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ARTICLE: Subtle Racism in Everyday Talk: Imus, Joe Biden and The Delonas New York Post Cartoon: Are they Racist?

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BIO:

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SUMMARY:

... On January 31, 2007, in an interview with the New York Observer, the then Democratic Senator from Delaware, and subsequently elected Vice President, Joseph Biden described the then African-American Senator from Illinois and presidential candidate, subsequently elected President Barack Obama, with these words:

"I mean, you got the first mainstream African American who is articulate and bright and clean and a nice-looking guy. ... The third issue discussed in this article is whether in defining racism, the impact on the target is a better yardstick for measuring racism rather than measuring the malice and inferiorization intended by the person making the comment., Malice and inferiorization or antipathy focus on the state of mind of the objectionable speaker, not on the impact on the object of the speech. ... Should the social concept of racism develop the same way the legal concept of racial discrimination has, and if it should, what impact does that have on future legal determinations based upon racism and discrimination? ... Many people felt the sting of Senator Joe Biden's, Sean Delonas' and Don Imus' commentary, but without the media coverage, and subsequent backlash from the African American community, Joe Biden would have paid little or no attention to his words, Imus might have progressed to even more colorful insults and Delonas could have exploited his license to ridicule as a cartoonist to its fullest, without regard to racially derogatory content. ... The Joe Biden Comment Senator Joe Biden's comments were significantly more subtle than Imus's which may explain, in part, why he was chosen as the running mate for Barack Obama and became the Vice President of the United States in the 2008 election, while Imus' television and radio programs were cancelled by the television networks and radio broadcasters. ... Remember, that Project Implicit concluded that over 75% of whites harbor some implicit bias based upon race. ... Part III: The impact of the Social Definition of Racism on the Law or the Impact of the Law on the Social Definition of Racism The plight of African Americans and oppressed people all over the world makes little sense without the inclusion of racism.

TEXT:

[*1] Introduction

Negative language infects the subconscious of most Western people from the time they first learn to speak. Prejudice is not merely imparted or superimposed. It is metabolized in the bloodstream of society. Although a change in language would help the problem slightly, an awareness of the power of words to condition attitudes would be a more holistic goal. If we can at least recognize the underpinnings of prejudice, we may be in a position to deal with the effects. n1

The English language is loaded with racial connotations that do not bode well for African Americans. From black cat to black sheep, black is bad. From white lie to whitewash, white is good. Black is for funerals and white is for weddings. These themes are so universal, little can be done to alter them. Still, it is good to recognize and combat the psychological [*2] impact of such language on the self-esteem of African Americans. n2 I do not propose that the association of white with good and black with bad is racist n3, nor can I document that race was a part of the origin of such usage. n4 However, language is a transmitter of culture and ideas, shapes and perceptions and is used to perpetuate demeaning characterizations of groups of people based upon race. n5 The choice of descriptors often has consequences that impact institutions. Words alone can change paradigms. For example, we are all familiar with the terminology "master" and "slave." Consider changing that terminology to "white captor" and "African held in captivity." While being a "slave" connotes a condition of shame and inferiority, and in American history a condition of sub-human property, an "African held in captivity," more appropriately identifies the human condition of Africans in America from the seventeenth through the nineteenth centuries. Furthermore, a descendant of an "African held in [*3] captivity," might be conceived by some to carry more honor than a descendant of a "slave." n6 Likewise, "master," is a position of power and authority, while "white captor" is a villain at best. The first part of this article will catalogue and identify a representative list of subtle descriptors in an attempt to expose how they perpetuate racist ideas and to thwart their continued dominance in the English language. Exposing subtle racism in everyday talk may make it easier to ferret out harmful words when confronted with them, and promote more accurate race sensitive substitutions that could lead to a different way of thinking about race.

Sometimes racism in language is easy to identify. The most obvious racism in language is found in terms like nigger n7, chink, spook, spic, oriental and the like. However, these extremes do not represent the limits of racism in the English language. When radio host Don Imus called the National Championship runner-up, Rutgers University women's basketball team, "nappy headed hoes," there was a national debate over whether it was racist. n8 For many, "nappy headed" is an obvious negative racial slur. Then, to attach the word "ho", a potential reference to the legacy of promiscuity slavery burned unto the reputations of black women all over America, gives such a reference clear racial significance. For some, Imus' comment wreaked of malice and inferiorization of African American women, based upon race. n9 This example shows that calling someone a "nappy headed ho" falls short of an overt racist classification like "nigger," consequently many are unwilling to identify the comment as racism, or the speaker as a racist. Imus declared that he was not a racist, and many would argue that one racist [*4] remark does not render the speaker a racist. n10 Although Imus was eventually fired as a result of the comment, the networks never admitted the comment was racist.

Early in 2009, after the passage of the Obama economic stimulus package, The New York Post ran a cartoon depicting two officers shooting a chimpanzee, with the caption, "They'll have to find someone else to write the next stimulus bill." n11 Sean Delonas, the author of the cartoon, and the editor of the paper both denied any racist intent and made a qualified apology indicating regret that some people were offended. Although the paper stopped short of stating the cartoon was not racist, that conclusion was implied. Given the long history of caricaturing African Americans as monkeys in cartoons dating back centuries, it is hard to understand how the New York Post missed the connection between the newly elected African American president and a chimpanzee as racially derogatory. Absent the use of obvious racist language (nigger, spook etc.) in the cartoon, the editor and the cartoonist were able to declare, like Imus did, the racial neutrality of their comments. They alleged, as Imus did, that the audience interpreted the comments in a way not intended by the speaker. Therefore the speaker is exonerated, or even a victim, and the audience is culpable for raising the ugly charge of racism without justification. n12 Both the Imus comment and the Delonas caricature of Obama as a chimpanzee raise the issue of subtle racism. Is racism such a harsh accusation that it should only be made in the most overt circumstances? Are such comments really harmful, or does the audience have a "chip on their shoulders" which causes them to make a big deal over nothing? Are comments like that of Imus and cartoons like that of Delonas victimless, or are Imus and Delonas the victims?

[*5] Image 1

Intent is often the focal point of a discussion of comments that are covertly racist. On January 31, 2007, in an interview with the New York Observer n13, the then Democratic Senator from Delaware, and subsequently elected Vice President, Joseph Biden described the then African-American Senator from Illinois and presidential candidate, subsequently elected President Barack Obama, with these words:

"I mean, you got the first mainstream African American who is articulate and bright and clean and a nice-looking guy. I mean, that's a storybook, man."

These remarks sparked an internationally televised debate about whether the remarks and consequently the speaker were racist. Individuals lined up on both sides of the issue with some identifying the overt racism in identifying Barack Obama as the "first mainstream African American." For some, the most problematic element of this comment was the implicit declaration of inferiority derived from praising an African American for things that are taken for granted in a white person, like being "articulate and bright and clean." Others focused on the intent of the speaker, who obviously planned to compliment rather than insult his junior colleague in the Senate and competitor for the presidency of the United States. This Biden comment raises the questions addressed in the second part of this [*6] article: "Is "intent" a necessary component of racism? Can a remark, uttered with no intent to insult, be nonetheless racist, based upon content alone?" The Biden and Imus comments and the Delonas cartoon, will be discussed in the context of different definitions of racism to explore whether they should be labeled racist under any or all of the definitions.

The third issue discussed in this article is whether in defining racism, the impact on the target is a better yardstick for measuring racism rather than measuring the malice and inferiorization intended by the person making the comment., Malice and inferiorization or antipathy focus on the state of mind of the objectionable speaker, not on the impact on the object of the speech. Should the question be, "[w]hat impact did the comment have on the targeted individual or group?" or "[w]hat was the intent of the speaker?" In other words, should racism be defined based upon impact or intent? Should the social concept of racism develop the same way the legal concept of racial discrimination has, and if it should, what impact does that have on future legal determinations based upon racism and discrimination? In other words, "How does the social concept of what is racist define legally actionable race discrimination?" If the two are connected, a redefinition of individual or social racism that defines most racism out of existence, would in due course, as language shapes the values that establish law, change legally sanctionable acts of discrimination.

