



Food for Thought: Identify and Interrupt Implicit Bias from BBQ to the Boardroom for a More Diverse Legal Profession

Seminar Topic: This material provides an in-depth examination of the skill set necessary to recognize, understand and reduce bias in the legal workplace. The seminar will assist legal professionals with the identification of implicit and unconscious bias in the workplace and provide them with the skills to apply the lessons of the course to their own professional situations. This seminar will assist the participant with learning to recognize different types of bias in the workplace, reduce bias in the legal profession and gain an increased awareness of how others perceive bias. This program examines how to apply negotiation techniques to personal interaction to reduce bias.



This publication provides the reader with the knowledge and tools necessary to identify bias and the tools that can be applied in practical situations to return to an unbiased position.

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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Seminar Learning Objectives

The present program is designed provide the following learning objectives:

- Participants will learn how to apply the core values and ethical responsibilities of our profession in various settings.
- Participants will learn how to engage in dialogue with their fellow attendees regarding identification and reduction of bias in the workplace.
- Participants will learn how to identify and interrupt implicit bias.
- Participants will learn how to identify unintentional bias.
- Participants will learn how to apply the lessons of the course to their own professional situations
- Participants will gain skills and practical takeaways to engage in an unbiased and more professional life.
- Participants will learn to recognize different types of bias in the workplace.
- Participants will learn to reduce bias in the legal profession.
- Participants will learn to recognize words, actions and situations that signal bias.
- Participants will learn how to engage in uncomfortable or difficult conversations with new skill sets including conflict identification, reframing/rewording the issue, changing the paradigm by recasting the conflict and the use of avoidance.

- Participants will gain new skill sets including tools for collaboration, working with their peers, ethically serving their clients, and increase awareness of how others perceive bias.
- Participants will learn about state supported programs that can assist in reducing bias in the legal profession.

About The Materials

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Timed Agenda:

Time	Description
00:00	Program Start
00:00	Presenter Introduction and subject introduction. Food for Thought: Identify and Interrupt Implicit Bias from BBQ to the Boardroom for a More Diverse Legal Profession
00:01:18	The Definitions Relating to Bias
00:03:11	Ethics, Bias and Professionalism Identify Bias Within Your Practice Bias versus Stereotype, Attitude and Prejudice
00:06:25	Identifying Implicit Bias and Unconscious Bias Within Your Practice
00:09:11	Implicit Bias and Unconscious Bias verses Prejudice or Stereotypes
00:12:54	Implicit Bias, Conscious Bias and Examples of Implicit Bias and Unconscious Bias
00:19:36	Why Implicit Bias Matters
00:21:55	Unconscious Bias in the Workplace: How Biases Affect Our Decision Making Process
00:25:10	Examples Of The Damaging Impact Of Implicit Bias In The Workplace And Legal Profession
00:28:25	Bias As An Emerging Topic in Jury Selection California Jury Instruction on Bias Illinois Pattern Jury Instruction on Bias
00:34:10	Recognizing Different Types of Bias Group Bias – In-Group and Out-Group Bias Affinity Bias Attribution Bias

	Conformity Bias Confirmation Bias Contrast Effect Halo Effect Horns Effect Cultural Bias Beauty Bias Gender Bias Racial and Ethnic Bias
00:58:22	Skills to Defeat Implicit Bias
01:03:10	Presenter Closing
01:03:29	Closing Credits
01:03:36	End of Video

Food for Thought: Identify and Interrupt Implicit Bias from BBQ to the Boardroom for a More Diverse Legal Profession

Introduction

The course is designed to assist legal professionals with the identification of implicit and unconscious bias in the workplace and provide them with the skills to apply the lessons of the course to their own professional situations. The course is designed to assist the participant with learning to recognize different types of bias in the workplace, reduce bias in the legal profession and gain an increased awareness of how others perceive bias.

Professionalism should be a part of every Illinois lawyer's daily practice. It is not enough to memorize the ABA Model Rules, the Illinois Rules of Professional Responsibility or your local jurisdiction's rules. Creating a legal practice that reflects one's ethical duties in an unbiased manner and lives up to the high degree of professionalism required by an attorney is a daily task and one that cannot be accomplished without effort. The rules can be unclear and ethical dilemmas can be ambiguous.

However, in many situations there are no excuses; the rules and case law make clear what is required and they should not be avoided due to personal bias. There are rules that every attorney should know and ethical duties that should always be implemented. Most importantly there is help. If an attorney has an ethical question, there are places to turn to find the answer. The course is designed to highlight how to create an unbiased practice, the attorney's ethical duties, the Illinois Rules of Professional Responsibility and Support and



Programs that are available. Incorporating this information into an attorney's daily practice and to create a practice that promotes the very fundamentals of attorney professionalism.

Ethics, Bias and Professionalism

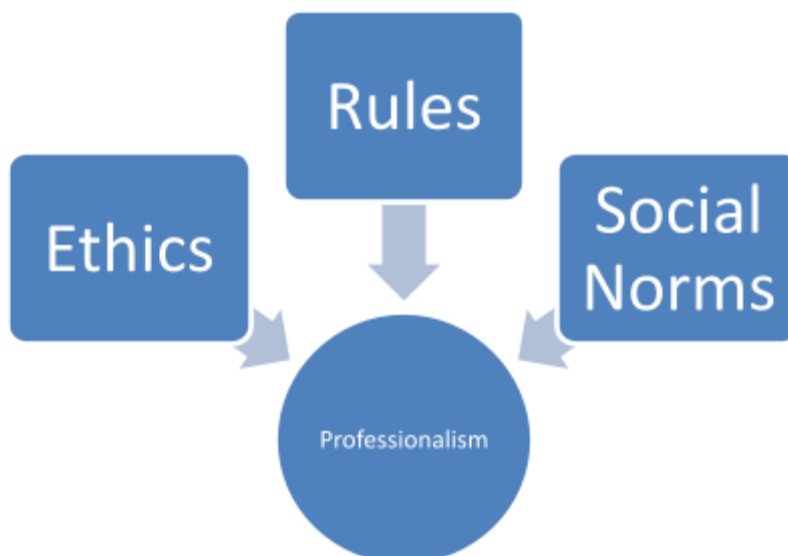
Before delving too deeply into the rules and case law, it is essential to distinguish between ethics and professionalism. Attorney conduct in Illinois is governed by the Illinois Rules of Professional Conduct. Like the model rules, these rules provide the “mandatory, minimum rules to which attorneys are expected to conform.”¹ Essentially they “constitute a safe guide for professional conduct...”² While acting within the bounds of the Code may keep an attorney out of trouble; it does not necessarily make the attorney ethical. There are dishonest, untrustworthy individuals that do not break the law. To be truly ethical, one must live beyond the scope of the rules and instead live by “basic moral principles such as honesty, integrity and fairness.”³

¹ In re Vrdolyak, 137 Ill.2d 407, 560 N.E.2d 840, 845, 148 Ill.Dec. 243 (Ill. 1990).

