

HENRICO BAR ASSOCIATION
April 20, 2021 (5:00-6:00 p.m.)
Diversity and Inclusion CLE

AGENDA

- I.** Introductions (3 minutes)

- II.** Court Room Diversity (5 – 10 minutes)
 - a. Demographics of Lawyers in Virginia
 - b. Demographics of Litigants
 - c. Implicit Bias

- III.** Discuss Examples of Implicit Bias (15 minutes)
 - a. Examples in the Courtroom (between other lawyers and with judges)
 - b. Examples of other litigants (defendants, litigants)
 - c. Panel Members: Judge Johnson, Samei Murphy, Breanna West,
Christopher Anderson

- IV.** Discuss Challenges Facing Minorities (10-15 minutes)
 - a. For attorneys
 - b. For litigants
 - c. Panel Members: Judge Johnson, Samei Murphy, Breanna West,
Christopher Anderson

- V.** Fighting Implicit Bias and Challenges Facing Minorities (10 - 15 minutes)

- a. Discuss current practices that law firms/courts are utilizing to address internal bias.
- b. Strategies that individuals affected by bias can use to counter those biases.
- c. Panel Members: Judge Johnson, Samei Murphy, Breanna West,
Christopher Anderson

VI. Questions for the Panel (20 Minutes)

Written Outline

A. Explore the history of diversity in the legal profession/Court room

- a. Demographics of Attorneys :
 - i. 85% of lawyers are white, compared to 77% of the U.S. population.
 - ii. Only 5% of lawyers are African American,
 - iii. 5% are Hispanic, and 3% are Asian.
 - iv. None of these statistics have changed over the past decade, even though the overall populations in the U.S. have increased over that same timeframe.

Source: [American Bar Association](#) demographics-earnings-tech-choices-and-more

B. Define Implicit Bias

- a. Implicit biases are unconscious attitudes and stereotypes that can manifest in the criminal justice system, workplace, school setting, and in the healthcare system.
- b. Categories: race, gender, ethnicity, sexuality, age....
- c. Due to implicit biases, people may often attribute certain qualities or characteristics to all members of a particular group, a phenomenon known as stereotyping.

C. Examples of Implicit Bias

- a. Women mandate that they be modest, self-effacing, nice, and team players. While men mandate that they be direct, assertive, competitive, and leaders.
- b. Men as leaders, women as supporters.
- c. Being more receptive to familiar sounding names.
- d. Recent Georgetown Law Professor: Black Students tend to perform lower than other races.
- e. Believing certain races commit certain crimes.
- f. Believing that a certain juror will be more likely to find a criminal defendant guilty/not guilty.

D. Strategies to Reduce and Combat Implicit Bias

- a. Increase contact with people who are different from you.
- b. Before interacting with people from certain groups, pause and reflect to reduce reflexive reaction.
- c. Focus on seeing people as individuals.
- d. Evaluate people based on their personal characteristics rather than those affiliated with their group.
- e. Consider experiences from the point of view of the person being stereotyped.

f. Stay Accountable.

E. Strategies the Bars/Courts Can Take to Reduce Implicit bias

a. Provide routine diversity training that emphasizes multiculturalism and encourages court leaders to promote egalitarian behavior as part of a court's culture.

b. Encourage attorneys to learn about the elimination of bias through mandatory and/or optional CLEs. *See* Virginia's proposed rule:

i. (1) All active members of the Virginia State Bar shall annually complete and certify attendance at a minimum of twelve (12) credit hours of approved Continuing Legal Education courses of which at least two (2) hours shall be in the area of legal ethics, or professionalism *or elimination of bias*,...

ii. In order to provide flexibility in fulfilling the annual requirement, a one year carryover of credit hours is permitted, so that accrued credit hours in excess of one year's requirement may be carried forward from one year to meet the requirement for the next year. A member may carry forward a maximum of twelve (12) credit hours, two (2) of which, if earned in legal ethics, or professionalism *or elimination of bias*, may be

counted toward the two (2) hours required in legal ethics, or professionalism or elimination of bias.

