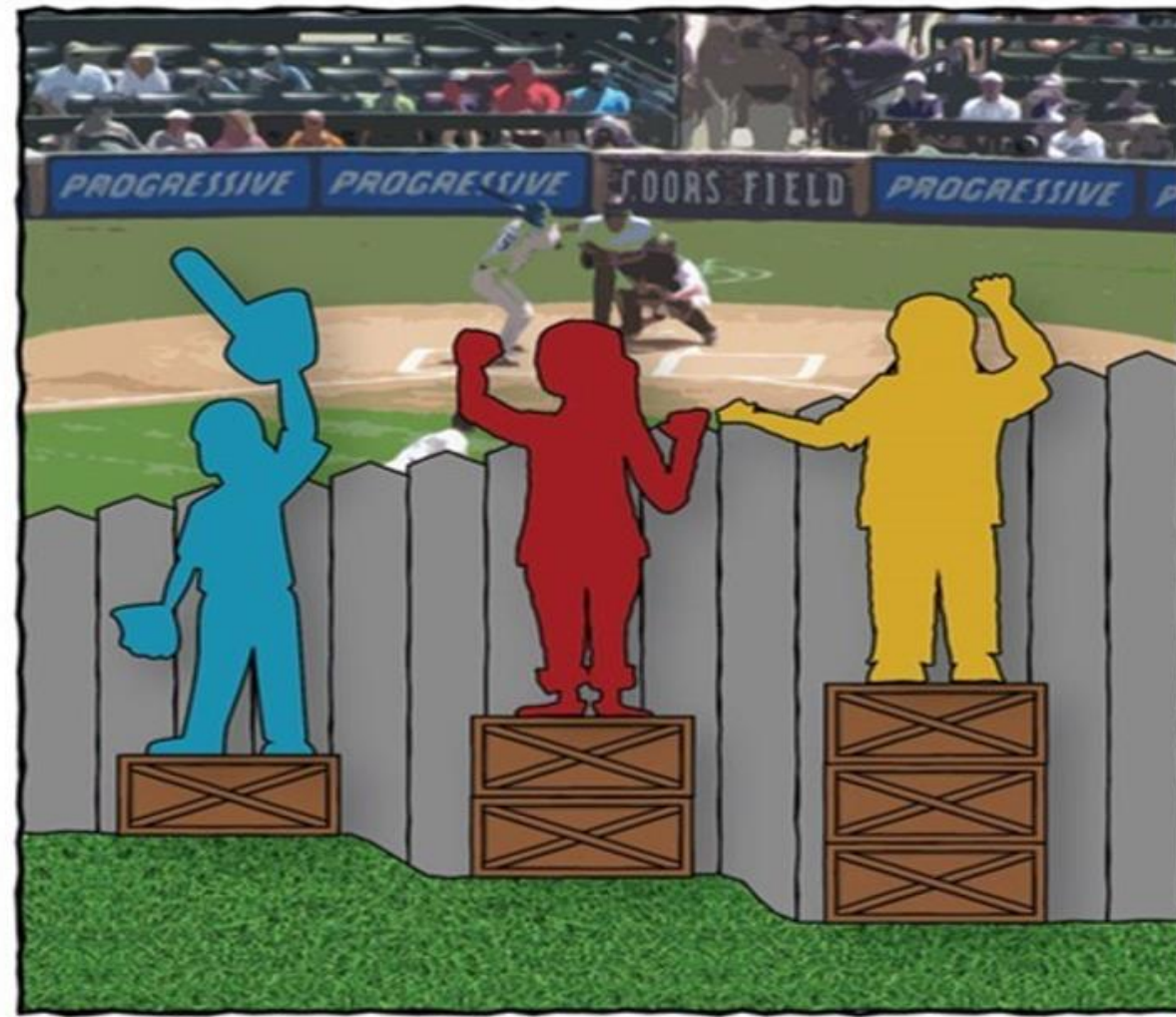
EQUITY = JUSTICE

Equity is about fairness, and providing people with the resources and opportunities they need, given their history and set of circumstances.