² In re Yamaguchi, 118 Ill.2d 417, 515 N.E.2d 1235, 1239, 113 Ill.Dec. 928 (Ill.1987).

³ Commission on Professionalism, Professionalism CLE Guidelines, <http://www.2civility.org>. (Last reviewed January 10, 2015)





“Ethics” encompasses “the law of lawyering” and the rules which lawyers must follow to maintain their good standing before the bar.⁴ Professionalism includes ethics but expands to also encompass our values as a profession such as competence, civility, integrity, and a commitment to justice and the public good.⁵

When creating the rules, the Illinois Supreme Court clearly intended to create ethical rules but also speak to a standard of professionalism. As the Preamble to the Rules states, “Lawyers ... are responsible for the character, competence and integrity of the persons whom they assist in joining their profession; for assuring access to that system through the availability of competent legal counsel; for maintaining public confidence in the system of justice by acting competently and with loyalty to the best interests of their clients; by working to improve that system to meet the challenges of a rapidly

⁴ Commission on Professionalism, Professionalism CLE Guidelines, <http://www.2civility.org>. (Last reviewed January 10, 2015)

⁵ Commission on Professionalism, Professionalism CLE Guidelines, <http://www.2civility.org>. (Last reviewed January 10, 2015)

changing society; and by defending the integrity of the judicial system against those who would corrupt, abuse or defraud it.”⁶

The American Bar Association has proposed a model rule that addresses bias and discrimination.

Model Rule 8.4(g) provides, in part, that:

It is professional misconduct for a lawyer to:

engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.⁷

Many jurisdictions already have a similar rule in place. As a result, implicit bias is already a possible ethical violation and it is the attorney’s duty to learn about, and avoid, improper implicit bias in their practice.

⁶ 134 Ill.2d Preamble

⁷

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/

Identify Bias Within Your Practice

Any discussion about bias must start with an understanding of what bias is and what bias is not. In general:

Bias is a tendency to lean in a certain direction, often to the detriment of an open mind. Those who are biased tend to believe what they want to believe, refusing to take into consideration the opinions of others. To truly be biased, it means you're lacking a neutral viewpoint.

An awareness of bias is a critical step to decoding what is and what is not biased. Ultimately, if a person becomes more aware of how they think, perceive and react to outside influences, they gain the ability to defeat those biases.

Bias is a tendency to think in a particular way or a tendency to lean in a particular direction, often without keeping an open mind.

Like v. Biased

To “Like” something is to “to enjoy doing something, or to feel that someone or something is pleasant or attractive”⁸

To be “biased” to something is to “a partiality that prevents objective consideration of an issue or situation”; Use the noun bias to mean a preference for one thing over another, especially an unfair one.⁹

⁸ https://www.macmillandictionary.com/us/dictionary/american/like_2 Last reviewed February 10, 2023.

⁹ <https://www.vocabulary.com/dictionary/bias> Last reviewed February 10, 2023.

Bias vs. Biased

There is evidence of the adjectival bias in constructions like “a bias [sic] news program” instead of the more usual “a biased news program.” The reason is likely because of aural confusion: the -ed of biased may be filtered out by hearers, which means that bias and biased can sound similar in the context of normal speech. They are not interchangeable, however. The adjective that means “exhibited or characterized by an unreasoned judgment” is biased (“a biased news story”). There is an adjective bias, but it means “diagonal” and is used only of fabrics (“a bias cut across the fabric”).¹⁰

Bias versus Stereotype, Attitude and Prejudice

Bias is also defined as prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair. Bias can be seen as the overarching definition of stereotype and prejudice, in that it is how we associate usually negative traits to a specific group of people. Our “implicit attitudes reflect constant exposure to stereotypical portrayals of members of, and items in, all kinds of different categories: racial groups, professions, women, nationalities, members of the LGBTQ community, moral and political values, etc.”¹¹

An attitude is an evaluative judgment of an object, a person, or a social group. We can form an attitude toward soccer players.

¹⁰ <https://www.merriam-webster.com/dictionary/biased>, last reviewed 2/10/2023.

¹¹ https://en.m.wikipedia.org/wiki/Implicit_stereotype

We can have many different types of attitudes toward soccer players that can either be positive or negative.¹²

A stereotype is the association of a person or a social group with a consistent set of traits. This may include both positive and negative traits, such as African Americans are great at sports or African Americans are more violent than any other race in the United States. There are many types of stereotypes that exists: racial, cultural, gender, group (i.e. college students), all being very explicit in the lives of many people.¹³

Prejudice is defined as unfair negative attitude toward a social group or a member of that group. Prejudices can stem from many of the things that people observe in a different social group that include, but are not limited to, gender, sex, race/ethnicity, or religion. This is pertinent to stereotypes because a stereotype can influence the way people feel toward another group, hence prejudice.¹⁴

The way we perceive our system of justice and the way we are perceived and treated by that system differs based on gender, race, ethnicity, and other group identities.¹⁵

¹² https://en.m.wikipedia.org/wiki/Implicit_stereotype

¹³ https://en.m.wikipedia.org/wiki/Implicit_stereotype

¹⁴ https://en.m.wikipedia.org/wiki/Implicit_stereotype

¹⁵

https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.authcheckdam.pdf

Identifying Implicit Bias and Unconscious Bias

Implicit Bias

Implicit biases, also called unconscious bias, are unintentional subliminal beliefs or attitudes that affect our understanding, actions and decisions in an unconscious manner.

Thoughts and feelings are “implicit” if we are unaware of them or mistaken about their nature. We have a bias when, rather than being neutral, we have a preference for (or aversion to) a person or group of people.

The term “implicit bias” describes when we have attitudes towards people or associate stereotypes with them without our conscious knowledge.¹⁶

Unconscious biases are social stereotypes about certain groups of people that individuals form outside their conscious awareness. Unconscious bias happens outside of our control. It occurs automatically and is triggered by our brain making a quick judgment.

Conscious Bias

Conscious biases are those thoughts, feelings and tendencies that we outwardly express in our statements. If someone says that they like football more than baseball or spicy food more than sweet food, these are conscious biases.

Examples of Implicit Bias and Unconscious Bias:

- Resumes with ethnic sounding names pushed down in the selection for interviews.

¹⁶ <https://perception.org/research/implicit-bias/>

- Asian candidates given priority positions requiring math and science.
- Women more frequently interrupted in business meetings.
- Some team members, who arrive late to a meeting, are welcomed and given a brief update on what transpired prior to their arrival. Other team members, based on a racial, gender, generational or other differences, receive only a fleeting glance from the leader, subtly conveying a message of admonishment with no welcome or update offered.¹⁷

For example, in the case of the review of resumes, the Implicit Bias is the unconscious state of mind that minorities are less qualified.

