

Mechanisms of Discrimination

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[Maria Chavez](#), [Everyday Injustice: Latino Professionals and Racism](#) (Rowman & Littlefield, 2011).

Everyday Injustice is an empirical study of Latino and Latina attorneys. The book examines the lawyers' cultural, socioeconomic and family backgrounds: it compares and contrasts their law school experiences, socialization into the profession, career paths and ideological and professional commitments with that of their non-Latino peers; it explores the intersection of racial, class, gender and professional identities; and it documents the political leanings, activities and political values of Latino and Latina attorneys. *Everyday Justice* investigates shared perceptions and experiences of negative stereotyping encountered by Latino and Latina attorneys as well as their sense of marginalization and professional isolation. It is a rich and revealing account of the professional lives of minority lawyers striving to overcome discrimination in a profession purporting to adhere to the highest standards of equality.

The book represents an important addition to the scholarship of the legal profession. As the profession continues to struggle, notwithstanding its increased diversity, with persistent under-representation of women and minority lawyers within its elite ranks, growing scholarly attention has been given to the experiences of gender, racial and class minorities. To date, however, insufficient attention has been paid to the experiences of the fastest growing ethnic minority group in the United States, Latinos and Latinas. Moreover, following recent US Supreme Court decisions that have eroded [affirmative action](#) policies, placed procedural limitations on Title VII litigation, and restricted avenues for recovery, some commentators have expressed concern that the Court's emphasis on the impact of affirmative action on African-Americans and Caucasians, its focus on intentional past discrimination and its inattention to Latinos, and implicit discrimination might cause it to prematurely [strike down affirmative action](#) policies altogether. Exploring in great detail the professional lives of Latino lawyers, including their discriminatory experiences, *Everyday Injustice* is especially important and timely and provides a rich and detailed context against which the wisdom of affirmative action policies as well as other diversity measures may be evaluated on an informed basis.

Furthermore, as intentional, overt discrimination has been in decline, a growing body of literature has begun to examine the next frontier of anti-discrimination law: implicit, structural and institutional discrimination both within and outside the legal profession. But what exactly is the nature of implicit discrimination and how does it manifest itself? Implicit discrimination takes place when institutions adopt organizational features, structures, procedures, work environments and cultures that tend to systematically favor some employees over others, irrespective of quality of work done or merit considerations.

Consider, for example, the [billable hour](#) method, routinely utilized by law firms large and small, both to monitor associates' work and to bill their time to paying clients. The billable hour is, however, a crude measure of associate work. It measures quantity of work, not quality. And, over time, it tends to consistently favor those associates who are able to log the most hours. This tends to disfavor all associates with competing and demanding personal obligations, and to disproportionately impact women associates to the extent that they shoulder more household and childrearing responsibilities compared with their male counterparts at large firms. Thus, the billable hour, ostensibly a gender neutral time-

keeping tool, in fact functions as a mechanism of gender discrimination. This does not mean, of course, that law firms should not use the billable hour method, but it does mean that firms ought to be sensitive to and mitigate the disparate gender consequences of the billable hour, especially in a day and age in which sophisticated clients increasingly reject the billable hour as a reliable method of billing and demand objective-meeting, incentive-based fee arrangements. Firms could, for example, supplement the billable hour with assessment tools meant to measure quality (rather than quantity) of work, ability to meet objectives, and effectiveness of performance as a team member.

The fight for equality and justice within the profession (and in American society) is therefore far from over. Indeed, in some ways the battle for equality is about to become much more complicated. For all of its ugly manifestations, intentional discrimination at least was easy to spot and fight. Indeed, its perpetrators often did not bother to hide it, and once the profession decided to fight it (after long decades of failing to do so), intentional discrimination underwent a sharp decline. Combating implicit discrimination, however, is an altogether different story. The elusive enemy, if you will, is harder to pin down and fight. In particular, the devil of implicit discrimination is in its details, which are often hard to document and prove.

The narratives of *Everyday Injustice* offer an important and rich perspective from which the insights of the emerging implicit discrimination scholarship can be tested. The book's main assertion is that Latino and Latina attorneys experience significant implicit discrimination which results not only in their under-representation within the legal profession but in considerable under-representation in the profession's upper strata of power, influence and status including the judiciary, academia and the partnership ranks of large law firms. Moreover, because the under-representation of Latino and Latina lawyers is a function of widespread implicit discrimination, it is not likely to be self-correcting over time and would require proactive diversity measures to overcome.

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