

1 **14-101B. Implicit bias instruction.¹**

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

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

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

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

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

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

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

22 USE NOTES

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

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

8 [Adopted by Supreme Court Order No. S-1-RCR-2023-00041, effective for all cases pending or
9 filed on or after December 31, 2025.]

10 **Committee commentary.** — Numerous experts have recognized that humans have
11 implicit biases which can affect human behavior, including decision-making. *See* Alexander Green
12 et al., *Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and*
13 *White Patients*, 22 J. Gen. Internal Med. 1231, 1237 (2007) (examining physicians’ implicit biases
14 about race impacted treatment decisions); Eric Hehman et al., *Disproportionate Use of Lethal*
15 *Force in Policing Is Associated with Regional Racial Biases of Residents*, 9 Soc. Psych. &
16 Personality Sci. 393, 393 (2018) (explaining that police officers who work in areas where White
17 residents have greater implicit racial prejudice against Black residents use disproportionate lethal
18 force against them); Brian A. Nosek et al., *National Differences in Gender-Science Stereotypes*
19 *Predict National Sex Differences in Science and Math Achievement*, 106 Proc. Nat’l Acad. Scis.
20 10593, 10596 (2009) (stating that implicit stereotyping associating science with males, more than
21 females, was predictive of the national-level sex differences in eighth-grade science and math
22 achievement); Brian Keith Payne et al., *The Bias of Crowds: How Implicit Bias Bridges Personal*
23 *and Systemic Prejudice*, 28 Psych. Inquiry 233, 242 (2017) (discussing research that suggests

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

4 Implicit bias in the courtroom and the need for implicit bias instructions has therefore
5 received significant scholarly and national attention. *See, e.g.*, Chris Guthrie et al., *Blinking on the*
6 *Bench: How Judges Decide Cases*, 93 Cornell L. Rev. 1 (2007); Jerry Kang et al., *Implicit Bias in*
7 *the Courtroom*, 59 UCLA L. Rev. 1124 (2012); Justin D. Levinson et al., *Judging Implicit Bias:*
8 *A National Empirical Study of Judicial Stereotypes*, 69 Fla. L. Rev. 63 (2017); Judge Andrew J.
9 Wistrich & Jeffrey J. Rachlinski, *Implicit Bias in Judicial Decision Making How It Affects*
10 *Judgment and What Judges Can Do About It*, Chapter 5: A.B.A., *Enhancing Just.* (2017); Colin
11 Miller, *The Constitutional Right to an Implicit Bias Jury Instruction*, 59 Am. Crim. L. Rev. 349,
12 391 (2022).

13 Several states have added instructions on implicit bias. *See* CACI No. 113 (California);
14 Illinois Pattern Jury Instructions, Criminal, No. 1.01B (approved April 30, 2021); MPJI-CR 2:06
15 (Maryland); Model Jury Instructions on Implicit Bias—Preliminary Charge (Massachusetts),
16 [https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-](https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-bias)
17 [bias](https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-bias); Model Jury Instructions on Implicit Bias—Final Charge (Massachusetts),
18 [https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-](https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-bias)
19 [bias](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
20 (CJI2d[NY]) Implicit Bias Instructions, [https://www.nycourts.gov/judges/cji/1-](https://www.nycourts.gov/judges/cji/1-General/CJI2d.Implicit_Bias.pdf)
21 [General/CJI2d.Implicit_Bias.pdf](https://www.nycourts.gov/judges/cji/1-General/CJI2d.Implicit_Bias.pdf).

22 Although New Mexico case law has not addressed the need for instructions on implicit
23 bias, the New Mexico Supreme Court and the New Mexico Supreme Court’s Commission on

1 Equity and Justice requested instructions in recognition of the role implicit bias plays in our society
2 and in our courts. The Committee crafted the current instruction, a version of which is to be used
3 in both civil and criminal cases, in an effort to disrupt the impact of implicit bias on decision-
4 making and to maximize the opportunity for relevant information, rather than bias, to determine
5 the outcome of a decision-making process. The first paragraph of the instruction refers to
6 statements included in the court’s introductory instruction to the jury after the jury is sworn—UJI
7 13-110 NMRA in civil cases, and UJI 14-101 NMRA in criminal cases. The Committee
8 contemplates that this instruction will be given after the introductory instruction and opening
9 statement, but before the presentation of evidence instruction in UJI 14-102 NMRA.
10 [Adopted by Supreme Court Order No. S-1-RCR-2023-00041.]