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Decision Making In The Future: Shedding The Baggage Of Cognitive, Implicit, And Cultural Biases*

Forensic Psychology Consultation in Child Custody Litigation

A Handbook for Child Protection Workers, Case Preparation, and Expert Testimony

Second Edition

ABA

Albury Wodonga Family Law Pathways Webinar
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*THE FOLLOWING SLIDES WERE A JOINT CREATION BETWEEN MYSELF, ROBERT SIMON, PHD, AND GITU BHATIA, PHD

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Attendees at this program will be able to:

- ▶ Understand and manage the threats to fairness, impartiality and neutrality in family law work
- ▶ Recognize the need to embrace complexity and consider **all** relevant family issues rather than a "single story"
- ▶ Manage the impact of our own values, experiences, and feelings when formulating conclusions and making recommendations and decisions in family law matters

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The Psychologist Expert Perspective

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What Is Cognitive Bias

- ▶ Cognitive Bias is any factor that keeps us from perceiving data / evidence accurately.
- ▶ All humans are at risk, as our brains are wired for oversimplifying complex tasks

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Why is Bias Critical in our Work?

- ▶ Cognitive bias is the greatest threat to the usefulness of forensic work and accuracy in advocacy and judicial decision making
- ▶ Cognitive bias threatens the probative utility of forensic work products
- ▶ Cognitive bias threatens the forensic integrity of work products
- ▶ Cognitive bias, when present, compromises the reliability and validity of forensic work products and usefulness of judicial decision making

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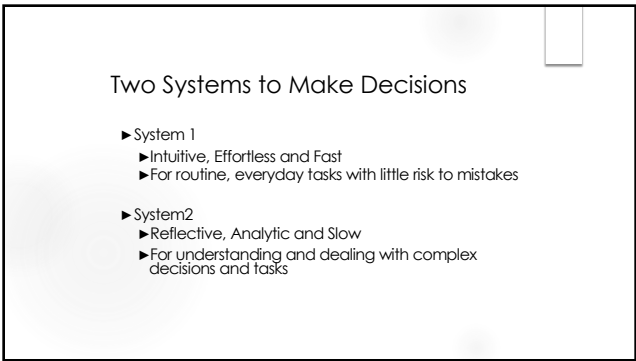
Let's Remember I

- ▶ Experts Must have a Basis for their Opinions
- ▶ If the basis is affected by cognitive biases, it's likely to be worthless

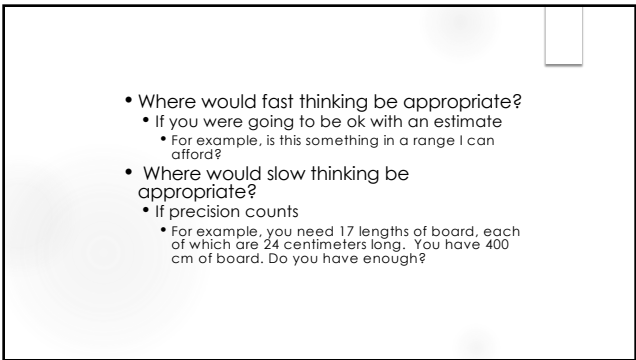
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Our Earlier Word Problems

- ▶ Some were System 1
- ▶ Some were System 2

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What Did We See?

- ▶ Inattentional Blindness
 - ▶ When people devote their attention to a particular area or aspect of their visual world, they tend not to notice unexpected objects, **even when those unexpected objects are salient, potentially important, and appear right where they are looking**
- ▶ Hence, the Illusion of Attention
 - ▶ We experience far less of our visual world than we think we do – the same holds true for our world of comprehension of complex issues

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Examples of Visual Illusions

- ▶ What's The Harm – GPS
- ▶ Motorcycles where we don't expect them
- ▶ Bicycles where we don't expect them
- ▶ Pedestrians where we don't expect them

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Other Illusions in our Work (Chabris and Simons)

