



AMERICAN
BANKRUPTCY
INSTITUTE

2020 Midwestern Virtual Bankruptcy Institute

Elimination of Bias in Bankruptcy Proceedings

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Prof. Mikah K. Thompson

University of Missouri-Kansas City School of Law | Columbia, Mo.

Elimination of Bias in Bankruptcy Proceedings

Mikah K. Thompson
Associate Professor of Law
University of Missouri-Kansas City

Learning Objectives

- Define Relevant Terms: Implicit Bias, Microaggressions, and Anti-Racism
- Recognize the Impact Bias Can Have on Decision-Making
- Identify the Role Bias Plays in the Practice of Bankruptcy Law
- Describe Methods for Reducing the Impact of Bias

Definitions: Implicit Bias, Microaggressions, Anti-Racism



What is Implicit Bias?

- “Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness.”
- “Rather, implicit biases are not accessible through introspection.”
- “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.”
- “These associations develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages.”
- “In addition to early life experiences, the media and news programming are often-cited origins of implicit associations.”

(Kirwan Institute for the Study of Race and Ethnicity)

Characteristics of Implicit Bias

- “Implicit biases are pervasive. Everyone possesses them, even people with avowed commitments to impartiality such as judges.”
- “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.”
- “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 debiasing techniques.”

(Kirwan Institute for the Study of Race and Ethnicity)

Origins of Implicit Bias

- Parents/Families
- Friends/Peers
- School
- Media
- Direct or Vicarious Experiences

Measuring Implicit Bias

The Harvard Implicit Association Test (IAT) - <https://implicit.harvard.edu/implicit/>

Gender-Career/Gender-Science	Age
Weight	Race
Ability	Skin Tone
Asian	Native American
Weapons	Arab-Muslim
Sexuality	Religion

The Stroop Test

RED	GREEN	BLUE	YELLOW	PINK
ORANGE	BLUE	GREEN	BLUE	WHITE
GREEN	YELLOW	ORANGE	BLUE	WHITE
BROWN	RED	BLUE	YELLOW	GREEN
PINK	YELLOW	GREEN	BLUE	RED

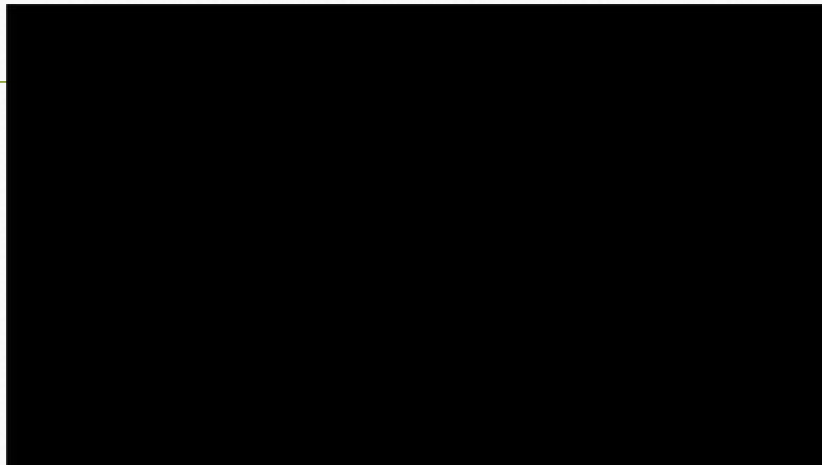
RED	GREEN	BLUE	YELLOW	PINK
ORANGE	BLUE	GREEN	BLUE	WHITE
GREEN	YELLOW	ORANGE	BLUE	WHITE
BROWN	RED	BLUE	YELLOW	GREEN
PINK	YELLOW	GREEN	BLUE	RED

Why Discuss Implicit Bias?

The evolution from overt to covert bias, which is marked by:

- Unintentional racism, sexism, etc.
- In-group favoritism over out-group prejudice
- Microaggressions – “subtle snubs, slights, and insults directed towards minorities, as well as to women and other historically stigmatized groups, that implicitly communicate or at least engender hostility.” (Derald Wing Sue)

Bias in Children Video

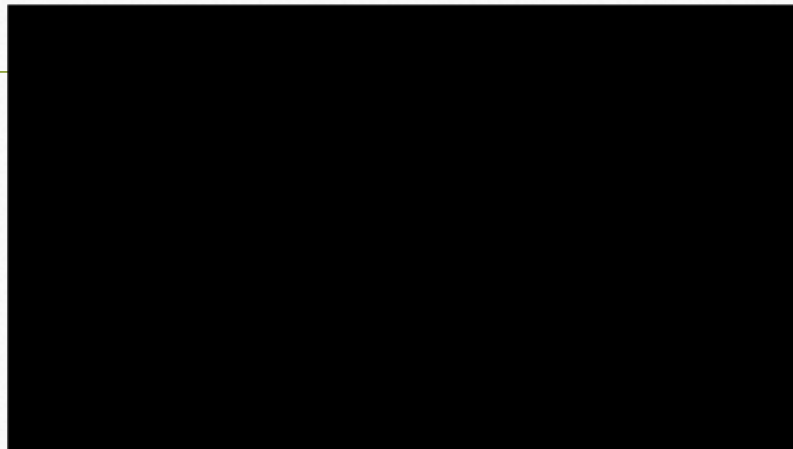


What are Microaggressions?

