

Eliminating Bias in the Courtroom? A Content Analysis of Judges’ Opinions Regarding Implicit Bias Training

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Abstract

The threat of implicit biases in people’s decision making is increasing. Unlike explicit biases, implicit biases are more covert and harder to identify. Research on implicit bias has increased substantially over the past few decades due to increasing disparities within the legal and criminal justice systems. Disparities result in minorities and underrepresented populations suffering due to the unjust decision-making of courtroom players. Previous research on implicit bias states that the more education a person receives about their biases, the less likely those biases will impact their decisions. To combat these disparities, we recommend implementing implicit bias training to reduce implicit bias in the courtroom.

We conducted a content analysis of survey data regarding judges’ perceptions of implicit bias training programs. Common themes found in the data included issues with the survey question proposed to the judges, personal attributes, minimization of bias, past experiences/beliefs, and general suggestions. Generally, judges were

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supportive of implicit bias trainings, with noted limitations. Some judges were open and willing to engage in implicit bias trainings, but other judges noted that implicit biases do not exist generally in society or specifically in their courtroom. As a future recommendation, judges expressed the need to investigate attorneys' perceptions of implicit bias trainings. The current research will be important in developing future implicit bias trainings for judges. Other training avenues, such as panel discussions and community forums, might be combined with educational efforts to increase the effectiveness of implicit bias training, or these trainings can be recommended to the Bar Association to be implemented in attorneys' own training.

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I. INTRODUCTION

The issue of implicit bias in decision-making has become an important concern in the media and everyday conversation. The concern stems from disparities found within decision-making throughout different sectors of society, but especially within the criminal justice system.¹ Judges have begun implementing implicit bias training programs as an attempt to reduce this effect; however, the trainings have not been thoroughly evaluated for effectiveness. This deficiency is a possible source of negative perceptions, and thus, a lack of openness towards implicit bias training.²

Implicit bias refers to unconsciously held attitudes or previously endorsed beliefs that influence one's actions or behaviors.³ These biases can influence decision-making in a variety of ways without the decision-maker's awareness.⁴ The most commonly used method to combat biases is education, with various training approaches based on educational models. Courtrooms have adopted such trainings in an attempt to minimize biased outcomes in decision-making.⁵

Courtrooms have implemented implicit bias trainings for court personnel and jurors, but currently, there is minimal evidence reporting judges' perceptions of these trainings. Before biases can be effectively reduced, understanding judges' perceptions is crucial because they are at the forefront of decision-making within the courtroom. The purpose of the current study is to fill the gap in the current literature regarding judges' perceptions of implicit bias training. Furthermore, understanding these perceptions can promote the development and

1. See generally Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012) (evaluating implicit bias effects on the current courtroom system and systems adjacent to it).

2. Rebecca L. Fix, *Justice Is Not Blind: A Preliminary Evaluation of an Implicit Bias Training for Justice Professionals*, 12 RACE & SOC. PROBS. 362, 363, 370 (2020).

3. Jules Holroyd et al., *What Is Implicit Bias?*, 12 PHIL. COMPASS 1, 4–5 (2017).

4. Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCH. REV. 4, 4–5 (1995).

5. See Fix, *supra* note 2, at 363–66.

implementation of successful implicit bias training in the future. To understand judges' perceptions of implicit bias training, we conducted a content analysis to investigate whether judges believe implicit bias training can limit biases in the courtroom. The current study is important because investigating, identifying, and understanding judges' perceptions and their receptiveness to implicit bias training is a vital first step prior to improving educational efforts that might reduce implicit bias in the courtroom.

II. LITERATURE REVIEW

This section provides a background on the literature surrounding the current research. First, this section provides an overview of the definitions of implicit biases and the mental processes by which they occur, followed by ways in which implicit biases are implicated within the court system. As there is current research on how the courtroom is attempting to minimize these biases, this section presents a review of the current education practices—both within and outside the courtroom. Finally, to fully understand the scope of judges' perception of implicit bias research and training, a review of the literature surrounding judges and their implicit biases is presented.

A. What are Implicit Biases?

Implicit bias entails past experiences that impact a person's present actions; however, the influence of those past experiences cannot be measured through self-report or introspection.⁶ Research regarding implicit bias yields two mental processes that greatly impact discrimination: implicit *attitudes* and implicit *stereotypes*.⁷ An *attitude* is defined as an evaluative disposition that guides favorable or unfavorable actions toward a person or object based on their likes or dislikes.⁸ More specifically, *implicit attitudes* can include unidentified past experiences that guide favorable or unfavorable feelings, thoughts, or actions toward another person or object,⁹ informing both a person's

6. Greenwald & Banaji, *supra* note 4, at 4–5.

7. Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 948 (2006).

8. *Id.*

9. Greenwald & Banaji, *supra* note 4, at 8.

behaviors and feelings toward that person or object. For example, an unidentified past experience, which could inform a person's feelings toward another person, might involve a negative altercation (e.g., physical fight, emotional distress) with a Black person. This past experience can *implicitly* influence that person's future feelings and behaviors toward other Black people, despite that past incident not involving other Black people. The other mental process, an *implicit stereotype*, is defined as a "mental association" between a group and a specific trait.¹⁰ More specifically, an *implicit stereotype* involves unidentified past experiences that attribute specific qualities to members of a social group regardless of their truth.¹¹ The key difference between a *regular* attitude/stereotype and an *implicit* attitude/stereotype is that *implicit* attitudes/stereotypes are informed by *unidentified* past experiences, not identifiable past experiences.¹² The cause of the behavior or feeling is left unknown. Together, implicit attitudes and implicit stereotypes create implicit biases.¹³

Researchers investigating implicit biases consider both mental processes of attitudes and stereotypes. Indirect measures, which do not notify the participants of the purpose of the test, are frequently utilized to study these processes.¹⁴ Based on the current application of implicit bias theory, mere exposure of possible implicit biases increases a person's awareness of their own biases.¹⁵ Implicit bias *training* exposes participants to their own implicit biases, which subsequently helps participants create strategies to address them.¹⁶ People who are more educated about their biases are less likely to act upon those biases.¹⁷ Therefore, implicit bias training serves as an effective educational tool to reduce biased effects on decision-making. Before considering current uses of implicit bias training, it is important to understand the extent and nature of implicit biases within the courtroom.

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10. Greenwald & Krieger, *supra* note 7, at 949.
 11. Greenwald & Banaji, *supra* note 4, at 15.
 12. *Id.*
 13. *See* Greenwald & Krieger, *supra* note 7, at 948, 951.
 14. Greenwald & Banaji, *supra* note 4, at 5.
 15. *Id.* at 10.
 16. Fix, *supra* note 2, at 364.
 17. *See* Kang et al., *supra* note 1, at 1172–75.

B. Disparities in the Courtroom

Implicit biases vary in content and can affect groups that are composed of different identities, such as race, gender, or religious affiliation. Within the courtroom, there are different types of implicit biases that might impact legal decision-making, including, but not limited to, racial and ethnic bias,¹⁸ gender bias,¹⁹ and religion bias.²⁰ The aforementioned biases are the most commonly observed in courtrooms and this Article will describe all three. All three of these biases can, and have, affected the decision-making of judges and other important courtroom actors.

Evidence of discrepancies within courtrooms demonstrates that there are potential problematic effects of racial and ethnic implicit biases within legal decision-making.²¹ These biases can originate from both juries and judges. For example, White jurors are more likely to convict Black defendants than White defendants²² and sentence Black

18. See generally Samuel R. Sommers & Phoebe C. Ellsworth, *White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom*, 7 PSYCH., PUB. POL'Y, & L. 201 (2001). The authors investigate White juror bias in mock jury trials through a psychological review; this review demonstrates how salient racial issues at trial activate racially biased attitudes. *Id.* at 201.

19. See generally Stephanie Riger et al., *Gender Bias in Courtroom Dynamics*, 19 LAW & HUM. BEHAV. 465 (1995) (investigating the importance of gender through secondary analyses of data from judges and attorneys and finding presence of bias, optimism that bias is decreasing, and the use of bias as a trial tactic); Laura Cutroni & Joel Anderson, *Lady Injustice: The Moderating Effect of Ambivalent Sexism in a Mock Case of Intimate Partner Homicide*, 48 CRIM. JUST. & BEHAV. 373 (2020) (discussing the experimental manipulation of a mock court transcript of an intimate partner homicide that found a moderating effect of hostile and benevolent sexism on several sentencing outcome variables).

