



CLIFFORD LAW OFFICES  
CONTINUING LEGAL EDUCATION PROGRAM

PRESENTS

# “THE PATH TO LAWYER WELL BEING & CONSCIOUS INCLUSION”

FEBRUARY 21, 2019





# CLIFFORD LAW OFFICES

## 2019 CONTINUING LEGAL EDUCATION (CLE) SPEAKERS

### Robert A. Clifford, Founder and Senior Partner at Clifford Law Offices



Robert A. Clifford and Clifford Law Offices are significantly involved in complex mass tort and class action cases on behalf of thousands of plaintiffs that have been the subject of national front-page news. Indeed, Bob and the lawyers at the firm enjoy a reputation of being viewed as leaders of consumer advocacy to whom people come when a problem of

Bob was named by Best Lawyers/U.S. News & World Report as the Lawyer of the Year in Mass Tort Litigation/Class Actions in 2016 and again in 2019 in the Chicago metropolitan area. He was appointed to serve as co-lead counsel in a case for which several attorneys recently secured a \$250 million settlement against State Farm Insurance company. Bob also serves as co-lead counsel in a data breach case filed in state court against Advocate Medical Group, Illinois' largest healthcare system, involving more than four million patients and reportedly the largest healthcare data breach in the nation's history. In addition, Bob was

appointed as co-lead counsel in a class action filed against Pella Windows Corporation, a nationwide window manufacturer, U.S. District Court Judge James B. Zagel of the Northern District of Illinois appointed Clifford "as class counsel for his demonstrated skills in the field." Most recently, Bob and other attorneys have joined to represent numerous hospitals across the country in their fight against the manufacturers of opioid drugs. Clifford Law Offices also represents numerous women in their allegations against Johnson & Johnson stemming from use of the company's talcum powder products. Just recently, the National Trial Lawyers named Bob Clifford the Class Action Trial Lawyer of 2018.

Bob Clifford received the same top honor from Best Lawyers/U.S. News & World Report in Product Liability Litigation in 2015 and in the area of Plaintiffs' Personal Injury Litigation in 2009 and again in 2012. He also was recognized by this peer-review group in the area of Plaintiffs' Medical Malpractice Litigation in 2010. Bob is particularly proud that the firm handles complex cases with consistently excellent results for consumers and victims spanning its more than 35-year history. One of Bob's proudest appointments is that of liaison counsel and lead negotiator in obtaining the \$1.2 billion settlement in 2014 of numerous 9/11 property damage claims following the collapse of the Twin Towers in New York. This is particularly impressive given that Clifford Law Offices is a boutique firm based in Chicago, having 14 partners and seven associates. Some of Bob's most notable cases include those involving the deaths and injuries of people trapped in a smoky stairwell during the fire of the Cook County Administration Building in 2003. Changes were made in the 911 response system in high rises as a result of that tragedy and the ensuing investigation. Bob and the firm also took the lead in the \$70 million global settlement on behalf of those who were injured or killed in the collapse of scaffolding negligently attached at the John Hancock Center. The victims included two young women who were killed in the front seat of their car with their mothers, who were severely injured and who witnessed their horrific deaths from the back seat. In 2015, Bob was lead counsel in a trial against Yellow Cab Company that resulted in a \$25.9 million verdict on behalf of a lawyer who was injured in the back seat when the vehicle crashed into a concrete barrier. Probably Bob's most notable case is the \$29.6 million verdict he received for Rachel Barton, an internationally acclaimed violinist, who was severely injured when deboarding a Metra train outside of Chicago. It was the most highly publicized civil trial in the history of Cook County Circuit Court.

Another notable case was an \$85 million settlement against Medline, one of the nation's largest suppliers of medical and surgical products in relation to a kickback scheme. Clifford Law Offices represented the whistleblower and prosecuted the case on behalf of the government. The case, settled in federal district court in Chicago, is among the largest settlements of a False Claims Act case in which the government declined to intervene.

Perhaps his greatest successes have been in the field of aviation. Bob has represented those injured or killed in every major domestic airline crash over the past three decades. He has consistently garnered multi-million-dollar settlements and verdicts

in aviation litigation. To name but a few, Bob has represented the families of loved ones aboard the Comair runway crash in Lexington, Kentucky, of 2006; as well as families of victims of the Colgan Air Crash in Buffalo, New York, in 2009; the Southwest Airlines crash at Chicago Midway Airport in 2005; and the families of victims aboard the Alaska Air crash in San Francisco of 2000. He also represented a number of people or the families of those who were killed in the tragic Turkish Airlines Flight 1951 crash in 2009 on approach to Amsterdam's Schiphol Airport in The Netherlands. Currently, he represents 30 of the 33 people who were injured or killed in a speeding Amtrak train that derailed in Seattle, Washington, in 2017.

Bob is constantly giving back to the profession through his frequent lecturing and continuing education programs. In 2019, he is teaming up again with Chicago attorney Dan Webb for the National Hellenic Museum's series of Greek trials, putting on a mock trial from ancient times using modern-day techniques, to see if the results would differ. Some of those trials have been televised on WTTW-TV, Chicago's public television station. He has spoken at several high-profile programs, including a program on closing arguments at the ABA's Annual involving the criminal "re-trial" based on the sinking of the S.S. Eastland (a pleasure ship that sank in the Chicago River 100 years ago and that killed 844), as well as a program in England entitled "Where Would You Try a Case? A Live Action Primer on Trial Skills in the U.S. and the U.K." to mark the 800th anniversary of the signing of the Magna Carta. In April of 2016, Bob donned his fedora in a portrayal of Al "Scarface" Capone during the mock trial of the famed Chicago gangster, as part of the ABA's Chicago meeting. The firm also sponsors an annual continuing legal education program that offers two hours of free professional responsibility/ethics credit to lawyers across the state. Now in its 11th year, registration for the program surpasses 4,000 every year and is believed to be the largest single CLE program in the state and perhaps in the country.

Bob is also incredibly active in the American Bar Association and Chicago Bar Association, having been President of ABA's Section of Litigation as well as president of the CBA. He has also served as President of the Illinois Trial Lawyers Association and the Chicago Inn of Court. Bob has been inducted into the International Academy of Trial Lawyers and the American College of Trial Lawyers. He is a member of the American Association for Justice, the International Society of Barristers and the Inner Circle of Advocates. Additionally, Bob has been selected to be a member of the National Judicial College, an assembly of legal and corporate leaders from across the country who are dedicated to furthering the education and training of judges. Bob also was appointed a member of the Illinois Supreme Court Committee on Civility, which was established to discover and promote appropriate ways to promote civility among Illinois lawyers. He was elected to be a trustee of the Supreme Court Historical Society, a non-profit organization supporting historical research and publications of the Supreme Court of the United States. Currently, he serves on the Board of Overseers of the Rand Institute for Civil Justice, a California-based think tank, and as Chair of the ABA Fund for Justice and Education.

Bob has received many accolades in recognition of his excellence. In 2019, he was named the #3 Super Lawyer in the State of Illinois. Later this year, he will be receiving the Illinois Bar Foundation's top honor. In 2018, he received the Unity Award from John Marshall Law School. He also was awarded the Chicago Bar Association's Justice John Paul Stevens Award in 2017 along with the North Suburban Bar Association's L. Sanford Blustin Award that year. Bob received the 2014 American Inns of Court Foundation Professionalism Award from the Seventh Circuit Judicial Conference. He was also named one of Chicago Magazine's Top 100 Most Powerful Chicagoans in 2013, 2014, 2015 and 2016, alongside the Mayor of Chicago and the Governor of Illinois. Martindale-Hubbell has given Bob and five of his law partners a perfect "5" rating. The firm was named to the National Law Journal's "Hot List" as one of the 10 Top Litigation Boutiques in the country in 2013.

Bob always gives back to the community, and to that end, has endowed the first Chair on Tort Law and Social Policy to his alma mater, DePaul University College of Law. This generous gift provides for an annual symposium, now in its 25th year, where academicians, lawyers and judges from across the country gather to speak on a timely topic dealing with the relationship between tort law and societal needs. He also sits on the Board of Directors of WTTW, Chicago's public television station, where he sponsors closed captioning for local programming. He is a past Chair of the Naples Children and Education Foundation, a nonprofit dedicated to helping underserved and at-risk youth in Collier County, Florida. And he and his wife, Joan, were recognized by the Lawyers for the Creative Arts Award in 2018 for their philanthropic work in the area of the arts.

Robert A. Clifford is a titan in the profession and continues to work for justice for his clients while making the community a better place to live.

## Robin Belleau, Executive Director, Lawyers' Assistance Program (LAP)



Robin Belleau is the Executive Director of the Illinois Lawyers' Assistance Program which provides confidential and no cost substance use and mental health services to Illinois Judges, lawyers, and law students. Under her tenure, LAP has seen a 43% increase in funding provided by the Illinois Supreme Court, a 33% increase in clients served, and a 300% increase in fundraising. Prior to her role as Executive Director, Robin was LAP's Clinical Director. As Clinical Director Robin supervised the clinical services provided to members of the Illinois legal community.

Robin began her career as a Licensed Clinical Professional Counselor at Advocate Medical Group, where she created and managed the Advocate Adolescent Addiction Case Management Program, which provided addiction and case management services to adolescents and their families. She also designed the Next Step Program, a diversion program for adolescents facing petty drug and alcohol offenses. Prior to earning a Masters Degree in Counseling from Northern Illinois University, Robin practiced law for 8 years. During her tenure in the law, Robin was a DuPage County Senior Assistant Public Defender, Kane County State's Attorney, and an associate in a general practice firm.

## James Faught, Associate Dean, Loyola University School of Law, and Chicago Bar Association, Future of the Profession Chair, Law Student and New Lawyer Committee, LAP Board Member



Dean Faught practiced law in a small Chicago firm for three years before returning to Loyola, where he earned his law degree, to become a member of the administration in 1979. As associate dean for administration, he oversees the general operation of the School of Law. During his career, he has served on a number of professional committees including the Illinois State Bar Association Standing Committee on Legal Education, Admission and Competence as chair; various Law School Admission Council Committees; the Illinois State Bar Association Committee on Liaison with the Attorney Registration and Disciplinary Commission, and the Lawyers' Assistance Program of Illinois where he served as president in 2009-10. In 2004, Dean Faught was appointed to the Illinois Executive Ethics Commission where served until 2018. He served as chair in 2009-10. He has published articles on the status of women in law schools and on controversial student organizations. Dean Faught is the founder and director of Loyola's London Comparative Advocacy Program, which has brought students to London since 1988.

## Hon. E. Kenneth Wright, Jr., Cook County Circuit Court, Presiding Judge, Municipal Division, and Chair, Illinois State Bar Association Special Committee on Health and Wellness



Judge Wright was elected a Circuit Judge in 1994 and was assigned to the first Municipal District handling traffic cases, jury cases, non-jury cases, felony preliminary cases, misdemeanor cases. Subsequently Judge Wright was assigned to the Probate Division, handling disabled estates calendar. He also handled decedent and minor's estates. Later, he was appointed Presiding Judge of the First Municipal District where he handled a consolidation of cases call, supervised judges, made assignments of judges, served on Executive Committee for the Chief Judge.

## Karen Munoz, Lawyer, Certified Yoga Instructor, LAP Illinois Task Force on Well Being and CBA Member of Mindfulness & the Law Committee



Karen Munoz is a Partner at Dolan Law, a boutique personal injury firm in Chicago. Karen is active in promoting mindfulness, yoga, and diversity issues through writing, teaching, and serving on legal committees. she serves as a Board Member of the Domestic Violence Legal Clinic, Member of LAP's Illinois Task Force on Well-Being, and as a Member of the CBA's Mindfulness & the Law Committee. Previously she worked with the ABA Young Lawyers Division Diversity Committee, Minority Section, and ISBA Standing Committee on the Delivery of Legal Services. Karen is certified to teach yoga, and shares her practice by teaching pro-bono yoga classes for LAP and YogaCare. In 2017, she was the recipient of the Carl H. Rolewick

Award for her volunteer work through LAP.

## Tracy L. Kepler, Director, Center for Professional Responsibility, American Bar Association



Tracy L. Kepler is the Director of the American Bar Association's Center for Professional Responsibility (CPR), providing national leadership in developing and interpreting standards and scholarly resources in legal and judicial ethics, professional regulation, professionalism and client protection. In that role, she manages and coordinates the efforts of 16 entities including six ABA Standing Committees (Ethics, Professionalism, Professional Regulation, Client Protection, Lawyers' Professional Liability, and Interest on Lawyer Trust Funds), the Commission on Lawyer Assistance Programs (CoLAP), the ABA/BNA Lawyers' Manual on Professional Conduct, the Center's Coordinating Council and other Center working committees.

From 2014-2016, Ms. Kepler served as an Associate Solicitor in the Office of General Counsel for the U.S. Patent & Trademark Office (USPTO), where she concentrated her practice in the investigation, prosecution and appeal of patent/trademark practitioner disciplinary matters before the Agency, U.S. District Courts and Federal Circuit, provided policy advice on ethics and discipline related matters to senior management, and drafted and revised Agency regulations. From 2000-2014, she served as Senior Litigation Counsel for the Illinois Attorney Registration and Disciplinary Commission (ARDC), where she investigated and prosecuted cases of attorney misconduct.

Ms. Kepler has served in various capacities, including as President, on the Board of the National Organization of Bar Counsel (NOBC), a non-profit organization of legal professionals whose members enforce ethics rules that regulate the professional conduct of lawyers who practice law in the United States and abroad. Ms. Kepler also taught legal ethics as an Adjunct Professor at American University's Washington College of Law. Committed to the promotion and encouragement of professional responsibility throughout her career, Ms. Kepler has served as the Chair of the CPR's CLE Committee and its National Conference Planning Committee, and is a frequent presenter of ethics related topics to various national, state and local organizations. She has also served as the NOBC Liaison to all of the CPR Standing Committees, and to CoLAP, where she was a Commission member, a member of its Advisory Committee, the Chair of its Education and Senior Lawyer Committees, and also a member of its National Conference Planning Committee. Ms. Kepler also participates as a faculty member for the National Institute of Trial Advocacy (NITA) trial and deposition skills programs, and served as the Administrator of the NOBC-NITA Advanced Advocates Training Program for four years. She is a graduate of Northwestern University in Evanston, Illinois, and received her law degree from New England School of Law in Boston, Massachusetts.

