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From the Editor-in-Chief

Daniel J. Oates

One night when I was in high school, at the apex of my stupid years,¹ I, along with a group of about twelve other guys, thought it would be a brilliant idea to play a game of tackle football in a local park, in the dark, at 2 am.² You know, like most typical teenaged idiots. Someone spilled the beans on the plan, and a large group of girls decided to raid the game with water balloons. Childhood chaos ensued, and, predictably, some disgruntled neighbor called the cops, who showed up with four squad cars and a K-9 unit following up on reports of a gang war.³ When the megaphone blared out “freeze” and the squad-car floodlights lit up the field, we were all terrified we would get in trouble (i.e., grounded). But that’s about all that we worried about.



Mr. Oates

What I can assure you without question is that *not one* of the teenaged idiots in the muddy field that night thought they might get shot. What cop would shoot a teenager for having a water balloon fight (even at 2 am)? And that was correct, inasmuch as we were mostly white kids in a very white town, and the very thought of getting shot by a cop never crossed anyone’s

1. Ok, I know there are at least some of you that are raising an eyebrow at this description and/or shouting out loud at the page that my stupid years extend well into recent times, up to and including the present. Future Dan, from editorials past, is probably in agreement with you. Since I’m dealing with a bunch of lawyers, I will specifically define, for purposes of this editorial, the “stupid years” as high school age (fifteen to eighteen). Also, if we’re going to get pedantic about it, I did say “apex,” so it’s not like I’m hiding the ball or anything.

2. The thought of playing tackle football now, much less in the dark, shrieks of torn ACLs, sprained ankles, broken bones, and concussions. Playing in near pitch-black conditions is just a recipe for severe injury. How I ever lived into adulthood is beyond me.

3. Yes, a gang war. At least that is what we were told. I’m sure there was some serious pearl-clutching going on in nearby homes with excited mutterings of “won’t someone think of the children” thrown in.

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mind. Despite the reports of an unfolding gang war, all we got were some eye rolls and a stern “go home and go to bed” from the police.⁴

Many people of color in this country have a very different experience. They face the prospect of death by simply playing in a park during the daytime,⁵ driving their cars,⁶ going to church,⁷ walking home from the convenience store,⁸ going for a morning jog,⁹ sleeping in their own bedroom,¹⁰ or eating ice cream in their own living room.¹¹ These are just the examples most of us have heard about. While the world deals with a pandemic, America still has yet to deal with a much more deeply rooted problem: the persistent and pernicious effect of racism and racial inequity that pervades so many layers of our society. These are not new issues to 2020 by any stretch; but the awakening conscience of white Americans (locked in our homes with nothing to do but watch the violent suppression of peaceful protests against racial bias, inequality, and police brutality) has forced us to confront a problem that has long been known and identified by people of color.

4. The fact that I can't even identify how old I was with any degree of accuracy is telling. The incident clearly didn't leave any mental scars or cause any psychological trauma.

5. See, e.g., Tamir Rice. Shaila Dewan & Richard A. Oppel Jr., *In Tamir Rice Case, Many Errors by Cleveland Police, Then a Fatal One*, N.Y. TIMES (Jan. 22, 2015), <https://www.nytimes.com/2015/01/23/us/in-tamir-rice-shooting-in-cleveland-many-errors-by-police-then-a-fatal-one.html>.

6. See, e.g., George Floyd, Walter Scott, and Philando Castile. See Evan Hill, Ainara Tiefenthaler, Christiana Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (May 31, 2020); Gregory Yee, *How Walter Scott's Death Continues to Reverberate 5 Years Later for Two SC Families*, POST & COURIER (Apr. 3, 2020), https://www.postandcourier.com/news/how-walter-scotts-death-continues-to-reverberate-5-years-later-for-two-sc-families/article_6a6f74dc-58cc-11ea-b9f2-9bb5868db708.html; *Philando Castile Death: Police Footage Released*, BBC NEWS (June 21, 2017), <https://www.bbc.com/news/world-us-canada-40357355>.

