

## Mediator Bias

Mediators are required by their training and practice to be neutral (albeit with some conjecture over what the term neutral actually means). Further, the rules which govern the professional conduct of Mediators require us to provide procedural fairness for all parties in the mediation. The concept of procedural fairness takes us directly to considerations of neutrality and impartiality.

Some rules specifically mention that the Mediator should be free from bias.

But as Mediators, are we free from bias? In this analysis, I will examine the effect of bias both on the conduct of Mediation, and the practice of professional Mediators, irrespective of whether the mediation methodology being used is considered as facilitative, evaluative, or transformative.

### Introduction

Most of us would claim that we practice mediation free of bias - whether this is an attempt on our part to remain neutral, or to comply with the rules governing our professional practice.

The interesting and challenging point however is that Mediators are not automatons. We are human beings. We bring our own baggage - cultural background, political and religious beliefs, gender perspectives, thoughts, perceptions, prejudices, emotions and feelings, history and professional training and experience (as lawyers, psychologists, engineers, social workers, business people, scientists, and so on) - into the mediation room. Some of this baggage we may understand; some we may not. Some of this baggage we may be aware of; and much of we won't.

We are constantly attempting to understand the minds of parties during mediation, but do we really understand our own minds at the same time? Most Mediators would probably say that they do - but is that assertion actually true? We attempt to be logical and to follow due process; we try to be empathic and even-handed; but how much of what goes on inside our brain and mind do we really understand?

Advances in neuroscience and neurobiology challenge this assertion. We now know that our reactions and responses are driven by our relatively automatic thought processes (our biases) . some of which we are conscious of, but much of which we are unaware or unconscious of.

According to studies by John A. Bargh, Professor of Psychology at Yale University, we don't give much conscious thought to a range of decision making processes - from the day-to-day decisions about how we vote, what we buy, how we interact with service providers, and where we go on vacation, to the more complex and strategic decisions regarding life choices.<sup>1</sup> Bargh asserts that unconscious processes underlie the way we deliberate and plan our lives.<sup>2</sup>

The question for Mediators is "are we really conscious of our thought processes during mediation?+ How do we perceive parties and their counsel during the whole mediation process? Whether we practice facilitative, evaluative or transformative mediation, the challenges for the Mediator are to be constantly "present" during the mediation and to be consciously aware of our own behaviour and the effect of our own personality and mindset.

These are not inconsequential challenges, as we will discover.

Bargh challenges us to better understand "the tug that the unconscious exerts on us".<sup>3</sup> We all act as a result of our unconscious self. We make judgements of people from first impressions (often before we have actually spoken to them) based on our observations of their race, gender, age, clothes, and other features (piercings, tattoos and the like). These observations and perceptions automatically derive from our internalised stereotypes of how members of a particular group, culture or subculture are likely to behave.

We evaluate parties' interests and naturally prefer options which they develop, based on our own deeply embedded attitudes. We find ourselves sympathising with one party more strongly than the other. Recently, I debriefed a Mediator who had mediated a protracted bullying complaint by a female employee against her male manager. He found himself "believing" the complainant's story more than her

manager's story. When he became aware of this, he reflected on why this was so. Apparently for him, her allegation was so confronting, so painful, and had apparently continued for such a long time that he had thought "this could be my daughter or wife". His implicit bias had affected his thought process - even if only momentarily. He was aware that his neutrality had been unconsciously affected.

It is not uncommon for a Mediator to find themselves in a position of sympathising with one side more strongly than another. Why is this . is it because of our unconscious biases? Is it ok to be a Mediator and still have unconscious biases? Do biases affect Mediator neutrality? What can a Mediator do to make themselves aware of these unconscious biases?

