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# Race, Cognitive Biases, and the Power of Law Student Teaching Evaluations

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*Decades of research shows that students' professor evaluations are influenced by factors well-beyond how knowledgeable the professor was or how effectively they taught. Among those factors is race. While some students' evaluative judgments of professors of color may be motivated by express racial animus, it is doubtful that such is the dominant narrative. Rather, what likely takes place are systematic deviations from rational judgment, whereby inferences about other people and situations are illogically drawn. In short, students' cognitive biases skew how they evaluate professors of color. In this Article, I explore how cognitive biases among law students influence how they perceive and evaluate law faculty of color. In addition, I contend that a handful of automatic associations and attitudes about faculty of color predict how law students evaluate them. Moreover, senior, especially white, colleagues often resist considering the role of race in law students' evaluations because of their own inability to be mindful of their own cognitive biases. Lastly, given research largely from social and cognitive psychology, I suggest a handful of interventions for law faculty of color to better navigate classroom dynamics.*

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INTRODUCTION

Prior to making key personnel decisions, academic institutions consider student evaluations. Thus, student evaluations influence hiring, promotion, tenure, and termination. For this reason, many have written about the effectiveness, or lack thereof, of student evaluations.<sup>1</sup> Many have conducted studies with the aim of uncovering factors that influence these evaluations (e.g., gender and race).<sup>2</sup> Despite skepticism about the utility of student evaluations, many still argue for their use in faculty promotion and retention. Some argue that students are the only group of people who see teachers' product firsthand. For example, Alan Socha contends that "[s]tudents' evaluations can help describe the learning environment more concisely than other types of measurement."<sup>3</sup> According to Socha, students interact with teachers more than others and their evaluations "are the main source of information about the achievement of educational goals, rapport, degrees of communication, the existence of problems between teachers and students and the ability of the teacher to motivate."<sup>4</sup> Others, like Sue Steiner and colleagues, contend that learning is significant in predicting student evaluation scores: the more students learn, the better the teachers' evaluation.<sup>5</sup> Herbert Marsh and Alan Roche note that student evaluations are correlated with "ratings by former students, students' achievement in multisection validity studies, teachers' self-evaluations, and extensive observations of trained observers on specific processes such as teachers' clarity."<sup>6</sup>

One of the biggest concerns skeptics have about student evaluations is their susceptibility to bias. For example, studies suggest that students evaluate male and female professors differently. Joey Sprague and Kelley Massoni discovered such distinctions in their research where students described their all-time best and worst teacher using up to four adjectives for each.<sup>7</sup> Most commonly, students remembered

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<sup>1</sup> See *infra* notes 3–6 and accompanying text.

<sup>2</sup> See *infra* notes 7–17 and accompanying text.

<sup>3</sup> Alan Socha, *A Hierarchical Approach to Students' Assessments of Instruction*, 38 *ASSESSMENT & EVALUATION HIGHER EDUC.* 94, 95 (2013).

<sup>4</sup> *Id.*

<sup>5</sup> Sue Steiner et al., *Evaluating Teaching: Listening to Students While Acknowledging Bias*, 42 *J. SOC. WORK EDUC.* 355, 365 (2006).

<sup>6</sup> Herbert W. Marsh & Lawrence A. Roche, *Making Students' Evaluations of Teaching Effectiveness Effective: The Critical Issues of Validity, Bias, and Utility*, 52 *AM. PSYCHOLOGIST* 1187, 1190 (1997).

<sup>7</sup> Joey Sprague & Kelley Massoni, *Student Evaluations and Gendered Expectations:*

“their best m[ale] teachers as funny, [and] their best [female] teachers . . . as caring and nurturing.”<sup>8</sup> To Sprague and Massoni, this revealed important gendered expectations: men are held to an entertainment standard, and women are held to a maternal standard. They concluded that these expectations harm women more than men, because satisfying a maternal standard is more time-consuming than satisfying an entertainment standard.<sup>9</sup> In their research, Susan Basow and Julie Martin found that, because women are expected to display more traditionally maternal qualities, they are judged more critically than men when they act harshly or in a demanding manner.<sup>10</sup> Furthermore, Landon Reid’s work found that female professors must display competence and friendliness in order for their students to regard them as confident, while male professors must only display competence.<sup>11</sup>

Not only do male professors accrue benefits vis-à-vis female colleagues, but white professors also fare better vis-à-vis professors of color. A study by Socha found that students consistently rated white teachers higher than minority teachers.<sup>12</sup> In Reid’s examination of RateMyProfessors.com ratings, he revealed that racial minority professors received significantly lower ratings than white professors in areas of “helpfulness,” “clarity,” and “overall quality” of teaching.<sup>13</sup> Reid found that black males were rated the most negatively.<sup>14</sup> In this study, students sometimes perceived racial minorities as good instructors, but rarely perceived them as great.<sup>15</sup> Those who believe that student evaluations are inherently biased against minority professors point to a number of different explanations to make sense of this phenomenon. Susan Basow and Julie Martin contend that, due to heavily rooted prejudices about the intellectual capacities of whites versus non-whites, professors of color must prove their competence in

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*What We Can’t Count Can Hurt Us*, 53 *SEX ROLES* 779, 783 (2005).

<sup>8</sup> *Id.* at 791.

<sup>9</sup> *See id.*

<sup>10</sup> Susan A. Basow & Julie L. Martin, *Bias in Student Evaluations*, in *EFFECTIVE EVALUATION OF TEACHING: A GUIDE FOR FACULTY AND ADMINISTRATORS* 40, 41 (Mary E. Kite ed., 2012).

<sup>11</sup> Landon D. Reid, *The Role of Perceived Race and Gender in the Evaluation of College Teaching on RateMyProfessors.com*, 3 *J. DIVERSITY HIGHER EDUC.* 137, 138 (2010).

<sup>12</sup> Socha, *supra* note 3, at 107.

<sup>13</sup> Reid, *supra* note 11, at 137.

<sup>14</sup> *Id.* at 147.

<sup>15</sup> *Id.* at 146.

a manner that white professors do not.<sup>16</sup> Reid highlights that there are significantly fewer faculty members of color than whites. Consequently, some students tend to have few black or Hispanic professors. As a consequence, they may rely heavily on preconceived notions about the teacher's ethnicity or race.<sup>17</sup>

In this Article, I make four interrelated points. Part I contends that students maintain biases about racial minorities' intelligence and competence — especially that of blacks. In addition, many students often make automatic negative associations with blacks and positive ones with whites. Generally, such stereotypes and associations likely influence law students' evaluations of law faculty. In section I.A, I explore three strains of psychological research that help explain several narrative accounts of law professors of color engaging students.<sup>18</sup> Section I.B explores nine cognitive biases that help explain several narrative accounts of law professors of color engaging students. In Part II, I address why it is important to consider the evaluative judgments of law students with respect to faculty of color. In short, a number of theories from cognitive psychology underscore why senior faculty and white faculty likely give undue weight to student evaluations. As a result, these judgments by colleagues impact the promotion and retention of faculty of color. In the Conclusion, I

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<sup>16</sup> Basow & Martin, *supra* note 10, at 42.

<sup>17</sup> Reid, *supra* note 11, at 146-47.

<sup>18</sup> In their work, Daniel Farber and Suzanna Sherry express their concerns with the validity of narratives, citing four rationales and worries: (1) fictional narrative creates a "spurious aura of empirical authority"; (2) the degree to which the narrative is truthful; (3) the difficulty of actually discerning if truth is being spoken — a methodological issue; and (4) the degree to which the narrative account is representative of any population of people. See Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 *STAN. L. REV.* 807, 830-40 (1993). However, narratives are a powerful means of destroying the assumptions upon which legal and political discourse takes place. According to Richard Delgado:

The stories of outgroups aim to subvert that ingroup reality. In civil rights, for example, many in the majority hold that any inequality between blacks and whites is due either to cultural lag, or inadequate enforcement of currently existing beneficial laws — both of which are easily correctable. For many minority persons, the principal instrument of their subordination is neither of these. Rather, it is the prevailing *mindset* by means of which members of the dominant group justify the world as it is, that is, with whites on top and browns and blacks at the bottom.

Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 *MICH. L. REV.* 2411, 2413 (1989).

Moreover, narrative may be buttressed by social science. See Gregory Scott Parks, Note, *Toward a Critical Race Realism*, 17 *CORNELL J.L. & PUB. POL'Y* 683, 739 (2008).

recommend a few approaches for law professors of color to strengthen their teaching evaluations.

I. RACE AND COGNITIVE INFLUENCES ON LAW STUDENT TEACHING EVALUATIONS

Individuals' articulations of their attitudes and beliefs often fail to comport with what they *actually* feel and believe. Some individuals are aware of the attitudes and beliefs they hold yet falsely articulate them to conform with what they believe is more socially acceptable.<sup>19</sup> In experimental settings, for example, social desirability — or study participants' tendency to reply in a manner they believe the experimenter will view favorably — may be a motivating factor.<sup>20</sup> In social settings, impression management may be a driving force.<sup>21</sup> Not surprisingly, race, a contentious issue, also serves as a catalyst for impression management. Whites seek to be liked and viewed as “moral” more so than racial minorities do.<sup>22</sup> This is no surprise, given that whites tend to believe that racial minorities perceive them as racially prejudiced.<sup>23</sup> While some individuals seek to conceal known attitudes and beliefs from public scrutiny, others may be wholly unaware of their actual attitudes and beliefs. In essence, some people harbor automatic, subconscious attitudes and beliefs.<sup>24</sup>

This occurs to such an extent that psychologists contend that people rely on two, distinct cognitive systems of judgment. System I is rapid, intuitive, subconscious, and error prone; System II is slow, deductive,

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<sup>19</sup> See, e.g., SAM HARRIS, LYING (2013) (discussing how frequently and easily people lie).

<sup>20</sup> See Maryon F. King & Gordon C. Bruner, *Social Desirability Bias: A Neglected Aspect of Validity Testing*, 17 PSYCHOL. & MARKETING 79, 82-83 (2000); see also Douglas P. Crowne & David Marlowe, *A New Scale of Social Desirability Independent of Psychopathology*, 24 J. CONSULTING PSYCHOL. 349, 352-53 (1960).

<sup>21</sup> See Brent Weiss & Robert S. Feldman, *Looking Good and Lying to Do It: Deception as an Impression Management Strategy in Job Interviews*, 36 J. APPLIED SOC. PSYCHOL. 1070, 1077-78 (2006) (discussing the extent of which people lie as impression management in job interviews).

<sup>22</sup> Hilary B. Bergsieker et al., *To Be Liked Versus Respected: Divergent Goals in Interracial Interactions*, 99 J. PERSONALITY & SOC. PSYCHOL. 248, 248 (2010).

<sup>23</sup> See Jacquie D. Vorauer et al., *How Do Individuals Expect to Be Viewed by Members of Lower Status Groups? Content and Implications of Meta-Stereotypes*, 75 J. PERSONALITY & SOC. PSYCHOL. 917, 927, 932 (1998).

