

Judicial Officers' Guide to Unconscious Bias



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Disclaimer

This Guide is intended solely as an educational resource for judicial officers involved in judicial decision-making processes. It provides general information and strategies related to the recognition and mitigation of unconscious bias.

It is not intended to constitute, and should not be relied upon as, legal advice, psychological advice, a substitute for independent judicial judgment, professional legal counsel, or the application of specific laws and procedures relevant to any particular jurisdiction or case.

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The discussions of unconscious bias within this Guide are for educational purposes, aimed at fostering self-awareness and improved judicial practice. **This Guide does not implicitly or explicitly accuse any individual or party of bias, nor does it provide grounds for complaint or legal challenge based on its content.**

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Executive summary



This Guide is designed to assist judicial officers upholding fairness and impartiality, recognising that even thoughtful judges are susceptible to unconscious biases—subtle mental shortcuts that can inadvertently influence decisions and erode public trust. Developed by the Federal Court of Australia under the DFAT-funded Pacific Judicial Integrity Program, it offers tailored insights and strategies for judicial officers across the Pacific region.

Unconscious biases are automatic assumptions held without awareness, distinct from actual or apprehended bias. Being unintentional and often imperceptible, recusal based on them is impossible. Recognising these biases as a normal cognitive process, not a personal failing, is key to mitigation. The Guide explores various types relevant to judicial decision-making, including in-group bias, overconfidence, hindsight, anchoring, confirmation bias, and the halo effect, illustrating their subtle impact on areas like credibility and sentencing.

The Guide also examines threats to impartiality, categorising them as dispute-specific (from the case facts or the parties involved) and structural (broader institutional pressures like safety or legitimacy). In the Pacific, challenges include conflicts of interest in small communities and applying diverse customary law alongside common law. To address these threats, the Guide offers practical strategies for judges and court institutions.

Judges can cultivate self-awareness through tools like implicit bias tests and mindfulness, and practice deliberative decision-making—slowing down for analytical thought in complex cases. Practical advice includes self-talk monitoring, journaling, and fostering empathy through diverse cultural exposure, along with ongoing training in this area.

Institutionally, the Guide proposes enhancing judicial codes of conduct to explicitly address unconscious bias. It supports implementing peer review and decision audits, a strategy many webinar participants found effective. Increasing judicial diversity is also vital, bringing broader lived experiences to the bench and challenging stereotypes. Developing specific guidelines for sensitive cases is crucial for managing situations prone to bias.

By combining these individual and institutional strategies, the Guide fosters an ongoing commitment to identifying and mitigating unconscious bias, ensuring fairer outcomes across the Pacific judiciary.

Introduction



A fair and impartial judiciary is essential to upholding the rule of law. The appearance of bias or partiality undermines the proper exercise of the judicial role. Although judges are required to engage in careful deliberation and thoughtful judgment, everyone is naturally susceptible to having unconscious biases. These subtle mental shortcuts can unintentionally influence the decisions of even the most ethically dedicated and experienced judges. To ensure impartiality, judges must be able to develop strategies to mitigate their unconscious biases. This Guide aims to assist judicial officers by providing insight into:

- Situations when unconscious bias may arise;
- The types of unconscious biases that can influence decisions; and
- Practical strategies to identify and reduce the influence of unconscious bias in judicial decision-making.

This Guide was developed by the Federal Court of Australia under the Pacific Judicial Integrity Program funded by the Department of Foreign Affairs and Trade. It is intended to serve as a resource for judicial officers in our partner courts within the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, and Vanuatu.

Impartiality



Judicial impartiality is a cornerstone of legal systems worldwide. Judges are required to decide cases fairly, without bias, prejudice, or conflicts of interest. This means treating all parties equally and basing decisions solely on the individual merits of each case, free from the influence of external factors. A judge must act, and also be seen to act, impartially, as the appearance of bias directly undermines public confidence in the courts and the rule of law.

The principle of impartiality is codified in various international instruments, including the *Universal Declaration of Human Rights*,¹ the *International Covenant on Civil and Political Rights*,² and the *Bangalore Principles of Judicial Conduct*.³ Principle 2.1 of the *Bangalore Principles* states: ‘A judge shall perform his or her judicial duties without favour, bias or prejudice’. As is common globally, all Pacific courts for which this Guide was developed have domestic codes of judicial conduct that explicitly mandate judicial impartiality (see [Annex A](#)).

However, impartiality is not an absolute. Requiring absolute impartiality would hinder judges from exercising necessary judicial functions that involve a certain level of discretion, such as evaluating witness credibility, the relevance of evidence, or interpreting uncertain legal principles. Therefore, the goal is for judges to maintain ‘appropriate and sufficient’ impartiality to perform their duties without favour, bias, or prejudice, to uphold public confidence in the administration of justice.⁴⁵⁶

Actual, Apprehended, and Unconscious Bias



Unconscious biases are a normal aspect of human cognition, helping individuals to recognise patterns and to make decisions quickly. However, they are a significant problem in judicial decision-making, as these mental shortcuts can result in unintended discrimination and unfair treatment. To fully grasp what unconscious bias is, it is important to distinguish it from the other two forms of judicial bias: actual bias and apprehended bias.

Actual bias occurs when a judge holds a clear, pre-existing prejudice or interest concerning a party, legal issue, or case outcome. This means a judge's mind is already made up or swayed by a specific interest, not merely perceived to be so. It refers to a demonstrable fact of a judge's subjective state which shows that they cannot or will not approach the case with an impartial mind. This type of bias can be difficult to prove.

Apprehended bias concerns the perception of bias, regardless of whether actual bias exists. In Papua New Guinea, the test is 'whether an objective observer, knowing all surrounding facts, would be left with an apprehension, not a conviction, that the judicial officer was predisposed, by matters extraneous to a proper adjudication, to reach a particular conclusion'.⁷ While the wording of this test varies slightly across common law jurisdictions, the underlying principle is consistent. It focuses on how an objective, informed observer would view the situation, rather than the judge's actual state of mind. The appearance of bias can undermine public confidence in the justice system even if no actual bias is present.

In a family law case, the wife's counsel engaged in numerous social interactions with the judge (i.e., drinks, coffee, and text message exchanges). The husband's counsel sought a retrial based on a reasonable apprehension of bias on the part of the judge.

While the Full Court of the Family Court of Australia initially found no apprehension of bias (by a 2-1 majority), the High Court of Australia overturned this decision, unanimously finding that an apprehension of bias existed, even if the judge and the wife's counsel did not directly discuss the matter during their interactions.⁴⁵

Unconscious biases (also known as **implicit biases**) are the set of intolerances and assumptions one holds about various people and behaviours without consciously being aware of them. These biases unknowingly affect how people think, act, and make

decisions. They accumulate throughout one’s life, shaped by formative experiences and the brain’s tendency to create mental shortcuts by associating things that commonly appear together (e.g., thunder and rain; grey hair and old age). One learns to expect similar co-occurrences in different contexts, which can lead to inaccurate judgments.

A judge with an unconscious bias is genuinely unaware of its presence or impact. Unlike actual bias, there is no deliberate intent to be partial, and unlike apprehended bias, it may not be apparent to an external observer. Unconscious bias stems from internal cognitive processes rather than overt behaviours, making it difficult to detect and to prove. Unlike apprehended or actual bias, it is impossible to request a judge’s recusal based on unconscious bias.

‘Reason cannot control the subconscious influence of feelings of which it is unaware’.
– Chief Justice Gageler, High Court of Australia⁴⁶

Many judges mistakenly view having unconscious biases as a personal failing, rather than a normal mental process. While these biases are common and unintentional, it is crucial for judges to interrogate whether their judicial decision-making might be affected by thought processes that do not accord with the evidence before them. Awareness allows judges to actively reflect on their thought processes, take steps to mitigate these hidden influences, and uphold judicial impartiality.



Actual Bias

Definition

A judge is clearly biased and unable or unwilling to decide impartially.

Evidence

Demonstrable, clear evidence of bias.

Impact on case

Directly affects fairness and outcome.

Awareness

Judge is aware or openly biased.



Apprehended Bias

Definition

A judge is perceived as biased by an objective, informed observer.

Evidence

Perception based on circumstances or judge’s behaviour.

Impact on case

Undermines public confidence in the courts.

Awareness

Observer perceives bias; judge may or may not be aware.



Unconscious Bias

Definition

A judge has mental predispositions that inadvertently influence decisions.

Evidence

Implicit, often unnoticed mental tendencies.

Impact on case

Subtle influence on judgment leading to discrimination or unfairness.

Awareness

Judge is unaware of bias; observer may or may not be aware.

