

ESSAY

Victim or Thug? Examining the Relevance of Stories in Cases Involving Shootings of Unarmed Black Males

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INTRODUCTION

In the summer of 2014, a police officer shot and killed Michael Brown, an eighteen-year-old, unarmed, African American teenager in Ferguson, Missouri.¹ A grand jury subsequently decided not to indict

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1. See Mark Berman & Wesley Lowery, *Ferguson Police Say Michael Brown Was a Robbery Suspect, Identify Darren Wilson as Officer Who Shot Him*, WASH. POST (Aug. 15, 2014), <http://www.washingtonpost.com/news/post-nation/wp/2014/08/15/ferguson-police-releasing-name-of-officer-who-shot-michael-brown/>.

the police officer.² These events prompted a public outcry and months of protests across the United States, and even as far away as England.³ To many, however, the killing of Michael Brown, was yet one more horrible event in a longer series. Prior to Brown's killing, the 2013 shooting death of another unarmed, African American teenager, seventeen-year-old Trayvon Martin, and the subsequent acquittal of his shooter, a neighborhood watch volunteer, reignited racially-charged debates and brought attention to a number of societal issues, including public perceptions of African American males.⁴ Since Brown's shooting, a number of other shootings of unarmed, African American men and boys, now acknowledged in the media, have continued to garner attention. In each of these cases, an all too familiar pattern has emerged—unarmed, African American males are shot and killed by individuals with real or purported police authority, and the shooter is either not charged or not convicted.⁵

Naturally, much of the public discussion surrounding these events has focused on the relationship between police officers and members of the African American community, and broader issues regarding the role that race plays in the American legal system. Public opinions vary widely along racial lines regarding the extent to which race may have played a role in the jury decisions in these cases, with African Americans being significantly more likely than White Americans to express the belief that these cases raised issues about race.⁶ It is not

2. See Monica Davey & Julie Bosman, *Protests Flare After Ferguson Police Officer Is Not Indicted*, N.Y. TIMES (Nov. 24, 2014), <http://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html>.

3. See *id.*; Ben Quinn, *Ferguson: Protest at US Embassy in London Over Killing of Michael Brown*, GUARDIAN (Nov. 26, 2014, 2:32 PM), <http://www.theguardian.com/us-news/2014/nov/26/london-protests-against-michael-brown-killing-in-united-states>; Ellen Wulfhurst, Daniel Wallis, & Edward McAllister, *Protests Spread to Other Cities; 400 Arrested*, COLUMBUS DISPATCH (Nov. 27, 2014, 5:29 AM), http://www.dispatch.com/content/stories/national_world/2014/11/27/protests-spread-to-other-cities-400-arrested.html.

4. See Jonathan Capehart, *From Trayvon Martin to 'Black Lives Matter'*, WASH. POST (Feb. 27, 2015), <http://www.washingtonpost.com/blogs/post-partisan/wp/2015/02/27/from-trayvon-martin-to-black-lives-matter/>.

5. See *id.* It is worth noting that just prior to this article's publication, a young African American man named Freddie Gray died after being arrested and transported by Baltimore police officers. This case involved a different factual scenario, as Mr. Gray died from a fatal neck injury while in police custody and did not die as the result of a police shooting. In contrast to many other cases, a grand jury charged six officers in the death of Mr. Gray, and some officers are currently facing charges of second degree murder. See Ian Simpson, *Baltimore Grand Jury Indicts Police in the Death of Freddie Gray*, REUTERS (May 21, 2015), <http://www.reuters.com/article/2015/05/21/us-usa-police-baltimore-idUSKBN0O62P220150521>.

6. See *Big Racial Divide Over Zimmerman Verdict: Whites Say Too Much Focus on Race, Blacks Disagree*, PEW RESEARCH CTR. (July 22, 2013), <http://www.people-press.org/2013/07/22/big-racial-divide-over-zimmerman-verdict/> [hereinafter PEW I] (discussing a poll conducted by

possible to know the extent to which race played a role in these particular decisions. This essay will not seek to answer that question, but rather to shed some light on how matters of race can influence jury decisions in these types of cases. Specifically, this essay will focus on the role that stories play in jury decision-making, and the opportunities that they provide for racial attitudes to factor into jurors' assessments of cases.

