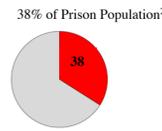
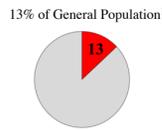


Mitigating Implicit Bias among Criminal Court Jurors: Intervention through Instruction

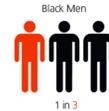
Hannah Bolotin and Steven Stemler, PhD
Department of Psychology, Wesleyan University

Introduction

In the United States,
African Americans represent...



Lifetime Likelihood of
Imprisonment by Race³



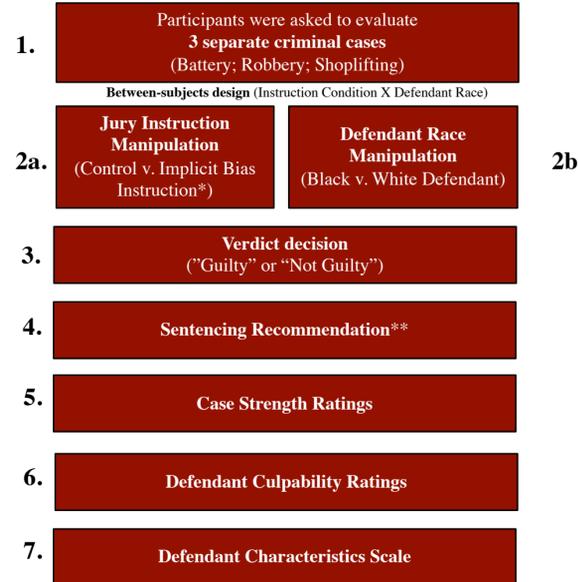
- Implicit bias exists across environments and toward a wide variety of individuals and social groups⁴.
- Implicit racial bias can influence criminal justice procedure and outcomes^{5,6,7}.
- While some district courts have attempted to mitigate the effect of implicit bias on jurors' decisions through special instructions⁸, the efficacy of such instructions remains understudied⁹.

Research Question: Is an implicit bias jury instruction sufficient to reduce mock jurors' presentation of bias in their judicial decisions?

Methods

Participants

Participants (N = 217) were recruited from Amazon's Mechanical Turk and compensated \$1.00 for participating.



* Implicit bias instruction excerpted from "Duty of Jury" preliminary instruction to be given before opening statements, Model Ninth Circuit Criminal Instruction 1.1, Western District of Washington State.

**Sentencing options were proposed by two prosecuting attorneys working in state criminal courts. The sentencing options were converted into a 6-point numerical scale (1 = least severe option; 6 = most severe option) for analysis.

References

- ¹Nellis, A. (2016). The Color of Justice: Racial and Ethnic Disparity in State Prisons. Retrieved from The Sentencing Project website: <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.
- ²U.S. Census Bureau. (2018). Retrieved April 13, 2019, from United States Census Bureau website: <https://www.census.gov/quickfacts/table/US/PST045218>.
- ³Bonczar, T. P. (2003). Prevalence of Imprisonment in the U.S. Population, 1974-2001. Bureau of Justice, *Kahler* 2007.
- ⁴Greenwald, A. G. & Krieger, L. H. (2006). Implicit bias: Scientific foundations. *California Law Review*, 94(4).
- ⁵Hehman, E., Flake, J. K., & Calanchini, J. (2018). Disproportionate use of lethal force in policing is associated with racial racial biases of residents. *Social Psychological and Personality Science*, 9(4), 393-401.
- ⁶James, L., James, S. M., & Vila, B. J. (2016). The Reverse Racism Effect. *Criminology & Public Policy*, 15(2), 457-479.
- ⁷Radelet, M. L., & Pierce, G. L. (1985). Race and prosecutorial discretion in homicide cases. *Law & Society Review*, 19(4), 587-621.
- ⁸Doyle, J. T. (2017). U.S. district court produces video, drafts jury instructions on implicit bias. *King County Bar Association Bulletin*, 2.
- ⁹Zick, J. K., & Hanraford-Agor, P. (2014). Can explicit instructions reduce expressions of implicit bias? New questions following a test of a specialized jury instruction. *SSRN Electronic Journal*.
- ¹⁰Sommers, S. R., & Ellsworth, P. C. (2000). Race in the courtroom: Perceptions of guilt and dispositional attributions. *Personality and Social Psychology Bulletin*, 26(11), 1367-1379.
- ¹¹Sommers, S. R., & Ellsworth, P. C. (2001). White juror bias: An investigation of prejudice against Black defendants in the American courtroom. *Psychology, Public Policy, and Law*, 7(1), 201-229.
- ¹²Sommers, S. R. (2007). Race and the decision making of jurors. *Legal and Criminological Psychology*, 12(2), 171-187.

Results – Planned Analyses

Fig. 1: Are Black defendants rated as guilty more often than White defendants?