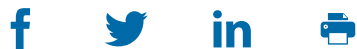
- iii. (x) “Elimination of Bias” training shall mean a training that relates to bias (race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation) in the legal profession. To be eligible for elimination of bias CLE credit, a program must address diversity or bias issues in the legal profession (e.g., among lawyers, in a law firm, or in the courtroom).**

c. Steps other bar associates have taken:

- i. Pennsylvania Supreme Court: adopted a new disciplinary rule saying attorneys can face discipline if, during the practice of law, they “knowingly manifest bias or prejudice, or engage in harassment or discrimination, as those terms are defined in applicable federal, state or local statutes or ordinances.”
- ii. New York: Experienced attorneys (those admitted to the New York Bar for more than 2 years) must complete at least 1 CLE credit hour in the Diversity, Inclusion and Elimination of Bias CLE category of credit as part of their biennial CLE requirement.

Rule 8.4: Misconduct

Share:



Maintaining The Integrity Of The Profession

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

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to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

In performing the duties of his or her judicial office, a judge may explain the judicial process, while maintaining impartiality. A judge may also inform unrepresented persons of free legal aid and similar assistance that is available.

- (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.**

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

- (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. This Section 3B(5) does not preclude proper judicial consideration when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or similar factors, are issues in the proceeding.**

Commentary:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

- (6) A judge shall require all persons appearing in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.**
- (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other**



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Strategies to Reduce the Influence of Implicit Bias*



Compared to the science on the existence of implicit bias and its potential influence on behavior, the science on ways to mitigate implicit bias is relatively young and often does not address specific applied contexts such as judicial decision making. Yet, it is important for strategies to be concrete and applicable to an individual's work to be effective; instructions to simply avoid biased outcomes or respond in an egalitarian manner are too vague to be helpful (Dasgupta, 2009). To address this gap in concrete strategies applicable to court audiences, the authors reviewed the science on general strategies to address implicit bias and considered their potential relevance for judges and court professionals. They also convened a small group discussion with judges and judicial educators (referred to as the Judicial Focus Group) to discuss potential strategies. This document summarizes the results of these efforts. Part 1 identifies and describes conditions that exacerbate the effects of implicit bias on decisions and actions. Part 2 identifies and describes seven general research-based strategies that may help attenuate implicit bias or mitigate the influence of implicit bias on decisions and actions. Part 2 provides a brief summary of empirical findings that support the seven strategies and offers concrete suggestions, both research-based and extrapolated from existing research, to implement each strategy.¹ Some of the suggestions in Part 2 focus on individual actions to minimize the influence of implicit bias, and others focus on organizational efforts to (a) eliminate situational or systemic factors that may engender implicit bias and (b) promote a more egalitarian court culture. The authors provide the tables as a resource for addressing implicit bias with the understanding that the information should be reviewed and revised as new research and lessons from the field expand current knowledge.

*Preparation of this project brief was funded by the Open Society Institute, the State Justice Institute, and the National Center for State Courts. The views expressed are those of the authors and do not necessarily reflect the views of the funding organizations. The document summarizes the National Center for State Courts' project on implicit bias and judicial education. See Casey, Warren, Cheesman, and Elek (2012), available at www.ncsc.org/lbreport for the full report of the project.



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Part 1. Combating Implicit Bias in the Courts: Understanding Risk Factors

The following conditions increase the likelihood that implicit bias may influence one's thoughts and actions.

Risk factor: Certain emotional states

Certain emotional states (anger, disgust) can exacerbate implicit bias in judgments of stigmatized group members, even if the source of the negative emotion has nothing to do with the current situation or with the issue of social groups or stereotypes more broadly (e.g., DeSteno, Dasgupta, Bartlett, & Cajdric, 2004; Dasgupta, DeSteno, Williams, & Hunsinger, 2009). Happiness may also produce more stereotypic judgments, though this can be consciously controlled if the person is motivated to do so (Bodenhausen, Kramer, & Susser, 1994).

Risk factor: Ambiguity

When the basis for judgment is somewhat vague (e.g., situations that call for discretion; cases that involve the application of new, unfamiliar laws), biased judgments are more likely. Without more explicit, concrete criteria for decision making, individuals tend to disambiguate the situation using whatever information is most easily accessible—including stereotypes (e.g., Dovidio & Gaertner, 2000; Johnson, Whitestone, Jackson, & Gatto, 1995).