20. See generally Samantha Bielen et al., *Blame Based on One's Name? Extralegal Disparities in Criminal Conviction and Sentencing*, 51 EUR. J. L. & ECON. 469 (2021) (discussing how researchers manipulated Islamic or nonethnic names in trials and found increased conviction rates, a non-discernible effect on sentence severity, and a higher focus on criminal record even without physical appearance for judges with minimal exposure to Islamic culture).

21. See generally Sommers & Ellsworth, *supra* note 18.

22. Linda A. Foley & Minor H. Chamblin, *The Effect of Race and Personality on Mock Jurors' Decisions*, 112 J. PSYCH. 47, 48–49 (1982); Kitty Klein & Blanche Creech, *Race, Rape, and Bias: Distortion of Prior Odds and Meaning Changes*, 3 BASIC & APPLIED SOC. PSYCH. 21, 27–29 (1982).

defendants more punitively.²³ Similarly, Hispanics are susceptible to implicit biases from judges. Compared to other racial/ethnic populations, Hispanics are at a greater risk of receiving the harshest penalty from White judges.²⁴ However, Hispanics do not experience the same discrepancies in punishments issued by Hispanic judges.²⁵ The racial and ethnic biases present in both juries and judges can disproportionately affect minority groups, Blacks and Hispanics in particular.

On the other hand, gender biases present different problems than racial biases in courtroom settings. A common stereotype in the United States is that males are more “career-focused,” but females focus on parenthood and child-rearing instead.²⁶ Based on this stereotype, judges are more likely to grant amendments to alter child custody arrangements for mothers than fathers.²⁷ Similarly, judges sentence women more leniently than men in identical violent crime scenarios.²⁸ Therefore, the sentencing disparities based on gender differ, but the results parallel the discrepancies based on race and ethnicity.

Gender biases not only affect female litigants but also female litigators. Females who display emotion while in the courtroom negatively bias decision-makers. Studies have shown that female

23. See generally David B. Gray & Richard D. Ashmore, *Biasing Influence of Defendants' Characteristics on Simulated Sentencing*, 38 PSYCH. REPS. 727 (1976) (finding through two separate studies that race explained significant proportions of discriminatory sentencing decisions); Laura T. Sweeney & Craig Haney, *The Influence of Race on Sentencing: A Meta-Analytic Review of Experimental Studies*, 10 BEHAV. SCIS. & L. 179 (1992) (presenting a meta-analysis review of the effects of defendant's race on jury sentencing decisions).

24. Darrell Steffensmeier & Stephen Demuth, *Ethnicity and Judges' Sentencing Decisions: Hispanic-Black-White Comparisons*, 39 CRIMINOLOGY 145, 167 (2001).

25. Malcolm D. Holmes et al., *Judges' Ethnicity and Minority Sentencing: Evidence Concerning Hispanics*, 74 SOC. SCI. Q. 496, 500–01 (1993).

26. See generally Tyler N. Livingston et al., *Psychological Explanations of How Gender Relates to Perceptions and Outcomes at Trial*, in ADVANCES IN PSYCHOLOGY AND LAW 137 (Brian H. Bornstein & Monica K. Miller eds., 2019) (reviewing the current literature of gender in the legal system, specifically on how it affects decision-making of courtroom players).

27. Jeffrey J. Rachlinski & Andrew J. Wistrich, *Benevolent Sexism in Judges*, 58 San Diego L. Rev. 101, 126 (2021); see also Peter Glick & Susan T. Fiske, *An Ambivalent Alliance: Hostile and Benevolent Sexism as Complementary Justifications for Gender Inequality*, 56 AM. PSYCH. 109, 114 (2001).

28. Rachlinski & Wistrich, *supra* note 27, at 120, 129.

attorneys are taken less seriously and are less likely to be hired in comparison to male attorneys.²⁹ Specifically, female attorneys who display anger in the courtroom are less likely to be hired or perceived as effective litigators compared to male attorneys.³⁰ This discrepancy is a result of the continued endorsement of gender norms surrounding anger. In the United States, people perceive anger to be a traditionally masculine behavior.³¹ Regardless of who benefits, these biased decisions create differential treatment and disparities between sexes and gender identities. Thus, like racial biases, gender biases must be minimized in the courtroom.³²

Additionally, religious biases can affect courtroom decision-making.³³ These biases can be presented in a variety of ways. For example, there is an increased conviction rate when the defendant's names are associated with the Islamic religion compared to cases in which a common, nonreligious name is used.³⁴ Even more specifically, defendants experience negative trial outcomes when the crime is associated with religion. Interestingly, Jewish judges are more effective at separating concerns with church and state in these types of religiously motivated cases compared to non-Jewish counterparts.³⁵ Researchers hypothesize Jewish judges are more adept at separating

29. See, e.g., Robert L. Brown & Sheila Campbell, *How the Public Views Female and Black Attorneys*, 32 ARK. LAW. 22, 24–26 (1997) (sharing poll results of how the public views attorneys based on their gender and race); Shari V. N. Hodgson & Burt Pryor, *Sex Discrimination in the Courtroom: Attorney Gender and Credibility*, 71 WOMEN LAWS. J. 7, 7 (1985).

30. Jessica M. Salerno et al., *Closing with Emotion: The Differential Impact of Male Versus Female Attorneys Expressing Anger in Court*, 42 LAW & HUM. BEHAV. 385, 394 (2018).

31. Jessica M. Salerno & Hannah J. Phalen, *Traditional Gender Roles and Backlash Against Female Attorneys Expressing Anger in Court*, 16 J. EMPIRICAL LEGAL STUD. 909, 926 (2019).

32. Rachlinski & Wistrich, *supra* note 27, at 135.

33. See generally Brian H. Bornstein & Monica K. Miller, *God in the Courtroom: Religion's Role at Trial*, in AMERICAN PSYCHOLOGY-LAW SOCIETY SERIES 1 (Ronald Roesch ed., 2009) (reviewing the literature on religious bias and how it can affect decision-making within the courtroom).

34. Bielen et al., *supra* note 20, at 471. Names perceived to be Islamic include Mohammed, Omar, and Moustafa, whereas names perceived to be non-Islamic—or in this study Belgian—include Ben, Tim, and Frank. *Id.* at 484 n.19.

35. Sepehr Shahshahani & Lawrence J. Liu, *Religion and Judging on the Federal Courts of Appeals*, 14 J. EMPIRICAL LEGAL STUD. 716, 735 (2017).

church and state due to historically significant events.³⁶ Understanding the effects of religious biases, as well as racial, ethnic, gender, and other types of biases, is important in the development of current education practices that intend to minimize implicit biases.

C. Current Education Practices

To alleviate the effects of implicit biases, there are various types of implicit bias trainings currently in use or awaiting further improvement before implementation.³⁷ Implicit bias trainings are designed to improve knowledge of implicit biases, increase awareness of individual attitudes and decisions, understand bias-related issues, and practice addressing their own implicit biases.³⁸ When asked about the effectiveness of implicit bias training, justice professionals display higher levels of skepticism and perceive trainings as less favorable than non-justice professionals.³⁹ This finding incites practitioners to question judges' receptiveness to any educational material presented in the implicit bias training. If judges are not receptive, then they might not adopt or continue the training, or if they do, the effectiveness of the training might decrease.

Other research has also concluded that justice professionals are skeptical of implicit bias trainings. Most judges believe themselves to be objective and effective at making unbiased decisions.⁴⁰ In fact, ninety-seven percent of judges believe that they are in the top half of "avoid[ing] racial prejudice in decision[-]making."⁴¹ However, that mindset is problematic for implicit bias training because people who believe themselves to be objective are actually more likely to be biased and thus unwilling to learn.⁴² Based on these attitudes, objectivity-doubting training—or training that is designed to make a person

36. *Id.*

37. *See, e.g.,* Fix, *supra* note 2, at 364–66.

38. *Id.* at 363–64.

39. *Id.* at 369–72.

40. Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1225–26 (2009).

41. *Id.* at 1225.

