End Violence Against Women International (EVAWI)

Training Bulletin Series:

Gender Bias in Sexual Assault Response and Investigation

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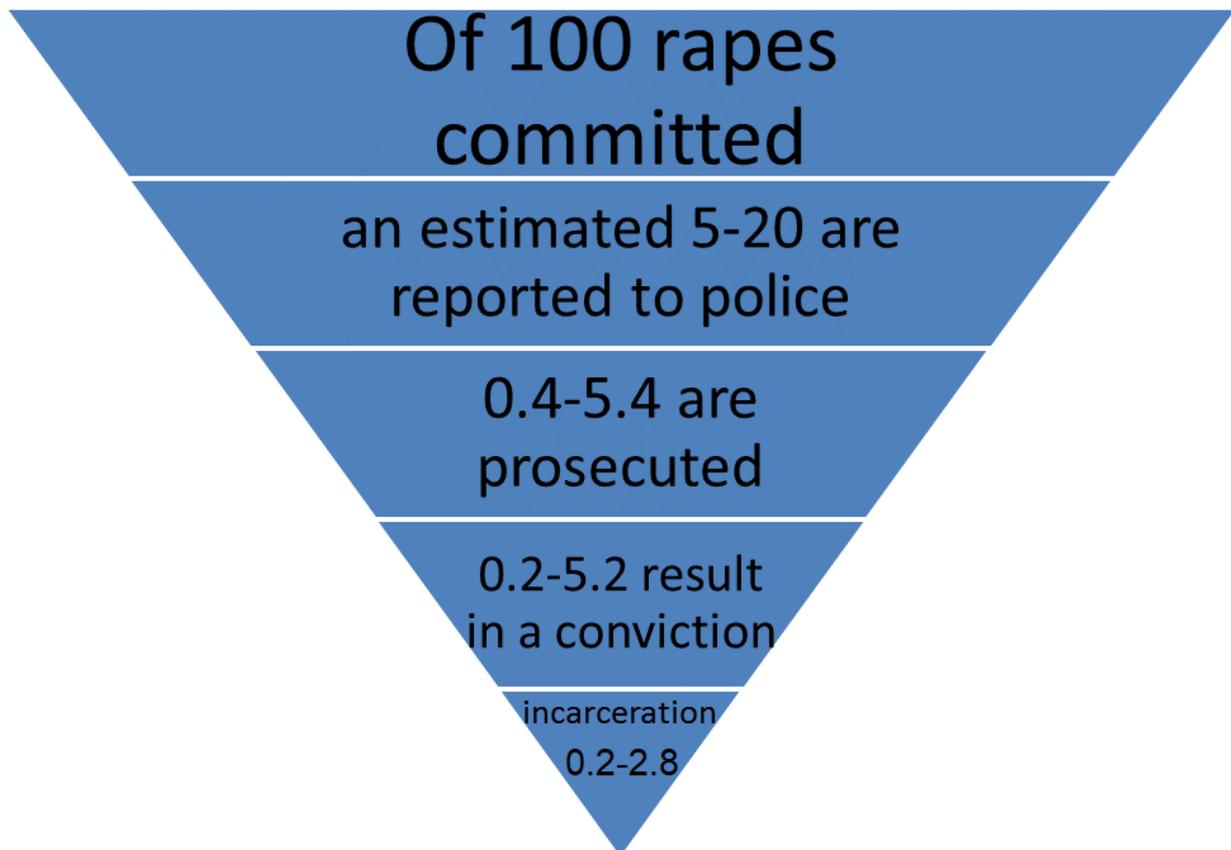
Part 1: Introduction

This Training Bulletin is the first in a series designed to explore the phenomenon of gender bias, both explicit (conscious) and implicit (unconscious), and the resulting stereotypes and attitudes that can influence the professional response to, and investigation of, sexual assault.