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Risk factor: Salient social categories

A decision maker may be more likely to think in terms of race and use racial stereotypes because race often is a salient, i.e., easily-accessible, attribute (Macrae, Bodenhausen, & Milne, 1995; Mitchell, Nosek, & Banaji, 2003). However, when decision makers become conscious of the potential for prejudice, they often attempt to correct for it; in these cases, judges, court staff, and jurors would be less likely to exhibit bias (Sommers & Ellsworth, 2001).

Risk factor: Low-effort cognitive processing

When individuals engage in low-effort information processing, they rely on stereotypes and produce more stereotype-consistent judgments than when engaged in more deliberative, effortful processing (Bodenhausen, 1990). As a result, low-effort decision makers tend to develop inferences or expectations about a person early on in the information-gathering process. These expectations then guide subsequent information processing: Attention and subsequent recall are biased in favor of stereotype-confirming evidence and produce biased judgment (Bodenhausen & Wyer, 1985; Darley & Gross, 1983). Expectations can also affect social interaction between the decision maker (e.g., judge) and the stereotyped target (e.g., defendant), causing the decision maker to behave in ways that inadvertently elicit stereotype-confirming behavior from the other person (Word, Zanna, & Cooper, 1973).



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Risk factor: Distracted or pressured decision-making circumstances

Tiring (e.g., long hours, fatigue), stressful (e.g., heavy, backlogged, or very diverse caseloads; loud construction noise; threats to physical safety; popular or political pressure about a particular decision; emergency or crisis situations), or otherwise distracting circumstances can adversely affect judicial performance (e.g., Eells & Showalter, 1994; Hartley & Adams, 1974; Keinan, 1987). Specifically, situations that involve time pressure (e.g., van Knippenberg, Dijksterhuis, & Vermeulen, 1999), that force a decision maker to form complex judgments relatively quickly (e.g., Bodenhausen & Lichtenstein, 1987), or in which the decision maker is distracted and cannot fully attend to incoming information (e.g., Gilbert & Hixon, 1991; Sherman, Lee, Bessenof, & Frost, 1998) all limit the ability to fully process case information. Decision makers who are rushed, stressed, distracted, or pressured are more likely to apply stereotypes – recalling facts in ways biased by stereotypes and making more stereotypic judgments – than decision makers whose cognitive abilities are not similarly constrained.

Risk factor: Lack of feedback

When organizations fail to provide feedback that holds decision makers accountable for their judgments and actions, individuals are less likely to remain vigilant for possible bias in their own decision-making processes (Neuberg & Fiske, 1987; Tetlock, 1983).



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Part 2. Combating Implicit Bias in the Courts: Seeking Change

The following strategies show promise in reducing the effects of implicit bias on behavior.

Strategy 1: Raise awareness of implicit bias

Individuals can only work to correct for sources of bias that they are aware exist (Wilson & Brekke, 1994). Simply knowing about implicit bias and its potentially harmful effects on judgment and behavior may prompt individuals to pursue corrective action (cf. Green, Carney, Pallin, Ngo, Raymond, Iezzoni, & Banaji, 2007). Although awareness of implicit bias in and of itself is not sufficient to ensure that effective debiasing efforts take place (Kim, 2003), it is a crucial starting point that may prompt individuals to seek out and implement the types of strategies listed throughout this document.

What can the individual do?

1. **Seek out information on implicit bias.** Judges and court staff could attend implicit bias training sessions. Those who choose to participate in these sessions should ensure that they fully understand what implicit bias is and how it manifests in every day decisions and behavior by asking questions, taking the IAT, and/or reading about the scientific literature as a follow-up to the seminar.



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What can the organization do?

1. **Provide training on implicit bias.** Courts could develop an implicit bias training program that presents participants not only with information about what implicit bias is and how it works, but that also includes information on specific, concrete strategies participants could use in their professional work to mitigate the effects of implicit bias. Judicial educators could present information about some of the other strategies listed in this report, or they could engage participants in a critical thinking activity designed to help them develop and/or tailor their own strategies. The Judicial Focus Group (JFG) thought that this type of training would be more effective if the program contained the following:
 - a. **A facilitator judge to help conduct the training or sit on the panel.** If the court conducts a training program or hosts a panel on implicit bias as part of a symposium on judicial ethics, the JFG indicated that judges would add credibility to the session. Judges typically respond well when one of “their own” speaks out in support of an issue or position. The judge’s presence could help make the session less threatening to participating judges and could help couch the discussion in terms of what can be done to make better decisions.
 - b. **Many diverse examples of implicit bias in professional judgment and behavior.** The JFG felt that training should provide illustrative examples of implicit bias that span several professional disciplines (e.g., NBA officials, medical treatment decisions, hiring decisions) to show how pervasive the phenomenon is.