42. Eric Luis Uhlmann & Geoffrey L. Cohen, "I Think It, Therefore It's True": *Effects of Self-Perceived Objectivity on Hiring Discrimination*, 104 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 207, 221 (2007).

question their abilities to be objective—is currently being implemented specifically for judges.⁴³

Additional recommendations for implicit bias training for judges include: contact or vicarious contact with counter stereotypical settings and increased motivation to be fair through internal persuasion of judges.⁴⁴ A training that includes contact with counter stereotypical settings to decrease racial biases might include introducing a judge to admired Black and disliked White individuals (e.g., Martin Luther King Jr. and Charles Manson)⁴⁵ or implemented through diversity initiatives for judges and people with similar occupations; however, these initiatives require economic and political resources that are currently not available.⁴⁶ Vicarious contact, or contact that is portrayed through names or images rather than in person, weakens pro-White implicit biases for up to twenty-four hours,⁴⁷ but other studies found vicarious contact created a smaller effect than the findings from the original research.⁴⁸ These findings suggest that contact, either vicarious or in person, might not be reliable or generalizable to all judges and courtrooms.

Another recommendation for implicit bias training involves increasing motivation for raising awareness of potential discrimination.⁴⁹ To increase the motivation for judges to be more fair, researchers recommend training judges on implicit biases and how they

43. Kang et al., *supra* note 1, at 1174–75.

44. *Id.* at 1170, 1174 (reviewing implicit bias and its effect in the courtroom setting and exploring strategies for implicit bias reduction in the courtroom).

45. Nilanjana Dasgupta & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice with Images of Admired and Disliked Individuals*, 81 J. PERSONALITY & SOC. PSYCH. 800, 802–05, 811 (2001).

46. Kang et al., *supra* note 1, at 1170.

47. Dasgupta & Greenwald, *supra* note 45, at 805, 807.

48. See generally Jennifer A. Joy-Gaba & Brian A. Nosek, *The Surprisingly Limited Malleability of Implicit Racial Evaluations*, 41 SOC. PSYCH. 137 (2010) (replicating Nilanjana Dasgupta and Anthony G. Greenwald’s implicit racial bias reduction strategy from their 2001 study and finding a substantially lower effect size than the original). See *supra* text accompanying notes 45–46 for a description of the Dasgupta and Greenwald study.

49. Kang et al., *supra* note 1, at 1174.

arise.⁵⁰ Understanding the extent of one's own implicit biases is important in this educational process.⁵¹

The Implicit Association Test ("IAT") is a psychometrically tested measure used to understand individual implicit biases.⁵² The IAT reveals unconscious attitudes by measuring the time it takes a person to associate one group with descriptive words that might be stereotypical to that specific social group (e.g., women and family-oriented words and men and career-oriented words).⁵³ An important first step toward effective implicit bias training programs, as referenced by IAT research, is to have a certain level of concern and awareness of implicit biases.⁵⁴ Thus, awareness of one's own biases, general education about implicit biases, and motivation to reduce implicit biases are three important factors in decreasing implicit biases.

Critics of implicit bias training suggest that current educational methods are more often symbolic rather than concrete because of the small effect the training has on the large-scale issue that is implicit bias.⁵⁵ Critics also argue that implicit bias trainings are based on a guiding set of assumptions that favor these trainings, regardless of the lack of empirical support.⁵⁶ Another, more optimistic assumption is that people are open to changing their attitudes.⁵⁷ However, this assumption is particularly salient for judges as their perceptions are inherently difficult to change or influence, especially considering their aforementioned perceptions of their own objectivity.⁵⁸

50. *Id.* at 1174–75.

51. *Id.*

52. Patricia G. Devine et al., *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 J. EXPERIMENTAL SOC. PSYCH. 1267, 1269 (2012).

53. *Id.* See also *supra* text accompany note 26.

54. Devine et al., *supra* note 52, at 1277.

55. Amanda M. Petersen, *Beyond Bad Apples, Toward Black Life: A Re-Reading of the Implicit Bias Research*, 23 THEORETICAL CRIMINOLOGY 491, 497 (2019).

56. *Id.* at 496.

57. *Id.* (explaining how implicit bias control training assumes "that individuals are intrinsically motivated to control their biases").

58. See *supra* notes 40–43 and accompanying text.

D. Judges' Lack of Attention to the Impact of Implicit Bias

There is limited knowledge about judges' awareness and openness to implicit bias trainings. To address this dearth of knowledge, we performed a content analysis, which is a scientific research methodology that identifies themes, common terms, and concepts within sets of qualitative data. The current study utilizes a similar methodology to studies completed by Jacqueline M. Kirshenbaum ("Kirshenbaum") and Monica K. Miller ("Miller") to identify judges' perceptions regarding the use of training strategies and their willingness to mitigate implicit biases for jurors,⁵⁹ as well as by Mia Abboud Holbrook ("Holbrook"), Adam Dunbar ("Dunbar"), and Miller to identify judges' perceptions of systemic racism in the criminal justice system.⁶⁰

Kirshenbaum and Miller's study found that judges are unsure of how to effectively address the topic of implicit bias to jurors.⁶¹ Similarly, a small proportion of judges do not believe in implicit bias or recognize implicit bias as an issue in the courtroom.⁶² Also, many of the judges in the sample presume that implicit bias training could potentially backfire and actually increase implicit biases rather than decrease it.⁶³

Holbrook, Dunbar, and Miller's research demonstrated a similar divide with judges: some judges believed systemic racism exists but others openly denied its existence.⁶⁴ Of the judges that believed systemic racism exists, they recommended training and other reforms to alleviate potential effects of systemic racism.⁶⁵ One such training might be implicit bias training, leading to the research question of the

59. See generally Jacqueline M. Kirshenbaum & Monica K. Miller, *Judges' Experiences with Mitigating Jurors' Implicit Biases*, 28 PSYCHIATRY, PSYCH. & L. 683 (2021) (conducting a content analysis on judges' approaches on how to minimize jurors' implicit bias).

60. See generally Mia Abboud Holbrook et al., *Judges' Perceptions of Systemic Racism in the Criminal Justice System*, RACE & JUST., Mar. 14, 2022, at 1, <https://doi.org/10.1177/21533687221087388> (conducting a content analysis to identify judges' perceptions of systemic racism and finding a general belief in the existence of systemic racism).

61. Kirshenbaum & Miller, *supra* note 59, at 688.

62. *Id.* at 689.

63. *Id.*

64. Holbrook et al., *supra* note 60, at 9.

65. *Id.* at 10.

current study: “Do you think judicial education can help rid courts of implicit bias?”

Both of these previous studies—and their corresponding results—are important to consider as they answered similar but different research questions to the current study. The study completed by Kirshenbaum and Miller focused only on judges’ perceptions or opinions about alerting *jurors* to implicit biases, not about their perceptions or opinions regarding implicit bias trainings specifically for *judges*. Similarly, the study executed by Holbrook, Dunbar, and Miller focused on whether systemic racism exists, and not necessarily on the methods implemented to reduce these biases. Thus, the *present* study focuses on the current uncertainty regarding judges’ opinions on the effectiveness of implicit bias training.

III. METHODS

The purpose of the current study is to investigate judges’ opinions regarding implicit bias training. The first hypothesis informing this study predicts that judges will be overall open to implicit bias training. This prediction is substantiated by the findings of the Kirshenbaum and Miller study, which found that judges were skeptical of the legal system’s ability to implement implicit bias programs effectively.⁶⁶ Thereby, the second hypothesis predicts that judges will be doubtful of implicit bias training implementation efforts, including some judges who might become defensive when talking about implicit biases because of their own assumption that they are fully objective decision-makers. This prediction is substantiated by Rachlinski and colleagues’ work on judges’ skewed perceptions of their own objectivity, finding that most judges believe themselves to be more objective than other judges.⁶⁷ To test these predictions, we conducted a content analysis, which is described next.

