

Joyce Hartsfield: Thank you everyone for coming to this session. I think this is going to be an excellent session. We've had an opportunity to work with Professor Godsil in the past. Professor Godsil is the Eleanor Bontecou Professor of Law at Seton Hall Law School. Her teaching and research interest includes applied social science, constitutional law, property, education and race. She is excellent on race issues and implicit bias. I think that you're going to get a lot from this session, so let me, at this time, welcome Professor Rachel Godsil.

Group: (Applause)

Prof. Godsil: Thank you. It's an amazing honor to be here. I've had the incredible good fortune of working with Dr. Mickey Collins for approximately the last year or so, working with judges. That has been a truly an education and an honor. I started out as a lawyer. I was a civil rights lawyer for 25 years. I've been a teacher for 15 years. It's only in the last 8 years, which actually is quite a long time when I think about my kids' ages, that I started focusing on the mind sciences, and here's why.

Twenty-five years ago, when I started in civil rights, there were set of issues and the one that ended up compelling and grabbing my heart most was environmental justice. This was an issue then in the late 1980s when I was starting out as a lawyer, created the most tangible, visible example of what, as a kid who grew up in Milwaukee, Wisconsin, one of the most segregated cities in the country, with parents who care deeply about civil rights, I saw every day but no one could really explain. How could it be that the civil rights movement had happened? Most people claimed that racism was wrong. Most people genuinely believed that racism is wrong.

There's an interesting poll done in Georgia in the early 2000s, 85 percent of white people from Georgia sad they would not vote for a politician who was going to rescind discrimination laws. Most people, most whites all over the country, think that racism is wrong. In fact, for most whites, to be considered racist is to be considered immoral, a bad person, un-American. It's considered worse than drunk driving, more immoral than drunk driving, second only to pedophilia. How could it be, how was it in the late 1980s and how was it now that the vast majority of people find the idea of racism repugnant and yet we continue to see the kinds of outcomes we see. People of color continue to experience what people of color continue to experience. Finally, much of that is now on the national stage as a result of cell phones.

How are these two things explained? How is this paradox unlocked? What the mind sciences can do for us is help us understand how two things can simultaneously be true. Whites and others can seriously, genuinely

believe, not be hiding it because it's pissy, but genuinely believe that being racist is wrong and yet our behavior can be inconsistent with those ideals. Those two things can be true. What is really powerful about that, I think, and why it can be helpful in speaking to an audience of judges as well as an audience of educators or an audience of business people or any of the other audiences that I've spoken to since I've started doing this work, is it's possible for us to talk about race without half of the group in the room, if it's an integrated room, to be lying.

Because I think often when I talk to a group that has many people of color in it, understandably, there's a response of like, "Sure. The white people are saying that they don't believe in racism, but that's not what they really think behind closed doors." Obviously, for some people, that's true. I mean we all read the comments on the Internet and I think there's like some group of people who spend all of their time on the Internet writing really offensive things. My guess is no one here is spending all of their time on the Internet writing offensive racist things, at least I'm hoping not.

What the mind sciences do is they give us an explanation, again, a truly compelling, empirically, scientifically-based explanation to help unlock this paradox. What's even more exciting, and this is only in the last two years or so, we actually have some interventions. We have some actions that we can take to reduce bias and even more importantly, frankly, to reduce the behavioral effects of bias. Because, let's be serious and let's be honest and say something we know, it's going to take a long time in this country to completely eliminate biases linked to race or ethnicity or gender. This is going to take a while. It's unrealistic to think, "Let's just know we have some implicit bias and then have an aha moment and suddenly it's gone." That's not going to happen. It's going to take work and it's going to take practice.

Again, what's exciting is there's research to suggest that there are practices that we can engage in that will have the effect of reducing bias and there's a great deal that can be done particularly with powerful people like those in this room to make sure that the effects of bias aren't manifested in the behavior.

This is a Code of Judicial Conduct from Florida. As I've mentioned, I've traveled throughout the country talking to different groups of state judges and this is an example of a code of conduct that will be probably familiar to most of you. Clearly, for judges particularly, the idea of objectivity, of fairness, of making decisions that are based upon the evidence and the actions of the people before them, is central to who a judge wants to be and thinks of themselves as in the idea that as a judge, any of you or any of the judges I've spoken to, would make a decision that was based upon an identity characteristic is horrific.

When I've talked to groups that included family law judges. The idea that a judge would remove a child from a home because of racial stereotypes or biases against that child's parents or against that child, again, that makes a judge ill. The idea for a judge to think about, "Might I have sentenced a young person to a longer period in juvenile detention because of their race?" That idea makes the judge ill. Each judge thinks to themselves and understandably so. I admit that this stuff might be happening elsewhere, but I know that I'm committed to being fair. I'm committed to following that code of judicial conduct and I'm committed to objectivity.

The question is if the vast majority of judges and others in law enforcement, but again, I'm particularly focusing on judges, are committed to objectivity, does the research bear that out? Is the judiciary one area where we don't see the kinds of disparate outcomes we see in other context? I think all of you in this room will know that that's not true. That there is quite a bit, in fact, a wealth of evidence to suggest that race plays a role in decisions in judging just like it frankly does in every domain of importance in our lives.

Here's just a few examples of some research. All of it is disturbing. Some of the research suggest that race is playing differently now than it did a couple of generations ago or a couple of decades ago. In some sense, race is no longer really a binary. It's not the box that you check as much now as it was at one time. For example, there has been research on sentencing that suggested we've made huge progress. Race no longer is notable in showing how different sentences emerge. Race is not a factor in the length of sentences that people get, and people are all excited. They feel very positive about the outcomes and the progress that's been made.

When the research is deeper and goes beyond the box that is checked, and Jennifer Eberhardt, who some of you may be familiar with. She won a MacArthur Genius Award recently for her work in this area. She's a social psychologist at Stanford. What she and a group of her graduate students did is, again, they went beyond the box, and they looked at images and they looked at color, and they looked at Afrocentricity of features. When they went beyond the box and they looked at particularly —I think they're looking primarily at men, men with darker skin, men with more Afrocentric features — what they found were some serious disparities in sentencing.

Because the judges aren't seeing a box and saying, "Oh, this is a black man. I'm going to sentence him to longer." That's not what's happening. Instead, and this is where this idea of implicit bias as I'll explain comes into play. It's the unconscious visual imagery that causes the judge in some of these instances and the research suggests probably many more than we like to think. It's the unconscious that causes the judge to look at the

information in just a slightly different way. As you all know, looking at information in a slightly different way, as that accumulates over different pieces of information, can lead to some significant differences in outcome. That's what the research shows.

The research shows, for example, that in cases involving capital punishment, there's this idea of looking "death worthy". If you are a very dark skinned black man, you are more likely to be sentenced to death in a capital case. Again, not because anyone has the conscious thought. "Well, a very dark skinned man obviously should be put to death." That's horrible. It's this unconscious response to a set of stereotypes that are more aggressively triggered when someone looks more like the group with whom they're associated.

The Perception Institute, I should talk about that for one second before I go on. The Perception Institute is a consortium of social scientists, law professors and advocates, and some judges, actually. We've worked with some judges. Judge Mark Bennett is someone you may have heard of from the District of Iowa who's done some wonderful work in this area. This consortium was put together in 2008, in September really it began, September of 2008, which you may all remember was a pretty pivotal time in our country's history. This was the period where it was not clear who would win the 2008 election.

This is not about being partisan. The concern that brought this group together was that there are a lot of rumblings during that election about "Who is this man? I don't know what he stands for." This man meaning Senator Barack Obama who'd gotten more coverage in a primary campaign perhaps than any other candidate in history other than John F. Kennedy. They were in Ohio and Pennsylvania and other places. "I don't trust him for some reason." Well, what might that reason be?

A group of social psychologists got together and started doing some research because the campaign didn't want to talk about race, and I understand that. They wanted race to be behind them after the Philadelphia speech. These rumblings, these comments were being addressed by surrogates for the candidate but in very aggressive way. The governor of Ohio at the time was going around to union halls and saying to primarily White unions, "You may not want to vote for a black man, but he is going to be better for the economy." The members of the union would be, "What? You're saying that I'm racist and I don't want to vote for him because he's black? That's not true." Immediately, 10 reasons for not voting for him would pop into their minds, because no one wants to be called a racist.

If you call someone a racist and say, "You don't want to vote for him because he's black but your pocketbook is going to be better off." That's not how people think. We're not the materialist in the way that sometimes political scientists assumed we are. The social psychologist started looking into what could explain some of these phenomena when people were so offended by the idea that it was race alone and this implicit bias came into play.

Again, another set of research that's interesting. I'm not sure how many of you ... I don't think many states necessarily follow the Twombly/ Iqbal pleading standards that the Supreme Court came down with a few years ago in the federal civil pleading standards. What those pleading standards have done, as you probably know, is they've required significantly more information at the pleading stage than was previously the case in notice pleading. That has had no effect in contract cases whatsoever, but it has had quite an effect in employment discrimination cases. The effect has been even greater in employment discrimination cases brought by black plaintiffs. Why might that be? Perhaps it's a subjectivity, perhaps it's the lens, but let's see. Let's continue.

Again, does this research and the wealth of other research that I could share with you mean the judges are racist? Some might want to use that word. Who am I? I have no moral authority to tell anyone what language to use, but what I would suggest is the research is powerful that most people, again, particularly people who are judges or who sit in positions of authority where objectivity is important, really reject the idea of race as a defining characteristic and think of racism is wrong.

Institutional racism is something that many of us are familiar with, but to call individuals racist is probably unlikely to advance a conversation and work about behavior because, frankly, it just makes people really defensive. No, I'm not. In my heart and in my head, I reject that, so if you want to have a debate with someone, by all means. What this research helps us do is to, again, understand that people can be more than one thing. Meaning they can really actually care about race issues and yet still have behavior and outcomes that are not consistent with those norms.

Okay, so now we're going to take a step back and now I get to put my ... I play the social psychologist on TV and I'm actually on TV so this is good. What I need from this group, and I know it's early in the morning, but I actually got in at 1 AM and was sitting in a public hearing in the Bronx for five hours, so if I can do this, you can do this. What I need from the group is I need everyone to please state the color of the text. I promise, this is not just a weird game. It's called the Stroop Test and it's a very famous test in social psychology and I'll explain what purpose it serves after we've done the test.

As group, loudly, and I know Joyce is going to help me with this, loudly, because she's the second of 7 children, she can tell people what to do, loudly state the color of the text. Everyone ready? We'll do practice.

Group: White. Blue.

Prof. Godsil: Okay, all right. It's early, it's early. We'll go back. We'll try it again. Ready?

Group: Blue. Red. Green. Black.

Prof. Godsil: Okay, so I think you're ready but you've got to do it a lot faster. Everyone really ready?

Male: Yeah.

Prof. Godsil: Okay.

Group: Blue. Red. Green. Black. Green. Red. Blue. Black. Black. Blue. Green.

Prof. Godsil: All right, so you're wondering what happened? What happened was, because we've gotten it pretty well. We've had a couple of tries. Again, it's early. Not enough coffee. The blue, red, green, black, green, you stated the color of the text. You were a 100 percent on, but as you saw, the color of the text was the same as the word, but when we got to the black text that followed the green text with the black text having the words that spell "red," what did everybody do?

Group: Read.

Prof. Godsil: You read the word. Why did you read the word? Were you thinking, "Professor Godsil, you're really irritating. Could you please sit down already?" I don't think so. I think you read the word for the same reason, frankly, that I read the word and I've literally done this hundreds of times. Automatically, your brain kicked into action. Automatically, you did what you've been trained to do since you were a little kid. You read the word. It's really hard to not do what you've been trained to do since you were a child. It's really hard. This is at the heart, this is at the base of what implicit bias is and how it works.

Your unconscious brain is really powerful. Frankly, as powerful as the conscious brains in this room are, and they're more powerful than in most rooms, let's be honest, even your powerful conscious executive brains can be overcome by your unconscious brains because you're people. That's how people work. I'm going to do something that hopefully will make you feel a little bit better, which is we'll start again and I'll move a little more

slowly. What we'll see is if you really concentrate, and I mean really concentrate and focus, and if we move a little more slowly, we can have our conscious brains overrule, override our unconscious brains. One more time, start with blue and ...

Group: Red. Green. Black. Green. Black. Red. Green. Red. Blue. Black. Green. Green. Red. Blue. Black.

Prof. Godsil: See? Nicely done. I could hear in all of your voices and admit to yourselves you really had to concentrate, didn't you? You really had to think about it. If we think about how this is linked to what I've been talking about, how this is linked to race and ethnicity, if as we know to be true, every one of us in this country has been bombarded since we were children by imagery and associations linked to race and ethnicity, if we think, "Oh, we can be objective. We're good people. We can be color blind. We cannot worry about race because we know we're good people." I'm confident that every person in here is a good person. I'm confident you don't want race to affect your decisions.

If you presume your objectivity and you presume that you can just go with your gut, the risk is that exactly what happened in that color test, in that Stroop test. It's going to come out in your judging and your behavior. You're going to go with your gut and your gut frankly has been raised on a lot of negative association and a lot of stereotypes around a lot of identity characteristics. How our brain operates is directly relevant to how judging has to happen in order to comport with the values that I know you hold.

The goals of this presentation are to understand how the brain's automatic operations make it more difficult than it would seem to judge without associations and attitudes that exist in your unconscious brain that may absolutely be completely contrary to every conscious value you hold, and yet the positive upside of this is with conscious effort, with a set of techniques designed to override the operation of those biases, you can judge according to the code of judicial conduct every one of you has agreed to abide by. It is absolutely doable but it does take effort.

It frankly takes effort for people who are of different races and ethnicities as well. It's not like women when looking at other women don't or if a woman hears engineer, I think of a white guy too, or I'll be honest, I'll think of either an Asian or white guy. That's who comes into my head because that's what I've been trained to think. I don't think of a woman. If I'm doing some hiring of an engineer, I may have to think about that. I may have to be mindful to not go into my set of associations.

