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The Influence of Racial Bias on Jury Selection and Potential Consequences for Justice

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The Influence of Racial Bias on Jury Selection and Potential Consequences for Justice

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Abstract

Empirical research and analyses of criminal court cases suggest that prosecuting attorneys often use race as a basis for excluding Black jurors in cases with Black defendants. This phenomenon can deprive Black defendants of a fair trial and influence the attitudes and behaviors of the remaining empaneled jurors. In 1986, the U.S. Supreme Court limited attorneys' ability to use peremptory challenges to exclude prospective jurors based on their race in the influential court case, *Batson v. Kentucky*. The Court's decision required attorneys to provide race-neutral justifications for their juror exclusions even though peremptory challenges typically require no explanation. In two studies, we tested a series of questions related to race and peremptory challenge use. In Study 1 ($N = 336$), we found that participants taking on the role of a prosecutor were slightly more likely to exclude a Black juror than a White juror but gave race-neutral rationales for their decisions. The effect of race was eliminated when participants were warned not to use race as a basis for excluding jurors. In Study 2 ($N = 228$), we examined the effects of race-based exclusions on participants taking on the role of a juror. Specifically, we investigated the effects of witnessing Black juror exclusions on participants' conviction likelihood, ability to remember case facts, emotional reactions, and perceptions of fairness in the legal system. Exposure to these exclusions influenced both Black and White jurors' emotional reactions and perceptions of a fair trial. This finding suggests that race-motivated peremptory challenges have the potential to affect not only Black defendants who are deprived of their right to a jury of their peers, but also the empaneled jurors who remain to deliberate. Hence, Study 2 provides additional incentive to implement interventions to curb the influence of race on the peremptory challenge, such as the warning that was found to be effective in Study 1.

The Influence of Racial Bias on Jury Selection and Potential Consequences for Justice

> "To watch [Black jurors] come in one by one and leave… it was hurtful." - Curtis Flowers, a Black defendant, describing the jury selection process in his criminal trials (Flowers & Hill, 2021)

> "I felt targeted. It was a life-changing experience for me, personally. And I still talk about it to this day. I tell my kids about it. Not to scare them but to make them aware." - Chrishala Reed, a Black prospective juror, on being excluded from jury service in California (Vansickle, 2020)

From violent police killings to long prison sentences, racial minorities are negatively impacted by the United States legal system at every turn. Relative to White individuals, Black individuals are 5.1 times more likely to be imprisoned (Hetey & Eberhardt, 2018). Black individuals make up over 30% of the United States prison population, despite comprising only 13% of the nation's population (Kovera, 2019). Compared to 1 in 17 White males, 1 in 3 Black males can anticipate going to prison at some point during their lifetime (Hetey & Eberhardt, 2018). Even when Black individuals are exonerated, they are perceived by the public as more aggressive and more likely to commit a crime resulting in a future prison sentence than White individuals (Howard, 2019). Additionally, police officers are significantly more likely to use force on Black individuals compared with White individuals (Kahn et al., 2016).

The idea that these disparities can simply be explained by differences in crime rates is a myth, as the crime prevalence for Black individuals is not significantly higher than for White individuals for many crimes. For instance, despite the fact that the majority of drug offenders in the United States are White, 75% of people incarcerated for drug offenses in 2004 were Black or Latino (Alexander, 2010). Therefore, instead of being driven by differences in offense rates, these imbalances in the prison population can be attributed in part to the stubborn and harmful prevalence of racial bias (Hetey & Eberhardt, 2018). Human cognitive systems, which are subject to bias, lie at the heart of the legal system, as matters of crime and punishment rely

heavily on human decision-making (Brewer & Douglass, 2019). Consequently, bias has the potential to infect the legal system at nearly every stage.

