

ADR SERVICES, INC. 4TH ANNUAL MCLE DAY  
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# BIAS DISRUPTERS

IMPLICIT BIAS IN MEDIATION



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# Speakers



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Justice Stanley Mosk

**“bias often deceives its host  
by distorting his view not only  
of the world around him, but  
also of himself.”**

*People v. Williams*, 29 Cal.3d 392 (1981)

# Brain Exercise

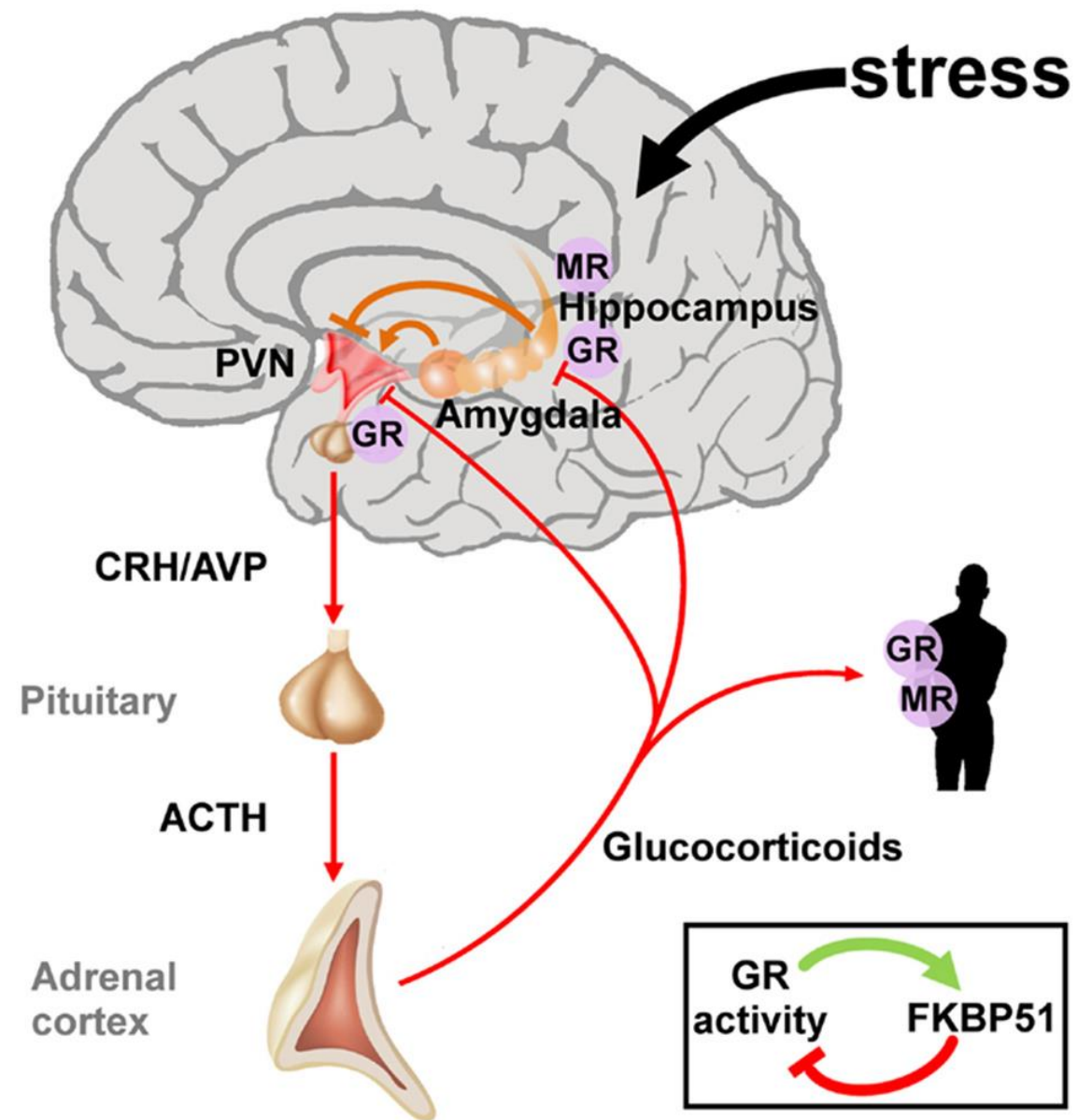
