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# Unconscious Bias and the 2008 Presidential Election

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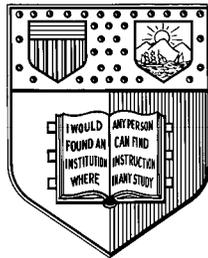
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### **Unconscious Bias and the 2008 Presidential Election**

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## UNCONSCIOUS BIAS AND THE 2008 PRESIDENTIAL ELECTION

GREGORY S. PARKS<sup>†</sup> & JEFFERY J. RACHLINSKI<sup>††</sup>

### ABSTRACT

The 2008 presidential campaign and election will be historic. It marks the first time a Black person (Barack Obama) and a woman (Hillary Clinton) have a real chance at winning the Presidency. Their viability as candidates symbolizes significant progress in overcoming racial and gender stereotypes in America. But closer analysis of the campaigns reveals that race and gender have placed enormous constraints on how these two Senators can run their candidacy. This is not surprising in light of the history of race and gender in voting and politics in America. But what is perhaps more surprising is how the campaigns have had to struggle not only with overt sexism and racism, but with unconscious, or implicit, biases in their campaigns. Recent research from social psychologists indicates that unconscious race and gender biases are widespread and influence judgment. Because existing anti-discrimination law is designed to combat overt, or explicit, biases, it does not address unconscious biases well. If even Senators Clinton and Obama, with an array of consultants and advisors behind them, find unconscious racism and sexism to be a stumbling block in what is nothing more than the most elaborate, grandest job interview of them all, then what must it be to the average Black person or woman seeking a job or promotion?

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## Introduction

What happened in the New Hampshire Democratic primary in the 2008 Presidential election cycle in the United States was historic on many levels. The results of 2008 election cycle's first primary signaled that the unbroken string of White male nominees for the Presidency from the major political parties was at an end. The results in New Hampshire made it extremely likely that either Hillary Clinton, a woman, or Barack Obama, a Black person, would emerge as the Democratic Party's nominee.<sup>1</sup> By itself, this marks a major change in gender and race relations in the United States. Such an outcome would have been unthinkable in decades past. Closer scrutiny of the results in New Hampshire, and of the Clinton and Obama campaigns more generally, reveal that Clinton's gender and Obama's race place enormous restrictions on how each will be able to make their respective cases for the nomination and ultimately for the Presidency. These restrictions show the nature and extent of continuing influence of gender and race play on how Americans evaluate people and how law regulates race and gender relations.

Other than the success of Senators Clinton and Obama, the second most notable aspect of the results in New Hampshire was the mistaken predictions concerning the outcome of the Democratic primary. Over the weekend before the primary, pollsters from at least three major organizations contacted hundred of New Hampshire's likely voters, so that the nightly news on Monday could predict the winner a day early. The pollsters predicted Obama would win by perhaps ten points (plus or minus, course).<sup>2</sup> So convincing were the predictions that even the Clinton campaign began preparing for defeat. Despite what they told the pollsters, New Hampshire's voters had other plans. Rather than beating Senator Clinton by ten points, Senator Obama lost by three points.

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<sup>1</sup> Two-thousand eight is not the first time a Black person or a woman has run for this nation's highest office. Black men (i.e., Jesse Jackson and Al Sharpton), Black women (e.g., Shirley Chisholm and Carol Moseley Braun), and one White woman (i.e., Patricia Scott Schroeder) all ran. Two-thousand eight, however, marks the first time that a Black person or woman is poised to secure a major party's nomination for President.

<sup>2</sup> Just two days before the New Hampshire primary, Obama had erased Clinton's lead in the polls. Steven Thomma, *Obama Tied with Clinton in N.H. Poll*, MIAMI HERALD, Jan. 6, 2008, at 1A. The day prior to the New Hampshire primary, Obama had established a 13-point lead over Clinton. Kenneth Lovett, *Obama Has 13-Point N.H. Lead*, NEW YORK POST, Jan. 7, 2008, at 004. In the end, however, Clinton beat Obama in the polls—39% to 36%, respectively. Jack Torry & Joe Hallett, *Clinton Shocks Obama – McCain back in Business*, COLUMBUS DISPATCH, Jan. 9, 2008, at 01A.

How could the polls have gotten it so wrong? Modern polling techniques are remarkably good at identifying likely voters, and the poll results for the Republicans were quite accurate.<sup>3</sup> Undecided voters sometimes break in unpredictable ways, but the exit polls confirmed an expected defeat for Senator Clinton.<sup>4</sup> The remaining explanation is one that has haunted Black candidates for decades—the “Bradley Effect.”<sup>5</sup> The Bradley Effect, named for former Mayor Tom Bradley of Los Angeles, is the tendency for polls to overestimate White support for a Black political candidate. Even though some pollsters believe the Bradley Effect to be a thing of the past, or deny that it accounts for the shift in New Hampshire, no other explanation seems to account for the discrepancy.<sup>6</sup>

The New Hampshire surprise and the unusual pitfalls that both Senators Clinton and Obama have negotiated during their campaigns together reveal a wealth of insights about how Americans evaluate race and gender. Each candidate has experienced success on the campaign trail that no Black person and no woman could have dreamed of decades ago. These two campaigns together obviously reveal the great strides against racism and sexism that America has achieved. Egalitarian norms have become the norm, and few will assert that they oppose Obama or Clinton because of their race or gender. But at the same time, each campaign has had to face subtle forms of racism and sexism in the electorate, which have boxed the campaigns into fairly narrow scripts.

For her part, Clinton walks a tightrope between convincing voters that being a woman who is attuned to issues that concern Democratic women (e.g., abortion, child care, health care), while also avoiding implicit concerns that a woman lacks leadership qualities Americans like to see in a President particularly at a time of economic unrest and the war on terror. Barack Obama walks a similar line between being “Black enough” for the Black community while avoiding issues and statements that might trigger racial stereotypes, fears, and resentment that some Whites harbor against Blacks. For example, Obama cannot afford to explicitly, and at length,

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<sup>3</sup> See Jon Cohen & Jennifer Agiesta, *Polls Were Right About McCain but Missed the Call on Clinton's Primary Win*, WASHINGTON POST, Jan. 9, 2008, at A7.

<sup>4</sup> See *supra* note 2.

<sup>5</sup> See *infra* notes 178 to 213 and accompanying text (discussing the Bradley Effect and its history).

<sup>6</sup> See *infra* notes 214 to 219 and accompanying text (reviewing evidence that the Bradley Effect was responsible for the outcome in New Hampshire).

speak about racial injustice without causing Whites to feel that he is blaming them for the lack of racial progress in this country. The Bradley Effect is just the most noticeable evidence of how the egalitarian norms most voters say they embrace collide with their implicit biases to a candidate's detriment. But each candidate—as seen through their actions and the messages they give—demonstrates that they navigate minefields that do not affect candidates who are White and male.

The 2008 election represents a unique case study of race and gender in America, and of the difference between explicit and implicit biases. The explicit barriers that would have prevented either candidacy in decades past are mostly gone. But more subtle stereotypes linger, often at an unconscious level. Senators Clinton and Obama are both obviously smart; their campaigns are well-managed, and it is no surprise to see evidence that these organizations are well-aware of the lingering biases that dictates the boundaries of how the candidates can present themselves. The 2008 election thereby shows how well-managed, highly motivated organizations navigate contemporary forms of racism and sexism.

A close scrutiny of how the 2008 election is relevant to any woman or minority applicant for any job that does not fit with lingering stereotypes about gender or race. After all, the American Presidential elections are simply the most elaborate job interviews on the planet. If Obama and Clinton, with all of the organizational support behind them, are not immune from the influence of lingering biases, how can the ordinary job applicant hope to avoid them?

Judges, legislators, and reformers have long struggled with the difference between explicit and unconscious bias.<sup>7</sup> Anti-discrimination law is far better suited to address biases that people are fully aware of (“explicit” biases) than it is to addressing biases people do not even themselves know that they have (“unconscious” or “implicit” biases).<sup>8</sup> People who overtly hold

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<sup>7</sup> See Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

<sup>8</sup> See 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); 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); Audrey J. Lee, Note, *Unconscious Bias Theory in Employment Discrimination Litigation*, 40 HARV. C.R.-C.L. L. REV. 481 (2005); Deana A. Pollard, *Unconscious*

racist or sexist sentiments will often say as much in public ways. A police chief who says he does not believe women make good officers or a human resources director who states that she worries about hiring Blacks because she thinks they are lazy make easy targets for the law's prohibition against discriminatory hiring practices.<sup>9</sup> Such individuals commonly try to hide these sentiments, particularly in litigation, but it is easy for these people to slip up. Unconscious bias, however, is extremely difficult to detect. Even a person who holds implicit biases against women or Blacks is not necessarily aware of these biases. They might judge resumes of women or Blacks more harshly than those of White males without even being aware of what they are doing. Although anti-discrimination law bans the influence of race or gender in hiring decision regardless of the source of such influence, unconscious bias can easily escape scrutiny.

The concern that anti-discrimination law fails to address how contemporary racism works has led scholars to advocate for reforms. Legal scholars have begun to recognize that even people who embrace explicit egalitarian norms might nevertheless continue to hold unconscious, or implicit, biases concerning race and gender.<sup>10</sup> Some assert that the law should rely on statistical proof of alone to support claims of discrimination.<sup>11</sup> Others contend that courts should

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*Bias and Self-Critical Analysis: The Case for a Qualified Evidentiary Equal Employment Opportunity Privilege*, 74 WASH. L. REV. 913, 915 (1999).

For a broader understanding of implicit cognition and its application to the law see IAN AYRES, PERVERSIVE PREJUDICE? UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION 419–25 (2001); R. Richard Banks, Jennifer L. Eberhardt, & Lee Ross, *Discrimination and Implicit Racial 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); 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 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); Kristin A. Lane et al., *Implicit Social Cognition and Law*, 3 ANN. REV. L. SOC. SCI. 427 (2007); Lawrence, *supra*, note 7, at 336-88; Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decision-making, and Misremembering*, 57 DUKE L.J. (forthcoming 2007); Lateef Mtima, *The Road to the Bench: Not Even Good (Subliminal) Intentions*, 8 U. CHI. L. SCH. ROUNDTABLE 135 (2001); 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); 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).

<sup>9</sup> See Jolls & Sunstein, *supra* note 8, at 969-70 (describing similar examples as incidents of explicit bias).

<sup>10</sup> See generally, Symposium, *Symposium on Behavioral Realism*, 94 CAL. L. REV. 945 (2006).

<sup>11</sup> Kreiger, *supra* note 8, at 1218.

be more suspicious of the justifications for disparate treatment that decision-makers provide.<sup>12</sup> Some believe that the widespread evidence of unconscious bias supports a broad program of affirmative action.<sup>13</sup> Finally, others argue that the law should itself be directed so as to reduce the extent of unconscious bias in the population at large.<sup>14</sup>

But the range and influence of unconscious racism and sexism on actual behavior remain uncertain.<sup>15</sup> When employers choose a white male job applicant over one who is female or Black, how often is it that gender or race played the decisive factor? The policy reforms above assume that unconscious bias has widespread influence on employment decisions and other important choices. The advocates of these reforms have made some progress in identifying the extent of such influence,<sup>16</sup> but the picture is still emerging.

In this article we use the Clinton and Obama campaigns as case studies to assess the pervasiveness of implicit bias in American society. Our analysis leads us to four main conclusions. First, despite the enthusiasm surrounding these campaigns, each candidate has faced and continues to face significant obstacles to success that are due to their race and gender. Second, the obstacles that Clinton faces are less severe than those confronting Obama. The narrow gap through which she must guide her candidacy is wider than that for Obama. Third, these campaigns largely, but not exclusively, must navigate through unconscious bias, not explicit racism or sexism.<sup>17</sup> We conclude that the Clinton and Obama campaigns reveal that unconscious bias is a widespread influence on how Americans assess the characteristics of any job applicant. In turn, these conclusions support the thesis that to be effective, anti-discrimination law must address unconscious biases. Not surprisingly, we also conclude that the 2008 election has implications for laws governing voting rights as well as employment discrimination.

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<sup>12</sup> Kreiger & Fiske, *supra* note 9, at 1027-52.

<sup>13</sup> Kang & Banaji, *supra* note 9.

<sup>14</sup> Jolls & Sunstein, *supra* note 9, at 976-91; Kang, *supra* note 9, at 1101-15.

<sup>15</sup> See Jeffrey J. Rachlinski et al., Does Unconscious Bias Affect Trial Judges? (Unpublished manuscript on file with authors).

<sup>16</sup> See 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* 62 (Bernd Wittenbrink & Norbert Schwarz eds., 2007).

<sup>17</sup> See *infra* notes 328 to 348 and accompanying text.

Part I of this Article assess the campaigns of Senators Clinton and Obama, with a particular eye towards the role gender and race have played in the campaigns. Part II argues that despite changes within the law, residual racist and sexist attitudes on the parts of many Americans still serves to limit Blacks' and women's full-participation in the political process. Recent history and political science research suggest that "race [and gender still] matters"<sup>18</sup> in elections. Part III acknowledges the apparent decline in levels of explicit racism and sexism but identifies research in cognitive and social psychology regarding implicit race and gender bias as predictors of voting behaviour. We describe how this research has identified implicit biases that will affect how campaigns are run and how they might affect the likely outcome. Part IV concludes with a brief discussion of debiasing and implications for existing law.

We add a caveat at the outset. Although research on unconscious bias implicates all manner of biases against people, we have restricted our analysis to women and Blacks. The reason for this is simply that Senators Clinton and Obama vastly outpaced other candidates, including Governor Bill Richardson, who is Hispanic. All other viable candidates in this election cycle have been White and male. Our basic thesis is that if large, well-funded, well-organized national job interviews must contend with continued unconscious bias, then it must be a widespread and important phenomenon. For better or worse, Governor Richardson's campaign never gained enough traction to allow us to assess his campaign in the way we can assess those of Senators Clinton and Obama. Applying our approach to a Hispanic candidate will have to wait until another day.

**I.**  
**Running for the White House 2008:**  
**The Obama (Race) and Clinton (Gender) Factors**

Pollsters and political commentators have speculated about the role that race and gender will play in the Obama and Clinton campaigns, respectively. The racial picture of Senator Obama's campaign is complex and not only raises questions about whether Whites will support him, but also whether Blacks will—especially Black women. The gendered pictured of Senator Clinton's campaign is not one of whether women will support her candidacy but whether men will.

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<sup>18</sup> See generally, CORNEL WEST, RACE MATTERS (Beacon Press 2001).

## a. Race and Senator Obama's Candidacy

Barack Obama first emerged on the national political stage in 2004. Then a state senator running for an Illinois U.S. Senate seat, Obama delivered a rousing speech during the Democratic National Convention (“DNC”) in Boston. This speech marked Obama not only as the dominant figure in a new generation of Black political leaders,<sup>19</sup> but also made him into a rising star within the Democratic Party.<sup>20</sup> Senator Obama handily won his Senate race, and in February of 2007 announced his candidacy for the presidency of the United States.<sup>21</sup>

Obama's journey from a state legislator to a viable candidate for the Presidency progressed at blinding speed. But he had many characteristics in his favor. He is charismatic, bright, well-educated, and brings an inspirational message. Also, his timing is excellent. He is running for the presidency at a time when many Americans feel frustrated and ready for a change—possibly a big change. Wherever he goes, he draws huge, adoring crowds. He has raised money faster than any Democrat in history, and he has done so from more people than any of his peers or predecessors. Senator Obama has also built a top-notch campaign organization. Moreover, the Democratic frontrunner for most of 2007 was Senator Hillary Clinton, who is one of the most polarizing figures in contemporary American politics.<sup>22</sup> Much like the title of his DNC speech, bestselling book, and campaign mantra—*The Audacity of Hope*—Obama's candidacy has inspired lofty expectations. Americans commonly embrace optimism, youth, and audacity in their political candidates, and so Obama is a person well suited for his time.

Obama's campaign has also forced all Americans to do some soul searching. In 2002, a Gallop Poll reported that more than 95% of American voters indicated they would not consider race as a negative factor in assessing a candidate.<sup>23</sup> In a December 2007 *Newsweek* poll, 93% of

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<sup>19</sup> Jonathan Tilove, *New Star Emerges on Democratic Scene: Obama Speech Marks Race-Politics Watershed*, TIMES PICAYUNE, July 28, 2004, at 01 (quoting NYU history professor Angela Dillard as saying, “I think this is really the end of an era of race and politics.”).

<sup>20</sup> Randal C. Archibold, *Day After, Keynote Speaker Finds Admirers Everywhere*, N.Y. TIMES, July 29, 2004, at 6.

<sup>21</sup> Mark Z. Barabak, *It's Official, Obama's Presidential Bid: Senator Announces Candidacy and Where He Stands on Issues*, L.A. TIMES, Feb. 11, 2007, at 22.

<sup>22</sup> Karen Tumulty, *Out of Reach?*, TIME, Oct. 8, 2007, at 50.

<sup>23</sup> Patrick Reddy, *Does McCall Have a Chance?: Yes, he Does, But African-American Candidates for Top State Offices Face an Uphill Climb*, BUFFALO NEWS, Jan. 20, 2002, at H1.

Americans said that they would be willing to vote for a qualified Black presidential candidate.<sup>24</sup> These poll results are a far cry from the results of a similar survey in 1958, which indicated that most Americans would not accept a Black President.<sup>25</sup> But Obama's success converts these questions from symbolic expressions of egalitarian values into reality. For Obama to succeed, voters must not merely publicly embrace the ideal that race will not adversely affect their judgment in the abstract, but must embrace an actual, viable Black candidate in the anonymity of the voting booth. His candidacy requires not simply answering whether America is ready, in an abstract sense, for a Black president, but are we ready for honest dialogue about how race affects judgment.<sup>26</sup>

Senator Obama quite clearly did not enter the race merely to serve as a symbol whose presence and relative success are enough to evidence progress on race. Neither did he enter the race to make race an issue in his campaign. Senator Obama entered the race in order to win. For him, winning would require simultaneously capturing a large percentage of White votes while maintaining strong support from the Black community. Because White and Black voters will see him differently, this has required Obama to perform a delicate balancing act.

White voter support for Obama has been complicated from the start. Unlike previous Black candidates, Obama has enjoyed real success among White voters. He won in Iowa and came close to winning in New Hampshire even though both states have only tiny Black populations.<sup>27</sup> Even in South Carolina, the heart of the old South, Obama attracted large

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<sup>24</sup> Dick Polman, *Barack Obama's Race Seems to Be a Second-tier Issue in '08 Election*, AUGUSTA CHRONICLE, Jan. 24, 2007, at A05.

<sup>25</sup> Reddy, *supra* note 23. As of 1995, when Colin Powell flirted with a presidential run, America was arguably receptive to the idea of electing a person of quality whose race is either beside the point, or perhaps an asset. Polman, *supra* note 24.

<sup>26</sup> Desiree Cooper, *Let's Talk to Break a White House Tradition*, DETROIT FREE PRESS, Dec. 12, 2006, at 1B; Jonathan Kaufman, *Whites' Great Hope?: Barack Obama and the Dream of a Color-Blind America*, WALL STREET JOURNAL, Nov. 10, 1007, at A1 (quoting Stanford professor Shelby Steele saying, "The very essence of Obama's appeal is the idea that he represents racial idealism -- the idea that race is something that America can transcend. That's a very appealing idea. A lot of Americans would truly love to find a Black candidate they could comfortably vote for President of the United States").

<sup>27</sup> In Iowa, Obama won 38% of the votes; Clinton won 29%. Christina Bellatoni, *Huckabee, Obama Win in Iowa: Youth Support Bypasses Hillary*, WASHINGTON TIMES, Jan. 4, 2008, at A01. In New Hampshire, Clinton won 39%, and Obama won 36%. Patrick Healy & Michael Cooper, *Clinton is Victor, Defeating Obama: McCain Also Wins*, N.Y. TIMES, Jan. 9, 2008, at 1.

percentages of White votes.<sup>28</sup> Furthermore, Obama achieved his unprecedented ability to raise money from the grassroots with considerable support from White donors.

Views on the sources and meaning of Obama's success among Whites have been mixed from the start. Some argue that the Gallop and *Newsweek* poll numbers reflect a new reality, and that White voters now look beyond race.<sup>29</sup> Under this view, race is only a secondary issue that will play only a minimal role in the campaign.<sup>30</sup> Others contend that enough Americans are still preoccupied by race such that Obama faces an uphill struggle to capture enough White votes to succeed in a National election.<sup>31</sup> As we noted in the introduction, lurking beneath Obama's success in early primaries lies evidence that support among many Whites is weaker than it seems.<sup>32</sup> Even as Obama did well among Whites in South Carolina, he did far less well among Whites there than he did in Iowa and New Hampshire.<sup>33</sup> Furthermore, as Mayor Bradley and other Black candidates have found over the years, White support in the polls sometimes has a symbolic quality that erodes fast when it comes time to vote.<sup>34</sup> Whites sometimes give pollsters responses they perceive to be politically correct, but act on different impulses in the voting booth.<sup>35</sup>

Even White voters who actually vote for Obama are not necessarily engaged in a race-neutral focus on his qualities as a candidate, relative to Senator Clinton. Psychologists have long

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<sup>28</sup> In South Carolina, Obama won 55% to Clinton's 27%. Dan Balz et al., *Obama Is Big Winner in S.C.: Clinton 2nd After Bitter Campaign*, WASHINGTON POST, Jan. 27, 2008, at A1.

<sup>29</sup> Jaun Williams, *Obama's Color Line*, N.Y. TIMES, Nov. 30, 2007, at 23.

<sup>30</sup> Polman, *supra* note 24.

<sup>31</sup> "Take the current Democratic primary. [Social psychologist Dr. Anthony] Greenwald and colleagues modified the Implicit Association Test to search for unconscious biases among Democratic voters. When asked who they planned to cast ballots for, a sample of voters reported strong support for Mr. Obama, who held a strong lead—42% to 34%—over Sen. Hillary Rodham Clinton among the sample, with John Edwards coming in at 12. But when the same people took the Implicit Association Test, measuring their unconscious preferences, Mrs. Clinton was 'the runaway winner,' favored by 48% of them, and Mr. Obama was dead last, with 25%. Mr. Edwards was favored by 27%, according to the researchers.

