THE IMPLICIT BIAS PROJECT IN THE DALLAS CIVIL DISTRICT COURTS

Hon. Tonya Parker
Issa F. Kamaru

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A. What Prompted Study of this Issue?

In December 2016, members of the Supreme Court of Texas gathered in Dallas to host a meeting, *Beyond the Bench: Law, Justice, and Communities Summit*, of trial and appellate court judges along with community leaders. Focused mostly on criminal and family courts, the Summit addressed the manner in which unconscious bias compromises merits-based decisions by judges. Dr. Jeffrey Rachlinski, a professor at Cornell Law School, took the stage to discuss the topic. Dr. Rachlinski’s presentation made two things clear: implicit bias is pervasive and, when people are made aware of it, they *can and do* take measures to address it. While provocative and insightful as to the issues addressed, two crucial questions emerged from what was not discussed at the Summit: **How is implicit bias impacting the civil justice system? Can and should we address implicit bias in juror decision-making?**

Subsequently, a Task Force was convened in 2017 to study these issues and develop a plan to address them. The Task Force includes: Judge Tonya Parker (116th Judicial District Court), Judge Eric Moye’ (14th Judicial District Court), Judge Ingrid Warren (Dallas County Probate Court No. 2), Professor Eliot Shavin (Clinical Professor in the Civil Clinic at Southern Methodist University (“SMU”) Dedman School of Law), Issa Kamara (S.J.D. Candidate at SMU Dedman School of Law, beginning Fall, 2018), and Professor Lynne Stokes (Professor and Chair of Department of Statistical Science at SMU).

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1 Judge Tonya Parker was the Presiding Judge of the Dallas Civil District Courts from 2016 through 2017 and is the presiding judge of the 116th Judicial District Court. In December 2016, she attended the Supreme Court of Texas’ *Beyond the Bench Summit* on behalf of the First Judicial Administrative Region. Following the Summit and noting the void, Judge Parker immediately became interested in studying the implications of implicit bias in civil cases and juror decision-making, and on exploring ways to reduce its improper use by jurors as they process evidence (during trial), deliberate upon, and decide cases. Judge Parker, thus, convened the Task Force to study such issues.

2 Among many other titles, Judges Moye’ and Warren are also co-founders of the W.J.
Over a period of several months in 2017, the Task Force met to discuss: anecdotal reports from trial lawyers and judges of implicit bias manifesting in civil jury deliberations (primarily gleaned from post-verdict questioning of jurors); specific issue(s) the Task Force should study, including proposals regarding the best methodology to study such issues; and the ultimate goals of the project. Initially, the Task Force focused on developing a method for investigating the extent to which implicit bias affects juror decision-making. However, after canvassing the literature and in light of Professor Rachlinski’s statement on the ubiquity of implicit bias, the Task Force decided to address the issue head-on by crafting a study to evaluate whether specific jury instructions (that create an awareness of implicit bias and urge the jurors to guard against it) can reduce the potential effects of implicit biases in civil jury verdicts.

Given both the involvement of judges and the goals of the project, the Task Force agreed the study must be neutral as to plaintiffs and defendants and that care should be taken to insure it is not designed in a manner that is helpful to either side. The primary and avowed goals of the project, as explained below, are to promote fairness and merits-based decision making by reducing implicit bias in civil jury trials. The discussion below will briefly explore the meaning of implicit bias, the importance of addressing it in the context of the civil justice system, and the role the Task Force envisions the Dallas Civil District Court Implicit Bias Project will play in moving the needle on this critical issue.

Durham Legal Council, Inc., an association of Texas African-American Judges. Judge Moye’ is on the Board of Directors for the Texas Center for the Judiciary, an entity responsible for educating Texas judges. Judge Warren is the president of the W. J. Durham Legal Council. With their relationships across the State, Judges Moye’ and Warren will help replicate any worthwhile efforts of the Task Force in jurisdictions across the State.