<sup>24</sup> See Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCHOL. REV. 4, 5 (1995); see also Anthony G. Greenwald et al., *A Unified Theory of Implicit Attitudes, Stereotypes, Self-Esteem, and Self-Concept*, 109 PSYCHOL. REV. 3, 3 (2002).

deliberative, but more accurate.<sup>25</sup> The two systems may operate simultaneously and yet compute contradictory responses.<sup>26</sup> The intuitive system often dictates choice, while the deductive system lags behind, searching for reasons for a choice that comport with the accessible parts of memory.<sup>27</sup> As a result, individuals may be unaware (1) of the existence of a significant stimulus that influenced a response; (2) of the existence of the response; and (3) that the stimulus affected the response.<sup>28</sup>

Timothy Wilson and Richard Nisbett conducted a series of experiments to determine the impact that this dual system has on decision making.<sup>29</sup> In the first experiment, they subliminally primed participants with a paired-associate word list (e.g., jelly-purple) and then showed them a series of color slides (e.g., a fruit stand). Both tasks were designed to elicit participants' target response word (e.g., grape). Participants were then questioned about why they responded the way they did for each category. Only 2% of participants attributed their responses to the word cues.<sup>30</sup> In the second experiment, participants rated four identical pairs of stockings. Forty percent selected the stocking in the right-most display position, while 31% selected the stocking just to the left of the most selected stocking. In essence, there was a position effect. Out of the fifty-two participants, eighty spontaneous responses were given for why they made their selection, and none mentioned the position of the stocking. When directly asked whether the order of the stockings influenced their decision, only one acquiesced.<sup>31</sup> In the third experiment, participants read a well-written and emotionally impactful book passage. Two sentences from the selection — one where a baby was described

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<sup>25</sup> See Daniel Kahneman & Shane Frederick, *Representativeness Revisited: Attribute Substitution in Intuitive Judgment*, in *HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT* 49, 51-52 (Thomas Gilovich et al. eds., 2002).

<sup>26</sup> Steven A. Sloman, *Two Systems of Reasoning*, in *HEURISTICS AND BIASES*, *supra* note 25, at 379, 384.

<sup>27</sup> See Richard E. Nisbett & Timothy DeCamp Wilson, *Telling More than We Can Know: Verbal Reports on Mental Processes*, 84 *PSYCHOL. REV.* 231, 231-33 (1977) (noting that people's "reports are based on a priori, implicit causal theories, or judgments about the extent to which a particular stimulus is a plausible cause of a given response").

<sup>28</sup> *Id.* at 231.

<sup>29</sup> Timothy De Camp Wilson & Richard E. Nisbett, *The Accuracy of Verbal Reports About the Effects of Stimuli on Evaluations and Behavior*, 41 *SOC. PSYCHOL.* 118, 118 (1978).

<sup>30</sup> *Id.* at 122.

<sup>31</sup> *Id.* at 123-24.

physically, in concrete terms, and another about the messiness of a house — were deleted for some trials but included in others. Wilson and Nisbett assumed that doing so would reduce or have no effect on the emotional impact of the passage. Participants believed that the passage had an emotional impact when, in fact, neither passage actually did.<sup>32</sup> The first two experiments demonstrated a failure to report the influence of an effective stimulus, and the third demonstrated the report of the influence of an ineffective stimulus. In short, Wilson and Nisbett's work suggests that people have limited insight on what influences their behavior.

Research on implicit racial attitudes and bias suggests that people more easily associate positive concepts with whites versus blacks; similarly, they more easily associate negative concepts with blacks than whites. Importantly, these associations are drastically different than people's self-reported racial attitudes.<sup>33</sup> With this data on implicit bias as a touchstone, research indicates that people harbor stereotypes about blacks in office settings as, among other things, unpolished and unintelligent.<sup>34</sup> Not surprisingly, blacks are more likely to receive unfair treatment in intellectual and academic settings.<sup>35</sup> Black

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<sup>32</sup> *Id.* at 125-26.

<sup>33</sup> For example, Latinos demonstrate a fairly limited explicit preference for whites (25.3% favor) over blacks (15.0% favor), with most showing no preference (59.7%). Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 958 (2006). At the implicit level, however, Latinos show a substantial preference for whites (60.5% favor) over blacks (10.2% favor), with far fewer showing preferential neutrality (29.2%). *Id.* Asians and Pacific Islanders, when compared to Latinos, show more of an explicit preference for whites (32.9% favor) over blacks (9.6% favor), with only slightly fewer showing preferential neutrality (57.5%). *Id.* Implicitly, Asians and Pacific Islanders demonstrate a substantial preference for whites (67.5% favor) over blacks (7.7% favor), with far fewer showing preferential neutrality (24.8%). *Id.* Whites show even more of an explicit preference for whites (40.7% favor) than blacks (3.4% favor) when compared to other racial groups, but still more than half (56.0%) show no preference. *Id.* Implicitly, whites show a robust preference for whites (71.5% favor) over blacks (6.8% favor), with only 21.7% showing no preference. *Id.* What may be striking is that while many blacks make implicit positive associations with whiteness, they also do with blackness. Although blacks show an explicit preference for blacks (58.9%) over whites (4.8%), with 36.2% showing no preference, the same cannot be said implicitly. *Id.* At the implicit level, some research shows that blacks have no overall preference — 34.1% favoring blacks, 32.4% favoring whites, and 33.6% showing no preference. *Id.*

<sup>34</sup> See Caryn J. Block, Kerstin Aumann & Amy Chelin, *Assessing Stereotypes of Black and White Managers: A Diagnostic Ratio Approach*, 42 J. APPLIED SOC. PSYCHOL. 128, 128-30 (2012).

<sup>35</sup> See Brenda Major et al., *Coping with Negative Stereotypes About Intellectual Performance: The Role of Psychological Disengagement*, 24 PERSONALITY & SOC. PSYCHOL. BULL. 34, 34-35 (1998) (finding that members of negatively stereotyped groups



professors, for instance, are taken less seriously and viewed as not as competent as their white counterparts.<sup>36</sup> As a consequence, students are less likely to listen to criticism or praise from a black professor.<sup>37</sup> Accordingly, in this section I consider the role race plays in influencing law students' evaluative judgments of law faculty of color. My contention is not that law students, by-and-large, are racist, though many may be. Rather, what this section attempts to highlight is that race likely plays a central role in their evaluative judgments of law faculty whether they know it or not. In the subsections, I focus on three concepts: First, I explore how race intersects with broader dynamics to produce negative student evaluative judgments. Second, I explore how race intersects with other components of a person's identity to impact student evaluations. Third, I explore how the ease with which people associate blacks, and not whites, with non-human primates influences law student evaluations.

### A. *Broad Concepts*

#### 1. *Intersections*

Donna Young recounted that while her first years of teaching were successful and overall enjoyable, there were some instances of discomfort.<sup>38</sup> She noted how the same three to four male students reacted with hostility whenever issues of equity, harassment, and affirmative action were discussed.<sup>39</sup> She suspected that their hostility was due to the fact that she was a woman of color.<sup>40</sup> Similarly, Adrienne Davis recounted how one of her senior colleagues frequently demeaned and humiliated his students, to their delight,<sup>41</sup> but also, ironically, cautioned Davis that he had a conversation with a student

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psychologically disengage their self-esteem).

<sup>36</sup> See Lisa Sinclair & Ziva Kunda, *Reactions to a Black Professional: Motivated Inhibition and Activation of Conflicting Stereotypes*, 77 J. PERSONALITY & SOC. PSYCHOL. 885, 885 (1999) (suggesting that students sometimes subscribe to the stereotype that African American professors are incompetent).

<sup>37</sup> *Id.*

<sup>38</sup> Donna E. Young, *Two Steps Removed: The Paradox of Diversity Discourse for Women of Color in Law Teaching*, 11 BERKELEY WOMEN'S L.J. 270, 276 (1996).

<sup>39</sup> *Id.* at 275.

<sup>40</sup> *Id.* at 276.

<sup>41</sup> Robert S. Chang & Adrienne D. Davis, *Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 6 (2010).

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who described Davis as thinking she was “bulletproof.”<sup>42</sup> In another instance, a student’s father faxed a number of law firms a letter in which he accused Davis of failing a third of the students, and of conducting a Property class with a black militant flavor. In fact, Davis had assigned Carol Rose’s *Crystals and Mud in Property Law* and Charles Reich’s *The New Property*. In response, some of her colleagues said that Davis should have assigned the casebook and used the teaching notes of the senior Property teacher.<sup>43</sup>

Elements of the law school process that students find frustrating may be amplified when the faculty member before them is a person of color. Students may evaluate the style and method of white professors as normative. The same conduct by a professor of color may elicit frustration and hostility. In fact, race occasionally intersects with other dynamics (e.g., law students’ expectations about classroom dynamics or their own facility with course material). For example, a black professor who touches on controversial topics, or who teaches a difficult subject that is unfamiliar to students may receive harsher evaluative judgments than a white professor in the same situation. Young and Davis’ experiences may have reflected the fact that, in stressful situations, things that — and by inference, people who — are considered lower status evoke more frustration than those perceived to be of higher status. For example, consider a professor who teaches a demanding course for which law students have no frame of reference for understanding, like Civil Procedure. There is no television show, movie, or high school class to prepare them for it. Also consider a professor who has to teach touchy subjects, such as race. Students are likely to respond differently to black and white professors who teach these courses or subjects even if students hold constant everything else about those professors.

For example, one line of research demonstrates the intersection between the perceived status of objects and how much they elicit frustration. In one group of experiments, vehicles — a common class marker — were used to explore reactions to people of high and low socioeconomic class. In one study, Anthony Doob and Alan Gross demonstrated that drivers are more likely to honk at an old, rusty car that failed to move promptly through an intersection than at an expensive, new, and well-maintained car in the same scenario.<sup>44</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See Anthony N. Doob & Alan E. Gross, *Status of Frustrator as an Inhibitor of Horn-Honking Responses*, 76 J. SOC. PSYCHOL. 213, 213-16 (1968); cf. Andreas Diekmann et al., *Social Status and Aggression: A Field Study Analyzed by Survival*

Andrew McGarva and Michelle Steiner observed similar driver responses in the reverse; they found that drivers accelerated away from a rusty Ford pickup significantly more quickly than they drove away from a new Nissan Pathfinder SUV after the other driver honked at them.<sup>45</sup> In his work, John Bargh explores the extent to which race intersects with frustrating situations. He asked participants to count whether an even or odd number of circles appeared on a computer screen.<sup>46</sup> After the one hundred thirtieth iteration, the computer was designed to crash, and participants were told to start over while a hidden video camera recorded their reactions. Third-party observers then evaluated those recordings to measure participants' frustration and hostility. For half the participants, a young black male face was flashed, subliminally, before each counting iteration; for the other half, the face was white. As rated by the observers, participants responded with greater hostility to the computer crash when they saw black faces.<sup>47</sup> In essence, a frustrating experience was met with greater hostility when a black, vis-à-vis a white, face was presented.

## 2. Intersectionality

Vincene Verdun, Associate Professor Emeritus of Law at The Ohio State University, Moritz College of Law recounted calling on a group of students after they repeatedly interrupted her class and disregarded her polite admonishments outside of the classroom.<sup>48</sup> On the fourth day of calling on a student, he had an outburst and refused to answer the questions.<sup>49</sup> She initially told the student that he could either leave if he did not want to answer or stay, but that he had to remain silent.<sup>50</sup> The Dean, who had been observing the class, suggested that the student may have had an issue with women in authority.<sup>51</sup> He disagreed, however, when Verdun pointed out that it could be

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*Analysis*, 136 J. SOC. PSYCHOL. 761 (1996) (varying the status of the blocked car rather than the blocking car).