7. See, e.g., Clementa C. Pinckney, Cynthia Marie Graham Hurd, Susie Jackson, Ethel Lee Lance, Depayne Middleton-Doctor, Tywanza Sanders, Daniel L. Simmons Sr., Sharonda Coleman-Singleton, and Myra Thompson. See, e.g., Susanna Kim, *Charleston Shooting Victims Identified*, ABC NEWS (June 18, 2015), <https://abcnews.go.com/US/charleston-shooting-victims-identified/story?id=31863489>; Jason Horowitz, Nick Corasaniti & Ashley Southall, *Nine Killed in Shooting at Black Church in Charleston*, N.Y. TIMES (June 17, 2015), <https://www.nytimes.com/2015/06/18/us/church-attacked-in-charleston-south-carolina.html>.

8. See, e.g., Trayvon Martin and Elijah McClain. *A Look at What Happened the Night Trayvon Martin Died*, MIAMI HERALD, July 6, 2012; Elijah McClain case: *Death After Arrest by Colorado Police Receiving Renewed Attention*, ABC7.COM (June 24, 2020), <https://abc7.com/elijah-mcclain-mccain-colorado-police-death-aurora/6266195>.

9. See, e.g., Amaud Arbery. Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES (June 24, 2020), <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html>.

10. See, e.g., Breonna Taylor. Richard A. Oppel, Jr. & Derrick Bryson Taylor, *Here's What You Need to Know About Breonna Taylor's Death*, N.Y. TIMES (Sept. 1, 2020), <https://www.nytimes.com/article/breonna-taylor-police.html>.

11. See, e.g., Botham Jean. Bobby Allyn, *Amber Guyger; Ex-Officer Who Killed Man in His Apartment, Given 10 Years in Prison*, NPR News (Oct. 2, 2019), <https://www.npr.org/2019/10/02/766454839/amber-guyger-ex-officer-who-killed-man-in-his-apartment-given-10-years-in-prison> (“Guyger, who is white, fatally shot 26-year-old Botham Jean, an accountant from the Caribbean island of St. Lucia, who was watching television and eating a bowl of ice cream. . .”).

I remember being viscerally outraged and upset when I saw the video footage of a North Charleston police officer shooting Walter Scott in the back five times as he fled across a playfield of a park.¹² But to my everlasting shame and regret, I did nothing about it beyond being angry and upset. Like many white people who did not grow up fearing encounters with the police, I have had a bad habit of explaining away these incidents (the officer thought the victim had a weapon, the victim was resisting arrest, etc.). I have come to accept that the reality is much more grim and dystopian. I ask myself now why I have not been more outraged by these injustices, and I can only conclude that it is a result of my childhood, and my own privileged experience of being told to “go home and go to bed.” I never feared that I wouldn’t get to go home. In my cloistered world, the police and the grumpy, complaining neighbor may be tired of stupid kids doing stupid things, but ultimately they wanted us to live, succeed, and carry forward the next generation. I am now forced to call that entire experience into question as being tainted by the rose-colored lens of whiteness. Because that is clearly not how it works for everyone.

Ultimately, what the past few months have laid bare is that the United States, ostensibly founded on the lofty and inspiring ideals of freedom and equality, continues to discount, ignore, and dehumanize people of color. Black people are three times more likely than white people to contract COVID-19, six times more likely to be hospitalized as a result, and twice as likely to die.¹³ When police initiate contact with civilians, Black and Hispanic people are more than twice as likely to experience the threat or use of physical force than white people.¹⁴ The vast majority of those who experienced the threat of force perceived it as excessive.¹⁵ The studies on the broad societal effect of these different metrics¹⁶ are compelling and generally in