Professor Shavin authored and presented an article on the topic of implicit bias at the Texas Bar’s Individual Rights and Responsibilities Section Bill of Rights Seminar in May 2016. The article is titled, Uncovering and Proving Implicit Bias in Voir Dire and Trial. Mr. Kamara works closely with Professor Shavin in researching and studying implicit bias issues. With their vast knowledge of the subject matter, Professor Shavin and Mr. Kamara contribute significantly to the Task Force’s efforts to study and devise methods to ameliorate the effects of implicit bias in our civil courts.

Professor Stokes, M.S., Ph.D. co-authored an article in 2011 with the late Professor Daniel Shuman and Professor George Martinez where they studied the effect of a plaintiff’s use of an interpreter on juror decision-making. The Article is titled, Stranger at the Gate: the Effect of the Plaintiff’s Use of an Interpreter on Juror Decision-making. It is published 25 May 2011 in Wiley Online Library. With her background in statistical sciences, Professor Stokes helped to design the study and sponsored it to SMU’s Institutional Review Board. She and her team will evaluate the data collected to attempt to measure the efficacy of our proposed action plan.
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B. What is Implicit Bias?

1. Unconscious Bias

Implicit bias is one of the most significant discoveries in recent times. Nancy Hopkins, a life scientist, ranked implicit bias as one of the three most important discoveries of the past century. Implicit biases are the plethora of fears, feelings, perceptions, and stereotypes that lie deep within our subconscious, without our conscious permission or acknowledgment. Because we are unaware of them, “we unconsciously act on such biases even though we may consciously abhor them.” Although there is growing literature on the subject, people still frequently conflate implicit bias (unconscious bias) with explicit bias (conscious bias). The two concepts are distinct. Explicit bias is a form of bias that a person intentionally endorses—such as the traditional definitions of racism, prejudice, sexism, or homophobia that most people recognize.

Implicit bias, on the other hand, occurs when a person makes unconscious associations between a group of people and particular traits, based on one’s perception of, understanding of, judgment about, or behavior toward members of the group. Moreover, implicit bias is a neurological response that one acquires after, for example, in the case of race, an association of a race to a particular behavior for an extended period. The Ohio State University Kirwin Institute for the Study of Race and Ethnicity expounds upon the definition of implicit bias as encompassing both favorable and unfavorable assessments of people and concepts, that are activated involuntarily and without an individual’s awareness or intentional control. These subconscious biases are different from known biases that individuals may choose to conceal for social and political correctness. Implicit bias is, therefore, a reflexive and spontaneous cognitive reaction that lies outside of the conscious mind.

2. Project Implicit Bias and the IAT

Much of the research on the topic of implicit bias emanates from Project Implicit. A key method of investigation is the Implicit Association Test (IAT). The IAT is a computerized test that measures the strength of associations between concepts or implicit preferences. The test works by measuring the amount of time it takes to categorize objects into two groups, with one group requiring more mental effort than the other. The difference in reaction time is said to reflect the strength of the association.

The Implicit Association Test (IAT) is a widely used measure of implicit bias. It involves a series of computer-based tasks where participants are asked to sort stimuli into categories. The task is designed to measure the speed at which participants associate one concept with another, with the implicit bias manifesting itself in the time it takes to make the association.

Many studies use the IAT to assess implicit bias in various domains, including race, gender, and other social categories. The test is often used in legal settings to explore biases that may influence decision-making processes.

3 Nancy Hopkins, Amgen, Inc. Professor of Biology, Mass. Inst. of Tech., Invisible Barriers and Social Change, Baccalaureate Address at Boston University’s 141st Commencement (May 18, 2014), http://www.bu.edu/1ews/2014/05/19/boston-universitys-141st-commencement-baccalaureate-address-nancy-hopkins [http://perma.cc/KT5L-P2Y3]. (The other two discoveries Professor Hopkins mentioned are Higgs boson particle and the Internet) (last visited 4/11/2018)


