

MANAGEMENT AND BUDGET

State Personnel Department

This section outlines the Indiana State Personnel Department's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Department did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The State Personnel Department's Equity, Opportunity, and Inclusion Director position was merged into its Learning and Development function in 2024. The State Personnel Department does not currently maintain any DEI departments or staff positions. See Appendix 1 for relevant documents, including a list of position movements in all state agencies from 2022 to present.

Mission Statement or Value Statement

- In various places on the State Personnel Department webpage, "diversity" was listed as one of the State's employer values. On the State of Indiana's LinkedIn profile, "Diversity, equity, and inclusion" is listed as a featured commitment. Diversity has been removed from the State's employer values and replaced with collaboration on the State Personnel Department webpage. The reference to diversity, equity, and inclusion has been removed from the State of Indiana's LinkedIn profile. See Appendix 5D for all relevant documents, including before-and-after screenshots of the State Personnel Department's website and the State of Indiana's LinkedIn profile.
- On the Work for Indiana webpage and printed materials, "diversity" was listed as one of the State's employer values. Additionally, all job postings on the Work for Indiana webpage contained the following language in the header: "At the State of Indiana, we don't just talk about diversity and inclusion—we make it our goal to create a welcoming, accessible, and equitable workplace with a workforce that is representative of Indiana's population. As a proud equal opportunity employer, reasonable accommodations may be available to enable individuals with disabilities to complete the application and interview process as well as perform the essential functions of a role." In addition, all job postings on the Work for Indiana webpage contained the following sentence in the footer: "The State of Indiana has established a culture that welcomes equity, inclusion, and opportunity for all employees and applicants." Diversity has been removed from the State's employer values and replaced with collaboration on the Work for Indiana

webpage and printed materials. Additionally, the aforementioned language has been removed from the header and footer of job postings on the Work for Indiana webpage. See Appendix 5E for all relevant documents, including before-and-after screenshots of the Work for Indiana webpage.

Programs Administered to the Public

- Governor's Policy Statement. The State Personnel Department maintained Governor Holcomb's August 3, 2018, Policy Statement regarding equal employment opportunities on its Standardized Policies webpage. This Policy Statement has been removed from the State Personnel Department's webpage. See Appendix 2A for all relevant documents, including a copy of the Governor's Policy Statement and a screenshot of the State Personnel Department's Standardized Policies webpage with the Policy Statement removed.
- The Department hosted a historical repository of various SOI newsletters which contain information regarding and advertising of different DEI initiatives and events which took place under prior administrations in the state of Indiana. These newsletters also contained various training checklists related to DEI training. The Department has removed the public repository and all associated links and documents from its website.

Grant Conditions

- The Department does not have any DEI grant conditions.

Training/Instruction Administered to the Employees

- When an employee joins the State of Indiana, they will either attend in-person orientation, e-orientation, or orientation that is facilitated by their agency, the last of which is not facilitated by the State Personnel Department. In-person orientation and e-orientation both previously had references to the Office of the Chief Equity, Inclusion, and Opportunity Officer, but those were both removed in the middle of 2024, when that office stopped actively participating in these initiatives. They were not replaced or supplemented in any other way.
- The Staff Training and Resources (STAR) program is an internal training program focused on cross-functional collaboration and development for all new hires. Previously, the program had a session for Affirmative Action Plans and the Pulse Survey. That session has been halted pending further guidance. See Appendix 3B for an overview of the STAR program.

- The State Personnel Department's Learning & Development Division facilitates the Indiana Manager Central and Manager Onboarding Workshops, through subject matter experts from all central office teams. Previously, there were workshops hosted on Identifying Unconscious Bias, Fostering Allyship, and Utilizing Equitable Hiring Toolkits. Through these programs, Learning & Development has historically recommended LinkedIn Learning courses on additional topics complimentary to the live workshops. Several of these courses related to diversity, equity, and inclusion, and while they were not required, those courses have been removed from the recommendations. See Appendix 3C for an overview of the Identifying Unconscious Bias, Fostering Allyship, and Utilizing Equitable Hiring Toolkits workshops. All three workshops have been cancelled as of January 14, 2025.
- The State Personnel Department's Employee Relations Division frequently utilizes LinkedIn Learning trainings as a corrective action following investigations into discrimination and harassment based on a protected class when discipline is not appropriate. These trainings sometimes focus on topics such as working with individuals from diverse backgrounds and inclusivity. Employee Relations will exclusively utilize a customized content map curated by the LinkedIn Learning Team which excludes any DEI-focused trainings. See Appendix 3D for the three LinkedIn Learning Courses that were previously being recommended.
- The Department continues working with LinkedIn Learning to further tailor the courses and learning modules available to State of Indiana employees through the State's subscription to conform to the requirements of Executive Order 25-14.
- The State Personnel Department facilitates the Pulse Survey one to two times a year, depending on the direction from the Governor's Office. Previously, the survey included questions related to the demographics of employees. See Appendix 5A & 5B for a copy of the survey's previous questions and the Pulse Survey dashboard. See Appendix 5C for a drafted rewrite of the survey questions to avoid additional demographic identifiers. Note that the Pulse Survey Dashboard will reflect the questions that are asked in the survey, so pending survey changes will be reflected in the dashboard moving forward.
- Workforce Strategy and Performance team facilitate Behaviorally Anchored Ratings (BARS) Guide. There are several competencies that use specific verbiage around diversity and inclusiveness. The WSP Team has completed their review and made recommended edits. The draft awaits final approval, and WSP anticipates it will be published in July. Talent Management Strategy read "To equitably attract, engage, and retain diverse talent." This has been updated on all resources and training materials to now reflect "To attract, engage, develop, and retain a skilled and innovative workforce." See Appendix 5G for BARS Guide language and edits made to Talent Management

Strategy language. See Appendix 5H for Talent Management before and after language of employee lifecycle.

Job Applicant Requirements

- The State Personnel Department created a library of interview questions for applicants based on the competencies assigned to the role. One of these competencies was “Equity, Inclusion, and Opportunity” and included questions such as “In your own words, how do you define [diversity, equity, inclusion, belonging, etc.]?” and “In a work setting, how do you articulate the importance of diversity, equity, and inclusion?” This competency has been removed from all the roles and the competency-based interview questions library. See Appendix 4A & 4B for all relevant documents, including before-and-after screenshots of the competency-based interview questions library.

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APPENDIX 1: DEI DEPARTMENTS & STAFF POSITIONS

Diversity & Inclusion job classifications				
Equity & Inclusion Prog Dir 1	002EI1			
Equity & Inclusion Prog Dir 2	002EI2			
Equity & Inclusion Prog Dir E7	00EEI7			
Strategic Equity Officer	00EXEI			
Agency	BU	Position	Current Job Code	Notes
SPD	70	10062217	00EXDC	<ul style="list-style-type: none"> ◆ Reclass to Strategic Equity Officer 4/4/22 ◆ Reclass to Asst. Director 6/9/24 ◆ Reclass to Dep Dir/Comm 1/12/25 ◆ Former incumbent in DEI role Zachery Mackramer ◆ Current incumbent in Dep Dir role Lori Gelhausen
FSSA	405	10050857	002WM1	<ul style="list-style-type: none"> ◆ Reclass to Equity & Inclusion Prog Dir 2 4/18/22 ◆ Reclass to Equity & Inclusion Prog Dir 1 5/16/22 ◆ Reclass to Equity & Inclusion Prog Dir E7 4/4/24 ◆ Reclass to Prog Director 1 9/15/24 ◆ Position filled by Amada Blaise since 4/18/22
		10031915	00EXDD	<ul style="list-style-type: none"> ◆ Reclass to Strategic Equity Officer 4/18/22 ◆ Reclass to Division Director 9/15/24 ◆ Position vacant - Kory Carey termed 1/11/25
		10054874	002WM1	<ul style="list-style-type: none"> ◆ Reclass to Equity & Inclusion Prog Dir 1 4/18/22 ◆ Reclass to Prog Director 1 9/15/24 ◆ Position filled by Kayla Brown since 7/8/24
FSSA Mental Health	410	10037046	00EUE7	<ul style="list-style-type: none"> ◆ Reclass to Equity & Inclusion Prog Dir E7 3/5/23 ◆ Reclass to Prog Director E7 1/19/25 - missed by FSSA in the 9/15/24 reclass package ◆ Position filled by Kari Jones since 9/19/22
DCS	502	10072103	00EUE6	<ul style="list-style-type: none"> ◆ Reclass to Strategic Equity Officer 9/18/22 ◆ Reclass to State Prog Dir E6 10/20/24 ◆ Position filled by Terrano Harris since 11/26/23
DOC	615	10018320	002EI1	<ul style="list-style-type: none"> ◆ Reclass to Equity & Inclusion Prog Dir 1 6/26/22 ◆ Position is vacant - Victoria Wilcher transferred out 9/1/24
		10022060	002EI1	<ul style="list-style-type: none"> ◆ Reclass to Equity & Inclusion Prog Dir 1 6/26/22 ◆ Position is vacant - Tori Williams termed 2/6/25

10024072 00EUE7 ♦ Reclass to Strategic Equity Officer 4/14/22
♦ Reclass to Prog Dir E7 2/2/25
♦ Position filled by Victoria Wilcher since 9/1/24

10017320 00EXDC ♦ Reclass to Dep Dir/Comm over DEI 3/17/24
♦ Position is vacant - Erica Parish termed 1/11/25

DOT 800 10010895 00EXAD ♦ Reclass to Strategic Equity Officer 4/14/22
♦ Reclass to Assistant Director 9/15/24
♦ Position filled by Melissa Murphy since 5/3/21

10059378 002WM1 ♦ Reclass to Equity & Inclusion Prog Dir 1 4/14/22
♦ Reclass to Prog Dir 1 9/15/24
♦ Position filled by Kerrie Leonard since 10/3/22

DWD 510 10026895 00EXEI ♦ Reclass to Strategic Equity Officer 4/22/22
♦ Position is vacant and has never been filled as Strategic Equity Off

APPENDIX 2: DEI ACTIVITIES, PROCEDURES, POLICIES & PROGRAMS

A.) Governor's Policy Statement:

1.) Statement

GOVERNOR'S POLICY STATEMENT

The State of Indiana is committed to recruit, select, develop, and promote employees based on individual ability and job performance. Our policy is to provide equal employment opportunity to all people in all aspects of employer-employee relations without discrimination because of race, color, creed, religion, sex, national origin, ancestry, age, sexual orientation or gender identity, physical or mental disability, or veteran status. We will comply with the spirit as well as the letter of all applicable state and federal laws.

Accordingly, we commit ourselves, the member(s) of the executive staff, the agency heads, and the entire management team throughout state government, to move toward ever more progressive affirmative action in state employment. Employment decisions will be made in a manner that will advance the principles of equal employment opportunity and affirmative action.

It is also our policy that all state employees have the right to work in an environment free from all forms of discrimination and conduct which are harassing or coercive, and the working environment should be characterized by mutual respect, safety, and civility. We will strive, at all times, to maintain a working environment free of sexual harassment and intimidation, and, as part of our commitment, we will provide regular and robust training for all state employees in order to prevent and eliminate this offensive conduct. Workplace harassment is unacceptable and will not be tolerated.

In order to ensure that the foregoing expectations are carried out, I direct all appointing authorities to place affirmative action and workplace harassment prevention on their list of agency priorities. In addition, I charge the Director of the Indiana State Personnel Department to develop and maintain the necessary programs, record, and reports to comply with laws and regulations, the goals and objectives of equal employment opportunity and affirmative action programs, and workplace harassment prevention.



B.) SPD Alphabetical Listing of Standardized Policies

a. Before and after

Before

Question: Where will we be able to find the Standardized Policies of the SPD?

Contact the Business Relations Division

Alphabetical Listing of Standardized Policies

Title	Effective Date
Affirmative Action Policy Statement	8/1/2018
Arrests or Convictions Policy Statement	7/1/2017
Background Checks for State Employment Policy Statement	8/1/2019
Dependent Eligibility Verification Audit Policy Statement	4/1/2018
Discipline Policy Statement	8/1/2017
Drug and Alcohol Free Workplace Policy Statement	7/1/2008
Drug and Alcohol Testing Policy Statement	2/1/2019
Education Reimbursement Policy Statement	8/1/2022

After

Alphabetical Listing of Standardized Policies

Title	Effective Date
Affirmative Action Policy Statement	7/1/2018
Background Checks for State Employment Policy Statement	8/1/2019
Certified Public Accountant (CPA) Award Policy Statement	2/1/2024
Classification Plan and Position Management Policy Statement	2/1/2024
Compensation Policy Statement	2/1/2024
Compensation for Direct Care Workers Policy Statement	8/1/2014
Dependent Eligibility Verification Audit Policy Statement	4/1/2018
Discipline Policy Statement	8/1/2017
Drug and Alcohol Free Workplace Policy Statement	7/1/2008
Drug and Alcohol Testing Policy Statement	2/1/2019

After

Standardized Employee Bureau

Title	Effective Date
Salary - Lateral Transfer Policy Statement	8/1/2012
Salary - Promotion Policy Statement	8/1/2012
State Employees' Appeals Commission	10/20/2011
Tobacco Testing Policy Statement	10/3/2019
WHOLE Employee Policy Statement	8/1/2023
Work-Related Injuries and Illnesses Policy Statement	12/1/2023
Workplace Harassment Prevention Policy Statement	8/8/2022
Workplace Violence Prevention Policy Statement	8/8/2022

Before

Salary - Lateral Transfer Policy Statement 8/1/2012

Salary - Promotion Policy Statement 8/1/2012

State Employees' Appeals Commission 10/20/2011

Tobacco Testing Policy Statement 10/3/2019

WHOLE Employee Policy Statement 8/1/2023

Work-Related Injuries and Illnesses Policy Statement 12/1/2023

Workplace Harassment Prevention Policy Statement 8/8/2022

Workplace Violence Prevention Policy Statement 8/8/2022

C.) Affirmative Action Plans

1) Indiana Code

IC 4-15-12Chapter 12. Affirmative Action Office

[4-15-12-1](#)Definitions

[4-15-12-2](#)Policy of state

[4-15-12-3](#)Indiana affirmative action office; creation; director's duties

[4-15-12-4](#)Duties of officer

[4-15-12-5](#)State agencies; plans and policy statements; review and approval; expediter

[4-15-12-6](#)Implementation of policy

[4-15-12-7](#)Duties of director of state personnel department

[4-15-12-8](#)Advisory committee

IC 4-15-12-1Definitions

Sec. 1. As used in this chapter:

"Affected class" means:

- (1) minorities;
- (2) women;
- (3) persons with disabilities; and
- (4) persons forty (40) years of age and older.

"Affirmative action policy" means the state's affirmative action policy established in section 2 of this chapter.

"Persons with disabilities" means all persons who by reason of physical or mental disability are unable to achieve full vocational participation.

"Minorities" means persons identified as Blacks, Native Americans, Asian Americans, and Hispanics.

"Office" means the Indiana affirmative action office created by this chapter.

"State agency" means any department, agency, commission, division, authority, board, bureau, or office of the state under the executive authority of the governor, except any state educational institution.

"Underutilization" means having fewer members of an affected class in a particular job category and classification than would be reasonably expected by their availability in the labor market for that job category and classification.

As added by P.L.12-1983, SEC.11. Amended by P.L.23-1993, SEC.2; P.L.2-2007, SEC.47; P.L.99-2007, SEC.9.

IC 4-15-12-2Policy of state

Sec. 2. The state is committed to an affirmative action policy that includes the establishment of employment policies and conditions that ensure the elimination of underutilization of qualified members of affected classes and the elimination of discrimination on the basis of race or color, religion, national origin or ancestry, age, sex, and disability.

As added by P.L.12-1983, SEC.11. Amended by P.L.23-1993, SEC.3.

IC 4-15-12-3Indiana affirmative action office; creation; director's duties

Sec. 3. There is created within the state personnel department the Indiana affirmative action office. The director of the department shall:

- (1) appoint an affirmative action officer who shall direct the office; and
- (2) employ the additional personnel necessary to carry out the functions of the office, which personnel are governed by [IC 4-15-2.2](#).

As added by P.L.12-1983, SEC.11. Amended by P.L.6-2012, SEC.14.

IC 4-15-12-4Duties of officer

Sec. 4. In addition to the authority conferred upon the office by other sections of this chapter, the affirmative action officer shall:

- (1) establish annually with each state agency reasonable affirmative action goals, determine whether good faith efforts have been made to reach the established goals, and provide technical assistance to each agency in developing the detailed program needed to reach the goals;
- (2) assist in training activities by state and other agencies in accordance with the affirmative action policy;
- (3) conduct affirmative action training for state agency appointing authorities, personnel officers, and affirmative action expeditors; and
- (4) provide technical assistance in the area of affirmative action to state agencies for supervisory training and new employee orientation.

As added by P.L.12-1983, SEC.11.

IC 4-15-12-5State agencies; plans and policy statements; review and approval; expediter

Sec. 5. (a) Each state agency shall annually establish an affirmative action plan to implement the affirmative action policy. The affirmative action officer may permit a state agency with a small number of employees to submit an affirmative action policy statement indicating its commitment to affirmative action, in lieu of establishing a plan. The affirmative action officer shall review and approve or disapprove each plan or statement for effectiveness and compliance with the affirmative action policy.

(b) Each state agency shall designate an affirmative action expediter for the agency to act under the supervision of the appointing authority.

As added by P.L.12-1983, SEC.11.

IC 4-15-12-6Implementation of policy

Sec. 6. The director of the state personnel department is responsible for the implementation of the affirmative action policy.

As added by P.L.12-1983, SEC.11.

IC 4-15-12-7Duties of director of state personnel department

Sec. 7. The director of the state personnel department shall:

- (1) create an overall affirmative action plan for all state agencies;
- (2) make changes in personnel procedures, rules, and programs in support of the affirmative action policy;
- (3) provide expeditiously such applicant and employee data and information as may be requested by the affirmative action officer; and
- (4) report at least annually to the governor:
 - (A) the state agencies that have approved affirmative action plans and those that do not have approved affirmative action plans; and
 - (B) the progress made by state agencies in achieving affirmative action goals and whether that progress is satisfactory or unsatisfactory.

As added by P.L.12-1983, SEC.11.

IC 4-15-12-8Advisory committee

Sec. 8. (a) There is created the affirmative action advisory committee to assist in the effective implementation of the affirmative action policy. The committee is composed of eight (8) members. The governor shall appoint the members of the committee with the advice of the affirmative action officer. The members serve at the pleasure of the governor.

(b) A member of the committee is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency. A member who is not an officer or employee of the state is entitled to the minimum salary per diem as provided in [IC 4-10-11-2.1](#)(b) while performing the member's duties.

(c) The committee shall select from its membership a chairperson and vice chairperson to serve for one (1) year from the date of selection. They may be reelected at the pleasure of the committee. In any instance where the chairperson or vice chairperson does not serve the chairperson's or vice chairperson's full term, the committee shall select another to serve in the chairperson's or vice chairperson's own right a full term.

(d) The affirmative action advisory committee shall:

- (1) provide liaison activities with the affirmative action officer with respect to problems and suggestions concerning the affirmative action policy;
- (2) advise the affirmative action officer and the governor of recommended changes in the implementation of the affirmative action policy and improved guidelines for state agency programs; and
- (3) advise the governor and the affirmative action officer concerning the effectiveness and status of the total implementation of the affirmative action policy.

(e) The affirmative action advisory committee may review the affirmative action programs of state agencies for effectiveness and improvements.

As added by P.L.12-1983, SEC.11. Amended by P.L.215-2016, SEC.88.

D.) Affirmative Action Goals as of January 14, 2025

Impact & Goal
1) Work with SPD to send job postings to educational institutions who traditionally serve people of color. 2) Increase outreach efforts to educational institutions who traditionally serve people of color or potential student teaching/internship opportunities at ISBVI. 3) Explore social media advertising to promote rewarding career opportunities at ISBVI.
1) Work with SPD to send job postings to Indiana institutions and associations serving veterans. 2) Increase outreach efforts to institutions serving veterans or potential student teaching/internship opportunities at ISBVI. 3) Explore social media advertising to promote rewarding career opportunities at ISBVI.
<ul style="list-style-type: none"> • Identify new opportunities to post jobs in an effort to continue to recruit talented, diverse staff. • Understand the experience and perspective of the workforce and our current efforts for recruiting.
<ul style="list-style-type: none"> • Form a committee to engage the workforce on equity, inclusion, and opportunity. • Focus will remain on understanding experiences and making recommendations to be more inclusive.
<ul style="list-style-type: none"> • Identify a focus group to determine barriers and areas of opportunity. • Provide feedback both internally and to INSPD in an effort to create a more inclusive practice.
Update and improve current onboarding plans and information.
See previous cell.
Identify best practices to recruit those individuals within our focus. Discuss and train IDHS supervisors/managers on these recruiting goals.
Update IDHS hiring practices to align with knowledge obtained from the initial review. Discuss and train IDHS supervisors/managers on updated hiring practices.
Create a Leadership Development program for IDHS staff. Encourage all employees to participate in mentoring and leadership development programs. Discuss and train IDHS supervisors/managers on mentoring and leadership development program.
IPSC will require all hiring managers and its leadership team to attend Implicit Bias training to encourage continued promotion and selection of people of color, women, veterans, and those with disabilities once the training is finalized and readily available for facilitation; IPSC also will include diversity and inclusion modules in its training for employees hired / promoted into supervisory positions.
Attract a diverse group of talent - including young and new professionals. Review current job descriptions for neutral language and information to promote on-the-job training program. Create new recruitment video and brochure.
Greater awareness amongst staff about the benefit of EIO initiatives.
Increased knowledge and understanding of the recruitment and hiring processes. Enhanced candidate experience through an overall better understanding of processes.
Increased representation for veterans at the facility.
Increased representation for people with diverse identities at the facility.
Work with INSPD on updating postings and recruiting.
Consult with ADA Coordinator to ensure hiring practices and current team member protocols promote equitable hiring and workspaces. - Require Hiring Managers to attend Using Equitable Hiring Toolkit training via Indiana Manager Central.
Consult with INSPD on best practices for hiring. Implement a hiring panel for all positions above entry level. Create an interview template for all hiring panels to utilize. Ensure accommodations are met.
Find specific events in this area such as IBA's Banking on Women Conference
Career opportunities will reach a broad audience resulting in a diverse candidate pool
Employees will be set up to consider promotional opportunities by engaging in learning.
95% of staff complete their people profiles and Peoplesoft HR ESS profile by 06/30/2025. Identify divisions to participate in success planning and partner with strategy and performance to determine readiness.
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Strategic Business Consultants (SPD TA) will work with hiring managers to ensure that targeted candidates are being identified and asked to apply -continue to prioritize interviewing qualified candidates that

Encouraging supervisors to attend Indiana Manager Central workshops and use IMC resources to work through manager related issues -Partner with Field HR to address performance issues and employee relations concerns to ensure staff feel supported as well as the supervisors
Strategic Business Consultant (TA) to work with hiring managers to coordinate efforts to target diverse groups of applicants.
Messaging will go to agency staff in an effort to educate and encourage self-reporting of demographic information.
Provide developmental opportunities for all staff, in an effort to skill up the workforce on needs. - Ensure review and feedback methods are consistent within the agency and encourage developmental conversations between supervisors and staff.
Provide training opportunities that address unconscious bias. - Provide training opportunities that address best practices for interviewing and hiring.
Presentations to be given by embedded SPD Staff to relevant parties. - Agency to actively engage in the goal setting and goal tracking process.
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Presentations to be given by embedded SPD Staff to relevant parties. - Agency to actively engage in the goal setting and goal tracking process.
Consult with INSPD on best practices for hiring.-Implement a hiring panel for all positions above entry level.-Create an interview template for all hiring panels to utilize.
<ul style="list-style-type: none"> - Consult with INSPD on best practices for hiring. - Implement a hiring panel for all positions above entry level. - Create an interview template for all hiring panels to utilize. - Utilize INSPD's TA team to ensure career fairs and community events are diverse.
<p>"- Increase self identification of veterans by utilizing open enrollment and new hire onboarding as an opportunity for every employee to update their profile in PeopleSoft.</p> <ul style="list-style-type: none"> - Utilize INSPD's TA team to attend targeted recruitment and community events for veterans.
<ul style="list-style-type: none"> - Consult with INSPD on best practices for hiring. - Implement a hiring panel for all positions above entry level. - Create an interview template for all hiring panels to utilize. - Utilize INSPD's TA team to ensure career fairs and community events are diverse.
<p>Attend career fairs focused on:</p> <ul style="list-style-type: none"> - People of Color - Veterans (IDVA Events)
<p>Consult with SPD on best practices for recruiting and hiring.</p> <ul style="list-style-type: none"> - Implement at least one (1) improved recruitment practice or process. - Utilize existing DMHA events for recruitment opportunities." - Require all managers to attend Unconscious Bias Training.

<p>Review termination data and analyze for areas of opportunity.</p> <ul style="list-style-type: none"> - Make recommendations for next steps in areas of opportunity. - Implement any training tools to support staff in understanding role expectations.
<p>Consult with SPD on recommended trainings and opportunities to increase diversity awareness to EPCC.</p> <ul style="list-style-type: none"> - Ensure diverse interview panels are being utilized. - Utilize existing trainings and materials such as IMC or LinkedIn to assign a facility wide training.
<p>Consult with SPD on best practices for recruiting and hiring.</p> <ul style="list-style-type: none"> - Implement at least one (1) improved recruitment practice or process. - Utilize existing DMHA events for recruitment opportunities." - Require all managers to attend Unconscious Bias Training.
<p>Review termination data and analyze for areas of opportunity.</p> <ul style="list-style-type: none"> - Make recommendations for next steps in areas of opportunity. - Implement any training tools to support staff in understanding role expectations.
<p>Require all managers to attend Unconscious Bias Training.</p> <ul style="list-style-type: none"> - Formally advertise open positions to all staff in ESH. - Facilitate a mentoring, if needed, to identify candidates for potential promotions. <p>Regularly promote Education Reimbursement programs to all ESH Staff.</p>
Increase Volume of Veteran Candidates and Hires
Increase Volume of Veteran Candidates and Hires
Increase Volume of Veteran Candidates and Hires
Strategic Business Consultant (TA) to work with hiring managers to coordinate efforts to target diverse groups of applicants.
<p>Provide developmental opportunities for all staff, in an effort to skill up the workforce on needs.</p> <ul style="list-style-type: none"> - Ensure review and feedback methods are consistent within the agency and encourage developmental conversations between supervisors and staff.
<p>Provide training opportunities that address unconscious bias.</p> <ul style="list-style-type: none"> - Provide training opportunities that address best practices for interviewing and hiring.
<p>Presentations to be given by embedded SPD Staff to relevant parties.</p> <ul style="list-style-type: none"> - Agency to actively engage in the goal setting and goal tracking process.
Messaging will go to agency staff in an effort to educate and encourage self reporting of demographic information.
Increase utilization of all SPD's Talent Acquisition minority and veteran outreach resources. Inform OALP Hiring Managers to consider diverse and veteran qualified candidates for job openings.
Increase utilization of all SPD's Talent Acquisition veteran outreach resources.
<p>A. HRD will add 2024 AAP to NDI Leadership Forum.</p> <p>B. Interview Panels will participate in timely and selective dispositioning of candidates on all job postings. Measurement: Monthly average metrics shared email from HRBP.</p>
Increase awareness of OALP, with these institutions, as a contemporary preferred employer through building relationships with college career development and placement team.
The intern(s) will learn about OALP while completing either a social media project or an Administrative Law Judge focused project. This may lead to permanent job placement.
<p>Initiate a campaign to encourage team members to update PeopleSoft information.</p> <ul style="list-style-type: none"> - Require all managers to attend Using Equitable Hiring Toolkit training via Indiana Manager Central. - Continued education of Hiring Managers on how to identify qualifying veterans for an interview during the application review phase to increase opportunity and hiring rate to achieve. - Leverage Protected Veteran team members to assist in developing and implementing recruitment strategies to achieve benchmark of 5.3%.
• Creation and proposal of a development plan for internal INSPD employees.
<ul style="list-style-type: none"> • SPD's TA Team will identify three organizations with people with disabilities that are able to serve as talent pools. • SPD's TA Team will actively communicate vacancies and career opportunities to these organizations in an effort to recruit employees. • SPD's TA Team will partner in providing career advice for people with disabilities in order to best place them into varies agencies across the SOI.
<ul style="list-style-type: none"> • SPD's HRD will ensure most vacancies are posted both internally and externally. • SPD will have 20% of employees participate in the succession planning module in order to model for other divisions. • SPD will have 100% of employees complete their people profiles within their first six months of employment. • SPD will have 80% of managers complete the talent assessments for completed people profiles of their supervisees within six

months of employment.

- SPD will make a push for employees to update Employee Self Service Personal Information items to gather more updated demographic information.

INDOT will recommend all hiring managers and its leadership team attend recruitment and selection training to encourage continued promotion and selection of Women, People of Color, Veterans and Persons with Disabilities within INDOT's hiring practices, once the training is finalized and readily available for facilitation; INDOT will include inclusion and belonging modules in its training for employees hired/promoted into supervisory positions

Work with SBC to facilitate at least one marketing initiative to reach a more diverse population highlighting the benefits of employment with Indiana State Government. Increase social media awareness to attract diverse applicants including using photos and testimonies from current employees that include women, veterans, people of color and persons with disabilities

APPENDIX 3: Employee DEI Training, Instruction, & Programming

A.) Overview of New Hire SuccessFactors Learning Assignments

Table of Contents

SuccessFactors Learning Required Training – Full, Part, & Intermittent Employees

Content Title	Course ID	Assignment Due	Estimated Time to Complete	Notes
Information Technology Resources	SOI_ITR_000001	21 days	5 minutes	This is a document agreement. Required by all who work for the state and access state technology, including computers, phones, and systems.
2024 OIG Ethics Training and Refresher Course	SOI_OIG_000005	42 days	35 minutes	OIG Ethics Training is refreshed every two years. The 2024 course will be in effect through August of 2026. *Not required for Contractors (CWRS) by the state; may be required by the agency . CWRS are not assigned Ethics in SF. CWRS use the Contractor Ethics Training Link: Ethics 2024
Preventing Workplace & Sexual Harassment 2024	SPD_CPL_000023	21 days	20 Minutes	Preventing Workplace & Sexual Harassment is refreshed yearly. The 2024 course will be in effect through July 2025. *Not required for Contractors (CWRS) by the state; may be required by the agency .
Cybersecurity Onboarding 2024	IOT_KB4_000111	21 Days	25 Minutes	Cyber Onboarding 2024 will remain in effect for all of 2025 until IOT refreshes the content. Required by all who work for the state and access state equipment.

Employee Self Service PeopleSoft 9.2 Curricula – Full-Time Employees Only

Content Title	Course ID	Assignment Due	Estimated Time to Complete	Notes
Introduction	SOI_HCM_ESS_000001	30 days	10 minutes	
Personal Details	SOI_HCM_ESS_000007	30 days	10 minutes	
Time	SOI_HCM_ESS_000002	30 days	14 minutes	
Absence	SOI_HCM_ESS_000003	30 Days	21 Minutes	
Payroll	SOI_HCM_ESS_000004	30 Days	24 Minutes	
Benefits and Life Events	SOI_HCM_ESS_000005	30 Days	16 minutes	
Total Rewards	SOI_HCM_ESS_000006	30 Days	13 minutes	

Employee Self Service PeopleSoft 9.2 Curricula – Part-Time/Intermittent Employees

Content Title	Course ID	Assignment Due	Estimated Time to Complete	Notes
Introduction	SOI_HCM_ESS_000001	30 days	10 minutes	
Personal Details	SOI_HCM_ESS_000007	30 days	10 minutes	
Time	SOI_HCM_ESS_000002	30 days	14 minutes	
Absence	SOI_HCM_ESS_000003	30 Days	21 Minutes	
Payroll	SOI_HCM_ESS_000004	30 Days	24 Minutes	
Total Rewards	SOI_HCM_ESS_000006	30 Days	13 minutes	

Manager Self Service PeopleSoft 9.2 Curricula – Full-Time Employees who Manage Only

Content Title	Course ID	Assignment Due	Estimated Time to Complete	Notes
Introduction	SOI_HCM_MSS_000001	30 days	3 minutes	Managers are assigned both Employee Self Service and Manager Self Service Curricula.
Team Time	SOI_HCM_MSS_000002	30 days	10 minutes	
Approvals	SOI_HCM_MSS_000003	30 days	7 minutes	
My Team	SOI_HCM_MSS_000004	30 Days	15 Minutes	
Update Team Information	SOI_HCM_MSS_000005	30 Days	5 Minutes	
Total Rewards	SOI_HCM_MSS_000006	30 Days	9 minutes	

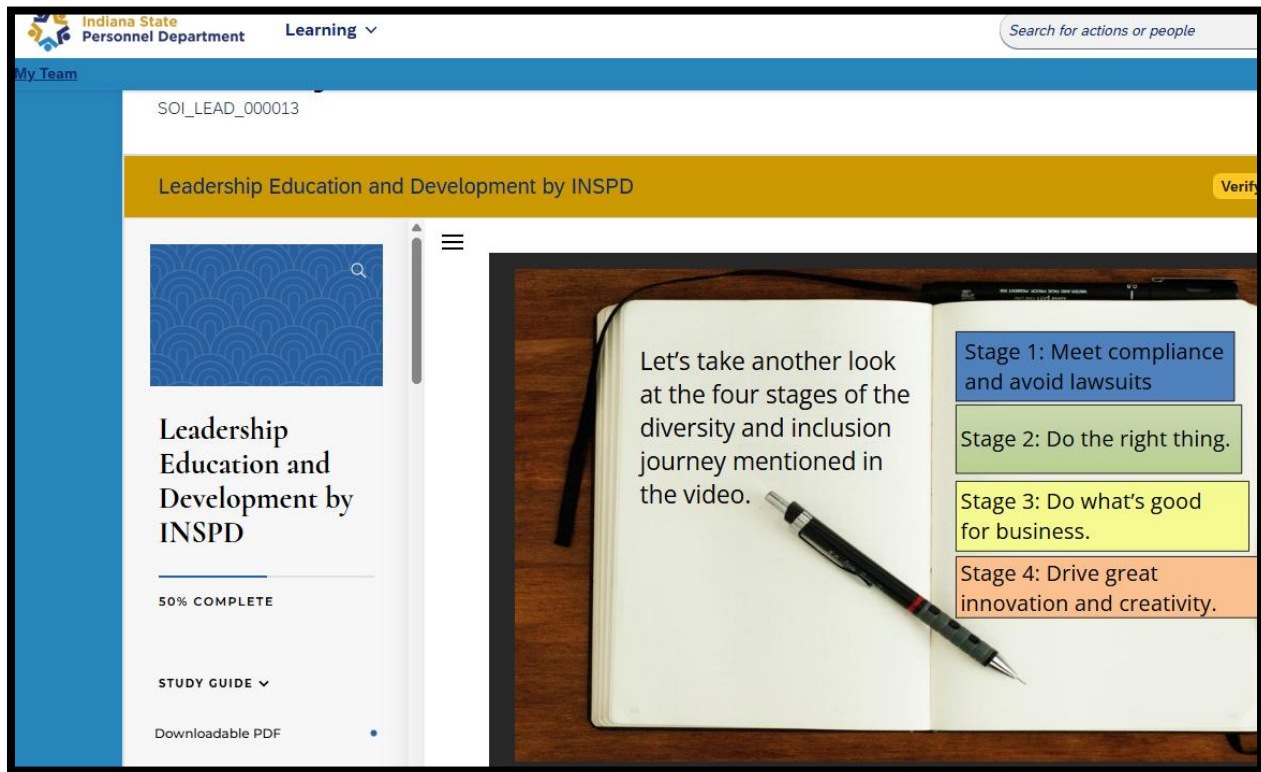
Managers Onboarding Workshop Program – Full-Time Employees who Manage Only

Content Title	Course ID	Assignment Due	Estimated Time to Complete	Notes
Manager Onboarding Checklist	SOI_MOW_Checklist_01	365 days	5-10 minutes	PDF document
Performance Review Cycle and Best Practices	N/A	365 days	5-10 minutes	JAM link*
Flexible Arrangements Policy		365 days	5-10 minutes	Link to policy page
**Leadership Education and Development	SOI_LEAD_000013	365 days	20-30 minutes	
Indiana Manager Central Workshops	N/A	365 days	5-10 minutes	Link to Indiana Manager Center page - IMC
Compensation Policy, Job Code Listing, and Pay Plan & Salary Grade Information	N/A	365 days	5-10 minutes	Link to compensation website
State Civil Service System	N/A	365 days	5-10 minutes	Link to policy
Education Reimbursement & Tuition Assistance	N/A	365 days	5-10 minutes	Link to policy
Community Service Leave	N/A	365 days	5-10 minutes	Link to policy
Referral Bonus	N/A	365 days	5-10 minutes	Link to policy
Spot Bonus	N/A	365 days	5-10 minutes	Link to policy
LinkedIn Learning	N/A	365 days	5-10 minutes	Link to LIL page
Subscribe to The Torch & Around the Circle	N/A	365 days	5-10 minutes	Link to State of Indiana publications page
Essential Skills Courses	N/A	365 days	5-10 minutes	Link to IMC page

****Leadership Education and Development**

We updated the curriculum from having a small section on diversity, equity, and inclusion and we have shifted that content entirely.

BEFORE:



AFTER:

MOVING FROM INDIVIDUAL CONTRIBUTOR TO MANAGER

- Adopting A Manager's Perspective
- Delegating Work Effectively
- Managing The Two-Role Transition
- Apply What You've Learned

ENHANCING COMMUNICATION THROUGH EMOTIONAL INTELLIGENCE

- Emotional Intelligence
- Social Awareness And Communication
- Connecting With Empathy
- Apply What You've Learned

HANDLING CONFLICT IN THE WORKPLACE

- Apply What You've Learned
- Approaches To Conflict
- Causes Of Workplace Conflict
- Conflict Resolution Planning
- Practicing Conflict Prevention
- Apply What You've Learned

MANAGING STRESS

- Stress In The Workplace
- Identifying Triggers
- Managing Stress
- SOI Resources

Additional Manager Trainings – Full-Time Employees who Manage Only

Content Title	Course ID	Assignment Due	Estimated Time	Notes
Performance & Goals: Performance Progress	SPD_PERFMGT_000023	37 Days	20 minutes	All other performance modules are self-assignable through Find Learning on SuccessFactors Learning .
Talent Acquisition Training for Hiring Managers	SPD_TA_000031	30 Days	30 minutes	
SuccessFactors Onboarding 1.0 for Hiring Managers	SPD_ONB_000001	30 Days	20 minutes	Hiring Managers only *Training on Onboarding for Form I-9 .

B.) Internal Trainings – Staff Training and Resource (STAR) Program

STAR is designed to establish a consistent baseline of knowledge across the agency. Upon completion of STAR, learners will be able to: Identify core HR functions within SPD Locate applicable resources Interpret program materials during a guided discussion

INTRODUCTION TO SPD Welcome to STAR! Introduction & Objectives

STAR: AFFIRMATIVE ACTION PLANS Affirmative Action History Affirmative Action for People of Color
Affirmative Action for Women Affirmative Action for Veterans Affirmative Action for People with Disabilities
Indiana State Personnel Department's Affirmative Action Plan Process

STAR: PULSE SURVEY Gallup Q12 Background Indiana State Personnel Department's Pulse Survey Process
Conclusion Lesson 1 of 11 Welcome to STAR! Select the play button below to hear the audio narration for the next section. 00:46The state of Indiana is working hard to deliver Next Level government service based on Governor Holcomb's five pillars: Economic Development, Workforce & Education, Public Health, Community Development, and Good Government. The Indiana State Personnel Department plays a key role in achieving these objectives by attracting, hiring, and retaining the right talent to support the Governor's mission. Each division provides a significant value to the acquisition and retention of employees by providing support throughout their journey as public servants. From orientation to retirement, SPD provides agencies with the tools and resources they need to manage their staff. Lesson 2 of 11 Introduction & Objectives Select the play button above to hear audio. 01:30 Welcome to Module 11 which will cover Affirmative Action Plans and the Pulse Survey. The goal of this module is to help Indiana State Personnel Department team members to understand the role that data-informed decision-making plays in informing strategic conversations with our customer agencies. Additionally, you will learn more about the content and history behind Affirmative Action and the Pulse Survey. The Equity, Inclusion, and Opportunity Division's mission is, "To provide guidance and support to State of Indiana Agencies in order to normalize and operationalize equity, inclusion, and opportunity across all aspects of state workforce engagement and state services." In order to achieve this, we need to do several things: Collect data via: SuccessFactors for Applicants and Hires PeopleSoft for staff, promotions, demotions, terminations, etc. Pulse Survey for employee engagement and more Analyze data Synthesize data Action upon data Upon completion of this module, learners will be able to: Identify the historical context of our 1 2 3 Affirmative Action Plans (AAPs), Pulse Survey, and the data behind these two programs. Understand the relevance of our AAPs and Pulse Survey. Recognize the Gallup Q12 framework and how it is utilized in the Pulse Survey. Select the play button above to hear audio. Lesson 3 of 11 Affirmative Action History 01:58 The State of Indiana has a history of affirmative action that predates the federal regulations enacted by President John F. Kennedy in 1961. In 1851, Indiana's Constitution prohibited slavery within the state and went on to emphasize religious freedoms early and often. 1941 Indiana State Personnel Act In addition to protected class statutes for US Citizens, Indiana's State Personnel Act of 1941 expanded protected classes to veterans. 1961 Indiana Fair Employment Practice Act Then in 1961, Indiana's Fair Employment Practice Act would protect citizens from discrimination in matters of employment, education, and public accommodations. 1963 Equal Pay Act of 1963 As protection continued to be refined, the Equal Pay Act of 1963 in Indiana guaranteed women fair compensation and working conditions equal to those of men. 1983 Affirmative Action Statute Lastly, the State of Indiana enacted an Affirmative Action Statute (IC 4-15-12 in 1983, which expanded equal protections to those U.S. protected classes, and also included age. Executive Order 10925 Federally, starting in 1961, President John F. Kennedy's Executive Order (EO 10925 provided the first demonstration of affirmative action at the federal level. This EO instructed federal contractors to treat all applicants equally, without regard for race, color, religion, sex, or national origin. This executive order also created the Committee on Equal Employment Opportunity (which would later become the U.S. Equal Employment Opportunity Commission [EEOC]. Three years later, in 1964, the Civil Rights Act was signed into law, extending affirmative action to all employers with over 15 employees, regardless of whether or not they held government contracts. Select the play button above to hear audio. Lesson 4 of 11 Affirmative Action for People of Color 02:11 Affirmative Action for People of Color People of Color (POC are those who identify as any race other than white, per the racial identities utilized by the US Census Bureau: Asian, Black, Hispanic or Latino, American Indian or Alaska

Native, Native Hawaiian or Other Pacific Islander, and Two or More Races. Select the "<" and ">" icons below to view additional information.

1866  Congress enacted the Civil Rights Act, which affirmed that all citizens were equally protected by the law.

1868  The Civil Rights Act was ratified, granting citizenship to all persons "born or naturalized in the United States." This included people that were formerly enslaved, and it granted all citizens equal protection under the laws.

1965  President Johnson issued executive order 11246, which required all government contractors to expand affirmative action to all applicants that were People of Color.

1971  President Nixon and the Department of Labor issued Order No. 4, authorizing goals to correct the "underutilization" of People of Color.

1971  President Nixon issued EO 11625, which directed federal agencies to develop plans and goals for the Minority Business Enterprise program. This program ensures that businesses owned by people with minoritized identities are receiving equal support and consideration.

1978  The U.S. Supreme Court ruled in favor of a university using race as a factor in choosing applicants for admission, but it ruled against another university reserving a specified number of seats for Students of Color.

1995  The Glass Ceiling Commission released a report on barriers that women and People of Color face in corporate America. The recommendation was held that corporate America should use affirmative action as a tool to ensure equal access and opportunity based on ability and merit.

Lesson 5 of 11 Affirmative Action for Women Select the play button above to hear audio. 01:01 Affirmative Action for Women Women are those who identify as female. Select the play button above to hear audio. Affirmative Action for Veterans Lesson 6 of 11 Affirmative Action for Veterans 00:36 Veterans are those who served in the active military, naval, or air service, and who were discharged or released therefrom under conditions other than dishonorable.

1 2 1974  Congress established the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA, which was aimed to provide assistance to returning veterans and to protect them from employment discrimination.

2014  New rules for VEVRAA were established to provide more protections that would improve efforts to recruit and hire protected veterans. Select the play button above to hear audio. Lesson 7 of 11 Affirmative Action for People with Disabilities 01:10 Affirmative Action for People with Disabilities People with Disabilities are those who have physical or mental impairment that limits one or more major life activity. These may include, but are not limited to, physical disabilities, mental disabilities, neurodivergence, and more. Click on the image above to enlarge. Select the play button above to hear audio. Lesson 8 of 11 Indiana State Personnel Department's Affirmative Action Plan Process 02:40 Indiana State Personnel Department's Affirmative Action Plan Process Starting on the first of the calendar year, the Indiana State Personnel Director appoints someone to serve as the Affirmative Action Plan contact, which has historically been tied to a specific position. Currently, that position is the Director of Equity, Inclusion, and Opportunity, making that person responsible for managing the entire program. The image below shows the designation of responsibilities in relation to the affirmative action plan process. Select the image below to enlarge. Affirmative Action Data The AAP Director pulls relevant data to build out the Affirmative Action plans. AAP data includes Staffing Report: The staffing report reflects the staff of an agency at a single point in time. Recruiting Report: The recruiting report reflects the applicants and hires within a year. Monitoring Report: The monitoring report reflects the promotions, demotions, and terminations within a year. Select the ">" or "start" button below to view additional information. Introduction 00:33 AAPs are generated each year based on the previous year's data and transactions in order to create a stagnant data point to refer to. For example, the 2023 Affirmative Action Plans will be built with staffing data from 12/31/2022. Previous year's data should be used in an effort to understand trends over time and be proactive in addressing areas of growth for the current year, and future years. AAPs will follow the following schedule of events: Step 1 Step 1 00:03 Data is pulled from relevant platforms. Step 2 Step 2 00:23 Data is generated per each applicable agency. Agencies with 35 full-time employees (FTEs). Agencies with internal breakdowns: Family and Social Services receives one plan per Business Unit. Indiana Department of Transportation receives one plan per District. Step 3 Step 3 00:04 AAPs are distributed to Field Operations. Step 4 Step 4 00:05 Field Operations and AAP Director meet to review the plan. Step 5 Step 5 00:06 Field Operations, AAP Director, and Agency Leadership meet to review the plan. Step 6 Step 6 00:08 Field Operations, in conjunction with the AAP Director, identify areas of growth to address with goals. Step 7 Step 7 00:07 Field Operations, AAP Director, and Agency Leadership agree on identified goals. Step 8 Step 8 00:06 Field Operations, AAP Director, and Agency Head sign the AAP. Summary 00:18 AAPs may be referenced for a number of additional purposes. Agencies may receive federal funding, grants, or have other reporting expectations that the AAP is able to meet. AAPs can be requested via the AAP Director on an as-needed basis. Select the play button

above to hear audio. Lesson 9 of 11 Gallup Q12 Background 05:31 The Indiana State Personnel Department (INSPD) conducts the Pulse Survey statewide to enable agencies to measure their level of employee engagement and to create action plans that promote and implement an inclusive culture and welcoming workplace behaviors. The Pulse Survey uses the Gallup Q12® as a framework to gauge employee engagement (ee). Research shows that increased employee engagement directly corresponds with increased business success and lower employee turnover. In fact, according to Gallup's 2020 Q12, employee engagement drives business improvement, from lower turnover to higher customer engagement to higher profitability, even during periods of disruption." Organizations with high engagement had 81% lower absenteeism, 18% lower turnover, and 18% higher productivity. Select each tab below to view additional information. Gallup defines employee engagement as the involvement and enthusiasm of employees in their work and workplace. Employee engagement helps you measure and manage employees' perspectives on the crucial elements of your workplace culture. You can find out if your employees are actively engaged with their work or if they're simply putting in their time. You can discover if your team building activities and human resources practices influence positive business outcomes or if there is room to grow. And with the right approach, you can learn what to do to improve your employees' connection to their work and your company.

WHAT IS THE DEFINITION OF EE? WHY IS EE IMPORTANT? WHY MEASURE EE? WHOSE JOB IS EE?
W DEM QU Employees make decisions and take actions every day that can affect your workforce and organization. The way your agency treats employees, and how employees treat one another, can positively affect their actions—or can place your organization at risk. Based on over 50 years of employee engagement research, Gallup knows that highly engaged employees give more effort, have higher productivity, work safer and more efficiently, and stay with the company longer—across industry, company size and nationality, and in good economic times and bad. But only 15% of employees worldwide and 35% in the U.S. fall in the “engaged” category.

WHAT IS THE DEFINITION OF EE? WHY IS EE IMPORTANT? WHY MEASURE EE? WHOSE JOB IS EE?
W DEM QU Because engagement drives performance, employers should regularly measure and make efforts to improve engagement. Agencies can use the information gleaned from the Pulse Survey Results Dashboard to create targeted action plans which seek to improve engagement in 1–3 areas.

WHAT IS THE DEFINITION OF EE? WHY IS EE IMPORTANT? WHY MEASURE EE? WHOSE JOB IS EE?
W DEM QU Employee engagement should be a manager's primary responsibility. Managers are in charge of ensuring that employees know what work needs to be done, supporting and advocating for them when necessary, and explaining how their work connects to organizational success. To succeed in that responsibility, managers need to be equipped to have ongoing coaching conversations with employees. Unfortunately, most managers don't know how to make frequent conversations meaningful, so their actions are more likely to be interpreted as micromanaging without providing the right tools and direction. So, it's not enough for leaders to simply tell managers to own engagement and coach their teams.

WHAT IS THE DEFINITION OF EE? WHY IS EE IMPORTANT? WHY MEASURE EE? WHOSE JOB IS EE?
W DEM QU Demographic questions allow our organization to gain background information about their participants' social identities and backgrounds. These questions provide context which allows leadership to better describe their participants and analyze how participant social identities intersect with their experiences. The demographic categories and individual social identities provided in this survey were intentionally added to glean insights about the diverse identities of the State of Indiana workforce and enable us to better meet the needs of staff on our teams. Providing more inclusive demographic identity options to our staff members helps to address areas of inclusion and representation. These options were vetted through the Indiana State Personnel Department and the Office of the Chief Equity, Inclusion, and Opportunity Officer, so we feel confident that surveying our staff with these options will continue to support our diverse workforce.

WHAT IS THE DEFINITION OF EE? WHY IS EE IMPORTANT? WHY MEASURE EE? WHOSE JOB IS EE?
W DEM QU The below information can be helpful to understand the possible cultural indications of a question's score and some suggested actions an agency or team can take to improve employee engagement. An Average Score greater than (>) 4.0 indicates the selected staff is Highly Engaged. An Average Score between

3.0 and 4.0 indicates the selected staff is Engaged. An Average Score less than (<) 3.0 indicates the selected staff is Disengaged.

WHAT IS THE DEFINITION OF EE? WHY IS EE IMPORTANT? WHY MEASURE EE? WHOSE JOB IS EE?

W DEM QU Select the play button above to hear audio. Lesson 10 of 11 Indiana State Personnel Department's Pulse Survey Process 04:13 Each year, the Indiana State Personnel Department facilitates the Pulse Survey for the State of Indiana's workforce. Each time the survey is facilitated, it is shared with 30,000 employees and has the following stakeholders and phases: Select the "+" icons below to view additional information.

INSPD Agency Head Responsible for sponsoring the survey and influencing Executive branch quasi-agencies and the legislative branch to commit to participating in the Survey. Business Process Owner (BPO) Responsible for managing the product, creating the survey template, and leading the meetings. Currently, the business process owner is the Director of Equity, Inclusion, and Opportunity. Executive Sponsors or Field Operations Directors Responsible for validating the Survey. Business Intelligence Developer Responsible for building the Tableau dashboard. Communication Team Responsible for all communications around the pulse survey and releasing the results. Communications and Employee Engagement Manager Responsible for creating and updating the survey template. Workforce Strategy & Performance Responsible for providing consultation, around the survey, helping in interpreting the survey results, and creating goals and action plans. Human Resources Directors (HRDs) Responsible for interpreting the data using the developed toolkit by the business owner, setting goals with their respective agency leadership (customers), and providing recommendations consistent with the toolkit. Additionally, HRDs for quasi-agencies are responsible for determining and reporting whether their respective agencies will participate in the Survey.

Phase I Creating and Enhancing Stakeholders meet in the first and third Quarters of the year to create and validate Survey questions. The first Quarter meeting is held by the last week of February. The second Quarter meeting is held by the last week of August. Phase II Delivering and Communication The Pulse Survey is available two times in a year. The first survey becomes available in March. The second survey becomes available in September. In total, the employees have three weeks (15 business days) to complete the Survey. The first two weeks (10 business days) are advertised by the communications team. The additional week (5 business days) is silently available. After 15 business days, the survey link becomes inactive. Phase III Updating the Toolkit and Dashboard The Business Process Owner finalizes product deliverables and ensures they are ready to be distributed. The Business Intelligence Developer builds the Tableau dashboard. The Communication Team communicates and distributes the survey toolkit to the HRDs. Phase IV Communicating the Results The Workforce Strategy & Performance team meets with the HRDs to discuss the results of the survey. The performance management team will interpret the data, answer questions, and provide recommendations consistent with the survey toolkit. Phase V After Action The stakeholders or their representatives meet twice a year to discuss the action planning tools, survey results, lessons learned, discuss feedback from agencies, discuss agency-specific questions that need to be added to future surveys, and brainstorm ideas for the next Survey cycle. The after-action meeting is held no later than a month after the Survey toolkit is distributed to the HRDs.

Lesson 11 of 11 Conclusion Select the play button above to hear audio. 01:00 Over the course of this training, you've been introduced to the various aspects of the Affirmative Action Plans and Pulse Survey. You learned about the history of Affirmative Action, demographic details about those included under affirmative action, and more about our internal process. Next, you were introduced to the Gallup Q12 Framework for employee engagement and more about our internal process. The goal is that you as an audience have an increased awareness and understanding of both the processes and the importance of using data to make informed decisions. As an employee of INSPD, it is your responsibility to understand the services, tools, and resources available to provide our partners and customers with the best possible HR solutions. If you are supporting an agency, remember that staying up to date and engaged with affirmative action and employee engagement data can support you in setting a strategic vision within your agencies.

Thank You for Completing This Module!

1. Identifying Unconscious Bias

Identifying Unconscious Bias

Learning & Development Division



Indiana State
Personnel Department

Learning Objectives

Participants will be able to.....

1. Understand the types of unconscious bias, specifically those present in a workplace setting.
2. Recognize consequences of these actions remaining uninterrupted.
3. Execute strategies to interrupt these actions in a workplace setting.
4. Others?



Indiana State
Personnel Department

Creating an Effective Learning Environment

Engaging the Audience

- Challenge by Choice
- Ask Questions

Setting Guidelines for the Conversation

- Terminology Provided
- Parking Lot Other Content

Encouraging a Psychologically Safe Space

- Express Thoughts and Feelings
- Space for Accountability, Not Judgment



Table of Contents

- Understanding Unconscious Bias
- Recognizing Consequences
- Executing Strategies to Interrupt
- Case Study Activity



Unconscious bias is part of a larger system that maintains institutional inequities and creates narratives that perpetuate biases.

However, organizations are made up of individuals, and these individuals hold unconscious biases.

Thus, unconscious bias at the individual level contributes to the larger systemic issue.



For instance, if a search committee fails to invite a single candidate with historically underrepresented identities for a job interview, they may say, "Well, it's the Accounting Field that is the problem. It isn't very diverse and has barred access to candidates with marginalized identities, not us."

Therefore, the best way to address systemic biases is to first unpack our own unconscious biases.



That's why it's important that we, as individuals, address our unconscious biases.

By not doing so, there can be a temptation to depersonalize the work, blame the system, and make it appear as though we are the exception to unconscious bias.

Unconscious vs. Conscious Bias

Unconscious	Conscious
<ul style="list-style-type: none">• Everyone has them• Unaware• Developed overtime through stereotypes and patterns• Ex. Defaulting to giving a technological task to a younger employee.	<ul style="list-style-type: none">• Reinforced by oneself• Aware and purposeful• Developed from environment and personal experiences• Ex. Refusing to give a technological task to an older employee.

Understanding Types of Unconscious Bias

- Having Biased Thoughts is Normal
- Acting on Bias Causes Harm
- Disrupting Bias Causes Change



Affect Heuristic Bias

The tendency to make decisions based on emotions instead of logic. Often referred to as a “gut instinct” and using this feeling to make decisions or process information quickly.



Affinity Bias

We as people gravitate towards people who are like us, whether it is based on appearance, hobbies, beliefs, etc.



Age Bias

We have a history of thoughts about what someone can do based on how old they are. By doing so, we are assigning a value and skillset based on an entire group of people, rather than considering the experiences of an individual.



Appearance Bias

We as people make snap judgements based around the visual cues of a person. This is often based on beauty, weight, height, etc. and the perceived values we assign to those identifiers.



Attribution Bias

We as people attribute actions and characteristics with value judgements, based on our previous experiences. When people around us do certain things, we pre-assign characteristics and values to that person, even if they are not true.



Authority Bias

As a society based in hierarchy and structure, we value the opinions of those in charge more than others. When we focus on the thoughts / ideas of those with power, we are in turn silencing those who are not in power.



Confirmation Bias

We as people have our own thoughts, beliefs, and values. When we come across information that goes against or challenges these thoughts, we are likely to discredit them and gravitate towards information that supports our thoughts, beliefs, and values.



Gender Bias

Though gender is a social construct, our society is based around a history of gender as it relates to traditions, values, social norms, culture, etc. Here we are assigning thoughts and opinions to someone based on their gender.



The Halo Effect

When we have one or two positive interactions with someone, we can easily allow them to cloud our overall perception of that person. Instead of building our understanding of someone based on everything they bring to the table (good, bad, and ugly), we focus on the good.

The Horn Effect

When we have one or two negative interactions with /perceptions of someone, we can easily allow them to cloud our overall perception of that person. Instead of building our understanding of someone based on everything they bring to the table (good, bad, and ugly), we focus on the bad and ugly.



Implications in the Workplace

- Feeling Uncomfortable / Unsafe
 - Low Employee Engagement
 - Low Application Interest (word of mouth)
 - High Employee Turnover
- Lack of Opportunities
 - Certain People Advance Quickly
 - Other People are Passed Over
- Incomplete Work Products
 - Low Employee Collaboration
 - Low Work Product Completion
- Lack of Innovation
 - Withholding Ideas / Solutions
 - Lack of Diverse Ideas / Experiences
- Absentee Employees
 - Illnesses Related to Stress
 - Desire to Leave Work / Take Time Off



Executing Strategies to Interrupt Bias

Internally

- P – pay attention
- A – acknowledge your assumptions
- U – understand your perspective
- S – seek different perspectives
- E – examine your options and make a decision



Executing Strategies to Interrupt Bias

Externally

Step 1: Point it Out

- Address the Comment – Did you just say ABC?

Step 2: Check it Out

- Question your Understanding – What makes you say LMNOP?

Step 3: Work it Out

- Inform the Speaker – I disagree. Here's my opinion on XYZ.



Executing Strategies to Interrupt Bias

Systematically

Creating Space in Conversations

Developmental Plans

Performance Appraisals

Performance Improvement Plans

Promotional Practices



Case Study Activity

You are on a hiring panel, and you need to fill an individual contributor role. You have both internal and external applicants, making it a competitive process.

The criteria for the role is:

- Bachelor's Degree in Relevant Field
- Three Years of Experience (Seven Years if No Degree)
- Two Technical Certifications in Relevant Field



Mikel (he/him):

- No Degree
- Work – 7 years
- Certifications – 2 of 2
- External Candidate
- Notes: Don't interview, no degree.

Shurah (she/her):

- Bachelors in 2013, Masters in 2017
- Work – 7 years
- Certifications – 2 of 2
- External Candidate
- Notes: Interview but is overqualified. She won't like this job.

Shawn (he/him):

- Bachelors in 2022
- Work – 2.5 years
- Certifications – 1 of 2
- External Candidate
- Notes: Definitely interview! We both went to Purdue.

Devon (they/them):

- Bachelors in 2022
- Work – 2.5 years
- Certifications – 1 of 2
- Internal Candidate
- Notes: Interview, but I know we are not going to select them.



Case Study Activity - Questions

1. Is there an issue within the agency?
 - If yes, what are the impacts of the issue?
 - If no, why do you say that?
2. How would you address the person who is displaying bias?
3. What resources could you implement to address bias in the future?

2.) Fostering Allyship

Fostering Allyship

Learning and Development Division



Indiana State
Personnel Department

Learning Objectives

Participants will be able to.....

1. Understand gender identity – including definitions, common misconceptions, etc.
2. Understand pronoun usage in daily conversations.
3. Engage in dialogues related to pronouns and gender identity.
4. Others?



Indiana State
Personnel Department

Learning Objectives

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Creating an Effective Learning Environment

Engaging the Audience

- Challenge by Choice*
- Ask Questions

Setting Guidelines for the Conversation

- Terminology Provided
- Parking Lot Other Content

Encouraging a Psychologically Safe Space

- Express Thoughts and Feelings
- Space for Accountability, Not Judgment

*When responding or asking questions today, try saying, "Hi my name is ___ and I use ___ pronouns."



Table of Contents

The Why

Overview of Gender Identity

Overview of Pronouns

Introduction to Being an Ally



The Why

Generation	Percent of Workforce	Total of SOI Workforce (1/1/24)
Builders	00.30%	108
Boomers	20.90%	7,548
Gen X	35.10%	12,676
Millennials	33.80%	12,207
Gen Z	09.90%	3,575



The Why

Generation	Percent of Workforce	Total of SOI Workforce (1/1/24)	Percent LGBTQ+*	Est. LGBTQ+
Builders	00.30%	104	00.80%	1
Boomers	20.90%	6,350	02.60%	165
Gen X	35.10%	10,650	04.20%	447
Millennials	33.80%	10,268	10.50%	1,078
Gen Z	09.90%	3,016	17.00%	512
				~ 2,203

*Source: Gallup



The Why

- Increased Cultural Acceptance for LGBTQ+ People
- Increased, Positive Media Representation
 - Displayed Representation
 - Will & Grace (1998-2006)
 - Queer Eye (2003-2007)
 - The L Word (2004-2009)
 - Created a Sense of Normalcy
 - Atypical (2017-2021)
 - Brooklyn Nine-Nine (2013-2021)
 - Dear White People (2017-2021)
 - Schitt's Creek (2015-2020)
- More Likely to Interview LGBTQ+ People



History of Gender

- Third Gender in Ancient Civilizations
 - Mesopotamia – Third Gender
 - Greece – Gender Nonconformity
- Third Gender in Religion
 - Hinduism, Jainism, & Buddhism
- Modern Culture
 - **Mexico – Muxes:** Born male but identify and express themselves as women.
 - **South Asia – Hijaras:** A third gender that may encompass people who are born with multiple sex organs and/or transgender people.
 - **United States – Two-Spirited Indigenous People:** An identify that may include gender identities, sexual orientation, and gender variance.



Understanding Gender Identity

Sex

- Anatomy at Birth
 - Sex assigned at birth
 - Sex organs
 - Assigned Male at Birth (AMAB)
 - Assigned Female at Birth (AFAB)

Gender

- Person's Lived Experience
 - Gender Identity
 - Gender Expression
- Gender Identity
 - Internal Sense of Self
 - Alignment w/ Gender Norms
- Gender Expression
 - Physical Representation
 - Clothing / Hair / Makeup



Gender Identity – Common Terminology

- Cisgender – a way to describe a person when their sex and gender identity align.
 - Ex. Sean was assigned male at birth and identifies as a man.
- Gender Dysphoria – the feeling when someone's gender identity is in dissonance with their sex.
 - This may align with feelings that Transgender people experience.
 - This is not a required experience for Transgender people and is not limited to the Trans Community.
- Body Dysmorphia – the feeling when someone perceives there to be dissonance or flaws with their physical body.
 - This may align with feelings that Transgender people experience.
 - This is not a required experience for Transgender people and is not limited to the Trans Community.



Gender Identity – Common Terminology

- Gender Queer – a gender expression that can align with neither, both, or a combination of the binary genders.
- Gender Fluid – a gender expression that can align with neither, both, or a combination of the binary genders, as well as ebbs and flows.
- Non-Binary – a way to describe a person that does not identify within the categories of man or woman.
 - Ex. Though they were assigned male at birth, Sam Smith came out as non-binary in 2019 and uses they/them pronouns.





Understanding Pronouns - Personal Pronouns

- Used to Refer to People
 - Jordan is our Chief of Staff.
 - She has blonde hair.
 - Her office is in the corner of W161.
- Assumptions Around Pronouns
 - The candidate's name is Jordan.
 - He has a lot of experience in this field.
 - I am looking forward to his interview.
 - Jordan is here for the interview, and she has a nice blazer on.



Understanding Pronouns - Possible Impacts

- Using Correct Pronouns
 - Show of Respect
 - Inclusive Culture
- Not Using Correct Pronouns
 - Misgendering
 - Offensive and Inappropriate
 - Creates Unwelcoming Work Environment
 - **May constitute a violation of the State's Workplace Harassment Prevention Policy**



Gendered Pronouns

- Pronouns in reference to someone's gender
 - He / Him / His
 - She / Her / Hers
- Historically most common and "default"
- Gender Binary
 - Idea of man or woman / male or female
 - Either this or that, no others
- Gendered Pronouns ≠ Bad
- Mistakes ≠ Bad
- Intentionally Misgendering = Bad













Gender Neutral Pronouns

- Pronouns that do not reference gender
 - They / Them / Theirs
- Affirming for people outside the Gender Binary
 - She / Her / Hers & They / Them / Theirs
- Language is Socially Constructed

Gender Neutral Pronouns

Gender-neutral pronouns are not firmly established in any language, but in some, the following variants are becoming more and more recognized:

Relatively Common	 English they	 Swedish hen		
Gaining Traction	 French ille/iel	 German sier/xier	 Russian они (oni)	 Spanish elle
It's Complicated	 Italian	 Portuguese		
Only One Pronoun	 Indonesian dia	 Turkish o		



Neopronouns

- Turning any set of prefixes into a series of pronouns
- Different type of Gender-Neutral Pronouns
 - Beyond he / she / they
- Most Common for Transgender, Non-binary, & Gender Nonconforming People
- Common Examples:
 - Xe/xem/xyr
 - Ze/hir/hirs



Pronouns – A How to Guide

Subject: ___1___ laughed at the notion of a gender binary.

Object: They tried to convince ___2___ that gay people do not exist.

Possessive: ___3___ favorite color is green.

Possessive Pronoun: This pronoun card is ___4___.

Reflexive: ___1___ think(s) highly of ___5___.

1	2	3	4	5
(f)ae	(f)aer	(f)aer	(f)aers	(f)aerself
e/ey	em	eir	eirs	eirself
he	him	his	his	himself
per	per	pers	pers	perself
she	her	her	hers	herself
they	them	their	theirs	themself
ve	ver	vis	vis	verself
xe	xem	xyr	xyrs	xemself
ze/zie	hir	hir	hirs	hirself

Sharing & Using Pronouns

- Active Methods
 - Hi, my name is Sean and I use he/him pronouns. What about you?
 - Can you remind me what pronouns ___ uses?
 - Don't Assume Pronouns
- Passive Methods
 - Pronoun Stickers / Buttons
 - Email Signatures

Sharing & Using Pronouns

- Comfort Levels
 - Go w/ Your Comfort
 - Don't Shutdown Others
 - Respect Privacy / Confidential Information
 - Effort > Perfection
- What About Y'all
 - Thoughts?
 - Other methods?



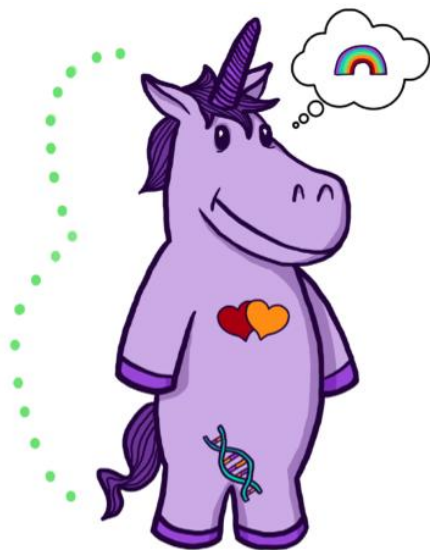
Mistakes

- Making Mistakes
 - Mistakes are Normal
 - Acknowledge and Move-On
 - Don't Make it About Yourself
- What to Say After Mistakes
 - Thank you for reminding me about her pronouns. She has been doing a great job with managing her workload lately.
 - That's right, thank you. They need to make sure to get the report to me by the end of the day.
 - My apologies, I didn't realize Sam used he/him pronouns. As I was saying, he did not respond to my email yet.



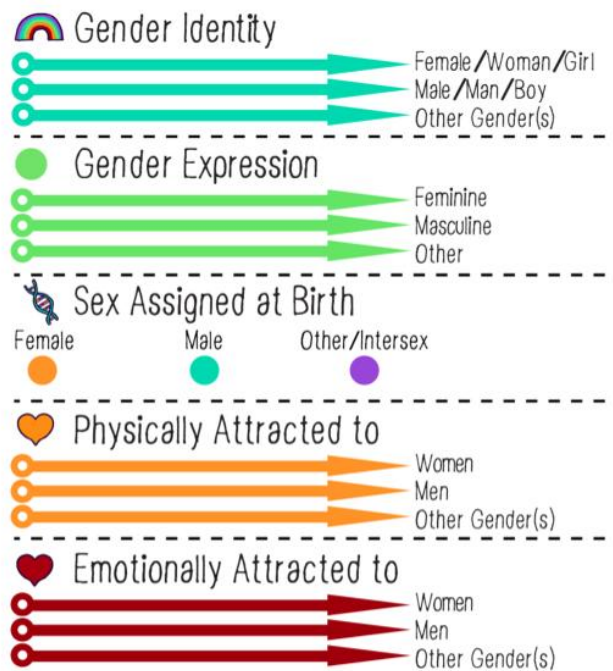
Things to Avoid

- Outdated, Offensive Terminology
 - *Lifestyle*
 - Previous ____
 - Dead Names
 - Pronouns
 - Gender
 - "He was a girl and then she transitioned and now her name is Tom."
 - Sex Change
 - Pre-Operation
 - Post-Operation
 - Tr*nny, She-Male, It, Etc.
 - Derogatory
 - Dehumanizing



To learn more, go to:
www.transstudent.org/gender

Design by Landyn Pan and Anna Moore



3.) Utilizing Equitable Hiring Toolkits

Utilizing Equitable Hiring Toolkits

Learning & Development Division and
Talent Acquisition Division



Indiana State
Personnel Department

Learning Objectives

Participants will be able to.....

- Identify what diverse recruiting is and why it is important.
- Identify the essential components of a hiring panel process.
- Understand the functionality of the Diverse Job Posting Toolkit and the Hiring Panel Toolkit.
- Implement the Equitable Hiring Toolkits for their team and / or their agencies.



Indiana State
Personnel Department

Creating an Effective Learning Environment

Engaging the Audience

- Challenge by Choice
- Ask Questions

Setting Guidelines for the Conversation

- Terminology Provided
- Parking Lot Other Content

Encouraging a Psychologically Safe Space

- Express Thoughts and Feelings
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INSPD's Diverse Job Posting Toolkit

What is Diverse Recruiting?

Diversity recruiting is the process of welcoming individuals from all backgrounds and identities into the applicant pool so that an employer can choose the best possible candidate from a cohort of talent that is representative of the available workforce.

Overall Goals:

- Provide equal access to all individuals no matter the identities they hold
- Create a culture of diverse perspectives to promote innovation
- Hire the best people for the jobs we have
- Aim to reduce bias in our hiring practices



A Quick Note

WE ARE NOT

- Aiming to fill a quota or “save seats” for people with specific identities
- Cutting corners on the necessary skills and experiences needed to complete these jobs

WE ARE

- Focusing on transferable skills that diverse professionals can bring to our agencies
- Leading by example and promoting innovation
- Sustaining an organization that is dedicated to equity, inclusion, and opportunity for all Hoosiers



Terminology

Equity	Creates fairness by providing people with individualized resources, treatment, and support to compensate for differences
Inclusion	The achievement of a culture in which all individuals are treated fairly and respectfully, have equal access to opportunities and resources, and can fully contribute
Opportunity	A favorable environment, occasion, or situation that makes it possible for an individual to do something that they want to do or must do
Diversity	The characteristics, experiences, and other distinctions that make one person different from another



Terminology

People of Color Professionals	Those who identify as any race other than white per the racial identities utilized by the US Census Bureau: Asian, Black, Hispanic or Latino, American Indian or Alaska Native, Native Hawaiian or Other Pacific Islander, or Two or More Races Protected by Title VII of the Civil Rights Act
LGBTQ Professionals	Those who identify as a part of the lesbian, gay, bisexual, transgender, queer or questioning community Protected by Title VII of the Civil Rights Act
Veteran Professionals	Those who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable Protected by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA)
Older Professionals	Those that are age 40 or older Protected by the Age Discrimination in Employment Act (ADEA)



Terminology

Women Professionals	Those who identify as female Protected by Title VII of the Civil Rights Act
Professionals with Disabilities	Those who have a physical or mental impairment that limits one or more major life activity Protected by the Americans with Disabilities Act (ADA)
Neurodiverse Professionals	Those whose patterns of behavior or thought are not "neurotypical" Examples of neurodiverse conditions include ADHD, Autism, Dyslexia, Tourette's syndrome, and more
Formerly Incarcerated Professionals	Those who were sentenced to a term of imprisonment, not including juvenile detention, after the disposition of one or more misdemeanor or felony charges and have completed their sentence.



Supplemental Information

Overview of how our approach in this toolkit is informed by best practices in
diverse recruiting strategies

Common
Mistakes

Integrating
Diverse
Recruiting
into Hiring
Process

Short- and
Long- Term
Efforts



Indiana State
Personnel Department

Moving Forward

Recruitment

- Acknowledge and navigate your bias
- Be cautious of language used in job postings
- Be intentional with recruiting time
- Expand your organizational partnerships
- Use advanced search features
- Build a strong referral network

Hiring

- Acknowledge and navigate your bias
- Build diverse interview panels
- Provide employees with formal DEI training
- Be mindful of metrics



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Personnel Department

Are These Mistakes Holding You Back?

- 1) **Failure to move from DEI policy to action**
Diversity recruiting does not stop at policy change
- 2) **Not knowing how to track your progress**
Track inclusive hiring practices more systematically
- 3) **Getting stuck in a cycle of inconsistent hiring practices**
Important to have a process in place
- 4) **Making a biased offer**
Candidates deserve to be compensated based on the value they bring
- 5) **Forgetting that we're talking about people**
Diversity without equity, inclusion, and belonging is a waste of time
- 6) **Underestimating your role as an employer**
Expand your view of the 'perfect' candidate



Practices Can't End There

Retention

- Fight microaggressions
- Offer learning and development opportunities
- Connect employees to mentors
- Targeted leadership development programs
- Create a succession plan

Culture

- Ensure leadership support
- Conduct inclusion audits
- Engage in diversity discussions
- Support employee resource groups
- Design accessible workplace
- Make employees feel appreciated and welcomed
- Take part in activities that benefit diversity and inclusion efforts



Current INSPD Initiatives

Affirmative
Action Plans

NextLevel
State Policies

Compensation
Equity
Analysis

Hiring Panels
to Reduce Bias

What are some initiatives you are seeing in your agencies?

What are some initiatives you'd like to see explored?



Job Posting Guidance

1. Complete the posting request form and submit it to your TA Consultant
2. TA Consultants will review requests to ensure all other recruitment resources have been exhausted
3. If purchasing an external job posting is in the best interest of the state and agency, you will receive approval
4. Submit a funds request for the job posting expense to your agency's finance or procurement department
5. You can now post your position to an external job board

To maintain the high level of quality associated with the Work for Indiana brand, all job postings on external sites, job boards, or sponsored job posts must first be reviewed by INSPD.



Toolkit Overview

Diverse Job Posting Resources

- Designed to give an overview of active and potential resources related to inclusive recruiting
- Scope, Identity Focus, Associated Fees, Timeframes

Diverse Job Posting Feedback Form

- Created to allow edits and new resources to be reviewed and added to the Diverse Job Posting Resources document
- We need your help to keep this resource growing



About Hiring Panels

Understanding the Benefits

- Minimize Unconscious Bias*
- *Can* Reduce Time to Hire
- Intent Behind Interviews
 - Skillset vs. Fit
- Candidates Receive a More Cross-Functional View
 - Multiple Perspectives for Questions
 - Highlights Collaboration
 - Demonstrates Collaborative Partners
 - More Connections for New Hires
 - Diversity in Answers

Understanding the Drawbacks

- Groups *can* Feel More Intimidating
- Follow-Ups *can* Be Harder to Ask
- Utilizes More People Resources

*Revisit Unconscious Bias Next



RE: Unconscious Bias

Affinity	"Like Me"
Age	Age-Based Expectations/Limitations
Appearance	Beauty/ Size
Attribution	Assign Values to Action
Authority	Prefer "Dominant" Thoughts
Confirmation	Seek Validation for Previous Thoughts
Gender	Gender-Based Expectation/Limitations
Halo/Horn Effect	Positive/Negative Interactions



About Hiring Panels

Hiring Panel Best Practices

- Train and Refresh Interviewers
- Identify Clear Criteria
 - Interview Questions
 - Selection Rubrics
- Create Structured Interview Guides
- Leverage Multiple Perspectives
 - Valuable for Several Reasons:
 - Cutting Unconscious Bias
 - Skilling Up Current Staff w/ Rationale
 - Skilling Up Current Staff w/ Experience
 - Hiring Justifications



About Hiring Panels

Avoiding Hiring Panel Pitfalls

- Interviewer Assumptions
 - People Know how to Interview
 - “Looking for a person with the right vibe.”
- Just “Winging-It”
 - No Selection Criteria
 - No Interview Questions
 - Asking the Wrong Questions
 - Prepping *Right* Before an Interview
- Using the Panel as a “Stress Test”



Terminology

Hiring Manager	<p>This person is the individual that will supervise the vacant position.</p> <p>The Hiring Manager is ultimately responsible for reviewing applicants and managing the process.</p>
Hiring Panel	<p>This is a group of individuals that will work together to review candidates, prepare interview questions, and facilitate the interviews.</p> <p>Hiring Panels should be sized appropriately and consist of a variety of staff, based on the type of vacancy being filled.</p>



Terminology

Rubric

A hiring rubric is a scoring tool that defines the expectations used to evaluate each candidate.

By using a hiring rubric, each person in a group discussion can participate equally in assessing candidates.

	Beginner (1)	Benchmark (2)	Benchmark (3)	Milestone (4)	Advanced (5)
COMPETENCY	Candidate experiments with this work. Their ability to learn new methods is doubtful.	Candidate participates in this work in a silo. Their ability to learn new methods is uncertain.	Candidate participates in this work at an appropriate level. Their ability to learn new methods is certain.	Candidate demonstrates the knowledge to do this work. Their ability to learn and be critical of new methods is apparent.	Candidate demonstrates an exceptional knowledge and ability to do this work. Their ability to learn, be critical of, and teach about new methods is apparent.



Hiring Panel Structures

Executive Level	Director Level	Management Level	Specialized Contributor Level	Individual Contributor Level
<ul style="list-style-type: none">• Highly Specialized• Require Organizational Buy-In• Lead the Organization	<ul style="list-style-type: none">• Highly Specialized• Require Divisional Buy-In• Lead the Functional Area	<ul style="list-style-type: none">• Relatively Specialized• Require Divisional Buy-In• Support the Functional Area	<ul style="list-style-type: none">• Relatively Specialized• Require Functional Buy-In• Support Specialized Area	<ul style="list-style-type: none">• Slightly Specialized• Require Hiring Manager Buy-In• Support Functional Area



Hiring Panel Structure Recommendations

Executive Level – highly specialized, require organizational buy-in, and lead their branch.

- Ex. C-Suite Executives, Deputy Directors, etc.

Director Level – highly specialized, require divisional buy-in, and lead their functional area.

- Ex. Department Directors, Division Directors, etc.

Management Level – specialized and serve as additional leadership within their area.

- Ex. Assistant Directors, _____ Managers, etc.



Hiring Panel Structure Recommendations

Specialized Individual Contributor Level – very specialized skillset and oftentimes do not supervise others.

- Ex. Program Directors, Specialized Roles, etc.

Individual Contributor Level – oftentimes more frequent support within their area.

- Ex. Administrative Assistants, Customer Service Representatives, Program Coordinators, etc.

One-Off Searching vs. Frequent Searching

- One-Off Searching: Executive to Specialized Contributor Levels
- Frequent Searching: Individual Contributor Level
 - Consider Establishing a Panel
 - Rotate Out Interviewers



Director Level Search Example

Search Level	Hiring Panel Count	Recommended Hiring Panel Cross-Functions	Example
Director of Communications	Four Members		Director of Communications
		Hiring Manager	Chief of Staff
		One or Two Supervisees	Assistant Director of Communications
		One or Two Divisional Partners	Director of External Affairs
		External Agency Partner	Ext. Assistant Director of Communications



Management Level Search

Search Level	Hiring Panel Count	Recommended Hiring Panel Cross-Functions	Example
Assistant Director of Policy	Three Members		Assistant Director of Policy
		Hiring Manager	Director of Policy
		One or Two Peers	Grants Manager
		One or Two Supervisees	Policy Analyst



Specialized Contributor Level Search

Search Level	Hiring Panel Count	Recommended Hiring Panel Cross-Functions	Example
Program Director for _____	Three Members		Program Director for _____
		Hiring Manager	Hiring Manager
		One or Two Peers	Program Director for _____
		One or Two Divisional Partners	Program Director for _____



Individual Contributor Level Search

Search Level	Hiring Panel Count	Recommended Hiring Panel Cross-Functions	Example
Individual Contributor: - Administrative Assistant - Customer Service Reps. - Program Coordinator	One or Two Members		Administrative Assistant
		Hiring Manager	Deputy Director of Operations
		One or Two Peers	Administrative Assistant
		One or Two Divisional Partners	Program Coordinator



Competency Based Interview Questions

- Library of Questions
- Serve as a *Starting Point*
- Enhance Questions to Best Fit Your Needs



Ex. Setting a Strategic Vision

- Q.1 Tell us about a time where your vision of the future was so inspiring that you were able to convert naysayers into followers.

We find that when working and communicating out data analytics, you oftentimes have the ability to persuade someone to make a decision. Tell us about a time you used data analytics to persuade a supervisor or organizational leader to make a specific decision.

- Q.2 Describe a time you established a vision for your department/unit. What process was used? Were others involved and, if so, how? How did the vision contribute to the functioning of the department/unit?

How do you use data to set strategic goals, analyze problems, propose solutions, and measure outcomes?



Interview Guide

Guiding Document

- Save Before Editing!
- Enhance to Best Fit Needs

Prompts the Following

- Structured Introduction
- Structured Interview Questions
 - Competency-Based
 - Simple Rubric for Scoring
- Structured Wrap-Up
 - Next Steps
 - Strengths / Areas of Growth
 - Scoring Tabulation



Indiana State
Personnel Department

Interview Guide

Job Title: Program Director 1

Structured Introduction:

- Name, Title, & Short Description of Your Role

Structured Interview Questions:

- Questions in Succession / Questions per Section
- Establishing Relationships, Critical Thinking, and Setting a Strategic Vision

Structured Wrap-Up:

- Interviews through Friday, January 20
- Second-Round Interviews with Division Director
 - Virtual & Over the next two weeks



Indiana State
Personnel Department

Things to Consider

Rubrics

- Use scores for guidance
 - Ex. Candidates with 16, 15, & 16
 - Ex. Candidates with 14, 15, & 20.

Development of Staff

- Rationale
- Experience

Timeliness

- Aim to meet metrics
- Organize in Advance:
 - Active Communication
 - Calendar Holds

Process

- Guidelines for Structure
- Flexible w/ Room for Creativity

D.) LinkedIn Learning Courses

The below courses were previously recommended. We are awaiting an updated content map from LinkedIn Learning that is in compliance with the Federal Government's Executive Orders, which align with the State of Indiana's EO RE: DEI Content.

a.) Confronting Bias: Thriving Across Our Differences

Find greater meaning, well-being, and productivity by learning how to interact with others across differences. Continue your journey and discover how to create inclusive environments where everyone can thrive. In this course, Arianna Huffington and Verna Myers discuss the impact of our cultural lens on our daily relations and how to counter bias in our words and actions.

Learning objectives

- Distinguish between diversity and inclusion.
- Determine the cause for why people say and do the wrong thing.
- Explain what happens when an individual processes unconscious bias.
- Interpret the types of unconscious bias.
- Determine the appropriate ways to respond when you say or do the wrong thing.

Skills covered

- [Unconscious Bias Awareness Training](#)
- [Diversity & Inclusion](#)
- [Allyship](#)

b.) Developing Cross Cultural Intelligence

Being able to work across cultures is an increasingly necessary skill for all employees. Communications expert Tatiana Kolovou helps you develop the cross-cultural intelligence to navigate cultural differences. She outlines the six primary areas of cultural difference, highlighting the differences between high- and low-context cultures. Once you can recognize the differences, she helps you use visual and nonvisual cues in the environment to inform your actions and respond effectively. The course closes by exploring a few real-world scenarios that demonstrate how to apply the principles of cross-cultural intelligence.

Learning objectives

- Review the differences between high and low context culture.
- Define individual culture.
- Explore the differences between a direct and an indirect communicator.
- Define a high status culture.
- Define risk as it relates to culture.
- Recall the scenario that best describes a monochronic workplace.

- Review the characteristics of a person with a internal locus of control.

Skills covered

- [Emotional Intelligence](#)
- [Cross-Cultural Communication Skills](#)

c.) Managing a Diverse Team

Team leaders should aim to create an inclusive culture that celebrates differences and fosters the best performance from every team member. In this course, leadership coach Vanessa Womack equips you with knowledge and impactful strategies that can help you successfully manage, counsel, and lead a diverse team. Vanessa first explains how to prepare yourself to lead by identifying cornerstones of diversity and reviewing diversity and inclusion terminology. She then shares strategies for observing and coaching your team to cultivate behaviors that build trust and strengthen relationships.

Learning objectives

- Define terms used in describing inclusivity and diversity.
- Explain how and why to maintain an open-door policy.
- Describe the components and function of a team agreement.
- Explain how a manager's style and behavior can influence team dynamics.
- Describe the importance of valuing diverse inputs and allowing freedom of expression.
- Explain how and why a manager should document actions and experiences.

Skills covered

- [Diversity & Inclusion](#)
- [Team Leadership](#)

APPENDIX 4: APPLICANT DIVERSITY STATEMENT OR DEI STATEMENT REQUIREMENT/PREFERENTIAL TREATMENT

A.) Competency-Based Interview Questions: Equity, Inclusion, and Opportunity Interview Questions

Understands the importance of creating systemic equity in the workplace, the necessary efforts to enhance inclusion, and the opportunities to support and encourage a diverse workforce.

Interview Questions

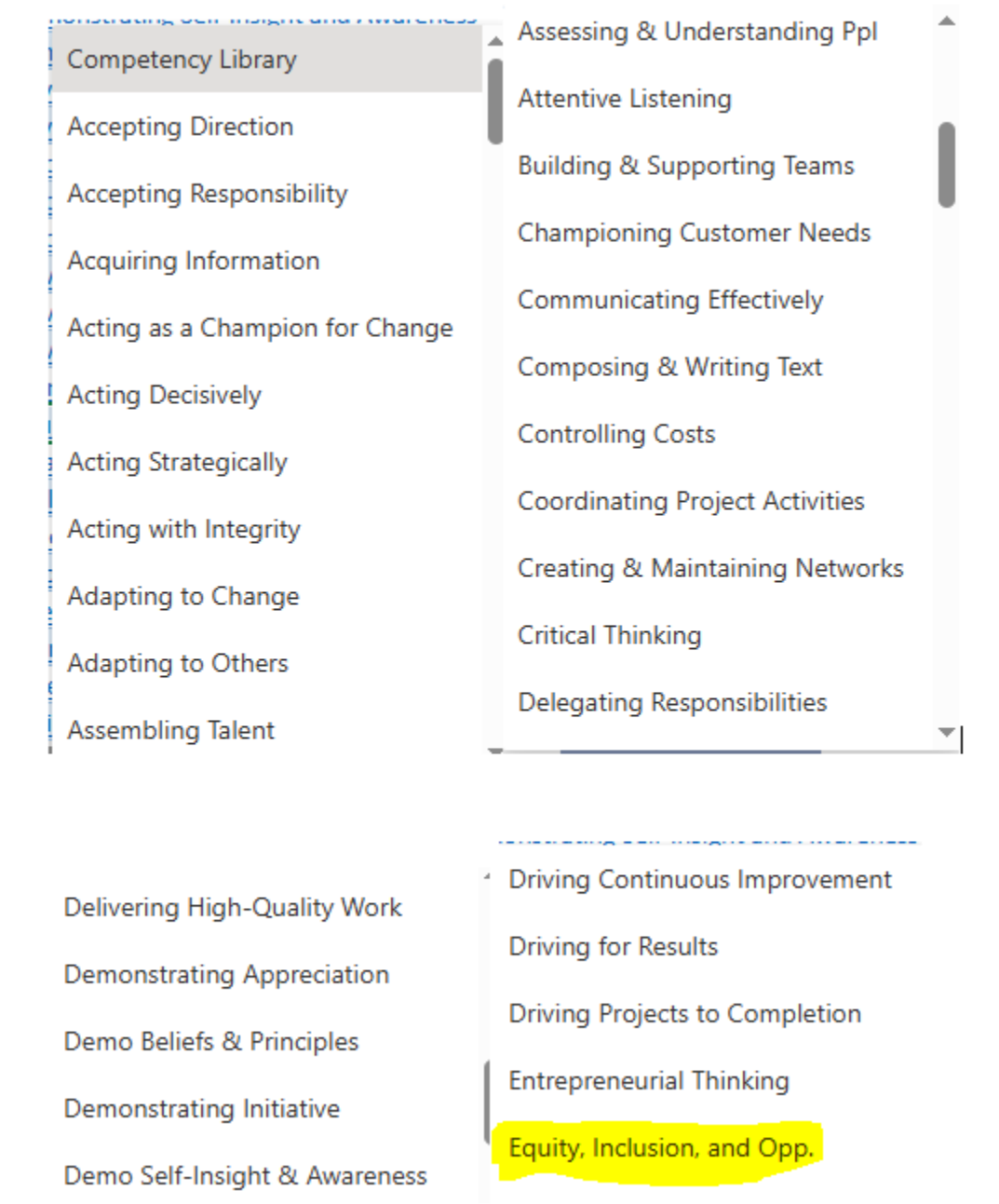
- 1) In your own words, how do you define [diversity, equity, inclusion, belonging, etc.]?
- 2) In a work setting, how do you articulate the importance of diversity, equity, and inclusion?
- 3) How do you balance DEI work on top of other organizational priorities, such as hiring, retention, employee engagement, etc.
- 4) What is the relevance of using data to support DEI work? When conducting research related to DEI, what are some key things to keep in mind?
- 5) Give us an examples of how you have helped to create an environment where differences are values, encouraged, and supported.
- 6) Tell us about a time where you needed to utilize conflict management skills to resolve a situation? Does your approach change or stay the same if the conflict is related to a person's identities (ex. Race, Gender Identity, etc.)?

Follow-Up Probing Questions

- 1) How do you deal with resistance when implementing a new idea or policy?
- 2) You explained to us the situation; tell us more about the action you took and the outcome.
- 3) What did you say at that point?
- 4) How did you react to that situation?
- 5) Tell me in detail what you did, the steps you took?
- 6) Tell me more about the result?
- 7) Tell me about the obstacles you faced in getting it done.
- 8) Please give me more details about...
- 9) Describe in sequence the steps you took to get to that point...
- 10) Please clarify what you mean by...
- 11) Did you consider other options at the time?
- 12) Why do you think you reacted as you did?
- 13) How do you think others felt about your actions at the time?
- 14) Talk to me about how you felt and others involved felt?