Equality = **Sameness**

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Equity = **Justice**

Equity is about fairness, and providing people with the resources and opportunities they need, given their history and set of circumstances.

What is Bias?

- The evaluation of one **group** and its members relative to another.
- **Inescapable** reality of humanity
- We do have choice over how much we let bias influence our **actions**.
- Acting on bias can be discriminatory and create negative **outcomes** for particular groups

Explicit

EXPRESSED DIRECTLY

AWARE OF BIAS /
OPERATES CONSCIOUSLY

EXAMPLE:

SIGN IN THE WINDOW OF
AN APARTMENT BUILDING
NOTING
“MEXICANS NEED NOT
APPLY”

Implicit

EXPRESSED INDIRECTLY

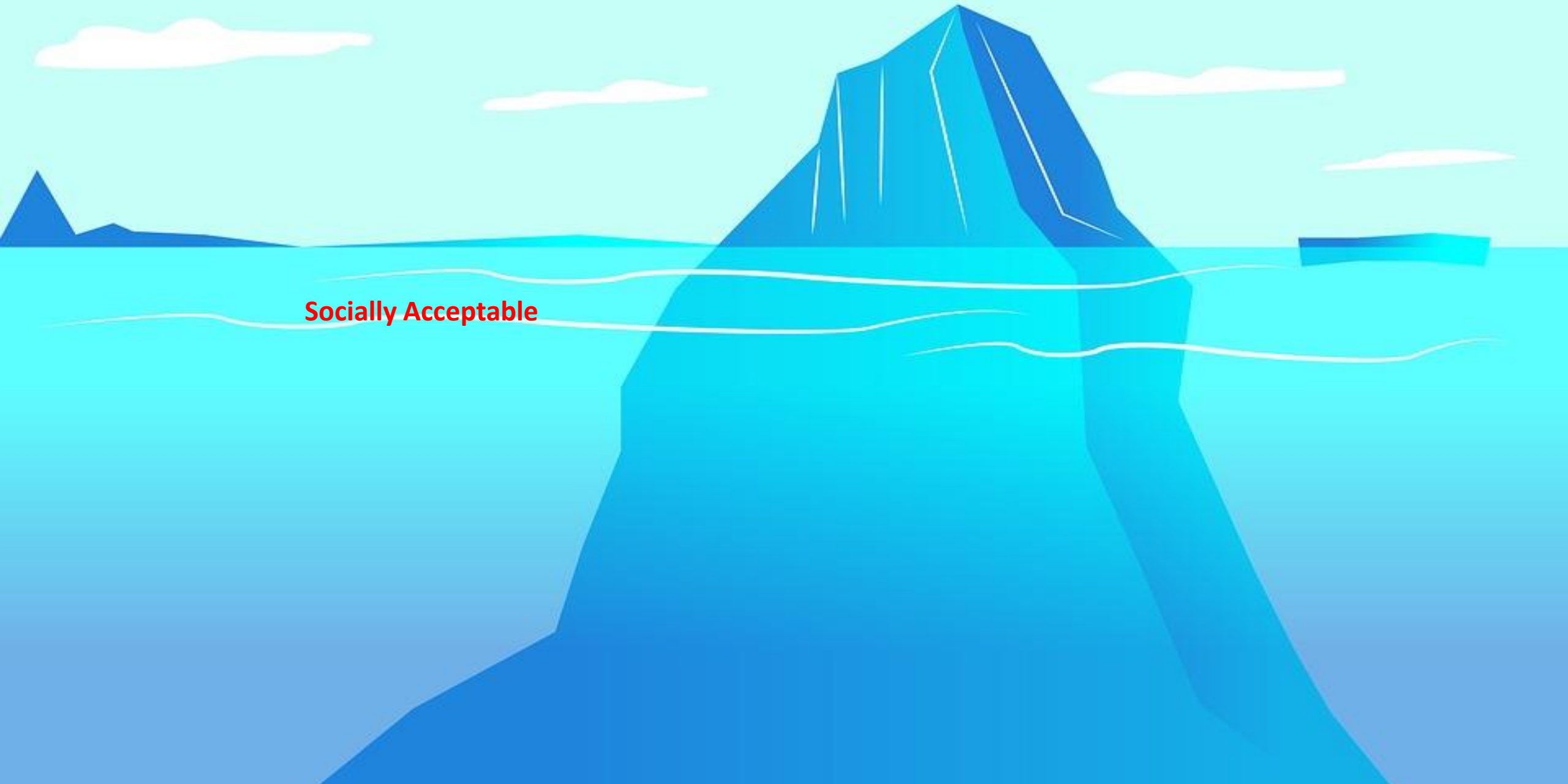
UNAWARE OF BIAS /
