Bias: An Annotated Bibliography

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Bias is a subject that has received a great deal of attention from lawyers, legal scholars, and researchers in other fields in recent decades, particularly as the focus of thinking about bias has shifted toward recognition of the importance of implicit or unconscious biases. This bibliography explores some areas of the literature that may be of most interest to JAAML readers. It covers issues about bias in contexts that are obviously important for child and family law attorneys, such as bias in child and family law doctrines and in family court proceedings. It also covers some of the key literature about bias in a wide range of other areas of law. In addition to enhancing understandings and thinking about bias more generally, that literature may illuminate and spark further thinking about bias in the child and family law realm. The bibliography primarily focuses on articles published in the past five years, from 2015 to 2020, but reaches back further for some articles of particular significance or relevance.

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ABA Model Rule 8.4(g)

Bradley S. Abramson, *ABA Model Rule 8.4(g): Constitutional and Other Concerns for Matrimonial Lawyers*, 31 J. AM. ACAD. MATRIM. LAW. 283 (2019) (analyzing how the ABA’s Model Rule would apply to the professional circumstances faced by matrimonial lawyers).

Rebecca Aviel, *Rule 8.4(g) and the First Amendment: Distinguishing Between Discrimination and Free Speech*, 31 GEO. J. LEG. ETHICS 31 (2018) (suggesting that the ABA’s Model Rule should be revised to better reflect the distinction between discrimination and harassment and the expression of controversial viewpoints).


George W. Dent, Jr., *Model Rule 8.4(g): Blatantly Unconstitutional and Blatantly Political*, 32 NOTRE DAME J.L. ETHICS & PUB. POL’Y 135 (2018) (criticizing the ABA for adopting a Model Rule that poses First Amendment concerns and can be applied selectively as a partisan political weapon).

Stephen Gillers, *A Rule to Forbid Bias and Harassment in Law Practice: A Guide for State Courts Considering Model 8.4(g)*, 30 GEO. J. LEG. ETHICS 195 (2017) (identifying issues that must be addressed as states decide whether to adopt the ABA’s Model Rule).

Andrew F. Halaby & Brianna L. Long, *New Model Rule of Professional Conduct 8.4(g): Legislative History, Enforceability*
Questions, and a Call for Scholarship, 41 J. LEG. PROF. 201 (2017) (discussing key legal problems with the ABA’s Model Rule).

Ashley Hart, Note, Sexism “Related to the Practice of Law”: The ABA Model Rule 8.4(g) Controversy, 51 IND. L. REV. 525 (2018) (discussing the application of the ABA’s Model Rule to sexist conduct in the legal community).

Claudia E. Haupt, Antidiscrimination in the Legal Profession and the First Amendment: A Partial Defense of Model Rule 8.4(g), 19 U. PA. J. CONST. L. ONLINE 1 (2017) (arguing that First Amendment principles are generally compatible with having a rule prohibiting discrimination in the practice of law, but free speech principles prohibit an expansive interpretation of the Model Rule’s application to “conduct related to the practice of law”).

Wendy N. Hess, Addressing Sexual Harassment in the Legal Profession: The Opportunity to Use Model Rule 8.4(g) to Protect Women from Harassment, 96 U. DET. MERCY L. REV. 579 (2019) (discussing the benefits of adopting the ABA’s Model Rule).


Katie Marie Wroten, Note, “G” Is More Than “PC” for Georgia: Why Prospective Adoption of ABA Model Rule 8.4(g) Is a Viable Measure to Combat Discrimination and Harassment, 52 GA. L.
Cognitive Bias

Effects on Criminal Prosecutions


Sarah Anne Mourer, *Believe It or Not: Mitigating the Negative Effects Personal Belief and Bias Have on the Criminal Justice System*, 43 Hofstra L. Rev. 1087 (2015) (discussing how criminal cases can be infected with bias when a prosecutor or a defense attorney have firm pre-trial beliefs about an accused’s guilt or innocence).


Huang Shiyuan, *Cognitive Biases that Led to Wrongful Convictions: Illustrated by Twenty-Three Erroneous Chinese Cases*, 54 Cal. W. L. Rev. 103 (2017) (discussing how cognitive biases, such as tunnel vision and hindsight bias, contributed to wrongful convictions in China).

