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We All Do It: How Bias Informs Legal Research and Teaching

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Submitted to Professor Penny A. Hazelton
to fulfill course requirements for Current Issues
in Law Librarianship, LIS 595, and to fulfill the
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INTRODUCTION

I approached this paper with the intention of studying the impact of legal research instructor resource choice, specifically with regard to the major legal research databases, Westlaw and LexisNexis. As I began research, delving more into the general library literature on collection bias, I realized that this “Westlaw vs. Lexis” discourse¹ in fact represents a far greater problem in the field of legal research: implicit biases in the way we conduct research and seek out resources. In this paper, I will connect literature on cognitive bias and collection bias to the field of legal research, with the aim of heightening awareness of the processes that shape our decisions to prioritize particular resources both in teaching and independent research settings.

PART I: THE PSYCHOLOGY OF BIAS

Nobody wants to be biased. Discussion of bias and its pervasiveness abounds in American popular culture: institutional bias, media bias, racial bias, gender bias.² While we attempt to identify and avoid bias, however, an unfortunate fact remains: “It happens naturally, and it happens in all of us.”³ Studies continue to show how bias informs human behavior, whether we like it or not.

What is bias?

Cognitive bias: Systematic error in judgment and decision-making common to all human beings which can be due to cognitive limitations, motivational factors, and/or adaptations to natural environments.⁴

¹ See Joe K. Stephens, *LEXIS vs. WESTLAW: The Contest Heats Up*, 6 Legal Admin. 42 (1987); Jon R. Cavicchi, *Lexis v. Westlaw for Research - Better, Different, or Same and the Qwerty Effect*, 47 IDEA 363 (2006-2007); Lisa Larrimore Ouellette, *WestlawNext vs. LexisAdvance vs. Google Scholar*, Written Description, Jan. 23, 2013, <http://writtendescriptions.blogspot.com/2013/01/westlawnext-vs-lexisadvance-vs-google.html>; *Westlaw or LexisNexis*, JDUnderground.com, April 9, 2014, <http://www.jdunderground.com/lawpractice/thread.php?threadId=67996>; Ashby Jones, *Can Bloomberg Law Compete with Westlaw and LexisNexis?*, The Wall Street Journal, Jul. 8, 2010.

² Caroline Staudenraus, *Yolo County District Attorney Office conducts implicit bias training*, The California Aggie, April 21, 2016, <https://theaggie.org/2016/04/21/yolo-county-district-attorney-office-conducts-implicit-bias-training/>; Iris Bohnet, *How to Take the Bias Out of Interviews*, Harvard Business Review, April 18, 2016, <https://hbr.org/2016/04/how-to-take-the-bias-out-of-interviews>; Roberto A. Ferdman, *The disturbing racial bias in who we help when they need it most*, The Washington Post, April 19, 2016, <https://www.washingtonpost.com/news/wonk/wp/2016/04/19/the-racial-bias-in-one-of-the-most-profoundly-disturbing-psychological-phenomena/>.

³ Ronald Wheeler, *We All Do It: Unconscious Behavior, Bias, and Diversity*, 107 Law Libr. J. 325, 327 (2015).

⁴ A. Wilke & R. Mata, *Cognitive Bias*, The Encyclopedia of Human Behavior, 531 (V.S. Rakmachandran ed., 2012).

Since the 1970s, cognitive biases have been a popular topic in psychological literature, and publications including the term “cognitive bias” have proliferated exponentially.⁵ Common cognitive biases include the confirmation bias (“the tendency to selectively search for or interpret information in a way that confirms one’s preconceptions or hypotheses”), conjunction bias (“the tendency to assume that specific conditions are more probable than a single general one”), and hindsight bias (“a memory distortion phenomenon by which with the benefit of feedback about the outcome of an event, people’s recalled judgments of the likelihood of that event are typically closer to the actual outcome than their original judgments were”).⁶ In order to understand bias, however, theories of conscious and unconscious thought must first be examined, as debate abounds on the topic of conscious and unconscious biases, and whether humans can truly eradicate bias with conscious awareness.⁷

The Unconscious Mind

Contemporary views of the ‘unconscious mind’ and unconscious thought processes are varied and hotly debated, often due to the wide range of definitions for “unconscious.”⁸ Sigmund Freud’s highly influential theory of the unconscious as the “primary guiding influence over daily life” has been met with significant criticism from proponents of modern empirical models, and has led to a large-scale rejection of unconscious-centric models of human thought.⁹ However, it is indisputable that unconscious and evolutionary processes influence human thought and action.¹⁰ Evolution influences human decision-making, and we are “predisposed to prefer certain objects and aspects of our environment over others.”¹¹ In this paper, I will use Bargh and Morsella’s definition of the unconscious mind as a “contextual priming” mechanism and “behavioral guidance system” that informs conscious thought to guide my discussion of inherent, unconscious biases.

Implicit Bias

‘Implicit bias’ is the manifestation of bias through unconscious mental processes, be they evolutionary or innate.¹² Research on implicit cognition suggests that individuals “do not always

⁵ *Id.* at 531; Drake Baer & Gus Lubin, *58 Cognitive Biases That Screw Up Everything We Do*, Jun. 18, 2014, <http://www.businessinsider.com/cognitive-biases-2014-6?op=1>.

⁶ *Id.*

⁷ Howard Ross, *Exploring Unconscious Bias*, 2(5) CDO Insights (2008).

⁸ John A. Bargh & Ezequiel Morsella, *The Unconscious Mind*, 3(1) Perspectives on Psychological Science 73 (2008).

⁹ *Id.*; Donald Levy, *Is the Psychoanalytic Unconscious a Dispensable Concept?*, in *Freud Among the Philosophers: The Psychoanalytic Unconscious and Its Philosophical Critics* (1996).

¹⁰ Bargh, *supra* note 8, at 76.

¹¹ *Id.*

¹² Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 Cal. L. Rev. 945, 946 (2006).

have conscious, intentional control over the processes of social perception, impression formation, and judgment that motivate their actions.”¹³ Under this definition, an action or bias is ‘explicit’ if it is consciously endorsed; implicit biases remain largely unknown to the individual and in fact may contradict an individual’s conscious thoughts about him or herself. It is for this reason that unconscious or implicit biases can be more harmful than those which are conscious; without introspection or analysis (for example, through the Implicit Association Test) actors remain unaware of these underlying stereotypes and preferences.¹⁴

While bias against large social groups is typically condemned, bias in favor of smaller groups (like one’s family and friends) is accepted, and not often considered to be within the same definition. While these smaller biases tend to support social institutions (for example, by providing for one’s own children), it is nonetheless critical to recognize that any kind of bias *towards* a group implies a similar bias *against* another group (e.g., providing for one’s own family instead of providing for the families of others). Recognition of this kind of small-group bias has grown in recent years (e.g., frowning upon hiring one’s family members or friends), but the term “favoritism” tends to be used instead of “bias.”¹⁵ By using the term “favoritism,” individuals can ignore some of the negative connotations or associations of the term “bias,” such as race or gender bias.

