Are Ideal Litigators White? Measuring the Myth of Colorblindness

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This study examined whether explicit and implicit biases in favor of Whites and against Asian Americans would alter evaluation of a litigator's deposition. We found evidence of both explicit bias as measured by self-reports, and implicit bias as measured by two Implicit Association Tests. In particular, explicit stereotypes that the ideal litigator was White predicted worse evaluation of the Asian American litigator (out group derogation); by contrast, implicit stereotypes predicted preferential evaluation of the White litigator (in group favoritism). In sum, participants were not colorblind, at least implicitly, toward even a "model minority," and these biases produced racial discrimination. This study provides further evidence of the predictive and ecological validity of the Implicit Association Test in a legal domain.

I. INTRODUCTION

"Racial discrimination." Today, few terms generate greater anxiety, concern, resentment, and passion in U.S. society. Being a victim of race discrimination is to feel debased, dehumanized, and righteously resentful. Conversely, to be accused of racial discrimination is to be tarred with a great sin, sometimes with legal consequences. But such moral and emotional intensity does not shed much light on what "racial discrimination" actually is. There is conceptual complexity, as is evidenced by the recent 5–4 Supreme Court decision *Ricci v. DeStefano* (129 S. Ct. 2658 (2009)).[1] Even if we define racial discrimination narrowly[2]—to cover only *disparate treatment* of a specific individual *because of* that individual's

[1] *See* Ricci v. DeStefano, 129 S. Ct. 2658 (2009) (holding that discarding a firefighter promotion exam because it might violate Title VII was itself a violation of Title VII).

[2] In this article, we focus on a narrow disparate treatment definition of race discrimination. The "perceiver" racially discriminates against the "target" if the perceiver treats the target worse because that target was classified as a member

race—there remains substantial empirical complexity about what "because of" actually means.[3]

The empirical complexity arises, in part, from the operation of implicit social cognitions (ISCs). Roughly, a *cognition* is a thought or feeling. A *social* cognition is a thought or feeling about a person or a social group, such as a racial group. An *implicit* social cognition is a social cognition that pops into mind quickly and automatically without conscious volition. In addition, we typically are unaware of (or mistaken about) both the source of that cognition and its influence on our judgment and behavior (Greenwald & Banaji 1995). Indeed, it may be a thought or feeling that we would reject as inaccurate or inappropriate upon self-reflection.

In the past decade, scientists working across the boundaries of neuroscience, cognitive psychology, social psychology, and behavioral economics have demonstrated the existence of implicit social cognitions generally, including ISCs about racial groups (for a review, see Lane et al. 2007). These ISCs turn out not to be randomly oriented; instead, they are biased in predictable directions in favor of groups higher in the social hierarchy. More recently, scientists have been documenting evidence of "predictive validity"—namely, that ISCs predict decisions, choices, and behavior in realistic settings. Such findings convert esoteric mind science into a real-world problem.

If ISCs based on race predict worse treatment in the real world, then we have identified a new stream of "race discrimination" even when defined narrowly.[4] Of course, it is less offensive than the kind of racism embraced by racial supremacists. However, the fact that Bull Connor and his dogs are so much worse does not mean that race discrimination caused by ISCs is necessarily de minimis. If nothing else, we should be more skeptical about easy assurances that today's racial disparities are caused only by objective differences in "merit" across racial groups.

To respond thoughtfully to the problem of racial discrimination, we need less opinion and more data. In particular, we need more behavioral realism about how and when ISCs about race predict behavior (Kang & Banaji 2006; California Law Review 2006). As our contribution, we study the link between ISCs and behavior within the legal domain regarding an understudied minority group. Specifically, we ask: When individuals imagine the ideal litigator, does a White man (as compared to an Asian American man) come to mind? More important, do such implicit stereotypes influence evaluation of the litigator?

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of a particular racial group. Counterfactually, if the target had been classified into at least one other racial group—typically, although not necessarily, White—that target would not have been treated worse.

[3]Title VII of the Civil Rights Act of 1964 states that it is an "unlawful employment practice for an employer . . . to discriminate against any individual . . . because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (2006). Courts have interpreted this statute to prohibit both disparate treatment and disparate impact. *See* Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971) ("Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation.") (explaining "disparate impact" theory).

[4]We hasten to add that not all forms of race discrimination as defined in this article are legally actionable. Our principal contribution is empirical, not legal-theoretical.

Section II provides a brief introduction to implicit social cognitions, and how they might be measured through reaction time instruments such as the Implicit Association Test (IAT). In addition, we describe Alice Eagly's role congruity theory, which explains how the perceived "lack of fit" between professional roles and social groups can undermine professional success, and extend her theory to race discrimination. Section III describes our study and reports our results. Spoiler alert: we found that both explicit and implicit stereotypes of ideal litigators as more White than Asian predicted more favorable evaluations of the White litigator over the Asian American one. Section IV briefly explores policy implications of these findings and responds to various objections.

II. Psychological Theory

A. *Implicit Social Cognitions*

By now, it is well known that our brains process information through schemas—templates of knowledge that help us organize specific examples into broader categories. For example, when we see something with a seat, back, and legs, we recognize it as a "chair." Without expending valuable mental resources, we simply sit down. We have schemas not only for objects such as chairs, but also procedures such as ordering food at a restaurant or boarding an airplane. Unless something goes wrong, we use these schemas without conscious direction, self-awareness, or intention. In this way, most cognitions are implicit (for descriptions in law reviews, see Kang 2005).

Schemas apply not only to objects and behaviors, but also to human beings. Through simple categorical thinking, we map people into available social groups, such as those demarcated by age, gender, and race. This, in turn, automatically activates the thoughts and feelings associated with those social groups. Some of these cognitions are *stereotypes*, which are traits that we associate with a group. For instance, once we map an individual to the group Asian American, we might associate the traits "quiet," "foreign," or "mathematical" to that person. These cognitions also include *attitudes*, which psychologists distinguish from stereotypes. Attitudes are not traits; instead, they are global evaluative feelings that are positive or negative. The term "implicit bias" includes both implicit stereotypes and implicit attitudes.

Let us return to our narrow definition of "racial discrimination." We are trying to spot those cases in which an individual is treated worse *because of* race. If we have particular stereotypes or a negative attitude about a racial group, decades of research suggest that these social cognitions will influence our evaluation and behavior toward individuals who are categorized into that group. Accordingly, in order to predict whether we will act in a discriminatory manner, we need to discover what our racial stereotypes and attitudes really are.

The easiest and most obvious method is simply to ask people what they think. However, we immediately run into the "opacity problem" (Kang 2005:1506). First, sometimes folks may not be "willing" to tell us what they think given widely celebrated norms of colorblindness. Few people want to come off sounding like a racist. Second, and sometimes more important depending on the context, folks may simply be "unable" to tell us what they think at the implicit level. Indeed, implicit cognitions are by definition those that take place

without our awareness or conscious direction, analogous to a computer's operating system running invisibly in the background (implicit thoughts) while other applications are running in the foreground (explicit thoughts). The scientific response to this opacity problem has been to go beyond merely asking and to start measuring without asking.

Among the various techniques, the best studied and most widely accepted instruments use some form of response latencies. These instruments rely on the fact that any two concepts that are closely associated in our minds are easier to group together. For example, as Americans, because we have a more positive attitude toward the United States than, say, Russia, we should be able to group more quickly positive words with the "United States" than with "Russia." The well-known Implicit Association Test (IAT) is based on this approach (Greenwald et al. 1998).

As performed on a computer, a typical race attitude IAT requires participants to group together categories of pictures and words. For example, in the Black-White race attitude test, participants sort pictures of European American faces and African American faces, "Good" words and "Bad" words into two "piles" using two computer keys. Most people respond more quickly when the European American face and Good words are assigned to the same key (and African American face and Bad words are assigned to the other key), as compared to when the European American face and Bad words are assigned to the same key (and African American face and Good words are assigned to the other key). This average time differential, scaled to appropriate units, is deemed to be the measure of implicit bias.

Data from across the globe using the IAT show that implicit bias (as measured by this time latency) is pervasive, large in magnitude, and nonrandom in direction. Project Implicit, which has collected the largest data set of IAT results, reports implicit attitudinal preferences for White over Black, light skin over dark skin, White children over Black children, young over old, straight over gay, and so on. It also reports implicit stereotypes that associate men with work (women with family), men with math (women with humanities), Whites with America (Asians with foreign), and so on. The data are clear and overwhelming (Greenwald et al. 2003; Nosek et al. 2007). However, some have voiced concerns about the proper interpretation of implicit bias scores (Arkes & Tetlock 2004; for a rebuttal, see Banaji et al. 2004; Blanton & Jaccard 2006; Greenwald et al. 2006), while others have also suggested improvements for the IAT (e.g., Olson & Fazio 2003, 2004).[5]

But these measures—essentially scores from playing a computer sorting game—could mean little if they do not predict real-world action. This raises the question of "predictive validity"—that is: Do implicit biases predict people's actions? There is increasing evidence that implicit biases, as measured by the IAT, do predict behavior in the real world. Two recent papers summarize the findings. John Jost and colleagues catalog a list of 10 predictive validity studies that managers should not ignore (Jost et al. 2009). Working with a higher order of magnitude, Greenwald and colleagues ran a meta-analysis of 122 research reports, encompassing 14,900 participants, that found statistically significant correlations between implicit bias scores and people's behaviors and choices. In the sensitive domains of prejudice and stereotyping (including race, ethnicity, gender, and sexual orientation), implicit bias scores

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[5]For criticisms in law reviews, see Banks and Ford (2009) and Mitchell and Tetlock (2006).

better predicted behavior than explicit self-reports (Greenwald et al. 2009; for non-meta-analytic reviews, see Dasgupta 2004, 2008).