The Challenge of Unconscious Bias in Judicial Decision-Making

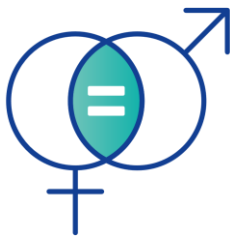


Even highly experienced and ethically committed judges are not immune to unconscious biases. These biases can lead to judicial outcomes that are inconsistent with a judge’s consciously held beliefs and principles.⁸ Adopting a neutral perspective and a commitment to equality is often insufficient. Paradoxically, these efforts can create a ‘blind spot’ for judges, giving them a false sense of confidence that allows unconscious biases to operate unnoticed.⁹ Believing strongly in one’s impartiality can make a person less aware of the subtle mental influences affecting their decisions.

Research consistently shows that judges who effectively mitigate the impact of unconscious bias are those who first recognise their biases and then take proactive steps to address them.¹⁰ The first crucial step is awareness: understanding that unconscious biases exist and that they influence judicial decision-making. With proper awareness, motivation, and training, judges can significantly reduce their effects.¹¹ Because unconscious biases accumulate and are reinforced over time, mitigation requires ongoing and deliberate effort.

This understanding forms the core of why this Guide is essential. It moves beyond the assumption of inherent impartiality to provide judges with actionable steps to cultivate conscious vigilance against their potential unconscious biases.

Types of Unconscious Bias



Psychologists have identified a broad range of unconscious biases, several of which are relevant to judicial decision-making.

In-group bias is the tendency for individuals to favour people they see as part of their own group, or a group they identify with, over those outside it. This means that individuals might trust in-group members more or attribute positive qualities to them. On the other hand, someone might distrust or attribute negative characteristics to people who are not part of their group.

- *Example:* A judge might inadvertently consider the testimony of a police officer (part of a respected professional group they identify with) as more credible than that of a convicted felon (a group they do not identify with).

A Pacific judge who identifies as a Christian recognises the importance of setting aside personal religious beliefs when a non-Christian appears in court, focusing solely on the legal issues. The judge has taken steps to proactively identify and mitigate his potential in-group bias against those who do not share his faith.

Without conscious awareness, a judge's in-group bias could lead him to unconsciously favour a witness who is also Christian (a member of a group identified with) or disadvantage a witness who declines to swear on the Bible (an outsider of the group).

Racial, gender, and class biases are all specific types of in-group bias where one attaches negative stereotypes to certain identities. Research in the United States has shown that unconscious racial and gender biases are highly prevalent among judges.^{12 13}

- *Examples:* A witness's testimony might be judged as less credible because of racial stereotypes, such as an ingrained assumption that people from certain backgrounds are more likely to be dishonest, even if the judge is unaware of holding such beliefs.
- A judge might inadvertently perceive a female barrister as being less competent or professional than a male barrister, due to gendered stereotypes.
- A defendant from an affluent background may be viewed as more capable of successful rehabilitation than someone from a disadvantaged background, potentially influencing sentencing decisions.

- A judge may unconsciously perceive a defendant's behaviour or demeanour as uncooperative or dishonest, when it is simply due to a cultural lack of familiarity with formal court procedures. Such biases related to cultural differences can influence how judges evaluate a defendant's credibility and conduct in court.

Overconfidence bias is when someone has unreasonable level of confidence in their knowledge and abilities. This can lead a judge to overestimate their ability to make unbiased decisions, making them less likely to recognise and challenge their own underlying assumptions.

- *Examples:* A judge might think that their high level of intelligence, education, experience, or commitment to ethics guarantees that they are immune to bias. This prevents them from actively looking inward to examine whether their personal beliefs may be influencing their decision-making and undertaking training to mitigate these biases.
- Studies suggest that judges can overestimate their own ability to assess witness credibility and avoid prejudices based on race or gender.¹⁴
- An experienced judge might dismiss arguments presented by less experienced counsel without fully considering the merits of their arguments, due to overconfidence in their own legal knowledge.

Hindsight bias is the tendency to believe that an outcome or event was more predictable or obvious after it has already happened. After a case concludes, a judge might mistakenly think that the outcome was clear from the start, which can unfairly influence how they evaluate past decisions or actions. The more negative the outcome, the stronger this bias can be.¹⁵

- *Examples:* A judge reviewing a claim of negligence who knows the severity of the plaintiff's injuries is more likely to think that certain warning signs were obvious to the defendant, even if at the time those signs were not clearly apparent to an ordinary reasonable person.¹⁶
- Some research indicates that judges may have an unusual ability to resist this bias compared to the general public. A study in the United States found that judges evaluating whether there was probable cause to carry out a search were not significantly influenced by foreknowledge of the search's outcome (i.e., whether incriminating evidence was discovered).¹⁷

Heuristics are mental shortcuts used to expedite problem-solving and decision-making. These shortcuts allow one to save time by not having to think through each step of a process. While often useful and efficient, they can also lead to biases.

- *Example:* A judge might rely on a representativeness heuristic when assessing a witness, quickly categorising them based on a few prominent features that match a typical profile in their mind, rather than fully processing all the individual details of their testimony. While efficient, this shortcut can lead to biased decisions if the profile is based on stereotypes.

Anchoring is a type of faulty heuristic. It is the tendency to favour the first piece of information learned about a person or an issue, which then makes it more difficult to consider new information objectively. It is often associated with numbers.

- *Examples:* A study of German trial judges found that they were influenced by prosecutors' initial sentencing recommendations. If a prosecutor suggested a longer sentence first, judges often gave longer sentences, and vice versa for a shorter sentence. The initial number 'anchored' their decision. This was true even amongst highly experienced judges.¹⁸
- Another German study found that irrelevant numerical references, such as a journalist's question about appropriate sentencing, could affect the length of sentences judges imposed.¹⁹
- Compensation awards are higher when judges are aware of a cap on damages, suggesting the cap itself acts as an anchor, even if it is meant to be an upper limit rather than a target amount.²⁰

Confirmation bias is the tendency to seek out and favour information that supports what one already believes, while ignoring or rejecting information that goes against one's belief.

A Pacific judge described how repeat offenders in criminal proceedings have concerns about the potential for bias when they are already known in the legal system or appear before the same judge. The judge is aware that these defendants fear being pre-judged based on their past offences rather than having their current case decided on its individual merits, which is what the judge actively strives to do.

- *Examples:* Judges have been found to give more positive weight to arguments that support their preliminary findings, compared to those that conflict with their preconceived view.²¹
- A Swedish study observed that judges who made a preliminary decision as to whether to detain someone pending trial are more likely to find that same defendant guilty later, compared to where another judge has made the pre-trial order.²²
- If a judge forms an early impression of a witness's dishonesty, they might inadvertently pay more attention to inconsistencies in that witness's testimony while overlooking similar inconsistencies from another witness that they view as credible.

The halo effect is when someone forms a positive opinion of a person's character based on a single characteristic.

- *Examples:* Two studies in the United States found that defendants who were physically attractive received shorter sentences.^{23 24} This suggests that judges unconsciously associated physical attractiveness with unrelated positive qualities, such as having a greater chance of successful rehabilitation.

- A judge might inadvertently perceive an articulate and well-dressed defendant as more intelligent or truthful than a less articulate or poorly dressed defendant.

Types of Cognitive Bias

Type of bias	Description	Example
<input type="checkbox"/> In group	Favouring individuals perceived as part of one's own group over those outside it.	A judge may trust testimony from a professional they identify with more than from others.
<input type="checkbox"/> Overconfidence	Having an unreasonable level of confidence in one's knowledge and abilities.	A judge might assume they are immune to bias due to their experience and education.
<input type="checkbox"/> Hindsight	Believing an outcome was more predictable after it has occurred.	A judge might think a negative outcome was obvious in hindsight, even if it was not at the time.
<input type="checkbox"/> Heuristics	Using mental shortcuts to make decisions quickly, which can lead to biased judgments.	A judge might categorise a witness based on a stereotype rather than full testimony.
<input type="checkbox"/> Anchoring	Relying too heavily on the first piece of information	A judge's sentencing decision may be influenced by the prosecutor's initial recommendation.
<input type="checkbox"/> Confirmation	Seeking and favouring information that supports existing beliefs while ignoring contradictory data.	A judge may give more weight to evidence that supports their preliminary view of a case.
<input type="checkbox"/> Halo Effect	Forming a positive impression of a person based on a single favourable characteristic.	A judge might perceive an articulate defendant as more credible regardless of other factors.

Threats to Impartiality



A wide range of circumstances can give rise to the biases described in the previous section. Threats to a judge's impartiality generally fall into two main categories: dispute-specific threats and structural threats.²⁵ **Dispute-specific threats** are those that arise directly from the unique facts or parties involved in a particular case. They relate to a judge's ability to remain neutral and decide the specific dispute before them without favour or prejudice. **Structural threats** extend beyond individual cases and relate to broader institutional or systemic pressures that could compromise the judiciary's ability to function independently and impartially. These threats can impact a judge's decision-making even when there is no direct connection to the parties or issues in a specific dispute.