Insight Education Systems uses the term “MicroInequity” meaning the time when the bias thought moves from being a thought inside someones mind to an action such as hiring someone, interacting with someone, promoting someone or selecting a person or convicting a person based upon a bias.¹⁸

The MicroInequity in the resume example is choosing to push the resume to the side.¹⁹

In the case of the priority for Asians in math and science, the Implicit Bias is the belief that these skills are dominant for that ethnic group. The MicroInequity is making the job offer.²⁰

In the example of women being interrupted more frequently, the Unconscious Bias is that men have more important things

¹⁷ <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

¹⁸ <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

¹⁹ <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

²⁰ <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

to say and are more authoritative. The MicroInequity is to actively disregard female colleagues' remarks and marginalize their contribution by speaking over them.²¹

In the case of different treatment when a colleague arrives late to a meeting, the Unconscious Bias is that we hold opinions about people's value, power and influence, unwittingly. The MicroInequity is the clear difference in behavior by being vocal and providing the information to one while withholding this same information from, and remaining silent with another.²²

In this particular example, there is an important distinguishing point. If the same negative treatment is consistently delivered to everyone, then it is not a MicroInequity – It is simply consistently delivered bad behavior. It is only when delivered differently, to different groups or individuals, that the behavior becomes a MicroInequity.²³

Why Implicit Bias Matters:

The mind sciences have found that most of our actions occur without our conscious thoughts, allowing us to function in our complex world. This means, however, that our implicit biases often predict how we'll behave more accurately than our conscious values. Multiple studies have also found that those with higher implicit bias levels against a particular race are more likely to categorize non-weapons as weapons (such as a phone for a gun, or a comb for a knife), and in computer simulations are more likely to shoot an unarmed person. Similarly, physicians who implicitly associated a specific race

²¹ <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

²² <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

²³ <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

with being “less cooperative” were less likely to refer those patients with heart disease for specific medical care.²⁴

Negative Effects of Implicit Bias and Unconscious Bias in the Workplace:

The negative effects of Implicit Bias in the workplace are pervasive. They can fester and affect loyalty, commitment and performance. The challenge is they are often executed unwittingly with neither the sender, nor the receiver, being actively conscious of the messages being sent, making them difficult to identify and manage.²⁵

The cumulative effect of bias over time can be substantial. A single drop of water may not change the landscape but, single drops of water overtime create rivers, lakes, oceans and canyons.

Similarly, the impact of MicroInequities can cause damage to the performance of others in the workplace. The effect is often gradual and easily missed. When the behavior is more prominent and easily noticed, it is no longer a MicroInequity. Such overt and easily noticed behaviors are more macro in nature and simply represent bad behavior.²⁶

Biases Affect Our Decision Making Process

Whether we see it or not, bias affect:

- Our Perception – how we see people and perceive reality.
- Our Attitude – how we react towards certain people.

²⁴ <https://perception.org/research/implicit-bias/>

²⁵ <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

²⁶ <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

- Our Behaviors – how receptive/friendly we are towards certain people.
- Our Attention – which aspects of a person we pay most attention to.
- Our Listening Skills – how much we actively listen to what certain people say.
- Our empathy, our Micro-affirmations – how much or how little we comfort certain people in certain situations.²⁷

Whether we are aware of it or not, each and every one of these things will affect who we select to come in for an interview, how we interview them, who we hire and our reasons for hiring them.²⁸

SurveyMonkey Survey Bias Samples

What is survey bias?

Survey bias is a deviation of feedback based on certain influences by the surveyor and respondent. Sampling bias certainly plays a part in how unbiased feedback and insights can be.²⁹

Sampling bias

Sampling bias is when certain people are systematically more likely to be chosen in a sample than others, otherwise known as purposive sampling.

²⁷ <https://www.socialtalent.com/blog/recruitment/9-types-of-bias>

²⁸ <https://www.socialtalent.com/blog/recruitment/9-types-of-bias>

²⁹ <https://www.surveymonkey.com/mp/how-to-avoid-common-types-survey-bias/> last reviewed 2/10/2023.

Response bias

Response biases are skewed insights from respondents whose answers deviate from how they actually feel.

They might not understand the question, or they're just not comfortable answering.

The survey might not be relevant to respondents.

The survey structure may encourage a particular answer.

- **Social desirability bias** - A conformity bias.
- **Dissent bias** - Dissent bias is when respondents answer survey questions negatively because of a lack of understanding of the survey.
- **Acquiescence bias** - Acquiescence bias means all survey answers are positive.
- **Extreme response bias** - Offering answer selections like "Strongly agree" or "Strongly disagree." Respondents choose extreme answers even it's not their actual viewpoint.
- **Neutral responding** - Neutral responding is the opposite of extreme bias. Respondents consistently choose an unbiased answer due to disinterest.

Interviewer bias

The survey most likely influenced by bias are group interviews, one-to-one interviews, panel interviews, and phone interviews.³⁰

³⁰ <https://www.surveymonkey.com/mp/how-to-avoid-common-types-survey-bias/> last reviewed 2/10/2023.

Examples Of The Damaging Impact Of Implicit Bias In The Workplace And Legal Profession

- Marginalizing and under-utilizing talent;
- Impairing recruitment and retention;
- Eroding an individual's performance;
- Stifling innovation and growth;
- Inhibiting team work and collaboration;
- Adversely affecting business growth;
- Eroding the firm's or company's brand³¹
- Finally, it is also potentially illegal employment discrimination.

Current Research On Bias

A recent survey of online scholarly research articles yielding over 200,000 results since 2022.

Mentioning the Sample's Country in the Article's Title Leads to Bias in Research Evaluation, Social Psychological and Personality Science 2022, Vol. 13(2) 352–361, <https://journals.sagepub.com/doi/pdf/10.1177/19485506211024036>;

Addressing racial and phenotypic bias in human neuroscience methods, 2022, Webb, E.K., Etter, J.A. & Kwasa, J.A. Addressing racial and phenotypic bias in human neuroscience methods. Nat Neurosci 25, 410–414 (2022). <https://doi.org/10.1038/s41593-022-01046-0>

³¹ <https://insighteducationsystems.com/unconscious-bias-implicit-bias/>

Tackling Implicit Bias in Health Care, 2022, N Engl J Med
2022; 387:105-107

<https://www.nejm.org/doi/full/10.1056/NEJMp2201180>

Bias As An Emerging Topic in Jury Selection

“Racial Bias in Juror Decision-Making”

“According to the widely accepted Story Model of juror decision-making (Bennett & Feldman, 1981; Hastie, Penrod, & Pennington, 1983), jurors use the information they receive at trial to construct a narrative or story about the case that is consistent with their world knowledge and that fits the legal categories provided in instructions to the jury. Story construction of this sort is inevitably colored by jurors’ personal preconceptions, attitudes, and experiences (i.e., schemas), all of which are used to resolve ambiguities and fill in details missing from evidence and arguments presented at trial. During deliberations, jurors compare elements from their individual narratives (e.g. whether a witness’s earlier inconsistent statements means she cannot now be believed) in their effort to arrive at a consensus about the “correct” interpretation of the evidence and the verdict that should follow.” ³²

Case Law Addressing Jury Bias

In *People v Whetsone*, defense counsel made a record of defendant's position concerning questioning jurors about potential racial bias stating that, according to research, everyone has implicit biases and that it was important to question more deeply whether the jurors would acknowledge those implicit biases and whether those biases would affect their deliberations.

