First, as a matter of American political behavior, it is extremely unlikely that a pro-crime candidate could win an election, then successfully advance convicts' supposed "interests" in the legislature by enacting pro-crime legislation. As one authority has pointed out in Congressional testimony, politically-minded burglars

"would have to find a candidate running on a platform that calls for lowering the penalties for burglary, then find 51 percent of the electorate that wanted to vote for that candidate, and then have that candidate convince his or her fellow legislators to also lower the penalties for burglary."33

Second, this rationale for disenfranchisement operates on incorrect assumptions about the political views of people convicted of crime. Disenfranchisement's defenders have never offered any proof that those convicted of crime would use their electoral power to rewrite the criminal law, but we have evidence to the contrary. Interviewing criminal defendants, Jonathan D. Casper found that, with few exceptions, they "believed that they had done something 'wrong,' that the law they violated represented a norm that was worthy of respect and that ought to be followed."34 People charged with property crimes "felt that laws against taking property from others were 'good' laws and that such behavior should not be tolerated but merited punishment."35 Casper's defendants showed that they understood "the idea of reciprocity upon which the law is based."36 Asked what they thought would happen without laws against the offense they were accused of committing, Casper's subjects replied that the behavior would become rampant, which would be a bad thing.37 People convicted of crime, then, are far more likely to endorse the laws they've broken — to "accept them as desirable guides for life"38 — than to band together and try abolish the criminal code.

After interviewing incarcerated voters in Maine and Vermont — two states which allow people imprisoned for felony convictions to vote — one journalist recently concluded that their political views likely "mirror those of other Americans."39 Another journalist found that "one might think that criminals would be a solid liberal constituency," but "interviews suggest there are a number of conservatives behind bars."40

Third, even if people with criminal convictions did have unique, articulable political views, it would violate basic democratic principles to exclude them from the

34 Jonathan D. Casper, American Criminal Justice: The Defendant's Perspective (1972), p. 146.
35 Id. at 147.
36 Id. at 148.
37 Id. at 149-151.
38 Id., at 151.
39 Vanessa Gezari, "Go To Jail, Get To Vote — in Maine or Vermont," St. Petersburg (Fla.) Times, Aug. 6, 2004, p. 1A.
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polls for that reason. As Stephen Holmes and Cass Sunstein have written, "[o]ur system of political liberty does not deprive people of the vote because incumbents fear how people will vote."41 The U.S. Supreme Court held in Carrington v. Rash that "[f]encing out" from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.42

In two late-nineteenth-century decisions handed down around the time the state of Washington first enacted its disenfranchisement law – Davis v. Beason43 and Murphy v. Ramsey44 – the U.S. Supreme Court upheld laws denying polygamists the ballot, allowing state governments to "withdraw all political influence" from people who might be "hostile" to family law and convention.45 Rash is among many Supreme Court decisions employing more modern understandings of voting rights.

Nevertheless, removing political influence from offenders may be the interest the state of Washington comes closest to articulating. As noted above, I cannot locate a clear statement of any purpose Washington seeks to accomplish with this policy, but the state describes its disenfranchisement policy as one which aims to "limit[] the participation in the political process by those who have proven themselves unwilling to abide by the laws that result from that process."46 This statement may well be a mere abstraction, with no connection to any goal or purpose. But if it does move towards any purpose that I can recognize, it would be removing political influence from those who have shown that they disagree with current law.

b. Highly abstract values such as the "purity of the ballot box" are inadequate reasons for mass disenfranchisement.

One notable phrase in the debate over disenfranchisement is the "purity of the ballot box" – that is, what the Ninth Circuit called "a quasi-metaphysical invocation that the interest [supporting disenfranchisement] is preservation of the 'purity of the ballot box.'"47 The Ninth Circuit went on to doubt that "the offenses that restrict or destroy voting rights have anything to do with the integrity of the electoral process....."48 The California Supreme Court has interpreted "purity of the ballot box" reasoning to be largely about preventing fraud, since the convict might "defile 'the purity of the ballot box' by selling or bartering his vote or otherwise engaging in election fraud; and such activity might affect the outcome of the election and thus frustrate the freely expressed will of the remainder of the voters."49

43 Davis v. Beason, 133 U.S. 333 (1890).
44 Murphy v. Ramsey, 114 U.S. 15 (1885).
45 Murphy, 114 U.S. at 43.
46 Plaintiffs' First Interrogatories and Requests for Production of Documents Propounded to Defendant Sam Reed and Objections and Answers Thereto, p. 8.
47 Dillenburg v. Kramer, 469 F.2d 1222, 1224 (Ninth Cir. 1972), quoting Washington v. State, 75 Ala. 582 (1884).
48 Dillenburg, p. 1224.
49 Otsuka v. Hite, 414 P.2d 412, 417 (1966). The same court would later overturn California's lifetime felon-disenfranchisement law after finding that "the enforcement of modern statutes regulating the voting process and
Whatever it may have meant in 1884, the idea of the “purity of the ballot box” is indeed a “quasi-metaphysical” piece of reasoning today, and certainly does not describe what practical problem the state of Washington aims to solve with its disenfranchisement policy.

One authority has concluded that nineteenth-century disenfranchisement provisions were at least partly explained by the belief that “a voter ought to be a moral person.” As a justification for disenfranchisement today, this argument is also tenuous—again, simply because it does not identify the purpose of the policy. It may be true that we do not want voters to be immoral people, but it is also true that we do not want voters to be slothful and greedy people, or racist people, or utterly ignorant people. But such abstract values are clearly insufficient grounds for denial of the franchise today.

As a hypothetical illustration, imagine that a state legislature enacted a law barring the homeless from voting, on the theory that the homeless lack a sufficient “stake in society” to cast responsible votes. Though this principle has a long pedigree in democratic thought, it is tenuous because it fails to identify a practical purpose. Or a legislature might decide that only those with a high-school diploma or its equivalent should be allowed to vote—on the sensible logic that only these people have proven themselves qualified to make political decisions. The legislature might also reason that people who have failed to graduate from high school have wasted social resources, have probably violated compulsory-education laws along the way, and have failed to sign their name on the social contract, as it were. But since it does not identify the specific problem it seeks to address, this voting restriction too would certainly fail.

For a long time, American lawmakers believed that an abstract idea, by itself, was a sound and sufficient reason for restricting the franchise. That is no longer true. Today, the statement that a property-less, homeles, non-taxpaying, illiterate person has a right to vote in the United States is clearly accurate. That statement would be nonsensical to eighteenth- and nineteenth-century American political thinkers, most of whom were comfortable restricting the franchise based solely on vague ideas like the “purity of the ballot box.” Today, those ideas are tenuous justifications for a restrictive voting policy.

c. Administrative difficulties underscore the apparent lack of a practical purpose behind the state’s disenfranchisement policy.

Whether disenfranchisement’s purposes are penal or political, the policy should be enforced in order to pursue or achieve those interests. The gubernatorial recount fight

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penalizing its misuse—rather than outright disfranchisement of persons convicted of crime—is today the method of preventing election fraud which is least burdensome on the right to suffrage.” See Ramirez v. Brown, 507 P.2d 1345, 1357.

The U.S. Supreme Court has also interpreted a state’s interest in preserving the “purity of the ballot box” to refer to preventing fraudulent elections. Dunn v. Blumstein, 405 U.S. 330, 345 (1972). In what may have been a spasm of mild sarcasm, the Court called preserving the purity of the ballot box “a formidable-sounding state interest,” but held that durational residence requirements were not necessary to prevent fraud. Id.

Alexander Keyssar, The Right To Vote, p. 163.

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of 2004 and 2005, however, indicated that the state of Washington’s felony disenfranchisement policy is unevenly enforced, as both Republicans and Democrats alleged that ineligible former felons had voted in the election. While I have not conducted research on the implementation of disenfranchisement law in the state of Washington, the state’s response to plaintiff’s interrogatories, press reports during the gubernatorial recount, and the results of my research into disenfranchisement’s administration in other states suggest that there are significant gaps in Washington’s enforcement of its disenfranchisement policy. The apparent inconsistency with which this voting restriction has been enforced raises serious questions about the policy’s purpose.

The restoration process in particular appears to be poorly-understood by state and local officials. After interviews with state and local officials – and with many of those accused of voting illegally in Washington’s 2004 gubernatorial election – the Seattle Times observed that the system intended to restore voting rights to those eligible while preventing illegal votes is “so bewildering that almost nobody navigates it well.” “You need a degree in government to figure it out,” one official told the newspaper.51

As Washington acknowledges in its replies to Plaintiff’s Interrogatories 1-5, it does not currently maintain lists of voters ineligible because of felony convictions. While it will do so under HAVA-mandated reforms beginning in 2006, the state acknowledges that it still will have no way of knowing about whether new arrivals to the state have felony convictions in their former state(s) of residence.52 More generally, HAVA-mandated changes in administration constitute a tacit acknowledgment that the current procedures for administering the policy are flawed.

One potential gap in the administration of Washington’s disenfranchisement law concerns how local elections officials keep records of people with felony convictions. After surveying and interviewing a sample of state and local elections officials in various states – not including Washington – I found that in practice, many states and localities may not disenfranchise someone not registered at the time of his conviction. Typically, a county elections official receiving a felony conviction notice for a local resident will check the voter rolls for that individual, and suspend or cancel the person’s registration to vote – but if the person is not a registered voter, many elections officials do not keep a record of the conviction. I should reiterate that I do not have evidence that this is how Washington’s county registrars implement the policy. But several states with similar laws and electoral structures have this problem. I would also note that while critics of disenfranchisement tend to emphasize administrative problems which bar from the polls people who are legally eligible, this gap in enforcement typically allows voting by people who are legally ineligible. While Washington does require voters to swear that they are not ineligible due to a felony conviction at the time of registration, the presence of other enforcement mechanisms indicates that the state does not believe the oath requirement is sufficient.

52 Plaintiffs’ First Interrogatories and Requests for Production of Documents Propounded to Defendant Sam Reed and Objections and Answers Thereto, p. 2-5.
Washington elections officials simply have no way of knowing whether newcomers to the state have old felony convictions in other states. This problem is particularly acute in states like Washington, where at least some people are barred from voting after their full sentences have been served. In addition, elections officials in some states do not know what to do even if they know a new resident has an old conviction in another state. I recently surveyed officials in five states which bar at least some people from voting after their full sentences have been served—Delaware, Maryland, Nebraska, Tennessee, and Wyoming. In each of these states, local officials were divided over what they would say to a new resident of the state who voluntarily divulged that he had an old felony conviction in another state, and who asked for their guidance.

In the absence of a national criminal database, Washington simply will not be able to enforce its disenfranchisement law consistently, no matter how well it trains state and local elections officials and administers its new statewide voter database.

HAVA-mandated reforms should improve the administration of disenfranchisement law in Washington. However, current gaps in enforcement undercut the state’s argument for the sanction. My conclusion is that if this policy were actually directed at rectifying any specific social problem, Washington would have devoted more resources to administering this voting restriction accurately, evenly, and comprehensively.

6. Many other democracies have apparently determined that the policy of disenfranchisement for crime serves no purpose. Where courts have inquired into the policy, governments have failed to demonstrate that disenfranchisement is necessary to address any social need or problem.

   a. In at least eighteen European countries, prisoners retain the right to vote without any restrictions.\(^{53}\)

   Disenfranchisement for criminal conviction is not the democratic norm. The fact that a great many democracies refuse to strip voting rights even from incarcerated offenders should induce added skepticism about the policy’s utility.

   b. The courts of Israel, South Africa, and Canada, as well as the European Court of Human Rights, have struck down disenfranchisement laws.

   Each decision supports the conclusion that the policy is tenuous—neither aimed at nor likely to accomplish any specific objective.

   In the 1996 case *Hilla Alrai*,\(^{54}\) the Israeli Supreme Court refused to revoke the citizenship of Yigal Amir in order to punish him, citing the U.S. Supreme Court’s

\(^{53}\) *Case of Hirst v. The United Kingdom (No. 2), European Court of Human Rights, 6 October 2005, p. 8.*

\(^{54}\) H.C. 2757/96, *Hilla Alrai v. Minister of Interior et al., P. D. 18 (1996).*
decision in *Trop v. Dulles* in doing so.\(^{55}\) Facing the man who had assassinated Prime Minister Yitzak Rabin, the Israeli Court declared that it must "separate contempt for his act from respect for his right."\(^{56}\) Society had already punished Amir by putting him in prison, the Court decided, and disenfranchisement would not harm Amir but Israeli democracy itself.\(^{57}\) Today all Israeli inmates retain the right to vote, and dozens of polling stations are set up inside the prisons.\(^{58}\)

The South African Constitutional Court addressed a challenge to prisoner disenfranchisement in 1999. Acknowledging that the country was "racked by criminal violence,"\(^{59}\) the South African court nevertheless found that the state was "unable to point to any specific evidence" that allowing inmates to vote would create trouble – even if their electoral residences were the prisons.\(^{60}\) After the government curtailed inmate voting by changing residency rules and refusing to set up polling stations inside the prisons, the South African Constitutional Court declared in *Minister of Home Affairs v. Nicro et al.*\(^{61}\) that all inmates must be permitted to vote. In *Nicro*, the state tried to prove two key claims: setting up secure, mobile polling stations in the prisons would waste scarce resources, and would send an "incorrect message to the public that the government is soft on crime."\(^{62}\) The Court rejected both arguments, ruling that the government could not "disenfranchise prisoners in order to enhance its image," nor "deprive convicted prisoners of valuable rights that they retain in order to correct a public misconception as to its true attitude to crime and criminals."\(^{63}\) Home Affairs failed "to place sufficient information before the Court to enable it to know exactly what purpose the disenfranchisement was intended to serve."\(^{64}\)

A 2002 decision of the Supreme Court of Canada similarly protected the right of all inmates to vote. In *Sauvé v. Canada*\(^{65}\) (*Sauvé II*), the Canadian judges observed that the government had "failed to identify particular problems that require denying the right to vote, making it hard to conclude that the denial is directed at a pressing and substantial purpose.\(^{66}\)

In 2004, the European Court of Human Rights reached a similar conclusion in *Hirst v. United Kingdom*.\(^{67}\) Responding to a challenge to the U.K. law barring all convicted inmates from voting, the European Court ruled that the automatic, blanket

\(^{55}\) *Id.* at 23. *See* *Trop v. Dulles*, 356 U.S. 86 (1958).

