



MARCUS WILLIAMS TRAINING ACADEMY

Investigations Certification Program



BIASED INVESTIGATIONS

Lesson 2: Investigations Certification Program



ABOUT ME:



Marcus Williams

President/Subject Matter Expert

- MS in Criminal Justice
- 20 years investigative experience
- NCIS, Brigham Young University, Pentagon (responded to 9/11 attacks)



SIMPLE DEFINITION

Merriam Webster's Dictionary:

- Noun: an inclination of temperament or outlook
- Verb: to give a settled and often prejudiced outlook to

"bias." Merriam-Webster.com. 2020. <https://www.merriam-webster.com/dictionary/bias> (04 Feb. 2020)



DOES IT APPLY TO INVESTIGATIONS?

- Yes - but only in part

To be biased, an investigations requires action in furtherance of the prejudice



LEGAL DEFINITION

Free Dictionary Legal Dictionary:

- A predisposition or a preconceived opinion that prevents a person from impartially evaluating facts that have been presented for determination; a prejudice.

Blacks Law Dictionary:

- Inclination; bent; prepossession: a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction.

"bias." *The Free Dictionary Legal Dictionary*. 2008. <https://legal-dictionary.thefreedictionary.com/bias> (04 Feb 2020). "bias." *Black's Law Dictionary*. 2020. <https://thelawdictionary.org/bias/> (04 Feb 2020)



THE BIAS EQUATION

- A biased investigation requires more than just a prejudice or preconceived belief.
- Bias (preconceived opinion) = A
- Non-Impartial Evaluation of Fact = B
- Legal Bias = A+B
- A Biased Investigatory Finding = C



THE BIAS EQUATION

If, as you review a case, you do not have the components of $A + B = C$, then you do not have a biased investigation.

- $A \neq C$
- $B \neq C$



PREVENT

- The bias must PREVENT impartial action
- Both parts of the equation must be present to equal bias
- Cause and Effect



HOW TO BE UNBIASED

- Impossible!
- Anyone who claims to be unbiased is not being honest with you or themselves. We act in spite of our biases.
- We learn to stop our biases from preventing impartial decision making



TYPES OF BIASES

- Implicit Bias
- The Dunning-Kruger Effect
- Confirmation Bias
- Self-Serving Bias
- Hindsight Bias
- Optimism/Pessimism Bias
- The Sunk Cost Fallacy
- Negativity Bias
- Decline Bias
- The Backfire Effect
- The Fundamental Attribution Error
- The Forer Effect
- In-Group Bias

Dwyer, Christopher, Ph.D. 12 Common Biases That Affect How We Make Everyday Decisions. Psychology Today, 07 Sep 2018, 07 Sep 2018. Psychology Today <https://www.psychologytoday.com/us/blog/thoughts-thinking/201809/12-common-biases-affect-how-we-make-everyday-decisions>



EASY TO SPOT

- Using the bias formula, it is not difficult to identify a biased investigation.
- WHY? Conducting a biased investigation takes concerted effort or lack of effort.
- The investigator must be proactive in ignoring exculpatory evidence, in forcing evidence to fit a preconceived theory, or in not completing standard investigative steps.



EXAMPLES

- Purdue vs John Doe
- Title IX investigation into sexual assault
- "Doe appeared before the three-person panel, but the female student did not, according to court filings. Two members of the group allegedly stated they had **not read** the report, and the third apparently asked questions of Doe that already **presumed** his guilt. Doe said he could not speak to any of the evidence against him in the report because he had not seen a full version."

Emphasis added

- Bauer-Wolf, Jeremy. Inside Higher-Education. Another Win for An Accused Student. 01 Jul 2019. <https://www.insidehighered.com/news/2019/07/01/appeals-court-finds-purdue-may-have-been-biased-against-man-accused-sexual-assault>



EXAMPLES

- Claim of bias in the courts citing behavior that prevented an impartial decision
- John Doe vs Columbia University
- "John Doe said the investigator **refused to interview witnesses** who could have verified his interpretation of the encounter, **ignored exculpatory evidence**, willingly misconstrued his statements and routinely failed to inform him of his rights throughout the review process."

Emphasis added

- Richardson, Bradford. The Washington Times. *Ruling Takes on 'Anti-Male' Bias in Title IX Cases*, 08 Aug 2016. <https://www.washingtontimes.com/news/2016/aug/8/title-ix-cases-show-gender-bias-court-rules/>



BIAS IS NOT

- Disagreement with the outcome
- A conclusion backed by evidence, training, and experience
- A different reasonable interpretation of the evidence.



AVOIDING A BIASED INVESTIGATION

- Create a sound, legally defensible policy
 - FOLLOW IT
- Create a consistent process
 - FOLLOW IT
- Train your investigators
 - Best practices
 - Thorough investigative reports
 - Standard of evidence
- Consistent Decisions
 - No special treatment based on position



INVESTIGATORS

- Identify and acknowledge your personal biases
- Consciously question your decisions
- If you are unsure, vocalize your reasoning to a coworker
- Back up your decisions in writing using evidence
- Address potential exculpatory evidence in your report to show you considered everything
- Be consistent



POLICY

- Identify and define bias in your policy.
- Appeals allowed? Whose burden is it to show bias?
- Investigator: Interpret and follow your policy literally, don't assume motivation or "what it really means"
- Leadership: Carefully write your policy and definitions so that investigator may apply them literally.



PROTECTION

- Never use an investigation to pursue or push an idea, agenda, platform, or belief
- Never take a case personally.
- Never base your decision on a gut feeling or personal belief; rely wholly on the evidence.



CONCLUSION

- Bias is an easy accusation to make, but more difficult to prove.
- A biased investigation requires the completed formula:
 - $A + B = C$
- Trust your policy and process.
- Invest in training.



WHAT'S NEXT?



Marcus Williams Training Academy

- EBook– "Bias in Investigations"
- I will send you a link and password to access the video, your certificate, and the training materials.
- Next week – Investigative Interviewing

<https://www.williamsconsultgroup.com/upcoming-conferences>

WILLIAMS
CONSULTING
GROUP



We help protect what is valuable to you.

WILLIAMS CONSULTING GROUP



File License:

Purchasing entitles the buyer to one license for the downloadable content. License is non-transferable to other users. All rights reserved. No portion of this lesson may be reproduced, presented, or shared in any form without permission from the publisher, except as permitted by U.S. copyright law. For permissions contact info@williamsconsultgroup.com

Not for Training Purposes
Provided for Title IX Compliance