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# CBA panel on legal bias illuminates inequities

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Human psychology can be entertaining.

A set of fake eyes can elicit more donations to a community fund.

Colors like red are harder to identify when used on mismatched words like “blue.”

A sketch of a rabbit can also be a sketch of a duck.

But these quirks are not always benign.

Minority job applicants are rated less favorably than white candidates, even with the same names and resumes.

Black children can make up less than 20% of a school population but earn nearly half of all suspensions there.

Blurry objects like guns are more discernible for people who are exposed to black faces.

“What’s wrong with this? Well, just about everything, right?” Sarah Redfield told a room full of lawyers and judges in a Chicago Bar Association conference room last week, pointing specifically to the race-crime association.

Redfield, a University of New Hampshire School of Law professor, teaches about implicit bias in the legal world and ways to counter it.

Citing all the examples above, she headlined a CBA panel discussion Thursday exploring implicit bias in the courtroom.

Panelists included Cook County Circuit Court Judge Kristal Royce Rivers; attorney John C. Sciacotta of Aronberg Goldgehn Davis & Garmisa, which helped sponsor the event; criminal defense attorney Adam B. Sheppard of the Sheppard Law Firm and 1st District Appellate Court Justice Michael B. Hyman, who moderated.

Each panelist told a story of how they’d seen bias seep into their practice. Rivers told of hiring a young, white male clerk years ago who would join her in conferences with clients.

“And invariably they’d look at this kid and ask him what his opinion was,” she recalled. “And I would say, ‘He’s only the clerk taking notes. Can I help you? I’m the attorney.’”

Sciacotta relayed a time decades ago when a judge, upon hearing his name, said he should be in the restaurant business instead of law. He said he responded with a quip about how his family had actually been in the restaurant business since 1929.

“I sort of took it,” he said. “I look back 30 years later, there was no reason for it.”

One way to counter bias is to learn more about it. Training also works, Redfield said.

Illinois’ judiciary has taken some of those steps. The Illinois Supreme Court surveyed more than two thirds of trial court judges between 2016 and 2017, finding that biases “are present and impact outcomes depending on the race, gender, poverty and legal representation status of the hypothetical parties.”

The court also approved a discretionary jury instruction last year addressing implicit bias, which says everyone has “feelings, assumptions, perceptions, fears and stereotypes.” It tells jurors they must “evaluate the evidence and resist, and help each other to resist, any urge to reach a verdict that is influenced by bias for or against any party or witness.”

Bias sometimes appears more directly in court cases. A juror in a Kankakee County case, for example, told police she was stalked during deliberations by a black person wearing a hood. On appeal before the 3rd District Appellate Court, dissenting Justice Mary W. McDade argued the juror’s interpretation of a benign incident should have gotten her dismissed.

“We obviously cannot always know what is in every potential juror’s heart and mind, but we can and should deal with bias when, as here, it slaps us in the face,” McDade wrote when the majority upheld the conviction in *People v. Kamron T. Taylor*.

There are more things that can be done, however.

Sheppard noted bias is particularly harmful when you’re in a criminal-defense practice.

“The facts are hard enough, and to have to encounter implicit bias stacks the deck even further,” he said, adding later he hopes the implicit bias instruction becomes mandatory in the near-future.

He cited Cynthia Lee, a research professor at the George Washington University School of Law, who calls for mandatory instructions asking jurors to imagine the races of parties are switched.

He also pointed to a short video for jurors in Washington state that describes unconscious bias and its pitfalls.

“This video cost \$15,000 [to make],” he noted. “It’s an 11-minute video, but I think

it's effective.”

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