Counsel again noted that the defendant was the only African-American in the courtroom at that point, and that

³²

<http://www.ncsc-jurystudies.org/~media/Microsites/Files/CJS/What%20We%20Do/Can%20Explicit%20Instructions%20Reduce%20Expressions%20of%20Implicit%20Bias.ashx>

research showed that such biases could alter how a juror both heard evidence and considered guilt and innocence. Counsel provided the court with an instruction that is purportedly used in California that the defendant suggested should be read to the jury prior to hearing any evidence.

The court refused the instruction but permitted voir dire to examine bias. Defense counsel raised multiple appeal issues based upon biases in the trial.³³ Defendant's arguments fall into three general categories: pre-trial (voir dire questioning and proposed instruction), the court's response to the three jury notes, and ineffective assistance. All categories concern bias and the right to a fair and impartial trial, a right that is protected by both the federal and state constitutions.³⁴

The appellate court found that:

...our judicial system is not infallible: “perfection in trial procedure is virtually unattainable” and, thus, it is fundamental that a defendant in a criminal case is “entitled to a fair trial, not a perfect one.” Bull, 185 Ill. 2d at 214, 235 Ill.Dec. 641, 705 N.E.2d 824. The determination of whether a jury has been “irrecoverably compromised by interjuror communications,” as well as the initial decision about whether and how to ask jurors about possible bias, rests in the trial court's sound judicial discretion,³⁵

California Jury Instruction on Bias

Judicial Council of California Civil Jury Instructions

113. Bias

³³ People v. Whetstone, 2020 IL App (2d) 170919-U, ¶ 60

³⁴ People v. Whetstone, 2020 IL App (2d) 170919-U, ¶ 61

³⁵ People v. Whetstone, 2020 IL App (2d) 170919-U, ¶ 81

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 ³⁶

Illinois Pattern Jury Instruction on Bias

Illinois Pattern Jury Instruction – Civil

1.08 Implicit bias

We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit biases” or “unconscious 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

³⁶ http://www.courts.ca.gov/partners/documents/aci_2019_edition.pdf

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 resist jumping to conclusions based on personal likes or dislikes. 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, and help each other to resist, any urge to reach a verdict that is influenced by bias for or against any party or witness.

Instruction, Notes on Use and Comment approved May 2018.³⁷

Achieving an Impartial Jury (AIJ) Project Proposed Instruction

The Achieving an Impartial Jury Project proposes the following jury instruction:

Our system of justice depends on judges like me and jurors like you being able and willing to make careful and fair decisions. Scientists studying the way our brains work have shown that, for all of us, our first responses are often like reflexes. Just like our knee reflexes, our mental responses are quick and automatic. Even though these quick responses may

³⁷ <http://www.illinoiscourts.gov/circuitcourt/civiljuryinstructions/1.08.pdf>

not be what we consciously think, they could influence how we judge people or even how we remember or evaluate the evidence. Scientists have taught us some ways to be more careful in our thinking that I ask you to use as you consider the evidence in this case: Take the time you need to test what might be reflexive unconscious responses and to reflect carefully and consciously about the evidence.³⁸

- Focus on individual facts, don't jump to conclusions that may have been influenced by unintended stereotypes or associations.
- Try taking another perspective. Ask yourself if your opinion of the parties or witnesses or of the case would be different if the people participating looked different or if they belonged to a different group?
- You must each reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours.

Working together will help achieve a fair result.³⁹

Test Your Own Implicit Bias with the Implicit Association Test at Project Implicit

This site allows you to test your own implicit associations in a variety of comparisons including race, age, ability, and gender. If you are willing to find out more about yourself, I suggest you give it a try:

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https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.authcheckdam.pdf

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https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.authcheckdam.pdf



www.implicit.harvard.edu/implicit/

You can learn more about Project Implicit at
www.projectimplicit.net

Recognize Different Types of Bias

When discussing bias, it is important to understand the broad scope of the topic. Bias encompasses any

Group Bias – In-Group and Out-Group Bias

Group prototypes define social groups through a collection of attributes that define both what representative group members have in common and what distinguishes the in group from relevant out groups. In-group favoritism, sometimes known as in-group–out-group bias, in-group bias, or intergroup bias, is a pattern of favoring members of one's in-group over out-group members. This can be expressed in evaluation of others, in allocation of resources, and in many other ways. Implicit in-group preferences emerge very early in life, even in children as young as six years old. In-group bias wherein people who are ‘one of us’ (i.e., our in group) are favored compared to those in the out group, meaning those who differ from ourselves. In group favoritism is associated with feelings of trust and positive regard for in group members and surfaces often on measures of implicit bias. This categorization (in group vs. out group) is often automatic and unconscious.⁴⁰

Our automatic group identification is substantial. Research demonstrates that being a member of a group typically creates a preference for that group, the ingroup, and against others, the outgroup. When we categorize people into groups, ingroups or outgroups, we tend to regard members of the same group as “more similar than they actually are, and more similar than they were before they were categorized together.” We tend to

⁴⁰ https://en.m.wikipedia.org/wiki/Implicit_stereotype

think more individually and with more detail about ingroup members, and to perceive outgroup members as lesser.⁴¹

The reasons for having in-group and out-group bias could be explained by ethnocentrism, social categorization, oxytocin, etc. A research paper done by Carsten De Dreu reviewed that oxytocin enables the development of trust, specifically towards individuals with similar characteristics - categorized as 'in-group' members - promoting cooperation with and favoritism towards such individuals. People who report that they have strong needs for simplifying their environments also show more ingroup favoritism. The tendency to categorize into ingroups and outgroups and resulting ingroup favoritism is likely a universal aspect of human beings.⁴²

We generally tend to hold implicit biases that favor our own ingroup.

Affinity Bias

Affinity bias refers to when you unconsciously prefer people who share qualities with you or someone you like. It occurs because your brain sees them as familiar and relatable, and we all want to be around people we can relate to.⁴³

For example, if a co-worker attended the same college, grew up in the same town, or they remind us of someone we know or they share similar hobbies, you're more likely to prefer them over other Co-workers.

Recruiting people with similar qualities is a no brainer. For the best culture fit, businesses should aim to recruit likeminded

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https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.authcheckdam.pdf

⁴² https://en.m.wikipedia.org/wiki/Implicit_stereotype

⁴³ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

people. But you're not looking for a new best friend. Affinity bias can cloud your judgment of which candidates are most appealing to the whole business. It may cause you to hire fewer diverse personalities, which means less creative views and approaches to work.

It is unfair. While an applicant may not be like you, they could be just as talented and friendly as those that are like you.⁴⁴

Attribution Bias

Attribution bias refers to how you perceive your actions and those of others. It stems from our brain's flawed ability to assess the reasons for certain behaviors – particularly those that lead to success and failure.⁴⁵

We generally attribute our own accomplishments to our skill and personality, and our failures to external factors – to hindrances that we believe are beyond our control. We are less likely to blame and find fault in ourselves.

However, this perception often reverses when we view other people. When they do something successfully, we're more likely to consider them lucky or benefited by someone else, and more likely to attribute their errors to poor capabilities or personal qualities.

In recruitment, this can skew your view of a candidate's performance. It can make you focus too hard on their faults, minimise their accomplishments, and potentially disregard a talented candidate.⁴⁶

Conformity Bias

⁴⁴ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁴⁵ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁴⁶ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

Conformity bias happens when your views are swayed too much by those of other people. It occurs because we all seek acceptance from others – we want to hold opinions and views that our community accepts.⁴⁷ Conformity bias relates to bias caused by group peer pressure. If an individual feels the majority of the group are leaning towards/away from a certain position, they will tend to go along with the group thinks rather than voice their own opinions.⁴⁸

Chances are, if most people feel strongly about a position, it's because they all noticed something similar. A unanimous view is less likely to come from a place of bias. However, you shouldn't let it prevent you from voicing your opinions and views. Your opinions may draw attention to facts about a position that others didn't spot.

In recruitment, conformity bias is common. When a majority of the group shares an opinion about a candidate, you usually decide to agree with them even if your original opinion differed.⁴⁹

Confirmation Bias

Confirmation bias refers to how people primarily search for bits of evidence that back up their opinions, rather than looking at the whole picture. It leads to selective observation, meaning you overlook other information and instead focus on things that fit your view. You may even reject new information that contradicts your initial evidence.⁵⁰

For example, let's say a candidate arrives 10 minutes late. You assume that they lack organisational skills, so throughout the

⁴⁷ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁴⁸ <https://www.socialtalent.com/blog/recruitment/9-types-of-bias>

⁴⁹ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁵⁰ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

interview you selectively focus on anything that backs up this idea. For instance, you focus on the fact that their CV lacks examples of self-managed projects.

Most people subconsciously slip into confirmation bias because they seek confirmation that their initial assessment of a person is correct. We even do it to back up other unconscious biases, so it's important to keep it in check. Otherwise, you may unfairly decide to not hire a candidate based on your faulty assessment.⁵¹

Contrast Effect

This type of bias occurs when you assess two or more similar things and compare them with one another, rather than looking at each based on their own merits.⁵²

The contrast effect is common in recruitment. When a firm receives dozens of similar resumes, it's useful to compare applications to narrow down your choices.

We judge whether or not the person in front of us did as well as the person that came before them. When really, the only thing we should be comparing are the skills and attributes each individual has, to the skills and attributes required for the job, not those of the person that came directly before them.⁵³

The contrast effect can make you judge too harshly and set your standards too high. It can make you overlook the fact that you're looking for people who can fit the role. You're not assessing who can submit the most flawless CV or make it through the interview without a stutter.⁵⁴

⁵¹ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁵² <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁵³ <https://www.socialtalent.com/blog/recruitment/9-types-of-bias>

⁵⁴ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

Halo Effect

The Halo Effect is when we see one great thing about a person and we let the halo glow of that significant thing affect our opinions of everything else about that person. We are in awe of them due to one thing.⁵⁵ It occurs when we focus on one particularly great feature about a person. You view everything about the person in a positive, ‘halo’ light, which makes you think they’re more perfect than they are. Similar to affinity and confirmation bias, this makes us overlook other information. It skews our opinion of other aspects, including negative ones.⁵⁶

For example, when looking through someone’s CV/resume we may see they went to a particularly highly regarded college where they received a certain high grade, or they had undertaken some very sought after work experience program. Upon seeing that, we tend to see everything else about that person surrounded by the glow of that achievement.⁵⁷

In recruitment, you need to prevent the the halo effect from blinding you. Otherwise, you may hire a candidate that, once the halo glow wears off, is actually not as fit for the role as you thought.⁵⁸

Horns Effect

The horns effect is the opposite of the halo effect: you focus on one particularly negative feature about a person, which clouds your view of their other qualities.⁵⁹

⁵⁵ <https://www.socialtalent.com/blog/recruitment/9-types-of-bias>

⁵⁶ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁵⁷ <https://www.socialtalent.com/blog/recruitment/9-types-of-bias>

⁵⁸ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁵⁹ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

For example, if a person uses a particular phrase you dislike or speaks slowly you may suddenly dislike everything else they say.

In recruitment, you need to avoid concentrating on aspects you personally dislike. One mistake or flaw does not represent them as a whole.⁶⁰

Cultural Bias

Cultural bias is the interpretation of any phenomena based on one's own cultural standards. On the other hand, it also refers to the bias created due to the norms of the majority ethnic group.⁶¹

It includes misconceptions, prejudices, or beliefs that we possess towards other people, communities, or countries. Various media like books, movies, travel, food, or lifestyle introduce us to the non-familiar aspects existing in the world outside. Cultural bias, is just like viewing the 'other' with 'our' glasses on.⁶²

Reading a text: Everyone reading this text starts from the top left and reads to the right and down. This qualifies for a cultural bias. There are other scripts, like Hebrew or Arabic for instance, which make sense the other way round, from right to left.⁶³ Japanese is read in columns from the top down and right to left.

Technology: As simple as a light switch works as the best example of how culturally biased the world is. The toggle switch, with the little words of 'ON' and 'OFF' written on it

⁶⁰ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁶¹ <https://psychologenie.com/understanding-cultural-bias-with-examples>

⁶² <https://psychologenie.com/understanding-cultural-bias-with-examples>

⁶³ <https://psychologenie.com/understanding-cultural-bias-with-examples>

works differently in the United States and in the UK, Ireland, Australia, or New Zealand. For Americans, to switch it 'ON', we push it 'UP', whereas the English push it 'DOWN'.⁶⁴

Beauty Bias

This is the view that we tend to think that the most handsome individual will be the most successful. But this can also play out in terms of other physical attributes a person may have.⁶⁵

We all unconsciously notice people's appearances and associate it with their personality. Appearances are important, particularly in a workplace setting, as they reflect on professionalism and self-awareness. However, many of us judge others too harshly based on their physical attractiveness.

