



# TECHSHOW2020

## Rise Up: Diversity, Leadership, and Innovation

### WRITTEN BY:

Safaya Fawzi  
Shannon Salter  
Dennis Garcia

### PRESENTERS:

Safaya Fawzi  
Shannon Salter  
Dennis Garcia

January 21, 2020



## RESOURCES

### *I. Resources for Further Learning from the ABA*

- American Bar Association’s “D&I 360” report created an Implicit Bias [Toolkit](#) and [Bibliography](#). Learn more at [ambar.org/implicitbias](http://ambar.org/implicitbias)
- [ABA Diversity and Inclusion Center’s Resources Depository](#)
- [ABA Section of Litigation: What is Implicit or Unconscious Bias?](#)
- [ABA Career Center: Implicit Bias 101 video](#) and [Leading and Managing Diversity, Inclusion and High Performance](#)
- [ABA Section of State and Local Government Implicit Bias Initiative](#)
- [ABA Judicial Division Joint Committee on Fighting Implicit Bias in the Justice System](#)

### *II. Partners to Advance D&I in the Legal Profession*

- **Microsoft Legal Diversity:** [microsoft.com/en-us/legal/diversity](http://microsoft.com/en-us/legal/diversity)
- **Institute for Inclusion in the Legal Profession:** [theiilp.com](http://theiilp.com)
- **Practicing Law Institute:** [pli.edu](http://pli.edu)
- **Aleria: Measuring Inclusion:** [alergia.tech](http://alergia.tech)
- **Diversity Lab: Boosting Diversity through Innovation, Data & Behavioral Science:** [diversitylab.com](http://diversitylab.com)
- **Minority Corporate Counsel Association (MCCA):** [mcca.com](http://mcca.com)
- **The Forum on Workplace Inclusion:** [forumworkplaceinclusion.org](http://forumworkplaceinclusion.org)
- Check out local, state, and national affinity bar associations in your area. Consider large demographic groups in your community.
- A starting point:
  - National Bar Association
  - National Asian Pacific American Bar Association
  - National Native American Bar Association
  - Hispanic National Bar Association
  - National Association of Women Lawyers
  - National Conference of Women’s Bar Associations
  - South Asian Bar Association
  - National Association of Muslim Lawyers



*III. ABA's Implicit Bias Toolkit*





# ABA Diversity and Inclusion 360 Commission Toolkit Introduction

Dear User,

The information provided in this Toolkit is designed to help you recognize some of the biases that we all have, including, specifically, the implicit biases of judges, prosecutors, and public defenders. The goals of this toolkit are to:

1. Explain the social science term *implicit bias*;
2. Provide some examples of where implicit biases live and thrive;
3. Explain how they exist;
4. Raise consciousness about the power of these unknown “mind bugs,” as some have called them, and their ability to negatively impact decision-making;
5. Help you identify some of your own implicit biases;
6. Examine how implicit biases might show up in the performance of your job;
7. Provide some tools to help you catch and correct snap decision-making that may be linked to harmful implicit biases; and
8. Provide you with the knowledge that will allow you to help others catch decision-making that might be based on implicit biases.

We all have biases. Every one of us. This is not a finger-pointing expedition. Rather, we are sharing with you the evidence of this science, offering strategies for you to find the implicit biases hidden within you to help you reduce their harmful effects. As you learn more about how these biases work in society and in your life, you will not only become more mindful and deliberate in your decision-making but also be able to help others in the profession with whom you interact regularly: court personnel, including law clerks, officers of the court, other lawyers, parties to litigation, witnesses, and jurors.

Implicit biases are unwitting and unconscious cognitions that include stereotypes, beliefs, attitudes, intuitions, gut feelings, and related intangibles that we categorize in our brains—without conscious effort—every fraction of a second.<sup>1</sup> For instance, if we think that a particular category of human beings is frail—the IAT (Implicit Association Test) indicates that many of us categorize the elderly in this way<sup>2</sup>—we will not raise our guard around them. That is a stereotype in action. If we identify someone as having graduated from our beloved alma mater, we will feel more at ease—that is an attitude in action.

Your ever-efficient brain automatically organizes all of the information it receives and places the information into cognitive boxes, shorthands, or schemas, if you will. A more colloquial way to think of a schema is the aforementioned “stereotype,” though the two terms are not entirely interchangeable. Consider some of the data collected about what many people think when they see an Asian male. The data shows that many people believe Asians and Asian-Americans are extremely smart, excellent students, excellent in mathematics, and pretty good at some martial art; play, *really well*, some musical instrument; and are also really polite, kind, and shy—in other words, the model minority.<sup>3</sup> These labels have

1.) JERRY KANG, NAT'L CTR. FOR STATE COURTS, IMPLICIT BIAS: A PRIMER FOR COURTS 1 (Aug. 2009), available at <http://jerrykang.net/research/2009-implicit-bias-primer-for-courts/>.  
2.) You will learn much, if you have not already, by taking an “implicit association test,” or “IAT” as it is commonly known. The IAT is explained in other parts of your Toolkit. One of the IATs deals with how people implicitly view the elderly. The fragile and the elderly are always paired together. For more about this result in particular or the IAT generally, visit <https://implicit.harvard.edu/implicit/>.  
3.) <https://www.bing.com/videos/search?q=jerry+kang+ted+talk&view=detail&mid=C199BFAA2157E6F0C7FBC199BFAA2157E6F0C7FB&FORM=VIRE>; see also Bernadette Lim, “Model Minority” Seems Like a Compliment, but It Does Great Harm, N.Y. TIMES (Oct. 16, 2015), <http://www.nytimes.com/roomfordebate/2015/10/16/the-effects-of-seeing-asian-americans-as-a-model-minority/model-minority-seems-like-a-compliment-but-it-does-great-harm>.

implicit origins. Based on information that we are fed in society through television, movies, the media, work, and social exposures, our mind quickly creates schemas and puts these associations into one box. These social schemas form based on everything that we've ever consciously and unconsciously seen and heard. So when we see an Asian male, we immediately think of many of the characteristics and adjectives referenced above even though we do not know *that* individual. These judgments, assumptions, and attitudes require no contemplative, deliberate thought. It just happens.