### **What is Bias?**

The concept of bias is familiar to the extent that many people no longer stop to consider what it means to be biased. Bias is most commonly referred to as an assortment of stereotypical beliefs and attitudes about social groups,<sup>4</sup> which are formed through a process of evaluation of that group, either by ourselves or others.<sup>5</sup> Therefore it can be argued that a bias is a tendency to favour a particular thing, person, belief and / or an act according to that tendency, even where it may seem illogical to do so.<sup>6</sup>

Bias is a kind of internal conflict of interest.<sup>7</sup> Biases are part of the mental model of an individual. Biases and mental models are derived from many different sources throughout the life of an individual such as: familial influences and socialisation; professional training and socialisation; and organisational culture and socialisation, the environment of your professional life.<sup>8</sup> In situations of dispute and conflict, often characterised by high levels of stress and emotion, personal biases often act in such a way as to hinder a Mediator from being able to act according to the principles of neutrality. Amos Tversky and Daniel Kahneman (1999) argue that since biases have the potential to cause an individual to make illogical conclusions and decisions, these systematic errors highlight the psychological process that underlie perception and judgment,<sup>9</sup> placing biases at the forefront of an individual's decision-making process.

## **The Necessary Purpose of Bias**

From an evolutionary perspective Bias is our protection mechanism. As we encounter situations in our day-to-day life, and make decisions about what is safe or not, and what is appropriate or not, we rely on our inbuilt danger detector (a term coined by psychologist Joseph LeDoux). He has suggested that our unconscious danger detector determines whether something is safe or not to do, even before we begin any conscious decision making. The neuroscience bears this out.

We are generally convinced that our decisions are rational, but in reality most human decisions are made emotionally, and then we post rationalise the facts to justify them. From a survival point of view this is a necessary trait. Where people are concerned, these decisions are hardwired into us.

In our prehistory, determining who or what was coming up the path towards us may have been a life or death decision. If it were a hostile animal or a member of a hostile tribe, you might die. Our minds evolved to make these decisions very quickly, often before we had even thought about it.

The unconscious way we perceive people during the course of a day is a reflexive reaction. Why would it be any different in mediation for the Mediator? The challenge is to exert concentrated, wilful and conscious effort into being aware of and putting aside, the unexplained and sometimes unwarranted negative feelings that we have towards others . be they parties, Counsel, experts or support people involved in the mediation process.

So our default way of looking at and making sense of the world is driven by a hardwired pattern of making decisions about others based on what feels safe, normal, likeable, valuable and competent. Freud knew that the unconscious was far faster and more powerful than the conscious. He described consciousness as the tip of the mental iceberg.

The other purpose of bias is efficiency. In any given day we are required to process millions of pieces of information at any one time, but our brains can only functionally

deal with many fewer pieces - probably less than 50. In order to manage the plethora of data, we have developed a perceptual lens that filters out unnecessary information and lets other information in. This lens uses certain perceptions, prejudices, preferences, interpretations which we have adapted through life from all of our experiences. These biases enable our brains to be efficient - the downside of which is that our brains become lazy.

This perceptual lens enables us to see some things, and ignore others, depending upon the focus of our unconscious. It filters evidence that we collect, generally to support our already held points of view and to disapprove those points of view with which we disagree.

### **Conscious and Unconscious Bias**

An individual may or may not be aware of their biases. Therefore, the impact and effect of the individual's biases on others may be deliberate or unintentional. Essentially, as it has been noted, biases involve a process of some kind of evaluation, either made by an individual or a predecessor who has a substantial impact on their mental model. For example, an individual may be biased against a particular social group due to their own experience with that group or this bias may be learned from someone else's experience with that group. Such an evaluation or learning may lead to prejudices or judgements either for or against a particular social group.