Part I: Subtle Racist Language

A. Defining Subtle Racism

Sociologist Eduardo Bonilla-Silva points out an important dilemma in America in the twenty-first century. Racism persists while no one wants to see themselves as racists. n14 Inarguably, the face of racism changed during the twentieth century Civil Rights Movement and its aftermath, in the same manner that segregation did. Integration became the law of the land; racism, especially racial slurs, became unacceptable. Only the ignorant fringes of society resorted to overt racial slurs, and diversity became the acceptable status-quo replacing segregation. In 2007, the NAACP with much fanfare held funerals all over the country to symbolically bury the "N" Word, in an attempt to rip it out of the American language forever. n15 There is a problem, [*7] however, with these noble attempts to change our language and thereby our culture around race. Ending overt racial slurs such as the "N" word does not eliminate racism in language, anymore than ending overt legally sanctioned segregation results in integration. n16 Diversity is the polite word for integration these days, but it has little clout in our twenty-first era of fairness and equality for all, where segregation persists along with racist speech. n17

Subtle racist remarks can be much more damaging than overt racial slurs, just as covert segregation is harder to eliminate than legally mandated segregation. Subtle racism has an even greater impact on the listener and the speaker, both of whom unconsciously receive/send/accept the message of inferiority with no incentive to think about or challenge their beliefs. Simon Podair described how language discreetly promotes bigotry in this statement:

Language as a potent force of our society goes beyond being merely a communication device. Language not only expresses ideas and concepts but may actually shape them. Often the process is completely unconscious, with the individual unaware of the influence of the spoken or written expression upon his thought process. n18

Language is one of the most important conveyors of culture available to a society. "People through language and other forms of communication are carriers of cultural standards of beauty, love, art, music, childbearing, funeral practices, eating and so on." n19 The problem with subtle racism is that when the speaker is not identified as a wrongful perpetrator, the object/victim bears all the burden of the hurt from the [*8] speech, while the oblivious speaker goes confidently about her business, perhaps even believing herself to be a civil libertarian. Many people felt the sting of Senator Joe Biden's, Sean Delonas' and Don Imus' commentary, but without the media coverage, and subsequent backlash from the African American community, Joe Biden would have paid little or no attention to his words, Imus might have progressed to even more colorful insults and Delonas could have exploited his license to ridicule as a cartoonist to its fullest, without regard to racially derogatory content. If we accept that remarks similar to the ones made by Imus, Delonas and Senator Joe Biden are common, but unrecorded and thereby unnoticed by the majority and controlling community, the multitude of hurts left behind by such language, while hard to measure, has to be significant. Bonilla makes the point in this way:

I have argued elsewhere that contemporary inequality is reproduced through "New Racism" practices that are subtle, institutional, and apparently nonracial. In contrast to the Jim Crow era, where racial inequality was enforced through overt means (e.g., signs saying "No Niggers Welcomed Here" or shotgun diplomacy at the voting booth), today racial practices operate on the *"now you see it, now you don't"* fashion. n20

B. Retooling our Vocabulary

Subtle racism in everyday talk is prolific. The choice of words as descriptors of African-Americans, Africa and any people who are degraded by commonly used terminology impacts self-perception. Language establishes the parameters for learning about oneself and one's history and often reflects a point of view oppositional to respect, appreciation and understanding. n21 From the beginning of slavery, degrading language and images were used to compromise the status of slaves, while at the same time, slaves were deprived of their mother language or any common language. "Consequently, the African's psychological and cultural destruction could be perpetuated without as much physical coercion since the African's view of himself was dictated by the oppressor." n22 This culture of using words and images with negative connotations to describe and portray African Americans, other minorities in America and people of color internationally has persisted over the centuries. Some of the language and [*9] images merely carried over from slavery times, but in the meantime new terminology developed that is equally as diminutive of the subject. Over the thirty-five years prior to this writing, activist sociologist, Lloyd Yabura said it is time to identify the subtle terminology that defines otherized people;

[o]ne of the most meaningful steps that we could make in preparing ourselves and more importantly our children for meaningful participation in the struggle of our people ... is to purge from our minds concepts that represent European definitions of who we are as a people. n23

Forty years after the civil rights movement, are the subtleties in our language rooted in our racist past still harmful? Do we really need to purge our language in order to change our minds about race? Yubara's position is that the continued use of language that demeans the African-American character, intelligence and experience perpetuates implicit racial bias. Imus could not have used such racially charged words to describe upstanding African-American college students without harboring some implicit bias toward black females. Biden may have harbored some subconscious ideology about the intelligence of black people. Delonas, subconsciously if not deliberately, may have made a connection between black people and primates without thinking about the debasing quality of his cartoon. If all three of these incidents were born out of honest intentions, then the very fact that they happened makes the case for rethinking our use of language and images so that we can disassociate black people from the degenerative past that haunts them. More recently social scientists have confronted issues of subconscious or implicit bias. Psychologist Siri Carpenter says that implicit or unconscious bias is more prevalent than overt prejudice. "Ideas that we may not endorse--for example, that a black stranger might harm us but a white one probably would not--can nonetheless lodge themselves in our minds and, without our permission or awareness, color our perceptions, expectations and judgments." n24 Since racism has become a social taboo and there appears to be a broad consensus in America against racial bias, it is reasonable to question how well-meaning people can make comments that upon close analysis bear evidence of racial hostility. According to

Carpenter, cultural factors such as shopworn ethnic jokes, careless [*10] catchphrases and playground taunts dispensed by peers, parents or the media, reinforce racial prejudice. n25

A group of social scientists, operating under the hypothesis that hidden biases lead to racial disparities, implemented a study called Project Implicit. n26 The Implicit Association Test (IAT), a product of the Project Implicit study is designed to measure unconscious attitudes that might lead us to behavior that conflicts with our most highly held ideals. The test measures attitudes and beliefs that people would be reluctant or unwilling to reveal if asked openly. Various kinds of biases can be measured using tests modeled according to the prejudice under study. The Race IAT tests whether a person has a preference for whites compared with blacks, by asking the test taker to associate good words (joy, love, peace, wonderful, happy) and bad words (agony, hurt, awful, evil, nasty) with white and black faces. n27 With thousands of respondents, the study showed that over 75% of white people preferred white over black. The study connects language to attitude and bias. It is not a far stretch to suggest that the language contributes to the implicit bias. Language and imagery is how we shape attitudes. n28

Below is a chart derived from the Yabura thesis n29 that gives examples of common terminology used to describe African-Americans that are not overtly racist, but carry negative connotations that degrade and otherize the subject of the speech. Alternative language which more [*11] neutrally and accurately describes the subject in the common terminology is proposed as alternative language. This list is by no means exhaustive and is intended to demonstrate how frequently we hear and use the prejudicial language in the Common Terminology list. Please note that the words and phrases in the Common Terminology list are frequently used in American English, although that does not mean they were not derived from somewhere else or a common part of speech used in other cultures. [*12]

Alternative Language	Common Terminology
Ethnic conflict rooted deep in colonial domination fed by neocolonial exploitation	Ancient tribal hatreds (describing the motive for Tutsi genocide in Rwanda)
Nation or People	Tribe (used to identify American Indians in the 19th century to connote a primitive society, savagery, barbarism)
African held in Captivity	Slave (suggest ownership by another, property, lack of rights)
White American Captor	Master (the authority, owner, limitless power to abuse or use)
Revolution	Rebellion (war between African People within a Nation)
Freedom Fighters	Rebels
African American candidate/student/employee	Qualified African American candidate/student/employee (whites are assumed to be qualified so the adjective is unnecessary when referring to whites)
Nation exploited by colonialism	Underdeveloped nation
Member of the global majority	Minority, third world people, non-whites (people of color)
Conquest of Native American Homelands	Discovered (the result of European exploration in North and South America)
Culturally different	Primitive, Uncouth or Backward
Naturally curly hair	Nappy or kinky hair
Blood	White blood, Black blood, Chinese blood, etc.
Babies	Illegitimate babies
Behavior that is compatible with the reality of the oppressed rather than that of the oppressor	Maladjustment, bad attitude or resistance
Black self determination, restoration, redemption, pride	Black separatism, racism or supremacy
Call for even more oppressive measures against African Americans	Law and order

Alternative Language
Educational Inequality
People
Culturally dispossessed
Victory

Common Terminology
Educationally disadvantaged
You people, those people, these people
Culturally disadvantaged
Massacre (when Native Americans were successful in preventing their homes and family from being destroyed)
Victory (when whites maliciously set out to destroy a people or community by taking what [land, oil, minerals] belongs to that group)

Massacre

[*13] C. The Don Imus Comment

Don Imus used the degrading terminology "nappy headed" in describing the Rutgers players. There can be little realistically grounded argument against the concept that "nappy headed" is a derogatory terminology in America associated with the curly hair of African Americans, with a particular reference to women. No positive imagery comes to mind when the words are spoken. The words bring about the unruly image of hair like that of "Aunt Jemimah," which is so obviously unsightly that it clearly needs to be covered with a rag. Whether Imus intended to conjure the image or not, the words "nappy headed" are derogatory descriptors of African American hair.