Social scientists categorize our dual ways of thinking into two systems: System 1 and System 2. System 1 is the unconscious mode, which helps us make snap judgments and is where our schemas live. System 2 is our deliberative mind, i.e., the conscious mode that is active in explicit biases. The focus of this Toolkit is to get you more conscious of System 1, that place where, as it turns out, 90 percent of your mind operates.

In a similar vein, we also must think about coded words and microaggressions. Take coded language, for example. It is not uncommon for women to be referred to as aggressive or bossy, characteristics viewed positively with male employees but considered negatively with female employees.<sup>4</sup> Is the woman “opinionated” or “sassy”? Why? And why are men not ever similarly categorized?<sup>5</sup> Consider some race-related terms and words. *Inner city* and *urban education* are terms most quickly associated with predominantly black, brown, and poor areas.<sup>6</sup> *Thugs* is a word almost exclusively used in connection with black men.<sup>7</sup>

Microaggression is another type of behavior the ABA is hopeful that this Toolkit will help reduce and ideally eliminate. Microaggressions are “commonplace daily indignities, whether intentional or unintentional, that communicate racial slights and insults towards [minorities].”<sup>8</sup> Studies have shown that the recipients of microaggressions experience greater degrees of loneliness, anger, depression, and anxiety.<sup>9</sup> There are many examples of microaggressions in daily life, some of which include assuming that a black student in an elite school is there because of affirmative action, confusing black attorneys for court staff, telling an LGBT person that s/he does not “look like” an LGBT person, telling a black person that s/he is “articulate,” touching someone else’s hair without permission, asking people of color where they are from, and assuming that all Asian-Americans are Chinese and/or speak an Asian language.<sup>10</sup> An attempt to be aware of microaggressions and taking a thoughtful approach to language when speaking with minority groups are part of this process of consciousness raising, education, and correction.

This program is designed to help with all of these areas. It includes a PowerPoint presentation that focuses on the aforementioned goals. It includes a video, too—just a short 10 to 12 minutes, designed to allow you to hear from experts and others who perform the very same role that you do in the judicial system. Implicit biases are analyzed in the video; and others, whether judge, prosecutor, or public defender, share their own implicit biases and strategies for how they work to be continually mindful of them in order to interrupt them. Finally, this Toolkit contains a comprehensive bibliography and resource list, including a large category of books, articles, and websites that focus on implicit bias generally for those who want to learn more about this fascinating social science; material specifically addressed to judges; material specifically addressed to prosecutors; and material specifically addressed to defenders.

Whether you are a judge, a prosecutor, or a defender, we hope that you find this Toolkit useful. This is fascinating yet challenging work. It is not rocket science, but because biases are in our DNA, will require great determination and conscious effort to catch assumptions that are made and applied automatically. The Toolkit will reveal the benefits of deliberation, i.e., slowing down to take a few extra moments to focus on the person in front of you before making decisions that will or might affect that person.

We are confident that you will not only learn about that stranger that lives within you but also actually enjoy the materials contained herein and this journey.

Thank you



4.) See Claire Cain Miller, *Is the Professor Bossy or Brilliant? Much Depends on Gender*, N.Y. TIMES (Feb. 6, 2015), available at <http://www.nytimes.com/2015/02/07/upshot/is-the-professor-bossy-or-brilliant-much-depends-on-gender.html>.  
5.) See Caroline Turner, *Women in the Workplace 2015: Is Gender Bias Part of the Story?*, HUFFINGTON POST (Oct. 7, 2015), [http://www.huffingtonpost.com/caroline-turner/women-in-the-workplace-20\\_b\\_8255008.html](http://www.huffingtonpost.com/caroline-turner/women-in-the-workplace-20_b_8255008.html).  
6.) *Is the System Racially Biased?*, PBS FRONTLINE (2014), available at <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/bench/race.html>; see also Jenee Desmond-Harris, *8 Sneaky Code Words and Why Politicians Love Them*, ROOT (Mar. 15, 2014), [http://www.theroot.com/articles/politics/2014/03/\\_racial\\_code\\_words\\_8\\_term\\_politicians\\_love.html](http://www.theroot.com/articles/politics/2014/03/_racial_code_words_8_term_politicians_love.html).  
7.) *Id.*  
8.) *Microaggressions: Be Careful What You Say*, NATIONAL PUBLIC RADIO (Apr. 4, 2014, 10:23AM), available at <http://www.npr.org/2014/04/03/298736678/microaggressions-be-careful-what-you-say>.  
9.) *Id.*  
10.) See Tanzina Vega, *Students See Many Slights as Racial “Microaggressions.”* N.Y. TIMES (Mar. 21, 2014), <http://www.nytimes.com/2014/03/22/us/as-diversity-increases-slights-get-subtler-but-still-sting.html>; Heben Nigatu, *21 Racial Microaggressions You Hear on a Daily Basis*, BUZZFEED (Dec. 9, 2013, 10:27AM), <http://www.buzzfeed.com/hnigatu/racial-microaggressions-you-hear-on-a-daily-basis#.ouAPDQo8L>.



