

THE #FERGUSON EFFECT: OPENING THE PANDORA'S BOX OF IMPLICIT RACIAL BIAS IN JURY SELECTION

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INTRODUCTION

It is a warm autumn night in St. Louis. The Cardinals are celebrating a 2–1 victory over the Los Angeles Dodgers in game four of the National League Championship Series. The bitter racial divisions that have erupted in this city following the shooting of unarmed teenager Michael Brown momentarily dissolve into a sea of red and white as fans dressed in Cardinals gear stream out of the stadium. But there he is: a man wearing a handmade sign, taped to the back of his jersey, that reads: “I AM Darren Wilson.”¹

He joins a group of fans, all white, to heckle a group of mostly black protesters rallying outside of the stadium demanding justice for Michael Brown. The white Cardinals fans shout, “Let’s go Darren!” “Africa! Africa! Africa!” and, “We’re the ones who gave all y’all the freedoms that you have!”² The Ferguson protesters respond with chants of, “This is what democracy looks like!”³ For better or for worse, the protesters are right. This clash exemplifies an extreme racial polarization with deep roots in American society. Since the founding of this nation, the dream of equality has clashed with the reality of racial injustice. As Supreme Court Justice Thurgood Marshall noted in 1987, “[A]t the Constitutional Convention eloquent objections to the institution of slavery went unheeded, and its

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¹ Tom Ley, *Cardinals Fans Get Ugly in Clash with Ferguson Protesters*, DEADSPIN (Oct. 7, 2014, 10:04 AM), <http://deadspin.com/cardinals-fans-get-ugly-in-clash-with-ferguson-proteste-1643282285> [<http://perma.cc/AV46-EK7T>].

² *Id.*

³ Tim O’Neil, *Police Chief Says Protesters Arrested After Refusing to Leave St. Louis QuikTrip*, ST. LOUIS POST-DISPATCH (Oct. 12, 2014, 5:45 PM), http://www.stltoday.com/news/local/crime-and-courts/police-chief-says-protesters-arrested-after-refusing-to-leave-st/article_fb84ee16-9759-535f-84ac-570d116eed2a.html [<http://perma.cc/8228-EUTQ>].

opponents eventually consented to a document which laid a foundation for the tragic events that were to follow.”⁴ In Ferguson, Missouri, those tragic events are still unfolding.

The Michael Brown shooting struck a nerve in American society because it exemplifies the complex nature of race relations today. On one hand, we extoll the merits of racial diversity, we celebrate the civil rights movement, and we have a black president. On the other, our communities and schools are highly segregated⁵ and African-Americans are disproportionately incarcerated⁶ and overrepresented among police shooting victims.⁷ Despite great strides, race still lurks under the surface of our “post-racial” exterior, waiting to explode.

In this Essay, given the renewed yet enduring importance of considering the intersection of race and justice following the tragic death of Michael Brown, I will examine how we should treat race and implicit bias in jury selection. In Part I, I discuss the nature of implicit bias, its role in subconscious conditioning, and its effects on contemporary social constructions. Part II explores how implicit bias affects voir dire, offering personal anecdotes from my time as a public defender. Lastly, in Part III, I consider and critique various methods of “debiasing” the jury and addressing the role of implicit bias in voir dire.

I. IMPLICIT BIAS AND RACIAL PARADIGMS

These simmering tensions are the product of a new racial paradigm: one in which we eschew de jure discrimination while still being conditioned by powerful cultural narratives that cast people of color as the deviant, criminal other.⁸ This conditioning impacts our attitudes, impressions, and perceptions of the world. Instead of the undisguised prejudice of the past, we face a much more intractable foe: implicit bias. Implicit bias is the unconscious racial stereotyping, both good and bad, that seeps into our decisionmaking process without the endorsement of our conscious mind.⁹

⁴ Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1, 3 (1987) [<http://perma.cc/E4XG-TXHC>].

⁵ See generally MEGAN HABERLE & JORGE SOTO, DISCRIMINATION AND SEGREGATION IN HOUSING, (2014) (reviewing data regarding extensive racial discrimination and segregation in residential housing) [<http://perma.cc/G2SW-MBKE>]; RICHARD ROTHSTEIN, ECON. POLICY INST., FOR PUBLIC SCHOOLS, SEGREGATION THEN, SEGREGATION SINCE (2013) (detailing the high level of racial segregation that persists in American public schools) [<http://perma.cc/U7UD-LBEE>].