4

Visualization

# Stress Response

Stress Enters Brain →

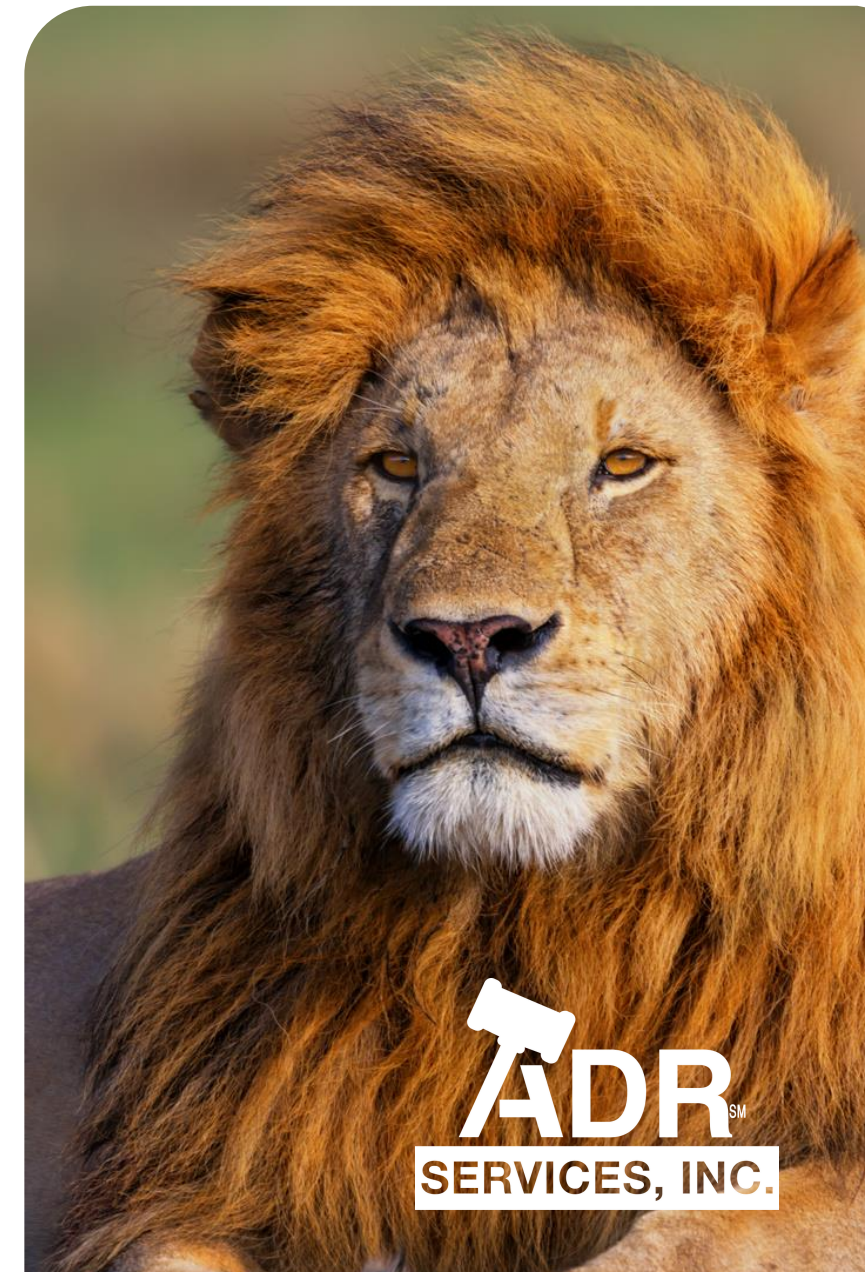
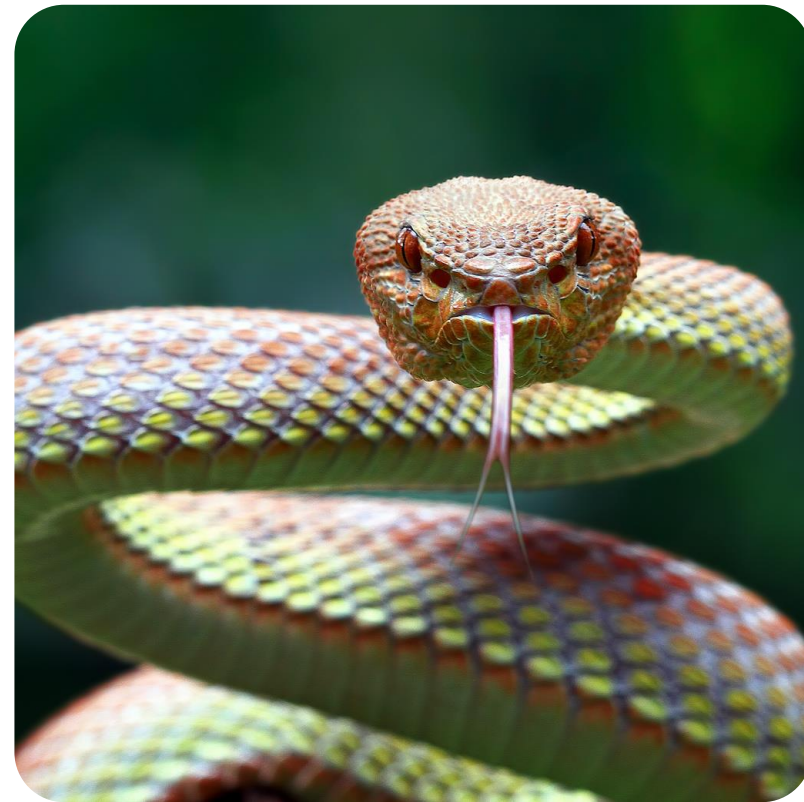
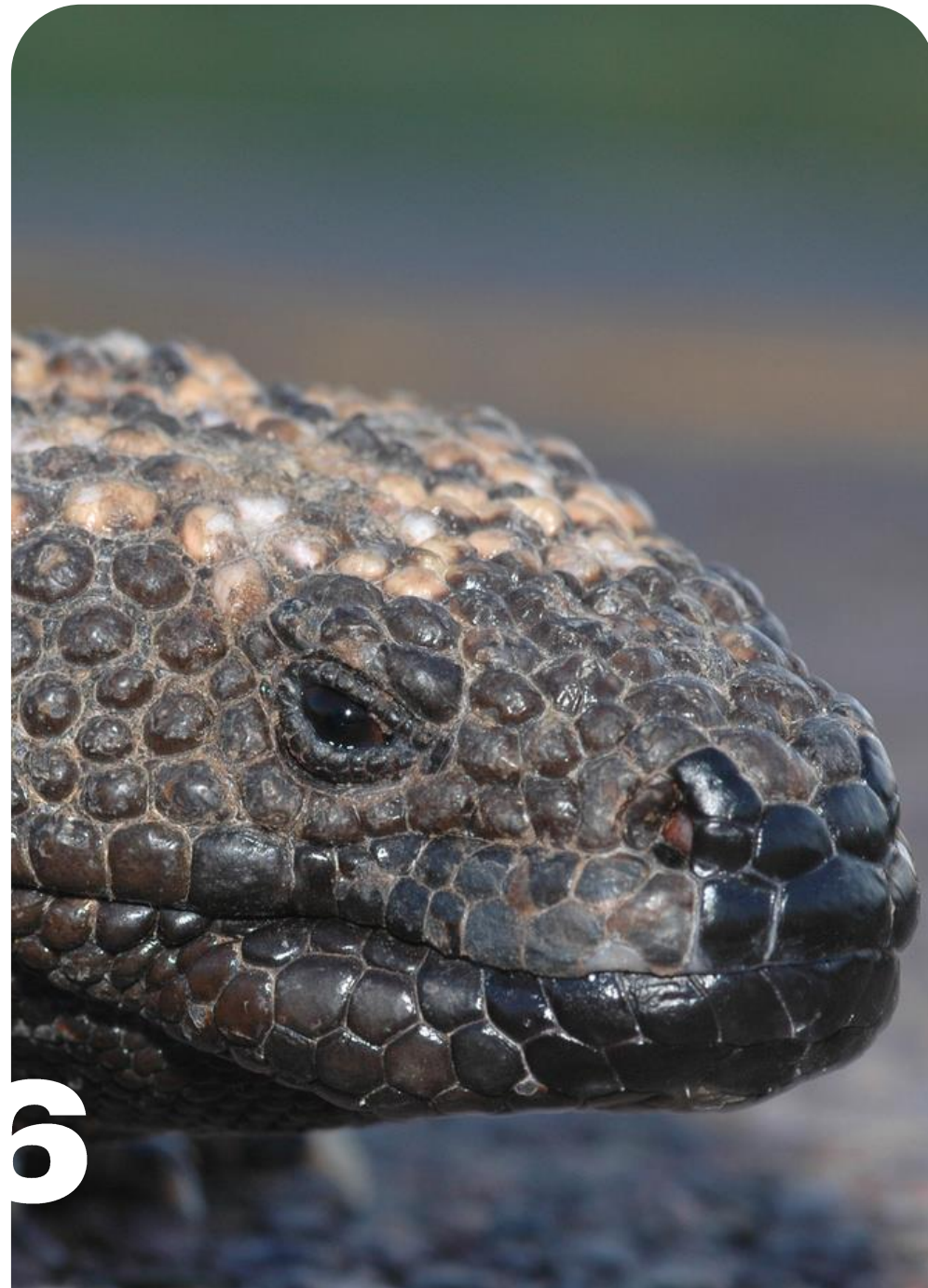
= Unexpected  
= Unfamiliar



