IMPLICIT BIAS IN PRACTICE
WHAT THE LAW REQUIRES—AND WHAT LAWYERS CAN DO

ADR SERVICES, INC. 6TH ANNUAL COMPLIMENTARY MCLE DAY EVENT

MARCH 3, 2026

ADR SERVICES, INC.
Your Partner in Resolution

HON. VERNA ADAMS (RET.)
Mediator, Arbitrator, Private Judging, Parental Coordinator

HON. SUSAN LOPEZ-GISS (RET.)
Mediator, Arbitrator, Private Judging, Parenting Coordinator

HON. SUZANNE RAMOS BOLANOS (RET.)
Mediator, Arbitrator, Referee

PROGRAM GOALS

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UNDERSTAND WHAT IMPLICIT BIAS IS

IDENTIFY WHERE BIAS SHOWS UP IN PRACTICE

REVIEW CCP §231.7 CHANGES

APPLY PRACTICAL INTERRUPTION TOOLS

WHAT IS IMPLICIT BIAS?

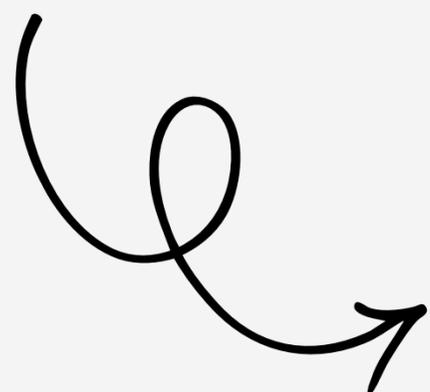## UNCONSCIOUS, AUTOMATIC MENTAL ASSOCIATIONS

→ Operates below awareness

→ Rooted in rapid brain processing

→ Influenced by culture and experience
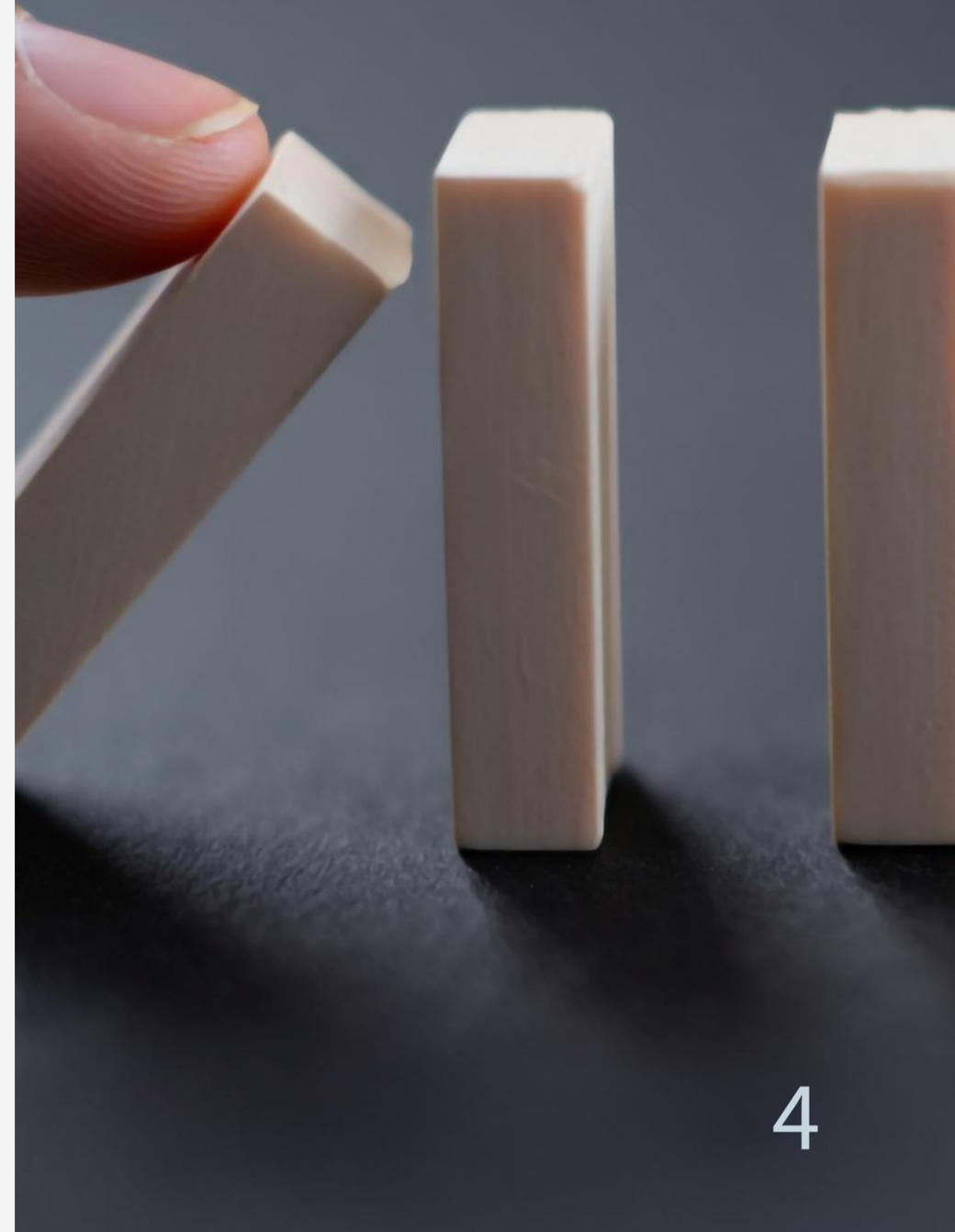
OUR GOAL TODAY: RAISE AWARENESS