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- c. **Experiential learning techniques.** The JFG suggested that small group exercises and other experiential learning techniques could help make information more personally relevant, which could provide a valuable frame of reference for those who are expected to resist the idea of implicit bias. Brain teaser exercises may be used to introduce the topic and demonstrate its broad application beyond race to gender, class, age, weight, and other stigmatized social categories.

Note: The JFG also encouraged a focus on implicit bias training for judges *before* they take the bench by making this training a component of new judge orientation. This way, future implicit bias training and requirements will simply be a part of “business as usual” and will incur less resistance.

Strategy 2: Seek to identify and consciously acknowledge real group and individual differences

The popular “color blind” approach to egalitarianism (i.e., avoiding or ignoring race; lack of awareness of and sensitivity to differences between social groups) fails as an implicit bias intervention strategy. “Color blindness” actually produces greater implicit bias than strategies that acknowledge race (Apfelbaum, Sommers, & Norton, 2008). Cultivating greater awareness of and sensitivity to group and individual differences appears to be a more effective tactic: Training seminars that acknowledge and promote an appreciation of group differences and multi-cultural viewpoints can help reduce implicit bias (Rudman, Ashmore, & Gary, 2001; Richeson & Nussbaum, 2004).

Diversity training seminars can serve as a starting point from which court culture itself can change. When respected court leadership actively supports the multiculturalism approach, those egalitarian goals can influence others (Aarts,



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Gollwitzer, & Hassin, 2004). Moreover, when an individual (e.g., new employee) discovers that peers in the court community are more egalitarian, the individual's beliefs become less implicitly biased (Sechrist & Stangor, 2001). Thus, a system-wide effort to cultivate a workplace environment that supports egalitarian norms is important in reducing individual-level implicit bias. Note, however, that mandatory training or other imposed pressure to comply with egalitarian standards may elicit hostility and resistance from some types of individuals, failing to reduce implicit bias (Plant & Devine, 2001).

In addition to considering and acknowledging group differences, individuals should purposely compare and individuate stigmatized group members. By defining individuals in multiple ways other than in terms of race, implicit bias may be reduced (e.g., Djikic, Langer, & Stapleton, 2008; Lebrecht, Pierce, Tarr, & Tanaka, 2009; Corcoran, Hundhammer, & Mussweiler, 2009).

What can the individual do?

1. **Seek out and elect to participate in diversity training seminars.**
Judges and court staff could seek out and participate in diversity training seminars that promote an appreciation of group differences and multicultural viewpoints. Exposure to the multiculturalism approach, particularly routine exposure, will help individuals develop the greater social awareness needed to overcome implicit biases.
2. **Seek out the company of other professionals who demonstrate egalitarian goals.** Surrounding oneself with others who are committed to greater egalitarianism will help positively influence one's own implicit beliefs and behaviors in the long run.



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3. **Invest extra effort into identifying the unique attributes of stigmatized group members.** Judges and court staff could think about how the stigmatized group members they encounter are *different* from others – particularly from other members of the same social/racial group. This type of individuating exercise will help reduce one’s reliance on social or racial stereotypes when evaluating or interacting with another person.

What can the organization do?

1. **Provide routine diversity training.** Offer educational credits for voluntary judicial participation in elective diversity or multiculturalism seminars. Levinson (2007) also suggests that this could be a valuable process for jurors. Recruit a judge to help conduct the training or sit on the panel. In this training, lead by example. Any highly esteemed judge could serve as a role model in this context to promote egalitarian goals.
2. **Target leadership in the jurisdiction first.** Egalitarian behavior demonstrated by judicial leaders can serve to encourage greater adherence to egalitarian goals throughout the court community. The Judicial Focus Group argued that systemic change only occurs with buy-in from leadership—an essential step toward improved egalitarianism.