Dispute-Specific Threats and Biases

Dispute-specific threats can arise in many ways including where a judge has a material interest in a case, a familial or social connection to a case, or has a professional opinion about an issue in dispute.

Material threats involve a judge having financial or other tangible interests that could directly affect their decision.

- *Example:* If a judge owns shares in a telecommunications company that appears as a party to a case before them, a reasonable person might suspect that the judge could personally benefit from a favourable ruling, which could influence their decision.

Relationship threats concern where a judge has a personal or familial connection with any of the parties, legal counsel, or witnesses involved in a case.

- *Examples:* If a judge is close friends with one of the lawyers presenting a case in their courtroom, there could be a perception that the judge might give preferential treatment to their friend's arguments, even if unintentionally.
- Conflicts of interest pose a challenge in remote Pacific islands, some of which have populations as small as 300 to 500 residents. A judge is likely to know or be related to many people in these communities. Recusal is difficult as other local judges are in a similar position. Bringing in a judge from another island by boat or plane is costly and places additional strain on already limited court resources. This can result in delays in justice of one to two years.²⁶

Subject-matter or issue-based threats occur when a judge has expressed strong opinions or has a deep personal or professional connection to the specific legal issue in a case. It could give rise to the perception that they will decide in line with their opinion.

- *Example:* Consider a judge who has published academic articles about the strict enforcement of environmental protection laws. If a case comes before them challenging a new large-scale resource development project, concerns might arise that the judge may not approach the matter with a completely open mind, potentially influenced by their known views on resource exploitation versus conservation.

Below are some specific examples of dispute-specific unconscious biases which may arise:

Identity. A judge might inadvertently perceive a witness as more credible or trustworthy because they share a similar racial, ethnic, or socio-economic background as the judge. For instance, a witness who attended the same prestigious university as the judge might be perceived as more reliable than a witness from a less familiar background, even if both present equally compelling testimonies.

A Pacific judge had been hearing testimony from a 9-year-old child for an entire day. In the morning, the child did well, but by the afternoon, she became angry and was unable to concentrate.

The judge paused to deliberately remind himself that this is normal behaviour for children. It was not an indication that her evidence was poor, unreliable, or irrelevant; it simply meant the child was hungry and tired and that she needed food and rest.

Had the judge not acknowledged that the child's fatigue might be affecting the quality of her evidence, he might have unconsciously dismissed it. Instead, he acknowledged that external factors were affecting the child, overcoming the potential unconscious bias to evaluate her evidence fairly.

Appearance and communication. A judge might unconsciously give less weight to the testimony of a witness who speaks with a foreign accent or appears untidy, compared to a witness who speaks with a local accent or is impeccably dressed, despite the content of their testimonies being equally valid.

Stereotyping. In a family law child custody dispute, a judge might be unconsciously influenced by traditional gender stereotypes, leading them to assume that a mother is inherently a better primary caregiver than a father, even when the father presents strong

evidence of his equally capable or superior parenting capabilities. This bias can lead to an unfair evaluation of the evidence presented.

Structural Threats and Biases



Structural threats include threats made against a judge or their family, situations where a judge can be removed from the bench, or where the legitimacy of the court itself is undermined.

Threats to the judge as a person include pressures relating to a judge's personal safety, reputation, or psychological well-being that might affect their ability to decide cases freely and fairly.

- *Example:* A judge presiding over a high-profile criminal case involving organised crime might face threats to their family's safety. Such external pressures, unrelated to the case's merits, could unconsciously influence the judge to rule in a way that minimises personal risk.

Threats to the judicial role involve pressures that could influence a judge's employment security, promotion prospects, or working conditions.

- *Example:* In countries where authorities have unjustly terminated judicial appointments or attempted to impeach senior judges, the threat to judges' positions might inadvertently pressure them to decide in favour of those who hold the power to remove them.

Threats to the judicial institution encompass broader political or societal forces that undermine the independence or legitimacy of the judiciary.

- *Example:* Political attacks on the courts can erode public confidence and lead to a chilling effect on judicial decision-making. As a result, judges may be reluctant to make controversial but legally sound rulings out of concern that such decisions could further damage the judiciary's public standing.

The following examples highlight structural-level unconscious biases:

Conflicting legal systems. In many Pacific countries, customary law is constitutionally recognised as an equal source of law as the common law.²⁷ Customary law systems are vastly divergent across the region, and at times, differ or contradict with the common law.²⁸ This presents challenges for the judiciary to apply the law consistently. Judges may give preference to one system of laws over the other, which can raise the appearance of bias.

Government interests. A judge may tend to attribute greater legitimacy to governmental authorities or established institutions. This can lead to an unconscious deference to the executive’s interests, regardless of the strength of their arguments and evidence, potentially compromising the judiciary’s role as an independent check on executive power.

Systematic inequality. In a legal system historically dominated by certain demographics (e.g., men), a judge from an underrepresented group (e.g., women) may inadvertently feel pressured to impose harsher sentences or make more ‘tough on crime’ decisions to avoid being stereotyped as soft or indecisive.

Maintaining social cohesion. A judge seeking to uphold the court’s public standing might interpret legal ambiguities in a manner detrimental to the rights of an unpopular or controversial minority group. This could occur without deliberate intent, driven by an unconscious desire to avoid societal discord or criticism directed at the judiciary.



Dispute-specific

Material threats

Judge has a financial or tangible interest in the case that could affect their decision.

Relationship threats

Judge has personal, familial, or social connections to parties, lawyers, or witnesses in the case.

Subject matter/issue based threats

Judge has expressed strong opinions or has a professional connection to the legal matter.



Structural

Threats to judge as person

Threats or pressures affecting judge’s safety, reputation, or psychological well-being.

Threats to judicial role

Pressures related to job security, promotion, or working conditions that may affect judicial decisions.

Threats to institution

Broader political or societal forces undermining court legitimacy and independence.

Practical Strategies for Addressing Unconscious Bias



This section provides practical strategies for judicial officers to identify and reduce the influence of unconscious biases on their decision-making. These strategies are drawn from research studies and the experiences of Pacific and Australian judicial officers, focusing on actionable steps.

Strategies for Judges

These are personal practices judicial officers can integrate into their daily routines to cultivate awareness and counteract unconscious bias.

Implicit bias tests and self-assessment. The Implicit Association Test (IAT), developed by researchers at Harvard University, is an online tool designed to reveal unconscious biases.²⁹ It measures how quickly people associate different concepts, such as race or gender, with positive or negative evaluations (i.e., good or bad). Faster reaction times indicate stronger unconscious associations between those two concepts. The IAT reveals automatic preferences or prejudices that individuals may not be aware of or willing to express openly. While not definitive, as results can vary across multiple attempts, the test can serve as an initial awareness-raising exercise, highlighting areas where one might hold unconscious preferences.

The IAT is available online at Project Implicit, offering various assessments related to demographics such as race, gender, and age. Reflecting on the test results can provide insight into how unconscious associations might subtly influence perceptions in judicial contexts. This exercise is intended for personal reflection on one's potential biases and is not meant for public disclosure.

A judge finds adjournment to be a particularly effective strategy for emotional regulation. The courtroom can be a tense environment. Counsel, witnesses, and members of the public often experience strong emotions and hold firm biases in favour of one side or the other.

Adjournment helps reduce tension and allows judges to return to the courtroom with a calmer, more focused mindset. Additionally, consulting with another judge about difficult issues can further help to relieve stress.

Mindfulness and emotional regulation. Mindfulness involves paying attention to the present moment, including one's thoughts, feelings, and bodily sensations. By cultivating

mindfulness, judges can take a ‘pause’ before making a decision, allowing for a moment of reflection that can interrupt automatic, bias-driven responses.¹¹ Emotional regulation is the skill of managing and responding to emotions effectively. Increased emotional awareness can help judges better separate personal reactions from objective assessments.

It is important for judges to notice signs of emotional stress or arousal, such as difficulty concentrating, elevated heart rate, upset stomach, tense muscles, shortness of breath, or irritability. Recognising these signs early helps in managing stress before it affects decision-making.³⁰

Emotional regulation strategies



Physical grounding

Helps judges stay present by focusing attention on the immediate environment and specific details.

Looking around the room: Focus on specific details for 30 seconds (e.g., identify circular objects, particular colours, or count objects).

Touching objects: Pay attention to the texture, weight, or temperature of the object.



Mindfulness

Incorporate brief mindfulness exercises to support stress management.

Focused breathing: Spend 2 to 5 minutes on deep, attentive breathing before starting proceedings or during breaks.