Little needs to be said about whether "ho" is derogatory. It is intended as an insult to women suggesting sexual promiscuity or prostitution. Although not overtly racist, the word "ho" is a dialectical variant of the word "whore." While "whore" is a white word, "ho" is a distinctively African American variation. Thus the use of the word "ho" was not only a derogatory comment, but also had racist intonations since culturally the word is African American. Consequently, the use of the word presents images of African American women, not white women. By using the "nappy headed" adjectives along with the negative African American dialectical version of "whores," "hos," Imus painted an unsightly picture of African American women with his words. Collectively, the statement is derogatory based upon race, although it is arguably negative based upon gender also.

D. The Joe Biden Comment

Senator Joe Biden's comments were significantly more subtle than Imus's which may explain, in part, why he was chosen as the running mate for Barack Obama and became the Vice President of the United States in the 2008 election, while Imus' television and radio programs were cancelled by the television networks and radio broadcasters. Barack Obama was [*14] described by Biden in a televised interview, as the "first mainstream African American," "articulate," and "storybook." Many lauded these statements as compliments not insults and could not see the subtle insults included in the hollow compliments. Consider what it means to be a "mainstream African American," much less the "first" of that genre. "Mainstream" carries a sense of acceptability or ordinariness. If that is what Joe Biden meant, then he was saying Barack Obama was acceptable because he was enough like the ordinary American to be labeled mainstream.

Perhaps there is no insult in calling someone acceptable. But let's put the language to a test I developed which I call, the "Last White Male Similarly Situated" test" (LWMSS). In that test, I compare any situation involving a person of color, or any other group historically subjected to discrimination as a result of membership in the group, with how the factors would have played out if the subject was a white male. Using that test, I can compare the statement made about Barack Obama, an African American male presidential candidate, with statements made about white males who had run for president recently. Using that standard, I can never remember a white male running for president being complimented by being called "mainstream." I will use the last two presidents as the sample for my LWMSS test. Many said George W Bush appealed to the ordinary man, but no one suggested that this privileged, wealthy, draft-dodging, Ivy League affirmative-action admittee was mainstream or ordinary. Bill Clinton had working class roots, and charismatic appeal to ordinary people, but this womanizing, adulterous, Ivy League graduate was not described as "mainstream" or ordinary. White males are not described as "mainstream" because they are presumed to be mainstream. The Biden statement fails the LWMSS test, since no white male presidential candidate would likely ever be characterized using that language. Since Biden's statement fails the test, that lends evidence supporting the hypothesis that race was a factor in the making of the statement.

Barack Obama may have been chided as the "first mainstream African American," because Biden thought Obama was the first African American presidential candidate who could appeal to white voters. Is that derogatory? The converse of the statement is that African American presidential candidates and all previous African American candidates did not or cannot appeal to white voters. That is either derogatory to African Americans, or admits to the degraded state of mind of the American electorate in Joe Biden's opinion. The use of the adjective "first" to describe Obama as a presidential was subtle, but insulting to all previous African American presidential candidates.

[*15] Joe Biden could have meant that Barack Obama was a traditional candidate because he is a presidential hopeful coming out of the United States Senate, which is one of the typical pipelines for the presidency. Generals, governors and senators are the stock from which presidential hopefuls frequently arise. That meaning is far less insulting although previous African American candidates, like Shirley Chisholm, might take issue with being excluded from the classification of "mainstream."

Joe Biden goes on to describe Barack Obama as "articulate." That is an overt compliment. Articulateness is a good thing for a presidential candidate or anyone. When the LWMSS test is applied, we find the articulation of white presidential candidates has won some commentary. George W. Bush was often ridiculed for his misuse and mispronunciation of words, as well as for his short sentences and small words. His opponent, John Kerry, was described as verbose, and Al Gore was described as stiff. As a contrast, Bill Clinton was praised as articulate. The speech of the recent white male presidential candidates has been criticized when it was less than "standard" and less often applauded, such as the case for Bill Clinton, for being what speech for a presidential candidate is expected to be, which is articulate. White males are presumed to be articulate, thus there is no need to describe them as such. African Americans have to combat the myth of being intellectually inferior, which includes being inarticulate. I spoke recently to an African American federal judge on this point. He reported having a long telephone conversation with a white person over an issue, which ended with the person complementing him on how articulate he was. The judge was insulted, because he felt the comment never would have been made to a white judge, and responded with, "I am a federal judge. I suspect I am supposed to be articulate." When Obama was described as articulate, the comment took on the character of a response to and thereby the acceptance by Joe Biden of the myth of the inarticulate African American. Again, Biden's description of Obama as articulate fails the LWMSS test. Taken in the context of the history of African Americans and the myths associated with being an African American, calling Obama articulate could easily be construed as an insult to Obama and all African Americans.

If a "storybook man" is nothing else, he is unreal and perhaps unbelievable. Joe Biden must have found Barack Obama so unusual, that he was unreal, or like a story. Again, applying the LWMSS test, no presidential candidate has been described as a "storybook man," not even John F. Kennedy who had "Camelot" attached to his white house 'after' he was elected. Even with the label Camelot, JFK, coming from the powerful and influential Kennedy legacy was believable and real, not a "storybook [*16] man." Joe Biden may have thought that having a viable African American candidate, with cross racial support, was so unusual until it was unreal. That suggestion is derogatory to African Americans.

The cloud over this analysis of course, is that Joe Biden is the Vice President of the United States, chosen by Barack Obama, the person which I argue here is the direct target of the bias. Doesn't his selection alone exonerate him of any allegations of bias implicit in his statement? I can hear the guffaws as I answer, not necessarily. Remember, that Project Implicit n32 concluded that over 75% of whites harbor some implicit bias based upon race. I have always intuitively known that, and I take it into account in my relationships with white people. It is imminently easier to maintain friendships when allowances are made for the occasional insensitive comments some people make when they become sufficiently relaxed. Although I make a point of letting the offending party know of how and why the comment was inappropriate, I nonetheless understand it is impossible to live in our society, as riddled as it is with ideological ambiguities surrounding race, without harboring some racial bias. So my white friends get a pass from time to time without serious injury to the relationship. I can either make such allowances, or choose to exclude all white people from my circle of friends. I know many African Americans who choose one way or the other. Charles Lawrence, who says the illness of racism infects almost everyone, n33 writes that he understood the benign intention of a white companion who complimented him by saying "I don't think of you as a Negro." Lawrence also understood the racist implications of the concepts. n34 Perhaps Barack Obama has chosen to make allowances for the implicit bias of the overwhelming majority of white Americans including Joe Biden, whose selection by Barack Obama is not necessarily an indication that Biden's comment was not biased or that he does not harbor racial prejudices, as much as it might be an indication that Barack Obama, like myself, Professor Lawrence and countless other Blacks working, living and playing in a white environment, is comfortable with, or might choose to treat as harmless, the implicit bias common amongst white Americans.

[*17] E. The Delonas Cartoon

It may be easy for whites to take words out of context and give them their most optimistic meaning. However, with a history that includes the total abridgment of rights of an entire group of people (Africans and their descendants taken and held in captivity for over two hundred years, followed by over one hundred years of government sanctioned overt oppression) and the genocide of another people (the Native American people), the impact of words cannot be measured without consideration of the myths used to support the captivity and genocide. Joe Biden's and Imus's words should not be presumed to have been spoken in a twenty-first century vacuum, with no regard to the background that would give cause for the words ever to have been spoken in the first place. The Delonas cartoon also should be evaluated within the context of its historical backdrop.

It is not difficult to find images of African Americans being portrayed using primates. Professor Jennifer Russell was terrorized in her own space when a National Geographic magazine with a picture of a gorilla was placed in her faculty mailbox. n35 Blackface applied to white minstrels was fashioned after the characteristics of monkeys with exaggerated rings around the mouth and eyes. There is a unique history in America of characterizing blacks as animals, particularly primates. Psychologists, Phillip Atiba Goff and Jennifer Eberhardt researched whether white males associated blacks with apes and whether that association impacted criminal sentencing. n36 Eberhardt said:

[*18] Scientific racism in the United States was graphically promoted in a mid-19th-century book by Josiah C. Nott and George Robins Gliddon titled *Types of Mankind*, which used misleading illustrations to suggest that "Negroes" ranked between "Greeks" and chimpanzees. When we have a history like that in this country, I don't know how much of that goes away completely, especially to the extent that we are still dealing with severe racial inequality, which fuels and maintains those associations in ways that people are unaware. n37

Even when there is a lack of conscious association of blacks with apes, studies by Professors Goff and Eberhardt indicate a subconscious association among white males. Their study involved young white males, primarily college students. There may be a greater likelihood that a person born in the 1980s could have missed the overt racial characterization of blacks as primates, but it seems less likely that the editor of *The New York Post* or Sean Delonas, both men of mature years, who witnessed firsthand life in America during the pre-civil rights era, could have missed such a profound metaphor. Whether deliberate or implicit, the cartoon undeniably portrayed the first black president as a chimpanzee. No doubt, even admittedly, the cartoon was designed to insult, since political cartoonists have a license to do so. The only question is whether it was designed to be a racial insult. Given the long history of inferiorization of African Americans in this country and the many images during the campaign likening Michelle and Barack Obama to monkeys, the racial connection is obvious, whether intended or implicit.

