

Confidential Support for Legal Professionals

Behind the Mask: Implicit Bias, Mental Health and the Hidden Struggles of Legal Professionals

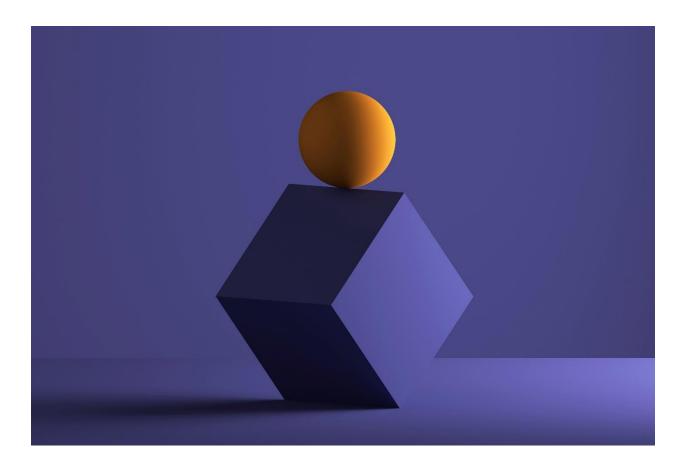


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Confidential Support for Legal Professionals

Lawyers Concerned for Lawyers – How Can LCL Help?

- LCL provides free, confidential peer and professional assistance to Minnesota lawyers, judges, law students, other legal professionals, and their immediate family members on any issue that causes stress or distress. This includes up to four free counseling sessions, a 24/7 hotline, support groups, and referrals to resources.
- LCL is a statewide program and is absolutely confidential.
- LCL partners with bars, Minnesota CLE, legal employers, law schools, and other organizations to offer programs on well-being, impairment, stress management and other topics, often for Mental Health, Elimination of Bias or Ethics credit.
- LCL provides coaching on how to reach out or support a friend or colleague who may be struggling. We can help address general concerns, make supervisory referrals, suggest community resources, discuss interventions, and much more.
- LCL can provide critical incident response if a tragedy or crisis impacts a firm, organization, or family.
- LCL can help with access to treatment and related services. We have a need-based fund to help lawyers and law students pay for substance use and mental health treatment and related services.
- LCL, founded in 1976, helps approximately 400 new clients every year and is funded through lawyer license fees and donations. We truly appreciate your support!
- LCL volunteers are the lifeblood of our service to the profession. Contact us to learn more or join LCL.
- LCL is committed to well-being in our profession and supports our colleagues and their families in recovery from any issue. Call us, we can help!

Lawyers Concerned for Lawyers

Myths & Facts

MYTH: LCL will report me to the Minnesota Board of Law Examiners or the Office of Lawyers Professional Responsibility.

FACT: LCL <u>does not</u> and <u>will not</u> report to any licensing board, employer, or agency, even if information is requested by those sources or our clients request that we do so.

MYTH: You can do it yourself.

FACT: Isolation is the enemy of recovery. The likelihood of being successful in recovery from any issue greatly increases with appropriate professional and peer support in place.

MYTH: LCL only helps with alcohol issues.

FACT: While LCL does provide services and support regarding drug and alcohol issues, we offer so much more. We also assist with stress and mental health matters such as anxiety, depression, eating disorders, and problem gambling, along with aging and retirement, couples and family, career, financial, and practice concerns, and any other issues that may cause stress or distress.

MYTH: LCL is a Twin Cities program.

FACT: LCL is a statewide program that serves lawyers, judges, law students, other legal professionals, and their families throughout Minnesota.

MYTH: I can use my employer's Employee Assistance Program with the same result.

FACT: Your employer's EAP can be a great resource. LCL counselors understand the stress of the legal profession and LCL offers ongoing connections, peer support and other services and resources.

Implicit Bias Resources

The ABA Implicit Bias Initiative

Implicit. Harvard.edu, Project Implicit: IAT Home (Implicit Association Tests)

<u>Guided Conversations Project</u>: addresses the intersectionality of race, ethnicity and gender in the legal profession.

Bodamer, Elizabeth, <u>Do I Belong here? Examining perceived Experiences of Bias</u>, <u>Stereotype Concerns</u>, and <u>Sense of Belonging in U.S. Law Schools</u>.