<sup>45</sup> See Andrew R. McGarva & Michelle Steiner, *Provoked Driver Aggression and Status: A Field Study*, 3 TRANSP. RES. PART F 167, 167-77 (2000).

<sup>46</sup> John A. Bargh et al., *Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action*, 71 J. PERSONALITY & SOC. PSYCHOL. 230, 238 (1996) (describing experimental procedure).

<sup>47</sup> *Id.* at 239.

<sup>48</sup> Vincene Verdun, *The Ugly Truth: Was the Outburst Anything but Racism?*, BUS. L. TODAY, May-June 1994, at 18, 20.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 18.

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racism.<sup>52</sup> The Dean dismissed racism as a rationale, because he had talked to a black male professor, who said the student in question did not give him any problems.<sup>53</sup> In her reflection on the situation, Verdin highlighted that a black woman's experience is different both from that of a white woman and that of a black man.<sup>54</sup>

In her qualitative research on the experiences of law faculty of color, Meera Deo recounted the story of Ryan, a black male law professor. Ryan — despite generally positive evaluations — had one student who, as a woman, remarked that Ryan “made her afraid in the classroom.”<sup>55</sup> Ronald Jackson and Rex Crawley's research underscored this sentiment.<sup>56</sup> They conducted a study where undergraduate students journaled about their experience with one African American male professor.<sup>57</sup> Jackson and Crawley indicated that many students admitted never having had a black teacher prior to college.<sup>58</sup> One white female student wrote:

When I first came into this class and saw my teacher, I thought he was going to [be] mean and a hard teacher . . . . I think I felt this way because he was a rather large, Black man. I have this thing where I think Black people want to kick my butt! I know this sounds weird but they intimidate me! I have been around Black people my whole life, so I really don't understand why I feel that way. I have many friends that are Black; it's just the ones I don't know that intimidate me.<sup>59</sup>

Therefore, as a general matter, law school administrations should note that law students may be more amenable to older, white male law professors than younger faculty of color. In law schools, students may view the actions of older, white males much differently than they do younger or female (or male) law professors even when the conduct is the same or similar. And these evaluative judgments are likely to work to the detriment of the intersectional minority.

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<sup>52</sup> *Id.* at 21.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Meera E. Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7, 33 (2015).

<sup>56</sup> See Ronald L. Jackson II & Rex L. Crawley, *White Student Confessions About a Black Male Professor: A Cultural Contracts Theory Approach to Intimate Conversations About Race and Worldview*, 12 J. MEN'S STUD. 25, 25-26 (2003).

<sup>57</sup> *Id.* at 30-32.

<sup>58</sup> *Id.* at 33.

<sup>59</sup> *Id.* at 34.

In these narrative and qualitative accounts, intersectionality appears to be at work. Intersectionality, originally conceptualized by law professor Kimberle Crenshaw,<sup>60</sup> is a way to study “the relationships among multiple dimensions and modalities of social relations and subject formations.”<sup>61</sup> It is, in a nutshell, the intersection of identities, more specifically socially and culturally constructed categories (e.g., age, class, gender, race, and sexual orientation).<sup>62</sup> A classic analysis of intersectionality examines race and sex.<sup>63</sup> Arguably, “[r]acism and sexism are interlocking, mutually-reinforcing components of a system of dominance rooted in patriarchy.”<sup>64</sup>

In one example of this, researchers have found that more mature faces appear more competent than younger faces.<sup>65</sup> While researchers have not tested this effect in the classroom, they have identified significant effects in other contexts. For instance, political candidates with more “competent” or mature faces win more contested congressional elections.<sup>66</sup> In the context of gender, black women and men may be subconsciously ascribed different qualities and characteristics, though both may be harmful. For black women, law students may construe them as “angry” when they are, indeed, not.<sup>67</sup>

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<sup>60</sup> See generally Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1993) (discussing structural, political, and representational intersectionality to consider how the social world is constructed and shapes the experiences of women of color).

<sup>61</sup> Leslie McCall, *The Complexity of Intersectionality*, 30 SIGNS 1771, 1771 (2005).

<sup>62</sup> See Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16, 17-19, 23 (1995).

<sup>63</sup> See Crenshaw, *supra* note 60, at 1243; see also Grillo, *supra* note 62, at 17-18 (noting that women of color stand at the intersection of the categories of race and gender).

<sup>64</sup> Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 371-72 (1991).

<sup>65</sup> See, e.g., Alexander Todorov et al., *Inferences of Competence from Faces Predict Election Outcomes*, 308 SCIENCE 1623, 1625 (2005) (noting older candidates can be judged as more competent and more likely to win in political elections); Leslie A. Zebrowitz et al., *Trait Impressions as Overgeneralized Responses to Adaptively Significant Facial Qualities: Evidence from Connectionist Modeling*, 7 PERSONALITY & SOC. PSYCHOL. REV. 194, 194 (2003) (noting individuals with child-like features are perceived as weak and naïve more often than those with more mature faces).

<sup>66</sup> See Todorov et al., *supra* note 65, at 1624.

<sup>67</sup> See generally Jioni A. Lewis et al., “Ain't I a Woman?": *Perceived Gendered Racial Microaggressions Experienced by Black Women*, 44 COUNSELING PSYCHOLOGIST 758, 768-69 (2016) (finding black, female participants in a study experienced projected stereotypes, including the Angry Black Woman stereotype); Jioni A. Lewis & Helen A. Neville, *Construction and Initial Validation of the Gendered Racial Microaggressions Scale for Black Women*, 62 J. COUNSELING PSYCHOL. 289, 294 (2015) (explaining that

In contrast, students may view black men as physically threatening,<sup>68</sup> despite never having interacted with a black man who exhibited threatening behavior.

The automatic association of blacks with aggression, danger, and threatening behavior is a well-documented one. In a study by Catherine Cottrell and Steven Neuberg, researchers found that while whites display similar overall *negativity* toward blacks, Asian Americans, and Native Americans, they report more fear and anxiety vis-à-vis blacks.<sup>69</sup> While people view blacks, activist feminists, and fundamentalist Christians as generally *threatening*, blacks tend to evoke more feelings of danger.<sup>70</sup> One line of studies further explores the association of blacks with danger and aggression by focusing on individuals' perception of anger and hostility on black, white, and racially ambiguous faces. Overall, these studies have shown that people more quickly perceive anger and hostility on black faces than on white faces, particularly if the observer exhibits a high level of implicit race bias. A second line of studies shows that the association of blacks with danger and hostility also influences how people perceive behaviors and actions by blacks. Observers tend to view actions by blacks as more aggressive than identical actions by individuals of other races.<sup>71</sup>

### 3. Dehumanization and Racial Prototypicality

Jennifer Russell, at the time of her article an Assistant Professor of Law at Case Western Reserve University School of Law, recounts how, after the birth of her son, she returned to her office even though she

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many of the women in the study reported being stereotyped as angry black women); Tia Tyree, *African American Stereotypes in Reality Television*, 22 HOWARD J. COMM. 394, 405 (2011) (finding that six of the ten television shows in the study portrayed the angry black woman stereotype).

<sup>68</sup> See Andrew R. Todd et al., *Does Seeing Faces of Young Black Boys Facilitate the Identification of Threatening Stimuli?*, 27 PSYCHOL. SCI. 384, 384 (2016); John Paul Wilson et al., *Racial Bias in Judgments of Physical Size and Formidability: From Size to Threat*, 113 J. PERSONALITY & SOC. PSYCHOL. 59, 60 (2017).

<sup>69</sup> See Catherine A. Cottrell & Steven L. Neuberg, *Different Emotional Reactions to Different Groups: A Sociofunctional Threat-Based Approach to "Prejudice,"* 88 J. PERSONALITY & SOC. PSYCHOL. 770, 778 (2005).

<sup>70</sup> See *id.* at 778-81.

<sup>71</sup> Birt L. Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 J. PERSONALITY & SOC. PSYCHOL. 590, 595 (1976); see also H. Andrew Sagar & Janet Ward Schofield, *Racial and Behavioral Cues in Black and White Children's Perceptions of Ambiguously Aggressive Acts*, 39 J. PERSONALITY & SOC. PSYCHOL. 590, 592-96 (1980).

was still on maternity leave, because she was so eager to be a colleague, teacher, and legal scholar.<sup>72</sup> She then received a magazine cover with a gorilla on it, placed anonymously in her mail box, causing her heart to race and sink.<sup>73</sup> The magazine remained in her mailbox, and she avoided it. Several days later, her secretary quietly disposed of the magazine.<sup>74</sup> Russell was enraged and hurt by the gorilla message, but decided to take it as an opportunity for character building.<sup>75</sup> She envisioned the law school environment to be a place for meaningful associations.<sup>76</sup> However, from this experience, she had to accept that black women should expect to have a dysfunctional relationship with the law school environment.<sup>77</sup>

As research on the topic demonstrates, dehumanization is the tendency to associate groups, particularly racial groups, with non-human animals.<sup>78</sup> The greater extent to which law students subconsciously associate blacks, for example, with non-humans, the more likely they are to evaluate those professors harshly. Phillip Goff and colleagues investigated the associations that people have between blacks and apes. They found that people identify ape images more easily when subliminally primed with black male faces vis-à-vis white faces or neutral images.<sup>79</sup> Similarly, when subliminally primed with images of apes — as opposed to jumbled line drawings — people more closely attended to black faces than white faces.<sup>80</sup> Even though, for many people, this black-ape association seems subconscious,<sup>81</sup> those who hold this association more strongly are more likely to consider harsher treatment of blacks, compared to whites, more acceptable under the same circumstances.<sup>82</sup>

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<sup>72</sup> Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, the Life of One Blackwoman in the Legal Academy*, 28 HARV. C.R.-C.L. L. REV. 259, 259 (1993).

<sup>73</sup> *Id.* at 260.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 261.

<sup>77</sup> *Id.*

<sup>78</sup> See Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences*, 94 J. PERSONALITY & SOC. PSYCHOL. 292, 292-93 (2008) (noting that dehumanization has been used to justify slavery in the United States, the Jewish Holocaust of World War II, and widespread violence of immigrants around the world).

<sup>79</sup> *Id.* at 296-97.

<sup>80</sup> *Id.* at 297-98.

<sup>81</sup> See *id.* at 300-01, 304.

<sup>82</sup> See *id.* at 301-05 (finding that the black-ape association justified the use of force against black criminal suspects and led to a higher probability of death penalty

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The black-primate association may operate outside of explicit cultural knowledge for many people; however, that makes the association even more pernicious. Law students who make this association with respect to their black law professors may not act upon it, as in Russell's account, but it may still influence their evaluative judgments of their black law professors. This leads students to make harsher evaluative judgments of those professors than of their white counterparts.

### B. Cognitive Biases

Cognitive biases are systematic deviations from rational judgment, whereby inferences about other people and situations may be illogically drawn.<sup>83</sup> As it relates to race, cognitive biases may serve to underscore the stereotype that people of color, particularly blacks, are unintelligent and incompetent. In this section, I explore nine cognitive biases and how they relate to law students' interactions with their professors.