It's not like those of us who fit into the identity group are free from all of this. We're not. We all have to be conscious of the norms and the

associations and the generalizations made about different identity groups. It is the unconscious mind, it is the crazy, powerful unconscious mind that allows us to function because frankly, if we didn't have this automatic brain that you saw operate in the color test, you'd literally stand in one place and not move. Because, like, look around this room and think about all the stimuli that you see. If you had to analyze each piece of it with your conscious brain, you literally wouldn't function. What our brain does is from the time that we're babies, our brain divides and categorizes stimuli into schema. You hear people say babies are blind. Babies aren't blind in the sense that their corneas don't work. They do see stimuli but they don't have any categories.

The first category typically that a baby learns, not because obviously anyone taught the baby through words because babies doesn't have words, but the first category the baby learns is a face, usually a mother or a father's face or a caregiver's face. Through early development, we develop these categories or schema that makes sense of the world and they allow us to function and to do things because of automaticity that are critical to who we are as people. How many of you drive cars? I'm not in New York City, so I'm guessing the numbers are pretty high, but there may be some New Yorkers here. How many of you drive manual? How many of you drive stick shift? Only a few people.

Well, even those of us who drive ... Actually, I do drive manual because my dad taught me when I was 17. I was very proud. When you start to drive, the idea that you're going to be able to simultaneously put your foot on the gas at the appropriate time, put your foot on the brake at the appropriate time, use the steering wheel, look around you, not hit the passengers and have, whoever's teaching you to drive, often, at least, for me, my mother who is hysterical, the idea that I'd be able to do all that at once and not die seems almost impossible, which is why we stayed in the parking lot for a really long time. Eventually, of course, it becomes automatic. Again, I would never text and drive nor would I put makeup on and drive, but I certainly have a conversation with the person next to me and drive and it'd be fine because all of that has become automatic.

Yesterday, I read that a person who is in a fairly deep coma but is beginning to come out but their brain's still doesn't appear to be functioning, if a phone rings, that person literally starts talking. Like, that's just weird, right? That has become so automatic that your brain can literally be almost vegetative and still that back brain begins to operate in behaviors. That was fascinating, I thought. What about people? We do categorize people and some of these ... It's a funny image because humor's always good, but these funny images do tell us some stories.

Part of categorizing people is just knowing who people are to function. Again, I spoke with some educators two days ago, and they nodded their heads vigorously when I said, "Isn't it remarkable how quickly even kindergarteners figure out that the principal is someone powerful and someone who, if they walk into the room, you'd be quiet?" Like they figure out that power dynamic. No one even has to tell them, they just figure it out. We have to create categories of people.

Obviously, you all, when you're judging, you wear your robes in part to convey to the people who are in front of you, "I am a person of authority, my decision about the most important aspects of your life should be binding because I am this person of authority." Yet when you take off that robe, my guess is your persona changes. You've chosen to put on a mantel of seriousness and of authority and that's really important for people to understand that you're in that role, but when you take that robe off and put on gym shorts, you're still you but I doubt if you told someone you are now going to give someone else \$100 million, people will look at you and say, "Yeah, really?" Without that robe, without that category of judge, you don't have that power, and that's okay and that's appropriate. Lots of young people choose different persona to communicate something about themselves, but of course, not all categories are chosen and not all categories of people can be taken off like a judicial robe.

The categories, the identity categories that we're concerned about are the ones that have associations linked to them, and frankly, the ones that either we can't take off because they are who we are and how we're perceived visually, immediately. Obviously, race and gender come into mind. Or sometimes you could not necessarily let everyone know that you fit into a certain identity category. If you're Jewish, for example, or if you're Catholic at an earlier age, you didn't have to let people know, but if you hid that fact about yourself or if you're a very light skinned African-American and you passed, hiding that aspect of your identity, that was deeply painful too.

There are some identity characteristics that are so central to who we are either from the outside or the inside that they're not taken off like a judicial robe. These are the identity categories that often have very powerful associations and attitudes linked to them that can be harmful. Why do I have this image up that is probably unfamiliar to many of you unless you're interested in history or Irish Catholics?

I have that up because that is a image from the 19th century that was showing the gross distinction between an Irish Catholic woman and an English woman. These were used in this country too, in New York, to distinguish the Irish Catholics from the Protestants. At that time, as again some of you may know, the Irish were seen as savage, sub-human,

uneducable, sexually profligate, and drunk. Those associations had incredibly powerful effects on whether or not they had any social mobility whatsoever, which was often, but they didn't.

As we all know, those associations no longer really exist except in history books. As an Irish Catholic woman, those have not been salient to my every day experience in the world at all. Most people, in fact, assume I'm Jewish. Rachel Godsil, curly hair, so that association has no real salience, and so associations about identity groups can change. Some people will say to me when I explain that, "Well, why can't other groups do what the Irish did?" I think people in this room probably know the answer to that. The Irish became white, right, and not every group either can nor frankly wants to become white. As a country, we've moved into a different place with respect to how we think about identity groups based upon race or ethnicity. We no longer think that it's necessarily what everyone should be striving for to become white.

There's an article in the *New York Times* some of you may saw that suggests that maybe I'm a little premature in saying this. Richard Alba ... Did anyone see the article about Richard Alba in the *Times* on Thursday, I think? What he wrote is the assumptions that we're going to become a country that is predominantly non-white or people of color may actually be premature because some ethnic groups are actually, in some degree, associating as white and so some have the concern that we're going to continue to have a divide and it's going to continue to be along black/white lines, with white expanding in definition in the same way that it did with the Irish.

Because again, for those of you who are interested in history, until really the 1950s, Irish, German, Polish, Jewish, other groups, we weren't just white. We were other races, that we literally were races at another time. French, these were all different races. Obviously, the category of race has shrunk. There are only fewer categories now. That may or may not happen, we don't know, but why this is important is because when their identity groups that have a set of associations linked to them, that's where the power comes from. Now, some of those associations are negative stereotypes, some of them are positive preferences, and when there's a negative association with a group, that's when we have prejudice.

Okay, I moved too quickly. Now you did see the race of that person, right, or ethnicity? It was ...?

Group: [Inaudible]

Prof. Godsil: Oop, I'm moving too quickly. I'm clicking this too fast. Okay. Elderly, right? Now, had I done this right, and I actually didn't do this right, I will

admit. It would've only taken you a single click, if I click properly, and you would've immediately seen the ethnicity and the race and the age of the people that I put up on the screen. What's interesting is when I did this properly with another group, and I'm going to actually see if I could do it again. What's interesting is when I did this properly and people only saw the millisecond group and I said, "What ethnicity was the person?" They looked and they said, and they didn't want to say, and then when I did that one, I said, "What race was that person, anyone know?" You noticed, right? Even though pretty light skinned, any other characteristics that you noticed about him?

Group: [Crosstalk]

Prof. Godsil: And?

Group: [Inaudible]

Prof. Godsil: And?

Group: {Inaudible}.

Prof. Godsil: Which one did you think you noticed first?

Group: His color.

Prof. Godsil: That's almost universally true and yet what's interesting, how about those folks?

Group: White.

Prof. Godsil: White, right? White, older, male, female, but the race is typically the first thing that our brains notice even if we haven't really thought about it, but it's often something we're embarrassed to admit that we saw, particularly if we're white, because for whites, the idea that we notice someone's race is assumed itself to be racist. That's actually interestingly one of the things that we have to work through to deal with implicit bias. Again, stereotypes and attitudes, those are different. Stereotypes are set of associations.

This is an iconic picture from the Depression era of a woman, single woman, poor single woman with children. The largest group of poor single women with children in this country, what do we think that group is racially?

Group: Black.

Prof. Godsil: The largest number ...

Group: White.

Prof. Godsil: White, but what's really interesting is because for a whole host of reasons, even though there are 19 million poor white people in this country and 10 million poor black people in this country, 12 million poor Latinos, most of the country assumes that most poor women with children are black. It's wrong. If I said, "Describe to me in your head without saying it, what a poor single woman with children looks like," I don't think you would have described her.

One of the interesting questions we should ask ourselves is why, at one point, was there a great deal of empathy and concern for the first woman and that empathy and concern doesn't seem to be shared with the woman I have before you. They're both women with children who are trying to do their best. Yet we have a set of associations and we have a set of stereotypes that have led to a very different response to the words "poor women with children," that again, first of all, are based upon factual distortions, and second of all, even if they're not, why have our attitudes changed? Why have our feelings about this group and their deservingness and our need as a society to care for this group, why have they changed so dramatically?

Another is stereotypes and myths. There are stereotypes and myths about Latinos, about most Latinos being undocumented. Again, absolutely not true and yet that association means if you're in some parts of the country, if you're Latino, you're literally assumed not to be American. You are assumed not to be a citizen. That has ramifications on a whole host of fronts and makes, for some people, the ability to say things about immigrants who are undocumented— code words for Latinos— that, again, end up being extremely harmful.

As I mentioned, assumptions about African Americans and levels of poverty are through the roof. It's not that the problem isn't acute and real and something as a society might want to deal with, but the assumptions and the generalities have effects on everybody, including how we judge individuals before us, that it's crucial to think about and be aware of.

With Muslims and Arab-Americans, I'm mainly talking about implicit bias. As you've already gleaned, obviously, as I'll talk a little bit more later, implicit bias means a bias that you don't know you have. It's implicit; it's in the back of your brain. With Arab Americans, it's much more common and comfortable for people to be expressive about the set of associations and even biases they have against this group because of this geo-political situation we find ourselves in. In this country, people who are Arab-American don't experience quite the same degree of ... We know it's wrong to say, even though we might behave, and so that in thinking

about if you're in a jurisdiction which you have a large number of Arab-American or Muslim litigants, thinking about how they're treated might have to involve a different set of assumptions.

Asian-Americans. There is the model minority myth. Now, first of all, and this was against...and I found out doing research to prepare for a talk in New York City, the group in New York City that has the highest proportion of people in poverty is Asian-American. That's the group that has the highest proportion of people in poverty. No one would ever assume that based upon the model minority myth. What does that mean? A, it means that getting help can be hard because we're making assumptions about you, B, if you're not good at math, it's really hard to be the Asian kid who's not good at math because those assumptions can be difficult too, but C, and this is what this study was based upon, even the positive associations of hardworking and bring up by boot straps and engineering prowess and I'd love to have you as my doctor, what about lawyer? What about lawyer?

Jerry Kang, a colleague of mine, did a study where they brought prospective jurors and had them listen to the identical deposition, one that they thought was taken by the gentleman with the blond hair, and the other they thought was taken by the gentleman with the black hair, and they had different names. One name was, well, stereotypically Asian, the other name was more stereotypically European-American. Same deposition. Then they were asked a series of questions. Do you think this person would represent your interest? Do you think this person would be assertive? Do you think this person would be someone you could trust?

Well, guess what? Based upon the identical deposition, the people with high implicit bias levels were not particularly happy about hiring Sung Chang to represent them in their case, nor would they recommend him to their family. Same deposition. The set of associations colored how they heard what he did, so they didn't think he was sufficiently assertive. They didn't think he was sufficiently warm. Same deposition, different picture, different name. The model minority myth can circumscribe opportunity, can create a set of assumptions that in some fields, law being one, can be very unhelpful.

What about Native Americans? For a long time, I didn't even have this slide because there's just frankly nothing about Native Americans in much of the media. There's not much in academia. You'd think, "Well, any associations or stereotypes about that group, they've got to have disappeared because no one's really talking about them anymore. We're not seeing them on the news all the time." What's remarkable is those set of associations continue actually to have power. Some people, when they hear about the challenges to the names, the mascot names that some sports

teams have, they think those are stupid. Like who cares if you have a Native American name as your mascot?

Notre Dame has the Fighting Irish and they're fine. Who cares? Well, as I mentioned, no one's really ... Like the Irish are doing fine, so the Fighting Irish, when someone hears that, they're not less likely to want to work with an Irish kid when they're doing their science project, even though frankly my family set of associations are that we're lousy at science. I guess no one else has heard those. When someone has heard the mascot name the Fighting Sioux, it actually makes them reluctant to work with a college partner on a science project who's Native-American.

Remarkably, even though we don't hear much about them, some of those associations have savagery and elemental back to the land continue to exert power. If someone is self-identified as Native American, that can affect how they are seen and the degree of competence in the modern technical world that they're expected to have.

Okay, so defining implicit bias. "Finally," that's everyone's thinking. Implicit is the automatic assumptions of stereotypes or attitudes for particular groups. Again, stereotypes are the traits. They're the associations and you can pick different ones for different groups that you know about. Attitudes are different. They're warmth, coldness, it's the valence, how you feel about a group. With respect to Asian-Americans, for example, some people would say there's lots of positive stereotypes but there's actually some pretty negative attitudes. There's a fair amount of coldness. Again, there's a fair amount of assumptions about whether or not people are really American. You can have a disjuncture in the degree of warmth. People who are seen as senior are older. There's a lot of warmth toward older people, but frankly, older people are not assumed to be very competent even by older people themselves.

A person can have deeply held conscious values that are egalitarian and still have implicit biases. Now, the next question is who cares? It doesn't matter. Before we get to that, real quickly, I'll talk about how do we know, how do we measure this? How many of you have heard of the implicit association test? How many of you have taken the implicit association test? I'm not going to ask you how you did because that's very personal question. The implicit association test, for those of you who haven't heard of it or taken it yet, is something you can find if you Google it and I recommend doing this. It's very interesting. It's a computerized test that is based upon ... The question is like the Stroop test. Can you as quickly associate positive words or certain associations or traits with one group as you can with the other?

The traditional one that we've seen is black/white and the question would be, so if you got a black face or white face, black good, white bad. When nasty comes up and you're supposed to press the button for the white face if you're white or frankly if you're black as well, or if you're a person of other races/ethnicities, can you press the button as quickly when it's nasty with the white face as you can with the black face? When wonderful comes up, can you press the wonderful button as quickly because you're supposed to be linking it with the black face as you can with the white face?

