
BIGLAW, MINORITY ISSUES, RACISM

Implicit Bias: The Silent Killer Of Diversity In The Legal Profession

Unconscious racial bias is a major problem within the legal profession. What can lawyers and law firms do about it?

By RENWEI CHUNG

Feb 6, 2015 at 11:02 AM

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“It’s beauty in the struggle, ugliness in the success / Hear my words or listen to my signal of distress.”
– J. Cole

According to the [Sentencing Project](#), “If current trends continue, one of every three black American males born today can expect to go to prison in his lifetime, as can one of every six Latino males — compared to one of every seventeen white males.” [Cornell Law School](#) notes, “Race matters in the criminal justice system. Black defendants appear to fare worse than similarly situated white

In other words, justice is not blind. **Unconscious racial bias can lead to racial inequality.** It is important to be conscious of our hidden biases, but as [Stanford Law School](#) points out, “The goal of racial justice efforts should be the alleviation of *substantive inequalities*, not the eradication of unconscious bias.”

Implicit or unconscious bias is a [mental shortcut](#) “that fills in gaps in our knowledge with similar data from past experiences and cultural norms.” It is a normal part of how we make decisions.

Unconscious racial bias pervades our law, education, and politics. It is not always a bad thing, but it often tends to be negative. [National Public Radio](#) notes, “There are big racial differences in how school discipline is meted out: students of color are much more likely to be suspended or expelled than white students, even when the infractions are the same.”

A U.S. Department of Education of Civil Rights [2014 Report](#) revealed that “black students are suspended and expelled at a rate three times greater than white students.” The disproportionately high suspension rates start suspiciously early. Although black children make up 18% of preschool enrollment, they account for [almost half](#) of the children who receive more than one out-of-school suspension. In addition, the [Washington Post](#) highlights, “black teens who commit a few crimes go to jail as often as white teens who commit dozens” (e.g., the [absurd results](#) from our “war on drugs”).

Implicit racial bias is a systemic issue in the recruiting process. According to Marianne Bertrand, an economics professor at my alma mater, [The University of Chicago Booth School of Business](#), “[identical] applicants with white-sounding names are 50 percent more likely to get called for an initial interview than applicants with African-American-sounding names.” When it comes to Hollywood, casting directors often say “we just went with the best candidate,” but as actress [Gabrielle Union](#) points out, “If you’re never considered, you never have a chance.”

Besides hampering the recruiting process, unconscious racial bias also severely affects a firm’s mentorship and culture, which have a direct impact on retention. The Nextions 2014 [Written in Black & White Report](#) revealed that identical memos written by hypothetical African American and Caucasian persons both named Thomas Meyer had substantially different feedback due to confirmation bias.

Similar to implicit bias, [confirmation bias](#) is defined as “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.” The report showed how confirmation bias led to the “African American” Thomas Meyer receiving



this disparity?

In their presentation “[Implicit Bias in the Legal Profession](#),” Janie Schulman and Stephanie Fong, employment attorneys at [Morrison Foerster](#), point out that that “Awareness of existence of disparities in treatment helps eliminate disparities in decision making.”

As [referenced](#) by Schulman and Fong, *The Level Playing Field Institute – 2007 Corporate Leavers Survey* states that “9.5% of people of color indicated unfairness was the only reason for voluntary departure” and “24.6% of people of color would have stayed at their jobs if they had a more respectful work environment.” They argue that a firm’s understanding of implicit bias can help protect it against attrition and reduce micro-inequities – “small events which are often ephemeral and hard-to-prove, often unintentional and unrecognized by the perpetrator.”

NALP’s [2005 report](#) on attrition revealed “that 42% of male associates of color leave their law firms within 28 months. Within 55 months, 78% have left.... while minority female attorneys have the highest attrition rate, at 41% within 28 months and 81% within 55 months.” In other words, **only one in five minority associates last five years at a law firm.**

Sometimes bias is understated, sometimes it’s rather overt. A new [Yale study](#) concluded science professors *widely view* female undergraduates as less competent than male students with the same achievements and skills. As a result, “professors were [less likely to offer](#) the women mentoring or a job.”

In [Joan Williams’s](#) study “[Double Jeopardy? – Gender Bias Against Women of Color in Science](#),” her team interviewed 60 women of color in the science, technology, engineering and math fields (STEM). In the study, **100% of women of color experienced gender bias.** In addition to gender bias, “Women of color also encounter racial and ethnic stereotypes, putting them in ‘[a double jeopardy](#).’” Some highlights of Williams’s study include:

- “ • *Asian-American women said they felt more pressure to act “feminine”—demure and passive—and received more push back when they don’t.*
- *Latinas reported that when they assert themselves, they risk being seen as “angry” or “too emotional.”*
- *Black women felt they have more leeway in terms of expressing emotion so long as they aren’t perceived as “angry black women.”*

MENU

be conscious of our hidden biases. We should be mindful of the legacies we have all inherited. It is important to understand how the [media](#) influences us. [We are wired for prejudice](#), but this does not have to be fatal. Practice and training are the best ways, perhaps the only methods, to overcome unconscious racial bias that leads to inequitable decisions and disparate results.

First, we should seek to understand our unconscious racial bias so we can address *substantive inequalities*. Second, law firms must also understand and recognize that unconscious racial bias exists. Third, firms should conduct [“Unconscious Bias @ Work Training/Workshops”](#) this year, if they haven’t already. A [typical one-day course](#) on hidden biases for 50 people costs an average of \$2,000 to \$6,000. The return on investment on [proper training](#) would be tremendous. [Willful ignorance](#) of hidden biases coupled with refusal of proper training is a deadly formula for diversity in any profession.

It is evident that unconscious racial bias pervades our law, education, and politics. It is inexcusable for us to permit negative hidden biases to continually operate in our blind spots; they must be brought to light. We must be cognizant and cautious of our automatic behaviors and established beliefs. **Our implicit bias is silently killing diversity in our profession.** The question is, what are we going to do about it?

[Renwei Chung](#) is a 2L at Southern Methodist University School of Law. He has an undergraduate degree from Michigan State University and an MBA from the University of Chicago. He is the author of [The Golden Rule: How Income Inequality Will Ruin America](#) (affiliate link). He has been randomly blogging about anything and everything at [Live Your Truth](#) since 2008. He was born in California, raised in Michigan, and lives in Texas. He has a yellow lab named Izza and enjoys old-school hip hop, the NBA and stand up paddleboarding (SUP). He is really interested in startups, entrepreneurship, and innovative technologies. You can contact Renwei by email at projectrenwei@gmail.com, follow him on Twitter ([@renweichung](#)), or connect with him on [LinkedIn](#).

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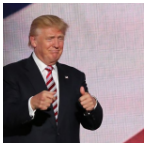
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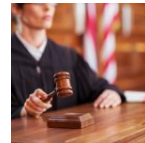
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Fr0zt • 2 years ago

One thing that Renwei's columns have done for me is to help me distinguish between people who actually suffer from prejudice as distinct from those who use it as an excuse for their own inadequacies. Women like Michelle Roberts have no doubt suffered through more than their share of prejudice, but succeed or fail, they gritted their teeth and kept plugging away like the champions they were. People like Renewi start off prepared to say that they won't achieve anything until the world fixes that Raceism thing. So if they don't succeed, it's obviously not because of anything wrong with them.

Also, as further evidence of the statement that Renwei has no idea what he's talking about:

A typical one-day course on hidden biases for 50 people costs an average of \$2,000 to \$6,000. The return on investment on proper training would be tremendous.

\$6000?! Let's see, presuming that the average attorney would have billed 9 hours that day at \$200 per hour, the cost of sending those 50 to an all-day workshop would be \$90,000 in unbillable time. But the return would be tremendous. Granted there's no data that these courses actually change anything or raise revenue or even reduce discrimination suits -- it's a diversity thing, so the value must be tremendous!

Seriously Renwei, if you want to write a column about a law student trying to learn about this big old crazy world, that might be interesting, but the first thing you need to realize is that you seriously don't know shit about shit, which is fine at your stage, but less so when your schtick is lecturing people with more experience.