OPERATES SUB-CONSCIOUSLY

EXAMPLE:

A PROPERTY MANAGER
DOING CRIMINAL
BACKGROUND CHECKS ON
BLACK APPLICANTS AND NOT
WHITE APPLICANTS.

Socially Unacceptable

Socially Acceptable





Socially Unacceptable

Charlottesville

**Charleston
Massacre**

KKK

**Black Face
costumes**

Racist Jokes

Noose images

Socially Acceptable



The Unconscious Mind

Schemas: the “frames” through which our brains help us understand and navigate the world

Shaped by our environment and largely reside in the sub-conscious.

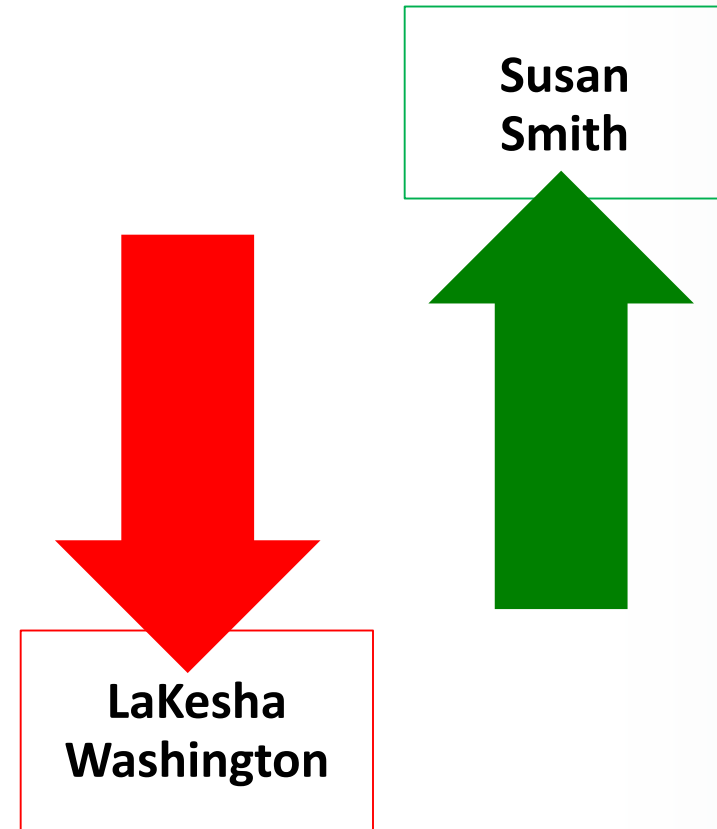
- 1) Sort into categories
- 2) Create associations
- 3) Fill in the gaps



Examples of **Implicit** Bias

Job search:

- Identical resumes, apart from names.
- White sounding names received 50% more callbacks than African-American sounding names.