Output →

Fight  
Flight  
Freeze

# A Natural Reaction to Stress



# Stanley



Stanley 2 months



Stanley 6 years



Stanley's Greatest Fear

# Daisy Mae & the Squirrel

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# Failure of Imagination



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[IMAGE CREDIT: National Park Service, Public domain, via Wikimedia Commons](#)

# Tools We Unconsciously Cling To

- **Instincts**
- **Habits**
- **Assumptions**

# 5 Common Biases that Affect Mediation & Negotiation

## Affinity Bias

“Like Me” Bias

## Confirmation Bias

Seeing what you expect to see

## Desirability Bias

Seeing what you want to see

## Binary Bias

Only 2 choices – Black or White

## Anchor Bias

Seeing a particular value influences assessment

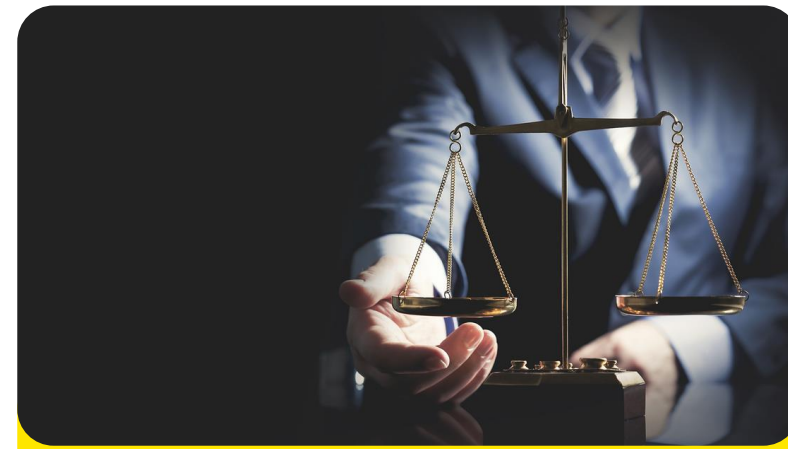
# Affinity Bias

<b>Common Affinity Biases</b>	<b>Behaviors</b>	<b>Consumer Choice</b>
<ul style="list-style-type: none"><li>• Gender</li><li>• Age</li><li>• Race</li><li>• Ethnicity/Culture</li><li>• Location</li><li>• Body Type – weight bias</li><li>• Attire/privilege</li><li>• Hair/tattoos/piercing</li><li>• Disability</li></ul>	<ul style="list-style-type: none"><li>• Language</li><li>• Accent</li><li>• Fast/Slow Talker</li><li>• Customs</li><li>• Education</li><li>• Status</li><li>• Experience/Title</li><li>• Eye Contact/Body Language</li><li>• Punctuality</li><li>• Extroversion</li><li>• Substance Abuse Disorder</li></ul>	<ul style="list-style-type: none"><li>• Religion</li><li>• TV Stations</li><li>• Newspapers</li><li>• Vaxer</li><li>• Political Party</li><li>• Sports Team</li><li>• Ally/network</li><li>• Friends</li><li>• Masker</li><li>• Plaintiff or Defendant</li></ul>



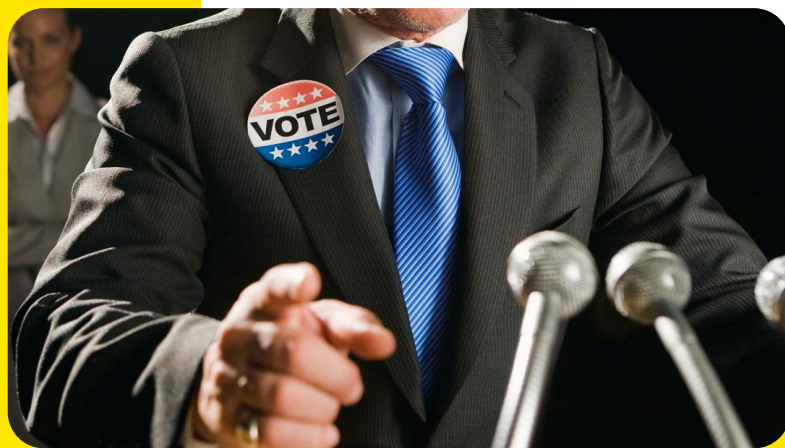
**Preacher**

I am Right



**Prosecutor**

You are Wrong



**Politician**

We are right. They are wrong



**Scientist**

I Might be Wrong

# → Rethinking

**Think Like a Scientist**

**Test your Hunch or Hypothesis with data**



# Enjoy Being Wrong Overcoming Binary Bias

**It Is Never Best Practices – It's Better Practices**

- Messy is good – it's complicated.
- Embrace Confusion & Emotions
- Ask – How rather than why
- What might change your mind?
- Acknowledge common ground.

# **Anchor Bias**

## **Stop Hijacking my Brain**

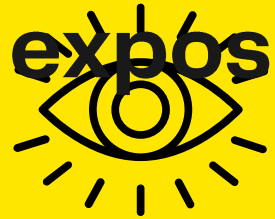


# Busting the Bias Loop



## Change the Unimagined to the Expected

Imagine/visualize/  
exposure/familiarity



Check data & assumptions like a scientist -  
Is your hypothesis true?



Examine your own behaviors



Overwrite/Override/Adjust





# The PAUSE Approach

Vanderbilt University,  
“Disrupting Everyday Bias”

DR. LOURDES ESTRADA  
[HTTPS://MEDSCHOOL.VANDERBILT.EDU/MSTP/2020/08/  
26/PAUSE-A-FRAMEWORK-TO-DISRUPT-EVERYDAY-  
BIAS/](https://medschool.vanderbilt.edu/mstp/2020/08/26/pause-a-framework-to-disrupt-everyday-bias/)

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**P**

Pay attention

**A**

Acknowledge your assumptions

**U**

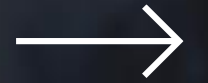
Understand your perspective

**S**

Seek different perspectives

**E**

Examine your options and make a  
decision





# Thank You



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# References & Resources

- *NOISE A Flaw in Human Judgment*, Daniel Kahneman, Olivier Sibony, Cass R. Sunstein;
- *Thinking Fast and Slow*, Daniel Kahneman;
- *Think Again*, Adam Grant;
- *INVISIBLE WOMEN, Data Bias In A World Designed For Men*, Caroline Criado Perez.
- TED Talk, "*How to Outsmart Your Own Unconscious Bias*," Valerie Alexander
- [The Black Swan, Second Edition: The Impact of the Highly Improbable](#) | by Nassim Nicholas Taleba
- [Harvard Implicit Association Test](https://implicit.harvard.edu/implicit/takeatest.html) <https://implicit.harvard.edu/implicit/takeatest.html>
- John Stewart's Intolerance Off: <https://www.cc.com/video/oe9257/the-daily-show-with-jon-stewart-last-gay-standing>
- Joshua Bell's 'Stop and Hear the Music' metro experiment | The Washington Post  
[https://www.youtube.com/watch?v=hnOPu0\\_YWhw](https://www.youtube.com/watch?v=hnOPu0_YWhw)