Definitionally, however, “bias” and “favoritism” are synonyms. Favoritism is “the unfair practice of treating some people better than others,”¹⁶ while bias is “a tendency to believe that some people, ideas, etc., are better than others that usually results in treating some people unfairly.”¹⁷ This point is critical for understanding the pervasiveness of bias or favoritism in any setting. Whatever you want to call it, bias or favoritism essentially boils down to a skewed preference for one thing over another. In the following section, I will explore examples of some of the forms of bias.

¹³ *Id.*

¹⁴ *Id.* at 947.

¹⁵ Judy Nadler & Miriam Schulman, *Favoritism, Cronyism, and Nepotism*, Markkula Center for Applied Ethics, June 2006, <https://www.scu.edu/ethics/focus-areas/government-ethics/resources/what-is-government-ethics/favoritism-cronyism-and-nepotism/>.

¹⁶ *Favoritism*, Merriam-Webster, accessed May 19, 2016, <http://www.merriam-webster.com/dictionary/favoritism>.

¹⁷ *Bia*, Merriam-Webster, accessed May 19, 2016, <http://www.merriam-webster.com/dictionary/bias>.

Forms of Implicit Bias

Memory Bias

One form of particularly harmful bias is memory bias. Research on human memory has revealed not only that humans can systematically misremember facts,¹⁸ but also that people are more likely to remember information that is consistent with their beliefs than that which is inconsistent.¹⁹

Memory bias constitutes another form of cognitive bias. Information that fits a particular stereotype that a person holds will be more easily retrieved from memory than information that is incongruent with the stereotype. This is because an individual's stereotypes have strong associations that form mental connections that make them easier to retrieve.²⁰

Because of the role of memory in human life, this form of bias is incredibly difficult to recognize and more difficult to correct. An example of this bias comes from research on romantic relationships; studies have indicated that people currently dissatisfied in their relationships tend to have disproportionately negative views on past states of the relationship.²¹ While important to individual memory-recalling tasks, this form of bias is even more critical in situations involving information-sharing, as one person's biased memory, when transmitted, can lead to widespread misremembering or discounting other information. In teaching settings, biased memories are incredibly destructive, as the teacher-student power dynamic can perpetuate bias as fact.

Confirmation Bias

A second, pervasive form of bias is confirmation bias, a term which has been used to encompass several different definitions. Generally, confirmation bias refers to a "perseverance of beliefs" or "hypothesis preservation," in which an individual tends to hang on to his or her favored beliefs with unwarranted confidence.²² This term is used in two primary settings. First, the term is used in scientific research settings, to describe how biases can affect experiment

¹⁸ Justin T. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 Duke L. J. 345, 373 (2007); Erika Hayasaki, *How Many of Your Memories Are Fake?*, The Atlantic, Nov. 18, 2013, <http://www.theatlantic.com/health/archive/2013/11/how-many-of-your-memories-are-fake/281558/>; Hal Arkowitz & Scott O. Lilienfeld, *Why Science Tells Us Not to Rely on Eyewitness Accounts*, Scientific American Mind, Jan. 1, 2010, <http://www.scientificamerican.com/article/do-the-eyes-have-it/>.

¹⁹ Brian Quinn, *Collection Development and the Psychology of Bias*, 82(3) The Library Quarterly 284, 285 (2012).

²⁰ *Id.*

²¹ Bridget Murray, *The Seven Sins of Memory*, American Psychological Association, October 2003, <http://www.apa.org/monitor/oct03/sins.aspx>.

²² Joshua Klayman, *Varieties of Confirmation Bias*, in *The Psychology of Learning and Motivation*, Vol. 32, 385 (1995).

outcomes.²³ Second (and the definition that will be applied in this paper), the term is used to describe more general psycho-social behavior, in which individuals make decisions based on prior beliefs and knowledge.²⁴ A formal definition of this phenomenon is “the tendency to seek out evidence consistent with one’s views, and to ignore, dismiss, or selectively reinterpret evidence that contradicts them.”²⁵

While some forms of confirmation bias are inevitable in everyday interactions (such as choosing how to perform a basic task), this bias is harmful in situations involving critical thinking and decision-making. Confirmation bias tends to support “selective perception of evidence,” or, “tunnel-vision,” which can lead to poor decision-making and analyses.²⁶ Some scholars have used confirmation bias theories to describe large-scale cult or fascist movements, in which regimes “fan the flames of extreme confirmation bias in their citizens, [...] by presenting them with only one point of view and assiduously insulating them from all others.”²⁷ Confirmation bias has also been shown in the way governments rationalize policies (“Once a policy has been adopted and implemented by a government, all subsequent activity of that government becomes focused on justification of that policy”)²⁸ and in the reasoning of jurors (“Results of mock-trial experiments indicate that, although there are considerable individual differences among mock jurors with respect to how they approach their task, jurors often come to favor a particular verdict early in the trial process. The final verdicts that juries return are usually the same as the tentative ones they initially form”).²⁹ Studies of jurors have also shown evidence of memory bias; jurors were “more likely to remember statements consistent with their chosen verdict as having been presented as trial evidence than statements that were inconsistent with this verdict.”³⁰

The juror example shows how confirmation bias can overlap with memory bias. With memory bias an individual is more likely to remember information consistent with his or her beliefs, while with confirmation bias, an individual is more likely to *perceive*, or process, information consistent with their beliefs than that which contradicts. Both of these biases can lead to the same result, of only interpreting information that supports one’s belief system.

²³ Michael Allen & Hilary Coole, *Experimenter Confirmation Bias and the Correction of Science Misconceptions*, 23(4) *Journal of Science Teacher Education*, 387 (2012).

²⁴ Klayman, *supra* note 22, at 386.

²⁵ Scott O. Lilienfeld, Rachel Ammirate & Kristin Landfield, *Giving Debiasing Away: Can Psychological Research on Correcting Cognitive Errors Promote Human Welfare?*, 4(4) *Perspectives on Psychological Science*, 390, 391 (2009).

²⁶ *Id* at 391

²⁷ *Id*.

²⁸ Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2(2) *Review of General Psychology*, 175, 191 (1998).

²⁹ *Id* at 193.

³⁰ *Id* at 194.

Why do we have bias?

While the existence of a range of cognitive biases is well known and documented, less clear is *why* humans maintain these biases. Several theories for the existence of bias will be explored below.

Consistency Seeking

One theory of bias, based on evolutionary models, posits that humans are “consistency seekers” who “strive for consistency between their prior beliefs about the world and their interpretation of a specific new situation.”³¹ This theory easily explains the existence of confirmation biases.