I. DIVERSE PERSPECTIVES ABOUT THE ROLE OF RACE IN THE AMERICAN LEGAL SYSTEM

Research conducted in 1999 by the American Bar Association (“ABA”) shows that while most Americans consider the American justice system to be the best in the world, a substantial number of Americans also believe that the system does not treat all groups of people the same way.⁷ Among respondents to the ABA’s survey, only about one-third agreed that law enforcement try to give equal treatment to whites and minorities, and to wealthy and poor people.⁸ With

Pew Research Center on July 17 to 21, 2013, of 1,480 adults finding that 78% of black respondents thought the Trayvon Martin case raised important issues about race that need to be discussed, but only 28% of white respondents agreed with that statement); Darryl Fears, *After Zimmerman Verdict, A Racial Divide Lingers*, WASH. POST (July 27, 2013), http://www.washingtonpost.com/politics/after-zimmerman-verdict-a-racial-divide-lingers/2013/07/27/2d8cb316-f570-11e2-aa2e-4088616498b4_story.html; *Stark Racial Divisions in Reactions to Police Shooting*, PEW RESEARCH CTR. (Aug. 18, 2014), <http://www.people-press.org/2014/08/18/stark-racial-divisions-in-reactions-to-ferguson-police-shooting> [hereinafter PEW II] (discussing a poll conducted by the Pew Research Center on August 14 to 17, 2014, of 1000 adults finding that 80% of African Americans say that the shooting in Ferguson raises important issues about race meriting discussion, while only 37% of whites agree); David Lauter, *Wide Racial Gap in Perceptions of Ferguson, Mo., Unrest, Poll Finds*, L.A. TIMES (Aug. 18, 2014, 12:14 PM), <http://www.latimes.com/nation/la-na-ferguson-poll-20140818-story.html>; Michael Wines, *Reaction to Ferguson Decisions Shows Racial Divide Remains Over Views of Justice*, N.Y. TIMES (Nov. 25, 2014), http://www.nytimes.com/2014/11/26/us/after-ferguson-announcement-a-racial-divide-remains-over-views-of-justice.html?_r=0.

7. *Study on the Perceptions of the U.S. Justice System*, AM. BAR ASS’N (Feb. 1999), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/perceptions_of_justice_system_1999_1st_half.authcheckdam.pdf [hereinafter *Perceptions 1st Half*]; *Study on the Perceptions of the U.S. Justice System*, AM. BAR ASS’N (Feb. 1999), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/perceptions_of_justice_system_1999_2nd_half.authcheckdam.pdf [hereinafter *Perceptions 2nd Half*]. In 1999, the ABA sponsored this “comprehensive nationwide survey” of 1000 adults to learn the perceptions of the general population about the criminal justice system. *Perceptions 1st Half*, *supra* note 7, at 3. Among those surveyed, 80% agreed or strongly agreed that “in spite of its problems, the American justice system is still the best in the world.” *Id.* at 6. Yet, many respondents expressed the belief that the system treats people belonging to different groups differently. *Id.* at 12.

8. *Perceptions 2nd Half*, *supra* note 7, at 65. Among respondents to the ABA’s survey, only 39% of the respondents agreed that law enforcement and police try to treat whites and minorities equally, and only 34% believed that law enforcement and police try to treat wealthy and poor people equally. *Id.*

respect to treatment by the courts, again, only about one-third of respondents expressed the belief that all racial or ethnic groups are treated equally, or that courts try to treat wealthy and poor people similarly.⁹ Among respondents, minorities, the poor, and women were more inclined to perceive unequal treatment than wealthy, white males, who expressed the most confidence in the system.¹⁰

While significant time has passed since the ABA survey was conducted, the ABA's findings appear to be in line with more recent statistics collected just over a week after Michael Brown's shooting. That study showed a great disparity in opinions concerning the Ferguson Police Department's handling of matters surrounding the Brown case. Nearly twice as many African Americans as White Americans expressed disagreement with the intense, military-style response of police officers in Ferguson to protests in the aftermath of Brown's shooting.¹¹ Moreover, according to the study, White Americans were three times more likely than African Americans to express confidence in the ongoing investigation of Brown's shooting.¹² Later studies showed a disparity in opinions regarding the grand jury's decision not to indict the officer who killed Brown, with African Americans being more than three times as likely as White Americans to be unsatisfied with that decision.¹³ These statistics suggest that African Americans and White Americans possess starkly different perspectives about a number of matters relevant to Michael Brown's case. These studies give some indication of how the public perceived the decisions in the Brown case and other similar cases; however, it is less clear what role jurors' perspectives actually played in the courtroom.