Our experiment falls squarely in this predictive validity literature. As just one more study, it does not influence the meta-analytic results (although it is consistent with those findings), but we believe it makes important new contributions. First, our study focuses on the legal domain, which is important but has been relatively understudied in the predictive validity of implicit bias literature (Rachlinski et al. 2009). Second, this study uses a more realistic procedure, which helps us generalize experimental findings obtained in laboratory settings to more real-world environments (Dasgupta & Hunsinger 2008). For starters, we use a pool of jury-eligible adults drawn from the local community as participants instead of college students earning credit for psychology classes. Finally, it looks at Asian Americans, a group that is understudied in the race literature and typically viewed as a "model minority." Some readers may believe that Asians could not possibly be victims of racial discrimination since they are seen as inoffensive, hardworking, overachieving, and law-abiding. If so, we are intentionally asking harder questions about the existence of bias directed at this group and its link to behavioral discrimination.

B. Role Congruity Theory

If you do not already know this riddle, try to solve it.

> A father and his son are out driving. They are involved in an accident. The father is killed, and the son is in critical condition. The son is rushed to the hospital and prepared for the operation. The doctor comes in, sees the patient, and exclaims, "I can't operate, it's my son!" (Chen and Hanson 2004; Sherman & Gorkin 1980)

Who is the surgeon?

The answer is not a stepfather, adoptive father, genetic father, godfather, or gay marriage father. The answer is *mother*. Kudos if this was obvious to you; for most it is not.

This riddle lies at the heart of another relevant psychological literature—Alice Eagly's role congruity theory, which examines the relationship between gender stereotypes and stereotypes of successful professionals in leadership roles (e.g., the role of a surgeon) (Eagly & Karau 2002). Eagly and her colleagues argue that discrimination against a woman in a high-status professional role can arise from the degree to which people perceive a "good fit" between the characteristics assumed to describe women in general and the requirements of specific social roles (e.g., surgeon vs. mother). As applied to the riddle above, characteristics of women are perceived as not at all fitting the role of "surgeon" but beautifully fitting the role of "mother." As such, "surgeon" and "mother" are seen as roles that cannot be occupied by the same person.

Gender stereotypes suppose that women and men possess different psychological qualities that can be classified as communal versus agentic. Women are thought to be more nurturing, kind, affectionate, and interpersonally sensitive (communal), while men are thought to be more assertive, ambitious, independent, and dominant (agentic) (Eagly 1987; Diekman & Eagly 2000; Williams & Best 1990). A comparison between gender stereotypes and stereotypes of ideal professional leaders—who are expected to be assertive, ambitious, independent, competitive, and confident—makes clear that expectations of

ideal leaders overlap greatly with masculine stereotypes but not with feminine ones (Dasgupta & Asgari 2004; Heilman et al. 1989; Schein 2001; for reviews, see Eagly & Karau 2002; Eagly and Carli 2007). Many empirical studies have found that the disjuncture between gender role stereotypes about women and leader stereotypes elicits substantially worse evaluations of women's potential for leadership compared to that of men's, and more discrimination against existing leaders who are women than against those who are men (for a review, see Eagly & Karau 2002).

Drawing on Eagly's theory, which focuses on gender, we make two extensions. First, we apply the same logic to race. Second, we switch from a discussion of leaders generally to litigators specifically.

Several studies have found that people share consensual expectations of the ideal successful lawyer's personality. For example, when asked to describe the behavior of a lawyer, students spontaneously generated actions that were assertive, argumentative, verbal, and competitive (Kunda et al. 1997). Similar descriptions were generated by members of the legal community, as illustrated by Elizabeth Gorman's archival study in which she analyzed the content of job advertisements posted by large law firms throughout the United States (2005). She found that 87 percent of the advertisements described their ideal applicant as someone who was ambitious, assertive, direct, decisive, independent, self-confident, and as having leadership and business skills. Moreover, other studies have found that litigators whose courtroom behavior was aggressive were significantly more effective and successful in having their clients acquitted compared to others whose behavior was relatively less aggressive (Hahn & Clayton 1996; Sigal et al. 1985). Taken together, these studies suggest that people both inside and outside the legal profession expect ideal lawyers to be assertive, dominant, and argumentative.

Note that stereotypes of lawyers and litigators are not only strongly gendered, which has been the subject of previous studies (e.g., Gorman 2005; Hahn & Clayton 1996; Sigal et al. 1985), but also strongly *racialized*, which to date has not received empirical attention. Specifically, the traits and behaviors used to describe ideal litigators, such as ambitious, assertive, competitive, dominant, and argumentative, typically bring to mind White professionals, especially White male professionals.

Moreover, such attributes differ starkly from stereotypes of Asian Americans (Fiske et al. 2002; Ho & Jackson 2001; Lin et al. 2005). Common stereotypes of Asian Americans as the "model minority" describe members of this group as strongly oriented toward mathematical and technical academic achievement (Shih et al. 1999; Taylor & Lee 1994; Maddux et al. 2008), but these stereotypes do not include characteristics associated with the ideal litigator—ambition, assertiveness, competitiveness, dominance, argumentativeness, eloquence, and extraversion.

In fact, Asian Americans are typically thought to possess interpersonal qualities that are antithetical to the ideal litigator. Whereas the ideal litigator is aggressive and assertive, Asian Americans are perceived to be quiet and deferential; whereas the ideal litigator is competitive and dominant, Asian Americans are seen as cooperative and oriented toward interpersonal harmony, not dominance; whereas the ideal litigator is argumentative and verbally eloquent, Asian Americans are perceived as having difficulty with English (Fiske et al. 2002; Ho & Jackson 2001; Lin et al. 2005; Kang 1993). In general, Asian Americans are stereotyped

as being deficient in interpersonal and social skills deemed essential for success as litigators.

We propose that the psychological lack of fit, or incongruity, between stereotypes of ideal litigators and stereotypes of Asian Americans is likely to elicit discrimination against Asian American litigators and relative preference for White litigators. Specifically, the more people envision the ideal litigator as White rather than Asian, the less likely they are to evaluate any given Asian American litigator as competent and likeable compared to his or her White counterpart, and the more reluctant they will be to hire any specific Asian American litigator or recommend his or her services.

C. Core Hypotheses

By combining the insights of implicit social cognition and role congruity theory, we can predict that the psychological "mismatch" between people's stereotypes of ideal litigators and their stereotypes of Asian Americans will operate both explicitly and implicitly. People may have *explicit* stereotypes that the ideal litigator is White not Asian. In other words, they may be conscious of these beliefs, be able to articulate them, and even endorse them.

In addition, folks may have *implicit* stereotypes that they are not fully aware of and cannot articulate. In fact, they may reject that stereotype and sincerely believe that race is irrelevant to good lawyering. These implicit stereotypes need not stem from animus; rather, they are likely to be learned over time through passive exposure in society and culture to nearly all White litigators (Kang 2005). Either way, we propose that explicit *and* implicit stereotypes—both of which accentuate the lack of fit between "litigator" and "Asian American"—should produce a net racial discrimination against Asian American lawyers and favoritism toward White litigators.

III. The Experiment

A. Method

1. Participants

A sample of 68 adults (50 females, 18 males) from the Los Angeles community volunteered to participate in this study. These adults had volunteered for the UCLA School of Law Witness Program, which recruits nonstudent adults in the community to act as mock witnesses or mock juries in trials conducted by law students. Participants' age ranged from approximately 18 to 85. The sample included 62 White Americans (91 percent), two African Americans (3 percent), and four Hispanic Americans (6 percent).[6]

2. Independent Variable Measures

a. Implicit Measures
i. Stereotypes linking ideal litigators to Whiteness. We created a new Implicit Association Test (IAT) to measure the degree to which White versus Asian Americans are associated with

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[6]Three participants who appeared to be Asian Americans (on the basis of physical appearance and name) were excluded from the sample. Their inclusion changes none of the findings.

traits that embody the ideal litigator. As described above, the IAT is a rapid computerized task in which participants' speed of response in categorizing pictures of racial groups and traits describing ideal litigators is taken to be an indirect measure of how quickly and easily a racial group "pops into mind" when people think of a successful litigator. One characteristic of the IAT is that it measures the *relative* speed with which people associate race with one profession (litigator) compared to another profession. In our study, we chose scientist as the comparison profession because it has a comparable status, similar valence,[7] is not overwhelmingly associated with Asians,[8] and traits commonly associated with the two professions differ substantially.