And here's one finding that upends conventional wisdom: According to the test, black voters, too, held implicit biases that worked against Mr. Obama. But how could it be otherwise? Black Americans are products of the same culture as white Americans, with its myriad stereotypes of black incompetence. And black Americans have internalized many of the same stereotypes." Cynthia Tucker, *Racial Bias So Deeply Embedded That You Might Not Recognize It in You*, BALTIMORE SUN, Jan. 21, 2008, at 13A.

<sup>32</sup> Cooper, *supra* note 26.

<sup>33</sup> In Iowa and New Hampshire, Obama claimed 33% and 36%, respectively, of the White vote. In South Carolina, he only took 24%. In contrast, Clinton's share of the white vote was 27%, 39%, and 38%. Steven Thomma, *Dem's Racial Chasm Persists: S.C. Results Reinforce Opposite Challenges for Obama and Clinton*, CHARLOTTE OBSERVER, Jan. 27, 2008, at 8A.

<sup>34</sup> Polman, *supra* note 24.

<sup>35</sup> See *infra* notes 178 to 223 and accompanying text.

found that many White Americans are somewhat well-aware of their own prejudices and those of the society in which they live, and find facing these biases an unpleasant experience.<sup>36</sup> They react by engaging in actions designed to quell the uncomfortable sense that they and their peers are biased. Senator Obama could benefit from the “aversive racism” that many Americans feel, making his race an advantage among White voters. A White voter who supports Obama does not necessarily want a Black man to be president, but might only want to be able to congratulate themselves for backing a Black person. As Bruce Llewellyn, Colin Powell's cousin, told *The New Yorker* magazine, “Whites love to believe that they are fair and free of racial prejudice.”<sup>37</sup> His campaign seems, at least, to respect this concern.

Senator Obama is careful to avoid using America’s racial legacy against White voters. And in doing so, according to Shelby Steele, Senator Obama grants Whites the benefit of the doubt that they are good and decent Americans who are not racist. In return for this gift, many Whites openly embrace Senator Obama and give him a fair chance to make his case for his candidacy.<sup>38</sup> Senator Obama’s race “can implicitly encourage [White voters] to feel that a vote for Obama is a vote for tolerance, for a future free of the constricting prejudices of the past...”<sup>39</sup> If a Black man can attain this nation’s highest office—largely with the support of White voters—maybe our nation finally judges people “on the basis of the content of his character rather than the color of his skin.”<sup>40</sup> Whites would like to believe that the nation is breaking free of racial prejudice, and Senator Obama’s successful presidential campaign allows them to do that.<sup>41</sup>

Indeed, should Senator Obama win the presidency, his victory would likely have a significant impact on one of the most racial polarizing issues in America today—affirmative action. Senator Obama supports affirmative action, and his victory would signal a big change in policy from the current administration, and a big difference from any Republican alternative. His success would thus mean a short-term gain for supporters of affirmative action. At the same

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<sup>36</sup> See generally Margo J. Monteith et al., *Putting the Brakes on Prejudice: On the Operation of Cues for Control*, 83 J. PERSONALITY SOC. PSYCHOL. 1029 (2002).

<sup>37</sup> Polman, *supra* note 24.

<sup>38</sup> See SHELBY STEELE, *A BOUND MAN: WHY WE ARE EXCITED ABOUT OBAMA AND WHY HE CAN'T WIN* 74-75 (2007).

<sup>39</sup> David Greenberg, *Playing the Tolerance Card*, SLATE, April 20, 2007, available at <http://www.slate.com/id/2164662/>.

<sup>40</sup> Martin Luther King, Jr., *I Have a Dream*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.* 258 (James M. Washington ed. 1986).

<sup>41</sup> Polman, *supra* note 24.

time, an Obama Presidency would almost certainly erode long-term support for affirmative action. Whites already oppose affirmative action in large numbers.<sup>42</sup> Should Senator Obama succeed, it will be harder for many Whites to understand why affirmative action is necessary when a Black man can achieve the nation's highest office and indeed, become the very symbol of America. The anticipation of such an outcome doubtlessly encourages some White support, and might make Blacks somewhat more hesitant to support him.

If these factors facilitate a good deal of White support of Senator Obama, then ironically, Obama cannot let race play a central role in his campaign. The Obama campaign seemed to understand this from the start. Though Senator Obama openly embraces the fact that he is a Black man, he does so in a way that does not overly alarm Whites. He often notes that though his father was from Kenya, his mother was a White woman from Kansas.<sup>43</sup> He is not hesitant to call Blacks on the carpet about issues in the Black community. For example, he has spoken out on the lack of Black fathers in households,<sup>44</sup> the notion among some Blacks that academic achievement is "White,"<sup>45</sup> and against anti-Semitism<sup>46</sup> and homophobia<sup>47</sup> in the Black community. Senator Obama, however, does not make frequent comments about race issues or his Blackness, particularly in front of White audiences. As a result, the goodwill he has built among Whites is not simultaneously eroded. He even managed to embrace a Black stereotype in an endearing, disarming fashion when he quipped that he did not know if Bill Clinton was truly the first Black President, because he had not yet had the chance to observe whether President Clinton could dance.<sup>48</sup>

At the same time that these characteristics facilitate White support for Obama, they place obvious boundaries on his campaign, boundaries that make it difficult for him to win. In his effort to appeal to White voters, Senator Obama must continue running a campaign that cuts

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<sup>42</sup> See Thomas C. Wilson, *Whites' Opposition to Affirmative Action: Rejection of Group-based Preferences as Well as Rejection of Blacks*, 85 SOC. FORCES 111, 112-16 (2006) (indication that 92.3% of White men and 87.3% of White women oppose race-based preferences).

<sup>43</sup> Reiterating that he is the product of an interracial marriage could make some Whites hostile. Arguably, however, doing so may make some Whites feel that they may claim some part of Obama.

<sup>44</sup> Liam Ford, *Obama's Church Sermon to Black Dad's: Grow Up*, CHICAGO TRIBUNE, June 20, 2005, at 1.

<sup>45</sup> Susan Estrich, *Obama to Blacks: Seek Change Within*, MIAMI HERALD, May 26, 2007, at A23.

<sup>46</sup> Joseph Williams, *At King's Church, Obama Reaches Out to Black Voters: Calls for Unity, Responsibility*, BOSTON GLOBE, Jan. 21, 2008, at 1A.

<sup>47</sup> *Id.*

<sup>48</sup> Joseph Williams, *Obama, Clinton Trade Blows in S.C.: Spar Over Records; Former President at Center of Storm*, BOSTON GLOBE, Jan. 22, 2008, at 1A.

across issues and minimizes race,<sup>49</sup> even as his skin color makes it impossible for him not to discuss race issues.<sup>50</sup> This is something Senator Obama is acutely aware of, as he has noted that he is likely face attack ads if he is nominated, which "will ... try[] to make [him] into this foreign, odd, clearly African-American person ... to scare people."<sup>51</sup> Obama's challenge will be to be "White enough" to assuage color-shy voters, but Black enough to be embraced by Black voters.<sup>52</sup> Consequently, he must walk a fine line demonstrating that he is connected to the Black community without appearing to have an agenda driven by that constituency.<sup>53</sup>

What's more, race is not part of public discourse merely because of Obama; race is always a part of American political campaigns. Ironically, because of the tightrope Obama walks between Black and White voters, his White adversary, Senator Clinton can be more sure-footed with regards to race issues. In a Democratic debate at Howard University, for example it was Clinton, not Obama, who arguably assumed the traditional Black candidate's persona. She was both passionate and rhythmic in her cadence. More generally, she is able to connect openly and show solidarity with Blacks in ways that Senator Obama cannot. For example, Senator Clinton made a striking comment about the disproportionate effect that HIV has on Black communities. She said that if "HIV-AIDS were the leading cause of death of White women between the ages of 25 and 34, there would be an outraged outcry in this country."<sup>54</sup> If Senator Obama said the same words in the same fiery manner, it may have been political suicide.<sup>55</sup> The mere mention of slavery's legacy, or reparations, or institutional racism, risks dissipating White support for Senator Obama.<sup>56</sup> As such, even if Senator Obama believed race hamstrung him in

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<sup>49</sup> Roddie A. Burris, *Obama Strives to Put Aside Race Issue: Candidate Must Appeal to All S.C. Democrats to Win January Primary*, CHARLOTTE OBSERVER, Sept. 30, 2007, at 1Y.

<sup>50</sup> Ellis Cose, *Obama: Go On Offense*, NEWSWEEK, available at <http://www.newsweek.com/id/57352> (last visited Nov. 2, 2007).

<sup>51</sup> *Role for Al Gore in Obama White House?: Candidate Sees Former Vice President in 'Very Senior Capacity, If He's Willing'*, available at <http://www.msnbc.msn.com/id/21474241/> (last visited Nov. 2, 2007).

<sup>52</sup> Cooper, *supra* note 26; Kaufman, *supra* note 26.

<sup>53</sup> Tumulty, *supra* note 22. This issue played out throughout the campaign as seen in Senator Obama's balancing act in deciding not to attend Tavis Smiley's annual State of the Black Union. See William Douglas, *Only Clinton to Speak at Black Forum*, NEWS & OBSERVER, Feb. 22, 2008, at A4.

<sup>54</sup> Amina Luqman, *Obama Walks a Tight Racial Tightrope*, GREENSBORO NEWS & RECORD, July 11, 2007, at A9.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* Some Whites were anxious over Obama's church giving Minister Louis Farrakhan an award. See Richard Cohen, *Obama's Farrakhan Test*, WASHINGTON POST, January 15, 2008, at A15. Also, though Senator Obama did not receive any immediate backlash among supporters for Oprah Winfrey's endorsement of him, Ms. Winfrey did from hers. And at least some of these critiques appeared to have racial undertones and concerns that

his candidacy among White voters, he would have to remain silent about this. When a Black person confronts a White person about that White person's perceived anti-Black racial bias, that confrontation is associated with feelings of irritation and antagonism among more prejudiced participants.<sup>57</sup> Even this country's racial legacy leaves some White voters wary of electing Senator Obama out of fear about how he will handle race issues during his presidency, if elected.<sup>58</sup>

Furthermore, Obama must eschew the notion that he has done as well as he has, politically, simply because he is Black. One thing that bodes well for him is that it is difficult for Whites to label him as "mediocrity lifted up by the lowered standards" of affirmative action.<sup>59</sup> If his Columbia University and Harvard Law School degrees did not dispel this assumption, his being the first Black president of the *Harvard Law Review*<sup>60</sup> —a highly merit-based position, should have. Nonetheless, Obama must still fight the perception that he simply speaks well but lacks substance<sup>61</sup> or is otherwise lacking qualifications to become president but getting a pass by media and maybe the general public simply because he is Black.

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she was only endorsing Obama because he is Black. See <http://politicalticker.blogs.cnn.com/> (last visited Dec. 13, 2007).

<sup>57</sup> Alexander M. Czopp & Margo J. Monteith, *Confronting Prejudice (Literally): Reactions to Confrontations to Racial and Gender Bias*, 29 PERSONALITY & SOC. PSYCOL. BULL. 532, 536 (2003). Czopp and Monteith measure race bias with a measure of explicit racism. *Id.* Arguably, few Americans are avowedly racist. Research on implicit racial bias, however, suggests that nearly 70% of Whites harbor implicit anti-Black/pro-White bias. Brian A. Nosek et al., *Pervasiveness and Correlates of Implicit Attitudes and Stereotypes*, 18 EUROPEAN REV SOC. PSYCHOL 36, \_\_ (2007). Asian, Hispanic, and Native Americans harbor this bias as well. *Id.* at \_\_. Though this has not been empirically tested, it stands to reason that those who harbor implicit anti-Black/pro-White biases would, too, feel irritated and become antagonistic if confronted by Obama about their perceived race bias. As such, only those low-prejudiced individuals would experience guilt and self-criticism upon such a confrontation. Czopp & Monteith, *supra*.

<sup>58</sup> During a question and answer session that Senator Edwards conducted in Iowa during his presidential run, an elderly White gentleman asked Edwards how he would address the O.J. Simpson verdicts during his campaign. The gentleman was upset that the jury acquitted O.J., apparently, as retribution towards Whites for their mistreatment of Blacks. The gentleman went on to note his concern that if Senator Obama were elected President, Al Sharpton, Jesse Jackson, and Oprah Winfrey would hold sway over him. He also expressed concern that Senator Obama had not publicly condemned the O.J. Simpson verdict in 1995. See <http://www.msnbc.msn.com/id/22285623/>.

<sup>59</sup> STEELE, *supra* note 38, at 13.

<sup>60</sup> Fox Butterfield, *First Black Elected to Head Harvard's Law Review*, N.Y. TIMES, Feb. 6, 1990, available at <http://query.nytimes.com/gst/fullpage.html?res=9C0CE2DC1631F935A35751C0A966958260>.

<sup>61</sup> For example, Senator Joe Biden caught flack for stating Obama was "the first mainstream African-American who is articulate and bright and clean and a nice-looking guy..." Lynette Clemetson, *Racial Politics and Speaking Well: Calling Successful Blacks 'Articulate' Carries Racist Subtext*, GRAND RAPIDS PRESS, Feb. 18, 2007, at H4. What may have been intended as a compliment was not taken that way by many Blacks, as research suggests that certain types of compliments from Whites about Blacks may actually have racist undertones. See generally

Not only does Senator Obama's race hamstringing him among White voters; it is also seen as a potential difficulty in his efforts to win votes among Blacks. To succeed, Senator Obama needs White votes. But owing to the strength of his opponents, he needs Black votes as well. If Blacks abandon him en masse, he does not have a chance. And maintaining support among Black voters has been a challenge. Not long after Senator Obama announced his candidacy, the media buzz was, "Is Obama Black enough?"<sup>62</sup> Despite having done what it takes (e.g., marrying a Black woman, living in a predominantly Black neighborhood, attending a predominantly Black church) to tell Blacks he is with them, according to Political Science professor Ron Walters,<sup>63</sup> two issues seem to raise this question in the minds of potential Black voters. Personally, his father was from Africa and mother was a White woman from Kansas, so Blacks are not sure Senator Obama has the same experiences as them.<sup>64</sup> Politically, Black voters are suspicious of a Black presidential candidate who seems to have such cachet with Whites. They cannot help but wonder, in a nation where race still matters, what must a Black candidate compromise to be elected?<sup>65</sup> Senator Obama, as a presidential candidate, can only be as Black as White's allow him to be. He cannot be too overtly Black, because in doing so a number of progressive Whites who have supported his campaign may feel uncomfortable."<sup>66</sup>

In contrast, Senator Clinton, early on, built strong support among Black voters based, in part, on her husband's popularity among Blacks.<sup>67</sup> Pollster, David Johnson, credits Senator Clinton's rising popularity among Black voters to the renewed visibility, beginning in August of 2007, of her husband.<sup>68</sup> Blacks have long been ardent supporters of Bill Clinton.<sup>69</sup> But that is

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Alexander M. Czopp & Margo J. Monteith, *Thinking Well of African Americans: Measuring Complimentary Stereotypes and Negative Prejudice*, 28 BASIC & APPLIED SOC. PSYCHOL. 233 (2006).

<sup>62</sup> Luqman, *supra* note 54. Even when Obama ran for an Illinois congressional seat against former Black Panther, Bobby Rush, his blackness was questioned. Jeff Zeleny, *When It Comes to Race, Obama Makes His Point—with Subtlety*, CHICAGO TRIBUNE, June 26, 2005, at 1.

<sup>63</sup> Jean Marbella, *Who's Right When Race Lies Below the Surface*, BALTIMORE SUN, Feb. 6, 2007, at 1B.

<sup>64</sup> Gordon Jackson, *Stirring the Nation's Conscience, Obama Makes His Case for Being 'African-American Enough'*, ATLANTA DAILY WORLD, March 16, 2007, at \_\_; Marbella, *supra* note 63.

<sup>65</sup> Nikole Hannah-Jones, *Is Obama African-American Enough?: African-Americans Care If He Shares Our Values, Concerns*, OREGONIAN, Aug. 26, 2007, at E01.

<sup>66</sup> Hannah-Jones, *supra* note \_\_.

<sup>67</sup> Jonathan Kaufman & Valerie Bauerlein, *More Blacks Lean Towards Obama: Shift in Allegiance from Clinton Could Tighten Primaries in the South*, WALL STREET J., Dec. 14, 2007, at A5.

<sup>68</sup> Deb Price, *Obama or Clinton?: African-American Voters Are Torn*, DETROIT NEWS, Oct. 24, 2007, at 01A.

<sup>69</sup> See DEWAYNE WICKHAM, *BILL CLINTON AND BLACK AMERICA* 290-310 (2002).

not because of their blind faith to the Democratic Party.<sup>70</sup> Blacks hold Bill Clinton in high regard for many reasons.<sup>71</sup> To drive the point home, in 1998, Black Nobel Laureate, Toni Morrison labeled former President Clinton the first Black President.<sup>72</sup> And in 2007, Civil Rights icon Andrew Young described Bill Clinton as “every bit as Black as Barack.”<sup>73</sup> Given former President Clinton’s significant popularity among Blacks, as argued by Terry McAuliffe, Senator Clinton’s campaign chairman, Black voters believe that Clinton will represent their interests, as proved by her husband’s policies while he was president. According to McAuliffe, “African-Americans look fondly on the Clinton years.”<sup>74</sup> Not surprisingly, even a civil rights icon like Andrew Young threw his support behind Senator Clinton and noted that Senator Obama would not have the needed support as president whereas “[t]here are more black people that Bill and Hillary lean on.”<sup>75</sup>

In addition to having his racial authenticity questioned, in particular vis-à-vis Senator Clinton, Senator Obama is handicapped by the fact that at least some Black voters do not believe he has an actual chance to win the election. Democratic activist Donna Brazile, a Black woman who was Al Gore’s 2000 campaign manager, noted that Black voters are pessimistic about whether the country is ready for a Black president.<sup>76</sup> The fears come in three varieties: First, some Blacks believe that when push comes to shove, “they” will not let Obama win. It is unclear who “they” might be—White voters, the “power structure”—and it’s unclear how “they” will thwart Obama’s ambition. The point is that, somehow, he will be denied the chance to win on his own merits.<sup>77</sup> In discussing Blacks’ attitudes, Senator Obama’s wife Michelle noted that “You

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<sup>70</sup> Greg Freeman, *Clinton’s Record Will Guarantee His Appeal to African-Americans, Despite Scandals, Criticism*, ST. LOUIS POST-DISPATCH, Aug. 5, 2001, at C3.

<sup>71</sup> Darryl Fears, *Bill Clinton, Soul Brother?: Honor Raises Some Eyebrows*, WASHINGTON POST, Oct. 19, 2002, at C1.

<sup>72</sup> Toni Morrison, *Thanks to the Papers, We Know What the Columnists Think. Thanks to Round-the-Clock Cable, We Know What the Ex-Prosecutors, the Right-Wing Blondes, the Teletropic Law Professors, and Disgraced Political Consultants Think. Thanks to the Polls, We Know*, NEW YORKER, Oct. 5, 1998, available at [http://www.newyorker.com/archive/1998/10/05/1998\\_10\\_05\\_031\\_TNY\\_LIBRY\\_000016504](http://www.newyorker.com/archive/1998/10/05/1998_10_05_031_TNY_LIBRY_000016504).

<sup>73</sup> Kathleen Parker, *Politics of Race: The Domestic Issue Seems to Be Who Is More Black*, DAILY NEWS, Dec. 14, 2007, at \_\_. To drive his point home, Mr. Young went on to, jokingly, note that “[Bill Clinton’s] probably [dated] more black women than Barack.” *Id.*

<sup>74</sup> Kenneth T. Walsh, *Trying to Manage Obama’s Message*, U.S. NEWS & WORLD REPORT, Feb. 19, 2007, at YY.

<sup>75</sup> Parker, *supra* note 73.

<sup>76</sup> Tumulty, *supra* note 22.

<sup>77</sup> Clarence Page, *Will Black Voters Overcome ‘Fear of Possibility’?*, BALTIMORE SUN, Dec. 14, 2007, at 27A; Eugene Robinson, *Obama and the ‘They’ Sayers*, WASHINGTON POST, July 31, 2007, at A19.

believe that somehow, someone is better than you. You know, deep down inside, you doubt whether you can do it because that's all you've been told ..."<sup>78</sup> And this doubt, among Blacks, works to Clinton's benefit.<sup>79</sup> Second, some Black's, including Senator Obama's wife, fear that he will be placed in harms way.<sup>80</sup> Others go so far as to fear that he will be assassinated, and that to not vote for him is a way to protect him.<sup>81</sup> These concerns are so pervasive, that even Senator Obama has not denied them.<sup>82</sup>

During the late winter of 2007, a *Washington Post*-ABC News poll found that 60% of Black voters supported Senator Clinton and 20% backed Senator Obama.<sup>83</sup> A CNN poll taken during the summer of 2007 of Democrats in South Carolina—a crucial, early-primary state where Blacks cast about half the Democratic votes—showed senator Clinton leading Senator Obama by a wider margin among Blacks than among Whites. And while White respondents thought Senator Clinton had only a slightly better chance of winning the 2008 general election than Senator Obama, Blacks who were polled thought Senator Clinton was twice as likely to beat a generic Republican opponent.<sup>84</sup> In early October of 2007, Blacks were split down the middle over Senators Obama and Clinton.<sup>85</sup> A more detailed analysis of the polls suggested that Senator Obama enjoyed strong support among younger and male Blacks with Senator Clinton running stronger among older Black women.<sup>86</sup> Among registered Democrats, 68% of Black women said Senator Clinton was their likely choice for the nomination while only 25% backed Senator Obama. By contrast, Senator Obama led Senator Clinton, 46% to 42%, among Black men.<sup>87</sup> In late October of 2007, a CNN/Opinion Research poll found that registered Black Democrats

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<sup>78</sup> Michael Saul, *Michelle Obama Issues Call to Black America*, DAILY NEWS, Nov. 14, 2007, at ...

<sup>79</sup> Margaret Talev, *Many Blacks Wonder: Can Obama Win?: Poll Indicates Clinton Benefits from Doubts about His Electability*, SACRAMENTO BEE, Nov. 28, 2007, at A14.

<sup>80</sup> Lynn Sweet, *Michelle Obama to Play Bigger Role in Campaign*, CHICAGO SUN-TIMES, March 12, 2007, available at <http://www.suntimes.com/news/sweet/292926,CST-NWS-sweet12.article>.

