

WHITE JUROR BIAS An Investigation of Prejudice Against Black Defendants in the American Courtroom

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Racial prejudice in the courtroom is examined through a historical sketch of racism in the legal system, a review of psychological research on White juror bias, and a study investigating White mock jurors' judgments of a fictional trial summary. The central hypothesis is that salient racial issues at trial activate the normative racial attitudes held by White jurors. In previous eras, these racial norms encouraged overtly anti-Black prejudice. But in modern America, many Whites embrace an egalitarian value system and try to behave in an appropriately nonprejudiced manner when race is salient. Therefore, contrary to the intuition of many scholars and researchers, contemporary White jurors are more likely to demonstrate racial bias against a Black defendant in interracial trials without blatantly racial issues. Empirical data suggest that this pattern of bias is not limited to one type of crime or one type of racial issue. Practical implications and future research directions are considered.

In our courts, when it's a white man's word against a black man's, the white man always wins. They're ugly, but those are the facts of life . . . The one place where a man ought to get a square deal is a courtroom, be he any color of the rainbow, but people have a way of carrying their resentments right into a jury box. (Lee, 1960, p. 220)

This quotation, from Harper Lee's (1960) *To Kill a Mockingbird*, describes how American courtrooms were influenced by the pervasive racial prejudice of the 1930s. Racial bias in the modern legal system may be less blatant than it was in Atticus Finch's Alabama, but the underlying problem of racism in the courts still exists. Whereas in previous eras the prejudicial treatment of Black defendants was attributable to a multitude of factors, including statutory inequality and the racist attitudes of trial and appellate judges, bias in contemporary criminal trials persists in the absence of overt legislative or judicial discrimination. Accordingly, recent investigations of prejudice in the courtroom have typically focused on the bias demonstrated by jurors (King, 1993; Skolnick & Shaw, 1997). As *To Kill a Mockingbird* (Lee, 1960) suggested 40 years ago, any attempt to examine White juror bias must also take into account the nature of racial norms in White society.

Of course, research on prejudice in the legal system has examined racial

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biases other than those demonstrated by jurors (e.g., discrepancies in arrests, indictments, and plea bargaining). For a more general discussion of the impact of the standards, values, and attitudes of North American society on the criminal justice system as a whole, and on the law itself, see Robinson and Darley (1995). The focus of this article, however, is racial bias demonstrated by White jurors.

The decision to focus on White jurors was made for several reasons. As the historical section of this article conveys, Black defendants have suffered a long history of racial injustice at the hands of White judges and juries. As the review of psychological research demonstrates, in psychology there is a substantial body of theory and research on prejudice against minority groups and on White Americans' racial bias against Black Americans in particular. By comparison, minority group prejudice against the majority has received almost no theoretical or empirical attention, and there is little reason to believe that the same psychological processes are involved.

Furthermore, given that Whites are the dominant group in the United States, both in number and in power, and that criminal defendants in this country continue to be disproportionately non-White, White juror bias is more consequential and dangerous than bias demonstrated by Black jurors or jurors of other minority groups. In most jurisdictions, juries with a majority of White people are the rule, and all-White juries are not uncommon (Bowers, Steiner, & Sandys, *in press*). On most juries, the final verdict reflects the views of the predeliberation majority. The pervasive and deleterious effects of White juror bias, combined with the wealth of existing research and theory about White juror performance, led to the present focus on White jurors.

At the heart of this analysis is the contention that salient racial issues in a trial activate the normative racial attitudes held by White jurors. This appears to be true today just as it was before the Civil War. Of course, the actual behavior of White jurors has changed considerably over the past two centuries. Although the archival data are mixed (Hymes, Leinart, Rowe, & Rogers, 1993; Sunnafrank & Fontes, 1983), they suggest that contemporary discrepancies in conviction rates and sentencing for White and Black defendants are smaller than they were earlier this century. These changes can be accounted for, in large part, by two related social developments. First, racial norms in society have shifted dramatically. Less than a century ago, anti-Black sentiment was accepted (and expected) among Whites, and the overtly prejudicial racial norms activated among jurors in racially-charged cases were not considered problematic. Theories about modern racial mores, however, assert that today many Whites strive to maintain a nonprejudiced appearance even though they still possess stereotypical beliefs and attitudes (Devine, 1989; Gaertner & Dovidio, 1986). Racial norms continue to influence juror decisions, but the norms themselves have changed over time.

Second, as Whites and Blacks have achieved relatively equal status (at least in statutory terms), race has become a much more complex social issue. In the 19th century, interactions between Whites and Blacks were inevitably framed by the racial issues made chronically salient by laws, openly-held prejudicial attitudes, and discriminatory practices. The explicit, pervasive nature of racial prejudice likely rendered race a salient issue whenever Whites made judgments about Blacks. Accordingly, race was viewed as a relevant issue in almost all trials of Black defendants (Kennedy, 1997). Today, racial issues still influence many

interracial interactions, but increased contact between the races and a more heterogeneous populace have made for more frequent interracial interactions in which racial issues are not salient (Blum, 1984; Ickes, 1984). In the courtroom setting, White jurors no longer perceive all trials involving Black defendants as necessarily racially charged (Myers, 1980; Sommers & Ellsworth, 2000). For example, the trial of a Black defendant charged with robbery might be relatively free of racial undertones unless his attorney attempts to depict the police as racist or the publicity surrounding the case as biased. Several decades ago, however, the prosecutor in such a case doubtless would have appealed to the anti-Black sentiments of White jurors (Kennedy, 1997). Even without such an attorney strategy, White jurors certainly would have seen the race of the defendant as relevant or even essential evidence.

Some researchers have carried the argument that racial norms influence juror decisions to the extreme by suggesting that changes in the racial landscape of the U.S. have eliminated prejudice against Black defendants (Reynolds, 1996), but many of these claims have been challenged on methodological and theoretical grounds (Ellsworth & Reifman, *in press*; Marder, 1999; Parloff, 1997). Furthermore, archival and empirical data indicate that absolute statements of juror colorblindness are too good to be true; the race of a defendant still influences the decisions of many criminal juries (Baldus, Woodworth, & Pulaski, 1990; Bowers et al., *in press*; Gross & Mauro, 1989; Guinther, 1988; Lynch & Haney, 2000). Other legal scholars have recognized that White juror bias is often influenced by the specific racial issues involved in a given trial (Hans & Vidmar, 1986; King, 1993). Most of these researchers suggest that, unlike jurors of previous eras who discriminated against almost all Black defendants, today's White jurors are likely to demonstrate prejudice primarily in cases where race is a salient issue: "The problem of the effect of racial composition on a jury and its verdict is most noticeable when the trial involves a blatantly racial issue" (Fukurai, Butler, & Krooth, 1993, p. 5).

The central hypothesis of the present investigation, however, is that the opposite is true: Run-of-the-mill trials of Black defendants in which racial issues are not obvious are more likely to elicit prejudicial responses from Whites. Societal norms about racial attitudes still have a profound effect on White jurors' judgments of Black defendants in racially-charged cases. Today, however, many Whites embrace an egalitarian value system and a desire to appear nonprejudiced. As a result, salient racial issues in a trial are likely to remind White jurors that they should avoid prejudice, and these jurors will adjust their judgments of Black defendants accordingly. But, when race is not salient in a trial, contemporary norms of egalitarianism are not necessarily triggered. In these cases, Whites will be more likely to render judgments tainted by the racial stereotypes and prejudice that linger in the consciousness of even the least overtly prejudiced of individuals (Devine, 1989; Gaertner & Dovidio, 1986).

This article considers this hypothesis about White juror bias from multiple perspectives. The first section documents the blatant and pervasive influence of racial norms on courtroom decisions in the premodern era. This brief historical review sets the stage for a social psychological examination of contemporary juror bias, which is characterized by White jurors with conflicted racial attitudes and trials that differ in the extent to which racial issues are emphasized. Next, an

empirical study of White mock jurors allows for the generalization of the present hypothesis beyond the contexts previously studied. Finally, the results of this study are discussed in terms of implications for the legal system and future directions for researchers of racial bias in the courtroom.

Historical Review of Prejudice in the Legal System

A historical look at prejudice in the legal system suggests two trends. First, statutes enacted during Reconstruction in the attempt to eliminate racial discrimination in the legal system were often met with resistance and defiance by Whites. Second, for the past 150 years the U.S. Supreme Court has consistently hesitated to directly confront the issue of prejudice in the courtroom. In recent decades, however, racial attitudes in American society have become less openly prejudicial, and even the Supreme Court seems to have become more sensitive to racism in the legal system. It is this gradual shift in many Whites' racial norms, rather than the immediate influence of federal legislation or higher court intervention, which is largely responsible for changes in the nature of juror bias over the years.