Pollyanna Principle

Another theory of bias is the Pollyanna principle, under which people prefer pleasant events over unpleasant events.³² Some manifestations of this principle are “avoiding looking at unpleasant pictures,” “overestimating the size of valued objects,” and “communicating good news more frequently than bad.”³³ This principle is explained by the reinforcing nature of positivity in the mind, as pleasant stimuli are both perceived and processed more thoroughly than unpleasant stimuli.³⁴

Fear Conditioning

Another cause for bias may arise from what neuroscientist Joseph LeDoux has named the “fear system,” a system in the brain which detects danger and “produces responses that maximize the probability of surviving a dangerous situation in the most beneficial way.”³⁵ This evolutionary system explains reinforcing pattern behavior and aversion to contradictory information.

Categorization

The “consistency seeker” theory can also be understood in the context of categorization. It is well understood that the human brain uses categorization as a tool to organize and

³¹ Herbert Bless, Klaus Fiedler & Fritz Strack, *Social Cognition: How Individuals Construct Social Reality* 3 (2004).

³² William N. Dember and Larry Penwell, *Happiness, depression, and the Pollyanna principle*, 15(5) *Bulletin of the Psychonomic Society*, 321 (1980).

³³ *Id.*

³⁴ Claire Stammerjohan, Charles M. Wood, Yuhmiin Chang & Esther Thorson, *An Empirical Investigation of the Interaction between Publicity, Advertising, and Previous Brand Attitudes and Knowledge*, 34(4) *Journal of Advertising*, 55, 58 (2005).

³⁵ Joseph LeDoux, *The Emotional Brain: The Mysterious Underpinnings of Emotional Life* (1998).

understand the world,³⁶ and this tendency can encourage biases as a way to accelerate the information-processing process.³⁷ Psychological research has shown that “people prefer information that matches their stereotypes, while discounting information that might challenge them.”³⁸ When reading and seeking information, people tend to disregard information that may conflict with their beliefs and biases.

Bounded Rationality

Another explanation for the existence of bias comes from the economic decision-making theory of “bounded rationality.” This theory, popularized by Nobel laureate Herbert Simon, holds that the human mind restricts itself in order to make decisions.³⁹ This theory is perhaps best explained in the context of a chess game: in a game of chess, a player has, at any given time, about 30 possible moves, with 10^3 continuations.⁴⁰ When considering 40 moves as the average length of a game of chess, this leaves us with around 10^{120} possible games. However, studies of chess players indicate that players rarely look at as many as 100 possible outcomes for a particular move; chess players “do not consider all possible strategies and pick the best, but generate and examine a rather small number, making a choice as soon as they discover one that they regard as satisfactory.”⁴¹ This process of choosing a move that is “satisfactory,” rather than running through all possible move options, illustrates the idea of bounded rationality:

If we describe the chess player as choosing a *strategy*, then his difficulty in behaving rationally - and the impossibility of his behaving as game theory says he should - resides in the fact that he has incomplete information as to what alternatives (strategies) are open to him. He has time to discover only a minute fraction of these strategies, and to specify the ones he discovers only incompletely.⁴²

This necessary restriction of options is described by Simon as “satisficing,” a combination of the words “satisfy” and “suffice.”⁴³ Bounded rationality can be recognized in numerous aspects of human life, as the human brain simply lacks the capacity to gather and consider all relevant

³⁶ R. Vogels, G. Sary, P. Dupont & GA Orban, *Human brain regions involved in visual categorization*, 16(2) *Neuroimage* 401 (2002); Bryan Bishop, *Berkeley researchers map out how our brains categorize the things we see*, *The Verge*, Dec. 21, 2012, <http://www.theverge.com/2012/12/21/3793952/berkeley-researchers-map-out-how-our-brains-categorize-the-things-we>.

³⁷ Quinn, *supra* note 19, at 281.

³⁸ *Id.* at 283.

³⁹ *Herbert Simon*, *The Economist*, Mar. 20, 2009, <http://www.economist.com/node/13350892>.

⁴⁰ Herbert A. Simon, *Theories of Bounded Rationality*, in *Decision and Organization*, 166 (1972).

⁴¹ *Id.*

⁴² *Id.* at 169.

⁴³ *Herbert Simon*, *supra* note 39.

information in making a decision.⁴⁴ For instance, when choosing a textbook for a course, an instructor lacks the time and energy to evaluate every possible book, and instead will restrict the pool of possibilities to those deemed most likely to be satisfactory. While the textbook example displays how bounded rationality can be a conscious decision, the danger of these “cognitive limits” lies in their unconscious application and their intersection with unconscious biases.

Why is bias a problem?

As described above, one of the factors supporting the pervasiveness of bias is its often-unconscious nature. Studies have shown that “discrimination against members of many stereotyped groups has mutated from overt ‘old-fashioned racism’ into new forms of bias that are more difficult to directly detect and observe, but are no less pernicious.”⁴⁵ While it is difficult to identify biases in others, it is even harder to identify them in oneself; psychologists have identified a phenomenon known as the bias “blind spot,” in which individuals have a biased perception of themselves as free of bias.⁴⁶

Despite the human tendency toward bias, people are inclined to see themselves as relatively unbiased, while at the same time viewing others as being much more prone to bias than themselves. Psychologists refer to this as the bias ‘blind spot.’ It is caused in part by a phenomenon known as the ‘introspection illusion,’ which is a tendency for individuals to examine their own thoughts and feelings for evidence of bias and, when they find none, claim that they are unbiased. Relying on introspection may not be the most accurate way to assess bias, because biased motives are often nonconscious.⁴⁷

This “blind spot” is problematic because it delegitimizes many strategies for decreasing bias, like introspection, and suggests that combatting bias may only be effective if we abandon self-policing strategies in favor of other peer-based systems. Yet more disturbing than this blind spot, however, is recent research on how a belief that one is “free from bias” can impact future behavior; studies have found that “behaviors that establish one’s morality can disinhibit people to act in morally dubious ways.”⁴⁸ This behavior, deemed “moral self-licensing,” describes a

⁴⁴ Bless, *supra* note 31, at 4.

⁴⁵ Victor D. Quintanilla & Cheryl R. Kaiser, *The Same-Actor Inference of Nondiscrimination: Moral Credentialing and the Psychological and Legal Licensing of Bias*, 104 Cal. L. Rev. 1 (2016).

⁴⁶ Emily Pronin, Daniel Y. Lin & Lee Ross, *The Bias Blind Spot: Perceptions of Bias in Self Versus Others*, 28 Personality and Social Psychology Bulletin, 369, 370 (2002).

⁴⁷ Quinn, *supra* note 19, at 282.

