The Professional Education Group

SYBIL DUNLOP

AMRAN FARAH



Greene Espel, PLLP

Minneapolis, Minnesota



Beyond Bias: Fostering Inclusivity in Workers' Compensation

Since 1981, we've championed empowering attorneys and clients through dedicated professional development. With a steadfast focus on education, motivation, and inspiration, we've cultivated a culture of excellence in the legal profession.

Contact Us:

800-229-2531

www.proedgroup.com

P.O. Box 2224 Burnsville MN 55337-8824

Kristi@proedgroup.com

POWERHOUSE THE Professional Education Group

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Presentation

and Legal Notice

Date : May 7, 2024

Time: 5:00 - 7:15 p.m.

Location: New Jersey - ZOOM

2.5 Credits

Beyond Bias: Fostering Inclusivity in Workers' Compensation

A presentation for the Coleman Inn of Court

Copyright © 2024 Sybil L. Dunlop, Amran A.Farah The Professional Education Group, Minnesota - ALL RIGHTS RESERVED

Except as noted in specific sections, no part of these materials may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without written permission from the publisher.

Nothing contained in this book/program is to be considered as the rendering of legal advice for specific cases. Readers/attendees are responsible for obtaining such advice from their own legal counsel. This book/program and any forms and agreements herein are intended for educational and informational purposes only.

The Professional Education Group

A PowerHouse Company

Program Details

Date : May 7, 2024

Time: 5:00 - 7:15 p.m.

Location: New Jersey - ZOOM

Program Agenda: Beyond Bias: Fostering Inclusivity in Workers' Compensation

Audience: The judges and lawyer members of the Justice James H. Coleman Inn of Court, New Jersey Chapter.

Objectives:

- Define and understand different types of biases
- Recognize biases that affect workers' compensation assessments
- Explore real-life effects of biases on claim outcomes
- Learn strategies to interrupt biases and promote inclusivity

Methods:

- Interactive presentations
- Case studies and examples
- Group discussions and reflection
- Q&A session for engagement

Outcome:

- Participants equipped with tools to identify and challenge biases
- Enhanced awareness of the importance of inclusivity in workers' compensation
- Empowerment to implement change for fairer claim assessments

Program Introduction

The workers' compensation process is subject to multiple types of biases, including biases that injuries are exaggerated or less impactful when they can't be seen as well as anti-work biases. Even a doctor's initial uninformed estimate of a recovery process can anchoring subsequent assessments of a claim. Understanding and identifying bias is crucial for ensuring fair and equitable treatment of workers' compensation claims.

Program Length: 125 Minutes

The Professional Education Group

A PowerHouse Company

Agenda

Date : May 7, 2024

Time: 5:00 - 7:15 p.m.

Location: New Jersey - ZOOM

Agenda

1. **Overview of bias**
2. **Case studies and examples**
3. **Identifying bias in claim assessment**
4. **Real life effects of bias**
5. **Strategies to combat bias**



The Professional Education Group

A PowerHouse Company

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

Unconscious Bias

The bias in judgment and behavior that results from subtle cognitive processes that operate **below conscious awareness** and **without intentional control.**



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*

Our brains play tricks on us

GREENE ESPEL PLLP

Notes

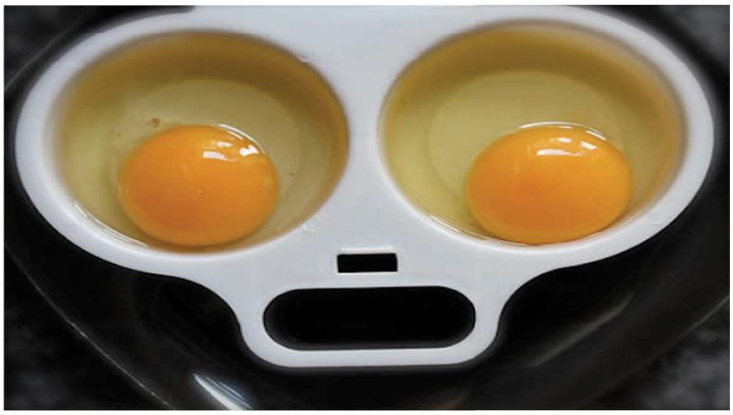
©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program









Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*





The color of a coffee mug can change the way coffee tastes.

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

Is there a way to measure this?