#### 1. Anchoring

In 1971, Derrick Bell became a full professor at Harvard Law School, and later served as Dean of the University of Oregon Law School.<sup>84</sup> In the Spring of 1986, he visited Stanford Law School, where he taught Constitutional Law. During this time, his students criticized his teaching and complained that they were unable to learn the subject from him. Many of Bell's students also began auditing other instructors' Constitutional Law classes. In response, other faculty responded by offering a series of public lectures in basic constitutional law.<sup>85</sup> Another professor of color, Cheryl Harris, recounted how students who were not even in her class would question what she taught in any given class.<sup>86</sup> She indicated that "students have assumed and asserted that neither my intellectual qualifications nor teaching

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sentences for black defendants).

<sup>83</sup> See Martie G. Haselton et al., *The Evolution of Cognitive Bias*, in THE HANDBOOK OF EVOLUTIONARY PSYCHOLOGY 724, 725 (David M. Buss ed., 2005).

<sup>84</sup> Lloyd Cohen, *A Different Black Voice in Legal Scholarship*, 37 N.Y.L. SCH. L. REV. 301, 311 n.40 (1992).

<sup>85</sup> *Id.* (citing Statement of Paul Brest, Dean, Stanford Law Sch., Stanford Univ. Campus Report 15 (Dec. 2, 1987) (on file with author)).

<sup>86</sup> Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI.-KENT L. REV. 331, 342-43 (1992).



abilities could match those of my white male counter parts.”<sup>87</sup> Harris recollected how a black student came to her after a white student said that she was a pretty good teacher but probably not qualified.<sup>88</sup>

Anchoring, a cognitive bias, helps explain these experiences. Anchoring reflects a person’s overreliance on the first piece of information offered (e.g., race) when making decisions. Cognitive psychologists Amos Tversky and Daniel Kahneman were the first researchers to determine that when asked a comparative question, “different starting points [or anchors] yield different estimates, which are biased toward the initial values.”<sup>89</sup> During decision-making tasks, this bias causes individuals to interpret information around the anchor, despite the value being a separate entity. Such judgmental anchoring impacts judgments in general knowledge, probability estimates, legal judgment, pricing decisions, and negotiation.<sup>90</sup> For example, in one study, subjects were asked to estimate the percentage of African countries in the United Nations. Following this question, a wheel was spun and participants were asked whether the value that the wheel landed on was higher or lower than the percentage of African countries in the UN. The wheel landed on different numbers for two groups of participants — ten and sixty-five respectively. Participants in the “10 condition” estimated the percentage of African countries in the UN to be 25%, while those in the “65 condition” estimated the percentage to be closer to 45%. Researchers attributed, and continue to attribute, the discrepancy in the estimates to be a result of anchoring effects. Participants who held the initial value of ten in their mind were biased to lower their final estimate toward this value more than those who were given an initial value of sixty-five.<sup>91</sup>

In the law school context, a student may walk into a class with preconceived notions about what an “authentic” law professor should look like. Similarly, law students may have stereotypes about the intelligence and/or competence of blacks. These anchors may serve as a guiding point of reference, even subconsciously, in the student’s evaluative judgments of law faculty of color. They may more heavily scrutinize those professors’ deviations from how other faculty teach or

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<sup>87</sup> *Id.* at 346.

<sup>88</sup> *Id.*

<sup>89</sup> Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 *SCIENCE* 1124, 1128 (1974) [hereinafter Tversky & Kahneman, *Judgment Under Uncertainty*].

<sup>90</sup> Thomas Mussweiler & Fritz Strack, *The Semantics of Anchoring*, 86 *ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES* 234, 234-35 (2001).

<sup>91</sup> See Tversky & Kahneman, *Judgment Under Uncertainty*, *supra* note 89, at 1128.

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simply not give law faculty of color the benefit of the doubt with regards to competence and facility with the taught material. The results can be detrimental to a professor of color's career when these biases are recorded in professor evaluations.

## 2. Availability Heuristic

In her qualitative research, Meera Deo had one law faculty of color — a black woman teaching at a major southern university — report that many of her law students had never engaged with a black woman who did not work in domestic service. As an aside, but appropriate to the broader dynamics she faced in the law school, this professor noted that although she dresses impeccably, law school visitors often mistake her for a maid and call spills to her attention.<sup>92</sup>

The concept of the availability heuristic reflects a reliance on immediate examples — of, for instance, a group of people — that come to a given person's mind when engaging in judgment and decision-making. Amos Tversky and Daniel Kahneman were the first to critique and further examine the initial conception of the availability heuristic. Their findings suggest that reliance on the availability heuristic in times of uncertainty often leads to several systematic cognitive biases and, therefore, errors in human judgment.<sup>93</sup> One particular example of a cognitive bias mediated by the availability heuristic is an availability cascade. The phenomenon of availability cascades is a “self-reinforcing process of collective belief formation by which an expressed perception triggers a chain reaction that gives the perception increasing plausibility through its rising availability in public discourse.”<sup>94</sup>

As the availability heuristic generates mistaken judgments about the frequency or probability of an occurrence, availability cascades represent the resulting bias triggered by the interaction between the availability heuristic and social mechanisms. Availability cascades often cause endorsed perceptions to appear increasingly reasonable or likely, based on increasing availability of such insights within a larger public.<sup>95</sup> There are a few predictable biases which impact the validity

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<sup>92</sup> Richard Delgado & Derrick Bell, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 360 (1989).

<sup>93</sup> See Amos Tversky & Daniel Kahneman, *Availability: A Heuristic for Judging Frequency and Probability*, 5 COGNITIVE PSYCHOL. 207, 207, 231 (1973).

<sup>94</sup> Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683, 683 (1999).

<sup>95</sup> *Id.* at 685.

of the availability heuristic, including biases due to the retrievability of instances, effectiveness of a search set, and those of imaginability, and illusory correlations.<sup>96</sup>

The cognitive bias resulting from the retrievability of instances is best explained by an experiment in which subjects listened to lists of personality types of both sexes read aloud and were then asked to determine whether the lists contained more names of men or women overall. Certain lists contained relatively more famous male personalities than female personalities, whereas in others the opposite was true. With each list, subjects wrongly judged that the sex that had more famous personalities was also more numerous.<sup>97</sup> These erroneous assumptions made by individuals in this study based on the use of the availability heuristic also further contribute to our understanding of the development of availability cascades.<sup>98</sup>

With this in mind, imagine that a given law student has only encountered people of color in service or entertainment roles. It may be difficult for those students then to shift their thinking to conceptualize blacks as professors and intellectuals. As such, law students may evaluate those professors more harshly or engage with them more negatively than white professors.

### 3. Bandwagon Effect

Early in Okianer Dark's career as a law professor, she reported varying experiences of race and gender in the classroom: students asking another professor to recite her credentials in front of the class, taking opposing views and refusing to concede, or challenging the way a question was phrased instead of answering the question.<sup>99</sup> She also recounted that a student once came by her office and said she was a great teacher but that other students did not believe she socialized with students enough. The student suggested that the author engage in an activity that only one other professor did regularly.<sup>100</sup> On another occasion, a student asked her what a word meant because she had used it during a lecture, and another student added that she had assumed the author had misspoken.<sup>101</sup> From this experience, the

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<sup>96</sup> See Tversky & Kahneman, *Judgment Under Uncertainty*, *supra* note 89, at 1127-28.

<sup>97</sup> *Id.* at 1127.

<sup>98</sup> See *id.* at 1127-28.

<sup>99</sup> Okianer Christian Dark, *Just My 'Magination*, 10 HARV. BLACKLETTER J. 21, 22, 24-25 (1993).

<sup>100</sup> *Id.* at 26.

<sup>101</sup> *Id.* at 27.

author noted that in the eyes of students she was not allowed to make mistakes.<sup>102</sup> Dark's narrative is not a perfect example of the bandwagon effect — an individual's tendency to make decisions based upon the popularity of the choice.<sup>103</sup> Here, as in other situations, the attitudes and beliefs of students can easily be shaped by other students. For example, once negative stereotypes about a law professor of color take root among a growing number of students, it is easy for other students to join the herd and develop the same negative evaluative judgments.

Solomon Asch investigated the role that social conformity plays in an individual's decision-making process.<sup>104</sup> Several of his experiments revolved around a simple task of determining which of three lines were a match in size to a line that was separated from the other three. First, participants were asked to examine these lines alone, and then identify which of the lines was a match in size to a new line shown. There were very few errors for the participants in this condition — less than 1% of total attempts.<sup>105</sup> The second part of the experiment involved placing individual participants in a room of confederates, who were there to match the lines incorrectly. In this second part, there were errors in 36.8% of total attempts.<sup>106</sup> Additionally, 75% of all participants made an error during the second task.<sup>107</sup> The increase from less than 1% to more than 36% error in the two groups led Asch to conclude that the participants were conforming to the choices of the confederates.<sup>108</sup> This was one of the first psychology experiments to show one of the factors of the bandwagon effect. Here, Asch concluded that a normative social influence was occurring, as the participants did not want to create conflict or be shamed for going against the group.<sup>109</sup>

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<sup>102</sup> *Id.*

<sup>103</sup> See H. Leibenstein, *Bandwagon, Snob, and Veblen Effects in the Theory of Consumers' Demand*, 64 Q.J. ECON. 183, 184 (1950).

<sup>104</sup> See Solomon E. Asch, *Studies of Independence and Conformity: I. A Minority of One Against a Unanimous Majority*, 70 PSYCHOL. MONOGRAPHS, no. 9, 1956, at 1, 2 (describing how people cooperate with or resist the ways in which group actions become psychological forces).

<sup>105</sup> See *id.* at 3.

<sup>106</sup> *Id.* at 10.

<sup>107</sup> See *id.* at 9.

<sup>108</sup> See *id.* at 9-10.

<sup>109</sup> See *id.* at 70. The work of Albert Mehrabian, as well as Ivo Bischoff and Henrik Egbert, underscores how people follow the herd in such contexts as voting. See Albert Mehrabian, *Effects of Poll Reports on Voter Preferences*, 28 J. APPLIED SOC. PSYCHOL. 2119, 2128 (1998); see also Ivo Bischoff & Henrik Egbert, *Social Information and*

In the law school context, once a critical mass of students in a given class turns on a professor, their gravitational pull may augment the evaluative judgments of the remainder of their classmates. Where race is involved, this could work to the significant detriment of the professor of color.

#### 4. Confirmation Bias and Congruence Bias

Trina Grillo recounted how, as a law student, she had a black woman law professor whom students criticized; they waited for her to make a mistake and then organized a petition against her. Both the mistake and the denial of tenure served to confirm the students' bias that the professor was inadequate and not qualified for the job.

Confirmation bias is the tendency to selectively search for information confirming prior beliefs or hypotheses.<sup>110</sup> Consider research on confirmation bias in the medical field (i.e., medical professionals confirming a preliminary diagnosis without seeking out contradictory evidence to rule out wrong diagnoses).<sup>111</sup> Specifically, some psychiatrists and medical students show signs of confirmation bias in their search for additional information, and that confirmation bias leads to poorer diagnostic accuracy.<sup>112</sup> Of the psychiatrists in one study, 13% searched for information in a confirmatory manner, and this increased to 25% for medical students.<sup>113</sup> Participants who exhibited confirmation bias were significantly less likely to make the correct medical diagnosis when compared with participants who searched for information in a dis-confirmatory or balanced way.<sup>114</sup> Similarly, congruence bias is likely to occur when people oversimplify the given problem, do not extensively search for competing evidence, or only consider a single hypothesis.<sup>115</sup> Because individuals more frequently encounter truth than falsity, human beings have become

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*Bandwagon Behavior in Voting: An Economic Experiment*, 34 J. ECON. PSYCHOL. 270, 278 (2013).

