

Access to Justice: Reducing the Implicit Pushback Burden on Working-Class Pro Se Plaintiffs in Employment Law Cases

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This Note applies social identity threat literature to the legal context in order to improve access to justice. Social identity threat literature indicates that stereotypes, associations, and similar methods center environments on particular identities. Social identity threat occurs when an individual who does not have the centered identity enters the environment, implicitly perceives marginalization, and thereby experiences psycho-physiological effects that burden engagement. Social identity threat, as it applies to litigants of marginalized identities inside the courtroom, is termed the “implicit pushback burden” because the social identity threat implicitly repels or pushes the individual back from the courtroom and its proceedings. While this burden may limit access to justice for people of various identities, this Note explains how it affects working-class pro se plaintiffs in employment law cases. The limited amount of literature concerning social identity threat as it applies to the legal context and the working-class identity makes drawing solutions difficult. Still, this Note provides an overview of solutions outlined in the most relevant literature, and suggests how those solutions may be applied in the courtroom.

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INTRODUCTION

The James R. Browning U.S. Court of Appeals Building in San Francisco contained no bathrooms for women when it was originally built.¹ Such bathrooms would have been useless given that the explicitly sexist message, both within and outside the Browning Courthouse, ensured that the legal profession and the courtroom belonged only to men.² Indeed, in upholding Illinois’s ban on female lawyers in 1872, Justice Joseph P. Bradley stated, “[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life” and that “the domestic sphere . . . properly belongs to the domain and functions of womanhood.”³ He further noted that “many of the special rules of law flowing from and dependent upon this cardinal principle still exist in full force in most States” and that “it is within the province of the legislature to ordain what offices, positions, and callings shall be filled and discharged by men”⁴ To the extent that women began receiving access to the legal profession and courthouses in the twentieth century, they continued to receive a message that they did not belong.⁵

1. Informational Tour of the James R. Browning U.S. Court of Appeals Building, San Francisco, California (Feb. 12, 2015).

2. *Id.*

3. *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring).

4. *Id.* at 14–42.

5. For example, due to the continued limits on women’s access to the legal profession, U.S. Supreme Court Justice Ruth Bader Ginsburg did not receive a single job offer from a firm despite graduating from Columbia Law School at the top of her class. Class Lecture with Ruth Bader Ginsburg, Associate Justice, U.S. Supreme Court, at University of California, Berkeley, School of

Courthouses like the Browning Building, which now contains bathrooms for women, no longer explicitly convey such messages. Nonetheless, in more implicit ways, courthouses continue to speak to those within. The Browning Building, for example, has retained its original architecture and design. It exposes visitors to replicas of torch holders originally made in the fifteenth century for the richest banker in Florence, Filippo Strozzi.⁶ The Building also contains massive bronze doors surrounded by trimmed marble; Doric and Corinthian columns; a labyrinth-patterned ceiling; and sculptures and images of, among other things, cupids, fruit motifs, and various mosaics.⁷ Many of these designs are made from Italian marble or from century-old tiles arranged by Italian artisans. Their purpose was and still is to portray the “affluence and increasing importance of the United States” by evoking the symbols of ancient wealth and power, namely, the Parthenon or the Coliseum.⁸

But a building meant to convey affluence and power might also convey to visitors a message of limited access to justice. Recent studies find that a setting may implicitly communicate to people of particular marginalized identities that they do not belong, and may thereby burden their engagement with activities within the building.⁹ These studies focused on marginalized identities within race, gender, and class.

Examples like the Browning Building, then, suggest that courtroom structures and the implicit messages they convey may have a profound effect on access to justice. Indeed, arguing for justice would be burdensome for anyone whose identity is implicitly unwelcome or threatened in the courtroom. Despite this substantial burden, the extent to which the courtroom itself is prepared for litigants of various identities, especially litigants from working-class backgrounds, remains largely understudied. Instead, much of the literature concerning access to justice has focused on preparing the litigant for the courtroom. Such literature points out, for example, the lack of sufficient legal

Law (Sept. 19, 2013); *see also* Susan Gluss, *US Supreme Court Justice Ginsburg Captivates Berkeley Law*, BERKELEY LAW NEWSROOM (Sept. 19, 2013), <https://www.law.berkeley.edu/article/us-supreme-court-justice-ginsburg-captivates-berkeley-law> [perma.cc/P25E-DKXA].

6. *James R. Browning U.S. Court of Appeals Building, San Francisco, CA: Building Overview*, U.S. GEN. SERVS. ADMIN., <http://www.gsa.gov/portal/ext/html/site/hb/category/25431/actionParameter/exploreByBuilding/buildingId/600> [perma.cc/AD5G-8DC8] (last visited Jan. 4, 2016).

7. *Id.*

8. *Id.*; Informational Tour of the James R. Browning U.S. Court of Appeals, *supra* note 1. Interestingly, access to the Parthenon and the Coliseum depended on the visitor’s identities, such as economic class, profession, and gender. KATHERINE E. WELCH, *THE ROMAN AMPHITHEATRE: FROM ITS ORIGINS TO THE COLOSSEUM* 159 (2007). Wealthy men received the best access to the buildings and the services within them, while women and slaves received the worst, often sitting physically segregated farthest away from both the service and privileged visitors. *See id.*

9. *See, e.g.,* Sapna Cheryan et al., *Ambient Belonging: How Stereotypical Cues Impact Gender Participation in Computer Science*, 97 J. PERSONALITY & SOC. PSYCHOL. 1045, 1049 (2009).

services,¹⁰ the inadequate number of lawyers willing to enter the legal aid practice,¹¹ the dearth of government funding for legal aid,¹² and the unwillingness of the courts, politicians, and general public to address the lack of legal resources.¹³

But how can seemingly innocent courtroom structures, like the sculptures in the Browning Building, limit access to justice for people of particular identities? And how can the courtroom itself be better prepared for or receptive to all litigants? This Note answers these questions by applying social identity threat literature to the legal context for the first time. It argues that courtroom structures may implicitly trigger social identity threat within the courtroom and thereby provide an additional burden for people of marginalized identities. It further explains how this burden stands in the way of equal access to justice for working-class pro se litigants in employment law cases, and contends that courts can and should adopt simple changes to reduce the burden that social identity threat imposes.

This Note proceeds in three parts. Part I gives an overview of social identity threat, its psycho-psychological effects, and its triggering. Part II reveals the *implicit pushback burden*, a psycho-physiological effect of social identity threat on people within the courtroom. Part II also explores, more specifically, how this burden applies to working-class pro se plaintiffs in employment law cases. Finally, Part III provides solutions for reducing the burden.

I.

SOCIAL IDENTITY THREAT

This Part discusses social identity threat. It explains what social identity threat is, how environmental cues trigger it, what burdens it poses for people of marginalized identities, and how scholars and the courts have treated social identity threat literature and related social science literature. Although Part II will narrow this Note's focus to working-class litigants, this Part relies on literature concerning numerous marginalized identities, including race and gender, and nonlegal contexts, such as test taking, in order to first provide a clear picture of social identity threat.

10. These programs include legal insurance, legal-referral services such as dial-a-lawyer, clinics, and pro-bono work. James W. Meeker & John Dombink, *Access to the Civil Courts for Those of Low and Moderate Means*, 66 S. CAL. L. REV. 2217, 2218 (1993); see also SPECIAL COMM. ON DELIVERY OF LEGAL SERVS., A.B.A., REPORT ON THE SURVEY OF LEGAL CLINICS AND ADVERTISING LAW FIRMS 29–32 (1990).

11. Fewer than 1 percent of lawyers, or one for every 1,400 poor or near-poor people, enter the legal-aid practice. DEBORAH L. RHODE, ACCESS TO JUSTICE 4 (2004).

12. See *id.* at 3; Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1788 (2001); Ron Ostroff, *Missouri Remains Unable to Pay Indigents' Counsel; Pro Bono Revolt Grows*, NAT'L L.J., May 11, 1981, at 2.

13. See Rhode, *supra* note 12, at 1791, 1794, 1797.

A. *The Nature of Social Identity Threat*

Social identity threat is the perception of an animus toward or marginalization of one's identity within a setting or environment.¹⁴ The threat occurs when an individual in a particular setting realizes that negative perceptions about his or her identity generally exist or could possibly exist.¹⁵ This realization occurs for "a broad array of groups and domains of activity"¹⁶ and allows the setting to "undermine a person's performance in the setting . . . and, over time, pressure the person to disengage or disidentify with the setting."¹⁷

Social identity threat is an umbrella term.¹⁸ As such, social identity threat may arise in multiple ways, and no exhaustive list of its examples or strands exists.¹⁹ Indeed, when proposing the term, Claude Steele and his colleagues referred to it as "a general model" that includes "identity-based threats" where "the setting simply holds an animus toward one's group or that one's group has low or marginalized status in the setting . . ."²⁰ While no exhaustive list of social identity threats exists, Part II discusses three identity-based threats that naturally fall within the social identity threat general model: intergroup bias,²¹ stereotype threat,²² and hindrance of social belonging.²³ For now, it is enough to know that stereotypes, implicit associations, and other similar presumptions center environments or settings on particular identities, and that social identity threat occurs when an individual who does not share the centered identity enters the setting and perceives marginalization.²⁴

For example, computer science classrooms are centered on the male identity, given the high percentage of males in the computer science field and the stereotype that males are better than females at math and computer

14. Claude M. Steele et al., *Contending with Group Image: The Psychology of Stereotype and Social Identity Threat*, 34 *ADVANCES IN EXPERIMENTAL SOC. PSYCHOL.* 379, 416 (2002).