GREENE ESPEL PLLP

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

#1	#2	#3
SLB	CFLTK	CFLTK
SPRND	HLMG	CFLTK
SLB	SPRND	SLB
SPRND	HLMG	CFLTK

#1	#2	#3
GREEN	BLUE	GREEN
RED	YELLOW	YELLOW
PURPLE	BLUE	RED
GREEN	RED	PURPLE

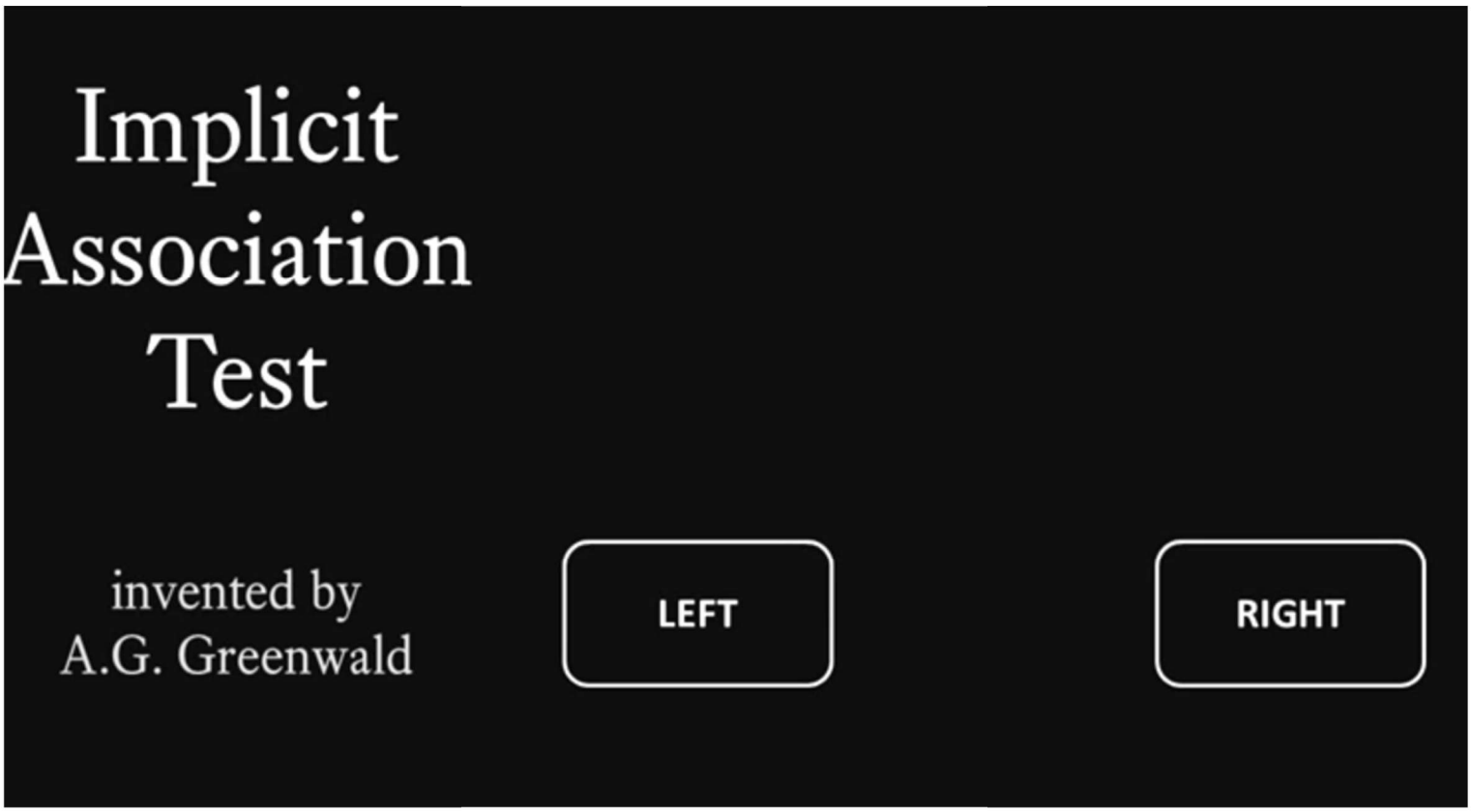
#1	#2	#3
RED	GREEN	YELLOW
BLUE	GREEN	BROWN
RED	YELLOW	BLUE
BROWN	BROWN	BLUE

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program



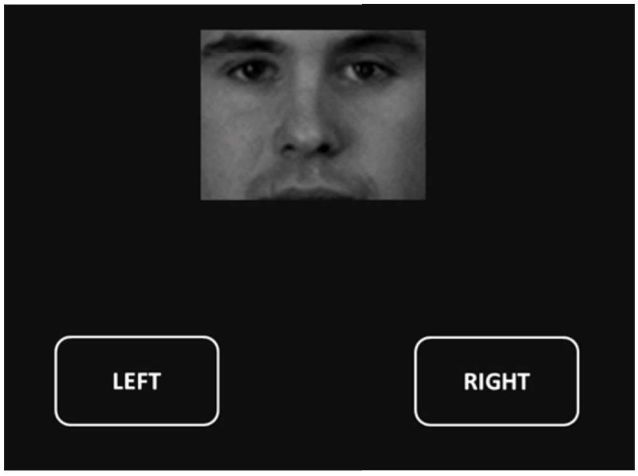
Immaculate perception: Jerry Kang at TEDxSanDiego 2013

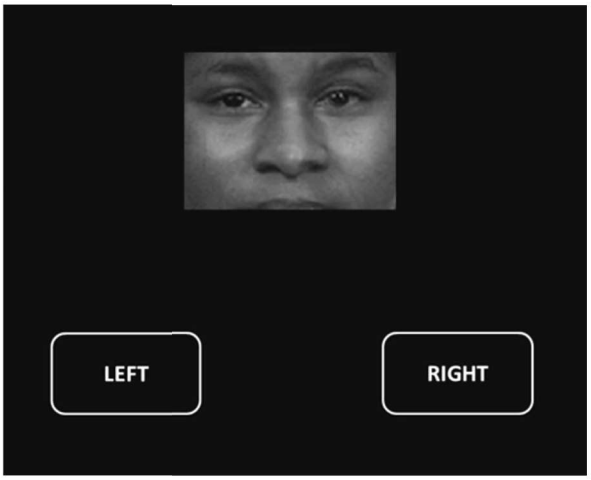
Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program









Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program



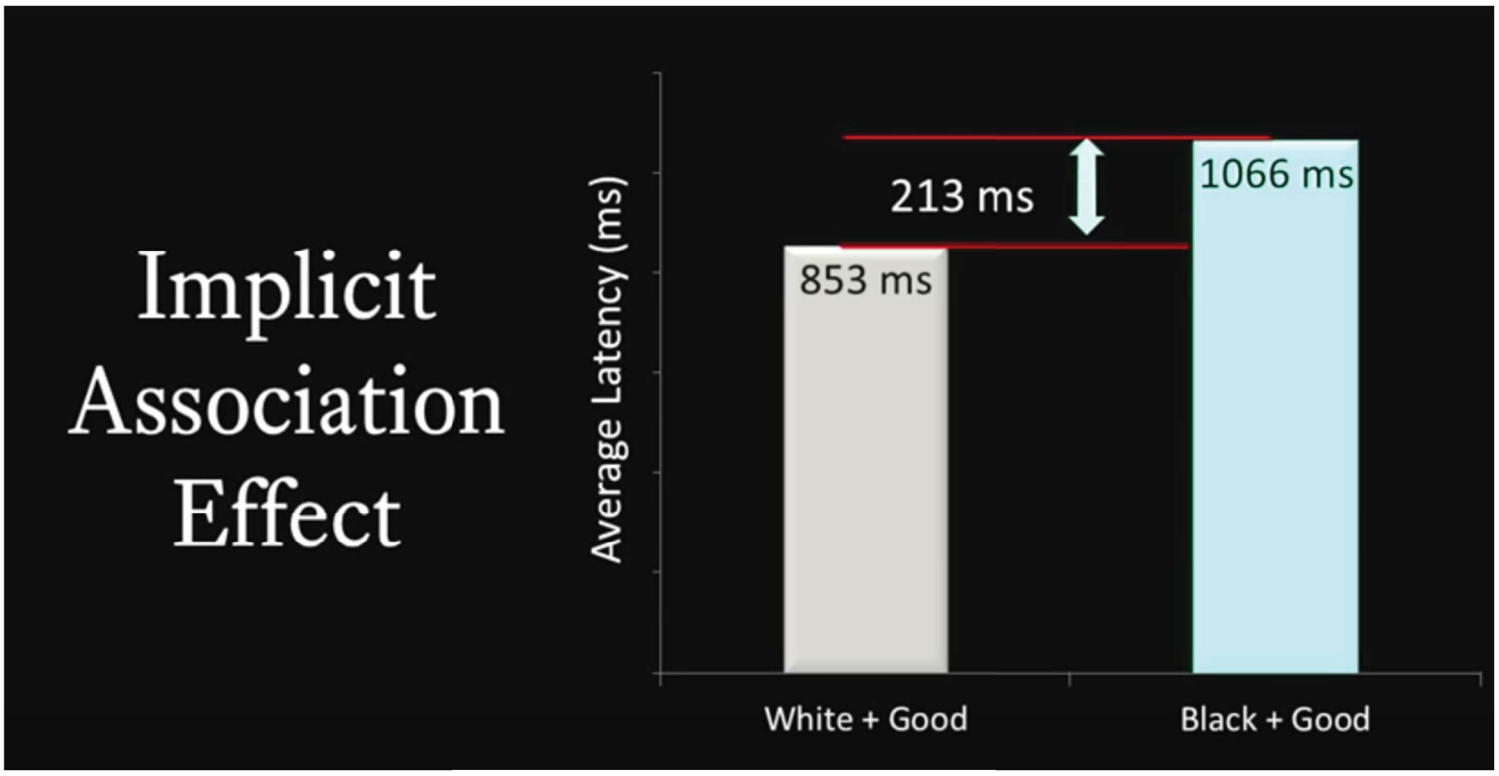


Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

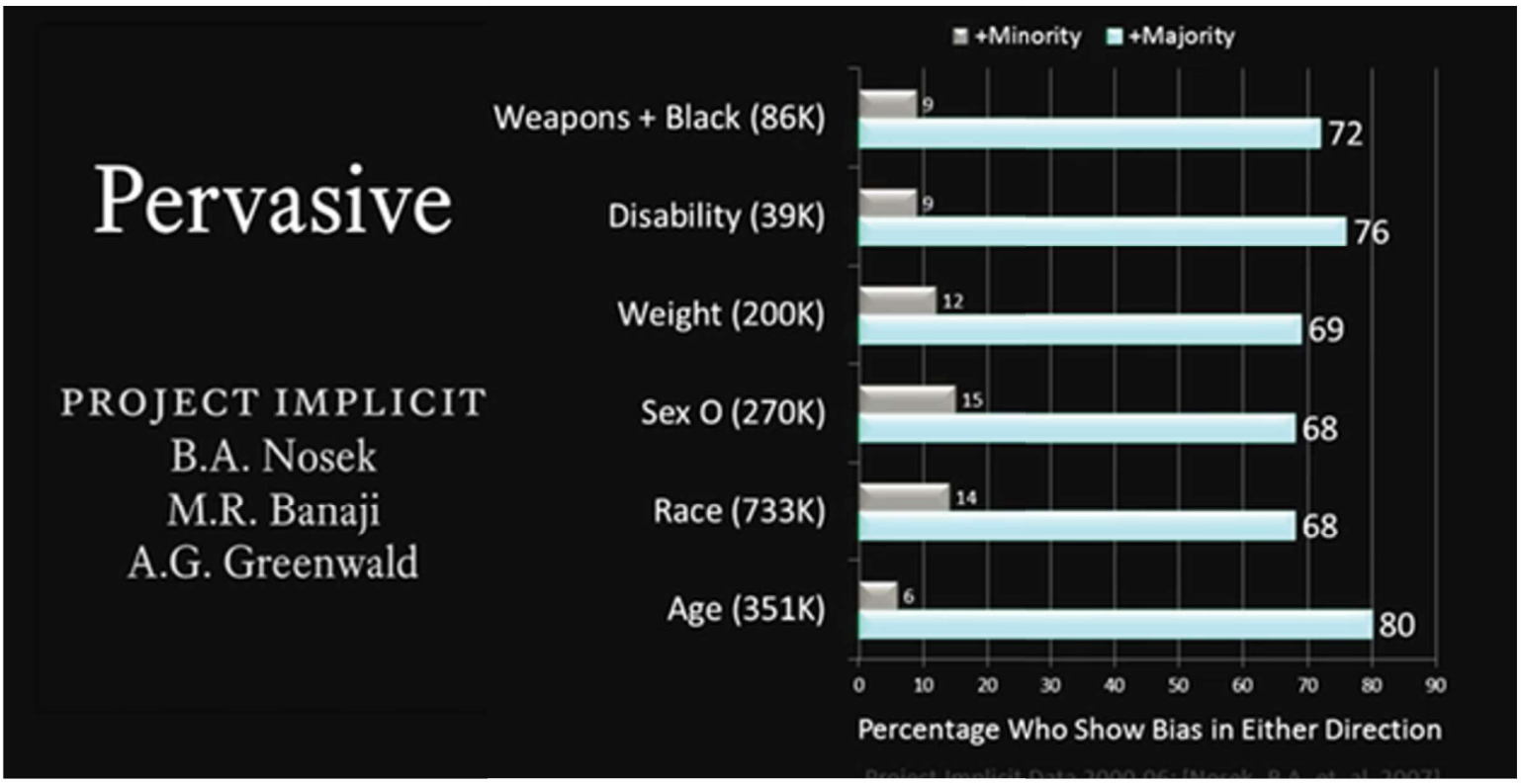


Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*

How did your presenter do?

Here is your result:

Your data suggest no automatic preference between Old people and Young people.

The sorting test you just took is called the Implicit Association Test (IAT). You categorized good and bad words with images of Black people and White people.

During the IAT you just completed:

Your responses suggested a slight automatic preference for White people over Black people.