Part II: Should Racism be Defined by Intent of the Speaker or Impact on the Object of the Speech? Are Imus, Delonas, and Biden Racists?

Whether the comments of Joe Biden, Sean Delonas or Don Imus are racist depends upon how racism is defined. The Supreme Court has held that in order to make a case for violations of equal protection (racial [*19] discrimination) under the United States Constitution, plaintiffs must show intent to discriminate. n38 However Title VII of the Civil Rights Act of 1964 allows relief for employment discrimination based upon an employment policy having a disparate impact on a racial group. n39 A definition of racism that includes intent of the perpetrator will catch a lot less activity, than a definition that focuses on the impact on the victim. Critics of the ruling in *Washington v Davis* argue in the first instance that, "[a] motive centered doctrine of racial discrimination places a very heavy, and often impossible, burden of persuasion on the wrong side of the dispute. Improper motives are easy to hide." n40 Secondly, critics of the decision point out "[t]he injury of racial discrimination exists irrespective of the decision making process." n41 As a result of *Washington*, even when it is obvious from a variety of factors that intent is present, it is so difficult to prove that the requirement is often fatal to a lawsuit. "[T]he Court thinks of facially neutral actions as either intentionally and unconstitutionally or unintentionally and constitutionally discriminatory." n42 In other words, racial discrimination is okay as long as it is not intentional. In the sociological and psychological context, that legal concept could be extrapolated to mean that there is no racism without intent or malice. If intent is a component of racism in how we think about our human relationships, such thinking will eventually narrow the legal [*20] conception of racism. Correspondingly, the narrow legal definition of racism could be driving the social definition of racism into a tight corner. Racism can be so

narrowly defined, legally and socially, until almost all except the most overt actions are excluded from its boundaries. That leads to the question in this section, "What is racism?" and more specifically, "Should a finding of racism be based upon the intent of the actor or the impact on the object?"

A. Racism Requires Morally Reprehensible Conduct and State of Mind

Sociologists have opinions which are as diverse as those of lawyers on what constitutes racism. Blum, in his book, "I'm Not a Racist, But. . ." n43 proposes making a distinction between morally reprehensible racism and less offensive race related ills with more genteel characterizations such as racial insensitivity, racial conflict, racial injustice, racial ignorance, racial discomfort and others. These lesser charges would make racial faux pas more acceptable and staunch the threatened loss of moral impact of the term racism. n44 Blum proposes that racism has lost its meaning from over-use, and the term should be redefined in order to encourage open discourse between people who now are reluctant to speak because of fear of misspeaking and being labeled a racist. Conversations on race are thereby stifled even among benign, well meaning supporters of racial justice. "Someone who exhibits a culpable ignorance about racial matters that bear on an interaction with an acquaintance or co-worker should feel a degree of shame, and resolve to correct that ignorance, without having to think she has been 'racist.' We should not be faced with a choice of racism or nothing." n45

A host of social scientists agree with Blum on his redefinition of race and racism. Something missing in the dialogue is a focus on the object of the activity. Perhaps the definitions of social or everyday racism, like Biden's comment, which are not legally actionable, are merely catching up with the law. Fourteenth Amendment Equal Protection law has included intent as an element of the offense for years. Reverse discrimination in employment, contract and education cases have included standards of [*21] historical discrimination necessary to support a racial classification that could best be described as requiring a showing of intentional malfeasance. n46 Intent, exonerates a great deal of activity that might otherwise be described as racist. A high intent standard for racism could be viewed as an attempt to place most individual, institutional and governmental activity outside of the "racist" spectrum, thereby placing more of the responsibility for disparities tied to race on African Americans, and other affected groups of people, rather than racism. n47

B. Color Blind Racism or an Ideology That Maintains Racial Inequality

Sociologist Eduardo Bonilla-Silva takes a contrary view to that of Blum in defining racism. Bonilla-Silva questions how it is possible to have so much racial inequality in a country where most whites claim race is not relevant. n48 His answer is "color-blind racism."

Much as Jim Crow racism served as the glue for defending a brutal and overt system of racial oppression in the Pre-Civil Rights era, colorblind racism serves today as the ideological armor for a covert and institutionalized system in the Post-Civil Rights era. And the beauty of this new ideology is that it aids in the maintenance of white privilege without fanfare, without naming those who it subjects and those who it rewards. It allows a president to state things such as "I strongly support diversity of all kinds, including racial diversity in higher education," yet, at the same time, to characterize the University of Michigan's Affirmative Action Program as flawed and discriminatory against whites. Thus whites enunciate positions that safeguard their racial interests without sounding "racist." Shielded by color blindness, whites can express resentment toward minorities: criticize their morality, values, work ethic; and even claim to be victims of "reverse discrimination." n49

[*22] Color-blind racism allows whites to retain the privileges associated with whiteness, like all of the seats at the University of Michigan School of Law, without bearing the burden of being a racist in order to do so. In colorblind language, things like fairness to whites, schools being inadequate due to economics and choice rather than race, or student work ethic are the culprits resulting in differential college opportunities for African Americans, not racism. The status of the various races is rationalized, and the speakers are shielded from charges of racism because of the color-blind nature of their comments. The issue for Bonilla-Silva and his theory of color-blind racism is not the intent of the speaker or whether they are good people or bad people. "The analytical issue, then, is examining how many whites subscribe to an ideology that ultimately helps preserve racial inequality rather than assessing how many hate or love blacks and other minorities." n50

Color-blind racism is results based. It looks to the impact of the conduct, rather than the intent of the actor in determining whether racism is at work. It is, in effect, an impact test, rather than an intent test. "Following the color-blind script, whites support almost all the goals of the Civil Rights Movement in principle, but object in practice to almost all

the policies that have been developed to make those goals a reality. ... Finally, although they sing loudly the color-blind song, ... they live a white color coded life." n51 The results oriented color-blind racism would look at the object of the speech and determine impact. What was the impact of Imus's comment on the Rutgers Women's Basketball team? Did Joe Biden's remarks impact Barack Obama or African Americans overall? Did the Sean Delonas cartoon offend the President, African Americans and/or all kinds of Americans?

C. Are Biden, Imus or Delonas Racist Based on the Intent Standard?

Given Blum's definition of racism, Biden's comments about Obama could at worst fall into the category of racial insensitivity, but not the despised, embarrassing classification of racist. Biden's comments fall short of being morally reprehensible, and it is not at all clear from his record or his relationship with Obama that he has "hatred or antipathy" for the President or African Americans in general. Biden ran a pretty impressive and loyal campaign for the vice-presidency. He appeared to help more than hurt the candidacy that resulted in a win for the team. The comment made early in the presidential campaign season was not even a factor in the election. Blum adopts the principle that a racist act does not make the actor [*23] a racist, n52 but in the case of Biden, his act would not even satisfy the definition of a racist act. This lesser charge of racial insensitivity leaves Senator Biden unscathed by the horrible classification of racist and free to continue in his quest, first for president of the United States and then for the vice presidency, without a huge blemish on his reputation. According to Blum's theory on racism, classifying Biden as insensitive rather than racist contributes to maintaining an open ended conversation on race without fear of being tagged a "racist."

Even Imus' comments may pass Blum's test and be deemed not racist. It was an isolated comment, not a pattern of behavior, and there was no indication that Imus held a deep-seated hatred for the team or African Americans in general based upon race. As discussed in Part I, "nappy headed" carries a derogatory significance and "hos" is an insulting negative reference to African American women, but it cannot be definitively said that either reference is based upon strong racial antipathy or inferiorization.

The Delonas cartoon, depicting the African American president as a chimpanzee is particularly off-color. An African American and ape metaphor, given the history of dehumanization of the African captives brought to this country, first to justify the captivity, then to maintain second class citizenship, is mean spirited and hostile. Almost every description of the apology from Delonas and the paper, found in the media in the aftermath of the debacle, used language like half-hearted, weak, and strained, which demonstrates a complete lack of remorse. Perhaps Al Sharpton said it best when he pointed out that if Delonas did not mean to characterize the first black president derogatorily as a chimpanzee in the cartoon, what other purpose would there have been. The claim that the cartoon was about the stimulus package and not the president just does not hold water. The caption said, "They'll have to find someone else to write the next stimulus bill," while depicting a chimpanzee being shot by police officers. It is the Obama stimulus bill and the author of it, President Obama was represented by a chimpanzee being shot. Furthermore, given the history of the primate/African American metaphor the racial insult was obvious. Perhaps the most egregious of all three comments under review here is the Delonas cartoon. Under the Blum theory, more than one incident, no matter how onerous, might be required to label the individual a racist. I have to wonder, if the one incident included socially taboo derogatory terminology like the word "spook," or "nigger" would that be sufficient under the Blum theory to define Delonas as a racist? The cartoon comes as close to being an overt insult, akin to a racial epithet, as you can get without actually using [*24] one. It would be unfortunate if any scholarly definition of racism should exclude such a person capable of such degrading insulting conduct.