INTENT VS. IMPACT

BIAS IS OFTEN UNINTENTIONAL, BUT

→ Impact still matters

→ Law increasingly focuses on effect

THIS PROGRAM IS ABOUT **SPOTTING**, **INTERRUPTING**, AND **REDUCING IMPACT**—NOT MORAL LABELING.

LEGAL FOUNDATIONS AND WHERE THE SYSTEM HAS PUT 'GUARDRAILS'

→ Mandatory implicit bias MCLE credit

→ Cal-Crim No. 209 / CACI No. 5030 jury instructions as a standalone required instruction

→ Judicial training rules

→ Civility and State Bar obligations

→ Amendments to voir dire statute: CCP 231.7" or "Changes to jury selection rules: CCP 231.7

ORIGINS OF C.C.P. SECTION 231.7

→ Enacted in 2020, CCP 231.7 took effect in 2022 for **criminal** trials *only*.

→ Shifts away from the traditional Batson/Wheeler framework by eliminating the initial burden on the objecting party to prove purposeful discrimination. Instead, it adopts an objective "reasonable person" standard focusing on the appearance and effect of bias, including unconscious biases.
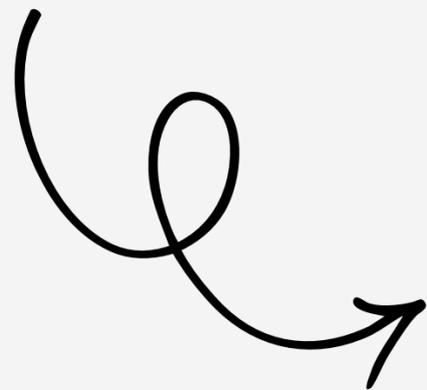
CIVIL TRIALS *WILL* BE SUBJECT TO § 231.7 STARTING IN **JANUARY 1, 2026.**

SECTION 231.7, SUBDIVISION (E)

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KEY FEATURES OF SECTION 231.7

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231.7(a) A party shall not use a peremptory challenge to remove a prospective juror on the basis of the prospective juror's **race, ethnicity, gender, gender identity, sexual orientation, national origin,** or **religious affiliation**, or the **perceived membership** of the prospective juror in any of those groups.

→ Burden is on party exercising the peremptory to justify it with lawful reasons

→ Purposeful discrimination need not be shown; designed to reduce implicit, unconscious bias

→ Many standard reasons for a strike are presumptively invalid

→ Peremptory challenge will be reversed on mere "substantial likelihood" that the juror's membership in a group was "a factor" in its exercise.

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PROCEDURES OF SECTION 231.7

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Challenge to a strike made at earliest possible time; further proceedings outside presence of jury.