24 ^ | ▾ • Share ›



Mileysaurus ➔ Fr0zt • 2 years ago

I really didn't have an issue with this piece until that second to last paragraph; I can't fault the research Renwei did, but good lord that's a hilarious set of conclusions. To his first point, I'm fairly certain researchers are "seek[ing] to understand our unconscious racial bias so we can address substantive inequalities", that's where we get all these pretty studies just cited. For the second and third, if you think these diversity workshops are providing any sort of enlightenment, education, or profound life changes, you're fooling yourself; setting aside that by nature legal professionals tend to be argumentative and defensive about, well, everything, and that anybody who comes to some major life revelations after a one day workshop was probably a bit of a malleable simpleton to begin with, the same amount of information could be conveyed by reading the notes from a sophomore taking Psychology 201.

7 ^ | ▾ • Share ›



Fr0zt ➔ Mileysaurus • 2 years ago



Jesus moment in one of those classes and realize that they've been an asshole they're whole life. No one walks out of a civility CLE like Ebenezer Scrooge shouting Merry Christmas through the streets.

7 ^ | v • Share ›



Mileysaurus ➔ Fr0zt • 2 years ago

My personal issue is with the many vicarious trauma seminars I've been required to attend. Not that some don't benefit from them, but I feel more traumatized by being forced to participate in a touchy-feely-kumbaya-group-hug-session than any of the challenges from my job.

2 ^ | v • Share ›



Fr0zt ➔ Mileysaurus • 2 years ago

I was at a bar with a colleague who criticized me for looking unapproachable. I said Thank you -- that's pretty much what I was going for.

11 ^ | v • Share ›



Jerry Gallo ➔ Fr0zt • 2 years ago

Maybe you looked unapproachable to the ladies because they were 'barking up the wrong tree' as they say.

1 ^ | v • Share ›



Fr0zt ➔ Jerry Gallo • 2 years ago

It was actually an event for gay lawyers. I'm just not a social butterfly and went to introduce two guys who I thought might hit it off.

^ | v • Share ›



Jerry Gallo ➔ Fr0zt • 2 years ago

Well, there you go, I don't blame you for being uninterested, gay lawyers got to be, what, 25 years old minimum?

2 ^ | v • Share ›



Fr0zt ➔ Jerry Gallo • 2 years ago

Its like you see right into my soul, man

3 ^ | v • Share ›



B. McLeod ➔ Mileysaurus • 2 years ago

The piece seems to assume that consciousness of bias nullifies the bias, which does not necessarily follow.

3 ^ | v • Share ›



Jerry Gallo ➔ B. McLeod • 2 years ago



Paul Harvey → Fr0zt • 2 years ago

In short, Renwei sucks at this.

3 ^ | v • Share ›



T-bag → Paul Harvey • 2 years ago

Hey now, Renwei is literally the **SECOND** most respectable person I know of with ties to SMU.

(after this guy):

<http://abovethelaw.com/2015...>

1 ^ | v • Share ›



Tawana • 2 years ago

Can Diversity Destroy Us?

<http://www.creators.com/opi...>

2 ^ | v • Share ›



LucreMagnus • 2 years ago

Aren't we overlooking the obvious in your hunt for raceists? In NY alone, blacks as a small percentage of the population, commit more homicides than anyone else, hundreds, generally against other blacks. Yet Elie suggests that the cops, who blow away maybe 10-20 people a year in NY if that, are his biggest fear. Renwei similarly posits that raceism accounts for the incarceration disparity, blind to the fact that accounts for it.

So a country that allows fifth and 9th amended writs of habeas corpus, seemingly endless appeals, combative trials by jury and has big law firms working pro bono for inmates is rife with raceism? But Renwei, who sits on the juries that deliver the guilty verdicts? And taken a look at the bench recently? There are black, white, and Hispanic judges galore. But facts disrupt the desired narrative don't they?