In this first installment, we introduce the concept of *implicit bias* and briefly review the decades of neurobiological and social scientific research that document its existence and impact. We begin by reviewing the concept of gender, and then defining gender bias, both implicit and explicit. In subsequent bulletins, we will explore strategies that can be used to identify the presence of implicit gender bias and mitigate its influence. We will also address key questions about how implicit gender bias can disadvantage (or advantage) either the victim and/or suspect.

Sexual Assault Response and Investigation: Our Starting Place

Before introducing the concept of gender bias, it is important to establish our starting place with a focus on sexual assault response and investigation. This is now widely recognized as a criminal justice function that requires specific skills, knowledge, and practices – for law enforcement, prosecutors, health care providers, victim advocates, and allied professionals. This is evidenced by the existence of government entities such as the Office on Violence against Women within the US Department of Justice, which administers funds for training and technical assistance allocated by the federal Violence against Women Act (VAWA), and other specialized training and capacity-building programs for criminal justice professionals, both at the state and national level.

Moreover, we know from decades of social scientific research and the FBI's Uniform Crime Report (UCR) that reporting rates for sexual assault are among the lowest for all violent crimes. At the same time, attrition rates for sexual assault are high. In fact, the pattern of attrition for sexual assault cases within the criminal justice is often described as a "justice gap," with research indicating that only 5-20% of sexual assaults are reported, 0.4 to 5.4% are prosecuted, and 0.2 to 5.2% result in a conviction of any kind.

Of 100 rapes committed

an estimated 5-20 are reported to police

0.4-5.4 are prosecuted

0.2-5.2 result in a conviction

incarceration 0.2-2.8

Lonsway, K.A. & Archambault, J. (2012). The "justice gap" for sexual assault cases: Future directions for research and reform. *Violence Against Women, 18(2)* 145-168.

In sum, sexual assault perpetrators are not typically held accountable within the American justice system, and the same is true in other countries as well.[1] This may be because of the difficulty of proving the legal elements beyond a reasonable doubt, in addition to other challenges. One of these is the existence of implicit gender bias.

Implicit Bias

Implicit bias refers to the automatic and unconscious process of assigning a stereotype and/or linking negative or positive attitudes to a particular group, or to an individual associated with a group (Kang, 2009). We also automatically and unconsciously identify, categorize, differentiate and label the world around us, in a process referred to as *implicit cognition*. This means we don't have to think about the difference between a stool and a coffee table, or how to use a spoon versus a fork – we automatically identify and differentiate such objects thousands of times a day, to function effectively in the world. This is not a bad thing; it is an example of the efficiency of the human brain.

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[1] In fact, the term "justice gap" was coined by researchers Jennifer Temkin and Barbara Krahé, to describe the pattern of criminal justice outcomes in the UK and Europe. See Temkin, J. & Krahé, B. (2008). *Sexual Assault and the Justice Gap*. Oxford: Hart Publishing.

However, when we use these processes to unconsciously identify and differentiate people in social categories, such as age, gender, and race, this can create problems (Kang, 2009). In fact, decades of neuroscientific, cognitive, and social psychological research demonstrate that the assignment of people into such categories is generally consistent with prevailing *social hierarchies* (Kang, 2009). These social hierarchies include, for example, the group of men over women, white over black, young over old, straight over gay. Research clearly demonstrates the connection between implicit bias and attitudes, which can translate into actual discriminatory behavior.

> *Implicit … attitudes and stereotypes operate automatically, without awareness, intent, or conscious control. Because they are automatic, working behind-the-scenes, they can influence or bias decisions and behaviors, both positively and negatively, without an individual's awareness. This phenomenon leaves open the possibility that even those dedicated to the principles of a fair justice system may, at times, unknowingly make crucial decisions and act in ways that are unintentionally unfair* (Casey et al., 2012, p. 2)

Most processes associated with automatically and unconsciously categorizing, assigning and differentiating the world around us do not result in discrimination. However, where people are concerned, scientific evidence tells us that it is nearly impossible for human beings to avoid drawing on stereotypes and attitudes toward individuals and groups that can and do result in real-world discrimination.

