

Outsmart Your Mind:

Addressing Unconscious Bias in Dispute Resolution

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Most judges, arbitrators and mediators firmly believe that they make rational and unbiased decisions. But is that belief justified? Science would say this is unlikely.

Despite our good intentions, everyone has unconscious biases. “Implicit bias is a kind of distorting lens that’s a product of both the architecture of our brain and the disparities in our society.”³ While we may be aware of our conscious attitudes toward others, we are typically clueless when it comes to our unconscious (or implicit) biases.

Experts believe that the mind’s unconscious is responsible for 80% or more of thought processes.⁴ Yet the conscious mind is simply not capable of perceiving what the unconscious is thinking.⁵ You can be two persons at the same time: a conscious self who firmly believes you do not have any bias against others because of their social identities, and an unconscious self who harbors stereotypes or biased attitudes that can unknowingly influence decision-making and behaviors.⁶ The good news is that we can interrupt bias by consciously challenging and breaking down stereotypes and biases we don’t agree with and implementing other research-based de-biasing tactics.

This article will help you recognize your unconscious cognitive biases and provide research-based strategies for addressing them.

Why Does It Matter?

This process is critical to making better decisions in general but indispensable in legal adjudications. Our entire system of justice rests on the notion that judges and neutrals act impartially.

As highly educated professionals who are paid to make good (and unbiased) decisions, most judges and neutrals are skeptical that their decision-making could be infected by bias. In one

study, 97 percent of judges rated themselves as better than the median judge in avoiding racial bias.⁷ Yet, research shows that judges aren't any less likely than a lay person to have unconscious racial bias.⁸

Can judges and neutrals act impartially? Or are their decisions riddled with social biases and fundamental cognitive errors? If so, what can be done about it?

Addressing Social Biases

We all have social biases based on people's social identity groups, like race, gender, class, disability, sexual orientation (and more) that can operate consciously or unconsciously.

Gender bias starts very early. Research has shown that we react differently to babies if we know their sex.⁹ Children of different sexes are often given different toys, clothes, opportunities, and messages. These messages have an early impact, causing girls to turn their backs on science, technology, engineering, and mathematics (STEM) subjects after grade school.¹⁰

They also have a delayed impact both on whom we choose as our neutral and, just as importantly, who is available to choose from. The headwinds women face in the legal profession are well-documented. The American Bar Association's 2019 study "Walking Out the Door"¹¹ illustrates how female lawyers have a materially different experience practicing law, which leads to higher attrition and their under-representation in all areas of legal practice, especially at the highest levels.

While implicit biases can be developed at a very early age, they can also be reinforced by the use of language, in particular by the way different vocabulary is used to describe identical behaviors demonstrated by men and women. For example, men who are engaged in so-called "social bonding behavior" (better known as talking over coffee or a beer) are more likely to be seen as "mentoring or rainmaking," whereas women are seen to be "chatting or gossiping".¹²

Recent articles authored by a federal circuit court judge and two researchers¹³ as well as by a law professor¹⁴ outline many of the research-based techniques recommended for judges to tackle unconscious bias. These are just as applicable for neutrals. Many are summarized below:

Awareness:

- participate in education programs on unconscious bias.
- take one or more Implicit Association Tests sponsored by Harvard University.¹⁵
- Remind yourself frequently that you have implicit biases.

Behavioral & Structural Changes:

- *Motivation:* Write a personal statement of commitment to making unbiased decisions and review it (as well as ethical obligations) before each case.¹⁶
- *Cognitive Equilibrium:* Optimize your state of mind by reducing cognitive overload, taking adequate time for decisions, engaging in meditation and other well-being efforts. The goal here is to maximize conscious decision-making and minimize reliance on your unconscious.
- *Accountability:* If your decisions will be reviewed, that can help reduce implicit bias because it makes you more careful. But in situations where decisions aren't appealed, oversight measures are even more critical.
 - Write an opinion (which forces you to reflect more deeply),
 - Issue preliminary rulings and welcome motions for reconsideration,
 - Post a pair of eyes that are looking at you during the adjudication as well as decision-making,¹⁷ and
 - Audit performance by gathering data on rulings to identify any disparities.
- *Structure:* Use checklists,¹⁸ spreadsheets,¹⁹ and objective criteria to reduce subjectivity and ambiguity, where unconscious bias thrives.
- *Exposure:*
 - Put up photos of people from underrepresented groups in your office and expose yourself to a wider variety of people and cultures in the community.
 - If you're concerned about in-person events due to COVID, read more about people from different backgrounds or watch programs like "Home Sweet Home" that depict families from a variety of social identities.
- *Flip it to Test:* Engage in perspective-taking by putting yourself in the shoes of the various parties.
 - Actively contemplating the feelings and experiences of others, especially those in perceived outgroups, can weaken implicit bias.²⁰
 - Also ask yourself if your initial decision would be different if the person in question was from a different social identity group.

Types of Unconscious Cognitive Biases

In addition to social biases, our brains regularly produce glitches, called cognitive biases, that can, and often do, interfere with good decision-making. There are too many to address in this article, but it is worthwhile learning about a few that can lead to biased decision-making in arbitrations and mediations, as how to counter those biases.

Confirmation Bias

Confirmation bias is a type of unconscious bias that causes people to pay more attention to information that confirms their existing belief system and disregard that which is contradictory. Clearly this can harm good decision-making. You can probably think of at least one instance when you reached a decision and later realized you dismissed or unintentionally ignored critical information that would have led to a different and perhaps better outcome.

Confirmation bias can be seen as an umbrella term for a number of related biases in reasoning including:

- (1) skewed search for evidence – in particular, searching for argument-consistent evidence when reviewing pleadings and ignoring contrary evidence;
- (2) biased evaluation of evidence - points that are consistent with a preliminary view are not scrutinized as carefully as contradictory evidence;
- (3) distorted recall of evidence - remembering facts which support the initial view more easily than facts which contradict.

Confirmation bias can also skew your evaluations of others' work and potentially disrupt their careers. A research study on confirmation bias conducted in the legal profession reveals shocking race-based disparities.²¹ This study tested whether attorneys unconsciously believe African Americans produce inferior written work and that White people are better writers.

The researchers created a research memo that contained 22 errors (spelling, grammar, technical writing, factual, and analytical). The memo was distributed to 60 partners working in nearly two dozen law firms who thought they were participating in a "writing analysis study" to help young lawyers with their writing skills. All of the participants were told the memo was written by a (fictitious) third-year associate named Thomas Meyer who graduated from New York University Law School. Half of the participants were told Thomas Meyer was White and the other half were told Thomas Meyer was African American. The law firm partners participating in the study were asked to give the memo an overall rating from 1 (poorly written) to 5 (extremely well written). They were also asked to edit the memo for any mistakes.

The results indicated strong confirmation bias on the part of the evaluators. African American Thomas Meyer's memo was given an average overall rating of 3.2 out of 5.0, while the exact same memo garnered an average rating of 4.1 out of 5.0 for White Thomas Meyer. The evaluators found twice as many spelling and grammatical errors for African American Thomas Meyer (5.8 out of 7.0) compared to White Thomas Meyer (2.9 out of 7.0). They also found more technical and factual errors and made more critical comments with respect to

African American Thomas Meyer's memo. Even more significantly, the researchers found that the female and racially/ethnically diverse partners who participated in the study were just as likely as white male participants to be more rigorous in examining African American Thomas Meyer's memo (and finding more mistakes), while basically giving White Thomas Meyer a pass.²²

The attorneys who participated in this study were probably shocked by the results. That is the insidious nature of unconscious bias—people are completely unaware of implicit biases they may harbor and how those biases can make their way into their decision-making and behaviors.

How could confirmation bias influence your decisions in arbitrations and mediations? Do you overlook critical information because it may seem irrelevant or unimportant (to your unconscious)? Is your attention triggered and then hyper-focused by mistakes or aberrations?