One area of the legal system that may be especially vulnerable to the pernicious effects of racial bias is the jury selection process (Joshi & Kline, 2015). Jury selection consists of a series of procedures which are designed, in theory, to ensure the recruitment of an impartial jury that is representative of the community. The process begins with each district court's random selection of individuals from those who are registered to vote or have driver's licenses. This group—known as the *venire*—completes a juror qualification questionnaire. Individuals from the venire who have indicated on their questionnaire that they are qualified to serve as a juror will then be asked to report for jury duty via a summons. Once qualified jurors report to the courtroom, they will be questioned by the judge and by the attorneys in a process called *voir dire*, a procedure designed to ensure that prospective jurors can be fair and impartial in a given case (American Bar Association, 2019). Jurors can be questioned in front of other jurors or can be individually questioned by the attorneys and judge in a private setting. Finally, as part of the voir dire, attorneys, with the approval of the judge, can remove prospective jurors by using a *challenge for cause*, a method of removing a juror by asserting that the prospective juror cannot be impartial, or *peremptory challenge*, a mechanism for removing a juror without providing a rationale (Edelman, 2015). An attorney has an unlimited number of challenges for cause, though peremptory challenges are limited in number depending on the nature of the case.

One goal of the jury selection process is to obtain representative juries. However, such representation is not always achieved. In one stark example, a criminal tax-evasion trial with a Black defendant in Chicago's federal district court, which covers racially-diverse Cook County, had a 50-person venire that only included two Black prospective jurors (Joshi & Kline, 2015).

Several possibilities for this lack of diversity in venires have been raised. For instance, the diversity of the community may not be adequately represented in the initial list of prospective jurors consisting of registered voters and individuals with driver's licenses, as registered voters tend to be White and more affluent than the general community (Sweeney & Dizikes, 2013).

Why Jury Diversity Matters

A largely White jury pool can have detrimental outcomes for minorities who come into contact with the legal system, likely contributing to the fact that minorities are convicted and incarcerated at higher rates than Whites (Anwar, Bayer, & Hjalmarsson, 2012). Several other arguments have been made in support of racially heterogeneous juries. One argument is that representativeness on juries can instill public trust in the legal system (Joshi & Kline, 2015). An all-White jury deciding the fate of a minority defendant has the potential to undermine the public's faith in fair, unbiased courtroom procedures. If people do not place trust in our country's legal institutions, these institutions will be seen as illegitimate. This could lead to a weakening of citizens' commitment to obeying the law (Van Damme & Pauwels, 2012).

A second argument is that diverse juries lead to more thorough deliberations and fairer outcomes. In a study aimed at uncovering the effects of racial diversity on jury deliberations and outcomes, Sommers (2006) manipulated the racial makeup of juries discussing a trial with a Black defendant. Using a 6-person mock jury paradigm, he found that heterogenous juries (groups with 4 White jurors and 2 Black jurors) were more likely than all-White juries to consider a wider range of case facts during deliberation and were less likely than all-White juries to make factual errors. This finding suggests that those in heterogeneous juries processed the trial information more thoroughly than those in the all-White groups. Notably, all-White groups showed more reluctance and discomfort in discussing the potential role of racial bias with regard

to case facts than did diverse groups, suggesting that heterogeneous juries can also lead jurors to be more open-minded, especially when it comes to issues of race. Even before discussing case facts with other members of the jury, White individuals in diverse groups were less likely than those in all-White groups to believe that the defendant was guilty (as measured by pre-deliberation ratings of guilt). This result is consistent with other research suggesting that in cases with minority defendants, all-White juries are more conviction prone than heterogenous juries (Chadee, 1996). Given that heterogeneous groups in this study processed the trial information with fewer errors (Sommers, 2006), it is plausible that these lower guilt ratings were indeed more accurate.

A final argument in favor of racially heterogeneous juries is that the disenfranchisement of Black jurors will prevent them from having the opportunity to perform their civic duty and will further suppress their voice in the judicial system. Although some individuals may view jury service as a burden, many others look forward to the experience. For instance, during the jury selection process for Derek Chauvin's recent murder trial in Minneapolis, a Black female juror specifically noted that she was excited to fulfill her civic duty (Haavik, Sandberg, & Raguse, 2021). Moreover, as demonstrated by the opening quote featuring Crishala Reed, a Black juror who was excused from jury service in a California criminal court case, exclusion from jury service can be deeply upsetting.