B.) Competency Library Screenshots before and after removal of Equity, Inclusion and Opp.

a.) Before



b.) After

Competency Library	Assessing & Understanding Ppl
Accepting Direction	Attentive Listening
Accepting Responsibility	Building & Supporting Teams
Acquiring Information	Championing Customer Needs
Acting as a Champion for Change	Communicating Effectively
Acting Decisively	Composing & Writing Text
Acting Strategically	Controlling Costs
Acting with Integrity	Coordinating Project Activities
Adapting to Change	Creating & Maintaining Networks
Adapting to Others	Critical Thinking
Assembling Talent	Delegating Responsibilities
Delivering High-Quality Work	Driving for Results
Demonstrating Appreciation	Driving Projects to Completion
Demo Beliefs & Principles	Entrepreneurial Thinking
Demonstrating Initiative	Establishing Relationships
Demo Self-Insight & Awareness	Evaluating & Implementing Ideas
	Following Beliefs & Procedures

APPENDIX 5: MISCELLANEOUS

A.) Pulse Survey Questions 2024

State of Indiana Pulse Survey Demographic Questions

The following questions allow us to learn more about you and ensure that we are creating a consistent, inclusive experience for all state employees. Each question requires a response that can be answered by selecting from one of the choices available, including "decline to answer."

We want to assure you that your responses to this survey are completely anonymous. Responses to this survey cannot be traced back to the respondent. No personally identifiable information is captured unless you voluntarily offer personal or contact information in any of the comment fields. **Additionally, your responses are combined with those of many others and summarized in a report to further protect your anonymity.**

1. I understand what is required to be successful in my role.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
2. I have access to the equipment and information needed to do my job well.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
3. My supervisor, or another leader, encourages my professional development.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
4. I feel a sense of belonging and inclusion at work.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
5. My supervisor, or someone at work, seems to care about me as a person.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
6. I receive meaningful recognition when I do good work.
 - a. Strongly agree
 - b. Agree

- c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
7. I work with some I consider a close friend.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
8. My peers are committed to continuous improvement.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
9. My work is meaningful and contributes to the goals of my agency.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
10. I have access to opportunities at work that allow me to learn and grow.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
11. I seek opportunities to improve my performance.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
12. Diverse identities and ways of thinking are valued in my workgroup.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
13. I receive timely feedback from my supervisor regarding my performance.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
14. I can maintain a healthy work-life balance in my current role.

- a. Strongly agree
- b. Agree
- c. Neither agree not disagree
- d. Disagree
- e. Strongly disagree

15. I see a career path forward for myself within this agency.

- a. Strongly agree
- b. Agree
- c. Neither agree not disagree
- d. Disagree
- e. Strongly disagree

16. I plan to leave the State of Indiana as an employer within the next year.

- a. Strongly agree
- b. Agree
- c. Neither agree not disagree
- d. Disagree
- e. Strongly disagree

17. My agency is moving forward in a positive direction.

- a. Strongly agree
- b. Agree
- c. Neither agree not disagree
- d. Disagree
- e. Strongly disagree

18. I would recommend the State of Indiana as a great place to work.

- a. Strongly agree
- b. Agree
- c. Neither agree not disagree
- d. Disagree
- e. Strongly disagree

19. Select which of the following employer and/or workplace characteristics are most important to you.

Please select all that apply.

- a. Benefits and Total Rewards (leave time, pension, insurance, etc.)
- b. Compensation
- c. Equity, Inclusion, and Opportunity (trainings, professional development, etc.)
- d. Flexible Work Arrangements (remote work, adjusted schedules, work life balance, etc.)
- e. Personal and Professional Development
- f. Recognition and Rewards (both individual and team)
- g. Purpose and Culture (agency's mission, leadership's values, etc.)
- h. Other (please specify): _____

20. Describe in two or three words what motivates you to work for the State of Indiana: _____

1. With which gender identity do you identify (select all that apply)?

- Gender Fluid/ Non-Conforming
- Man
- Non-Binary
- Woman
- Decline to Answer
- Additional Gender Identity: _____

2. Are you transgender?

- Yes
- No
- Decline to Answer

3. Which category describes you? [Branches Below]

- American Indian or Alaska Native
- Asian
- Black or African American
- Hispanic or Latino
- Native Hawaiian or Other Pacific Islander
- North African or Middle Eastern
- White or Caucasian
- Two or More Races
- Decline to Answer
- Additional Racial Category: _____

3.1. You selected the Asian Racial Category – if applicable with which sub-categories do you identify?

- Burmese
- Chinese
- Filipino
- Indian
- Japanese
- Korean
- Vietnamese
- Decline to Answer
- Additional Racial Category: _____

3.2. You selected the Hispanic or Latino Racial Category – if applicable with which sub-categories do you identify?

- Central American
- Cuban
- Mexican, Chicano
- Puerto Rican
- South American
- Decline to Answer
- Additional Racial Category: _____

3.3. You selected the Native Hawaiian or Other Pacific Islander Racial Category – if applicable with which sub-categories do you identify?

- Native Hawaiian
- Guamanian or Chamorro
- Samoan
- Decline to Answer
- Additional Ethnic Category: _____

3.4. You selected the Two or More Racial Category – with which racial categories do you identify (please select all that apply)?

- American Indian or Alaska Native
- Asian
- Black or African American
- Hispanic or Latino
- Native Hawaiian or Other Pacific Islander
- North African or Middle Eastern
- White or Caucasian
- Decline to Answer
- Additional Racial Category: _____

1. What is your employment status?

- Full-Time
- Part Time
- Intermittent / Seasonal
- Contract
- Decline to Answer

2. In which age category are you?

- 18-24
- 25-34
- 35-44
- 45-54
- 55-64
- 65+
- Decline to Answer

3. How many years have you worked for the State of Indiana?

- 0-2 Years
- 2-4 Years
- 4-6 Years
- 6-10 Years
- 10-20 Years
- 20+ Years
- Decline to Answer

4. What is your salary range?

- \$24,999 and Below
- \$25,000 – \$42,999
- \$43,000 – 54,999
- \$55,000 – \$69,999
- \$70,000 – \$84,999
- \$85,000 – \$99,999
- \$100,000 – \$114,999
- \$115,000 – \$129,999
- \$130,000 and Above
- Decline to Answer

5. What is your highest level of educational attainment?

- Less than High School
- High School Graduate
- GED or High School Equivalent
- Some College but No Degree
- Associate Degree
- Bachelor's Degree
- Master's Degree
- Professional Degree
- Doctoral Degree
- Decline to Answer

6. What is your sexual orientation?

- Asexual
- Bisexual
- Gay
- Heterosexual or Straight
- Lesbian
- Pansexual
- Queer
- Decline to Answer
- Additional Sexual Orientation Category: _____

7. What is your military status?

- Active
- Active Reserve
- Disabled Veteran
- Inactive
- Inactive Reserve
- Indiana Guard
- Retired
- Veteran
- Not Applicable
- Decline to Answer
- Additional Military/Veteran Category: _____

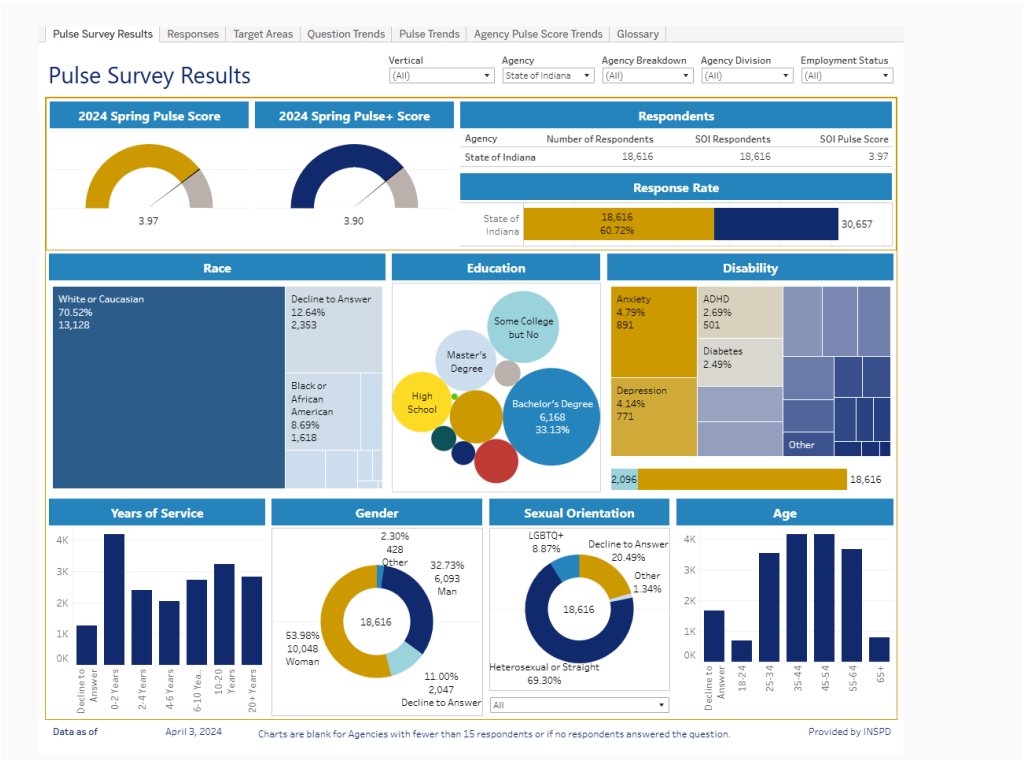
8. Do you have a disability? [Branches Below]

- Yes, I have a disability
- No, I do not have a disability
- Decline to Answer

8.1. With which of the following disability categories do you identify (please select all that apply)?

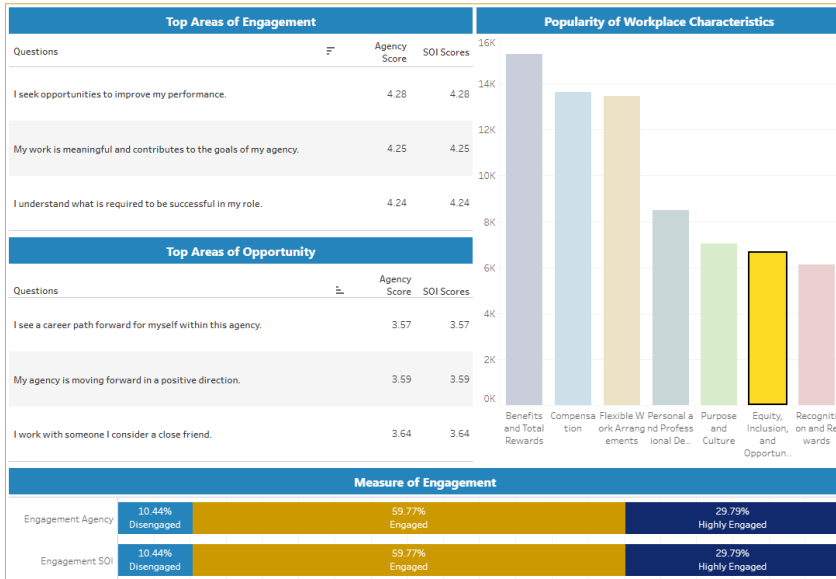
- Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder
- Anxiety
- Autoimmune Disease
- Bipolar
- Blind or Low Vision
- Autism Spectrum Disorder
- Chronic Illness
- Chronic Migraine
- Deaf or Hard of Hearing
- Depression
- Diabetes
- Epilepsy
- Intellectual or Developmental Disability
- Learning Disability
- Physical Impairment
- Post Traumatic Stress Disorder
- Speech or Language Impairment
- Traumatic Brain Injury
- Decline to Answer
- Additional Disability Category: _____

B.) Pulse Survey Dashboard 2024



Target Areas

Vertical (All) Agency State of Indiana Agency Breakdown (All) Agency Division (All) Employment Status (All)



Data as of April 3, 2024 Provided by INSPD

Glossary

For additional information related to this dashboard click this box to follow the link to SharePoint.

The Glossary contains definitions for all the terms used in this dashboard. Use the "Search Glossary" filter to find any terms, definitions, or examples that are related to this dashboard.

Search Glossary

Term	Definition	Example
Race	Self reported race from the survey: White, Black, Asian, Hispanic, American Indian, North African, Pacific Islander, Two or More, or a Self Report.	If someone did not identify as one of the given categories, they would type in their self identified racial category such as African American & Asian.
Response Rate	The comparison of the number of people who were asked to complete the survey and the number of people who completed the survey.	For the State of Indiana, 25,647 employees were asked to complete the survey and 14,171 employees did complete the survey for a response rate of 55%.
Top Areas of Engagement	The top three (or more) question scores for the agency (or peer group).	The three questions that have the highest scores for the State of Indiana are: I understand what is required to be successful in my role, I seek opportunities to improve my performance, & My work is meaningful and contributes to the goals of my agency.
Top Areas of Opportunity	The bottom three (or more) question scores for the agency (or peer group).	The three questions that have the lowest scores for the State of Indiana are: My peers are committed to continuous improvement, I receive meaningful recognition when I do good work, & I work with someone I consider a close friend.
Veteran Status	Self reported veteran status from the survey: Active, Active Reserve, Inactive, Retired, Not Applicable, Not Veteran, or Decline to Answer.	If someone is an Active Reserve Military they are counted as a Veteran.
Years of Service	Self reported years of service with the State of Indiana from the survey: 0-2 Years, 2-4 Years, 4-6 Years, 6-10 Years, 10-20 Years, 20+ Years, or Decline to Answer.	A majority of the employees for the State of Indiana that completed the Pulse Survey have 0-2 years of service.

Provided by INSPD

C.) Pulse Survey Drafted Questions 2025

1. I understand what is required to be successful in my role.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
2. I have access to the equipment and information needed to do my job well.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
3. My supervisor, or another leader, encourages my professional development.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
4. I feel a sense of belonging at work.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
5. My supervisor, or someone at work, seems to care about me as a person.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
6. I receive meaningful recognition when I do good work.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
7. I work with some I consider a close friend.
 - a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
8. My peers are committed to continuous improvement.

- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
9. My work is meaningful and contributes to the goals of my agency.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
10. I have access to opportunities at work that allow me to learn and grow.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
11. I seek opportunities to improve my performance.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
12. Different ways of thinking are valued in my workgroup.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
13. I receive timely feedback from my supervisor regarding my performance.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
14. I can maintain a healthy work-life balance in my current role.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree
 - e. Strongly disagree
15. I see a career path forward for myself within this agency.
- a. Strongly agree
 - b. Agree
 - c. Neither agree not disagree
 - d. Disagree

e. Strongly disagree

16. I plan to leave the State of Indiana as an employer within the next year.

a. Strongly agree

b. Agree

c. Neither agree nor disagree

d. Disagree

e. Strongly disagree

17. My agency is moving forward in a positive direction.

a. Strongly agree

b. Agree

c. Neither agree nor disagree

d. Disagree

e. Strongly disagree

18. I would recommend the State of Indiana as a great place to work.

a. Strongly agree

b. Agree

c. Neither agree nor disagree

d. Disagree

e. Strongly disagree

19. Select which of the following employer and/or workplace characteristics are most important to you.

Please select all that apply.

a. Benefits and Total Rewards (leave time, pension, insurance, etc.)

b. Compensation

c. Flexible Work Arrangements (remote work, adjusted schedules, work life balance, etc.)

d. Personal Development (Continuing Education, Community Service, etc.)

e. Professional Development (LinkedIn Learning, Seminars/ Conferences, Trainings, etc.)

f. Recognition and Rewards (both individual and team)

g. Purpose and Culture (agency's mission, leadership's values, etc.)

h. Other (please specify): _____

20. Describe in two or three words what motivates you to work for the State of Indiana: _____

21. What is your employment status?

a. Full-Time

b. Part-Time

c. Intermittent/ Seasonal

d. Contract

e. Decline to Answer

22. In which age category are you?

a. 18-24

b. 25-34

c. 35-44

d. 45-54

e. 55-64

f. 65+

g. Decline to Answer

23. How many years have you worked for the State of Indiana?

- a. 0-2 Years
- b. 2-4 Years
- c. 4-6 Years
- d. 6-10 Years
- e. 10-20 Years
- f. 20+ Years
- g. Decline to Answer

24. What is your salary range?

- a. \$24,999 and Below
- b. \$25,000 - \$42,999
- c. \$43,000 - \$54,999
- d. \$55,000 - \$69,000
- e. \$70,000 - \$84,999
- f. \$85,000 - \$99,999
- g. \$100,000 - \$114,999
- h. \$115,000 - \$129,999
- i. \$130,000 and Above
- j. Decline to Answer

25. What is your highest level of educational attainment?

- a. Less than High School
- b. High School Graduate
- c. GED or High School Equivalent
- d. Some College but No Degree
- e. Technical Trade School Certification
- f. Associate Degree
- g. Bachelor's Degree
- h. Master's Degree
- i. Professional Degree
- j. Doctoral Degree
- k. Decline to Answer

D.) State Employer Brand and Values

Current Value: Diversity

Join a team where your voice is welcomed, valued, respected, and heard. In the State of Indiana, we believe we find strength in diverse ideas, worldviews, and life experiences, so we're committed to building a team that embraces all individuals and their unique ideas.



New Value: Collaboration

Join a team where your voice is welcomed, valued, respected, and heard. The State of Indiana prioritizes innovation through a wide range of ideas and life experiences. We're committed to building a team that embraces all Hoosiers and encourages the exchange of ideas.

Homepage Values Banner



Why Work For Indiana? Page Value

Collaboration

Join a team where your voice is welcomed, valued, respected, and heard. The State of Indiana prioritizes innovation through a wide range of ideas and life experiences. We're committed to building a team that embraces all Hoosiers and encourages the exchange of ideas.



E.) Work For Indiana Page

- **Previous Header Language**

Old language:

Begin a fulfilling career with the State of Indiana by joining one of the largest employers in the state, offering a diverse range of opportunities across 60+ agencies. At the state, you'll find competitive compensation, a robust benefits package and a commitment to work-life balance. Most importantly, you'll have the chance to make a real and measurable impact on the lives of Hoosiers across Indiana.

At the State of Indiana, we don't just talk about diversity and inclusion—we make it our goal to create a welcoming, accessible, and equitable workplace with a workforce that is representative of Indiana's population. As a proud equal opportunity employer, reasonable accommodations may be available to enable individuals with disabilities to complete the application and interview process as well as perform the essential functions of a role.

- **Updated Header Language**

Begin a fulfilling career with the State of Indiana by joining one of the largest employers in the state, offering a range of opportunities across 60+ agencies. At the state, you'll find competitive compensation, a robust benefits package and a commitment to work-life balance. Most importantly, you'll have the chance to make a real and measurable impact on the lives of Hoosiers across Indiana.

- **Previous Footer Language**

The State of Indiana is an Equal Opportunity Employer and is committed to recruiting, selecting, developing, and promoting employees based on individual ability and job performance. Our policy is to provide equal employment opportunity to all people in all aspects of employer-employee relations without discrimination because of race, color, creed, religion, sex, national origin, ancestry, age, sexual orientation, gender identity, physical or mental disability, or veteran status. We will comply with the spirit as well as the letter of all applicable state and federal laws.

If you are a qualified individual with a disability and require reasonable accommodations to complete this application, you can request assistance by contacting the Indiana State Personnel Department at jobs@spd.IN.gov.

The State of Indiana has established a culture that welcomes equity, inclusion, and opportunity for all employees and applicants. We encourage you to apply if you feel you have the transferrable skills to be successful in this position and we look forward to reviewing your application.

- **Updated Footer Language**

The State of Indiana is an Equal Opportunity Employer and is committed to recruiting, selecting, developing, and promoting employees based on individual ability and job performance. Reasonable accommodations may be available to enable individuals with disabilities to complete the application and interview process as well as perform the essential functions of a role. If you require reasonable accommodations to complete this application, you can request assistance by contacting the Indiana State Personnel Department at jobs@spd.IN.gov.

F.) ActiveHealth Invest in Your Health

What sex were you assigned at birth? (optional)

- ☐ Male
- ☐ Female
- ☐ Don't know
- ☐ I'd prefer not to answer

What is your current gender identity? (optional)

Select all that apply. Reminder, all responses are kept confidential.

- ☐ Female
 - ☐ Male
 - ☐ Transgender Woman/Transgender Female
 - ☐ Transgender Man/Transgender Male
 - ☐ Something else (e.g. non-binary, genderqueer, gender-diverse, or gender fluid)
 - ☐ Don't know
 - ☐ I'd prefer to not answer
-

G.) Workforce Strategy & Performance

1.) Behaviorally Anchored Ratings Scale (BARS) Guide BEFORE

10. **Assembling Talent** - *Actively works to recruit, hire, and retain high performers; constantly looking for talent to add to the organization; creates a challenging and rewarding work environment; has a reputation as a great person to work.*

Rating	Possible Behavioral Examples
Successful	<ul style="list-style-type: none"> <input type="checkbox"/> Recognizes the importance of attracting and retaining high performing individuals; devotes resources to activities associated with recruiting, hiring, and retaining high performers <input type="checkbox"/> Provides staff with a challenging and rewarding work environment; holds a reputation as being a great person to work with <input type="checkbox"/> Constantly looks for talent to add to the organization; builds networks with people who can help him/her find high potential candidates; effectively recruits new members into the organization <input type="checkbox"/> Makes accurate hiring decisions; uses systematic tools and methods to evaluate and select employees; clearly defines job requirements and uses these to guide staffing decisions
Exceeds	<ul style="list-style-type: none"> <input type="checkbox"/> Attracts industry leaders into the organization to enhance learning; identifies and acquires industry leaders and upcoming stars <input type="checkbox"/> Builds complimentary teams with skill diversity and defined roles; creates teams who are memorable and innovative <input type="checkbox"/> Incorporates industry leading strategic hiring practices to make successful hires <input type="checkbox"/> Retains high performers and talent within the organization
Unsuccessful	<ul style="list-style-type: none"> <input type="checkbox"/> Demonstrates poor recruiting skills

29. **Developing Talent** – *Values the difference that each employee makes and connects their role to organizational and team success. Provides direction and guidance in team and collaborative settings. Provides timely guidance and feedback to help others strengthen specific knowledge and develop skill areas to accomplish tasks or solve problems.*

Rating	Possible Behavioral Examples
Successful	<ul style="list-style-type: none"> <input type="checkbox"/> Invests time and resources into building the capabilities of team members; ensures that the jobs of others contain a healthy mix of developmental activities; helps others define career goals and establish development plans to achieve them <input type="checkbox"/> Encourages others to fully realize their potential; supports the career goals of others and encourages them to move to the next level in their career; actively promotes the talents of others that helps them move to more advanced positions within the organization <input type="checkbox"/> Gives others constructive, developmental feedback and advice; provides others with resources and guidance to support their career development <input type="checkbox"/> Demonstrates interest in the career goals of others; creates opportunities for others to develop their capabilities and advance their careers <input type="checkbox"/> Creates space for colleagues to have difficult conversations in relation to values, mission, social identities, and/or organizational nuances while sometimes engaging
Exceeds	<ul style="list-style-type: none"> <input type="checkbox"/> Creates a feeling of inclusion as the efforts of all team members are integrated <input type="checkbox"/> Creates a highly motivating culture that inspires and engages team members to achieve their maximum performance; maximizes the diversity of the group by allowing individuals with different talents to take on different challenges that match their strengths

85. **Working with Diverse Populations** - Works well with people of diverse backgrounds, and is able to effectively leverage individual difference. Encourages **diversity** and mutual respect among team members and demonstrates compassion and sensitivity.

Rating	Possible Behavioral Examples
Successful	<ul style="list-style-type: none"> <input type="checkbox"/> Calls attention to comments, behaviors, or practices that may be perceived as unfair, biased, or critical toward people with certain backgrounds and cultural beliefs; revolts tolerance to practices that promote biases or stereotyping based on the appearance or culture of an individual <input type="checkbox"/> Shows sensitivity to cultural differences and beliefs; shows respect for the beliefs and traditions of others; avoids doing or saying things that might offend others <input type="checkbox"/> Encourages and promotes practices that support cultural diversity; reviews policies and practices to make sure they do not adversely impact people from different demographic or cultural groups

	different from their own
Exceeds	<ul style="list-style-type: none"> <input type="checkbox"/> Always considers diverse points of view when making decisions and taking action; always considers the impacts that actions will have on those from different cultural/ethnic backgrounds as well as those with disabilities and/or other special needs <input type="checkbox"/> Displays sensitivity to all issues relating to age, disability, race, sexual orientation, and gender by drawing attention to the attitudes of employees towards each other and the work environment and always striving to integrate the efforts of all team members that results in a created feeling of inclusion among individuals on their team <input type="checkbox"/> Consistently exceeds hiring and workplace diversity goals; seeks out high potential women, minority, or disabled employees within the organization and helps them make substantial contributions <input type="checkbox"/> Maximizes the diversity in the group by allowing individuals with different talents to take on different challenges; actively works to build new strengths in members of the team by providing individuals with encouragement, guidance, and resources
Unsuccessful	<ul style="list-style-type: none"> <input type="checkbox"/> Neglects to take the necessary or required steps to confront harassment in the workplace; demonstrates insensitivity to the different means of communication used by individuals from diverse backgrounds <input type="checkbox"/> Refrains from integrating the efforts of all team members that results in a created feeling of exclusion within certain individuals <input type="checkbox"/> Refrains from applying adequate effort to meet goals for hiring and managing diversity <input type="checkbox"/> Neglects to maintain consistency when approaching the development

10. **Assembling Talent** - *Actively works to recruit, hire, and retain high performers; constantly looking for talent to add to the organization; creates a challenging and rewarding work environment; has a reputation as a great person to work.*

Rating	Possible Behavioral Examples
Successful	<ul style="list-style-type: none"> <input type="checkbox"/> Recognizes the importance of attracting and retaining high performing individuals; devotes resources to activities associated with recruiting, hiring, and retaining high performers <input type="checkbox"/> Provides staff with a challenging and rewarding work environment; holds a reputation as being a great person to work with <input type="checkbox"/> Constantly looks for talent to add to the organization; builds networks with people who can help him/her find high potential candidates; effectively recruits new members into the organization <input type="checkbox"/> Makes accurate hiring decisions; uses systematic tools and methods to evaluate and select employees; clearly defines job requirements and uses these to guide staffing decisions
Exceeds	<ul style="list-style-type: none"> <input type="checkbox"/> Attracts industry leaders into the organization to enhance learning; identifies and acquires industry leaders and upcoming stars <input type="checkbox"/> Builds complimentary teams with skill diversity and defined roles; creates teams who are memorable and innovative <input type="checkbox"/> Incorporates industry leading strategic hiring practices to make successful hires <input type="checkbox"/> Retains high performers and talent within the organization
Unsuccessful	<ul style="list-style-type: none"> <input type="checkbox"/> Demonstrates poor recruiting skills

	while sometimes engaging
Exceeds	<ul style="list-style-type: none"> <input type="checkbox"/> Creates a feeling of inclusion as the efforts of all team members are integrated <input type="checkbox"/> Creates a highly motivating culture that inspires and engages team members to achieve their maximum performance; maximizes the diversity of the group by allowing individuals with different talents to take on different challenges that match their strengths

2.) Behaviorally Anchored Ratings Scale (BARS) Guide AFTER

New Language:

Developing Talent – *Invests time and resources into building the capabilities of team members; helps team members define career goals and establish development plans to achieve them; engages in regular, structured check-ins to provide timely guidance and feedback.*

Rating	Possible Behavioral Examples
Successful	<ul style="list-style-type: none">❑ Encourages others to fully realize their potential; supports the career goals of others and encourages them to move to the next level in their career❑ Actively promotes the talents of others and helps them move to more advanced roles within the organization❑ Gives constructive feedback and advice to improve or strengthen skills; provides resources and guidance to support their career development❑ Demonstrates interest in the career goals of others; creates opportunities for others to develop their capabilities and advance their careers❑ Helps team members strengthen skills, make achievements, and overcome obstacles in their development journey.

a. Before



The Indiana State Personnel Department's (INSPD) Talent Management Strategy is to equitably attract, engage, and retain diverse talent throughout the employee lifecycle.

Talent management is a system of tools and best practices managers can use to **engage staff and directly influence their productivity and retention**. It helps to define the employee's engagement experience – or the relationship that should exist between the employee and their organization. Managers who use the talent management system timely and effectively have more meaningful relationships with staff and see a direct correlation with improved business results.

The Employee Lifecycle is defined by six milestones the employee experiences with the agency, manager, and team.

Candidate & Employee Engagement Experience



State of Indiana Manager Engagement Experience

At each milestone in the lifecycle, we seek to accomplish the following objectives:

1. Attract: Attract high-quality, diverse talent
2. Hire: Select and hire qualified talent
3. Onboard: Train and acclimate staff
4. Perform: Consistently hold staff accountable for successful outcomes and identify high performing staff
5. Develop: Develop staff skillset capabilities and career advancement readiness
6. Offboard: Transfer job duties and knowledge to existing or new staff

b. **After**



The Indiana State Personnel Department's (INSPD) Talent Management Strategy is to attract, engage, develop, and retain a skilled and innovative workforce.

Talent management is a system of tools and best practices managers can use to *engage staff and directly influence their productivity and retention*. It helps to define the employee's engagement experience – or the relationship that should exist between the employee and their organization. Managers who use the talent management system timely and effectively have more meaningful relationships with staff and see a direct correlation with improved business results.

The Employee Lifecycle is defined by six milestones the employee experiences with the agency, manager, and team.

Candidate & Employee Engagement Experience



State of Indiana Manager Engagement Experience

At each milestone in the lifecycle, we seek to accomplish the following objectives:

1. Attract: Attract high-quality, skilled talent
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3. Onboard: Train and acclimate staff
4. Perform: Consistently hold staff accountable for successful outcomes and identify high-performing staff
5. Develop: Develop staff skillset capabilities and career advancement readiness
6. Offboard: Transfer job duties and knowledge to existing or new staff

Indiana State Board of Accounts

This section outlines the Indiana State Board of Accounts' internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The State Board of Accounts did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The State Board of Accounts did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The State Board of Accounts does not have a mission or value statement including DEI.

Programs Administered to the Public

The State Board of Accounts does not have any public programs relating to DEI.

Grant Conditions

The State Board of Accounts does not have any DEI grant conditions.

Training/Instruction Administered to the Employees

Prior to March 11, 2025, SBOA's Personnel Manual contained a section entitled, "Affirmative Action / Equal Employment Opportunity" which referenced the State Personnel Department's (SDP) Affirmative Action Policy. This section was removed from SBOA's Personnel Manual on March 11, 2025. The removed language stated:

"It is the policy of the State Board of Accounts to be fair and equitable in all its relations with its employees and applicants for employment without regard to race, color, creed, religion, sex, national origin, ancestry, age, sexual orientation or gender identity, physical or mental disability, or veteran status. This policy is applicable to the policies governing recruitment, placement, selection, promotion, training, transfer, rates of pay, and all other terms and conditions of employment. Compliance with this policy — and all SPD and SBOA policies — is the personal responsibility of each employee. For additional information, see State Personnel standardized policies at Affirmative Action."

Public Access Counselor

This section outlines the Indiana Public Access Counselor's internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The PAC did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The PAC does not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The PAC does not have a DEI mission or value statement.

Programs Administered to the Public

The PAC did not administer any DEI programs to the public.

Grant Conditions

The PAC does not require any DEI grant conditions

Training/Instruction Administered to the Employees

The PAC did not participate in any DEI trainings for employees

Job Applicant Requirements

The PAC did not maintain any DEI job applicant requirements.

Job Applicant Requirements

The State Board of Accounts does not have any DEI job applicant requirements.

Office of Management and Budget

This section outlines the Indiana Office of Management and Budget's internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Office did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Office does not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The Office does not have a DEI mission or value statement.

Programs Administered to the Public

The Office did not administer any DEI programs to the public.

Grant Conditions

The Office does not require any DEI grant conditions

Training/Instruction Administered to the Employees

The Office did not participate in any DEI trainings for employees

Job Applicant Requirements

The Office did not maintain any DEI job applicant requirements.

Office of the Inspector General

This section outlines the Indiana Inspector General's Office's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Office of the Inspector General did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Office of the Inspector General did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

- The Office of the Inspector General does not have a mission or value statement including DEI.

Programs Administered to the Public

- The Office of the Inspector General does not have any public programs related to DEI.

Grant Conditions

- The Office of the Inspector General does not have any grant conditions relating to DEI.

Training/Instruction Administered to the Employees

- The Office of the Inspector General has one instance of a DEI Resources Page.

Job Applicant Requirements

- The Office of the Inspector General does not have any DEI job applicant requirements.

Management Performance Hub (MPH)

This section outlines the MPH's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

MPH did not have a department dedicated to DEI initiatives.

DEI Staff Positions

MPH did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

MPH did not have any DEI principles in its Mission Statement or Values Statement.

Programs Administered to the Public

MPH did maintain an Equity Data Portal initiated under the previous administration.ⁱ This dashboard was taken down upon the issuance of EO 25-14.

Grant Conditions

MPH doesn't administer any grant programs.

Training/Instruction Administered to the Employees

MPH did not administer any DEI programming, training, or instruction to its employees.

Job Applicant Requirements

MPH had no DEI requirements for job applicants.

ⁱ <https://www.wfyi.org/news/articles/holcomb-unveils-equity-and-inclusion-data-dashboard>

Indiana Office of Technology

This section outlines the Indiana Office of Technology's internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

IOT did not have a department dedicated to DEI initiatives.

DEI Staff Positions

IOT does not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

IOT does not have a DEI mission or value statement.

Programs Administered to the Public

IOT did not administer any DEI programs to the public.

Grant Conditions

IOT does not require any DEI grant conditions

Training/Instruction Administered to the Employees

IOT did not participate in any DEI trainings for employees

Job Applicant Requirements

IOT did not maintain any DEI job applicant requirements.

Indiana State Employees' Appeal Commission

This section outlines the Indiana State Employees' Appeal Commission's internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Commission did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Commission does not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The Commission does not have a DEI mission or value statement.

Programs Administered to the Public

The Commission did not administer any DEI programs to the public.

Grant Conditions

The Commission does not require any DEI grant conditions

Training/Instruction Administered to the Employees

The Commission did not participate in any DEI trainings for employees

Job Applicant Requirements

The Commission did not maintain any DEI job applicant requirements.

Indiana Public Retirement System

This section outlines the Indiana Public Retirement System's internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

INPRS did not have a department dedicated to DEI initiatives.

DEI Staff Positions

INPRS does not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

INPRS does not have a DEI mission or value statement.

Programs Administered to the Public

INPRS did not administer any DEI programs to the public.

Grant Conditions

INPRS does not require any DEI grant conditions

Training/Instruction Administered to the Employees

INPRS did not participate in any DEI trainings for employees

Job Applicant Requirements

INPRS did not maintain any DEI job applicant requirements.

Indiana Ethics Commission

This section outlines the Indiana Ethics Commission's internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The IEC did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The IEC does not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The IEC does not have a DEI mission or value statement.

Programs Administered to the Public

The IEC did not administer any DEI programs to the public.

Grant Conditions

The IEC does not require any DEI grant conditions

Training/Instruction Administered to the Employees

The IEC did not participate in any DEI trainings for employees

Job Applicant Requirements

The IEC did not maintain any DEI job applicant requirements.

Indiana Board of Tax Review

This section outlines the Indiana Board of Tax Review's internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Board did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Board does not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The Board does not have a DEI mission or value statement.

Programs Administered to the Public

The Board did not administer any DEI programs to the public.

Grant Conditions

The Board does not require any DEI grant conditions

Training/Instruction Administered to the Employees

The Board did not participate in any DEI trainings for employees

Job Applicant Requirements

The Board did not maintain any DEI job applicant requirements.

Distressed Unit Appeals Board

This section outlines the Distressed Unit Appeal Board's ("Board") internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Board did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Board did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The Board did not have a DEI mission or value statement.

Programs Administered to the Public

The Board did not administer any DEI programs to the public.

Grant Conditions

The Board did not require any DEI grant conditions

Training/Instruction Administered to the Employees

The Board did not participate in any DEI trainings for employees

Job Applicant Requirements

The Board did not maintain any DEI job applicant requirements.

Department of Local Government Finance

This section outlines the Indiana Department of Local Government Finance's ("Department") internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Department did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Department did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The Department did not have a DEI mission or value statement.

Programs Administered to the Public

The Department did not administer any DEI programs to the public.

Grant Conditions

The Department did not require any DEI grant conditions

Training/Instruction Administered to the Employees

The Department did not participate in any DEI trainings for employees

Job Applicant Requirements

The department did not maintain any DEI job applicant requirements.

Archives and Records Administration

This section outlines the Indiana Archives and Records Administration' internal review of DEI positions, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Department did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Department did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The Department did not have a DEI mission or value statement.

Programs Administered to the Public

The Department removed a blog post found to include DEI. The blog post was written by a former employee. The post discussed ways to describe a historical record in a catalog where the original title of the record might have antiquated language to describe people. That blog post has been taken down. In practice, the archivists use the original title of the records to describe them in the catalog.

Grant Conditions

The Department did not require any DEI grant conditions

Training/Instruction Administered to the Employees

- The Department has an internal policy document called "IARA Standards of Conduct" first developed in 2020. Much of the document was adapted from a DCS "Code of Conduct" document <https://www.in.gov/dcs/files/Code-of-Conduct-Archived-12-31-19.pdf> . IARA reports seldom referring to the "Standards of Conduct" except for on-boarding. We have edited the IARA document and deleted the "Diversity and Non-Discrimination" section of the document.
- The Governor's Office additionally found three uses of the phrase "Affirmative Action" on IARA's webpages. However, the use of the term was not in relation to any IARA

training/instruction (or programs). The use of the term was in reference to affirmative action documents created at other agencies in accordance with IC 4-15-12-5 and 29 CFR 1602.30, and how the documents should be maintained or disposed of in accordance with those statutes. Of the three uses of “Affirmative Action” on IARA’s website, two were in relation to the titles of records series on retention and disposition schedules, and one was a hyperlink to the retention schedule for SPD’s Affirmative Action department. IARA can remove these instances if SPD agrees to the changes, or if federal or state statutes change eliminating these requirements.

- The Governor’s Office identified a reference to the “Cultural Emergency Response Team” in an IARA handbook for Indiana county and local government records managers. However, the Cultural Emergency Response Team has nothing to do with DEI. It is also not an IARA program. It is a program offered by the American Institute for Conservation, where they operate a hotline and can consult during fires, floods or other emergencies where records (or other historic artifacts) are threatened or need rescuing.

Job Applicant Requirements

The department did not maintain any DEI job applicant requirements.

State Budget Agency

This section outlines the Indiana State Budget Agency's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

SBA does not have department dedicated to DEI initiatives.

DEI Staff Positions

SBA does not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

- SBA's Guiding Principles includes "inclusiveness - Leveraging diversity by seeking and embracing different perspectives and constructive feedback with humility, respect, and intellectual honesty.". SBA will work on updating its guiding principles to remove this reference and comply with EO 25-14.ⁱ

Programs Administered to the Public

- SBA does not have any programs with DEI.

Grant Conditions

- SBA does not have any grant conditions with DEI.

Training/Instruction Administered to the Employees

- SBA does not have any training or instruction for employees with DEI.

Job Applicant Requirements

- SBA does not have any job applicant requirements with DEI.

ⁱ See Item 1 – PDF of language from SBA's website.

<https://www.in.gov/sba/about-us/Mission,-Vision,-and-Guiding-Principles/>

The Indiana State Budget Agency's Guiding Principles:

- **Inclusiveness** - Leveraging diversity by seeking and embracing different perspectives and constructive feedback with humility, respect, and intellectual honesty.

Office of Administrative Law Proceedings

This section outlines the Indiana Office of Administrative Law Proceedings' internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Office did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Office did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

- The Office did not have a mission or value statement including DEI.

Programs Administered to the Public

- The Office does not have any public programs for DEI.

Grant Conditions

- The Office does not have any grant conditions for DEI.

Training/Instruction Administered to the Employees

- In 2020, OALP required ALJs to complete a training titled "Unconscious Bias" which addressed unconscious bias, diversity, and inclusion. Remedial Action: The training materials have been archived.ⁱ
- OALP had saved training materials from a 2020 training by the National Judicial College titled "Implicit Bias." ALJs were given the option to attend. Remedial Action: This item has been archived.ⁱⁱ
- In 2022, OALP required ALJs to attend training courses in partnership with Illinois. The first was "Debiasing Strategies for ALJs", which included Karrah Herring (CEIOO), and addressed strategies for an ALJ to de-bias their thoughts for fair legal decisions. The second session was titled "Plain Legal Language: What it is and why it matters," which noted that clear writing can be unfair when "Created without a lens of cultural humility

or inclusivity.” ALJs were not disciplined if they could not/did not attend. These trainings were not recorded and only the Plain Language materials were kept. Remedial Action: All training materials have now been archived.ⁱⁱⁱ

- OALP’s 2024 Employee Handbook included a Non-Discrimination and Inclusivity section supporting an inclusive workplace. Remedial Action: The language is edited to align with federal requirements.^{iv} Another section “Open Door Policy” supported voicing concerns. Remedial Action: This section was deleted in its entirety.^v
- In 2024, OALP had required employees to complete two trainings titled “DEI Discussion Part 2 (NJO) 2024” and “C&T Orientation: DEI & Cultural Competency.” These recordings are housed on the Indiana Judicial Branch Education Network learning portal. There is no contract with the Judiciary. Remedial Action: This requirement has been rescinded.

Job Applicant Requirements

- The Office does not have any job applicant requirements for DEI.

ⁱ See Item 5

ⁱⁱ See Item 6

ⁱⁱⁱ See Item 8

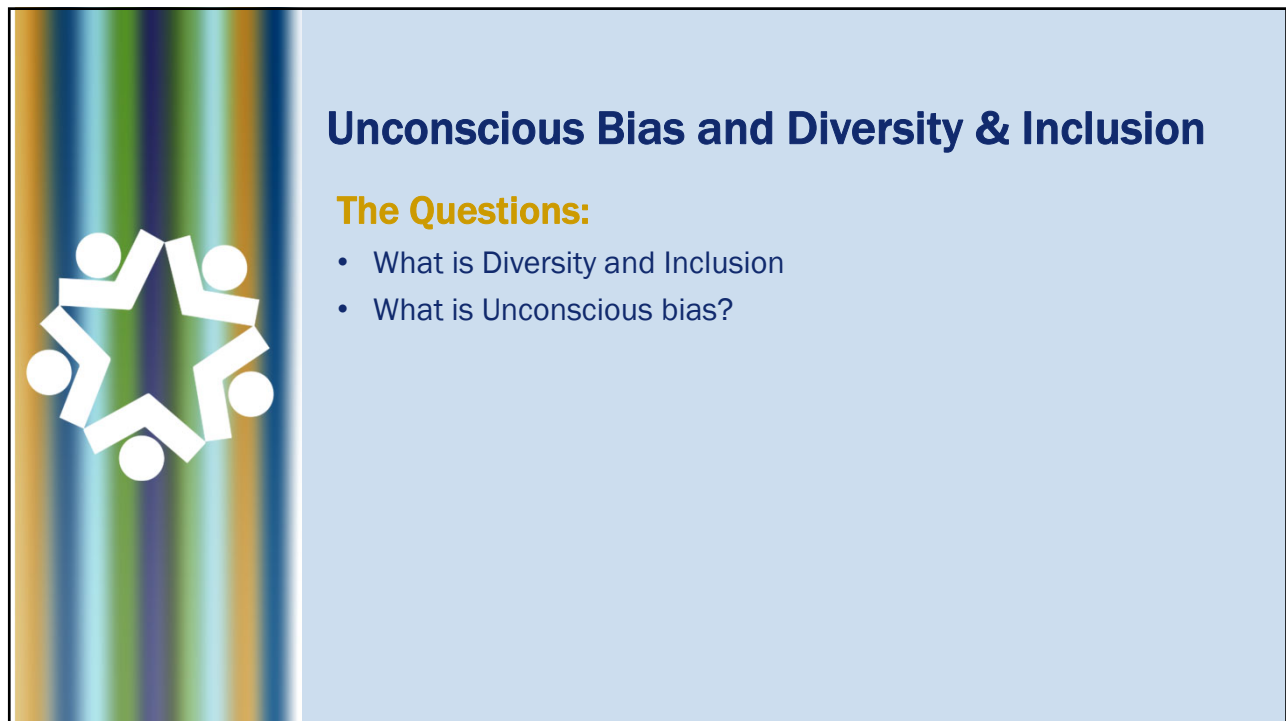
^{iv} See Item 1

^v See Item 2

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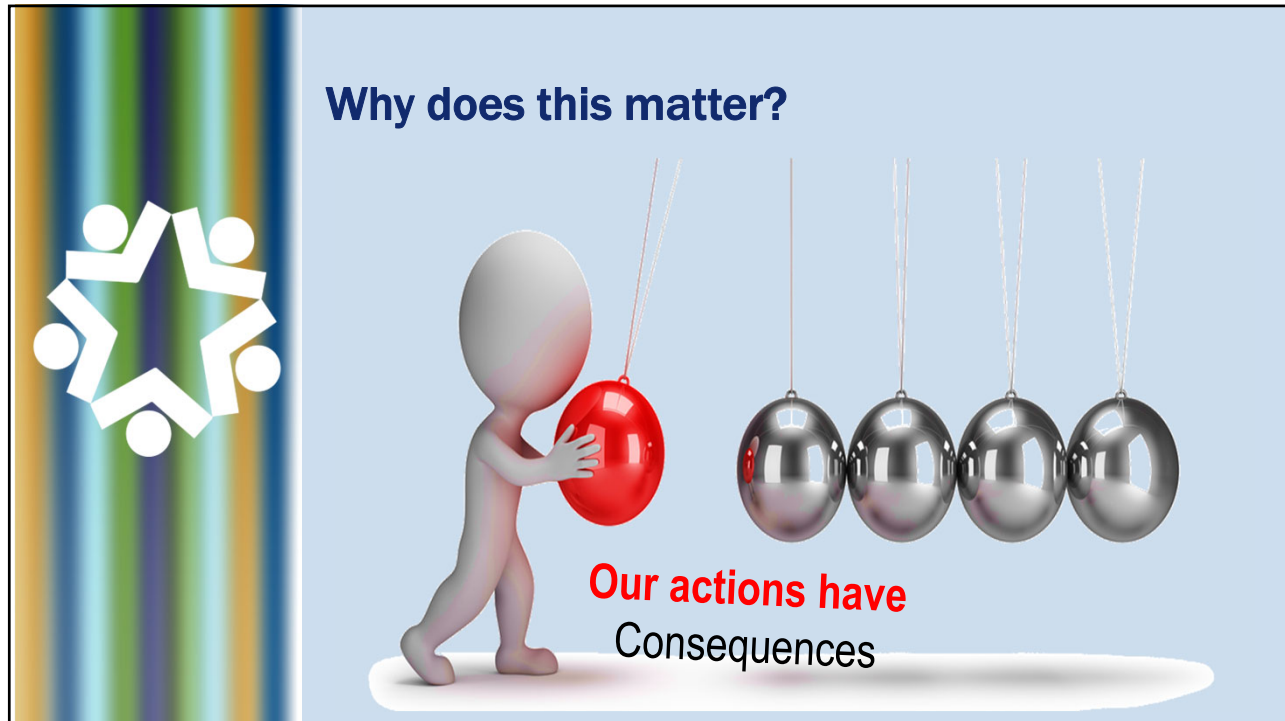


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2

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3



4


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The Business Case for Diversity

“Diversity brings many advantages to an organization: **increased profitability** and **creativity**, **stronger governance** and **better problem-solving** abilities. Employees with diverse backgrounds bring to bear their own **perspectives, ideas** and **experiences**, helping to create organizations that are **resilient** and **effective**, and which **outperform organizations that do not invest in diversity**.”

<https://www.weforum.org/agenda/2019/04/business-case-for-diversity-in-the-workplace/>



5




The Business Case for Diversity & Inclusion

Why People Leave

- Feeling devalued & marginalized
- A better opportunity (financially, environmentally, culturally etc.)
- Lack of diversity (there's no one here that looks like me)
- Poor management
- Stalled advancement/promotion
- Exhaustion due to assimilation/survival mechanisms

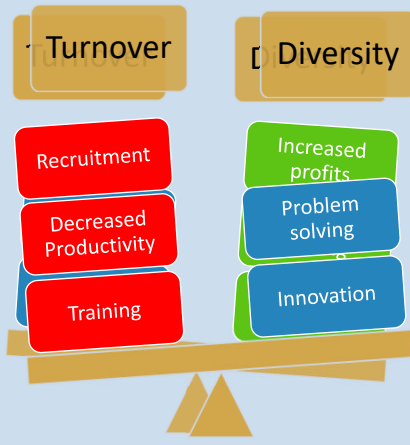
6

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The Business Case for Diversity & Inclusion


1. The benefit of diversity is meant to outweigh the cost of turnover



Without inclusion, diversifying is purely transactional and can lead to high turnover

<https://www.ere.net/diversitys-revolving-door-with-2x-the-turnover-a-diversity-retention-program-is-needed/>

7



Culture

Culture - is a way of life for a group of people—the behaviors, beliefs, values, and symbols that they accept, generally without thinking about them, and that are passed along by communication and imitation from one generation to the next. Culture is symbolic communication.

Cultural lens – shapes the way we see the world, the people in it and the actions they take


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Unconscious Bias and Culture

9



Unconscious Bias and Culture

There is a biker gang from Arizona who help keep child abuse victims safe while the child's abuser is prosecuted, including guarding their houses at night if person is not yet in jail and attending court with the child, shielding them so they don't have to look at their abuser.

Thank you Bikers Against Child Abuse International, you guys are totally awesome! #respect

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Work Culture

Work culture – culture and personality of the organization


Why it matters:

- Attracts talent
- Drives engagement and retention
- Impacts happiness and satisfaction
- Affects performance

What impacts Work Culture:

- Leadership
- Workplace practices
- People
- Mission/values/vision
- Communication

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Action Steps for Combatting Unconscious Bias


1. [Explore your biases to uncover those that may have gone undetected.](#)
2. Acknowledge your biases and stereotypes in real time.
 - A. Label
 - B. Evaluate
 - C. Combat
3. Imagine what it would feel like to be quickly labeled or judged inaccurately
 - A. Consider
4. Become intentional about what you say, the way you think, act or react based on your biases.

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Explore Your Biases




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Action Steps for Combatting Unconscious Bias

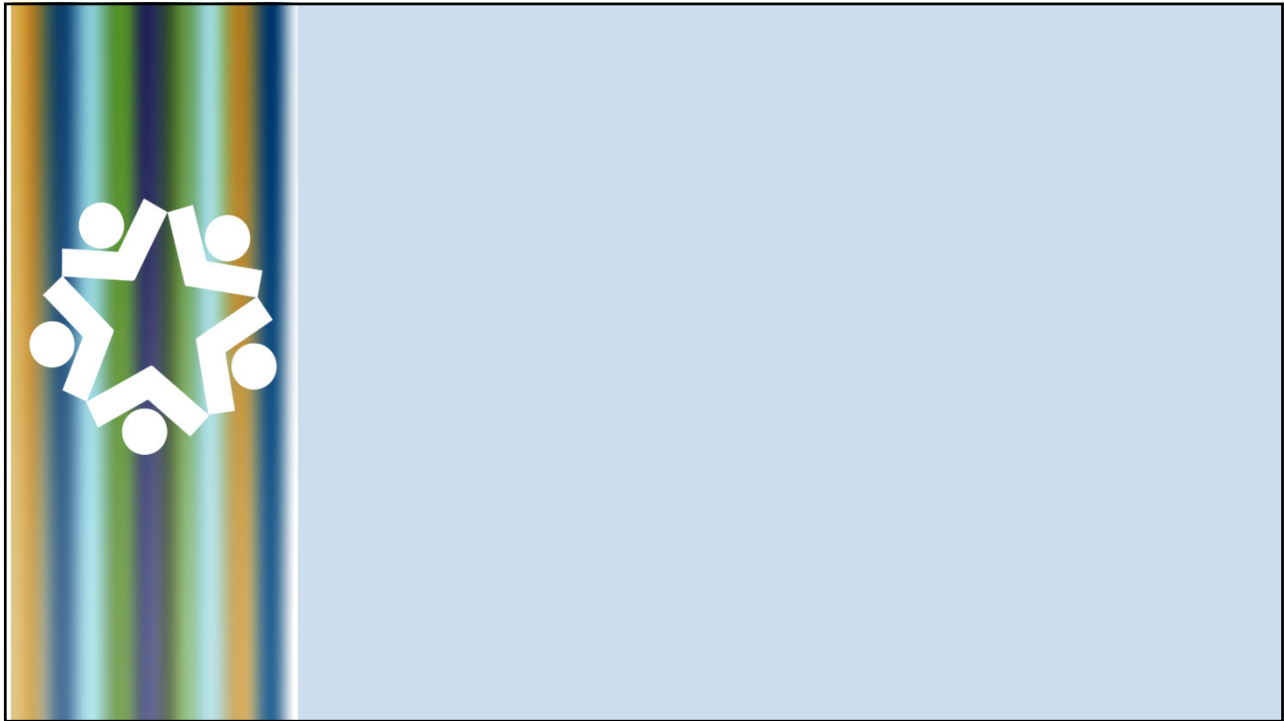
1. Explore your biases to uncover those that may have gone undetected.
2. Acknowledge your biases and stereotypes in real time
 - a. Label
 - b. Evaluate
 - c. Combat
3. Imagine what it would feel like to be quickly labeled or judged inaccurately
 - a. ConsiderBecome intentional about what you say, the way you think, act or react based on your biases.

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Microaggressions

Definition: “A microaggression is a slight snub or insult that communicates hostile, derogatory or negative messages.”

- “You don’t act like a normal black person.”
- “What are you?”
- No, WHERE are you from?”
- “You’re so articulate!”
- “What she’s trying to say is...”
- “Is that your natural hair?”
- “You look really nice, Today.”
- “I don’t see color, I’m color blind.”

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Be Intentional

1. Checking in with ourselves
2. Engaging ourselves and others in the reprogramming process on a consistent basis
3. Reflecting on our actions and making corrections
4. Considering the weight of our words and actions
5. Stepping in to correct others
6. Use your platform

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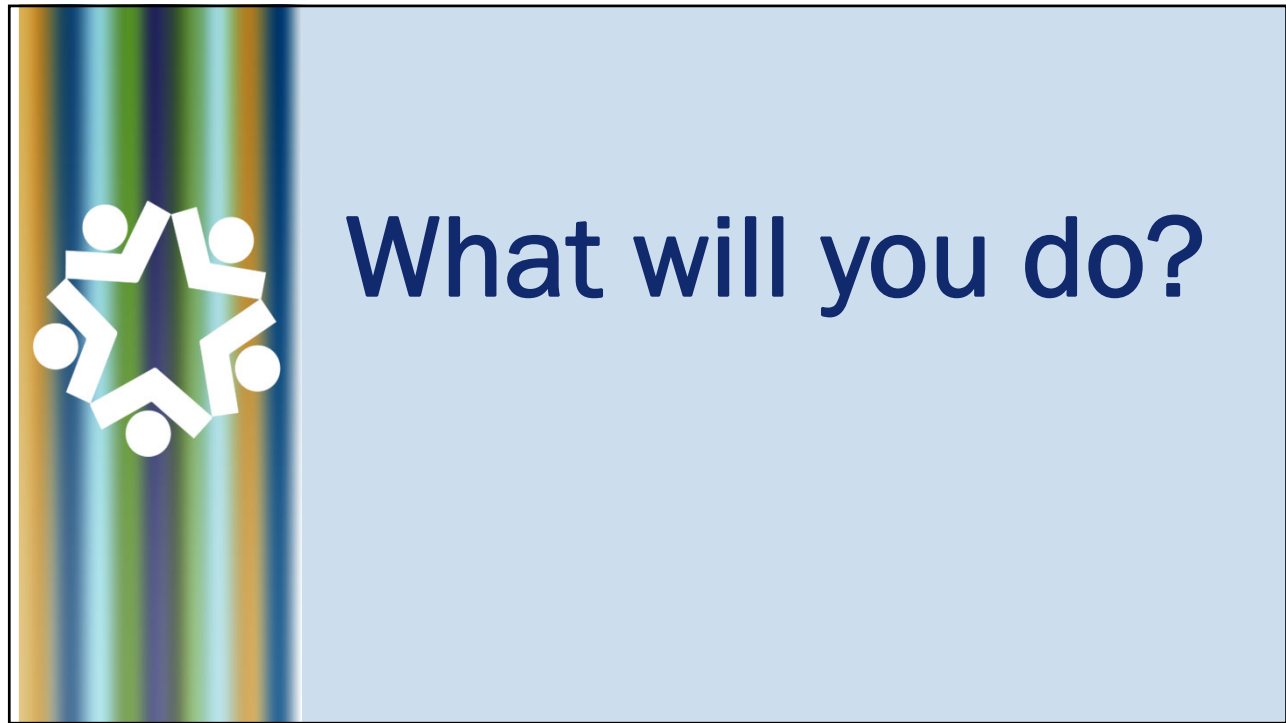


Leverage Our Privilege



KORY WILSON
@korywilson

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Mirror, Mirror on the Wall, Who's the Least Biased of Us All?

As our Nation grapples with the principles of diversity, equity, and inclusion, there has never been a more opportune time to take an honest look at the implicit biases we each have undoubtedly inherited. Despite our efforts, systemic racism and discrimination continue to plague our legal and justice systems. Our constitutional and ethical commitment to both equal justice and the perception of justice requires lawyers and judges to engage in thoughtful re-examination of our institutions and the people who run them – ourselves.

Please join a diversity strategist, appellate lawyers and judges for an introspective and frank talk on how implicit bias, identity anxiety, and stereotype threat affect members of the bar and the judiciary, including at the appellate level, and how we can improve the public's trust and confidence in our systems. Explicit bias and racism are easily discernable. But how do we identify and work to remedy unconscious bias in ourselves and others that if undetected affects our decision making process in our work and daily lives? How can we counter the identity anxieties and stereotypes that influence our behavior, create unintended consequences, and perpetuate racism? Most importantly, what are some concrete steps we can take together to ensure that our judicial system does indeed provide justice and equality for all?

The appellate bird's-eye view is outdated; these times and future generations compel us to take a closer look in the mirror. This virtual program has been intentionally designed to encourage self and collective reflection on where we are, how we got here, and how we can move to a better place.

Moderator: Justice Luz Elena Chapa of the Texas Fourth Court of Appeals, San Antonio, TX

Speakers:

Chief Judge Roger L. Gregory of the United States Court of Appeals for the Fourth Circuit, Richmond, VA

Gerald H. Goldstein, Esq. of Goldstein & Orr, San Antonio, TX

Yolonda P. Harrison, Esq., Deputy Director of Programs and Assessment, Perception Institute, New York, NY

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Learning Objectives

This program is designed to help attendees (whether judges, staff attorneys, practitioners, or academics) to become more aware of and address bias in the appellate system and the identity anxiety and stereotype threat in their personal lives, in both themselves and those around them. Attendees will learn:

- how to identify implicit bias and related emotions and behavior;
- how to recognize, accept, and bridge differences among people;
- how to evaluate the fairness and appearance of fairness in our thoughts, communications, conduct, and decisions;
- how to disrupt implicit bias, identity anxiety, and stereotype threat in ourselves and others through specific recommended interventions; and
- how to work both individually and collaboratively to promote systemic change in the appellate bar and courts.

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Rachel D. Godsil, Co-Founder and Co-Director, Perception Institute

Rachel Godsil is Co-Founder and Co-Director of Perception Institute and a Professor of Law and Chancellor's Scholar at Rutgers Law School. She collaborates with social scientists on empirical research to identify the efficacy of interventions to address implicit bias, racial anxiety, and stereotype threat. She regularly leads workshops and presentations addressing the role of bias and anxiety associated with race, ethnicity, religion, and gender, focusing on education, criminal justice, health care, and the workplace.

Godsil is a lead author of Perception Institute reports, including [The Science of Equality in Education: The Impact of Implicit Bias, Racial Anxiety, and Stereotype Threat on Student Outcomes](#) (2018), [The "Good Hair" Study: Explicit and Implicit Attitudes Toward Black Women's Hair](#) (2017), and [The Science of Equality, Volume 2: The Effects of Gender Roles, Implicit Bias, and Stereotype Threat on the Lives of Women and Girls](#) (2016). With Perception, she has collaborated with other organizations to produce influential reports, such as a research review with Story At Scale entitled [What Are We Up Against? An Intersectional Examination of Stereotypes Associated with Gender?](#) (2020), a toolkit with the Executives' Alliance, [His Story: Shifting Narratives of Boys and Men of Color](#) (2018), and a volume of the PopJustice initiative, [Pop Culture, Perceptions, and Social Change: A Research Review](#) (2016). Rachel has also co/authored numerous articles and book chapters such as: [Promoting Fairness? Examining the Efficacy of Implicit Bias Training in the Criminal Justice System](#) (*Bias in the Law*, 2020), [Prosecuting Fairly: Addressing the Challenges of Implicit Bias, Racial Anxiety, and Stereotype Threat](#) (CDAAC Prosecutor's Brief, Vol. 40, No. 2, 2018), [The Moral Ecology of Policing: A Mind Science Approach to Race and Policing in the United States in The Routledge Handbook of Criminal Justice Ethics](#) (*The Routledge Handbook of Criminal Justice Ethics*, 2016); [Why Race Matters in Physics Class](#) (64 U.C.L.A. L. Rev. Disc. 40, 2016); [Race, Ethnicity, and Place Identity: Implicit Bias and Competing Belief Systems](#) (37 Hawaii L. Rev. 313, 2015), [Implicit Bias in the Courtroom](#), (59 U.C.L.A. L. Rev. 1184, 2012), and [A Tale of Two Neighborhoods: Implicit Bias in Environmental Decision-Making, in Implicit Racial Bias in the Law](#) (Cambridge University Press, 2011). She also co-authored amicus briefs on behalf of empirical social psychologists in both iterations of *Fisher v. Texas* and the National Parent Teacher Association in the *Parents Involved in Community Schools v. Seattle School District* litigation at the Supreme Court.

Rachel is on the advisory boards for [Research, Integration, Strategies, and Evaluation \(RISE\) for Boys and Men of Color](#) at the University of Pennsylvania's Center for the Study of Race and Equity in Education, The [Systemic Justice Project](#) at Harvard Law School, and the [Poverty and Race Research Action Council](#). Her teaching and research interests include civil rights, constitutional law, property, land use, environmental justice, and education.

Her recent property work focuses on gentrification, the mortgage crisis and eminent domain, as well as the intersection of race, poverty, and land use decisions. Rachel served as Chair of the New York City Rent Guidelines Board in 2014 and 2015. After serving as the convener for the Obama campaign's Urban and Metropolitan Policy Committee and an advisor to the Department

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of Housing and Urban Development transition team, Rachel co-directed a report to HUD Secretary Shaun Donovan entitled “[Retooling HUD for a Catalytic Federal Government.](#)”

During law school, Rachel served as the Executive Article Editor of the Michigan Law Review, was awarded the Henry M. Bates Memorial Award, and elected to the Order of the Coif. After graduation, she clerked for John M. Walker of the Second Circuit Court of Appeals. Rachel was an Assistant United States Attorney for the Southern District of New York. She was an Associate Counsel at the NAACP Legal Defense and Educational Fund, focusing on environmental justice, as well as an associate with Berle, Kass & Case and Arnold & Porter in New York City.

Previously, Rachel was Eleanor Bontecou Professor of Law at Seton Hall University Law School. She joined the School of Law in 2000 and was recognized for her teaching by being nominated for Professor of the Year in 2011, 2002 and 2003. In 2003-2004, she was awarded the Researcher of the Year in Law by Seton Hall University. During fall of 2007, Professor Godsil was a Visiting Professor at the University of Pennsylvania Law School and she taught property at New York University Law School in spring 2009. Rachel resides with her family in Brooklyn, NY.

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ROGER L. GREGORY, Chief Judge of the United States Court of Appeals for the Fourth Circuit, formerly a partner in the law firm of Wilder & Gregory, grew up in Petersburg, Virginia and graduated from Virginia State College and the University of Michigan Law School. He is the first African-American to sit on the United States Court of Appeals for the Fourth Circuit, which includes the states of Maryland, West Virginia, Virginia, North Carolina and South Carolina. President William J. Clinton recess appointed him to the Court on December 27, 2000, and President George W. Bush commissioned his lifetime appointment to the Court in July 2001. Judge Gregory is the only person in the history of the United States to be appointed to a federal appellate court by two presidents of different political parties. Judge Gregory became Chief Judge on July 9, 2016. He is a member of the Judicial Conference of the United States that governs the Federal Judiciary.

Judge Gregory's past leadership positions include Rector of Virginia Commonwealth University, and President of the Old Dominion Bar Association.

Judge Gregory presently serves as Trustee Emeritus for the University of Richmond.

Judge Gregory's numerous awards include the National Conference of Christians and Jews Humanitarian Award, the National Bar Association's Gertrude E. Rush and Equal Justice Awards, the Washington Bar Association's Charles Hamilton Houston Merit Medallion, the Old Dominion Bar Association's L. Douglas Wilder Vanguard Award, the Thurgood Marshall College Fund Award of Excellence, and the University of Richmond School of Law's William Green Award for Professional Excellence.

Judge Gregory is an inductee in the Virginia Interscholastic Heritage Association's Hall of Fame, a Fellow of the Virginia State Bar Foundation, and a member of the American Law Institute. He holds honorary degrees from Virginia Union University, Virginia State University, Virginia Commonwealth University, Widener University, Saint Paul's College, and The American University.



Justice Luz Elena D. Chapa

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**Court of Appeals
State of Texas Fourth Judicial District**

Justice Luz Elena D. Chapa was elected to serve on the Fourth Court of Appeals effective January 1, 2013, and upon her election, she was the youngest serving Hispanic justice in the State of Texas. Prior to her election, Justice Chapa practiced on both sides of the civil docket in counties across Texas, with a concentration in products liability litigation.

Justice Chapa was raised in El Paso, Texas and pursued her secondary education in San Antonio at St. Mary's University, where she received both her Bachelor of Arts in English and her Juris Doctor. Between college and law school, she headed to Capitol Hill, where she interned for US Congressman Lloyd Doggett and worked for the late US Congressman Frank Tejeda. During law school, Justice Chapa interned for Chief Justice (Ret.) Alma L. López, and upon graduating, Justice Chapa began her legal career in El Paso, working with the law firm Oaxaca, Bernal & Associates. She later moved to Corpus Christi in 2001, where she joined the law firm Hartline, Dacus, Barger & Dreyer, LLP before returning to San Antonio in 2005, where she joined forces with her husband and fellow lawyer, Miguel Chapa. Justice Chapa has been married to Miguel for eighteen years, and they have three children.

Justice Chapa is a Texas Bar Foundation Life Fellow, a San Antonio Bar Foundation Fellow, a 2014 Inductee to the San Antonio Women's Hall of Fame and is a member of numerous organizations. In addition to her personal and professional responsibilities to her family and the Fourth Court, Justice Chapa devotes her time to mentoring students at Healy Murphy Center, where she served as Vice President of the board 2012-2018, currently serving on the boards of the American Bar Association, Judicial Division, Appellate Judges Education Institute (AJEI), and Clarity Child Guidance Center. She previously served on the boards of the St. Mary's Law Alumni Association, St. Mary's Hispanic Law Alumni Association, and The Children's Ballet of San Antonio. She is a proud member of National Charity League-Alamo Chapter, IMPACT San Antonio and is an official advocate for 1in5Minds – a campaign launched by Clarity to bring more awareness to the community about children's mental health needs and to lessen the stigma associated with mental illness.

Justice Chapa currently serves on the Diversity, Equity and Inclusion Task Force for Saint Mary's Hall in San Antonio.

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EDUCATION

- St. Mary's University, B.A.
- St. Mary's University School of Law, J.D.

LICENSED AND ADMITTED

- State of Texas
- United States District Court for the Southern District of Texas
- United States District Court for the Western District of Texas

WORK HISTORY

- Fourth Court of Appeals; 2013-present; Justice
- Chapa Law Group, P.C.; San Antonio; 2010-2012; Attorney
- Chapa & Nevarez, P.C.; San Antonio; 2005-2010; Attorney
- Hartline, Dacus, Barger, Dreyer & Kern, L.L.P.; Corpus Christi; 2002-2005; Attorney
- Barger, Hermansen, McKibben & Villarreal, L.L.P.; Corpus Christi; 2001-2002; Attorney
- Oaxaca, Bernal & Associates; El Paso; 2000-2001; Attorney
- Lyons & Rhodes, P.C.; San Antonio; 1998-1999; Law Clerk
- Law Offices of Frank Herrera, Jr.; San Antonio; 1997-1998; Law Clerk
- Chief Justice (Ret.) Alma L. López, Fourth Court of Appeals; San Antonio; 1997; Intern
- The Center for Legal and Social Justice; San Antonio; 1997; Law Clerk
- Congressman Frank Tejeda; Washington, D.C.; 1995-1996; Legislative Correspondent
- Congressman Lloyd Doggett; Washington, D.C.; 1995, Intern
- Cauthorn, Hale, Hornberger, Sheehan, Fuller & Becker; San Antonio; 1995; Intern

ORGANIZATIONS

- American Bar Association, Member
- State Bar of Texas, Member
- Texas Bar Foundation, Fellow
- San Antonio Bar Association, Member
- San Antonio Bar Foundation, Fellow
- American Inns of Court, Member
- St. Mary's University Alumni Association, Member
- St. Mary's University School of Law Alumni Association, Member
- Bexar County Women's Bar Association, Member
- Mexican American Bar Association-San Antonio, Member
- San Antonio Women's Hall of Fame, Member
- IMPACT SA, Member
- National Charity League-Alamo Chapter, Member
- San Antonio Women's Chamber of Commerce, Former Member
- League of Women Voters-San Antonio, Member
- Bexar County Democratic Women, Member

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- San Antonio Zoo, Member
- Witte Museum, Member
- Southwest School of Art, Member
- El Paso Bar Association, Former Member
- El Paso Young Lawyers Association, Former Member
- Mexican American Bar Association-El Paso, Former Member
- Texas Women Lawyers, Former Member, Board of Directors & Treasurer
- Corpus Christi Bar Association, Former Member
- Corpus Christi Young Lawyers Association, Former Member
- Coastal Bend Women Lawyers Association, Former Member

AWARDS, BOARD SERVICE & COMMUNITY ENGAGEMENT

- State Bar of Texas-Hispanic Issues Section, Judge of the Year Award, 2018
- Mexican American Bar Association-San Antonio, Community Leadership Award, 2015
- San Antonio Women's Hall of Fame, 2014 Inductee
- American Bar Association, Judicial Division, Appellate Judges Education Institute (AJEI), Board of Director (2019-present)
- Clarity Child Guidance Center, Board Member (2016-present)
- 1in5Minds for Clarity Child Guidance Center, Official Advocate (2013-present)
- Guardian House, Chairman of the Board (2016-2018); (Board Vice President, 2013-2015)
- Healy Murphy Center, Board Vice President and Mentor (2012-2018)
- St. Mary's University Law Alumni Association, Board Member (2013-2018), Treasurer (2017-2018)
- The Children's Ballet of San Antonio, Board Member (2015-2017)
- St. Anthony's de Padua Catholic Church, Parishioner
- Holy Trinity Catholic Church, Former Parishioner & Faith Formation Teacher (2013-2014)
- Saint Mary's Hall, Parents' Association Board (2009-2012), Family Connections Chair (2011- 2012) and Volunteer (2008-present)
- Clarity Child Guidance Center, Gala Co-Chair (2019)
- The Guardian House Luncheon, Chair (2015, 2016, 2017, 2018)
- Southwest School of Art, Gala Committee Member, (2011, 2015, 2017)
- Rey Feo Scholarship Fund, Campaign for Walter Serna, Friends of the Court & Committee Member

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**GERALD HARRIS GOLDSTEIN
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PRACTICE: State and Federal Trial and Appellate.
BORN: Santa Maria, California, January 29, 1944
PREPARATORY EDUCATION: Tulane University (B.B.A., 1965)
LEGAL EDUCATION: University of Texas (LL.B., 1968)
BAR ADMISSIONS: Texas (1968), Colorado (1989); U.S. Supreme Court (1975); U.S. District Court's for the Western District of Texas (1970); Southern District of Texas (2000); Northern District of Texas (2002); Eastern District of Texas; U.S. Court of Appeals for the Fourth (1982), Fifth (1970), Eighth (1983), Ninth (1979), Tenth (1983) and Eleventh (1981) Circuits

Board Certified, Criminal Law, State Bar of Texas, 1975
Board Certified, Criminal Appellate Law, 2012

TEACHING POSITIONS:

Adjunct Professor of Law, University of Texas School of Law, Austin, Texas (1982 to 1993);
Adjunct Professor of Law at St. Mary's University School of Law, San Antonio, Texas (1998-present);
Lecturer, State Bar of Texas, Advanced Criminal Law Course (1975 to present); State Bar of Texas, National Association of Criminal Defense Lawyers and Texas Criminal Defense Lawyers Association – Texas State Bar Criminal Law Institutes (1974 to present); Texas Center for The Judiciary, 2012 Winter Regional Conferences, San Antonio, Texas.

ORGANIZATIONS:

Past President, National Association of Criminal Defense Lawyers Association (1994-1995);
Past President, Texas Criminal Defense Lawyers Association (1992-1993);
Fellow of the International Academy of Trial Lawyers [1997 to present];
Fellow of the American College of Trial Lawyers [1991 to present];
Fellow of the American Board of Criminal Lawyers [1987 to present];
Fellow, State Bar Foundation [1976 to present];
American Board of Trial Advocates [1997 to present];
Dean's Round Table, University of Texas School of Law [1989 to present];
General Counsel for the Texas Civil Liberties Union (1979-1985);
San Antonio Bar Association, Board of Directors [1977-1978];
Faculty, National Criminal Defense College [1975 to 1995];
American Bar Association [1968 to present];
Texas Trial Lawyers Association

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AWARDS:

Recipient of Outstanding 50-Year Lawyer, Texas Bar Foundation (2019)

Recipient of the Robert C. Heeney Memorial Award [Outstanding Criminal Defense Attorney in the United States from the National Association of Criminal Defense Lawyers for 1991];

Recipient of the Outstanding Criminal Defense Lawyer in Texas from the State Bar of Texas for 1991;

"Texas Legal Legends", State Bar of Texas, Litigation Council, November, 2011;

Texas Lawyer Legal Legends, 100 Best Lawyers over last century (100 Year Anniversary of State Bar of Texas) [2000];

Justice Albert Tate, Jr. Award [Outstanding Contribution to Criminal Advocacy] from the Louisiana Association of Criminal Defense Lawyers in 1993.

Recipient of the John Henry Faulk Civil Libertarian of the Year Award from the American Civil Liberties Union for 1999.

Texas Criminal Defense Lawyers "Hall of Fame" (inducted 2002)

Best Lawyers in American [1987 to present]

Texas Lawyer, one of five "Top Notch" Criminal Defense Lawyers in Texas (2012)

TCDLA Minute Men Strike Force Award (2012)

San Antonio Bar Association, Hall of Fame Award, 50th Annual Criminal Law Seminar in Honor of Judge A.A. Semaan (2013)

First Annual Michael J. Kennedy Social Justice Award, George Washington University, (May, 2016)

William S. Sessions American Inns of Court First Annual Goldstein Award of Excellence (2015)

San Antonio Bar Association, Joe Frazier Brown, Jr., Award of Excellence for Outstanding Leadership and Service to the Legal Community & Citizens of Texas, 2016

First Annual "Goldstein Award of Excellence", William S. Sessions Inns of Court San Antonio, Texas (2015)

Texas Monthly - Texas Super Lawyers,

Top 100 Texas Super Lawyers in Texas,

Top 50 Central and West Texas Region Super Lawyers,

Criminal Defense: White Collar (2003 to present);

Scene in SA Monthly - San Antonio's Best Attorneys,

San Antonio Law, Top Ten Lawyers (2004 to present);

26Marquis Who's Who, Who's Who in American Law, 14th Edition, 2006-2008

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ADDITIONAL MATERIALS

As a little additional reading, I have included the following three case examples that our firm has handled which relate to several of the issues raised by your assignment and Bryan Stevenson's excellent book, *Just Mercy*.

PICKING A FAIR JURY:

With regard to addressing racial bias in the selection of juries, please see the highlighted passages in the case of *Jesse Mauldin v. State* attached as Exhibit 1, (beginning at page 3). Jesse Mauldin, his twin brother and three other African American young men were charged in a drug conspiracy in Smith County, Tyler, Texas. After three failed attempts to pick a jury in Tyler (18% of the citizens of Smith County were African Americans), the Judge moved the case to Canton, Texas, in Van Zandt County, which was considered a "white-flight" community, having only 4% African Americans.

During a contentious jury selection process the trial court cut off any questioning regarding "race" in a community where the words "THE BLACKEST SOIL AND THE WHITEST PEOPLE IN TEXAS" could be faintly seen on the town's painted-over water tower. Prior to cutting off questioning, the town preacher's wife told the court that some of the other prospective jurors "were being less than honest," were referring to the defendants using the "N" word, and were talking about "dragging them out of town and tarring and feathering and all that kind of stuff."

The convictions were reversed on the grounds that "questions such as...whether members of the venire (the panel of prospective jurors) or their children went to integrated schools, how many have blacks for neighbors, whether they had ever held membership in the Ku Klux Klan or White Citizens Council, whether they belonged to segregated organizations or clubs, whether they had heard racial comments...and their reactions to them would have given insight into their personal prejudices and beliefs and should have been allowed."

EXONERATIONS:

Michael Morton was wrongfully convicted of the brutal murder of his wife and spent 27-years in prison before being exonerated in a Court of Inquiry (by San Antonio Judge Sid Harle), leading to the ultimate conviction of his prosecutor, Ken Anderson (by that time a sitting District Judge), who was ultimately sentenced to jail for concealing a tape recording of Morton's 3½ year old son telling police that "Daddy not at home. Mommy killed by monster with a mustache." See Article attached as Exhibit 2.

The actual killer was thereafter located with DNA evidence discovered during the Morton proceedings and convicted of the murder. That perpetrator, Mark Allen Norwood, was also convicted of a similar murder nearby while Morton was serving his life sentence for a crime he did not commit. A life that would perhaps been saved, had the real killer been convicted in the first place.

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Morton went on to lobby the Texas legislature to pass the Michael Morton Act (Art. 39.14, Texas Code of Criminal Procedure) which now provides Texas with one of the most progressive criminal discovery statutes in the country. As a result of his efforts, the statute passed both Texas houses unanimously and was signed into law by then Governor Rick Perry in Michael's and his Counsel's presence.

Hannah Overton, a 27-year-old mother of 5, was wrongfully convicted of the salt poisoning of her 4-year-old foster child and sentenced to life in prison without parole. Again, on a State Writ of Habeas Corpus, it was determined that the lead prosecutor had withheld a cannister of the child's stomach contents, that contained very low sodium, proving that the toddler did *not* die of salt poisoning. The Texas Court of Criminal Appeals pointed out in their opinion that the state court prosecutor answered 72 consecutive times that she "did not recall" or "could not remember" relevant and material questions regarding the concealed evidence, including "whether she recognized her own handwritten notes." during Ms. Overton's trial.

Hannah served 7 years in prison before being exonerated. Since her release she has used the compensation received from the State of Texas for her wrongful imprisonment to establish a non-profit home for recently released female Texas inmates in order to provide a suitable residence to ease their re-integration into society. *See* Articles attached as Exhibit 3.

Exhibit 1

874 S.W.2d 692 (1993)

Jesse Harold MAULDIN, Johnny H. Mauldin,
Chris Young, Lawrence Bullette & Larry
Thomas, Appellants,
V.
The STATE of Texas, Appellee.

Nos. 12-90-00216-CR, 12-90-00217-CR, 12-90-218-CR and 12-90-00194-CR.

Court of Appeals of Texas, Tyler.

December 31, 1993.

*693 Gerald H. Goldstein, San Antonio, Clifton L. Holmes, Longview, Jeff L. Haas, Tyler, Karen Holcomb, Newton, for appellants.

Troy Johnson, Asst. Dist. Atty., Tyler, for appellee.

Before RAMEY, C.J., and BILL BASS and HOLCOMB, JJ.

HOLCOMB, Justice.

This is an appeal from a conviction, by a jury, of engaging in organized criminal activity. Appellants were charged with entering into a combination in an attempt to buy about fourteen (14) pounds of cocaine from California and bring it to Smith County, Texas, *694 for approximately \$150,000. We will reverse and remand for a new trial.

Appellants join together in eighteen (18) points of error. By two points of error, they complain that the evidence was insufficient to convict them of the offense as charged. We shall consider these points first.

In reviewing the sufficiency of the evidence, the reviewing court must consider all the evidence which the jury was permitted to consider whether rightly or wrongly. *Thomas v. State*, [753 S.W.2d 688](#) (Tex.Cr. App.1988). The standard for reviewing sufficiency of the evidence questions on appeal is whether, after viewing the evidence in a light most favorable to the verdict, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, [443 U.S. 307](#), [99 S. Ct. 2781](#), [61 L. Ed. 2d 560](#) (1979); *Butler v. State*, [769 S.W.2d 234](#) (Tex.Cr.App.1989); *Stokes v. State*, [853 S.W.2d 227](#) (Tex.App. Tyler 1993, no pet.). The reviewing court is not to act as a thirteenth juror, but rather, to position itself as "a final, due process safeguard ensuring only the rationality of the factfinder." *Moreno v. State*, [755 S.W.2d 866](#), 867 (Tex.Cr.App.1988).

The jury was charged as to each defendant that if they found the named defendant had formed a combination with four or more of the other five defendants to deliver cocaine to Johnny Howard Mauldin by performing one of fifteen (15) enumerated acts, then they were to find the defendant guilty of engaging in organized criminal activity.

Appellants argue that: (1) there was no evidence of an agreement to deliver cocaine to Johnny Mauldin; (2) there was no evidence of a plan to deliver cocaine to Johnny Mauldin; and (3) no cocaine was found in the homes, the motel rooms, the autos, the personal effects, or on the persons of Appellants. Appellants also argue that evidence which should have been withheld from the jury was admitted and should not be considered. In determining the sufficiency of the evidence on appeal, all of the evidence that was before the jury will be considered. *Thomas*, 753 S.W.2d 688. The State's brief contained only the sentence: "The State denies each and every allegation contained in point[s] of error fourteen [and fifteen]."

The evidence shows that there were telephone conversations between Chris Young and Johnny Mauldin. The purchase of drugs from California was discussed during these conversations. They discussed that people would have to be paid to move the drugs, and talked about the coordination of the delivery of and payment for the drugs. The evidence shows that Lawrence Bullette and Rose Lee Banks^[1] flew to Dallas and checked into a Marriott hotel in Dallas. Jessie Mauldin drove to the Dallas-Fort Worth Airport where he met Young, and together they checked into a La Quinta motel in Garland. The motel records show calls between the rooms in the Marriott, where Jessie Mauldin and Young were, and the La Quinta motel where Bullette and Banks were. Jessie Mauldin and Young went to the Marriott Hotel to the room rented by Bullette and Banks. They were joined by Johnny Mauldin and Larry Ray Thomas.^[2] The Mauldins left the room with a bag that was taken to Thomas' truck. Thomas drove the truck back to Smith County where it was stopped. The bag contained approximately fourteen pounds of cocaine. Bullette was stopped after leaving the room with a suitcase containing \$148,845.00. This is sufficient evidence that the Mauldins, Young, Bullette, Banks, and Thomas engaged in organized criminal activity, and the points of error are overruled.

By other points of error, Appellants complain that the evidence from the wiretap was improperly obtained and should have been suppressed.

In March, 1988, this investigation reached the point that the police asked the trial court to order the phone company to install a pen register to record telephone numbers dialed *695 from the Mauldins' phone. This was done in accordance with Texas Code of Criminal Procedure article 18.21 (Vernon Supp.1988). Based on information gathered from the pen register, the police asked the court, in late March of 1988, to order the phone company to give them a digital display pager which would respond to the phone number of a pager that had been leased by a Jesse Mosley, but which the police believed to actually belong to the Mauldins. The information gathered by these devices enabled the police to prepare a request for a wiretap which was approved by the judge designated for the administrative judicial district. The information obtained through the wiretap was critical to the prosecution of Appellants.

Appellants argue that the trial court had no authority to grant the order authorizing the use of a digital display pager because it violated the Electronic Communications Privacy Act of 1986.^[3] They argue that the use of the display pager was in fact a wiretap, and even if the trial court could authorize the wiretap, he could not preside at the trial without violating Texas Code of Criminal Procedure article 18.20, section 9(h). Appellants also argue that the evidence was obtained in violation of federal and state statutes and was therefore inadmissible under Texas Code of Criminal Procedure article 38.23(a). During oral argument, Appellants contended that the recently decided case of *Richardson v. State*, 865 S.W.2d 944 (Tex.Cr.App.1993), was dispositive of the issue and none of the interceptions from the wiretap were admissible because it was the fruit of an intrusion stemming from the initial illegal use of a pen register.^[4]

Appellants argue that federal wiretap regulations were binding upon the state when the display pager was ordered by the trial court. This 1986 statute clearly added digital display pagers to the devices that Congress considered to be covered by Title 18, UNITED STATES CODE sections 2510(12), 2511, 2516 and 2518 (West Supp.1993). See S.Rep.No. 99-541, 99th Cong., reprinted in 1986 U.S.C.C.A.N. 3555 at 3569. The statute mandated procedures for the states to follow before they could intercept "electronic communications" such as a digital display pager. 18 U.S.C.A. § 2516 (West Supp.1993). However, the statute was not to trench on state law until the first of two events occurred: the passage of conforming legislation, or two years from the effective date of the federal Act, i.e., Oct. 21, 1988. Electronic Communications Privacy Act of 1986, Pub.L. 99-508, § 111(b), 100 Stat. 1848, 1859 (1986). Thus, the federal statute in effect against state police action when the display pager was used in March, 1988, only prohibited the "aural acquisition," as opposed to the "aural or other acquisition" of wire or oral communications. 18 U.S.C.A. § 2510(4) (West 1970). The display was a visual acquisition of a wire communication, not an "aural," but

an "or other" acquisition. Since the federal statute did not forbid the intercept of the display pager's messages, any intercept would have been valid and lawful. The wiretap order was based on information validly and lawfully obtained from the display pager. Since the wiretap was based on the valid and lawful intercept of the display pager, the results of the wiretap were not tainted and they were properly received into evidence. 18 U.S.C.A. § 2515.

We have already held that the Texas statute was not violated by the intercept of the visual display of the pager and that the information was not the type contemplated by Texas Code of Criminal Procedure, article 18.20, section 9(h). *Mauldin v. Coats*, 786 S.W.2d 737 (Tex.App. Tyler 1989, orig. proceeding). There was no reason for the trial court to recuse himself under these facts. Appellants argue that notwithstanding the writ of mandamus they filed in this Court, the TEXAS GOVERNMENT CODE section 74.059(c)(3) required the motion to recuse to *696 be heard by a court other than the trial court. Appellants rely on a title of the Government Code controlling the assignment of visiting or retired judges. In this case, the judge was sitting in the court to which he was elected and the code section is not applicable.

Appellants argue that *State ex rel Millsap v. Lozano*, 692 S.W.2d 470 (Tex.Cr.App.1985) controls any situation where a motion to recuse has been filed. We do not agree. *Millsap* dealt with a Bexar County Court at Law judge who tried to order the recusal of another Bexar County Court at Law judge after the first refused to recuse himself. The Court of Criminal Appeals held that what is now TEXAS GOVERNMENT CODE section 74.059(c)(3), applied only to district judges. *Id.*, 692 S.W.2d at 481. That court noted that TEXAS RULE OF CIVIL PROCEDURE 18(a) was probably not applicable to criminal cases, but that in any event the motion had not been timely filed. *Id.*; *Autry v. Autry*, 646 S.W.2d 586 (Tex.App. Tyler 1983, no writ). The court in *Millsap* relied on *McLeod v. Harris*, 582 S.W.2d 772 (Tex.1979) for the proposition that a district judge had to either recuse himself or forward the motion to the presiding judge of the administrative district for a hearing on the motion. *Millsap*, 692 S.W.2d at 477. *McLeod* was a case where an assigned judge in a civil case refused to recuse himself or send the motion to be heard by the presiding judge of the administrative district. *McLeod*, 582 S.W.2d at 773. Thus, *McLeod* was consistent with the statute which required an *assigned* district judge to either recuse himself or forward the motion. Tex. Gov't Code § 74.059. While the statute is applicable to criminal cases in the absence of legislative intent to the contrary, there is implicit in the location of section 74.059 in the chapter of the Government Code dealing with the assignment of judges the intent for the section to apply when there has been an assignment of a district judge to hear a case. *McClenan v. State*, 661 S.W.2d 108, 110 (Tex.Cr.App.1983).¹⁵

Appellants further complain the court erred by denying their right to intelligently use their peremptory challenges because the trial court arbitrarily curtailed *voir dire* by refusing to allow them to question veniremembers about racial prejudice.¹⁶

We recognize the right to be represented by counsel is guaranteed by the Sixth Amendment of the UNITED STATES CONSTITUTION, and Article I, Section 10 of the TEXAS CONSTITUTION encompasses the right of counsel to question the members of the jury panel in order to intelligently exercise peremptory challenges, subject to the trial court imposing, within its sound discretion, reasonable restrictions on *voir dire* examination. *Abron v. State*, 523 S.W.2d 405, 408 (Tex.Cr.App. 1975); *Smith v. State*, 513 S.W.2d 823 (Tex. Cr.App.1974). Appellants here argue that the trial was racially charged from its inception. They point to the three failed attempts in Smith County to find a jury, and the decision of the trial court to move the trial to Van Zandt County where only about four percent (4%) of the population is black. Appellants also point to the venirepersons who said that some members of the panel were being less than honest when they said they were not prejudiced because of a number of racially charged remarks which had been made by venirepersons.

Venireperson Baird testified that she overheard potential jurors "talking about Grand Saline and how the attitude of the white people has always been toward blacks and they were laughing about it and they were talking about calling them they were referring to the black people down there as 'niggers' and they were dragging them out of town and tarring and feathering and all that kind of stuff, and the lady in pink said something about ... they [blacks] just weren't very smart. And one of the ladies ... said she didn't think she was prejudiced by she wouldn't want one of her daughters to marry one of them." Another venireperson, Albert, stated that she overheard a potential juror comment "he wished they could load the jury *697 with Ku Klux Klan," and she also heard the defendants referred to as "nigger and things like that."

Appellants admit that a general question about racial prejudice had been asked of all members of the venire. The judge told the lawyers that he wanted to shorten *voir dire* and keep racial prejudice out of the trial. To this end, he refused to allow a detailed questioning about racial bias on the ground that it was repetitious. The judge stated, "I do not want racism brought [up, do] not even mention it from now on." Appellants argue that while the trial court tried to keep racism out by not mentioning it, racism's hidden, and thus more sinister, quality was not only allowed but was assured to exist on the jury.

On behalf of Appellant Jesse Mauldin and all the other Defendants, Jesse's counsel perfected this point for appeal by making an offer of proof as to the questions which counsel on behalf of all Defendants would have asked concerning racial prejudice. By the trial court's order, counsel was specifically prevented from asking the following questions:

- (1) Would the fact that there is a monument to the Confederacy with a fresh Confederate Flag ... in front of this courthouse to which you and these black defendants have to pass affect your fair and impartial consideration of the evidence with regard to whether the State has proved beyond a reasonable doubt these black defendants' guilt.
- (2) Would the fact that there is a monument to the Confederacy with the fresh Confederate flag by which both you and the black defendant have to pass affect your fair and impartial consideration of the punishment.
- (3) How do you feel about requiring both the Defendants and yourselves to pass by such a monument with a fresh Confederate flag placing in front of it.
- (4) Would the fact that there was a sign in your county to the effect of, 'Nigger, don't let the sun set on you in this county,' affect your fair and impartial consideration of the evidence weight regard to whether the State has proved beyond a reasonable doubt these black defendants' guilt.
- (5) Would the fact of such a sign in your county affect your fair and impartial consideration of punishment.
- (6) How do you feel about such a sign having been in this county with respect to these black defendants' trial.
- (7) Would the fact that the Defendants, each of whom are black, affect your fair an impartial consideration of the full range of punishment.
- (8) How many of you have blacks as neighbors.
- (9) Whether any of the jurors are now or have had membership in the Ku Klux Klan, in the White Citizen's Counsel and any white supremacy groups.
- (10) Whether or not any of the jury panel have had experience or confrontations or altercations with blacks which they found emotionally disturbing to them.
- (11) How many of the prospective jurors went to school in integrated schools.
- (12) How many of the prospective jurors' children go to integrated schools.
- (13) Whether or not any of the prospective jurors belong to any segregated organizations or clubs.
- (14) Whether any of the prospective jurors' children attend private schools.
- (15) Which of the jurors made statements to the effect that they would like to stack the jury with KKK members.
- (16) Which of the prospective jurors made the statement that they would not want their daughter or child to marry a black.
- (17) Which of the prospective jurors made the statement that blacks all look alike.
- (18) Which of the prospective juror were present when the statement was made that these individuals (defendants) brought this case to the wrong county.
- (19) Which of the prospective jurors congratulated Mrs. Albert, Juror No. 82, for making the statement about the jury being hypocritical with respect to their responses on racism.
- *698 (20) Which of the prospective jurors chastised or criticized Mrs. Albert, Juror No. 82, for making those statements.
- (21) Which of the prospective jurors heard any other jurors and, if so, to name those prospective jurors who made racial slurs during or prior to jury selection.
- (22) Whether or not if any of these jurors had a loved one, a family member or friend sitting in the position of the defendants would they want to be tried by them due to the color of their skin or race?