12. Scott was pulled over for a non-functioning rear brake light. Sarah Parvini & David Zucchini, *Did North Charleston, S.C., Police Try to Aid Walter Scott After Shooting?*, L.A. TIMES (Apr. 11, 2015), <https://www.latimes.com/nation/la-na-south-carolina-cpr-20150411-story.html>. After shooting Scott repeatedly, Officer Michael Slager handcuffed Scott, who was motionless on the ground, and provided no medical aid. *Id.* Instead, he threw his stun gun to the ground by Scott to make it appear as though he had been holding the officers’ stun weapon when the officer pulled the trigger on his firearm. Yee, *supra* note 6. The initial police report on the incident claimed that officers on the scene performed CPR and rendered first aid. Parvini & Zucchini, *supra*. But the subsequently released video of the incident showed no such efforts. *Id.* Instead, it appears as though the officers callously let the man bleed to death, and planted evidence on his rapidly dying body, to cover up the shooter’s crime. It is beyond sickening to think about.

13. Gus Wezerek, Opinion, *Racism’s Hidden Toll*, N.Y. TIMES (Aug. 11, 2020), <https://www.nytimes.com/interactive/2020/08/11/opinion/us-coronavirus-black-mortality.html>.

14. Special Report, *Contacts Between Police and the Public*, U.S. DEP’T OF JUSTICE, at 1 (Oct. 2018), <https://www.bjs.gov/content/pub/pdf/cpp15.pdf>.

15. *Id.* at 17. The common sense response for dealing with teenagers in their stupid years (“go home and go to bed”) is largely reserved for white people.

16. The data and statistics on these issues extend to virtually every facet of our lives, from home ownership, to longevity, to incarceration, and are far beyond the meager scope of this editorial.

agreement, as are the American people, who recent polls show broadly agree that racial and ethnic discrimination is a big problem in the United States.¹⁷

Despite the obvious truths this data reveals, most Americans continue to believe that fairness and equality are a birthright.¹⁸ These beliefs are central to our core identity as Americans, going back to the very founding document upon which our entire system of government is based: the Declaration of Independence. That document, which publicly announced our right (and our descendants' right) to freedom from tyranny and oppression, succinctly sums up that American ideal:

We hold these truths to be self-evident: that all men are created equal. That they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of Happiness.¹⁹

These words were of course written by Thomas Jefferson, a man who was not only our third President and drafter of the Declaration, but also expanded the country with the Louisiana Purchase, created of the Library of Congress, and founded of the University of Virginia. He was also a man who committed heinous and despicable acts, espousing patriotic words of liberty and freedom, while he simultaneously held people in bondage, enslaved his own children,²⁰ and maintained the strongly held belief that people of color are inherently inferior to white people.²¹ In other words, Jefferson was not referring to all “men” when he wrote the Declaration of Independence. He certainly wasn't including women. He was referring to white men of privilege, like himself. Despite the irony of the situation, the words of the Declaration themselves have inspired generations of Americans to the higher ideal that is generally ascribed to Jefferson's words; the ideal that *everyone* is created equal and that we each have the right to live our lives and pursue our own happiness free from reprisal, recrimination, or threat of violence. And after more than two centuries, the words do not belong to Jefferson; *they belong to us*. Like the fairies in Peter Pan who survive only if children continue to believe in them,²² the ideals of the Declaration only have meaning

17. *National: Protestors' Anger Justified Even if Actions May Not Be*, MONMOUTH UNIV. POLLING INST. at 3 (June 2, 2020), https://www.monmouth.edu/polling-institute/documents/monmouth_poll_us_060220.pdf (finding that seventy-six percent of Americans believe that racial and ethnic discrimination is a big problem in the United States, and an additional sixteen percent say that it is problem).

18. *Eight out of 10 American Voters Believe the U.S. Was Founded on Ideals of Freedom and Equality*, JUSTTHENEWS.COM (Aug. 7, 2020), <https://justthenews.com/politics-policy/polling/eight-out-10-american-voters-believe-us-was-founded-ideals-freedom-and>.

