

# Implicit Bias in the Legal Profession: Mental Health and Double Stigma

Joan Bibelhausen  
Lawyers Concerned for Lawyers

Copyright 2019, Lawyers Concerned for Lawyers



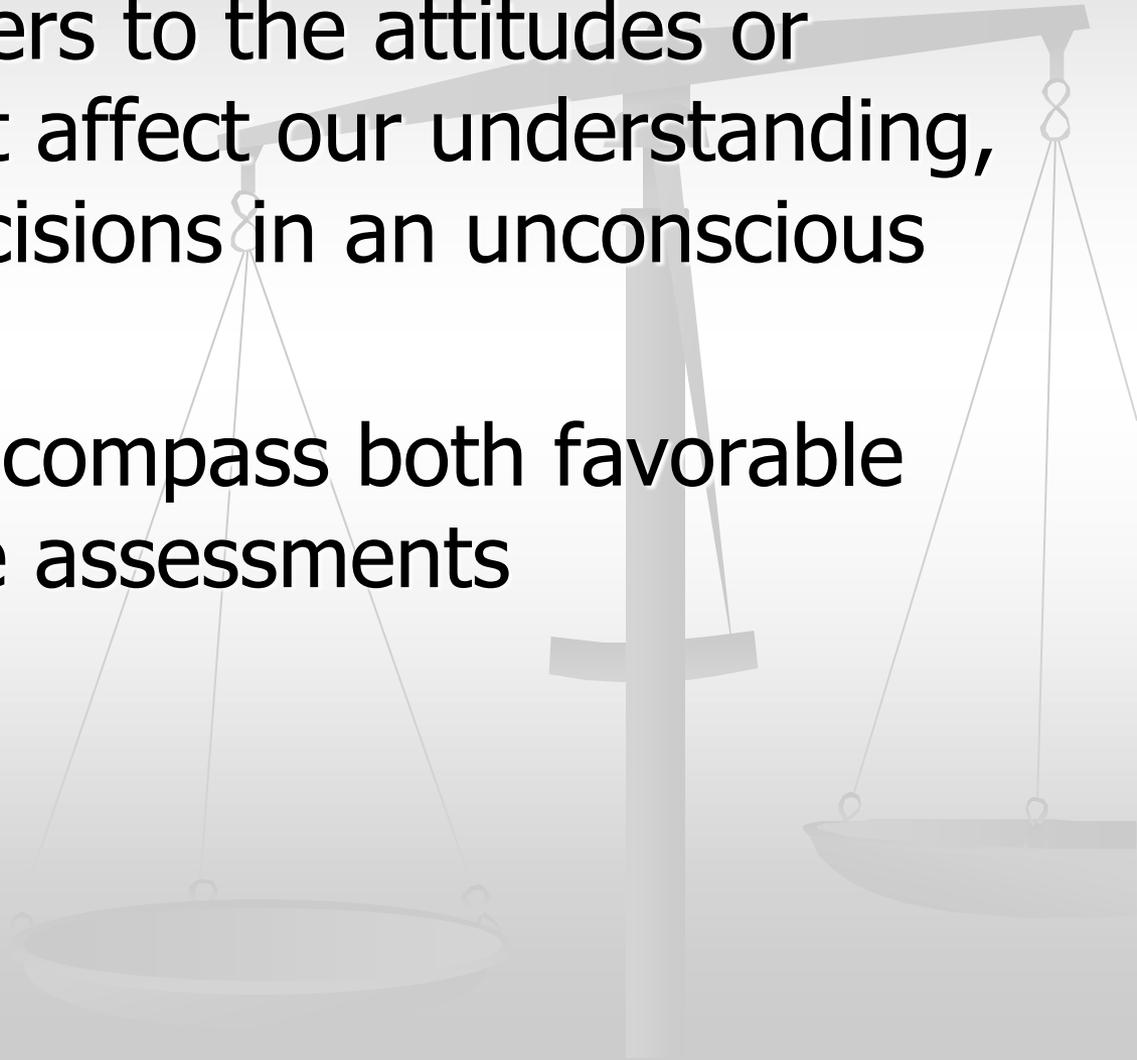
# Why Does this Matter?

- Ethics
- Stigma
- Bias
- Public Service
- Lawyer Well Being



# Defining Implicit Bias

- Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
- These biases encompass both favorable and unfavorable assessments



# What do you think of?

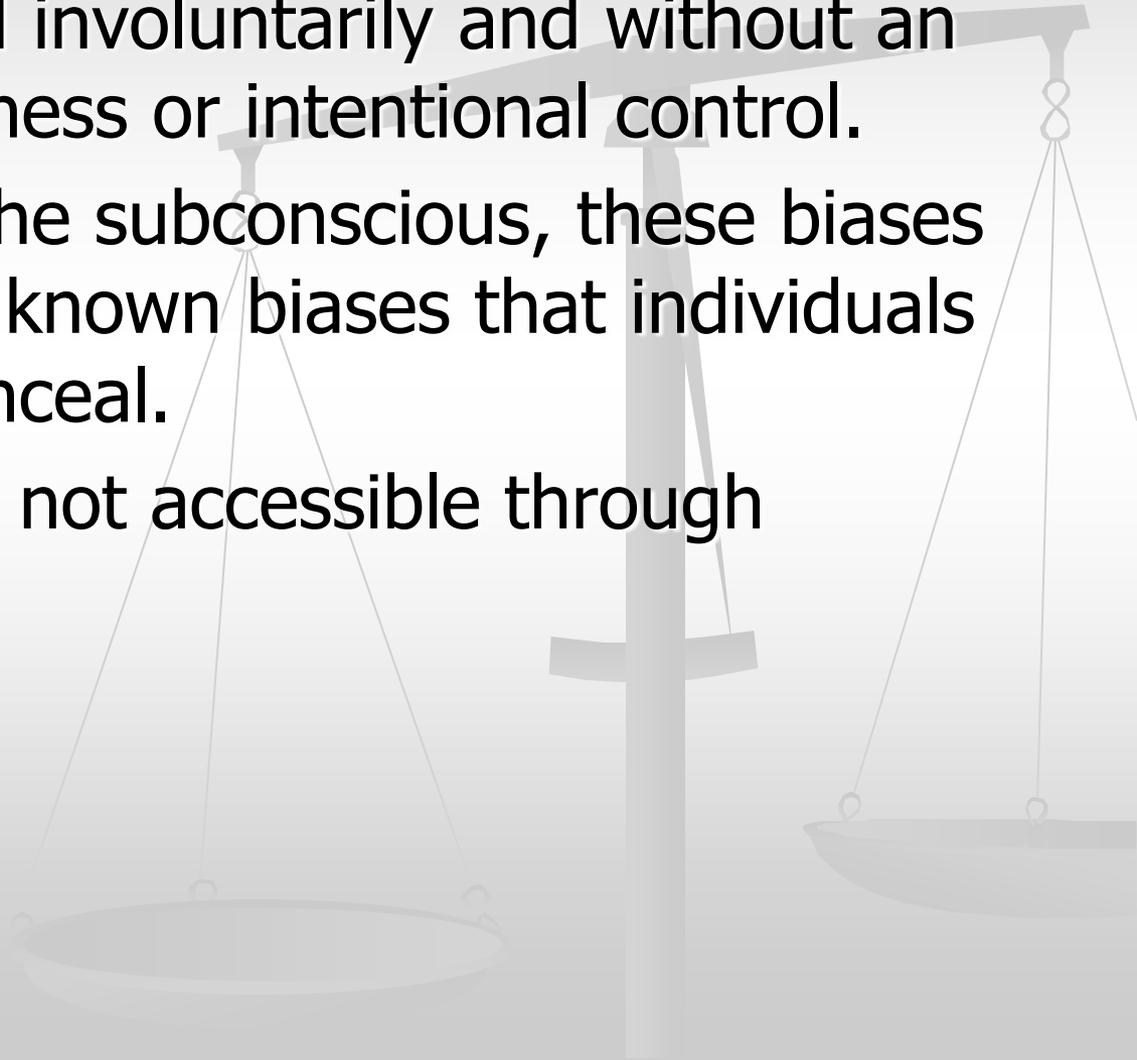


# How about now?



# Origins of Implicit Bias

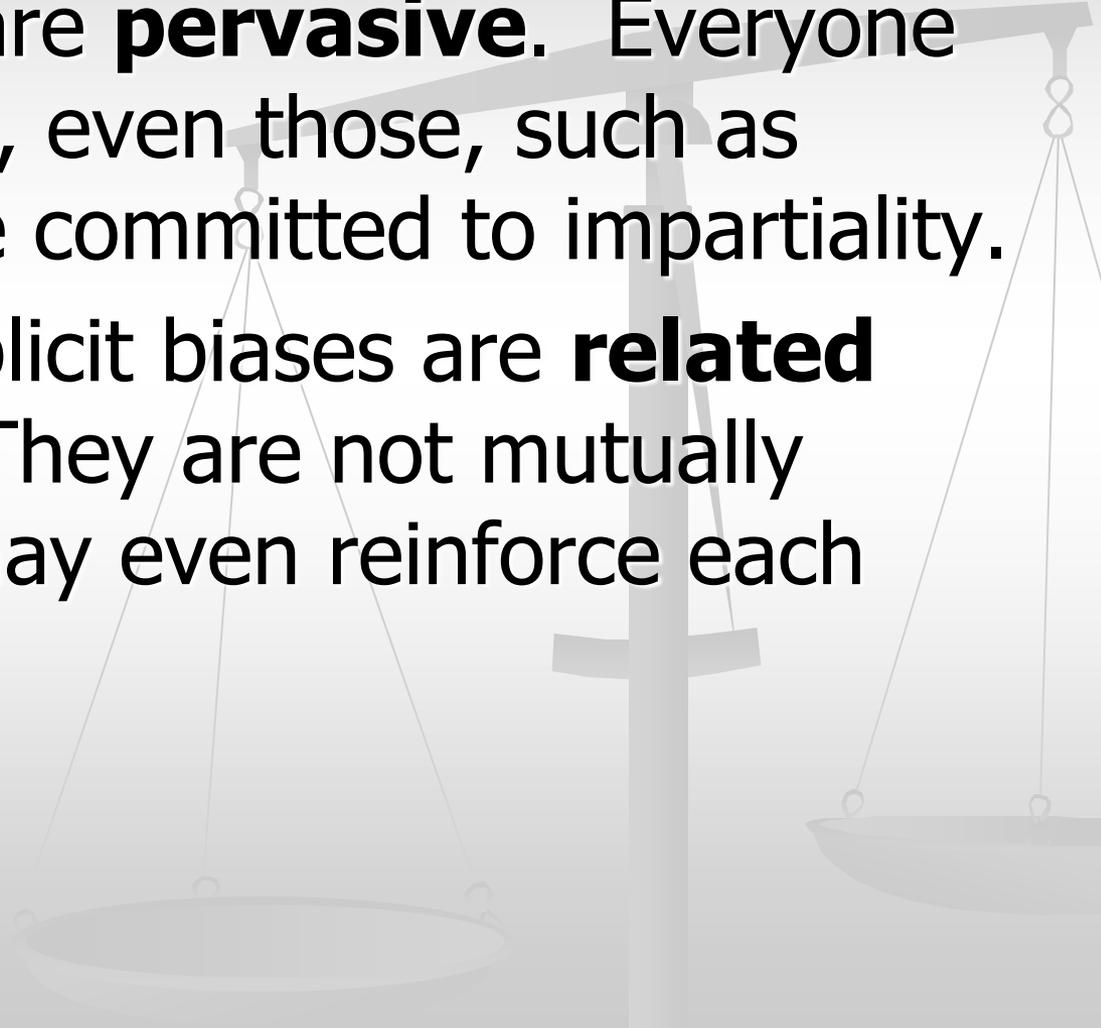
- They are activated involuntarily and without an individual's awareness or intentional control.
- Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal.
- Implicit biases are not accessible through introspection.



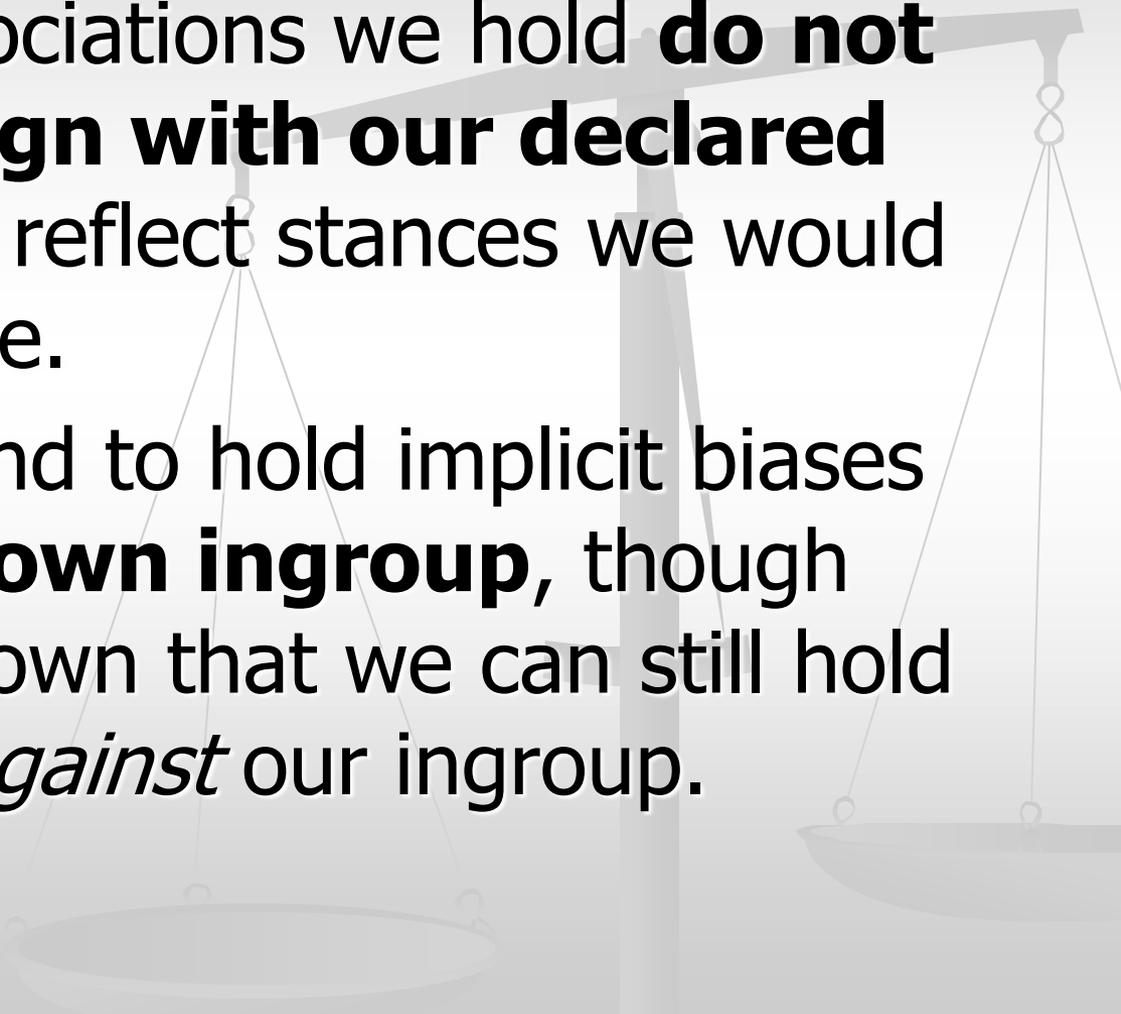
# Development of Implicit Bias

- The implicit associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance.
- They develop over our lifetime through exposure to direct and indirect messages.
- The media and news programming are often-cited origins of implicit associations.