Five Asian faces and five White faces, of comparable age and attractiveness,[9] were used to represent the two racial groups. Recognizing that the racial category "Asian American" is a social and political construction that encompasses heterogeneous subgroups, we selected East Asian faces, which observers would likely group together as Chinese, Japanese, or Korean on the basis of physical appearance. Recognizing that gender would act as an important confound, we used photographs of men only. Our strategy was not to ignore gender, but to control for it, based on past evidence showing that lawyers are expected to be men rather than women (Gorman 2005; Hahn & Clayton 1996; Sigal et al. 1985) and other

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[7]We conducted a small pilot test to provide a manipulation check on the social status of litigators versus scientists ($N = 15$). Two items were used to assess status of each profession on a seven-point scale:

- How influential are litigators (scientists) in American society?
- How much social status do litigators (scientists) have in American society compared to other professions?

The internal consistency for litigator items was high ($\alpha = 0.73$); in other words, the answers to the questions about influence and social status "hung together" and tap into the same conceptual construct. The same goes for the scientist items ($\alpha = 0.72$). For further discussion of the meaning of Cronbach's α, see infra note 18. Accordingly, we created a single score that was the numerical average of the influence and status answers. On this metric, participants perceived litigators ($M = 5.63$) and scientists ($M = 5.47$) to be equally influential and have equal status in society, $t(14) = 1.00$, $p = 0.33$.

[8]Before we implemented the current study, we conducted a pilot test to determine the extent to which each of the racial groups (Asians and Whites) were associated with each of the two professions (litigator vs. scientist). We asked participants ($N = 43$): "What do you estimate to be the percentage of lawyers/litigators (or scientists) in Los Angeles that fall into the demographic categories below?" Participants were given a list of racial groups, next to which they typed out the percentage they estimated. Results showed that for lawyers, participants thought that a significantly higher percentage of lawyers were White ($M = 64.21$ percent) versus Asian American ($M = 14.21$ percent), $t(42) = 16.02$, $p < 0.001$. Similarly, for litigators, participants thought a significantly higher percentage of litigators were White ($M = 65.09$ percent) versus Asian American ($M = 12.60$ percent), $t(42) = 13.97$, $p < 0.001$. Similarly, for scientists, participants thought a significantly higher percentage of scientists were White ($M = 55.57$ percent) versus Asian American ($M = 33.07$ percent), $t(41) = 4.99$, $p < 0.001$. In selecting scientist as a profession to compare with litigators, our goal was to find an appropriate profession that was of equal status and social influence as legal professionals, but where people could readily imagine professionals who were Asian or White. As expected, our pretest showed that people perceived a larger race difference in the percentage of White versus Asian lawyers than in the percentage of White versus Asian scientists. In the ideal world, we would have picked a comparison profession that showed no race difference, but it was not clear what that profession might be—while maintaining equal status and likeability. Using scientists offered a reasonable comparison. For more discussion, see infra Section IV.D.2.

[9]We conducted a pilot test to ensure that White and Asian faces used in the IATs were matched on attractiveness and age ($N = 15$). Participants rated attractiveness on a seven-point scale: 1 (not at all attractive) to 7 (very attractive). Results showed that faces of both races were evaluated as equally attractive: Asian faces ($M = 4.13$) and White faces ($M = 4.24$), $t(14) = -1.20$, $p = 0.25$. Participants also rated the approximate age of each face, Asian ($\alpha = 0.71$) and

Table 1:   Experimental Stimuli: Attributes Stereotypically Associated with Successful Litigators and Scientists

Litigator Words	*Scientist Words*
Eloquent	Analytical
Charismatic	Methodical
Verbal	Mathematical
Assertive	Careful
Persuasive	Systematic

research showing that stereotypes of men and women within the same ethnic group differ quite often (Eagly & Kite 1987). As such, we expected that implicit and explicit stereotypes about ideal lawyers would activate thoughts of White men more than Asian men, but would not much activate thoughts of women of either race. Faces used in the IAT were matched in age, attractiveness, facial hair, and expression (all had neutral facial expressions).

Five words stereotypic of litigators and five words stereotypic of scientists were used to capture traits associated with the ideal successful litigator and scientist, respectively (see Table 1).

These words were selected based on ratings from a pretest in which a separate group of participants ($N = 14$) were asked to rate a larger pool of 22 traits in terms of how descriptive they were of the "ideal litigator" [or the "ideal scientist"] on a seven-point scale ranging from "not at all descriptive" (1) to "very descriptive" (7). From the average responses of pretest participants we selected five traits that were rated as uniquely descriptive of the ideal litigator, but not of the ideal scientist (i.e., assertive, eloquent, persuasive, verbal, and charismatic), and five other traits that were rated as uniquely descriptive of the ideal scientist, but not of the ideal litigator (i.e., mathematical, analytical, methodical, systematic, and careful).[10]

If a participant implicitly envisions White individuals in the professional role of litigator, he or she should more quickly group together White faces and litigator words with one response key and Asian faces and scientist words with a different response key (White + Litigator | Asian + Scientist) compared to the opposite combinations (Asian + Litigator | White + Scientist). Thus the IAT served as an implicit measure of the relative degree to which ideal litigators are associated with Asian Americans compared to White Americans.[11]

ii. Attitudes toward Asian Americans versus White Americans. In social psychology, stereotypes and attitudes are carefully distinguished because they reflect different cognitive

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White ($\alpha = 0.76$) on equal-interval age brackets: 1 = (20–24 years old), 2 = (25–29), 3 = (30–34), 4 = (35–39), 5 = (40–44), 6 = (45–49), 7 = (50–54), 8 = (55–59), 9 = (60–64), 10 = (65–69), 11 = (70–74). Results showed that on average, Asian American faces were seen as roughly 34 years old and White faces were seen as roughly 35 years old, $t(14) = -0.73$, $p = 0.48$

[10]For further discussion of these word choices, see Section V.D.1.

[11]For discussion of why we focus on the ideal litigator instead of the ideal scientist, see Section V.D.2.

processes (Amodio & Devine 2006; Millar & Tesser 1986). For example, even if one has strong stereotypes that Asians are not litigators, one may still have a very positive attitude toward them. For example, one could like and admire Asian Americans but believe that they belong in an accounting office. One could also strongly dislike lawyers but still stereotype them as competent, assertive, and persuasive.

Even though Eagly's role congruity theory focuses on stereotypes only, we decided to measure implicit racial *attitudes* as well as implicit stereotypes about litigators. First, this would allow us to rule out a plausible alternate hypothesis that discrimination against Asian American litigators is driven by generalized dislike or prejudice toward this group, rather than by specific stereotypes about the implausibility of Asian Americans in litigator roles. Second, it would provide us more data about racial attitudes toward Asian Americans, an understudied racial group.

Accordingly, a second IAT was used to measure participants' implicit racial attitudes or the degree to which they favored one racial group over another overall. Implicit attitudes were measured as the differential speed with which participants categorized "Asian American + Good" and "White American + Bad" stimuli together compared to the speed with which they paired opposite combinations of stimuli together (White American + Good | Asian American + Bad). The same five East Asian faces and five White faces were used to represent the racial groups and five positive words and five negative words were used to represent positive and negative concepts. By design, these words are unrelated to specific stereotypes about Asian Americans (see Table 2).[12]

This setup, including the words representing the "Good" and "Bad" categories, resembles the standard race-attitude IAT that has been completed by millions of participants on Project Implicit.

b. Explicit Measures. The above measures were implicit: they measured reaction times instead of asking for self-reports. However, explicit bias may also help explain racial discrimination. Accordingly, we also asked participants direct questions. Because our primary hypotheses

Table 2:   Experimental Stimuli: Words Used in the IAT Assessing Implicit Racial Attitudes

Good Words	*Bad Words*
Beauty	Filth
Gift	Repulsive
Happy	Pain
Joyful	Hurt
Enjoy	Sick

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[12]A few studies have examined implicit bias against Asian Americans, including implicit attitudes toward Asian Americans (e.g., Rudman & Ashmore 2007) and implicit stereotypes about their foreignness (e.g., Devos & Banaji 2005; Devos & Ma 2008; Yogeeswaran & Dasgupta 2010). However, no research has examined: (1) whether people hold implicit stereotypes about the link between race (being Asian) and professions (being a lawyer or scientist), and (2) no research has tested whether such stereotypes predict biased professional evaluations.

were about stereotypes linking litigators and Whiteness (rather than general attitudes toward Asian Americans) and because we sought to avoid participant fatigue by limiting the length of the study, we asked explicit questions only about stereotypes (not attitudes). We administered both personal and cultural measures of stereotypes.[13]

i. Personal endorsement of stereotypes. Participants completed a self-report measure assessing the extent to Which they personally believed White and Asian American litigators possess qualities necessary for an ideal litigator. For example: How ELOQUENT do you think WHITE-AMERICAN litigators are?" Participants rated how much each of the litigator traits used in the IAT (i.e., eloquent, charismatic, verbal, assertive, and persuasive) described White American [Asian American] litigators on a scale ranging from "not at all" (1) to "very much" (7).

ii. Knowledge of societal stereotypes. We also asked these questions differently to assess what participants knew about society's general stereotypes of Asian Americans. For example, we asked: "According to *MOST AMERICANS*, how ELOQUENT are litigators who are WHITE AMERICAN?" (italics added). We explained to participants that by "most Americans," we meant "not just Americans in your city or state, but the entire country. These questions are not about your own personal opinion, but instead about the opinion of the average American person."

