

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS-CIVIL AND  
UNIFORM JURY INSTRUCTIONS-CRIMINAL  
PROPOSAL 2025-019**

**March 6, 2025**

The Uniform Jury Instructions-Civil Committee and Uniform Jury Instructions-Criminal Committee have recommended the adoption of new UJIs 13-110.1 and 14-101B NMRA and amendments to UJIs 13-2005, 13-2009, 14-6006, and 14-6008 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
rules.supremecourt@nmcourts.gov  
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 5, 2025**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

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**[NEW MATERIAL]**

**13-110.1. Implicit bias instruction.**

As jurors, you are charged with considering the evidence impartially and without bias. Throughout the trial, you and your fellow jurors must strive to be impartial and unbiased in considering the evidence and in reaching a verdict.

This is not an easy task because as humans, we all have biases. Biases may be based on assumptions or feelings we have about people of a particular type, class, or background. They can affect what we think about other people, how we view information we receive from them, how we remember that information, and how we develop opinions and make decisions. We may not always be aware that these biases exist, which is why we call them "implicit" or "unconscious" biases.

For this reason, as you participate in this trial, I encourage you to consider these guidelines:

1. Avoid forming a fixed view of a party, a witness, or the evidence based on your initial impressions without carefully examining the basis for that view.
2. Ask yourself whether you would have a different view of a party, or would find a witness to be more or less believable, if they had certain characteristics, for example, if they were richer or poorer, more or less educated, did not have a particular disability, or were of a different

race, nationality, gender, gender identity, sexual orientation, or religion [or \_\_\_\_\_  
((insert other form of bias))].

3. Take the time you need to reflect carefully and consciously about the evidence, and keep those considerations in mind.

4. Focus on individual facts. Do not jump to conclusions that may be influenced by unintended stereotypes or associations.

#### USE NOTES

This instruction is to be given as part of the court's initial instructions to the empaneled jury at the start of the trial. The court has some discretion with respect to placement of the instruction within the general flow of initial instructions, but generally it should be given immediately after or closely after UJI 13-110 NMRA. Language has been added to UJI 13-2005 NMRA and UJI 13-2009 NMRA to remind the jurors of their obligation before deliberations. If the parties agree, they may use the bracketed phrase in the second numbered paragraph to name a particular bias of concern or at issue in the case.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — Numerous experts have recognized that humans have implicit biases which can affect human behavior, including decision-making. *See* Alexander Green et al., *Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients*, 22 J. Gen. Internal Med. 1231, 1237 (2007) (examining physicians' implicit biases about race impacted treatment decisions); Eric Hehman et al., *Disproportionate Use of Lethal Force in Policing Is Associated with Regional Racial Biases of Residents*, 9 Soc. Psych. & Personality Sci. 393, 393 (2018) (explaining that police officers who work in areas where White residents have greater implicit racial prejudice against Black residents use disproportionate lethal force against them); Brian A. Nosek et al., *National Differences in Gender-Science Stereotypes Predict National Sex Differences in Science and Math Achievement*, 106 Proc. Nat'l Acad. Scis. 10593, 10596 (2009) (stating that implicit stereotyping associating science with males, more than females, was predictive of the national-level sex differences in eighth-grade science and math achievement); Brian Keith Payne et al., *The Bias of Crowds: How Implicit Bias Bridges Personal and Systemic Prejudice*, 28 Psych. Inquiry 233, 242 (2017) (discussing research that suggests implicit bias influences behavior); Louis A. Penner et al., *Reducing Racial Health Care Disparities: A Social Psychological Analysis*, 1 Pol'y Insights Behav. Brain Sci. 204, 204 (2014) (stating that implicit racial bias "can affect physicians' perceptions and decisions").