# Characteristics

- Implicit biases are **pervasive**. Everyone possesses them, even those, such as judges, who are committed to impartiality.
  - Implicit and explicit biases are **related but distinct**. They are not mutually exclusive and may even reinforce each other.
- 

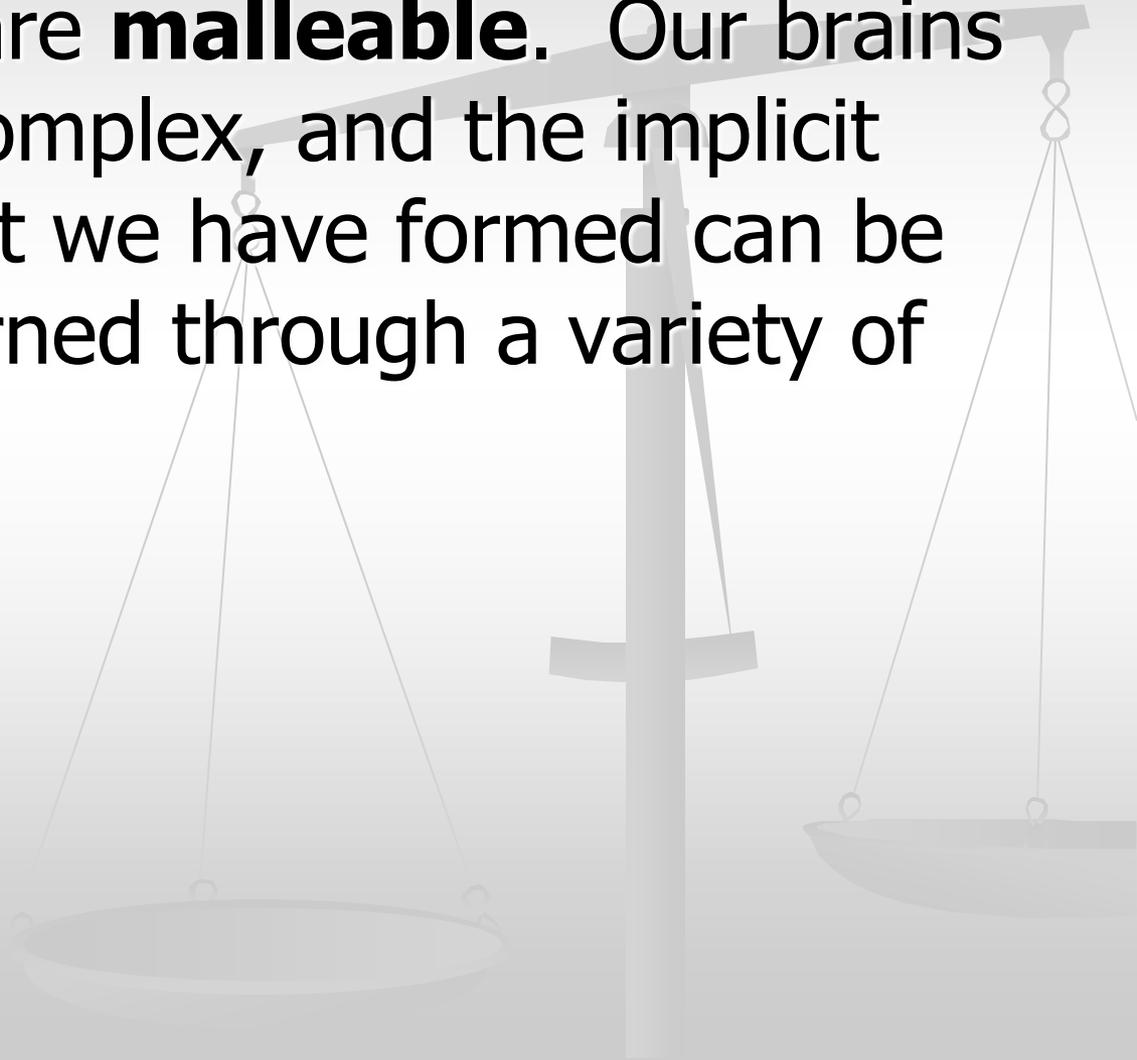
# Characteristics



- The implicit associations we hold **do not necessarily align with our declared beliefs** or even reflect stances we would explicitly endorse.
- We generally tend to hold implicit biases that **favor our own ingroup**, though research has shown that we can still hold implicit biases *against* our ingroup.

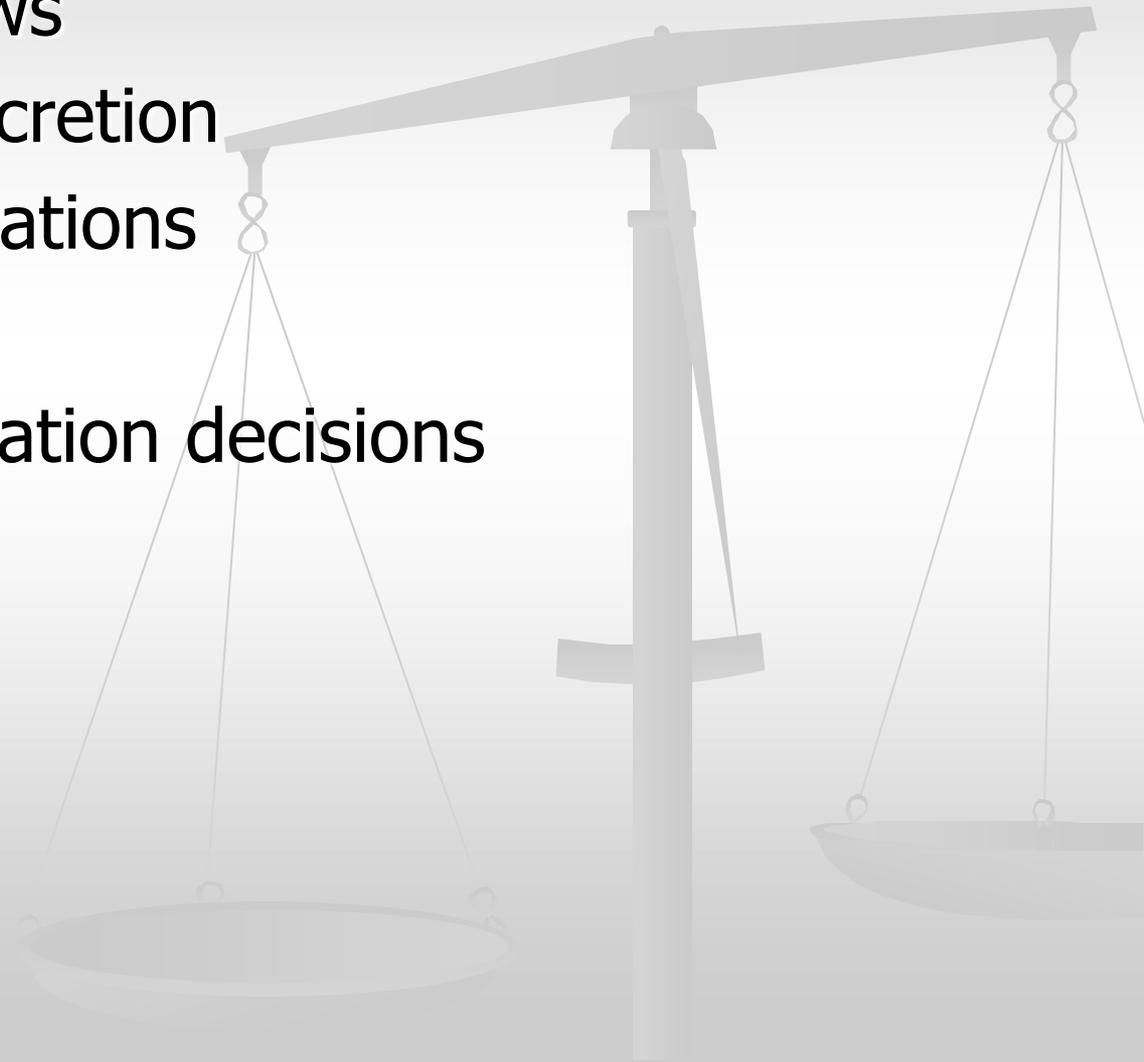
# Characteristics

- Implicit biases are **malleable**. Our brains are incredibly complex, and the implicit associations that we have formed can be gradually unlearned through a variety of techniques.



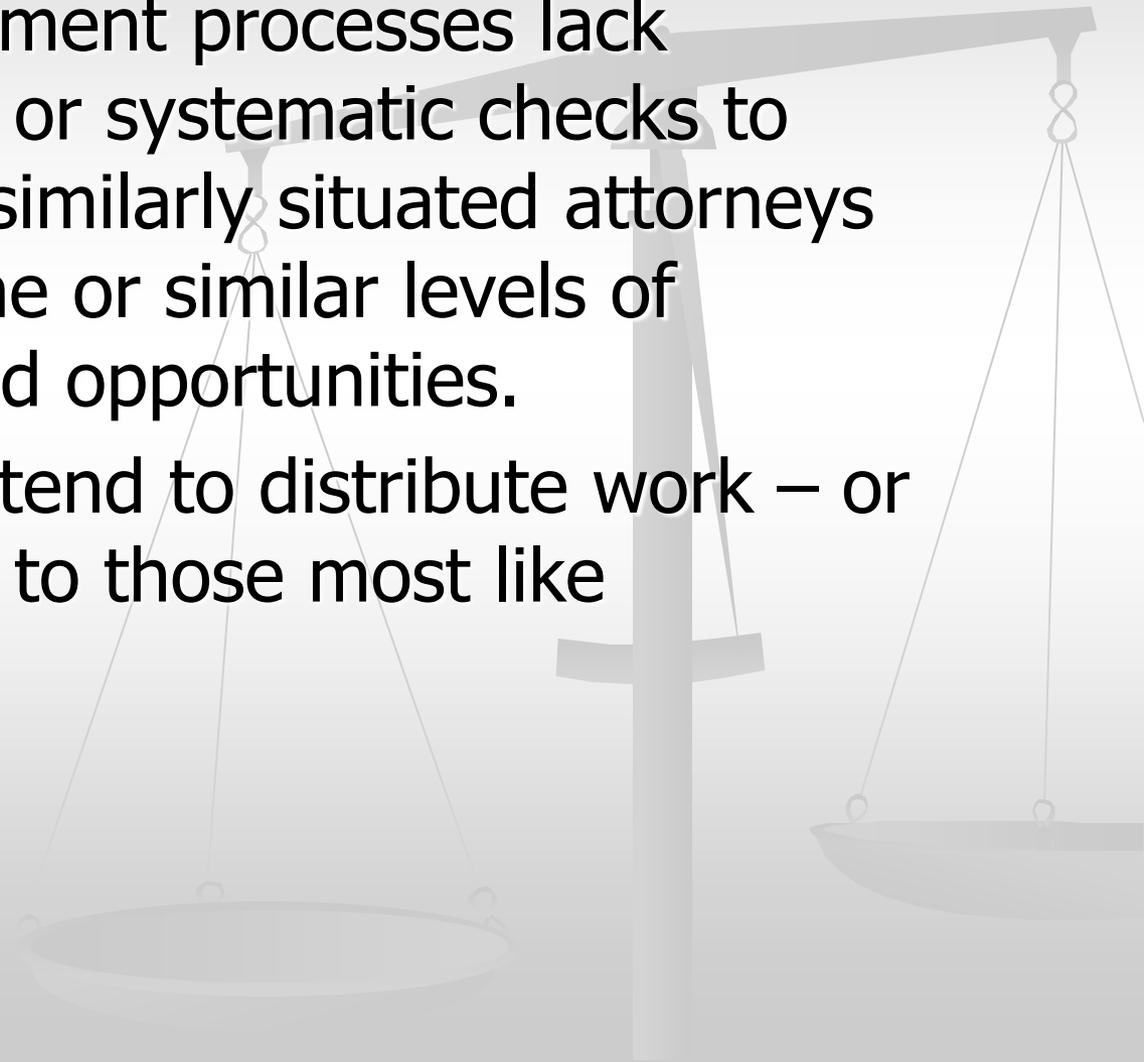
# Implicit bias and the legal profession

- Enactment of laws
- Prosecutorial discretion
- Client communications
- Jury selection
- Sentencing/probation decisions
- Hiring
- Promotion
- Rainmaking

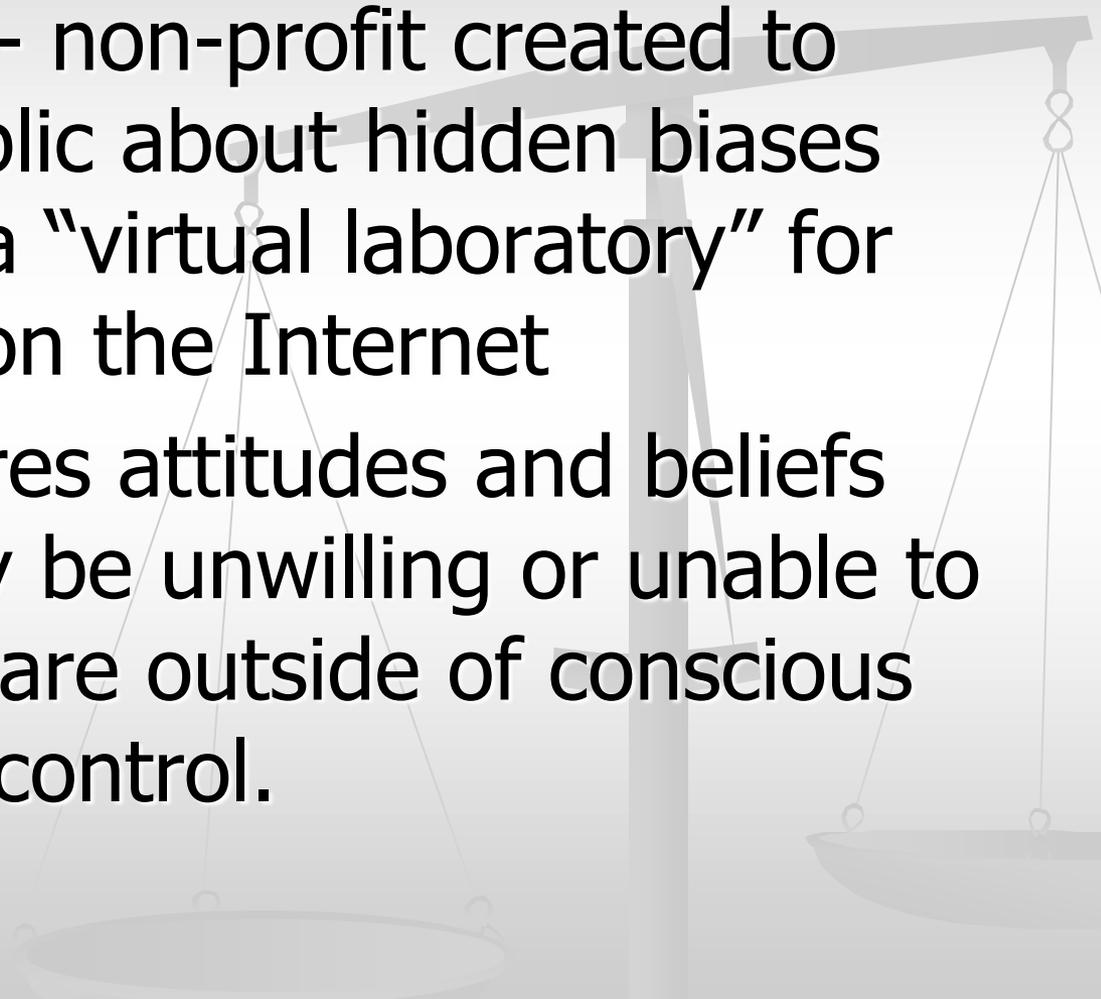


# Law Office Implications

- Informal assignment processes lack standardization or systematic checks to ensure that all similarly situated attorneys receive the same or similar levels of assignments and opportunities.
- Do supervisors tend to distribute work – or the best work - to those most like themselves?