In a workplace situation, this bias can be mitigated by blinding the process - having lawyers turn in work assignments anonymously. Legal organizations are fighting bias by blinding many of their processes.

One of the most frequently cited examples of successfully addressing implicit bias by blinding the process is demonstrated by actions taken in the 1970s to address under-representation of women in professional orchestras. Simply installing a screen that hid the auditioner's identity led to an increase of female musicians from 10% to around 35%.²³ A more recent example involves applications for research projects using the Hubble Telescope. NASA saw disparities in who was awarded research time using the telescope with female scientists' applications accepted at a lower rate than male scientists until a blinding process was implemented, which eliminated the disparities.²⁴ In yet another study, when academic papers were blind peer reviewed, the number of papers written by women accepted for publication went up significantly. Not surprisingly there have been calls for blind reviews to become standard procedure in relation to Law Review articles.²⁵

If, as seems likely from the research studies, women are penalized when their name appears on a list of potential neutrals, then one way to confront this is to remove all names from the proposed list of arbitrators and for the resumes to be standardized and reviewed at face value. For example, an institution could identify its list of suitable arbitrators for the dispute, standardize the resumes, and remove the names from the list. It could then forward the list to counsel for the parties to make their selection. In the event that further research into a preferred

candidate was needed, the party could contact the institution to find out the name of the arbitrator in order to review his or her publications, published awards, and so on. However, the preliminary ‘blind’ process might have prevented at least some of the potential implicit gender bias on part of the decision maker.

Attribution Bias

Another type of unconscious cognitive bias—*attribution bias*—causes people to make more favorable assessments of behaviors and circumstances for those in their “in groups” (by giving second chances and the benefit of the doubt) and to judge people in their “out groups” by less favorable group stereotypes. A workplace example of this would be firing an employee from a social identity group that you may unconsciously perceive as an “outsider” for making a mistake but retaining another employee from an “insider” group who makes the same mistake and giving them a chance to improve.

One way to break attribution bias is to start noticing when you give more leeway to some people (especially those in groups similar to your own) and ask yourself whether you would do the same for people you may unconsciously consider to be different (flip it to test).

In arbitrations and mediations, it is important to evaluate who you might - even unconsciously - view as insiders and outsiders. If you are a former plaintiffs’ lawyer, could you be unknowingly giving plaintiffs greater leeway? If you are in a higher socio-economic group, could you be over-scrutinizing the credibility of a party or witness from a lower socio-economic group?

Attribution bias can particularly arise in the arbitration hearing room. Arbitration practitioners are part of a close-knit community and often neutrals will be familiar with those appearing before them. It is likely that neutrals may, unwittingly, give greater weight to arguments propounded by counsel who are perceived as significant and established players in the market, which can, of course, disadvantage newer participants.

Availability Bias

Availability bias interferes with good decision-making because it causes people to default to “top of mind” information. So, for instance, if you automatically picture a man when asked to think of a “leader” and a woman when prompted to think of a “support person,” you may be

more uncomfortable when interacting with a female leader or a man in a support position, particularly at an unconscious level.

Availability bias also comes into play when selecting people for opportunities, such as work assignments, awards/recognition, or to attend client meetings. In one study²⁶ participants were asked to come up with an informal shortlist of three candidates for a male-dominated role. Not surprisingly, few women were included. But when asked to add three more people to the list, the percentage of women increased quite a bit. The lesson is to challenge people to go beyond their initial “top of mind” assessment and extend the shortlist. That is a tactic that could be used in selecting lawyers for class-action cases (or simply requiring they fully represent the members of the class).

Another technique is to simply make a list of everyone who could possibly be eligible, which takes you past “top of mind” selections. One managing partner of a Midwest firm is doing this when he visits regional offices so that he doesn’t spend most of his time with the attorneys who pop into his head.

Changing the automatic and unconscious associations in your brain is another debiasing tactic. For instance, a female judge who presides in criminal cases in a jurisdiction where most criminal defendants are people of color spends vacation days sitting in the back of courtrooms in a neighboring jurisdiction where most criminal defendants are white to try to interrupt her availability bias so that she isn’t automatically thinking “criminal” when she encounters defendants of color in her courtroom.