Cherry, Kendra, How Does Implicit Bias Influence Behavior (2025)

Stallings, Erika, *Racism at My Job Literally Gave Me PTSD* (2020)

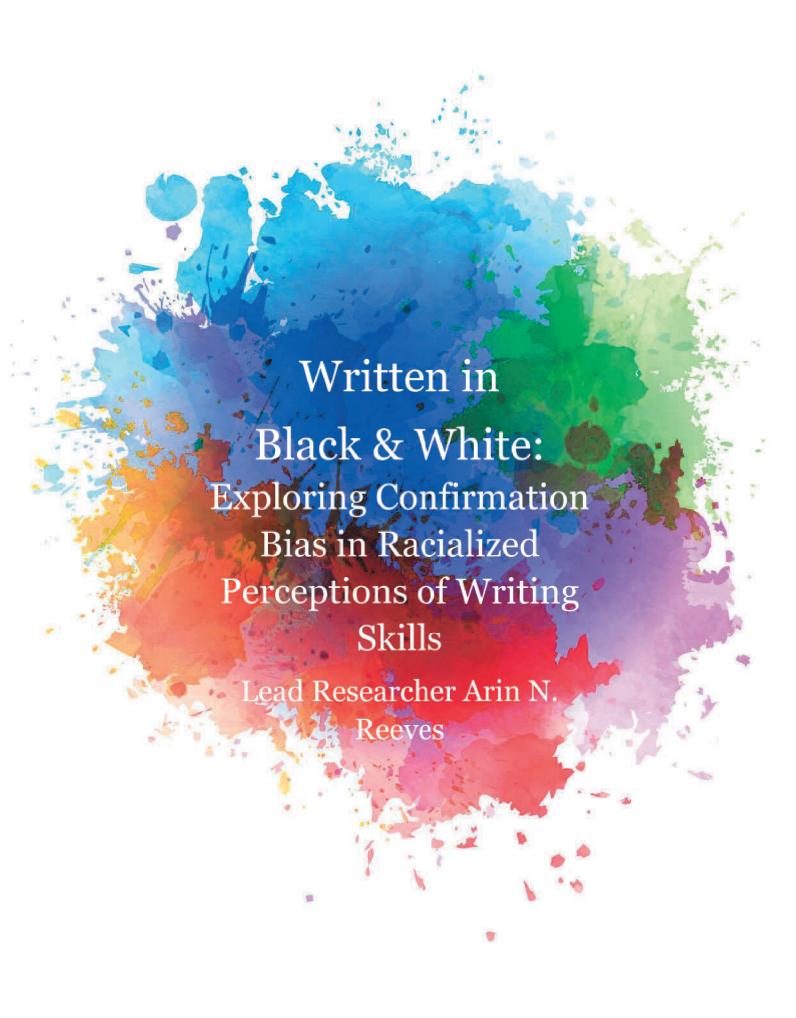
Maloney, Andrew, "New Partners Say Mental Health Stigma Persists Despite Law Firms' Efforts" (2021)

O'Neill, Maureen, <u>A Framework for Recognizing and Overcoming Implicit Bias in the Legal Profession</u>.

Nalty, Kathleen, Strategies for Confronting Unconscious Bias | Colorado Lawyer (2021)

Current statistics on diversity of the federal bench

Written in Black and White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skill



Research Question: Given our finding in a previous study that supervising lawyers are more likely than not to perceive African American lawyers as having subpar writing skills in comparison to their Caucasian counterparts, we asked if confirmation bias unconsciously causes supervising lawyers to more negatively evaluate legal writing by an African American lawyer.

We first discovered empirical evidence that supervising lawyers perceived African Americans lawyers to be subpar in their writing skills in comparison to their Caucasian counterparts when we researched unconscious biases in the legal profession over ten years ago. Since our surveys and focus groups at the time were studying unconscious biases generally, we decided to study this specific bias of writing skills in greater detail via the cognitive construct of confirmation bias.

This research summary provides a general overview of the methodology, results and key takeaways from the study. Please note that we studied this question only from the unconscious or implicit bias perspective. While the possibility of explicit bias exists, our research has consistently shown that implicit bias is far more prevalent in our workplaces today than explicit bias, thereby guiding us to utilize our resources to study implicit instead of explicit biases.

Methodology

Nextions, along with the assistance of 5 partners from 5 different law firms, drafted a research memo from a hypothetical third year litigation associate that focused on the issue of trade secrets in internet start-ups. We followed a simple Question Presented, Brief Answer, Facts, Discussion and Conclusion format for the memo, and we deliberately inserted 22 different errors, 7 of which were minor spelling/grammar errors, 6 of which were substantive technical writing errors, 5 of which were errors in fact, and 4 of which were errors in the analysis of the facts in the Discussion and Conclusion sections.

