

# Legal Writing and the Rules of Professional Responsibility



Sybil Dunlop

# Honesty and the administration of justice



# Credibility and your ethical obligations

1. Research
2. Writing
3. Evaluation



Research

**RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS**

In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law.

**MINNESOTA RULES  
OF  
PROFESSIONAL CONDUCT**  
Effective October 1, 2005,  
with amendments through June 11, 2015

Legal argument based on a knowingly false  
representation of law constitutes dishonesty toward the  
tribunal.

**MINNESOTA RULES  
OF  
PROFESSIONAL CONDUCT**  
Effective October 1, 2005,  
with amendments through June 11, 2015

Writing

# Credibility and your ethical obligations

*United States ex rel. Holmes v. Northrop Grumman Corp.*, No. 1:13cv85-HSO-RHW, 2015 U.S. Dist. LEXIS 71804, at \*14 (S.D. Miss. June 3, 2015)





# Credibility and your ethical obligations

## Frivolous arguments



# Credibility and your ethical obligations

## Threats of criminal prosecution



# Credibility and your ethical obligations

Rule 3.1 Meritorious Claims and Contentions

Rule 3.4 Fairness to Opposing Party and Counsel

Rule 4.1 Truthfulness in Statements to Others



# Credibility and your ethical obligations

## Plagiarism and ghostwriting



# Credibility and your ethical obligations

*In re Harper*, 223 A.D.2d 200 (2d Dep't 1996)



# Credibility and your ethical obligations

*Pagan Velez v. Laboy Alvarado*, 145 F. Supp. 2d 146 (D. P.R. 2001)



# Credibility and your ethical obligations

## Bad Writing



# 7th Cir. Alerts IL Bar to Lawyer's 'Gibberish' Briefs

By Stephanie Rabiner, Esq. on September 21, 2011 5:47 AM

[Walter Maksym](#) may well be the most embarrassed attorney in Illinois.

Homing in on his grammatical deficiencies (and a 345-word sentence), the 7th Circuit publicly critiqued the litigator's inability to file an intelligible complaint.

It ordered him [to show cause](#) why he should not be suspended or otherwise sanctioned.

If that wasn't enough, the panel then directed the clerk to send a copy of its opinion to the state bar's disciplinary authorities.

The written words of Walter Maksym came to the attention of the appellate court after a district court rejected his second amended complaint. All three briefs were "generally incomprehensible and riddled with errors."

His appeal similarly lacked coherency, having been riddled with "rampant grammatical, syntactical, and typographical errors."

When questioned about his fondness for run-on sentences (23 exceeded 100 words), Maksym cited his health.

