No. 99793-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
TYLER BAGBY,
Petitioner

BRIEF OF THE UNIVERSITY OF WASHINGTON AND GONZAGA UNIVERSITY BLACK LAW STUDENTS ASSOCIATIONS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

Kimberly Ambrose
WSBA No. 19258
University of Washington
Race and Justice Clinic
University of Washington
School of Law
P.O. Box 851110
Seattle, WA 98145-1110
kambrose@uw.edu
Law Student Interns:
Metta D. Girma and
Aaron B. Yared

Jason Gillmer
WSBA No. 57851
Brooks Holland
NY Reg. No. 2696433
Civil and Human Rights
Advocacy Clinic
Gonzaga University
School of Law
721 N. Cincinnati St.
Spokane, WA 99202
hollandb@gonzaga.edu
Law Student Interns:
Caleb Mathews and Jordan O'Connor
Attorneys for Amici Curiae:
University of Washington
Black Law Student Association
Gonzaga University School of Law
Black Law Student Association

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I. STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

The statements of identity and interest of amici are set forth in the Motion for Leave to File which is filed contemporaneously with this brief.

II. ISSUES TO BE ADDRESSED BY AMICI

Should the Supreme Court extend the intent-based standard in *State v. Monday*, 171 Wn.2d 667, 257 P.3d 551 (2011), to include impact-based remedies in cases of implicit racial bias?

III. STATEMENT OF THE CASE

Amici adopts the petitioner's statement of the case. Mr. Bagby was a Black student at Washington State University who was tried for criminal charges arising from a university fraternity party. He was tried to an all-White jury, with a White prosecutor representing the State, a White judge presiding, and a White defense lawyer. In this space, the prosecutor repeatedly and unnecessarily highlighted the race and "nationality" of Mr. Bagby when questioning witnesses. He questioned Mr. Bagby

about whether he loved his dog, invoking a harmful racial trope about Black men. Neither Mr. Bagby's lawyer nor the judge intervened and the Court of Appeals affirmed, finding that the prosecutor's conduct was not a "flagrant and ill-intentioned" appeal to race. *State v. Bagby,* 17 Wash.App.2d 1023, 2021 WL 1549948 at 4 (Wash. App. Div. 3 Apr. 20, 2021) (unpublished opinion).

IV. INTRODUCTION

"[R]acial bias is a common and pervasive evil that causes systemic harm to the administration of justice." *State v. Berhe*, 193 Wash. 2d 647, 657, 444 P.3d 1172, 1178 (2019). This racial bias is often manifested implicitly, unconsciously, and without malicious intent. *State v. Saintcalle*, 178 Wash. 2d 34, 46, 309 P.3d 326, 335 (2013), *abrogated by City of Seattle v. Erickson*, 188 Wash. 2d 721, 398 P.3d 1124 (2017). Implicit racial bias works to other Black people, who experience microaggressions and other forms of harmful racial bias in all aspects of their lives. Tyler Bagby experienced this othering

when facing criminal prosecution in an almost exclusively White space. The Court should not condone this racial bias, regardless of whether it was intentional. The Court can and should tailor a solution that will meaningfully remedy implicit racial bias in a prosecutor's advocacy to protect a defendant's right to an impartial jury. Existing legal frameworks in Washington, such as General Rule ("GR") 37, already support an effective objective standard for remedying implicit racial bias.

V. ARGUMENT

A. THE OTHERING CAUSED BY IMPLICIT BIAS IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.

1. Implicit Bias is pervasive in the lives of Black people.

Racism is not always intentional. Commonly held notions of racism today are primarily associated with explicit bias, yet many people engage in racist behavior unknowingly. Consequently, implicit bias is not readily recognizable. It

results in behavior that is driven by implicit attitudes and stereotypes. Darren Lenard Hutchinson, *"Continually Reminded of Their Inferior Position": Social Dominance, Implicit Bias, Criminality, and Race*, 46 WASH. U. J.L. & POL'Y 23, 37 (2014). For some, it may be difficult to recognize the harmful impact the prosecutor's conduct had on Mr. Bagby's jury, or on Mr. Bagby's ability to meaningfully participate in his own trial. However, for those who regularly experience the pernicious effects of implicit bias while navigating predominantly White spaces, the harm is clear.

Implicit bias is not just present in the criminal legal system, it pervades all aspects of society, especially in the context of schools and student life. Jason P. Nance, *Dismantling the School-to-Prison Pipeline: Tools for Change*, 48 Ariz. St. L.J. 313, 367 (2016). In schools within the Pacific Northwest, Black students are more likely to receive punishment, such as suspensions, or referred to special education programs than White students due in large part to

implicit racial stereotypes. Sharon Xie, *The Role of Implicit Bias in the Overrepresentation of African--American Males within the Public School System* (2015) (Ph.D. dissertation, University of Washington). A study of Black students in predominantly White universities found that since many Black students were made aware of their race at a young age and treated differently than their peers because of implicit racial bias, they may develop anxiety about fitting in at their school because of their race. Rodolfo Mendoza-Denton, et al., *Sensitivity to status-based rejection: Implications for African American students' college experience*, 83 J. OF PERSONALITY & SOC. PSYCH. 896 (2002).

Microaggressions are a product of implicit biases, which include racial slights, insults, and invalidations in everyday interactions. Jonathan W. Kanter, et al., *The Measurement and Structure of Microaggressive Communications by White People Against Black People*, 12 RACE & SOC. PROBLEMS 323, 323 (2020). Individual microaggressions, "accumulate to

create" an "unpredictable and stressful environment for those who experience them." *Id.* at 338. According to a study at a large public university in the Northwest, microaggressions are more than subjective experiences, they can create a public health hazard. Kanter, et al., *supra*, at 339. Microaggressions are comparable to other public health concerns such as second-hand smoke or lead exposure, in that they accrue and produce large, negative impacts on the health of people of color. *Id.* at 338. These studies show how Black students in predominantly White schools are constantly being inundated with racism and microaggressions as a result of implicit biases.

Implicit racial biases can affect the outcome of a trial as well as undermine public faith in the court system. Christian B. Sundquist, *Uncovering Juror Racial Bias*, 96 Denv. L. Rev. 309, 310 (2019). Failure to curtail racist acts, even if those acts are done without sinister intent, compounds the significant harm done to Black people.