For both explicit measures, we calculated a difference score to capture the degree to which participants applied litigator-like traits to White Americans compared to Asian Americans by subtracting ratings of litigator traits given to Asian Americans from ratings given to White Americans. Thus, larger positive numbers indicated the belief that Whites are more suited to be litigators than are Asians.

3. Dependent Variable Measures

a. Depositions. Two realistic but fictitious depositions involving accidents (an auto accident and a slip-and-fall accident) were created for this study by an experienced litigator. The written transcript and audio recording of each deposition depicted a litigator deposing an opponent party.[14] The accident fact patterns were selected because they are, by far, the most common type of civil cases. Moreover, their subject matter did not trigger race or interracial conflict (e.g., they were not race discrimination cases).

The two depositions were created to be comparable in complexity, length (the audio recordings were five minutes long), quality of the litigator's performance, and ability to

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[13]We did not counterbalance implicit and explicit stereotyping measures because past research has found that the magnitude of the effects on each type of stereotyping measure does not change substantially as a function of order (Nosek et al. 2005).

[14]In the auto accident, the litigator was deposing a Defendant Campbell, who was driving a car that struck the litigator's client. In the slip-and-fall, the litigator was deposing a Plaintiff Turner, who fell on a stairwell of an apartment building owned by the litigator's client.

capture the listener's interest. Two individuals with typical tone, timbre, and vocal range provided the voices for the deposing lawyers; both spoke with what might be called a "standard" U.S. accent (Matsuda 1991). So did both deponents.

Participants saw the deposing litigator's picture and name for five seconds before each deposition began. We manipulated the race of the litigator by varying his name and photograph to be prototypically White (William Cole) or Asian (Sung Chang). The pictures of the Asian and White men used to represent the two litigators were matched in apparent age and attractiveness.[15]

b. Litigator Evaluations. After listening to each deposition, participants were asked to evaluate the litigator heard in the deposition on three types of dimensions: the litigator's competence (six items), the litigator's warmth (six items), and participants' willingness to hire him and recommend him to friends and family (two items).

In the COMPETENCE dimension, participants judged how smart, effective, assertive, eloquent, persuasive, and professional the litigator seemed. These items showed high internal consistency (Cronbach's $\alpha = 0.89$). In the LIKEABILITY dimension, participants evaluated how friendly, likeable, trustworthy, humorous, easy to talk to, and similar to the self the litigator was. These items also showed high internal consistency ($\alpha = 0.90$). Finally, participants rated how willing they were to HIRE this litigator and how willing they were to recommend the litigator to a friend or family member. These two items also showed high internal consistency ($\alpha = 0.98$). All 14 items were rated on a scale of 1 (not at all) to 7 (very much).

B. Procedure

1. Cover Story

When participants came for the study, they were told that they would complete several tasks related to skills relevant to jury decision making, such as memory, reasoning, analytical reasoning, listening and processing legal information, and making rapid judgments. This was part of the "cover story" so that participants would not suspect the actual purpose of the study.[16] Participants came into a room where they were

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[15]We conducted a pilot test to ensure that the White and Asian faces used to represent the two lawyers were matched on attractiveness and age ($N = 15$). Participants rated the lawyers' attractiveness on a seven-point scale (1 = not at all attractive; 7 = very attractive). Results showed no statistically significant difference in attractiveness between the two faces: Asian lawyer (M = 3.87), White lawyer (M = 4.27), $t(14) < 1$, $p = 0.37$. Also remember that the small, black-and-white photographs were flashed only five seconds before the beginning of the deposition exercise.

[16]Our "cover story" only partly succeeded. In the exit interviews, most participants guessed that the purpose of the study had something to do with racial stereotypes. This is not especially unusual when using an Implicit Association Test to measure racial attitudes and stereotypes. However, if people figured out the point of the experiment and wanted to engage in "impression management," they would be inclined to show as little racial bias as possible both on the stereotyping measures (especially the self-report questions) and in terms of their judgments of the litigators. Notwithstanding such a motivation, we found both bias against Asian Americans and correlations between these biases and evaluations of the depositions. If the cover story had succeeded, some of the obtained biases and correlations would likely have been even larger.

greeted by the experimenter,[17] who explained what they would be doing over the next hour.

2. Implicit Measures

After signing the informed consent form, participants completed two computerized IATs that assessed their (1) implicit stereotypes linking the ideal litigator with particular racial groups and (2) implicit racial attitudes toward Asians relative to Whites. The order of the IATs was counterbalanced such that half the participants first completed an IAT assessing their implicit stereotypes followed by an IAT assessing their implicit attitudes, while the other half completed the IATs in reverse order.

3. Distracter Tasks

Participants then completed a few unrelated distracter tasks such as a crossword puzzle[18] and a memorization task in which they were asked to memorize an eight-digit number. These tasks were inserted between the IATs and the depositions that followed in order to support the cover story.

4. Deposition Evaluation

Participants were then told that they would hear two depositions from two unrelated cases. At the beginning of each deposition, participants were shown for five seconds a picture of the litigator on a computer screen accompanied by his name. As mentioned earlier, we manipulated the race of the litigator by varying his name and photograph to be prototypically White (William Cole) or Asian (Sung Chang).

    Participants then listened to the deposition through headphones and, at the same time, read the script of the deposition presented on a computer screen. The transcript identified who was speaking, which meant that participants saw labels such as "Attorney Cole" or "Attorney Chang."

    At the end of the deposition, participants were asked to evaluate the litigator's competence (six items), warmth (six items), and their willingness to hire him or recommend him to family and friends (two items). Next, participants saw a picture of the second litigator, then listened to the second deposition and evaluated the second litigator on the same dimensions.[19]

    The order in which the two depositions were presented and the race of the litigator were counterbalanced between participants. In other words, half the participants first heard

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[17]By name and phenotype, most people would map the experimenter (a woman) to the racial category White.

[18]None of the questions or answers were related to race or race discrimination.

[19]The Greenwald et al. (2009) meta-analysis revealed that the order of tasks (i.e., whether implicit and explicit attitudes or beliefs were assessed before or after behavior) makes no significant difference in the strength of the relationship between implicit or explicit measures with behavior. Therefore, we expect that reversing the order would not have affected the results of the study.

the auto accident deposition followed by the slip-and-fall deposition, while the other half heard the depositions in the reverse order. Within each deposition order described above, for half the participants the first deposition was conducted by a White litigator (William Cole) and the second deposition was conducted by an Asian American litigator (Sung Chang), whereas for the other half, the order of the lawyer's race was reversed. In sum, the pairing of deposition type and litigator race was varied between subjects and so too was the order in which participants encountered these pairs. This ensured that any difference in participants' evaluations of the two litigators, if obtained, could not be due to the content of the deposition or the order in which they encountered each particular litigator.

5. Explicit Measures

Finally, we measured the degree to which participants personally endorsed the stereotype linking ideal litigators' personality to race by asking them to judge how well each of the five litigator traits described Asian Americans as a group and White Americans as a group. In addition to measuring personal stereotypes, we asked about societal stereotypes—what "most Americans" believed. Once this task was finished, participants completed an exit interview to see if they had guessed the point of the experiment. They were then thanked for their participation and debriefed about the purpose of the study.

C. Results

1. Biases Against Asian Americans

a. Explicit Biases Recall that we asked for explicit personal self-reports on stereotypes to see whether participants viewed Whites as more the ideal litigator as compared to Asian Americans. A composite of explicit stereotypes was created by averaging the five attribute ratings of White versus Asian American litigators separately ($\alpha = 0.87$ and 0.90, respectively). On the personal stereotype measure, we found no bias. On average, participants reported that White ($M = 5.03$) and Asian Americans ($M = 4.95$) possess litigator-related characteristics to an equal degree, $t(67) = -1.15$, $p = 0.25$. The minor difference was *not* statistically significant.

We did, however, find differences on the cultural stereotype measure. Recall that we also asked what participants thought about the beliefs of "most Americans." When asked that way, participants reported that most Americans think that Asian Americans possess fewer characteristics necessary to be a successful litigator ($M = 4.40$, $\alpha = 0.90$) compared to White Americans ($M = 5.54$, $\alpha = 0.92$). This difference was statistically significant, $t(67) = 7.84$, $p < 0.0009$. In sum, although participants claimed that they themselves did not hold racial stereotypes about the ideal litigator, they thought "most Americans" did.

b. Implicit Biases
i. Implicit stereotypes linking litigators with race. Implicit stereotypes were measured using the differential speed with which participants paired Asian + Litigator and White + Scientist compared to the reverse combination (White + Litigator and Asian + Scientist). These

difference scores (in milliseconds) were converted into effect sizes similar to standardized units known as Cohen's *d* (IAT *D* score) using the algorithm standard within the literature (proposed by Greenwald et al. 2003). As expected, results showed that, on average, participants were significantly faster at pairing litigator-related traits with White faces compared to Asian faces ($M = 330$ ms; IAT $D = 0.45$), $t(67) = 9.93$, $p < 0.001$.