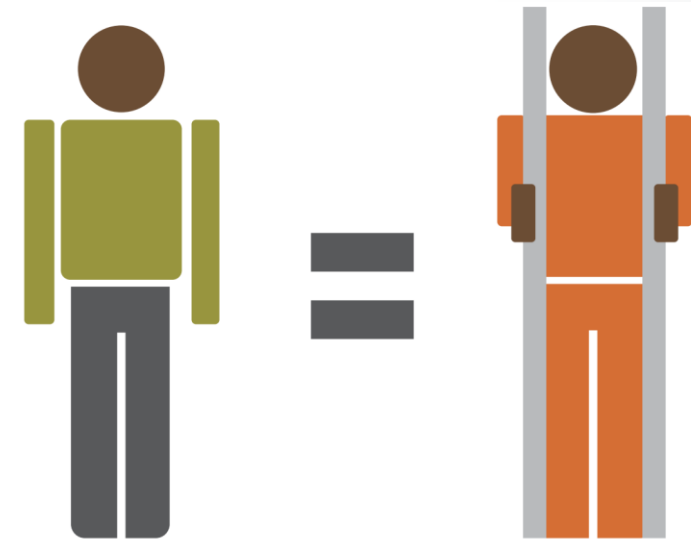


Implicit Bias

When we are exposed or socialized to certain identity groups being paired with certain characteristics, we **automatically** and **unconsciously** associate the **identity** with the **characteristics...**

whether or not that association aligns with reality.

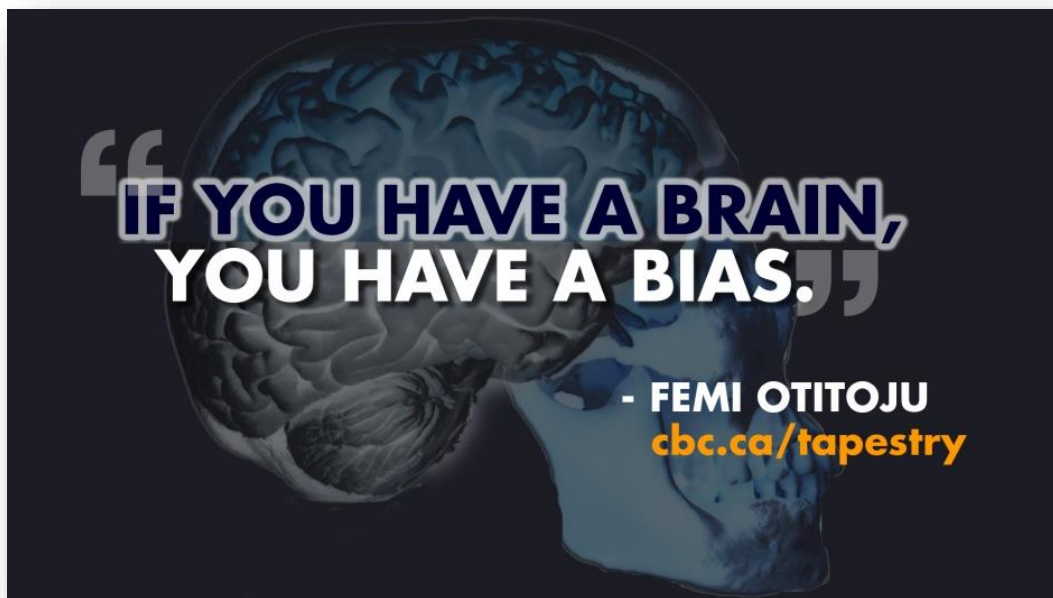
Source: Kirwan Institute Implicit Bias Report 2016



In the U.S., there is a strong implicit association between African Americans and criminal activity.

