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DIVERSITY & DELIBERATE DECISION-MAKING

Hon. Donald Johnson, 19th Judicial District of Louisiana

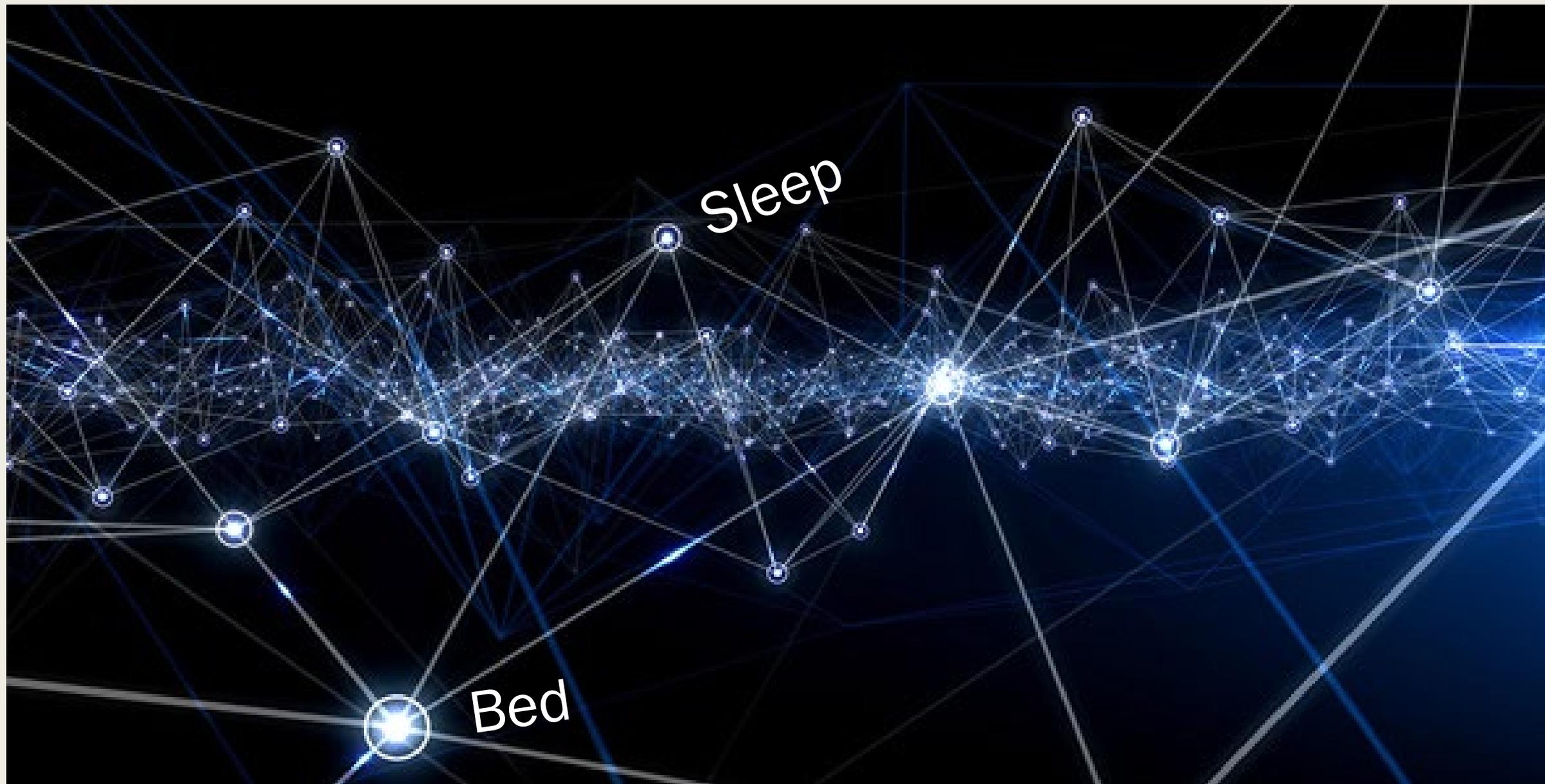
Hon. Joseph G. McGraw, 17th Circuit Court of Illinois

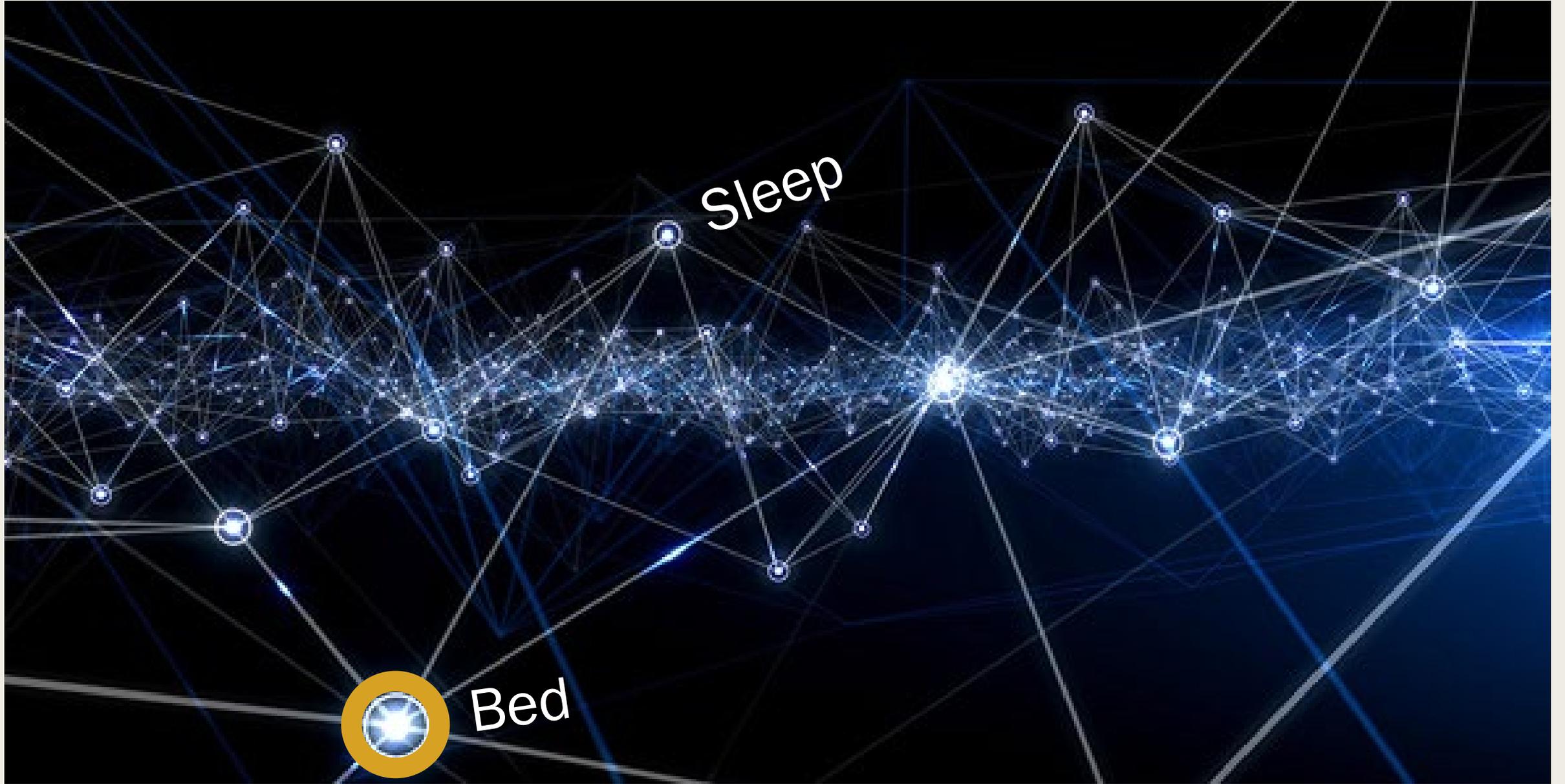
Dr. Andrea Miller, PhD, JD, University of Illinois Urbana-Champaign