## Hon. Thomas More Donnelly, Cook County Circuit Court, and Chair, Illinois Judicial College Board of Trustees, the Illinois Supreme Court's educational arm



Tom serves as an Associate Judge of the Circuit Court of Cook County. He is assigned to the Law Division. Sworn in as a judge in 2000, he currently hears civil jury trials, after having presided over criminal jury trials from 2008 to 2009. He has presided over several hundred jury trials. In September 2012, he authored an opinion in a highly publicized First Amendment case involving the Occupy Chicago protests: *City of Chicago v. Alexander*. He has spearheaded the development of three court programs to assist self-represented litigants: CBA Summary Suspension Volunteer Program, the CARPLS Consumer Collection Self-Help Desk, and the CBA Municipal Court Pro Bono Panel program. He chairs the Illinois Judicial College Board of Trustees, the Illinois Supreme Court's educational arm, responsible for the training of Illinois judges and those who assist judges in the court system, including probation officers, court clerks, guardians ad litem, trial court administrators, and law clerks. He serves on the faculty for the National Judicial College.

Before becoming a judge, he clerked for the Honorable Mary Ann G. McMorrow (Loyola Law '53) and served as an assistant public defender for thirteen years. He served as an attorney supervisor in the Cook County Public Defender Office (1990-2000). Tom has taught at Loyola Law School since 1987. He directed Loyola's Philip H. Corboy Trial Advocacy Fellowship for twenty years from 1995-2016. He currently teaches Illinois Civil Litigation Practice at Loyola. He has taught Illinois Tax Litigation and Procedure, Professional Responsibility, Professional Responsibility Seminar, and Criminal Procedure at Loyola. He is a past recipient of the St. Robert Bellarmine Award for a distinguished young alumnus and is an honorary member of Loyola's Circle of Advocates.

Tom serves as president of the Catholic Lawyers Guild of Chicago, which named him 2014 Catholic Lawyer of the Year; he has served on the Guild's board since 1988. He is the past chair of the John Howard Association and the current vice-chair of the National Center for the Laity. Married to Anne Wicker, they have four sons.

## Cunyon Gordon, Senior Counsel and Director, Settlement Assistance Program, Chicago Lawyers' Committee for Civil Rights



J. Cunyon Gordon is the Director of the Settlement Assistance Program. In this role, Cunyon evaluates cases and potential clients, recruits volunteer attorneys, and represents litigants in cases in which she is unable to find a match. Prior to Chicago Lawyers' Committee for Civil Rights, Cunyon was Of Counsel at Eimer Stahl Klevorn & Solberg LLP, during which time she was an early volunteer with SAP. Cunyon was also a civil litigator at Jenner & Block LLP for ten years, where she earned the distinction of being the first black woman to make partner at the then 75-year old firm. Cunyon has also served as an attorney with the U. S. Navy JAG. Cunyon attended Yale College and earned her J.D. from Yale Law School. Cunyon has taught as a Distinguished Visiting Professor for the Boston University School of Law and Visiting Professor for Seattle University School of Law. Cunyon was a board member of Access Living and LAF for over fifteen years, and served as the CLE chair for the Chicago Bar Association for two years.

## Josie M. Gough, Assistant Dean for Inclusion, Diversity, and Equity, Curt and Linda Rodin Clinical Assistant Professor of Social Justice and Director of Experiential Learning and Professional Development at Loyola University Chicago School of Law



Josie M. Gough is the assistant dean for Inclusion, Diversity, and Equity at Loyola University Chicago's School of Law, where she leads the school's on-going efforts to further enhance and cultivate a learning environment for all students, faculty, and staff that promotes inclusion and advances its diversity goals. She is also a Curt and Linda Rodin Clinical Assistant Professor of Social Justice, and director of Experiential Learning and Professional Development, where she has been instrumental in strengthening the connection between diversity and academic excellence. Ms. Gough has practiced law in Illinois on behalf of public and private sector clients for more than 25 years. She is a frequent speaker on topics related to diversity and inclusion in the legal profession, and represents the School of Law as a member of Chicago's Educating Tomorrow's Lawyers Consortium and Alliance for Experiential Learning. Ms. Gough has been the recipient of numerous awards for her service to the legal profession, including special recognition from the Constance Morris House Legal Advocacy Program. In 1995, she was listed as one of the 100 Women Making a Difference in Today's Chicago Women's magazine. She is the recipient of Loyola's Donald L. Hollowed Distinguished Service, the National Summit of Black Women Lawyers Exemplary Service Award, and most recently, the United States Supreme Court Justice John Paul Stevens Award presented by the Chicago Bar Foundation and the Chicago Bar Association. Ms. Gough is a member of the American Bar Association, Black Women's Bar Association of Greater Chicago, Chicago Bar Association, Cook County Bar Association and Federal Bar Association. She is also a member of the Loyola University Chicago School of Law Diversity Council, advisory board member to Legal Prep, and a member of the University of Chicago Women's Board. Ms. Gough is a 1984 graduate of Loyola University Chicago School of Law. She also earned her Master in Education, and Bachelor of Arts degrees from Loyola University Chicago.

## Allison L. Wood, Principal of Legal Ethics Consulting, P.C., Former Hearing Board Chair and former Litigation Counsel with the ARDC



Allison L. Wood is Principal of Legal Ethics Consulting, P.C. in Chicago. She has nearly twenty years of legal ethics experience having served as a former Hearing Board Chair and former Litigation Counsel with the Illinois Attorney Registration and Disciplinary Commission (ARDC). Since 2011, her firm provides expert testimony in legal malpractice cases; represents attorneys before the ARDC; and counsels law graduates before the Character & Fitness Committee. Prior to her service with the ARDC, she was a Partner at a boutique law firm where she handled commercial litigation, products liability, and employment matters. She has extensive trial experience in State and Federal courts, as well as administrative tribunals. Ms. Wood is a current member of the Illinois Supreme Court Standing Committee on Professional Responsibility. She is a former member of the Board of Managers of the Chicago Bar Association, the ABA Standing Committee on Ethics and Professional Responsibility; and the Illinois Bar Association Standing Committee of Professional Conduct. She is a Certified MCLE Ethics provider and is a frequent ethics presenter for various bar associations and committees. For more than two decades, she has served as an adjunct professor and/or lecturer at University of Chicago, DePaul University College of Law, and The John Marshall Law School; teaching courses in pre-trial skills, trial skills, and professional responsibility. She pens an ethics column WoodWiseEthics for The Chicago Daily Law Bulletin and is a graduate of DePaul University College of Law.

## Clifford's Notes: Finding a Balance

By [Robert A. Clifford](#)

Chicago Lawyer

February 1, 2019

### A free upcoming CLE tackles wellness and diversity

Starting this year, Illinois lawyers will be required to attend a one-hour class on mental health and substance abuse, as well as an hour class on diversity and inclusion. The classes' purpose is to successfully complete their mandatory Continuing Legal Education requirements. Illinois is among the first states in the nation to require these courses, demonstrating a real concern for the health of individual lawyers and the profession.

In an effort to promote the awareness of these important goals, [Clifford Law Offices](#) is sponsoring a free two-hour webinar Feb. 21 that addresses both of these requirements. At this writing, more than 1,000 lawyers already have registered to attend. The first hour features an all-star panel with a cross section of speakers who will speak on wellness and balance in a lawyer's life.

One need look no further than the letter to the editor that appeared in a recent issue of American Lawyer magazine written by the widow of a 42-year-old partner at a major law firm who committed suicide. What signs were missed? What would lead someone to commit such a drastic act the day before his tenth wedding anniversary? The widow asks some poignant and sad questions. ("Big Law Killed My Husband": An Open Letter From a Sidley Partner's Widow," Joanna Litt, Nov. 12, 2018.)

The issue has been studied in recent years, including by [The Chicago Bar Association's](#) 2018 "The Future of the Practice of Law in Chicago," which resulted in a 65-page report on how lawyers can improve their efficiency, output and worklife.

Assistant Dean [James Faught](#), slated as a speaker at the Feb. 21 seminar, sat with 50 diverse leaders of the profession with his focus on the wellness of law students and young lawyers on the CBA study. That subcommittee's findings concluded that "wellness is a critical topic that has been overlooked by generations of lawyers." It's obvious that is no longer the case.

The subcommittee went on to say, "Our profession is suffering. Alcohol abuse, drug dependency, gambling addiction, depression and mental health problems affect lawyers in disproportionate numbers. These issues affect our law students and new lawyers more than most of us ever imagined and affect our more experienced colleagues in ways that can threaten our clients' cases, our licenses to practice law and our families."

The CBA report called the new CLE rules "a good first step," but wrote that "more is needed for law students and new lawyers who are all too familiar with a stressful legal culture that offers alcohol at most social events. As we look ahead, these challenges will only increase."

Other panelists who will address this critical issue Feb. 21 include [Lawyers Assistance Program](#) Executive Director [Robin Belleau](#), [American Bar Association](#) Director of the [Center for Professional Responsibility](#), [Tracy Kepler](#) and [E. Kenneth Wright](#), presiding judge of the [Cook County Circuit Court's Municipal Division](#) and chair of the [Illinois State Bar Association's](#) Wellness Committee.

The second hour will deal with diversity and inclusion. It will include Cook County Circuit Judge [Thomas More Donnelly](#), chair of the Illinois Judicial College Board of Trustees, the educational arm of the [Illinois Supreme Court](#); [Josie M. Gough](#), [Loyola University School of Law](#) director of experiential learning and member of its diversity council; [J. Cunyon Gordon](#), senior counsel and director of the [Settlement Assistance Program](#) for the [Chicago Lawyers Committee for Civil Rights](#); and [Allison Wood](#), principal of [legal ethics consulting](#) and former [hearing board](#) chair and litigation counsel with the [Attorney Registration & Disciplinary Commission](#).

The ISBA also conducted an exhaustive study that was released in 2016 by the Task Force on the Future of Legal Services. Although this report focused on the impact of technology on legal services, it cannot be ignored that it is the faster pace in today's business world that is driving client expectations as well as lawyers' gloomier outlook on the profession and their wellness.

And the ABA reported in a Hazelden Betty Ford Foundation study that it conducted along with the ABA Commission on Lawyer Assistance programs that 19 percent of lawyers experience anxiety and 23 percent experience chronic stress. Its 2017 report on the National Task Force on Lawyer Well-Being, "The Path to Lawyer Well-Being: Practice Recommendations for Positive Change," found that "the gathering of stakeholders is a first step."

It will take a village to help lawyers as they attempt to succeed in the 21st century when many cannot be away from their technology devices for less than a few minutes. Millennials seem to desire a greater balance of work and personal life, a foreign concept to many including the baby boomers who have been practicing for decades. Maybe we can all learn something from the younger folks.

P.S. And I should mention that the Feb. 21 program includes a five-minute tutorial on chair yoga. Don't knock it until you've tried it!

General Categories: [Lawyers](#), [Meetings, Seminars and Events](#), [Professional Development](#)

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# Hypo #1

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I have an attorney in my office who is often late, smells of alcohol, has bloodshot eyes, often is disheveled, and sometimes slurs her words after lunch. I am also getting calls from her clients that she is missing court dates, and there are all kinds of typos in the pleadings she is filing.

**Should I confront the attorney privately about a possible problem?**

**Should I tell her, “if you don’t do something about it, I will?”**

**Do I need to inform my managing partner about the attorney’s possible problem?**

# Substance Abuse: What to look for

## Follow the MAP

(Pacione & Belleau, ABA Solo Practice Journal, May 2015)

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1. **M**ood or attitudinal disturbances
2. **A**pppearance or physical changes
3. **P**roductivity and quality of work



## Hypo #2

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Angela and fellow attorney Bruce are good friends. Angela notices that Bruce has been withdrawn lately and has missed some court calls. Bruce tells Angela there is nothing wrong and he's just a bit stressed. Bruce has started carrying around a mint tin. After a few mints, Bruce becomes agitated and then, after some time, seems to crash. Angela is concerned that Bruce is concealing a substance abuse problem.