<sup>81</sup> Jim Galloway & Bob Kemper, *Blog: Political Insider: 'America Is Readier to Elect a White Woman Than It Is a African-American Man'*, ATLANTA JOURNAL-CONSTITUTION, Oct. 15, 2007, at 0.

<sup>82</sup> Katherine Q. Seelye, *Obama, Civil Rights and South Carolina*, N.Y. TIMES, Nov. 3, 2007, available at <http://thecaucus.blogs.nytimes.com/2007/11/02/obama-civil-rights-and-south-carolina/>.

<sup>83</sup> Kenneth T. Walsh, *Trying to Manage Obama's Message: His Story Means Different Things to Different People*, U.S. NEWS & WORLD REPORT, Feb. 19, 2007, available at [http://www.usnews.com/usnews/news/articles/070211/19obama\\_2.htm](http://www.usnews.com/usnews/news/articles/070211/19obama_2.htm).

<sup>84</sup> Robinson, *supra* note 77.

<sup>85</sup> *Democrats Split Blacks' Allegiance: Obama's Experience Judged Differently*, COLUMBIA DAILY TRIBUNE, Oct. 4, 2007, available at <http://www.columbiatribune.com/2007/Oct/20071004News015.asp>.

<sup>86</sup> Tumulty, *supra* note 22.

<sup>87</sup> Eugene Robinson, *Put Your Hands Together for Her: Hillary Gets 'Sistah' Vote*, OAKLAND STAR, Oct. 19, 2007, available at [http://findarticles.com/p/articles/mi\\_qn4176/is\\_20071019/ai\\_n21064742](http://findarticles.com/p/articles/mi_qn4176/is_20071019/ai_n21064742).

avored Senator Clinton over Senator Obama, 57% to 33. In that survey, Black men were nearly evenly divided, but Black women overwhelmingly favored Senator Clinton (Clinton, 68%; Obama, 25%). The gender split gave Senator Clinton the edge in the Black community, according to American Research Group.<sup>88</sup> It was only as of late October to early November of 2007 that Senator Obama saw an increase in his support among Blacks. This was most clear in South Carolina where his poll numbers were at 51% among Blacks, compared with 27% for Senator Clinton.<sup>89</sup>

All that changed as the voting began in earnest. The Iowa caucus, however, undermined many assumptions about Obama's electability—given that he won in an overwhelmingly White state.<sup>90</sup> His win not only gave him the appearance of electability among White voters. It reverberated among Black voters, as well.<sup>91</sup> The South Carolina primary illustrated this new-found confidence where half of the voters were Blacks. These voters reversed their preference for Clinton from earlier polling at least in part due to a belief that he was electable.<sup>92</sup>

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<sup>88</sup> Deb Price, *Obama or Clinton?: African-American Voters Are Torn*, DETROIT NEWS, Oct. 24, 2007, at 01A; *Poll: African-American Support Helps Clinton Extend Lead*, available at <http://www.cnn.com/2007/POLITICS/10/17/poll.African-Americans.democrats/index.html> (last visited Nov. 2, 2007).

<sup>89</sup> Kaufman & Bauerlein, *supra* note 67. Senator Obama's inroads within the Black community are highlighted by the endorsement of his campaign by more than 100 black ministers, a publicized lunch with Al Sharpton, and a fund-raiser at Harlem's Apollo Theater where comedian Chris Rock rallied Blacks to support Senator Obama: "You'd be real embarrassed if he won and you wasn't down with it. You'd say, 'aw man, I can't call him now. I had that white lady. What was I thinking?'" Senator Obama benefited from considerable publicity surrounding his appearance with Oprah Winfrey. Their South Carolina appearance drew more than 20,000 people, many of whom were Black, making it the largest political event in the state's history. Additionally, in various parts of the country, Michelle Obama became a powerful advocate for her husband among Blacks, particularly Black women. *Id.*

<sup>90</sup> Jeff Zeleny, *New Face and a Call for Change Shake Up the Democratic Field*, N.Y. TIMES, Jan. 4, 2008, at A1.

<sup>91</sup> Sharon Cohen, *Obama's Success in Iowa Shows Shifting Views, Some Voters Say*, FORT WORTH STAR-TELEGRAM, Jan. 6, 2008, at A18; Peter Wallsten & Richard Fausset, *Obama's Campaign vs. Cynics: Electability Doubts Seen as Obstacle in Black Community*, GRAND RAPIDS PRESS, January 7, 2008, at A5.

<sup>92</sup> After Obama's Iowa victory, his poll numbers and confidence in his electability in South Carolina began to climb, simultaneously. Christi Parsons & Lisa Anderson, *Obama Wins Big in S.C.*, CHICAGO TRIBUNE, Jan. 27, 2008, at 1. Added to this, at least among Black voters, was their distaste for comments made by former president Bill Clinton that were construed as him suggesting Senator Obama's presidential candidacy was the "biggest fairy tale [he'd] ever seen." Anne E. Kornblut & Shailagh Murray, *Clinton Seeks to Alleviate Racial Friction: Comments Perturbed African-Americans*, BUFFALO NEWS, Jan. 13, 2008, at A1. Furthermore, many Blacks were outraged by what seemed to be Senator Clinton's diminishment of Dr. Martin Luther King's role vis-à-vis President Lyndon B. Johnson's in passing civil rights legislation. *Id.*

## b. Gender and Senator Clinton's Candidacy

Hillary Clinton first received national attention in 1992 after her husband became a candidate for the Democratic presidential nomination. From the outset of his campaign, former President Clinton spoke to the power and influence Mrs. Clinton would have in the White House, arguing that that his election would get Americans “two for the price of one.”<sup>93</sup> When Bill Clinton took office as president in January of 1993, Mrs. Clinton became the First Lady of the United States. She was the first, First Lady to hold a post-graduate degree and had a prominent career of her own before entering the White House.<sup>94</sup> She was also the first, First Lady to have an office in the West Wing of the White House.<sup>95</sup> From there, she organized the administration's efforts to reform the nation's health-care system. After that effort failed, her visibility as a policy maker diminished, but she retained considerable influence over administration policy.<sup>96</sup> In all, Hillary Clinton was arguably the most openly empowered First Lady in American history, save perhaps for Eleanor Roosevelt.

In November of 1998, Daniel Patrick Moynihan, the senior senator from New York, announced his retirement. Mrs. Clinton ran for his Senate seat and won. In moving to New York and running for Senate, Senator Clinton consciously began following the pathway to the Presidency laid out by the late Robert Kennedy. Following the assassination of his brother, Robert Kennedy also moved to New York, won a Senate seat to facilitate an effort to run for the Presidency.<sup>97</sup> Senator Clinton has, from the outset in 2000, used her role as a platform to organize her efforts towards an even higher office.<sup>98</sup>

Senator Clinton has been a polarizing figure in American politics since her husband's run for the Presidency in 1992. She enjoys enormous popularity in New York, having won a landslide re-election in 2006. She has also garnered support from a wide variety of Democratic

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<sup>93</sup> Faith Whittlesey, *The Betty Crocker Mystique ... and the Hillary Factor*, WASHINGTON TIMES, Sept. 18, 1995, at A19.

<sup>94</sup> Jasmin K. Williams, *Hillary Rodham Clinton*, N.Y. POST, Oct. 30, 2006, at 028.

<sup>95</sup> Christopher Hanson, Clinton Invites the People In: President Opens the White House to Ordinary Citizens, Seattle Post-Intelligencer, Jan. 22, 1993, at A1.

<sup>96</sup> See John F. Harris & Ann Devroy, *Her Way Versus the Washington Way: Ambition and Suspicion in First Year are Redounding on Hillary Rodham Clinton*, WASHINGTON POST, Feb. 19, 1996, at A1.

<sup>97</sup> Alison Mitchell, *The Freshman: Starring Hillary Clinton*, N.Y. TIMES, Jan. 7, 2001, at 3.

<sup>98</sup> See Adam C. Smith, *In a GOP Bastion, Sen. Clinton Earns Praise of Skeptics*, ST. PETERSBURG TIMES, Dec. 25, 2007, at 1A.

leaders and other leaders of the party. This carefully constructed platform has given her tremendous advantages in the early stages of the run for the Democratic Party's nomination. But even as she enjoys considerable support in her home state of New York, and among party faithful, she remains the target of exceptional scorn among conservative voters in the Republican party—especially Christian conservatives. Conservative voters never truly accepted the legitimacy of her husband's administration, viewing it as the product of an unfortunate combination of Bill Clinton's preternatural campaign skills and Ross Perot's entrance into the 1992 campaign as a third-party candidate.<sup>99</sup> President Clinton's sexual improprieties while in office further exaggerated conservatives' contempt for his administration, and for his wife. Senator Clinton's visibility as a policy maker in the Clinton administration made her a natural, collateral target for opponents of her husband's administration from the outset. Her leadership role in the failed health-care reform efforts in 1993 also facilitated conservative attacks.

Senator Clinton's candidacy obviously raises the question of whether America is willing to accept a woman as its President. Some believe, in fact, that she has a clear advantage as a woman, at least during the presidential campaign, in that she can stand out in a field of men as having a unique perspective.<sup>100</sup> Most polls taken in recent years reveal that between 60 and 80% of Americans believe the country is ready for a woman president.<sup>101</sup> In light of these numbers, will women, specifically, stream to the polls to elect Senator Clinton?<sup>102</sup> In an ABC-*Washington Post* poll taken in December 2006, 23% of women voters indicated that they are more likely to vote for a woman candidate.<sup>103</sup> And according to a *Washington Post*-ABC News poll conducted in November 2007, Senator Clinton's Democratic approval rating was higher than 50% among Democratic women.<sup>104</sup> In a general election match-up with then leading GOP contender Rudy

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<sup>99</sup> Bill Clinton won in 1992 with only 43% of the popular vote, as compared to 38% for George H.W. Bush, and 18% for Ross Perot. *It's Clinton: Huge Turnout Defeats Bush by a Landslide*, PRESS OF ATLANTIC CITY, Nov. 4, 1992, at A1. Obviously Perot's voters could have split in innumerable ways between Clinton and Bush (or staying at home), but conservatives frequently cite his entrance as having presented particular difficulties for the 1992 Bush campaign. Scott Forneck, *Perot a Wild Card in Local Vote: Experts Unclear on Impact of 3rd Party in Illinois*, CHICAGO SUN-TIMES, Sept. 27, 1995, at 6.

<sup>100</sup> Andrea Sarvaday Feldhahn, *Does Sen. Hillary Clinton's Gender Hurt Her Chances to be Elected President?*, KNOXVILLE NEWS SENTINEL, Nov. 18, 2007, at 79.

<sup>101</sup> Bonnie Erbe Scripps, *Will Women Vote for Woman?*, DESERT NEWS, Jan. 28, 2007, at G04.

<sup>102</sup> Ann McFeatters, *Just How Strong is Hillary Clinton's Sisterhood?*, VENTURA COUNTY STAR, Nov. 12, 2007, at YY; Bonnie Erbe Scripps, *Will Women Vote for Woman?*, DESERT NEWS, Jan. 28, 2007, at G04.

<sup>103</sup> Scripps, *supra* note 101.

<sup>104</sup> Feldhahn, *supra* note 100.

Giuliani, her lead was almost entirely credited to women.<sup>105</sup> Although women more positively view all the leading Democratic candidates than men, winning women's support, where women constituted 54% of voters in the last presidential election, is especially important to Senator Clinton's campaign.<sup>106</sup>

Others, however, suggest that the country is not ready for a female president, particularly one deemed to be a polarizing as Senator Clinton.<sup>107</sup> And Senator Clinton's candidacy does more than merely raise the issue of a woman as President. Like Senator Obama, she is not an abstraction; she is a real individual with a realistic chance of success. And she has a long history. The animosity towards Senator Clinton in some circles fuels a concern among many Democrats that she cannot win the general election in 2008, should she secure the nomination.<sup>108</sup> They worry that nothing will bring out the Republican's base of conservative Christians quite like the prospects of a second Clinton administration, with Hillary now at the helm.<sup>109</sup>

Some of the animosity directed at Senator Clinton is simply inherited from conservatives' distaste for her husband and for the positions of the Clinton administration. But some of it arises directly from her gender. Conservative voters associate Senator Clinton with precisely those features of American feminism that they disdain. But it is not merely her views on abortion, family and medical leave policies, or the like that draw their ire. Conservative voters have never forgotten that as part of her efforts to demonstrate her value as a member of her husband's administration, she announced indignantly that she did not want to "stay at home, bake cookies, and give teas."<sup>110</sup>

This negative perception of Senator Clinton sets her apart from some other successful female politicians. For example, the Presidential candidacy of Senator Libby Dole never provoked conservative voters in the way that Senator Clinton's candidacy does because Senator Dole openly embraced conservative positions on home and family. Obviously Senator Dole has had a significant career in public life. But conservatives did not perceive her as flaunting that

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<sup>105</sup> *Id.*

<sup>106</sup> Katherine Q. Seelye & Dalia Sussman, *Women's Views about Hillary Still Mixed, Poll Finds*, N.Y. TIMES, July 22, 2007, at A15

<sup>107</sup> Marianne Means, *Hillary Clinton is Battle Ready*, SEATTLE POST-INTELLIGENCER, Oct. 21, 2007, at G4.

<sup>108</sup> Nicholas D. Kristof, *Who Is More Electable?*, N.Y. TIMES, Feb. 7, 2008, at 31.

<sup>109</sup> *Id.*

<sup>110</sup> Carol Marin, *Michelle Obama Standing by Her Man*, CHICAGO SUN-TIMES, Feb. 20, 2008, at 25.

choice, and Senator Dole's embrace of conservative positions on domestic life allow voters to vote for a woman for public office while still embracing conservative ideals of motherhood and domestic life. Senator Clinton's obvious (and deserved) pride in her career combines with many of her positions to makes her candidacy particularly threatening to conservative voters.

The polls have long suggested that Clinton's gender is, in fact, a big factor in her campaign. As of November 2007, 80% Americans told Gallup pollsters that they expect women voters to be the deciding factor in Senator Clinton's election to the presidency.<sup>111</sup> But 70% of those polled had not made up their minds, and 75% of women had not decided either.<sup>112</sup> Twenty percent of women surveyed in a poll for Lifetime Networks said they were more likely to vote because Senator Clinton is running.<sup>113</sup> And 25% of women are paying more attention to campaign news this year simply because she is running.<sup>114</sup> Even as Senator Clinton was riding high as the Democratic frontrunner, there remained considerable skepticism about her. All polls found that young and single women are Senator Clinton's strongest supporters. Older, married, upper-income women remain skeptical; it is this group that is traditionally more likely to vote.<sup>115</sup> And almost 10% of women state that they would "never" vote a woman into the White House.<sup>116</sup>

Polls also have consistently produced a gender gap, even among Democratic voters. A July 2007 poll of likely Democratic caucus-goers, conducted by the University of Iowa, found that Clinton had 30% support among women and 18% among men.<sup>117</sup> Comparatively, Senator Obama received 21% from both men and women.<sup>118</sup> In the same poll, 30% of women strongly indicated that Senator Clinton was the strongest Democratic candidate; only 17% of men did.<sup>119</sup>

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<sup>111</sup> McFeatters, *supra* note 102.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*; Seelye & Sussman, *supra* note 106 (indicating that more than 80% of working women say Senator Clinton understands their problems; 39% of married women like Clinton, and 39% also view her negatively; 27% of those under 45 years-old view her negatively with 33% of those between 45 and 64, and 40% of those 64 and older).

<sup>116</sup> McFeatters, *supra* note 102.

<sup>117</sup> Matt Stearns, *Campaign 2008: Clinton Failing to Make Inroads with Male Voter: Democrats' Lead Candidate Fighting Wide Gender Gap*, HOUSTON CHRONICLE, Aug. 26, 2007, at A4; Jerry Zremski, *New Women Voters Could Put Clinton in the White House: The Gender Card May Be Her Edge*, BUFFALO NEWS, Nov. 25, 2007, at A1 (indicating that a Zogby International poll indicated that Senator Clinton's lead over Senator Obama in November was entirely due to her support from women).

<sup>118</sup> Stearns, *supra* note 117.

<sup>119</sup> *Id.*

And 32% of women strongly agreed that Clinton was electable; only 14% of men did.<sup>120</sup> In a July 2007 *Times*-CBS survey, only 35% of swing-voting independent men viewed her favorably; forty-two percent viewed her unfavorably.<sup>121</sup> A November 2007 Gallup poll for *USA Today* found that 55% of all married men—Democrats and Republicans—said they refuse to vote for Senator Clinton.<sup>122</sup> Among the reasons given was uncertainty about the prospects of a female as president.<sup>123</sup>

Arguably, one reason why Senator Clinton consistently has the highest disapproval ratings among Democrats is that she was demonized through the 1990s by conservative talk-show hosts, as being anti-White male voters whom she must now court.<sup>124</sup> White men who have had a problem with Senator Clinton, have because of their long-standing problem with Democratic Party.<sup>125</sup> If Clinton is nominated by the Democrats, liberal women will likely throw their support her way. But White working-class men, it was thought, would be a lost cause for her.<sup>126</sup> Furthermore, whereas nearly 50% of White men identified themselves as Democrats in 1952, that share has been cut in half as of today. This is particularly so given blue-collar white men's exodus from the party.<sup>127</sup> During the primary season, these predictions have not, necessarily, been born out.<sup>128</sup>

The complex tapestry of affection and ire that Senator Clinton faces in the electorate reveals that she must walk a tightrope similar to that confronting Senator Obama. Opposition to Senator Clinton arises not merely from her policy positions, as these do not differ markedly from those her husband. Nor do they arise entirely from her gender, as other successful female politicians do not inspire similarly venomous attacks. But her gender affects how voters, particularly conservatives and males, view her. A conservative woman would not inspire the

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<sup>120</sup> *Id.*

<sup>121</sup> Dick Polman, *Help with the Guy Vote for Hillary*, STANDARD-EXAMINER, July 26, 2007, at YY.

<sup>122</sup> McFeatters, *supra* note 102.

<sup>123</sup> *Id.*

<sup>124</sup> Stearns, *supra* note 117.

<sup>125</sup> Dick Polman, *Clinton Must Narrow the White-Guy Gap*, TIMES UNION, Nov. 4, 2007, E2.

<sup>126</sup> Froma Harrop, *Will Bill Lure White Males to Hill?*, LAS CRUCES SUN-NEWS, Oct. 23, 2007, at \_\_\_.

<sup>127</sup> Polman, *supra* note 24.

<sup>128</sup> See, e.g., On Super Tuesday, White men supported Obama over Clinton in California (52% to 34%), Connecticut (57 to 40), New Mexico (59 to 34), Utah (64 to 29) and Illinois (59 to 37). Jonathan Tilove Newhouse, *White Males Prove Pivotal: The Democratic Candidate Won't Look Like Them, so Which Way Will They Turn?*, POST-STANDARD, Feb. 7, 2008, at A4. Clinton beat Obama among White males in New Jersey (58 to 39), Missouri (55 to 41), Oklahoma (55 to 32), Tennessee (58 to 32), Arkansas (74 to 20) and New York (52 to 43). *Id.* White men were divided evenly among Clinton and Obama in Delaware, Arizona and Massachusetts. *Id.*

same contempt, but then, a conservative woman would not be able to capture the Democratic nomination. Neither would a conservative woman capture the support and admiration of more liberal women in the Democratic Party. Senator Clinton must appeal to her base—which consists of liberal women in her party. But even as she does, her gender combines with her policy positions to alienate males and infuriate conservatives.

The public reaction to Senator Clinton's response to a question in a New Hampshire diner illustrates how she has come this far. When a concerned voter appeared to ask her how she managed to keep up the pace of an exhausting campaign, Senator Clinton responded with uncharacteristic and surprising emotion.<sup>129</sup> Although she provided a fairly standard response in attributing her efforts to selfless concern for the nation's fate, she teared-up while doing so.<sup>130</sup> The response might have struck just the right chord with multiple constituencies. For women inclined to support her, the tear might have signaled a kind of kinship.<sup>131</sup> Women who follow high-powered career paths can easily understand the display as evidence that like them, Senator Clinton feels pressure of trying to present a tough exterior all the time. For others, the break from that tough exterior signaled a kind of emotional presence that Senator Clinton is often accused of lacking. Overt displays of emotion, however, risk playing into the stereotype that women are not tough enough to be President, however. But the emotion that she displayed was sufficiently controlled that it might have kept her on the tightrope: it was sufficient to further her kinship with her base while not furthering a stereotype that would doom her candidacy. The emotion might have worked, as Senator Clinton unexpectedly won New Hampshire, largely by winning big among women voters.<sup>132</sup>

Despite the similarity of their positions, Senator Clinton might have more room to maneuver between encouraging her base without playing into the fears or stereotypes of those whom she needs to win over. Senator Obama must tread carefully on addressing issues of race, but Senator Clinton can, and does, discuss issues central to women without risking her candidacy. She embraces her role as a champion for women's issues, such as health care,

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<sup>129</sup> See *She Found a Voice, Votes Through Tears*, KANSAS CITY STAR, Jan. 10, 2008, at B9.

<sup>130</sup> See *id.*

<sup>131</sup> Chris Rovzar & Jessica Pressler, *Hillary Clinton: Minority Candidate*, DAILY INTELLIGENCER, Jan. 9, 2008 at [http://nymag.com/daily/intel/2008/01/hillary\\_clinton\\_minority\\_candi.html?imw=Y](http://nymag.com/daily/intel/2008/01/hillary_clinton_minority_candi.html?imw=Y).