Outline

- Part 1: The psychological science of implicit bias
- Part 2: A judge's journey: Overcoming conscious & unconscious biases
- Part 3: How implicit associations affect case outcomes
- Part 4: Tools and strategies for promoting deliberativeness

Memory Test

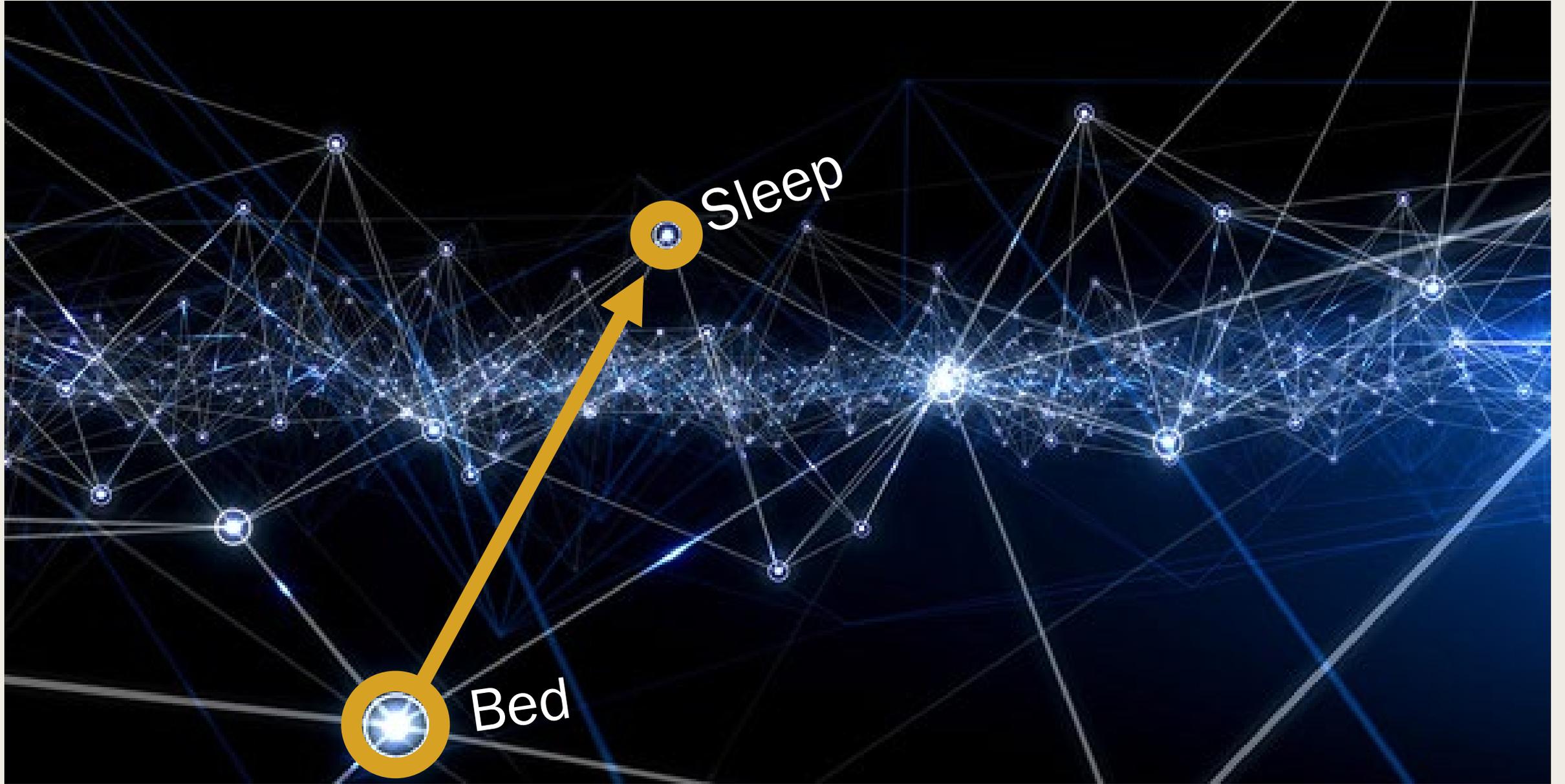


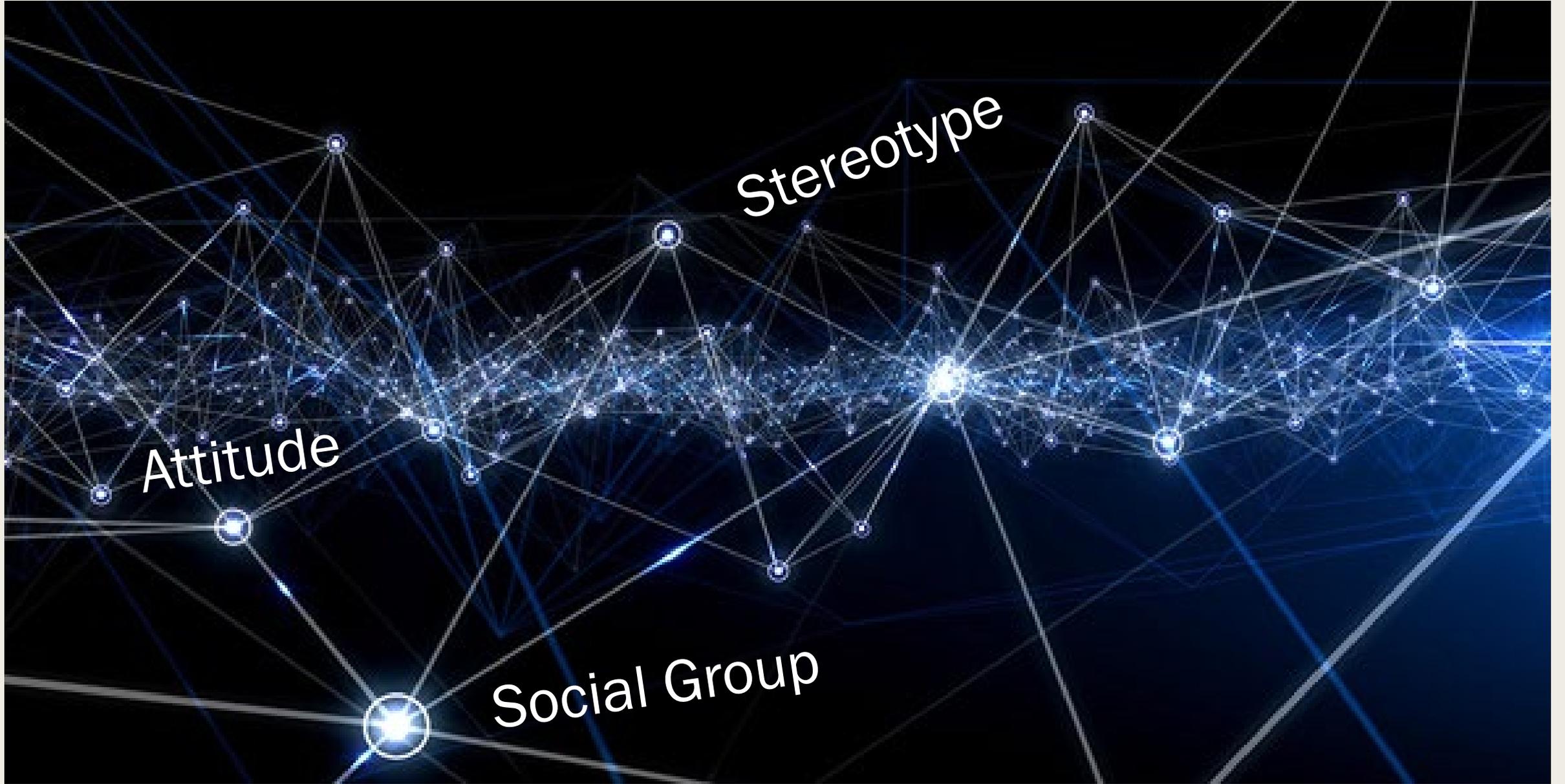


Sleep



Bed

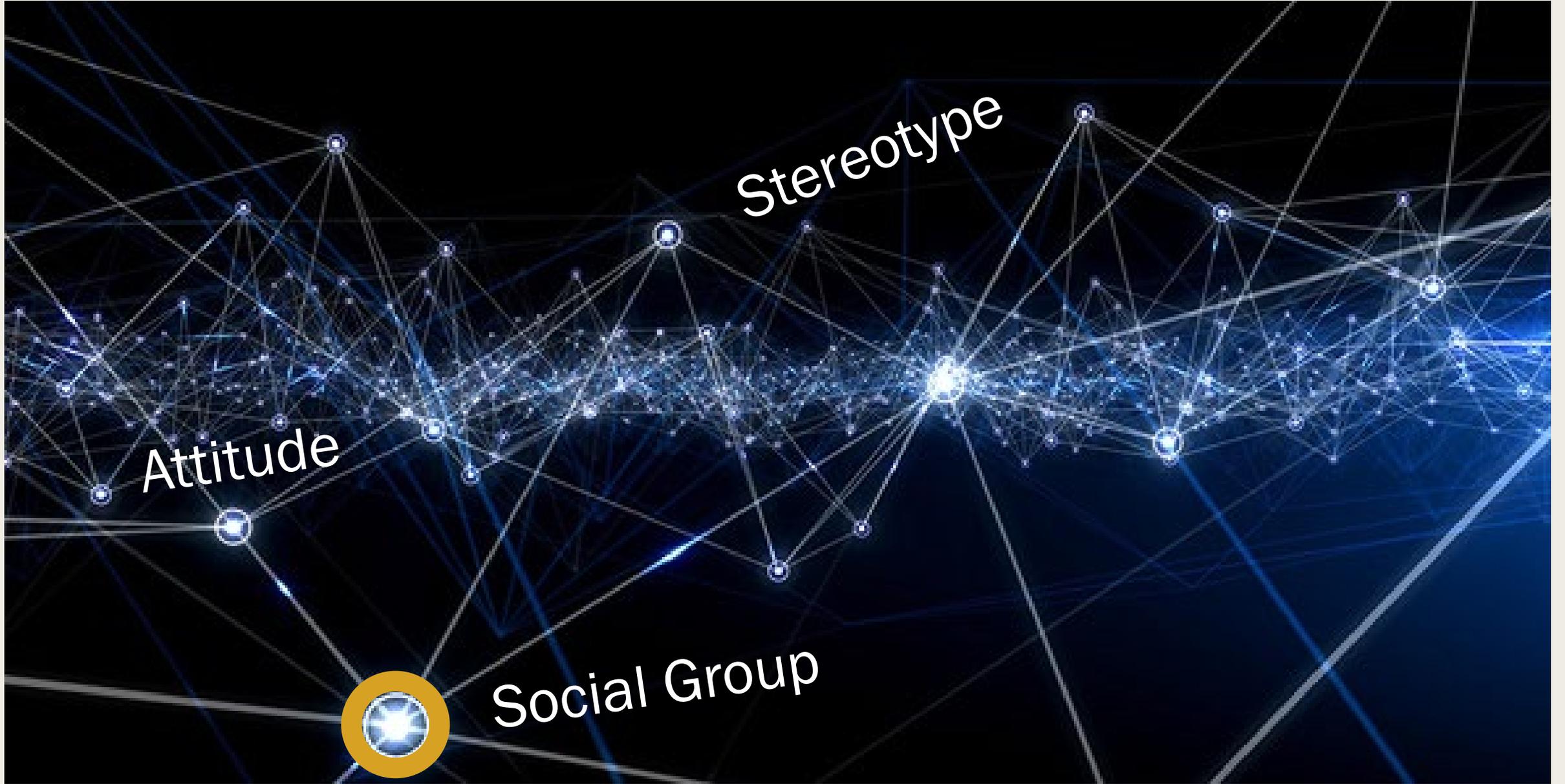




Attitude