Before the Civil War, the overtly racist attitudes of White Americans were reflected in discriminatory penal codes. Several jurisdictions criminalized a wide array of mundane activities for slaves to make sure that Blacks were perpetually aware of their inferior status in society (Coleman, 1996; *Luke v. State*, 1853). As Kennedy (1997) describes, behaviors such as smoking in public, walking with a cane, and defending oneself against assault were often illegal for slaves but not for Whites. Punishments also differed for Blacks and Whites (Bowers, 1984). In pre-Civil War Virginia, for example, over 70 crimes were punishable by death if the perpetrator was Black, compared with only one for Whites (Kennedy, 1997). Explicit racism in the criminal justice system during this era makes it difficult to separate the issue of juror bias from the more general institutional racism epitomized by laws and judges of the period.

Reconstruction marked the departure of federal law from the entrenched racial prejudice of many Whites, as the Civil Rights Act of 1866 and the 14th Amendment required states to end statutory discrimination based upon race, color, or personal history of slavery (Coleman, 1996; Delaney, 1998). With these first legislative attempts to mandate racial equality, many White politicians, judges, and jurors found themselves in the novel position of holding racial attitudes upon which they could not constitutionally act. This tension between the law that governed the courts and the prejudices of society at large created a recurring conflict in the legal system over the next century. Accordingly, the nature of racial bias in the courtroom during Reconstruction and beyond is illuminated by the ways in which legislators, judges, and juries of this era attempted to circumvent the 14th Amendment, as well as by the measures taken, and not taken, by higher courts to combat the prejudicial tendencies of those who rendered verdicts and passed sentences in criminal trials.

One way that the pervasiveness of racism in society continued to influence the legal system was the tendency of many trial judges to go out of their way to allow differential treatment of White and Black defendants without violating the letter of the law. *Dorsey v. State* (1899) provides an illustrative example. In this case, a Black defendant charged with rape claimed that he was only attempting to

persuade a White woman to consent to intercourse. The trial judge instructed the jury that the defendant's race could be taken into account to refute this claim, and the jury was apparently happy to oblige. Georgia's Supreme Court upheld the guilty verdict and ruled that the defendant's race was relevant to the determination of whether or not he had truly been attempting to obtain consent. As Kennedy (1997) points out, the trial judge's ruling was literally race-neutral in that the race of a White defendant would have been similarly admissible (though seemingly not persuasive in any way), but the judge's emphasis on the defendant's race in his instructions to the jury clearly demonstrates an attempt to subvert the equality granted by the 14th Amendment.

The state legislature provided a second way in which racial discrimination persevered in the face of federal law intended to eliminate it. "Jim Crow" regulations were designed to maintain White supremacy through constitutional means by prohibiting specific acts and establishing punishments that disproportionately targeted Blacks. For example, vagrancy laws criminalized unemployment, and these laws were primarily enforced against Black defendants (Delaney, 1998). The statutory punishment of disenfranchisement for crimes such as this, combined with laws that made it difficult for ex-slaves to register to vote, enabled Whites to ensure themselves a voting majority and the ability to maintain their control over the legislature in Southern regions with a large percentage of non-White citizens.

The omnipresent threat of lynchings by White mobs was a third way in which the racial attitudes of society could seep into the courtroom. This community-organized vigilante justice had a direct impact upon trial proceedings, as jurors often listened to evidence in the courtroom while angry lynch mobs gathered outside in full view (Radelet, Bedau, & Putnam, 1992). A more ironic example of the direct influence that lynch mobs had on trial proceedings is provided by cases in which defense attorneys argued that their Black clients could not have committed the crime in question because if they had, they would certainly have been lynched before the trial began (Kennedy, 1997).

Most historians and legal scholars agree that federal laws failed to achieve their purpose of eliminating the tendency of White judges and jurors to discriminate against Black defendants. The U.S. Supreme Court, on the other hand, never made a concerted effort to fight racism before the late 20th century. During slavery, rulings such as the infamous *Dred Scott* decision (*Scott v. Sandford*, 1856) reflected and even perpetuated the blatant racism of society. Even after the Civil War, the Court often failed to address the issue of racial bias in the justice system when it had the opportunity to do so. Radelet et al. (1992) describe several specific instances when the Court refused to hear the appeals of innocent defendants who were wrongfully convicted of crimes simply because they were Black. On other occasions when the Court did intervene in trials tainted by prejudice, it typically did so by ruling on nonracial issues in the cases in question.

For example, in 1934, three Black farm workers were convicted of murdering a White man even though the police admitted that they had beaten two of the suspects and hung the third from a tree before they finally obtained a confession. The all-White jury delivered a guilty verdict, despite the lack of other incriminating evidence and the trial judge's instruction that the officers' admission of coercion could be considered in determining the validity of the confessions.

Mississippi's Supreme Court acknowledged that the confessions were not voluntary, but nonetheless affirmed the trial court's decision. The U.S. Supreme Court finally overturned the conviction by citing the 5th Amendment right to withhold self-incriminating information, but the Court did not address the role played by racial prejudice in the verdict (*Brown v. State of Mississippi*, 1936).

Some would argue that the Court's reluctance to directly address discrimination against Black defendants resulted from the Justices' knowledge that they lacked the power to enforce these rulings on a societal level. For example, even if they ordered a new trial for a Black defendant, he was likely to be lynched beforehand or convicted again (Kennedy, 1997). If accurate, this assertion is a profound demonstration of the direct influence of the racial norms of society on even the highest courts in the legal system. But even recently, in a society with far more egalitarian values, the Court has often shied away from directly addressing the issue of juror discrimination when the opportunity to do so was obvious (King, 1993).

Modern cases involving racial prejudice have often focused on the disproportionate application of the death penalty to Black defendants (Gross & Mauro, 1989). In *Coker v. Georgia* (1977) the Court had a clear chance to make a statement against the influence of racism on sentencing. In striking down the death penalty for rape convictions, however, the Court managed to sidestep the issue of racial discrimination that was the original basis for the appeal. In Coker's brief, the claim of racial bias in capital sentencing was supported by data collected by Wolfgang and Reidel (1973), who found that between 1945 and 1965 in 11 Southern states, Black men accused of raping White women were 18 times more likely to be sentenced to death than White defendants. The Court's ruling focused instead on the 8th Amendment issue of whether the death penalty was excessive punishment for the crime of rape, avoiding the question of racial prejudice altogether (Ellsworth, 1988).

In other cases, the Court has not merely overlooked the issue of racism, but has rejected outright compelling evidence of racial bias. In *McCleskey v. Kemp* (1987), a Black man argued that his death sentence for the murder of a police officer violated the 14th Amendment. The petitioner presented the Court with the findings of a carefully-controlled statistical study showing that Black defendants in Georgia were significantly more likely to be sentenced to death than White defendants in aggravated cases, especially when the victim was White (Baldus et al., 1990). Although the Baldus study controlled for over 200 other variables, and found that none of them, alone or in combination, could explain the pattern of racial discrimination, the Court referred to the racial disparity as "unexplained" and affirmed McCleskey's death sentence.

One area in which the Supreme Court has repeatedly addressed the issue of race involves jury pool representation and petit jury selection. The fact that the Court has seen fit to rule on race and jury composition suggests a tacit acceptance of the premise that the racial composition of a jury can affect the verdict it reaches, though this is a conclusion the Court has refused to endorse on several occasions (e.g., *Swain v. Alabama*, 1965). Most of the appeals filed were by Black defendants petitioning on the ground that their rights had been violated by the racial composition of the jury (e.g., *Batson v. Kentucky*, 1986); more recently the Court has begun to frame the issue of racial composition of the jury in terms of

violations of the right of Black Americans to be empaneled as jurors (e.g., *Georgia v. McCollum*, 1992).

As early as the 1880s, the Court ruled against statutes that formally limited jury service to Whites (*Neal v. Delaware*, 1880; *Strauder v. West Virginia*, 1879), but state legislatures often manipulated the qualifications necessary for jury service and voting registration in the attempt to exclude Blacks from juries (Bowers et al., in press). Not until *Norris v. Alabama* (1935) were mere statements of a lack of prejudicial intent in creating a jury pool deemed insufficient to refute a defendant's claim of discrimination. Even today, the guidelines established by the Court seek only to provide a racially-representative jury pool (Alschuler & Deiss, 1994; Fukurai et al., 1993), and a variety of factors (e.g., low rates of voter registration and low response rates to jury summons among Blacks) continue to prevent the attainment of equal representation in jury pools (Cohn & Sherwood, 1999).

For several decades after *Norris v. Alabama* (1935), practitioners of the law could still constitutionally manipulate the racial composition of petit juries through the use of peremptory challenges. In *Swain v. Alabama* (1965) the Court upheld the constitutionality of race-based peremptory challenges, as long as they were not found to be attempts to deprive Blacks of their right to jury service. The Court majority was apparently unswayed by the fact that no Black had served as a criminal juror in the past 15 years in Talladega County, Alabama, even though more than one-quarter of the region's population during that period was Black. It was not until 1986 that this strategy of removing Black jurors with race-based peremptory challenges was ruled unconstitutional (*Batson v. Kentucky*, 1986). And in the wake of *Batson*, today's judges continue to give prosecutors the benefit of the doubt when they offer race-neutral justifications for the exclusion of Blacks from juries (Alschuler & Deiss, 1994; Bowers et al., in press; Raphael & Ungvarsky, 1993).