On behalf of Appellant Jesse Mauldin, his counsel then asked the court if the request to ask these questions was being denied. The court replied, "Denied. Yes, Sir."

The trial court allowed the questions to be entered into the record, but they had to do it in the presence and hearing of the venire panel.

Appellants contend that these questions were essential for the Appellants to effectively and intelligently exercise not only challenges for cause, but also their peremptory challenges. Appellants argue these questions were of the type which the Court of Criminal Appeals in *Abron* recognized as being essential to the effective representation of an accused when the Court quoted with approval an opinion from 1898, saying "The tendency of this question was simply to prove the conscience of the respective jurors to ascertain whether or not they had any prejudice against Appellant, he being a negro.... If the answer had not shown any prejudice on the part of said jurors, or any of them, still it may have furnished Appellant some basis upon which he might have exercised his right more intelligently to avail himself of his peremptory challenges." *Abron*, 523 S.W.2d at 409.

Both sides agree that the analysis of whether the questions should have been allowed is governed by *Abron* and cases cited therein. The State argues that the questions to the venire must have some bearing on a question to be determined by the jury. In a drug possession case there is no issue of race and the Defendant does not have a right to ask irrelevant questions. By the State's reasoning, the questioning of veniremen about any racial bias would be precluded except in cases where racial bias was an element of the offense or where the victim and the accused belonged to different races. Appellants argue that as in *Abron*, while there was no inherent issue of race to be determined, the ability of the veniremen to exclude race from their deliberations was critical to the appellants' intelligent use of peremptory challenges. Appellants seem to agree that *Abron* is limited to situations where there is some articulable basis for believing racial animus may be a factor in the deliberation of the jury.

In *Abron*, the black defendant had a right to question the venire about their ability to be fair even though the victim was white. *Abron*, 523 S.W.2d at 409, citing *Fendrick v. State*, 39 Tex.Cr. 147, 45 S.W. 589 (1898). In *Plair*, the black defendant was allowed to ask questions of racial bias in a theft case. *Plair v. State*, 279 S.W. 267 (1925) (race of the victims is not identified). The court in *Plair* reiterated that:

It is always commendable for a trial court to dispatch business with promptness and expedition, but this salutary result must never be obtained at the risk of denying to a party on trial a substantial right.

Plair, 279 S.W. at 269 (citation omitted). The court held that there was a clear distinction between individual *voir dire* and group questioning. *Id.* An appropriate question to prepare for the intelligent exercise of peremptory challenges does not have to meet the same standards of relevance as one that would be used to establish a challenge for cause. *Id.* The trial court has the discretion to control the examination of the venire, but that cannot be used to deny the defendant an intelligent means of exercising the privilege of arbitrarily excusing a member of the venire. *Id.* (opinion on denial of motion for rehearing).

In this case, the venire itself, as shown above, brought the question of racial bias into issue. The trial court had to balance his wide discretion to limit and control *voir dire* with the Appellants' right to intelligently *699 exercise peremptory challenges. *Abron*, 523 S.W.2d at 408.

Some of the questions which the Appellants proposed were within the discretion of the trial court to either allow or deny. Those questions that were repetitious or vexatious, those that were not in proper form, and those that inquired into personal habits rather than personal prejudices and moral beliefs were properly excluded. *McCarter v. State*, 837 S.W.2d 117, 120 (Tex.Cr.App.1992); *Smith v. State*, 513 S.W.2d 823 (Tex.Cr.App. 1974); *Hernandez v. State*, 508 S.W.2d 853 (Tex.Cr.App.1974); *Densmore v. State*, 519 S.W.2d 439 (Tex.Cr.App.1975). But questions such as those concerning whether members of the venire or their children want integrated schools, how many have blacks for neighbors, whether they had ever held membership in the Ku Klux Klan or White Citizens Council, whether they belonged to segregated organizations or clubs, whether they had heard the racial comments mentioned and their reactions to them would have given insight into their personal prejudices and beliefs and should have been allowed. Appellants' fourth point of error is *sustained* and since our ruling on this point is dispositive, we need not address the Appellants' remaining points.

The judgment of the trial court is reversed and the case is remanded for a new trial.

NOTES

[1] The action against Rose Lee Banks was severed and is not part of this appeal.

[2] Larry Ray Thomas was also convicted and appealed, but he was killed in an execution-style slaying which the police believe to have been drug related.

[3] Pub.L. 99-508, Title I, § 101(a), Oct. 21, 1986, 100 Stat. 1848, 1851, codified as 18 U.S.C.A. § 2510 *et seq.*

[4] As of the date of this opinion *Richardson* was not final, since two motions for rehearing were pending. However, Appellants never asserted any objection to the pen register or the display pager as an unwarranted search in violation of the United States Constitution, Amendment IV, or Texas Constitution, article I, section 9. Therefore, we believe that even if *Richardson* was controlling, Appellants have waived error.

[5] To the extent we cannot determine whether the trial judge was assigned, we decline to follow *Crawford v. State*, [807 S.W.2d 597](#) (Tex.App.[] Dallas 1991, no writ).

[6] All of the Appellants are black.

Exhibit 2



Ex-Texas Prosecutor first in history to be jailed for withholding evidence.



Nov. 8, 2013, 6:50 PM CST
By M. Alex Johnson, Staff Writer

A former Texas district attorney was ordered Friday to serve 10 days in jail for withholding evidence that could have stopped an innocent man from going to prison for nearly 25 years — apparently the first time a prosecutor has been sent to jail for concealing evidence helpful to the defense.

Former Williamson County District Attorney Ken Anderson agreed to a plea deal that will also require him to pay a \$500 fine and complete 500 hours of community service after state District Judge Kelly Moore found him in contempt of court for telling a trial judge in 1987 that he had no exculpatory evidence to hand over to lawyers for Michael Morton, whose conviction in his wife's death was overturned in 2011.

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Charges of tampering with evidence — which could have meant 10 years in prison — were dropped as part of the deal, under which Anderson will be disbarred.

Prosecutors are required by law to share any evidence they collect that could help the defense. But Anderson withheld two critical facts in his prosecution of Morton: that witnesses reported seeing a man park a green van nearby and walk into the woods near the Mortons' house and that Morton's 3-year-old son specifically said Morton wasn't at the scene.

Morton was released from prison two years ago, when [new DNA evidence proved his innocence](#). In March, a drifter named Mark Alan Norwood was convicted of beating Christine Morton to death in bed based on the same evidence.

Michael Morton was in court for the hearing Friday in Georgetown.

"My number one motivating factor here is that what happened to me will not happen to you," he said, addressing Anderson. "And by what happened today, we've succeeded."

Exhibit 3

TexasMonthly

Hannah's Prayer

Hannah Overton, a Corpus Christi mother of five, was sentenced to life in 2007 for poisoning her soon-to-be adoptive son. This spring, she was finally granted a hearing to reexamine the evidence in her case. Will it be enough to prove her claims of innocence?

By: Pamela Colloff
Issue:2012



Photographs by Corpus Christi Caller-Times/Todd Yates

On October 2, 2006, four-year-old foster child Andrew Burd was brought to a Corpus Christi urgent care clinic in cardiac arrest. He had fallen suddenly and

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acutely ill that afternoon. His soon-to-be adoptive mother, Hannah Overton, had frantically administered CPR, and medical personnel tried to revive him, but it was too late—Andrew soon lapsed into a coma. During the next 24 hours, bruises emerged on his body, and his brain began to hemorrhage. The following evening, shortly after nine o'clock, he died. Blood tests revealed that he had an unusually high amount of sodium in his blood—so high, in fact, that doctors were able to determine that his death had been caused by ingesting an excessive amount of salt.

Investigators quickly zeroed in on Hannah, who had been with Andrew when he fell ill. The bruises were seen as evidence of abuse, the hemorrhaging as proof of a head injury, and the elevated blood sodium as the result of deliberate poisoning. The churchgoing mother of five—who had no history of abuse or violence and no previous arrests—was charged with capital murder. Prosecutors argued that she had snapped under the demands of parenting and forced Andrew to eat a large quantity of salt. Hannah insisted that she had not poisoned the boy and refused all plea deals. After a sensational trial the following year, she was convicted and sentenced to life in prison without the possibility of parole.

Extensive and often inaccurate local media coverage pilloried Hannah before and during her trial. Four years later, when she submitted a writ of habeas corpus—a last-ditch effort to persuade the courts to review her claims of innocence—the case remained divisive. Nueces County district judge Jose Longoria, who oversaw her 2007 trial, immediately ruled that the application for the writ was “without merit.” Yet questions about her conviction persisted. Her appellate attorney, Cynthia Orr, had found evidence that challenged many of the state’s assumptions at trial, and additional evidence suggested that Andrew had suffered from an undiagnosed eating disorder called pica, which is characterized by a desire to consume inappropriate items with little or no nutritional value, like salt. (An [article I wrote in the January issue](#) of TEXAS MONTHLY examined the case extensively.)

Then, in February of this year, the Texas Court of Criminal Appeals handed down an unexpected ruling, ordering that Hannah’s claims of innocence be examined. The decision came in the wake of a number of high-profile DNA exonerations and reflected the court’s growing unease with the capriciousness of scientific opinion in the courtroom. In a rebuke to Judge Longoria, the

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court ordered him to hold an evidentiary hearing, at which the defense would be allowed to present new evidence. In a rare written statement, Judge Cathy Cochran asserted that “the judiciary must be ever vigilant to ensure that verdicts in criminal cases are based solely upon reliable, relevant scientific evidence—scientific evidence that will hold up under later scrutiny.”

The hearing got under way on April 23 in the same Corpus Christi courtroom where Hannah stood trial five years earlier. As at the original proceedings, she sat quietly at the defense table, only this time she wore a gray county jail jumpsuit and was constrained by leg irons. She occasionally scribbled notes on a yellow legal pad as an overflow crowd of reporters and supporters—mostly members of her church, Calvary Chapel of the Coastlands—filled the benches behind her. Her husband, Larry, who has been raising their children by himself, leaned forward so as not to miss a word.

Moments before the hearing began, Hannah wiped away tears with a white handkerchief. She was flanked by a formidable new team of lawyers, led by Orr, a San Antonio criminal defense attorney who in 2001 obtained the first confession of error by the State of Texas in a death penalty case. Orr was joined by the legendary Gerry Goldstein, who has represented clients as diverse as Hunter S. Thompson and Manuel Noriega, and by John Raley, of the Houston firm Raley & Bowick, whose 6-year battle with the Williamson County district attorney’s office over DNA testing resulted in the recent exoneration of Michael Morton after nearly 25 years behind bars for murder. All three attorneys took the case pro bono. “I’ve never met anyone less capable of harming a child,” Raley told me.

Although Hannah’s trial had drawn tremendous local media attention, the hearing—which was slated to explore the arcane science of salt poisoning—was expected to be short and soporific. But as testimony stretched into a second week, Hannah’s fate dominated local TV news broadcasts. The proceedings became increasingly dramatic, punctuated by revelations about everything from missing evidence to lead prosecutor Sandra Eastwood’s personal life and at one point devolving into a shouting match. David Jones, a lawyer who had served on Hannah’s original team, wept on the stand as he confessed that he had done an inadequate job of representing her. “I failed miserably,” he said, looking at Hannah, who struggled to keep her composure. “There’s probably not a day since this verdict that I haven’t—that I don’t regret not spending

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more time on this case.” He bowed his head as he was overcome with emotion. “I failed, and I am so sorry,” he whispered.

When Hannah was tried for capital murder, the state needed to prove one of two scenarios to win a conviction: that Hannah had deliberately made Andrew ingest a lethal amount of salt or that she had purposely neglected to get him timely medical attention when he became ill, knowing that this would kill him. In an evidentiary hearing, the burden of proof rests on the defense, and so Hannah’s attorneys now sought to have her conviction overturned by demonstrating three points: that the medical opinions on which her conviction rested were incorrect; that critical, and potentially exculpatory, evidence had been withheld from the defense, depriving her of a fair trial; and that her previous lawyers had not provided her with effective representation.

Prosecutors Doug Norman and Bill Ainsworth quickly pushed back, arguing that the supposedly withheld evidence had been available to Hannah’s defense and that she had been represented by seven able attorneys. They told Judge Longoria that what he would learn about salt poisoning was nothing new. “There’s very little that this court will hear that wasn’t heard at trial,” cautioned Norman at the outset.

Yet within days, the hearing unveiled troubling new information. Perhaps the most important element of the defense’s case concerned a sample of Andrew’s vomit, taken at the clinic where the Overtons had brought him when his breathing became labored. Hannah’s lawyers argued that the sample was never turned over by the prosecution, nor were some notes about the sample, photographs that documented its existence, and reports stating where and when it had been collected. (Orr discovered reports about the vomit in 2010, when she began reviewing the DA’s research file in preparation for Hannah’s writ.) Not having access to that evidence “significantly changed how this case was tried,” testified Jones, the lawyer who wept on the stand. “It seems it was purposely withheld, because we kept asking for it and they refused to give it to us.” Chris Pinedo, who had also served on Hannah’s original defense team, claimed that the defense had requested the sample so that testing could be conducted on it, but “we were told it did not exist.”

Forensic pathologist Judy Melinek, an assistant medical examiner in San Francisco who had testified at Hannah’s trial, then took the stand to explain

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how critical this sample would have been to understanding exactly what had happened to Andrew. Determining the precise makeup of his stomach contents and the time they were collected, she said, would have been pivotal in a case in which the defendant was accused of poisoning the victim. After reviewing all the evidence, Melinek said, she firmly believed that Andrew had ingested a fatal amount of salt on his own. Her opinion was bolstered by the testimony of Edgar Cortes, an emergency medicine pediatrician who had seen Andrew twice before his death. Cortes maintained that he had informed Eastwood prior to trial that the boy had suffered from significant cognitive delays. These delays, Cortes now testified, put Andrew at greater risk for eating inappropriate items and ingesting something lethal. Yet Andrew was portrayed during the trial as a normal four-year-old. As for why the jury never heard his medical opinion, Cortes stated, “I felt like the prosecution had its own theory about what happened.”

The most compelling scientific testimony, however, came from Michael Moritz, the clinical director of pediatric nephrology at the Children’s Hospital of Pittsburgh and one of the world’s leading authorities on salt poisoning. Moritz had been scheduled to testify on Hannah’s behalf at her trial but was never called—a decision cited by her new defense team as proof that she had not been ably represented. Now, at the hearing, Moritz testified that Andrew had likely consumed the lethal amount of salt while briefly unsupervised. (Indeed, Hannah testified in 2007 that she had discovered Andrew standing on a stool in the pantry on the same day he was hospitalized and that he had been reaching for the spice rack, though she was unable to remember what, exactly, she had taken from his hands.) That scenario, Moritz said, was far more plausible than one in which Andrew was forcibly fed salt. “The reports in the literature do not show a loving parent who takes in a foster child, who wants to do well, and for no apparent reason salt-poisons the child, with no evidence of struggle,” he said. Several members of Calvary Chapel nodded in unison as Moritz stated that he did not think Hannah—who admitted to giving Andrew “a sprinkling” of salty seasoning in a sippy cup of water to appease him after he threw a tantrum begging for more lunch—had committed a crime.

Intentional salt poisoning, the doctor went on to explain, is extremely rare. When it does occur, the victims are often bottle-fed babies whose food supply can be easily tampered with. Moritz stated that there was only one

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documented case in which an older child—a five-year-old—was poisoned with salt, and there were obvious signs of a struggle, including lacerations to his lips and gums. Yet Andrew had no such lacerations. Typically, Moritz added, someone who salt-poisons a child is mentally ill or a drug addict and has a well-documented history of child abuse. “So what we’re seeing in this case does not fit with any cases of intentional salt poisoning in the literature,” Moritz said.

Judge Longoria periodically glanced down at the doctor when he spoke of children poisoning themselves, studying him with skepticism. Moritz described how “voluntary salt intoxication” almost uniformly happened to children who fit a narrow profile: they were between the ages of one and six, they had been in the foster system or were from abusive homes, and they had some form of eating disorder, such as pica. Andrew, who had tried to eat everything from cigarette butts to glow sticks to toothpaste, fit this profile well.

The jury at Hannah’s trial had found that she had “knowingly or intentionally” caused Andrew’s death by failing to render aid quickly enough—that is, that she recognized what grave danger he was in, knew he was going to die, and deliberately acted too slowly to save him. But Moritz pointed out that the initial flu-like symptoms that manifest themselves after eating a fatal dose of salt would not have caused grave concern. The medical personnel who saw Andrew on the day he entered the hospital were slow to diagnose him—so slow, in fact, that they had administered “hypertonic saline solution and three rounds of sodium bicarbonate,” Moritz said, as they tried to revive him. In other words, they had introduced additional sodium into his system. If they had been unable to recognize that he was suffering from fatal sodium toxicity, Moritz posited, how could Hannah have done so?

On the third day of the hearing, the gallery of spectators fell quiet as Eastwood entered the courtroom. The former prosecutor had unsuccessfully fought against the subpoena that compelled her to testify that day, and she appeared ill at ease as she took the stand. Though she had aggressively pursued capital murder charges against Hannah, commanding the same courtroom just a few years earlier with a macabre tale of maternal depravity, she now appeared fragile, flustered, and, at times, near tears. (Eastwood was dismissed from the

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DA's office two years ago, though the reason for her termination was not publicly disclosed.) Goldstein questioned her about whether she had abused prescription diet pills during the trial, prompting Eastwood's attorney to shout over him, but she later admitted to using them and confessed that she was a recovering alcoholic with a little more than a year's sobriety. Her memory of the trial was cloudy, she said, but she stated that she had turned over all the evidence she had to the defense.

Under withering questioning from Goldstein, Eastwood answered "I don't know" or "I don't remember" 72 times when asked whether she recognized notes written in her handwriting, emails sent from her own account, and papers signed with her signature. "I have trouble remembering phone numbers," she said. "I have trouble remembering what I had for lunch yesterday. I think that's normal. I had hundreds of conversations and there were thousands of documents, so I don't remember specifics."

Goldstein became so exasperated with her that he asked if she remembered the trial itself. "You recall the trial, do you not?" he said. "The individual got life in prison."

"The question is . . . ?" said Eastwood.

"Do you remember the trial?" Goldstein asked, his voice rising.

"Yes," she replied.

"It ended in life without parole," Goldstein scolded. "That means they spend the rest of their life in prison. You remember cases that have those kinds of consequences, don't you?"

"Yes," she said softly.

From the defense table, Hannah shook her head slightly as she listened.

Eastwood was followed by ex-prosecutor Anna Jimenez, who had assisted her as "second chair" at Hannah's trial. (As the Nueces County DA, Jimenez later terminated Eastwood.) Jimenez did not mince words. "She is not truthful," she said of Eastwood. She recounted how Eastwood had allegedly told her, "I will do anything to win this case," and had sent someone to spy on members of

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Hannah's church in an effort to uncover what sort of defense strategy would be used at trial.

Most significantly, Jimenez said, Eastwood had informed her that no vomit existed for testing. But the vomit, as well as the accompanying notes, photos, and police reports that documented its existence, constituted "Brady evidence," Jimenez went on to say—exculpatory or mitigating evidence that the prosecution is required, by law, to hand over to the defense. "The state should have given this information," she said. "We should have turned this over." Under cross-examination, Jimenez conceded that she did not have conclusive proof that Eastwood had intentionally withheld anything. But, she added, "it's like any other criminal issue when there's circumstantial evidence. We prove cases in court every day on this same kind of evidence."

As the hearing wound to a close, the state summoned medical examiner Ray Fernandez to the stand. Fernandez stood by his original findings that Andrew was poisoned, but during nearly four hours of cross-examination by Raley, he made several significant revisions of his position. Fernandez admitted that he had not consulted with a pediatric kidney specialist in determining that Andrew's death was a homicide and that Andrew's death was the only fatal case of sodium toxicity that he had ever encountered. He agreed that the hemorrhaging in Andrew's brain had probably been caused by salt toxicity and that blunt force trauma had not been a contributing factor, as he had initially ruled it to be. Fernandez also acknowledged that the extensive bruising found on Andrew's body was likely due to coagulopathy, a side effect of sodium in the blood. He agreed to review Moritz's scholarship on salt poisoning and take it into consideration, along with any other defense evidence.

The hearing, which lasted six days, went longer than anyone had expected. During closing arguments, Raley sketched out how Andrew had likely eaten a fatal amount of sodium while unattended and how once the toxic load was in his system, it was too late—a fact supported by Moritz's testimony. No amount of medical intervention, he explained, would have made a difference, and yet "she was fighting with all that she had, all that she knew how, to save his life," he said, referring to Hannah's administering of CPR. "Is that consistent with the kind of person that would intentionally kill someone?" Raley went further than asking that Hannah be granted a new trial. He made an impassioned plea for her release. "We request—we pray—that your Honor consider this new

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scientific evidence and recommend to the Court of Criminal Appeals that Hannah be declared actually innocent,” he said, addressing Judge Longoria.

Prosecutors, for their part, hammered home the idea that the defense had not come up with any information that was a “game changer.” Ainsworth argued that the sample of vomit was not a critical piece of evidence because Fernandez had stated that it was the sodium level in Andrew’s blood, not his stomach contents, that had been key in determining salt poisoning.

At the close of the hearing, Hannah embraced her attorneys, then locked eyes with her husband before breaking down in tears as she was led away.

Judge Longoria must submit his recommendations to the Court of Criminal Appeals by June 7. (He will not make a ruling in the case.) The court will then review the material presented at the hearing and do one of three things: allow Hannah’s conviction to stand, order a new trial, or overturn her conviction, which would bring about her release. Orr told me that her commitment to Hannah, whom she has represented for five years, will not end until her client is out of prison. If Hannah is granted a new trial, her current legal team will try the case—a fact sure to give the DA’s office pause. “Gerry Goldstein, John Raley, and I are going to see this case through to the end,” Orr said. “We are firmly convinced of Hannah’s actual innocence.”

Hannah Overton, supporters chant 'Actually innocent' after capital murder dismissal

Krista M. Torralva, Corpus Christi Caller-Times

Published May 10th, 2017

The Nueces County District Attorney's action legally exonerates Hannah Overton and closes an 11-year case. Here's a timeline of the case.



(photo: Gabe Hernandez/ Caller-Times)

Hannah Overton was shackled the last time she rode an elevator nine floors to the 214th District Courtroom in Corpus Christi.

On Wednesday, Overton willed herself to return to the courtroom where she was convicted of capital murder in 2007 and stripped from her family.

She left this time clutching a piece of paper that deems her legally innocent in the death of a 4-year-old boy Overton and her husband were adopting.

"Actually innocent," Overton, her team of lawyers, family and supporters, cheered in the courthouse hallway moments after a judge signed a dismissal that will entitle Overton to state compensation and protect her from being retried on the charge.

Overton's 2007 capital murder conviction gained international attention because it was widely believed she was wrongfully convicted of the salt poisoning death of Andrew Burd.

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Andrew died in 2006 from high levels of sodium in his body. Photos of Andrew in the hospital show scratch marks on his face and arms.

Prosecutors sought to prove Overton, in a rage over the child's behavior, force-fed Andrew a mixture of spicy seasoning and water. Defense lawyers argued Andrew's death was accidental, the result of a rare medical condition that caused him to have odd cravings and high levels of sodium.

Overton and one of her lawyers, Cynthia Orr of San Antonio, said they discovered after his death medical records depicting the condition and special treatment he needed. Orr blamed state agencies for never informing the Overtons of Andrew's condition.

"They were aware of that and if they had provided medical treatment to him he would be here today and that's the bitterest pill to swallow," Orr said.

A Nueces County jury convicted Overton because they believed she delayed seeking medical care for Andrew. She was automatically sentenced to life in prison without parole.

Overton's team of appellate lawyers, led by Orr, fought the conviction and found medical experts who testified Andrew's medical conditions likely led to his death.

Dr. Michael Moritz, a leading expert on salt poisoning, testified in post-conviction hearings that Andrew's chance of survival was nil no matter how quickly Overton might have gotten him medical care. Another doctor, Judy Melinek, addressed the scratch marks on Andrew's body and testified sodium poisoning causes blood clotting that makes small scars, insect bites and scratches appear gorged with blood and more pronounced.

After seven years in prison, the state's highest criminal court overturned her conviction in 2014, citing her trial lawyers were ineffective, and sent her case back to Nueces County. In 2015, then-District Attorney Mark Skurka dropped the case against her but refused to declare her innocent, which prohibited her from accessing state compensation funds for wrongly convicted people.

New Nueces County District Attorney Mark Gonzalez took the additional step in court Wednesday and new 214th District Court Judge Inna Klein signed his amended motion to dismiss.

"(N)o credible evidence exists that inculpates the defendant and, the state's attorney believes that the defendant is actually innocent of the crime for which she was sentenced," the dismissal form reads.

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Overton and her lawyers smiled as the judge read the dismissal. Klein addressed Overton after signing the form.

“On a personal note, congratulations. I can’t imagine what this process has been like for you, for your extended family. As a new judge here this is what it’s all about – this process and this day. Congratulations,” Klein said.

Standing in the back of the crowded courtroom was Michael Morton, a man wrongfully convicted and imprisoned 25 years for the brutal murder of his wife. Morton is the namesake of the 2014 law that requires prosecutors to give all exculpatory evidence to a defendant’s lawyers. Just an hour before, Overton and her family attended his speaking engagement at the Ortiz Center for the Corpus Christi Bar Association’s annual Law Day luncheon.

Morton and Overton became friends through their ordeals. They share lawyers including Orr and Gerry Goldstein of San Antonio’s Goldstein, Goldstein, Hilley & Orr and John Raley of Houston’s Raley and Bowick L.L.P. Each of the lawyers – all of whom worked pro bono on both cases - was also present.

Overton will be entitled to more than \$550,000 plus payment for what she could have made working during the seven years she was in prison, Orr said. In addition, she may enroll in the same insurance state employees get, Orr said. Orr will be working on the compensation paperwork.

Overton, who has since started a nonprofit prison ministry called Syndeo Ministries, expressed gratitude to the lawyers as she spoke to media.

“It’s amazing but still a little overwhelming,” Overton said. “I think it’ll take a while to sink in.”

Gonzalez, who in November was elected to be Nueces County’s top prosecutor, said he reviewed the case and felt the dismissal was right. He said his motion affirms Skurka’s dismissal and adds language declaring her innocent.

“A lot of times you have to look past how it may seem politically and do the right thing. That’s all I did,” Gonzalez said.

He added the timing was special on the day Morton spoke in Corpus Christi.

“My office will do everything in its power to make sure this doesn’t happen to individuals like Mr. Morton or Mrs. (Overton) ever again,” Gonzalez said.

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Overton's lawyers hinted at more legal action.

"You all have not seen the end of this yet," Goldstein said.

"No you haven't," Orr echoed. "Stay tuned."

Research Article

Cognitive Costs of Exposure to Racial Prejudice

Jessica Salvatore and J. Nicole Shelton

Princeton University

ABSTRACT—*This study examined how encountering racial prejudice affects cognitive functioning. We assessed performance on the Stroop task after subjects reviewed job files that suggested an evaluator had made nonprejudiced, ambiguously prejudiced, or blatantly prejudiced hiring recommendations. The cognitive impact of exposure to ambiguous versus blatant cues to prejudice depended on subjects' racial group. Black subjects experienced the greatest impairment when they saw ambiguous evidence of prejudice, whereas White subjects experienced the greatest impairment when they saw blatant evidence of prejudice. Given the often ambiguous nature of contemporary expressions of prejudice, these results have important implications for the performance of ethnic minorities across many domains.*

Social and legal norms in the United States discourage the overt expression of many kinds of prejudice. Ethnic bias, in particular, is strongly sanctioned (Crandall, Eshleman, & O'Brien, 2002). Despite this, many ethnic minority groups continue to face discrimination, and even seemingly egalitarian behavior may mask prejudice (Monin & Miller, 2001). Contemporary forms of prejudice incorporate a mixture of negative and positive elements and are therefore more ambiguous and harder to categorize than the straightforward antipathy of "old-fashioned" forms of prejudice. They pose a challenge to the core human need to understand the workings of the social world (Fiske, 2004).

For optimal social functioning, people must accurately understand others' motivations. Previous research suggests that they will expend attention and effort to achieve this goal. Indeed, uncertainty about the cause of an event triggers diagnostic information seeking—a careful, laborious deployment of atten-

tion, designed to render an accurate causal assessment (e.g., Riley, 1998; Weary & Jacobson, 1997). Given that contemporary forms of prejudice are often subtle and ambiguous, targets of prejudice may experience cognitive impairment as they try to determine the cause underlying the negative events they encounter in their lives. In the research reported in this article, we addressed the extent to which exposure to prejudice affects individuals' cognitive functioning. The relative cognitive costs of exposure to ambiguous versus blatant prejudice should be related to individuals' prior experience with prejudice. As a result, we addressed this issue separately for ethnic minorities (Blacks) and Whites.

ETHNIC MINORITIES' EXPERIENCES WITH PREJUDICE

Some theoretical perspectives on coping with prejudice suggest that ethnic minorities should be relatively well equipped to deal with blatant forms of bias. C.T. Miller and Kaiser (2001), for example, argued that members of stigmatized groups develop adaptive strategies for coping with prejudice over time. These coping strategies may confer a psychological "immunity" that attenuates the negative consequences that would otherwise be associated with perceiving prejudice (see, e.g., Allison, 1998; Barrett & Swim, 1998). Similarly, the simple awareness that one's group is stigmatized results in a form of psychological preparedness. Members of some ethnic minority groups grow up thinking of themselves as potential targets of prejudice. This stigma consciousness (Pinel, 1999) facilitates the recognition of overt prejudice.

Psychological coping strategies cannot be activated, however, until targets can make an attribution to prejudice, and this may be quite challenging in an environment where prejudice is ambiguous. Hence, members of ethnic minorities are likely to experience uncertainty over the motivations behind negative treatment from others; indeed, such attributional ambiguity is one defining element of the experience of stigmatization (Crocker, Major, & Steele, 1998). Crocker and Major (1989)

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argued that ambiguity serves a self-protective function because attributing negative treatment to discrimination rather than to one's idiosyncratic personal qualities can buffer self-esteem. Attributional ambiguity may also influence affect and cognition, however, and it is unclear whether these consequences would be equally beneficial for members of stigmatized groups (see, e.g., Aronson & Inzlicht, 2004). Major, Quinton, and McCoy (2002) suggested that ambiguity "is not a benign psychological state," but rather "is often highly distressing" and "consumes cognitive resources" (p. 259). For example, exposure to modern sexism, which is subtle and ambiguous, elicits anxiety and inaction in women, whereas old-fashioned sexism, which is blatant, results in hostility and engagement (Barreto & Ellemers, 2005). In addition, the efficiency of dyadic problem solving is reduced when dyads consist of a Black and a White who is an aversive racist (i.e., someone who tends to express ambivalent messages toward Blacks). Specifically, Dovidio (2001) found that dyads consisting of a Black and an aversive-racist White took slightly longer to solve a problem than did dyads consisting of a Black and a blatantly prejudiced White. The mixed messages and subtle racial bias displayed by aversive racists presumably interfered with the effectiveness of accomplishing the goal in the interaction more than did the consistently negative behavior displayed by blatantly prejudiced Whites.

It is important for members of disadvantaged groups to be able to predict the likelihood of discrimination occurring in their immediate social environment, regardless of whether their own group would be the primary target. Uncertainty about others' prejudice leaves marginalized individuals unable to discern which coping strategies would be most appropriate to the situation. Thus, members of disadvantaged groups may be especially motivated to expend cognitive effort to arrive at a satisfying attribution for ambiguously prejudiced behavior, causing depletion in their ability to focus on other cognitive tasks. In other words, when the evidence of racial bias is ambiguous, members of disadvantaged groups may be vulnerable to decreased performance on pressing cognitive tasks. Therefore, we predicted that exposure to ambiguous prejudice would prove more problematic for the short-term cognitive functioning of Black individuals than would exposure to blatant forms of prejudice.

WHITE AMERICANS' EXPERIENCES WITH PREJUDICE

Past experiences with prejudice shape individuals' coping skills, which, in turn, determine cognitive disruption following an encounter characterized by prejudice. We suggest that there are group-level differences between members of disadvantaged versus advantaged groups in their experiences with prejudice. First, anti-White prejudice is so infrequent that Whites do not tend to think of themselves as potential targets of prejudice. Indeed, Pinel (1999) found that Whites are less stigma conscious

than Blacks. Second, Whites are relatively unlikely to perceive prejudice (against either Whites or Blacks) under conditions of uncertainty. For example, Inman and Baron (1996) asked college students to rate the traits shown by actors in a series of vignettes that described ambiguously racist actions. Whites were less likely to label potentially racist acts as instances of prejudice than Blacks were, regardless of the target's race. In signal-detection terms, the threshold at which members of traditionally advantaged groups make attributions to prejudice may be relatively high (cf. Barrett & Swim, 1998), both because these individuals do not encounter bias very often and because the implications of prejudice are limited for them (Schmitt & Branscombe, 2002). These findings suggest that Whites are relatively insensitive to subtle cues of prejudice, regardless of the race that is targeted. Thus, we predicted that they would not experience cognitive disruption after exposure to ambiguous prejudice. Rather, we expected that Whites, in contrast to Blacks, would experience substantial disruption when exposed to blatant prejudice. Because overt racism is relatively rare (McConahay, 1986), Whites do not tend to develop the coping skills that would buffer them from cognitive disruption in such situations.

OVERVIEW OF THIS STUDY

The purpose of this study was to examine depletion in cognitive resources resulting from exposure to racial-prejudice cues. Subjects first reviewed (fictional) hiring recommendations that were blatantly or ambiguously motivated, or clearly not motivated, by racial prejudice. Then we assessed cognitive impairment with the Stroop (1935) color-naming task, which requires the selective deployment of attention. We predicted that this higher-level cognitive function would be depleted under different circumstances for White and Black individuals. That is, we expected Blacks' Stroop performance would be worse in the ambiguous-prejudice condition than in the blatant-prejudice condition because they would be forced to wrestle with attributional uncertainty in the former condition. In contrast, we expected that Whites would be unlikely to register the ambiguous cues as potential indicators of prejudice (cf. Barrett & Swim, 1998). Rather, we expected their Stroop performance to be impaired in the blatant-prejudice condition because they would be unaccustomed to encountering prejudice in a professional environment and would therefore lack strategies for coping with it.

METHOD

Subjects and Design

Two hundred fifty-five Princeton University undergraduates participated in the study and were compensated with either

payment or partial credit toward a course requirement.¹ Five subjects' data were excluded because of procedural error (e.g., misunderstanding directions or experimenter error), leaving a final sample of 250 (122 Blacks, 128 Whites) in a 2 (subject's race: Black, White) \times 2 (evaluator's race: Black, White) \times 3 (prejudice condition: none, ambiguous, blatant) between-subjects factorial design.

Procedure

Upon arrival, subjects received a written description of the cover story for the first of two supposedly unrelated studies. This description was in the form of a letter from the human-resources manager at an ostensibly real company. The letter asked for subjects' help in deciding whether to change the way the company made hiring decisions. Subjects learned that their task was to help the company decide whether it should adopt a new protocol in which human-resources officers would make collaborative rather than solo hiring decisions. We told subjects that they would be evaluating some actual recent hiring decisions made at the company, either by one human-resources officer working alone or by a group. Upon providing informed consent, all subjects were told that they had been randomly assigned to the solo-officer condition. They then received a job description, plus a résumé file and an evaluation sheet for each of four ostensible job candidates, and rated each candidate's level of qualification and hireability. Last, subjects received a file containing an information sheet about the human-resources officer and a set of his hiring recommendations. After they had looked over these materials, the experimenter apologized for not having the next questionnaire and suggested that they could do the second study while she obtained the forms. All subjects agreed to this arrangement and completed the ostensibly unrelated Stroop task on a computer while the experimenter was absent. Afterward, subjects completed the manipulation checks and were debriefed.

¹We conducted the study with four samples of subjects. Sample 1 ($n = 80$) and Sample 2 ($n = 77$) were composed of roughly equal numbers of Black and White subjects, all of whom received stimulus materials with an opposite-race evaluator. Subjects in Sample 1 were randomly assigned to either the ambiguous-prejudice or the blatant-prejudice condition. Subjects in Sample 2 were randomly assigned to either the no-prejudice or the ambiguous-prejudice condition. Subjects in Sample 3 ($n = 56$), who were mostly White students, received stimulus materials with a White evaluator. Subjects in Sample 4 ($n = 42$), who were all Black students, received stimulus materials with a Black evaluator. Subjects in Samples 3 and 4 were randomly assigned to one of the three prejudice conditions. The procedure was identical for all four samples. Data from the four samples were combined prior to analysis, resulting in a data set with all three prejudice conditions and all combinations of subject's race and evaluator's race represented. Because sample is almost fully confounded with the match between the subject's race and the evaluator's race (mismatched in Samples 1 and 2, generally matched in Samples 3 and 4), it is possible—though, we believe, unlikely—that the observed interaction between subject's race and evaluator's race on the Stroop task (see Results) was due to this variable.

Materials

Job Description

The job-description sheet detailed the company's search for an entry-level, full-time consultant whose job would be to address clients' needs in the area of employee compensation. The job description included a list of job responsibilities, the promise of a competitive salary and benefits package, and a list of minimal required skills and abilities. All of the materials, including the job description, were designed to convey the impression that the successful candidate would be working in a highly professional environment.

Job-Application Materials

We designed filler résumés for the first two candidates so that they would appear to be competent but unremarkable. The key résumés were from Candidate 3, who had a mediocre GPA from a mediocre school and was clearly unqualified, and Candidate 4, who had graduated from a prestigious preparatory school and Yale University with a respectable GPA. This last résumé detailed strong job experience and impressive school activities, making Candidate 4 the most qualified of the group.

We manipulated candidates' ostensible race via their résumés as well. In one set of résumés, we implied that the highly qualified Candidate 4 was Black (e.g., he had been a member of his college's Black Student Union) and that the less-qualified Candidate 3 was White (i.e., we omitted any race-based references in his résumé). In a second set of résumés, this pattern was reversed, so that the highly qualified candidate was presented as White and the less-qualified candidate was presented as Black.

Human-Resources-Officer Information Sheet

We manipulated the race of the human-resources officer using a one-page sheet detailing his name, number of years with the company, gender, and race. The officer was described as either a Caucasian male (when Candidate 3, the less-qualified candidate, was presented as White) or an African American male (when Candidate 3 was presented as Black).

Manipulation of Prejudice Cues

For each candidate, the human-resources officer provided a hiring recommendation accompanied by a short rationale. We manipulated prejudice level with the pattern of hiring recommendations and the content of the officer's notes. In the no-prejudice condition, the human-resources officer recommended hiring the best-qualified candidate, and his rationales were neutral with regard to race. The hiring pattern and notes gave subjects no reason to think that any candidates were discriminated against on the basis of race.

In the remaining conditions, the human resources officer recommended hiring an unqualified candidate who seemed to be of his own race (Candidate 3) over a clearly more qualified candidate who seemed to be of the other race (Candidate 4). In

the ambiguous-prejudice condition, the officer's comments were neutral with regard to race (e.g., "good GPA but not business or econ"), so the reasons for his hiring recommendations were unclear. In the blatant-prejudice condition, his comments explicitly invoked race as a factor in the decision (e.g., the comments indicated that the Black candidate had been a member of "too many minority organizations," and the White candidate was a "typical white prep-school kid"), making it clear that the decision was motivated by bias.

Measures

Manipulation Checks

We assessed subjects' beliefs about the qualifications of the job candidates in order to ensure that they viewed the candidates as intended. For each of the four candidates, subjects rated their agreement with two statements: "This candidate is highly qualified for the job," and "I would hire this candidate for the job." Ratings were made on a scale from 1 (*strongly disagree*) to 7 (*strongly agree*). We also used one question to assess perceptions of prejudice in the hiring scenario: "In the last evaluation, to what extent were the comments made by the evaluator (the human-resources officer) prejudiced?" The response scale was bounded at 1 (*not at all*) and 7 (*very much*).

Cognitive Functioning

We assessed depletion in high-level cognitive functioning using the Stroop (1935) color-word task, which requires the rapid on-line inhibition of tempting responses (MacLeod, 1991; E.K. Miller & Cohen, 2001). Considerable processing capacity is required to respond with consistent speed and accuracy (Macrae, Bodenhausen, Schloerscheidt, & Milne, 1999). In this task, subjects saw a series of trials consisting of either the control string "XXXX" or a color word ("yellow," "red," "green," or "blue"). Each stimulus was presented on a computer screen in one of four colors. Subjects' task was to indicate the color of the text as quickly as possible. Subjects responded to each of 8 practice trials and 84 experimental trials by pressing the appropriate one of four color-coded keys on a standard keyboard.

RESULTS

Manipulation Checks

To test whether our manipulation of the candidates' qualifications was successful, we conducted a paired *t* test that compared subjects' evaluations of Candidate 3 with their evaluations of Candidate 4. As we expected, subjects judged Candidate 3 to be less qualified ($M = 3.91$, $SD = 1.11$) than Candidate 4 ($M = 5.60$, $SD = 1.14$), $t(247) = 20.43$, $p < .001$, $p_{rep} > .99$, $\eta^2 = .63$. Furthermore, subjects said that they would be less likely to hire Candidate 3 ($M = 3.91$, $SD = 1.25$) than Candidate 4 ($M = 5.66$, $SD = 1.23$), $t(247) = 19.15$, $p < .001$, $p_{rep} > .99$, $\eta^2 = .60$. Including race of the candidate as a between-subjects factor in a

repeated measures analysis of variance revealed that race did not moderate evaluations of the candidates' qualifications, $F(1, 246) = 0.41$, or hireability, $F(1, 246) = 1.26$, both n.s.

Despite the overall success of this manipulation, 3 Black subjects and 1 White subject gave Candidate 4 low ratings (less than 3 out of 7) on both questions. Because their ratings indicated that they would agree with the human-resources officer's recommendation not to hire Candidate 4, the prejudice manipulation did not have the intended meaning for them (i.e., that the human-resources officer had discriminated against Candidate 4). Therefore, we removed these 4 subjects from further analyses, leaving 246 subjects.

We also tested whether the prejudice manipulations were successful, by conducting a 2 (subject's race) \times 2 (evaluator's race) \times 3 (prejudice condition) analysis of variance on ratings of the comments made in the human-resources officer's notes about the candidates. We observed the expected main effect of prejudice condition, $F(2, 234) = 97.03$, $p < .001$, $\eta^2 = .45$. Tukey's post hoc tests indicated that the evaluator was viewed as significantly less prejudiced in the no-prejudice condition ($M = 1.89$, $SD = 1.16$) than in the ambiguous-prejudice condition ($M = 3.57$, $SD = 1.89$) and was viewed as significantly less prejudiced in the ambiguous-prejudice condition than in the blatant-prejudice condition ($M = 5.53$, $SD = 1.26$). The condition effect was qualified by an unexpected interaction with evaluator's race, $F(2, 234) = 5.48$, $p < .01$, $\eta^2 = .04$. Inspection of the cell means (see Table 1) indicated that this interaction was driven by a larger effect of condition when the target of prejudice was Black and the human-resources officer was White ($\eta^2 = .40$ for Black subjects and $\eta^2 = .41$ for White subjects) than when the target was White and the officer was Black ($\eta^2 = .15$ for Black subjects and $\eta^2 = .27$ for White subjects). This result is consistent with Inman and Baron's (1996) finding that people use prototypes to determine when prejudice occurs. Our combination of a Black target and a White evaluator fits the prototype of a scenario involving prejudice much more neatly than the reverse combination of a White target and a Black evaluator. It was

TABLE 1

Ratings of Prejudice in the Human-Resources Officer's Comments (Manipulation Check)

Subjects' race and condition	White evaluator	Black evaluator
Black subjects		
No prejudice	1.60 (0.75), $n = 20$	2.53 (1.73), $n = 15$
Ambiguous prejudice	3.95 (1.97), $n = 38$	2.62 (1.98), $n = 13$
Blatant prejudice	5.85 (0.88), $n = 20$	4.92 (1.26), $n = 13$
White subjects		
No prejudice	1.59 (0.87), $n = 17$	1.94 (1.06), $n = 18$
Ambiguous prejudice	3.44 (1.69), $n = 18$	3.57 (1.82), $n = 37$
Blatant prejudice	6.12 (1.22), $n = 17$	5.10 (1.38), $n = 20$

Note. Higher values indicate greater prejudice. Standard deviations are given in parentheses.

therefore easier for subjects of both races to make clean judgments about the level of prejudice involved in the former case.

Stroop Task Analyses

We removed Stroop trials with incorrect responses and trimmed the reaction time data as follows. For each subject, we calculated the mean and standard deviation for the control trials and for the incompatible trials (those in which the font color and the meaning of the text disagreed) separately, and then removed all responses 3 or more standard deviations from the mean for their respective kind of trial. We then calculated an average reaction time for each trial type using the remaining trials. Stroop interference scores were calculated by subtracting the mean reaction time for the control trials from the mean reaction time for the incompatible trials for each subject. We searched for statistical outliers within each prejudice condition separately, and removed a total of nine interference scores (three outliers in each condition). Thus, all analyses involving Stroop interference scores are based on an n of 237.

We entered the interference scores into a 2 (subject's race) \times 2 (evaluator's race) \times 3 (prejudice condition) analysis of variance and observed the expected interaction between subject's race and prejudice condition, $F(2, 225) = 5.13, p < .01, \eta^2 = .04$. As predicted, Black subjects and White subjects showed very different patterns of reactions to the three prejudice conditions (Fig. 1). Simple-effects analyses revealed that Black subjects experienced significantly more interference than did White subjects in the ambiguous-prejudice condition, $F(1, 233) = 5.74, p < .02, p_{\text{rep}} > .93, \eta^2 = .03$. In contrast, White subjects experienced significantly more interference than did Black subjects in the blatant-prejudice condition, $F(1, 233) = 5.89, p < .02, p_{\text{rep}} > .93, \eta^2 = .03$. Interference was comparable for Black and White subjects in the no-prejudice condition ($F < 1$). In addition, we conducted contrast analyses to examine how

Black subjects reacted to ambiguous prejudice and how White subjects reacted to blatant prejudice. The results supported our predictions. For Black subjects, we observed greater interference in the ambiguous-prejudice condition than in the other two prejudice conditions, $t(82) = 2.29, p < .03, p_{\text{rep}} > .94, \eta^2 = .05$. For White subjects, we observed greater interference in the blatant-prejudice condition than in the other two prejudice conditions, $t(58) = 3.35, p < .01, p_{\text{rep}} > .99, \eta^2 = .08$.

We also observed an interaction between subject's race and evaluator's race, $F(1, 225) = 7.36, p < .01, p_{\text{rep}} = .96, \eta^2 = .03$, indicating that the Stroop results were also determined by the match between subject's race and the race of the evaluator (and job candidate). Cognitive depletion was attenuated when the evaluative context featured a match between the subject's race and the human-resources officer's race (i.e., both Black or both White), and the job candidate was a racial out-group member (overall $M = 85, SD = 66$). Cognitive depletion was exacerbated when the evaluative context instead featured a match between the subject's race and the job candidate's race, such that the human-resources officer making the hiring recommendations was a member of the racial out-group (overall $M = 112, SD = 70$). No other significant effects emerged.

DISCUSSION

This study sheds light on the circumstances under which encounters with race-based prejudice disrupt cognitive functioning. The results revealed that cognitive consequences for White and Black individuals differed as a function of the clarity of the prejudice cues they encountered. In addition, cognitive impairment was more pronounced when an in-group member was being evaluated by an out-group member than when an out-group member was being evaluated by an in-group member.

The finding that blatant prejudice depleted the cognitive capacities of White individuals more than ambiguous prejudice does suggests that Whites are not well equipped to deal with blatant prejudice in a professional environment. In fact, our results suggest that Blacks are better prepared to cope with blatant prejudice than Whites are, at least in terms of the short-term effects on performance of cognitive tasks. However, we do not mean to suggest that attributions to prejudice are not detrimental for Black individuals. The adaptive strategies that individuals develop to cope with the experience of being a target of prejudice over time (C.T. Miller & Kaiser, 2001) are unlikely to confer complete psychological "immunity." Rather, Blacks may find that the negative consequences of blatant prejudice ultimately become manifest as problems with mental and physical health (e.g., Landrine & Klonoff, 1996).

Furthermore, it appears that Blacks are particularly vulnerable to cognitive impairment resulting from exposure to ambiguous prejudice—a level of prejudice that Whites may not even register. The finding that ambiguous prejudice impairs the cognitive performance of Black individuals more than blatant

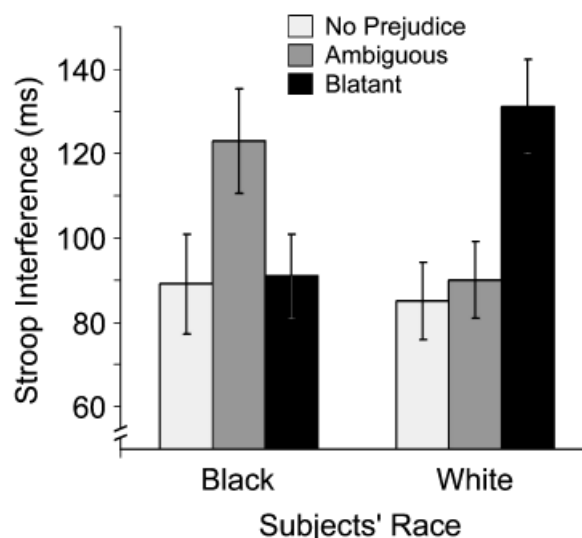


Fig. 1. Stroop interference as a function of prejudice condition and subjects' race. Error bars represent standard errors of the means.

prejudice accords well with findings of previous research on negative consequences of causal uncertainty (Weary & Edwards, 1994). Furthermore, because of the relatively ambiguous nature of contemporary expressions of prejudice, the implications of the finding that ambiguous prejudice depletes cognitive functioning for members of traditionally disadvantaged groups are potentially widespread. Cognitive resources are essential for success across a wide range of domains, from the academic and professional arenas to the domain of everyday social interactions. Imagine members of a faculty hiring committee who overhear a colleague's potentially biased evaluation of a candidate. Their need to digest and synthesize extensive amounts of information about the large candidate pool could be compromised, leading to a suboptimal hiring decision that affects not only the committee members themselves, but also the entire department. This is just one example of the myriad situations in which small decreases in task focus can snowball into large real-world consequences.

We set out to address how exposure to prejudice affects cognitive functioning. According to our results, encountering ambiguous prejudice and blatant prejudice are likely to disrupt cognitive functioning for Blacks and Whites, respectively, leading to suboptimal performance on tasks that require the on-line deployment of attention. Future research should focus on useful interventions that minimize this disruption, so that individuals of all ethnicities can be better equipped to anticipate and cope with prejudice without incurring individual costs.

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MIND SCIENCES KEY CONCEPTS

DEFINITIONS

Implicit bias: the brain's automatic, instant association of stereotypes or attitudes toward particular groups, often without our conscious awareness.

- The split-second decisions our brains make (e.g. reactions to or assumptions about someone).

Identity anxiety: the brain's stress response before or during cross-group interactions.

- Out-group members fear they will experience bias, through discrimination, hostile treatment, or invalidation.
- In-group members fear their actions will be perceived as biased.

Stereotype threat: impaired cognitive functioning on a task when a negative stereotype is activated.

- When we are worried about confirming a negative stereotype about our identity group, we have a physiological reaction and often end up confirming the stereotype.

INTERVENTIONS

Implicit Bias Interventions

“De-Biasing” – Efforts to Reduce Implicit Bias

Stereotype Behavior Replacement: Recognize when a response is based on a stereotype, label the response as stereotypical, reflect on why the response occurred, and consider how this biased response could be avoided in future. Replace the biased response with one that is consistent with your values.

Individuation: Gather specific information about individuals, to prevent making stereotypic inferences. This strategy helps people evaluate others based on personal, rather than group-based, attributes.

Perspective Taking: Imagine oneself to be a member of a stereotyped group. This increases empathy toward the group and reduces automatic group-based evaluations.

Counter-stereotypic imaging: Surround yourself with media/images that counter stereotypes. Imagine, in detail, counter-stereotypic others (whether real individuals, characters from television, or imaginary).

Seek Opportunities for Contact: Seek opportunities to encounter and engage in positive interactions with others. Contact decreases bias by altering mental representations of the group and improving evaluations of the group. Meaningful relationships with others also increase empathy toward other identity groups.

Break the Link Between Bias and Behavior

Doubt Objectivity: Presuming oneself to be objective actually increases the role of implicit bias in decision-making. Acknowledge the presence of bias in order to counter its impact.

Improve Conditions of Decision-making: Think slow: engage in mindful, deliberate processing to prevent implicit biases from kicking in and determining behaviors. Reduce time pressure, load, and multi-tasking: focusing on decisions can help us make more mindful decisions and prevent reliance on unconscious processing. Reduce ambiguity: gathering information prevents the tendency for our brains to “fill in the gaps.” Use clear and fair criteria, develop protocols: adding structure and clarity to decisions can prevent implicit biases from determining our behavior.

Identity Anxiety Interventions

Manage Your Mindset & Build Muscle: Envisioning a positive cross-group experience prior to engaging in a new one will help reduce anxiety and reset energy for the encounter. Be mindful of your body language: engage in appropriate eye contact and open body language, to demonstrate confidence in the interaction and convey respect.

Reset Conversations: Learn how to “fail fast” when you misstep.

1. **Reset.** Let your colleague decide whether to continue with the discussion.
2. **Acknowledge** your role and take on the burden of racial navigation.
3. Briefly share recognition of the misstep, but **don’t self-justify**.
4. Take **responsibility**. Ideally, this includes a commitment moving forward.

Engagement Plans: Staying in working relationship across lines of difference when harm has occurred.

Know your goal:

- Before you speak, plan your approach. Reflect: what do you want to happen? What does amnesty look like for you?

State your take:

- Describe what happened without conclusions. Begin with detailed facts; share what the facts mean to you.
- Invite dialogue if you feel safe to do so.

Make it safe:

- Remember that implicit biases and identity anxiety can undergird behavior.
- Stick to your lived experience—focus on the impact of the behavior rather than the intentionality of the person who caused the harm.

Stereotype Threat Interventions

Create an Identity-Safe Environment: Increase the sense of belonging for individuals in stereotyped groups. This makes social identity less salient as a marker of difference. Use inclusive language, to affirm the belonging of all identities.

Promote a Growth Mindset: Abilities can be conceptualized as either fixed (“you have it or you don’t”) or able to be developed (“you can learn it”). When thought of as fixed, poor performance is equated with inadequacy, but with growth mindset, there is just more work to do.

In-group Peers and Experts: Connecting to peers of the same identity group can increase the sense of belonging. Relationships with aspirational individuals affirms that such achievements are attainable.

Wise Feedback: Give feedback that communicates both high expectations and a confidence that the individual can meet those expectations. If feedback is purely critical, it may be interpreted as the product of bias; if feedback is purely positive, it may be interpreted as racial condescension. Wise feedback reduces uncertainty about the reason for feedback.

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Implicit Bias in the Courtroom

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ABSTRACT

Given the substantial and growing scientific literature on implicit bias, the time has now come to confront a critical question: *What, if anything, should we do about implicit bias in the courtroom?* The author team comprises legal academics, scientists, researchers, and even a sitting federal judge who seek to answer this question in accordance with behavioral realism. The Article first provides a succinct scientific introduction to implicit bias, with some important theoretical clarifications that distinguish between explicit, implicit, and structural forms of bias. Next, the Article applies the science to two trajectories of bias relevant to the courtroom. One story follows a criminal defendant path; the other story follows a civil employment discrimination path. This application involves not only a focused scientific review but also a step-by-step examination of how criminal and civil trials proceed. Finally, the Article examines various concrete intervention strategies to counter implicit biases for key players in the justice system, such as the judge and jury.

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INTRODUCTION

The problems of overt discrimination have received enormous attention from lawyers, judges, academics, and policymakers. While explicit sexism, racism, and other forms of bias persist, they have become less prominent and public over the past century. But explicit bias and overt discrimination are only part of the problem. Also important, and likely more pervasive, are questions surrounding implicit bias—attitudes or stereotypes that affect our understanding, decisionmaking, and behavior, without our even realizing it.

How prevalent and significant are these implicit, unintentional biases? To answer these questions, people have historically relied on their gut instincts and personal experiences, which did not produce much consensus. Over the past two decades, however, social cognitive psychologists have discovered novel ways to measure the existence and impact of implicit biases—without relying on mere common sense. Using experimental methods in laboratory and field studies, researchers have provided convincing evidence that implicit biases exist, are pervasive, are large in magnitude, and have real-world effects. These fascinating discoveries, which have migrated from the science journals into the law reviews and even popular discourse, are now reshaping the law's fundamental understandings of discrimination and fairness.

Given the substantial and growing scientific literature on implicit bias, the time has now come to confront a critical question: *What, if anything, should we do about implicit bias in the courtroom?* In other words, how concerned should we be that judges, advocates, litigants, and jurors come to the table with implicit biases that influence how they interpret evidence, understand facts, parse legal principles, and make judgment calls? In what circumstances are these risks most acute? Are there practical ways to reduce the effects of implicit biases? To what extent can awareness of these biases mitigate their impact? What other debiasing strategies might work? In other words, in what way—if at all—should the courts respond to a better model of human decisionmaking that the mind sciences are providing?

We are a team of legal academics, scientists, researchers, and a sitting federal judge¹ who seek to answer these difficult questions in accordance with behavioral realism.² Our general goal is to educate those in the legal profession who are

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1. Judge Mark W. Bennett, a coauthor of this article, is a United States District Court Judge in the Northern District of Iowa.
 2. Behavioral realism is a school of thought that asks the law to account for more accurate models of human cognition and behavior. See, e.g., Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit*

unfamiliar with implicit bias and its consequences. To do so, we provide a current summary of the underlying science, contextualized to criminal and civil litigation processes that lead up to and crescendo in the courtroom. This involves not only a focused scientific review but also a step-by-step examination of how criminal and civil trials proceed, followed by suggestions designed to address the harms. We seek to be useful to legal practitioners of good faith, including judges, who conclude that implicit bias is a problem (one among many) but do not know quite what to do about it. While we aim to provide useful and realistic strategies for those judges already persuaded that implicit bias is a legitimate concern, we also hope to provoke those who know less about it, or are more skeptical of its relevance, to consider these issues thoughtfully.

We are obviously not a random sample of researchers and practitioners; thus, we cannot claim any representative status. That said, the author team represents a broad array of experience, expertise, methodology, and viewpoints. In authoring this paper, the team engaged in careful deliberations across topics of both consensus and dissensus.³ We did not entirely agree on how to frame questions in this field or how to answer them. That said, we stand collectively behind what we have written. We also believe the final work product reveals the benefits of such cross-disciplinary and cross-professional collaboration.

Part I provides a succinct scientific introduction to implicit bias, with some important theoretical clarifications. Often the science can seem too abstract, especially to nonprofessional scientists. As a corrective, Part II applies the science to two trajectories of bias relevant to the courtroom. One story follows a criminal defendant path; the other story follows a civil employment discrimination path. Part III

Bias and the Law, 58 UCLA L. REV. 465, 490 (2010); Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CALIF. L. REV. 997, 997–1008 (2006). Jon Hanson and his coauthors have advanced similar approaches under the names of “critical realism,” “situationism,” and the “law and mind sciences.” See Adam Benforado, *Frames of Injustice: The Bias We Overlook*, 85 IND. L.J. 1333, 1339 n.28 (2010) (listing papers).

3. This paper arose out of the second symposium of PULSE: Program on Understanding Law, Science, and Evidence at UCLA School of Law, on March 3–4, 2011. We brought together leading scientists (including Anthony Greenwald, the inventor of the Implicit Association Test), federal and state judges, applied researchers, and legal academics to explore the state of the science regarding implicit bias research and to examine the various institutional responses to date. The Symposium also raised possibilities and complications, ranging from the theoretical to practical, from the legal to the scientific. After a day of public presentations, the author team met in a full-day closed session to craft the outlines of this paper. Judge Michael Linfield of the Los Angeles Superior Court and Jeff Rachlinski, Professor of Law at Cornell Law School, participated in the symposium but could not join the author team. Their absence should not be viewed as either agreement or disagreement with the contents of the Article.

examines different intervention strategies to counter the implicit biases of key players in the justice system, such as the judge and jury.

I. IMPLICIT BIASES

A. Empirical Introduction

Over the past thirty years, cognitive and social psychologists have demonstrated that human beings think and act in ways that are often not rational. We suffer from a long litany of biases, most of them having nothing to do with gender, ethnicity, or race. For example, we have an oddly stubborn tendency to anchor to numbers, judgments, or assessments to which we have been exposed and to use them as a starting point for future judgments—even if those anchors are objectively wrong.⁴ We exhibit an endowment effect, with irrational attachments to arbitrary initial distributions of property, rights, and grants of other entitlements.⁵ We suffer from hindsight bias and believe that what turns out to be the case today should have been easily foreseen yesterday.⁶ The list of empirically revealed biases goes on and on. Indeed, many legal academics have become so familiar with such heuristics and biases that they refer to them in their analyses as casually as they refer to economic concepts such as transaction costs.⁷

One type of bias is driven by attitudes and stereotypes that we have about social categories, such as genders and races. An *attitude* is an association between some concept (in this case a social group) and an evaluative valence, either positive or negative.⁸ A *stereotype* is an association between a concept (again, in this case a social group) and a trait.⁹ Although interconnected, attitudes and stereotypes

4. See Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation*, 74 N.Y.U. L. REV. 630, 667 (1999) (describing anchoring).

5. See generally Russell Korobkin, *The Endowment Effect and Legal Analysis*, 97 NW. U. L. REV. 1227 (2003).

6. See generally DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011); Jeffrey J. Rachlinski, *A Positive Psychological Theory of Judging in Hindsight*, 65 U. CHI. L. REV. 571 (1998).

7. See, e.g., Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption From Law and Economics*, 88 CALIF. L. REV. 1051 (2000); Donald C. Langevoort, *Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review*, 51 VAND. L. REV. 1499 (1998).

8. In both common and expert usage, sometimes the word “prejudice” is used to describe a negative attitude, especially when it is strong in magnitude.

9. If the association is nearly perfect, in that almost every member of the social group has that trait, then we think of the trait less as a stereotype and more as a defining attribute. Typically, when we use the word “stereotype,” the correlation between social group and trait is far from perfect. See Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 949 (2006).

should be distinguished because a positive attitude does not foreclose negative stereotypes and vice versa. For instance, one might have a positive overall attitude toward African Americans and yet still associate them with weapons. Or, one might have a positive stereotype of Asian Americans as mathematically able but still have an overall negative attitude towards them.

The conventional wisdom has been that these social cognitions—attitudes and stereotypes about social groups—are explicit, in the sense that they are both consciously accessible through introspection *and* endorsed as appropriate by the person who possesses them. Indeed, this understanding has shaped much of current antidiscrimination law. The conventional wisdom is also that the social cognitions that individuals hold are relatively stable, in the sense that they operate in the same way over time and across different situations.

However, recent findings in the mind sciences, especially implicit social cognition (ISC),¹⁰ have undermined these conventional beliefs. As detailed below, attitudes and stereotypes may also be implicit, in the sense that they are not consciously accessible through introspection. Accordingly, their impact on a person's decisionmaking and behaviors does not depend on that person's awareness of possessing these attitudes or stereotypes. Consequently, they can function automatically, including in ways that the person would not endorse as appropriate if he or she did have conscious awareness.

How have mind scientists discovered such findings on matters so latent or implicit? They have done so by innovating new techniques that measure implicit attitudes and stereotypes that by definition cannot be reliably self-reported. Some of these measures involve subliminal priming and other treatments that are not consciously detected within an experimental setting. Other instruments use reaction time differences between two types of tasks—one that seems consistent with some bias, the other inconsistent—as in the Implicit Association Test (IAT).¹¹

10. Implicit social cognition (ISC) is a field of psychology that examines the mental processes that affect social judgments but operate without conscious awareness or conscious control. *See generally* Kristin A. Lane, Jerry Kang & Mahzarin R. Banaji, *Implicit Social Cognition and Law*, 3 ANN. REV. L. & SOC. SCI. 427 (2007). The term was first used and defined by Anthony Greenwald and Mahzarin Banaji. *See* Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCHOL. REV. 4 (1995).

11. *See* Anthony G. Greenwald et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. PERSONALITY & SOC. PSYCHOL. 1464, 1464–66 (1998) (introducing the Implicit Association Test (IAT)). For more information on the IAT, *see* Brian A. Nosek, Anthony G. Greenwald & Mahzarin R. Banaji, *The Implicit Association Test at Age 7: A Methodological and Conceptual Review*, in AUTOMATIC PROCESSES IN SOCIAL THINKING AND BEHAVIOR 265 (John A. Bargh ed., 2007).

The well-known IAT is a sorting task that measures time differences between schema-consistent pairings and schema-inconsistent pairings of concepts, as represented by words or pictures. For example, suppose we want to test whether there is an implicit stereotype associating African Americans with weapons. In a schema-consistent run, the participant is instructed to hit one response key when she sees a White face or a harmless object, and another response key when she sees an African American face or a weapon. Notice that the same key is used for *both* White and harmless item; a different key is used for *both* African American and weapon. Most people perform this task quickly.

In a schema-inconsistent run, we reverse the pairings. In this iteration, the same key is used for both White and weapon; a different key is used for both African American and harmless item. Most people perform this task more slowly.¹² Of course, the order in which these tasks are presented is always systematically varied to ensure that the speed of people's responses is not affected by practice. The time differential between these runs is defined as the implicit association effect and is statistically processed into standard units called an IAT D score.¹³

Through the IAT, social psychologists from hundreds of laboratories have collected enormous amounts of data¹⁴ on reaction-time measures of "implicit biases," a term we use to denote implicit attitudes and implicit stereotypes. According to these measures, implicit bias is pervasive (widely held),¹⁵ large in magnitude (as compared to standardized measures of explicit bias),¹⁶ dissociated from explicit biases (which suggests that explicit biases and implicit biases, while related, are

12. See Brian A. Nosek et al., *Pervasiveness and Correlates of Implicit Attitudes and Stereotypes*, 18 EUR. REV. SOC. PSYCHOL. 1, 17 (2007).

13. This D score, which ranges from -2.0 to 2.0, is a standardized score, which is computed by dividing the IAT effect as measured in milliseconds by the standard deviations of the participants' latencies pooled across schema-consistent and -inconsistent conditions. See, e.g., Anthony Greenwald et al., *Understanding and Using the Implicit Association Test: I. An Improved Scoring Algorithm*, 85 J. PERSONALITY & SOC. PSYCHOL. 197 (2003). If an individual's IAT D score is divided by its standard deviation of the population that has taken the test, the result is interpretable as the commonly used effect size measure, Cohen's *d*.

14. The most prominent dataset is collected at PROJECT IMPLICIT, <http://projectimplicit.org> (last visited Mar. 22, 2012) (providing free online tests of automatic associations). For a broad analysis of this dataset, see Nosek et al., *supra* note 12.

15. Lane, Kang & Banaji, *supra* note 10, at 437.

16. Cohen's *d* is a standardized unit of the size of a statistical effect. By convention, social scientists mark 0.20, 0.50, and 0.80 as small, medium, and large effect sizes. The IAT effect, as measured in Cohen's *d*, on various stereotypes and attitudes range from medium to large. See Kang & Lane, *supra* note 2, at 474 n.35 (discussing data from Project Implicit). Moreover, the effect sizes of implicit bias against social groups are frequently larger than the effect sizes produced by explicit bias measures. See *id.* at 474-75 tbl.1.

separate mental constructs),¹⁷ and predicts certain kinds of real-world behavior.¹⁸ What policymakers are now keen to understand are the size and scope of these behavioral effects and how to counter them—by altering the implicit biases themselves and by implementing strategies to attenuate their effects.

Useful and current summaries of the scientific evidence can be found in both the legal and psychological literatures. For example, in the last volume of this law review, Jerry Kang and Kristin Lane provided a summary of the evidence demonstrating that we are not perceptually, cognitively, or behaviorally colorblind.¹⁹ Justin Levinson and Danielle Young have summarized studies focusing on jury decisionmaking.²⁰ In the psychology journals, John Jost and colleagues responded to sharp criticism²¹ that the IAT studies lacked real-world consequences by providing a qualitative review of the literature, including ten studies that no manager should ignore.²² Further, they explained how the findings are entirely consistent with the major tenets of twentieth century social cognitive psychology.²³ In a quantitative review, Anthony Greenwald conducted a meta-analysis of IAT studies—which synthesizes all the relevant scientific findings—and found that implicit attitudes as measured by the IAT predicted certain types of behavior, such as anti-Black discrimination or intergroup discrimination, substantially better than explicit bias measures.²⁴

Instead of duplicating these summaries, we offer research findings that are specific to implicit bias leading up to and in the courtroom. To do so, we chart

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17. See Anthony G. Greenwald & Brian A. Nosek, *Attitudinal Dissociation: What Does It Mean?*, in *ATTITUDES: INSIGHTS FROM THE NEW IMPLICIT MEASURES* 65 (Richard E. Petty, Russell E. Fazio & Pablo Briñol eds., 2008).
 18. See Kang & Lane, *supra* note 2, at 481–90 (discussing evidence of biased behavior in perceiving smiles, responding to threats, screening resumes, and body language).
 19. See Kang & Lane, *supra* note 2, at 473–90; see also David L. Faigman, Nilanjana Dasgupta & Cecilia L. Ridgeway, *A Matter of Fit: The Law of Discrimination and the Science of Implicit Bias*, 59 *HASTINGS L.J.* 1389 (2008).
 20. See Justin D. Levinson & Danielle Young, *Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence*, 112 *W. VA. L. REV.* 307, 319–26 (2010).
 21. See, e.g., Gregory Mitchell & Philip E. Tetlock, *Antidiscrimination Law and the Perils of Mindreading*, 67 *OHIO ST. L.J.* 1023, 1108–10 (2006).
 22. See, e.g., John T. Jost et al., *The Existence of Implicit Prejudice Is Beyond Reasonable Doubt: A Refutation of Ideological and Methodological Objections and Executive Summary of Ten Studies That No Manager Should Ignore*, 29 *RES. ORGANIZATIONAL BEHAV.* 39, 41 (2009).
 23. See *id.*
 24. See Anthony G. Greenwald et al., *Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity*, 97 *J. PERSONALITY & SOC. PSYCHOL.* 17, 19–20 (2009). Implicit attitude scores predicted behavior in this domain at an average correlation of $r=0.24$, whereas explicit attitude scores had correlations at an average of $r=0.12$. See *id.* at 24 tbl.3.

out two case trajectories—one criminal, the other civil. That synthesis appears in Part II.

B. Theoretical Clarification

But before we leave our introduction to implicit bias, we seek to make some theoretical clarifications on the relationships between explicit biases, implicit biases, and structural processes that are all involved in producing unfairness in the courtroom. We do so because the legal literature has flagged this as an important issue.²⁵ In addition, a competent diagnosis of unfairness in the courtroom requires disentangling these various processes. For instance, if the end is to counter discrimination caused by, say, *explicit* bias, it may be ineffective to adopt means that are better tailored to respond to *implicit* bias, and vice versa.

We start by clarifying terms. To repeat, explicit biases are attitudes and stereotypes that are consciously accessible through introspection *and* endorsed as appropriate. If no social norm against these biases exists within a given context, a person will freely broadcast them to others. But if such a norm exists, then explicit biases can be concealed to manage the impressions that others have of us. By contrast, implicit biases are attitudes and stereotypes that are not consciously accessible through introspection. If we find out that we have them, we may indeed reject them as inappropriate.

Above, we used the labels “explicit” and “implicit” as adjectives to describe mental constructs—attitudes and stereotypes. Readers should recognize that these adjectives can also apply to research procedures or instruments. An explicit instrument asks the respondent for a direct self-report with no attempt by researchers to disguise the mental construct that they are measuring. An example is a straightforward survey question. No instrument perfectly measures a mental construct. In fact, one can often easily conceal one’s explicit bias as measured through an explicit instrument. In this way, an explicit instrument can poorly measure an explicit bias, as the test subject may choose not to be candid about the beliefs or attitudes at issue.

By contrast, an implicit instrument does not depend on the respondent’s conscious knowledge of the mental constructs that the researcher is inferring from the measure. An example is a reaction-time measure, such as the IAT. This does not necessarily mean that the respondent is unaware that the IAT is measuring bias.

25. See generally Ralph Richard Banks & Richard Thompson Ford, *(How) Does Unconscious Bias Matter?: Law, Politics, and Racial Inequality*, 58 EMORY L.J. 1053 (2009); Stephen M. Rich, *Against Prejudice*, 80 GEO. WASH. L. REV. 1 (2011).

It also does not mean that the respondent is actually unaware that he or she has implicit biases, for example because she has taken an IAT before or is generally aware of the research literature. To repeat, no instrument perfectly measures any mental construct, and this remains true for implicit instruments. One might, for instance, try to conceal implicit bias measured through an implicit instrument, but such faking is often much harder than faking explicit bias measured by an explicit instrument.²⁶

Finally, besides explicit and implicit biases, another set of processes that produce unfairness in the courtroom can be called “structural.” Other names include “institutional” or “societal.” These processes can lock in past inequalities, reproduce them, and indeed exacerbate them even without formally treating persons worse simply because of attitudes and stereotypes about the groups to which they belong.²⁷ In other words, structural bias can produce unfairness even though no single individual is being treated worse right now because of his or her membership in a particular social category.

Because thinking through biases with respect to human beings evokes so much potential emotional resistance, sometimes it is easier to apply them to something less fraught than gender, race, religion, and the like. So, consider a vegetarian’s biases against meat. He has a negative attitude (that is, prejudice) toward meat. He also believes that eating meat is bad for his health (a stereotype). He is aware of this attitude and stereotype. He also endorses them as appropriate. That is, he feels that it is okay to have a negative reaction to meat. He also believes it accurate enough to believe that meat is generally bad for human health and that there is no reason to avoid behaving in accordance with this belief. These are *explicit* biases.

Now, if this vegetarian is running for political office and campaigning in a region famous for barbecue, he will probably keep his views to himself. He could, for example, avoid showing disgust on his face or making critical comments when a plate of ribs is placed in front of him. Indeed, he might even take a bite and compliment the cook. This is an example of *concealed* bias (explicit bias that is hidden to manage impressions).

26. See, e.g., Do-Yeong Kim, *Voluntary Controllability of the Implicit Association Test (IAT)*, 66 SOC. PSYCHOL. Q. 83, 95–96 (2003).

27. See, e.g., Michelle Adams, *Intergroup Rivalry, Anti-Competitive Conduct and Affirmative Action*, 82 B.U. L. REV. 1089, 1117–22 (2002) (applying lock-in theory to explain the inequalities between Blacks and Whites in education, housing, and employment); John A. Powell, *Structural Racism: Building Upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 795–800 (2008) (adopting a systems approach to describe structured racialization); Daria Roithmayr, *Barriers to Entry: A Market Lock-In Model of Discrimination*, 86 VA. L. REV. 727, 743–48 (2000) (describing lock-in theory, drawing on antitrust law and concepts).

Consider, by contrast, another vegetarian who has recently converted for environmental reasons. She proclaims explicitly and sincerely a negative attitude toward meat. But it may well be that she has an implicit attitude that is still slightly positive. Suppose that she grew up enjoying weekend barbecues with family and friends, or still likes the taste of steak, or first learned to cook by making roasts. Whatever the sources and causes, she may still have an implicitly positive attitude toward meat. This is an *implicit* bias.

Finally, consider some eating decision that she has to make at a local strip mall. She can buy a salad for \$10 or a cheeseburger for \$3. Unfortunately, she has only \$5 to spare and must eat. Neither explicit nor implicit biases much explain her decision to buy the cheeseburger. She simply lacks the funds to buy the salad, and her need to eat trumps her desire to avoid meat. The decision was not driven principally by an attitude or stereotype, explicit or implicit, but by the price. But what if a careful historical, economic, political, and cultural analysis revealed multifarious subsidies, political kickbacks, historical contingencies, and economies of scale that accumulated in mutually reinforcing ways to price the salad much higher than the cheeseburger? These various forces could make it more instrumentally rational for consumers to eat cheeseburgers. This would be an example of *structural* bias in favor of meat.

We disentangle these various mechanisms—explicit attitudes and stereotypes (sometimes concealed, sometimes revealed), implicit attitudes and stereotypes, and structural forces—because they pose different threats to fairness everywhere, including the courtroom. For instance, the threat to fairness posed by jurors with explicit negative attitudes toward Muslims but who conceal their prejudice to stay on the jury is quite different from the threat posed by jurors who perceive themselves as nonbiased but who nevertheless hold negative implicit stereotypes about Muslims. Where appropriate, we explain how certain studies provide evidence of one type of bias or the other. In addition, we want to underscore that these various mechanisms—explicit bias, implicit bias, and structural forces—are not mutually exclusive.²⁸ To the contrary, they may often be mutually reinforcing. In focusing on implicit bias in the courtroom, we do not mean to suggest

28. See, e.g., GLENN C. LOURY, THE ANATOMY OF RACIAL INEQUALITY 23–30 (2002) (discussing self-reinforcing stereotypes); JOHN POWELL & RACHEL GODSIL, *Implicit Bias Insights as Preconditions to Structural Change*, POVERTY & RACE, Sept./Oct. 2011, at 3, 6 (explaining why “implicit bias insights are crucial to addressing the substantive inequalities that result from structural racialization”).

that implicit bias is the only or most important problem, or that explicit bias (revealed or concealed) and structural forces are unimportant or insignificant.²⁹

II. TWO TRAJECTORIES

A. The Criminal Path

Consider, for example, some of the crucial milestones in a criminal case flowing to trial. First, on the basis of a crime report, the police investigate particular neighborhoods and persons of interest and ultimately arrest a suspect. Second, the prosecutor decides to charge the suspect with a particular crime. Third, the judge makes decisions about bail and pretrial detention. Fourth, the defendant decides whether to accept a plea bargain after consulting his defense attorney, often a public defender or court-appointed private counsel. Fifth, if the case goes to trial, the judge manages the proceedings while the jury decides whether the defendant is guilty. Finally, if convicted, the defendant must be sentenced. At each of these stages,³⁰ implicit biases can have an important impact. To maintain a manageable scope of analysis, we focus on the police encounter, charge and plea bargain, trial, and sentencing.

1. Police Encounter

Blackness and criminality. If we implicitly associate certain groups, such as African Americans, with certain attributes, such as criminality, then it should not be surprising that police may behave in a manner consistent with those implicit stereotypes. In other words, biases could shape whether an officer decides to stop an individual for questioning in the first place, elects to interrogate briefly or at length, decides to frisk the individual, and concludes the encounter with an arrest versus a warning.³¹ These biases could contribute to the substantial racial disparities that have been widely documented in policing.³²

29. See Jerry Kang, *Implicit Bias and the Pushback From the Left*, 54 ST. LOUIS U. L.J. 1139, 1146–48 (2010) (specifically rejecting complaint that implicit bias analysis must engage in reductionism).

30. The number of stages is somewhat arbitrary. We could have listed more stages in a finer-grained timeline or vice versa.

31. Devon W. Carbado, *(E)racizing the Fourth Amendment*, 100 MICH. L. REV. 946, 976–77 (2002).

32. See, e.g., Dianna Hunt, *Ticket to Trouble/Wheels of Injustice/Certain Areas Are Ticket Traps for Minorities*, HOUS. CHRON., May 14, 1995, at A1 (analyzing sixteen million Texas driving records and finding that minority drivers straying into White neighborhoods in Texas's major urban areas were twice as likely as Whites to get traffic violations); Sam Vincent Meddis & Mike Snider, *Drug War 'Focused' on Blacks*, USA TODAY, Dec. 20, 1990, at 1A (reporting findings from a 1989 USA

Since the mid-twentieth century, social scientists have uncovered empirical evidence of negative attitudes toward African Americans as well as stereotypes about their being violent and criminal.³³ Those biases persist today, as measured by not only explicit but also implicit instruments.³⁴

For example, Jennifer Eberhardt, Philip Goff, Valerie Purdie, and Paul Davies have demonstrated a bidirectional activation between Blackness and criminality.³⁵ When participants are subliminally primed³⁶ with a Black male face (as opposed to a White male face, or no prime at all), they are quicker to distinguish the faint outline of a weapon that slowly emerges out of visual static.³⁷ In other words, by implicitly thinking *Black*, they more quickly saw a weapon.

Interestingly, the phenomenon also happens in reverse. When subliminally primed with drawings of weapons, participants visually attended to Black male faces more than comparable White male faces.³⁸ Researchers found this result not only in a student population, which is often criticized for being unrepresentative of the real world, but also among police officers.³⁹ The research suggests both that

Today study that 41 percent of those arrested on drug charges were African American whereas 15 percent of the drug-using population is African American); Billy Porterfield, *Data Raise Question: Is the Drug War Racist?*, AUSTIN AM. STATESMAN, Dec. 4, 1994, at A1 (citing study showing that African Americans were over seven times more likely than Whites to be arrested on drug charges in Travis County in 1993).

33. See generally Patricia G. Devine & Andrew J. Elliot, *Are Racial Stereotypes Really Fading? The Princeton Trilogy Revisited*, 21 PERSONALITY & SOC. PSYCHOL. BULL. 1139 (1995).
34. In a seminal paper, Patricia Devine demonstrated that being subliminally primed with stereotypically "Black" words prompted participants to evaluate ambiguous behavior as more hostile. See Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5 (1989). The priming words included "Negroes, lazy, Blacks, blues, rhythm, Africa, stereotype, ghetto, welfare, basketball, unemployed, and plantation." *Id.* at 10. Those who received a heavy dose of priming (80 percent stereotypical words) interpreted a person's actions as more hostile than those who received a milder dose (20 percent). *Id.* at 11–12; see also John A. Bargh et al., *Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action*, 71 J. PERSONALITY & SOC. PSYCHOL. 230, 238–39 (1996).
35. See Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876 (2004).
36. The photograph flashed for only thirty milliseconds. *Id.* at 879.
37. See *id.* at 879–80. There was a 21 percent drop in perceptual threshold between White face primes and Black face primes. This was measured by counting the number of frames (out of a total of 41) that were required before the participant recognized the outlines of the weapon in both conditions. There was a 8.8 frame difference between the two conditions. *Id.* at 881.
38. Visual attendance was measured via a dot-probe paradigm, which requires participants to indicate on which side of the screen a dot flashes. The idea is that if a respondent is already looking at one face (for example, the Black photograph), he or she will see a dot flash near the Black photograph faster. See *id.* at 881 (describing dot-paradigm as the gold standard in visual attention measures).
39. See *id.* at 885–87 (describing methods, procedures, and results of Study 4, which involved sixty-one police officers who were 76 percent White, 86 percent male, and who had an average age of forty-two).

the idea of Blackness triggers weapons and makes them easier to see, and, simultaneously, that the idea of weapons triggers visual attention to Blackness. How these findings translate into actual police work is, of course, still speculative. At a minimum, however, they suggest the possibility that officers have an implicit association between Blackness and weapons that could affect both their hunches and their visual attention.

Even if this is the case, one might respond that extra visual attention by the police is not too burdensome. But who among us enjoys driving with a police cruiser on his or her tail?⁴⁰ Moreover, the increased visual attention did not promote accuracy; instead, it warped the officers' perceptual memories. The subliminal prime of weapons led police officers not only to look more at Black faces but also to remember them in a biased way, as having more stereotypically African American features. Thus, they "were more likely to falsely identify a face that was more stereotypically Black than the target when they were primed with crime than when they were not primed."⁴¹

We underscore a point that is so obvious that it is easy to miss. The primes in these studies were all flashed *subliminally*. Thus, the behavioral differences in visually attending to Black faces and in remembering them more stereotypically were all triggered implicitly, without the participants' conscious awareness.

Shooter bias. The implicit association between Blackness and weapons has also been found through other instruments, including other priming tasks⁴² and the IAT. One of the tests available on Project Implicit specifically examines the implicit stereotype between African Americans (as compared to European Americans) and weapons (as compared to harmless items). That association has been found to be strong, widespread, and dissociated from explicit self-reports.⁴³

Skeptics can reasonably ask why we should care about minor differentials between schema-consistent and -inconsistent pairings that are often no more than a half second. But it is worth remembering that a half second may be all

In this study, the crime primes were not pictures but words: "violent, crime, stop, investigate, arrest, report, shoot, capture, chase, and apprehend." *Id.* at 886.

40. See Carbado, *supra* note 31, at 966–67 (describing existential burdens of heightened police surveillance).

41. Eberhardt et al., *supra* note 35, at 887.

42. See B. Keith Payne, *Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon*, 81 J. PERSONALITY & SOC. PSYCHOL. 181, 185–86 (2001). The study deployed a priming paradigm, in which a photograph of a Black or White face was flashed to participants for two hundred milliseconds. Immediately thereafter, participants were shown pictures of guns or tools. *Id.* at 184. When primed by the Black face, participants identified guns faster. *Id.* at 185.

43. For N=85,742 participants, the average IAT D score was 0.37; Cohen's *d*=1.00. By contrast, the self-reported association (that is, the explicit stereotype measure) was Cohen's *d*=0.31. See Nosek et al., *supra* note 12, at 11 tbl.2.

the time a police officer has to decide whether to shoot. In the policing context, that half second might mean the difference between life and death.

Joshua Correll developed a shooter paradigm video game in which participants are confronted with photographs of individuals (targets) holding an object, superimposed on various city landscapes.⁴⁴ If the object is a weapon, the participant is instructed to press a key to shoot. If the object is harmless (for example, a wallet), the participant must press a different key to holster the weapon. Correll found that participants were quicker to shoot when the target was Black as compared to White.⁴⁵ Also, under time pressure, participants made more mistakes (false alarms) and shot more unarmed Black targets than unarmed White targets, and failed to shoot more armed White targets (misses) than armed Black targets.⁴⁶ Interestingly, the shooter bias effect was not correlated with measures of explicit personal stereotypes.⁴⁷ Correll also found comparable amounts of shooter bias in African American participants.⁴⁸ This suggests that negative attitudes toward African Americans are not what drive the phenomenon.⁴⁹

The shooter bias experiments have also been run on actual police officers, with mixed results. In one study, police officers showed the same bias in favor of shooting unarmed Blacks more often than unarmed Whites that student and civilian populations demonstrated.⁵⁰ In another study, however, although police officers showed a similar speed bias, they did not show any racial bias in the

44. Joshua Correll et al., *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314, 1315–17 (2002) (describing the procedure).

45. *Id.* at 1317.

46. *Id.* at 1319. For qualifications about how the researchers discarded outliers, see Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1493 n.16 (2005). Subsequent studies have confirmed Correll's general findings. See, e.g., Anthony G. Greenwald et al., *Targets of Discrimination: Effects of Race on Responses to Weapons Holders*, 39 J. EXPERIMENTAL SOC. PSYCHOL. 399 (finding similar results).

47. Correll et al., *supra* note 44, at 1323. The scales used were the Modern Racism Scale, the Discrimination and Diversity Scale, the Motivation to Control Prejudiced Responding Scale, and some questions from the Right-Wing Authoritarianism Scale and the Personal Need for Structure Scale for good measure. *Id.* at 1321. These are survey instruments that are commonly used in social psychological research. Shooter bias was, however, correlated with measures of societal stereotypes—the stereotypes that other people supposedly held. *Id.* at 1323.

48. *See id.* at 1324.

49. On explicit attitude instruments, African Americans show on average substantial in-group preference (over Whites). On implicit attitude instruments, such as the IAT, African Americans bell curve around zero, which means that they show no preference on average. See Brian A. Nosek, Mahzarin R. Banaji & Anthony G. Greenwald, *Harvesting Implicit Group Attitudes and Beliefs From a Demonstration Web Site*, 6 GROUP DYNAMICS: THEORY RES. & PRACTICE 101, 105–06 (2002).

50. See E. Ashby Plant & B. Michelle Peruche, *The Consequences of Race for Police Officers' Responses to Criminal Subjects*, 16 PSYCHOL. SCI. 180, 181 (2005).

most important criterion of accuracy. In other words, there was no higher error rate of shooting unarmed Blacks as compared to Whites.⁵¹

Finally, in a study that directly linked implicit stereotypes (with weapons) as measured by the IAT and shooter bias, Jack Glaser and Eric Knowles found that “[i]ndividuals possessing a relatively strong stereotype linking Blacks and weapons [one standard deviation above the mean IAT] clearly show the Shooter Bias.”⁵² By contrast, recall that Correll found no such correlation with explicit stereotypes. These findings are consistent with the implicit stereotype story. Of course, it may also be true that participants were simply downplaying or concealing their explicit bias, which could help explain why no correlation was found.

In sum, we have evidence that suggests that implicit biases could well influence various aspects of policing. A fairly broad set of research findings shows that implicit biases (as measured by implicit instruments) alter and affect numerous behaviors that police regularly engage in—visual surveillance, recall, and even armed response.⁵³ It should go without saying that explicit biases, which often undergird unspoken policies of racial profiling, also play an enormous role in the differential policing of people of color. It also should go without saying that various structural forces that produce racially segregated, predominantly minority neighborhoods that have higher poverty and crime rates also have a huge impact on racialized policing. Nevertheless, we repeat these points so that readers internalize the idea that implicit, explicit, and structural processes should not be deemed mutually exclusive.

2. Charge and Plea Bargain

Journalistic investigations have uncovered some statistical evidence that racial minorities are treated worse than Whites in prosecutors’ charging decisions.⁵⁴

51. See Joshua Correll et al., *Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot*, 92 J. PERSONALITY & SOC. PSYCHOL. 1006, 1010–13, 1016–17 (2007) (describing the results from two studies).

52. Jack Glaser & Eric D. Knowles, *Implicit Motivation to Control Prejudice*, 44 J. EXPERIMENTAL SOC. PSYCHOL. 164, 169 (2008).

53. For discussions in the law reviews, with some treatment of implicit biases, see Alex Geisinger, *Rethinking Profiling: A Cognitive Model of Bias and Its Legal Implications*, 86 OR. L. REV. 657, 667–73 (2007) (providing a cognitive model based on automatic categorization in accordance with behavioral realism).

54. For example, in San Jose, a newspaper investigation concluded that out of the almost seven hundred thousand criminal cases reported, “at virtually every stage of pre-trial negotiation, whites are more successful than non-whites.” Ruth Marcus, *Racial Bias Widely Seen in Criminal Justice System; Research Often Supports Black Perceptions*, WASH. POST, May 12, 1992, at A4. San Francisco Public Defender Jeff Brown commented on racial stereotyping: “It’s a feeling, ‘You’ve got a nice

Of course, there might be some legitimate reason for those disparities if, for example, minorities and Whites are not similarly situated on average. One way to examine whether the merits drive the disparate results is to control for everything except some irrelevant attribute, such as race. In several studies, researchers used regression analyses to conclude that race was indeed independently correlated with the severity of the prosecutor's charge.