Guided meditation: Use apps like Calm or Headspace for structured mindfulness practice.

Pauses: Take short breaks to observe thoughts and sensations throughout the day.



Adjournment

Brief breaks to cool down and reset when stress or anger arises.

Take a step outside the courtroom: Take a pause by adjourning. This is not a sign of weakness or incompetence but rather an effective way to reset and return with a clearer mind.

Take a short walk: Physically remove yourself to cool down.

Chat with a colleague: Brief social interaction for a mental break.

Have a cup of tea: Use a calming ritual to relieve stress.



Bilateral Stimulation

Connect the brain's left and right hemispheres to promote relaxation and reduce stress.

Squeezing toes: Alternating left then right.

Beetle wings: Clasp hands together, lift interlocking fingers up and down alternating sides.

Butterfly hugs: Cross arms over the chest and gently tap opposite elbows.

Deliberative decision-making. This involves slowing down to carefully consider different perspectives and systematically evaluate all available information, rather than relying on quick, automatic judgments. This analytical approach helps to override intuitive ‘fast thinking’, which is more prone to unconscious bias.

One judge advises: ‘It’s very hard in a busy docket if you have caseloads piling up behind you. But slowing down is one way of making sure that you are not relying on your internal unconscious biases to make a decision. The more you can use your ‘slow thinking’ rather than your ‘fast thinking’ or heuristics, the more likely it is that you will be bringing an impartial mind to the job’.

The brain employs two decision-making systems: **System 1 (intuitive)** thought processes are fast, effortless, and instinctive decisions; **System 2 (deliberative)** thought processes are slow, intentional, and effortful decisions based on logic and critical thinking.³¹

Some examples of the two modes of thinking in a judicial context include:



System 1 (Intuitive)

A judge with a heavy caseload and under time pressure applies a familiar approach to a routine bail hearing, relying on past experiences and patterns to make a quick decision without thoroughly reviewing all case specific details. *This can be efficient but may inadvertently overlook unique factors.*

During a procedural hearing, a judge immediately grants a requested motion because its form and content are similar to many others previously encountered, matching a pattern, without extensive reasoning or analysis. *While often correct, this swiftness can mask unexamined assumptions.*

A judge instinctively forms an assessment of a defendant's credibility based on their demeanor, appearance, or communication style, drawing on mental shortcuts or subconscious associations (e.g., halo effect, confirmation bias). *This reflects a tendency to seek coherence and familiarity.*

Under time pressure, a judge quickly categorises a case as similar to past cases and decides accordingly, even if some details differ. This automatic categorisation can lead to overlooking critical distinctions. *This demonstrates heuristic thinking, which can be useful but also leads to errors when subtle differences are important.*

A judge makes a preliminary assessment of a legal argument based on its initial presentation and how well it aligns with their existing beliefs or common legal tropes, without deep scrutiny. *This reflects a tendency to seek coherence and familiarity.*



System 2 (Deliberative)

A judge carefully and thoroughly reviews all the evidence, methodically considering and weighing each piece of information, including nuances, before each decision. *This ensures a comprehensive and well-reasoned outcome.*

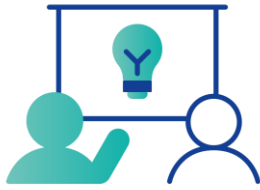
When presented with a routine motion, a judge consciously takes the time to briefly confirm its legal basis, ensure all procedural requirements have been met, and consider any specific circumstances of the current case, even if the general pattern is familiar. *This demonstrates a conscious application of established procedure and a check for accuracy.*

A judge consciously evaluates a witness' credibility by meticulously analysing inconsistencies in testimony and corroborating evidence, the plausibility of their account, and assessing their motive to lie, rather than relying on first impressions or non-verbal cues. *This promotes a more objective assessment.*

A judge carefully examines all relevant mitigating or aggravating factors that might lessen or increase the severity of a sentence, consulting sentencing guidelines, considering victim impact statements, and ensuring the sentence is proportional and fair in light of all unique circumstances of the case and the offender. *This requires careful consideration and a balanced approach.*

A judge critically evaluates a novel or complex legal argument by systematically deconstructing its components, identifying underlying assumptions, testing its logical consistency, and considering counterarguments before forming a conclusion. *This involves active and critical thinking.*

Effective judicial decision-making involves balancing both systems. However, judges under heavy caseloads and stress are more prone to rely on System 1 because it is quicker and more efficient, but consequently more prone to error and bias. For judges, constantly second-guessing every thought is impractical, while relying solely on System 2 thinking is too inefficient for routine decision-making.³¹



The most effective strategy is developing the ability to recognise situations where errors are more likely to be made. Minimising the number of ‘in-the-moment’ decisions a judge is required to make can be beneficial. For instance, evidentiary rulings made during hearings or trials would be better considered if they were deferred and made based on written briefs, with time for judges to research and reflect. While this may reduce court expediency, prioritising quality and fairness necessitates conscious and deliberative decision-making to counteract bias.³²

Taking time to write down one’s reasoning helps organise thoughts in a clear, logical, and well-supported manner. This practice provides a necessary pause to engage in slower, deliberative thinking. In complex cases, preparing a written summary of arguments for and against each party, explicitly listing key evidence and relevant legal precedents, can be especially useful. Before reaching a decision, judges are encouraged to consciously consider the opposing side’s case, even if they initially disagree, by examining what evidence supports that position and identifying any weaknesses in their current perspective. This approach promotes thoroughness and impartiality in judicial decision-making.

Monitoring self-talk and journaling. Self-talk refers to the internal dialogue individuals have with themselves. Journaling is the practice of regularly writing down thoughts, feelings, and observations. Actively paying attention to one’s internal monologue can help reveal biased ideas or assumptions as they arise. Journaling provides a private outlet for judges to reflect on difficult decisions, explore underlying assumptions, and identify recurring patterns of thought that might indicate bias.

After a challenging hearing or ruling, judges are encouraged to dedicate five to ten minutes to privately journal about their thoughts and feelings regarding the parties, witnesses, and arguments. This includes noting any initial reactions, stereotypes that came to mind, or assumptions made. This process can help judges become more self-aware of their decision-making process and if any unfair preferences might be influencing them.

Empathy and exposure to diverse groups. Empathy is the ability to understand and share the feelings of another. Increased empathy can help judges see individuals beyond stereotypes, fostering a more nuanced understanding of others’ experiences. Exposure involves actively engaging with and learning about individuals and groups from different backgrounds than one’s own. Direct exposure to diverse perspectives challenges preconceived notions and can weaken unconscious associations.



Judges can broaden their understanding by engaging in cultural events, community groups, or reading literature from diverse communities within their jurisdictions. This is not about seeking out specific cases but broadening one’s general awareness of society. It can be helpful to participate in intercultural dialogues or workshops focused on understanding diverse lived experiences.

Exploring opportunities to learn about the cultural norms, communication styles, and societal challenges faced by different groups within one’s community may also be beneficial. This also includes gaining familiarity with different legal cultures and customary law practices within the region, where applicable, to better understand diverse legal reasoning. Such learning can take place through reading, attending community events, or engaging in respectful conversations.

With increasing diversity among counsel and parties appearing before courts, judges should consider strategies to engage respectfully with people from different backgrounds and avoid creating a sense of bias or ‘othering’. A simple but effective practice is to ensure correct pronunciation of names. Having court staff or clerks ask counsel or witnesses how to pronounce their names properly helps to promote respect and inclusivity. Mispronouncing names or neglecting to make an effort can inadvertently signal that someone is an outsider.

Checklist. A checklist has been developed which aims to assist judges to identify and mitigate the impacts of unconscious bias (see [Annex B](#)). The checklist includes actions to take and questions for judges to ask themselves at the beginning of the day, before a hearing starts, during the case, and when making a decision.

Strategies for Courts

Beyond individual efforts, courts can implement systemic practices to support judges in identifying and mitigating unconscious bias.

Ongoing training and resources. Courts can provide structured programs and accessible materials designed to educate judges on the nature of unconscious bias, its manifestations, and mitigation strategies. Judges who participated in the Pacific Judicial Integrity Program (PJIP) unconscious bias webinar unanimously highlighted the importance of ongoing training (100 percent) and educational resources (63 percent) (see [Additional Resources for Further Learning](#)). Continuous education reinforces awareness and provides new tools. Specific training needs identified include:

- **Emotional awareness training.** Helping judges recognise and manage their own emotional states to prevent them from influencing decisions.

- **Access to the latest literature on bias.** Keeping judges informed about new research and understanding of cognitive biases.
- **Common judicial mistakes.** Learning from shared experiences about how biases can manifest in practical judicial settings.
- **Practical examples and role-playing scenarios.** Applying theoretical knowledge to simulated real-life situations to practice bias recognition and mitigation.
- **Recurring discussions and sharing sessions.** Creating a safe space for judges to discuss their experiences, challenges, and successful strategies related to bias.

