



Section Review

Reducing Unconscious Bias: An Ethical Requirement And Moral Imperative

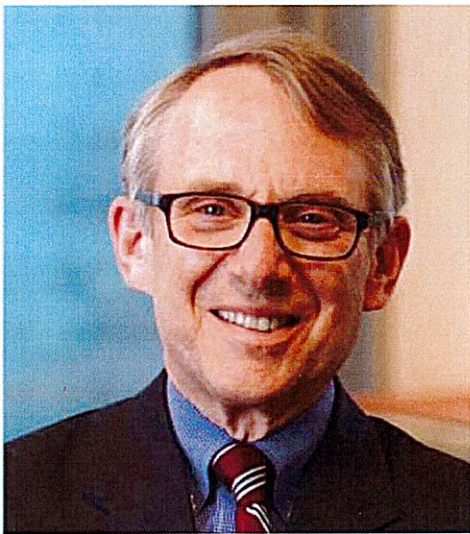
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Dispute Resolution Section Review



David A. Hoffman

Mediators and arbitrators have an ethical duty to be unbiased.¹ In addition, in a society that values equal opportunity, avoiding bias in our dealings with each other is a moral (and sometimes legal) imperative.

Yet how can we be sure that we are complying with these duties when science has shown us that many of our biases are unconscious?

1. Uncovering Bias

Answering this question has become easier in recent years with the development of the Implicit Association Test (IAT), which is

available online at a Harvard University website and has been taken by millions of people. (Taking the test is free, and also anonymous.) The IAT assesses the strength of our associations – both stereotypes and attitudes – in connection with race, gender, religion, age and other factors, by measuring the speed with which we respond to prompts on a computer screen. For example, a majority of test-takers (of all genders) associate the term "career" more quickly with the term "male" than "female" – even among test-takers who espouse gender equality.

The validity of the IAT testing methodology has been shown in a remarkable experiment studying the reactions of white participants to seeing images of Black people and white people.² The participants' reactions were observed in real time through the use of functional MRI scanning. The experiment showed that participants had a stronger amygdala (fight, flight or freeze) reaction to the image of Black faces as compared with white faces. Interestingly, this reaction occurred even when the image was seen subliminally – i.e., so fleetingly that the participants were not aware that they had seen any photo at all. Also of interest: the strength of the participants' amygdala reaction correlated with the strength of their negative association with Blackness on the IAT.

The good news that emerged from this study is that with additional time (even as little as half a second), the participants' pre-frontal cortex (their logic circuits) kicked in and their amygdala reaction subsided. One of the conclusions that follows from this research is that we have immediate and visceral reactions to people we encounter, and that those reactions can be moderated by the reasoning circuits in our minds.

However, there is an additional challenge: once we become aware of our unconscious biases, what can we do about them?

2. Counteracting Bias

Fortunately, social psychologists have been hard at work on this question in recent decades and have produced an abundance of peer-reviewed research showing that, while bias is ubiquitous, it is also malleable.

In order to make this research more accessible to mediators, arbitrators and other professionals, a mediation colleague, Helen Winter, and I embarked on a yearlong review of scientific studies of the following question: what strategies for reducing unconscious bias actually work? We reviewed hundreds of reports involving various bias-reduction strategies in peer-reviewed social psychology journals. Our results, published in 2022 in the *Harvard Negotiation Law Review*, contain both good news and bad news.

First, the good news: anti-bias training works. Despite recent op-eds in the *New York Times* and elsewhere suggesting otherwise, there is abundant scientific evidence that increasing our awareness of bias and the impacts of bias, among other steps, can counteract biased mental associations.

Now, the bad news: one-and-done won't do it. Social psychologists have discovered – not surprisingly – that the effects of bias-awareness training tend to be short-lived. To truly whittle away at our unconscious biases requires concerted effort, over time, and preferably supplemented with other bias-reduction strategies, such as the following:

- a. Perspective-taking
- b. Stereotype negation
- c. Peer contact with people whose identities and backgrounds differ from ours
- d. Individuation
- e. Mindfulness

Before considering these strategies, however, we should remind ourselves that good people – including people who have devoted their careers to fighting oppression – can have unconscious biases that sometimes spring to the fore unbidden and may affect our thoughts and behavior. Archbishop Desmond Tutu often told the story of how he was shocked to find his own racism when he was flying on an airliner. When he boarded, he was pleasantly surprised to see that the pilot and co-pilot were Black. And then, when the plane hit a patch of severe turbulence, he found himself (to his dismay) thinking, "oh dear, there's no white person in the cockpit."

a. Perspective-taking. In perspective-taking experiments, researchers exposed participants to personal accounts – in written, oral or video formats – of people who were of a different race or other background. In these accounts, people described encountering a challenge because of their difference. The experimental participants took the IAT before and after their exposure to these accounts, and the participants who were asked to imagine how the person in the account was feeling (rather than thinking about the person objectively) showed a reduction of bias.

b. Stereotype negation. In stereotype-negation experiments, researchers conducted training about gender stereotypes in a university setting and found – unsurprisingly – that subsequent hiring of women was more equal. And in an experiment showing the power of even subtle influences, researchers found that exposure to photographs of women scientists in science texts improved the learning of women students in scientific subjects.

c. Peer contact. In peer-contact studies, researchers found less unconscious bias in participants who had extensive contact with those who were different, and the bias-reduction impact correlated with both the duration of contact over a number of years and also with the extent to which participants had shared personal information with members of the "outgroup."

d. Individuation. In an individuation experiment, researchers compared the responses of Airbnb owners when the person seeking to rent a unit was of a different race. The experiment showed that providing more individualized information about the renter reduced the owners' bias.

e. Mindfulness. Researchers also found that mindfulness meditation reduced unconscious bias, evidently by strengthening our minds' ability to be less reactive to fleeting thoughts and reactions, such as those measured in the fMRI study described above.

My experience of working to reduce my own unconscious biases suggests the value of introspection and also working with others on these issues. Especially in our professional organizations, we can create peer-supervision and support groups in which personal accountability to each other can strengthen our resolve to take the steps needed to be less biased.

3. Institutional Bias

While trying to reduce the biases of individuals, we cannot ignore the impact of institutional and structural bias. For example, the underrepresentation of racial minorities in our professions not only reinforces stereotypes but also undermines the ability of our professional organizations to recognize and address the causes – both subtle and overt – of exclusion and subordination.

The bottom line is that, in order to live up to our ideals as a society, we need to do more to hold our institutions accountable (see, e.g., the **Ray Corollary Initiative** for those of us in the world of dispute resolution, and the **Mansfield Rule** for law firms) and also hold ourselves accountable for biases that may be operating subconsciously but can be successfully managed and reduced.

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¹ See "Model Standards Of Conduct For Mediators Standard II(A)" (AM. ARB. ASS'N 2005) ("A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice."); CODE OF ETHICS FOR ARBITRATORS Canon I(B) (AM. ARB. ASS'N 2004) ("One should accept appointment as an arbitrator only if fully satisfied: (I) that he or she can serve impartially . . .").

² See William A. Cunningham et al., "Separable Neural Components in the Processing of Black and White Faces," 15 PSYCH. SCI. 806, 808-811 (2004); Elizabeth A. Phelps et al., "Performance on Indirect Measures of Race Evaluation Predicts Amygdala Activation," 12 J. COGNITIVE NEUROSCI. 729, 734 (2000). See also Anthony G. Greenwald et al., "Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity," 97 J. PERSONALITY & SOC. PSYCH. 17, 23 (2009).