

# “Assassinate the nigger ape[]”<sup>1</sup>: Obama, Implicit Imagery, and the Dire Consequences of Racist Jokes

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**ABSTRACT:** In 1994, Congress passed legislation stating that presidents elected to office after January 1, 1997 would no longer receive lifetime Secret Service protection. Such legislation was unremarkable until the first black president—Barack Obama—was elected. From the outset of his campaign until today, and likely beyond, President Obama has received unprecedented death threats. These threats, we argue, are at least in part tied to critics’ and commentators’ use of figurative language and imagery that characterize Obama as a primate. As a point of departure, we refer specifically to the racist humor in Sean Delonas’ controversial *New York Post* cartoon of February 2009. Against this backdrop while looking to history, cultural studies, theories of humor, federal case

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1. *Morgan v. McDonough*, 540 F.2d 527, 531 (1st Cir. 1976) (stating in a school desegregation case, that white students harassed black students by chanting “assassinate the nigger apes”); *see also infra* notes 109-13 and accompanying text.

law, as well as cognitive and social psychology, we explore how the use of putatively harmless imagery may still be racially laden and evoke violence against its object. By employing this interdisciplinary approach to the topic, we bridge the theoretical and the empirical in order to make a compelling case for the direct link between jokes—and cultural symbolism more broadly—and assassination threats to the United States' first black president.

### ***Introduction***

In 1994, Congress passed legislation stating that presidents elected to office after January 1, 1997, will receive Secret Service protection for 10 years after leaving office as opposed to lifetime protection.<sup>2</sup> To date, this legislation has gone unnoticed in legal scholarship. One might venture to guess that concerns about the safety of post-1997 elected presidents have been, and maybe should be, negligible—that is, until the election of Barack Obama. By this action, it is arguable that legislators in 1994—including President Bill Clinton, who signed the legislation into law—relaxed their fears over assassination threat to the former Heads of State. Certainly, they must not have imagined that, despite the United States' racial legacy and the slow rise of black politicians to government offices, a black man would be elected to the highest office in the land so soon. But despite the milestone of President Obama's election, race still matters in America,<sup>3</sup> and the need for Secret Service protection of the U.S. President is all the more necessary. As such, President Obama does,

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2. Treasury, Postal Service and General Government Appropriations Act of 1995, Pub. L. No. 103-329, § 530(a), 108 Stat. 2382, 2413 (codified at 18 U.S.C. § 3056).

3. See, e.g., Gregory S. Parks et al., Debate: *Implicit Race Bias and the 2008 Presidential Election: Much Ado About Nothing?*, 157 U. PA. L. REV. 210 (2009); Gregory S. Parks & Jeffrey J. Rachlinski, *Implicit Bias, Election '08, and the Myth of a Post-Racial America*, 37:3 FLA. ST. U. L. REV. 1-111 (forthcoming 2010).

and likely will for many years, disproportionately face threats to his life.<sup>4</sup>

The issue of President Obama's possible assassination originated with his candidacy. The Secret Service placed him under its protection earlier than any other presidential candidate—in May 2007, eighteen months before the 2008 presidential election.<sup>5</sup> The Department of Homeland Security authorized his protection after consulting with a bipartisan congressional advisory committee.<sup>6</sup> The security detail was not prompted by direct threats, but by “general concerns about the safety of then-Senator Obama as a prominent black candidate.”<sup>7</sup> These concerns arose, in part, from the racist chatter found on white supremacist websites early in Obama's candidacy.<sup>8</sup>

Senator Obama did not initiate the request for Secret Service protection; his colleague, Illinois Senator Dick Durbin did.<sup>9</sup> Senator Durbin openly acknowledged that his request “had a lot to do with race.”<sup>10</sup> At the outset of Obama's presidential campaign, many supporters, including his wife Michelle, expressed fears that he would

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4. See RONALD KESSLER, *IN THE PRESIDENT'S SECRET SERVICE: BEHIND THE SCENES WITH AGENTS IN THE LINE OF FIRE AND THE PRESIDENTS THEY PROTECT* 225 (Crown Publishers 2009) (indicating that threats against President Obama are up 400 percent vis-a-vis his predecessor).

5. Nedra Pickler, *Racial Slur Triggers Early Protection for Obama: He Called on Secret Service to Monitor Big Crowds*, GRAND RAPIDS PR., May 4, 2007, at A3.

6. *Id.*

7. *Id.*

8. *Id.*

9. Shamus Toomey, “*A Lot to Do with Race*”: *Durbin Says Obama Needs Secret Service in Part Because He's Black*, CHI. SUN-TIMES, May 5, 2007, at 6.

10. *Id.*

be placed in harm's way.<sup>11</sup> Some black supporters went so far as to express fear that he would be assassinated and that refusing to vote for him was a way to protect him.<sup>12</sup> These concerns became so pervasive and widely discussed that even candidate Obama acknowledged them.<sup>13</sup>

During the campaign, several arrests underscored the nature and extent of the threats that candidate Obama faced. In early August 2008, the Secret Service arrested Raymond Hunter Geisel in Miami for threatening to assassinate Obama.<sup>14</sup> In Geisel's hotel room and car, agents found a nine-millimeter handgun, knives, "ammunition, including armor-piercing types," body armor, a machete, and military-style fatigues.<sup>15</sup> Geisel had "allegedly referred to . . . Obama with a racial epithet" during a bail-bondsman training class and said, "[i]f he gets elected, I'll assassinate him myself."<sup>16</sup> In late August, "[t]he Secret Service, FBI, and other law enforcement agencies investigated a possible assassination plot against Obama by white supremacists. . . ."<sup>17</sup> They arrested Nathan Johnson, Tharin Gartell, and Shawn Robert Adolf, as well as recovered two rifles.<sup>18</sup> The men

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11. Lynn Sweet, *Michelle Obama to Play Bigger Role in Campaign: Candidate's Wife Also His Most Important Adviser*, CHI. SUN-TIMES, March 12, 2007, at 24.

12. Jim Galloway & Bob Kemper, *Blog: Political Insider: 'America Is Readier to Elect a White Woman Than It Is an African-American Man'*, ATLANTA J. CONST., Oct. 15, 2007.

13. Katherine Q. Seelye, *Obama, Civil Rights and South Carolina, The Caucus*, <http://thecaucus.blogs.nytimes.com/2007/11/02/obama-civil-rights-and-south-carolina/> (Nov. 2, 2007, 23:09 EST).

14. Curt Anderson, *Fla. Man Held on Charge of Threatening Obama*, PITT. POST-GAZETTE, Aug. 8, 2008, at A6.

15. *Id.*

16. *Id.*

17. Dave McKinney et al., *A Plot Targeting Obama? 3 in Custody May Be Tied to Supremacists, Said to Talk of Stadium Shooting*, CHI. SUN-TIMES, Aug. 26, 2008, at 3.

18. *Id.*

told the arresting officers that they planned to use the rifles to shoot Obama from a distance at Invesco Field in Denver during Obama's Democratic National Convention speech.<sup>19</sup> In September, law-enforcement agents arrested Omhari L. Sengstacke, who was in possession of a gun and a bulletproof vest near Obama's Chicago home.<sup>20</sup> In October, federal officers undermined an alleged plot against Obama by white supremacists Daniel Cowart and Paul Schlesselman.<sup>21</sup> The two men had planned to go on a killing spree, targeting a predominantly black school and beheading fourteen blacks. They intended for their rampage to conclude by assassinating Obama.<sup>22</sup>

The threats did not end with the election. Obama's victory produced a spate of racial animosity against him. In Maine, the day after the election, citizens rallied against a backdrop of black figures hung by nooses from trees.<sup>23</sup> "In a Maine convenience store," an Associated Press reporter noted "a sign inviting customers to join a betting pool on when Obama" would be assassinated.<sup>24</sup> The sign read, "Let's hope we have a winner."<sup>25</sup> In Mastic, New York, a woman reported that someone spray-painted a "message threatening

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19. *Id.*

20. Angela Rozas & John McCormick, *Man Arrested Near Obama's Home; Gun, Bulletproof Vest, Allegedly Found in His Car in Kenwood Neighborhood*, CHI. TRIB., Sept. 24, 2008, at 7.

21. Kevin Johnson, *2 Men Accused of Planning Massacre, Targeting Obama*, USA TODAY, Oct. 28, 2008, at 5A.

22. *Id.*

23. Greg Mitchell, *Racial Incidents and Threats against Obama Soar: Here is a Chronicle*, HUFFINGTON POST, Nov. 15, 2008, [http://www.huffingtonpost.com/greg-mitchell/racial-incidents-and-thre\\_b\\_144061.html](http://www.huffingtonpost.com/greg-mitchell/racial-incidents-and-thre_b_144061.html).

24. *Id.*

25. *Id.*

to kill Obama” on her son’s car.<sup>26</sup> In Hardwick, New Jersey, someone burned crosses in the yards of Obama supporters.<sup>27</sup> In Apolacon, Pennsylvania, someone burned a cross on the lawn of a biracial couple.<sup>28</sup> At North Carolina State University, “Kill that nigger” and “Shoot Obama” were spray-painted in the university’s free expression tunnel.<sup>29</sup> At Appalachian State University, a T-shirt was reportedly seen around campus that read “Obama ‘08, Biden ‘09.”<sup>30</sup>

The threats were not simply an East Coast phenomenon. In Midland, Michigan, a man was observed walking around wearing a Ku Klux Klan robe, carrying a handgun, and waving the American flag.<sup>31</sup> He later admitted to the police that the display was in response to Obama’s win.<sup>32</sup> In a Milwaukee, Wisconsin police station, police “found a poster of Obama with a bullet going toward his head. . . .”<sup>33</sup> At the University of Texas in Austin, Buck Burnette lost his place on the football team for posting on his Facebook page, “[a]ll the hunters gather up, we have a nigger in the White House.”<sup>34</sup> In Vay, Idaho, a

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26. *Id.*

27. Debby Berger, *Cross burned on lawn of Obama supporters in Hardwick*, NJ.COM, Nov. 6, 2008, [http://www.nj.com/news/index.ssf/2008/11/burning\\_cross.html](http://www.nj.com/news/index.ssf/2008/11/burning_cross.html).

28. Patrik Jonsson, *After Obama’s Win, White Backlash Festers in US: The Election of a Black President Triggered at Least 200 Hate-related Incidents, a Watchdog Group Finds*, CHRISTIAN SCI. MONITOR, Nov. 17, 2008, at 3.

29. Mitchell, *supra* note 23.

30. *Id.*

31. *Id.*

32. *Id.*

33. Eileen Sullivan, *Obama Faces More Personal Threats than Other Presidents-Elect*, HUFFINGTON POST, Nov. 14, 2008, [http://www.huffingtonpost.com/2008/11/14/obama-faces-more-personal\\_n\\_144005.html](http://www.huffingtonpost.com/2008/11/14/obama-faces-more-personal_n_144005.html).

34. Mitchell, *supra* note 23.

sign on a tree offered a “free public hanging” of Obama.<sup>35</sup> Parents in Rexburg, Idaho, complained to school officials after second and third graders chanted “Assassinate Obama!” on a school bus.<sup>36</sup> A popular White supremacist website got more than “[two thousand] new members the day after the election, compared with [ninety-one] new members on Election Day. . .”<sup>37</sup> And federal agents arrested Mark M. Miyashiro in December 2008 for threatening to attack and kill Obama during Obama’s scheduled vacation in Hawaii.<sup>38</sup> The Secret Service confiscated a Russian SKS rifle, a collapsible bayonet, and several boxes of ammunition from him.<sup>39</sup>

Against the chilling backdrop of this litany, we explore how the use of racially-loaded imagery—whether intended or unintended—packaged in the form of jokes serves to increase the risk to President Obama’s life. Intentions of assassination and violence against Barack Obama, we argue, are directly connected to figurative displays of racial animus, many of which claim to be humorous in nature.<sup>40</sup> At times they provide direct calls to violence, but in other instances they work at the level of the political unconscious to stir up pernicious

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35. *Id.*

36. *Id.*

37. *Id.*

38. Peter Boylan, *Man Held in Obama Threats*, HONOLULU ADVER., Dec. 10, 2008, at 1B.

39. *Id.*

40. Some of this language and imagery does not come in the guise of humor, but rather other forms – e.g., prayers. See Tony Norman, *Obama-Haters are Perverting Christianity*, PITT. POST-GAZETTE, Nov. 20, 2009, at A-2. Norman indicates that in Arizona, Pastor Steven Anderson called for President Obama’s death just prior to Obama’s visit to Phoenix: “[o]ne of Pastor Anderson’s followers attended an Obama speech the next day with an assault rifle.” *Id.* In addition, T-shirts were sold with a pair of hands folded in prayer above: “Pray for Obama—Psalm 109:8.” A review of the context of the verse reveals also, “[l]et his days be few; [l]et another take his office,” followed by, “[l]et his children be fatherless, and his wife a widow.” *Id.*

ideas about racial difference and fantasies of racial violence. We focus our analysis of this linkage specifically on one exemplary iconographic representation: On February 18, 2009, a political cartoon appeared in the *New York Post* that generated considerable controversy.<sup>41</sup> Bringing together two recent front page headlines—one about a brutal mauling of a woman in Stamford, Connecticut by a pet chimpanzee<sup>42</sup> and the other about the passing of the economic stimulus package by Congress<sup>43</sup>—the cartoon shows two policemen facing a chimpanzee shot dead by one of the officers.<sup>44</sup> Three bullet holes are visible on the chimpanzee's chest, whose blood stains the grass beneath his sprawled and mangled corpse.<sup>45</sup> Above the head of the other officer hangs a bubble which reads, “[t]hey’ll have to find someone else to write the next stimulus bill.”<sup>46</sup>

This cartoon sketched by the regular *New York Post* contributor Sean Delonas immediately drew reactions from the blogosphere that complained about its rehashing of a longstanding racist stereotype comparing blacks to primates.<sup>47</sup> This controversy, which over the

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41. Sean Delonas, Sean Delonas Cartoon, N.Y. POST, Feb. 18, 2009, at 12.

42. See Brigitte Williams-James & Rich Calder, *Havoc as Chimp Goes Ape—200-Pound ‘Pet’ Shot Dead after Mauling Woman, Charging Cops at Conn. Home*, N.Y. POST, Feb. 17, 2009, at 4.

43. See Michael A. Fletcher, *Obama Leaves D.C. to Sign Stimulus Bill; Renewable Energy a Focal Point in Denver as \$787 Billion Effort Is Made Law*, WASH. POST, Feb. 18, 2009, at A5.