⁶ E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2011 8, tbl.8 (2012) [<http://perma.cc/4NTA-9S98>].

⁷ Jeff Kelly Lowenstein, *Killed by the Cops*, COLORLINES (Nov. 4, 2007, 12:00 PM), http://www.colorlines.com/archives/2007/11/killed_by_the_cops.html [<http://perma.cc/ZQ9A-B8J5>].

⁸ See generally VESLA M. WEAVER, *Unhappy Harmony: Accounting for Black Mass Incarceration in a “Postracial” America*, in BEYOND DISCRIMINATION 215–256 (Fredrick C. Harris & Robert C. Lieberman eds., 2013) [<http://perma.cc/K69Z-78PH>].

⁹ Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 951 (2006) [<http://perma.cc/SN25-QZXF>].

Research has revealed that “one does not have to be a Racist with a capital R . . . to harbor implicit racial bias.”¹⁰ Rather, implicit bias is triggered automatically, as “people who engage in this unthinking discrimination are not aware of the fact that they do it.”¹¹

For example, the man wearing the “I AM Darren Wilson” sign at the Cardinals game and other Wilson supporters probably do not identify as a racist or white supremacist.¹² They are likely not openly hostile in everyday interactions with the people of color who are their co-workers, bosses, employees, teachers, doctors, acquaintances, friends, and neighbors. Yet, by tapping into socially conditioned implicit biases, these seemingly “good Americans”¹³ advance a narrative about the Michael Brown shooting that is infused with negative racial attitudes and damning, racially charged stereotypes. Michael Brown is transformed from a kid walking home into a “common street thug.”¹⁴ Officer Wilson’s lethal actions become the reasonable reaction of a man in fear for his life.¹⁵

Thus, the role of race finds its way, covertly, into the social construction of normative rules for social interaction between whites and people of color. When decisionmaking is influenced by negative attitudes and stereotypes, a certain racial order arises. One in which African-Americans, for example, are more likely to be viewed as violent, hostile, and aggressive than whites.¹⁶

In this way, implicit bias affects how we are governed by some of our most valued democratic institutions, including the American jury. This has broad implications for the criminal justice system generally and defense lawyers such as myself in particular. All too often, we find ourselves in the trenches of a jury trial where the black defendant is someone a lot like Michael Brown, and the predominantly white venire has several people a

¹⁰ Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1577 (2013) [<http://perma.cc/BJ5H-QJHC>].

¹¹ Isabel Wilkerson, *No, You’re Not Imagining It*, ESSENCE, Sept. 2013, at 134.

¹² See, e.g., Laurie Lynn et al., *We Support Officer Darren Wilson*, FACEBOOK, <https://www.facebook.com/groups/599915720125823> (“We do not support racism of any kind. Hatred, racism and negative comments or posts will result in your removal of the group.”).

¹³ The concept of the “good American” has long been a part of our national discourse. President Theodore Roosevelt, in a speech on Americanism, stated, “There is no such thing as a hyphenated American who is a good American. The only man who is a good American is the man who is an American and nothing else.” 20 THEODORE ROOSEVELT, *Fear God and Take Your Own Part*, in THE WORKS OF THEODORE ROOSEVELT 457 (memorial ed. 1923).

¹⁴ Tasneem Raja, *Fundraising Effort for Ferguson Cop Who Shot Michael Brown Gets Ugly*, MOTHER JONES (Aug. 21, 2014, 5:35 PM) <http://www.motherjones.com/politics/2014/08/darren-wilson-donors-racist-ferguson> [<http://perma.cc/5FPW-2WQS>].

¹⁵ *Id.* For an in-depth discussion of implicit bias in self-defense cases, see Lee, *supra* note 10, at 1577–80.

¹⁶ Cynthia Kwei Yung Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 MINN. L. REV. 367, 406 (1996) (highlighting ways in which ambiguous acts can be interpreted differently, depending on the actor’s race, and citing studies suggesting that “stereotypes about Blacks as violent or dangerous people influence perception and judgment”).

lot like the man with the Darren Wilson jersey. Given the prevalence of implicit bias and its influence on decisionmaking, how can I protect my clients' constitutional right to a fair and impartial jury?

