



**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-Ed. 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>

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