Notice the "dissociation" between explicit and implicit stereotypes. On the explicit measure, participants denied personally associating litigator traits more to Whites than to Asians. (They did, however, report that "most Americans" had such stereotypes.) However, according to the implicit measure, those associations exist and are of moderate strength. It would be wrong to say that the implicit measures show the explicit self-reports to be either erroneous or insincere. Instead, explicit bias and implicit bias are best viewed as related but independent mental constructs. Both types of bias should be taken seriously, and neither should be privileged as the only authentic or socially significant measure.[20]

ii. Implicit racial attitudes. Finally, as expected, on average, participants were significantly faster at pairing positive valence words with White faces compared to Asian faces ($M = 331$ ms; IAT $D = 0.62$), $t(67) = 13.31$, $p < 0.001$. They were not colorblind in their implicit attitude, even toward a "model" minority.

In sum, we collected evidence of bias against Asian Americans. When asked explicitly, participants reported that they themselves had no racialized stereotypes associating Whites more than Asian Americans with litigators; however, they reported that "most Americans" did. When measured implicitly, participants' responses revealed medium-sized implicit stereotypes associating the ideal litigator with Whiteness and medium-sized[21] implicit attitudes in favor of Whites (over Asian Americans).

2. Predictive Validity for Deposition Evaluations: Correlations

We measured four *independent* variables: implicit stereotypes, implicit attitudes, explicit personal stereotypes, and explicit knowledge of societal stereotypes. The *dependent* variables were the deposition evaluations of the White American and Asian American litigator, which clustered into three separate scores (competence, likeability, and hireability) for each deposition. Bivariate correlations[22] were conducted to test which of the independent variables would be related to participants' evaluations of the Asian and White deposing lawyer.

As shown in Table 3, participants' evaluation of the Asian American litigator conducting the deposition was significantly correlated with their *explicit (not implicit) stereotypes* about

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[20]Implicit stereotypes did not correlate significantly with knowledge of societal stereotypes.

[21]Standard convention is to consider Cohen's $d = 0.2$ small; $d = 0.5$ medium; $d = 0.8$ large (Cohen 1988).

[22]Note that correlations range from –1 to +1; large positive or negative correlations that are statistically significant suggest that there is a nonrandom relationship between participants' bias and their evaluations of the deposing lawyers, whereas correlations close to zero mean that the two variables are completely unrelated. The negative or positive sign attached to the correlation coefficient specifies the direction of the relation, as explained below.

Table 3:   Correlations Between Implicit and Explicit Stereotypes and Evaluations of the White Versus Asian Litigator

Dependent Variables	Implicit Stereotypes	Explicit Stereotypes	Knowledge of Societal Stereotypes	Implicit Attitudes
Asian Lawyer				
Competence	−0.07	−0.42**	−0.09	0.09
Likeability	−0.01	−0.41**	−0.20	0.07
Willingness to hire	−0.18	−0.39**	0.00	−0.04
White Lawyer				
Competence	0.32**	0.01	−0.05	0.03
Likeability	0.31**	−0.11	−0.31**	0.25*
Willingness to hire	0.26*	0.09	−0.04	−0.12

*$p \leq < 0.05$; **$p < \leq 0.01$.

ideal lawyers. However, participants' evaluation of the White American litigator was significantly correlated with their *implicit (not explicit) stereotypes* about ideal lawyers. Participants' knowledge of societal stereotypes and their global implicit attitudes toward Asians and Whites in general were not systematically related to evaluations of either litigator.

a. Evaluations of the White American Lawyer. The more participants *had an implicit stereotype,* the more competent they thought the White deposing litigator was ($r = 0.32$, $p < 0.01$), the more they liked him ($r = 0.31$, $p < 0.01$), and the more willing they were to hire him personally and recommend him to friends and family ($r = 0.26$, $p < 0.05$). However, evaluations of the White litigator on all three dimensions were uncorrelated with *explicit stereotypes* about ideal lawyers (all *r*s were close to zero).[23]

b. Evaluations of the Asian American Lawyer. Unlike evaluations of the White litigator, participants' evaluation of the Asian American litigator was significantly correlated with their *explicit stereotypes.* The more they explicitly and personally endorsed the belief that the qualities required to be a successful litigator are more prevalent among Whites than among Asians, the less competent they judged the Asian American deposing lawyer to be ($r = −0.42$, $p < 0.01$), the less they liked him ($r = −0.41$, $p < 0.01$), and the less willing they were to hire him personally or recommend his services to friends and family ($r = −0.39$, $p < 0.01$). However, their implicit stereotypes were not correlated with evaluations of the Asian litigator (all *r*s were close to zero). Moreover, participants' knowledge of societal stereotypes and global implicit attitudes toward Asians and Whites were also uncorrelated with their evaluations of the deposing litigator who was Asian American.

In sum, the take-home message from the correlations is that people's evaluations of the White litigator's performance were most strongly related to their *implicit stereotypes*

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[23]Scatter plots of the data reveal a clear linear pattern of results suggesting that correlational analyses were appropriate for the data. Additionally, all regression analyses discussed below examined the data using both linear functions and higher-order functions (e.g., quadratic and cubic curvilinear functions) and found no significant pattern of results using higher-order functions (all *p*s > 0.10).

of who they envisioned as the ideal litigator; whereas their evaluations of the Asian litigator's performance were most strongly related to their *explicit stereotypes about the ideal litigator*. The other measures did not influence evaluations of the deposing lawyers in a systematic way.[24]

3. Comparing the Predictive Validity of Implicit Versus Explicit Measures of Stereotyping: Hierarchical Regressions

The correlations reported above suggest that participants' evaluations of the Asian and White deposing litigators can be predicted by knowing their implicit and explicit stereotypes of ideal lawyers. However, to ensure the *independent* contribution of each type of social cognition (implicit vs. explicit stereotypes) in explaining evaluations of each litigator, we conducted hierarchical regressions.

a. Predicting Favoritism Toward the White Litigator. In the first set of three regressions, evaluations of the White litigator served as the dependent variable (competence, likeability, hireability), while implicit and explicit stereotypes served as predictor variables.[25] These hierarchical regressions allow us to determine how much of the variability in participants' judgments of the White litigator can be explained by knowing their *explicit* beliefs about lawyers in general. Once these explicit beliefs have been considered (controlled for) in the first step of the regression equation, the regression then assesses whether *implicit* stereotypes explain participants' judgments of the same lawyers over and above what can be predicted from their explicit stereotypes. If the test for implicit stereotypes remains statistically significant, it implies that knowing participants' implicit stereotypes provides additional information *over and above* explicit beliefs with which to forecast their evaluations of lawyers.

Regression results confirmed correlational findings reported earlier: participants who implicitly associated the ideal litigator with Whiteness significantly favored the White litigator by judging him to be highly competent ($B = 0.95$, $SE = 0.35$, $p = 0.008$), highly likeable ($B = 1.21$, $SE = 0.45$, $p = 0.009$), and eminently hireable ($B = 1.35$, $SE = 0.63$, $p = 0.04$) even after controlling for the effects of explicit stereotypes (see Figures 1, 2, and 3). In other words, for every one unit increase in implicit stereotyping, participants' evaluations of the White lawyer's competence increased by 0.95 units, likeability increased by 1.21 units, and hireability increased by 1.35 units on the seven-point scale.[26]

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[24]In addition to these primary correlations, two other correlations were significant, but we interpret them cautiously because they emerged only for liking judgments given to the White lawyer (not competence or hireability). Participants who implicitly preferred Whites as a group over Asians tended to like the White litigator more ($r = 0.25$, $p < 0.05$) and those who reported knowing that Americans in general associate ideal lawyers to Whiteness reported liking the White litigator less ($r = -0.31$, $p < 0.01$).

[25]For evaluations of the White litigator, the regression equations are as follows:
  Competence: $Y = 5.06 - 0.01$(explicit stereotypes) $+ 0.95$(implicit stereotypes)
  Likeability: $Y = 4.36 - 0.32$(explicit stereotypes) $+ 1.21$(implicit stereotypes)
  Hireability: $Y = 4.30 + 0.26$(explicit stereotypes) $+ 1.35$(implicit stereotypes).