Christopher T. Stein & Michelle Drouin, *Cognitive Bias in the Courtroom: Combating the Anchoring Effect Through Tactical Debiasing*, 52 U.S.F. L. Rev. 393 (2018) (reporting results of experiment testing whether prosecutors’ sentencing requests have an anchoring effect that bias decisions about criminal sentencing and proposing strategies to counter this effect).

Molly J. Walker Wilson, *Defense Attorney Bias and the Rush to the Plea*, 65 U. Kan. L. Rev. 271 (2016) (discussing the cognitive biases that make public defenders too likely to urge clients to plead guilty, such as priming, anchoring, belief perseverance, and confirmation and over-confidence biases).
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Effects on Experts and Investigators


Jeff Kukucka & Saul M. Kassin, *Do Confessions Taint Perceptions of Handwriting Evidence? An Empirical Test of the Forensic Confirmation Bias*, 38 LAW & HUM. BEHAV. 256 (2014) (reporting results of a study finding that experts who read a case summary in which the defendant had confessed were more likely to erroneously conclude that handwriting samples from the defendant matched those from the perpetrator).

John J. Lentini, *Contextual Bias in Fire Investigations*, BRIEF, Spring 2015, at 40 (exploring how contextual bias can influence the work of fire investigators who serve simultaneously as law enforcement officers).

Erin Morris, *Cognitive Bias and the Evaluation of Forensic Evidence*, CHAMPION, May 2012, at 12 (discussing the importance of informing jurors about the risk of cognitive bias in the evaluation of forensic evidence).

John Rafael Peña Perez, Comment, *Confronting the Forensic Confirmation Bias*, 33 YALE L. & POL’Y REV. 457 (2015) (considering ways to reduce the risk that forensic analysts are biased toward aligning their interpretations of evidence with the preexisting theories of prosecutors and law enforcement officials).


Effects on Judges

Matthew I. Fraidlin, *Decision-Making in Dependency Court: Heuristics, Cognitive Biases, and Accountability*, 60 CLEV. ST. L.
REV. 913 (2013) (arguing that dependency court decisions about placing children in foster care are biased by the lack of pre-decisional accountability and the abundance of post-decisional opportunities to self-defensively bolster the decisions previously made).


Aileen Oeberst, *When Being Wise After the Event Results in Injustice: Evidence for Hindsight Bias in Judges’ Negligence Assessments*, 22 PSYCHOL. PUB. POL’Y & L. 271 (2016) (reporting results of an experiment finding that judges’ decisions about whether someone acted negligently were biased by hindsight, because someone looking back at an event that already occurred is more likely to deem it was foreseeable than if the person had considered the possibility of the event before it occurred).

Arin N. Reeves, *The Ineffectiveness of Efficiency*, JUDGES’ J., Fall 2015, at 34 (explaining how cognitive shortcuts are efficient but introduce biases into judges’ thinking).

David C. Sarnacki, *Winning Divorce Trials*, MICH. B.J., June 2002, at 22 (advising lawyers on how to overcome cognitive biases of judges in divorce cases, including confirmation bias, availability bias, and belief perseverance bias).

Christine M. Venter, *The Case Against Oral Argument*, 14 LEG. COMM. & RHETORIC: JALWD 45 (2017) (reporting results of a study on oral arguments at the U.S. Court of Appeals for the Seventh Circuit, which suggest that having oral arguments may not be an effective use of judicial resources because judges are subject to confirmation biases that prevent them from shifting away from their initial views about cases).

Andrew Wistrich et al., *Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding*, 153 U. PA. L. REV. 1251 (2005) (discussing results of an experiment that found judges’ awards of damages in hypothetical torts case were affected by knowing the figures the parties had discussed in settle-
ment talks, even though that information was inadmissible and should not have been considered by the judges).

Effects on Juries

Jonathan M. Golding & Jerry Hauselt, *When Instructions to Forget Become Instructions to Remember*, 20 PERSONALITY & SOC. PSYCHOL. BULL. 178 (1994) (explaining the irrational tendency to adhere to information, even if told to forget it and even if contradictory information is provided).


Kristyn A. Jones et al., *Objectivity Is a Myth for You but Not for Me or Police: A Bias Blind Spot for Viewing and Remembering Criminal Events*, 24 PSYCHOL. PUB. POL’Y & L. 259 (2018) (reporting results of a study finding that while people generally recognize that biases may influence an average person’s assessment of a criminal event based on police body camera or surveillance footage, they tend to believe that biases will not affect their own assessments or those of police officers).