Nonetheless, the Court's progression from *Swain* (1965) to *Batson* (1986) indicates an increasing awareness of the changing nature of racial prejudice. Whereas its ruling in *Swain* emphasized the absence of direct evidence of "purposeful racial discrimination," in *Batson* the Court went further, acknowledging that a more covert form of racism might influence legal proceedings despite the enactment of "neutral statutes" intended to ensure equal protection. Other recent Supreme Court opinions have also conveyed concern about jurors' "subtle, less consciously held racial attitudes" (*Turner v. Murray*, 1986), as well as the likelihood that "conscious and unconscious racism can affect the way White jurors perceive minority defendants . . . perhaps determining the verdict of guilt or innocence" (*Georgia v. McCollum*, dissenting opinion, J. O'Connor, 1992).

This increased sensitivity of the Supreme Court to racial issues doubtless reflects more widespread change in the racial norms of society and the nature of modern prejudice. Unlike the Reconstruction-era atmosphere that encouraged anti-Black sentiment, today's racial norms condemn racial prejudice and emphasize egalitarianism (Flagg, 1998). But since anti-Black stereotypes and attitudes still persist in modern America, contemporary Whites often find themselves trying to reconcile prejudicial thoughts with egalitarian values. This conflict carries over into the courtroom where the explicit racism of past jurors is no longer a foregone conclusion. This shift in racial norms leads to the hypothesis that White juror bias

is less likely to occur in racially-charged trials than it is in cases without salient racial issues. This hypothesis is examined in the next section by reviewing psychological research on White juror prejudice and the nature of contemporary racial attitudes.

Psychological Research on White Juror Prejudice

For decades, social psychologists have been interested in juror decision-making and in prejudice, but until recently the two areas were rarely brought together empirically or theoretically. The few experiments that have examined issues of prejudice in juror decisions have yielded inconsistent conclusions. Several studies using mock jurors have shown that when descriptions of the crime are identical, Whites are more likely to vote to convict Black defendants than White defendants (e.g., Foley & Chamblin, 1982; Klein & Creech, 1982) and give longer sentences to Black defendants (e.g., Gray & Ashmore, 1976; Sweeney & Haney, 1992). Other studies have qualified these results, concluding that White mock jurors demonstrate racial prejudice only in the face of incriminating inadmissible evidence against a Black defendant (Johnson, Whitestone, Jackson, & Gatto, 1995), or primarily in the artificial setting of the psychology laboratory where judicial instructions (Pfeifer & Ogloff, 1991) and deliberation (Bernard, 1979; Kerr, Hymes, Anderson, & Weathers, 1995) are typically omitted.

Still other research reveals no evidence of White prejudice at all. In their meta-analysis of 29 studies with over 6,000 participants, Mazzella and Feingold (1994) concluded that Black defendants were no more likely than White defendants to be found guilty (see also McGuire & Bermant, 1977; Skolnick & Shaw, 1997). Other researchers find no consistent evidence of racial prejudice in White jurors' sentencing of Black defendants (e.g., Hagen, 1974; Nickerson, Mayo, & Smith, 1986). McGowen and King (1982) arrived at the surprising conclusion that in some cases, White jurors are more punitive towards White, not Black, defendants. Returning to a consideration of modern racial norms enables a reconciliation of some of these contradictory findings.

Over the past few decades, social psychologists have been faced with the seemingly irreconcilable facts that there has been a decline in Whites' demonstration of overt prejudice and endorsement of explicitly racist beliefs, yet racial minorities continue to experience discrimination on an institutional and personal basis. Many theorists have converged on the similar explanation that White prejudice and racism still exist, but the nature and manifestations of this racial bias have changed (Gaertner & Dovidio, 1986; Kinder & Sears, 1981; McConahay, 1986). This new form of racism has been referred to by a variety of names including *modern racism*, *symbolic racism*, *subtle racism*, and *aversive racism*. Terminology aside, these theories share the common idea that Whites are no longer likely to demonstrate the overt, "red-necked" form of prejudice that was common in this country only a short time ago (Gaertner & Dovidio, 1986). Because racial norms in contemporary America have shifted towards egalitarianism, explicit demonstrations of racism are frowned upon in most communities.

Sadly, Whites' outward acceptance of an egalitarian value system has not led to the end of racial bias. Today, many Whites express their anti-Black sentiment through more subtle, symbolic, or "acceptable" means. Whites' racial attitudes

might manifest themselves through opposition to social policies designed to facilitate equality, such as affirmative action. Whites may also express prejudice through the endorsement of statements such as "Blacks are getting too demanding in their push for equal rights" (Modern Racism Scale, McConahay, 1986). Moreover, theorists have offered predictions about the situational factors likely to lead Whites to express bias. In their theory of aversive racism, Gaertner and Dovidio (1986) suggest that all Americans are aware of anti-Black stereotypes and beliefs by virtue of their birth into a historically racist culture. Many of these Whites embrace egalitarianism and make a conscious effort to behave in a nonprejudiced manner. As long as this egalitarian motivation is activated in these Whites—which occurs when race is made salient in a situation or when normative cues to avoid bias are strong—they are typically successful in avoiding prejudice.

However, in some situations the prejudicial attitudes and beliefs that linger in the consciousness of many Whites do emerge and influence their behavior and judgment. Gaertner and Dovidio (1986) predicted that when race is not salient or normative cues are absent during a social interaction or judgment task, Whites' motivation to appear nonprejudiced may not be triggered and prejudicial attitudes will become apparent. In other words, when they are not reminded or pressured by situational cues to avoid prejudice, White people often let down their guard and demonstrate bias. Support for this theory has been provided by various empirical studies. In a series of laboratory experiments reported by Gaertner and Dovidio, White people who claimed to have a strong egalitarian motivation were nevertheless quicker to associate negative personality traits with Blacks and positive personality traits with Whites. These results, which are consistent with the findings of other researchers obtained using a variety of populations and methods, suggest that even Whites who sincerely believe themselves to be nonprejudiced tend to harbor anti-Black sentiment that can influence their behavior (Devine, 1989).

Experiments in more natural settings have tested the prediction that situational factors influence Whites' expression of racial bias. In one study reported by Gaertner and Dovidio (1986), Black and White experimenters pretended to be stranded motorists and phoned unsuspecting White participants to ask for assistance. Each motorist, whose race was identifiable from his dialect, explained that he was using a pay phone next to the highway because his car had broken down. The motorist stated that he had used his last coin to make this call but must have dialed the wrong number, and he asked if the participant would phone a tow truck on his behalf. White participants belonging to a liberal political party, who presumably had strong egalitarian beliefs, were actually more likely to help the Black motorist than the White motorist after hearing the entire plea. As Gaertner and Dovidio explained, "Failure to offer assistance to a Black person once the necessity for help has been recognized would violate prescriptions for appropriate behavior and could be attributed to racial antipathy" (p. 69). But a substantial percentage of participants hung up on the caller before hearing about his need for assistance, and it was the Black motorist who suffered a disproportionate number of these premature hang ups. Before the motorist voiced his need for help and triggered strong normative pressures against hanging up, Whites were able to discriminate against the Black caller without worrying about appearing racist.

The theory of aversive racism has obvious implications for the investigation

of race in the contemporary courtroom. Gaertner and Dovidio (1986) conducted one relevant study in which the race of a defendant and the presence or absence of inadmissible incriminating evidence was manipulated. In the absence of inadmissible evidence, White mock jurors did not differ in their judgments of the White and Black defendants. When an incriminating statement allegedly made by the defendant was introduced and ruled inadmissible, White mock jurors expressed greater certainty of guilt in the Black defendant version than in the White defendant version of the case. White jurors who heard incriminating hearsay evidence about the Black defendant were able to rationalize their high guilt ratings as resulting from their desire to consider all the relevant trial evidence, not prejudice. Such a nonracial explanation for the influence of this evidence would be plausible but for the finding that mock jurors did not use the same inadmissible evidence against a White defendant. Johnson et al. (1995) reported similar results, suggesting that a nonracial justification allows White mock jurors to make biased decisions without appearing to be prejudiced.

Fein, Morgan, Norton, and Sommers (1997) also obtained findings that were consistent with aversive racism theory in a study investigating the influence of pretrial publicity on mock jurors. In this study, White mock jurors' verdicts in a case involving a Black defendant were influenced by newspaper articles about the defendant that they had read before reading the trial transcript. Mock jurors who were also given information suggesting that the media's treatment of the defendant was racially motivated were not influenced by the negative pretrial publicity. Reminded of the pervasiveness of racism in society and of their own desire to avoid prejudice, White mock jurors rendered unbiased decisions based only on the admissible facts of the case. In general, Gaertner and Dovidio's (1986) characterization of Whites' racial attitudes provides a useful theoretical framework for the present hypothesis that White juror bias is more likely in cases that are not racially charged. When race is an obvious issue at trial, White jurors may be on guard against racial bias. However, in trials without salient racial issues, White jurors may be less likely to monitor their behavior for signs of prejudice, and therefore more likely to render judgments tainted by racial bias.

The results of several mock juror experiments support the first half of this hypothesis—that blatantly racial issues in a trial make White juror bias less likely. Studies using trial scenarios with salient racial issues have often failed to reveal prejudice among White mock jurors. Skolnick and Shaw's (1997) study, for example, found no evidence of White racism in mock jurors' responses to a murder case designed to resemble the criminal trial of O. J. Simpson—the most notoriously race-salient trial in recent U.S. history. An examination of modern racial norms leads to the conclusion that the trial used by Skolnick and Shaw is exactly the type of case likely to elicit White jurors' defenses against the appearance of prejudice. Rather than demonstrating an absence of White bias in the legal system, this study highlights the importance of considering situational factors in investigations of juror bias.

Sommers and Ellsworth (2000, Study 1), consistent with the results of Skolnick and Shaw (1997), found no evidence of White juror bias when they presented mock jurors with five racially-charged written trial summaries. Each of these trials described a different cross-racial crime. For each trial, one version was created with a White defendant and one with a Black defendant, but the facts of

the case remained identical in the two versions. The five incidents were: a college basketball player who allegedly assaulted a teammate after a dispute involving a racial slur; a young man who allegedly robbed a stranded motorist of his wallet and told him to "go back to your own neighborhood"; a law school applicant who allegedly held a secretary hostage because he was frustrated by the program's racial admission policies; a middle-aged man who allegedly slapped his girlfriend in public while making racially-insensitive remarks; and an elderly man who allegedly burned down a church attended by congregants of a different race.

White participants read either the White or Black defendant version of each of these five cases. They were asked to render verdicts and recommend a sentence for the defendant in each case, and they were asked a number of questions about the defendant's personality characteristics and general dangerousness. White mock jurors' responses were not different in the White and Black defendant conditions for any of these dependent measures. These results led Sommers and Ellsworth (2000) to conclude that the plausible assumption that race-salient trials are most likely to elicit White juror prejudice is incorrect, and may in fact be responsible for the apparent dearth of social psychological research into race in the courtroom. Many of the studies that have used racially-charged trial materials may have wound up in researchers' file drawers with null results.

Of course, there are intuitive reasons for the assumption that racially-charged cases lead to juror bias (Fukurai et al., 1993; Hans & Vidmar, 1986; King, 1993). For example, it is easy to imagine scenarios in which a distasteful, racially-motivated crime will lead White jurors to punish a Black defendant severely. But it is also reasonable to assume that White jurors will be similarly punitive towards a White defendant who commits the same unsavory crime, such as the White men in Texas convicted of dragging James Byrd to his death simply because he was Black. If brutal, racially-motivated crimes do indeed lead to harsh verdicts for both White and Black defendants, then the outcomes in these trials are not inconsistent with the present hypothesis.

Others might suggest that there are specific racially-charged crimes that traditionally have elicited bias against Black defendants. An obvious example is a case involving a Black defendant charged with the rape of a White woman (Hymes et al., 1993; Wolfgang & Reidel, 1973). But the historical and cultural baggage attached to a small number of specific crimes is insufficient to refute the more general hypothesis that, on the whole, White juror prejudice against Black defendants is more likely in today's courts when a case is not racially charged.

Further support for this prediction is provided by mock juror studies using trials without blatantly racial issues, which often have produced evidence of White bias. For example, Gray and Ashmore (1976) found that White mock jurors were more punitive towards Black defendants than White defendants in a vehicular manslaughter trial that was race-neutral except for the manipulation of the defendant's race. In a meta-analysis of 19 studies, Sweeney and Haney (1992) attributed their conclusion that White mock jurors tend to discriminate against Black defendants during the sentencing phase of trials to the ambiguous nature of sentencing guidelines. Alluding to aversive racism theory, Sweeney and Haney concluded that "sentencing decisions may provide fertile ground for more modern, subtle forms of racism to operate" (p. 191). Lynch and Haney (2000) drew similar conclusions about the potential for bias in death penalty decisions.

The results of mock juror studies using trials with and without blatantly racial issues offer support for the present hypothesis. But a more rigorous and controlled test requires the experimental manipulation of a trial's racial content within the same study so that judgments of the race-salient and non-race-salient versions can be compared statistically. Sommers and Ellsworth (2000, Study 2) conducted such an experiment. One hundred fifty-six White mock jurors were given a written summary of a domestic assault trial in which the defendant was accused of slapping his girlfriend in a bar and knocking her down. Half of the participants read about a White defendant who slapped his Black girlfriend, and the other half read the same case with a Black defendant who slapped his White girlfriend. The race-salience manipulation in the trial materials involved what the defendant allegedly yelled at his girlfriend before slapping her. In the race-salient condition, the defendant's statement was "you know better than to talk that way about a White (or Black) man in front of his friends," explicitly bringing up the issue of race. In the non-race-salient condition, the defendant's race was identified in the demographic information provided to participants before the trial, but no mention of race occurred at any point during the trial proceedings. The defendant's statement in this version of the trial was modified to read "you know better than to talk that way about a man in front of his friends."

The impact of this one-word manipulation on White mock jurors' perceptions of the trial was statistically significant. In the race-salient condition (when the defendant referred to his race), mock jurors rated the White and Black defendant equally guilty. In the non-race-salient condition (when the defendant did not refer to his race), mock jurors gave higher guilt ratings and longer sentence recommendations to the Black defendant than to the White defendant. The proportion of Whites voting to convict the Black defendant rose from 73% in the race-salient condition to 87% in the non-race-salient condition (see Figure 1 for all cell means).

The influence of the trial's race-salience on mock jurors could be seen in a variety of other measures as well. In the non-race-salient trial, when an egalitarian value system presumably was not activated among White mock jurors, the prosecution case against the Black defendant was rated as stronger than the case against the White defendant. In addition, the defense case presented on behalf of the Black defendant was rated as significantly weaker than the White defendant's defense in this version of the trial. These differences emerged despite the fact that the prosecution and defense cases were identical in the White and Black defendant versions of the trial summary. No such pattern of bias was present in mock jurors' judgments of the race-salient trial.

Furthermore, subtly reminding mock jurors that race might be an issue in the case had a significant influence on White mock jurors' perceptions of the defendant himself. In the non-race-salient condition, White jurors rated the Black defendant as significantly more violent and aggressive than the White defendant. This pattern was reversed for positive personality characteristics; the White defendant was perceived to be more honest and moral than the Black defendant. Mock jurors were also less willing to make excuses for the behavior of the Black defendant. Jurors were more prone to agree that, compared with the White defendant, the Black defendant likely would be arrested for a similar crime in the future, and they were more likely to believe that the Black defendant's behavior

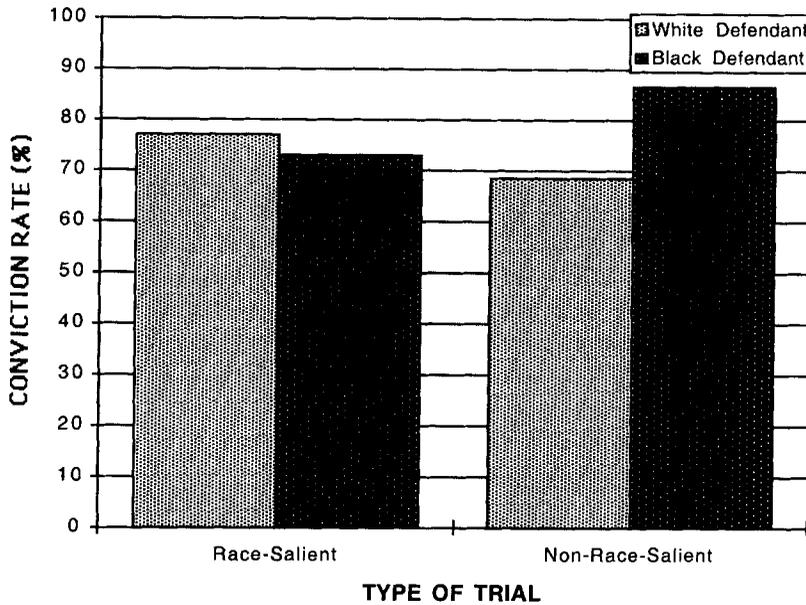


Figure 1. Conviction rates by defendant's race and race-salience of trial in Study 2, Sommers & Ellsworth (2000).

resulted from a criminal personality type. Once again, none of these differences emerged when racial issues in the trial were salient. It is also worth noting that even though the crime in question involved a male accused of abusing a female, no gender differences were found in mock jurors' perceptions of the case.