The level of awareness an individual has of a potential bias will determine that bias as either conscious or unconscious also often referred to as implicit or explicit. Unconscious or implicit biases are those which present negative mental attitudes towards a thing, person, group or belief at an unconscious level. Conversely, a conscious or explicit bias is an attitude that an individual is aware of having.<sup>10</sup> This seems simple enough. However, research has suggested that these biases have the potential to diverge. For example, it is possible for an individual to express a neutral or positive opinion about a social group which they actually have an unconscious negative opinion about.<sup>11</sup> Unconscious biases are built into the structure of our brain's neurons and are the result of the process by which the brain traditionally

filters through information to perceive danger. Growing out of normal and adaptive features of human thinking,<sup>12</sup> unconscious biases are subtle and may result in unnoticeable behaviours such as being less empathetic towards people with whom we cannot identify directly; from another social group.<sup>13</sup>

Awareness of what biases an individual has and the strength of those feelings will help an individual to better manage those unconscious biases and be more vigilant when they are in play in the mediation process.

### **Common Personal Biases**

Personal biases, which are an assortment of stereotypical beliefs and attitudes about social groups,<sup>14</sup> have the potential to affect the actions and responses of an individual. Often, these personal biases arise out of the notion of in-group favouritism or tribal bias and are not necessarily a choice, they are part of the individual's mental model developed from a young age and shaped by many environmental and social factors. Sociologist William Sumner (1906) asserted that it is human nature to form groups or tribes to act as protective mechanisms or support.<sup>15</sup> Once such a group or tribe has been formed, it is not uncommon for an individual to favour their own group or tribe over others, whether consciously or unconsciously, and make judgements according to those biases. This process of judgement based on an individual's own standards of culture from their own tribe or group is often referred to as ethnocentrism or in-group bias.

There are now hundreds of studies which have examined such personal tendencies; to associate positive characteristics with one's own in-group more easily than out-groups as well as to associate negative characteristics more easily with out-groups than one's own in-group.<sup>16</sup> Such studies have examined both attitudes (such as automatic prejudices) and beliefs (associated with stereotypes) which an individual holds towards an out-group.<sup>17</sup> Nilanjana Dasgupta (2004) argues that these in-group biases work in such a way that an individual will tend to prefer groups with whom they can associate as confirmation of their positive self-esteem<sup>18</sup> as well as to prefer groups which are valued more highly in mainstream culture as confirmation of the socio-political order in society.<sup>19</sup> However, it would be misleading to suggest

that such biases always result in outwardly discriminatory behaviour. Indeed, such personal in-group biases fall within the established category of unconscious or implicit biases and apply to multiple areas of everyday life and interpersonal relations and, for this reason, it is important for individuals to consider how such biases may impact on these relations, including those parties, their Counsel and Mediators involved in a mediation process.

There is no such thing as an exhaustive list of personal biases. Personal preferences for taste, colour, sound, familial associations and many other environmental and social factors affect our decisions and reactions to situations without our knowledge. However, it is often possible to place personal biases into categories. One of the most subtle biases is that of confirmation bias. Confirmation bias has been defined as meaning looking for the presence of what you expect, as opposed to what you do not expect.<sup>20</sup> The argument is that, in seeking to answer a question or find a reason as to why something is the way it is, we are deliberately selective in the evidence we choose to use to support our arguments, disregarding other available information and hence creating a moral dilemma.

Other common biases include . Status-quo, Negativity, Anchoring, Projection, Observational Selection, and Bandwagon Effect.

### **Identification of Biases**

Most commonly, difficulties will arise for an individual where they are not able to identify their own biases. The very phenomenon of implicit biases applies to situations where, although an individual may consciously believe something, such as racial equality, they may also act on subconscious prejudices, such as favouring white over black or Islamic (in-group biases).