Challenger to a strike identifies the protected group to which juror belongs

Burden shifts to the party exercising peremptory to provide justification for the strike

Court can only rule based on justifications provided by the striking party

REMEDIES OF SECTION 231.7

→ Quash the jury venire and start jury selection anew. This remedy <u>shall be provided</u> if requested by the objecting party.

→ If the motion is granted after the jury has been impaneled, declare a mistrial and select a new jury if requested by the defendant.

→ Seat the challenged juror.

→ Provide the objecting party additional challenges.

→ Provide another remedy as the court deems appropriate.

13 PRESUMPTIVELY INVALID REASONS FOR STRIKE

1. Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system.
2. Expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.
3. Having a close relationship with people who have been stopped, arrested, or convicted of a crime.
4. A prospective juror's neighborhood.
5. Having a child outside of marriage.
6. Receiving state benefits.
7. Not being a native English speaker.
8. The ability to speak another language.
9. Dress, attire, or personal appearance.
10. Employment in a field that is disproportionately occupied by members listed in subdivision (a) or that serves a population disproportionately comprised of members of a group or groups listed in subdivision (a).
11. Lack of employment or underemployment of the prospective juror or prospective juror's family member.
12. A prospective juror's apparent friendliness with another prospective juror of the same group as listed in subdivision (a).
13. Any justification that is similarly applicable to a questioned prospective juror or jurors, who are not members of the same cognizable group as the challenged prospective juror, but were not the subject of a peremptory challenge by that party….” (§ 231.7, subd. (e).)

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BIAS BEYOND JURY TRIALS

Don't think you're off the hook just because you don't do jury trials.

Bench trials, family law, probate, civil

E.g. Bias risks in:

→ Credibility assessments

→ How parties are addressed (names/pronouns/titles; defaulting to "petitioner/respondent", or "Mx" as neutral language)

→ Tone and "snark" in orders; how language lands

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NEGOTIATION & MEDIATION CONTEXT

→ Cultural communication differences

→ Emotion expression norms

→ Silence vs. assertiveness

→ Authority signals

BIAS–REDUCING STRATEGIES ATTORNEYS CAN ACTUALLY USE TOMORROW

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SELF-AWARENESS TOOLS

INTERRUPT THE PATTERN

FOSTER A CULTURE OF FEEDBACK

SELF–AWARENESS TOOLS

Consider trying a self-awareness test like the Harvard Implicit Association Tests:

https://implicit.harvard.edu/implicit/takeatest.html

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Race	Transgender	Presidents
Muslim	Age	Weapons
Sexuality	Skin-tone	Disability
Arab	Weight	Asian American
Hispanic	Gender – Career	Jewish
American	Native American	Gender – Science

SELF–AWARENESS TOOLS

Some Reflection Prompts:

→ "What assumptions did I just make—and on what data?"

→ "If I'm wrong, what's an alternative explanation?"

→ "Would I interpret this behavior the same way if the person looked/sounded different?"