<sup>110</sup> R. Mendel et al., *Confirmation Bias: Why Psychiatrists Stick to Wrong Preliminary Diagnoses*, 41 PSYCHOL. MED. 2651, 2651 (2011); see SCOTT PLOUS, *THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING* 233-34 (1993).

<sup>111</sup> Mendel et al., *supra* note 110, at 2655-56.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 2654.

<sup>114</sup> *Id.* at 2655.

<sup>115</sup> See Jonathan Baron et al., *Heuristics and Biases in Diagnostic Reasoning*, 42 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 88, 108-09 (1988) (concluding that congruence heuristics may involve a failure to carry out different "checks" on an initial decision to ask a question).

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biased to expect truth when encountering a certain set of conditions. Therefore, individuals have difficulty evaluating negated relationships and are more likely to prefer or choose the positive form of the relationship, thereby exhibiting some form of congruence bias in their responses.<sup>116</sup>

In the law school context, students may not simply passively experience perceived deficiencies in law professors of color. In the classroom, law students' biases and stereotypes about the competence and intelligence of professors of color may lead them to look for defects in those professors. For example, law students may actively look for a misspelling in a PowerPoint slide, mispronunciation of a word, misstatement of a case name, and the like as signs of deficiency in professors of color. Once they find what they have set out to, it will likely influence their evaluative judgments of said professors.

##### 5. Conservatism Bias

In his analysis of the experiences of black law professors, Robert Chang noted:

If we personalize this notion to what you're going through, then the student microaggressions you experience form the principal foundation that verifies your inferiority as a Black woman for these White male students. It doesn't matter that you are brilliant and articulate beyond belief. They still see you as ebonically inarticulate. It doesn't matter that you have tenure, that you have a chair at the University of North Carolina, that the University of Alabama is trying to woo you to join their faculty with a university chair with access to a lot of resources. It doesn't seem to matter to them that you are flown around the country to give lectures for BarBri. All they see is a Black woman standing in front of them, and they need to not have their worldviews disrupted, need to make sure that you know your place.<sup>117</sup>

This experience may be explained through the theory of conservatism bias, which has the ability to place a professor of color at a continual disadvantage in student opinions, despite the students' ongoing positive interactions with the professor.

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<sup>116</sup> See P. C. Wason, *Reasoning About a Rule*, 20 Q.J. EXPERIMENTAL PSYCHOL. 273, 273-74 (1968).

<sup>117</sup> Chang & Davis, *supra* note 41, at 13.

Conservatism bias is the tendency to revise one's belief insufficiently when presented with new evidence.<sup>118</sup> For example, Carlos Alós-Ferrer and Sabine Hügelschäfer's work measured the extent to which intuitiveness factors into decision-making. Specifically, they tested whether intuitive decision-making runs in contrast with proper implementation of Bayes' Rule.<sup>119</sup> Bayes' Rule asserts that "[w]hen confronted with uncertain outcomes, a rational decision maker will make use of all available information to update prior beliefs."<sup>120</sup> For example, if a doctor were attempting to determine the likelihood of the presence of cancerous cells in a person, information such as age, diet, or habits would be influential in the ultimate judgment. However, there are instances when individuals deviate from such decision-making approaches and rely on what "feels right" or make decisions based on a gut feeling,<sup>121</sup> thereby failing to use all available information and in turn failing to implement Bayes' Rule. Alós-Ferrer and Hügelschäfer found that people not only frequently fail to consistently use Bayes' Rule when analyzing new information, but they also sacrifice standards favored by Bayes' Rule for those of conservatism (in this context meaning the over-reliance on or favoring of prior information over newly discovered facts).

Law students, after some weeks or months during the semester and with greater engagement with a law professor of color, may view law professors of color in a more positive light than they had initially. However, that shift in view may not be as dramatic as one might hope. The professor's credentials may be impeccable and/or their teaching beyond reproach, but the student may not be able to adequately weigh the new information. Rather, falling back on heuristics or any range of other biases, law students' judgments about law professors of color may shift far less than is warranted by new, positive information. This places the law professor of color at a constant disadvantage to white law professors when the primary method of comparison is student evaluations.

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<sup>118</sup> See Ward Edwards, *Conservatism in Human Information Processing*, in *JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES* 359, 359 (Daniel Kahneman et al. eds., 1982) (finding that it takes "two to five observations to do one observation's worth of work" to induce a person to change her opinion).

<sup>119</sup> See Carlos Alós-Ferrer & Sabine Hügelschäfer, *Faith in Intuition and Behavioral Biases*, 84 *J. ECON. BEHAV. & ORG.* 182, 182 (2012).

<sup>120</sup> *Id.*

<sup>121</sup> See *id.* at 183 (discussing experiments that relate a general measure of intuitive behavior to specific behavioral biases associated with failure to implement Bayes' rule).

## 6. Illusory Correlation and Illusory Truth Effect

Reginald Robinson noted in his account that because of his race, students felt that they could justifiably doubt his abilities.<sup>122</sup> He wrote that he taught his classes by being authentic and challenging the preconceived notions his students brought into the classroom about appropriate pedagogy. However, his students were hostile towards such an approach.<sup>123</sup> Because of preconceived biases, law students may correlate race with intelligence, and in turn may enter the classroom with the assumption that a law professor of color is automatically less intelligent and therefore less qualified than that professor's white colleagues.

The illusory correlation occurs when an individual believes there to be a correlation between two objects that are not in fact correlated, less strongly correlated than reported, or correlated in the opposite direction as reported.<sup>124</sup> David Hamilton and Robert Gifford investigated the role of illusory correlation in determining the frequency of behavior.<sup>125</sup> The researchers recruited participants to examine the effect of paired distinctiveness as a potential basis of stereotypes in decision-making. Participants observed two groups of people: group A and group B. Approximately two-thirds of the observations were of people in group A. The ratio of desirable to undesirable behaviors exhibited by the groups was equal, the only difference being that more actions were observed from group A.<sup>126</sup> This ratio was also weighted so that the groups performed desirable behaviors two-thirds of the time and undesirable behaviors one-third of the time.<sup>127</sup> After observing the behaviors, the participants were asked to determine how many of the behaviors described members of group A or group B. Next, researchers asked how many of those statements had described undesirable behavior. The dependent variable in this case was the attribution of undesirable behavior to an

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<sup>122</sup> Reginald Leamon Robinson, *Teaching from the Margins: Race as a Pedagogical Sub-Text: A Critical Essay*, 19 W. NEW ENG. L. REV. 151, 157-58 (1997).

<sup>123</sup> See *id.* at 159-60.

<sup>124</sup> Loren J. Chapman, *Illusory Correlation in Observational Report*, 6 J. VERBAL LEARNING & VERBAL BEHAV. 151, 151 (1967).

<sup>125</sup> See David L. Hamilton & Robert K. Gifford, *Illusory Correlation in Interpersonal Perception: A Cognitive Basis of Stereotypic Judgments*, 12 J. EXPERIMENTAL SOC. PSYCHOL. 392, 392-407 (1976).

<sup>126</sup> See *id.* at 394-95.

<sup>127</sup> See *id.* at 394 (“[F]or both Groups A and B, there was a 9:4 ratio of desirable to undesirable behaviors.”).



individual group.<sup>128</sup> The results of the study showed that participants attributed significantly more undesirable behavior to group B than group A, even though the ratios of desirable to undesirable behavior were the same for each group.<sup>129</sup> These findings show that, in forming stereotypes, individuals can find an illusory correlation between negative behaviors and a minority group.

David Hamilton and Robert Gifford also performed the same experiment but in the reverse. Specifically, they switched the ratio of desirable and undesirable behaviors. The second experiment conducted by the authors tested whether or not the co-occurrence of distinctive events would produce a positive stereotype of a group by making desirable behaviors less frequent than undesirable behaviors in the stimulus sequence.<sup>130</sup> Based on the findings from the second experiment, there is support for the idea that subjects developed an “illusory correlation between behavior desirability and group membership,” seen via the over-attribution of desirable behaviors to the minority group.<sup>131</sup> This study shows that the results found in the first experiment are not due to exposure effects (i.e., the positive evaluation of minority/smaller groups is not necessarily linked with group size).<sup>132</sup>

The illusory truth effect is the tendency to believe information to be correct after repeated exposure. In essence, information repeated over time gives the illusion of truth.<sup>133</sup> As seen in multiple psychological studies dating back to 1977, participants consistently judge repeated statements as relatively true compared to unfamiliar statements.<sup>134</sup> This effect has been obtained for statements that are *judged as true*, regardless of the actual veracity or repetition of the statements.<sup>135</sup> When people are faced with a trivia statement, they tend to use heuristic cues in order to judge the truthfulness of the statement.<sup>136</sup>

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<sup>128</sup> See *id.* at 396.

<sup>129</sup> *Id.* at 399.

<sup>130</sup> *Id.* at 400-01.

<sup>131</sup> *Id.* at 404.

<sup>132</sup> *Id.*

<sup>133</sup> See Frederick T. Bacon, *Credibility of Repeated Statements: Memory for Trivia*, 5 J. EXPERIMENTAL PSYCHOL. 241, 251 (1979) (finding that statements judged to be repeated were perceived as true, regardless of whether they were actually repeated, actually true, or even contradictory).

<sup>134</sup> See, e.g., *id.* at 241 (discussing the first of such studies, which found that repeated statements were rated true more frequently than new statements, and received higher truth ratings upon subsequent exposure).

<sup>135</sup> *Id.* at 241, 251.

<sup>136</sup> See Alice Dechêne et al., *The Truth About the Truth: A Meta-Analytic Review of*

Examples of these heuristics include traits of the source of the statement, characteristics of the context in which it was presented, and attributes of the statement itself.<sup>137</sup> The “truth effect” states that the major heuristic cue that people use is the familiarity of the statement. That is, if a statement is repeatedly presented, it is more likely to be believed, due to the familiarity that is misattributed to truth.<sup>138</sup> Ian Begg suggests that rated truth is influenced by both source recollection and statement familiarity, but the two are independent of one another.<sup>139</sup>

As a combined result of these effects, law students may engage professors of color with the presupposition that said professors are less knowledgeable or competent than their white counterparts. In addition, law students pass along all types of narratives about faculty — of color and white — to other students. Subconscious racial biases may taint these narratives, skewing the accuracy of the perception itself. For example, a student may experience or remember a class more negatively when taught by a professor of color versus a white professor. Even though their evaluative judgments may be marginally or significantly inaccurate, it may be received as truth by new students in a professor of color’s class, thereby unfairly tainting their opinion of the professor from day one. It is these inaccurate judgments, received as true, that may also result in harsh evaluative judgments by students new to that faculty member’s class.

