



HUMAN ETHOS
WELLBEING FOR JUDGES AND LAWYERS

Unconscious bias: Judicial stress and its impact on decision-making

Pacific Judicial Integrity Program

19 October 2023

Carly Schrever & Sally Ryan

Psychologists; Directors, Human Ethos

FUN QUIZ

A bat and a ball cost **\$1.10** in total. The bat costs **\$1.00** more than the ball. How much does the ball cost?

_____ cents.

FUN QUIZ

If it takes **5** machines **5** minutes to make **5** widgets,
how long would it take **100** machines to
make **100** widgets?
_____ minutes.

FUN QUIZ

In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes **48** days for the patch to cover the entire lake, how long would it take for the patch to cover half of the lake?
_____ days.

What is unconscious bias?

Definition:

Unconscious influences on judgment, based on associations we hold that are outside our conscious awareness or control

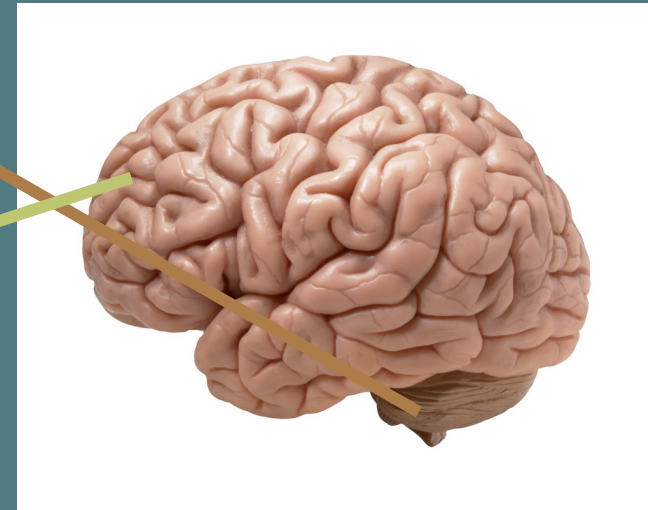
“actors do not always have conscious, intentional, control over the processes of perception, impression formation and judgment that motivate their actions”

Greenwald & Krieger (2006). ‘Implicit bias: Scientific foundations,’
California Law Review, 94, 945.

How does unconscious bias work?

Two decision-making systems in the human brain:

- **System 1: 'Intuitive'**
 - Rapid, effortless, confident
 - Operates outside cognitive awareness
 - Evolutionarily old
- **System 2: 'Deliberative'**
 - Slower, effortful, less confident
 - Conscious reasoning and logic
 - Distinctly human



**Good human decisions involve an
appropriate synthesis of intuitive and
deliberative systemics**

Common categories of unconscious bias

1. In-group bias

Favouring members of our own group

2. Racial, gender and class bias

Attaching negative or stereotypical assumptions to certain races, genders, or social groups

Implicit Association Test (IAT)

LEFT



good
lovely
saafe

RIGHT



bad
negative
unsafe

Implicit Association Test (IAT)

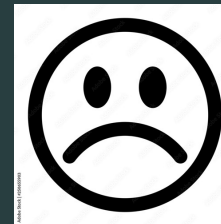
LEFT



good
lovely
safe

Women + Family v
White faces + good v
Black face + weapons v

RIGHT



bad
negative
unsafe

Men + Career
Black faces + bad
White face + harmless objects

Common categories of unconscious bias

1. In-group bias

Favouring members of our own group

2. Racial, gender and class bias

Attaching negative or stereotypical assumptions to certain races, genders, or social groups

3. Anchoring

Excessive reliance on numeric reference points when making numeric judgments

4. Hindsight bias

Over-estimating the foreseeability or predictability of an outcome after it occurs

Other possible threats to impartiality

1. 'Unknowing'