5 Id.


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Implicit. Initially launched at Yale University in 1998 and expanded in 2003 with a grant from the National Institute of Mental Health, Project Implicit has evolved into a collaborative effort among research scientists, technicians, and laboratories at Harvard University, the University of Virginia, and the University of Washington.8 “It exists ‘to facilitate the research of implicit social cognition: cognitions, feelings, and evaluations that are not necessarily available to conscious awareness, conscious control, conscious intention, or self-reflection.’”9

The Project “blends basic research and educational outreach in a virtual laboratory at which visitors can examine their own hidden biases through a test known as the Implicit Assessment Test (IAT).”10 Generally, “the IAT pairs an ‘attitude object’ (such as a racial group) with an ‘evaluative dimension’ (such as “good” or “bad” [or “truthful” or “untruthful”] and suggests that the speeds of responses to the association of the two show automatic attitudes and stereotypes, that is, implicit biases.”11 The hypothesis of the IAT is that people will find it easier to associate pleasant words with the faces and names of people toward whom they have a favorable bias than with the faces and names of those toward whom they have an unfavorable or less favorable bias.12 The test is therefore rooted in the logic that people more easily and more quickly pair traits with people to whom they unconsciously associate such traits.13 After participants complete the test, their level of bias is rated as ranging from “slight” to “strong.”

Using the IAT, social psychologists have collected enormous amounts of data that measures the strength of automatic associations (implicit biases) between people and traits. Researchers have concluded that such biases are pervasive and widely held, greater in magnitude (compared to explicit biases), and disassociated with explicit biases.14 These findings don’t bode well for our civil justice system and jury trials in particular where citizens, not trained judges, are deciding the facts based upon credibility assessments and the weighing of evidence.

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8 Bennett, supra note 4, at 152-153.
9 Id. citing Project Implicit, What is Project Implicit?, http://www.projectimplicit.net/about.php (on file with the Harvard Law School Library).
11 Bennett, supra note 4, at 152-153.
13 Bennett, supra note 4, at 153.
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C. Why We Should Address Implicit Bias in Civil Jury Trials.

The founding fathers were at pains to protect jury trials in the Constitution. The United States Supreme Court has long held that a fair and impartial jury is essential to a fair trial. Although the High Court has repeatedly and consistently held that fairness and impartiality are the touchstones of a person’s seventh amendment right to a jury trial, implicit bias still exists unchecked in courtrooms. Jurors do not shed their implicit biases at the courthouse door. They come to the courthouse with them, which likely influence the way they interpret evidence, understand facts, remember facts, parse legal principles, and render verdicts. For example, studies based on social cognition and memory indicate that jurors unconsciously forget facts in cases involving blacks because of implicit bias. Moreover, the evidence presented at trial may be “inaccessible, it may not be gathered together in time to bear on the decision, or it may be too voluminous to be properly organized and utilized in a judgment task.” Such circumstances can create an environment where jurors will likely rely on implicit bias to “make inferences and predictions from what scanty and unreliable data are available.” Additionally, the dynamics of our adversarial system—two opposing sides

15 U.S. Const. amend. VII. (The Seventh Amendment guarantees the right to jury trial in civil cases in law (excluding equity) where the amount in controversy exceeds $20); See also THE FEDERALIST NO. 83, at 562 (Alexander Hamilton) (Jacob E. Cooke ed., 1961)). (Alexander Hamilton called it, in Federalist 83, “the “very palladium of free government.”). Id. Emphasis added.

16 See Turner v. Louisiana, 379 U.S. 466 (1965); see also United States v. Burr, 25 Fed. Case. 49, 50 (C.C.D. Va. 1807) (No. 14,692g) (Marshall, C.J., sitting). Chief Justice Marshall opined, speaking of jury selection, that (“Why do personal prejudices constitute a just cause of challenge? Solely because the individual who is under their influence is presumed to have a bias on his mind which will prevent an impartial decision of the case, according to the testimony.”) Id.