Note: See Strategy 7 for more suggestions on what an organization can do to cultivate more egalitarian norms in the court community.



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Strategy 3: Routinely check thought processes and decisions for possible bias

Individuals interested in minimizing the impact of implicit bias on their own judgment and behaviors should actively engage in more thoughtful, deliberative information processing. When sufficient effort is exerted to limit the effects of implicit biases on judgment, attempts to consciously control implicit bias can be successful (Payne, 2005; Stewart & Payne, 2008).

To do this, however, individuals must possess a certain degree of self-awareness. They must be mindful of their decision-making processes rather than just the results of decision making (Seamone, 2006) to eliminate distractions, to minimize emotional decision making, and to objectively and deliberately consider the facts at hand instead of relying on schemas, stereotypes, and/or intuition (see risk factors in Part 1).

Instructions on how to correct for implicit bias may be effective at mitigating the influence of implicit bias on judgment if the instructions implement research-based techniques. Instructions should detail a clear, specific, concrete strategy that individuals can use to debias judgment instead of, for example, simply warning individuals to protect their decisions from implicit bias (e.g., Mendoza, Gollwitzer, & Amodio, 2010; Kim, 2003). For example, instructions could help mitigate implicit bias by asking judges or jurors to engage in mental perspective-taking exercises (i.e., imagine themselves in the other person's shoes; Galinsky & Moskowitz, 2000).

As discussed in Strategy 2, however, some seemingly intuitive strategies for counteracting bias can, in actuality, produce some unintended negative consequences. Instructions to simply suppress existing stereotypes (e.g., adopt the “color blindness” approach) have been known to produce a “rebound effect” that



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may increase implicit bias (Macrae, Bodenhausen, Milne, & Jetten, 1994). Others also perceive individuals instructed to implement the “color blindness” approach as more biased (Apfelbaum, Sommers, & Norton, 2008). For these reasons, decision makers should apply tested intervention techniques that are supported by empirical research rather than relying on intuitive guesses about how to mitigate implicit bias.

What can the individual do?

1. **Use decision-support tools.** Legal scholars have proposed several decision-support tools to promote greater deliberative (as opposed to intuitive) thinking (Guthrie, Rachlinski, & Wistrich, 2007). These tools, while untested, would primarily serve as vehicles for research-based decision-making approaches and self-checking exercises that demonstrably mitigate the impact of implicit bias. The Judicial Focus Group (JFG) also supported the use of such tools, which include:
 - a. **Note-taking.** Judges and jurors should take notes as the case progresses so that they are not forced to rely on memory (which is easily biased; see Part 1 and Levinson, 2007) when reviewing the evidence and forming a decision.
 - b. **Articulate your reasoning process** (e.g., opinion writing). By prompting decision makers to document the reasoning behind a decision in some way before announcing it, judges and jurors may review their reasoning processes with a critical eye for implicit bias before publicly committing to a decision. Techniques or tools that help decision makers think through their decision more clearly and ensure that it is based on sound reasoning before committing to it publicly will protect them from rationalizing decisions post hoc (also see Strategy 6 on instituting feedback mechanisms). Sharing this reasoning up front with the public can also positively affect public perceptions of fairness.



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c. **Checklists or bench cards.** The JFG suggested the use of checklists or bench cards that list some “best practice” questions or exercises (e.g., perspective-taking, cloaking). These tools could prompt decision makers to more systematically reflect on and scrutinize the reasoning behind any decision for traces of possible bias. Note that this strategy should be used only after the decision maker has received implicit bias and diversity training, and should be offered for voluntary use. If untrained judges rely on these tools, their efforts to correct for bias may be sporadic and restricted to isolated cases. If resistant judges are compelled to use these tools, checklists as a forced procedure could backfire and actually increase biases in these types of individuals.

What can the organization do?

1. **Develop guidelines that offer concrete strategies on how to correct for implicit bias.** Courts could develop and present guidelines to decision makers on how to check for and correct for implicit bias. These guidelines should specify an explicit, concrete strategy for doing so that has been empirically shown to reduce the effects of implicit bias on judgment and behavior. Some research-based strategies could include instructions that walk people through a perspective-taking exercise (Galinsky & Moskowitz, 2000) or a cloaking exercise (i.e., checking decisions for bias by imagining how one would evaluate the stigmatized group member if he or she belonged to a different, non-stigmatized social group), or that direct people to adopt specific implementation intentions to control for potential bias in specific instances (e.g., if-then plans such as *if: encounter a stigmatized group member, then: think counter-stereotypic thoughts*; see Mendoza, Gollwitzer, & Amodio, 2010). It should NOT instruct a person to ignore or suppress stereotypes and/or implicit biases or offer any other intervention technique that is not supported by empirical literature on implicit bias.