# Harvard Implicit Association Test

- Project Implicit - non-profit created to educate the public about hidden biases and to provide a “virtual laboratory” for collecting data on the Internet
  - The IAT measures attitudes and beliefs that people may be unwilling or unable to report and that are outside of conscious awareness and control.
- 

# IAT Topics

- Race
- Gender
- Age
- Sexual Orientation
- Disability
- Additional variations such as career, skin-tone and weight.



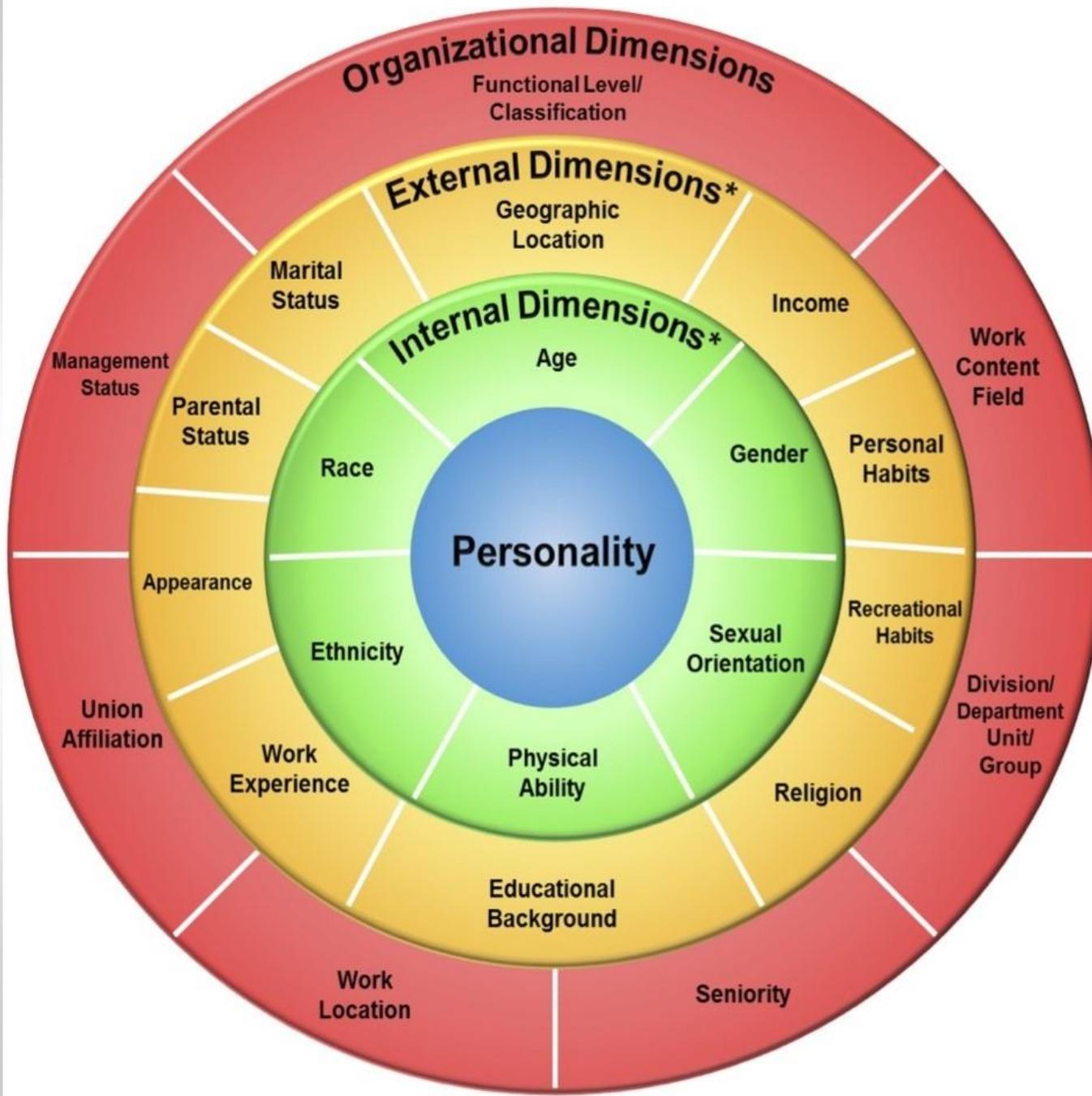
# Mental Health and the Legal Profession



# Why Does this Matter?

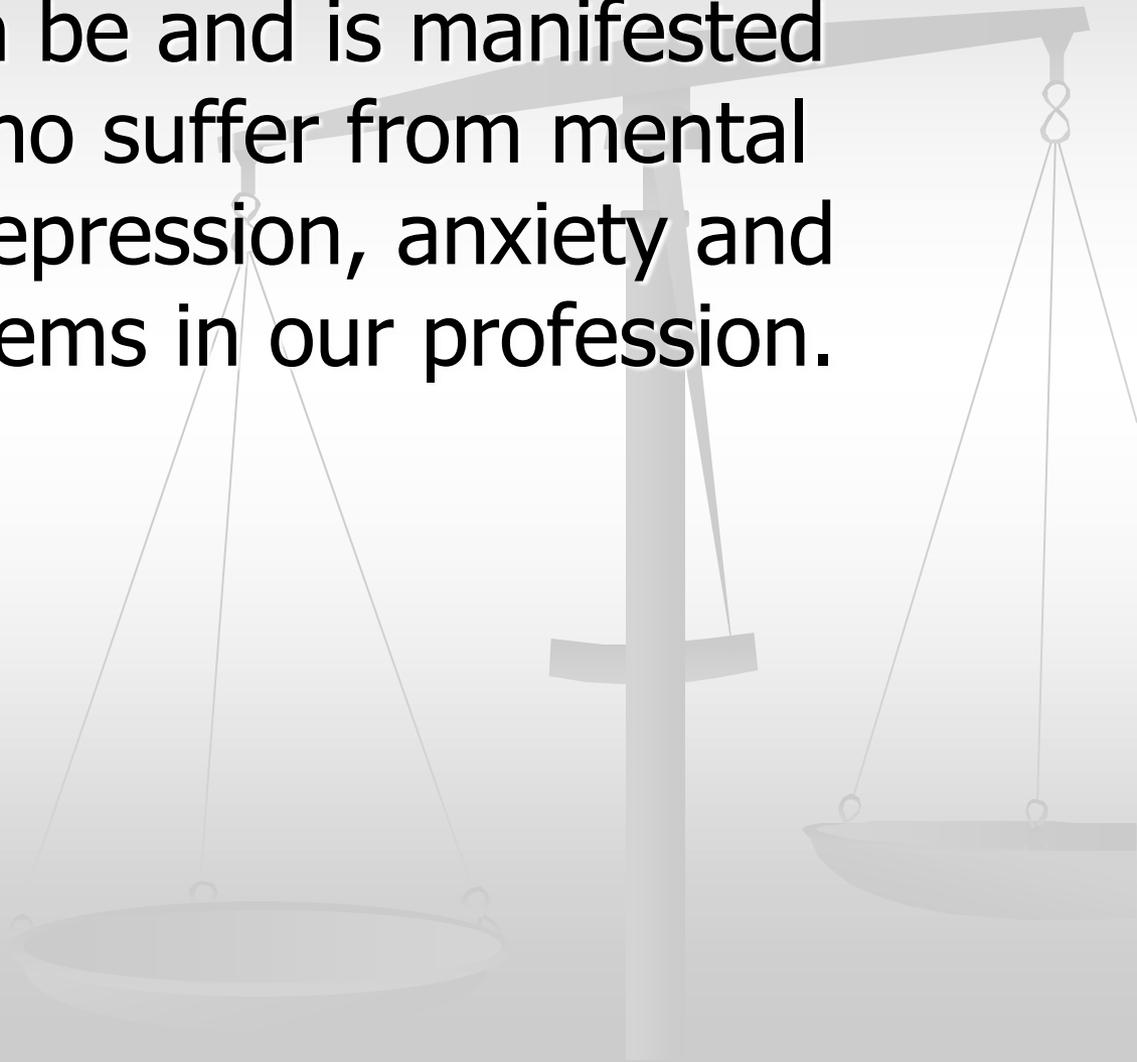
- Ethics
- Stigma
- Bias
- Public Service
- Lawyer Well Being





# Paulette Brown

- Implicit bias can be and is manifested toward those who suffer from mental health issues, depression, anxiety and substance problems in our profession.





# Alcohol Use in Our Profession - 2016 data

- ABA and Hazelden Betty Ford surveyed over 15,000 lawyers in multiple states
- 21% met the criteria for alcohol use disorder
- Younger/newer lawyers in law firms have higher rates
- Those from underrepresented groups get help later, if at all

# When is Work Affected?

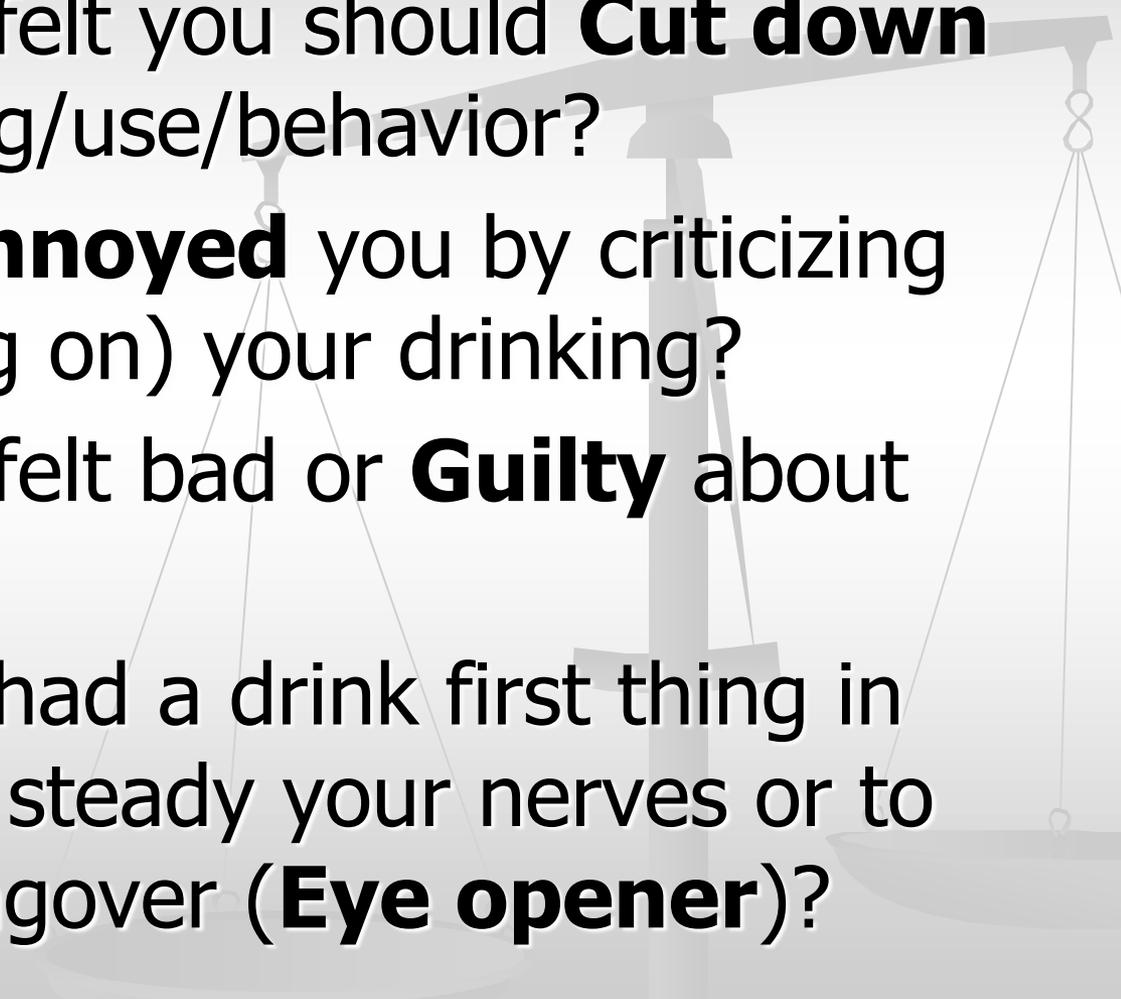
- The impaired lawyer may cover very well at work.
  - I never missed court
  - No client complaints
- Are you bringing your “A” game?

# Other Addictions

- Drugs
- Gambling
- Internet Addiction
- Sexual Compulsivity
- Eating Disorders
- Shoplifting Addiction
- Compulsive Shopping



# Is there a Problem?



- Have you ever felt you should **Cut down** on your drinking/use/behavior?
- Have people **Annoyed** you by criticizing (or commenting on) your drinking?
- Have you ever felt bad or **Guilty** about your drinking?
- Have you ever had a drink first thing in the morning to steady your nerves or to get rid of a hangover (**Eye opener**)?