<sup>132</sup> Michael Fauntroy, *Don't Overplay the Bradley Effect*, THE HUFFINGTON POST, Jan. 11, 2008 at [http://www.huffingtonpost.com/michael-fauntroy-phd/dont-overplay-the-bradl\\_b\\_80810.html](http://www.huffingtonpost.com/michael-fauntroy-phd/dont-overplay-the-bradl_b_80810.html)

abortion, and the like, by asserting that she is a “fighter” for these issues. The role naturally allows her to embrace women’s issues in a male way. Furthermore, quite obviously, there are many more women voters than Black voters. Whatever support these issues cost her among male voters might well be offset by increased support from women voters. Furthermore, though some comments by her husband on the campaign trail may have offended some Black voters, his presence may also allay voter concerns about voting for Senator Clinton. Just as Former President Clinton announced during his first run for the presidency, Senator Clinton may allay some concerns among male voters with her “two for the price of one” proposal.<sup>133</sup> In a June 3, 2007 CNN debate, she said that her husband would serve in a roving ambassador’s role during her administration.<sup>134</sup> And though there is concern among some Americans about having her husband’s influence back in the executive office, just enough male voters may feel more at ease with a male “presence” in the White House to vote for her.<sup>135</sup>

### **c. The Two Tightropes**

Both Obama and Clinton face a tension with voters due to their demographics. Race and gender make them vulnerable to stereotypes in ways that limit how they can campaign. On the one hand, their success has energized support from a base of constituents, many of whom could not have imagined that they would see a candidate like them. Both candidates risk alienating their respective bases by appearing to reject their Blackness and womanhood, respectively. But at the same time, race and gender influence the views of a large percentage of voters in ways that hurt their candidacy. An open embrace of their race and gender risks alienating these voters. Unlike the White candidates both candidates walk on eggshells. Senators Clinton and Obama look for issues that lie in the gap, that make them look like the next President, or try to find ways to communicate that will sound a different note in their base than in the public at large.

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<sup>133</sup> David Broder, *What of a Dual Presidency if Hillary Clinton Wins?*, KANSAS CITY STAR, Nov. 19, 2007, at B9.

<sup>134</sup> Chuck Raasch, *Hillary Clinton’s Lead Raises Question: What about Bill? – Role He’d Play in Presidency Unclear*, DETROIT FREE PRESS, Sept. 23, 2007, at 7A.

<sup>135</sup> Andrea Sarvaday Feldhahn, *Does Sen. Hillary Clinton’s Gender Hurt Her Chances to be Elected President?*, KNOXVILLE NEWS SENTINEL, Nov. 18, 2007, at 79.

### III. Voter Discrimination against Black and Women Candidates

Law alone cannot change human behavior. *Brown v. Board of Education* overturned *Plessy v. Ferguson*'s "separate but equal" doctrine as it related to public education, but the change in law that the decision announced did little to alter the underlying attitudes that produced segregation.<sup>136</sup> Indeed, widespread segregation in schools remains the norm, even fifty years later.<sup>137</sup> Likewise, despite the ratification of the Fifteenth Amendment, the enactment of the Voting Rights Act, and the subsequent rise in number of Black elected officials, racism has persisted in the American political process. Furthermore, despite the passage of the Nineteenth Amendment, many voters' retained gender stereotypes about women candidates. Changes in the laws governing voting have been essential to the success of Black and women politicians, especially the former. But law has not changed the invidious role that race and gender have played in political campaigns. Not only do voters' perceptions about race influence their voting behavior and party affiliation, but White politicians also use veiled racism as a way to swing voters or to get Whites out to the polls.<sup>138</sup> Racist undertones affected a number of elections over the past few decades. These campaigns have set the stage for the 2008 Presidential election cycle, and reveal how modern campaigns use invidious stereotypes—particularly involving race.

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<sup>136</sup> Laura Bacon, Note, *Godinez v. Sullivan-Lackey: Creating a Meaningful Choice for Housing Choice Voucher Holders*, 55 DEPAUL L. REV. 1273, 1275 (2006) ("But progress through the law can only truly make a difference if the underlying discriminatory attitudes change as well").

<sup>137</sup> See generally, BARRY A. GOLD, STILL SEPARATE AND UNEQUAL: SEGREGATION AND THE FUTURE OF URBAN SCHOOL REFORM (2007); JONATHAN KOZOL, THE SHAME OF THE NATION: THE RESTORATION OF APARTHEID SCHOOLING IN AMERICA (2006).

<sup>138</sup> See KEITH REEVES, VOTING HOPES OR FEARS?: WHITE VOTERS, BLACK CANDIDATES, AND RACIAL POLITICS IN AMERICA 3-90 (1997).

## a. Racism and Black Political Candidates

### 1. *Indirect Racial Messages and Contemporary Elections*

In 1985, the national Democratic Party sponsored a number of focus groups to discern why so many working-class Whites had abandoned their traditional support for the party. After conducting significant research on the subject, pollster Stanley Greenberg attributed the defection to dissatisfaction with the Democratic Party's increasing association with Black voters. These defectors expressed a profound distaste for Black voters and issues important to Black voters. Their racial sentiments pervaded much of how they feel about government and politics. For these voters, Blacks constituted an explanation for much of what had gone wrong in their lives. They perceived Blacks as a "serious obstacle to their personal advancement."<sup>139</sup> Not being Black relegated them to lower middle-class status. Not living near Blacks made their neighborhoods decent places to live. It is no surprise that such voters repudiated the Democratic Party and developed such hardened racial attitudes. Just as Whites moved to the suburbs to flee increasing integration in urban public schools, so too did many abandon the increasingly integrated Democratic Party.

Well before Greenberg's assessment, Republicans sensed the racial overtones of working-class Whites' increasing disaffection for the Democratic Party. Richard Nixon's 1968 campaign captured some of the mood among White voters in promise for "law and order," code for cracking down on Black militants.<sup>140</sup> When Ronald Reagan spoke of supposed "Welfare Queens" gaming the system, voters knew what he meant.<sup>141</sup> This latter imagery melded the Republicans' focus on lower taxes and smaller government with Whites' racial animosity. The message to Whites was implicit, but clear: your taxes are high because Lyndon Johnson's programs are funneling your money to undeserving Black women. These seemingly race-neutral

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<sup>139</sup> Frederick Slocum & Yeuh-Ting Lee, *Racism, Racial Stereotypes, and American Politics*, in *THE PSYCHOLOGY OF PREJUDICE AND DISCRIMINATION* 62 (Jean Lau Chin ed., 2004) [hereinafter *PREJUDICE AND DISCRIMINATION*] (citing STANLEY B. GREENBERG, *REPORT ON DEMOCRATIC DEFECTION* 13-18, 28 (The Analysis Group, April 15, 1985)).

<sup>140</sup> George Poague, *Clinton was Tight in Her LBJ-MLK Remark*, *LEAF-CHRONICLE*, Jan. 27, 2007, at 3C.

<sup>141</sup> *Id.*

campaign themes, *welfare* and *crime*, have demonstrably racially-loaded undertones.<sup>142</sup> Nixon's effort was sufficiently successful at galvanizing White support that it survived an election in which a third-party candidate (George Wallace) ran on overtly racist themes. Republican candidates Nixon and Reagan ultimately won the support of a majority of White voters having used racial themes to begin the process of converting Southern and blue-collar Whites from their traditional affiliation with the Democratic Party.

As more overt racism has become increasingly taboo, White politicians began to appeal to White voters' race concerns through subtle overtures.<sup>143</sup> In 1988, a group that supported George H. W. Bush's presidential campaign, with the apparent approval of his campaign ran a highly controversial ad that baited White fears about young Black male violence. The ads featured a menacing image of Willie Horton, a Black escapee from Massachusetts who fled to Maryland and broke into a White couple's home. There, Horton stabbed the husband and raped the wife. The ads showed Horton's menacing, scowling headshot. In addition to highlighting Horton's crimes, the ads also attacked Democratic presidential candidate Michael Dukakis—then, Massachusetts governor—for the weekend release program under which Horton had fled the state.<sup>144</sup> Republican political operatives knew that the Horton ad would use continuing racism as a way to win White support.<sup>145</sup>

Just as Nixon and Reagan's more subtle race baiting was matched by the overt racism of George Wallace, the 1988 Bush campaign accompanied some lingering pockets of overt racism. The late 1980's witnessed the rise of a remarkably racist candidate in Louisiana named David Duke. In his 1989 bid for a Louisiana U.S. Senate seat and 1991 bid for Louisiana Governorship, Republican and former Ku Klux Klan leader David Duke made explicit racial appeals. He attacked the "welfare underclass," "welfare systems that encourage illegitimate births," and "set-asides to promote the incompetent." Duke lost both races but received 44% of the overall vote and 60% of the White vote in his 1991 Senate bid.<sup>146</sup> Arguably, the race-neutral

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<sup>142</sup> John Hurwitz & Mark Peffley, *Public Perceptions of Race and Crime: The Role of Racial Stereotypes*, 41 AM. J. POL. SCI. 375, 383-91 (1997); Fred Slocum, *White Racial Attitudes and Implicit Racial Appeals: An Experimental Study of "Race Coding" in Political Discourse*, 29 POL. & POL'Y 650, \_\_ (2001).

<sup>143</sup> See generally, TALI MENDENBERG, *THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGES AND THE NORM OF EQUALITY* (2001).

<sup>144</sup> Slocum & Lee, *supra* note 139, at 72-73.

<sup>145</sup> MENDENBERG, *supra* note 143 at 143-144.

<sup>146</sup> Slocum & Lee, *supra* note 138, at 73.

terms Duke's campaign employed fell short of the overtly "racist" appeals of George Wallace. But Duke's unapologetic relationship with the Klan and his emphasis on racially loaded themes was clear notice to Louisiana voters that his position on race was no different than that of the former Governor Wallace when he demanded "segregation today, segregation tomorrow, segregation forever."<sup>147</sup>

When Jesse Helms, a White Senator from North Carolina, faced a Black challenger, Harvey Gantt, in 1990, few were surprised that race played a role in Helms' ultimate victory. In the race, Helms brought up several issues tied to race, including his allegation that Gantt favored quotas that would benefit Blacks.<sup>148</sup> One of Helms' advertisements showed the hands of a White person crumbling a rejection letter. "You needed that job," the announcer said, "And you were the best-qualified. But they had to give it to a minority because of a racial quota. Is that really fair?"<sup>149</sup> The ad was broadcast just a few days shy of the election and boosted Helms to victory in what was had an election in which surveys predicted a dead heat.<sup>150</sup>

Politicians have even found ways to fan racial animosity even in elections between White candidates. During the 2000 presidential primaries, Karl Rove masterminded a much-needed victory for George W. Bush during his South Carolina primary with a campaign that featured a quiet racial attack. Rove strategically used whispered innuendos, one of them being that John McCain fathered a Black child out of wedlock.<sup>151</sup> People in some areas of South Carolina received phone calls in which self-described pollsters would ask, "Would you be more likely or less likely to vote for John McCain for president if you knew he had fathered an illegitimate African-American child?"<sup>152</sup> It was a reference to Bridget, who the McCains adopted as a baby from an orphanage in Bangladesh and is darker skinned than the rest of the McCain family.<sup>153</sup> Richard Hand, a professor at Bob Jones University, had also sent an e-mail message to "fellow

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<sup>147</sup> Sandy Grady, *George Wallace Reborn in a Blaze of Votes*, MIAMI HERALD, Sept. 11, 1982, at 27A.

<sup>148</sup> Peter Appleborne, *Racial Politics Surfaces Again in Some Races in Southern States*, ST. LOUIS POST-DISPATCH, Nov. 7, 1990, at 8C.

<sup>149</sup> Slocum & Lee, *supra* note 138, at 72; Peter Appleborne, *Racial Politics Surfaces Again in Some Races in Southern States*, ST. LOUIS POST-DISPATCH, Nov. 7, 1990, at 8C.

<sup>150</sup> Slocum & Lee, *supra* note 138, at 72.

<sup>151</sup> Bill Curry, *Rove Leaves Long Trail of Dirty Tricks*, HARTFORD COURANT, Aug. 19, 2007, at C3.

<sup>152</sup> Jennifer Steinhauer, *Confronting Ghosts of 2000 in South Carolina*, N.Y. TIMES, Oct. 19, 2007, at 1.

<sup>153</sup> *Id.*

South Carolinians" telling recipients that Mr. McCain had "chosen to sire children without marriage."<sup>154</sup>

The most recent attempt at subtle racial appeals in a prominent election occurred during the 2006 U.S. Senate race in Tennessee. In a tight race between Bob Corker, White, and Congressman Harold Ford, Black, the Republican National Committee played the "race card." A television ad, funded by the Republican National Convention ("RNC"), insinuated a relationship between Ford and a White woman.<sup>155</sup> The ad's hardest-hitting jab came from the mouth of a scantily clad White woman. "I met Harold at the Playboy Club," she said, casting a flirtatious look into the camera. Then as the ad draws to an end, the woman says, "Harold, call me." That dig was meant to remind people that Ford attended a 2005 Super Bowl party sponsored by Playboy. But it was also meant to suggest that the Black congressman had gotten too familiar with a White woman.<sup>156</sup> Hillary Shelton, head of the Washington office of the National Association for the Advancement of Colored People ("NAACP"), said the ad contradicted the spirit of remarks delivered at last year's NAACP convention by the RNC chairman, Ken Mehlman, in which he decried those in his party who had tried to "benefit politically from racial polarization."<sup>157</sup> They also said that the ad played on fears of interracial relationships to scare some rural White Tennessee voters to oppose Ford.<sup>158</sup>

The disaffection of working-class Whites for the Democratic Party's close association with Black voters continues to affect national politics. It might account for an otherwise curious anomaly in the race between Senators Clinton and Obama. Even though Senator Obama adopts somewhat more progressive positions than Senator Clinton on issues of importance to working-class voters (such as on free trade), she consistently attracts more support from these voters than he does.<sup>159</sup> These voters might see Senator Obama as more supportive of affirmative action than Senator Clinton, or see her as stronger on some other issue, such as health care. And Senator

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<sup>154</sup> *Id.*

<sup>155</sup> *GOP Airs Racist Ad in Tennessee Race*, OCEAN COUNTY OBSERVER, Oct. 29, 2006, at \_\_; Jesse Jackson, *Does GOP Mean Gutter-Oriented Politics*, CHICAGO SUN-TIMES, Oct. 31, 2006, at 27; Peter Wallsten, *Democrats Say GOP Ad Appeals to Racist Fears*, L.A. TIMES, Oct. 24, 2006, at A5.

<sup>156</sup> *GOP Airs Racist Ad*, *supra* note 155.

<sup>157</sup> Wallsten, *supra* note 155.

<sup>158</sup> *Id.*

<sup>159</sup> Christi Parsons & John McCormick, *Blue-collar Vote Tough for Obama: Group More Likely to Give Clinton Edge*, CHICAGO TRIBUNE, Feb. 10, 2008, at 1.

Clinton has not engaged in the kind of race baiting that has characterized previous efforts of the Republican Party. But she might not need to do so, as these are the same voters targeted in the past by racially motivated ads by Karl Rove, Jesse Helms, the first President Bush, and Richard Nixon. Working-class White voters seem inclined as Democrats on policy, but as Republicans on race.

## 2. *Racial Polarization in Elections*

Accounts of individual candidates, Black and White, who face an electorate polarized by racially-charged campaigns are not mere anecdotes. Black and White voters seem to prefer candidates of their own race in biracial elections. Consequently, Black candidates rarely succeed outside of majority-minority political jurisdictions.<sup>160</sup> At the state level, only one of the fifty State governors is Black (Deval Patrick of Massachusetts) and Senator Obama is the only Black member of the U.S. Senate. Up to year 2000, only four Blacks had ever served in the U.S. Senate, and only two since Reconstruction.<sup>161</sup> At the more local level, the first serious candidacy of a Black person increases concern among Whites regarding the allocation of power between the races.<sup>162</sup>

The success of Black candidates is positively related to several factors: First, Whites are more likely to engage in racial cross-over voting (in mayoral, city council, congressional elections) when the incumbent is Black. They are also more likely to vote for Black candidates who run for lower-level (i.e., not top (city) positions). Furthermore, Whites are more likely to engage in cross-over voting in run-off as opposed to general elections. They are also more likely to engage in cross-over voting when the local press endorses the Black candidate.<sup>163</sup> Endorsements of the Black candidate, by local white-controlled newspapers, in biracial elections

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<sup>160</sup> See LUCIUS J. BARKER ET AL., *AFRICAN AMERICANS AND THE AMERICAN POLITICAL SYSTEM* 246-47 (1999); DAVID T. CANON, *RACE, REDISTRICTING, AND REPRESENTATION: THE UNINTENDED CONSEQUENCES OF AFRICAN-AMERICAN MAJORITY DISTRICTS* \_\_ (1999); HANES WALTON, JR. & ROBERT C. SMITH, *AMERICAN POLITICS AND THE AFRICAN AMERICAN QUEST FOR UNIVERSAL FREEDOM* \_\_ (2000).

<sup>161</sup> WALTON & SMITH, *supra* note 160, at \_\_.

<sup>162</sup> Thomas Pettigrew, *Black Mayoral Campaigns*, in *URBAN GOVERNANCE AND MINORITIES* \_\_ (Herrington J. Bryce ed., 1976).

<sup>163</sup> Charles S. Bullock, III, *Racial Crossover Voting and the Election of Black Officials*, 46 J. POLI. 238, 247 (1984).

provide White voters with “important voting cues as to the candidates’ qualifications and political acceptability.”<sup>164</sup>

Second, Black density at the micro-level (e.g., the neighborhood level) has a positive impact on Whites’ crossover voting.<sup>165</sup> It is thought that as close inter-racial interactions increase, “the probability that [Whites] will adopt political attitudes and behaviors similar to those [Blacks] with whom they interact increases.”<sup>166</sup> At the macro-level, this theory seems dubious. Arguably, the perception of racial threat provokes negative reactions to Black candidates among Whites. Among the factors that seem to enhance such sentiments are the size of the black population,<sup>167</sup> the history of race relations in the community, and the salience of racial issues in the campaign.<sup>168</sup>

Third, the proportion of Blacks in the population makes a difference. Where there are more Blacks in an electoral jurisdiction, Black candidates are more likely to be elected to office. The House of Representatives is more representative, with nearly 10% of its members being Black, but this success is attributable to racial gerrymandering of House Districts. In areas dominated by Whites, Black electoral success is rare. In a variety of electoral contexts this relationship has been demonstrated.<sup>169</sup> “In the 6667 House elections in White majority districts between 1966 and 1996 (including special elections), only 35 (0.52%) were won by African-Americans.”<sup>170</sup>

Experimental research also supports the idea that Black candidates face significant hurdles among White voters. In one study, Terkildsen found that given two fictitious candidates

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<sup>164</sup> Joel Lieske, *The Political Dynamics of Urban Voting Behavior*, 33 AM. J. POLI. SCI. 150, 154 (1989).

<sup>165</sup> Thomas M. Carsey, *The Contextual Effects of Race on White Voter Behavior: The 1989 New York City Mayoral Election*, 57 J. POLI. 221, 225-27 (1995); Lisa C. DeLorenzo et al., *The Impact of Crossracial Voting on St. Louis Primary Election Results*, 33 URBAN AFFAIRS REV. 120, 125-30 (1997).

<sup>166</sup> Thomas M. Carsey, *The Contextual Effects of Race on White Voter Behavior: The 1989 New York City Mayoral Election*, 57 J. POLI. 221, 223 (1995).

<sup>167</sup> V.O. KEY, JR., SOUTHERN POLITICS IN STATE AND NATION 5 (1949) (indicating that Whites fear maintenance of control over Blacks where Blacks are a large part of the population).

<sup>168</sup> Pettigrew, *supra* note 162, at \_\_; RAYMOND E. WOLFINGER, THE POLITICS OF PROGRESS \_\_ (1974).

<sup>169</sup> David A. Bostis, *The Future of Majority-Minority Districts and African-American and Hispanic Legislative Representation*, in REDISTRICTING AND MINORITY REPRESENTATION: LEARNING FROM THE PAST, PREPARING FOR THE FUTURE 9-42 (David A. Bostis ed., 1998); Cameron et al., *supra* note 118; Epstein & O’Halloran, *supra* note 118; Lisa Handley et al., *Electing Minority-Preferred Candidates to Legislative Office: The Relationship Between Minority Percentages in Districts and the Election of Minority-Preferred Candidates*, in RACE AND REDISTRICTING IN THE 1990S 13-38 (Bernard Grofman ed., 1998).

<sup>170</sup> CANON, *supra* note 160, at 10.

described identically on dimensions other than race, White voters are more likely to rate the White candidate higher than either a dark-skinned or light-skinned Black candidate. They are also more willing to vote for the White candidate over the Black candidates.<sup>171</sup> Furthermore, racially prejudiced White voters express more negative attitudes about Black candidates than less prejudiced ones.<sup>172</sup>

Why are voters historically so polarized? Racism comes in many strains, of course, and has many causes. Blacks' tendency to support Black candidates has a different meaning and different origin than White voters' tendency to support White candidates. White voter opposition to Black candidates is probably more symbolic racism, than instrumental. Black candidates pose no real threat to the well-being of White voters any more or less than any White candidate. While Black candidates might favor affirmative action more than most White candidates, which could affect some Whites, the degree of White opposition seems to vastly exceed the risk that a single successful Black politician could sufficiently bolster affirmative action, or any other program, in a way that would significantly impair any White voter's career aspirations. White opposition to Black candidates likely arises from what meaning White voters attach to successful Black politicians than any practical effect such success might have.

Experimental research by Kinder and Sears demonstrates how race can influence voting.<sup>173</sup> They tested two competing theories of White prejudice against Blacks—realistic group conflict theory (emphasizing tangible threats that Blacks might pose to White's private lives) and symbolic racism (emphasizing moralistic resentment of Blacks)—as predictors of Whites voting behavior. Specifically, they tested these theories in light of the 1969 and 1973 Los Angeles mayoral campaigns where Thomas Bradley (Black) and Samuel Yorty (White) were the candidates.<sup>174</sup> Kinder and Sears found that symbolic racism better predicts White voting behavior than group conflict theory and that more prejudiced individuals supported the White conservative, Yorty.<sup>175</sup>

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<sup>171</sup> Nayda Terkildsen, *When White Voters Evaluate African-American Candidates: The Processing Implications of Candidate Skin Color, Prejudice, and Self-Monitoring*, 37 AM. J. POL. SCI. 1032, 1040 (1993).

<sup>172</sup> *Id.* at 1043.

<sup>173</sup> See generally, Donald R. Kinder & David O. Sears, *Prejudice and Politics: Symbolic Racism Versus Racial Threats to the Good Life*, 40 J. PERSONALITY & SOC. PSYCHOL. 414 (1981).

<sup>174</sup> *Id.* at 417, 419.

<sup>175</sup> *Id.* at 421-26.