- ▶ We attend to salient data
 - ▶ The Gorilla we just saw (or didn't see)
- ▶ We see Salient Data
 - ▶ The grand piano
- ▶ We Remember Salient Data
 - ▶ If it's not written down, we might not remember it
- ▶ Illusion of Overconfidence
 - ▶ We have more confidence in areas we know little about
- ▶ Illusion of Knowledge
 - ▶ We think we understand complex systems more than we do
- ▶ Jumping to Conclusions
 - ▶ We look for patterns and infer underlying causes - Measles vaccine causes autism

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Another Video Example

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What did we Learn from this video

- ▶ Knowledge does not equal understanding
- ▶ The brain loses neuroplasticity and becomes more rigid as we get older
- ▶ We all operate with cognitive biases that affect what we see and how we do things

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Different Types of Bias

- ▶ Research Bias
 - ▶ Citing research on one side of an issue – the side that supports your point of view
- ▶ Personal Prejudices
 - ▶ Ethnic, racial, religious, gender
- ▶ Personal Beliefs (even if starting from a professional position)
 - ▶ Children under age 2 belong with their mothers
 - ▶ Relocation is always bad for children
 - ▶ Fathers who work during the marriage have trouble taking on primary parenting after divorce
 - ▶ Children don't lie – if they say they were abused, they were abused
- ▶ Wanting to Please A Referral Source
- ▶ Playing Into Perceptions of the Judicial Officer's Preferences
- ▶ Avoiding Being Stereotyped
 - ▶ "I am not an evaluator who favors mothers even though that is my reputation"

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Heuristics and Cognitive Bias

- ▶ What is a Heuristic?
 - ▶ "Simple, efficient rules that describe how people make decisions or reach conclusions when faced with complex problems."
- ▶ Kahneman points out that the use of heuristics create shortcuts in logic and reasoning. People use heuristics that are overly simple because of the complexity of problems. (Thinking Fast and Slow)
 - ▶ Heuristics can lead us to focus on one aspect of a problem
 - ▶ Heuristics can lead us to ignore some of the information in front of us
 - ▶ Heuristics can lead us to emphasize some factors and minimize others

The use of heuristics often goes unrecognized by decision-makers!

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Availability Heuristic

- ▶ The tendency to focus on what is most availability in memory
 - ▶ Data that is repeated frequently during the evaluation
 - ▶ Data that is emotionally salient
 - ▶ Data that the evaluator "remembers" without going to the file and doing a thorough review of all of the data
 - ▶ Data that is familiar to the evaluator – perhaps similar to issues in the evaluator's life or experience
- ▶ Otherwise known as recency bias

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Anchoring Heuristic

- ▶ Evaluator anchors on an aspect of a minority of aspects of a case at the expense of other information
 - ▶ For example, an incident of IPV
 - ▶ For example, an episode of drunkenness by a parent
 - ▶ For example, a psychiatric diagnosis
- ▶ The Primacy Effect (the data gathered first is given undue emphasis)

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Confirmatory Bias

- ▶ Conclusions are reached prematurely – subsequent data and information are viewed for how they support the prematurely formed impression
- ▶ Particularly common/uncommonly toxic source of bias, especially in relocation, alienation, and domestic violence cases
- ▶ Evaluators **must** have an attitude of disconfirmation in order to offset this

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Hindsight Bias "I Knew It All Along"

- ▶ The tendency to overestimate our own ability to have predicted or foreseen and event after learning the outcome
 - ▶ In CCE, this may present itself as an evaluator making predictions about a current case based on a previous case whose outcome is known
 - ▶ "I had a case last year just like this"
- ▶ Data that supports conclusions in the previous case is remembered and applied to the current case. Data that does not support the conclusion is thus forgotten.

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Recency Bias

- ▶ Recent information is given disproportionate weight
 - ▶ A complex case, the evaluator is highly ambivalent, an event near or at the conclusion of the case tips the balance
 - ▶ For example, DV v. Alienation

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Clinical/Professional Stereotyping

- ▶ Belief in diagnostic labels
 - ▶ Litigant carries a psychiatric diagnosis and this overly impacts the view of the litigant as a parent
- ▶ Characteristics over investigation
 - ▶ A litigant presents in a very emotional and dramatic fashion. This leads evaluator to underappreciate the claims made by the litigant

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The Dunning-Kruger Effect

- The cognitive bias in which the less able people are, the more likely they are to overestimate their abilities.
- In other words, "People don't know what they don't know"
- Everyone, no matter how smart they are (or claim to be) can still be wrong, especially about certain things

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Affiliative/Disaffiliative Bias

- ▶ Evaluator influenced by aspects of litigant that are like or unlike the evaluator
 - ▶ Litigant is a passionate surfer. Evaluator also loves to surf because it gives him a sense of calm and serenity. He assumes that litigant gains the same benefit.
 - ▶ Litigant is a gun owner. Evaluator believes that guns are unwise and would never own one. Attributes an aggressive point of view to litigant.