For example, in a 1985 study of charging decisions by prosecutors in Los Angeles, researchers found prosecutors more likely to press charges against Black than White defendants, and determined that these charging disparities could not be accounted for by race-neutral factors, such as prior record, seriousness of charge, or use of a weapon.⁵⁵ Two studies also in the late 1980s, one in Florida and the other in Indiana, found charging discrepancies based on the race of the victim.⁵⁶ At the federal level, a U.S. Sentencing Commission report found that prosecutors were more apt to offer White defendants generous plea bargains with sentences below the prescribed guidelines than to offer them to Black or Latino defendants.⁵⁷

While these studies are suggestive, other studies find no disparate treatment.⁵⁸ Moreover, this kind of statistical evidence does not definitively tell us that biases

person screwing up,' as opposed to feeling that 'this minority is on a track and eventually they're going to end up in state prison.'" Christopher H. Schmitt, *Why Plea Bargains Reflect Bias*, SAN JOSE MERCURY NEWS, Dec. 9, 1991, at 1A; see also Christopher Johns, *The Color of Justice: More and More, Research Shows Minorities Aren't Treated the Same as Anglos by the Criminal Justice System*, ARIZ. REPUBLIC, July 4, 1993, at C1 (citing several reports showing disparate treatment of Blacks in the criminal justice system).

55. See Michael L. Radelet & Glenn L. Pierce, *Race and Prosecutorial Discretion in Homicide Cases*, 19 LAW & SOC'Y REV. 587, 615–19 (1985).
56. See Kenneth B. Nunn, *The "Darden Dilemma": Should African Americans Prosecute Crimes?*, 68 FORDHAM L. REV. 1473, 1493 (2000) (citing Martha A. Myers & John Hagan, *Private and Public Trouble: Prosecutors and the Allocation of Court Resources*, 26 SOC. PROBS. 439, 441–47 (1979)); Radelet & Pierce, *supra* note 55, at 615–19.
57. LEADERSHIP CONFERENCE ON CIVIL RIGHTS, JUSTICE ON TRIAL: RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM 12 n.41 (2000), available at <http://www.protectcivilrights.org/pdf/reports/justice.pdf> (citing U.S. SENTENCING COMM'N, SPECIAL REPORT TO CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (1995)); see also Kevin McNally, *Race and Federal Death Penalty: A Nonexistent Problem Gets Worse*, 53 DEPAUL L. REV. 1615 (2004) (compiling studies on the death penalty).
58. See, e.g., Jeremy D. Ball, *Is It a Prosecutor's World? Determinants of Count Bargaining Decisions*, 22 J. CONTEMP. CRIM. JUST. 241 (2006) (finding no correlation between race and the willingness of prosecutors to reduce charges in order to obtain guilty pleas but acknowledging that the study did not include evaluation of the original arrest report); Cyndy Caravelis et al., *Race, Ethnicity, Threat, and the Designation of Career Offenders*, 2011 JUST. Q. 1 (showing that in some counties, Blacks and Latinos are more likely than Whites with similar profiles to be prosecuted as career offenders, but in other counties with different demographics, Blacks and Latinos have a lesser likelihood of such prosecution).

generally or implicit biases specifically produce discriminatory charging decisions or plea offers by prosecutors, or a discriminatory willingness to accept worse plea bargains on the part of defense attorneys. The best way to get evidence on such hypotheses would be to measure the implicit biases of prosecutors and defense attorneys and investigate the extent to which those biases predict different treatment of cases otherwise identical on the merits.

Unfortunately, we have very little data on this front. Indeed, we have no studies, as of yet, that look at prosecutors' and defense attorneys' implicit biases and attempt to correlate them with those individuals' charging practices or plea bargains. Nor do we know as much as we would like about their implicit biases more generally. But on that score, we do know something. Start with defense attorneys. One might think that defense attorneys, repeatedly put into the role of interacting with what is often a disproportionately minority clientele, and often ideologically committed to racial equality,⁵⁹ might have materially different implicit biases from the general population. But Ted Eisenberg and Sheri Lynn Johnson found evidence to the contrary: Even capital punishment defense attorneys show negative implicit attitudes toward African Americans.⁶⁰ Their implicit attitudes toward Blacks roughly mirrored those of the population at large.

What about prosecutors? To our knowledge, no one has measured specifically the implicit biases held by prosecutors.⁶¹ That said, there is no reason to

59. See Gordon B. Moskowitz, Amanda R. Salomon & Constance M. Taylor, *Preconsciously Controlling Stereotyping: Implicitly Activated Egalitarian Goals Prevent the Activation of Stereotypes*, 18 SOC. COGNITION 151, 155–56 (2000) (showing that “chronic egalitarians” who are personally committed to removing bias in themselves do not exhibit implicit attitudinal preference for Whites over Blacks).

60. See Theodore Eisenberg & Sheri Lynn Johnson, *Implicit Racial Attitudes of Death Penalty Lawyers*, 53 DEPAUL L. REV. 1539, 1545–55 (2004). The researchers used a paper-pencil IAT that measured attitudes about Blacks and Whites. *Id.* at 1543–45. The defense attorneys displayed biases that were comparable to the rest of the population. *Id.* at 1553. The findings by Moskowitz and colleagues, *supra* note 59, sit in some tension with findings by Eisenberg and Johnson. It is possible that defense attorneys are not chronic egalitarians and/or that the specific practice of criminal defense work exacerbates implicit biases even among chronic egalitarians.

61. In some contexts, prosecutors have resisted revealing information potentially related to their biases. For example, in *United States v. Armstrong*, 517 U.S. 456 (1996), defendants filed a motion to dismiss the indictment for selective prosecution, arguing that the U.S. Attorney prosecuted virtually all African Americans charged with crack offenses in federal court but left all White crack defendants to be prosecuted in state court, resulting in much longer sentences for identical offenses. *Id.* at 460–61. The claim foundered when the U.S. Attorney's Office resisted the defendants' discovery motion concerning criteria for prosecutorial decisions and the U.S. Supreme Court upheld the U.S. Attorney's Office's refusal to provide discovery. *Id.* at 459–62. The Court held that, prior to being entitled even to discovery, defendants claiming selective prosecution cases based on race must produce credible evidence that “similarly situated individuals of a different race were not prosecuted.” *Id.* at 465.

presume attorney exceptionalism in terms of implicit biases.⁶² And if defense attorneys, who might be expected to be less biased than the population, show typical amounts of implicit bias, it would seem odd to presume that prosecutors would somehow be immune. If this is right, there is plenty of reason to be concerned about how these biases might play out in practice.

As we explain in greater detail below, the conditions under which implicit biases translate most readily into discriminatory behavior are when people have wide discretion in making quick decisions with little accountability. Prosecutors function in just such environments.⁶³ They exercise tremendous discretion to decide whether, against whom, and at what level of severity to charge a particular crime; they also influence the terms and likelihood of a plea bargain and the length of the prison sentence—all with little judicial oversight. Other psychological theories—such as confirmation bias, social judgeability theory, and shifting standards, which we discuss below⁶⁴—reinforce our hypothesis that prosecutorial decisionmaking indeed risks being influenced by implicit bias.

3. Trial

a. Jury

If the case goes to the jury, what do we know about how implicit biases might influence the factfinder's decisionmaking? There is a long line of research on racial discrimination by jurors, mostly in the criminal context. Notwithstanding some mixed findings, the general research consensus is that jurors of one race tend to show bias against defendants who belong to another race ("racial outgroups"). For example, White jurors will treat Black defendants worse than they treat comparable White defendants. The best and most recent meta-analysis of laboratory juror studies was performed by Tara Mitchell and colleagues, who found that the fact that a juror was of a different race than the defendant influenced

62. Several of the authors have conducted training sessions with attorneys in which we run the IAT in the days leading up to the training. The results of these IATs have shown that attorneys harbor biases that are similar to those harbored by the rest of the population. One recent study of a related population, law students, confirmed that they too harbor implicit gender biases. See Justin D. Levinson & Danielle Young, *Implicit Gender Bias in the Legal Profession: An Empirical Study*, 18 DUKE J. GENDER L. & POL'Y 1, 28–31 (2010).

63. See Robert J. Smith & Justin D. Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, 35 SEATTLE L. REV. 795 (2012) (undertaking a step-by-step consideration of how prosecutorial discretion may be fraught with implicit bias).

64. See *infra* Part II.B.

both verdicts and sentencing.⁶⁵ The magnitude of the effect sizes were measured conservatively⁶⁶ and found to be small (Cohen's $d=0.092$ for verdicts, $d=0.185$ for sentencing).⁶⁷

But effects deemed “small” by social scientists may nonetheless have huge consequences for the individual, the social category he belongs to, and the entire society. For example, if White juries rendered guilty verdicts in exactly 80 percent of their decisions,⁶⁸ then an effect size of Cohen's $d=0.095$ would mean that the rate of conviction for Black defendants will be 83.8 percent, compared to 76.2 percent for White defendants. Put another way, in one hundred otherwise identical trials, eight more Black than White defendants would be found guilty.⁶⁹

One might assume that juror bias against racial outgroups would be greater when the case is somehow racially charged or inflamed, as opposed to those instances when race does not explicitly figure in the crime. Interestingly, many experiments have demonstrated just the opposite.⁷⁰ Sam Sommers and Phoebe Ellsworth explain the counterintuitive phenomenon in this way: When the case is racially charged, jurors—who want to be fair—respond by being more careful and thoughtful about race and their own assumptions and thus do not show bias in their deliberations and outcomes. By contrast, when the case is not racially charged, even though there is a Black defendant and a White victim, jurors are not especially vigilant about the possibility of racial bias influencing their

65. Tara L. Mitchell et al., *Racial Bias in Mock Juror Decision-Making: A Meta-Analytic Review of Defendant Treatment*, 29 LAW & HUM. BEHAV. 621, 627–28 (2005). The meta-analysis processed thirty-four juror verdict studies (with 7397 participants) and sixteen juror sentencing studies (with 3141 participants). *Id.* at 625. All studies involved experimental manipulation of the defendant's race. Multirace participant samples were separated out in order to maintain the study's definition of racial bias as a juror's differential treatment of a defendant who belonged to a racial outgroup. *See id.*

66. Studies that reported nonsignificant results ($p>0.05$) for which effect sizes could not be calculated were given effect sizes of 0.00. *Id.*

67. *Id.* at 629.

68. *See* TRACY KYCKELHAHN & THOMAS H. COHEN, U.S. DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NCJ 221152, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2004, at 1, 3 (2008), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc04.pdf> (“Seventy-nine percent of trials resulted in a guilty verdict or judgment, including 82% of bench trials and 76% of jury trials.”); *see also* THOMAS H. COHEN & TRACEY KYCKELHAHN, U.S. DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NCJ 228944, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2006, at 1 (2010), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/fdluc06.pdf> (reporting the “typical” outcome as three out of four trials resulting in convictions).

69. This translation between effect size d values and outcomes was described by Robert Rosenthal & Donald B. Rubin, *A Simple, General Purpose Display of Magnitude of Experimental Effect*, 74 J. EDUC. PSYCHOL. 166 (1982).

70. *See, e.g.*, Samuel R. Sommers & Phoebe C. Ellsworth, “Race Salience” in *Juror Decision-Making: Misconceptions, Clarifications, and Unanswered Questions*, 27 BEHAV. SCI. & L. 599 (2009).

decisionmaking. These findings are more consistent with an implicit bias than a concealed explicit bias explanation.⁷¹

So far, we know that race effects have been demonstrated in juror studies (sometimes in counterintuitive ways), but admittedly little is known about “the precise psychological processes through which the influence of race occurs in the legal context.”⁷² Our default assumption is juror unexceptionalism—given that implicit biases generally influence decisionmaking, there is no reason to presume that citizens become immune to the effects of these biases when they serve in the role of jurors. Leading scholars from the juror bias field have expressly raised the possibility that the psychological mechanisms might be “unintentional and even non-conscious processes.”⁷³

Some recent juror studies by Justin Levinson and Danielle Young have tried to disentangle the psychological mechanisms of juror bias by using the IAT and other methods. In one mock juror study, Levinson and Young had participants view five photographs of a crime scene, including a surveillance camera photo that featured a masked gunman whose hand and forearm were visible. For half the participants, that arm was dark skinned; for the other half, that arm was lighter skinned.⁷⁴ The participants were then provided twenty different pieces of trial evidence. The evidence was designed to produce an ambiguous case regarding whether the defendant was indeed the culprit. Participants were asked to rate how much the presented evidence tended to indicate the defendant’s guilt or innocence and to decide whether the defendant was guilty or not, using both a scale of guilty or not guilty and a likelihood scale of zero to one hundred.⁷⁵

The study found that the subtle manipulation of the skin color altered how jurors evaluated the evidence presented and also how they answered the crucial question “How guilty is the defendant?” The guilt mean score was M=66.97 for

71. See Samuel R. Sommers & Phoebe C. Ellsworth, *White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom*, 7 PSYCHOL. PUB. POL’Y & L. 201, 255 (2001); Samuel R. Sommers & Phoebe C. Ellsworth, *Race in the Courtroom: Perceptions of Guilt and Dispositional Attributions*, 26 PERSONALITY & SOC. PSYCHOL. BULL. 1367 (2000). That said, one could still hold to an explicit bias story in the following way: The juror has a negative attitude or stereotype that he is consciously aware of and endorses. But he knows it is not socially acceptable so he conceals it. When a case is racially charged, racial bias is more salient, so other jurors will be on the lookout for bias. Accordingly, the juror conceals it even more, all the way up to making sure that his behavior is completely race neutral. This explicit bias story is not mutually exclusive with the implicit bias story we are telling.

72. Samuel R. Sommers, *Race and the Decision-Making of Juries*, 12 LEGAL & CRIMINOLOGICAL PSYCHOL. 171, 172 (2007).

73. *Id.* at 175.

74. Levinson & Young, *supra* note 20, at 332–33 (describing experimental procedures).

75. *Id.* at 334.

dark skin and $M=56.37$ for light skin, with 100 being “definitely guilty.”⁷⁶ Measures of explicit bias, including the Modern Racism Scale and feeling thermometers, showed no statistically significant correlation with the participants’ weighing of the evidence or assessment of guilt.⁷⁷ More revealing, participants were asked to recall the race of the masked robber (which was a proxy for the light or dark skin), but many could not recall it.⁷⁸ Moreover, their recollections did not correlate with their judgments of guilt.⁷⁹ Taken together, these findings suggest that implicit bias—not explicit, concealed bias, or even any degree of conscious focus on race—was influencing how jurors assessed the evidence in the case.

In fact, there is even clearer evidence that implicit bias was at work. Levinson, Huajian Cai, and Young also constructed a new IAT, the Guilty–Not Guilty IAT, to test implicit stereotypes of African Americans as guilty (not innocent).⁸⁰ They gave the participants this new IAT and the general race attitude IAT. They found that participants showed an implicit negative attitude toward Blacks as well as a small implicit stereotype between Black and guilty.⁸¹ More important than the bias itself is whether it predicts judgment. On the one hand, regression analysis demonstrated that a measure of *evidence evaluation* was a function of both the implicit attitude and the implicit stereotype.⁸² On the other hand, the IAT scores did not predict what is arguably more important: guilty verdicts or judgments of guilt on a more granular scale (from zero to one hundred).⁸³ In sum, a subtle change

76. See *id.* at 337 (confirming that the difference was statistically significant, $F=4.40$, $p=0.034$, $d=0.52$).

77. *Id.* at 338.

78. This finding built upon Levinson’s previous experimental study of implicit memory bias in legal decisionmaking. See Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345, 398–406 (2007) (finding that study participants misremembered trial-relevant facts in racially biased ways).

79. Levinson & Young, *supra* note 20, at 338.

80. Justin D. Levinson, Huajian Cai & Danielle Young, *Guilty by Implicit Bias: The Guilty–Not Guilty Implicit Association Test*, 8 OHIO ST. J. CRIM. L. 187 (2010).

81. *Id.* at 204. For the attitude IAT, $D=0.21$ ($p<0.01$). *Id.* at 204 n.87. For the Guilty–Not Guilty IAT, $D=0.18$ ($p<0.01$). *Id.* at 204 n.83.

82. Participants rated each of the twenty pieces of information (evidence) in terms of its probity regarding guilt or innocence on a 1–7 scale. This produced a total “evidence evaluation” score that could range between 20 (least amount of evidence of guilt) to 140 (greatest). *Id.* at 202 n.70 (citation omitted). The greater the Black = guilty stereotype or the greater the negative attitude toward Blacks, the higher the guilty evidence evaluation. The ultimate regression equation was: Evidence = $88.58 + 5.74 \times BW + 6.61 \times GI + 9.11 \times AI + e$ (where BW stands for Black or White suspect; GI stands for guilty stereotype IAT score; AI stands for race attitude IAT score; e stands for error). *Id.* at 206. In normalized units, the implicit stereotype $\beta=0.25$ ($p<0.05$); the implicit attitude $\beta=0.34$ ($p<0.01$); adjusted $R^2=0.24$. See *id.* at 206 nn.93–95.

83. *Id.* at 206 n.95.

in skin color changed judgments of evidence and guilt; implicit biases measured by the IAT predicted how respondents evaluated identical pieces of information.

We have a long line of juror research, as synthesized through a meta-analysis, revealing that jurors of one race treat defendants of another race worse with respect to verdict and sentencing. According to some experiments, that difference might take place *more* often in experimental settings when the case is *not* racially charged, which suggests that participants who seek to be fair will endeavor to correct for potential bias when the threat of potential race bias is obvious. Finally, some recent work reveals that certain IATs can predict racial discrimination in the evaluation of evidence by mock jurors. Unfortunately, because of the incredible difficulties in research design, we do not have studies that evaluate implicit bias in real criminal trials. Accordingly, the existing body of research, while strongly suggestive, provides inferential rather than direct support that implicit bias accounts for some of the race effects on conviction and sentencing.

b. Judge

Obviously, the judge plays a crucial role in various aspects of the trial, exercising important discretion in setting bail,⁸⁴ deciding motions, conducting and deciding what can be asked during jury selection, ruling on the admissibility of evidence, presiding over the trial, and rendering verdicts in some cases. Again, as with the lawyers, there is no inherent reason to think that judges are immune from implicit biases. The extant empirical evidence supports this assumption.⁸⁵ Jeff Rachlinski and his coauthors are the only researchers who have measured the implicit biases of actual trial court judges. They have given the race attitude IAT to judges from three different judicial districts. Consistent with the general population, the White judges showed strong implicit attitudes favoring Whites over Blacks.⁸⁶

84. See Ian Ayres & Joel Waldfogel, *A Market Test for Race Discrimination in Bail Setting*, 46 STAN. L. REV. 987, 992 (1994) (finding 35 percent higher bail amounts for Black defendants after controlling for eleven other variables besides race).

85. Judge Bennett, a former civil rights lawyer, shares his unnerving discovery of his own disappointing IAT results in Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 HARV. L. & POL'Y REV. 149, 150 (2010).

86. See Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1210 (2009). White judges ($N=85$) showed an IAT effect $M=216$ ms (with a standard deviation of 201 ms). 87.1 percent of them were quicker to sort in the schema-consistent arrangement than in the schema-inconsistent one. Black judges ($N=43$) showed a small bias $M=26$ ms (with a standard deviation of 208 ms). Only 44.2 percent of Black judges were quicker to sort in the schema-consistent arrangement than in the schema-inconsistent one. See *id.*

Rachlinski and colleagues investigated whether these biases predicted behavioral differences by giving judges three different vignettes and asking for their views on various questions, ranging from the likelihood of defendant recidivism to the recommended verdict and confidence level. Two of these vignettes revealed nothing about race, although some of the judges were subliminally primed with words designed to trigger the social category African American. The third vignette explicitly identified the defendant (and victim) as White or Black and did not use subliminal primes. After collecting the responses, Rachlinski et al. analyzed whether judges treated White or Black defendants differently and whether the IAT could predict any such difference.

They found mixed results. In the two subliminal priming vignettes, judges did not respond differently on average as a function of the primes. In other words, the primes did not prompt them to be harsher on defendants across the board as prior priming studies with nonjudge populations had found.⁸⁷ That said, the researchers found a *marginally* statistically significant interaction with IAT scores: Judges who had a greater degree of implicit bias against Blacks (and relative preference for Whites) were harsher on defendants (who were never racially identified) when they had been primed (with the Black words). By contrast, those judges who had implicit attitudes in favor of Blacks were less harsh on defendants when they received the prime.⁸⁸

In the third vignette, a battery case that explicitly identified the defendant as one race and the victim as the other,⁸⁹ the White judges showed equal likelihood of convicting the defendant, whether identified as White or Black. By contrast, Black judges were much more likely to convict the defendant if he was identified as White as compared to Black. When the researchers probed more deeply to see what, if anything, the IAT could predict, they did not find the sort of interaction that they found in the other two vignettes—in other words, judges with strong implicit biases in favor of Whites did not treat the Black defendant more harshly.⁹⁰

Noticing the difference between White and Black judge responses in the third vignette study, the researchers probed still deeper and found a three-way interaction between a judge's race, a judge's IAT score, and a defendant's race. No effect was found for White judges; the core finding concerned, instead, Black

87. See Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 LAW & HUM. BEHAV. 483 (2004).

88. See Rachlinski et al., *supra* note 86, at 1215. An ordered logit regression was performed between the judge's disposition against the priming condition, IAT score, and their interaction. The interaction term was marginally significant at $p=0.07$. See *id.* at 1214–15 n.94.

89. This third vignette did not use any subliminal primes.

90. See *id.* at 1202 n.41.

judges. Those Black judges with a stronger Black preference on the IAT were less likely to convict the Black defendant (as compared to the White defendant); correlatively, those Black judges with a White preference on the IAT were more likely to convict the Black defendant.⁹¹

It is hard to make simple sense of such complex findings, which may have been caused in part by the fact that the judges quickly sniffed out the purpose of the study—to detect racial discrimination.⁹² Given the high motivation not to perform race discrimination under research scrutiny, one could imagine that White judges might make sure to correct for any potential unfairness. By contrast, Black judges may have felt less need to signal racial fairness, which might explain why Black judges showed different behaviors as a function of implicit bias whereas White judges did not.

Put another way, data show that when the race of the defendant is explicitly identified to judges in the context of a psychology study (that is, the third vignette), judges are strongly motivated to be fair, which prompts a different response from White judges (who may think to themselves “whatever else, make sure not to treat the Black defendants worse”) than Black judges (who may think “give the benefit of the doubt to Black defendants”). However, when race is not explicitly identified but implicitly primed (vignettes one and two), perhaps the judges’ motivation to be accurate and fair is not on full alert. Notwithstanding all the complexity, this study provides some suggestive evidence that implicit attitudes may be influencing judges’ behavior.

4. Sentencing

There is evidence that African Americans are treated worse than similarly situated Whites in sentencing. For example, federal Black defendants were sentenced to 12 percent longer sentences under the Sentencing Reform Act of 1984,⁹³ and Black defendants are subject disproportionately to the death penalty.⁹⁴

91. *Id.* at 1220 n.114.

92. *See id.* at 1223.

93. *See* David B. Mustard, *Racial, Ethnic, and Gender Disparities in Sentencing: Evidence From the U.S. Federal Courts*, 44 J.L. & ECON. 285, 300 (2001) (examining federal judge sentencing under the Sentencing Reform Act of 1984).

94. *See* U.S. GEN. ACCOUNTING OFFICE, GAO GGD-90-57, REPORT TO THE SENATE AND HOUSE COMMITTEES ON THE JUDICIARY, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES (1990) (finding killers of White victims receive the death penalty more often than killers of Black victims); David C. Baldus et al., *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview*,

Of course, it is possible that there is some good reason for that difference, based on the merits. One way to check is to run experimental studies holding everything constant except for race.

Probation officers. In one study, Sandra Graham and Brian Lowery subliminally primed police officers and juvenile probation officers with words related to African Americans, such as “Harlem” or “dreadlocks.” This subliminal priming led the officers to recommend harsher sentencing decisions.⁹⁵ As we noted above, Rachlinski et al. found no such effect on the judges they tested using a similar but not identical method.⁹⁶ But, at least in this study, an effect was found with police and probation officers. Given that this was a subliminal prime, the merits could not have justified the different evaluations.

Afrocentric features. Irene Blair, Charles Judd, and Kristine Chapleau took photographs from a database of criminals convicted in Florida⁹⁷ and asked participants to judge how Afrocentric both White and Black inmates looked on a scale of one to nine.⁹⁸ The goal was to see if race, facial features, or both correlated with actual sentencing. Using multiple regression analysis, the researchers found that after controlling for the seriousness of the primary and additional offenses, the race of the defendant showed no statistical significance.⁹⁹ In other words, White and Black defendants were sentenced without discrimination based on race. According to the

With Recent Findings From Philadelphia, 83 CORNELL L. REV. 1638, 1710–24 (1998) (finding mixed evidence that Black defendants are more likely to receive the death sentence).

95. See Graham & Lowery, *supra* note 87.

96. Priming studies are quite sensitive to details. For example, the more subliminal a prime is (in time duration and in frequency), the less the prime tends to stick (the smaller the effects and the faster it dissipates). Rachlinski et al. identified some differences between their experimental procedure and that of Graham and Lowery’s. See Rachlinski et al., *supra* note 86, at 1213 n.88. Interestingly, in the Rachlinski study, for judges from the eastern conference (seventy judges), a programming error made their subliminal primes last only sixty-four milliseconds. By contrast, for the western conference (forty-five judges), the prime lasted 153 milliseconds, which was close to the duration used by Graham and Lowery (150 milliseconds). See *id.* at 1206 (providing numerical count of judges’ prime); *id.* at 1213 n.84 (identifying the programming error). Graham and Lowery wrote that they selected the priming durations through extensive pilot testing “to arrive at a presentation time that would allow the primes to be detectable but not identifiable.” Graham & Lowery, *supra* note 87, at 489. It is possible that the truncated priming duration for the eastern conference judges contributed to the different findings between Rachlinski et al. and Graham and Lowery.

97. See Irene V. Blair et al., *The Influence of Afrocentric Facial Features in Criminal Sentencing*, 15 PSYCHOL. SCI. 674, 675 (2004) (selecting a sample of 100 Black inmates and 116 White inmates).

98. *Id.* at 676. Afrocentric meant full lips, broad nose, relatively darker skin color, and curly hair. It is what participants socially understood to look African without any explicit instruction or definition. See *id.* at 674 n.1.

99. *Id.* at 676.

researchers, this is a success story based on various sentencing reforms specifically adopted by Florida mostly to decrease sentencing discretion.¹⁰⁰

However, when the researchers added Afrocentricity of facial features into their regressions, they found a curious correlation. Within each race, either Black or White, the more Afrocentric the defendant looked, the harsher his punishment.¹⁰¹ How much so? If you picked a defendant who was one standard deviation above the mean in Afrocentric features and compared him to another defendant of the same race who was one standard deviation below the mean, there would be a sentence difference of seven to eight months between them, holding constant any difference in their actual crime.¹⁰²

Again, if the research provides complex findings, we must grapple with a complex story. On the one hand, we have good news: Black and White defendants were, overall, sentenced comparably. On the other hand, we have bad news: Within each race, the more stereotypically Black the defendant looked, the harsher the punishment. What might make sense of such results? According to the researchers, perhaps implicit bias was responsible.¹⁰³ If judges are motivated to avoid racial discrimination, they may be on guard regarding the dangers of treating similarly situated Blacks worse than Whites. On alert to this potential bias, the judges prevent it from causing any discriminatory behavior. By contrast, judges have no conscious awareness that Afrocentric features might be triggering stereotypes of criminality and violence that could influence their judgment. Without such awareness, they could not explicitly control or correct for the potential bias.¹⁰⁴ If this explanation is correct, we have further evidence that discrimination is being driven in part by implicit biases and not solely by explicit-but-concealed biases.

* * *

Where does this whirlwind tour of psychological research findings leave us? In each of the stages of the criminal trial process discussed, the empirical research

100. *Id.* at 677.

101. *Id.* at 676–77. Jennifer Eberhardt and her colleagues reached consistent findings when she used the same Florida photograph dataset to examine how Black defendants were sentenced to death. After performing a median split on how stereotypical the defendant looked, the top half were sentenced to death 57.5 percent of the time compared to the bottom half, which were sentenced to death only 24.4 percent of the time. See Jennifer L. Eberhardt et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*, 17 PSYCHOL. SCI. 383, 384 (2006). Interestingly, this effect was not observed when the victim was Black. See *id.* at 385.

102. See Blair et al., *supra* note 97, at 677–78.

103. See *id.* at 678 (hypothesizing that “perhaps an equally pernicious and less controllable process [is] at work”).

104. See *id.* at 677.

gives us reason to think that implicit biases—attitudes and beliefs that we are not directly aware of and may not endorse—could influence how defendants are treated and judged. Wherever possible, in our description of the studies, we have tried to provide the magnitude of these effects. But knowing precisely how much work they really do is difficult. If we seek an estimate, reflective of an entire body of research and not any single study, one answer comes from the Greenwald meta-analysis, which found that the IAT (the most widely used, but not the only measure of implicit bias) could predict 5.6 percent of the variation of the behavior in Black–White behavioral domains.¹⁰⁵

Should that be deemed a lot or a little? In answering this question, we should be mindful of the collective impact of such biases, integrated over time (per person) and over persons (across all defendants).¹⁰⁶ For a single defendant, these biases may surface for various decisionmakers repeatedly in policing, charging, bail, plea bargaining, pretrial motions, evidentiary motions, witness credibility, lawyer persuasiveness, guilt determination, sentencing recommendations, sentencing itself, appeal, and so on. Even small biases at each stage may aggregate into a substantial effect.

To get a more concrete sense, Anthony Greenwald has produced a simulation that models cumulating racial disparities through five sequential stages of criminal justice—arrest, arraignment, plea bargain, trial, and sentence. It supposes that the probability of arrest having committed the offense is 0.50, that the probability of conviction at trial is 0.75, and that the effect size of implicit bias is $r=0.1$ at each stage. Under this simulation, for a crime with a mean sentence of 5 years, and with a standard deviation of 2 years, Black criminals can expect a sentence of 2.44 years whereas White criminals can expect just 1.40 years.¹⁰⁷ To appreciate the full social impact, we must next aggregate this sort of disparity a second time over all defendants subject to racial bias, out of an approximate annual

105. See Greenwald et al., *supra* note 24, at 24 tbl.3 (showing that correlation between race attitude IAT (Black/White) and behavior in the meta-analysis is 0.236, which when squared equals 0.056, the percentage of variance explained).

106. See Rachlinski et al., *supra* note 86, at 1202; Jerry Kang & Mahzarin Banaji, *Fair Measures: A Behavioral Realist Revision of 'Affirmative Action'*, 94 CALIF. L. REV. 1063, 1073 (2006).

107. The simulation is available at *Simulation: Cumulating Racial Disparities Through 5 Sequential Stages of Criminal Justice*, http://faculty.washington.edu/agg/UCLA_PULSE.simulation.xlsx (last visited May 15, 2012). If in the simulation the effect size of race discrimination at each step is increased from $r=0.1$ to $r=0.2$, which is less than the average effect size of race discrimination effects found in the 2009 meta-analysis, see *supra* note 105, the ratio of expected years of sentence would increase to 3.11 years (Black) to 1.01 years (White).

total of 20.7 million state criminal cases¹⁰⁸ and 70 thousand federal criminal cases.¹⁰⁹ And, as Robert Abelson has demonstrated, even small percentages of variance explained might amount to huge impacts.¹¹⁰

B. The Civil Path

Now, we switch from the criminal to the civil path and focus on the trajectory of an individual¹¹¹ bringing suit in a federal employment discrimination case—and on how implicit bias might affect this process. First, the plaintiff, who is a member of a protected class, believes that her employer has discriminated against her in some legally cognizable way.¹¹² Second, after exhausting necessary administrative remedies,¹¹³ the plaintiff sues in federal court. Third, the defendant tries to terminate the case before trial via a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure (FRCP) 12(b)(6). Fourth, should that fail, the defendant moves for summary judgment under FRCP 56. Finally, should that motion also fail, the jury renders a verdict after trial. Again, at each of these

108. See ROBERT C. LAFOUNTAIN ET AL., COURT STATISTICS PROJECT, EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2009 STATE COURT CASELOADS 3 (2011), available at <http://www.courtstatistics.org/FlashMicrosites/CSP/images/CSP2009.pdf>.

109. See Rachlinski et al., *supra* note 86, at 1202.

110. See Robert P. Abelson, *A Variance Explanation Paradox: When a Little Is a Lot*, 97 PSYCHOL. BULL. 129, 132 (1985) (explaining that the batting average of a 0.320 hitter or a 0.220 hitter predicts only 1.4 percent of the variance explained for a single at-bat producing either a hit or no-hit). Some discussion of this appears in Kang & Lane, *supra* note 2, at 489.

111. We acknowledge that *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), made it much more difficult to certify large classes in employment discrimination cases. See *id.* at 2553–54 (holding that statistical evidence of gender disparities combined with a sociologist's analysis that Wal-Mart's corporate culture made it vulnerable to gender bias was inadequate to show that members of the putative class had a common claim for purposes of class certification under FED. R. CIV. P. 23(b)).

112. For example, in a Title VII cause of action for disparate *treatment*, the plaintiff must demonstrate an adverse employment action “because of” the plaintiff’s “race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1) (2006). By contrast, in a Title VII cause of action for disparate *impact*, the plaintiff challenges facially neutral policies that produce a disparate impact on protected populations. See *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). We recognize that employment discrimination law is far more complex than presented here, with different elements for different state and federal causes of action.

113. The U.S. Equal Employment Opportunity Commission (EEOC) process is critical in practical terms because the failure to file a claim with the EEOC within the quite short statute of limitations (either 180 or 300 days depending on whether the jurisdiction has a state or local fair employment agency) or to timely file suit after resorting to the EEOC results in an automatic dismissal of the claim. However, neither EEOC inaction nor an adverse determination preclude private suit. See 2 CHARLES SULLIVAN & LAUREN WALTER, EMPLOYMENT DISCRIMINATION LAW AND PRACTICE § 12.03[B], at 672 (4th ed. 2012).

stages,¹¹⁴ implicit biases could potentially influence the outcome. To maintain a manageable scope of analysis, we focus on employer discrimination, pretrial adjudication, and jury verdict.

1. Employer Discrimination

For many, the most interesting question is whether implicit bias helped cause the employer to discriminate against the plaintiff. There are good reasons to think that some negative employment actions are indeed caused by implicit biases in what tort scholars call a “but-for” sense. This but-for causation may be legally sufficient since Title VII and most state antidiscrimination statutes require only a showing that the plaintiff was treated less favorably “because of” a protected characteristic, such as race or sex.¹¹⁵ But our objective here is not to engage the doctrinal¹¹⁶ and philosophical questions¹¹⁷ of whether existing antidiscrimination laws do or should recognize implicit bias-actuated discrimination. We also do not address what sorts of evidence should be deemed admissible when plaintiffs attempt to make such a case at trial.¹¹⁸ Although those questions are critically important, our

114. As explained when we introduced the Criminal Path, the number of stages identified is somewhat arbitrary. We could have listed more or fewer stages.

115. Section 703(a) of Title VII of the 1964 Civil Rights Act states that “[i]t shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of [an] individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1).

116. For discussion of legal implications, see Faigman, Dasgupta & Ridgeway, *supra* note 19; Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995); Krieger & Fiske, *supra* note 2.

117. For a philosophical analysis, see Patrick S. Shin, *Liability for Unconscious Discrimination? A Thought Experiment in the Theory of Employment Discrimination Law*, 62 HASTINGS L.J. 67 (2010).

118. For example, there is considerable disagreement on whether an expert should be allowed to testify that a particular case is an instance of implicit bias. This issue is part of a much larger debate regarding scientists’ ability to make reasonable inferences about an individual case from group data. John Monahan and Laurens Walker first pointed out that scientific evidence often comes to court at two different levels of generality, one general and one specific. See Laurens Walker & John Monahan, *Social Frameworks: A New Use of Social Science in Law*, 73 VA. L. REV. 559 (1987). For instance, in a case involving the accuracy of an eyewitness identification, the general question might concern whether eyewitness identifications that are cross-racial are less reliable than same-race identifications; the specific question in the case would involve whether the cross-racial identification in this case was accurate. Interested in social science evidence, Monahan and Walker referred to this as “social framework” evidence, though their fundamental insight regarding frameworks applies to all scientific evidence. In the context of implicit biases, then, general research amply demonstrates the phenomenon in the population. However, in the courtroom, the issue typically concerns whether a particular decision or action was a product of implicit bias.

As a scientific matter, knowing that a phenomenon exists in a population does not necessarily mean that a scientist can reliably say that it was manifest in a particular case. This has led to a debate as to

task is more limited—to give an empirical account of how implicit bias may potentially influence a civil litigation trajectory.

Our belief that implicit bias causes some employment discrimination is based on the following evidence. First, tester studies in the field—which involve sending identical applicants or applications except for some trait, such as race or gender—have generally uncovered discrimination. According to a summary by Mark Bendick and Ana Nunes, there have been “several dozen testing studies” in the past two decades, in multiple countries, focusing on discrimination against various demographic groups (including women, the elderly, and racial minorities).¹¹⁹ These studies consistently reveal typical “net rates of discrimination” that range from 20–40 percent.¹²⁰ In other words, in 20–40 percent of cases, employers treat subordinated groups (for example, racial minorities) worse than privileged groups (for example, Whites) even though the testers were carefully controlled to be identically qualified.

Second, although tester studies do not distinguish between explicit versus implicit bias, various laboratory experiments have found implicit bias correlations with discriminatory evaluations. For example, Laurie Rudman and Peter Glick demonstrated that in certain job conditions, participants treated a self-promoting and competent woman, whom the researchers termed “agentic,” worse than an

whether experts should be limited to testifying only to the general phenomenon or should be allowed to opine on whether a particular case is an instance of the general phenomenon. This is a complicated issue and scholars have weighed in on both sides. For opposition to the use of expert testimony that a specific case is an instance of implicit bias, see Faigman, Dasgupta & Ridgeway, *supra* note 19, at 1394 (“The research . . . does not demonstrate that an expert can validly determine whether implicit bias caused a specific employment decision.”); and John Monahan, Laurens Walker & Gregory Mitchell, *Contextual Evidence of Gender Discrimination: The Ascendancy of “Social Frameworks,”* 94 VA. L. REV. 1715, 1719 (2008) (“[Testimony] in which the expert witness explicitly linked general research findings on gender discrimination to specific factual conclusions . . . exceeded the limitations on expert testimony established by the Federal Rules of Evidence and by both the original and revised proposal of what constitutes ‘social framework’ evidence.”). For advancement of allowing expert testimony that a particular case is an instance of some general phenomenon, see Susan T. Fiske & Eugene Borgida, *Standards for Using Social Psychological Evidence in Employment Discrimination Proceedings*, 83 TEMPLE L. REV. 867, 876 (2011) (“Qualified social scientists who provide general, relevant knowledge and apply ordinary scientific reasoning may offer informal opinion about the individual case, but probabilistically.”).

In the end, lawyers may be able to work around this dispute by using an expert to provide social framework evidence that identifies particular attributes that exacerbate biased decisionmaking, then immediately calling up another witness who is personally familiar with the defendant’s work environment and asking that witness whether each of those particular attributes exists.

119. See Marc Bendick, Jr. & Ana P. Nunes, *Developing the Research Basis for Controlling Bias in Hiring*, 68 J. SOC. ISSUES (forthcoming 2012), available at http://www.bendickegan.com/pdf/Sent_to_JSI_Feb_27_2010.pdf.

120. *Id.* (manuscript at 15).

equally agentic man.¹²¹ When the job description explicitly required the employee to be cooperative and to work well with others, participants rated the agentic female less hireable than the equally agentic male.¹²² Probing deeper, the researchers identified that the participants penalized the female candidate for lack of social skills, not incompetence.¹²³ Explicit bias measures did not correlate with the rankings; however, an implicit gender stereotype (associating women as more communal than agentic)¹²⁴ did correlate negatively with the ratings for social skills. In other words, the higher the implicit gender stereotype, the lower the social skills evaluation.¹²⁵

Third, field experiments have provided further confirmation under real-world conditions. The studies by Marianne Bertrand and Sendhil Mullainathan demonstrating discrimination in callbacks because of the names on comparable resumes have received substantial attention in the popular press as well as in law reviews.¹²⁶ These studies found that for equally qualified—indeed, otherwise identical candidates, firms called back “Emily” more often than “Lakisha.”¹²⁷ Less attention has been paid to Dan-Olof Rooth’s extensions of this work, which found similar callback discrimination but also found correlations between implicit stereotypes and the discriminatory behavior.¹²⁸ Rooth has found these correlations

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121. Laurie A. Rudman & Peter Glick, *Prescriptive Gender Stereotypes and Backlash Toward Agentic Women*, 57 J. SOC. ISSUES 743, 757 (2001). Agentic qualities were signaled by a life philosophy essay and canned answers to a videotaped interview that emphasized self-promotion and competence. *See id.* at 748. Agentic candidates were contrasted with candidates whom the researchers labeled “androgynous”—they also demonstrated the characteristics of interdependence and cooperation. *Id.*
 122. The difference was $M=2.84$ versus $M=3.52$ on a 5 point scale ($p<0.05$). *See id.* at 753. No gender bias was shown when the job description was ostensibly masculine and did not call for cooperative behavior. Also, job candidates that were engineered to be androgynous—in other words, to show both agentic and cooperative traits—were treated the same regardless of gender. *See id.*
 123. *See id.* at 753–54.
 124. The agentic stereotype was captured by word stimuli such as “independent,” “autonomous,” and “competitive.” The communal stereotype was captured by words such as “communal,” “cooperative,” and “kinship.” *See id.* at 750.
 125. *See id.* at 756 ($r=-0.49$, $p<0.001$). For further description of the study in the law reviews, see Kang, *supra* note 46, at 1517–18.
 126. Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991 (2004). A search of the TP-ALL database in Westlaw on December 10, 2011 revealed ninety-six hits.
 127. *Id.* at 992.
 128. Dan-Olof Rooth, *Automatic Associations and Discrimination in Hiring: Real World Evidence*, 17 LABOUR ECON. 523 (2010) (finding that implicit stereotypes, as measured by the IAT, predicted differential callbacks of Swedish-named versus Arab-Muslim-named resumes). An increase of one standard deviation in implicit stereotype produced almost a 12 percent decrease in the probability that an Arab/Muslim candidate received an interview. *See id.*

with not only implicit stereotypes about ethnic groups (Swedes versus Arab-Muslims) but also implicit stereotypes about the obese.¹²⁹

Because implicit bias in the *courtroom* is our focus, we will not attempt to offer a comprehensive summary of the scientific research as applied to the implicit bias in the *workplace*.¹³⁰ We do, however, wish briefly to highlight lines of research—variously called “constructed criteria,” “shifting standards,” or “casuistry”—that emphasize the *malleability of merit*. We focus on this work because it has received relatively little coverage in the legal literature and may help explain how complex decisionmaking with multiple motivations occurs in the real world.¹³¹ Moreover, this phenomenon may influence not only the defendant (accused of discrimination) but also the jurors who are tasked to judge the merits of the plaintiff’s case.

Broadly speaking, this research demonstrates that people frequently engage in motivated reasoning¹³² in selection decisions that we justify by changing merit criteria on the fly, often without conscious awareness. In other words, as between two plausible candidates that have different strengths and weaknesses, we first choose the candidate we like—a decision that may well be influenced by implicit factors—and then justify that choice by molding our merit standards accordingly.

We can make this point more concrete. In one experiment, Eric Luis Uhlmann and Geoffrey Cohen asked participants to evaluate two finalists for police chief—one male, the other female.¹³³ One candidate’s profile signaled *book smart*, the other’s profile signaled *streetwise*, and the experimental design varied which profile attached to the woman and which to the man. Regardless of which attributes the male candidate featured, participants favored the male candidate and articulated their hiring criteria accordingly. For example, education (book

129. Jens Agerström & Dan-Olof Rooth, *The Role of Automatic Obesity Stereotypes in Real Hiring Discrimination*, 96 J. APPLIED PSYCHOL. 790 (2011) (finding that hiring managers (N=153) holding more negative IAT-measured automatic stereotypes about the obese were less likely to invite an obese applicant for an interview).

130. Thankfully, many of these studies have already been imported into the legal literature. For a review of the science, see Kang & Lane, *supra* note 2, at 484–85 (discussing evidence of racial bias in how actual managers sort resumes and of correlations between implicit biases, as measured by the IAT, and differential callback rates).

131. One recent exception is Rich, *supra* note 25.

132. For discussion of motivated reasoning in organizational contexts, see Sung Hui Kim, *The Banality of Fraud: Re-situating the Inside Counsel as Gatekeeper*, 74 FORDHAM L. REV. 983, 1029–34 (2005). Motivated reasoning is “the process through which we assimilate information in a self-serving manner.” *Id.* at 1029.

133. See Eric Luis Uhlmann & Geoffrey L. Cohen, *Constructed Criteria: Redefining Merit to Justify Discrimination*, 16 PSYCHOL. SCI. 474, 475 (2005).

smarts) was considered more important when the man had it.¹³⁴ Surprisingly, even the attribute of being family oriented and having children was deemed more important when the man had it.¹³⁵

Michael Norton, Joseph Vandello, and John Darley have made similar findings, again in the domain of gender.¹³⁶ Participants were put in the role of manager of a construction company who had to hire a high-level employee. One candidate's profile signaled more education; the other's profile signaled more experience. Participants ranked these candidates (and three other filler candidates), and then explained their decisionmaking by writing down "what was most important in determining [their] decision."¹³⁷

In the control condition, the profiles were given with just initials (not full names) and thus the test subjects could not assess their gender. In this condition, participants preferred the higher educated candidate 76 percent of the time.¹³⁸ In the two experimental conditions, the profiles were given names that signaled gender, with the man having higher education in one condition and the woman having higher education in the other. When the man had higher education, the participants preferred him 75 percent of the time. In sharp contrast, when the woman had higher education, only 43 percent of the participants preferred her.¹³⁹

The discrimination itself is not as interesting as *how* the discrimination was justified. In the control condition and the man-has-more-education condition, the participants ranked education as more important than experience about half the time (48 percent and 50 percent).¹⁴⁰ By contrast, in the woman-has-more-education condition, only 22 percent ranked education as more important than experience.¹⁴¹ In other words, what counted as merit was redefined, in real time, to justify hiring the man.

Was this weighting done consciously, as part of a strategy to manipulate merit in order to provide a cover story for decisionmaking caused and motivated by explicit bias? Or, was merit refactored in a more automatic, unconscious, dissonance-reducing rationalization, which would be more consistent with an implicit bias story? Norton and colleagues probed this causation question in another series of

134. *See id.* ($M=8.27$ with education versus $M=7.07$ without education, on a 11 point scale; $p=0.006$; $d=1.02$).

135. *See id.* ($M=6.21$ with family traits versus 5.08 without family traits; $p=0.05$; $d=0.86$).

136. Michael I. Norton et al., *Casistry and Social Category Bias*, 87 J. PERSONALITY & SOC. PSYCHOL. 817 (2004).

137. *Id.* at 820.

138. *Id.* at 821.

139. *Id.*

140. *Id.*

141. *Id.*

experiments, in the context of race and college admissions.¹⁴² In a prior study, they had found that Princeton undergraduate students shifted merit criteria—the relative importance of GPA versus the number of AP classes taken—to select the Black applicant over the White applicant who shared the same cumulative SAT score.¹⁴³ To see whether this casuistry was explicit and strategic or implicit and automatic, they ran another experiment in which participants merely rated admissions criteria in the abstract without selecting a candidate for admission.

Participants were simply told that they were participating in a study examining the criteria most important to college admissions decisions. They were given two sample resumes to familiarize themselves with potential criteria. Both resumes had equivalent cumulative SAT scores, but differed on GPA (4.0 versus 3.6) versus number of AP classes taken (9 versus 6). Both resumes also disclosed the applicant's race. In one condition, the White candidate had the higher GPA (and fewer AP classes); in the other condition, the African American candidate had the higher GPA (and fewer AP classes).¹⁴⁴ After reviewing the samples, the participants had to rank order eight criteria in importance, including GPA, number of AP classes, SAT scores, athletic participation, and so forth.

In the condition with the Black candidate having the higher GPA, 77 percent of the participants ranked GPA higher in importance than number of AP classes taken. By contrast, when the White candidate had the higher GPA, only 63 percent of the participants ranked GPA higher than AP classes. This change in the weighting happened even though the participants did not expect that they were going to make an admissions choice or to justify that choice. Thus, these differences could not be readily explained in purely strategic terms, as methods for justifying a subsequent decision. According to the authors,

[t]hese results suggest not only that it is possible for people to reweight criteria deliberately to justify choices but also that decisions made under such social constraints can impact information processing even prior to making a choice. This suggests that the bias we observed is not simply post hoc and strategic but occurs as an organic part of making decisions when social category information is present.¹⁴⁵

142. Michael I. Norton et al., *Mixed Motives and Racial Bias: The Impact of Legitimate and Illegitimate Criteria on Decision Making*, 12 PSYCHOL. PUB. POLY & L. 36, 42 (2006).

143. *Id.* at 44.

144. *See id.*

145. *Id.* at 46–47. This does not, however, fully establish that these differences were the result of implicit views rather than explicit ones. Even if test subjects did not expect to have to make admissions determinations, they might consciously select criteria that they believed favored one group over another.

The ways that human decisionmakers may subtly adjust criteria in real time to modify their judgments of merit has significance for thinking about the ways that implicit bias may potentially influence employment decisions. In effect, bias can influence decisions in ways contrary to the standard and seemingly commonsensical model. The conventional legal model describes behavior as a product of discrete and identifiable motives. This research suggests, however, that implicit motivations might influence behavior and that we then rationalize those decisions after the fact. Hence, some employment decisions might be motivated by implicit bias but rationalized post hoc based on nonbiased criteria. This process of reasoning from behavior to motives, as opposed to the folk-psychology assumption that the arrow of direction is from motives to behavior, is, in fact, consistent with a large body of contemporary psychological research.¹⁴⁶

2. Pretrial Adjudication: 12(b)(6)

As soon as a plaintiff files the complaint, the defendant will try to dismiss as many of the claims in the complaint as possible. Before recent changes in pleading, a motion to dismiss a complaint under FRCP 8 and FRCP 12(b)(6) was decided under the relatively lax standard of *Conley v. Gibson*.¹⁴⁷ Under *Conley*, all factual allegations made in the complaint were assumed to be true. As such, the court's task was simply to ask whether "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim."¹⁴⁸

Starting with *Bell Atlantic Corp. v. Twombly*,¹⁴⁹ which addressed complex antitrust claims of parallel conduct, and further developed in *Ashcroft v. Iqbal*,¹⁵⁰ which addressed civil rights actions based on racial and religious discrimination post-9/11, the U.S. Supreme Court abandoned the *Conley* standard. First, district courts must now throw out factual allegations made in the complaint if they are merely conclusory.¹⁵¹ Second, courts must decide on the plausibility of the claim based on the information before them.¹⁵² In *Iqbal*, the Supreme Court held that

146. See generally TIMOTHY D. WILSON, STRANGERS TO OURSELVES: DISCOVERING THE ADAPTIVE UNCONSCIOUS (2002).

147. 355 U.S. 41 (1957).

148. *Id.* at 45–46.

149. 550 U.S. 544 (2007).

150. 129 S. Ct. 1937 (2009).

151. *Id.* at 1951.

152. *Id.* at 1950–52.

because of an “obvious alternative explanation”¹⁵³ of earnest national security response, purposeful racial or religious “discrimination is not a plausible conclusion.”¹⁵⁴

How are courts supposed to decide what is “Twombal”¹⁵⁵ plausible when the motion to dismiss happens before discovery, especially in civil rights cases in which the defendant holds the key information? According to the Court, “[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.”¹⁵⁶

And when judges turn to their judicial experience and common sense, what will this store of knowledge tell them about whether some particular comment or act happened and whether such behavior evidences legally cognizable discrimination? Decades of social psychological research demonstrate that our impressions are driven by the interplay between categorical (general to the category) and individuating (specific to the member of the category) information. For example, in order to come to an impression about a Latina plaintiff, we reconcile general schemas for Latina workers with individualized data about the specific plaintiff. When we lack sufficient individuating information—which is largely the state of affairs at the motion to dismiss stage—we have no choice but to rely more heavily on our schemas.¹⁵⁷

Moreover, consider what the directive to rely on common sense means in light of social judgeability theory.¹⁵⁸ According to this theory, there are social rules that tell us when it is appropriate to judge someone. For example, suppose your fourth grade child told you that a new kid, Hannah, has enrolled in school and that she receives free lunches. Your child then asks you whether you think she is smart. You will probably decline to answer since you do not feel entitled to make that judgment. Without more probative information, you feel that you would only be crudely stereotyping her abilities based on her socioeconomic status. But what if the next day you volunteered in the classroom and spent twelve minutes observing

153. *Id.* (quoting *Twombly*, 550 U.S. 544) (internal quotation marks omitted).

154. *Id.* at 1952.

155. See *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10-4038-MWB, 2011 WL 5547159, at *1 (N.D. Iowa Nov. 9, 2011) (referring to a *Twombly-Iqbal* motion as “Twombal”).

156. *Iqbal*, 129 S. Ct. at 1940.

157. These schemas also reflect cultural cognitions. See generally Donald Braman, *Cultural Cognition and the Reasonable Person*, 14 LEWIS & CLARK L. REV. 1455 (2010); Dan M. Kahan, David A. Hoffman & Donald Braman, *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837 (2009).

158. See Vincent Y. Yzerbyt et al., *Social Judgeability: The Impact of Meta-Informational Cues on the Use of Stereotypes*, 66 J. PERSONALITY & SOC. PSYCHOL. 48 (1994).

Hannah interacting with a teacher trying to solve problems? Would you then feel that you had enough individuating information to come to some judgment?

This is precisely what John Darley and Paget Gross tested in a seminal experiment in 1983.¹⁵⁹ When participants only received economic status information, they declined to evaluate Hannah's intelligence as a function of her economic class. However, when they saw a twelve-minute videotape of the child answering a battery of questions, participants felt credentialed to judge the girl, and they did so in a way that was consistent with stereotypes. What they did not realize was that the individuating information in the videotape was purposefully designed to be ambiguous. So participants who were told that Hannah was rich interpreted the video as confirmation that she was smart. By contrast, participants who were told that Hannah was poor interpreted the same video as confirmation that she was not so bright.¹⁶⁰

Vincent Yzerbyt and colleagues, who call this phenomenon "social judgeability," have produced further evidence of this effect.¹⁶¹ If researchers told you that a person is either an archivist or a comedian and then asked you twenty questions about this person regarding their degree of extroversion with the options of "True," "False," or "I don't know," how might you answer? What if, in addition, they manufactured an illusion that you were given individuating information—information about the specific individual and not just the category he or she belongs to—even though you actually did not receive any such information?¹⁶² This is precisely what Yzerbyt and colleagues did in the lab.

They found that those operating under the illusion of individuating information were more confident in their answers in that they marked fewer questions with "I don't know."¹⁶³ They also found that those operating under the illusion gave more stereotype-consistent answers.¹⁶⁴ In other words, the illusion of being informed made the target judgeable. Because the participants, in fact, had received no such individuating information, they tended to judge the person in accordance with their schemas about archivists and comedians. Interestingly, "in the debriefings,

159. See John M. Darley & Paget H. Gross, *A Hypothesis-Confirming Bias in Labeling Effects*, 44 J. PERSONALITY & SOC. PSYCHOL. 20, 22–23 (1983).

160. See *id.* at 24–25, 27–29.

161. See Yzerbyt et al., *supra* note 158.

162. This illusion was created by having participants go through a listening exercise, in which they were told to focus only on one speaker (coming through one ear of a headset) and ignore the other (coming through the other). They were later told that the speaker that they were told to ignore had in fact provided relevant individuating information. The truth was, however, that no such information had been given. See *id.* at 50.

163. See *id.* at 51 ($M=5.07$ versus 10.13; $p<0.003$).

164. See *id.* ($M=9.97$ versus 6.30, out of 1 to 20 point range; $p<0.006$).

subjects reported that they did not judge the target on the basis of a stereotype; they were persuaded that they had described a real person qua person.”¹⁶⁵ Again, it is possible that they were concealing their explicitly embraced bias about archivists and comedians from probing researchers, but we think that it is more probable that implicit bias explains these results.

Social judgeability theory connects back to *Iqbal* in that the Supreme Court has altered the rules structuring the judgeability of plaintiffs and their complaints. Under *Conley*, judges were told not to judge without the facts and thus were supposed to allow the lawsuit to get to discovery unless no set of facts could state a legal claim. By contrast, under *Iqbal*, judges have been explicitly green-lighted to judge the plausibility of the plaintiff’s claim based only on the minimal facts that can be alleged before discovery—and this instruction came in the context of a racial discrimination case. In other words, our highest court has entitled district court judges to make this judgment based on a quantum of information that may provide enough facts to render the claim socially judgeable but not enough facts to ground that judgment in much more than the judge’s schemas. Just as Yzerbyt’s illusion of individuating information entitled participants to judge in the laboratory, the express command of the Supreme Court may entitle judges to judge in the courtroom when they lack any well-developed basis to do so.

There are no field studies to test whether biases, explicit or implicit, influence how actual judges decide motions to dismiss actual cases. It is not clear that researchers could ever collect such information. All that we have are some preliminary data about dismissal rates before and after *Iqbal* that are consistent with our analysis. Again, since *Iqbal* made dismissals easier, we should see an increase in dismissal rates across the board.¹⁶⁶ More relevant to our hypothesis is whether certain types of cases experienced differential changes in dismissal rates. For instance, we would expect *Iqbal* to generate greater increases in dismissal rates for race discrimination claims than, say, contract claims. There are a number of potential reasons for this: One reason is that judges are likely to have stronger biases that plaintiffs in the former type of case have less valid claims than those in the latter. Another reason is that we might expect some kinds of cases

165. *Id.*

166. In the first empirical study of *Iqbal*, Hatamyar sampled 444 cases under *Conley* (from May 2005 to May 2007) and 173 cases under *Iqbal* (from May 2009 to August 2009). See Patricia W. Hatamyar, *The Tao of Pleading: Do Twombly and Iqbal Matter Empirically?*, 59 AM. U. L. REV. 553, 597 (2010). She found that the general rate of complaint dismissal rose from 46 percent to 56 percent. See *id.* at 602 tbl.2. However, this finding was not statistically significant under a Pearson chi-squared distribution test examining the different dismissal rates for *Conley*, *Twombly*, and *Iqbal* for three results: grant, mixed, and deny.

to raise more significant concerns about asymmetric information than do others. In contracts disputes, both parties may have good information about most of the relevant facts even prior to discovery. In employment discrimination cases, plaintiffs may have good hunches about how they have been discriminated against, but prior to discovery they may not have access to the broad array of information in the employer's possession that may be necessary to turn the hunch into something a judge finds plausible. Moreover, these two reasons potentially interact: the more gap filling and inferential thinking that a judge has to engage in, the more room there may be for explicit and implicit biases to structure the judge's assessment in the absence of a well-developed evidentiary record.

Notwithstanding the lack of field studies on these issues, there is some evidentiary support for these differential changes in dismissal rates. For example, Patricia Hatamayr sorted a sample of cases before and after *Iqbal* into six major categories: contracts, torts, civil rights, labor, intellectual property, and all other statutory cases.¹⁶⁷ She found that in contract cases, the rate of dismissal did not change much from *Conley* (32 percent) to *Iqbal* (32 percent).¹⁶⁸ By contrast, for Title VII cases, the rate of dismissal increased from 42 percent to 53 percent.¹⁶⁹ Victor Quintanilla has collected more granular data by counting not Title VII cases generally but federal employment discrimination cases filed specifically by Black plaintiffs both before and after *Iqbal*.¹⁷⁰ He found an even larger jump. Under the *Conley* regime, courts granted only 20.5 percent of the motions to dismiss such cases. By contrast, under the *Iqbal* regime, courts granted 54.6 percent of them.¹⁷¹ These data lend themselves to multiple interpretations and suffer from various confounds. So at this point, we can make only modest claims. We merely suggest that the dismissal rate data are consistent with our hypothesis that *Iqbal*'s plausibility standard poses a risk of increasing the impact of implicit biases at the 12(b)(6) stage.

If, notwithstanding the plausibility-based pleading requirements, the case gets past the motion to dismiss, then discovery will take place, after which defendants will seek summary judgment under FRCP 56. On the one hand, this procedural posture is less subject to implicit biases than the motion to dismiss because more individuating information will have surfaced through discovery. On the

167. See *id.* at 591–93.

168. See *id.* at 630 tbl.D.

169. See *id.*

170. See Victor D. Quintanilla, *Beyond Common Sense: A Social Psychological Study of Iqbal's Effect on Claims of Race Discrimination*, 17 MICH. J. RACE & L. 1 (2011). Quintanilla counted both Title VII and 42 U.S.C. § 1981 cases.

171. See *id.* at 36 tbl.1 ($p < 0.000$).

other hand, the judge still has to make a judgment call on whether any “genuine dispute as to any material fact”¹⁷² remains. Similar decisionmaking dynamics are likely to be in play as we saw in the pleading stage, for a significant quantum of discretion remains. Certainly the empirical evidence that demonstrates how poorly employment discrimination claims fare on summary judgment is not inconsistent with this view, though, to be sure, myriad other explanations of these differences are possible (including, for example, doctrinal obstacles to reaching a jury).¹⁷³

3. Jury Verdict

If the case gets to trial, the parties will introduce evidence on the merits of the claim. Sometimes the evidence will be physical objects, such as documents, emails, photographs, voice recordings, evaluation forms, and the like. The rest of it will be witness or expert testimony, teased out and challenged by lawyers on both sides. Is there any reason to think that jurors might interpret the evidence in line with their biases? In the criminal trajectory, we already learned of juror bias via meta-analyses as well as correlations with implicit biases. Unfortunately, we lack comparable studies in the civil context. What we offer are two sets of related arguments and evidence that speak to the issue: motivation to shift standards and performer preference.

a. Motivation to Shift Standards

Above, we discussed the potential malleability of merit determinations when judgments permit discretion and reviewed how employer defendants might shift standards and reweight criteria when evaluating applicants and employees. Here, we want to recognize that a parallel phenomenon may affect juror decisionmaking. Suppose that a particular juror is White and that he identifies strongly with his Whiteness. Suppose further that the defendant is White and is being sued by a racial minority. The accusation of illegal and immoral behavior threatens the

172. FED R. CIV. P. 56(a).

173. See, e.g., Charlotte L. Lanvers, *Different Federal Court, Different Disposition: An Empirical Comparison of ADA, Title VII Race and Sex, and ADEA Employment Discrimination Dispositions in the Eastern District of Pennsylvania and the Northern District of Georgia*, 16 CORNELL J.L. & POL'Y 381, 395 (2007); Theodore Eisenberg & Charlotte Lanvers, *Summary Judgment Rates Over Time, Across Case Categories, and Across Districts: An Empirical Study of Three Large Federal Districts* (Cornell Law Sch. Research Paper No. 08-022, 2008), available at <http://ssrn.com/abstract=1138373> (finding that civil rights cases, and particularly employment discrimination cases, have a consistently higher summary judgment rate than non-civil rights cases).

status of the juror's racial ingroup. Anca Miron, Nyla Branscombe, and Monica Biernat have demonstrated that this threat to the ingroup can motivate people to shift standards in a direction that shields the ingroup from ethical responsibility.¹⁷⁴

Miron and colleagues asked White undergraduates at the University of Kansas to state how strongly they identified with America.¹⁷⁵ Then they were asked various questions about America's relationship to slavery and its aftermath. These questions clumped into three categories (or constructs): judgments of harm done to Blacks,¹⁷⁶ standards of injustice,¹⁷⁷ and collective guilt.¹⁷⁸ Having measured these various constructs, the researchers looked for relationships among them. Their hypothesis was that the greater the self-identification with America, the higher the standards would be before being willing to call America racist or otherwise morally blameworthy (that is, the participants would set higher confirmatory standards). They found that White students who strongly identified as American set higher standards for injustice (that is, they wanted more evidence before calling America unjust);¹⁷⁹ they thought less harm was done by slavery;¹⁸⁰ and, as a result, they felt less collective guilt compared to other White students who identified less with America.¹⁸¹ In other words, their attitudes toward America were correlated with the quantum of evidence they required to reach a judgment that America had been unjust.

In a subsequent study, Miron et al. tried to find evidence of causation, not merely correlation. They did so by experimentally manipulating national identification by asking participants to recount situations in which they felt similar to other Americans (evoking greater identification with fellow Americans) or different from other Americans (evoking less identification with fellow Americans).¹⁸²

174. Anca M. Miron, Nyla R. Branscombe & Monica Biernat, *Motivated Shifting of Justice Standards*, 36 PERSONALITY SOC. PSYCHOL. BULL. 768, 769 (2010).

175. The participants were all American citizens. The question asked was, "I feel strong ties with other Americans." *Id.* at 771.

176. A representative question was, "How much damage did Americans cause to Africans?" on a "very little" (1) to "very much" (7) Likert scale. *Id.* at 770.

177. "Please indicate what percentage of Americans would have had to be involved in causing harm to Africans for you to consider the past United States a racist nation" on a scale of 0–10 percent, 10–25 percent, up to 90–100 percent. *Id.* at 771.

178. "I feel guilty for my nation's harmful past actions toward African Americans" on a "strongly disagree" (1) to "strongly agree" (9) Likert scale. *Id.*

179. *See id.* at 772 tbl.1 ($r=0.26, p<0.05$).

180. *See id.* ($r=-0.23, p<0.05$).

181. *See id.* ($r=-0.21, p<0.05$). Using structural equation modeling, the researchers found that standards of injustice fully mediated the relationship between group identification and judgments of harm; also, judgments of harm fully mediated the effect of standards on collective guilt. *See id.* at 772–73.

182. The manipulation was successful. *See id.* at 773 ($p<0.05, d=0.54$).

Those who were experimentally made to feel *less* identification with America subsequently reported very different standards of justice and collective guilt compared to others made to feel *more* identification with America. Specifically, participants in the low identification condition set lower standards for calling something unjust, they evaluated slavery's harms as higher, and they felt more collective guilt. By contrast, participants in the high identification condition set higher standards for calling something unjust (that is, they required more evidence), they evaluated slavery's harms as less severe, and they felt less guilt.¹⁸³ In other words, by experimentally manipulating how much people identified with their ingroup (in this case, American), researchers could shift the justice standard that participants deployed to judge their own ingroup for harming the outgroup.

Evidentiary standards for jurors are specifically articulated (for example, "preponderance of the evidence") but substantively vague. The question is how a juror operationalizes that standard—just how much evidence does she require for believing that this standard has been met? These studies show how our assessments of evidence—of how much is enough—are themselves potentially malleable. One potential source of malleability is, according to this research, a desire (most likely implicit) to protect one's ingroup status. If a juror strongly identifies with the defendant employer as part of the same ingroup—racially or otherwise—the juror may shift standards of proof upwards in response to attack by an outgroup plaintiff. In other words, jurors who implicitly perceive an ingroup threat may require more evidence to be convinced of the defendant's harmful behavior than they would in an otherwise identical case that did not relate to their own ingroup. Ingroup threat is simply an example of this phenomenon; the point is that implicit biases may influence jurors by affecting how they implement ambiguous decision criteria regarding both the quantum of proof and how they make inferences from ambiguous pieces of information.

b. Performer Preference

Jurors will often receive evidence and interpretive cues from performers at trial, by which we mean the cast of characters in the courtroom who jurors see, such as the judge, lawyers, parties, and witnesses. These various performers are playing roles of one sort or another. And, it turns out that people tend to have stereotypes about the ideal employee or worker that vary depending on the segment of the labor

183. In standards for injustice, $M=2.60$ versus 3.39; on judgments of harm, $M=5.82$ versus 5.42; on collective guilt, $M=6.33$ versus 4.60. All differences were statistically significant at $p=0.05$ or less. See *id.*

market. For example, in high-level professional jobs and leadership roles, the supposedly ideal employee is often a White man.¹⁸⁴ When the actual performer does not fit the ideal type, people may evaluate the performance more negatively.

One study by Jerry Kang, Nilanjana Dasgupta, Kumar Yogeeswaran, and Gary Blasi found just such performer preference with respect to lawyers, as a function of race.¹⁸⁵ Kang and colleagues measured the explicit and implicit beliefs about the ideal lawyer held by jury-eligible participants from Los Angeles. The researchers were especially curious whether participants had implicit stereotypes linking the ideal litigator with particular racial groups (White versus Asian American). In addition to measuring their biases, the researchers had participants evaluate two depositions, which they heard via headphones and simultaneously read on screen. At the beginning of each deposition, participants were shown for five seconds a picture of the litigator conducting the deposition on a computer screen accompanied by his name. The race of the litigator was varied by name and photograph. Also, the deposition transcript identified who was speaking, which meant that participants repeatedly saw the attorneys' last names.¹⁸⁶

The study discovered the existence of a moderately strong implicit stereotype associating litigators with Whiteness (IAT $D=0.45$),¹⁸⁷ this stereotype correlated with more favorable evaluations of the White lawyer (ingroup favoritism since 91% of the participants were White) in terms of his competence ($r=0.32$, $p<0.01$), likeability ($r=0.31$, $p<0.01$), and hireability ($r=0.26$, $p<0.05$).¹⁸⁸ These results were confirmed through hierarchical regressions. To appreciate the magnitude of the effect sizes, imagine a juror who has no explicit stereotype but a large implicit stereotype (IAT $D=1$) that the ideal litigator is White. On a 7-point scale, this juror would favor a White lawyer over an identical Asian American

184. See, e.g., Alice H. Eagly & Steven J. Karau, *Role Congruity Theory of Prejudice Toward Female Leaders*, 109 PSYCHOL. REV. 573 (2002); Alice H. Eagly, Steven J. Karau & Mona G. Makhijani, *Gender and the Effectiveness of Leaders: A Meta-Analysis*, 117 PSYCHOL. BULL. 125 (1995); see also JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 213–17 (2000) (discussing how conceptions of merit are designed around masculine norms); Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOC. 1297 (2007).

185. See Jerry Kang et al., *Are Ideal Litigators White? Measuring the Myth of Colorblindness*, 7 J. EMPIRICAL LEGAL STUD. 886 (2010).

186. See *id.* at 892–99 (describing method and procedure, and identifying attorney names as “William Cole” or “Sung Chang”).

187. See *id.* at 900. They also found strong negative implicit attitudes against Asian Americans (IAT $D=0.62$). See *id.*

188. *Id.* at 901 tbl.3.

lawyer 6.01 to 5.65 in terms of competence, 5.57 to 5.27 in terms of likability, and 5.65 to 4.92 in terms of hireability.¹⁸⁹

This study provides some evidence that potential jurors' implicit stereotypes cause racial discrimination in judging attorney performance of basic depositions. What does this have to do with how juries might decide employment discrimination cases? Of course, minority defendants do not necessarily hire minority attorneys. That said, it is possible that minorities do hire minority attorneys at somewhat higher rates than nonminorities. But even more important, we hypothesize that similar processes might take place with how jurors evaluate not only attorneys but also both parties and witnesses, as they perform their various roles at trial. To be sure, this study does not speak directly to credibility assessments, likely to be of special import at trial, but it does at least suggest that implicit stereotypes may affect judgment of performances in the courtroom.

We concede that our claims about implicit bias influencing jury decisionmaking in civil cases are somewhat speculative and not well quantified. Moreover, in the real world, certain institutional processes may make both explicit and implicit biases less likely to translate into behavior. For example, jurors must deliberate with other jurors, and sometimes the jury features significant demographic diversity, which seems to deepen certain types of deliberation.¹⁹⁰ Jurors also feel accountable¹⁹¹ to the judge, who reminds them to adhere to the law and the merits. That said, for reasons already discussed, it seems implausible to think that current practices within the courtroom somehow magically burn away all jury biases, especially implicit biases of which jurors and judges are unaware. That is why we seek improvements based on the best understanding of how people actually behave.

Thus far, we have canvassed much of the available evidence describing how implicit bias may influence decisionmaking processes in both criminal and civil cases. On the one hand, the research findings are substantial and robust. On the other hand, they provide only imperfect knowledge, especially about what is actually happening in the real world. Notwithstanding this provisional and limited knowledge, we strongly believe that these studies, in aggregate, suggest that implicit bias in the trial process is a problem worth worrying about. What, then, can be done? Based on what we know, how might we intervene to improve the trial process and potentially vaccinate decisionmakers against, or at least reduce, the influence of implicit bias?

189. These figures were calculated using the regression equations in *id.* at 902 n.25, 904 n.27.

190. See *infra* text accompanying notes 241–245.

191. See, e.g., Jennifer S. Lerner & Philip E. Tetlock, *Accounting for the Effects of Accountability*, 125 PSYCHOL. BULL. 255, 267–70 (1999).

III. INTERVENTIONS

Before we turn explicitly to interventions, we reiterate that there are many causes of unfairness in the courtroom, and our focus on implicit bias is not meant to deny other causes. In Part II, we laid out the empirical case for why we believe that implicit biases influence both criminal and civil case trajectories. We now identify interventions that build on an overlapping scientific and political consensus. If there are cost-effective interventions that are likely to decrease the impact of implicit bias in the courtroom, we believe they should be adopted at least as forms of experimentation.

We are mindful of potential costs, including implementation and even overcorrection costs. But we are hopeful that these costs can be safely minimized. Moreover, the potential benefits of these improvements are both substantive and expressive. Substantively, the improvements may increase actual fairness by decreasing the impact of implicit biases; expressively, they may increase the appearance of fairness by signaling the judiciary's thoughtful attempts to go beyond cosmetic compliance.¹⁹² Effort is not always sufficient, but it ought to count for something.

A. Decrease the Implicit Bias

If implicit bias causes unfairness, one intervention strategy is to decrease the implicit bias itself. It would be delightful if explicit refutation would suffice. But abstract, global self-commands to "Be fair!" do not much change implicit social cognitions. How then might we alter implicit attitudes or stereotypes about various social groups?¹⁹³ One potentially effective strategy is to expose ourselves to countertypical associations. In rough terms, if we have a negative attitude toward some group, we need exposure to members of that group to whom we would have a positive attitude. If we have a particular stereotype about some group, we need exposure to members of that group that do not feature those particular attributes.

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192. In a 1999 survey by the National Center for State Courts, 47 percent of the American people doubted that African Americans and Latinos receive equal treatment in state courts; 55 percent doubted that non-English speaking people receive equal treatment. The appearance of fairness is a serious problem. See NAT'L CTR. FOR STATE COURTS, HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY 37 (1999), available at http://www.ncsconline.org/WC/Publications/Res_AmtPTC_PublicViewCrtsPub.pdf. The term "cosmetic compliance" comes from Kimberly D. Krawiec, *Cosmetic Compliance and the Failure of Negotiated Governance*, 81 WASH. U. L.Q. 487 (2003).
193. For analysis of the nature versus nurture debate regarding implicit biases, see Jerry Kang, *Bits of Bias*, in IMPLICIT RACIAL BIAS ACROSS THE LAW 132 (Justin D. Levinson & Robert J. Smith eds., 2012).

These exposures can come through direct contact with countertypical people. For example, Nilanjana Dasgupta and Shaki Asgari tracked the implicit gender stereotypes held by female subjects both before and after a year of attending college.¹⁹⁴ One group of women attended a year of coed college; the other group attended a single-sex college. At the start of their college careers, the two groups had comparable amounts of implicit stereotypes against women. However, one year later, those who attended the women's college on average expressed no gender bias, whereas the average bias of those who attended the coed school increased.¹⁹⁵ By carefully examining differences in the two universities' environments, the researchers learned that it was exposure to countertypical women in the role of professors and university administrators that altered the implicit gender stereotypes of female college students.¹⁹⁶

Nilanjana Dasgupta and Luis Rivera also found correlations between participants' self-reported numbers of gay friends and their negative implicit attitudes toward gays.¹⁹⁷ Such evidence gives further reason to encourage intergroup social contact by diversifying the bench, the courtroom (staff and law clerks), our residential neighborhoods, and friendship circles. That said, any serious diversification of the bench, the bar, and staff would take enormous resources, both economic and political. Moreover, these interventions might produce only modest results. For instance, Rachlinski et al. found that judges from an eastern district that featured approximately half White judges and half Black judges had "only slightly smaller" implicit biases than the judges of a western jurisdiction, which contained only two Black judges (out of forty-five total district court judges, thirty-six of them being White).¹⁹⁸ In addition, debiasing exposures would have to compete against the other daily real-life exposures in the courtroom that rebias. For instance, Joshua Correll found that police officers who worked in areas with high minority demographics and violent crime showed more shooter bias.¹⁹⁹

If increasing direct contact with a diverse but countertypical population is not readily feasible, what about vicarious contact, which is mediated by images,

194. See Nilanjana Dasgupta & Shaki Asgari, *Seeing Is Believing: Exposure to Counterstereotypic Women Leaders and Its Effect on the Malleability of Automatic Gender Stereotyping*, 40 J. EXPERIMENTAL SOC. PSYCHOL. 642, 649–54 (2004).

195. See *id.* at 651.

196. See *id.* at 651–53.

197. See Nilanjana Dasgupta & Luis M. Rivera, *From Automatic Antigay Prejudice to Behavior: The Moderating Role of Conscious Beliefs About Gender and Behavioral Control*, 91 J. PERSONALITY & SOC. PSYCHOL. 268, 270 (2006).

198. See Rachlinski et al., *supra* note 86, at 1227.

199. See Correll et al., *supra* note 51, at 1014 ("We tentatively suggest that these environments may reinforce cultural stereotypes, linking Black people to the concept of violence.").

videos, simulations, or even imagination and which does not require direct face-to-face contact?²⁰⁰ Actually, the earliest studies on the malleability of implicit bias pursued just these strategies. For instance, Nilanjana Dasgupta and Anthony Greenwald showed that participants who were exposed vicariously to countertypical exemplars in a history questionnaire (for example, Black figures to whom we tend to have positive attitudes, such as Martin Luther King Jr., and White figures to whom we tend to have negative attitudes, such as Charles Manson) showed a substantial decrease in negative implicit attitudes toward African Americans.²⁰¹ These findings are consistent with work done by Irene Blair, who has demonstrated that brief mental visualization exercises can also change scores on the IAT.²⁰²

In addition to exposing people to famous countertypical exemplars, implicit biases may be decreased by juxtaposing ordinary people with countertypical settings. For instance, Bernard Wittenbrink, Charles Judd, and Bernadette Park examined the effects of watching videos of African Americans situated either at a convivial outdoor barbecue or at a gang-related incident.²⁰³ Situating African Americans in a positive setting produced lower implicit bias scores.²⁰⁴

There are, to be sure, questions about whether this evidence directly translates into possible improvements for the courtroom.²⁰⁵ But even granting numerous caveats, might it not be valuable to engage in some experimentation? In chambers and the courtroom buildings, photographs, posters, screen savers, pamphlets, and decorations ought to be used that bring to mind countertypical exemplars or associations for participants in the trial process. Since judges and jurors are differently situated, we can expect both different effects and implementation strategies. For example, judges would be exposed to such vicarious displays regularly as a feature of their workplace environment. By contrast, jurors would be exposed only

200. See Jerry Kang, *Cyber-Race*, 113 HARV. L. REV. 1130, 1166–67 (2000) (comparing vicarious with direct experiences).

201. Nilanjana Dasgupta & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice With Images of Admired and Disliked Individuals*, 81 J. PERSONALITY & SOC. PSYCHOL. 800, 807 (2001). The IAT effect changed nearly 50 percent as compared to the control (IAT effect $M=78\text{ms}$ versus 174ms , $p=0.01$) and remained for over twenty-four hours.

202. Irene V. Blair, Jennifer E. Ma & Alison P. Lenton, *Imagining Stereotypes Away: The Moderation of Implicit Stereotypes Through Mental Imagery*, 81 J. PERSONALITY & SOC. PSYCHOL. 828 (2001). See generally Irene V. Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 PERSONALITY & SOC. PSYCHOL. REV. 242 (2002) (literature review).

203. See Bernd Wittenbrink et al., *Spontaneous Prejudice in Context: Variability in Automatically Activated Attitudes*, 81 J. PERSONALITY & SOC. PSYCHOL. 815, 818–19 (2001).

204. *Id.* at 819.

205. How long does the intervention last? How immediate does it have to be? How much were the studies able to ensure focus on the positive countertypical stimulus as opposed to in a courtroom where these positives would be amidst the myriad distractions of trial?

during their typically brief visit to the court.²⁰⁶ Especially for jurors, then, the goal is not anything as ambitious as fundamentally changing the underlying structure of their mental associations. Instead, the hope would be that by reminding them of countertypical associations, we might momentarily activate different mental patterns while in the courthouse and reduce the impact of implicit biases on their decisionmaking.²⁰⁷

To repeat, we recognize the limitations of our recommendation. Recent research has found much smaller debiasing effects from vicarious exposure than originally estimated.²⁰⁸ Moreover, such exposures must compete against the flood of typical, schema-consistent exposures we are bombarded with from mass media. That said, we see little costs to these strategies even if they appear cosmetic. There is no evidence, for example, that these exposures will be so powerful that they will overcorrect and produce net bias against Whites.

B. Break the Link Between Bias and Behavior

Even if we cannot remove the bias, perhaps we can alter decisionmaking processes so that these biases are less likely to translate into behavior. In order to keep this Article's scope manageable, we focus on the two key players in the courtroom: judges and jurors.²⁰⁹

1. Judges

a. Doubt One's Objectivity

Most judges view themselves as objective and especially talented at fair decisionmaking. For instance, Rachlinski et al. found in one survey that 97 percent of judges (thirty-five out of thirty-six) believed that they were in the top quartile in "avoid[ing] racial prejudice in decisionmaking"²¹⁰ relative to other judges attending the same conference. That is, obviously, mathematically impossible.

206. See Kang, *supra* note 46, at 1537 (raising the possibility of "debiasing booths" in lobbies for waiting jurors).

207. Rajees Sritharan & Bertram Gawronski, *Changing Implicit and Explicit Prejudice: Insights From the Associative-Propositional Evaluation Model*, 41 SOC. PSYCHOL. 113, 118 (2010).

208. See Jennifer A. Joy-Gaba & Brian A. Nosek, *The Surprisingly Limited Malleability of Implicit Racial Evaluations*, 41 SOC. PSYCHOL. 137, 141 (2010) (finding an effect size that was approximately 70 percent smaller than the original Dasgupta and Greenwald findings, *see supra* note 201).

209. Other important players obviously include staff, lawyers, and police. For a discussion of the training literature on the police and shooter bias, see Adam Benforado, *Quick on the Draw: Implicit Bias and the Second Amendment*, 89 OR. L. REV. 1, 46–48 (2010).

210. See Rachlinski et al., *supra* note 86, at 1225.

(One is reminded of Lake Wobegon, where all of the children are above average.) In another survey, 97.2 percent of those administrative agency judges surveyed put themselves in the top half in terms of avoiding bias, again impossible.²¹¹ Unfortunately, there is evidence that believing ourselves to be objective puts us at particular risk for behaving in ways that belie our self-conception.

Eric Uhlmann and Geoffrey Cohen have demonstrated that when a person believes himself to be objective, such belief licenses him to act on his biases. In one study, they had participants choose either the candidate profile labeled “Gary” or the candidate profile labeled “Lisa” for the job of factory manager. Both candidate profiles, comparable on all traits, unambiguously showed strong organization skills but weak interpersonal skills.²¹² Half the participants were primed to view themselves as objective.²¹³ The other half were left alone as control.

Those in the control condition gave the male and female candidates statistically indistinguishable hiring evaluations.²¹⁴ But those who were manipulated to think of themselves as objective evaluated the male candidate higher ($M=5.06$ versus 3.75 , $p=0.039$, $d=0.76$).²¹⁵ Interestingly, this was not due to a malleability of merit effect, in which the participants reweighted the importance of either organizational skills or interpersonal skills in order to favor the man. Instead, the discrimination was caused by straight-out disparate evaluation, in which the Gary profile was rated as more interpersonally skilled than the Lisa profile by those primed to think themselves objective ($M=3.12$ versus 1.94 , $p=0.023$, $d=0.86$).²¹⁶ In short, thinking oneself to be objective seems ironically to lead one to be less objective and more susceptible to biases. Judges should therefore remind themselves that they are human and fallible, notwithstanding their status, their education, and the robe.

But is such a suggestion based on wishful thinking? Is there any evidence that education and reminders can actually help? There is some suggestive evidence from Emily Pronin, who has carefully studied the bias blindspot—the belief

211. See Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, *The “Hidden Judiciary”: An Empirical Examination of Executive Branch Justice*, 58 DUKE L.J. 1477, 1519 (2009).

212. See Eric Luis Uhlmann & Geoffrey L. Cohen, “*I Think It, Therefore It’s True*”: Effects of Self-Perceived Objectivity on Hiring Discrimination, 104 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 207, 210–11 (2007).

213. This was done simply by asking participants to rate their own objectivity. Over 88 percent of the participants rated themselves as above average on objectivity. See *id.* at 209. The participants were drawn from a lay sample (not just college students).

214. See *id.* at 210–11 ($M=3.24$ for male candidate versus 4.05 for female candidate, $p=0.21$).

215. See *id.* at 211.

216. See *id.* Interestingly, the gender of the participants mattered. Female participants did not show the objectivity priming effect. See *id.*

that others are biased but we ourselves are not.²¹⁷ In one study, Emily Pronin and Matthew Kugler had a control group of Princeton students read an article from *Nature* about environmental pollution. By contrast, the treatment group read an article allegedly published in *Science* that described various nonconscious influences on attitudes and behaviors.²¹⁸ After reading an article, the participants were asked about their own objectivity as compared to their university peers. Those in the control group revealed the predictable bias blindspot and thought that they suffered from less bias than their peers.²¹⁹ By contrast, those in the treatment group did not believe that they were more objective than their peers; moreover, their more modest self-assessments differed from those of the more confident control group.²²⁰ These results suggest that learning about nonconscious thought processes can lead people to be more skeptical about their own objectivity.

b. Increase Motivation

Tightly connected to doubting one's objectivity is the strategy of increasing one's motivation to be fair.²²¹ Social psychologists generally agree that motivation is an important determinant of checking biased behavior.²²² Specific to implicit bias, Nilanjana Dasgupta and Luis Rivera found that participants who were consciously motivated to be egalitarian did not allow their antigay implicit attitudes to translate into biased behavior toward a gay person. By contrast, for those lacking such motivation, strong antigay implicit attitudes predicted more biased behavior.²²³

A powerful way to increase judicial motivation is for judges to gain actual scientific knowledge about implicit social cognitions. In other words, judges should be internally persuaded that a genuine problem exists. This education and

217. See generally Emily Pronin, *Perception and Misperception of Bias in Human Judgment*, 11 TRENDS COGNITIVE SCI. 37 (2007).

218. See Emily Pronin & Matthew B. Kugler, *Valuing Thoughts, Ignoring Behavior: The Introspection Illusion as a Source of the Bias Blind Spot*, 43 J. EXPERIMENTAL SOC. PSYCHOL. 565, 574 (2007). The intervention article was 1643 words long, excluding references. See *id.* at 575.

219. See *id.* at 575 (M=5.29 where 6 represented the same amount of bias as peers).

220. See *id.* For the treatment group, their self-evaluation of objectivity was M=5.88, not statistically significantly different from the score of 6, which, as noted previously, meant having the same amount of bias as peers. Also, the self-reported objectivity of the treatment group (M=5.88) differed from the control group (M=5.29) in a statistically significant way, $p=0.01$. See *id.*

221. For a review, see Margo J. Monteith et al., *Schooling the Cognitive Monster: The Role of Motivation in the Regulation and Control of Prejudice*, 3 SOC. & PERSONALITY PSYCHOL. COMPASS 211 (2009).

222. See Russell H. Fazio & Tamara Towles-Schwen, *The MODE Model of Attitude-Behavior Processes*, in DUAL-PROCESS THEORIES IN SOCIAL PSYCHOLOGY 97 (Shelly Chaiken & Yaacov Trope eds., 1999).

223. See Dasgupta & Rivera, *supra* note 197, at 275.

awareness can be done through self-study as well as more official judicial education. Such education is already taking place, although mostly in an ad hoc fashion.²²⁴ The most organized intervention has come through the National Center for State Courts (NCSC). The NCSC organized a three-state pilot project in California, Minnesota, and North Dakota to teach judges and court staff about implicit bias.²²⁵ It used a combination of written materials, videos, resource websites, Implicit Association Tests, and online lectures from subject-matter experts to provide the knowledge. Questionnaires completed before and after each educational intervention provided an indication of program effectiveness.

Although increased knowledge of the underlying science is a basic objective of an implicit bias program, the goal is not to send judges back to college for a crash course in Implicit Psychology 101. Rather, it is to persuade judges, on the merits, to recognize implicit bias as a potential problem, which in turn should increase motivation to adopt sensible countermeasures. Did the NCSC projects increase recognition of the problem and encourage the right sorts of behavioral changes? The only evidence we have is limited: voluntary self-reports subject to obvious selection biases.

For example, in California, judicial training emphasized a documentary on the neuroscience of bias.²²⁶ Before and after watching the documentary, participants were asked to what extent they thought “a judge’s decisions and court staff’s interaction with the public can be unwittingly influenced by unconscious bias toward racial/ethnic groups.”²²⁷ Before viewing the documentary, approximately 16 percent chose “rarely-never,” 55 percent chose “occasionally,” and 30 percent chose “most-all.” After viewing the documentary, 1 percent chose “rarely-never,” 20 percent chose “occasionally,” and 79 percent chose “most-all.”²²⁸

Relatedly, participants were asked whether they thought implicit bias could have an impact on behavior even if a person lacked explicit bias. Before viewing the documentary, approximately 9 percent chose “rarely-never,” 45 percent chose “occasionally,” and 45 percent chose “most-all.” After viewing the documentary, 1 percent chose “rarely-never,” 14 percent chose “occasionally,” and 84 percent

224. Several of the authors of this Article have spoken to judges on the topic of implicit bias.

225. See PAMELA M. CASEY ET AL., NAT’L CTR. FOR STATE COURTS, HELPING COURTS ADDRESS IMPLICIT BIAS: RESOURCES FOR EDUCATION (2012), available at <http://www.ncsc.org/IBReport>.

226. The program was broadcast on the Judicial Branch’s cable TV station and made available streaming on the Internet. See *The Neuroscience and Psychology of Decisionmaking*, ADMIN. OFF. COURTS EDUC. DIV. (Mar. 29, 2011), <http://www2.courtinfo.ca.gov/cjer/aocvtv/dialogue/neuro/index.htm>.

227. See CASEY ET AL., *supra* note 225, at 12 fig.2.

228. See *id.*

chose “most-all.”²²⁹ These statistics provide some evidence that the California documentary increased awareness of the problem of implicit bias. The qualitative data, in the form of write-in comments²³⁰ support this interpretation.

What about the adoption of behavioral countermeasures? Because no specific reforms were recommended at the time of training, there was no attempt to measure behavioral changes. All that we have are self-reports that speak to the issue. For instance, participants were asked to agree or disagree with the statement, “I will apply the course content to my work.” In California, 90 percent (N=60) reported that they agreed or strongly agreed.²³¹ In North Dakota (N=32), 97 percent reported that they agreed or strongly agreed.²³² Three months later, there was a follow-up survey given to the North Dakota participants, but only fourteen participants replied. In that survey, 77 percent of those who responded stated that they had made efforts to reduce the potential impact of implicit bias.²³³ In sum, the findings across all three pilot programs suggest that education programs can increase motivation and encourage judges to engage in some behavioral modifications. Given the limitations of the data (for example, pilot projects with small numbers of participants, self-reports, self-selection, and limited follow-up results), additional research is needed to confirm these promising but preliminary results.

From our collective experience, we also recommend the following tactics. First, training should commence early, starting with new-judge orientation when individuals are likely to be most receptive. Second, training should not immediately put judges on the defensive, for instance, by accusing them of concealing explicit bias. Instead, trainers can start the conversation with other types of decisionmaking errors and cognitive biases, such as anchoring, or less-threatening biases, such as the widespread preference for the youth over the elderly that IATs reveal. Third, judges should be encouraged to take the IAT or other measures of implicit

229. *Id.* at 12 fig.3.

230. Comments included: “raising my awareness of prevalence of implicit bias,” “enlightened me on the penetration of implicit bias in everyday life, even though I consciously strive to be unbiased and assume most people try to do the same,” and “greater awareness—I really appreciated the impressive panel of participants; I really learned a lot, am very interested.” *See* CASEY ET AL., *supra* note 225, at 11.

231. *See id.* at 10.

232. *See id.* at 18. Minnesota answered a slightly different question: 81 percent gave the program’s applicability a medium high to high rating.