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2. **Institute formal protocols or develop decision-support tools for guidance.**

Courts could establish “best practice” protocols or self-checking procedures (e.g., perspective-taking, cloaking; see above) to help judges identify and override implicit bias. The judiciary could also develop protocols to help minimize situational ambiguity (see Part 1 for more on situational ambiguity and Strategy 5 for further discussion about strategies that may be used to reduce ambiguity).

Strategy 4: Identify distractions and sources of stress in the decision-making environment and remove or reduce them

Decision makers need enough time and cognitive resources to thoroughly process case information to avoid relying on intuitive reasoning processes that can result in biased judgments (see Part 1).

What can the individual do?

1. **Allow for more time on cases in which implicit bias may be a concern.**

The Judicial Focus Group (JFG) suggested that judges prepare more in advance of hearings in which disadvantaged group members are involved (as attorneys, defendants/litigants, victims, key witnesses). If possible, judges could slow down their decision-making process by spending more time reviewing the facts of the case before committing to a decision. If implicit bias is suspected, judges could reconvene and review case material outside of the court environment to reduce time pressure.

2. **Clear your mind and focus on the task at hand.** Judges should become adept at putting distractions aside and focusing completely on the case and evidence at hand. Meditation courses may help judges develop or refine these skills (Kang & Banaji, 2006; Seamone, 2006).



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What can the organization do?

1. **Conduct an organizational review.** An organizational review could help the court determine whether and how the court fosters bias. Part of this review should include a critical assessment of the burden on judges and other decision makers. Some stressors that could adversely affect judicial performance include time pressure (as a result of heavy caseloads, complex cases, or dockets with a broad array of case types), fatigue (as a result of long hours, threats to physical safety, or other emergency or crisis situations), and distractions (as a result of multi-tasking, overburdened workloads, or even loud construction noise that day). Courts could modify procedures to allow judges sufficient time to consider each case by, for example, reorganizing the court calendar to reduce the typical caseload for each judge, minimizing the necessity for spur-of-the-moment decisions, or permitting the judge to issue tentative decisions or reconvene if further deliberation is necessary (e.g., see Guthrie, Rachlinski, & Wistrich, 2007).

Strategy 5: Identify sources of ambiguity in the decision-making context and establish more concrete standards before engaging in the decision-making process

Situational ambiguity may arise for cases in which the formal criteria for judgment are somewhat vague (e.g., laws, procedures that involve some degree of discretion on behalf of the decision maker). These especially include (but are not limited to) cases that involve the interpretation of newly established laws or case types that are unfamiliar or less familiar to the decision maker. In these cases, decision makers should preemptively commit to specific decision-making criteria (e.g., the importance of various types of evidence to the decision) *before* hearing a case or reviewing evidence to minimize the opportunity for implicit



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bias (Uhlmann & Cohen, 2005). Establishing this structure before entering the decision-making context will help prevent constructing criteria after the fact in ways biased by implicit stereotypes but rationalized by specific types of evidence (e.g., placing greater weight on stereotype-consistent evidence in a case against a black defendant than one would in a case against a white defendant).

What can the individual do?

1. **Preemptively commit to more specific decision-making criteria.** Before entering into a decision-making context characterized by ambiguity or that permits greater discretion, judges and jurors could establish their own informal structure or follow suggested protocol (if instituted) to help create more objective structure in the decision-making process. Commit to these decision-making criteria before reviewing case-specific information to minimize the impact of implicit bias on the reasoning process.

What can the organization do?