[26]We also ran the same regression after reversing the order of the predictor variables (entering implicit stereotypes as the first predictor and explicit stereotypes as the second predictor). Results did not change and confirmed findings

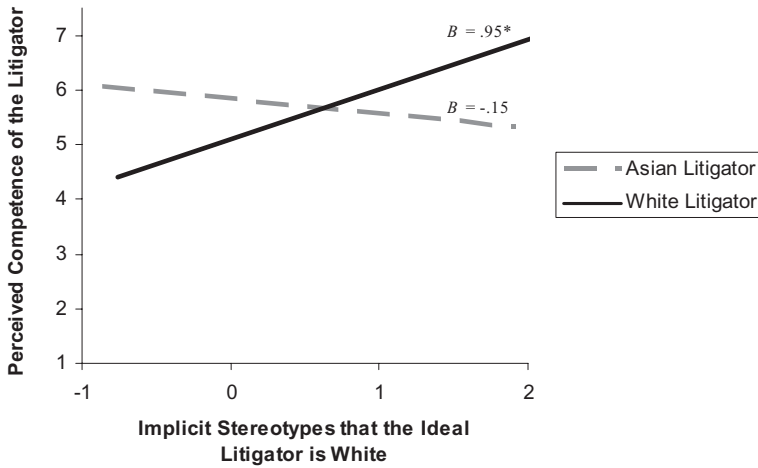*Figure 1:* Competence of White and Asian litigators as a function of implicit stereotypes.
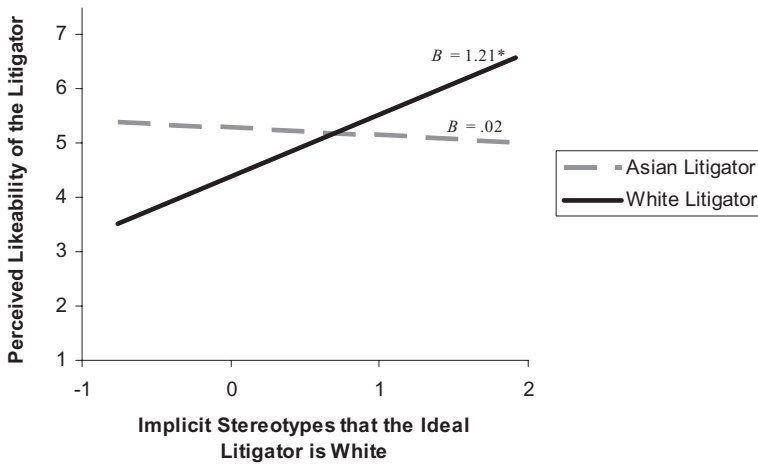

*Figure 2:* Likeability of White and Asian litigators as a function of implicit stereotypes.

Figures 1, 2, and 3 graphically depict the regression results. In each figure, the two regression lines for the Asian and White lawyer represent two separate regression analyses. They are presented together within each figure only for illustrative purposes—to help the reader visually compare the results for the Asian versus White lawyer.

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from the original correlations: explicit stereotypes were unrelated to evaluations of the White litigator's competence ($B = -0.01$, $SE = 0.23$, $p = 0.95$), likeability ($B = -0.32$, $SE = 0.29$, $p = 0.27$), or hireability ($B = 0.26$, $SE = 0.41$, $p = 0.53$) after controlling for the effect of implicit stereotypes.

Figure 3:   Hireability of White and Asian litigators as of funciton of implicit stereotypes.
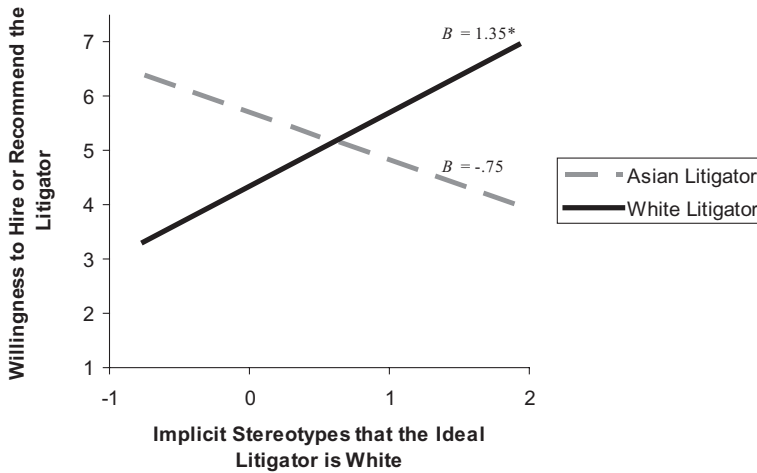
b. *Predicting Discrimination Against Asian Litigators.* Another set of three hierarchical regressions were conducted; this time evaluations of the Asian American litigator served as the dependent variable (competence, likeability, hireability), while implicit and explicit stereotypes served as predictor variables.[27] As before, these hierarchical regressions allow us to determine how much of the variability in participants' judgments of the Asian litigator in the deposition can be successfully explained by knowing their *explicit stereotypes* about lawyers in general after controlling for implicit beliefs.

Regression results revealed that participants' *explicit stereotypes* significantly predicted greater bias against the Asian litigator even after statistically partialing out the effect of implicit stereotypes. Participants who explicitly endorsed racialized stereotypes about the ideal successful lawyer thought the Asian litigator in the deposition was significantly less competent ($B = -0.76$, $SE = 0.20$, $p < 0.001$), less likeable ($B = -0.86$, $SE = 0.24$, $p = 0.001$), and were less willing to hire him or recommend him to others ($B = -1.19$, $SE = 0.35$, $p = 0.001$). In other words, for every one unit increase in explicit stereotyping, participants' evaluations of the Asian lawyer's competence decreased by 0.76 units, evaluations of his likeability decreased by 0.86 units, and hiring recommendations decreased by 1.19 units on the seven-point scale (see Figures 4, 5, and 6).[28]

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[27]For evaluations of the Asian litigator, the regression equations are as follows:
   Competence: $Y = 5.80 - 0.15$(implicit stereotypes) $- 0.76$(explicit stereotypes)
   Likeability: $Y = 5.25 + 0.02$(implicit stereotypes) $- 0.86$(explicit stereotypes)
   Hireability: $Y = 5.67 - 0.75$(implicit stereotypes) $- 1.19$(explicit stereotypes).

[28]We also ran the same hierarchical regression after reversing the order of the predictor variables (entering explicit stereotypes as the first predictor and implicit stereotypes as the second predictor). Results confirmed findings from the original correlations: implicit stereotypes were unrelated to evaluations of the Asian litigator's competence

Figure 4: Competence of Asian and White litigators as a function of explicit stereotypes.
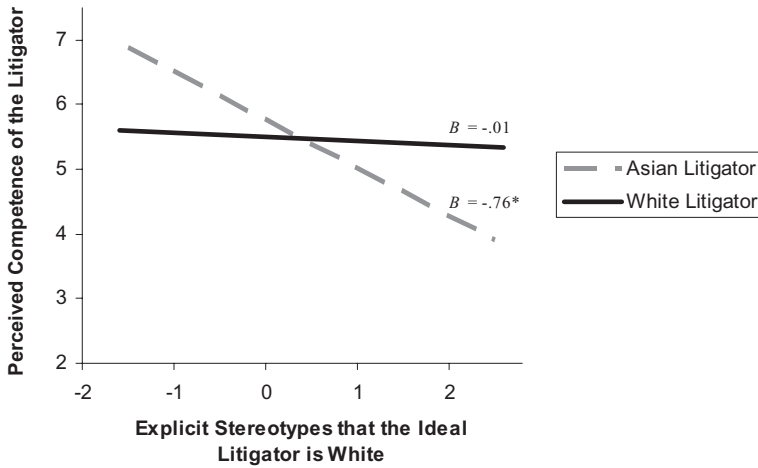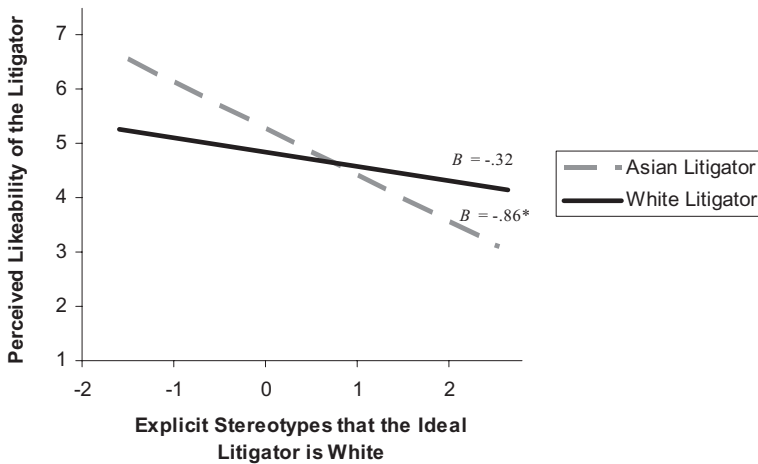

Figure 5: Likeability of Asian and Whilte litigators as a function of explicit stereotypes.

As with Figures 1, 2, and 3, in Figures 4, 5, and 6 the two regression lines for the Asian and White lawyer represent two separate regression analyses. They are presented together within each figure only for illustrative purposes—to help the reader visually compare the results for the Asian versus White lawyer.

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($B = -0.15$, $SE = 0.31$, $p = 0.63$), likeability ($B = 0.02$, $SE = 0.36$, $p = 0.95$), and hireability ($B = -0.75$, $SE = 0.54$, $p = 0.17$), after controlling for the effects of explicit stereotypes.