15. *Id.* at 416–17.

16. *Id.* at 385.

17. *Id.* at 419 (internal citations omitted).

18. *See id.* at 416.

19. *See id.*

20. *Id.*

21. *See* John T. Jost et al., *A Decade of System Justification Theory: Accumulated Evidence of Conscious and Unconscious Bolstering of the Status Quo*, 25 *POL. PSYCHOL.* 881, 883 (2004); Laurie A. Rudman et al., *Minority Members' Implicit Attitudes: Automatic Ingroup Bias as a Function of Group Status*, 20 *SOC. COGNITION* 294, 294–97 (2002).

22. *See* Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 *J. PERSONALITY & SOC. PSYCHOL.* 797, 797 (1995); *see also* Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 *AM. PSYCHOLOGIST* 613, 613 (1997).

23. *See* Roy F. Baumeister & Mark R. Leary, *The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation*, 117 *PSYCHOL. BULL.* 497, 499–501 (1995); Nicole M. Stephens et al., *Closing the Social-Class Achievement Gap: A Difference-Education Intervention Improves First-Generation Students' Academic Performance and All Students' College Transition*, 25 *PSYCHOL. SCI.* 943, 949–51 (2014).

24. *See* Steele et al., *supra* note 14, at 420.

science.²⁵ When a woman walks into a computer science classroom, the setting may implicitly convey to her that she is marginalized or unwelcome.²⁶ This message then translates into various psycho-physiological effects that hinder her engagement and repel or push her back from the setting.

Social identity threat may occur on an implicit, unconscious level.²⁷ This means that an individual under social identity threat might not be consciously aware of its occurrence at the time he or she suffers its effects. For example, an individual may enter an environment in which his or her identity is stereotypically associated with failure, such as a female student taking a math test near a group of men. Her knowledge of the stereotype that men are better at math than women, and the mere observation of male test takers around her, may together trigger social identity threat even if she does not believe in the stereotype, has not explicitly connected the stereotype to her own situation, or has not consciously recognized negative perceptions of her in the setting.²⁸

B. Triggering Social Identity Threat

Although the effect and presence of social identity threat operate on an implicit, unconscious level, the threat's cause stems from overt cues. Social identity threat cues are explicit environmental prompts that may implicitly indicate to an individual that his or her identity is devalued, marginalized, or negatively perceived.²⁹ They “signal the status of that identity in the setting, whether or not it lives under a ‘glass ceiling’ in the setting, whether it compares negatively to other identities in the setting, and, of course, whether it is negatively stereotyped in the setting.”³⁰

Even “relatively small, seemingly innocuous cues that either directly or indirectly signal some basis of identity threat in the environment”—such as the demographic composition in the room—may be enough to trigger social identity threat.³¹ These cues can be general, such as the environment itself combined with a “person's general cultural knowledge of how people with

25. Tracy Camp, *The Incredible Shrinking Pipeline*, 40 COMMS. ACM 103, 103 (1997), <http://inside.mines.edu/~tcamp/paper/paper.html> [perma.cc/7TCC-UN9X] (indicating that more men than women attain computer-science degrees).

26. *See id.*

27. *See* Steele et al., *supra* note 14, at 394. Indeed, partly because of its implicit nature, some scholars refer to social identity threat as the “target's perspective” of implicit bias, which is another mental process that occurs on an implicit, unconscious level, such that the individual under the process is not aware of it at the time. *See* Belle Derks et al., *The Neuroscience of Stigma and Stereotype Threat*, 11 GROUP PROCESSES & INTERGROUP REL. 163, 164 (2008).

28. *See* Steele et al., *supra* note 14, at 394. *See generally* Michael Inzlicht & Talia Ben-Zeev, *A Threatening Intellectual Environment: Why Females Are Susceptible to Experiencing Problem-Solving Deficits in the Presence of Males*, 11 PSYCHOL. SCI. 365 (2000) (finding that females experienced “performance deficits” in math tests when working with males).

29. Steele et al., *supra* note 14, at 417.

30. *Id.*

31. *Id.* at 422–23.

given social identities are regarded in given settings and domains of activity.”³² They can also be specific, such as the lack of other people who share the individual’s identity within the setting;³³ the “styles of dress, music, and humor, that the setting values; the intellectual skills and styles that it recognizes and values; the styles of being a person that it values; the stores that people in the setting shop at; and the places where they spend their vacations.”³⁴

Consider, as a more concrete example, a study that asked Asian American women to take a math test.³⁵ Prior to the test, the study broke the participants into groups, giving each group a survey that highlighted their female gender, Asian race, or neither identity.³⁶ Participants with a cued gender identity performed worse on the test than participants with a cued racial identity, and those with a cued racial identity performed better than those with no cue.³⁷ In other words, given the participants’ general knowledge that stereotypes of Asians, women, and math ability exist in society, cuing “Asian” through the survey increased test scores, while cuing “female” decreased them. Another study showed that these test scores changed in proportion to the strength of the cue.³⁸ Studies like these indicate that social identity threat cues are explicit environmental cues that implicitly draw attention to marginalization or devaluation of one’s identity within an environment.³⁹ This occurs even if the individual is not consciously thinking of the marginalization, or that the stereotype applies to him or her within the particular setting.

C. *The Effects of Social Identity Threat*

Once triggered, social identity threat leads to psycho-physiological effects, including altered bodily function. One study revealed a connection between working-class social identity threat and stress-related immune system responses.⁴⁰ Measuring for inflammatory cytokine interleukin-6, an immune system protein that orchestrates inflammation in response to infection or injury, the study found that participants who experienced a low socioeconomic status (SES) during early life—as measured by their family’s lack of home ownership

32. *Id.* at 417.

33. *Id.* at 419.

34. *Id.* at 420.

35. See Margaret Shih et al., *Stereotype Susceptibility: Identity Salience and Shifts in Quantitative Performance*, 10 PSYCHOL. SCI. 80, 80–81 (1999).

36. *Id.*

37. *Id.*

38. For example, one study found a correlation between the number of women in a math-test-taking group and the strength of the social identity threat, such that the fewer women in the group, the worse a woman’s performance on the test. Inzlicht & Ben-Zeev, *supra* note 28, at 365; see also Steele et al., *supra* note 14, at 423 (2002) (describing the study and stating that “the degree of women’s underperformance on the math test varied with the strength of this situational cue”).

39. Shih et al., *supra* note 34.

40. Neha A. John-Henderson et al., *Performance and Inflammation Outcomes Are Predicted by Different Facets of SES Under Stereotype Threat*, 5 SOC. PSYCHOL. & PERSONALITY SCI. 301, 304 (2014).

when the participant attended kindergarten—secreted significantly more inflammation protein when under social identity threat than did participants without a low SES during early life.⁴¹ This proved true for two different cues of social identity threat: (1) when participants heard that the test was diagnostic of intelligence, cuing the stereotype within the environment that persons from low SES backgrounds are not smart; and (2) when participants were exposed to a mere social comparison between their SES and another participant's higher SES.⁴²

Studies concerning similar marginalized⁴³ identities support these results. One study found that the presence of acute race-related social identity threat significantly elevated blood pressure during and in between two tests.⁴⁴ African American participants under threat during the second test, for example, began the test with an elevated heart rate that eventually increased by the end of the test.⁴⁵ Similarly, another study found that social identity threat based on a stereotype of women being inferior to men in spatial reasoning tasks activated the left rostral-ventral anterior cingulate, which is associated with processing negative emotions like anger and sadness.⁴⁶ Participants in that study also displayed an activation of the right orbital gyrus, which is associated with processing interpersonal relations such as gender stereotypes, and emotions such as embarrassment and shame.⁴⁷ Social identity threat, then, resulted in the involuntary transfer of brain function from task-relevant to task-irrelevant brain activity.⁴⁸

Moreover, these psycho-physiological effects lead to altered behaviors and suboptimal performances on tasks at hand. For example, in the study concerning SES and inflammation, participants with a higher current SES performed better on the given task than other groups.⁴⁹ Similarly, women under social identity threat in the spatial reasoning task study made 6 percent more errors than the control group, while women under positive stereotype committed 8 percent fewer errors than the control group.⁵⁰ These effects are

41. *Id.* at 301–03.

42. *Id.* at 304–05.

43. While the term “marginalized” often refers to underrepresented or traditional minority identities, such as people of color or women, social identity threat may affect even white, upper-class men. For example, when told that the purpose of a math test was to study why Asians were better at math than whites, white male students at Stanford experienced stereotype threat and gave suboptimal performances. Joshua Aronson et al., *When White Men Can't Do Math: Necessary and Sufficient Factors in Stereotype Threat*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 29, 33–35 (1999).

44. Jim Blascovich et al., *African Americans and High Blood Pressure: The Role of Stereotype Threat*, 12 PSYCHOL. SCI. 225, 227 (2001).

45. *Id.*

46. Maryjane Wraga et al., *Neural Basis of Stereotype-Induced Shifts in Women's Mental Rotation Performance*, SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE, Jan. 2006, at 4.

47. *Id.* at 4–5.

48. *See id.* at 5.