How Bias Develops

The other challenging factor is that implicit bias operates at the unconscious level, so "people may not even be consciously aware that they hold biased attitudes" (Casey et al., 2012, Appendix B1). Indeed:

> *Implicit biases may oppose a person's adopted worldview, but because they are not consciously controlled, they may nonetheless be reflected in their behavior – including in the professional realm* (Halilović & Huhtanen, 2014, p. 33).

This happens because the development of implicit bias begins early in life, during childhood, when we absorb information about the world around us, from family, friends, school, and socio-cultural messaging (e.g., TV, movies, music, social media). During this process, children learn to "ascribe certain characteristics to members of distinct ethnic and social groups" and with age, these stereotypes become more ingrained, and they remain largely unchanged – and thus become implicit (Levinson & Young, 2010, p. 6). For example, research has shown that children in the US learn that men are "competent, rational, assertive, independent, objective and self-confident," while women are "emotional, submissive, dependent, tactful and gentle" (Bridge, 1997, p. 604). One study summed it up like this: Men and boys are "really really smart" while women and girls are "really really nice" (Bian et al., 2017, p. 1).

Testing Implicit Bias

In 1998, researchers from three American universities began a collaborative effort called "Project Implicit" to identify the gap between intention and reality when it comes to implicit bias. Together, they designed the Implicit Association Test (IAT), which assesses beliefs and attitudes that people may be unable or unwilling to report.

The IAT is computer-based, and it measures response times between "typical" and "atypical" associations. In other words, it evaluates response times for associations that are either consistent or inconsistent with common socio-cultural stereotypes. This means that people taking the test cannot control the outcome, even if they provide the same answer to typical and atypical associations. For example, someone may not explicitly link the concepts such as "women" and "family" – but they may be slower to link alternative concepts such as "women" and "career" (Halilović et al., 2017, p 27).

The test is based on the principle that:

- A fast response = an easy answer is consistent with an implicit association; and

- A slow response = a more difficult answer is inconsistent with implicit associations.

Check it out for yourself! The IAT is publicly available on a variety of topics, including gender, race, age, and ability: https://implicit.harvard.edu/implicit/takeatest.html

An Illustration

Let's use a simple example to get a feel for how the test works – and see how readily the mind makes associations that take time and effort to consciously overcome.

Below is a Stroop test, which provides the *words for various colors, printed in various colors* (Stroop, 1935). The test is intended to identify, or measure directed attention, the cognitive process that allows an individual to manage our thoughts by inhibiting one response in order to say or do something else. For each column, your task is to say the color of the word – not the word itself – as quickly as you can.

#1	#2	#3
WHITE	GREEN	WHITE
RED	PINK	PINK
BLUE	GREEN	RED
WHITE	RED	BLUE

That chart should have been easy. In fact, it was probably so easy, you might have wondered if you misunderstood the instructions. For most of us, you were probably able to say the color of the word very quickly, because it also happened to be the same as the word for that color.

Below is another chart with the words for various colors, but this time they are printed in different colors. Again, your task is to say the color of the word – not the word itself – as quickly as you can.

#1	#2	#3
PINK	BLUE	YELLOW
YELLOW	RED	BLUE
WHITE	BLUE	WHITE
RED	WHITE	PINK

This time the exercise was probably harder because the word for each color did not match the color of the word. That means that your brain had to ignore the word itself, and identify only the color, in spite of the fact that the words were all words for colors.

This is an example of *typical* versus *atypical* association. The exercise also illustrates the difference between automatic and implicit associations made by the brain – versus conscious associations that require thinking and awareness. In other words, the exercise demonstrates how our brains can override automatic and implicit associations, but it takes more time and effort than simply going along with a typical association.

Sex, Gender, and Stereotypic Characteristics

Now we can begin applying the concept of implicit bias specifically to gender. *Gender bias* refers to the inclination toward, or prejudice against, one gender versus the other(s). But what do we mean by gender? We routinely see it confused with the term *sex,* and while there is an essential connection between sex and gender, they are nonetheless distinct concepts that refer to different physical and social characteristics.