17 See Sheppard v. Maxwell, 384 U.S. 333, 362 (1966). (The Court held that pretrial publicity compromised an “impartial jury free from outside influences.”) Id.

18 To be sure, judges and lawyers possess implicit bias, too. However, the focus on jurors is because jurors, unlike judges, are not trained on implicit bias. See Implicit Bias and American Juror, 116 Court Review – Volume 51.


20 Id.


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presenting conflicting evidence/arguments about the same event and, in some instances, requesting and challenging an award of non-economic damages—further spawn an environment where jurors will tend to rely on their implicit biases to reconcile conflicting, intangible evidence. “When a decision is undefined and open-ended, like a pain and suffering award, it is more likely to be influenced by biases.”

On the other hand, “when jurors are given clear, objective criteria for determining an award, structural factors are most likely to influence awards.”

Despite the prevailing realities of unconscious bias, our justice system continues to have an almost singular focus on eliminating or reducing the taint of explicit biases through voir dire questioning and jury instructions directing jurors against allowing bias or prejudice to play a role in their decisions. We do not have tools to identify and/or purge implicit bias from civil jury trials. Admittedly, little data exists that quantifies the extent to which implicit bias influences civil jury decision-making. The very nature of implicit (“unconscious”) biases makes them challenging to study in the context of jury trials.

Moreover, in the real world, certain institutional processes may make both explicit and implicit biases less likely to translate into behavior. For example, jurors must deliberate with other jurors, and sometimes the jury features significant demographic diversity, which seems to deepen certain types of deliberation. Jurors also feel accountable to the judge, who reminds them to adhere to the law and the merits.

However, because it is the sole province of jurors to decide the disputed facts in a case upon which a verdict and judgment will be entered, reducing implicit bias in jurors’ processing and deliberations about evidence is a first-order problem for courts whether or not the phenomena of it can be quantified:

All of us have implicit biases to some degree; this does not necessarily mean we will act in an inappropriate or discriminatory manner, only that our first “blink” sends us certain information. Acknowledging and understanding

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this implicit response and its value and role is [sic] critical to informed
decision-making and is particularly critical to those whose decisions must
embody fairness and justice.27

The Task Force firmly believes that implicit biases, like explicit biases, can
compromise merits-based decisions and thus impede a party’s constitutional right to
a fair and impartial trial. Taking some action to reduce the effect of such biases on
verdicts is not a choice, it is an imperative. The clarion call is for judges and lawyers
alike to take action to address implicit bias and promote merits-based decisions by
increasing awareness and providing instructions about unconscious bias and,
perhaps, other inter-related issues.

D. Dallas Civil District Courts Implicit Bias Project: Awareness and Instruction

1. Awareness

Being made aware of implicit bias can help in correcting for it. Studies have
shown that raising awareness about implicit bias is an effective means for reducing
and eliminating it.28 However, implicit bias, unlike explicit bias, is more difficult to
control.29 Although implicit bias is automatic, it is not like a knee-jerk reaction that
is impossible to control. In the context of our civil justice system, jurors must be
made skeptical of their objectivity, educated about implicit bias, and motivated to
check against it.30 While there is no data on how an implicit bias instruction affects
actual jurors in civil jury trials, researchers have “hypothesize[d] about its
benefits.”31 Making jurors aware of implicit bias is “critical for mental
decontamination success.”32 Therefore, priming jurors about implicit bias could lead
them to doubt their objectivity and control for it.33 Studies have suggested that