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Research Bias

- ▶ The use of research to support a preconceived opinion
 - ▶ "Research suggests" without citations
 - ▶ The use of research over weighting the specific and unique factors in a given case (for example, very young child whose parents live several hours apart)
 - ▶ Using research that supports the ongoing involvement in children's lives to recommend against relocation despite what the law says
 - ▶ Primary parent theory
 - ▶ Citing research on one side of a controversy to the exclusion of the other side of the issue

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The Truth Lies Somewhere In The Middle

- ▶ A bias that leads evaluators to conclude that the truth of the matter is somewhere between the positions of each litigant
- ▶ A priori belief that both parents have equal contribution to the conflict (as opposed to each probably but not certainly having some contribution)
 - ▶ Instead of a careful/methodical investigation of the contribution of each parent and how their contributions interact into the overall dynamic
 - ▶ Those at risk for burnout are particularly vulnerable to this bias

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Data Gathering Bias

- ▶ An evaluator believes more in one type of data than another
 - ▶ Preference for psychological testing versus in-depth investigative interviews
 - ▶ Preference for what is observed during parent-child interaction versus what is learned in interview and from collateral data

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Implicit Bias: Friend or Foe, It's Here To Stay

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SBS News – 10 June 2020

- ▶ **Three in four Australians hold racial bias against Indigenous people, study finds**
 - ▶ The findings from an Australian National University study released on Tuesday revealed an invisible barrier, author Siddharth Shirodkar says
 - ▶ "It was certainly shocking ... but it also wasn't necessarily surprising," he told AAP. "It says something, not so much about Indigenous people, it says something more about the rest of us."
 - ▶ The study tested 11,000 Australians over a decade since 2009
 - ▶ Men were more biased than women against First Nations peoples
 - ▶ Western Australians and Queenslanders showed higher levels of unconscious prejudice, while people in the Northern Territory and ACT showed less
 - ▶ Australians showed the same level of bias against Indigenous Australians as people held against African Americans in the United States
 - ▶ It looked at the response time of online volunteers to an association test, which flashed images of white people and Aboriginal Australians as well as positive or negative words. It found the majority of Australians showed a preference for white faces.

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Implicit Bias – What do we know

- ▶ According to the Kirwin Institute for the Study of Race and Ethnicity, implicit bias:
 - ▶ "Refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner"
 - ▶ "These biases encompass both favorable and unfavorable assessments are activated involuntarily and without an individual's awareness or intentional control."
 - ▶ "Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness"

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Implicit Bias - Continued

- ▶ The implicit association cause us to "have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance" and develop over a lifetime.
- ▶ Key Characteristics of Implicit Biases:
 - ▶ "Implicit biases are **pervasive**. Everyone possesses them, even people with avowed commitments to impartiality such as judges.
 - ▶ Implicit and explicit biases are **related but distinct mental constructs**
 - ▶ The implicit associations we hold **do not necessarily align with our declared beliefs** or even reflect stances we would explicitly endorse
 - ▶ We generally tend to hold implicit biases that **favor our own ingroup**, though research has shown that we can still hold implicit biases against our ingroup.
 - ▶ Implicit biases are **malleable**. Our brains are incredibly complex, and the implicit associations that we have formed can be gradually unlearned through a variety of debiasing techniques."

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Project Implicit – Harvard University

- ▶ The Implicit Association Test is available online – <https://implicit.harvard.edu/implicit/takeatest.html>
- ▶ The IAT measures:
 - ▶ the strength of associations between concepts (e.g., black people, gay people)
 - ▶ evaluations (e.g., good, bad)
 - ▶ stereotypes (e.g., athletic, clumsy)
 - ▶ making a response is easier when closely related items share the same response key
- ▶ They now have IATs for teens, school-aged children and even preschoolers

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Project Implicit – Harvard University

► What is an attitude?