II. IMPLICIT BIAS AND VOIR DIRE

As a new lawyer, starting out in the juvenile unit of the public defender's office, the democratic potential of the jury excited me. In courtrooms across America, the people themselves, in their roles as jurors, directly determine the outcome of cases—one person, one vote. Each juror has an equal and meaningful opportunity to participate in the decisionmaking process. As part of public defender training, I was taught the importance of connecting with the jurors to make them trust me. Voir dire is like carrying on thirty dinner party conversations at one time: smile, be charming, remember their names, make them like you, *be yourself*. The goal is to establish credibility with the jurors so they will hear you out when presenting your client's theory of innocence. The hope is they will listen with an open mind and maybe, just maybe, give your client the benefit of reasonable doubt. When I realized that cases could be won or lost during jury selection, I was terrified.

My fears stemmed from the reality that nothing in law school had prepared me for the theater of voir dire. The venire come from all walks of life: they are retired schoolteachers, electricians, unemployed factory workers, accountants, homemakers, and church leaders. They are young, middle-aged, and elderly. They are straight and gay, male and female, black, white, Asian, and Latino. They are Good Americans. And like all of us, they harbor implicit biases about people of different races, ethnicities, and genders. Can a jury rife with implicit biases fulfill its role as a bulwark of liberty¹⁷ and an “anchor . . . to the principles of [the] [C]onstitution”?¹⁸ My legal education taught me how to make constitutional arguments, to structure an opening statement, and to properly object to evidence, but not how to suss out the implicit biases of a sixty-five year old Asian-American man who owns a gas station in the inner city.

Is there any effective way for lawyers to surface the implicit biases of the venire during voir dire so that only the most fair and impartial jury is impaneled? Although over a century of Supreme Court jurisprudence recognizes the importance of eliminating racial bias in jury selection,¹⁹ the process of voir dire has proven largely ineffective at detecting or correcting

¹⁷ *Strauder v. West Virginia*, 100 U.S. 303, 308 (1879) (quoting William Blackstone's description of the right to trial by jury as the “bulwark of [citizens'] liberties”) [<http://perma.cc/9QV4-RETK>].

¹⁸ Letter from Thomas Jefferson to Thomas Paine (July 11, 1789), in 7 THE WRITINGS OF THOMAS JEFFERSON 408 (Albert Ellery Bergh ed., 1907) [<http://perma.cc/W4HS-Y38N>].

¹⁹ See, e.g., *Batson v. Kentucky*, 476 U.S. 79, 84 (1986) [<http://perma.cc/P2RF-L6Z5>]; *Strauder*, 100 U.S. at 308.

implicit bias in jurors.²⁰ The Court's approach in the landmark case *Batson v. Kentucky*, which bans the racially discriminatory use of peremptory strikes,²¹ is aimed at only the most overt discrimination. To be fair, the *Batson* doctrine was crafted in 1986, long before researchers began fully exploring the impact of implicit bias in the courtroom.²² Today, the growing body of implicit bias research is widely recognized as having important implications on criminal justice policies and the jury system in particular.²³ But without a jurisprudential framework to remedy illegal discrimination grounded in implicit bias, lawyers are left on their own to detect and address the implicit bias of jurors in an ad hoc fashion.

III. "DEBIASING" THE JURY

Scholars and commentators have stepped in to fill the void, suggesting ways to make implicit bias less of a factor in jury decisionmaking. These suggestions range from screening prospective jurors with the Implicit Association Test (the primary research tool used in detecting unconsciously held biases) to educating jurors about implicit bias and its possible effects in the courtroom.²⁴ While I recognize the value of attempting to combat implicit bias through cultivating greater awareness of the phenomenon, I am concerned that instead of reducing implicit bias, these approaches will open Pandora's Box.

First, the relevant research does not directly address how implicit bias mitigation techniques can be effectively utilized in the context of jury decisionmaking.²⁵ What we do know is that mere awareness of the

²⁰ Reshma M. Saujani, "The Implicit Association Test": A Measure of Unconscious Racism in Legislative Decision-Making, 8 MICH. J. RACE & L. 395, 419 (2003) ("[T]he unconscious nature of juror bias prevents the voir dire from impaneling fair and impartial jurors . . .").

²¹ *Batson*, 476 U.S. at 89.