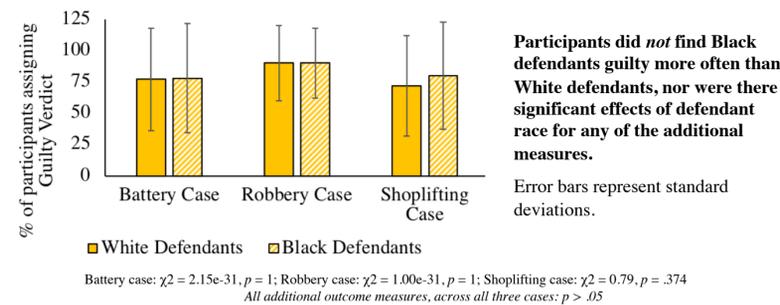


Fig. 2: Does the implicit bias instruction influence the rate at which the Black defendant is found guilty?



Results – Exploratory Analyses

Fig. 3: How strong is the case in favor of the defense?

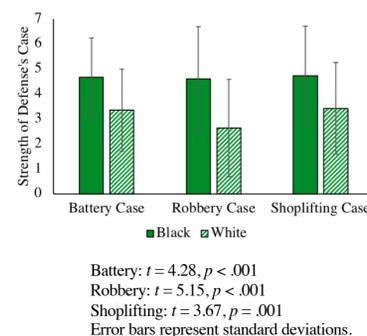


Fig. 4: How responsible is the defendant for the crime?

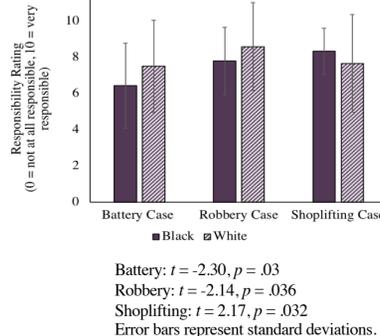
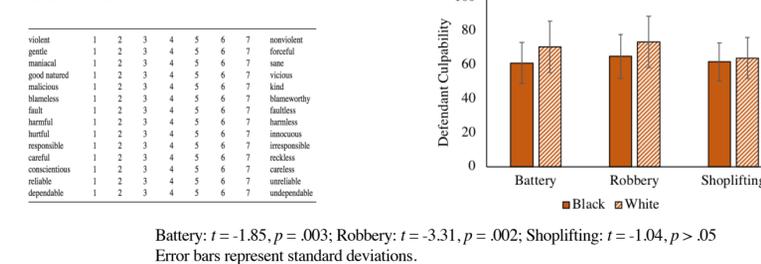


Fig. 5: Please rate the defendant on the extent to which he possesses each of the following characteristics.



Conclusions and Future Directions

Participants did not show baseline bias against which to assess the effect of the implicit bias jury instruction.

This may be due to:

- A lack of ambiguity in defendant guilt
- A lack of mundane realism (i.e., the study was not sufficiently similar to a real courtroom trial for juror bias to present itself)
- Necessity of reinforcement through multiple instructions

Reshape the current study before concluding that implicit juror bias does not exist.

The present study's inability to replicate previously established implicit juror racial bias^{10,11} should not be viewed as justification that such bias has vanished. Statistics such as those presented in the Introduction continue to suggest bias interferes with colorblind justice.

Rethink bias interventions.

Intervention during jury deliberation. Courts can instruct jurors to engage in a "checks and balances" system for bias mitigation during deliberation, such that jurors "watch out" for evidence of implicit bias in other jurors' decision-making.

During jury selection. Questioning potential jurors about their racial attitudes can "serve to remind Whites of their egalitarian values, suppressing the eventual expression of racial bias"¹⁶.

During the trial. Studies have shown that an attorney's description of the "role race played in [a given] incident was enough to lead White jurors to render nonprejudiced judgments of a Black defendant"¹⁶.

Exploratory Analyses: Participant Race Effects

Unlike previous studies investigating juror race bias^{10,11}, the present study also investigated baseline differences in judgments depending on participant (i.e., mock juror) race, independent of defendant race and instruction condition.

There was a strong pattern of differences between White and Black participants' evaluations of case materials, such as:

- Black participants rated the strength of the defense's case higher than White participants across all three cases (Fig. 3).
- White participants rated the defendants as more responsible for the crime than Black participants in the battery and robbery cases while Black participants rated the defendants as more responsible than White participants in the shoplifting case (Fig. 4).
- White participants rated the defendants as more culpable for the crimes than Black participants, based on a defendant characteristics scale score, in the battery and robbery cases (Fig. 5).

Despite the lack of studies on this topic, it is reasonable to think that Black and White individuals could have "different race-related motivations when they serve as jurors," such as Black jurors evaluating cases with more concern for institutional bias in mind¹². Ultimately, if there are in fact baseline racial differences in juror decision-making (i.e., if future studies focusing on juror race differences can replicate the present finding), then that offers an additional avenue for consideration and intervention, such as substantiating an argument for racial diversity in jury panels.

I would like to thank the Wesleyan Feldman Fund for their support.

For further information regarding this project, please contact
Hannah Bolotin (hbolotin@wesleyan.edu).