28 Id. at 1268.
29 Patricia G. Devine et al., Long-Term Reduction in Implicit Race Bias: A Prejudice
HabitBreaking Intervention, 48 J. Experimental Soc. Psychol. 1267, 1268 (2012) (finding
that “breaking the habit” of prejudice or implicit bias “requires learning about the contexts
that activate the bias and how to replace the biased responses with responses that reflect
one’s non-prejudiced goals”).
30 Kang et al, supra note 21, at 1181. The authors further suggest education must occur
“early and often.” Id.
31 Id. at 1181 (discussing the success [in removing juror racial bias in the assessment of
guilt] of a “reflective voir dire” examination which required venire members to answer
“open-ended questions about the possibility of racial bias.”; see also Bennett, supra note 4,
at 169 (Judge Bennett writes that he is “undeterred” in his decision to give implicit bias jury
instructions (even when his colleague judges are unreceptive to the idea) because of the
“positive outcomes of studies attempting to teach actors about their implicit biases.”
32 Carol Izumi, Implicit Bias and the Illusion of Mediator Neutrality, 34 Wash. U. J.L.
& Pol’y 71, 141 (2010)
33L. Song Richardson, Systemic Triage: Implicit Racial Bias in the Criminal Courtroom,
awareness alone is inadequate in reducing implicit bias. However, there is a possibility that, when primed, one can override implicit bias in decision-making. Courts should specifically target implicit bias to address the problem, and not expect current legal processes that are an antidote to conscious bias to address or cure unconscious bias.

2. Instructions

The bulk of scholarly articles on implicit bias focus on criminal trials where the defendant and the victim are of different races. As mentioned above, there is a dearth of academic articles on implicit bias in civil trials, and the majority of those that exist are related to discrimination cases. Contrary to the commonly held belief, implicit bias is more prevalent in cases where race is not a salient factor, and the parties are not necessarily of different races. It is so because, in such instances, jurors are not trying to inhibit their biases, creating a more significant potential for implicit bias to infect their verdict. Therefore, the Cinderella in implicit bias studies is a civil trial where race is not a salient factor—such as where the case does not involve discrimination. Eliminating or reducing implicit bias in the courtroom evidently poses a more formidable challenge than explicit bias. The goal of the Task Force is to conduct an empirical investigation into whether providing jurors with three proposed instructions (described below) can positively influence how they process evidence, deliberate, and decide cases. The study will also attempt to assess whether the instructions show any impact on jury verdicts.

3. The Study

The Implicit Bias Project will assess whether one or all three proposed jury instructions can have a positive influence on jurors such that they engage in a more thoughtful and deliberative process based only on the evidence presented and then

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37 In this Project, in addition to the Implicit Bias Instruction, we decided to include instructions on factors that may be useful to assessing credibility (Credibility Instruction) and the need to be “present” and pay attention during trial (Mindfulness Instruction). The decision to do this was an effort to heed the warnings discussed elsewhere in this paper that suggest merits-based decisions are more likely when you educate jurors about implicit bias, do so in more than one way, and offer them objective criteria to inform their decisions.
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reach a merits-based decision. If the results show that the proposed instructions provide a positive influence on juror decision-making, they will provide a basis for the Task Force to request the inclusion of such instruction(s) in the Texas Pattern Jury Charge books and/or the Texas Rule of Civil Procedure 226a standard instructions. To accomplish these goals, the Project will use an interventionist strategy to determine whether the proposed instructions, beyond the general Rule 226a instructions, can promote juror mindfulness, fair credibility assessments, and reduce the taint of implicit bias in jury trials.

For an initial period of ninety (90) days, 38 10 of the 13 Civil District Court Judges in Dallas County will participate in the study in motor vehicle personal injury accident cases only. Half of the participating judges will administer the three proposed instructions, complete a questionnaire about the trial, and secure questionnaire responses from the jurors about the instructions. Participating judges will sign an informed consent form to ensure their participation is voluntary and inform them that the Study is for educational purposes. See Appendix A. The participating judges will also give jurors the option to participate or not by informing them that their participation will have no impact on their jury service or juror pay. The judges who administer the instructions will follow these protocols:

1) Securing the agreement of counsel for the use of the proposed jury instructions in motor vehicle accident personal injury cases only; 39
2) Delivering the instructions to the jury after they are impaneled and before opening statements (See Appendix B);
3) Providing information about the study and securing the jurors’ consent to participate in the study (See Appendix C);
4) Providing the questionnaires to the jurors to capture their feedback regarding the pilot instructions so that we can evaluate the extent to which, if at all, the instructions impacted the manner in which they processed and/or deliberated upon evidence. (See Appendix D). The questionnaires will include debriefing information and contact information for jurors who have questions or comments. 40 The jurors will be given the questionnaires after the verdict is received; and