Nick D. Lange et al., *Contextual Biases in the Interpretation of Auditory Evidence*, 35 LAW. & HUM. BEHAV. 178 (2011) (reporting results of experiments showing how interpretations of audio recordings can be biased by the availability of transcripts and other contextual information).

Eyal Zamir et al., *Seeing Is Believing: The Anti-Inference Bias*, 89 IND. L.J. 195 (2014) (examining the reluctance to impose liability based on circumstantial evidence alone, even when the circumstantial evidence is more reliable than direct evidence).

Effects on Lawyers and Clients

ing how lawyers fail to realize there are multiple ways that ambiguous statutory language could be read).

Cory S. Clements, Comment, *Perception and Persuasion in Legal Argumentation: Using Informal Fallacies and Cognitive Biases to Win the War of Words*, 2013 BYU L. REV. 319 (discussing the insights about legal argumentation that lawyers can draw from psychologists’ research on cognitive biases and philosophers’ understandings of logical fallacies).


Brian P. Kane, *Are Cognitive Biases Impeding Your Legal Advice Under Rule 2.1?*, ADVOC. (Idaho), Oct. 2015, at 23 (encouraging lawyers to recognize the biases that affect their evaluation of legal issues, as well as the biases that affect their clients’ evaluations of legal positions and options).


Pamela Keller, *Accounting for Cognitive Bias in Legal Reasoning and Writing*, J. KAN. B. ASS’N, Sept. 2019, at 26 (providing advice on how to adjust the style and content of legal writing and advocacy to account for cognitive biases).

comes and assess the fair settlement value of personal injury claims).


Graham Ward, *Conflict Management by Managing Cognitive Biases*, MICH. B.J., Feb. 2019, at 32 (explaining how lawyers who understand cognitive biases can improve their ability to give advice about the generation of conflicts and how to resolve them).

Melanie D. Wilson, *Quieting Cognitive Bias with Standards for Witness Communications*, 62 HASTINGS L.J. 1227 (2011) (discussing how proposed standards on lawyer-witness communications could reduce the impact of unwanted cognitive biases).

*Effects on Witnesses*

Florina Altshiler, *Memory, Perception, and Confirmation Bias*, IN-HOUSE DEFENSE Q., Summer 2017, at 23 (discussing the psychology of flawed eyewitness testimony).

Amy V. Hall, *Which Self Should the Law Target? An Analysis of Behavioral Biases in Criminal-Punishment Regimes*, 98 TEX. L. REV. 163 (2019) (examining biases that affect decision making, particularly biases that affect the way people expect to experience an event, actually experience the event while it is happening, and remember experiencing the event afterward, and discussing the implications of these biases for the criminal justice system).

Bryan Scott Ryan, *Alleviating Own-Race Bias in Cross-Racial Identifications*, 8 WASH U. JURIS. REV. 115 (2015) (arguing that debiasing jury instructions should be given in cases involving cross-racial identifications because witnesses are worse at correctly identifying people of other races).

*Foresight Bias*

sight bias in patent law, which occurs when a decision maker lets over-pessimism and an oversimplified view of the future influence the patentability determination).

**Negativity Bias**


**Optimism, Confirmation, and Causal Bias**


**Educational Background Bias**


**Emotional Bias**

tific insights to explain how bias, emotion, and empathy influence judicial decisions).

Charles Elliott, *Juries, Sex, and Emotional Affect*, 35 Law & Psychol. Rev. 37 (2011) (assessing whether criminal trial outcomes are affected by the gender of prosecuting attorneys delivering arguments with or without emotional content).


Shai Danziger et al., *Extraneous Factors in Judicial Decisions*, 108 Proc. Nat’l Acad. Sci. 6889 (2011) (reporting results of study which found a connection between judges’ parole decisions and the timing of judges’ food breaks, suggesting that hungry judges may be less inclined to rule in favor of prisoners seeking parole).