49. *See* John-Henderson et al., *supra* note 40, at 305.

50. Wraga et al., *supra* note 46, at 3.

also seen in, among many other things, lexical decisionmaking,⁵¹ collaboration with people of particular identities,⁵² and, as this Note posits, access to justice in the courtroom.

D. The Treatment of Social Identity Threat and Similar Literature

Literature on social identity threat as it applies in the legal context, and during litigation in particular, is scarce. In 2008, Belle Derks and her colleagues noted that “[i]nitially, most social psychological research on prejudice and stereotyping examined functions, characteristics, and consequences for people who use stereotypes and hold prejudiced beliefs.”⁵³ In contrast, social identity threat concerns the consequences for people targeted by marginalization.⁵⁴ Indeed, scholars only began concretely identifying social identity threat in the 1990s while studying examples of it, such as stereotype threat.⁵⁵ And in the late 1990s and early 2000s, scholars finally started to understand that these various psychological phenomena, like stereotype threat, were not separate but instead fell within a larger category best described as social identity threat.⁵⁶ Today, the study of social identity threat remains fresh, and the specific study of how it applies in the legal context, especially in the courtroom, has been, until now, unexplored.

The scarcity of social identity threat literature as it applies in the legal context is especially pronounced when it comes to working-class identity because scholars have only given limited attention to working-class identity in the first place. In 2002, Bernice Lott summarized this limited focus, noting that “psychologists distance themselves and the discipline from the poor by generally ignoring social class as a significant variable in research and theory”⁵⁷ She added that this distancing has “made invisible those who are not middle class.”⁵⁸ Over a decade later, research concerning social identity threat and related psychological phenomena remains limited when it comes to working-class identity.

51. Jacques-Philippe Leyens et al., *Stereotype Threat: Are Lower Status and History of Stigmatization Preconditions of Stereotype Threat?*, 26 PERSONALITY & SOC. PSYCHOL. BULL. 1189, 1192, 1194 (2000) (finding that in a task asking participants to “decide whether a target word was or was not affective,” “[m]ore errors were committed by men than by women, and there were more errors in the threat conditions than in the no-threat conditions,” with the “main effect of threat” being significant).

52. See generally Leslie Ashburn-Nardo et al., *Black Americans’ Implicit Racial Associations and Their Implications for Intergroup Judgment*, 21 SOC. COGNITION 61 (2003).

53. Derks et al., *supra* note 27, at 168.

54. *Id.*

55. See Steele & Aronson, *supra* note 22, at 787–89.

56. See Steele et al., *supra* note 14, at 416.

57. Bernice Lott, *Cognitive and Behavioral Distancing from the Poor*, 57 AM. PSYCHOLOGIST 100, 102 (2002); see also Bettina Spencer & Emanuele Castano, *Social Class Is Dead. Long Live Social Class! Stereotype Threat Among Low Socioeconomic Status Individuals*, 20 SOC. JUST. RES. 418, 421 (2007).

58. Lott, *supra* note 57, at 100.

Even when sufficient research exists, whether courts will consider that research remains uncertain, because they have been unwilling to consider social science literature before. The Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes* is a prime example.⁵⁹ The case concerned class certification of about 1.5 million plaintiffs who alleged gender discrimination in promotion and pay increases.⁶⁰ Plaintiffs did not allege "any express corporate policy against the advancement of women," but instead targeted Wal-Mart's policy of providing local supervisors broad discretion in promotion and pay.⁶¹ They argued that the local supervisors disproportionately exercised their discretion in a manner that resulted in an unlawful disparate impact on female employees.⁶²

As evidence, plaintiffs called a sociology expert, Dr. William Bielby, to testify that Wal-Mart's grant of broad discretion to local supervisors created a "strong corporate culture" that was vulnerable to gender bias.⁶³ In particular, Dr. Bielby noted that when such broad discretion is allowed, local supervisors might exercise their discretion with implicit bias, that is, through gender stereotypes involuntarily held on an unconscious level.⁶⁴

The Court found that "Bielby's testimony d[id] nothing to advance respondents' case" and that the Court "c[ould] safely disregard what he ha[d] to say" because he could not "calculate whether 0.5 percent or 95 percent of the employment decisions at Wal-Mart might be determined by stereotyped thinking."⁶⁵ Merely using social science literature as applied to a particular setting, at least without providing enough concrete examples of discrimination, was not enough for the Court.

Of course, this does not mean that courts refuse to consider social science literature altogether. At least two reasons prevent such a conclusion. First, though *Dukes* may evince the Court's hesitance to use social science literature in proving a substantive claim in court, social science literature can be applied in the legal context while leaving substantive claims alone. Indeed, this Note uses social identity threat literature to suggest changes to the courtroom's physical structures and procedures unrelated to substantive claims. Courts may accept such suggestions without violating the reasoning in *Dukes* or similar

59. See 131 S. Ct. 2541, 2552–54 (2011).

60. *Id.* at 2547.

61. *Id.* at 2548, 2554.

62. *Id.*

63. *Id.* at 2553.

64. *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 153 (N.D. Cal. 2004), *aff'd*, 474 F.3d 1214 (9th Cir. 2007), *opinion withdrawn and superseded on denial of reh'g*, 509 F.3d 1168 (9th Cir. 2007), *on reh'g en banc*, 603 F.3d 571 (9th Cir. 2010), *rev'd*, 131 S. Ct. 2541 (2011) ("Dr. Bielby opines that the social science research demonstrates that gender stereotypes are especially likely to influence personnel decisions when they are based on subjective factors, because substantial decision-maker discretion tends to allow people to 'seek out and retain stereotyping-confirming information and ignore or minimize information that defies stereotypes.'").

65. *Dukes*, 131 S. Ct. at 2553–54.

cases. Second, courts have used social science literature before, even to interpret and apply the law. *Brown v. Board of Education*⁶⁶ is a good counterexample to *Dukes*. There, the Warren Court cited social science literature for the proposition that segregation has a detrimental psychological effect on children of color.⁶⁷ It then struck down the “separate but equal” doctrine for violating the Equal Protection Clause.⁶⁸ The Court has applied similar rationale in the more recent same-sex marriage cases.⁶⁹

Research concerning social identity threat as it applies in the legal context is especially important at this time. As discussed, research indicates that people of particular identities experience a threat in implicitly threatening environments, and thereby suffer from psycho-physiological effects. This issue deserves attention, especially when it may very well stand in the way of equal access to justice—an idea fundamental to our society. And given the potential of this area of study—arising from the lack of research on social identity threat as it applies in the legal context, especially when it relates to identities such as class, and the decision courts face to either accept or reject social science literature—an opportunity now exists to improve access to justice by leaps and bounds.

II.

THE IMPLICIT PUSHBACK BURDEN: GENERAL THEN SPECIFIC

This Part applies social identity threat literature to the courtroom for the first time, and reveals the implicit pushback burden—a burden litigants of marginalized identities face in the courtroom because of social identity threat. Part I showed that the burden imposed by social identity threat varies with the circumstances, such as the identity of the individual or the type and strength of the cue. This fluidity of the burden limits any general discussions of the implicit pushback burden. Accordingly, after revealing that the implicit pushback burden exists, this Part applies it to a specific circumstance: working-class pro se plaintiffs in employment law cases.

A. *The Implicit Pushback Burden*

As long as the proper cues and identities are present, social identity threat can affect litigants in the courtroom just as it affects individuals taking a test,⁷⁰

66. 347 U.S. 483 (1954).

67. *Id.* at 494 n.11.

68. *Id.* at 495.

69. See *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013) (reasoning that a law defining marriage as between a man and a woman “humiliates tens of thousands of children now being raised by same-sex couples”); see also *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600–01 (2015) (relying on *Windsor* to similarly conclude that laws prohibiting same-sex marriage “harm and humiliate the children of same-sex couples”).

70. Steven J. Spencer et al., *Stereotype Threat and Women’s Math Performance*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 4, 21–25 (1999).

playing sports,⁷¹ or participating in various other studied activities and settings. It can accordingly bring its psycho-physiological effects to the courtroom for various marginalized identities. These effects may include, among other things, abnormal increase in heart rate, transfer of brain activity from task-relevant to task-irrelevant function, disengagement, and diminished performance, all of which serve social identity threat's repelling nature.

The presence of social identity threat in the courtroom⁷² triggers the implicit pushback burden for litigants of marginalized identities. While social identity threat burdens arise in different settings and affect different activities, the burden of social identity threat as it applies in the legal context, particularly in the courtroom, warrants its own term, the implicit pushback burden, for at least two reasons.

First, it is analogous to traditional legal burdens. When applied specifically to litigants in the courtroom, it is as real for affected litigants as any other legal burden, such as the burdens of proof and production. It must be overcome, or at least successfully endured, in order for the litigant to prevail or obtain access to justice. In other words, a litigant under social identity threat must endure or overcome all the triggered psycho-physiological effects in order to succeed.

Second, the burden of social identity threat as it applies in the courtroom has acutely severe consequences demanding unique attention. The burden in a nonlegal context may result in a missed basketball shot, an inaccurate answer to a test question, or some similar result. To be sure, such effects may be serious; for example, a few inaccurately answered questions on the SAT or ACT could result in a rejection from a college applicant's top-choice school. In the courtroom, however, the burden may unjustifiably result in a criminal conviction, a loss of income meant to sustain a family, or even a loss of millions of dollars for a corporate client. These consequences demand extra attention, especially because they are distributed unequally to people of marginalized identities.