# ABA Diversity and Inclusion 360 Commission Implicit Bias Bibliography

## A.) IAT WEBSITE

<https://implicit.harvard.edu/implicit/takeatest.html>.

## B.) BOOKS

- EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA* (4th ed. 2016).
- FERGUSON'S FAULT LINES: THE RACE QUAKE THAT ROCKED A NATION (Kimberly Norwood ed., 2016).
- ADAM BENFORADO, *UNFAIR: THE NEW SCIENCE OF CRIMINAL INJUSTICE* (2015).
- MARGARET REUTER & CARWINA WENG, *NAVIGATING CULTURAL DIFFERENCES, IN LEARNING FROM PRACTICE* (3d ed. 2015).
- HOWARD J. ROSS, *EVERYDAY BIAS: IDENTIFYING AND NAVIGATING UNCONSCIOUS JUDGMENTS IN OUR DAILY LIVES* (2014).
- COLOR MATTERS: SKIN TONE BIAS AND THE MYTH OF A POSTRACIAL AMERICA (Kimberly Norwood ed., 2014).
- GEOFFREY BEATTIE, *OUR RACIST HEART?: AN EXPLORATION OF UNCONSCIOUS PREJUDICE IN EVERYDAY LIFE* (2013).
- LEONARD MLODINOW, *SUBLIMINAL: HOW YOUR UNCONSCIOUS MIND RULES YOUR BEHAVIOR* (2013).
- MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, *BLIND SPOT: HIDDEN BIASES OF GOOD PEOPLE* (2013).
- JUSTIN D. LEVINSON, *IMPLICIT RACIAL BIAS ACROSS THE LAW* (2012).
- DAVID EAGLEMAN, *INCOGNITO: THE SECRET LIVES OF THE BRAIN* (2012).
- DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* (2011).
- CHRISTOPHER CHABRIS & DANIEL SIMONS, *THE INVISIBLE GORILLA: HOW OUR INTUITIONS DECEIVE US* (2011).
- VERNA A. MYERS, *MOVING DIVERSITY FORWARD: HOW TO GO FROM WELL-MEANING TO WELL-DOING* (2011).
- DEBORAH L. RHODE, *THE BEAUTY BIAS: THE INJUSTICE OF APPEARANCE IN LIFE AND LAW* (2011).
- MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).
- GREGORY PARKS ET AL., *CRITICAL RACE REALISM: INTERSECTIONS OF PSYCHOLOGY, RACE, AND LAW* (2010).
- CLAUDE M. STEELE, *WHISTLING VIVALDI AND OTHER CLUES TO HOW STEREOTYPES AFFECT US* (2010).
- SHANKAR VEDANTAM, *THE HIDDEN BRAIN* (2010).
- DERALD WING SUE, *MICROAGGRESSIONS IN EVERYDAY LIFE: RACE, GENDER, AND SEXUAL ORIENTATION* (2010).
- SARAH E. REDFIELD, *DIVERSITY REALIZED: PUTTING THE WALK WITH THE TALK FOR DIVERSITY IN THE PIPELINE TO THE LEGAL PROFESSION* (2009).
- SHERI LEVY & MELANIE KILLEN, *INTERGROUP ATTITUDES AND RELATIONS IN CHILDHOOD THROUGH ADULTHOOD* (2008).
- GORDON L. PATZER, *LOOKS: WHY THEY MATTER MORE THAN YOU EVER IMAGINED* (2008).
- EUGENE BORGIDA & SUSAN T. FISKE, *BEYOND COMMON SENSE: PSYCHOLOGICAL SCIENCE IN THE COURTROOM* (2007).
- DAVID A. AMODO & PATRICIA G. DEVINE, *CHANGING PREJUDICE: THE EFFECTS OF PERSUASION ON IMPLICIT AND EXPLICIT FORMS OF RACE BIAS, IN PERSUASION: PSYCHOLOGICAL INSIGHTS AND PERSPECTIVES* (M. C. Green & T. C. Brock eds., 2d ed. 2005).
- MALCOLM GLADWELL, *BLINK: THE POWER OF THINKING WITHOUT THINKING* (2005).
- ANTHONY DAMASIO, *DESCARTES' ERROR: EMOTION, REASON, AND THE HUMAN BRAIN* (2005).
- Patricia G. Devine et al., *Self-Regulatory Processes in Interracial Interactions, in Social Motivation: Conscious And Unconscious Processes* (J. P. Forgas, K. D. Williams & S. M. Laham eds., 2004).
- TIMOTHY D. WILSON, *STRANGERS TO OURSELVES: DISCOVERING THE ADAPTIVE UNCONSCIOUS* (2004).
- GEORGE LAKOFF, *THE METAPHORS WE LIVE BY* (2002).
- LINDA GAYLE MILLS, *A PENCHANT FOR PREJUDICE: UNRAVELING BIAS IN JUDICIAL DECISION-MAKING* (1999).
- VIRGINIA VALIAN, *WHY SO SLOW? THE ADVANCEMENT OF WOMEN* (1999).
- THOMAS ROSS, *JUST STORIES: HOW THE LAW EMBODIES RACISM AND BIAS* (1997).
- ELIZABETH F. LOFTUS, *EYEWITNESS TESTIMONY* (2d ed. 1996).
- JOE R. FEAGIN & MELVIN P. SIKES, *LIVING WITH RACISM: THE BLACK MIDDLE-CLASS EXPERIENCE* (1994).