Implicit bias in the courtroom and the need for implicit bias instructions has therefore received significant scholarly and national attention. *See, e.g.*, Chris Guthrie et al., *Blinking on the Bench: How Judges Decide Cases*, 93 Cornell L. Rev. 1 (2007); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124 (2012); Justin D. Levinson et al., *Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes*, 69 Fla. L. Rev. 63 (2017); Judge Andrew J. Wistrich & Jeffrey J. Rachlinski, *Implicit Bias in Judicial Decision Making How It Affects Judgment and What Judges Can Do About It*, Chapter 5: A.B.A., Enhancing Just. (2017); Colin Miller, *The Constitutional Right to an Implicit Bias Jury Instruction*, 59 Am. Crim. L. Rev. 349, 391 (2022).

Several states have added instructions on implicit bias. *See* CACI No. 113 (California); Illinois Pattern Jury Instructions, Criminal, No. 1.01B (approved April 30, 2021); MPJI-CR 2:06

(Maryland); Model Jury Instructions on Implicit Bias—Preliminary Charge (Massachusetts), <https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-bias>; Model Jury Instructions on Implicit Bias—Final Charge (Massachusetts), <https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-bias>; 10 Minn. Prac., Jury Instr. Guides—Criminal CRIMJIG 1.01, 3.03 (7th ed.); New York (CJI2d[NY]) Implicit Bias Instructions, [https://www.nycourts.gov/judges/cji/1-General/CJI2d.Implicit\\_Bias.pdf](https://www.nycourts.gov/judges/cji/1-General/CJI2d.Implicit_Bias.pdf).

Although New Mexico case law has not addressed the need for instructions on implicit bias, the New Mexico Supreme Court and the New Mexico Supreme Court’s Commission on Equity and Justice requested instructions in recognition of the role implicit bias plays in our society and in our courts. The Committee crafted the current instruction, a version of which is to be used in both civil and criminal cases, in an effort to disrupt the impact of implicit bias on decision-making and to maximize the opportunity for relevant information, rather than bias, to determine the outcome of a decision-making process. The Committee contemplates that this instruction will be given soon after, and is best given immediately after, UJI 13-110 NMRA.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

### **13-2005. Jury sole judges of the facts.**

You are the sole judges of all disputed questions of fact in this case. It is your duty to determine the true facts from the evidence produced here in open court. Your verdict should not be based on speculation, guess, or conjecture.

At the start of the trial, I instructed you about implicit or unconscious bias and the need to ensure that unconscious bias does not affect the way you view the parties, the witnesses, or the evidence. Now that you are about to begin your final deliberations, that caution bears repeating. You must not let bias influence your decision. You must not be biased in favor of or against any party or witness because of their gender, gender identity, race, religion, ethnicity, sexual orientation, age, education, national origin, social or economic status, disability, [\_\_\_\_\_ (insert other form of bias),] or any other impermissible form of bias. In forming your views about the parties, witnesses, and evidence, focus on individual facts, avoid jumping to conclusions based on stereotypes, and think about the reasons for your views to make sure they are not based on feelings you may have about people of a particular type, class, or background.

Your verdict must be based on the evidence presented. You are to apply the law, as stated in these instructions, to the facts as you find them and, in this way, decide the case. Neither sympathy nor prejudice should influence your verdict.

#### **USE NOTES**

This instruction shall be given in all cases and is intended to preclude other instructions of similar import. If the parties agree, the bracketed blank space at the end of the second paragraph may be used to name a particular bias of concern or at issue in the case.

[As amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — It is a basic precept of New Mexico law that, if requested, the jury must be informed that they are the sole judges of the facts. This provision, [~~prior to~~] before the adoption of mandatory jury instructions in New Mexico, was long a part of the rules of procedure in New Mexico. The latter [~~portion~~] part of the instruction purposely repeats cautions

contained in other instructions. The second and third paragraphs of this instruction are intended to recall to the jurors' minds the court's instructions about unconscious or implicit bias given earlier in the case.