44. See Delonas, *supra* note 41.

45. See *id.*

46. See *id.*

47. See Karen Matthews, *Cartoon of Shot Chimp Seen as Swipe at Obama*, SEATTLE TIMES, Feb. 19, 2009. See also Sam Stein, *New York Post Chimp Cartoon Compares Stimulus Author to Dead Primate*, HUFFINGTON POST, Feb. 18, 2009, [http://www.huffingtonpost.com/2009/02/18/new-york-post-chimp-carto\\_n\\_167841.html](http://www.huffingtonpost.com/2009/02/18/new-york-post-chimp-carto_n_167841.html) (Indicating that “[a]t its most benign, the cartoon suggests that the stimulus bill was so bad, monkeys may as well have written it.” Most



subsequent several days drew the attention of the news media all over the U.S., engendered a public discussion about how to interpret the cartoon, whether racism is a fair accusation to level at the image, and what the effects of such an image have on those who harbor antipathy toward Blacks, generally, and the President, specifically. Those incensed by the cartoon saw a direct comparison between the chimpanzee in the image and President Obama, the primary author of the stimulus bill, and echoed a theme which pervaded the landscape of the 2008 Presidential election.<sup>48</sup> Many local and national black leaders and media outlets organized demonstrations and called for the mass boycotting of the *New York Post*.<sup>49</sup> The *Post's* editor-in-chief, Col Allen, defended the cartoon as “a clear parody of a current news event, to wit the shooting of a violent chimpanzee in Connecticut . . . [i]t broadly mocks Washington’s efforts to revive the economy,”<sup>50</sup>

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provocatively, “it compares the president to a rabid chimp”).

48. See *Monkey Cartoon Draws Fire from Black Leader*, AGENCE FRANCE-PRESSE, Feb. 18, 2009. “[A] Sharpton called the cartoon ‘troubling at best given the historic racist attacks of African-Americans as being synonymous with monkeys.’” Karen Matthews, *NY Post Cartoon of Dead Chimpanzee Stirs Racial Outrage*, VIRGINIA-PILOT, Feb. 19, 2009, at A5. Barbara Ciara, president of the National Association of Black Journalists, said, “[t]o compare the nation’s first African American commander in chief to a dead chimpanzee is nothing short of racist drivel.” *Id.* Virginia State Senator Eric Adams referred to the cartoon as “a throwback to the days when black men were lynched.” *Id.*

49. See Pamela Gentry, *Costly Cartoon for the New York Post*, PAMELA ON POLITICS, Feb. 20, 2009, <http://blogs.bet.com/news/pamela/2009/02/20/costly-cartoon-for-the-new-york-post/>; see also Caitlin Millat & Tracy Connor, *Post Gets Spiked. Director Joins Boycott as Protestors Vow to Target Tab’s Advertisers*, DAILY NEWS, Feb. 21, 2009, at 14; Verena Dobnik, *NAACP Wants NY Post Editor and Cartoonist Fired*, ASSOC. PRESS, Feb. 21, 2009. Filmmaker Spike Lee, Rev. Al Sharpton, TV judge Greg Mathis, and other protest leaders led the demonstrators in a march in front of the NY Post’s offices near Rockefeller Center in New York, NY.

50. See *New York Post in Racism Row over Chimpanzee Cartoon*, GUARDIAN UNLTD. (ENGLAND), Feb. 18, 2009, <http://www.guardian.co.uk/world/2009/feb/18/new-york-post-cartoon-race>; see also Mark Anthony Neal, *Opinion: Hit Cartoon Publisher in the*

denying evidence that the image was racially laden. Upon closer examination of the source of humor in this cartoon, however, Allen's denial fell flat. Using parody or humor more broadly, as an alibi for the innocuousness of an image is toothless, we show, insofar as comedy actually bears far more rhetorical and communicative force than literal expression. Moreover, forms of comedy, like parody, require the audience to tap into a body of shared knowledge which exists outside the frame of the image in order to get the joke. Below, we demonstrate the mechanics of humor and show how claims of innocuousness in the case of this cartoon and similar instances of depicting and referring to President Obama as a primate cannot hold up. Such representations and references are not only culpable, but they are also consequential.

In this article, we analyze joking and literal language and visual imagery associating President Obama with primates. Specifically, we seek to ascertain whether they are indicia of racial animus, and if so, whether their existence contributes to a milieu where racial violence against President Obama is encouraged or tolerated. In Part I, we present the historical development of the stereotype that casts blacks as subhuman primates and the stereotype's contemporary appearance. Part II closely analyses Delonas' political cartoon *vis à vis* the cultural repertoire of ape imagery and theories of humor in order to show how racial bias and violent sentiments are expressed at the explicit (conscious) and implicit (unconscious) levels. Part III examines how courts have addressed this association between blacks and primates. Considering this complex cultural and legal history, Part IV explores how we understand this association in light of research on implicit racial attitudes. In conclusion, we argue that the *New York Post*

cartoon causes damaging effects because it works to implicitly dehumanize blacks, generally, and President Obama, specifically. Such dehumanization coupled with violent imagery, in turn, works to increase the threats against President Obama's life.

### ***I. The Negro, a Beast: A History of the Stereotype***

The association of blacks with primates dates back to the sixteenth century, when European explorers first encountered sub-Saharan Africa.<sup>51</sup> Having come across Africans and anthropoid (or man-like) apes at the same time, these explorers thus began associating the two, describing in their travelogues the likeness between African and ape.<sup>52</sup> From the start, this fascination over the perceived similarity of Africans and apes included references to the venereal potency of both.<sup>53</sup> Edward Topsell, in his 1607 *Histoire of Foure-Footed Beastes*, drew from explorers' and naturalists' accounts in order to stress the sexual appetite and virility of apes, whose "genitall (*sic*) member was greater than might match the quantity of his other parts."<sup>54</sup> Topsell claimed that "[m]en that have low and flat nostrils," or Africans, "are Libidinous as Apes that attempt women . . ."<sup>55</sup> European zoological writings showed a fascination with stories of oversexed apes capturing women and taking liberties with them.<sup>56</sup>

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51. See WINTHROP D. JORDAN, *WHITE MAN'S BURDEN: HISTORICAL ORIGINS OF RACISM IN THE UNITED STATES* 15-18 (1974) ; GUSTAV JAHODA, *IMAGES OF SAVAGES: ANCIENT ROOTS OF MODERN PREJUDICE IN WESTERN CULTURE* 35 (1999).

52. See JORDAN, *supra* note 51, at 15.

53. See *id.* at 15-16.

54. *Id.* at 16.

55. *Id.*

56. ELIZABETH EWEN & STUART EWEN, *TYPECASTING: ON THE ARTS & SCIENCES OF HUMAN INEQUALITY: A HISTORY OF DOMINANT IDEAS* 433 (rev. ed., Seven Stories Press 2008) (2006).

Collectively, these stories mythologize a preference of the hulking primates for fair-haired white women.<sup>57</sup>

These associations predated the advent of natural history in the mid-eighteenth century, as well as efforts to chart out the “Great Chain of Being” in taxonomic terms, most notably by Carl Linnaeus and Georges-Louis Leclerc, Comte de Buffon.<sup>58</sup> These first attempts at using natural history to map out hierarchies among the different biological species included taxonomic distinctions among types of men, thereby inventing the modern concept of race.<sup>59</sup> Always, Africans were figured as the closest relative to the “orang outan,” or what today would be called the chimpanzee.<sup>60</sup>

Europeans have long held an interest in Africans as missing links in the evolution of ape to man,<sup>61</sup> which led the Dutch South African colonist, Hendrick Cezar, to bring his brother’s African slave Saartjie Baartman with him to London in the early nineteenth century in order to display her in a cage at the Picadilly side show.<sup>62</sup> Known as the Hottentot Venus, Baartman drew curiosity due to the distinctive features of her body, and especially her large buttocks.<sup>63</sup> She was displayed totally nude but for a small cloth covering her

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57. *Id.*

58. *See generally* ARTHUR O. LOVEJOY, *THE GREAT CHAIN OF BEING 183-207*, 227-41 (Harvard Univ. Press 1964) (1936).

59. *See* JORDAN, *supra* note 51, at 29, 229; JAHODA, *supra* note 51, at 40.

60. *See* JORDAN, *supra* note, at 51.

61. *See* EWEN & EWEN, *supra* note 56, at 123.

62. *See generally* RACHEL HOLMES, *AFRICAN QUEEN: THE REAL LIFE OF THE HOTTENTOT VENUS 27-41* (2007). Baartman was part of the Khoisan of South Africa, an ethnic group which in the 19<sup>th</sup> century was referred to by Europeans as the Hottentots. *Id.* at 9-10. This term is now considered derogatory.

63. *See id.* at 43.

genitalia, which were also a source of wonder.<sup>64</sup> The African Association, a benevolent abolitionist organization interested in the “humanization” of Africans, protested and brought suit against the Piccadilly sideshow,<sup>65</sup> but to no avail. After Piccadilly, she went on to be displayed at the London Museum and the *Jardin du Roi* in Paris by the animal trainer Réaux.<sup>66</sup> In 1815, Baartman died at the young age of 26, and was soon displayed at the *Muséum d’Histoire Naturelle* in Paris for scientists to observe.<sup>67</sup> One of those scientists, the French naturalist and zoologist Georges Cuvier, was put in charge of dissecting the body of the deceased Hottentot Venus. Reporting on Baartman’s body he remarked, “I have never seen a human head more similar to that of monkeys.”<sup>68</sup> Continuing to stress her simian-like physiognomy he described that “[h]er movements had something brusque and capricious about them, which recall those of monkeys. She had, above all, a way of pouting her lips, in the same manner as we have observed in orang utans [chimpanzees].”<sup>69</sup>

Into the nineteenth century, the modern western imagination increasingly privileged science over religion as a source for explaining the universe. The hierarchization of racial difference took on new intensity starting in the late nineteenth century with the advent of

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64. *See id.* at 39-40. Rumors of Baartman’s enlarged labia, or her “tablia” (a French word meaning “apron”) fascinated spectators, *See id.* at 39. Only upon her death did scientists who examined and dissected her corpse declare that the rumors were true. *See id.* at 95-97.

65. EWEN & EWEN, *supra* note 56, at 126.

66. *See* HOLMES, *supra* note 62, at 80-81.

67. *See generally id.* at 92-102.

68. STEPHEN JAY GOULD, THE FLAMINGO’S SMILE: REFLECTIONS IN NATURAL HISTORY 296 (1985).

69. *Id.*

modern science and knowledge of evolutionary theory.<sup>70</sup> Darwin's publication in 1859 of *On the Origin of Species*, which put forth the theory of evolution, influenced natural historians, biologists, and philosophers alike to speculate further into the question of human difference, deepening the academic and cultural belief in the biological basis of race. This belief reached its peak during the eugenics movement, founded in Britain by Sir Francis Galton (Darwin's half-cousin) in the 1860s, honed in the United States in the first half of the twentieth century, and borrowed by the Nazi program in the 1930s.<sup>71</sup>

Eugenics literature around the turn of the century elaborated ad nauseam "the results of comparative anatomy, which indicates that the negro is an ape."<sup>72</sup> Anatomist Alexander Winchell, a proponent of Preadamism,<sup>73</sup> noted that "the convolutions [of a Negro's brain] are fewer and more simple, and [. . .] approximate those of the quadrumana."<sup>74</sup> Charles Carroll, author of *The Negro a Beast*, rattled off the anatomical and physiognomic similarities of Blacks and apes: "the long, broad jaw of the Negro . . . exaggerated by the thickness of the lips;" "the retreating chin" approximating "the chimpanzee and

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70. See generally THOMAS L. DUMM, *THE NEW ENCLOSURES: RACISM IN THE NORMALIZED COMMUNITY*, in *READING RODNEY KING, READING URBAN UPRISING 180-84* (Routledge 1993).

71. See NICHOLAS W. GILLHAM, *A LIFE OF SIR FRANCIS GALTON: FROM AFRICAN EXPLORATION TO THE BIRTH OF EUGENICS 1-2* (2001); EDWIN BLACK, *WAR AGAINST THE WEAK: EUGENICS AND AMERICA'S CAMPAIGN TO CREATE A MASTER RACE xv-xxviii* (2003).

72. See CHARLES CARROLL, *THE NEGRO A BEAST 75* (American Book & Bible House 1900).

73. See ALEXANDER WINCHELL, *PREADAMITES, OR A DEMONSTRATION OF THE EXISTENCE OF MEN BEFORE ADAM 1-6* (Trübner & Co. 1886) (1880). Preadamism is the religion-based theory that humans, specifically the non-white races, existed before Adam, the first human named in the Bible. *Id.*

74. *Id.* at 250. The term "quadrumana" refers to a primate with four hands as opposed to bimana, a primate with two hands and two feet.

lower mammals;” “the front teeth [. . .] which set slanting in the jaw”; “the thick, puffed lips” and “the flat nose of the Negro, which has the appearance of having been crushed in;” “the greater length and slenderness of the pelvis;” the “slenderness of the Negroe’s [sic] calves;” the “long, broad heel” and “long, flat Foot;” and like, apes, he argues, “Negroes are void of sensibility to a surprising degree.”<sup>75</sup> Robert Hartmann, a professor of anatomy at the University of Berlin, offered as evidence “[t]he shortness of the neck, as well as the relatively small size of the brain-pan, and the large size of the face [of the Negro], may the more readily be taken as an approximation to the simian type, since all apes are short-necked . . . .”<sup>76</sup> Elsewhere, Hartmann made the comparison, “[i]n the case of an adult male gorilla the first glance at this member reminds us of the knotty fist of a black labourer or lighterman, like those who, at Rio de Janeiro, Bahia, or La Guayra, lift the heavy bags of coffee and place them on their heads or on their herculean shoulders.”<sup>77</sup> About the Negro’s long arms, French anthropologist Paul Topinard noted similarly that frequently “the extremity of the middle finger touched the patella; once it was twelve millimeters below its upper border, as in the gorilla.”<sup>78</sup>

At the very time when scientific literature was proposing arguments such as the above, the notion that “the Negro is an ape” found regular expression in mass culture by way of the sideshow, an increasingly popular form of entertainment.<sup>79</sup> As with the case of the Hottentot Venus, Ota Benga, a Batwa Pigmy from the Congo, was

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75. See CARROLL, *supra* note 72, at 50-70.

76. See ROBERT HARTMANN, ANTHROPOID APES 101 (D. Appelton & Co. 1886).

77. *Id.* at 102.

78. See PAUL TOPINARD, ANTHROPOLOGY 335 (Chapman & Hall 1890).

79. See generally RACHEL ADAMS, SIDESHOW U.S.A.: FREAKS AND THE AMERICAN CULTURAL IMAGINATION 10-21 (Univ. of Chicago Press 2001).

captured from his home in order to be displayed in a cage at the St. Louis World's Fair in 1904 and afterward at traveling sideshow exhibitions.<sup>80</sup> In 1906, Benga was bought by the Bronx Zoo, an acquisition which the *New York Times* advertised with the headline, "BUSHMAN SHARES A CAGE WITH BRONX PARK APES."<sup>81</sup> Benga's humiliating enslavement was met by protests by "a group of Baptist ministers" who called for his release.<sup>82</sup> Like Saartjie Baartman, Benga's life ended prematurely when he committed suicide with a stolen pistol in 1916.<sup>83</sup>

The development of the cultural myth of black subhumanity served as the justification for Jim Crow segregation and acts of vigilante justice against blacks in the form of lynching in the U.S. South. Specifically, Jim Crow was fueled by the paranoid fear of miscegenation based upon the premise that Africans were primates.<sup>84</sup> It was thought that the mixture of subhuman black genes with pure white genes would result in the adulteration of the human gene pool and the denigration of the race.<sup>85</sup> Moreover, the fear over miscegenation was deeply linked to ideas about sex and sexuality, particularly with regard to myths of black male hypersexuality and their desire for fair-haired white women.<sup>86</sup> Stories in the travel

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80. *Id.* at 25.

81. *See* EWEN & EWEN, *supra* note 56, at 136.

82. *See* KARLA FC HOLLOWAY, PASSED ON: AFRICAN AMERICAN MOURNING STORIES, A MEMORIAL 101 (2003)

83. *See id.* at 102.

84. *See* generally Danielle C. Heard, MISCEGENATION, *in* 2 THE JIM CROW ENCYCLOPEDIA 526-35 (Nikki L. M. Brown & Barry M. Stentiford, eds., Greenwood Press 2008).

85. *See id.* at 526-27.

86. *See* EARL OFARI HUTCHINSON, THE ASSASSINATION OF THE BLACK MALE IMAGE 71 (Simon & Schuster 1996).



narratives of colonial explorers of apes in the jungles of Africa kidnapping and raping white women made their way into the public consciousness especially in the era of Hollywood cinema between the World Wars.<sup>87</sup> In both the North and the South, pseudo-scientific claims of black bestiality permeated mass culture by way of stereotype, providing the material for a host of Hollywood blockbusters, starting with D.W. Griffith's 1917 epic *The Birth of a Nation*.<sup>88</sup> The film featured two notorious villains, Gus, a slave played by an actor in blackface, and Silas Lynch, the mulatto leader of the South's reconstruction, both of whose attempted rapes of fair white maidens prompted and justified the establishment of the Ku Klux Klan.<sup>89</sup> The film's central rape narrative, thus, invokes natural history's longstanding ascription of hypersexuality and the tendency toward committing rape (especially against white women) to apes, and by extension, blacks.<sup>90</sup>

Compounding this was the manner in which apes and monkeys were commonly featured in films as unmistakable stand-ins for the black brute. Joseph von Sternburg's 1932 *Blonde Venus*, starring Marlene Dietrich and Cary Grant, features Helen Faraday (played by the blonde-haired Dietrich) performing stage numbers in an ape suit while surrounded by African "natives" on stage and black waiters on the club floor.<sup>91</sup> The most notable appearance of an ape standing in for the black brute in Hollywood cinema is in Merian C. Cooper and Ernest B. Schoedsack's *King Kong*, released just a year after *Blonde*

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87. *See id.* at 26-27.

88. *See id.* at 26.

89. THE BIRTH OF A NATION (Epoch Films Co. 1915).

90. *See* HUTCHINSON, *supra* note 86, at 71-72.

91. BLONDE VENUS (Paranmount Pictures 1932); *see also* Siane Ngai, BLACK VENUS, BLONDE VENUS, *in* BAD MODERNISMS 154 (Douglas Mao & Rebecca L. Walkowitz, eds., Duke Univ. Press 2006) .

*Venus* in 1933, toward the end of the eugenics movement in the United States.<sup>92</sup> Accordingly, since blacks were seen as a species of African ape, these films can be understood as not only expressing the fear over sex between black men and white women and the resulting mixture of the gene pool, but also as cementing the popular image of blacks as subhuman, brutal, and dangerous.

The same anxieties over the “dark brute”<sup>93</sup> picked up by Hollywood found expression in the mainstream criminal justice system and the news media’s reaction to black crime. The infamous Scottsboro trial in 1931 in which nine black teenagers were falsely accused of raping two white women on a freight train running through the northeast corner of Alabama traded on this myth of black male bestiality.<sup>94</sup> Shortly after the Scottsboro Boys were accused, rumors circulated among infuriated white locals that “black brutes . . . chewed off one of the breasts” of one of the accusers, Ruby Bates.<sup>95</sup> During the trial and in newspaper articles published at the time, the black teenagers on trial, and the “Negro” more broadly, were tagged with epithets such as “that ape-nigger,”<sup>96</sup> a “creature of the jungles.”<sup>97</sup>

Such discourse was not just to be found in the Jim Crow South. In 1938, during the highly-publicized Chicago murder case of Robert Nixon, upon which Richard Wright based his novel *Native Son*,<sup>98</sup> the

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92. KING KONG (RKO Radio Pictures 1933).

93. See generally David Pilgrim, *The Brute Caricature, The Jim Crow Museum of Racist Memorabilia*, Ferris State University, <http://www.ferris.edu/jimcrow/brute/>

94. N. Jeremi Duru, *The Central Park Five, the Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV., 1315, 1335-37 (2004).

95. DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* 7 (rev. ed. La. State Univ. Press 1979) (1969).

96. *Id.* at 45.

97. *Id.* at 108.

98. See RICHARD WRIGHT, *NATIVE SON* 278-80 (Harper & Bros. 1940).

media linked the 18 year-old black man's brutal beating of a white woman to his subhuman nature. In a *Chicago Tribune* article on the case with the headline "Brick Slayer is Likened to Jungle Beast," Nixon is described by a policeman as "just like an ape."<sup>99</sup> The article goes on to say that he had "hunched shoulders and long, sinewy arms that dangle almost to his knees," a description that echoes Topinard's from four decades earlier. As well, the article goes on to say that "he is very black—almost pure Negro. His physical characteristics suggest an earlier link in the species."<sup>100</sup>

The stereotype associating blacks with apes and monkeys has been deeply ingrained in the "political unconscious," as Fredrick Jameson would put it, by the confluence of pseudo-science, popular culture, and mass media such that even after the end of the eugenics movement, advances in civil rights, and an increasingly pervasive understanding of racial equality, such associations continue to manifest in the later portion of the twentieth and early twenty-first centuries.<sup>101</sup> For example, in 1989 the same logic of black inhumanity that framed the Scottsboro Boys indicted five black teenagers accused of raping a white woman who was jogging at night in Central Park.<sup>102</sup> This case brought to the surface the racist vocabularies of centuries past in the mainstream news media, which

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99. See Charles Leavelle, *Brick Slayer Likened to Jungle Beast*, CHI. TRIB., June 5, 1938, §1 at 6.; cf. WRIGHT, *supra* note 98, at 238–40.

100. Leavelle, *supra* note 99.

101. See FREDERICK JAMESON, *POLITICAL UNCONSCIOUS: NARRATIVE AS A SOCIALLY SYMBOLIC ACT* 18-19 (Routledge 2006) (1981). Jameson's project of theorizing the political unconscious "conceives of the political perspective not as some supplementary method, not as an optional auxiliary to other interpretive methods current today . . . but rather as the absolute horizon of all reading and all interpretation." *Id* at 1.

102. Duru, *supra* note 94, at 1316-17.

found the five teenagers guilty before the trial even began.<sup>103</sup> During the trial of the officers accused of beating Rodney King in 1992, these discourses helped to frame King as a big, black, brute who victimized the white police officers, despite the video evidence of the four officers beating King with clubs.<sup>104</sup> Tapping into this stereotype, the defense was able to portray King as having bestial strength and also that blacks, like apes, have a higher threshold of pain tolerance, a justification for the use of undue force on King's supine body.<sup>105</sup> Even before trial, the black-ape association apparently informed the officers' use of excessive force, as they were heard on their radios calling blacks "gorillas in the mist."<sup>106</sup> The police officers later partially explained away these remarks in terms of irony and dark humor.<sup>107</sup>

One of the most recent incarnations of this association was last year, when *Vogue* magazine featured an image of LeBron James, a black National Basketball Association star, and Giselle Bündchen, a white model,<sup>108</sup> that ostensibly resembled a World War I recruitment poster of a large gorilla with a club in his hand carrying away a terrified "white beauty."<sup>109</sup> Coming full circle, during the 2008 presidential race, there were numerous instances of associating both

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103. See generally Duru, *supra* note 94, at 1347-56.

104. See DUMM, *supra* note 70, at 186.

105. *Id.*

106. *Id.* at 180.

107. *Id.*

108. See, e.g., Dan Fleschner, *Lebron, Gisele and Vogue: The Cover Controversy*, MSNBC ALL DAY: TODAY'S FAMILY BLOG, Mar. 26, 2008, <http://allday.msnbc.com/archive/2008/03/26/9=80863.aspx>

109. See H. R. Hopps, *Destroy this Mad Brute Lithograph*, <http://www.dhm.de/lemo/objekte/pict/pl003967/index.html> (last visited May 23, 2010).

Barack and Michele Obama with monkeys and apes.<sup>110</sup> In the week just after the *Post* cartoon controversy, a branch of Barnes & Nobles booksellers in Coral Gables, Florida placed a monkey book prominently in the center of an Obama-themed front window display.<sup>111</sup>

Stereotypes based on black-ape association evolved with the advent of modernity, but have taken on a life of their own within mass culture.<sup>112</sup> As Ewen and Ewen note, stereotypes “served the requirements of media formulas that sought to avoid the burdens of complex character developments in favor of trouble-free indicators of good and evil. In the process, they were, and are, routinely separated from their moorings in history, becoming floating signifiers that can easily be applied to serve any given objective.”<sup>113</sup> For the *New York Post*, the image of the ape, “unmoored” from its historical underpinnings, could easily be explained away as a mere joke or wholly unrelated to the President. Cast against its historical backdrop, the cartoon served not only to lampoon the President for his ideas but also to conjure a cultural mythology which breeds fantasies of violence against blacks.

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110. See Bo Emerson, *Politically Correct?: Not This Bar Owner*, ATLANTA J. CONST., May 15, 2008, at B1 (indicating that “[i]n Georgia, a restaurant owner sold mock ‘Obama ‘08’ T-shirts featuring an image of Curious George, a cartoon monkey, and a Utah company made sock monkey dolls of the presidential candidate.”). See also Posting of Mcnairbo to *Michelle Obama Predicts Ohio Victory*, HUFFINGTON POST, Feb. 15, 2008, [http://www.huffingtonpost.com/2008/02/15/michelle-obama-predicts-o\\_n\\_86896.html](http://www.huffingtonpost.com/2008/02/15/michelle-obama-predicts-o_n_86896.html) (Feb. 15, 2008, 22:45 EST) (comparing Michele Obama’s appearance to that of Zira from *Planet of the Apes*).

111. See Zayda Rivera, *Monkey Book on Display in an Obama-Themed B&N Window*, DIVERSITY INC., Mar. 9, 2009, <http://www.diversityinc.com/public/5419.cfm>.

112. See EWEN & EWEN, *supra* note 56, at 424.

113. *Id.* at 423-24.

## ***II. Laughing Matters: A Cultural Analysis of the Post Cartoon***

In this section, we analyze the *New York Post* cartoon in light of the cultural repertoire of stereotypical images and dominant narratives of black bestiality presented in Part I, paying particular attention to how humor functions in the explicit and implicit expressions of racism and aggression toward President Obama. One of the basic definitions of humor is that which sets up expectations in order to disrupt them.<sup>114</sup> Delonas' cartoon sets up our expectations by showing two policemen who have just shot a chimp.<sup>115</sup> At first, the image appears to be a literal representation of the news story about a pet chimpanzee that attacked a woman and was shot by the

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114. See IMMANUEL KANT, *KRITIK OF JUDGMENT* 223 (John Henry Bernard, trans., Macmillan & Co. 1892) ("In everything that is to excite a lively laugh there must be something absurd, in which the understanding, therefore, can find no satisfaction. *Laughter is an affection arising from the sudden transformation of a strained expectation into nothing.*") (emphasis in original); See generally ARTHUR SCHOPENHAUER, *2 THE WORLD AS WILL AND IDEA* 270-84 (3d ed., Richard Burdon Haldane & John Kemp, trans., Charles Scribner's Sons. 1948) (1888). Schopenhauer states,

the source of the ludicrous is always paradoxical, and therefore unexpected, subsumption of an object under a conception which in other respects is different from it, and accordingly the phenomenon of laughter always signifies the sudden apprehension of an incongruity between such a conception and the real object thought under it, thus between the abstract and the concrete object of perception. The greater and more unexpected, in the apprehension of the laughter, this incongruity is, the more violent will be his laughter . . . Indeed if we wish to understand this perfectly explicitly, it is possible to trace everything to ludicrous to a syllogism in the first figure, with an undisputed *major* and an unexpected *minor*, which to a certain extent is only sophistically valid, in consequence of which connection the conclusion partakes of the quality of the ludicrous.

*Id.* at 271. See also SIGMUND FREUD, *JOKES AND THEIR RELATION TO THE UNCONSCIOUS* 12 (James Strachey, trans., W. W. Norton & Co. 1963) (1960).

115. See Delonas, *supra* note 41.

responding police.<sup>116</sup> The bubble above one officer's head disrupts our expectations, however, by referring to another news story, the recent passing of a stimulus bill headed largely by President Obama and characterized by some conservatives as being too liberal.<sup>117</sup> Noting this secondary level of signification, the image changes from a literal representation of a news story to a figurative joke that derides the bill's authors by comparing them to primates. More specifically, however, since the cartoon deals in the singular, citing one chimp and one author, the figurative joke can be understood as aiming its ridicule at one person in particular—the primary author of the bill, President Obama. Many have argued that a generous interpretation of this cartoon would link the chimp to all of the bill's authors.<sup>118</sup> In light of the pervasive stereotype of black and simian likeness, however, it is fair to surmise that many readers will recognize that the chimp is being jokingly compared to the President, whose race is of historical significance.

A well-known function of humor is to suppress anger, violence, and aggression and transform them into a mode of expression that is more socially acceptable than outright scorn or physical violence.<sup>119</sup> Ridicule, as a comic attack on another, is a common form of humor, and it jokes by way of disrupting our sympathy and opening a momentary space for outward antipathy. In this way, aggressive jokes

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116. *See id.*

117. *See id.*

118. *See* STEIN, *supra* note 47; Saul Relative, *Chimp Attack Cartoon by Sean Delonas Draws Condemnation, Sparks Outrage*, ASSOC. CONTENT, Feb. 18, 2009 [http://www.associatedcontent.com/article/1489784/chimp\\_attack\\_cartoon\\_by\\_sean\\_delonas.html?cat=9](http://www.associatedcontent.com/article/1489784/chimp_attack_cartoon_by_sean_delonas.html?cat=9).