A. Procedure

In the current study, judges were asked by the National Judicial College in Reno, Nevada (“NJC”), “Do you think judicial education can help rid courts of implicit bias?” in the NJC’s July 2021 monthly

66. See Kirshenbaum & Miller, *supra* note 59, at 689.

67. Rachlinski et al., *supra* note 40, at 1225–26.

survey. The sample included alumni judges and judges who have taken classes through the NJC in the past; they were identified by the NJC and successively placed on its listserv. The NJC provided us with the primary data, so we could perform this secondary data analysis. It is important to note that parts of this data were described in a general, non-scientific way in a brief news article in the Judicial Edge Today newsletter, published by the NJC.⁶⁸

The survey included a binary yes/no response to the initial question—whether education helps eliminate implicit bias in courtrooms—with an additional place for the judges to write their thoughts or opinions on the issue. The survey produced 507 responses to the yes/no question, with 284 respondents providing open-ended, written responses. Written responses were separated into individual comments by two researchers, so each individual comment represented a single idea or thought. Therefore, some responses were not separated, but other responses were separated into multiple comments.⁶⁹ This separation produced a total of 447 comments. A content analysis was conducted to generate additional themes.

B. Codes

The authors identified overarching themes, or codes, based partially on themes found in previous research and on commonalities discovered when reading and separating comments. Each theme was divided into specific subcodes. A codebook of operationalized variables based on the identified major themes and subcodes was created and updated throughout the coding process.⁷⁰ The authors identified the following five major themes: issues with the survey question, personal attributes, minimization of bias, past experiences or

68. Autumn King, *Most Judges Believe This Tactic Can Help Eliminate Implicit Bias in Court*, THE NAT'L JUD. COLL. (July 16, 2021), <https://www.judges.org/news-and-info/judges-believe-this-tactic-can-help-eliminate-implicit-bias-in-court/>.

69. Example of comment separation: Original response from judge: "Yes, but . . . [o]nly those who are open to acknowledging that is worth being educated will benefit from such education. As such, I think 'rid' would be an aspirational goal." This response was separated into two comments: "Yes, but . . . [o]nly those who are open to acknowledging that is worth being educated will benefit from such education" and "[a]s such, I think 'rid' would be an aspirational goal."

70. See *infra* Table 1.

beliefs, and general suggestions. All five major themes are detailed below.

The first major theme, *issues with the survey question*, includes two subcodes: “criticisms of the survey question” and “unalignment of the judge’s answer to the survey question with their comments.” The second major theme, *personal attributes*, consists of the following subcodes: “self-awareness”; “human nature or judges are not perfect”; “openness to education”; “willingness to change their mindset”; “justice”; “fairness”; “neutrality”; “defensiveness”; and “indication of a psychology background.” The third major theme, *minimization of implicit bias*, includes the following subcodes: “implicit bias is too big of a problem”; “implicit bias has no impact”; “denial of presence of implicit bias”; and “implicit bias is not in my courtroom.” The fourth major theme, *issues with implicit biases*, includes the following subcodes: “training cannot change the older generation, so focus on the next generation” and “implicit bias is a systemic issue.” The fifth major theme, *past experiences or beliefs*, includes the following subcodes: “past training program’s effectiveness”; “prior beliefs about implicit bias”; “political beliefs about implicit bias”; and “biased thinking’s origin.” Finally, the sixth major theme, *general suggestions*, includes the following subcodes: “education”; “length of training”; “people can never get rid of implicit biases but can only decrease implicit biases”; “all-or-nothing effort”; “sufficient first steps”; “other demographics”; “limitations”; and “future recommendations.”⁷¹

C. Inter-Rater Reliability

Two independent raters assessed thirty comments (6.7% of the total amount of comments) to establish inter-rater reliability (“IRR”). IRR ensures there is consistency between all coders when they are coding the data independently, and IRR describes the percentage of individual codes that the separate coders agreed upon. Agreement was based on whether each coder coded the same subcode and numerical code (e.g., whether the code was present or absent) for each comment.

71. Most codes were operationalized by binary levels with presence being coded as one (1) and lack of presence as zero (0). However, some codes (e.g., denial of presence, prior beliefs on implicit bias, length of training, limitations of training, other demographics, and general suggestions) were operationalized with additional levels. See *infra* Table 1 for operational definitions of each code.

Table 1 includes the IRR scores for individual codes as well as each codes' frequencies.⁷² Disagreements in codes were discussed by raters and operational definitions were further refined until rater agreement was met. IRR was measured by the Holsti's coefficient: the IRR was 89.89%, meaning the investigators agreed on codes 89.89% of the time. In other words, the coders coded a set of thirty comments independently, but an appropriate percentage of IRR was not met. In sum, the coders discussed the disagreement, and then they changed the definitions of the subcodes.

After the definitions of the codes were refined, the coders randomly selected twenty more codes to refine until IRR was reached. Once the level of agreement was deemed acceptable, coders randomly split the remainder of the comments in half to code individually. Table 1 includes each of the overarching themes and operationalized codes.⁷³

IV. RESULTS

A. Hypotheses One and Two

The first hypothesis ("Hypothesis One") predicted that judges would overall be open to implicit bias training. However, the second hypothesis ("Hypothesis Two") predicted that judges would be hesitant towards implicit bias implementation efforts. The results of Hypotheses One and Two were combined in this section because the hypotheses were based on Holbrook, Dunbar, and Miller's previous work.⁷⁴ Of the 507 judges who responded, there were 341 judges who answered yes (i.e., they believed judicial education can help courts get rid of implicit biases), and 158 judges who answered no (i.e., they did not believe that judicial education would help courts get rid of implicit biases). The other eight judges answered maybe to the question about judicial education. To test these hypotheses, the researchers evaluated how supportive each comment was of implicit bias training. The operational definitions included the following numerical ratings: 0 = highly unsupportive, 1 = slightly unsupportive, 2 = slightly supportive, 3 = highly supportive, and 4 = missing. Most comments (n = 243) were evaluated to be slightly supportive, but eighty-three comments were

72. See *infra* Table 1.

73. See *infra* Table 1.

74. See *generally* Holbrook et al., *supra* note 60.

evaluated to be either slightly or highly *unsupportive* of implicit bias training. The notation, *n*, indicates the number of judges who were evaluated as slightly supportive of implicit bias training. Overall, the judges' comments were slightly supportive (i.e., supportive with some hesitations) of implicit bias training ($M = 1.92$, $SD = 0.88$). Based on the results of this study, both Hypotheses One and Two were supported in that the judges were overall open to implicit bias training, but many judges were concerned about the implementation of the training.

B. Hypothesis Three

The third hypothesis ("Hypothesis Three") predicted that some judges might become defensive when talking about implicit biases because of their own assumption that they are fully objective decision-makers. To test this hypothesis, the researchers evaluated personal attributes of the judges. The researchers chose to evaluate personal attributes of the judges because specific personal attributes indicate whether judges are receptive or not to implicit bias training.

One of the overarching themes regarding the judges' comments included personal attributes of the judges, such as self-awareness, human nature, openness and willingness to change their mindset, justice, fairness, neutrality, defensiveness, and indication of a psychology background. Twenty-two comments indicated that participants believed judges are human and are not perfect; therefore, implicit bias is simply an effect of human nature. One judge stated in the comment section that implicit bias was "baked in" the justice system. Another judge took it a step further, commenting that implicit bias is not just baked in the justice system but baked in human nature: "A major take-away of the implicit bias training and education received so far is that implicit bias is an inherent human condition, present to some degree in all of us." Eighty-eight comments indicated that respondents believed judges must be aware of their own biases before they are able to reduce them, with one judge indicating that implicit bias training could be effective "If it is geared toward helping each judge recognize, understand, and illuminate that judge's own thought processes about people, race, and bias."

Similarly, eight comments indicated that judges must be open to education to reduce implicit bias, and eighteen judges noted that they must be open and willing to change their mindsets about the existence

of implicit bias and implicit bias training: “Education on bias and or prejudice to those who are willing to be educated on these matters is certainly helpful.” Another judge at the opposite end of the spectrum stated: “If I were not open to hearing about this, I doubt it would be helpful. I have attended training with those who are clearly opposed to learning about implicit bias. It isn’t encouraging.” Additionally, there was a small number of comments that indicated the importance of justice, fairness, and neutrality, each gaining five, nine, and four comments in support, respectively. Overall, some judges recognized that all humans have biases that can distort their decision-making; however, the judges also specified that judges must be open and willing to change their mindsets before implicit bias training can truly be effective.

C. Additional Results

The following results were additional themes and codes the researchers examined.