For those inclined to give Delonas a pass on the racist label, the incident if not the individual could be classified as racist under the intent test. If Delonas is not a racist, arguably the cartoon would pass the standard of openly hostile and malicious. Portraying the president as a chimpanzee, a primate, from the ape family goes beyond insensitivity by almost any measure. If more than one incident is required to determine that an individual harbors racial animus, surely an overtly racist product can be called racist.

D. Are Biden, Imus and Delonas Racists Based on the Impact Standard?

When an "impact standard" is applied to Imus and Joe Biden, there are different results. Imus' words were deeply hurtful to the women of the Rutgers basketball team. Days after the comment, the team appeared on National Television and rendered a heartfelt response that brought many listeners to tears. Young, accomplished, college students defending their honor and integrity, parading their accomplishments and virtue in order to dispel the implications of the reference, "nappy headed hos." Not surprisingly, one of the students has now sued Imus for defamation and slander. The African American community, led by community activist Al Sharpton, stood up and demanded justice. The injury went far be-

yond the women at Rutgers. The African American community at large, internalized the discourse. When using an impact standard, there is a strong case that Imus's comments were racist. Not only did the words insult and injure based upon race but they confirmed a deep seated myth about the lack of beauty and promiscuity of African American women that dates back to slavery.

Likewise, Biden's comments yielded a tremendous response from the African American community, even though the Obama campaign played it off nobly making little comment and ultimately selecting him for Vice President. That proved politically wise on the campaign's part, since the African American community would have taken offense had Obama taken the position that the comments were not racist, and the white community might have been offended if Obama had said they were. Obama wisely took the neutral position. If Biden's comments were damaging to Obama politically, there was no significant impact. Biden's comment reminded America, that Obama is an African American candidate, which is something few could forget anyway, who amazingly made the cut. If nothing else, Biden's comment planted in the minds of America that a [*25] viable, African American front-runner candidate is unbelievable. The comment may also have distinguished Obama as a "different from the stereotype" kind of black man, which could have had positive effects for him. There is so much negative imagery associated with being black, to be the exceptional black could have worked positively in the psyche of many Americans.

Regarding the Delonas cartoon, the impact on the African American community was immediate and measurable. The day after the cartoon hit the press, it was forwarded to me in no less than ten e-mails from outraged or disheartened African Americans as well as some white people lamenting over its implications. Just when hope for better race relations began to peak after the inauguration, we had to be reminded that even if elevated to the presidency, African Americans are still less than human, an animal, an ape, or even a crazed chimpanzee.

Delonas, Imus and Biden iterated hurtful words which, without regard for the intent of the speaker, heaped significant baggage on Obama, the Rutgers team and the African American community. The impact of the words cannot be denied. David Burgest used strong language to define racism as a vehicle for maintaining white power and privilege.

Racism may be defined as a conscious and/or unconscious desire on the part of whites to destroy, castrate, and exploit black people both physically and psychologically. n53

Some reading these words might think they have a 60s type rhetorical ring to them. They were indeed written during the Civil Rights Movement and can be considered "strong language." We are much more polite in the twenty-first century than we were in the middle of the twentieth. In our new color-blind world, we should remain mindful of the significance of results. Attorney General Eric Holder called us a nation of cowards when it comes to issues of race. n54 We are so busy trying to diminish the existence of racism and racists so that no one is labeled as such. Whether conscious or unconscious, the words of Delonas, Imus, and Biden were psychologically destructive to African Americans and to the [*26] direct objects of the thoughtless, off the cuff or cautiously drafted comments.

Part III: The impact of the Social Definition of Racism on the Law or the Impact of the Law on the Social Definition of Racism

The plight of African Americans and oppressed people all over the world makes little sense without the inclusion of racism. If significant social and economic disparities exist along racial lines, the good fortune for one group over another must have a cause. For example, the reason could result from divine favor, genetic superiority, racism, not to exclude some other less likely possibilities. Once divine favor and racism are ruled out, only genetic superiority is left. That is a very good reason not to eliminate the concept of racism. Without racism, a tremendously plausible reason for racial disparities is genetic superiority; hopefully a concept embraced only by the extreme fringes of any society. The "Blame the Victim" ideology has a long history in the United States and was exposed in the midst of the Civil Rights Movement in a book by William Ryan. n55

A narrow definition of racism, whether established in the social or legal discipline, means that disparate results are the fault of the victims of racism. The "Blame the Victim" ideology has a long history in the United States and was exposed in the midst of the Civil Rights Movement in a book by William Ryan. n56 Brazil presents a classic example of what happens when racism ceases to exist, while disparities continue. Ideally, there is no racism in Brazil. Ask any Brazilian and they will tell you there is no racial discrimination in Brazil. n57 The reality in Brazil is that the social and economic situation for the Black population is dismal. n58 Brazil has a color caste system that classifies people as white, pardos (mixed race), black and [*27] Asian. The pardos category has up to seven sub-categories. The same peo-

ple who declare there is no racism can recite the various racial categories with great specificity. One has to wonder why it is necessary to have so much racial classification, if there is no racism.

In a recent trip to Brazil to present this paper at the Lat-Crit South North Exchange Conference, a young black Brazilian told a story about attempting to rent an apartment in Rio de Janeiro and having trouble finding a nice apartment to rent. He indicated his white friend with the same income was able to rent the apartment easily. However, he prefaced his comments by saying he did not think racism was the reason for his difficulty and repeated the phrase I heard often while in Brazil, "There is no racism in Brazil." I asked the young man how he explained his failure to find an apartment, compared with his white friend's success, and he inarticulately responded with words that included words like, "no chip on my shoulder," "not a complainer," and finally the personal attribution, "maybe I am not as personable."

If race was not the culprit, then some inferiority 'within' had to explain the different result. Therein lies the problem in defining racism out of existence in a culture. If there are disparities based upon race that impact the human condition, which are not explained through racism, then there is nothing left but to internalize the cause. It is the African American students' fault they are not receiving a competitive quality education. It is the individual's fault: 1) he had to drop out of college due to lack of resources; 2) she had a baby because they could not afford birth control pills or an abortion; 3) the gas was turned off because he could not afford rapidly increasing heating bills in the drafty rented house and could not move because there was no money for moving expenses and first and last month's rent on a new place; 4) she has no health insurance, and etc. If racism is not the culprit, these disparities in opportunities and privileges have to be taken personally.

Since racism does not exist in the minds of the people in Brazil, it would be almost impossible to win a race discrimination case there. There are very real race based distinctions at play in Brazil, so the elimination of racism had to start ideologically. Perhaps it started by socially defining racism so narrowly that only the most obvious overt behavior fell into the category, such as Blum proposes. That definition could have been embraced by the culture and then reflected in the legal system.

In the United States, there is ample evidence that the legal system's response to race has driven the social perception of racism. Immediately after the Civil Rights Movement, in the late sixties and early seventies, citizens of the United States were acutely aware of the inequities heaped [*28] upon African American people in the United States. The Southern population had grown up with overt segregation and Jim Crow laws. Many citizens of the South witnessed lynchings as late as the sixties. Everyone knew that the law of the land, up until 1954, included separate but equal accommodations for blacks and whites, as expressed in *Plessy v. Ferguson*. n59 The overturning of the "separate but equal" doctrine by *Brown v Topeka* n60 was met with intense civil resistance. Federalized state troops were deployed to assist with its enforcement. In the North, people of all races were aware of the covert subtle racism that was pervasive in the Northern culture. Schools, neighborhoods, workplaces and churches were segregated in the most insidious of ways, but were segregated nonetheless.