\(^{56}\) *Hilla Alrai*, at 24.

\(^{57}\) *Id.*


\(^{59}\) *August v. Electoral Comm'n*, 1999 (8) SALR (CC), at 23.

\(^{60}\) *Id.*, at 11.


\(^{62}\) *Id.* at *Id.*, at 20-21, 22-23; 23-24, 27.

\(^{63}\) *Id.* at 28.

\(^{64}\) *Id.* at 28-34.

\(^{65}\) *Id.* at 33.

\(^{66}\) *Id.* at 521.

\(^{67}\) *The Case of Hirst v. The United Kingdom (No. 2)*, Eur. Ct. H.R., Fourth Section, 30 March 2004.
disenfranchisement of all convicted persons during incarceration violates the Convention for the Protection of Human Rights and Fundamental Freedoms. The U.K. attempted to justify disenfranchising all inmates “because of the danger which they present,” a theory which the Court found unconvincing and unconnected to any legitimate government aim. While expressing its “appreciation” for the power of national legislatures to govern the franchise, the unanimous Court rejected the U.K. policy and concluded that it “derives[d], essentially, from unquestioning and passive adherence to a historic tradition.” Furthermore, the Court could find “no rational link” between the punishment and the offender under the U.K. law, and no evidence that disenfranchisement served as a deterrent. This decision was re-affirmed in October of 2005.

c. Several European countries disenfranchise some people convicted of crime, but do so in a much more narrow, targeted, public way.

For example, in Germany, disenfranchisement never occurs automatically, may only be applied by the sentencing judge for certain serious infractions, and can last for only a limited time. While still vulnerable to criticism, such a narrow, publicly-imposed voting sanction explicitly identifies disenfranchisement as punitive in nature, and gains a measure of plausibility. By contrast, the state of Washington’s disenfranchisement policy is invisible, general, and automatic.

The New York Times recently editorialized that “[t]he United States has the worst record in the democratic world when it comes to stripping convicted felons of their rights.” It is certainly true that blanket policies automatically stripping whole classes of convicted people of voting rights – and, further, declining to restore such rights automatically after the sentence has been completed – are extremely unusual, not just among democracies. This fact further intensifies the need for the state to explain what problem the policy is intended to address.

7. Disenfranchisement is a counterproductive policy, since voting is an inherently conservative thing to do. At critical moments in the history of American suffrage, proponents of expanded voting rights have made this point.

By casting a ballot, one political philosopher writes, citizens express “their commitment to the legitimacy of the whole system.” Voting is an exercise of individual choice, “but is also an activity which helps sustain the feeling that the system is

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68 See id. at 17.
69 Id. at 16.
70 Id. at 14.
71 Id. at 15.
72 Case of Hirte v. The United Kingdom (No.2), European Court of Human Rights, 6 October 2005.
73 Nora V. Demleitner, Continuing Payment on One’s Debt to Society: The German Model of Felon Disenfranchisement as an Alternative, 84 MINN. L. REV. 753, 760-761 (2000).
legitimate."  When any citizen votes, that citizen actively endorses the political system. By definition, voting cannot be subversive: each ballot legitimates the status quo. During the civil rights movement of the 1960s, some members of the business community understood this, and supported expanded voting rights for African Americans because they believed doing so would curb radicalism. Helping African Americans to see voting as a good way to pursue their interests would encourage them to seek "to achieve their ends by voting rather than demonstrating."

This was not a newfangled idea. In the 1820 Massachusetts constitutional convention, one advocate of enfranchising laborers without property argued, "[b]y refusing this right to them, you array them against the laws; but give them the rights of citizens -- mix them with the good part of society, and you disarm them."

These advocates were not starry-eyed idealists, but men interested in enhancing social order and cohesion.

8. Striking evidence of the policy's disproportionate racial impact intensifies the need to ask what practical objective the state's disenfranchisement law pursues.

As this court has previously found, Washington's "disenfranchisement provision clearly has a disproportionate impact on racial minorities." The court also found that evidence of discrimination in the Washington criminal justice system, and of a "resulting disproportionate impact on minority voting power," was "compelling."

Indeed, the state of Washington's Sentencing Guidelines Commission recently concluded that "the over-representation of people of color is a system-wide problem within the criminal justice system." Specifically, the Commission found that although African Americans made up just 3% of the state's adult population in 2002, they accounted for 21.3% of the state prison population. Hispanics accounted for 7% of the

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78 In the Wisconsin constitutional convention of 1846, a speaker named Huebschmann argued for the enfranchisement of men not yet citizens by contending that
79 "...the right of voting...has proved...to be the best stimulant to make the indifferent ones use their best endeavors to inform themselves in relation to the institutions of this country.... You throw political responsibility upon them, which impels them to investigate the political questions of the day, and they will thus gain experience and pursue an enlightened political course."
state population, but 11% of the prison population. Native Americans were also over-represented in the prison population, sentenced at 1 ½ times their proportion in the population. Taken together, all non-white groups made up about 19% of the overall state population in 2002, but about 39% of the Washington state prison population.

The Commission concluded that sentencing alternatives such as the First Time Offender Waiver “appear to benefit Caucasians over people of color.” Such sentencing alternatives, it should be noted, would considerably abbreviate the term of disenfranchisement of an individual. Finally, the Commission found that Hispanics “receive more punitive punishments at slightly higher rates than Caucasians and other minorities.”

The Ninth Circuit, meanwhile, noted that “racial bias in the criminal justice system may very well interact with voter disqualifications to create the kinds of barriers to political participation on account of race that are prohibited by Section 2” of the Voting Rights Act.

One authority estimated that as of 1998, about one-quarter of black men in Washington – 24% – were disenfranchised. Another study estimated that while about 3.64% of Washington’s total voting-age population was disenfranchised as of 2000, 14.33% of its African American population was disenfranchised.

Latinos are usually not as consistently tracked by correctional officials as are African-Americans, so estimates of the Latino disenfranchised population are more difficult to calculate. However, one study concludes that while Latinos make up 3.85% of Washington state’s citizen voting age population, Latinos represent 9.89% of the disenfranchised population.

Disenfranchisement exists at the intersection of two systems – electoral politics and criminal justice – that have been purposefully discriminatory for much of American history. At the least, that history – together with disproportionate impact of disenfranchisement on racial minorities today – ought to induce a sharp skepticism about the wisdom of disenfranchisement, a policy which exacerbates the racial fault lines in American democracy. The practice should survive only if the state can demonstrate that fulfills a specific, important governmental purpose; can demonstrate that it implements

81 Id., p. 3.
82 Id., p. 4.
83 Id., p. 3.
84 Id., p. 26.
the policy in a non-discriminatory manner; and can demonstrate how it will strengthen the democratic character of our society.

The state here fails that test, and for these reasons I regard Washington’s disenfranchisement policy as tenuous.

IV. Sources Consulted.

I have reached these opinions after research into the materials cited above, as well as histories of suffrage, decisions by courts in the United States and other countries, state constitutions and constitutional convention debates, Congressional testimony, scholarly articles in various disciplines, advocacy reports, and arguments made in the popular press. I have also conducted original research into how disenfranchisement is administered by state and local elections officials in the United States, and into similar policies in other countries.

V. Compensation.

I am being compensated $100 per hour for my work in connection with this litigation.

VI. Other Expert Testimony Given in Last Four Years.

None.

Date: October 26, 2005

/s/
Alec Ewald
ATTACHMENT E
Prepublication draft of article in a special symposium of the California Law Review, "Behavioral Realism and Implicit Social Cognition"

Implicit Bias: Scientific Foundations
Anthony G. Greenwald & Linda Hamilton Krieger

Summary

Sections 1–3 of this article review the scientific developments of the past 25 years that have established the foundation for understanding implicit biases. Implicit biases are attitudes and stereotypes that operate largely outside of awareness, yet are significant in determining judgment and behavior in relation to stigmatized and disadvantaged groups.

The Implicit Association Test (IAT — Section 4) is a research procedure that has greatly accelerated investigations of implicit bias in the last 10 years. Prior investigations of bias have relied mostly on survey (question-asking) methods, which have the two disadvantages of (a) allowing people to choose answers that disguise their actual beliefs and (b) not allowing access to beliefs that escape conscious awareness. The IAT assesses implicit bias without asking questions, instead relying on speeded classification performances that are facilitated or impaired by knowledge that need not be accessible to conscious awareness.

The relation of IAT measures to social judgments and behavior has been investigated in numerous studies, 61 of which were recently summarized in a review that statistically characterizes the aggregate import of these findings. Among the important findings of this review is that IAT measures predict behavior and judgment in
relation to stigmatized groups more effectively than do survey-type measures (Section 5).

The biases revealed by IAT measures are remarkably pervasive. Implicit biases toward specific stigmatized groups often appear at statistically noticeable levels in more than 2/3 of respondents. Pervasiveness of implicit biases is also indicated by their appearance at this high level in virtually every demographic sub-segment of the American population that has been examined among the very large samples of respondents who have taken IATs on demonstration and research web sites (Section 6). Explicit biases revealed by survey measures are not nearly so pervasive. It remains a challenge to understand both why implicit biases are so much more pervasive than explicit biases and how implicit biases are formed (Section 7).

Most researchers who have investigated both implicit and explicit bias have concluded that these represent psychologically different forms of bias (Section 8). Implicit biases are seen as being involved in subtle or spontaneous forms of social behavior that can be significant in determining the quality and outcome of social interactions (Section 9). By contrast, explicit biases are conceived as being more involved in deliberate discriminatory behavior that occurs with conscious awareness. Furthermore, conscious awareness may have the potential to override discriminatory effects of implicit bias, when one is aware of possessing implicit bias and of its potential to produce unintended discrimination (Section 10).

Several research studies have established that implicit biases can be reduced by interventions such as exposure to admirable and attractive members of stigmatized
groups. However, such interventions have not yet shown to be capable of producing durable reductions in implicit bias (Section 11).

Two established facts are persuasive in favor of the conclusion (Section 12) that implicit bias is a source of racially disparate outcomes for which race-neutral causes cannot be identified. First is the known pervasiveness of implicit biases that operate outside of awareness and which often deviate from the same person’s explicit beliefs. Second is the established relation of implicit bias to behavior that can have discriminatory impact.

Postscript. The study conducted by Katherine Beckett, reported in her May 3, 2004 manuscript, “Race and Drug Law Enforcement in Seattle”, illustrates Section 12’s point. Beckett identified several race-neutral factors that might have been causally responsible for observed substantial race disparities in drug arrests in Seattle. She identified effective methods of empirically evaluating these potential causes, finding that — singly or in combination — these factors could not explain the observed racial disparity. With evidence favoring racially neutral causes thus lacking, it is plausible, even probable, that the observed racial disparity can be explained by explicit and/or implicit bias. If explicit bias measures had been available to show that the population of arresting police officers was free of such bias, it would remain highly plausible that the observed disparities were due to implicit bias.
Draft of article in press for a special symposium of the *California Law Review*,
"Behavioral Realism and Implicit Social Cognition"
(Footnotes in this draft are in Psychology Journal mode; yet to be converted to Law Review mode)

Implicit Bias: Scientific Foundations
Anthony G. Greenwald\textsuperscript{1} & Linda Hamilton Krieger\textsuperscript{2}

The assumption of conscious control of human behavior has taken a theoretical battering in recent years. Although this assault in some ways resembles the previous century’s Freudian revolution, there are important differences between the two. Freud’s views of unconscious mechanism were embedded in a theory that never achieved conclusive support among scientists, despite many, many empirical theory-testing efforts by researchers in the middle third of the 20th century.\textsuperscript{3} Consequently, Freud’s psychoanalytic theory of unconscious mind and unconscious mental processes has been abandoned by most psychological scientists.

Theoretical conceptions of conscious control over human behavior were strongly re-established in the last third of the 20th century, but this dominance has been crumbling during the past two decades. Unlike the Freudian revolution, however, the new science of unconscious mental process is not the product of a single brilliant theoretical mind.