What to DO with Bias

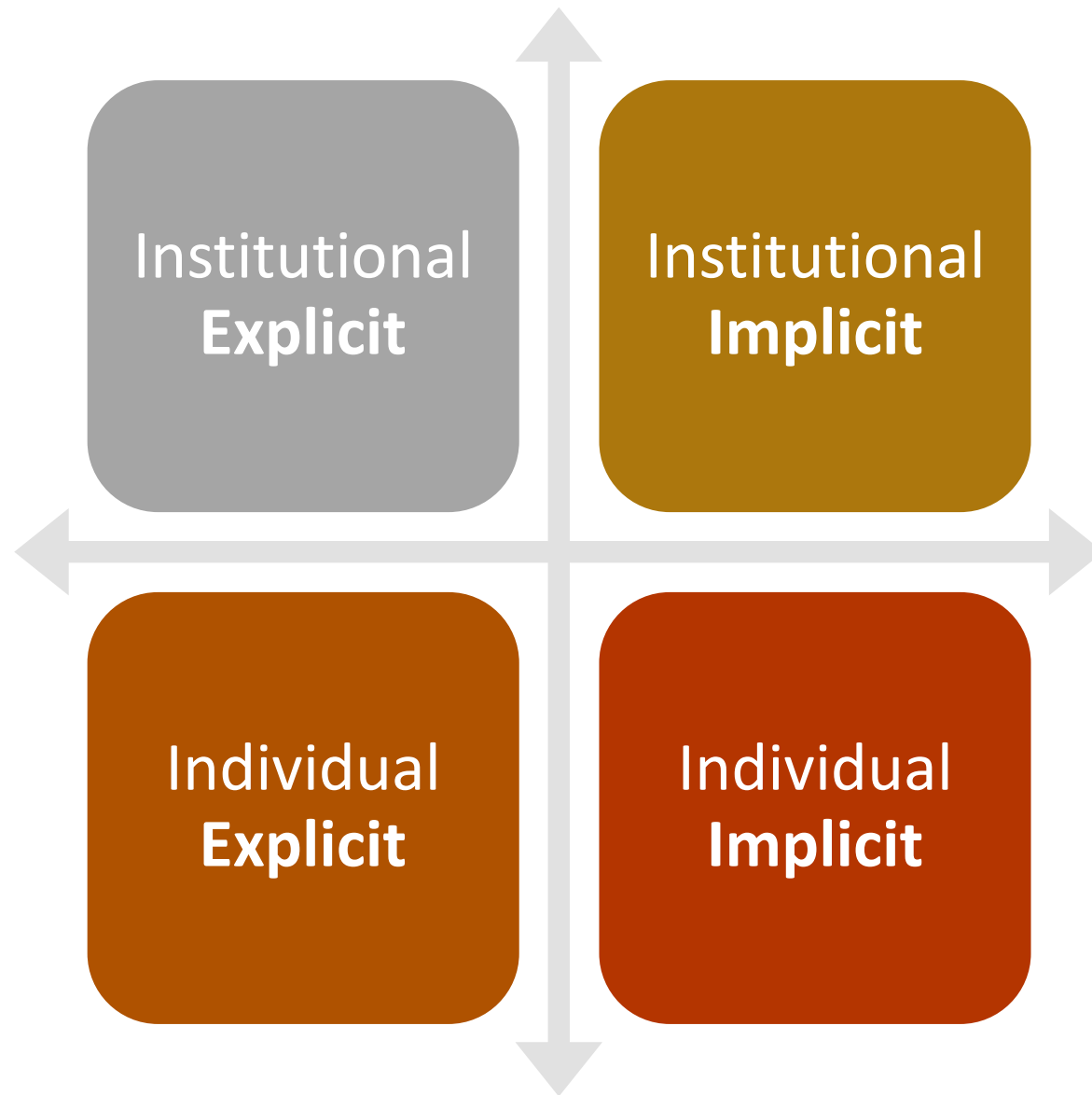
Suppressing or denying biased thoughts can actually **increase prejudice** rather than eradicate it.



Be Accountable: Take the time to examine your actions or beliefs.

Take Action: Increase contact with people outside of your own demographics, experiences, and thought groups.

Adapted from Kirwan Institute Implicit Bias Report 2016



Differentiating Implicit & Explicit Bias

a.

Institutional / Explicit

- Policies which explicitly discriminate against a group.

Example:

Police department refusing to hire people of color.

b.

Institutional / Implicit

- Policies that negatively impact one group unintentionally.

Example:

Police department using “stop and frisk” style racial profiling.

c.

Individual / Explicit

- Prejudice in action – discrimination.

Example:

Police officer calling someone an ethnic slur while arresting them.

d.

Individual / Implicit

- Unconscious attitudes and beliefs.

Example:

- Police officer calling for back-up more often when stopping a person of color.