Training could be divided into the following four modules. Fictional case studies are provided at [Annex C](#) and will be used as a practical tool, particularly in Module 3.

- **Module 1: Foundations of unconscious bias.** Define unconscious bias, explain its cognitive origins, and provide examples relevant to judicial work. (1-2 hours)
- **Module 2: Manifestations in the courtroom.** Discuss specific ways unconscious biases can impact witness credibility, evidence evaluation, sentencing, and procedural fairness. (2-3 hours)
- **Module 3: Mitigation techniques.** Focus on practical tools like mindfulness, deliberative processing, and self-reflection exercises, including role-playing scenarios where judges can practice applying these techniques. (3-4 hours)
- **Module 4: Institutional safeguards.** Explore court-level strategies, including peer review, diversity initiatives, and ethical guidelines. (1-2 hours)

Enhancing Judicial Codes of Conduct. A further option is to explicitly incorporate principles and expectations regarding unconscious bias into official judicial codes of conduct and ethical guidelines. Formal inclusion elevates the importance of bias awareness, signals institutional commitment, and provides a clear framework for accountability.³³ This would involve reviewing existing judicial codes of conduct to identify opportunities to strengthen language around unconscious bias, potentially adding specific commentary or clauses related to its impact on impartiality. It would also involve developing a clear policy statement from the Chief Justice or judicial leadership emphasising the importance of recognising and mitigating unconscious bias as a core component of judicial impartiality. See further in [Annex D](#).

Peer review and audit of decisions. This would involve a process where judges' decisions are reviewed by other judges, specifically looking for indicators of potential

bias.¹¹ This was identified as a key mitigation practice by 50 percent of PJIP webinar participants. This process provides an external check on individual judgments, offering another perspective that might identify blind spots or subtle biases that a judge might miss in their own self-reflection.

The process can be implemented by randomly selecting a small percentage of anonymised judgments for review by a panel of peers for any indications of unfairness or disproportionate outcomes that might indicate unconscious bias. This approach is like practices in the medical profession, where senior medical specialists periodically review

Bias spot check

- Are there any consistent patterns in outcomes for particular demographic groups (e.g., sentencing disparities based on race, gender, or religion)?
- Is the language used in the judgment neutral and objective, or does it contain biased terms and stereotypes?
- Are witness credibility assessments disproportionately influenced by factors like accent, education background, or physical appearance rather than the substance of their testimony?
- Has all evidence been given due weight, or does it appear certain evidence was overlooked or minimised for certain parties?

anonymised complex cases to improve quality and share insights. The focus is on learning and improvement, rather than punishment. Reviews should respect privacy and aim to identify broad trends or systemic issues rather than targeting individual judges. If disparities emerge, such as sentencing decisions showing bias against demographic groups, these should be addressed at the institutional level. A checklist for reviewers might include questions such as:

Stereotype-incongruent models and increasing judicial diversity. Stereotype-incongruent models involve actively promoting and highlighting examples of individuals who defy common stereotypes.¹¹ This approach can help to weaken unconscious biases by exposing judges to examples that contradict their ingrained associations.³⁴ This is closely linked to increasing diversity within the judiciary itself (identified by 50 percent of PJIP webinar participants as effective). A diverse judiciary brings a broader range of lived experiences and perspectives to the bench, naturally challenging existing biases and fostering a more inclusive environment. For example, greater representation of women and racial or ethnic minorities serves as a constant reminder to pursue equitable outcomes.

Practical steps include featuring profiles of judges from diverse backgrounds in internal communications or judicial publications, highlighting their unique contributions and perspectives. Advocating for and actively supporting initiatives aimed at increasing



diversity in judicial appointments is crucial, ensuring representation across various demographic groups relevant to the jurisdiction. This includes diversity in terms of socio-economic background, educational pathways (e.g., judges with backgrounds in customary law or community leadership), and physical abilities, to ensure a comprehensive reflection of society on the bench. Even subtle reminders, such as displaying pictures of judges and inspiring leaders from diverse genders, races, religions, and cultures in the corridors between courts and judges' chambers, can effectively serve as a reminder for judges to check their biases. Such visual cues help judges identify and challenge their stereotypes, promoting greater diversity and fairness in judicial decision-making.

Guidelines for sensitive cases. Developing specific guidelines for sensitive cases is essential to helping judges manage situations where unconscious bias is more likely to affect outcomes. These cases often involve marginalised groups or issues that raise heightened concerns about fairness and impartiality.

One approach is to establish clear protocols for identifying and managing cases with a high risk of bias. Some jurisdictions are considering a 'traffic light system' to evaluate bias risk and the need for judicial recusal, categorising cases as: 'green' (no disqualification), 'orange' (possible disqualification), and 'red' (automatic disqualification).^{35 36} This system aims to partially codify the law on apprehended bias by classifying scenarios based on the level of risk. Such a framework, informed by legal policy, public opinion, and psychological research could help align legal standards with public perceptions and scientific insights on bias. This system reflects a broader argument for more explicit, evidence-based protocols to manage bias risks within the judiciary.

Traffic light system

- Red cases are those that almost always raise questions of actual or apprehended bias and require heightened caution or recusal.
- Orange cases fall into a grey area where biases, including unconscious bias, are possible and judges need to apply extra vigilance and proactive mitigation strategies.
- Green cases are those where bias concerns are minimal, allowing judges to proceed confidently with standard procedures.

Implementing such a system would provide judges with clear guidance on when to take additional steps to ensure fairness, helping to balance efficiency with the need to reduce bias. By adopting tailored protocols and risk assessment tools, courts can better safeguard impartiality in sensitive cases, enhancing public confidence in the justice system.

Combining these individual and institutional strategies will enable judicial officers and courts to foster an ongoing commitment to identifying and mitigating unconscious bias, resulting in fairer and more impartial outcomes.

Additional Resources for Further Learning



Below are key resources developed by PJIP to support further learning about unconscious bias, particularly in the context of judicial decision-making in the Pacific region.

The Construct of Impartiality and Unconscious Bias (28 November 2022)

A powerful keynote address from The Honourable Chief Justice Sir Gibuma Gibbs Salika, GCL, KBE, CSM, OBE of Papua New Guinea, in which he emphasises the importance of impartiality and highlights the challenges posed by unconscious bias in judicial practice in the Pacific. This keynote was delivered at the Judicial Officers' Fraud and Corruption Workshop in Port Moresby, Papua New Guinea. Chief Justice Salika discusses the nature, formation, types of unconscious biases, and underscores that true impartiality is an aspiration that requires constant self-reflection and vigilance.

https://www.fedcourt.gov.au/_data/assets/pdf_file/0013/109003/01.-Chief-Justice-Salika-Keynote-Address.pdf

Unconscious Bias in Judicial Decision-Making Webinar (19 October 2023)

This webinar featured the Honourable Justice Sarah Derrington AM of the Federal Court of Australia, along with Judicial Wellbeing Advisers Ms Carly Schrever and Ms Sally Ryan. The session aimed to help judicial officers identify and mitigate unconscious bias in their decision-making. The discussion topics included an overview of judicial impartiality, the impact of judicial stress on decision-making, an interview with a Federal Court judge on identifying and reducing unconscious bias, and practical strategies for stress mitigation and bias reduction.

https://www.fedcourt.gov.au/_data/assets/pdf_file/0013/113071/Presentation-Powerpoints-PJIP-Unconscious-Bias-.pdf

Pacific Experiences of Unconscious Bias in Judicial Decision-Making Webinar (12 June 2025)