This was based upon, this implicit association test was based upon a ... The original test was with flowers and bugs. Tony Greenwald from the University of Washington was curious to see whether he could train himself to press the button and link positive words with bugs as he could with flowers. He really likes flowers. He's a like a garden guy. Like many of us, he loathes cockroaches. He doesn't live in New York so he hasn't gotten as anesthetized to it as many of us have. I don't really blink anymore. He really loathes them.

What he found was he could not. Hundreds of tries, he could not press the button as quickly when it said pretty and it was supposed to link to the cockroach as when it said pretty and was supposed to link to the bug. He couldn't do it no matter how hard he tried. That's the essence of the implicit association test. Those two things were so schema inconsistent. He's so revolted by bugs and so happy about flowers that he couldn't get his unconscious mind and his executive mind to cohere.

That's what the implicit association test does with different identity categories, so with race or gender. Can you as quickly press the ... It's fairly easy, as I said, for most of us to press the left key when it's engineering and science or male, but what about when it's supposed to be science and female. Can we as quickly press the button? Turns out most of us can't. It's that little bit of time difference that shows that you have a little bit of inconsistency in your brain between what you're supposed to do, press the button for the science and the female and what your brain tells you to do. That determines whether or not, or that gives you some indication of whether or not you have some implicit associations to particular group.

Now, you might say, "First of all, this is a stupid computer game, so who cares?" You might also say, "Even if it's a computer game that matters a little bit, what can a teeny difference in time do to anything real?" First of all, there was a really interesting assessment done. The teeny difference in the black/white association test, you know how like if you're at a law firm you get these evaluations every so often? Those evaluations, when they all add up, are part of what determines whether you get to be partner? Tony

Greenwald, this bug guy — actually I should have called him a flower guy because a bug guy is mean—he did a mathematical model where he took the tiny time difference that is the average time difference for most white people and their black/white association and he used that on evaluations over seven years of a person's time in a law firm.

He found that a white person's likelihood of being partner ended up being 25 percent higher than the black person's just based on this little, tiny time difference. Little bits of difference aggregated over time, guess what? Translates into huge differences in a person's life experience. If you think about the kinds of work that you do as judges, little bits of ways that you listen to people or little bits of ways that you make different decisions over the course of a whole trial or of a course of decision making over your career, may well make a big difference. The research suggested it so.

What makes it more likely that implicit bias may play a role in decision making? Big surprise. When we move really fast in my Stroop test, we did horribly even though this is a really smart group. If you're moving fast, you have time pressure, you're stressed, you have cognitive overload, you have lots going on, that's a scenario in which implicit bias is likely to come into play. You're thinking about a whole bunch of different things and you're just going to go with your gut. Again, you go with your gut, you have implicit bias, implicit bias directs your actions.

Similarly, if you have a lot of discretion like my notice pleading versus detailed pleading, if you've got a lot of discretion and you're not thinking about it, that's when the risk come into play. If it's ambiguous criteria, "Am I really right about this?" Well, I'll tell you about one study that's really interesting. Again, group of people making a decision about a police chief, and of course, they want to hire the most meritorious police chief because who wouldn't? Of course, you assume we all know merit when we see it. We look at a resume, we know who's going to be the best police chief. You've got police chief candidates, male or female, and one has a resume that's streetwise. It's a person who started out as a beat cop and then made his or her way through the ranks and ends up being a real leader. Streetwise, a person who's one of the applicants for a police chief.

Second one went to Harvard, wrote the book on the latest wave of best policing techniques, so we've got one or the other. You would think, you would hope that whoever thinks that a streetwise person should be the chief would pick the streetwise person whether or not it was a man or a woman. Similarly, you would hope that whoever thinks that the person on the cutting-edge of criminology technique and theorizing would pick that person whether it's male or female. Well, guess what? Not so much. In either instance, whichever one was male was picked. If he was picked, people were convinced, "Well, she'll be a great police chief somewhere,

we're confident, but we really needed someone who could get the support and the trust of the guys, the people who are the beat cops. They're the ones we are really concerned about right now. She'll get a job somewhere. It will be great."

If they pick the educated person, "We know she's going to do fabulous somewhere. There's going to be a department somewhere that needs someone who can get ..." That you can justify either decision because they're both meritorious. If you're just looking for merit, but you don't know what merit looks like, guess what? Merit looks like whatever the person who you generally think of in that category looks like. Guess what? Most police chiefs are male. One of the keys has to be defining merit before you get the resumes.

It's not, again, because anyone intends to discriminate against women. They probably would have been thrilled if they would've been convinced that they had a female police chief who was awesome because we all feel like we're being pioneers in this area, right? We like that, but it's really hard to do that, it turns out, if you haven't trained yourself. Again, the irony here is the people who thought they were the most objective, who like self-rated, "I'm really objective, I'm not the kind of person who's ever sort of affected by these kinds of irrelevant categories". They were the worst. Absolute worst. It's why I get really worried when I give these presentations to really liberal groups. They're all looking at me like, "It's not about me. Those other people, not me." Again, I make fun of myself because I'm sure I was just like that 25 years ago. I was this liberal girl who wanted to be a civil rights lawyer. I'm sure I was like, "Well, these people and their race issues..." Again, I'm sure I had horrible amounts of hubris on this issue.

Judges. Now this one is distressing but it's important. Jeff Rachlinski from Cornell is the person who's done the most work directly with judges and some of you may have seen this. He worked with three different districts around the country, federal district judges, they agreed to take the implicit bias test. They, interestingly, showed, found, the findings ... This is consistent, actually, with everyone that's taken the implicit association test, but I think it's important to spend a moment and talk about it. Some people, when I give this spiel will say in their heads, not usually out loud, "Isn't this just evolutionary biology? Don't we all just favor our groups?" Isn't it normal that white people would prefer white people and think more positive things about white people and black people will think more positive things about black people, and Latinos about Latinos, and women about women, whatever it is.

These findings which are consistent with findings from every group, explain this is not just about liking your group better because if it were,

then wouldn't the black judges have the same degree of implicit preference or implicit bias, whichever way you want to put it, as the white judges? They don't. As you can see, 87 or so percent of white judges showed an implicit preference for whites but only 44 percent of black judges showed an implicit preference for blacks. A good 30 or so percent of black judges are neutral, which is where ideally we'd all like to go, right? We'd all like to be at a place where we can as quickly identify positive and negative words with any group. That's where we'd like to be. A good 30 percent of black judges are there.

There's another group of black judges, a smaller group, and a group who is often very reluctant to admit to this because this is distressing, that actually prefer whites. Now is that a surprise? No. In every country in the world, and this is a test that's now around the world, in every country in the world, the dominant group likes itself the best and the non-dominant groups like themselves or the smaller percentages of people on the non-dominant group self-prefer, and a significant percentage, a notable percentage, of people in the non-dominant group prefer people in the dominant group. This is not just illusionary biology. This is culture. This is power. It's important to realize that.

Again, it's important for a couple of reasons. One, so that we can't just brush it off and say, "Well, of course, everyone likes themselves better. It's just like liking your mom." That's one reason. Second is understanding this is malleable, this can change, because dominant groups can change, but also that just being a member of a particular group does not make you immune to this phenomenon. Just to get another shibboleth off the table, you might have read the headline, "Babies Are Racist."

That headline, which I hated, was based upon a finding that babies preferred faces that were of the same basic phenotype as their mothers. Guess what, babies are more linguist than they are racist, meaning babies smiled more and were more open to people who spoke the same language as their mother than they were to people who had the same skin color. It's like babies. A, it's stupid to say babies are racist, but B, even the assumption that skin color is always the most important factor, isn't right. This is not just biology at play. This is cultural conditioning, which means that there's a lot of room for change and that's good.

Your next question is, okay, so all this is based on these computerized tests, who cares? Does it link to behavior? Yes. The research is overwhelming at this point that implicit associations are more predictive of behavior than self-reports. We just don't know ourselves that well. We wish we did but we don't. When people take the implicit association test then they engage in behavioral tasks, it is more likely that your ... whatever you've done, whether or not you're recommending sentencing or

whether or not you're taking the shooter test, which is really disturbing and I'll talk about this in a second, IAT scores predict our behavior.

Now, one thing that's notable to this audience is judges are actually better than most groups. You guys are far better than most cohorts at overcoming your biases. Judges, for example, if I gave you a bunch of sentencing vignettes, most of you would be able to crack those and have race be irrelevant. Not surprisingly. You're smart. You know what it's all about. You probably read through the test a little more quickly than everybody else. When judges are primed, and I did the priming so badly and I apologize for that. I'm going to blame it on my lack of sleep. When you're primed, meaning you're given a quick image that you don't know that you see, because that's what priming is, which I did badly. When judges are primed, then ironically, the judges who have high implicit biases against blacks, when primed with a black face, sentence everyone more harshly. That's interesting, right? It's just the priming with this image that is associated in their minds, unfortunately, with criminality and danger, leads to harsher sentencing of everybody.

Okay, the other real world increases or behaviors that implicit bias predicts, there's a lot. Oops. Budget cuts. Now the treatment for cardiac patients I'm going to talk about for one second. A group of residents were given patient, sort of pages of patient characteristics. Of course, you all know when you go to the doctor, you usually fill out your races, like the box with everything else. These had those boxes like those everything else, but then there were descriptions of patient symptoms. The residents were told this is ... They were led to understand this is testing your efficacy at diagnosing and recommending treatment. That's what they thought this was about. This is, of course, important for them to do well on their medical studies. It turned out that medical students were very good at diagnosing with race being irrelevant. The residents who later took the implicit association test and were found to have high preference for whites, bias against blacks, however you want to characterize it, they were less likely to recommend the gold standard treatment of thrombolysis to black patients than they were to white patients.

There was a direct effect of treatment recommendations based upon implicit bias scores. Again, unbelievably distressing. This has the medical world ... This is a study from a while ago. This is 2007. Medical schools and doctors generally have been focusing on implicit bias now for years because, again, that idea is life or death. One of the outcomes of that study that was very heartening was that there was one group of residents who, as part of their laundry list of instructions, like 25 instructions, like number 19 in little tiny letters was some doctors are likely to take race and gender to affect in making treatment recommendation diagnosis.

Now, I said that really quickly on purpose because this was not a scenario where they were hit over the head with, "By the way, this is about race. Do it right." It was embedded in this long laundry list. Even that small tiny written notation suggesting that race or gender or other characteristics may come into play, that was enough for the judges to self-correct. I'm sorry, the doctors to self-correct. That was huge because again it tells us implicit bias doesn't guarantee bias behavior. There was a period of time when all this stuff became known, where there are a bunch of law professors were going around saying, "Everyone should take the implicit association test before you go on a jury. If you have implicit bias, you're automatically kicked off the jury."

First of all, you have no juries left, I'm sorry to say. Second of all, it's actually not necessary. That's an overreach of what the implicit association test tells us. The implicit association test only tells us we need to be mindful. It tells us we need to be careful. It doesn't guarantee that we have white hoods and we're going to do awful things. If you've taken that test and if you found that you have some implicit bias, you don't have to despair and throw yourself off the bench. You just have to take your time and be careful and set up some of the bias override recommendations that have been suggested.

This is a study that you may, again, may have read about in the newspapers. It's one that you also may have heard about anecdotally. Resumes were sent out with virtually identical characteristics and virtually identical qualities in all respects except for the names. The names were Emily and Lakesha or Jamal and I think Ben, and Emily and Ben got a lot of callbacks and Lakesha and Jamal did not. With identical resumes. What do we do with that information? Now, first of all, that tells us perhaps that it's just racist hiring practices. Some anecdotal and other evidence suggest that that's too quick. If the same resume has a name that is not associated, that doesn't have a race association, but has an express reference to being a member of a group, and I'll give an example from a student of mine.

Tyrone sent in a resume. Tyrone Blackburn sent in a resume to a lot of different Wall Street firms and he's a president of BLSA and he got a very few callbacks. His middle name is Anthony. When he changed his name on the head title of the resume to T. Anthony Blackburn but kept in his resume the fact that he'd been president of BLSA, he actually got a ton of callbacks. What that tells us is it's not that the places didn't want to hire someone black. In fact, they were thrilled when he came in. It's the implicit response to the name that caused the evaluation of the resume to be different. What else helps us conclude that that's correct?

This race effect was done by a consulting group called Nexions. I'm saying consulting group because I can't completely vouch for it's empirical

rigor the way I can with an economic study, but this one has really distressed a lot of law firms and as it should. Same memo were sent to 60 law firm partners. They were told that it was done by a third year associate named Tom Meyer who'd gone to NYU. They were asked to assess whether or not Tom Meyer appeared to be someone they'd want to keep on who look like a good lawyer. You can see some of the comments and these are every worst nightmare. White Tom Meyer has potential. Black Tom Meyer, can't believe he went to NYU. White Tom Meyer, good analytic skills. Black Tom Meyer, average at best.

Now, those could have been cherry picked, right? If we look at the more objective measure here and the one that aggregates all the responses and not just the most obnoxious, we see a pattern that I think is very distressing but also very revealing. That's white Tom Meyer, the partners only noticed an average 2.9 of the 7 intentionally embedded spelling and grammatical errors. Black Tom Meyer, 5.8. Double. They noticed twice as many of the intentionally embedded errors, which always makes me think of the adage, "I've got to be twice as good to be considered equal." I mean, the fact that it's exactly double is obviously a little bit random but it's just too remarkable not to note it.

What does this tell us? It tells us that when the partners were reading the memo and they saw the typo in white Tom Meyer's memo, they didn't really notice it and they kept on going. They saw a little grammatical error, whatever. When they saw the typo in a memo they thought was written by a black associate, what did that do? Hyper vigilance. Suddenly they're on eagle eye lookout for every single error, everything to suggest that this person may not be a strong associate. It's what we call confirmation bias. If the memo written by a supposedly black associate had been the best memo ever written, had been perfect, undoubtedly those partners would have come out of the room, like jumping for joy and saying we've got the best guy, we're thrilled. It's not that they didn't want to have a black associate.