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\textsuperscript{2} Professor of Law, University of California, Berkeley (Boalt Hall)
\textsuperscript{3} See reviews by Erdelyi (1985), Erdelyi and Goldberg (1979), Greenwald (1992), Kihlstrom (1990), Shevrin and Dickman (1980)
Rather, it is being constructed from an evolving, accumulating body of reproducible empirical findings.4

This article aims to provide readers with an understanding of implicit bias -- one aspect of the new science of unconscious mental process that has substantial potential bearing on discrimination law. Theories of implicit bias are defined in part by contrast with the "naïve"5 psychological view of social behavior, which views human actors as being guided by their explicit beliefs and conscious intentions. A belief is considered "explicit" if it is consciously believed or endorsed. An intention is considered "conscious" to the extent that the actor is aware of taking an action for a particular reason. In either case, the actor would be capable of asserting the belief or identifying the intention, even if unwilling to do so.6

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4 The early stages of this modern revolution were reviewed by Greenwald (1992). Nisbett and Wilson's (1977) exposé of the inadequacies of introspective explanations of behavior was a noticeable starting point of the modern revolution, leading to widespread understanding that self-report measures of conscious mental process used widely in psychological research were of highly suspect validity. Wegner's (2002) and Bargh's (Bargh et al., 2001) more recent works reveal the frequency with which seemingly ordinary voluntary actions are controlled in ways that evade conscious scrutiny, further undermining the idea that a conscious mind is the effective governor of most human behavior.

5 The term "naïve psychology" refers to laypersons' intuitions about determinants and consequences of human, and especially their own, thought and behavior. Modern treatments were largely inspired by Fritz Heider's (1958) book, The psychology of interpersonal relations, which initiated systematic investigation of how laypersons' intuitions differ from scientific understanding.

6 Methodological investigations by social psychologists in the 1960s revealed social influences operating within research and interview settings that would lead people to describe their explicit beliefs inaccurately in experimental studies (Orne, 1962; Rosenberg, 1969; Weber & Cook, 1972). Work inspired by Festinger's (1957) cognitive dissonance theory initiated modern interest in understanding inability to identify the causes of one's own thought and behavior. Nisbett and Wilson's (1977) article effectively summarized the humbling implications of the ensuing two decades of research.
1. Implicit Cognition

Many different types of mental process have been shown to function implicitly, outside of conscious attentional focus. These include implicit memory,\(^7\) implicit perception,\(^8\) implicit attitudes,\(^9\) implicit stereotypes,\(^\text{10}\) implicit self-esteem,\(^11\) and implicit self-concept.\(^12,13\) The meaning of "implicit" in these usages is technical, but still reasonably close to its everyday meaning. For example, implicit memory\(^14\) is memory that is revealed by some performance that could not have occurred in the absence of some previous experience leaving a memory record even though that experience cannot be voluntarily ("explicitly") retrieved. The memory is said to be expressed implicitly, but not explicitly, in the performance. An example: On Day 1 of an experiment\(^15\) subjects were asked to pronounce each of a long list of people's names. Some of these names were recognizably famous, and others were not. On Day 2, these same subjects judged whether each of another long list of names was famous or not. Half of Day 2's non-famous names were repeated from Day 1. The result: More of the repeated non-famous names than the novel ones were judged famous. These "false fame" judgments amounted to an implicit memory effect, with the following interpretation: The names acquired some familiarity from Day 1's pronunciation even though, by Day 2, the Day 1 exposure was not likely to be consciously remembered by

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\(^7\) Schacter, 1987; Jacoby and Dallas (1981)

\(^8\) Kihlstrom, Barnhardt, and Tataryn (1992)


\(^10\) Rudman, Greenwald, and McGhee (2001)

\(^11\) Greenwald and Farnham (2000)

\(^12\) Rudman et al. (2001)

\(^13\) An overview of implicit social cognition, which encompasses the phenomena of implicit attitudes, stereotypes, self-esteem, and self-concept, is available in Greenwald and Banaji (1995); see also Greenwald et al. (2002).
subjects. This perhaps-vague feeling of familiarity for repeated names was sometimes mis-attributed to fame, leading to greater false judgments of fame for the repeated than the non-repeated names. Subjects are presumably going through a mental process something like: “This name seems familiar. How could it be familiar? Perhaps it’s famous.” For names that subjects could explicitly remember as having been seen and pronounced on Day 1, subjects would correctly understand why the name seemed familiar and would therefore not mistakenly attribute the familiarity to fame.

Development of any experimentally useful implicit measure requires that the researcher understand the causes of a judgment or action for which the subject is unlikely to discern the cause. The 2-day study just described requires the researcher to understand that pronouncing a name could produce a feeling of familiarity, which could in turn be mis-attributed to fame. Another example requires that the researcher understand causal influences affecting a loudness judgment. The researcher might know, first, that hearing and understanding a word is facilitated after having recently heard it being pronounced and, second, if a word presented in noisy listening conditions is understood it will be judged to have been spoken more loudly than one that can’t be understood. Thus, at constant loudness, words that have been made easier to understand by having been heard recently will be judged louder than ones not recently heard.\textsuperscript{16} This finding deserves to be called a memory effect because the loudness judgment shows that a trace (i.e., a memory) of the prior exposure exists. It is an

\textsuperscript{14} Schacter (1987)  
\textsuperscript{15} Jacoby, Kelly, Brown, and Jasechko (1989)  
\textsuperscript{16} Jacoby, Allan, Collins, and Larwill (1988)
implicit effect because the subject remains unaware of the influence of the recent exposure on the loudness judgment.

2. Implicit Attitudes and Implicit Stereotypes

Implicit memory research conducted in the 1980s led researchers to develop measures of other implicit mental phenomena. Two of these — implicit attitudes and implicit stereotypes — are especially relevant to bias and discrimination.

Implicit Attitudes

Social psychologists define an attitude as an evaluative disposition, meaning the tendency to like or dislike, or to act favorably or unfavorably toward, someone or something. Explicit expressions of attitudes occur frequently, whenever we say we like or dislike someone or something. A person’s statement that they like a particular presidential candidate provides a ready example. In addition to statements, attitudes can be expressed through favorable or unfavorable action — for example, by voting for or against a particular presidential candidate. If the voter understands that the favorable vote results from favorable beliefs about the candidate, the vote can be considered an explicit attitude expression.

In other situations, a vote might function as an implicit attitude indicator. An implicit attitude is performance of action that indicates favorability or unfavorability toward some object, but is not understood by the actor as expressing an attitude.17 Consider, for

17Greenwald and Banaji (1995, p. 8) define implicit attitude as follows: "Implicit attitudes are introspectively unidentified (or inaccurately identified) traces of past experience that mediate favorable or
example, a situation in which someone votes for a particular candidate even though they know nothing about the candidate other than his or her name. One of the things that might influence a person to vote for this candidate is that the candidate’s name shares one or more initial letters with the voter’s name. In such a case, the vote could be understood, at least in part, as an implicit expression of the voter’s favorable attitude toward self.18

As a second example, consider how people go about forming impressions of a liked or disliked candidate’s spouse, child, or sibling. Someone who knows nothing about this relative other than the fact of relation to the candidate may feel favorably or unfavorably disposed to the relative. Not too surprisingly, this favorable or unfavorable attitude toward the relative is likely to match the attitude toward the candidate. Evaluation of the unknown relative therefore acts as an implicit indicator of attitude toward the candidate. In this example, the “implicit” designation indicates that the attitude expressed toward the relative is determined by the attitude toward the candidate, even though it may be experienced as an independent attitude.

Implicit attitudes are of greatest interest when implicit and explicit attitudes toward the same attitude object differ. These deviations are referred to as dissociations between implicit and explicit attitudes. Dissociations are commonly observed in relation to attitudes toward stigmatized groups, including ones defined by race, age, ethnicity,
disability, and sexual orientation. Many such findings of dissociation have been obtained using the Implicit Association Test (IAT), a procedure described below.\(^{19}\)

**Implicit Stereotypes**

A *stereotype* is a mental association between a social group or category and a trait. The association may reflect a statistical reality, but it need not. If the association does exist, it should take the form of members of the group being more likely to display the trait than are members of other groups. A perfect or near-perfect correlation, which might be a *defining trait*, does not fall within the understanding of stereotype. For example, the correlation between race and skin color may be close to perfect but not taken as part of a racial stereotype. Stereotypes are of interest when the correlation between group membership and trait expression is not perfect, but the trait nevertheless distinguishes members of one group from others. For example, perhaps 10–15% of persons over the age of 70 characteristically drive on highways at speeds noticeably below speed limits. Perhaps only 5% of younger persons drive this slowly. If these estimates (which we, in fact, made up) are accurate, they constitute a genuine association between age and driving behavior. This is a stereotype that (as described) applies to only a small minority (10–15%) of elderly people. Nonetheless, it may come to serve as a default assumption — the assumption that any elderly person is likely to be a slow driver.

The stereotype that associates male gender with fame-deserving achievement was used in the first experimental demonstration of implicit stereotypes. The experiment

\(^{19}\) Discussions of factors that promote dissociation of implicit from explicit attitudes can be found in articles...
was based on Jacoby et al.'s earlier described false-fame implicit memory effect. Banaji and Greenwald\textsuperscript{21} found that this false-fame effect was substantial when the pronounced (i.e., attended-to-but-not-studied) names were male, but was noticeably weaker when the names were female. Banaji and Greenwald described this result as an implicit indicator of the stereotype that associates maleness with fame-deserving achievement. Put more technically, an implicit stereotype of this kind can be defined as "the introspectively unidentified (or inaccurately identified) traces of past experience that mediate attributions of qualities to members of a social category".\textsuperscript{22}

Stereotypes can involve associations of favorable or unfavorable traits with a group. Because the favorable–unfavorable distinction is also central to the concept of attitude, it is natural to ask how stereotypes and attitudes differ. For stereotypes the content of the ascribed trait, rather than its evaluative valence, is central. For attitudes, the opposite holds. So, for example, in the implicit fame experiment, it was the trait of fame, rather than the positivity of fame, that defined the implicit stereotype phenomenon. Stereotypes are often a mixture of favorable and unfavorable traits. As an example, the (not necessarily justified) stereotype of a cheerleader includes both being attractive (a favorable trait) and being unintelligent (an unfavorable trait).

\textsuperscript{20} by Hofmann et al. (2005) and Nosek (in press).
\textsuperscript{21} Jacoby et al. (1989)
\textsuperscript{22} Banaji and Greenwald (1995).
\textsuperscript{22} Greenwald and Banaji (1995, p. 15)
3. Response Bias and Implicit Bias

The term, "bias," sometimes referred to as "response bias," denotes a displacement of response along a judgment continuum. Response bias need not indicate something unwise, inappropriate, or even inaccurate. For example, instructors may vary in their response bias in grading, such that some assign a relatively higher grade to average student performance and others assign a relatively lower grade to the same performance. Instructors who differ in response bias on the grading dimension may nevertheless be equally sensitive to differences among students. Consider an instructor who is biased to grade leniently and assign grades exclusively between A (highest) and C (lowest). This instructor's grades may be perfectly correlated with those of a severe-grading instructor who limits grades to the B to D range. If these two instructors were grading the same person, the more lenient instructor's grades would be exactly one letter grade above those of the more severe instructor. Unless there are established standards that associate specific performances with specific grades, one could not accuse either instructor of being less "accurate" than the other.

A more widely recognized form of bias does affect response accuracy and bears a pejorative connotation. Imagine that a particular instructor differentially assigns grades to two identically performing students when one student is male and the other is female, or when one is White and the other is Black. In this case, judgment fairness and accuracy are both compromised. Attitudes and/or stereotypes are one plausible cause of such discriminatory biases. If, among equally qualified job applicants, one favors members of one race over those of another, this plausibly reflects an attitudinal bias —
one may have a more favorable attitude toward one race group than toward the other. If, among equally qualified renters, one assumes that members of one race are more conscientious than those of another, this is plausibly a bias rooted in stereotype. If, among equally qualified candidates for a management position, men are considered preferable to women, it could be due to operation of a stereotype that treats leadership as a trait more frequently found among men than women.23

Implicit biases are discriminatory biases based on implicit attitudes or implicit stereotypes. Implicit biases are especially intriguing, and also especially problematic, because they can produce behavior that diverges from one’s avowed or endorsed beliefs or principles. The mere existence of implicit bias poses a challenge to legal theory and practice, because discrimination doctrine is premised on the assumption that, barring insanity or mental incompetence, human actors are guided by their avowed (explicit) beliefs, attitudes, and intentions.24

Biases can be either favorable or unfavorable. Ingroup bias designates favoritism toward groups to which one belongs. There is a widespread intuition that it is often entirely acceptable to be biased in favor of at least some of the groups to which one belongs. In this view, bias is a problem only when it is directed against some group. Thus it may be considered acceptable to be biased in favor of one’s siblings, children, or other relatives, and similarly to favor one’s schoolmates and other friends.