In contentious proceedings, counsel can use the effect of availability bias through deliberate selection and repetition of certain incidents in the recitation of background facts, leading the decision maker to focus on the “available” information and ignore the suppressed information. Being aware of the brain’s tendency to falsely identify a robust course of conduct by joining up a number of isolated incidents will assist the decision maker in taking all relevant evidence into account in reaching their decision. The ability to take a step back from the “top of mind” information comes from an appreciation of our strong bias towards easily accessible and available information.

Anchoring Bias

Anchoring bias occurs once you have been exposed to a number or value. Your unconscious gets stuck on or anchored to that numerical reference point, and that influences a later decision

involving a completely different number or value. There have been dozens of studies that document this bias but one that is particularly relevant involves 167 U.S. Magistrate Judges who were asked at one of their bi-annual conferences to read a fictitious case scenario and make an award of damages to the plaintiff.²⁷ Half of the judges were also informed that the defendant moved to dismiss because the case didn't meet the jurisdictional minimum for a diversity case of \$75,000. The judges who saw the motion awarded an average of \$882,000 while the other judges awarded an average of \$1.249 million. The \$75,000 number acted as an anchor, reducing the damages award made by the judges who saw it.

How can you counter anchoring bias? Studies show that anchoring bias is robust and powerful. Eliminating it entirely probably isn't possible. But that doesn't mean that neutrals shouldn't try since it causes biased decisions and outcomes. Some of the suggested tactics include:

- Consciously and actively challenge the basis for any anchor presented in the case.²⁸ Explicitly ask if the anchor is wrong – either over- or under-inflated. Look at awards in previous cases with similar facts and determine if the parties' estimates are reasonable or not. If not, consciously counter-argue and debunk the number, which might help break your gravitation to that reference point.
- Consider how you could keep anchors out of the process in the first instance. Can you prohibit litigants from mentioning numbers that might operate as anchors?

Affinity Bias

The adverse effects of many of these cognitive biases can be compounded by affinity bias, which is the tendency to gravitate toward and develop relationships with people who are more like ourselves and share similar interests and backgrounds. This bias could cause mediators and arbitrators to feel more comfortable with parties, advocates, witnesses, experts, and co-panelists who are within their own affinity group, whether it is based on social identities such as age, race, class, gender, etc. or on role, such as previously serving as plaintiffs' or defense counsel.

How can affinity bias affect decisions in mediations and arbitrations? Obviously, feeling more akin to a party, witness, expert, or lawyer based on affinity bias might lead to differing perceptions of credibility. Are you actively and consciously trying to uncover any affinities or affiliations you may have with and working to counter-steer away from the cognitive bias those affinities might trigger?

Simply reminding yourself about the impact of affinity bias might lessen any impact on parties or lawyers you unconsciously view as being in “out-groups.” A series of research studies analyzing foul calls in NBA games demonstrates the powerful impact of simply being aware of affinity bias. In the first of three studies examining data from 13 seasons (1991–2004), researchers discovered that referees called more fouls against players who were not the same race as the referee, and these disparities were large enough to affect the outcomes in some games.²⁹ Based on a number of studies documenting the existence of “in group” or affinity bias in other realms, the researchers inferred that the differential in called fouls was mostly happening on an unconscious level.

The findings of the first study, released in 2007, were criticized by the NBA, resulting in extensive media coverage. The researchers subsequently conducted two additional studies—one using data from basketball seasons before the media coverage (2003–06) and the other focusing on the seasons after the publicity (2007–10). The results were striking. In the seasons before referees became aware they were calling fouls disparately the researchers replicated the findings from the initial study. Yet after the widespread publicity, there were no appreciable disparities in foul-calling.

The lesson to be learned from this research is that paying attention to your own affinity bias and auditing your behaviors can help you interrupt this type of implicit bias.