As you all know, A, there's a moral imperative not to be racist, which I'm sure these partners care about just like everybody else; B, frankly, there's an economic imperative. There are corporations, there's the corporate diversity agreement that means that corporations would rather hire firms that have diverse groups of lawyers. There is a moral and an economic imperative for these partners not to be "racist" and yet when they see this single typo, it calls into question in their minds this person's competence, whereas the white guy, same typo, doesn't have that effect. Law firms, unnoticed, we think we know merit when we see it. We think we can be objective. We know we want to have diverse associates. All those things, really probably only the third is true. We can't be objective as we think we can. We have to know that there's risk. I've only got a few more on

implicit bias and we'll take a break, or I'd get some questions, actually, so I'd love to hear some of your thoughts.

We often think of implicit bias as evaluative, and again, as judges, that's a lot of what you do, of course, is you make evaluations, you make decisions and credibility decisions and you read information and you reach conclusions based upon information that are cognitive. There's another aspect to implicit bias and another aspect that I submit is relevant to judging, and that's how you display what your body language is. It turns out that researchers can easily identify by watching through a window an interracial interaction who has high implicit bias. Because the high implicit bias person is likely to have less eye contact, to stand further away, to give sure more curt answers to questions, and overall to project a level of coldness or even disdain.

Our implicit biases can be manifest in our physical behavior and that's read by other people. If it's read by other people, that of course affects how they think they're being heard or perceived. As judges, again, I would urge you, and I have no power over you, but I would urge you to be aware of this because for people of color, the experience of having the skepticism, the appearance of disdain, is likely to have significant effect on the degree of comfort and genuineness that the person who is testifying, for example, is able to convey. Of course, that's going to matter to you. Your display, if it's there, of implicit bias, may well affect what you hear back.

I would urge all of you to see a documentary that's about to come out in theaters called 3 ½ Minutes about the killing of Jordan Davis that some of you may remember. He was the young teen in Florida who was killed over the noise in his car by a white guy named Michael Dunn. It's a really remarkable documentary that goes through the entire trial. Watching the trial dynamics is really interesting, but one of the things I thought about as I watched the trial dynamics is how the young people who testified who were Jordan Davis' friends, how they were, I think, probably coached or urged to testify, which was to be no emotion, they were very respectful but no emotion, and just completely serious and without anything other than just tell the information, flat affect. Whereas Michael Dunn and his fiancée, they both cried on the stand, they're both white, they both cried on the stand, they showed a lot of emotion.

One of my thoughts was if the jurors have some implicit biases, which again, likely they do, and some of the associations may be, well, again, what is the character of the people who were seeing, who were standing in for this young boy who's tragically killed. Not letting these young people show their emotion about the death of their friend I think was a real error. Because I think some assumptions can be made about how people feel

about their friends, like again, what their characters, what they're like, and that's what he's like, they may have had an effect. We all know that how people present themselves matters to how we hear them. The display of implicit bias can be as important as the evaluative conclusions.

In group preference, real quickly, this is just the idea that one of the reasons most white people have no idea that we could be, in any way, have bias is because often the way bias plays itself out is it's not animus toward another group. It's just a lot of enthusiasm about your own. That, of course, over time can turn out to be the same thing. If you're the person who's just really enthusiastic about your own group, so you believe your own group, you think your own group is more qualified, you give them that break when you won't give someone else a break. All of that, even though it's not filled with hate, can have some of the same outcomes that we're concerned about.

This is a great example both of implicit bias and of how it can be overcome. Some of you may have read about this. Orchestras have historically had a very difficult time having equal numbers of men and women. The women claim it was because of the bias. The men claim it was because the women didn't play as well. A very clever fix was suggested. Let's put a screen in front of the people when they are playing. Because it doesn't matter what they look like, it just matters how they play. At first, the screen made no difference. The men were, I'm sure, at some level like, see, we knew.

Then someone noticed that for some of the people who were auditioning, there was a little click, click, click sound before they sat down to play. What do you think the click, click, click triggered in people's heads? High heels, right? They put down like a little rubber mat, and so there were no more click, click, clicks. Suddenly you got this really awesome increase from 25 percent to 46 percent. I think that's such a fascinating example because it shows, again, undoubtedly the people who were listening before weren't intentionally not hiring the women. They just were listening to them through a lens of bias and the click, click, click was enough to trigger, "Ah, female," unconsciously. Remember how powerful our unconscious is, so I love that example.

Okay, so final question. Risk for judging. None of you would ever in a million years think you know something about someone just by the description of their race or class, right? Of course not. When teachers were asked whether or not a child should be put in a gifted and talented program and they were told she's upper middle class or she's working class. This is a white kid. They were offended at the idea that they would be, in any way, influenced by her class background. Again, that's completely offensive to teachers. Of course, you're right, we shouldn't do that. Well,

have you watched a video of this child in her kindergarten class and watch you manipulate the manipulables or whatever it is that they're called? Then you can see if you can come into some conclusions about whether this child is gifted or talented.

The teachers were given the opportunity to watch 10 minutes of the same child, Hannah, who's white. One group were told she's upper middle class, other group were told she's working class. Guess who went to the gifted and talented program? Rich Hannah. It was based upon, again, the same information and this idea of social judgeability theory, if we get a little bit of information, we think we can make an accurate judgment. We know we can't with no information, but a little bit of information empowers us to think that we're making these objective judgments. Again, the risk is, yeah, but those judgments may not be based upon actual facts that we would in a distant way consider valuable. Instead they're judged in the schema consistently, in that case, a class schema consistent way.

Confirmation bias we've talked about. Okay, so behavioral change. What can we do about this? Highlighting race in particular ways can help. As I mentioned in the doctor's study, doctors being aware that there may be an effect of race in their treatment decisions was enough for them to self-correct. There's a very interesting jury study by Sam Sommers at Tufts where there were four scenarios given to perspective jurors. Two of them were identical in one way. Black man, white woman, white man, black woman, in a bar, fighting, no one could hear what they're saying. The man hits the woman, she falls in the ground. He's charged with assault.

Next scenario, also identical, black man, white woman, white man, black woman, comment heard before the hit, "How dare you laugh at a white man" or "How dare you laugh at a black man in public?" Whack. Question: In which instance, if any, in which of these ... In scenario 1, you don't hear what the person says, whack. Scenario 2, you hear this comment, "How dare you laugh at a white man or black man in public?" Whack. In which one do you think that the white jurors sentenced the black man more harshly? My guess is if I'd asked you this at the very beginning of the training, I think you might have said, at least at every other audience I've ever asked has said, "Well, I think that the white people would judge the black man who made that obnoxious comment more harshly," but you probably know now it's the opposite. It is.

In the instance in which race is present but not salient, that's when the white jurors are more likely to recommend a harsher punishment than in the scenario where there's the comment, "How dare you hit a black man in public?" Why? Because the comment raises the concern that race may affect decision making. Once that concern about being racially unfair is raised particularly not in a way that's accusing the jurors of being racist,

that can do the work. The reason I think that that study is so important is because I've seen jury instructions and I've seen voir dire questions that I think are at risk of doing the opposite. When you have the voir dire questions that asked, "Can anyone who's ever been a victim of a crime ... a person of the race of the defendant, raise their hand and come talk to me in chambers so I can make sure you're fair."

I've seen that in modeled voir dire instructions. That's a disaster. Right? Because you'll have some number of people that can come back and describe the crime and maybe, you know, convince the judge that they can be fair, but let's even say the judge strikes every one of them for cause. Every other person on that jury has just been primed. Wow, these people have all been victims of cross-racial crimes, what about me? And they don't even know it. That's the worst possible way to try and make sure that you don't have a racially biased jury, to try and identify, by asking aggressively the question, "Have you been the victim of a crime by someone who looks just like that guy over there?" Disaster.

Similarly, I worry about the jury instructions that appear to be suggesting that the jurors are racist. I've seen them. I've seen those. Because if the jury instructions basically are, "We need to make sure that we are not using race," and again, if the judge ... particularly if the judge is really adamant about it, and giving the spit eye to the white jurors, you know, if it appears that someone's being accused of being racist, the reaction, almost invariably, is defensive, "No I'm not," and a whole set of justifications, just like in the presidential primary work that was being done, a whole set of justifications, "It's not that I'm racist, just that all this evidence suggests that he's guilty."

It's really important to be careful to not allow race ... and this has become the new norm, to keep race totally out of it, not to mention race at all. Like in the Michael Dunn trial, the defense attorney, who was, frankly, very good ... Michael Dunn's defense attorney made sure race was never mentioned, and that was smart, because what you don't want, if you're a defense attorney trying to get a white guy who shot someone in cold blood off — he was eventually convicted of first degree murder, just FYI — what you don't want is for race to be raised in a way. Actually, what we want, as people who want to be fair — not that you're trying to guarantee an outcome one way or another, but you want it to be fair — you want people's best angels to be invoked.

You want to invoke their spirit of fairness, their desire to not have race come into play. You want to invoke that, but you want it to inspire that, rather than to, kind of, whack them across the head as though you think they're unlikely to be able to be fair. That's obviously a fine line. We know the difference, right? It's different to hear, "I know you want to be fair. I

know, as jurors, you want to abide by the oath that you've taken. I know that there are challenges in doing so."

As Judge Mark Bennett in the District of Iowa has been working with some different jury instructions to do this, where he actually talks about implicit bias, and he does another thing that's really interesting. He actually, and I've heard every state judge I've ever described this to says, "I'd get thrown off the bench immediately," but, Judge Bennett, who's a federal judge, actually gets off the bench when he does his presumption of innocence and he goes and he puts his hand on the defendant's shoulder and he introduces himself to him, and he's already shaken the hands of all the perspective jurors, and he says, "I've just introduced myself to an innocent man. That's what the presumption of innocence is." Now, again, every state judge who's heard this has been like, "Are you kidding me? I would get so thrown off the bench if I did that."

I'm not suggesting you have to do that, but just thinking about ways to invoke people's desire to be fair, which is very powerful, not to hit them over the head with your concern that they might not be fair, is something really important to think about. Again, judges are much more sophisticated than most people, because, again, you're aware of the importance, but you're good at it when you're aware that you need to be, just like everybody else. That's the hope.

There's an article that I think was in your packet, that was co-written by Jerry Kang, and myself, and a number of others, including Judge Bennett. These were a set of recommendations to help create conditions for judges to make sure that each judge is living their values. First and foremost, is, frankly, to doubt your objectivity. That feels a little offensive to say, but I hope there's been enough to convince you that I'm not being obnoxious. I have to doubt my objectivity, too, this is for all of us. The second is, we know, sadly, that decades of diversity trainings have often backfired, because people often, whites particularly, often feel very defensive at the end of it. They feel like they've just been harangued for being bad people, for four hours and bored. I hope I'm not boring you too much.

The difference between an internal motivation to be fair and the external, "You better be fair or you're a racist," epithet, is quite acute. The difference in the outcomes when someone has an internal motivation to be fair, seems to be very different. I know there's not much that can be done about this, and you can use this study, if you want, to get better budgets, and I'd be very supportive of that. Improving conditions of decision making is really important. If you're harried, if it's too hot, if you have too many cases, if you have too little time, if you don't have enough resources, big surprise, all of that makes implicit bias more likely. Similarly, eliminating distractions.

The final one, which is really, really, really important, but maybe difficult to do as individuals, and may require a broader effort, is data, because right now in any of your individual courts, you don't know what role race is playing, probably. Data really gives you that information. This is why some people get offended by keeping track of racial and ethnic information. The reason we have to do that at this point, and gender, is we don't know whether these stereotypes that we know still exists, we don't know the degree in which they're playing into outcomes, unless we actually look at the data.

I'm going to stop after one more description of an intervention, and talk about implicit bias, but after I do that, after we talk through some questions, I'm going to talk about two other phenomena, that you might have seen on my first slide, racial anxiety and stereotype threat, that make it particularly important to think about the use of data, because, and I actually told this to Joyce as we started, it turns out that white liberals, who are just bound and determined, earnestly, to do the right thing, we can be really awful. We can create enormous harm, because we're bending over so triple backward not to be racist, that we can make some inane decisions. We put that under the rubric of racial anxiety or sometimes white stereotype threat.

I'm not the person who's here to sort of urge you to be like I was 25 years ago, when I started out. I called myself the happy liberal, where I was so filled with white guilt, that I think my decision making was impaired. Luckily for me, I went to the NAACP Legal Defense Fund, and I was whacked over the head a bunch of times by my colleagues. They said, like, "Get that guilt off the table, because first of all, it's irritating and second of all, it's impairing your legal judgement." The data's important, because the data helps you know whether something really is at play or not, because it isn't necessarily, or it isn't necessarily in the way that you might think. The data, if you can get it, is crucial.

In family court ... I'll just give one example. In family court, there are two competing outcomes that are unbelievably horrific and distressing. One is that black boys, particularly, are more likely than any other group to be removed from the home, even when we control for class. The second is that black boys are more likely than any other group to be killed in their home. Again, it's hard to talk about either of those without a lot of emotion, because they're so horrific, but those are two competing outcomes, and one question would be, "How can it be that we have over-removal, families being destroyed, kids taken away from their families, perhaps, likely, without warrant, and at the same time, another group of kids, not removed from their families when they're in danger? How can those two things both be true?"

The explanation for that is, there's one group of people who are looking at the evidence before them, and likely this is probably ... a lot of it's happening before it even gets to the judge. You have someone who goes into an apartment, sees an empty refrigerator, sees laundry on the ground, sees ... Again, think of my house, four water bugs, because we're working on our water bug issue, sees all that and is convinced that there's neglect going on, takes the kid out of the home. The bias lens.

Then, we have someone else who goes into a home and sees a child, and sees signs that the child has been hurt, and thinks, "I don't want to be one of those people who removes a child from a home, who shouldn't." I've heard this: "I understand that black people are more likely to hit their children, and I have to respect cultural traditions, so I'm going to leave that child in the home." And then that child's killed. We don't want either of those scenarios to happen.

