

Stereotypes about race and responsibility persist in bankruptcy system

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Prior research has established that society appears to accord less forgiveness to African-Americans when they arrive in bankruptcy court: Proceedings take longer, cost more and typically lead to lower levels of debt relief.

And according to new research co-written by an interdisciplinary team of University of Illinois experts in psychology and legal studies, practitioners inside the [bankruptcy](#) system have little knowledge of the [racial disparities](#) that exist, relying instead on [common stereotypes](#) about race, responsibility and debt.

The overrepresentation of blacks filing for Chapter 13 bankruptcy and the attendant lack of knowledge by consumer bankruptcy attorneys regarding the racial dimensions of the problem should be a major policy concern, said Robert M. Lawless, the Max L. Rowe Professor of Law and a co-author of the research.

"This paper first replicates an earlier study that we did in 2012 and includes a new study that focuses more on the perceptions of lawyers," said Lawless, also a co-director of the Program on Law, Behavior and Social Science at the U. of I. College of Law. "You would think people who work in a system, especially highly trained professionals, would be aware of what's happening in their field. It turns out they're not."

"Stereotypes can be quite powerful and can obscure huge patterns of how things actually are, especially if those patterns don't align with

expectations," said co-author and U. of I. psychology graduate student Faith Shin. "Attorneys likely hold common stereotypes about which groups are responsible and trustworthy, and that guides their beliefs about which groups file Chapter 13."

To see how sensitive bankruptcy insiders were to racial disparities, the researchers sent surveys to a random national sample of consumer bankruptcy attorneys.

People filing for bankruptcy can file under either Chapter 7 or Chapter 13.

"There are advantages to each, but generally, Chapter 7 is considered cheaper and much more financially beneficial for someone who wants a fresh start," Lawless said.

Previous research by Lawless, U. of I. psychology professor Dov Cohen and the late legal scholar Jean Braucher showed that African-Americans are twice as likely to file Chapter 13 compared with whites, an occurrence that could not be explained by many other factors outside of race. A second study showed that attorneys were also more likely to recommend Chapter 13 in a bankruptcy case when the hypothetical couple was named "Reggie and Latisha" as opposed to "Todd and Allison."

Although blacks in bankruptcy are twice as likely to file under Chapter 13 as whites, bankruptcy attorneys believed it was the other way around, thinking that it was whites who were twice as likely to file under Chapter 13, Lawless said.

"We found that about 60 percent of consumer bankruptcy attorneys believed that whites were twice as likely to file Chapter 13 bankruptcy, when in reality it is actually blacks who are twice as likely to do so," he

said.

According to Shin, what's most striking in the paper is not that various actors disagree on the cause of the difference.

"It's that they don't even see the difference," she said. "Their perceptions of racial disparity and the actual racial disparity were completely inverted. And the pattern that emerges is one that hews to the well-worn American stereotypes about which race will own up to their debts and which won't."

Another survey queried respondents who had little or no knowledge of the U.S. bankruptcy system but likely held common American stereotypes about which groups tended to be responsible or irresponsible - and their responses were slightly more accurate than the bankruptcy professionals, Lawless said.

The results have implications for general beliefs about how well insiders know their area of expertise, the researchers said.

"There are implications well beyond the legal system," said Cohen, a co-author of the paper. "For many matters, we have to rely on experts. But experts are sometimes influenced by stereotypes, just like everybody else. A lot of times people - even experts - just see what they expect to see. And part of the problem is that stereotypes are seductive. They can make people feel like they know what's going on, even if they don't."

The research also has implications for reform of the bankruptcy system in that it makes clear that good data - and good measurement of that data - is needed, Lawless said.

"In other papers, we have argued that the Department of Justice or the federal courts should keep track of the race and other demographic

characteristics of bankruptcy filers," he said. "We believe this paper also illustrates this point that actual data on who files what, rather than general impressions or subjective judgments, are more likely to tell us what is happening on the ground, and whether improvements are being made toward a more equitable system."

But that's not to say that outsiders must always police a system, especially one as arcane and specialized as the bankruptcy system.

"Insiders may also be able to effectively monitor their own systems," Lawless said. "However, they will need hard data, rather than guesses based on preconceptions."

The paper was published in the *American Bankruptcy Law Journal*.

More information: Cohen, Dov and Lawless, Robert M. and Shin, Faith, *Opposite of Correct: Inverted Insider Perceptions of Race and Bankruptcy* (August 22, 2017). *American Bankruptcy Law Journal*, 2017; Illinois Program in Law, Behavior and Social Science Paper No. 18-8. Available at SSRN: ssrn.com/abstract=3041393

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