Sex is biological, referring to the biological, physiological, and anatomical features people are born with. This includes reproductive organs (testes and ovaries), male and female chromosomes (XY and XX), male and female hormones (testosterone and estrogen) and secondary sex characteristics (muscle mass, facial hair, etc.). Biological sex is unchangeable and fixed, in the absence of medical intervention such as surgery or hormone therapy. The terms "male," "female," and "intersex" (being born with both male and female reproductive organs) all refer to the biological concept of sex.

On the other hand, **gender is learned.** The term refers to the different roles, characteristics, and behaviors that are taught and assigned to boys versus girls, men versus women. This includes associating women and girls with certain physical markers (like dresses and skirts, jewelry and other adornments) and behavioral markers (such as being nurturing, emotional, and polite). It also includes associating men and boys with physical markers (like suits, short hair, and physical fitness) and behavioral markers (such as assertiveness, leadership, and bravery). Gender roles are changeable over time, and they vary both within and across cultures. The terms "masculine," "feminine," "man," "woman," and "transgender" all refer to the concept of gender.

Perhaps what is most notable about gender – and this is borne out by research from across the world – is the extent to which masculinity and femininity are defined in contrast or opposition to each other (UN Women Training Center, 2016). Consider for a moment, what it means to "be a man" or "be a woman" in our society. For each concept, you can identify for one gender, try to identify the corresponding role, behavior or characteristic for the other gender. Make a quick list.

After you have made your own list of 3-4 gender characteristics associated with men versus women, compare your list to the table below.

Associated with Masculinity	Associated with Femininity
Take care of the family's financial needs (breadwinner)	Take care of the family's physical and emotional needs (caregiver)
Being "naturally" good at certain tasks (such as driving, mechanics, technology)	Being "naturally" good at other tasks (e.g., cooking, child care, decorating)
Being a leader, assertive, tough	Being a support person, passive, sensitive
Getting what one wants	Providing what others want
Hiding emotions associated with vulnerability (sadness, fear, anxiety)	Showing emotions associated with vulnerability (sadness, fear, anxiety)
Being sexually interested in, and sexually active with women, including promiscuity	Being sexually available to men, but not promiscuous
Being virile	Being fertile
Being a perpetrator, but not a victim of violence	Being a victim, but not a perpetrator of violence
Aggression/violence can be acceptable and even expected	Aggression/violence generally not acceptable or expected
Strong/protector	Vulnerable/protected

Chart adapted from the UN Women Training Center (2016). *Self-Learning Booklet: Understanding Masculinities and Violence against Women and Girls,* p. 11.

While not everything on this list applies to all women or all men, there is clearly a social expectation for men and women to at least generally conform with these characteristics. For example, when men or women behave differently from their gender role, they can often become the subject of jokes, hostility, abuse, and even violence. Take, for example, men who cry, or men who elect to stay home and raise their children while their wife works – these men might be referred to as "whipped" or called something even more pejorative like "pussy." In other words, men who do not behave "like men" can be at risk of being called a woman or gay – both of which are intended as an insult.

Again, there are men and women who do not conform to these characteristics, and there are men and women who do not participate in "policing'" gender roles by teasing, insulting, or attacking those who do not conform. Nonetheless, a quick analysis of the news, TV programs and contemporary movies will reveal the extent to which gender roles define how men and women (and boys and girls) are expected to behave and operate in the world. This is important because it relates directly to the stereotypes or attitudes that we consciously endorse, as well as those that operate without our awareness (unconscious). Then, returning to the topic of this bulletin, these stereotypes and attitudes can interfere with our assessment of a sexual assault case, the evaluation of victim and suspect credibility, and ultimately our determination about whether a crime was even committed.