Now, we can have an important conversation about the role of corporal punishment. I know it's a complex one, and I don't mean to minimize it, but we don't want people making ill-informed, kind of, again, I'm not going to be that racist person decisions that leave children in danger. We don't want that to happen, so we need good data, and we need real hard conversations about the way that race can play in ... it can come into play, and never oversimplify how any of this works out.

Very quickly, there are some reduced ... bias reduction techniques that have been shown to work. If we can do this, if each of you can do this, if each of you can create conditions that do this, this is great. First of all, this is really easy. Change representations in your local environment. Have available to you images of rooms like this where you have all sorts of counterstereotypical exemplars. Again, these are some obvious ones. These are good. Those images, it seems so simple and so, like, "Oh, come on. Really? It's going to make a big difference if I have a picture of Nelson Mandela and Ruth Bader Ginsburg?" Yes, it turns out it does. It is actually very helpful to have images of people who are admired, who have done counterstereotypical things, who are, again, the kinds of people we all want to be of every race and ethnicity and gender. It turns out that actually does have an effect. Now, it doesn't last that long, but it's helpful, it's good.

This one is even more exciting and I think I was telling ... I might have been telling Joyce. I'm, kind of, obsessed with Joyce. Break the Habit training, this was done by Patricia Devine at the University of Wisconsin, and what she did is she aggregated all of the interventions that all the other researchers had come up with that had any positive effect, and she put them into a set of slides and videos, and a set of practices that she calls Break the Prejudice Habit. What they involve is, first that

counterstereotypic imaging, where you have, accessible to you, images that are totally different from the negative associations, because we're trying to affect that back brain and take out some of those associations and replace them and make accessible some other images.

Increasing opportunities for contact: Interracial contact among people who are peers or, even better, superiors, is one of the most effective ways to reduce prejudice. Have a boss of a different race, ethnicity, or gender, as long as that boss isn't really awful, is one of the best ways to reduce bias ever, because we all want to please our boss. Stereotype replacement, again, is this action of recognizing when your conduct is being determined by stereotypes, and some of the examples of the students who engaged in this were really, kind of, stereotypical themselves, but like a young white woman at the University of Wisconsin said, "I realized that when a black guy would walk by me, I would go like this and I would flinch. And I realized that that was stupid, and it was based upon a stereotype, and it was hurting him, because he's seeing me do that, and he goes through his day having this woman flinch when he walks by." She became mindful of the different ways that she was responding based upon stereotypes.

Individuation: This one huge, and it's actually very hard. What it is referring to is learning how to distinguish people within another racial group. It's particularly hard for whites, but it's hard for everybody, actually, with other groups, because we're not ... First of all, most of us don't have enough interracial contact with lots of other groups that we have the information to be able to describe people, that we have the experience to notice the small differences, but the other challenge isn't just lack of opportunity, it's also, we think we're not supposed to notice. Right? If you're not supposed to notice, because you're supposed to be colorblind, then how can you actually think through the words?

Like if you think about your kids when they come home, you ask them to describe a friend, if they're at an integrated school, they'll say, "Oh, well, kind of caramel-colored with curly hair," and they'll give you what they call the Crayola Crayon box description, because that's what they see. They see all sorts of differences. Some parents will actually say, "Well, the skin color shouldn't be important," and the kid's like, "Okay, curly hair," and, kind of, like, well, why can I say the hair color and the eye color, but I can't say ... Like, what's bad about that?... Again, the colorblindness thing is a risk, and it actually, I think, is one of the explanations for why cross-racial identifications are so awful, because literally people don't have the language, and they don't know what to look for if it's someone from another group, so individuation is huge.

This was amazing. This is a picture of judges in Philadelphia. They told me I could use this. I did a training over two days, and the first day I did

what you basically have heard, and the second day I did what you're going to hear after we have some discussion and a little break. One of the judges, the woman in the middle with the orange shirt, tall woman, she said to me, "These white judges have no idea what you're talking about when you say, 'individuation.' They have no idea." I said, "What do you mean?" She said, "First of all, they're embarrassed to even think of us as black. They think they're being racist. Second of all, I don't know if they notice the difference in our skin color. It's really unclear to me. Certainly when you talked about the difference in experience of people with different skin colors and Afrocentricity features, I don't think they had any idea what you're talking about."

She says, "Here's what I'm going to do. When we come back on Wednesday, I'm going to have all the black judges come up, and we're going to stand there and we're going to say to our fellow judges, 'We are your fellow black judges. We're fine with that.' And we're each going to talk about the different kinds of experiences we have based upon how we look and our hair texture, and our skin color, and our features, and what that means." And they did. One of the white judges broke down into tears and she said, "So it's not racist for me to think of you as black?" We're all like, "No." Then she said to her the thing that I was thinking is, "Am I sexist if I think of you as a woman?" She's like, "No." Again, thinking of someone as a woman isn't thinking of them as whatever stereotype you want to think. It's not you're "just" a woman. It's just part of who you are.

For us, race is the same way. Then this woman was so awesome. She did the same thing. She said, "Okay. Now I want the white people to come up." She had all the white judges, and there were a lot of them, all had to stand up there, and she said, "Okay, let's see. Who's what? You alls, you know, you claim that we're all different. Great. Tell us about your differences." Then, first of all, they said, "Can any of us know who's Irish, Jewish, Italian?" This is Philadelphia, so ethnicity's actually pretty important in Philly, but no one had any idea. They didn't even know themselves. It was a really powerful experience because the individuation, the different skin colors, the white judges really were wildly anxious and unable to ... Again, there were no words. What color do we say? Do we say chestnut? Do we say coffee? Do we say espresso? Like, what do we say? How do we do that? We need better Crayola boxes.

What's powerful about this individuation and why it's so important is, how many of you have heard the adage — I'm sure every one of you have — "I can't be racist. I have a black friend"? How can that be? Or, "I can't be racist, I voted for Obama." Or, "I can't be racist. I would have voted for Colin Powell." Or, "I can't be racist. I love Will Smith movies." Now, there has always been, forever, some iconic person of every race and ethnicity, you know, I can't ... of course, I like Asian-Americans. I watch

every Bruce Lee movie ever made. You think of any ridiculous thing you want to think about, but the reason that that means something to the person who says it is, they're thinking, if I can think positively about someone who is a member of a group, that must mean I don't have negative associations about the group.

Here's what our brains do. We exceptionalize. Then the other one that I know everyone loves ...

Speaker 2: He's a [inaudible].

Prof Godsil: He's a good one or, but I don't think of you as ... Right? Most white people don't know why that's offensive, because what they're saying is, "I think of you as a person." Of course, the person of color is thinking, "So if you didn't think of me as, then I'm not a person? Like, really?" Again, what the white person's saying is, "I'm colorblind." You know, we're given all this weird, contrary messaging. What this individuation does is it means that you're given an opportunity, or made, frankly, to simultaneously think of someone as an individual with all of their individual characteristics, how they look, how they speak, how they act, their interests, and also think of them as a member of that group, presuming they self-identify that way. That's always a risk. If you know someone self-identifies as black, it's not racist to think of them that way.

It's amazing, even one of the social psychologists who does this work, we were at an event, and there's a guy who was with us. He was a football player. He's huge. He's bald, very dark-skinned, and he ordered a Merlot. She said, "I think of you as a beer guy." I could tell he, kind of, wanted to ... He didn't. He looked at her and said, "What? You think I have the ... " What's the horrible beer in the bottle thing?

Group: [Inaudible].

Prof Godsil: Yeah, one of those. She said, "Well, you think I like whatever those are?" He said, "No, actually, I like red wine quite a bit." Again, she got really embarrassed, but it was one of those things where she'd made this, kind of, stupid stereotype about him, but what he explained later is, it's those kind of little stereotypes that, on a day-to-day basis ... He said, "I don't order chicken in restaurants with white people." He said, "I really don't. It makes me self-conscious." It's awkward. He said, "And, frankly, I really like it, but I don't." Again, it's learning some of these triggers, and learning to individuate is important.

Last one, perspective-taking. I love this one, and we hear it all the time. We're hearing it again. The perspective-taking people think of is, I'm going to put myself in someone else's shoes, and if the police told me to

leave the pool party, I would leave the pool party. I don't understand what happened. That, of course, is not perspective-taking. That is putting myself, in light of my life experiences and how really, frankly, quite wonderful police officers have always been to me, and thinking, what I would expect to have heard, which is a very polite ... I went to high school parties. I actually had police come to my high school parties and tell us to get out of the cornfield. This is in Wisconsin. I had those experiences, and the police were usually pretty nice about it. It was, like, "All right, kids. Get out of the cornfield. Go back to where you came from."

That's what many of us hear when we hear the description. You think, "Well, why wouldn't the people just politely leave?" That, of course, is not perspective-taking. That's your life experience in a situation that's utterly unlike the experience that they've actually had, either in that moment, obviously in that video, or, perhaps, in that person's life. Empathic perspective-taking is to really learn about what it is like to live in this country in a different body, in a different gender, in a different race, in a different ethnic group, and to really think about that, and learn about it, and not make people from other racial and ethnic groups teach you all the time.

That's what empathic perspective-taking is, and what's really wonderful about the effect of this set of practices engaged in by people really intentionally, over a period of four to eight weeks, is the effects held. Their bias was reduced, and their concern about the role of discrimination was increased, and, most significantly, their desire and comfort in interracial interactions increased dramatically. This was finally replicated. I was getting kind of nervous because this was a 2012 study, and I hadn't seen any replication. It's been replicated now three times. This is a set of practices and habits that people can engage in that can reduce prejudice. It's very labor intensive. Of course, we'd have to do it for every group, if we're going to do the real work, so because that is a little unrealistic, that's why I would say those other practices, which seem more mundane, but for judging, to make sure that judicial decisions don't have bias creep, the behavioral overrides are really crucially important.

Why don't I take a stop now and let's talk about implicit bias a little bit, and then take a quick break and talk about these other phenomena, but I would love to hear some of your thoughts because, again, I know you've been listening for a really long time.

Male: [Inaudible].

Female: Can't hear you.

Prof Godsil: I will repeat the questions as I hear them, because they're taping, and we want to make sure that people hear the questions. Again, if anyone ... Yes, sir?

Male: You indicated just a little while ago in terms of efforts to improve this concept increased motivation to be fair. Could you give us examples of what you mean by that?

Prof Godsil: Yeah. The question was, what did I mean when I said, "Increased motivations to be fair"? What that means is, instead of having ... Actually, I know which one you're talking about. Instead of having external mandates that you feel like you have to not be racist because someone's telling you you shouldn't be, instead, having it be, "I really don't want to be that person. It's important to me, personally. It's my personal value. It's not a PC, you know, political correctness thing that's being thrown at me. This is something that I care about."

Not surprisingly, when you actually care about something yourself, you're more likely to do the work that it takes to make sure that the bias doesn't creep into decision making, then if it's just a, "So-and-so's telling me I have to." That's really what that means is thinking deeply about, "Why does this matter? Is it really possible that I'm potentially engaging this behavior? Because, again, I'm presuming everyone in this room has no desire to engage in behavior that would be linked to bias in any way, but I think it is sometimes difficult for, particularly those people who do care, to actually accept that they might have to work at it. That's where this linking the doubting objectivity and increasing the motivation to recognize, I need to work to be fair. Other questions? Yes?"

Female: My question goes back to when we were discussing the memo to the law firm, and then also saying that one way to dispel [inaudible] have people of color, African-Americans, to be in positions of authority. Wouldn't that suggest, for instance, when a person ... when an African-American gets into a position of authority, they're more than likely to be judged harshly. They're not aggressive. They're not assertive. Why did she get picked? She got picked because she's black. Isn't there still those [inaudible] you have to work twice as hard [inaudible] as the black person, or the person of color, you're still finding that your colleagues don't think you should be there, so how's it going to work that if you put blacks, or people of color, in a position of power, they're still almost burdened with, "I have to [inaudible]. I have to do ..." I mean, it's almost like, too much to handle at that same point. How's it going to help your colleagues if they probably don't think you should be there anyway?

Prof Godsil: The question, which is a terrific one, is the research has suggested, and there's actually a phrase for it, "stereotype inoculation," having people of

different races and ethnicities and genders in positions of power can do quite a bit to reduce the implicit bias of those who are below them, who are reporting to them, and can also really help ... and we'll talk later about this, the feelings of efficacy of the people who identify in the same identity groups. The judge's question was, but isn't that putting a huge burden and onus on the either woman or person of color, or both, woman of color, who's in that position of power, if her peers or his peers think that he or she only got the job because someone wants someone of color or a woman in power, if they doubt her competency or his competency, if they're questioning whether or not they have all the skills?

The answer to your question is, yes, that ... and I'm sad to say that, but again, there's ... The answer is, your instinct that putting all of the onus on the couple of people of color or women of color, or women who are white, in these positions to do all the work, to make all this right, is impossible. Right? It cannot be done by individuals in the non-dominant identity groups alone. There have to be alliances with the people in the dominant group, particularly those in power so that it's not the phenomena that you described, because the phenomena that you described has a lot of different facets to it, as you undoubtedly know.

First of all, there's the second job that you have, which is to mentor every single person who is of your identity group, which is a lot of work. There's the being perfect, because you have to model constantly, which is a lot of work. Then there's the ... and this one's interesting, answering every question about anything relevant to your identity group to all of your colleagues. That's a lot of work. Then there's being in every picture that's ever been taken of any group that you've ever been part of to show that the group is diverse. That's a lot of work.

Group: [Inaudible].

Female: And the job.

Prof Godsil: What's that?

Female: And the job.

Prof Godsil: Oh, but we haven't talked about the job yet. This is all on top of the job. This is, like, the five jobs that you have in addition to the actual job. The answer to your question, judge, is it cannot be done by the individual alone. There has to be ... and this is where the first judge's question, if you have a set of people in leadership positions who are both dominant, race and gender, and non-dominant race and gender, who collectively, collaboratively conclude this really matters to us, as a group, and they respect each other, and they're working together to both ensure that

whatever issues between each other are addressed, and dealt with, and also so you're ... You have to model, essentially, what you want to be present for those who are coming into your, again, either into your courtroom, into your office. It cannot be done by the woman of color, white woman, man of color, alone. It absolutely can't. You're right.