23 Discriminatory biases are plausibly stereotype-based when they oppose the bias that might be expected as an attitude effect. For example, gender biases that discriminate against women are plausibly stereotype-based, given that research has found that attitudes toward women are often more favorable than attitudes toward men (Eagly and Mladinic, 1989).
Interestingly, the intuition that biases in favor of one’s smaller ingroups (such as family and friends) are acceptable typically does not extend to believing that biases favoring one’s larger ingroups (one’s race, sex, ethnicity, religion, or age group) are appropriate. Is there a boundary encompassing ingroups toward which favorable biases can be considered acceptable? A non-psychological boundary can be found in the illegality of biases toward certain groups (regardless of one’s membership) defined, for example, by race, sex, ethnicity, religion, and age. Psychologically, the small size of some ingroups is no doubt significant because many people feel more obliged to help others when they are one of only a few people who can possibly be helpful, as when family members are the only ones in a position to help.

Perhaps fortunately, the situations in which one wishes to be biased in favor of one’s important and smaller ingroups, such as in providing care for one’s children, are often ones for which there is no question of possible discrimination against others. Nevertheless, a positive attitude toward any ingroup necessarily implies a relative negativity toward a complementary outgroup. In some circumstances, this relative favoring of the ingroup puts members of other groups at a clearly discriminatory disadvantage, as when one allows favoritism toward a family member or friend to influence a hiring, job assignment, rental, or admissions decision in which one plays a role.

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25 This psychological truth was demonstrated very clearly by Darley and Latané (1968) who found that a solitary witness to a simulated epileptic seizure was considerably more likely to intervene than was one of a group of witnesses. This effect of being in a unique position to help is so strong that the presence of multiple bystanders can result in less likelihood of any help being given than when only a single bystander is present.
4. The Implicit Association Test

The recent development of the Implicit Association Test (IAT) has noticeably accelerated research on implicit bias. The IAT's general method can be readily adapted to measure a wide variety of the group-valence and group-trait associations that underlie attitudes and stereotypes. The IAT is an implicit measure because it infers group-valence and group-trait associations from performances that are influenced by those associations, and does so in a fashion that is not discerned by respondents.26

The most widely used IAT measure assesses implicit attitudes toward African Americans (AA) relative to European Americans (EA).27 In this "Race IAT", respondents first practice distinguishing AA from EA faces by responding to faces from one of these two categories with the press of a left-side computer key and to those of the other category with a right-side key. Respondents next practice distinguishing pleasant-meaning from unpleasant-meaning words in similar fashion. The next two tasks, given in randomly determined order, use all four categories. In one of these two tasks, the AA faces and pleasant words get one response (say, left hand) while the EA faces and

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26 The IAT was first reported by Greenwald, McGhee, and Schwartz (1998). The name of the IAT may suggest that it measures something that should be called "implicit associations". However, the "implicit" in the name of the technique designates a type of test, not a type of association. The IAT is therefore a procedure that provides an implicit measure of association strengths. The statement that respondents do not discern the influence of associations on their IAT performance is properly limited to respondents who have not become aware of the way in which the procedure captures association strengths.

27 These formal race category labels are used in the Race IAT — in place of the widely used labels of Black and White — because the color-name labels carry race-unrelated associative connotations of good and bad that potentially interfere with their use in the measure of race-valence associations.
unpleasant words get the other response. In the remaining task, EA faces share a response with pleasant words and AA faces with unpleasant words.28

The implicit attitude measure produced by this IAT is based on relative speeds of responding in the two four-category tasks. This measure allows an inference about attitudes (category–valence associations) because it is easier to give the same response to items from two categories when those two categories are associated than when they are not. For American respondents taking the Race IAT, performances very often take the form of faster performance when EA and pleasant share a response than when AA and pleasant share a response. This frequently observed pattern supports the interpretation that EA–pleasant is a stronger association than AA–pleasant. This result is described as showing implicit attitudinal preference for EA relative to AA.29

Research comparing IAT (implicit) measures with parallel standard survey-type self-report (explicit) measures has found systematic variations in the agreement between these two types of measures. There is substantially greater overlap when implicit and explicit attitudes have been shaped by the same experiences, which is likely to be the case for attitudes toward consumer brands, sports teams, and political candidates.30

When implicit and explicit measures of attitudes or stereotypes disagree — for example,

28 Various non-essential aspects of the IAT procedure, such as hand assigned to the pleasant category and order of performing the two four-category tasks, are randomized or counterbalanced to avoid their systematically influencing findings.

29 Because each task involves two associations, the complete description of the inference about association strengths is that the combined strength of EA–pleasant and AA–unpleasant associations is stronger than the combined strength the of AA–pleasant and EA–unpleasant associations. This association-strength interpretation of the IAT has been widely, although not uniformly, accepted. A recent discussion of alternative interpretations can be found in Nosek, Greenwald, & Banaji (in press). One of these alternative interpretations — that the IAT measures cultural beliefs — is considered in Section 5 of this article.

30 Hofmann et al. (2005), Nosek (in press), Greenwald, Nosek, and Banaji (2003).
when a Race IAT shows preference for EA and a self-report measure shows impartiality — there is said to exist a dissociation between the two.

5. Predictive Validity of the IAT

Researchers have been extending the IAT into increasingly diverse content domains, applying its general method to a wide variety of groups and social categories.\textsuperscript{31} Perhaps because of the importance of attitude as a theoretical construct in psychology, more attention, thus far, has been given to investigating implicit attitudes than to investigating implicit stereotypes. In recognition of the importance of understanding relations between IAT measures and behavior, many studies that have used an IAT attitude measure have also included a measure of one or more social behaviors that are theoretically expected to be related to attitude or stereotype measures. Data analyses then determine whether individual differences in implicit attitudes or stereotypes measured by the IAT correlate as expected with individual differences in behavior.

Sixty-one such studies were recently identified and summarized in a meta-analytic review by Poehlman, Uhlmann, Greenwald, and Banaji.\textsuperscript{32} The meta-analytic method of their review appraises the value of IAT measures by looking at this body of research in the aggregate, rather than as isolated research findings. To do this, the available correlational measures of relations between IAT and behaviors of interest are averaged within groups of studies that test related hypotheses, as well as over the entire group of

\textsuperscript{31} See Nosek (in press).
86 independent findings that were available in the 61 studies. For comparison, parallel analyses were done examining the aggregated correlations involving self-report (explicit) measures, which were also obtained in most of the studies. Both the implicit (IAT) and the parallel explicit measures displayed predictive validity, meaning that both types of measures, on average, were significantly correlated in expected fashions with measures of behavior. To be clear, this does not mean that statistically significant correlations were found in all studies, but that averages of the correlational results of the collected similar tests clearly showed the expected positive relationships. Predictive validity was greater (meaning that the average correlation was larger) for self-report (explicit) measures than for IAT measures. However, within the critical group of studies that focused on prejudicial attitudes and stereotypes — in other words, studies of implicit bias — predictive validity was significantly greater for the IAT measures.  

6. How Pervasive Is Implicit Bias?

IAT measures of implicit attitudes have been available on the internet for self-administered demonstration use since 1998. These web-accessible demonstrations, which provide opportunities to interactively experience the IAT, have accumulated sufficient data to allow conclusions about relative pervasiveness of implicit and explicit

32 Poehlman, Uhlmann, Greenwald, & Banaji (2005)
33 Poehlman et al.'s (2005) meta-analysis also found that predictive validity of IAT measures was relatively unaffected by two types of study variations that affected predictive validity of explicit measures. First, predictive validity of explicit measures was reduced when the topic was socially sensitive, such that research subjects might be reluctant to describe their attitudes and beliefs to researchers (e.g., for the domain of race attitudes). Second, predictive validity for explicit measures was likewise reduced when the actions or judgments being observed were "spontaneous", meaning that the actions were ones typically performed with little deliberation or with low levels of conscious control.
34 Interactive demonstrations of a dozen versions of the IAT are available at https://implicit.harvard.edu.
biases. Table 1 displays results for a dozen data sets, comparing the degree of favoritism toward advantaged (relative to disadvantaged) groups revealed by implicit and explicit measures. Two differences between the implicit and explicit measures are readily apparent in these data. First, the explicit measures generally show much greater evidence for attitudinal neutrality or impartiality. Averaged across the dozen topics, 42% of respondents expressed neutrality on explicit measures, compared to only 18% of respondents on IAT measures being judged to show negligible bias in one or the other direction. Second, the IAT measures consistently showed greater evidence for bias in favor of the relatively advantaged group (averaging 73% across topics) than did the explicit measures (averaging only 38% favoring advantaged groups). Table 1 also shows a bias index computed as the percentage of respondents showing favorability to the advantaged group minus that showing favorability to the disadvantaged group. Whereas this index averaged only 20% for explicit measures, it averaged 64% for IAT measures. The broad generalization justified by the data in Table 1 is that implicit attitudes reveal far more bias favoring advantaged groups than do explicit measures.

The data in Table 1 cannot be interpreted as representing the attitude distribution of some specific population of interest, such as adult residents of the United States. Rather than coming from a random sample of the U.S. population, these data were provided by voluntary visitors to the web site at which demonstration and research versions of IAT measures were available. The drop-in respondents who provided the data in Table 1 therefore constitute self-selected samples, as distinct from

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35 These demonstration tests were not set up to conduct research, but were nevertheless obliged to record data to enable feedback of test results to web visitors. The accumulated data provided by the
representative samples that can be obtained by selecting and recruiting respondents randomly from a defined population. Even so, the greater favoritism to advantaged groups found for IAT than explicit measures would certainly also be found with representative samples. The key evidence for this comes from a closer look at the Race IAT data for the wide-ranging demographic subgroups shown in Table 2.

Table 2 shows that, with one notable exception, percentages of respondents who display implicit race bias vary relatively little across groups categorized by age, sex, and educational attainment. The only subgroup of respondents who did not show substantial implicit race bias on the Race IAT is African Americans. Approximately equal percentages of African Americans displayed implicit bias in the pro-African American and pro-European American directions. Among African Americans, it was quite noticeable that the IAT results showed considerably greater favoritism to the dominant European American group than did the results from self-report measures, which showed very strong favoritism toward African Americans. The results shown in Table 2 strongly suggest that any non-African American subgroup of the United States population will be characterized by high proportions of persons showing statistically noticeable implicit race bias in favor of EA relative to AA.
### Table 1. Distributions of Responding on Self-report (Explicit) and IAT (Implicit) Measures

<table>
<thead>
<tr>
<th>disadvantaged group</th>
<th>advantaged group</th>
<th>N</th>
<th>% biased toward disadvantaged (dis) and advantaged (adv) groups, and % neutral (neu)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Self-report (Explicit)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>dis</td>
</tr>
<tr>
<td>Afr. American</td>
<td>Eur. American</td>
<td>22074</td>
<td>11.3%</td>
</tr>
<tr>
<td>Old</td>
<td>Young</td>
<td>11528</td>
<td>16.7%</td>
</tr>
</tbody>
</table>

### IAT Demonstration Web Site Tests

| Afr. American       | Eur. American   | 211   | 11.8% | 56.4% | 31.9% | 20%  | 12.3% | 18.5% | 69.2% | 57%  |
| Asians              | Whites          | 211   | 16.4% | 56.9% | 26.7% | 10%  | 11.3% | 25.9% | 62.8% | 51%  |
| Canadian            | American        | 218   | 24.1% | 39.5% | 36.4% | 12%  | 13.3% | 21.7% | 65.0% | 52%  |
| Foreign places      | American places | 178   | 20.9% | 36.6% | 42.4% | 22%  | 9.6%  | 14.0% | 76.4% | 67%  |
| Gay people          | Straight people | 217   | 14.3% | 45.7% | 40.0% | 26%  | 8.3%  | 22.9% | 66.8% | 60%  |
| Muslims             | Jews            | 144   | 10.4% | 49.3% | 40.3% | 30%  | 11.1% | 20.7% | 68.2% | 57%  |
| Old people          | Young people    | 236   | 27.4% | 39.2% | 33.5% | 6%   | 5.5%  | 15.6% | 78.9% | 73%  |
| Poor                | Rich            | 211   | 36.7% | 37.6% | 25.7% | -11% | 1.4%  | 4.3%  | 94.3% | 93%  |
| Fat people          | Thin people     | 239   | 13.4% | 42.4% | 44.2% | 31%  | 13.1% | 20.8% | 66.1% | 53%  |
| Japan               | USA             | 263   | 19.9% | 19.9% | 60.2% | 40%  | 6.2%  | 15.2% | 78.7% | 73%  |

AVERAGES (12 data sets, unweighted) | 19.5% | 42.4% | 38.1% | 20% | 9.2% | 18.0% | 72.8% | 64%  |

Note. Implicit data were obtained with IAT measures (see Section 4) in which pleasant and unpleasant words were classified together with the items representing the groups shown in the table. Explicit data were obtained with self-report measures of endorsed attitudes. The "index" column reports a bias index computed as the percentage favoring the advantaged group minus the percentage favoring the disadvantaged group. The higher the value of this index, the more pervasive is bias. The bias index's values for IAT measures reveal considerably higher values than for the self-report measures, indicating that implicit bias is far more pervasive than explicit bias. Data from the demonstration web site are previously unpublished. Those from the research web site were reported by Nosek (in press).
Table 2. Percentages Favoring European American (EA) Relative to African American (AA) on Self-report (Explicit) and IAT (Implicit) Measures