2. Othering has a damaging effect on Black lives.

Implicit bias can lead to interactions and judgements with consequential outcomes for Black people. In a racial profiling study, both students and police officers had a bias to "look at the black face, rather than the white face," when prompted to think about "violent crime." Jenifer L. Eberhart, *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 Cal. L. Rev. No. 4, 1169-1190 (2006). Similarly, the Implicit Association Test shows that individuals tend to associate positive attributes and stereotypes with White people rather than Black people. Matthew Clair, *Sociology of Racism*, INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES (2d ed.), 857-863 (2015).

These studies, and many others, exemplify how pervasive social attitudes are and how consequential they are in the criminal legal system, as well as in everyday social

environments. Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124, 1132 (2012).

Implicit attitudes can also unconsciously facilitate exclusive social spaces which effectively isolate non-members of the hegemonic social group. Scholars have termed this social phenomenon as "othering" and have been unpacking the array of harms it can cause within different social contexts. Lajos L. Brons, *Othering, An Analysis*, 6 Transcience: A Journal of Global Studies, 69-90 (2015). Othering can be understood as the behavioral result of implicit bias within a racial context. It has been articulated as: "a process through which identities are set up in an unequal relationship." *Id.* at 70.

Members of the Black Law Students Association ("BLSA") at both the University of Washington and Gonzaga University have echoed sentiments of feeling "eyes" on them when discussing subject matter relating to race. Appendix A at ¶11. Appendix B at ¶4. The expectation to voice a perspective on behalf of Black people is a harmful exercise which Black

students are subjected to in the racially homogenous classroom environments often seen in law school. *Id.* While it may not always appear obvious to the hegemonic group, the impact of implicit othering can place racialized individuals in a position to further internalize structural and implicit racism. Kristin Lane, *Implicit Social Cognition and Law,* 3 Annu. Rev. Law Soc. Sci. 435 (2007); Appendix B at ¶8.

Regardless of the intent of the perpetrator, othering can silently devalue and demean the existence of racialized individuals within social environments, such as courtrooms and educational institutions, which lack necessary perspectives and protections for historically vulnerable social groups. Similarly, microaggressions generally do not require intention to produce harm and due to their subtle nature, racialized individuals are often placed in a powerless position to remedy the harm. Derald Wing Sue, *Microaggressions in Everyday Life: Race, Gender, and Sexual Orientation*, xii (Wiley & Sons inc.) (2010).

Xavier Fox ("Xavier") is a Gonzaga Law student and executive member of the BLSA. App. B at ¶ 2. As one of the few black students in the law school, he acknowledged feeling "othered" from the start of first-year orientation. *Id.* at ¶4. He recounts one particular morning on campus:

> I was walking to the front entrance of the law school when suddenly campus security stopped me and said: "You know, this is the law school … are you sure you're supposed to be here?" And that's a normal experience for people of color, right? It's almost like you get desensitized to it. At the same time, I was a little bit upset, obviously. I'm a student at the law school, why do I need to be bothered on my way in? There could have easily been something going on at the time. Maybe there was a security crackdown because of something else? It just felt very weird at the time because obviously I have never seen anybody else get stopped on their way into the law school like that."

Id. at ¶ *5.* Xavier's encounter with campus security in front of the law school exemplifies the act of othering, as well as its effect on the individual. Stopping law students for "security purposes" before entering the law school is an unusual practice at Gonzaga. While the security guard may have acted

within the scope of his duties, Xavier is clearly wrestling with the racial bias that he has experienced. *Id.* Often, racialized students internalize facially prejudiced acts when trying to rationalize what happened to them, and why they were differentiated. This can have damaging effects upon the psyche of racialized students within non-racially diverse spaces. Elvin Hope, *Emerging Into Adulthood in the Face of Racial Discrimination: Physiological, Psychological, and Sociopolitical Consequences for African American Youth*, TRANSLATIONAL ISSUES IN PSYCHOL. SCI., 342-346 (2015). Black students in predominantly White spaces regularly experience microaggressions and othering. Gabryelle Matz-Carter ("Gabryelle"), Metta Girma ("Metta") and Gabriella Jackson ("Gabriella") are all Black students at the University of Washington School of Law. Appendix B at ¶2; Appendix C at ¶2. Appendix D at ¶2. Gabryelle was the only Black person in her high school choir and without notice, her choir teacher asked her to sing the Black national anthem during an

assembly. App. A at ¶11. In Metta's final year of college, a White classmate stretched her arms out and asked if she could touch Metta's hair. App. C at ¶9. Gabriella's college professor asked her and the only other Black student in the class whether reading the N-word out loud from a textbook would be appropriate. *Id.*

Ill-intention and maliciousness did not produce these incidents. In fact, the classmates and teachers above may have had positive intent. Appendix A at ¶11. Nevertheless, the impact on the students was harmful and demeaning. The Black students described the incidents as traumatizing, infuriating and disruptive. *Id.* Similar to how the White jury witnessed the prosecutor's othering conduct, these events in the educational setting unfolded in front of the Black students' White classmates. While the othering may have stemmed from unintentional inferences of race—the impact produced harmful results.

3. Implicit racial bias cannot be addressed when it is characterized as not ill-intended and harmless.

In addition to describing the harmful nature of implicit bias, Black law students at the University of Washington and Gonzaga University emphasize the difficulty in confronting and eliminating it. App. C at ¶ 8.

The Court of Appeals held that the prosecutor's conduct focusing the jurors on Mr. Bagby's nationality or race did not reflect "racism or stereotypes" and did not reflect "flagrant or ill-intentioned misconduct." *State v. Bagby,* 2021 WL 1549948 at 4. This characterization furthers the "othering" experienced by Black people. If the harm and devaluation of Black lives is not acknowledged, it cannot be addressed.

Danielle Igbokwe is a Black law student at the University of Washington. Appendix E at ¶ 2. In one instance, she was touring an apartment. Her white friend Brooke had been the one in contact with the manager:

> When it came time to view the apartment, I went with Brooke. When we got there, the woman kind of paused. I could see something physical on her face. Then she asked Brooke, 'is she going to be living with you?' as if I wasn't standing right there. Brooke said yes. I had to just walk out.