1. Minimization of Implicit Bias

Another overarching theme of the judges’ comments described judges’ unwillingness to accept or acknowledge the presence of implicit bias. The subcodes included: implicit bias is too big of a problem to fix, has no impact on decision-making, has no presence, does not occur in their courtroom, is not a systemic issue, and cannot decrease in the older generation. There were six comments from judges who thought that implicit bias was too big of a problem to fix. One judge said, “This is a deep[-]seeded problem that has no easy fix.” Only eight comments indicated that implicit bias does not impact judges’ decision-making. However, thirteen comments noted that the respondent did not believe implicit bias was real; one judge commented: “You are assuming that implicit bias exists. I don’t agree with that assumption.” Only two respondents acknowledged the presence of implicit bias: “That is not to say that implicit bias is not real or that such bias never results in discriminatory behavior.” Additionally, eight comments from judges indicated that implicit bias does not affect their courtroom. For example, one judge stated, “but I don’t actually think [implicit bias] impacts our courts at this level.”

2. Implicit Bias Issues

Twenty-two comments indicated that the judges, collectively, believed the individual judge was the issue, but nine comments indicated that those judges collectively believed that the issue stems from policies and practices of the court system. One judge who believed the issue lies within the individual judges said, “Personal growth is something all judicial officers should strive for to include [the] important topic” of implicit bias in their courtroom. Conversely, a respondent who believed the issue lies in policies and practices said, “Education must systematically assess policies and practices for racial bias and racial disparities to enable courts to make necessary systemic changes.” For the final code, “training cannot change the older generation, so focus on the next generation,” only two comments indicated that the older generation of judges will not change, so change should be focused on the next generation.

3. Past Experiences/Beliefs

The judges’ past experiences or beliefs pertaining to implicit bias and implicit bias training was another overarching theme. The codes within this theme included: past training programs’ effectiveness, prior beliefs toward implicit bias, implicit bias is political or a fad, and implicit bias begins at a young age. Twenty comments mentioned that the respondents had completed or participated in past implicit bias training programs. Out of those twenty comments, eight respondents indicated that the program was not effective. One judge commented, “As attorneys, we have had bias training yearly since we were admitted to the bar. Most judges have had *decades* of training already to eliminate bias. Further training will likely not have additional effects.” Conversely, twelve comments indicated that the program was effective. For example, one judge commented, “As an immigration judge, one of the most enlightening trainings I have ever had was on implicit bias.” Another judge echoed the same sentiment: “The classes I have taken on implicit bias have been extremely helpful to me in taking ownership of mistakes and trying to remedy them.”

Regarding the judges’ prior beliefs about implicit bias, one comment indicated that the respondent used to have *negative* beliefs about implicit bias. Another comment indicated that the respondent

used to and continues to have *positive* beliefs about implicit bias: “I’ve long held a belief that implicit bias is more dangerous than overt racism because it exists without the individual’s participating knowledge.” However, another comment mentioned the respondent’s past beliefs about implicit bias could be eliminated: “At one point, in my education on bias/prejudice, I thought that people could eliminate it.” These comments suggest that judges continue to recognize the negative consequences of implicit bias and that implicit bias training might not be able to feasibly eliminate implicit bias but *reduce* implicit bias instead.

There were seven comments indicating a belief that implicit bias is a political issue or a fad, a political agenda from democrats, or an effort to push critical race theory. For example, one respondent commented,

I do not believe in implicit bias. Critical Race Theory is a Marxist construct. The 1619 Project relies on crucial falsehoods. LBJ and his Great Society is principally responsible for current observed disparate impacts. Subsidize fatherlessness, make it a cultural norm, and that’s what you get. [Seventy-seven percent] of 1960 Black children lived in two parent homes. Now just [twenty-three percent].

Additionally, five comments stated that implicit bias begins at a young age and is ingrained in people. One judge mentioned that “[t]hey were from the South, so the judges in the South will continue to have the deeply embedded biases from which they have grown up in and around all of their lives.” This judge indicated in their comment that people who grew up in the southern part of the United States might have biases that they have learned from a young age and continue to influence their present lives. Another judge commented that “bias exists long before one is old and experienced enough to be installed on the bench.” This comment demonstrates that judges might bring biases that they learned earlier in their lives to their courtrooms. Therefore, implicit biases are not only learned in a person’s adult life, but they might be ingrained in a person from a young age and brought forth into their adult lives. Biases learned at a young age might be even harder

to identify because the influence of past experiences in a person's childhood can be harder to identify than more recent experiences.

4. General Suggestions

The last overarching theme was judges' general suggestions for implicit bias training. This theme's subcodes included: education, length of training, the belief that implicit bias can never be eliminated, all-or-nothing effort, first steps, limitations of training, other demographics, and future recommendations.

Out of all the responses, 136 comments from judges recommended that education is necessary in reducing implicit bias, but there were four comments from judges that recommended that education was not necessary to reduce implicit bias. However, eighty-five comments indicated that implicit bias can never be fully eliminated, only reduced. Twelve comments from judges indicated that *recognizing* one's own biases is a sufficient first step to reduce implicit bias. For example, one respondent commented that "recognition of the simple fact that bias exists in everyone is a first step," and fifteen comments from judges indicated that *education* was a sufficient first step to reducing biases (e.g., "Education is a great start"; "Education is a necessary starting point.").

Regarding the length of implicit bias training, two comments indicated that the training should occur once a year, and ten comments suggested that the training should be ongoing or continuous. Similarly, four comments from judges recommended that the training will only be successful if everyone is involved. As one judge stated, "All court personnel need to be on board," and "[a]n all-out effort to educate is definitely needed." Thus, many judges agree that education is necessary to reduce implicit bias, but the judges disagree on the duration of the trainings and what measure is the best first step to reducing bias.

For the limitations of implicit bias trainings, there were various suggestions. One comment from a judge said that a limitation was that the training cannot be "one and done"; judges must keep practicing for the training to be successful. Seven comments from judges indicated that the training will only work for people who believe that implicit bias exists. Eight comments suggested that there needs to be implementation or enforcement practices in addition to the training.

Some even suggested these enforcement practices need to come from outside the judicial system: “No, random audits of a sample of cases need[] to be done by a group that is *not connected with that court.*” Two judges indicated that more diverse judges need to be hired. Another judge indicated that the training/education needs to be earlier and more general. However, a couple of judges cautioned against accusing any judges that they are racist.

In two comments, judges cautioned that training programs should not imply judges are racist because this will cause judges to get defensive. Seven comments from judges said that the training will simply not work. These judges were skeptical about effectively reducing bias when the participating judge is not even aware bias exists: “You can’t fix what doesn’t exist.” Another judge similarly commented, “We can’t change what we don’t understand.” Two comments from judges indicated that the training must require the participants to actively engage in the training or education. Other comments expressed the following additional limitations: judges cannot get past personal experiences; trainings are not sufficient (need a multifaceted approach); the success of the training depends on the trainer (expert); there is no objective measurement of implicit bias; implicit biases can be hidden until they are revealed; and reducing bias must be done on a personal level.

If judges cannot get past their own personal experiences, those judges will continue to harbor implicit biases that stem from past personal experiences.⁷⁵ For example, if a judge experienced a negative confrontation with a Black person and they continued to fixate on that experience their entire life afterwards, then that judge might harbor biases that implicitly impact all future encounters with all Black people. Because implicit biases are nonconscious, judges might not become aware of their personal biases until they are put in a situation that brings those biases to theirs or other people’s attention. Therefore, judges must be committed to reducing their own biases on a personal level. Other people cannot force judges to recognize their biases unless they are willing to reflect on their own personal lives. Except for the IAT, there is unfortunately no other objective measurement of implicit bias. The use of a multifaceted approach to implicit bias training might expose judges to different types of biases, real-life examples of bias,

75. See Greenwald & Banaji, *supra* note 4, at 4–5, 8.

and other people's testimonies to their experiences with implicit bias and attempts to reduce their biases. Another suggestion that the judges mentioned was that implicit bias training should include other demographics beside race.

In eight comments, the judges said that they believed that implicit bias training should be more inclusive to other demographics. The judges who made these comments were suggesting that implicit bias trainings only focus on racial biases that impact their decision-making. Instead, these implicit bias trainings should expand the demographic groups, such as gender and sexual orientation, that might be affected by implicit bias. The influence of implicit bias on a judge's decision-making is not restricted to only racial biases. There are additional biases against other characteristics that could distort judges' decision-making, and judges should be educated on the impacts of how gender, sexual orientation, and religion can impact their decision-making.

As for future recommendations, five comments from judges indicated that the training must provide examples of bias as illustrations. In eleven comments, judges recommended that additional trainings other than education need to be implemented. Lastly, several comments mentioned other recommendations. First, teach judges to compartmentalize emotions from decision-making. For judges to remain as impartial as possible, their own personal emotions should remain separate from their decision-making. Thus, implicit bias trainings should include exercises and recommendations for judges to compartmentalize their emotions away from their decision-making. Second, remind judges how implicit bias affects their decisions. As mentioned in previous research,⁷⁶ judges are likely to perceive themselves as objective decision-makers all the time. However, everyone's decisions are subject to implicit biases, including judges.⁷⁷ Therefore, judges should be periodically reminded how implicit biases might interfere with their decision-making. If judges are reminded a few times a year how implicit biases can be detrimental to their decision-making, then they might be more likely to be aware of those consequences and address their decision-making processes. Third, address other types of biases other than individual biases. For example,

76. See *supra* notes 40–43 and accompanying text.

77. See Kang et al., *supra* note 1, at 1128–29.

these trainings might educate judges on group biases, such as in-group and out-group effects. Fourth, include community service or discussion/fellowship. Besides educational classes, judges might hold community forums or discussions, which allow open dialogue between judges and the communities they serve. Judges might be able to learn from past mistakes that the community voices. Fifth, utilize remote hearings, which might allow judges to review the recordings of these remote hearings to observe whether their own rulings appear unbiased. Watching their own actions and decision-making processes might allow the judges to see their decisions from a more outside perspective. Sixth, educate judges about the critical importance and necessity of their leadership. Judges preside over the proceedings of a courtroom; therefore, if judges are making biased decisions, then attorneys and jurors might feel like they are also allowed to make biased decisions. Judges need to set an example in the courtroom to be as impartial as possible. Seventh, use bench officers as the trainers. Eighth, make the trainings mandatory. If the trainings are not mandatory, the judges who do not believe implicit bias exists will never attend these trainings. Hopefully, over time, those judges will begin to see that implicit biases do exist and impact their own decision making.

Overall, judges are supportive of implicit bias training implementations, but many judges left comments expressing limitations to these training programs and suggesting improvements. The results of this study provide great insight into judges' stances on the current state of implicit bias trainings, as well as their thoughts on future trainings.

VII. DISCUSSION

The purpose of this article is to investigate judges' opinions about implicit bias training. The results of the survey showcased a wide range of judges' opinions regarding implicit bias training. Overall, the findings of this study demonstrated that judges' perceptions of implicit bias training are moving in a positive direction. This is an optimistic transformation that deviates from previous research, which demonstrated that judges were extremely skeptical and less favorable of implicit bias training.⁷⁸

78. See *supra* text accompanying notes 40–43.

The survey question was, “Do you think judicial education can help rid courts of implicit bias?” A total of 506 judges responded to the question, and 294 judges left additional comments elaborating on their opinions about implicit bias and implicit bias training. The researchers rated each comment on a scale from zero to three describing how supportive the judge was of implicit bias training. These ratings provided data to support Hypothesis One and Hypothesis Two respectively: judges will overall be open to implicit bias training, and there will be some judges who will be hesitant about implicit bias implementation efforts. The mean score of the ratings, $M = 1.92$ and $SD = 0.88$, indicates that most of the judges are supportive of implicit bias training. However, there were 158 judges who were not supportive of implicit bias training. To investigate Hypothesis Three, some judges might become defensive when talking about implicit biases because of their own assumption that they are fully objective decision-makers, we reviewed the most common themes that appeared in this study.

The most common major themes of the judges’ comments include the following: personal attributes, denial of presence, past experiences/beliefs, and general suggestions. For the personal attribute theme, many judges expressed how judges need to be aware of their own biases and must be open and willing to attend education programs to change their mindsets before any implicit bias training can be effective in reducing biases. This code was one of the most prevalent among the judges, and the high prevalence might be due to judges understanding that change must occur within themselves before external sources can change their personal behaviors. The personal attribute theme also supported Hypothesis Three: some judges would become defensive when talking about implicit biases because they assume they are fully objective decision-makers. This defensiveness was confirmed when a group of judges stated this type of training assumes judges are racist. There was also a group of comments within the personal attribute theme stating judges were not perfect and were only human, which indicates more support for implicit bias training among judges.

The next most prevalent theme among the judges’ comments were general suggestions. The general suggestions identified judges’ perceptions of the training’s limitations and future suggestions for implicit bias training. Many judges suggested that implicit bias can never be completely eliminated, so this limitation guided their future

suggestions. Lastly, the theme denial of the presence of implicit bias identified judges' beliefs that implicit bias does not exist, influence their decision-making, or impact their courtrooms. The prevalence of these major themes (i.e., personal attributes, denial of presence, past experiences/beliefs, and general suggestions) might be explained by the many judges who are willing to recognize their personal biases and learn how to reduce implicit biases in the courtrooms. However, this is undermined by the remaining faction of judges who are resistant and do not see the benefits of these trainings.

These findings moderately align with previous research on judge objectivity and acknowledgement of their biases, which showed that judges are more likely to believe that they are objective decision-makers.⁷⁹ Some judges presented a lack of acknowledgment that implicit bias exists, generally in their lives and in their courtrooms. This finding is supported by previous research on judges' perceptions regarding their own objectivity and how biases do not interfere with their decision-making.⁸⁰

The current study also demonstrated skepticism among judges. Most judges were slightly supportive of implicit bias training along with varying levels of skepticism found within the comments. This finding suggests that some judges were skeptical of implicit bias training and did not fully support judicial education efforts. However, the judges' opinions were generally more supportive than expected. Contrasting the results to past research, an abundance of comments in the current study displayed self-awareness of implicit biases and openness to education or changing their mindsets. Although we did not predict an exact number of judges who we expected to be supportive, the results were surprising given the results of past research, which indicated that judges were not as willing to recognize their own biases.⁸¹ Based on the findings of the current study, judges' perceptions of implicit bias training appear to be moving in a positive direction. This is an optimistic change from previous research, which showed that judges were extremely skeptical and exhibited less favorable perceptions of implicit bias training.⁸²

79. See Rachlinski et al., *supra* note 40, at 1225–26.

80. See *id.*

81. See *id.*

82. Fix, *supra* note 2, at 363–66, 370.

A. Limitations

Although this study produced in-depth data regarding judges' opinions about implicit bias training, there were limitations to the study. One of the limitations of the current study included the examination of a secondary data set. The data was not collected primarily by the current researchers. Instead, the data was collected through the National Judicial College, which has access to hundreds of judges that the researchers would not have had. Because the current researchers were not in control of the wording of the survey, there were a few judges who commented that the wording of the survey question was misleading or incorrect. Many judges did not believe that implicit bias could be eliminated, so the wording of the question created a few problems with how the judges answered the question. If the question were to say "decrease" instead of "rid," then that might have eliminated this concern.

Another limitation was that the participants self-selected whether to participate in the survey, so there could be a threat of selection bias. Judges who chose to participate in the survey might have different characteristics or beliefs than those who chose not to participate in the study because they believe implicit bias trainings are effective, or they feel strongly against implicit bias training. This could positively skew the results of the survey in the direction of high or low support of implicit bias training. Self-selection can limit the generalizability of the survey.

Additionally, there were many judges who did not respond with additional comments in the survey. Instead, they only responded with a yes or no answer to the survey question. Although the binary response to the survey question informs the researchers about their general stance regarding implicit bias, there are no in-depth comments elaborating further. Without the additional comments, fewer conclusions can be drawn about judges' opinions regarding implicit bias training.

The survey data also lacked demographic information (i.e., gender, race, political ideology) about the judges. If the researchers had demographic information, then the study could have further investigated how individual differences influence a judge's opinion regarding implicit bias and implicit bias training. For example, there might be differences in gender or political ideologies between judges

who are supportive of implicit bias training versus those who are not. Moreover, judges with different genders and political ideologies could be further compared to other individual differences, including professional training and experiences, beliefs, and geographical regions. Future researchers might collect additional information such as gender, race, and political ideology to conduct additional analysis to compare and explain how these external factors influence individual biases. However, despite the current study's limitations, the results of this study yielded important insights and implications for future implicit bias training programs.