Andreas Glöckner, *The Irrational Hungry Judge Effect Revisited: Simulations Reveal that the Magnitude of the Effect Is Overstated*, 11 Judgment & Decision Making 601 (2016) (suggesting that the supposed “irrational hungry judge effect” may actually be the result of other factors, such as a tendency for judges to handle easy matters first and then take up the most difficult and time consuming cases before a lunch or other break).

**Explicit Bias**

Jessica A. Clarke, *Explicit Bias*, 113 Nw. U. L. Rev. 505 (2018) (arguing that courts in many discrimination cases have been surprisingly willing to ignore clear, explicit manifestations of bias).

**Gender Bias**

*In Family Law Proceedings*

Jed H. Abraham, *Why Men Fight for Their Kids: How Bias in the System Puts Dads at a Disadvantage*, Fam. Advoc., Summer 1994, at 48 (discussing how American courts in child custody cases once had a patriarchal approach, then shifted to a prefer-
ence for maternal custody, and then moved to a joint custody model, and considering how attitudes of judges, attorneys, and parents evolved over time).


Erin N. Birt & Elizabeth J. Chacko, *The Changing Role of the Tender Years Doctrine: Gender Bias, Parenthood, and Illinois Law*, DCBA BRIEF, Nov. 2013, at 26 (describing how changing attitudes toward gender and nontraditional families led to the rejection of the tender years doctrine favoring mothers over fathers as the preferred caretakers for young children).


Lynn M. Curtis, *Sexism and Bias in the Name of Tradition: Missouri’s Standard of Inequality Regarding Children’s Surnames*, 66 UMKC L. REV. 169 (1997) (discussing Missouri decisions about changing a minor’s surname and how the practice of naming reflects gender traditions that subjugate women).
Douglas Dotterweich & Michael McKinney, National Attitudes Regarding Gender Bias in Child Custody Cases, 38 FAM. & CONCILIATIONCTS. REV. 208 (2000) (reporting results of survey of four thousand attorneys and judges, finding that most attorneys, especially male attorneys, believe that mothers continue to be favored over fathers in child custody cases, but judges generally do not feel that gender of the parent is a significant factor in making custody awards).


Lorena Espino-Piepp, Note, The Violence Against Women Act, Implicit Bias, and Judicial Training, 24 CARDOZO J. EQUAL RTS. & SOC. JUST. 347 (2018) (arguing that family court judges and staff should be required to have training about implicit bias based on racial stereotyping of domestic violence survivors).

Kathy T. Graham, How the ALI Child Custody Principles Help Eliminate Gender and Sexual Orientation Bias from Child Custody Determinations, 8 DUKE J. GENDER L. & POL’Y 323 (2001) (considering the changes proposed in the American Law Institute’s Principles of the Law of Family Dissolution and the effects they will have on child custody law).

Jennifer J. Harman et al., Parents Behaving Badly: Gender Biases in the Perception of Parental Alienating Behaviors, 30 J. FAM. PSYCHOL. 866 (2016) (reporting the results of a survey on how people perceive mothers’ and fathers’ behaviors that support or discourage a positive relationship with the other parent, which found that parental alienating behaviors are considered more acceptable for mothers than for fathers).

Robert W. Hinds & E. Ruth Bradshaw, Gender Bias in Lawyers’ Affidavits to the Family Court of Australia, 43 FAM. CT. REV. 445 (2005) (reporting the results of a study of contents of lawyers’ affidavit material presented to an Australian family court in custody and visitation cases, which found that the lawyer’s gender affected the nature, length, and emotional content of arguments to the court, especially in cases involving domestic violence).

Lawrence W. Kaplan, *When the Court Compounds the Problem: How to Cope with Bias from the Bench*, Fam. Advoc., Summer 1994, at 61 (discussing how to handle gender bias in family court cases, including situations where attorneys attempt to exploit attitudes toward gender and situations where judges exhibit gender bias).


Andrea L. Miller, *Expertise Fails to Attenuate Gendered Biases in Judicial Decision-Making*, 10 Soc. Psychol. & Personality Sci. 227 (2019) (reporting the results of a study of trial court judges in cases about child custody and workplace discrimination relating to family caregiving duties, which found that judges are just as likely as laypeople to discriminate on the basis of personal ideas about gender roles).

Carolyn F. Moore, *Gender Bias in Protective Orders Nipped in the Bud*, 65 Tex. B.J. 454 (2002) (explaining how a proposed change to Texas rules on unauthorized practice of law, allowing nonlawyers and certain nonprofit organizations to provide legal
advice or representation to protective order applicants, would have a disproportionate adverse impact on women because most applicants for such orders are women).