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

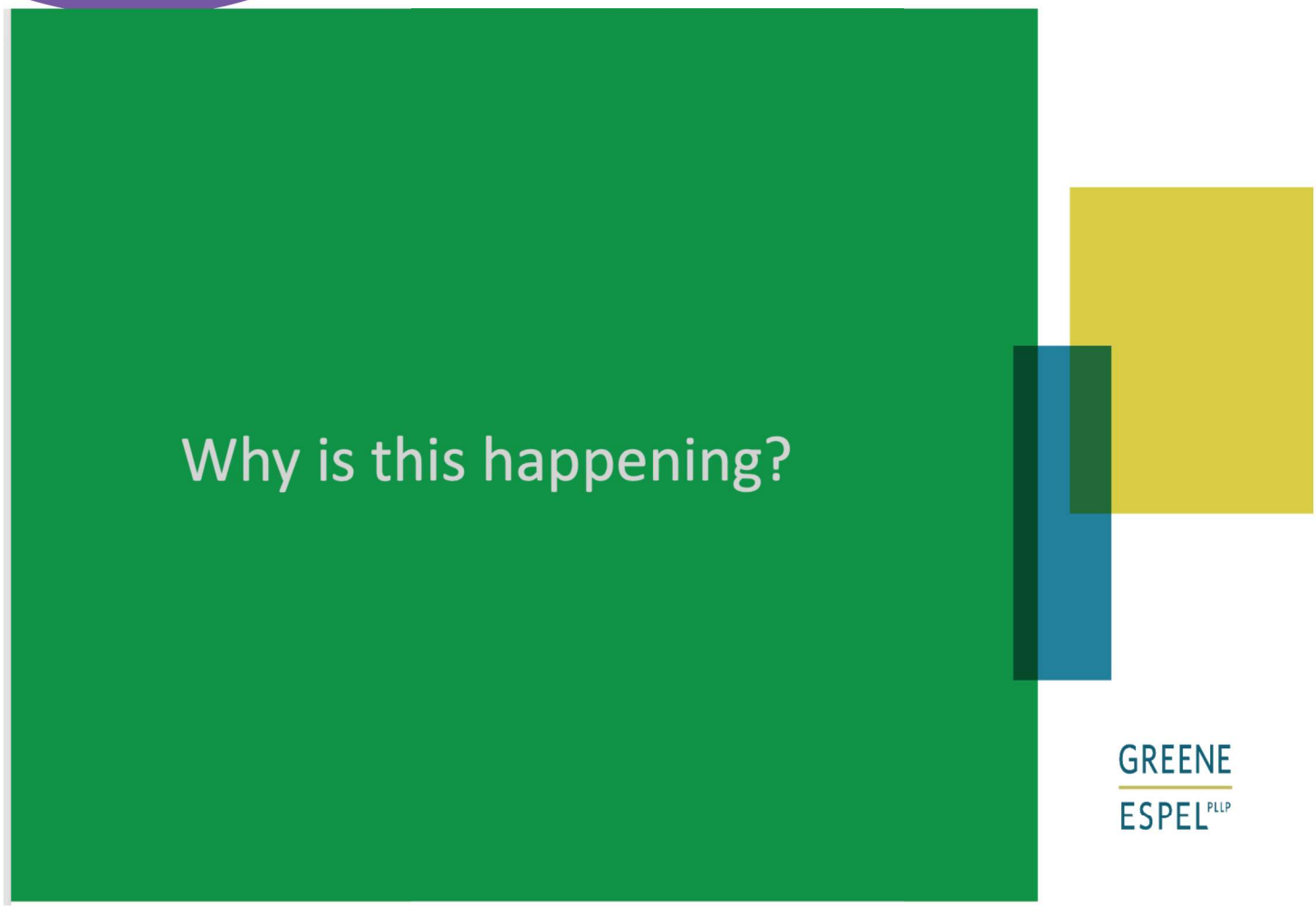
Would knowing someone's IAT score help determine whether they are likely to act in discriminatory ways?

GREENE ESPEL PLLP

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*

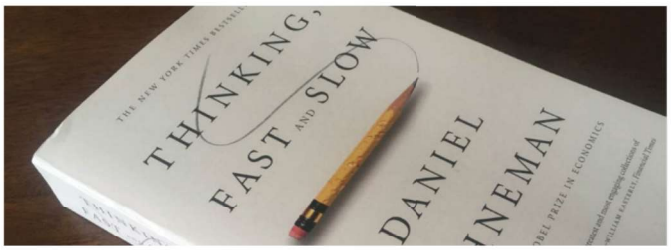


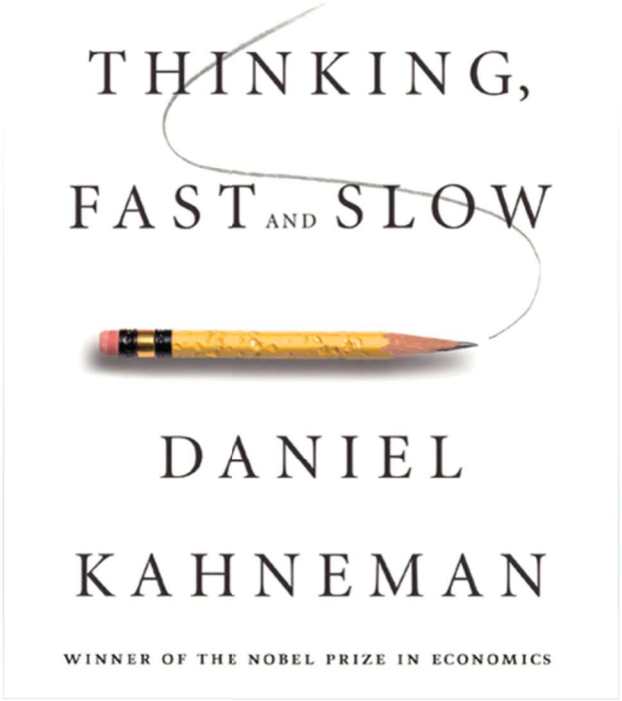
Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program





Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program







Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*

Case Studies and Examples

GREENE ESPEL PLLP

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*

Texas Case Study



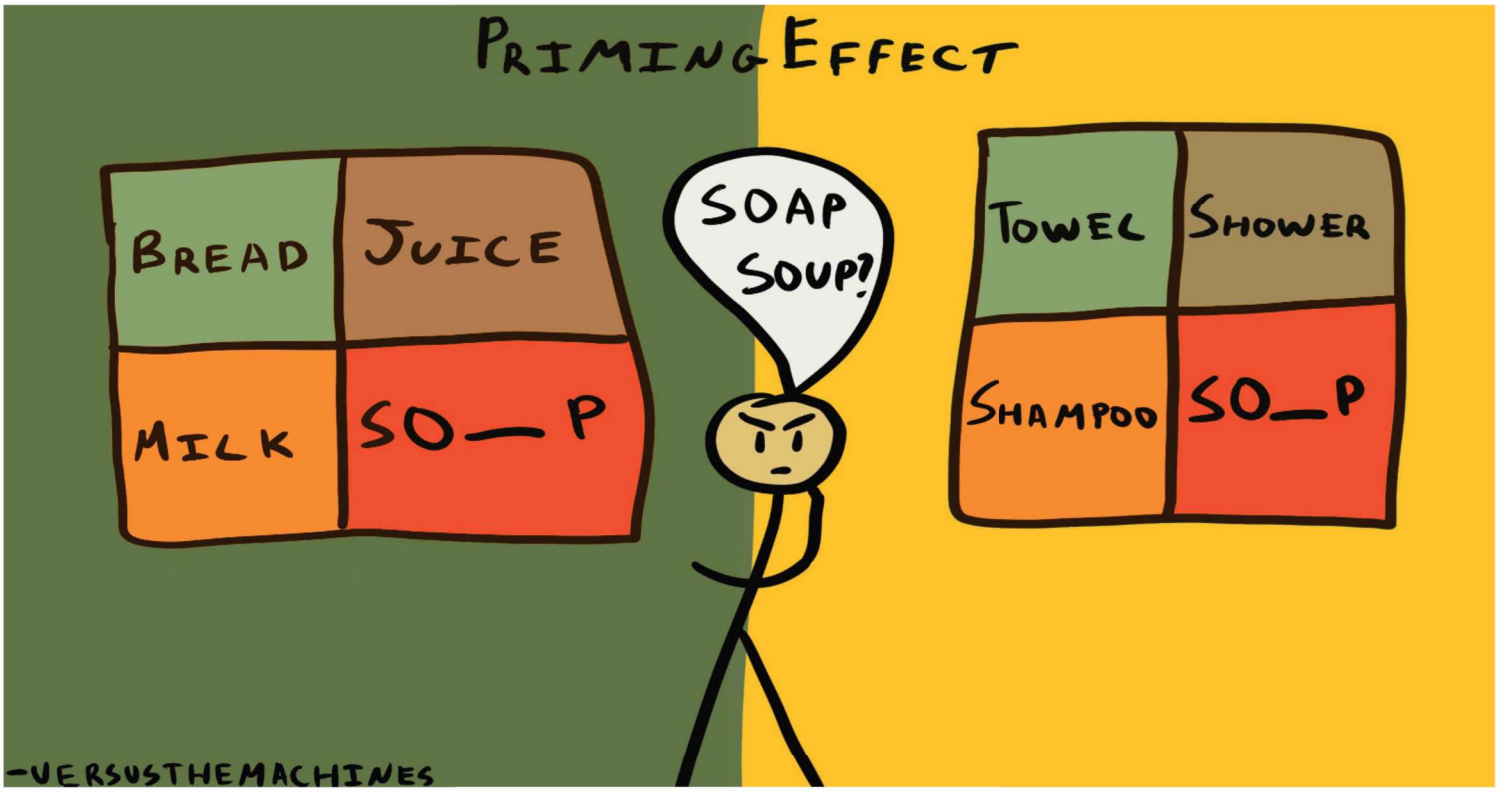
GREENE ESPEL PLLP

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

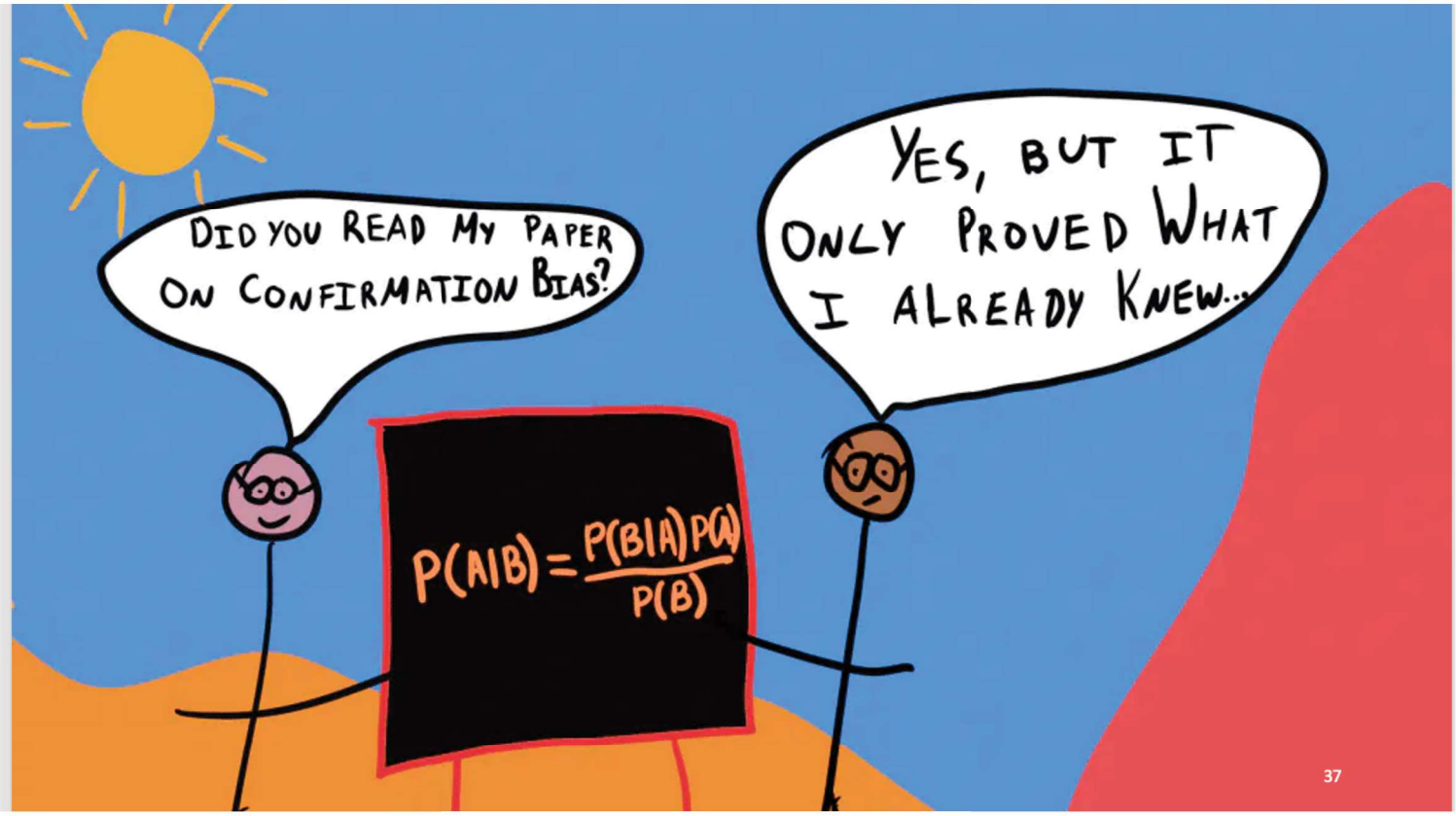
Beyond Bias

the Program



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*





Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

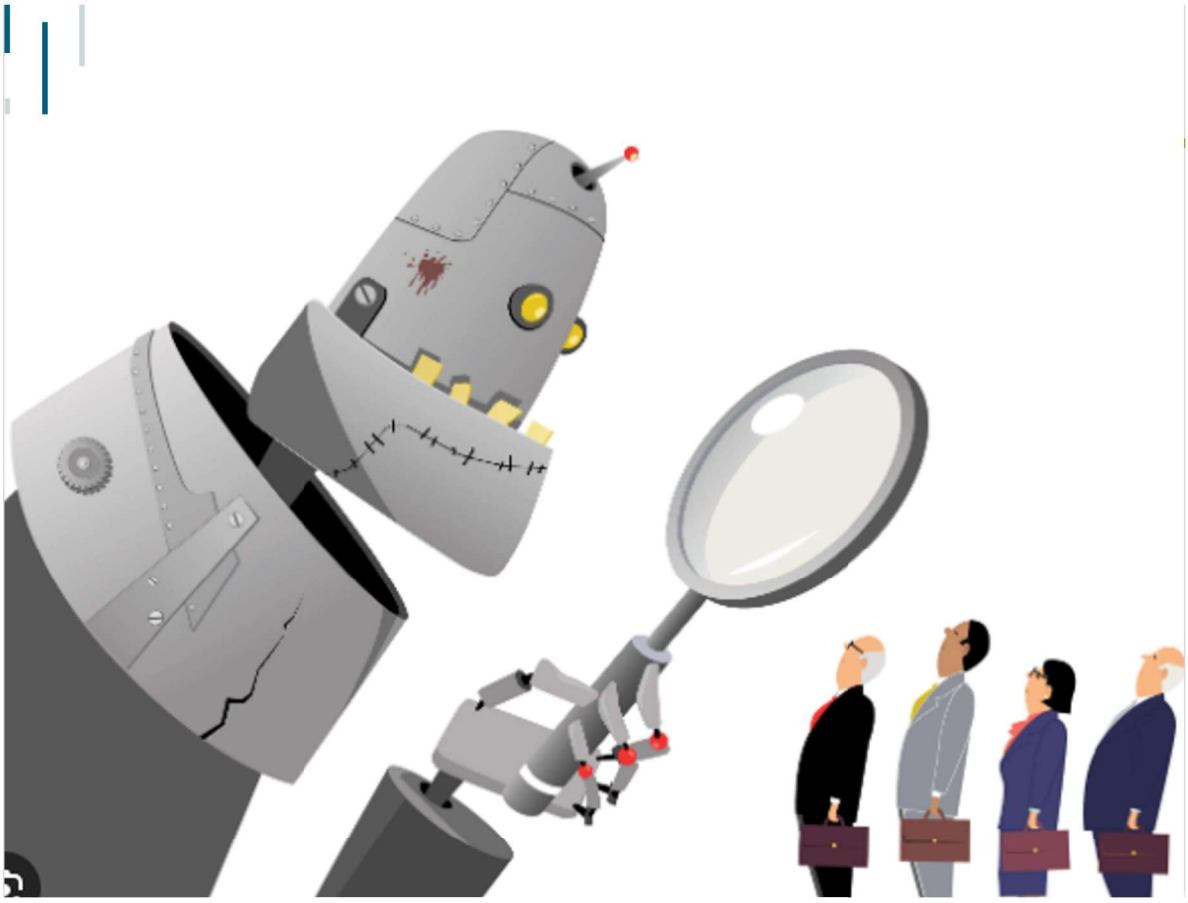


Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

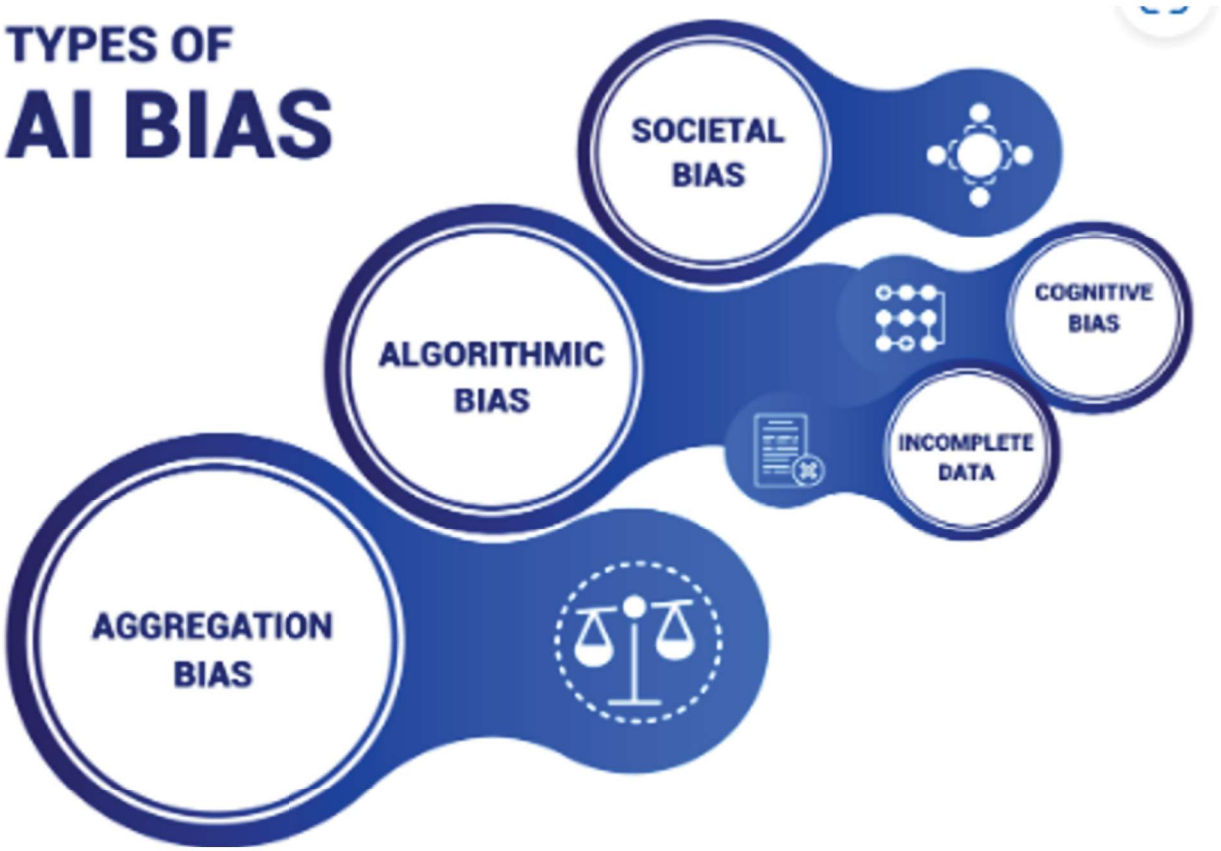


Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

Algorithmic bias

- Algorithms are trained using biased data



Bernard Parker, left, was rated high risk; Dylan Fugett was rated low risk.

Machine Bias

There's software used across the country to predict future criminals. And it's biased against blacks.

by Julia Angwin, Jeff Larson, Surya Mattu and Lauren Kirchner, ProPublica
May 23, 2016

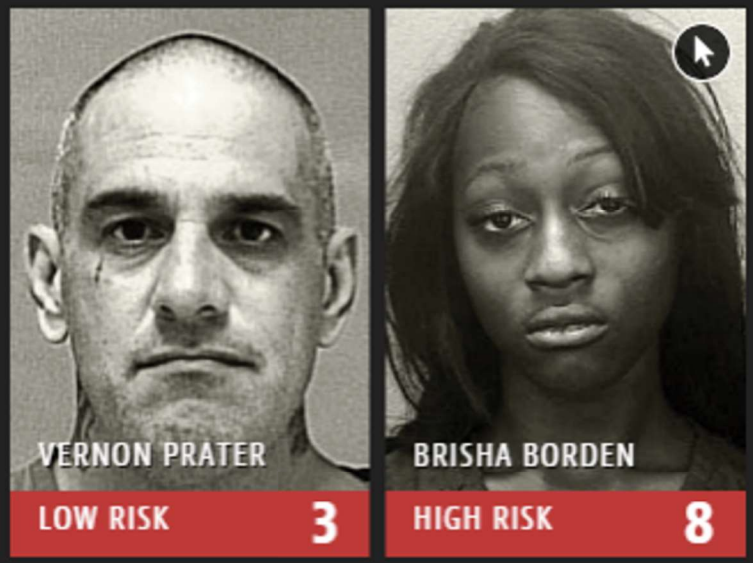
GREENE ESPEL PLLP

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Algorithmic bias

- Algorithms are trained using biased data



GREENE ESPEL PLLP

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