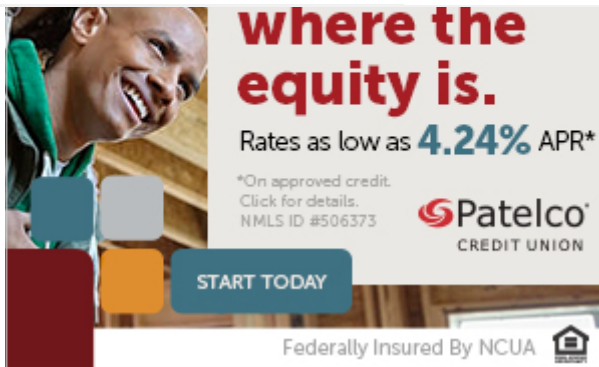
Law work is hard work; often for thankless clients (they pay their bill, that's all that is expected), and with indifferent partners, and competitive peers. News flash: whites too often feel neglected, put upon, cold-shouldered, taken advantage of, friendless, harassed by overwork, and envious of associates who are more social, better looking, better connected. But excuses are a menu for failure. Encouraging minorities to see raceism as the reason they leave BigLaw does only 2 things: and I guarantee it does these; it undermines the resolve every lawyer needs to advance in Big Law; and it encourages partners to avoid minorities for fear of being tagged a racist by some hyper-sensitive person like you. That is your contribution to minorities in law firms.

17 ^ | v • Share ›

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**T-bag** • 2 years ago

Yep. The only logical way to explain why more black people go to prison is because of Racist judges/cops. The rate of crime obviously has nothing to do with it.

Once again, great article, very insightful, such unique perspective on the world. This is why we need diversity y'all.

14 ^ | v • Share ›

**Pol Pot** • 2 years ago

Hey Renwei,

You do realize in 'Merica the implicit bias means that people will think you can do math well? Is that so bad? Sure they assume black guy can run faster than you, but then again you seen Olympics right.

But most importantly, you do realize you are not black, you Asian? Do you understand that some Asians, perhaps possibly yours truly included, don't have that great of a record with xenophobia, racism, and some would suggest ethnic cleansing as if the Cham muslims in South East Asia were really human anyway.

--Brother Number One

P.S.

You want some street cred why not drive down South Lamar until you are under the bridge. You will know when you get to the place I speak of. I am sure they will welcome you with open arms. And I am sure you won't think for a second that some of those brothers might rob your Sino-Cracka Ass.

8 ^ | v • Share ›

**Fr0zt** ➔ Pol Pot • 2 years ago

There was a vietnamese kid in my platoon who despite being a pipsqueak was not at all shy about threatening to start shit with strangers in bars, banking on the assumption that they would think he knew martial arts (he did not).

Someone in the platoon once made a joke about assuming that he knew karate because he was japanese, and I immediately stood up and declared "He is Vietnamese -- not Chinese -- which means he studied the violin!" There was a look of absolute rage/frustration on his face before yelling "Fuck -- I did nlay the violin!"



Leo Black → Fr0zt • 2 years ago

Weren't you an officer?

^ | v • Share ›



Thereas Onableman → Leo Black • 2 years ago

You take that back!!! Frozt worked for a living!

^ | v • Share ›



Leo Black → Thereas Onableman • 2 years ago

I thought he mentioned RotSea in one of his posts. While that does sound like something I would have said, I have a hard time picturing a barbie having the balls/lack of etiquette to say it.

^ | v • Share ›



Fr0zt → Leo Black • 2 years ago

We were infantry, so once and a while I'd associate with the men in between martinis and manicures.

2 ^ | v • Share ›



Thereas Onableman → Fr0zt • 2 years ago

Say it ain't so. You were a butter bar?

^ | v • Share ›



Leo Black → Thereas Onableman • 2 years ago

Fr0zt? Pretty sure he was a BUTTer bar. Sorry Fr0zt, couldn't help it.

2 ^ | v • Share ›



Fr0zt → Leo Black • 2 years ago

I'm very disappointed in you -- you could have made a Last Tango in Paris joke in reference to the butter.

2 ^ | v • Share ›



Leo Black → Fr0zt • 2 years ago

Yeah but I'm thinking fast here.

^ | v • Share ›



Fr0zt → Thereas Onableman • 2 years ago

There was a time I toyed with writing a book about my brief experience and "Butter Bar" would have been the title. I left shortly after making captain, dishonorably discharged for spelling it "Cap'n" in all official documents.