The Present Study

The findings summarized above provide initial support for the central hypothesis of this article. However, only one type of crime was used in Sommers and Ellsworth's (2000) Study 2, rendering necessary further research to test the generality of this pattern of bias. Domestic altercations involving partners in interracial relationships might carry with them historical and cultural baggage that have an idiosyncratic influence on White jurors. Such cases might tap into the unique anger Whites have traditionally reserved for Black defendants charged with raping or abusing White women (Radelet et al., 1992; Wolfgang & Reidel, 1973), and they could conjure up images of the O. J. Simpson trial. Therefore, the first goal of the present empirical study is to examine White jurors' judgments of a case outside the realm of domestic assault.

In addition, Sommers and Ellsworth (2000) manipulated race-salience only by means of a statement uttered by the defendant during the incident. There are myriad ways in which race can be made salient during a trial (e.g., attorneys' arguments, witnesses' remarks, the actions and testimony of police officers, judicial instructions, pretrial publicity). The present hypothesis about White juror bias is not contingent upon any one method for making racial issues salient in a trial, and it is therefore essential for the theory that the predicted pattern of results generalizes to more than one race-salience manipulation. The second goal of the

present study is to examine whether or not White juror bias can be influenced by racial trial issues other than statements made by the defendant during the alleged crime.

It is important to note that, with few exceptions (Bernard, 1979; McGuire & Bermant, 1977), the research on racial bias in juror decision-making reviewed in this section was conducted using college students as mock jurors. Various scholars and researchers have weighed in on the question of whether reliance on college participants skews the results of mock juror studies (MacCoun, 1989; Wiener, Habert, Shkodriani, & Staebler, 1991). For example, some data indicate that college students are more lenient and more likely to adhere to legal standards than other adult mock jurors (King, 1993). More directly at issue for the current investigation is the possibility that college students are less likely to demonstrate discrimination than other mock jurors are. Indeed, the egalitarian value system at the core of theories such as aversive racism might be especially strong on the politically correct college campus. The findings of Sweeney and Haney (1992), however, suggest that the influence of race on the decisions of college students does not differ significantly from its effect on other mock jurors. Nonetheless, non-college-student participants were recruited for the present study in the attempt to examine mock juror bias using a more representative sample. Broader issues concerning the universality of an egalitarian value system among White Americans will be revisited in the *Discussion*.

In sum, the purpose of the present study is to continue the investigation into race in the courtroom begun by Sommers and Ellsworth (2000). In Study 1 of that paper, White mock jurors were presented with five racially-charged trial summaries, and they did not demonstrate racial bias in their decisions about the trial or in their ratings of the defendant. The race of the defendant and the race-salience of the trial summary were both manipulated in Study 2, and once again White mock jurors did not demonstrate bias when race was a salient trial issue. When race was not salient, however, White mock jurors were more likely to convict the Black defendant, and they perceived the Black defendant's personality in a more criminally-inclined, negative light. The present study was designed to extend these initial findings to a trial using a different crime and a different race-salience manipulation. In any line of empirical research, systematic replication of the basic findings is necessary, and convergent validity achieved by generalization of the stimulus materials is essential. Consequently, this study is an attempt to increase the real-world applicability of Sommers and Ellsworth's findings and to test the boundary conditions of this article's central hypothesis.

Method

Overview

Mock jurors were presented with the written trial summary of an interracial battery case. Half of the mock jurors read a trial summary about a White defendant and Black victim, and the other half read the same trial summary about a Black defendant and White victim. The racial content of the trial was also varied so that half of the mock jurors read

a race-salient version and half read a non-race-salient version (although they were made aware of the defendant's race in all conditions). Race was made salient in the trial summary through the testimony of a defense witness about the defendant's minority status on his high school basketball team. White jurors were expected to be more likely to discriminate against the Black defendant in the non-race-salient condition than in the race-salient condition.

Before describing the method and results of this study, it is important to address the fact that the alleged victim was always the opposite race of the defendant in the experimental trial summary. This raises the methodological possibility that the victim's race might have influenced mock jurors instead of or in addition to the defendant's race because both the defendant's and victim's race were manipulated simultaneously. An interracial trial summary was used to allow for the race-salience manipulation of defense claims of racial provocation (it would not make sense for a White defendant to claim he was racially provoked by his White teammates). An interracial trial summary was also used in Sommers and Ellsworth (2000, Study 2), where race-salience was manipulated by racial language allegedly used by the defendant during the incident (it would not have made sense for a White defendant to say to a White woman, "you know better than to talk that way about a White man in front of his friends"). Using these designs, it is difficult to separate the effects of the defendant's race and the victim's race on juror performance.

However, the alternative explanation for the reported results—that the victim's race principally influenced jurors in Sommers and Ellsworth (2000)—is theoretically inconsistent with the observed data. This alternative hypothesis would be that White jurors are more lenient towards a defendant who harms or wrongs a Black victim, and are angered by the illegal behavior of a defendant towards a White victim (Baldus et al., 1990; Klein & Creech, 1982). Such a victim-focused increase in White juror punitiveness should be greatest when a White victim's race is the motivation for an assault or is invoked during the commission of a crime. But the opposite pattern of results was found. When testimony in the case used by Sommers and Ellsworth (Study 2) indicated that the Black defendant made racially-charged statements at the victim's expense, White jurors did not demonstrate racial bias. It was the non-race-salient version of these trials that elicited juror bias, consistent with the conclusion that the race of the defendant drove the observed pattern of results in Sommers and Ellsworth.

Other results reported by Sommers and Ellsworth (2000) also indicate that mock jurors' decisions were in fact driven by reactions to the defendant, not reactions to the alleged victim (see Lynch & Haney, 2000, for a similar finding in a mock juror study). In Study 2 (Sommers & Ellsworth, 2000), a series of questions measured participants' perceptions of both the defendant and the victim. As reported above, mock jurors perceived the defendant quite differently depending on his race and the race-salience of the trial; no differences were revealed across conditions in perceptions of the victim. Mock jurors' ratings of the defendant along a variety of personality dimensions were significantly correlated with their verdict and sentence recommendations. Participants who rated the defendant as violent and aggressive were more likely to render a guilty verdict and recommend a longer sentence for the defendant. There was no such relationship between perceptions of the victim's personality and jurors' decisions. These correlational data suggest that the paradigm used in the present study is an effective way of measuring the interactive influence of the race of a defendant and the race-salience of a trial on mock juror decisions. Nonetheless, the relative influence of both a defendant's race and a victim's race on mock jurors has not yet been examined in conjunction with the variable of race-salience, and such an investigation would obviously be informative.

Participants and Design

One hundred ninety-six White participants were approached by a White experimenter in waiting areas of a major international airport. Eighty-eight participants (45%) were female, 107 were male (55%) were male, and 1 (.5%) did not provide gender information. Participants were born in the U.S. and ranged in age from 18–83 years ($M = 43$). More specific questions regarding their eligibility for jury service were not posed. Since a driver's license or equivalent state identification is required for air travel and is also used for jury mailing lists, it is safe to assume that most of the participants recruited were jury eligible. Individuals were asked if they would read and complete a questionnaire about legal attitudes while they waited. Each participant received one version of the trial summary from the 2×2 factorial design: *race-salient/White defendant*, *race-salient/Black defendant*, *non-race-salient/White defendant*, *non-race-salient/Black defendant*. The questionnaire instructions emphasized the importance of taking the role of mock juror seriously, and participants were asked to render judgments as if they were actual jurors in a real case.

Materials

The trial summary included demographic information about the defendant and victim at the top of the page. In the trial summary for the White defendant, the following information was provided:

Defendant: Matthew Clinton, 6'2", 195 lbs., Caucasian male, 18 years old, student.

Victim: André Barkley, 6'0", 165 lbs., African American male, 16 years old, student.

In the summary for the Black defendant, the following information was provided:

Defendant: André Barkley, 6'2", 195 lbs., African American male, 18 years old, student.

Victim: Matthew Clinton, 6'0", 165 lbs., Caucasian male, 16 years old, student.

Additional information about the defendant's height, weight, and age was included to prevent mock jurors from guessing that the study's primary hypotheses involved the race of the defendant. All mock jurors received the demographic information; the race-salience manipulation occurred within the actual trial summary.

The trial summary consisted of two paragraphs describing the prosecution case, two paragraphs describing the defense case, and a paragraph of judicial instructions and criteria for conviction adapted from the California Penal Code. The defendant was a high school basketball player charged with one count of battery with serious bodily injury after an altercation with a teammate in the locker room. The prosecution claimed that the defendant was upset over losing his place in the starting line-up and attacked his replacement. The defense admitted that the defendant confronted his teammate in the locker room, but claimed that when a third player stepped in and tried to restrain him, the defendant panicked and tried to break free and leave the room. According to the defendant, while he was trying to escape, he accidentally made contact with the victim.

In the *race-salient* version of the trial, a defense witness testified that the defendant was one of only two Whites (or Blacks) on the team, and had been the "subject of racial remarks and unfair criticism throughout the season from many of his Black [White] teammates." This was the only mention of the defendant's race in the entire case, other than the demographic information presented earlier. There was no mention of the defendant's race in the trial proceedings in the *non-race-salient* version. Instead, the same defense witness testified that the defendant had only one other friend on the team and had been the "subject of obscene remarks and unfair criticism from many of his teammates." This testimony marked the only difference between the race-salient and non-race-salient conditions.