- Your evaluation of some concept
- Explicit attitude is the kind of attitude that you deliberately think about and report – for example, you like math
- Implicit attitudes are positive and negative evaluations that are much less accessible to our conscious awareness and/or control – despite your explicit attitude, perhaps you associate math with negative attitudes
- And you do this without being aware of it

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Project Implicit – Harvard University

► Stereotypes

- The belief that most members of a group have some characteristic
- E.g., women are nurturing or police officers like donuts
- Explicit stereotypes we are aware of and talk about
- Implicit stereotypes are relatively inaccessible to conscious awareness and control
- E.g., even if you say men and women are equally competent in math, you might associate men more strongly with math skills without being aware of it

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Project Implicit – Harvard University

► Some research on implicit associations

- Although preferences for one group over another might be due to availability (?? Availability bias), research suggests our implicit biases might be what is keeping the preferred group more available
- Perhaps the preference is for “ingroups”, but both Blacks and Asians both show a preference for White people
- Gay people show an implicit preference for straight people, but it is not as strong as the implicit preference shown by straight people.
- Since most people who show implicit preferences for one group over another, that does not mean they are “prejudiced”, BUT, such implicit preferences can predict behaviors
- Per the website, “If we want to treat people in a way that reflects our values, then it is critical to be mindful of hidden biases that may influence our actions”

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When bias is implicit, how might we think about repairing harm?

Banaji, Bhaskar, & Brownstein, 2015

- ▶ IB is universal; it is a byproduct of fundamental features of thinking
- ▶ IB varies by individual and by group
- ▶ IB reveals ingroup preference
- ▶ IB reveals dominant group preference
- ▶ IB is dissociated from conscious intent/values
- ▶ IB is also associated to conscious intent/values
- ▶ IB is present in children; at times, to the same extent as adults
- ▶ IB predicts behavior, including behavior in natural settings

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Examples from their Research

- ▶ Anti-Hispanic IAT bias predicted attitudes toward illegal and legal immigration
- ▶ ER and resident physicians with stronger anti-Black IAT bias were less likely to prescribe a particular medical procedure to Black patients
- ▶ Stronger anti-Black IAT bias among physicians led to more negative experiences with Black patients
- ▶ Anti-obese IAT bias was related to less likelihood of interviewing obese candidates
- ▶ Associations of 'mentally ill' with 'dangerous,' were correlated with stronger endorsements of societal control mechanisms
- ▶ Voters with stronger anti-Obama IAT scores were more likely to oppose his policies — but not when the same policies were attributed to President Clinton

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Cultural Competency

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Overview of Cultural Sensitivity

- Increasing one's self Awareness: We are all racists (assumptions, values & biases)
- Understanding the worldview of the cultural "other": We need to understand the geography and history of others to understand the underpinnings of differences.
- Developing appropriate intervention Skills and SOLUTIONS

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Examining our own cultural lens

- The worldview and beliefs of the observer are as significant in the assessment as that of the family being observed.
- Within each family, each member may have experienced life in a different manner.
- It is important to take into account the socio-cultural climate and global events.

Bhatia, G. & Saini, M. (2016). In Drozd, Saini, & Olsen Cultural Dynamics of Divorce and Parenting. Parenting Plan Evaluations, 2nd Edition.

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Implicit Bias is....

Increased by	NOT reduced by
✓ stress	X good intentions
✓ time pressure	X someone else telling you to reduce your bias
✓ multi-tasking	X suppressing bias
✓ lack of clear criteria for decision-making	X avoiding people from other groups
✓ ambiguous or incomplete information	X thinking you don't have bias
✓ lack of familiarity with group	

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Automaticity of Stereotypes

Stereotypes are schemas about people.

Stereotype: what we associate with a group of people.

Attitude: how you feel about a group of people.

We can hold **positive stereotypes** and **negative attitudes** about the same group and vice versa.

Kang, J., et al. (2012).

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Racial Anxiety

How does racial anxiety show up?