²² See Anna Roberts, (Re)forming the Jury: Detection and Disinfection of Implicit Juror Bias, 44 CONN. L. REV. 827, 841 (2012) [<http://perma.cc/TQZ6-3EUM>].

²³ CHERYL STAATS, KIRWAN INST., STATE OF THE SCIENCE: IMPLICIT BIAS REVIEW 2014 23–26 (2014) [<http://perma.cc/AVN2-V7LY>].

²⁴ See, e.g., Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 HARV. L. & POL'Y REV. 149, 165–70 (2010) [<http://perma.cc/4M6U-RYAD>]; Dale Larson, *A Fair and Implicitly Impartial Jury: An Argument for Administering the Implicit Association Test During Voir Dire*, 3 DEPAUL J. SOC. JUST. 139, 162–69 (2010) [<http://perma.cc/Q5FG-HWDU>]; Roberts, *supra* note 22, at 852–57; Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCHOL. 597, 601 (2006) [<http://perma.cc/SLEX-7KA2>].

²⁵ Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1146 (2012) ("Unfortunately, because of the incredible difficulties in research design, we do not have studies that evaluate implicit bias in real criminal trials. Accordingly, the existing body of research, while strongly suggestive, provides inferential rather than direct support that implicit bias accounts for some of the race effects on conviction and sentencing.") [<http://perma.cc/4YEJ-N8S9>].

existence of implicit bias will not effectively mitigate it.²⁶ Nor is it simply a matter of stifling biased impulses.²⁷ Rather, it is an ambitious and difficult undertaking that requires the formation of new automatic associations.²⁸ Researchers have proposed exposing individuals to others who disconfirm negative stereotypes about other groups as the primary means to effectively minimize implicit bias.²⁹ This process of removing bias, or debiasing, takes “intention, attention, and time.”³⁰ Lawyers conducting voir dire do not have adequate time to meaningfully engage in this process. Social scientists concur that the procedural limitations and psychological atmosphere of jury selection are not conducive to the kind of open exchange of information necessary to fully ascertain juror biases.³¹

Second, as the events in Ferguson demonstrate, American society is still stratified along racial fault lines. Potential jurors who are not comfortable talking about race or who view themselves as “colorblind” may be offended by attempts to inject the issue of racial bias into voir dire, viewing it as “race-baiting”³² or an attempt to “play the race card.”³³ Imagine the Cardinals fan with the Darren Wilson sign taped to his jersey as

²⁶ Do-Yeong Kim, *Voluntary Controllability of the Implicit Association Test (IAT)*, 66 SOC. PSYCHOL. Q. 83, 93 (2003) [<http://perma.cc/D77F-RZBB>].

²⁷ In fact, suppressing biased thoughts may actually serve to increase the influence of implicit bias. See Adam D. Galinsky & Gordon B. Moskowitz, *Further Ironies of Suppression: Stereotype and Counterstereotype Accessibility*, 43 J. EXPERIMENTAL SOC. PSYCHOL. 833, 837 (2007) [<http://perma.cc/24QU-U8LQ>].

²⁸ Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5, 16 (1989) [<http://perma.cc/D4FD-KMQS>].

²⁹ Kristin A. Lane et al., *Implicit Social Cognition and Law*, 3 ANN. REV. L. & SOC. SCI. 427, 438 (2007) [<http://perma.cc/3HMM-LQ2D>]; see also CHERYL STAATS, KIRWAN INST., STATE OF THE SCIENCE: IMPLICIT BIAS REVIEW 2013, at 54 (2013) (“A significant portion of the debiasing research centers on interventions that counter stereotypes and train individuals to develop new associations. One such example, advanced by Wittenbrink, Judd, and Park (2001) focused on how modifying the situational context may influence racial attitudes. By juxtaposing ordinary people in counter-stereotypic situations, such as depicting young White and Black males in scenes that included a church and a graffiti-strewn street corner, researchers found that the context condition affected participants’ racial attitudes on a subsequent sequential priming task” (citation omitted)) (citing Bernd Wittenbrink, Charles M. Judd, & Bernadette Park, *Spontaneous Prejudice in Context: Variability in Automatically Activated Attitudes*, J. OF PERSONALITY & SOC. PSYCHOL. 815 (2001) [<http://perma.cc/A98S-6MHR>]) [<http://perma.cc/N7B8-W3BK>].

³⁰ Devine, *supra* note 28, at 16.