Evaluation

# What is implicit bias?



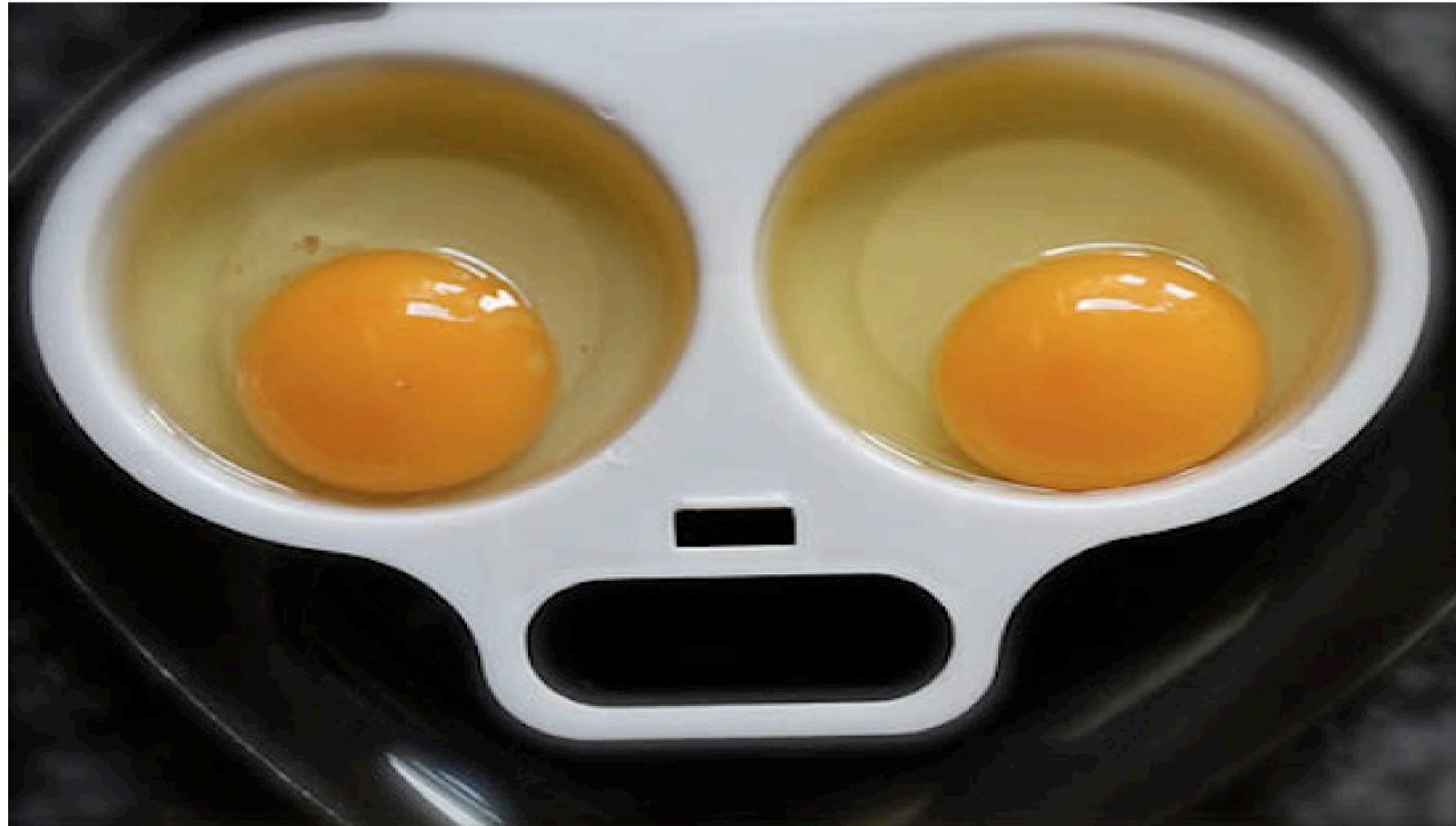
The bias in judgment and behavior that results from subtle cognitive processes that operate below conscious awareness and without intentional control

OUR BUSY BRAINS  
SEE FACES  
EVERYWHERE











We don't just see things that aren't there:  
Our brains also perceive things that aren't there.



The color of a coffee mug can alter the way coffee tastes.



Is there a way to measure thoughts outside of our conscious awareness and control?

#1	#2	#3
SLB	CFLTK	CFLTK
SPRND	HLMG	CFLTK
SLB	SPRND	SLB
SPRND	HLMG	CFLTK

#1	#2	#3
<b>GREEN</b>	<b>BLUE</b>	<b>GREEN</b>
<b>RED</b>	<b>YELLOW</b>	<b>YELLOW</b>
<b>PURPLE</b>	<b>BLUE</b>	<b>RED</b>
<b>GREEN</b>	<b>RED</b>	<b>PURPLE</b>

#1	#2	#3
RED	GREEN	YELLOW
BLUE	GREEN	BROWN
RED	YELLOW	BLUE
BROWN	BROWN	BLUE

# Implicit Association Test

invented by  
A.G. Greenwald

LEFT

RIGHT



**LEFT**

**RIGHT**



**LEFT**

**RIGHT**

beauty  
gift  
happy  
joy

LEFT

RIGHT

filth  
pain  
hurt  
sick

LEFT

RIGHT



beauty  
gift  
happy  
joy

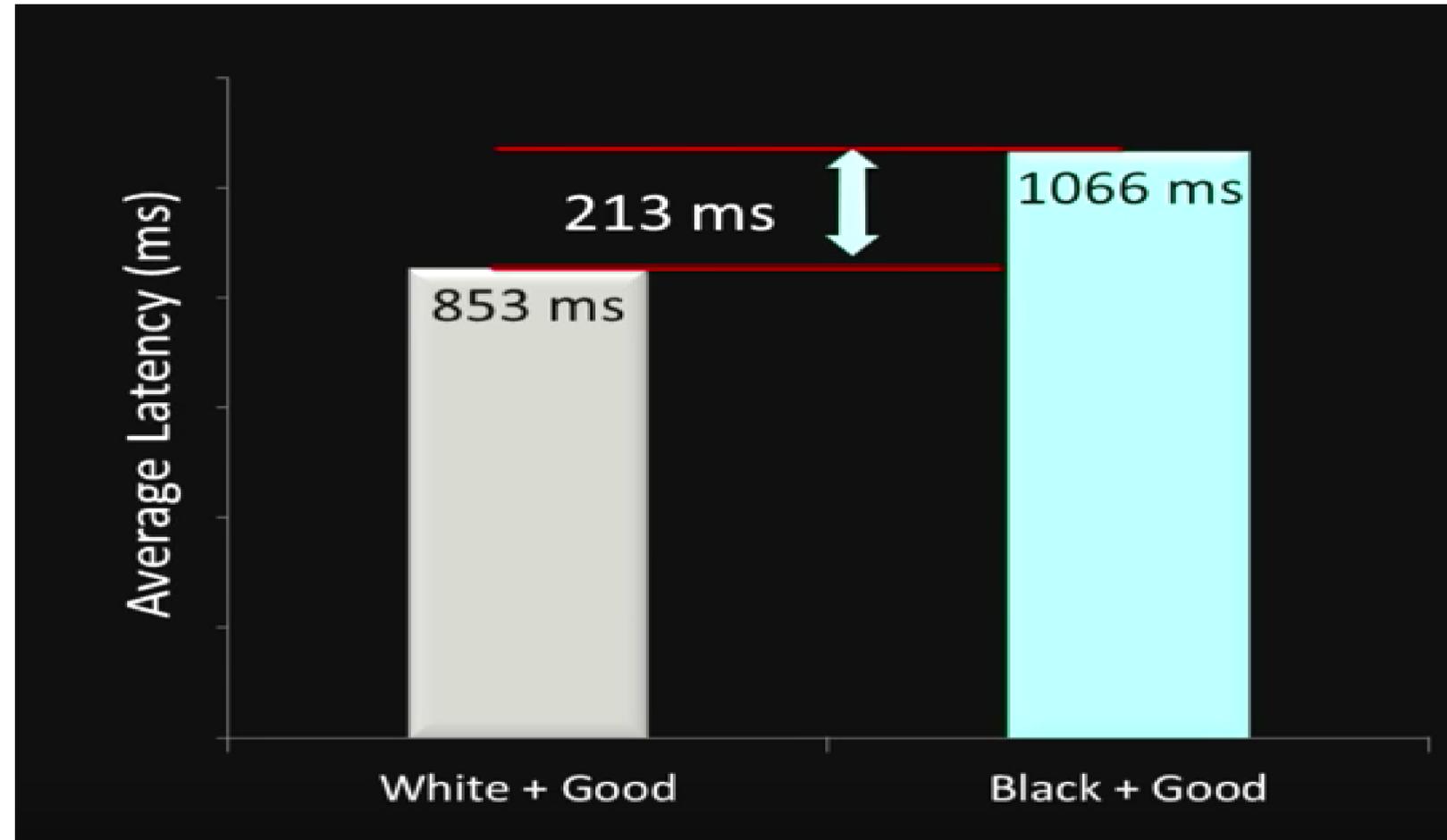


filth  
pain  
hurt  
sick



filth  
pain  
hurt  
sick

beauty  
gift  
happy  
joy



# Pervasive

## PROJECT IMPLICIT

B.A. Nosek

M.R. Banaji

A.G. Greenwald

Weapons + Black (86K)