# Depression Symptoms & Stages

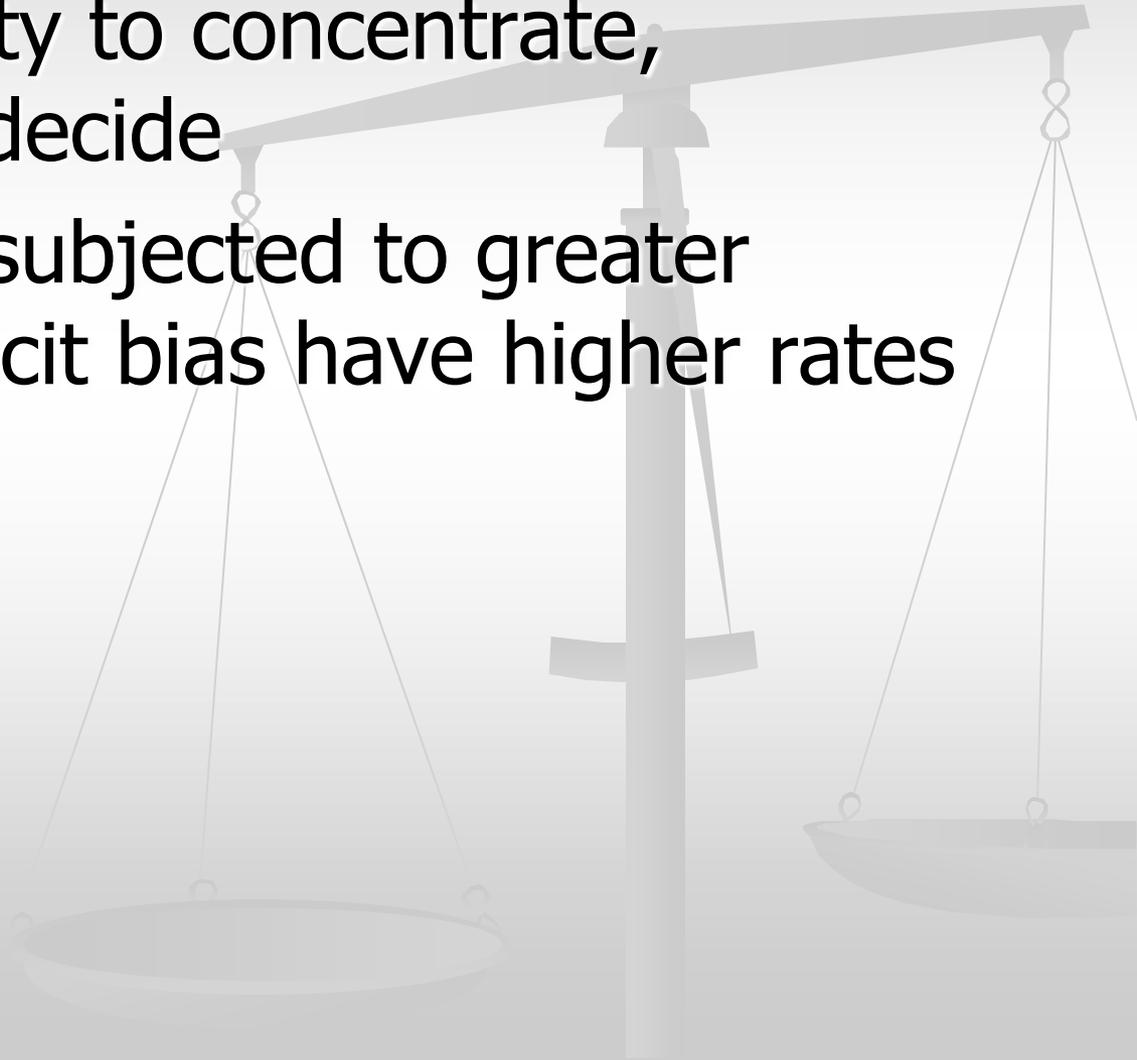
While there are many symptoms for depression, it's important to recognize that they occur in stages:

**Persistent sadness → Emptiness →  
Hopelessness/ Helplessness → Suicide**

If the symptoms persist and are interfering with the person's ability to work, study, eat, or enjoy once pleasurable activities, the person may be experiencing a major depressive episode.

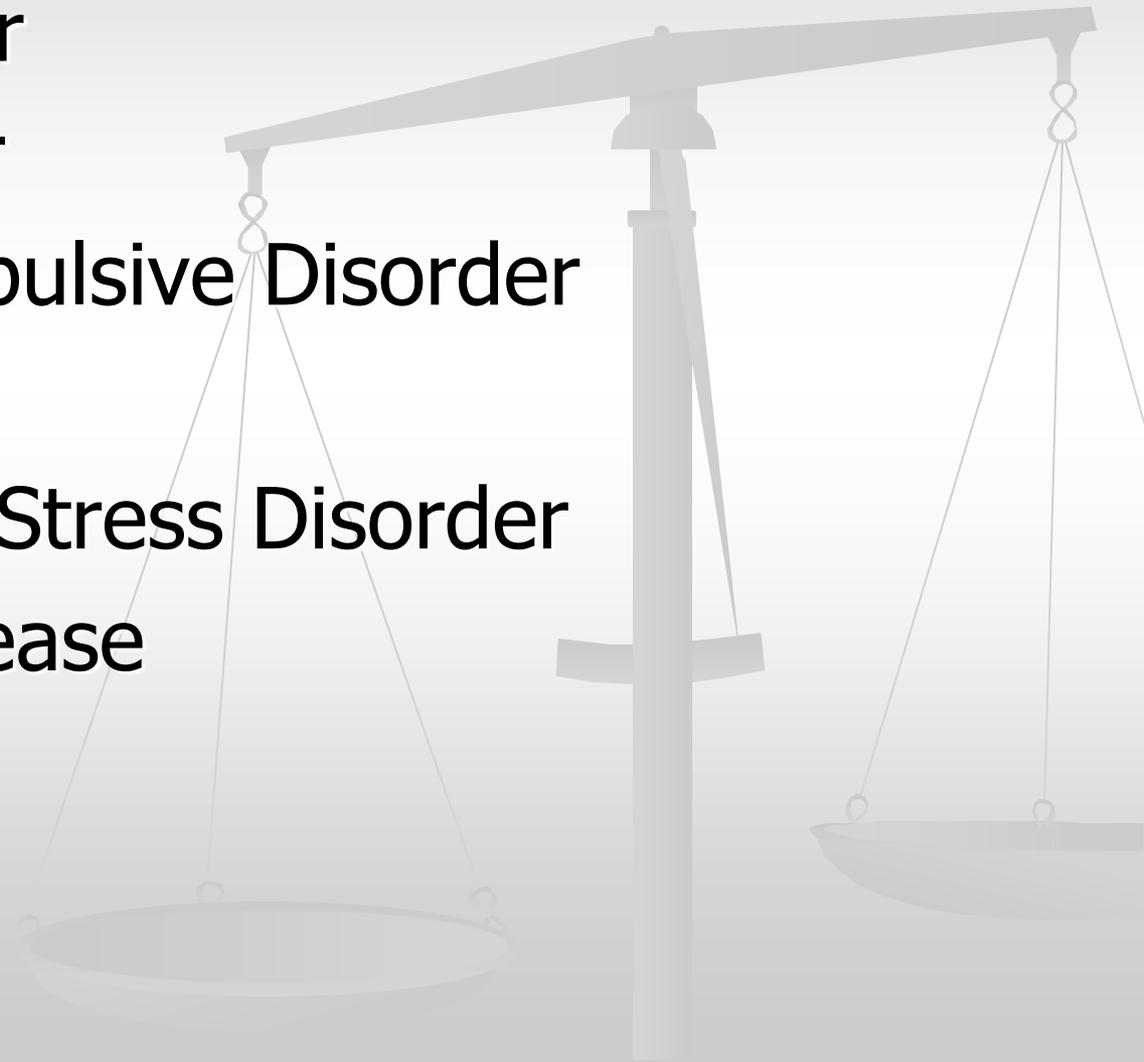
# When lawyers notice

- Changes in ability to concentrate, remember and decide
- Those who are subjected to greater degrees of implicit bias have higher rates of depression.



# Other Mental Health Issues

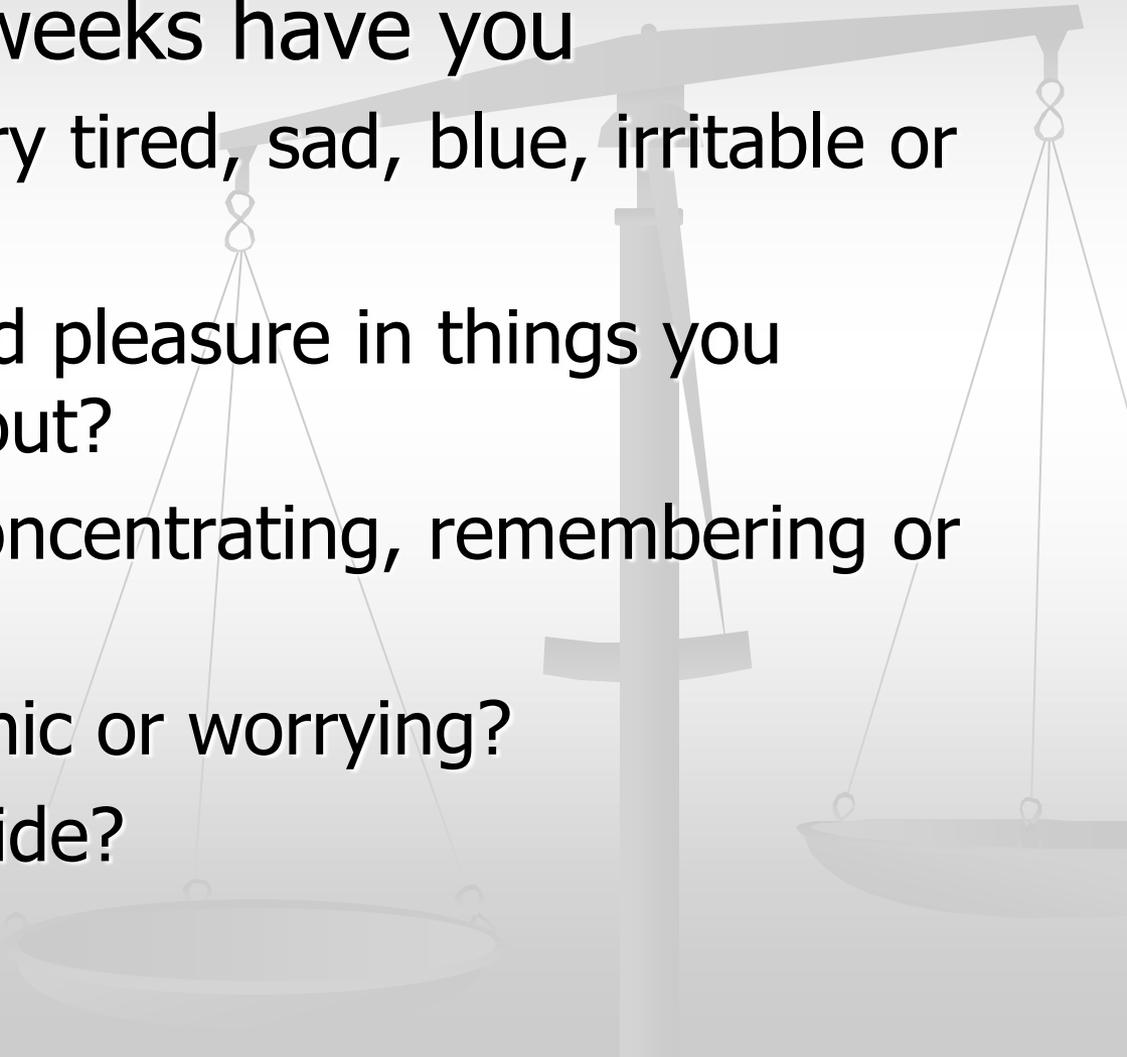
- Anxiety Disorder
- Bipolar Disorder
- Obsessive Compulsive Disorder
- ADHD
- Post Traumatic Stress Disorder
- Alzheimer's Disease



# 2016 Data

- 28% met the criteria for depressive disorder
- 18% met the criteria for an anxiety disorder
- 11.5% had considered suicide.

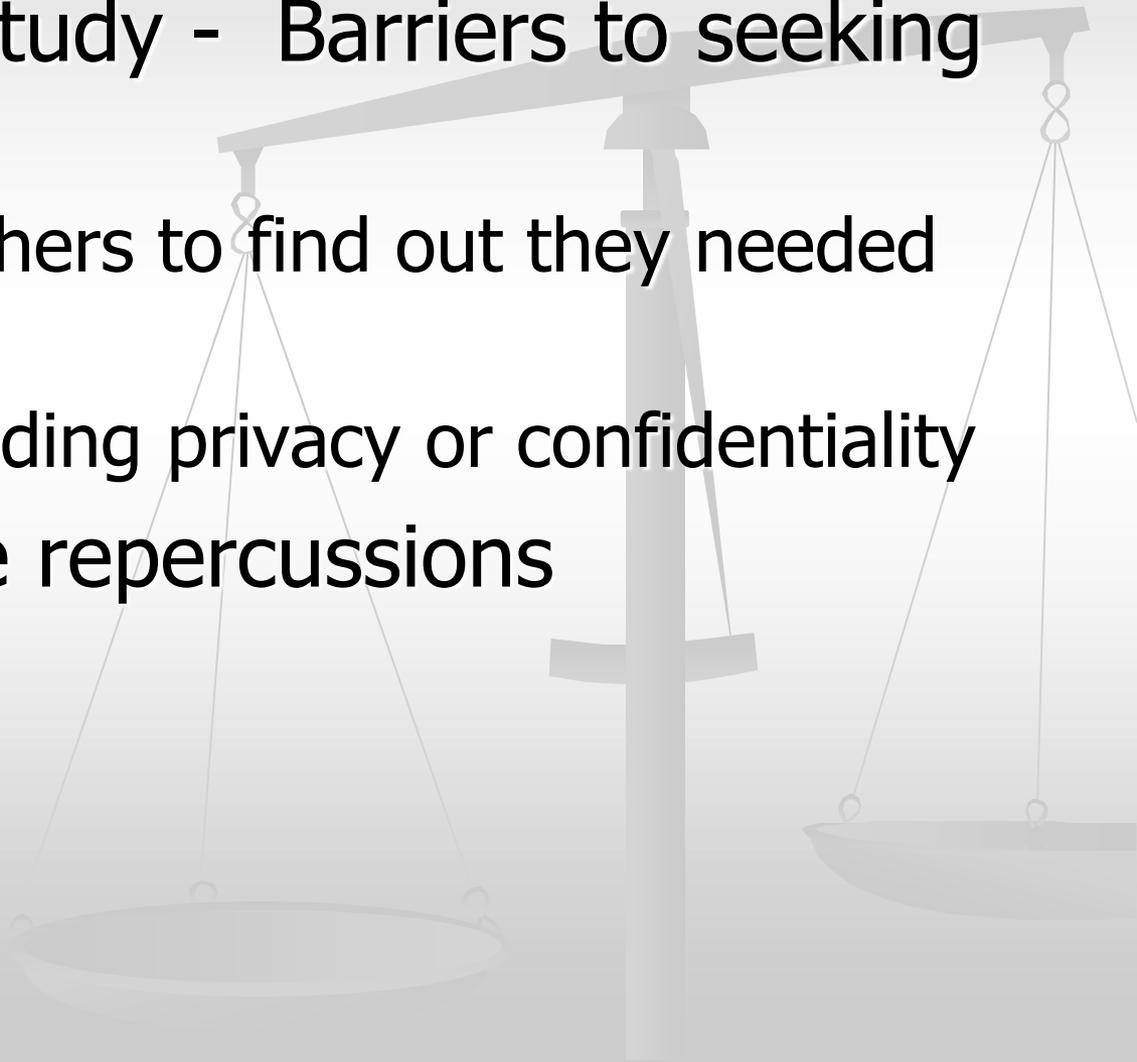
# Is there a Problem?