³¹ Rachael A. Ream, *Limited Voir Dire*, CRIM. JUST., Winter 2009, at 22 (collecting information on ineffectiveness of limited voir dire); David Suggs & Bruce D. Sales, *Juror Self-Disclosure in the Voir Dire: A Social Science Analysis*, 56 IND. L.J. 245, 247, 264–66 (1981) (finding that the current method of voir dire serves to “inhibit rather than facilitate [juror] self-disclosure”) [<http://perma.cc/RUE7-DATG>].

³² See, e.g., S.A. Miller, *Desperate Democrats Resort to Race-Baiting to Spur Black Vote*, WASH. TIMES (Oct. 29, 2014), <http://www.washingtontimes.com/news/2014/oct/29/democrats-use-race-baiting-fliers-to-spur-black-vo> [<http://perma.cc/48P9-7MAW>].

³³ See Rick Horowitz, *The Race Card: Dealing from the Bottom of the Deck*, HUFFINGTON POST (July 27, 2010, 1:03 PM), http://www.huffingtonpost.com/rick-horowitz/the-race-card-dealing-fro_b_660626.html [<http://perma.cc/44BG-3QNZ>].

a member of the venire in a criminal case where the defendant is a young black man. Because he is unaware that he harbors hidden biases based on a “belief system and subconscious informed by [his] race-related experiences[] and a perceived narrative” of what occurred in Ferguson,³⁴ he is unable to self-disclose his bias, even if directly asked about it. Because he has not self-reported anything that would raise concern, he may become part of the empaneled jury. But after sitting through a voir dire peppered with repeated references to implicit bias and questions about race and prejudice, he will likely feel defensive, unsettled, and suddenly suspicious of the lawyer’s motives.³⁵ Talk about a nightmare dinner party conversation. Any chance of building rapport with this juror is effectively destroyed. Yet there he will sit, in judgment of a young black defendant.

If lawyers are expected to educate juries about implicit bias, they should be provided with the tools to do this effectively. Law schools, bar organizations, and legal affinity groups should create programs for attorneys interested in mitigating the effects of hidden bias in their practice.³⁶ The terror I felt facing voir dire for the first time would only have been magnified if, in addition to persuading the venire, I had felt pressure to expose the hidden racial biases of a room full of strangers. Especially for women and people of color, raising issues of race risks the

³⁴ Patrick C. Brayer, *Hidden Racial Bias: Why We Need to Talk with Jurors About Ferguson*, 109 NW. U. L. REV. ONLINE 163, 169 (2015).

³⁵ See generally J. Beth Mabry & K. Jill Kiecolt, *Anger in Black and White: Race, Alienation, and Anger*, 46 J. HEALTH & SOC. BEHAV. 85 (2005) (finding that mistrust increases feelings of anger in whites but not in African-Americans) [<http://perma.cc/JG8S-8WQJ>].

³⁶ For example, law professors can invite students to openly discuss implicit bias through in-class exercises, reflective journals, courtroom observations, and reading implicit bias literature. Also, professors can highlight the underlying racial issues that are present in many of the seminal cases contained in casebooks. The more students participate in such discussions, the more comfortable they will become with the topic of race. When teaching a juvenile justice clinic, I asked students to take the Implicit Association Test as part of our coursework. Students were not required to share the results with the class, but could do so on a voluntary basis either in class discussion or a reflective journal. We also completed an exercise known as the “mirror” in which students explore how they perceive themselves and others. See Laurie Shanks, *The Mirror Mirror Exercise: A Quick and Easy Method to Begin Discussing Race, Gender, Ethnicity, Age and Other Differences with Your Students*, THE LAW TEACHER, Spring 2012, at 24–25 [<http://perma.cc/84Y2-Y79D>]. Likewise, law schools and bar organizations alike can create safe spaces for law students and practicing lawyers to discuss implicit bias by sponsoring CLEs, panels, and group forums and hosting evened-biasing training. Such activities provide education, awareness, exposure, and strategies for addressing implicit bias. See, e.g., *Implicit Bias Initiative*, A.B.A., <http://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias.html> (last visited Feb. 24, 2015) (providing information, tools, and resources relating to implicit bias in the legal system) [<http://perma.cc/78LL-R47R>]; NAT’L CTR. FOR STATE COURTS, STRATEGIES TO REDUCE THE INFLUENCE OF IMPLICIT BIAS (2012) (suggesting, among other things, diversity training seminars, fostering increased opportunities for contact with counter-stereotypic individuals, and creating institutional feedback mechanisms that promote deliberative thinking, procedural consistency, and reduce ambiguity in the decision making process) [<http://perma.cc/P93U-UKRN>].