To be sure, not all researchers who have studied the issue have found racial polarization in candidate preferences. For example, Citrin and colleagues found no racial preferences in their study of voter preferences concerning the 1982 California governor's race between a Black and a White candidate. But, as we discuss below, their results are inconsistent with the outcome of the actual election. These researchers themselves were aware of the inconsistency, and noted that their study could not identify any "covert racism", that might have distorted their "measurement of racial attitudes or voting intention," thereby leading them to have "underestimated the impact of race on the Bradley-Deukmejian election."<sup>176</sup>

A study by Highton likewise found little support for the hypothesis that White voters discriminate against Black candidates in House elections. Highton found, in the 1996 and 1998 congressional elections, that White voters were not less likely to vote Democratic when the Democratic candidate was Black. And White voters were not more likely to vote Democratic when the Republican candidate was Black. Highton acknowledged, however, that because the study's analysis relied on self-reports of voting behavior, his results might not reflect actual voting patterns. He noted that if voters systematically misreported their opposition to Black candidates, then the findings reported in the article were flawed and probably understated the degree of White voter aversion to Black candidates.<sup>177</sup>

### 3. *Race and the Electability of Black Candidates*

Of course, where candidates stand on the issues affects the outcome when a Black candidate squares off against a White candidate, just as qualifications matter for any job applicant. A Black candidate's views will attract some voters and repel others. But as Harvey Gantt and Harold Ford discovered, their adversary might work to ensure that their race counts against them. Even in the absence of overt appeals to racial biases in campaigns, a candidate's race still matters when White and Black candidates face each other.

The 1982 California governor's race provides a case in point on how race affects a Black candidate's ability to win elections outside of minority strongholds. In 1982, Los Angeles

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<sup>176</sup> Jack Citrin et al., *White Reactions to African-American Candidates: When Does Race Matter*, 54 PUB. OPINION Q. 74, 92 (1990).

<sup>177</sup> Benjamin Highton, *White Voters and African American Candidates for Congress*, 26 POLI. BEHAV. 1, 11-12 (2004).

Mayor Thomas Bradley, a Black Democrat, ran against Attorney General George Deukmejian, a White Republican, for California's governorship. Bradley's election would have made him the first Black to be elected governor in the United States,<sup>178</sup> but Bradley lost the close election. Race was clearly not the only factor in Bradley's loss. He was a strong candidate on issues important to Californians, but the presence on the Democratic ticket of then governor Jerry Brown as a candidate for the U.S. Senate might have hurt Bradley. Brown had become increasingly unpopular among Californians, and their association on the ticket could have inspired voter opposition to Bradley among independents and increased Republican turnout. An outpouring of conservative voters bent on defeating a gun control referendum might also have been a factor.<sup>179</sup>

Issues and the factors that influence voter turnout play a role in any election, but polling data strongly suggests that race played a role in Bradley's defeat. A poll conducted by the *Los Angeles Times* revealed that eight percent of the Democrats and independents crossover voters (meaning that they voted for the Republicans) indicated that they felt that government was doing too much for Blacks and other minorities. Five percent of the Republicans who voted for Bradley felt government was not doing enough. This three percent spread comprised some 200,000 votes, easily enough to affect the outcome of the election.<sup>180</sup> Similarly, a CBS-*New York Times* exit poll of actual voters showed that three percent of the voters admitted outright that their gubernatorial decision was based on race.<sup>181</sup> Pollster Mervin Field said three percent of voters, asked in exit polls why they rejected Bradley, "offered as their reason . . . that they could not vote for a Black man."<sup>182</sup>

Even more important than the three percent of voters in California who openly admitted the influence of race was race's potential covert influence. Covert influence can be hard to detect, but polling data might have revealed its influence. Throughout the race, Bradley had led

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<sup>178</sup> David Nyhan, *Racism Cited as Factor in Bradley's Loss\ Minorities Make Gains in US House*, BOSTON GLOBE, Nov. 7, 1982, at \_\_\_; William Raspberry, *Blacks Didn't Lose This Election*, THE WASHINGTON POST, Nov. 17, 1982, at A19;

<sup>179</sup> Robert A. Jordan, *The Lessons of Bradley's Defeat in California*, BOSTON GLOBE, Nov. 10, 1982, at \_\_\_.

<sup>180</sup> *Id.*

<sup>181</sup> Mark Shields, *It Wasn't White Racism that Beat Tom Bradley*, WASHINGTON POST, Nov. 12, 1982, at A31.

<sup>182</sup> Nyhan, *supra* note 178.

Deukmejian by six to 10 points in the Field Poll (the local version of the Gallup Poll).<sup>183</sup> Bradley led by 14% in a poll published just one month before the voting.<sup>184</sup> The final Field Poll gave Bradley 48% and a seven-point lead. Yet, Bradley lost by one percentage point, 49-48%,<sup>185</sup> a defeat by 52,295 votes out of 7.5 million.<sup>186</sup> This was the only major error in a final Field Poll in its 50-year history.<sup>187</sup> As the polling numbers above indicate, a small percentage of White voters are not shy about indicating their preference for a White candidate. The error in the Field poll suggests that others might be unwilling to reveal their racial preferences. They might simply lie to pollsters about their choice, producing a gap between poll numbers and actual results. Alternatively, the variations between the polling results and the actual voting might reflect a last-minute change of heart. In fact, virtually all of the undecided White Democrats and Independents broke for the GOP candidate.<sup>188</sup> At the last minute, in the privacy of the voting booth, a number of White's simply could not pull the lever to elect a Black man as governor.<sup>189</sup> Pollsters began to call this phenomenon—where White voters who tell interviewers they are undecided or even favor a Black candidate over a White Candidate, but then vote against the Black candidate—the "Bradley Effect."<sup>190</sup>

Seven years after Bradley's bid to become the first Black governor, L. Douglas Wilder claimed that title when he beat J. Marshall Coleman, a White Republican, for Virginia's governorship. Wilder defeated Coleman by a tiny margin. The exact size of Wilder's victory was initially uncertain, but he ultimately received just a fraction more than half of the 1.78 million votes cast. The turnout was about two-thirds of registered voters, a record in a non-presidential election. The Associated Press reported Wilder winning by 5,533 votes, while United Press International gave him a 7,755-vote spread.<sup>191</sup> Both spreads were less than one-

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<sup>183</sup> Patrick Reddy, *Does McCall Have a Chance?: Yes, he Does, But African-American Candidates for Top State Offices Face an Uphill Climb*, THE BUFFALO NEWS, Jan. 20, 2002, at H1.

<sup>184</sup> Nyhan, *supra* note 178.

<sup>185</sup> Reddy, *supra* note 183.

<sup>186</sup> Jordan, *supra* note 179; Nyhan, *supra* note 178.

<sup>187</sup> Reddy, *supra* note 183.

<sup>188</sup> *Id.*

<sup>189</sup> Raspberry, *supra* note 189.

<sup>190</sup> Reddy, *supra* note 173.

<sup>191</sup> Kent Jenkins, Jr. & R.H. Melton, *Wilder Revels in His Triumph: Slim Margin Puzzles Analysts*, WASHINGTON POST, Nov. 9, 1989, at A1.

half of one percent,<sup>192</sup> which meant that the state would have been obligated to conduct a recount had Coleman sought it.<sup>193</sup> Political analysts struggled to explain the forces that shaped one of the closest elections in Virginia history. Although Wilder won, and the capital of the former Confederate States seated the nation's first Black governor, the election's results were, like those in California, at odds with pre-election polls conducted in the final week of the campaign.<sup>194</sup> Polling data had found that Wilder had been between four and 15 percentage points ahead of Coleman.<sup>195</sup> Because Wilder was leading in every public and private poll, most experts argued that Coleman made up the difference with a surge in the final days of the election.<sup>196</sup> But the Virginia race added a new twist to the Bradley Effect. The exit poll surveys suggested that Wilder would win by about ten points. In effect, a full 10% of the voters in the exit poll reported that they had voted for the Black candidate immediately after they had cast their ballot for the White candidate.

As with the Bradley-Deukmejian race, the Wilder-Coleman contest raised the issue of whether Whites are being honest when they say they support a Black candidate over a White candidate.<sup>197</sup> The gap in the Virginia polls inspired a great deal of scrutiny by professional pollsters both because it affirmed the possible existence of the Bradley Effect and because of the erroneous exit polls.<sup>198</sup> According to Richard Morin, then survey director for *The Washington Post*, and Brad Coker, then president of the Mason-Dixon polling service, "There's a pattern emerging here."<sup>199</sup> According to Morin, the percentage that the Black candidate gets in the last survey is what he gets on Election Day, but then the "lie factor" comes into play. "It's as if you could throw all the undecideds to the White candidate."<sup>200</sup>

The election of David Dinkins as Mayor in New York City during same election cycle produced a similar phenomenon. In 1989, Dinkins, a Black Democrat, ran against Rudolph

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<sup>192</sup> Jenkins & Melton, *supra* note 191; Richard Locker, *Is Ford's White Support For Real?: Political Correctness Can Skew Polling*, COMMERCIAL APPEAL, Nov. 1, 2006, at A1. Arguably, the one-half percentage point was rounding upward from four-tenths a percentage point. See Reddy, *supra* note 183.

<sup>193</sup> Jenkins & Melton, *supra* note 191.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*; Reddy, *supra* note 183.

<sup>196</sup> Jenkins & Melton, *supra* note 191.

<sup>197</sup> Tom Baxter & Dwight Morris, *Voters May Lie About Voting Against African-Americans: Numbers Don't Add Up From Polls to Election*, ATLANTA JOURNAL & ATLANTA CONSTITUTION, Nov. 9, 1989, at A21.

<sup>198</sup> Jenkins & Melton, *supra* note 191.

<sup>199</sup> Baxter & Morris, *supra* note 197.

<sup>200</sup> *Id.*

Guliani, a White Republican, in the New York mayoral race. New York City voters elected Dinkins, their first-ever Black mayor.<sup>201</sup> But on Election Day, the media started the day reporting results of pre-election public opinion polls that gave Dinkins a double-digit lead over Giuliani. Exit polls in New York suggested that Dinkins would win by at least six to 10 points<sup>202</sup>--possibly even as many as 14 to 21 percentage points.<sup>203</sup> Just as in the Wilder-Coleman race, however, pre-election polls overstated Dinkins' lead by a large margin; Dinkins won by a much narrower margin than polls had shown.<sup>204</sup> In the end, Dinkins polled 50% to Rudolph Giuliani's 48%.<sup>205</sup> Pollsters groped for explanations for the closer-than-predicted margins, and some offered a simple answer: Survey respondents lied, or they changed their minds from Black to White in the privacy of the voting booth.<sup>206</sup>

The influence of the Bradley effect on the elections in New York and Virginia in 1989, to some, bore the taint of insidious and deep-seated racial prejudice.<sup>207</sup> If the voters did not intend to pick the Black candidate, why lie to the pollsters? The answer lies in how subtle racism can be. Those who might have lied in post-election surveys would deny they are prejudiced; they know it is publicly unacceptable to appear to make decisions on the basis of race. The mindset of some voters may have best been captured in the comment of a White voter in the Bronx, "I like Giuliani. He looks good. He's White like me."<sup>208</sup> For others, as political scientist Larry Sabato stated, "It's socially acceptable to vote for an African-American candidate ... Whites tell pollsters ahead of time that they are voting for the African-American candidate, and then they go into the voting booth and can't quite pull down that lever."<sup>209</sup>

More controlled survey research supports the existence of a potent Bradley Effect. A study by Berinsky demonstrates that voters are reluctant to express preferences concerning

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<sup>201</sup> *Why Did They Lie*, POST-STANDARD, Nov. 14, 1989, at A10.

<sup>202</sup> *Id.*

<sup>203</sup> Dan Balz, *Vote Counting Method, Race factor in Polls Leave Plenty of Room for Error: Some Blame Voters for Off-the-Mark Projections*, WASHINGTON POST, Nov. 9, 1989, at A37.

<sup>204</sup> Baxter & Morris, *supra* note 197.

<sup>205</sup> Balz, *supra* note 203; *Why Did They Lie*, *supra* note 201.

<sup>206</sup> Gary Langer, *Dinkins, Wilder Showings Poorer than Expected*, CHARLOTTE OBSERVER, Nov. 9, 1989, at 14A; *Why Did They Lie*, *supra* note 231.

<sup>207</sup> *Why Did They Lie*, *supra* note 231.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

racially polarizing issues, for fear of appearing racist.<sup>210</sup> In his study, voters who privately opposed school integration were unwilling to express their opposition publicly.<sup>211</sup> Rather than say they were opposed to integration, voters sought race-neutral principles to express their opposition—responding with “I don’t know.” Though the results from the 1989 data may be different in type from the school integration results in the study, Berinsky notes that they are similar in kind. In both cases the “no opinion” result seemed to be a cover—for at least a significant proportion of the sample—for opposition to policies and candidates in choices that are racially sensitive. Whites who are apprehensive about voting for Black candidates simply “vacate the field” in pre-election polls; they declare themselves undecided rather than come out and say that they oppose a Black candidate.<sup>212</sup> In this study, this similarity between the school integration results and the 1989 pre-election poll results carried over to a simulation that predicts respondent’s candidate choice.<sup>213</sup>

The Bradley Effect, is not just a nuisance to pollsters, it is evidence of the continued influence of race on how Americans evaluate people. The effect bears all the hallmarks of contemporary racism. A small percentage of people are overtly racist and willing to admit as much. Others might make race-based choices, but be unwilling to own up to them in public. Still others begin the process by embracing egalitarian norms and want to ignore skin color, but flinch at the last minute. And on the bright side, of course, Black candidates can win elections in which White voters dominate. But they must overcome a persistent opposition that arises from their race, as evidenced by the Bradley Effect.

As we noted at the outset of this article, the 2008 primaries show evidence of the persistence of Bradley Effect. Before the voting, polls had Senator Obama leading Senator Clinton by roughly 10 points in New Hampshire.<sup>214</sup> But like Los Angelinos before them, New Hampshire voters flinched at the last minute, and would not admit as much to the pollsters.

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<sup>210</sup> Adam J. Berinsky, *The Two Faces of Public Opinion*, 43 AM. J. POL. SCI. 1209, 1220 (1999).

<sup>211</sup> *Id.* at 1221.

<sup>212</sup> KEITH REEVES, VOTING HOPES OR FEARS?: WHITE VOTERS, AFRICAN-AMERICAN CANDIDATES, AND RACIAL POLITICS IN AMERICA 87 (1997).

<sup>213</sup> Berinsky, *supra* note 210, at 1224.

<sup>214</sup> Lovett, *supra* note 2.

Some commentators denied that the Bradley Effect was at work in New Hampshire, and cite alternative explanations.<sup>215</sup> The polls were conducted before Clinton's incident in the Diner and before she had a successful debate.<sup>216</sup> Furthermore, many independent voters who told pollsters before the election that they planned to vote for Obama ultimately voted for John McCain, because Obama was so far ahead they believed he would win easily.<sup>217</sup> These factors could have played a role in the polling miscue, but substantial evidence supports the idea that the Bradley Effect played a role. First, the small residue of undecided voters and small number of independent voters who switched to McCain cannot account for the 13-point shift between the final polls and the actual results. Second, as was the case with the Wilder election, the exit polls were consistent with previous polls; voters clearly lied to pollsters both before and after they had voted.<sup>218</sup> Other commentators have, in fact, concluded that the Bradley Effect influenced the outcome in New Hampshire.<sup>219</sup>

The 2008 primaries also provide a new source of support for the Bradley Effect in the anachronistic caucus system. Unlike elections, caucuses require a public vote. They do not allow for voting for a White candidate in private while announcing support for the Black candidate in public. And in early contests, Obama has done better among White voters in caucuses than in primaries. Senator Obama, like his predecessors, will continue to face the misleading polls and the covert influence of race that these disparities reveal.

## **b. Sexism and the Electability of Women Candidates**

American politics has been dominated by sex-role stereotyping that has hampered women's ability to be considered as serious candidates for elected office.<sup>220</sup> As late as 1993,

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<sup>215</sup> *Id.*; Michael Graham, *Primary Wrongly Colored by Matthews*, BOSTON HERALD, Jan. 11, 2001 available at [http://news.bostonherald.com/news/opinion/op\\_ed/view.bg?articleid=1065822&srvc=home&position=rated](http://news.bostonherald.com/news/opinion/op_ed/view.bg?articleid=1065822&srvc=home&position=rated).

<sup>216</sup> Michael Fauntroy, *Don't Overlay the Bradley Effect*, THE HUFFINGTON POST, Jan. 11, 2008 available at [http://www.huffingtonpost.com/michael-fauntroy-phd/dont-overlay-the-bradl\\_b\\_80810.html](http://www.huffingtonpost.com/michael-fauntroy-phd/dont-overlay-the-bradl_b_80810.html).

<sup>217</sup> *Clinton Victory Tainted by Race*, EASTBAY EXPRESS, Jan. 10, 2008 at [http://www.eastbayexpress.com/blogs/clinton\\_victory\\_tainted\\_by\\_race\\_/Content?oid=620375](http://www.eastbayexpress.com/blogs/clinton_victory_tainted_by_race_/Content?oid=620375).

<sup>218</sup> *Id.*

<sup>219</sup> Graham, *supra* note 215 (citing MSNBC commentator, Chris Matthews, perspective on what took place in New Hampshire).

<sup>220</sup> KATHLEEN A. DOLAN, VOTING FOR WOMEN: HOW THE PUBLIC EVALUATES WOMEN CANDIDATES 8-9, 59-67 (2004).

nine percent of Americans said they would not vote for a qualified woman presidential candidate.<sup>221</sup>

Scholars find that gender stereotyping, linked to traditional sex-roles, still pervades the electoral politics.<sup>222</sup> One study by Huddy and Terkildsen, for example, finds that women who demonstrate stereotypically female characteristics are at a great disadvantage.<sup>223</sup> Similarly, voters who place priority on issues such as terrorism, homeland security, and U.S. involvement in Iraq, are more likely to believe that a man would do a better job of handling those issues as president.<sup>224</sup> Given the perennial importance of these issues among all voters, it is perhaps small wonder that women, like Blacks, are underrepresented among the ranks of successful politicians. Even if some women candidates, like Senator Clinton, can appear tough enough to overcome these stereotypes, political parties' gate-keeping activities can disadvantage women. Party leaders primarily want to find candidates who will win, and they are as much aware of the stereotypes as researchers. Party leaders believe that there tends to be more uncertainty about a woman's electability than a man's.<sup>225</sup>

Although there is considerable diversity in broader policy attitudes among women, gender matters in political choice.<sup>226</sup> Women tend to support women candidates more than men support women candidates.<sup>227</sup> Women candidates have an advantage when they run as "women" stressing issues that voters associate favorably with female candidates and targeting female voters, at least in U.S. House and state legislative elections.<sup>228</sup> Women disproportionately

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<sup>221</sup> Richard L. Fox & Eric R.A.N. Smith, *The Role of Candidate Sex in Voter Decision-Making.*, 19 POLI. PSYCHOL. 405 (1998).

<sup>222</sup> Deborah Alexander & Kristi Andersen, *Gender as a Factor in the Attributions of Leadership Traits*, 46 POLI. RES. Q. 527 (1993); RICHARD LOGAN FOX, *GENDER DYNAMICS IN CONGRESSIONAL ELECTIONS* 173-75 (1997); David Niven, *Party Elites and Women Candidates: The Shape of Bias*, 19 WOMEN & POLI. 57 (1998); Kira Sanbonmatsu, *Gender Stereotypes and Vote Choice*, 46 AM. J. POLI. SCI. 20, 28-30 (2002).

<sup>223</sup> Leonie Huddy & Nayda Terkildsen., *The Consequences of Gender Stereotypes for Women Candidates at Different Levels and Types of Office*, 46 POLI. RES. Q. 503, 518 (1993).

<sup>224</sup> Erika Falk & Kate Kenski, *Issue Saliency and Gender Stereotypes: Support for Women in Times of War and Terrorism*, 87 SOC. SCI. Q. 1, 12 (2006).

<sup>225</sup> KIRA SANBONMATSU, *WHERE WOMEN RUN: GENDER & PARTY IN THE AMERICAN STATES* 2-3, 22, 26-30, 37-86, 97-115, 118 (2006).

<sup>226</sup> Craig Leonard Brians, *Women for Women?: Gender and Party Bias in Voting for Female Candidates*, 33 AM. POLI. RES. 357, 359 (2005).

<sup>227</sup> DOLAN, *supra* note 220, at 101.

<sup>228</sup> Paul S. Hernson et al., *Women Running "as Women": Candidate Gender, Campaign Issues, and Voter Targeting Issues*, 65 J. POLI. 244, 249-250 (2003).

support other women in both state and Federal elections. In statewide elections, women voters offer stronger support to women candidates, particularly to those who are Democrats.<sup>229</sup>

Women Democratic candidates fare better among more liberal voters, and men Democratic candidates fare better among conservative voters.<sup>230</sup> In U.S. House elections, women are nine percentage points more likely to vote for other women and support other women with whom they shared a party.<sup>231</sup> Also, women voters support women candidates in gubernatorial and U.S. Senate elections, even if the voters were Republicans and the candidates Democrats.<sup>232</sup> Republican women are 13 percentage points more likely to vote across party lines than are Democratic women.<sup>233</sup> And although female Democratic candidates garner additional support from female crossover voters, they lose few votes from men in their own party—all of which advantages women Democrats seeking office.<sup>234</sup>

Compared to race, however, there has been little effort on the part of politicians to use gender as a wedge issue in campaigns. That is not to say there are not gender divisions between the parties. Since President Ronald Reagan's first term, a partisan gender gap has existed in national elections, with women voters disproportionately favoring Democratic candidates and men generally leaning toward Republicans.<sup>235</sup> Women voters frequently favor Democratic Party policies.<sup>236</sup> But this has not led candidates to engage in a gender analogue to race-baiting. The reason for this might be that most successful women politicians are themselves people whose character runs against stereotype. Successful women candidates generally follow the lead of Margaret Thatcher, Britain's "Iron Lady", and present themselves as having few stereotypical feminine traits. They do not seem as vulnerable to subtle efforts to invoke stereotypes. And there is no contemporary history of an analogous Bradley Effect in elections involving women.

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<sup>229</sup> Eric Plutzer & John F. Zipp, *Identity Politics, Partisanship, and Voting for Women Candidates*, 60 PUB. OPINION Q. 30, 40 (1996).

<sup>230</sup> Monika L. McDermott, *Voting Cues in Low-Information Elections: Candidate Gender as a Social Information Variable in Contemporary United States Elections*, 41 AM. J. POLI. SCI 270, 278 (1997).

