EXHIBIT A

M. Leslie Wade Zorwick, Ph.D.
1600 Washington Avenue, Conway, AR 72034
Phone: 501.450.1493 *Email*: Zorwick@hendrix.edu

March 19, 2016

R. A. Coulter
776 E. Riverside Drive, Suite 240
Eagle, Idaho 83616

Re: Jun Yu v. Idaho State University, Case No. 4:15-CV00430-REB

Dear Attorney Coulter:

At your request, I have prepared an expert witness report regarding my professional opinions in the matter of Jun Yu v. Idaho State University (Case No. 4:15-CV00430-REB).

I am currently a tenured Associate Professor at Hendrix College who specializes in social psychology. At Hendrix College, I teach courses in Stereotyping and Prejudice, Social Psychology, Social Cognition, Identity and Belonging, Stereotyping and Identity, Psychology and the Law, and Statistics. I received my B.A. in Psychology and Philosophy from Emory University, my M.A. in Psychology from The Ohio State University, and my Ph. D. in Psychology from The Ohio State University. At Hendrix College, I broadly conduct research about stereotyping, prejudice, identity, perspective taking, and the social benefits of integrated educational settings. More specifically, I study the gender stereotyping of women in traditional and non-traditional roles, the impact of identification with social groups on the perception of others, race-based stereotyping, stereotype threat, and the use of perspective-taking as a way to improve relationships between different people. During my time at Hendrix, I have received both internal research grant support and non-profit grant support for my work. I have also been nominated for the Edna Award for Social Justice from the Berger-Marks Foundation. I have provided a copy of my full curriculum vitae with this report.

Social psychologists have long been interested in issues of stereotyping, prejudice, and discrimination. As a field, social psychologists are in a unique position to discuss the ways in which stereotyping may be manifested in behavior. Recent legal scholarship has begun to point to the importance of having expert witnesses that can speak to both the psychological underpinnings of prejudice and the ways in which stereotyping may manifest in behavior. Bodensteiner (2008) argues "in order to make better, more reliable decisions in discrimination cases, all participants in the process need to

understand the psychology of discrimination" (p. 108). It has also been argued that an awareness of social cognitive processes – for example, how the activation of group categories, like race, encourage the use of stereotypes – is essential to understanding prejudice and discrimination (Krieger, 1995).

In preparing my report, I have extensively researched and reviewed the research literature that offers evidence in support of the theories of aversive racism and shifting standards. The theories I cite – aversive racism and shifting standards – are widely recognized and accepted within the field of social psychology and both have been studied for more than 25 years. My opinions are based on my education and research and they are solely mine, and do not reflect the positions of my employer or other organizations with which I am affiliated.

I. Materials Reviewed

To prepare my report, I reviewed the following case documents:

- Complaint filing with the U. S. District Court for Idaho in the matter of Jun Yu v. Idaho State University, dated September 16, 2015.
- Updated Complaint Management Order by U. S. Magistrate Ronald E. Bush of the U. S. District Court for Idaho in the matter of Jun Yu v. Idaho State University, dated January 26, 2016.
- Document titled: "The Assault on Jun Yu: Multicultural Incompetence in a Clinical Psychology Doctoral Program, Resulting in the Professional Destruction of an International Student," by Jocelyn Eikenburg and Michael D. Dwyer.
- Document titled: "Clinical-Professional Development Points For Consideration By the Graduate Council in the Appeal of Mr. Jun Yu," by Jun Yu.
- All documents contained in the 659 page defendant's initial disclosures.
- Defendant's answers and response to the Plaintiff's first set of discovery requests dated February 5, 2016.
- All documents contained in pages 660-845, which was shared in the Defendant's answers and response to the Plaintiff's first set of discovery requests
- Plaintiff's answers and response to the Defendant's first set of discovery requests dated March 16, 2016.
- All documents contained in the 1408 page plaintiff's initial disclosures, including "State Board of Psychology of Ohio – Complaint Against Dr. Leslie Speer and Dr. Thomas Frazier filed by Jun Yu," "APA Ethics Office – Complaint against Dr. Mark Roberts filed by Jun Yu," and "APA Ethics Office – Complaint against Dr. Shannon Lynch filed by Jun Yu."
- The Graduate Record Exam (GRE) Report of Scores for Mr. Jun Yu.

II. Opinions and Basis of Opinions about Aversive Racism

1. *Modern manifestations of prejudice are less blatant than manifestations of prejudice in the past.*

A great deal of research in social psychology has identified the fact that it has become much less socially acceptable to endorse prejudiced attitudes over the past fifty years. Public endorsement of prejudiced ideals is uncommon and is associated with public censure because we have largely embraced egalitarianism as a society (Dovidio & Gaertner, 2000). However, despite the fact that people will not explicitly endorse stereotypes to the same extent as fifty years ago, discrimination is still a very large problem (Dovidio & Gaertner, 2000). Because of the social norm of egalitarianism, people do not express racist attitudes publicly. However, when people are not aware of how their negative race-based attitudes might be affecting them, either because the invocation to use these attitudes is subtle or the situation is ambiguous, researchers tend to see evidence that racial bias is, in fact, present (Dovidio & Gaertner, 2000). Unfortunately, "the invisible nature of acts of aversive racism prevents perpetrators from realizing and confronting (a) their own complicity in creating psychological dilemmas for minorities and (b) their role in creating disparities in employment, health care, and education" (Sue et al., 2007, p. 272).

Social psychologists have identified two types of measures to assess racial attitudes: explicit and implicit. Explicit measures tap into the attitudes that participants can self-report and are willing to disclose (Gaertner & Dovidio, 2002). Implicit measures are indirect and often assess the extent to which categories and traits are linked in memory, operating under the assumption that the greater the connection between a category and a trait, the easier it will be to perceive and associate the two (Greenwald & Krieger, 2006). Implicit measures regularly demonstrate evidence of pro-White bias, which points to the power of socialization in America to shape the racial attitudes of individuals (Lee, 2013; Greenwald & Krieger, 2006).

It was originally thought that implicit measures of bias tapped into attitudes that were outside of people's conscious awareness and that people could not detect these biases. However, recent research has found that people are aware of their implicit, as well as explicit, bias and are able to predict their implicit biases fairly accurately (Hahn, Judd, Hirsh, & Blair, 2014). The ability to be self-aware of implicit and explicit racial attitudes seems to be a critical precursor for avoiding unwanted behavior based on bias. Hahn and his colleagues (2014) argue that "awareness of one's implicit biases is a good and healthy first step for the effortful control of prejudiced reactions. That is, participants might use their… knowledge to be more careful in their behavior and more aware of their possibly biased reactions" (p. 1388). Monteith and Mark (2005) argue that when

stereotypes are activated and when we act in biased ways, by noticing our biased behavior, we have an opportunity to identify cues that might signal an increased risk of bias in the future. This increased awareness allows us avoid using stereotypes and prejudice in subsequent judgment. In fact, Monteith and Mark (2005) argue that "one of the potential obstacles to learning to self-regulate prejudiced responses is failure to recognize biases when they occur" (p. 143).

2. ***Aversive racism theory explains the tension between egalitarian attitudes and disparate treatment of minorities.***

According to Armour (1995) "the dominant model of prejudice in the current legal literature is the theory of aversive racism" (p. 746). In their research, Dovidio and Gaertner (2000) discuss aversive racism as one reason why people may not be aware of the extent to which their behaviors have been affected by negative racial attitudes, saying: "aversive racism is hypothesized to characterize the racial attitudes of many whites who endorse egalitarian values, who regard themselves as nonprejudiced, but who discriminate in subtle, rationalizable ways" (p. 315). Aversive racism combines an explicit belief in egalitarianism with implicitly measured connections between racial groups and negative stereotypes. Because these negative stereotypes are learned due to socialization in a culture, they tend to be established first. And, when egalitarianism is learned and starts to be explicitly valued, it doesn't seem to undo these cognitive associations (Dovidio, 2001). In the theory of aversive racism, aversion is felt based on both negative stereotypes of other racial groups and the concern people have at the thought of being seen as prejudiced (Gaertner & Dovidio, 2002).

In addition, aversive racism seems to be more likely to manifest in subtle behavior than overt and obvious behavior (Dovidio, 2001). Evidence of aversive racism has been found in the context of helping behavior (Dovidio 2001; Kunstman & Plant, 2008), doctor-patient interactions (Penner et al., 2010), job candidate decisions (Dovidio & Gaertner, 2000), student selection decisions (Hodson, Dovidio, & Gaertner, 2002), resource allocations (Son Hing, Li, & Zanna, 2002), legal decisions about defendants (Gaertner & Dovidio, 2002), and intergroup interactions (Dovidio, Gaertner, Kawakami, & Hodson, 2002). Ultimately, "aversive racists recognize that prejudice is bad, but they do not recognize that *they* are prejudiced" (Dovidio & Gaertner, 2004, p. 26).

3. ***Aversive racism can be activated by subtle cues that highlight group membership.***

Son Hing, Li, and Zanna (2002) studied aversive racism in response to an Asian experimenter. Specifically, they highlighted the Asian experimenter's racial

identity with a strong linguistic accent, which caused the experimenter's racial category to become salient for participants. This salient racial identity then caused participants who fit the pattern of aversive racism – low explicit prejudice and high implicitly measured prejudice – to subsequently favor larger cuts to the budget of an Asian students association, indicating that the salient racial identity resulted in prejudiced decision making. This research points to the fact that subtle cues, such as the strength of an accent, can set the stage for the use of race-based stereotypes.

4. *Aversive racism is most likely to shape behavior in the face of ambiguity.*

For aversive racists, when decision-making or behavior would clearly demonstrate race bias, they choose decisions and behaviors that will not demonstrate bias. But, when there is ambiguity in a situation, racism will influence decision making in ways that will not threaten the person's self-image as being nonprejudiced. For example, when considering a highly qualified candidate, aversive racists will express equal interest in Black or White job candidates. But, when considering a moderately qualified job candidate, aversive racists will choose the White job candidate over the Black job candidate, because there is a way to justify their decision (e.g., this candidate does not have enough experience) that does not require an acknowledgement of their own prejudice attitudes (Dovidio & Gaertner, 2000).

The creators of the theory argue that aversive racism is most likely to manifest when "normative structure is weak, when the guidelines for appropriate behavior are unclear, when the basis for social judgment is vague, or when one's actions can be justified or rationalized on the basis of some factor other than race" (Pearson, Dovidio, & Gaertner, 2009, p. 5). Consistent with findings on aversive racism, Crandall and Eshleman (2003) proposed the Justification-Suppression Model. This model argues that the relationship between prejudice and the expression of prejudice is determined by two things: the factors that encourage us to suppress prejudice and the factors that encourage us to justify using prejudice. The factors that increase the likelihood of aversive racism manifesting – ambiguity, weak norms, ability to rationalize behavior in race-neutral ways, and unclear guidelines – can all be considered to be factors that can take the pressure off people to suppress their stereotypes, resulting in the greater usage and activation of stereotypes.

Aversive racism also involves an avoidance of interracial interaction, because of the anxiety that is associated with negative stereotypes and the anxiety associated with the risk of inadvertently expressing prejudice, which would go against the person's stated belief in egalitarianism (Dovidio & Gaertner, 2004). One additional consequence of this anxiety is that when interracial interaction

does occur, aversive racists seek to end the interaction as quickly as possible (Dovidio & Gaertner, 2004).

5. *Aversive racism involves focusing on race-neutral explanations*

One way that evaluators can create ambiguity surrounding evaluations involves seeking out race-neutral explanations for behavior. Between 1989 and 1999, Dovidio and Gaertner (2000) found that the explicit endorsement of prejudice declined, but aversive racism did not. Part of the difficulty in combating aversive racism is that people who are making decisions based on race and stereotypes may not be fully aware of how stereotypes are influencing them. Our ability to rationalize race-based decisions in race-neutral ways, then, becomes an impediment to eliminating racist beliefs. And, when decision makers only search for evidence that supports their prior belief or expectation, they may create a race-neutral justification for a policy or decision that has a disparate impact on minority students.

One extreme of race-neutrality involves taking the approach of colorblindness, which minimizes differences across racial groups and involves a focus on similarities across people (Purdie-Vaughns & Walton, 2011). Recently, Chow and Knowles (2016) have argued that color-blindness can be used strategically to mask negative stereotypes about racial groups and to allow culturally dominant groups to maintain their privilege. Color-blind decision-making can be used in contemporary contexts as a way to "'set the agenda' so that race can no longer be effectively discussed and addressed. Thus, for many Whites, support for color-blind policies may reflect the motivation to protect the racial status quo" (p. 26).

6. *Aversive racism can lead to post hoc explanations for decisions.*

Hodson, Dovidio, and Gaertner (2002) argue that one cause of the differential treatment of Whites and minority groups by aversive racists is the tendency to give the "benefit of the doubt" to White targets. In their research, Hodson et al. (2002) find that when qualifications are mixed, participants higher in prejudice will change the value they assign to each type of qualification, depending on which will most favor White candidates. This work finds that "higher prejudice-scoring participants weighed application criteria in ways that systematically justified or rationalized…discrimination against Blacks" (Hodson et al., 2002, p. 469).

Research has found that when aversive racist participants, relative to truly low prejudice participants, have a race-neutral explanation for decision making, they will discriminate against Asian job candidates (Son Hing, Chung-Yan, Hamilton, & Zanna, 2008). And, these participants who demonstrated this aversive racism

subsequently demonstrated a biased memory towards the Asian candidate, so when they thought back about the candidate at the end of the study, they consistently remembered less of that candidate's positive qualities (Son Hing et al., 2008).

Research has found that when people make decisions that are influenced by social category membership (e.g., race or gender), they will often cover up the true reasons for their decisions and will rationalize their choices by identifying or creating reasons *post hoc* that aren't based on group membership (Norton, Vandelllo, & Darley, 2004). It has been argued that this covering up of biased reasoning is "a means of rationalizing one's questionable actions to oneself" (Norton et al., 2004, p. 829). Further work by Uhlmann and Cohen (2005) has found that we define and then redefine the qualifications we use to assess job candidates who belong to different social groups, so that we can justify the choice of the candidate who is stereotypically expected to succeed at the job in question. Making matters worse, Uhlmann and Cohen (2005) find that the perception that our criteria and judgments are objective can make the bias caused by re-defining criteria even worse. This finding – that we see ourselves as being more objective than we are – is consistent with work on the bias blind spot, which argues that we have an easier time seeing the ways in which other peoples' decisions are biased than the ways in which we are biased (Pronin & Kugler, 2006). In their work, Pronin and Kugler (2006) argue that the bias blind spot will manifest when people focus on their own internal thoughts, and not their behaviors, to determine they are not biased, all the while ignoring the ways in which their internal thoughts may be protecting them from having to acknowledge bias.

7. ***Positive feedback can be consistent with a pattern of aversive racism.***

A meta-analysis found that while ambiguous criteria lead aversive racists to prefer Whites, clear criteria lead to a slight preference for minorities (Aberson & Ettlin, 2004). This allows for aversive racists to maintain their non-prejudiced self-views and to provide evidence of non-prejudiced credentials to others. Unfortunately, being able to reference these "moral credentials" has been associated with subsequent behavior that is prejudiced (Effron, Cameron, & Monin, 2009). For example, in the research conducted by Monin and Miller (2001), after males were given the opportunity to disagree with sexist statements on a survey, they were more likely to endorse the idea that certain jobs are more appropriate for men. Researchers also find that expressing positivity toward Black politicians serves as a justification for prejudice (Effron et al., 2009).

Research has also demonstrated that the stereotypes associated with different social groups often include both positive and negative components (Fiske,

Cuddy, Glick, & Xu, 2002). In their Stereotype Content Model, Fiske and her colleagues (2002) argue that groups are frequently seen as being high in warmth and low in competence *or* as being high in competence and low in warmth. They argue that these combinations of positive and negative stereotypes occur because positive stereotypes allow us to continue holding negative stereotypes about the group, while maintaining the belief that we are not prejudiced.

8. *Aversive racism can make working relationships more challenging.*

Aversive racism makes interracial interactions less successful (Dovidio, Gaertner, Kawakami, & Hodson, 2002). In interracial interactions, White interaction partners tend to focus on their conscious belief in egalitarianism and they think this will communicate their positivity to Black partners. In contrast, Black interaction partners focused on the ways in which White participants' negative stereotypes leaked out nonverbally, which communicated significantly less friendliness. After the interracial interaction, White aversive racists thought things had gone well, while the Black participants they interacted with felt uneasy and did not think the interaction had gone well (Dovidio et al., 2002). Additional research has found that interracial interaction with White aversive racists produces team performance that is significantly worse than interacting with Whites who are either low in prejudice or who are actually high in prejudice (Dovidio & Gaertner, 2004). Dovidio and Gaertner (2004) argue that this occurs because "the conflicting messages displayed by aversive racists and the divergent impressions of the team members' interaction interfered with the team's effectiveness" (p. 25).

9. *Aversive racism can manifest in racial microaggressions.*

One consequence of aversive racism is that it is hard to identify because of its "subtle, nebulous, and unnamed nature" (Sue et al., 2007, p. 272). Racial microaggressions are one manifestation of aversive racism and they involve "brief, everyday exchanges that send denigrating messages to people of color because they belong to a racial minority group" (Sue et al., 2007, p. 273). Racial microaggressions might involve "subtle snubs or dismissive looks, gestures, and tones" (Sue et al., 2007, p. 273). One example of racial microaggressions provided by Sue et al. (2007) is the tendency to assume that communication styles different than those common for Whites in America are either wrong or less appropriate, which communicates to racial minorities that they are expected to assimilate to dominant American culture. One critical problem that stems from racial microaggressions is that they will often be explained away in a race-neutral way, similar to the finding that selection decisions made by aversive racists will only manifest bias when race-neutral explanations are possible.