B. Implications

The current study analyzed judges' comments regarding implicit bias and implicit bias training. The results revealed that most judges believed judicial education on implicit bias would aid courts in reducing implicit bias in the courtroom. These results have important implications for future implicit bias training programs.

Before any educational training programs can be implemented, researchers must investigate judges' receptiveness to implicit bias training. Trainings will not be effective in reducing implicit bias in the courtroom without judges' willingness to receive these trainings. Therefore, the current study considered the perspectives of judges—those who are most involved in courtroom decision-making who could be most impacted by implicit bias. This study can encourage future research to improve implicit bias training and further reduce implicit bias in better, more accepted methods.

Pertaining to the judges' own attributes, many judges stated they must be aware of both implicit biases generally and their own biases specifically. Many judges also indicated that they believed judges as a whole must be open and willing to change their own mindsets and attend judicial education programs. Therefore, in addition to reducing implicit bias, the training should focus on increasing awareness of the specific implicit biases judges might have. Further, previous research has analyzed judges' perceptions of alerting jurors of implicit bias's role in issuing a verdict. This research found judges' personal lack of awareness or understanding of implicit biases actually increased the

feeling in judges that they should alert jurors to the importance of implicit biases in the future.⁸³

Conversely, there was a small group of judges who minimized the impact of implicit bias in everyday life and their own courtroom. There was even a small group of judges who did not believe implicit bias exists. Therefore, it might be beneficial for implicit bias training programs to focus on judges who believe that implicit bias exists because judges who do not believe implicit bias exists might be less willing to learn and change their mindsets.

Many judges mentioned numerous limitations of implicit bias training along with future recommendations. In particular, many judges mentioned that they did not believe implicit bias can be completely eliminated, but they did believe that implicit bias can be reduced. Many judges expressed that training would not be effective if the goal were to eliminate implicit bias altogether. Therefore, implicit bias training should focus its efforts on reduction rather than elimination. Leaders of the training can craft their words carefully and use words like “reduce” rather than “rid.”

Additionally, judges recommended implicit bias training instructors provide examples of biases to both contextualize and normalize prevalence of implicit bias. These trainings might provide judges with examples of how implicit bias might affect their decisions in their everyday life outside of the courtroom. For example, a judge might be impacted by implicit bias if they are judging their own children’s competition. The judge’s decisions will inherently be biased even if the judge believes they can be impartial. If judges can recognize that implicit bias impacts unimportant decisions in their daily lives, then they might be more willing to recognize how implicit bias impacts important decisions in their courtrooms.

Further, these judges recommended implementing additional trainings beyond educational programs. In addition to educational programs, judges might attend panel discussions and community forums that discuss the issues of implicit bias. These additional efforts could supplement the information taught in the education programs. Thus, implicit bias training should provide judges with real-life examples of situations depicting bias both within and outside the

83. See generally Kirshenbaum & Miller, *supra* note 59 (finding that judges’ recognized the importance of alerting jurors to the potential effects of implicit biases).

courtroom. These examples will help the judges visualize how implicit biases can manifest in the real world and how it might occur within different contexts.

Additional subsequent trainings might include community town halls or discussions, remote hearings, and trainings instructed by bench officers. Many judges and researchers assume that educational classes are the only tool available to decrease biases, but there are other options that need to be explored. Future studies might implement other implicit bias training avenues other than education and assess these other methods' effectiveness. However, all this current study demonstrates is the heightened need for additional training methods. These other methods for training might be combined with education tactics to create a more effective training program for judges. Nonetheless, judges are not the only courtroom actors who could benefit from implicit bias training.

However, some judges did not believe implicit bias existed nor did they believe judicial education was effective in reducing implicit biases. These findings demonstrate that the implicit bias trainings should focus on those judges who believe implicit biases exist and are willing to change their beliefs and actions. Judges who have strong beliefs *against* implicit bias training should attend trainings that focus on first increasing their awareness of implicit biases instead of focusing on changing their behaviors in the courtroom. The focus on behavior modification can come at later training dates. The training could focus on providing examples of implicit bias and showcasing the negative consequences of these biases. These efforts might help those judges who do not believe implicit bias exists to recognize that implicit biases actually do exist, and then they can attend subsequent trainings that aim to reduce these biases.

Because the results of this study demonstrated that most judges believe judicial education and implicit bias training would be effective in reducing biases in the courtroom, judges are likely willing to not only take the training themselves but to implement training for other important actors in the courtroom. Judges might recommend to a local bar association that attorneys participate in implicit bias trainings too. These trainings can be slightly adjusted to the specific role that they play in court. For example, attorneys make different decisions than judges, so attorney implicit bias training can be slightly altered to align with the types of decisions they are required to make. Additionally,

attorneys, like judges, are important decision-makers in the courtroom, so they might be able to provide further insight and a different perspective on whether they believe training will effectively reduce implicit bias and provide different recommendations to improve the training. While this study did not include attorneys, future implicit bias training research could expand to include the like.

Further, previous research has analyzed judges' perception of alerting jurors of implicit bias's role in issuing a verdict. This research found some judges lack personal awareness or understanding of implicit biases and are unsure of how to effectively address the topic of implicit bias to jurors.⁸⁴

Additionally, future research should collect demographic data from participants. This data will allow researchers to investigate effects of individual differences of the judges. For example, individual differences might include Social Dominance Orientation ("SDO"). Judges high in these traits might be less receptive to implicit bias training because they support social hierarchies and desire their in-group to be superior to their out-group. Future researchers might compare the effectiveness of implicit bias training on judges who are high in SDO and those who are low in SDO.

Although there were some limitations to the current study (e.g., self-selection bias, secondary data analysis, lack of demographic information), this study yields impactful implications for implicit bias training in courtroom settings. By starting to educate judges on their own implicit biases, these implicit bias trainings can disseminate throughout the legal system to mitigate the influence of implicit bias on any decision-maker in the courtroom (e.g., attorneys). Overall, the results of the current study provide a foundation for the state of judges' perceptions of implicit bias training.

VI. CONCLUSION

Previous research on judges' perceptions of implicit bias training is minimal due to the novelty of implicit bias training.⁸⁵ The

84. Kirshenbaum & Miller, *supra* note 59, at 689–90.

85. *See generally* AM. BAR ASS'N JUD. DIV., ENHANCING JUSTICE: REDUCING BIAS (Sarah E. Redfield ed., 2017) (discussing bias in the criminal justice system and how approaches can be used to reduce its effect by "breaking the bias habit").

purpose of this content analysis was to fill the gap in the current literature on judges' perceptions of implicit bias training. Common themes found in the data included issues with the survey question, personal attributes, minimization of bias, past experiences or beliefs, and general suggestions. Although some judges displayed unsupportive attitudes towards implicit bias training, overall, the majority appeared slightly supportive, with some noted limitations. These findings provide important implications for future reduction strategies, particularly considering this study illuminated that most judges were open to considering implicit bias training and its effectiveness. With continued work improving the effectiveness of implicit bias training and more substantiated research on its effects, judges will continue to become more open to the idea of implicit bias training. Overall, the practice of implementing implicit bias training for judges could reduce the effects of implicit bias in judicial decision-making.

TABLE 1

Identifies themes, categories within each theme, their operational definitions, the inter-rater reliability for each individual code, and the number and frequency percentage of judges within those responses who applied to that code.