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38 Or it could be longer if additional data is needed to have a statistically relevant sampling.
39 To control for variables in areas such as attorney competency, skill, and experience, evidence likely to be admitted or excluded, and the background, including socio-economic status, of the parties/witnesses, the Study is only being conducted in the context of personal injury motor vehicle accident cases. Experience suggests there is greater consistency in these areas in these types of cases than with others on the docket.
40 “Thank you for participating in our study of jury decision-making! The questionnaire you completed was designed to provide data for judges and others in the legal system to evaluate whether certain jury instructions can: i) combat implicit biases being used improperly in jury decision making; ii) cause jurors to be more mindful of their role and responsibilities; and iii) guide jurors on factors that can help them assess a witness’s credibility. If you have any questions or comments about this study, please email us at slstokes@smu.edu.
5) Completing a judge’s questionnaire at the conclusion of each case to collect demographic data about the jury, parties, length of trial and deliberations, and the verdict rendered (See Appendix E).

The other half of the participating judges will NOT administer the proposed instructions, but will complete the judge’s questionnaire and capture juror feedback as to certain aspects of the Rule 226a instructions so that we have comparison data for the study (See Appendix F). At the conclusion of each trial, the participating judges are responsible for sealing the questionnaire responses in an envelope. At the completion of the study period, the data will be collected from each of the participating judges and delivered to Professor Stokes for a determination as to whether additional data is needed and, if not, for her and her team to analyze the data to distill and extrapolate any trends about the instructions. The study will be conducted under the guidelines of SMU’s Institutional Review Board.41

E. Conclusion

What we are doing in the Dallas Civil District Courts—attempting to evaluate the efficacy of jury instructions in combatting implicit bias—with actual jurors in real trials, has not been done before (to our knowledge) anywhere in the country. We know there will be contingencies we have not considered and adjustments we will have to make as the study and Project unfold. Nevertheless, our fidelity to the principle of equal justice under the law compels us to at least try to take a swing at forces (though implicit) that would detract from the system we so revere. We are hopeful that the data collected will help us to better understand the impact of the three proposed instructions on civil juries and, importantly, confirm whether such instructions can be useful tools in the fight, which we must wage, against implicit bias in the courtroom and in the jury room. In the end, we must remember that it is only merits-based verdicts that advance the cause of equal justice under the law and protect the integrity of the judicial process.

F. Appendix A

Judge’s Consent Form
[To be given to Judges Who Will Complete the Judge’s Questionnaire]

I, ___________________________________________, consent to participate in the Implicit Bias Study being coordinated by The Dallas Civil District Courts and the faculty at Southern Methodist University under the direction of Judge Tonya Parker and Professor Lynne Stokes. I understand that the purpose of the Study is to learn

41 Consistent with the Code of Federal Regulations, the IRB protects the rights and welfare of research participants—judges, attorneys, and jurors. Per Federal Guidelines, a principal investigator is responsible for the study—here, Professor Lynn Stokes is our lead investigator. After she and Judge Parker submitted a detailed application for approval and both successfully completed the National Institutes of Health training course, "Protecting Human Research Participants," Professor Stokes received an approval letter from SMU’s IRB in March 2018 to proceed forward with the study.
more about jury decision making and the impact of certain jury instructions, if any at all, on the manner(s) in which jurors process and deliberate upon evidence. To assist in collecting data for the study, I consent to completing a short questionnaire about the case I submitted to the jury using the three specific instructions. In the event my role in the study did not require me to submit the instructions, I consent to complete the questionnaire to provide comparison data for similar cases tried during the relevant time period. I understand that the entire questionnaire will take 10-15 minutes for me to complete depending upon my answers. I further understand that my participation in this Study is voluntary. I can choose not to participate or to withdraw from the study at any time. My answers to the questionnaire will be confidential, sealed in an envelope, and kept in my chambers until retrieved from me by Judge Parker, Dr. Stokes, or their designees, at the end of the Study period.