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It's unfair to think that a person doesn't make 'enough' of an effort with their appearance, or that they put in 'too much' effort. This can lead to assumptions about their personality and skills. You can't assume that a person who dresses professionally and tidies their hair is an all-around organised person. The opposite could easily be true.

Other times, you may unconsciously dislike certain features in a person. Maybe you think they're too short, that they have poor posture, or they don't have an expressive face. These may stem from a subconscious, stereotypical view of what a successful or friendly person looks like.

These assumptions may cause you to unfairly favour 'attractive' people during recruitment, despite the fact that we

⁶⁴ <https://psychologenie.com/understanding-cultural-bias-with-examples>

⁶⁵ <https://www.socialtalent.com/blog/recruitment/9-types-of-bias>

⁶⁶ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

should embrace physical diversity and never judge a book by its cover.⁶⁷

Gender Bias

Gender bias is simply a preference for one gender over the other. It often stems from our deep-seated beliefs about gender roles and stereotypes.⁶⁸

In recruitment, gender bias can cause you to unconsciously lean towards a candidate based on their gender and the qualities you associate with it. For example, you may subconsciously think a man better fits a physically demanding job.

In particular, gender bias occurs because you favor people that we can relate to, especially those of the same gender. You often connect with them easier because of shared gender-specific physical and emotional experiences.

Even from the moment your job advertisement goes live, you may inadvertently favor one gender over the other. Certain terminology may appeal more to men than women and vice versa.⁶⁹

Racial and Ethnic Bias

Ethnicity is the state of belonging to a social group that has a common national or cultural tradition.

Race is understood to be a group of people of common ancestry, distinguished from others by biological traits,

⁶⁷ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁶⁸ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁶⁹ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

physical characteristics, such as hair type, color of eyes and skin, stature deemed by society to be important.

Race is determined by how a person looks while their ethnicity is determined based on the social and cultural groups they belong to.

Racial and ethnic bias occurs when you favor one race or ethnicity over another.

Other Characteristics that may lead to bias:

- Age
- Language
- Socioeconomic
- Religion
- Weight
- National Origin
- Disability
- Political View
- Profession
- Marital Status
- Height
- Class

Skills to Defeat Implicit Bias

Recognizing Words, Actions and Situations that Signal Bias

Empathy is the first step in recognizing words, actions or situations that signal bias. Bias may appear in any communication, email, pleading, phone call or discussion. The first step is to take control of bias is recognizing it. Look for:

Review Messaging and Micro Messaging In the Courtroom

The American Bar Association has an interesting tool to explore bias and recognize how subtle messages in the judicial system may affect bias. The Achieving an Impartial Jury (AIJ)Toolbox provides an extensive discussion of bias in the judicial system.⁷⁰

One item in the Toolbox is a check list of messages displayed in the courtroom. Here, judges can examine whether their courtroom is part of the problem or solution. Judges are asked to think about whether:

- The visual images in my courtroom and courthouse are representative of the community members served by this courthouse. (For example, they are not all pictures of former judges who are mostly White.)
- Everyone in my courtroom is immediately called Mr./Ms. or another appropriate title such as Dr. if known (That is, not some by first name and others more formally).

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https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.authcheckdam.pdf

- Everyone in my courtroom is greeted politely without assumption as to his or her role or guilt or innocence. (For example, Judge Bennett reports using a strategy of shaking hands with all jurors and the defendant in his courtroom before the case).
- To avoid implicit cues regarding status, everyone in my courtroom is given similar time for responding and shown similar levels of attention.
- I and my staff have participated in training regarding implicit bias and the significance of ingroup preferences.
- I have encouraged others involved with my courtroom to participate in training regarding implicit bias and the significance of ingroup preferences as well.
- My staff has been instructed to report any bias seen (implicit or explicit), and I have in place a consistent process for this reporting to happen confidentially.
- I remind myself that I might not be as objective as I'd like or as I think I am.
- I have a system where, at key decision points, I ask myself if my opinion or decision would be different if the people participating looked different, or if they belonged to a different group.
- I have considered, and as appropriate incorporated, additional more specific checklists at key decision points.
- I have self-monitoring in place on training and checklist initiatives.

Defeating Bias With An Open Mind

The first step to defeating bias is to open your mind to the possibility that you may hold one or more implicit biases.

- Staying calm;
- Be open to change;
- Be aware. The first step in unconscious bias reduction is being aware of what it is and how it can affect others;
- Question others and yourself. To reduce the effects of implicit bias, question biases in yourself and raise awareness in others;
- Be honest with yourself. It's okay to have biases – we all do. It doesn't make you any less of a person. What's important is that you control them and actively look for ways to expand and revise your views.;⁷¹
- Listening for the purpose of understanding;
- Find a starting point where there is common ground;
- State your position calmly, based upon accurate facts and law;
- Identify the legal issue or factual issue that is the problem and restate it;
- Is the biased reaction due to a personal conflict or a conflict about the goal;
- Avoid attacking the person or their view, attack the problem;

⁷¹ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

- Take your time during decision-making processes. Making the right decision is more important than making a fast decision to save money and time, so you should avoid snap judgments or opinions. Instead, make sure you fully assess each possible option and keep an open mind.⁷²
- When working with others, think about each person as an individual. You should avoid comparing one worker to another or one candidate to another and should judge each based on their own merit instead. To prevent selective observation, look at them from all sides and justify your assessments with varied evidence.⁷³
- Include a variety of people in recruitment processes. Other people's views and input help you spot and address your own preconceptions, which in turn helps reduce recruitment bias.⁷⁴
- Change your outlook to prevent attribution bias. Everyone should aim to assess others more positively – to give credit where it's due and not magnify shortcomings.⁷⁵
- Improve everyone's awareness of equality and diversity. You can take training courses that teach people the benefits of a multicultural workplace. It helps you to recognise any biases you hold that go against building an equal, diverse team.⁷⁶

⁷² <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁷³ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁷⁴ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁷⁵ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁷⁶ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

- Write down your opinions and impressions of applicants. Doing so helps you compare and collate ideas with others in the group, as well as question your own biases and the opinions of others. This reduces conformity bias and helps you gain a well-rounded view of candidates, which in turn allows you to reach a fairer, unanimous decision.⁷⁷
- Mix up your workgroups. Create opportunities for intergroup contact. Working with individuals of different groups is one of the most tried-and-true ways of breaking down reliance on stereotypes. Explore cross-training programs (where new attorneys work in different roles for short periods).⁷⁸
- Widen the scope of your recruiting. Encouraging or requiring partners to interview a diverse bench of candidates for each open role creates another opportunity for intergroup contact.⁷⁹
- Formalize mentorship and include multiple mentors from different practice groups. Mentors naturally want their mentees to succeed, regardless of demographics. Every new associate should have two mentors from different practice areas and meet on a regular basis.⁸⁰

⁷⁷ <https://www.highspeedtraining.co.uk/hub/types-of-unconscious-bias/>

⁷⁸ <https://www.hirevue.com/blog/5-steps-to-mitigating-bias-in-the-workplace>

⁷⁹ <https://www.hirevue.com/blog/5-steps-to-mitigating-bias-in-the-workplace>

⁸⁰ <https://www.hirevue.com/blog/5-steps-to-mitigating-bias-in-the-workplace>

Tools for Conflict Resolution Without Bias

Clarifying tools

Chunking - breaking the problem into smaller parts.