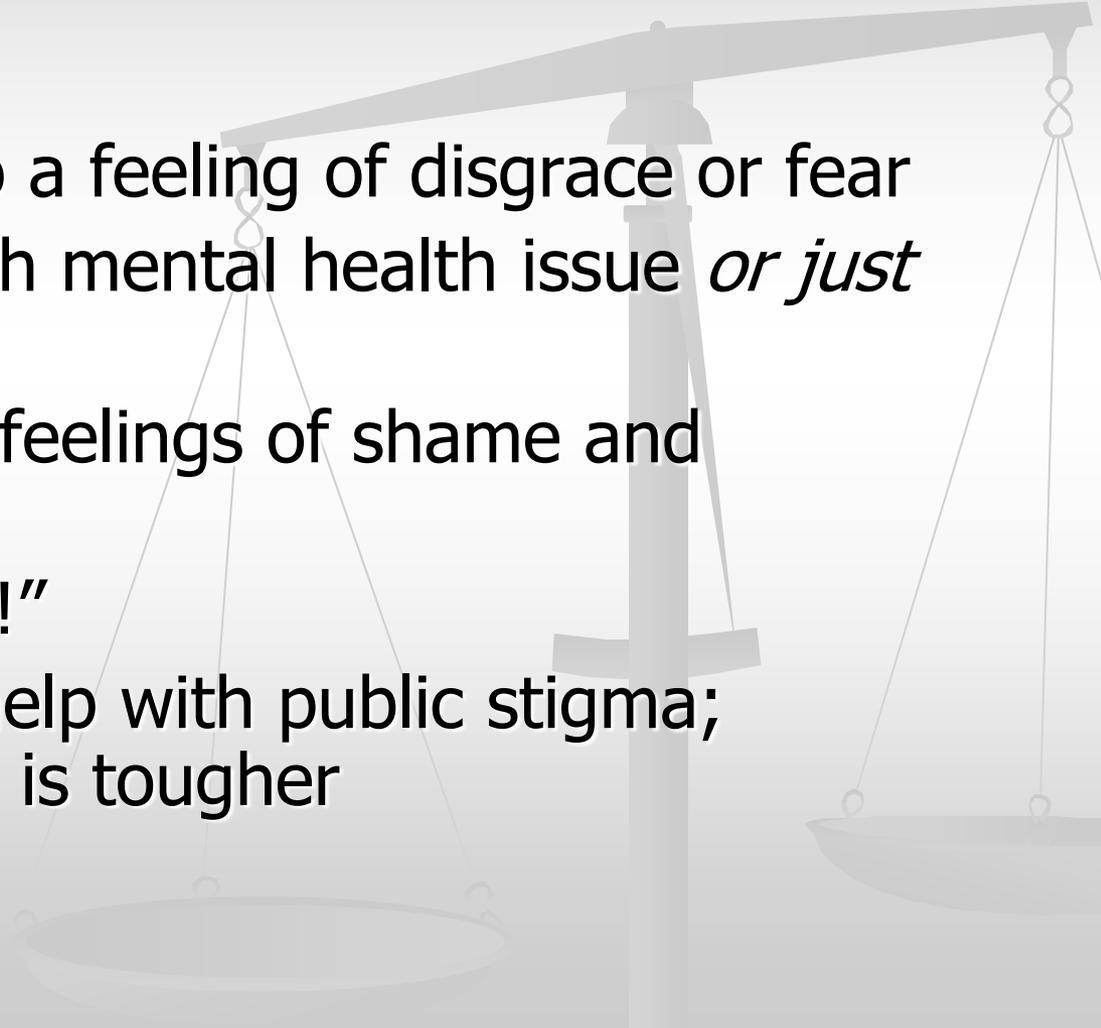
- In the last two weeks have you
  - Been feeling very tired, sad, blue, irritable or depressed?
  - Lost interest and pleasure in things you usually care about?
  - Had difficulty concentrating, remembering or deciding?
  - Felt unusual panic or worrying?
  - Considered suicide?

# What Stigma Means

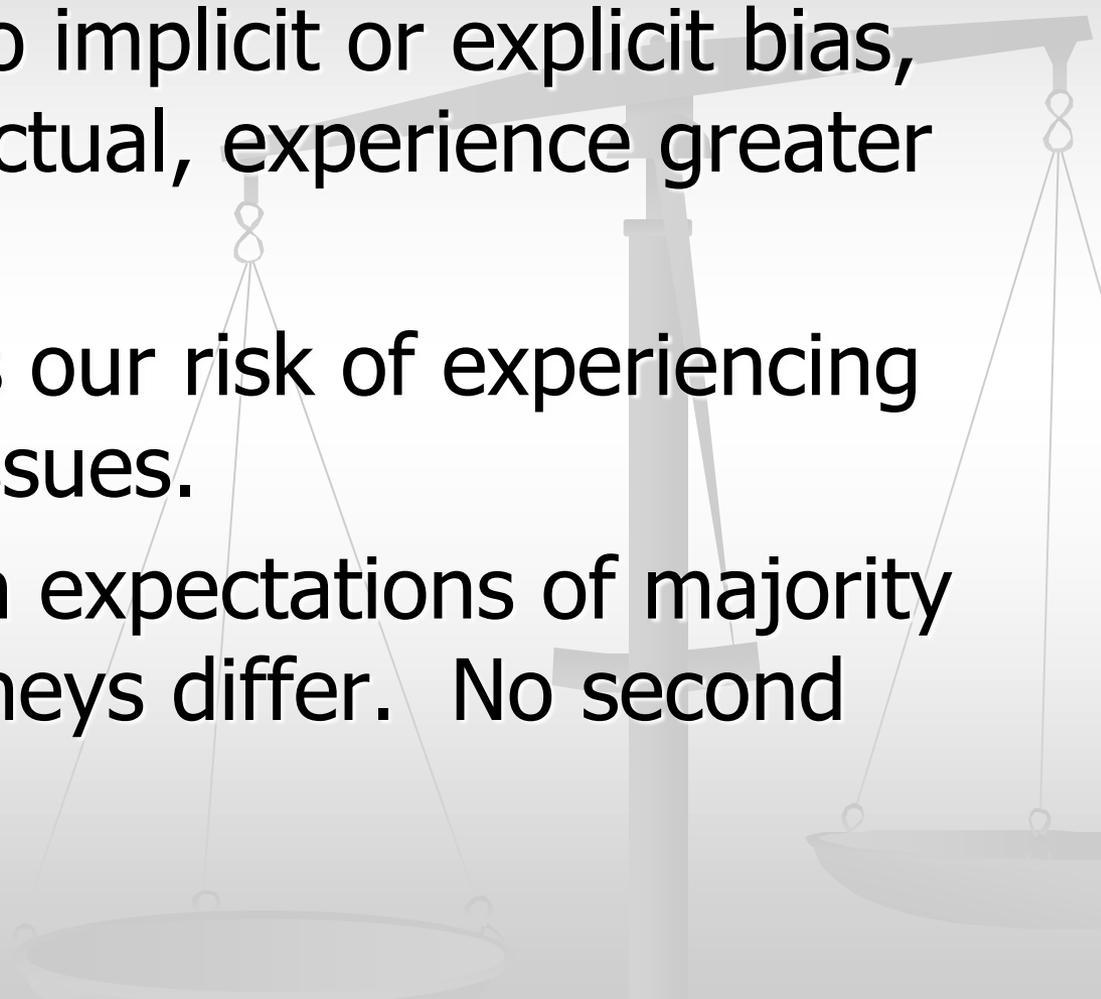
- ABA Hazelden Study - Barriers to seeking help included
  - “not wanting others to find out they needed help”
  - “concerns regarding privacy or confidentiality”
- Fear of negative repercussions



# Erasing the stigma

- Stigma refers to a feeling of disgrace or fear
  - Experienced with mental health issue *or just stress*
  - The bearer has feelings of shame and isolation
  - “I’ll do it myself!”
  - Education can help with public stigma; personal stigma is tougher
- 

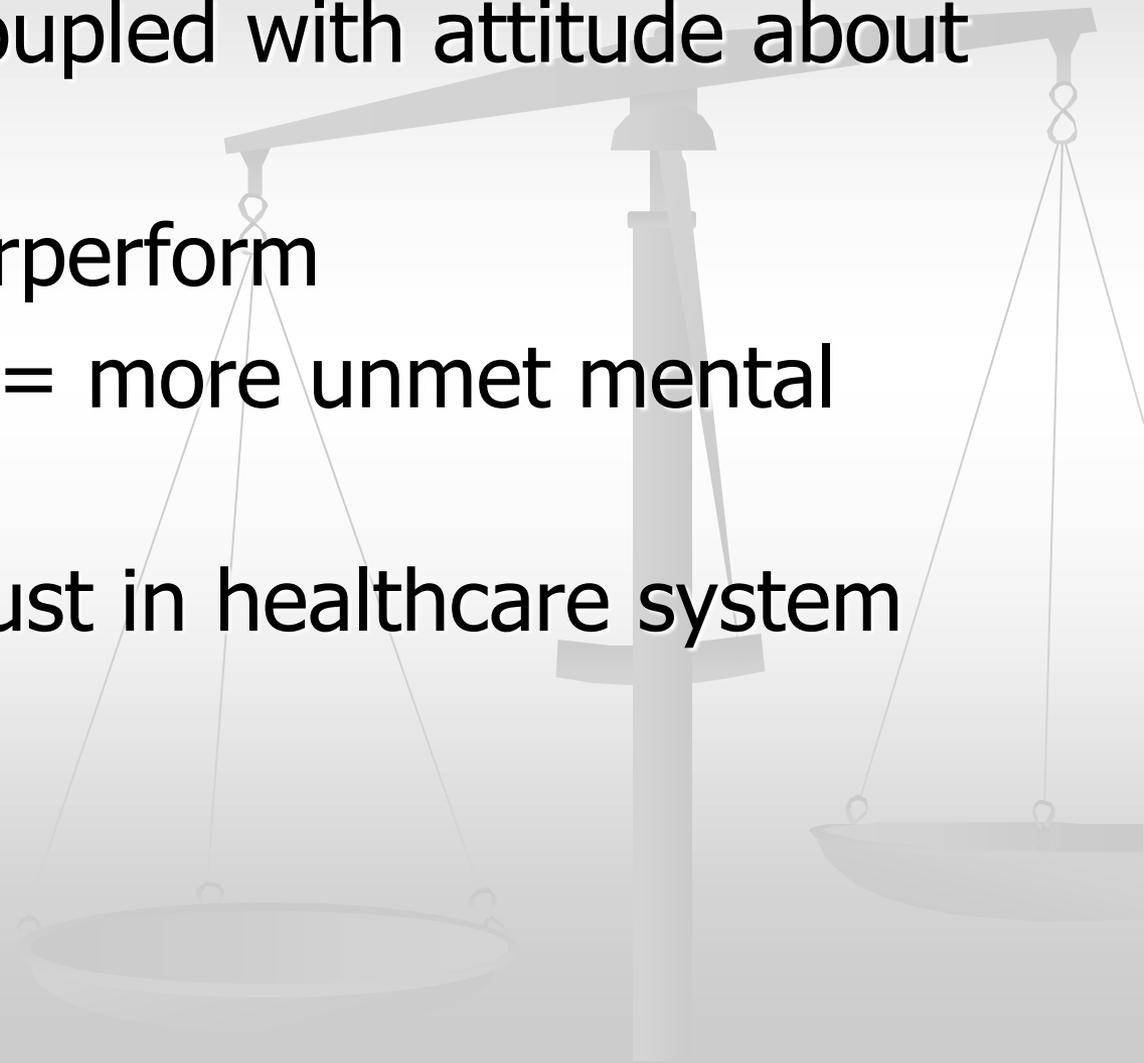
# Double Stigma



- Those subject to implicit or explicit bias, anticipated or actual, experience greater stress
- Stress increases our risk of experiencing mental health issues.
- Legal profession expectations of majority and other attorneys differ. No second chances.

# Impact of Double Stigma

- Social stigma coupled with attitude about weakness
- Pressure to overperform
- Cultural stigma = more unmet mental health needs
- Self-reliance, trust in healthcare system

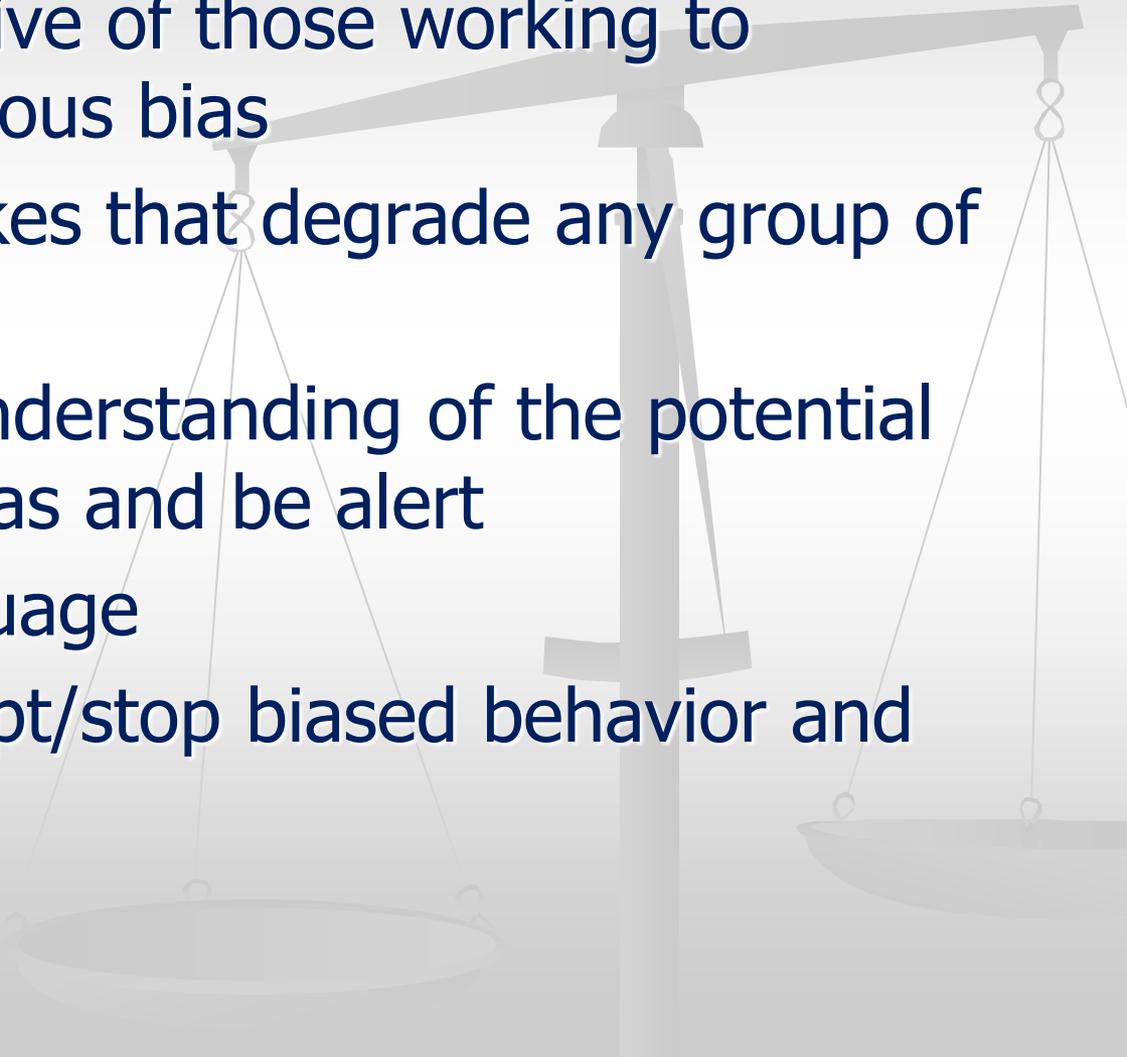




How do LAPs  
become safe?

