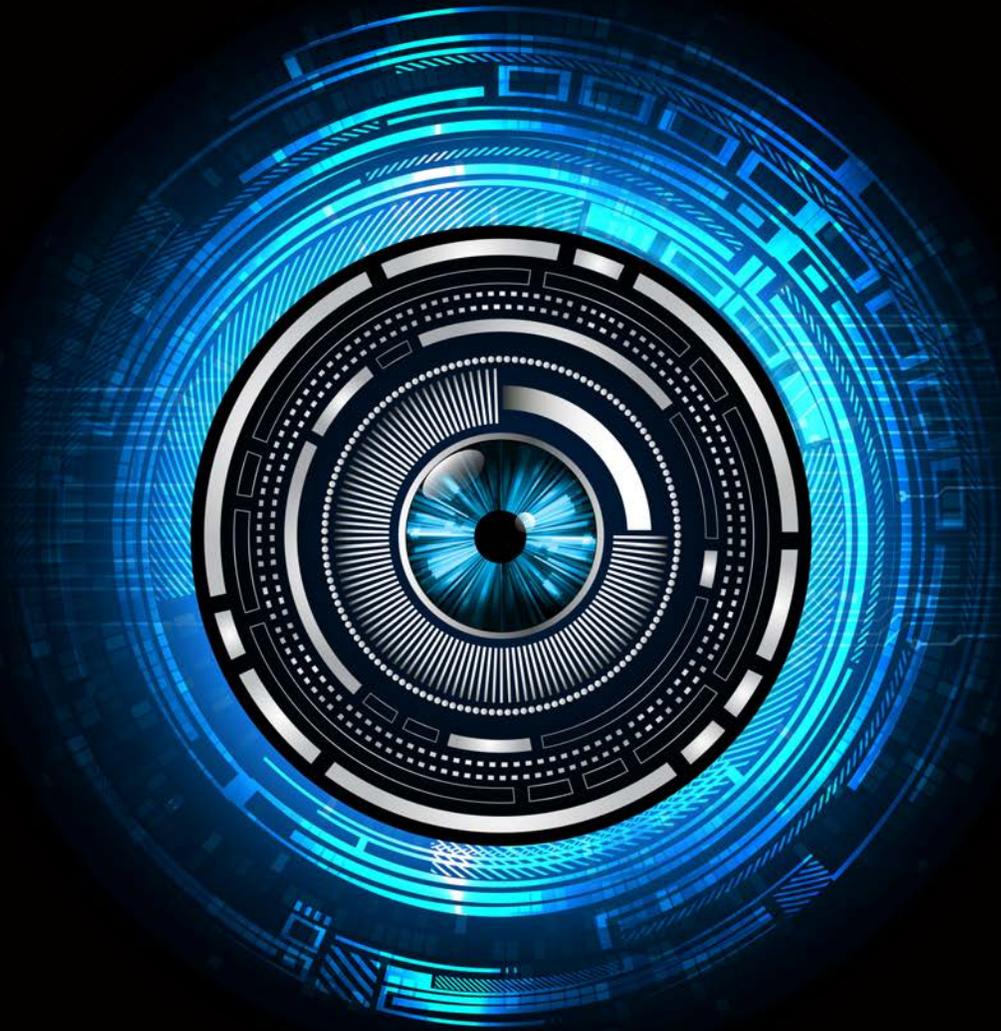


**Deloitte.**



**In search of judgment**  
Chief Legal Officer Program



## The chief legal officer's (CLO) competing priorities

Today's CLOs do much more than clear legal hurdles and react to crises. Eighty percent of CLOs report directly to the chief executive officer (CEO)<sup>1</sup>—and, whatever their reporting structure, CLOs are increasingly expected to offer strategic advice and insight to both the C-suite and the board (57 percent hold corporate secretary titles and 53 percent have a reporting line to the board).<sup>2</sup> In fact, [Deloitte research shows](#)<sup>3</sup> that CEOs expect CLOs to spend 60-70 percent of their time focused on strategic or catalytic endeavors at the enterprise level. At the same time, they are charged with running the organization's day-to-day legal operations efficiently and managing teams to address both routine and emergent legal issues.