Stereotype

Social Group

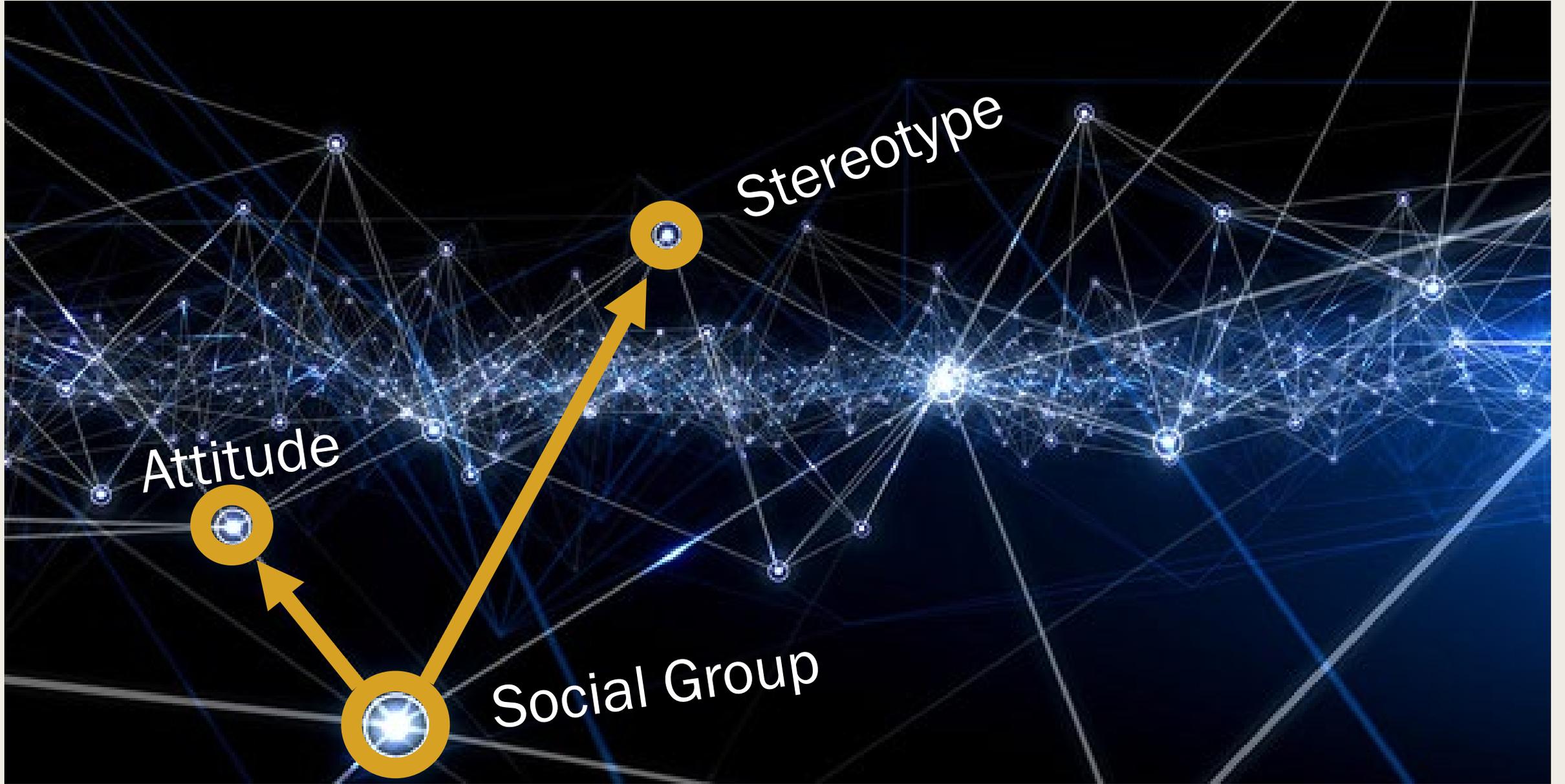


Attitude

Stereotype

Social Group





Where does implicit bias come from?

- Implicit stereotypes and attitudes form in memory through **repeated exposure** to group stereotypes in everyday life.
- These implicit biases **develop in memory** even if you don't personally endorse them.
- These implicit biases **influence decision-making & behavior** even if you don't personally endorse them.

What do psychologists know about implicit bias?

- Many thoughts & behaviors happen outside awareness
- Implicit bias effects are not limited to the lab
- Judges are not immune
- The path from implicit bias to discriminatory behavior is not inevitable
 - *With enough **motivation** and **cognitive capacity**, we can learn over time to override our implicit biases*