~~[This instruction was cited by the New Mexico Supreme Court in the case of *Jewell v. Seidenberg*, 82 N.M. 120, 477 P.2d 296, 49 A.L.R.3d 121 (1970) and by the court of appeals in the case of *Anderson v. Welsh*, 86 N.M. 767, 527 P.2d 1079 (Ct. App. 1974).~~

~~This instruction was cited and quoted in part in the specially concurring opinion of Judge Sutin in the case of *Higgins v. Hermes*, 89 N.M. 379, 552 P.2d 1227 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).]~~

[As amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

### 13-2009. Verdict of jury.

~~[Upon]~~ On retiring to the jury room, and before commencing your deliberations, you will select one of your members as foreperson.

You will be given the Court's instructions and [a special] verdict form[s]. [In this case it will be necessary for you to answer the preliminary questions presented to you on the verdict form.] Take the time you need to consider whether your verdict might be influenced by stereotypes and biases and reflect carefully and consciously about the evidence. In the course of your deliberations, listen to your fellow jurors, who all have their own lived experiences. Listening to different perspectives with an open mind may help you better identify the possible effects of hidden biases.

When as many as [ten] [five] of you have agreed ~~[upon]~~ on a verdict [and your answers to the questions presented on the special verdict form], your foreperson must sign the appropriate form[s] and you will all then return to open court.

#### USE NOTES

This instruction should be given in every case. The bracketed language in the second and third paragraphs is used when special interrogatories or preliminary questions are presented under verdict forms UJI 13-2217 NMRA or UJI 13-2220 NMRA. ~~[Where]~~ When used instead of the special verdict form questions, "special interrogatories" should be substituted for "preliminary questions." The instruction is given without the bracketed language ~~[where]~~ when a general verdict form is used.

[As amended, effective November 1, 1991; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — In civil cases in New Mexico, a majority of the jury renders the jury's verdict. Rule 1-038(F) and (G) NMRA. The verdict is announced by a jury foreperson. The verdict must be in writing and signed by the foreperson. Rule 1-038(F) and (G). Chapter 22 of these instructions contains the appropriate jury verdict forms for general verdicts and special verdicts accompanied by special interrogatories or answers to preliminary questions necessary to rendering of a verdict in cases of comparative fault.

#### [NEW MATERIAL]

#### 14-101B. Implicit bias instruction.<sup>1</sup>

As jurors, you are charged with considering the evidence impartially and without bias. Throughout the trial, you and your fellow jurors must strive to be impartial and unbiased in considering the evidence and in reaching a verdict.

This is not an easy task because as humans, we all have biases. Biases may be based on assumptions or feelings we have about people of a particular type, class, or background and can affect what we think about other people, how we view information we receive from them, how we remember that information, and how we develop opinions and make decisions. We may not always be aware that these biases exist, which is why we call them “implicit” or “unconscious” biases.

For this reason, as you participate in this trial, I encourage you to consider these guidelines:

1. Avoid forming a fixed view of a party, a witness, or the evidence based on your initial impressions without carefully examining the basis for that view.

2. Ask yourself whether you would have a different view of a party, or would find a witness to be more or less believable, if they had certain characteristics, for example, if they were richer or poorer, more or less educated, did not have a particular disability, or were of a different race, nationality, gender, gender identity, sexual orientation, or religion [or \_\_\_\_\_ (insert other form of bias)]<sup>2</sup>.

3. Take the time you need to reflect carefully and consciously about the evidence, and keep these considerations in mind.

4. Focus on individual facts. Do not jump to conclusions that may be influenced by unintended stereotypes or associations.

#### USE NOTES

1. The Committee recommends that this instruction be given after opening statements and before UJI 14-102 NMRA. This will ensure that jurors keep the information in the instruction in mind as they hear and consider the evidence in the case. The Committee has also added language to UJI 14-6006 NMRA and UJI 14-6008 NMRA to remind the jurors of their obligation before deliberations.