Id. at ¶5. In social situations, Black victims of microaggressions may have the ability to walk away as Danielle did. As a young Black defendant, Mr. Babgy did not. Although Mr. Bagby tried to respond to the prosecutor's injection of racial bias during his testimony, he found himself in the disorienting situation that amici have been in numerous times, yet with great consequence. *State v. Bagby,* 2021 WL 1549948 at 6-7. He had his nationality or race pointed out repeatedly. The jury witnessed the othering and found Mr. Bagby guilty.

4. Tyler Bagby experienced racial bias and othering which influenced the jury.

As a Black defendant, Mr. Bagby was prejudiced by the prosecutor's injecting race and racial stereotypes into his trial. This was not an identification case. Mr. Bagby's race or nationality was not material to the case. Similar to the student

narratives attached to this brief, the prosecutor's references to race operated in an othering fashion. When the prosecutor continuously referred to Mr. Bagby's nationality or race, it primed the jurors to pay more attention to his racial difference. This was harmful to Mr. Bagby because implicit bias impacts how jurors view witnesses, evidence and the parties themselves. Briana M. Clark, *Social Dominance Orientation: Detecting Racial Bias in Prospective Jurors*, 39 Yale L. & Pol'y Rev. 614, 636 (2021). In return, these biases affect verdicts. *Id*. Like the harmful actions in the student narratives cited herein, regardless of intent race was implicitly and explicitly referenced, and like the students' otherness, it was called to attention. But for Mr. Bagby, it was the jury who witnessed the othering.

Mr. Bagby was a Black man in a room full of White people. The prosecutor, whether intentionally or not, improperly highlighted Mr. Bagby's race and questioned his nationality. Regardless of intent, the prosecutor's racist dog

whistle was suggestive.[1] He asked a Black man if he loves his dog when a very public Black male had recently been convicted for animal cruelty.[2] Normally, a person would never ask someone if they love their dog–it's a given. Regardless of intent, the othering was driven by the stereotypes associated with Black men and their mistreatment of dogs. It signals a larger narrative of how dangerous and violent Black men are.

Black law students affirm that such incidents are explained away as benign when in reality they are harmful. App. E at ¶ 4. Preserving a standard that depends on proving intent does not fix the deep-seated problem of implicit bias. It dismisses the harmful consequences that arise from the othering

[1] A "dog whistle" is a way to make "a covert appeal to some noxiuos set of views." Ian Olasov. *Offensive Political Dog Whistles: You Know them when you Hear Them. Or Do you?* Vox, (Nov. 7, 2016, 9:50AM) https://www.vox.com/the-big-idea/2016/11/7/13549154/dog-whistles-campaign-racism

[2] Michael Vick was convicted in i2007 for the heinous, cruel and inhumane killing of dogs. The case was popularized by heavy media coverage of gruesome images of tortured dogs from his dogfighting ring. Adam Harris Kurland, *The Prosecution of Michael Vick: Of Dogfighting, Depravity, Dual Sovereignty, and "A Clockwork Orange,:* 21 Marq. Sports L. Rev. 465, (2011) Available at: http://scholarship.law.marquette.edu/sportslaw/vol21/iss2/2

of Black people. It is especially harmful in the context of juror decision-making. BLSA members identify this dismissal as a habitual negation of their experiences being affirmed by the judicial system. *Id.;* App. D at ¶*7;* App. E at ¶8 They expect this Court to confront implicit bias, not shy away from it. App. C at ¶14. Failure to act in these moments are what perpetuates the harms of Black lives in the legal system. App D. at ¶9.

Depriving Mr. Bagby of the right to an impartial jury because the bias was not ill-intentioned and flagrant violates his constitutional rights.

B. THE COURT SHOULD EXTEND *STATE V. MONDAY* TO RECOGNIZE AN OBJECTIVE, IMPACT-BASED REMEDY FOR IMPLICIT RACIAL BIAS

In affirming Mr. Bagby's conviction, the Court of Appeals relied upon the standard set forth in *Monday,* requiring reversal for "flagrant and ill-intentioned" appeals to racial bias, unless "it appears beyond a reasonable doubt that the misconduct did not affect the jury's verdict." *State v. Monday*,

171 Wn.2d at 681. The Court of Appeals found that the prosecutor did improperly use the term 'nationality' when referring to Mr. Bagby, and that the prosecutor's questions about Mr. Bagby's dog were "awkward." *Bagby,* 2021 WL 1549948, at 4. The Court of Appeals concluded, however, that because the prosecutor did not engage in a "flagrant and ill-intentioned" appeal to racial bias, and Mr. Bagby did not object, Mr. Bagby was not entitled to any relief. *Id at 4*.

Explicit appeals to racial bias by a prosecutor should receive the closest judicial scrutiny, as *Monday* properly requires. Yet, this Court has recognized that explicit bias is not the exclusive vehicle for the devaluation of Black lives in the legal system:

> As judges, we must recognize the role we have played in devaluing (B)lack lives …We cannot undo this wrong—but we can recognize our ability to do better in the future. We can develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases, and we can administer justice and support court rules in a way that brings greater racial justice to our system as a whole.

Letter from the Wash. State Sup. Ct. to Members of the Judiciary and the Legal Cmty. (June 4, 2020). As this Court's letter makes clear, the Judiciary has a duty to account for the pernicious role of unconscious, or implicit, racial bias.

Monday's intent-based review standard, however, does not adequately recognize that both explicit and implicit racial bias can undermine the integrity and fairness of a jury's verdict. Instead, under *Monday*, a finding that the prosecutor did not intend to discriminate will end the inquiry without judicial review of whether the prosecutor's advocacy implicitly influenced the jury with improper consideration of race. This regime would mean only defendants who appear in courtrooms where the judges, lawyers, and jurors are well-trained on and committed to detecting and disrupting implicit bias can be confident of a trial that is truly free of racism.[3]

[3] Many members of the Judiciary, the legal community, and society have made this commitment to equal justice. But questions persist about the continuing influence of both explicit and implicit racial bias, even at the highest levels of the criminal legal system. *See e.g.*, Daniel

Amici thus advocate that the Court extend *Monday* to include judicial review that effectively remedies implicit bias in the courtroom. Judicial review of implicit bias in lawyer advocacy is necessary not only to fulfill this Court's promise to pursue racial justice in individual cases, but also to ensure the right to an impartial jury, a right whose violation does not depend on a prosecutor's improper intent. *See* U.S. Const., Amend. XI; WA. Const. Art. I § 22. This judicial review standard could be informed by existing legal frameworks, including GR 37, the Washington Code of Judicial Conduct ("CJC") 2.3(c), and this Court's decision in *State v. Berhe*, 193 Wn.2d 647, 444 P.3d 1172 (2019).[4]

Walters, *Lesley Haskell, Wife of Spokane County Prosecutor, Calls Herself 'White Nationalist,' Uses N-Word as Slur*, THE INLANDER (January 27, 2022), *available at* https://www.inlander.com/spokane/lesley-haskell-wife-of-spokane-county-prosecutor-calls-herself-white-nationalist-uses-n-word-as-slur/Content?oid=23162154 (last visited February 7, 2022).