71. Jeff Stone et al., *Stereotype Threat Effects on Black and White Athletic Performance*, 77 J. PERSONALITY & SOC. PSYCHOL. 1213, 1224–25 (1999).

72. Many legal proceedings or transactions today may occur outside of the traditional courtroom, such as during arbitration or mediation. Accordingly, the reference to the courtroom here is meant to encompass the traditional courtroom and any setting or environment in which a legal proceeding or transaction occurs. Similarly, Part II.B references the courtroom with respect to social identity threat for working-class pro se plaintiffs in employment law cases. There, courtroom is similarly meant to encompass the traditional courtroom and any setting or environment in which a working-class pro se plaintiff may participate in legal proceedings related to an employment law case. Arbitration is a common example of this setting.

B. The Implicit Pushback Burden on Working-Class Pro Se Plaintiffs

Research suggests that the implicit pushback burden can affect working-class⁷³ pro se plaintiffs⁷⁴ in employment law cases.⁷⁵ Regardless of how one defines working-class identity, research indicates that a mere socioeconomic comparison between two people can trigger class-based social identity threat.⁷⁶ Some scholars have even stated that a “casual chat in one’s dorm room, for example, may become threatening when a first-generation college student realizes that all his roommates’ parents are college graduates and highly paid professionals.”⁷⁷

Structures within employment law cases can similarly prime—that is, establish or bring attention to—the plaintiff’s working-class identity. A socioeconomic comparison occurs when the working-class plaintiff encounters a more affluent employer in the courtroom. Even in the absence of the employer, the perceived difference between the socioeconomic positions of the working-class plaintiff and the judge or the employer’s lawyer may itself prime the working-class identity.⁷⁸ In some cases, where the employer, the employer’s lawyer, and the judge are present, the primer for working-class identity may be even stronger.⁷⁹ And where the identification with working-

73. Studies addressing social identity threat define working-class in various ways. For instance, one study referred to a lack of home ownership during kindergarten. John-Henderson et al., *supra* note 40, at 303. Another study defined working-class as low SES participants whose parents were manual labor workers, unemployed, or administrative workers. Jean-Claude Croizet & Theresa Claire, *Extending the Concept of Stereotype Threat to Social Class: The Intellectual Underperformance of Students from Low Socioeconomic Backgrounds*, 24 PERSONALITY & SOC. PSYCHOL. BULL. 588, 590 (1998). Low SES student participants in that study also received government aid for schooling due to low familial income, while high SES participants did not. *Id.*

74. This Note focuses on pro se plaintiffs because research suggests that social identity threat effects depend to some extent on when the individual held the working-class identity, such as currently or in the past. John-Henderson et al., *supra* note 40, at 302. Because this Note focuses on the working-class identity, which lawyers tend not to share, the most appropriate group to study when addressing the working-class social identity threat in the courtroom is self-represented working-class litigants. Further, focusing on plaintiffs in particular is most appropriate, given that plaintiffs in employment-law cases tend to be employees suing more affluent employers.

75. See Stone et al., *supra* note 71.

76. See John-Henderson et al., *supra* note 40, at 304–05; see also Sarah E. Johnson et al., *Middle Class and Marginal? Socioeconomic Status, Stigma, and Self-Regulation at an Elite University*, 100 J. PERSONALITY & SOC. PSYCHOL. 838, 840–45 (2011); David M. Marx & Phillip Atiba Goff, *Clearing the Air: The Effect of Experimenter Race on Target’s Test Performance and Subjective Experience*, 44 BRIT. J. SOC. PSYCHOL. 645, 648–51 (2005). See generally SUSAN T. FISKE, ENVY UP, SCORN DOWN: HOW STATUS DIVIDES US (2011); Wendy Berry Mendes et al., *Challenge and Threat Responses During Downward and Upward Social Comparisons*, 31 EUR. J. SOC. PSYCHOL. 477 (2001).

77. Derks et al., *supra* note 27, at 166.

78. Cf. Inzlicht & Ben-Zeev, *supra* note 28, at 368 (showing that the more men within a math test-taking group, the worse a woman’s performance); Steele et al., *supra* note 14, at 423 (describing the study and stating that “the degree of women’s underperformance on the math test varied with the strength of th[e] situational cue”).

79. See Steele et al., *supra* note 14.

class identity becomes stronger, the effects of social identity threat become more burdensome.⁸⁰

Priming the working-class identity for pro se plaintiffs in employment law cases is especially pertinent here because the working-class identity—unlike some other identities, such as race and gender—must be primed in order for social identity threat to apply.⁸¹ Two studies illustrate this.

The first study involved working-class French students, and found that social identity threat affected students taking a test even when their working-class identity was not explicitly primed within the test-taking environment.⁸² The study explained this by saying that “class stereotypes . . . have a long history in French society,” and French “students carry knowledge of their SES level and its societal connotations, making it impossible to raise their current level of awareness.”⁸³

The second study found that, in the United States, the working-class identity must first be primed in the particular setting in order to activate social identity threat.⁸⁴ This study noted, “American history and ideology suggest that the [United States] is a relatively ‘classless’ society. As a result of this belief, Americans may not be as aware of their class standing as were . . . French participants.”⁸⁵

Both studies, then, suggest that the working-class identity must be primed in some way, whether implicitly throughout the country or explicitly within the particular setting. As explained, employment law cases ensure that this requirement is met by providing social comparisons—comparisons between the plaintiff and the employer, the employer’s lawyer, and the judge—that prime the working-class identity.

Once the courtroom environment primes working-class identity, pro se plaintiffs in employment law cases face three strands of social identity threat: stereotype threat, intergroup bias, and hindered social belonging. Two courtroom structures trigger these strands of social identity threat: the aforementioned social comparisons, and the items in the room, such as portraits, clothing, furniture, interior architecture, and displays.

80. *See id.* at 390–91.

81. *See* Croizet & Claire, *supra* note 73, at 593–94 (indicating that class-based identity threat affected French participants presumably because they were inherently aware of, or primed to recognize, their social class); Spencer & Castano, *supra* note 57, at 428–29 (indicating that priming of the working-class identity in the United States is more necessary than in France because U.S. participants, unlike French participants, are not as inherently aware of their working-class identity).

82. Croizet & Claire, *supra* note 73, at 593–94.

83. *Id.* at 594.

84. Spencer & Castano, *supra* note 57, at 428–29.

85. *Id.* at 428.

1. *Stereotype Threat*

The social comparisons within the courtroom can trigger working-class stereotype threat. Claude Steele and Joshua Aronson identified stereotype threat as the risk of confirming a negative stereotype, such that awareness of the risk carries disruptive effects.⁸⁶ This may affect any group with a stereotype.⁸⁷ The disruptive effects include a reduction in relevant cognitive capacity.⁸⁸ Usually, if the task requires reason and intellect, the person affected by a low-intellect stereotype threat will spend cognitive resources on emotionally related processes, which limit cognitive resources for reasoning.⁸⁹ Other effects include anxiety,⁹⁰ disassociation from the task at hand,⁹¹ and previously mentioned psycho-physiological effects, all of which hinder performance.

As is true with social identity threat in general, the person affected does not need to believe the stereotype. They merely have to know of or be cued to its existence.⁹² This cuing can occur very easily, and could involve simply telling an individual that a task is diagnostic of intelligence,⁹³ comparing socioeconomic standing,⁹⁴ or implying the higher socioeconomic standing of others.⁹⁵

Studies have confirmed that stereotype threat affects working-class people. For example, Jean-Claude Croizet and Theresa Claire (Croizet study) showed that low SES students performed worse than high SES students on a test when the intelligence-related stereotype threat was cued.⁹⁶ The study notified one group that the test was diagnostic of intelligence (diagnostic), a common stereotype threat trigger, and notified another group that it was merely an investigative tool (non-diagnostic),⁹⁷ and low SES participants performed worse in the diagnostic group than in the nondiagnostic group.⁹⁸ They fared worse than high SES participants in both groups.⁹⁹ This diminished performance was statistically significant,¹⁰⁰ and low SES participants under threat even attempted to answer the fewest number of questions.¹⁰¹ These

86. Steele & Aronson, *supra* note 22, at 797.

87. *Id.* at 797–99.

88. See Derks et al., *supra* note 27, at 169.

89. *Id.*

90. Steele & Aronson, *supra* note 22, at 797–99.

91. *Id.*

92. *Id.*

93. John-Henderson et al., *supra* note 40, at 303.

94. *Id.* at 304–05.