119. *See* MAX EASTMAN, *THE SENSE OF HUMOR* 32-37 (1921). All of the major theories of comedy, incongruity theory, superiority theory, and repression theory (Freud and psychoanalysis), touch upon the aggressive nature of comedy. *See id.*

are an emotional process whereby unconscious feelings of antipathy are revealed and expressed.<sup>120</sup> Derisive humor, then, is a weapon which fits within the constraints of cultural propriety.<sup>121</sup> Hobbesian theorists of humor, those ascribing to the “superiority theory,” explain that the comedy of ridicule manages to temporarily, at least, grant the joker a “feeling of superiority” over the object of ridicule, a hierarchy also perceived and enjoyed by the joke’s audience.<sup>122</sup> Indeed, such ridicule is said to produce a “sudden glory” for the joker.<sup>123</sup> Scorn alone does not necessarily disarm one’s opponent, and physical violence, while effective, does not regularly fit within the bounds of cultural propriety.<sup>124</sup> Ridicule, on the other hand, accomplishes sudden glory over the joke’s object without engaging perilously in physical violence.<sup>125</sup> As Max Eastman notes, the debasement of the ridiculed becomes “the source of a dear and infectious pleasure to the whole company, who are at play, and he will have a hard time making them let go of it.”<sup>126</sup> It is this process which explains “the superior power of ridicule and satire over scorn.”<sup>127</sup>

The aggression in this cartoon, however, does not stop at the socially acceptable level of ridicule, as at the textual level of the image we observe a representation of two policemen exacting violence against the chimp who stands in for President Obama—indeed the assassination of a United States President. Moreover, while ridicule is

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120. *See id.* at 32.

121. *See id.*

122. *See id.* at 36.

123. *Id.* at 33.

124. *See id.* at 35-36.

125. *Id.* at 36.

126. *Id.*

127. *See id.*



generally understood as a socially acceptable form of rendering one's opponent inferior, it can only be understood as acceptable in the case of this cartoon before considering the terrain of racism upon which it treads. Divorced of its racial and violent context, the cartoon presents just another political caricature which momentarily brings a powerful man low, itself a form of pleasure for many, regardless of one's political affiliations or leanings.<sup>128</sup> The levels of racial allusion in the cartoon, however, provide an additional register of humor for those who, explicitly or implicitly, find pleasure in racial stereotypes of black people, and especially black men, as beasts. This level of signification connotes the long and fraught history of racist discourse associating blacks with primates delineated in Part I, as well as the historical reality of police brutality against blacks—a reality linked to the stereotype. Indeed, the image of the bullet-ridden chimp connotes the stories of Sean Bell, Amadou Diallo, and other recent victims of police shootings.<sup>129</sup>

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128. The comic strategy of bringing a powerful man low through ridicule can be understood not just in terms of superiority theory, but also in light of Mikhail Bakhtin's notion of "grotesque realism" whereby the abstract nature of social power is degraded when confronted with the universal functions of the "grotesque body," the need to eat, sleep, defecate, and have sex. See MIKHAIL BAKHTIN, *RABELAIS AND HIS WORLD* 19-20 (Hélène Iswolsky, trans., Indiana Univ. Press 1984) (1883). He says, "the essential principle of grotesque realism is degradation, that is, the lowering of all that is high, spiritual, ideal, abstract; it is a transfer to the material level, to the sphere of earth and body in their indissoluble unity." *Id.* The comedy of grotesque realism also compares to the comic formula described by Henri Bergson in his study of humor, that jokes can be found in "something mechanical encrusted upon the living," i.e. the mechanical nature of social status upon the reality of our biological commonness. See HENRI BERGSON, *LAUGHTER: AN ESSAY ON THE MEANING OF THE COMIC* (Cloudesley Brereton & Fred Rothwell, trans., 1914), available at <http://www.gutenberg.org/files/4352/4352-h/4352-h.htm>. In this way, the cartoon brings a powerful man, the President, low by foregrounding his grotesque relation to corporeality and death. See *id.*

129. See Sarah Kerkshaw, *Police Shooting Reunites Circle of Common Loss*, N.Y. TIMES, Dec. 2, 2006, at A1. This article also mentions Black shooting victims Patrick M.

What Col Allen described as parody, or satire more broadly, ostensibly fails at this literal level of signification. The rhetorical structure of the cartoon compares to the direct and literal scorn of right-wing radio hosts such as Rush Limbaugh, or arguably even unabashed white supremacist propagandists. Both deride President Obama for being an inept and dangerous president and advocate for his assassination (whether subtly or specifically) within the discourses of white supremacy and conservative criminology, which supports police brutality against black and brown people.<sup>130</sup> The cartoon does not mask this level of aggressive and violent meaning with the ridiculous, and in this way fails at the level of satire on this point.

In the case of the *New York Post* cartoon, the stereotype that links black people with primates shows itself in unadulterated form. However, the pernicious discourse of black sub-humanity that casts Africans as a species of ape separate from the human race as established by pseudo-scientists such as Carroll, Hartmann, Topinard and others, the same discourse which justified Jim Crow, eugenics, and a history of violence enacted against blacks—dissipates into the political unconscious of white supremacy.<sup>131</sup> These discourses largely remain in the past, but their effect on the imagination and cognitive processes persist in the form of stereotype.<sup>132</sup> Ewen and Ewen argue that the challenge to deeply ingrained stereotypes is experienced as a

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Dorismond, Gidone Busch, Malcolm Ferguson, Timothy Stansbury Jr., and 13-year-old Nicholas Heyward, Jr., as well as Abner Louima, a Haitian immigrant who was brutalized and sodomized with a toilet plunger by New York City police officers outside a Brooklyn nightclub in 1997. *Id.*

130. For an example of racist criminology see JAMES Q. WILSON & RICHARD J. HERRNSTEIN, *CRIME AND HUMAN NATURE: THE DEFINITIVE STUDY OF THE CAUSES OF CRIME* (1998); *See also* COLIN WEBSTER, *UNDERSTANDING RACE AND CRIME* (2007).

131. *See* JAMESON, *supra* note 101.

132. *See* EWEN & EWEN, *supra* note 56, at 423.

traumatic disruption of one's epistemological foundations.<sup>133</sup> Moreover, they argue, "[i]f stereotyping endures . . . the overarching worldview that shaped these mental categories is rarely visible."<sup>134</sup> In other words, the more that stereotypes persist over time in a culture, the more they become ingrained into the political unconscious, and the less their originating logic becomes consciously known. In this way, the cartoonist, the *New York Post* editors, and conservative apologists can, in one sense, get away with claiming ignorance of the historical weight of primate imagery in association with blacks. For while stereotypes tied to white supremacist logic prove to be deeply embedded in culture, the discourse and its implications are not *necessarily* consciously known.

Here, Freud's theory of jokes and their relation to the unconscious becomes useful for interpreting what gets expressed in the cartoon, regardless of the conscious will of the artist. According to Freud's theory of humor, jokes serve the function of expressing repressed thoughts, motives, and feelings relegated to the unconscious through figurative substitution and word play, which, like humor in general, momentarily disrupts expectations and dominant narratives.<sup>135</sup> He called this kind of humor "tendentious."<sup>136</sup> It was Freud's work on dreams that led him to recognize the structural similarity they had with jokes in terms of their masking of unconscious thoughts.<sup>137</sup> As Eastman explains, jokes, like dreams, show "the same tendency to express two or more things by one, to express a thing by its opposite, by something similar to it, by using

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133. *See id.*

134. *Id.*

135. *See generally* FREUD, *supra* note 114, at 90-116.

136. *See id.* at 90.

137. *See generally id.* at 159-80.

ambiguous words, or words that have both a literal and figurative meaning, by twisting words, or making up new ones, or changing their order in a sentence. Indeed a dream has all the attributes of a joke except its humor.”<sup>138</sup> Dreams mask forbidden thoughts in order to keep them from the consciousness, while jokes disguise taboo thoughts in order to let them into consciousness.<sup>139</sup> In the case of dreams, the masked thoughts are most likely pain-inducing, while in jokes the thoughts are pleasure-inducing.<sup>140</sup> Tendency wit, or “tendentious jokes,” are nonsensical and pleasurable but “so constructed as to furnish a disguise under which a man hearing it can bear to admit into his own society his own suppressed impulses.”<sup>141</sup> These tendentious jokes provide for an economy of feeling in that the energies of the passions are conserved through the expression of laughter.<sup>142</sup> Regarding the cartoon, it is arguable that the joker/artist is conscious and unconscious to varying degrees over the repressed racist feelings which are liberated in this cartoon. Audiences who laugh at and find no objection to this cartoon reveal their unconscious, or as social scientists would term it “implicit,” racism in that they take pleasure in impulses which are ordinarily repressed.<sup>143</sup>

In order to test this theory of wit as a censor for taboo thoughts, we might compare Delonas’ cartoon with unabashedly racist cartoons produced by white supremacist organizations. In his useful study of humor, Elliot Oring describes how the White Aryan Resistance (WAR), led by father and son duo Tom and John Metzger, publishes

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138. EASTMAN, *supra* note 119, at 197.

139. *Id.*

140. *See id.*

141. *Id.* at 194-95.

142. *See id.*

143. *See supra* text accompanying notes 114, 119-128.

hateful racist cartoons, yet they do so alongside overt hate speech.<sup>144</sup> Oring also shows how many of their cartoons advocate for violence against racial minorities, gays, and lesbians.<sup>145</sup> With this example, the Freudian notion that jokes provide the technologies of expressing repressed thoughts and desires does not appear to apply, since racist thoughts are conscious and accepted among WAR's audience. If the Freudian model applies at all to this limit case example, however, it does so at the level of advocating violence. Figurative and humorous representations of violence against hated groups take the place of literal declarations of war, which could land the propagandists into legal trouble. In 1990, WAR was sued by the Anti-Defamation League and the Southern Poverty Law Center for inciting or encouraging a gang of skinheads who read WAR's publications to kill Mulugeta Seraw, an Ethiopian student living in Portland, Oregon.<sup>146</sup> Oring describes how WAR, aware of the legal allowances for plotting violence, uses these strategies of humor to mask the literal meaning, which must be repressed in order to avoid prosecution.<sup>147</sup> Indeed, Tom and John Metzger defended themselves on the ground that the cartoons did not express imminent calls to violence; rather, they argued, the cartoons were comic exaggerations, satirical, or abstract enough to be a form of speech protected under the constitution.<sup>148</sup> The Metzgers lost the lawsuit,<sup>149</sup> but their defense shows how the humor of their political cartoons was in fact a mask for forbidden declarations of violence.

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144. See ELLIOT ORING, *ENGAGING HUMOR* 43 (Univ. of Ill. Press 2003) .

145. See generally *id.*

146. See *Berhanu v. Metzger*, 850 P.2d 373 (Or. App., 1993).

147. See ORING, *supra* note 144, at 49.

148. See *id.*

149. See *Berhanu v. Metzger*, *supra* note 146.

The *Berhanu v. Metzger* case suggests that the humor of the *Post* cartoon masks and abstracts imminent calls—intended or unintended—to violence against whomever the chimp is meant to represent—namely, President Barack Obama. As in the case of the skinheads killing Seraw, however, the call to violence obfuscated by humor in the cartoon is consciously or unconsciously—explicitly or implicitly—understood in its literal form by those who harbor extreme racial bias and antipathy toward the President, such that this cartoon can actually be said to pose a threat to the President’s safety.

### ***III. Order in the Courts: How the Judicial System Has Made Sense of the Black-Primate Association***

Courts have also attempted to discern under what circumstances figurative, joking language and imagery can be interpreted as representing racial animus and discrimination.<sup>150</sup> During and immediately following the 2008 presidential election campaign, several incidents that could be construed as racially insensitive, if not hostile, occurred. Arguably, like the Obama-primate association in the *Post* cartoon, these incidents were merely jokes, misunderstandings, and the like. Courts have provided *some* insights, however.

For example, in October 2008, the president of a Republican women’s club sent out a newsletter to 200 club members with a photo

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150. See generally LAURA E. LITTLE, *Regulating Funny: Humor and the Law*, 94 CORNELL L. REV. 1236 (2009). Little surveys examples from contract, trademark, and discrimination law in order to show how courts interpret the intent of jokes in different legal contexts. She finds that, in general, courts tend to interpret jokes as void of harmful intent in contract and trademark law, yet they find jokes intentionally harmful in discrimination cases. See *id.* at 1238. Little concludes that the courts tendencies are largely subjective, and while they happen to parallel ideas about humor theorized by thinkers in the humanities, the courts could benefit from looking directly to these theories for assistance in making legal decisions involving humor. See *id.* at 1238-39.

of Barack Obama on a ten dollar bill surrounded by fried chicken, watermelon, and barbecued ribs.<sup>151</sup> Inscribed on this bill, referred to as “Obama Bucks,” are the words “United States Food Stamps.”<sup>152</sup> Just four months later, in February 2009, a similar association between the president and food stereotypically associated with black people reappeared when the mayor of Los Alamitos, California, resigned after an email he sent sparked national outrage.<sup>153</sup> The email depicted the White House lawn planted with watermelons under the title “No Easter egg hunt this year.”<sup>154</sup> Associations between blacks and certain foods, specifically watermelon and fried chicken, gained cultural currency since before the Civil War as they appeared regularly as props in blackface minstrel shows, a form of popular entertainment based on racist humor.<sup>155</sup> Generally, courts encountering such

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151. Michelle DeArmond, *Inland GOP Mailing Depicts Obama's Face on Food Stamp*, THE PRESS-ENTERPRISE, October 16, 2008, [http://www.pe.com/localnews/inland/stories/PE\\_News\\_Local\\_S\\_buck16.3d67d4a.html](http://www.pe.com/localnews/inland/stories/PE_News_Local_S_buck16.3d67d4a.html).

152. *Id.*

153. Rebecca Cathcart, *Mayor Resigns Over 'Watermelon' Email Message*, N.Y. TIMES, February 28, 2009, *available at* <http://www.nytimes.com/2009/02/28/us/28resign.html>.

154. *Id.*

155. *See* DAVID R. ROEDIGER, THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS 115-16 (rev. ed. 2000). Minstrelsy, a burlesque of impersonated Black performance and caricature performed originally by White actors in blackface makeup. *See id.* at 97-98. Minstrelsy began appearing as early as the 1820s. *See id.* at 105.

The humor of the minstrel stage consisted primarily of one-liners, riddles, quips, gibes, malapropisms, parodic and nonsensical stump-speeches, as well as slapstick comedy and antic humor and centered on the popular myth of the happy slave and a romanticization of the plantation. The minstrel show generally had an established format featuring the interlocutor, a straight man, and the comic “endmen,” Mr. Bones and Mr. Tambo, so named for the instruments they played. The form consisted of a “walkaround” and opening song, followed by the

associations recognize them as racially derogatory. For example, in *Robinson v. Conagra Poultry Corporation*, the plaintiff alleged that, throughout his twenty-five year career with the defendant-employer, he was “subjected to a hostile work environment” because of a co-worker’s abusive language in violation of 42 U.S.C. § 1981 and the Arkansas Civil Rights Act of 1993.<sup>156</sup> Among the abusive language cited by the plaintiff was the statement, “You boys like collard greens and watermelons.”<sup>157</sup> Although the court granted the defendant’s motion for summary judgment, the court acknowledged the “watermelon” comment as “offensive” and a “racial slur.”<sup>158</sup>

In December 2008, Chip Saltman—“candidate for chairman of the Republican National Committee”—sent a compact disc to committee members featuring the song, “Barack the Magic Negro,” a parody of the Peter, Paul, and Mary song “Puff the Magic Dragon.”<sup>159</sup> While, at one time, the term “negro” was considered a neutral and acceptable appellation for blacks, it is now generally considered a

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“circle” or comic exchange between the interlocutor and endmen, the olio, and finally a plantation skit or farce of well known play; Harriet Beecher Stowe’s abolitionist novel *Uncle Tom’s Cabin*, for example, was frequently parodied.