**Should she report him to the ARDC?**

# Hypo #2 continued

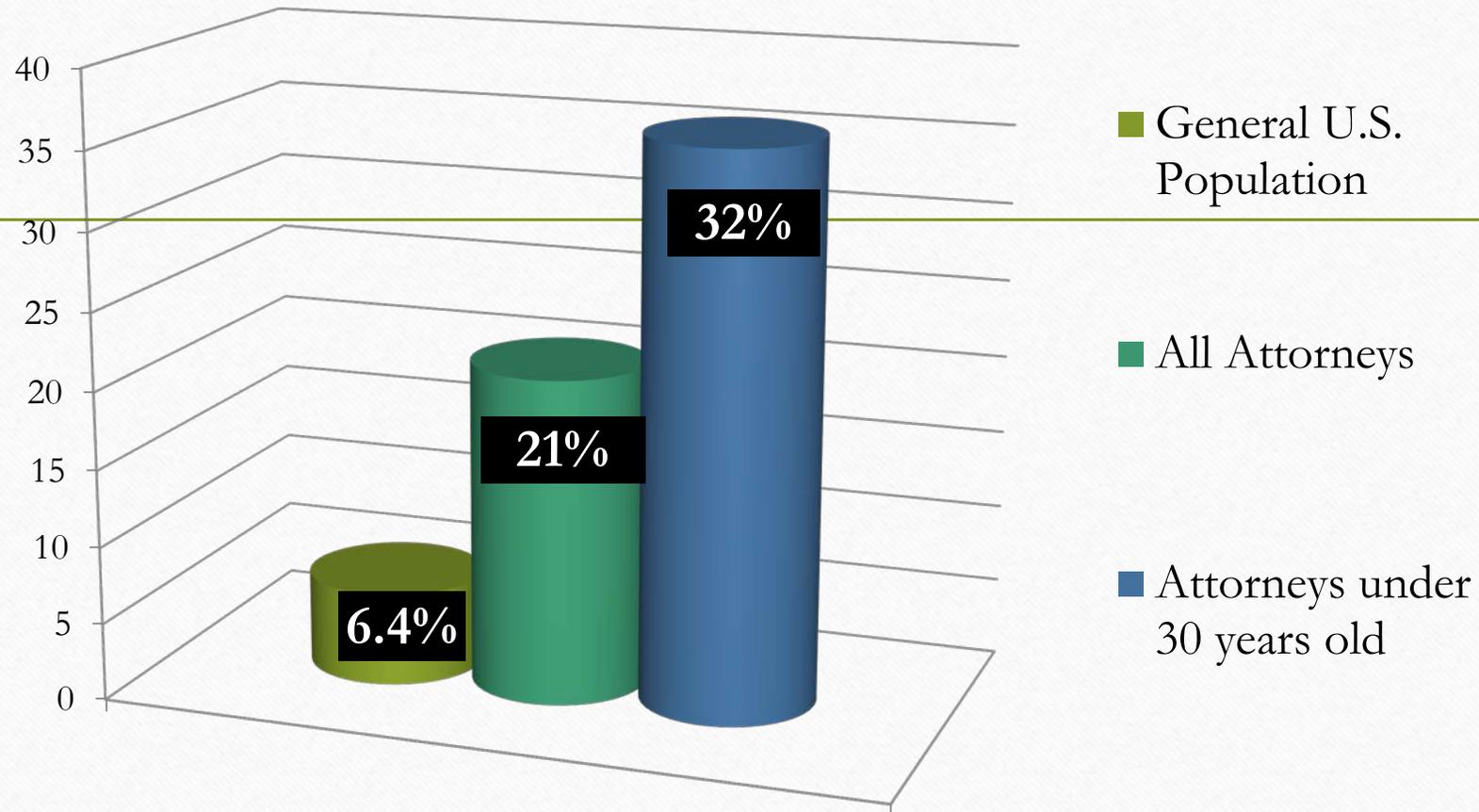
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In many states Legal Assistance programs offer confidential guidance and they do not report to disciplinary agencies.

- There is a dire crisis in the legal profession with respect to substance abuse, alcohol abuse and mental health issues.
- A 2016 study from the ABA/Hazelton Betty Ford Foundation revealed alarming rates of substance abuse and mental health disorders among attorneys.

**One in three** practicing lawyers are problem drinkers, based on the volume and frequency of alcohol consumed, **28%** suffer from depression, and **19%** show symptoms of anxiety, according to the study, which involved 12,825 licensed, employed lawyers in 19 states around the country.

# CoLAP/Hazelden Lawyer Study



"Problematic Drinking" = hazardous,  
possible dependence

# Lawyer Study – Mental Health

28% depression

19% severe anxiety

11.5% suicidal thoughts during  
career

Males higher levels of  
depression than females

Rates decrease as age increases

Junior positions = higher rates

# Hypo # 3

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Associate was hired for her hard-working attitude and excellent results. Lately, though, her supervising attorney has been heavily redlining her briefs. Associate's door is closed all the time now. She is at work regularly, but has been skipping associate lunches and mixers. Supervising attorney points out these issues. To his surprise, she is very apologetic. In fact, she says, "I don't deserve to be here. I don't deserve the opportunities you are giving me. I will work harder."

## **Should Supervising Attorney Get Involved?**

**Is it appropriate for Supervising Attorney to ask Associate whether she is depressed? Has had thoughts about killing herself? Has done anything to prepare for the end of life?**

# Suicidal Thoughts and Self Harm

11.5% reported suicidal thoughts during their career

2.9% reported self injurious behaviors

0.7% reported at least one suicide attempt

# What to Do

(CSSRS: Columbia Suicide Severity Rating Scale)

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- ACE Card questionnaire
  - Ask
  - Care
  - Escort
- Only 6 questions
- Designed for peers

## What Not to Do

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- Do not argue about the “right or wrong” of suicide
- Avoid platitudes like:
  - “You have so much to live for”
  - “It will be better tomorrow”
- Do not discount their problems
- Refuse to be sworn to secrecy

# Hypo #4

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The Judge never takes a vacation. He takes his job very seriously. He gets to the courthouse early and stays late each day. He ignores his increasing fatigue. By the time he leaves for the day, he has just enough energy to go to the drive-thru for dinner and then to go home and sleep. The Judge is undoubtedly becoming short-tempered in the courtroom.

**Lawyers in the courthouse are concerned about the Judge's temperament. Should one or more of them:**

# Hypo #5

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The Judge has not been sleeping well. Tomorrow, she has to rule on a motion that may make new law. She is prepared but stresses over her decisions. On the day of the hearing, she does her best to maintain a clean record. The lawyers make their arguments, but then begin to address each other, talk over each other and raise their voices. Judge loses her temper uncharacteristically and blurts out: “You are all a bunch of babies and I have HAD IT!” She then makes her ruling. Lawyers in her courtroom have noticed that this has occurred more than once in recent times.

**Lawyers in the case before her are trying to decide how to proceed. Should they:**

# Helpful Meditation Apps

*Taken from <https://www.healthline.com/health/mental-health/top-meditation-iphone-android-apps#omvana>*

The Mindfulness App	Headspace
Calm	Mindbody
Buddhify	Insight Timer
Smiling Mind	Mediation Timer Pro
Sattva Meditations & Mantras	10% Happier
Breethe	Simply Being
Omvana	

# Hypo #6

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The Judge is in the middle of a big trial. He is invited to a party where he knows the lawyers from one side will be in attendance. Though the judge is very ethical, he agrees to attend the party. Alcohol is served at the party and the judge decides to have only a few drinks. One of the lawyers at the party begins to talk about the case while in the judge's presence. The Judge does not immediately walk away.

**When the trial reconvenes the next day, should the lawyer at the party:**

# Hypo #7

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You are the Law School Dean of Students. Like all law schools, your school has a class attendance policy that cautions students against excessive absences. When a student's class absences are excessive, the faculty member may withdraw the student from the class or withhold the final examination, which will result in a failing grade.

In October, a faculty member contacted you regarding Lauren, a first-year law student who has missed several classes during the semester and is close to the limit of absences allowed. In addition, Lauren has not submitted required assignments. Five weeks remain in the semester. The faculty member believes that Lauren will have a difficult time passing the class and seeks your advice.

You consult Lauren's other teachers and learn that she is regularly absent from those classes as well. They report that she is usually unprepared for the classes she attends and appears to be unengaged with her classmates. Teachers express their concern that the student is likely to fail in her first semester.

**What should you recommend?**

# Hypo # 8

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You are the Law School Dean of Students. Matt is a popular second-year law student. He has excellent social skills. He is not at the top of his class, but shows potential to be a good lawyer.

This week, three students in his class come to your office and ask to speak confidentially. They inform you that they believe that Matt has a substance abuse problem. They recount in detail several instances of inappropriate behavior both in and out of the law school. They also discuss examples of times during which Matt was clearly not in control of himself. They claim that this behavior has persisted since the beginning of law school. The students wish to remain anonymous.

**What should you do?**

# Law Student Survey - Alcohol

- **One-quarter at risk for alcoholism**
- 15 law schools
- 3,300 law students

	Law Students	Other Grad Students
Got drunk prior 30 days	53%	39%
Binge drank at least once prior 2 weeks	43%	36%
Binge drank at least twice	22%	21%

# Hypo # 9

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Angela is a first-year law student. Final exams are in a month. She comes to your office, closes the door and breaks down in tears. She explains that she has suffered from depression since she was a child. She is now suffering from deep anxiety and depression and she is falling behind in her classes. She cannot gather the strength to catch up with her studies and is constantly fearful that she will fail. Her parents have always supported her desire to attend law school and they have made great sacrifices to help pay her tuition. She does not want to disappoint them. They are unaware that she is now suffering. Angela struggles to control herself, but continues to cry as she describes her inability to meet the challenges that confront her. She sees no solution.

**What do you do for Angela?**

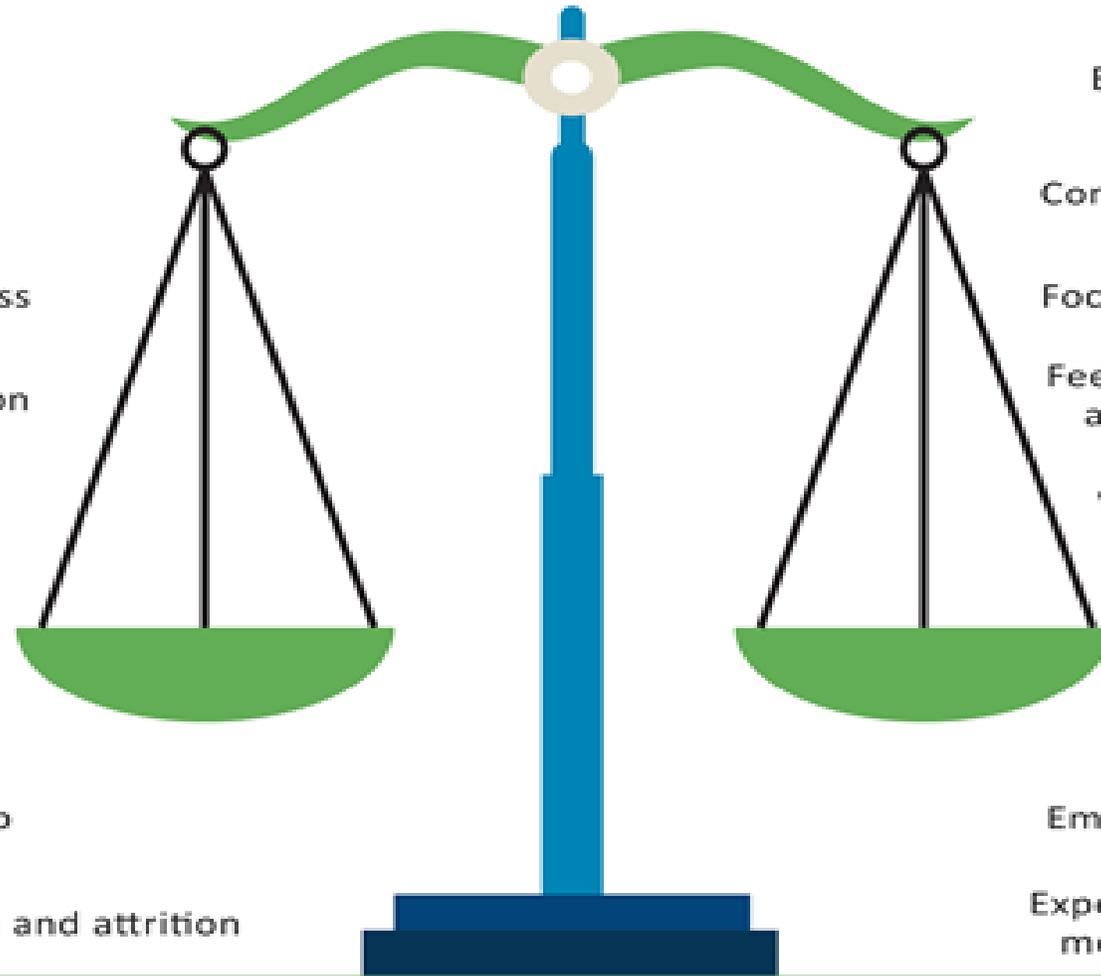
# Law Student Survey – Mental Health

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- 17% depression
- 14% severe anxiety
- 23% mild/moderate anxiety
- 6% suicidal thoughts in last year

## OUR CHALLENGES

-  21-36% problem drinkers
-  28% depression
-  19% anxiety
-  23% elevated stress
-  25% work addiction
-  High suicide rate
-  Sleep deprivation
-  Work-life conflict
-  Avoid seeking help
-  Job dissatisfaction and attrition



## OUR POTENTIAL

- Physically strong and healthy
- Emotionally thriving
- Contributing to society
- Focusing on client care
- Feeling connected and a sense of belonging
- Willing to seek help
- Engaged at work
- Continually seeking intellectual growth
- Emotionally intelligent
- Experiencing a sense of meaning and purpose





# WHY...Are Lawyers Different?



## Individual Factors

- Pessimism/Skepticism
- Competitive Nature
- Perfectionism/Imposter Syndrome
- Problem Solvers
- Higher Reserve

## Life Situation Factors

- Spouse/Partner
- Children
- Health
- Finances

## Organizational Factors

- High pressure, little credit
- Zero sum game
- Work load
- Client expectations
- Definition of success
- Billing Structure

# Five Generations of Lawyers

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- Gen Z, iGen, or Centennials: Born 1996 and after
- Millennials or Gen Y: Born 1977-1995
- Generation X: Born 1968-1976
- Baby Boomers: Born 1946-1964
- Traditionalists or Silent Generation: Born 1946 and before
  - *From <https://genhq.com/faq-info-about-generations/>*

# Three Reasons to Take Action

- Organizational effectiveness:
  - It's good for business!

---
- Ethical integrity and professionalism:
  - It's good for clients!
    - Rule 1.1 – competence
    - Rule 1.3 – diligence
    - Rules 4.1 through 4.4 – transactions with persons other than clients
- Humanitarian reasons:
  - It's good for lawyers and their families!

