



## JULIE A. UEBLER

Julie Uebler is a litigator, mediator, and investigator of employment law-related matters in the greater Philadelphia region. She spent the first part of her legal career representing employers: first, in a large Philadelphia law firm; and then as in-house counsel for a global pharmaceutical company where she had responsibility for all corporate and U.S. employment, employee benefits, and executive compensation matters. Julie made the switch to representing individuals when she opened a solo practice in 2003, and has been focused on making a difference in the work lives of individuals ever since.

## HIGHLIGHTS

Do you have cases on your docket that you hoped to resolve last year? Julie is available as a mediator to help you settle those lingering matters. Visit [www.ueblerlaw.com/what-we-do/mediation/](http://www.ueblerlaw.com/what-we-do/mediation/) to learn more, or call us at 610-688-7900.

## INTUITION OR DISCRIMINATION? Confronting Our Unconscious Biases at Work

*By Julie A. Uebler, Esq.*

The topic of “unconscious” or “implicit” bias has received an increasing level of attention as the research on this topic has expanded. Back in 2005, Malcolm Gladwell introduced us to the importance of “rapid cognition” in [Blink](#), and wrestled with the question of whether acting on such quick thinking was good or bad. ([Gladwell.com/blink](http://Gladwell.com/blink)). In the wake of a series of police shootings of black men by white police officers, the issue of whether the snap judgments we make every day are helpful or harmful is back in the news.

Whatever name you put on them - bias, intuition, rapid cognition, or stereotypes – we know these quick decisions made without conscious thought can have either good or bad consequences – sometimes in the same encounter, as was true for me. The summer before last, I faced one of those situations as a parent when you just have to trust your intuition. My daughter had broken her arm (scooter accident in the driveway), and she had the bone set while under anesthesia. The initial follow up appointments with the orthopedic surgeon were to evaluate whether the alignment was still acceptable under the cast, or whether it needed to be adjusted so it would heal properly. The day of one of those appointments, I was so sick with a virus I could not take my daughter myself, and so she went with the sitter. I then got a call from our distraught babysitter who reported that the orthopedist was recommending my daughter go back to the hospital to have the bone reset, the next day, or she would risk a cosmetic deformity.

Even before I talked to the surgeon, I felt in my gut this was not the right treatment option. Since I was sick at the time myself, I wondered whether it was the right thing to trust my own instincts. Even so, I relied on my intuition when the doctor got on the phone, and tried

to talk me into bringing my daughter in for another procedure the next day. To my surprise (and general disgust), the surgeon then asked me if there was a “Mr.” in the family with whom he could speak about his recommendation. Apparently, the surgeon had some “intuition” of his own about the situation.

How did it turn out? After I felt up to it, I took my daughter to another surgeon for a second opinion, who felt no need to treat her injury other than to let it heal, and she healed beautifully. I trusted my intuition, and I made the right decision.

But what about the doctor’s “intuition” about me and gender? What about how our unconscious biases play out at work? More and more research studies are producing evidence that our unconscious biases are the obstacles getting in the way of our collective good intentions about diversity and equality in the workplace. In 2013, the EEOC issued a report titled the African American Workgroup Report, which was commissioned to identify the obstacles that remain in the federal workplace that hinder equal employment opportunities for African Americans. The number one obstacle identified in the report was unconscious biases and perceptions about African Americans, and the significant role

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they still play in employment decisions. ([www.eeoc.gov/federal/reports/aawg.cfm](http://www.eeoc.gov/federal/reports/aawg.cfm)).

Recently, the issue of unconscious bias has been the subject of research and analysis at Google, and the subject of a lecture on the topic by Brian Welle, Ph.D., Director of People Analytics, describing how it plays out in life and in the workplace. ([www.gv.com/lib/unconscious-bias-at-work](http://www.gv.com/lib/unconscious-bias-at-work)). As Dr. Welle encourages, if anyone thinks themselves immune to unconscious bias, it is worth taking a few of the Implicit Association Tests (IATs) available as part of Project Implicit. ([www.implicit.harvard.edu](http://www.implicit.harvard.edu)). This topic also received extensive treatment by the Society for Human Resources Management in its December 2014 Magazine. ([www.shrm.org/1214-hidden-bias](http://www.shrm.org/1214-hidden-bias)). Despite my professional immersion in issues of equity, I still scored as having a “strong association” of Male with Science and Female with Liberal Arts on the Gender-Science IAT, which has the potential to impact the assessments I make about my own competency as well as that of others.

So, if it is true that we all have these unconscious biases, the critical question is what to do about it. For some situations, shining a light on the bias may be sufficient to force corrective action. For example, back in 2007, researchers examined the calls for personal fouls made by professional basketball referees over many years, and concluded that personal fouls were more likely to be called against basketball players when games are officiated by an opposite-race refereeing crew than when officiated by an own-race refereeing crew, despite the fact that they were paid to make objective, unbiased calls. ([www.brookings.edu/research/papers/2014/02/awareness-reduces-racial-bias-wolfers](http://www.brookings.edu/research/papers/2014/02/awareness-reduces-racial-bias-wolfers)). The research study received widespread coverage in the news. Later, the researchers decided to compare the evidence of racial bias in the period just following the prior study, but before the media coverage, to the period following the publicity. Since the National Basketball Association told the researchers that it did not take any specific action to eliminate referee discrimination, never spoke to the referees about the study, nor changed referee training or incentives, they concluded that the media exposure alone was enough to bring about a change in behavior.

But, does it take more than just awareness of bias – unconscious or otherwise – to eliminate discrimination in the workplace? In a recent, jointly authored article for the New York Times, Adam

Grant, the Wharton School Professor, and Sheryl Sandberg, Chief Operating Officer of Facebook, opined that it is not enough to make people aware of stereotypes in the workplace, and such exposure can actually backfire. ([www.nytimes.com/2014/12/07/opinion/sunday/adam-grant-and-sheryl-sandberg-on-discrimination-at-work.html](http://www.nytimes.com/2014/12/07/opinion/sunday/adam-grant-and-sheryl-sandberg-on-discrimination-at-work.html)). The idea is that if we learn that everyone is engaging in discriminatory stereotyping, then we do not need to worry so much about monitoring our own behavior. We are just like all the rest – a concept I think of every time I use one of those plastic k-cups instead of a reusable one – everyone else is polluting the environment in this way, why should I be inconvenienced? To combat this, Grant and Sandberg propose we not only make people aware of discriminatory bias, but also affirmatively communicate that such bias is undesirable and unacceptable.

In the early days of diversity awareness and related training, employers made an effort to emphasize the importance of and business case for diversity. This was “easy” in the sense that the efforts were all positive actions, and no one really opposed the concept of valuing a diverse workplace. The way to get there was to follow certain practices more likely to result in diverse workforces, such as ensuring diverse candidate slates. Binders full of women, anyone?

Today, the research we have seen about unconscious bias shows us that building truly diverse and equitable workplaces is going to take a lot more hard work. Unlike the NBA referees, most of us will not face public shaming about the adverse impact of our unconscious biases. We will need to see our leaders communicate forcefully that discriminatory bias, including unconscious bias, is unacceptable in our workplaces. We will also need to identify new, creative approaches to combat the snap judgments we all make. Remember the introduction of blind auditions for candidates applying for orchestras? Requiring candidates to sit behind a screen to play for decision makers who could not see them resulted in significant increases in the number of women musicians at the country’s major orchestras. Today’s workplace diversity challenge is to invest in methods to replicate this effort, and neutralize our unconscious biases. Not “easy,” but worth it.