This other point about the 16 other jobs that you tend to have if you're from a non-dominant group, that's really something to think about. There's a book that I recommend to everyone, because it's awesome, called ... by Baratunde Thurston called *How to Be Black*. It's written simultaneously to people who aren't black, and to people who are black, and one of the chapters is, *How to Be a Black Employee*, and it has a quiz saying, "What do you do if someone comes in and says, so what'd you do ... what'd you think of Obama's speech last night?" It gives four answers. One is, "Oh, I didn't have a chance to watch it. I was pulling an all-nighter, finishing the project." The second is, "I thought the speech was terrific. I liked points A, B, and C." The third is, "Oh, have you asked everybody in the office that question?" The fourth is, "You know, I don't watch ... I don't pay any attention to politics."

What he said is, and this is actually one of the quizzes that I got wrong, I got most of them right. What he says is, "Every one of those answers is fine, except for, "I really liked his speech, particular points A, B, and C" because then your second job, along with your other five is to be the arbiter of all things involving black politics, and you can't do that job. I thought, of course, that the incendiary, "Oh, did you ask someone else?" would be too risky. He says if you follow that one by a smile and a punch in the shoulder, then the person can't be offended because you're making a joke, and they can't be offended by the joke, but they're not going to ask you again, either. Your question is right, and there's some strategies. Yes?

Female: Kind of along those lines, a lot of us kid, judges get rated by bar associations, by law firms, by judicial conferencing, and in terms of strategies, in terms of studies of how we are rated. Has there been anything done from that perspective, because I imagine they're rating us much like they're rating the interns or the law firm?

Prof Godsil: The question was, that you may have been able to hear, the judge said ... the judge asked whether there have been any studies on the link between judicial ratings by bar associations and lawyers and other rating entities, and race and gender, and an overlap of race and gender and ethnicity. That's a phenomenal question, and I ... and the reason it came to mind is, law professors are rated, too, and women and people of color, women of color, some of the same issues arise where we know that we're rated more harshly. We know that our competence is not assumed, it has to be proven. I don't know of any studies. Actually, I'll bring that back to the group that

I'm involved in, and find ... A, find out, because it's possible that one exists that I don't about, and I ... we know there have been reports written that have raised this issue to light, but what would be really interesting is to think about what can be done about it.

I mean, one thing that can be done about it, if you're talking about internal dynamics, is just for everyone to realize that we do have to be more skeptical of the ratings when they're about someone in the non-dominant group, we just do ... That doesn't mean, again, that every woman and every judge of color is wildly competent. Of course, it doesn't mean that, but it does mean a little bit of skepticism is warranted. The other thing we can talk about a little bit later in the presentation are some strategies that can help ... that essentially can help us navigate these minefields effectively, and I'll share some of those strategies, because, of course, in our ideal world, the burden shouldn't be on people in non-dominant groups to continue to do all the work, but in reality, that work's still going to be there, and there are some good strategies about ... that I'll share with you to, frankly, help have those ratings likely go better, but again, I think more needs to be done. It's a great question, and I will bring it back. Yes, sir?

Male: I just wanted to say, in Massachusetts we did do a study. We found that with both respect to race and gender, we found not evidence of consistent bias with respect to gender, but yes, evidence of consistent bias with respect to race.

Prof Godsil: The gentleman said, and you might have been able to hear him, that Massachusetts has done a study, and I'd love to ... I'll get a link to that and look at that. It sounds really important.

Male: [Inaudible].

Prof Godsil: Oh, wow, then I really want to talk to you. Apparently, Massachusetts has recently done a study that hasn't been published yet, looking precisely at ratings and trying to assess whether or not there's bias with respect to race or gender, and the findings that they've reported are that there aren't consistent findings of bias with respect to gender, but they did find consistent bias with respect to race. What I'll be really interested to see is, how the ... essentially, how the assessments were made about the presence of bias. I'll be really interested to see that. That sounds like an important study, and it's great that it happened. Obviously, we'll all share that study once it's reported, and what I'll also do, probably, is bring it back to the social science world and see if there's anything we can glean from that that would be helpful, so that's really great. Thank you for asking the question, and thank you for sharing the study. Yes, ma'am?

Female: Just a follow-up on the same question. I'm from New Jersey, and we know that there's a certain publication that does a study every amount of years. Even though they [inaudible] observations of many findings on ... race and gender, the numbers were not elected or appointed, but that number, whatever that rating is, follows a judge on a consideration for tenure. No matter how elevated, that number is always identified. X, Y was elevated [inaudible] by the way her performance, morals, whatever, and consistently it will be nine point whatever on [inaudible] and impartiality, zero on ability to handle complex cases. [Inaudible] while it might be a good thing to determine how strategies to address [inaudible] but the fact that they're waiting and they are assigned validities is a [inaudible].

Prof Godsil: The judge was saying that New Jersey does a study every five years ...

Male: [Inaudible].

Prof Godsil: I'm sorry, a publication every five years that essentially links the ratings of judges on issues like fairness and impartiality, as well as competence in handling complex cases, and that there's consistent, sort of, underestimation, undoubtedly, of the competence of women and judge of color, women of color, white women, women of color, it sounds like, and those ... even though there's an acknowledged bias in those ratings, those bias continue to be given credence, and they matter when it comes to tenure. That's something that, again, you know, you and I are both in New Jersey, so it would be interesting to talk about whether ... some of us ... several of us it sounds like, we should talk about whether or not there's some way to think about a empirically valid way of both criticizing but perhaps, even, addressing how those are portrayed, so that we can figure out some way to make those more accurate, because you're right, it's not going to be enough to have some navigational tools, although they can help, but it's not going to be enough to do all the work, and so that's a great point.

Female: [Inaudible] because diversity ...

Male: [Inaudible].

Female: ... diversity [inaudible] they've only been in the [inaudible] court once, and we have no way of determining ... we haven't figured out [inaudible]. We've been trying to figure it out for years. [Inaudible] or that person may have been in a judge's court over a series of years.

Prof Godsil: The judge is making the excellent point that the methodology for this study in New Jersey, I mean, it's almost like a Yelp rating. Right? It's a random, you know, whoever happens to be there gets to fill it out, and in terms of ... maybe in terms of assessing the quality of your steak, that's

fine, but in terms of making a really important assessment about someone's competence, you know, A, we've got the bias issues we're concerned about, B, there's the methodology of equally weighting someone who's been there once and someone who'd been there over time. Again, I'll just bring academia back into play. In academia, because we do realize, or at least most of our institutions realize, that student evaluations have to be taken with an enormous grain of salt, because of all of the different, sort of, sets of assumptions, and the hoops that you have to jump over if you're not from the dominant group.

It differs for people. Right? As a 5 foot 10 inch woman who played sports and whatever else, it's a little ... gender's easier for me than it is for my colleagues who are smaller and more feminine, so I haven't had as many problems with respect to gender, as some of my colleagues. Different of us will experience our identity categories differently, of course, but if we know there's a systemic problem, then, in academia, we have colleagues go in who have, first of all, a diverse group of colleagues, and second of all, colleagues who have determined a set of criteria, and try and apply that criteria fairly to assess someone's efficacy as a teacher, and not just this, sort of, Rate My Teacher, like ... I don't know if any of you have seen the Rate My Teacher things. They have, like, that little chili pepper associated with it. I mean, it's really offensive. I'm glad you guys don't have that, at least. The chili pepper thing is awkward. Yes, sir?

Male:

I'm not a judge. I'm [inaudible], so my concern is not so much the [inaudible] from the perspective bias of a juror, and you mentioned addressing the issue through charge language. I'm wondering if you've looked at the different charges available to judges across the different states and then suggest or propose a set of ideal models, charges, fitting today's [inaudible].

Prof Godsil:

There are some studies that are ongoing about charging language, and again, one is linked to Mark Bennett from the District of Iowa. I'm not sure exactly what the outcomes have been with respect to his charging language. I will happily get back to you after I canvas my colleagues a little bit better, and see whether or not the final results have come out about idealized recommendations. To the extent that those are available, I'll share them with this group and they can be disseminated across the association. If they're not finalized, if the study is still ongoing, then perhaps what I can do is share a couple of examples of the charging language that are being studied and give some explanations as to why some, even if we don't quite know the full results yet, might be seen as preferred over others. I will happily share more detailed information with you.

Obviously, the charging language will have to differ, to some extent, depending upon the case, but in terms of the fairness language, again, I'll find out. The reason I haven't put that in my PowerPoint until this point is, last I checked, they hadn't completely finished the study yet, and I tend to be a little bit reticent to put information in that's not complete, but your point's well-taken. You have to make decisions now, so I'll share what's available.

Male: One last thing is, is your PowerPoint going to be made available?

Prof Godsil: Absolutely. Yes, sir?

Male: You talked about the [inaudible] what African-Americans have had the same biases as anyone else. Do you know anything about that pool of people? Did they go to black schools as opposed to northern schools, or did they come from low-income families or middle ... Do you know anything about the makeup of that group of people?

Prof Godsil: The question, judge ... I'm assuming you're a judge. The question, judge ... I'm assuming anyone who doesn't say that they're not a judge is a judge, so correct me if I'm wrong. Judge, your question, I believe, was, whether or not any other characteristics were known about those individuals who were found to have a pro-white bias as opposed to a, either neutral or pro-black bias, and you're looking within the pool of judges or just in general in the population?

Male: [Inaudible].

Prof Godsil: Oh, I ... yeah, the one set of facts I gave you, they were all judges, and I'm not sure off the top of my head what other demographic information, or whether there were any correlations found. I know that I've seen other studies that have shown that one ... the experience of having gone to a historically black college tends to be linked to a higher level ... more ... less stereotype threat vulnerability, and a higher level of [inaudible]. Generally, I've seen that, but I'll check the ... Again, I'll check the Jeff [Roklinski] study to see if he has an analysis of other demographic factors. Again, if that information is available, I will share it with the association to share back with you, because it's an interesting question. Yes? Yeah?

Female: Just in terms of the jury selection process and [inaudible] just basic thing that we do, is there something to be said in terms of referring to someone as the defendant, a defendant, and the perceptions that come with that when you're talking to a jury, [inaudible]?

Prof Godsil: There is certainly research in slightly related, but not identical domains. The question was whether or not there's any effect or significance to

referring to a defendant as "the" defendant versus referring to the defendant by his or her name, you know, mister or mizz. There's certainly research in related areas suggesting that the more that people are humanized, the more that people are ... the more that others relate to them as fellow humans, and so I would certainly ... That would be the case with a defendant of any race or ethnicity. Given the greater challenges of empathy that exists cross-race, it would seem even more important to take any steps that can be taken to remind the jurors of the common ... and I know that's where these words sound a little bit elaborate, but they're actually ... they're scientific terms that have a lot of significance. The common humanity of the person who is the defendant, I think it's even more important cross-race.

I take it, judge, that your instinct is that it would be important to call the person by their name, and the ... Again, I've not seen a study on that that directly links that question with race, but if you combine the studies generally on the importance of humanizing people who are criminal defendants and the just enormous wealth of studies on some of the challenges, the empathy challenges, and the common humanity challenges across race, your instinct is absolutely right, and I think that that would be something very, very, very important, actually. Again, obviously the goal isn't to create a scenario in which some people are wildly advantaged, but the idea is to create fairness, and so ensuring that jurors recognize common humanity is just baseline fairness. Yes?

Female:

I just want to thank you for this talk, because I just found it most educational, the knowledge that you've given us. Now, my question is, I've only become aware of implicit bias within the last year or two, and this is so important, I think, for all Americans, in order for us to reach our ideals [crosstalk] equal opportunity. I think people, everybody, should be aware of this concept. Now, is this being taught now in schools, in colleges, in law schools? I don't know.

Prof Godsil:

The judges question is that, nothing that she'd become aware of this concept only within the last year or two, and nothing, and obviously I agree with you, the importance of this information for all of us to understand how it is we might be treating people and creating conditions under which equal opportunity is possible. The question was whether the degree to which this information is taught in schools, and colleges, and law schools. The answer to that is, it's at the very beginning stages. It's very interesting, for me, because, as I mentioned, I started doing this work in 2008 with John Powell who's now at the University of California Berkeley, and he's someone whose work I recommend, absolutely, to everyone. He's wonderful.

John and I, with some others, cofounded the organization, and when we first started trying to convince, even civil rights lawyers, to incorporate this information into briefs, people thought we were crazy. Now, you know, Jim Comey, the FBI director, used the language to talk about what he sees as a concern among police officers, and obviously police officers across the country are now recognizing it as an issue. It is, at this point, the interest is enormous, and so private schools, public schools ...

We're actually working with a school district ... and this is one of the projects I'm most excited about. We're working with a school district in California that has extraordinarily high expulsion, suspension rates, for black boys, and black girls to some extent, too. It's a pre-complaint settlement, and we've been invited in to help do a mind science assessment, where we're going to be able to get ... have individual teachers take the IAT and some other instruments, and we're going to correlate that with their suspension and referral data for the past three years and with the ... I'm still pressing, but I'm hoping, and with the academic outcomes in their classrooms, so we could actually, really have a true understanding of what the phenomena are that might be leading to the harms, and then identify interventions that will be contact specific.

The interest is, at this point, overwhelming, which is great. The problem is, there's still ... for all of this to really make a difference, it has to be more than just ... again, the "ah-ha" moment. Now, I love giving these talks. I really, really do, because it's really ... it's so heartening to see people interested, but for this to really make a difference, it has to be integrated and inculcated into the practices of institutions in a very contextual, contact-specific way. That's just beginning to happen. For the last couple of years there have been a couple of us, some people more than me, who are flying around giving talks. I call these "flybys." A fly by is great, but it's not enough. What's exciting is, again, there's beginning to be ... In New York, some family court judges, we're going to start working on a curriculum. There's beginning to be real integration of this work into processes, which is what's necessary.