95. Derks et al., *supra* note 27, at 166.

96. Croizet & Claire, *supra* note 73, at 591–92.

97. *Id.* at 589–90.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 591–92.

results occurred even though low SES participants under stereotype threat did not explicitly indicate noticing a higher psychological or physiological burden during the test.¹⁰²

Other studies support these results. For example, in 2007, Bettina Spencer and Emanuele Castano (Spencer study) repeated the Croizet study in the United States using Graduate Record Examination questions and included in their study a measure of participants' confidence.¹⁰³ Like the Croizet study, this study focused specifically on three distinctions: whether the testing is diagnostic or nondiagnostic of intelligence, whether the participants are low SES or high SES, and whether the working-class identity itself was primed.¹⁰⁴ Indeed, low SES participants under diagnostic conditions with a primed working-class identity performed the worst overall.¹⁰⁵ Conversely, high SES participants under diagnostic conditions when the working-class identity was primed performed the best.¹⁰⁶ In other words, when researchers cue stereotype threat and prime the working-class identity of participants, a low SES participant performs at their worst while a high SES participant performs at their best. Moreover, the confidence measures showed a positive correlation between income and confidence.¹⁰⁷ When income was low, confidence was lower in diagnostic compared to non-diagnostic conditions, and lower in SES primed compared to nonprimed conditions.¹⁰⁸

These studies portend the effects of stereotype threat on pro se plaintiffs in employment law cases.¹⁰⁹ Litigants must be analytical, intelligent, and able to think on their feet. The social comparisons in employment law cases create a seeming competition of intellect between two parties of different socioeconomic standing—the employer and the employee—similar to the test-taking tasks in the Croizet and Spencer studies. Working-class people are often stereotyped as less intelligent.¹¹⁰ It appears that in employment law cases in which the working-class pro se plaintiff's identity is primed through social comparisons, the employer-employee comparison in the courtroom may cue stereotype threat. Consequently, the plaintiff can experience unusually high

102. *Id.* at 589–90.

103. Spencer & Castano, *supra* note 57, at 423–24.

104. *Id.* at 426.

105. *Id.* at 426–27.

106. *Id.*

107. *Id.* at 426.

108. *Id.* at 426–27.

109. Interestingly, the Spencer study suggests that employers or their lawyers in employment law cases may receive a boost to their performance due to the same social comparisons and stereotypes that burden the plaintiff. *Id.* at 426–27 (indicating that when the working-class identity was primed, high SES participants performed better than participants in all other groups, including high SES participants whose identity was not primed, and low SES participants, regardless of priming).

110. Stereotypes say that “the American poor are dirty, violent, inbred, lazy, unkempt, carefree hillbillies. And, perhaps most damaging, that they are stupid.” *Id.* at 419.

anxiety¹¹¹ and heart rate levels,¹¹² immune system responses such as inflammation,¹¹³ an involuntary decrease of task-relevant brain function,¹¹⁴ disassociation from the task at hand,¹¹⁵ reduction of working memory,¹¹⁶ and generally suboptimal performance.¹¹⁷

2. Intergroup Bias

The social comparisons in employment law cases may also trigger implicit intergroup bias for working-class pro se plaintiffs. Intergroup bias is the implicit favoring of one group over another, which usually depends at least in part on the group to which a person belongs.¹¹⁸ This favoring occurs on an unconscious and involuntary level.¹¹⁹ Some studies suggest that when people identify with a group, and their self-esteem is tied to the perceived worthiness of the group, they will display in-group favoritism and out-group derogation.¹²⁰ Various studies support this conclusion, specifically when examining, among other identities and biases, whites' in-group preference over blacks,¹²¹ Latinos' in-group preference for light-skinned Latinos,¹²² young people's in-group

111. See Steele & Aronson, *supra* note 22, at 797–99.

112. See Blascovich et al., *supra* note 44, at 227.

113. See John-Henderson et al., *supra* note 40, at 304.

114. See Wraga et al., *supra* note 46, at 4–5.

115. See Steele & Aronson, *supra* note 22.

116. Toni Schmader & Michael Johns, *Converging Evidence That Stereotype Threat Reduces Working Memory Capacity*, 85 J. PERSONALITY & SOC. PSYCHOL. 440, 443–44 (2003).

117. See Croizet & Claire, *supra* note 73, at 589; Spencer & Castano, *supra* note 57, at 426–27.

118. See Jost et al., *supra* note 21, at 894.

119. *Id.*

120. See Nilanjana Dasgupta, *Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations*, 17 SOC. JUST. RES. 143, 147–48 (2004); see also Dominic Abrams & Michael A. Hogg, *Comments on the Motivational Status of Self-Esteem in Social Identity and Intergroup Discrimination*, 18 EUR. J. SOC. PSYCHOL. 317, 320–22 (1988); Richard Y. Bourhis, *Power, Gender, and Intergroup Discrimination: Some Minimal Group Experiments*, in 7 THE PSYCHOLOGY OF PREJUDICE: THE ONTARIO SYMPOSIUM 171, 172–74, 200–03 (Mark P. Zanna & James M. Olson eds., 1994); Richard Y. Bourhis et al., *Interdependence, Social Identity and Discrimination*, in THE SOCIAL PSYCHOLOGY OF STEREOTYPING AND GROUP LIFE 273, 275–79 (Russell Spears et al. eds., 1997). See generally HENRI TAJFEL, HUMAN GROUPS AND SOCIAL CATEGORIES: STUDIES IN SOCIAL PSYCHOLOGY (1981) (providing summaries of social psychology studies pertaining to relations of different social groups categorized by identities such as race); Mark Rubin & Miles Hewstone, *Social Identity Theory's Self-Esteem Hypothesis: A Review and Some Suggestions for Clarification*, 2 PERSONALITY & SOC. PSYCHOL. REV. 40 (1998) (reviewing the connection between self-esteem and intergroup bias and the influence each has on the other).

121. See Nilanjana Dasgupta & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice with Images of Admired and Disliked Individuals*, 81 J. PERSONALITY & SOC. PSYCHOL. 800, 802–08 (2001); Anthony G. Greenwald et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. PERSONALITY & SOC. PSYCHOL. 1464, 1473–78 (1998); Brian A. Nosek et al., *Harvesting Implicit Group Attitudes and Beliefs from a Demonstration Web Site*, 6 GROUP DYNAMICS: THEORY, RES., & PRAC. 101, 105–06, 111–12 (2002). See generally Jennifer A. Richeson & Nalini Ambady, *Effects of Situational Power on Automatic Racial Prejudice*, 39 J. EXPERIMENTAL SOC. PSYCHOL. 177 (2003).

122. See Scott A. Ottaway et al., *Implicit Attitudes and Racism: Effects of Word Familiarity and Frequency on the Implicit Association Test*, 19 SOC. COGNITION 97, 119–35 (2001); Eric Uhlmann et

preference for similarly aged individuals,¹²³ and even in-group favoritism when groups are arbitrarily constructed in a laboratory.¹²⁴

However, more recent research indicates that these earlier theories are not wholly accurate.¹²⁵ Indeed, the theory of system justification—the legitimizing of existing social arrangements and hierarchies even at the expense of one’s own interest—suggests that low-status groups may display out-group favoritism.¹²⁶ For example, when told to choose a partner for an intellectual task with a one hundred dollar reward, black participants, on average, displayed significant out-group favoritism toward whites.¹²⁷ Studies also suggest that this out-group favoritism leads to negative psycho-physiological effects for low-status people. For example, one study found that black participants who exhibited higher out-group favoritism for whites also exhibited more stereotype threat-related effects, anxiety, and self-handicapping.¹²⁸

Research indicates that working-class people in particular often display in-group derogation and out-group favoritism. One study that used the Implicit Association Test (IAT), which measures an individual’s biases by measuring associations held on an involuntary, unconscious level, found that working-class people show automatic in-group derogation and out-group favoritism toward more affluent groups.¹²⁹ The study focused on self-identified working-class participants with an average familial income of \$33,600.¹³⁰ The participants took two IATs, one measuring the association between low SES and “pleasant” and the other measuring the association between low SES and “unpleasant.”¹³¹ Each IAT provided a numerical measure of in-group bias. When the two measures were combined, a positive figure indicated in-group favoritism and a negative figure indicated in-group derogation, while higher

al., *Subgroup Prejudice Based on Skin Color Among Hispanics in the United States and Latin America*, 20 SOC. COGNITION 198, 198–99 (2002).

123. See Dasgupta & Greenwald, *supra* note 121, at 805–08; Petra Jelenec & Melanie C. Steffens, *Implicit Attitudes Toward Elderly Women and Men*, 7 CURRENT RES. SOC. PSYCHOL. 275, 286–89 (2002).

124. See Dasgupta, *supra* note 120, at 147 (“[E]ven when arbitrary in- and outgroups are created in the laboratory, people quickly develop attachments to their own group, and exhibit automatic preference for the ingroup and relative bias against the outgroup within a very short period of time. . . .”); see also David DeSteno et al., *Prejudice from Thin Air: The Effect of Emotion on Automatic Intergroup Attitudes*, 15 PSYCHOL. SCI. 319 (2004) (in-group favoritism created through emotional stimulation); Charles W. Perdue et al., *Us and Them: Social Categorization and the Process of Intergroup Bias*, 59 J. PERSONALITY & SOC. PSYCHOL. 475 (1990) (in-group favoritism created through the use of collective pronouns).

125. See Jost et al., *supra* note 21, at 883.

126. *Id.* at 885.

127. Ashburn-Nardo et al., *supra* note 52, at 76–84.

128. See Dasgupta, *supra* note 120, at 161. See generally Clarence Vincent Spicer, *Effects of Self-Stereotyping and Stereotype Threat on Intellectual Performance* (1999) (unpublished dissertation, Univ. of Kentucky) (on file with author).

129. Rudman et al., *supra* note 21, at 311–18.

130. *Id.* at 298.