One of the most effective tools available for testing one's own unconscious bias is the Implicit Association Test (IAT) created and maintained by Project Implicit. Project Implicit is a joint research effort of Harvard University, the University of Washington and the University of Virginia which seeks to investigate thoughts and feelings that exist outside of conscious awareness or conscious control<sup>21</sup> in

examining these %implicit biases+. Implicit Association Tests (IATs) are used to measure these unconscious biases and the results demonstrate several things, including the strength of an individual's in-group biases. The findings of these tests affirm the suggestions made by Nilanjana Dasgupta: firstly, it has been shown by the IATs that people are likely to show preference to a dominant social group, e.g. young over old as well as still asserting age-old stereotypes of men being breadwinners and women being the family carers (stereotype beliefs).<sup>22</sup> And secondly, it is mostly the case that people will prefer members of a similar social group to their own, and be wary of outsiders (automatic prejudices).

### **Rules and Standards**

As a starting point, any discussion regarding Mediator bias needs to be placed into an appropriate professional practice framework. Two such frameworks are considered - Mediation Standards and Rules, and Mediator Neutrality.

We could expect that Mediation %Practice Standards and Rules+would contain elements of guidance regarding ethics (and ethical practice), as well as concepts of procedural fairness and natural justice. These areas (of ethical practice and procedural fairness) are fundamental to the philosophy of mediation and it is these areas where the impact of Mediator Bias would be most keenly observed and would arguably have the greatest impact.

Two such sources to which I will refer are the Australian National Mediator Standards (abbreviated as NMAS) and the ICC Mediation Rules. The Australian National Mediator Standards (NMAS) have been in place for Australian Accredited Mediators since 2007, while the ICC Mediation Rules came into force on 1 January 2014. These two reference points are at either end of a time continuum . NMAS being one of the earliest attempts anywhere in the world to standardise Mediator competencies and practice, and the ICC being the latest to formulate standards of Mediator practice.

## **NMAS Practice Standards**

In the NMAS Practice Standards<sup>23</sup> the word **bias** is mentioned several times. It is first mentioned in relation to **Impartial and Ethical Practice**, where the Standards say that **Impartiality** means freedom from favouritism or bias in word or action, or the omission of a word or action, that might give the appearance of such favouritism or bias.<sup>24</sup> It goes on to instruct that **a Mediator** will disclose actual and potential grounds of bias and conflicts of interest.<sup>25</sup> The Standards provide guidance to the Mediator as to whether they should continue with, or withdraw from the mediation, even with the express agreement of the parties. There is a requirement for a Mediator to **Identify and disclose any potential grounds of bias or conflicts of interest that emerge any time in the process**.

The essence of the meaning of bias in this context of the Standards is in direct reference to issue of partiality . proffering the interests of one party over those of the other party (or parties). Further, in the Standards the context of bias is extended to include both the process and the content (subject matter) of the mediation. Importantly, the onus for the identification of, communication of, and management of bias lies with the Mediator.

It is self-evident that NMAS refers to conscious bias . that bias already known to the Mediator.

## **ICC Mediation Rules**

The ICC Rules<sup>26</sup> are silent regarding the word **bias** it is not mentioned once in the published document, or the accompanying Mediation Guidance Notes<sup>27</sup>. The Rules do however refer to the concept of neutrality in defining the term **Mediator**: **The term Mediator shall be deemed to cover the neutral who conducts such settlement or procedures [mediation]**.<sup>28</sup>

Additionally, the Rules also refer to the Mediator signing a **statement of acceptance, availability, impartiality and independence**, as well as requiring the Mediator to disclose in writing to the parties any circumstances which could question the Mediator's independence, or give rise to reasonable doubts as to their impartiality.

The Rules allow parties to receive such a declaration and comment upon them. This mechanism of transparency seems key to dealing with these issues of the neutrality and impartiality of the prospective Mediator.

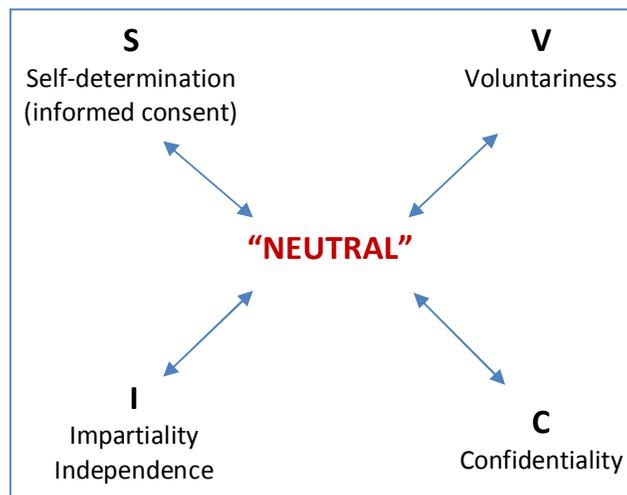
The Rules also require the Mediator to be guided by the wishes of the parties and shall treat them with fairness and impartiality.<sup>29</sup> In these ways the ICC Rules place procedural obligations on the Mediator, in such a way that procedural fairness is maintained, without at any time attempting to define it or even use this precise form of words.

Again, the assumptions made by those who have formulated the rules are that the Mediator is conscious of their potential partiality. This may be a dangerous assumption.

### **Mediator Neutrality**

Neutrality has been identified as a core concept of mediation.<sup>30</sup> As is recommended in most codes for Mediators, as an independent third party to the dispute, Mediators must aspire to remain neutral and impartial at all times.<sup>31</sup> And, whilst the importance of Mediator neutrality appears to be largely undisputed,<sup>32</sup> it is difficult to accurately define what neutrality means, how to achieve neutrality, and the potential destructive effects of bias in the mediation process.

Gibson and Handy<sup>33</sup> take a different and broader view of the links between neutrality and impartiality. In their "VISC" model, they see "neutrality" as a more fluid concept.



Gibson and Handy argue that neutrality affects a range of process and content decisions which Mediators make throughout the mediation process - irrespective of whether it is a facilitative, evaluative or transformative. They believe that bias affects both the process and content decisions, which occur through the duration of a mediation, and that the concept of neutrality is dynamic - changing as the mediation ebbs and flows. They view bias as having an effect on all four dimensions of their model. Further, they see that in directing attention to one dimension may bias direction away from other dimensions. In their view maintaining neutrality challenges the competing attention of the Mediator.

The behaviour of the parties, their counsel, appointed experts and support people affect the Mediator and therefore the process of mediation. How much of what a Mediator does is automatic and how much of it is controlled?

As such, the research suggests that there is a direct conflict between notions of neutrality and impartiality and the inevitability of unconscious and implicit biases. The question which must be considered is that if all Mediators are subject to implicit biases, is it possible for a Mediator to be neutral? It is possible to suggest that there is a significant gap between the aspiration of Mediator neutrality and scientific studies which demonstrate that all individuals are subject to unconscious and implicit biases

However, comprehension of what Mediator neutrality means and how it should look in practice is complicated by a lack of consistency in definitions,<sup>34</sup> and, as Carol Izumi (2010) argues: 'the dispute resolution lexicon is imprecise... there is no consensus within the dispute resolution community that neutrality and impartiality are terms of art or synonyms in the vernacular.'<sup>35</sup> That is to say that in some instances, neutrality will be heavily associated with, even synonymous with the concept of impartiality and being inactive in the process of conflict resolution. However, when considering these concepts in practice, Douglas Frenkel and James Stark (2008) consider *impartiality* to represent the requirement that a Mediator does not favour one party over another during a mediation and *neutrality* to be the idea that the Mediator is not concerned with the outcome of the process, that the parties find

solutions which they view as favourable and not those which the Mediator sees as preferable.<sup>36</sup>

It is important here to differentiate between the dominant forms of mediation: facilitative (including transformative) and evaluative.

Dealing first with evaluative mediation, whether or not the Mediator is providing a binding evaluation, or non-binding evaluation, biases can affect the Mediator's judgement about the determination of facts, the credibility of experts, the perceptions of the parties in dispute, the weighing of evidence, and the making of decisions themselves. The parties, and their counsel, demand and expect professional and ethical behaviour; they do not want the unintended consequences associated with the Mediator's conscious or unconscious bias.