233. *See id.* at 20. The strategies that were identified included: “concerted effort to be aware of bias,” “I more carefully review my reasons for decisions, likes, dislikes, and ask myself if there may be bias underlying my determination,” “Simply trying to think things through more thoroughly,” “Reading and learning more about other cultures,” and “I have made mental notes to myself on the bench to be more aware of the implicit bias and I’ve re-examined my feelings to see if it is because of the party and his/her actions vs. any implicit bias on my part.”

bias. Numerous personal accounts have reported how the discomfiting act of taking the IAT alone motivates action. And researchers are currently studying the specific behavioral and social cognitive changes that take place through such self-discovery. That said, we do not recommend that such tests be mandatory because the feeling of resentment and coercion is likely to counter the benefits of increased self-knowledge. Moreover, judges should never be expected to disclose their personal results.

c. Improve Conditions of Decisionmaking

Implicit biases function automatically. One way to counter them is to engage in effortful, deliberative processing.²³⁴ But when decisionmakers are short on time or under cognitive load, they lack the resources necessary to engage in such deliberation. Accordingly, we encourage judges to take special care when they must respond quickly and to try to avoid making snap judgments whenever possible. We recognize that judges are under enormous pressures to clear ever-growing dockets. That said, it is precisely under such work conditions that judges need to be especially on guard against their biases.

There is also evidence that certain elevated emotional states, either positive or negative, can prompt more biased decisionmaking. For example, a state of happiness seems to increase stereotypic thinking,²³⁵ which can be countered when individuals are held accountable for their judgments. Of greater concern might be feelings of anger, disgust, or resentment toward certain social categories. If the emotion is consistent with the stereotypes or anticipated threats associated with that social category, then those negative emotions are likely to exacerbate implicit biases.²³⁶

234. There are also ways to deploy more automatic countermeasures. In other words, one can teach one's mind to respond not reflectively but reflexively, by automatically triggering goal-directed behavior through internalization of certain if-then responses. These countermeasures function implicitly and even under conditions of cognitive load. See generally Saaed A. Mendoza et al., *Reducing the Expression of Implicit Stereotypes: Reflexive Control Through Implementation Intentions*, 36 PERSONALITY & SOC. PSYCHOL. BULL. 512, 514–15, 520 (2010); Monteith et al., *supra* note 221, at 218–21 (discussing bottom-up correction versus top-down).

235. See Galen V. Bodenhausen et al., *Happiness and Stereotypic Thinking in Social Judgment*, 66 J. PERSONALITY & SOC. PSYCHOL. 621 (1994).

236. See Nilanjana Dasgupta et al., *Fanning the Flames of Prejudice: The Influence of Specific Incidental Emotions on Implicit Prejudice*, 9 EMOTION 585 (2009). The researchers found that implicit bias against gays and lesbians could be increased more by making participants feel disgust than by making participants feel anger. See *id.* at 588. Conversely, they found that implicit bias against Arabs could be increased more by making participants feel angry rather than disgusted. See *id.* at 589; see also David DeSteno et al., *Prejudice From Thin Air: The Effect of Emotion on Automatic Intergroup Attitudes*, 15 PSYCHOL. SCI. 319 (2004).

In sum, judges should try to achieve the conditions of decisionmaking that allow them to be mindful and deliberative and thus avoid huge emotional swings.

d. Count

Finally, we encourage judges and judicial institutions to count. Increasing accountability has been shown to decrease the influence of bias and thus has frequently been offered as a mechanism for reducing bias. But, how can the behavior of trial court judges be held accountable if biased decisionmaking is itself difficult to detect? If judges do not seek out the information that could help them see their own potential biases, those biases become more difficult to correct. Just as trying to lose or gain weight without a scale is challenging, judges should engage in more quantified self-analysis and seek out and assess patterns of behavior that cannot be recognized in single decisions. Judges need to count.

The comparison we want to draw is with professional umpires and referees. Statistical analyses by behavioral economists have discovered various biases, including ingroup racial biases, in the decisionmaking of professional sports judges. Joseph Price and Justin Wolfers found racial ingroup biases in National Basketball Association (NBA) referees' foul calling;²³⁷ Christopher Parsons and colleagues found ingroup racial bias in Major League Baseball (MLB) umpires' strike calling.²³⁸ These discoveries were only possible because professional sports leagues count performance, including referee performance, in a remarkably granular and comprehensive manner.

Although NBA referees and MLB umpires make more instantaneous calls than judges, judges do regularly make quick judgments on motions, objections, and the like. In these contexts, judges often cannot slow down. So, it makes sense

237. Joseph Price & Justin Wolfers, *Racial Discrimination Among NBA Referees*, 125 Q.J. ECON. 1859, 1885 (2010) ("We find that players have up to 4% fewer fouls called against them and score up to 2½% more points on nights in which their race matches that of the refereeing crew. Player statistics that one might think are unaffected by referee behavior [for example, free throw shooting] are uncorrelated with referee race. The bias in foul-calling is large enough so that the probability of a team winning is noticeably affected by the racial composition of the refereeing crew assigned to the game.").

238. Christopher A. Parsons et al., *Strike Three: Discrimination, Incentives, and Evaluation*, 101 AM. ECON. REV. 1410, 1433 (2011) ("Pitches are slightly more likely to be called strikes when the umpire shares the race/ethnicity of the starting pitcher, an effect that is observable only when umpires' behavior is not well monitored. The evidence also suggests that this bias has substantial effects on pitchers' measured performance and games' outcomes. The link between the small and large effects arises, at least in part, because pitchers alter their behavior in potentially discriminatory situations in ways that ordinarily would disadvantage themselves (such as throwing pitches directly over the plate).").

to count their performances in domains such as bail, probable cause, and preliminary hearings.

We recognize that such counting may be difficult for individual judges who lack both the quantitative training and the resources to track their own performance statistics. That said, even amateur, basic counting, with data collection methods never intended to make it into a peer-reviewed journal, might reveal surprising outcomes. Of course, the most useful information will require an institutional commitment to counting across multiple judges and will make use of appropriately sophisticated methodologies. The basic objective is to create a negative feedback loop in which individual judges and the judiciary writ large are given the corrective information necessary to know how they are doing and to be motivated to make changes if they find evidence of biased performances. It may be difficult to correct biases even when we do know about them, but it is virtually impossible to correct them if they remain invisible.

2. Jurors

a. Jury Selection and Composition

Individual screen. One obvious way to break the link between bias and unfair decisions is to keep biased persons off the jury. Since everyone has implicit biases of one sort or another, the more precise goal would be to screen out those with excessively high biases that are relevant to the case at hand. This is, of course, precisely one of the purposes of voir dire, although the interrogation process was designed to ferret out concealed explicit bias, not implicit bias.

One might reasonably ask whether potential jurors should be individually screened for implicit bias via some instrument such as the IAT. But the leading scientists in implicit social cognition recommend against using the test as an individually diagnostic measure. One reason is that although the IAT has enough test-retest reliability to provide useful research information about human beings generally, its reliability is sometimes below what we would like for individual assessments.²³⁹ Moreover, real-word diagnosticity for individuals raises many more issues than just test-retest reliability. Finally, those with implicit biases need not

239. The test-retest reliability between a person's IAT scores at two different times has been found to be 0.50. For further discussion, see Kang & Lane, *supra* note 2, at 477–78. Readers should understand that “the IAT’s properties approximately resemble those of sphygmomanometer blood pressure (BP) measures that are used to assess hypertension.” See Anthony G. Greenwald & N. Sriram, *No Measure Is Perfect, but Some Measures Can Be Quite Useful: Response to Two Comments on the Brief Implicit Association Test*, 57 EXPERIMENTAL PSYCHOL. 238, 240 (2010).

be regarded as incapable of breaking the causal chain from implicit bias to judgment. Accordingly, we maintain this scientifically conservative approach and recommend against using the IAT for individual juror selection.²⁴⁰

Jury diversity. Consider what a White juror wrote to Judge Janet Bond Arterton about jury deliberations during a civil rights complaint filed by Black plaintiffs:

During deliberations, matter-of-fact expressions of bigotry and broad-brush platitudes about “those people” rolled off the tongues of a vocal majority as naturally and unabashedly as if they were discussing the weather. Shocked and sickened, I sat silently, rationalizing to myself that since I did agree with the product, there was nothing to be gained by speaking out against the process (I now regret my inaction). *Had just one African-American been sitting in that room, the content of discussion would have been quite different.* And had the case been more balanced—one that hinged on fine distinction or subtle nuances—a more diverse jury might have made a material difference in the outcome.

I pass these thoughts onto you in the hope that the jury system can some day be improved.²⁴¹

This anecdote suggests that a second-best strategy to striking potential jurors with high implicit bias is to increase the demographic diversity of juries²⁴² to get a broader distribution of biases, some of which might cancel each other out. This is akin to a diversification strategy for an investment portfolio. Moreover, in a more diverse jury, people’s willingness to express explicit biases might be muted, and the very existence of diversity might even affect the operation of implicit biases as well.

In support of this approach, Sam Sommers has confirmed that racial diversity in the jury alters deliberations. In a mock jury experiment, he compared the deliberation content of all-White juries with that of racially diverse juries.²⁴³ Racially diverse juries processed information in a way that most judges and lawyers would consider desirable: They had longer deliberations, greater focus on the actual evidence, greater discussion of missing evidence, fewer inaccurate statements, fewer

240. For legal commentary in agreement, see, for example, Anna Roberts, *(Re)forming the Jury: Detection and Disinfection of Implicit Juror Bias*, 44 CONN. L. REV. 827, 856–57 (2012). Roberts suggests using the IAT during orientation as an educational tool for jurors instead. *Id.* at 863–66.

241. Janet Bond Arterton, *Unconscious Bias and the Impartial Jury*, 40 CONN. L. REV. 1023, 1033 (2008) (quoting letter from anonymous juror) (emphasis added).

242. For a structural analysis of why juries lack racial diversity, see Samuel R. Sommers, *Determinants and Consequences of Jury Racial Diversity: Empirical Findings, Implications, and Directions for Future Research*, 2 SOC. ISSUES & POLY REV. 65, 68–71 (2008).

243. The juries labeled “diverse” featured four White and two Black jurors.

uncorrected statements, and greater discussion of race-related topics.²⁴⁴ In addition to these information-based benefits, Sommers found interesting predeliberation effects: Simply by knowing that they would be serving on diverse juries (as compared to all-White ones), White jurors were less likely to believe, at the conclusion of evidence but before deliberations, that the Black defendant was guilty.²⁴⁵

Given these benefits,²⁴⁶ we are skeptical about peremptory challenges, which private parties deploy to decrease racial diversity in precisely those cases in which diversity is likely to matter most.²⁴⁷ Accordingly, we agree with the recommendation by various commentators, including Judge Mark Bennett, to curtail substantially the use of peremptory challenges.²⁴⁸ In addition, we encourage consideration of restoring a 12-member jury size as “the most effective approach” to maintain juror representativeness.²⁴⁹

b. Jury Education About Implicit Bias

In our discussion of judge bias, we recommended that judges become skeptical of their own objectivity and learn about implicit social cognition to become motivated to check against implicit bias. The same principle applies to jurors, who must be educated and instructed to do the same in the course of their jury service. This education should take place early and often. For example, Judge

244. Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCHOL. 597 (2006).

245. See Sommers, *supra* note 242, at 87.

246. Other benefits include promoting public confidence in the judicial system. See *id.* at 82–88 (summarizing theoretical and empirical literature).

247. See Michael I. Norton, Samuel R. Sommers & Sara Brauner, *Bias in Jury Selection: Justifying Prohibited Peremptory Challenges*, 20 J. BEHAV. DECISION MAKING 467 (2007); Samuel R. Sommers & Michael I. Norton, *Race and Jury Selection: Psychological Perspectives on the Peremptory Challenge Debate*, 63 AM. PSYCHOLOGIST 527 (2008) (reviewing literature); Samuel R. Sommers & Michael I. Norton, *Race-Based Judgments, Race-Neutral Justifications: Experimental Examination of Peremptory Use and the Batson Challenge Procedure*, 31 LAW & HUM. BEHAV. 261 (2007) (finding that race influences the exercise of peremptory challenges in participant populations that include college students, law students, and practicing attorneys and that participants effectively justified their use of challenges in race-neutral terms).

248. See, e.g., Bennett, *supra* note 85, at 168–69 (recommending the tandem solution of increased lawyer participation in voir dire and the banning of peremptory challenges); Antony Page, *Batson's Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. REV. 155 (2005).

249. Shari Seidman Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. EMPIRICAL LEGAL STUD. 425, 427 (2009).

Bennett spends approximately twenty-five minutes discussing implicit bias during jury selection.²⁵⁰

At the conclusion of jury selection, Judge Bennett asks each potential juror to take a pledge, which covers various matters including a pledge against bias:

I pledge *** :

I will not decide this case based on biases. This includes gut feelings, prejudices, stereotypes, personal likes or dislikes, sympathies or generalizations.²⁵¹

He also gives a specific jury instruction on implicit biases before opening statements:

Do not decide the case based on “implicit biases.” As we discussed in jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is, “implicit biases,” that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common

250. Judge Bennett starts with a clip from *What Would You Do?*, an ABC show that uses hidden cameras to capture bystanders' reactions to a variety of staged situations. This episode—a brilliant demonstration of bias—opens with a bike chained to a pole near a popular bike trail on a sunny afternoon. First, a young White man, dressed in jeans, a t-shirt, and a baseball cap, approaches the bike with a hammer and saw and begins working on the chain (and even gets to the point of pulling out an industrial-strength bolt cutter). Many people pass by without saying anything; one asks him if he lost the key to his bike lock. Although many others show concern, they do not interfere. After those passersby clear, the show stages its next scenario: a young Black man, dressed the same way, approaches the bike with the same tools and attempts to break the chain. Within seconds, people confront him, wanting to know whether the bike is his. Quickly, a crowd congregates, with people shouting at him that he cannot take what does not belong to him and some even calling the police. Finally, after the crowd moves on, the show stages its last scenario: a young White woman, attractive and scantily clad, approaches the bike with the same tools and attempts to saw through the chain. Several men ride up and ask if they can help her break the lock! Potential jurors immediately see how implicit biases can affect what they see and hear. *What Would You Do?* (ABC television broadcast May 7, 2010), available at <http://www.youtube.com/watch?v=ge7i60GuNRg>.

251. Mark W. Bennett, *Jury Pledge Against Implicit Bias* (2012) (unpublished manuscript) (on file with authors). In addition, Judge Bennett has a framed poster prominently displayed in the jury room that repeats the language in the pledge.

sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.²⁵²

Juror research suggests that jurors respond differently to instructions depending on the persuasiveness of each instruction's rationale. For example, jurors seem to comply more with an instruction to ignore inadmissible evidence when the *reason* for inadmissibility is potential unreliability, not procedural irregularity.²⁵³ Accordingly, the implicit bias instructions to jurors should be couched in accurate, evidence-based, and scientific terms. As with the judges, the juror's education and instruction should not put them on the defensive, which might make them less receptive. Notice how Judge Bennett's instruction emphasizes the near universality of implicit biases, including in the judge himself, which decreases the likelihood of insult, resentment, or backlash from the jurors.

To date, no empirical investigation has tested a system like Judge Bennett's—although we believe there are good reasons to hypothesize about its benefits. For instance, Regina Schuller, Veronica Kazoleas, and Kerry Kawakami demonstrated that a particular type of reflective voir dire, which required individuals to answer an open-ended question about the possibility of racial bias,

252. *Id.* In all criminal cases, Judge Bennett also instructs on explicit biases using an instruction that is borrowed from a statutory requirement in federal death penalty cases:

You must follow certain rules while conducting your deliberations and returning your verdict:

* * *

Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

The certification statement, contained in a final section labeled "Certification" on the Verdict Form, states the following:

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

This certification is also shown to all potential jurors in jury selection, and each is asked if they will be able to sign it.

253. See, e.g., Saul M. Kassin & Samuel R. Sommers, *Inadmissible Testimony, Instructions to Disregard, and the Jury: Substantive Versus Procedural Considerations*, 23 PERSONALITY & SOC. PSYCHOL. BULL. 1046 (1997) (finding evidence that mock jurors responded differently to wiretap evidence that was ruled inadmissible either because it was illegally obtained or unreliable).

appeared successful at removing juror racial bias in assessments of guilt.²⁵⁴ That said, no experiment has yet been done on whether jury instructions specifically targeted at implicit bias are effective in real-world settings. Research on this specific question is in development.

We also recognize the possibility that such instructions could lead to juror complacency or moral credentialing, in which jurors believe themselves to be properly immunized or educated about bias and thus think themselves to be more objective than they really are. And, as we have learned, believing oneself to be objective is a prime threat to objectivity. Despite these limitations, we believe that implicit bias education and instruction of the jury is likely to do more good than harm, though we look forward to further research that can help us assess this hypothesis.

c. Encourage Category-Conscious Strategies

Foreground social categories. Many jurors reasonably believe that in order to be fair, they should be as colorblind (or gender-blind, and so forth.) as possible. In other words, they should try to avoid seeing race, thinking about race, or talking about race whenever possible. But the juror research by Sam Sommers demonstrated that White jurors showed race bias in adjudicating the merits of a battery case (between White and Black people) unless they perceived the case to be somehow racially charged. In other words, until and unless White jurors felt there was a specific threat to racial fairness, they showed racial bias.²⁵⁵

What this seems to suggest is that whenever a social category bias might be at issue, judges should recommend that jurors feel free to expressly raise and foreground any such biases in their discussions. Instead of thinking it appropriate to repress race, gender, or sexual orientation as irrelevant to understanding the case, judges should make jurors comfortable with the legitimacy of raising such issues. This may produce greater confrontation among the jurors within deliberation, and evidence suggests that it is precisely this greater degree of discussion, and even confrontation, that can potentially decrease the amount of biased decisionmaking.²⁵⁶

This recommendation—to be conscious of race, gender, and other social categories—may seem to contradict some of the jury instructions that we noted

254. Regina A. Schuller, Veronica Kazoleas & Kerry Kawakami, *The Impact of Prejudice Screening Procedures on Racial Bias in the Courtroom*, 33 LAW & HUM. BEHAV. 320 (2009).

255. See *supra* notes 70–71.

256. See Alexander M. Czopp, Margo J. Monteith & Aimee Y. Mark, *Standing Up for a Change: Reducing Bias Through Interpersonal Confrontation*, 90 J. PERSONALITY & SOC. PSYCHOL. 784, 791 (2006).

above approvingly.²⁵⁷ But a command that the race (and other social categories) of the defendant should not influence the juror's verdict is entirely consistent with instructions to recognize explicitly that race can have just this impact—unless countermeasures are taken. In other words, in order to make jurors behave in a colorblind manner, we can explicitly foreground the possibility of racial bias.²⁵⁸

Engage in perspective shifting. Another strategy is to recommend that jurors try shifting perspectives into the position of the outgroup party, either plaintiff or defendant.²⁵⁹ Andrew Todd, Galen Bohenhausen, Jennifer Richardson, and Adam Galinsky have recently demonstrated that actively contemplating others' psychological experiences weakens the automatic expression of racial biases.²⁶⁰ In a series of experiments, the researchers used various interventions to make participants engage in more perspective shifting. For instance, in one experiment, before seeing a five-minute video of a Black man being treated worse than an identically situated White man, participants were asked to imagine "what they might be thinking, feeling, and experiencing if they were Glen [the Black man], looking at the world through his eyes and walking in his shoes as he goes through the various activities depicted in the documentary."²⁶¹ By contrast, the control group was told to remain objective and emotionally detached. In other variations, perspective taking was triggered by requiring participants to write an essay imagining a day in the life of a young Black male.

These perspective-taking interventions substantially decreased implicit bias in the form of negative attitudes, as measured by both a variant of the standard IAT (the personalized IAT) and the standard race attitude IAT.²⁶² More important, these changes in implicit bias, as measured by reaction time instruments,

257. See Bennett, *supra* note 252 ("[Y]ou must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.").

258. Although said in a different context, Justice Blackmun's insight seems appropriate here: "In order to get beyond racism we must first take account of race." *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 407 (1978) (Blackmun, J., concurring in part and dissenting in part).

259. For a thoughtful discussion of jury instructions on "gender-, race-, and/or sexual orientation-switching," see CYNTHIA LEE, *MURDER AND THE REASONABLE MAN: PASSION AND FEAR IN THE CRIMINAL COURTROOM* 252–55 (2003); see also *id.* at 257–58 (quoting actual race-switching instruction given in a criminal trial based on Prof. Lee's work).

260. Andrew R. Todd et al., *Perspective Taking Combats Automatic Expressions of Racial Bias*, 100 J. PERSONALITY & SOC. PSYCHOL. 1027 (2011).

261. See *id.* at 1030.

262. Experiment one involved the five-minute video. Those in the perspective-shifting condition showed a bias of $M=0.43$, whereas those in the control showed a bias of $M=0.80$. Experiment two involved the essay, in which participants in the perspective-taking condition showed $M=0.01$ versus $M=0.49$. See *id.* at 1031. Experiment three used the standard IAT. See *id.* at 1033.

also correlated with behavioral changes. For example, the researchers found that those in the perspective-taking condition chose to sit closer to a Black interviewer,²⁶³ and physical closeness has long been understood as positive body language, which is reciprocated. Moreover, Black experimenters rated their interaction with White participants who were put in the perspective-taking condition more positively.²⁶⁴

CONCLUSION

Most of us would like to be free of biases, attitudes, and stereotypes that lead us to judge individuals based on the social categories they belong to, such as race and gender. But wishing things does not make them so. And the best scientific evidence suggests that we—all of us, no matter how hard we try to be fair and square, no matter how deeply we believe in our own objectivity—have implicit mental associations that will, in some circumstances, alter our behavior. They manifest everywhere, even in the hallowed courtroom. Indeed, one of our key points here is not to single out the courtroom as a place where bias especially reigns but rather to suggest that there is no evidence for courtroom exceptionalism. There is simply no legitimate basis for believing that these pervasive implicit biases somehow stop operating in the halls of justice.

Confronted with a robust research basis suggesting the widespread effects of bias on decisionmaking, we are therefore forced to choose. Should we seek to be behaviorally realistic, recognize our all-too-human frailties, and design procedures and systems to decrease the impact of bias in the courtroom? Or should we ignore inconvenient facts, stick our heads in the sand, and hope they somehow go away? Even with imperfect information and tentative understandings, we choose the first option. We recognize that our suggestions are starting points, that they may not all work, and that, even as a whole, they may not be sufficient. But we do think they are worth a try. We hope that judges and other stakeholders in the justice system agree.

263. *See id.* at 1035.

264. *See id.* at 1037.

INTERPERSONAL RELATIONS AND GROUP PROCESSES

To Be Liked Versus Respected: Divergent Goals in Interracial Interactions

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Pervasive representations of Blacks and Latinos as unintelligent and of Whites as racist may give rise to divergent impression management goals in interracial interactions. We present studies showing that in interracial interactions racial minorities seek to be respected and seen as competent more than Whites do, whereas Whites seek to be liked and seen as moral more than racial minorities do. These divergent impression management goals are reflected in Whites' and racial minorities' self-report responses (Studies 1a, 1b, 2, and 4) and behaviors (Studies 3a and 3b). Divergent goals are observed in pre-existing relationships (Study 2), as well as in live interactions (Studies 3a, 3b, and 4), and are associated with higher levels of negative other-directed affect (Study 4). Implications of these goals for interracial communication and misunderstandings are discussed.

Keywords: interracial interactions, intergroup contact, impression management, self-presentation, non-verbal behavior

People care deeply about how others perceive them, a phenomenon believed to reflect a fundamental human need to belong in groups and maintain stable relationships (Baumeister & Leary, 1995). This need to belong causes people to monitor their social surroundings for indications of acceptance or rejection from others and to manage their behavior to minimize the possibility of exclusion (Leary, Tambor, Terdal, & Downs, 1995). In interracial interactions, racial minorities and Whites contend not only with general interpersonal concerns about positive evaluation and belonging but also with the possibility of being negatively stereotyped by outgroup members (Krueger, 1996). Given pervasive representations of racial minorities as unintelligent and Whites as racist, Blacks and Latinos may worry that they will be stereotyped as incompetent, whereas Whites may fear being perceived as bigoted during social interactions. Insofar as these group stereotypes differ, so too will the impression management concerns of each racial group and the behavioral strategies they use to disconfirm these stereotypes.

We sought in this research to examine the extent to which interracial interactions activate divergent impression management goals for Blacks and Latinos on one hand and Whites on the other. Across a series of studies, we tested whether Blacks and Latinos are more likely than Whites to have the goal of being respected and whether Whites are more likely than Blacks and Latinos to have the goal of being liked. We also assessed whether these divergent goals are evident in pre-existing real-world relationships (Study 2). Furthermore, we explored whether minorities—seeking to convey competence to elicit respect—engage in self-promotion behaviors, whereas Whites—seeking to convey warmth and morality to elicit liking—engage in ingratiation behaviors (Studies 3a & 3b). Finally, we aimed to demonstrate divergent self-reported impression management goals in live dyadic interactions between strangers in the lab to examine the extent of goal divergence for minority groups stereotyped as low (e.g., Blacks and Latinos) versus high (e.g., Asians) in competence and to test the affective correlates of these divergent goals (Study 4).

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Stereotypes and Impression Management Goals

Basic person perception research suggests that people often evaluate others along two dimensions: warmth or morality and competence (Fiske, Cuddy, & Glick, 2007). Notably, the former dimension, variously labeled *warmth* (e.g., Fiske et al., 2007) and *morality* (Wojciszke, 2005), is thought to encompass “other-serving” traits related to benevolence, sociability, morality, and deference. The two dimensions are associated with specific evaluative responses. Specifically, warmth and morality (or the lack thereof) are associated with (dis)liking, and (in)competence is associated with (dis)respect (Fiske, Xu, Cuddy, & Glick, 1999). Although the dimensions vary independently (Wojciszke, 2005), perceptions of groups’ warmth and competence are generally neg-

atively correlated (Yzerbyt, Kervyn, & Judd, 2008), such that stereotyped outgroups are perceived as either (a) warm or moral but incompetent, and thus liked but disrespected, or (b) competent but cold or immoral, and thus respected but disliked. Most research on warmth or morality and competence has focused on people's evaluations of others, assessing whether people like or respect another individual or group, but people also give considerable thought to understanding others' evaluations of them (Vorauer, 2006). Accordingly, the present research focuses on people's goals of appearing warm or competent, namely, the extent to which people want others to like or respect them.

Indeed, research suggests that most people want to be liked and respected by others (Baumeister, 1982). People often enter interpersonal interactions hoping to fulfill these social goals. To be perceived as warm or moral and competent, and thus be liked and respected, facilitates not only successful navigation of the social world but also maintenance of a positive self-concept. Like many motivations, these goals are theorized to be most salient and aroused when they are threatened (Leary & Kowalski, 1990), that is, when the actor perceives a risk of being disliked or disrespected in a social interaction. Such situations may cause the actor to become consciously occupied with these goals and even more motivated to fulfill them.

Interactions between Whites and racial minorities can threaten these particular social goals. We suggest that because of their position in society and stereotypes associated with their groups, Whites and minorities place differential emphasis on the goals to be liked and respected by the outgroup. Specifically, as a dominant, high-status group in North American society, Whites are often considered intelligent and competent (Fiske et al., 2007). At the same time, however, Whites risk being perceived as prejudiced, biased, unfair, and closed-minded, especially during interracial interactions (Vorauer, Main, & O'Connell, 1998). Whites themselves report both personal beliefs and cultural stereotypes that ascribe intolerance to Whites (Krueger, 1996). Moreover, Whites are aware that racial minorities perceive Whites as racist. White Canadians, for instance, reported expecting Aboriginal Canadians—individually and as a group—to see Whites as prejudiced, unfair, closed-minded, critical, and insensitive (Vorauer et al., 1998). Moreover, when White Americans were asked, "What are the negative perceptions that other groups have about your racial group?" in an open-ended format, one third cited a stereotype of Whites as bigoted or racist, and overall participants rated Whites as more racist than other groups (Frantz, Cuddy, Burnett, Ray, & Hart, 2004).

Previous research implies that for Whites the desires to be seen as moral (i.e., nonprejudiced) and as likeable in interactions with minorities are closely related. For instance, White participants who were instructed to imagine interacting with a Black person who did not like them inferred that this person saw them as more prejudiced, relative to participants given no liking information (Winslow, 2004). Similarly, White participants who read that their Black partner considered them prejudiced thought their partner disliked them to a greater extent than participants given no prejudice information. Taken together, previous research suggests that although Whites have little reason to be concerned about appearing competent during interracial interactions, they may be particularly concerned about being seen as likeable because of the stereotype that they are racist. Thus, Whites are apt to have the goal to appear warm or moral and likeable, and by implication nonprejudiced, to Black and Latino interaction partners.

Lower status racial minority groups, especially Blacks and Latinos, are frequently stereotyped as less intelligent than higher status groups, such as Whites (Fiske, Cuddy, Glick, & Xu, 2002; Krueger, 1996),¹ and are therefore not afforded respect. Negative stereotypes about minorities' competence have an enduring history: The 10 most common stereotypical descriptions of Blacks over 75 years ago included *lazy*, *ignorant*, and *stupid* (Katz & Braly, 1933) and in the modern era still include *low in intelligence*, *lazy*, and *ignorant* (Devine & Elliot, 1995). Similarly, Latinos are often stereotyped as less intelligent than Whites (e.g., Weaver, 2007). Racial minorities are aware of these negative stereotypes about their groups (e.g., Krueger, 1996).

Although Blacks are also not stereotyped as particularly warm or likable, we theorize that they place less emphasis on the goal of being liked (vs. respected) by White interaction partners. We assert this preference for respect over liking for Blacks because incompetence—and thus disrespect—is more central to their stereotype in the United States (Devine & Elliot, 1995; Fiske et al., 2002). Indeed, insofar as positive stereotypes of Blacks suggest perceived warmth, these stereotypes also connote incompetence. For instance, Blacks have been stereotyped as *fun-loving* and *playful* (Allport, 1954) or *happy-go-lucky* (Katz & Braly, 1933)—characteristics that refer more to childlike naïveté than genuine warmth. Thus, even warm stereotypes of Blacks reflect perceived incompetence and confer disrespect. Unlike Whites, who are respected by default and thus place more emphasis on being liked in interracial interactions, Blacks, who are neither respected nor liked, place a greater emphasis on being respected.

Impression Management Behaviors: Self-Promotion Versus Ingratiation

People use various strategies to create particular impressions on others (DePaulo, 1992). Moreover, the degree of discrepancy between "the image one would like others to hold of oneself and the image one believes others already hold" drives impression management (Leary & Kowalski, 1990, p. 39). Thus, if Whites and minorities anticipate being assimilated to negative stereotypes of their respective group, during interracial interactions they should be motivated to use strategies that will counteract these stereotypes by eliciting respect or liking. To induce outgroup members to like and respect them, they may alter their behavior intentionally to make a good impression, usually by behaving in ways that disconfirm the stereotype.

Jones and Pittman's (1982) seminal work on self-presentation guides our research on behavioral impression management. Their taxonomy of impression management strategies outlines distinct behaviors associated with pursuing self-promotion and ingratiation goals. Specifically, they theorized that ingratiation (i.e., trying to elicit liking) is characterized by opinion conformity and other enhancement, whereas self-promotion (i.e., trying to earn respect) entails performance claims and accounts of accomplishments.

¹ Not all racial minority groups are stereotyped as incompetent. For instance, student and nonstudent samples rated Asians as highly competent and Arabs as moderately competent (Fiske et al., 2002). Thus, the present analysis (except Study 4) focuses on two minority groups, Blacks and Latinos, whose societal status and stereotype content are more congruent.

Empirically, what verbal and nonverbal behavioral strategies do people use when they want to be liked? People seeking to be liked engage in a host of ingratiation behaviors, mimicking those used when they are genuinely interested in others (Floyd & Burgoon, 1999; Schlenker, 1980). Some specific nonverbal ingratiation behaviors include smiling, gazing at the partner, leaning forward, modeling moderate body relaxation, using “open” body positions (especially for women), back-channeling responses (e.g., “mm-hmm”) that signal attentiveness, choosing closer seating proximity, and using physical touch. Rosenfeld (1966) instructed participants to get an interaction partner either to like them (approval-seeking condition) or to realize that they were uninterested in them (approval-avoiding condition) without telling the other person these objectives. Participants seeking (vs. avoiding) approval showed more verbal attentiveness to their partner and talked more often and for longer, while using more affirmative head nods (for men) or smiling and gesticulating more (for women). Thus, approval seeking involves approach-related tactics.

What behavioral strategies do people use when they want to be respected? Most research in this area focuses on self-promotion or attempts to appear competent (Jones & Pittman, 1982; Rudman, 1998). Godfrey, Jones, and Lord (1986) instructed participants to induce an interaction partner either to like them as much as possible or to regard them as extremely competent without disclosing these objectives. Participants trying to appear competent (vs. trying to elicit liking) displayed nonverbal behaviors that were less attentive to their partner and more likely to draw attention to themselves. For example, these individuals were less likely to smile, nod, and gaze at their partners but were more likely to sit up straight and gesture confidently.

Thus, different impression management goals entailed performing distinct—and sometimes mutually exclusive—behaviors: Ingratiating participants deferred more to the other person, whereas self-promoting participants behaved more proactively. On the basis of this research, we predicted that in interracial interactions, Whites would attempt to elicit liking by using ingratiation behaviors, whereas minorities would seek respect with self-promotion behaviors.

Affective Correlates of Divergent Impression Management Goals

Conceivably, the divergent impression management goals of minorities and Whites could facilitate rather than impede enjoyable, effective interracial communication, given that both parties earnestly desire to convey positive attributes and elicit a favorable impression. However, the sharp divergence in behaviors associated with respect versus liking impression management goals can render these behaviors incompatible. These goals may entail mutually exclusive behaviors, such as adopting an informal and relaxed versus confident and purposeful tone (Godfrey et al., 1986). These differences are likely to lead to uncoordinated, asynchronous, and dysfunctional interactions. For example, a White person who tries to elicit liking by relying on humor, self-deprecating anecdotes, and flattery may appear patronizing to a Black person who is trying to elicit respect by focusing on accomplishments and showing confidence by behaving in a professional manner. As a result, the Black person will probably feel frustrated and out of sync with the White person. Likewise, the White person will also have a

negative experience because his or her friendly behavior will go unreciprocated, rendering the White person more likely to perceive a reserved Black interaction partner as unfriendly rather than respect-seeking.

Our theorizing about negative affective consequences of incompatible impression management goals draws on the circumplex model of interpersonal behavior (Horowitz et al., 2006). In this model, a given interpersonal behavior invites a specific intended response from an interaction partner. Behaviors related to warmth (or *communion*) call for responses that are similar in warmth, whereas behaviors related to competence and control (or *agency*) invite responses that are opposite or reciprocal in control. In interracial interactions, when minorities pursuing respect goals use highly agentic, formal behaviors to convey their competence, they should expect responses from interaction partners that are similarly neutral in warmth and deferential with respect to agency. Thus, the highly affiliative, casual behaviors displayed by Whites pursuing liking goals will be doubly discrepant from the desired response, showing too much warmth and not enough deference. Conversely, the friendly, liking-seeking behaviors of Whites in interracial interactions should call for high-warmth responses from interaction partners, making minorities’ less warm, more agentic behaviors seem inappropriate.

Given these divergent behaviors and incompatible responses, both interaction partners are at risk of having their goals unmet, which, in turn, will likely result in negative outcomes. In the circumplex model, noncomplementary reactions are theorized to frustrate the desires underlying impression management behaviors, leading to negative affect and subjective distress (Horowitz et al., 2006), especially hostility-related emotions, such as frustration, anger, and disappointment.

Overview of Studies

This research examines the extent to which interracial interactions activate divergent impression management goals for Whites and racial minorities. We used a series of studies to test whether in interracial interactions the goal to be respected or seen as competent matters more to Blacks and Latinos than to Whites, whereas the goal to be liked or seen as moral matters more to Whites than to Blacks and Latinos. In Studies 1a and 1b, we assessed self-reported impression management goals in preferred responses from a partner (i.e., respect vs. liking) and preferred qualities to be ascribed by a partner (i.e., competence vs. morality). In Study 2, we examined goal divergence in the context of real-world interracial relationships. Next, we tested whether in interracial interactions Whites engage in ingratiation behaviors, seeking to convey warmth and morality to elicit liking (Study 3a), whereas Blacks engage in self-promotion behaviors, seeking to convey competence to elicit respect (Study 3b). Finally, in Study 4, we examined whether these divergent goals are (a) specific to Whites and minority groups stereotyped as incompetent (e.g., Blacks and Latinos) as opposed to those stereotyped as competent (e.g., Asians) and (b) associated with increased negative affect.

Study 1a: Respect and Liking Goals in Imagined Interactions

In Study 1a, we tested the hypotheses that in interracial interactions Blacks and Latinos seek respect more than Whites,

whereas Whites seek liking more than Blacks and Latinos. In same-race interactions, Black and Latino participants and White participants were expected to place comparable emphasis on being respected versus liked. Participants were instructed to imagine engaging in a same-race or interracial interaction. Two types of scenarios—an academic and a social setting—were included to test whether goal divergence in interracial interactions generalizes across situations.

Method

Participants. White, Black, and Latino participants completed an online study for payment or course credit.² Analyses excluded 14 of the 180 participants because 10 failed manipulation checks and four expressed suspicion. The remaining participants included 80 White and 86 minority participants (48 Blacks and 38 Latinos). This sample contained 116 females and 50 males, with a mean age of 20.5 years (range = 18–28 years).

Design and procedure. For this study, we used a 2 (participant race: minority vs. White) \times 2 (dyad composition: same-race vs. interracial) \times 2 (context: social vs. academic) between-participants design to assess participants' respect and liking goals in imagined interactions.³

Imagined interaction. Participants were randomly assigned to imagine an interpersonal interaction in either a social (roommate) or academic (classmate) context. Participants imagined a hypothetical scenario in which they were assigned to either live or work together with another person of their same gender and class year. The racial composition of this interaction varied by condition and by participant race. White participants were assigned to imagine either a same-race interaction ($n = 43$) or an interracial interaction with a Black partner ($n = 37$). Similarly, minority participants imagined either a same-race interaction ($n = 44$) or an interracial interaction with a White partner ($n = 42$). An excerpt from one scenario (for a male senior participant) follows:

Imagine that you unexpectedly have to relocate to new university housing for a semester. The housing office arbitrarily assigns rooms alphabetically by last name, such that most students are unacquainted with their roommates. You have been assigned to live with a senior, a male student of the same race, whom you have not previously met.

Participants were then prompted to mentally elaborate the scenario: "What do you think your interactions would be like? What kinds of expectations or concerns might you have about how you would get along with or be seen by your partner?" In the classmate scenario, participants were to be randomly assigned to work on a project with an unfamiliar partner for one semester.

Respect versus liking. After imagining their assigned scenario, participants indicated how they would like to be perceived by their hypothetical interaction partner. Participants were asked, "If you had to choose between being liked and being respected by this person, which would you regard as more important?" The response scale was a 7-point bipolar continuum from 1 (*most important to be liked*) to 7 (*most important to be respected*), with 4 (*equally important*) as the midpoint. Higher scores thus indicated a stronger preference for respect over liking.

Demographics and manipulation checks. Finally, participants reported their race, gender, and class year as well as those of their hypothetical interaction partner and then were debriefed.

Results and Discussion

The impression management goals were submitted to a 2 (participant race: minority vs. White) \times 2 (dyad composition: same-race vs. interracial) \times 2 (context: social vs. academic) analysis of variance (ANOVA).⁴ Minorities reported a marginally stronger preference for respect ($M = 5.20$, $SD = 1.47$) relative to Whites ($M = 4.85$, $SD = 1.28$), $F(1, 158) = 3.47$, $p = .064$, $\eta_p^2 = .02$, and no other main effects were significant, all $F_s(1, 158) < 1.40$. The predicted interaction between participant race and dyad composition was significant, $F(1, 158) = 3.91$, $p < .05$, $\eta_p^2 = .02$ (see Figure 1a). Simple effects analyses revealed that in imagined same-race interactions, minorities and Whites did not differ in their preference for respect versus liking (respective $M_s = 5.02$ and 5.09 , $SD_s = 1.66$ and 1.19), $F(1, 83) < 1$.⁵ In imagined interracial interactions, however, minorities reported a stronger preference for respect over liking ($M = 5.38$, $SD = 1.23$) relative to Whites ($M = 4.57$, $SD = 1.34$), $F(1, 158) = 7.01$, $p = .009$, $\eta_p^2 = .04$.⁶ The three-way participant race, context, and dyad composition interaction was not significant, $F(1, 158) = 2.38$, $p = .125$, $\eta_p^2 = .01$, suggesting that the vignette context did not influence the divergent goals.

Thus, participants' self-reported forced-choice preferences for respect versus liking were consistent with our predictions. In imagined same-race interactions, Blacks, Latinos, and Whites reported comparable impression management preferences, but in interracial interactions, Blacks and Latinos reported a significantly stronger preference than Whites for respect as opposed to liking.

Study 1b: Competence and Morality Goals in Imagined Interactions

We designed Study 1b to replicate the goal divergence in Study 1a, using different wording for the dependent measure drawn from Vorauer (2006). Rather than choosing between being respected versus being liked, participants indicated their preference to be seen as competent versus moral. This terminology clearly differentiates impression management goals related to appearing competent (i.e., intelligent, counter to the stereotype of minorities) versus appearing moral (i.e., fair or unbiased, counter to the stereotype of Whites). Similar to Study 1a, we predicted that in interracial interactions, Blacks and Latinos value appearing competent more than appearing moral, whereas Whites value appearing moral more than appearing competent.

² In this and all subsequent studies, no significant differences emerged between participants who received payment versus course credit.

³ The study included a manipulation intended to enhance prejudice-related concerns, but it produced no significant effects, all $F_s(1, 150) < 0.2$, and was thus dropped from analysis.

⁴ Gender did not interact significantly with any findings of interest in this or subsequent studies. Sometimes a marginal main effect for gender emerged, with men preferring being respected or appearing competent and women preferring being liked or appearing moral (Studies 1b, 2, and 4).

⁵ The degrees of freedom differ due to a violation of the homogeneity of variance assumption, $p = .042$.

⁶ Minorities sought respect nonsignificantly more in interracial (vs. same-race) interactions, $F(1, 158) = 1.09$, $p = .298$, whereas Whites sought liking marginally more in interracial (vs. same-race) interactions, $F(1, 158) = 3.02$, $p = .084$.

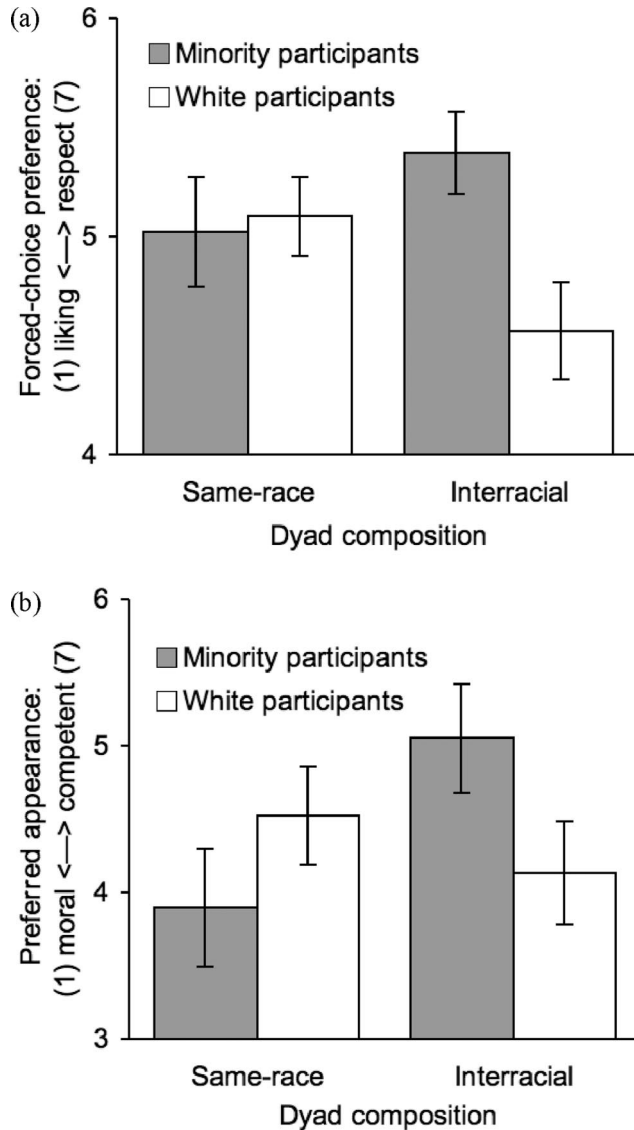


Figure 1. Mean preference to (a) be respected rather than liked (Study 1a) and (b) appear competent rather than moral (Study 1b) by participant race and dyad composition. Minority participants included Blacks and Latinos. Error bars = standard errors.

Method

Participants. A total of 90 White and racial minority undergraduates participated in the study for \$8 or course credit, but five were dropped from analysis because three identified as Asian or Middle Eastern and two failed the manipulation checks. The remaining sample of 52 women and 33 men included 38 minorities (27 Blacks and 11 Latinos) and 47 Whites.

Design and procedure. As in Study 1a, we used a 2 (participant race: minority vs. White) \times 2 (dyad composition: same-race vs. interracial) \times 2 (context: social vs. academic) design to assess participants' impression management goals in imagined interactions. All instructions, manipulations, and measures were administered on a laboratory computer.

Imagined interaction. Participants were randomly assigned to imagine one of the scenarios described in Study 1a. Whites imagined either a same-race interaction ($n = 23$) or an interaction with a Black partner ($n = 24$), and minorities imagined either a same-race interaction ($n = 19$) or an interaction with a White partner ($n = 19$). Participants were then prompted to elaborate on the scenario: "In the situation that you just imagined, how would you want the other student to see you? What impression would you want that person to form of you?"

Competence versus morality. After imagining their assigned scenario, participants were asked to indicate how they would ideally like to be perceived by their hypothetical interaction partner. Participants were asked, "If you had to choose between being seen as competent and being seen as moral by this person, which would you regard as more important?" The response scale was a 7-point bipolar continuum from 1 (*more important to be seen as competent*) to 7 (*more important to be seen as moral*), with 4 (*equally important*) as the midpoint. To parallel Study 1a, we reverse scored this measure, such that higher scores indicate a preference for appearing competent over appearing moral.

Demographics and manipulation checks. Participants reported the type of scenario they imagined, as well as the race, gender, and class year of their hypothetical interaction partner. Finally, participants filled out a demographics questionnaire, then were debriefed and thanked.

Results and Discussion

We submitted the impression management goals to a 2 (participant race: minority vs. White) \times 2 (dyad composition: same-race vs. interracial) \times 2 (context: social vs. academic) ANOVA. This analysis revealed a main effect for context, $F(1, 77) = 9.32$, $p = .003$, $\eta_p^2 = .11$. Participants reported stronger preferences for appearing competent rather than moral with a classmate ($M = 4.88$, $SD = 1.55$) than with a roommate ($M = 3.88$, $SD = 1.69$). The predicted interaction between participant race and dyad composition was significant, $F(1, 77) = 5.80$, $p = .018$, $\eta_p^2 = .07$ (see Figure 1b). Tests of simple effects revealed that in imagined same-race interactions, minorities and Whites did not differ in their preference for appearing competent versus moral (respective M s = 3.89 and 4.52, SD s = 1.76 and 1.62), $F(1, 77) = 2.08$, $p = .154$, $\eta_p^2 = .03$. In imagined interracial interactions, however, minorities reported a stronger preference for appearing competent rather than moral ($M = 5.05$, $SD = 1.61$) relative to Whites ($M = 4.13$, $SD = 1.69$), $F(1, 77) = 3.89$, $p = .052$, $\eta_p^2 = .05$.⁷ No other effects were significant, all F s(1, 77) < 1.60 .

Participants' self-reported forced-choice preferences for appearing competent versus moral were consistent with our predictions. In imagined same-race interactions, minorities and Whites reported comparable preferences, but in interracial interactions, minorities reported a stronger preference than Whites for appearing competent as opposed to appearing moral. Also, as in Study 1a, the hypothesized goal divergence in interracial interactions demon-

⁷ Whites' slightly stronger morality preference in interracial (vs. same-race) interactions was not significant, $F(1, 77) < 1$, whereas minorities preferred competence significantly more in interracial (vs. same-race) interactions, $F(1, 77) = 5.76$, $p = .019$.

strated cross-situational generalizability, insofar as it emerged for both social and academic scenarios.

Study 2: Divergent Goals in Dyadic Relationships

In Study 2, we aimed to show divergent impression management goals in the context of actual, as opposed to imagined, same-race and interracial relationships. Although much research has shown that imagining being in a situation is comparable to experiencing a real situation (see Robinson & Clore, 2001), other work has shown that the dynamics of actual interactions can be powerful enough to change people's goals and behaviors (Mallett, Wilson, & Gilbert, 2008). For example, although Whites and minorities anticipate pursuing divergent goals in imagined interracial interactions, in real interracial relationships conceivably both groups could report a comparable preference to be liked (or seen as moral) versus respected (or seen as competent), because being liked is the more fundamental social need (Nezlek, Schütz, & Sellin, 2007). Given the stereotypes of each group, however, we expected minorities to report a stronger preference than Whites for appearing competent (vs. moral) in interracial relationships, whereas in same-race relationships we did not expect the goals of Whites and minorities to differ.

Method

Participants. Initially, 89 White, Black, and Latino undergraduates were recruited to participate for course credit in an online study about either a same- or different-race friend of the same gender. (Participants had to select a White, Black, or Latino friend to be included in this study.) Analyses excluded six participants who misreported their friend's gender or race. The friends nominated by the remaining 83 participants were invited to complete the same online friendship study for \$8, and 50 did so. The final sample of 133 students (83 original participants plus 50 friends) comprised 38 men and 95 women, reported a mean age of 19.5 years (range = 18–23 years), and self-identified as White ($n = 91$), Black ($n = 27$), and Latino ($n = 15$). Thus, the sample included 33 same-race and 17 interracial *complete* dyads, as well as 26 same-race and seven interracial *incomplete* dyads, with individuals ("solos") whose friends did not participate.

Design and procedure. We used a 2 (participant race: minority vs. White) \times 2 (dyad composition: same-race vs. interracial) between-participants design to assess participants' respect (i.e., competence) and liking (i.e., morality) goals in actual dyadic relationships. A random number generator assigned participants to select a friend of the same gender and approximate age who attended the same college and whose race or ethnicity was described either as the "same as you" or "different from you." The sample included 11 participants who mistakenly selected a friend whose race did not match their assigned condition but who were retained for analyses because this error rate did not significantly vary by condition ($p > .10$) or interact with any findings of interest (all $ps > .10$). When the friends nominated by the original participants were invited to participate, they were instructed to complete the questionnaire with respect to the person who selected them. Notably, the friends' participation rate did not differ by condition, $\chi^2(1, N = 83) = 1.58, p = .209$. Everyone completed the study within a 10-week period.

Impression management goals. Participants reported the importance to them of appearing competent or moral to the other person using measures taken from Vorauer and Sakamoto (2008). Participants reported whether "it is important to me that this person sees me as" possessing traits that indicate competence (*intelligent, capable, competent*; $\alpha = .86$) and morality or likeability (*fair, kind, open-minded, a good person*; $\alpha = .85$) on 7-point scales. (These items were interspersed.) Univariate outliers were trimmed not to exceed 2.5 standard deviations. To compare these goals using dyadic mixed-model analyses, we computed an impression management goal difference score by subtracting the morality trait mean from the competence trait mean. Higher scores indicate a preference for appearing competent over appearing moral.

Background information. Participants indicated their gender, racial or ethnic background, age, and class year, and those of their friend, plus their relationship duration (ranging from "a few weeks" to "2 years or longer"). They indicated "How well does this person know you?" on a scale from 1 (*not at all*) to 7 (*very well*) and completed additional unrelated measures.

Results and Discussion

Analyses of the impression management goals revealed no significant differences between people who were initially recruited to participate by the experimenter versus nominated by a friend, all $ps > .15$. Similarly, no differences emerged for membership in a complete versus incomplete dyad, all $ps > .35$. All subsequent analyses therefore collapse across these variables.

Because the sample included 50 complete dyads (in addition to the 33 solo participants), dyadic mixed-model analyses were used to control for nonindependence and other dyad-level effects. This study involves both interracial and same-race dyads, so participant race is a *mixed* variable (varying both within and across dyads), and the two members of each dyad are thus treated as indistinguishable in all dyadic analyses (Kenny, Kashy, & Cook, 2006). In analyses of indistinguishable dyads, the variances of the two dyad members are treated as homogeneous (Kenny et al., 2006), because no variable systematically differentiates them. Notably, this procedure can yield fractional degrees of freedom. The full 2 (participant race) \times 2 (dyad composition) factorial approach (see West, Popp, & Kenny, 2008) involves estimating three parameters in each model: participant race, dyad composition (i.e., partner race: different vs. same), and the Participant Race \times Dyad Composition interaction. Effects coding was used for participant race ($-1 = \text{minority}$, $1 = \text{White}$) and dyad composition ($-1 = \text{interracial}$, $1 = \text{same-race}$).

Impression management goals. Participants' self-reported impression management goals, indexed by their differential preference for appearing competent (indicated by higher scores) versus moral (indicated by lower scores) to the other person, were submitted to a mixed-model analysis (see Figure 2). No significant main effects emerged for participant race or dyad composition ($ps > .15$), but the predicted interaction between participant race and dyad composition proved significant, estimate = 0.14, $t(125.2) = 2.28, p = .024$. In interracial relationships, the goals of Whites and minorities diverged, $t(61.8) = 2.61, p = .011$, with Whites reporting a stronger preference for appearing moral as opposed to competent ($M = -0.47, SD = 0.69$) than did minorities ($M = -0.01, SD = 0.59$). In same-race relationships, goals

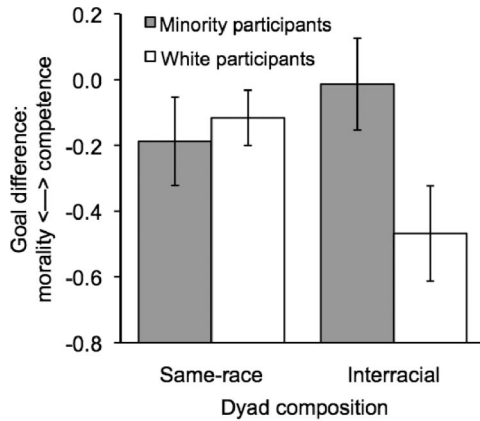


Figure 2. Mean impression management goal divergence (competence goal-morality goal) by participant race and dyad composition (Study 2). Minority participants included Blacks and Latinos. Error bars = standard errors.

did not differ between Whites ($M = -0.12$, $SD = 0.69$) and minorities ($M = -0.19$, $SD = 0.66$), $t(85.1) < 1$.⁸

Background information. The 83 relationships ranged in duration from “a few months” (5%) or “6 months to less than a year” (39%) to “a year to less than 2 years” (35%) or “2 years or longer” (22%) but did not differ for same-race versus different-race friends, $\chi^2(3, N = 83) = 5.94$, $p = .114$. Likewise, the measure assessing “How well does this person know you?” ($M = 4.92$, $SD = 1.24$) did not differ between same-race and interracial relationships, $t(74.81) < 1$. In sum, participants who were assigned to nominate a same-race (vs. different-race) friend did not select friends whom they had known longer or who knew them better.

Analysis of the “How well does this person know you?” measure suggested that the divergence in impression management goals may diminish for relationships in which individuals feel that the other person knows them well. This measure did not significantly moderate the Participant Race \times Dyad Composition interaction predicting goals, $t(114.3) = -1.07$, $p = .289$. Notably, however, mixed-model analyses at conditional values one standard deviation above and below the mean of the “How well does this person know you” measure (Aiken & West, 1991) revealed that the Participant Race \times Dyad Composition interaction was not significant for participants who reported that their friends knew them relatively well, $t(115.21) < 1$, but was significant for those whose friends knew them less well, $t(120.3) = 2.48$, $p = .015$. This pattern, while inconclusive (possibly due to limited sample size, particularly for minority participants), suggests that as interracial relationships develop and people get to know one another better, their impression management goals can converge. At the very least, these data serve as a reminder that divergent goals are not inevitable in all close interracial relationships, but they are salient in relationships in which people may be concerned about others potentially misperceiving them.

These findings replicate the divergent goals observed in Studies 1a and 1b and extend them to actual relationships. Also, this study independently assessed morality and competence impression management goals to demonstrate that the prior results are not restricted to forced-choice measures that explicitly set these goals in

opposition. In the next studies, we more closely examined whether divergent goals are evident in behavior during interracial interactions.

Study 3a: Whites' Impression Management Behaviors in Interracial Interactions

Verbal and nonverbal behaviors are crucial to understanding the dynamics of interactions, and they provide another means of assessing people's impression management goals (DePaulo, 1992). We sought in this study, together with Study 3b, to examine the extent to which Whites and Blacks display divergent liking- and respect-seeking behaviors during interracial interactions. In Study 3a, Whites took part in an ostensible video-mediated interaction with a confederate that involved responding to a series of questions. Afterward, coders rated the extent of self-promotion and ingratiation evident in participants' videotaped verbal and nonverbal behaviors.

On the basis of Whites' self-reported liking and morality goals in the previous studies, we expected that Whites would display more ingratiation than self-promotion in interracial interactions but that these behaviors would not differ in same-race interactions.

Method

Participants. Of the 95 White undergraduate participants, five were dropped from analysis because three knew the confederate, one encountered an equipment malfunction, and one misperceived the confederate's race. The 90 remaining participants included 53 women and 37 men, with an average age of 19.6 years (range = 18–24 years). Participants were compensated with course credit or \$10.

Design and procedure. We used a 2 (dyad composition: same-race vs. interracial) \times 2 (impression management behaviors: self-promotion vs. ingratiation) mixed design, in which each White participant was paired with a White or Black confederate and impression management behaviors were assessed as a within-participants variable.⁹ A White female experimenter presented this study as an “interpersonal communication” study about impression formation in proximal (face-to-face) versus remote (video-mediated) interactions. Participants were informed that they would interact with a partner via an exchange of videotapes, rather than face-to-face. After a brief warm-up session to familiarize participants with being filmed, the experimenter gave participants a list of questions for the upcoming interaction and permitted them to make point-form notes if they wished. The experimenter then left the room and returned with the confederate's videotape for the participant to view.

Interaction. The experimenter manipulated the same-race or interracial composition of each simulated interaction by showing White participants a videotape from a gender-matched confederate who was either Black ($n = 45$) or White ($n = 45$). The eight

⁸ Whites had lower competence (vs. morality) goals in interracial (vs. same-race) relationships, $t(108.4) = 2.16$, $p = .033$; minorities' goals only trended in the predicted direction, $t(112.0) < 1$.

⁹ As in Study 1a, a prejudice-concerns manipulation was included in the study design but was dropped from analysis because it failed to produce significant effects.

confederate videotapes included two Black women, two Black men, two White women, and two White men who delivered a memorized script (adapted from Vorauer et al., 1998). Confederates and participants answered the same seven questions, which provided opportunities for participants to self-promote (e.g., "Could you say a little about your career goals?") or ingratiate (e.g., "Is there anything you would like to change about your social life?"). Participants recorded their response to each question immediately after hearing the confederate answer that question, simulating the turn-taking involved in normal conversations. After the interaction, participants completed other measures not reported here as part of an exit questionnaire.

Demographics and manipulation checks. At the end of the study, participants indicated their race, gender, and class year as well as those of their interaction partner, then were debriefed.

Behavior coding. Four trained coders (one White man, one Latino woman, and two Black women) who were blind to experimental condition independently assessed each participant's videotape for behaviors related to self-promotion and ingratiation. Coders rated the extent of each behavior on an 11-point scale from 0 (*not at all*) to 10 (*extremely*) after exposure to all seven answers from each participant. Nonverbal behaviors were coded with the volume turned off, and verbal behaviors were coded with the volume on while facing away from the screen.

The coding schema used to rate the tapes was adapted from prior research identifying distinct behavioral strategies associated with ingratiation and self-promotion (Godfrey et al., 1986). These researchers suggest that ingratiation is evident when participants "use nonverbal approach gestures: smiles, nods, eye contact; use verbal approach attempts: humor, self-deprecating anecdotes, being natural, informal, friendly; agree and note similarities or common acquaintances; use flattery or compliments," whereas self-promotion can be observed when participants "mention accomplishments or achievements, [. . .] show confidence (nonverbal), express confidence (verbal)" (p. 110). Coded nonverbal behaviors in the present study included smiling, nodding, eye contact, comfort, upright posture, and confidence; verbal behaviors included humor, self-deprecation, flattery, friendliness, noting similarities, noting differences, agreement, disagreement, mentioning achievements, confidence in style or tone, and confidence in content. Finally, the coders rated the extent to which participants appeared to display ingratiation (i.e., liking) and self-promotion (i.e., respect) goals as described by Jones and Pittman (1982).

Additionally, behavioral engagement was coded, as it sometimes mediates behavioral effects observed in interracial interactions (e.g., Shelton, Richeson, Salvatore, & Trawalter, 2005). Perhaps due to the simulated nature of the interaction, some participants mentioned that they had difficulty immersing themselves in the situation, feeling connected to their interaction partner, or caring how that person would perceive them. Other participants, by contrast, appeared readily absorbed in the interaction, talking at a length, asking questions about the partner, and expressing eagerness to learn the other person's response to them. Two of the four coders rated participants' verbal ($\alpha = .80$) and nonverbal ($\alpha = .65$) engagement in the interaction, and these ratings were combined into a behavioral engagement composite ($\alpha = .81$).¹⁰

Results and Discussion

The four coders' independent ratings of participants' verbal and nonverbal behavior were averaged to create a score for each participant on each behavior. The behaviors included in the final analysis satisfied two criteria. Each behavior showed an interrater reliability of at least .6 and an item loading of at least .3 in a varimax-rotated principal components analysis. Notably, the resulting two components comprised behavior clusters that closely matched those proposed by Godfrey et al. (1986). Table 1 lists the behaviors with their reliabilities and item loadings. Item loadings were used to construct two orthogonal factor scores for each participant, indexing ingratiation (liking-seeking) and self-promotion (respect-seeking) behaviors.

We entered the participants' factor-score behaviors into a 2 (dyad composition: same-race vs. interracial) \times 2 (impression management behavior: self-promotion vs. ingratiation) \times 2 (behavioral engagement level: high vs. low, based on a median split) ANOVA.¹¹ The main effect for engagement level revealed higher ratings of impression management behavior for more engaged ($M = 0.41$, $SD = 0.62$) than less engaged ($M = -0.43$, $SD = 0.51$) White participants, $F(1, 86) = 47.66$, $p < .001$, $\eta_p^2 = .36$. Engagement level also interacted with impression management behavior, $F(1, 86) = 7.62$, $p = .007$, $\eta_p^2 = .08$. Less engaged participants self-promoted ($M = -0.24$, $SD = 0.99$) more than they ingratiated ($M = -0.62$, $SD = 0.44$), $F(1, 42) = 4.46$, $p = .041$, $\eta_p^2 = .10$. More engaged participants, in contrast, ingratiated ($M = 0.59$, $SD = 1.03$) marginally more than they self-promoted ($M = 0.23$, $SD = 0.96$), $F(1, 44) = 3.51$, $p = .068$, $\eta_p^2 = .07$.

The hypothesized two-way interaction between impression management behavior and dyad composition failed to attain significance, $F(1, 86) = 1.74$, $p = .190$, $\eta_p^2 = .02$, but was qualified by a marginal three-way interaction involving behavioral engagement, $F(1, 86) = 3.02$, $p = .086$, $\eta_p^2 = .03$. Tests of simple interactions revealed that impression management behavior and dyad composition did not significantly interact for less engaged White participants, $F(1, 42) < 1$. For more engaged White participants, however, levels of impression management behaviors varied in same-race versus interracial interactions, $F(1, 44) = 3.82$, $p = .057$, $\eta_p^2 = .08$ (see Figure 3a).¹² Simple effects tests showed that these more engaged White participants displayed comparable levels of self-promotion ($M = 0.44$, $SD = 0.95$) and ingratiation ($M = 0.42$, $SD = 0.96$) behaviors in same-race interactions, $F(1, 42) < 1$, but used more ingratiation ($M = 0.82$, $SD = 1.09$) than self-promotion ($M = -0.04$, $SD = 0.92$) behaviors in interracial

¹⁰ Behavioral engagement did not vary for same-race versus interracial interactions, $t(88) < 1$.

¹¹ Engagement was included because participants' widely divergent levels of engagement led us to suspect that the predicted goal divergence might not occur for disengaged participants.

¹² Testing behavioral engagement as a continuous variable in regression corroborated these findings: Impression management behaviors diverged as a function of engagement in interracial interactions, $\Delta R^2 = .445$, $p = .002$, but not in same-race interactions, $\Delta R^2 = .135$, $p = .377$.

interactions, $F(1, 44) = 6.48, p = .014, \eta_p^2 = .23$.¹³ This significant difference between self-promotion and ingratiation behaviors among more engaged White participants, evident in interracial but not same-race interactions, reflects the predicted divergence of respect and liking goals for Whites.

The findings for behavioral engagement suggest that choosing to engage in an interaction may be a prerequisite for impression management and, by extension, that divergent levels of ingratiation and self-promotion in interracial interactions will only emerge when individuals are actively trying to manage the other person's impression of them. Theoretically, that impression management would depend on exceeding a certain threshold of engagement is consistent with the claim that impression management typically requires conscious, sustained effort (Leary & Kowalski, 1990). Empirically, this need for engagement parallels previous findings: Modifying behavior in interracial interactions is associated with increased behavioral engagement (Shelton, Richeson, & Salvatore, 2005), and Whites who were perceived by Black interaction partners as more engaged in interracial interactions were also better liked (Shelton, Richeson, Salvatore, & Trawalter, 2005). Similarly, more engaged participants in the present study showed higher overall levels of impression management behaviors, coupled with more ingratiation (which should elicit liking) than self-promotion in interracial interactions.

Methodologically, the present findings underscore the advantages of using sufficiently engaging interaction paradigms for detection of effortful impression management behaviors. The design of Study 3b therefore involved direct in-person (rather than video-mediated) interactions, intended to be more inherently engaging and evaluative, to minimize concerns about participants failing to engage with the task or care about managing their partner's impression of them. (Similarly, a face-to-face interaction paradigm is used in Study 4.)

Table 1
Reliability and Principal Components Item Loadings of Coded Behaviors

Coded verbal and nonverbal behavior	Reliability (α)	Principal components	
		1 (Ingratiation)	2 (Self-promotion)
Smiling	.95	.77	
Friendliness	.80	.74	.43
Apparent liking goal	.83	.73	.50
Humor	.80	.71	
Flattery	.93	.66	
Gesturing	.92	.61	
Self-deprecation	.70	.60	-.45
Agreeing	.90	.60	.38
Nodding	.83	.59	
Noting similarities	.81	.43	.43
Maintaining eye contact	.73	.36	
Confidence (verbal content)	.75		.86
Apparent respect goal	.61		.71
Mentioning achievements	.78		.70
Confidence (verbal style)	.76	.46	.64
Confidence (nonverbal cues)	.72	.52	.55
Upright posture	.82		.45

Note. Interrater reliability was calculated across four coders for each behavior. Only varimax-rotated item loadings of at least .32 are reported (see Tabachnick & Fidell, 2007).

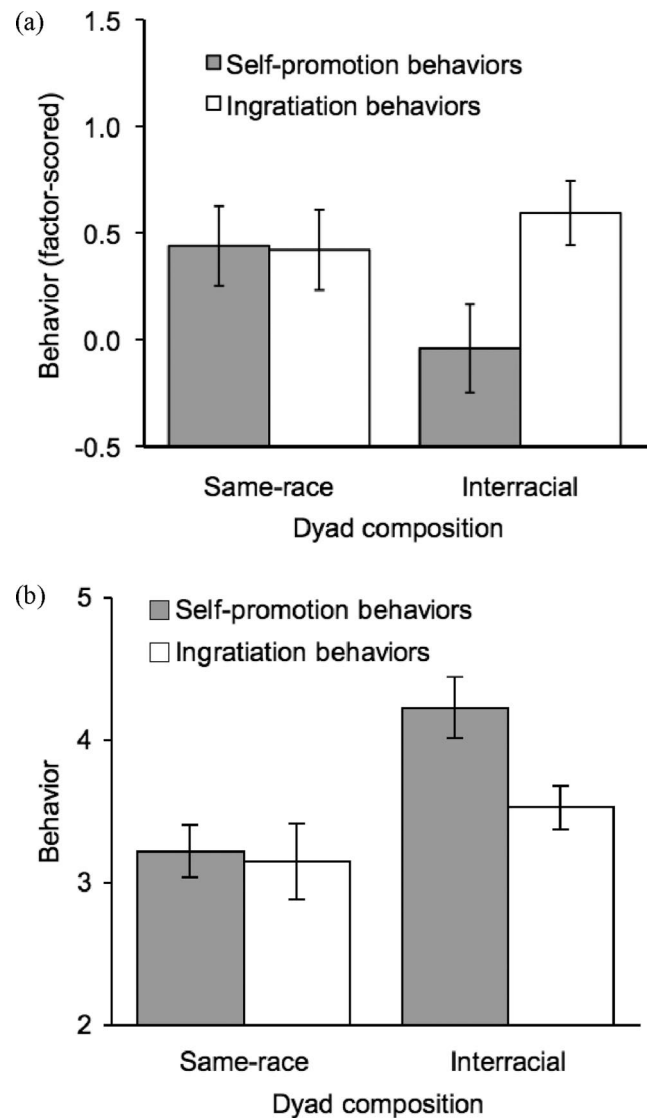


Figure 3. Mean self-promotion and ingratiation impression management behaviors of (a) highly engaged White participants (Study 3a) and (b) Black participants (Study 3b) by dyad composition. Error bars = standard errors.

Study 3b: Blacks' Impression Management Behaviors in Interracial Interactions

Study 3a documented higher levels of ingratiation than self-promotion behaviors in interracial interactions for behaviorally engaged Whites. Study 3b focuses on minorities, examining their self-promotion and ingratiation behaviors in interracial (vs. same-race) interactions. Given evidence that minorities want to be respected more than liked in interracial interactions but not during same-race interactions, we expected Blacks' impression manage-

¹³ In interracial (as opposed to same-race) interactions White participants self-promoted less, $F(1, 86) = 3.94, p = .050$, and ingratiated nonsignificantly more, $F(1, 44) = 2.28, p = .138$.

ment behaviors to diverge in interracial but not same-race interactions. Specifically, we predicted comparable levels of self-promotion and ingratiation behaviors in same-race interactions but more self-promotion than ingratiation in interracial interactions.

Method

Participants. The study participants included 22 Black students (two of whom were dropped from analysis due to a video-recording error) and 10 White students. Because this study focused on minority participants (as the counterpart to Study 3a), the coding of behavior and subsequent analyses included only the Black participants. The 20 participants retained for analysis included 12 women and eight men. Participants were compensated with \$10.

Design and procedure. As in Study 3a, we used a 2 (dyad composition: same-race vs. interracial) \times 2 (impression management behaviors: self-promotion vs. ingratiation) mixed design, in which each Black participant was randomly assigned to interact with a White or Black partner of the same gender. Participants were told that the study concerned “the impact of the video and computer revolution on task performance and communication in work environments” and that they would have a videotaped interaction with another student.

Interaction. Participants were seated at a conference table in a room with video cameras arranged to allow each participant to be videotaped separately. Participants were instructed to come up with criteria for hiring someone into an open position at a travel agency. Participants were asked to consider what type of person would be good for the position. For 5 min, they discussed the position without the experimenter present. The cameras were visible, and participants knew they were being taped. These videos of participants' behavior during the interaction were later coded.

Demographics and debriefing. At the end of the study, participants completed a number of unrelated measures, reported their race, and were debriefed.

Behavior coding. We investigated thin slices of nonverbal behavior during participants' interactions. A 30-s clip from the midpoint of each participant's videotape was extracted, showing the participant centered on the screen, talking to an off-screen interaction partner.

Two trained coders (two White women) blind to experimental condition independently assessed each participant's videotape for behaviors related to self-promotion and ingratiation. Coders watched each clip on a color monitor (with both audio and video) and rated participants' behaviors on 9-point scales from 1 (*not at all*) to 9 (*extremely*). Drawing on Study 3a,¹⁴ we coded the following behaviors to assess participants' impression management behaviors: flattery, friendliness, and seeking to be liked (ingratiation) as well as mentioning achievements, confidence, and seeking to be respected (self-promotion). The two coders' ratings were averaged for each variable, and the mean of these average ratings was calculated to form ingratiation ($r = .81$) and self-promotion ($r = .85$) composites.

Results and Discussion

We subjected the behavior ratings to a 2 (dyad composition: same-race vs. interracial) \times 2 (impression management behaviors:

ingratiation vs. self-promotion) mixed-model ANOVA. Results revealed main effects of both dyad composition and impression management behavior, respective $F_s(1, 18) = 4.9$ and 7.6 , both of which were qualified, however, by the predicted Dyad Composition \times Impression Management Behavior interaction, $F(1, 18) = 5.20$, $p = .035$, $\eta_p^2 = .22$ (see Figure 3b). Tests of simple effects revealed no differences in the extent to which Black participants displayed ingratiation ($M = 3.15$, $SD = 0.84$) versus self-promotion ($M = 3.22$, $SD = 0.58$) behaviors in same-race interactions, $F(1, 9) < 1$. By contrast, these participants were more likely to engage in self-promotion ($M = 4.23$, $SD = 0.67$) than ingratiation ($M = 3.53$, $SD = 0.48$) in interracial interactions, $F(1, 9) = 8.46$, $p = .017$, $\eta^2 = .48$. Furthermore, these Black participants engaged in more self-promotion, $F(1, 18) = 13.1$, $p = .002$, $\eta_p^2 = .42$, but comparable levels of ingratiation, $F(1, 18) = 1.56$, $p = .22$, $\eta_p^2 = .08$, during interracial versus same-race interactions. Taken together, these results provide compelling evidence that Blacks are often more interested in seeking respect than in being liked during interracial interactions.

Study 4: Divergent Goals and Negative Affect in Live Interracial Interactions

With this study, we extended the previous studies by simultaneously examining the impression management goals of Whites and minorities engaging in live same-race or interracial interactions with one another. Dyadic analyses enable us to test whether White and minority participants engaging in the same task together indeed diverge in their goals, while controlling for any dyad-level variation in the extent to which participant pairs wish to appear competent versus moral.

Moreover, this study included Asians—in addition to Whites, Blacks, and Latinos—in sufficient numbers for us to compare the extent of goal divergence between Whites and minority groups stereotyped as incompetent (e.g., Blacks and Latinos) versus competent (e.g., Asians). We theorized that divergent impression management goals in intergroup settings depend not just on status differentials between groups but also on the content of group stereotypes. Although Asians, Blacks, and Latinos are seen as having lower group status than Whites, Asians are not perceived as incompetent. Also, although Blacks may see Whites as intolerant, selfish, and arrogant (e.g., Krueger, 1996), it is not clear that Asians have a comparably negative view of Whites or that Whites anticipate that Asians will perceive them as immoral or unlikeable. Thus, differences in stereotype content led us to predict less goal divergence between Whites and Asians in their interactions with one another than between Whites and Blacks or Latinos.

Finally, consistent with our theorizing that navigating an interaction with an impression management goal that is divergent from that of one's interaction partner may be aversive, we tested in Study 4 the affective correlates of these divergent goals. We expected that goal divergence in interracial interactions would be associated with higher levels of negative affect, especially affect directed at the other person. Thus, in this study, we attempted to

¹⁴ We selected behaviors from Study 3a that loaded highly on the intended dimension, had high face validity, and could be coded reliably with full-channel (audio and video) presentation.

extend the previous studies by providing evidence that goal divergence in interracial contexts is associated with negative interpersonal outcomes.

Method

Participants. Eighty-four same-sex pairs of students were recruited to participate in an “opinion exchange” study for course credit or \$12. After excluding four dyads with participants who indicated being “moderately” or “very” well previously acquainted¹⁵ and eight dyads in which a participant misperceived the other’s race, the final sample included 27 White/White dyads, 28 White/Black and White/Latino dyads, and 17 White/Asian dyads. This sample included 46 men and 98 women, of whom 99 self-identified as White, 22 as Black, 6 as Latino, and 17 as Asian.

Design and procedure. This study was designed such that White participants were randomly assigned to interact with a White, Black, Latino, or Asian fellow participant. (Due to sampling constraints in the student population, no same-race minority dyads were included.) A White or Asian female experimenter greeted participants and took them to separate rooms, where they learned that they would discuss their opinions on two social topics with another person.¹⁶

Discussions. Participants sat in the same room and selected a topic from a rigged drawing that assigned them to discuss either modern racism or ethnic diversity in schools. The respective prompts for this conversation read as follows:

Racism has played an influential role in shaping American history, from slavery, anti-immigration laws, and other policies that contributed to racial disparities. Some people argue that racism is a thing of the past, whereas others believe that it continues to exist in the present day. Discuss your thoughts and opinions about the state of racism in modern American society.

Although the population of ethnic minorities continues to grow in the United States, student populations among universities remain ethnically homogeneous. Discuss your thoughts and opinions about how universities can ensure an ethnically diverse student body.

After providing the instruction paragraphs, the experimenter left the room and gave the participants 5 min to discuss the topic.

After the first discussion, the participants each completed a postinteraction questionnaire in separate rooms. Next, the experimenter reunited the participants in one room and had them select a second discussion topic (rigged to be the remaining discussion topic: either modern racism or ethnic diversity in schools) to discuss for 5 min. After the second discussion, participants again completed a postinteraction questionnaire in separate rooms.

Impression management goals. After the second interaction, participants reported the importance to them of appearing competent or moral to their partner during both interactions. Specifically, participants reported whether “it was important to me that the other participant saw me as” *intelligent*, *capable*, and *competent* (competence goal; $\alpha = .90$) or *fair*, *kind*, *open-minded*, and *a good person* (morality goal; $\alpha = .88$) on 7-point scales. We computed an impression management goal difference score by subtracting the morality trait mean from the competence trait mean to enable assessment of the goals’ relative strength in a mixed-model dyadic analysis. Higher difference scores indicate a preference for appearing intelligent over appearing moral.

Affect. In the second questionnaire, participants also indicated the extent to which they felt each of 27 emotions “at the present moment” on a scale from 1 (*very slightly or not at all*) to 5 (*extremely*). The five items assessing negative other-directed affect came from Vorauer and Kumhyr’s (2001) “negative feelings toward others” composite: *hostile*, *upset at others*, *irritated at others*, *resentful*, *angry at others* ($\alpha = .79$). (The other 22 items were combined to create composites of negative self-directed affect, discomfort, wariness, and positive affect.) Notably, these items ostensibly tap emotion directed “at others” as opposed to “at the other participant” to minimize social desirability biases in reporting, but in this context negative other-directed affect is thought to be primarily directed at the interaction partner, not other people in general.

Demographics and manipulation checks. Finally, participants provided demographic information, reported their perceptions of their partner’s gender and race, indicated any prior acquaintance with one another, and were debriefed, thanked, and compensated.

Results and Discussion

As in Study 2, this sample includes both interracial and same-race dyads, so the data are thus treated as indistinguishable in all dyadic analyses (Kenny et al., 2006). A modified factorial approach (West et al., 2008) was used to test contrasts between Whites and minorities in same-race versus interracial interactions. (Contrasts were used because the study design did not include minorities in same-race interactions, confounding the main effects of participant race and dyad composition and rendering them less meaningful.) The full 2 (participant race) \times 2 (dyad composition) factorial approach involves estimating three parameters in each model and requires four types of dyads: Whites and minorities in same-race and interracial interactions.

In the absence of minority–minority dyads, only two parameters were estimated in the model, with Whites with minority partners as the reference group. When entered simultaneously, the “interracial dyad” dummy code (1 for minorities with White partners; 0 for others) contrasts Whites and minorities in interracial dyads, while the “White participant” dummy code (1 for Whites with White partners; 0 for others) contrasts Whites with minority versus White partners. Univariate outliers were trimmed not to exceed 2.5 standard deviations.

Impression management goals. Paralleling the previous studies, initial analyses of impression management goals focused on Whites relative to Blacks and Latinos (see Figure 4a). The impression management goal difference score was submitted to a mixed-model dyadic analysis testing the two contrasts of interest. The “interracial dyad” contrast proved significant, estimate = 0.78, $t(54) = 2.59$, $p = .012$, indicating that as hypothesized, in interracial dyads, minorities more strongly preferred appearing

¹⁵ Previously well-acquainted participants were excluded because this study aimed to examine interactions among strangers and because divergent goals are not expected for friends who report knowing each other especially well (see Study 2).

¹⁶ At this point, participants read a story designed to induce an ideological mind-set, which did not influence the findings reported here (all $ps > .10$).

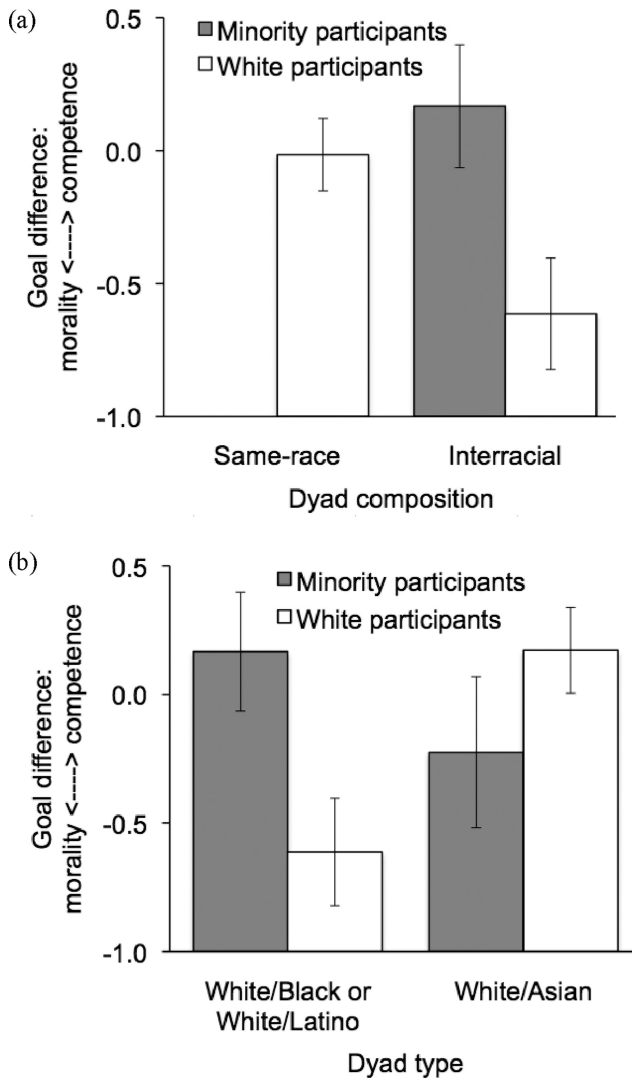


Figure 4. Mean impression management goal divergence (competence goal–morality goal) by (a) participant race and dyad composition (minority participants were Black and Latino; Asians excluded), and (b) participant race and dyad type (minority participants were Black, Latino, and Asian; Study 4). Error bars = standard errors.

competent over appearing moral ($M = 0.17$, $SD = 1.22$), whereas Whites more strongly preferred appearing moral over appearing competent ($M = -0.61$, $SD = 1.11$). Moreover, the “White participant” contrast was significant, estimate = 0.60, $t(99.3) = 2.40$, $p = .018$, indicating that Whites with minority partners more strongly sought to appear moral (vs. competent) relative to Whites with White partners ($M = -0.02$, $SD = 1.00$).

Group variation. The next set of analyses examined whether such goal divergence would be observed between Whites and a lower status minority group that is not stereotyped as incompetent, namely, Asians. The stereotype of Asians as competent—on par with or exceeding Whites—spans seven decades (Bergsieker, Leslie, Constantine, & Fiske, 2009; Katz & Braly, 1933); however, Asians are still not generally perceived to have as high societal status as Whites (e.g., Vorauer & Sakamoto, 2008). Ratings from

an independent sample of 344 undergraduates drawn from the same population as Study 4 showed that Whites ($M = 6.46$, $SD = 0.70$), Asians ($M = 5.30$, $SD = 0.91$), Blacks ($M = 3.39$, $SD = 1.23$), and Latinos ($M = 3.06$, $SD = 1.09$) differ in perceived societal status on a scale from 1 (*very low status*) to 7 (*very high status*), $F(2.2, 740.1) = 1153.65$, $p < .001$, $\eta_p^2 = .77$, and Bonferroni-corrected comparisons confirmed that Asians are seen as having lower status than Whites ($p < .001$).

We submitted impression management goal difference scores for participants in interracial dyads only to a mixed-model dyadic analysis with three parameters: participant race (White vs. non-White), dyad type (White–Asian vs. White–Black or White–Latino¹⁷), and the Participant Race \times Dyad Type interaction (see Figure 4b). As predicted, the effect of participant race on goals interacted significantly with the type of dyad, estimate = 0.32, $t(41) = 2.56$, $p = .014$, such that White and Black or Latino participants who interacted with one another reported goals that diverged significantly in the predicted direction, $t(41) = 2.77$, $p = .008$,¹⁸ whereas White ($M = 0.17$, $SD = 0.69$) and Asian ($M = -0.23$, $SD = 1.21$) participants who interacted with one another showed nonsignificant goal divergence in the opposite direction, $t(41) = 1.02$, $p = .316$. These results suggest that when Whites interact with Asians, who are slightly lower in perceived societal status but not perceived competence and who may not see Whites as prejudiced to the same extent as do Blacks and Latinos, no significant goal divergence by race is observed. In contrast, when Whites are paired with Blacks or Latinos, these participants diverge significantly in their impression management goals, with Whites more strongly wanting to be seen as moral (i.e., likeable) and minorities preferring to appear competent (i.e., worthy of respect).

Affect. Returning once again to the three primary groups of interest—Whites with White partners, Whites with Black or Latino partners, and Blacks or Latinos with White partners—mixed-model dyadic analyses revealed that negative other-directed affect interacted significantly with both contrasts, potentially signaling moderation (see Figure 5). The “interracial dyad” contrast was qualified by negative other-directed affect, $t(92.1) = 3.34$, $p = .001$, such that as levels of negative other-directed affect rose, preferences for appearing competent (vs. moral) increased for minorities with White partners, $r(26) = .43$, $p = .023$, but decreased for Whites with minority partners, $r(26) = -.37$, $p = .050$. The “White participant” contrast also significantly interacted with negative other-directed emotion, $t(103.5) = 2.26$, $p = .026$; negative other-directed affect and competence (vs. morality) goals were negatively correlated for Whites with minority partners (see earlier discussion) but not those with White partners, $r(52) = .06$, $p = .645$. In other words, for participants in interracial dyads who felt more negative emotion toward their partner, minorities reported an increased preference for appearing competent as opposed to moral and Whites reported an increased preference for

¹⁷ No significant goal divergence emerged between Whites with Black versus Latino partners ($p = .763$) or between Blacks versus Latinos with White partners ($p = .535$).

¹⁸ This difference’s significance ($p = .008$) deviates from that reported previously ($p = .012$) due to differing error terms in models with distinct subsets of participants (respective $ns = 88$ and 110).

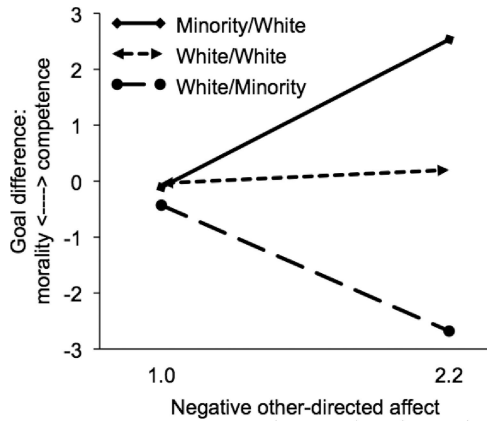


Figure 5. Mean impression management goal divergence (competence goal-morality goal) by participant race, dyad type, and negative other-directed affect plotted over observed affect range (Study 4). Minority participants included Blacks and Latinos (not Asians).

appearing moral as opposed to competent, but in White-White dyads, negative emotion was not correlated with impression management goals.

Analyses of goals at the lower and upper bounds of the observed affect range confirmed that both contrasts were significant at the upper bound of reported negative other-directed affect, $ps < .01$, but not at the lower bound, $ps > .25$. These results suggest that divergent goals are not an invariant feature of interracial interactions but instead covary with negative emotion.¹⁹

To test whether these effects were specific to negative other-directed affect and not negative affect in general, we performed mixed-model analyses to test the relationship of negative self-directed affect, discomfort, and wariness to impression management goals. In interracial interactions, goal divergence for Whites and minorities (i.e., Blacks and Latinos), tested by the “interracial dyad” contrast, was not qualified by negative self-directed affect, $p = .741$, and increased only slightly at higher levels of wariness, $p = .097$, or discomfort, $p = .112$.²⁰ Thus, divergent impression management goals in interracial interactions appear to be associated with increased negative other-directed affect in particular, not negative affect in general.

The measurement of both affect and impression management goals after, not during, the interaction, precludes our making any strong claims about the causal or temporal sequence of these processes. Possibly variation in emotion predicts differences in goals: Lower levels of negative other-directed affect could signal that the interaction is going smoothly and buffer participants against concerns about being stereotyped, decreasing their need to pursue divergent impression management goals. Or perhaps the reverse is true and divergent goals lead to changes in affect: Trying harder to disconfirm a negative stereotype (i.e., incompetence or immorality) about one’s group in the presence of an outgroup member may lead people to feel more negative emotion because they have to expend more effort to focus on countering a negative stereotype than they typically would to be seen as average in competence and morality. Alternatively, a third variable, such as perceived partner prejudice, might cause people to feel more upset at more apparently prejudiced partners for potentially stereotyping

them and more motivated to disconfirm that negative stereotype to that person. Each of these scenarios suggests avenues for further study.

In sum, Study 4 provides evidence consistent with our theorizing. First, Whites’ and minorities’ impression management goals diverge in live dyadic interracial interactions, with Whites preferring to appear moral and minorities preferring to appear competent. Second, differing stereotype content, rather than mere status disparities, may be critical for producing divergent goals, because Whites and Asians who interacted with one another failed to show a significant divergence in impression management goals, which was in sharp contrast to interactions between Whites and Blacks or Latinos. Third, consistent with the claim that divergent goals may lead to negative interpersonal outcomes, we observed higher levels of negative other-directed affect associated with greater impression management goal divergence in interracial (but not same-race) interactions. These results fit our prediction based on the circumplex model of interpersonal behavior that incompatible impression management goals could give rise to noncomplementary reactions and hostility-related emotions.

General Discussion

Our primary aim in the present research was to examine the impression management goals activated for Whites and racial minorities in interracial interactions. Our studies provide support for the hypothesis that Whites and racial minorities pursue divergent liking and respect goals, respectively, in interracial interactions. In Studies 1a and 1b, this pattern emerged when participants were compelled to choose between being liked versus respected or being perceived as moral versus competent along a bipolar continuum. In Study 2, a parallel pattern of divergent goal preferences emerged for Whites and minorities in pre-existing relationships.

Studies 3a and 3b extend these results through assessment of behavior. Specifically, in Study 3a, the divergence in self-promotion and ingratiation behaviors observed among more engaged Whites in simulated interracial actions showed that, when interacting with a White versus Black partner, Whites adopt different behavioral strategies that correspond closely to the predicted divergent impression management goals. Likewise, in Study 3b, the divergence in self-promotion and ingratiation behaviors showed that Blacks also vary their behaviors depending on the race of their partner to reflect the goals they would like to fulfill.

Finally, Study 4 addressed the generalizability of impression management goal divergence across racial groups and tests affective correlates. White and minority strangers who interacted in the laboratory reported divergent impression management goals in

¹⁹ Negative other-directed affect ($M = 1.18$, $SD = 0.31$) did not mediate goal divergence. Negative other-directed affect did not vary by participant race or dyad composition, $ps > .19$, and in the basic mixed-model analysis of goals, negative other-directed affect did not directly predict differences in goals, $t(103.4) < 1$, whereas the “interracial dyad” and “White participant” contrasts remained significant, $t(53.6) = 2.58$ and $t(98.7) = 2.31$, respectively, both $ps < .03$.