Figure 6:   Hireability of Asian and Whilte litigators as a function of explicit stereotypes.

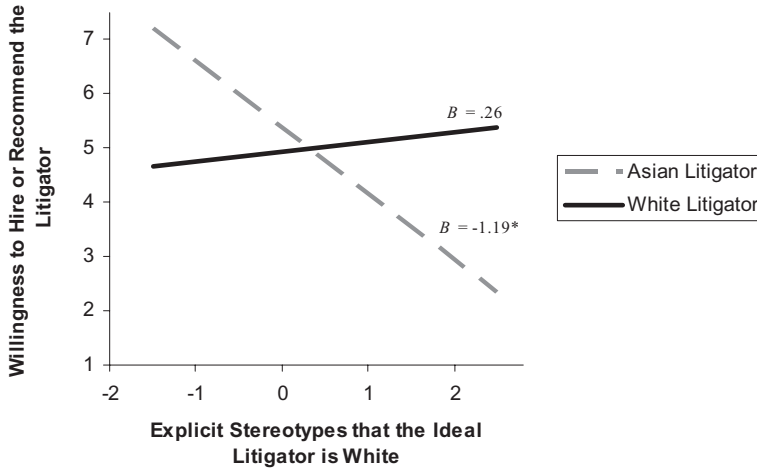## IV. Law and Policy Implications

A. Lack of Colorblindness

The well-known naturalistic fallacy is to think that what "is" is what "ought" to be. The converse moralistic fallacy is less familiar: it is to think that what "ought" to be is what "is." Many people believe that we "ought" to be colorblind, and through the mental slip, they assume that we already "are" colorblind.

Traditionally, these claims of colorblindness were challenged by personal narratives told by racial minorities about the continuing significance of race in their daily lives (Williams 1991). But these stories were often disregarded as subjective, exaggerated, and atypical (Farber & Sherry 1993). When claims of colorblindness were challenged by broader social statistics showing nonrandom, and sometimes stark, racial disparities, again there was plausible deniability about their cause. After all, those differences might reflect actual racial differences in merit—not racial discrimination.

This is why social science findings from the social cognition and behavioral economics literatures provide crucial new evidence to shed light on the empirical debate of colorblindness. Audit studies have powerfully challenged claims of colorblindness by showing that individuals carefully controlled to be identical on all relevant measures except for race still experience disparate treatment because of their race (Bertrand & Mullainathan 2004; Rooth 2007). The same can be said of the implicit social cognition studies that show quantitatively and objectively that, at least on an implicit level, we cannot but help see race.

For our study, we picked a racial minority designated as "model" and selected intentionally as a hard case. Moreover, our experiment took place in southern California, with many participants drawn from neighborhoods near UCLA. In these areas, social

contact with Asian Americans should have been high compared to the rest of the United States. In other words, we were not targeting some rare racial/ethnic group with whom contact was infrequent and thus toward whom more prejudice was likely (for a meta-analysis of the contact hypothesis, see Pettigrew & Tropp 2006).

Nevertheless, we recorded implicit stereotypes and prejudice against Asian Americans. The study participants were not colorblind, at least at the implicit level. They held implicit attitudes in favor of Whites. They also held implicit stereotypes that associated Whiteness with the ideal litigator. Even though Asian Americans are complimented as the "model minority," they remain targets of bias.

B. Predictive Validity

For many, reaction time differences on some computerized test are not especially important or meaningful. What's crucial is real-world behavior (Dasgupta 2008). In this experiment, we found evidence supporting just that: implicit stereotypes of the ideal litigator as being White elicit favorable evaluations of the White attorney. Accordingly, we have provided further evidence that implicit biases do predict racial discrimination, even when it is narrowly defined as disparate treatment of an individual because of race.

Moreover, this "because of" does not resort to some distant "but for" race discrimination such as the Chinese Exclusion Acts (130 years ago), the internment of Japanese Americans (70 years ago), or the torching of Korean shops in Los Angeles (20 years ago). It does not resort to "structural racism" that may have led to decreased opportunities for skills and ability development. Instead, the "because of" is much more proximate and direct. Because of racial stereotypes operating in their individual minds, participants evaluated lawyers who were objectively indistinguishable as significantly different.

Of course, "significantly" was used in the last sentence in the sense of statistical significance—as in not likely to be caused by random variations in sampling participants. However, not everything that is statistically significant is worth fretting about. After all, the effect sizes of implicit bias might be trivial. Regrettably, that is not the case here.

To appreciate the effect size of *implicit* stereotypes, consider the following comparison between two hypothetical participants, "James" who is implicitly colorblind (IAT *D* score of 0) and "Greg" who has an IAT *D* score of 1.[29] According to the regression, Greg would likely evaluate Attorney Cole, the White lawyer, very favorably as 6.01 on the 1–7 scale on competence, 5.57 on likeability, and 5.65 in terms of recommending his services to friends and family. By contrast, James would evaluate Attorney Cole as 5.06 in terms of competence, 4.36 in terms of likeability, and 4.30 in terms of recommending his services to others (see Table 4).

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[29]We have not made Greg an implicit bias freak. An IAT *D* = 1 score is within 1.5 standard deviations from the average IAT D = 0.45 (*SD* = 0.37). Assuming a normal curve distribution, 95 percent of the participants are expected to fall within two standard deviations of the mean.

Table 4:   Differences in White Litigator Evaluations by
Hypothetical James Versus Greg

White Litigator Evaluation[a]	James (IAT D = 0)	Greg (IAT D = 1)	Difference
Competence	5.06	6.01	0.95
Likeability	4.36	5.57	1.21
Hireability	4.30	5.65	1.35

[a]All on 1–7 scale.

Table 5:   Differences in Asian Litigator Evaluations by Hypothetical Lisa Versus Emily

Asian Litigator Evaluation[a]	Lisa (White = 6, Asian = 6)	Emily (White = 6, but Asian = 5)	Difference
Competence	5.80	5.04	−0.76
Likeability	5.25	4.39	−0.86
Hireability	5.67	4.48	−1.19

[a]All on 1–7 scale.

To appreciate the effect size of *explicit* stereotypes, consider a hypothetical participant "Emily," who said that successful lawyers are more likely to be White than Asian (i.e., who gave Whites a 6 and Asians a 5 on the 1–7 scale).[30] Emily would probably evaluate Attorney Chang, the Asian American lawyer, as 5.04 in terms of his competence, 4.39 in terms of his likeability, and 4.48 in terms of recommending his services to friends and family. By contrast, another hypothetical participant, "Lisa," who said that successful lawyers are *equally* likely to be White and Asian (gave both groups a 6 on the 1–7 scale),[31] would probably evaluate Attorney Chang as 5.80 in terms of competence, 5.25 in terms of likeability, and 5.67 in terms of recommending his services to others (see Table 5).

Finally, often conflated with the concept of predictive validity is the idea of ecological validity, namely, that laboratory conditions do not approximate real-life situations. This study made advances on these concerns in several ways. Our participants were not undergraduates, but jury-eligible adult residents drawn from the community. Also, the dependent variables were not only written vignettes; instead, there was a multimedia component, in

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[30]Again, we did not manufacture a strawperson Emily, who is freakishly explicitly biased. The Asian rating of 5.0 is essentially at the mean of participants' evaluations (M = 4.95, SD = 0.91). The White rating of 6.0 is 1.2 standard deviations above the mean for participants' evaluations (M = 5.03, SD = 0.83). Again, assuming a normal distribution, about 77 percent of the participants would fall within 1.2 standard deviations from the mean. Finally, the difference score of 1 (White = 6, Asian = 5) is only 0.37 standard deviations away from the average difference score (M = 0.79, SD = 0.57).

[31]Nor is Lisa an outlier. Given that the mean for explicit stereotypes of Asians = 4.95 (SD = 0.91), and the mean for Whites = 5.03 (SD = 0.83), Lisa's score of 6.0 for both groups is roughly within one *SD* for both the Asian (1.15) and White ratings (1.17).

which participants actually listened to a full five-minute long deposition, which provided a richer set of materials for participants to interpret and judge.

We recognize that this was not truly "real world" in that we were not measuring real jurors viewing a real deposition at a real trial. Doing so would be nearly impossible under current institutional review board practices and would introduce a new set of real-world confounds. Skeptics might also define "behavior" very narrowly and refuse to consider evaluating a litigator's deposition and answering questions about his hireability to count as "behavior." But under such a standard, we point out that it would be exceedingly difficult to measure something like hiring "behavior" *in any experimental setting*. What we call "behavior" is well within the mainstream usage of the term in psychology, and we seek to be fully transparent with our readers about what we are measuring (Amodio & Devine 2006; Millar & Tesser 1986; see also Ajzen & Fishbein 2005; Greenwald et al. 2009).[32]

Finally, we point to evidence of general convergence between behaviors and judgments measured in hiring decision studies done in the lab and real-world behaviors captured in archival studies and field studies, conducted in real-world organizations. For example, Eagly et al. (1995) reviewed a vast number of studies and found that lab experiments reporting that hiring discrimination against female job candidates paralleled similar findings obtained in real organizations. Also, Irene Blair's work on race-based stereotyping based on physical appearance demonstrates a convergence between findings obtained from archival studies and lab experiments (see Blair et al. 2004a, 2004b). In closing, we remind legally trained readers that "validity" of a psychological construct or instrument is never established conclusively by any single experiment; instead, it is produced by an entire research program, to which this article's findings contribute.