Lynn Hecht Schafran, Gender Bias in Family Courts: Why Prejudice Permeates the Process, FAM. ADVOC., Summer 1994, at 22 (discussing how family law is a particularly serious problem in family law cases because all participants bring to the process their own family experiences and because many judges dislike the field of family law and are burned out by its emotionally draining nature).


Sheila Prell Sonenshine, Addressing Bias at the Appellate Level, FAM. ADVOC., Summer 1994, at 66 (considering how gender stereotypes affect the family law appellate process).


In Other Areas of Law


Melinda Cleary, Comment, *Mothering Under the Microscope: Gender Bias in Law and Medicine and the Problem of Munchausen Syndrome by Proxy*, 7 T.M. COOLEY J. PRAC. & CLINICAL L. 183 (2005) (arguing that legal consideration of Munchausen Syndrome by Proxy disorder has been tainted by cultural, legal, and medical stereotypes about women and motherhood).


Michael P. Fix & Gbemende E. Johnson, Public Perceptions of Gender Bias in the Decisions of Female State Court Judges, 70 VAND. L. REV. 1845 (2017) (reporting the results of a survey experiment on whether the gender of a judge influences how likely people are to support a judge’s decision in a child custody case).

Christy Krawietz, Note, An Overture to Equality: Preventing Subconscious Sex and Gender Biases from Influencing Hiring Decisions, 39 SEATTLE U. L. REV. 1051 (2016) (proposing that federal law should require employers to remove all sex and gender markers from job application materials in the preinterview stage of hiring).

Connie Lee, Gender Bias in the Courtroom: Combating Implicit Bias Against Women Trial Attorneys and Litigators, 22 CARDOZO J.L. & GENDER 229 (2016) (recommending strategies to counter gender biases that work against women attorneys inside and outside the courtroom).

Katherine E. Leung, Note, Microaggressions and Sexual Harassment: How the Severe or Pervasive Standard Fails Women of Color, 23 TEX. J. C.L. & C.R. 79 (2017) (arguing that the widespread and significant impact of microaggressions makes it essential to rethink anti-discrimination law and stop treating race discrimination and sex discrimination as separate problems).

Justin D. Levinson & Danielle Young, Implicit Gender Bias in the Legal Profession: An Empirical Study, 18 DUKE J. GENDER L. & POL’Y 18 (2010) (reporting the results of a study finding that law students hold implicit gender biases about women in the legal profession but that many are able to resist their implicit biases and make decisions in gender neutral ways).

Vicki Lawrence MacDougall, Medical Gender Bias and Managed Care, 27 OKLA. CITY L. REV. 781 (2002) (asserting that gender bias permeates every aspect of the practice of medicine, including managed care, and this has detrimental effects on the health of women and men).

secondary earners in order to reduce tax law’s biased effects on working women).

Joan C. Williams, *Double Jeopardy? An Empirical Study with Implications for the Debates over Implicit Bias and Intersectionality*, 37 Harv. J. L. & Gender 185 (2014) (reporting the results of an empirical study involving interviews of sixty women of color in science, technology, math, and engineering, producing results with implications for the debate over the use of implicit bias evidence in court cases and the debate over intersectionality and how the experiences of women of color differ from those of white women).


Linda G. Mills, *A Calculus for Bias: How Malingering Females and Dependent Housewives Fare in the Social Security Disability System*, 16 Harv. Women’s L.J. 211 (describing how gender bias operates within the decision making process for Social Security disability cases, and proposing a plan for addressing and remedying the problem).

Wendy Murphy, *Gender Bias in the Criminal Justice System*, 20 Harv. Women’s L.J. 14 (1997) (describing the author’s experiences, as former prosecutor and as an attorney in private practice who advocates for women victims of violence, with terrible indignities resulting from gender bias in the criminal justice system).


Catherine Ross Dunham, *Third Generation Discrimination: The Ripple Effects of Gender Bias in the Workplace*, 51 Akron L. Rev. 55 (2017) (arguing that implicit gender bias against female litigants in employment discrimination cases adds an additional
layer of discrimination on top of the underlying events that gave rise to the litigants’ claims).