The questionnaire given to mock jurors consisted of one version of the trial summary, followed by several case-related questions. First, participants were asked to render a verdict by circling either "Not Guilty" or "Guilty." They were asked to rate their confidence in this verdict on a scale ranging from 1 (*not at all confident*) to 9 (*very confident*), and were asked to rate the strength of the prosecution and defense cases on a similar scale of 1 (*not at all strong*) to 9 (*very strong*). Finally, mock jurors were provided with the maximum allowable sentence for the crime of battery with serious bodily injury and were asked to recommend a sentence for the defendant. Nine different sentencing options were available, ranging from no punishment to probation to four years in prison. Mock jurors' responses were converted into a 9-point scale on which higher numbers reflected the increased severity of the sentence.

Results

Across all four conditions, 74% of the participants recommended a guilty verdict for the defendant. No significant gender differences were found for any of the dependent measures. As in Sommers and Ellsworth (2000, Study 2), White jurors in the present study demonstrated a significantly higher conviction rate for the Black defendant in the non-race-salient condition than in the race-salient condition, $\chi^2(1, N = 95) = 4.03, p < .05$. As expected, in the race-salient condition conviction rates for the White defendant (69%) and Black defendant (66%) were comparable. In the non-race-salient condition White jurors were more likely to convict the Black defendant (90%) than the White defendant (70%), and this difference on the dichotomous verdict measure was marginally significant, $\chi^2(1, N = 96) = 2.97, p < .09$. This pattern of results emerged throughout the present analyses, as White mock jurors did not discriminate on the basis of race in the race-salient conditions, but did demonstrate racial bias in the non-race-salient conditions. A logistic regression confirmed the significant interaction between the defendant's race and race-salience of the trial on verdict judgments ($\beta = .38, p < .04$), which is depicted graphically in Figure 2.

Participants were asked to rate how confident they were in their verdict. These confidence scores were multiplied by +1 for a guilty verdict and -1 for a not guilty verdict in order to obtain a continuous verdict-confidence score that could be analyzed through an analysis of variance (ANOVA). The scaled scores obtained therefore ranged from -9 (*extreme confidence in a not guilty verdict*) to +9 (*extreme confidence in a guilty verdict*). A two-way ANOVA revealed no significant main effects for defendant's race, $F(1, 191) = 1.59, ns$, or for race-salience $F(1, 191) = 2.17, ns$, but did indicate a significant interaction between defendant's race and race-salience, $F(1, 191) = 4.19, p < .05$. This interaction provided support for the prediction that the salience of racial issues in a trial influences White jurors' decisions. As expected, in the non-race-salient condition White mock jurors judged the Black defendant ($M = 5.40$) more harshly than the White defendant ($M = 2.76$), $t(191) = 2.33, p < .03$, via planned contrast. The difference between ratings of the Black defendant in the non-race-salient and race-salient conditions ($M = 2.59$) was also statistically significant, $t(191) = 2.45, p < .02$. Table 1 displays the four cell means for this and all subsequently reported dependent measures.

Participants were asked to rate the strength of the prosecution case on a scale of 1-9. A two-way ANOVA revealed no significant main effects for defendant's

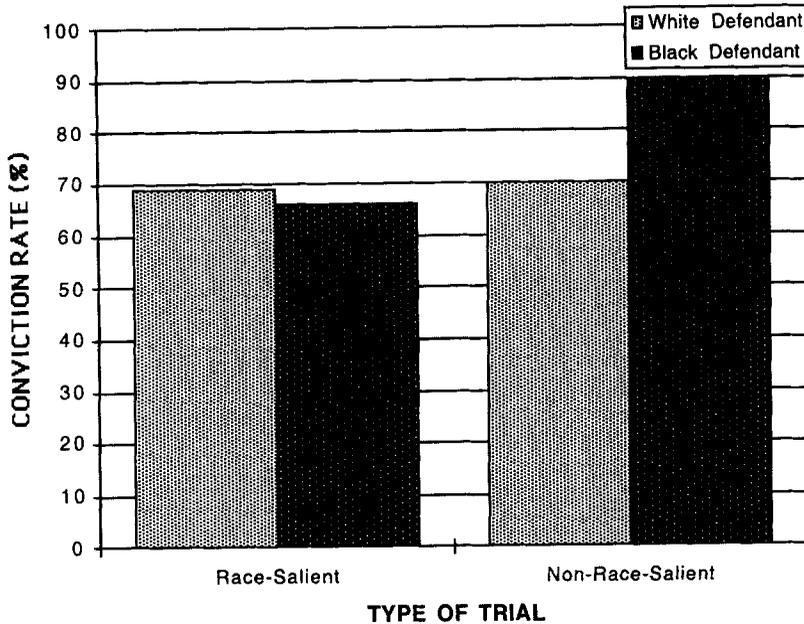


Figure 2. Conviction rates by defendant's race and race-salience of trial.

race, $F(1, 191) = 1.59$, *ns*, or for race-salience $F(1, 191) = 1.25$, *ns*, but did indicate the predicted interaction between defendant's race and race-salience, $F(1, 191) = 4.24$, $p < .05$. A planned contrast supported the prediction that in the non-race-salient condition the case against the Black defendant ($M = 6.32$) would be rated as stronger than the case against the White defendant ($M = 5.42$), $t(191) = 2.34$, $p < .03$. Jurors also rated the prosecution case against the Black defendant in the non-race-salient condition as significantly stronger than the case against the Black defendant in the race-salient condition ($M = 5.43$), $t(191) = 2.21$, $p < .03$.

Similar results were obtained for participants' ratings of the strength of the defense case, as the interaction between defendant's race and race-salience was

Table 1
Cell Means and Standard Deviations by Condition

Measure	Race-salient trial				Non-race-salient trial			
	WD		BD		WD		BD	
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>
Scaled verdict-confidence	3.22	5.88	2.59	6.15	2.76	5.85	5.40	4.17
Strength of prosecution	5.65	1.89	5.43	2.31	5.42	1.97	6.32	1.62
Strength of defense	4.38	1.83	4.51	1.80	4.56	1.65	3.76	1.87
Sentence recommendation	3.27	1.94	3.18	1.60	3.28	1.76	4.42	2.19

Note. For each measure, the mean for the BD in the non-race-salient condition is significantly different ($p < .05$) from the means in the other three conditions through planned contrast. WD = White defendant; BD = Black defendant.

marginally significant, $F(1, 194) = 3.21, p < .08$. White mock jurors in the non-race-salient condition rated the White defendant's defense ($M = 4.56$) as stronger than the Black defendant's ($M = 3.76$), even though the defense attorney's examinations and arguments were identical for both defendants. A planned contrast supported the prediction that the Black defendant's defense would be rated as weaker in the non-race-salient condition than in the race-salient condition ($M = 4.51$), $t(191) = 2.04, p < .05$.

Participants were also asked to recommend a sentence for the defendant from among several options that ranged from no punishment to four years in prison, the maximum allowable sentence for the crime of battery with serious bodily injury. These responses were converted to a scale of 1–9 on which higher numbers reflected the increased severity of the sentence recommendation. A two-way ANOVA revealed a marginally significant main effect for defendant's race, $F(1, 192) = 3.69, p < .06$, and a significant main effect for race-salience, $F(1, 192) = 5.32, p < .03$. More importantly, the ANOVA indicated a significant interaction effect, $F(1, 192) = 5.15, p < .03$. As predicted, juror bias in sentence recommendations was influenced by the salience of racial issues in the trial (see Figure 3). A planned contrast confirmed that in the non-race-salient condition mock jurors recommended a more severe sentence for the Black defendant ($M = 4.42$) than for the White defendant ($M = 3.28$), $t(192) = 2.94, p < .005$. Sentence recommendations were more severe for the Black defendant in the non-race-salient condition than in the race-salient condition ($M = 3.18$), $t(192) = 3.19, p < .005$.

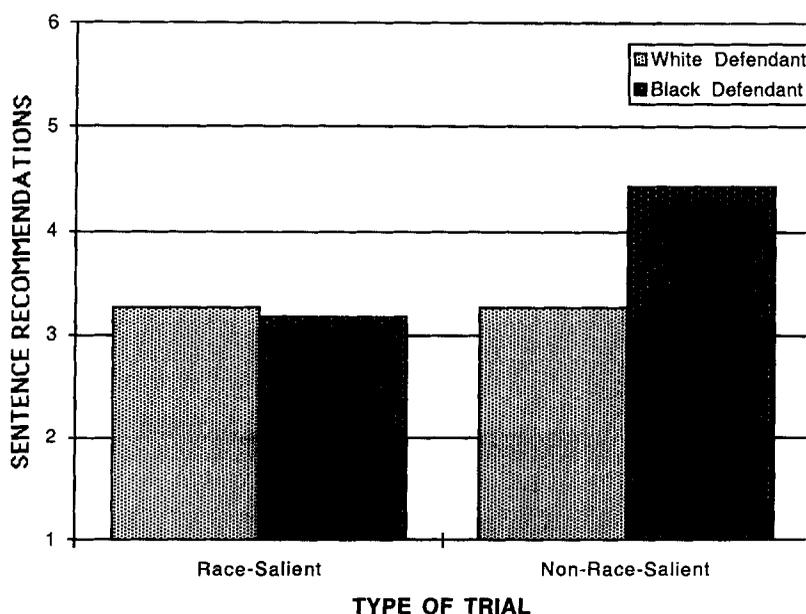


Figure 3. Sentence recommendations by defendant's race and race-salience of trial. Higher numbers on the y axis correspond to harsher sentence recommendations.