#### 7. Negativity Effect

In his analysis of the experiences of black law professors, Robert Chang noted:

It would be nice if shoes and fancy clothes would insulate us from this, because that would be an easy way to make up our bodies. And I suppose our exchange of letters would stop here with this simple prescription to junior scholars of color: WEAR FANCY CLOTHES! But it’s not that easy. I remember a

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*the Truth Effect*, 14 PERSONALITY & SOC. PSYCHOL. REV. 238, 239 (2010) (citing a finding that repeated statements are believed more than new statements in the context of trivia).

<sup>137</sup> *Id.* at 238.

<sup>138</sup> See Alice Dechêne et al., *Mix Me a List: Context Moderates the Truth Effect and the Mere-Exposure Effect*, 45 J. EXPERIMENTAL SOC. PSYCHOL. 1117, 1117 (2009).

<sup>139</sup> Ian Maynard Begg et al., *Disassociation of Processes in Belief: Source Recollection, Statement Familiarity, and the Illusion of Truth*, 121 J. EXPERIMENTAL PSYCHOL. 446, 455 (1992).

story told by our friend John Calmore [black]. He was speaking on a roundtable at the Association of American Law Schools Annual Meeting. After Duncan Kennedy [white] spoke, John got up and said that he aspired someday to dress like Duncan, who was attired in tattered dark jeans, faded red flannel shirt, and ratty leather jacket. John was beautifully dressed in a suit with an impeccably knotted silk tie . . . . It's difficult enough teaching Contracts or Property or Trusts and Estates, but what happens when you are operating from a "base" such as ours? When you enter the classroom and step up to the podium, what kind of cognitive dissonance is created? What's that cafeteria worker doing up there?!<sup>140</sup>

Chang's analysis reveals the unfortunate reality of many law professors of color: while the white professor is judged based on the positive associations students hold with white professionals, the law professor of color is working against every negative experience or assumption that the students have experienced with persons of color leading up to this point, regardless of the number of positive experiences those students have had with persons of color.

The negativity effect is when there are things of equal intensity, and those that are more negative in nature have a greater effect on one's psychological state and processes than do neutral or positive things.<sup>141</sup> Illustrated by research on perception and integration, the negativity effect is people's tendency, when evaluating the causes of the behaviors of a disliked person, to attribute their positive behaviors to the environment and their negative behaviors to their inherent nature.<sup>142</sup> To test this theory, Carolien Martijn and colleagues presented subjects with different behavioral instances and asked them to make a trait-inference.<sup>143</sup> Each of the four behaviors was combined with two trait categories. Subjects were asked: for a person who is

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<sup>140</sup> Chang & Davis, *supra* note 41, at 13-14.

<sup>141</sup> See generally Roy F. Baumeister et al., *Bad Is Stronger than Good*, 5 REV. GEN. PSYCHOL. 323 (2001) (illustrating that bad events have more psychological impact than good ones when equal measures of bad and good are present); Paul Rozin & Edward B. Royzman, *Negativity Bias, Negativity Dominance, and Contagion*, 5 PERSONALITY & SOC. PSYCHOL. REV. 296, 298 (2001) (believing that there is a general bias to give greater weight to negative entities than positive entities when their objective magnitude is the same).

<sup>142</sup> See Carolien Martijn et al., *Negativity and Positivity Effects in Person Perception and Inference: Ability Versus Morality*, 22 EUR. J. SOC. PSYCHOL. 453, 462 (1992) (finding that inferences of ability tend to form positive biases, whereas inferences of morality tend to form negative biases).

<sup>143</sup> *Id.* at 455.

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*extremely moral* (i.e., behavior), how likely is it that this person is *moral/immoral* (i.e., trait category)? The behavior example listed under *extremely moral* was “canceling a holiday to look after a sick friend.” Ratings were made on a seven-point probability scale, ranging from *extremely unlikely* (1) to *extremely likely* (7).<sup>144</sup> A second experiment focused on positive and negative information, and found that negative information is more influential in the formation of an evaluative personality judgment than positive information. Furthermore, if different traits are integrated into one general impression, and one of the traits reflects immorality or inability, then the negativity effect will be observed.<sup>145</sup> A stronger negativity effect occurs when negative morality traits are combined with positive ability traits. Thus, as initially demonstrated by Guido Peeters and Janusz Czapinski, information related to morality is highly influential in evaluating others.<sup>146</sup> Research on cognitive biases indicates that negative information is more influential on behaviors and cognitions than equivalent positive information.<sup>147</sup>

No professor is flawless in the classroom; each presents with a bundle of strengths and weaknesses, triumphs and mistakes. Law students experience these dynamics in class. However, students' judgments about professors of color may be influenced more by their negative experiences than their positive experiences. For instance, consider a professor who has a typographical error in a PowerPoint slide. For a white professor, students may remember the dozens or hundreds of other times the professor presented slides without errors, focusing on the positive. In contrast, for a professor of color, the single mistake may leave more of a lasting impression on them than the myriad error-free slides. What results is student evaluations that contain more references to positive experiences in the white professor's class and more references to negative experiences in the law professor of color's class.

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<sup>144</sup> *Id.* at 456.

<sup>145</sup> *Id.* at 462.

<sup>146</sup> See Guido Peeters & Janusz Czapinski, *Positive-Negative Asymmetry in Evaluations: The Distinction Between Affective and Informational Negativity Effects*, in *EUROPEAN REVIEW OF SOCIAL PSYCHOLOGY* 33, 41-42 (1990).

<sup>147</sup> Kelly Goldsmith & Ravi Dhar, *Negativity Bias and Task Motivation: Testing the Effectiveness of Positively Versus Negatively Framed Incentives*, 19 *J. EXPERIMENTAL PSYCHOL.* 358, 358 (2013).

## 8. Selective Perception

In her narrative, Pamela Smith noted that black women law professors are perceived as unqualified because of affirmative action and are additionally perceived as incompetent, unintelligent, and lacking in authority.<sup>148</sup> According to her assessment, after receiving their midterm grades, a group of white students went to the Dean of Students, and the administration did not tell Smith about those meetings.<sup>149</sup> In her analysis, she thought this hostility was related to students' anger over a black woman — her — exercising power and authority over them through grading.<sup>150</sup> Further, because of the presumption of incompetence, students expected to have an easier time in a black professor's class and were angered by mediocre exam scores.<sup>151</sup> When Smith's credentials and the difficulty of her exam defied these preconceived beliefs, the students changed the narrative to better conform with their preexisting biases.<sup>152</sup>

Selective perception requires attending to relevant information while ignoring irrelevant information, allowing a person to manage the allocation of his or her limited processing capacities to what is most significant for goals and behaviors.<sup>153</sup> However, an individual's ability to do so may be compromised. Many factors can influence selective perception.<sup>154</sup> A study by Jon Maner and Saul Miller demonstrates evidence for selective perception in the context of out-group men.<sup>155</sup> The authors suggest that perceptual vigilance may be a useful evolutionary tool developed from a long history of intergroup conflict, and that self-protective motives promote cognitive vigilance toward out-group men.<sup>156</sup> Maner and Miller hypothesized that perceptions of interpersonal danger would be associated with heightened attention to male out-group members during a computerized task, and that

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<sup>148</sup> See Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority*, 6 WM. & MARY J. WOMEN & L. 53, 138 (1999).

<sup>149</sup> *Id.* at 177.

<sup>150</sup> *Id.* at 167-68.

<sup>151</sup> *Id.* at 169.

<sup>152</sup> *Id.* at 175-76.

<sup>153</sup> Maria J. S. Guerreiro et al., *Age-Equivalent Top-Down Modulation During Cross-Modal Selective Attention*, 26 J. COGNITIVE NEUROSCIENCE 2827, 2827 (2014).

<sup>154</sup> *Id.*

<sup>155</sup> See generally Jon K. Maner & Saul L. Miller, *Adaptive Attentional Attunement: Perceptions of Danger and Attention to Outgroup Men*, 31 SOC. COGNITION 733 (2013) (assessing attentional biases to find that people who perceived the outgroup as dangerous had their attention captured selectively by images of outgroup males).

<sup>156</sup> *Id.* at 733.

attention would not be heightened for in-group stimuli.<sup>157</sup> Results from the study confirmed that participants thought the out-group was more dangerous than the in-group. The out-group was also perceived as more boring, rude, and stupid.<sup>158</sup> There was a significant interaction effect between target group membership and participant danger ratings for male targets.<sup>159</sup> Participants with lower perceptions of out-group danger had a marginally significant tendency to attend more to in-group males than out-group males.<sup>160</sup> The more dangerous participants thought the out-group was, the more powerfully out-group men initially captured and held participants' attention.<sup>161</sup> This pattern observed for perceptions of out-group danger did not generalize to other traits ascribed to the out-group.<sup>162</sup> This study suggests that selective perception is promoted and can occur when people feel threatened by out-group males.<sup>163</sup>

One way black women law professors can establish credibility is to provide additional information about their qualifications before students are too firmly set in their belief of incompetences.<sup>164</sup> They can establish credibility by highlighting their achievements in traditional law school credentials, like law review membership and moot court participation.<sup>165</sup> However, a law professor of color's adeptness in the classroom, credentials, or facility with the course material may undermine the racialized stereotypes that law students carry with them at the start of every semester. As a consequence, the juxtaposition of having black professors who excelled at elite universities, and the stereotypes often associated with blackness may be difficult for some law students to digest. Accordingly, some law students may subconsciously fail to notice, and more quickly forget, positive attributes of black faculty. In turn, their evaluative judgments of black faculty may skew more heavily in the negative direction.

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<sup>157</sup> *Id.* at 737.

<sup>158</sup> *Id.* at 739.

<sup>159</sup> *Id.* at 740.

<sup>160</sup> *Id.*

<sup>161</sup> *See id.*

<sup>162</sup> *See id.* at 740-41 (finding no significant interaction between target gender, target group membership, and outgroup ratings when perceptions of danger were replaced with perceptions of how "boring, rude, and stupid" the outgroup was perceived to be).

<sup>163</sup> *Id.* at 741.

<sup>164</sup> Smith, *supra* note 148, at 139-40.

<sup>165</sup> *See id.*

9. Moral Credentialing

Ronald Jackson and Rex Crawley recounted the journal entry of a white male student:

I do not consider myself racist. In fact, I have many Black friends and have even dated a Black woman; however, I must admit that I was shocked when I walked into my Skills IV course and saw a young Black man standing in front of the class. I thought, "Oh my God."<sup>166</sup>

White students who enter into the classroom carrying the belief that they are racially egalitarian may in turn discriminate against law professors of color, and may even feel justified in doing so because of their identity as someone who does not see one race as above or greater than another. Moral credentialing may help explain such conduct.

Moral credentialing is demonstrated where an individual takes moral or altruistic action before engaging in immoral behavior to avoid experiencing negative emotions and to personally justify the immoral behavior.<sup>167</sup> At its core, this theory holds that individuals build and rely upon morally sound "track records" to guiltlessly engage in immoral behavior in the future.<sup>168</sup> The desire to maintain an egalitarian self-image supposedly fuels this phenomenon.<sup>169</sup> In their research, Benoît Monin and Dale Miller discovered that those who chose a black job applicant in the first part of an experiment were more willing to select a white applicant in the second segment, despite the instruction to diversify.<sup>170</sup> The authors concluded that "a decision that favors one minority member (even if it is totally deserved) is sufficient to liberate people to act on a[] [prejudicial] attitude" in subsequent interactions.<sup>171</sup> In the voting context, Daniel Effron and

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<sup>166</sup> Jackson & Crawley, *supra* note 56, at 33-34 (studying white student responses to their black male professor's presence and pedagogy in the classroom).

