

Deciding Impartially

Best Practices for Arbitrators to Address Implicit Bias

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Arbitrator Ethics Code

*One should accept appointment as an arbitrator only if fully satisfied:
(1) that he or she can serve impartially [Canon I(B)]*

Implicit Bias

Unconscious favoritism toward or prejudice against people of a particular ethnicity, gender, or social group that influences one's actions or perceptions.

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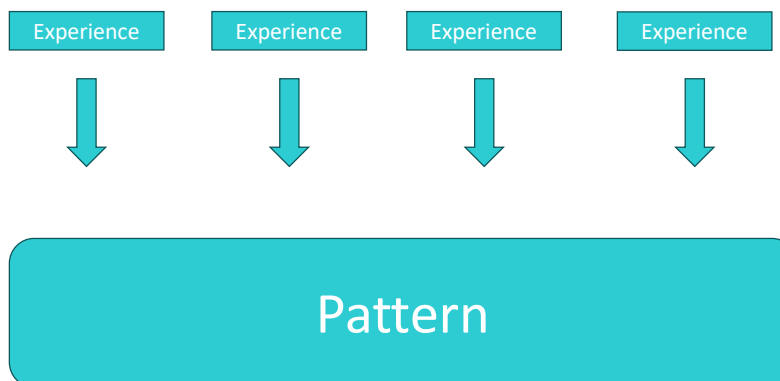
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Intuition

Uses the past to assess the present and predict the future

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Pattern

Perception

↓


Prediction

↓

Emotion

Synonyms for emotion: gut reaction, instinct, hunch, feel, sense, sixth sense, impulse, impression, inclination, knee jerk reaction.

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A Simple Example


Experiences



Pattern

Perception: A flame → Prediction: Burning hot → Emotion: Fear of harm

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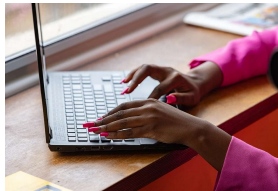
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Why Intuition Evolved

Speed: Avoid imminent threats



Efficiency: Performing routine tasks unconsciously frees the conscious mind to focus on complex problems



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Added Speed/Efficiency from Secondary Patterns

Associations between patterns

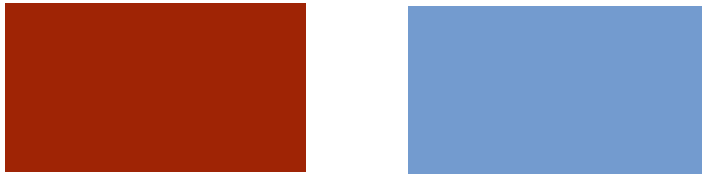


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Which color feels warmer? Cooler?



Are you consciously aware that colors have no temperature?

Does this awareness change how you feel?

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Patterns about people (“stereotypes”) result from personal experiences . . .



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... And exposure to media . .



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... including fiction

Are you consciously aware that a movie is fiction?



Does this awareness stop you from becoming emotionally engaged?



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Secondary patterns—anything which we associate with a type of person or group of persons—may trigger a stereotype. Examples include:

Accent
Laugh
Height
Clothing
Tattoos

Skin color
Jewelry
Facial features
Facial Expressions
Gender

Word usage
Weight
Mannerisms
Gait
Hair



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Why Intuition About People Can Be Biased

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We cannot possibly experience everything



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Discrimination—past and present—shapes the world we experience



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Secondhand experiences
may be designed to
engender bias . . .



Reminder:
Patterns arises solely from what we see and hear,
not from what we know or believe

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. . . to grab our attention . . .



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. . . may reflect our own biases . . .



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. . . or tastes



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People Often Are Surprising



Hedy Lamarr

Inducted into the National Inventors Hall of Fame for developing frequency hopping technology.



Brian May

An astrophysicist who has published research on asteroids.

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Review . . .

- Firsthand experience is
 - limited
 - colored by social norms and discrimination
- Secondhand experience
 - reflects personal choices, which tend to reinforce existing views
 - is colored by the desire to grab your attention
 - includes made up stories and images
- People are unpredictable

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The Good News

You can overcome unconscious bias through conscious effort.



Here's how . . .

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Notice Your Biases

Importance

You can only solve problems you are aware of



What to do

Take the Implicit Association Test

Notice your initial reactions to

- parties
- party representatives
- witnesses (fact and expert)
- allegations

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Notice What Triggers Your Reactions



Importance:

A study of judges showed no bias in sentencing when race was explicitly mentioned . . . But implicit bias crept in when race was implied (e.g., person's name or neighborhood).

Why? The judges made a conscious effort to avoid bias when they knew to be on guard, but not when cues failed to capture their attention.

What to do

Observe when subtle cues about race, ethnicity, gender, etc. elicit a reaction.

Remember the slide with the “hot” and “icy” colors

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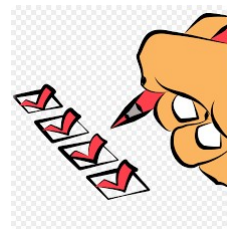
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Structure Your Decision-Making Process

Importance

These steps engage your conscious mind



What to do

- When possible, avoid rushed decisions
- Use checklists and objective criteria
- Write explanations for your decisions
- Consider the opposite

Would you react the same way if the person's race, ethnicity, gender, etc. was different?

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Take Pride is Disproving Your Intuition



Importance

Study result: 97% of judges rated themselves as better than the median judge in avoiding racial bias in decision-making.

Conclusion: “Although judges recognize that they are human and therefore imperfect, some imperfections are difficult to detect and accept.”

What to do

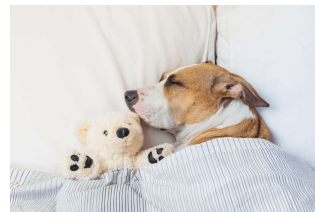
Resist the very human tendency to boost your ego by looking for evidence that you were right all along.

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Self Care



Importance

Conscious deliberation requires a lot of effort. We rely more on gut feelings when tired, distracted, or stressed.

What to do

- Take breaks
- Get plenty of rest
- Eat regular meals
- Relieve anxiety (exercise, hobbies, music, etc.)

Almost everything will work again if you unplug it for a few minutes, including you.

--Anne Lamont.

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The Impact Can Be Dramatic



Researchers at Ben Gurion University in Israel and Columbia University examined more than 1,000 decisions by eight Israeli judges who ruled on convicts' parole requests.

- At the beginning of the day's session: 65% of requests granted
- Right before their break: Almost no requests granted
- Immediately after a snack break: 65% of requests granted

Granting leniency requires more effort because you have to justify your decision

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