## C.) UCLA LAW PROFESSOR JERRY KANG'S WEBSITE

Professor Kang has worked with courts to create implicit bias primers for the court system; has written many law review articles on the subject; and conducts CLEs, etc. See <http://jerrykang.net>. In particular, see Jerry Kang, Nat'l Ctr. for State Courts, *Implicit Bias: A Primer for Courts* (Aug. 2009), available at <http://jerrykang.net/research/2009-implicit-bias-primer-for-courts/>. See also his TED talk and other relevant videos of his work in this area:

<https://www.bing.com/videos/search?q=jerry+kang+ted+talk&view=detail&mid=C199BFAA2157E6F0C7FBC199BFAA2157E6F0C7FB&FORM=VIRE>.

<http://uwtv.org/watch/PluF2WluqYE/>.

<http://uwtv.org/watch/dMVC1n599vg/>.

## D.) THE NATIONAL CENTER FOR STATE COURTS WEBSITE

Contains a lot of information on working with implicit bias: <http://www.ncsc.org/Search.aspx?q=implicit%20bias>. A particular work of interest is 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/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB\\_report\\_033012.ashx](http://www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_report_033012.ashx).

## E.) MATERIALS SPECIFIC TO JUDGES, PROSECUTORS, AND DEFENSE COUNSEL

### Judges:

Videos produced by the ABA Diversity and Inclusion 360 Commission: Video for Judges; Video for Prosecutors; Videos for Public Defenders. Please visit: [www.ambar.org/360commission](http://www.ambar.org/360commission) to access the videos.

### Prosecutors:

Prosecutor TED Talk: [http://www.ted.com/talks/adam\\_foss\\_a\\_prosecutor\\_s\\_vision\\_for\\_a\\_better\\_justice\\_system?language=en#t-421101](http://www.ted.com/talks/adam_foss_a_prosecutor_s_vision_for_a_better_justice_system?language=en#t-421101).

*Foster v. Chatman*, 578 U.S. \_\_\_\_ (2016).

### Defense Counsel:

Jeff Adachi, S.F. Public Defender, Remarks on Implicit Bias at the Criminal Litigation Ethics Seminar at UC Hastings (Aug. 1, 2013): <http://sfpublicdefender.org/news/2013/08/read-jeff-adachis-talk-on-implicit-bias/>.

## F.) COGNITIVE REFLECTIONS TEST (CRT) WEBSITE

The CRT is designed to assess an individual's ability to suppress an intuitive and spontaneous wrong answer in favor of a reflective and deliberative answer. The test is available at [http://www.sjdm.org/dmidi/Cognitive\\_Reflection\\_Test.html#x-Cognitive\\_Reflection\\_Test\\_\(CRT\)](http://www.sjdm.org/dmidi/Cognitive_Reflection_Test.html#x-Cognitive_Reflection_Test_(CRT)).

## G.) PERCEPTION INSTITUTE WEBSITE

<http://perception.org/>.

## H.) KIRWAN INSTITUTE WEBSITE

Shared research from researchers, grassroots advocates, policy makers, and community leaders: <http://kirwaninstitute.osu.edu/>.

## I.) ARTICLES

### GENERAL

Investigation of the St. Louis County Family Court St. Louis, Missouri, U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION (July 31, 2015), available at [https://www.justice.gov/sites/default/files/crt/legacy/2015/07/31/stlouis\\_findings\\_7-31-15.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2015/07/31/stlouis_findings_7-31-15.pdf).

Russell G. Pearce et al., *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 *FORDHAM L. REV.* 2407 (Apr. 2015).

Esinam Agbemenu, *Medical Transgressions in America's Prisons: Defending Transgender Prisoners' Access to Transition-Related Care*, 30 *COLUM. J. GENDER & L.* 1 (2015).

Ronald Wheeler, *We All Do It: Unconscious Behavior, Bias, and Diversity*, 107 *LAW LIBR. J.* 325 (Spring 2015).

Robert J. Smith et al., *Implicit White Favoritism in the Criminal Justice System*, 66 *ALA. L. REV.* 871 (2015).

Traci Burch, *Skin Color and the Criminal Justice System: Beyond Black-White Disparities in Sentencing*, 12 *J. EMPIRICAL LEGAL STUD.* 395 (Sept. 2015).

Erik J. Girvan, *On Using the Psychological Science of Implicit Bias to Advance Anti-Discrimination Law*, 26 *GEO. MASON U. C.R. L.J.* 1 (2015).

Michele L. Jawando & Chelsea Parsons, *4 Ideas That Could Begin to Reform the Criminal Justice System and Improve Police-Community Relations*, *CENTER FOR AM. PROGRESS* (Dec. 18, 2014), <https://www.americanprogress.org/issues/civil-liberties/report/2014/12/18/103578/4-ideas-that-could-begin-to-reform-the-criminal-justice-system-and-improve-police-community-relations/>.

Anthony Greenwald et al., *With Malice Towards None and Charity for Some: Ingroup Favoritism Enables Discrimination*, 69 *AM. PSYCHOL.* 669 (2014).

Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 4 *J. PERSONALITY & SOC. PSYCHOL.* 526 (2014).

Jessica M. Salerno et al., *Give the Kid a Break—But Only If He's Straight: Retributive Motives Drive Biases Against Gay Youth in Ambiguous Punishment Contexts*, 20 *PSYCHOL. PUB. POL'Y & L.* 398 (2014).