²⁰ Whites’ and minorities’ goals diverged to a greater extent when participants reported less positive affect, $p = .044$, but this moderation—unlike that for negative other-directed affect—dropped to marginal significance ($p = .058$) with ideological prime included in the model.

interracial (but not same-race) interactions, with Whites again preferring to appear moral and Blacks and Latinos preferring to appear competent. These divergent goals were not observed in interactions with White and Asian participants (for whom the respective stereotypes about prejudice and incompetence are less clear). Moreover, impression management goal divergence was associated with negative other-directed affect. In interracial interactions, no goal divergence emerged for participants who experienced low levels of negative other-directed affect, whereas high levels of negative other-directed affect were associated with wanting to appear moral for Whites and wanting to appear competent for Blacks and Latinos. Collectively, these studies demonstrate a consistent divergence in Whites' and racial minorities' impression management goals and behavioral strategies in interracial interactions, with Whites pursuing liking and minorities seeking respect.

Divergent Perspectives of Whites and Minorities

Our findings contribute to a growing body of research showing that Whites and racial minorities often have vastly different perspectives in interracial interactions. Divergences have been documented on many levels. For example, research using a relational approach to study dyadic interactions between Whites and minorities has shown that one individual's heightened prejudice concerns may lead to positive interaction experiences for an interaction partner but negative outcomes (e.g., cognitive disruption, felt inauthenticity, negative affect) for the self (Richeson & Shelton, 2007; Shelton & Richeson, 2006). Furthermore, the specific concerns activated for Whites and minorities in interracial interactions typically differ: Whites more often worry about appearing prejudiced (Vorauer et al., 1998), whereas minorities worry about being the target of prejudice and appearing incompetent (Shelton & Richeson, 2006). Given extensive evidence of divergent experiences in interracial interactions, it follows logically that Whites' and minorities' impression management goals may also differ, and these contrasting goals may in turn contribute to this pattern of divergent experiences in interracial interactions.

On an ideological level, Whites and minorities often diverge in their preferences for assimilation versus integration, respectively, in interracial relations. Majority group members typically prefer assimilation models that downplay subgroup distinctiveness and require minorities to adopt majority group culture. Minorities, by contrast, prefer integration models that respect distinct subgroups and preserve minority cultures within an overarching group (Ryan, Hunt, Weible, Peterson, & Casas, 2007). Critically, these contrasting ideological preferences may lead Whites and minorities to navigate interracial interactions differently, and these conflicting approaches may perpetuate group inequalities (see Dovidio, Gaertner, & Saguy, 2007). In recent research, preferences for discussing group commonalities versus power differences have been examined with both experimental and ethnic groups (Saguy, Dovidio, & Pratto, 2008). High-status group members preferred discussing commonalities, whereas low-status group members wanted to discuss both commonalities and power differences. Discussing commonalities promoted positive intergroup attitudes, causing low-status groups to anticipate more benevolent treatment from high-status groups (Saguy, Tausch, Dovidio, & Pratto, 2009). Focusing on similarities also led high-status groups to report more

favorable outgroup attitudes but did not lead them to reduce the power differential between the groups.

Our work on divergent impression management goals in interracial interactions is convergent with the finding that Whites prefer assimilation and talking about commonalities, whereas minorities prefer integration and talking about intergroup differences. For Whites, who primarily want to be liked by minorities in interracial interactions, discussing intergroup commonalities (as opposed to power differences) facilitates a more pleasant, comfortable interaction that creates a "façade of 'liking'" (Dovidio et al., 2007, p. 324). For minorities, however, who primarily seek respect in interracial interactions, Whites' tendency to discuss commonalities and ignore intergroup distinctions or power differences does not afford minorities the acknowledgment, status, and respect that they seek. If discussing commonalities causes (a) low-status group members to expect outgroup benevolence and (b) high-status group members to perpetuate status differences despite these expectations (Saguy et al., 2009), minorities may feel disrespected in these interactions and potentially dislike the Whites who have disappointed them.

Similarly, work on reconciliation following intergroup conflict shows that more effective intergroup communications address the distinct goals and needs of high- and low-status groups (Shnabel & Nadler, 2008). Motivation for intergroup reconciliation is greatest for members of high-status groups following messages of acceptance (i.e., liking) from low-status groups but for members of low-status groups following messages of empowerment (i.e., respect) from high-status groups (Shnabel, Nadler, Ullrich, Dovidio, & Carmi, 2009). In contrast, Whites' focus on commonalities and their failure to reduce group power differences do not provide empowerment to minority groups (failing to meet minorities' respect goal), a disappointment that may in turn reduce minorities' acceptance of Whites (failing to meet Whites' liking goal).

In sum, this research suggests that the divergent perspectives of Whites and minorities and the resulting strategies they adopt may frustrate rather than fulfill Whites' and minorities' liking and respect goals in interracial interactions. If Whites take an assimilating approach, ignore power, and downplay race, minorities may feel disrespected. Likewise, if minorities adopt an integrating approach, disregard similarities, and bring up racial issues, Whites may think minorities dislike them. These unmet goals may undermine their interactions.

Implications for Interracial Communication, Cognition, and Emotion

Divergent impression management goals present in interracial interactions may also lead to misunderstandings and negative attitudes toward interaction partners. Research suggests that Whites and Blacks may respond especially negatively to the impression management behaviors that the other group is most likely to demonstrate. For example, relative to Blacks, Whites tend to perceive people who engage in self-promotion more unfavorably, deeming them less trustworthy (Hull, Okdie, Guadagno, & Bennett, 2008), and evaluating them negatively even when the self-promotion is truthful (Holtgraves & Dulin, 1994). Moreover, Blacks may be likely to distrust Whites' display of overtly friendly behavior more so than other types of behavior. For instance, Whites' verbal friendliness in interracial interactions often does

not lead their Black interaction partners to see them favorably (Dovidio, Kawakami, & Gaertner, 2002). Insofar as Whites and minorities may distrust individuals (especially outgroup members) who self-promote or ingratiate, respectively, these tendencies compound the difficulties caused by divergent goals in interracial interactions.

Moreover, we predict that incompatible impression management goals in interracial interactions may lead to negative cognitive outcomes. These goals may induce a narrow focus of attention and greater cognitive load. The attention needed for sustained impression management and monitoring of interaction partners' (often noncomplementary) responses leaves fewer resources for processing additional information about the other individual or the interaction. Interracial interactions tend to be more cognitively depleting than same-race interactions (Richeson & Shelton, 2007). Whites' tendency to "overcorrect"—indicated by increased smiling, laughing, showing positive affect, and attempts to be liked—in interactions with stigmatized partners is associated with a physiological threat response (Mendes & Koslov, 2009), suggesting that ingratiating may make interracial interactions more depleting for Whites. Pursuing incompatible impression management goals in interracial interactions may thus lead individuals to feel cognitively debilitated during and after interactions, hindering effective cooperation.

Finally, Study 4 highlights the connection between Whites' and minorities' divergent impression management goals and their affective experiences in interracial interactions. Meta-analyses show that relative to cognitive factors (e.g., stereotypes or beliefs), intergroup emotion improves to a greater extent following intergroup contact (Tropp & Pettigrew, 2005) and twice as strongly predicts intergroup discrimination (Talaska, Fiske, & Chaiken, 2008). Moreover, intergroup admiration and anger or resentment fully mediated the relationship between intergroup contact and attitudes among a nationally representative sample of Whites, Blacks, and Asians (Seger, Banerji, Smith, & Mackie, 2009). If divergent impression management goals for Whites and minorities in interracial interactions are associated with negative other-directed affect—specifically, anger at others, hostility, and resentment—these affective experiences could have powerful negative implications for the attitudes Whites and minorities hold toward one another.

Limitations

Given our predictions about Whites' and minorities' preferences diverging, respectively, toward liking or morality goals and respect or competence goals in interracial interactions—and converging in same-race interactions—it may appear surprising that participants' net preferences vary across studies, sometimes tending toward respect or competence (e.g., Studies 1a and 1b) and other times toward liking or morality (e.g., Studies 2 and 4) on average. Our chief interest, however, is in the relative emphasis placed by Whites versus minorities on these goals in same-race versus interracial settings, not the absolute level of each goal, which may be influenced by context (as in Study 1b) or measurement (e.g., due to variation in the rated importance of appearing *kind* vs. *capable* or frequency of smiling vs. mentioning achievements). Interested readers may consult Jones and Pittman (1982) for a theoretical discussion of impression management goals' relative priority or

Nezlek and colleagues (2007) for an empirical assessment of their pervasiveness.

Additionally, this work has not yet definitively established the boundary conditions or underlying mechanisms for divergent impression management goals for Whites and minorities in interracial interactions. That these goals diverged even within interracial friendships may seem surprising (or discouraging), and although this divergence was attenuated for people who felt that their friends knew them well, this moderation was not significant. Also, the causal sequence linking divergent impression management goals and negative other-directed affect in interracial interactions remains unclear. Thus, further specifying antecedents of Whites' and minorities' divergent goals and identifying means to reconverge them is a worthy aim for future research.

Concluding Remarks

The present work makes a novel contribution to the intergroup relations literature by documenting substantial divergence in the goals Whites and minorities may bring to interracial contexts. Unlike much prior work in intergroup relations, the divergent respect/competence and liking/morality goals held by racial minorities and Whites, respectively, in interracial interactions do not derive from implicit or explicit animus between groups. Instead, these divergent goals can arise independently of individuals' biases to impede interactions between minorities and Whites who initially have favorable attitudes and intentions toward one another. This work goes beyond a focus on prejudice reduction and even intergroup attitudes more broadly to highlight instead some functional and strategic aspects of interracial interactions that may arise from Whites' and minorities' divergent perspectives. Consideration of the distinct goals and needs of Whites and minorities in interracial interactions can better enable individuals and institutions to navigate or structure contexts in ways that not only improve race relations but also reduce racial inequalities.

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Is Justice Really Blind? Race and Reversal in U.S. Courts[‡]

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Abstract

I use two newly collected data sets to demonstrate that black federal district judges are consistently overturned on appeal more often than white district judges, a gap in reversal of up to ten percentage points. This gap is robust and persists after taking into account previous professional and judicial experience, educational backgrounds, qualification ratings assigned by the American Bar Association, and differences in appellate panel composition. In total, it suggests that approximately 2,800 additional cases authored by black judges have been reversed over the last 12 years. This study is among the first to explore how higher-court judges evaluate opinions written by judges of color, and it has clear implications: despite attempts to make judiciary more reflective of the general population, racial disparities within the legal system appear to persist.

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1 Introduction

In 1961, Illinois state judge James Parsons was at his summer home when he got a call that changed his life. The call was from John F. Kennedy, and over the course of the call, Kennedy asked Parsons if he would accept a federal judgeship at the U.S. District Court for the Northern District of Illinois. As Parsons later recalled, “I said, ‘As a former naval officer, aye, aye sir,’ And he said, ‘Carry on.’” The significance of this conversation – an otherwise routine exchange between a President and a potential judicial nominee – was that Parsons was black, and his investiture made him the first African American appointed to the U.S. District Courts.

Thanks to jurists like James Parsons, numerous men and women of color now occupy roles in the upper echelons of the judiciary, not just in state and federal courts, but also in other countries and at the international level. And while social scientists have an increasing understanding of how characteristics such as race influence decision making, less well understood is how the legal system has incorporated these actors – that is, how the decisions rendered by minority and women judges have been evaluated by higher courts, whether they have been treated on equal footing, and how influential they have been. On the one hand, the increased appointment of women and minorities serves to make the judiciary more reflective of the population it serves. On the other, if these judges are more likely to be overturned, then we must consider whether more needs to be done to achieve the goals of descriptive representation in the courts.

In this paper, I examine how higher-court judges evaluate opinions written by minority judges. I leverage several new data sets that include the personal characteristics of approximately 1,500 federal district judges and their corresponding appeal and reversal rates on cases decided between 2000 and 2012. By then controlling for measures of partisanship, judge qualifications (including ratings awarded by the American Bar Association), experi-

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ence, and jurisdiction, I find that cases decided by African-American lower court judges are up to 10 percentage points more likely to be overturned than are cases written by similar white judges. This gap is significant, robust, and appears particularly strong among judges appointed by Democratic presidents. I confirm these results using an existing data set of randomly selected published appeals cases compiled by [Songer \(2007\)](#) and [Kuersten and Haire \(2011\)](#). In additional results presented in the Appendix, I also present matching and sensitivity analyses showing that these results are probably not due to fundamental imbalances in the data or to omitted variable bias. In terms of meaningful impact, this gap is not insubstantial: if blacks were reversed at whites' comparably lower reversal rates, some 2,800 cases authored by black judges would have been upheld on appeal over the last 12 years.

Although I explore several possible explanations behind this finding, the underlying mechanism is not straightforward. One possibility is that the racial gap is explained by differences in ideological views, perhaps because black judges are more liberal and are therefore overturned more, even when appointed by the same President. To test this, I examine the composition of reviewing appeals panels using data from [Kuersten and Haire \(2011\)](#). I find that the difference between black and white judges in terms of reversal does not vary across more or less conservative higher courts. Neither are the results driven by distinctive voting by African Americans on civil rights or affirmative action issues, on which previous scholarship has suggested differentiated voting patterns ([Kastellec, 2013](#); [Cox and Miles, 2008](#)). These results suggest that something more than simple ideological differences are at play; a more likely explanation is that the racial gap is driven by an amalgam factors, possibly differences in lower-court judge ideology, but also the possibility of implicit biases by higher courts. However, the results are clear: a factor in predicting whether a judge will be reversed is, surprisingly, his or her race.

This paper proceeds as follows. I discuss theories linking race, decision making, and reversal in Parts [2](#) and [3](#). In Part [4](#), I discuss the data, which are two newly collected

data sets and one existing data set on U.S. district judges. Part 5 presents the core results: black judges are indeed more likely to be reversed than white judges, and the difference is robust. In Parts 7–10, I discuss possible explanations behind this finding, which are (1) the possibility that black lower-court judges have more, or different, kinds of cases appealed to higher courts, (2) possible differences in professional experience, (3) differences in ideology, (4) differences in voting patterns in certain issue areas, and (5) implicit racial bias by higher courts. I conclude in Part 11 with a discussion of the limitations and implications of this research. Additional results from matching analyses are presented in the Appendix.

2 Race and Judicial Decision-Making

Ever since Jimmy Carter began nominating women and minority judges in large numbers, scholars have stressed their potential importance and focused closely on their impact. On the one hand, there is a view that simply having a diverse bench might be normatively desirable (Pitkin, 1967) and that it has the potential to increase the institutional legitimacy of the courts (Scherer and Curry, 2010). Another view is that descriptive representation can also be instrumentally important by bringing important viewpoints that might otherwise be unshared. Descriptive representation can therefore often (although not always does) result in substantive representation (Krislov, 1974).

Empirical studies on this topic have mostly focused on this second question: Whether women and minority judges decide cases differently than their white male counterparts. For the most part, the answer to this question has been yes, but that they do so in the context of substantively salient issues. For example, for the minority judges who are the focus of this study,¹ Kastellec (2013) finds that black judges are more likely to vote in favor of affirmative

¹A similar literature addresses differences in voting by male and female judges. This scholarship suggests that there are differences in the way that male and female judges vote, but only in the context of gender-salient cases – e.g., sex discrimination (Boyd, Epstein and Martin, 2010; Baldez, Epstein and Martin, 2006; Peresie, 2005; Massie, Johnson and Gubala, 2002; Segal and Spaeth, 2002; Crowe, 1999). Others have found

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action policies and that having blacks on an appellate panel changes how that panel votes. [Cox and Miles \(2008\)](#) similarly find that the addition of a black judge to a panel increases the likelihood that it will find a violation of the Voting Rights Act. Other studies find difference in voting in related civil rights areas. For example, [Pinello \(2003\)](#) finds that black judges are more likely to side with LGBT claimants than white judges, and [Martin and Pyle \(1999\)](#) find that black judges are more likely to rule in a liberal direction in discrimination and gender-related cases. (On this last point, however, [Segal \(2000\)](#) finds evidence to the contrary.) Importantly, a number of these studies have found this difference between white and black judges when the race of the parties is a salient issue. In the criminal context, [Scherer \(2004\)](#) finds that black judges are more likely to accept black defendants' claims of police misconduct, while [Welch, Combs and Gruhl \(1988\)](#) and [Gottschall \(1983\)](#) find that black judges are more lenient with black defendants than white judges (but see [Spohn \(1990\)](#), which finds no differences). A number of other studies have found no differences across other legal areas ([Walker and Barrow, 1985](#); [Gottschall, 1983](#)).

A thread running through this literature is that differences in voting may be due to different personal and professional experiences, which in turn inform legal views. African Americans on the bench tend to be clustered in certain (oftentimes urban) districts, with a greater share having experience as public defenders, government lawyers, and law professors ([Sen, 2014b](#)). In addition, a number of black judges have historically come from the trenches of the civil rights movement (e.g., Thurgood Marshall, Constance Baker Motley, Matthew Perry), or possibly have more experience as lawyers working within the criminal justice system ([Scherer, 2004](#)). These different experiences could introduce or reinforce distinct attitudes about affirmative action, civil rights, and voting rights. A number of these studies examining voting differences between black and white judges do attempt to control

little or no effects associated with a judge's gender ([Manning, Carroll and Carp, 2004](#); [Kulik, Perry and Pepper, 2003](#); [Ashenfelter, Eisenberg and Schwab, 1995](#)). With regard to reversal rates, I find no differences between male and female judges.

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for different political views (by way of judicial common space scores or other proxies for judicial ideology); however, that differences between black and white judges persist despite controlling for such measures suggests that blacks' voting transcends measurements of political ideology, particularly on civil rights issues. That is, the views of black judges differ from the views of otherwise similarly liberal whites.

However, differences in voting is only half of the story, at least regarding substantive representation. Although we know that minority judges vote differently once on the bench, we have little sense of how they are perceived or evaluated – that is, what kind of impact these judges make. The question is key for understanding descriptive representation's impact: after all, if these judges have diminished impact due to consistent reversal or lessened influence, then their substantive impact will be lessened as well. Underlying this concern is the possibility of implicit biases against minority actors, especially in the form of more appeals and increased reversal. In this regard, a number of studies have demonstrated implicit biases against African Americans in a host of settings, including high-level business organizations ([Castilla, 2008](#); [Bielby and Baron, 1986](#); [Fernandez, Castilla and Moore, 2000](#)), law ([Greenwald and Krieger, 2006](#); [Banks, Eberhardt and Ross, 2006](#); [Bagenstost, 2006](#); [Kang, 2004](#)), public health ([Krieger et al., 2010](#)), academia ([Ginther et al., 2011](#)), employment ([Bertrand and Mullainathan, 2004](#); [Fryer and Levitt, 2004a](#)), housing ([Yinger, 1986](#)), and even the halls of Congress ([Butler and Broockman, 2011](#)). That the same could apply to the judiciary may be problematic, but perhaps unsurprising.

Despite substantial literature in other fields, the literature of how the legal system incorporates (non-criminal defendant) minorities is limited. Some insight comes from state-level analyses, specifically attempts to quantify judicial performance in anticipation of judicial elections. Such judicial evaluations have been implemented in 19 states and usually involve surveys of local attorneys about judicial performance ([Pelander, 1998](#); [Gill, Lazos and Waters, 2011](#)). With regard to minority judges, [Gill, Lazos and Waters \(2011\)](#) have found

that attorney surveys routinely award lower scores to women and minorities, even after controlling for experience and reversal rates. At the federal level, no study has looked at the comparative performance of minority or women judges, or at how often these judges are overturned by higher courts. However, perhaps the only measure of judicial “quality” comes in the form of ratings awarded by the American Bar Association (ABA); here, black judges have been shown to receive lower ratings by some studies ([Lott, 2001](#); [Sen, 2014a](#)), but not others ([Smelcer, Steigerwalt and Jr, 2011](#)). In addition, within public opinion, [Scherer and Curry \(2010\)](#) finds that many perceive black judges to be more liberal.

3 How Race and Reversal May be Related

In this study, I explore the judicial analogy to those outcomes explored in other implicit bias studies: reversal by higher courts. Of the few studies examining individual-level judicial reversal rates, most agree that reversal is costly (e.g., [Epstein, Landes and Posner, 2013](#); [Choi, Gulati and Posner, 2012](#)). Reversal may result in increased workload as judges have to re-visit cases, forcing them to allocate scarce resources and to deal with the higher court’s instructions; all of this comes with no reduction in the number of incoming cases. In addition, a higher reversal rate could bring with it reputation costs, especially as lower court judges consider actions that could make them palatable candidates for “promotion” to higher courts. Thus, reversal is generally assumed as something to be avoided ([Choi, Gulati and Posner, 2012](#)). As noted by some, however, higher reversal rates could be a sign of greater risk- or position-taking and creativity ([Epstein, Landes and Posner, 2013](#)).

Regarding the relationship of race and reversal, the literature is more silent but still provides the basis for several working hypotheses. First, the fact that black judges have been shown to vote differently than white judges ([Kastellec, 2013](#); [Cox and Miles, 2008](#)) has suggestive implications: if black judges vote differently than white judges, it would not

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be surprising that black lower-court judges have cases appealed at higher rates, and then are also more likely to have those cases reversed – particularly if reviewed by white appeals judges without the same political or legal inclinations. Taken in tandem with implicit biases against African Americans in other fields, and also within law and the legal system, this would suggest the first hypothesis: *African-American judges will be more likely to be reversed on appeal than white judges.* This forms the core inquiry of this study, but would be a finding in contrast to some studies, e.g., [Epstein, Landes and Posner \(2013\)](#), which find no relationship between minority status of district court judge and reversal rate.

Such a finding could have several possible explanations, however. The first potential mechanism concerns the gatekeeping issue highlighted above – the very decision to appeal. Because litigants have discretion in choosing to appeal, not all cases are appealed, and this could vary by the race of the lower-court judge in ways that complicate any findings. Here, I consider two possibilities. First, because the existing literature suggests that black judges vote differently than white judges on certain issues, and because most appellate panels are comprised of all-white panels, losing litigants in such cases may have some incentives to appeal and secure a reversal. A second possibility is grounded in the fact that practicing attorneys are known to have lower opinions of minority judges (at least at the state level, [Gill, Lazos and Waters \(2011\)](#)). Thus, attorneys might view those black judges' opinions with more skepticism and may be more inclined to appeal them. These two mechanisms have a clear observable implication, which is my second hypothesis: *opinions written by African Americans, particularly those on civil rights issues, will on average be more likely to be appealed than those written by white judges.* Finding such a difference may suggest that discrepancies in reversal rates stem more from the nature of cases appealed, rather than any kind of bias by appeals panels.

Parallel narratives would also have observable implications at the reversal stage (i.e., conditional on appeal). That black judges have different, perhaps stronger or more resolute

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beliefs about affirmative action or voting rights ([Kastellec, 2013](#); [Cox and Miles, 2008](#)) suggests that black judges would be reversed more in these issue areas, and in these areas only. Contrariwise, if black judges are reversed because they are more liberal “across the board,” then we would expect to see African American judges being reversed more frequently across a wider swath of legal topics. If this is true, then black judges would be more likely to be reversed by more conservative 3-judge appeals panels, or panels with two or more Republican appointees. This would be consistent with the findings in other literature examining reversal rates, for example [Epstein, Landes and Posner \(2013\)](#), who find that more liberal lower-court decisions are more likely to be reversed by more conservative panels. Thus, another hypothesis is that *the “black judges” effect should increase in (1) issue areas involving civil rights and/or (2) when appeals are heard by more conservative appeals panels*. Finding any of these effects would suggest that disparate reversal rates stem from differences in voting behavior rather than other causes. I also note that such a mechanism would suggest that more reversals, rather than a costly activity to be avoided, may actually indicate risk taking, position taking, or creativity (as suggested by [Epstein, Landes and Posner, 2013](#)).

There are two further explanations, both of which raise troubling normative implications under the assumption that reversal is costly. The first is that black judges could possibly bring with them different qualifications and professional experiences that result in decisions that are more likely to be overturned. In this regard, the literature is very far from agreement in terms of what constitutes judicial “quality.” At the same time, as Table 1 and some accounts suggest ([Lott, 2001](#); [Sen, 2014a](#)), African-American lower-court judges are more likely than white judges to be awarded lower qualification ratings from the American Bar Association (see [Smelcer, Steigerwalt and Jr \(2011\)](#) for no findings on this point); in addition, a lively scholarly debate has addressed the relative successes of African-American versus white graduates of elite law schools ([Sander, 2004](#); [Ho, 2005](#)). Thus, a possibility that must be addressed seriously and with care is that systematic differences in educational opportunities

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	Not Qualified	Qualified	Well Qualified	Exceptionally Well Qualified	<i>N</i>
All	0.01	0.43	0.54	0.02	1653
Whites	0.01	0.41	0.56	0.03	1388
Blacks	0.01	0.57	0.41	0.00	147
Hispanics	0.02	0.61	0.38	0.00	104
Women	0.00	0.49	0.51	0.00	43

Table 1: Distribution of ABA Qualification Ratings for U.S. District Court judges (Johnson to Obama Administrations).

or professional experiences have translated into some African American judges arriving to the bench with qualitatively different experiences than white judges, and that these differences translate into higher reversal rates. Whether this means that differently qualified judges write opinions reflecting these different experiences (or “qualifications”), or that appeals panels leverage this lack of prestige against judges with non-traditional professional backgrounds is extremely difficult to suss out using this kind of quantitative data. Nonetheless, for the sake of ruling out alternate mechanisms, I address this explanatory hypothesis: *any gap between black and white judges’ reversal rates should attenuate when we compare judges with comparable professional experiences and Bar Association ratings*. Finding such attenuation would suggest a gap driven not by bias, but rather by possible differences in professional and educational preparedness.

The last possibility is the possibility of implicit bias by appeals panels. To a large extent, a case for implicit bias using observational data is circumstantial, a stubborn difference that persists despite controls and robustness checks. Nonetheless, as noted, a growing literature suggests that implicit bias against African Americans persists (and can be measured) within a wide variety of comparable instances, including not just law (Greenwald and Krieger, 2006; Banks, Eberhardt and Ross, 2006; Bagenstost, 2006; Kang, 2004) and politics (Butler and Broockman, 2011), but also employment (Bertrand and Mullainathan, 2004; Fryer and Levitt, 2004a), academia (Ginther et al., 2011), public health (Green et al., 2007), etc. Here, beliefs about blacks’ views could also shape biased views. For example, black judges

could simply be perceived to be more liberal (Scherer and Curry, 2010). This in turn could contribute to a biased perception – whether substantiated or not – that black judges decide cases more liberally, thus driving up their reversal rates. Another possibility is that appeals courts view black judges as less qualified simply because of their race; that is, black judges could be perceived to produce opinions of poorer quality, despite no substantive evidence. Ultimately, given how strongly implicit bias has been measured in other areas, and given (despite scholars’ best efforts) continued unexplained gaps between blacks and whites in fields like education (Fryer and Levitt., 2004b) and health care (Jha et al., 2005), this is a possibility that must be considered.

4 U.S. District Judge Data

The data come from the two lower tiers of the federal judiciary – the U.S. District Courts and the U.S. Courts of Appeals. District judges decide cases alone, which makes it easier to determine the impact of a particular judge’s race on appeal and reversal; by contrast, appeals judges nearly always hear cases in panels of three. Also important is that appeals judges have met most of their lower-court counterparts and will therefore be aware of their basic demographics.²

To examine how characteristics of lower-court judges affect case outcomes, I look to data from the Federal Judicial Center (FJC), which makes public key characteristics of all federal judges.³ For each of the 1,653 judges confirmed from the Johnson through Obama administrations (as of July of 2012) I coded each judge’s (1) race or ethnicity, (2) age at confirmation, (3) gender, (4) law school attended, and (5) geographic location (Table 2). I used

²This assumption is borne out by the fact that higher- and lower-court judges interact personally (by frequently having offices in the same building) and professionally (by participating in judicial conferences and meetings). Dropping the jurisdiction least likely to meet this assumption – the 9th Circuit – does not meaningfully alter the results.

³<http://www.fjc.gov/history/home.nsf/page/judges.html>.

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President	Whites	African Americans	Hispanics	Women	<i>N</i>
Barack Obama	0.73	0.17	0.11	0.48	110
George W. Bush	0.82	0.07	0.11	0.21	261
William J. Clinton	0.76	0.18	0.06	0.29	305
George H.W. Bush	0.89	0.07	0.04	0.2	148
Ronald Reagan	0.93	0.02	0.05	0.08	290
Jimmy Carter	0.78	0.14	0.07	0.15	196
Gerald Ford	0.91	0.06	0.02	0.02	49
Richard M. Nixon	0.96	0.03	0.01	0.01	178
Lyndon B. Johnson	0.92	0.05	0.03	0.02	116

Table 2: Racial/ethnic and gender distribution of judicial nominees by President (Johnson through Obama administrations).

automated coding to further assess whether each nominee had previously been (6) a former law clerk, (7) a U.S. Attorney or Assistant U.S. Attorney, (8) a Solicitor General or Deputy or Assistant Solicitor General, (9) a state judge (either a state supreme court or state lower court judge), (10) a former federal judge (e.g., magistrate, territorial, or bankruptcy judge), (11) a full-time law professor or law school dean, (12) an attorney in private practice, or (13) a public defender. I also noted each judge’s American Bar Association qualification rating (historically a four-point scale from “Not Qualified” to “Exceptionally Well Qualified,” with “Exceptionally Well Qualified” dropped in 1989), which could reflect qualitative information not captured by the quantitative data (Table 1).

For partisanship, I recorded for each judge the identity of the appointing President as well as his or her judicial common space score, which relies on some combination of the common space score of the appointing President or of the home-state Senators (Boyd, 2011; Giles, Hettinger and Peppers, 2001; Epstein et al., 2007; Poole, 1998). I further coded the law school attended by using the 2001 *U.S. News & World Report* rankings and dividing them into rank cohorts: (1) elite law schools in the “Top 14,” (2) schools ranked #15-25, (3) #26-50, (3) #51-76, (4) #76-100, and (5) outside of the top 100. This is a rough measure for judges attending law schools in the 1970s and 80s; however, an assuaging factor is that

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	All	Whites	Blacks	Black Democrats	Black Republicans
Ave Age at Investiture	50.06	50.44	48.55	48.16	49.49
Female	0.17	0.15	0.27	0.29	0.21
Nominated by Democrat	0.44	0.40	0.71	1.00	0.00
Top 14 Law School	0.30	0.30	0.28	0.31	0.21
Private Law School	0.52	0.51	0.67	0.69	0.63
Law Clerk	0.21	0.22	0.14	0.16	0.09
Law Professor	0.06	0.05	0.12	0.13	0.07
Private Practice	0.92	0.94	0.76	0.81	0.65
U.S. Attorney	0.09	0.09	0.03	0.03	0.05
Assistant U.S. Attorney	0.20	0.19	0.29	0.25	0.40
Justice Dept Lawyer	0.05	0.05	0.07	0.08	0.07
Public Defender	0.04	0.03	0.10	0.12	0.02
U.S. Magistrate Judge	0.09	0.08	0.10	0.09	0.12
U.S. Bankruptcy Judge	0.01	0.01	0.04	0.05	0.02
State Judge	0.41	0.38	0.55	0.52	0.63
N	1653	1388	147	104	43

Table 3: Demographics of U.S. District Court nominees named after 1960.

the top tier’s composition has never changed. A summary of these statistics is reported in Table 3.

Professional and educational characteristics are only half of the story. To assess the influence of these characteristics on reversal, I also examined case outcomes data via two distinct data sets. First, I used automated coding to collect judge-level reversal statistics reported by Westlaw, a commercial legal data base, in its “Judicial Reversal Reports.” Included in these reports are (1) the total number of cases, both published and unpublished, for which the district judge wrote an opinion, (2) the total number of cases, published and unpublished, that were appealed for that judge, and (3) how many of these appealed cases, again published and unpublished, were affirmed or reversed. (This is measured as a dichotomous variable, i.e., the case was upheld or it was not.) I used this information to create a data set that includes for all district judges his or her complete reversal rate from 2000 to July of 2012. This final data set includes reversal rates for 1,054 district judges, of whom 945 are white and 109 are African American. The distribution of judges’ reversal rates

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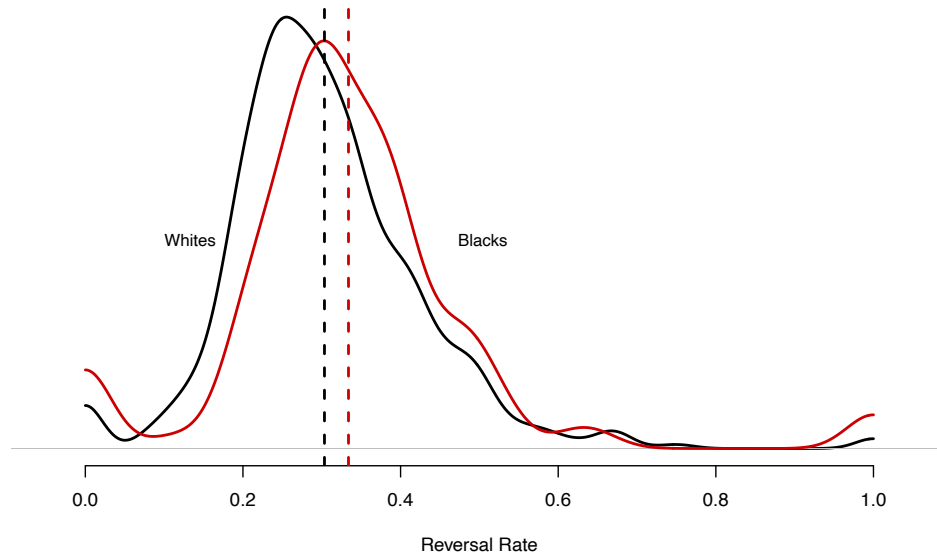


Figure 1: Reversal rates for white and black U.S. District Judges (cases appealed 2000 to July 2012). Dotted vertical lines denote white and black means.

is displayed in Figure 2.⁴ The figures include judges who had very few cases appealed (an issue I address in the methodological discussion, below), resulting in some judges reporting 0 or 100 percent of cases reversed.

Because the identity of the appeals panel and other case characteristics could influence the probability of reversal (Epstein, Landes and Posner, 2013), and because the Judicial Motion Reports by their aggregate nature do not contain this information, I examine an extant data set of appealed cases collected by Songer and by Kuersten and Haire (2011). These data include randomly selected published appeals cases decided between 1925 and 2002. In the analyses that follow, I subset these data to more contemporary periods, leaving me with 1,722 cases decided between 1996 and 2002 (or 7,289 cases decided between 1960 and

⁴One consideration is that Westlaw reports slightly higher reversal rates than are, for example, reported by the Administrative Office of the Courts. One reason might be that the Administrative Office includes all proceedings (e.g., motions) in its final count, while the Westlaw data include only those case for which there was a written opinion. This could have the effect of leading more important cases into the sample, which could introduce more variance in reversal rates than would otherwise be the case.

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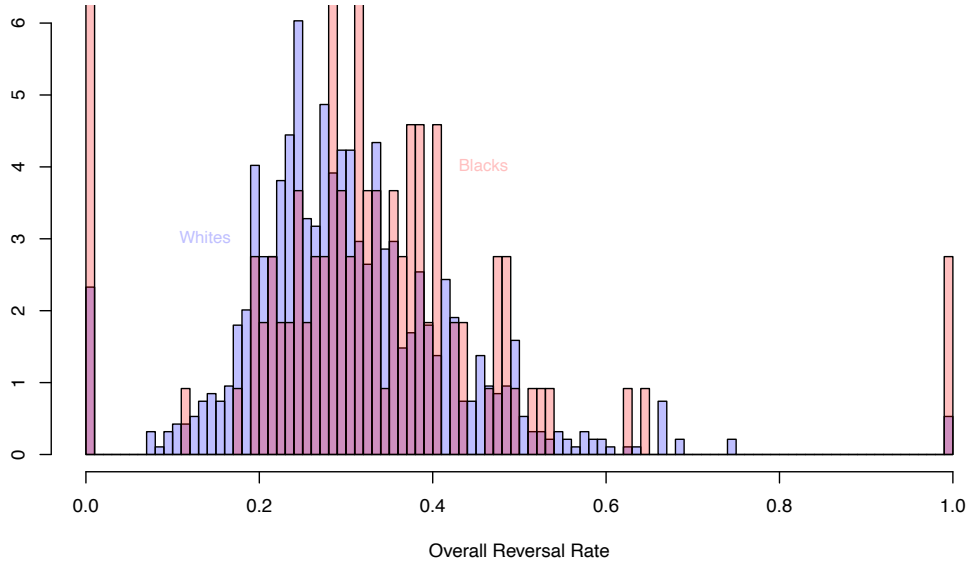


Figure 2: Reversal rates for white and black U.S. District Judges (cases appealed 2000 to July 2012).

2002, for at least one model specification in Table ??). These data also include information on the three judges hearing the appeal, its substantive legal issue area (e.g., “Civil Rights,” “Criminal Law,” “Economic Activity,” “Labor”), and whether the lower-court opinion was (1) upheld or (2) reversed. I note that, although perfect overlap with the Westlaw data is preferable, the [Kuersten and Haire \(2011\)](#) data only go through 2002. In addition, as noted by others, these data also include only published cases, which could skew the sample ([Epstein, Landes and Posner, 2013](#)).⁵

Here, a fact helpful to identification is that incoming cases in (1) district courts and in (2) the appeals stage are assigned to judges (or panels) on a fairly random basis. Although the randomization can be informal, this longstanding practice makes it impermissible for

⁵Including unpublished cases, as I do with the Westlaw judge-level data, not only has the effect of reducing possible bias stemming from the decision to publish, but it also likely has the effect of presenting a more conservative overall estimate of the black judges’ effect, as unpublished cases have been shown to display less variance ([Keele et al., 2009](#)). I also note the possibility that some of the case-level data may be miscoded, as noted by [Epstein, Landes and Posner \(2013\)](#).

federal judges to request to hear particular kinds of cases. Thus, conditional on jurisdiction, (1) cases heard by black lower-court judges should on average be similar to those heard by white judges (i.e., there should be balance in case characteristics between cases heard by black judges versus those heard by white judges) and (2) appeals panels hearing cases written by black judges should on average be similar to appeals panels hearing cases written by white judges (that is, potentially biased judges cannot request to hear cases decided by lower-court black judges). I present results that suggest that the randomization is working below. I also control for issue area and other case attributes in the case-level analysis; the substantive results are unaffected.

5 Race as a Predictor of Reversals

I now turn to the key question: whether black judges are overturned more or less than their white colleagues. I do this analysis twice, once looking at the new data on judges' overall reversal rates and again looking at case-level data from [Kuersten and Haire \(2011\)](#). When examining the judges' reversal rates, which include all published and unpublished cases appealed 2000-July 2012, an important consideration is that the number of cases a judge hears varies by jurisdiction and length of service. For example, a judge retiring in 2001 will have fewer cases included versus a judge serving the entirety of 2000-2012. An ordinary least squares specification with the reversal rate as the outcome would therefore violate basic OLS assumptions: the variance of the outcome would clearly vary according to whether the judge had 1 case appealed or 180. For the reversal data, I therefore take a weighted least squares (WLS) approach by weighing each judge by the square root of the number of cases he or she had appealed ([Lewis and Linzer, 2005](#)). This is similar to what has been done in other studies of reversal (e.g., [Epstein, Landes and Posner, 2013](#)).

For the analyses looking at the case-level [Kuersten and Haire \(2011\)](#) data, I use a logit

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specification, with the outcome variable being whether a case was reversed (1) or upheld (0). Here, I also include judge-specific random effects to account for the fact that one judge might hear multiple cases (and observations are therefore not independent). In both, to guard against the possibility that the results could be model dependent, I fit a variety of models, including dummies for appointing President, the District Court where the judge sits, the Circuit hearing the appeal, and several demographic characteristics. In addition, to guard that the results are not being driven by secular changes in reversal rates, I include year and year-squared controls. Finally, I present results that rely on matching observations (Boyd, Epstein and Martin, 2010; Ho et al., 2007), which assures that the results are not driven by a lack of common support in the data. Because these are largely consistent with parametric results, these are presented in the Appendix.

Tables 4 (judge-level reversal rates) and 5 (case-by-case reversals) present the core results. Focusing on Table 4, the effect for black district judge is always positive and statistically significant, ranging in magnitude from 2% to 3%. Substantively this means that black judges have a reversal rate that is between 2 and 3 percentage points higher than that of whites. This difference persists after taking into account structural characteristics that could explain discrepancies in reversal rates, such as black and white judges being appointed by different Presidents (Table 4 Models 2–7), living in different jurisdictions (Models 3–7), being of different ages on confirmation (Models 5–7),⁶ and having in their ranks different proportions of men and women (Model 5 and, showing that an interaction between race and gender is insignificant, in Models 6 and 7). I also test whether the effect increases significantly when the appeals court is located in the South, by including dummy variables for the Richmond-based 4th Circuit, the New Orleans-based 5th Circuit, and the Atlanta-based 11th Circuit. I find no significant difference in the effect across Southern and non-Southern jurisdictions (Models 8). I also include controls for confirmation year (Models 5–7), which addresses the

⁶Age in these analyses is included as a normalized term.

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	Judge-level Reversal Rates (Continuous 0 to 1)						
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7
Black District Judge	0.03*** (0.01)	0.03*** (0.01)	0.03*** (0.01)	0.02*** (0.01)	0.02*** (0.01)	0.02*** (0.01)	0.02* (0.01)
Female District Judge					0.001 (0.01)	0.0002 (0.01)	0.0001 (0.01)
Age					0.01*** (0.003)	0.01*** (0.003)	0.01*** (0.003)
Commission Year					0.01 (0.28)	0.01 (0.28)	−0.01 (0.29)
Commission Year ²					−0.0000 (0.0001)	−0.0000 (0.0001)	0.0000 (0.0001)
Female * Black District Judge						0.002 (0.02)	0.01 (0.02)
South							0.003 (0.01)
South * Black District Judge							0.02 (0.02)
Constant	0.31*** (0.003)	0.32*** (0.02)	0.31*** (0.02)	0.48*** (0.02)	−8.75 (283.40)	−9.99 (283.71)	13.60 (284.43)
President Dummies		✓	✓	✓	✓	✓	✓
Circuit Dummies			✓				
District Dummies				✓	✓	✓	✓
N	1054	1054	1054	1054	1054	1054	1054
Adj. R-squared	0.01	0.01	0.31	0.48	0.49	0.49	0.49

***p < .01; **p < .05; *p < .1

Table 4: Weighted OLS regression results, U.S. District Court judges' reversal rates (continuous between 0 and 1) for cases decided between 2000-2012.

concern that the race effect might be picking up secular trends in reversal rates.

The key results are substantiated by even stronger findings based on the case-level data, which are presented in Table 5. (Again, these are only respective to a random subset of published cases, which could be a biased subsample of all cases.) Cases written by black lower-court judges are more likely to be reversed on appeal, and the effect is robust to the inclusion of district-level dummies and dummy variables for the appointing President.⁷ In terms of predicted probabilities, Table 5 actually suggests even stronger effects: a case written by a black judge on average may have an approximately 10 percentage point greater

⁷The results are also robust to the inclusion of age and gender and, in results not shown here, to the inclusion of the number of years on the bench (experience) the judge had before hearing the case in question.

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chance of being reversed than a case written by a white judge (depending on the model). In addition, I compare whether the effect is an artifact of the time period in question by examining the spread of data available from Songer et al, dating back to the era when the first black judge was nominated in 1961 (Model 5). The effect appears regardless of whether we examine only cases from 1996 moving forward *or* going back to 1960. In addition, an interaction between race of lower court judge and time period in question (for example, pre- or post-1996) is not significant (not shown), suggesting that we cannot rule out that the effect has either strengthened or attenuated.

These are substantively meaningful differences: considering that the average black district judge has approximately 196 cases appealed in a 12-year period, this 10 percentage-point gap results in a difference between black and white judges of approximately 2,800 cases. That is, if blacks were reversed at whites' comparably lower rates, approximately 2,800 black-authored cases would have been upheld over the period from 2000 to 2012, instead of having been reversed. (Contrariwise, if whites were reversed at blacks' higher rates, approximately 7,500 white-authored cases would have been reversed on appeal instead of having been upheld.) At the individual level, these results mean that each African American judge on average had approximately 20 additional cases (out of an average of 196 cases appealed) reversed than if he or she had been white.

Three points are worth further mention. First, I note that the substantive interpretations do not change depending on whether we include District Court dummies (Table 4, Models 4–7) or Circuit dummies (Table 4, Model 3). However, the explanatory power from the model increases swiftly when we include any kind of control for district. (Table 4's overall R^2 moves from around 0.01 to around 0.5, Models 4–6.) I move forward in most of the remaining analyses by including dummy variables for district. This has the additional benefits of (1) controlling for fluctuations in case dockets among districts (e.g., the Southern District of California versus the District for Alaska), and also of (2) allowing the assumption that cases

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	Case-level Reversal (0 or 1)				
	Model 1	Model 2	Model 3	Model 4	Model 5
Black District Judge	0.49*** (0.18)	0.40** (0.19)	0.49** (0.21)	0.51** (0.21)	0.24** (0.11)
Female District Judge				0.22 (0.18)	0.17* (0.11)
Age				−0.01 (0.07)	0.05* (0.03)
Case Year				−43.15 (67.93)	3.28** (1.42)
Case Year ²				0.01 (0.02)	−0.001** (0.0004)
Constant	−1.15*** (0.06)	−1.06*** (0.13)	−0.82*** (0.28)	43099.92 (67892.18)	−3243.15** (1414.47)
Judge-Specific Random Effects	✓	✓	✓	✓	✓
President Dummies		✓	✓	✓	✓
District Court Dummies			✓	✓	✓
N	1718	1718	1718	1718	7279
Log Likelihood	−962.47	−958.94	−899.77	−898.28	−4233.36

***p < .01; **p < .05; *p < .1

Table 5: Logit regression regression results, case-by-case basis. Outcome variable is whether case reversed (1) or upheld (0). Data are randomly selected subset of published cases (from Songer et al), 1996-2002 (Models 1–4) and 1960–2002 (Model 5). Judge random effects included.

are randomly assigned to be made more safely (as cases are usually assigned randomly, but only within district). Second, the results are significant regardless of whether we look at overall reversal rates (Table 4) or randomly selected case-level data (on published cases, Table 5). In the analyses that follow, I primarily use the overall reversal rates, using the case-level data to analyze instances when the composition of the appeals panel is thought to play a salient role. I do so because the overall reversal rate data is both more conservative and, more importantly, because it includes the universe of appealed cases, not just a random subset of published cases. Lastly, these core results are consistent with additional matching analyses, which are presented in the Appendix.

These results provide support for the first hypothesis that black judges will be more likely to be overturned on appeal. I turn now to exploring possible reasons behind this difference,

beginning with the theory that appeals courts are hearing cases that vary in number and type according to the race of the lower-court judge.

6 Mechanism 1: Differences in Cases Appealed

The first explanation I consider is that cases authored by black lower-court judges will be more likely to be appealed, perhaps as a result of differences in black-white voting, or from some kind of bias against black judges by legal practitioners (as suggested by the state-courts literature, e.g., [Gill, Lazos and Waters \(2011\)](#)). Although I control for the number of cases appealed (via weighting in Table 4), it is possible that a persistent difference in both the number and the type of cases appealed could be skewing the results. That is, having more cases appealed from black judges may mean that more of them will be reversed; likewise, if more civil rights cases are appealed from black judges, and if civil rights cases are more likely to be reversed, this would create the impression of race-based reversal when none in fact exists.

I first examine the number of cases appealed and whether they vary by race of lower-court judge. For these analyses, the outcome variable is the number of cases each district judge had appealed 2000-2012.⁸ To take into account the fact that some judges produce more or fewer authored opinions, I also include the number of opinions each judge produced during this time period as a control variable (Table 6, Models 2–5). Further, to take into account that norms about appeal vary across jurisdictions, I also include specifications that include dummy variables for jurisdiction in Models 3–5 (in the form of district, although dummy variables for appeals court result in identical inferences).

Surprisingly, Table 6 shows that we cannot rule out that there is no difference between

⁸I note that these figures do not take into account the number of type of cases a judge had settled. As some scholarship has shown (e.g., [Boyd, 2013](#)), this could vary according to the identity of the lower-court judge. This does have the potential to bias the results, although I do not see evidence of it here.

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	Number of Cases Appealed				
	Model 1	Model 2	Model 3	Model 4	Model 5
Black District Judge	8.25 (16.49)	9.58 (15.26)	9.05 (12.98)	10.08 (11.36)	-5.29 (10.96)
Total Number Heard		0.12*** (0.01)	0.14*** (0.01)	0.10*** (0.01)	0.09*** (0.01)
Female District Judge					-11.77 (8.97)
Age					-24.43*** (3.67)
Commission Year					2503.98*** (368.88)
Commission Year ²					-0.63*** (0.09)
Constant	188.05*** (5.30)	125.09*** (6.81)	122.09*** (23.95)	20.51 (23.95)	-2491447.00*** (367739.40)
District Court Dummies			✓	✓	✓
President Dummies				✓	✓
N	1054	1054	1054	1054	1054
R-squared	0.0002	0.14	0.47	0.62	0.65
Adj. R-squared	-0.001	0.14	0.42	0.58	0.61

***p < .01; **p < .05; *p < .1

Table 6: OLS regression results. Outcome variable is total number of cases appealed from each judge (between 2000 and 2012).

black and white judges in terms of rates of appeal: under all model specifications, the substantive difference between black and whites is negligible and never statistically significant. There are two further items of note. First, as would be expected, the total number of cases each judge produces is itself predictive of the number of cases appealed – that is, judges who write more opinions have more of them appealed. Second, what explanatory power we have in the model comes not from the race of the lower-court judge, but from the addition of dummies for the district court (Models 3, 4, and 5), the inclusion of which causes the R^2 value to increase substantially. For purposes of this inquiry, the analysis is unable to rule out that there is no relationship between the race of the lower-court judge and rates of appeal.

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Circuit	p -value	Significant?
DC	0.18	No
1st	0.21	No
2nd	0.10	No
3rd	0.99	No
4th	0.19	No
5th	0.15	No
6th	0.59	No
7th	0.43	No
8th	0.68	No
9th	0.13	No
10th	0.71	No
11th	0.12	No

Table 7: Fisher’s exact tests of difference between black and white judges’ cases across legal issue area, using cases from [Kuersten and Haire \(2011\)](#).

However, the other concern is perhaps that the number of cases might not vary, but the *kind* of case does. Here, the particular concern that black judges’ rulings on racially salient judges may be more (or less) likely to be appealed. To address this issue, I supplement Table 6 by using data from [Kuersten and Haire \(2011\)](#) to analyze whether case dockets involving published appeals vary within circuit according to the race of the lower court judge. Specifically, I use a Fisher’s exact test to test for a relationship between district judge race and the issue areas coded by the [Kuersten and Haire \(2011\)](#) data, conditional on the 12 federal appeals circuits. The Fisher’s exact test operates by comparing the observed contingency table (here, for each circuit) to all possible contingency tables with the same marginal counts. It is useful in this case because it does not rely on large sample approximations, and many circuits had few cases in specific issue areas.

The categories I test are the seven issue areas coded by [Kuersten and Haire \(2011\)](#): criminal, civil rights, First Amendment, due process, privacy, labor relations, economic activity, and miscellaneous (and also a “not ascertained” category). The results, by jurisdiction, are presented in Table 7. Across all of the jurisdictions, I cannot reject the null hypothesis

that there is no relationship between lower-court judge race and the type of case heard on appeal. Taken together, this leads me to reject the second explanation. There is no support that attorneys either (1) appeal from opinions written by black judges at higher rates, or (2) choose to appeal different kinds of cases depending on the race of the lower-court judge. Thus, to the extent that black judges are more likely to be reversed on appeal, it is unlikely to be due to the number and nature of the kinds of cases being appealed.

7 Mechanism 2: Possible Differences in “Quality”

The FJC data show that black and white judges differ on average in terms of some previous employment, qualification scores, and law schools attended (Tables 1 and 3). For example, fewer black judges have private practice experience compared to white judges (76% compared to 94%), while more have state judge experience (55% compared to 38%). Black judges are also less likely to receive higher qualification ratings from the American Bar Association; 41% of them receive a high “Well Qualified” rating compared to 56% of white judges. (Discrepancies in qualification ratings are explored in [Lott \(2001\)](#) and [Sen \(2014a\)](#), with [Smelcer, Steigerwalt and Jr \(2011\)](#) providing evidence to the contrary.) However, there is disagreement in the literature on whether objective criteria can ever determine what makes a “good” judge, whether such criteria are useful predictors of reversal, and whether some factors (e.g., public defender experience) could cut both ways. Nonetheless, addressing these issues is essential to possibly understanding why reversal rates for black and white judges differ, and I do so by including both objective measures of experience and education and also subjective measures such as ABA ratings.

As in Table 4, the outcome variable for this analysis is the judge’s reversal rate from 2000–2012, across all cases (published and unpublished). I again include dummy variables for the (1) identity of the appointing President and (2) district court. The results are displayed

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in Table 8. In Model 1, I include the ABA ratings as dummy variables. In Model 2, I include various educational variables – including rank cohort of law school attended. (The excluded category is attending a Top 14 (“T14”) law school, considered the elite group; a large number of judges attended one of these schools, particularly Harvard (121 judges) and Yale Law Schools (54 judges).) Model 3 includes professional experience, such as whether the judge had been in private practice or was a law clerk. Model 4 includes whether the judge had served in a judicial capacity before, perhaps as a federal magistrate or state judge (either state supreme or state lower court judge), and Model 5 includes additional controls for commission year.

Despite the inclusion of both the subjective and objective criteria, the inferences do not change: black district judges are still more likely to be overturned on appeal than are white judges – with an increase in their reversal rate of approximately two percentage points. Perhaps surprising is the fact that relatively few of the educational measures and professional experiences predict reversal: there are few differences between those who went to high-ranked law schools and those who didn’t, those who were U.S. attorneys and those who weren’t, etc. The only exception, perhaps, are former state judges (who are more likely to be reversed) and former law clerks (slightly less). The models are by observational standards fairly predictive, with R^2 values close to 0.50. However (as before), most of the explanatory power comes not from the professional or educational variables, but rather from the dummy variables for appointing President and for jurisdiction (Model 1).

Although the gap between black and white judges does not attenuate with the inclusion of these professional and educational characteristics, we must consider whether other unmeasurable or qualitative traits are driving the results. Here, some literature suggests that even black graduates of high-performing law schools do not perform at the level of their white peers (Sander (2004); but see Ho (2005) for a rebuttal). For this analysis, some traits that are not captured in the FJC data are LSAT score, law review membership, law school

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Judge-level Reversal Rates (Continuous 0 to 1)					
	Model 1	Model 2	Model 3	Model 4	Model 5
Black District Judge	0.02*** (0.01)	0.02*** (0.01)	0.02*** (0.01)	0.02** (0.01)	0.02** (0.01)
Female District Judge	0.001 (0.01)	0.002 (0.01)	0.003 (0.01)	0.002 (0.01)	0.001 (0.01)
Age	0.01*** (0.003)	0.01*** (0.003)	0.01*** (0.003)	0.01*** (0.003)	0.01*** (0.003)
Law School Ranked 15-25		0.01 (0.01)	0.005 (0.01)	0.005 (0.01)	0.003 (0.01)
Law School Ranked 26-50		0.001 (0.01)	0.0000 (0.01)	-0.0005 (0.01)	0.0003 (0.01)
Law School Ranked 51-75		0.02 (0.01)	0.01 (0.01)	0.01 (0.01)	0.01 (0.01)
Law School Ranked 76-100		-0.01 (0.01)	-0.02* (0.01)	-0.02* (0.01)	-0.02* (0.01)
Law School Ranked 101+		0.0003 (0.01)	-0.0000 (0.01)	-0.001 (0.01)	-0.001 (0.01)
Law Clerk		-0.01** (0.01)	-0.01* (0.01)	-0.01* (0.01)	-0.01 (0.01)
Law Professor			-0.003 (0.01)	-0.002 (0.01)	-0.004 (0.01)
Private Practice			0.01 (0.01)	0.01 (0.01)	0.01 (0.01)
U.S. Attorney			-0.01 (0.01)	-0.01 (0.01)	-0.01 (0.01)
Assistant U.S. Attorney			0.0001 (0.01)	0.001 (0.01)	0.001 (0.01)
Justice Department			-0.02 (0.01)	-0.02 (0.01)	-0.02 (0.01)
Public Defender			0.02* (0.01)	0.02* (0.01)	0.02* (0.01)
Federal Magistrate				0.01 (0.01)	0.01 (0.01)
Federal Bankruptcy Judge				0.01 (0.02)	0.01 (0.02)
State Judge				0.01** (0.01)	0.01** (0.01)
Commission Year					0.02 (0.28)
Commission Year ²					-0.0000 (0.0001)
Constant	0.53*** (0.04)	0.54*** (0.04)	0.54*** (0.04)	0.53*** (0.04)	-16.27 (284.03)
ABA Ratings Dummies	✓	✓	✓	✓	✓
President Dummies	✓	✓	✓	✓	✓
District Court Dummies	✓	✓	✓	✓	✓
N	1054	1054	1054	1054	1054
R-squared	0.54	0.54	0.55	0.55	0.55
Adj. R-squared	0.48	0.49	0.49	0.49	0.49

***p < .01; **p < .05; *p < .1

Table 8: Weighted OLS regression results, U.S. District Court judges' reversal rates (continuous between 0 and 1) for cases decided between 2000-2012.

rank, Order of the Coif, bar passage, or writing ability. I do not address this debate on black achievement specifically, but there are several reasons why this is less of a concern

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with this analysis. The first is that the results obtained via matching are not only consistent but actually fairly robust to potential omitted variable bias (with these tests presented in the Appendix). The second is that few of the prestige-oriented variables that are included in the federal data are actually predictive at all of reversal rates: being a U.S. Attorney, graduating from a top law school, or even having served as a full-time law professor or dean do little to predict judges' reversal rates. Being a law clerk is only fleetingly so, and its effect is quite minuscule compared to the variance explained by simply conditioning on jurisdiction (or even compared to the effect of a lower-court judge being black). An appropriate supposition is that including similar prestige-oriented variables (e.g., law review membership) would result in similar non-significance.

Third, although I do not have access to data like class rank or bar passage (which are not made public by the FJC), I do condition on attributes clearly predicated on those marks of success: few advance to legal clerkships, law professorships, or U.S. Attorney positions without having achieved some combination of high class rank (GPA), law review membership, and bar passage. Presumably controlling for these professional experiences also controls to some extent for these unrecorded traits. Lastly, I also condition on ABA ratings – which purport specifically to assess a judicial nominee's "professional competence," a qualitative assessment based on quality of legal reasoning, class rank, law review membership, and bar passage. Thus, these are characteristics that would likely be reflected via a candidate's ABA rating, and the results are robust to the inclusion of this variable. Taken together, this leads me to reject this possible mechanism as an exclusive explanation behind the findings.

8 Mechanism 3: More Liberal Voting

The results suggest that the racial gap persists despite controlling for differences in backgrounds – including both objective experiences and subjective qualification ratings. Perhaps

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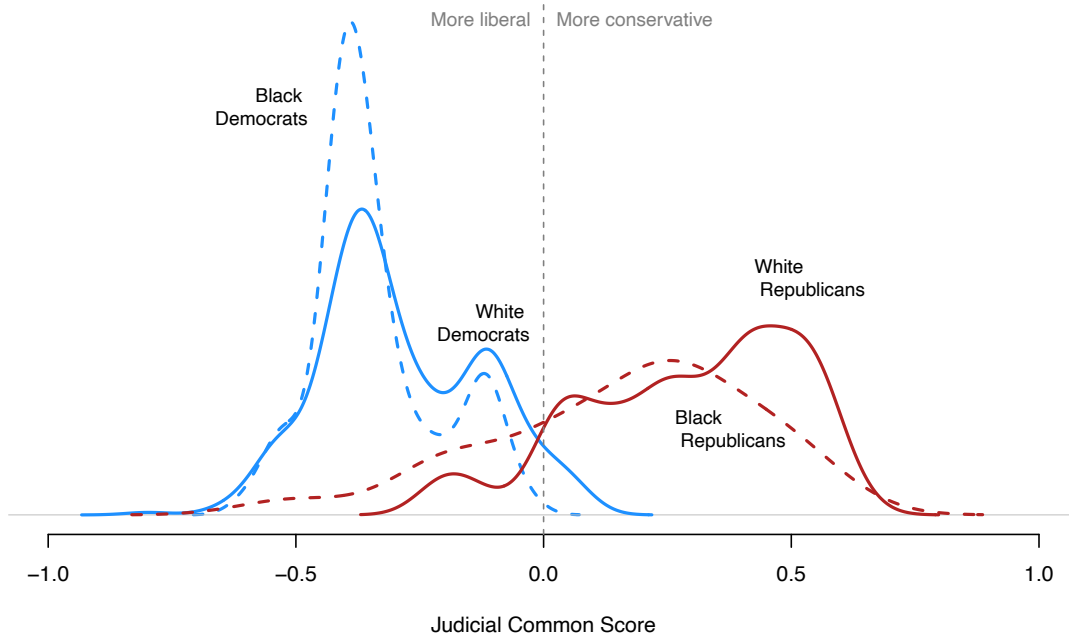


Figure 3: Judicial common space scores of black and white district judges, by race and party

a more likely possibility is that black judges are more liberal across the board than are comparable white judges, even among those appointed by the same President. For example, some literature suggests that Presidents who appoint minorities take the opportunity to appoint more ideologically driven individuals than they would otherwise ([Asmussen, 2011](#)). For African Americans, this would bring to the bench more left-leaning (or right-leaning in the case of Republican presidents) black candidates, who would then be overruled more by moderate appeals panels across all kinds of legal issue areas. I note some evidence of this in Figure 3, which shows the judicial common space scores of black and white judges by party ([Boyd, 2011](#)). Black judges have more left-leaning judicial common space scores, which in turn raises the possibility that they write opinions that are more liberal and hence reversed at higher rates by more centrists appeals panels. Again, this could be the case despite appointment by the same President.

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	Judge-level Reversal Rates (Continuous 0 to 1)			
	Model 1	Model 2	Democrats Only	Republicans Only
Black District Judge	0.02** (0.01)	0.02* (0.01)	0.03** (0.01)	0.01 (0.01)
Republican District Judge	-0.07* (0.04)			
Judicial Common Space Score (JCS)		-0.01 (0.02)		
Republican * Black District Judge	-0.01 (0.02)			
JCS * Black District Judge		-0.01 (0.03)		
Commission Year	0.02 (0.29)	0.38 (0.80)	-0.14 (0.93)	0.29 (0.29)
Commission Year ²	-0.0000 (0.0001)	-0.0001 (0.0002)	0.0000 (0.0002)	-0.0001 (0.0001)
Constant	-19.28 (284.31)	-378.25 (791.23)	140.33 (923.12)	-282.28 (293.49)
ABA Ratings Dummies	✓	✓	✓	✓
President Dummies	✓	✓	✓	✓
District Court Dummies	✓	✓	✓	✓
Educational Controls	✓	✓	✓	✓
Professional Controls	✓	✓	✓	✓
N	1054	648	457	597
Adj. R-squared	0.49	0.50	0.40	0.57

***p < .01; **p < .05; *p < .1

Table 9: Weighted OLS regression results, U.S. District Court judges' reversal rates (continuous between 0 and 1) for cases appealed between 2000-2012.

Testing district judge ideology directly. To more closely analyze the role of lower-court ideology (or at least as directly as possible, given current ideological measures), Table 9 explores reversal rates with four model specifications: (1) district judge party and race interacted, (2) district judge judicial common space score and race interacted,⁹ and separately for (3) district judges appointed by a Democrat, and for (4) district judges appointed by a Republican.

To be clear, the possibility exists that minority judges appointed by the same President are still more liberal. However, the analysis does not rule out that there are no differences

⁹Note that there are many judges for whom current JCS scores are not available; thus, the sample size decreases markedly between Model 1 and Model 1.

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between Democrat and Republican appointments in terms of reversals among black judges (Model 1); an interaction between race of district judge and party of appointing President is not significant under any model specifications. In addition, the judicial common space score interacted with the race of the lower-court judge is also not significant (Model 2).¹⁰ However, what Table 9 does suggest is that the effect appears driven by Democratic appointed judges. Among Democratic appointed judges, the reversal rate increases by approximately 3 percentage points for black judges compared to whites, and this difference is statistically significant; the effect is robust to the inclusion for the variables associated with prior experience and also to the inclusion of dummy variables for appointing President and district court. Among Republican judges, however, the effect is close to 1 percentage point and never significant. Neither is the gap driven by systematic differences between black Democrats and Republicans, for example in terms of their previous professional experience: the models all include controls for professional experience and ABA ratings and, as Table 3 demonstrates, black Democrats and black Republicans do not differ in ways that would suggest that black Republicans are somehow stronger or more experienced judicial candidates. (If anything, a higher share of black Democrats attended elite “T14” law schools and served as law clerks.)

Testing relationship to appeals panel ideology. These results are consistent with the theory that black judges are simply more liberal than other judges – that is, compared to white Democrats, African American judges are more liberal and therefore more likely to be reversed. (The results are actually not consistent with a parallel story, one in which black Democrats are more liberal, and black Republicans more conservative – i.e., minority candidates are more “extreme.” If this story was true, then we would see the effect regardless of party, and not for Democrats only.) Unfortunately, existing measures of lower-court

¹⁰This is not surprising, as judicial common space scores capture either the ideology of the appointing President or the senior home-state Senator (or some combination of the two home-state Senators), depending on the partisan alignment (Boyd, 2011). The lack of precision in estimating lower-court ideology is an issue not just for the present study, but for others trying to control for lower judges’ beliefs.

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	Case-level Reversal					
	All Judges			Democrats Only		
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Black District Judge	1.23*** (0.36)	1.24*** (0.47)	0.27 (0.34)	1.62*** (0.49)	1.53** (0.63)	0.39 (0.42)
Meal Panel Ideology (Conservative)	-0.14 (0.40)			0.35 (0.71)		
Republican Panel		-0.11 (0.22)			-0.17 (0.41)	
Conservative Decision			-1.58*** (0.14)			-1.40*** (0.25)
Black District Judge * Mean Ideology	-0.44 (1.00)			-1.06 (1.25)		
Black District Judge * Republican Panel		-0.11 (0.56)			-0.17 (0.74)	
Black District Judge * Conservative Decision			0.64 (0.43)			0.76 (0.54)
Case Year	72.14 (118.92)	-11.98 (101.13)	-16.00 (72.89)	-106.84 (195.26)	-86.33 (168.87)	-49.80 (122.79)
Case Year Squared	-0.02 (0.03)	0.003 (0.03)	0.004 (0.02)	0.03 (0.05)	0.02 (0.04)	0.01 (0.03)
Constant	-72097.20 (118853.30)	11938.10 (101069.60)	15992.03 (72848.71)	106853.50 (195157.30)	86370.12 (168782.70)	49848.34 (122726.10)
District Court Dummies	✓	✓	✓	✓	✓	✓
President Dummies	✓	✓	✓	✓	✓	✓
N	669	934	1639	272	368	627
Log Likelihood	-304.26	-425.33	-786.84	-124.58	-163.33	-302.24

***p < .01; **p < .05; *p < .1

Table 10: Logit regression regression results, case-by-case basis. Outcome variable is whether case reversed (1) or upheld (0). Data are randomly selected subset of published cases (Songer et al), 1996-2002. Judge random effects included.

ideology do not allows us to rule out this possibility conclusively.

I therefore turn to some indirect tests. Specifically, I examine the appeals case-level data from [Kuersten and Haire \(2011\)](#) analyzed in Table 5. If the effect is driven by black lower-court judges being more liberal than whites, then we would expect that (1) not only would black Democrats be more likely than white Democrats to be reversed (as we see in Table 8), but also that (2) the difference between black and white judges in terms of reversal rates increases when black judges' opinions are reviewed by conservative 3-judge appeals panels. That is, the gap between black and white judges should grow with more conservative reviewing courts, even conditional on a Democratic lower-court judge.

I check this by examining the interaction between the race of the lower court judge and the composition of the appeals panel. I conduct three analyses, interacting the race of the

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lower court judge (black or white) with (1) the mean JCS score of the appeals panel, (2) whether the appeals panel had two or more Republican appointments (e.g., was a Republican majority), and (3) whether the appeals panel’s decision was coded by Songer et al as having ruled in a conservative direction. I include both all lower-court judges (Models 1–3) and also, for ease of interpretation, Democrats only (Models 4–6). All of the models further include dummies for the district court and for the appointing president, in addition to controls for case year. If black judges’ (or black Democrats’) more liberal voting is driving their increased reversal, then we would expect a positive relationship in the interaction terms. That is, if black judges are voting in a more liberal direction compared to their white counterparts, then Republican appeals panels (or panels ruling in a more conservative direction) would be more likely to be reversing them.

However, as Table 10 demonstrates, the interactions of the black judges’ variable and the median ideology, partisanship, and directionality of appeals panel ruling are never significant, even when we restrict the sample to those for whom the effects are the strongest (black and white Democrats, Models 4–6); that is, we cannot rule out that the “black judges” effect does not vary according to the ideology or partisanship of the appeals panel (Models 2 and 5), or even according to how the appeals panel rules on cases (Models 3 and 6). If anything, the negative coefficients on some of the interaction terms (for example in Models 1, 2, 4, and 5) suggest that the effect *decreases* with when the 3-judge panel becomes more conservative. The explanation behind this is unclear, and none of the interactions is significant. However, it does provide additional evidence against the theory that the fact that black judges’ increased reversal is being driven by these black judges being more liberal across the board: we cannot rule out that the increased reversal of black judges does not vary according to the composition or ruling of the appeals panel.

9 Mechanism 4: Voting on Certain Issues

A remaining possibility is that black judges vote differently than white judges, but that they do so only with regard to cases having a significant racial, ethnic, or civil rights dimension. This could include substantive issue areas involving affirmative action and civil rights (Kastellec, 2013; Cox and Miles, 2008) or, possibly criminal cases involving race-based defenses by black defendants. We may expect black judges to be overruled most frequently in these areas, where their views might differ the most from whites. Or, we may expect that black judges may be upheld more in these areas, with appeals judges being deferential to black judges on racially sensitive cases. Either scenario predicts that the “black judges effect” would vary significantly between possibly racially-salient areas (e.g., civil rights law) and others.

To test this possibility, I include in the case-level analyses a dummy variable for civil rights-related cases, as coded by Kuersten and Haire (2011), interacting it with the race of the lower court judge (Table 11). (In models not shown, I also control for all seven of Kuersten and Haire et al’s issue areas; the inferences are not affected.) For the “issue area” explanation to hold sway, the racial gap should differ across the areas identified by the judicial politics literature as being particularly racially salient; that is, we would see a significant relationship in the interaction of black lower-court authorship and civil rights issues. The results show, however, that the effect of black authorship on a case’s probability of being upheld actually varies little by civil rights issue area: there is no difference in blacks’ reversal rates across civil rights cases and non-civil rights cases (Table 11, Model 2). Thus, the data provide no evidence for the proposition that black judges are being overturned at greater or lesser rates (compared to white judges) within different legal categorizations.

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	Case-level Reversal (0 or 1)				
	Model 1	Model 2	Model 3	Model 4	Model 5
Black District Judge	0.50** (0.21)	0.51** (0.23)	1.18*** (0.29)	1.15*** (0.33)	1.29*** (0.30)
Civil Rights Case	−0.27* (0.16)	−0.27 (0.18)			
Black District Judge * Civil Rights Case		−0.06 (0.47)			
1 Black on Panel			−0.39 (0.28)	−0.53* (0.31)	
2 Blacks on Panel			−0.09 (0.72)	0.87 (0.78)	
Majority Black Panel					1.03 (0.77)
Black District Judge * 1 Black on Panel				0.80 (0.70)	
Black District Judge * 2 Blacks on Panel				−20.11 (4554.49)	
Black District Judge * Majority Black Panel					−20.25 (4575.08)
Case Year	−40.23 (67.93)	−39.77 (67.97)	−5.64 (101.12)	−3.30 (101.77)	
Case Year ²	0.01 (0.02)	0.01 (0.02)	0.001 (0.03)	0.001 (0.03)	
Constant	40182.47 (67899.46)	39720.22 (67935.23)	5595.49 (101065.00)	3250.84 (101711.60)	−0.93** (0.38)
District Court Dummies	✓	✓	✓	✓	✓
President Dummies	✓	✓	✓	✓	✓
N	1717	1717	934	934	934
Log Likelihood	−897.47	−897.46	−424.52	−420.53	−422.56

***p < .01; **p < .05; *p < .1

Table 11: Logit regression regression results, case-by-case basis. Outcome variable is whether case reversed (1) or upheld (0). Data are randomly selected subset of published cases (Songer et al), 1996-2002. Judge random effects included.

10 Mechanism 5: Race as Signal

An explanation that must be considered is that appeals panels somehow implicitly rely on the race of the lower-court judge in reaching decisions. On the one hand, this explanation has the deepest and most troubling normative implication and challenges the fairness and race neutrality of the judiciary. On the other, such a finding would perhaps be unsurprising, as studies have teased out implicit biases against racial minorities in prominent economic,

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social, and political settings.

Here, I consider one possible manifestation – whether having a black presence on an appeals panel attenuates the effect. This could happen as white judges become more sensitive to any possible discriminatory tendencies, or as black judges raise possible concerns about bias. (On this point, [Kastellec \(2013\)](#) provides evidence that having a black judge on an appeals panel will change the way that the panel votes on affirmative action issues.) To test this theory, I evaluated how the racial gap varies across different racial appeals panel compositions – zero, one, or two black judges on the three-judge higher-court panels.¹¹ As before, I use mixed-effect logit model, with an interaction between race of the lower-court judge and the number of black circuit judges hearing the appeal (Model 4). I also include an interaction between race of lower-court judge and whether African Americans constituted a majority of the panel (two or more, Model 6). No cases in the data were heard by an all-black 3-judge panel.

Results from these analyses are presented in Table [11](#), Models 4–6. Because of the low numbers of black judges on appeals courts, and because of the fact that these judges very rarely sit together, it is impossible to distinguish how the effect varies across panels involving zero, one, or two black judges on the appeals (Models 4 and 5). Although the black judges’ effect appears to attenuate when black judges constitute a majority on the appeals panel, the interaction is not at all significant. I also note that this analysis doesn’t rule out the possibility that black appeals judges are more liberal than white judges, an implication that would also explain these patterns on more ideological grounds.

¹¹Note that there are very few cases involving two or more African Americans on the same appeals panel. For example, in the Songer et al data for cases decided between 1960 and 2002, 88% had no black judges on the 3-judge appeals panel, 11% had one black judge, and just under 1% had two.

11 Conclusion

The results show that discrepancies exist in how appeals courts review cases, with black judges being up to ten percentage points more likely to be reversed than whites. This racial gap is robust and persists once we control for possible proxies for judicial “qualifications” – e.g., quality of legal education, age, professional experience, and American Bar Association ratings. Controls for the partisanship of the lower-court judge, as well as for the partisanship and racial composition of the reviewing appeals panel do not affect the results. The discrepancy in reversal rates between black and white judge does not appear to vary across issue area and across jurisdictions. And this gap translates into meaningful legal outcomes. Close to 3,000 federal court cases would still be on the books if black judges were overturned at whites’ lower rates. At the individual level, African American judges on average have up to 20 additional cases reversed than do similar white judges, out of an average of 196 cases appealed.

The reasons behind this persistent difference are not straightforward. Although having blacks on the reviewing panel appears to attenuate the effect, there are too few black appeals court judges to make meaningful inferences. The difference appears not to be driven by black judges voting differently on certain cases. At best, we have suggestive evidence that black judges are more liberal than otherwise similar whites, but the fact that we can’t rule out that black judges’ increased reversal does not vary across conservative and liberal appeals panels casts doubt on this being the sole explanation. A more likely explanation is that this discrepancy is driven by a variety of factors – perhaps due to black judges being more liberal in ways unmeasured by extant ideology measures (accompanied or perhaps buttressed by the perception of black judges being more liberal ([Scherer and Curry, 2010](#))), but also perhaps due to implicit biases by higher courts (perhaps based on the perception that black judges are less qualified). On this point, better measures of lower-court judicial ideology –

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including possible text-based measures – would go far adjudicating between an ideologically based explanation and other possible mechanisms. This presents a clear path for future research.

A point worth emphasizing is that the gap between black and white judges attenuates at times, but never fully disappears. The implications for this particular gap are striking, regardless of the reason. Since John F. Kennedy, American Presidents have actively sought to appoint judges of color – not just African Americans, but also Hispanics, and Asian Americans – to the nation’s highest courts. At the state and international level, too, efforts are underway to increase the proportion of judges from under-represented communities. The racial gap demonstrated here, however, calls into question whether the mere appointment of these individuals is enough. After all, if certain judges are being systematically overturned more often, then this raises questions about their long-term impact on the law, legal precedent, and the legal system.

The results presented in this paper actually represent the tip of the iceberg in exploring the components of judicial evaluation and its relationship to descriptive representation – a topic previously unexplored in the judicial politics literature. I touched upon just one singular ascriptive characteristic: the race (black or not) of lower court judges. Whether a judge is African American is, however, just one facet of judicial identity, and we may think that the similar effects may exist for other racial or ethnic groups (Asian Americans, Hispanics), religious groups (Jews, Catholics), and genders – not to mention multiple combinations of these identities. In addition, if we think that heuristics or personal familiarity may play a role in how appeals panels reach decisions, then maybe we would find different rates of overturning between judges who attended the same law school or are otherwise knowledgeable or friendly – that is, that a personal connection strengthens a bond that makes reversal less likely. Further research should help clarify the extent to which these and other attributes might play a role in appellate review.

In addition, this is a study that relies on a quantitative analysis of aggregated data. Still remaining is a closer, qualitative look at the opinions authored by both black and white lower-court and appeals judges. Do black judges use different legal reasoning or articulate legal principles in a different way? Do black judges rely on particular arguments in defining their opinions? Does the language used by appeals panels differ according to the identity of the legal actors involved? The analyses presented here suggest that there could be something qualitatively different about those opinions written by black judges, as well as some qualitative differences in how appeals panels review cases decided by black judges. Given the results of this analysis, a qualitative examination into these issues would further shed light into why black judges are more likely to be overruled, and why this racial gap is so persistent.

12 Appendix: Matching Analyses

Because black and white judges differ in their age, previous employment, partisanship, and geographic dispersion, and because different cases arise in different jurisdictions, simple comparisons may mask a lack of overlap in the data. To account for differences, I present additional results using matching ([Boyd, Epstein and Martin, 2010](#); [Ho et al., 2007](#)). Matching operates by comparing reversal rates among judges who are identical across key characteristics. Thus, a black judge sitting within the 8th Circuit who graduated from a second-tier law school with previous experience working in private practice will be matched to a white judge also sitting within the 8th Circuit with a similar profile.

This approach offers advantages and disadvantages. First, matching is an effective pre-processing step that reduces dependence on modeling assumptions ([Ho et al., 2007](#)). Second, and relatedly, matching effectively tests all possible ways that variables could interact with each other. A drawback is, however, that observations are dropped, resulting in inferences

that are based on only a subset of the original population. For the core results presented, this does not appear to be a problem: sufficient observations remain after matching to make statistically significant inferences, and the matched sample by no means an anomalous subset of the entire universe of judges. The results obtained by matching are consistent with the results obtained via parametric methods, presented in the main text.

Matching Methodology. To implement the matching, I use coarsened exact matching (Iacus, King and Porro, 2011, 2009), which allows exact matching on key variables and coarsening and then matching approximately on the three variables that are continuous (discussed below). Coarsened exact matching has the advantage of allowing for this approximation to be as close as needed to remove biases. I also have the advantage of matching exactly on a large portion of the variables measuring judicial qualifications.¹²

Once the judges were matched, I took the difference in means in reversal rates, obtained via simple linear regression. In the results presented, I match on the same key variables analyzed above. These include whether the judge is (1) male or female, (2) a Republican or Democratic appointee, (3) a former federal magistrate or bankruptcy judge, (4) a former attorney in practice practice, (5) a graduate of a Top Tier (“T14”) law school, and (6) his or her corresponding appeals court.¹³ I further coarsen an additional set variables using specific cut points. These are (7) birth year, (8) number of years either on a federal bench (e.g., as a magistrate judge) or in private practice, and (9) the judge’s common space score (Boyd, 2011).

A summary of some of the judge characteristics post-matching on the judge-level data is given by Table 12. This matched sample of judges is, as expected, slightly different than the

¹²Using different matching estimators (nearest neighbor matching and propensity score matching) yielded similar substantive results, as did estimating the effect without discarding any “treated” units (i.e., black judges). I present the results from coarsened exact matching, as it bounds the maximal amount of imbalance through the choice of coarsenings (Iacus, King and Porro, 2011, 2009).

¹³Matching on district court, which would be ideal, is not possible due to the sample size.

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	All Whites	All Blacks	Matched Whites	Matched Blacks
Female	0.15	0.27	0.28	0.28
Appointed by Democrat	0.40	0.71	0.68	0.68
Top 14 Law School	0.30	0.28	0.23	0.26
Former Federal Judge	0.09	0.14	0.07	0.07
Private Practice	0.94	0.76	0.90	0.90
Ave Commission Year	1987.49	1991.95	1995.83	1995.75
Trial Years	16.75	10.08	13.68	12.28
<i>N</i>	1388	147	172	72

Table 12: Demographics of matched district court judges compared to the entire population of district court judges.

original pre-matched sample (Table 3) but by no means anomalous. Overall, more judges in the matched sample were appointed by Democrats (specifically Bill Clinton) and had experience in private practice. Slightly fewer of them had experience as a federal judge (for example as a magistrate or bankruptcy judge), and, on average, they had slightly less trial experience before nomination. We also have more female judges in the matched sample.

Matching Results. I run matching analyses twice. The first is on the judge-level data presented in Columns 1 and 2 of Table 13, while the second is on the Songer et al case-level data from 1960 to 2002. The judge-level post-matching results are estimated using a weighted OLS (with the weights coming from the number of cases appealed), while the case-level post-matching results are calculated using a mixed-effect logit (because of the binary nature of the outcome variable), with judge-specific random effects. The results are, however, substantially similar. Post matching, reversal rates of black judges are approximately 3 to 4 percentage points higher than those of comparable white judges. This is the case after matching for all of the characteristics discussed above and, in the case of the judge-level reversal rates, taking into account variable rates of appeal.

Sensitivity to Omitted Variables. In addition, these results allow me to check the possibility that the core findings could be attributable to omitted variable bias – e.g., that

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	Overall Reversal Rate (WOLS)	Case Level Reversal (Mixed Logit)
Black District Judge	0.037** (0.015)	0.161* (0.084)
Constant	0.293*** (0.008)	0.291*** (0.056)
<i>N</i>	184	275

*p < .1; **p < .05; ***p < .01

Table 13: Post-matching results. Model 1 presents results from the judge-level data (with reversal rate as the outcome variable); Model 2 presents results from the case-level data (with individual case reversal as the outcome variable). Both match on birth year, age, party, previous judicial experience, previous trial experience, private practice experience, top law school attended, judicial common space score, and Circuit.

there is some characteristic in the population of black judges that is not fully captured by the covariates used in the matching. Noting that the sample size here is fairly small (one reason why matching is a useful complement, rather than a substitute, for parametric methods), I employ a method of sensitivity analysis developed by [Holland \(1986\)](#) and implemented by [Keele \(2010\)](#). The methodology allows me to put bounds on how large some characteristic would have to be in order to render the post-matched results insignificant. That is, the methodology allows me to estimate how many times more likely black judges would have to have some characteristic in order to render the results no longer significant – e.g., how much more often they are to write riskier (perhaps more liberal) opinions.

Results from these sensitivity tests are presented in Table 14. What these results show is that black judges would have to have some characteristic around three times more than white judges in order for the results to be called into question. For example, it could be that black judges are three times more likely to write sharply worded politically oriented opinions than are white judges. I do note that such a trait would have to be present despite controlling via matching for law school attended, common space score, years of experience,

	Overall Reversal Rate	Case Level Reversal
Sensitivity Upper Bound	2.65	3.10
N	184	275

Table 14: Sensitivity analyses results. Column 1 presents results from the judge-level data (with reversal rate as the outcome variable); Column 2 presents results from the case-level data, 1960-2002 (with individual case reversal as the outcome variable). Both results obtained after matching on birth year, age, party, previous judicial experience, previous trial experience, private practice experience, top law school attended, judicial common space score, and Circuit.

etc. I also note that there is no clear answer as to what range of sensitivity is “acceptable” for observational studies; however, these bounds are quite robust compared to the existing literature (e.g. [Keele, 2010](#)). This gives some assurance that unobserved variables are not the exclusive drivers of these results.

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Yellow Paper Series

Written in Black & White

Exploring Confirmation Bias in Racialized
Perceptions of Writing Skills

Lead Researcher
Dr. Arin N. Reeves

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.*

CONFIRMATION BIAS:

A mental shortcut – a bias – engaged by the brain that makes one actively seek information, interpretation and memory to only observe and absorb that which affirms established beliefs while missing data that contradicts established beliefs.

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:

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

Name: Thomas Meyer

Seniority: 3rd Year Associate

Seniority: 3rd Year Associate

Alma Mater: NYU Law School

Alma Mater: NYU Law School

Race/Ethnicity: African American

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 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

“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”

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.

General Findings Cont.

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.

Confirmation bias manifests itself most often in the “data gathering” phase of our evaluation – the time during which we seek out errors, and this manifestation is almost always unconscious.

Key Takeaways

There are commonly held racially-based perceptions about writing ability that unconsciously impact our ability to objectively evaluate a lawyer's writing... 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.

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.

Distribute and discuss this study with senior lawyers in your organization to gather their reactions and perspectives.

Lead Researcher:

Dr. Arin N. Reeves | 312.922.0226



THINK SMARTER | LEAD BETTER





1

Plain Legal Language: *What is it and why it matters*

Connections Course
Illinois Bureau of Administrative Hearings +
Indiana Office of Administrative Law Proceedings

Friday, February 25, 2022
Presented by Clear Language Lab
at Literacy Works

2

Thank you for having me and for choosing to be here today!

- **I value your expertise and knowledge.** Please feel free to use the chat to ask questions, comment, or share resources.
- **Consider the spirit of examples and forgive any legal errors in my interpretations.** We recognize that there may be varying regulations so, of course, some strategies may not be permitted in certain variations. Take with you what is useful and permissible.
- **Resources will be shared out** afterward FYI.

3

What We Do



Literacy Works

Community Literacy

Provide capacity building and technical support to adult education settings around the Chicago area and beyond through a social justice lens

Clear Language Lab

Provide communication training, coaching, and materials review across sectors to foster systems that embrace understandable, intersectional, useful communications that drive systemic change

4

What our work is about...

- Creating communications - and conversations around communication – that **work toward just, effective systems for all** and **work to dismantle racist and heteropatriarchal norms that cause harm.**
- Recognizing that this is an ongoing process and that we will make mistakes.

***Final Notes:** And when I use “we,” I don’t mean the people on this call. I am using it to stand in for roles of power in inequitable systems.*

5

Who We’ve Worked With...



6

Agenda



PLAIN LANGUAGE
OVERVIEW



AUDIENCE, PURPOSE +
ACTION



ORGANIZATION,
COHESION, + LAYOUT



WORDS



PRACTICE AND
REFLECTION



RESOURCES

7

Objectives for Today

01

Identify what plain
language is – and
isn't

02

Analyze examples
from the field to
improve
readability and
actionability

03

Identify several
strategies to apply
to your own
writing

8

Let's understand who is here and where you are with plain language.



9

What elements do you think make clear, effective communication?

Tell us in the chatbox!

10

And real life, we often get content that look like this...

HOW READY TO RENT WORKS / RELEASE OF INFORMATION

By taking Ready to Rent I understand that:

- I will become educated about my rights and responsibilities as a renter.
- I will learn about affordable housing and the steps to take to overcome screening barriers such as evictions, criminal history and credit problems.
- There will be landlords willing to consider Ready to Rent graduates, but there is no guarantee or promise a landlord will rent to me. Some landlords use a special screening criteria just for Ready to Rent graduates. Some landlords are willing to consider issues on a case-by-case basis.

Roles - the tenant, the landlord, the PHA, the PHA's role:

- Once a PHA approves a tenant for the same term as the tenant's obligations: We pay a security deposit to the PHA of any changes.
- Landlord's Obligations: housing quality standards as part of the lease. Housing Authority's role: PHA enters into a contract to terminate assistance housing quality standards.

HUD's Role: To cover the cost of the program, HUD provides funds to allow PHAs to make housing assistance payments on behalf of the families. HUD also pays the PHA a fee for the costs of administering the program. When additional funds become available to assist new families, HUD invites PHAs to submit applications for funds for additional housing vouchers. Applications are then reviewed and funds awarded to the selected PHAs on a competitive basis. HUD monitors PHA administration of the program to ensure program rules are properly followed.

Original Loan Amount	Current Balance	Amount Past Due
Payment Due Date	Payment History	Date of Last Payment
Credit Report(s)	Monthly Payment Amount	Loss Mitigation Agreement

I further hereby authorize **NHSJ** to furnish any information regarding my financial status which may be used by the servicer or its affiliates in determining whether my homeownership may be preserved by restructuring or by other services. I also authorize **Neighborhood Housing Services of Jamaica, Inc. ("NHSJ")** to receive documents pertaining to my financial information including, but not limited to: Forbearance Agreements, Partial Claim, Reinstatement Figures and Payoff Statements. I authorize NHSJ, to pull my credit report.

I acknowledge that I have received a copy of **Neighborhood Housing Services of Jamaica, Inc. and its subsidiaries Privacy Policy**.

I understand that I may be referred to other housing services of the organization or another agency or agencies as appropriate. I may be able to assist with particular concerns that have been identified. I understand that I am not intended to use any of the services offered to me.

I understand that **Neighborhood Housing Services of Jamaica, Inc. is a HUD certified Counseling Agency** subject to the Fair Housing Laws under The New York City Human Rights Law prohibiting housing discrimination on the basis of person's race, color, national origin, gender, creed, disability, sexual orientation, marital status, partnership status, citizenship status, age, lawful occupation or children who may be referred to other housing services of the organization or another agency or agencies as appropriate. I understand that the housing services I receive from **Neighborhood Housing Services of Jamaica, Inc. and its subsidiaries** in no way limit my ability to choose any of these particular loan products or housing programs.