By 1978, the writings of the immediate post Civil Rights Era did not deny the existence of racism or its impact on African Americans. In fact, the existence of racism was widely-accepted, and affirmative action became the practice, in large part by choice, as citizens recognized the injustice of discrimination and sought to make amends. The University of California at Davis medical school, along with institutions of higher education all over the country, voluntarily implemented affirmative action programs to increase the number of African American students enrolled at their institutions. n61 The city of Richmond, Virginia, the capital of the confederacy, acknowledged that it had discriminated against African American contractors in the past and implemented a program to ensure that a fair proportion of the city's contracts went to minority contractors. n62 The federal government implemented and strengthened programs designed to increase the number of minority employees, promote minority contracts n63 and develop minority businesses. With or without an admission of personal discrimination, institutions all over the nation responded to the civil rights movement, the martyrdom of the Reverend Martin Luther King Jr., and the [*29] new culture of non-discrimination with programs designed to right the wrongs of the past. n64

The movement towards affirmative action was not uniform. New groups formed, and existing groups rallied their resources to fight against the new affirmative action programs designed to promote racial justice. These groups, like The Association of General Contractors of America, n65 used the courts to promote their cause and they were successful. Then the rule of law began to change the definition of justice and the will of the people turned with it. Words like, "illegal quota," "reverse discrimination" and "illegal set asides" became synonymous with affirmative action. Supreme Court decisions made it clear that affirmative action programs were subject to strict judicial scrutiny, and thus, must serve a "compelling" state interest and be "narrowly tailored" to achieve those ends in order to be considered constitutionally

valid. The Court emphasized that evidence of societal discrimination was not enough to support the constitutionality of an affirmative action program. Instead, there needed to be a particularized demonstration of discrimination going beyond statistical disparities. Even if the institution or the government could demonstrate a compelling state interest justifying the need for affirmative action, an affirmative action program could only consider race after race-neutral methods were found to be an inadequate remedy. n66 Furthermore, the party seeking relief must have personally suffered from discrimination. It became easier to prove reverse discrimination against white people than it was to prove allegations of discrimination and racism against African Americans.

The words defining racism, or its non-existence, came straight from the pages of court opinions, entered the press, and then shaped the debate and attitudes on affirmative action among everyday citizens in the United States. When the Supreme Court says that the University of California's affirmative action program constitutes reverse discrimination against white people, and states that it is illegal for an institution to respond to societal discrimination, that molds how even liberal whites think about affirmative action. In *Regents of the University of California v. Bakke*, n67 the Supreme Court was given an opportunity to decide that affirmative action was an [*30] appropriate response to hundreds of years of racism and its impact on African American people. Instead the court decided that the "benign" use of race in an affirmative action program was "suspect" and potentially a violation of the 14th Amendment rights of white people displaced by the program. The concept of reverse discrimination was bred, if not born, in the *Bakke* case, along with a cultural shift in opinion against affirmative action.

The Supreme Court shaped the language used to define affirmative action and simultaneously formed a new concept of racism as something outside of the ordinary course of events. If the public accepts that societal racism does not exist in a court of law in a manner sufficient to support a program designed to ameliorate the effects of racism, then the public could likewise believe that there is no racism absent the most overt behavior.

The relative success of *Bakke* encouraged further challenges to affirmative action programs by public interest groups all over the country. In *City of Richmond v. J.A. Croson Co.* n68, the Supreme Court held that it was illegal for the city of Richmond, Virginia to implement a set aside program which encouraged the use of minority contractors. The city of Richmond knew it needed to demonstrate discrimination in order to support the constitutionality of its newly implemented affirmative action program under the rule of law presented in *Bakke* and *Wygant*, so the city admitted to discrimination. The Supreme Court held, however, that the capital of the confederacy could not merely admit to discrimination, it had to prove it. Thus, the predicate study was born; a study performed by professionals designed to prove that there was historical discrimination. People all over this country were so determined to do the right thing, that city and state governments commissioned predicate studies to support the constitutionality of their minority business enterprise programs. In large part, when challenged in the courts, such programs failed to pass judicial scrutiny.

Public opinion concerning the legitimacy of integration, if not the existence of racism, continue to emerge as well meaning people understand and encourage integration. In *Parents Involved in Community Schools v. Seattle School District # 1*, n69 the city of Seattle attempted to implement a voluntary plan to increase the integration of its public schools. The Supreme Court said that the school boards did not present any "compelling state interest" that would justify the assignment of school seats on the basis of race. The school district did not allege a history of de jure discrimination as the constitutional justification for its plan, but instead implemented the [*31] integration plan based upon the compelling state interest of having integrated schools. The Supreme Court made it clear in *Parents Involved* that illegal discrimination is a requirement for any integration plan based upon race. In accordance with its decision in *Bakke*, the Court determined that a plan using race, even with benign objectives, would only survive Fourteenth Amendment strict scrutiny if there was clear cut evidence of overt discrimination. Through this pattern of requiring absolute proof of discrimination in order to support an affirmative action program and by setting the bar for proving racism so high, the Supreme Court has redefined racism over the past thirty years. If racism cannot be proven given the extremely high standard of proof established by the Supreme Court, then it does not legally exist. The standard set by the Court has become the societal standard for demonstrating racism. Racism does not exist unless the action is intentional, malicious and overt. Derogatory language, no matter how hurtful, like that used by Don Imus, is not racist since we cannot prove that he had any malicious intent. Likewise, words which include diminutive implications based upon race, like those of then Senator Joe Biden, are not racist since he clearly intended to compliment and not offend President Obama. The Sean Delonas cartoon depicting the president as a chimpanzee is not racist absent clear evidence that he knew there was a racist connection between primates and African Americans. The standards imposed by the Supreme Court to prove racism have infected society's perception of racism. As a result, the United States, like Brazil, is defining racism out of existence.

As mentioned in Part II, in the United States we have already imposed a requirement of "intent" in order to demonstrate racism for Fourteenth Amendment and Title VII purposes. That narrow application of racism serves as an impediment to retaining affirmative action legislation designed to balance the playing field after hundreds of years of overt governmentally sanctioned segregation and discrimination. Although it is my contention that the Courts helped define racism as only including the most overt conduct, it is possible for society to reject that definition and redefine the concept of racism to include behavior that impacts historically oppressed people in a more subtle manner. A social definition of racism that further expands the concept of intent, thus narrowing the activity that would fall under the definition of racism, could result in even further inroads into the accessibility of legal redress for discrimination.

[*32] **Conclusion**

Racism is unconsciously learned behavior. Subtle references in everyday talk, such as the examples provided in Part I, above, impart the culture of racism. Ossie Davis described the impact of language in a 1969 speech:

In my speech, I will define culture as the sum total of ways of living built up by a group of human beings and transmitted by one generation to another. I will define education as the act or process of imparting and communicating a culture, developing the posers of reasoning and judgment and generally preparing oneself and others intellectually for a mature life. I will define communication as the primary means by which the process of education is carried out. I will say that language is the primary medium of communication in the educational process and, in this case the English language. I will indict the English language as one of the prime carriers of racism from one person to another in our society and discuss how the teacher and the student, especially the Negro student, are affected by this fact. n70

Ossie Davis makes the point that language is the vehicle of education that transmits racism from student to pupil. This paper makes the point that racism is subtle and a part of our everyday talk. Racism is transmitted and received unconsciously. If racist words are evaluated on the intent of the speaker, rather than the impact on the victim, then hurtful racist commentary will go unnoticed. Don Imus will continue to use the media to make insulting remarks and Vice President Joe Biden may continue to make off the cuff remarks that have unintended insulting content. Given the amount of attention he received, which I am sure did not hurt his bottom line, coupled with the lack of sanctions for his off-color cartoon, I have little doubt that Sean Delonas will strike again. I believe that the Supreme Court has shaped the social definition of racism in the Post-Civil Rights era over the past forty years. By using the Fourteenth Amendment to eliminate programs designed to rectify the racial injustices of the past, the Supreme Court has made it virtually impossible to prove racism absent the most overt [*33] conduct. American society has been infected with this narrow definition of racism. Although the Courts have been the driving force behind narrowing the concept of racism, society can change the trend. If the social definition of racism breaks away from the legal definition, change can happen. The Civil Rights Movement reflected a change in the ideology of the American people and the Court followed that lead in its decisions making segregation unconstitutional. The Supreme Court undermined most attempts to achieve integration by declaring them unconstitutional, and essentially defined racism out of existence both from a legal perspective and in the minds of the American people. In the same way that the will of the people ended legally-sanctioned segregation, using the Courts as a vehicle to do so, the people can also demand reasonable action to make integration happen. Society needs to reject the definition of racism employed by the courts as resoundingly as it rejected the "separate but equal" doctrine. In taking control of our own language, society can propel the Courts to adopt a new definition of racism that allows us to embrace the ideology most Americans hold true; freedom, justice and equal opportunity for all within our integrated society.

Legal Topics:

For related research and practice materials, see the following legal topics:

Governments
Federal Government
Elections
International Law
Sovereign States & Individuals
Human Rights
Slavery
Labor & Employment Law
Discrimination
Racial Discrimination
Employment Practices
Compensation

FOOTNOTES:

n1 Norman Cousins, *The Environment of Language*, *The Saturday Review*, Apr. 8, 1967, at 36

n2 See Kenneth B. Clark & Mamie Clark, *The Development of Consciousness of Self and the Emergence of Racial Identification in Negro Preschool Children*, 10 *Journal of Social Psychology* 591, 591-599 (1939); Kenneth B. Clark & Mamie Clark, *Skin Color as a Factor in Racial Identification of Negro Preschool Children*, 11 *The Journal of Social Psychology* 159, 159-169 (1940); Lloyd Yabura, *Towards a Language of Humanism*, in *Rhythm* 30 (1971) ("Any African who consciously or unconsciously absorbs the European worldview and its dangerous devilview of blackness is absorbing his own non-being - his own death").

n3 On the connotations associated with "black" and "white" see Ossie Davis, *The Language of Racism: The English Language is My Enemy*, in *Language in America* (Niel Postman, et al. eds., 1969) ("A superficial examination of *Roget's Thesaurus of the English Language* reveals the following facts: The word "whiteness" has 134 synonyms, forty-four of which are favorable and pleasing to contemplate. For example: 'purity,' 'cleanness,' 'immaculateness,' 'bright,' 'shiny,' 'chaste,' 'unblemished,' 'unsullied,' 'innocent,' 'honorable,' 'upright,' 'just,' 'straight-forward,' 'fair,' 'genuine,' 'trustworthy' -- and only ten synonyms which I feel to have been negative and then only in the mildest sense, such as 'gloss-over,' 'whitewash,' 'gray,' 'wan,' 'pale,' 'ashen,' etc.

The work 'blackness' has 120 synonyms, sixty of which are distinctly unfavorable, and none of them even mildly positive. Among the offending sixty were such words as 'blot,' 'blotch,' 'smut,' 'smudge,' 'sullied,' 'be-grime,' 'soot,' 'becloud,' 'obscure,' 'dingy,' 'murky,' 'low-toned,' 'threatening,' 'frowning,' 'foreboding,' 'forbidding,' 'sinister,' 'baneful,' 'dismal,' 'thundery,' 'wicked,' 'malignant,' 'deadly,' 'unclean,' 'dirty,' 'unwashed,' 'foul,' etc"). *Id.*

n4 Although clearly the word Negro, used to describe African people for hundreds of years had negative and racist origins, derived from Nekros in Greek which means death, Nigrus-a-num is Latin for black, Negor in Spanish and Portuguese, and Nig(g)ard(e) in middle English meaning slovenly. See David R. Burgest, *The Racist Use of the English Language*, 5 *Black Scholar* 37, 40 (Sept. 1973).

n5 Robert B. Moore, *Racism in the English Language*, in *The Meaning of Difference: American Constructions of Race, Sex and Gender, Social Class, and Sexual Orientation* 502, 502-3 (Karen E. Rosenblum ed., 3rd ed. 2003).

n6 See generally David R. Burgest, *The Racist Use of the English Language*, 5 *Black Scholar* 37, 37-47 (Sept. 1973).

n7 Although the author is aware of the movement to eliminate all use of the racial slur "nigger," it is impractical to discuss racism in language without identifying the language under discussion.

n8 See Bob Herbert, *Words as Weapons*, *N.Y. Times*, Apr. 23, 2007, at A19; Posting of Big Roy to The Imus Show Blog, *Imus Apologizes To Rutgers Women*, available at <http://imusblog.com/imus-apologizes-to-rutgers-women> (posted April 6, 2007). There are many controversial articles on the subject. There was more consensus on whether the statement was sexist. Sexism is a lesser evil than racism and it seems more people are willing to concede to sexism than racism. However, Imus was referring to dark skinned black women, and not about white

women, even though there were two white women on the basketball team. The comment would not have been made about white women which renders the statement essentially a race based comment.

n9 These are themes used to define racism by Lawrence Blum in his book, "I Am Not a Racist, But..."

Lawrence Blum, *I'm Not A Racist, But--: The Moral Quandary Of Race* 8 (2002).

n10 *Id.* at 14. Blum recounts a story of a teacher who is subconsciously uncomfortable with African American parents, which hinders her interactions with them, and negatively impacts her ability to serve their children, resulting in poorer performance for those children. Blum argues this is not racism, because of the lack of malice, antipathy and inferiorization. *Id.* Imus eventually reached a settlement with MSNBC reported to be in an amount over twenty million dollars. He was sued by a Rutgers basketball player Kia Vaughn for slander and defamation. *See*, Johnson, Peter, "Rutgers player sues Imus" USA Today, August 14, 2007.

n11 The New York Post, Sean Delonas for Wednesday, February 18, 2009.

n12 *See generally*, William Ryan, *Blaming the Victim* (1971). "Blaming the victim can take its place in a long series of American ideologies that have rationalized cruelty and injustice." *Id.* at 19. Ryan points out that parents and students are blamed for poor school performance, poor people are blamed for their poverty, the uninsured are responsible for their lack of health care and so on. In response to the question "Why do Victim Blamers, who are usually good people, blame the victim?" *Id.* at 25, Ryan says "They cannot bring themselves to attack the system that has been so good to them," *Id.* at 27 so, "They turn their attention to the victim in his post-victimized state." *Id.* at 28.

n13 The interview was printed in the February 5, 2007 issue of The New York Observer. Jason Horowitz, (*The Morning Read*), The New York Observer, Feb. 5, 2007, at 1. An audio recording of this quote is *available at* <http://www.brightcove.com/title.jsp?title=463858485>.

n14 Eduardo Bonilla-Silva, *Racism Without Racists* 1 (2nd ed. 2003).

n15 *NAACP delegates 'bury' N-word in ceremony*, MSNBC, July 9, 2007, *available at* <http://www.msnbc.msn.com/id/19680493>; *NAACP to hold funeral for 'N' word*, USA TODAY, April 23, 2007, *available at* http://www.usatoday.com/news/nation/2007-04-30-n-word-funeral_N.htm.

n16 *See generally* Vincene Verdun, *The Huge Disconnect Between Integration and Segregation*, 56 *Negro Educational Journal* 67 (2005).

n17 Recent research indicates that most whites do not associate a significant burden to being African American, which suggests a widely held belief that there is little racism, or even that being African American is beneficial (perhaps due to widely held belief that affirmative action effectively tilts the playing field in favor of African Americans). In the study conducted by Mahzarin Banaji and Phil Mazzoco, through Ohio State, Harvard and Georgia State, participants were asked how much they would need to be paid to be black for the rest of their lives and the majority answered less than \$ 10,000, while most wanted more than \$ 1 million to give up television. Elizabeth Slightham, *Study Searches for Cost of Being Black*, The Lantern, July 10, 2007, at 1.

n18 Simon Podair, *How Bigotry Builds Through Language*, 16 Negro Digest 39 (March 1967).

n19 Burgest, *supra* note 3, at 42.

n20 Bonilla-Silva, *supra* note 13, at 3.

n21 Evelyn Jones Rich, *Mind Your Language*, 19 Africa Report 48 (Sept-Oct 1974).

n22 Burgest, *supra* note 3, at 40.

n23 Yabura, *supra* note 1, at 30

n24 Siri Carpenter, *Buried Prejudice: The Bigot in Your Brain*, Scientific American, at 1 (May 2008), available at (<http://www.sciam.com/article.cfm?id=buried-prejudice-the-bigot-in-your-brain>) (last visited Mar. 2, 2009).

n25 *Id.*, at 3.

n26 Project Implicit is the work of Brian Nosek, Mahzarin Banaji, and Tony Greenwald. Brian Nosek is currently an Assistant Professor of Psychology at the University of Virginia. See <http://projectimplicit.net/nosek/papers/nosek.vita.pdf> (last visited Mar. 2, 2009). Mr. Nosek received his Ph.D. in Psychology from Yale University in 2002 and his research interests include: implicit cognition, attributions of responsibility, as well as stereotyping and prejudice. *Id.* Mahzarin Banaji is the Head Tutor in the Department of Psychology at Harvard University. See [http://www.people.fas.harvard.edu/\[Tilde\]banaji/bio/index.htm](http://www.people.fas.harvard.edu/[Tilde]banaji/bio/index.htm) (last visited Mar. 2, 2009). Ms. Banaji received her Ph.D. from the Ohio State University in 1986. Ms. Banaji is a Fellow of the American Association for the Advancement of Science, the American Psychological Association, and the Association for Psychological Science. Tony Greenwald is a Professor of Psychology at the University of Washington. See (<http://faculty.washington.edu/agg/pdf/vita.pdf>.) (last visited Mar. 2, 2009) Mr. Greenwald received his Ph.D. in psychology from Harvard University in 1963.

n27 The Boston Globe, *How the IAT Works* (December 19, 2004), available at (http://www.boston.com/news/globe/ideas/articles/2004/12/19/how_the_iat_works/) (last visited Mar. 2, 2009).