2. If the parties agree, they can use this alternative to name a particular bias of concern or issue in the case.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — Numerous experts have recognized that humans have implicit biases which can affect human behavior, including decision-making. *See* Alexander Green et al., *Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients*, 22 J. Gen. Internal Med. 1231, 1237 (2007) (examining physicians’ implicit biases about race impacted treatment decisions); Eric Hehman et al., *Disproportionate Use of Lethal Force in Policing Is Associated with Regional Racial Biases of Residents*, 9 Soc. Psych. & Personality Sci. 393, 393 (2018) (explaining that police officers who work in areas where White residents have greater implicit racial prejudice against Black residents use disproportionate lethal force against them); Brian A. Nosek et al., *National Differences in Gender-Science Stereotypes Predict National Sex Differences in Science and Math Achievement*, 106 Proc. Nat’l Acad. Scis. 10593, 10596 (2009) (stating that implicit stereotyping associating science with males, more than females, was predictive of the national-level sex differences in eighth-grade science and math achievement); Brian Keith Payne et al., *The Bias of Crowds: How Implicit Bias Bridges Personal and Systemic Prejudice*, 28 Psych. Inquiry 233, 242 (2017) (discussing research that suggests

implicit bias influences behavior); Louis A. Penner et al., *Reducing Racial Health Care Disparities: A Social Psychological Analysis*, 1 Pol’y Insights Behav. Brain Sci. 204, 204 (2014) (stating that implicit racial bias “can affect physicians’ perceptions and decisions”).

Implicit bias in the courtroom and the need for implicit bias instructions has therefore received significant scholarly and national attention. *See, e.g.*, Chris Guthrie et al., *Blinking on the Bench: How Judges Decide Cases*, 93 Cornell L. Rev. 1 (2007); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124 (2012); Justin D. Levinson et al., *Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes*, 69 Fla. L. Rev. 63 (2017); Judge Andrew J. Wistrich & Jeffrey J. Rachlinski, *Implicit Bias in Judicial Decision Making How It Affects Judgment and What Judges Can Do About It*, Chapter 5: A.B.A., Enhancing Just. (2017); Colin Miller, *The Constitutional Right to an Implicit Bias Jury Instruction*, 59 Am. Crim. L. Rev. 349, 391 (2022).

Several states have added instructions on implicit bias. *See* CACI No. 113 (California); Illinois Pattern Jury Instructions, Criminal, No. 1.01B (approved April 30, 2021); MPJI-CR 2:06 (Maryland); Model Jury Instructions on Implicit Bias—Preliminary Charge (Massachusetts), <https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-bias>; Model Jury Instructions on Implicit Bias—Final Charge (Massachusetts), <https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-bias>; 10 Minn. Prac., Jury Instr. Guides—Criminal CRIMJIG 1.01, 3.03 (7th ed.); New York (CJI2d[NY]) Implicit Bias Instructions, [https://www.nycourts.gov/judges/cji/1-General/CJI2d.Implicit\\_Bias.pdf](https://www.nycourts.gov/judges/cji/1-General/CJI2d.Implicit_Bias.pdf).

Although New Mexico case law has not addressed the need for instructions on implicit bias, the New Mexico Supreme Court and the New Mexico Supreme Court’s Commission on Equity and Justice requested instructions in recognition of the role implicit bias plays in our society and in our courts. The Committee crafted the current instruction, a version of which is to be used in both civil and criminal cases, in an effort to disrupt the impact of implicit bias on decision-making and to maximize the opportunity for relevant information, rather than bias, to determine the outcome of a decision-making process. The first paragraph of the instruction refers to statements included in the court’s introductory instruction to the jury after the jury is sworn—UJI 13-110 NMRA in civil cases, and UJI 14-101 NMRA in criminal cases. The Committee contemplates that this instruction will be given after the introductory instruction and opening statement, but before the presentation of evidence instruction in UJI 14-102 NMRA.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**14-6006. Jury sole judge of facts; sympathy or prejudice not to influence verdict.<sup>1</sup>**

You are the sole judges of the facts in this case. It is your duty to determine the facts from the evidence produced here in court. Your verdict should not be based on speculation, guess, or conjecture.