9. *Id.* Regarding court treatment, only 39% of respondents indicated that that all ethnic and racial groups are treated equally, and only 33% indicated that courts try to treat poor people and wealthy people equally. *Id.*

10. *Perceptions 1st Half*, *supra* note 7, at 75.

11. PEW II, *supra* note 6 (stating that 65% of African Americans thought the police response to protests in Ferguson had gone too far, while only 33% of whites agreed).

12. *Id.* (showing that only 18% of African Americans expressed at least a fair amount of confidence in the investigation of Brown's shooting, compared to 52% of whites).

13. *Sharp Racial Divisions in Reactions to Brown, Garner Dec* <http://www.people-press.org/2014/12/08/sharp-racial-divisions-in-reactions-to-brown-garner-decisions/#survey-reportitions>: *Many Blacks Expect Police-Minority Relations to Worsen*, PEW RESEARCH CTR. (Dec. 8, 2014), <http://www.people-press.org/2014/12/08/sharp-racial-divisions-in-reactions-to-brown-garner-decisions/#survey-report> [hereinafter PEW III] (discussing a poll conducted December 3 to 7, 2014 of 1,507 adults showing that 80% of African Americans said that the grand jury made the wrong decision in not charging the officer in Brown's death, while only 23% of whites said this was the wrong decision); *See also* Pew I, *supra* note 6 (showing that 86% of African Americans were dissatisfied with the jury decision not to convict Trayvon Martin's shooter, while only 30% of whites were dissatisfied).

II. THE ROLE OF STORIES IN JURY DECISION-MAKING

To satisfy the constitutional guarantee of an impartial jury, the Supreme Court requires that jurors be selected at random from a “fair cross-section of a community,” and prohibits the systematic and intentional exclusion of people belonging to certain groups defined by factors such as race.¹⁴ However, the Court does not require that all groups be represented on a particular jury.¹⁵

Recent studies suggest, however, that jurors’ perspectives play a significant role in their assessments of a case. Our legal system reflects the long-held perception of jurors as passive decision-makers who decide cases through a nearly mechanical assessment of the evidence. Social scientists who study jury decision-making have more recently expressed the belief that jurors make decisions in large part by considering competing stories and then determining which story is most persuasive.¹⁶ According to these researchers, in or out of the courtroom, it is natural for listeners to place the information that they hear into a narrative context. As they hear asserted facts, listeners instinctively construct stories that help them to make sense of the information presented and to put it into a broader context.¹⁷ In a courtroom, however, jurors not only construct their own stories, but also hear stories that the attorneys put forth to frame the evidence in the

14. *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975); *Thiel v. Southern Pac. Co.*, 328 U.S. 217, 220 (1946) (“The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community.”); See Mitchell S. Zulkie, *Rethinking the Fair Cross-Section Requirement*, 84 CAL. L. REV. 101, 440–56 (1996) (describing Supreme Court cases applying the fair cross-section principle and discussing the Court’s treatment of impartiality as an absence of bias).

15. See *Taylor*, 419 U.S. at 538 (“[W]e impose no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population.”); *Batson v. Kentucky*, 476 U.S. 79, 85 n.6 (1986) (“[I]t would be impossible to apply a concept of proportional representation to the petit jury in view of the heterogeneous nature of our society.”); *Lockhart v. McCree*, 476 U.S. 162, 173 (1986) (stating that the fair cross-section doctrine has never been invoked “to require petit juries, as opposed to jury panels or venues, to reflect the compositions of the community at large” . . . “[t]he limited scope of the fair-cross-section requirement is a direct and inevitable consequence of the practical impossibility of providing each criminal defendant with a truly ‘representative’ petit jury.”) (citing *Batson*, 476 U.S., at 85–86); Meiring de Villiers, *The Impartiality Doctrine: Constitutional Meaning and Judicial Impact*, 34 AM. J. TRIAL ADVOC. 71, 77–78 nn.41–42 (2010).

16. See Lisa Kern Griffin, *Narrative, Truth, and Trial*, 101 GEO. L.J. 281, 285–99 (2013) (discussing theories of social scientists who study juries).