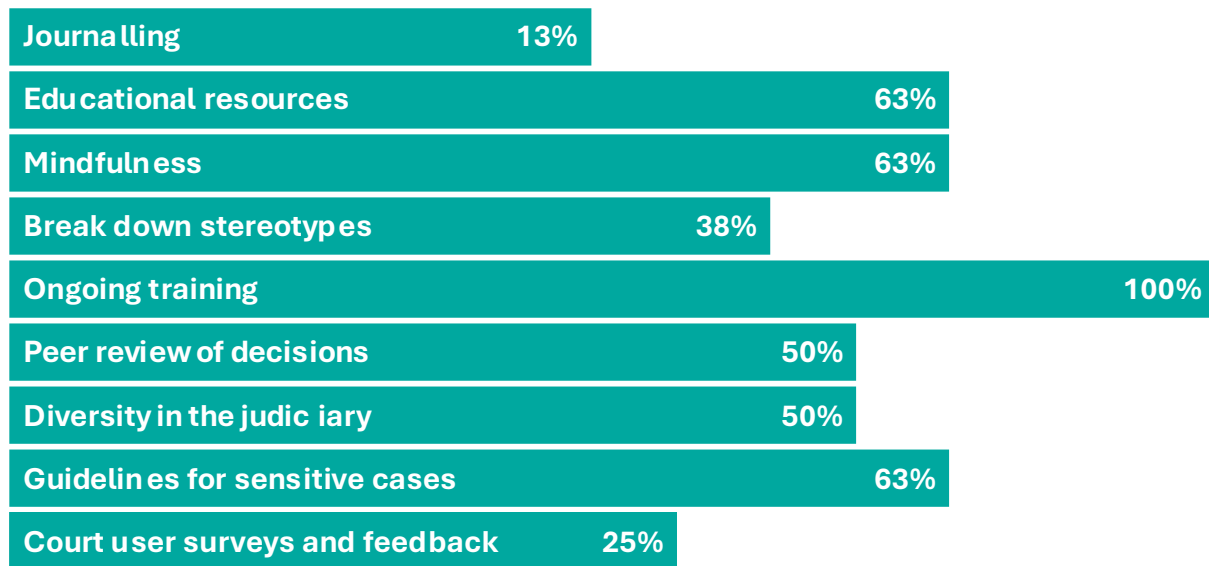
This interactive webinar brought together Australian and Pacific judicial officers to share personal reflections and practical experiences in identifying and addressing

unconscious bias in their daily work. Facilitated by the Honourable Justice Sarah Derrington AM of the Federal Court of Australia, the discussion focused on how familiar Pacific judges are with the concept of unconscious bias, effective strategies for identifying and reducing bias, and resources and reforms needed to address unconscious bias. The insights and experiences shared during this session have been anonymously incorporated in this Guide to assist judicial officers with mitigating the impacts of unconscious bias in their decision-making. The firsthand accounts from Pacific judges have been particularly valuable for informing this practical resource, given the limited existing research on judicial bias in the region.

Based on the webinar discussion and shared experiences, the most effective strategies for reducing unconscious bias identified by Pacific judges include:

- **Mandatory and ongoing unconscious bias training (100%):** This would involve judges participating in regular training sessions designed to raise awareness of unconscious biases and provide strategies for mitigating their impact.
- **Engaging with educational materials about understanding unconscious bias (63%):** These resources support judges in understanding what unconscious biases are and strategies to reduce their impact.
- **Practicing mindfulness meditation to lower stress and make clearer decisions (63%):** Mindfulness can help judges manage emotions in stressful situations so that they think more logically without bias.
- **Development of specific guidelines for sensitive cases (63%):** Creating explicit protocols for handling cases where unconscious bias may be more likely to influence outcomes, such as those involving marginalised groups.
- **Regular peer review of judicial decisions for bias (50%):** This would establish a system where judicial decisions are anonymously reviewed by other judges to identify potential instances of unconscious bias.
- **Increased diversity within the judiciary (50%):** Ensuring a more diverse pool of candidates, in terms of background and lived experiences, which can bring a wider range of perspectives and potentially reduce the impact of any single dominant unconscious bias.

Which practices do you think are most effective at reducing unconscious bias?



Articles for further reading

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Annex A: Codes of Judicial Conduct



The principle of judicial impartiality is widely recognised internationally as essential to upholding the rule of law and is enshrined in the judicial codes of conduct of most jurisdictions worldwide. This annex highlights how domestic codes of conduct within the Pacific jurisdictions reinforce this principle and provide the foundational ethical framework for addressing all forms of bias, including unconscious bias. Judicial officers should regularly review their specific domestic code of judicial conduct to understand its provisions related to impartiality, conflicts of interest, and ethical behaviour. Pay close attention to provisions that address:

- The duty to act impartially and without prejudice;
- Recusal or disqualification due to actual or apprehended bias;
- Expectations regarding judicial conduct inside and outside the courtroom that could impact public confidence in impartiality; and
- The principle of treating all parties, legal counsel, and witnesses with dignity and respect, irrespective of their background, status, or appearance.

Judges should consider how the principles in your code apply to the manifestations of unconscious bias as discussed in this Guide. While unconscious bias may not be explicitly mentioned in judicial codes, the overarching commitment to impartiality requires proactive self-awareness and mitigation.

Example of common provisions. *For illustrative purposes only – always refer to your specific domestic code.*

- **Principle of impartiality:** ‘A judge shall perform the duties of the judicial office impartially and fairly’.
- **Elimination of bias:** ‘A judge shall, to the best of his or her ability, ensure that his or her conduct, both in and out of court, does not convey a perception of bias or prejudice towards any person or group on any ground. A judge shall strive to be free of bias and prejudice and not permit the judge’s judgment to be influenced by personal relationships, social connections, or any form of discrimination’.
- **Decision-making:** ‘A judge shall conduct all judicial proceedings fairly and efficiently, with an open mind, and with due regard to the rights of all parties’.

- **Demeanour and conduct:** ‘A judge shall be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of those subject to the judge’s direction and control’.

Annex B: Checklist

This checklist is designed for judges to keep on the bench, incorporating key questions and reminders to help recognise and mitigate unconscious bias. It is structured for quick reference during different stages of a case.

When	Do and/or ask yourself	Related bias
At the beginning of your day – remind yourself	Impartiality is a continuous effort: It is not inherent but an ongoing commitment to bias awareness and mitigation.	
	Self-awareness is key: Recognising my cognitive shortcuts is the first and most powerful step.	
	Every case matters; every decision shapes public confidence in justice.	
Before the hearing starts	Take a few deliberate breaths.	
	Am I present and centred?	
	Am I approaching this case/day with an open mind, ready to consider all perspectives?	
	Am I aware of any personal material, relationship, or issue-based connections that might create a perceived or unconscious bias? If so, have I taken appropriate steps?	
During the hearing - assessing individuals and presentations (witnesses, parties, counsel)	Am I assessing this person's credibility based on their actual testimony, consistency, and corroboration, or on their:	
	Appearance (clothing, physical traits)?	Halo effect
	Accent or communication style (directness, eye contact, pauses)?	Appearance/communication bias, cultural in-group bias
	Background (racial, ethnic, socio-economic, professional, educational)?	In-group bias, stereotyping

	Is my interpretation of their demeanour culturally informed, or am I applying my own cultural norms (e.g., does quietness mean evasiveness, or respect)?	Appearance/communication bias, cultural in-group bias
	Am I allowing a single positive trait (e.g., eloquence, perceived attractiveness, confident delivery) to unduly influence my overall perception of credibility or intelligence?	Halo effect
	Am I giving equal attention and consideration to arguments from less experienced counsel, or am I summarily dismissing them due to perceived inexperience?	Overconfidence bias
	Am I treating all counsel with equal courtesy and respect, regardless of gender, age, or background?	Gender bias, age bias
	Self-Talk Monitoring. What internal labels or assumptions am I applying to this person (e.g., 'shifty', 'overly aggressive', 'just a beginner')? Challenge these thoughts.	Appearance/communication bias, cultural in-group bias
During the hearing – assessing evidence & arguments	Am I actively seeking out information or arguments that challenge my initial impressions of the case or a party, or am I only noticing information that confirms what I already believe?	Confirmation bias
	Have I given positive weight to arguments that support my preliminary findings while dismissing those that conflict?	Confirmation bias
	When reviewing past events, am I assessing what was knowable or foreseeable at that specific time, without the benefit of knowing the negative outcome?	Hindsight bias
	When considering sentencing or damages, has the first number or recommendation (e.g.,	Anchoring

	prosecutor's suggestion, damages cap) unfairly 'anchored' my thinking, making it harder to consider other figures objectively?	
	What would my independent assessment be if I had not heard that initial number?	Anchoring
	Am I relying on a quick mental 'shortcut' or typical 'profile' to understand a complex piece of evidence or situation, instead of engaging in thorough, analytical thinking?	Heuristics
Deliberative decision-making	Have I systematically articulated and considered the strongest arguments for <i>all</i> sides, even those I initially disagreed with?	
	Can I genuinely make the best case for the opposing side's position?	
	If this decision were to be reviewed or challenged, what potential hidden assumptions or biases might be revealed?	
	Is my reasoning based purely on the evidence and the law, or could it be subtly influenced by an unconscious preference, stereotype, or assumption about a party's identity or background?	
	Have I maintained an open mind throughout, or did I form a conclusion too early in the proceedings?	
	Am I consciously compensating for any potential biases I identified in myself during the hearing?	

Annex C: Fictional Case Studies

Case Study 1: The Village Elder's Testimony

Issues

Witness credibility assessment, cultural communication styles, perceived authority.

