CLE SEMINAR

Implicit Racial Bias and Decision Making in the Criminal Justice System

Hosted at: Mark O. Hatfield U.S. Courthouse Jury Assembly Room

Speaker: Professor Song Richardson, Senior Associate Dean for Academic Affairs and Professor of Law at the University of California, Irvine School of Law

Portland, Oregon
Live on April 13, 2017
12:00pm to 1:00pm
Implicit Racial Bias

L. Song Richardson
Senior Associate Dean and Professor of Law
School of Law
University of California, Irvine
Does it matter?
ANCHORING

Arbitrary number introduced by one party first

People tend to fixate on the anchor and it becomes the basis for subsequent judgments.

Judges’ sentences anchored by prosecutor sentencing recommendation, regardless of judge’s experience or relevance of the recommendation.
Implicit Bias and People
DEFINITION: IMPLICIT BIAS

- *Implicit bias* refers to the brain’s automatic, instant association of stereotypes or attitudes toward particular groups, without our conscious awareness.
Implicit *Racial* Bias
Slide Deleted
Even people with deeply held conscious beliefs that all people should be treated fairly regardless of race still have implicit biases.
How is Bias Measured?

- Implicit Association Test
- Project Implicit
  --https://implicit.harvard.edu/implicit/
Slide Deleted
<table>
<thead>
<tr>
<th>Stereotype Inconsistent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joy</td>
</tr>
<tr>
<td>Love</td>
</tr>
<tr>
<td>Peace</td>
</tr>
<tr>
<td>Wonderful</td>
</tr>
<tr>
<td>Pleasure</td>
</tr>
<tr>
<td>Glorious</td>
</tr>
<tr>
<td>Laughter</td>
</tr>
<tr>
<td>Happy</td>
</tr>
<tr>
<td>Agony</td>
</tr>
<tr>
<td>Terrible</td>
</tr>
<tr>
<td>Horrible</td>
</tr>
<tr>
<td>Nasty</td>
</tr>
<tr>
<td>Evil</td>
</tr>
<tr>
<td>Awful</td>
</tr>
<tr>
<td>Failure</td>
</tr>
<tr>
<td>Hurt</td>
</tr>
</tbody>
</table>
Stereotype Consistent

Agony  Joy
Terrible  Love
Horrible  Peace
Nasty  Wonderful
Evil  Pleasure
Awful  Glorious
Failure  Laughter
Hurt  Happy
Ambiguous Evidence

• **RESULTS**
  - W-W: 13%
  - B-B: 69%
  - W-B: 17%
  - B-W: 75%
Ambiguous Evidence

- Police and Probation Decisions
IMPLICIT WHITE FAVORITISM
Crime Relevant Object
Crime Relevant Object
Crime Neutral/Irrelevant Object
Implicit Dehumanization

• Association between Black individuals and apes

• Over-estimate the age of black children identified as felony suspects by 4.53 years
Racialized Memory

- Defendant: William or Tyrone
- Tyrone = correctly remembered more aggressive details (80.2%)
- William = recalled fewer aggressive details (68.8%)
- Tyrone = incorrectly remembered more aggressive details
Evidence Evaluation
Implicit Bias and Interactions

• Awkward Body Language

• Facial expressions

• Self-Fulfilling Prophecy Effects

• But, Racial Anxiety
Why should this matter to us?
Implications:

– Implicit bias affects every discretionary decision in a case
  – Officer discretion
  – Prosecutorial Discretion
  – Witness Memory
  – Jury Decisions
  – Defense Lawyer Decisions
  – Sentencing
Addressing Implicit Biases
IMPLICIT BIAS IS INCREASED BY

-- Stress & overload
-- Time pressure
-- Multi-tasking
-- Discretion
-- Ambiguous criteria
-- Incomplete data
IMPLICIT BIAS IS NOT REDUCED BY

X Good intentions
IMPLICIT BIAS IS **NOT** REDUCED BY

\[ \times \text{Good intentions} \]
IMPLICIT BIAS IS NOT REDUCED BY

X Good intentions
X Suppression and avoidance
Don’t Be Colorblind
Results

• More likely to convict
• Prosecution’s case is stronger
• Defense case is weaker
• Black defendant is more aggressive
• White defendant is more honest and moral
Results

* More likely to convict
* Prosecution’s case is stronger
* Defense case is weaker
* Black defendant is more aggressive
* White defendant is more honest and moral
IMPLICIT BIAS IS NOT REDUCED BY

- Good intentions
- Suppression and avoidance
IMPLICIT BIAS IS NOT REDUCED BY

X Good intentions
X Suppression and avoidance
X Self-perceived objectivity
IMPLICIT BIAS IS NOT REDUCED BY

- Good intentions
- Suppression and avoidance
- Self-perceived objectivity
THE SCIENCE OF EQUALITY

• Evidence-based solutions:

✓ “De-bias” – efforts to reduce implicit bias

✓ Bias override – break the link between bias and behavior
Implicit Bias Interventions

• Start with Yes
• Awareness
Awareness Test
Implicit Bias Interventions

• Start with Yes

• Awareness
  • Environmental Cues
    – Google example
Seattle Examples

• What Would You Do – Bike Video
Seattle Examples

• What Would You Do – Bike Video

• Jury Orientation Video

• Jury Instructions
  – Body Worn Camera Footage - Study
    http://www.wawd.uscourts.gov/jury/unconscious-bias

• Voir Dire on Race
  – “This trial involves a Black defendant and White victims. How might this affect you? In your opinion, how does the race of a suspect affect the treatment s/he receives from the police?”
Implicit Bias Interventions:

---Improve Conditions of Decision-making

- Eliminate distractions
- Slow Down
  - Articulate Reasons
- Eat!
- Commit to Specific Evaluation Criteria
  - What is reasonably suspicious?
  - Aggravating circumstances?
- Checklists
- Blind Judging
Sentencing

55 % of defendants sentenced minorities

• No rec from P.O.
• Remove photos of defendants - PSR
• Remove racial info from PSR till after sentencing
• Reach tentative range before sentencing (anchoring bias & biases developed in sentencing – allocution)

• Judge Mark Bennett, N. D. Iowa
Implicit Bias Interventions:

--Avoid or Reduce Ambiguity

--Create Diverse Teams
- Facilitates Positive Contact
- Increases Creativity

--Individuation

--Count
- Aggregate Data
- Helps Identify Barriers

--Accountability
Thank You!

L. Song Richardson
Senior Associate Dean
Professor of Law
UC Irvine School of Law
srichardson@law.uci.edu
(949) 824-4158
Helpful Links:

1. If you are interested in taking your own Implicit Association Test:

2. The Western District of Washington shows this video to jurors when they report for jury service:

3. The ABA created a Toolbox for use in exploring implicit bias: