May 22, 2014

Hello, APDs! It’s time for another post from Race Judicata, NC PDCORE’s E-blast. Enjoy!

Your client comes into your office. He tells you that the trouble all started with a traffic stop. He tells you that he was racially profiled. He tells you that you have to get the case thrown out. His rights were violated!

You could tell him about Whren v. United States. You could explain the Supreme Court (in its infinite wisdom) has ruled that racial profiling doesn't matter as long as the officer can also point to a race-neutral reason for stopping him. You could say that you know it isn't fair that the officer targeted him because of his race, but there's nothing you can do about it.

But maybe the client has a point, after all. Not necessarily a legal one -- Whren is still Whren -- but a strategic one. Maybe by talking about race in your motion to suppress you can nudge the judge to see the stop the way you and your client do. Maybe talking about race will help you get the judge to view the officer’s testimony with greater skepticism. Maybe that will be enough.

Those of you who were at conference got a great primer in implicit bias from Song Richardson and Robert Smith. One of the things they told us is that the research shows that bringing race up, even just using racial language, can help reduce the effects of implicit racial bias. In the context of jury trials, for example, recent research suggests that talking about the racial issues in a case makes the jurors less, not more, racially biased in their decision making. ([Making Race Salient: Trayvon Martin And Implicit Bias In A Not Yet Post-Racial Society](http://nclawreview.org/documents/91/5/lee.pdf), pp 32-35). (For more on implicit bias and juries, including practical strategies, check out [First, Do No Harm](http://www.ncsc-jurystudies.org/What-We-Do/~/media/Microsites/Files/CJS/What%20We%20Do/First%20Do%20No%20Harm.ashx)).  In general, “[a] great way to debias is to openly acknowledge biases and then directly challenge or refute them.” ([Quick Facts Sheet](http://kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf)).

Back to your motion to suppress. You wonder, in a conservative courthouse in front of a conservative judge in a conservative state, won't mentioning racial bias trigger a backlash against my client? Won’t the judge rule against my client with a terse [Robertsonian rebuke](http://www.supremecourt.gov/opinions/13pdf/12-682_j4ek.pdf) for suggesting anything other than colorblindness in enforcing the law? What the research is telling us is no! In general, openly discussing race when race is an issue will *help* your clients (with the obvious caveat to know your judges). Talking about it, saying out loud that the stop was pretexual, might help diminish the judge’s own implicit biases. Maybe then he’ll agree that your client didn’t actually roll through that stop sign, or that the officer didn’t really smell marijuana from 30 feet away, or that everyone’s seatbelts were fastened. Maybe you should take a cue from your client and talk about what's really going on in that stop. You've got some righteous science on your side.

We would love for you to join our organization! You will find the link to do so on the bottom right portion of the [webpage](http://ncids.com/pd-core/). If you have feedback about *Race Judicata*, we’d love to hear from you. Please respond to the original poster only, rather than the APD listserv.