Disability is inherently diverse. Americans with disabilities are one of the largest minority groups in the United States.

Yet many in our society have biases about disabilities.

Studies suggest that race, gender and socioeconomic factors play a significant role when it comes to disabilities.



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*

Identifying Bias in Claim Assessment

GREENE ESPEL PLLP

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Understanding Essentialism in Workers' Compensation

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Do 'independent medical examiners' tend to side with employers in worker's compensation disputes? Or is there bias on both sides?

JANUARY 23, 2018 BY THE CVPOST ADMIN

By Alexandra Hall, *Wisconsin Public Radio* **and Dee J. Hall**, *Wisconsin Center for Investigative Journalism*

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Evidence of Bias in Workers' Compensation Awards

October 26, 2012 • (4 min read)

Study Shows Whites Receive Higher Benefits Than Other Groups for Comparable Harm

Despite the basic workers' compensation principle that every claimant should receive equal medical and wage-loss benefits for the same type of compensable injury and that those benefits should reflect the extent of that harm, relevant statistics have indicated that someone's ethnic background may impact the awarded compensation.

An article entitled "Analysis of Ethnic Disparities in Workers' Compensation Claims Using Data Linkage" that Lee S. Friedman, Ph.D. and his co-authors wrote for the October 2012 edition of the *Journal of Occupational and Environmental Medicine* addressed the issue of race-based differences regarding workers' compensation benefits in the context of compensable injuries that construction workers in Illinois sustained. The high incidence of compensable harm in that industry is one reason that the team chose it for the study.

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*

Why does it matter?

GREENE ESPEL PLLP

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

Why Diverse Teams Are Smarter

by David Rock and Heidi Grant

November 04, 2016



- **They focus more on facts.**
  - In mock-jury research, diverse panels raised more facts related to the case than homogenous panels and made fewer factual errors while discussing available evidence.
- **They process those facts more carefully.**
  - Research suggests that considering the perspective of an outsider helps groups make the correct decisions (identifying a "murderer" in a research game).
- **They are more innovative.**
  - Companies with more women are more likely to introduce radical new innovations into the market over a two-year period.