<table>
<thead>
<tr>
<th>Subcategories</th>
<th>N</th>
<th>Self-report (Explicit)</th>
<th></th>
<th></th>
<th></th>
<th>IAT (Implicit)</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>AA</td>
<td>neither</td>
<td>EA</td>
<td>Index</td>
<td>AA</td>
<td>neither</td>
<td>EA</td>
<td>Index</td>
<td></td>
</tr>
<tr>
<td>Education Level</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>thru high school grad</td>
<td>3869</td>
<td>9.9</td>
<td>57.9</td>
<td>32.2</td>
<td>22%</td>
<td>9.8</td>
<td>26.2</td>
<td>64.0</td>
<td>54%</td>
<td></td>
</tr>
<tr>
<td>at least some college</td>
<td>13028</td>
<td>11.3</td>
<td>54.1</td>
<td>34.6</td>
<td>23%</td>
<td>10.2</td>
<td>23.2</td>
<td>66.6</td>
<td>56%</td>
<td></td>
</tr>
<tr>
<td>at least some grad school</td>
<td>3829</td>
<td>12.5</td>
<td>53.5</td>
<td>34.0</td>
<td>21%</td>
<td>12.4</td>
<td>24.6</td>
<td>62.9</td>
<td>50%</td>
<td></td>
</tr>
<tr>
<td>Race and Ethnicity</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black (incl. multiracial)</td>
<td>2277</td>
<td>58.9</td>
<td>36.2</td>
<td>4.8</td>
<td>-54%</td>
<td>34.1</td>
<td>33.6</td>
<td>32.4</td>
<td>-2%</td>
<td></td>
</tr>
<tr>
<td>Hispanic (not Black)</td>
<td>1204</td>
<td>15.0</td>
<td>59.7</td>
<td>25.3</td>
<td>10%</td>
<td>10.2</td>
<td>29.2</td>
<td>60.5</td>
<td>50%</td>
<td></td>
</tr>
<tr>
<td>Asian &amp; Pacific Islander</td>
<td>1080</td>
<td>9.6</td>
<td>57.5</td>
<td>32.9</td>
<td>23%</td>
<td>7.7</td>
<td>24.8</td>
<td>67.5</td>
<td>60%</td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>14805</td>
<td>3.4</td>
<td>56.0</td>
<td>40.7</td>
<td>37%</td>
<td>6.8</td>
<td>21.7</td>
<td>71.5</td>
<td>65%</td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under 25</td>
<td>13823</td>
<td>9.7</td>
<td>55.7</td>
<td>34.5</td>
<td>25%</td>
<td>9.4</td>
<td>23.7</td>
<td>66.9</td>
<td>58%</td>
<td></td>
</tr>
<tr>
<td>25-44</td>
<td>5403</td>
<td>14.9</td>
<td>53.9</td>
<td>31.2</td>
<td>16%</td>
<td>12.8</td>
<td>24.4</td>
<td>62.8</td>
<td>50%</td>
<td></td>
</tr>
<tr>
<td>45 and older</td>
<td>1743</td>
<td>12.3</td>
<td>47.1</td>
<td>40.6</td>
<td>28%</td>
<td>12.6</td>
<td>25.6</td>
<td>61.8</td>
<td>49%</td>
<td></td>
</tr>
<tr>
<td>Sex</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>13060</td>
<td>12.3</td>
<td>57.8</td>
<td>29.8</td>
<td>17%</td>
<td>11.4</td>
<td>25.2</td>
<td>63.4</td>
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<td>9.2</td>
<td>22.2</td>
<td>68.6</td>
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<tr>
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<td>6.5</td>
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<td>35.0</td>
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<td>12.9</td>
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<td>61.1</td>
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</table>

See the note for Table 1. The finding of high levels of the bias index for all demographic subgroups other than Black (i.e., African American) indicates the pervasiveness of pro-European American bias. Even though the bias index was lower in groups of Hispanics and political liberals than for other groups, it was still quite high among those groups.
7. Why is implicit bias so pervasive?

This question can be decomposed into three other questions: First, how are implicit attitudes and stereotypes acquired? Second, what mental representations underlie implicit attitudes and stereotypes? Third, do the representations underlying implicit attitudes and stereotypes differ from those underlying explicit attitudes and stereotypes? Answers to these questions could explain both the weak correlations often observed between IAT and explicit measures and the substantially greater bias apparent on implicit than explicit attitudes. It may be several years before thorough research-based answers to these questions are available. These answers will require, in part, research that examines the formation of implicit attitudes and stereotypes in young children. To be used with pre-school children, the IAT needs modifications, the most substantial of which is to replace printed-word stimulus items either with pictures or with words presented in spoken rather than printed form.36

In a recent review article, Rudman wrote “The hypothesized causal influences on attitudes include early (even preverbal) experiences, affective experiences, cultural biases, and cognitive consistency principles. Each may influence implicit attitudes more than explicit attitudes, underscoring their conceptual distinction.”37 Rudman’s proposal that early experiences and affective experiences may be reflected more in implicit attitudes than in explicit attitudes may explain why implicit attitudes generally reveal more bias, as shown in Tables 1 and 2. As Rudman also noted, influences of cultural factors on the IAT can also explain why people often display implicit attitudes that

36 Research with IAT procedures that have been adapted for use with pre-school children is now actively under way in the laboratories of M. R. Banaji at Harvard University and A. L. Meltzoff at University of Washington.
appear more concordant with their general cultural milieu than with the experiences of their individual upbringing. One example of this phenomenon is the finding, evident in Table 2, that implicit racial attitudes of African Americans, on average, show much less ingroup-favoring bias than is observed in implicit race attitudes of European Americans.\textsuperscript{38} On average, African Americans' implicit racial attitudes are remarkably close to indicating racial neutrality.\textsuperscript{39} And, as was already suggested in considering Table 2, this observation contrasts sharply with findings for African Americans' explicit racial attitudes, which are strongly polarized in the ingroup-favorable (pro-AA) direction.

The finding of approximate racial neutrality of African Americans' implicit attitudes is especially impressive because it is such a clear exception to the general pattern (see Tables 1 and 2) of implicit attitudes revealing more bias than explicit attitudes. Perhaps the appropriate principle needed to accommodate this observation is that, compared to explicit attitudes and explicit stereotypic beliefs, implicit attitudes and stereotypes are more likely to reflect the social–cognitive content of the larger culture. This suggestion leads to an interesting puzzle: If implicit attitude and stereotype measures are indicators of the social–cognitive content of one's broad cultural environment, then Table 1's data indicate that (for as-yet-unclear reasons) explicit measures of attitudes and stereotypes do not reflect the social–cognitive content of the culture of those who provide the measures.

The just-stated proposition that "explicit measures of attitude and stereotype do not reflect the social–cognitive content of the culture of those who provide the measures" is

\textsuperscript{37} Rudman (2004, p. 79)
\textsuperscript{38} See discussion of this and related observations in the discussion of system justification in this symposium's article by Blasi and Jost.
certainly a discouraging assessment of the value of explicit measures. It also provides a perspective on one of the most reasonable and plausible critiques that has been offered in regard to IAT measures. The essence of this critique is that IAT measures should be interpreted, not as indicating beliefs or attitudes that respondents personally endorse but, rather, as indicating modal beliefs or attitudes that respondents understand to be generally endorsed by others — in other words, cultural beliefs.\textsuperscript{40}

In viewing the IAT as a measure of one's understanding of cultural beliefs that are external to one's self, the critiques just mentioned imply that individual differences in IAT measures are differences in clarity of one's perception of modal cultural beliefs. As such, they might be seen as having no more importance as determinants of interesting forms of social behavior than should differences among people in their clarity of other perceptions, such as the symbols on an eye chart. In contradiction of this expectation, however, the previously mentioned meta-analytic evidence for predictive validity of IAT measures\textsuperscript{41} clearly shows that IAT measures do predict social behavior, thereby suggesting an important weakness of the cultural-belief interpretation of IAT measures.\textsuperscript{42}

\textsuperscript{39} see also Nosek, Banaji, and Greenwald (2002, p. 105).

\textsuperscript{40} Olson and Fazio (2004) describe these as "extrapersonal associations"; Karpinski and Hilton (2001) label them as "environmental associations"; and Arkes and Tetlock (2004) refer to them "shared cultural knowledge".

\textsuperscript{41} Poehlman et al. (2005); see Section 5, above

\textsuperscript{42} Consider the intellectual puzzle created by the collection of views of those who regard the IAT as reflecting cultural beliefs rather than implicit attitudes. Two of these views are that (a) the IAT reflects cultural beliefs, and (b) the IAT measures something different from what is assessed by explicit measures. It follows (logically) that (c) explicit measures do not measure cultural beliefs. Another belief endorsed by many, including those who advocate the cultural-beliefs critique of the IAT, is that (d) explicit measures assess views that respondents avow or endorse. Juxtaposing (c) and (d), one arrives (again, logically) at the seemingly paradoxical conclusion that people's endorsed beliefs do not correspond to cultural beliefs. This is paradoxical in approximately the same sense that it is paradoxical for the great majority of people to believe that they are above average in intelligence. It is genuinely puzzling to arrive at the conclusion that explicit measures assess something other than cultural beliefs. What do explicit
8. What Is The Difference Between Possessing Implicit Bias And Endorsing Discrimination?

Many who have taken race IAT measures have received their result in the form of the specific statement, "You show automatic preference for European American relative to African American". Those receiving this result frequently ask, "Does this mean that I'm prejudiced?" The answer depends on one's understanding of the difference between what is measured by the IAT and what is measured by explicit (self-report) measures. The answer, "Yes, your IAT result means that you are prejudiced" would follow from believing that the IAT provides a measure of racial attitude that is at least as appropriate as a measure of prejudice as is the measure provided by self-report. The answer "No, your IAT result has relatively little bearing on a judgment of whether or not you are prejudiced" follows from considering the likelihood that IAT and self-report measures assess distinct mental constructs.

Because psychological interpretations of research data are remarkably flexible, it is possible to accommodate the numerous findings of dissociation of IAT from explicit measures\(^3\), with widely diverging theoretical interpretations. At one extreme, one may assume that IAT and explicit measures correspond to independent sources of knowledge that are housed in separate brain regions. At the other extreme, one can assume that the two types of measures are based on exactly the same stored knowledge. With the latter assumption, discrepancies between results obtained with the

\(^3\) See definitions of dissociation in Sections 1 and 4, above
two types of measures are assumed to be due to influences on behavior that operate very differently in the research settings in which the two types measures are obtained.\textsuperscript{44}

Because of the range of available interpretations, the question of whether or not the IAT measures prejudice has no single answer. From the perspective of a \textit{dual-representation} view, which treats IAT and explicit measures as corresponding to mentally distinct entities, implicit attitudes may not measure prejudice. In this view, prejudice is associated primarily with the portion of the psyche that is responsible for expressions of attitudes observed on explicit (self-report) measures. In sharp contrast, advocates of a \textit{single-representation} view are prepared to describe implicit race preference as indeed corresponding to what is ordinarily meant by “prejudice”.

At present, the dual-process view appears to be more widely held among social cognition researchers, as suggested by their frequent descriptions of the weak relation between implicit and explicit attitude measures as indicating “dissociation”. In this dominant dual-process view, those who show stronger association (for example) of European American than African American with pleasant are not prejudiced in the ordinary meaning of having an avowed racial preference. Rather, this frequent result of the race IAT is often described as indicating “implicit prejudice” or “automatic preference”. These uses of the qualifiers “implicit” and “automatic” are intended to differentiate what the IAT measures from the lay-language meaning of “prejudice”, which is assumed to be something more properly assessed via self-report measures.

\textsuperscript{44} Fazio (1990)
9. Do Implicit Biases Produce Discriminatory Behavior?

As noted earlier, evidence indicating that implicit attitudes produce discriminatory behavior is already substantial.\textsuperscript{45} Such evidence will almost certainly continue to accumulate. The dominant interpretation of this evidence is that implicit attitudinal biases are especially important in influencing non-deliberate or spontaneous discriminatory behaviors.

A study by McConnell and Leibold,\textsuperscript{46} one of the first to relate an IAT race attitude measure to discriminatory behavior, provides a good illustration. In this study, the behavior of White undergraduate students was videotaped while they were being interviewed both by a White and a Black experimenter.\textsuperscript{47} These subjects also completed a race attitude IAT measure. Subjects whose race IAT scores indicated strong implicit preference for White relative to Black hesitated less and made fewer speech errors when speaking to the White experimenter than the Black experimenter. They also spoke more to and smiled more at the White experimenter than the Black experimenter. These behaviors suggest higher levels of comfort interacting with the White experimenters.\textsuperscript{48}

The importance of results such as McConnell and Leibold’s becomes especially apparent in light of the findings of research that was conducted by Word, Zanna, and

\begin{footnotesize}
\begin{enumerate}
\item Poehlman et al. (2005). See previous mentions of this in Sections 5 and 7.
\item McConnell and Leibold, (2001)
\item Subjects did not know in advance about the videotaping, but received a subsequent description and explanation, at which time their signed consent to use the videotape as a source of research data was obtained.
\item Other published studies have likewise found correlations of IAT-measured race attitude with indicators of subtle or spontaneous discriminatory actions. These include Ashburn-Nardo, Knowles, and Monteith (2003); Hugenberg & Bodenhausen (2003, 2004); and Richeson et al. (2003). Several similar unpublished results involving race IAT measures were mentioned in the Poehlman et al. (2005) meta-
\end{enumerate}
\end{footnotesize}
Cooper\textsuperscript{49} well before development of the IAT. In the first of two studies, Word et al. showed that, in interviewing both a Black and White job applicant, White students showed greater indications of nonverbal discomfort and spent less time speaking with the Black applicant — precisely the same indicators that McConnell and Leibold found were predicted by individual differences on their IAT measure of implicit race attitude. In Word et al.’s second study, White interviewers were carefully trained to control these same subtle aspects of their behavior in interaction with naïve, White job applicants. Compared to those whose interviewer behavior resembled the relatively comfortable behavior of the White–White interactions in the first study, Interviewees who encountered the less-comfortable interviewer performed less well in the interview and were more uncomfortable and distant in their interaction style. They also judged their interviewer to be less friendly. The combination of the McConnell–Leibold and Word–Zanna–Cooper findings reveals the potential for implicit bias to affect interaction quality in ways that can disadvantage Blacks.