These racial microaggressions can occur in both social and academic contexts on college campuses and affect the well being of minorities (Solorzano, Ceja, & Yosso, 2000). Sue (2010) argues "the most detrimental forms of microaggressions are usually delivered by well-intentioned individuals who are unaware that they have engaged in harmful conduct toward a socially devalued group. These everyday occurrences may on the surface appear quite harmless, trivial, or be described as 'small slights,' but research indicates they have a powerful impact upon the psychological well-being of marginalized groups" (p. 3). The consequences of racial microaggressions include the creation of hostile and exclusionary work and learning environments, lower workplace and school productivity, threats to group identity, learning environments in which people will worry about being stereotyped, and harm to both physical and mental health (Sue, 2010).

Color-blindness, too, is connected to microaggressions because it frequently invalidates the unique experience different groups have, as a function of their membership in socially devalued groups (Sue, 2010). Sue argues that color-blind decision making and policy "is predicated on the mistaken belief by many Whites that 'not seeing color' means they are unbiased and free of racism" (p. 10). And, the challenges that surround discussing race in American academic contexts have been well documented in previous research (Sue, 2013). The difficulty in openly discussing race in academic contexts can be detrimental for students of color, particularly when working with well-intentioned White faculty members who never challenge their race bias because they avoid difficult conversations about race (Sue, 2013).

Recent research has examined how racial microaggressions manifest for Asian international students (Houshmand, Spanierman, & Tafarodi, 2014). Houshmand and her colleagues (2014) find that these microaggressions involve being ridiculed for having an accent, being made to feel that cultural differences are not important and should not be considered, and the structural barriers that exist for funding and opportunities for international students. Houshmand et al. (2014) argue: "because of the ways in which Asian international students routinely experience racial invalidation and insults on campus, the onus of acculturation and integration cannot be placed solely on international students" (p. 385).

III. Connections between the facts of the case and Aversive Racism

1. *There was ambiguity in the judgment criteria used when assessing Mr. Yu.*

a) There was clear ambiguity about the level of English speaking skill that the Idaho State University faculty required for Mr. Yu to successfully complete his doctorate. According to the "Clinical–Professional Development Points For Consideration By the Graduate Council in the Appeal of Mr. Jun Yu," the requirement for the university was a TOEFL score of 80 and Mr. Yu's score was well above this standard. Mr. Yu was told to participate in a program to practice his English in his first year of the graduate program, which he did. After meeting the objective requirement of the University, and participating in the specified program, he continued to be told that he needed to work on his English and was told to "…immerse himself in English-speaking contexts wherever possible (i.e., course-work, clinic work, research, and opportunities external to the clinical program)" (ISU Documents 0065). Given that Mr. Yu was living in an English-speaking country, taking courses in English, teaching courses in English, and working in English speaking therapeutic settings, it's completely unclear what more he was expected to do or how he could have more fully immersed himself in English. Given that the guidelines for appropriate English fluency were unclear and the suggestions for improvement were vague, this was the kind of normative situation that is frequently associated with the expression of aversive racism.

b) There is evidence of ambiguity across the evaluations Mr. Yu received from many supervisors. These kinds of ambiguity communicate that the bases for judgment about Mr. Yu's skills were neither clear nor concrete. Many supervisors gave feedback that was contradictory or that both praised and criticized Mr. Yu on the same dimensions. For example, in her final evaluation before dismissing Mr. Yu from the Cleveland Clinic on April 1, 2013, Dr. Leslie Speer said "Jun…accepts feedback well" and several lines later says "Jun is unaware of own limitations." It's difficult to understand how both of these can occur, given that if he accepts feedback well, that must be – at least in part – about the areas in which he needs to grow. In addition, when Dr. Speer spoke with Mr. Yu and told him that he would be dismissed from the internship, she also "admitted she could have been clearer about her expectations" (Plaintiff Documents 000307). There is also evidence that the assessments of Mr. Yu's internship supervisors, Dr. Speer and Dr. Cheryl Chase, disagreed about his work and progress, creating ambiguity for the CTC when making a decision about whether to dismiss Mr. Yu from the ISU program. When criteria for success are vague or ambiguous, it increases the chances that aversive racism will be expressed.

c) There is evidence of ambiguity in the tasks that were considered appropriate work for practicum students, suggesting a weak normative structure. While there is a broad set of appropriate activities for practicum students, it seems that Mr. Yu had different opportunities for skill development than other practicum students. For example, in his community practicum with Dr. Cheri Atkins in the

fall of 2011, Mr. Yu was only allowed to observe clinical activity. Even the ISU faculty seemed surprised that he would be accepted for a community practicum and not allowed to participate fully in the activities associated with the practicum (ISU Documents 0151). And, this decision to not allow him to work with clients, after he had received good grades from Dr. Atkins and been allowed to work individually with clients in the previous spring in an practicum with Dr. Atkins, suggests an arbitrary and capricious shift in treatment. When normative structure is weak, it increases the chances that aversive racism will be expressed.

d) At its core, the idea of "satisfactory progress" in either professional or academic domains is inherently based on subjective ratings, which invite both ambiguity and the opportunity for shifting standards (which will be addressed in more detail in section IV below).

2. ***ISU shifted from considering Mr. Yu's cultural background to creating and using race-neutral explanations for their own behavior.***

It's clear that the ISU Psychology department was cognizant and focused on Mr. Yu's international status when he initially joined the program. The program admitted him in part because they wanted to have a student who "would bring Chinese culture front and center into the Program" (ISU Documents 0197). In addition, the initial approach to Mr. Yu's education was one in which his faculty and supervisors took into account his international status; in fact, Dr. Mark Roberts mentions in his testimony before the graduate council on October 2, 2013 (ISU Documents 0269) that the faculty knew that Mr. Yu would need time to develop language skills and they tried to teach him in a way in the first two years that would give him the time to develop these skills, saying: "...during the first two years we simply...said okay, this is an international student, and we expect him to become more fluent in English...and so of course he was sheltered...during these first two years I think everyone just looked at some of the issues we might have had as typical for someone whose language was not English during those first two years." While Dr. Roberts contends that the faculty tried to "shelter" Mr. Yu in his first two years, this was neither effective to communicate how Mr. Yu should improve his language nor effective to communicate the ultimate standard to which Mr. Yu would be held, in terms of English language proficiency.

In contrast, when Mr. Yu was dismissed, the language of the ISU faculty shifted to communicate that he was being treated exactly the same as every other student. The ISU faculty claims (ISU Document 0272) that they used the same "model for applying for internship, the same external review, and the same process for notification of the limitations. Nothing was done that was specific to him." This shift in approach is one that moves from an acknowledgement of Mr.

Yu's individual needs to an espousal of color-blind ideology, which is connected to both the maintenance of prejudice and racial microaggressions. Sue (2013) argues that "organizations…that profess a color-blind philosophy actually promote interpersonal discrimination among employees, adopt discriminatory policies and practices, and justify inequality…pretending not to see color and avoiding critical consciousness of race lower empathic ability, dim perceptual awareness, and allow Whites to live in a world of deception" (p. 667).

Beginning in the description of the internship process, faculty begin clearly comparing Mr. Yu directly to native English speakers, allowing them a race-neutral justification for their negative feedback and lack of assistance. For example, in the Clinical Training Committee (CTC) student evaluation in spring 2012 (ISU Documents 0158), the summary includes this statement "… Jun's difficulties in assuming the perspective of patients and supervisors is inconsistent with fourth year doctoral student status, and when combined with difficulties in communication, seems likely to be the root cause of the Below Expectation items on the practicum rating scales and, possibly, the failure to obtain an internship." While two sentences later, the CTC acknowledges, "…given the highly competitive nature of the internship process, there may be reasons other than communication and perspective-taking…behind failure to match." There is absolutely *no* evidence that these issues were responsible for Mr. Yu not matching in an incredibly competitive internship process; in fact, multiple students in the ISU clinical psychology program went through non-standard internships and 29% of applicants did not receive internships through the match process in 2012 (Plaintiff Document 000011). This type of shifting toward race-neutral explanations is one that frequently precedes the expression of aversive racism in the research literature.

3. ***There is evidence that post hoc explanations, which are a hallmark of aversive racism, were used to justify the decision to dismiss Mr. Yu.***

a) In the Psychology Department's response to Mr. Yu's letter of appeal (ISU Documents 0640), Dr. Shannon Lynch wrote: "The reasons behind your dismissal date back to unsatisfactory progress in professional development that was formally documented during the fall semester 2011." While it is true that the first concerns about professional development appeared on the fall 2011 CTC evaluation, Mr. Yu was on track to graduate with his Ph.D. until his dismissal from the Cleveland Clinic internship.