131. *Id.* at 299.

positive figures and lower negative figures represented more pronounced favoritism or derogation, respectively. The other minority identities measured in the double digits: overweight as opposed to skinny (derogation measure of -70); Asian as compared to white (favoritism measure of 57); and Jewish as opposed to Christian (favoritism measure of 87).¹³² By contrast, working-class participants displayed a significantly lower figure, with a self-derogation measure of -238.¹³³ Having another minority identity, such as a minority race or gender, did not affect the working-class participants' implicit preference for more affluent people.¹³⁴

The association of the working-class identity with inferiority is so strong that arbitrarily linking someone who might not even share the working-class identity to a lower SES, and then comparing them to another group's supposed higher SES, will trigger out-group favoritism.¹³⁵ When one study asked Yale students to give possible reasons why Yale alumni are socioeconomically superior to Stanford alumni, 81.5 percent of the responses indicated in-group favoritism while only 2.4 percent of responses indicated in-group derogation.¹³⁶ Further, when mentioning Stanford alumni, the out-group, 42.1 percent of the responses were unfavorable, while only 15.8 percent were favorable.¹³⁷ However, the results changed when the study asked Yale students to explain why Yale alumni were socioeconomically inferior. A mere 12.3 percent of the responses displayed in-group favoritism, while 42.5 percent of the responses showed in-group derogation.¹³⁸ When referring to Stanford, the out-group, 62.2 percent of responses were now favorable, and only 4.2 percent were unfavorable.¹³⁹ Thus, participants' intra-group assessments significantly changed merely due to the suggested socioeconomic status of their group.

In the courtroom, social comparisons remind the working-class plaintiff that they are in a socioeconomic group below the defendant employer, the employer's lawyer, and the judge. Indeed, the working-class plaintiff often relies on the defendant employer's wealth to attain remedies—lost wages, benefits, or damage awards. This mere comparison, according to the aforementioned studies, induces the working-class pro se plaintiff to display out-group favoritism toward the employer or the employer's lawyer. The working-class plaintiff in an employment law case may think that they are “too idealistic” and have “impractical or false imaginations about real world life,” or

132. *Id.* at 303.

133. *Id.*

134. *Id.*

135. See John T. Jost, *Outgroup Favoritism and the Theory of System Justification: A Paradigm for Investigating the Effects of Socioeconomic Success on Stereotype Content*, in *COGNITIVE SOCIAL PSYCHOLOGY: THE PRINCETON SYMPOSIUM ON THE LEGACY AND FUTURE OF SOCIAL COGNITION* 89, 89–102 (Gordon B. Moskowitz ed., 2001).

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

that the “[defendant] offers a better [argument] than [the plaintiff]” or is “smarter” than the plaintiff.¹⁴⁰ Along with these changes in self-valuation, the plaintiff may also experience stereotype-related effects, increased anxiety, and self-handicapping.¹⁴¹

3. *Social Belonging*

Finally, items in the courtroom may also hinder the plaintiff’s implicit sense of social belonging. Social belonging refers to seeing oneself as socially connected to or as belonging in a certain environment.¹⁴² Various factors may either promote or hinder a person’s implicit sense of belonging. A socially threatened individual may see his or her belonging as uncertain. For example, one study asked black and white students to list eight friends suitable for computer science.¹⁴³ There, lacking the ability to list eight friends indicated a disconnect between the participant and the computer science field.¹⁴⁴ Only black participants, who are stigmatized in academics, showed a decrease in their sense of belonging.¹⁴⁵ This uncertainty about belonging led black participants both to feel discouraged about joining computer science, and to discourage other black peers from joining.¹⁴⁶

Similarly, a socially threatened individual may also receive implicit messaging that he or she does not belong at all within a certain environment. For example, given implicit associations between men and math, or men and computer science, a female student may perceive a lack of belonging in math or computer science classes.¹⁴⁷ This hindered social belonging may then result in a higher level of stress,¹⁴⁸ anxiety,¹⁴⁹ decreased commitment,¹⁵⁰ and worsened performance on math and computer science-related tasks.¹⁵¹

Working-class people experience similar implicit social belonging hindrances. For example, one study found that when a university’s culture—“the taken for granted norms, ideas, and practices”—did not match the culture shared by many first-generation students, who often come from working-class

140. See *id.* at 97 (adopting some of the quotes from Yale students experiencing out-group favoritism).

141. See Dasgupta, *supra* note 120, at 161; see also Spicer, *supra* note 128.

142. Baumeister & Leary, *supra* note 23, at 499–501.

143. Gregory M. Walton & Geoffrey L. Cohen, *A Question of Belonging: Race, Social Fit, and Achievement*, 92 J. PERSONALITY & SOC. PSYCHOL. 82, 85–87 (2007).

144. *Id.*

145. *Id.*

146. *Id.*

147. See Cheryan et al., *supra* note 9, at 1049; see also Brian A. Nosek et al., *Math = Male, Me = Female, Therefore Math ≠ Me*, 83 J. PERSONALITY & SOC. PSYCHOL. 44, 49 (2002).

148. See Stephens et al., *supra* note 23, at 949.

149. See *id.*

150. See Ellen A. Ensher et al., *Effects of Perceived Discrimination on Job Satisfaction, Organizational Commitment, Organizational Citizenship Behavior, and Grievances*, 12 HUM. RESOURCE DEV. Q. 53, 56, 64 (2001).

151. See Stephens et al., *supra* note 23, at 947.

backgrounds, these students' academic performance suffered.¹⁵² While middle-class people are often exposed to, and conform to, norms of independence throughout their lives, working-class people are often exposed to, and conform to, norms of interdependence.¹⁵³ In other words, working-class people are more likely to be comfortable with "adjust[ing] to the conditions of the context, be[ing] connected to others, and respond[ing] to the needs, preferences, and interests of others."¹⁵⁴ The study revealed that when first-generation students who favored interdependence attended colleges whose cultures centered on independence, the first-generation students' academic performance suffered during the first two years.¹⁵⁵ Conversely, continuing-generation students, who often come from middle- and upper-class backgrounds, and who more often prefer independence, thrived in settings centered on independence.¹⁵⁶

These results are consistent with research showing that performance at a task depends, at least in part, on one's fit or sense of belonging in the setting.¹⁵⁷ The aforementioned study also altered the welcome letter incoming students received before beginning college.¹⁵⁸ It then asked students to complete "verbal academic task[s]" that the study called anagrams.¹⁵⁹ First-generation students who received a letter indicating that the college culture centered on independence performed worse on the anagram task than did continuing-generation students who received the same letter.¹⁶⁰

Similarly, another study showed that universities that emphasized working-class identity improved participants' engagement and academic outcomes.¹⁶¹ The study divided students into two groups.¹⁶² One group received a difference-education intervention, during which a panel of diverse students spoke about their backgrounds, including the first-generation college student identity. This ensured that working-class students understood how their backgrounds mattered.¹⁶³ The other group also attended a panel, but the panel did not emphasize how the first-generation college student background mattered (control group).¹⁶⁴ While a grade point average gap persisted between the first-generation and continuing-generation students in both groups, the gap

152. Nicole M. Stephens et al., *Unseen Disadvantage: How American Universities' Focus on Independence Undermines the Academic Performance of First-Generation College Students*, 102 J. PERSONALITY & SOC. PSYCHOL. 1178, 1179–1180, 1187–88 (2012).

153. *Id.* at 1180.

154. *Id.*

155. *Id.* at 1187–88.

156. *Id.* at 1179, 1189.

157. *Id.* at 1189.

158. *Id.*

159. *Id.*

160. *Id.* at 1190.

161. See Stephens et al., *supra* note 23, at 947.

162. *Id.* at 944.

163. *Id.*

164. *Id.*

was 63 percent narrower in the group that received the difference-education intervention.¹⁶⁵ Moreover, first-generation college students in the difference-education condition sought out resources 30 percent more often than their counterparts not exposed to difference-education intervention.¹⁶⁶ These first-generation students also displayed less anxiety and stress.¹⁶⁷

Research concerning similar low-status identities, such as marginalized races and gender, further supports these results. One study showed that some environments go beyond creating uncertainty about social belonging and, indeed, suggest that the individual does not belong there at all.¹⁶⁸ The study divided female college students into two groups. One group entered and briefly remained in a computer science room filled with stereotypical computer science items, like soda cans and comics.¹⁶⁹ The other group entered and briefly remained in a computer science room containing neutral items, like water bottles and general-interest books or magazines.¹⁷⁰ Female students who spent time in the stereotypical classroom were less interested in computer science as compared to male students and other female students in the nonstereotypical condition.¹⁷¹ Between the two groups of female students, those in the stereotypical classroom also showed a marginal reduction of identification with computer science and a reduced sense of similarity to computer science majors.¹⁷² The study suggested that the more the female students identified masculinity through various items in the room, the less they felt a sense of belonging.¹⁷³

These studies suggest that working-class pro se plaintiffs in employment law cases may have a reduced sense of social belonging in the courtroom. As noted before, items in the courtroom may include the robe the judge wears, the suits parties wear, and the images or portraits of people or places seemingly lacking connection with the working-class identity. Courtrooms may also include expensive furniture unfamiliar to working-class people. The Browning Building, for example, contains replicas of expensive torch holders, marble columns, and large bronze doors meant to communicate affluence. Plaintiffs may perceive wealth through these items, similar to how female students in the computer-classroom study perceived masculinity through soda cans and comic books.¹⁷⁴ Through this perception of wealth in the courtroom, working-class

165. *Id.*

166. *Id.* at 947.