1 ^ | v • Share ›



discharged.

And were you ever in charge of any soldiers?

6 ^ | v • Share ›



Leo Black ➔ Fr0zt • 2 years ago

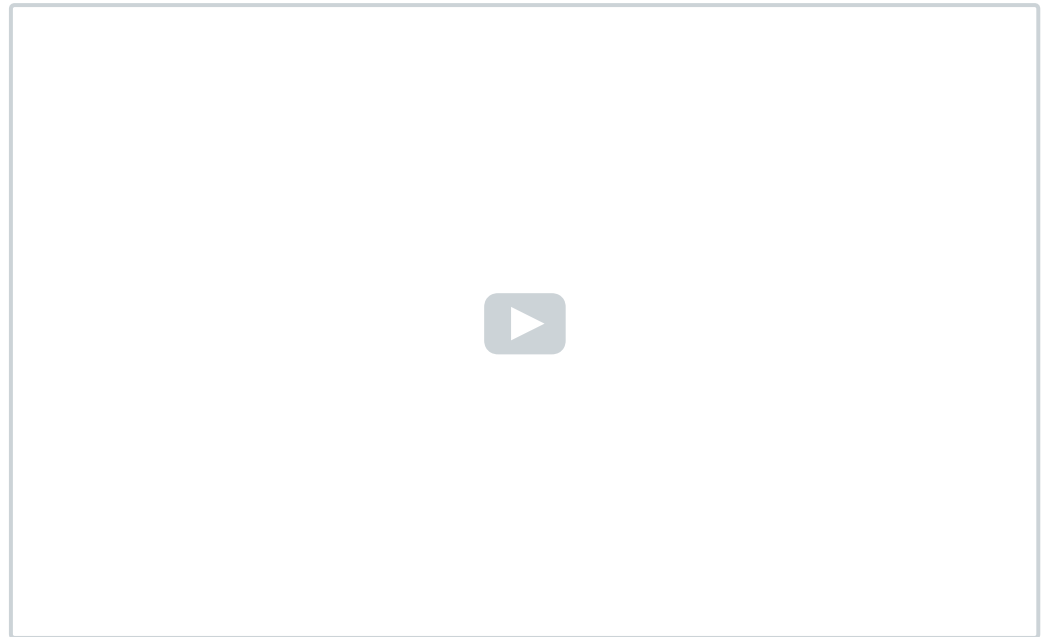
Stupid. Only in the navy can you spell it Cap'n.

^ | v • Share ›



Fr0zt ➔ Leo Black • 2 years ago

My uncle was in the Navy. Spent two years in a Soggy prison camp.



^ | v • Share ›



Leo Black ➔ Fr0zt • 2 years ago

I sincerely hope he got past that traumatizing experience.

^ | v • Share ›



Fr0zt ➔ Leo Black • 2 years ago

To this day, he dives under the table whenever he hears the "snap," "crackle," and "pop" of battle.

That's not supposed to be part of a complete breakfast :(

^ | v • Share ›



Leo Black ➔ Fr0zt • 2 years ago

It's a hard life vets with PTSD face, some of them even become cereal killers.

3 ^ | v • Share ›



Fr0zt ➔ Leo Black • 2 years ago



Leo Black → Fr0zt • 2 years ago

Isn't that standard amongst gay men?

1 ^ | v • Share ›



Jerry Gallo → Fr0zt • 2 years ago

I can't help but think of Catch 22, with Major Major and Yoserian.

^ | v • Share ›



Fr0zt → Jerry Gallo • 2 years ago

It would've been more like a practical guide for new lieutenants; kind of a Everything You Wanted To Know About Leading A Team of Trained Killers But Were Embarrassed To Ask. Not how to be the next Patton, but very basic advice to avoid stepping on your dick. The cover would have been a confused-looking LT trying to hold a bunch of gear and dropping it.

^ | v • Share ›



Leo Black → Fr0zt • 2 years ago

Ahh.

^ | v • Share ›



Puest → Pol Pot • 2 years ago

And small peens.

^ | v • Share ›



Brocaine_Brandy • 2 years ago

Wait, I thought type 2 diabetes was the silent killer of URM attorneyes?