Four Categories

- Microassaults – Example – A patient refusing to be seen by a female doctor
- Microinsults – Example – “Where are you from? No, where are you really from?”
- Microinvalidations – Example – “Maybe you’re just being overly sensitive.”
- Environmental Microaggressions – Example – Confederate statues

Microaggressions Video



What is Anti-Racism?

- "To be antiracist is to think nothing is behaviorally wrong or right -- inferior or superior -- with any of the racial groups. Whenever the antiracist sees individuals behaving positively or negatively, the antiracist sees exactly that: individuals behaving positively or negatively, not representatives of whole races. To be antiracist is to deracialize behavior, to remove the tattooed stereotype from every racialized body. Behavior is something humans do, not races do." (Ibram X. Kendi)
- The beauty of anti-racism is that you don't have to pretend to be free of racism to be an anti-racist. Anti-racism is the commitment to fight racism wherever you find it, including in yourself. And it's the only way forward." (Ijeoma Oluo)
- "One endorses either the idea of a racial hierarchy as a racist, or racial equality as an anti-racist. One either believes problems are rooted in groups of people, as a racist, or locates the roots of problems in power and policies, as an anti-racist. One either allows racial inequities to persevere, as a racist, or confronts racial inequities, as an anti-racist." (Ibram X. Kendi)

ABA Video on Implicit Bias



The Impact of Bias on Decision-Making



Name Bias in Hiring Lakisha & Jamal vs. Emily & Greg

- Fictitious resumes were sent to Boston and Chicago employers.
- Resumes included stereotypically Black-sounding and stereotypically White-sounding names.
- All qualifications were identical.
- Researchers found significant discrimination against job applicants with Black-sounding names.
- Applicants with White-sounding names received 50 percent more call-backs.
- Advantage for applicants with White-sounding names was equivalent to an additional eight years of experience.
- A related study showed that applicants with male names were more likely to be interviewed than applicants with female names.

(Marianne Bertrand, et al., 2004)

Shooter Bias

- College students participated in a simulated shooting task in which they saw faces of Black, White, and Asian men paired with either a gun or a neutral object.
- The students had to decide whether to shoot by pressing a button within 630 milliseconds of the appearance of the face.
- The students shot the unarmed Black men more often than the unarmed Asian and White men.
- Researchers found that the cultural stereotype of Black criminality contributed to this result.

(Saul Miller, et al., 2012)

Bias in Healthcare

- Physicians took the Harvard Implicit Association Test.
- Thereafter, the physicians were shown a vignette of a patient, Black or White, who presented with symptoms of acute coronary syndrome.
- The physicians were asked to diagnose and treat the patient.
- Researchers found that the physicians showing a bias against Blacks on the IAT were less likely to recommend proper treatment for the Black patient.
- Researchers attributed the difference in treatment to the stereotype that Black people are less cooperative with medical procedures and less cooperative generally.

(A.R. Green, et al., 2007)

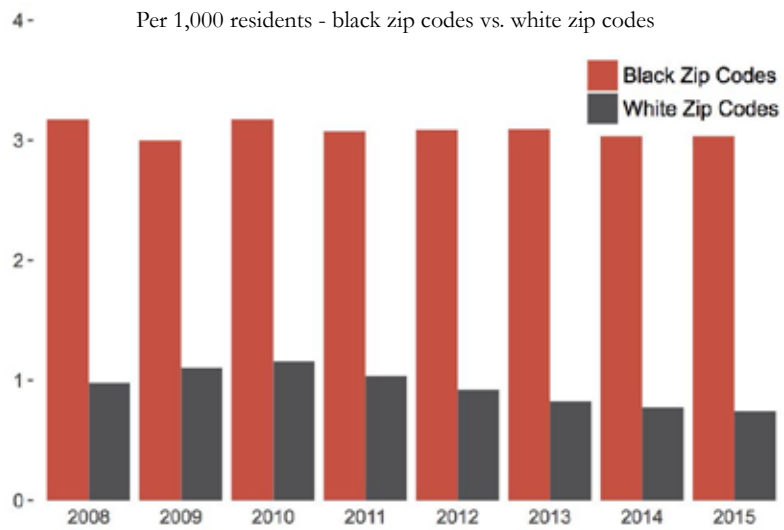
Other Studies on Biased Decision-Making

- Implicit bias affects school discipline decisions, especially for Latino and Black boys. (Kirwan Institute, 2015)
- Researchers have found that criminal defendants with Afro-centric features receive with longer sentences. (Irene Blair, et al., 2003)
- Implicit bias affects perceptions of Arab-Americans and Muslims and associates these groups with terrorism. (Jaihyun Park, et al., 2007)