1. **Institute formal protocol to help decision makers.** The court could establish and institute formal protocols that decision makers could follow to help them identify sources of ambiguity and that offer suggestions on how to reduce these types of ambiguity in the decision-making context.
2. **Specialization.** The Judicial Focus Group (JFG) discussed the possibility that case decisions by judges with special expertise in that particular area of law may be less prone to implicit bias than decisions made by judges without such expertise. They reasoned that without familiarity, there is greater ambiguity and uncertainty in decision making. However, the JFG also discussed how this could be a double-edged sword: Specialist judges may be



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on autopilot with familiar case types and may not be engaged in the kind of deliberative thinking that helps reduce the impact of implicit bias on judgment. To prevent “autopilot” stereotyping, specialist judges in particular should commit to thinking deliberately (see Strategy 3 for some suggestions on how to check decisions and thought processes for possible bias).

Strategy 6: Institute feedback mechanisms

Providing egalitarian consensus information (i.e., information that others in the court hold egalitarian beliefs rather than adhere to stereotypic beliefs) and other feedback mechanisms can be powerful tools in promoting more egalitarian attitudes and behavior in the court community (Sechrist & Stangor, 2001). To encourage individual effort in addressing personal implicit biases, court administration may opt to provide judges and other court professionals with relevant performance feedback. As part of this process, court administration should consider the type of judicial decision-making data currently available or easily obtained that would offer judges meaningful but nonthreatening feedback on demonstrated biases. Transparent feedback from regular or intermittent peer reviews that raise personal awareness of biases could prompt those with egalitarian motives to do more to prevent implicit bias in future decisions and actions (e.g., Son Hing, Li, & Zanna, 2002). This feedback should include concrete suggestions on how to improve performance (cf. Mendoza, Gollwitzer, & Amodio, 2010; Kim, 2003) and could also involve recognition of those individuals who display exceptional fairness as positive reinforcement.



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Feedback tends to work best when it (a) comes from a legitimate, respected authority, (b) addresses the person’s decision-making process rather than simply the decision *outcome*, and (c) when provided *before* the person commits to a decision rather than *afterwards*, when he or she has already committed to a particular course of action (see Lerner & Tetlock, 1999, for a review). Note, however, that feedback mechanisms which apply coercive pressure to comply with egalitarian standards can elicit hostility from some types of individuals and fail to mitigate implicit bias (e.g., Plant & Devine, 2001). By inciting hostility, these imposed standards may even be counterproductive to egalitarian goals, generating backlash in the form of increased explicit and implicit prejudice (Legault, Gutsell, & Inzlicht, 2011).

What can the individual do?

1. **Actively seek feedback from others.** Judges can seek out their own informal “checks and balances” by organizing or participating in sentencing round tables, or by consulting with a skilled mentor or senior judge for objective feedback on how to handle a challenging case or difficult situation.
2. **Actively seek feedback from others regarding past performance.** With an open mind, judges and court staff could talk to colleagues, supervisors, or others to request performance feedback. This information could be helpful in determining whether a person’s current efforts to control or reduce implicit bias are effective or could be improved.
3. **Articulate your reasoning process.** To ensure sound reasoning in every case, judges could choose to document or articulate the underlying logic of their decisions. Not only does this exercise afford judges the opportunity to critically review their decision-making processes in each case, but taking it a step further—making this reasoning transparent in court—can have positive effects on public perceptions of fairness (see *Articulate your reasoning process* in Strategy 3, above).



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What can the organization do?

1. **Adopt a peer-review process.** Judges could benefit from additional feedback about possible bias in their judicial performance. The court could arrange to have judges observe and provide feedback to one another on a rotating schedule. Guthrie, Rachlinski, and Wistrich (2007) offered a more formal approach: Every 2-3 years, an experienced team of reviewers (comprised of peer judges) could visit the court and for each judge at that court, the team would review the transcripts, rulings, and other material for a few past cases. The team would then provide each judge with performance feedback and suggestions, if necessary, for improvement. The team should be trained to deliver this feedback in a constructive, non-threatening way.
2. **Develop a bench-bar committee.** The Judicial Focus Group (JFG) also suggested that courts develop a bench-bar committee, which could oversee an informal internal grievance process that receives anonymous complaints about judicial performance in the area of racial and ethnic fairness. Similar to the peer review process mentioned above, this committee (or a select group of trained peer or mentor judges) could review a sample of past cases or observe workplace behavior and offer feedback and guidance to the judge.
3. **Hold sentencing round tables.** The JFG suggested that judges convene a sentencing round table to review hypothetical cases involving implicit bias. Prior to the round table, the judges review the hypothetical cases and arrive prepared to discuss the sentencing decision they would issue in each case. When they convene, all judges reveal their decisions and discuss their reasoning frankly and candidly. This process can help judges think more deliberatively about the possibility of implicit biases entering their decisions and offers a forum for judges to obtain feedback from peers.