[4] While *amici curiae* were preparing this brief, the Fred T. Korematsu Center for Law and Equality and other *amici curiae* filed a brief arguing a similar position and legal framework in the pending case of *State v. Zamora*, Washington Supreme Court Case No. 999597, available at *State v. Zamora*, 2022 WL 226691 (Jan. 7, 2022). *Amici curiae* endorse

1. General Rule 37 provides an analogous framework to address the limitations of *Monday* during trial

This Court already has established a legal framework for detecting and remedying implicit lawyer bias in GR 37, which governs jury selection in Washington State. Working from this framework, *amici curiae* respectfully contend that when a prosecutor's advocacy, intentionally or unintentionally, employs racial othering tactics, tropes, or stereotypes, and the trial court did not take corrective action, the appellate court should apply an objective test analogous to GR 37 to assess whether implicit bias could have influenced the jury.

This Court adopted GR 37 in 2018 to address the shortcomings of the "*Batson"* rule to protect jurors from racially discriminatory peremptory strikes. *See Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986).

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this brief in *Zamora*, which aligns with the position of this brief. As the *Zamora* brief aptly argues, "[s]trong medicine is needed when a prosecutor engages in conduct that, explicitly or implicitly, appeals to or activates racial stereotypes." *Id*. at 1.

Under *Batson*, to invalidate a peremptory challenge, a court must find that the lawyer intended to discriminate against the juror on the basis of race—a requirement of explicit bias. This Court has acknowledged the failure of this *Batson* standard to protect jurors from all racial bias, due to the difficulty of proving explicit bias, and because of this standard's inability to reach implicit lawyer bias. *See State v. Jefferson*, 192 Wn.2d 225, 242, 429 P.3d 467 (2018); *State v. Saintcalle*, 178 Wn.2d at 36, 70.

GR 37 reformed the *Batson* rule to address these concerns. Instead of looking solely for lawyer intent, a court reviewing a challenged peremptory strike under GR 37 instead inquires whether, under the totality of circumstances, "an objective observer could view race or ethnicity as a factor in the use of the peremptory challenge." GR 37(e). This rule makes clear, "[t]he court need not find purposeful discrimination to deny the peremptory challenge." *Id*. On the contrary, GR 37 defines the "objective observer" as someone who is "aware that

implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in [unfairness].” GR 37(f). The rule further identifies relevant factors for courts to consider when applying this test. *See* GR 37(g)-(i).

The principles codified in GR 37 provide an effective paradigm for courts to detect and disrupt lawyer advocacy during trial that implicitly appeals to racial bias. Shortly after enacting GR 37, this Court demonstrated that GR 37 can require reversal on facts that would not satisfy the *Batson* explicit bias test. *See Jefferson*, 192 Wn.2d at 239, 251-52. Court of Appeals decisions also have been applying GR 37 to remedy implicit bias that *Batson* might not reach. *See e.g.*, *State v. Orozco*, 19 Wn.App.2d 367, 373-78, 496 P.3d 1215 (Div. 3, 2021); *id*. at 378-80 (Pennell, J., concurring); *State v. Saylor*, 16 Wn. App. 2d. 1073, 2021 WL 960832 at 1 (Div. 1, 2021) (unpublished opinion); *State v. Omar*, 12 Wn. App. 2d 747, 750-55, 460 P.3d 225 (Div. 1, 2020). Furthermore, this Court already has extended GR 37’s “objective observer” implicit bias

test beyond jury selection to jury deliberations. *See Berhe*, 193 Wn.2d 647. As *Berhre's* reasoning illustrates, nothing should limit GR 37's principles to these bookends of jury selection and jury deliberations, yet exempt the equally pernicious influence of implicit bias during the trial itself.

2. *State v. Berhe* reinforces that appellate courts can and should review lawyer advocacy for implicit bias

This Court's recent decision in *Berhe* reinforces that GR 37 effectively can address implicit bias in lawyer advocacy during the trial itself. In *Berhe,* the defendant asserted that jury deliberations were tainted by both explicit and implicit biases. *See Berhe*, 193 Wn.2d. at 653. In considering this claim, this Court recognized the importance of accounting for implicit racial bias to ensure an impartial jury: "[I]mplicit racial bias can affect the fairness of a trial as much as, if not more than, 'blatant' racial bias … as our understanding and recognition of implicit bias evolves, our procedures for addressing it must evolve as well." *Id.* at 663.

The Court therefore held that when implicit racial bias has been alleged as a factor in the jury's deliberations, the governing standard is whether an objective observer *could* view race as a factor in the verdict. *Id*. at 664-65. The "objective observer" is imported from GR 37: someone who "is aware that implicit, institutional, and unconscious biases … have influenced jury verdicts." *Id*. at 665. If the court finds that this objective observer could view race as a factor, a *prima facie* showing of racial bias has been made, and the court must hold an evidentiary hearing. *See id*. *Berhe* further cautioned about the implications of a standard for assessing racial bias that is constrained to explicit racial animus:

> When determining whether there has been a *prima faci*e showing of implicit racial bias, courts cannot base their decisions on whether there are equally plausible, race-neutral explanations. There will almost always be equally plausible, race-neutral explanations because that is precisely how implicit racial bias operates.

Id. at 666.

Consistent with the logic of *Berhe*, if evidence on the record permits a court to infer that racial bias implicit in a prosecutor's advocacy could have influenced the jury, the court must take remedial action. GR 37 provides this remedial framework. Only this kind of rule can guarantee to all Washingtonians the constitutional right to an unbiased jury that will judge the facts and the law untainted by racism, whether explicit or implicit.