Vivia Chen, *The Diversity Crisis: Time to Call It Racism?*, *AM. LAW. MAG.* (June 5, 2014).

John Tyler Clemons, *Blind Injustice: The Supreme Court, Implicit Racial Bias, and the Racial Disparity in the Criminal Justice System*, 51 *AM. CRIM. L. REV.* 689 (2014).

Adam Hahn et al., *Awareness of Implicit Attitudes*, 143 *J. EXPERIMENTAL PSYCHOL.* 1369 (2014).

Govind Persad, *When, and How, Should Cognitive Bias Matter to Law?*, 32 *LAW & INEQ.* 31 (Winter 2014).

Nicole E. Negowetti, *Navigating the Pitfalls of Implicit Bias: A Cognitive Science Primer for Civil Litigators*, 4 *ST. MARY'S J. LEGAL MALPRACTICE & ETHICS* 278 (2014).

Deborah N. Archer, *There Is No Santa Clause: The Challenge of Teaching the Next Generation of Civil Rights Lawyers in a "Post-Racial" Society*, 4 *COLUM. J. RACE & L.* 55 (2013).

Debra L. Bassett, *Deconstruct and Reconstruct: Reexamining Bias in the Legal System*, 46 *U.C. DAVIS L. REV.* 1563 (2013).

Christopher Cerullo, *Everyone's A Little Bit Racist? Reconciling Implicit Bias and Title VII*, 82 *Fordham L. Rev.* 127 (2013).

Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not-Yet Post Racial Society*, 91 *N.C. L. REV.* 1555 (2013).

Patricia Devine et al., *Long-term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 *J. EXPERIMENTAL SOC. PSYCHOL.* 1267 (Nov. 2012).

Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 *UCLA L. REV.* 1124 (2012).

Robert J. Smith & Bidish J. Sarma, *How and Why Race Continues to Influence the Administration of Criminal Justice in Louisiana*, 72 *LA. L. REV.* 361 (2012).

Jonathan Feingold & Karen Lorang, *Defusing Implicit Bias*, 59 *UCLA L. REV.* 210 (2012).

Elizabeth F. Emens, *Framing Disability*, 2012 *U. ILL. L. REV.* 1383 (2012).

Molly O'Leary, *What Do You Mean I'm Biased?*, 9 *ADVOCATE* 10 (Sept. 2012).



Tamar R. Birkhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL'Y 53 (2012).

Yuvraj Joshi, *Respectable Queerness*, 43 COLUM. HUM. RTS. L. REV. 415 (2012).

Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System, A.B.A., [http://www.americanbar.org/groups/criminal\\_justice/pages/buildingcommunity.html](http://www.americanbar.org/groups/criminal_justice/pages/buildingcommunity.html) (last visited Apr. 27, 2011).

Eden B. King et al., *Discrimination in the 21st Century: Are Science and the Law Aligned?*, 17 PSYCHOL. PUB. POL'Y & L. 54 (Feb. 2011).

Deborah L. Bassett & Rex R. Perschbacher, *The Elusive Goal of Impartiality*, 97 IOWA L. REV. 181 (2011).

Fatma E. Marouf, *Implicit Bias and Immigration Courts*, 45 NEW ENG. L. REV. 417 (2011).

Brian A. Nosek et al., *Policy Implications of Implicit Social Cognition*, 6 SOC. ISSUES & POL'Y REV. 112 (July 12, 2011).

Suzanne B. Goldberg, *Sticky Intuitions and the Future of Sexual Orientation Discrimination*, 57 UCLA L. REV. 1375 (June 2010).

Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465 (2010).

Natalie B. Pederson, *A Legal Framework for Uncovering Implicit Bias*, 79 U. CIN. L. REV. 97 (2010).

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 (2010).

Adam Benforado, *Frames of Injustice: The Bias We Overlook*, 85 IND. L.J. 1333 (Fall 2010).

Clifford J. Rosky, *Like Father, Like Son: Homosexuality, Parenthood, and the Gender of Homophobia*, 20 YALE J.L. & FEMINISM 257 (2010).

Patrick S. Shin, *Liability for Unconscious Discrimination?: A Thought Experiment in the Theory of Employment Discrimination Law*, 62 HASTINGS L.J. 67 (2010).

Derald W. Sue, *Microaggressions: More than Just Race*, PSYCHOL. TODAY (Nov. 17, 2010), available at <https://www.psychologytoday.com/blog/microaggressions-in-everyday-life>.

Jerry Kang et al., *Are Ideal Litigators White?: Measuring the Myth of Colorblindness*, 7 J. EMPIRICAL LEGAL STUD. 886 (2010).

Tim Wise, *Denial Is a River, Wider Than the Charles: Racism and Implicit Bias in Cambridge* (July 27, 2009), available at <http://www.timwise.org/2009/07/denial-is-a-river-wider-than-the-charles-racism-and-implicit-bias-in-cambridge/>.

Anthony C. Greenwald et al., *Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity*, 97 J. PERSONALITY & SOC. PSYCHOL. 17 (2009).

Ralph R. Banks & Richard T. Ford, *(How) Does Unconscious Bias Matter?: Law, Politics and Racial Inequality*, 58 EMORY L.J. 1053 (2009).

Chris Guthrie et al., *The Hidden Judiciary: An Empirical Examination of Executive Branch Justice*, 58 DUKE L.J. 1477 (2009).

Shawn C. Marsh, *The Lens of Implicit Bias*, 1 JUV. & FAM. JUST. 17–19 (Summer 2009), available at [http://www.ncsconline.org/D\\_Research/ref/IMPLICIT%20BIAS%20Marsh%20Summer%202009.pdf](http://www.ncsconline.org/D_Research/ref/IMPLICIT%20BIAS%20Marsh%20Summer%202009.pdf).