Another noteworthy result showing prediction by the IAT is the finding that the Race IAT, administered to White American subjects, predicts activation of the amygdala — an indication of fear or other negative emotional arousal — in response to photographic images of unfamiliar African American faces.\textsuperscript{50} A related finding was the report by Richeson et al.\textsuperscript{51} that IAT measures correlated with evidence of self-regulatory or executive control activity on exposure to African American faces.

\textsuperscript{49} Word, Zanna, and Cooper (1974)
\textsuperscript{50} Phelps, O’Connor, Cunningham, Funayama, Gatenby, Gore, and Banaji (2000).
10. What can be done to attenuate the influence of implicit biases on behavior?

In their 1995 review of then-available research evidence, Greenwald and Banaji suggested that attentional focus would attenuate automatic influences on social judgment, if those influences were relatively weak. Applying this principle, and assuming that implicit biases constitute “weak automatic influences”, one might expect to eliminate their influences on interpersonal behavior by getting people to think more about, or to attend more closely to, their objectives in an interracial interaction. However, Poehlman et al.’s review of the relevant predictive validity evidence for IAT measures suggests some limitation of this conclusion. Their review indicated that prediction of behavior by IAT measures was not reduced when the behavior under investigation was more deliberative. They also found that predictive validity of explicit measures was greater for more deliberative behavior (i.e., for behavior presumably done with greater self-conscious attention). Applying these findings to a hypothetical situation in which racially different applicants are being evaluated for jobs, for admissions, for loans, for medical treatments, etc., an interviewer’s devoting more deliberate effort to the task may increase the interviewer’s use of explicit evaluative criteria — and might thereby produce better decisions — but may not eliminate effects of implicit biases. Thus, the meta-analysis’s conclusions suggest caution in assuming that implicit bias should be reduced by increased deliberative effort on a decision. Because no studies have yet provided direct experimental tests of this hypothesis, the

53 Poehlman et al. (2005)
question of how to attenuate the impact of implicit biases on subtle-but-important aspects of interpersonal interaction still awaits answer.

11. How Can Implicit Biases Be Altered?

In the first few years after development of the IAT, many researchers working with the technique were impressed that, when they repeatedly administered the same IAT to themselves, their measures of implicit bias remained remarkably similar over time. This was in part a welcome observation, because it indicated that IAT measures might be administered multiple times to the same person without losing their validity as research measures.\footnote{This is a desirable property, which can be noted by its contrast with (for example) the need to have multiple different forms of intelligence tests, for which scores will obviously improve if exactly the same test is administered repeatedly.} The consistency of IAT measures over time also suggested that the implicit attitudes and stereotypes measured by the IAT were stable entities that were not easily modified. Subsequent research has shown that conclusion to be premature, as can be illustrated by one of the first experiments that sought to influence IAT performance.

Taking as their cue the assumption that the race–valence associations that are measured by the IAT may be shaped by media exposures, Dasgupta and Greenwald\footnote{This is a desirable property, which can be noted by its contrast with (for example) the need to have multiple different forms of intelligence tests, for which scores will obviously improve if exactly the same test is administered repeatedly.} had White undergraduate students complete a preliminary task in which they practiced identifying a series of photographs of well known and admirable African Americans (scientists, artists, political leaders) mixed with photographs of somewhat less well known but thoroughly disreputable European Americans (terrorists and serial murderers). A subsequent race IAT measure revealed that this photograph-identification practice reduced the level of automatic preference for European American
(relative to African American). Further, this reduction in implicit bias persisted over a 24-hour delay.\textsuperscript{56}

Numerous other such experiments were summarized in a review by Blair\textsuperscript{57} who concluded that implicit biases are malleable. That is, Blair found that IAT measures and other measures of implicit bias\textsuperscript{58} are modifiable by a variety of procedures that reduce the typical bias. For example, implicit gender stereotypes of feminine weakness were reduced by imagining counter-stereotypic female exemplars,\textsuperscript{59} and implicit anti-Black race attitudes were reduced by having the research procedure administered by an African American experimenter.\textsuperscript{60} In studies using IAT measures of implicit race attitudes, these effects are most often modest. They typically reduce, but generally do not come close to eliminating, implicit biases.

The question naturally raised by the sizeable collection of findings suggesting that implicit biases might be malleable is, "How durable are these changes?" Although the research needed to answer this question with confidence has not yet been done, most IAT researchers are skeptical that targeted interventions, as opposed to profound social and cultural change, will have enduring effects on levels of implicit bias. Some researchers, for example, suggest that interventions like those used in the malleability studies produce short term changes in implicit bias levels because they temporarily

\textsuperscript{55} Dasgupta & Greenwald (2001)
\textsuperscript{56} The opposite type of preliminary exposure, consisting of photographs of admirable European Americans and disreputable African Americans, had no noticeable impact on race IAT scores. This observation suggested that the ordinary media environment encountered by these undergraduate research subjects might have been functioning as the equivalent of these biased (anti-Black) exposures — cf. Kang (2005).
\textsuperscript{57} Blair, (2002).
\textsuperscript{58} e.g., Blair & Banaji (1996); Kawakami, Dovidio, Moll, Hermsen, & Russin (2000)
\textsuperscript{59} Blair, Ma, and Lenton (2001).
\textsuperscript{60} Lowery, Hardin, and Sinclair (2001).
activate a sub-type of a larger category, such that this sub-type temporarily replaces the larger category. For example, in the Dasgupta and Greenwald experiment\textsuperscript{61} the preliminary exposure to admirable Blacks may, for at least for some of the subjects, cause the relatively attractive sub-type of African American celebrities to be activated and temporarily function as a mental replacement for the larger (and presumably negatively valenced) African American category. If this interpretation is correct it seems unlikely that even repeated interventions will produce cumulative effects, if these repetitions occur within a larger societal environment that reinforces preexisting racial attitudes and stereotypes.

This skeptical appraisal does not imply that long-term changes in implicit biases are impossible. For example, research has shown that when a person forms a new personal connection with a member of a previously de-valued outgroup, implicit attitudes toward that group may change dramatically and rapidly.\textsuperscript{62} For example, when a son or daughter marries a member of a racial or ethnic minority or when a close friend is paralyzed in an accident and becomes wheelchair-bound, a favorable implicit attitude may rapidly replace a pre-existing negative implicit bias.\textsuperscript{63}

\textsuperscript{61} Dasgupta & Greenwald (2001)
\textsuperscript{62} [Greenwald et al. (2002)]
\textsuperscript{63} Olsson, Ebert, Banaji, and Phelps, (2005) recently reported that an implicit indicator of expected anti-outgroup racial bias was absent for college student subjects who had interracial dating experience. A remarkable model for this type of influence was given by George Orwell in a scene from 1984 (Part 2, Chapter 9). After 20 minutes of haranguing a crowd of Oceanians with vilification of the Eurasian enemy, the orator receives a piece of paper and “without pausing in his speech” continues his tirade against the (new) enemy, Eastasia. Orwell’s text continues: “Without words said, a wave of understanding rippled through the crowd. Oceania was at war with Eastasia! . . . The banners and posters with which the square was decorated were all wrong! . . . There was a riotous interlude while posters were ripped from the walls, banners torn to shreds and trampled underfoot. . . . But within two or three minutes it was all over. . . . The Hate continued exactly as before, except that the target had changed.”
Another way in which malleability of implicit bias has been tested with IAT measures has been to ask research subjects to try to respond to the IAT so as to produce a specific result — for example, asking subjects who ordinarily show implicit preference for European American to attempt to produce an IAT result that would be scored as indicating the reverse automatic preference (i.e., to produce an IAT result showing preference for African American). Relatively few subjects succeed at this faking assignment, partly because few can spontaneously come up with a faking strategy.\textsuperscript{64} However, somewhat successful faking of the IAT has been achieved by instructing subjects to deliberately respond slowly on the IAT task for which they can ordinarily respond rapidly.\textsuperscript{65}

12. Is Implicit Bias A Probable Cause Of Disparate Outcomes?

"When you have eliminated all which is impossible, then whatever remains, however improbable, must be the truth."

Sherlock Holmes, in A. Conan Doyle's "The Adventure of The Blanched Soldier" (1926)

The argument that implicit bias is a probable cause of race discrimination sometimes requires inference by a process of elimination. This is a reasoning device endorsed not only by Sherlock Holmes, but also by the United States Supreme Court. Specifically, in \textit{Furnco v. Waters},\textsuperscript{66} a 1978 employment discrimination case, the Court wrote:

\footnote{Banse, Seise, & Zerbes (2001); Egloff & Schmukle (2002); Steffens (2004)}
\footnote{cf. Kim (2003). Such faking may prove detectable because it is possible to detect that a subject is responding unusually slowly in a task. By comparison, it is generally quite easy for subjects to fake attitudes and beliefs on self-report measures. This typically requires no more than modifying the position on which a pencil mark is placed in giving a response to a survey questionnaire.}
\footnote{438 U.S. 567 (1978).}
[We know from our experience that more often than not people do not act in a totally arbitrary manner, without any underlying reasons . . . Thus, when all legitimate reasons for [a negative outcome] have been eliminated as possible reasons for the employer's actions, it is more likely than not the employer, whom we generally assume acts only with some reason, based his decision on an impermissible consideration such as race.  

Whether adjudicating an individual allegation of discrimination, or attempting to understand broad patterns of disadvantage in society more generally, if one finds evidence of disparate impact — for example, in the form of systematically disadvantageous outcomes to African Americans in health care, education, employment, housing, or criminal justice — one may begin the process of identifying and eliminating plausible causes. Conceivable explanations that cannot be eliminated remain worth considering.

For sake of argument, let us assume that in attempting to understand whether racial bias has played a role in probation recommendations in a particular criminal court system, all conceivable non-race-related ("racially neutral") explanations have been eliminated through sound research evidence. Let us also assume that none of the relevant decision makers have reported consciously holding negative racial attitudes or stereotypes. Finally, let us assume that no test of implicit bias has been administered to these decision makers. With this set of assumptions, is it reasonable to infer that the observed racial disparity is being caused by implicit bias? Not only is it reasonable, it

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67 Id. at 577.
should be regarded as the most probable cause. This conclusion is justified by three considerations.

The first consideration is the observed pervasiveness of implicit bias, as was demonstrated very clearly by the data summarized in Tables 1 and 2.

The second consideration comes from the available evidence that (a) implicit biases are predictive of discriminatory behavior and (b) implicit bias measures do a significantly better job than explicit bias measures in predicting behavioral indicators of prejudice or discrimination. This evidence was previously described in Sections 5 and 9.

The third consideration is provided by findings that implicit bias plays a causal role in discrimination. The most important piece of this evidence at present is the finding (described in Section 9) that subtle discriminatory behaviors, of the types known to be predicted by IAT measures of implicit race bias, play a significant role in determining the outcomes of job interviews. The absence of another type of evidence also supports this causal interpretation. Specifically, if — in the joint absence of racially neutral causes and explicit bias — racially disparate impact is shown to occur even when implicit bias is shown to be absent, this would provide evidence against a causal role of implicit bias in disparate impact. No such evidence now exists.

In summary, a substantial and actively accumulating body of research evidence establishes that implicit race bias is pervasive and that implicit race bias is associated with discrimination against African Americans. Consequently, it is plausible that, when racially neutral causes and explicit bias can be rejected as plausible causal

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68 see especially McConnell and Leibold (2001); Word, Zanna, and Cooper, (1974).
explanations for racially disparate outcomes, one can reasonably infer that implicit race bias played a determinative causal role. More direct confirmations of the causal role of implicit bias can be expected in the next few years as studies in relevant domains in which racially disparate impact is a known phenomenon (e.g., health care, education, employment, housing, and criminal justice) increasingly include measures of implicit bias.
References


EXPERT REPORT

BY

J. MORGAN KOUSser

I. Case

No. CV-96-076-RHW
United States District Court
for the Eastern District of Washington

II. Credentials

1. I am a professor of history and social science at the California Institute of Technology. Educated at Princeton and Yale, I have been a visiting professor at Michigan, Harvard, Oxford, and Claremont. As my curriculum vitae, attached, shows, I’ve published three books and edited another, in addition to 43 scholarly articles, 75 book reviews, and 23 entries in reference works. My work has focused on minority voting rights, educational discrimination, race relations, the legal history of all of the foregoing subjects, political history, and quantitative methods. My first book, The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910, is the standard work on black and poor white disfranchisement. My most recent book, Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction, was co-winner of the annual Lillian Smith Award of the Southern Regional Council for the best book on the South and co-winner of the annual Ralph J. Bunche Award of the American Political Science Association for the best scholarly work in political science which explores the phenomenon of ethnic and cultural pluralism. Since 2000, I have been editor of the journal Historical Methods. I have also served on
the editorial boards of *The Journal of American History*, *The Journal of Interdisciplinary History*, *Social Science History*, and *Historical Methods*.