167. *Id.* at 949.

168. Cheryan et al., *supra* note 9, at 1049.

169. *Id.* at 1048.

170. *Id.*

171. *Id.* at 1048–49.

172. *Id.*

173. *Id.* at 1051.

174. *See id.* at 1048–49, 1053.

plaintiffs may further perceive that they do not belong, and this may thereby limit their performance and engagement.¹⁷⁵

The courtroom may further exacerbate, or at least fail to mitigate, these effects if, as seen in the college education studies, it also fails to display any reference to the working-class identity, or express how such an identity matters.¹⁷⁶ This exacerbation or failure to mitigate can occur even if the courtroom contains references to the working-class identity but, like the acceptance letters in the college culture study, fails to accurately and appropriately communicate a sense of belonging to working-class plaintiffs.¹⁷⁷ Consequently, working-class pro se plaintiffs in employment law cases may experience higher levels of stress¹⁷⁸ and anxiety,¹⁷⁹ decreased commitment,¹⁸⁰ and worsened performance during litigation.¹⁸¹

In sum, when the working-class pro se plaintiff experiences the three strands of social identity threat—stereotype threat, intergroup bias, and hindrance of social belonging—the plaintiff experiences an additional and significant burden in the courtroom. They may face, among other things, increased anxiety; higher blood pressure and stress; increased immune activity normally arising from injury, such as inflammation; decreased confidence; reduced task-relevant brain function and increased task-irrelevant brain function; reduced working-memory capacity; mental disassociation from the courtroom or its proceedings; a favoring of the defendant employer, which may include undeserved devaluation of one's own viewpoints and arguments; and a sense of not belonging in the courtroom coupled with a desire to leave. All of these effects implicitly limit the plaintiff's access to justice and repel or push them back from the courtroom and its proceedings. And the plaintiff involuntarily and unconsciously faces this implicit-pushback burden as they encounter the aforementioned triggers: social comparisons and items in the courthouse.

III.

REDUCING THE IMPLICIT PUSHBACK BURDEN

Because the implicit pushback burden springs from social identity threat, the most effective solutions will reduce or eliminate the causes and effects of social identity threat. For working-class pro se plaintiffs in employment law cases in particular, the most effective solutions are those that reduce the effects of stereotype threat, intergroup bias, and hindrance of social belonging. This

175. *See id.* at 1049.

176. *See* Stephens et al., *supra* note 23, at 949–51.

177. *See* Stephens et al., *supra* note 152, at 1190.

178. *See* Stephens et al., *supra* note 23, at 949.

179. *See id.*

180. *See* Ensher et al., *supra* note 150, at 56, 64.

181. *See* Stephens et al., *supra* note 23, at 947.

Part explains why any solution in this context must be approached cautiously. It provides an overview of the most relevant solutions found in social identity threat literature and suggests preliminary implementations of those solutions in the legal context.

A. *A Word of Caution*

Currently, ascertaining solutions to the implicit pushback burden runs up against the unavoidable challenges that arise when two areas of study—social identity threat and the legal context—are combined for the first time. Accordingly, solutions found in social identity threat literature must be cautiously applied to the legal context for two reasons.

First, much of the social identity threat literature concerns test-taking settings, which differ from the courtroom setting.¹⁸² For example, a lawyer may be representing a client,¹⁸³ whereas a test taker represents themselves. These differences indicate that social identity threat might not apply in the courtroom in the same way that it applies in the classroom or other nonlegal settings. Solutions to social identity threat in nonlegal contexts, then, might not be applicable here.¹⁸⁴ And even if the threat and solutions appropriate for a nonlegal setting were exactly applicable to the courtroom, some practical changes in a nonlegal setting, such as a classroom, may nonetheless be impractical or unwelcome in the legal field.

Second, the social identity threat literature outside of the legal context is limited when addressing working-class identity. Indeed, with respect to working-class stereotype threat, only a handful of empirical studies exist.¹⁸⁵ To compensate, this Note uses literature that concerns other low-status identities to support conclusions about the implicit pushback burden as it applies to the working-class identity. But while sufficient literature demonstrates that social identity threat affects working-class people, and even strongly suggests that it impacts litigants in the courtroom, it also suggests that the threat affects different identities in different ways. One study indicated that, in the United States, the particular setting must prime the working-class identity before stereotype threat can apply.¹⁸⁶ This is not necessary for some other identities,

182. See, e.g., Spencer et al., *supra* note 70, at 4–28.

183. While this does not apply to pro se plaintiffs, it illustrates a difficulty in applying social identity threat literature to the legal context generally.

184. Of course, this is not necessarily true of intergroup bias literature because it suggests that intergroup bias can easily arise through a mere social comparison, even if it is in the courtroom. See Jost, *supra* note 135, at 89–102. However, intergroup-bias literature has largely focused on in-group favoritism and out-group derogation. See, e.g., Samuel L. Gaertner et al., *Reducing Intergroup Bias: Elements of Intergroup Cooperation*, 76 J. PERSONALITY & SOC. PSYCHOL. 388 (1999). In contrast, the implicit-pushback burden as it applies here concerns in-group derogation and out-group favoritism, which suggests that applying solutions outlined in intergroup bias literature to the legal context may nonetheless face some limitations.

185. See, e.g., Spencer & Castano, *supra* note 57, at 423–24.

186. *Id.* at 428–29.

such as marginalized race or gender, and it is not even true of the working-class identity in France.¹⁸⁷ Therefore, literature concerning other marginalized identities can offer helpful analogies, but it may not be wholly applicable when determining both the effect of social identity threat and solutions to it in the courtroom for working-class litigants.

B. Overview and Application of Solutions

Notwithstanding the current challenges in ascertaining solutions, a general overview of solutions recommended by social identity threat literature can provide some insight.

1. Stereotype Threat Solutions

Three solutions to stereotype threat are worth mentioning here. First, removing stereotype cues altogether, or at least framing the courtroom proceeding as unrelated to any working-class stereotype, may reduce the effects of stereotype threat. Indeed, a cue within the setting triggered stereotype threat in each of the relevant studies mentioned in Part II. In both the studies on French and U.S. students, the stereotype cue was indicating that the test would be a diagnostic of intelligence.¹⁸⁸ In the study concerning U.S. students, asking students to report familial income and parents' occupation served as another cue.¹⁸⁹ Removing similar cues within the courtroom could mitigate stereotype threat.

However, in the courtroom context, it is impractical if not impossible to remove the social comparisons that trigger stereotype threat.¹⁹⁰ Nonetheless, to the extent that stereotype threat cues cannot be removed altogether, courts can reduce stereotype threat by ensuring that visitors perceive those cues as unrelated to the courtroom proceeding.¹⁹¹ One study used this strategy when it assured participants that gender was unrelated to test outcomes. In doing so, it reduced gender stereotype threat and achieved similar results between men and women.¹⁹² Similar to indicating that an identity or stereotype is unrelated, framing the courtroom proceeding itself as unrelated to any identity or stereotype should similarly reduce stereotype threat. This solution may also be more efficient, since framing the proceeding itself requires less effort than

187. Croizet & Claire, *supra* note 73, at 591–94.

188. *Id.* at 592; Spencer & Castano, *supra* note 57, at 427–28.

189. Spencer & Castano, *supra* note 57, at 427–28.

190. Eliminating social comparisons in the courtroom presumably requires separating the plaintiff from the judge, the employer, and the employer's lawyer, which suggests eliminating social comparisons is impractical. Still, the Cheryan study indicates that items in a room may evoke stereotypes to visitors. Cheryan et al., *supra* note 9, at 1051. Substituting items can address this issue and potentially reduce hindrance of social belonging.

191. See Steele et al., *supra* note 14, at 394.

192. Spencer et al., *supra* note 70, at 21–22.

focusing on all the relevant identities and stereotypes, and then individually negating them.

Second, expressly mentioning the potential of stereotype threat to litigants prior to the courtroom proceeding may also reduce stereotype threat effects. Johns, Schmader, and Martens reduced stereotype threat this way.¹⁹³ Their study divided participants into three groups. It did not cue stereotype threat for the “problem-solving condition” group, but cued stereotype threat for the “math-test condition” and “teaching-intervention condition” groups.¹⁹⁴ The teaching-intervention condition group also received an instruction that female students within the group may experience stereotype threat and its effects, and that such effects were irrelevant to a woman’s math abilities. While female participants in the math-test condition group performed worse than men on the exercise, female participants in the teaching-intervention group performed as well as male students in that group and female students in the problem-solving group.¹⁹⁵ This occurred even though female students in the teaching-intervention group believed that the examiner expected them to perform worse than male students.¹⁹⁶ The study attributed this reduction of stereotype threat to the female participants’ ability to attribute stereotype effects to external factors.¹⁹⁷

Finally, framing the courtroom as an identity-safe setting can also reduce stereotype threat effects for litigants. For example, one study about leadership found that creating an identity-safe environment—an environment that mitigates stereotype threat despite priming the identity and cuing stereotype threat—reduced the effects of stereotype threat.¹⁹⁸ The study exposed participants to commercials that triggered gender stereotype threat and divided participants into two conditions: identity-vulnerable and identity-safe.¹⁹⁹ Both conditions provided participants with a description of a leadership task and a description of a problem-solving task. Both conditions indicated that a successful leader had excellent interpersonal skills and the ability to facilitate cooperative interaction, while a successful problem solver was a good team player with excellent communication skills.²⁰⁰ However, only the identity-safe condition provided participants with additional language meant to eliminate the

193. Michael Johns et al., *Knowing Is Half the Battle: Teaching Stereotype Threat as a Means of Improving Women’s Math Performance*, 16 PSYCHOL. SCI. 175, 177–78 (2005).