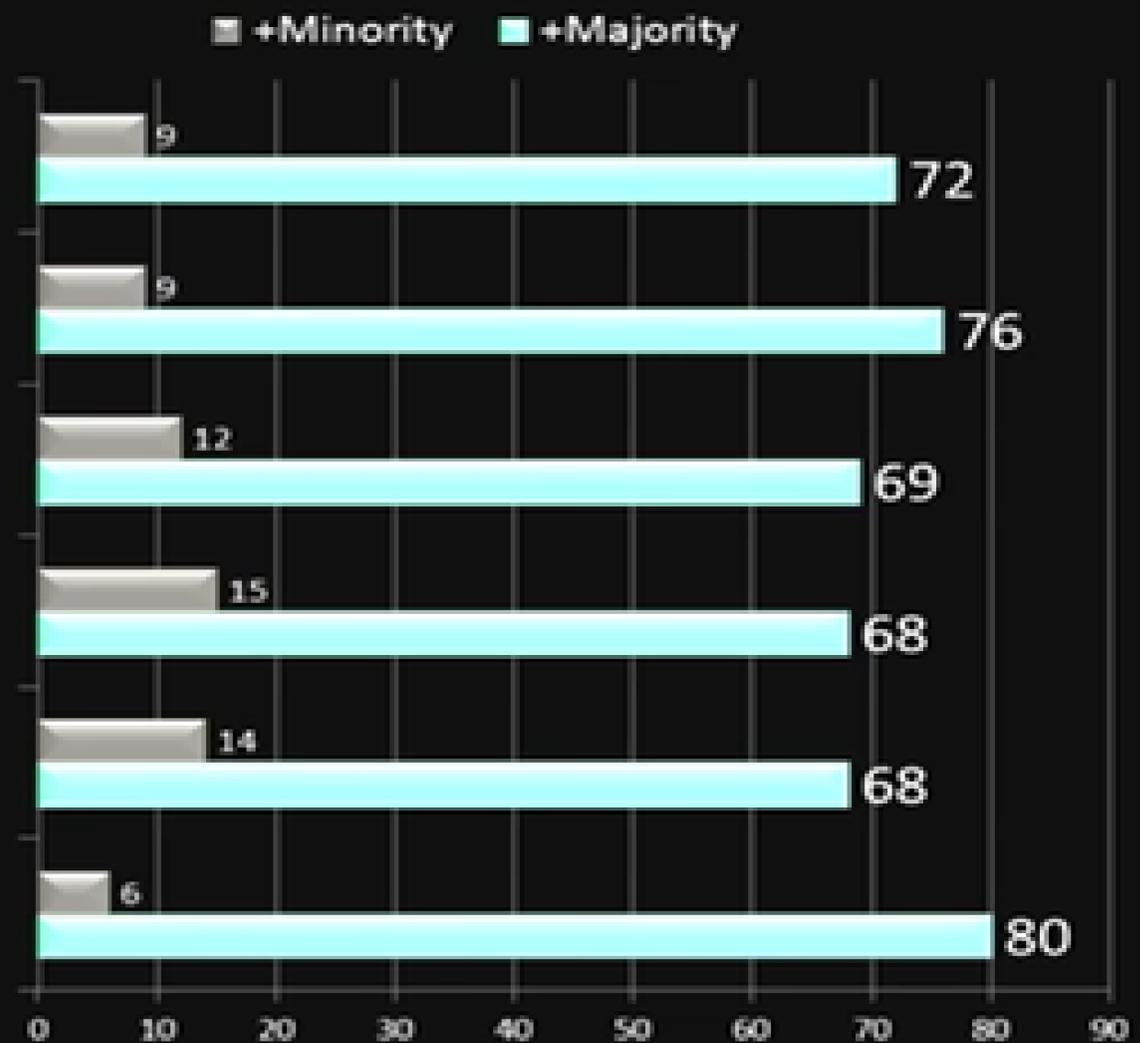
Disability (39K)

Weight (200K)

Sex O (270K)

Race (733K)

Age (351K)



Percentage Who Show Bias in Either Direction

Project Implicit Data 2000-06: [Nosek, B.A. et. al, 2007]

# HOW DID YOUR PRESENTER DO?

**Here is your result:**

Your data suggest no automatic preference between Old people and Young people.