Theme	Sub-themes	Operational Definition	Inter-Rater Reliability	Number of Times Code Appeared & Frequency Percentage
How supportive is the judge of implicit bias training?	N/A	Based on the judge's comment, how supportive do you think the judge is of implicit bias training? highly unsupportive (0), slightly unsupportive (1), slightly supportive (with limitations) (2), highly supportive (without limitations) (3), or was missing (4)	0.93	Highly unsupportive (0) = 52 (7.8%) Slightly unsupportive (1) = 31 (4.6%) Slightly supportive (2) = 243 (36.3%) Highly supportive (3) = 99 (14.8%) Missing (4) = 224 (33.4%)
Cannot be Coded	N/A	The comment by the judge cannot be coded if the comment makes no sense (1), the comment is not relevant to the survey question or is not a meaningful comment (2), or the codebook does not have a code for the comment (3)	1.00	Makes no sense (1) = 5 (0.7%) Not relevant/not meaningful (2) = 2 (0.3%) Do not have a code for (3) = 16 (2.4%)

Issues with Survey Question	Criticism of Survey Question Answer to “Do you think judicial education can help rid courts of implicit bias?” does not align with comments	Judge noted that there were issues with the survey question (1) or that there were none (0) The answer given to the question aligned with and did not contradict the comments that the judge said (0) or did not align and contradicted (1)	N/A 1.00	Issues noted with question (1) = 15 (2.2%) Answer did not align or contradicted (1) = 85 (12.7%)
	Self-Awareness	Judge noted that individuals must be self-aware of implicit bias (1) or that they are not (0)	0.88	Not self-aware (0) = 1 (0.1%) Self-aware (1) = 88 (13.1%)
Personal Attributes	Human Nature/Judges are not perfect	Judge noted that implicit biases are human nature, “baked in,” or that one cannot help because everyone has implicit biases (1) or noted that they were not (0)	0.33	Implicit biases are human nature (1) = 22 (3.3%)

Openness to Education	Judge noted that they are open (1) or not open (0) to education, specifically by noting a word pertaining to "education"	N/A	Open to education (1) = 8 (1.2%)
Openness/Willi ngness to Change Mindset	Judge noted specifically that they were open to changing their mindset or beliefs (1) or that they were not open (0)	1.00	Not open to changing mindset (0) = 1 (0.1%) Open to changing mindset (1) = 18 (2.7%)
Justice	Judge mentioned the word justice or a term similar in definition in their comment (1) or did not (0)	N/A	Justice mentioned (1) = 5 (0.7%)
Fairness	Judge mentioned the word fairness or a term similar in definition in their comment (1) or did not (0)	1.00	Fairness mentioned (1) = 9 (1.3%)
Neutrality	Judge mentioned the word neutral or a term similar in definition in their comment (1) or did not (0)	N/A	Neutral mentioned (1) = 4 (0.6%)
Defensiveness	Judge was defensive in their comment (1) or was not (0)	N/A	Defensive in comment (1) = 3 (0.4%)

	Indication of Psychology Background	Judge indicated that they had a background in psychology by referencing psychology readings, concepts, theories, or famous psychological names (1) or did not (0)	1.00	Psychology background indicated (1) = 9 (1.3%)
Minimization of Implicit Bias	Implicit Bias is Too Big of a Problem,	Judge noted that implicit bias was too big of a problem to fix (1) or that it was not (0)	N/A	Too big of a problem to fix (1) = 6 (0.9%)
	Implicit Bias has no Impact in Decision-Making	Judge noted that implicit bias does not have an impact in decision-making (1) or that it does (0)	0.00	Does impact decision-making (0) = 3 (0.4%) Does not impact decision-making (1) = 8 (1.2%)
	There is a Denial of Presence of Implicit Bias	Judge noted that there is no presence of implicit bias to some degree (0), that there is a presence of implicit bias (1), or was ignorant to the presence of implicit bias (2)	N/A	No presence of implicit bias (0) = 13 (1.9%) Presence of implicit bias (1) = 2 (0.3%) Ignorant to presence of implicit bias (2) = 1 (0.1%)

	Implicit Bias is Not in my Courtroom	Judge noted that implicit biases were occurring in their courtroom (1) or that they were not (0)	N/A	Not occurring in my courtroom (0) = 5 (0.7%) Occurring in my courtroom (1) = 8 (1.2%)
Issues with Implicit Bias	Cannot Change the Older Generation, Focus on the Next Generation	Judge noted that you cannot change the 'old' or that the next generation will have less biases (1) or that you can change the 'old' (0)	1.00	Cannot change the old (1) = 2 (0.3%)
	Systemic Issue	Judge noted that implicit biases were not a judge-only issue but rather an issue in policies and practices (1) or noted that it was a judge-only issue (0)	1.00	Judge-only issue (0) = 22 (3.3%) Issue in policies and practices (1) = 9 (1.3%)
Past Experiences/ Beliefs	Past Training Program's Effectiveness	Judge noted that previous trainings or education that they had had on implicit biases were effective (1) or were not effective (0)	1.00	Previous trainings were not effective (0) = 8 (1.2%) Previous trainings were effective (1) = 12 (1.8%)

General Suggestions	Prior Beliefs on Implicit Bias	Judge noted that they had negative prior beliefs about implicit biases, specifically that they are not real (0), had positive prior beliefs about implicit biases (1), or had neutral prior beliefs about implicit biases (2)	N/A	Implicit biases are not real (0) = 1 (0.1%) Positive prior beliefs about implicit biases (1) = 2 (0.3%)
	Political Beliefs about Implicit Bias	Judge noted that implicit bias is a fad, is political, is an agenda from the left/democrats, or is pushing Marx or critical race theory (1) or did not (0)	N/A	Implicit bias is political/a fad (1) = 7 (1.0%)
	Start of Biased Thinking	Judge noted that implicit bias begins at a young age or is ingrained in us (1) or did not (0)	N/A	Implicit biases are ingrained in use (1) = 5 (0.7%)
	Education	Judge specifically noted a word associated with some aspect of education (i.e., education, teaching, instruction, classroom, etc.) (1) or did not (0)	1.00	Education not mentioned (0) = 4 (0.6%) Education mentioned (1) = 136 (20.3%)

	Length of Training	Judge noted that training should last a few weeks long (0), a few months long (1), a year long (2), should be once a year (3), or should be continuous/ongoing (4)	n/a	Training should be once a year (3) = 2 (0.3%) Training should be continuous (4) = 10 (1.5%)
	People Can Never get Rid of Implicit Biases but Can Only Decrease Implicit Biases	Judge noted that we can never get rid of implicit bias or noted something inferentially similar (1) or did not (0)	1.00	Can get rid of implicit biases (0) = 1 (0.1%) Can never get rid of implicit bias, just decrease (1) = 85 (12.7%)
	All or Nothing Effort (Everyone on Board)	Judge noted that everyone must be involved for the training to work (1) or did not (0)	1.00	Everyone must be involved (1) = 4 (0.6%)
	Sufficient First Steps	Judge noted that recognizing implicit bias is the first step (0), that education is the first step (1), or that something else, which was noted in the codes, is the first step (2)	1.00	Recognizing implicit bias is first step (0) = 12 (1.8%) Education is first step (1) = 15 (2.2%) Something else is first step (2) = 2 (0.3%)

	<p>Limitations of Training</p>	<p>Judge noted that trainings should not be “one and done” and that individuals must keep practicing (0), that training only works for people who believe implicit bias exists (1), that trainings need implementation/enforcement/audits/accountability too, not just training (2), that we need to hire more diverse judges (3), that education needs to be earlier and to general people, not just judges (4), that trainers must be careful not to imply that the judge is racist or causes judges to get defensive (5), questions how bias can be reduced if a judge does not know it exists (6), that trainings require engagement in the training/education (7), or noted another limitation not mentioned above wherein coders specified that limitation in the codebook (8)</p>	<p>0.60</p>	<p>Should not be ‘one and done’ (0) = 1 (0.1%) Training only works for people who believe implicit bias exists (1) = 7 (1.0%) Trainings need more (2) = 8 (1.2%) More diverse judges (3) = 2 (0.3%) Education needs to be earlier (4) = 1 (0.1%) Trainers must be careful (5) = 2 (0.3%) How can bias be reduced without knowledge of existence (6) = 7 (1.0%) Trainings require engagement (7) = 8 (1.2%) Different limitation noted (8) = 22 (3.3%)</p>
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Other Demographics	Judge noted that race (0), social status (1), gender (2), or religion (3) needs to be focused on in training. Judge noted that trainings need to be more inclusive of everyone (4)	N/A	Race (0) = 2 (0.3%) More inclusive of everyone (4) = 8 (1.2%)
Future Recommendations	Judge recommended to provide examples for describing bias in trainings (0), recommendation that additional training other than education is required (1), or recommended something else wherein the coders specified that recommendation in the codebook (2)	0.67	Examples for describing bias (0) = 5 (0.7%) Additional training other than education (1) = 11 (1.6%) Different recommendation (2) = 34 (5.0%)