Date: _________________________________
Printed Name: _________________________________
Signature: __________________________________

G. Appendix B

Proposed Instructions on Implicit Bias, Mindfulness, and Credibility

**JUDGE MUST SECURE AGREEMENT OF COUNSEL ON THE RECORD OR IN WRITING TO GIVE THE FOLLOWING INSTRUCTIONS IN PERSONAL INJURY MVA CASES ONLY. THE PROPOSED INSTRUCTIONS SHOULD BE GIVEN AFTER THE JURY IS SWORN WITH THE RULE 226a INSTRUCTIONS THAT ARE GIVEN BEFORE OPENING STATEMENTS

Implicit Bias Instruction
Do not decide the case based on "implicit biases." As we discussed in jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is "implicit biases," that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear,
and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluations of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.42

Mindfulness Instruction
It is important that you pay attention from moment to moment in the case to all of the evidence presented. Maintain an open mind throughout the case. Do not decide the case until all the evidence has been submitted for your consideration.43

Credibility Instruction
In considering the testimony of any witness, you may take into account:
(1) the witness’s opportunity and ability to see or hear or know the things testified to;
(2) the witness’s memory;
(3) the witness’s manner while testifying;
(4) the witness’s interest in the outcome of the case, if any;
(5) the witness’s bias or prejudice, if any;
(6) whether other evidence contradicted the witness’s testimony;
(7) the reasonableness of the witness’s testimony in light of all the evidence; and
(8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it. What is important is how believable the witnesses are, and how much weight you think their testimony deserves.44

H. Appendix C

Informed Consent Script

[To be given to jurors after the verdict is accepted by the court and prior to the questionnaires being distributed]

Ladies and Gentlemen, may I please have your attention. The Dallas County Civil District Courts are engaging in a Pilot Project with faculty at Southern Methodist University under the direction of Judge Tonya Parker and Professor Lynne Stokes. We are conducting a research study to learn more about jury decision

42 Source: Implicit Bias Jury Instruction of U.S. District Judge Mark Bennet (Northern District of Iowa)
43 Source: Ret. Superior Court of Massachusetts Judge Richard Connon.
44 Source: United States Courts for the Ninth Circuit Manual of Model Civil Jury Instructions Section 1.14
making and the impact of certain jury instructions, if any at all, on the manner(s) in which jurors process and deliberate upon evidence. To assist us in collecting data for our study, we are asking you to complete a short questionnaire about three specific instructions given to you after you were sworn-in. No personal identifying information will be sought from you. The entire questionnaire will take 10-15 minutes for you to complete depending upon your answers.

Your participation in this study is voluntary. You can choose not to participate or to withdraw from the study at any time. Your decision to participate will have no bearing on your jury service or the compensation you will receive from the County for such service.

If you wish to participate please remain seated (or return to the jury room] and the questionnaire will be provided to you by the Bailiff.

I. Appendix D

Confidential Juror Questionnaire

After you were impaneled, the Court administered the following Instructions to you (among others). With regard to Instructions A-C set out below, please answer the 6 questions listed after each instruction.

I. Juror Instruction A

Do not decide the case based on "implicit biases." As we discussed in jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is "implicit biases," that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluations of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
1. Did you hear the Court give Instruction A?  
   Yes: ____  No:_____

2. Did you think about Instruction A while listening to the evidence?  Yes: ____  No:_____ 

3. Did you think about Instruction A during deliberations?  Yes: ____  No:_____ 

4. Did you or any other juror mention any part of Instruction A during deliberations?  Yes: ____  No:_____ 

5. Did any part of Instruction A influence the manner in which you processed evidence or deliberated on the case?  
   Yes: ____  No:_____ 

6. If “Yes” to Ques. 5, please briefly explain how?  

II.  Juror Instruction B

   It is important that you pay attention from moment to moment in the case to all of the evidence presented. Maintain an open mind throughout the case. Do not decide the case until all the evidence has been submitted for your consideration.