- Shorter interactions
- Awkward attempts to connect
- Control Failures
- Avoidance

Tropp, L. R., & Page-Gould, E. (in press); Eberhardt, J.L., (2005)


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Racial Anxiety

What is it?

People of Color fear they will experience discrimination, hostile treatment, or invalidation.

Whites fear their words or actions will be perceived as racist.




E.g. Trawalter, S., et al. (2012); Amodio, D., et al., (2009)

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Justice Sotomayor

"Whether born from experience or inherent physiological or cultural differences our gender and national origins may and will make a difference in our judging."



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MULTICULTURAL GUIDELINES

An Ecological Approach to Context, Identity and Intersectionality, 2017

Adapted by the APA Council of Representative in August 2017

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WHAT'S NEW?

- Includes practice, research, consultation, and education.
- Including not only the recipient of clinical services, but also student, research participant or consultee.
- Advocates for a more diverse & inclusive population of psychologists.

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GUIDELINE 1

- Psychologists seek to recognize and understand that identity and self-definition are fluid and complex and that the interaction between the two is dynamic. To this end, psychologists appreciate that intersectionality is shaped by the multiplicity of the individual's social contexts.



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GUIDELINE 2

- Psychologists aspire to recognize and understand that as cultural beings, they hold attitudes and beliefs that can influence their perceptions of and interactions with others as well as their clinical and empirical conceptualizations. As such, psychologists strive to move beyond conceptualizations rooted in categorical assumptions, biases, and/or formulations based on limited knowledge about individuals and communities.

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GUIDELINE 3

- Psychologists strive to recognize and understand the role of language and communication through engagement that is sensitive to the lived experience of the individual, couple, family, group, community, and/or organizations with whom they interact. Psychologists also seek to understand how they bring their own language and communication to these interactions.

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GUIDELINE 4

- Psychologists endeavor to be aware of the role of the social and physical environment in the lives of clients, students, research participants, and/or consultees.



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GUIDELINE 5

- Psychologists aspire to recognize and understand historical and contemporary experiences with power, privilege, and oppression. As such, they seek to address institutional barriers and related inequities, disproportionalities, and disparities of law enforcement, administration of criminal justice, educational, mental health, and other systems as they seek to promote justice, human rights, and access to quality and equitable mental and behavioral health services.

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GUIDELINE 6

- Psychologists seek to promote culturally adaptive interventions and advocacy within and across systems, including prevention, early intervention, and recovery.

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GUIDELINE 7

- Psychologists endeavor to examine the profession's assumptions and practices within an international context, whether domestically or internationally based, and consider how this globalization has an impact on the psychologist's self-definition, purpose, role, and function.

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GUIDELINE 8

- Psychologists seek awareness and understanding of how developmental stages and life transitions intersect with the larger bio-sociocultural context, how identity evolves as a function of such intersections, and how these different socialization and maturation experiences influence worldview and identity.

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GUIDELINE 9

- Psychologists strive to conduct culturally appropriate and informed research, teaching, supervision, consultation, assessment, interpretation, diagnosis, dissemination, and evaluation of efficacy as they address the first four levels of the Layered Ecological Model of the Multicultural Guidelines

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GUIDELINE 10

- Psychologists actively strive to take a strength - based approach when working with individuals, families, groups, communities, and organizations that seeks to build resilience and decrease trauma within the sociocultural context.

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Standards for practice in all our professions require attention to diversity

ABA

APA

AFCC

NASW, AAMFT

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Religious/Spiritual identity
Economic class background
Sexual identity
Psychological maturity
Ethnic racial identity
Chronological/Developmental challenges
Trauma and other threats to well being
Family background and history
Unique physical characteristics
Location of residence and language differences

R-E-S-P-E-C-T.....
Framework by Ivey, 2007

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All of us have inherited biases. Acknowledging these to ourselves can minimize the detrimental effects on others.

Socialize, work with and get to know people from diverse backgrounds on personal and intimate levels. You can only understand about sexism by talking to women, about homophobia by talking to a gay or lesbian.

Explore yourself as a cultural being. How have you experienced discrimination or privilege.