⁴⁸ Anna C. Merritt, Daniel A. Effron & Benoît Monin, *Moral Self-Licensing: When Being Good Frees Us to Be Bad*, 4(5) Social and Personality Psychology Compass 344, 354 (2010).

situation where people are more likely to act in ethically questionable ways when they are able to identify evidence of their virtuous character.⁴⁹

“Moral self-licensing” and the bias “blind spot” are incredibly relevant in environments where ethics and political correctness reign supreme, as people are provided with extensive moral character evidence. In particular, these phenomena are important in library settings, due to an emphasis on impartiality and equality in library culture.

PART II: BIAS IN COLLECTION DEVELOPMENT

We provide the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access; and accurate, unbiased, and courteous responses to all requests.

— Code of Ethics of the American Library Association⁵⁰

We distinguish between our personal convictions and professional duties and do not allow our personal beliefs to interfere with the service we provide.

— AALL Ethical Principles⁵¹

Librarianship is, in its very essence, an ethical activity embodying a value-rich approach to professional work with information.

— IFLA Code of Ethics for Librarians and other Information Workers⁵²

Neutrality is a common theme in societal perceptions of libraries. Whether in the sciences or humanities, law or medicine, academic or public, librarians are regularly presented as unbiased educators and information gatekeepers.⁵³ In reality, however, this neutrality stereotype is unrealistic. Librarians have to make decisions on a regular basis that cannot support all

⁴⁹ Quintanilla, *supra* note 45, at 15.

⁵⁰ *Code of Ethics of the American Library Association*, American Library Association, accessed May 19, 2016, <http://www.ala.org/advocacy/proethics/codeofethics/codeethics>.

⁵¹ *AALL Ethical Principles*, American Association of Law Libraries, accessed May 19, 2016, <http://www.aallnet.org/mm/Leadership-Governance/policies/PublicPolicies/policy-ethics.html>.

⁵² *IFLA Code of Ethics for Librarians and other Information Workers*, IFLA, Aug. 12, 2012, <http://www.ifla.org/news/ifla-code-of-ethics-for-librarians-and-other-information-workers-full-version>.

⁵³ *Social Role of the Library*, American Library Association, accessed May 19, 2016, <http://www.ala.org/research/librariesmatter/taxonomy/term/143>; *The Role of the School Librarian*, School Library Association, January 2006, <http://www.sla.org.uk/role-of-school-librarian.php>; C. Watkins, *Role of the Librarian*, 56 *Bulletin of the Medical Library Association* 36 (1968); *Questioning Library Neutrality: Essays from Progressive Librarian* (Alison Lewis ed., 2008); David McMenemy, *Librarians and Ethical Neutrality: Revisiting The Creed of a Librarian*, 56(3) *Library Review*, 177 (2007); Juris Dilevko & Kalina Grewal, *Neutrality and Media Literacy at the Reference Desk: A Case Study*, 21 (1998); David Percival, *Teaching and Learning: Innovation and Development in Information Services. 2. Public Libraries: Bourgeois Nostalgia and Myths of Neutrality*, 1(2) *Information, Society and Justice Journal* 233 (2008).

viewpoints. The library selector, for instance, has to make decisions on which books to buy for a collection. The reference librarian has to decide which resources to show patrons when answering their questions. In both of these tasks, complete neutrality is impossible. To revisit Herbert Simon's bounded rationality theory, we are simply constrained in our ability to be completely impartial and thorough in our decisions; we "strive to simplify the cognitive processes."⁵⁴ There is not enough time in the day to evaluate every resource, and as a result we rely on implicit biases to guide our hand. In library literature, this phenomenon is primarily identified in the collections setting, and is termed "collection bias."

What is Collection Bias?

Collection bias can be seen, at its most basic level, as an application of psychological bias theories to the library collections setting. The term "collection" is used to refer to materials that a library owns, in all formats or genres. Collection development, then, is "the thoughtful process of developing or building a library collection in response to institutional priorities and community or user needs and interests."⁵⁵ Collection development can refer to a range of activities, such as physical selecting, forming a selection policy, or assessing user needs. In this paper, the term "selection" is used to refer to individual resource selection, as opposed to broader tasks like scoping development policies.

Bias enters this realm of resource selection as it does in many decision-making environments; biases can be used to make a more efficient process. Selectors, tasked with spending funds and acquiring new titles, use a range of strategies to streamline the process, many of which are based on prior experience and memory. Hence, unless each book is considered anew, without the interference of a selector's personal judgment, this process inherently contains biases. With the addition of a time crunch or a limited budget, both common factors,⁵⁶ this process is further compromised:

Subject selectors, under pressure to spend funds and faced with hundreds of potential new titles to consider, often find themselves in this kind of situation. In such instances, a selector might quickly notice one or two attributes of a book, such as dates in the title, and quickly categorize the book as history and, therefore, "not my subject area" when, in fact, the book is actually a chronological treatment of her or his subject. To expedite the selection process, we rapidly and automatically categorize and, in the process, sacrifice accuracy.⁵⁷

While this rapid categorization can sacrifice overall neutrality, biases can be helpful at times. For instance, if a selector is aware that a particular publisher is known as a 'vanity publisher,' they

⁵⁴ Bless, *supra* note 31, at 5.

⁵⁵ Peggy Johnson, *Fundamentals of Collection Development and Management* 1 (2009).

⁵⁶ Quinn, *supra* note 19, at 284.

⁵⁷ *Id* at 281.

can employ this knowledge to avoid books from that press which are perhaps “low-quality.”⁵⁸ Although this process of avoiding certain publishers has been described by some as “common sense,” it is nonetheless a form of bias.⁵⁹ Another similar form of bias can occur when a selector perceives a particular source as being biased; psychological research has suggested that when people perceive others as biased, they react negatively, in effect becoming more biased against those they perceive as biased.⁶⁰ This belief of bias can create a cycle, “in which perceived bias, rather than actual bias, generates bias.”⁶¹ Thus, the act of evaluating sources for bias, or for quality of content, can in itself create a biased decision-making process.

Collection Bias and Legal Research

It is in this way that collection bias relates to legal research: the evaluation and choice of sources is a regular activity in legal research, and because of the deluge of material available, choices must be made that are necessarily informed by internal biases as an efficiency mechanism. However, legal research resources differ from traditional monographs and serials; the dominance of LexisNexis and Westlaw as online databases has created a unique environment in which one can seemingly gather all necessary information from the same source. It is in this strange world of monopolistic resources that bias and collection bias must be re-conceptualized.

PART III: BIAS IN USE OF LEGAL RESOURCES

The idea of ‘collection bias,’ as described in library literature, applies to an individual researcher’s use of resources just as it does to the collection development environment described above. However, each independent legal researcher is not a library selector, and is not trained in the same way to use materials that may challenge their biases. It is in this light I find the debate of ‘Lexis vs. Westlaw’ particularly important, as the role of selector has been outsourced to the student, faculty member, or regular library patron.