Dale Larson, *Unconsciously Regarded As Disabled: Implicit Bias and the Regarded-As Prong of the Americans with Disabilities Act*, 56 UCLA L. REV. 451 (2008).

Charles Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of "The Id, the Ego, and Equal Protection,"* 40 CONN. L. REV. 931 (2008).

Ivan E. Bodensteiner, *The Implications of Psychological Research Related to Unconscious Discrimination and Implicit Bias in Proving Intentional Discrimination*, 73 MO. L. REV. 83 (2008).

Catherine Smith, *Unconscious Bias and "Outsider" Interest Convergence*, 40 CONN. L. REV. 1077 (2008).

Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471 (2008).

Howard Ross, *Proven Strategies for Addressing Unconscious Bias in the Workplace*, 2 CDO INSIGHTS 1 (2008), available at <http://www.cookcross.com/docs/UnconsciousBias.pdf>.

Emily Pronin, *How We See Ourselves and How We See Others*, 320 SCI. 1177 (2008).

Samuel R. Sommers et al., *Cognitive Effects of Racial Diversity: White Individuals' Information Processing in Heterogeneous Groups*, 44 J. EXPERIMENTAL SOC. PSYCHOL. 1129 (2008).

Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences*, 94(2) J. PERSONALITY & SOC. PSYCHOL. 292 (2008).

Phyllis Goldfarb, *Pedagogy of the Suppressed: A Class on Race and the Death Penalty*, N.Y.U. REV. L. & SOC. CHANGE (2007), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=977779##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=977779##).

David Faigman et al., *A Matter of Fit: The Law of Discrimination and the Science of Implicit Bias*, 59 HASTINGS L.J. 1389 (2007).

Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decision Making, and Misremembering*, 57 DUKE L.J. 345 (2007).

Nancy Levit, *Confronting Conventional Thinking: The Heuristics Problem in Feminist Legal Theory*, 28 CARDOZO L. REV. 391 (2006).

R. Richard Banks et al., *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 CAL. L. REV. 1169 (2006).

Anthony C. Greenwald et al., *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945 (2006).

Christine Joll & Cass Sunstein, *The Law of Implicit Bias*, 94 CAL. L. REV. 969 (2006).

Gregory Mitchell & Phillip E. Tetlock, *Antidiscrimination Law and the Perils of Mindreading*, 67 OHIO ST. L.J. 1023 (2006).

Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005).

Justin D. Levinson, *Suppressing the Expression of Community Values in Juries: How "Legal Priming" Systematically Alters the Way People Think*, 73 U. CIN. L. REV. 1059 (2005).

Reshma Saujano, *The Implicit Association Test: A Measure of Unconscious Racism in Legislative Decision-Making*, 8 MICH. J. RACE & L. 395 (2003).

Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001 (2002).

Michelle A. Travis, *Perceived Disabilities, Social Cognition, and "Innocent Mistakes,"* 2002 VAND. L. REV. 481 (2002).

Irene V. Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 PERSONALITY & SOC. PSYCHOL. REV. 242 (2002).

Jennifer Durkin, *Queer Studies I: LF*, 8 UCLA WOMEN'S L.J. 343 (1998).

George S. Bridges & Sara Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, 63 AM. SOC. REV. 554 (1998).

Mareasa Issacs-Shockley, *Cultural Competence and the Juvenile Justice System: Irreconcilable Differences?*, 8 FOCAL POINT 19 (Summer 1994), available at <http://www.pathwaysrtc.pdx.edu/focalpoint.shtml>.