This memo was then distributed to 60 different partners (who had previously agreed to participate in a "writing analysis study" from 22 different law firms of whom 23 were women, 37 were men, 21 were racial/ethnic minorities, and 39 were Caucasian. While all of the partners received the same memo, half the partners received a memo that stated the associate was African American while the other half received a memo that stated the associate was Caucasian:

Name: Thomas Meyer

Seniority: 3rd Year Associate

Alma Mater: NYU Law School

Race/Ethnicity: African American

Name: Thomas Meyer

Seniority: 3rd Year Associate

Alma Mater: NYU Law School

Race/Ethnicity: Caucasian

The 60 partners in the study received the memo electronically (an attached pdf) along with the research materials used in the preparation of the memo. The cover email thanked each of them for participating in a study on "writing competencies of young attorneys," and asked them to edit the memo for all factual, technical and substantive errors. The partners were also asked to rate the overall quality of the memo from a 1 to 5, with "1" indicating the memo was extremely poorly written and "5" extremely well written.

The partners were originally given 4 weeks to complete the editing and rating, but we had to extend deadline to 7 weeks in order to obtain more responses. 53 partners completed the editing and rating of the memo. Of the 53 completed responses, 24 had received the memo by the "African American" Thomas Meyer, and 29 had received the memo by the "Caucasian" Thomas.

General Findings

The exact same memo, averaged a 3.2/5.0 rating under our hypothetical "African American" Thomas Meyer and a 4.1/5.0 rating under hypothetical "Caucasian" Thomas Meyer. The qualitative comments on memos, consistently, were also more positive for the "Caucasian" Thomas Meyer than our "African American" Thomas Meyer:

"Caucasian" Thomas Meyer

"African American" Thomas Meyer

"generally good writer but needs to work on..."

"needs lots of work"

"has potential"

"can't believe he went to NYU"

"good analytical skills"

"average at best"

In regards to the specific errors in the memo:

- An average of 2.9/7.0 spelling grammar errors were found in "Caucasian" Thomas Meyer's memo in comparison to 5.8/7.0 spelling/grammar errors found in "African American" Thomas Meyer's memo.
- An average of 4.1/6.0 technical writing errors were found in "Caucasian" Thomas Meyer's memo in comparison to 4.9/6.0 technical writing errors found in "African American" Thomas Meyer's memo.
- An average of 3.2/5.0 errors in facts were found in "Caucasian" Thomas Meyer's memo in comparison to 3.9/5.0 errors in facts were found in "African American" Thomas Meyer's memo.

The 4 errors in analysis were difficult to parse out quantitatively because of the variances in narrative provided by the partners as to why they were analyzing the writing to contain analytical errors. Overall though, "Caucasian" Thomas Meyer's memo was evaluated to be better in regards to the analysis of facts and had substantively fewer critical comments.

We did not ask for edits and/or comments on formatting. However, we did receive such edits and/or comments in 41 out of the 53 responses, and all of them regarded changes that the partners would have liked to see on the formatting in the memo. Of the 41 edits and/or comments on formatting, 11 were for "Caucasian" Thomas Meyer's memo in comparison to 29 for "African American" Thomas Meyer's memo.

There was no significant correlation between a partner's race/ethnicity and the differentiated patterns of errors found between the two memos. There was also no significant correlation between a partner's gender and the differentiated patterns of errors found between the two memos. We did find that female partners generally found more errors and wrote longer narratives than the male partners.

Analysis & Discussion

We undertook this study with the hypothesis that unconscious confirmation bias in a supervising lawyer's assessment of legal writing would result in a more negative rating if that writing was submitted by an African American lawyer in comparison to the same submission by a Caucasian

lawyer. In order to create a study where we could control for enough variables to truly see the impact of confirmation bias, we did not study the potential variances that can be caused due to the intersection of race/ethnicity, gender, generational differences and other such salient identities. Thus, our conclusion is limited to the impact of confirmation bias in the evaluation of African American men in comparison to Caucasian men. We do not know (although we plan to study the issue in the very near future!) how this impact will splinter or strengthen when gender and/or other identities are introduced. The data findings affirmed our hypothesis, but they also illustrated that the confirmation bias on the part of the evaluators occurred in the data collection phase of their evaluation processes—the identification of the errors—and not the final analysis phase. When expecting to find fewer errors, we find fewer errors. When expecting to find more errors, we find more errors. That is unconscious confirmation bias. Our evaluators unconsciously found more of the errors in the "African American" Thomas Meyer's memo, but the final rating process was a conscious and unbiased analysis based on the number of errors found. When partners say that they are evaluating assignments without bias, they are probably right in believing that there is no bias in the assessment of the errors found; however, if there is bias in the finding of the errors, even a fair final analysis cannot, and will not, result in a fair result.

Key Takeaways

There are commonly held racially-based perceptions about writing ability that unconsciously impact our ability to objectively evaluate a lawyer's writing. Most of the perceptions uncovered in research thus far indicate that commonly held perceptions are biased against African Americans and in favor of Caucasians.

These commonly held perceptions translate into confirmation bias in ways that impact what we see as we evaluate legal writing. We see more errors when we expect to see errors, and we see fewer errors when we do not expect to see errors.