17. See Nancy Pennington & Reid Hastie, *A Cognitive Theory of Juror Decision Making: The Story Model*, 13 CARDOZO L. REV. 519, 520 (1991) (concluding that the “central cognitive process in jury decision-making is story construction.”); J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 J. LEGAL WRITING INST. 53, 57–59 (2008) (describing the fundamental nature of narrative as a means to understand the human experience).

case. While jurors are tasked with determining a case based on the evidence presented, this research suggests that jurors not only weigh the evidence to determine what probably occurred, but also consider the plausibility of the stories they construct and the competing stories that they hear.

While stories are integral to the court process, it appears that they also have the potential to distort the truth and mislead listeners.¹⁸ According to social scientists, a listener will tend to judge the validity of a story by matters that are independent of its truthfulness. Indeed, the familiarity of a given scenario may make it more believable to the listener. Listeners tend to believe stories that correspond with their understanding of how the world typically works.¹⁹ Thus, a story may appeal to its listener because it corresponds to the listener's sense of what could happen or typically happens—which may or may not be consistent with what actually happened.²⁰ It follows that as jurors hear stories in court, they may be more inclined to believe stories that align with their pre-existing expectations. Moreover, jurors may look beyond the facts of the case “to a store of background knowledge about these kinds of narratives—to a set of stock stories.”²¹ As such, a story may appear plausible not because it is necessarily truthful, but rather because it is similar to other narratives known to the listener and thus aligns with the listener's expectations.

According to social scientists, the believability of a story is also determined by its coherence – the story's consistency and completeness.²² To be believable, a narrative must be internally consistent, judged by how well the parts of the story fit together and the extent to which the structure of the story contains all of its expected parts.²³ At first glance this may appear to be a more objective consideration as

18. See Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on The Ethical Limits of Applied Legal Storytelling*, 7 J. ASS'N LEGAL WRITING DIRECTORS 63, 64 (2010) (describing and addressing potential pitfalls of storytelling, including concerns that matters, other than truth, can make a story believable; stories are always told from a particular point of view; and stories can appeal to emotions as well as logic).

19. See Rideout, *supra* note 17, at 66 (citing Pennington & Hastie, *supra* note 17, at 528).

20. *Id.* at 67 (citing W. Lance Bennett & Martha S. Feldman, *Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture*, at 50 (Rutgers U. Press 1981)).

21. *Id.*

22. *Id.* at 64–66.

23. *Id.* at 64; See Helena Whalen-Bridge, *The Lost Narrative: The Connection Between Legal Narrative and Legal Ethics*, 7 J. ASS'N LEGAL WRITING DIRECTORS 229, 234 (2010) (“When a lawyer relates a client's story in court that pulls together disparate facts in a way that explains and justifies the client's behavior, the story is persuasive because it presents a version of events that rings true—regardless of what ‘actually’ happened according to another perspective.”).

the coherence of a story would necessarily depend to some degree on the relationship between the evidence available in a case and the framing story. Yet, a listener's assessment of a story's coherence may also be subjective as stories are rarely completely supported by explicit evidence. For a story to be deemed complete, the listener will often need to be willing not only to accept certain facts, but also to make certain inferences to fill in gaps in logic.²⁴ In drawing these inferences, jurors will again refer to established stock stories for guidance.²⁵

It follows that when choosing between competing stories of events, jurors “rely not only on ‘case-specific information acquired during the trial,’ but also on their own experiences and values and on ‘generic expectations about what makes a complete story.’”²⁶ Narrative “appeal[s] to preexisting models for human behavior,” and “assumed facts and structures supplement given information.”²⁷ If considered in this context, it would appear that when jurors enter the courtroom, they are already inclined to favor one story over another. Moreover, stories that align with more popular perspectives of what typically happens or that reflect more mainstream beliefs, even pervasive biases and prejudices, would seem to be inherently more persuasive to more people. It also follows that stories whose characters act in the same way that people like them are expected to act—including those whose characters' actions align with existing stereotypes—would be more easily believed.

III. STORIES ABOUT UNARMED AFRICAN AMERICAN MALES SHOT BY POLICE

Public perceptions of African American men have been widely studied in recent years. While many Americans now express the belief that race is no longer significant, and even that we live in a post-racial society, research shows that most, if not all, people possess implicit racial biases.²⁸ According to this research, a majority of Americans

24. *Id.* at 65 (citing Bennett & Feldman, at 44–45, *supra* note 20).

25. *Id.*

26. Griffin, *supra* note 16, at 294.

27. *Id.* at 287.