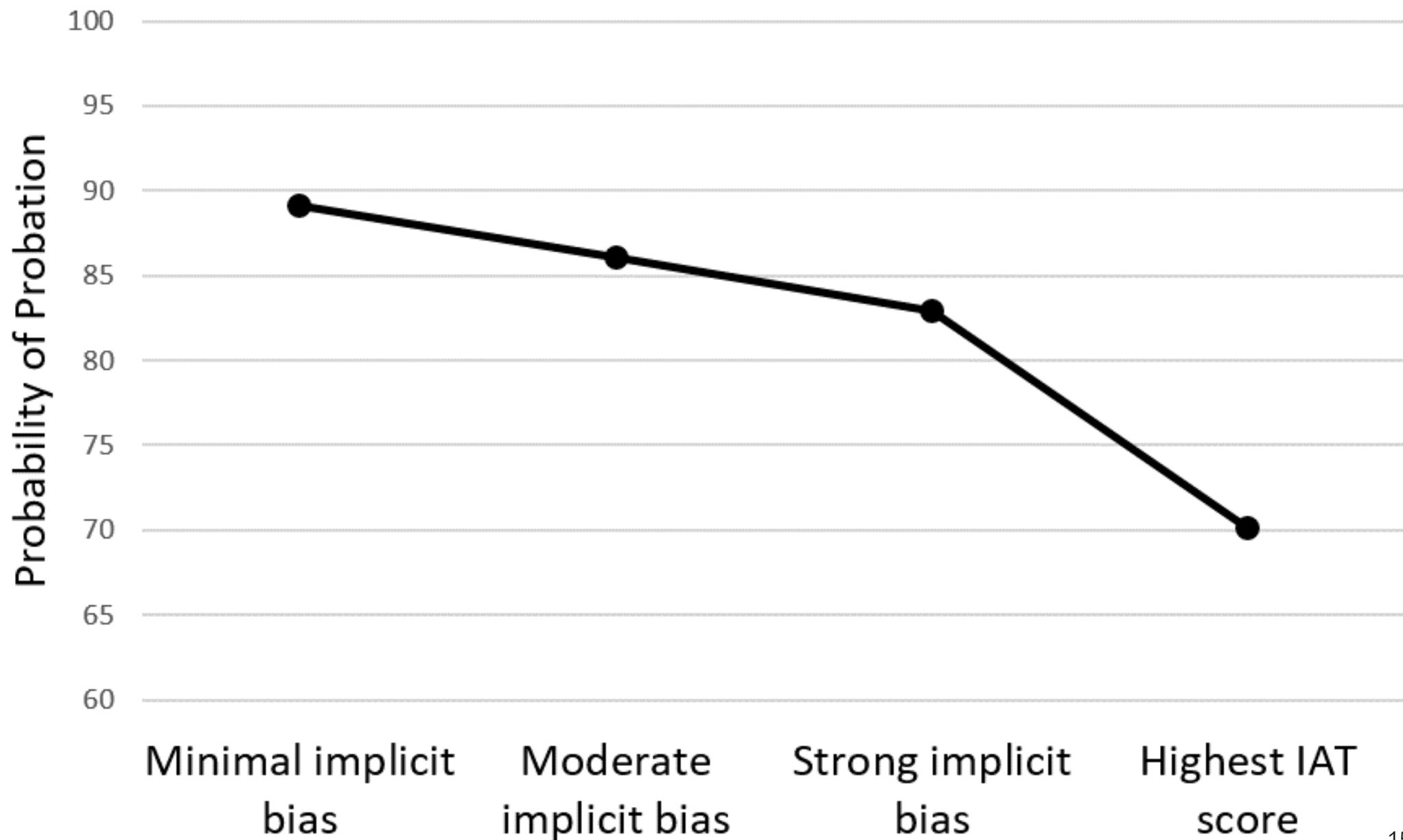
Judicial Decision-Making Study

- Research question: How do race, gender, income, and representation status affect case outcomes?
- Method: controlled experiment
 - *Participants read hypothetical cases with identical facts*
 - *Only race, gender, income, and representation were varied across conditions*