# HOW DID YOUR PRESENTER DO?

The sorting test you just took is called the Implicit Association Test (IAT). You categorized good and bad words with images of African Americans and European Americans.

**Here is your result:**

Your data suggest a slight automatic preference for European Americans over African Americans.

Your result is described as an "Automatic preference for African Americans over European Americans" if you were faster responding when *African Americans* and *Good* are assigned to the same response key than when *European Americans* and *Good* were classified with the same key. Your score is described as an "Automatic preference for European Americans over African Americans" if the opposite occurred.

Your automatic preference may be described as "slight", "moderate", "strong", or "no preference". This indicates the *strength* of your automatic preference.

Why does this happen?



THINKING,  
FAST AND SLOW



DANIEL

KAHNEMAN

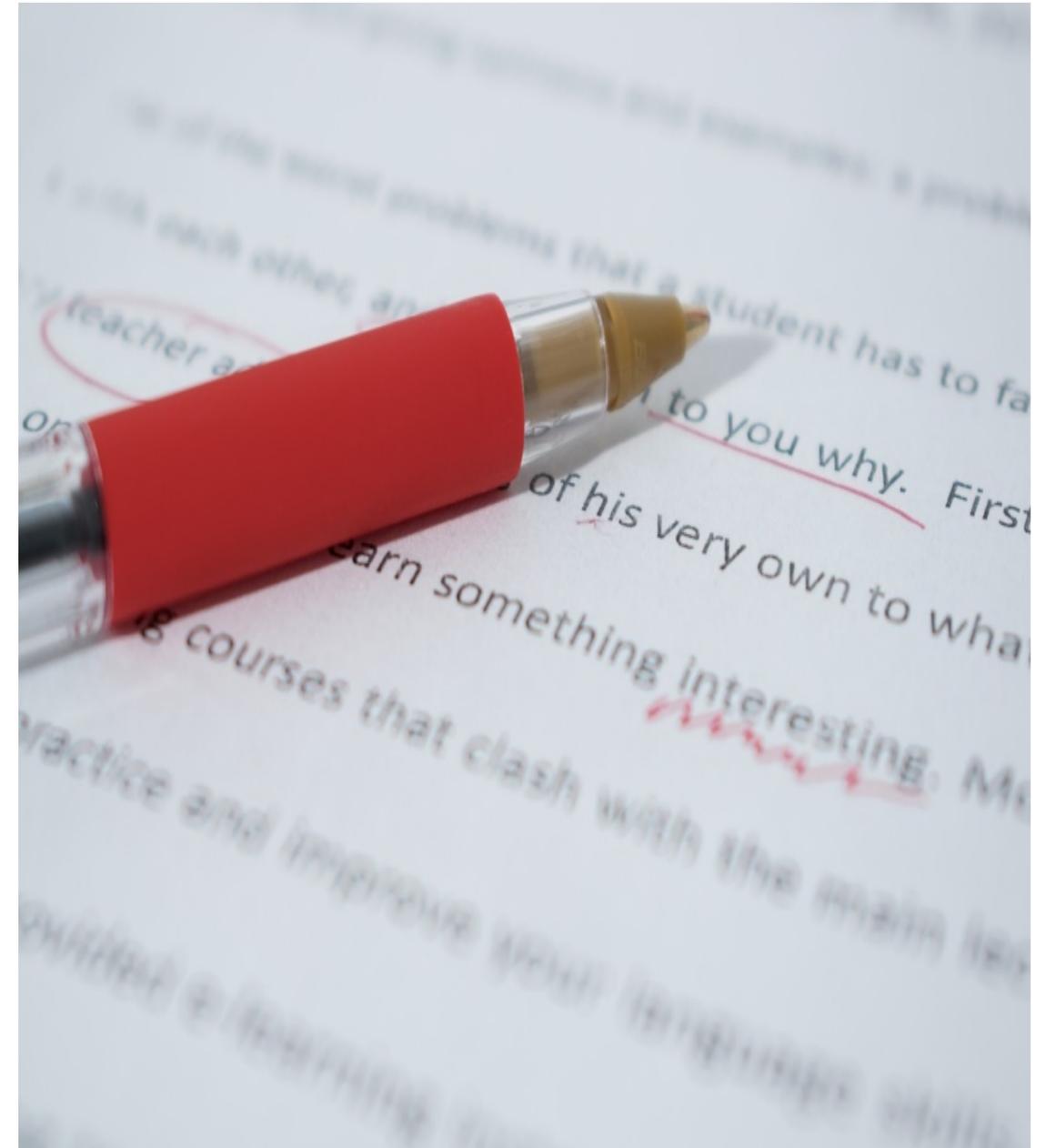
WINNER OF THE NOBEL PRIZE IN ECONOMICS



How can implicit bias impact us as we evaluate writing?

## Evidence of Bias in Evaluation:

- Law firm partners were asked to evaluate a research memo containing 22 different errors.
- Half were told that the author was African American and half were told that the author was Caucasian.
- On a five-point scale, reviews for the same memo averaged a 3.2 for the “African American” author and 4.1 for the “Caucasian” author.



# The comments were also telling:

## “Caucasian” Thomas Meyer

- “generally good writer but needs to work on . . .”
- “has potential”
- “good analytical skills”

## “African American” Thomas Meyer

- “needs lots of work”
- “can’t believe he went to NYU”
- “average at best”



## Cleary Gottlieb Steen & Hamilton LLP

- Actively recruited and hired more than thirty African-American associates from 1989 to 1996, but was unable to retain any of them.
- When surveyed about their experiences, the associates mentioned “a subtle yet pervasive tendency by almost exclusively white partners to favor those who looked like themselves.”



Objectivity is not the answer. Simply affirming merit-based system isn't enough.

*Biases will be perpetuated unless they're intentionally interrupted*