<sup>231</sup> DOLAN, *supra* note 220, at 101.

<sup>232</sup> RICHARD L. FOX, GENDER DYNAMICS IN CONGRESSIONAL ELECTIONS 178 (1997).

<sup>233</sup> Brians, *supra* note 226, at 368.

<sup>234</sup> *Id.*

<sup>235</sup> ELEANOR SMEAL, WHY AND HOW WOMEN WILL ELECT THE NEXT PRESIDENT 69-77 (1984).

<sup>236</sup> See Mark Schlesinger & Caroline Heldman, *Gender Gap or Gender Gaps?: New Perspectives on Support for Government Action Policies*, 63 J. POLI. 59, 73-83 (2001).

Furthermore, blatant and widespread discrimination among the electorate against female candidates has diminished considerably. Some studies have found that voters harbor little bias against women;<sup>237</sup> in some instances, women candidates may have an advantage over their male counterparts.<sup>238</sup> And once on the ballot, women are as successful as men at gaining elected office.<sup>239</sup>

In short, gender matters in politics too. But it matters less than race.

#### **IV. Unconscious Voter Bias and the 2008 Election**

The persistence of the Bradley Effect in the 2008 election raises broader questions about how race and gender influence decisions to place Blacks and women in positions of authority. The ability of some Blacks and women candidates to succeed with Whites and males shows that race and gender do not act as complete barriers to such positions. The small percentage of voters who say that they will never vote for a Black or for a woman for high office reveals that overt discrimination persists among a small minority. But the voters who express clear preferences regardless of race or gender, or who express overt bias, are not responsible for the Bradley Effect. The Effect comes from two kinds of voters—those who are sufficiently embarrassed about their choice of a White over a Black candidate that they lie to a pollster and those who honestly claim to support the Black candidate, but who switch their choice to the White candidate when it comes time to cast their ballot.

These “switchers” are an interesting group. The polling data suggests that they might comprise as much as 10% of the population in some elections.<sup>240</sup> Contemporary research on how racial bias works suggests that these voters might honestly believe themselves to be ignoring the race of the candidate, but succumb to its influence in unconscious ways. They honestly tell pollsters that they are undecided, or even that they favor the Black candidate, but act on a gut sense of discomfort in the polling station. They just cannot pull the lever for the Black

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<sup>237</sup> See, e.g., Carol Chaney & Barbara Sinclair, *Women and the 1992 House Elections*, in *THE YEAR OF THE WOMAN* 123-39 (Elizabeth Adell Cook et al., 1994).

<sup>238</sup> See *id.*

<sup>239</sup> Leonie Huddy & Theresa Capelos, *Gender Stereotyping and Candidate Evaluation: Good News and Bad News for Women Politicians*, in *THE SOCIAL PSYCHOLOGY OF POLITICS* 30 (Victor C. Ottati et al., eds., 2002).

<sup>240</sup> See *supra* note 2 and accompanying text.

candidate, and they cannot quite articulate why. They sense race played a role in their choice, but are embarrassed to admit that, and so they dissemble when confronted by someone taking an exit poll.

### **a. Implicit Attitudes, Generally**

Contemporary research on the psychology of judgment and choice supports this thesis. People's reports of their cognitive processes are often not consistent with their judgments.<sup>241</sup> Many influences on judgment seem to operate outside of people's awareness.<sup>242</sup> Combining this observation with contemporary research on the structure of the brain, psychologists now argue that people rely on two distinct cognitive systems of judgment: one that is rapid, intuitive, and unconscious; another that is slow, deductive, and deliberative.<sup>243</sup> The intuitive system can often dictate choice, with the deductive system lagging behind, struggling to produce reasons for a choice that comports with the accessible parts of memory. Thus, an intuitive, gut reaction against a candidate can dictate choice. The rational account only follows later, and might not provide a fully accurate account of the decision.

Voting is not based on the deductive, deliberative system of reasoning; intuition and emotion play significant roles in voter choice.<sup>244</sup> In one study involving a choice of candidates, for example, the emotional responses to candidates accurately predicted voter preferences for more than 90% of the decided voters and 80% of the undecided voters.<sup>245</sup> Most political advertisements are meant either inspire voter enthusiasm, thereby motivating their political engagement and loyalty, or are meant to induce fear, thereby stimulating vigilance against the risks some candidate supposedly poses.<sup>246</sup> Other research shows that political advertisements that provoke anxiety stimulate attention toward the campaign and discourages reliance on

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<sup>241</sup> See e.g., Timothy D. Wilson & Richard E. Nisbett, *The Accuracy of Verbal Reports about the Effects of Stimuli on Evaluations and Behavior*, 41 SOC. PSYCHOL. 118, 121-23, 125, 127 (1978).

<sup>242</sup> See *id.*

<sup>243</sup> See Chris Guthrie et al., *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1, 6-9 (2007) (reviewing this literature).

<sup>244</sup> See generally, DREW WESTEN, *THE POLITICAL BRAIN: THE ROLE OF EMOTION IN DECIDING THE FATE OF THE NATION* (2007).

<sup>245</sup> William G. Christ, *Voter Preference and Emotion: Using Emotional Response to Classify Decided and Undecided Voters*, 15 J. APPLIED SOC. PSYCHOL. 237, \_\_ (1985).

<sup>246</sup> Ted Brader, *Striking a Responsive Chord: How Political Ads Motivate and Persuade Voters by Appealing to Emotions*, 49 AM. J. POLI. SCI. 388, 393-97 (2005).

habitual cues for voting; in short, it can induce crossover voting.<sup>247</sup> Likeability also affects voting. In one study, disengaged voters who watched entertainment-oriented talk show interviews of Al Gore and George W. Bush were more likely to vote against their party loyalties when they found the crossover candidate likeable.<sup>248</sup> Emotion is clearly not a panacea for candidates. The last study also showed that politically astute voters were not influenced by the extent to which they found the candidates likeable.<sup>249</sup> As with most decisions, both passion and reason influence voting.

Research on “implicit bias” indicates that race and gender biases can influence unconscious, emotional processes, wholly apart from the conscious, rational ones.<sup>250</sup> Psychologists term these unconscious, emotional influences “implicit biases”—meaning attitudes or thoughts that people hold, but might not explicitly endorse.<sup>251</sup> These attitudes might conflict with expressly held values or beliefs. Many people who embrace the egalitarian norm that skin color should not affect their judgment of a job or political candidate also unwittingly harbor negative associations with minorities.<sup>252</sup> People might not even be aware that they hold these attitudes.<sup>253</sup> Even so, these implicit cognitions influence how people evaluate others.<sup>254</sup> The implicit cognitive processes might heavily influence the final choice of a voter who does not otherwise clearly embrace one candidate over another.<sup>255</sup>

Over the last ten years, psychologists have identified ways to measure these implicit cognitions. These measures have proven to be particularly useful for studying bias against

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<sup>247</sup> George Marcus & Michael Mackuen, *Anxiety, Enthusiasm, and the Vote: The Emotional Underpinnings of Learning and Involvement During Presidential Campaigns*, 87 AM. POLI. SCI. REV. 627, 677-78 (1993).

<sup>248</sup> Matthew A. Baum, *Talking the Vote: Why Presidential Candidates Hit the Talk Show Circuit*, 49 AM. J. POLI. SCI. 213, 223-30 (2005).

<sup>249</sup> *Id.*

<sup>250</sup> See Greenwald & Krieger, *supra* note 8, at 951.

<sup>251</sup> Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCHOL. REV. 4, 5 (1995); see also Brian A. Noesk 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).

<sup>252</sup> See Andrew Scott Baron & Mahzarin R. Banaji, *The Development of Implicit Attitudes: Evidence of Race Evaluations from Age 6 and 10 and Adulthood*, 17 PSYCHOL. SCI. 53, 55-56 (2006); Greenwald & Kreiger, *supra* note 8, at 951.

<sup>253</sup> Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCHOL. REV. 4, 5 (1995); see also Brian A. Noesk et al., *supra* note 251.

<sup>254</sup> See Anthony G. Greenwald et al., *Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity*, -- J. PERSONALITY & SOC. PSYCHOL. -- (forthcoming, 2007); Kirsten Lane et al., *supra* note 8, at 435-37 (2007) (reviewing evidence that the implicit social cognition predicts behavior.)

<sup>255</sup> See *infra* notes 325 to 348 and accompanying text.

Blacks, for two key reasons. The first is that 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, for example, political outcomes. A second comparative advantage of implicit measures is that individuals may not even be aware of their true preferences or attitudes.<sup>256</sup>

The Implicit Association Test (“IAT”) has rapidly become the most widely used measure of implicit racial bias.<sup>257</sup> The IAT basically measures the relative strength of associations between pairs of concepts. It does so with a simple computer task that asks participants to sort stimuli into one of four categories. The four categories are also paired together, so that the difficulty of the sorting process produces a measure of how closely the person taking the IAT associates the categories. For example, one of the most common IAT tests asks participants to sort positive words, negative words, Black faces, and White faces. The task pairs White faces with positive words and Black faces with negative words and measures how long it takes participants to sort randomly presented stimuli. Then it alters the pairings to be White faces with negative words and Black faces with positive words, and again measures the time it takes participants to sort the four types of stimuli. The difference in average reaction times in the two different pairings provides a measure of the participant’s association between the two categories (White with good and Black with bad versus White with bad and Black with good).

#### **b. Whites’ Anti-Black/Pro-White Implicit Bias**

The IAT is a versatile task, and all manner of pairings and implicit measures are possible. Researchers have used the IAT to study everything from racial prejudice to yogurt preferences.<sup>258</sup> But the IATs that use race, gender and other categories that are known to implicate invidious biases garner the most attention. Research on the IAT that pairs White and Black faces with positive and negative words shows that roughly 70% of Whites harbor anti-

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<sup>256</sup> Cindy D. Kam, *Implicit Attitudes, Explicit Choices: When Subliminal Priming Predicts Candidate Preference*, 29 POLI. BEHAV. 343, 345 (2007).

<sup>257</sup> See Lane et al., *supra* note 8, at 430 (noting that techniques that assess response times are the most widely used methods for ascertaining implicit attitudes).

<sup>258</sup> See T. Andrew Poehlman et al., *Understanding and Using the Implicit Association Test: III: Meta-analysis of Predictive Validity* (Unpublished manuscript, available at <http://faculty.washington.edu/agg/pdf/IAT.Meta-analysis.16Sep05.pdf>).

Black/pro-White biases.<sup>259</sup> Web-based IAT samples with thousands of participants reveal strong biases with several characteristics: People associate light skin with good and dark skin with bad;<sup>260</sup> White faces with harmless objects and Black faces with weapons.<sup>261</sup> The proper interpretation of these results has been a matter of some debate,<sup>262</sup> but most scholars conclude that the IAT can measure invidious implicit biases.<sup>263</sup>

A study by Ashburn-Nardo and her colleagues shows just how broad based implicit biases can be. In this study, participants found it easier to associate their in-group (i.e., American names) with pleasant words and the out-group (i.e., Surinam names) with unpleasant words than they found it to make reverse pairings, even though participants lacked experience with Surinam.<sup>264</sup> Even with equally unfamiliar exemplars for both in-group and out-group, nevertheless displayed a pro-in-group IAT bias. Thus, even with only minimal experiential or historical input, peoples' minds are prepared to display bias, effortlessly.<sup>265</sup>

In a study investigating White, Ivy League students, Devos and Banaji found that participants made no distinction between Blacks and Whites on explicit measures of "Americanness." On Implicit measures, however, participants more easily paired American symbols with White faces rather than with Black faces.<sup>266</sup> In a second study, Devos and Banaji used photos of eight Black and eight White U.S. track and field athletes who participated in the 2000 Olympics. The rationale was that Blacks who represented their country in the Olympics should appear more American than those who did not. For the measure of familiarity, participants reported being more familiar with Black athletes than with White athletes. Taking

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<sup>259</sup> Brian A. Nosek, et al., *Pervasiveness and Correlates of Implicit Attitudes and Stereotypes*, 18 EUROPEAN REV. SOC. PSYCHOL. 36, \_\_ (2007).

<sup>260</sup> Lane et al., *supra* note 16.

<sup>261</sup> B. Keith Payne, *Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon*, 81 J. PERSONALITY & SOC. PSYCHOL. 181, 183–86, 188 (2001).

<sup>262</sup> See Hal R. Arkes & Philip E. Tetlock, *Attributions of Implicit Prejudice, or "Would Jesse Jackson Fail the IAT?"*, 15 PSYCHOL. INQUIRY 257 (2004).

<sup>263</sup> See Greenwald & Kreiger, *supra* note 8; Lane et al., *supra* note 8; Lane et al., *supra* note 16.

<sup>264</sup> 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).

<sup>265</sup> *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) (finding that positive attributes were more strongly associated with White than Black Americans even when (a) pictures of equally unfamiliar Black and White individuals were used as stimuli and (b) differences in stimulus familiarity were statistically controlled).

<sup>266</sup> Thierry Devos & Mahzarin R. Banaji, *American = White*, 88 J. PERSONALITY & SOC. PSYCHOL. 447, 452, 453 (2005).

the two explicit self-report measures together, participants were both more familiar with Black than White athletes and reported a stronger association between Black athletes and American than White athletes and American. On the IAT, however, the reverse was found, with White athletes being more strongly associated with the category “American” than Black athletes.<sup>267</sup> White and Asian Americans associated Whites with the concept “American” to a greater extent than Blacks.<sup>268</sup> Furthermore, in a study by Melissa Ferguson and colleagues, they found that when Whites and Asians are primed (where individuals are subliminally shown images) with the American flag, their attitudes toward Blacks become more negative.<sup>269</sup>

Furthermore, the bias begins at an early age. Baron and Banaji assessed White American 6-year-olds, 10-year-olds, and adults using a child-oriented version of the IAT. Remarkably, even the youngest group showed implicit pro-White/ anti-Black bias, with self-reported attitudes revealing bias in the same direction. The 10-year olds and adults showed the same magnitude of implicit race bias, but self-reported racial attitudes became substantially less biased in older children and vanished entirely in adults, who self-reported equally favorable attitudes toward Whites and Blacks.<sup>270</sup> It seems that people learn bias early, but only later learn to cover the bias by publicly embracing more egalitarian norms.

The latter point shows the striking divergence between explicit attitudes towards race and measures of implicit bias.<sup>271</sup> Although explicit and implicit measures of bias are related, even people who openly embrace egalitarian norms often harbor very negative associations concerning Blacks.<sup>272</sup> Even participants who are told that the IAT measures undesirable racist attitudes and who explicitly self-report egalitarian attitudes find it difficult to control their biased responses.<sup>273</sup> These findings suggest that the explicit and implicit studies measure somewhat different cognitive systems. The explicit measures show that most adults have learned the

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<sup>267</sup> *Id.* at 455.

<sup>268</sup> *Id.* at 459.

<sup>269</sup> Melissa J. Ferguson et al., Presentation entitled “On the Automaticity of Nationalist Ideologies” given at the Society for Personality and Social Psychology Conference Symposium: Priming Ideology: Demonstrating the Malleability of Political Ideology (2008).

<sup>270</sup> Baron & Banaji, *supra* note 252.

<sup>271</sup> See Lane et al., *supra* note 16.

<sup>272</sup> See generally, Baron & Banaji, *supra* note 252 (indicating that whereas seemingly egalitarian views about race emerge over time, implicit racial attitudes stay the same).

<sup>273</sup> 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) (cited in Nilanjana Dasgupta et al., *supra* note 265, at 317 *Automatic Preference for White Americans*).

importance of egalitarian norms, or at least the importance of embracing such norms publicly. But these explicit norms reflect only the slower, deductive processes. The implicit biases linger, and affect the intuitive processes—the gut reactions that are often hard to control.

### c. Blacks' Anti-Black/Pro-White Implicit Bias

Blacks who harbor explicit anti-Black biases are mere caricatures seen in Black comedic cultural critiques, like that of Dave Chapelle<sup>274</sup> and Aaron McGruder.<sup>275</sup> Like Whites, however, Blacks too demonstrate an alarming degree of anti-Black/pro-White implicit bias. In an Internet-based study, Blacks express a notable preference for Whites over Blacks.<sup>276</sup> By age 13, White children have developed a strong in-group preference on the IAT, but Black children do not.<sup>277</sup> Black adults show variability in implicit racial preferences, and overall, Blacks show a preference for Whites over Blacks.<sup>278</sup> Between 50-65% of Blacks exhibit implicit bias in favor of Whites.<sup>279</sup> The finding that Blacks favor Whites on implicit measures harkens back to some of the testimony used in *Brown v. Board of Education*, in which psychologist found that young Black children often favored playing with a White doll over a Black doll.<sup>280</sup> Even Jesse Jackson might well “fail” the IAT.<sup>281</sup>

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<sup>274</sup> Black comedian Dave Chapelle created a skit for his television show, THE DAVE CHAPELLE SHOW, about a White supremacist who is Black. See e.g., [http://www.comedycentral.com/motherload/player.jhtml?ml\\_video=24400&ml\\_collection=&ml\\_gateway=&ml\\_gateway\\_id=&ml\\_comedian=&ml\\_runtime=&ml\\_context=show&ml\\_origin\\_url=/shows/chappelles\\_show/videos/season\\_1/index.jhtml&ml\\_playlist=&lnk=&is\\_large=true](http://www.comedycentral.com/motherload/player.jhtml?ml_video=24400&ml_collection=&ml_gateway=&ml_gateway_id=&ml_comedian=&ml_runtime=&ml_context=show&ml_origin_url=/shows/chappelles_show/videos/season_1/index.jhtml&ml_playlist=&lnk=&is_large=true).

<sup>275</sup> Black cartoonist Aaron McGruder created a cartoon series entitled The Boondocks where one of the Black Characters despises Black people and expressly makes this known. See e.g., <http://youtube.com> (type “Uncle Ruckus”; select “Uncle Ruckus Part 1” or “Uncle Ruckus Part 2”).

<sup>276</sup> Brian A. Nosek et al., *Harvesting Implicit Group Attitudes and Beliefs from a Demonstration Website*, 6 GROUP DYNAMICS 101-15 (2002).

<sup>277</sup> Andrew Scott Baron et al., *Implicit Race Attitudes of African American and Hispanic Children*, Poster presented at the Annual Meeting of the Society for Personality and Social Psychology (Jan. 2004) (cited in Andrew Scott Baron & Mahzarin R. Banaji, *The Development of Implicit Attitudes: Evidence of Race Evaluations from Age 6 and 10 and Adulthood*, 17 PSYCHOL. SCI. 53, 57 (2006)).

<sup>278</sup> C. Vincent Spicer, *Effects of Self-Stereotyping and Stereotype Threat on African Americans' Intellectual Performance* (1999) (unpublished Ph.D. dissertation, University of Kentucky) (on file with William T. Young Library, University of Kentucky).

<sup>279</sup> John J. Jost et al., *A Decade of System Justification Theory: Accumulated Evidence of Conscious and Unconscious Bolstering of the Status Quo*, 25 POL. PSYCHOL. 881, 895 (2004) (citing C. Vincent Spicer & Margo J. Monteith, *Implicit Outgroup Favoritism Among Blacks and Vulnerability to Stereotype Threat* (2001) (unpublished manuscript, on file with ...)).

<sup>280</sup> See JOHN P. JACKSON, JR., *SOCIAL SCIENTISTS FOR SOCIAL JUSTICE: MAKING THE CASE AGAINST SEGREGATION* 136-45 (2001).

<sup>281</sup> See, e.g., Hal R. Arkes & Philip E. Tetlock, *Attributions of Implicit Prejudice, or “Would Jesse Jackson ‘Fail’ the Implicit Association Test?”*, 15 PSYCHOL. INQUIRY 257 (2004).

At the same time, Blacks express highly favorable in-group attitudes on explicit measures.<sup>282</sup> In fact, a comparison of implicit and explicit measures on Whites and Blacks are almost mirror images of each other. Blacks show far stronger explicit in-group favoritism than Whites respondents, although both clearly show explicit preferences for their own group.<sup>283</sup> This result stands in marked contrast to the implicit measures. Whites favor Whites on implicit measures, while Blacks favor express in-group favoritism on implicit measures Blacks are more mixed, and even slightly favor Whites. In other words, Blacks will say they prefer Blacks, but Whites will not; Whites implicitly hold much more favorable views of Whites than Blacks, while Blacks do not.<sup>284</sup>

These findings may seem paradoxical, but they have an explanation. Both Blacks and Whites see a constant set of positive images of Whites and negative images of Blacks.<sup>285</sup> As Gordon Allport suggested a half-century ago, Black Americans have so long been exposed to stereotypes “that they are lazy, ignorant, dirty, and superstitious that they may half believe the accusations.”<sup>286</sup> Many Blacks’ implicit biases are consistent with system justification theory (“SJT”). Jost and Banaji defined system justification as the “psychological process by which existing social arrangements are legitimized, even at the expense of personal and group interest”<sup>287</sup> In other words, people—whether they are members of low- or high-status groups—attempt to justify the social hierarchy observed within their society. As a result, both low- and high-status group members may exhibit a preference for the high-status group relative to the low-status group, and members of both groups may endorse negative stereotypes regarding the low-status group. Jost and Banaji argue that these preferences are especially likely to emerge with measures that tap into implicit associations.<sup>288</sup> Recent findings, consistent with system justification theory, have revealed less implicit in-group bias among members of low- versus high-status groups.

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<sup>282</sup> Leslie Asburn-Nardo et al., *Black American’s Implicit Racial Associations and Their Implications for Intergroup Judgment*, 21 SOC. COGNITION 61, 73 (2003).

<sup>283</sup> Lane et al., *supra* note 16.

<sup>284</sup> Jost et al., *supra* note 279, at 897.

<sup>285</sup> Ashburn-Nardo et al., *supra* note 264, at 63.

<sup>286</sup> Gordon W. Allport, *THE NATURE OF PREJUDICE* 152 (1954).

<sup>287</sup> John T. Jost & Mahzarin R. Banaji, *The Role of Stereotyping in System-Justification and the Production of False Consciousness*, 33 BRITISH J. SOC. PSYCHOL. 1, 2 (1994).

<sup>288</sup> *Id.* at 1-27.