How do we select legal resources?

In order to understand how bias manifests in legal research resource use, the choice of legal resources must be examined.

First-to-Market Economics

One of the factors influencing resource choice is the state of the market and the number of possible resources available. In his survey of legal database preferences, *Lexis v. Westlaw for*

⁵⁸ Timothy Laquintano, *The Legacy of the Vanity Press and Digital Transitions*, 16(1) *The Journal of Electronic Publishing* (2013).

⁵⁹ *Id.*

⁶⁰ Quinn, *supra* note 19, at 282.

⁶¹ *Id.*

Research - Better, Different, or Same and the QWERTY Effect?, Jon Cavicchi draws a parallel between the Lexis v. Westlaw debate (or Wexis, as he refers to it) and principles of economics:

In economic development, for example, it is said that a standard that is first-to-market can become entrenched and that inferior standards can persist simply because of the legacy they have built up. So, decisions to use Lexis or Westlaw that I projected would be made on cost, task analysis, content, functionality, and value added features are often made by matter of taste and history.⁶²

Cavicchi's survey focused on the use of Lexis and Westlaw by students and law faculty members involved in intellectual property research, but the findings can be extrapolated to other areas of legal research. The comments on his survey "indicate some perception that both services [Lexis and Westlaw] are undifferentiated masses of data. In the words of one law professor, 'I have absolutely no knowledge in differences in content.'"⁶³

Cavicchi's findings support what he refers to as the 'qwerty effect': "the cause of a sub-optimal (usually anachronistic) solution to a problem where logically superior alternatives apparently exist."⁶⁴ This effect is also known as "path-dependence," a term which reflects the idea that "preceding steps in a particular direction induce further movement in the same direction."⁶⁵ The idea of path-dependence can be understood as a form of confirmation bias, as individuals continue to return to a particular path (or resource) based on prior knowledge and familiarity, rather than on an independent analysis of whether that path continues to be the best for his or her purposes.

Why the West/Lexis bias?

1. Branding and Reliability

When forming the idea for this paper, I initially intended to look at a wide variety of legal resources, including print resources and free online databases. However it became clear not only through reflection of my own experience but also through the literature that discussion of legal resource choice revolves around one format: the proprietary database. Why does the West/Lexis debate persist, especially in light of new, free online resources that produce similar content? One theory points to reliability and organization involved in these databases:

End users have been conditioned by training, experience, and careful marketing campaigns to value particular aspects of familiar systems like LEXIS and WESTLAW. Those systems are strongly branded, and have a deservedly high reputation among those

⁶² Cavicchi, *supra* note 1, at 364.

⁶³ *Id* at 366.

⁶⁴ *Id* at 363.

⁶⁵ Paul Pierson, *Increasing Returns, Path Dependence, and the Study of Politics*, 94(2) *The American Political Science Review* 251, 252 (2000).

who have been able to use them. it is not at all surprising (though it is at times dismaying) that experienced users find it difficult to recognize those same virtues when they are produced by new and unfamiliar implementations. At the core of this phenomenon is a bias induced by thirty years' experience with older computer systems and older modes of industrial organization: centrality equals reliability. The Internet approach stands in sharp contrast as it argues the contrary: decentralization equals reliability, attainability, and scalability. On some profound but subliminal level this is news that shocks and bewilders. New, distributed models of computing that are reflected in distributed information systems and distributed models of business organization must seem inherently anarchic and therefore inherently suspect, no matter their virtues. That suspicion will subside in time, to a degree. But it will never vanish entirely until we become more discerning than we are about what was necessary about older ways of doing things and what was merely incidental.⁶⁶

Westlaw and Lexis have maintained dominance not only based on their comprehensive content, but in particular by individuals' biases against other internet sources as 'inherently anarchic' and in opposition to traditional organizational structures. This phenomenon of distrust of the internet is seen not only in law but in all disciplines; "evaluating internet resources" is a necessary step one must take in order to use a resource that is not already vetted in the way that subscription databases have been.⁶⁷ Again, this behavior is biased based both on path-dependence and confirmatory biases; by continuing to use Lexis or Westlaw, users are content with the fact that these databases have already been deemed credible, whereas other resources would require some amount of investigation. However some have questioned whether Lexis and Westlaw are truly more reliable:

There is no guarantee, other than time and experience, that texts from West are inherently more reliable than those published by public-sector actors on the Internet. West law and Lexis have reliable brands; the public-sector publishers do not as yet, because they have had no time to establish them.⁶⁸

Branding is an incredible tool for building trust and ideas of reliability,⁶⁹ and years of branding by Lexis and West has made a considerable impact on user perceptions (West, for example, has

⁶⁶ Thomas R. Bruce, *Tears Shed Over Peer Gynt's Onion: Some Thoughts on the Constitution of Public Legal Information Providers*, 2 J. Info., L. & Tech. (2000).

⁶⁷ *Evaluating Internet Resources*, Georgetown University Library, accessed May 19, 2016, <http://www.library.georgetown.edu/tutorials/research-guides/evaluating-internet-content>.

⁶⁸ Bruce, *supra* note 66.

⁶⁹ Susan P. Douglas, C. Samuel Craig & Edwin J. Nijssen, *Integrating Branding Strategy across Markets: Building International Brand Architecture*, 9(2) Journal of International Marketing 97 (2001).

operated in three centuries⁷⁰).⁷¹ Branding can create biased judgment on future products by a company, which can prove difficult for new market players.⁷² While the branding of Lexis and West is a strong factor impacting user preference, another related factor is each brand's format as one-stop-shopping for legal resources.

2. *One-Stop-Shopping*

A major distinguishing factor between West/Lexis and other online legal resources is the ability to gather a wide range of content - news, caselaw, journals - from a single search on West or Lexis. While branding and reliability are also key factors, the ability to do the majority of one's research on a single interface can drive users to rely primarily on proprietary databases:

Legal professionals feel a strong need for comprehensive electronic sources of legal information. They remain oddly naive about the nature of comprehensiveness in the new, distributed network environment and, to a degree, about their own research practices. It is understandable that lawyers researching caselaw would want to feel that they had searched or seen every single available case on point. What is slightly surprising is their seeming insistence that these results come from a central provider, even when it can be demonstrated to their intellectual satisfaction that an aggregation of providers is providing the same collection of cases searchable from a central point.⁷³

This preference for a single provider is seemingly warranted in light of what some have described as the "supermarket" effect⁷⁴; both Westlaw and Lexis contain so much data that "very few subscribers will ever begin to tap their full potential."⁷⁵ This is the effect of competitive leapfrogging that has occurred between the two companies: "If one vendor added a database which gave it a perceived advantage, the other vendor followed suit or jumped ahead in another area."⁷⁶ This competitive environment of constant database growth has led to a point where these databases can hardly be compared based on size and scope; instead, users point to 'look and feel' or single specialized resources in describing their preferences.⁷⁷ The Lexis and Westlaw models

⁷⁰ Jason Krause, *Towering Titans*, ABA Journal, May 1, 2004, http://www.abajournal.com/magazine/article/towering_titans.