<sup>167</sup> See Anna C. Merritt et al., *Moral Self-Licensing: When Being Good Frees Us to Be Bad*, 4 SOC. & PERSONALITY PSYCHOL. COMPASS 344, 344 (2010).

<sup>168</sup> See *id.*

<sup>169</sup> See Donald G. Dutton & Vicki Lea Lennox, *Effect of Prior "Token" Compliance on Subsequent Interracial Behavior*, 29 J. PERSONALITY & SOC. PSYCHOL. 65, 65-66 (1974) (finding that some white subjects who complied with a black person's short-term request felt less inclined to comply with a long-term request in the future because they had already proven their egalitarian self-image).

<sup>170</sup> Benoît Monin & Dale T. Miller, *Moral Credentials and the Expression of Prejudice*, 81 J. PERSONALITY & SOC. PSYCHOL. 33, 37 (2001).

<sup>171</sup> *Id.*

colleagues found that those who had chosen to support Barack Obama over John McCain in the 2008 presidential election subsequently were more inclined to hire a white candidate over a black candidate to fill a police officer job.<sup>172</sup>

Law students who see themselves as racial egalitarians, nevertheless, can and will, racially discriminate in their evaluative judgments of law faculty. Ironically, they may see these evaluative judgments as particularly rational and non-biased given their prior, racially egalitarian thinking and conduct.

## II. COLLEAGUE IMPRESSIONS

The most damaging element of racially-biased law student teaching evaluations is the influence they have on white and senior colleagues. These individuals have considerable influence over guiding the teaching of faculty of color and stifling that faculty's scholarship in the name of shoring-up teaching. They also maintain their own evaluative judgments of law faculty of color vis-à-vis promotion and tenure.

Reginald Robinson noted in his account that his students complained to the Dean and a senior colleague about his pedagogical style, demanding to only be taught the rules.<sup>173</sup> He suspected such opposition stemmed from the fact that law schools have teaching models to which they want professors to conform.<sup>174</sup> Both students and colleagues implied they could not respect Robinson as an intellectual because he taught outside of the expected teaching model.<sup>175</sup> A senior tenured professor purposefully undermined his teaching method and made jokes about it with other students.<sup>176</sup> Even when asked to stop, the professor continued making jokes and even undermined the author when his rehiring was being discussed.<sup>177</sup> Because of student evaluations, Robinson met with members on the personnel subcommittee who seemed determined to change his teaching method.<sup>178</sup> He felt as though his colleagues were adversaries.<sup>179</sup> He felt unsupported, threatened, and disrespected in

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<sup>172</sup> Daniel A. Effron et al., *Endorsing Obama Licenses Favoring Whites*, 45 J. EXPERIMENTAL SOC. PSYCHOL. 590, 590-91 (2009).

<sup>173</sup> Robinson, *supra* note 122, at 159-60.

<sup>174</sup> *See id.* at 165.

<sup>175</sup> *Id.* at 169.

<sup>176</sup> *Id.* at 173.

<sup>177</sup> *Id.* at 174.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*



this meeting.<sup>180</sup> The racial dynamics of the classroom were acknowledged but never discussed.<sup>181</sup> The next fall, his colleagues questioned his status as a black intellectual because his students again complained about being taught legal philosophy and discussing the cultural aspects of property law.<sup>182</sup> The members of the personnel committee visited his class many times, without announcement, without learning about his teaching philosophy, without determining what he intended to cover in the class, and without obtaining the materials prior to class.<sup>183</sup> As a follow-up, Robinson met with his new subcommittee members, who accused him of making a mistake while teaching.<sup>184</sup> When it became clear that he had not in fact made a mistake, the members accused him of teaching over the heads of his students.<sup>185</sup> His colleagues implicitly told him that they did not see him as an intellectual who could challenge legal doctrine.<sup>186</sup> After the meeting, Robinson was concerned and later had a private conversation with a member of the committee, who conveyed a feeling that Robinson had turned a corner on his teaching. Then the member asked the author to stop writing and to teach like everyone else.<sup>187</sup>

In recounting his experiences with colleagues, David Chang noted how homophobia was given more credence than racism:

During my consideration for tenure, there were comments made by some of my colleagues about the operation of race in the classroom and how it might have impacted my student evaluations. These comments were largely ignored. But when it was reported that students had been overheard saying homophobic remarks about me, this apparently caused an audible gasp from the people at the meeting, a reaction that I believe stemmed from the fact that I was perceived by my colleagues as not gay. Misdirected homophobia operated to delegitimize, for some of my senior colleagues, the negative student evaluations. That I might have also been the target of (properly) directed racism was largely ignored.<sup>188</sup>

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<sup>180</sup> *Id.* at 175.

<sup>181</sup> *Id.* at 176.

<sup>182</sup> *Id.* at 177.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 178.

<sup>185</sup> *Id.* at 178-79.

<sup>186</sup> *Id.* at 179.

<sup>187</sup> *Id.* at 180.

<sup>188</sup> Chang & Davis, *supra* note 41, at 16.

Chang, in a letter to his co-author Adrienne Davis, highlighted the stifling effect that race-biased teaching evaluations can play on other elements of a pre-tenured professor's file:

[I]n my case, in my penultimate review before my tenure year, I was discouraged by my tenure review committee from pursuing a book project, an anthology on reparations that Richard Delgado encouraged me to do. My committee was not concerned that I wasn't spending enough time on my teaching; rather, they were concerned about how it would appear to my colleagues if I were to be working on another book instead of focusing on my teaching. More directly, negative student evaluations can lead to the conclusion by your tenure and promotions committee or your senior colleagues that you are an ineffective teacher who does not meet your school's standards with regard to teaching excellence.<sup>189</sup>

In this Part, I explore why it may be so easy for white and senior law faculty to legitimize students' teaching evaluations even where there is the specter of racial bias. I argue that they are emotionally motivated to believe that their own marginal to stellar student evaluations are based on their hard-work and intelligence, rather than — to some extent — their race. In short, they believe that merit got them their teaching evaluations. As such, white and senior law faculty are subconsciously prone to cherry-picking data, facts, and information that fit this narrative.

#### A. *Bias Blind-Spot*

One challenge law professors face is that, like anyone else, they are influenced by any number of cognitive biases.<sup>190</sup> However, they may fail to see that they harbor such biases. The bias blind-spot is people's tendency to report thinking that biases are more prevalent in people other than themselves.<sup>191</sup> As such, it would not be surprising if these cognitive biases influenced law faculty colleagues in evaluating junior faculty. However, white and senior law faculty may fail to see, along

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<sup>189</sup> *Id.* at 35.

<sup>190</sup> Researchers have demonstrated that even JD-trained individuals harbor cognitive biases. See Theodore Eisenberg & Sheri Lynn Johnson, *Implicit Racial Attitudes of Death Penalty Lawyers*, 53 DEPAUL L. REV. 1539, 1553-54 (2004); Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1197 (2009).

<sup>191</sup> Richard F. West et al., *Cognitive Sophistication Does Not Attenuate the Bias Blind Spot*, 103 J. PERSONALITY & SOC. PSYCHOL. 506, 506 (2012).

with how they influence their promotion and tenure evaluative decisions.

Richard West and colleagues' research found that overreliance on introspective evidence nurtures the bias blind-spot in that people hold the false belief that introspection can detect biasing processes.<sup>192</sup> In Study 1, they assessed whether participants displayed a bias blind-spot with respect to the classic cognitive biases: outcome bias, base-rate neglect, framing bias, conjunction fallacy, anchoring bias, and my-side bias. This study aimed to see whether those who claimed to be unaffected by biases were actually more unbiased in their performance, as compared to their peers. For each of the biases, participants rated the other students as more likely to be biased than themselves. The bias blind-spot was largest for outcome bias.<sup>193</sup> Participants also thought that some biases were more likely both for themselves and others. West and colleagues found that more cognitively sophisticated individuals displayed larger bias blind-spots. This study showed that metacognitive biases extended to biases in the cognitive domain. Moreover, people who were aware of their own biases were not better able to overcome them.<sup>194</sup>

Study 2 explored whether the findings could be generalized to a broader population by replicating the findings from Study 1 with a more heterogeneous sample.<sup>195</sup> The results of Study 2 indicate that for each of the six potential biases, participants rated the average person as more likely to commit the bias than themselves.<sup>196</sup> West and colleagues were also concerned with whether or not more cognitively sophisticated individuals were less likely to display classic cognitive biases. They found cognitive bias effects for both outcome bias and conjunction problem tasks. Further, they concluded that there was very little evidence to suggest that cognitive ability was related to judgmental bias.<sup>197</sup> Study 2's results indicate a bias blind spot in the cognitive domain, but there was no relationship found between cognitive ability and metacognitive bias or between people's awareness of their biases and their ability to overcome them.<sup>198</sup>

Emily Pronin and colleagues' studies show, as has previous research, that individuals can see the existence and procedure of cognitive and

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<sup>192</sup> *Id.* at 507.

<sup>193</sup> *Id.* at 510.

<sup>194</sup> *Id.* at 513.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 514.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

motivational biases more so in others than themselves.<sup>199</sup> In Study 1, Pronin and colleagues asked participants via three surveys to indicate how much they displayed eight specific biases: self-serving attributions for success versus failure, dissonance reduction after free choice, positive halo effect, biased assimilation of new information, reactive devaluation of proposals from one's negotiation counterparts, perceptions of hostile media bias toward one's group or cause, fundamental attribution error "in blaming the victim," and judgments about the "greater good" influenced by personal self-interest.<sup>200</sup> Overall, participants reported themselves as less susceptible to these biases than the average American. Interestingly, in Survey 1 they also rated their parent as less susceptible to each bias than the average American.<sup>201</sup> Survey 2 asked participants to rate their susceptibility to specific biases relative to their fellow students in a seminar course, thus creating a comparison target which was relevant to the participants.<sup>202</sup> Participants still reported themselves as less biased. However, the participants did not rate themselves as less prone to the personal limitations — procrastination, public speaking, and planning fallacy. In fact, they reported themselves as somewhat more prone; however, this was not significant.<sup>203</sup> Survey 3 explored the role of social desirability and cognitive ability in producing the bias blind-spot.<sup>204</sup> The results generally replicated those of the previous two surveys. Participants claimed to be less biased than members of the relevant comparison group, but not regarding procrastination, public speaking, and planning fallacy.<sup>205</sup> Participants viewed themselves as less susceptible to the eight biases which the raters judged to be low in cognitive ability, but equally susceptible to the eight biases which the raters deemed high in availability.<sup>206</sup> Similarly, participants viewed themselves as less susceptible to biases deemed low in social desirability but equally susceptible to those of high social desirability.<sup>207</sup> Study 2 sought to examine the relation of the findings from Study 1 to the better-than-average effect. Participants first made

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<sup>199</sup> Emily Pronin et al., *The Bias Blind Spot: Perceptions of Bias in Self Versus Others*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 369, 369 (2002).

<sup>200</sup> *Id.* at 370.

<sup>201</sup> *Id.* at 371.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* at 373.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 373-74.