These competing pressures mean that CLOs may frequently bridge two conflicting (but coexisting) environments: a traditional, reactive one focused on responding to problems in real time and a rapidly evolving, new setting that requires a future-focused, innovative, and strategically engaged mindset. Legal training, and most legal experience, is heavily tilted toward the former: Time pressure abounds, risk must be mitigated, and precision is paramount—creativity and experimentation are anathema to getting the job done. Yet strategic thinking, which requires much more than fast reflexes and deep substantive expertise, is unlikely when leaders spend most of their time reacting to problems. To meaningfully advise the C-suite, CLOs must be seen as trusted collaborators, not just legal problem-solvers. Earning trust at this level requires, first and foremost, the consistent exercise of good judgment. The exercise of judgment is critical to analyzing issues and problem-solving; not surprisingly, it was ranked as the second most important competency for in-house counsel, trailing only behind integrity and honesty.<sup>4</sup> But ask any professional about judgment and you'll likely hear, "I know it when I see it"—or "I certainly know when it's missing." But what, really, is judgment?

## Recognizing "judgment"

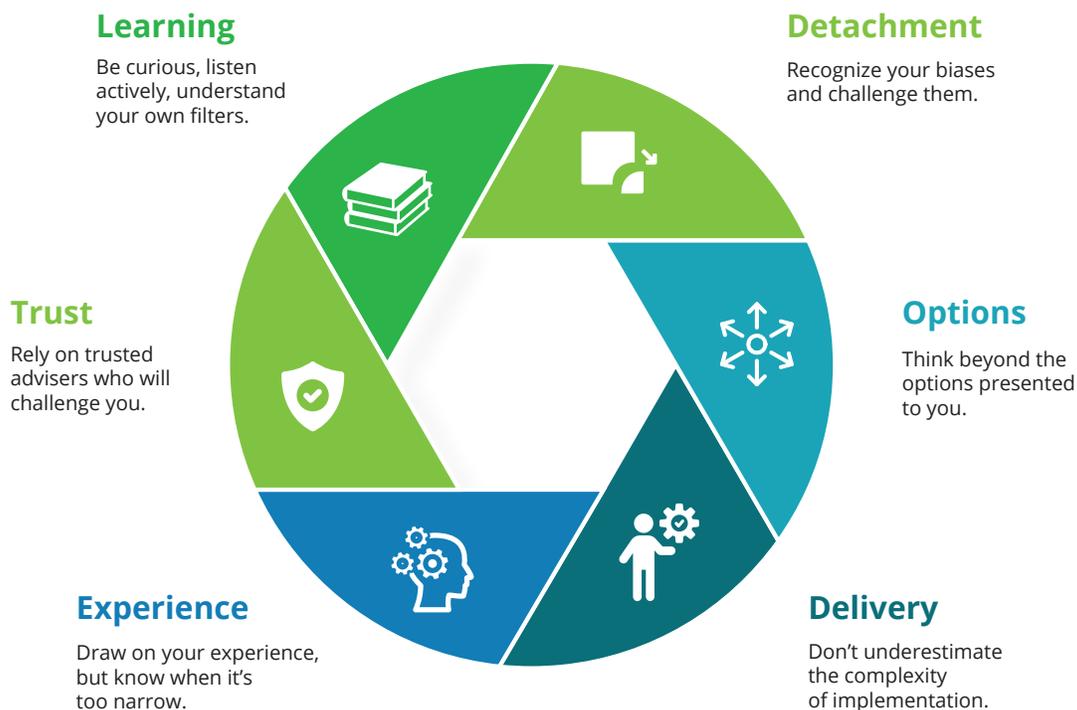
Despite the availability of extensive guidance on the principles of leadership, management, and optimizing team function, a notion persists that "judgment"—one of the most critical executive skills leaders can develop—can somehow be evaluated based entirely on the observer's "gut feeling." (This approach also implies that there's no real way to teach "judgment skills"—an idea that should alarm anyone concerned with developing future leaders.) The logic goes something like this: Experience hones judgment; those with experience have, by definition, gained judgment skills; thus, having experience-based knowledge enables them to recognize good judgment in others. Except, of course, that it's not always true. We've all seen the long-tenured worker who mysteriously remains employed despite offering little in the way of valuable insight or ideas. Everyone's met a senior leader whose judgment is unsound and untrusted despite years on the job. Common sense tells us that experience alone does not automatically translate to strong judgment. And more importantly, mere experience is inadequate when it comes to enabling junior team members to develop a crucial judgment-focused skill set.