There is another very compelling reason to interrupt affinity bias. Research shows that diversity leads to better decision-making. Being exposed to others who are socially different (outside our affinity groups) causes us, as individuals, to work harder cognitively, thereby making better, more accurate decisions.

There have been multiple studies documenting this effect.³⁰ One study³¹ looked at the value of cognitive diversity in solving problems. Teams were given the task of solving a murder mystery. They were given plenty of complex material to assimilate, including alibis, witness statements, list of suspects, forensics and so on. In half the cases the groups were composed of four friends, the other half were composed of three friends and a stranger. This stranger was selected from social media profiles as someone with a different perspective than the others on the team. The teams with an outsider performed much better than the other teams. They got the right answer 75% of the time compared with 54% from those in the other group and 44% for individuals working alone. But note one important issue, participants in the two groups had very different experiences of the task. Those in diverse teams found the discussion cognitively

demanding. There was plenty of debate and disagreement because different perspectives were aired; they got to the right decisions, but they were not wholly certain about the decision they reached. Yet the homogeneous teams’ experiences were very different. They found the session more agreeable because they spent most of the time agreeing with each other. They were mirroring each other's perspective and although they were more likely to be wrong, they were far more confident about being right. They were not challenged on their blind spots so didn't get a chance to see them. They were not exposed to other perspectives so became more certain of their own. This is the danger with homogenous groups: they are more likely to form judgments that, in the words of the study, “combine excessive confidence with grave error.”

This dynamic should prompt greater diversity in adjudication panels. But that begs the question of whether the legal profession is doing the work necessary to create the broadest pools of candidates from which to select for appointments?

According to several national research studies,³² there are hidden barriers to success in most legal organizations for lawyers in already under-represented groups (female, LGBTQ, racially/ethnically diverse, or those with disabilities). Attorneys in these groups are disproportionately excluded from opportunities that are critically important, such as networking (formal and informal), insider information, access to decision-makers, mentors and sponsors, training and development, high profile work assignments, feedback, social integration, client contact, and promotions. These opportunities are shared unevenly by those with power and influence in legal organizations, often without realizing it.

A 2018 study by the American Bar Association and the Minority Corporate Counsel Association³³ reveals how the hidden barriers are impacting lawyers in underrepresented groups and causing them to have materially different experiences in law firms, with female attorneys of color consistently facing the highest rates of exclusion:

Hidden Barrier	White Men	White Women	Men of Color	Women of Color
Socially isolated	28%	36%	34%	39%
Have good mentors	68%	63%	61%	57%
Have equal access to networking opportunities	82%	57%	62%	56%
Have equal access to business development opportunities	78%	60%	60%	56%
Have equal opportunities for high quality work assignments	81%	63%	59%	53%

Do more administrative tasks than colleagues	26%	47%	20%	44%
Don't get constructive feedback	21%	26%	40%	35%
Have fair opportunities for promotions	75%	58%	62%	52%
Paid less than colleagues with similar qualifications & experience	36%	60%	44%	67%

Certainly, hard work and technical skill are the foundation for career progress, but without equitable access to these opportunities, attorneys are far less likely to advance and gain the credentials necessary for selection as neutrals.

While conscious bias can certainly play a role, experts point to unconscious affinity bias as the major cause of these hidden barriers to success. When senior lawyers (the vast majority of whom are white and male) gravitate toward and share more opportunities with others like themselves, they unwittingly leave out lawyers from underrepresented groups. Addressing bias in the legal profession and the lack of diversity among arbitrators and mediators has to account for the role affinity bias plays.

Conclusion

Bias must be addressed by mediators and arbitrators who, like everyone else, have conscious and unconscious social as well as cognitive biases. The fact that we have unconscious, unintentional biases, in particular, does not make us bad or flawed; it is just a reality of how our brains operate. Becoming aware of your implicit biases is necessary but not enough. If you want to live up to your personal commitment and ethical obligations to make unbiased decisions, you have to do the work to uncover your implicit biases and engage in behavioral and structural changes to interrupt or at least limit those biases.