2. I have previously testified or consulted in 32 federal or state voting rights cases. I was the chief expert witness on the intent issue in *Garza v. Los Angeles County Board of Supervisors* (1990) and for the U.S. Department of Justice in *U.S. v. Memphis* (1991). *Garza* resulted in the election of the first Latino in 115 years to the nation’s largest county governing body; the Memphis case resulted in the election of the first African-American mayor in the history of the city. My report in *Garza* essentially served as the basis of Judge David Kenyon’s opinion on the intent issue. In turn, that part of Judge Kenyon’s opinion became the basis of the unanimous part of the Appeals Court’s opinion, which the Supreme Court did not review. My report in the Memphis case was the only factual basis in evidence at the time that the Judge granted a preliminary injunction against the runoff provision of the city election laws, an injunction that allowed the election of Mayor Willie Herenton by 250 votes, but without a majority. I was also an expert witness for the NAACP Legal Defense and Educational Fund, Inc. in *Shaw v. Hunt* (1994) and for the Justice Department in *Bush v. Vera* (1994), both statewide “racial gerrymandering” cases. I also served as an expert witness in the 1992 and 2002 challenges to statewide redistricting in California, the first time for the Democratic congressional delegation, the second, for the Mexican American Legal Defense and Education Fund.

3. I have written extensively about the Voting Rights Act and was one of only three historians who testified before congressional committees during the 1981-82 debates on renewing Section 5 and amending Section 2. Most recently, I have written the first comprehensive history of Section 5, which will be published as part of the scholarly background to the debate over the forthcoming 2007 renewal of Section 5.
III. The Fifth “Senate Factor”

4. In an effort to spell out for courts the way it wished cases to be analyzed under Section 2 of the Voting Rights Act, the U.S. Senate listed seven principal “factors” in its authoritative Report # 417 in 1982. Among them was “the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process; . . .” In an accompanying footnote, it noted that “no further causal nexus” need be shown, once conditions of deprivation are shown and there is disproportionately low minority political participation. (Report No. 97-417, 97th Cong., 2d Sess., Voting Rights Act Extension: Report of the Committee on the Judiciary, United States Senate, on S. 1992, with Additional, Minority, and Supplemental Views (Washington, D.C.: Government Printing Office, 1982), 29, and note 114)

5. This factor is relevant to the particular case of felon disfranchisement because in Washington State, the process of regaining suffrage is particularly complicated, requiring considerable skills in negotiating two separate bureaucracies and perhaps the money to hire a lawyer who specializes in such matters. If minorities are particularly likely to be convicted of felonies, and if they are more likely than whites to be disadvantaged in education and economic well-being, they will be at a disadvantage in regaining the suffrage, as well. If, in addition to these conditions, it can be shown that there was discrimination in education and employment in the past, then the fifth Senate factor should be adequately addressed.
IV. Re-enfranchisement in Washington State

6. The procedure for regaining the right to vote in Washington State is a bureaucratic maze that would challenge even the best educated, most bureaucratically-savvy person. As the Seattle Times remarked on May 22, 2005, after a series of interviews with state and local officials growing out of the Gregoire/Rossi contested election, the system is “so bewildering that almost nobody negotiates it well,” or as one official told the paper, “You need a degree in government to figure it out.” For the generally poor, ill-educated former prison inmate, the maze has especially high walls, topped with razor wire. Although details and citations to statutes and judicial opinions are better left to lawyers, the basic points about the re-enfranchisement process are clear:

7. After serving their prison and probationary sentences, felons must pay their legal financial obligations (LFOs) before they can get certificates of discharge, which can then be presented to voting officials to regain their right to vote. (American Civil Liberties Union of Washington, “Amicus Curiae Brief” in Borders v. King County, Superior Court of the State of Washington for Chelan County, No. 05-2-00027-3, pp. 6-7, hereinafter referred to as “Amicus Brief”)

8. According to the State of Washington, “at least 90 percent” of released felons had LFOs that had to be satisfied before they could obtain certificates of discharge. (“Plaintiff’s First Set of Interrogatories and Request for Production of Documents, Objections and Answers Thereto,” in Madison v. State of Washington, State of Washington, King County Superior Court, No. 04-2-33414-4SEA, p. 2, hereinafter referred to as “Interrogatories”)

9. From the 1981 passage of the Sentencing Reform Act to 1984, the state Department of Corrections (DOC) had no procedure for informing the local sentencing court, the court responsible for issuing the certificate of discharge, that the individual’s sentence had been completed. Until 2003,
the responsibility for collecting LFOs was shared by the DOC and the local sentencing court. Ten years after the release of the individual from prison, the DOC's supervision ended, and if it took longer for the individual to pay his LFO to the sentencing court, that court could not issue a certificate of discharge, because it would not be able to get the requisite notification from the DOC. This classic Catch-22 has been exacerbated by the huge increase in the prison population in the last generation, which has caused the DOC to drop supervision of former prisoners long before the normal ten-year cut-off date, throwing even more released felons into the limbo between the DOC and the myriad local courts that may have sentenced felons. ("Amicus Brief," pp. 8-11) The DOC continues not to inform felons of the process for obtaining a certificate of discharge. ("Interrogatories," p. 10)

10. In 2004, the legislature allowed felons who have satisfied all of their obligations to petition local courts for certificates of discharge, but it did not require any court or other agency to inform the individual of their right to petition, and it placed the burden of proof that they had satisfied their obligations on the felons. This burden is often difficult to meet, for the DOC generally either destroys or archives records once it ceases to supervise individuals, and it may therefore not be possible for the individual to obtain the requisite termination notice from the DOC. The whole petitioning process would almost certainly require hiring an attorney, another bar to the enjoyment of a right by a person likely to be poor. ("Amicus Brief," pp. 11-13)

11. Persons convicted of disfranchising crimes in other states must either lie in taking their voter registration oaths in Washington or obtain proof from the other states that their civil rights have been restored there. Because criminal disfranchisement laws vary widely across states and are administered differently even within states, it is almost impossible for a local registrar in Washington State to know enough to be able to administer this facet of the law. (U.S. Department of Justice,

12. Moreover, if the disfranchising laws and the administration of these and other laws are discriminatory in the other states, that discrimination will be carried over to Washington. Suppose, for instance, that the laws of, say, Alabama or Florida or Texas discriminate against minorities or that minorities in those states suffer from the results of past discrimination. (Recall the language of the fifth Senate factor — “bear the effects,” not “have been disadvantaged as a result of discrimination by the state or political subdivision.”) Minority individuals may then migrate from those states to Washington. Finally, suppose Washington denies them the right to vote because they lost their civil rights in the other states. Then Washington would be allowing the discrimination to migrate with the individuals. The state has provided no statewide process to alleviate this potential discrimination and, as we shall see, many minorities have, in fact, recently migrated to Washington State.

13. More basic than the specific details of procedures and legal changes about felon re-enfranchisement in Washington State is the fact that the system is radically decentralized, making it much more difficult for individuals to navigate. Perhaps the most striking evidence of this fact is the admission by the DOC that it “is not able to state how many felons have obtained a certificate of discharge.” It also cannot determine how many felons in the state currently have outstanding LFOs. ("Interrogatories," pp. 4-6)
V. Minority Prisoners Are Especially Likely to be Disadvantaged

14. Although Washington State apparently does not collect statistics on the educational attainments of its prison population, the U.S. Department of Justice does publish national statistics on state and federal prisoners. There is no reason to believe that Washington differs from the national pattern of severe educational disparities for incarcerated persons, compared to the general population, and within prisons, disparities by race and ethnicity. The facts are simple and stark.

15. In 1997, the most recent year for which statistics are available, 81.6 percent of the non-institutional population 18 years old or older had completed high school or attended or graduated from college. In state prisons, the comparable figure was 31.9 percent. Among whites in state prisons, the percentage completing high school or above was 37.7; among African-Americans, 31; among Latinos, 22.3. (Caroline Wolf Harlow, Education and Correctional Populations, Bureau of Justice Statistics Special Report (revised April 15, 2003), U.S. Department of Justice, Office of Justice Programs, pp. 1, 6) The report does not list Native Americans separately.

VI. Current Socioeconomic Disparities by Race in Washington State

16. The 2000 U.S. Census provides numerous statistics indicating that African-Americans, Latinos, and Native Americans in Washington State suffer from the effects of past and continuing discrimination. Of those Washingtonians over 25, 90 percent of non-Hispanic whites have at least a high school education, but the comparable figure for African-Americans is only 84 percent, for Native Americans, 77.4 percent, and for Latinos, 53 percent. (“American FactFinder,” U.S. Census Bureau, Tables P148B, P148C, P148H, and P148I, all from Census 2000 Summary File 3, www.census.gov, which is the source for all subsequent census statistics in this report. Hereafter, I will refer only to the table numbers.)
17. Income and related statistics are even more disparate. I will give a series of them in tabular form.

**Table I: Economic Well-Being by Race in Washington State, 1999**

<table>
<thead>
<tr>
<th>White</th>
<th>Black</th>
<th>Native American</th>
<th>Latino</th>
<th>Table Numbers in Census 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>$25,081</td>
<td>$17,748</td>
<td>$13,622</td>
<td>$11,293</td>
<td>P157B, C, H, I</td>
</tr>
</tbody>
</table>

**Per Capita Income**

<table>
<thead>
<tr>
<th>Percent Below Poverty Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.3%</td>
</tr>
</tbody>
</table>

**Median Value of Owner-Occupied Housing**

| $169,300 | $161,800 | $122,600 | $123,400 | HCT42B, C, H, I |

**Percent Who Own Homes**

| 67.9% | 37.2% | 50.5% | 41% | H11, H12, H13 |

**Percent Having No Vehicle Available**

| 6.6% | 16.9% | 12.4% | 9.7% | HCT33B, C, H, I |
18. All five indices of well-being show that the three minority groups are at a considerable
disadvantage in Washington State, compared to non-Hispanic whites. Whites have much higher
average incomes and are much less likely to be poor, their houses are worth more, and they are much
more likely than members of minority groups to be owners, rather than renters. Virtually all whites
have access to automobiles, while more than one in six blacks do not. The only area in which any
of the minority groups approaches the white level is the value of owner-occupied housing, where
blacks’ homes are nearly as expensive as whites’. However, the proportion of African-Americans
who actually own, rather than rent, is especially low, just 54.8% as high as whites (37.2/67.9 = .548).

VII. Geographic Mobility

19. Washington’s is a geographically mobile population, especially its minority population.
The implication of this fact in this case is that discrimination and racial attitudes in other states, and
not just in Washington State, are relevant to current disparities in education and economic well-being.
Among non-Hispanic whites in Washington in 2000, only 50.4 percent were born in the state. 21.4
percent were born in other western states, 12.5 percent in the Midwest, and 6 percent in the South.
Native Americans were even more likely to have been born in Washington, 63.4 percent. But
African-Americans and Latinos were predominantly immigrants. Only 36.1 percent of black
Washingtonians in 2000 had been born in the state, and only 34.1 percent of Latinos. The South was
the birthplace of 27.7 percent of African-Americans in Washington, and 38.5 percent of Latinos were
foreign born. (Tables PCT63 B, C, H, and I)

20. Considerable numbers of these in-migrants to the state were recent. 10.7 percent of non-
Hispanic whites and 10.6 percent of Native Americans in Washington State in 2000 had moved into
the state from other U.S. states in the past 5 years. Black and Latino in-migration was larger – 17.5
percent for African-Americans and 13.8 percent for Latinos. In addition, 10.6 percent of Latinos in
the state in 2000 had moved from foreign countries in the past five years.