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Putting Things Together

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DECISION MAKING

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WHAT IS DECISION MAKING

- ▶ Decision making is the process of making a choice between a number of options and committing to a future course of actions

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ELEMENTS OF DECISION MAKING

1. PROCESS
2. OPTIONS
3. CHOICES
4. ACTIONS

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CHALLENGES

A. Having too much or not enough information

- ▶ An overload of information can leave you confused and misguided
- ▶ An overload of information can fog your intuition
- ▶ Relying on one single source of information can lead to disasters down the track

B. Misidentifying the ISSUES

- ▶ Clearly identify where the main issue lies

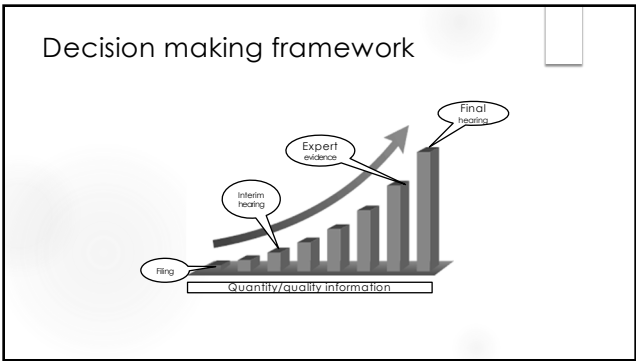
C. Being too "COCKY"

- ▶ In following the steps of the decision making process, there is still a chance that the outcome will not exactly accord with your desired outcome. It therefore becomes crucial to identify a valid option(s) that is plausible and achievable.
- ▶ Being overconfident in an unlikely outcome can lead to adverse results.

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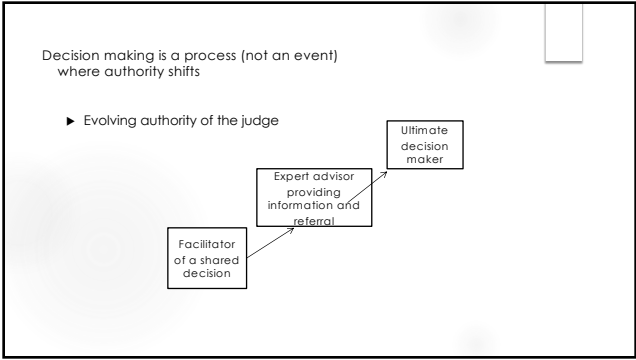
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Decision making is a process (not an event)
where authority shifts

- Decision making about children is a process where authority is shared at the beginning and gradually accrues more and more to the evaluator or Judge as the process evolves

An illustration at the bottom of the slide shows four stylized human figures in white, each holding a piece of a puzzle. They are arranged in a line, suggesting they are working together to complete the puzzle.

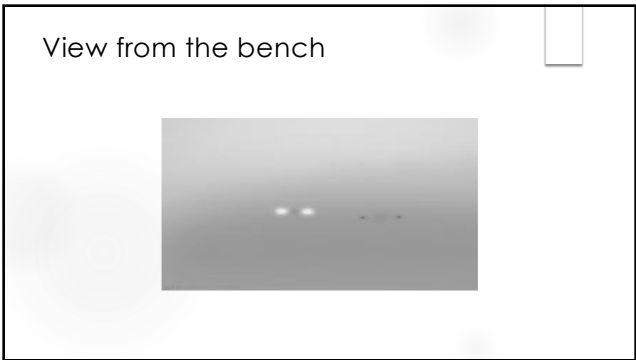
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Steps in Decision-Making

- ▶ Gather Data/Evidence
- ▶ Brainstorming Potential Hypotheses
- ▶ Sort those data
- ▶ Group data into hierarchies
- ▶ Avoid cognitive biases
- ▶ Listen until the end – or might miss critical information
- ▶ Brainstorming Potential Outcomes
- ▶ Make Decisions

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Critical Items to Embrace

- ▶ The Unexpected
- ▶ Creativity / Outside the Box Thinking
- ▶ Mistakes – Do not fear or hide from them
- ▶ Idea of zooming out – seeing things from various perspectives
- ▶ Reframing
- ▶ Forward looking perspective

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Debiasing Strategies

- ▶ "As a professional psychologist, you're ethically obligated to not be influenced by your own [biases]," said Neal. "You're supposed to know that they're there, and then account for them. We know that that's really hard to do, and in fact, probably impossible. But the clinicians are trained to think they can do it, and that they have to be objective, so they're really invested in it."