At the start of the trial, I instructed you about implicit or unconscious bias and the need to ensure that unconscious bias does not affect the way you view the parties, the witnesses, or the evidence. Now that you are about to begin your final deliberations, that caution bears repeating. You must not let bias influence your decision. You must not be biased in favor of or against any party or witness because of their gender, gender identity, race, religion, ethnicity, sexual

orientation, age, education, national origin, social or economic status, disability, [\_\_\_\_\_] (*insert other form of bias*)]<sup>2</sup> or any other impermissible form of bias.

In forming your views about the parties, witnesses, and evidence, focus on individual facts, avoid jumping to conclusions based on stereotypes, and think about the reasons for your views to make sure they are not based on feelings you may have about people of a particular type, class, or background. Your verdict must be based solely on the evidence presented.

\_\_\_\_\_. Neither sympathy nor prejudice should influence your verdict. You are to apply the law as stated in these instructions to the facts as you find them, and in this way decide the case.

#### USE NOTES

1. This is a proper instruction to be given in all cases.

2. If the parties agree, they can use this alternative to name a particular bias of concern or at issue in the case.

[As amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — This instruction was derived from and is identical to UJI 13-2005.

#### **14-6008. Duty to consult.**

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agrees. Your verdict must be unanimous.

It is your duty to consult with one another and try to reach an agreement. However, you are not required to give up your individual judgment. Each of you must decide the case for yourself, but you must do so only after an impartial consideration of the evidence with your fellow jurors.

Take the time you need to consider whether your verdict might be influenced by stereotypes and biases and reflect carefully and consciously about the evidence. In the course of your deliberations, listen to your fellow jurors, who all have their own lived experiences. Listening to different perspectives with an open mind may help you better identify the possible effects of hidden biases. ~~[do]~~ Do not hesitate to re-examine your own view and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction [as to] on the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the purpose of reaching a verdict.

You are judges - judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

#### USE NOTES

This instruction must be given in every case. After the jury has retired for deliberation neither this instruction nor any “shotgun” instruction shall be given.

[As amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — The language of this instruction was derived from a suggested jury instruction for federal criminal cases. *See* 27 F.R.D. 39, 97-98 (1961). The use of a mandatory, duty to consult, instruction in every case before the jury retires, takes the place of the so-called shotgun instruction. *See* commentary to UJI 14-6030. *See also* American Bar Association Standards Relating to Trial by Jury, § 5.4 (approved draft 1968).





**New Mexico  
Courts**

Alyssa Segura &lt;supams@nmcourts.gov&gt;

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**[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court**

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**Supreme Court** <noreply@nmcourts.gov>

Tue, Mar 25, 2025 at 1:45 PM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

<b>Name</b>	Quentin Ray
<b>Phone Number</b>	5754205146
<b>Email</b>	<a href="mailto:qray@da.state.nm.us">qray@da.state.nm.us</a>
<b>Proposal Number</b>	2025-019
<b>Comment</b>	<p>I'm a prosecutor and trial attorney. The Court continues adding more and more language to the jury instructions. I'm not opposed to addressing "implicit bias" in theory, but this seems unnecessary. The parties are allowed to address this during Voir Dire. All this does is lengthen the already too-lengthy jury instructions. Jurors struggle to pay attention. Jurors quit listening. We keep adding and adding, but I've observed jurors listening less and less. I would encourage the committee members to go sit through a jury trial and watch jurors.</p> <p>Also, in general, it comes off as condescending.</p>

Name Quentin Ray

Phone Number 5754205146

Email [qray@da.state.nm.us](mailto:qray@da.state.nm.us)

Proposal Number 2025-019

Comment

I'm a prosecutor and trial attorney. The Court continues adding more and more language to the jury instructions. I'm not opposed to addressing "implicit bias" in theory, but this seems unnecessary. The parties are allowed to address this during Voir Dire. All this does is lengthen the already too-lengthy jury instructions. Jurors struggle to pay attention. Jurors quit listening. We keep adding and adding, but I've observed jurors listening less and less. I would encourage the committee members to go sit through a jury trial and watch jurors.