# Business Case



- **Major Depressive Order**
- Leading Cause of Disability Worldwide
- Total Economic Burden = \$210 Billion
- 50% Due to Lost Productivity
- 77% Due to Presenteeism
- Low Rate of Treatment for Mental Health Disorders: 40%

# Business Case

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- **Excessive Alcohol Use**
- Total Economic Burden = \$250 Billion
- Most (72%) Due To Lost Workplace Productivity
- Most (77%) due to Binge Drinking
- Within 2 Hours: Men: 5+ Drinks , Women: 4 + Drinks

# BUSINESS CASE

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- **ENGAGEMENT**

- **Job Performance**

- Profitability ( + 21%)
- Productivity (+ 17%)
- Client Satisfaction (+10%)
- Lower Absenteeism (-59%)
- Lower Turnover (- 41%)

- **BURNOUT**

- **Turnover**

- Quality Decline
- Depression
- Substance Abuse
- Suicidal Thinking
- Ethical Lapses

# Articles

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- “Lawyer accuses judge of ‘robe rage,’ tells opposing counsel to ‘certify your own stupidity,’ ethics complaint says,” Weiss, Debra Cassens, *ABA Journal* December 20, 2018
  - <http://www.abajournal.com/news/article/lawyer-accused-judge-of-robe-rage-told-opposing-counsel-to-certify-her-stupidity-ethics-charges-say/>
- “‘Big Law Killed My Husband’ – An Open Letter From a Sidley Partner’s Widow,” Litt, Joanna *American Lawyer* November 12, 2018
  - <https://www.law.com/2018/11/12/big-law-killed-my-husband-an-open-letter-from-a-sidley-partners-widow/>

## LAWYER COMPETENCE



### ABA Model Rule 1.1 Competence

Must provide the legal **knowledge, skill, thoroughness, and preparation** reasonably necessary for the client representation.

## LAWYER COMPETENCE



### ABA Model Rules of Professional Conduct, Preamble

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Lawyers should “strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession’s ideals of public service.”

# WORLD HEALTH ORGANIZATION DEFINITIONS

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- **“Health”**

- A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

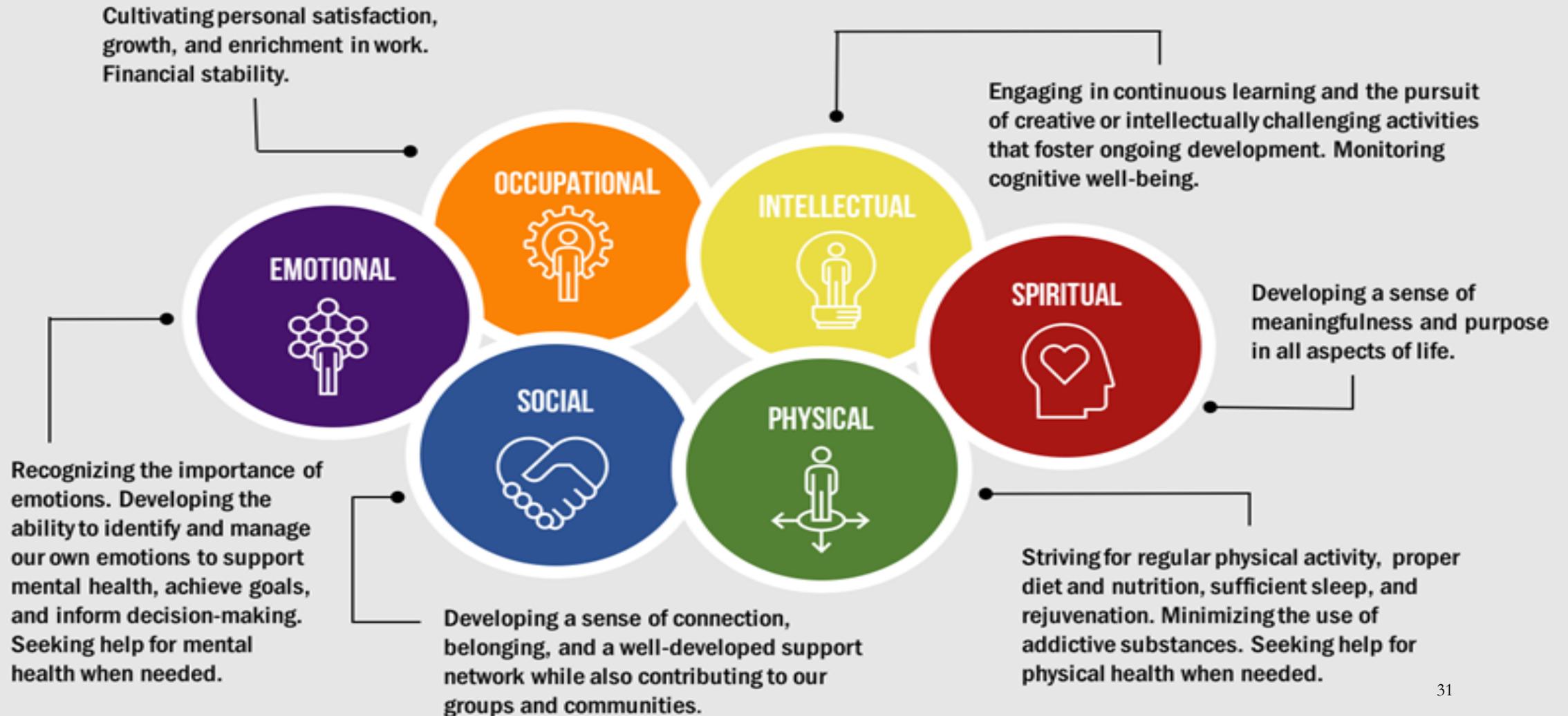
- **“Mental Health”**

- A state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.





## A continuous process in which lawyers strive for thriving in each dimension of their lives:



**Five core  
steps for a  
sustainable  
culture  
in the legal  
profession:**

1. Identify stakeholders and their roles
2. Diminish stigma associated with seeking help
3. Emphasize that well-being is a part of competence
4. Educate on well-being/mental health/substance use disorders
5. Make health and well-being a top priority throughout the profession

General  
Recommendation:  
**Acknowledge the  
Problems and  
Take  
Responsibility**

In order to transform passive denial to proactive support for change:

- Every sector must support lawyer well-being.
- Every one of us must take a leadership role within our sphere of influence.

General  
Recommendation:  
**Create a  
Profession-Wide  
Action Plan**

- Develop a National Action Plan that continues the effort.
- Create state-level action plan, led by state Supreme Court
- Create an organized coalition to plan, fund, instigate, motivate, and sustain long-term change.

General  
Recommendation:  
**Leaders Should  
Demonstrate a  
Personal  
Commitment To  
Well-Being**

- Change requires buy-in and role modeling from top leadership.
- Leaders can create and support change through their own demonstrated commitment to well-being.

General  
Recommendation:  
**Facilitate,  
Destigmatize  
and Encourage  
Help-Seeking  
Behaviors**

- Minimize the stigma of mental health and substance use disorders.
- Stigma prevents lawyers from seeking help.
- Research shows:
  - the most effective way to reduce stigma is direct contact with someone who has personally experienced a relevant disorder.

General  
Recommendation:  
**Partner With  
Lawyer  
Assistance  
Programs**

- Lawyer assistance programs are experts and indispensable partners in educating and empowering the profession to address the well-being crisis.
- Partner with and ensure stable and sufficient funding for:
  - ABA's Commission on Lawyer Assistance Programs (CoLAP).
  - State-based lawyer assistance programs.

General  
Recommendation:  
**De-emphasize  
alcohol at events**

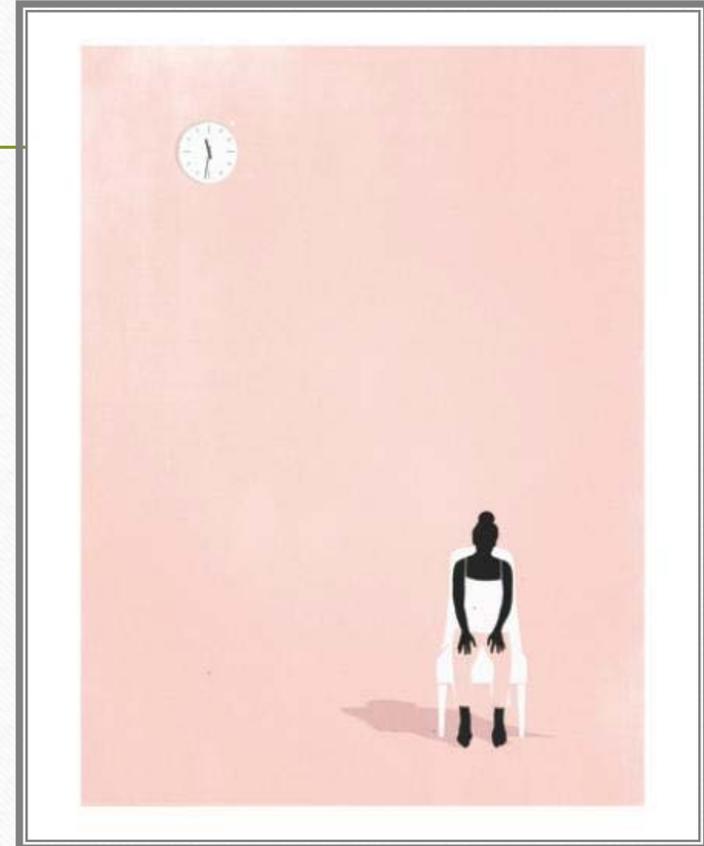
- This is NOT a temperance movement!
- Promote healthy additions to social event – model another way to de-stress and have fun
- It's a matter of inclusivity – focusing on alcohol cuts off from networking:
  - Those in recovery
  - People who do not imbibe for religious reasons
  - People who do not drink for health reasons

General  
Recommendation:  
**Begin a  
Dialogue About  
Suicide  
Prevention**

- Lawyers have high rates of suicide.
- Suicide is a highly stigmatized topic.
- Stakeholders must lead discussions about this topic.
- Sponsor awareness programs regarding signs of suicidality.

## Chair Yoga with Karen Munoz

- Karen Munoz is a Partner at Dolan Law, a boutique personal injury firm in Chicago.
- Karen is active in promoting mindfulness, yoga, and diversity issues through writing, teaching, and serving on legal committees. She serves as a Board Member of the Domestic Violence Legal Clinic, Member of LAP's Illinois Task Force on Well-Being, and as a Member of the CBA's Mindfulness & the Law Committee. Previously she worked with the ABA Young Lawyers Division Diversity Committee, Minority Section, and ISBA Standing Committee on the Delivery of Legal Services.
- Karen is certified to teach yoga, and shares her practice by teaching pro-bono yoga classes for LAP and YogaCare. In 2017, she was the recipient of the Carl H. Rolewick Award for her volunteer work through LAP.



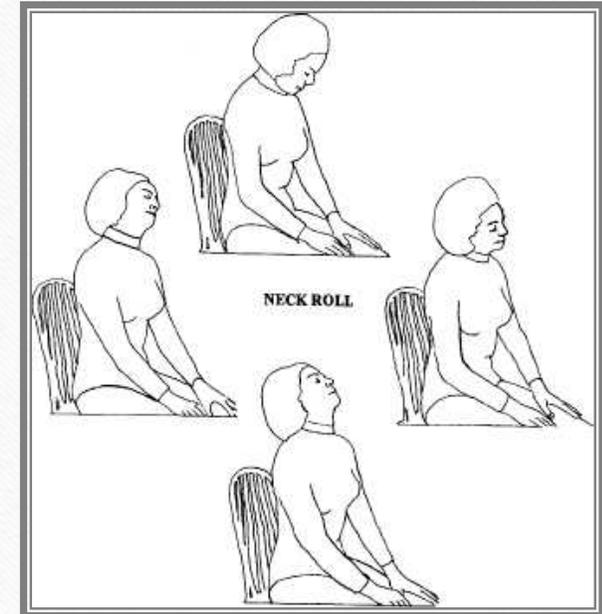
# Simple Meditation

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- Sit tall in your chair or against a wall. Find a comfortable spot to feel supported. Close the eyes. Begin to let go of any tension in the head, face, and neck. Relax the palms on the tops of the thighs or resting in the lap.
- Inhale deeply from the belly, exhale through the nostrils. Repeat for any length of time, remembering to observe the thoughts as they float through the mind, and then letting them pass by, like clouds in the sky.

# Neck rolls

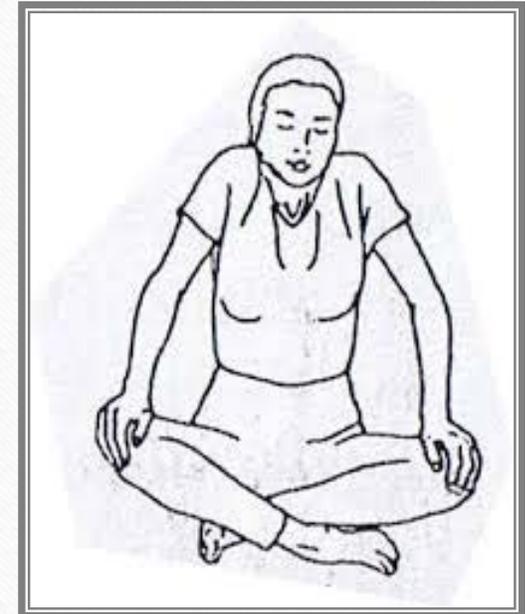
Take a few deep breaths. Relax the head forward, chin to chest. Gently inhale the head up and back, then bring the right ear to right shoulder, and travel through to center, inhale the left ear to left shoulder, then back to center, chin to chest. Repeat as many times as necessary.



# Shoulder rolls

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Inhale and draw the shoulders up towards the ears and on the exhale release. Inhale draw the shoulders forward and exhale roll them back. Alternate moving the shoulders up and down, forward and back.



# Hypo #1 – Employment Discrimination

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Person A is a senior manager in a prominent nationwide tax consulting firm. A's supervising partners proposed A for partnership and requested comments from the other partners on their proposal. Despite A's stellar record, some partners commented that A was "aggressive," "pushy," and "sometimes argumentative." Another partner stated that A "needs a course in charm school."