Assuming judges can ignore inadmissible evidence

2. Emotion

Expecting judges to reject emotion as a source of guidance

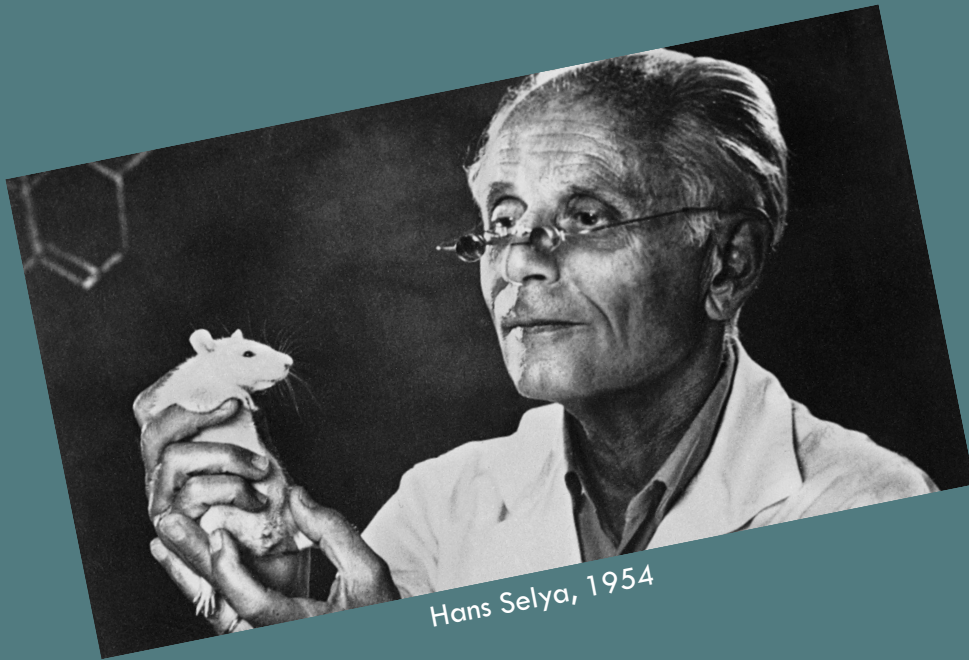
3. Heuristics

Mental shortcuts

FUN QUIZ

1. A bat and a ball cost **\$1.10** in total. The bat costs **\$1.00** more than the ball. How much does the ball cost?
10 cents? No, 5 cents
2. If it takes **5** machines **5** minutes to make **5** widgets, how long would it take **100** machines to make **100** widgets?
100 minutes? No 5 minutes
3. In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes **48** days for the patch to cover the entire lake, how long would it take for the patch to cover half of the lake?
24 days? No 47 days

What is stress?



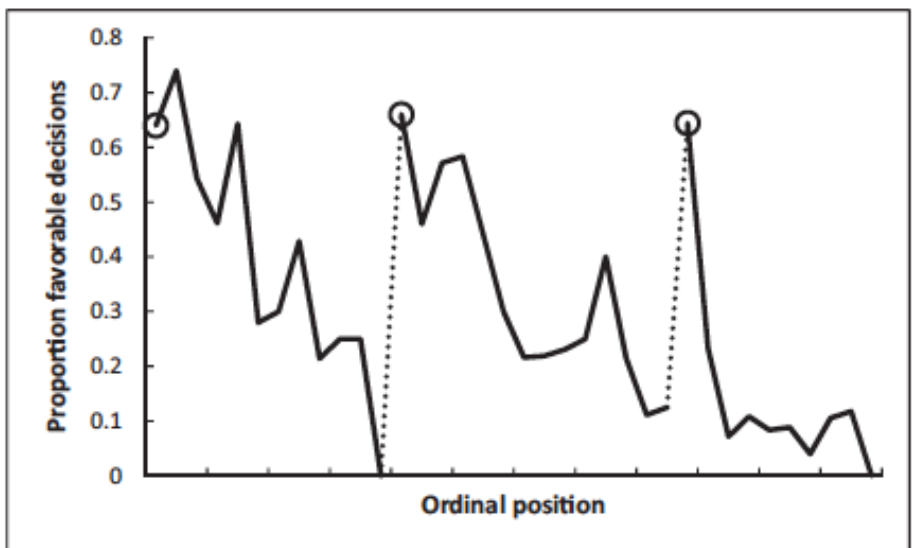
Hans Selye, 1954

“... the non-specific response of the body to any demand, whether positive or negative, made of it”

Stress and unconscious bias

Stress undermines:

- Emotion regulation and impulse control
- Objectivity and critical thinking (System 2)



Danziger et al., 2011

Other factors that exacerbate unconscious bias

1. Time pressure

Increases stress and tendency to default to System 1 reasoning

2. Lack of diversity and inclusion

Social pressure to conform

3. Privilege and power

Less need to challenge our assumptions and attitudes



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Unconscious bias: Practical strategies for stress mitigation

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Individual strategies – ongoing

Cultivate curiosity

- Willingness to challenge own assumptions

Implicit Association Test (IAT)



Harvard University 'Project Implicit'

Individual strategies – ongoing

Cultivate curiosity

- Willingness to challenge own assumptions

Mindfulness techniques

- Should be learned and practiced over time

Peer discussion and review

- Encourages self-reflection through peer learning

Individual strategies – in the moment

Use emotion regulation strategies

- Develop arousal awareness
- Breathing
- Physical grounding techniques

Manage empathic response

- Bring awareness to empathic response
- Understand your triggers

Practice bi-lateral stimulation


- Toe squeezes, Beetle wings, Butterfly hug

Monitor self-talk

- Notice levels of self-identification
- Promote self-talk that keep you in role

Thank you

Carly Schrever, Director, Human Ethos

 +61 422 218 466

 carly@humanethos.com.au

Sally Ryan, Director, Human Ethos

 +61 411 332 553

 sally@humanethos.com.au