Scenario



Judge Kalani is presiding over a land dispute case involving two remote villages. A key witness for one side is Chief Manoa, a revered elder known for his wisdom in his community. During his testimony, Chief Manoa speaks slowly, often using proverbs and extended metaphors, which is typical of traditional storytelling in his culture. His answers sometimes seem indirect or circuitous to a judge accustomed to direct, concise responses in the courtroom. The opposing counsel is frequently frustrated, interrupting to ask for direct answers. Judge Kalani finds herself subtly leaning towards finding the written surveyor's report more compelling than Chief Manoa's oral testimony, feeling his narrative is less concrete or reliable.

Types of bias

In-group bias (cultural/communication style)

The judge might unconsciously favour communication styles and directness that align with her own training and cultural background over a more traditional, narrative-based approach.

Appearance and communication bias

The judge might unconsciously perceive the elder's slower, more elaborate communication as less credible or evasive, rather than a culturally appropriate way of conveying information.

Halo effect (reversed)

Conversely, if the judge (or other court staff) has a pre-existing positive association with directness and brevity, an individual without those traits might be unconsciously perceived negatively based on this single characteristic.

Approach to discussion

Initial reactions

Ask participants for their immediate thoughts on Chief Manoa's testimony style. 'How did you feel when reading about Chief Manoa's communication? What challenges might this present?'

Identify intolerance

Explore any feelings of impatience or perceived lack of clarity. 'Why might a judge find this communication style challenging in a courtroom setting?'

Unpack cultural context

Discuss the importance of understanding diverse communication norms, particularly in a culturally rich region like the Pacific. 'How do traditional communication patterns in our region differ from formal legal discourse?'

Impact on impartiality

'How could a judge's unconscious preferences for direct communication impact their assessment of Chief Manoa's credibility, even if they consciously strive to be fair?'

Brainstorm mitigation

Encourage participants to brainstorm concrete steps the judge could take.

Strategies to acknowledge and mitigate biases

Mindfulness and emotional regulation

Judge Kalani could take a deliberate pause when feeling impatient, recognising the emotion without acting on it. Focus on breath to calm and re-centre, reminding herself to listen actively.

Empathy and cultural exposure

Training on local cultural communication norms would be invaluable. The judge could reflect on general knowledge of traditional storytelling and its inherent value in different contexts.

Deliberative decision-making

Instead of immediate mental dismissal, Judge Kalani should actively transcribe or note down the key points of Chief Manoa's testimony, then consciously compare them against other evidence (including the surveyor's report) in a structured manner, focusing on factual consistency rather than delivery style.

Checklist for credibility assessment

Before forming a conclusion on credibility, consciously review a checklist: ‘Am I assessing this witness based on their appearance or communication style, or purely on the consistency of their statements?’ ‘Have I ensured an interpreter is correctly capturing the nuances of the testimony, especially proverbs or metaphors?’

Proactive clarification

Rather than interrupting dismissively, the judge could employ patient, open-ended questions to clarify. ‘Chief Manoa, thank you for that important proverb. Could you help the court understand how that applies directly to the boundary line in question?’

Case Study 2: The Experienced Judge Sentencing

Issues

Sentencing decisions, evaluation of counsel’s arguments, self-assessment of impartiality.

Scenario



Judge Tavita has served on the bench for 25 years and is widely respected for his legal expertise and efficiency. He is known for his quick grasp of cases and often makes preliminary assessments based on his extensive experience. In a recent fraud case, the junior defence counsel, fresh out of law school, presented a novel argument regarding a mitigating factor. Judge Tavita found himself quickly dismissing the argument as the product of inexperience without fully delving into its merits. During sentencing, he largely followed the prosecutor’s recommendation, which was consistent with previous sentences he had imposed in similar cases, unconsciously overlooking the nuanced argument presented by the junior counsel.

Types of bias

Overconfidence bias

Judge Tavita’s long tenure and respected reputation might lead him to overestimate his ability to be unbiased and to quickly assess arguments, making him less likely to challenge his own initial assumptions about a new or seemingly inexperienced argument. He believes his experience guarantees immunity from bias.

Anchoring bias

The prosecutor's sentencing recommendation (the first piece of information) acts as an anchor, making it harder for the judge to objectively consider the defence's argument for a different sentence length.

In-group bias (professional)

A subtle bias favouring established and experienced legal professionals (the prosecutor, his own past decisions) over a newer, less experienced counsel.

Approach to discussion

Acknowledge experience

Start by acknowledging the value of experience. 'Judge Tavita's long career is admirable. How can experience be both a strength and a potential blind spot?'

Challenge assumptions about expertise

Discuss how even experts can fall prey to biases, especially overconfidence. 'Is high intelligence or extensive experience a guarantee against bias?'

Identify dismissal points

Pinpoint the moments where the judge might have unconsciously dismissed the junior counsel's argument. 'At what point might Judge Tavita have stopped giving full consideration to the defence's new argument?'

Distinguish argument merit from its presentation

'Was the argument dismissed because of its content, or because of *who* presented it?'

Analyse anchoring

'How might the prosecutor's recommendation have anchored the judge's thinking from the outset?'

Strategies to acknowledge and mitigate

Deliberative decision-making

Judge Tavita should consciously adopt a slower, more structured approach to evaluating new arguments, especially those from less experienced counsel. This includes requiring written submissions for complex points and dedicating specific time to analyse them without immediate judgment.

Consider the opposite

Actively force himself to argue the junior counsel's point to its strongest conclusion, even if it feels counter-intuitive, before making a decision.

Monitoring self-talk

Pay attention to internal comments about counsel's experience or novelty of arguments. If he thinks, 'This sounds like a beginner's idea', he should consciously stop and reframe: 'Is this argument legally sound, regardless of its source?'

Numerical disruption for anchoring

When considering sentencing, generate his own initial range *before* seeing the prosecutor's recommendation. If he has already heard the recommendation, he might write down a very high and a very low possible sentence to de-anchor his mind before arriving at his own independent figure.

Regular peer review/discussion

Engage in sessions where judges discuss challenging arguments or sentencing decisions, allowing peers to offer fresh perspectives that might catch subtle biases related to overconfidence or anchoring.

Case Study 3: The Uncooperative Defendant

Issues

Defendant demeanour, assessment of intent/culpability, cultural differences.

Scenario



In a criminal trial, the defendant, Mr. Sione, is from a remote island community with different social norms regarding authority and communication. During questioning, Mr. Sione maintains consistent eye contact with his counsel, rarely looking directly at the judge or prosecutor. He answers questions softly, often with long pauses, and avoids direct 'yes' or 'no' answers, preferring to give context or background. Judge Williams, interpreting this behaviour through her own cultural lens, unconsciously perceives Mr. Sione as evasive, potentially disrespectful, or even guilty. This unacknowledged perception hardens her view of his testimony and leads her to give less weight to his explanations.

Types of bias

In-group bias (racial/cultural)

The judge is unconsciously interpreting Mr. Sione's behaviour through a lens that labels it as uncooperative or negative, due to a lack of familiarity with his cultural norms regarding respect for authority, eye contact, and communication style.

In-group bias (cultural/communication)

The judge's in-group norms for courtroom behaviour clash with Mr. Sione's out-group norms, leading to a negative assessment.

Confirmation bias

If the judge formed an early impression of Mr. Sione's guilt (perhaps from the initial police report), his uncooperative demeanour might inadvertently be interpreted as confirmation of that guilt.

Approach to discussion

Explore cultural variations

Discuss how different cultures demonstrate respect, engagement, and directness. 'How might cultural norms regarding eye contact, tone of voice, or direct answers differ across our diverse communities?'

Challenge default interpretations

Ask participants to consider what typical signs of evasiveness they might look for, then challenge if these signs are universally applicable. 'Are our assumptions about truthful or cooperative behaviour culturally specific?'

Impact on judgment

'How might the judge's unconscious interpretation of Mr. Sione's demeanour affect her overall assessment of his credibility and, potentially, his culpability?'

Focus on substance

Emphasise the need to prioritise the substance of testimony over its delivery style.

Strategies to acknowledge and mitigate

Emotional awareness and mindfulness

When feeling frustrated or perceiving evasiveness, Judge Williams should pause, acknowledge the feeling, and question its source. 'Am I reacting to the content or the delivery? Could this behaviour have a different, cultural explanation?'

Empathy and exposure

Actively seek out and learn about the diverse cultural norms present in the jurisdiction, perhaps through community engagement or specific training on cultural competence.

Deliberative communication assessment

Instead of immediate interpretation, Judge Williams should consciously defer judgment on demeanour. Focus on the actual words spoken, looking for logical consistency, factual corroboration, and internal contradictions rather than relying on subjective cues.

Proactive clarification and interpreter use

Ensure that excellent interpreting services are available and utilised, not just for language translation, but also for cultural nuances. The judge could ask the interpreter or counsel if the communication style is typical for the defendant's cultural background.