This interference can result from either or both explicit and/or implicit biases. For example, explicit bias might be seen with a patrol officer who assumes that a woman could not have been sexually assaulted, because she works in the sex trade, and

therefore fails to write a report or conduct an investigation. In this scenario, the officer is consciously applying a stereotyped judgment, rather than the law. Implicit biases operate in the same way, but without conscious awareness – often in split-second assessments based on the same stereotypes and attitudes that form conscious biases. While explicit biases reflect our consciously held worldview, implicit biases stem from prevailing socio-cultural attitudes, stereotypes, and norms. None of us are immune from the influence of our socio-cultural context (e.g. American society).[2]

Gender Bias in Operation

By understanding the meaning and relevance of gender, this can help us to understand how both explicit and implicit gender bias works in practice within the criminal justice system. Lynn Hecht-Schafran, Director of the National Judicial Education Program (NJEP), identified three practices that can result in gender bias, particularly with respect to criminal justice processes (Hecht-Schafran, 1993, p. 397-8):

1. ***Stereotyped thinking about the true nature and roles of women and men.***

   "Many implicit assumptions about the innate nature of women and men are based on stereotypes that lack any scientific foundation" (Halilović et al., 2017, p. 13). These assumptions extend to how women and men should behave, including within the sexual realm. They define behaviors that are seen as acceptable and appropriate for women, in contrast to those that are acceptable and appropriate for men. For example, why do we so often accept heavy drinking as an excuse for bad (or even criminal) behavior by men, while heavy drinking by women is viewed as culpability for their own victimization? In this case, the same behavior may be evaluated completely differently, depending on the gender of the person.

2. ***Perceptions about the relative worth of women and men, based on a given society's view of what constitutes "women's work" and "men's work".***

   "Paid work, which is more frequently performed by men, tends to be given a higher value [in American society] than unpaid caregiving, which is predominantly performed by women and often taken for granted" (Halilović et al., 2017, p. 13). In cases of sexual assault, this can translate into discussions about how a guilty verdict will "ruin" the defendant's career or future, with less consideration given to the low-skilled or unpaid work performed by the victim, and little concern about the impact the assault may have on the victim's ability to earn a living and support a family.

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[2] Banaji and Greenwald, in their pioneer work on implicit bias, have found that regardless of our race, gender or other social identity markers, people hold unconscious stereotypes and attitudes consistent with prevailing social hierarchies. In other words, women, like men, will unconsciously be biased favorably for men and career, and unfavorably for women and career; and African-Americans, like White-Americans, will be unfavorably biased toward African-Americans and criminality and favorably biased toward White-Americans and non-criminality (Banaji and Greenwald, 2013).

3. ***Myths and misconceptions about the social and economic realities of women's and men's lives***.

> Social and economic realities can directly inform whether victims will report their sexual assault and whether they will stay engaged throughout the process of an investigation. Victims can suffer intensive scrutiny, not only by responding professionals, but also from their friends, family, and surrounding community. Sometimes victims simply try to put the assault behind them, in order to avoid being socially alienated. In a workplace setting, victims may fear losing their job if they report, and they may continue to suffer ongoing harassment and abuse in order to stay employed. Women and girls also frequently assess their physical risk differently than men and boys do – they may believe they are less capable of defending themselves or fighting back, and as a result, they may "freeze" or comply with the perpetrator's demands, in the hopes of avoiding physical harm in addition to the sexual assault. Finally, as a result of socialization and gender roles, women and girls may prioritize the feelings and interests of others over their own. They may accept behaviors that make them uncomfortable, or are harmful, simply to avoid embarrassing someone else or hurting their feelings (including a perpetrator). While these responses may not always seem rational to outsiders, it is important to bear in mind that women and men experience different social and economic realities, even in our modern world.