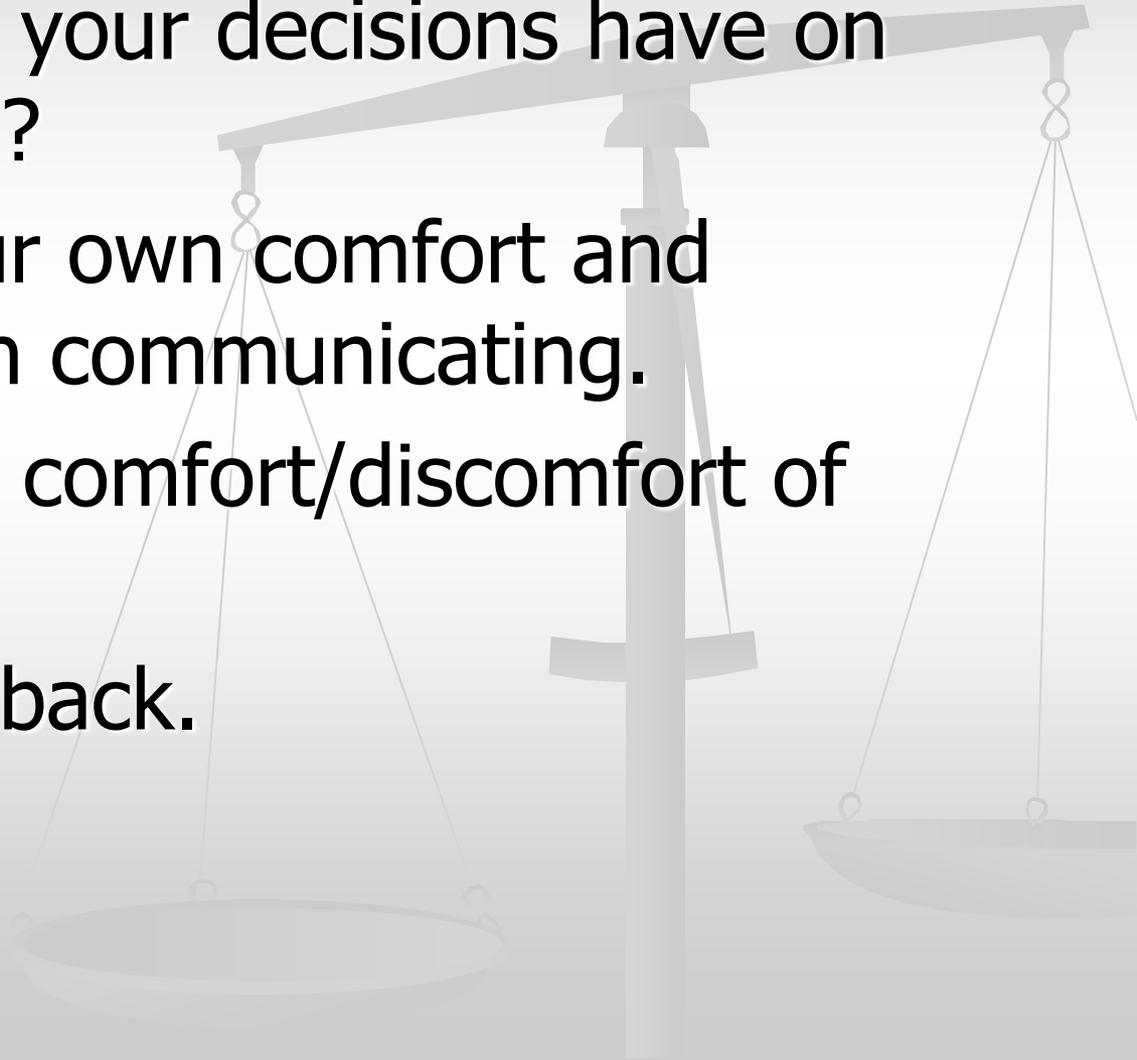


# Making a Change

- Be openly supportive of those working to eliminate unconscious bias
  - Do not support jokes that degrade any group of people
  - Develop a good understanding of the potential for unconscious bias and be alert
  - Use inclusive language
  - Notice and interrupt/stop biased behavior and statements
- 

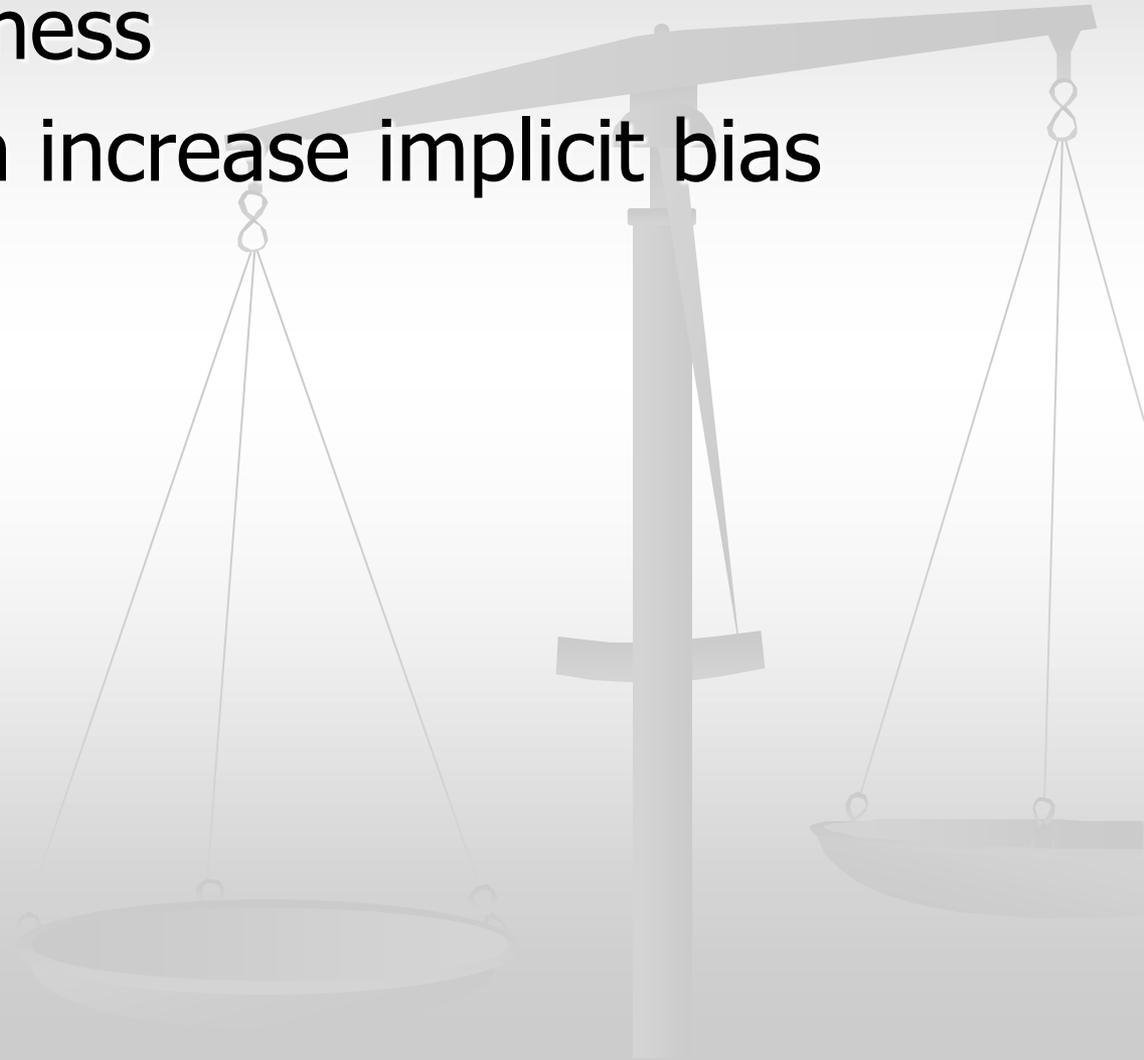
# Uncovering Bias

- What impact do your decisions have on decision making?
- Think about your own comfort and discomfort when communicating.
- Be aware of the comfort/discomfort of others.
- Be open to feedback.



# Mindfulness

- Increase awareness
- Factors that can increase implicit bias



# The Path to Lawyer Well-Being:

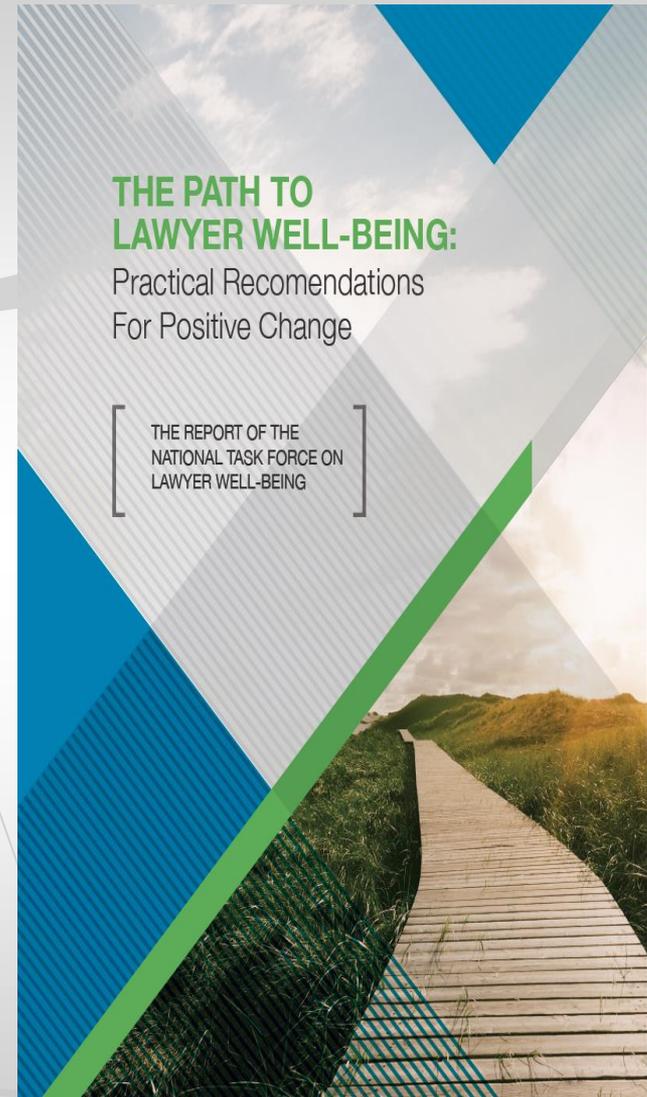
## *Practical Recommendations for Positive Change*

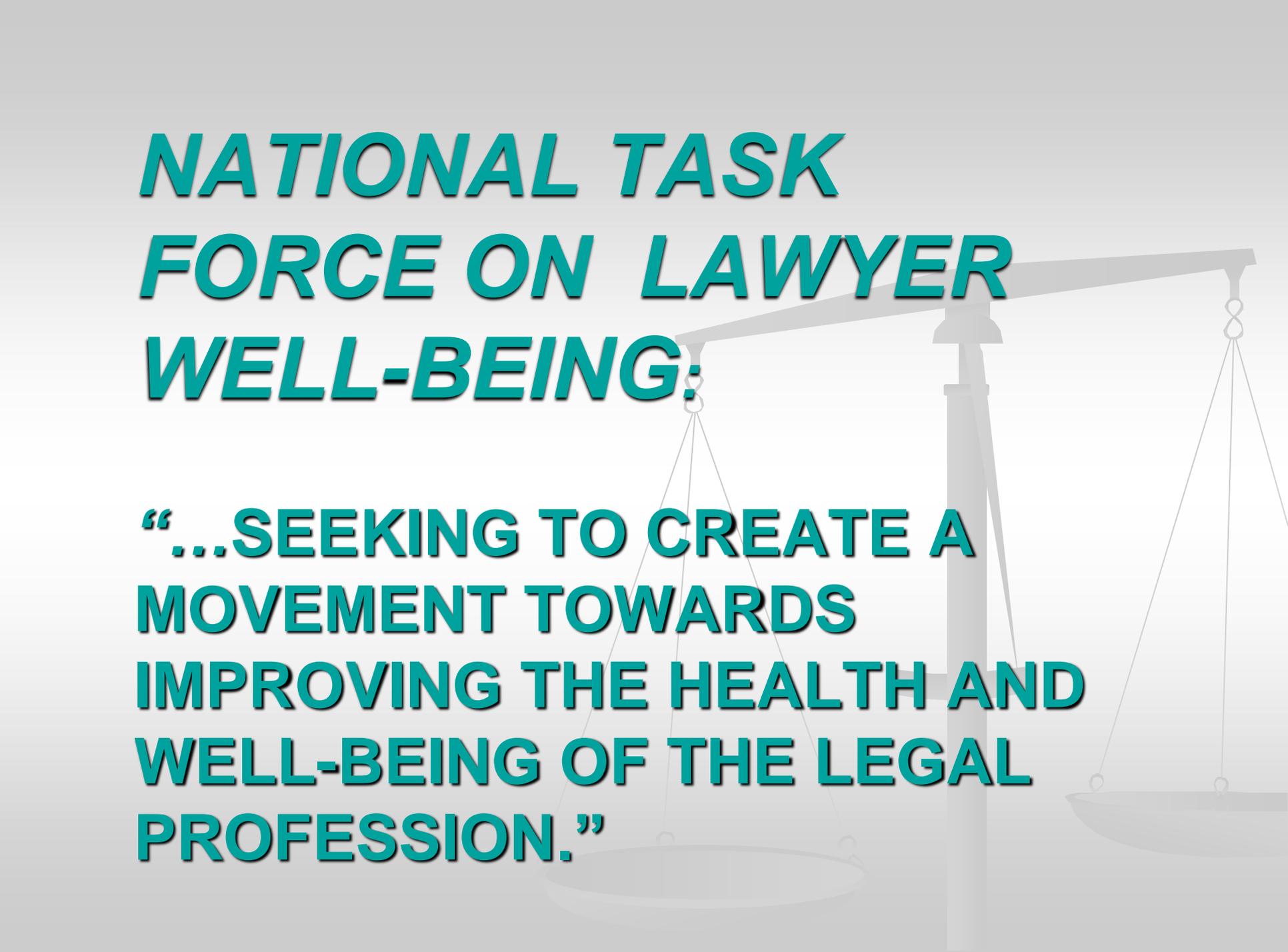
THE REPORT OF THE NATIONAL  
TASK FORCE ON LAWYER WELL-  
BEING

### THE PATH TO LAWYER WELL-BEING:

Practical Recommendations  
For Positive Change

[ THE REPORT OF THE  
NATIONAL TASK FORCE ON  
LAWYER WELL-BEING ]