Describing this time period as one during which the faculty started having the concerns that led to dismissal is somewhat misleading, as there was actually strong evidence in favor of Mr. Yu's skills in the fall semester of 2011. Dr. Mark Roberts wrote a letter of recommendation in the fall of 2011 (the same semester

referenced by Dr. Lynch), offering strong support for Mr. Yu's candidacy for APPIC internships. Dr. Roberts wrote: "Jun's professional development has also proceeded well…he has worked for seven different supervisors. All have indicated he met or exceeded expectations for his developmental level on virtually all rated professional skills, with two exceptions. Given his international background and Chinese accent, two supervisors believed his alliance building skills were below expectations…I did not detect that problem…I recommend him to you without reservation" (ISU Document 0670). In addition, in the fall of 2011, Dr. Tony Cellucci wrote a recommendation for Mr. Yu for an internship based on his three years of experience as Mr. Yu's teacher and practicum supervisor, saying "Jun made a definite contribution to the training program and department. I found him to be a person of integrity…he is also one of the hardest workers I have ever known…early concerns regarding English pronunciation and fluency did not present problems…Jun was easy to supervise…" (Plaintiff Documents 000478-000479).

The concerns raised by Dr. Lynch from 2011 were not seen as meriting dismissal until *after* the outcome of the Cleveland Clinic internship. This is the very definition of a *post hoc* explanation and justification for behavior.

b) In their letter in response to Mr. Yu's complaint with the Idaho Human Rights Commission, Dr. Roberts and Dr. Lynch write that they pushed Mr. Yu in the direction of "a professional placement that focused on testing…given that psychometric tests have a specific linguistic script to follow" because "it was assumed that with practice he could readily learn to administer any of the tests used by the site. In contrast, a professional placement that involved primarily the provision therapy was considered premature for him, given his fluency problems" (ISU Documents 0148). In subsequent evaluations, the ISU faculty decided that Mr. Yu had not developed the skills that were consistent with his year in the program, particularly in regards to patient interaction. But, there is no mention of the fact that the ISU faculty actively curtailed Mr. Yu's learning opportunities as late as his third year in the program because of their beliefs that he was not ready for certain types of work activities.

c) When Mr. Yu did not match through the APPIC process, the department suggested three possible next steps: applying through APPIC the following year, creating a non-standard internship, or returning to China for an internship. The CTC made the case that an internship in China would both address the linguistic challenges inherent in counseling in a nonnative language and allow Mr. Yu to develop relationships with other professionals in China, in advance of seeking employment there (ISU Documents 0158). Mr. Yu chose to create a non-standard internship in the United States, but the faculty actually had a strong preference that he complete his internship in China. In responding to a complaint with the Office of Consultation and Accreditation on January 28 2014 (ISU Document

0198), Dr. Mark Roberts wrote that, "In early June 2012…It was clear to the committee that Mr. Yu's professional progress remained unsatisfactory…he was unable to perform at the intermediate level of professional skill," yet the committee thought the best option for Mr. Yu would be an internship in China, calling it a "more viable option."

In a letter in support of Mr. Yu receiving Dissertation funding, Dr. Roberts argues that Mr. Yu should have the resources to conduct therapy with families in China, noting "were Mr. Yu successful in accommodating the current treatment measures and treatment procedures to Chinese families, the potential clinical service to high-risk defiant and aggressive Chinese children is staggering" (ISU Documents 0668). In his letter of recommendation for APPIC, Dr. Mark Roberts says that Mr. Yu did excellent work collecting his dissertation data and functioned "virtually independently in performing a clinical trial" in China, including working with multiple families (ISU Documents 0670). Both of these documents suggest tremendous trust in Mr. Yu's ability to engage in counseling that would be effective and transformative for clients. Dr. Roberts also notes that Mr. Yu's largely independent work "is a most impressive accomplishment for a pre-intern in a clinical psychology program" (ISU Documents 0670).

When Mr. Yu was let go from the internship with Dr. Leslie Speer at the Cleveland Clinic, he requested the opportunity to attempt an internship in China. The psychology department denied this request, arguing in their response to Mr. Yu's appeal that "failure at the Cleveland Clinic provided explicit evidence that your lack of satisfactory progress is not the result of a linguistic problem alone…we believe that you may actually put patients at risk, not as a matter of inadequate linguistic abilities, but as a matter of poor perspective taking and difficulties with conceptualization…and might put Chinese patients at risk of harm" (ISU Document 0641). The logical leap required to believe that the concern of one internship supervisor (which was not shared by Mr. Yu's other supervisor, Dr. Cheryl Chase) meant increased risk for Chinese patients, when none of the faculty making this assessment had ever been in the position to assess Mr. Yu's work with Chinese patients, suggests the creation of a *post hoc* justification for dismissal, in addition to the ISU faculty working to create a race-neutral justification for dismissal.

In addition, the *only* evidence of Mr. Yu's work with Chinese families suggests incredible success. Mr. Yu had 100% of his 19 families complete their sessions with him (Plaintiff Document p. 295), which is an incredibly large and very rare completion rate in psychological research. In addition, the average satisfaction ratings Mr. Yu received were all in the range of 5.4-5.5 (out of 6) when patients considered Mr. Yu's preparation, teaching skills, helpfulness, and his interest and concern for the caregiver and their child's problems (Plaintiff Document 000377-000379). These ratings show that Mr. Yu's Chinese patients had *very*

positive experiences working with him and that they perceived he had good perspective taking skills, which stands in direct contrast with the concerns of the ISU faculty. To ignore the only direct piece of evidence about Mr. Yu's work with Chinese patients in making their final decision about dismissal also offers strong evidence of the use of *post hoc* justifications.

d) In the dismissal letter sent by Dr. John Landers to Dr. Mark Roberts when Mr. Yu was let go from an externship (ISU Documents 0035), Dr. Landers says "...Jun Yu is unable to grasp the communication nuances that are required to build rapport with difficult patients, administer standardized tests with difficult patients..." but then goes on to write "Jun Yu...has obviously mastered the behavioral science components essential to his career goal of returning to China to provide parent/child skills training." In a feedback summary form (ISU Documents 0039), Dr. Landers wrote "Given his desire to return to China and specialize in parent/child training, he is probably right where he needs to be...I would recommend continued focus in his area of interest..." This externship dismissal was held up as part of the reason for Mr. Yu's ultimate dismissal from the ISU program. However, Dr. Landers is explicit that the language problems that prevented Mr. Yu from working successfully at Dr. Landers' externship were not likely to be a problem working with Chinese patients. The ultimate usage of this dismissal to prove the concern about harming patients more generally suggests the ISU faculty were looking for ways to justify their decision to dismiss Mr. Yu after the fact.

e) In responding to a complaint with the Office of Consultation and Accreditation on January 28 2014, Dr. Roberts wrote that, while the department thought that Mr. Yu should complete his internship in China, the department "was compelled...to honor his request to begin the process of approving the non-standard internship; further, we were...prevented...from contacting Dr. Speers [sic] independently to provide historical caveats regarding Mr. Yu's readiness for internship" (ISU Documents 0199). Given that Dr. Roberts had written a strong letter of support for Mr. Yu, when Mr. Yu applied for APPIC internships, this suggests *post hoc* generation of reasons to justify Mr. Yu's dismissal.

f) When Mr. Yu's two internship supervisors in 2013, Dr. Cheryl Chase and Dr. Leslie Speer, offered mixed evidence about his work, the Psychology department only focused on the negative opinion of Dr. Leslie Speer. Dr. Chase did not share Dr. Speer's concerns; in fact, Dr. Chase was uniformly positive in her feedback and impressed with Mr. Yu's work (ISU Documents 0530). In responding to Mr. Yu's appeal of the decision to dismiss him (ISU Documents 0641), the Psychology department says that they did not consider Dr. Chase's feedback with the same weight because she had not seen Mr. Yu in "face-to-face service provision with clients." However, this is directly contradicted by Dr. Chase's report on Mr. Yu's work, which references working together with clients. In addition, given that Dr.

Speer did not work with Mr. Yu to discuss a plan for remediation before dismissing him means that her report was based on interaction that violated the minimal due process protections that were in place for Mr. Yu. Under these circumstances, the fact that the ISU Psychology department only focused on the evidence supporting their conclusion, even when the behavior of the supervisor giving the feedback did not meet the requirements established in the supervisory agreement, suggests the faculty were creating explanations for dismissal after the fact.

g) One specific example of *post hoc* justifications for dismissal comes from the feedback of Dr. Shannon Lynch as a supervisor. In her assessment of Mr. Yu's practicum performance in the fall of 2011 (ISU Documents 0081) she comments on the organization of his note taking, his classroom performance, and the ways in which he struggles to incorporate the situation of clients into his approach. But, she points to improvement in several domains – including organization, conceptualization, and their working relationship – and she ends the evaluation by saying "I fully expect further improvement in the coming months and look forward to seeing his growth as a therapist in training." There is clear evidence of Mr. Yu's further improvement under her supervision in the records. Initially, Dr. Lynch's evaluation was offered in December 2011 while Mr. Yu's practicum work was incomplete, and Dr. Lynch wrote in the Course Completion Contract (ISU Documents 0082), "If Jun does not carry out additional work, his current efforts reflect performance + skills equivalent to a 'B'". After Mr. Yu finished the incomplete work in Spring 2012 for her practicum, Dr. Lynch gave Mr. Yu an A- for his performance.