#### d. Implicit Bias and Behavior, Generally

Implicit racial bias is not a mere abstraction. It is linked to the deepest recesses of the mind—particularly the amygdala. The amygdala is an almond-sized subcortical brain structure, involved in emotional learning, perceiving novel or threatening stimuli,<sup>289</sup> and fear conditioning.<sup>290</sup> Neurological research shows that Whites react to Black faces with amygdala activation, even when shown Black faces *subliminally*.<sup>291</sup> This activation does not occur in Whites processing White faces. Furthermore, the degree of amygdala activation after exposure to Black faces correlates with IAT scores.<sup>292</sup> In short, Whites who show a high degree of implicit bias evidence react to Black faces, whether they know it or not, with some measure of fear and anxiety.

The unconscious bias that the IAT measures also seems to affect cognitive processes. In one study, subliminally priming participants with the word “White” made it easier for them to recognize positive words like “smart”, than when they were primed with the word “Black”.<sup>293</sup> Other studies show even more marked effects when researchers use Black and White faces as priming materials.<sup>294</sup> Similarly, Whites subliminally primed with Black male faces reacted to a staged computer mishap with much greater hostility than those primed with White male faces.<sup>295</sup> Other work shows that subliminal priming people with words commonly associated with Blacks could lead individuals to interpret ambiguous behavior as more aggressive.<sup>296</sup> Consistent with the findings of the IAT, the associations most people have with Blacks are different from those they have with whites. Exposure to Black faces, even at a subliminal level, activates both the category “African American” and the associated stereotypes and the behaviors that go along with

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<sup>289</sup> Kevin N. Ochsner & Matthew D. Lieberman, *The Emergence of Social Cognitive Neuroscience*, 56 AM. PSYCHOLOGIST 717, 720 (2001)

<sup>290</sup> See Elizabeth A. Phelps et al., *Performance on Indirect Measures of Race Evaluation Predicts Amygdala Activation*, 12 J. COGNITIVE NEUROSCIENCE 729, 729 (2000).

<sup>291</sup> William A. Cunningham et al., *Separable Neural Components in the Processing of Black and White Faces*, 15 PSYCHOL. SCI. 806, 811 (2004).

<sup>292</sup> *Id.*

<sup>293</sup> Samuel L. Gaertner & John P. McLaughlin, *Racial Stereotypes: Associations and Ascriptions of Positive and Negative Characteristics*, 46 SOC. PSYCHOL. Q. 23, 23 (1983).

<sup>294</sup> John F. Dovidio et al., *On the Nature of Prejudice: Automatic and Controlled Processes*, 33 J. EXPERIMENTAL & SOC. PSYCHOL. 510, 522-23 (1997).

<sup>295</sup> 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, 238-39 (1996)

<sup>296</sup> Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5, 10-12 (1989).

it. In turn, people seem simply to think differently, at least at an intuitive level, about Blacks than Whites.

These phenomena influence judgments in more realistic settings as well. In one study, participants reacted differently to a crime story from a local news show depending upon whether the story a mug shot of either a White suspect or a Black.<sup>297</sup> All other material in the story was identical; in fact, the two mug shots consisted of the same photograph except that the researchers altered the skin hue. Even though the suspect appeared for only five seconds in a ten-minute newscast, White participants showed more support for punitive remedies for the perpetrator after seeing the Black mug shot. As with the studies conducted in laboratory settings, exposure to Black faces seems to trigger a different mindset. Another study, by Chen and Bargh, showed that the subliminal activation of stereotypes can poison a social interaction. When these experimenters primed racial stereotypes in a mixed race pair led to downward spiral in the interaction. The White participant primed with Black stereotypes was more hostile in the interaction. The Black partner (correctly) perceived the hostility and reflected it back, leading to an unpleasant interaction for both.<sup>298</sup>

The different reactions Whites have to Black faces are connected to implicit bias. In one demonstration of this relationship, by McConnell and Leibold, experimenters correlated the reactions of White undergraduates to both White and Black experimenters with measures of both explicit and implicit bias.<sup>299</sup> The researchers found that explicit bias had no relationship with how the participants reacted to the experimenters. Implicit bias, however, had an effect. Those who showed stronger negative attitudes toward Blacks on the IAT had more negative social interactions with a Black experimenter. They made less eye contact with the Black interviewer, gave shorter answers to questions, and adopted more defensive body positions. A similar study, by Dovidio and his colleagues, found that the degree of implicit bias also predicted the extent of

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<sup>297</sup> 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).

<sup>298</sup> 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).

<sup>299</sup> 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, 438-40 (2001).

racially stereotypic interview questions participants posed to Black as compared to White job candidates during simulated job interviews.<sup>300</sup>

The combination of results from the priming studies and the implicit bias research suggests that Black job candidates face significant hurdles when facing White interviewers who harbor strong implicit biases against Blacks. The studies by McConnell and Leibold and by Dovidio suggest that such interviewers will be more hostile to Black applicants than White ones. Such interviewers need not be primed with stereotypes, they already associate Blacks with a variety of undesirable traits. Operating at an unconscious level, this kind of hostility and discomfort can be hard for either party to understand. According to Chen and Bargh, this unexplained hostility poisons the interaction. Both parties blame the other for the unfortunate exchange, meaning that the interviewer concludes the job candidate is unsuitable. A particularly strong Black applicant might be able to overcome these problems, but the hidden influence of the implicit bias makes for a significant impediment.

Implicit anti-Black bias is associated with harmful behaviors towards Blacks.<sup>301</sup> In one study, participants who showed a high anti-black implicit also supported budget cuts for Asian, Black, and Jewish student organizations.<sup>302</sup> More importantly, implicit anti-Black bias predicted self-reported racial discrimination; notable, high bias correlated with self reported efforts to exclude Blacks from social situations, with the use of verbal slurs, and even with causing physical harm to Blacks.<sup>303</sup>

Other striking demonstrations of the influence of unconscious racial bias on behavior show that these biases can be life-threatening. One study placed participants in a video-game style police simulation in which they had to assess whether a target was holding a gun or a harmless object (wallet, soda can, or cell phone).<sup>304</sup> Participants had to decide as quickly as possible whether to shoot the target. Both Black and White participants were more likely to

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<sup>300</sup> John F. Dovidio et al., *Implicit and Explicit Prejudice and Interracial Interaction*, 82 J. PERSONALITY & SOC. PSYCHOL. 62, 65-66 (2002). See also Denise Sekaquapetwa et al., *Stereotypic Explanatory Bias: Implicit Stereotyping as a Predictor of Discrimination*, 39 J. EXP. SOC. PSYCHOL. 75, 77-78 (2003).

<sup>301</sup> See generally, Laurie A. Rudman & Richard D. Ashmore, *Discrimination and the Implicit Association Test*, 10 GROUP PROCESSES & INTERGROUP REL. 359 (2007).

<sup>302</sup> *Id.* at 363-68.

<sup>303</sup> *Id.* at 361-63.

<sup>304</sup> Joshua Correll et al., *The Police Officer's Dilemma: Using Ethnicity To Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314, 1315-17, 1319, 1325 (2002).

mistake a Black target as armed when he in fact was unarmed; conversely, they were more likely to mistake a White target as unarmed when he in fact was armed. Furthermore, unconscious anti-Black bias correlated with the extent of the shooter bias that participants in such studies express.<sup>305</sup> In the area of health care, Green and his colleagues found that the diagnoses of internal medicine and emergency medicine physicians were associated with their unconscious bias. As physicians' pro-White bias increased so did their likelihood of providing White patients with a treatment for cardiovascular disease and with deciding the treatment was not appropriate for otherwise identical Black patients.<sup>306</sup>

### e. Implicit Gender Attitudes

The research on implicit bias also indicates that most people harbor implicit biases about gender. People misattribute status more readily to unknown men than to unknown women.<sup>307</sup> They associate male with hierarchical and female with egalitarian<sup>308</sup> and evaluate male authority figures more favorably than their female counterparts.<sup>309</sup> Priming people to think about dependence or aggression influences their judgments of men and women; they judge women, but not men, as more dependent while thinking about dependence and judge men, but not women, as more aggressive while thinking about aggression.<sup>310</sup> Men also automatically associate maleness with power.<sup>311</sup>

Not surprisingly, these attitudes towards men and women translate directly into evaluations of potential careers. Web-based IAT studies reveal that people more closely associate men with science and women with humanities.<sup>312</sup> People more easily associate

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<sup>305</sup> See Jack Glaser & Eric D. Knowles, *Implicit Motivation to Control Prejudice*, -- J. EXPER. SOCIAL PSYCHOL. -- (forthcoming, 2008).

<sup>306</sup> Alexander R. Green et al., *Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients*, J. GEN. INTERNAL MED (in press).

<sup>307</sup> See generally, Mahzarin R. Banaji & Anthony G. Greenwald, *Implicit Gender Stereotyping in Judgments of Fame*, 68 J. PERSONALITY & SOC. PSYCHOL. 181, 185-86, 189, 190-91, 192-93 (1995).

<sup>308</sup> Marianne Schmid Mast, *Men Are Hierarchical, Women Are Egalitarian: An Implicit Gender Stereotype*, 63 SWISS J. PSYCHOL. 107, 109-10 (2004).

<sup>309</sup> Laurie A. Rudman & Stephen E. Kilianski, *Implicit and Explicit Attitudes Toward Female Authority*, 26 PERSONALITY & SOC. PSYCHOL. BULL. 1315, 1319-24 (2000).

<sup>310</sup> Mahzarin R. Banaji et al., *Implicit Stereotyping in Person Judgment*, 65 J. PERSONALITY & SOC. PSYCHOL. 272, 275-76 (1993).

<sup>311</sup> Laurie A. Rudman et al., *Implicit Self-concept and Evaluative Implicit Gender Stereotypes: Self and Ingroup Share Desirable Traits*, 27 PERSONALITY & SOC. PSYCHOL. BULL. 1164, 1167-68 (2001)

<sup>312</sup> Brian A Nosek et al., *Harvesting Implicit Group Attitudes and Beliefs From a Demonstration Web Site*, 6 GROUP DYNAMICS: THEORY, RES. & PRACTICE 101, 105, 107-08 (2002).

“engineer” with men and “elementary school teacher” with female than the opposite pairing.<sup>313</sup> In one study, participants primed with words associated with historically male roles (like “doctor”) tended to categorize a subsequent gender-neutral pronoun as being male, while participants primed with words associated with historically female roles like “nurse”).<sup>314</sup> Like studies of racial bias, even participants who explicitly reject gender-based stereotypes concerning careers carry these implicit biases.<sup>315</sup> Web-based IAT studies also reveal that both men and women tend to link “male” with “career” and “female” with “family”.<sup>316</sup> Among men, this connection is consistent with their explicit statements about gender stereotypes, although women explicitly reject such connections as inconsistent with their beliefs

Many of the implicit associations involving gender cast men in a more favorable light, just as the connections in race imply a general preference for white over Black. But the relationship involving gender is more complicated. Women reveal a strong automatic preference for female words (e.g., “her” or “she”) over male words (e.g., “him” or “he”), although men do not harbor any preference.<sup>317</sup> Moreover, women’s automatic in-group bias is much stronger than men’s in-group bias, although this tendency is most pronounced among women who have positive self-esteem.<sup>318</sup> Rudman and Greenwald captured the essence of this phenomenon with two phrases characterizing women and men, respectively: “If I am good and I am female, females are good,” and “Even if I am good and I am male, men are not necessarily good.”<sup>319</sup> Rudman and Greenwald also discovered, in two other studies, that individuals harbor a pro-female bias to the extent that they favor their mothers over their fathers<sup>320</sup> and associate maleness with violence, all at the implicit level.<sup>321</sup>

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<sup>313</sup> Michael J. White & Gwendolen B. White, *White, Implicit and Explicit Occupational Gender Stereotypes*, 55 *SEX ROLES* 259, 263-64 (2006).

<sup>314</sup> Mahzarin R. Banaji & Curtis D. Hardin, *Automatic Stereotyping*, 7 *PSYCHOL. SCI.* 136, 137-38, 139 (1996).

<sup>315</sup> *Id.* at 138-39.

<sup>316</sup> Nosek et al., *supra* note 312 at 105, 108-09.

<sup>317</sup> Eugene V. Aidman & Steve M. Carroll, *Implicit Individual Differences: Relationships between Implicit Self-Esteem, Gender Identity, and Gender Attitudes*, 17 *EUROPEAN J. PERSONALITY* 19, 27-28 (2003).

<sup>318</sup> Laurie A. Rudman & Stephen A. Goodwin, *Gender Differences in Automatic In-Group Bias: Why Do Women Like Women More Than Men Like Men?*, 87 *J. PERSONALITY & SOC. PSYCHOL.* 494, 497-98 (2004).

<sup>319</sup> *Id.* at 498.

<sup>320</sup> *Id.* at 500-01.

<sup>321</sup> *Id.* at 502-03.

The studies of implicit gender and race bias have both similarities and differences. Both sets of research reveal that most adults harbor implicit biases consistent with stereotypes. Both also show that these biases occur even among people who openly embrace egalitarian norms. Blacks evidence such biases to a lesser extent than Whites, however, while women and men generally show the same degree of bias. Furthermore, while the unconscious racial biases can be summarized as “Whites are good and Blacks are bad”, the unconscious gender bias is more complicated. People more closely associate men with those traits most closely connected to political leaders: power, authority, hierarchy, status, and aggression. As these traits are not uniformly positive or negative, this does not translate into “men are good and women are bad.” Indeed, women tend to carry more positive associations with women than men, while men carry neither positive nor negative neutral associations with gender, as a general matter.

#### **f. Implicit Bias and Politics**

Implicit attitudes are associated with political beliefs. People who endorse right-of-center political views also tend to associate Black with bad and White with good on the IAT.<sup>322</sup> Similarly, political conservatism is associated with White in-group favoritism on both implicit and explicit measures.<sup>323</sup> The relationship holds up in reverse among Blacks. Blacks who are conservative tend to associate White with good and Black with bad on the IAT.<sup>324</sup>

And implicit attitudes affect how people vote.<sup>325</sup> In one study, Kam examined the impact of an implicit measure of attitudes towards an ethnic group on citizens’ willingness to support a minority candidate. She either identified the candidates’ party affiliations, or omitted that information. She found that for the implicit measure, Democrats who held the most favorable views towards Hispanics were nearly four times as likely to prefer the Hispanic candidate

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<sup>322</sup> William A. Cunningham et al., *Implicit and Explicit Ethnocentrism: Revisiting the Ideologies of Prejudice*, 30 PERSONALITY & SOC. PSYCHOL. BULLETIN 1332, 1336 (2004).

<sup>323</sup> John J. 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); Brian Nosek, *The Politics of Intergroup Attitudes: Implicit Cognition and Political Orientation*, Presentation at Duke University’s The Psychology of Voting and Election Campaigns (Oct. 20-21, 2006).

<sup>324</sup> *Id.* Jost et al., *supra* note 323 (finding that results were not as robust as those for White conservatives).

<sup>325</sup> See Inna Burdein et al., *Experiments on the Automaticity of Political Beliefs and Attitudes*, 27 POL. PSYCHOL. 359 (2006); Malte Friese et al., *Predicting Voting Behavior with Implicit Attitude Measures: The 2002 German Parliamentary Election*, 54 EXPERIMENTAL PSYCH. 248, 251 (2007) (finding predictive power of the IAT in the 2002 German Parliamentary election); DREW WESTEN, *THE POLITICAL BRAIN THE ROLE OF EMOTION IN DECIDING THE FATE OF THE NATION* 219-48 (2007).

compared with their counterparts who held the least positive implicit views towards Hispanics. Implicit measures of attitudes towards Hispanics were much less relevant when party cues were available, however. Even participants who expressed highly negative implicit attitudes towards Hispanics nevertheless voted for Hispanic candidates identified as being from the political party that they favor.<sup>326</sup>

Recent, unpublished research by Albertson and Greenwald links the IAT with the Bradley Effect.<sup>327</sup> Their study (conducted before the 2008 primaries began), measured both implicit and explicit preferences by voters for three Democratic hopefuls—Clinton, Edwards, and Obama. When asked who they say they support, Obama won handily, 42 percent to 34 percent and 12 percent for Clinton and Edwards, respectively. But Obama came in third, with 25% on implicit measures, with Clinton and Edwards capturing 48 and 27 percent of the participants' support. This study, while preliminary, provides the most direct evidence that Senator Obama faces a gap between what voters will tell pollsters and how they will vote.

The small handful of studies on implicit bias and politics provide some insights into the tangle of unconscious bias that Senators Clinton and Obama face in the electorate. But fleshing out the full picture requires extrapolating from the full collection of studies of unconscious and explicit bias that we describe above to assess the specifics of the 2008 election. This exercise necessarily entails a bit of hindsight and speculation.

### *1. The Primaries*

The research on unconscious bias affirms our assessment that Senators Obama and Clinton must both walk thin tightropes that their White male rivals do not. Presidential campaigns have become elaborate and dynamic processes in the United States in which Presidential hopefuls must anticipate the likely attacks from their adversaries in advance. They must position themselves ahead of these attacks in whatever way best prepares them for these attacks. The unconscious attitudes that most Americans have concerning race and gender make these two candidates uniquely vulnerable to subtle efforts to undermine the extent to which

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<sup>326</sup> Cindy D. Kam, *Implicit Attitudes, Explicit Choices: When Subliminal Priming Predicts Candidate Preference*, 29 POLI. BEHAV. 343, 344 (2007).

<sup>327</sup> Implicit Association Test Creator Says Political Polls Need Better Metrics to be More Accurate. *See* [www.scientificblogging.com/news\\_release/imlicit\\_association\\_test](http://www.scientificblogging.com/news_release/imlicit_association_test).

Americans can picture either of them as our next Commander-in-Chief. Whether their campaign staffs are aware of the research on unconscious bias or not, both Senators Clinton and Obama have tried to position themselves to be ready for these attacks. They are both trying to walk the tightrope.

As we discussed above, the line Senator Obama must walk is razor-thin. Among White voters, the persistence of the Bradley Effect highlights the split between the widespread embrace of egalitarian norms and the persistence of unconscious bias. Whites indicate that they are willing to vote for a Black candidate, but they sometimes flinch in the polling booth. Some White voters might be lying when they indicate to pollsters that they plan to vote for Senator Obama because they sense that it is politically correct to endorse a well-educated and well-credentialed politician despite the fact that he is Black. Others might simply lack the level of introspection needed to discern how they truly feel about him and whether they would vote for him. Even though Senator Obama has refrained from raising overtly Black issues, he is still visibly Black: he looks Black, has a Black family, and attends a Black church. When pollsters ask such voters how they have voted, they are somewhat embarrassed at having relied on their baser instincts and state that they voted for Senator Obama.<sup>328</sup>

Overt, explicit bias against Blacks certainly remains and will hurt Obama. But the overtly racist positions tend to be held largely by more conservative voters who no longer participate in the Democratic primaries—at least not since the Democratic party lost its deep support among White voters in the South. It is the covert, implicit bias that threatens his support among White Democrats. Those who vote in the Democratic primaries are exactly the kind of people to whom the research on implicit bias is the most striking—those who embrace egalitarian views and yet harbor implicit bias. As the research on implicit bias priming shows, little effort is needed to trigger lingering implicit bias.

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<sup>328</sup> According to MSNBC pundit, Chris Matthews, “You remember the Lone Ranger and Tonto?” Matthews asked another MSNBC pundit, Joe Scarborough. “Me thinks paleface speak with forked tongue.” In stating such, Matthews implied that White New Hampshire Democrats lied to pollsters about supporting Obama, because they are had no intention of voting for Senator Obama because of his race bigots who never had any intention of voting for a black man. He went on to say, “I thought white voters stopped being what they didn’t want to be. You know what it tells me? White people aren’t proud of who they are.” When Scarborough asked whether Matthews’ complaints might be more appropriate to the South than New England, Matthews replied “Boston? BOSTON? There’s a different kind of prejudice in the North than in the South. It may not be ‘I think I’m better than you,’ but it might be ‘I don’t want to live next door to you.’” See <http://www.newsbusters.org/blogs/tim-graham/2008/01/10/matthews-lectures-forked-tongue-paleface-bigots-new-england>.

Simple, subtle advertising can do most of the work for Senator Obama's opponents. In fact, his opponents need not raise race at all to succeed. As the interview studies show, those who fall under the influence of implicit bias will not cite their ill-ease with a person, out of concern that they seem racist. Rather, they will seize upon some other weakness in the candidate's resume. One illuminating study of bias in employment discrimination showed, for example, that extra credentials on resumes help White applicants far more than Black applicants.<sup>329</sup> Employers seem to evaluate Black and White resumes differently; Whites get hired because of credentials, but hiring a Black applicant requires that employers get past their own biases—credentials do not matter as much. Senator Obama's opponents need only provide some reasonable criticism of his efforts—his race might do the rest.

At the same time, Senator Obama cannot, himself, trigger unconscious bias with his own words. But he must not only navigate the potential influence of implicit bias among White voters, he must face the explicit in-group favoritism among a base of Black voters. Blacks express much less anti-Black implicit bias than Whites, but express strong pro-Black explicit sentiment. Blacks will thus want an authentically Black candidate. To the extent that Senator Obama tries to avoid Black issues so as not to trigger the unconscious sentiment among White Democrats, he risks crossing the explicit pro-Black sentiment among Black voters. Every candidate needs a strong base of support from some group in order to get elected. Senator Obama's natural base lies with Black voters; if he loses that, he stands little chance. Senator Obama must find some room between the implicit anti-Black biases of White voters and the explicit pro-Black sentiment among Black voters.

Senator Clinton faces her own set of challenges that arise from the influence of implicit bias. Even in 2008, a broad set of Americans associate men with leadership positions, and women with domestic roles. But the effect and influence of such biases might be much more muted for several reasons. First, no evidence of a Bradley Effect for women exists. Voters who report being comfortable enough with a female candidate seem to mean what they say, and do not flinch or change their minds when it comes time to vote. Once voters accept a female candidate as suitable, it seems they have gotten past the unconscious biases. Second, unlike race,

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<sup>329</sup> Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AMER. ECON. REV. 991, 994 (2004).

some aspects of unconscious bias favor women. Notably, people have more positive associations with women than men, and women are thought of as nurturing egalitarians. Finally, Senator Clinton need not worry as much about alienating female Democrats through her efforts to fight against the implicit stereotypes that women cannot pursue careers. Democrats tend to favor efforts to ensure that women have a clear choice concerning whether to pursue a career, and are apt to be understanding of Senator Clinton's efforts to fight the gender stereotypes. In short, unlike Senator Obama, she will not risk alienating her base by efforts to counteract the implicit biases that are widespread among American voters.