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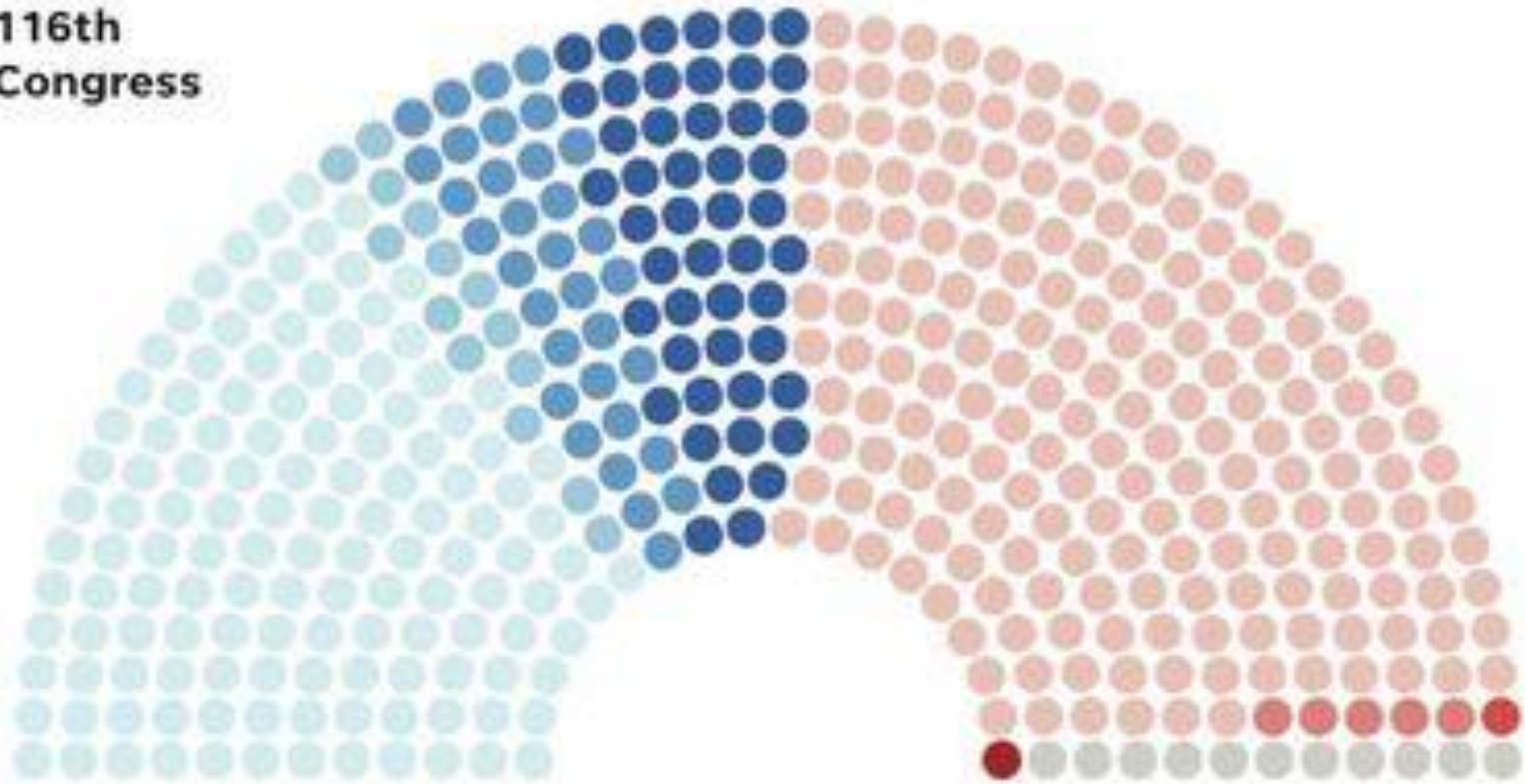
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Example:

- Police officer calling for back-up more often when stopping a person of color.