   In striking contrast, her testimony before the graduate council on October 2, 2013 (ISU Documents 0274) involved a description of profound concerns at Mr. Yu's mishandling of a client in crisis – which was not flagged in the evaluation for that semester – and she says that "what I'm trying to convey to you is the ability to respond and this issue of doing harm to patients. This is just one example…and it's actually a very clear one in my mind from that time." This shift in focus, from looking forward to tracking his growth and progress to one where she is confident that Mr. Yu is doing harm to clients suggests a profound shift in her impression that is not consistent with her assessment of his work *immediately* after his performance, and contradicts the satisfactory grade that she had awarded him for the practicum. This is consistent with the finding in the aversive racism literature that people demonstrating aversive racism systematically misremember minority candidates as being worse than they actually were.

h) In his January 28, 2014 letter in response to the complaint filed by Mr. Yu against the ISU psychology department with the Office of Program Consultation and Accreditation (ISU Documents 0197), Dr. Mark Roberts wrote the following:

"Our concerns at admission were his poor GRE Verbal score (410; 34th percentile) and his poor GRE Analytic Writing score (3.5; 18th percentile). These scores are markedly discrepant form [*sic*] the modal applicant offered admission into the Program (see our website at: www.isu.edu/psych/clinicalprogram.shtml/#admiss for IR C-20 data). Given English as his second language, we discounted these poor scores on the GRE in order to enhance the Program's diversity."

This statement is a significant misrepresentation of Mr. Yu's GRE scores. Mr. Yu took the GRE three times and it is common practice to consider the highest score for each section across the multiple tests. While it is true that Mr. Yu did receive the scores reported by Dr. Roberts on one of his GRE exams, he *also* scored a 600 on the verbal section (which is in the 85th percentile) and a 4.0 on the writing section (which is in the 33rd percentile). In combination with his 790 quantitative score (which is in the 92nd percentile), Mr. Yu's standardized test performance was quite strong. Although the website provided above by Dr. Roberts only offers information about mean and median GRE Scores for students admitted to the ISU psychology program from 2011-2015, Mr. Yu's scores indicate that his performance was *higher* than both the mean and the median of scores for other students in the program on both the verbal and the quantitative sections.

In his initial report of Mr. Yu's scores to the Office of Program Consultation and Accreditation, Dr. Roberts either misremembered Mr. Yu's test scores or intentionally used the lowest possible version of Mr. Yu's test scores as a *post hoc* justification for the treatment of Mr. Yu. If Dr. Roberts misremembered Mr. Yu's scores, it is consistent with the tendency for people to misremember the qualifications of Asian job candidates, in ways that systematically devalue performance, when aversive racism is influencing judgment.

4. ***Settings involving teamwork suggested patterns consistent with aversive prejudice.***

a) When Mr. Yu filed a complaint against Dr. John Landers after being dismissed from an externship in fall 2011 without advanced notice, the ISU Psychology department conducted an investigation about the supervisory training experiences offered by Dr. Landers. In their ultimate report about this investigation, the department focuses on the experiences of the other student working with Dr. Landers that semester and previous externs with Dr. Landers, all of whom were White and native English speakers, to determine that Dr. Landers was an effective supervisor (ISU Documents 0114-0115). By equating the experience of native and nonnative English speakers, as well as minority and White students, it appears that the Psychology department neither gave the benefit of the doubt to Mr. Yu nor considered that being an Asian international

student might have given him a different perspective on the experience that no other students were actually in the position to corroborate or deny.

Notes from a follow up conversation that Dr. Landers had with Dr. Roberts suggest that Dr. Landers acknowledged that the way that he offered "daily feedback may have been too indirect" in the case of Mr. Yu. However, this information did not make it into Dr. Roberts' report about the investigation of Dr. Landers to the CTC. The indirect nature of feedback is consistent with the challenges White individuals have discussing race and, in this instance, the fear of directly acknowledging race-related areas of concern may have prevented Mr. Yu from getting the direct feedback from his supervisor that could have helped him learn and grow as a therapist.

b) In Mr. Yu's first two years in the doctoral program, supervisors repeatedly praised him for being "non-defensive in accepting supervisory feedback" (ISU Documents 0076). In contrast, after repeatedly being told to improve English fluency (without any specifics of how to do so), being given different opportunities than his peers in practicum work, and having less support in navigating the structural challenges faced by international students trying to match an internship through APPIC, the perception of faculty working with Mr. Yu changed. In his testimony before the graduate committee, Dr. Roberts describes that after being dismissed from his externship with Dr. Landers in fall 2011, Mr. Yu's behavior changed. Dr. Roberts says, "we started to see a lot of defensiveness, a lot of anger, a lot of noncooperation" (ISU Document 0270).

In response to the CTCs spring 2012 feedback, Mr. Yu wrote that he perceived that he was not trusted by supervisors, who both assigned him different work based on low expectations and did not give feedback for improvement in a timely manner (ISU Document 0160). And, in giving testimony before the graduate committee, Mr. Yu describes "insensitivities from the beginning" that culminated in feeling "betrayed by this program" when Dr. Roberts looked for evidence to support Dr. Landers' decision to dismiss Mr. Yu from the externship at Eastern Idaho Regional Medical Center and the perception that Dr. Roberts expressed "no concern" for Mr. Yu's mental state following his dismissal from the externship (ISU Document 0257). Mr. Yu's description is consistent with the experience of someone who has chronically experienced the expression of microaggressions in their academic environment.

5. *Some behavior by ISU faculty suggests the use of racial microaggressions.*

There are a series of behaviors on the part of the ISU faculty that suggest that racial microaggressions were present. Mr. Yu's wife alleges that Dr. Shannon

Lynch, the chair of the Psychology department, said "Jun's English is terrible" in a casual conversation.

In addition, research has found that the expectation that nonnative speakers are expected to participate in course work in an identical way to native English speakers is one of the most common manifestations of microaggressions against Asian international students. When Dr. Shannon Lynch wrote in her fall 2011 evaluation that when Mr. Yu looked at course materials during a class discussion, it reflected disengagement (ISU Documents 0708), he was being held to a standard that is more typical of White, Western, native English speakers.

As the only international student in the program, it seems that the ISU faculty treated this numerical minority to reflect something more connotative of abnormality. In his testimony before the graduate council, Dr. Roberts described Mr. Yu applying to both APPIC sites where his Chinese language background would be an asset and ones where it wouldn't actively be an asset, saying: "I think two of the sites he applied to that was the case, and the other nine he was competing with the typical graduate student at that point, who is basically a sophisticated fourth-year student or fifth-year student" (ISU Documents 0270). In this comment, Dr. Roberts is equating and conflating Mr. Yu's national origin and nonnative communication in English with perceived deficits in professional skill. Dr. Roberts also attributed Mr. Yu's success in getting four internship interviews through the APPIC process to his background and being a Chinese student, only indirectly hinting at Mr. Yu's skill, which is also typical of the use of microaggressions to minimize success (ISU Documents 0270).

Mr. Yu also alleges that after being dismissed from his clinical externship in 2011, in his fourth year in the doctoral program, Dr. Roberts began asking him to define words in English (Plaintiff Document 000573).

Finally, microaggressions towards Asian international students can involve a lack of awareness of the structural challenges that these students face. So, when the CTC said in May of 2011 that Mr. Yu should apply to work at internship sites with Chinese speaking populations so that his "Chinese language is a strength, rather than a liability," they created an extra logistical challenge that Mr. Yu's peers did not face (ISU Documents 0025). Mr. Yu reports that there was no offer of help by the ISU faculty to address this structural challenge. Not only did the ISU faculty not offer to help, they seemed to be unaware of these structural challenges. In his testimony before the graduate council (ISU document 0271), Dr. Mark Roberts said that for a students, it's much more common to finish everything but their dissertation, and that it was "very unusual status" for the program to have a student with every requirement completed but their internship.

However, these structural challenges were predictable, if the faculty had looked into the challenges that an international student might face in the APPIC match process. In his report for the Graduate Council (ISU Documents 0304), Dr. Michael Dwyer outlines the many reasons why racial minorities, and especially international students who are racial minorities, have a particularly difficult time matching through the APPIC process, ranging from the fact that some internships require US citizenship to the relative unimportance many sites place on speaking a foreign language to the ways in which nonnative speakers can be perceived as less confident or professional.