⁷¹ Bruce, *supra* note 66.

⁷² Franz-Rudolf Esch, Bernd H. Schmitt, Jokern Redler, & Tobias Langner, *The Brand Anchoring Effect: a Judgment Bias Resulting From Brand Awareness and Temporary Accessibility*, 34 *Advances in Consumer Research* 498 (2007).

⁷³ Bruce, *supra* note 66.

⁷⁴ Cavicchi, *supra* note 1, at 370.

⁷⁵ Kendall F. Svengalis, *Legal Information Buyer's Guide & Reference Manual* 153 (2012).

⁷⁶ *Id.*

⁷⁷ Michael S. Marino, *A Comparison of Westlaw and Lexis-Nexis*, July 1999, <http://www.massbar.org/publications/section-review/1999/summer/a-comparison-of-westlaw-and>.

seemingly produce the most efficient tools for legal practitioners seeking to do “one-stop-shopping,” finding all of their content (case law, legislative histories, legal periodicals) in the same place. However, is this preeminence of quantity argument truly warranted?

3. *Comprehensiveness*

It is one of the greatest merits of the National Reporter System that it gives all the cases. Some of our critics call it a ‘Blanket System,’ and we are disposed to accept that analogy. No policy of insurance is so satisfactory as the blanket policy; and that is the sort of policy we issue for the lawyer seeking insurance against the loss of his case through ignorance of the law set forth in the decisions of the highest courts.

- John B. West, 1889⁷⁸

Comprehensiveness is one of the major elements of the West and Lexis brand strategy, continuing the ‘blanket system’ goal John B. West set forth in 1889. Studies have suggested, however, that the “comprehensive search result” offered by West and Lexis may not be the most effective research strategy, as full-text databases have several inherent weaknesses.

Problems with full-text searches include the failure to search for synonyms or variant spellings, failure to distinguish homonyms, and the “aboutness” problem (when a term appears in a document but is not related to the conceptual content of the document).⁷⁹ In legal research specifically, studies have indicated that they keyword dependence of full-text searching fails to adequately recognize broad subjects.⁸⁰ User behavior and interface design are also critical factors in the effectiveness of full-text databases.⁸¹ Unless a user has a strong understanding of the search mechanisms used by Lexis or West, their results will likely not produce the “comprehensive search result” they believe they are getting.

PART IV: TEACHING LEGAL RESEARCH

The choice of legal resources and its involved biases takes on a new importance in the context of legal research teaching. Both student and instructor biases affect learning; differences between a student’s bias towards Google-retrievable sites or a professor’s bias for historically reputable materials can cause a disconnect with frustration on either side. In this environment, recognition of biases and the formation of a common ground is key to assure the most useful and effective course.

⁷⁸ John B. West, *A Symposium of Law Publishers*, 23 Am. L. Rev. 396, 406 (1889).

⁷⁹ Jeffrey Beall, *The Weaknesses of Full-Text Searching*, 34 Journal of Academic Librarianship 438 (2008); Penny Hazelton, *Integrating Manual and Computer Legal Research*, in *The Spirit of Law Librarianship* 233 (1991).

⁸⁰ Daniel P. Dabney, *The Curse of Thamus: An Analysis of Full-Text Legal Document Retrieval* (1986).

⁸¹ Julie M. Jones, *Not Just Key Numbers and Keywords Anymore: How User Interface Design Affects Legal Research*, 101 Law Library Journal 7 (2009).

Why do we teach legal research?

The importance of legal research coursework in law school is clear, from both ethical and practical perspectives.⁸² Legal research is an essential part of practice; a 2014 legal technology study revealed that respondents spent nearly a fifth of their working hours conducting legal research.⁸³ Law librarians, legal research professors, and practitioners alike have recognized the importance of teaching legal research in law school, as many students arrive to law school with a minimal understanding of research techniques:

It's a much more universal deficiency of knowledge about research resources and techniques. It begins in junior high school, and is not only unrelieved by high school, university, and graduate school so-called "research" experiences, but is actually exacerbated by them. It is, in fact, an abysmal level of ignorance about how to do research, not only using Web and proprietary database sources, but the much wider range of resources.⁸⁴

While legal research courses are essential in light of many students lacking research fundamentals, these courses are also critical for students with strong research backgrounds. Legal research and legal analysis are distinct from other disciplines that students may be familiar with, and require a different skill set to navigate:

There is nothing new in the notion that law students have trouble understanding how to conduct efficient legal research, nor are some of the reasons for this phenomenon hard to understand. The law is, after all, a complicated web of interrelated doctrines and often contradictory interpretive texts. First-year law students frequently lack the contextual understanding necessary to discover and evaluate all the extant decisions necessary to develop a full analysis of the issues presented to them.⁸⁵

The new environment of the law, paired with unfamiliar methods of analysis, makes legal research one of the fundamental courses in a law student's academic career. However, students do not come to these courses with a blank slate, and are informed by prior research experiences. Students are often "heavily biased" in favor of online research methods, and may often be

⁸² Filippa Marullo Anzalone, *Some Musings on Teaching Legal Research*, 20 Legal Writing J. Legal Writing Inst. 5 (2015).

⁸³ Joshua Poje, *Legal Research*, accessed May 19, 2016, <http://www.americanbar.org/publications/techreport/2014/legal-research.html>.

⁸⁴ Cindy Carlson, *Notes from the Technology Trenches, Reader Responses: Teaching Cost Effective Searching & Bloomberg for Law Firms*, May 24, 2004, <http://www.llrx.com/columns/notes70.html>.

⁸⁵ Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 Akron L. Rev. 151, 152 (2006).

“inattentive to a discussion of print-based research tools.”⁸⁶ The challenge of teaching legal research thus becomes not only how to teach the law, but how to teach it to an audience predisposed to certain methods of information seeking behavior.⁸⁷

What do we teach?