I understand that personal identifying information, or information that could lead to personal identification, is shared with other parties, **but that all other information gathered may be used and uploaded into the data management system** for research, program or policy development, or other legitimate purposes by **The City of New York City Neighborhoods, The New York State Attorney General and the City of New York**, or any of their funding of foreclosure prevention services, including by publication or distribution of non-confidential information. **I give permission for relevant funders to follow-up within the next three years of program evaluation.**

Sex:	Female	Male	<input type="checkbox"/> White	<input type="checkbox"/> Asian	<input type="checkbox"/> Asian & Pacific Islander
Married:	Married	Separated	<input type="checkbox"/> Black/African American	<input type="checkbox"/> American Indian/Alaskan Native	<input type="checkbox"/> Native Hawaiian/Other Pacific Islander
Inactive:	Inactive	Not Applicable	<input type="checkbox"/> Asian Indian/Pakistani/Bangladeshi	<input type="checkbox"/> Black/African American & White	<input type="checkbox"/> American Indian/Alaskan Native
Income:	\$	/	<input type="checkbox"/> Black/African American & White	<input type="checkbox"/> American Indian/Alaskan Native	<input type="checkbox"/> Black/African American
Hispanic?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Other Multi-Racial		

OME: (Please indicate Veteran status, if applicable)

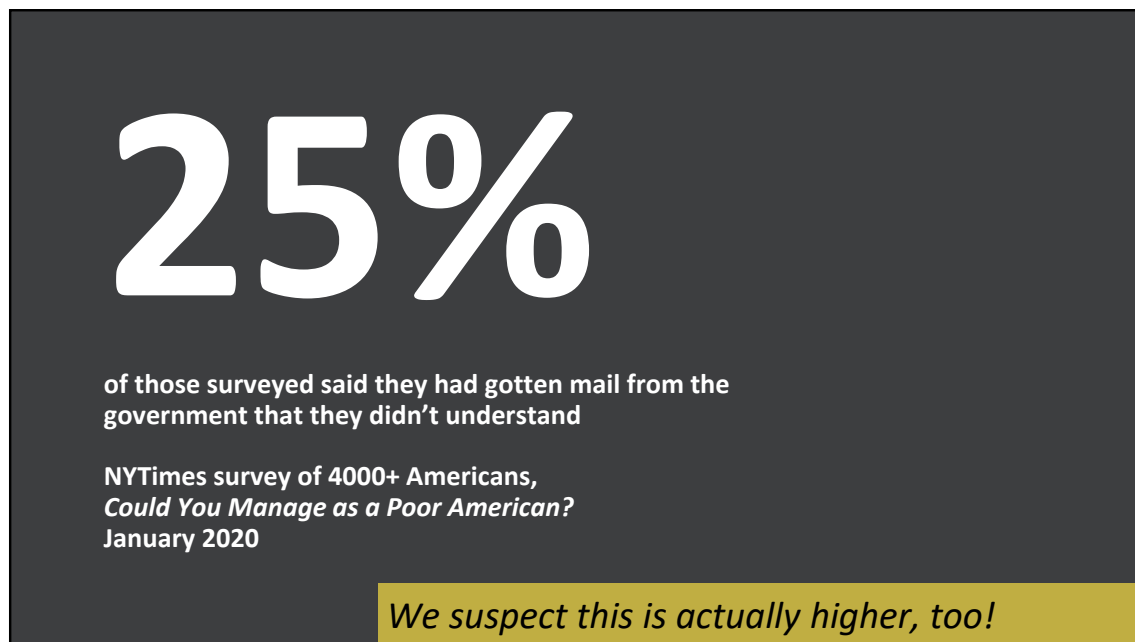
Age	Sex	Relationship to Client	Ethnicity

“The single biggest problem in communication is the illusion that it has taken place.”

-credited to George Bernard Shaw, playwright



13



14

Systemic Issue: Education Inequity

County	Estimated % at Level 1 or below in literacy
Alexander County, IL	35%
La Grange County, IN	33%
Wayne County, MI	27%
Cook County IL	25%
Marion County, IN	24%

People 16+ at level 1 or below in reading
PIACC Study Estimates,
U.S. Skills Map: State and County Indicators
of Adult Literacy and Numeracy

What does this mean?

- At the upper end of this level, reading short texts in print or online to perform simple tasks (filling out short form); drawing inferences or connecting multiple sources may be too difficult
- Below Level 1, may understand basic vocabulary and find specific information on familiar topics
- Some may have trouble reading most content

15

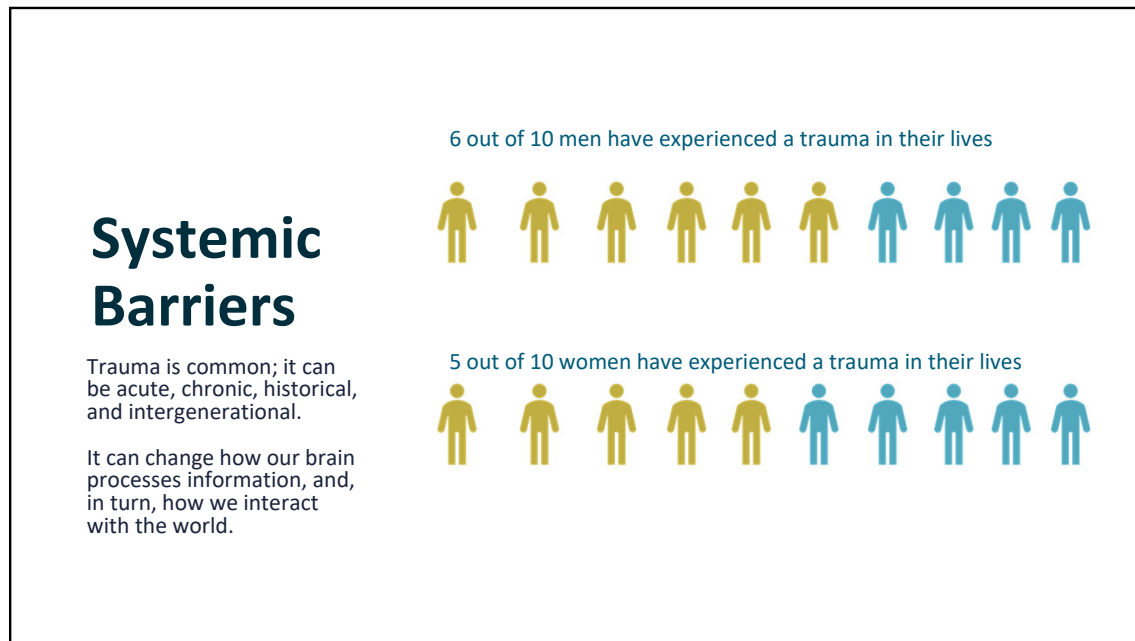
Systemic Barriers

How do we
prioritize
Accessibility/
accessibility
in
meaningful
ways?

REASONABLE ACCOMMODATION: All in-person hearings are conducted in a barrier-free location in compliance with state and federal law. If you need a reasonable accommodation for effective participation in a hearing, including accessible documentation or assistive hearing devices, contact MOAHR or send MOAHR the completed Disability Accommodation Request form found at https://www.michigan.gov/documents/lara/Disability_Accommodation_form_for_MOAHR_Internet_5-2.web_654057_7.pdf within seven (7) days after receipt of the Notice of Hearing.

- Is this sent by mail? How easy is it to read this paragraph? How accessible is typing in a URL like this for most people if they get it by mail? What to do when the link no longer works?
- How are we examining content through the lens of a neurodiverse world?

16



17

Systemic Barriers

Language is not neutral. How we frame ideas impacts perceptions.

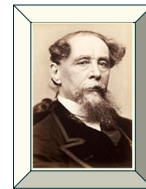
- “habit” versus “substance use disorder”
- “inmate” versus “incarcerated person”
- *In forma pauperis (IFP)* is Latin for “in the form of a pauper.” IFP status is generally granted to those who the Court determines do not have the resources to pay the \$402.00 filing fee...

18

Systemic Barriers

Language is not neutral. How we frame ideas impacts perceptions.

- “habit” versus “substance use disorder”
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- *In forma pauperis (IFP)* is Latin for “in the form of a pauper.” IFP status is generally granted to those who the Court determines do not have the resources to pay the \$402.00 filing fee...



19

Norms in Other Sectors: Healthy People Campaigns 2010 +2020

Personal health literacy

the degree to which individuals have the capacity **to obtain, process, and understand basic health information and services** needed to make appropriate health decisions



20

Healthy People 2030 campaign: A Two-Part Approach

Personal health literacy is the degree to which **individuals** have the ability **to find, understand, and use information and services to inform health-related decisions and actions** for themselves and others.



Organizational health literacy is the degree to which **organizations** equitably enable individuals to **find, understand, and use information and services to inform health-related decisions and actions** for themselves and others.



21

Plain Language

"Making the simple complicated is commonplace; making the complicated simple, awesomely simple — that's creativity."

- Charles Mingus, musician



22

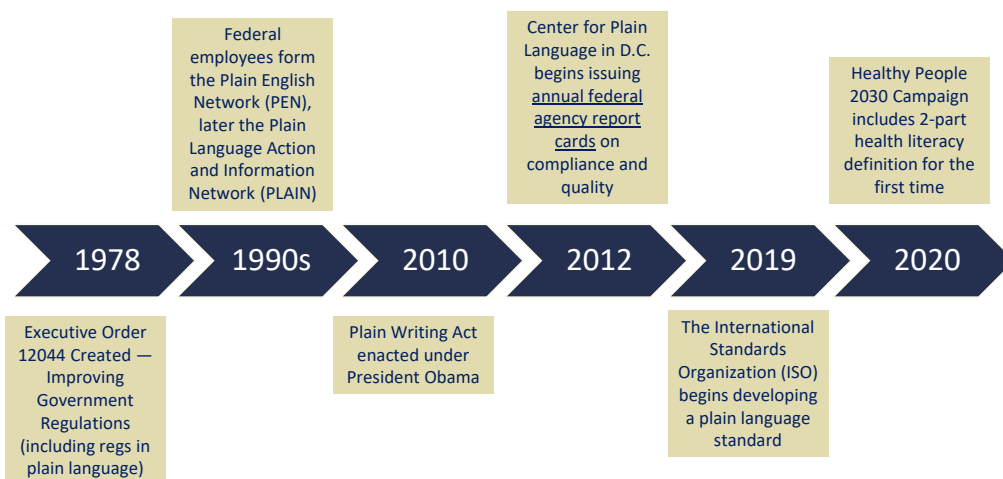
What is Plain Language?

A communication is in **plain language** if its wording, structure, and design are so clear that the **intended readers** can easily **find what they need, understand what they find, and use that information.**

-International Plain Language Federation

23

Recent History in Plain Language...



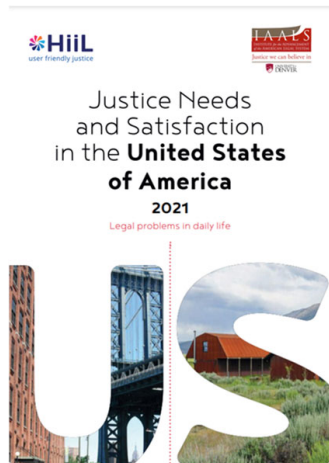
24

Nielsen Norman Research: People prefer clear, accessible language

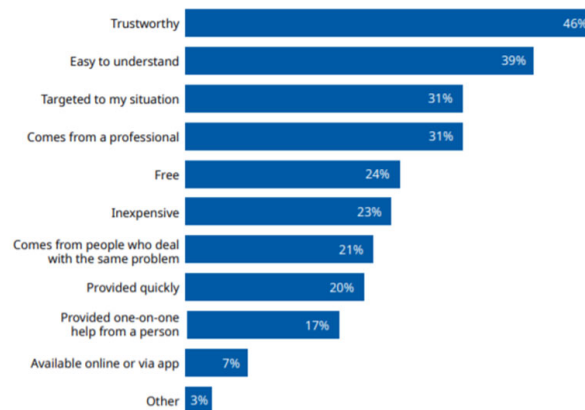
*Results for pharma website
improved with Plain Language
and Information Design lens;
both groups improved in all three
areas (2005)*

	Users with lower literacy skills	Users with higher literacy skills
Success Rate	↑	↑
Total Task Time	↓	↓
Satisfaction	↑	↑

25



What are the three most valuable characteristics of legal advice or information for resolving an issue similar to yours?



Study from Institute for the Advancement of the American Legal System (IAALS) and Hiil

26

“Have you ever felt so frustrated when reading an attorney’s letter or a legal document that you stopped reading it before it ended? If so, why?”

*It was all in the English language, yet I could not understand the mumbo-jumbo!!
This for me feels condescending and corrupt.*

The Public Speaks: An Empirical Study of Legal Communication, 2012
Christopher R. Trudeau

27

“Have you ever felt so frustrated when reading an attorney’s letter or a legal document that you stopped reading it before it ended? If so, why?”

*It was all in the English language, yet I could not understand the mumbo-jumbo!!
This for me feels condescending and corrupt.*

If too much of the content is difficult to understand, I feel like I’ve already missed too much to get the full meaning anyway.

The Public Speaks: An Empirical Study of Legal Communication, 2012
Christopher R. Trudeau

28

“Have you ever felt so frustrated when reading an attorney’s letter or a legal document that you stopped reading it before it ended? If so, why?”

It was all in the English language, yet I could not understand the mumbo-jumbo!! This for me feels condescending and corrupt.

If too much of the content is difficult to understand, I feel like I’ve already missed too much to get the full meaning anyway.

Because it made me feel dumb. And I didn’t know what was being said.

The Public Speaks: An Empirical Study of Legal Communication, 2012
Christopher R. Trudeau

29

Clear communication

is not about:

- ~~“dumbing down”~~ information
- Watering down content or being inaccurate
- Making people write in a “prescriptive” way

is about:

- Being accurate
- Communicating clearly and transparently
- Being responsive to the needs of the audience
- Improving effectiveness
- Making systems more equitable for all, especially those marginalized by said systems historically (**in our opinion!**)

30

Audience

“My eye is on the reader...I try to be as clear and concise as I can be.”

- Justice Ruth Bader Ginsburg

31

Example from the Clear Language Lab: How Did We Work to Center Audiences?

Original

**MAKE SURE YOU ARE IN THE CORRECT PRECINCT
PRIOR TO VOTING A PROVISIONAL BALLOT**

CONTACT THE BOARD AT 312-269-1604 TO VERIFY YOUR PROPER PRECINCT

WHY YOUR BALLOT IS PROVISIONAL

- Voter not found in the Electronic Poll Book and voter refused the opportunity to register in the voter's precinct or at another grace period registration site.
- Voting status has been challenged and the judges of election agree with the challenge.
- Voter registered to vote by mail and was required to show ID before voting and was unable to do so.
- The voter's record shows he or she voted during the early voting period, but the voter claims not to have voted during early voting.
- The voter received a Vote By Mail ballot but did not return the Vote By Mail ballot to the Board.
- A Federal or State Court has ordered the extension of voting hours beyond 7 p.m.
- The voter attempted to register to vote on election day but failed to provide the necessary documentation.

VOTING INSTRUCTIONS FOR PROVISIONAL VOTERS

- ✓ Complete the Affidavit you receive from the election judge. The pink copy will be given to you as a receipt.
- ✓ An election judge will mark the Affidavit to indicate the reason your vote is provisional. The judge will place any supporting documentation you provide in the plastic sleeve.
- ✓ An election judge will issue a provisional ballot to you along with your Provisional Voter Affidavit / Ballot Envelope.
- ✓ After you complete voting, fold your ballot along the creases and insert it into your Provisional Voter Affidavit / Ballot Envelope, seal it and return it to the election judge.
- ✓ The judge must place your completed Provisional Voter Affidavit / Ballot Envelope into the Provisional Carrier Envelope – Envelope P.

You may submit supporting documentation to the Chicago Board of Election Commissioners to verify your voting status. The Board must receive the information no later than the close of business on the Tuesday following Election Day. The Board is located at 69 W. Washington, Suite 600, Chicago, IL.

Our Version

Information for Provisional Voters from the Chicago Board of Elections

What is provisional voting? Provisional voting allows you to cast a ballot if there are questions about your eligibility to vote or a mistake in the registration record needs to be corrected. In the two weeks after the election, we will check our registration records and decide if your vote counts.

Why is my ballot provisional? You can see the reason(s) an Election Judge (Judge) marked on the back of this receipt.

Important! Before you vote a provisional ballot, call us at 312-269-1604 to check your correct precinct. You can cast a provisional ballot in the precinct you are in now even if you don't live in this precinct. However, under state law, if you do vote in the wrong precinct, only some of your ballot might count.

How do I vote a provisional ballot?

Now that you and a Judge have filled out the Affidavit, follow the directions below.

On Election Day

1. A Judge will give you a provisional ballot and the Affidavit attached to the ballot envelope. A Judge will direct you to a voting booth where you can vote.
2. Vote. After you vote, fold the ballot along the creases. Place the ballot in the envelope, and seal the pink envelope flap with the ballot inside.
3. Then, give the envelope with the ballot in it back to a Judge. **Don't put your ballot in the ballot scanner!**

What if I have other documents that show I am eligible to vote?

You must submit the documents to our office **by 5 p.m. on the Tuesday after Election Day** in one of the following ways:

In person or by mail
69 W. Washington, Suite 600
Chicago, IL 60602

By fax
312-269-7880

By email
registration@chicagoelections.net

Did my vote count?

Call 1-866-780-VOTE (1-866-780-8683) or visit

32

16

What We Did

Original

YOU ARE IN THE CORRECT PRECINCT

CONTACT THE BOARD AT 312-269-1604 TO VERIFY YOUR PROPER PRECINCT

WHY YOUR BALLOT IS PROVISIONAL

- Voter not found in the Electronic Poll Book and voter refused the opportunity to register in the voter's precinct or at another given period registration site.
- Voting status has been challenged and the judges of election agree with the challenge.
- Voter registered to vote by mail and was required to show ID before voting and was unable to do so.
- The voter's second spouse has or she voted during the early voting period, but the voter claims not have voted during early voting.
- The voter received a Vote By Mail ballot but did not return this Vote By Mail ballot to the Board.
- A Federal or State Court has ordered the extension of voting hours beyond 7 p.m.
- The voter attempted to register to vote on election day but failed to provide the necessary documentation.

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- ✓ An election judge will mark the Affidavit to indicate the reason your vote is provisional. The judge places any supporting documentation you provide in the plastic sleeve.
- ✓ An election judge will issue a provisional ballot to you along with your Provisional Voter Affidavit / Ballot Envelope.
- ✓ After you complete voting, fold your ballot along the scores and insert it into your Provisional Voter Affidavit / Ballot Envelope, seal it and return it to the election judge.
- ✓ The judge must place your completed Provisional Voter Affidavit / Ballot Envelope into the Provisional Central Envelope - Envelope B.
- ✓ You may submit supporting documentation to the Chicago Board of Election Commissioners to verify your voting status. The Board must receive the information no later than the close of business on the Tuesday following Election Day. The Board is located at 69 W. Washington, Suite 600, Chicago, IL.

DID YOUR VOTE COUNT?

- Call 1-866-780-VOTE (1-866-780-8683) or visit chicagoelections.com to determine if your vote counted. If it was not counted you can determine the reason.
- Your information will be listed by last name, first name, suffix and street name and number.
- The Board has two weeks following the election to verify the registration for provisional voters. If the Board determines you are a registered voter, your provisional ballot will be counted.
- If the Board determines you are not a registered voter, your provisional ballot will not be counted. The Affidavit you completed will be used as a registration application and you will be sent a verification of

Our Version

Information for Provisional Voters from the Chicago Board of Elections

Provisional voting allows you to cast a ballot if there are questions by to vote or a mistake in the registration record needs to be corrected. In the election, we will check our registration records and decide if your vote counts.

Why is my ballot provisional? You can see the reason(s) an Election Judge (Judge) marked on of this receipt.

Important! Before you vote a provisional ballot, call us at 312-269-1604 to check correct precinct. You can cast a provisional ballot in the precinct you are in now if you don't live in this precinct. I not, only some of your ballot might be in the wrong

Highlighted action steps

How do I vote a provisional ballot? and a Judge have filled out follow the directions below.

What if I have other documents that show I am eligible to vote? You must submit the documents to our office by 5 p.m. on the Tuesday after Election Day in one of the following ways:

In person or by mail
69 W. Washington, Suite 600
Chicago, IL 60602

By fax
312-269-7880

By email
registration@chicagoelections.net

Did my vote count?
Call 1-866-780-VOTE (1-866-780-8683) or visit

Added title and provided context (signposting)

Used helpful, concrete headings to be more skimmable

Made sequential steps clear

Reduced content where appropriate (note: sometimes things written in plain language may need to be longer! It depends!)


Updated out of date info

Added more negative space to make it less

33

Chip Heath

Co-author, *Made to Stick*



*“Becoming an expert in something means we become more and more fascinated by nuance and complexity. That’s when the **Curse of Knowledge** kicks in, and we start to forget what it’s like not to know what we know.”*

34

17

Examine this excerpt of a medical study description.

How comfortable would you feel deciding to participate in this study after reading this once? Having no one to ask questions to?

Description

This is a multicenter Phase 1b, open-label study to assess safety, tolerability, preliminary efficacy, and pharmacokinetics (PK) of cabozantinib taken in combination with atezolizumab in subjects with multiple tumor types, including advanced urothelial carcinoma (UC) (including bladder, renal pelvis, ureter, urethra), renal cell carcinoma (RCC), castration-resistant prostate cancer (CRPC), non-small-cell lung cancer (NSCLC), triple negative breast cancer (TNBC), ovarian cancer (OC), endometrial cancer (EC), hepatocellular cancer (HCC), gastric cancer / gastroesophageal junction cancer / lower esophageal cancer (GC / GEJC / LEC), colorectal cancer (CRC), head and neck (H&N) cancer, and differentiated thyroid cancer (DTC). The study consists of two stages: in the Dose Escalation Stage, an appropriate recommended cabozantinib dose for the combination with standard dosing regimen of atezolizumab will be established in the Expansion Stage, tumor-specific cohorts will be enrolled for the combination treatment in these tumor indications (SAC) cohorts may also be enrolled with UC, NSCLC, CRPC, TNBC, OC, EC, HCC, and DTC. In the Expansion Stage, tumor-specific cohorts will be enrolled for the combination treatment in these tumor indications (SAC) cohorts may also be enrolled with UC, NSCLC, CRPC, TNBC, OC, EC, HCC, and DTC. In the Expansion Stage, tumor-specific cohorts will be enrolled for the combination treatment in these tumor indications (SAC) cohorts may also be enrolled with UC, NSCLC, CRPC, TNBC, OC, EC, HCC, and DTC. In the Expansion Stage, tumor-specific cohorts will be enrolled for the combination treatment in these tumor indications (SAC) cohorts may also be enrolled with UC, NSCLC, CRPC, TNBC, OC, EC, HCC, and DTC.

Eligibility Criteria

Inclusion Criteria

- Cytologically or histologically and radiologically confirmed solid tumor that is inoperable, locally advanced, metastatic, or recurrent;
- Dose-Escalation Stage:
 - Subjects with UC (including renal pelvis, ureter, bladder, urethra) after prior platinum-based therapy, or
 - Subjects with RCC (clear cell, non-clear cell histology) with or without prior systemic anticancer therapy
- Expansion Stage:
 - Inoperable locally advanced or metastatic solid tumor (UC, RCC, CRPC, NSCLC, TNBC, OC, EC, HCC, GC/GEJC/LEC, CRC, H&N cancer, and DTC as outlined above)
 - Measurable disease per RECIST 1.1 as determined by the investigator.
 - Tumor tissue material available (archival or recent tumor biopsy)
 - Recovery to baseline or ≤ Grade 1 CTCAE v4 from toxicities related to any prior treatments, unless AE(s) are clinically nonsignificant and/or stable on supportive therapy.
 - Age eighteen years or older on the day of consent.
 - Eastern Cooperative Oncology Group (ECOG) Performance Status of 0 or 1.
 - Adequate organ and marrow function.
 - Sexually active fertile subjects and their partners must agree to use medically accepted methods of contraception.

35

What about the example on the right?

How might this feel to a human unfamiliar with legal terms?

Is it that different than the medical example?

Description

This is a multicenter Phase 1b, open-label study to assess safety, tolerability, preliminary efficacy, and pharmacokinetics (PK) of cabozantinib taken in combination with atezolizumab in subjects with multiple tumor types, including advanced urothelial carcinoma (UC) (including bladder, renal pelvis, ureter, urethra), renal cell carcinoma (RCC), castration-resistant prostate cancer (CRPC), non-small-cell lung cancer (NSCLC), triple negative breast cancer (TNBC), ovarian cancer (OC), endometrial cancer (EC), hepatocellular cancer (HCC), gastric cancer / gastroesophageal junction cancer / lower esophageal cancer (GC / GEJC / LEC), colorectal cancer (CRC), head and neck (H&N) cancer, and differentiated thyroid cancer (DTC). The study consists of two stages: in the Dose Escalation Stage, an appropriate recommended cabozantinib dose for the combination with standard dosing regimen of atezolizumab will be established in the Expansion Stage, tumor-specific cohorts will be enrolled for the combination treatment in these tumor indications (SAC) cohorts may also be enrolled with UC, NSCLC, CRPC, TNBC, OC, EC, HCC, and DTC. In the Expansion Stage, tumor-specific cohorts will be enrolled for the combination treatment in these tumor indications (SAC) cohorts may also be enrolled with UC, NSCLC, CRPC, TNBC, OC, EC, HCC, and DTC. In the Expansion Stage, tumor-specific cohorts will be enrolled for the combination treatment in these tumor indications (SAC) cohorts may also be enrolled with UC, NSCLC, CRPC, TNBC, OC, EC, HCC, and DTC.

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- Dose-Escalation Stage:
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- Expansion Stage:
 - Inoperable locally advanced or metastatic solid tumor (UC, RCC, CRPC, NSCLC, TNBC, OC, EC, HCC, GC/GEJC/LEC, CRC, H&N cancer, and DTC as outlined above)
 - Measurable disease per RECIST 1.1 as determined by the investigator.
 - Tumor tissue material available (archival or recent tumor biopsy)
 - Recovery to baseline or ≤ Grade 1 CTCAE v4 from toxicities related to any prior treatments, unless AE(s) are clinically nonsignificant and/or stable on supportive therapy.
 - Age eighteen years or older on the day of consent.
 - Eastern Cooperative Oncology Group (ECOG) Performance Status of 0 or 1.
 - Adequate organ and marrow function.
 - Sexually active fertile subjects and their partners must agree to use medically accepted methods of contraception.

PARTIES' DUTIES

I. All Parties: All parties are responsible for the following:

- Following the deadlines listed on page one of this order.
- **Service:** Nancy Drew and Respondent BDDS must give a copy of their Proposed Exhibits, Exhibit Lists, Witness Lists, Position Statements, and any other Filings on each other on the date that they give a copy to the undersigned Administrative Law Judge. The parties can serve documents on the undersigned Administrative Law Judge using the below contact information:
- **Participation:** A party who fails to attend or participate in a pre-hearing conference, hearing, or other legal stage of this administrative process may be held in default, or have the proceeding dismissed. IC 4-21.5-3-24. Parties may appear **personally OR by a representative**.
- **Presentation of Evidence:** Nancy Drew and Respondent BDDS should be prepared to present evidence and testimony pertaining to the issue under appeal **during the hearing**. The entire hearing will be recorded, and the decision will be based on the evidence admitted at the hearing.
- **Appearances:** An attorney representing a party must file an appearance with the ALJ and the other party because the attorney will receive service from OALP. *If an attorney files an appearance less than one week prior to the date this case is set for a hearing, the hearing shall automatically be continued to give the other party time in which to obtain an attorney.*

36

Thinking About Audience



Have a clear audience and actionable intentions for documents



Consider the circumstances in which people get your content



Identify reflective practices for the work

37

Organization, Cohesion, + Information Design

"Prose is architecture, not interior decoration, and the Baroque is over."

Ernest Hemingway, writer



38

Clear Language Lab Example: Disability Rights

Original

Self-Advocacy Assistance

Teaching people about their rights.

We help people and families learn about their rights at work, school, and other public places. We also have free trainings to educate people with disabilities and their family members on advocacy and legal rights. To learn more, call our main number.

Special Education Helpline

Staff on our Helpline give free legal advice and information on special education laws, what to do if a child is having problems at school, and how to ask the school for what a child needs. Call 1-866-543-7046 or email SpecialEd@equipforequality.org.

Employment Rights Helpline

We provide free help and legal assistance to people with disabilities who need help with job applications, asking for reasonable accommodations, and stopping discrimination in the workplace. Call 1-844-744-4879 or email Employment@equipforequality.org.

Our Version

Get Free Help

We can talk with you about your rights at school, at work, where you live, and in the community. **Our lawyers can help you in many ways.**

Get Help for Your Child

Do you have questions about your child's rights at school? We can help you:

- Learn about special education rights
- Know what to ask for and how to get the help your child needs to succeed
- Feel confident by going to school meetings with you

☎ 1-866-543-7046 (1-866-KIDS-046)
✉ SpecialEd@equipforequality.org

Get Help at Work

Do you know your rights at work? We can help you:

- Talk to your boss about your disability and how to ask for what you need to do your job

39

How we reorganized this content...

Original

Self-Advocacy Assistance

Teaching people about their rights.

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Employment Rights Helpline

We provide free help and legal assistance to people with disabilities who need help with job applications, asking for reasonable accommodations, and stopping discrimination in the workplace. Call 1-844-744-4879 or email Employment@equipforequality.org.

Online Resources

Our website has a large collection of fact sheets, training materials, and information to help people with disabilities learn about their rights. www.equipforequality.org



Our Version

Get Free Help

We can talk with you about your rights at school, at work, where you live, and in the community. **Our lawyers can help you in many ways.**

Get Help for Your Child

Do you have questions about your child's rights at school? We can help you:

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✉ SpecialEd@equipforequality.org

Get Help at Work

Do you know your rights at work? We can help you:

- Talk to your boss about your disability and how to ask for what you need to do your job

Added an actual introduction

Focused this section on help-lines (original combined community presentations here, too)

Broke up content using dot points

Highlighted contact info further

Used more specific headings

40

20

Any thoughts on how we could group this information in “buckets” or groups?

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted by the Michigan Office of Administrative Hearings and Rules (MOAHR) in accordance with the administrative hearing rules at Mich Admin Code, R 792.10101 et seq., and the Michigan Administrative Procedures Act (APA), MCL 24.201 et seq. The hearing will be held on the date and time and in the manner specified in the Notice of Hearing. An Administrative Law Judge (ALJ) will hear the case and allow you to explain your reasons for disagreeing with the action in dispute, offer evidence, and question witnesses. All persons must respect the parties, witnesses and ALJ. This includes attending the hearing on time, silencing phones, and wearing appropriate attire. The ALJ may exclude persons from the hearing for unruly or threatening behavior or language.

REPRESENTATION: You may be represented at your own expense by an attorney of your choice or, law permitting, an authorized representative (AR). Your attorney or permitted AR must immediately file an appearance with MOAHR by mail or fax, with a copy to the opposing party.

WITNESSES: You may offer witnesses to testify whose testimony is relevant, subject to ALJ rulings.

EXHIBITS: If you have documents that you seek to offer as evidence, you must submit them to MOAHR and the opposing party by mail, fax (if less than 25 pages), or personal delivery at least seven days before the hearing date, unless an ALJ or applicable law or policy states otherwise, or good cause is shown for late filing. The documents must contain your name and MOAHR docket number shown on the Notice of Hearing. Any photographs or small documents should be attached to 8 1/2 x 11-inch paper. MOAHR is not responsible for photocopying your documents.

REQUESTS AND MOTIONS: You must file all requests and motions with MOAHR by regular mail, fax, personal or overnight delivery, or as permitted by the ALJ and send a copy of the filing and attachments to the opposing party as listed on the Proof of Service in this Notice. You have seven (7) days to file a response to an opposing party's request or motion, unless another time period is set by the ALJ.

ADJOURNMENT OR WITHDRAWAL: If you want to reschedule the hearing date or cancel your hearing request, you must send or fax MOAHR a written, signed request before the hearing date. Include the docket number on the Notice of Hearing with your request. Unless MOAHR notifies you that your request was granted, you must be available for the scheduled hearing. If on the day of your hearing you cannot participate, you must call MOAHR immediately before the scheduled hearing time.

FAILURE TO APPEAR: Your failure to participate in the hearing may result in a default decision against you or dismissal of your case. Defaults may only be set aside in accordance with Mich Admin Code, R 792.10134.

REASONABLE ACCOMMODATION: All in-person hearings are conducted in a barrier-free location in compliance with state and federal law. If you need a reasonable accommodation for effective participation in a hearing, including accessible documentation or assistive hearing devices, contact MOAHR or send MOAHR the completed Disability Accommodation Request form found at https://www.michigan.gov/documents/lara/Disability_Accommodation_form_for_MOAHR_Internet_5-2.web_654057_7.pdf within seven (7) days after receipt of the Notice of Hearing.

PRIVACY OF INFORMATION: In order to conduct a comprehensive and fair hearing, a party's private or confidential information, such as health or financial information, may be disclosed at the hearing. MOAHR will use this information solely for purposes related to the hearings process.

ENTRY TO STATE BUILDING: To enter a state building, you must present valid photo identification.

CONTACT INFORMATION: For Lansing, contact MOAHR by mail at 611 W Ottawa Bldg., 2nd Floor, P.O. Box 30763, Lansing, MI 48909, by phone at (517) 335-7519, or by fax at (517) 763-0155. For Detroit, contact MOAHR by mail at 3038 W Grand Blvd, 3rd Floor Annex, Ste. 3-700, Detroit, MI 48262.

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Any thoughts on how we could group this information in “buckets” or groups?

Could we:

- Organize by time (before, during, and after)?
- Tasks/Rights?
- ???

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted by the Michigan Office of Administrative Hearings and Rules (MOAHR) in accordance with the administrative hearing rules at Mich Admin Code, R 792.10101 et seq., and the Michigan Administrative Procedures Act (APA), MCL 24.201 et seq. The hearing will be held on the date and time and in the manner specified in the Notice of Hearing. An Administrative Law Judge (ALJ) will hear the case and allow you to explain your reasons for disagreeing with the action in dispute, offer evidence, and question witnesses. All persons must respect the parties, witnesses and ALJ. This includes attending the hearing on time, silencing phones, and wearing appropriate attire. The ALJ may exclude persons from the hearing for unruly or threatening behavior or language.

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FAILURE TO APPEAR: Your failure to participate in the hearing may result in a default decision against you or dismissal of your case. Defaults may only be set aside in accordance with Mich Admin Code, R 792.10134.

REASONABLE ACCOMMODATION: All in-person hearings are conducted in a barrier-free location in compliance with state and federal law. If you need a reasonable accommodation for effective participation in a hearing, including accessible documentation or assistive hearing devices, contact MOAHR or send MOAHR the completed Disability Accommodation Request form found at https://www.michigan.gov/documents/lara/Disability_Accommodation_form_for_MOAHR_Internet_5-2.web_654057_7.pdf within seven (7) days after receipt of the Notice of Hearing.

PRIVACY OF INFORMATION: In order to conduct a comprehensive and fair hearing, a party's private or confidential information, such as health or financial information, may be disclosed at the hearing. MOAHR will use this information solely for purposes related to the hearings process.

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42

Sample ALJ Court Excerpt: Filing an Appeal

What's different in the organization in this two versions?

Original

II. **Petitioner's Duties – Nancy Drew's or Petitioner's representative shall**

Send the following:

- Proposed Exhibits & Exhibit List:** a copy of all exhibits the Petitioner plans to introduce into evidence. The exhibits shall be labeled with numbers, (for example "Petitioner's Exhibit 1," "Petitioner's Exhibit 2," and so on);
- Witness List:** a list of all persons (witnesses), including their address and telephone numbers, whom Nancy Drew expects to testify on behalf of Nancy Drew;
- Position Statement:** a copy of any written summary of their position with regard to the issues to be decided at the hearing, identifying any section of the Indiana Code or Administrative Rules, BDDS Standards or Guidelines, that Nancy Drew believes to be relevant to this appeal.

Send the Above Items To:

- Respondent, BDDS, c/o Kristin Brand, BDDS Appeals Coordinator, 402 W. Washington St., Rm. W453, Indianapolis, IN 46204, Kristin.Brand@fssa.in.gov; and
- Administrative Law Judge at Office of Administrative Law Proceedings, 100 N. Senate Ave., Indianapolis, IN 46204 or OALP@oalp.in.gov.

Parties should include this case's OALP number ([OALP Number]) in their filings. Questions can be directed to oop@oalp.in.gov or to (317) 234-6689.

Sample Alternative

Petitioner's Duties

Nancy Drew, or Nancy Drew's representative, must send or deliver the following documents by August 1, 2021:

Item To Submit	Explanation
<input type="checkbox"/> Proposed Exhibits (Evidence)	Copies of all evidence (paperwork, photos, etc.) you plan to share at the hearing
<input type="checkbox"/> Exhibit List	A list with all your exhibits (evidence) labeled with numbers such as: 1. Petitioner's Exhibit 1 – Letter from BDDS 2. Petitioner's Exhibit 2 – Letter from Nancy Drew
<input type="checkbox"/> Witness List	A list of all people (witnesses), including their addresses and telephone numbers, who you, Nancy Drew, expect to testify on your behalf
<input type="checkbox"/> Position Statement	A copy of any written summary of your position about the issues to be decided at the hearing, identifying any section of the Indiana Code or Administrative Rules, BDDS Standards or Guidelines, that you, Nancy Drew, believe to be relevant to this appeal

Include this case's OALP number (123456789) on all filings.

Where should I send these items?

You need to mail, deliver, or email copies of all the items above to the Respondent and Administrative Law Judge:

Respondent, BDDS	AND	Administrative Law Judge
c/o Kristin Brand, BDDS Appeals Coordinator 402 W. Washington St., Rm. W453 Indianapolis, IN 46204 or Kristin.Brand@fssa.in.gov		Office of Administrative Law Proceedings, 100 N. Senate Ave. Indianapolis, IN 46204 or OALP@oalp.in.gov

Questions?

43

Sample ALJ Court Excerpt: Filing an Appeal

What's different in the organization?

Original

II. **Petitioner's Duties – Nancy Drew's or Petitioner's representative shall**

Send the following:

- Proposed Exhibits & Exhibit List:** a copy of all exhibits the Petitioner plans to introduce into evidence. The exhibits shall be labeled with numbers, (for example "Petitioner's Exhibit 1," "Petitioner's Exhibit 2," and so on);
- Witness List:** a list of all persons (witnesses), including their address and telephone numbers, whom Nancy Drew expects to testify on behalf of Nancy Drew;
- Position Statement:** a copy of any written summary of their position with regard to the issues to be decided at the hearing, identifying any section of the Indiana Code or Administrative Rules, BDDS Standards or Guidelines, that Nancy Drew believes to be relevant to this appeal.

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- Respondent, BDDS, c/o Kristin Brand, BDDS Appeals Coordinator, 402 W. Washington St., Rm. W453, Indianapolis, IN 46204, Kristin.Brand@fssa.in.gov; and
- Administrative Law Judge at Office of Administrative Law Proceedings, 100 N. Senate Ave., Indianapolis, IN 46204 or OALP@oalp.in.gov.

Parties should include this case's OALP number ([OALP Number]) in their filings. Questions can be directed to oop@oalp.in.gov or to (317) 234-6689.

Sample Alternative

Petitioner's Duties

Nancy Drew, or Nancy Drew's representative, must send or deliver the following documents by August 1, 2021:

Item To Submit	Explanation
<input type="checkbox"/> Proposed Exhibits (Evidence)	Copies of all evidence (paperwork, photos, etc.) you plan to share at the hearing
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Questions?

Used checkboxes to reiterate these are things "to do"

Separated proposed exhibit and exhibit list

Added clear subheadings

Used more space to make information stand out

Provided brief intro to section (signposts)

44

What's the difference between these two excerpts about videoconferencing?

Additional Videoconference Hearing Instructions:

- The hearing will be held via Zoom, as specified above. You may participate in this hearing using the link above through any device that has internet access. You may also go to zoom.us, click on "Join a Meeting" and enter the "Meeting ID" and "passcode" identified in Zoom Access. If you do not have a device that has internet access, you may call in and participate in the hearing by telephone using the telephone number and passcode for phone calls identified above.
- Learn how to use Zoom prior to the hearing. Information on using Zoom can be found on the internet, including at <https://support.zoom.us/hc/en-us/articles/200941109-Attendee-controls-in-a-meeting> and at MOAHR's website (go to www.michigan.gov/lara, select "Michigan Office of Administrative Hearings and Rules," and click on the hyperlink for the "MOAHR Standards and Guidelines for Remote Hearings.")
- MOAHR does not provide technical support and cannot troubleshoot technical difficulties during the hearing. However, if you have tried but are unable to connect or call into the hearing, you should call MOAHR at (517) 335-7519 or (313) 456-1012 within 15 minutes from the scheduled start time of the hearing.
- It is your responsibility to notify MOAHR if the email address identified in this notice is incorrect or if you want MOAHR to use a different email address. If you did not receive an emailed copy of this Order/Notice and would like an electronic hyperlink to the Zoom hearing, you must email MOAHR at MOAHR-BSD-Support@michigan.gov before the hearing date and ask for a copy of this Order/Notice to be sent to you via email. This request must include your name, the docket number from page 1 of this Order/Notice, and the email address you would like the notice sent to.
- You should be in a private and quiet room during the hearing.
- You are responsible for notifying your witnesses of the date and time of the hearing, and any adjourned or continued hearing, and forwarding the contact instructions and the link to the hearing. Witnesses should be available at the start time of the hearing.
- If you do not login or call in for the Zoom hearing within 15 minutes of the scheduled time, the hearing may proceed in your absence and a final decision may be issued.
- Additional hearing instructions, as well as instructions to be shared with your witnesses, are enclosed.
- You should review the opposing party's proposed exhibits prior to the hearing and

Remote Hearing Frequently Asked Questions

Here are some common questions that people have about remote hearings.

What if I have trouble logging in to Zoom?

Make sure you review how to use Zoom before the meeting. Our office cannot help you with Zoom or computer issues during the hearing. If you do not login or call in for the Zoom hearing within 15 minutes of the scheduled start time, the hearing may go on even if you are not there. The judge may still issue a final decision.

If you have tried but cannot connect or call into the hearing, you should call MOAHR at (517) 335-7519 or (313) 456-1012 within 15 minutes of the scheduled start time of the hearing so that our office knows that you tried to join.

Where can I participate from? Do I have to be at home?

You should be in a private and quiet place during the hearing. You want to be able to focus. Many libraries have private rooms that you can book for free.

I didn't get any emails from MOAHR/I want to update my email.

It is your responsibility to tell our office if the email address listed in this notice is incorrect or if you want our office to use a different email address. If you did not get an emailed copy of this Order/Notice and need a link to the Zoom hearing, you must:

1. Email our office at MOAHR-BSD-Support@michigan.gov before the hearing date
2. Ask our office to send a copy of this Order/Notice by email
3. Include your name, the docket number from page 1 of this Order/Notice, and the email address you would like the notice sent to

What do I need to do to prepare my witnesses?

You are responsible for telling your witnesses the date and time of the hearing and about any adjourned or continued hearings. You must forward the contact instructions and hearing link(s) to them. Our office will not contact them.

Make sure your witnesses know to be ready at the start time of the hearing. You can find more hearing instructions and what to share with your witnesses on page 6.

45

What's the difference between these two excerpts about videoconferencing?

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Offered idea when possible.

Added more spacing.

Remote Hearing Frequently Asked Questions

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Grouped content into meaningful chunks of related information.

Used headings to make more scannable (in this case, using questions).

16

Tips for Organization + Cohesion



Have a clear main idea + prioritize important information



Organize content into a **logical order** (sequence, buckets of information, most important to least important, etc.)



Use headings to show “levels” of information (visual hierarchy)



Use transitions and connect ideas together, providing guideposts for the reader



Break it down into shorter paragraphs or cohesive lists with bullet points or icons (but not too long or they lose their impact!) as needed

Numbers can work well for sequences or listicles

47

A Few Basic Concepts to Apply to Everyday Documents

Non-Designer's Design Handbook: CRAP
By Robin Williams

Contrast

Repetition

Alignment

Proximity (Grouping)

48

Sample ALJ Court Excerpt: Filing an Appeal

Let's examine this example again thinking about information design.

Original

Sample Alternative

Used larger heading and smaller subheadings (CONTRAST)

Used same font family (REPETITION) but altered size (CONTRAST)

Used grouping to highlight to communication requirements (PROXIMITY)

Used grouping to show the terms and their definitions (PROXIMITY)

Used left alignment in general and used center alignment for accenting info (ALIGNMENT)

II. **Petitioner's Duties – Nancy Drew's or Petitioner's**

Send the following:

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Parties should include this case's OALP number ([OALP Number]) in their Questions can be directed to oalp@oalp.in.gov or to (317) 234-6689.

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AND

Administrative Law Judge
Office of Administrative Law Proceedings,
100 N. Senate Ave.,
Indianapolis, IN 46204
or
OALP@oalp.in.gov

49

Case Studies from Ideas42, a nonprofit design firm

- They have done several projects around administrative law processes
- Information design is one of several interventions involved in their processes

Before

After

NYC SUMMONS REDESIGN

FRONT: SUMMONS FORM

OLD

NEW

1 Clear title describes the purpose and required action.

2 The date, time, and location of the appearance is moved from the bottom to the top, where it is more likely to be read.

3 The consequence of missing is clearly articulated and framed to spur loss aversion, the human tendency to feel losses more acutely than equivalent gains.

4 Added clarification that appearing in court is not an admission of guilt.

5 Builders added for officers to quickly and clearly indicate where to go to court.

6 Boxes added for phone numbers and roles, allowing reminders for court and tracking of demographic data, respectively.

7 Website and phone number added for easy access to additional information.

50

25

Tips for Information Design



Check for clear visuals like enough color contrast and readable font



Use moderate line lengths when possible and manage alignment



Build in negative space (in other words, don't fill the entire page!)



Use images or illustrations to support text when possible (but make sure it is meaningful for and respectful of the audience)



Design for the medium

51

Wording + Structure

"I try hard to write an opinion so that no one has to read a sentence twice to get what it means."

Ruth Bader Ginsburg, Supreme Court Justice



52

What makes some words here potentially hard?

outstanding grant adjudication

pilot program secure cloud




appearance rue cut corners clinic

refrain judicial allocation

play it by ear

preponderance of evidence

53

 TIER 1 WORDS	 TIER 2 WORDS	 TIER 3 WORDS
<p>Everyday words, usually concrete</p> <p>Example: First, we will look at <u>apartments</u> that meet your <u>budget</u> and <u>needs</u>.</p> <p>Example words:</p> <ul style="list-style-type: none"> • Run • Read • Hospital • Happy • City 	<p>Words, usually more common in reading, that can be applied to different contexts</p> <p>Example: It is <u>critical</u> that we examine the <u>ramifications</u> of these legal policies on the <u>populace</u>.</p> <p>Example words:</p> <ul style="list-style-type: none"> • Emerge • Benevolence • Maintenance • Rue • Complexity 	<p>Words associated with a sector, genre, domain (jargon)</p> <p>Example: If you consent to a <u>judgment</u> in your <u>stipulation</u> and don't pay on time, your <u>eviction</u> can go forward.</p> <p>Example words:</p> <ul style="list-style-type: none"> • Pro se • Guardian ad litem • Bench • Counsel • Sanction

54

Example from Court Appeal Directions

What is a written summary? How much do I have to write?

You may, however, submit a **written summary** or Memorandum of Law explaining why you believe the Administrative Law Judge's decision is incorrect. This does not have to be submitted at the time you request the Agency Review, but you must submit it to the address or FAX number given above within twenty (20) days of the date that you received this decision. A copy must also be provided to the party(ies) listed below.

55

What's the difference?

ADJOURNMENT OR WITHDRAWAL: If you want to reschedule the hearing date or cancel your hearing request, you must send or fax MOAHR a **written, signed request before the hearing date**. Include the docket number on the Notice of Hearing with your request. Unless MOAHR notifies you that your request was granted, you must be available for the scheduled hearing. If on the day of your hearing you cannot participate, you must call MOAHR **immediately** before the scheduled hearing time.

Rescheduling or Cancelling Your Hearing Meeting
If you want to change or cancel your hearing date, you must send or fax our office a letter. The letter must:

- ☐ Send a short note asking for the change in writing
- ☐ Have your name and signature
- ☐ Include the X-digit docket number from the Notice of Hearing

Important: You must still plan on attending the hearing until you get a letter in the mail telling you that we agreed to your request to change or cancel the hearing. Call the ABC Office at 773-555-1212 right away if you cannot attend the hearing meeting if it is still scheduled.

56

Strategies We Used

Adjusted the heading to use more familiar language

ADJOURNMENT OR WITHDRAWAL: If you want to reschedule the hearing date or cancel your hearing, you must send a **written, signed request before the hearing date.** Include the docket number on the Notice of Hearing with your request. Unless MOAHR notifies you that your request was granted, you must be available for the scheduled hearing. If on the day of your hearing you cannot participate, you must call MOAHR **immediately** before the scheduled hearing time.

Clarified the 3 key parts of the letter

Rescheduling or Cancelling Your Hearing Meeting
If you want to change or cancel your hearing date, you must send or fax our request. You must:

Explained what "written request" means

- ☐ Send a short note asking for a change or cancellation
- ☐ Have your name and signature
- ☐ Include the X-digit docket number from the Notice of Hearing

Explained what happens (you will get a letter)

Important: You must wait until you get a letter in the mail telling you that we agreed to your request to change or cancel the hearing. Call the ABC Office at 773-555-1212 **right away** if you cannot attend the hearing meeting if it is still scheduled.

Highlighted info about next steps

57

Tips for Introducing New Words/Concepts

- **Don't assume - explain the context** (*We use the term 'exhibit' to refer to the paperwork, photos, or other items you want to share as evidence.*)
- **Link the term to connected ideas** (*Your exhibit items include any evidence you want to share. This evidence can include paperwork, photos, or other documents. You should send us an Exhibit List, or a list that tells us what each item of evidence is and includes the name and ...*)
- **Use the term in context with definitions, examples, relatable metaphors, etc.** (*Exhibits can be any information that helps the Judge understand your issue. This could be an email, letter, text message, or any other information that helps you explain your point of view. It's the proof that the Judge will review to help make a decision.*)
- **Consider a visual, video, audio, movement, etc. to aid in understanding** (*I am going to send you a link to a short video that shows you how to create an Exhibit List.*)

58

What’s the difference?

Subpoenas

A party that needs to subpoena a witness must request subpoenas from ABC Court in accordance with ABC Court requirements **no later than (21 days before the hearing date)**. Request for Subpoena forms may be accessed at www.abcgov.gov/courts. Requests must state the name and address of each witness and the reason needed. Delivery of subpoenas and notification of the date and time for the scheduled hearing (and any adjourned or continued hearing dates) is the responsibility of the requesting party.

Requiring Someone To Appear in Court

If you need to subpoena a person (require them to appear in court because they are not willing), you must submit a subpoena request form.

To do this, you must submit a Subpoena Request Form **at least 21 days before the hearing date**. You can find this form on our website: www.abcgov.gov/courts. You will need to have the name and address of each witness and the reason that you need them to be a witness.

If our office approves your subpoena for your witness(es), you will be responsible for getting a process server company to give the subpoena to the witness(es).

It is also your responsibility to let your witnesses know about the dates and times of the hearings, including changes.

59

What’s the difference?

Linked ideas together

Explained jargon

Subpoenas

A party that needs to subpoena a witness must request subpoenas from ABC Court in accordance with ABC Court requirements **no later than (21 days before the hearing date)**. Request for Subpoena forms may be accessed at www.abcgov.gov/courts. Requests must state the name and address of each witness and the reason needed. Delivery of subpoenas and notification of the date and time for the scheduled hearing (and any adjourned or continued hearing dates) is the responsibility of the requesting party.

Used more moderate sentence length

Requiring Someone To Appear in Court

To subpoena a person (require them to appear in court because they are not willing), you must submit a **Request for Subpoena** form.

You must submit this form **at least 21 days before the hearing date**. On the form, you will need to tell us the name and address of each witness and why you need them to be a witness. You can find this form on our website: www.abcgov.gov/courts.

? Does this cost money?

If we approve your request, you will be responsible for having a process server company give the notice of the subpoena to the witness(es). You must also let your witnesses know about the dates and times of the hearings, including changes.

Used active voice and 2nd person to clarify who does what

60

Readability Formulas

How They May Help

- Might be a good place to start if you already have a document that you want to get a snapshot of
- Quantifies aspects of writing if that data is helpful for you
- Give you a range if you do need a better sense of text complexity (some industry standards do attempt to quantify it)

What They Won't Do

- Won't address necessarily meeting the audiences wants and needs
- Won't address if background information is adequately addressed
- Sometimes there are big words that are really familiar – hospital, breakfast, etc. that might impact the formula
- Won't account for design elements

Audience feedback is the ultimate way to really know if content is effective.

61

Tips for Wording + Sentence Structure



Make sure readers are primed and given enough context!



In general use words that are precise yet familiar + provide clear definitions or examples with new terms or jargon they need to know



Consider sentence length and complexity



Use the active voice unless the passive voice is more appropriate or more clear



Be clear about who is doing what and action steps

62

Putting It All Together

"The common language of the law is not the product of necessity, precedent, convention, or economy, but it is the product of sloth, confusion, hurry, cowardice, ignorance, neglect, and cultural poverty."

-Judge Lynn N. Hughes, U.S.. District Court, Houston, Texas.



63

Take a look at this example text.

We are going to break into groups and take about 10 minutes to discuss what you think you might do to make these instructions for filing an appeal **easier to navigate, understand, and use.**

ALL PARTIES HAVE THESE APPEAL RIGHTS

If you are not satisfied with the decision of the Administrative Law Judge you may request that it be reconsidered. This process is called AGENCY REVIEW. This will NOT be a new hearing but will instead be a review of the established record by an impartial party who has not been previously involved in the appeal.

Your request for Agency Review must be submitted, in writing, within ten (10) days of the date that you received this decision. The address for mailing or otherwise sending your request for an Agency Review is:

MS 04 FSSA Appeals Agency Review
Attn: Ultimate Authority Designee
402 W. Washington St. Room E034
Indianapolis, IN 46204

Agency Review requests may also be faxed to FSSA Appeals Agency Review at 317-232-4412. Agency Review may not be requested by phone.

Agency Reviews are conducted in accordance with administrative rules found at 405 IAC 1.1-2 or 470 IAC 1-4-6. The process is limited to a review of the record established at the hearing. No new evidence can be considered.

You may, however, submit a written summary or Memorandum of Law explaining why you believe the Administrative Law Judge's decision is incorrect. This does not have to be submitted at the time you request the Agency Review, but you must submit it to the address or FAX number given above within twenty (20) days of the date that you received this decision. A copy must also be provided to the party(ies) listed below.

Even if a summary or Memorandum of Law is not submitted, the agency designee will still review the Administrative Law Judge's decision. An Agency Review can result in the Administrative Law Judge's decision being upheld, reversed, or remanded for further action.

When the Agency Review is completed, all parties will be notified of the outcome by a written Notice of Final Agency Action.

64

What changes did your group suggest?

What are 2-3 changes that your group think might increase the readability of this excerpt? 

65

**What makes
sense for your
system?**

**How can you
move the needle?**

- Review templates with a plain language lens
- Create a working group
- Develop a skill share or resource page
- Talk to people and identify pain points
- Create an advisory group
- Offer or attend further training
- ?????

66

Additional Resources

Books

- [Oxford Guide to Plain English](#) by Martin Cutts
- [Plain Language Legal Writing](#) by Cheryl Stephens
- [Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law](#) by Joseph Kimble

Professional Development Resources

- [Access for All Conference](#): Plain Language is a Civil Right
- [Clarity](#): Legal Plain Language Organization
- [Michigan Bar Journal: Plain Language Column](#)

67

“Writing clearly and plainly and directly just looks easy. Only the best minds and best writers can accomplish it — writers who have taken stock and freed themselves from the bad habits that plague professional writing everywhere.”

- Joseph Kimble
Lawyer, Professor, and Long-time Plain Language Advocate

68

Thank you!

Please feel free to stay in touch or
attend an upcoming virtual event at
Clear Language Lab!

I'd be happy to talk more!



melanie@litworks.org



litworks.org



[@LiteracyWorksChicago](https://www.instagram.com/LiteracyWorksChicago)



[@LitWorksChicago](https://twitter.com/LitWorksChicago)



[Literacy Works](https://www.facebook.com/LiteracyWorks)

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Item 1

- Workplace anxiety

The EAP also offers eight free in-person counseling sessions for you and your household per issue. You may [contact EAP](#) for a list of counselors available through the program.

EAP information under INSPD can be found at <https://www.in.gov/spd/2466.htm>. You may also contact the INSPD Employee Relations team by calling 1-855-SPD-INHR (1-855-773-4647) and choose the Employee Relations prompt.

Non-Discrimination and Inclusivity

OALP is committed to creating an inclusive work environment for everyone within our agency and for those parties that interact with OALP.

It is OALP's obligation to provide a fair and impartial hearing for all parties. OALP employees shall treat every person with civility regardless of their race, color, creed, religion, sex, national origin, age, sexual orientation or gender identity, or physical or mental disability, or any other category protected under state or federal law.

OALP embraces and celebrates the unique experiences, perspectives, and cultural backgrounds that each employee brings to our workplace. OALP strives to foster an environment where our employees feel respected, valued and empowered, and our team members are at the forefront in helping us promote and sustain an inclusive workplace.

OALP is committed to taking the following actions in support of an inclusive workplace:

- Provide ongoing education and training to all employees on diversity, equity and inclusion topics.
- Support the creation and operation of a culture and mentorship committee that may promote, education and advocate for diversity, equity and inclusion issues and which is open to be attended by all employees.
- Provide all employees with a safe avenue to voice concerns regarding diversity, equity and inclusion in our workplace.

Conduct

All OALP employees are also expected to support an inclusive workplace by adhering to the following conduct standards:

- Treat others with dignity, respect and civility at all times, especially when confronted with ideas and beliefs which may be different than your own.

Item 1

- Avoid repeatedly misnaming, deadnaming, or misgendering a person. If you misname or misgender someone, apologize, correct yourself and continue your interaction.
- Address and report inappropriate behavior and comments that are discriminatory, harassing, abusive, offensive or unwelcome.
- Foster teamwork and employee participation, encouraging the representation of different employee perspectives.
- Avoid slang or idioms that might not translate across cultures and be respectful of learning why certain language may be considered disrespectful in a certain culture.
- Confront the decisions or behaviors of others that are based on conscious or unconscious biases.
- Be open-minded and listen when given constructive feedback regarding others' perception of your conduct.

OALP will not tolerate unlawful discrimination, harassment or any behavior or language that is abusive and in violation of federal law.

Violations

Employees are expected to report incidents that violate this code of conduct by contacting a manager or human resources or by [using the anonymous ethics hotline or other anonymous reporting system].

Employees who violate OALP's code of conduct expectations will face disciplinary action. Possible consequences include additional training, written warnings, suspension and termination of employment.

Protected Rights

Nothing in this policy is intended to, nor should be construed to limit or interfere with employee rights to organize and engage in protected concerted activity regarding the terms and conditions of employment or violate any rights as set forth under all applicable provisions of the National Labor Relations Act, including Section 7 and 8(a)(1) rights to organize and engage in protected, concerted activities regarding the terms and conditions of employment.

Workplace Harassment and Anti-Retaliation

The State of Indiana's Workplace Harassment Prevention Policy applies to all OALP employees. OALP expects all employees to abide by that policy. To that end, you should immediately report any violation of the State of Indiana's Workplace Harassment Prevention Policy according to that policy's procedures.

Non-Discrimination and Inclusivity**Equal Employment Workplace** **and Hearing Process**

OALP is committed to creating an inclusive work environment for everyone within our agency and for those parties that interact with OALP.

It is OALP's obligation to provide a fair and impartial hearing process for all parties. OALP ~~employees~~ shall treat every person equality and shall not discriminate against a job applicant, employee, or party in a proceeding because of the person's with civility regardless of their race, color, creed, religion, sex, national origin, age, sexual orientation or gender identity, or physical or mental disability, veteran status, ancestry or any other category protected under state or federal law.

~~OALP embraces and celebrates the unique experiences, perspectives, and cultural backgrounds that each employee brings to our workplace. OALP strives to foster an environment where our employees feel respected, valued and empowered, and our team members are at the forefront in helping us promote and sustain an inclusive workplace.~~

~~OALP is committed to taking the following actions in support of an inclusive workplace:~~

- ~~• Provide ongoing education and training to all employees on diversity, equity and inclusion topics.~~
- ~~• Support the creation and operation of a culture and mentorship committee that may promote, education and advocate for diversity, equity and inclusion issues and which is open to be attended by all employees.~~
- ~~• Provide all employees with a safe avenue to voice concerns regarding diversity, equity and inclusion in our workplace.~~

Conduct

~~All OALP employees are also expected to support an inclusive workplace by adhering to the following conduct standards:~~

- ~~• Treat others with dignity, respect and civility at all times, especially when confronted with ideas and beliefs which may be different than your own.~~
- ~~• Avoid repeatedly misnaming, deadnaming, or misgendering a person. If you misname or misgender someone, apologize, correct yourself and continue your interaction.~~
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Employees who violate OALP's code of conduct expectations will face disciplinary action. Possible consequences include additional training, written warnings, suspension and termination of employment.

Item 2

knowledgeable about, public issues. OALP expects you to consider how your actions and statements represent and affect OALP, parties to proceedings with OALP, and the State of Indiana. Please consider every contact between yourself and the public as a representation of OALP and act accordingly, regardless of whether the contact occurs during the course of business. This includes use of social media.

Although you are expected to treat each contact with the public as a representation of OALP, no employee other than the OALP Executive Director has the authority to speak on behalf of OALP (including but not limited to speaking to any member of the media). This should not be construed as a limitation on an employee's right to speak under the First Amendment.

Open Door Policy / Issue Resolution Procedures

In any organization, there can be differences of opinion about working conditions, rules, methods of work performance, and other issues. An open channel of communication is essential for an enjoyable work atmosphere and OALP's ability to function effectively and efficiently.

Accordingly, OALP operates in an "open door" manner to help its employees and supervisors work together to address and resolve work-related issues in a positive and productive manner. All employees are encouraged to discuss ideas and concerns with OALP leadership or co-workers in an open, honest, and professional manner. If you do not feel comfortable addressing these matters alone, ask OALP leadership to assist you with the conversation.

To do so, we request you first bring your comments or concerns to your immediate supervisor. In cases where that may not be appropriate, you may bring your comments or concerns directly to the OALP Director. Concerns or complaints about the [State's Workplace Harassment Prevention Policy](#) should follow the channels identified in that policy.

Avoid keeping issues or concerns to yourself. Talk them over, so we all can work together to address and resolve them. OALP and its employees will benefit from open communication and commitment to resolution.

All employee input is considered and can be presented without fear of reprisal. However, in presenting your ideas or concerns, do so in a truthful, responsible, civil, professional, and respectful manner. This policy should not be viewed as authorization to engage in gossip, slander, or insubordination, but rather a means to resolve conflict and improve workplace culture.

Complaint information under the State's Civil Service System can be found at www.in.gov/spd/2399.

~~Open Door Policy / Issue Resolution Procedures~~

Page 15 of 22

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Indiana Department of Administration

This section outlines the IDOA's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

IDOA has a few departments that may qualify as a DEI initiative. First, the Governor's Commission on Supplier Diversity is a bipartisan commission that exists, among other reasons, to "[i]nitiate aggressive programs to assist minority business enterprises [MBEs], women's business enterprises [WBEs], and veteran owned small businesses [VOSBs] in obtaining state contracts." Ind. Code § 4-13-16.5-2(g)(3); *see also* IC § 4-13-16.5-2(a) (establishing membership composition).

Second, and under the jurisdiction and at the direction of the Governor's Commission, the Division of Supplier Diversity is established by IC 4-13-16.5-3 by way and through the creation of the Deputy Commissioner of IDOA.

Separate from supplier diversity, the procurement division has discontinued the use of DEI language in its boilerplate RFP. Prior to the Governor's DEI executive order, IDOA's standard RFP template inquired as to the diversity and inclusion of the respondent's organization. This language has been removed from IDOA's template.

Finally, IDOA procurement and legal have updated the nondiscrimination provision in the state's contract template. This language has been reviewed and approved by the Governor's General Counsel and the Office of Attorney General. FAQ's have been issued to agencies, which offers guidance and acknowledges the evolving legal environment surrounding the issue. Those draft documents are attached.

DEI Staff Positions

IDOA currently employs the Deputy Commissioner of Supplier Diversity, who manages seven individuals assigned to the statutory program. Not including the deputy commissioner, supplier diversity staff include a director of certification, a director of contract compliance, a business development and outreach manager, and two certification specialists. Currently, the division has two vacant positions, which include a contract compliance manager and a director of business development and outreach.

Mission Statement or Value Statement

Consistent with the requirements of Indiana Code, the Division of Supplier Diversity's mission is as follows:

To assist minority, women and veteran owned businesses by:

- *Creating a fair, competitive, and equitable business environment;*
- *Providing networking opportunities to clients;*
- *Working to increase utilization; and*
- *Monitoring and enforcing program compliance.*

The division fulfills its mission by providing knowledge, guidance, and service to clients while protecting the integrity of the program. The commitment pledges high quality customer service that is both efficient and professional, and that demonstrates respect for both clients and colleagues.

Programs Administered to the Public

- The Division of Supplier Diversity acts on behalf of the State of Indiana to actively promote, monitor and enforce the standards for certification of minority, women, and veteran business enterprises. The Division was established in 1983 by the State of Indiana when Indiana Code 4-13-16.5 became law. Its mission is to provide equal opportunity to minority, women, and veteran owned enterprises in the state's procurement and contracting process. Since the enabling statute was passed, various iterations of regulations, codified in 25 IAC-5 and 25 IAC 9, have been adopted to govern the program.
- On IDOA's webpage they have resources and reports available to the public for their review. There are several IDOA Annual Outreach Reports on the webpage, and these are annual reports that address outreach and resources to minority owned businesses and promotion of diversity in Indiana.

Grant Conditions

- The division of supplier diversity does not receive federal funding, so no grant conditions have been accepted.

Training/Instruction administered to the Employees

- Consistent with statutorily based programmatic mandates, IDOA does have policy for employees and contractors to follow Affirmative Action requirements, and the webpage includes a FAQ section on contract compliance for Affirmative Action certificates.

Job Applicant Requirements

- IDOA does not require supplier diversity or DEI training or education.

33. Nondiscrimination.

Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act:

A. The Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this subparagraph may be regarded as a material breach of this Contract, including for purposes of Indiana Code § 5-11-5.5-2, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

B. Contractor covenants that it does not and shall not operate any programs or engage in any practices promoting Diversity, Equity, and Inclusion (DEI) that violate Indiana or Federal Civil Rights Laws by treating a person differently on the basis of race or sex, such as by considering race or sex when making recruitment, hiring, disciplinary, promotion, or employment decisions; requiring employees to participate in training or educational programs that employ racial or sex stereotypes; or attempting to achieve racial or sex balancing in the Contractor's workforce. The Parties agree that a breach of this subparagraph is a material breach of this Contract, including for purposes of Indiana Code § 5-11-5.5-2, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

Updates to the Nondiscrimination Clauses in State Contracts

Frequently Asked Questions

What changes have been made to the Nondiscrimination Clause in the standard state contract template and why?

In light of recent developments in civil rights law, including the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023), a modification to the civil rights provision of the State contract and grant templates used by state agencies is appropriate to ensure that all contracts into which the state enters fully comply with Indiana Code § 22-9-1-10, which requires state contractors and grantees to covenant that they will not discriminate on the basis of race or sex, among other protected characteristics, in their employment practices. The revised Clause adds a new subparagraph concerning diversity, equity, and inclusion ("DEI") practices and references to Indiana's False Claims Act in both the current and new subparagraphs of the Clause.

The revised language requires a contractor or grantee to covenant that it does not operate any programs or engage in any practices promoting DEI that violate Indiana or federal civil rights laws by treating a person differently on the basis of race or sex, such as by considering race or sex when making recruitment, hiring, disciplinary, promotion, or employment decisions; requiring employees to participate in trainings or educational programs that employ racial or sex stereotypes, depending on the circumstances under which the trainings or programs are conducted; or attempting to achieve racial or sex balancing in the Contractor's workplace.

Prohibitions on racial discrimination have long been included in all state contracts. The new subparagraph concerning DEI practices simply clarifies and makes explicit the obligations to which all state contractors and grantees are already subject.

What makes DEI programs or practices unlawful?

If a contractor or grantee treats a person differently than it treats another person because of race or sex, the contractor is violating the law. Contractors and grantees are thus prohibited from using race or sex in decisions pertaining to hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, and all other aspects of their workforce operations.

Although some programs and practices may seem neutral as to race and sex, a program or practice is still unlawful if it is based on considerations of race or sex or indirectly takes race or sex into account in employment or other contexts. For example, an employer may

not use job applicants' cover letters, writing samples, or other factors as proxies for determining or predicting an applicant's race and favoring or disfavoring applicants based on such determinations. Relying on non-racial information as a proxy for race, and making decisions based on that information, violates the law.

DEI programs often violate civil rights laws in subtle but significant ways. For instance, many DEI programs operate based on unlawful assumptions that members of a certain race behave or think alike and treat members of that race accordingly. That is a form of racial stereotyping that violates civil rights laws.

Not all DEI programs or practices necessarily violate federal or state civil rights laws. Conversely, just because a contractor's or grantee's program or practice does not use racially charged DEI language does not mean that it is compliant with civil rights laws. Some entities may attempt to veil racially discriminatory policies with terms like "anti-racism," "social-emotional learning" or "culturally responsive" training. Whether a DEI initiative constitutes unlawful discrimination does not turn on whether it is labeled "DEI" or uses terminology such as "diversity," "equity," or "inclusion." An assessment of policies and programs depends on the facts and circumstances of each case.

Relatedly, DEI practices related to sex may not always raise the same legal concerns as racially discriminatory practices in cases where sex is a bona fide occupational qualification.

What are some examples of unlawful DEI programs or practices?

Examples of unlawful DEI programs or practices include:

- Implementing "quotas" or otherwise attempting to "balance" a workforce by race or sex;
- Excluding or dissuading individuals from taking part in training, fellowships, mentoring, or other programs on the basis of their race or sex;
- Selecting candidates for interviews, including placement on candidate slates, based on their race or sex;
- Limiting membership in workplace groups, such as employee resource groups, to members of particular racial groups;
- Making resources or other forms of workplace support available only to employees of a particular race; and

- Separating employees into groups based on race when administering workplace trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.

What consequences do state contractors and grantees face if they operate unlawful DEI programs?

Contractors and grantees who operate unlawful DEI programs may be subject to penalties under Indiana's False Claims Act, Indiana Code § 5-11-5.5 *et seq.* The new, revised Nondiscrimination Clause makes clear that breach of the Clause will be treated as a material breach of the contract for purposes of the False Claims Act.

The attorney general and inspector general have concurrent jurisdiction to investigate violations of the False Claims Act, and the attorney general may bring a civil action against the contractor or grantee to recover up to three times the amount of damages sustained by the state, plus attorneys' fees and up to \$5,000 in penalties. Additionally, the Act authorizes whistleblowers to bring a civil action on behalf of the State to recover these damages.

When is the effective date of the updated Nondiscrimination Clause?

Any contracts initiated on or after July 1, 2025 must include the updated Nondiscrimination Clause. Contracts initiated after July 1, 2025 without the updated Nondiscrimination Clause may be disapproved by the attorney general. Contracts that have already been signed and submitted for approval before July 1, 2025 do not have to be amended to include the updated Nondiscrimination Clause.

Contracts that are amended after July 1, 2025 must incorporate the updated Nondiscrimination Clause, even if the only changes are term extensions or added funds.

How does the updated Nondiscrimination Clause affect Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") requirements?

MBE and WBE requirements in state contracts are legally suspect in light of recent developments in federal and state civil rights laws. The Office of the Attorney General ("OAG") recognizes that there is significant tension between recent Supreme Court precedents and programs that make race or sex a factor in the state procurement process, and there is active litigation concerning such programs. OAG is monitoring this litigation and other legal developments and will advise state agencies if new developments in the law mean that MBE or WBE requirements may no longer be included in the procurement process or state contracts.

About Us

 [Division of Supplier Diversity \(/idoa/mwbe\)](#) > About Us

Mission

The Division of Supplier Diversity assists minority, women and veteran owned businesses by:

- Creating a fair, competitive, and equitable business environment
- Providing networking opportunities to clients
- Working to increase utilization
- Monitoring and enforcing program compliance

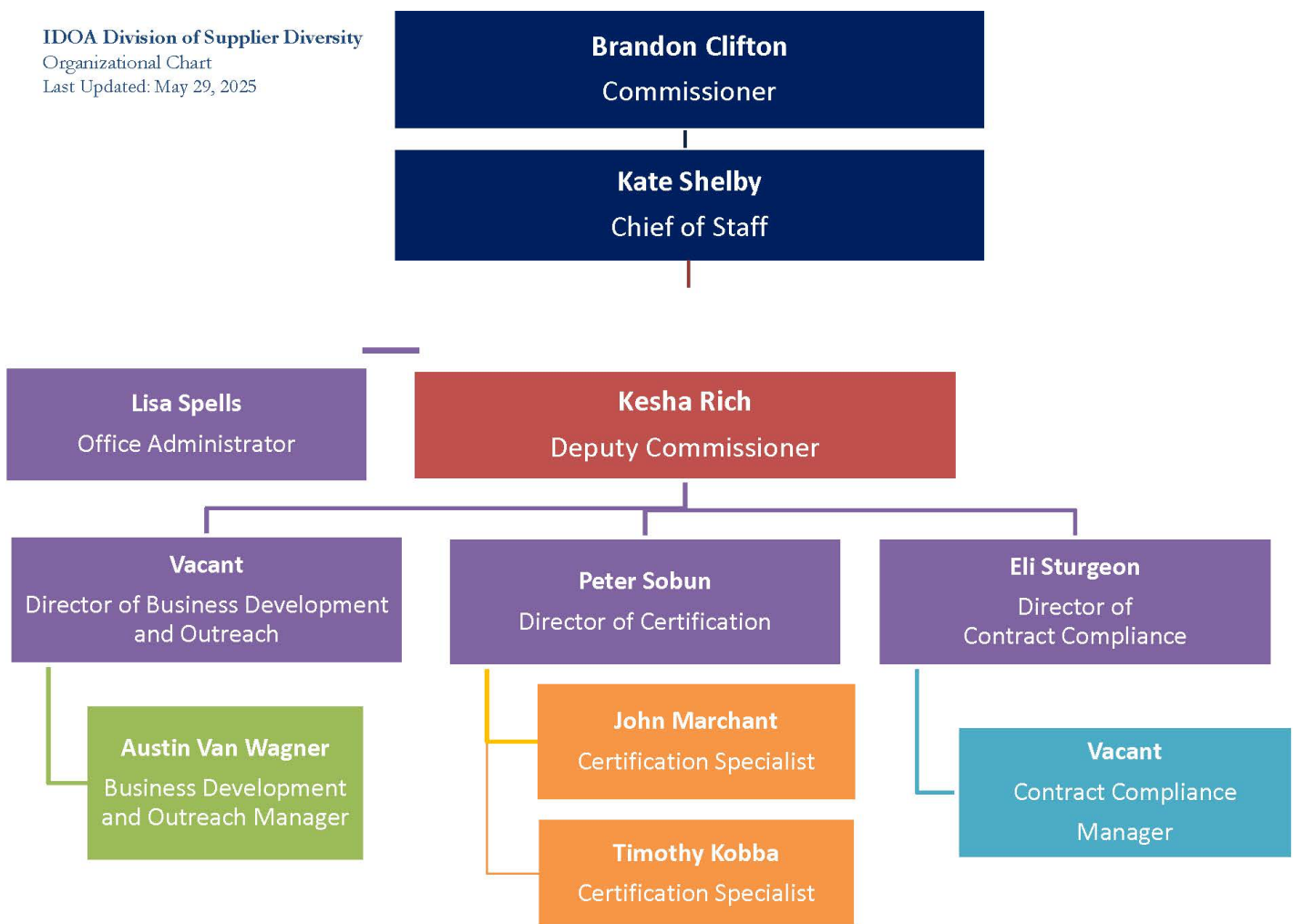
The division fulfills its mission by providing knowledge, guidance, and service to clients while protecting the integrity of the program. The commitment pledges high quality customer service that is both efficient and professional, and that demonstrates respect for both clients and colleagues.

Business Strategy

Our Business Strategy is driven by our focus on these key objectives:

- Adding value to Indiana's economy
- Establishing strategic partnerships
- Positioning minority, women, and veteran-owned businesses for growth

Division Org. Chart



Division Organizational Chart (pdf) (/idoa/mwbe/files/DSD_OrgChart_05.29.25.pdf).

I Want To

Apply for MBE/WBE (</idoa/mwbe/minority-and-womens-business-enterprises/certify-your-business/indiana-firms-certification-steps>).

See the list of MBE/WBE certified businesses (</idoa/mwbe/minority-and-womens-business-enterprises/certified-business-search>).

Find opportunities for bidding (</idoa/mwbe/business-opportunities/subcontractor-and-other-opportunities>).

Find Indiana government and university purchasing contacts (</idoa/mwbe/business-opportunities>).

See who's on the Governor's Commission for MWBE ([\(/idoa/mwbe/minority-and-womens-business-enterprises/governors-commission-on-supplier-diversity/commission-members\)](http://idoa/mwbe/minority-and-womens-business-enterprises/governors-commission-on-supplier-diversity/commission-members))

Know the next meeting of the Governor's Commission for MWBE. ([\(/idoa/mwbe/minority-and-womens-business-enterprises/governors-commission-on-supplier-diversity/commission-meeting-schedule\)](http://idoa/mwbe/minority-and-womens-business-enterprises/governors-commission-on-supplier-diversity/commission-meeting-schedule))

Online Services

View State Property Map & Records (<http://www.in.gov/idoa/StateLandOffice>)

Search State Contracts (<https://www.in.gov/idoa/procurement/active-contracts-and-qpas>)

See Contracts Out for Bid (<https://www.in.gov/idoa/procurement/supplier-resource-center/find-current-bidding-opportunities>)

Register as a Bidder (<https://www.in.gov/idoa/procurement/supplier-resource-center/requirements-to-do-business-with-the-state/bidder-profile-registration>)

Register as an Executive Branch Lobbyist (idoa/executive-branch-lobbying)

Forms.IN.gov (<https://www.in.gov/idoa/forms.in.gov>)

More IN.gov Online Services (<http://www.in.gov/services.htm>)

IN.gov Subscriber Center (http://www.in.gov/subscriber_center.htm)

Top FAQs

Does my certification with the State automatically certify me with the City of Indianapolis? (<https://faqs.in.gov/hc/en-us/articles/115005041567-Does-my-certification-with-the-State-automatically-certify-me-with-the-City-of-Indianapolis>)

What is state-owned Surplus property? (<https://faqs.in.gov/hc/en-us/articles/115005042167-What-is-state-owned-Surplus-property>)

Can the Minority and Women's Business Enterprises office help me with the application process for certification? (<https://faqs.in.gov/hc/en-us/articles/115005213648-Can-the-Minority-and-Women-s-Business-Enterprises-office-help-me-with-the-application-process-for-certification>)

What are the certification requirements for a Minority and/or Women-owned Business Enterprise? (<https://faqs.in.gov/hc/en-us/articles/115005042007-What-are-the-certification-requirements-for-a-Minority-and-or-Women-owned-Business-Enterprise>)

How long does the certification process take? (<https://faqs.in.gov/hc/en-us/articles/115005213908-How-long-does-the-certification-process-take>)

As a vendor, how can I get a piece of the action by being allowed to sell my goods at the new stadium? (<https://faqs.in.gov/hc/en-us/articles/115005041487-As-a-vendor-how-can-I-get-a-piece-of-the-action-by-being-allowed-to-sell-my-goods-at-the-new-stadium>)

More FAQs ([https://ingov.zendesk.com/hc/en-us/search?utf8=✓&query=Minority Women's Business Enterprise](https://ingov.zendesk.com/hc/en-us/search?utf8=✓&query=Minority%20Women's%20Business%20Enterprise))

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Email State Information Center (<https://in.accessgov.com/idoa/Forms/Page/idoa/ask-sic-a-question/>)

Find a Person (<https://www.in.gov/apps/iot/find-a-person/>)

Find an Agency (http://www.in.gov/core/find_agency.html)

Call: 1-800-457-8283 (tel:1-800-457-8283)

Text: 1-888-311-1846 (tel:1-888-311-1846)

Quick Information

[IN.gov User Survey \(https://www.in.gov/core/sitesurvey.html\)](https://www.in.gov/core/sitesurvey.html)

[Advanced Search \(https://www.in.gov/core/advanced_search.html\)](https://www.in.gov/core/advanced_search.html)

[Policies \(https://www.in.gov/core/policies.html\)](https://www.in.gov/core/policies.html)

[Sitemap \(https://www.in.gov/core/sitemap.html\)](https://www.in.gov/core/sitemap.html)

[IN.gov FAQs \(https://faqs.in.gov/hc/en-us\)](https://faqs.in.gov/hc/en-us)

[State Employee Resources \(https://www.in.gov/core/info_employees.html\)](https://www.in.gov/core/info_employees.html)

State Information

[Maps & Information \(https://www.in.gov/core/map.html\)](https://www.in.gov/core/map.html)

[IN.gov News & Events \(https://www.in.gov/core/news_events.html\)](https://www.in.gov/core/news_events.html)

[Email Updates \(https://www.in.gov/core/gov-delivery.html\)](https://www.in.gov/core/gov-delivery.html)

[Indiana Code \(https://iga.in.gov/legislative/2023/current/ic/\)](https://iga.in.gov/legislative/2023/current/ic/)

[Indiana Administrative Code \(http://www.in.gov/legislative/iac/\)](http://www.in.gov/legislative/iac/)

[Awards \(https://www.in.gov/core/awards.html\)](https://www.in.gov/core/awards.html)



[Accessibility Settings](#)

[Report Accessibility Issues \(https://www.in.gov/core/accessibility-feedback.html\)](https://www.in.gov/core/accessibility-feedback.html)

SPEAK

Indiana Finance Authority

This section outlines the Indiana Finance Authority's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Finance Authority did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Finance Authority did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

- The Finance Authority did not have a mission or value statement involving DEI.

Policy or Procedure

- The Finance Authority did not have any public programs involving DEI.
- A 2023 Request for Qualifications for Audit Services requested responders to describe their policies on "affirmative action . . . [and the] use of women and minority business enterprises [MBE/WBE]." ¹ The contract resulting from the RFQ required the vendor to only comply with its MBE/WBE plan and IC 22-9-1-10.
- A 2020 Request for Qualifications for Toll Road Oversight requested responders to summarize their policies on "practices for the promotion of diversity in the workplace" and the "use of Minority and Women-Owned Business Enterprises [MBE/WBE]." ² The contract resulting from the RFQ required the vendor to only comply with its MBE/WBE plan and IC 22-9-1-10.

Grant Conditions

- The Finance Authority did not have any DEI grant conditions.

Training/Instruction Administered to the Employees

- At the urging of the then-Governor's office, a member of the Governor's Equity, Inclusion, and Opportunity Office led a discussion of DEI topics at an all-staff meeting of the Finance Authority on May 16, 2023.

Job Applicant Requirements

- The Finance Authority did not have any DEI job-applicant requirements.

¹ See Item 1.

² See Item 2.

INDIANA FINANCE AUTHORITY

REQUEST FOR QUALIFICATIONS

INDEPENDENT AUDIT SERVICES

April 24, 2023

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
(317) 233-4332

INTRODUCTION

The Indiana Finance Authority (the "Authority") is requesting information from firms interested in providing independent audit services for fiscal years ending June 30, 2023 through and including June 30, 2024 with an option for two additional years upon mutual agreement by the Authority and the firm.

This Request is not an Invitation to Bid, nor is it a Request for Proposal. The Authority creates no obligation, expressed or implied, by issuing this Request for Qualifications (RFQ) or by receiving any responses submitted in response to it. The award of any contract shall be at the sole discretion of the Authority. Neither this RFQ nor any response submitted to it should be construed as a legal offer.

BACKGROUND INFORMATION

The Indiana Finance Authority is a body both corporate and politic, and though separate from the State, the exercise by the Authority of its powers constitutes an essential public function. The Authority was created in 2005 under IC 4-4-10.9 and 4-4-11, et seq. and is governed by a five-member board including the State Treasurer, director of the Indiana Office of Management and Budget and three members appointed by the Governor. One of the statutory purposes of the Authority is to oversee State debt issuance and provide efficient and effective financing solutions to facilitate state, local government, and business investment in Indiana. Information regarding the Authority's programs can be found at www.in.gov/ifa/.

For the year ending June 30, 2023 and forward, the Authority will require financial statements for the following:

- Indiana Finance Authority
- Indiana Stadium and Convention Building Authority
- Indiana Motorsports Commission
- State Revolving Fund

In addition to the financial statements, the Authority will require a Single Audit Report for the Authority.

Copies of the Authority's audited financial statements for fiscal years 2022 through 2018 are available at <https://www.indianabonds.org/indiana-finance-authority/documents/downloads/i762>

The Authority uses MAS 200 accounting software that includes the financial activities of all agency operations.

PROPOSED SCOPE OF WORK

1. The respondent shall perform an audit of the consolidated financial statements of the Authority with the ability to opine at the consolidating agency level of reporting which will be included in supplemental schedules to the financial statements.
2. The respondent shall perform an audit of the Indiana Stadium Convention and Building Authority, Indiana Motorsports Commission, and the State Revolving Fund each year similar to reporting performed historically.
3. The respondent shall perform such work in accordance with generally accepted auditing standards, *Government Auditing Standards* issued by the Comptroller General of the United States and the *Uniform Compliance Guidelines for Audits of Hospitals and State and Local Governments by Authorized Independent Public Accounts* issued by the Indiana State Board of Accounts.
4. Because the audit is subject to approval by the State Board of Accounts, the respondent may be required to provide audit workpapers to the State Board of Accounts or may be asked to meet to discuss the scope and results of the audits.
5. The activities of the Authority are included in the State of Indiana ACFR as blended or discretely presented component units or as fund level (SRF) financial statements. Therefore, the respondent may be asked to provide audit information or may be asked to meet to discuss the financial statement presentation.
6. The respondent shall present the financial statements, any recommendations and opinions no later than October 15 of each year. The respondent must also make a presentation of the statements to the Authority's board. Draft financial statements, opinions and management recommendations must be available to Authority management at least one week prior to the October 15 date.
7. The respondent should have a working knowledge of MAS 200 software in order to properly plan and conduct the audit.
8. As needed the respondent shall provide assistance to the Authority on the implementation of new accounting pronouncements.

AUTHORITY RESPONSIBILITIES

Through the use of Authority staff, the Authority expects to provide the external auditor a complete financial statement, note disclosures and supplemental schedule to the external auditor. In addition, the Authority will prepare and provide substantially all supporting documentation including trial balance, financial statement line reconciliation, note disclosure support references, material account reconciliations, confirmation generation, permanent files, analytics and other schedules. All information will be provided electronically except original source documents.

Related to internal controls, the Authority will assist with:

- Documenting internal control policies and procedures using checklists or narrative.
- Compiling internal control testing data and performing procedures that may be reperformed by the auditors as desired.

To the extent other information can be prepared, the Authority will discuss and agree-upon other audit documentation with the external auditor. All practical requests from the auditor should be given to the Authority to determine their capability to provide information in order to mitigate the time spent by external auditors on accounting matters and procedures.

This level of service should be contemplated when reviewing the scope of work and preparing budgets for estimated professional fees under this request for qualifications.

INFORMATION REQUESTED

The response is limited to **15 pages** excluding the cover page, table of contents, and two appendices. A transmittal letter is not required. All respondents must provide the following information in numbered order:

1. Cover page with the name and title of individual who is responsible for this response, mailing address, telephone number, fax number and e-mail address.
2. Table of Contents
3. Executive Summary - Explain how selecting the firm will benefit the Authority.
4. A brief description of the firm's experience serving as independent auditor of other State of Indiana quasi-governmental or similar agencies. Include the number of local partners and staff that focus their time serving governmental entities. Include contact information for three (3) references for which similar work has been done, at least one of which must be a former client.
5. Staff Qualifications – Please provide relevant biographical information with respect to the Partner, Senior Manager and/or Manager, and In-charge positions. Traditional resumes are not required. The information should include but is not limited to:
 - Unique qualifications and years of audit experience
 - Governmental accounting and auditing training and experience
 - Similar clients
 - Certifications and association involvement

The Authority will look for an engagement team that has active hands on involvement by the team leaders, and the firm's approach to maintaining staff continuity over time.

6. A brief description of how the firm will conduct the audit in the first year and subsequent years. Also include a brief description of how you will work with IFA to efficiently/effectively plan and perform the audit.
7. The Authority expects that the respondent will use Authority staff and develop creative/innovative ways to improve the efficiency of the audit process to mitigate audit fees. For each year, the proposed fee structure for the engagement must include:
 - Not to exceed fee quote for services
 - Range of hours related to the fee quote
 - Estimated breakdown of hours and rates by staffing level:
 - Partner/Principal
 - Senior Manager

- Manager
 - Incharge
 - Staff
 - Billing rates for other independent consultation outside the scope of the audit
8. **Appendix A** - Provide a statement on the following:
- Firm's policies on:
 - Prohibition of discriminatory employment practices;
 - Affirmative action and equal opportunity;
 - Use of women business enterprises;
 - Use of minority business enterprises;
 - Enforcement of drug-free workplace initiatives.
 - Details of any criminal or material civil investigation, conviction or judgment, material litigation or regulatory or civil enforcement action completed or pending against the firm or members or former members of the firm during the past five years.
9. **Appendix B** - Provide a copy of your most recent peer review reporting package. Please attach any comments related to the firm's government work.

ADMINISTRATIVE INFORMATION

1. A firm may not join with any other related or non-related firm in responding to this Request. The Authority will not enter into a contract or other agreement for independent audit services without further discussion. This Request is not an invitation to bid or a request for proposal under the procurement provisions of the Indiana Code.
2. Neither the State nor the Authority will assume any responsibility or liability for any expenses incurred by a respondent or prospective respondent in connection with the preparation or delivery of a response, requested interview or any action related to the process of completing and submitting a response to this Request.
3. Respondent shall certify within the letter of transmittal that all information provided herein is accurate and complete, to the best of its knowledge, and that any false or misleading information may result in disqualification of the proposing firm at the Authority's discretion.
4. Respondent shall disclose any information about its firm which may materially impair the firm's ability to provide the level of service required of an independent auditor.
5. The Authority reserves the right to reject any and all submissions without cause, waive irregularities in all procedures related to this Request, make inquiries of responding firms and their references and clients regarding qualifications of information submitted as part of their response as deemed necessary, and request and receive additional information as the Authority deems necessary.
6. The Authority shall be deemed the owner of all information and papers submitted by a respondent.

7. Additional State contract boilerplate information that the selected firm will be required to agree to, appears in Attachment A.

CALENDAR

The following calendar will be followed. However, the Authority reserves the right to alter this calendar, as they deem necessary.

Response Due Date: All responses to this request are due on May 5, 2023 by 12:00 p.m. An electronic PDF of your response is acceptable for the May 5, 2023 due date by email to cmcafee@ifa.in.gov. The Authority requests that 3 bound copies be delivered by May 5, 2023 at 3:00 p.m.

Award Date: The Authority reserves the right to conduct interviews of any respondent as deemed necessary. The Authority will have a recommendation for an independent auditor prepared by May 12, 2023. Selection of the firm is subject to Authority board approval at the May 18th board meeting.

SUBMITTAL INFORMATION

Please send inquiries and response to:

Connie McAfee
Controller
Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, Indiana 46204
cmcafee@ifa.IN.gov

If you have any questions regarding this Request, please contact Ms. McAfee at (317) 234-4265. **No respondent should contact other Authority or State officials during the qualification process without the express permission from Connie McAfee.**



Request for Qualification
Professional Audit/Oversight Services In Connection with the
Amended and Restated Indiana Toll Road Concession and Lease
Agreement

January 29, 2020

Proposals due by 5:00 P.M. EST February 21, 2020

**Indiana Finance Authority Request for Qualification
Professional Audit/Oversight Services related to the Amended and Restated Indiana Toll
Road Concession and Lease Agreement**

I. INTRODUCTION

This Request for Qualification (“RFQ”) is issued by the Indiana Finance Authority (“IFA”), a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions, to seek competitive proposals (individually, a “Proposal” and collectively, the “Proposals”) from firms interested in providing audit/oversight services in connection with the Indiana Toll Road (the “Toll Road”) and the Amended and Restated Indiana Toll Road Concession and Lease Agreement (the “Concession Agreement”), dated as of July 1, 2017, between the IFA and the ITR Concession Company, LLC (the “ITRCC”). Any interested firm (hereinafter defined as a “Respondent”) is encouraged to respond to this RFQ, in accordance with the guidelines discussed below.

If selected, the Respondent will enter into a Professional/Personal Services Agreement (the “Agreement”) with the IFA, to perform the Services more particularly described in Section II of this RFQ. A copy of the Agreement has been attached as Exhibit A to this RFQ. The IFA shall select the Respondent that submits a Proposal that is a complete response to the RFQ and demonstrates the greatest ability to effectively perform the Services set forth in Section II of this RFQ.

Respondents are encouraged to employ methods to provide cost-savings alternatives. For example: use of local staffing to reduce or eliminate travel time, mileage, meals, and hotel expenses.

Respondents are encouraged to use an engineering student from an area college as a second inspection person on the project. This alternative provides the ability to significantly reduce costs and provide practical experience for area engineering students.