## JUDGES

- Justin D. Levinson et al., Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes Beyond Black and White, 68 *FLA. L. REV.* (forthcoming 2016).
- Richard Perez-Pena, St. Louis County Biased Against Black Juveniles, Justice Department Finds, *N.Y. TIMES* (July 31, 2015), available at [http://www.nytimes.com/2015/08/01/us/st-louis-county-biased-against-black-juveniles-justice-department-finds.html?\\_r=0](http://www.nytimes.com/2015/08/01/us/st-louis-county-biased-against-black-juveniles-justice-department-finds.html?_r=0).
- Dana Leigh Marks, Who, Me? Am I Guilty of Implicit Bias?, 54 *JUDGES' J.* 20 (2015).
- Shana Heller, Dehumanization and Implicit Bias: Why Courts Should Preclude References to Animal Imagery in Criminal Trials, 51 *CRIM. L. BULL.* 870 (Summer 2015).
- Maya Sen, Is Justice Really Blind?: Race and Reversal in US Courts, 44 *J. LEGAL STUD.* S187 (Jan. 2015).
- Rebecca Gill, Implicit Bias in Judicial Performance Evaluations: We Must Do Better Than This, *JUST. SYS. J.* 1 (2014).
- Robin W. Sterling, Defense Attorney Resistance, 99 *IOWA L. REV.* 2245 (2014).
- Michael B. Hyman, Implicit Bias in the Courts, 102 *ILL. B.J.* 40 (Jan. 2014).
- Michael B. Neitz, Socioeconomic Bias in the Judiciary, 1 *CLEV. ST. L. REV.* 137 (2013).
- Valena E. Beety, Criminality and Corpulence: Weight Bias in the Courtroom, 11 *SEATTLE J. FOR SOC. JUST.* 523 (2013).
- Matthew I. Fraidin, Decision-Making in Dependency Court: Heuristics, Cognitive Biases, and Accountability, 60 *CLEV. ST. L. REV.* 913 (2013).
- Thomas J. Miles, Racial Disparities in Wiretap Applications Before Federal Judges, 41 *J. LEGAL STUD.* 419 (June 2012).
- 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 (2010).
- John F. Irwin & Daniel L. Real, Unconscious Influences on Judicial Decision-Making: The Illusion of Objectivity, 42 *McGEORGE L. REV.* 1 (2010).
- Jeffrey Rachlinski et al., Does Unconscious Racial Bias Affect Trial Judges?, 84 *NOTRE DAME L. REV.* 1195 (2009).
- Pat K. Chew et al., Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases, 86 *WASH. U. L. REV.* 1117 (2009).
- Geoff Ward et al., Does Racial Balance in Workforce Representation Yield Equal Justice?: Race Relations of Sentencing in Federal Court Organizations, 43 *LAW & SOC'Y REV.* 757 (2009).
- Mary K. Ramirez, Into the Twilight Zone: Informing Judicial Discretion in Federal Sentencing, 57 *DRAKE L. REV.* 592 (2009).
- I. Bennett Capers, Cross Dressing and the Criminal, 20 *YALE J.L. & HUMAN.* 1 (Winter 2008).
- Michael E. Waterstone & Michael A. Stein, Disabling Prejudice, 102 *Nw. U. L. REV.* 1351 (Summer 2008).
- Eva Paterson et al., The Id, the Ego, and Equal Protection in the 21st Century: Building Upon Charles Lawrence's Vision to Mount a Contemporary Challenge to the Internet Doctrine, 40 *CONN. L. REV.* 1175 (May 2008).
- Lindsey R. Vaala, Bias on the Bench: Raising the Bar for U.S. Immigration Judges to Ensure Equality for Asylum Seekers, 49 *WM. & MARY L. REV.* 1011 (2007).
- Jeffrey J. Rachlinski et al., Blinking on the Bench: How Judges Decide Cases, 93 *CORNELL L. REV.* 1 (2007).
- Dennis Jacobs, The Secret Life of Judges, 75 *FORDHAM L. REV.* 2855 (2007).
- Jennifer L. Eberhardt et al., Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes, 17 *PSYCHOL. SCI.* 383 (2006).
- William T. Pizzi et al., Discrimination in Sentencing on the Basis of Afrocentric Features, 10 *MICH. J. RACE & L.* 327 (2005).
- Evan. R. Seamone, Judicial Mindfulness, 70 *U. CIN. L. REV.* 1023 (2002).
- Chris Guthrie et al., Inside the Judicial Mind, 86 *CORNELL L. REV.* 777 (2001).
- David B. Mustard, Racial, Ethnic, and Gender Disparities in Sentencing: Evidence for the U.S. Federal Courts, 44 *J.L. & ECON.* 285 (2001).
- Migdalia DeJesus-Torres, Microaggressions in the Criminal Justice System at Discretionary Stages and Its Impact on Latino(a)/Hispanics, 13 *JUST. PROF.* 1 (2000), available at <http://www.tandfonline.com/doi/abs/10.1080/1478601X.2000.9959574>.
- Bryan A. Stevenson & Ruth E. Friedman, Deliberate Indifference: Judicial Tolerance of Racial Bias in Criminal Justice, 51 *WASH. & LEE L. REV.* 509 (1994).

## PROSECUTORS

- Prosecutorial Oversight: A National Dialogue in the Wake of *Connick v. Thompson*, *INNOCENCE PROJECT* (Mar. 2016), available at <http://www.innocenceproject.org/news-events-exonerations/prosecutorial-oversight-report>.
- Sunita Sah et al., Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System, 1 *BEHAV. SCI. & POL'Y* 69 (2015), available at <https://behavioralpolicy.org/article/blinding-prosecutors-to-defendants-race-a-policy-proposal-to-reduce-unconscious-bias-in-the-criminal-justice-system/>.
- Amita Kelly, Does It Matter That 95 Percent of Elected Prosecutors Are White?, *NPR* (July 8, 2015), <http://www.npr.org/sections/itsallpolitics/2015/07/08/420913118/does-it-matter-that-95-of-elected-prosecutors-are-white>.
- James Babikian, Cleaving the Gordian Knot: Implicit Bias, Selective Prosecution, & Charging Guidelines, 42 *AM. J. CRIM. L.* 139 (Spring 2015).
- Nicole E. Negowetti, Implicit Bias and the Legal Profession's "Diversity Crisis": A Call for Self-Reflection, 15 *NEV. L.J.* 930 (2015).
- James C. McKinley, Jr., Study Finds Disparity in Criminal Prosecutions, *N.Y. TIMES* (July 8, 2014), available at <http://www.nytimes.com/2014/07/09/nyregion/09race.html>.
- Krisin Henning, Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform, 98 *CORNELL L. REV.* 383 (2013).
- Angela J. Davis, In Search of Racial Justice: The Role of the Prosecutor, 16 *N.Y.U. J. LEGIS. & PUB. POL'Y* 821 (2013).
- Justin Murray, Reimagining Criminal Prosecution: Toward a Color-Conscious Professional Ethic of Prosecutors, 49 *AM. CRIM. L. REV.* 1541 (Summer 2012).
- Robert J. Smith & Justin D. Levinson, The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion, 35 *SEATTLE U. L. REV.* 795 (Spring 2012).
- Michael Callahan, "If Justice Is Not Equal for All, It Is Not Justice": Racial Bias, Prosecutorial Misconduct, and the Right to a Fair Trial in *State v. Monday*, 35 *SEATTLE U. L. REV.* 827 (2012).
- Maureen A. Howard, Taking the High Road: Why Prosecutors Should Voluntarily Waive Peremptory Challenges, 23 *GEO. J. LEGAL ETHICS* 369 (Spring 2010).
- Morgan Tilleman, (Trans)forming the Provocation Defense, 100 *J. CRIM. L. & CRIMINOLOGY* 1659 (2010).
- Kerala T. Cowart, On Responsible Prosecutorial Discretion, 44 *HARV. C.R.-C.L. L. REV.* 597 (Summer 2009).
- Alafair S. Burke, Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science, 47 *WM. & MARY L. REV.* 1587 (2006).
- Antony Page, Batson's Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge, 85 *B.U. L. REV.* 155 (2005).
- Theodore Eisenberg & Sheri L. Johnson, Implicit Racial Attitudes of Death Penalty Lawyers, 53 *DEPAUL L. REV.* 1539 (2004).