194. *Id.* at 176.

195. *Id.* at 177.

196. *Id.* at 178.

197. *Id.*

198. Paul G. Davies et al., *Clearing the Air: Identity Safety Moderates the Effects of Stereotype Threat on Women’s Leadership Aspirations*, 88 J. PERSONALITY & SOC. PSYCHOL. 276, 278, 284 (2005).

199. *Id.* at 281.

200. *Id.* at 279.

gender stereotype threat.²⁰¹ The study then asked participants to choose between two positions: a leader or a problem solver. While male participants in the two different conditions showed no change in position preference, the identity-safe environment eliminated stereotype threat for female participants such that they displayed the same preference for leadership as male participants.²⁰²

2. *Intergroup Bias Solutions*

One solution to intergroup bias stands out: framing litigants as having multiple identities unrelated to class. In order for intergroup bias to arise, some literature indicates that the individual must first categorize people into groups, which often consist of a single identity or a few identities that the perceiver can oversimplify and generalize.²⁰³ When the perceiver is forced to view people as having multiple identities unrelated to the originally perceived identity, a decategorization effect occurs, which prevents the individual from oversimplifying and thereby introducing bias.²⁰⁴ In other words, intergroup bias may be stronger when an individual perceives someone as a “single mother” or “working parent” than when an individual perceives someone as a “single, Black, educated, working mother.”²⁰⁵ By framing litigants as having multiple identities unrelated to class, courts may induce decategorization and reduce intergroup bias.

Empirical studies support this strategy for reducing intergroup bias. For example, one study divided participants into two groups that focused on students’ school affiliation.²⁰⁶ The study instructed one group to think of identities unrelated to being a student, such as hair color, and then asked both groups to rate paper models made by in-group and out-group members.²⁰⁷ Participants in the group that perceived multiple identities unrelated to being a student displayed less intergroup bias.²⁰⁸ However, when participants perceived multiple identities related to the original student identity, such as area of study, intergroup bias increased.²⁰⁹

201. The description of the leadership role included the following threat-negating sentence: “There is a great deal of controversy in psychology surrounding the issue of gender-based differences in leadership and problem-solving ability; however, our research has revealed absolutely no gender differences in either ability on this particular task.” *Id.* at 281.

202. *Id.* at 284.

203. Natalie R. Hall & Richard J. Crisp, *Considering Multiple Criteria for Social Categorization Can Reduce Intergroup Bias*, 31 PERSONALITY & SOC. PSYCHOL. BULL. 1435, 1435 (2005).

204. *See id.* at 1436.

205. *Id.*

206. *Id.* at 1437–38.

207. *Id.* at 1438–39.

208. *Id.* at 1439–40.

209. *Id.* at 1438.

3. *Social Hindrance Solutions*

Finally, removing items that disassociate the courtroom from the working-class identity, while displaying items that indicate the presence and importance of that identity, may increase social belonging. When the rooms in the computer science study contained only neutral items—items that were not stereotypically associated with computer science or masculinity—female and male students indicated equal interest in computer science.²¹⁰ When first-generation students were exposed to a discussion that expressly indicated their identity's presence and importance in college, the grade point average gap between those first-generation students and continuing-generation students fell by 63 percent.²¹¹ Those first-generation students even sought out resources 30 percent more often, and displayed less anxiety and stress than first-generation college students who had not received such exposure.²¹² Similarly, in the college culture study, when college welcome letters indicated that the college centered on interdependence, a type of culture first-generation students more likely prefer, first-generation students performed just as well as continuing-generation students on the anagram task.²¹³ These studies demonstrate that replacing items that disassociate the litigant from the courtroom with items that emphasize the importance of the working-class identity may mitigate social belonging burdens for plaintiffs.

This would not be the first time a court prohibits items to prevent undesired effects on litigants or the proceedings. For example, many federal courts, including the U.S. Supreme Court, have refused to permit cameras in the courtroom.²¹⁴ In 1965, the Supreme Court even held that the presence of cameras in the courtroom violated a defendant's Fourteenth Amendment due process rights.²¹⁵ Rejecting the argument that the impact of the cameras on people in the courtroom should be left to psychologists and not the Court,²¹⁶ the Court reasoned that the use of cameras in court "amounts to the injection of an irrelevant factor into court proceedings. In addition, experience teaches that there are numerous situations in which it might cause actual unfairness—some *so subtle as to defy detection by the accused or control by the judge.*"²¹⁷ The Court then enumerated these subtle effects on four categories of people in the courtroom: jurors, witnesses, judges, and litigants, namely, the defendant.²¹⁸ The Court's language with respect to the defendant is most applicable here.

210. Cheryan et al., *supra* note 9, at 1048.

211. Stephens et al., *supra* note 23, at 947.

212. *Id.*

213. Stephens et al., *supra* note 152, at 1190.

214. Todd Piccus, *Demystifying the Least Understood Branch: Opening the Supreme Court to Broadcast Media*, 71 TEX. L. REV. 1053, 1056–57 (1993).

215. *Estes v. Texas*, 381 U.S. 532, 544–45 (1965).

216. *Id.* at 550.

217. *Id.* at 544–45 (emphasis added).

218. *Id.* at 547–50.

The Court analogized the effects of cameras in the courtroom to “a form of mental—if not physical—harassment” that “might well transgress his personal sensibilities, his dignity, and his ability to concentrate on the proceedings”²¹⁹ This suggests that courts may welcome removing items to prevent undesired psycho-physiological effects.

In sum, social identity threat literature suggests several general solutions to the implicit pushback burden. As mentioned, courts might reduce stereotype threat effects by removing any stereotype threat cues, or framing the proceeding as unrelated to any working-class stereotype; by expressly mentioning the potential effects of stereotype threat to litigants prior to the proceeding; or by creating an identity-safe environment by, for example, indicating that identity differences do not matter. Courts could reduce intergroup bias by framing the litigants as having multiple identities. And they may reduce hindrance of social belonging by substituting items that disassociate the working-class identity from the courtroom with items that indicate such an identity is present and important.

4. *Implementing the Solutions*

Courts could implement these solutions in many ways. For example, courts may designate a room for any removed priming or implicitly marginalizing items, especially if those items hold symbolic value. Visitors who wish to see those items may voluntarily go to that room, while litigants who wish to avoid social identity threat can limit their visit to the hallway and the courtroom until after the court proceeding. To create an identity-safe environment or frame the litigation as unrelated to any identity or stereotype, judges could adopt an introduction to the proceedings. Through this introduction, judges could frame litigants as having multiple identities, inform them of the potential social identity threat, and reassure them that no identity or threat effect has any influence on the court’s opining process.

However, given the limited social identity threat research as it applies to the legal context and the working-class identity, the implementation of these solutions is currently unclear. Accordingly, the exact implementation of solutions is beyond the scope of this Note, and the aforementioned examples are intended to serve as a starting point for discussion. It is unclear, for example, which items the court should remove or display, or what words judges should use in the introduction. It is also unclear if an introduction itself would be the best method of reducing social identity threat. Future research and discussion must fill in these gaps.

219. *Id.* at 549.

CONCLUSION

The marbled halls, Corinthian columns, labyrinth-patterned ceiling, and similar architecture and design of the Browning Courthouse are unlikely to drastically change. The Courthouse became a national historic landmark in 2012.²²⁰ And Judge James R. Browning himself helped save the Courthouse from demolition after an earthquake in 1989.²²¹ Still, the judge whose name now appears on that Courthouse kept his office, in contrast to the Courthouse itself, “small and modest.”²²² And, as one of Judge Browning’s former clerks described, “He has always wielded the judicial power as a tool for realizing justice by advancing human dignity.”²²³ Perhaps, then, this approach to law could guide future research to further this Note’s modest proposals in an effort to provide equal access to justice for all.

The application of social identity threat literature in the legal context has important potential. Future research can bolster access to justice by pursuing many avenues previously unrealized. It can gather empirical data to more directly support the existence of the implicit pushback burden and provide a stronger basis for more detailed solutions. Future research can analyze the burden as it applies to other identities and the effect of multiple threatened identities on the implicit pushback burden; determine how social identity threat is relevant to non-litigating parties in the courtroom, such as judges, jurors, and witnesses; or provide more evidence for courts to consider when deciding whether to rely on social science literature.

220. *Interior Designates 27 New National Landmarks*, U.S. DEP’T OF THE INTERIOR (Oct. 17, 2012), <https://www.doi.gov/news/pressreleases/Interior-Designates-27-New-National-Landmarks> [perma.cc/7JHL-QPGR].

221. E. Vaughn Dunnigan, *Reading Between the Lines*, 73 MONT. L. REV. 13, 13 (2012); Informational Tour of the James R. Browning U.S. Court of Appeals, *supra* note 1.

222. Elizabeth Kristen, “*If You Write Something Particularly Clever . . .*”, 73 MONT. L. REV. 19, 19 (2012).

223. Erin Ryan, *The Center of His Circle*, 73 MONT. L. REV. 14, 17 (2012).