Monitoring self-talk

Challenge internal labels like evasive, disrespectful, or uncooperative. Reframe them as: 'Mr. Sione is speaking softly and indirectly; I need to focus on understanding the full content of his answer'.

Case Study 4: The Impressive Expert Witness

Issues

Evaluation of expert testimony, influence of perceived intelligence/articulation, balancing evidence.

Scenario



In a complex environmental case, both sides present expert witnesses. The plaintiff's expert, Dr. Elena, is highly articulate, uses sophisticated legal terminology confidently, and presents her findings with detailed visual aids. The defendant's expert, Mr. Peni, is equally qualified but less polished, speaks in simpler terms, and occasionally pauses to collect his thoughts. Judge Mere, despite consciously trying to weigh the evidence equally, finds herself more impressed by Dr. Elena's presentation. Unconsciously, she associates Dr. Elena's superior articulation and confident demeanour with greater intelligence and trustworthiness, leading her to give Dr. Elena's testimony more weight, even when the underlying scientific merits might be comparable. Dr. Elena represents a more academic or professional style that aligns with the judge's own educational background, as opposed to Mr. Peni, who might represent a more local or practical approach.

Types of bias

Halo effect

Dr. Elena's single positive characteristic (articulation, confident presentation) spills over to influence the judge's overall positive perception of her credibility and intelligence, influencing the weight given to her testimony.

In-group bias (professional/educational/class)

The judge might unconsciously favour Dr. Elena if her presentation style or academic background aligns more closely with the judge's own professional or educational in-group, leading to a subconscious preference.

Appearance and communication bias

The more polished presentation is unconsciously equated with higher quality or truthfulness.

Approach to discussion

Define halo effect

Introduce the concept and ask for everyday examples.

Separate style from substance

Guide participants to distinguish between the delivery of information and the content and merit of the information itself. 'What makes an expert truly credible? Is it their speaking style, or their methodology, data, and conclusions?'

Identify subtlety

Discuss how this bias is often very subtle and hard to detect. 'Why is this bias particularly insidious for judges evaluating experts?'

Focus on methodologies

Shift the discussion to scrutinising the scientific methodology, data sources, and logical reasoning of each expert, rather than their presentation.

Strategies to acknowledge and mitigate

Conscious decoupling of presentation and content

Judge Mere should actively force herself to separate the expert's communication style from the substance of their expertise. She might even close her eyes or look away briefly during parts of the testimony to focus purely on the audio content.

Reviewing transcripts

Post-hearing, Judge Mere could review the transcript of each expert's testimony without the visual cues, focusing solely on the words and arguments presented to ensure an objective assessment.

De-biasing prompts

Before ruling, she could ask herself: 'Am I giving more weight to Dr. Elena because she is more articulate, or because her evidence is objectively stronger?' and 'If Mr. Peni had presented Dr. Elena's findings, would I still find them as compelling?'

Seeking peer input (for complex cases)

If a case involves highly technical expert testimony, discussing the content (not the presentation) with a trusted peer could provide a check against subtle biases.

Annex D: Reviewing Codes of Conduct



While the *Bangalore Principles of Judicial Conduct* provide a foundational framework emphasising impartiality, integrity, and fairness, many domestic judicial codes of conduct primarily focus on ensuring freedom from actual or apprehended bias without explicitly addressing the concept of unconscious bias. This omission reflects the relatively recent emergence of cognitive psychology insights into how unconscious biases can influence judicial decision-making.

However, there is a growing movement to incorporate awareness of unconscious bias into judicial ethics and practice. Courts and judicial bodies are increasingly recognising the need for judges to mitigate unconscious bias, and this is starting to be reflected in judicial education programs, training initiatives, and, to a lesser extent, in the language of judicial codes and associated commentaries.

Examples of Codes with Emerging Provisions on Unconscious Bias

Unconscious bias provisions often fall under the broader umbrella of impartiality and equality. It is sometimes addressed explicitly in commentaries, guidance documents, and judicial education policies. Here are examples of how some jurisdictions are approaching it, at times through policy rather than direct code amendments:

Federal Circuit and Family Court of Australia. While the primary judicial conduct policies might not have a standalone unconscious bias article, their judicial workplace conduct policies and training materials often explicitly mention it. For instance, the *Judicial Workplace Conduct Policy* explicitly states that ‘Discrimination can occur because of unconscious biases held about why people behave in a particular way’. It also emphasises that ‘It is important to be aware of acting on stereotypes and assumptions about people based on a personal characteristic or favouring a person because of a characteristic’.³⁷

The Judicial Commission of New South Wales has published extensive educational materials on unconscious bias and its implications for judicial decision-making.^{38 39} These documents often serve as interpretative guides for the broader principles of their judicial code.

The United States of America is increasingly recognising the need to address unconscious bias within the judiciary, although this awareness is often reflected more in judicial education and advisory policies than direct amendments to the *Model Code of Judicial Conduct*. Scholars have proposed revising the *Model Code*, particularly Rule 2.3,

which requires judges to perform their duties ‘without bias’. A recommended approach is to add a comment to Rule 2.3 acknowledging the universal existence of unconscious biases and imposing an affirmative duty on judges to actively confront and mitigate them.⁴⁰ This addition would normalise the concept of unconscious bias within the judiciary, reduce stigma or defensiveness about its existence, and symbolically reinforce the judiciary’s commitment to impartiality. While such a comment would not be widely enforceable in disciplinary terms, its primary value lies in signalling to judges that recognising and combating unconscious bias is a professional responsibility essential to fair judicial decision-making.

The American Bar Association (ABA) has played a leading role in addressing unconscious bias within the United States judiciary. The ABA has developed toolkits, videos, and educational materials specifically targeting judges, prosecutors, and public defenders to raise awareness of unconscious bias and offer strategies for mitigation.^{41 42} The ABA has passed multiple resolutions urging courts to address unconscious bias. For example, Resolution 116 (2016) amended the *ABA Principles for Juries and Jury Trials* to include a provision for courts to instruct the jury on the impact of implicit bias on the decision-making process.⁴³ Additionally, Resolution 121 (2017) called for unconscious bias awareness and debiasing training to become a standard part of both initial and continuing judicial education for all courts.⁴⁴

The trend is to address unconscious bias not just as a moral failing but as a cognitive reality that must be managed through education, self-awareness, and systemic safeguards. The explicit language tends to appear more in training mandates and supporting documents rather than the core articles of the codes themselves, which often remain principle based.

Given the current landscape, a robust and explicit provision in a judicial code of conduct addressing unconscious bias could build on the existing principles of impartiality and equality, making the unconscious aspect explicit.

Proposed addition to a judicial code of conduct. To be inserted under the ‘Impartiality’ value/principle, possibly as an additional application or commentary.

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

A judge shall recognise that human cognition inherently involves unconscious biases, which can unintentionally influence perceptions, judgments, and decisions. Therefore, a judge shall:

- a. *actively strive to understand the nature and manifestations of actual, apprehended, and unconscious bias, including but not limited to, racial, gender, cultural, socio-economic, and professional biases;*
- b. *undertake regular self-reflection and engage in continuous judicial education designed to enhance awareness of personal biases and develop practical strategies for their mitigation;*
- c. *critically evaluate information and arguments to ensure that decisions are based solely on the evidence and the law, free from the influence of stereotypes, assumptions, or preconceived notions;*
- d. *treat all persons in court proceedings, including litigants, witnesses, legal counsel, and court staff, with equal dignity, courtesy, and respect, mindful that varying communication styles, cultural norms, and personal characteristics should not unfairly affect their credibility or standing before the court; and*
- e. *be vigilant in identifying and addressing any potential systemic or structural biases within the judicial process itself that could impede fair and impartial outcomes.*

Explanation of the proposed provision

- It directly names ‘unconscious biases’ and acknowledges their inherent nature.
- It specifies ‘actual, apprehended, and unconscious bias’ and lists common types, making it comprehensive.
- It uses ‘actively strive’ and ‘undertake regular self-reflection’ to emphasise the ongoing, proactive effort required.
- Explicitly links to ‘continuous judicial education’, reinforcing the importance of training.
- Refers to ‘practical strategies for their mitigation’, aligning with the guide’s focus.
- Emphasises that mitigation applies not just to the final decision but also to the entire process (evaluation of information, treatment of individuals).
- Includes language about treating all persons equally, with specific mention of communication styles and cultural norms, directly addressing common sources of unconscious bias in the courtroom.

Adds a clause on identifying and addressing ‘systemic or structural biases’, acknowledging that bias exists beyond individual judges.

This type of provision would significantly strengthen a judicial code by moving beyond a general statement of impartiality to a more concrete and actionable commitment to understanding and combating unconscious bias in all its forms.