28. See L. Song Richardson & Phillip Attiba Goff (2012), *Self-Defense and the Suspicion Heuristic*, 98 IOWA L. REV. 293, at 301–07 (describing studies by social scientists that identify implicit racial bias).

associate black men with criminality and violence, even if they do not acknowledge it.²⁹

The stories that have surrounded the fatal shootings of unarmed, African American males often bring to mind a number of familiar narratives that invoke prevalent racial stereotypes. In these cases, the narrative put forth by the shooter has often been that the victim acted violently and that the shooter was therefore reasonably fearful and thus legally justified in using deadly force; the victim is often characterized as being a criminal or otherwise associated with negative behavior. In Michael Brown's case, it appears to be undisputed that the encounter began when the police officer who shot Brown, Darren Wilson, saw Brown and a friend walking in the street and asked them to move to the sidewalk.³⁰ Immediately after the shooting, the story emerged that Wilson had brazenly shot Brown while Brown had his hands raised, suggesting that he was trying to surrender.³¹ The officer later told his version of events to the grand jury.

In his testimony, the officer described Brown's appearance and behavior in vivid terms that described him as large, angry, and violent: According to Wilson, after he told Brown and his friend to move to the sidewalk, Brown cursed at him in response and became enraged.³² Wilson, who was in his police vehicle at the start of the encounter, testified that he then attempted to open the vehicle door, but Brown responded with more cursing and slammed the door shut.³³ At that point, Wilson said that Brown was staring at him "almost like to intimidate me or to overpower me."³⁴ Wilson told the grand jury that during the encounter, Brown "had the most intense aggressive face" that made him "look like a demon."³⁵ Wilson claims that after Brown hit him in the face and grabbed for his gun, he then grabbed Brown.³⁶ According to Wilson, at that moment, he "felt like a five-year-old

29. See *id.* at 310 ("Blacks serve as our mental prototype (i.e., stereotype) for the violent street criminal.").

30. See Berman and Lowery, *supra* note 1.

31. See *id.*

32. See Terrence McCoy, *Darren Wilson Explains Why He Killed Michael Brown*, WASH. POST (Nov. 25, 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/11/25/why-darren-wilson-said-he-killed-michael-brown/>.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

holding Hulk-Hogan.”³⁷ After Wilson fired two shots, Wilson testified that Brown took off down the street, and he pursued Brown.³⁸ Wilson claims that when he got near to Brown, he warned Brown to “get back,” and Brown then reached into the waistband of his pants.³⁹ Wilson said that he then shot at Brown several times, all the while thinking that Brown would kill him if Brown got hold of his gun.⁴⁰ Wilson claims that as he shot at Brown, Brown continued to come towards him: “He was almost bulking up to run through the shots, like it was making him mad that I was shooting him.”⁴¹

While it is impossible to know the extent to which grand jurors considered race as they heard Brown’s case, it is easy to see how racial biases could influence the jurors’ assessments. Wilson’s story aligned with popular narratives and negative stereotypes of young, African American men. In the story, Brown was cast as a belligerent individual who relentlessly attacked a police officer and was unstoppable by anything other than a bullet. By contrast, Wilson was presented as a cool-headed and thoughtful police officer who had the misfortune of finding himself in a frightening situation. To accept the officer’s story, the jury had to believe what Wilson told them about Brown—that he was threatening and violent.

Other narratives may also have been invoked by the above story. Many citizens see police officers merely as protectors, who only have poor interactions with serious violators of the law. Members of the African American community often have a different perspective of the character and behavior of a typical police officer based on their different life experiences. African Americans may recall the all too common narrative of innocent African Americans being singled out by police officers and handled aggressively during these encounters or may have had the personal experience of being pulled over for “driving while black.” They may have learned to maneuver a complex relationship that exists between many African Americans and the police—they rely on police officers for protection, but also fear that a police encounter will result in their injury or death. Narratives of African American males as violent and criminal, however, are clearly

37. *Id.* At the time of the shooting, Wilson was described as nearly 6 feet, four inches in height, and over 200 pounds. *Id.* Brown was described as 6 feet, five inches tall and weighing approximately 300 pounds. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

more dominant in American society than these narratives that are more familiar to African Americans and other minority communities.