C. *Janus-Faced Discrimination*

One of the most intriguing findings is the Janus-faced nature of the obtained discrimination. Implicit stereotypes predicted ingroup favoritism—more favorable evaluations of the White attorney. By contrast, explicit stereotypes predicted outgroup derogation—worse evaluations of the Asian American attorney. When designing the experiment, we assumed that explicit stereotypes would not predict discrimination much. We thought that there were too many "impression management" reasons that would make the explicit self-reports of personal stereotypes not very useful, particularly when it became clear in exit interviews that the "cover story" had been only partly successful. We were thus surprised to find that implicit versus explicit stereotypes predicted different kinds of discrimination.

In retrospect, we can offer some explanation for the different roles that explicit and implicit biases seem to be playing. The explicit bias in this experiment measured explicit endorsement of the belief that Asian Americans as a group do not possess the characteristics necessary to be a successful litigator. It should not be surprising, then, that these explicit stereotypes produced a "confirmation bias." If Asian Americans are generally viewed as

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[32]For another line of research that uses "behavioral" measures similar to ours, see the lab experiments on aversive racism's impact on hiring decisions (e.g., Dovidio & Gaertner 2000; Son Hing et al. 2008).

worse litigators, then any specific example of litigating that is ambiguous in quality is likely to be interpreted in a manner that confirms preexisting stereotypes.

Implicit bias about the ideal lawyer, by contrast, may not have much to do with Asians at all; instead, it is more about the rightness of Whiteness. The status quo conception of the ideal lawyer is a White man, and that prototype may fill one's entire mental field. We may simply not think of Asian Americans as litigators, any more than we think of White women as litigators. From this view, a White male litigator receives preferential treatment for fitting naturally into preconceived expectations. By comparison, an Asian American man does not receive the same boost; but neither does he receive a direct penalty because he is largely invisible and irrelevant to the very category of litigator.

Despite our lack of a detailed theoretical account for this Janus-faced finding, we want to resist any easy characterization that implicit-bias-induced in-group favoritism is unproblematic. As a matter of impact, although the specific form of discrimination is different, both implicit and explicit stereotypes predictably produce disparate treatment of White versus Asian litigators in judging the quality of their work, likeability, and hiring and recommendation decisions. As a matter of anti-discrimination and equal protection law, race discrimination is not excused because it is driven by ingroup favoritism (treating Whites better) instead of outgroup derogation (treating Asian Americans worse).

If one argues that the *motivation* of ingroup favoritism is somehow less offensive than that of outgroup derogation, again the law disagrees. For example, under current equal protection analysis, race-conscious action by the state triggers strict scrutiny. The Supreme Court has made clear that this is so regardless of whether the action has benign ("affirmative action") or malign ("racial subordination") motivations (*Adarand Constructors v. Pena*, 515 U.S. 200 (1995)). If the motivation of remedial affirmative action does not excuse race-contingent behavior, why should the motivation of ingroup racial favoritism fare any better?

D. Objections

Having made our affirmative case, we answer a few objections and concerns, especially those that might be salient to legal audiences.

1. Word Stimulus Selection

Within an Implicit Association Test, specific stimuli must be selected to represent a category. In the stereotype IAT we constructed, photographs were used to represent races, and words were used to represent the category "litigator" on the one hand ("eloquent, charismatic, verbal, assertive, persuasive") and "scientist" on the other ("analytical, methodical, mathematical, careful, systematic"). One could object, however, that the words we claim to represent the stereotype of ideal litigator (and, conversely, the ideal scientist) are somehow inaccurate or inappropriate. After all, not all litigators are eloquent or assertive. A great many litigators are analytical, methodical, and systematic. Conversely, many scientists are eloquent, charismatic, and verbal.

First, to repeat, these litigator traits were not selected randomly. They were chosen through a pretesting procedure, described above.

Second, they were consistent with prior studies of consensually shared stereotypes about lawyers (Gorman 2005; Hahn & Clayton 1996; Kunda et al. 1997; Sigal et al. 1985).

Third, it does not matter whether these traits capture the difference between litigators and scientists accurately on some "objective" or expert's metric. What matters is whether average people likely to be jurors believe this distinction to be true and, if so, do their beliefs affect their evaluations of litigator performance?[33] If our choice of litigator traits were completely off—imagine if we had chosen words such as "prudish," "caring," "lofty," "sweaty"—then we would not have found any correlation between the implicit stereotypes and evaluation of the two lawyers, which we did.

2. Asian-Scientist Driver

Since the IAT always compares two categories, one might ask whether the IAT effect was generated in part by the implicit stereotype that Asian Americans are scientists than by the implicit stereotype that White Americans are litigators. Indeed, there may be some mutually exclusive relationship between the set of attributes we identified pertaining to the ideal litigator and the set of attributes related to the ideal scientist. In other words, to the extent that we associate any social category *more* with one profession, we may tend to associate that social category *less* with the other profession. Thus, one could argue that we may not be viewing Whites as ideal litigators; instead, we are viewing Asians as the ideal scientists, which simultaneously make us view them as *not* ideal litigators. This is a reasonable objection, and the same conceptual question can be asked of any IAT measure. Future research using different instruments, such as priming tasks, could help disentangle more cleanly what amount of the IAT effect is driven by the White + Litigator association as compared to the Asian + Scientist association.

That said, this complementary explanation does not undermine the basic empirical finding that implicit stereotypes of Whites as compared to Asians lead participants to rate Whites as better litigators. At most, it would suggest a longer title to the article: "Are Ideal Litigators More White than Asian *and/or Are Ideal Scientists More Asian than White*? Measuring the Myth of Colorblindness *in Litigator Performance.*"

Still, the current article's title and framing could be criticized as misleading if the IAT effect were driven principally by the Asian + Scientist association. But the evidence suggests otherwise. First, recall that in our pretesting, the profession of "scientist" was guessed to be majority White. In other words, we did not pick a comparison profession like sushi chef or martial arts instructor, which folks might have guessed to be majority Asian. Second, and more important, if the Asian + Scientist association were the principal driver, we should not see correlations with participants' evaluations of the deposing lawyers—which is precisely what we see. Remember, we were not asking participants to evaluate how two men performed some science experiment; we were asking them how the men performed a litigator's task of taking a deposition. If this implicit bias is only about Asians and scientists,

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[33]Here is another way to think about it. If we are interested in what average consumers want in a dessert wine, it may not matter much that their associations differ from what expert sommeliers identify as uniquely distinctive. We are not trying to predict sommeliers' behavior.

participants should have had no reason to evaluate *litigators* differently as a function of race.[34]

In conclusion, we want to focus readers on the principal experimental findings regarding implicit bias: implicit stereotypes predicted differential evaluations of the exact same litigator performance. In moral or legal terms, evaluating White litigators better because Asians are viewed as ideal scientists is not obviously more defensible than doing so because Whites are viewed as ideal litigators. Both break the norm of formal colorblindness.

V. Conclusion

People who decry play of the "race card" believe that we already compete in something like a meritocratic tournament, in which individuals are evaluated based on their performance only. Differences in evaluation are presumed to come only from differences in actual merit, which is independent of social categories, such as race. If this is what is going on, then most claims of racial discrimination can be seen as self-interested whining by those who lost in a fair game.

But do we really live in such a world? Or in less Manichean terms, how much does race continue to influence our merit evaluations? By this, we do not mean to go back decades in an individual's life to trace how race might have affected his or her trajectory of human capital development. We mean, instead: "Does race influence merit evaluations *right now*, when the performance is objectively indistinguishable?"

Our study demonstrates that explicit and implicit stereotypes about litigators and Whiteness alter how we evaluate identical lawyering, simply because of the race of the litigator. The race was only primed by a five-second picture and the last name of the lawyer shown on the transcript. Nonetheless, race was sufficiently salient to predict different evaluations of the litigator's deposition. Implicit stereotypes predicted pro-White favoritism. Explicit stereotypes predicted anti-Asian derogation. Both types of bias produced net racial discrimination against a "model" minority either by elevating Whites or by putting Asians down.

Many folks resent "affirmative action" programs and instead say that everyone should be colorblind. Appeals to an only partially redeemed history are rejected. It is as if some statute of limitations has passed on claims of justice for past wrongs. But if we are sincere and accurate about our own colorblindness, then the race of the litigator should not cause one iota of difference in how we evaluate a garden-variety deposition. But our data show otherwise—that race still does matter. We need more evidence on how and why; more important, we need to start studying what we might do about it (Dasgupta 2009; Blasi 2002).

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[34]Indeed, to the extent that the Asian-Scientist connection is driving the results, that would simply add noise to our measure and weaken our correlations between that implicit bias measure and the deposition evaluations. In other words, the true correlations are likely higher, not lower due to this confound.

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