With facilitative mediation the Mediator avoids any evaluation of the issues, and resists requests by the parties to provide opinions. Depending upon the attitude of the Mediator, the parties will be more or less encouraged to determine the solution themselves and take responsibility for their own decision-making. They may however be guided by a process determined by the Mediator, designed by and managed by them to provide procedural fairness. It is possible however that the Mediator may, in the course of the design and management of the process, be affected by their own biases.

In the purest sense, the Mediator adopts a role of facilitating a discussion between parties in conflict.<sup>37</sup> This facilitative role is reliant upon the notion of neutrality, which is seen as a fundamental element of the Mediator's role.<sup>38</sup>

Transformative mediation takes this even further to the point of facilitating a conversation between the parties which encourages them to develop a process through which they can resolve their differences. The process of this mediation is to develop and restore the connection and relationship between the parties by empowering them in the decision-making processes - both in terms of process and content. This requires Mediators to always be present, and to have high levels of self-awareness in terms of the implicit or unconscious bias.

## Dealing with Biases

Most research into the area considering the management of unconscious biases suggests that the only way to combat these biases is to become aware of them in the first place.<sup>39</sup> Awareness requires self-assessment, reflection, and mindfulness. It also requires an openness and willingness to work to adjust engrained perceptions. There is no simple solution for combating unconscious and implicit biases. It takes time, hard work, conscious and disciplined effort, and a daily routine...

Firstly, there must be an acknowledgement by Mediators themselves that their professional practice may be affected by confirmation biases and tribal biases. Secondly, Mediators must assess the impact which these biases are having on their practice irrespective of what methodology they are applying. Finally, measures must be implemented to consciously combat biases which are having a negative impact on the relationships with parties in particular as their behaviour will impact the Mediator, and the Mediator's behaviour will have an impact on the parties. It is a dynamic relationship.

Being absolutely neutral is a challenge for most Mediators. It is no easy task to combat unconscious biases and indeed such behaviours are manifested in the actions of Mediators in dealing with the parties.

The following provide some specific guidance to Mediators in managing their own biases:

**Awareness.** Primarily this involves feedback - from parties, spouses, business partners and respected professional colleagues, sporting partners and associates, siblings and adolescent and adult children. The reason for such a wide and diverse range of sources lies principally in a genuine attempt to receive accurate, insightful and helpful feedback from as many people as possible who have had the opportunity to witness your behaviour in as many and varied situations as possible.

Feedback may also include having parties and others involved in the mediation completing surveys and being involved in debriefings and discussions in relation to attempts at changing our mental models. Feedback aids an understanding and acknowledgement of unconscious biases

You don't have to be captive to your unconscious biases. That is to say it is not possible to go back in time and change the upbringing, education and employment of an individual which help to formulate established biases and mental models.

However, taking the Implicit Association Tests (IATs) would represent a practical first step in attempting to identify and increase awareness of individual unconscious biases. The range of these tests enables a variety of insights to be gathered.

**Acceptance.** Receiving feedback is a necessary step, but it is only one step - acceptance of the feedback is often a more difficult step. The feedback, if honestly given, can often be confronting and difficult to accept because it challenges who we are; it questions those beliefs and prejudices which have sustained us, and presumably made us successful through life. Often these beliefs and prejudices are deeply engrained and tightly held - after all they have aided our survival and development. Moreover we have probably associated with people who have similar views; recalling that "tribal" bias is our primary bias (and most common).

The tricky part is that we will, unfortunately, seek out and probably only hear that feedback which already confirms our belief systems; recalling that "confirmation" bias is our secondary bias (probably the second most commonly encountered). It is a confronting process to discover our unconscious or implicit biases.