This pattern of implicit and explicit biases gives a roadmap for each candidate to follow. Senator Clinton's course is clear. She must primarily fight the potential for voters to see her as lacking leadership qualities. Like other successful female politicians in the US and in other countries, she has done this successfully for her entire political career. She talks endlessly about policies she would adopt. She surrounds herself with other powerful leaders (notably her husband). She boasts of her connections to foreign leaders. And she looks tough as nails. Only once—when she teared-up in a New Hampshire diner—has she deviated even slightly from this path. By and large, the overt and subtle messages that Senator Clinton expresses are intended to signal that she will be as tough a leader as any man,

But at the same time, one of her chief strengths against Senator Obama, her experience, undermines her efforts to convince voters that she will be an effective commander-in-chief. She often totes her resume and experience in Washington as ensuring that she will be able to “hit the ground running” and get started on America's problems “from day one.” While this might be an effective way to highlight a significant difference between her and Senator Obama, it risks inducing the negative stereotype that women are not true leaders. Concerned that her previous emphasis on experience is not getting through to the voters she began posing an old saw of senior politicians who would be President; that is, “when that phone rings in the middle of the night, who do you want to answer it?” She means to imply that she would be better able to handle a crisis than Senator Obama, of course. The question has always been a less-than-subtle effort to invoke an affective intuition that one wants an experienced person to answer the phone. But, because the attempt comes in the form of a question, rather than an implicit affirmation of

her experience, it invokes, rather than fights, a stereotype. The unconscious answer for many Americans is probably “a man.”

Other than these small deviations, however, one of which helped her, Senator Clinton treads a clear path. She looks and acts like America’s image of a leader so as to fight the implicit biases arrayed against her. And it is largely successful—if she loses, it will not be because Americans think she is not a strong person.

Senator Obama’s path is less obvious, because it is so narrow. But he has pursued two more nuanced strategies that have brought him success. First, in sharp contrast to Senator Clinton, he tends to avoid lengthy, detailed policy statements. With the enormous staff that comes with a well-funded Presidential campaign, generating detailed position papers is not a challenge. But they can only hurt Senator Obama. Detailed positions can only give ammunition to unconscious bias. As the resume study, cited above suggests, Senator Obama cannot help himself by padding his resume. Like all Black job applicants, he must get past the intuitive, unconscious reaction that can influence voters’ emotions. Senator Obama seems to know this and he works hard to remain purely positive and to be likeable. In effect, he tries to engage voters more so on an emotional, and less so on a cerebral level. He sells hope, not health-care reform. Like Senator Clinton, he campaigns straight at the bias by trying to get voters to like him and the abstract notion of what he stands for.

Second, to navigate between White voter’s implicit bias and Black voters explicit concerns, he uses ambiguous messages that allow each to hear what they want to hear. Notable among these messages is his assertion that “now is our time.” White voters hear this as a generational message—and a clever one. Baby Boomers, always quick to think that now is their time, always embrace such messages. Gen-Xers’ sense the end of the reign of Boomers when they hear this assertion. Younger voters also like the idea that they are coming into their own. Even more importantly, Black voters hear this statement as an affirmation by Senator Obama of his race. “Now is our time” covertly affirms his Blackness while inspiring Whites.

## 2. *The General Election*

Either Senator Obama or Senator Clinton will face new challenges in the general election that arise from the nation's unconscious biases. If Senator Clinton is the Democratic nominee, she will, once again, be campaigning against a man. Our analysis and her strategy change only slightly. Her gender can adversely affect voters' ability to see her as a commander-in-chief, so she must campaign headlong against this image. For independent and Republican voters, the answer to the question of who they want to answer the emergency phone call in the middle of the night is apt to be "John McCain." She will have to fight this stereotype even harder in the general election than she has in the primaries.

Winning the general election, however, also requires that she face independent voters who might react more negatively toward her tough image. They will be less sympathetic to her efforts than the Democratic voters from the primaries. She will do well to find some way to win over independent voters, particularly women, who are less sympathetic to women driven primarily by career over family.

Should Senator Obama capture the nomination, he faces an electorate that holds both more implicit and explicit anti-Black bias than those who vote in the Democratic primaries. Presumably, he can do little to win over overtly racist voters, and he should not try to do so. Indeed, overt expressions of anti-Black animus by public supporters of the Republican candidate might help him. Republicans who attempt to play upon implicit bias in a ham-fisted fashion might inspire resentment among voters. Even as most Americans harbor implicit anti-Black bias, they find such bias to be uncomfortable. Most people can be brought to make race neutral decisions if they are motivated to overcome their unconscious biases. Racial pandering by Republicans might well inspire efforts to overcome bias.

Absent some help from foolish campaign tactics by his Republican adversary, Senator Obama is apt to find it more difficult to overcome the implicit biases of the broader electorate than that of the Democrats he faces in the primaries. Political orientation correlates with implicit bias against Blacks. He will have to work even harder than he does now to make an emotional appeal to independents and Republicans. Working in his favor, however, is that if he captures the Democratic nomination, he might be able to worry a bit less about having the support of the

Black community. Capturing the nomination certainly constitutes an adequate test of his national appeal. He also will not be running against a popular figure in the Black community. He might be able to focus exclusively on fighting the implicit biases he faces.

At the broadest level, he will likely face the lingering concern among some voters that he is too Black. Implicit bias research shows that people tend to implicitly prefer White over Black and light-skinned over dark-skinned Blacks.<sup>330</sup> One might wonder if this goes beyond mere skin color to what that skin color, combined with certain philosophical musings, might symbolize. For instance, Whites may harbor a preference for other people who more closely approximate “Whiteness” on a more abstract, philosophical level.<sup>331</sup> With particular regards to Senator Obama, he will face withering attacks about his affiliation with a predominantly Black church—especially one where the pastor, Reverend Jeremiah Wright—espouses a Black value system.<sup>332</sup> Moreover, Senator Obama will have to contend with scrutiny directed at him given his pastor’s loose ties to Minister Louis Farrakhan,<sup>333</sup> leader of the Nation of Islam, and Minister Farrakhan’s positive remarks about Senator Obama.<sup>334</sup> Though early concerns about this relationship have focused on Minister Farrakhan’s past statements about Jews and the state of Israel, other concerns could be raised about the Nation of Islam’s assertion that Whites are devils.<sup>335</sup> In addition, given that Michelle Obama has arguably been more vocal about issues of race than Senator Obama,<sup>336</sup> voters may impute her Blackness to him. Consequently, their negative implicit bias towards her philosophical Blackness may be transferred to him.<sup>337</sup>

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<sup>330</sup> Lane et al., *supra* note 16.

<sup>331</sup> Dave Chapelle created a skit for his television show, THE DAVE CHAPELLE SHOW, entitled *Racial Draft*. In the skit, Whites selected Colin Powell from the Blacks and were required, as part of the deal, to take Condeleeza Rice. See <http://www.spike.com/video/2945730>.

<sup>332</sup> *Barack’s Unrighteous Rev.*, N.Y. POST, Jan. 18, 2008, at 028.

<sup>333</sup> Mary Mitchell, *Why Obama ‘Denounced’ Farrakhan: It Wasn’t Candidate’s Best Move, But Most Blacks Understand*, CHICAGO SUN-TIMES, March 2, 2008, at 12.

<sup>334</sup> Sophia Tareen, *Farrakhan Still Supports Obama: Senator Denounced Nation of Islam Chief*, CHICAGO TRIBUNE, Feb. 29, 2008, at 10 (comparing Senator Obama to Master Fard Muhammad—God in person who founded the Nation of Islam—who both had Black fathers and White mothers).

<sup>335</sup> LOUIS E. LOMAX, WHEN THE WORD IS GIVEN: A REPORT ON ELIJAH MUHAMMAD, MALCOLM X, AND THE BLACK MUSLIM WORLD 54-56 (1963).

<sup>336</sup> See, e.g., Jennifer Fermino, *Michelle’s Colorful Ivy Thesis*, N.Y. POST, Feb. 24, 2008, at 006.

<sup>337</sup> Under Title VII, employment discrimination has been found to take place where race is imputed from a racial minority who is not an employ to their partner or parent who is. See *Parr v. Woodmen of the World Life Ins. Co.*, 791 F.2d 888 (11th Cir. 1986); *Tetro v. Elliott Popham Pontiac, Oldsmobile, Buick & GMC Trucks, Inc.*, 173 F.3d 988, 990 (6th Cir. 1999); *Smith v. Century Concrete, Inc.*, No. 05-2105-JAR, 2006 WL 877013 (D. Kan. July 6, 2006).

Furthermore, Senator Obama previously admitted to using drugs as an adolescent.<sup>338</sup> Supporters of Senator Clinton's campaign have already raised this as an issue and questioned whether or not Senator Obama also sold drugs as well.<sup>339</sup> In the general election, Republicans will likely run with this admission and insinuation. This poses an issue for Senator Obama, because of the implied race-crime connection.<sup>340</sup> And voters' judgments about Senator Obama are likely to be more negative given the racial stereotypicality of the crime.<sup>341</sup>

Should he enter the general election against Senator McCain, Senator Obama will also face a slightly different strain of implicit bias. As noted above, the research indicates that Whites associate being White with being American. Even if Senator Obama can create positive imagery that overcomes the negative associations Americans have for Blacks, then he has to face the set of implicit biases that make Blacks seem more foreign than Whites. Indeed, a recent unpublished study of implicit bias and the current election cycle showed (using students at San Diego State University) that people more easily associate Senator Clinton with the category "American" than Senator Obama.<sup>342</sup> The participants in this study even found *Tony Blair* to be more American than Barack Obama.

Senator Obama's very name causes him problems. His middle name seems, to most Americans, foreign and hostile. A Republican commentator at a recent rally for John McCain sought to exploit that fact by repeating his middle name, Hussein, three times during a speech.<sup>343</sup> Senator McCain repudiated the effort, but such attacks might harm Senator Obama all the same. Furthermore, Senator Obama's last name sounds similar to that of America's most reviled enemy. Major newspapers repeatedly misprint it as "Osama." As comedian Jon Stewart quipped in his monologue before the Academy Awards Ceremony this month, Obama's candidacy might

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<sup>338</sup> See Margaret Talev, *Democrats: Obama Dismisses Flak on Past Drug Use*, MIAMI HERALD, Dec. 16, 2007, at A6.

<sup>339</sup> See *BET Founder Tells Obama He's Sorry*, WASHINGTON POST, Jan. 18, 2008, at A9; Marjorie Valbrun, *Will They Play the Race Card?*, WASHINGTON POST, Jan. 13., 2008, at B7.

<sup>340</sup> Slocum, *supra* note 142; Hurwitz & Peffley, *supra* note 142.

<sup>341</sup> See Christopher S. Jones & Martin F. Kaplan, *The Effects of Racially Stereotypical Crimes on Juror Decision-making and Information-processing Strategies*, 25 BASIC & APPLIED SOC. PSYCHOL. 1, 5-9 (2003).

<sup>342</sup> Thierry Devos et al., *Is Barack Obama American Enough to be the Next President? The Role of Racial and National Identity in American Politics*, available at [http://www-rohan.sdsu.edu/~tdevos/thd/Devos\\_spsp2008.pdf](http://www-rohan.sdsu.edu/~tdevos/thd/Devos_spsp2008.pdf).

<sup>343</sup> Liz Sidoti, *McCain Repudiates Remarks on Obama*, FORT WORTH STAR-TELEGRAM, Feb. 27, 2008, at A11.

face the same fate as the (fictitious) 1944 Presidential campaign of “Gaydolf Titler”, who “had some good ideas,” but “just couldn’t get past that name.”<sup>344</sup>

Senator McCain is a certified war hero, whereas Senator Obama has never served in the armed forces. Already, Republicans have attacked his patriotism.<sup>345</sup> The attack stems from assertions that Senator Obama had refused to wear an American flag lapel pin<sup>346</sup> and to place his hand over his heart during the singing of the *National Anthem*.<sup>347</sup> The American flag is a tough issue for Senator Obama. A recent study by Melissa Ferguson and her colleagues showed that when Whites and Asians are primed with images of the American flag, their attitudes toward democrats were not altered, but their attitude toward Blacks generally, and Senator Obama specifically, become more negative.<sup>348</sup> The failure to seem patriotic can hurt any candidate. But Patriotic symbols exacerbate the association between Whiteness and Americanness. Senator Obama will have to find some way to diffuse that issue without simply surrounding himself with flags on all occasions.

## V.

### **Taking Stock: Race and Gender in the Election and Beyond**

Many people claim that race and gender do not affect their judgment. Such assertions, however, usually refer to explicit judgments. And maybe these speakers are right to assert that they do not consciously or deliberately treat people differently based on their race or gender. But the evidence on implicit bias suggests that this is not the whole story. Invidious implicit biases are ubiquitous and they affect behavior. In the 2008 election, the failure of most voters to acknowledge and to check their implicit biases has created challenges for Senators Clinton and Obama. As presidential candidates, both have millions of dollars, consultants, and an army of volunteers at their disposal. As president, either of them would also have a vast body of resources at their disposal to make their term in office as successful as possible. And if Clinton

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<sup>344</sup> Jon Stewart, Monologue at the 80<sup>th</sup> Annual Academy Awards Ceremony, February 24, 2008, Los Angeles, CA. See <http://www.breitbart.tv/?p=52684>.

<sup>345</sup> Nedra Pickler, Obama May Face Grilling on Patriotism, AP wire story on Yahoo. 2/23/08.

<sup>346</sup> Nedra Pickler, Pundits Question Patriotism of Obamas, Oakland Tribune, Feb. 24, 2008, available at [http://www.insidebayarea.com/ci\\_8351738?source=rss](http://www.insidebayarea.com/ci_8351738?source=rss).

<sup>347</sup> *Id.*

<sup>348</sup> Melissa J. Ferguson et al., Presentation entitled “On the Automaticity of Nationalist Ideologies” given at the Society for Personality and Social Psychology Conference Symposium: Priming Ideology: Demonstrating the Malleability of Political Ideology (2008).

and Obama face significant challenges in light of implicit biases held by those “hiring” them—the American people—imagine the challenges before ordinary employees, mortgage applicants, and anyone whose fate rests on the judgment of people who harbor implicit biases. They will face the same set of hurdles, only without the significant spin machines to help them navigate the minefield of implicit bias.

To be sure, Senator McCain faces his own challenges, just as any White male job applicant faces challenges. Although a war hero with significant military and legislative experience, he has many negative qualities: he is thought to be short-tempered; he has a history of irritating his supporters with contrarian views; he hales from the libertarian West rather than the current base of conservative Christian support—the Southeast; he has a past history of scandal with the Keating Five; and he is old. But unlike Senators Clinton and Obama, these negative qualities can be discussed openly and directly. Even as to age, which shows sizeable implicit biases, Senator McCain can directly address the issue. Senator McCain can directly tell voters why he thinks he is not too old to be President. It is less easy for Senator Clinton directly to tell voters she is not too female, and impossible for Senator Obama to tell voters directly that he is not too Black. Senator McCain carries a standard package of strengths and weaknesses into his candidacy, whereas Senators Clinton and Obama carry additional factors that are more difficult to manage. Voters do not treat race and gender as being the same as taking unpopular positions or even as being old.

We thus conclude that if the case study of the 2008 election can provide any guidance to policy makers, it is that the scholars writing about implicit bias are right. The difficulty of these implicit biases lies in their tendency to influence voters outside of consciousness. Voters and employers believe they make evaluations on what they believe are rational grounds, but which might be influenced more so by implicit anti-Black or gender-stereotyped attitudes. Addressing these problems might require adjusting the approach to anti-discrimination law so as to address unconscious biases, as these scholars suggest.<sup>349</sup> In the context of elections, the continued influence of these biases supports the maintenance of racially gerrymandered districts, without which Black politicians be nearly eliminated from Congress.

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<sup>349</sup> See *supra* note 9 and accompanying text.

Of course, the success of Senators Clinton and Obama thus far is good news for race and gender relations as well. Indeed, their respective gender and race might be benefiting them, as well as causing them difficulties. Some voters, for any number of reasons, might want to be able to say either to others or themselves that they supported a woman or Black candidate. This serves as form of a voter affirmative action—promotion of one candidate at least in part because of their diversity. This is conceivably the very form of affirmative action embraced by Professors Kang and Banaji—who are leading theorists on implicit bias. They contend that affirmative action is not a retrospective effort to redress wrongs of the past, but is meant to overcome the thumb on the scale that implicit biases place against women and minorities in the present.<sup>350</sup> Curiously, the success of these two candidates might signal that the American public supports affirmative action somewhat more than polls suggest.

Furthermore, the two campaigns, of course, have the potential to reduce the level or influence of implicit biases. Hiring or promoting people to prominent positions that are contrary to their stereotypes can force people to confront their implicit biases.<sup>351</sup> Voters in the Democratic primaries and caucuses must at least confront the prospect voting for a woman or Black man, which is something they never would have had to seriously face in years past. The same will be true in the general election, one way or the other. Making the choice might inspire voters who harbor implicit biases to become aware of these biases and make efforts to reduce them, or at least eliminate their influence on judgment.

Current models of prejudice and stereotype reduction support the view that the 2008 election will reduce the effect of implicit biases overall. This work reveals that what helps people avoid the influence of implicit biases are: 1) they aware of their bias; 2) are motivated to change their responses because of personal values, feelings of guilt, compunction, or self-insight;<sup>352</sup> and 3) possess cognitive resources needed to develop and practice correction.<sup>353</sup> Regardless of the outcome, the 2008 election might facilitate all of these factors.

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<sup>350</sup> See Kang & Banaji, *supra* note 9, at 1067-81.

<sup>351</sup> Jerry Kang, Behavioral Realism: Future History of Implicit Bias and the Law, Lecture at Ohio State University (November 2006), <http://www.law.ucla.edu/kang/Talks/talks.html>.

<sup>352</sup> Nilanjana Dasgupta, *Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations*, 17 SOC. JUST. RES. 143, 157-58 (2004); 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, 800, 803-05 (2001); Patricia G. Devine et al., *Prejudice*

The other way that the 2008 election can reduce the influence of invidious biases is by providing two salient, positive role models who are opposite to the stereotype of the demographic groups they represent. Exposing people to examples that run counter to the stereotypes reduces the level of implicit invidious bias.<sup>354</sup> For example, showing people images of esteemed Blacks reduces the anti-Black bias on the IAT.<sup>355</sup> Much the same is true of gender.<sup>356</sup> Indeed, simply imaging people that are contrary to invidious implicit stereotypes reduces the bias.<sup>357</sup> Should either Senators Clinton or Obama become the next President, the American public will be bombarded with constant images of a successful career-oriented female leader or a successful, intelligent, hard-working Black man. Given the difficulties both candidates have encountered, we harbor no illusions that either outcome will mean the complete demise of implicit biases (either of women or Blacks). But we will not be surprised if researchers observe a noticeable reduction in such biases.

Finally, what may be the most remarkable sign that people can be debiased is indicated by the surprising success of Senator Clinton's and Senator Obama's candidacy. Given what is known about implicit bias, the success of these candidates belies conventional wisdom. For example, Senator Clinton has strong support among men, Senator Obama has almost fanatical support among Whites, and both have high prospects of success should they become the nominee. Maybe their candidacy is more complex than just gender or race. Maybe the success of these candidates represents to many voters the possibility of a truly egalitarian America and

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*With and Without Compunction*, 60 J. PERSONALITY & SOC. PSYCHOL. 817, 820-21, 825-27 (1991). What is consistently found is that individuals—Whites in particular—who are more internally motivated to reduce their levels of race bias show less implicit prejudice, whereas those who are more externally motivated display more implicit prejudice. See Leslie R. M. Hausmann & Carey S. Ryan, *Effects of External and Internal Motivation to Control Prejudice on Implicit Prejudice: The Mediating Role of Efforts to Control Prejudiced Responses*, 26 BASIC & APPLIED SOC. PSYCHOL. 215, 220-22 (2004). Specifically, high internal and low external motivation to reduce race bias appears to be the best method to reduce implicit race bias. Irene V. Blair & Mahzarin R. Banaji, *Automatic and Controlled Processes in Stereotype Priming*, 70 J. PERSONALITY & SOC. PSYCHOL. 1142, 1151-53, 1155-57 (1996); Patricia G. Devine, *The Regulation of Explicit and Implicit Race Bias: The Role of Motivations to Respond Without Prejudice*, 82 J. PERSONALITY & SOC. PSYCHOL. 835, 839-40, 841-44 (2002).

<sup>353</sup> Dasgupta & Greenwald, *supra* note 354; Blair & Banaji, *supra* note 354, at 1145-48.

<sup>354</sup> Dasgupta & Greenwald, *supra* note 354

<sup>355</sup> *Id.*

<sup>356</sup> See Nilanjana Dasgupta & Shaki Asgari, *Seeing Is Believing: Exposure to Counterstereotypic Women Leaders and Its Effect on the Malleability of Automatic Gender Stereotyping*, 40 J. EXPERIMENTAL SOC. PSYCHOL. 642, 647-48, 650-53 (2004).

<sup>357</sup> See Irene V. Blair, et al., *Imagining Stereotypes Away: The Moderation of Implicit Stereotypes Through Mental Imagery*, 81 J. PERSONALITY & SOC. PSYCHOL. 828, 830-31, 832, 833, 834, 835-86 (2001).

that these candidates are bridges to that place. If that it so, it behooves Americans to move beyond implicit bias to the best of their ability.<sup>358</sup>

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<sup>358</sup> See David Paul Kuhn, *For GOP, a Minefield of Campaign 'Firsts': Strategists Know Any Hint of Racism, Sexism Can Be Costly*, ST. PAUL PIONEER PRESS, Feb. 27, 2008, at A1; Jonathan Martin, *RNC Warns Tenn. GOP on "Hussein"*, POLITICO, Feb. 27, 2008, available at [http://www.politico.com/blogs/jonathanmartin/0208/RNC\\_warns\\_Tenn\\_GOP\\_on\\_Hussein.html](http://www.politico.com/blogs/jonathanmartin/0208/RNC_warns_Tenn_GOP_on_Hussein.html); Ben Smith, *Insults, Apologies Fuel Obama's Rise*, POLITICO, Feb. 28, 2005, at <http://www.politico.com/news/stories/0208/8751.html>.