See Danielle C. Heard, HUMOR AND COMIC TRADITIONS, in 1 THE JIM CROW ENCYCLOPEDIA, *supra* note 84, at 390. For more blackface minstrelsy, see also ALEXANDER SAXTON, THE RISE AND FALL OF THE WHITE REPUBLIC: CLASS POLITICS AND MASS CULTURE IN NINETEENTH CENTURY AMERICA 165-82 (2003).

156. *Robinson v. Conagra Poultry Co.*, 2008 U.S. Dist. LEXIS 76547, at \*20 (W.D. Ark. Sept. 30, 2008).

157. *Id.* at \*22.

158. *Id.* See also, *Smith v. Fairview Ridges Hosp.*, 550 F. Supp. 2d 1050, 1057 (E.D. Minn. 2008) (“Courts have held that statements implying that ‘all black people love fried chicken’ are offensive.”) (citing *Copeland v. Hussman Corp.*, Civ. No. 4:06-839, 2007 U.S. Dist. LEXIS 79631, at \*21 (E.D. Mo. Oct. 26, 2007)).

159. Clarence Page, *No Magic in ‘Magic Negro,’* CHICAGO TRIB., Dec. 31, 2008, <http://archives.chicagotribune.com/2008/dec/31/entertainment/chi-oped1231pagedec31>.



racial slur. In the 2008 Sixth Circuit case, *Lindsey v. Whirlpool Corporation*, the plaintiff appealed from a district court order granting defendant-employer's motion for summary judgment.<sup>160</sup> The plaintiff alleged that she was subjected to a hostile work environment in violation of Title VII where, *inter alia*, an exam proctor instructed her to identify herself as "negro" on an examination.<sup>161</sup> The court concluded that "the exam proctor's comment[] certainly constitute[d] a basis for alleging racial harassment" and was "unacceptable."<sup>162</sup>

In May 2009, an aide to a Republican Tennessee state senator came under fire after circulating an email that contained an image composed of portraits or photos of each U.S. president except Obama, who is depicted only as "a pair of cartoon spook eyes against a black backdrop."<sup>163</sup> The term "spook," a well-known racial slur used to insult blacks, is usually acknowledged by courts encountering it as racially offensive. For example, in *Taylor v. Jones*, the Eighth Circuit affirmed the district court's holding that the plaintiff had been discriminated against on the basis of her race, in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act.<sup>164</sup> After considering the testimony of employees that were, *inter alia*, frequently subjected to the use of the term "spook,"<sup>165</sup> the court concluded that "the plaintiff was subjected to an atmosphere heavily charged with racial discrimination which she endured as long as could be expected."<sup>166</sup>

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160. *Lindsey v. Whirlpool Corp.*, 295 Fed. Appx. 758, 760 (6th Cir. 2008).

161. *Id.* at 762.

162. *Id.* at 766.

163. Leonard Pitts, Jr., *Race and the President – Some Republicans Think it's the 19<sup>th</sup> Century*, PITTS. POST-GAZETTE, June 23, 2009, <http://www.post-gazette.com/pg/09174/979159-109.stm>.

164. *Taylor v. Jones*, 653 F.2d 1193, 1196 (8th Cir. 1981).

165. *Id.* at 1198.

166. *Id.* at 1198-99. The Second Circuit also encountered the term in *Richardson v.*

Just as federal courts have interpreted various conduct as racially insensitive, if not racist—and impliedly not mere humor—they have also weighed evidence of black-primate associations in determining whether such associations were indeed made, and whether they provided an indicia of racial bias. To determine how courts have interpreted this association, in March 2009, we conducted a Westlaw search of published and unpublished federal district and trial court cases. The search terms we employed were: primate ape monkey chimp! baboon gorilla orangutan /5 “African American” Black nigger. We excluded those district court cases that were later reviewed by a circuit court. Ultimately, we retrieved 24 circuit court cases and 88 district court cases, totaling 112 federal cases.

We analyzed each case to determine whether the court in that case held as a matter of law that the race-primate association provided some indicia of racial bias. In some cases, racial bias was not found as a matter of law due to procedural reasons—e.g., running of the statute of limitations, the failure of employment discrimination plaintiff to report on-the-job discrimination to management prior to bringing suit. Nonetheless, in some of these cases, the court still articulated the extent to which racial bias occurred as a mere matter of fact. As such, for those cases in which racial bias was found to have occurred as either a matter of law or matter of fact, we count those cases under

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New York State Dept. of Correctional Service, 180 F.3d 426 (2d Cir. 1999), where the court reversed the district court's order granting of summary judgment on plaintiff's claim that she was subjected to a racially hostile work environment under Title VII. *Id.* at 432. In reaching its decision, the court noted that a reasonable juror could infer that plaintiff's co-worker's use of the word “spooks,” *inter alia*, was racially hostile. *Id.* at 439-40. See also *Home Repair, Inc. v. Paul W. Davis Sys., Inc.*, No. 98 C 4074, 2000 U.S. Dist. LEXIS 929, at \*15 (N.D. Ill. Jan. 31, 2000) (denying summary judgment because the plaintiff proffered sufficient circumstantial evidence of intentional discrimination where a company representative declared that the company owner “didn't want these spooks to get a monopoly of his business”).

the “Racial Bias” column. For those cases in which racial bias was not found to have occurred as either a matter of law or matter of fact, we count those cases under the “No Racial Bias” column. We excluded those cases in which racial bias was not found as a matter of law, due to procedural reasons, and where the court failed to articulate, either way, whether racial bias was found as a matter of fact.<sup>167</sup> This left us with 103 cases to analyze. The raw numbers for the cases we analyzed are found in Table 1.<sup>168</sup> In 44 cases, racial bias was found as a matter of law. In six cases, racial bias, though not found as a matter of law, was found as a matter of fact. In 53 cases, racial bias was not found as a matter of law. There were no cases in which racial bias, though not found as a matter of law, was not also found as a matter of fact. These results are not surprising, given, for example, in the Title VII context the mere use of a black-primate association is likely insufficient to prove racial discrimination. Some degree of pervasiveness is also required. Nonetheless, an analysis of these cases illustrates that in the legal context, many courts do find the black-primate association to be an indicia of racial bias.

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167. See *Curtis v. Airborne Freight Corp.*, 87 F. Supp. 2d 234, 248 (S.D.N.Y. 2000); *Graaf v. North Shore Univ. Hosp.*, 1 F. Supp. 2d 318, 320-21 (S.D.N.Y. 1998); *Wilson v. Blockbuster, Inc.*, 571 F. Supp. 2d 641 (E.D. Pa. 2008); *Barnes v. Fed. Express Corp.*, No. 03-CV-72229, 2007 WL 405686, at \* 2 (E.D. Mich. Feb. 01, 2007); *Atkins v. Todd Pac. Shipyards, Inc.*, No. C06-0883-JCC, 2008 WL 1781062, at \*4 (W.D. Wash. Apr. 16, 2008); *Guidry v. Dalton*, No. C99-1073, 2000 WL 1482907, at \*3 (N.D. Cal. Sept. 27, 2000).

168. For a complete accounting of the cases we used in our analysis, see Addendum.

Table 1

	Racial Bias -MOL	Racial Bias -MOF	No Racial Bias -MOL	No Racial Bias -MOF	Total
1st Cir.	1	0	1	0	2
2d Cir.	6	0	10	0	16
3d Cir.	4	0	3	0	7
4th Cir.	5	1	2	0	8
5th Cir.	4	0	5	0	9
6th Cir.	6	1	7	0	14
7th Cir.	3	0	8	0	11
8th Cir.	7	1	2	0	10
9th Cir.	2	0	2	0	4
10th Cir.	3	3	0	0	6
11th Cir.	3	0	11	0	14
D.C. Cir.	0	0	2	0	2
	44	6	53	0	103

A look at several cases, in more qualitative terms, highlights how the black-primate association has been found to be indicative of racial bias. In *Morgan v. McDonough*, the plaintiffs, a class representing all black Boston public school children and parents, moved to close the South Boston High School (“SBHS”), a school serving a racially mixed enrollment under a desegregation plan.<sup>169</sup> The plaintiffs alleged that black students were being denied a “peaceful, integrated and

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169. See *Morgan*, 540 F.2d at 529.

nondiscriminatory education” and sought to close the school.<sup>170</sup> The district court agreed with the plaintiffs’ allegation, but instead of closing the school, it designated a temporary receiver whose duty it was to desegregate the school according to the desegregation plan announced for SBHS (and other Boston schools not relevant to this matter).<sup>171</sup> The plaintiffs appealed that ruling. On appeal, the First Circuit held that there was nothing impermissible about the order designating a temporary receiver for SBHS where it was clear from findings, supported by evidence, that black students attending the school were not receiving a peaceful, desegregated education, but were being subjected to insults, intimidation and continued segregation.<sup>172</sup> In affirming the district court’s opinion that the temporary receiver was a permissible solution to the desegregation problem at SBHS, the First Circuit noted findings made by the district court regarding the impediments:

There was evidence that black students had been physically attacked without provocation by larger groups of white students. There was evidence that black students had been disciplined for defending themselves while white attackers went unpunished. Black students were found to have been subjected to continuing verbal abuse, and despite a court-ordered ban on racial epithets school officials did little to intervene. In addition to “familiar racial slurs,” white students this year have employed the chant “2, 4, 6, 8 assassinate the nigger apes,” and, while changing classes, groups of white students often sing “bye, bye

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170. *Id.*

171. *Id.*

172. *Id.* at 530-31.

blackbird” and “jump down, turn around, pick a bale of cotton”. [sic] The white student caucus, in a list of demands, requested that music be played over the School’s public address system during the changing of classes, since “music soothes the savage beasts”. [sic] On numerous occasions, school staff and police stationed inside the building have heard these remarks and chants and failed to take any corrective or disciplinary action.<sup>173</sup>

According to the First Circuit, the foregoing findings, among others, made the district court’s desegregation decree reasonable and permissible under the circumstances.<sup>174</sup> The court also noted that the temporary receivership should “last no longer than the conditions which justify it make necessary.”<sup>175</sup>

The Fourth Circuit, in *White v. BFI Waste Services, LLC*, reversed grants of summary judgment in two Title VII cases, consolidated for appeal.<sup>176</sup> The plaintiff-appellants, were black “roll off” drivers for the defendant.<sup>177</sup> They alleged racial discrimination by defendant in violation of Title VII, including a hostile work environment and failure to compensate them adequately for similar work.<sup>178</sup> The court noted that its *de novo* review of the record led it to the conclusion that a reasonable jury could find that both plaintiff-appellants suffered harassment that was “sufficiently severe and pervasive to alter the

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173. *Id.* at 530-31.

174. *Id.* at 533-34 (internal quotations omitted).

175. *Id.* at 535.

176. *White v. BFI Waste Servs.*, 375 F.3d 288, 291 (4th Cir. 2004).

177. *Id.*

178. *Id.* at 291.

conditions of employment and create an abusive atmosphere.”<sup>179</sup> In particular, one plaintiff-appellant had testified in his deposition, which was included as part of the record in both cases below, that throughout his employment, supervisors repeatedly called him and other black employees “boy, jigaboo, nigger, porch monkey, Mighty Joe Young,” and “Zulu warrior.”<sup>180</sup>

In *Jordan v. City of Cleveland*, a black former city employee brought action against his city employer, alleging racial discrimination, retaliation, and racial and retaliatory harassment in violation of Title VII.<sup>181</sup> The plaintiff worked as a firefighter for defendant and was one of a few minorities in a district with an overwhelming black population.<sup>182</sup> The district court granted defendants’ summary judgment motion on the plaintiff’s racial discrimination claims<sup>183</sup> but entered judgment, upon jury verdict, in favor of the plaintiff, on the plaintiff’s retaliatory discharge claims.<sup>184</sup> On appeal, the Sixth Circuit held that the plaintiff suffered harassment that was severe and pervasive because of his race, as required to support a Title VII claim. Among the findings made by the district court and affirmed by the Sixth Circuit were that during the plaintiff’s tenure, he was subjected to many offensive racial remarks by his white co-workers, including being called “Sambo” and “Welfare Fighter.”<sup>185</sup> In addition, most black firefighters were stationed in a battalion pejoratively referred to

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179. *Id.* at 297.

180. *Id.* at 297. *Mighty Joe Young* is a motion picture about an ape brought from Africa to Hollywood, California. *See* MIGHTY JOE YOUNG, (RKO Radio Pictures 1949).

181. *Jordan v. Cleveland*, 464 F.3d 584, 588 (6th Cir. 2006).

182. *Id.* at 589.

183. *Id.* at 598.

184. *Id.* at 600.

185. *Id.* at 596-97.

by white colleagues as “Monkey Island.”<sup>186</sup>

In *Daniels v. Pipefitters’ Association Local Union No. 597*, a black member of the defendant union alleged that the union racially discriminated against blacks in its operations and membership and discriminated against him when it expelled him from the union.<sup>187</sup> After being expelled, the plaintiff filed suit alleging Title VII violations, among other violations.<sup>188</sup> After a jury and bench trial on all the issues, the district court found for the plaintiff.<sup>189</sup> The Seventh Circuit affirmed the district court’s ruling, noting that white union members routinely referred to blacks as “ ‘baboon[s],’ ‘porch monkeys,’ ‘spear-chuckers,’ ‘ghetto assholes,’ ‘nigger,’ ‘super nigger,’ ‘melanzanni (Italian for eggplant),’ and ‘tutsune’ (Italian for nigger)” by white union members.<sup>190</sup>

A black man sued his employer, in *Webb v. Worldwide Flight Service Inc.*, alleging a racially hostile work environment in violation of the Florida Civil Rights Act.<sup>191</sup> He alleged that, from January 2001 to December 2001, his supervisor’s supervisor “referred to him, on a daily basis, as a ‘nigger,’ a ‘monkey,’ and being ‘from the tribe.’”<sup>192</sup> After a jury trial, the district court entered judgment in employee’s favor.<sup>193</sup> The employer appealed, and the Eleventh Circuit affirmed

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186. *Id.*

187. *See Daniels v. Pipefitters’ Ass’n Local Union No. 597*, 945 F.2d 906, 909 (7th Cir. 1991).

188. *Id.* at 909.

189. *Id.* at 910.

190. *Id.*

191. *Webb v. Worldwide Flight Serv.*, 407 F.3d 1192, 1193 (11th Cir. 2005).

192. *Id.* at 1193.

193. *Id.*



the district court's decision.<sup>194</sup>

These cases, analyzed *in toto*, reveal that even when courts have failed to find, as a matter of law, racial bias where the black-primate association has been at issue, by normative standards such an association is indicative of racism.