**Will these comments help or hurt the proposal to promote A to partner?**

**Are these fair and reasonable comments to make about a candidate?**

# Hypo #1 – Cont'd

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Person B is also senior manager in a prominent nationwide tax consulting firm. B also has a stellar record, so B's supervising partners proposed B for partnership and requested comments from the other partners. Some partners commented that B "demonstrated great confidence," was "tenacious," and "zealous."

**Will these comments help or hurt the proposal to make B partner?**

**Are these fair and reasonable comments to make about a candidate?**

# Hypo #1 – Cont'd

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See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) issue was whether social science expert testimony should be allowed in Title VII case; expert testimony focused not only on the overtly sex-based comments of partners but also on gender-neutral remarks, made by partners who knew Hopkins only slightly but that were intensely critical of her, making it highly likely that the remarks (on the only female candidate) were the product of sex stereotyping; these remarks came from “an impermissibly cabined view of the proper behavior for women,” which Price Waterhouse did “nothing to disavow.”

## Hypo #2 – Sentencing

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Defendant, an African American, was convicted of criminal drug conspiracy and delivery of a controlled substance, a Class 1 offense. At the sentencing hearing, Defendant stated that he began selling drugs in order to feed his family and, though he wished he hadn't done it, his paycheck wasn't enough. The judge stated "there are people in your community, not African-American, working and making a living to support their family while you stand around waiting for someone to drop off 5 dollars for a bag; if you think that's the only way to support your family, you are fooling yourself." The judge then sentenced him to the maximum sentence allowable for a Class 1 felony.

## Hypo #2 – Cont'd

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See *People v. Grimes*, 379 Ill.App.3d 905 (1<sup>st</sup> Dist. 2008); “In our considered opinion, the aforementioned colloquy does not establish that the trial judge used race as an improper sentencing factor. Instead, the trial judge did nothing more than explain why he did not believe the defendant’s excuse for selling drugs.” *reversed* by *People v. Grimes*, 895 N.E.2d 1 (Ill. 2008) with directions to conduct a new sentencing hearing pursuant to the court’s supervisory authority.

# Hypo #3 – A Domestic Relations Matter

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Dad moves the court to reconsider an Allocation of Parental Responsibilities Judgment, claiming the court improperly applied the law based on the evidence presented. Currently, the three children, ages 6, 8, and 10, live with Dad. Mom works 60 hours a week, often out of town on business. Dad works at home, remotely doing medical billing.

Following a trial at which both parties testified and presented evidence, the court allocated all decision-making responsibilities and the majority of parenting time to Mom. The court opined during the trial, that “generally, kids want to be with their mother.” The court then chastised Mom and told her to “cut back on her hours” at work.

**Should the lawyer for Dad:**

## Hypo #3 – Cont'd

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Persons A and B are a same-sex couple with three children. A, with whom the children reside, now moves the court to reconsider the Allocation of Parental Responsibilities Judgment. B works 60 hours a week, often out of town on business. A works at home, remotely doing medical billing.

Through a court-appointed representative, the children indicate they wish to be with B. Following a trial at which both parties testified and presented evidence, the court allocated all decision-making responsibilities and the majority of parenting time to A.

**Is there implicit bias here?**

# Hypo #4 – Criminal Law Class

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You are an adjunct professor at a local law school. You are teaching a first-year Criminal Law class. In order to make your presentation relevant to the students, you refer to a recent case involving a police shooting in the city where the law school is located.

The first question you pose is directed to one of two African-American law students in the class and insinuates that the student has had similar experiences with law enforcement. As you continue your discussion of the case, it becomes evident that this student and several others in the class are uncomfortable about the direction this conversation is taking. You see that the student you have called upon is visibly shaken and that his eyes have filled with tears.

# Hypo #5 – Labor Negotiations

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Your firm participates in a local law school's externship program. You decide to take your law school extern to a negotiation with a local labor union. Your student is introduced and initially made to feel welcome in the room. Several times during break periods, one of the management attorneys makes a variety of comments, including racial slurs, about the female Latin-American attorney for the union.

During the lunch break, that attorney asks the law student about her personal background. The student informs the group that she is a South Side resident and names the schools she has attended. She then adds "by the way, you probably should know I am a Latina just like the attorney you have been discussing all morning." At this point, the law student excuses herself and returns to the board room where the negotiations resume.

# Hypo #6 – Opposing Counsel I

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Karen (counsel for the defense) and Todd (counsel for the plaintiffs) are opposing counsel in a contentious employment discrimination lawsuit. During Karen's deposition of one of the plaintiffs, Todd keeps interrupting her. Karen, who had become increasingly annoyed, asked Todd to stop interrupting her. Todd responded by saying, "*Don't raise your voice at me. It's not becoming of a woman or an attorney who is acting professionally under the rules of professional responsibility.*"

**Should Karen respond to Todd's comments?**

*Claypool, et al v. County of Monterey*, 2016 WL 145557  
(N.D. Cal., Jan. 12, 2016)

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“There are several obvious problems with his statement, but, most saliently, Bertling endorsed the stereotype that women are subject to a different standard of behavior than their fellow attorneys. To make matters worse, in his declaration in opposition to this motion, Bertling offered only a halfhearted politician’s apology “if [he] offended” Plaintiff’s counsel, and he nevertheless tried to justify the comment because it “was made in the context of [Plaintiff’s counsel] literally yelling at [his] client and creating a hostile environment during the deposition.””

*Claypool, et al v. County of Monterey*, 2016 WL 145557  
(N.D. Cal., Jan. 12, 2016)

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“A sexist remark is not just a professional discourtesy, although that in itself is regrettable and all too common. The bigger issue is that comments like Bertling’s reflect and reinforce the male-dominated attitude of our profession. A recent ABA report found that “inappropriate or stereotypical comments” towards women attorneys are among the more overt signifiers of the discrimination, both stated and implicit, that contributes to their underrepresentation in the legal field. When an attorney makes these kinds of comments, “it reflects not only on the attorney’s lack of professionalism, but also tarnishes the image of the entire legal profession and disgraces our system of justice.”

# Hypo #7 – Opposing Counsel II

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Courtney (counsel for the defense) and Jason (counsel for the plaintiffs) are opposing counsel in a commercial litigation case in Federal Court. In speaking with Courtney in the hallway about the case, Jason calls her “C@#!tney,” using a vulgar term. He uses the term again when addressing her in an email that reads, “Your days of filing unnecessary frivolous motions will come to an end.”

**Should Courtney alert the court to Jason’s comments?**

*In the Matter of the Discipline of Jason R. Craddock, Sr.,*  
17 MC 27 (N.D. Ill., Jan. 18, 2017)

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“In light of the record, the Executive Committee finds that Craddock violated Rule of Professional Conduct 8.4(g) by “engag[ing] in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of...sex.”

“Craddock’s use of slurs against defense counsel was intended to intimidate her in the representation of her client. This conduct, along with its underlying intent, meets the definition of harassment or discrimination on the basis of sex, and violated...8.4(g).”

## *In the Matter of: Jason Robert Craddock, 2017 PR 115* (ARDC)

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### Complaint:

“Respondent has engaged in the following misconduct:

- Using means that have no substantial purpose other than to embarrass, delay or burden a third person, by conduct including addressing opposing counsel... as “C---tney” following a court proceeding...in violation of Rule 4.4(a) of the IRPC (2010); and
- ...Rule 8.4(d) of the IRPC (2010).

## Hypo #8 – Déjà Vu

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A number of lawyers at a large firm are brainstorming regarding a new client. One of the lawyers, Julie, responds with an idea that is met with lukewarm feedback. Sitting next to Julie is a new lawyer, Jim, who is at his first meeting with the group. He chimes in with the identical idea and the group enthusiastically embraces it and congratulates him for his creativity. Julie is about to point out to the group that she just said the same thing, but the meeting takes another turn.

**What should Julie do?**

# Hypo #9 – Trial Tactics

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Lawyers are representing a family in a tragic wrongful death case that could involve a large amount of damages. The decedent is African American. The defendant is a Fortune 500 company. The case comes to trial and the parties draw a judge who is African American. When voir dire begins, an African American attorney for the first time enters an appearance for defendant.

**Is Defendant engaging in:**

# Racial Microaggression

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- Brief, commonplace, and daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative prejudicial slight and insults toward any racial group.
- It is imperative to create an academic environment that is as free from racial microaggressions as possible. One way for educators to set the tone is to confront any racial microaggressions. In understanding how these experiences negatively affect students of color, educators can better understand the issues that often underlie. This helps them reduce racial microaggressions within the classroom and their educational institution.

•(See Wikipedia “Microaggression” citing Sue DW (2010). *Microaggressions in Everyday Life: Race, Gender, and Sexual Orientation*. Wiley. pp. xvi. ISBN 0-470-49140-X; <http://racialmicroaggressions.weebly.com/blog/im-colorblindthats-a-common-microaggression-called-microinvalidation>).

# Microinvalidations

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Characterized by communications or environmental cues that exclude, negate, or nullify the psychological thoughts, feelings, or experiential reality of certain groups, it is normalized behavior that demonstrates hostility and negative stereotypes of marginalized groups.

## 4 TYPES OF MICROINVALIDATIONS:

1. “An alien in your own country”
2. “Colorblindness”
3. “Myth of Meritocracy”
4. Denial of individual racism/sexism/heterosexism

(See <http://racialmicroaggressions.weebly.com/blog/im-colorblindthats-a-common-microaggression-called-microinvalidation>; <https://www.teenvogue.com/story/microinvalidations-are-real?verso=true>).

# Microinvalidations - Their Impact

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Marginalized persons experiencing microinvalidations over a period of time can begin to question the legitimacy of their feelings and experiences. Such persons can begin to experience depression, anxiety, fear of social interactions, and self-esteem/confidence issues.

How do we overcome these microinvalidations?

- Challenge ourselves by paying closer attention to various microinvalidations around us
- Increase awareness by standing up to casual racism, sexism, xenophobia, transphobia, homophobia
- Acknowledge the problem, educate others, and change the system by opening people's eyes
- Start a dialogue, further the conversation as a way to rid implicit "isms"

(See <https://www.teenvogue.com/story/microinvalidations-are-real?verso=true>)

# Resources – Committees and Groups

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- ABA Diversity and Inclusion 360 Commission Toolkits
  - <https://www.americanbar.org/groups/diversity/resources/toolkits/>
- The Diversity Scholarship Foundation
  - <https://diversitychicago.org/dc/cles/>
- Institute for Inclusion in the Legal Profession (IILP) Review 2017
  - [http://www.theiilp.com/resources/Pictures/IILP\\_2016\\_Final\\_LowRes.pdf](http://www.theiilp.com/resources/Pictures/IILP_2016_Final_LowRes.pdf)

# Resources - Videos

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- ABA Section of Litigation – “The Neuroscience of Implicit Bias”
  - <https://www.youtube.com/watch?v=kzz5Ae-Jq0s&feature=youtu.be>
- Vernā Myers – “How to overcome our biases? Walk boldly toward them”
  - [https://www.ted.com/talks/verna\\_myers\\_how\\_to\\_overcome\\_our\\_biases\\_walk\\_boldly\\_toward\\_them?language=en](https://www.ted.com/talks/verna_myers_how_to_overcome_our_biases_walk_boldly_toward_them?language=en)
- Renee Wells – “Microaggressions in the Classroom”
  - <https://www.youtube.com/watch?v=ZahtlxW2CIQ>

# Resources - Reading

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- *Breaking Through Bias: Communication Techniques for Women to Succeed at Work* - Andrea S. Kramer and Alton B. Harris
- *Blindspot: Hidden Biases of Good People* - Mahzarin R. Banaji and Anthony C. Greenwald
- *So You Want to Talk About Race* – Ijeoma Oluo
- *Race Talk and The Conspiracy of Silence* – Derald Wing Sue
- *Written in Black & White: Exploring Confirmation Bias in Racializing Perceptions of Writing Skills* – Dr. Arin N. Reeves
- “How Professionals of Color Say They Counter Bias at Work,” Christine Hauser, New York Times, December 12, 2018
  - [https://www.nytimes.com/2018/12/12/us/racial-bias-work.html?emc=edit\\_ne\\_20181212&nl=evening-briefing&nlid=6014829420181212&te=1](https://www.nytimes.com/2018/12/12/us/racial-bias-work.html?emc=edit_ne_20181212&nl=evening-briefing&nlid=6014829420181212&te=1)

# Implicit Bias

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In May 2018, the Illinois Supreme Court IPI Civil Jury Committee promulgated **a new instruction for civil jury trial in Illinois on implicit bias** recognizing that we "*all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called 'implicit biases' or 'unconscious biases.'*"

Additionally **it warns that** "*our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.*"

# I.P.I. 1.08 Implicit Bias

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We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit biases” or “unconscious biases.”

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must resist jumping to conclusions based on personal likes or dislikes. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party or witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, [or] socioeconomic status[, or [insert any other impermissible form of bias]].

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist, and help each other to resist, any urge to reach a verdict that is influenced by bias for or against any party or witness.

## I.P.I 1.08 Implicit Bias – Notes on Use

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This instruction should be given at the start of trial and again before the jury begins its deliberations. Jurors, in their role as impartial decision-makers, need to be aware of their own implicit biases so that these biases do not affect their view of the case. Ideally, jurors would have already seen a short video about implicit bias when they were waiting in the Jury Assembly Room, as is done in some jurisdictions, but even if they are not shown such a video, they should still be given this instruction.

## I.P.I. 1.08 - Comment

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The literature on implicit bias explains that everyone has implicit biases. This means that judges and jurors are not immune. Although judges can attend workshops that teach about implicit bias, jurors do not receive any such training. Therefore, it is important for the court to make jurors aware that everyone is affected by implicit biases. It is particularly important for judges and jurors, who strive to be impartial decision-makers, to be aware of this phenomenon and to try to guard against it for purposes of the trial.

# I.P.I. 1.08 - Comment

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Implicit bias has been the subject of much scholarly attention.

- Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, “Blinking on the Bench: How Judges Decide Cases,” 93 CORNELL. L. REV. 1 (2007)
- Jerry Kang, et al., “Implicit Bias in the Courtroom,” 59 UCLA L. REV. 1124 (2012)
- Justin D. Levinson, Mark W. Bennett & Koichi Hioki, “Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes,” 69 FLA. L. REV. 63 (2017)
- Judge Andrew J. Wistrich & Jeffrey J. Rachlinski, “Implicit Bias in Judicial Decision Making: How it Affects Judgment and What Judges Can Do About It,” *Enhancing Justice and Reducing Bias* (2017)

# I.P.I. 1.08 - Comment

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It has also been the focus of attention by organizations dedicated to improving the courts and legal profession, such as the National Center for State Courts and the American Bar Association. See:

- Jerry Kang, Nat'l Ctr. for State Cts., *Implicit Bias: A Primer for Courts* (Aug. 2009)
- Jennifer K. Elek & Paula Hannaford-Agor, "Implicit Bias and the American Juror," 51 CT. REV. 116 (2015)
- Jennifer K. Elek & Paula Hannaford-Agor, "First, Do No Harm: On Addressing the Problem of Implicit Bias in Juror Decision-Making," 49 CT. REV. 190 (2013)
- Am. Bar Ass'n, "Achieving an Impartial Jury (AIJ) Toolbox, available at [https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire\\_toolchest.authcheckdamn.pdf](https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.authcheckdamn.pdf)

## I.P.I. 1.08 - Comment

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Although Illinois case law does not require an implicit bias instruction, the Illinois Supreme Court has recognized the importance of training judges about implicit bias. See Chief Justice Lloyd A. Karmeier, “Another Step Toward Equal Justice: Identifying Implicit Bias,” Illinois Courts Connect (Feb. 1, 2018) at

[http://www.illinoiscourts.gov/Media/enews/2017/112917\\_chief\\_message.asp](http://www.illinoiscourts.gov/Media/enews/2017/112917_chief_message.asp)

## I.P.I. 1.08 - Comment

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To that end, the Illinois Supreme Court created the Committee on Equality in 2015. The Committee on Equality has been charged with working with other offices and agencies in Illinois to “coordinate ongoing judicial education around the state to help judges incorporate anti-bias ideas and procedures into judicial decision-making.”

- Illinois Supreme Court Press Release, “Illinois Supreme Court Announces Findings, Next Steps Following Judicial Decision-Making Study, “ Nov. 6, 2017

## I.P.I. 1.08 – Comment

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Some states, such as California, have added an instruction on implicit bias. *See* Judicial Council of California, California Civil Jury Instructions (CACI) 113 (2017) (Bias)

Federal courts in other states, such as the Western District of Washington, have added a short video addressing the topic. *See* “Understanding the Effects of Unconscious Bias” at <http://www.wawd.uscourts.gov/jury/unconscious-bias>, along with instructions. Some courthouses in Washington show the video to prospective jurors while they are waiting in the Jury Assembly Room to be assigned to a courtroom.

## I.P.I. 1.08 - Comment

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Although empirical studies have not established that awareness – whether through instructions or videos – can eliminate people’s implicit biases, there is general agreement that awareness is the best step forward and does more good than harm. *See* Kang, et al., at 1184.

# ABA Model Rule 8.4

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It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

# ABA Standard 302: Learning Outcomes

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A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession
  - These “[o]ther professional skills” “may include skills such as interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, *cultural competency*, and *self-evaluation*.” (emphasis added)  
[Interpretation 302-1]

## IRPC 4.4: Respect for Rights of Third Persons

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(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

# IRPC 8.4: Misconduct

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It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (d) engage in conduct that is prejudicial to the administration of justice.

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Page printed from: <https://www.law.com/americanlawyer/2018/11/12/big-law-killed-my-husband-an-open-letter-from-a-sidley-partners-widow/>

# 'Big Law Killed My Husband': An Open Letter From a Sidley Partner's Widow

The wife of Sidley Austin partner Gabe MacConaill shares her story.

By **Joanna Litt** | November 12, 2018

*Joanna Litt's husband, Gabe MacConaill, a 42-year-old partner at Sidley Austin, committed suicide*



**Joanna Litt (left) and Gabriel MacConaill on their wedding day.**

*(<https://www.law.com/americanlawyer/2018/10/18/gunshot-killed-sidley-partner-la-medical-examiner-rules/>) in the parking garage of the firm's downtown Los Angeles office last month.*

My husband took his life—our life—on Sunday, Oct. 14, one month to the day before our 10-year wedding anniversary. We had been planning a trip for over a year in anticipation of celebrating.

I'm beyond lost and I don't know how I'm going to get through the rest of my life. Gabe was my best friend, my partner, my lover, and my constant. I turned to him for everything, and he was always there with the most perfect advice and words. He was my world, and after losing him, I can absolutely say, my better half. Gabe and I did not have children (except for our dog Ivy) and we made that deliberate choice so we could focus solely on our life together, because we were happy. And now he's gone. He saw no other choice or path.

I never thought in a million years that he could or would do that. And I keep going back to one thought: "Big Law" killed my husband.

We met on our first day of law school (he graduated third in our class). We had every class together and sat next to each other for two bars because of our last names. He was the smartest person I had ever met. He was also the kindest, most selfless person I've ever met.

I know in my heart that overall, more than anything, we were happy. I would find myself during the day thinking how lucky I was to have him and our life. No one made me feel more special and loved— everything he did, he did for us. And that's why I have this overwhelming need to tell our story, his story. I don't want anyone else to experience the utter shock and pain I am in.

Gabe and I worked hard at our marriage. Marriage isn't easy and I would never pretend it was. Our most serious problem revolved around Gabe's struggle with binge drinking. It wasn't on a daily basis, but maybe three or four times a year there would be some event or function where he drank too much. I was hard on him for it—it made me so uncomfortable and mad and sad when he would cross that line. I didn't have much compassion or realize his drinking

was masking a deeper pain and I made him feel very guilty. As a result, he would stop drinking for a month or two and be OK for a while, but then there'd be a lapse.

He saw someone professionally a few times, but that was it. In his way, he was working on it— and that meant a lot to me, so we stayed together.

Then there were a series of ill-fated events at work. First, his mentor and confidant suddenly announced he was leaving the firm. This had a huge impact on Gabe personally. It also caused a big shake up at the firm, and another of his treasured partners left to take early retirement.

Gabe, thrust suddenly into an important leadership role, was told in no uncertain terms that the firm was not going to hire any lateral support. Shortly thereafter, the last partner who was senior to Gabe decided to leave, and an associate whom Gabe spent a lot of time mentoring also left. The Los Angeles bankruptcy group Gabe had so deeply cherished and relied on for support had fallen apart.

It was also during this time that Gabe was asked to chair the summer associate program. Sidley's position in some rankings had fallen and Gabe poured his heart and soul into that program. I know there were many others that helped him, but he passionately assumed responsibility for all 13 candidates, wanting to make sure they had the professional summer experience of a lifetime and



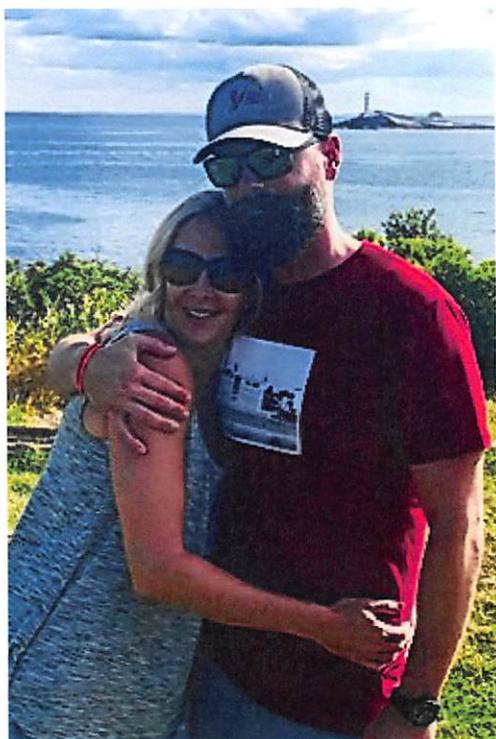
***Gabriel MacConaill  
delivering a toast at his  
brother's wedding.***

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wouldn't hesitate to accept an offer from the firm. The success of the program was overwhelming and he didn't even tell me. I found out from someone after he died that the associate reviews were glowing.

Finally, Gabe started working on the Mattress Firm case—a huge bankruptcy. It was a little over a month away from filing a Chapter 11 petition, and I had never seen him so stressed out and anxious. He was trying not to burden me with what was going on, but he wasn't sleeping, I hadn't seen him smile in weeks, and most everything he said was negative.

He told me he had experienced stress during cases before, but it had never been this bad. I didn't know what to do. I tried to be positive and encouraging and just make our home as pleasant a place to come home to as possible.



***Gabriel MacConaill and Joanna Litt recreating their engagement photo.***

The Sunday before leaving to file in Delaware, he spent all day at the office. When I finally called him that evening, it was clear he was in distress and had been working himself to exhaustion. He told me his body was failing him. I picked him up and we decided he should go to the emergency room. He actually said to me on the way there, "You know, if we go, this is the end of my career."

I've never felt so helpless in my life. I didn't know whom to reach out to or to tell my husband was in crisis. I called his closest colleague and asked if she had noticed anything unusual with his behavior at work. She said he was working more with his door closed, and then she said something I'll never forget: She said his sense of humor had been

gone for a while. I asked her to keep an eye on him at work and then I just brought him home. I tried to make sure he slept and was rehydrating and eating so he could make the trip to Delaware.

About a week later Mattress Firm publicly filed. I sent an article announcing the bankruptcy to my mom and a couple of close friends with the exact words, "This is the case that is killing my husband."

Gabe came home from Delaware late Tuesday evening. I was hoping the worst was over, but he wasn't any better. I convinced him to skip a conference in Los Angeles that he was supposed to attend that Wednesday and Thursday and we stayed home together. I thought this would do him some good, but what I found out later was that he had stopped responding to work emails. And when he told me he was going into work that Friday, he instead spent the day at his biological father's grave—a man he never met—a couple of hours away from our home.

During this terrible spiral, I told him to quit. I told him we could sell our beautiful house and move to Mammoth, our happy place, and snowboard all winter and then figure it out. He said he couldn't quit in the middle of a case. The irony is not lost on me that he found it easier to kill himself. I thought after this case was over, we'd find a path back to being happy.

Suicide has now become my new world and I am desperately searching for answers. Because to those that knew him best, his family, friends and colleagues, this came without warning. Though it's only the beginning stages of trying to figure out why this happened, I came across a concept, maladaptive perfectionism, that combines unrealistic standards of achievement with hypercriticism of failing to meet them.

Gabe displayed most if not all of the characteristics. Simply put, he would rather die than live with the consequences of people thinking he was a failure.

Looking back on the things Gabe confided in me, I now know I missed a lot of signs. He told me he felt like he was doing the work of three people—and I think that’s being generous. He told me the deal to resolve the bankruptcy kept changing. He also felt that while a senior partner in Chicago was heading the case, a lot of pressure fell directly on him.

We spoke a handful of times about how he should just try to care less about the work, but knowing the kind of person my husband was, that was never going to happen. He said he felt like a phony who had everyone fooled about his abilities as a lawyer, and thought after this case was over, he was going to be fired—despite having won honors for his work.

On the morning he killed himself, he said he got an email and had to go into work to put something together. I wanted to ask if I could go with him and just sit there, but instead, I simply offered to make him a sandwich for lunch. And without any hesitation, he said, “No baby, I’ll be fine—I won’t be long.” I’ll be haunted by those words forever. He gave me a few kisses, and tried to get Ivy to come cuddle me.

And then he left, taking his gun with him, and shot himself in the head in the sterile, concrete parking structure of his high-rise office building.

I feel like I lost my husband so quickly—within the course of a month—but I’m now starting to realize how hard he must have been on himself all the time. The constant striving to be perfect at work, to be the perfect husband, son, uncle, brother and friend. And then living with this deep unbearable shame



***MacConaill with his dog Ivy.***

that he wasn't performing to the impossibly high standards he set for himself. He said a few times how he couldn't turn off his head, but again, I didn't understand the severity of that statement.

Maladaptive perfectionists lack self-compassion. I should have held him just a little longer, loved him a little harder, and told him way more often how proud I was of him and how much I loved him—exactly as he was. I'll make penance for this for the rest of my life and for just not seeing the depth of the sorrow and pain he was going through.

Then came Sidley's handling of Gabe's suicide—"damage control" that included a last-minute invitation for me and my mom to attend a service at the firm. We went because I needed to see what kind of narrative they were creating. There were a handful of attorneys there, but in the immense receiving line of people who patiently waited to tell us about their unique story of Gabe, most were support staff. One told me that after working at the firm for years, Gabe was the only attorney to take the time to know her name.

I heard story after story about Gabe's encouraging nature and how he made people feel like they could succeed at anything they put their mind to. One close colleague said she wished "Gabe had his own Gabe."

Finally, packing up his office, I was handed a gift left by someone who just missed saying goodbye to him. He had decided to go to law school after numerous discussions with Gabe. The gift was a leather plaque; on it was inscribed, "It Can Be Done."

Gabe lived his life with integrity and treated those around him with sincerity, kindness, and a genuine sense of presence. Unfortunately, I know my husband died not knowing the impact he had on so many people. I believe he died feeling overworked, inferior and undervalued. And I know he died with a lot of shame.

So as I write our story and think about it more and more, I know “Big Law” didn’t directly kill my husband—because he had a deep, hereditary mental health disorder and lacked essential coping mechanisms. But these influences, coupled with a high-pressure job and a culture where it’s shameful to ask for help, shameful to be vulnerable, and shameful not to be perfect, created a perfect storm.

I don’t have any immediate solutions, but for the sake of retaining people like Gabe in these important professions, something needs to change. We need people like him walking this earth; they make it a better place. My husband was impeccable with his word, and actually cared so immensely about the job he did and how people viewed him. He wasn’t focused on the bottom line or lining his pockets with more money. He cared about his clients and the hundreds and thousands of people impacted by a corporation filing bankruptcy. Not to mention, he was really good at what he did.