19. THE DECLARATION OF INDEPENDENCE ¶ 1 (U.S. 1776).

20. See, e.g., ANNETTE GORDON-REED, *THE HEMINGSSES OF MONTICELLO: AN AMERICAN FAMILY* (2009).

21. See, e.g., THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* at 148–49 (1788). I won't besmirch these pages with the actual parenthetical quote.

22. J.M. BARRIE, *PETER AND WENDY*, ch. 13: Do you believe in Fairies? (1911).

if we collectively believe that they do, and it is incumbent upon us to give them effect.

By now you are probably wondering what any of this has to do with franchising or the *Franchise Law Journal*. While it may seem insignificant, every step we take toward improving diversity and inclusiveness is a step toward a more just and equitable society. That includes the humble *Journal*. And as the preeminent academic treatise on the subject of franchising, the *Journal* is uniquely positioned to address issues of diversity and inclusion in our niche area of law. While the *Journal* and the Forum on Franchising have made diversity and inclusion a cornerstone of our mission and visions for growth,²³ based on the most recent survey of the Forum's membership in 2016, there is no question that we (like America) still have a lot of work to do.²⁴ The number one response by forum members in the survey was that the organization should strive to improve Forum diversity and inclusiveness.²⁵

Our Forum community owes it to our diverse colleagues to stand up for these ideals and to give meaning and purpose to those self-evident truths espoused by our Declaration. At the *Journal*, that means a commitment to publishing articles on franchising topics that impact the lives of people of color. I cannot do that without your help. As the editor-in-chief, I can cheerlead, but other than these soapbox editorials shouted out into the void, I don't really contribute to the substantive discussion of law and policy. In other words, while "I'm the one with enthusiasm; you're the one with experience, which I'm looking forward to learning from."²⁶ So I'm counting on you to help author articles and educate our membership (including myself) on issues of racial justice and equity in franchising. Only you can move the Forum forward to help reach its goals of being a truly diverse and inclusive organization that is representative of this country and our membership.

It is not enough to sit idly by; we must all take positive and affirmative antiracist steps if we are to solve this problem.²⁷ If you have any interest in

23. It is one of the four goals of the Forum, as adopted in 1997, to "promote full and equal participation of minorities, women, and underrepresented groups in Forum activities." POLICIES & PROCEDURES MANUAL, ABA FORUM ON FRANCHISING 10 (2018). This is reflected in the Diversity Caucus, which, beginning in 2006 or 2007, has the mission of (1) increasing the number of diverse members in the Forum; (2) growing the representation by diverse members on the Forum's divisions and committees; (3) continuing to develop a strong base of diverse writers and speakers for the Forum; (4) creating a growing pool of diverse members ready to assume leadership positions for the Forum; and (5) raising awareness of the value of diversity in the profession. *Id.* at 42.

24. This is not to imply that the work is ever going to be finished. Like democracy itself, achieving racial equity is less of an attainable goal and more of an ongoing sacred duty.

25. *Id.* at 62.

26. AHSOKA TANO, STAR WARS—THE CLONE WARS (Lucasfilm 2008).

27. See, e.g., IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 9 (2019) ("One either allows racial inequities to persevere, as a racist, or confronts racial inequities, as an antiracist."); see also THEODORE ROOSEVELT, FEAR GOD AND TAKE YOUR OWN PART 26–27 (1916) ("[J]ustice consists not in being neutral between right and wrong, but in finding out the right and upholding it, wherever found, against the wrong.").

writing on diversity and inclusion, racial justice, or racial equity topics relevant to franchising, or if you know someone who does, or even if you have great ideas or untapped on these topics, please don't hesitate to reach out to me or one of our team of excellent editors to discuss. At the *Journal*, we will endeavor to improve our open topics list to better reflect our mission of diversity and inclusion, and to give a voice to underrepresented communities and perspectives through our publication of content.

This is intended as a call to action. I hope you take it.