IV. Opinions and Basis of Opinions about Shifting Standards

1. ***Language is frequently relative and we use group membership to disambiguate descriptors.***

   Most descriptions of people involve subjective language. For example, to identify a person as being tall means that we know we are referring to height for people, as opposed to buildings. In many instances, we make sense of these subjective descriptors using group stereotypes (Biernat, 2003; Biernat 2009). Research has found that in understanding height, participants will think differently about what it means to be tall or short when considering men and women (Biernat, Manis, & Nelson, 1991). One consequence of this subjectivity is that while we don't typically say people are tall *for a woman*, "our impressions and descriptions of others are likely to be based, in part, on reference to the group stereotype as a judgment standard" (Biernat, 2009, p. 137).

   In making a decision about relevant standards of comparison, we often make these judgments based on our own personal motivations (Miron, Branscombe, & Biernat, 2010). Research has found that when people strongly identify with their group, they are more likely to shift standards in a way that makes their group look good, specifically seeing negative behaviors in the group's past as not being quite as bad (Miron et al., 2010). One consequence is that when considering their own unjust actions, groups often require more injustice to confirm that they did something bad, which results in more "lenient assessment of injustice of the ingroup's actions" (Miron et al., 2010, p. 769). This means that in a desire to avoid feelings of guilt, groups are unwilling to acknowledge their own injustice by creating unreasonably lax standards for their behavior. Specifically, Miron et al. (2010) argue that this allows people to conclude that race-based injustice "does not qualify as racism" because we hold the bar so high to acknowledge the presence of racism (p. 777).

2. ***The shifting standards model explains why understanding the comparison groups being used in judgment are important.***

In the case of shifting standards, evaluations will change as a function of the referent group (Biernat, 2009). So, while we might think a child is very smart when compared to other children, we may not think of them as being quite as intelligent when compared to college graduates. Research on the shifting standards model has found that whether participants are asked evaluative questions on subjective or objective scales will produce different evaluations of the same target (Biernat, 2009). For example, if an international student is compared to other international students in an academic program, the evaluation will likely be different than if the international student is being compared to all students in the program because the relevant group-level stereotypes of the comparison group are different.

When using objective scales, where the meaning of the assessment is similar across all individuals, the group-level stereotypes of specific groups will have a more visible impact. So, in considering how many inches and feet tall a group of men and women are, ratings tend to show the stereotypic expectation that men are taller than women. In contrast, when using more subjective assessments – such as asking if people are very tall, somewhat tall, somewhat short, or very short – people will consider what these groupings mean in the context of the target's group. On these subjective assessments, then, there will be similar distributions of men and women into each category, because people are answering the question with the implicit understanding they are assessing height *for women* or *for men*.

In considering the promotion and success of women in the workplace and understanding laws that support caregivers, legal scholars have relied on shifting standards to understand outcomes for men and women in both work and caretaking roles (Williams & Segal, 2003; Benard, Paik, & Correll, 2008; Williams, 2003).

In addition, shifting standards are used when we consider the information we hear about other people (Biernat, 2009). When participants are asked to reverse engineer what it means for a man and woman to be either a "very good" or "all right" parent, they expect considerably more parenting behavior consistent with success on the part of women than men, following either descriptive labels; this means that women described as "all right" parents are actually assumed to be as involved or more involved than men described as "very good" parents, which is consistent with stereotypes of women (Kobrynowicz & Biernat, 1997). When we communicate with other people, they frequently interpret positive feedback about negatively stereotyped groups in such a way that they remember the feedback being worse (Biernat, 2012). This is particularly important when considering performance evaluations, which may have positive information that is presented subjectively, while still creating an overall less favorable impression

of someone who belongs to a negatively stereotyped group than the same information about someone who belongs to a group that is not negatively stereotyped (Biernat, 2012).

One large problem with the use of shifting standards is that "in academic, workplace, and legal settings, the standards used to decide that an individual is incompetent, and the standards against which one begins noticing incompetence, matter for real work outcomes including dismissals, demotions, and verdicts" (Biernat, Fuegen, & Kobrynowicz, 2010, p. 866). The comparison standards that employers and supervisors use in making evaluations have tremendous impacts on people and must be considered when understanding decision-making surrounding the termination of employment or opportunity. In addition, "by using different standards, particularly by using subjective language in evaluating racial, ethnic, gender, and occupational groups, discrimination can occur invisibly" (Crandall & Eshleman, 2003, p. 429). This happens because the extent to which people shift standards when making judgments related to stereotypes seems to be a subtle marker of stereotype application (Biernat, Collins, Katzarska-Miller, & Thompson, 2009).

3. ***The differences in minimum standards and confirmatory standards can explain disparities in ratings of different groups.***

Minimum standards are those things required for considering someone *might* have a trait or set of qualifications (for example, the things it would take to be included on a short list of potential job candidates). In contrast, confirmatory standards are those required to be *confident* that someone has the trait or qualifications in question (for example, the things it would take to actually get the job). Shifting standards research has found that for people who belong to stereotyped groups, minimum standards are often lower but confirmatory standards are higher (Biernat & Kobrynowicz, 1997; Biernat, 2012).

This has the consequence of meaning that the evaluations of people who belong to negatively stereotyped groups often look initially better than groups who are not negatively stereotyped; however, selection decisions ultimately favor those belonging to groups that are not negatively stereotyped. This may provide the appearance of kindness, but Biernat and Kobrynowicz (1997) argue that initial low standards are actually patronizing and that "the ultimate outcome for a low-status person is a longer, more difficult trek to document ability and evaluations that are objectively less positive than those awarded to similarly credentialed individuals from high-status groups" (p. 555). Unfortunately, these standards can also be used to differentially punish stereotyped and non-stereotyped employees. Shifting standards research has found that minority employees were

less likely to be placed on workplace probation, but they were more likely to be ultimately fired from the position (Biernat, 2012).

Research has also found that the type of evaluation being used can make a difference in the use of minimum and confirmatory standards. Formal evaluations encourage people to use confirmatory standards and to look for strong evidence to be confident in judgment, while informal evaluations (for example, note taking) encourage people to use minimum standards (Biernat et al., 2010). This means that formal evaluations may set up people from negatively stereotyped groups to have a more difficult time to confirm positive traits, because the bar for confirmatory standards for this group are actually higher.

After giving positive subjective feedback based on shifting standards, perceivers can use the same kinds of moral credentials discussed previously to justify further disparate treatment (Biernat, 2012). Biernat (2012) argues that "positive communication produced by the use of shifting standards provides 'cover' for subsequent prejudice but leaves the communicator feeling as through he or she has behaved without bias" (p. 20). Ultimately, "the use of shifting standards may contribute to the maintenance of stereotypes over time and to confusion and inconsistency in the feedback targets receive" (Biernat, 2012, p. 2)

V. Connections between the facts of the case and shifting standards

1. ***The ISU faculty used different comparison groups to assess Mr. Yu's performance at different points in his career as a student.***

   In testimony before the graduate council on October 2, 2013 (ISU Documents 0269), Dr. Mark Roberts explains that initial evaluations of Mr. Yu are based on his skills, compared to the groups of international students, saying: "We…looked at [Mr. Yu] during his first two years here as somebody with linguistic differences that would – might slow the pace of his acquisition of professional skills…so it's his practicum evaluations that come to the fore. And during the first two years we simply…said okay, this is an international student, and we expect him to become more fluent in English…and so of course he was sheltered…during these first two years I think everyone just looked at some of the issues we might have had as typical for someone whose language was not English during those first two years."

   However, in Mr. Yu's final CTC evaluation (ISU Documents 0030), it's clear that he was being compared to a different group when the decision was made to dismiss him. Dr. Roberts wrote: "Despite four years (August 2008 to May 2012) in the standard curriculum on campus and three months in an approved clinical internship, [Mr. Yu] remains unable to provide professional services in a manner

consistent with expectations for a fourth year student or an intern." These comments suggest that the standard to which Mr. Yu's progress was held changed during his time in the program; Mr. Yu was initially given special consideration to allow time for his English language skills to improve, while in the last year the approach was not one that was sensitive to his unique situation as a student. In fact, in the letter of dismissal, Mr. Yu was explicitly compared to the standard of native English speakers who had successfully completed the ISU doctoral program.

Due to this shift in comparison standard, the feedback Mr. Yu received was inconsistent, arbitrary, and capricious during his time in the ISU psychology graduate program. Given that the standard to which Mr. Yu was held actively changed during his time in the ISU Psychology graduate program, the feedback he received in the first two years did not prepare him to meet the expectations that the faculty held him to in making their dismissal decision. This may tie back into the fact that race-based conversations are frequently difficult for White professors (Sue, 2013).

2. ***There is evidence of shifting standards in the judgments made about Mr. Yu by the ISU faculty.***

There are numerous examples of times where the implicit comparison group for Mr. Yu is made explicit. In her practicum evaluation in the spring of 2010 (ISU Documents 0063), Dr. Cheri Atkins writes "while I have witnessed dramatic improvements over the past year or so with conversational English, his conversational skills are still subpar for doctoral level training experience in both assessment and treatment." This comment suggests that she sees improvement, but only when considering the referent group to be international students. This is also an early red flag that the feedback Mr. Yu is getting is relative to international students, not the group of "successful ISU program graduates" to which he will eventually be compared when the decision is made to dismiss him from the program.

