

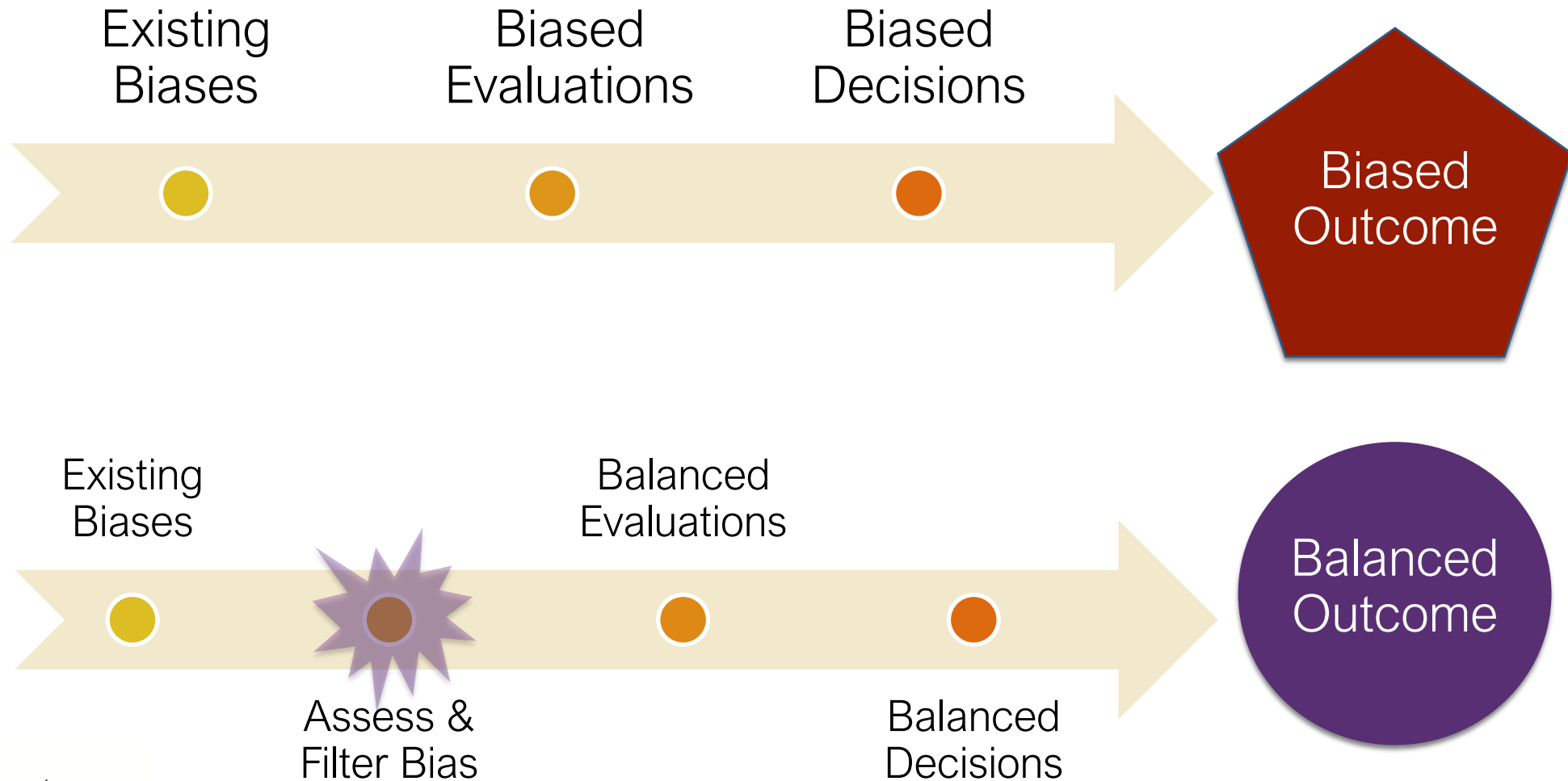
Addressing Bias in Jury Trials

Dr. Alexis Forbes

Bonora Rountree Trial Consulting and Research

www.br-tcr.com

Disrupt the Process



Help Jurors Assess & Express Their Biases

1. [Using a Jury Questionnaire](#) with items that invite potential jurors to assess and express their potential biases.
2. [Improved Voir Dire Conditions](#) that allow the judge or attorneys to ask about the influence of the jurors' potential biases on their ability to serve as a juror. These conditions increase your likelihood of gaining cause challenges.
3. [Special Jury Instructions](#) (for example, in California, [CACI 113](#)) that discourage the use of potential biases not just about the litigants, but about the judge and the attorneys in the case.

Improved Voir Dire Conditions:

Trial Jury and Management Act 2018 (CCP§222.5)



Trial judges are prohibited from arbitrarily or unreasonably refusing to submit a reasonable written questionnaire if requested by counsel.



Trial judges should consider any unique or complex elements in the case when exercising discretion as to the form and subject matter of voir dire questions.



Counsel shall be allowed to make a brief opening statement prior to the commencement of oral questioning.



Counsel has the right to examine prospective jurors in order to intelligently exercise cause or peremptory challenges.



Counsel should be provided reasonable time to evaluate the questionnaire responses before oral questioning begins.

CA Civ. Proc. 225. Challenges (for Cause)

General Disqualification

Implied Bias (Not Implicit Bias)

Actual Bias

The existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party.

Jury Instructions: CACI 113

113. Bias

Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party or witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, [or] socioeconomic status[, or [insert any other impermissible form of bias]].

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness.

New June 2010; Revised December 2012

Resources for Remedies for Jurors' Biases

- Voir Dire Conditions and Juror Questionnaires that Allow for Biases to be Expressed
https://www.americanbar.org/groups/criminal_justice/voir_dire.html
- ABA Achieving an Impartial Jury (AIJ) Project & Toolbox
https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.pdf
- 2020 Article by A. Su, *A Proposal to Properly Address Implicit Bias in the Jury*
<https://repository.uchastings.edu/hwlj/vol31/iss1/>
- Implicit Bias Juror Orientation Video, Western District of Washington
<http://www.wawd.uscourts.gov/jury/unconscious-bias>
- Jury Instruction, Western District of Washington
<http://www.wawd.uscourts.gov/sites/wawd/files/CriminalJuryInstructions-ImplicitBias.pdf>