#### ***IV. Contemporary Measures of "Racism," Elucidating the Black-Primate Association***

Contemporary methods of studying racial prejudice as a psychological construct—in addition to methodological approaches from the humanities and the law—aid in our understanding of the black-primate association and more so its implications for President Obama's security. A burgeoning body of social scientific literature, largely from the areas of cognitive and social psychology, suggests that long-standing modes of thinking about racial attitudes are largely outdated. This research highlights the fact that rare is the individual who is an express racist, one who takes ownership of his or her bigoted beliefs. The "racist" of the late 20<sup>th</sup> and early 21<sup>st</sup> centuries largely comes in two varieties: those who harbor racial animus but who are *unwilling* to acknowledge their racially-biased attitudes to others, and those who harbor racial animus but who are *unable* to acknowledge their racially biased attitudes to others.<sup>195</sup> Legal academics have begun to import this research into their scholarship.<sup>196</sup> This section explores how implicit racial bias research

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194. *Id.* at 1195. The only substantive issue that the appellate court considered in this case was whether the district court had subject matter jurisdiction – which the Eleventh Circuit decided it did. *Id.*

195. *See supra* notes 135 to 148 and accompanying text.

196. Charles Lawrence was the first to articulate how unconscious race bias is important to our understanding of the role that race plays vis-à-vis the law. *See*

aids in our understanding of the black-primate association, particularly with regard to President Obama.

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generally Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987). See also IAN AYRES, PERVASIVE PREJUDICE? UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION 419–25 (2001); R. Richard Banks et al., *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 CAL. L. REV. 1169 (2006); Gary Blasi & John T. Jost, *System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice*, 94 CAL. L. REV. 1119 (2006); Mijha Butcher, *Using Mediation to Remedy Civil Rights Violations When the Defendant is Not an Intentional Perpetrator: The Problems of Unconscious Disparate Treatment and Unjustified Disparate Impacts*, 24 HAMLINE J. PUB. L. & POL'Y 225, 238–40 (2003); Theodore Eisenberg & Sheri Lynn Johnson, *Implicit Racial Attitudes of Death Penalty Lawyers*, 53 DEPAUL L. REV. 1539 (2004); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945 (2006); Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 CAL. L. REV. 969 (2006); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005); Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of Affirmative Action*, 94 CAL. L. REV. 1063 (2006); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995); Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CAL. L. REV. 997 (2006); Kristin A. Lane, Jerry Kang, & Mahzarin R. Banaji, *Implicit Social Cognition and Law*, 3 ANN. REV. L. & SOC. SCI. 427 (2007); Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345 (2007); Lateef Mtima, *The Road to the Bench: Not Even Good (Subliminal) Intentions*, 8 U. CHI. L. SCH. ROUNDTABLE 135 (2001); Audrey J. Lee, *Unconscious Bias Theory in Employment Discrimination Litigation*, 40 HARV. C.R.-C.L. L. REV. 481 (2005); Antony Page, *Batson's Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. REV. 155 (2005); Marc R. Poirier, *Is Cognitive Bias at Work a Dangerous Condition on Land?*, 7 EMP. RTS. & EMP. POL'Y J. 459 (2003); Deana A. Pollard, *Unconscious Bias and Self-Critical Analysis: The Case for a Qualified Evidentiary Equal Employment Opportunity Privilege*, 74 WASH. L. REV. 913, 915 (1999); Robert G. Schwemm, *Why Do Landlords Still Discriminate (And What Can Be Done About It)?*, 40 J. MARSHALL L. REV. 455, 500-507 (2007); Reshma M. Saujani, *"The Implicit Association Test": A Measure of Unconscious Racism in Legislative Decision-making*, 8 MICH. J. RACE & L. 395 (2003); Michael S. Shin, Comment, *Redressing Wounds: Finding a Legal Framework to Remedy Racial Disparities in Medical Care*, 90 CAL. L. REV. 2047, 2060-2076 (2002); Joan C. Williams, *The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination Cases and Defang the "Cluelessness" Defense*, 7 EMP. RTS. & EMP. POL'Y J. 401, 446–47 (2003).

An implicit construct is “the introspectively unidentified (or inaccurately identified) trace of past experience that mediates [‘the category of responses . . . assumed to be influenced by that construct’].”<sup>197</sup> In turn, implicit cognition reveals mental associations that people are unwilling or are unable to report.<sup>198</sup> This is because such cognitions might conflict with expressly-held values or beliefs.<sup>199</sup> Moreover, implicit cognitions reveal information that is not readily available to introspection for people with a desire to retrieve and/or express such information.<sup>200</sup> Therefore, when individuals are studied, the key feature of implicit attitude measures is that individuals—“often unaware that their attitudes are being measured and are thus unable to exert conscious control over their responses.”<sup>201</sup> As such, implicit attitude measures have two comparative advantages over explicit measures.<sup>202</sup> First, “when explicit measures are used, individuals may not reveal their true attitudes or preferences because of social desirability biases, thus attenuating the magnitude of the relationship that researchers identify between attitudes and

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197. Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCHOL. REV. 4, 5 (1995); see also Brian A. Noeske et al., THE IMPLICIT ASSOCIATION TEST AT AGE 7: A METHODOLOGICAL AND CONCEPTUAL REVIEW, in SOCIAL PSYCHOLOGY AND THE UNCONSCIOUS: THE AUTOMATICITY OF HIGHER MENTAL PROCESSES 266 (John A. Bargh ed. 2007) [hereinafter SOCIAL PSYCHOLOGY AND THE UNCONSCIOUS].

198. See Greenwald & Banaji, *supra* note 197, at 4-5.

199. See *id.* at 5.

200. See Greenwald & Banaji, *supra* note 197, at 5. See also Noeske, *supra* note 197, at 266.

201. Cindy D. Kam, *Implicit Attitudes, Explicit Choices: When Subliminal Priming Predicts Candidate Preference*, 29 POL. BEHAV. 343, 345 (2007). See also, *supra* notes 134 to 136 and accompanying text on Freud’s theories on the unconscious.

202. Kam, *supra* note 201.

[behavior].”<sup>203</sup> Second, “individuals may not even be aware of their true preferences or attitudes.”<sup>204</sup>

“[I]n situations where people have the motivation and the opportunity to deliberately regulate their behavior, they will rely primarily on effortful processing to do so” —e.g., seen in “explicit self-report measures.”<sup>205</sup> In contrast, “when either motivation or opportunity to deliberate are lacking, behavior will be guided primarily by less controlled processes, which implicit measures try to tap.”<sup>206</sup> This means that, “implicit measures should be particularly valuable predictors of behavior for situations in which people have limited control over their actions.”<sup>207</sup> The Implicit Association Test (“IAT”) is a popular measure of “the relative strength of association between pairs of concepts,”<sup>208</sup> including positive/negative attributes and race.

White 6-year-olds demonstrate implicit pro-white/anti-black bias, with self-reported attitudes revealing bias in the same direction.<sup>209</sup> However, in 10-year olds and adults, the same magnitude of implicit race bias is observed, although self-reported race attitudes dissipate with age—vanishing entirely in adults.<sup>210</sup> Ultimately, more

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203. *Id.*

204. *Id.*

205. Malte Friese et al., *Predicting Voting Behavior with Implicit Attitude Measures: The 2002 German Parliamentary Election*, 54 *EXPERIMENTAL PSYCHOL.* 247, 247 (2007).

206. *Id.*

207. *Id.*

208. Kristin A. Lane et al., UNDERSTANDING AND USING THE IMPLICIT ASSOCIATION TEST: IV: WHAT WE KNOW (SO FAR) ABOUT THE METHOD, *in* IMPLICIT MEASURES OF ATTITUDES: PROCEDURES AND CONTROVERSIES 62 (Bernd Wittenbrink & Norbert Schwarz eds., 2007).

209. Andrew Scott Baron & Mahzarin R. Banaji, *The Development of Implicit Attitudes: Evidence of Race Evaluations from Ages 6 and 10 and Adulthood*, 17 *PSYCHOL. SCI.* 53, 55-56 (2006).

210. *Id.* at 56.

than 70% of whites harbor anti-black/pro-white biases.<sup>211</sup> These implicit preferences are manifested as faster responding to the white/pleasant combination, often on a computerized task, than to the black/pleasant combination.<sup>212</sup> Whites also pair “white names with pleasant words and black names with unpleasant words more easily than they ma[ke] the reverse pairings.”<sup>213</sup> And they find it “easier to associate their in-group (i.e., American names) with pleasant words and the out-group (i.e., Surinaman names) with unpleasant words” than vice versa.<sup>214</sup> Even with equally unfamiliar exemplars for both in-group and out-group, whites still display a pro-in-group implicit bias. “Thus, it appears that even when there is minimal experiential or historical input available, [peoples’] minds are prepared to display bias effortlessly.”<sup>215</sup> Even whites who know “that the IAT measures undesirable racist attitudes and who explicitly self-report egalitarian attitudes find it difficult to control their biased responses.”<sup>216</sup> Thierry Devos and Mahzarin Banaji found that whites make no distinction between blacks and whites on explicit measures of “Americanness.”<sup>217</sup> However, on implicit measures, whites more

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211. Greenwald & Krieger, *supra* note 196, at 958.

212. Anthony G. Greenwald et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. PERSONALITY & SOC. PSYCHOL. 1464, 1474 (1998).

213. Leslie Ashburn-Nardo et al., *Implicit Associations as the Seeds of Intergroup Bias: How Easily Do They Take Root*, 81 J. PERSONALITY & SOC. PSYCHOL. 789, 792 (2001).

214. *Id.*

215. *Id.* at 794-95. See also Nilanjana Dasgupta et al., *Automatic Preference for White Americans: Eliminating the Familiarity Explanation*, 36 J. EXPERIMENTAL SOC. PSYCHOL. 316, 321-323 (2000).

216. *Id.* at 317 (citing D.Y. Kim & Anthony G. Greenwald, Voluntary Controllability of Implicit Cognition: Can Implicit Attitudes Be Faked?, Paper presented at the annual meeting for the Midwestern Psychological Association (May 1998).

217. Thierry Devos & Mahzarin R. Banaji, *American = White*, 88 J. PERSONALITY & SOC. PSYCHOL. 447, 455 (2005).

easily “pair American symbols with [w]hite faces” rather than with black faces.<sup>218</sup> This is even so where faces of black Americans are more familiar than white faces.<sup>219</sup> In addition to experimental studies, which rely on small sample sizes, implicit racial attitude data has been collected via web-based IATs, which rely on large sample sizes.<sup>220</sup> These web-based studies reveal that, among children (N = 28,816) and adults (N = 351,204), white is associated with good and black with bad.<sup>221</sup> Light skin is associated with good and dark skin with bad (N = 122,988). White is associated with harmless objects and black with weapons (N = 85,742).<sup>222</sup>

Implicit racial bias is linked to the amygdala—an almond-sized subcortical brain structure, involved in emotional learning, perceiving novel or threatening stimuli,<sup>223</sup> and fear conditioning.<sup>224</sup> William Cunningham and colleagues found that the amygdalas of whites are activated far more when they are subliminally shown black faces as compared to white faces.<sup>225</sup> Moreover, the degree of amygdala activation is significantly correlated with participants’ IAT scores.<sup>226</sup>

No mere abstraction, implicit race bias predicts real-world behavior. For example, Samuel Gaertner and John McLaughlin

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218. *Id.* at 453.

219. *See id.* at 455.

220. Lane et al., *supra* note 208, at 65.

221. *Id.* at 67.

222. *Id.*

223. Kevin N. Ochsner & Matthew D. Lieberman, *The Emergence of Social Cognitive Neuroscience*, 56 AM. PSYCHOLOGIST 717, 720 (2001)

224. *See* Elizabeth A. Phelps et al., *Performance on Indirect Measures of Race Evaluation Predicts Amygdala Activation*, 12 J. COGNITIVE NEUROSCIENCE 729, 729 (2000).

225. *See* William A. Cunningham et al., *Separable Neural Components in the Processing of Black and White Faces*, 15 PSYCHOL. SCI. 806, 811 (2004).

226. *Id.*

subliminally primed individuals with the word “white” or “black” and then immediately replaced the word with a string of letters that were sometimes actual words and sometimes nonsensical.<sup>227</sup> The actual words selected were associated with stereotypes of either whites or blacks.<sup>228</sup> As quickly as possible, individuals had to identify whether the string of letters was, indeed, a word.<sup>229</sup> They were faster at recognizing positive words (e.g., “smart”) if they were primed with the word “white” instead of “black.”<sup>230</sup> Dovidio and colleagues also demonstrated that “response times to negative target words were significantly faster following the [b]lack prime than following the [w]hite prime.”<sup>231</sup> And Patricia Devine’s research reveals that subliminal priming with words stereotypically associated with blacks leads individuals to interpret ambiguous behavior as more aggressive.<sup>232</sup> Possibly, these results stemmed from more than simply using words with negative affect (e.g., “lazy”). Bargh and colleagues found that whites who were subliminally primed with black male faces (as opposed to white male faces) for a fraction of a second, responded with greater hostility and anger toward an experimenter after being told that they would have to repeat a boring task because of a computer malfunction.<sup>233</sup> Here, presumably, exposure to black faces not only activated the category “African American” but also activated

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227. Samuel L. Gaertner & John P. McLaughlin, *Racial Stereotypes: Associations and Ascriptions of Positive and Negative Characteristics*, 46 *SOC. PSYCHOL. Q.* 23, 23 (1983).

228. *Id.*

229. *Id.*

230. *Id.*

231. John F. Dovidio et al., *On the Nature of Prejudice: Automatic and Controlled Processes*, 33 *J. EXPERIMENTAL & SOC. PSYCHOL.* 510, 522-23 (1997).

232. Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 *J. PERSONALITY SOC. PSYCHOL.* 5, 11-12 (1989).

233. John A. Bargh et al., *Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action*, 71 *J. PERSONALITY & SOC. PSYCHOL.* 230, 238 (1996).

the associated stereotype “hostile” and the behaviors that go along with it, leading participants to enact those behaviors within the experimental situation.<sup>234</sup>

Implicit racial attitudes also predict a host of other behaviors. Laurie Rudman and Richard Ashmore conducted an experiment on the relationship between implicit racial attitudes and harmful behaviors towards blacks.<sup>235</sup> In their second study, they discovered that implicit bias predicted budget cuts for Asian, black, and Jewish student organizations.<sup>236</sup> More importantly, implicit anti-black bias predicted self-reported racial discrimination.<sup>237</sup> Included in this category of behaviors were exclusion, verbal slurs, and physical harm.<sup>238</sup>

Franklin Gilliam and Shanto Iyengar investigated how local news crime scripts might create ingrained heuristics for understanding crime and race.<sup>239</sup> They created variations of a local newscast, and among them was one in which there was a crime story with a black suspect mugshot, and another crime story with a white-suspect mugshot.<sup>240</sup> Both suspects were represented by the same morphed photograph; the only difference was skin hue in order to control for facial expression and features.<sup>241</sup> The suspect appeared for only a few

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234. *Id.* at 238-39.

235. *See generally*, Laurie A. Rudman & Richard D. Ashmore, *Discrimination and the Implicit Association Test*, 10 GROUP PROCESSES & INTERGROUP REL. 359 (2007).

236. *See id.* at 363-68.

237. *Id.* at 362.

238. *See id.* at 361-63.

239. *See generally* Franklin D. Gilliam, Jr. & Shanto Iyengar, *Prime Suspects: The Influence of Local Television News on the Viewing Public*, 44 AM. J. POL. SCI. 560, 563-68 (2000).

240. *Id.* at 563.

241. *Id.*



moments in a fifteen-minute newscast. Nonetheless, having seen the black suspect, whites showed six percent more support for punitive remedies than did the control group, which saw no crime story.<sup>242</sup> When the subjects were instead exposed to the white suspect, their support for punitive remedies increased by only one percent, which was not statistically significant.<sup>243</sup>

Allen McConnell and Jill Leibold found that whites who revealed stronger negative attitudes toward blacks (vs. whites) on the IAT had more negative social interactions with a black (vs. white) experimenter.<sup>244</sup> In the employment context, implicit race bias also predicts the frequency with which individuals choose to ask racially stereotypic interview questions of black as compared to white job candidates during simulated job interviews.<sup>245</sup> Mark Chen and John Bargh similarly found that the subliminal activation of stereotypes leads to behavioral confirmation.<sup>246</sup> For instance, once racial stereotypes have been activated and manifested in a perceivers' hostile behavior toward a naive interaction partner, that behavior in turn elicits a similar response from the partner, which leads each person to believe that the other has provoked the hostile interaction.<sup>247</sup> In

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242. *Id.* at 568.

243. *Id.*

244. Allen R. McConnell & Jill M. Leibold, *Relations among the Implicit Association Test, Discriminatory Behavior, and Explicit Measures of Racial Attitudes*, 37 J. EXPERIMENTAL SOC. PSYCHOL. 435, 438-440 (2001). Others have made similar findings. *See also* John F. Dovidio et al., *Implicit and Explicit Prejudice and Interracial Interaction*, 82 J. PERSONALITY & SOC. PSYCHOL. 62, 65-66 (2002).

245. *See* D. Sekaquaptewa et al., *Stereotypic Explanatory Bias: Implicit Stereotyping as a Predictor of Discrimination*, 39 J. EXP. SOC. PSYCHOL. 75, 77-78 (2003).

246. Mark Chen & John A. Bargh, *Nonconscious Behavioral Confirmation Process: The Self-fulfilling Consequences of Automatic Stereotype Activation*, 33 J. EXPERIMENTAL SOC. PSYCHOL. 541, 552-54 (1997).

247. *Id.*

addition, William Cunningham and colleagues found that “[t]he stronger the endorsement of right-wing ideology, the stronger the tendency for automatic associations between” black/bad and white/good.<sup>248</sup> Similarly, John Jost and colleagues and Brian Nosek found that among whites, political conservatism is positively associated “with ingroup favoritism on both implicit and explicit measures.”<sup>249</sup>

Implicit racial bias is also implicated in more life-threatening situations. B. Keith Payne subliminally primed non-black participants with a black or white face and subsequently asked them to identify, as fast as possible, whether the object displayed was a tool or gun.<sup>250</sup> Those who are primed with the black face more quickly identify guns correctly. In contrast, those primed with the white face more quickly identify tools correctly.<sup>251</sup> When participants are time-pressured to force more errors, those primed with a Black face err more in mistaking a tool for a gun (false alarm).<sup>252</sup> Joshua Correll added to this work by creating a video game that placed photographs of a white or black individual holding either a gun or other object (i.e., wallet, soda can, or cell phone) into diverse photographic backgrounds.<sup>253</sup>

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248. William A. Cunningham et al., *Implicit and Explicit Ethnocentrism: Revisiting the Ideologies of Prejudice*, 30 PERSONALITY & SOC. PSYCHOL. BULLETIN 1332, 1336 (2004).

249. See John T. Jost et al., *A Decade of System Justification Theory: Accumulated Evidence of Conscious and Unconscious Bolstering of the Status Quo*, 25 POL. PSYCHOL. 881, 902 (2004); see also Brian Nosek, *The Politics of Intergroup Attitudes and Stereotypes*, Presentation at Duke University’s The Psychology of Voting and Election Campaigns (Oct. 20-21, 2006).

250. B. Keith Payne, *Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon*, 81 J. PERSONALITY & SOC. PSYCHOL. 181, 183, 188 (2001).

251. *Id.* at 185.

252. *Id.*

253. Joshua Correll et al., *The Police Officer’s Dilemma: Using Ethnicity to Disambiguate*

Participants were instructed to decide as quickly as possible whether to shoot the target.<sup>254</sup> Severe time pressure designed into the game forced errors.<sup>255</sup> Individuals are more likely to mistake a black target as armed when he in fact is unarmed (false alarms); conversely, they are more likely to mistake a white target as unarmed when he in fact is armed (misses).<sup>256</sup>

In the area of health care, Alexander Green and colleagues studied internal medicine and emergency medicine physicians; they found that none of the physicians reported explicit preferences for whites over blacks.<sup>257</sup> Nonetheless, they found an implicit preference for white and implicit stereotypes that blacks are less cooperative with medical procedures and less cooperative generally.<sup>258</sup> More importantly, as physicians' pro-white bias increased so did their likelihood of providing white patients, and not treating blacks, with a treatment for cardiovascular disease.<sup>259</sup>

Implicit race bias research also puts the black-primate association into context, generally, and with particular regard to President Obama. For example, Phillip Goff and colleagues investigated the relationship between implicit racial attitudes and the dehumanization of blacks.<sup>260</sup> In their first study, individuals were

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*Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314, 1315, 1319 (2002).

254. *Id.*

255. *Id.* at 1317.

256. *Id.*

257. Alexander R. Green et al., *Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients*, 22 J. GEN. INTERNAL MED. 1231, 1235 (2007).

258. *Id.* at 1235-36.

259. *Id.* at 1237.

260. Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge, Historical*

subliminally shown images of Black faces, White faces, or neutral images.<sup>261</sup> Then they were shown fuzzy images of animals (apes and non-apes), which gradually became clearer.<sup>262</sup> Individuals were instructed to indicate the point at which they could identify the image.<sup>263</sup> Goff and colleagues found that individuals more easily identified ape images when primed with black male faces than when not so primed.<sup>264</sup> Moreover, individuals found it more difficult to identify ape images when primed with white male faces.<sup>265</sup> In a second study, individuals were first subliminally shown images of “ape line drawings or jumbled line drawings.”<sup>266</sup> Then they were given a facial interference task designed to gauge how distracted they would become when presented with faces prior to a test measuring their attentional bias to black and white faces.<sup>267</sup> Their results indicated that priming individuals with images of apes demonstrated more attentional bias towards black faces.<sup>268</sup> In another study, Goff and colleagues had white males take, either, a race IAT or a “dehumanization IAT,” that included ape words (e.g., ape, monkey, baboon) and big cat words (e.g., lion, tiger, panther) and complete a stereotype knowledge questionnaire.<sup>269</sup> Among the questions on the questionnaire was “I am aware of the stereotype that African

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*Dehumanization, and Contemporary Consequences*, 94 J. PERSONALITY & SOC. PSYCHOL. 292, 295 (2008).

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.* at 296.

265. *Id.*

266. *Id.* at 297.

267. *Id.*

268. *Id.* at 298.

269. *Id.*

Americans are like apes.<sup>270</sup> On the personalized IAT, participants demonstrated a pro-white/anti-black bias.<sup>271</sup> On the dehumanization IAT, participants more easily categorized words in the black-ape condition than they did in the black-big cat condition.<sup>272</sup> Implicit anti-Black bias was found not to be responsible for the black-ape association.<sup>273</sup> Furthermore, given the low numbers of participants who reported awareness of the historical representation of blacks as primates, the results suggested that the black-primate association operates outside of explicit cultural knowledge of the association.<sup>274</sup>

Implicit anti-black bias predicts whites' justification of violence against blacks. For example, Goff and colleagues subliminally primed individuals with images of apes or big cats.<sup>275</sup> They then asked these individuals to view a videotape of police officers beating a suspect who individuals were led to believe was black or white.<sup>276</sup> Individuals who believed the suspect was white perceived the police as being no more justified when primed with apes vis-à-vis big cats.<sup>277</sup> Individuals who believed the suspect was black perceived the police as being more justified when primed with apes vis-à-vis big cats.<sup>278</sup> Moreover, individuals who were primed with big cats did not think the police were more justified in beating the white or black suspect.<sup>279</sup> In contrast, individuals who were primed with apes thought the police

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270. *Id.* at 301.

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.* at 301-02.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

were more justified in beating the black, as opposed to the white suspect.<sup>280</sup> In a final study, Goff and colleagues reviewed capital punishment cases, particularly death-eligible cases, between 1979 and 1999 in Philadelphia, Pennsylvania.<sup>281</sup> They analyzed 153 cases for which there were both defendant mug shots and press coverage of those defendants' cases.<sup>282</sup> Goff and colleagues found that black, as opposed to white, capital defendants were "more likely to be portrayed as ape like in news coverage," and this portrayal was associated with higher levels of state-sponsored executions.<sup>283</sup>

The consequence of implicitly shaping President Obama's image among American citizens cannot be understated. Implicit anti-Black biases are malleable.<sup>284</sup> For example, exposing Whites to negative Black representations increases their implicit anti-Black biases.<sup>285</sup> Furthermore, after exposure to negative representations of Blacks via news broadcasts, those already predisposed to harbor stereotypes about Blacks, vis-à-vis those who are not, more likely support harsher treatment of Blacks in certain contexts.<sup>286</sup> Not all of those exposed to aggression-related or inducing cues act aggressively; priming with such cues only increases aggressive cues among those "low in

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280. *Id.*

281. *Id.* at 303.

282. *Id.*

283. *Id.* at 304.

284. See generally Nilanjana Dasgupta & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice With Images of Admired and Disliked Individuals*, 81 J. PERSONALITY & SOC. PSYCHOL. 800, (2001).

285. See Laurie A. Rudman & Matthew R. Lee, *Implicit and Explicit Consequences of Exposure to Violent and Misogynous Rap Music*, 5 GROUP PROCESSES & INTERGROUP REL. 133, 138 (2002).

286. See Travis L. Dixon, *Psychological Reactions to Crime News Portrayals of Black Criminals: Understanding the Moderating Roles of Prior News Viewing and Stereotype Endorsement*, 73 COMM. MONOGRAPHS 162, 176-77 (2006).

agreeableness.”<sup>287</sup> In the context of political ideology, those who are center-right on the political spectrum tend to be lower in agreeableness than those who are center-left.<sup>288</sup> Moreover, political conservatism is associated with implicit anti-Black bias<sup>289</sup> and is disambiguated from mere conservative ideology.<sup>290</sup> This may be better understood in light of research that suggests that “[o]ne major criterion continually reappears in distinguishing left from right: attitudes toward equality. The left favors greater equality, while the right inevitably sees society as hierarchical.”<sup>291</sup> Thus, 73.6% of Conservatives harbor implicit anti-Black biases.<sup>292</sup> Significantly, Whites who harbor stronger implicit anti-Black biases are more likely to engage in acts of racial aggression against Blacks.<sup>293</sup> The juncture at which implicit race bias, political ideology, the Black-primate association, and potential threats to President Obama’s life become intersected most starkly is among right-wing extremists.<sup>294</sup>

Accordingly, what should be of concern to those who seek to

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287. Brian P. Meier et al., *Turning the Other Cheek: Agreeableness and the Regulation of Aggression-Related Primes*, 17 *PSYCHOL. SCI.* 136, 140 (2006).

288. Gian Vittorio Caprara et al., *Personality Profiles and Political Parties*, 20 *POL. PSYCHOL.* 175, 175 (1999).

289. See Greenwald & Krieger, *supra* note 196, at 958.

290. See Inna Burdein, *Principled Conservatives or Covert Racists: Disentangling Racism and Ideology Through Implicit Measures*, 18 (May 2007) (unpublished Ph.D. dissertation, State Univ. of New York, Stony Brook) (on file with ProQuest).

291. ANTHONY GIDDENS, *THE THIRD WAY: THE RENEWAL OF SOCIAL DEMOCRACY* 40 (Polity Press 1998).

292. See Greenwald & Krieger, *supra* note 196, at 958.

293. Laurie A. Rudman & Richard D. Ashmore, *Discrimination and the Implicit Association Test*, 10 *GROUP PROCESSES & INTERGROUP REL.* 359, 362-63 (2007).

294. See Eli Lake & Audrey Hudson, *Federal Agency Warns of Radicals on Right*, *WASH. TIMES*, April 14, 2009 at A01; see also Paul Krugman, *The Big Hate*, *N.Y. TIMES*, June 12, 2009 at 27.

protect President Obama's life, both in the short and long run, is the effect that implicit primate imagery might have had on "ordinary," but implicitly anti-black Americans. They might have been influenced by such priming, and though not inclined to plot against President Obama's life, will share enough in their belief-system with right-wing extremists.<sup>295</sup> As such, despite the fact that those who would threaten President Obama's life have little community encouragement—vis-à-vis in decades past—for such actions, today there may be enough overlapping ideology and rhetoric such that implicitly anti-black people might lead such extremists to think that they have such social support. Furthermore, imagery that dehumanizes President Obama might keep implicitly anti-Black Americans, not themselves inclined toward violence, from "reporting plots against President Obama as well."<sup>296</sup>

### ***Conclusion***

During the 2008 Presidential campaign, from the primaries to the election, and thereafter, critics, commentators, protesters, and even politicians have used visual and discursive imagery that relies on the cognitive shortcuts of humor to characterize the first black president (and members of his family) as a primate. As may have been expected, when labeled as racist for such conduct, these jesters

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295. Cf. Brian Lickel et al., *A Case of Collective Responsibility: Who Else Was to Blame for the Columbine High School Shootings*, 29 PERSONALITY & SOC. PSYCHOL. BULLETIN 194, 194 (2003); see also. Joshua D. Freilich & William Alex Pridemore, *Politics, Culture, and Political Crime: Covariates of Abortion Clinic Attacks in the United States*, 35 J. CRIM. JUST. 323, 323 (2007).

296. Gregory S. Parks & Jeffrey J. Rachlinski, BARACK OBAMA'S CANDIDACY AND THE COLLATERAL CONSEQUENCES OF THE "POLITICS OF FEAR," in BARACK OBAMA AND AFRICAN-AMERICAN EMPOWERMENT: THE RISE OF BLACK AMERICA'S NEW LEADERSHIP 234 (Manning Marable & Kristen Clarke eds., Palgrave 2009).



retreated to the conventional by stating that their association of the president with various forms of primates was devoid of racial meaning and merely a joke. The same can be said of Sean Delonas' *New York Post* cartoon. Unmoored from its historical, cultural, and psychological foundations, such an explanation might be fitting. Placed in its proper context, however, such imagery fails to belie racial meaning. Moreover, such racial significance is heightened by the fact that a historical and psychological understanding of such imagery underscores how such associations have been used to dehumanize and justify violence against blacks. What humor theory shows is that, in fact, jokes are not trivial, and are a form of rhetorical violence which can, in certain instances, awaken socially unacceptable animosities and incite physical violence. Coupled with the vast empirical data on implicit racial bias, it is clear that Delonas' cartoon and similar representations are no laughing matter. In an environment where Barack Obama, both as a presidential candidate and as President, has received unprecedented threats against his life, the potential implications of such seemingly benign imagery should neither be ignored by those who care about the president as a human being nor by those who pass legislation to secure the safety of him as an institution.