I was having a hard time getting older. I’m 41 and would think about how time was flying by. We weren’t as young or vibrant. I feel like I’ve answered the age-old question how do you make time slow down. You lose the love of your life. Now, there’s just so much time left, and infinite sadness. I’ll live the rest of my life trying to fill his shoes and help anyone from having to go through this horrendous, needless experience.

***[Read More: As Attorney Suicides Mount, a Survivor Speaks Out](https://www.law.com/americanlawyer/2018/11/12/as-attorney-suicides-mount-a-survivor-speaks-out/)***  
***[\(https://www.law.com/americanlawyer/2018/11/12/as-attorney-suicides-mount-a-survivor-speaks-out/\)](https://www.law.com/americanlawyer/2018/11/12/as-attorney-suicides-mount-a-survivor-speaks-out/)***

*Free, confidential services for people in suicidal crisis or emotional distress, or those around them, exist 24/7. The National Suicide Prevention Lifeline is at 1-800-273-TALK (8255). A crisis text line is at 741-741. The American Bar*

*Association*

*([https://www.americanbar.org/groups/lawyer\\_assistance/resources/lap\\_progra](https://www.americanbar.org/groups/lawyer_assistance/resources/lap_progra)  
has a directory of lawyer assistance programs.*

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## How Professionals of Color Say They Counter Bias at Work

By [Christine Hauser](#)

Dec. 12, 2018

An African-American man in a suit was handed car keys by someone who thought he was a parking attendant. A black lawyer was patted down by guards at a courthouse, even though his white colleagues entered without a search. An African-American politician was told she did not look like a legislator.

Such encounters are the plight of many people of color in the United States, highlighted in October when flight attendants questioned the credentials of a black doctor while she was trying to treat a passenger in distress.

When the physician, Fatima Cody Stanford, later explained that she always carries her medical license to help disarm skeptics in situations like the one she had experienced, other professionals said they, too, had developed strategies to brace themselves for people who will doubt them.

Those in professional fields historically dominated by white people, including law, medicine and politics, say that the pressure to be prepared for these moments can feel particularly acute. It affects how they dress, what they carry in their wallets and how they behave.

In interviews, about a dozen people described their efforts to ward off bias at work because they supposedly do not, as Dr. Stanford put it, “look the part.”



Ramon Ray

### ‘People think I’m the help’

Ramon Ray, 46, a New Jersey entrepreneur, always dresses in a suit or a sweater. But he has still been asked by strangers to park a car, or been handed luggage or a coat to hang up. The bias, Mr. Ray said, was an assumption that he was “the help.”

He is also aware of the racist assumption that black men are menacing. It has prompted him to modify his behavior in ways that include keeping his distance from white female strangers, especially in isolated places like parking lots.

“Why cause drama? Why cause angst?” he said. “I just wait.”



## **'We have to normalize our presence in the field'**

Black, Hispanic and Latino people make up a low proportion of medical school graduates in the United States. Several doctors described their experiences with implicit bias, or unconscious assumptions about race.

Dr. Ashley Denmark, 34, has overheard patients say they have not seen a doctor, even though she just examined them.

"I will go back, and round again, and say: 'Hey, you didn't remember seeing me? My notes are in the chart,'" Dr. Denmark said.

"It plays to a bigger problem that we have to normalize our presence in the field," she added.



Dr. Mallory Whitley  
Lans Stout of Lans Stout Photography &  
Productions

Dr. Mallory Whitley, 33, emphasizes to patients that she is their doctor. "I have been handed a tray before and asked if I am there to take their order," she said. "If a nurse walks in — say, a white male — that is their doctor all of a sudden."

She is also aware of how she delivers her orders. "I tend to not speak a certain way at work," she said, "to make sure in other people's eyes I am less menacing or less aggressive."

It isn't just black professionals. Hispanic and Latino people, Asian-Americans and people of other races have also reported encounters with bias.

Dr. Gricelda Gomez, 31, who is Latina, said she was helping herself to a supply of scrubs recently when an unfamiliar white nurse challenged her, assuming she was not a doctor and snatching her badge away after she did not provide her name.

Dr. Gricelda Gomez  
Brigham & Women's Hospital



“The default is never ‘you are the physician,’” Dr. Gomez said.

Such assumptions that she is less qualified than other professionals are rarely overt, she added. “This is the tricky thing about bias and talking about it,” she said. “It is not macroscopic anymore. It is all underlying.”

After the encounter with the nurse, she stopped wearing the badge that identifies her as a doctor on her hip and started displaying it more prominently.

“I pin it right in the middle of the V-neck,” she said.

Dr. Gomez, who also recalled being accused by a colleague of playing the “minority card” to get into Harvard Medical School, said she worked twice as hard to be perceived as competent as her white colleagues.

“The default is ‘Oh, she is Latina — she squeezed by because she is a minority,’” she said.



Anthony Denmark

## Avoiding casual Fridays

Anthony Denmark, 33, a lawyer in South Carolina, said he avoided wearing informal clothing on his firm’s casual Fridays.

Mr. Denmark, who is married to Dr. Denmark, has been patted down at courthouses where white colleagues walked in without a search, he said. In his car, he hangs work badges from the rearview mirror so he will always have identification within reach.

“At times I have had to show my license to my own clients before they believed that I was the attorney working on their case,” he said.

Kyle Strickland, an analyst at the Kirwan Institute for the Study of Race and Ethnicity, said, “I want to be able to say people should not have to wear a suit to fit in.”

“But at the end of the day,” he added, “you are still a person of color in America, because we have not necessarily confronted the



Emilia Strong Sykes  
Office of State Representative Emilia Sykes

### ‘You don’t want to be the black legislator causing trouble’

In 2016, a black Ohio state legislator, Emilia Strong Sykes, 32, asked why she had been singled out for a search entering the Statehouse. “Well, you don’t look like a legislator,” she recalled the guard saying. After a pause, he said she looked “too young.”

Ms. Sykes braces for such encounters. She dresses conservatively, keeping her badge visible and unfailingly displaying her legislative pin. “I am very mindful of it,” she said. “You don’t want to be the black legislator causing trouble.”

She has also instructed her aide to greet visitors at her office entrance, so there is no question that the black woman they encounter sitting at the representative’s desk is, in fact, the legislator herself.

“There is something that triggers those thoughts that ‘she is not supposed to be there,’” Ms. Sykes said.



Rahmah Abdulaleem

### ‘A stereotype in their mind’

Rahmah Abdulaleem, 43, a Muslim lawyer, said her evolving head scarf choices reflected her efforts to pre-empt bias. When she was starting her career in Georgia, she would wear a dark scarf, making the Islamic covering less jarring for clients or colleagues. As she became more established, she started to wear colors.

“It was for them to be comfortable,” she said. “Then I finally got to the point where: ‘This is not me. I am not happy.’”

But she still recalls clearly how a colleague told her, almost 20 years ago, that she needed to “tone it down so people will feel comfortable.”

“And that sticks with me,” Ms. Abdulaleem said. “I make sure that I am not the loud black woman. I want to be respected for what is

coming out of my mouth, and not falling into a stereotype in their mind.”

The New York Times

A version of this article appears in print on Dec. 12, 2018, on Page B3 of the New York edition with the headline: How Professionals Of Color Say They Counter Bias at Work

[READ 219 COMMENTS](#)

# Illinois Bar Journal

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Professionalism

Reining in Implicit Bias

By

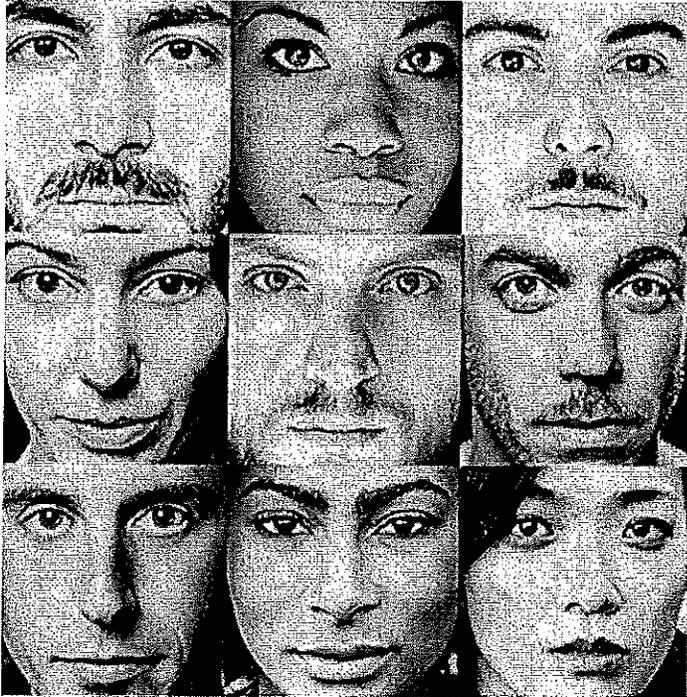
Justice Michael B. Hyman

Implicit bias poses a constant challenge to lawyers and judges. Nothing will eliminate it, but once we understand what it is and recognize it in ourselves we can reduce its influence on our thinking and decision-making.

## TAKEAWAYS

- Implicit bias is everywhere and it comes from "stereotypical associations so subtle that people who hold them might not even be aware of them." Examples include connecting black people to violent crime, connecting men to corporate leadership, deeming female lawyers as less aggressive than male lawyers, and crediting Asians as good at math.
- Instead of avoiding controversial topics, legal professionals should participate in direct, candid discussions in a welcoming, supportive environment. Open and respectful dialogue can produce a lasting learning experience. Listening to people who differ from us enhances understanding and knowledge necessary to gain some control over our biases.

- Implicit bias thrives in spur-of-the-moment, intuitive decision-making and when we are distracted or under stress. The best antidote to these tendencies is to think in a deliberative fashion.



While waiting at a bus stop, you hear police sirens growing louder. Suddenly, an older model Ford sedan speeds past, followed by a squad car. Loud music blares from the sedan; the driver throws a brick-sized package wrapped in brownish paper out of the window. Seconds later, the driver jumps from the still moving car. Two police officers rush up and tackle the driver.

Describe the driver. Male or female? White, Hispanic, Asian, or Black? How old? What was the driver wearing? What about the police officers - males, females, or one of each? Were they White, Hispanic, Asian, or Black? Fit or overweight? What about the package? Illegal drugs or something else?

As you read the opening paragraph, your mind formed a mental picture, giving life to indeterminate images and filling in details missing from the story. Nothing divulges the race, age, build, or gender of the driver or police officers. Yet your mind visualized their identities. This kind of subconscious stereotyping is known as "implicit bias."

Implicit biases alter the way we all interact, socialize, and perceive members outside of our racial, ethnic, gender, economic, and religious circles. Beware - implicit bias has a grip on our minds so strong and fierce that nothing will eliminate it.<sup>1</sup> We cannot just think implicit bias away or expect to control it by reading articles like this one.

According to an authority on implicit bias, "The most widely held misconceptions about implicit biases are that 'they affect other people but not me' and that it's possible to eliminate these biases with relatively simple interventions. These are both assertions that lack empirical support in research of the last 20 years."<sup>2</sup> Indeed, to loosen the sticky pull of implicit bias, we must stay motivated and willing to persist at understanding and controlling it.

This article provides an overview of implicit bias to acquaint judges and lawyers with the phenomenon, and then offers proactive steps to counter, minimize, and neutralize its potential to harm. As you read this article, remember that resisting implicit bias requires adopting multiple strategies. It also requires discipline, patience, and time.

### **What is implicit bias?**

Implicit bias is everywhere. It comes from "stereotypical associations so subtle that people who hold them might not even be aware of them."<sup>3</sup> Examples abound: connecting black people to violent crime or men to corporate leadership, deeming female lawyers as less aggressive than male lawyers, or crediting Asians as good at math.

Implicit bias and explicit bias differ. Explicit bias involves attitudes and beliefs that we accept as fact and reveal through intentional actions; implicit bias involves attitudes and beliefs that are triggered automatically without mental awareness. When the prosecution removes people of color from a jury on the basis of their race that is explicit bias. So is making racist or homophobic jokes or statements.

Unlike explicit bias, implicit bias operates behind the scenes, in seclusion, where we don't notice it affecting our thoughts and decisions. Implicit bias has been referred to as a "hidden brain," which, unbeknownst to our conscious selves, colors our perceptions of life.<sup>4</sup> "We all have biases - this

is a way for us to process and organize information.... Bias does not make you prejudiced. It makes you human."<sup>5</sup>

Nevertheless, saying someone has implicit bias is often misunderstood as a polite way to call someone a racist, sexist, or homophobe. Consider the Vice-Presidential debates in which then-Governor Mike Pence took issue with Senator Tim Kaine's references to implicit bias. "Senator, please," Pence said, "enough of this seeking every opportunity to demean law enforcement broadly by making the accusation of implicit bias every time tragedy occurs."<sup>6</sup>

To Pence, "implicit bias came across as an insult, a put-down on par with branding police as racists. Many Americans may hear it as academic code for 'racist.' But that connotation does not line up with scientific research on what implicit bias is and how it really operates."<sup>7</sup>

### **How implicit bias impacts you**

Picture an apple.<sup>8</sup> Most imagine a round, shiny, red fruit. But not all apples are round and red. Some apples are bell-shaped; others have yellow or green skin. To most of us, the typical "apple" is "red" and "round" because when the concept of an apple was introduced to our infant brain, the baby-book depicted a round, shiny, red object. When we learned to read, the flashcard that read "A is for Apple" pictured a round, shiny, red object. And when we ate our first apple, we heard "apple," and then were handed a slice of a round, shiny, red object. Through constantly reinforced patterns, our young mind associated the term "apple" with its common characteristics: "round," "shiny," and "red."