Recommendations for Next Actions

Infusing the point at which unconscious thought has greatest impact with objective mechanisms that force the conscious brain to add input, decreases unconscious bias greatly. We have worked with many employers to revise their formal and informal evaluation processes to be more infused with objective interrupters that compel unconscious biases to be filtered through conscious analysis, and we have seen many success stories. So, make the subjective more objective in order to make the unconscious more conscious.

EXAMPLE: In one law firm where we found that minority summer associates were consistently being evaluated more negatively than their majority counterparts, we created an interruption mechanism to infuse the subjective with objective. We worked with the firm to create an Assignment Committee, comprised of 3 partners through whom certain assignments were distributed to the summer associates and through whom the summer associates submitted work back to the partners who needed the work done. When the work was evaluated, the partners evaluating the work did not know which associate had completed the work. The assignments for this process were chosen judiciously, and there was a lot of work done to ensure buy-in from all partners. At the end of the summer, every associate had at least 2 assignments that had been graded blindly. The firm then examined how the blind evaluations compared with the rest of the associate's evaluations and found that the blind evaluations were generally more positive for minorities and women and less positive for majority men.

Ideas for Inclusion

- Distribute and discuss this study with senior lawyers in your organization to gather their reactions and perspectives. Ask them how they would recommend making the subjective more objective in order to reduce confirmation bias in their evaluation processes.
- If racial/ethnic minorities are deemed to be subpar in writing skills, send out samples of a minority lawyer's writing and a sample of a majority lawyer's writing without any identifying

information attached. Ask a few senior lawyers to evaluate both samples. Explore how the samples may be evaluated differently when the lawyer's background is not available.

- Implement training on unconscious bias for everyone who is in an evaluative position. Our unconscious bias trainings have proven effective in reducing bias through raising awareness and insights into how unconscious biases operate and can be interrupted.
- If you offer writing assistance in the form of coaches, workshops and such, offer the assistance to everyone, not just racial/ethnic minorities in order to prevent the reification of the bias.



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Well-Being Research and Resources

- Krill, Patrick, Johnson, Ryan, Albert, Linda, <u>The Prevalence Of Substance Use and Other Mental Health Concerns</u>
 Among American Attorneys, *Journal of Addiction Medicine*: Jan./Feb. 2016
- Task Force on Lawyer Well-Being, <u>The Path to Lawyer Well-Being: Practical Recommendations for Positive</u> <u>Change</u>, 2017
- Well-Being Toolkit for Lawyers and Legal Employers, 2018
- Jaffe, David, Bender, Katherine, Organ, Jerome, <u>'It is Okay to Not Be Okay': The 2021 Survey of Law Student Well-Being</u>, University of Louisville Law Review, June 2022
- Swenson, David, Bibelhausen, Joan, et al., <u>Stress and Resiliency in the U.S. Judiciary</u>, ABA Journal of the Professional Lawyer, 2020
- Swenson, David, Yetter, Katheryn, Judicial Stress and Resiliency Survey COVID-19 Update, Crt. Rev., Vol. 57, 2021
- Anker, Justin, Krill, Patrick, <u>Stress, drink, leave: An examination of gender-specific risk factors for mental health problems and attrition among licensed attorneys</u>, PLoS One. 2021 May 12
- Krill, Patrick, Degeneffe, Nicki, et al., <u>People, Professionals, and Profit Centers: The Connection between Lawyer</u> Well-Being and Employer Values, Behav. Sci. 2022, 12, 177
- Krill, Patrick, Thomas, Hannah, et. al., <u>Stressed, Lonely, and Overcommitted: Predictors of Lawyer Suicide Risk</u>, Healthcare, 2023
- Maroney, Terry, Swenson, David, Bibelhausen, Joan, Mark, David, <u>The State of Judges' Well-Being: A Report on</u> the 2019 National Judicial Stress and Resiliency Survey, Judicature, Vol. 107, 2023
- ABA Commission on Lawyer Assistance Programs
- Institute for Well-Being in Law

Lawyers Concerned for Lawyers

- Lawyers Concerned for Lawyers (LCL) supports lawyers, judges, law students, other legal professionals and their immediate family members on any issue that causes stress or distress, including substance use, mental health, stress, family, and career concerns.
- LCL confidential services include 24-hour crisis response, professional clinical assessments and referrals, interventions, short-term counseling, support groups facilitated by licensed counselors, case management, and peer mentoring and support.
- LCL designs and offers CLE and other programming on well-being, mental-health impairment, stress management and other issues, often for Mental Health, Elimination of Bias, or Ethics credit.
- LCL confidentially consults with legal organizations regarding potential impairment and well-being initiatives and resources.