It is troubling that, in his response to a complaint with the Office of Consultation and Accreditation on January 28 2014 (ISU Documents 0198), Dr. Mark Roberts wrote that, "In early June 2012…It was clear to the committee that Mr. Yu's professional progress remained unsatisfactory…he was unable to perform at the intermediate level of professional skill," yet the committee thought the best option for Mr. Yu would be an internship in China, calling it a "more viable option." If it is true that the faculty and CTC did not believe that Mr. Yu was capable of independent therapeutic work, it seems unlikely they would be open to allowing him any sort of internship. This suggests that either the faculty's expectations for care were higher in the United States than China or that they

held Mr. Yu's work to a different standard when he worked with Chinese and American populations.

3. *Evaluations of Mr. Yu's work were on formal evaluations, which encouraged the use of confirmatory standards.*

Mr. Yu's twice-yearly evaluations from the CTC are formal evaluations established by the program. This type of evaluation is frequently associated with confirmatory standards and from the testimony of Dr. Mark Roberts, it is clear that the expectations of proficiency for a nonnative English speaker are lower than for a "typical" student. This means that it would be more difficult for Mr. Yu to ultimately confirm impressions of competence or strong English language skill than it would for students who did not belong to a negatively stereotyped group. And, Mr. Yu's CTC evaluations frequently include lots of positive feedback, including statements praising his "strong GTA performance" (ISU Documents 0054), "'good job' with his first ADA evaluation"(ISU Documents 0059), "journal submission and acceptance…at the WCBCT conference"(ISU Documents 0065), "exceptional" effort (ISU Documents 00 72), and "diligence…non-defensiveness…conceptualizations [that were] accurate and sophisticated"(ISU Documents 0077), to name just a few. But, the handful of concerns about Mr. Yu's work and progress seemed to carry much more weight than the tremendous number of positive comments, which is consistent with the incredible difficulty of meeting confirmatory standards in domains in which one is negatively stereotyped.

VI. Conclusions and Summary Opinions

The inconsistencies in the treatment of Mr. Yu across his time in the program, and the profound shift in the faculty's impression of his performance following his dismissal by Dr. Landers from the Eastern Idaho Regional Medical Center externship, show decision-making that was not based on objective and consistent standards. And, the ambiguity created without objective and consistent standards sets the stage for aversive racism to manifest. The ambiguity surrounding the evaluation and assessment of Mr. Yu was evidenced in unclear expectations of required English language proficiency, the feedback Mr. Yu received from supervisors, the criteria used to assess the tasks that would be appropriate for Mr. Yu's level of training, and in the overall criteria used to assess "satisfactory progress."

It appears that across his time in the program, the faculty shifted from trying to consider Mr. Yu's unique circumstances as an international student to coming up with race-neutral explanations for their negative assessments. This focus on race neutrality is one hallmark of situations that are conductive to the expression of aversive racism and

reflects a color-blind approach, which is strongly associated with the use of microaggressions. The shift from trying to consider Mr. Yu's needs as an international student to trying to treat him the same as other students was accompanied by Mr. Yu's impression that his supervisors did not respect him, which is also consistent with the challenged work environments that are created in the presence of aversive racism. Despite the faculty arguing they tried to accommodate Mr. Yu as a nonnative English speaker, it appears that microaggressions towards Mr. Yu were happening simultaneously and one consequence of these microaggressions was that Mr. Yu felt unsupported and undermined in his work.

There is strong evidence of the use of *post hoc* justifications once the psychology faculty made the decision to dismiss Mr. Yu from the program. These *post hoc* justifications include memories of his work that are reported differently from initial assessments of his work, considering areas of concern as dismissal-worthy only after the decision was made to dismiss Mr. Yu from the psychology program, a complete reversal of the faculty's belief in the appropriateness of Mr. Yu completing an internship in China, systematically failing to consider positive evaluations of Mr. Yu's work with the same weight as negative evaluations, and using mixed feedback from supervisors to justify dismissal by systematically ignoring positive comments. The use of *post hoc* justifications – particularly race-neutral *post hoc* justifications – for behavior or decisions is another hallmark of the presence of aversive racism.

There is also strong and compelling evidence that the evaluations of Mr. Yu were shaped by shifting standards. The ISU faculty made regular references to the fact that they were comparing Mr. Yu to international students, for whom English is their nonnative language, in his first two years in the program and "typical" program graduates (in the words of ISU faculty) in his third year and beyond. The shift that occurs during his time in the ISU graduate program suggests that Mr. Yu's performance was seen as good "for an international student" in his first two years, but that there was a significant drop in assessments of his work when he was compared to the native English speakers who made up the department's expectation of a successful student. This leads me to believe that Mr. Yu got feedback early on that was *relative* to what was expected for international students, as opposed to all graduates of the program. This prevented him from having the opportunity to grow from feedback in the same way offered to the native English speakers who make up the majority of the psychology graduate program. This is consistent with research suggesting White faculty, even those who believe in egalitarianism, have a difficult time speaking about topics involving race. And, this difficulty reduces the likelihood that faculty will become self-aware of their own biases, which is required to have a chance to correct for bias.

The regular and formal evaluations Mr. Yu received from the CTC may have also encouraged the use of shifting standards in such a way that it was more difficult for Mr. Yu to meet the confirmatory standards of professional competence. And, this happened

because of the ways in which nonnative English speakers and international students were stereotypically expected to be less successful.

It is also clear, given the ISU faculty's initial desire for Mr. Yu to complete his internship in China and their complete reversal after dismissing him, based on their concern that he might harm clients in China, that the faculty either a) created *post hoc* justifications for their behavior and evaluations of Mr. Yu, b) held him to different standards in working with American and Chinese populations, or c) had different requirements for the treatment of clients in America and China. In any instance, his work was being judged in a way that involved shifting standards of judgment in stereotype-relevant domains. And, this judgment ignored the overwhelmingly positive feedback from Mr. Yu's actual clients in China, who were the only people in a position to actually communicate his skill as a clinician.

From early on in the work developing Mr. Yu's nonstandard internship at the Cleveland Clinic, concerns were raised about his inability to access the due process of a standard APPIC internship grievance procedure. There are many ways in which Dr. Leslie Speer violated the minimal due process that was available to Mr. Yu (Plaintiff Document 000053-000059) – ranging from not offering a second assessment until after his dismissal to not working with him to develop a remediation plan in the face of performance concerns to not assembling the group of supervisors in Ohio to discuss his performance before dismissal – and the ISU faculty used the decision of Dr. Speer to justify dismissing Mr. Yu from the program. The ISU faculty's decision to privilege the opinion and decision-making of a supervisor who was violating accepted standards means that the decision was, at least in part, based on a violation of accepted professional norms. In addition, the psychology department never placed Mr. Yu on probation or told him he was at risk of dismissal from the program.

On the basis of these facts, it is my opinion that the behavior of the members of the Idaho State University psychology department was arbitrary and capricious and deviated from accepted professional norms in psychology. It is also my opinion that the shifting of standards in stereotype-relevant judgments contributed to the negative treatment of Mr. Yu in ways that were not professionally appropriate. While aversive racism is typically something my field only studies while considering differences across large groups of people, and not individuals, it is hard to imagine a situation that more strongly demonstrates all of the hallmarks that are typically present when aversive racism is occurring, which *strongly* suggests that the behavior of the ISU Psychology department was influenced by Mr. Yu's race and international status.

VII. Previous work as an expert witness

Spurlock v. Fox, 2010 WL 3807167 (M.D.Tenn., 2010)

I was an expert for the plaintiff in a NAACP-backed lawsuit against a 2009 Metro Nashville school re-zoning plan. I wrote an expert witness report, was deposed, and testified in court. My testimony described the social psychological literature on prejudice, stereotyping, and the benefits of integrated educational settings.

VIII. Compensation

My rate for the work on this case is [redacted] hour. This fee includes case review, literature review, report writing, and communication with the legal team. I charge [redacted] hour, plus travel expenses, up to a maximum of [redacted] /day for travel and testimony.

Sincerely,

Leslie Wade Zorwick

Dr. M. Leslie Wade Zorwick
Associate Professor of Psychology
Hendrix College

References

Aberson, C. L., & Ettlin, T. E. (2004). The aversive racism paradigm and responses favoring African Americans: Meta-analytic evidence of two types of favoritism. *Social Justice Research, 17*(1), 25-46.

Armour, J. (1995). Stereotypes and prejudice: Helping legal decision makers break the prejudice habit. *California Law Review, 83*, 733-772.

Benard, S., Paik, I., & Correll, S. J. (2008). Cognitive bias in motherhood penalty. *Hastings Law Journal, 59*, 1359-1387.