If you'll all oblige me, I'd like to take a few more questions, but then I really do want to continue, because, as I mentioned earlier, it is crucial to me that I share the information with you about racial anxiety and stereotype threat, as well, because I worry that if I don't, that the takeaway will be, it's implicit bias, that's "the" issue, and that we'll leave aside what the research suggests, again, is equally important and equally harmful. One of the things that our group is trying to do is to expand the interests and implicit bias to include racial anxiety and stereotype threat so that we don't inadvertently cause harm. I really worry if we just think about bias, we're actually going to cause harm. Let's have three more questions. Yes?

Male:

I think that ... I can't speak for everybody in the room, but I think that we always knew this was going on. This is not new or last year or in the last couple of years that we're experiencing this, not just as black judges, but as black people, the same way that a lot of white people didn't know that police were killing people in the streets, and hitting people and abusing black people, this has been going on for years. We all knew it was going on. It was just that, black people read the paper one day, and woke up and said, "Okay, this is really going on." A lot of us, I mean, come from jurisdictions ... I'm practicing law where you're maybe one of two or three judges in your jurisdiction. We deal with this not only in coming from the bench, but also in our own personal experiences. It's, sort of, like, you have a double experience.

You have a different experience than your white colleagues. We're going to leave this conference and we'll go back to our jurisdiction and have to deal with this on a day-to-day basis, like we did before we got here. Now, making us aware of it, and exposing some of these issues, is very good, but whether it's a fly by, like you said, or whether it's something that's going to resonate with people, well, we always knew this was going on.

Prof Godsil:

Judge, the experience that I've had in giving these talks is that, essentially, every single ... or virtually every single person of color, in any room, has the same experience you did which is, to some extent, probably in the back of your head, well, duh. This is not new, and a little bit of surprise, and maybe a little bit of, like, just ... probably just kind of being aghast that the white people seem so surprised, so I hear what you're saying, and you're right.

I think what is valuable about this information that I think the hope is that it can actually make a difference, is by bringing ... by being able to explain how it is that, as I mentioned at the very beginning, you can have people who consciously think and want to be non-racist, but in their behavior, act inconsistently with that. Being able to explain A to them, or to us ... again, I obviously know that I'm white and I know that I'm guilty of some of these things, as well, so I don't mean to exclude myself. For us to be able to understand how conscious intentions aren't enough, and I think to have the experience of watching your executive brain be overcome by your automatic brain, what I've seen it do is increase the desire among people who ... Again, I've been a civil rights lawyer for 25 years, so I've been talking about race for 25 years, and no one really wanted to hear about it, not from me, not from anybody. Right? If you had to go to a diversity training, it was, kind of, like, "Oh, geez."

What's really interesting is, that's not the reaction that this information gets. From a lot of white judges and whites in all sorts of different domains, people seems to somehow get, A, that what you knew to be real,

yes, in fact, is real. It's not you being oversensitive. Like this actually ... what I hope this does is it helps bolster for other people what you've been saying all along, but perhaps they haven't been listening to, so this, sort of, the work to press against what you and others have been experiencing, will actually be ... It won't just be you alone, it'll be others working with you.

Actually, I did a training in Tampa, and the ... there's someone else being invited back to the big August ... I don't know if you go to the big August judges convention, but they invited me, but I couldn't go, so someone else is going in Tampa in August, and then I'm being invited back with some other folks to do more work in Florida. The Florida white judges were, kind of, like, had this reaction of, like, "Oh, my God, this is really happening." I know it seems pathetic that it should take all of this, but prosecutors in Charlotte, North Carolina are inviting John Powell and me and some others down to work with them. The science seems to give an underpinning that it should have been enough for you and others to say it. It should have been. It feels lousy that it isn't.

I've also had people say to me, having a white woman say this is sometimes helpful because if it'll be an African-American woman, I've been saying this for years and no one listens. That sucks. It sucks that that's true, and I don't like the idea that somehow I would be listened to more than someone of color would be listened to, and generally, in my ideal world, I do these trainings with someone of color, so it's not like the white lady talking. That isn't always possible, obviously, but I try to do that when I can.

Male: Obviously you get it. I'm not talking about you.

Prof Godsil: Oh, I know, I know. No, I'm not being defensive. I'm, honestly, I'm not being defensive. What I'm saying is, the hope is that this work, along with, you know, like you say, the videos and other things that finally are making people wake up, is actually going to lead to real change, because I think what we saw is, a couple of decades where people just didn't do very much if you weren't a person actively engage in civil rights, or a person of color who's dealing with it every day. I guess that's what I'm saying, Again, I'm not trying to be defensive, because you're right, and I'm just trying to say, it seems like this work is having some purchase that some other attempts to bring issues of power and issues of race and issues of privilege and all the things that are real and true, they just didn't change behavior. This work seems to give some potential to change behavior in a way that I haven't seen before. That's the hope, I think. Hopefully that's a good thing.

We've got three more question and then, again, if ... Does anyone know what time it is?

Group: [Crosstalk].

Female: [Crosstalk] you should go into, maybe take one question and then go onto your last one.

Prof Godsil: Okay, so maybe let's do one more question and then, again, we can talk afterward, but the other information, I swear, is just as important as everything else that I've said. Burning question?

Group: [Crosstalk].

Prof Godsil: Okay. All right. We'll talk after, but again, I swear it's just as important.

Group: [Crosstalk].

Female: [Inaudible].

Prof Godsil: Okay, so I'm going to give these slides to you, so I'm not going to spend a lot of time on these. This is just information from people who did the Breaking the Prejudice Habit. All right, so here are the points that I want to make in my last 15 minutes. I can't believe time has gone by this quickly. Two other phenomena that have to be understood, along with implicit bias. One is this idea of racial anxiety, which is the worry or concern that people have before or during interracial interactions. The second, and I'll talk about both fairly quickly, is stereotype threat, which is the worry or concern that we're going to confirm a stereotype, a negative stereotype, about our group.

Racial anxiety is ... and there's another term that we're not going to talk about today, but I'm happy to talk with you about, and that's racial threat. Racial threat is the experience that people who want to hold onto power have that causes a certain set of very hostile interactions. We know there are people who consciously are mad that we're not an all-white country anymore, and that's out there, and we know it's out there. Racial anxiety is different. Racial anxiety is something that people who generally think of our diverse country as a good thing, who want to be the good people, but have worry ... if you're a person of color, this is not a surprise, a reasonable worry that you're going to experience bias or discrimination in interracial interaction that causes your cortisol to go up, and causes some apprehension before that interaction. Am I going to be subject to discrimination?

Most people of color are familiar with that. That's not new. What is often surprising for white people, and I think for many people of color, as well, is that white people actually experience quite a bit, most of us, of racial anxiety, as well, because we're worried we're going to say something

stupid, or say something that's going to indicate to the person of color we're interacting with, that suggests that we're racist. That worry has the effect, again, of increasing cortisol, and anxiety and nervousness, and causing our brains to go a little bit of haywire. The result of racial anxiety, particularly if it's felt by both people simultaneously, confirms the worry on both sides, because the white person often says something ... because you know how if someone says, "Don't think about an elephant," you think about an elephant?

If you're white and you're worried, "Oh, I'm going to say the wrong thing. I'm going to say the wrong thing," you're really likely to say the wrong thing. Yeah, if I had more time I'd give you some funny stories about that, but it's true. You've got the person of color who's worried about being discriminated against who's, kind of, comes into the interaction armored, and you've got the white person who's worried they're going to say something stupid who comes into the interaction awkward, again, terrible interview. Right? Awful interview. Thinking about the judicial dynamic or lawyers with clients, or all the other ways in which relations matter, racial anxiety is huge.

Here's one of the great ironies or all of this. It's difficult just visually to distinguish between manifestations of implicit bias, and manifestations of anxiety. They look very similar. What that means is, you can have your white liberal who's worried about saying the wrong thing, and your person who's implicitly biased, and they, kind of, look the same. That, of course, means, that if you're the person of color dealing with both of those people, you're getting a lot of weird reactions that are very unpleasant and that are a lot of work to deal with on both sides, but it's also why I don't like to just talk about bias, because if I just talk about bias, and I've got some racially anxious liberals out there, I might exacerbate that by telling you, "Guess what? You're probably biased." All of a sudden you're even more worried, and so you're even more awkward.

Working through the racial anxiety and recognizing, worrying about being racist, that's not the goal. The white guilt doesn't do anybody any good. The internal motivation to change has to be external, not internal. Does that make sense? It can't be about me worrying about how people see me, which is why I made the comment about not feeling defensive. I don't feel defensive when people ask me those questions. You have a right to ask me the questions, and I'm happy to have the discussion, because it can't be about me. Again, racial anxiety, heart rate goes up, cortisol, cognitive capacity goes on. Racial anxiety is felt by different people for different reasons. You can look at this at your leisure, but the most important thing is, we need to take actions to ensure that the racial anxiety goes down.

The good news is, going back to the Breaking the Prejudice Habit steps, those have been shown very effectively to reduce racial anxiety because they're other oriented. Right? If you're engaging in those steps, you're not thinking, "How are people seeing me?" You're thinking about, "How am I responding to other people? What are my actions suggesting to them?" You're doing a lot of work engaging in having interracial interactions, and the combined effect of all that is to get you more comfortable. This seems very small and silly, but it turns out that realizing that with some more interaction, and with some more work thinking about that interaction, racial anxiety will go down. That, can of course, have the effect of making the racial anxiety go down, and it's huge. I'll talk a little bit more why in a second.

The second thing is, this idea of stereotype threat. Stereotype threat is the nervousness ... the negative consequences of the apprehension that your identity and your performance of something in a context in which your identity is relevant or salient, often results in your being less capable of ultimate performance. The reason I have the picture of the runner is, the metaphor has been used, stereotype threat is like a headwind that one runner's running into, and everyone else has the wind at their back, and it's literally true when we look at the evidence. I'm going to go back to the identity salient in a minute.

This is one of the early studies that was done, and the purple are male, and the green are female, so this is a scenario where math majors, male and female, are given an indication that ... There's this general norm out there that guys are better in math. When that's primed, the guys ... you can see the purple line in the first stage. They do really well on that math test, and the women tank. The second test, when there's complete confirmation that men and women do equally well on this test, the women do a lot better. The men don't do quite as well, because they haven't gotten the stereotype lift. You can see, just having the idea primed that your group doesn't do as well on a test depresses most people's behavior.

Now part of the reason it's so important to explain this to a group of powerful judges is not everyone is stereotype threat vulnerable. Some of the people in this room are not the kind of people who will be vulnerable to stereotypes about your group. You're the people who someone says, "Women can't do math," well, you're going to do math twice as well as anyone else. Someone says, "People of color don't do well on the LSAT." You're going to do five times better than anyone else. Most people are not like that. Most people are vulnerable to stereotypes about their group, and if you need all of your cognitive capacities to do something, and you've got this little apprehension in the back of your brain that your identity is going to interfere, or that your identity and your performance might, again, confirm this negative stereotype, you won't do as well.

Quick story, and the reason that I put the picture here of, on the one hand, NAACP legal defense fund lawyers coming down from a successful Supreme Court argument, and the other, the picture of Shanty Irish is I've mentioned a couple times that I'm ... that my Irish Catholicity. I'm also from a working class background. I went to Michigan. I actually did really well in law school, clerked in the federal court. It was, kind of, fancy. Went to a law firm, a small firm, was all excited to do really well, and did very well, generally, except for with one partner.

His father was a senator. He was high WASP, and I was convinced that he looked at me and he saw this working class, like, Irish thing, and literally every memo that I gave to this man had typos. I was a law review editor. I'm typo queen. I don't do typos, but I would give this guy these memos, and they would have typos and his ... the look on his face ... and he would wear bow ties, the look on his face was just ... You could tell, he was, like, why is she here? Each thing I did got worse and worse. This was typos. It was stupid. Finally I did something, a big assignment over a long weekend for a partner who I knew thought well of me, and it was a really important assignment. I hadn't showered for days. Who comes in to read the memo? And this is, like, a 50 page memo, but Mr. Bowtie.

I'm thinking, "Oh, no." I could see the look on his face. He's like, "They did not give this to her." He goes into his office and he takes all the cases that I'd read, he takes all the documents, and he comes out after an hour. I'm sitting there sweating during this hour, literally and figuratively. He comes out and he says, "I wouldn't have thought you capable of such fine work." You know what? The spell was broken. The spell was broken. I was able to get over my stereotype threat, which was very unique to me, as an Irish working class girl, but this is something ... Some of the folks in that picture, those are some of the most brilliant lawyers in this country. I've had LDF lawyers, NAACP Legal Defense Fund lawyers tell me they didn't do well in law school. I'm thinking, "Are you kidding me? You've written the most brilliant briefs I've ever seen."

What they said is in law school, didn't feel so brilliant. That was the context in which the identity relevance depressed performance, and I've heard this over and over again. The reason it's important ... These are just examples from some of the big studies. Claude Steele has pioneered this. If I can just run through really quickly, and I'd love to hear comments. Just run through it really quickly, because I want to get to some of the interventions. Feeling like something's non-diagnostic, racial difference goes down. Diagnostic meaning measuring performance, racial difference is huge. These are Stanford undergrads. White men can be susceptible to it, too. White men take a math test. Your math ability, they do really well. They're taking their math test relative to how Asians perform, not so well.

There's another great one about white men and spatial ability on putting greens. They do really well if they think it's measuring their spatial ability. They're told it's measuring their natural athletic ability and there's black men in the room, they tank. They can't sink a put. We can all experience this depending upon what our potential risks are.

Now here's the main thing I wanted to get to, and then we can talk ... maybe have some time for some more questions. This is my biggest fear, and this is another white liberal risk. There was a study done by Kent Harber at Rutgers sending mediocre ... actually, poor middle school essays to middle school teachers and asking the teachers to give feedback that they would give to the students, with racially identifiable names. The teachers gave less critical feedback to the black and Latino students than they did to the white and Asian students, less critical feedback. They overpraised, they under critiqued, except when the teachers ... They filled out, like a belonging survey. When the teachers felt like the principals had their back, and they belonged in their schools ... This is really interesting, they gave equal levels of critical feedback to the black students, but not to the Latino students.