3. Application of GR 37's principles to trial advocacy also reinforces the judicial obligation in CJC 2.3 to prohibit racial bias in the courtroom

CJC 2.3 requires judges to conduct judicial proceedings without bias, prejudice, or harassment. CJC 2.3(c) specifically imposes a proactive obligation for judges to "require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others." Comment two to CJC 2.3 highlights examples of bias and prejudice. These examples include

explicit racism, but also conduct that may operate more as implicit bias. Most relevant to Mr. Bagby's case, these examples include, "suggestion of a connection between nationality and crime … as well as irrelevant references to personal characteristics." *Id.*

By providing judges with a clearer roadmap for disrupting implicit bias, GR 37's principles better will equip and incentivize judges to implement CJC 2.3 without an option to remain passive observers. The State may argue that this framework instead will create implicit bias reversal traps for unwary judges. To the contrary, judicial review that tracks GR 37 will aid judges in how and when to address implicit bias in the courtroom. For example, timely curative instructions or stricken records may resolve the issue. Moreover, judges can preempt some of these issues by educating jurors to self-regulate implicit bias for themselves. For example, the United States District Court for the Western District of Washington provides implicit bias training to prospective jurors and implicit

bias jury instructions. *See* United States District Court Unconscious Bias Juror Video, Western District of Washington, United States District Court, *available at* https://www.wawd.uscourts.gov/jury/unconscious-bias (last visited February 8, 2022). These proactive measures align effectively with CJC 2.3, and may mitigate concerns that implicit bias has influenced the jury.

The State also may argue that defendants can abuse this kind of rule by withholding an objection and raising the issue after trial. While protection of a defendant's interest in a bias-free trial should start with defense counsel, the Supreme Court's 2020 letter makes clear, the Judiciary cannot assign the elimination of racial bias solely to the adversary system. *Cf. City of Seattle v. Erickson*, 188 Wn.2d 721, 729, 398 P.3d 1124, 1128 (2017) (recognizing that "judges and parties do not have instantaneous reaction time"). GR 37 itself allows for active judicial intervention to prevent this kind of bias, even without an objection. *See* GR 37(c). Moreover, appellate review of

implicit bias claims could consider a lack of objection as part of the totality of circumstances. For example, a reviewing court could consider whether the defense lawyer failed to object for legitimate strategic reasons or instead failed to appreciate the implicit bias unfolding in real time, or whether the defense even objected to the court's proposed intervention.

GR 37 therefore will not require judges to manage the unmanageable. Rather, by extending GR 37 to trial advocacy, the Court will maintain consistency not only with *Berhe*, but also with Judiciary's ethical responsibility to eradicate racial bias from the courtroom.

VI. CONCLUSION

A pressing need exists to extend *Monday's* intent-based standard to include an objective, impact-based standard for addressing all racial bias in the courtroom. This Court has recognized, "We can develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases." Letter from the Wash. State Sup.

Ct., *supra*. The University of Washington Law School and Gonzaga University School of Law BLSA respectfully urge the court to take this opportunity to extend the *Monday* standard to align with GR 37, *State v. Berhe*, and CJC 2.3.

Pursuant to RAP 18.17(b) we certify that this document contains 4913 words.

RESPECTFULLY SUBMITTED this 9th day of February, 2022.

/s/ Kimberly Ambrose

Kimberly Ambrose, WSBA No. 19528
Jason Gillmer, WSBA No. 57851
Brooks Holland, NY Reg. No. 2696433

Attorneys for *Amici Curiae*

RACE AND JUSTICE CLINIC
AT UNIVERSITY OF WASHINGTON SCHOOL OF LAW

CIVIL AND HUMAN RIGHTS CLINIC
AT THE UNIVERSITY OF GONZAGA SCHOOL OF LAW

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on February 9, 2022 the forgoing document was electronically filed with the Washington State Appellate Court Portal, which will effect service of such filing on all attorneys of record.

Signed in Seattle, Washington, this 9th day of February, 2022.

/s/ Kimberly Ambrose

Kimberly Ambrose, WSBA No. 19528

APPENDIX A

Declaration of Gabryelle Matz-Carter
(University of Washington School of Law)

1. I, Gabryelle Matz-Carter, am over 18 years old and I live in Seattle, Washington.

2. I am a law student at the University of Washington School of Law. I am currently a1L Representative for the Black Law Student Association ("BLSA") and am submitting this declaration individually and on behalf of the BLSA.

3. BLSA exists to foster community among Black law students and to provide collective resources to and from its members and community partners. This community is necessary because law school, and the legal system we seek to work within, is a space that is occupied by mostly White students, faculty and lawyers. BLSA plays a critical role in bringing together Black law students and gives them the opportunity to take up space in a systematically exclusive profession. Through networking, mentorship, and community outreach, BLSA strengthens community ties and increases advocacy efforts to enact meaningful changes in racial equity.

4. Implicit bias and othering have impacted and harmed me throughout my childhood and continue to this day.

5. As a Black girl in elementary school, I struggled with the effects of adultification bias where White adults in my life viewed me and other Black girls as more adult-like and less innocent than our White counterparts.

6. For example, my second-grade teacher at a private Christian school, Mr. Donovan, accused me of plagiarism after I followed his instructions to get ideas for poems from the internet. As a seven- or eight-year-old, I had no idea what plagiarism was. Mr. Donovan sent me to the principal's office where I was told I needed to repent and that I committed a sin by stealing someone else's work.

7. As I grew older, I thought about how there was this automatic assumption that I had willfully and maliciously tried to plagiarize and take shortcuts. My teacher and principal instantly thought I should be suspended and did not consider that at eight years old, I would not know what plagiarism was.

8. This story is a microcosm of what my life has been like as a Black girl, where people act off of their false assumptions and automatically assume I am acting or doing something maliciously. I now recognize it as implicit biases; our brains create shortcuts that predict our behavior and inform our choices and decisions. These implicit biases are so dangerous because they become normalized for Black students like me. When I went to Howard University, one of my biggest awakenings was talking with people who had similar experiences growing up in predominantly White areas and then figuring out all the ways in which we all have been discriminated against passively, but we didn't recognize it or maybe even if it was obvious at the time, we didn't realize it because we were so used to it.

9. The experience of being subjected to implicit bias itself is traumatizing. Even after realizing what has happened, I know that I don't have the words or the ammo to defend myself, which is retraumatizing. As a result, I have let a lot of racist things slip under the rug. Regardless, I vividly remember these moments, like when friends thought it was funny to call me "nigger" or friends thought it was funny to mess with my hair. There are so many, but I will describe a few.