Also, in general, it comes off as condescending.



Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>  
Reply-To: noreply@nmcourts.gov  
To: rules.supremecourt@nmcourts.gov

Fri, Apr 4, 2025 at 11:15 PM

Name	Arne Leonard
Phone Number	505-243-1443
Email	<a href="mailto:aleonard@rothsteinlaw.com">aleonard@rothsteinlaw.com</a>
Proposal Number	2025-019
Comment	See comment attached.
File Upload	<a href="https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/formidable/6/2025-04-04_Comments-from-A.-Leonard-on-Proposal-2025-019.pdf">https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/formidable/6/2025-04-04_Comments-from-A.-Leonard-on-Proposal-2025-019.pdf</a>

Name Arne Leonard

Phone Number 505-243-1443

Email [aleonard@rothsteinlaw.com](mailto:aleonard@rothsteinlaw.com)

Proposal Number 2025-019

Comment

See comment attached.

[https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/formidable/6/2025-04-04\\_Comments-from-A.-Leonard-on-Proposal-2025-019.pdf](https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/formidable/6/2025-04-04_Comments-from-A.-Leonard-on-Proposal-2025-019.pdf)

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April 4, 2025

**Via Electronic Submission**

Elizabeth A. Garcia, Chief Clerk of Court  
New Mexico Supreme Court  
P O Box 848  
Santa Fe, New Mexico 87504-0848  
rules.supremecourt@nmcourts.gov

Re: Proposal 2025-0019 – Uniform Jury Instructions on Implicit Bias

Dear Ms. Garcia:

I write in support of Proposal 2025-0019 to add uniform jury instructions (UJIs) on implicit bias in all civil and criminal jury trials in New Mexico courts. I believe the language of this proposed Uji will be an improvement on existing UJIs in this state, as well as jury instructions on implicit bias used in other jurisdictions, because it is phrased in terms of encouraging, considering, and asking questions, rather than assigning jurors the impossible task of disregarding biases which they may not even be aware of, or which affect their decisionmaking in ways they are not ready to consciously acknowledge. On the other hand, my support of Proposal 2025-0019 is accompanied by three important caveats enumerated below.

1. While the proposed UJIs on this subject may have a positive and preventive effect in many cases, they should not be treated as a catch-all cure for all instances of implicit or unconscious bias. When biases that may impact a jury's decisionmaking arise during trial or are discovered afterwards, courts should not simply presume those impacts did not occur because jurors were given a Uji on implicit bias. One of the defining characteristics of implicit or unconscious biases is that we may not be able to consciously recognize them, much less admit that they affected our decisionmaking. Many years ago, Justice Sandra Day O'Connor presciently referred to "implied bias" when a "juror may have an interest in concealing his own bias" or "may be unaware of it." *Smith v. Phillips*, 455 U.S. 209, 221-223 (1982) (concurring opinion). In the same case, Justice Marshall similarly foresaw instances where juror "bias was not part of an affirmative course of misconduct ... but was unconscious." *Id.* at 230-31 (dissenting opinion). During both a trial itself and further judicial review after a trial is completed, courts will still need to employ additional measures to protect juror impartiality and correct error when bias or prejudice adversely affects juror decisionmaking. Cautionary language to that effect could be added to the committee commentary or use notes which follow the proposed Uji.