## ***Addendum***

### First Circuit

#### a. Bias

Morgan v. McDonough, 540 F.2d 527 (1st Cir.1976).

#### b. No Bias

Horne v. City of Boston, 509 F. Supp. 2d 97 (D. Mass. 2007).

### Second Circuit

#### a. Bias

Brown v. New York State Dep't. of Corr. Servs., 583 F. Supp. 2d 404 (W.D.N.Y. 2008); Everson v. New York City Transit Auth., No.1:02-cv-1121, 2007 WL 539159, at \*6 (E.D.N.Y. Feb. 16, 2007); Lumhoo v. Home Depot USA, Inc., 229 F. Supp. 2d 121, 154 (E.D.N.Y. 2002); Marvelli v. Chaps Cmty. Health Ctr., 193 F. Supp. 2d 636, 646 (E.D.N.Y. 2002); Cooper v. Xerox Corp., 994 F. Supp. 429, 433 (W.D.N.Y. 1998); Wills v. Key Food Stores Coop. Inc., No. 95 CV 5333, 1997 WL 168590, at \*4 (E.D.N.Y. Apr. 9, 1997); Cox v. Nat'l Football League, 889 F. Supp. 118, 119 (S.D.N.Y. 1995).

#### b. No Bias

Piesco v. Koch, 12 F.3d 332 (2d Cir. 1993); Buster v. City of Wallingford, 557 F. Supp. 2d 294, 298-99 (D. Conn. 2008); Holt v. Roadway Package Sys. Inc., 506 F. Supp. 2d 194, 204-05 (W.D.N.Y. 2007); Mislin v. City of Tonawanda Sch. Dist., No. 02-CV-273S, 2007 WL 952048, at \*4 (W.D.N.Y. Mar. 29, 2007); Gray v. Lutheran Soc. Servs. of Metro. N.Y., Inc., No. 04-CV-2843, 2006 WL 1982859, at \*8 (E.D.N.Y. July 13, 2006); During v. City Univ. of N.Y., No. 01 Civ. 9584, 2005 WL 2276875, at \*15 (S.D.N.Y. Sept. 19, 2005); Kemp v. A & J Produce Corp., No. 00-CV-06050, 2005 WL 5421296, at \*19

(E.D.N.Y. June 7, 2005); *Morgan v. Metro. Dist. Comm'n*, 222 F.R.D. 220, 225 (D. Conn. 2004); *Rabel v. Am. Bldg. Maint.*, No. 00 CIV.1940, 2002 WL 389156, at \*3 (S.D.N.Y. Mar. 12, 2002);

### Third Circuit

#### a. Bias

*Spencer v. Zimmerman*, No. 3:CV-07-101, 2008 WL 2994227, at \*9 (M.D. Pa. July 31, 2008); *McCleave v. R.R. Donnelley & Sons Co.*, 226 F. Supp. 2d 695, 698 & n.5 (E.D. Pa. 2002); *Jackson v. Delaware River and Bay Auth.*, No. 99-3185, 2001 WL 1689880, at \*2 (D.N.J. Nov. 26, 2001); *Goode v. Police Officer Hall*, Civ. A. No. 85-5079, 1986 WL 2465, at \*2 (E.D. Pa. Feb. 19, 1986).

#### b. No Bias

*Wilson v. Primus Tech. Inc.*, No. 4:04-CV-2784, 2005 WL 2562296, at \*5 (M.D. Pa. Oct. 12, 2005); *Emri v. Evesham Twp. Bd. of Educ.*, 327 F. Supp. 2d 463, 467 (D.N.J. 2004); *Johnson v. Strick Corp.*, No. CIV. A. 95-7152, 1996 WL 437049, at \*2 (E.D. Pa. Aug. 2, 1996).

### Fourth Circuit

#### a. Bias

*Jordan v. Alternative Res. Corp.*, 467 F.3d 378 (4th Cir. 2006); *White v. BFI Waste Servs., LLC*, 375 F.3d 288 (4th Cir. 2004); *Spriggs v. Diamond Auto Glass*, 242 F.3d 179 (4th Cir. 2001); *U.S. v. Henry*, 519 F. Supp. 2d 618 (E.D. Va. 2007); *Carson v. Giant Food, Inc.*, 187 F. Supp. 2d 462 (D. Md. 2002); *Collier v. Ram Partners*, 159 F. Supp. 2d 889 (D. Md. 2001).

#### b. No Bias

*Carter v. Ball*, 33 F.3d 450 (4th Cir. 1994); *Alexander v. Delta Star, Inc.*, No. 6:08cv00011, 2008 WL 3887654 (W.D. Va. Aug. 21, 2008).

Fifth Circuit

## a. Bias

Farpella-Crosby v. Horizon Health Care, 97 F.3d 803 (5th Cir. 1996); Jones v. Delta Towing LLC, 512 F. Supp. 2d 479 (E.D. La. 2007); Richardson v. Stadtman, No. 3-98-CV-0151-BD, 1998 WL 792542 (N.D. Tex. Nov. 09, 1998); Demele v. Belle of Orleans, No. CIV. A. 96-0237, 1997 WL 411558 (E.D. La. July 21, 1997).

## b. No Bias

Thomas v. Atmos Energy Corp., 223 Fed. Appx. 369 (5th Cir. 2007); Matthews v. Int'l House of Pancakes, Inc., No. 07-2869, 2009 WL 211788 (E.D. La. Jan. 23, 2009); Swanier v. Home Depot U.S.A. Inc., No. 2:05CV2071, 2007 WL 4292579 (S.D. Miss. Dec. 05, 2007); Lee v. Mostyn Law Firm, No. Civ.A. H-04-3473, 2006 WL 571859 (S.D. Tex. Mar. 06, 2006); Reown v. Int'l Paper Co., No. 3:95-CV-3182, 1997 WL 53118 (N.D. Tex. Jan. 28, 1997).

Sixth Circuit

## a. Bias

Jordan v. City of Cleveland, 464 F.3d 584 (6th Cir. 2006); Ford v. General Motors Corp., 305 F.3d 545 (6th Cir. 2002); U.S. v. Jones, 159 F.3d 969, 973 (6th Cir. 1998); Curry v. SBC Comm'n, Inc., 250 F.R.D. 301 (E.D. Mich. 2008); Jackson v. Flowers Bakery of Cleveland, L.L.C., No. 1:07-cv-112, 2008 WL 2002459 (E.D. Tenn. May 07, 2008); Robinson v. Coca-Cola Enter. Inc., No. 1:06-CV-371, 2007 WL 2948869 (S.D. Ohio, Oct. 9, 2007); Cole v. CTI Molecular Imaging, Inc., No. 3:04-CV-329, 2005 WL 3534382 (E.D. Tenn. Dec. 21, 2005).

## b. No Bias

Smith v. Leggett Wire Co., 220 F.3d 752, 756 (6th Cir. 2000); Clark v. Lockheed Martin Energy Sys. Inc., No. 3:06-cv-046, 2007 WL

2043882 (E.D. Tenn., July 12, 2007); *Blackwell v. Product Action Int'l. Inc.*, No. 04-231, 2006 WL 3747519 (E.D. Ky. Dec. 18, 2006); *Smith v. National Coll. of Bus. & Tech.*, No. 03:04-0038, 2006 WL 889495 (M.D. Tenn., Mar. 29, 2006); *Williams v. United Dairy, Inc.*, No. 2:03CV868, 2005 WL 1077596 (S.D. Ohio Apr. 18, 2005); *Keaton v. State*, No. C2-00-1248, 2002 WL 1580567 (S.D. Ohio June 3, 2002); *Allen-Cuffee v. Franklin County Juvenile Detention Ctr.*, No. 99CV00344, 2001 WL 242590 (S.D. Ohio Feb. 7, 2001).

#### Seventh Circuit

##### a. Bias

*Mendenhall v. Mueller Streamline Co.*, 419 F.3d 686 (7th Cir. 2005); *Daniels v. Pipefitters' Ass'n Local Union No. 597*, 945 F.2d 906 (7th Cir. 1991); *Carter v. Chicago Transit Auth.*, No. 99 C 7738, 2001 WL 1035712 (N.D. Ill. Sept. 07, 2001); *Scurto v. Commonwealth Edison Co.*, No. 97 C 7508, 2000 WL 1624827 (N.D. Ill. Sept. 28, 2000).

##### b. No Bias

*Walker v. Mueller Indus.*, 408 F.3d 328, 330 (7th Cir. 2005); *Oates v. Discovery Zone*, 116 F.3d 1161 (7th Cir. 1997); *Swann v. William Rainey Harper Coll.*, No. 05 C 5919, 2008 WL 4681950 (N.D. Ill. May 20, 2008); *Jordan v. Chicago Transit Auth.*, No. 01 C 8203, 2004 WL 1375405 (N.D. Ill. May 25, 2004); *Hawkins v. Groot Indus. Inc.*, No. 01 C 1731, 2003 WL 22078382 (N.D. Ill., Sept. 5, 2003); *Riley v. UOP LLC.*, 244 F. Supp. 2d 928 (N.D. Ill. 2003); *Walls v. Turano Baking Co.*, 221 F. Supp. 2d 924 (N.D. Ill. 2002); *Harper v. Mega*, No. 96 C 1892, 1998 WL 473427 (N.D. Ill. Aug. 7, 1998).

#### Eighth Circuit

##### a. Bias

*Green v. Franklin Nat'l Bank of Minneapolis*, 459 F.3d 903 (8th

Cir. 2006); *Bainbridge v. Loffredo Gardens, Inc.*, 378 F.3d 756 (8th Cir. 2004); *Jones v. Forrest City Grocery Inc.*, No. 4:06cv00944, 2008 WL 2539851 (E.D. Ark. June 23, 2008); *Perrotta v. White Oak Manor, LLC*, No. 05-0394-CV-W-REL, 2007 WL 3312164 (W.D. Mo. Nov. 05, 2007); *Owens v. Paragon Life Ins. Co.*, No. 4:04-CV-875, 2006 WL 2571542 (E.D. Mo. Sept. 05, 2006); *Canady v. John Morrell & Co.*, 247 F. Supp. 2d 1107 (N.D. Iowa 2003); *Golleher v. Aerospace Dist. Lodge 837, I.A.M.A.W.*, 122 F. Supp. 2d 1053 (E.D. Mo. 2000); *Gold Star Taxi and Transp. Serv. v. Mall of Am. Co.*, 987 F. Supp. 741 (D. Minn. 1997).

b. No Bias

*Holly v. Anderson*, No. 04-CV-1489, 2008 WL 1773093 (D. Minn. Apr. 15, 2008); *Griffith v. City of Des Moines*, No. 4:01-CV-10537, 2003 WL 21976027 (S.D. Iowa July 03, 2003);

Ninth Circuit

a. Bias

*Jackson v. ABC Nissan, Inc.*, No. CV-03-0563, 2006 WL 2256908 (D. Ariz. Aug. 04, 2006); *Anthony v. County of Sacramento*, 898 F. Supp. 1435 (E.D. Cal. 1995).

b. No Bias

*Kortan v. California Youth Auth.*, 217 F.3d 1104 (9th Cir. 2000); *Gahano v. Sundial Marine & Paper*, No. 05-CV-1946-BR, 2008 WL 185793 (D. Or. Jan. 17, 2008).

Tenth Circuit

Bias

*Young v. Dillon Co.*, 468 F.3d 1243 (10th Cir. 2006); *Harris v. LMI Finishing, Inc.*, No. 05-CV-570, 2007 WL 129002 (N.D. Okla. Jan 12, 2007); *Cooper v. Am. Airlines, Inc.*, No. 05-CV-236, 2006 WL 1141852 (N.D. Okla. April 27, 2006); *Dockery v. Unified Sch. Dist.*

No. 231, 406 F. Supp. 2d 1219 (D. Kan. 2006); *Rowland v. Franklin Career Servs. LLC*, 272 F. Supp. 2d 1188 (D. Kan. 2003); *Watson v. City of Topeka*, 241 F. Supp. 2d 1223 (D. Kan. 2002)

#### Eleventh Circuit

##### a. Bias

*Webb v. Worldwide Flight Serv. Inc.*, 407 F.3d 1192 (11th Cir. 2005); *Baker v. City of Safe Harbor, Fla.*, No. 8:07-cv-1120-T-23TGW, 2008 WL 4200147 (M.D. Fla. Sept. 12, 2008); *Sims v. Montgomery County Comm'n.*, 766 F. Supp. 1052 (M.D. Ala. 1990).

##### b. No Bias

*Harrington v. Disney Reg'l Ent. Inc.*, 276 Fed. Appx. 863 (11th Cir. 2007); *Cowan v. Jackson Hosp. & Clinic, Inc.*, 572 F. Supp. 2d 1286 (M.D. Ala. 2008); *Perez v. Pavex Corp.*, No. 8:01-CV-69-T-27MSS, 2008 WL 348803 (M.D. Fla. Feb. 07, 2008); *Quitto v. Bay Colony Golf Club, Inc.*, No. 2:06-cv-286-FtM-29DNF, 2007 WL 2002537 (M.D. Fla. July 5, 2007); *Davis v. City of Panama City, Fla.*, 510 F. Supp. 2d 671 (N.D. Fla. 2007); *HomeLife Cmtys. of Henry, Inc. v. City of McDonough, Georgia*, No. 1:05-CV-2085, 2006 WL 2539492 (N.D. Ga. Aug. 31, 2006); *Garrison v. Montgomery County Bd. of Educ.*, Civ.A.2:05CV549-WHA, 2006 WL 625876 (M.D. Ala. Mar. 10, 2006); *Reid v. Lockheed Martin Aeronautics Co.*, 205 F.R.D. 655 (N.D. Ga. 2001); *Baaqee v. Brock & Bleving Constr. Co.*, No. Civ.99-588-AH-C, 2000 WL 821469 (S.D. Ala. June 19, 2000); *Holiness v. Moore-Handley, Inc.*, 114 F. Supp. 2d 1176 (N.D. Ala. 1999); *Mitchell v. Carrier Corp.*, 954 F. Supp. 1568 (M.D. Ga. 1995).

D.C. Circuit

## No Bias

Family Serv. Agency San Francisco v. NLRB, 163 F.3d 1369 (D.C. Cir. 1999); Caldwell v. ServiceMaster Corp., 966 F. Supp. 33 (D.C. Cir. 1997).