10. Living in Kirkland, Washington, I had to go to Federal Way for relaxer appointments for my hair which required my mom to take a half day off of work. One day, before a relaxer appointment, I went to the beach because I wanted to hang out

with my friends. My mother dropped me off warning me not to get my hair wet. I explained to my White friends that I couldn't get my hair wet since relaxers require your hair to be dry. One of my friends pushed me into the lake and my hair got completely wet. My mom picked me up and she was mad. She asked me why I hung out with these people if they were going to do something like that. My friends were ignorant, if I brought this up to them, they would think it was hilarious, when in reality, it was frightening. I was afraid of my mom and her reaction, and I realized my friends really did not care about me.

11. In high school, I used to dread having any Black History Month curriculum because it felt like every single eye was on me. One assembly, I was in choir and we were going to perform the Black National Anthem and do an "in memoriam" segment for Martin Luther King Jr. The conductor shouted, "Gabby, could you come to the front?" I was terrified, but I walked up to her. She asked, "Do you want to start us off? I know this is something that you guys probably do." I grew up around White people, so I didn't know the lyrics to the anthem. I was so baffled. I didn't have the words. I remember just quietly saying that I didn't know the lyrics and I'm going to need the sheet music, just like everybody else. This is just one of the instances where I was expected to speak on behalf of the entire diaspora and have the knowledge of the entire diaspora. I felt exploited. Sometimes it was really embarrassing, and sometimes it was another part of being Black. It is especially difficult when White people try to frame a microaggression as a positive thing, as a compliment.

12. One time, I was pulling weeds as part of a Beautification Day event and one of my good friends stood over me, with both hands on his hips, and said "Yeah, you go

on and get it." It's hard in those moments to stand up for yourself. You don't know how to and maybe you don't realize how horrible it is. It's hard when you're trying to be palatable and agreeable and not stir things up. You don't want to be the person that has all the tropes associated with being an angry Black man and woman.

13. As I applied to law school, I felt pressure to conform to a singular type of activism where all Black law students have a civil rights attorney-type personality. I thought that's the role I would have to play in the legal system. Black people are expected to point out the knife in our back and then expected to do the surgery as well. This is something I'm still reconciling with today as I go through law school. As a Black woman, I have a duty to uplift and center the voices of Black people that have been systematically disenfranchised for centuries. But at the same time, I want to pursue things that I'm more passionate about in that moment, without being required to point out the daily injustices and implicit biases that exist in the criminal and other legal systems. The judicial system's failure to address these biases makes it all the more challenging to be the Black lawyer that I want to be, not what is expected of me.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED on this day, February 9, 2022 in Seattle, Washington.

____*/s/ Gabryelle Matz-Carter*
Gabryelle Matz-Carter

APPENDIX B

Declaration of Xavier Fox
(Gonzaga University School of Law)

1. I, Xavier Fox, am over 18 years old and I live in Spokane, Washington.

2. I am a law student at the Gonzaga University School of Law. I am the Vice President of the Black Law Students Association and am submitting this declaration individually and on behalf of the BLSA.

3. BLSA exists to foster community among Black law students and to provide collective resources to and from its members and community partners. This community is necessary because law school, and the legal system we seek to work within, is a space that is occupied by mostly White students, faculty and lawyers. BLSA plays a critical role in bringing together Black law students and gives them the opportunity to take up space in a systematically exclusive profession. Through networking, mentorship, and community outreach, BLSA strengthens community ties and increases advocacy efforts to enact meaningful changes in racial equity.

4. There are only four Black people in our graduating class. From the start of orientation, it was already an isolating feeling. But the administration then separated it us in half so one other student and I were the only Black students in our section. One particular and uncomfortable experience was in criminal law. We were discussing Paul Butler and whether or not jury nullification is proper. I felt eyes on me. When a question was asked that pertained to race, I felt like I was the one that was expected to answer.

5. I was walking to the front entrance of the law school when suddenly campus security stopped me and said: “You know, this is the law school … are you sure you’re supposed to be here?” And that’s a normal experience for people of color,

right? It's almost like you get desensitized to it. At the same time, I was a little bit upset, obviously. I'm a student at the law school, why do I need to be bothered on my way in? There could have easily been something going on at the time. Maybe there was a security crackdown because of something else? It just felt very weird at the time because obviously I have never seen anybody else get stopped on their way into law school like that.

6. When I feel othered in a formal setting, my preliminary thought is that I am not the first person to have this done to them and I am not going to be the last. My response to situations like that depends on how I am feeling that day. Addressing these matters takes so much energy, and often for little benefit, that I do not always say something.

7. Confronting implicit bias is something that I tend not to do, especially if I am exhausted. Sometimes I am exhausted by a person's ignorance and saying something would only further exhaust me. Although that seems somewhat enabling, it is not always my responsibility to educate others. As a student, I am just trying to stay afloat. As Black students, we do not have the energy to expend on thinking about the faculty, why we have so many White professors, why there is so little diversity.

8. When courts continuously permit racial bias to go unchecked, it is exhausting to leave it to individuals, to leave it to students, to do the work.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated on this day, February 9, 2022, in Spokane, Washington.

_____*/s/ Xavier Fox*
Xavier Fox

APPENDIX C

Declaration of Metta Girma
(University of Washington School of Law)

1. I, Metta Girma, am over 18 years old and I live in Seattle, Washington.

2. I am a law student at the University of Washington School of Law. I am currently the Vice President of Outreach for the Black Law Students Association ("BLSA") and am submitting this declaration individually and on behalf of BLSA.

4. BLSA exists to foster community among Black law students and to provide collective resources to and from its members and community partners. This community is necessary because law school, and the legal system we seek to work within, is a space that is occupied by mostly White students, faculty and lawyers. BLSA plays a critical role in bringing together Black law students and gives them the opportunity to take up space in a systematically exclusive profession. Through networking, mentorship, and community outreach, BLSA strengthens community ties and increases advocacy efforts to enact meaningful changes in racial equity.

5. I have experienced implicit racial bias in many forms since childhood. I was the only Black girl in all of my classes from the third grade to eighth grade. I knew I was the only Black girl. The class knew it. It was clear for all to see. However, whenever a racialized comment was made, no matter how subtle, it actively invoked my otherness.