-Elie's Doctor

5 ^ | v • Share ›



Fr0zt → Brocaine_Brandy • 2 years ago

If you think it's silent, then you've clearly never sat next to Elie as he's eating.

10 ^ | v • Share ›



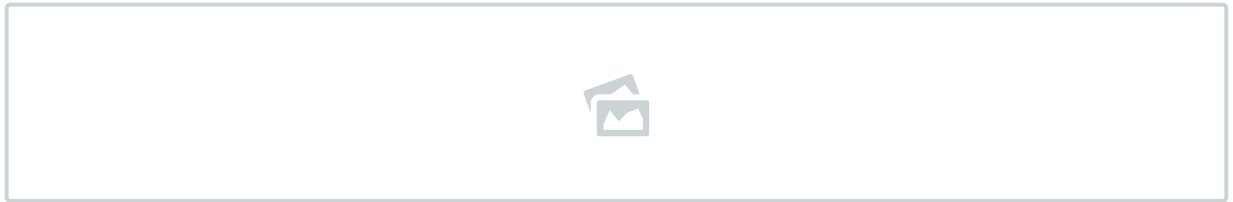
Fresh Commentor • 2 years ago

Diversity isn't an end in and of itself and the obsession with equality of outcomes is at best, disingenuous. Every institution need not precisely, or even closely, mirror the racial makeup of society as a whole. Insisting on as much reinforces the belief that skin color really is a meaningful way of categorizing people. If we're insisting on equality, I want to see more "African Americans" and women in construction and garbage hauling jobs. It's not fair that most of those jobs are held by white men.



You'll leave the garbage hauling jobs out of this, ya know what's good for ya.

Capisce?



1 ^ | v • Share ›



Jerry Gallo → Fr0zt • 2 years ago

If you need to hire a sanitation consultant, I know a guy.

1 ^ | v • Share ›



Regular Guy • 2 years ago

There are negative hidden biases that arise as a result of a number of factors that the individuals affected thereby cannot help. Being short, bald, fat, generally unattractive, introverted, having asymmetrical eyes or other facial features, etc., will cause some people to have reactions to you that aren't positive. Often the skills you build in overcoming the drag of these biases are pivotal to whatever successes you have in life. These subjects are certainly useful to think about, because every person should aspire to be professionally fair. That said, life will challenge you in both fair and unfair ways. At the end of No Country For Old Men, the old man says - All that time you spend trying to get back what was took from you, more is going out the door. I like to keep that in mind when I get stuck worrying about some unfairness that is affecting me.

2 ^ | v • Share ›



T-bag → Regular Guy • 2 years ago

I bet Renwei will look back on his brief time as a contributor to ATL while he is doing contract work, and think "I thought I was going to teach the readers a lesson, but instead I was the one who learned a lesson."

^ | v • Share ›



Volucure • 2 years ago

Hate to break it to you, Renwei, but "fill[ing] in gaps in our knowledge with similar data from past experiences" is called "the scientific method," not "implicit bias."

2 ^ | v • Share ›



Thereas Onableman → Volucure • 2 years ago

Actually, it's not, but good for you for trying.

1 ^ | v • Share ›



Volucure → Thereas Onableman • 2 years ago

Actually, it is. Under the scientific method, you submit a hypothesis as an educated



conduct the experiment to test if the hypothesis was correct.

Renwei contends it's invalid to submit any hypothesis based on "similar data from past experiences" because that's purportedly "biased." In reality, though, the only "bias" in using the scientific method is toward correctness.

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JerryM1957 • 2 years ago

Substitute the word "Aisans" for "Afro-Americans" at any point in this article and the thesis falls flat on its face. The reason that there more Afro-Americans males incarcerated today is because Afro-American males commit a substantially disproportionate share of violent crime. Similarly, given the dramatic increase in the number of Afro-American children who are being raised in single family households, it is no surprise that a disproportionate number of Afro-American children are suspended from school each day. With no discipline in the home its no surprise that the children have discipline problems at school. Liberals can continue to blame "hidden bias" until the cows come home but nothing is going to change until the Afro-American community begins to take responsibility for the actions of its members.

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