The most diverse Congress in U.S. history

116th
Congress



White
Democrats

Hispanic
Democrats

White
Republicans

Black
Republicans

Asian/other
Democrats

Black
Democrats

Hispanic
Republicans

Asian/other
Republicans

Vacant/undecided

SOURCE USA TODAY research

“The key to moving forward is what we do with our discomfort. We can use it as a door out—blame the messenger and disregard the message. Or we can use it as a door in by asking, Why does this unsettle me? What would it mean for me if this were true?”

-Robin DiAngelo

IMPLICIT BIAS AND ITS IMPACT ON RISK POOL MANAGEMENT

- INTERNALLY &
MANAGING THE
LITIGATION

LMC.org and NLC.org/REAL



Portrait of James Batson from the website of the “More Perfect” Podcast

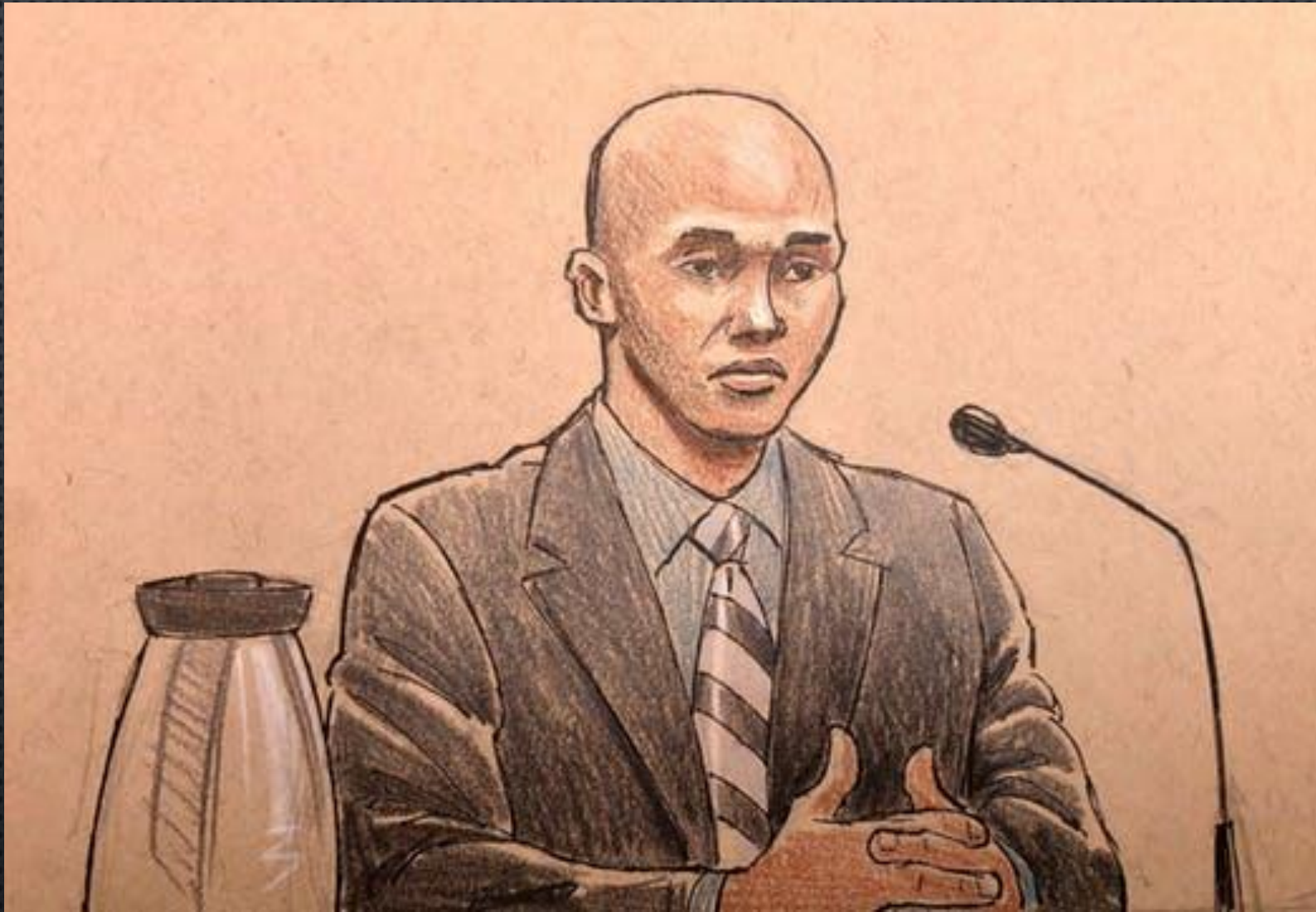
RECENTLY IN
MINNESOTA...