II. SCOPE OF WORK

The Respondent shall provide audit/oversight services (the “Services”) for the IFA relating to the confirmation of required performance by the ITRCC under Concession Agreement. For reference, a copy of the Concession Agreement and related documents can be found at <https://www.in.gov/ifa/2973.htm>. The Respondent shall assume that the items described below shall be included in the Scope of Services attached as Exhibit A to the Agreement.

1. Drive the length of the Toll Road conducting four (4) visual inspections, once in mid-April, once in mid-June, once in mid-August, and once in mid-October during the term of the Agreement, on random days/weeks, with prior written notification to the ITRCC and

IFA, to monitor and note any deficiencies in the performance obligations required by the Performance Time Frames in the Operating Standards Manual of the Concession Agreement (the "Maintenance Manual" or "Operations and Procedures Manual") with respect to the following categories:

- a. Roadway Maintenance (**Volume I, Maintenance Manual, Chapter B.3.3**);
- b. Pavement Delineation Maintenance (**Volume I, Maintenance Manual, Chapter C.3.3**);
- c. Roadside Safety Features and Systems Maintenance, including Guardrail, Barrier Wall and Impact Attenuators (**Volume I, Maintenance Manual, Chapter H.3.3**);
- d. Lighting and Electrical System Maintenance (**Volume I, Maintenance Manual, Chapter J.3.3**);
- e. Signs and Sign Maintenance Systems (**Volume I, Maintenance Manual, Chapter I.3.3**);
- f. Toll Plaza Maintenance (**Volume I, Maintenance Manual, Chapter K.3.3**).
Inspections shall include documenting functionality (in both directions) of all Toll Plaza overhead signage and lighting, functionality, and presence of tollgates, and functionality and presence of toll lane lighting.

Inspections for all items described above will be conducted on each inspection trip. It is anticipated that each inspection will take two-to-three days/nights and all inspections shall be completed in one trip.

2. Snow and Ice Control (**Volume II, Operations and Procedures Manual, Chapter E.3.4**). One (1) inspection shall be conducted during the winter season (December through March), and the inspection shall include documenting road treatment and clearing before and during and after a snow event for various locations along the ITR and noting any deficiencies in the Acceptance Criteria's operational parameters.
 - a. Note: These inspections need to be conducted during a "snow event", as confirmed by the National Weather Service. Qualifying "snow events" are a Winter Storm Warning or Winter Weather Advisory. Prior written notification to the ITRCC and IFA is required. It is anticipated that each inspection will take two days/one night and the inspection shall be completed in one trip.
 - b. The selected respondent will drive the Indiana Toll Road independently to verify compliance as identified in Item 2. A 50-mile sampling of the roadway is sufficient for this inspection.

3. Facility Maintenance (**Volume I, Maintenance Manual, Chapter L.3.3**). Inspections shall include all ITRCC facilities, with focus being placed upon component / element / system as identified in the Performance Time Frame Table in Volume I, Maintenance Manual, Section L.3.3. Inspection team(s) should include an architect, mechanical engineer, electrical engineer, and plumbing engineer. Inspection report shall detail the appropriate building, electrical, fire, plumbing, life-safety code(s) and/or lease section for each deficiency. Facilities inspections shall be completed in a one-week (five days / nights) trip, and are generally conducted in April or May. Visual inspections are performed on each facility. Verification of operation applies to general items such as GFCI outlets, ceiling lighting, faucets, toilets, showers, exit lighting, etc. Any deficiencies found shall reference the deficiency and the building code (if applicable).

A sample inspection schedule of the facilities has been provided on page 10.

4. Provide electronic and written reports in a PDF format (with photographs for all deficiencies) of all inspection results (listed in Items 2-3 above) to the IFA within five (5) business days of completion of each inspection.

Service Provider shall provide hardware technology (at its own expense) enabling it to interface with State of Indiana inspection software and connection to GIS satellite communication systems. Inspection data (deficiency and photograph) for Item 1 will be entered into the State ARC GIS inspection software program. Software use will be provided to the respondent at no cost.

All costs associated with the preparation, distribution, and/or any requested changes, revisions, and corrections of the reports shall be included in the costs provided in Items 1-3 above and shall not result in any additional costs to the IFA.

The Service Provider shall perform all services on a time and material basis in accordance with the Indiana Department of Transportation (INDOT) approved employee classification, and hourly rates will be used for billing. Travel reimbursement must follow the State Travel Policy and Procedures (https://secure.in.gov/sba/files/fmc_2017-2.pdf). Hotel, parking, and mileage rates shall comply with state rates outlined in this document.

5. Services provided by the Respondent shall include staff time, meals, and mileage for (i) pre/post season meeting(s), (ii) consultations with IFA/INDOT and the ITRCC to review inspection work, schedules, and resource sharing, and (iii) all required safety training or sessions per INDOT/IFA/ITRCC regulations and policies. Any such services described in the preceding sentence shall be included at no additional cost to the IFA.

III. GUIDELINES FOR RESPONSE

Respondent's Proposal must be a complete response, including all aspects outlined in this section.

- **Letter of Transmittal** (not to exceed two (2) pages)
- Respondent shall include a signed letter of transmittal, including a certification that, to the best of the Respondent's knowledge, all information provided therein is accurate and complete. Any false or misleading information may result in disqualification of the Respondent, at the IFA's discretion. The letter shall include the name, title, and contact information for the individual responsible for the Proposal.
- **Introduction and Description of Respondent** (not to exceed three (3) pages)
- Respondent shall include any introductory remarks and a brief description of the Respondent's firm, its capabilities, and how its selection would benefit the IFA and ensure the applicable performance requirements under the Concession Agreement are being met by the ITRCC.
- **Pricing**
- Respondent shall include a detailed quote for all fees and costs that would be incurred by providing the Services described in Section II of this RFQ. In doing so, Respondent shall complete the "Bid Calculation Worksheet" attached as Exhibit B to this RFQ.
- **Information on Personnel**
- Respondent shall provide an organization chart and identify relevant biographical information with respect to the individual(s) primarily responsible for providing the Services.
- **Previous Experience**
- Respondent should provide up to three (3) examples of previous work experience that demonstrates the Respondent's ability to perform the Services.
- **General Information**
- Respondent shall provide a summary of its policies on:
 - Prohibition of discriminatory employment practices;
 - Practices for the promotion of diversity in the workplace;
 - Use of Minority Business Enterprises;
 - Use of Women-owned Business Enterprises;
 - Enforcement of Drug-Free Workplace Initiatives;
- **Completed Forms**

- Respondent shall complete and sign Forms I and II, both of which are attached as Exhibit C to this RFQ.

IV. EVALUATION OF PROPOSALS

To be considered by the IFA, the Respondent's Proposal must be a complete response, including all aspects outlined in Section III of this RFQ. General criteria for selection will include, but are not limited to, the following factors:

- (A). Technical Abilities;
- (B). Experienced Personnel; and
- (C). Price.

V. CONTRACTUAL TERMS

If selected, the IFA intends to enter into the Agreement with the Respondent for a term of one (1) year unless renewed or extended as set forth in the Agreement. The Respondent shall review the Agreement, attached hereto as Exhibit A to this RFQ, and identify in its Proposal any provisions that would need to be further negotiated between the Respondent and the IFA. Unless specifically otherwise denoted in its Proposal, the Respondent consents and agrees to the provisions of the Agreement.

VI. TIMELINE

This RFQ is being issued on January 29, 2019 (the "Issue Date"), and will be posted on the website of the IFA and INDOT. If a Respondent intends to provide a Proposal, the Respondent should provide its contact information (including email address) to the Authorized Representative (as defined below) upon receipt hereof. The IFA may elect to issue addenda to this RFQ, which will also be posted on the IFA's website. If a Respondent provides its contact information, the IFA will also provide a copy of the addenda to the Respondent by email. Any questions related to this RFQ must be received by the Authorized Representative via email by February 14, 2020. At the discretion of the Authorized Representative, responses to pertinent questions will be provided to all self-identified intended Respondents and posted on the IFA's website in a fair and equitable manner. The Authorized Representative and pertinent contact information is as follows:

**Mr. David Clark
Special Projects Manager
Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, Indiana 46204
Dclark2@ifa.in.gov**

Following the Issue Date, the Respondent shall not contact any person who is an employee, officer, elected official or agent of the State of Indiana, its agencies or instrumentalities, an employee, officer, member or agent of the IFA or INDOT, with respect to this RFQ, except the Authorized Representative identified above. The IFA may disqualify the Proposal of any Respondent who makes such contact.

A Proposal shall be delivered by email to the Authorized Representative at the email address provided above no later than 5:00 p.m. EST on February 21, 2020 (the “Due Date”). The IFA shall disqualify any response not received by such date or which does not follow the procedures and guidelines described in this RFQ.

Following receipt of the Proposals, the Authorized Representative may contact a Respondent for clarification or questions with respect to the contents of its Proposal, or request an interview with the Respondent if deemed necessary. Following a review period by the IFA, it is anticipated that a winning Respondent will be selected by February 28, 2020. The IFA reserves the right, in its sole discretion, to modify the anticipated timeline at any time and forego, without cause, the selection process. Therefore, if a Respondent’s Proposal has an expiration date, please reflect it in the Proposal.

As discussed above, the following calendar will generally be adhered to for this RFQ and the selection of a Respondent.

January 29, 2020	RFQ Distributed
February 12, 2020	Deadline for questions regarding the RFQ must be submitted, in writing, to the IFA.
February 14, 2020	Date upon which the IFA shall respond to questions submitted to the RFQ
February 21, 2020	Responses to the RFQ Due
February 26, 2020	Interviews, if necessary
February 28, 2020	Selection of Respondent

VII. MISCELLANEOUS

Confidentiality of Proposal

The Respondent’s Proposal is not confidential and will be subject to disclosure in its entirety except the parts of the Proposal that may be treated as confidential, in the sole discretion of the IFA, in accordance with Indiana Code 5-14-3 (“Public Records Act”). Each Respondent, by submitting a Proposal consents to such disclosure and expressly waives any right to contest such disclosure under the Public Records Act.

Upon receipt of a records request, the IFA will work with the Respondent to develop a redacted version of its Proposal, containing only those redactions consistent with the Public Records Act. The Respondent's submission of a redacted form of its Proposal will confirm the Respondent's intent to defend against any challenges as to the adequacy of the response to a public records request, including but not limited to the Respondent's agreement to pay all costs and fees (including attorneys' fees and costs) incurred by the IFA in connection with any litigation, proceeding or request for disclosure, including in the event that the IFA determines, in its sole discretion, to intervene or participate in such proceeding.

Notwithstanding any proposed redactions and/or claims of exemption asserted by any Respondent, the IFA shall have sole discretion to determine the applicability of any exemptions under the Public Records Act and of the contents to be disclosed in response to a request thereunder. Under no circumstances will the IFA or its employees, agents (including the Authorized Representative), or members be responsible or liable to a Respondent or any other party as a result of disclosing any such materials, including the redacted material, whether the disclosure is deemed required by law or by an order of court or occurs through inadvertence, mistake or negligence on the part of the IFA, or its employees, agents, or members.

Communication between Respondent and Authorized Representative

The Authorized Representative is the sole point of contact concerning this RFQ. Respondents should submit questions about the intent or content of this RFQ and request clarification of any and all procedures used for this RPF prior to submission of a Proposal.

The Authorized Representative may also communicate with Respondent's via e-mail. Each Respondent should provide an e-mail address with its response for ease of communication through this RFQ process.

Amendments to RFQ

The IFA reserves the right to cancel this RFQ, modify the RFQ, modify the process, or the defined Scope of Services. This RFQ does not commit or bind the IFA to enter into an Agreement or proceed with the procurement described herein.

Proposal is an Offer

A Proposal submitted to this RFQ is a binding offer valid for ninety (90) days after the RFQ Due Date, unless specifically noted otherwise in the Proposal. If a Proposal is submitted before the RFQ Due Date, the Respondent may withdraw its Proposal at any time prior to the RFQ Due Date by submitting a written withdrawal request. Such withdrawal request must be addressed to the Authorized Representative and be signed by the Respondent's duly authorized representative.

A Respondent may submit an amended Proposal before the RFQ Due Date. Such amended Proposal must be a complete replacement for the previously submitted Proposal and must be clearly identified as such in the submission.

VIII. FACILITIES INSPECTION SCHEDULE SAMPLE

ITRCC – 2019 Facilities Inspection Schedule

<u>Facility</u>		<u>Group</u>	<u>Maint. Area</u>	<u>Date</u>
MP-1.1	WestPoint Barrier Toll Plazas (1)	A	M1	Monday
MP-4.6	Auxiliary Storage	A	M1	Monday
MP 4.7	Calumet Avenue Toll Plaza (5W)	A	M1	Monday
MP 4.7	Calumet Avenue Toll Plaza (5E)	A	M1	Monday
MP-10.1	Cline Avenue Toll Plaza (10)	A	M1	Monday
MP-16.7	Gary East Toll Plaza (17)	A	M1	Monday
MP-20.6	Lake Station Toll Plaza (21)	A	M1	Monday
MP-21.6	Auxiliary Storage			Monday
MP-21.7	Travel Plaza 1N & 1S	A	M1	Tuesday
MP-23.5	Porter Maintenance	A	M1	Tuesday
MP-23.8	Willowcreek (23)	A	M1	Tuesday
MP-24.1	Portage Barrier (24)	A	M1	Tuesday
MP-30.9	Valpo/Chesterton Toll Plaza (31)	B	M2	Tuesday
MP-37.5	Salt Storage	B	M2	Tuesday
MP-38.9	Michigan City Toll Plaza (39)	B	M2	Tuesday
MP-49.2	La Porte Toll Plaza (49)	B	M2	Tuesday
MP-51.9	Maintenance Building	B	M2	Wednesday
MP-55.9	Travel Plaza 3N & 3S	B	M2	Wednesday
MP-72.4	South Bend W Toll Plaza (72)	C	M3	Wednesday
MP-72.9	Auxiliary Storage	C	M3	Wednesday
MP-76.6	South Bend S Toll Plaza (77)	C	M3	Wednesday
MP-82.9	Mishawaka Toll Plaza (83)	C	M3	Wednesday
MP-87.1	Elkhart Maintenance	C	M3	Thursday
MP-90	Travel Plaza 5N & 5S	C	M3	Thursday
MP-91.8	Elkhart Toll Plaza (92)	C	M3	Thursday
MP-96	Elkhart East Toll Plazas (96)	C	M4	Thursday
MP-99	Auxiliary Storage	C	M4	Thursday
MP-101.2	Bristol Toll Plaza (101)	C	M4	Thursday
MP-107.1	Middlebury Toll Plaza (107)	C	M4	Thursday
MP-114	Maintenance	C	M4	Friday
MP-120.5	Howe/LaGrange Toll Plazas (121)	D	M4	Friday
MP-125.8	Travel Plaza 7N & 7S	D	M5	Friday
MP-137.5	Maintenance	D	M5	Friday
MP-143.9	Angola Toll Plaza (144)	D	M5	Friday
MP-153	EastPoint Toll Plaza (153)	D	M5	Friday
MP-156	Maintenance	D	M5	Friday

ATTACHMENT A – STATE CONTRACTS BOILERPLATE

The independent audit services agreement will contain the following provisions in addition to the legal and business terms directly related to the auditing services provided to the Authority.

- 1. Access to Records.** The firm shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Agreement. They shall make such materials available at their respective offices at all reasonable times during this Agreement term, and for three (3) years from the date of final payment under this Agreement, for inspection by the IFA or its authorized designees. Copies shall be furnished at no cost to the IFA if requested.
- 2. Assignment; Successors.** The firm binds its successors and assignees to all the terms and conditions of this Agreement. The firm shall not assign or subcontract the whole or any part of this Agreement without the IFA's prior written consent. The firm may assign its right to receive payments to such third parties as the firm may desire without the prior written consent of the IFA, provided that the firm gives written notice (including evidence of such assignment) to the IFA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.
- 3. Authority to Bind the Firm.** The signatory for the firm represents that he/she has been duly authorized to execute this Agreement on behalf of the firm and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the firm when his/her signature is affixed, and accepted by the IFA.
- 4. Changes in Work.** The firm shall not commence any additional work or change the scope of the work until authorized in writing by all signatories hereto. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.
- 5. Compliance with Laws.**
 - A.** The firm shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference.
 - B.** The firm and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the IFA or the State, as set forth in IC 4-2-6 *et seq.*, IC 4-2-7 *et seq.*, the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004. If the firm is not familiar with these ethical requirements, the firm should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the firm or its agents violate any applicable ethical standards, the firm may be subject to penalties under IC 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
 - C.** The firm certifies by entering into this Agreement, that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the IFA or the State. Further, the firm agrees that any payments in arrears and currently due to the IFA or the State may be withheld from payments due by the IFA to the firm.

- D. The firm warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the IFA or the State, and agrees that it will immediately notify the IFA of any such actions.
- E. Any payments that IFA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.
- F. The firm warrants that the Developer and its subcontractors, if any, shall obtain and maintain all required registrations, permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the IFA.
- G. The firm affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
 - (1) The firm and any principals of the firm certify that, in accordance with IC 5-22-3-7, (A) the firm, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 (Telephone Solicitation Of Consumers), (ii) IC 24-5-12 (Telephone Solicitations), or (iii) IC 24-5-14 (Regulation of Automatic Dialing Machines) in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the firm will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.
 - (2) The firm and any principals of the firm certify that an affiliate or principal of the firm and any agent acting on behalf of the firm or on behalf of an affiliate or principal of the firm (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

6. Confidentiality of IFA Information. The firm understands and agrees that data, materials, and information disclosed to firm may contain confidential and protected information. The firm covenants that data, material, and information gathered, based upon, or disclosed to the firm for the purpose of this Agreement will not be disclosed to or discussed with third parties without the prior written consent of the IFA.

7. Conflict of Interest.

A. As used in this section:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party,” means:

- 1) The individual executing this Contract;
- 2) An individual who has an interest of three percent (3%) or more of the firm, if the firm is not an individual; or
- 3) Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Commission” means the State Ethics Commission.

B. Firm has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the IFA or the State. The obligation under this section extends only to those facts that firm knows or reasonably could know.

- 8. Debarment and Suspension.** The firm certifies, by entering into this Agreement, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. The term “principal” for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the firm.
- 9. Drug-Free Workplace Certification.** The firm hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The firm will give written notice to the IFA within ten (10) days after receiving actual notice that the firm or an employee of the firm has been convicted of a criminal drug violation occurring in the firm’s workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of agreed upon payments, termination of this Agreement and/or debarment of contracting opportunities with the IFA for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total agreed upon amount set forth in this Agreement is in excess of \$25,000.00, Developer hereby further agrees that this Agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the firm and made a part of the contract or agreement as part of the contract documents.

The firm certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the firm’s workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform it’s employees of (1) the dangers of drug abuse in the workplace; (2) the firm’s policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the firm of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing to the IFA within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

10. **Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State and suit, if any, must be brought in the State. The firm specifically consents to this jurisdiction.
11. **Indemnification.** The firm agrees to indemnify, defend, and hold harmless the IFA and the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the firm and/or its subcontractors, if any, in the performance of this Agreement. The IFA and the State shall **not** provide such indemnification to the firm.
12. **Independent Contractor.** Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The firm shall be responsible for providing all necessary unemployment and workers' compensation insurance for the firm's employees.
13. **Licensing Standards.** The firm and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the firm pursuant to this Agreement.
14. **Merger & Modification.** This Agreement constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.
15. **Minority and Women Business Enterprise Compliance.** The firm agrees to comply fully with the provisions of the firm's MBE/WBE participation plan.
16. **Nondiscrimination.** This covenant is enacted Pursuant to the Indiana Civil Rights Law, specifically IC 22-9-1-10, and in keeping with the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

Pursuant to the Indiana Civil Rights Law, specifically IC 22-9-1-10, and in keeping with the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the firm shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, the Services Provider certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on Protected Characteristics in the provision of services.

17. **Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the firm prior to execution of this Agreement, but specifically developed under this Agreement shall be considered "work for hire" and the firm transfers any ownership claim to the IFA and all such materials will be the property of the IFA. Use of these materials, other than related to contract performance by the firm, without the prior written consent of the IFA, is prohibited. During the performance of this Agreement, the firm shall be

responsible for any loss of or damage to these materials developed for or supplied by the IFA and used to develop or assist in the services provided while the materials are in the possession of the firm. Any loss or damage thereto shall be restored at the firm's expense. The firm shall provide full, immediate, and unrestricted access to the work product during the term of this Agreement.

18. Penalties/Interest/Attorney's Fees. The IFA will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1. Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the IFA's failure to make prompt payment shall be based solely on the amount of funding originating from the IFA and shall not be based on funding from federal or other sources.

19. Security and Privacy of Health Information. The firm agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Agreement, to maintain compliance throughout the life of this Agreement, to operate any systems used to fulfill the requirements of this Agreement in full compliance with HIPAA and to take no action which adversely affects the State of Indiana's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the firm assures that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the firm in the course of its work under this Agreement. The firm agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the IFA as required by the final regulations.

20. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

21. Substantial Performance. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

22. Taxes. The IFA is exempt from state, federal, and local taxes. The IFA will not be responsible for any taxes levied on the firm as a result of this Agreement.

23. Travel. No expenses for travel will be reimbursed unless specifically permitted under the Duties and Services or Consideration provisions. Expenditures made by the firm for travel will be reimbursed at the current rate paid by the IFA and in accordance with the State of Indiana Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the IFA for availability of funds and for appropriateness per Circular guidelines.

24. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the IFA's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or for any cause of action arising out of the performance of this Agreement, and the firm shall be and remain liable to the IFA in accordance with applicable law for all damages to the IFA caused by the firm's negligent performance of any services furnished under this Agreement.

25. Work Standards. The firm shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the IFA becomes dissatisfied with the

work product of or the working relationship with those individuals assigned to work on this Agreement, the IFA may request in writing the replacement of any or all such individuals, and firm shall grant such request.

26. Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, that he/she is the firm, or that he/she is the properly authorized representative, agent, member or officer of the firm, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

27. Employment Eligibility Verification. As required by IC § 22-5-1.7, the firm swears or affirms under the penalties of perjury that the firm does not knowingly employ an unauthorized alien. The firm further agrees that:

A. The firm shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The firm is not required to participate should the E-Verify program cease to exist. Additionally, the firm is not required to participate if the firm is self-employed and does not employ any employees.

B. The firm shall not knowingly employ or contract with an unauthorized alien. The firm shall not retain an employee or contract with a person that the firm subsequently learns is an unauthorized alien.

C. The firm shall require his/her/its subcontractors, who perform work under this Contract, to certify to the firm that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The firm agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The Authority may terminate for default if the firm fails to cure a breach of this provision no later than thirty (30) days after being notified by the Authority.

28. Insurance.

A. The firm and its subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the firm for any and all claims of any nature which may in any manner arise out of or result from the firm's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the Authority. The Authority is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence. The Authority is to be named as an additional insured on a primary, non-contributory basis.

3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the Authority shall continue for a period of two (2) years after the date of service provided under this Contract.

4. Fiduciary liability if the firm is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.
5. Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.
6. Surety or Fidelity Bond(s) if required by statute or by the Authority.
7. Cyber Liability addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$700,000 per occurrence and \$5,000,000 in the aggregate.

The firm shall provide proof of such insurance coverage by tendering to the undersigned Authority representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The firm's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the firm.
3. The Authority will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the firm in excess of the minimum requirements set forth above. The duty to indemnify the Authority under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the Authority.
5. The firm waives and agrees to require their insurer to waive their rights of subrogation against the Authority.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the Authority to immediately terminate this Contract. The firm shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

29. Key Person(s).

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the Authority shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the Authority.

Nothing in sections A and B, above shall be construed to prevent the firm from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such

ancillary tasks include secretarial, clerical, and common labor duties. The firm shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are _____

Indiana Department of Revenue

This section outlines the Indiana Department of Revenue's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

- The Department did not have a department dedicated to DEI initiatives.

DEI Staff Positions

- The Department did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

- "Diversity" appears within one of the Department's core value statements – "Respect – Be kind, humble and mindful. Appreciate and value diversity."ⁱ
 - There is no mandate of action, no hiring practice, no preferential treatment, or anything else beyond just a simple statement within the Department's core values related to showing respect for others who may be different in any number of ways.
- The Department's agency overview mentions the Department's core value of "Respect – Be kind, humble and mindful. Appreciate and value diversity."ⁱⁱ
 - Again, there is no mandate of action, no hiring practice, no preferential treatment, or anything else beyond just a simple statement within the Department's core values related to showing respect for others who may be different in any number of ways.
- The Department's 2024 annual report contains four mentions of the core value of "Respect – Be kind, humble and mindful. Appreciate and value diversity."ⁱⁱⁱ
 - As with the previous mentions, there is no mandate of action, no hiring practice, no preferential treatment, or anything else beyond just a simple statement within the Department's core values related to showing respect for others who may be different in any number of ways.

Programs Administered to the Public

- The Department has no public programs for DEI.

Grant Conditions

- The Department has no grant conditions for DEI.

Training/Instruction Administered to the Employees

- Following the compilation of the Department's report required under IC 4-15-12, some agency supervisors voluntarily participated in an "Identification of Unconscious Bias" training. No action or training is ongoing as a result of the report. And, having discussed this with DOR's HRD, there does not appear to be any future plans by SPD related to IC 4-15-12.

Job Applicant Requirements

- The Department has no job applicant requirements for DEI.

ⁱ See Item 1.

ⁱⁱ See Item 2.

ⁱⁱⁱ See Item 3.

Core Values

Fun



Celebrate and enjoy what you do.

Leadership



Through positive actions, inspire others to become more.

Integrity



Always do what is right. Take action when it is not.

Respect



Be kind, humble, and mindful. Appreciate and value diversity.

Teamwork



Focus on we, not me.

Service



Lose yourself in the service of others.

Continuous Improvement



Be relentless about always getting better.

#WeAreDOR





INDIANA Department of Revenue

The Indiana Department of Revenue has been serving Indiana's diverse population and business community since 1947.

Our team of more than 700 dedicated public servants helps administer over 65 different tax types. Every year, DOR processes billions of dollars in tax revenue by...



processing millions of tax returns



working with hundreds of thousands of Hoosiers



completing thousands of diverse audits



addressing tax protests and legal issues



and working in person with individuals, business owners, tax preparers, and other stakeholders

Our Foundation

Mission

To serve Indiana by administering tax laws in a fair, secure, and efficient manner.

Vision

To be recognized as the premier tax administrator in the nation and a great place to work.

Purpose

To provide great government service at a great value to our customers.

Pyramid of Excellence

DOR's Pyramid of Excellence illustrates the agency's mission, vision, and purpose—all of which were reimagined to capture DOR culture and brand. Displayed throughout the organization, this symbol serves as the agency's compass, continuously directing and encouraging the team.



Core Values

As DOR's new culture began to solidify in 2017 and 2018, a clear set of seven core values began to emerge, capturing the organization's beliefs, philosophies, and behavioral expectations. DOR established the values in 2018 to define its culture and how staff works together both internally and externally with all customers, stakeholders, and partners.

Fun	Leadership	Integrity	Respect	Teamwork	Service	Continuous Improvement
Celebrate and enjoy what you do.	Through positive actions, inspire others to become more.	Always do what is right. Take action when it is not.	Be kind, humble, and mindful. Appreciate and value diversity.	Focus on we – not me.	Lose yourself in the service of others.	Be relentless about always getting better.

District Offices

1. Bloomington
2. Clarksville
3. Columbus
4. Evansville
5. Fort Wayne
6. Indianapolis
7. Kokomo
8. Lafayette
9. Merrillville
10. Muncie
11. South Bend
12. Terre Haute



Our People

Over 700 hardworking, passionate Hoosiers

Best-in-class Customer Service

With a focus on customer care, single point of contact, one transaction resolution, quality service delivery, efficient process design and operation, and continuous improvement, our customer service team assists Hoosiers with their specific tax questions and requests for assistance.

Our people are the front line for customer assistance and problem resolution and take this responsibility very seriously. Customer service operations are provided at the Indiana Government Center in Indianapolis and 12 District Offices.

[See DOR's Executive Organizational Chart.](#)

[Meet Our Team.](#)



Contact & Other Information

Contact DOR

Visit dor.in.gov for tax tips, [online services](#), contact information, and more.

[Go directly to contact information.](#)

Media Requests

Email mediarequests@DOR.in.gov for all media requests.

INTIME e-services Portal

[INTIME](#) gives customers several tools, including direct correspondence with customer service representatives. [More information](#) is available.

DOR News

Latest News & Publications

See the [latest news](#), agency updates and important notices, including information on DOR programs, tax tips, and helpful information for tax preparers.

Tax Bulletin

[Stay up to speed on DOR announcements and events](#) related to business tax and tax practitioners.

Tax Filing Customer Tips

File taxes electronically if possible; it is faster with fewer mistakes.

- **Always file state taxes**—even if you are under the threshold or don't expect a refund.
- Ensure your return is **complete and correct**; use blue or black ink on paper forms.
- Incorrect/outdated forms can **cause significant delays** or a return to be sent back.
- Include all required, **supporting documentation** for deductions or credits.
- **Keep copies** of any original documentation submitted with your return.
- **Do not duplicate your filing**; filing both electronically and by paper will cause significant delays in return processing.
- **Send state returns to DOR.** Federal forms go to the IRS.
- **Respond quickly** to any correspondence from DOR.
- **Collect all documentation** before filing.

DOR Social Media
@INREVENUE



dor.in.gov



INDIANA DEPARTMENT OF REVENUE

FISCAL YEAR



ANNUAL REPORT



NATIONALLY RECOGNIZED

INNOVATION AND EXCELLENCE IN TAX ADMINISTRATION AWARD FOR LE@DOR
FEDERATION OF TAX ADMINISTRATORS (FTA)

IDENTIFIED AS ONE OF THE FIVE BEST REVENUE AGENCIES IN THE U.S.
BY LAW360 TAX AUTHORITY AUTHOR DAVID BRUNORI

RECOGNIZED LOCALLY AND NATIONALLY AS A TOP WORKPLACE
FOR SIX STRAIGHT YEARS
(2019-2024)

ONLY ONE OF THREE STATES WITH AN "A" RATING
COUNCIL ON STATE TAXATION 2023 SCORECARD

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INTIME, DOR's customer portal, incorporates features like direct messaging, secure bill pay and refund status lookup. Available 24-7, it allows customers to self-service common transactions, reducing the need to call, mail in payments or visit district offices. As a result, this functionality allows Customer Service to provide more targeted support to those with more complex needs.

LEARN MORE



AT A GLANCE

THE INDIANA DEPARTMENT OF REVENUE

The Indiana Department of Revenue supports the state in the administration of over 60 tax types—processing millions of returns, payments and correspondence, delivering best-in-class customer service, and issuing select permits and fees.

CORE VALUES

Core values define and drive the behaviors of entire organizations and foster the way it “feels” for each and every team member.

Deeply rooted in its DNA, the agency stands on seven carefully crafted pillars to sustain its operational and cultural successes by mindfully enhancing hiring, training, performance management, and the reward systems that keep the nearly 675-member team continuously poised for public service excellence.



FUN

Celebrate and enjoy what you do.



LEADERSHIP

Through positive actions, inspire others to become more.



INTEGRITY

Always do what is right. Take action when it is not.



RESPECT

Be kind, humble, and mindful. Appreciate and value diversity.



TEAMWORK

Focus on we, not me.



SERVICE

Lose yourself in the service of others.



CONTINUOUS IMPROVEMENT

Be relentless about always getting better.

LETTER FROM THE COMMISSIONER

Dear Governor Holcomb,

The Indiana Department of Revenue team is pleased to present DOR's Annual Report for Fiscal Year 2024 (FY24: July 1, 2023 - June 30, 2024).

FY24 marked another remarkable year of achievements for the DOR team. Through collaborative efforts with our partners within Indiana state government and throughout the tax administration ecosystem, we have provided professional, caring, and high-quality services to millions of Indiana individuals, businesses, corporations, and organizations.



Our team's diligence throughout FY24 has also yielded significant improvements across various facets of our operations, enhancing the breadth, quality, and effectiveness of the operations we manage and the services we provide.

Comprised of nearly 675 dedicated Hoosiers in 13 locations across Indiana, our team is immensely proud of the service we provide to all who count on us.

We have remained fully committed to our mission, vision, and purpose and, as you will see throughout the report, we have used our core values to guide us. We conclude FY24 with a sense of pride in our accomplishments and the national recognition we have received as a premier tax administrator and a great place to work.

Our success is a testament to our skilled and committed team, and we are excited about exploiting the high levels of organizational capability we have created to continue to improve our services and tackle the new and exciting opportunities ahead.

For the last seven and a half years, our team has been devoted to your ambitious challenge to take Indiana to the next level. While this aspirational vision is never fully achieved, we are tremendously proud of our progress on this rewarding journey.

Respectfully,

A handwritten signature in black ink that reads "Robert J. Grennes, Jr." The signature is fluid and cursive, with a prominent "R" and "J".

Robert J. Grennes, Jr.
Commissioner
Indiana Department of Revenue

LEADERSHIP & TEAMS



BOB GRENNES

COMMISSIONER

Bob was appointed by Governor Holcomb as Commissioner on Feb. 1, 2020. Prior to his appointment, Bob served as DOR's Chief Operating Officer from 2017-2019. Bob works with DOR team members across the agency to serve Indiana and its citizens, businesses, corporations, state agencies, partners and stakeholders. Working collaboratively with the Office of Management & Budget, the Governor's Office and state agency leaders, Bob helps the DOR team tackle the many challenges of agency operations and [deliver on DOR's mission](#).

RANDAL BOONE

EXECUTIVE DIRECTOR OF MOTOR CARRIER SERVICES

Randal has been a member of DOR's leadership team for 17 years. As the Executive Director of Motor Carrier Services (MCS), Randal is responsible for the following MCS teams:

- Fuel Taxes: International Fuel Tax Agreement (IFTA) and Motor Carrier Fuel Tax (MCFT)
- Insurance and Safety - Indiana Operating Authority (IOA)
- MCS Customer Service Walk-in Branch
- Oversize/Overweight Permitting (OSOW)
- Titles Processing
- Vehicle Registrations: International Registration Plan (IRP) and Base Plate Registration (BPR)





STEVE COMBS

EXECUTIVE DIRECTOR OF AUDIT OPERATIONS

Steve serves as the Executive Director of Audit Operations and has been with DOR for 34 years. Steve's team includes the following:

- Audit Operations
- Audit Support

KEVIN GULLEY

CHIEF INFORMATION OFFICER

Kevin has been a member of DOR's leadership team since 2007. As the Chief Information Officer, Kevin is responsible for leading the following teams:

- Application Support
- Indiana Tax System (ITS)
- IT Operations Support
- IT Security Office
- ITS Production Support Team
- MCS Application Support



TERRI LIVINGSTON

EXECUTIVE DIRECTOR OF AGENCY & BUSINESS SYSTEMS SUPPORT

Terri serves as the Executive Director of Agency & Business Systems Support and has been a member of DOR's leadership since 2017.

Terri's team includes the following:

- Business Analysis
- Communications
- Corporate & Trust Tax Processing
- Data Governance & Analytics
- Internal Audit
- Investigations & Internal Affairs
- Operational Improvement
- Organizational Development & Training
- Project Management Office
- Tax Compliance

CHRIS RUSSELL

GENERAL COUNSEL

Chris has been a member of DOR's leadership team since 2017. As General Counsel, Chris oversees the Legal Division, which includes the following teams:

- Appeals
- Compliance & Ethics
- Legal Operations
- Legal Services
- Litigation
- Tax Policy



ED VANCE

CHIEF FINANCIAL OFFICER

Ed serves as the Chief Financial Officer and has been a member of DOR's leadership since 2017. Ed is responsible for the following teams:

- Accounting & Financial Controls
- Budget & Revenue
- Procurement & Contract Management
- Tax Liability Management

MONIQUE YOUNG-WASH

EXECUTIVE DIRECTOR OF SERVICE OPERATIONS

Monique has been a member of DOR's leadership team since 2017. As the Executive Director of Service Operations, Monique leads the following teams:

- Customer Service
- Returns Processing Operations
- Special Tax Operations
- Taxpayer Advocate Office





#DORGIVESBACK



AGENCY GOALS FOR 2024

At the beginning of each calendar year, DOR's Executive team identifies "thematic goals" that will serve as the agency's guiding light through the coming year—driving continuous improvement in people, processes, technology, and service delivery. These goals are cascaded throughout the agency and used to develop division, department, and individual goals.



Make it Easy to Do Business with Us

- Strategically drive and improve taxpayer compliance
- Fortify and expand self-service opportunities
- Develop clear, easy-to-access tools and guidance
- Harness the Voice of the Customer channels to provide data for strategic improvements



Position DOR for the Future

- Optimize Agency-Wide Performance & Service Delivery
 - Deploy resources strategically to meet service levels across the agency
- Turn Data into Actionable Information
 - Produce and analyze data to drive action, decisions, and improvement
 - Leverage data to provide timely insight about agency performance and effectiveness
 - Continue to drive and socialize data governance principles
- Embody "The DOR Way"
 - Continue investing in leadership and team member development
 - Live our Core Values, Strategic Anchors and Guiding Principles
 - Keep our systems modernized

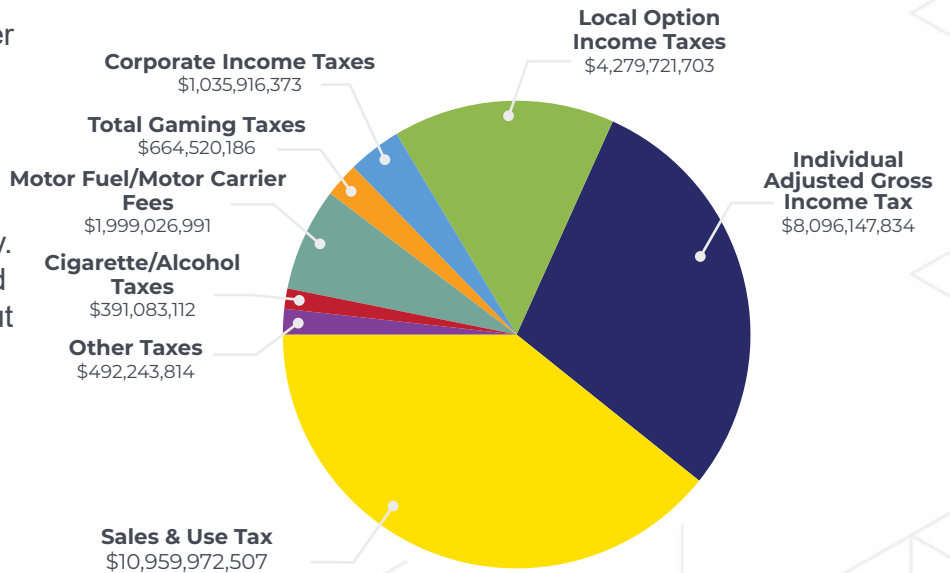
YEAR IN REVIEW:

FISCAL YEAR 2024

Nearly 675 dedicated Hoosiers support Indiana taxpayers to confidently understand and meet their tax responsibilities, with each team member contributing to and modeling the agency's core values and dedicating their diverse skills to public service.

Our mission is to administer Indiana tax laws fairly, securely, and efficiently. And with best-in-class technology and team members who care deeply about delivering excellent service, we have reached new heights in continuously improving taxpayer experience. Throughout the report, you will learn more about DOR's key initiatives and accomplishments that drive us forward.

SUMMARY OF FY24 TAX RECEIPTS



TOTAL TAX COLLECTED FY24

Gross Collections	\$29,921,062,779	Collections Allowance	\$66,882,188
Net Collections	\$27,918,632,521	Administrative Costs	\$84,880,662
Refunds	\$(2,002,430,258)	Delinquencies Collected	\$800,248,800

Customers Served



Individual
4,691,376



Business
477,500



Government Entities
2,321

Key Accomplishments

- Administered over \$29.9 billion of tax revenue
- Recognized locally and nationally as a Top Workplace for six straight years
- Evolved content accessibility, self-service and navigation of [DOR's website](#)
- Only one of three states with an "A" rating — Council on State Taxation 2023 Scorecard
- Identified as one of the five best revenue agencies in the U.S. by Law360 Tax Authority author David Brunori
- DOR's MCS Division achieved the highest registration safety rating possible through the [Performance and Registration Information Systems Management program](#) (Expanded PRISM)
- Assisted the Governor's office, General Assembly and Indiana tax partners during the 2024 legislative session and leading up to publishing the annual Legislative Synopsis, a summary of changes to tax laws
- Supported agency operations through improved internal controls and internal auditing
- Invested in staff and service operations through training and process improvement

SERVICE:

LOSE YOURSELF IN THE SERVICE OF OTHERS

At our very foundation, DOR is a service organization—passionately serving Hoosiers and everyone who comprises Indiana’s tax ecosystem. To be successful, we must develop and provide caring and quality service to both internal and external customers, bringing joy to the team at large.

Customer Experience

We fuel our passion for public service by continuously leveling up our customers’ experience. A Customer Experience Management team, now within our Customer Service division, is dedicated to supporting all representatives with training, workforce management, quality assurance and timely communication.

- **Training:** develops new hires and provides continuing education
- **Workforce Management:** ensures productivity, quality, efficiency, and service excellence
- **Quality Assurance:** maintains the highest quality customer service
- **Communications:** informs Customer Service of evolving tax changes, service process updates, and monitors service-level metrics

Staying in Touch

Dedicated to responding to hundreds of thousands of customer phone calls, the Customer Contact team also processes a variety of correspondence related to individual, business and payment inquiries, as well as hundreds of INTIME inquiries.

This team also provides in-person services to walk-in customers and receives a large volume of tax payments at our cashier windows.

Customer Service representatives regularly receive positive feedback and notes of appreciation for their attentiveness and ability to help people.



CUSTOMER ASSISTANCE

Connection Point	Customers Served
INTIME Messages	69,359
Walk-in Visits	62,202
Phone Calls	411,804
Email, paper, fax	79,003



93.32%

Overall Customer Satisfaction

based on 20,461 completed surveys

SATISFACTION SURVEY

Was the Customer Service Representative professional? 98.53%

Did your question or questions get resolved today? 89.25%

Were you satisfied with your overall customer experience today? 94.36%

Self-service

We constantly seek out crucial and collaborative projects that result in higher customer satisfaction, to make it easier for customers to do business with us. Notably, the Communications and Creative teams [answered the call](#) by enhancing the tools and guidance, navigation and the layout of our website. Individuals, businesses, tax professionals and other customers are now able to select from defined paths and calls to action that bring clarity to their choices. By harnessing user data and evolving best practices, the improvements target and answer customer needs and concerns before they turn into questions.

Leading the Industry of MCS

Commercial motor vehicles travel more than 9.7 billion miles in Indiana each year. The movement of these vehicles impacts the safety conditions and traffic patterns of Indiana's roads and the physical demands placed on them.

DOR's MCS team provides support to motor carrier companies, commercial drivers, and residents of Indiana through the fair, efficient and high-quality administration of state and federal laws that govern the commercial use of Indiana's roads, which have a large role in Indiana's economic success.

MCS works collaboratively with the Indiana Department of Transportation (INDOT), Indiana State Police (ISP) and trucking organizations across the country to provide best-in-class service. MCS is comprised of six areas:

- Vehicle Registrations: International Registration Plan (IRP) and Base Plate Registration (BPR)
- Fuel Taxes: International Fuel Tax Agreement (IFTA) and Motor Carrier Fuel Tax (MCFT)
- Oversize/Overweight Permitting (OSOW)
- Insurance and Safety: Indiana Operating Authority (IOA)
- Titles Processing
- MCS Customer Service Walk-in Branch



FUN:

CELEBRATE AND ENJOY WHAT YOU DO

Joy in the workplace is a leading indicator of high employee satisfaction and engagement. We care deeply about the important work we do—and enjoying the journey and our team members is part of the magic recipe of success.

DOR team members collaborate and work together, both internally and externally with all customers, stakeholders and partners while living our core value of fun. We recognize our team and make the workplace enjoyable during holidays, special events and teambuilding activities. Celebrating project successes, team member awards, service milestones and positive feedback from customers are customary at DOR.



DOR's weekly team e-newsletter, Reve-news, shares the latest news, including celebrations around the agency. Spotlight videos are also featured in Reve-news and provide a peek into individual teams at DOR.

In addition, InsideDOR articles feature individuals or teams who are making strides at DOR. Team members can find these articles and all agency-related news conveniently housed on DORway, our intranet site.

Recognition: the Heart of DOR Culture

Recognizing the positive contributions of our team members is the norm at DOR—and we utilize a variety of ways to show that gratitude to those who exemplify one or more of DOR's core values.

Teammates can send each other timely emailed recognition in the form of a "DOR High-five." Nominators select a type of High-five message, like "I appreciate you" or "Thank you for your support," and describe how their colleague best represented DOR in a specific situation.



"DOR Prizes" are incentivized performance recognition awards granted to team members who demonstrate engagement in exceptional performance. Some examples include completion of a project ahead of schedule with results that exceed expectations, assuming and successfully performing additional work, consistently performing beyond the scope of regular daily activities and assignments, and improving DOR's workplace or culture with exceptional teamwork and collaboration.

The Employee of the Month award celebrates the exceptional accomplishments of our team members whose actions deserve recognition. Submissions are based on the nominee's contributions and behaviors demonstrated that make them exceptional beyond the basic expectations of their role or contributions. At the end of the year, the senior leadership team reviews all Employees of the Month to select an Employee of the Year!

The Customer Service area's Wall of Fame recognizes Customer Service team members' outstanding performance with a focus on outstanding customer satisfaction feedback and Best-in-Class customer service results. Teams participate and enjoy these celebrations as a DOR family with specific team names, colors and t-shirts. A Rock Star and Customer Advocate celebration is also held quarterly.

Bringing People Together

Team members gather throughout the year to celebrate success and share success stories during All-Agency meetings. Public Service Recognition Week also brings the entire DOR family together for a celebration and recognition. A celebration lunch and spirit days were just a few of the activities that took place during that week.

Agency Spirit Day & Professional Development Day

Team members wore DOR apparel and took advantage of our many professional development resources available.

Years of State Service Day

Team members wore the color that corresponded with their length of service as a public servant.

Hoosier Spirit Day

Team members wore any Indiana apparel to celebrate their Hoosier pride.

Giving is a huge part of DOR's culture! The State Employees' Community Campaign (SECC), an annual charity campaign, administered by state employees, allows for a one-time donation or pledging a payroll deduction to any of the 1,500 charities available on the SECC giving portal.

Some DOR team members also contribute through special events hosted by our Employee Connection team or their own specific teams. A chili kickoff, bake sale, candy grams, pumpkin decorating contest and a goody basket auction were some of the ways team members raised and donated funds to SECC last year. A sprinkle of fun while supporting a great cause!



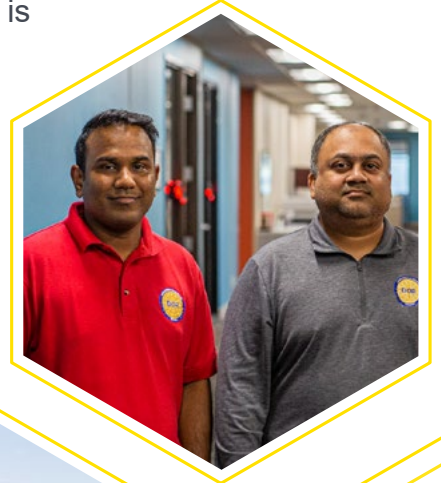
TEAMWORK:

FOCUS ON WE, NOT ME

Standing up a process to administer a new tax rule or an internal procedure takes regular collaboration, measurement and maintenance. Each team within the agency works hard to harmonize with one another so every hand knows what the other is doing by actively seeking out crucial internal and external voices to gain perspective and anticipate more efficient paths forward. Teamwork certainly fortifies our quest for continuous improvement.

A Joint Effort

The implementation of the Pass Through Entity Tax (PTET) project is a perfect example of this core value in action achieved through collaboration between different divisions within DOR. The PTET project impacted DOR's tax administration system and tax processing procedures and required marathon discussions and reviews to comprehensively define the implementation framework. Cohesiveness was evident among various teams as they worked to devise new procedures, create a new webpage, update forms, and provide customer service and business training. This effort included the expertise from various teams including Agency & Business Systems Support, Tax Policy, Communications, Finance, Returns Processing Operations, Customer Service, ITS Support and Tax Compliance.



Partnering with Communications

Communications liaisons for each business unit at DOR drives alignment and consistency. These partnerships ensure that a business unit's needs are met, while keeping the Communications team abreast of upcoming projects earlier in the process, giving the team a more holistic approach and how their work can improve operational effectiveness.

Internal Policy Review group

The Policy Review group includes the areas of Audit, Agency & Business Systems Support, Compliance & Ethics, Customer Service, Human Resources, IT Security, Legal Services, MCS, and Returns Processing Operations. This diverse group ensures that every internal policy is current and accurate, serves the interests of the entire agency and promotes good government. The group meets when a new policy is proposed, when an active policy is updated, and when a request is made for an active policy to be retired.

State Agency Partnerships

It's all about teamwork and the importance of partnerships between Indiana state agencies. As part of DOR's Finance Division, the Budget team works closely with the State Budget Agency (SBA) to develop, monitor and manage DOR's overall budget, while the Revenue team works with SBA to provide revenue data and insight as they manage the state's revenue forecast.

The Budget team reports incremental tax collections for the Qualified Motorsports Investment District to the Motorsports Commission, while the Revenue team provides local income tax certified data to the SBA to assist them with determining the local income tax distributions to county governments.

The Budget & Revenue and Finance teams further provide various required information that is used to compile the state's Annual Comprehensive Financial Report by the Comptroller's Office, including information about credits, assets and other financial items.



Governor's Cybersecurity Council & IOT Partnership

A perpetual mission for all DOR team members is ensuring the protection of taxpayer information. DOR's Security and Internal Compliance & Ethics teams help lead this effort by working with staff across the agency, the IRS and participating on Governor Holcomb's Cybersecurity Council and working collaboratively with the Indiana Office of Technology (IOT) to proactively address information security.



MCS & INDOT

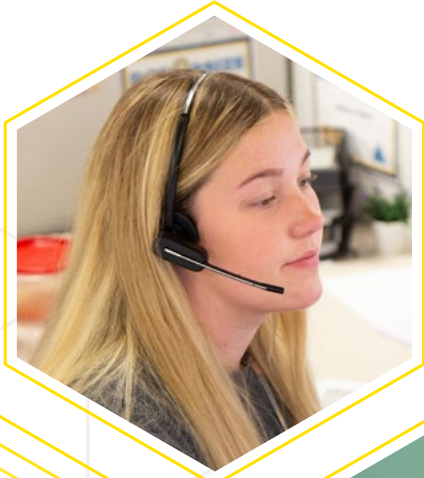
DOR continuously improves the state's trucking industry services through MCS and partnerships with the INDOT, ISP and Bureau of Motor Vehicles (BMV).



BMV e-lien Project

A team effort between DOR and the BMV to manage titles electronically instead of maintaining paper files for new liens to be mailed to customers was a huge endeavor during FY24. In addition to all the underlying work, weekly meetings to walk through questions and gain clarity on how systems would interact and share information were necessary.

DOR worked with a project team from the BMV to understand the technical requirements and what would impact changes to our systems and procedures, and the service calls necessary between DOR and the BMV to exchange title information. Reviewing test scenarios that would satisfy DOR's testing needs and BMV's certification process was also required before going live with this new process and functionality.



Worker's Compensation Board

Collaboration between DOR's Titles & Clearances team and the Worker's Compensation Board (WCB) of Indiana resulted in the Worker's Compensation Exemption Clearance Certificate (Form WCE-1) being added to INTIME. The Titles & Clearances team estimated, on average, that 50-70 of these forms were being processed daily, and adding the WCE-1 to INTIME would reduce correspondence with customers, improve service quality, and decrease the time to process the forms.

Together with the WCB, DOR worked to identify the deliverables that needed to be updated and provided direction on how to move forward while reducing confusion with the customer. Team meetings ensured all business areas had a say in the project and any issues were resolved. The form, now live on INTIME, has confirmed that more customers are completing the online versus paper version. The project's success was rooted in the team's ability to work collaboratively on the many new processes brought about during planning and execution.



Indiana CPA Society and Tax Advisory Council

Our agency is grateful for the input and expertise of our thousands of Hoosier tax professionals, business stakeholders and advocates. DOR works closely with the Indiana CPA Society and all their members to serve Hoosiers and improve tax administration, including monthly calls with their Communication and Advocacy team and collaboration with the Tax Resource Advisory Council, with whom we meet with biennially.

Additionally, we have continued the Commissioner's Tax Advisory Council, which is made up of tax experts, business leaders and other interested Hoosiers who are invested in improving Indiana's tax administration.

This year, our work with these groups helped us clarify processes and strengthen official guidance on the newly implemented PTET, process Economic Development for a Growing Economy (EDGE) credits more efficiently and streamline and simplify letters issued to customers with unpaid taxes (proposed assessments and demand notice for payments), to name just a few improvements. Our partnerships with members of this community are immensely valuable, as they help inform how DOR can best serve each and every one of our Hoosier taxpayers.



LEADERSHIP:

THROUGH POSITIVE ACTIONS, INSPIRE OTHERS TO BECOME MORE

DOR's commitment to positive leadership, at all levels, is at the center of our award-winning culture and success story. We invest heavily in leadership development and take intentional action to inspire team members across the agency to be part of DOR's leadership community.

Peer Leadership

The Employee Connection team, a diverse group of DOR team members, plans and executes activities that appeal to and impact our organization. Its mission is to improve the variety and success of these activities, promote connection between DOR team members, enrich our agency's culture and encourage all of us to find value and joy in what we do. Members of this team focus on building relationships, acting as ambassadors for their team, building leadership skills and positively impacting our agency and culture through valuable contributions outside of their normal day-to-day work.

DOR's Employee of the Month award celebrates the exceptional accomplishments of our team members, showcasing how they embody DOR's culture and live DOR's core values. The Employee of the Month (EOM) Committee, a group of eight DOR volunteer team members, are selected to review and score all EOM nominations. Serving in this capacity for one year, the goal is to have one committee member from each of DOR's functional business units, excluding directors or executive team members.

The Training team continued to enhance the agency's innovative leadership development and award-winning program, LE@DOR, providing new growth opportunities for participants in any role to carve their own, individual leadership journey.



LE@DOR was recognized this year by the Federation of Tax Administrators (FTA) with the Innovation and Excellence in Tax Administration award.

The structure of the LE@DOR Program is comprised of three main elements: activities, milestone points, and levels. Participants have access to numerous activities through the Participant Activity Checklist, designed to both draw from participants' strengths and challenge their areas of improvement. Each course and activity will have an associated number of points that, upon completion, the participant earns toward their overall LE@DOR Level.

A myriad of leadership resources, including online training and professional development opportunities, are also available on DORway via the SuccessFactors learning portal or through LinkedIn Learning.

Director's Council

Through quarterly meetings for senior leadership, directors and executive directors are able to share information, solve challenges together and align on agency priorities. As a way to connect, Director's Council meetings served to equip leaders with relevant information to share with their teams and provided opportunities for discussions on ways to strategize for the future.

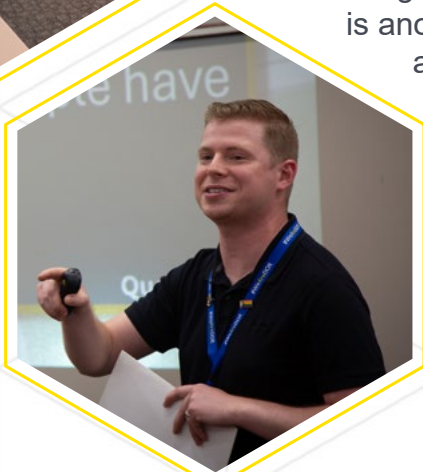
Cultivating Leadership & Learning Together

DOR supervisors and team leads from Service Operations and MCS gathered for the first-ever Growing Leaders Conference, and it was a huge success! A great networking opportunity designed to cultivate personal and professional growth, participants attended seminars on topics including managing employees from different generations, handling stress, employee engagement, and workforce management.



There are currently two directors, eight assistant directors, 33 supervisors and 41 team leads in Service Operations, which includes Customer Service and Returns Processing Operations. These leaders support a team of more than 300 team members throughout the agency.

To accommodate schedules and meet the needs of the large team, there were two conferences, one for supervisors and another for team leads.



Attending the annual Federation of Tax Administrators conference is another learning opportunity for staff from all levels of state agencies, including DOR, to connect with professionals who share unique responsibilities. It's a way to learn from government experts as they share subject matter knowledge, including policy, programs and technology that advance the work of tax administration. It provides up-and-coming leaders exposure to the experiences, lessons learned and creative approaches of other tax administrators from agencies across the country.

CONTINUOUS IMPROVEMENT:

BE RELENTLESS ABOUT ALWAYS GETTING BETTER

DOR is passionate about finding ways to continuously improve our capabilities and performance. Through individuals, processes, systems, and all agency operations, this commitment fueled our agency transformation and continues daily.

Spark Innovation Challenge

The Spark Innovation Challenge encourages all DOR team members to identify processes that could benefit from analysis and improvement, one of DOR's core values. These incremental changes result in significant efficiencies and better customer service.

Our homegrown Spark Innovation program provides practical learning using Six Sigma principles, data analysis and teamwork. The entire agency completed basic Six Sigma training, including defining, measuring, analyzing, improving, and controlling a project. Those interested in deepening their knowledge took part in additional, more involved training in order to partner with our process improvement team to develop innovative, operational system and service ideas that would result in impactful improvements.

One of many examples from FY24, is together with the Returns Processing Operations and Customer Service teams, DOR's Individual Tax Compliance (ITC) area used Spark Innovation to streamline the escalation process involving customer refunds that were awaiting specialized tax analyst review. The proposed solutions involved user-friendly enhancements to dor.in.gov, employing plain language and simplified instructions for better customer guidance. Implementation of the proposed solutions and collaboration with the different areas yielded reductions in escalation cases, manual reviews and phone calls. By streamlining the processes, ITC was able to process taxpayers returns in a more efficient manner.

NextDOR '24

For DOR's ITS team, being relentless about always getting better means working to continuously identify improvements in our processes and technology to provide the best possible customer experience. Project NextDOR has been a tremendous success for DOR, Indiana's taxpayers, the tax practitioner community, and every organization and individual who is involved in Indiana's tax administration world.



We concluded Project NextDOR in July 2022, feeling confident about establishing a strong foundation of success for many years to come.

To maintain a positive experience for our taxpayers and to meet the needs of our internal customers, DOR is working toward upgrading our current ITS system as part of our NextDOR '24 project. Keeping our technology modernized and up to date helps ensure we are maximizing our investment in our system. The upgraded system will allow us to continue to offer new functionality to our customers, with the goal of making it easier for customers to do business with us. This upgrade continues that success story.

Expected to be completed in mid-November, NextDOR '24 will result in new functionality and an improved user experience, which will allow us to continue to keep our system current.



Legal Division

The Legal division, a total of six teams, made significant investments in personnel, systems, and operations to better serve the agency, Indiana taxpayers, and their representatives during FY24.

These investments and associated improvements included filling several key vacancies with outstanding candidates who are now part of this high-performing team.

The Appeals team delivered a key taxpayer service improvement—the ability for taxpayers to file protests using DOR's customer portal, INTIME. This new online option makes the process of filing a protest easier and more efficient for taxpayers, and also streamlines the administrative side of the protest process—ultimately leading to faster and more accurate processing of taxpayer protests. A revised Protest Guide, developed and published by the Appeals team, focuses on the current protest process and details on filing a protest using INTIME.

Working collaboratively with DOR's Information Technology and Process Improvement teams to streamline the protest and settlement processes has been a big deal for the Legal team, as new legal operations system functionality will be implemented within ITS during FY25.

A number of process and service improvements within Legal Services enhanced the service provided to all DOR business units, including an enhanced contract, confidentiality agreement, and data sharing agreement development and management.

Our passion for continuous improvement is abundantly clear, as we have identified ways to improve operational efficiencies internally that enhance the overall internal and external customer experience in interacting with DOR's Legal team.

RESPECT:

BE KIND, HUMBLE AND MINDFUL—APPRECIATE VALUE AND DIVERSITY

Organizations are a collection of people who bring their unique talents, passions and expertise to support the organization's mission. Team DOR cares deeply about who we are, what we do, and who we serve. We also care about each other and our work environment, while keeping respect at the core of how we serve, behave and treat each other.

Training & Developing Team Members



DOR continues to invest in the training and development of team members and ensures that the diverse learning needs of everyone are met. Team members from across the agency connected in collaborative classroom workshops like Developing a Solution Mindset to learn together and from one another. Leveraging self-led computer-based training provided operational areas with the flexibility to implement process training, like Power of Attorney update training, in ways that met scheduling demands.

A variety of projects and priorities, like implementation of a new phone system, and continued updating of existing training programs for evolving processes and tools were supported by trainers across the agency. The training team also continues to invest in their own learning and development with a renewed focus on ensuring that training content meets accessibility requirements for all.

#DORGivesBack

#DORGivesBack, an agencywide volunteer initiative, encourages our DOR family to give back to our customers, team members and communities. Since 2017, this program has allowed DOR team members to volunteer as a unified team while supporting various Indiana charitable organizations. Some of DOR's selected organizations have included Gleaners, Jeffersonville Animal Shelter, Helping Veterans and Families, Hoosier Hills Food Bank and Second Helpings.



Business Outreach & Other Education

Our Business Education Outreach Program helps businesses receive taxpayer education and advice early in the business formation process, aligning with state tax compliance laws. Free tax presentations are offered to a diverse group of Hoosier organizations. Tax information for tax practitioners, new and small businesses, specialty businesses, volunteer tax preparers and others are covered in the presentations, and experienced DOR representatives are available to answer questions.

DOR's New and Small Business Education Center focuses on ensuring Hoosiers have the best opportunity to succeed in business. Our goal is to help future business owners understand state laws, the tax filing process and what services are available to support as their business evolves. A basic overview and webinars that address business taxes and tax compliance are available on our website.

Taxpayer Advocate Office

In accordance with Indiana Code § 6-8.1-11-3, the Taxpayer Advocate Office (TAO) provides high-quality specialized services to the unique needs of customers and partners facing complex tax issues that cannot be resolved through other DOR channels. The team is staffed with some of the agency's most senior Customer Service team members, who skillfully handle several programs and needs:

- Hardship
- Needs specific to active-duty military
- Needs specific to people who are incarcerated
- Offer in compromise
- Complex problem resolution
- Tax warrant expungement

TAO has focused on the core value of Respect: Be kind, humble and mindful. Appreciate and value diversity, by increasing collaboration with other areas of our organization, as well as building a team of various cultural and generational contributors, to boost innovation and creativity through varied levels of expertise and perspectives to provide caring service to those they serve.





INTEGRITY:

***ALWAYS DO WHAT IS RIGHT—
TAKE ACTION WHEN IT IS NOT***

The complex and important work we do requires the highest level of care, transparency, and honesty. We take that responsibility seriously and integrity guides us daily.

Internal Controls, Audit & Security

The Internal Controls team continues to build upon its advanced framework, partnering with each unit of the agency to assess a multitude of risks, improve process controls and mitigate potentially negative incidents during our day-to-day course of business. The team's structure is in Workiva, an advanced platform for ongoing management of not only Internal Controls, but also the Internal Audit program that supports safe, compliant and effective operations. In FY24, the Internal Controls team finalized an additional seven processes, seven process flows and 61 controls.



Increased communications and an Internal Controls annual training program ensure all DOR team members are equipped to play their part in supporting the effective development and operation of crucial internal controls. This program was enhanced with additional content.

DOR's Internal Audit team continued to work with leadership and the audit committee to conduct audits that promote ethical behavior, enhance operational efficiency, ensure compliance with policies and procedures, and find ways to improve the services we provide.

To this end, in the spirit of our core values, the Internal Controls and Internal Audit teams lead DOR's effort to continuously improve and keep current our control framework and environment while demonstrating integrity, by always doing what is right and taking action when it is not.



Fraud & Individual and Business Tax Compliance

The Fraud & Individual and Business Tax Compliance team has focused on the core value of Integrity: Always doing what is right and taking action when it is not, through training and ongoing system improvements to strengthen their ability to improve compliance.

Improved business rules, automation and process improvements continued to drive compliance and stop attempted refund fraud. During this timeframe, the ITC team identified and stopped 33% more in attempted fraudulent returns.

Additional staffing and enhanced procedures also allowed this team to identify potential fraudulent returns that needed to be reviewed for an accurate reflection of taxes owed, based on documented wages. Flagged returns requiring analyst review were reduced from over 250 days last year to 60 days this year.

By the end of FY24, the Compliance team successfully identified discrepancies in reported income and adjusted taxpayer returns that resulted in recovering \$33 million of invalid refund claims, a 33% increase in recoveries.

The onboarding of a new Food & Beverage and County Innkeepers Tax jurisdiction was another area of focus for the team. Education was provided to taxpayers and tax authorities implementing the taxes to increase business registration and monthly revenue.



Information Security

Ensuring the protection of taxpayer information is an ongoing mission for all DOR team members. To help promote public confidence and trust in state government, DOR's Security and Compliance & Ethics teams equip team members with the knowledge and resources to always do the right thing and take action when it is not. This effort was led by:

- Championing the development of a process to consistently deliver service systems with stronger security configurations
- Leading DOR's disaster recovery and continuity of operations program
- Implementing a tool that enables the IT team to analyze system performance concerns and resolve security risks
- Spearheading the implementation of new technology to optimize the security of confidential data on DOR servers
- Participating on Governor Holcomb's Cybersecurity Council and working collaboratively with IOT to proactively address information security
- Stewarding all DOR team members through the completion of annual security and privacy awareness training
- Leading DOR's annual IRS Safeguards Audit and ensuring that all requirements are covered within DOR's systems and operations
- Reinforcing the understanding of and adherence to specific IRS regulations through monthly interactive trainings for team members performing specialized tasks
- Writing guidance documents and providing customized DOR department trainings

Audit Operations

An audit is an examination of an organization's or individual's account and financial information to ensure information is reported correctly and taxpayers are fully compliant with Indiana tax laws. As audits are conducted, our Audit Operations staff verifies that all reported information is supported by a taxpayer's books and records. In fulfilling DOR's mission to administer taxes in a fair, secure, and efficient manner, this team focuses on ensuring and encouraging compliance to "level the playing field" among Indiana's taxpayers. We do this by following standard procedures and requirements, and selecting audit candidates based on various data points that might indicate a lapse in compliance or a reporting discrepancy.

Auditors from all corners of the state and beyond also gathered for meeting, learning and fun at DOR's sixth annual Audit Conference. #DORWeConnect was the theme of the conference, while "connecting" was the subject of every session. From personality profiles to guest speakers, this three-day event had a trivia contest running the entire conference, tying together DOR's history, culture and team members. Attendees included Audit team members and others from the Business Compliance, Special Investigations and Legal teams.



MOTOR CARRIER SERVICES

Commercial motor vehicles travel more than 9.7 billion miles in Indiana each year. The movement of these vehicles impacts the safety conditions and traffic patterns of Indiana roads as well as the physical demands placed on them.

These roads play an important role in the state's economic success. As a premiere provider of government services to the motor carrier industry, MCS works collaboratively with INDOT and the Indiana State Police's Commercial Vehicle Enforcement division to provide guidance and service to motor carrier companies, commercial drivers and Indiana residents through the administration of state and federal laws governing the commercial use of the state's roads.

In FY24, a review of MCS was conducted by the Federal Motor Carrier Safety Administration (FMCSA) to certify compliance with the PRISM program. Results determined that MCS not only maintained full compliance but also leveled up to the highest possible rating, becoming the second state in the nation to achieve this milestone certification. MCS's Expanded PRISM status continues to enhance the safety of Indiana roads by immobilizing motor carriers with serious safety deficiencies.

Our industry-leading MCS division is comprised of six areas of business.

Registrations

Intrastate: Base Plate Registrations

Base plate registrations are available for companies with 25 or more commercial vehicles weighing 16,000 lbs. or more that only travel within Indiana (intrastate).



Active Customers: nearly 350

Power Units: 31,400

Trailers: nearly 8,000

Interstate: International Registration Plan

A number of the largest carriers in the nation register their fleet for travel through Indiana (interstate) using DOR's IRP system. The continued modernization of IRP increased performance and efficiency in FY24 with duplicate address validation, suspicious miles validation, overall stability of the system and operational efficiencies, contributing to MCS's upgraded PRISM certification.



Active Customers: nearly 10,000
Power Units: nearly 685,000
Trailers: nearly 868,000

Fuel Tax

Businesses operating motor vehicles within the state that have three axles or more on the power unit; a combination of power unit and trailing unit; or any vehicle over 26,000 pounds, must file a tax return based on fuel usage.

Vehicles subject to Fuel tax must be registered and annually renewed, including decals, license cards and quarterly returns. In FY24, legislation enacted exemptions to intrastate carriers subjected to Motor Carrier Fuel tax, easing the burden on carriers and reducing the issuance of decals. Customers can manage all of their International Fuel Tax Association and Motor Carrier Fuel tax transactions online any time using the MCS Fuel Tax System.



International Fuel Tax Association

Active Customers: nearly 9,500
Decals Issued: over 520,000



Motor Carrier Fuel Tax

Active Customers: nearly 3,600
Decals Issued: 627

Indiana Oversize/Overweight Permitting System

In partnership with INDOT, MCS maintained its permitting service level agreements to customers throughout FY24, issuing nearly 420,000 specialty permits. The OSOW Permitting System, with continued enhancements including bridge integration, improved the overall safety and protection of Indiana routes. This automated permit system has dramatically increased self-service, automated route calculation and improved permitting service, reducing delays with over a 99% automated route approval.



Indiana Operating Authority

An IOA application is required for transporting passengers, household goods, or general freight within Indiana, and the system streamlines those requests for a better customer experience—specifically for setting up payment plans and signing documents. In FY24, there were nearly 1,100 IOA renewals and over 160 new passenger/household good authorities granted.

The Unified Carrier Registration (UCR) fee is collected annually to interstate motor carriers to fund highway and safety programs. During FY24, MCS's IOA team managed the registrations for 17,228 Indiana-based UCR carriers and subsequently collected \$2,819,845.



Titles

The Titles team processes vehicle titles for trucking companies and sole proprietors that are registered in Indiana. They assist motor carriers with transactions and work closely with the BMV to ensure timely processing while maintaining proper transaction security, which totaled nearly 140,000 in the fiscal year.



Customer Service

The Customer Service team supports MCS transactions and works closely with the BMV to handle all Commercial Motor Vehicle-related transactions. They assist walk-in customers with various needs, from new IRP accounts to Fuel tax transactions. The team supports all areas of MCS and educates carriers on specific requirements, having just served over 13,000 customers—over 1,500 of which were new accounts.

AUDIT STATISTICAL REPORT OF VIOLATIONS

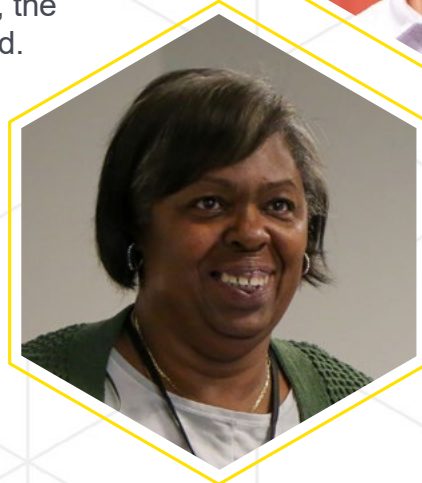
Indiana Code 6-8.1-14-4(2) requires DOR to provide a statistical study of audit results annually. The following paragraphs and tables detail the specific statutes or regulations (administrative rules) violated by taxpayers under audit for each tax type group. These violations are segregated by Corporate Income Taxes, Financial Institutions taxes, taxes due from pass-through entities including Composite tax and PTET; Employer Payroll Withholding tax; Sales and Use tax; Food and Beverage tax, Heavy Rental Excise tax, and County Innkeepers' tax; Cigarette Excise tax; and Motor Carrier taxes imposed by IRP and IFTA. The figures reflect the tax dollar impact of each violation.

The listed statute or regulation violations are segregated by the industry sector of the business associated with the violation. Where a customer's registration did not include an industry code (North American Industrial Classification System or "NAICS"), the column on that exhibit has been marked as unidentified.

Typically, a field audit includes the most recent three complete tax years, though it may include more or fewer tax periods. To expand the coverage among businesses reporting tax to Indiana, auditors and their supervisors may limit the scope of a field audit to include fewer tax periods or to focus only on certain tax issues.

The Audit Operations team is comprised of field auditors working in three business units:

- Sales and Income Audit team (all income, payroll withholding, sales tax and sales-related specialty taxes)
- Special Tax Audit team (excise taxes including tobacco, e-cig, and alcohol, but primarily cigarette tax)
- Motor Carrier Audit team (carrier taxes related to IFTA, IRP, and Indiana motor carriers)



AMOUNT OF TAX ASSESSED

The tables of data that follow detail the audit adjustments, reflected in tax dollar changes, gleaned from audit worksheets and totaled by internal reports. Associated penalties and interest that may result from audit adjustments are not reflected in the data; these figures represent tax dollars only, with few exceptions which are noted by citation. Any tax refunds (sometimes an audit results in a refund) or negative adjustments posted are offset against tax assessments.

For **Indiana Corporate Income taxes**, the audit adjustments that are most common and result in the larger tax impacts are based on the definition of Indiana adjusted gross income, which includes required modifications (add-backs or deductions) to federal taxable income. Other large impacts derive from apportionment and allocation of receipts for multistate businesses and the composition of affiliated groups filing consolidated income tax returns.

CORPORATE (C CORP.) INCOME TAX ADJUSTMENTS

STATUTE/RULE VIOLATED	UNIDENTIFIED INDUSTRY	NAICS					
		2	3	4	5	6	7
45 IAC 3.1-1-106				4,179,177			
45 IAC 3.1-1-153			10,052	3,980,021			
45 IAC 3.1-1-50				134,784			
45 IAC 3.1-1-51	3,081,181		114,646			2,179	
45 IAC 3.1-1-55					-341,039		
45 IAC 3.1-1-59	8,462						
45 IAC 3.1-1-62	-2,251,589						
45 IAC 3.1-1-8	-443,387						
IC 6-3-1-20	894,359		13,378	299,201		43,338	
IC 6-3-1-3.5	-543,054	-126,154	495,893	11,802,269	135,127	143,856	10,701,445
IC 6-3-2-1	631		10,098	58,029			
IC 6-3-2-2	406,935		236,766	19,555,529			
IC 6-3-2-2.6	-4,928,424		-282,722	982,284	-25,293	-237,885	1,612,469
IC 6-3-2-20	54,508		7,808				
IC 6-3-4-14						61,166	
IC 6-3-4-6	-529,118						
IC 6-3.1-1-2							532
IC 6-3.1-4-1	227,182			4,252,551			
TOTAL	-4,022,314	-126,154	605,919	21,639,307	-231,205	12,654	12,314,446

Corporations doing business as financial institutions, as defined by Indiana Code (IC 6-5.5) are required to file **Financial Institutions tax (FIT)** returns. All FIT filers subject to audit, therefore, fall into the banking, financial, or credit extending industry sectors. Because the definition of subject taxpayers is so specific, the largest adjustments in terms of dollars and in count result from adding or removing entities filing combined FIT-20 returns. The authority for those adjustments is IC 6-5.5-2-1, which defines the computation of the tax base for FIT. At the end of FY24, FIT assessments totaled almost \$8 million. Most of that total related to removing non-subject affiliated corporations from the FIT-20 combined returns. This involves changes to the tax base as well as the receipts attributed to those entities in the apportionment formula.

FINANCIAL INSTITUTIONS TAX ADJUSTMENTS	
STATUTE/RULE VIOLATED	TAX IMPACT OF ADJUSTMENT
IC 6-3.1-7-3	\$1,515
IC 6-5.5-1-2	\$261,494
IC 6-5.5-2-1	\$5,595,360
IC 6-5.5-2-3	\$123,848
IC 6-5.5-2-4	\$10,795
IC 6-5.5-4-10	\$3,267,216
IC 6-5.5-4-11	\$73,442
IC 6-5.5-4-12	(\$73,441)
IC 6-5.5-4-3	(\$440,030)
IC 6-5.5-4-4	\$6,598,975
IC 6-5.5-4-5	(\$1,270,716)
IC 6-5.5-4-6	(\$537,539)
IC 6-5.5-4-7	(\$7,994,610)
IC 6-5.5-4-8	\$1,866,923
IC 6-5.5-4-9	\$1,063,976
IC 6-5.5-5-1	(\$772,266)
TOTAL	\$7,774,942

Pass-through entities (S corporations and partnerships) audited were subject to changes in the taxable income base, often as a result of failing to report all receipts, expenses, or modifications correctly. The adjustments to the base might result in additional Composite tax due for nonresident shareholders and partners which is assessed directly to the pass-through entity. Many of these audits required associated audits on those individuals or other entities who receive tax attributes from the pass-through entity. During this past fiscal year, Pass-through Entity Tax (PTET) enacted by the Indiana General Assembly in 2023 was subject to audit for the first time, with tax year 2022 being the first year it was effective. A summary of all tax imposed directly on S corporations and partnership entities is presented here:

PASS-THROUGH ENTITIES					
STATUTE/RULE VIOLATED	UNIDENTIFIED INDUSTRY	NAICS			
		2	3	4	8
45 IAC 3.1-1-66				20,774	
IC 6-3-4-12	6,516	3,628	4,236	1,390	879
IC 6-3-4-13	21,519			57,639	
IC 6-3.1-4-1			75,940		
IC 6-3.1-4-7			6,249		
IC 6-8.1-10-2.1				-9,561	
TOTAL	28,035	3,628	86,425	70,242	879

Audit Operations sales and income auditors occasionally conduct limited scope audits of individual taxpayers. **Individual Income tax** audits usually involve owners of pass-through entities (S corporation or partnership) or sole proprietors operating businesses. Often income, expenses, modifications, or credits that flow to individuals are adjusted. Audits completed resulted in various adjustments, the largest of which relates to additional net income or disallowed credits (such as research expense credit) flowing to shareholders of S corporations. Adjustments to Individual Income taxes are detailed in this table:

INDIVIDUAL INCOME TAX							
STATUTE/RULE VIOLATED	UNIDENTIFIED INDUSTRY	NAICS					
		2	3	4	6	7	8
45 IAC 3.1-1-106	13,374	103,233	22,104	5,958		64,306	
45 IAC 3.1-1-2	273,797			18,487		52,888	
45 IAC 3.1-1-3	5,958				10,030		
45 IAC 3.1-1-66	4,427		74,239				
45 IAC 3.1-1-67	1,066,198	8,068	31,305	184,106	2,681	13,012	
IC 6-3-1-3.5	152,548			-225	20,013	4,066	9,775
IC 6-3-2-1				2,743			

INDIVIDUAL INCOME TAX							
STATUTE/RULE VIOLATED	UNIDENTIFIED INDUSTRY	NAICS					
		2	3	4	6	7	8
IC 6-3-2-2.5	14,372						
IC 6-3-4-1	14,517						
IC 6-3-4-6	-106						
IC 6-3.1-1-2	3,339						
IC 6-3.1-4-5	937,250						
IC 6-3.1-4-7	278,958		170,253	64,960			
IC 6-3.6-2-13	-106						
IC 6-3.6-2-2	9,483						
TOTAL	2,773,938	111,301	297,901	276,029	32,724	134,272	9,775

For **Indiana Sales and Use taxes**, audit adjustments generally result from errors in collection and remittance of Sales tax by retail merchants and the misapplication of Sales/Use tax exemptions on purchases made. Business taxpayers often fail to accurately self-assess Use tax when Sales tax is not collected by the seller. Many larger Sales/Use tax audits are performed using stratified statistical sampling techniques to reduce the number of documents that need to be reviewed while maintaining desired precision and accuracy. Most credit (negative) adjustments stem from exemptions granted for manufacturers. The largest Sales tax assessments relate to sales by marketplace facilitators who failed to correctly collect and remit on retail sales.

INDIANA SALES AND USE TAXES										
STATUTE/RULE VIOLATED	UNIDENTIFIED INDUSTRY	NAICS								
		1	2	3	4	5	6	7	8	9
45 IAC 2.2-1-1				14	9,085					
45 IAC 2.2-2-1								12,311		
45 IAC 2.2-2-2					663,879			54,743	31,156	
45 IAC 2.2-3-12			395,374	436	530	1,367				
45 IAC 2.2-3-15	44,696				7,775					
45 IAC 2.2-3-4	21,509		66,637	38,396	218,584	68,709	2,922	35,494	13,072	1,421
45 IAC 2.2-3-5					2,307					
45 IAC 2.2-3-6						22,050				
45 IAC 2.2-3-8			107,698		7,485					
45 IAC 2.2-3-9			34,330							
45 IAC 2.2-4-1					675,426			44,944	3,648	
45 IAC 2.2-4-13				-36,053				-1,846		
45 IAC 2.2-4-2			-53	-561	-7,618			36		
45 IAC 2.2-4-27			14,311	3,667	5,341	7,477	42	13,637	783	
45 IAC 2.2-4-31								250		

INDIANA SALES AND USE TAXES

STATUTE/RULE VIOLATED	UNIDENTIFIED INDUSTRY	NAICS								
		1	2	3	4	5	6	7	8	9
45 IAC 2.2-4-8					667	931		101,175		
45 IAC 2.2-5-10				2,604	2,302					
45 IAC 2.2-5-12				1,144	-2,895			-5,920		
45 IAC 2.2-5-14				-1,641		-2,058		-206		-433
45 IAC 2.2-5-15	-15		-23,211	-223	-20,745	-12,371		-2,269	-5,831	
45 IAC 2.2-5-16	-12			-5,558	-1,679			-500		
45 IAC 2.2-5-26	254			12	10					
45 IAC 2.2-5-36						180	-5,370			
45 IAC 2.2-5-4					543					
45 IAC 2.2-5-45					511		11			
45 IAC 2.2-5-8	-2,923		25,121	-20,283,779	-169	1,921		736	4,366	
45 IAC 2.2-5-9			1,987							
45 IAC 2.2-6-14			173				27			
45 IAC 2.2-6-8	19,029			171,057	2,031,045	462,928	617,194	210,872	-33,687	563
45 IAC 2.2-8-12	44,953	4,329	17,615	116,277	-392,483	54,862	25,867	63,657	5,057	
IC 6-2.5-1-24	1,420		621	9,121	573	6,159	-480	3,339		
IC 6-2.5-1-5	209		102	14,360	601,547		125	1,310	3	
IC 6-2.5-3-8	41,301		116,535	465,434	246,197	76,188	22,059	36,269	21,559	420
IC 6-2.5-4-1					6,335					
IC 6-2.5-4-17	40		447	313	1,691		140			
IC 6-2.5-4-18				-348	-2,501				1,617,246	
IC 6-2.5-4-9	1,930	1,473	14,380	5,753	23,761	1,478	76	856	90	
IC 6-2.5-5-20				63	109,383			53,562		
IC 6-2.5-5-35	-662							-2,776		
IC 6-2.5-5-40				-4,416						
IC 6-2.5-5-45.8				16,130	110,021					
IC 6-2.5-5-5.1								-417		
IC 6-2.5-6-1	65,217			1,055	678,245	10,287		264,072	6,517	
TOTAL	236,946	5,802	772,066	-19,486,744	4,975,151	700,107	662,612	883,329	1,663,978	1,970

Retail merchants engaged in certain activities are also subject to **County Innkeepers' tax (CIT)**, **Food & Beverage tax (FAB)**, **Heavy Equipment Rental tax (HRT)**, and **Waste Tire Management (TIF)** among other miscellaneous sales-related taxes. The table labeled "Miscellaneous Taxes" includes adjustments for all of these tax types together. Proposed adjustments for additional CIT, FAB, HRT, and TIF this past year are the result of merchants failing to correctly collect and remit the tax. FAB tax was assessed to a marketplace facilitator, as noted by an industry sector outside of the typical food/beverage seller. Combination businesses, such as gas station/convenience stores, are also frequently out of compliance with local FAB collection.

MISCELLANEOUS TAXES					
STATUTE/RULE VIOLATED	UNIDENTIFIED INDUSTRY	NAICS			
		4	5	7	8
IC 13-20-13-7		(3,753)			843
IC 6-6-15-3		30,711	2,318		
IC 6-9-12-3		14,742			1,820,564
IC 6-9-20-4				6,366	115,211
IC 6-9-21-4		1,281			58,523
IC 6-9-25-4					4,474
IC 6-9-26-6		1,297			40,255
IC 6-9-27-4					129,154
IC 6-9-33-4				7,028	180,075
IC 6-9-35-8				14,231	683,079
IC 6-9-41-6					100,704
IC 6-9-48-5	5,718			6,242	67,539
IC 6-9-50-4					2,106
IC 6-9-51-4					78,414
IC 6-9-52-4					9,179
IC 6-9-8-2				7,496	
IC 6-9-9-2				6,317	
TOTAL	5,718	44,279	2,318	47,680	3,290,119

Withholding tax assessed from employers totaled over \$1.9 million, which includes both state and local payroll tax. Review of that data suggests noncompliance in withholding local (county) income tax from employees or failing to withhold and remit Payroll Withholding tax due in total.

WITHHOLDING TAX ADJUSTMENTS								
STATUTE/RULE VIOLATED	UNIDENTIFIED INDUSTRY	NAICS						
		2	3	4	5	6	7	8
45 IAC 3.1-1-101							54	
45 IAC 3.1-1-97	8,678						5,266	
IC 6-3-4-8	41,317	97,348	358,359	611,432	744,240	19,616	79,594	20,299
TOTAL	49,995	97,348	358,359	611,432	744,240	19,616	84,914	20,299

DOR is charged with diligently enforcing compliance with **Cigarette tax** stamping requirements in order for Indiana to receive payment through the tobacco industry's Master Settlement Agreement (MSA). Audit Operations' Special Tax Audit team has a goal of examining each distributor within a three-year time span to achieve this, allowing Indiana to collect millions of dollars through the MSA. Cigarette Excise tax audits yielded over \$300,000 in additional tax, under the authority of IC 6-7-1-12.

CIGARETTE TAX ADJUSTMENTS		
STATUTE/RULE VIOLATED	NAICS	
	3	4
IC 6-7-1-12	49,432	251,607

Our Motor Carrier field audit team is responsible for auditing a range of carriers in size of fleet. We measure the size of the carrier by a class code, with Class 1 encompassing smaller carriers and Class 5 being larger carriers. The auditors examine carriers' records for compliance with fuel consumption and mileage reporting requirements and have quantitative audit quotas to comply with the IFTA and IRP requirements. Both IFTA and IRP require that we audit an average of 3% of our carrier base each calendar year. This amounts to an average of approximately 270 IFTA audits and 270 IRP audits we must complete each year. IRP involves the registering of subject vehicles and corresponding mileage reporting for accurate distribution to all jurisdictions in which the carriers operate. All adjustments made are supported by the IFTA and IRP audit authority. IFTA and IRP audits completed in fiscal year ended June 30, 2024 assessed about \$1.5 million. Of this, approximately \$876,000 was assessed on behalf of Indiana. The audits of carriers cover all jurisdictions in which a carrier operates, so much of the tax assessed lands outside Indiana. Assessments break down this way in audit count and dollars adjusted for Indiana.

MOTOR CARRIER AUDITS			
Class 1	IFTA	146	272,407
	IRP	147	24,040
Class 2	IFTA	97	212,076
	IRP	96	23,151
Class 3	IFTA	30	92,385
	IRP	32	16,668
Class 4	IFTA	10	139,056
	IRP	12	7,384
Class 5	IFTA	1	62,199
	IRP	1	26,833

INDUSTRY SECTORS	
CLASS	EXPLANATION
	Agricultural; Forestry
2	Mining; Oil and Gas Extraction; Construction
3	Manufacturing
4	Wholesale; Retail; Transportation
5	Information; Publishing; Telecommunications; Finance; Retail Insurance; Real Estate; Leasing; Professional Services
6	Education; Health Services
7	Arts; Entertainment; Recreation; Food Services; Accommodations
8	Repair; Personal Services; Other Services
9	Public Administration; Unrelated Business Activities; Individuals

TAXPAYER BILL OF RIGHTS



Quality Taxpayer Service



Preservation of Taxpayer Rights



Taxpayer Education & Information



Fair Collections Process



Hearing Time & Representation



Demand Notices



Warrants for Collection of Tax



Judgment Liens Against Property



Annual Public Hearing & Report



Taxpayer Responsibilities

Learn more about your Taxpayer Bill of Rights

AREAS OF RECURRING TAXPAYER NON-COMPLIANCE

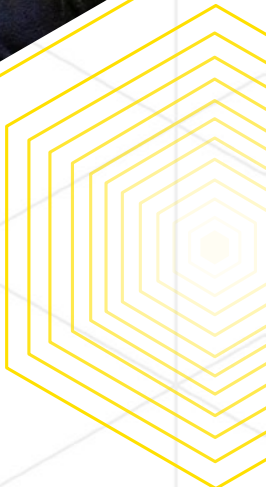
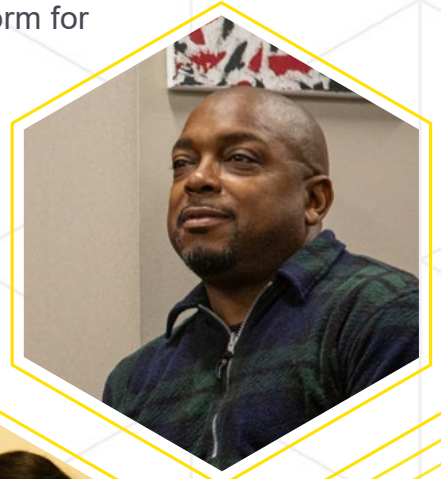
DOR receives unidentified checks from customers, the majority of which are sent without a corresponding voucher. When this happens, DOR tax analysts must determine what taxpayer, account and period the check is for. This requires manual research, data entry and processing. More than 16,000 unidentified checks were received in FY24.

Customers who file paper returns sometimes mistakenly submit an incorrect or outdated form. When this happens, the filing process slows down and requires manual processing by a DOR tax analyst. Over 16,000 outdated paper returns required manual processing in the fiscal year.

In addition to those errors, over 119,000 customer returns required manual intervention due to one or more of the following reasons:

- Account adjustments and corrections had to be made due to incorrectly amended and duplicate returns.
- The customer claimed an estimated payment on their return, but DOR records did not reflect any estimated payments on their account.
- The customer failed to include Social Security number(s), name(s), address(es) or county code(s) on their return or used the wrong form for the filing year.
- DOR had to verify duplicate names filing with the same address.
- DOR had to verify if credits claimed by customers were claimed properly.
- An invalid account and/or filing status mismatch, which occurs when customers change filing status (single, married, filing jointly or filing separately), was filed.
- Missing schedules, forms and W-2s for state, county and local taxes withheld and/or incomplete and/or incorrect account numbers were filed.
- Tax returns and/or Social Security benefit documentation were missing from Automatic Taxpayer Refund verification.

DOR is on a mission to reduce these types of occurrences through taxpayer education, enhanced guidance and form improvements.



DOR LOCATIONS

1. Bloomington
2. Clarksville
3. Columbus
4. Evansville
5. Fort Wayne
6. Indianapolis
7. Kokomo
8. Lafayette
9. Merrillville
10. Muncie
11. South Bend
12. Terre Haute



LEGISLATIVE REQUIREMENTS

In accordance with IC 6-8.1-14-4, the Indiana Department of Revenue's Annual Report must include the following:



1. Areas of recurring taxpayer noncompliance

2. A statistical study under IC 6-8.1-7-2 from DOR's audit process, including the following:

- The statute or rule violated by the taxpayers
- The amount of tax involved
- The industry or business of the taxpayers
- The number of years in the audit period
- The use of professional tax preparation assistance by the taxpayers
- The filing of appropriate tax returns by the taxpayers



3. Recommendations for improving taxpayer compliance and DOR administration by the following:

- The adoption of new or amended statuses and rules
- Improvements in the training of DOR team members
- Improvements in taxpayer communication and education
- Increases in the enforcement capability of DOR

4. The certification required under IC 6-8.1-3-2.6.

5. The following information:

- Number of taxpayers
- Amount of gross collections
- Amount of net collections
- Amount of refunds
- Amount of customer retained collection allowances
- Amount of administrative costs
- Amount of delinquencies by type of tax collected by DOR





INDIANA DEPARTMENT OF REVENUE

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