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*



Inclusive decision making contributes directly to the bottom line. Shutterstock

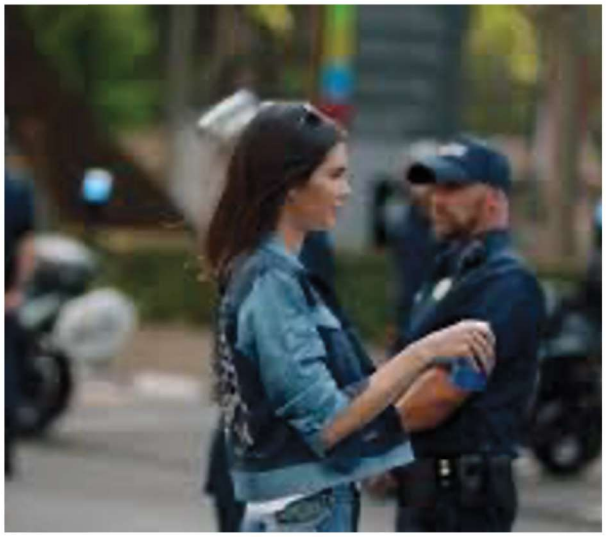
One study analyzed approximately 600 business decisions made by 200 different business teams in a wide variety of companies over two years, using the Cloverpop decision-making database. In general:

- Inclusive teams make better business decisions up to 87% of the time.
- Teams that follow an inclusive process make decisions 2X faster with 1/2 the meetings.
- Decisions made and executed by diverse teams delivered 60% better results.
- Compared to individual decision makers, all-male teams make better business decisions 58% of the time, while gender diverse teams do so 73% of the time.
- Teams that also include a wide range of ages and different geographic locations make better business decisions 87% of the time.

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias *the Program*



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

Objectivity is not the answer



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program



Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

the Program

Individual Techniques



- Acknowledge that we all have bias
- Make slow decisions
- Monitor your behavior
- Avoid making assumptions
- Speak out if you notice bias
- Apologize if you get it wrong

GREENE ESPEL PLLP

Institutional Techniques

Awareness and Education

Structured Decision-Making

Diverse Perspectives

Feedback and Reflection

GREENE ESPEL PLLP

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Recommended Reading List

- Eberhardt, Jennifer. *Biased: Uncovering the Hidden Prejudice that Shapes What We See, Think, and Do*. Penguin Books, 2019.
- Gladwell, Malcolm. *Blink: the Power of Thinking without Thinking*. Back Bay Books, 2019.
- Ifill, Sherrilyn. *Judicial Diversity*. 13 Green Bag 2D 45, http://www.greenbag.org/v13n1/v13n1_ifill.pdf
- Kahneman, Daniel. *Thinking, Fast and Slow*. Farrar, Straus and Giroux, 2015.
- Kang, Jerry, National Campaign to Ensure the Racial and Ethnic Fairness of America's State Courts, *Implicit Bias - A Primer for Courts* (August 2009), http://wp.jerrykang.net.s110363.gridserver.com/wp-content/uploads/2010/10/kang-Implicit-Bias-Primer-for-courts-09.pdf.
- Joan Williams et al., *You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession*, American Bar Association and Minority Corporate Counsel Association, 2018.

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.

Beyond Bias

Articles

A Call for Action: How Clients and Judges Can Do More to Address the Legal Profession's Diversity Problem
Sybil Dunlop
18 U. St. Thomas L.J. 78 (2022)

Why the Legal Profession is the Nation's Least Diverse (and How to Fix It)
Volume 47, Mitchell Hamline Law Review (2021)

Why Our Profession is the Nation's Least Diverse
Sybil Dunlop
Hennepin Lawyer (2017)

Notes

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.



ABOUT YOUR PRESENTER

SYBIL DUNLOP

PROFESSIONAL BIOGRAPHY

Contact Sybil Dunlop:

(612) 373-8345

www.greeneespel.com

sdunlop@greeneespel.com

Sybil is a passionate and uncommonly persuasive advocate who helps clients resolve commercial and intellectual property disputes. Sybil's litigation practice affords her substantial first-chair trial and arbitration experience. Sources share that "she is brilliant, responsive and seeks to understand business objectives." (*Chambers USA*, 2022). And *Minnesota Lawyer* has recognized her three times as "Attorney of the Year." Bringing her skills to bear, Sybil successfully leads teams in litigations around the country.

Sybil is also an experienced legal writer and teacher. After college, she wrote monthly columns for the *Washington City Paper*. And after law school, she wrote a monthly column for *Minnesota Lawyer* (called "Sybil Procedure"). She has taught legal writing to legal audiences around the country as well as at Vanderbilt University Law School, where she won the "best brief" award in 2006. She clerked for the Honorable James M. Rosenbaum, United States District Judge for the District of Minnesota, before joining Greene Espel PLLP.

POWERHOUSE
THE Professional Education Group

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.



ABOUT YOUR PRESENTER

AMRAN FARAH

PROFESSIONAL BIOGRAPHY

Contact Amran Farah

(612) 373-8357

www.greeneespel.com

safarah@greeneespel.com

Amran Farah is a commercial litigator with the Greene Espel Law firm. She is also, along with Sybil Dunlop, a recognized thought leader on Diversity, Equity, and Inclusion ("DEI"). She co-founded her law firm's DEI practice which conducts workplace investigations and assists employers in addressing issues of discrimination and workplace misconduct. In that arena, she helps clients develop diversity, equity and inclusion policies to foster equity, inclusion and belonging, and developed and provides DEIB trainings.

Amran's talents are widely recognized. She was awarded the Minnesota Lawyer's Attorney of the Year Award and recognized by Minneapolis/St. Paul Business Journal as a 40 under 40 Honoree. Minnesota Senators Amy Klobuchar and Tina Smith selected Amran to serve on the Judicial Selection Committee for the open seat on the federal court bench, and appointed her to the selection committee to select Minnesota's U.S. Attorney and U.S. Marshall. Amran is routinely asked to assist in hiring executive officers.

Amran is the past-President of the Minnesota Association of Black Lawyer, a founder and past-President of the Somali American Bar Association, and the past-Chair of the Council of Minnestans of African Heritage.

PH POWERHOUSE THE Professional Education Group

©2024 Sybil Dunlop and The Professional Education Group, Burnsville MN. ALL RIGHTS RESERVED.