**Mindfulness.** The notion of being "present" during mediation is a challenging prospect. Not because it is necessarily difficult; but because it requires exertion. The ability to concentrate not only on the words being used by parties, but also the meaning behind the words is mentally taxing - it requires concentration. This is why many "Mindful Mediators" work in short sessions - often of not more than an hour. The brain consumes oxygen and glucose - much more than we credit - in order to maintain high levels of attention and concentration. This principle applies to both the Mediator and the parties, recalling that the higher states of arousal and nervous

energy associated with conflict call for even greater access to "brain food" - oxygen and glucose.

Generally, our brains revert to our most engrained attitudes when we are under pressure or stress. Mediation, particularly that involving high emotion and deeply embedded or protracted conflict, can be extremely stressful for all involved . the parties, the Mediator, and others. The Mediator in particular can feel the pressure of both the responsibility to positively assist the parties, as well as managing the process constructively and neutrally.

It is also why the breaks, when correctly managed, give the Mediator and parties the opportunity to walk and breath - replenishing the oxygen; and why access to sweets (glucose laden) is also a good idea. All of this however just supports the brain as it is directed to focus, be alert, pay attention, remain neutral and suspend judgement. It is the suspension of judgement which can be the most taxing because the unconscious assumptions are ever present.

Increasing mindfulness involves the processes of reflection and training. Simple activities to increase the elasticity of our mental models may include keeping a diary or meditation, as well as changing established habits, like taking a different route to work in the morning. Trying new foods or wine, coupled with an understanding or study of where they came from will also help to increase mindfulness . an awareness of our surroundings and the present moment. More difficult and complex attempts to retain an elasticity of our mental models may include learning a new language or musical instrument or joining a society which challenges our traditional beliefs. Such practices will be rendered insignificant if they do not occur in tandem with the process of feedback.

## **Conclusion**

Parties expect professional and ethical behaviour from Mediators . that is what they pay for, and most Rules of professional conduct lead parties and their Counsel to believe that is what they will experience. What they don't want are the unintended consequences of Mediator bias. The responsibility for maximising the former and

eliminating the latter rests squarely with the Mediator irrespective of the mediation methodology applied. As Mediators, our professional reputations depend upon this.

## **About the Author**

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<sup>1</sup> Bargh, J., 'When Psychologists try to Understand' (2014) January, *Scientific America*, pp. 32- 37.

<sup>2</sup> Ibid, p. 33.

<sup>3</sup> Ibid.

<sup>4</sup> Carpenter, S., 'Buried prejudice' (2008) 19 *Scientific American Mind*, p.33.

<sup>5</sup> Dr Anthony Greenwald and Linda Krieger, 'Implicit Bias: Scientific foundations' (2006) 94 *California Law Review*, pp.945-967.

<sup>6</sup> Haselton, M. G., Nettle, D. & Andrews, P. W. (2005). *The evolution of cognitive bias*. In D. M. Buss (Ed.), *The Handbook of Evolutionary Psychology*: Hoboken, NJ, US: John Wiley & Sons Inc. pp. 724–746.

<sup>7</sup> Cain, D & Detsky, A., 'Everyone's a Little Biased (Even Physicians)' (2008) 229 (24) *JAMA*, pp. 2893-2895.

<sup>8</sup> Professor Mario Patera 2013, 'Mental Models', *KonfliktKultur*.

<sup>9</sup> Kahneman, D., & Tversky, A. (1996). 'On the reality of cognitive illusions', *Psychological Review*, 103, 582-591 (p. 582).

<sup>10</sup> Stanford Faculty of Medicine – Office of Faculty Development and Diversity (2014), *FAQ on Implicit Bias*, Stanford, viewed 28 June 2014 <[http://med.stanford.edu/diversity/FAQ\\_REDE.html](http://med.stanford.edu/diversity/FAQ_REDE.html)>.

<sup>11</sup> Ibid.