Starting from scratch, how does one decide what resources to teach? Many believe legal research classes should be a practice-oriented approach, where coursework attempts to simulate legal practice as much as possible.⁸⁸ This practice-oriented focus informs the format of legal resources taught in legal research courses, as coursework increasingly emphasizes online resources; 96 percent of lawyers polled in the 2013 ABA Legal Technology Survey said they conducted legal research online.⁸⁹

While teaching online resources is important from a practice orientation, it is also critical when we consider the experience and practices of modern law students. Legal literature has identified a divide between today’s teachers and students: a digital divide. Some have classified today’s students as “digital natives,” with non-digital-natives as “digital immigrants.” Digital immigrants are part of a generation “instructed in traditionally pedagogic, ‘old learning’ institutions, [...] immersed in a print-only industrialized world.”⁹⁰ Millennials, on the other hand, were born between the 1980s and early 2000s, and are characterized by an “increased use and familiarity with communications, media, and digital technologies.”⁹¹ Further, millennials “have a proclivity for bricolage, piecing together information from a variety of sources,” influenced by their relationship to the internet.⁹² In the world of the internet and easily-accessible information, these digital natives have not needed to learn systematic information-retrieval skills of generations past, and this has led to differences in brain circuitry and behavior between digital natives and digital immigrants.⁹³ This difference in upbringing and relationship with information has a great effect on the way millennials research and how they are informed by older generations. As one “digital immigrant” reflects:

⁸⁶ *Id* at 178.

⁸⁷ Jones, *supra* note 81, at 8.

⁸⁸ Anzalone, *supra* note 82, at 6.

⁸⁹ Carole A. Levitt, *10 Must-Know Tips for Internet Legal Research on the Cheap*, Attorney at Work (2014).

⁹⁰ Kari Mercer Dalton, *Bridging the Digital Divide and Guiding the Millennial Generation’s Research and Analysis*, 18 Barry L. Rev. 167, 177 (2012-2013).

⁹¹ *Id* at 168.

⁹² *Id* at 175.

⁹³ Kari Mercer Dalton, *Their Brains on Google: How Digital Technologies are Altering the Millennial Generation’s Brain and Impacting Legal Education*, 16 SMU Sci. & Tech. L. Rev. 409, 419 (2013).

For our students, though, books are substantially less important than they were to us and electronic research has been a successful strategy for them up to the point where they encounter legal research instruction. It is logical, therefore, for them to believe that their teachers are simply out of touch with the way things are now, and while they might hear what their teachers say about the importance of book-based research, it is unclear whether they really believe what they hear.⁹⁴

This belief of instructors as “out of touch” can be incredibly detrimental and can undermine instruction even on those materials students will come to rely on, like LexisNexis or Westlaw. Some have described this disconnect as a problem with trust:

Once they are done with print, they are done with us. Why? One reason is that they do not trust us. We lied to them. We told them they had to do something and later they learned that they did not. We can only develop trust by abandoning our unsupported pretensions about what students have to do and start taking advantage of what they are actually going to do. We must speak their language.⁹⁵

Relying on biases of what has worked in the past not only alienates students but may not adequately represent the current state of the law, as the nature of legal information and authority is changing.⁹⁶ While educators are beginning to recognize this challenge and are asking fundamental questions such as whether print materials should be abandoned in legal research courses⁹⁷, there is more to the discussion than simply “print vs. online.” Online legal research consists of far more than LexisNexis and Westlaw, and an understanding of alternative sources is necessary not only for cost-effective or access-to-justice reasons, but also to deconstruct path-dependent research tendencies.

Beyond Westlaw and LexisNexis

In 2012, a survey conducted at Stanford’s Robert Crown Law Library approached the “Lexis v. Westlaw” debate from a cost-effective perspective: if law schools could only subscribe to one database for students, which database could be canceled? The authors cited a need for low-cost materials as impetus for the study: as costs for research tools, both online and paper, continue to increase, librarians are often faced with the difficult decision of what materials can and should be canceled, and what new acquisitions can be made.”⁹⁸ Questions were posed for

⁹⁴ Gallacher, *supra* note 85, at 160.

⁹⁵ Thomas Keefe, *Teaching Legal Research from the Inside Out*, 97 *Law Lib. J.* 117, 130 (2005).

⁹⁶ Robert C. Berring & Kathleen Vanden Heuvel, *Teaching Advanced Legal Research: Philosophy and Context*, 28 *Legal Reference Services Q.* 53, 56 (2009).

⁹⁷ Keefe, *supra* note 95, at 130.

⁹⁸ J. Paul Lomio & Erika V. Wayne, *Law Librarians and LexisNexis vs. Westlaw: Survey Results*, Stanford Law School, Robert Crown Law Library, Legal Research Paper Series 2 (2008).

cutting access to either Westlaw or LexisNexis: question five asked if it would be problematic to only provide access to LexisNexis, and question six asked whether access to only Westlaw would be a problem. For both questions, two-thirds of law firm library respondents answered that it would not be a problem.⁹⁹ A followup question asked respondents what other online databases they would like to have taught in law school. Eighty percent of respondents wanted training provided on PACER, and fifty-eight wanted training on BNA and CCH. The following are examples of the 73 comments included with this question:

- “Any free legal resource available on the web”
- “General Internet literacy and search skills”
- “All alternatives should be considered”
- “More training on less expensive resources”
- “How to evaluate the free sites they use”
- “Internet legal resources”

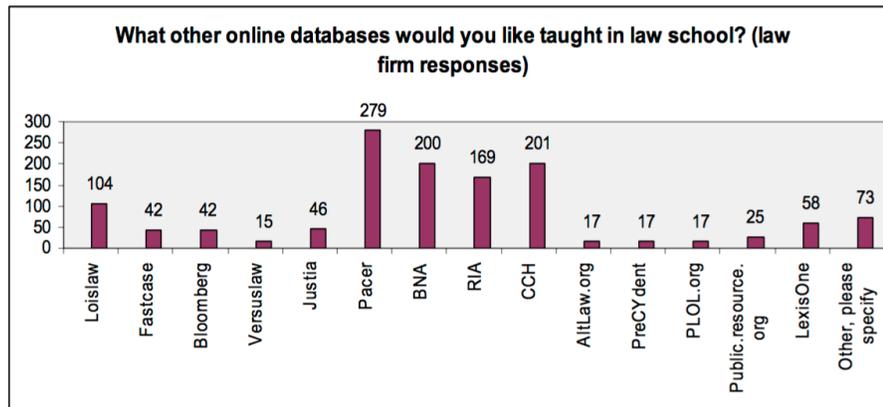


Figure 7

These study results reflect a very real challenge: law students enter the field relatively untrained in non-Lexis/West online resources, and this frames their future legal research behaviors. This is a problem stemming from both legal research courses and student information behaviors. For legal research instructors, the challenge lies in the sheer magnitude of online legal resources, an inability to teach proficiency in multiple resources during the short amount of class time¹⁰⁰, and a potential bias towards those resources deemed reputable and reliable through the test of time.¹⁰¹ For students, the challenge can arise from a lack of visibility¹⁰² (for example, I never saw a

⁹⁹ *Id* at 7.