IV. ADDRESSING RACE IN THE COURTROOM

Stories can help jurors to make sense of the information that they receive in a case and are integral to our legal process. Yet the power of stories should not be underestimated. In cases involving the shootings of unarmed, African American men and boys, including Michael Brown, the evidence is naturally limited, or contradictory at best. Moreover, these cases not only require jurors to make an assessment of what actually happened as a purely factual matter, but also to consider the reasonableness of the shooter's actions. As jurors work to determine a shooter's perspective and motivation, there are many opportunities for varying perspectives to impact how the evidence is viewed and what inferences are drawn. It is in these difficult cases that stories become all the more significant, and jurors' perspectives and life experiences are likely to play a more decisive role.⁴² It is also in these circumstances that the storytelling model reveals the propensity for a verdict to be influenced by a shared sense among jurors based on a consensus of perspective, rather than the truth.

Although research has shown that jurors view evidence in a case through a prism of their own thoughts and experiences, the courts have not fully embraced this newly recognized reality. Courts tend to view jury impartiality through a lens of exclusion, rather than one of inclusion. Impartiality is equated with an absence of bias, rather than an opportunity for true consideration of varied perspectives and life experiences. While acknowledging the need for diversity among prospective jurors, courts have tended to focus their efforts on keeping bias out of jury decision-making by employing practices and procedures that are intended to reduce the risk of biased jury decision-making; this includes the practices of allowing for the exclusion of jurors through preemptory challenges, excluding evidence that is deemed to be unduly prejudicial, and giving jury instructions that tell jurors that decisions are not to be made based on their biases and prejudices. Yet, these safeguards do not seem to anticipate the full potential of stories to engage jurors' perspectives and life experiences, and tap into

42. See Mark Cammack, *In Search of the Post-Positivist Jury*, 70 *IND. L. J.* 405, 477 (1995) (asserting that decisions requiring jurors to make judgments about intention or motivation of others and the likelihood of actions that never materialized or were never witnessed, would seem to more often invoke assumptions that correspond with cultural communities.)

jurors' biases and prejudices at a fundamental level. Indeed, if one considers the way that stories can cause jurors to reference biases of which they may not even be aware, it is easy to reach the conclusion that these safeguards are prone to be insufficient in some cases.

The reality is that bias can never be completely removed from jury decision-making, and it appears unclear whether this is even a worthwhile goal. It would seem a better strategy for courts to impose procedures that acknowledge the role that jurors' perspectives play in their decision-making processes and to employ practices that encourage the selection of jurors who bring diverse perspectives.⁴³ Moreover, if jurors are made aware of their own biases and the roles that they can play in their evaluations of cases, they will be given an important tool that will allow them to realize how their own perspectives impact their assessments of competing narratives in the courtroom, and to better recognize and consider the perspectives of others.⁴⁴

The frustrations expressed by the African American community seem to stem from a growing awareness that the perspectives and life experiences of African Americans are not always represented in the court process and jury decisions. The storytelling model lends credibility to these concerns, as it demonstrates how stories that align with commonly held biases can be quite persuasive even if untrue, particularly to listeners who possess similar perspectives that go unchallenged. Many years ago, Justice Thurgood Marshall warned that "when any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable."⁴⁵ Michael Brown's case demonstrates why it is important that courts continue to work to make sure that juries are diverse not only in theory but also in

43. See Darryl K. Brown, *The Role of Race in Jury Impartiality and Venue Transfers*, 53 MD. L. REV. 107, 121–22, n.79 (1994) (discussing how some juror bias, described as interpretive bias is "important because the exercise of juror judgment entails interpretation and assessment of facts, evidence, witness demeanor, and even law What is at issue in a discussion of general or interpretive bias among jurors is the differences in their intuition, common sense, and deep-seated hunches and judgments about social life.").

44. See Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1597 (2013) (stating that one "way race can be made salient is through jury instructions" and providing examples of a judge's jury instructions that tell jurors that they may have implied biases and they are not to rely on them in their decision-making).

45. *Peters v. Kiff*, 407 U.S. 493, 503 (1972) (plurality opinion) (Marshall, J., joined by Douglas, J. and Stewart, J.).

practice, and that minorities have a real opportunity for their stories to be heard.⁴⁶ If courts begin to take steps to better address the realities of how jurors make decisions, they will make much needed strides toward improving the quality of justice for individual litigants and improving public perceptions about the American legal system for all Americans.

46. See Brown, *supra* note 41, at 107, 121–22 n.79.