INTERRUPT THE PATTERN
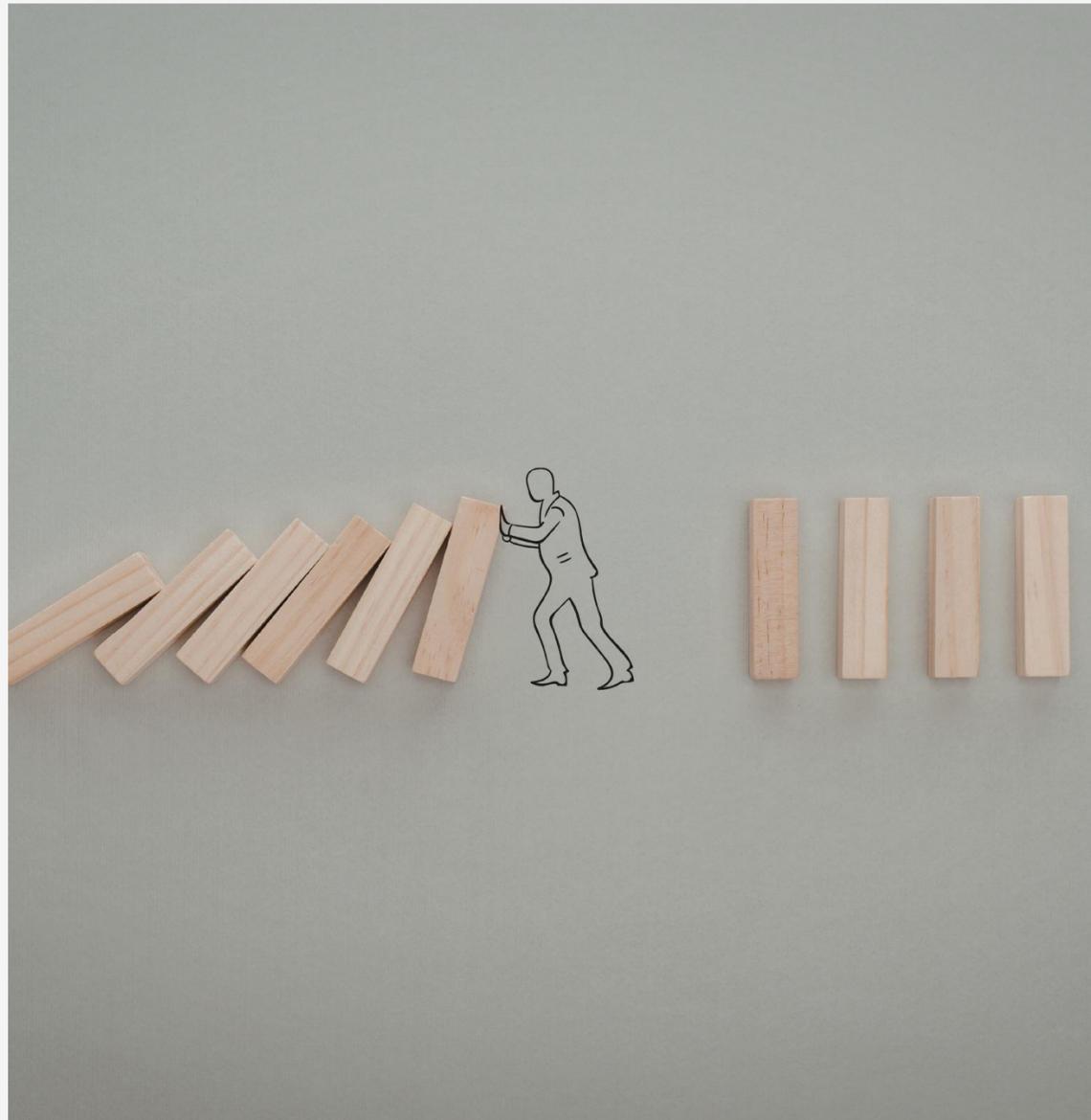
Slow down at decision points (jury strikes, credibility calls, settlement valuation)

USE CHECKLISTS:

→ "Reason grounded in case facts?"

→ "Would I say this reason out loud on the record?"

→ "Is the reason tied to a protected category or proxy?"

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FOSTER A CULTURE OF FEEDBACK

→ Invite correction

→ Setting norms in teams, mediations, meet-and-confers: "If I miss the mark, tell me."

→ Two-way mentorship examples (kids/staff/younger attorneys) as a practical model

→ Reminder: norms change — today's "in" becomes tomorrow's outdated

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BIAS CAN RUN BOTH WAYS

→ Avoid reflexive intolerance; hold "good faith + impact" simultaneously

→ Encourage humility and repair
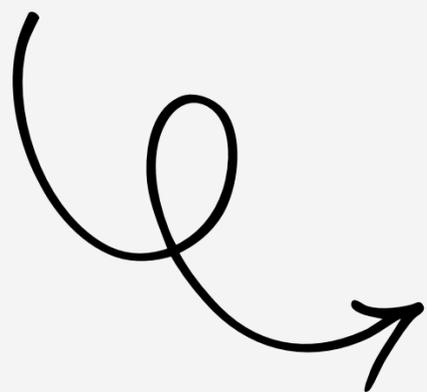
TAKEAWAY TIP: **QUICK CORRECTION + MOVE FORWARD + TRY NOT TO REPEAT**

THREE CORE TAKEAWAYS

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BIAS IS NORMAL; IMPACT STILL MATTERS

THE LAW IS MOVING (CCP §231.7) AND IT'S A PRACTICE SHIFT

YOU CAN INTERRUPT BIAS WITH CONCRETE HABITS AND SELF-AWARENESS

THANK YOU

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