Diverse Interactions: Race and Implicit Bias in the Legal Research Classroom

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Why now? Why us?
Key Characteristics of Implicit Biases

- Implicit biases are **attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.**
- Implicit biases cause us to harbor feelings and attitudes about other people based such as **race, ethnicity, age, and appearance.**
- Implicit biases are **pervasive.** Everyone possesses them.
- We generally tend to hold implicit biases that **favor our own in-group.**
- The implicit biases **do not necessarily align with our declared beliefs.**
- Implicit biases are **malleable.** Our brains are incredibly complex, and the implicit biases we have formed can be gradually unlearned.
Race

Race has four constructs:

• Physical-People have constructed ideas, bias, and belief systems about others based on one’s skin pigmentation.

• Social-People categorize themselves and others based on a range of societal perspectives drawn from one’s interpretation of history and the law.

• Legal-Infamous cases such as Brown v. Board of Education of Topeka (1954) have influenced and defined the construction of race in America.

• Historical-Historical realities, such as Jim Crow laws, slavery, and racial discrimination, also shape the way people conceptualize race.
U.S. Demographics - Race

- Black or African American: 13%
- American Indian: 3%
- Asian: 6%
- White: 60%
- Hispanic or Latino: 17%
- Two or More Races: 1%
Implicit Biases in the Law

• **Attorney bias.** Prosecutors have a great deal of discretion in how they manage cases and who they select to serve on jurors. Implicit biases can influence each of these decisions, potentially having a significant impact on the lives of defendants.

• **Judicial bias.** Studies have found that trial court judges "rely extensively on intuition, more than deliberative judging, in deciding matters before the bench."

• **Jury Bias.** Attorneys have biases when they select jurors. Jurors bring their own biases into the trial and deliberations.

• There has been research detailing the **unreliability of eyewitness testimony**, particularly as to cross-racial identification.
Implicit Association Test

https://implicit.harvard.edu/implicit/takeatest.html
Rule 1.1 Competence

• “A lawyer shall provide competent representation to a client…”
• Quote from Comment 2: “Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.”
• Quote from Comment 5: “Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.”
ABA Model Rules of Professional Conduct

Rule 1.3 Diligence

• “A lawyer shall act with reasonable diligence and promptness in representing a client.”

• Quote from Comment 1: “A lawyer should... take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.”
ABA Model Rules of Professional Conduct

Rule 2.1 Advisor

• “....In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.”

• Quote from Comment 2: “It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.”
Standard 302. Learning Outcomes

• “A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:
  ◦ (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
  ◦ (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.”

• From Interpretation 302-1: “For the purposes of Standard 302(d), other professional skills are determined by the law school and may include skills such as, interviewing,... fact development and analysis,... cultural competency, and self-evaluation.”
ABA’s Steps to Eliminate Implicit Bias

• In 2008, the American Bar Association (ABA) adopted “Goal III: Eliminate Bias and Enhance Diversity” to show its dedication to diversity and inclusion in the legal profession.

• The ABA created a Diversity Plan “designed to achieve not just diversity—the presence of lawyers and law students from all backgrounds—but inclusion as well—their full and equal participation in the Association.”

• In 2013, the ABA named Dr. Valeria Stokes as Chief Diversity Officer.

• The ABA Diversity and Inclusion Portal includes diversity related newsletters, books, and reports.

• The ABA Diversity and Inclusion 360 Commission website includes: implicit bias training videos and an accompanying toolkit to raise awareness on the impact of implicit bias and to offer suggestions on combatting it.
How Can We Incorporate Race in Legal Research?

• Lectures
  • Creating a research plan
  • Developing legal questions
  • Generating search terms
  • Expand and Update Your Research

• Hypotheticals
  • Use varied names such as Rhonda, Elisa, Diego, Mia, and Chang in your hypotheticals instead of the typical culturally-neutral “Jack and Jill”.
  • Identify the race of the clients in your hypotheticals.

• Classroom Discussions
Hypothetical #1: Employment Discrimination

• Legal Research Skill/Objective: Consult “creative research” using secondary sources

• Cliff Note Facts:
  • Tyrone Bennett, a 32-year-old African-American male, worked in the kitchen of a local restaurant for the past five years. Recently, the Head Chef position at the restaurant became vacate and Tyrone was promoted to Head Chef.
  • Tyrone’s supervisor explained that because the new position required him to deal directly with the customers, he would have to maintain a clean, shaven face.
  • Tyrone informed his supervisor that he could not shave his face due to a medical condition that causes him to develop painful shaving bumps on this face after shaving. He promised to keep his beard well-groomed. Tyrone was demoted from his head chef position.

• Legal Question: Tyrone is at your office to find out what his rights are and if he can sue the restaurant for discrimination. After a week of research, what advice would you give him?
Hypothetical #2: Jury Selection

• Legal Research Skill/Objective: Case Analysis

• Cliff Note Facts:
  • Janet’s client, Carlos Garcia, was tried by a jury and convicted of robbery and assault.
  • Janet is working on his appeal and wants to challenge his conviction on the grounds that the trial court erred in denying Garcia’s challenge to the state's preemptory strike of two jurors.
  • Ms. Martinez was dismissed because she failed to disclose that she was a victim of sexual assault 15 years ago. Mr. Lees was dismissed because of his thick accent.
  • The trial court found that both strikes were race-neutral and upheld both preemptory strikes. Ultimately, the jury seated for Garcia’s trial consisted of no jurors of color.

• Legal Question: Janet wants you to research: 1) the standard (or basis) required for a preemptory challenge, 2) how Courts “test” for such challenge, 3) examples of what Courts deem to be “race-neutral” strikes, and 4) the likelihood that Garcia will win the challenge on appeal.
Race-Related Current Events & Resources

Race-Related Current Events
◦ Wrongful death settlement for police killing, Deferred Action for Childhood Arrivals (DACA), immigration ban, appealing a sentence, racial gerrymandering/voter suppression

Resources
Addressing Your Fears
Unique Challenges for Faculty of Color in the Classroom

Challenges

• Faculty of color have reported:
  • More challenges, both directly and indirectly, to their intellectual authority than White faculty
  • Experiencing racial microaggressions in the classroom
  • White faculty do not understand how their classroom experiences differ
  • Female faculty of color must navigate both racial and gender biases. This is referred to as intersectionality.

Consequences

• Need to prove their competence (over preparing and hypersensitive of speech patterns)
• Feelings of isolation
• Black women feel that they have to be “motherly” to avoid the angry black women label
Comments from Student Evaluations

“I don’t like the way she talks.”
“She is always talking about African Americans.”
“Her hair is distracting.”
“She talks too loud.”
“She walks too close to people and it makes me nervous.”
“She seems angry. She rarely smiles.”
Race and Student Evaluations

• Institutional Student Evaluations
  • Faculty of color received significantly lower ratings on average than their White colleagues.
  • White students also rated African American faculty as less intelligent than White faculty.

• RateMyProfessor.com
  • Faculty of color were evaluated more negatively than White faculty in terms of Overall Quality, Helpfulness, and Clarity.
  • African American faculty were rated higher in Easiness than faculty of all other races.
Support for Teaching Librarians of Color

• Do not ignore that implicit bias exist
• Praise the teaching accomplishments in annual evaluations and tenure and promotions applications
• Advocate for implicit bias training for faculty and students
• Advocate for objective questions on student evaluation forms
References