possibility of further alienating some of the white members of the venire.³⁷ Without the proper training, even a well-meaning attempt to address race during jury selection can backfire. There is no practical way to reveal deeply held unconscious feelings during a brief conversation in a sterile and impersonal courtroom,³⁸ but it is quite easy to turn off a potential juror who feels she is being accused of racism.³⁹

CONCLUSION

Defense lawyers, and public defenders in particular, are acutely aware of the effects of implicit bias in the justice system. While it is critical to the ethical administration of justice that biased individuals be removed from the venire, some of the proposed solutions in the literature—such as simply injecting a discussion of race into voir dire—are solutions that are likely to be insufficient and may actually trigger a negative response in jurors. Raising the issue of race is like opening Pandora’s Box: if handled improperly, lawyers (and their clients) are likely to suffer dangerous consequences. Unless done with great skill and delicacy, a line of inquiry that touches on racial bias might elicit a defensive response that harms the chances of empanelling an impartial jury. Lawyers addressing racial bias during voir dire run the risk of polarizing the venire and losing credibility among potential jurors who view this as unwarranted race-baiting. Any discussion about addressing implicit bias in jury selection must recognize and account for this reality.

³⁷ See, e.g., FRANCES E. KENDALL, UNDERSTANDING WHITE PRIVILEGE: CREATING PATHWAYS TO AUTHENTIC RELATIONSHIPS ACROSS RACE 67 (2d ed. 2013); SHANNON SULLIVAN, REVEALING WHITENESS: THE UNCONSCIOUS HABITS OF RACIAL PRIVILEGE 127 (2006). The intersection of race and gender is complex. Women of color face a kind of double jeopardy where both gender bias and racial bias can impact social interactions. While the author is unaware of studies examining juror perceptions of black female lawyers, a study of juror-eligible individuals in Los Angeles demonstrated a strong preference for white lawyers over identical Asian lawyers in terms of likeability, competence, and hireability. See Jerry Kang et al., *Are Ideal Litigators White? Measuring the Myth of Colorblindness*, 7 J. EMPIRICAL LEGAL STUD. 886, 899–900 (2010). With regard to gender, a 2004 study of women in the workplace found that race-based stereotyping against African-American women results in institutional isolation and negative perceptions regarding their authority and capability, even as compared to white women and African-American men. For example, African-American women report exclusion from networking opportunities, limited social interactions with white coworkers, concerns about conforming to corporate culture, and difficulty bonding with their white female colleagues. CATALYST, ADVANCING AFRICAN-AMERICAN WOMEN IN THE WORKPLACE: WHAT MANAGERS NEED TO KNOW 12–17 (2004) [<http://perma.cc/C729-HVF5>]. See generally PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs et al. eds., 2012) (setting forth a qualitative, empirical and narrative study of how women of color are marginalized, discredited, and belittled in academia by colleagues, administrators, and students).

³⁸ Suggs & Sales, *supra* note 31, at 264–66.

³⁹ See Marc Lamont Hill, *Are White People Afraid to Talk About Race?*, HUFFPOSTLIVE (March 27, 2013), <http://live.huffingtonpost.com/r/segment/being-white-in-philly/5148ef702b8c2a28d2000143> (discussing why white people feel uncomfortable discussing “third rail” racial issues) [<http://perma.cc/32X6-AXS5>].

As Americans, we need to talk about race. We need to discuss implicit bias and how it impacts our worldviews and governs our relationships. But perhaps jury selection is not the venue in which to attempt to redress centuries of deep racial divisions. Instead of having these conversations with strangers under the bleak florescent lights of a criminal courtroom, we should be talking about it with our families, friends, and colleagues in conference rooms, around dinner tables, in classrooms, boardrooms, and cubicles. I do not believe that race is unimportant. Quite the opposite: it is so important it deserves more than cursory treatment by lawyers who, with nothing more than legal training, are poorly equipped to explore the nuances of implicit racial bias under the procedural limitations of modern voir dire.