

Marketplace

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Inherent bias must be acknowledged

Supreme Court nominee Sonya Sotomayor insists her "wise Latina" comment does not mean she will be biased on the bench. Commentator Betsey Stevenson says biased decision-making is inevitable, but can be overridden if its existence is acknowledged.

TEXT OF COMMENTARY

KAI RYSSDAL: Today was the last day of Sonia Sotomayor's Supreme Court confirmation hearings. From her perspective, it seemed to be smooth sailing. But if we hadn't heard it before, the news-consuming public certainly got its fill of the phrase "wise Latina" this week.

Judge Sotomayor apologized for any misunderstanding. She tried to put the comments into context. But commentator Betsey Stevenson says the nominee may not be that different from the rest of us.

BETSEY STEVENSON: Supreme Court nominee Sotomayor's comments about her life experience as a "wise Latina" have been juxtaposed against those of Chief Justice Roberts, who once said that a judge's job is to "call balls and strikes," like a baseball umpire. The implication is that, Roberts is unbiased since most people believe that umpires are impartial. Certainly umpires make mistakes, but these mistakes are not driven by their race or ethnicity.

But is this right? Researchers agree that it's difficult to sustain bias in professional sports arenas. But they also believe, like the old adage about New York, if bias can make it there,



Betsey Stevenson, assistant professor of business and public policy at the Wharton School of Business.
(<http://bpp.wharton.upenn.edu>)

it can make it anywhere. So two separate teams of economists recently studied baseball umpires. And they learned something pretty startling: An umpire is more likely to call "strike" than "ball" when he's of the same race or ethnicity as the pitcher. And as a result, your team is more likely to win if the umpire is the same race as the pitcher.

In sports, unlike the Supreme Court, there's an objective truth. And by comparing these umpires' calls with the pitch location data recorded by computers, researchers confirmed that it's the umpire making mistakes, favoring his own group. Similar research analyzing basketball referees also found that fewer fouls are called against white players when the refs are also white.

These three independent studies all find evidence of biased decision-making in a highly scrutinized arena with clear right and wrong answers. If our biases trip us up even when making simple decisions -- like calling ball or strike, foul or charge -- then I really worry about how they may affect the more complex judgments made by any Supreme Court justice.

Whether he admits it or not, a wise white man brings a different perspective to the bench, just as much as a wise Latina woman. Biases exists. Problems arise when we are unaware of them. If we acknowledge our bias, we can to work to override it. But by ignoring the reality, we will continue to tilt our calls towards those who look like us.

RYSSDAL: Betsey Stevenson teaches at the Wharton School at the University of Pennsylvania.

COMMENTS

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By j miller

From Ashburn, VA, 07/19/2009

This report was most refreshing and rightly advocates that the first step in judicial fairness reform is to acknowledge that bias does exist and that legal opinions from biased courts affect all citizens, not just the litigants in such cases. I am grateful to learn about umpire and referee bias, but as far as the larger baseball analogy is concerned, while umpires appear to be there to make calls, they are in fact there to record calls, even when a call is incorrect. Just compare the video replay to the score book if you have any doubt about how that works. The primary task of an

umpire is to conduct the game. When a dispute arises the ump must consult and rely upon the appropriate section and paragraph of the rulebook before applying the proper rule, including to dispense a specified remedy when called for.

Thanks, J. Miller

By john gates

From columbus, OH, 07/18/2009

I'm sorry, but your analogies are sloppy. Sports calls are not "simple decisions" , and they are not dealing with determinable "objective truths", even with computer studies. And they are made instantly, unlike court decisions. Apples and oranges! But your conclusion, that we all have biases, is a given!

By Katie Harrold

From MN, 07/17/2009

Thank you for addressing this: "Whether he admits it or not, a wise white man brings a different perspective to the bench, just as much as a wise Latina woman. Bias exists. Problems arise when we are unaware of them." I am surprised and saddened that this thread of conversation has not been more present in America in all the hub-bub over her statement. It is fascinating to me that if you are white and male, it is presumed neither of these things inform your life. The point is, "judges, like everyone else, are influenced by their backgrounds. How a judge deals with his or her prejudices is the real issue". (thank you also Aaron Harber, Huffington Post)

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