▶ ** Tess Neal

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► Unfortunately, bias isn't always as obvious as in the case of Grigson - who was known as Dr. Death in Texas, and who ultimately was found guilty of unethical conduct and expelled from the American Psychiatric Association and the Texas Society of Psychiatric Physicians after testifying in 167 cases, all for the prosecution, and which most resulted in death sentences

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Research on Bias Awareness
*** Neal and Brodsky

► 5 Scripted Questions:

- In general, how can psychologists' personal biases enter the picture in their forensic work?
- Tell me about your own background, experiences, and beliefs that may influence the choices you must make when you do forensic evaluations
- To what extent are you concerned about your own potential biases when you do forensic work?
- Talk to me about any experiences you've had in which you were concerned about your ability to be objective.
- Do you have any strategies or methods you employ to try to correct for your own potential biases?

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Results

► **Awareness of Bias Falls on a Continuum**

- Psychologists differed in the degree to which they were aware of or willing to admit to potential threats to their objectivity
- Some clinicians immediately dismissed the possibility of bias in their work
- Others were able to identify specific areas of potential bias in their work

► **Awareness of bias in others is higher than awareness of personal bias**

- Everyone described ways in which others can be biased, but only some of the participants described concerns about their own potential biases

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Bias Correction Strategies

- ▶ Embracing Professional Pride
- ▶ Formal and Informal Education
- ▶ Relying on Data
- ▶ Investigating all relevant data before forming an opinion
- ▶ Critically examining conclusions (e.g., considering alternative hypotheses)
- ▶ Using Procedural and Structural Support (e.g., structured methods or care notes)
- ▶ Disengaging Emotionally from Cases - Being cautious about empathy and rapport - it's a fine line

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Bias blind spots

- ▶ The problem with psychological evaluators not seeing their own biases is that they may be overconfident in clinical judgments. Overconfidence can lead to negative consequences, such as risky decision making and rejecting decision aids that would improve accuracy.
- ▶ However, introspection is not just a poor strategy for bias correction, but may actually exacerbate bias. After engaging in the ineffective strategy of introspection, forensic clinicians may develop a false confidence that they are bias-free, a confidence they may convey to the courts

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Mindfulness for Judges (and others)

** Heald et al

- ▶ Mindfulness is the practice of focusing attention and non-judgmentally observing thoughts, emotions and bodily sensations as they ebb and flow
- ▶ The "STOP" meditation
 - ▶ Stop what you are doing
 - ▶ Take a few deep breaths and focus on the experience of breathing
 - ▶ Observe your thoughts, feelings and actions
 - ▶ Proceed with new awareness
- ▶ With practice, people who engage in mindfulness are thought to be able to respond to decision-making tasks with greater focus, attention and reflection rather than relying on heuristics.
- ▶ Learning brief mindfulness techniques will enable you to "reset" attention whenever you begin feeling distracted or overwhelmed

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Final Keys to Managing and Controlling
for Bias

- ▶ Avoid adopting your client's emotionally-driven narrative about the other parent
- ▶ Gather information in a systematic way, but don't get stuck in the process (see curiosity below)
- ▶ Understand your client's view of the other client but don't adopt that view
- ▶ Be aware that, if you take on your client's emotions, you take on the client's bias

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- ▶ Remain curious and open
- ▶ Challenge your client's fundamental beliefs about their co-parent
- ▶ Ask probing questions of your client
- ▶ Consider the risks and benefits of various potential outcomes
- ▶ Make generous use of hypothesis testing
 - ▶ Search for data that might confirm as well as disconfirm your and your client's hypotheses
- ▶ Don't overestimate your ability to discern "truth"
- ▶ Humblition

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Let's Remember II

- ▶ If an expert didn't use a reliable method in his/her procedures and doesn't have a reliable basis for the conclusions:
 - ▶ The opinion is a lay opinion of an expert rather than an expert opinion
- ▶ Martindale, DM, 2001

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