Results: Race

- Implicit racial associations predicted sentencing outcomes

Probability of Probation for the Black Defendant



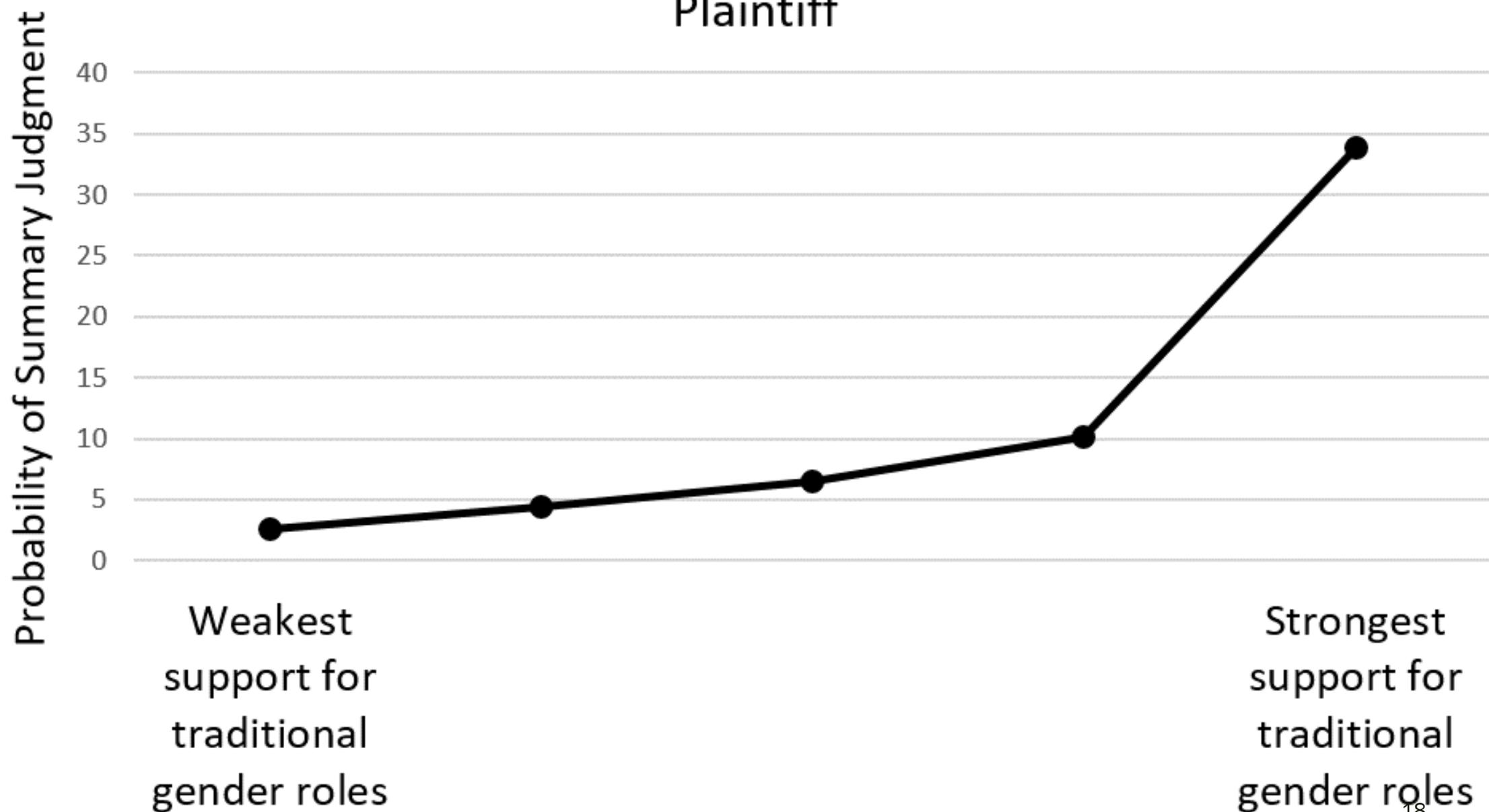
Results: Gender

- Litigant gender influenced:
 - *sentencing of criminal defendants*

Results: Gender

- Litigant gender influenced:
 - *sentencing of criminal defendants*
 - *summary judgment in an employment discrimination case*

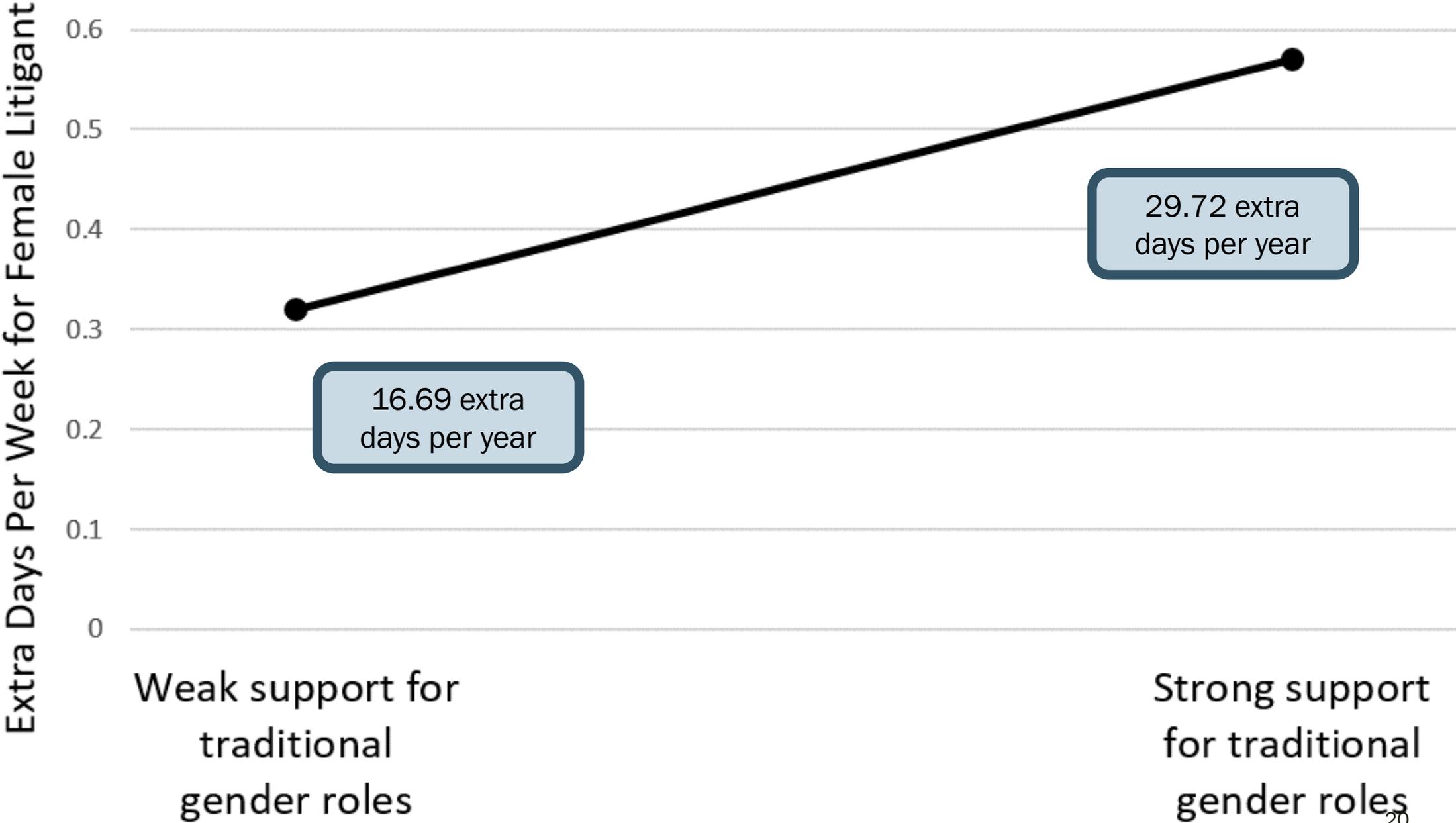
Probability of Summary Judgment against the Female Plaintiff



Results: Gender

- Litigant gender influenced:
 - *sentencing of criminal defendants*
 - *summary judgment in an employment discrimination case*
 - *allocation of parenting time in a custody dispute*