6. In third grade, I spoke up in class and one of the boys asked me why I talked like that. It was my first year in the United States. I lost my accent quickly, but there were still many moments like this which constantly reminded me that I was different than my mostly white peers.

7. Looking back, I realize the kids were only noticing something that was different and their intention was not to harm me. Still, regardless of their intent, whenever any

attention was placed on my racial "otherness," I couldn't help but notice that they did see me differently. That I wasn't part of the "in-group."

8. As I became older, recognizing racism regardless of whether it was unintentional and subtle became easier, but it was and is still difficult to address.

9. For example, my senior year of college I had decided to switch up my hairstyle mid-quarter. When I showed up to class, one of my white classmates noticed immediately. While everyone was watching, she complimented me, then proceeded to stretch out her arm and ask "Can I touch your hair?"

10. I was furious although I knew the classmate had no idea what she had done. She was being nice and complimenting me. She probably thought I was the one being rude for saying no. I was even more upset that other students were watching. I had said "no" so quickly and with an exasperated expression, that I realized the other white students were probably confused too.

11. The other students said nothing, it was an awkward interaction and I realized that if I had said yes, I could have made it less awkward. But the question is, less awkward for who? If I had said yes, the girl would have probably touched my hair and complimented me on it more. But I would have been left feeling like I was at a zoo, or like a dog you would pet. Although the other students said nothing, I could tell they also realized that this was an othering moment. I could tell from their shifting eyes and their sudden quietness that they too did not know how to address implicit bias when it is coming from a well-intentioned person.

12. When Black people are put on the spot, their responses are watched carefully. Even if the watchers don't notice it, they are watching for signs of aggression. They're

looking for any signs that might reaffirm Black stereotypes. This was what I was considering and must always consider as I evaluate what to do when faced with an othering comment or microaggression.

13. These othering moments are extremely disruptive for the person experiencing the racism. That entire class period after my classmate "innocently" asked to touch my hair, I wondered what my classmates thought. I wondered if they thought I was aggressive. I wondered why I didn't call out how wrong it was. I felt they would not understand the harm, I did not want to exasperate the moment. I didn't want them to think I was making something out of nothing.

14. I know these experiences won't stop, but I wonder how we will strive to eliminate it. Especially in the legal system where we expect fairness. I wonder if our State Supreme Court will do anything about it.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED on this day, February 9, 2022 in Seattle, Washington.

_____*/s/ Metta Girma*
Metta Girma

APPENDIX D

Declaration of Gabriella Jackson
(University of Washington School of Law)

1. I, Gabriella Jackson, am over 18 years old and I live in Seattle, Washington.

2. I am a law student at the University of Washington School of Law. I am the treasurer of the Black Law Student Association ("BLSA") and am submitting this declaration individually and on behalf of BLSA.

3. BLSA exists to foster community among Black law students and to provide collective resources to and from its members and community partners. This community is necessary because law school, and the legal system we seek to work within, is a space that is occupied by mostly White students, faculty and lawyers. BLSA plays a critical role in bringing together Black law students and gives them the opportunity to take up space in a systematically exclusive profession. Through networking, mentorship, and community outreach, BLSA strengthens community ties and increases advocacy efforts to enact meaningful changes in racial equity.

4. Preparing to be lawyers, we are Black beings in a system not made for us. We must prepare to work in a legal system that is infected by racial injustice.

5. It is impossible for us not to experience micro-aggressions and see things through a racial justice lens. Just being in spaces that weren't made for Black people is enacting change.

6. "Othering" is something that I have experienced throughout my education. For example, while attending the University of Washington as an undergraduate student, a White professor wanted to say the N-word. She put me and another Black student in an uncomfortable position of stating whether it should be said out loud. I told her I was clearly uncomfortable with it. She should not be reading it out loud and I should

not be explaining it to her. The professor then said that she would decide for herself, and basically lied about wanting to listen to me.

7. I was a Resident Adviser (RA) at the time, and I decided to talk to my supervisor about it because it was bothering me. My supervisor, a White woman, told me that as a Black woman, I have to tell the faculty about this professor. This wasn't helpful. As a Black student, I didn't feel comfortable going to the faculty after I had already been dismissed. I was harmed, and I attempted to get support, but was faced with another racist microaggression. I couldn't trust my supervisor anymore and I couldn't be honest with her because I was her employee.

8. After law school, I want to be a public defender. but I do not believe I have to be a public defender to enact change. In interviews, I always get asked, "How do you take your passion for racial justice into your future career?" Those are not two different lenses to put on or take off for me.

9. Whatever we do as Black individuals, we are helping our community and giving back. However, for us to continue being in these spaces and creating positive change, we need a judicial system that acknowledges the racism, both implicit and explicit, that exists at the core of its system.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED on this day, February 9, 2022 in Seattle, Washington.

_____*/s/ Gabriella Jackson*
Gabriella Jackson

APPENDIX E

Declaration of Danielle Igbokwe
(University of Washington School of Law)

1. I, Danielle Igbokwe, am over 18 years old and I live in Seattle, Washington.

2. I am a law student at the University of Washington School of Law. I am a member of the Black Law Students Association and am submitting this declaration individually.

3. Because I grew up in Nigeria, I had trouble recognizing what racism was, especially coming to the U.S. by myself. I have found myself calling my brother who is in Canada when I experience something that seems off. He was able to recognize racism easier as I was still adjusting to a new country. After our calls, I would go back and think about it but most of the time, it was too late to do anything about it. That is why acting on racial bias is so important.

4. I usually feel like there's no point in speaking up because by the time you speak up, people find a way to downplay it. Seeing my friends and family experience racism helped me understand the experiences of Black people in the U.S. When you first experience racism, you downplay it. You think this did not really happen to me. But then you see it happen over and over again, it becomes something that you are used to. You have to let it go in order to survive. But that shouldn't be the case.

5. We should be able to speak up and find remedies. That is why I believe sharing my story and the difficulty in confronting racism is so important. It is particularly important when racism occurs in an overt manner. Before law school, my best friend Brooke and I had a plan to move to Austin. We were going to get an apartment together. Brooke, who is White, had been talking to a woman about renting an apartment. Since it was Brooke who had done all the communication, the woman had

no idea I was going to be on the lease. When it came time to view the apartment, I went with Brooke. When we got there, the woman kind of paused. I could see something physical on her face. Then she asked Brooke, "is she going to be living with you?" as if I wasn't standing right there. Brooke said yes. I had to just walk out. I didn't want to look at the apartment anymore. Brooke stayed inside another 15 minutes and I didn't know what she was doing, I thought she was still taking a look at the apartment. When she came out, she told me that she had told the woman off and that she didn't want to live there. After that, we decided not to move to Austin. Now I know that it's unconscionable to reject people that are applying to apartments because of their race.