<sup>207</sup> *Id.* at 374.

self-assessments that were expected to produce this effect and then viewed an explicit description of it, after which researchers measured their denial of guilt.<sup>208</sup> Participants claimed to have more of the positive characteristics than the negative characteristics. Moreover, 87% of the participants gave a mean rating that reflected a claim of being better than average compared to their peers.<sup>209</sup> Only 24% indicated their responses as having been biased and due to the better than average effect. Even immediate experience with the bias and familiarity with its definition were not sufficient to induce claims to bias susceptibility.<sup>210</sup>

Thus, while white and senior colleagues may be able to observe cognitive biases in others, they often fail to see it in themselves. Rather than acknowledge their own personal biases and therefore failings, they may find it easier to deny any racial bias in their law students, instead accepting the negative evaluations as based purely on the professor of color's teaching abilities.

### B. *Motivated Reasoning*

It should not be surprising that white and senior law faculty do not appreciate that law students may have biased judgments and evaluations toward faculty of color. As noted above, they cannot see their own biases — systematic deviations from rational judgment, whereby inferences about other people and situations may be illogically drawn.<sup>211</sup> Arguably, they are emotionally motivated to believe that law student evaluations are fair. If they believe otherwise — that racial bias influenced law student teaching evaluations — they would also have to believe that their own evaluations are inflated because of race. As such, their emotional need to believe that law student evaluations are fair leads to subconscious cherry-picking of information.

Motivated reasoning is when decision-makers prefer a particular outcome with regard to an evaluative task. Such a preference leads them to arrive at that desired conclusion by inadvertently engaging in biased processes for “accessing, constructing, and evaluating beliefs.”<sup>212</sup> Sir Francis Bacon recognized it as far back as the 1600s when he wrote:

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<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 375.

<sup>210</sup> *Id.*

<sup>211</sup> See Haselton et al., *supra* note 83, at 725.

<sup>212</sup> Ziva Kunda, *The Case for Motivated Reasoning*, 108 PSYCHOL. BULL. 480, 480

The human understanding when it has once adopted an opinion . . . draws all things else to support and agree with it. And though there be a greater number and weight of instances to be found on the other side, yet these it either neglects and despises, or else by some distinction sets aside and rejects; in order that by this great and pernicious pre-determination the authority of its former conclusions may remain inviolate.<sup>213</sup>

In short, social cognition research indicates the ways in which “hot” or “emotional” concepts have motivational influence over cognition.<sup>214</sup> Challenges to one’s preexisting beliefs trigger negative affect, which in turn results in an increased intensity of cognitive processing.<sup>215</sup> This more intense processing may result in a search for new evidence that is more fitting with one’s already-held beliefs. When that new information affirms the already-held belief, the urgency dissipates, and the decision-making process ends.<sup>216</sup>

Ziva Kunda found that people may conduct either a selective, internal search through their memory or an external search of available information to find existing facts, beliefs, or rules that support the outcome they prefer. Alternatively, people may “creatively combine accessed knowledge to construct new beliefs that could logically support the desired conclusion.”<sup>217</sup> In this process, preference-inconsistent information is evaluated in a more critical manner than information that is consistent with the decision maker’s preferred outcome.<sup>218</sup> People may even search for desired features during the visual perception process, or their visual systems might

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(1990).

<sup>213</sup> Francis Bacon, *Aphorisms Concerning the Interpretation of Nature and the Kingdom of Man*, in *THE PHILOSOPHICAL WORKS OF FRANCIS BACON* 259, 265 (John M. Robertson ed., 1905); see also Charles G. Lord et al., *Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence*, 37 *J. PERSONALITY & SOC. PSYCHOL.* 2098, 2098 (1979).

<sup>214</sup> See Shelley E. Taylor & Curtis D. Hardin, *Motivated Cognition: Phenomena in Search of Theory*, 10 *PSYCHOL. INQUIRY* 75, 75-76 (1999).

<sup>215</sup> Leonard S. Newman, *Motivated Cognition and Self-Deception*, 10 *PSYCHOL. INQUIRY* 59, 60 (1999).

<sup>216</sup> *Id.*

<sup>217</sup> Kunda, *supra* note 212, at 483.

<sup>218</sup> Peter H. Ditto & David F. Lopez, *Motivated Skepticism: Use of Differential Decision Criteria for Preferred and Nonpreferred Conclusions*, 63 *J. PERSONALITY & SOC. PSYCHOL.* 568, 568 (1992); Shailendra Pratap Jain & Durairaj Maheswaran, *Motivated Reasoning: A Depth-of-Processing Perspective*, 26 *J. CONSUMER RES.* 358, 364-65 (2000).

“lower the threshold” required for a perceptual determination to be consistent with their desired result.<sup>219</sup>

Motivated reasoning is self-deceptive,<sup>220</sup> and it lies outside of conscious awareness. As Kunda noted:

[P]eople do not realize that the process is biased by their goals, that they are accessing only a subset of their relevant knowledge, that they would probably access different beliefs and rules in the presence of different directional goals, and that they might even be capable of justifying opposite conclusions on different occasions.<sup>221</sup>

Accordingly, this phenomenon is not a deliberate form of outcome-driven decision-making. In many ways, any number of cognitive biases — some already described, above — are implicated in motivated reasoning. For example, an individual may be fixated on certain information due, in part, to anchoring, availability heuristic, confirmation bias, congruence bias, illusory correlation, and/or selective perception. They may also reject new and more accurate information due to the conservatism bias, as discussed above.

Thus, while white colleagues may be aware that racial bias exists, and may even be willing to admit that students suffer from it, these studies suggest that when confronted with their own biases, they will be less willing to acknowledge that they too suffer and benefit from racial bias. Thus, when forced to question whether their colleagues’ negative evaluations are the result of students’ racial bias — in turn forcing them to question whether their positive evaluations are merely the result of a preference for white professors — they are likely to balk at the suggestion. Their response will often be to offer other, and potentially more damaging explanations, for why law professors of color were rated so poorly.

#### CONCLUSION: USING PSYCHOLOGY TO ADDRESS THE PROBLEM

Navigating legal academia can be a difficult road for professors of color. One of the chief obstacles is securing solid teaching evaluations.

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<sup>219</sup> Emily Balcetis & David Dunning, *See What You Want to See: Motivational Influences on Visual Perception*, 91 J. PERSONALITY & SOC. PSYCHOL. 612, 614 (2006). As Balcetis and Dunning note, “[P]eople literally are prone to see what they want to see.” *Id.* at 613.

<sup>220</sup> Emily Balcetis, *Where the Motivation Resides and Self-Deception Hides: How Motivated Cognition Accomplishes Self-Deception*, 2 SOC. & PERSONALITY PSYCHOL. COMPASS 361, 361 (2008).

<sup>221</sup> Kunda, *supra* note 212, at 483.

While not the only metric used to determine — among other things — promotion and tenure, student evaluations alone may give the impression that a professor of color has not mastered the course material or that he or she does not care about teaching. Student evaluations may give the impression that professors of color are incompetent, unintelligent, or lazy. Navigating poor, and potentially biased, student evaluations may also impact professors of color in other ways. It may cause them to scale back research and/or service to invest more time in teaching, which may undermine their broader promotion and tenure goals. Ultimately, the feedback, insights, and mentoring of senior and white faculty may be of little utility if their pedagogical approach is received well by students not simply because of methodology but because of race.

As such, I offer a few tips, rooted in the psychological literature, that may prove helpful to law professors of color in augmenting and enhancing their teaching evaluations: Prime students with watermarks of white faces in PowerPoint slides to reduce their level of frustration in class.<sup>222</sup> Prime students with the first names of positively regarded blacks (e.g., Martin) and negative whites (e.g., Adolf) in hypotheticals to reduce levels of implicit race bias.<sup>223</sup> Dress the part; law professors should wear the lawyer's uniform to maintain a look of professionalism.<sup>224</sup> Conform to the teaching styles of the majority of senior, white faculty even if the methods are out of step with research on effective teaching and learning.<sup>225</sup> Students will tend to perceive what older, white males on your faculty do in the classroom as the benchmark. Only be an outlier with respect to your colleagues' teaching methods if research supports the method and you convey

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<sup>222</sup> See generally Bargh et al., *supra* note 46, at 239 (finding that subjects primed with African American faces behaved more hostilely than subjects primed with Caucasian faces).

<sup>223</sup> See generally Nilanjana Dasgupta & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice with Images of Admired and Disliked Individuals*, 81 J. PERSONALITY & SOC. PSYCHOL. 800, 806 (2001) (finding that when subjects were presented with famous African Americans and infamous European Americans, their implicit racial bias decreased).

<sup>224</sup> Cf. Nancy M. Albert et al., *Impact of Nurses' Uniforms on Patient and Family Perceptions of Nurse Professionalism*, 21 APPLIED NURSING RES. 181 (2008) (explaining that nurses who wear the more traditional, white uniform are more likely to be perceived as professional).

<sup>225</sup> See generally Antoine Roblain et al., *Why Do Majority Members Prefer Immigrants Who Adopt the Host Culture? The Role of Perceived Identification with the Host Nation*, 55 INT'L J. INTERCULTURAL REL. 44, 52 (2016) (showing that subjects received immigrants more warmly when it appeared as though the immigrants had adopted the host culture).



that to your students.<sup>226</sup> Use a white teaching assistant, ideally one who performed exceedingly well in the class. People tend to trust individuals of the same race.<sup>227</sup> Assuming past teaching evaluations have been positive, share them with new students to anchor them in a positive direction in their own teaching evaluations.<sup>228</sup> While it is in the students' best interest to do so, do not give metrics throughout the semester of their performance (e.g., mid-terms and quizzes) as these elevate student frustration with faculty.<sup>229</sup> Teach more interesting, less difficult, and more familiar subjects, as this may minimize the level of frustration students feel in class.<sup>230</sup> Outside of class, be friendly and ask students questions, as people like others who ask them questions.<sup>231</sup> These are not the totality of strategies that professors of color could or should use. However, they are a running start and rooted in empirical research.

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<sup>226</sup> See generally Robert H. Ashton, *Effects of Justification and a Mechanical Aid on Judgment Performance*, 52 *ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES* 292 (1992) (finding that subjects will judge something more accurately when given a justification for it).

<sup>227</sup> See Ken J. Rotenberg & Carrie Cerda, *Racially Based Trust Expectancies of Native American and Caucasian Children*, 134 *J. SOC. PSYCHOL.* 621, 628-29 (1994); see also Sandy Jeanquart-Barone, *Trust Differences Between Supervisors and Subordinates: Examining the Role of Race and Gender*, 29 *SEX ROLES* 1, 9 (1993).

<sup>228</sup> See generally *supra* text accompanying notes 55–59.

<sup>229</sup> Cf. Tracy Vaillancourt, *Students Aggress Against Professors in Reaction to Receiving Poor Grades: An Effect Moderated by Student Narcissism and Self-Esteem*, 39 *AGGRESSIVE BEHAV.* 71, 80 (2013) (showing that students will punish professors for low grades by giving them low teaching evaluation scores). See generally *supra* text accompanying notes 148–52.

<sup>230</sup> See generally *supra* Section I.A.1.

<sup>231</sup> Karen Huang et al., *It Doesn't Hurt to Ask: Question-Asking Increases Liking*, 113 *J. PERSONALITY & SOC. PSYCHOL.* 430, 444 (2017).