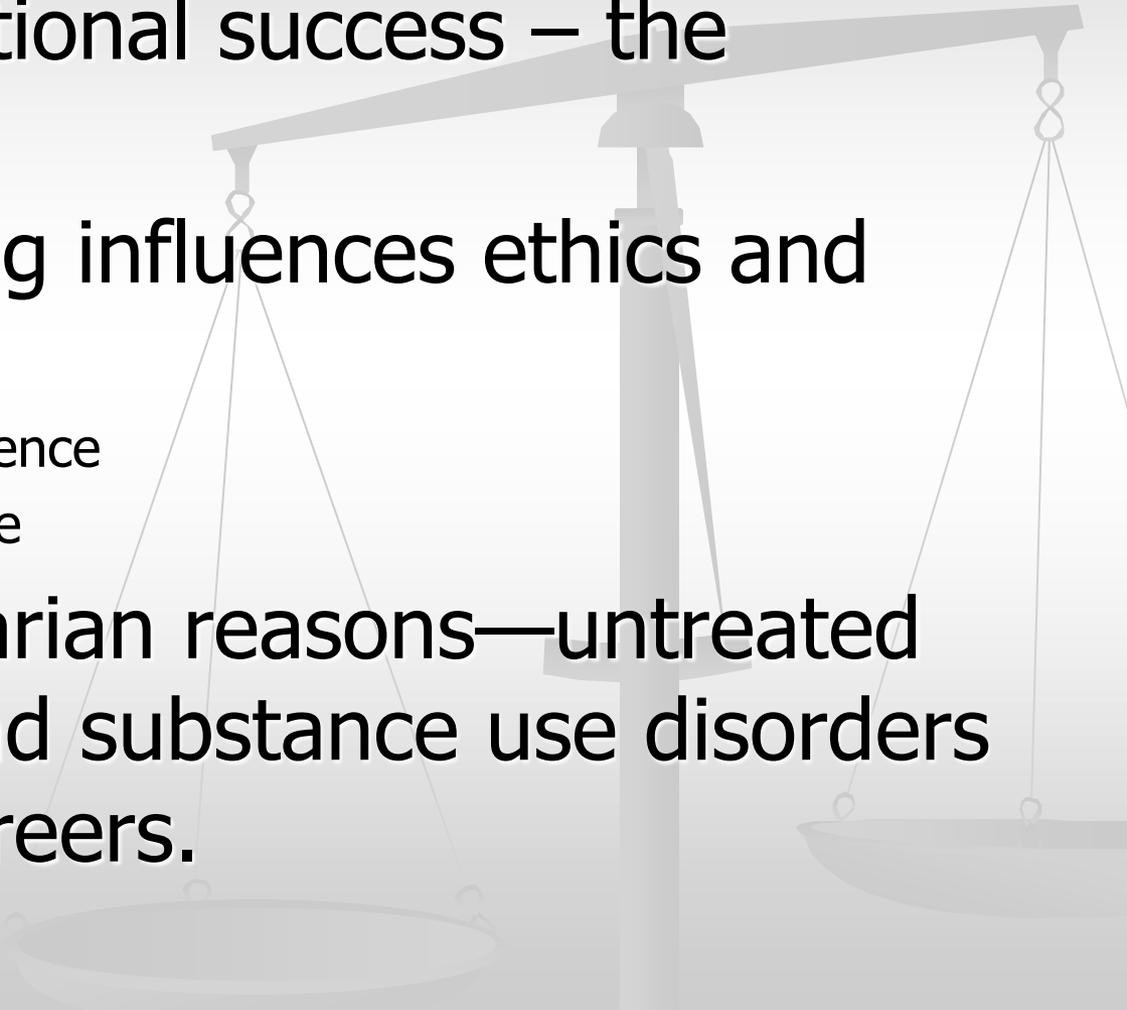




***NATIONAL TASK  
FORCE ON LAWYER  
WELL-BEING:***

***“...SEEKING TO CREATE A  
MOVEMENT TOWARDS  
IMPROVING THE HEALTH AND  
WELL-BEING OF THE LEGAL  
PROFESSION.”***

# Three Reasons to Take Action



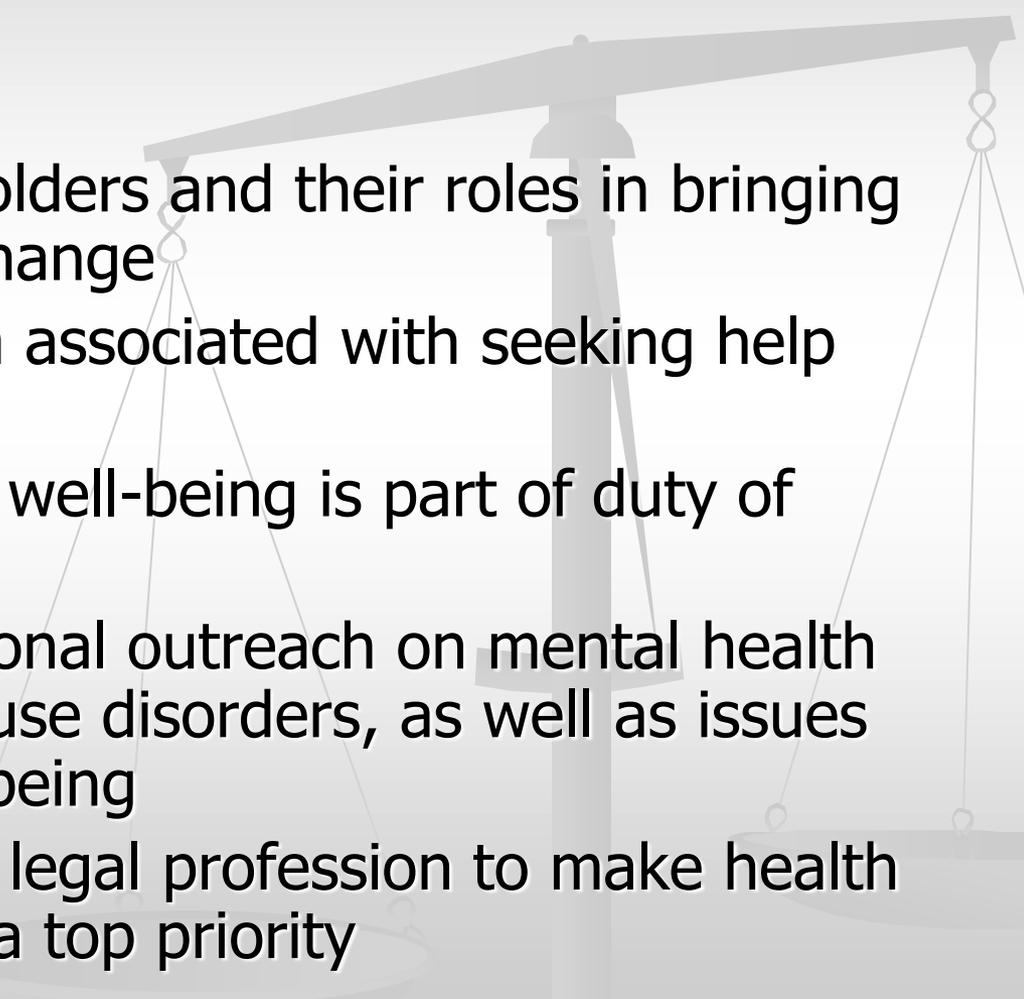
(1) Organizational success – the business case

(2) Well-being influences ethics and professionalism.

- Rule 1.1 – competence
- Rule 1.3 – diligence

(3) Humanitarian reasons—untreated mental health and substance use disorders ruin lives and careers.

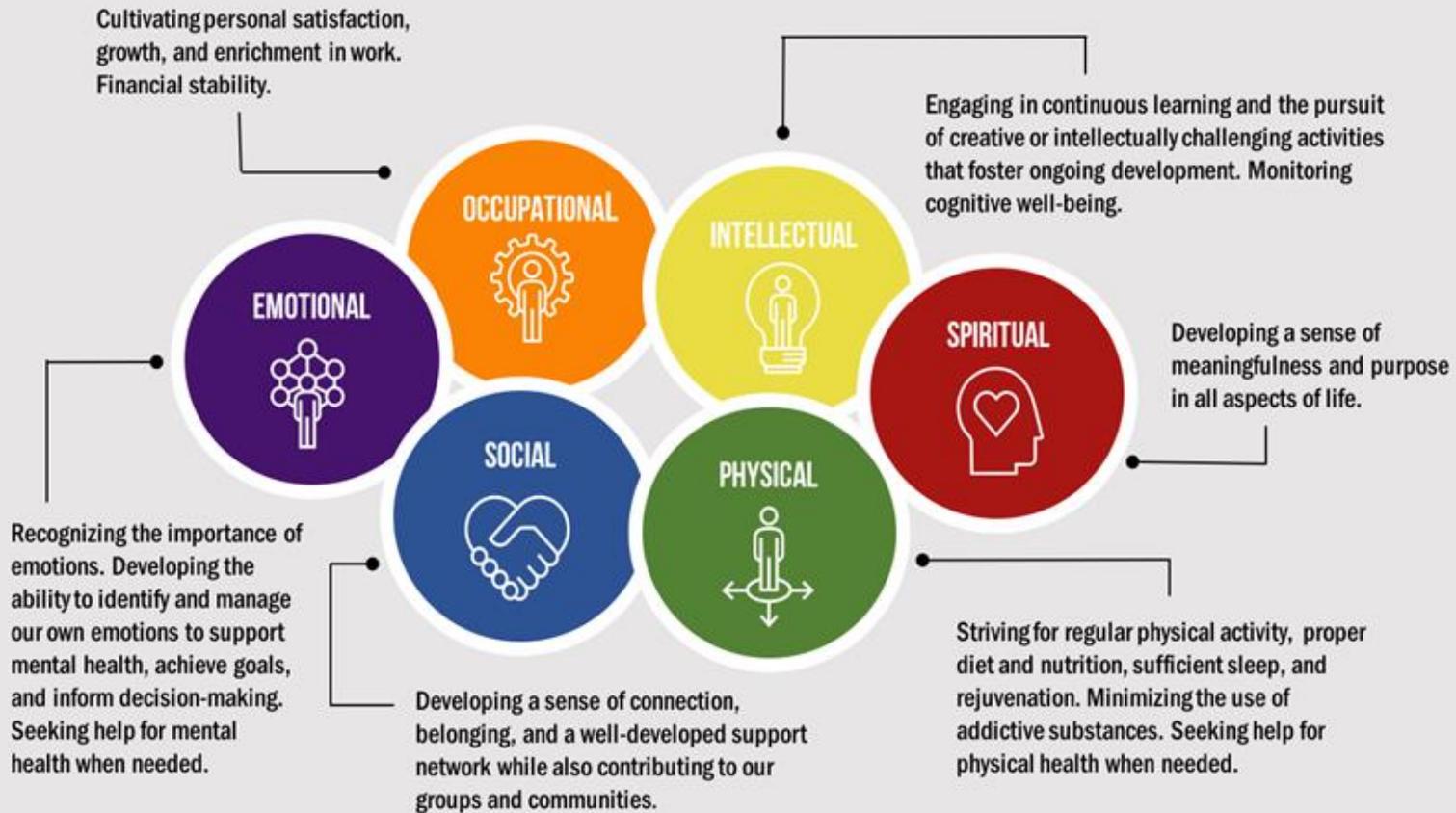
# Five core steps for a sustainable culture in the legal profession:

1. Identify stakeholders and their roles in bringing about culture change
  2. Diminish stigma associated with seeking help for disorders
  3. Emphasize that well-being is part of duty of competence
  4. Expand educational outreach on mental health and substance use disorders, as well as issues related to well-being
  5. Change tone of legal profession to make health and well-being a top priority
- 

# What is lawyer “well-being”?



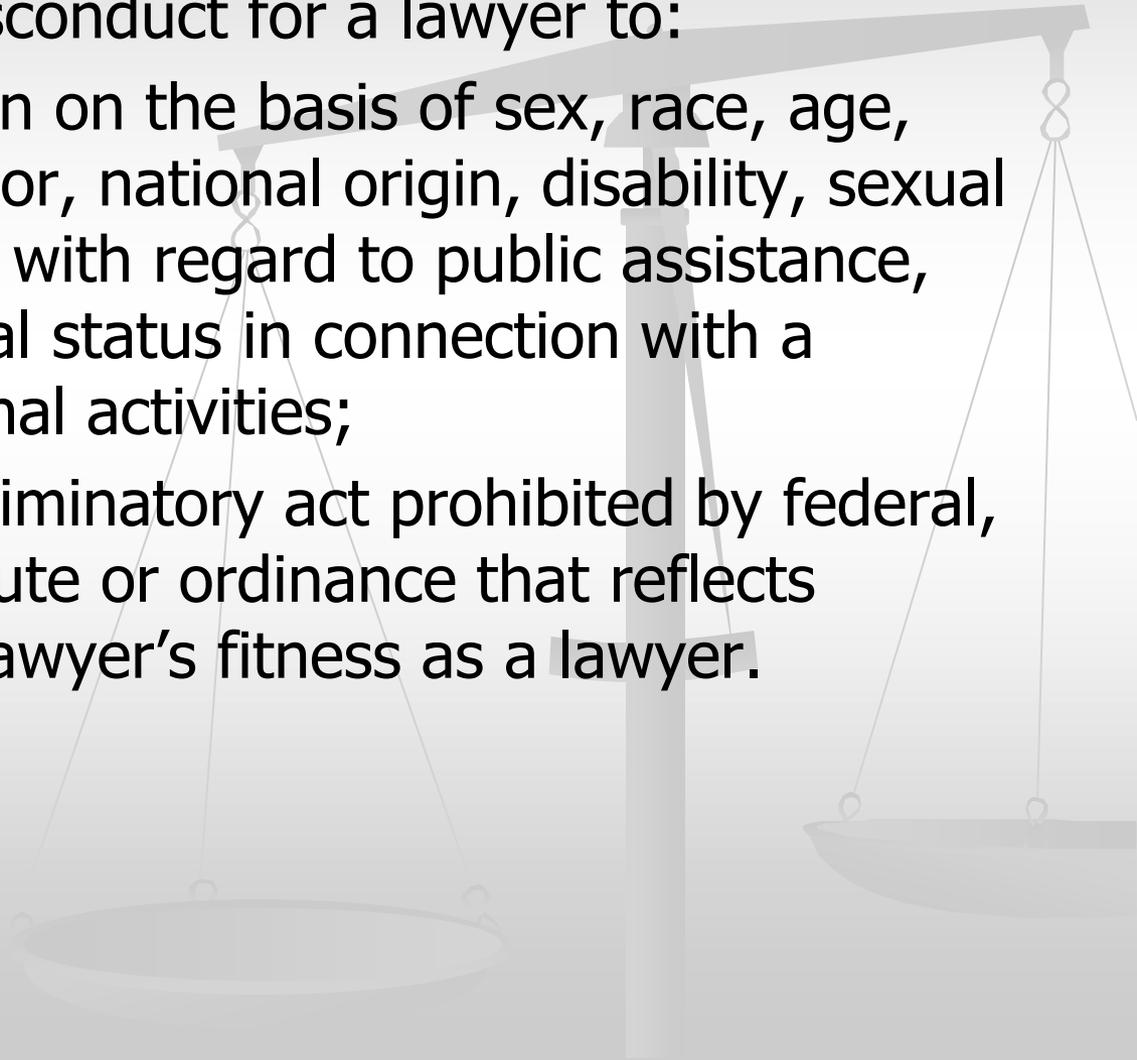
A continuous process in which lawyers strive for thriving in each dimension of their lives:



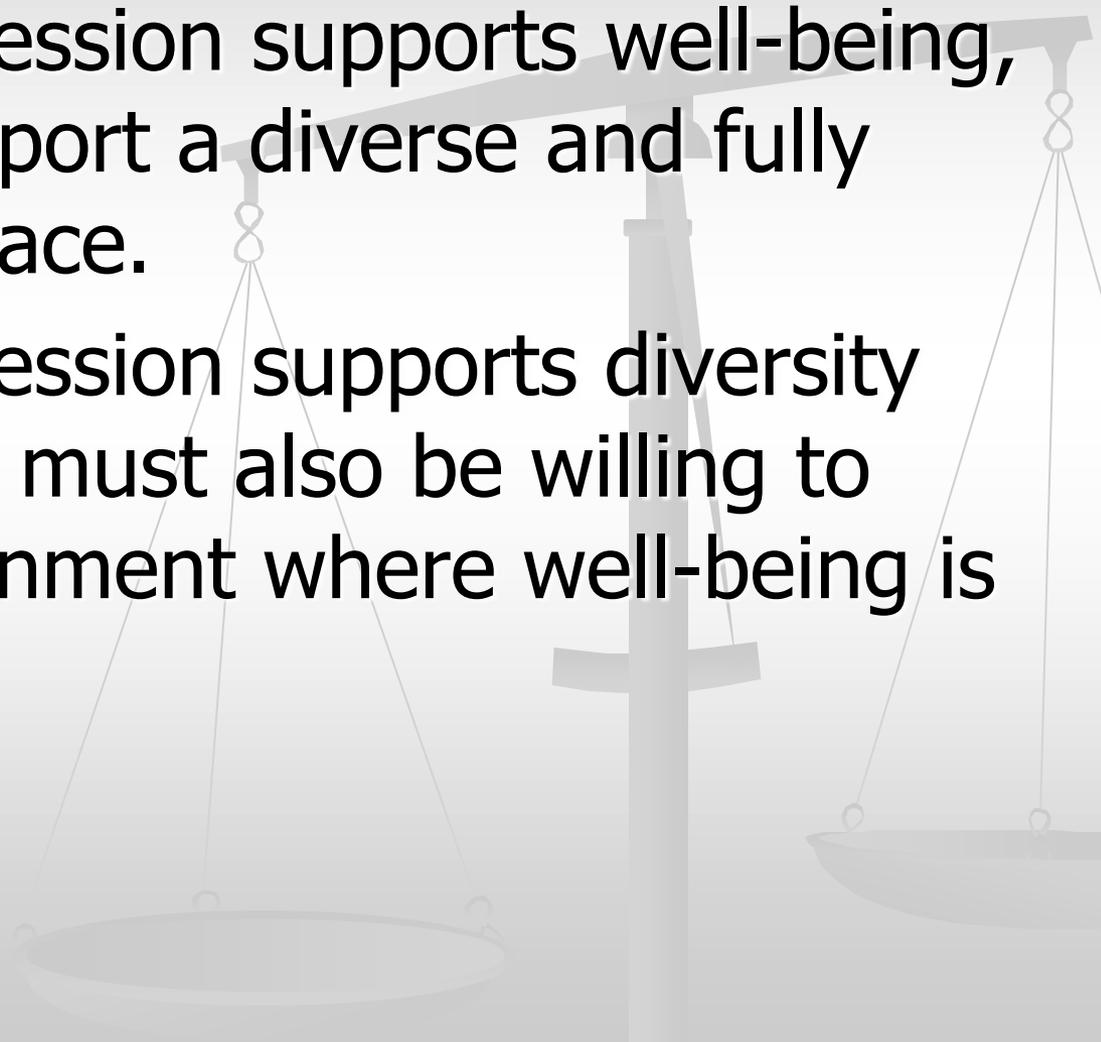
# Ethics! - RULE 8.4

It is professional misconduct for a lawyer to:

- (g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, status with regard to public assistance, ethnicity, or marital status in connection with a lawyer's professional activities;
- (h) commit a discriminatory act prohibited by federal, state, or local statute or ordinance that reflects adversely on the lawyer's fitness as a lawyer.



# It works both ways



- If the legal profession supports well-being, it must also support a diverse and fully inclusive workplace.
- If the legal profession supports diversity and inclusion, it must also be willing to foster an environment where well-being is a priority.

# Challenges



- Serious examination of “forced” cultural norms – from golf to alcohol
  - Recovery
  - Interaction with medications
- Hallmarks of success
  - Competition vs. collaboration
  - Impact of incivility and harassment

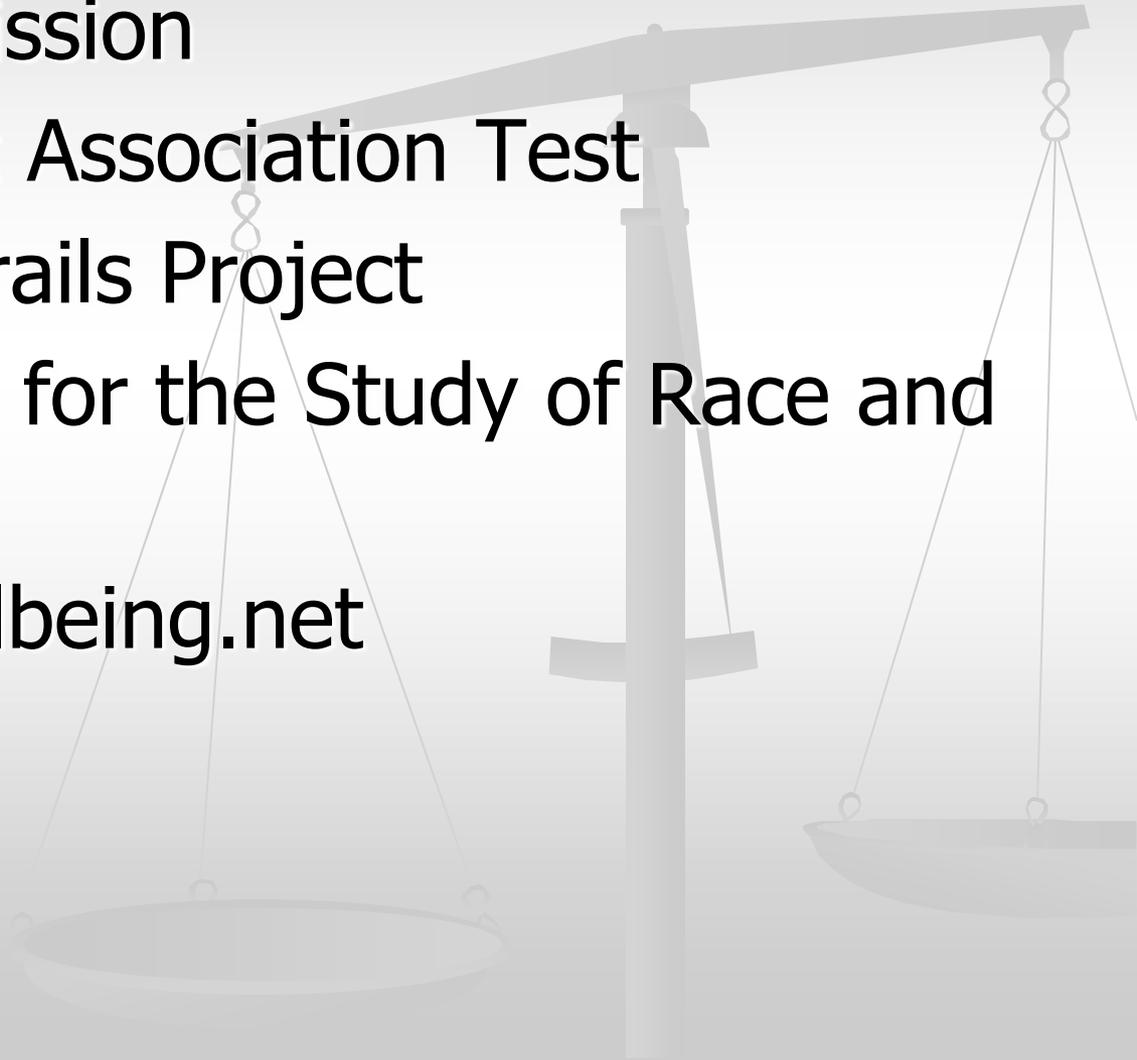
# Collegiality and Respect

- Building resilience
- Mentoring, fostering and sponsorship
- Reduced isolation
- Autonomy
- Having what we need to do our best work.



# Resources

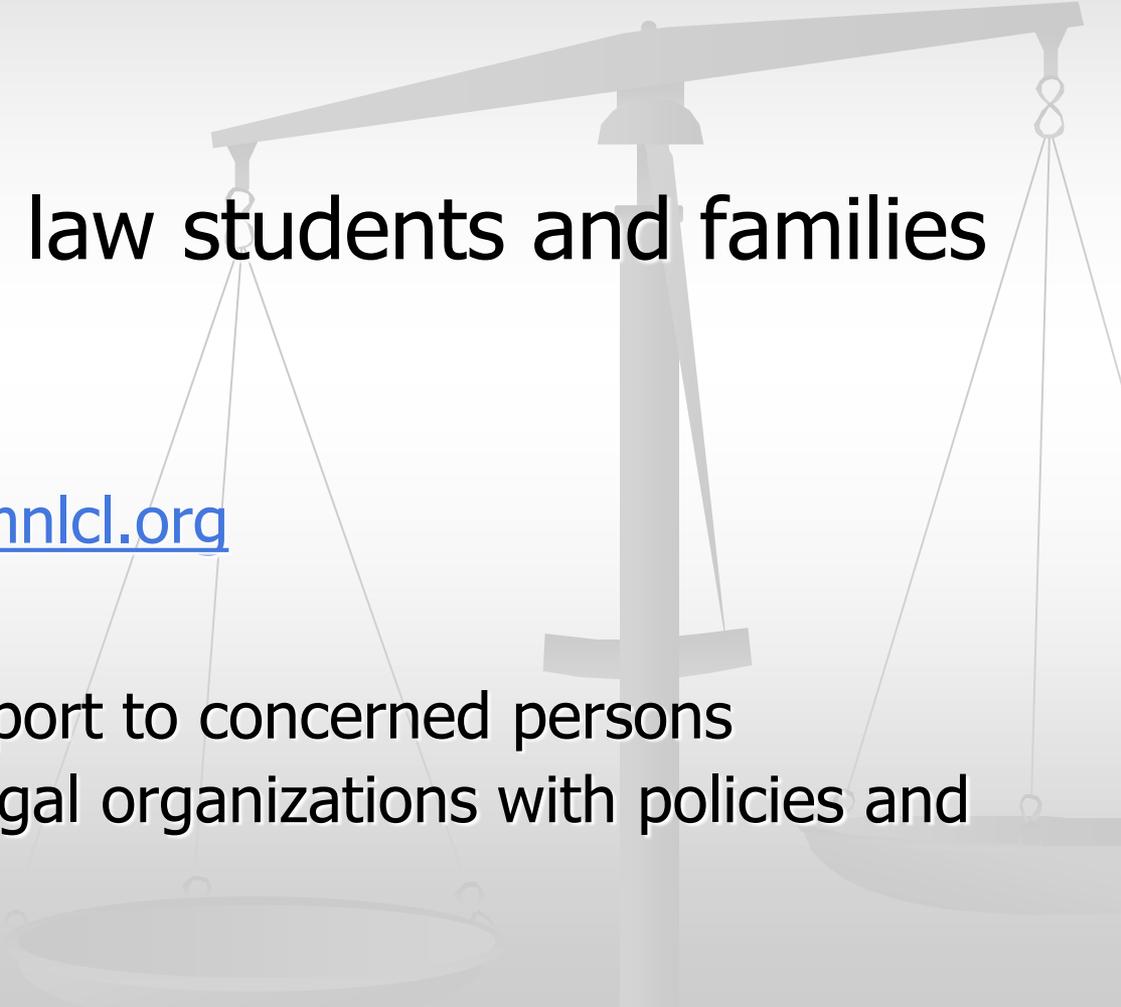
- ABA 360 Commission
- Harvard Implicit Association Test
- Harvard Mind Trails Project
- Kirwan Institute for the Study of Race and Ethnicity
- [www.lawyerwellbeing.net](http://www.lawyerwellbeing.net)



*"When Spider Webs Unite they can Tie Up a Lion"...*  
*Ethiopian Proverb*



# Lawyers Concerned for Lawyers Minnesota LAP

- History
  - Confidentiality
  - Lawyers, judges law students and families
  - Education
    - CLEs
    - Website [www.mnlcl.org](http://www.mnlcl.org)
  - Consultation
    - Advice and support to concerned persons
    - Assistance to legal organizations with policies and procedures
- 

# Lawyers Concerned for Lawyers Minnesota LAP

- Clinical Services
  - 24 hour hotline
  - Assessment
  - Intervention Coaching
  - Short term counseling
  - Referral to Community Services
  - Group Therapy
  - Support Group
- Mentoring
- Social Support



# Partnership with EAP



- Up to 4 free counseling sessions
- Resource website
  - [www.sandcreekeap.com](http://www.sandcreekeap.com)
  - Click on WORKLIFEWELLNESS LOGIN
  - Enter password LCL1
- Contact Sand Creek directly at **651-430-3383** or toll-free: **1-888-243-5744**

# TO CONTACT LCL

LAWYERS CONCERNED FOR LAWYERS  
2250 University Avenue West, # 313N  
St. Paul, MN 55114

**(651) 646-5590**  
**Toll Free: (866) 525-6466**

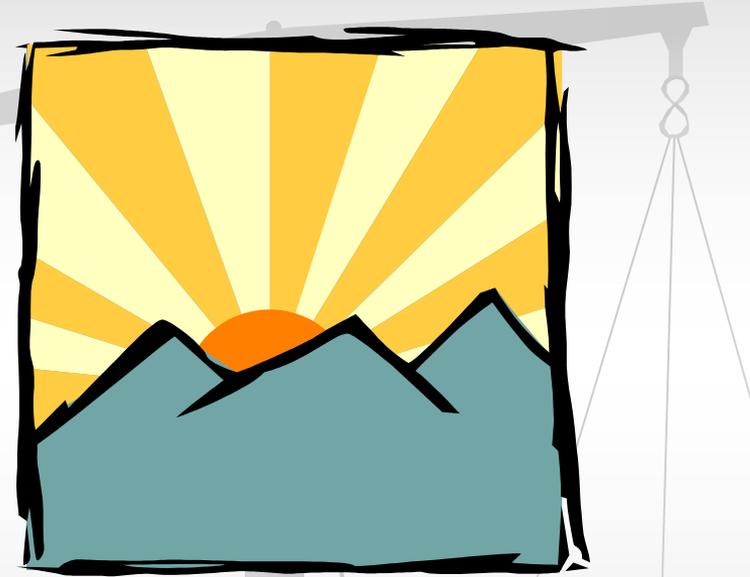
Website: [www.mnlcl.org](http://www.mnlcl.org) E-mail [help@mnlcl.org](mailto:help@mnlcl.org)

# LAWYERS CONCERNED FOR LAWYERS

There is Help



&



There is Hope