1. Did you hear the Court give Instruction B?  Yes: ____  No:_____ 

2. Did you think about Instruction B while listening to the evidence?  Yes: ____  No:_____ 

3. Did you think about Instruction B during deliberations?  Yes: ____  No:_____ 

4. Did you or any other juror mention any part of Instruction B during deliberations?  Yes: ____  No:_____ 

5. Did any part of Instruction B influence the manner in which you
processed evidence or deliberated on the case?
Yes: ____ No: ____

6. If “Yes” to Ques. 5, please briefly explain how?

____________________________________________________________

III. Juror Instruction C

In considering the testimony of any witness, you may take into account:
(1) the witness’s opportunity and ability to see or hear or know the things testified to;
(2) the witness’s memory;
(3) the witness’s manner while testifying;
(4) the witness’s interest in the outcome of the case, if any;
(5) the witness’s bias or prejudice, if any;
(6) whether other evidence contradicted the witness’s testimony;
(7) the reasonableness of the witness’s testimony in light of all the evidence; and
(8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it. What is important is how believable the witnesses are, and how much weight you think their testimony deserves.

1. Did you hear the Court give Instruction C? Yes: ____ No: ______
2. Did you think about Instruction C while listening to the evidence? Yes: ____
   No: ______
3. Did you think about Instruction C during deliberations? Yes: ____ No: ______
4. Did you or any other juror mention Instruction C during deliberations? Yes: ____
   No: ______
5. Did any part of Instruction C influence the manner in which you processed evidence or deliberated on the case? Yes: ____
   No: ______
6. If “yes” to Ques. 5, please briefly explain how?

______________________________________________________________

J. Appendix E

Confidential Judge’s Questionnaire

Case Information:
The Implicit Bias Project in the Dallas Civil District Courts

Cause No: _____________ Type of Case: **Personal Injury Motor Vehicle Accident**

Plaintiff:
Race: _________ Sex: _________ Interpreter used: yes / no

Defendant:
Race: _________ Sex: _________ Interpreter used: yes / no

Verdict:
Length of trial in days: _____________

Length of jury deliberation in hours/minutes: _____________

Did Jury send out any questions during deliberations? _____________

Total amount of economic damages awarded, if any\(^{45}\): $__________

Total amount of non-economic damages awarded, if any\(^{46}\): $__________

**Jury Demographic Info (include number for each):**

Male: _________ Female: _________

White/Caucasian: _______ Black/African-American: _________

Hispanic: _______ Asian/Pacific Islander: _________

Mexican-American _____ Other: _____________

**Briefly describe anything that occurred, between voir dire and receiving the verdict, which you consider to be “unusual” for a case of this type?**

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\(^{45}\) Economic damages include awards for medical expenses, lost wages, and loss of earning capacity.

\(^{46}\) Non-economic damages include awards for pain and suffering, mental anguish, physical impairment, and disfigurement.
Confidential Juror Questionnaire
Before Opening Statements were presented in the case, the Judge instructed you, among other things, that your conclusions about the case must be based only on what you see and hear in the courtroom, rather than information that has not been presented in open court.

With regard to the instruction you received, answer the following 6 questions:
1. Did you hear the Court’s Instruction? Yes: ____ No: ______
2. Did you think about the Instruction while listening to the evidence?
   Yes: ____ No: ______
3. Did you think about the Instruction during your deliberations?
   Yes: ____ No: ______
4. Did you or any other juror mention any part of the Instruction during deliberations? Yes: ____ No: ______
5. Did any part of the Instruction influence the manner in which you processed evidence or deliberated on the case? Yes: ____ No: ______
6. If “No” to Ques. 5, please briefly explain?
____________________________________________________________________________