Discussion

Mock jurors' judgments in the present study supported the hypothesis that White jurors are more likely to demonstrate racial prejudice in cases without salient racial issues. When race was made salient in the experimental trial, Whites demonstrated no signs of discrimination, apparently because the racial content of the trial activated a motivation to appear nonprejudiced. However, when race was not a salient issue, a motivation to avoid prejudice was not expected among jurors, and White mock jurors did indeed demonstrate racial bias in their judgments. This racial bias could be seen not only in mock jurors' verdict and sentence recommendations, but also in their ratings of how strong the prosecution and defense cases were. These results, while consistent with the present hypothesis, are inconsistent with the intuitive prediction of many scholars that racial bias is more likely to occur in racially-charged cases (Fukurai et al., 1993; Hans & Vidmar, 1986; King, 1993). The present data also contradict some scholars' arguments (Reynolds, 1996) and some empirical indications (Skolnick & Shaw, 1997) that White juror bias no longer is a problem in contemporary America.

The present results extend the initial findings of Sommers and Ellsworth (2000) because they were obtained using a trial summary free of the unique connotations carried by interracial romantic relationships. These results indicate that the predicted pattern of White juror bias is not confined to judgments of defendants charged with one particular type of crime. Another implication of the present findings is that race can be made salient in a trial in more than one way. In the trial summary used in this study, race was made salient through the testimony of a defense witness about the defendant's minority status on the basketball team and the abuse he suffered as a result. This generalization to another type of crime and a different racial issue increases the practical significance of these findings by testing the boundary conditions of the present hypothesis.

The practical significance of this study can be addressed more directly by considering how the effects reported in the present data might translate into bias among real jurors in real cases. Examining effect sizes reveals that both the race of the defendant and the race-salience of the trial account for less than 4% of the variance explained in mock jurors' decisions about the case (via binomial effect size display for the dichotomous verdict variable and η^2 for the continuous measures). This apparently small effect is somewhat stronger than the effect of a major league baseball player's batting average on the likelihood that he will get a hit in a particular at bat (Abelson, 1985)—no single factor can be expected to account for a great deal of variance in complex events such as baseball games or criminal trials. Quantitatively small effects are often practically consequential (Johnson & Eagly, 2000), and focusing on jurors' actual conviction rates across conditions reveals the dramatic and significant influence of race on jurors' decisions in this study. The difference in conviction rates for the White and Black defendant in the non-race-salient condition of the present study was 20%; the difference in conviction rates for the Black defendant in the race-salient versus non-race-salient conditions was 24%.

On a 12-person jury, a difference of 20 percentage points in conviction rates amounts to a difference in the predeliberation opinions of 2 or 3 jurors. If a

12-person jury were to hear the non-race-salient version of the present trial with a White defendant, the results suggest that 8 jurors would enter the deliberation room leaning towards a conviction and 4 towards an acquittal. With the same case and a Black defendant, 11 jurors would be conviction-prone and only 1 juror would be likely to argue for acquittal at the start of deliberation. This is clearly a difference of substantial importance and concern. First of all, the predeliberation opinions of individual jurors are excellent predictors of a jury's eventual verdict, particularly for simple guilty-versus-innocent verdicts on a single charge (Kalven & Zeisel, 1966). In addition, the deliberation dynamics that would be in place for the present case would be drastically different depending on the race of the defendant. The predicted 8-to-4 preliminary vote to convict the White defendant might lead to a guilty verdict, but there would be enough jurors on each side of the issue for there to remain a chance of acquittal. Hastie, Penrod, and Pennington (1983, p. 96), for example, found that when 12-person juries operate under a unanimity rule, a majority of 8 actually determines the final verdict less than 70% of the time; there is a reasonable chance that a minority of 4 jurors will influence the majority. An 11-to-1 preliminary vote to convict the Black defendant is a much different story. Minority influence is extraordinarily difficult when a person in the minority has no allies (Asch, 1956; Moscovici & Lage, 1976).

Implications for Legal Policy and Practice

Jury composition. The theoretical framework proposed in this article is a useful first step towards developing a better understanding of when and why racial bias is likely to occur among jurors. A logical next question involves what policies or practices can be adopted in order to reduce the likelihood of juror bias. An obvious way to combat White juror bias is to avoid juries that are exclusively White. There are a variety of ways in which the presence of Black jurors can reduce White juror bias. First, simply by having a vote in the final verdict, Black jurors can potentially prevent unanimous miscarriages of justice. However, interview studies and anecdotal evidence suggest that Black jurors often face a great deal of pressure to conform to the wishes of the White majority during deliberation (Bowers et al., in press).

The inclusion of Blacks on a jury can also influence the way that White jurors think about the case. The mere presence of Black jurors might be a normative cue that makes race salient and reminds many Whites about their egalitarian values. That is, without even explicitly mentioning race, Black jurors might be able to bring racial issues into the consciousness of White jurors and thereby make bias less likely. Empirical evidence suggests that even expectations surrounding the racial composition of a jury are sufficient to influence jurors' predeliberation decisions (Kerr et al., 1995). Black jurors might also raise consciousness about racial issues more directly and intentionally. Research suggests that Black jurors are more likely than Whites to believe that a Black defendant could have been singled out by police or prosecutors because of his race, and are more likely than Whites to perceive race as a relevant issue at trial (Bowers et al., in press; Sommers & Ellsworth, 2000). Accordingly, Black jurors may be more likely than Whites to raise the possibility of racial prejudice during deliberation. The greater the number of Blacks sitting on a jury, the greater the chance that discrimination

or racial issues in general will be brought up, and the present findings suggest that making such issues salient renders bias less likely.

Jury selection during voir dire. The question of how to ensure that juries are racially heterogeneous is a different matter. Strategies such as racial quotas for jury selection or other affirmative action measures have generally been viewed with suspicion (King, 1993). Even attempts to improve the representativeness of the jury pool by adding Black citizens have so far failed to gain legal approval (Cohn & Sherwood, 1999), although less explicitly racial methods, such as geographical oversampling of Black neighborhoods, have not yet been examined by the courts. Certainly one strategy would be to scrutinize so-called "race-neutral" *Batson* (*Batson v. Kentucky*, 1986) exclusions more stringently than has often been the practice (Bowers et al., in press; Raphael & Ungvarsky, 1993).

The process of voir dire itself is another way in which bias might be diminished. The nature of a crime and the race of the defendant or victim sometimes prompts attorneys or judges to ask potential jurors about their racial attitudes and their ability to make a nonprejudiced decision. In *Turner v. Murray* (1986), the Supreme Court ruled that this line of questioning is a key element in the attempt to ensure a defendant's right to an impartial jury, at least in capital cases. The present research suggests that asking potential jurors about their racial attitudes may indeed reduce White juror bias, but through a more indirect route. Voir dire questions may be more successful in influencing jurors affected by modern racism than in identifying them.

Due to racial norms in contemporary America, modern racism is often expressed in subtle ways and prejudicial thoughts often linger outside Whites' conscious awareness. As a result, when asked about their ability to remain race-neutral, few White Americans admit to harboring anti-Black sentiment. Some potential jurors may intentionally lie in order to avoid appearing prejudiced. Others may truly believe they are impartial. In either case, the principal usefulness of direct questioning about racial attitudes lies not in its diagnostic ability to unmask potentially biased jurors. Rather, the questions themselves can serve to remind Whites about their egalitarian values, suppressing the eventual expression of racial bias. In addition to case-specific questions, asking potential jurors about their beliefs regarding the fairness of the criminal justice system or the pervasiveness of racism in society at large may also make race more salient. In courtrooms where attorneys have some leeway in voir dire questioning, the introduction of racial issues during jury selection is a potential strategy for preventing White juror bias.