2. The task of accounting for implicit bias in our legal system is not completed merely by adopting and implementing this proposed Uji on the subject. The professional literature cited in the proposed committee commentary strongly suggests that additional actions are needed to address implicit or unconscious bias among trial judges, court staff, and attorneys. While trial procedures are already set up to encourage and allow for conscious, deliberative decisionmaking by jurors,

other participants in the trial, including the trial judge, are sometimes placed in situations where they are under pressure to make snap decisions without sufficient opportunity for deliberation. According to empirical research on the subject, those hurried situations increase the likelihood that decisionmaking will be affected by implicit biases. Thus, the Court should envision and consider future changes to rules of procedure and evidence that help to create the conditions for more deliberative decisionmaking by judges and attorneys before trial where possible, rather than procrastinating and leaving important matters for decision at the last minute during the heat of the trial itself.

3. The Court and its UJI committees should get feedback on the proposed new UJI after it is adopted and then return to the subject of improving it by means of a future rule change request in a few years or so. In response to the criticism that adding a new UJI on implicit bias increases the overall length of the UJIs which need to be read to the jury in every trial, the Court should look more globally at how to reduce that volume without sacrificing content or comprehension. Some related UJIs, such as the "faithful performance" language in UJI 13-2001, may strike some jurors as fragmentary boilerplate that is not written in plain or current language they can understand. A holistic review of all the UJIs on duties of jurors may reveal opportunities to consolidate some of them and update language to more current vernacular in this State in a way that increases comprehension while reducing redundancy. Future research based on feedback from jurors, judges, court staff, and attorneys may advance the same goals with respect to improving the language of the proposed UJI on implicit bias itself.

Sincerely,

*/s/ Arne Leonard*

ARNE LEONARD  
Attorney



**New Mexico  
Courts**

Alyssa Segura <supams@nmcourts.gov>

## [rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

**Supreme Court** <noreply@nmcourts.gov>

Sat, Apr 5, 2025 at 2:31 PM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

<b>Name</b>	Shannon Kennedy
<b>Phone Number</b>	5052441400
<b>Email</b>	<a href="mailto:slk@civilrightslaw.com">slk@civilrightslaw.com</a>
<b>Proposal Number</b>	Proposal 2025-0019 to add uniform jury instructions (UJIs) on implicit bias in all civil and criminal jury trials in New Mexico courts
<b>Comment</b>	I have been a civil rights attorney in New Mexico for thirty years and based on my trial experience, I know special jury instructions on implicit bias would help ensure fair trials for the most vulnerable. Thus, I write in support of Proposal 2025-0019 to add a UJI on implicit bias in all civil and criminal jury trials. In addition I attach an affidavit of Dr. Williams in a matter involving an officer involved shooting of a Black man in Las Cruces, New Mexico. During the civil trial of this matter, we will be requesting a jury instruction on implicit bias and it would be helpful to have this UJI on the subject matter for guidance.
<b>File Upload</b>	<a href="https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/formidable/6/Affidavit-of-Monnica-Williams.pdf">https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/formidable/6/Affidavit-of-Monnica-Williams.pdf</a>

Name Shannon Kennedy

Phone Number 5052441400

Email [slk@civilrightslaw.com](mailto:slk@civilrightslaw.com)

Proposal Number Proposal 2025-0019 to add uniform jury instructions (UJIs) on implicit bias in all civil and criminal jury trials in New Mexico courts

Comment

I have been a civil rights attorney in New Mexico for thirty years and based on my trial experience, I know special jury instructions on implicit bias would help ensure fair trials for the most vulnerable. Thus,  
I write in support of Proposal 2025-0019 to add a UJI on implicit bias in all civil and criminal jury trials. In addition I attach an affidavit of Dr. Williams in a matter involving an officer involved shooting of a Black man in Las Cruces, New Mexico. During the civil trial of this matter, we will be requesting a jury instruction on implicit bias and it would be helpful to have this UJI on the subject matter for guidance.

<https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/formidable/6/Affidavit-of-Monnica-Williams.pdf>



**Affidavit-of-Monnica-Williams.pdf**  
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