



**2020  
MCLE  
MINI-MARATHON**

**4:00**

**ELIMINATION OF BIAS?  
IMPOSSIBLE**

**1 HR  
ELIM OF BIAS**

**WRITTEN MATERIALS**



**Matthew Cahill**

President and Principal Consultant,  
Percipio Company

# Elimination of Bias? Impossible.

Matthew J. Cahill

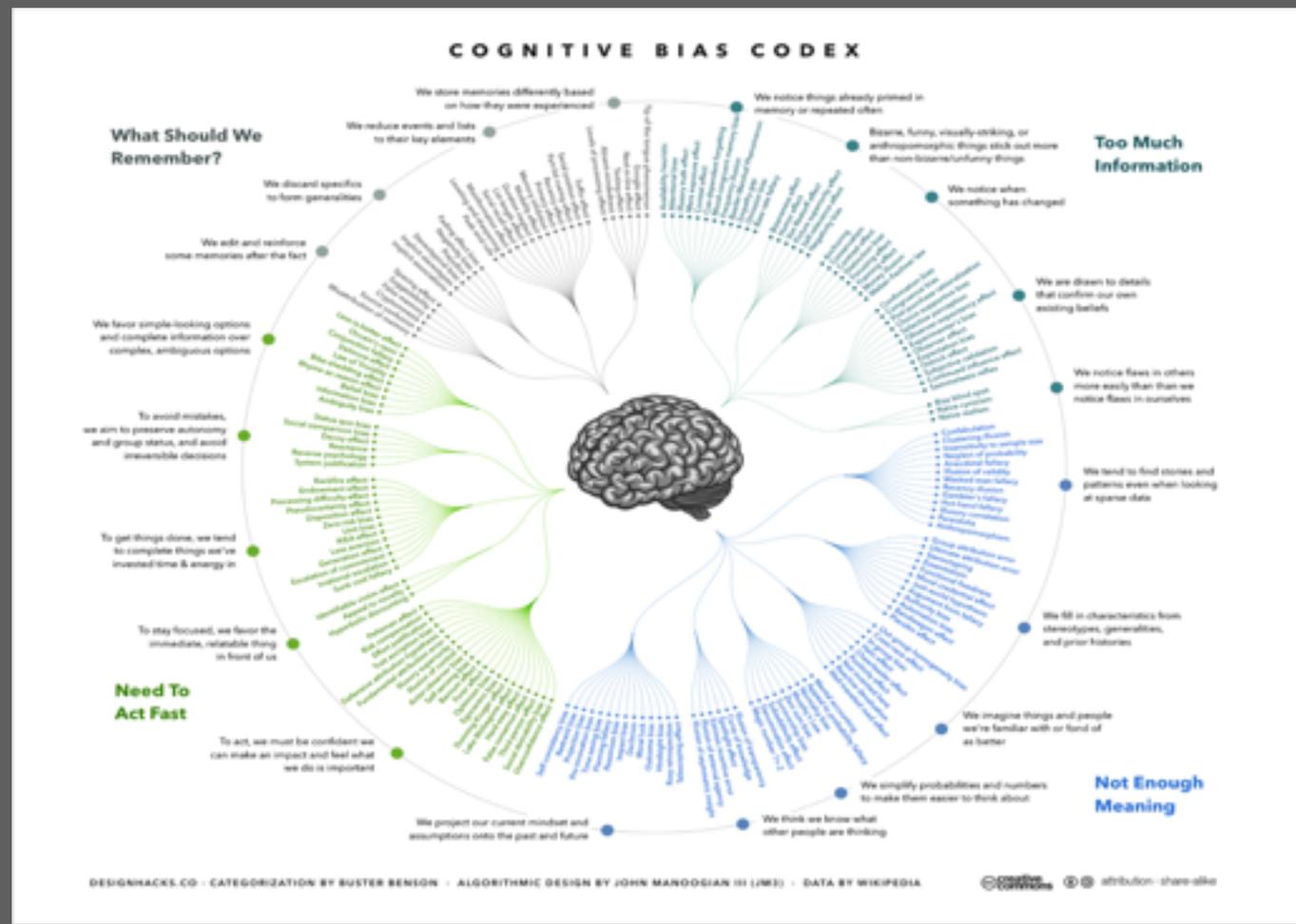


ASIAN AMERICAN BAR ASSOCIATION  
*of the Greater Bay Area*

# *What is Bias?*



# There are over 180 named Cognitive Biases



# BIAS: DIFFERENTIATION

## Conscious

*An intentional act in **favor of or against** one thing, person, idea or group compared with another, usually in a way considered to be **unfair or unjustified***

## Unconscious

*An unrecognized mental process or categorization that is intimately **tied to cognitive heuristics** and how the **human brain processes information.***

# IF YOU HAVE A BRAIN, YOU HAVE BIAS

Develop  
and use  
categories

Associative  
memory

Mental  
shortcuts

Five Most Common Cognitive Biases

# 5 COMMON WORKPLACE BIASES

- **L**ike Me: “People like me are better than others”
- **E**gocentric: “My views are clear to all and true”
- **A**vailability: “Decisions based on easy and inc. initial ideas”
- **A**nchoring: “Decisions based on first data point, graph or image”
- **P**roximity: “Closer is better than distant”

# WHAT'S IN A NAME?

TELL THE PERSON NEXT TO YOU THE STORY OF YOUR NAME

- Where did your name come from?
- Were you named after someone?
- Has your name changed over time?  
(Marriage, immigration...)
- Do people ever mispronounce your name?  
If yes, how does that feel?
- Has anyone ever made assumptions about  
you based on your name?