The Peremptory Challenge as a Biasing Tool

Despite the research providing support for diverse juries, there are several barriers to maintaining minority representation in the final jury. Historically, prosecutors and defense attorneys have been able to distort the representativeness of juries by systematically excluding individuals from participating on a jury, often with the intention that such exclusions will help

them win their case. As noted above, one mechanism for excluding individuals from serving on a jury is through the *peremptory challenge*, a legal action that allows defense attorneys and prosecutors to excuse a prospective juror without having to provide a rationale during voir dire (Sommers & Norton, 2008). In theory, a peremptory challenge is designed to be used when an attorney believes that a prospective juror is biased, but may not necessarily be able to prove it. In practice, peremptory challenges have often been used as a tool for keeping minority jurors out of the courtroom.

The first case to shed light on the ways in which peremptory challenges may sometimes be motivated by racial bias was *Swain v. Alabama* (1965), a U.S. Supreme Court case involving a Black defendant, Robert Swain, who was convicted of rape and sentenced to death. When six Black prospective jurors were struck by peremptory challenges, the defendant appealed, claiming that the challenges were discriminatory. The Alabama Supreme Court denied his appeal, claiming that the attorneys must have had an authorized reason for utilizing their peremptories, and hence, the challenges were constitutional.

Though one could speculate that the peremptory challenges in *Swain* were based on race, there was no documentation or evidence indicating so. However, attorneys' records from other court cases suggest that peremptory challenges often do stem from intentional, explicit efforts to remove jurors based on race, thereby rendering them unconstitutional. For example, in *Foster v. Chatman* (2016), a capital murder case involving a Black defendant, the prosecutor used peremptory challenges to strike all four Black prospective jurors. Under the Georgia Open Records Act, the defendant obtained access to the prosecutor's jury selection notes and discovered a written plan to exclude Black jurors. Notably, the prosecutor had marked all of the names of Black prospective jurors with a "B" and highlighted them in green. The prosecutor had

created a key on multiple documents indicating that green highlighting "represents Black" (*Foster v. Chatman,* p. 1).

Limiting the Effect of Race on Peremptory Challenges

In more recent decades, there have been efforts to limit the influence of race on jury selection procedures. When a Black man was tried for burglary in the monumental case *Batson v. Kentucky* (1986), all four Black prospective jurors were struck through the prosecutor's use of peremptory challenges. Batson was convicted and appealed on the grounds that the challenges violated his Sixth Amendment right to a fair jury and the Equal Protection Clause of the Fourteenth Amendment. The U.S. Supreme Court, ruling that jurors could not be excused based on their membership in a cognizable group, overturned Batson's conviction, stating that the peremptories were unconstitutional without a "race-neutral" justification. The case gave rise to a new three-part process for determining whether or not a peremptory challenge is discriminatory. First, if a defense attorney levies a *Batson* challenge against a prosecutor utilizing a peremptory challenge, the defense attorney must make the case that the peremptory challenge was influenced by race. If the trial court accepts this argument, the prosecutor must provide a non-discriminatory (or race-neutral) rationale for why he or she used a peremptory challenge on the prospective juror. The trial court must then decide whether the rationale is sufficiently race-neutral (Chopra, 2014). This three-part process is undertaken for each individual juror whose strike is challenged by the defense.

Batson has been upheld in several influential court decisions. In *Miller-El v. Dretke* (2005), another case involving a Black defendant, the prosecution used its peremptory challenges to strike ten out of eleven Black prospective jurors. After being convicted and sentenced to death by a predominantly White jury, the defendant, Thomas Miller-El, appealed his conviction. The

Supreme Court eventually reversed the conviction in light of *Batson*, citing the exclusions and disparate questioning of Black and White prospective jurors as evidence of racial discrimination. In *Snyder v. Louisiana* (2008), a case involving another Black defendant who was convicted and sentenced to death, the Court again upheld *Batson*. When the prosecution used peremptory challenges to strike all five prospective jurors from the pool, the Court determined that the challenges were unconstitutional and reversed the conviction.