So now, ask yourself, are you up to this challenge?

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The Law Firm Leader's Playbook (Kathleen Nalty Consulting LLC, 2019). Visit www.kathleennaltyconsulting.com for more information.

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3. Eberhardt, *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do* (Penguin Random House, 2019).

4. Banaji and Greenwald, *Blindspot: Hidden Biases of Good People* 61 (Delacorte Press, 2013).

5. *Id.* at 55.

6. *Id.* at 20.

7. Guthrie, C. et al. "The 'Hidden Judiciary': An Empirical Examination of Executive Branch Justice," 58 *Duke L.J.* 1477 (2009).

8. Donald, B. et al. "Getting Explicit About Implicit Bias," *Judicature*, Vol. 104, No. 3 (Fall/Winter 2020-21), available at <https://judicature.duke.edu/articles/getting-explicit-about-implicit-bias/>.

9. Why parents may cause gender differences in kids, Sharon Begley
<https://www.newsweek.com/why-parents-may-cause-gender-differences-kids-79501>

10. A study commissioned by Microsoft of 1,000 girls and young women in the UK aged between 11 and 30 showed that, on average, there is just a five-year window to foster their passion for STEM subjects. The research also found that gender stereotypes hold young women back the most. 70% of girls in the UK said they would feel more confident pursuing STEM careers if they knew men and women were equally employed in these professions.
<https://edtechnology.co.uk/Article/why-arent-more-girls-in-the-uk-studying-stem-subjects>.

11. Liebenberg, R. & Scharf, S., "Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice," *American Bar Association & ALM Intelligence* (2010),
https://www.americanbar.org/groups/diversity/women/initiatives_awards/long-term-careers-for-women/walking-out-the-door/.

12. See Williams, J., “Litigating the Glass Ceiling and the Maternal Wall: Using Stereotyping and Cognitive Bias Evidence to Prove Gender Discrimination: The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination Cases and Defang the “Cluelessness” Defense,” *7 Empl.Rts & Employ. Pol’y J.* 410 (2003).

13. Donald, B. et al. “Getting Explicit About Implicit Bias,” *Judicature*, Vol. 104, No. 3 (Fall/Winter 2020-21), available at <https://judicature.duke.edu/articles/getting-explicit-about-implicit-bias/>.

14. Kang, J. “What Judges Can Do About Implicit Bias,” *57 Court Review* 78 (2021), <http://jerrykang.net/research/2021-what-judges-can-do-about-implicit-bias/>.

15. Project Implicit offers a variety of online tests to uncover implicit biases - <https://implicit.harvard.edu/implicit/takeatest.html>.

16. Research studies show that people who are more internally motivated to interrupt bias, even implicit bias, are more successful in doing so. See Rachlinski, J. et al., “Does Unconscious Racial Bias Affect Trial Judges?” *Notre Dame Law Review* 84, no. 3, p. 1202 (2009).

17. Kathleen’s late husband, Craig Shaffer, served as a U.S. Magistrate Judge in Denver for 18 years. After learning about a study where researchers implicitly nudged employees to contribute more to the coffee fund by posting a pair of eyes on the collection cup, Judge Shaffer printed off a pair of eyes and taped them to the back of his bench to provide an extra measure of oversight and accountability. Even though he wasn’t consciously aware of the eyes after the novelty wore off, he was hopeful his unconscious mind would be put on alert and cause him to make better decisions. See Mackenzie, D. “Big Brother eyes make us act more honestly,” *New Scientist* (June 27, 2006).

18. See the “Benchmark” included in the appendix to UCLA Law Professor Jerry Kang’s article - Kang, J. “What Judges Can Do About Implicit Bias,” *57 Court Review* 78 (2021), <http://jerrykang.net/research/2021-what-judges-can-do-about-implicit-bias/>.

19. Professor Kang recommends that judges (and neutrals) create spreadsheets that “cabin” decision-making; otherwise, decision criteria can shift or creep toward justifying gut or automatic thoughts. See Kang, J.