Exercising good judgment is a foundational professional skill; indeed, it's vital to effective decision-making and the ability to recognize and align an organization's legal and business strategies. It becomes doubly important when—as is often the case—competing legal and business considerations mean that multiple viable paths must be wisely evaluated before a decision is made. Effective CLOs demonstrate consistently robust judgment—and position their teams to do the same. Yet deconstructing what goes into the exercise of "good judgment" is complicated at best.

# Defining and strengthening judgment

A comprehensive analysis by Sir Andrew Likierman of the London Business School tackles the daunting task of defining the components and behaviors that underlie good judgment.<sup>5</sup> After extensive interviews with professionals ranging from CEOs and lawyers to doctors and scientists, Likierman drew the following conclusions: The exercise of judgment draws on six discrete but interwoven components. Each relates to the information people take in (Learning and Trust), how they integrate that information with their existing knowledge and views (Experience and Detachment), and how they then draw conclusions and make decisions (Options and Delivery). These components support this useful working definition of judgment: *“the ability to combine personal qualities with relevant knowledge and experience to form opinions and make decisions.”*<sup>6</sup>

Examining any one of these areas will yield ideas for how to strengthen judgment skills; sometimes it can be as straightforward as becoming a bit more self-aware or making small adjustments to one’s habits. A key aspect of being effective in the Learning component, for example, is careful listening. This includes going beyond hearing what’s said—it means asking probing questions, drawing people out, and understanding where one’s own assumptions or past knowledge might be influencing what information is absorbed or tuned out. Under Options, a critical lesson is not to (necessarily) accept just the choices offered. They certainly could be the right set of possibilities—but don’t assume it. Effectively drawing on other judgment areas (including Learning and Experience) is one way you can kick the tires before making a decision. Are ideas missing from what’s been presented? Why? What might they be?



# Key skills development for CLOs

The facets of Trust and Detachment offer some challenging—but possibly higher-impact—areas for CLOs to enhance their judgment expertise. Sharpening these can go beyond reinforcing already solid practices like active listening or knowing the limits of one's past experience. Instead, increasing proficiency here can require higher-order thinking that could actually be at odds with one's own instincts.



## Trust: Soliciting diverse perspectives

Trust in this context hinges on the notion that your judgment is strengthened by being surrounded by a “team of rivals” who bring a range of perspectives to any given problem. Seeking a diversity of views, rather than confirmation of what you already think, is paramount, so having a trusted pool of willing contrarians is a foundational element. This is, however, easier said than done. Not only do you need to put aside your own ego and show some enthusiasm for being challenged, but you must also create an environment in which people feel safe to do so.

This may be easier for some people than others. [Our earlier article on Business Chemistry](#) highlighted that many in-house counsel are Guardians or Integrators (collectively, they represent two-thirds of the in-house workforce)—that is, they prefer a less confrontational approach to work. For those who share this preference, intentionally creating contrarian views may be even more challenging than for others. But effective leaders avoid a judgment-weakening echo chamber by actively fostering a culture of dissent. To hone their own judgment, then, CLOs need to empower their teams to speak up. First and foremost, this requires a psychologically safe environment: People must trust that raising conflicting views won't be held against them—and that it's OK to toss out ideas that end up being rejected. This can be tricky when it comes to legal teams: A lawyer's success depends on getting things right, and lawyers can be loath to speak up before they're as certain as possible about the issue at hand. But this approach doesn't usually build trust—instead it's more likely to foster insecurity and reactivity in those around you, which is the opposite of what's needed to strengthen judgment.

### Increasing Trust (via Dissent)

- ✓ Create a psychologically safe place—reward, don't punish, those who challenge your ideas.
- ✓ Foster dissent—and show appreciation when team members stretch your thinking.
- ✓ If people are not confident disagreeing with you, assign a (rotating) devil's advocate.
- ✓ Check your ego. Healthy debate signals an intellectually lively group. It's a benefit, not a threat.



## Detachment: Addressing cognitive bias

Effectively exercising detachment skills involves recognizing and stepping back (both emotionally and intellectually) from your own biases. Our values, experiences, and beliefs can and should shape how we make decisions, but also shape our impressions of new information and ideas. These and other thinking-related biases shape our decisions, and we're probably not even aware of them.