(www.census.gov/population/cen2000/phc-t25/tab01.pdf)

21. The movement of minorities to Washington is not only large, it is recent, a fact that has
strongly affected the course of race relations in the state’s history. It is worthwhile to summarize the
population proportions of each group, to the extent that the census gathered the figures, over the
course of the 20th century. (Until 1980, the Census did not distinguish between white and Hispanic.
Hispanics may be of any race.)
Table II: Population Percentages of Ethnic Groups in Washington State, 1900-2000

<table>
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<tr>
<th>Ethnic Group</th>
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<td>97.3</td>
<td>97.8</td>
<td>97.4</td>
<td>96.4</td>
<td>95.4</td>
<td></td>
</tr>
<tr>
<td>Non-Hisp. White</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>90.2</td>
</tr>
<tr>
<td>Hisp.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>0.5</td>
<td>0.5</td>
<td>0.5</td>
<td>0.4</td>
<td>0.4</td>
<td>1.3</td>
<td>1.7</td>
<td>2.1</td>
<td>2.6</td>
</tr>
<tr>
<td>Native Am.</td>
<td>1.9</td>
<td>1</td>
<td>0.7</td>
<td>0.7</td>
<td>0.7</td>
<td>0.6</td>
<td>0.7</td>
<td>1</td>
<td>1.5</td>
</tr>
</tbody>
</table>

VIII. Historical Patterns of Discrimination in Washington State

22. Washington is not Alabama or Mississippi or even California. There has always been discrimination, but after whites pushed the disease-wracked Native Americans into smaller and smaller enclaves in the 19th century, no non-white ethnic group was large enough to pose any social, economic, or political threat to whites until at least the Second World War. Thus, it is not surprising that the number of discriminatory laws that Washington State passed was minimal. There were *de facto* restrictions on racial intermarriage, some exclusion of blacks from juries, and the enforcement of racially restrictive covenants. (*Wilburn v. Craner*, 40 Wash. 2d 38 (1952); *Creasman v. Boyle*, 31 Wash. 2d 345 (1948); Quintard Taylor, *The Forging of a Black Community: Seattle’s Central District from 1870 through the Civil Rights Era* (Seattle: University of Washington Press, 1994), p. 87, hereinafter referred to as Taylor, *Forging*) But the proportion of whites was so overwhelming that there was no movement in Washington State to restrict the suffrage (except for Native Americans) or to segregate the schools formally. Until 1940, the largest minority group in Washington was Asian-American, primarily of Japanese origin, a group that is not part of the plaintiff class in the *Farrakhan* case.

23. Because Native Americans in Washington State have been largely resident on reservations and Latinos have arrived in the state in sizable proportions only since 1970, and because the historiography of relations between whites and those two groups in the state is thin, I will concentrate in this report primarily on the history of black-white relations. Much of the evidence comes from Seattle, where a sixth of the blacks in the state lived in 1900, and a quarter in 2000. According to the leading historian of African-Americans in Seattle, “Asians and Native Americans... were the objects of virulent hatred and sometimes even organized violence” in that city in the 19th century, and “the
small black population was insulated from the more virulent expressions of racial prejudice by the presence of large numbers of Chinese immigrants and American Indians who throughout the nineteenth-century bore the brunt of discrimination from the white population.” (Taylor, Forging, pp. 14, 22) Thus, concentrating on African-Americans will understate the amount of discrimination against minorities in Washington Territory and state.

24. Given the minuscule percentages of African-Americans in the state before the defense-related employment boom of World War II, it is shocking that there was already so much anti-black employment discrimination before 1940. In the 19th century, “the most prestigious employment” for black males in Seattle was work as barbers or porters, while “African-American women fared worse. Almost without exception they were confined to jobs as maids.” Between 1910 and 1940, from 43 to 56 percent of black males and from 79 to 84 percent of black females in Seattle were domestic servants. (Taylor, Forging, pp. 14, 62) Despite the integrated school system, prominent black graduates from the University of Washington were forced to take jobs as YWCA staffers or waitresses. At least partly as a consequence of such employment discrimination, many blacks foresaw no payoff in college attendance, and the proportion of blacks in Seattle in 1940 with four years or more of college was 2.7 percent, compared to 8.3 percent for the city population as a whole. (Taylor, Forging, 144-46) As the Great Depression ended, “it was almost impossible for blacks to find employment at any level beyond menial service.” (Taylor, Forging, 155)

25. In other areas of Seattle life, “evidence of discrimination was so widespread that only the most naive or ill-informed could ignore it.” Between 1900 and 1940, movie theaters in Seattle were extra-legally segregated and department stores and many restaurants turned blacks away. Housing segregation was rife, and even the richest black leaders felt its sting. Segregated neighborhoods began
to be established in Seattle as soon as there were enough blacks to populate them. (Taylor, *Forging,* 154, 80-82)

26. Between 1940 and 1950, the black population in Seattle tripled. At the largest employer, Boeing Aircraft, the Aero-Mechanics local reluctantly allowed blacks to be hired only under heavy federal government pressure, insisted on segregated lunch rooms and toilets, and refused to allow African-Americans to participate in union meetings, although it required them to pay union dues. (Quintard Taylor, "The Great Migration: The Afro-American Communities of Seattle and Portland During the 1940s," *Arizona and the West* 23 (1981), pp. 109-112) The same "familiar patterns of discrimination" against blacks in employment and public accommodations were seen in Spokane. (Quintard Taylor, "Migration of Blacks and Resulting Discriminatory Practices in Washington State between 1940 and 1950," p. 68) In Walla Walla, 95 percent of restaurants refused to serve black soldiers during World War II, and in Bremerton, 80 percent. (Howard A. Droker, "Seattle Race Relations During the Second World War," *Pacific Northwest Quarterly* (1976), p. 166) "In both large and small communities" in Washington State, African-Americans, "lured by labor recruiters to jobs in defense industries, were unceremoniously swept aside when war's end made their labor no longer necessary." (Taylor, "Migration of Blacks," p. 70)

27. In the 1950s in Seattle, most unions "either disallowed black membership or limited it to a token number of workers," and such large employers as Bethlehem Steel confined African-Americans to cleanup jobs. They were excluded from working in the electronics and chemical industries, retail sales, health care, and banking. In 1969, only 29 of the 14,850 building trades union members in Seattle were black. In 1970, blacks constituted 7.1 percent of the city's population, but only 1.4 percent of Boeing's employees. According to a study by Andrew Brimmer, later a member of the
Federal Reserve Board, the state’s chief anti-discrimination arm, the Washington State Board Against Discrimination, which primarily investigated housing and employment discrimination had very weak enforcement powers and was grossly underfunded. (Taylor, Forging, pp. 176-77, 183, 194, 230, 244) Summarizing race relations in the region as a whole through the 1960s, Quintard Taylor declared that “the type of racism they [blacks] experienced in the Pacific Northwest differed only in intensity from the situation faced by Afro-Americans in the South.” (Taylor, “A History of Blacks in the Pacific Northwest, 1788-1970 (Unpublished Ph.D. Thesis: University of Minnesota, 1977), p. 252)

28. Housing discrimination and school segregation were interrelated. If African-Americans had been able to move anywhere they could buy or raise the necessary money for rent in Seattle, then neighborhood schools would have been naturally integrated. Instead, there was a decades-long struggle to provide integrated, equal primary and secondary education, a struggle that continues today. In 1960, 75 percent of Seattle’s blacks lived in four census tracts in the Central District, an area with the highest dropout rate, the highest percentage of single-parent families, and over 40 percent of the city’s welfare spending. (Taylor, Forging, 194-96) During the 1960s, the city’s largest newspaper, the Seattle Times, refused to run ads for a real estate broker who sold homes to blacks in “white” areas. A 1957 state law against housing discrimination was declared unconstitutional by a King County judge, on the grounds that it infringed on the property owner’s “complete freedom of choice in selecting those with whom he will deal.” His decision was upheld on appeal to the state Supreme Court. (O’Meara v. Washington State Board Against Discrimination, quoted in Taylor, Forging, 203) An open housing ordinance passed by the Seattle City Council was overturned in a 1964 referendum by better than a two-to-one margin. Relators opposing the open housing ordinance in the referendum claimed that requiring non-discrimination would lead to a police state. As a consequence of such
discrimination, 75 percent of black high school students in Seattle in 1962 went to just one of the city’s 11 high schools, and 6 of the city’s 86 elementary schools were over 75 percent black. (Taylor, *Forging*, 204-05, 211; Taylor, “History of Blacks in the Pacific Northwest,” p. 243; Howard Alan Droker, “The Seattle Civic Unity Committee and the Civil Rights Movement, 1944-1964,” (Unpublished Ph.D. Thesis: University of Washington, 1974), p. 168)

29. By 1970, in the words of Quintard Taylor, “Deteriorating buildings and rigidly segregated housing practices, crime, drugs, de facto school segregation, chronic intergenerational poverty, and welfare dependency all increasingly characterized the Pacific Northwest’s largest African American community, and generated growing alienation, despair, and anger among black Seattleites.” Although some middle-class blacks managed to scatter into other areas during the 1970s, most moved only short distances into the Rainier Valley, adjoining the Central District. (Taylor, *Forging*, 235, 237)

30. When the Seattle School Board attempted to desegregate in the early 1970s, “Citizens Against Mandatory Busing” tried to recall the integrationists, only to be stopped by the State Supreme Court, which ruled that attempted integration was not a recallable offense. (*State ex rel. Citizens Against Mandatory Busing v. Brooks*, 80 Wash. 2d 121 (1972)) Repeated efforts to desegregate the schools were met by lawsuits and initiatives, culminating in the anti-affirmative action initiative, I-200, in 1998, and subsequent lawsuits challenging the city school board’s race-conscious open enrollment program. Housing discrimination still lies at the heart of educational discrimination in Seattle. As the Washington Supreme Court recently noted, “About 66 percent of all Caucasian students live on the waterfront or north of downtown and 84 percent of all African American students live south of the Seattle downtown area. Were geography alone used to determine school assignment, the different schools in the district would be racially segregated.” (*Certification From the United States Court of*
Appeals for the Ninth Circuit in Parents Involved in Community Schools v. Seattle School District

No. 1, 149 Wash. 2d 660 (2003), p. 666

IX. Summary

31. In sum, there is a history of discrimination in Washington State in employment, housing, schools, and many other aspects of social and economic life, as well as a generally-known history of discrimination in other states, particularly in the South, where so many of Washington’s African-Americans were born. Recent state and federal litigation shows that discrimination in housing, as well as opposition to overcoming minority disadvantages in education, continue. African-Americans, Native Americans, and Latinos bear the effects of past and current discrimination. All of these minority groups are at a considerable disadvantage in educational attainment and economic well-being. The educational disadvantages of inmates, especially minority inmates, at state prisons, are striking. And those disadvantages and the comparative poverty of minorities in Washington State make it particularly difficult for minority felons to navigate Washington’s decentralized and devilishly intricate procedures for regaining the vote. It is an interlocking system that concatenates discrimination and disadvantage to multiply inequality.
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON

Plaintiff

PRICE, Marcus Lorant
DOC No. 742754

v.

Defendant

 Cause No.: 95-1-01602-3
 AA: 96310
CERTIFICATE AND ORDER OF DISCHARGE

THIS MATTER having come on regularly before the above-entitled Court pursuant to RCW 9.94A.220, the Court having been notified by the Secretary of the Department of Corrections or his designee that the above-named defendant has completed the requirements of his/her sentence, and there appearing to be no reason why the defendant should not be discharged, and the Court having reviewed the records and file herein, and being fully advised in the premises, Now, Therefore,

IT IS HEREBY CERTIFIED that the defendant has completed the requirements of the sentence imposed and that all court-ordered monetary obligations, including any assessed interest, have been met to the Court's satisfaction.

IT IS HEREBY ORDERED that this document be considered a satisfaction of judgment and that the defendant be DISCHARGED from the confinement and supervision of the Secretary of the Department of Corrections.

IT IS FURTHER ORDERED that the defendant's civil rights lost by operation of law upon conviction be HEREBY RESTORED. This restoration of civil rights specifically does not include the right to ship, transport, possess, or receive firearms. Legal advice should be obtained.

DONE IN OPEN COURT this 30 day of MAY, 2001.

HONORABLE JUDGE RICHARD J. SCHROEDER

Presented by:

DEPUTY PROSECUTING ATTORNEY

JOE LETOURNEAU

COMMUNITY CORRECTIONS OFFICER III

JL/mb
5/16/01
Distribution: ORIGINAL - Court

COPY - Prosecuting Attorney, File, Offender

CERTIFICATE AND ORDER OF DISCHARGE

EXHIBIT 3
STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

REPORT TO: The Honorable R. Schroeder
Spokane County Superior Court

NAME: PRICE, Marcus Lorant

CRIME: Drugs-Mfg, Deliver, Poss.

DATE OF SENTENCE: 10/20/95

PRSENT LOCATION: PO Box 233
Gunnison, MS 98746

CLASSIFICATION: OMB

SRA - REQUEST FOR DISCHARGE

DATE: April 23, 2001

DOC NUMBER: 742754

CAUSE: Spokane #95-1-01602-3

SENTENCE: Monetary

TERMINATION DATE: 4/20/08

STATUS: Active-Fld

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Case 2:96-cv-00076-RHW      Document 217-4      Page 76 of 77      Filed 12/13/2005

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Comments: Legal financial obligations paid in full.

II. COMMUNITY SERVICE HOURS
1. Number of Hours Ordered 0
2. Satisfactory Completion Date
   Date of Last Contribution
3. Number of Hours Completed 0

Comments: N/A

III. OTHER INFORMATION
All sentence requirements have been completed or previously addressed by the Court. All requirements of sentence completed.

IV. RECOMMENDATION
The Court sign the attached Certificate and Order of Discharge.

If the Court schedules a hearing in this matter, a Community Corrections Officer will not be present for the hearing unless requested by the Court at the time the report is received.

I certify or declare under penalty of perjury of the laws of the State of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.

[Signature] 5/15/2001

Joseph Letourneau
Community Corrections Officer III
Spokane Drug/Gang Unit
1821 N. Maple
Spokane, WA 99205
Telephone (509) 456 – 7676

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05/16/01
95-1-01602-3
Price, Marcus, #742754
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DOC 09-128 (F&P Rev. 04/23/2001)  SRA – REQUEST FOR TERMINATION / DISCHARGE