Biernat, M. (2003). Toward a broader view of social stereotyping. *American Psychologist, 58*(12), 1019-1027. doi:10.1037/0003-066X.58.12.1019.

Biernat, M. (2009). Stereotypes and shifting standards. in T. D. Nelson (Ed.), *Handbook of Prejudice, Stereotyping, and Discrimination* (137-152). New York, NY: Psychology Press.

Biernat, M. (2012). Stereotypes and shifting standards: Forming, communicating, and translating person impressions. *Advances in Experimental Social Psychology, 45*, 1-59. doi:10.1016/B978-0-12-394286-9.00001-9.

Biernat, M., Collins, E. C., Katzarska-Miller, I., & Thompson, E. R. (2009). Race-based shifting standards and racial discrimination. *Personality and Social Psychology Bulletin, 35*(1), 16-28. doi:10.1177/0146167208325195.

Biernat, M., Fuegen, K., & Kobrynowicz, D. (2010). Shifting standards and the inference of incompetence: Effects of formal and informal evaluation tools. *Personality and Social Psychology Bulletin, 36*(7), 855-868. doi:10.1177/0146167210369483.

Biernat, M., Mains, M., & Nelson, T. E. (1991). Stereotypes and standards of judgment. *Journal of Personality and Social Psychology, 60*(4), 485-499.

Bodensteiner, I. E. (2008). The implications of psychological research related to unconscious discrimination and implicit bias in proving intentional discrimination. *Missouri Law Review, 73*, 83-127.

Chow, R. M., & Knowles, E. D. (2016). Taking race off the table: Agenda setting and support for color-blind public policy. *Personality and Social Psychology Bulletin, 42*(1), 25-39. doi:10.1177/0146167215611637.

Crandall, C. S., & Eshleman, A. (2003). A justification-suppression model of the expression and experience of prejudice. *Psychological Bulletin, 129*(3), 414-446. doi:10.1037/0033-2909.129.3.414.

Dovidio, J. F. (2001). On the nature of contemporary prejudice: The third wave. *Journal of Social Issues, 57*(4), 829-849.

Dovidio, J. F., & Gaertner, S. L. (2000). Aversive racism and selection decisions: 1989 and 1999. *Psychological Science, 11*(4), 315-319.

Dovidio, J. F., & Gaertner, S. L. (2004). Aversive racism. *Advances in Experimental Social Psychology, 36*, 1-52.

Dovidio, J. F., Gaertner, S. L., Kawakami, K., & Hodson, G. (2002). Why can't we just get along? Interpersonal biases and interracial distrust. *Cultural Diversity and Ethnic Minority Psychology, 8*(2), 88-102. doi:10.1037//1099-9809.8.2.88.

Effron, D. A., Cameron, J. S., & Monin, B. (2009). Endorsing Obama licenses favoring Whites. *Journal of Experimental Social Psychology, 45*, 590-593.

Fiske, S. T., Cuddy, A. J. C., Glick, P., & Xu, J. (2002). A model of (often mixed) stereotype content: Competence and warmth respectively follow from perceived status and competition. *Journal of Personality and Social Psychology, 82*(6), 878-902.

Gaertner, S. L., & Dovidio, J. F. (2005). Understanding and addressing contemporary racism: From aversive racism to the common ingroup identity model. *Journal of Social Issues, 61*(3), 615-639.

Greenwald, A. G., & Krieger, L. H. (2006). Implicit bias: Scientific foundations. *California Law Review, 94*(4), 945-967.

Hahn, A., Judd, C. M., Hirsh, H. K., & Blair, I. V. (2014). Awareness of implicit attitudes. *Journal of Experimental Psychology: General, 143*(3), 1369-1392. doi:10.1037/a0035028.

Hodson, G., Dovidio, J. F., & Gaertner, S. L. (2002). Processes in racial discrimination: Differential weighting of conflicting information. *Personality and Social Psychology Bulletin, 28*(4), 460-471.

Houshmand, S., Spanierman, L. B., & Tafarodi, R. W. (2014). Excluded and avoided: Racial microaggressions targeting Asian international students in Canada. *Cultural Diversity and Ethnic Minority Psychology, 20*(3), 377-388. doi:10.1037/a0035404.

Kobrynowicz, D., & Biernat, M. (1997). Decoding subjective evaluations: How stereotypes provide shifting standards. *Journal of Experimental Social Psychology, 33*(6), 579-601.

Krieger, L. H. (1995). The content of our categories: A cognitive bias approach to discrimination and equal employment opportunity. *Stanford Law Review, 47*, 1161-1247.

Kunstman, J. W., & Plant, E. A. (2008). Racing to help: Racial bias in high emergency helping situations. *Journal of Personality and Social Psychology, 95*(6), 1499-1510. doi:10.1037/a0012822.

Lee, C. (2013). Making race salient: Trayvon Martin and implicit bias in a not yet post-racial society. *North Carolina Law Review, 91*, 1555-1612.

Miron, A. M., Branscombe, N. R., & Biernat, M. (2010). Motivated shifting of justice standards. *Personality and Social Psychology Bulletin, 36*(6), 768-779. doi:10.1177/0146167210370031.

Monin, B., & Miller, D. T. (2001). Moral credentials and the expression of prejudice. *Journal of Personality and Social Psychology, 81,* 33-43.

Monteith, M. J., & Mark, A. Y. (2005). Changing one's prejudice ways: Awareness, affect, and self-regulation. *European Review of Social Psychology, 16,* 113-154.

Norton, M. I., Vandello, J. A., & Darley, J. M. (2004). Casuistry and social category bias. *Journal of Personality and Social Psychology, 87*(6), 817-831. doi:10.1037/0022-3514.6.817.

Pearson, A. R., Dovidio, J. F., & Gaertner, S. L. (2009). The nature of contemporary prejudice: Insights from aversive racism. *Social and Personality Psychology Compass, 3,* 314-338.

Penner, L. A., Dovidio, J. F., West, T. V., Gaertner, S. L., Albrecht, T. L., Dailey, R. K., & Markova, T. (2010). Aversive racism and medical interactions with black patients: A field study. *Journal of Experimental Social Psychology, 46,* 436-440. doi:10.1016/j.jesp.2009.11.004.

Pronin, E., & Kugler, M. B. (2007). Valuing thoughts, ignoring behavior: The introspection illusion as a source of the bias blind spot. *Journal of Experimental Social Psychology,43,* 565-578. doi:10.1016/j.jsep.2006.05.011.

Purdie-Vaughns, V., & Walton, G. (2011). Is multiculturalism bad for African Americans? Redefining inclusion through the lens of identity safety. In L. R. Tropp & R. K. Mallett (Eds.), *Moving Beyond Prejudice Reduction* (pp. 159-177). Washington, D.C.: American Psychological Association.

Rich, S. M. (2011). Against prejudice. *The George Washington Law Review, 80,* 1-101.

Solorzano, D., Ceja, M., & Yosso, T. (2000). Critical race theory, racial microaggressions, and campus racial climate: The experiences of African American college students. *Journal of Negro Education, 69*(1), 60-73.

Son Hing, L. S., Chung-Yan, G. A., Hamilton, L. K., & Zanna, M. P. (2008). A two-dimensional model that employs explicit and implicit attitudes to characterize prejudice. *Journal of Personality and Social Psychology, 94*(6), 971-987. doi:10.1037/0022-3514.94.6.971.

Son Hing, L. S., Li, W., & Zanna, M. P. (2001). Inducing hypocrisy to reduce prejudicial responses among aversive racists. *Journal of Experimental Social Psychology, 38,* 71-78. doi:10.1006/jsep.2001.1484.

Sue, D. W. (2010). Microaggressions, marginality, and oppression: An introduction. In D. W. Sue (Ed.), *Microaggressions and Marginality: Manifestations, Dynamics, and Impact* (pp. 3-22). New Jersey: Wiley.

Sue, D. W. (2013). Race talk: The psychology of racial dialogues. *American Psychologist, 68*(3), 663-672. doi:10.1037/a0033681.

Sue, D. W., Capodilupo, C. M., Torino, G. C., Bucceri, J. M., Holder, A. M. B., Nadal, K. L., & Esquilin, M. (2007). Racial microaggressions in everyday life: Implications for clinical practice. *American Psychologist, 62*(4), 271-286. doi:10.1037/0003-066X.62.4.271.

Uhlmann, E. L., & Cohen G. L. (2005). Constructed criteria: Redefining merit to justify discrimination. *Psychological Science, 16*(6), 474-480.

Williams, J. C. (2003). Litigating the glass ceiling and the maternal wall: Using stereotyping and cognitive bias evidence to prove gender discrimination: The social psychology of stereotyping: Using social science to litigate gender discrimination cases and defang the "cluelessness" defense. *Employee Rights and Employment Policy Journal, 7*, 403-456.

Williams, J. C., & Segal, N. (2003). Beyond the maternal wall: Relief for family caregivers who are discriminated against on the job. *Harvard Women's Law Journal, 26*, 77-162.