Researching - more information; extent of resources: constraints. Goal-setting - what is the outcome we want?⁸¹

Generating tools

The obvious solution - to which all parties say "yes".

Brainstorming- no censoring, no justifying, no debating
Consensus - build a solution together

Lateral thinking - have we been practical, creative?⁸²

Negotiating tools

Maintain current arrangements - with trade-offs or sweeteners.
Currencies - what is it easy for me to give and valuable for you to receive? Trial and error - try one option, then another

Establishing alternatives - what will happen if we can't agree?
Consequence confrontation - what I will do if we don't agree.⁸³

⁸¹ Conflict Resolution Network, www.crnhq.org/pages.php?PID=12

⁸² Conflict Resolution Network, www.crnhq.org/pages.php?PID=12

⁸³ Conflict Resolution Network, www.crnhq.org/pages.php?PID=12

Reframing/Rewording The Issue for Conflict Identification

Generally speaking, it is easier to help reframe interest disputes than reframing value conflicts over issues such as guilt, rights, or facts. The goal of reframing is to develop a mutually acceptable definition of the problem.

Listen carefully to the parties' position statements and identify the underlying interests of those positions.⁸⁴

Explore more options for settlement by shifting from specific interests, such as a pay increase, to more general interests such as overall employment benefits.⁸⁵

Reframing Value Conflicts

Value conflicts are normally more difficult to reframe. These conflicts have a tendency to polarize the disputants. When parties possess strictly opposed value-based viewpoints there are a few techniques to reframe the issues so they will be more ripe for resolution.

The first technique is to translate values into interests. For example, if there is a dispute between people about the value of wilderness as opposed to jobs, it would be very hard to resolve which is more important. The question always develops: for whom? Wilderness will be more important for some; jobs for others. But if the particular dispute is reframed in terms of interests: some groups want a particular piece of

⁸⁴ Spangler, Brad. "Reframing." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2003 <<http://www.beyondintractability.org/essay/joint-reframing>>.

⁸⁵ Spangler, Brad. "Reframing." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2003 <<http://www.beyondintractability.org/essay/joint-reframing>>.

land preserved as wilderness, and others want jobs, there might be a way to provide jobs serving people going into or coming out of the wilderness. Or development might be allowed to take place somewhere else in exchange for a wilderness designation on the contested land. By trading off interests, not values, agreement can sometimes be reached.⁸⁶

A second strategy for dealing with value conflicts is to identify overarching, superordinate goals that all parties can accept and cooperatively work toward. In the abortion controversy in the United States, for example, the two sides are probably never going to agree about whether abortion is moral or not. But they can agree on the idea that women should be helped to avoid having unwanted babies. They can work together to try to prevent unwanted pregnancies and to provide options to abortion (such as adoption) for women who still are faced with that dilemma.⁸⁷

Reframing Through Stories

People often explain their circumstances, emotions, and ideas through the use of metaphors, analogies, proverbs and other imagery. Another approach to reframing is using new metaphors to describe the situation. Using metaphors that both parties relate to can help open up communication and increase understanding of the conflict and possibilities for resolution.⁸⁸

For example, some people who were writing essays for this system did not understand why they could not write whatever they wanted. Their metaphor for this system was an edited book, and in most edited books, the chapters are on topics of

⁸⁶ Spangler, Brad. "Reframing." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2003 <<http://www.beyondintractability.org/essay/joint-reframing>>.

⁸⁷ Id.

⁸⁸ Id.

the authors' choice (or at least they have a fair amount of leeway.) But when explained to them that another way to think of this system was as a Lego building block kit, and that they were writing a piece that would fit together with other pieces around it to form a whole, they better understood their role in the bigger project.⁸⁹

Lastly, parties must be explicit about the issues that divide them in order to successfully help reframe the problem in terms that facilitate agreement. Often there is a cycle of exchanges between the parties and the mediator. As parties become more comfortable with the conflict resolution process they become more explicit about their issues. Ultimately, the acceptance of the reframing of an issue "is a result of timing and the psychological readiness of the parties to accept the definition of the situation."⁹⁰

Changing The Paradigm By Recasting – Conflict Strategies

Civility increases with understanding and negotiation, not aggression. Negotiation should focus on:

- Focus on the problem, not the person
- Focus on needs and goals, not positions or unsupported positions
- Emphasize and acknowledge common ground
- Be creative about options and potential resolutions

⁸⁹ Spangler, Brad. "Reframing." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2003 <<http://www.beyondintractability.org/essay/joint-reframing>>.

⁹⁰ Spangler, Brad. "Reframing." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2003 <<http://www.beyondintractability.org/essay/joint-reframing>>.

- Make clear agreements and confirm them in writing
- Focus on steering the negotiation in a positive direction regardless of the actions of the other person
- Let some accusations, attacks, threats or ultimatums pass
- Always attempt to leave a path out for the other party. Make it possible for the other party to retreat without being humiliated, angered or lose face to their client or the judge. Have there been any changed circumstances that justify a change of position²⁰

Fight to the end – Win, Lose

Premise: “Damn the torpedoes, full speed ahead”⁹¹ adversarial attack. My case is strong enough to withstand any onslaught.

Strategy: The process of scorched earth will prevail in the end.

- No negotiation
- Unyielding position
- Attacking the case and the person.

Best to Use When:

- Criminal prosecution
- When you can vilify the other parties’ representative
- When you are sure that your case has no weaknesses
- When you are sure that you will never need to ask for an extension or professional courtesy

May Not be the Best to Use When:

⁹¹ David Glasgow Farragut, Battle of Mobile Bay, August 5, 1864

- You may need to request a favor from opposing counsel
- You may discover a weakness in your case

Collaborating – Win Win

Premise: The win/win approach is about changing the conflict from adversarial attack and defense, to co-operation. Teamwork and cooperation help everyone achieve their goals while also maintaining relationships.

Strategy: The process of working through differences will lead to creative solutions that will satisfy both parties' concerns.