“What Judges Can Do About Implicit Bias,” 57 *Court Review* 78, 85-86 (2021),

20. Perspective taking increases psychological closeness to the stigmatized group, which helps diminish automatic group-based evaluations, stereotypes, and bias. See Galinsky, A. & Moskowitz, G., “Perspective-taking: decreasing stereotype expression, stereotype accessibility, and in-group favoritism,” *J. Pers. Soc. Psychol.* 78(4), 708-24 (April 2000).

21. Reeves, A. “Yellow Paper Series: Written in Black & White—Exploring Confirmation Bias in Racialized Perceptions of Writing Skills,” Nextions Original Research, (2014).

22. *Id.* at 5.

23. As reported in “Willful Blindness: Why We Ignore the Obvious at Our Peril” by Margaret Heffernan (Walker & Co, 2011), see also “Orchestrating Impartiality: The Impact of “Blind” Auditions on Female Musicians” Claudia Goldin and Cecilia Rouse 1997 “Using data on orchestra personnel, the switch to “blind” auditions can explain between 30% and 55% of the increase in the proportion female among new hires and between 25% and 46% of the increase in the percentage female in the orchestras since 1970”. The Vienna Philharmonic did not accept women to permanent membership until 1997.

24. Bartels, M. “Hubble Telescope Test Inspires Changes at NASA to Combat Gender Bias,” *Scientific American*, (February 25, 2020), <https://www.scientificamerican.com/article/hubble-telescope-test-inspires-changes-at-nasa-to-combat-gender-bias/>.

25. Gingerich, J., “A Call for Blind Review: Student Edited Law Reviews and Bias” 59 *J. Legal Educ.* (2009). “Research suggests that non-blind review of journal submissions makes it harder for women and non-U.S. scholars to publish, leads to prestige bias that hurts younger scholars, and undermines the perceived fairness of the submission review process among authors.”

26. Lucas, et al., “Research: To Reduce Gender Bias in Hiring, Make Your Shortlist Longer,” *Harvard Business Review*, (February 16, 2021).

27. Guthrie, C. et al., “Inside the Judicial Mind,” 86 *Cornell Law Review* 776 (May 2001).

28. Mussweiler, T. et al., "Overcoming the Inevitable Anchoring Effect: Considering the Opposite Compensates for Selective Accessibility," *Personality and Social Psychology Bulletin*, Vol. 26, Issue 9 (2000).

29. Pope et al., "Awareness Reduces Racial Bias," *Economic Studies at Brookings* (Feb. 2014), www.brookings.edu/~media/research/files/papers/2014/02/awareness-reduces-racial-bias/awareness_reduces_racial_bias_wolfers.pdf.

30. Phillips, K., "How Diversity Makes Us Smarter," *Scientific American* (October 2014).

31. Phillips, K. et al., "Is the Pain Worth the Gain? The Advantages and Liabilities of Agreeing With Socially Distinct Newcomers," *Personality and Social Psychology Bulletin*, Vol 35(3): 336-50 (March 2009).

32. There have been over a dozen national research studies since 2006 by the American Bar Association, Catalyst, McKinsey & Co., the Minority Corporate Counsel Association, the Women's Bar Association of the District of Columbia, Corporate Counsel Women of Color, and Vault. The ABA issued three studies in three years: 1) Joan Williams et al., "You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession," *American Bar Association & Minority Corporate Counsel Association*, (2018),

http://www.abajournal.com/files/Bias_interrupters_report-compressed.pdf;

2) Liebenberg, R. & Scharf, S., "Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice," *American Bar Association & ALM Intelligence* (2010),

https://www.americanbar.org/groups/diversity/women/initiatives_awards/long-term-careers-for-women/walking-out-the-door/; and 3) Peery, D. et al.,

"Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color," *American Bar Association* (2020),

<https://www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf>. 15

33. Joan Williams et al., “You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession,” *American Bar Association & Minority Corporate Counsel Association*, (2018), http://www.abajournal.com/files/Bias_interrupters_report-compressed.pdf.