Jennifer Thibodeau, Note, Sugar and Spice and Everything Nice: Female Juvenile Delinquency and Gender Bias in Punishment and Behavior in Juvenile Courts, 8 Wm. & Mary J. Women & L. 489 (2002) (examining the disparate treatment of male and female juvenile delinquents in juvenile courts).

Debbie Thomas, Bias in the Boardroom: Implicit Bias in the Selection and Treatment of Women Directors, 102 Marq. L. Rev. 539 (2018) (proposing reforms to address implicit gender bias facing women directors on corporate boards).

Kyle C. Velte, So You Want to Have a Second Child? Second Child Bias and the Justification-Suppression Model of Prejudice in Family Responsibilities Discrimination, 61 Buff. L. Rev. 909 (2013) (exploring the prevalence and causes of bias against employees, primarily mothers, who have a second child).


Immigration Status Bias


Nicole Davis et al., A Question of Excluding Immigration Status in Civil Court: Why Torres Got It Right, 45 N.M. L. Rev. 711 (2015) (reviewing a New Mexico court’s ruling that immigration status is irrelevant to the calculation of damages for wrongful death, and arguing that evidence of immigration status generally should be excluded in civil litigation).

David Holland & Gil Lenz, Exposing Immigration Bias During Voir Dire, Ill. B.J., Feb. 2011, at 82 (arguing that courts should allow prospective jurors to be questioned about anti-immigrant bias).


Implicit Bias

Basic Overviews


Bernice B. Donald & Sarah Redfield, Arcing Toward Justice: Can Understanding Implicit Bias Help Change the Path of Criminal Justice?, Crim. Just., Summer 2019, at 18 (providing an overview of implicit bias issues in the legal field).


*Constitutional Doctrine*


Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stan. L. Rev. 317 (1987) (introducing the idea that anti-discrimination law should take into account unconscious bias as well as intentional, conscious forms of discrimination).


*Critiques of the Focus on Implicit Bias*

Samuel R. Bagenstos, *Implicit Bias’s Failure*, 39 Berkeley J. Emp. & Lab. L. 37 (2018) (arguing that implicit bias research has not achieved its goals of depoliticizing and depersonalizing racial issues and may have undermined efforts to address racial inequality).

Ralph Banks et al., *(How) Does Unconscious Bias Matter? Law, Politics, and Racial Inequality*, 58 Emory L.J. 1053 (2009) (warn-
ing that concerns about implicit bias may draw attention away from more productive types of anti-discrimination reform).


Jonathan Kahn, *Pills for Prejudice: Implicit Bias and Technical Fix for Racism*, 43 Am. J. L. & Med. 263 (2017) (questioning the trend toward the idea of physically locating manifestations of racism in the brain, which can reduce racism to a decontextualized physiological condition that obscures understandings of its social and historical nature).

Jerry Kang, *Implicit Bias and the Pushback from the Left*, 54 St. Louis U. L.J. 1139 (2010) (observing that the political Left, as well as the Right, has deep concerns about relying on understandings of human decision making and behavior informed by new findings in the mind sciences).


Keith Payne et al., *How to Think About “Implicit Bias,”* Sci. Am., Mar. 27, 2018 (discussing why some people on the political left and right are critical of implicit bias studies).

Michael Selmi, *The Paradox of Implicit Bias and a Plea for a New Narrative*, 50 Ariz. St. L.J. 193 (2018) (arguing that too much emphasis has been put on implicit bias, because characterizing discrimination as implicit and unconscious puts it beyond legal reach, and most of what is treated as implicit bias could just as easily be defined as explicit or conscious bias).

Philip E. Tetlock et al., *Detecting and Punishing Unconscious Bias*, 42 J. Legal. Stud. 83 (2013) (presenting experimental re-
results about how liberals and conservatives disagree about the value of technology used to detect implicit biases).


*Effect on Alternative Dispute Resolution Processes*

Lisa Blomgren Amsler, *Dispute System Design and Bias in Dispute Resolution*, 70 *SMU L. Rev.* 913 (2017) (examining the effect of mediator race and gender on perceptions of procedural justice in the handling of employment discrimination complaints at the United States Postal Service).