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Strategy 7: Increase exposure to stigmatized group members and counter-stereotypes and reduce exposure to stereotypes

Increased contact with counter-stereotypes—specifically, increased exposure to stigmatized group members that contradict the social stereotype—can help individuals negate stereotypes, affirm counter-stereotypes, and “unlearn” the associations that underlie implicit bias. “Exposure” can include imagining counter-stereotypes (Blair, Ma, & Lenton, 2001), incidentally observing counter-stereotypes in the environment (Dasgupta & Greenwald, 2001; Olson & Fazio, 2006), engaging with counter-stereotypic role models (Dasgupta & Asgari, 2004; Dasgupta & Rivera, 2008) or extensive practice making counter-stereotypic associations (Kawakami, Dovidio, Moll, Hermsen, & Russin, 2000).

For individuals who seek greater contact with counter-stereotypic individuals, such contact is more effective when the counter-stereotype is of at least equal status in the workplace (see Pettigrew & Tropp, 2006). Moreover, positive and meaningful interactions work best: Cooperation is one of the most powerful forms of debiasing contact (e.g., Sherif, Harvey, White, Hood & Sherif, 1961).

In addition to greater contact with counter-stereotypes, this strategy also involves decreased exposure to stereotypes. Certain environmental cues can automatically trigger stereotype activation and implicit bias. Images and language that are a part of any signage, pamphlets, brochures, instructional manuals, background music, or any other verbal or visual communications in the court may inadvertently activate implicit biases because they convey stereotypic information (see Devine, 1989; Rudman & Lee, 2002; Anderson,



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Benjamin, & Bartholow, 1998; for examples of how such communications can prime stereotypic actions and judgments; see also Kang & Banaji, 2006). Identifying these communications and removing them or replacing them with non-stereotypic or counter-stereotypic information can help decrease the amount of daily exposure court employees and other legal professionals have with the types of social stereotypes that underlie implicit bias.

What can the individual do?

1. **Imagine counter-stereotypes or seek out images of admired exemplars.** To reduce the impact of implicit bias on judgment, judges and court staff could imagine or view images of admired or counter-stereotypic exemplars of the stereotyped social group (e.g., Martin Luther King, Jr.) before entering a decision-making scenario that could activate these social stereotypes. To accomplish this, researchers on implicit bias have suggested that people hang photos or program screen savers and desktop images of role models or others that challenge traditional racial stereotypes.
2. **Seek greater contact with counter-stereotypic role models.** Individuals who are motivated to become more egalitarian could also spend more time in the presence of people who are counter-stereotypic role models to reinforce counter-stereotypic associations in the brain and make traditional stereotypes less accessible for use.
3. **Practice making counter-stereotypic associations.** Individuals who are motivated to change their automatic reactions should practice making positive associations with minority groups, affirming counter-stereotypes, and negating stereotypes. Implicit biases may be “automatic,” but corrective and debiasing strategies can also become automated with motivation and practice.



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What can the organization do?

1. **Conduct an organizational review.** An organizational review could help the court determine whether and how the court fosters bias. Part of this review should include an assessment of court communications (visual and auditory) to identify all communications in the courthouse that convey stereotypic information. Change these communications to convey egalitarian norms and present examples of counter-stereotypes. These positive cues can serve as subtle reminders to judges and court staff that reinforce a culture of equality.
2. **Follow equal-opportunity and affirmative action (EOAA) hiring practices.** Members of stigmatized groups, when fairly represented in valued, authoritative roles (Richeson & Ambady, 2003), offer opportunities to foster positive intergroup relations and present other judges with readily accessible counter-stereotypes that they can draw upon to reduce implicit bias.

¹ For more information on the empirical research supporting Tables 1 and 2, see Appendix G, Tables G-3 and G-4, in Casey, Warren, Cheesman, and Elek (2012).



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Reading Resources Regarding Implicit Bias

Source: The American Bar Association

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