- Underlying needs
 - Recognition of individual differences
 - Openness to adapting a position in light of shared information and attitudes
 - Attacking the problem, not the people
- Best to Use When:
- When there is a high level of trust
 - When you don't want to have full responsibility
 - When you want others to also have "ownership" of solutions
 - When the people involved are willing to change their thinking as more information is found and new options are suggested
- May Not be the Best to Use When:
- The process takes lots of time and energy

- Some may take advantage of other people's trust and openness ⁹²

Creative Response – Win, Win

Premise: Turning problems into solutions. Exploring what can be done, rather than focusing on how bad it is. It is affirming that you will choose to extract the best from the situation.

Strategy: The process of asking what are the possibilities opens the door to resolutions unseen by other attorneys.

- Exploration
- Enthusiasm
- What are the possibilities?
- Acceptance
- Inquiry
- Experiment

How else can we look at this?. Best to Use When:

- When there is a high level of trust
- When there are multiple options for what is considered a win
- When you want others to also have "ownership" of solutions
- When the people involved are willing to change their thinking when new options are suggested

May Not be the Best to Use When:

⁹² <http://home.snu.edu/~hculbert/conflict.htm>

- The process takes lots of time and energy
- There are limited options for a win, a win is money only⁹³

Accommodating – I Lose, You Win

Premise: Working toward a common purpose is more important than any of the peripheral concerns; the trauma of confronting differences may damage fragile relationships

Strategy: Appease others by reducing conflict and focusing on the relationship

Best to Use When:

- When an issue is not as important to you as it is to the other person
- When you realize you are wrong
- When you are willing to let others learn by mistake
- When you know you cannot win
- When it is not the right time and you would prefer to simply build credit for the future
- When harmony is extremely important
- When what the parties have in common is a good deal more important than their differences

May Not be the Best to Use When:

- One's own ideas don't get attention
- Credibility and influence can be lost⁹⁴

⁹³ <http://home.snu.edu/~hculbert/conflict.htm>

⁹⁴ <http://home.snu.edu/~hculbert/conflict.htm>

Competing – I Win, You Lose

Premise: Associates “winning” a conflict with competition

Strategy: When goals are extremely important, one must sometimes use power to win

Best to Use When:

- When you know you are right
- When time is short and a quick decision is needed
- When a strong personality is trying to steamroller you and you don't want to be taken advantage of
- When you need to stand up for your rights May Not be the Best to Use When:
- Can escalate conflict
- Losers may retaliate⁹⁵

Avoidance – No Winner, No Loser

Premise: This isn't the right time or place to address this issue

Strategy: Avoids conflict by withdrawing, sidestepping, or postponing

Best to Use When:

- When the conflict is small and relationships are at stake
- When you're counting to ten to cool off
- When more important issues are pressing and you feel you don't have time to deal with this particular one

⁹⁵ <http://home.snu.edu/~hculbert/conflict.htm>

- When you have no power and you see no chance of getting your concerns met
- When you are too emotionally involved and others around you can solve the conflict more successfully
- When more information is needed May Not be the Best to Use When:
- Important decisions may be made by default
- Postponing may make matters worse⁹⁶

⁹⁶ <http://home.snu.edu/~hculbert/conflict.htm>

Support And Programs To Assist Attorneys

Often an ethics issue arises and the Illinois Rules of Professional Conduct are unclear as to how to proceed. The attorney can look to the ABA Model Rules and their comments for guidance but still may be unable to find a solution. At that point the attorney may want to contact the Ethics Inquiry Program created by the ARDC. The Ethics Inquiry Program provides research assistance and guidance regarding ethics issues. They do not accept e-mails or faxes but can be reached via telephone at 312-565-2600 or 800-826-8625.⁹⁷ The Commission will not keep a record of the caller's identity or the substance of the inquiry. The attorney can even remain anonymous and is urged to present the question hypothetically. Id.

Through this program, an Ethics attorney will hear the problem and assist in identifying the relevant Rules of Professional Conduct, case law or other sources to help resolve the issue.⁹⁸ Any information received through the Program is neither legal advice nor a binding advisory opinion. Id. It is legal research assistance only and the attorney is ultimately responsible for her own final judgment. The fact that the inquiry has been made or the response from the Ethics Inquiry attorneys will not be admissible in an attorney disciplinary proceeding. Id.

“The goal of the Program is to help lawyers understand their professional obligations and assist them in resolving important issues in their practice.”⁹⁹ The ARDC attorneys and paralegals that staff the program look to existing professional responsibility law, legal precedent, bar association ethics

⁹⁷ <http://www.iardc.org/ethics.html#1>.

⁹⁸ <http://www.iardc.org/ethics.html#1>.

⁹⁹ .” <http://www.iardc.org/ethics.html#1>

opinions, law review articles and practical guidelines to help attorneys answer their ethics queries.¹⁰⁰ The Program is also available to the general public if they have concerns about their attorney's behavior.¹⁰¹ Note that utilizing this service does not satisfy any requirements to report attorney misconduct.¹⁰²

The Ethics Inquiry Program is just one of a few services offered by the ARDC to assist attorneys in discerning the Rules requirements. On the ARDC website – www.iardc.org – there is a section on rules and decisions. Attorneys can use this link to research independently or simply keep abreast of recent rulings. The ARDC website also has a Publication section which includes articles on the following topics:

- Avoiding ARDC Anxiety: A Disciplinary Primer
- Ten Ethics Questions From Young Lawyers
- Lawyer Admission and Regulation in Illinois
- Client Trust Account Handbook¹⁰³

The ARDC is not the only organization offering assistance to attorneys' in Illinois. The Illinois State Bar Association in conjunction with the Chicago Bar Association established The Lawyers' Assistance Program (LAP). This not-for-profit organization works with Illinois legal professionals dealing with addiction issues or mental illness. LAP provides educational, informational and referral, peer assistance and intervention services. Acknowledging that ten to twenty percent of attorneys and judges suffer from alcohol and drug

¹⁰⁰ ." <http://www.iardc.org/ethics.html#1>

¹⁰¹ ." <http://www.iardc.org/ethics.html#1>

¹⁰² ." <http://www.iardc.org/ethics.html#1>.

¹⁰³ See <http://www.iardc.org/pubs.html>.

dependency or mental health problems and recognizing that these problems significantly impact a professional's performance, LAP works to protect the public, improve the integrity and reputation of the legal profession and saves the lives and practices of impaired attorneys.¹⁰⁴

¹⁰⁴ www.illinoislap.org

Additional Resources

ABA Center for Professional Responsibility

www.abanet.org/cpr

Chicago Bar Association

www.chicagobar.org

Commission on Professionalism

www.2civility.org

Judicial Inquiry Board

<http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar

www.ilbaradmissions.org

Illinois Department of Financial and Professional Regulation

www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc

www.illinoislap.org



Illinois State Bar Association

www.isba.org

Illinois Supreme Court

www.state.il.us/court

Lawyers Trust Fund of Illinois

www.ltf.org

MCLE Program

www.mcleboard.org