Bias in the Practice of Bankruptcy Law



Chapter 13 Bankruptcy Filing Rates



(ProPublica, 2017)

Chapter Choice and Race

- Researchers sought to determine whether Black people are more likely to file for bankruptcy protection under Chapter 13.
- The study adjusted for income, homeownership, assets, and education, but the disparity remained.
- Compared to their White counterparts with identical financial situations, Blacks filed for Chapter 13 protection more often.
- Blacks who did not own their homes were twice as likely to file for Chapter 13 protection compared to other races.
- Notably, less than half of Chapter 13 filers permanently eliminate their debt.

(Jean Braucher, et al., 2012)

Chapter Choice and Attorney Influence

Todd & Allison v. Reggie & Latisha

- Researchers sent 262 bankruptcy lawyers information on a fictitious couple and asked them make a recommendation on chapter choice. “Todd and Allison” were members of a United Methodist Church while “Reggie and Latisha” were members of an African Methodist Episcopal Church. Their financial situations were identical.
- Surveyed lawyers were more likely to recommend Chapter 7 for Todd and Allison and Chapter 13 for Reggie and Latisha.
- The lawyers viewed Reggie and Latisha as having better values and being more competent when told that they had a preference for Chapter 13 but viewed them as less likely to have good values and less competent when told they had a preference for Chapter 7.
- The lawyers viewed Todd and Allison as having better values and being more competent even when they preferred Chapter 7 because their preference would provide them with a “fresh start.”
- Notably, perceptions regarding the client’s ability to pay attorney’s fees might also influence recommendations.

(Jean Braucher, et al., 2012)

Perception vs. Reality

- 140 bankruptcy lawyers were surveyed to determine if they were aware of the racial disparities in chapter choice.
- Perception – Whites choose Chapter 13 by a rate of 2 to 1 over Blacks – 59% of surveyed lawyers reported this perception.
- Reality – Blacks choose Chapter 13 by a rate of 2 to 1 over Whites – 6% of surveyed lawyers reported this perception.
- Researchers believe the misperception is based on subconscious racial stereotypes, including the view that Blacks are less responsible than Whites and therefore less likely to repay their debts.
- “It is generally believed that people with a front-row seat in the justice system will know the justice system and have privileged insight into how it works. This is undoubtedly the case in many matters. However, when it comes to matters in which there are powerful social stereotypes, we simply fail to notice (or mentally invert) the inequities appearing before us.”

(Dov Cohen, et al., 2017)

Reducing the Impact of Bias



How to Avoid Biased Decision-Making

- Recognize and remain mindful of your own biases. Take the IAT.
- Engage in high-effort, deliberate thought processes.
- Appreciate that making a decision based on your “gut” or intuition” increases the likelihood of bias.
- Recognize the negative impact of stereotypes.
- Improve your own critical thinking skills by looking at issues from various perspectives, using a different lens.
- Take note of the messaging that surrounds you at work, at home and on your social media accounts.
- Get to know out-group members to counteract biased messaging and assumptions.

How to be an Anti-Racist

- Commit to speaking out against racial inequities and disparities when you see them.
- Avoid making judgments about individuals based on racial stereotypes.
- Call out microaggressions when you witness them.
- Stop describing yourself as colorblind.
- Understand that action is an inherent part of being an anti-racist.

(HOW TO BE AN ANTI-RACIST, Ibram X. Kendi, 2019)

Resources on Bias and Bankruptcy

- Dov Cohen, et al., *Opposite of Correct: Inverted Insider Perceptions of Race and Bankruptcy*, 91 AM. BANKR. L.J. 623 (2017).
- Sara S. Greene, et al., *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, 101 MINN. L. REV. 1031 (2017).
- A. Mechele Dickerson, *Racial Steering in Bankruptcy*, 20 AM. BANKR. INST. L. REV. 623 (2012).
- Jean Braucher, et al., *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393 (2012).
- A. Mechele Dickerson, *Race Matters in Bankruptcy*, 61 WASH. & LEE L. REV. 1725 (2004).

Thank you!

Mikah K. Thompson
Associate Professor of Law
University of Missouri-Kansas City
thompsonmikah@umkc.edu