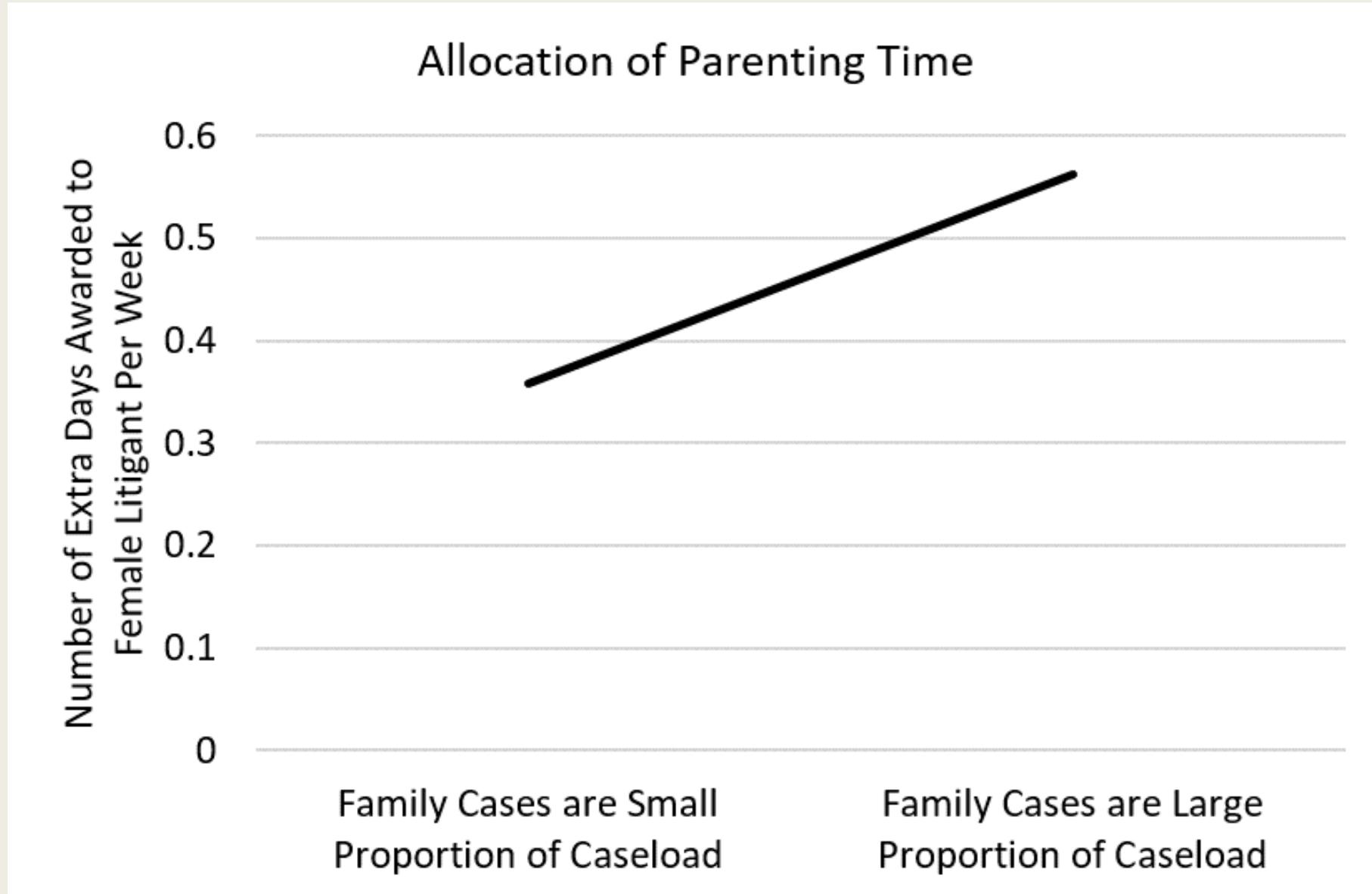
Allocation of Parenting Time



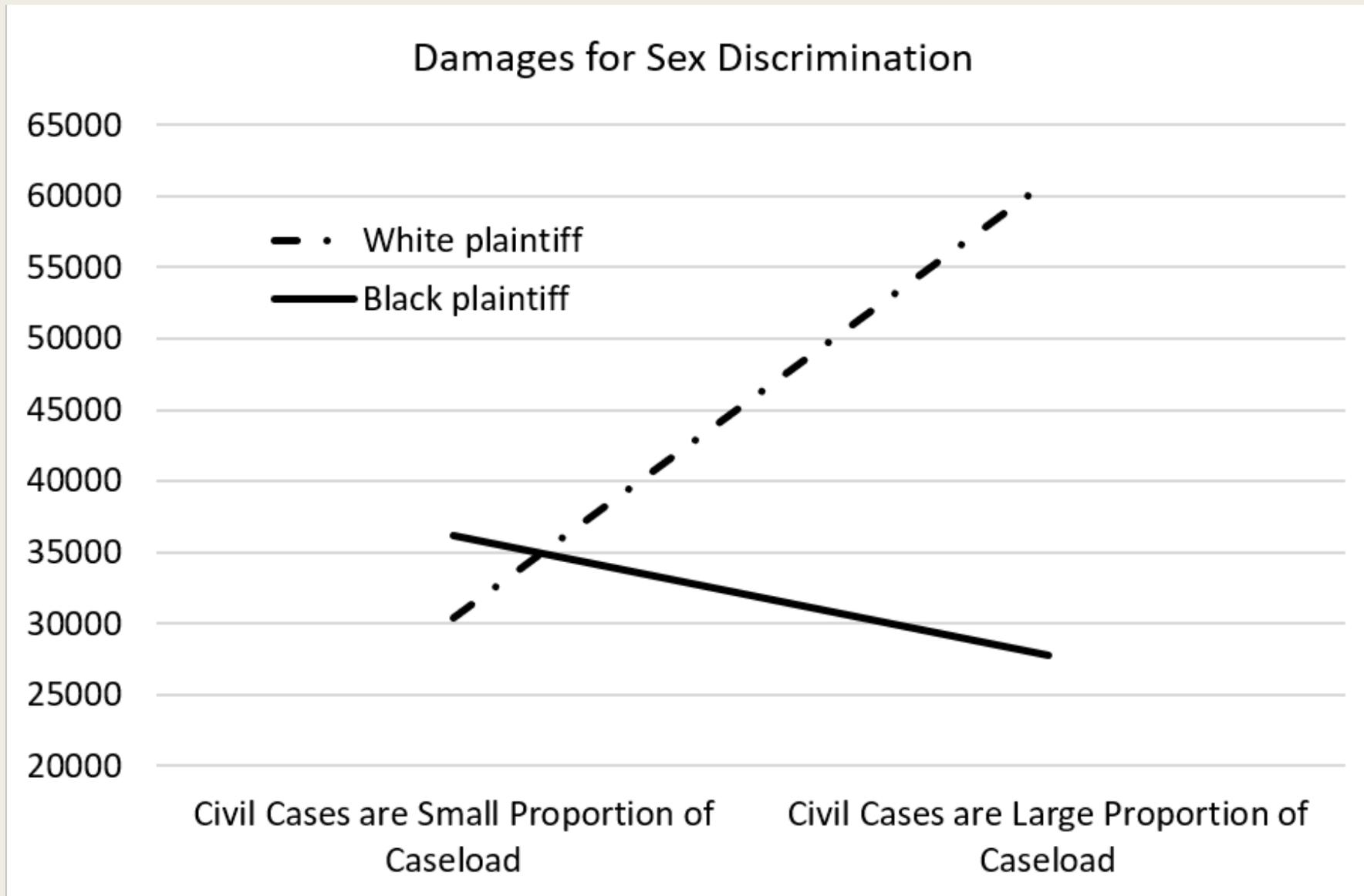
Results: Gender

- Litigant gender influenced:
 - *bond rulings for criminal defendants*
 - *sentencing of criminal defendants*
 - *summary judgment in an employment discrimination case*
 - *admission of expert testimony in an employment discrimination case*
 - *ruling on the merits of an employment discrimination case*
 - *allocation of parenting time in a custody dispute*