As we grew, we began sorting people too, usually by race, gender, age, and physical appearance, among other traits. We attribute qualities to people based on common perceived characteristics. This is because our brain "automatically associates certain characteristics with specific groups that are not accurate for all the individuals in the group...."<sup>9</sup> These biases are so ingrained in our brains, we do not think about what we are saying or doing while we say or do it. Like riding a bike, reading, or recognizing an apple.

Implicit bias is a human condition;<sup>10</sup> a product of our brain's natural functions, molded by society, and reinforced by our environment.<sup>11</sup> For

judges and lawyers, implicit bias can be particularly detrimental because it affects behavior and decision-making.<sup>12</sup>

Judges rarely question their own objectivity, but they should. There is always the possibility that implicit bias will intrude on judicial decision-making, and affect the outcome. Also, judges have ethical obligations to be impartial and perform the duties of their office without bias. Inherent in their ethical obligations is the obligation to be aware of and act on their own negative biases and bias that exists within the legal system. Public trust in the courts depends, in part, on the public perceiving judges as free from prejudices or partiality.

Implicit bias is just as dangerous for attorneys, who need to be mindful of bias, prejudice, discrimination, and harassment.<sup>13</sup> For instance, in criminal proceedings, implicit bias may reveal itself in every phase of prosecutorial discretion from charging decisions to bail contests to trial strategy. In civil cases, implicit bias may discourage a lawyer from taking a suit brought by a member of a minority group, perceiving him or her as less trustworthy or honorable. In law firms, implicit bias may affect the hiring process, or advancement of women and lawyers of color.

The existence of implicit bias was observed in a study of 60 law firm partners who were asked to evaluate a law student memo.<sup>14</sup> Researchers gave each partner the exact same copy of the memo, but half the memos contained names usually associated with blacks while the other half contained names usually associated with whites. The partners rated white students' memos higher than the black students' memos, suggesting bias against black hires.<sup>15</sup>

### **How to recognize implicit bias in yourself**

Being alert to the potential for implicit bias can inhibit it.<sup>16</sup> But before we can inhibit it, we must face it. Our decisions as legal professionals will not be free of stereotypes and bias, unless we accept the notion that we all harbor implicit biases of one kind or another. Then we can compensate for them. Psychologists have detected "an illusion of objectivity" that prevents people from confronting their biases.<sup>17</sup> Most of us do not see ourselves as biased, and we assume that when we make decisions they are based on what we know, see, and understand. Not entirely true. For one thing, implicit bias may be at work.

To better understand your own struggle with implicit bias, take the Implicit Association Test (IAT), a free, anonymous, and easy-to-use computer program at <https://implicit.harvard.edu/implicit/takeatest.html>. Numerous IATs are available via the Project Implicit website, including on race, religion, gender, sexuality, and disability.

The IAT divulges biases by asking participants to match names, faces, or categories to suggestive adjectives. As a co-creator of the IAT has pointed out, "At its heart, the test is telling us something about ourselves that is not palatable. While that leads us to reject this message, it also keeps us coming back to it, and once you know that, it opens up a whole new universe of decisions that can be made quite differently."<sup>18</sup>

Seminars and conferences tailored toward teaching people how to identify and guard against implicit bias can be effective at enhancing awareness and understanding of implicit bias, as long as they are not exclusively relied on and what is learned is put into practice.

Recognition also includes challenging ourselves to pay attention to the words we use. We should use inclusive language (e.g., "humankind," "we," "he and she") and avoid words, expressions, or terms that might be considered offensive or that reinforce inappropriate or demeaning assumptions or attitudes (e.g., "man-made," "illegal alien," "dear"). Spoken and written communication should be neutral and non-sexist, non-ethnophobic, non-homophobic, and non-discriminatory, particularly in formal settings such as in court, at the office, or when meeting with clients.

### **Talking about bias helps**

Many of us avoid talking about controversial issues like racism, sexism, and ableism due to fear, either of saying something offending or displaying ignorance. Or because it makes us feel awkward, self-conscious, or embarrassed. Like trying to break a bad habit, we cannot subdue implicit bias unless we are willing to open ourselves to other voices and viewpoints, and, possibly, criticism.

But giving in to fear will produce nothing positive. Unless and until each of us is willing to feel some discomfort, to counter our knee-jerk defensiveness, and to reflect on our past conduct, implicit bias will continue its claim on how we behave and comprehend the world.

Racial matters comprise a subject so sensitive that most of us would prefer not to even think or talk about it. Some people physically react to race-related discussions, particularly between whites and blacks.<sup>19</sup> There are those who justify their silence by believing we live in a post-racial America, but the turmoil of 2016 should have dispelled that notion. Indeed, the general inability of whites and blacks to engage in conversations related to bias and prejudice signals that America has a way to go before declaring we live in a tolerant multicultural society.

Instead of avoiding controversial topics, legal professionals should participate in direct, candid discussions in a welcoming, supportive environment. Open and respectful dialogue can produce a lasting learning experience. Listening to people who differ from us enhances the understanding and knowledge necessary to gain some control over our biases. Too often, we isolate ourselves from "them," when what we should be doing is moving out of our comfort zones and talking about the challenges that diversity and marginalization pose.

Dialogue can be private as well. Consider finding an ally or mentor; someone with whom you can safely discuss these sensitive issues.

### **Practice positive emotions**

Positive emotions break down barriers. Experts recommend that maintaining an open posture, making eye contact, and speaking fluidly can diminish the intensity of implicit bias.<sup>20</sup> Even smiling helps.<sup>21</sup> By inducing test subjects to smile while looking at unfamiliar black and white faces, and then comparing IAT results from before and after the facial-recognition exercise, researchers discovered that IAT scores after the exercise showed a marked decrease in implicit bias.<sup>22</sup>

While an occasional smile will not reverse unconscious bias, it can serve as a source of encouragement. Implicit bias research unravels "the intimate connections between our feelings and expectations and our perceptions.... Smiles and positive perceptions may not make every prejudiced instance or impulse disappear, but every individual step forward is a step closer to where we want to be."<sup>23</sup>

### **Think of people in terms of individuals and not categories**

Implicit bias occurs because we automatically sort people who share similar characteristics into groups. Viewing people as unique individuals, rather than as members of a particular group, decreases implicit bias.<sup>24</sup>

A study asked white test participants to distinguish black faces based on individual characteristics.<sup>25</sup> Participants were divided into two groups. The first group distinguished black faces from other black faces, while the second group distinguished black faces from white faces. White participants who had to individualize black faces from other black faces had less implicit bias after the test. Therefore, implicit bias can lose some of its command when we focus on a person as an individual rather than a member of a group.

Also, embracing commonalities that transcend categories shrinks subconscious stereotypes. Embracing our shared humanity enables empathy and empathy draws us towards others, allowing us to connect with all different kinds of people and better understand their lives and perspectives.

### **Develop your color-awareness**

Colorblindness assumes that skin color is a "meaningless characteristic, and that everyone should be seen as the same, regardless of color."<sup>26</sup> At first blush, colorblindness appears desirable. Multiple studies, however, have established that a color-blind mindset actually results in less friendly interactions by whites with blacks.<sup>27</sup>

The idea of color-blindness cannot solve our social problems. Colorblindness facilitates bias because it blinds us to disparities - while we may disagree over the cause of mass-incarceration of people of color, a sizeable number of Americans refuse to admit the role played by a person's skin color or economic status. The same is true of disparities in education and employment opportunities.

Race remains an "extraordinarily salient and meaningful social category."<sup>28</sup> Children are "wired" to notice racial differences as early as six-months old.<sup>29</sup> To pretend we can blind ourselves to racial differences allows unspoken biases to thrive.

Instead of color-blindness, we need to embrace color-awareness. We should be asking ourselves not *whether* we see race, but *how* we see it. The subject of race should prompt honest discussion about the challenges faced by people of color in their encounters in the color- categorized world, and how to go about solving those challenges.

### **Counter stereotypes with positive images**

Negative stereotypes reinforce implicit bias. But implicit biases are malleable, and can be reduced by adapting counter-stereotypes, which replace negative stereotypes with positive ones.<sup>30</sup> In a study of positive stereotyping, students began with a gender IAT to measure their implicit biases.<sup>31</sup> Half of the students were asked to imagine a strong, capable woman and keep that image in mind. The rest were asked to envision a Caribbean vacation.

The participants then took a second IAT. The students who envisioned a strong woman showed less implicit bias against women on their second IAT compared to their first test. This research suggests that a positive stereotype (e.g., women as decisive leaders) upends stereotypes. Studies on positive racial stereotyping produced similar results.<sup>32</sup>

Negative associations also can be reversed by formal or informal contacts and interactions between in-group and out-group members and by members of out-groups being seen in power and leadership positions.<sup>33</sup> Also, seeking mentors and advisors of a different race, gender, sexual orientation, etc. than us has the potential to build respect for members of those groups.

Positive stereotypes do not require face-to-face contact; images, videos, and imagination have been found to reinforce positive attitudes.<sup>34</sup> We should also commit ourselves to a diverse profession and encourage the entry of minority judges, partners, associates, and employees. Familiarity, exposure, and contact deter implicit bias by demystifying and humanizing how we view and relate to others.

### **Think differently**

A heavy-duty debiasing tool is to visualize yourself as the member of an outgroup.<sup>35</sup> Or, ask yourself whether you would feel differently about someone if that person were a member of a non-stigmatized social group.

For example, male attorneys are likely to consider a female attorney who shouts at a witness as overly aggressive, while viewing a male attorney who does the same thing as a passionate advocate. Gender, of course, shouldn't be the determinative factor.

Breaking preconceived expectations forces us to adopt different perspectives. Students with strong opinions on the death penalty were asked to examine the opposite perspective.<sup>36</sup> Alternative thinking enabled students to become less committed to their opinions and more willing to weigh the other side; conversely, students who did not practice alternative thinking became more hardened in their beliefs.

Additionally, implicit bias thrives in spur-of-the-moment, intuitive decision-making<sup>37</sup> and when we are distracted or under stress. The best antidote to these tendencies is to think in a deliberative fashion. Deliberative thinking requires pausing, hesitating, taking a step back to think things over, like looking-before-leaping. It infuses time into decision-making, time to take control of our automatic perceptions and judgments.

The process of writing involves deliberative thinking. We analyze and assess and parse and reflect, all of which are central to deliberative thinking.

## **Conclusion**

Go back to the opening paragraph. You probably envisioned two white male police officers chasing a young black male. In a last ditch effort to avoid the consequences of his actions, you watched as the young black male hurled a package of drugs out the window. Or, perhaps, you saw a different picture. Maybe you saw two black female police officers chasing an Asian female.

Regardless of what you envisioned, the images that popped into your head were the result of implicit bias, reinforced by repeated social interactions, which caused your brain to fill in details the story never gave you. While we cannot survive daily life without an active unconscious mind, we also cannot have an inclusive and equitable society unless we recognize the significance and consequences of implicit bias. It causes us to discriminate without knowing it. It affects our perceptions and behavior towards others. It

influences our reactions, choices, decision-making, and understanding of the world.

As human beings, as Americans, as judges and lawyers, we must not let implicit bias go unchecked. Only if we are willing to acknowledge and confront implicit bias can we loosen its obsessive hold on us. Nothing less will do.



*Justice Michael B. Hyman, a member of the Illinois Appellate Court, First Division, is immediate past chair of the ISBA Bench and Bar Section Council. He wishes to thank Christos Dimoulis, a 2017 graduate of the Loyola University Chicago School of Law, for his assistance in the preparation of this article. He also thanks Judge Thomas M. Donnelly, Judge Sophia H. Hall, and Dean Leonard Schragger (ret.) for their insightful comments.*

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#### **ISBA RESOURCES >>**

ISBA Free CLE, *Implicit Bias in the Criminal Justice System* (recorded Jan. 13, 2017), **<http://onlinecle.isba.org/store/seminar/seminar.php?seminar=92367>**.

Vincent F. Cornelius, *Understanding Implicit Bias*, 104 Ill. B.J. 10 (Aug. 2016), **<https://www.isba.org/ibj/2016/08/understandingimplicitbias>**.

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# Lawyer accuses judge of 'robe rage,' tells opposing counsel to 'certify your own stupidity,' ethics complaint says

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Legal Ethics

By [Debra Cassens Weiss](#)

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A Chicago lawyer has been accused of belittling his opposing counsel during a deposition and then describing the judge's reaction to his conduct as "robe rage."

Charles Andrew Cohn was accused in [a Dec. 12 ethics complaint](#) noted by the [Legal Profession Blog](#). The complaint relies on a transcript of the November 2016 deposition and a court filing by Cohn.

During the deposition, Cohn had instructed his client not to answer a question, spurring the opposing lawyer to note her disagreement. "Certify the question," said the opposing lawyer, who is identified only as "K.H." in the complaint.

"OK," Cohn replied. "Then certify your own stupidity."

"Counsel, I'm not going to sit here and take insults from you," K.H. responded.

"At this point in time," Cohn replied, "a man who insults on a daily basis everybody he does business with has now been elected president of the United States. The standards have changed. I'll say what I want."

Later in the deposition, Cohn interrupted K.H.'s question and said, "Don't waste your breath." After she continued, Cohn instructed his client not to answer. "Certify the question," K.H. again said.

Cohn replied: "Motions for sanctions; indicate that on the record. I'm going to get sanctions against your firm like you wouldn't believe, bitch."

K.H. filed a motion to compel that sought to overrule Cohn's objections to her questions. During a December 2016 hearing on the motion, Judge Franklin Valderrama of Cook County admonished Cohn for his deposition statements and allowed him to file a response to K.H.'s motion.

In the court filing, Cohn said his statements were a response to K.H.'s "bullying and improper questions" as well as her "general angry tone." Cohn also wrote that the judge had himself flown into a rage in the court hearing, describing the situation as a "robe rage incident."

The Illinois Attorney Registration and Disciplinary Commission filed the complaint.

Cohn told the ABA Journal he has certain feelings about the ethics complaint, but he prefers not to discuss them. "I have no comment of any kind at this time," he said. "I think the safer move is not to say anything."