n28 See generally, Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 *Duke L.J.* 345, 347 (2007) [hereinafter *Forgotten Racial Equality*].

n29 Yabura, *supra* note 1 at 31.

n30 For many years it was common for African American men to shave their heads, so the terminology "nappy hair" or "nappy headed" would most often be used in reference to African American women.

n31 In the author's own, although admittedly unscientific, study of the word "ho," several middle class middle aged males were asked if they were familiar with the terminology "ho" and "whore." Among white males, all were familiar with "whore" but not "ho." African American males, whether middle class or not, were all familiar with the terminology "ho" and "whore" and knew they referenced the same phenomenon, a promiscuous woman.

n32 See discussion, *supra*, note 26.

n33 Charles R. Lawrence III, *The Id, The Ego and Equal Protection: Reckoning With Unconscious Racism*, 39 *Stan. L. Rev.* 317, at 321 (1987).

n34 *Id.*

n35 Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, The Life of One Blackwoman in the Legal Academy*, in *Critical Race Theory: The Cutting Edge* 498, 498-99 (Richard Delgado ed., 1995).

n36 Goff, P. A., Eberhardt, J. L., Williams, M. J., & Jackson, M. C. (2008). *Not yet human: Implicit knowledge, historical dehumanization, and contemporary consequences*. *Journal of Personality and Social Psychology*, 94, 292-306 (Historical representations explicitly depicting Blacks as apelike have largely disappeared in the United States, yet a mental association between Blacks and apes remains. The authors demonstrate that U.S. citizens implicitly associate Blacks and apes. Their research found that references to black criminal defendants in murder trials with ape like metaphors were more likely to result in the death penalty). See also, *Discrimination Against Blacks Linked to Dehumanization, Study Finds*, *Science Daily* (Feb. 8, 2008) available at (<http://www.sciencedaily.com/releases/2008/02/080207163811.htm>) (last visited Mar. 2, 2009). See also: DeWayne Wickman, *Blacks as Monkeys? Its time for an adult conversation, who suggested Goff's article should*

have been required reading at The New York Post. USA Today Blog *available at* (<http://blogs.usatoday.com/oped/2009/02/blacks-as-monke.html>) (last visited Mar 2, 2009).

n37 To view a talk from the 2007 Project on Law and Minds Sciences conference at the Harvard Law School (2007 PLMS) where Professor Eberhardt presents her theories on association with apes and sentencing see (<http://thesituationist.wordpress.com/2009/02/04/jennifer-eberhardts-policing-racial-bias/>) (last visited Mar. 2, 2009). *Also see*, <http://whatsortsofpeople.wordpress.com/2009/02/07/have-mercy-jennifer-eberhardt-on-implicit-racial-bias-plms/>) (last visited Mar. 2, 2009).

n38 *Washington v. Davis*, 426 U.S. 229 (1976). The Supreme Court held that disparate impact, by itself, is not sufficient to make out an equal protection violation. In order to establish a prima facie case of discrimination, plaintiff must show a purpose or intent to discriminate. The majority of the Court felt that the disparate impact test went too far, as mere impact alone should not be sufficient to trigger strict scrutiny. *See also* Charles Lawrence, *The Id, Ego and Equal Protection: Reckoning With Unconscious Racism*, 39 *Stan. L. Rev.* 317 (1987).

n39 A prima facie case of discriminatory impact may be established by showing that an employer's facially neutral practice has a disparate impact on the plaintiff's racial group and cannot be justified by business necessity. Such a discriminatory racial impact is frequently evidenced by statistics demonstrating that the employer's selection methods or employment criteria result in employment of a disproportionately larger share of whites than of minorities out of a pool of qualified candidates. Once the inference of discrimination has been raised by a prima facie showing, the defendant may defend by making a showing of a "business necessity" for the practice or practices, which is itself not based on race but on a genuine business need and which has a manifest relationship to the employment in question or a demonstrable relationship to successful performance of the jobs for which the practice is used. If the employer provides evidence of business necessity, the plaintiff must then show that other selection devices without similar discriminatory effect would also serve the employer's legitimate business interests. *See Griggs v. Duke Power Co.*, 401 U.S. 424, 429-430 (1970).

n40 *See* Lawrence, *supra* note 57, at 319.

n41 *Id.*

n42 *Id.* at 322.

n43 *See* Blum, *supra* note 8. For a definition of racism that does not include intent see Bonilla-Silva, *supra* note 11, at 3 ("Instead of relying on name calling (nigger, Spics, Chinks) color-blind racism otherizes softly (these people are human, too)"), and Bonilla-Silva, *supra* note 11, at 55 ("But the Civil Rights era shattered among many things, the United States' norms about public discussions on race. Hence using words such as 'nigger' and 'Spic' and even saying things that sound or can be perceived as racist is deemed immoral").

n44 Blum, *supra* note 8, at 8.

n45 Blum, *supra* note 8, at 3.

n46 *Grutter v. Bollinger*, 539 U.S. 306 (2003); *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989); *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

n47 *See generally*, Ryan, Blaming the Victim, *supra*, note 12.

n48 Bonilla-Silva, *supra* note 11, at 2.

n49 Bonilla-Silva, *supra* note 11, at 3-4.

n50 Bonilla-Silva, *supra* note 11, at 15.

n51 Bonilla-Silva, *supra* note 11, at 131.

n52 Blum, *supra* note 8, at 9.

n53 David R. Burgest, *Racism in Everyday Speech in Social Work Jargon*, 18 *Social Work* 21, 21 (July 1973); David R. Burgest, *The Racist Use of the English Language*, 5 *Black Scholar* 37, 37 (Sept 1973).

n54 Attorney General Eric Holder made the comment at a Black History Month celebration while addressing Justice Department employees on February 18, 2009. See CNNPolitics.com, Holder 'nation of cowards' remark blasted, praised (<http://www.cnn.com/2009/POLITICS/02/19/holder.folo/>) (last visited Mar.3,2009).

n55 *See generally* WILLIAM RYAN, BLAMING THE VICTIM (1971).

n56 *Id.*

n57 At the same conference where this was mentioned a representative from Puerto Rico said there was no racism in Puerto Rico either. She acknowledged differences in income, jobs and education, for darker people but attributed the differences to historical colonial conditions, which do not exist in post-colonial Puerto Rico (if there is such a thing). Since Puerto Rico keeps no race based statistics, she indicated it is hard to measure race based differences in income, opportunity and quality of life.

n58 Carlos Hasenbalg and Nelson do Valle Silva, *Notes on Racial and Political Inequality in Brazil*, in *Racial Politics In Contemporary Brazil* 154, (Michael Hanchard ed., 1999). (...[n]early 40% of the nations Blacks live in favelas, the contaminated hillside slums composed of thousands of ramsacle houses. Blacks have a higher illiteracy rate than whites (33 percent versus 15 percent); and almost 40 percent of the Black population toils in menial jobs where they earn less than the minimum wage of \$ 50 per month.) Whittaker, Charles, "*Blacks in Brazil: The Myth and the Reality*" *Ebony*, February, 1991.

n59 *163 U.S. 537 (1896)*.

n60 *347 U.S. 483 (1954)*.

n61 In *Regents of the University of California v Bakke*, *438 U.S. 265 (1978)*, a white male medical school applicant claimed he had not gained admission to medical school at the University of California Davis because sixteen slots were set aside for minority students. When the program was challenged, in a plurality decision, Justice Powell almost offhandedly ruled out societal discrimination as the foundation for a race based remedy. See, Vincene Verdun, *The Only Lonely Remedy*, *59 Oh. St. L.J. 793, 802 (1998)*.

n62 *City of Richmond v J.A.Croson Co.*, *488 U.S. 480 (1989)*.

n63 In *Adarand*, The Supreme court held the violations of the constitutional rights of white contractors, already acknowledged in *Croson*, applied to the federal government which made unconstitutional most federal programs designed to benefit groups that had been historically discriminated upon based upon race.

n64 See generally, Vincene Verdun, *If the Shoe Fits Wear It: An analysis of Reparations to African Americans*, *67 Tul. L. R. 597 (1993)*.

n65 The Association of General Contractors of America led the challenge against affirmative action programs for contractors all over the nation. The organization targeted local, state and federal programs in order to impact the viability of affirmative action programs across the nation.

n66 See generally *Wygant v Jackson Board of Education*, 476 U.S. 267 (1986) and *Adarand Constructors v. Pena*, 515 U.S. 200 (1995).

n67 438 U.S.265 (1978).

n68 488 U.S. 469 (1989).

n69 *Parents Involved in Community Schools v. Seattle School District # 1*, 127 S. Ct. 2738 (2007).

n70 OSSIE DAVIS, *The Language of Racism: The English Language is My Enemy*, in *Language In America* 73 (Niel Postman, et al. eds., 1969).