Anthony V. Alfieri, *Race Prosecutors, Race Defenders*, 89 *Geo. L.J.* 2227 (2001).  
V. A. Richelle, *Racism as a Strategic Tool at Trial: Appealing Race-Based Prosecutorial Misconduct*, 67 *Tul. L. Rev.* 2357 (1993).  
Elizabeth L. Earle, *Banishing the Thirteenth Juror: An Approach to the Identification of Prosecutorial Racism*, 92 *Colum. L. Rev.* 1212 (1992).

### **DEFENSE COUNSEL**

Jeff Adachi, *Public Defenders Can Be Biased, Too, and It Hurts Their Non-White Clients*, *WASH. POST* (June 7, 2016), available at <https://www.washingtonpost.com/posteverything/wp/2016/06/07/public-defenders-can-be-biased-too-and-it-hurts-their-non-white-clients/>.  
*Public Defenders' Biases May Contribute to Wrongful Convictions*, *INNOCENCE PROJECT* (May 3, 2016), available at <http://www.innocenceproject.org/public-defenders-biases-may-contribute-wrongful-convictions/>.  
Alan J. Gocha, *A Call for Realism in the Justice System: Why Criminal Defense Attorneys Should Take Race into Account When Advising Clients*, 28 *Geo. J. Legal Ethics* 547 (2015).  
Jonathan Rapping et al., *The Role of the Defender in a Racially Disparate System*, 37 *CHAMPION* 50 (July 2013).  
L. Song Richardson & Phillip A. Goff, *Implicit Racial Bias in Public Defender Triage*, 122 *Yale L.J.* 2626 (2013).  
Jonathan A. Rapping, *Implicitly Unjust: How Defenders Can Affect Systemic Racist Assumptions*, 16 *N.Y.U. J. Legis. & Pub. Pol'y* 999 (2013).  
Andrew E. Taslitz, *Trying Not to Be Like Sisyphus: Can Defense Counsel Overcome Pervasive Status Quo Bias in the Criminal Justice System?*, 45 *Tex. Tech L. Rev.* 315 (Fall 2012).  
Andrea D. Lyon, *Race Bias and the Importance of Consciousness for Criminal Defense Attorneys*, 35 *Seattle U. L. Rev.* 755 (2012).  
Franita Tolson, *The Boundaries of Litigating Unconscious Discrimination: Firm-Based Remedies in Response to a Hostile Judiciary*, 33 *Del. J. Corp. L.* 347 (2008).  
Russell Pierce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 *Ford L. Rev.* 2081 (2005).  
Eva S. Nilsen, *The Criminal Defense Lawyer's Reliance on Bias and Prejudice*, 8 *Geo. J. Legal Ethics* 1 (1994).

### **JURIES**

Sarah J. Forman, *The Ferguson Effect: Opening the Pandora's Box of Implicit Racial Bias in Jury Selection*, 109 *Nw. U. L. Rev. Online* 171 (2015).  
Cynthia Lee, *A New Approach to Voir Dire on Racial Bias*, 5 *U.C. Irvine L. Rev.* 843 (Nov. 2015).  
Giovanna Shay, *In the Box: Voir Dire on LGBT Issues in Changing Times*, 37 *Harv. J.L. & Gender* 407 (2014).  
Justin D. Levinson et al., *Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States*, 89 *N.Y.U. L. Rev.* 513 (May 2014).  
Andrew E. Taslitz, *Curing Own Race Bias: What Cognitive Science and the Henderson Case Teach About Improving Jurors' Ability to Identify Race-Tainted Eyewitness Error*, 16 *N.Y.U. J. Legis. & Pub. Pol'y* 1049 (2013).  
Anna Roberts, *(Re)forming the Jury: Detection and Disinfection of Implicit Juror Bias*, 44 *Conn. L. Rev.* 827 (Feb. 2012).  
Todd Brower, *Twelve Angry—and Sometimes Alienated—Men: The Experiences and Treatment of Lesbians and Gay Men During Jury Service*, 59 *Drake L. Rev.* 669 (2011).  
Janet B. Arterton, *Unconscious Bias & the Impartial Jury*, 40 *Conn. L. Rev.* 1023 (2008).  
Tara L. Mitchell et al., *Racial Bias in Mock Juror Decision-Making: A Meta Analytic Review of Defendant Treatment*, 29 *Law & Hum. Behav.* 621 (2005).  
Karl L. Wuensch et al., *Racial Bias in Decisions Made by Mock Jurors Evaluating a Case of Sexual Harassment*, 142 *J. Soc. Psychol.* 587 (2002).