What this tells us is, two different phenomena. They have implicit bias about the writing capacity of the Latino students because of a set of stereotypical associations about Latinos. With the black students, they're worried they're going to seem racist if they give them negative feedback. Think about the combined effect of the partners who over critique and unfairly critique, and the white liberals ... and this was me, but not anymore, who under critique, and you have the phenomena that's been named attributional ambiguity. As a person of color, you don't know if you should believe praise, or if you should believe a critique, because the praise can be condescension, and the critique can be biased.

I know I'm saying things that you already know, but this is a disaster because it turns out the under critiquing and the over praising actually leads to more disengagement from education. Like my friends at LDF, when they were in law school, they didn't trust what they were hearing from the teachers. They'd all been told this was going to happen. They get to LDF. These are the most brilliant people I've ever met in my life and, again, I was at the U.S. Attorney's Office. I was Arnold & Porter. I saw a lot of fancy people. No one was as good as these lawyers, but they didn't trust the environment until they were somewhere where they could trust the environment.

What this means is, figuring out both, for whites, how to give effective interracial feedback and mentoring is crucial, and there's a way to do it, and this is why I'm also excited. The way you do it is ... and there's a great study on this that I'll share with you, if you validate ... if you explain that

you have high expectations in a very clear way, and you affirm specifically the way that, you know, I didn't believe you could do fine work, but hopefully not as obnoxiously. If you affirm your belief in that person, or that student, or that lawyer, and then give all the critiques that that person needs to hear to improve their performance to be the lawyer they need to be, that has shown to be ... to lead to even more response to, like, a super performance by students of color, and it's being integrated into workplaces. What's crucial is to overcome this ambiguity, am I being criticized because someone's got a racist biased lens, or am I being praised because they think I can't take the critique?

There's got to be this other path, and part of the reason I bring all this up is, if ... This goes to some of the questions that some of you have raised. If you have lawyers coming into your courtroom and the environment in your courtroom, if you're a white judge, is traditional, it may well be ... and if you're a male judge, that the women and the people of color in your courtroom, have to overcome some hurdles to be their most effective selves, because they're getting all sorts of signals that are just typical of the signals that we've gotten for years. As judges, you have the power to change that. This is the opposite of everyone telling women and people of color to lean in. I want people in power to lean in. Lean in and really say to everyone in front of you, "I think well of you."

You can't say it, obviously. It's got to be shown in authentic ways. What that also does is it means you look for things in that lawyer. You look for things in that law clerk. You look for things in your colleague. You look for their strengths, and you make clear that you see their strengths, and you give them the negative and positive critical feedback that they need. Don't hold that back because you're worried that you're going to look racist. Share that with them because you respect them as a professional. It's finding this balance between not the over biased criticism that we know happens, but not the, "Oh, I can't tell that to someone because they're really sensitive." The reason you can't that to someone because they're really sensitive is they don't know where it's coming from.

If you, as a person, do that leaning and get to know the person, find out what it is about them that makes them a strong judge, or makes them a strong lawyer, and convey that, that's when people can be their best selves. This ambient belonging idea is actually really important. We talked earlier about this, sort of, 15 extra jobs that people who are a person of color or a woman or a woman of color have. Share the work. Right? Help not create a condition in which people feel like they have to do the 15 extra jobs. Again, it's something that can really happen. There are, again, there's a couple of other interventions that I can share, and I can send you some studies.

This is John Powell, my colleague who brought me into all this work. He's a genius, and if you can ever go see him speak, you should go. There's amazing power that comes on all sides, and this is the final thing I'll say, because I know I'm sure my time is up. One of the other things, and I told you I would talk a little bit about navigational tools for people in non-dominant groups. It shouldn't be, and I feel ... I do feel some guilt, white guilt here, about putting extra work back on people of color or women to continue to navigate, but I think it's really useful to know that this racial anxiety phenomena is real, and that if you are a person of color navigating a world in which you've got whites in power who you can sense have some racial anxiety now that you're aware of the concept, you actually have a ton of power to change that, because I will tell you, white people feel so happy if a person of color seems to like them. We get really, weirdly happy about that.

I'm serious. I'm totally serious. I know it sounds pathetic, but it's really true, because you're so worried that you're one of those racist people or someone's going to think that you are, so if you're given this, sort of, positive ... and, actually, a colleague of mine did this where a student of color came into her office and she was nervous and she was worried, and she was, kind of, like, this. My colleague said, "Okay, go back out the door. Antoinette, go back out the door. Come back in and walk in and say, 'Hello, professor. Great to see you. I can't wait to hear about health law.'" She looked at her, and she said, "Seriously, go back and do it." She's like, "All right." She went back out and she came in, "Hello, professor. Great to see you. I'm excited to learn about health law." My colleague said, "Well, I'm excited to tell you about health law."

What she said is, if you had gone in with this, to a professor who didn't understand this dynamic, no mentoring would have come from this relationship, but if you come in, "I'm excited to learn about this ..."  
Professors, oh my God, we're the most pathetic. If anyone indicates any interest in anything we do ... Am I right?

Group: Absolutely.

Prof Godsil: I'm right. There is power as the person in the non-dominant group because those in the dominant group often ... Frankly, we haven't navigated this stuff very well or very often, and so again, it should be on us to do much more of the work, and that's obviously most of what I've been talking about, but because we're not all going to have done that, knowing that you have some power by virtue of just being the one to break the ice, as it were ... and you've all seen that work. Right? There's always the wonder, like, "Why does so-and-so do so well?" Often it's the person who does take on the mantel of, "I'm just going to make this happen." It is extra work and I acknowledge that, but we should all know the power that we have. I could

go on forever. There's more information to share. I will share as much of it as I can, PowerPoints, studies, et cetera. If we have any more time?

Female: Oh, okay, so I don't have to tell you, Professor Godsil. Great hand. She is wonderful. She is really wonderful. Give her a big hand. We're running about a minute behind schedule. Do not leave, please. Our moderator has to come up and, if you stay for a few minutes, after one other things happens, Professor Godsil could answer some more questions if she wished to.

Prof Godsil: Sure.

Female: The moderator has a couple things to say.

Joyce Hartsfield: There's me and having to get it short again. I want you to just wave your hands if you learned anything in this session. Have you got something to pass on to other folks out of this session? It was so dynamic. I guess that just means we got more work to do. As in interim, I'd like to take a minute to present to some, introduce to others, the great chief judge of the courts of the state of New York, Jonathan Lippman, who has agreed to give us a few words.

Judge Lippman: Thank you. I want to hear the questions. The professor is so great. I just wanted to come in and say how proud I am to be here with all of you, how proud we are in New York to have the national consortium here in our great state, in the western part of our great state, how terrific we feel about the Franklin Williams Commission, in our own state, which has such a storied history for so many of us. I also am delighted that coming up after we hear the professors answer the questions, I'm going to go to the panel in which my colleague, Judge Jenny Rivera, is going to preside over, my fabulous colleague, and to hear about all the things that she teaches me every day, and that she'll teach me here.

I did want to say that it's so important that we talk about the issues that you're all here to discuss over these three days. Every day in this country we recognize that with all the progress that we've made, we have so much more to do, and so many things to talk about in-depth, together, and I think this conference is just spectacular. I know that my friend, Reverend Sharpton, was here the other day, and he's such an interesting, terrific speaker, with so many things to say.

Again, I just want to highlight to you that nothing could be more important in this state, or this country, than discussing in a very real, interactive discussion, on the kinds of issues that you were all talking about at this conference. A belated welcome, at least from me. My first time to welcome you here is today. You're all terrific. We're so delighted to have

you in New York State, and again, I want to stress the importance of what you're doing to the wellbeing of New York and all of our sister states. For someone who has been in the court system for over 40 years, racial and ethnic diversity and fairness is number one on my list.

I've seen so much over these years, and we're going to see so much over the coming years. Again, so delighted to be with you, to see you during the day and to see you tonight. Thank you for being here, and thank you for having this conference in New York. Thank you.

Prof Godsil: You have a question? Yes? Yes, judge?

Judge: Thank you very much for presenting. I wanted to [inaudible] the situation which [inaudible] strikes many of the concepts that you've mentioned, racial anxiety, stereotype, apprehensiveness, [inaudible] articulated [inaudible] and judicial selection. As part of Franklin Williams Commission, we meet with decision makers on who becomes a judge, and we met with a certain mayor who's no longer in office, [inaudible]. He really was very anxious to meet with us. He expressed a desire for diversity and articulating what he was concerned about. He said to us he had a wonderful candidate on paper, person of color, and someone who went to a top 10 law school. On paper, a perfect candidate, but when he met him, the person could not look him in the eyes and shake his hand firmly. That was why this person was not selected. We felt part of our role was to educate him, and it was someone I actually have a relationship with over the years. I said, "Mr. Mayor, if that was the criteria in the beginning of my career, I would never have been selected as a judge, because I could not have looked you in the eye or shaken your hand. I would have been very, very nervous."

He said to me, "You know, you could have said anything to me." I said, "But you are judging someone who has a demonstrated career, has knowledge, and went to a top 10 law school, and you're saying that just because he didn't make eye contact with you, that is so subjective and something that I don't think really goes to the role of being judge." I mean, he took it in a very nice way, and I think it's because we had this relationship. It illustrates everything what you were saying. Thank you very much. Now I have the words to explain why it's a problem to select on these qualifications, and I think this ... that we can use this to educate.

Prof Godsil: Can I ask a question? Did he get selected?

Judge: I don't know.

Prof Godsil: Oh, I hope so.

Judge: It's a process.

Prof Godsil: You educated him, because obviously he thinks highly of you, and he sees ... Again, you're absolutely right that I can't repeat with all the eloquence everything that was just described, but I hope it was captured on tape about an experience where, all the phenomena we described where a person from a dominant group, sort of used one criteria— the handshake, look in the eye— to conclude that someone wasn't qualified, and the judge thankfully was able to educate the decision maker about how problematic that criteria was in the context of someone who may well have not felt comfortable in that moment enough to be themselves.

Judge c: We used that information to school the other people who would go before him, so ...

Prof Godsil: I think that raises the last point I was making. Again, it shouldn't be that that decision maker was applying a criteria in that way. We can share with people who we know are in non-dominant groups, and who may be susceptible, understandably, to the challenges of dealing with a certain set of expectations and a certain awkwardness by saying, this is going to be hard, but if you go in armed with knowing, eye contact, handshake, have a script ready to go that you've practiced and you're comfortable with, it can make a huge difference. That's just, sort of, as another tool, both ... If you have white colleagues who are willing to ... who are either here or who are thinking about these issues, who have racial anxiety, the scripts can make a big difference.

One example that I would give is when I worked with family court judges in New Jersey, there was a white female judge who was saying she really struggled when she had to talk with families in the context of potential abuse cases. She wasn't sure what to say if there had been some corporal punishment, and she wasn't sure ... She didn't think it was to the degree for the child to be removed, but she didn't know what to say about the role of corporal punishment and where the lines were drawn, because she ... again, she didn't want to be culturally insensitive.

One of the women of color, one of the African-American judges said, "Here's what I say," and she gave a description of how she communicates with the family to let them know, "I respect you as a parent. I know that you have the best interests of your children at heart, but here are some lines you can't cross, and here's why." She said, "I say that with all the respect in the world, but I say that." This judge realized, if she's not saying that, if she's not communicating that, and sharing that information, she's both doing the children and the family a disservice because, again, if we're not sure what the lines are and when they're crossed, and when we're not

given the constructive suggestions we need in all sorts of contexts, then they're losing out because of her anxiety.

I know you had a question earlier, so I wanted to make sure that you had a chance to ... or a comment or a thought to share.

Female: First of all, I'm not a judge. I wanted to address the issue of ... one's status. You get over all of the anxiety ... but I think my experience is that it doesn't matter what the next job offer, I take it, because I'm going to have to start all over again.

Prof Godsil: The comment was made that the ability to, perhaps, overcome the identity, stereotype threat anxieties or the anxiety dynamics that occur with one set of individuals, in one context, isn't necessarily portable, and often is not portable, because you have to, essentially, jump over those same hoops at the next job. You're exactly right, and I think we've, again, any of us in non-dominant groups have had that experience. The hope is, I think, A, obviously, the main work is for the institutions to change so that people in non-dominant groups aren't having to do the triple work. Again, your work is gender work, race work, you have more work to do, obviously, than I do, coming from a different level, sort of having different sets of characteristics.

I don't know what your class background is. I know for me, class background has been the biggest challenge, but what I think ... what hopefully can happen is, institutions will change, but to the extent that we're talking about what we as individuals, how we navigate, success in one realm, hopefully can give us the confidence to buoy ourselves in another, and make the second opportunity a little bit easier. That's not always the case, and it depends on how challenging the environment is, but I know that being aware that stealing oneself, armoring oneself, moving into a situation with a set of ideas about how to self-present that has worked, hopefully, again, creates a practice group that makes the second or third less difficult, but I think it really does depend upon the difficulty in the environment.

I know that I've had female colleagues who have been in much more difficult environments than I have where the gender performance demands are much higher. Again, I've been really lucky. I've been in a lot of places where ... I was in the U.S. Attorney's Office under Mary Jo White. I was at LDF when Elaine Jones was the head. I've been really, really fortunate and not had these issues come up much, and often a lot of places I went, there were other folks who had working class backgrounds, and we could joke about not knowing what a bidet was. There was some comfort level in that, but that's also ... There are many more white women in law than there are black women at this point, still, and so the work is harder.

I think I have to sit down. I'm happy to talk with anyone outside of the room, and again, I would love to keep in touch with any of you. There were so many good ideas shared about more information that needs to be gathered, the information about the jury instructions. Hopefully people can get my information, share information by e-mail, and everything I can, I will share with the association, and it hopefully can be distributed among you. Thank you so much for all of your interest.