6. This experience was one of the reasons that I decided to go to law school. It is harmful to keep experiencing these things quietly. My first instinct was to just walk out and do nothing and say nothing. In my head, if I tried to do anything it's almost like I'm aggressive, because that's the first reaction that people have when Black people try to speak out.

7. The judicial system should not continue to create spaces where Black people and voices cannot be heard.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED on this day, February 9, 2022, in Seattle, Washington.

____*/s/ Danielle Igbokwe*
Danielle Igbokwe

APPENDIX F

Declaration of Hosanna Negash
(University of Washington School of Law)

1. I, Hosanna Negash am over 18 years old and I live in Seattle, Washington.

2. I am a law student at the University of Washington School of Law. I am currently a 1L Representative for the Black Law Students Association ("BLSA") and am submitting this declaration individually and on behalf of the BLSA.

3. BLSA exists to foster community among Black law students and to provide collective resources to and from its members and community partners. This community is necessary because law school, and the legal system we seek to work within, is a space that is occupied by mostly White students, faculty and lawyers. BLSA plays a critical role in bringing together Black law students and gives them the opportunity to take up space in a systematically exclusive profession. Through networking, mentorship, and community outreach, BLSA strengthens community ties and increases advocacy efforts to enact meaningful changes in racial equity.

4. During my junior year at the University of Washington, I worked as a Resident Advisor (RA) at one of the dorms. Once, while on weekend duty I received a call to go check out something that was happening in one of the other buildings. I arrived at the building and two police officers came straight to me and told me that they needed to talk to me in a separate room. I had no idea what was going on or why they detained me. They told me I needed to wait there. While detaining me, they started asking me random questions. I tried to tell them that I was an RA and that I received a phone call to go to the building. The room I was in had a glass wall and I could see another police officer pointing and talking to a girl outside, presumably asking her to identify me as the person she reported.

5. For the first couple of minutes, I was confused, I stood there not realizing what was happening. And then, when it hit me, I was really angry. I don't want to use the word embarrassed, but I felt like I did something wrong even though I didn't. I went there to help. I remember feeling angry, confused, embarrassed, and humiliated. I remember my face being very heated. But I also remember feeling like there's no way I was going to say anything. The police officer had a gun and I'm not stupid.

6. The police officers did not realize that I was an RA and that I was supposed to be investigating the matter with them. Not once did the police officers stop to think that I showed up to work with them and help them. It may not have been intentionally but their racial bias directed their actions. Once the police officers figured out that I was an RA, they told me that I was good to go. They said I had matched the description because I was wearing a red sweatshirt and it could have happened to anyone. They did not tell me the description but obviously, they must have been looking for a Black guy. It just turned out that I wasn't the Black guy they had wanted to arrest.

7. The entire experience bothered me but it really frustrated me that they didn't even tell me the real reason. I told them I was going to send a different RA over and I left and let someone else handle it.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED on this day, February 9, 2022, in Seattle, Washington.

____*/s/ Hosanna Negash*
Hosanna Negash

APPENDIX G

Declaration of Chloe Sykes
(Gonzaga University School of Law)

1. I, Chloe Sykes, am over 18 years old and I live in Spokane, Washington.

2. I am a law student at the Gonzaga University School of Law. I am the President of the Black Law Students Association ("BLSA") and am submitting this declaration individually and on behalf of the BLSA.

3. BLSA exists to foster community among Black law students and to provide collective resources to and from its members and community partners. This community is necessary because law school, and the legal system we seek to work within, is a space that is occupied by mostly White students, faculty and lawyers. BLSA plays a critical role in bringing together Black law students and gives them the opportunity to take up space in a systematically exclusive profession. Through networking, mentorship, and community outreach, BLSA strengthens community ties and increases advocacy efforts to enact meaningful changes in racial equity.

4. The first time I felt othered in law school was during Orientation. I had only seen one other Black student that day. There are only four Black students in total for our graduating class, and we were split in half with only two in each section.

5. In Spring of 2021, I had a classmate in clinic that would make racial comments although I suspect that their intention was to be friendly not offensive. At first, that colleague would ask what seemed like innocent questions about my background, like "what nationality are you?" While it seemed oddly phrased to me, I rationalized it as that classmate wanted to get to know me. But soon, I started to get questions like, "do all White guys look the same to you?" in response to a Tik Tok joke about "generic White men." It continued onto, "does that half of you see White men differently than

the other half?" or something along those lines. At the time, it did not bother me much because I was trying to do work for clients while fielding these questions, so I was really only halfway paying attention. After that colleague left, I found myself having the room to reflect and realize that what started as seemingly innocent questions developed into microaggressions. He likely did not realize how his words made me uncomfortable and disrupted my work environment.

6. This same individual had tried to recommend a show to me—a Kevin Hart series on Netflix. While describing a scene from the series, he ever-so-casually dropped the n-word. Innocent intentions are a slippery slope when referencing race. This situation had started out seemingly innocent (a colleague recommending a show), but it became an extremely uncomfortable moment that took me by complete surprise.

7. I weighed my options in confronting the individual. Ultimately, I decided not to confront him because the likelihood that this person would realize what he did is low. I rationalized that I probably would not see them after law school and what mattered most was the pressing deadline I had for a client. I ignored the situation and went back to my work, but that interaction threw off my entire mood for the rest of the day and the following days.

8. As a Black law student, I have found othering disruptive and difficult to address. It should not be tolerated in a legal system that purports to be fair and impartial.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated on this day, February 9, 2022, in Spokane, Washington.

_____*/s/ Chloe Sykes*
Chloe Sykes

UNIVERSITY OF WASHINGTON SCHOOL OF LAW

February 09, 2022 - 6:22 PM

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Comments:

Please find attached CORRECTED Motion to File Amicus Brief and Amicus Brief. Please disregard prior filing which contained incorrect case number.

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Address:
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WILLIAM H GATES HL STE 265
SEATTLE, WA, 98145-1110
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