Results: The role of judicial specialization



Results: The role of judicial specialization



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 - *With enough **motivation** and **cognitive capacity**, we can learn over time to override our implicit biases*

Overriding implicit bias

- During decision-making, both implicit and explicit processing are happening **simultaneously**
- Factors that increase the influence of implicit biases:
 - *Limited cognitive capacity (time pressure, distraction, multitasking, fatigue)*
 - *Habitual, intuitive, spontaneous decisions*
 - *Ambiguous or subjective decision criteria*

Cognitive Load

Gut Feelings

Discretion

Overriding implicit bias

- The most successful psychological interventions treat implicit bias like a **habit**
 - *It takes time and practice to learn to override our implicit biases*

Devine, Forscher, Austin, & Cox (2012); Devine, Plant, Amodio, Harmon-Jones, & Vance (2002); Forscher, Mitamura, Dix, Cox, & Devine (2017); Monteith, Ashburn-Nardo, Voils, & Czopp (2002)

Overriding implicit bias

- 1) Choose 1 situation in your judicial work that may be vulnerable to the influence of unintended bias
- What are the potential consequences of implicit bias in this decision?
 - *For the individual litigant*
 - *For the group or for society*

Overriding implicit bias

- 2) Identify the factors that may increase the influence of implicit bias in that decision
 - *Limited cognitive capacity (time pressure, multitasking, fatigue)*
 - *Habitual, intuitive, spontaneous decisions*
 - *Ambiguous or subjective decision criteria*

Cognitive Load

Gut Feelings

Discretion

Overriding implicit bias

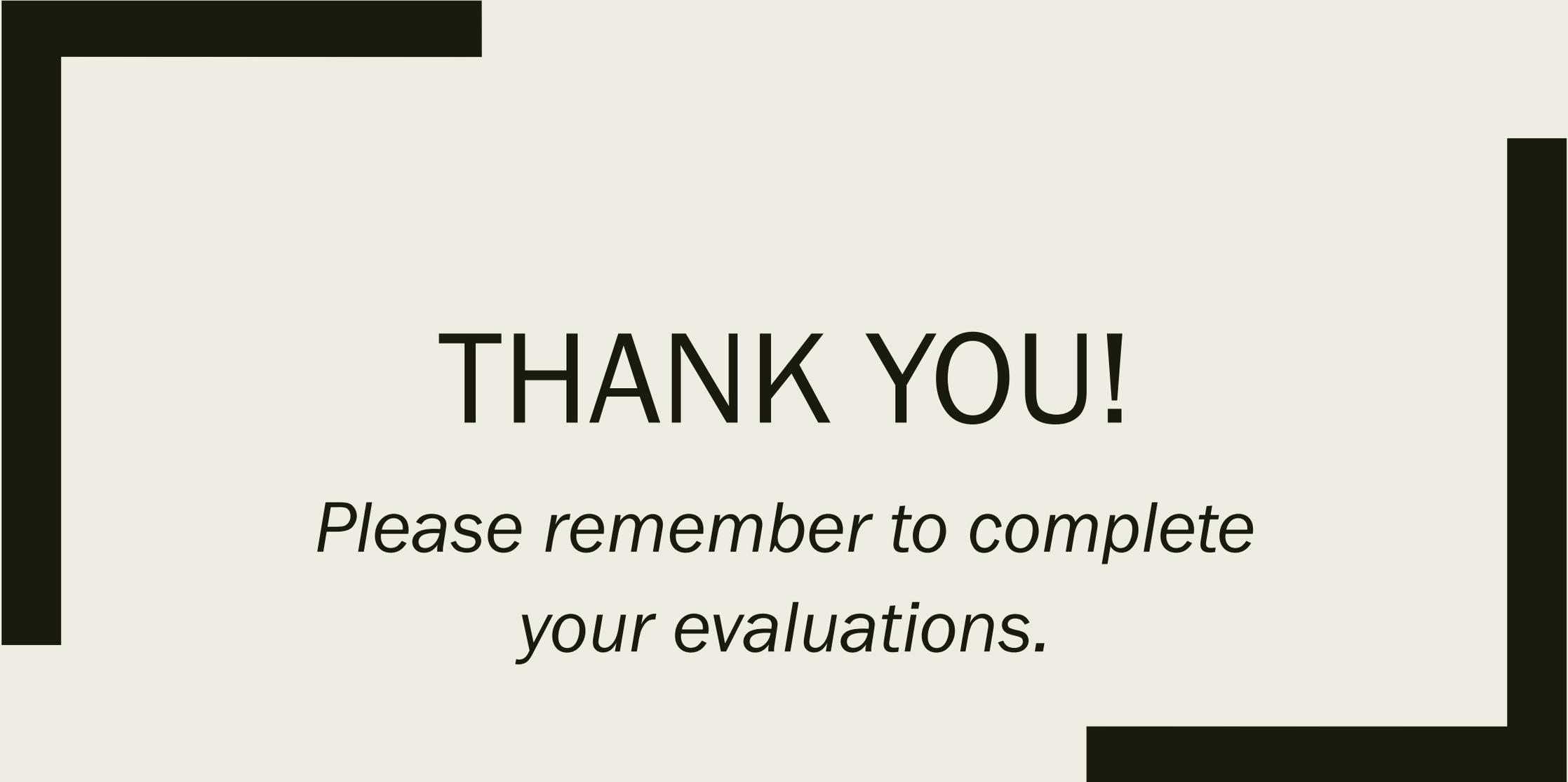
- 3) Identify **one** thing you can do to address one of those factors
 - *Make sure your plan is specific, measurable, and realistic*

Overriding implicit bias

- 4) State your goal as an Implementation Intention:

If _____, then I will _____.

- 5) Post your implementation intention in a meaningful place and PRACTICE

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THANK YOU!

*Please remember to complete
your evaluations.*