Gender Bias in the Courts

These phenomena have been well documented in US court systems by the National Judicial Education Program (NJEP) – a project initiated to address gender bias within the courts. With support from the NJEP, State, and Federal court systems initiated gender bias task forces to investigate the existence and impact of gender bias on court operations and judicial decision-making. Notably, all US gender bias task forces found evidence of gender bias at the procedural level (interactions between and among legal professionals and court users), the structural level (functional accommodation or lack thereof) and substantive level (evidentiary findings, adjudication, and sentencing). For example, the New York Task Force on Women in the Courts (1986) concluded that:

> *Gender bias against women…is a pervasive problem with grave consequences…Cultural stereotypes of women's role in marriage and society…distort courts' application of substantive law [on a daily basis]. Women uniquely, disproportionately, and with unacceptable frequency, must endure a climate of condescension, indifference, and hostility* (p. 17-8).

Gender bias task forces also found that female victims of domestic and sexual violence were often subject to scrutiny, blame, and/or outright disbelief. For example, the Maryland Special Joint Committee on Gender Bias in the Courts (1989) found that:

…too often judges and court employees deny the victim's experiences, accuse the victim of lying about her injuries, treat the cases as trivial and unimportant, blame the victim for getting beaten, and badger the victim for not leaving the batterer (p. v).

While this particular quote refers to domestic violence, gender bias task forces across the US also routinely found that victims of rape and sexual assault were judged harshly on their appearance, demeanor, lifestyle, and reputation (for review, see Kearney & Sellers, 1996). Indeed, Koss (2006) concluded on the basis of decades of research that a rape report is most likely to be taken seriously by society if the victim:

Has little-to-no relationship to the offender, is virtuous and going about legitimate business, was above reproach in behavior prior to the rape, reports a single occurrence, was raped by an unambiguously bad offender, has demographic characteristics that signal power, influence, or sympathy, shows visible, appropriate expressions of trauma, and [is] open to help (p. 212).

Identifying and Preventing Bias: New Guidance

While criminal justice professionals are responsible for safeguarding a fair and impartial process, it is problematic to assume that they are inherently objective, either as individuals or as a collective system. The evidence is clear that conscious gender bias, and implicit gender-based stereotypes and attitudes, abound in our society.

This is why the US Department of Justice (DOJ) published groundbreaking new guidance for law enforcement in 2015, entitled, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence.* This DOJ guidance calls on law enforcement to acknowledge the presence of gender bias and introduce specific practices during the initial response and investigation process, to mitigate its impact.

Gender bias in policing practices is a form of discrimination that may result in LEAs [law enforcement agencies] providing less protection to certain victims on the basis of gender, failing to respond to crimes that disproportionately harm people of a particular gender, or offering reduced or less robust services due to a reliance on gender stereotypes.

Gender bias, whether explicit or implicit, conscious or unconscious, may include police officers misclassifying or underreporting sexual assault or domestic violence cases, or inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; interrogating rather than interviewing victims and witnesses; treating domestic violence as a family matter rather than a crime; failing to enforce protection orders; or failing to treat same-sex domestic violence as a crime.

> *In the sexual assault and domestic violence context, if gender bias influences the initial response to or investigation of the alleged crime, it may compromise law enforcement's ability to ascertain the facts, determine whether the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable* (US Department of Justice, 2015, p. 3).

This Training Bulletin series is one of the many efforts sponsored by the Department of Justice to help law enforcement agencies eliminate such manifestations of bias.

Conclusion: Implicit Gender Bias

In our first Training Bulletin in this series, we defined the concept of implicit bias, as documented by cognitive, neurobiological, and social scientific methods. We also documented the presence of conscious, open, and widely held stereotypes and attitudes regarding the expected roles and behaviors of men and women, boys, and girls. What we can learn from consciously held stereotypes and attitudes is that they directly relate to types of implicit and automatic stereotypes and attitudes that we all hold, and are therefore likely to act on – without even being aware of them. This has implications for all of us working to improve criminal justice responses to sexual assault

Up Next

In our next installment, we will address the relationship between gender bias, victim selection, and victim blaming in sexual assault cases. This will include analyzing why victims are specifically targeted and exploring the extent to which victim selection is based on gender bias – or prevailing gender-based stereotypes and attitudes.

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