"Cognitive biases" are systematic mental shortcuts. We all rely on them, and human beings developed them for good reason. Our brains cannot individually process the massive amounts of data coming at us in any given moment; without some shortcuts, our ability to make decisions would be paralyzed. These mental devices provide a set of unconscious "rules" that enable the brain to work more efficiently. But there's a catch: While cognitive biases do expedite decision-making, they are generally irrational. This means they may lead people to make inaccurate judgments (often while being deeply convinced that they're correct or that their decision-making isn't affected by bias). Moreover, these biases are socially informed and socially reinforced, meaning that erroneous information from the social world gets embedded into the brain's unconscious decision-making methods.

Of course, you can't switch off the subconscious activities that take place in your brain. But you can build systems and processes that may help you and your teams double check where cognitive biases might be unduly influencing decisions. There are now more than 200 identified cognitive biases, and they can have varying degrees of impact on the exercise of business judgment. While it won't make sense for CLOs to try to learn them all, leaders are well-advised to understand—and develop strategies to mitigate—a few biases which can skew decision-making and diminish innovative or strategic thinking. Key among these are negativity bias, loss aversion, the false consensus effect, and confirmation bias.

### Strengthening Detachment

- ✓ Question your own assumptions; learn about how cognitive biases play out.
- ✓ Accept that your brain will filter out disconfirming information; create your own "reality checks."
- ✓ Find out whether others really agree with you (or with your C-suite leaders).
- ✓ Counterbalance the negativity bias by scanning for the positive and then replicating.



## Negativity bias and loss aversion

We are more likely to notice and recall negative information or experiences, even when positive information empirically outweighs it or where the negative information is inconsequential. Your brain will automatically seek and register the negative (hence the name “negativity bias”). Closely related to negativity bias is the concept of “loss aversion”: In our brains, losses loom larger than gains, even when the value of the loss or gain is equal. For example, studies<sup>7</sup> show that people are more upset by the idea of losing \$50 than they are happy about the idea of receiving \$50. Negativity bias and loss aversion can significantly weaken the ability to effectively make judgment calls.

Giving negative factors an inaccurate and disproportionate weight jeopardizes good decision-making and impairs strategic analysis. It can also limit innovation and foster risk-averse behavior.

### Try this:

- ✓ Develop a habit of scanning for the positive.
- ✓ Root out reflexive objections such as “that will never work” or “we tried something like that in the past” in favor of a more open-minded approach to brainstorming.
- ✓ Intentionally consider what is working well across your organization, not just in the limited area in front of you.
- ✓ In problem-solving, this “bright spots” approach means considering what is working well and finding ways to replicate those successes in different contexts, instead of limiting the thinking to the negative aspects to be addressed.



## False consensus effect and confirmation bias

We tend to overestimate how much other people share our beliefs, values, or behaviors, in part because we believe our own views are “normal”—this is known as the “false consensus effect.” (For example, people tend to believe that their preferred political candidate has more support than he or she does, even if contrary data is available).<sup>8</sup> We also tend to spend time with people who share our interests and opinions, which reinforces the sense that they’re widely shared. Not surprisingly, it’s also easiest for us to see things from our own perspective, and our own experiences also come to mind more readily. “Confirmation bias”—the tendency to see and remember information that confirms our existing beliefs while rejecting contradictory evidence—is related to the false consensus effect. This bias is equally likely to cause problems when high-level judgments must be made, because we may unconsciously filter or minimize conflicting information that we need to include in our analyses.

Because social and team pressures can often push team members to express agreement with a leader, understanding these biases is especially critical for CLOs, both in managing their own teams and in advising their C-suite and board. If you’re not aware that false consensus or confirmation bias are in play, they can impair an honest strategic discussion.

### Try this:

- ✓ Observe your group dynamics closely, ask tough questions of yourself and others, and take steps to test agreement levels.
- ✓ Are leaders assuming agreement where it’s not really there?
- ✓ Is agreement coming quickly and without sufficient “digging in”?
- ✓ Are naysayers quickly shut down?

# Conclusion

CLOs who can recognize the many facets of judgment are likely to be best positioned both to lead and to develop their own teams and to provide high-level, sound advice to the C-suite at a strategic level. For significant strengths development, CLOs should reexamine the practices of their own teams and their leadership teams with an eye toward improving decision-making across the board. Fostering trust by encouraging a diversity of views and learning to spot and interrupt cognitive biases are two very good starting points.

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