**Problems can be addressed**

# SCIENTIFIC RESEARCH ON DEBIASING IS ONGOING.

Article

## Mindfulness Meditation Reduces Implicit Age and Race Bias: The Role of Reduced Automaticity of Responding

Adam Lueke<sup>1</sup> and Bryan Gibson<sup>1</sup>

### Abstract

Research has shown that mindfulness can positively affect peoples' lives in a number of ways, including relying less on previously established associations. We focused on the impact of mindfulness on implicit age and racial bias as measured by implicit association tests (IATs). Participants listened to either a mindfulness or a control audio and then completed the race and age IATs. Mindfulness meditation caused an increase in state mindfulness and a decrease in implicit race and age bias. Analyses using the Quad Model showed that this reduction was due to weaker automatically activated associations on the IATs.

### Keywords

mindfulness meditation, implicit attitudes, implicit bias, prejudice

We are here to awaken from the illusion of our separateness.

—Thich Nhat Hanh

Mindfulness meditation focuses the individual on the present and encourages practitioners to view thoughts and feelings nonjudgmentally as mental events, rather than as part of the self. This allows the individual to understand and reflect on these events as transient moments that are separate from the self, which inhibits the natural tendency toward reaction and automatic evaluation (Bishop et al., 2004). Research regarding this process has demonstrated the unique ability of mindfulness

& Custers, 2012), reduced problem solvers' reliance on automatic solutions (Ostafin & Kassman, 2012), and reduced the correlation between implicit alcohol attitudes and drinking behavior (Ostafin, Bauer, & Myxter, 2012; Ostafin & Marlatt, 2008). These findings suggest that mindfulness meditation minimizes the impact and influence of past experience on the present moment, whether it is an established attraction toward unhealthy food or the tendency to use past information to solve current problems. One mindfulness practitioner stated that mindfulness increases "nonconceptual awareness" that "does not get hung up on ideas . . . or memories" (Gunaratana, 2002, p. 140). Similarly, Ostafin and Kassman (2012) state

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