¹⁰⁰ Vicenç Feliú & Helen Frazer, *Embedded Librarians: Teaching Legal Research as a Lawyering Skill*, 61 J. Leg. Ed., 540, 543 (2012).

¹⁰¹ Bruce, *supra* note 66.

¹⁰² Laura K. Justiss, *A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms*, 103 Law Lib. J. 71, 72 (2011).

PACER representative on campus during law school), both databases' use of a Google-like keyword search¹⁰³, a misguided impression that one can find all necessary information within these platforms¹⁰⁴, and initial patterned behavior through the continued use of Westlaw or LexisNexis.¹⁰⁵ While these challenges cannot be easily addressed, I propose a handful of de-biasing strategies for use by instructors in evaluating legal research instruction.

PART V: DEBIASING STRATEGIES

One of the problems with addressing bias, or, 'de-biasing,' is the difficulty in getting people to recognize their own biases. Self-reporting is notoriously ineffective as a proper measure: "every time we look at our behavior and monitor our behavior, we behave in an egalitarian way [...] it's only when we're not paying attention that we discriminate."¹⁰⁶ Most people don't like recognizing the possibility that they could be biased, because of social stigma against those who have biases. Thus, strategies for minimizing bias must focus on the "inherent" nature of bias in order to be successful. One strategy involves taking a test, like the Implicit Association Test, to bring awareness to one's own hidden biases.¹⁰⁷ Other strategies include mental reframing and active open-mindedness.

The Implicit Association Test

The Implicit Association Test (IAT) is a psychological word association test. The IAT 'score' is based on the length of time it takes a person to sort different words: concepts (e.g., fat people, thin people) and evaluative words (e.g., good, bad). The test measures the strength of concept associations by looking at response times in computer categorization tasks.¹⁰⁸ The test can work for a range of subjects:

In an initial block of trials, exemplars of two contrasted concepts (e.g., face images for the races Black and White) appear on a screen and subjects rapidly classify them by pressing one of two keys (for example, an *e* key for Black and *i* for White). Next,

¹⁰³ Keefe, *supra* note 95, at 124.

¹⁰⁴ Roberta F. Woods, *From Federated Search to the Universal Search Solution*, 58 *The Serials Librarian* 141, 142 (2010).

¹⁰⁵ Jones, *supra* note 81, at 29.

¹⁰⁶ John Dovidio, *Speaking of Psychology: Understanding your racial biases*, American Psychological Association, accessed May 19, 2016, <http://www.apa.org/research/action/speaking-of-psychology/understanding-biases.aspx>.

¹⁰⁷ Anthony G. Greenwald, Debbie E. McGhee, & Jordan L. K. Schwartz, *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 *J. Personality & Social Psychology* 1464 (1998).

¹⁰⁸ Anthony G. Greenwald, T. Andrew Poehlman, Eric Luis Uhlmann & Mahzarin R. Banaji, *Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity*, 97 *J. Personality & Social Psychology* 17, 18 (2009).

exemplars of another pair of contrasted concepts (for example, words representing positive and negative valence) are also classified using the same two keys.¹⁰⁹

A review of the test results compared the test to self-reporting measures, and found that the predictive validity of self-reporting was low while the validity of IAT results was relatively high. Now, the IAT is available online for a range of subjects, from gender and race to self-esteem and anxiety.¹¹⁰ This test may be an effective first step in combatting bias, as it can make one aware of his or her own biases. However, not all people may agree with their results. As stated on the IAT “Preliminary Information” webpage, “If you are unprepared to encounter interpretations that you might find objectionable, please do not proceed further.”¹¹¹

Reflective Strategies

Other debiasing strategies are mental exercises. One basic de-biasing strategy is known as “consider the opposite,” and is as simple as its name suggests. The strategy is to ask oneself, “What are some reasons that my initial judgment might be wrong?”¹¹² This strategy aims to form alternative hypotheses, and directs attention to contrary evidence that may not have been considered. With regard to legal research, this strategy could be used to probe judgments on resource choice, particularly when a resource has been overlooked. For example, a reference librarian could challenge him or herself to explore and evaluate one new online resource per week, so that they would be knowledgeable enough to share this resource with patrons and expand their own list of “go-to” resources.

Another powerful de-biasing strategy is group decision making. The most basic reason this strategy is effective is statistical; a larger sample size can reduce individual error.¹¹³ However, group decision making does have several pitfalls, like the unconscious influence of public judgment. The best way to use groups for de-biasing is to emulate a “consider the opposite” strategy, by assembling a group with diverse perspectives. Application in a legal research setting may involve a group of law students, law faculty, and librarians discussing the aims of a legal research course. Students in their final year could share their law school research experiences, so that instructors know what resources are being used by students, what kinds of resources students need, and what kinds of tasks students struggle with. Similarly, a legal research instructor should consult with other faculty members, both to learn about faculty research habits, and to learn what resources faculty members believe students should learn. Together, these groups contain a wide range of perspectives that would encourage a comprehensive legal research course.

¹⁰⁹ *Id.*

¹¹⁰ *Project Implicit*, accessed May 19, 2016, <https://implicit.harvard.edu/implicit/>.

¹¹¹ *Preliminary Information*, Project Implicit, accessed May 19, 2016, <https://implicit.harvard.edu/implicit/takeatest.html>.

¹¹² Richard P. Larrick, *Debiasing*, in *Blackwell Handbook of Judgment and Decision Making*, 323 (2004).

¹¹³ *Id.* at 327.

A final strategy similar to both group decision making and “consider the opposite” is teaching “active open-mindedness,” which involves considering arguments from a range of perspectives.¹¹⁴ This could manifest with a legal research instructor asking him or herself, “If I were a student, what would I want my legal research class to look like?” or “If I were an attorney, what resources would I want my associates to know?” Addressing these viewpoints will be helpful for instructors not only to develop their courses, but also to stay abreast of current trends and practices.

These de-biasing strategies are only a small sample of those available; other strategies emulate decision-making tools and include providing new information, using models, and modifying one’s environment. While no de-biasing strategy is assured success, due in part to challenges like the bias blind spot¹¹⁵, these are nonetheless helpful tools to consider during tasks where one may be predisposed to respond a certain way (such as performing a task redundantly).

CONCLUSION

Bias is pervasive in all aspects of human life, and can lead to stagnated thinking by reinforcing beliefs. In the field of legal research, recognizing and addressing bias is essential, due both to the changing information landscape and the role of librarians and instructors as information providers. In the classroom, bias also manifests based on learned brain circuitry, and reminding oneself of these processes can help mediate social disconnects between generations. For legal research instructors, it is crucial to teach to the needs of the student in the changing legal environment, and de-biasing strategies can better help educators identify what those needs are.

¹¹⁴ Lilienfeld, *supra* note 25, at 393.

¹¹⁵ Pronin, *supra* note 46, at 370.