

# Bias

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# So far . . .

- History/context
- Disproportionalities throughout CJS
- Proffered causes
  - Crime commission
  - Neutral policies with disparate outcomes
  - Bias



# Attitudes and Stereotypes

## Conscious/explicit

- Admission
- Survey

## Unconscious/implicit

- Linguistic
- Micro-facial movements
- fMRI
- Cardiovascular
- IAT
- Decisions/behaviors



# Attitudes and Stereotypes (cont.)

## Expressed racial attitudes (white respondents)

	Support law against Black/White intermarriage
1964	60%
2002	10%

But in 2002, 24% still opposed intermarriage between Blacks and Whites

## Implicit racial biases (all respondents)

- Pervasive
- Large in magnitude

“[W]e are not, on average or generally, cognitively colorblind”



# Attitudes and Stereotypes (cont.)

## Expressed racial attitudes (white respondents)

### Causes of Black inequality

	<b>Blacks lack ability</b>	<b>Blacks have no motivation</b>
1977	27%	66%
2006	7%	52%

	<b>Blacks are treated unfairly by police</b>
1997	36%
2004	35%

## IAT stereotypes (all respondents)

72% associated MALE with SCIENCE and FEMALE with HUMANITIES

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American = White  
Undocumented = Latino  
Foreign = Asian



# Connecting bias to behaviors and outcomes

## Conscious/explicit

- Bias
  - Problem of proof
  - Concealed motives
- Behavior
- Outcome

## Unconscious/implicit

- Bias
  - Problem of proof
- Behavior
- Outcome



# Outcomes and Problems of Proof

## Med-mal case, Eastern WA

- Bias
- Behavior
  - “Mr. Miyagi”; “Mr. Kamikaze”; “Pearl Harbor Day”
- Outcome?

Turner v. Stime, 153 Wash. App. 581 (Wash. App. Div. 3 2009)

## Experiment involving Disabled Person

- Bias
- Behavior
  - Seating choice
- Outcome
  - Disabled person watching movie alone, more often than not, if movie choice given



# Price Waterhouse v. Hopkins (specific)

## Conscious/explicit

- gendered comments

## Unconscious/implicit

- “unwitting or ingrained bias is no less injurious or worthy of eradication than blatant or calculated discrimination . . . the fact that some or all of the partners at Price Waterhouse may have been unaware of that motivation, even within themselves, neither alters the fact of its existence nor excuses it”
- 825 F.2d 458 (D.C. Cir. 1987)





# White- and Black-sounding Names (aggregate)

## Conscious/explicit

- Bias
  - Proof?
- Behavior
  - Callback decision

## Unconscious/implicit

- Bias
  - Proof?
- Behavior
  - Callback decision

- “White” candidates received 50% more callbacks than “Black” candidates
- Lower-skilled “White” candidates got many more callbacks than highly skilled “Black” candidates
- High quality “Blacks” received same calls as average “Blacks”

# Traffic Stops

## Conscious/explicit

- Bias?
- Behavior
  - Decision to search/citation

## Unconscious/implicit

- Bias?
- Behavior
  - Decision to search/citation



# Traffic stops, WSP

## Nov. 1, 2005-Sept. 30, 2006

18 year old male, daytime, interstate, non-Latino  
 White male officer, one non-serious violation

All stops

### Predicted search rate

	Low discretion	High discretion
Native American	3.1%	1.6%
Latino	1.1%	.7%
Black	1.2%	.6%
Non-Latino White	.8%	.4%
Asian/PI	.6%	.25%
East Indian	.1%	.1%

DUI, search
91%
85.9%
84.9%
81.7%
77.7%
82.4%

Loveritch et al., No evidence of intentional discrimination

# Effects of Bias (explicit, implicit, or in combination)

- Initial Stereotypes and Associations
- Suspicion, Investigation and Interrogation
- Arresting and Charging
- Pretrial detention/bail
- Eyewitness Testimony
- Conviction and Sentencing



# Limits of Current Antidiscrimination Law

## Intentional discrimination

Perpetrator who has  
Discriminatory intent which  
brings about  
Action that causes  
Discriminatory outcome

## Disparate impact

Actor  
Disparate impact on a  
protected group  
Insufficiently justified  
policy/practice

Limited applicability



# Interventions

## Conscious/explicit

- Accountability
- Education
- Exposure
- Other

## Unconscious/implicit

- Accountability
- Education
- Exposure
- Other



# At the end of the day

- Disproportionalities throughout CJS
- Crime commission rates do not account fully for these disproportionalities
- Facially neutral policies + bias at work
- Race matters in ways that are not fair, that produce racial disparities, that do not advance legitimate public safety objectives, and which undermines confidence in our legal system