Gilat J. Bachar & Deborah R. Hensler, *Does Alternative Dispute Resolution Facilitate Prejudice and Bias? We Still Don’t Know*, 70 *SMU L. Rev.* 817 (2017) (explaining how studies have produced contrary and inconclusive results about whether mediation and arbitration facilitate prejudices).


Leigh Goodmark, *Alternative Dispute Resolution and the Potential for Gender Bias*, *Judges’ J.*, Spring 2000, at 21 (looking at the potential for gender bias in alternative dispute resolution, focusing on mediation of child support and custody cases).

Elayne E. Greenberg, *Fitting the Forum to the Pernicious Fuss: A Dispute System Design to Address Implicit Bias and ’isms in the Workplace*, 17 *Cardozo J. Conflict Resol.* 75 2015) (proposing a reconciliation-focused system for handling employee claims about workplace discrimination caused by implicit biases).

Carol Izumi, *Implicit Bias and Prejudice in Mediation*, 70 *SMU L. Rev.* 681 (2017) (discussing how implicit bias can undermine
mediators’ best efforts to achieve neutrality and suggesting bias reduction strategies to mitigate prejudice in mediation).


Sergio Puig & Anton Strezhnev, *Affiliation Bias in Arbitration: An Experimental Approach*, 46 J. LEGAL. STUD. 371 (2017) (reporting the results of an experimental survey about how professional arbitrators have a cognitive predisposition to favor the party that appointed them).

**Effects on Employment**


Daniel Masakayan, Comment, *The Unconscious Discrimination Paradox: How Expanding Title VII to Incorporate Implicit Bias Cannot Solve the Issues Posed by Unconscious Discrimination*, 25 GEO. MASON L. REV. 246 (2017) (arguing that courts should not attempt to incorporate implicit bias into the legal framework of Title VII because it will hurt victims of unconscious discrimination by creating evidentiary burdens that will limit and deter litigation).
Camille A. Olson et al., *Implicit Bias Theory in Employment Litigation*, Practical Law, Oct. 2017, at 37 (discussing the extent to which courts have embraced or rejected implicit bias theory in employment cases).

Crystal Powell, Comment, *Bias, Employment Discrimination, and Black Women’s Hair: Another Way Forward*, 2018 BYU L. Rev. 933 (exploring the history of bias and stereotyping surrounding Black women’s hair and analyzing court decisions about employment discrimination claims).

Victor D. Quintanilla & Cheryl R. Kaiser, *The Same-Actor Inference of Nondiscrimination: Moral Credentialing and the Psychological and Legal Licensing of Bias*, 104 Cal. L. Rev. 1 (2016) (arguing that evidence from psychological science show it is unreliable to presume there is no discrimination when the same person hires an employee and then fires that employee within a relatively short time span).


**Effects on Experts**

L.C. Alewijnse et al., *Minimizing Bias in Forensic Handwriting Examinations*, 25 J. Forensic Document Examination 17 (2015) (suggesting ways to minimize the risk of biases in forensic handwriting examination, such as confirmation bias, selection bias, and contextual bias).

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Itiel E. Dror et al., Cognitive Bias and Its Impact on Expert Witnesses and the Court, Judges’ J., Fall 2015, at 8 (reviewing scientific findings about how expert witnesses are inevitably influenced by factors unrelated to the data relevant to the formation of their expert conclusions).

Itiel E. Dror et al., The Emergence of Cognitive Bias in Forensic Science and Criminal Investigations, 4 Brit. J. Am. Legal Stud. 527 (2015) (discussing how forensic science is vulnerable to cognitive bias problems and the importance of recognizing biases that may affect analysis).


Kevin W. Eva, Putting Bias into Context: The Role of Familiarity in Identification, 40 Law. & Hum. Behav. 50 (2016) (reporting results of an experiment looking at how the case information available to a forensic expert influences forensic fingerprint comparison accuracy and biases the likelihood of an expert finding a match).

Chulyoung Kim, Adversarial Bias, Litigation, and the Daubert Test: An Economic Approach, 47 Int’l Rev. L. & Econ. 67 (2016) (discussing the conditions under which expert witnesses’ analysis may not be tainted by adversarial bias, because litigants may have incentives to present truly neutral expert testimony in some litigation environments).

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Hawai‘i


Health Care


*Housing*


*Impeachment of Verdicts*


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**Traditional or Biological Family Bias**

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**Weight Bias**