Courtroom sketch from inside current police shooting case in MN

CONCERNS OF IMPLICIT BIAS PERMEATED THE PROCEEDINGS – FROM CHARGING TO CLOSING ARGUMENT

- **CRITICS OF HENNEPIN COUNTY ATTORNEY MIKE FREEMAN SAY HE WOULDN'T HAVE PROSECUTED THE CASE SO AGGRESSIVELY IF THE ROLES HAD BEEN REVERSED. FREEMAN HAS DENIED RACE HAD ANYTHING TO DO WITH HIS PROSECUTING DECISIONS AND INSISTED HE HAS CHARGED WHITE OFFICERS WITH OTHER CRIMES.**
- **RACE CAME OUT IN KEY MOMENTS OF THE TRIAL. POTENTIAL JURORS WERE ASKED ABOUT THEIR EXPERIENCES WITH SOMALI-AMERICANS. AND WHILE CROSS-EXAMINING NOOR, THE PROSECUTING ATTORNEY IMPLIED RUSZCZYK COULD NOT HAVE BEEN PERCEIVED AS DANGEROUS: "THE WHOLE BLONDE HAIR, PINK T-SHIRT AND ALL IS A THREAT TO YOU?"**



THIS COURTROOM SKETCH DEPICTS FORMER MINNEAPOLIS POLICE OFFICER MOHAMED NOOR, ON THE WITNESS STAND THURSDAY, APRIL 25, 2019 IN MINNEAPOLIS, MINN., DURING HIS TRIAL IN THE FATAL SHOOTING OF AN UNARMED AUSTRALIAN WOMAN, JUSTINE RUSZCZYK DAMOND, IN JULY 2017



ADDRESSING IMPLICIT BIAS

EXAMPLES OF SOME STEPS RISK POOLS CAN TAKE TO ADDRESS IMPLICIT BIAS IN CLAIM HANDLING AND DECISION-MAKING

INTERNALLY

- RECOGNITION, TRAINING, AND TESTING
- LEGAL WRITING COUNTER-STEREOTYPICAL EXAMPLES
- COGNITIVE CORRECTION

MANAGING THE LITIGATION

- ADDRESSING IN VOIR DIRE
- BATSON CHALLENGE PROCESS
- TRIAL THEMES AND STORYTELLING

QUESTIONS?

ADDITIONAL RESOURCES

TAKE THE TEST

- PROJECT IMPLICIT AT HARVARD UNIVERSITY
- SEARCH FOR: “PROJECT IMPLICIT” OR GO DIRECTLY TO:
[HTTPS://IMPLICIT.HARVARD.EDU](https://implicit.harvard.edu)



GOOD ADDITIONAL READING

- UNRAVELING THE GORDIAN KNOT OF IMPLICIT BIAS IN JURY SELECTION: THE PROBLEMS OF JUDGE-DOMINATED VOIR DIRE, THE FAILED PROMISE OF BATSON, AND PROPOSED SOLUTIONS.
- BY JUDGE MARK W. BENNETT

QUESTIONS? GET IN TOUCH.

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WHO WE ARE

The National League of Cities (NLC) is the voice of America's cities, towns and villages, representing more than 200 million people across the country.



OUR MISSION

To strengthen local leadership, influence federal policy and drive innovative solutions.



CITIES STRONG TOGETHER

@LEAGUEOFCITIES