<sup>12</sup> Ross, H. (2010), *Fighting the Bias in Your Brain*, Linkage – Cook Ross Inc., viewed 30 June 2014 <[http://www.linkageinc.com/thinking/linkageleader/Documents/Howard\\_Ross\\_Fighting\\_the\\_Bias\\_in\\_Your\\_Brain.pdf](http://www.linkageinc.com/thinking/linkageleader/Documents/Howard_Ross_Fighting_the_Bias_in_Your_Brain.pdf)>.

<sup>13</sup> Cornish, T. & Jones, P. (2014), *Unconscious Bias Factsheet*, The University of Leicester, viewed 30 June 2014 < <http://www2.le.ac.uk/departments/physics/people/equality/Documents/ub-fact-sheet>>.

<sup>14</sup> Carpenter, above n 4.

<sup>15</sup> Marilyn Brewer, 'Ingroup Bias in the Minimal Intergroup Situation: A Cognitive-Motivational Analysis' (1979) 86(2) *Psychological Bulletin*, p.307.

<sup>16</sup> Nilanjana Dasgupta, 'Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations', (2004) 17(2) *Social Justice Research*., pp.143-169.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, p. 163.

<sup>19</sup> Ibid.

<sup>20</sup> Douglas Medin, Jerome Busemeyer and Reid Hastie, 'Decision Making from a Cognitive Perspective: Advances in Research and Theory' (1995) *The Psychology of Learning and Motivation* 32, p. 386.

<sup>21</sup> Ibid.

<sup>22</sup> Melody Finnemore, 'Prejudice May Exist Even When People Aren't Aware of Their Biases' (2010) *Oregon State Bar Bulletin*.

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<sup>23</sup> Australian National Mediator Standards, *Practice Standards – For Mediators Operating Under the National Mediator Accreditation System*, September 2007.

<sup>24</sup> *Ibid*, p. 8.

<sup>25</sup> *Ibid*.

<sup>26</sup> International Chamber of Commerce, *Arbitration Rules – Mediation Rules*, International Court of Arbitration and International Centre for ADR, Paris, 2011,2013.

<sup>27</sup> International Chamber of Commerce, *Mediation Guidance Notes*, Commission on Arbitration and ADR, Paris, 2013.

<sup>28</sup> Mediation Rules, above n.25, p. 72.

<sup>29</sup> *Ibid*, p. 76.

<sup>30</sup> Kimberlee K. Kovach, *Mediation: Principles and Practice 211* (3<sup>rd</sup> ed, 2004).

<sup>31</sup> Hung, H., 'Neutrality and impartiality in mediation' (2002) 5(3) *ADR Bulletin*, pp. 45-48 (p. 45).

<sup>32</sup> Izumi, C., 'Implicit Bias and the Illusion of Mediator Neutrality' (2010) 34(71) *Washington University Journal of Law & Policy*, pp. 71-155 (p.77).

<sup>33</sup> Gibson, P. & Handy, F., 2013, *The Trillium Group* (Unpublished).

<sup>34</sup> *Ibid*, p. 78.

<sup>35</sup> *Ibid*.

<sup>36</sup> Frenkel, D. & Stark, J. (2008), *The Practice of Mediation: A Video-Integrated Text*, 83-84.

<sup>37</sup> Jacobs, S., 'Maintaining neutrality in dispute mediation: managing disagreement while managing not to disagree' 34 (10-11) *Journal of Pragmatics*, pp. 1403-1426 (p. 1405).

<sup>38</sup> Cohen et al., 1999, 341: 347 (in Jacobs, S., 'Maintaining neutrality in dispute mediation: managing disagreement while managing not to disagree' 34 (10-11) *Journal of Pragmatics*, pp. 1403-1426 (p. 1406).

<sup>39</sup> Howard Ross, 'Proven Strategies for Addressing Unconscious Bias in the Workplace' (2008) 2(5) *CDO Insights (Diversity Best Practices)*, p. 13.