"Playing the race card." Race can also be made salient during the course of a trial. In the present study, a defense witness' description of the role race played in the incident was enough to lead White jurors to render nonprejudiced judgments of a Black defendant. An attorney defending a Black defendant might be wise to intentionally introduce racial issues during a trial's proceedings, during the examination of witnesses, or during opening or closing arguments. An attorney might suggest that a Black defendant's race influenced the allegedly criminal incident, the subsequent police investigation, the likelihood of arrest, or the indictment decision eventually made by prosecutors. Essentially, such a strategy would be "playing the race card," a phrase made (in)famous by Johnnie Cochran in the O. J. Simpson criminal trial. Cochran, though, was playing to a

predominantly Black jury, and his repeated accusations of police misconduct and racism were intended to inflame the racial passions of these non-White jurors. In some cases a modified version of this tactic could be an effective way to remind White jurors of their egalitarian values and of the possibility of racial bias in the criminal justice system.

“Playing the race card” in order to influence White jurors could be a risky endeavor though. Making racial issues salient in a trial will remind White jurors of their desire to appear nonprejudiced. But if claims of racial injustice or police misconduct are perceived by Whites as baseless or as manipulative attempts to get a seemingly guilty defendant off the hook, the strategy might actually backfire. Empirical research suggests that suspicion about the ulterior motives of attorneys can undermine their attempts to influence mock jurors (Fein, McCloskey, & Tomlinson, 1997). White jurors might particularly resent transparent attorney tactics when they are related to the sensitive issue of race.

An unpublished, preliminary mock juror study conducted by the present authors (Sommers & Ellsworth, 1999) revealed that when the defense case was relatively weak, jurors were more likely to vote guilty when the defense attorney alleged a racially-motivated police conspiracy. According to posttrial measures, most mock jurors did not believe these racial allegations and viewed them as a last-ditch attempt to stave off conviction. Future research is needed to clarify the situations in which playing the race card will effectively combat White juror bias. For now, a likely hypothesis is that the strategy can be effective with White jurors when the racial claims made are substantiated by evidence and the case against the defendant is not air-tight.

Limitations and future directions. As is the case with all mock juror research, there are some limitations of the present study that must be considered when drawing conclusions. The central hypothesis of this article assumes that most Whites actually endorse the egalitarian value system described by Gaertner and Dovidio’s (1986) theory of aversive racism. The present study was conducted using middle-class Northern American Whites as mock jurors. Among Whites of different socioeconomic or geographic backgrounds, the motivation to appear nonprejudiced might be weaker, and in some cases nonexistent. As has been argued throughout this article, consideration of the racial norms and mores of the communities that surround modern courtrooms is essential for understanding juror bias within them. Whites who unabashedly express overtly prejudicial attitudes will likely demonstrate bias against Black defendants in all cases, regardless of their race-salience. Overt and conscious racism such as this is highly pernicious, but it is easier to detect and predict (e.g., during jury selection) than the more subtle form of prejudice described by Gaertner and Dovidio. Following the lead of numerous contemporary social psychologists (Devine, 1989; Dovidio, Kawakami, Johnson, Johnson, & Howard, 1997; Greenwald & Banaji, 1995), it is this less conscious, less overt form of modern prejudice that the present study examined.

Jurors in the present study rendered verdicts without deliberating, a methodological omission that Bernard (1979) and others have pointed to as a common flaw in mock juror research. Incorporating deliberation into future investigations of race in the courtroom is an important extension of this research. More generally, it is important to acknowledge that there certainly are differences

between mock jurors rendering decisions about a defendant who only exists on paper and real jurors making judgments about the fate of an actual defendant. But the usefulness of studies such as the present one is that they allow the investigator to compare jurors' judgments across a variety of trials, and they afford the researcher a necessary degree of experimental control that is impossible to achieve outside the laboratory. They are also a necessary first step in designing more expensive and elaborate studies that examine deliberation. Mock juror experiments such as the present study serve a limited but nonetheless essential role in legal research, and they should be considered in conjunction with historical trends, archival data, and legal theory—a cross-disciplinary approach adopted in this article.

As previously mentioned, the race of the victim is another consideration in need of empirical attention. Victim's race historically has been found to influence juror decisions and has also been linked more specifically to juror bias (Baldus et al., 1990; Wolfgang & Reidel, 1973). In light of the present theoretical perspective, one hypothesis would be that a victim's race is influential in part because it can lead to salient racial issues at trial. Attorneys are more likely to make racially-charged arguments in interracial cases, and witnesses are more likely to address race on the stand in such trials. In some interracial cases, the issue of race might be so endemic to the crime itself that it becomes salient from the very outset of the trial (e.g., hate crimes, cases involving police brutality or fabrication of evidence). It will be important in future research to systematically vary both the defendant's race and the victim's race, including Black-on-Black, Black-on-White, White-on-Black, and White-on-White crimes in the same study. Making race a salient issue in a same-race crime, particularly a crime involving only White people, and doing so in a way that is equally plausible across all four defendant-victim combinations, is not a simple task, however, and it is one that the present authors are still working on.

As explained in the *Introduction* of this article, the present investigation focuses on White juror bias because of the long history of White racism in this country and because most psychological theories of prejudice and discrimination focus on White perceivers. But certainly the decision-making of non-White jurors is also of interest and importance. By examining the influence of race on the decision-making of jurors from a wide variety of backgrounds, a more complete picture of racial attitudes in the courtroom can be attained. Furthermore, cross-racial comparisons of White and non-White jurors are empirically necessary in order to determine whether racial bias differs by jurors' race or is simply a universal cultural phenomenon in America. Such cross-racial comparisons have been made on occasion; for example, the Sommers and Ellsworth (2000) studies also examined the decisions made by Black mock jurors. The results indicated that Black jurors tended to demonstrate leniency towards a Black defendant in both the race-salient and non-race-salient conditions. Skolnick and Shaw (1997) describe a similar finding of same-race leniency among Black jurors.

Although so far there are limited data, one plausible explanation for this pattern of results involves the same issues of race-salience and racial norms addressed throughout this article. Black mock jurors in Sommers and Ellsworth (2000) were more likely than White mock jurors to rate the case of a Black defendant as racially charged even in the non-race-salient condition. This pro-

pensity to view trials of Black defendants as race-salient might stem from the racial concerns of Black Americans, which some theorists have characterized as being chronically suspicious of White institutions and focused on combating White racism (Jones, 1997; Shelton, 2000). Accordingly, salient racial issues might activate a motivation in Black jurors to level the playing field for Black defendants by giving them, and not the predominantly White system, the benefit of the doubt in criminal trials. This is mere speculation, however, and additional investigation of these questions is obviously needed, especially given recent, problematic arguments that the real problem of racial bias in the legal system lies with Black juror nullification (Reynolds, 1996).

A related research question entails studying the actual decision-making process of jurors in conjunction with racial bias. Almost all of the studies cited and the data reported in this article concern the final decisions of jurors (conviction rates and sentence recommendations). Also of interest is the process through which jurors arrive at these decisions. In the case of White jurors, do differential conviction rates for White and Black defendants reflect different interpretations of trial evidence? Do White jurors make different attributions for the behavior of White and Black defendants? Are their story constructions for the facts of the case (Pennington & Hastie, 1992) influenced by race? Along these lines, it should also be possible to determine whether the same-race leniency demonstrated by Black jurors reflects a conscious decision to level the playing field for Black defendants, or actual differences in the perception and interpretation of evidence depending on the defendant's race. A variety of methods, including online evidence ratings, midtrial guilt measures, and open-ended response questions could be used to examine these possible process differences.

Conclusion

This article continues the investigation of Sommers and Ellsworth (2000) and confirms the importance of race-salience as a variable influencing White juror bias. Without controlling for race-salience, many previous researchers of race in the courtroom have arrived at ambiguous and inconsistent conclusions. Much of this uncertainty can be resolved by the theoretical perspective outlined here. The present empirical findings support the hypothesis that White jurors are more likely to demonstrate racial bias in cases that do not raise blatantly racial trial issues. This depiction of the nature of modern juror bias is consistent with Gaertner and Dovidio's (1986) conceptualization of aversive racism, and is also reflected in recent Supreme Court opinions that cite the potential biasing influence of subtle, less overt forms of racial prejudice (e.g., *Turner v. Murray*, 1986).

The abolition of separate, race-based penal codes and other institutionalized forms of discrimination in the legal system has led many researchers to focus their examination of bias in the modern American courtroom on the decisions of jurors. Studies of racism in the legal system are well served by analyses at the level of the individual juror and jury, but one of the main purposes of this article is to emphasize the importance of considering the broader historical contexts and sociocultural atmospheres in which American courtrooms exist. Returning to the concerns raised by Harper Lee forty years ago, it seems true that most Americans no longer live in a society as racist as the one depicted in *To Kill a Mockingbird*

(Lee, 1960). After centuries of activism and struggle, the expression of anti-Black sentiment has become inappropriate and even taboo in many communities. Black defendants certainly have a better chance of getting “a square deal” today than they did in the past. But even if the torrent of racism that once dominated the U.S. legal system has subsided, an undercurrent of prejudice continues to influence juror decisions. To this day, one cannot assume defendants always receive a fair trial regardless of the color of their skin. People still carry their resentments into the jury box with them, often without realizing they are doing so. And, there certainly are no assurances that today’s court-appointed defense attorneys are all as devoted or persuasive as Atticus Finch.

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