# LIKE ME BIAS

Examples

In-group

Out-group

Self-serving

*“I prefer people who share the same characteristics as me”*

Common in the hiring & promotion processes.

Automatically defining everyone as in-group or out-group, and processing information differently as a result.

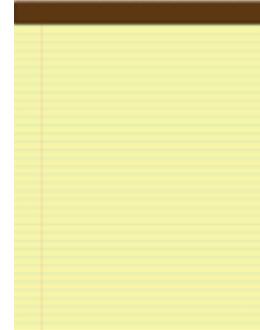
Mitigation = Find Commonality

An aerial, high-angle photograph of a bustling city intersection at night. The scene is filled with pedestrians crossing multiple wide zebra crossings, and cars are visible on the roads. The buildings are brightly lit with various colors, and the overall atmosphere is one of intense urban activity. A large, semi-transparent teal shape is overlaid on the center of the image, containing white text. A small teal circle is also present on the right side of the teal shape.

**11 million bits**

40  
bits

# HOW MUCH DOES THE LEGAL PAD COST?

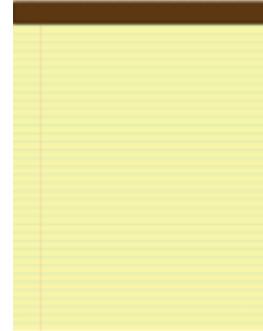


**\$110**

# HOW MUCH DOES THE LEGAL PAD COST?



**\$105**



**\$5**



# AVAILABILITY BIAS

Examples

Confirmation

Expediency

WYSIATI

*“Decisions based on easy and incomplete ideas”*

Common when we hurry or experience high cognitive load.

Taking the path of least mental resistance subjects us to un/intentional errors.

Mitigation = Consider all information

# Where does Bias Lead?



# BIAS IN INDIVIDUALS

is a stealth autopilot mode of thinking and acting  
evades our awareness and curiosity | 99.99996%  
is human | it's how we're wired

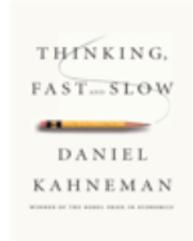
# THINKING, FAST AND SLOW

## System 1

- Fast
- Unconscious
- Automatic
- Everyday Decisions
- Error Prone

## System 2

- Slow
- Conscious
- Effortful
- Complex Decisions
- Reliable



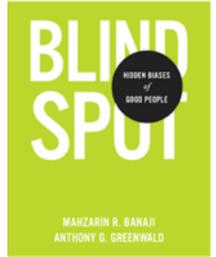
# BIRTH OF BIAS AWARENESS

The attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner

35-55% increase since 1970  
(Goldman & Rouse)



# EXERCISE



Call out “left” if the term belongs under the left heading.

Call out “right” if the term belongs under the right heading.

Respond as fast as you can.



Project Implicit®

*The Percipio Company*



Male

Female

Lesbian  
Gay  
Bisexual  
Transgender  
Queer  
Questioning  
Interlocked  
LGBTQIA+  
Community

Male  
or  
Corporate

Female  
or  
Family

Individual - Single  
Individual - Married  
Individual - Divorced  
Individual - Widowed  
Individual - Separated  
Individual - Other  
Corporate - Public  
Corporate - Private  
Corporate - Non-Profit  
Corporate - Government  
Corporate - Other





We have biases we **think** work for us, but often they **work against others**.

# Applied Bias Activity



- Share an example of when you experienced any of the 5 Common Unconscious Biases in your practice.
- Debrief w/examples & discuss mitigation strategies

# Examples of Bias in Law

- 1 in 4 law firm associates is a person of color, more than 90% of equity partners are white.
- Among women, non-white women represent 13% but less than 3% of equity partners

*-Minority Corporate Counsel Association (MCCA)*

- Bias in the legal profession often manifests itself in the form of lower rates of advancement or promotion for members of protected classes. Even where women or minorities are well represented, bias may appear in the form of less desirable assignments, fewer perks, or exclusion from important meetings, committees, or decision making.

# WHY DISRUPT OUR BIASES?



Promote  
intellectual  
curiosity

Attract and  
retain top  
talent

Improve  
performance  
and decision-  
making

Increase  
innovation

McKinsey Study – 21%

# IMPACT OF BIAS IN PRACTICING LAW

- Great ideas and innovation being missed
- Double standards for performance and advancement
- Opportunities missed when hiring and loss of talent
- Clients not being served justice
- Errors in decision-making
- All people are impacted

# MANAGE BIAS

- Recognize that bias is universal.
- Design practices and processes in advance.
- Place a premium on cognitive effort over intuition.
- Cultivate a question-driven, inclusive culture.
- Build If-then plans and use Decision Guides.

# WHAT WILL YOU DO?

MAKE A COMMITMENT

At work?

In your relationships?

In your practice?



# Film Screening & Networking Event

# DocuSign®

- Wednesday, February 12, 2020 - 5:30-8:30pm
- DocuSign Executive Briefing Center (EBC)
- <https://vimeo.com/265863934>
- <https://percipiocompany.com/events.html>

[mjc@percipiocompany.com](mailto:mjc@percipiocompany.com)

**Thank You**



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