Batson was intended to pave the way for limiting the influence of race on peremptory challenges. However, rather than effectively eliminating peremptories based on race, *Batson* has given rise to a system in which the prohibition against race-based exclusions is easy to circumvent as long as attorneys can generate ostensibly race-neutral explanations for those exclusions. Whether those explanations are genuinely race-neutral has been the subject of empirical research.

Generating "Race-Neutral" Rationales for Peremptory Challenges

Researchers have found that race-neutral justifications for peremptory challenges are fairly easy to generate. In one study, Sommers and Norton (2007) asked a racially diverse group of participants to role-play a prosecutor trying a case with a Black defendant. Participants were presented with two potential juror profiles: a 43-year-old man who wrote about police misconduct (Juror #1) and a 40-year-old man who was skeptical of statistics and forensic analysis (Juror #2). Both of these profiles were designed to portray each juror as unattractive to a prosecutor trying to convict the defendant. All participants were asked to choose which of the two jurors to exclude through a peremptory challenge. In one condition, Juror #1 was portrayed as White and Juror #2 was portrayed as Black. In the other condition, each juror's profile was kept the same, but #1 was portrayed as Black and #2 was portrayed as White. The researchers

found that regardless of juror profile, participants were significantly more likely to exclude the Black juror than the White juror.

When asked to write a rationale for their choice, however, the majority of participants cited the juror's background information (i.e., writings about police misconduct or skepticism of statistics and forensic analysis) as their justification for exclusion. Only a small minority of participants mentioned race in their rationales. The results highlight how race can impact peremptory use, but, perhaps more alarming, that those decisions can easily be justified by other, race-neutral factors (Sommers & Norton, 2007). It is notable that three different participant samples produced the same results: college students, law students, and practicing attorneys, all of whom followed the pattern of excluding the Black juror while generating race-neutral explanations for those choices. This suggests that even those with a background in legal practices can be vulnerable to unconstitutional racial bias, even though these individuals presumably understand that excluding jurors based on race violates the constitution and their professional standards.

The difficulties of preventing race-motivated peremptory challenges are illustrated in the recent U.S. Supreme Court decision, *Flowers v. Mississippi* (2019). The case involved the killings of four employees at a furniture store in Mississippi in 1996. Curtis Flowers, a Black man, was tried six separate times for the killings of the employees. Flowers' trials spanned over two decades, a period of time in which he was incarcerated on death row while his appeals wound through the court system. During the six trials, the majority of the Black jurors were struck through District Attorney Doug Evans' repeated use of peremptory challenges (Bogel-Burroughs, 2020). In the first four trials, there were 36 Black prospective jurors; Evans attempted to strike all of them (*Flowers v. Mississippi)*. There was no available information

about the race of the prospective jurors for the fifth trial, but in the sixth trial, Evans attempted to strike five out of six Black prospective jurors. Notably, Black individuals only had the opportunity to serve when there were more Black individuals in the prospective jury pool than the prosecutor had peremptory challenges, or when the defense attorney issued a *Batson* challenge.

Flowers was convicted and sentenced to death by a predominantly or all-White jury at the first three trials. All three convictions were reversed by the Mississippi Supreme Court, sometimes on the grounds that the peremptory strikes of Black jurors were in violation of *Batson*. Unlike the first three trials, the fourth and fifth trials included more than one Black juror (five and three, respectively). However, these resulted in mistrials because the juries could not agree on a unanimous verdict. The fact that Flowers was not convicted at trials that involved Black jurors is consistent with empirical findings; research demonstrates that the presence of Black individuals on a jury leads to more accurate case recall and fewer guilty votes compared with all-White juries (Sommers, 2006).

The sixth and final trial included only one Black juror, again due to District Attorney Evans' use of the peremptory challenge. Flowers was convicted and sentenced to death. When the Mississippi Supreme Court denied Flowers' appeal to reverse the conviction in the sixth trial, Flowers sought relief from the U.S. Supreme Court. The Court concluded that the prosecutor's peremptory strike of a Black prospective juror in the sixth trial (and in previous trials) was motivated in part by discrimation, and thus was in violation of *Batson.* They reversed the conviction and remanded the case back to Mississippi. The charges have recently been dropped against Flowers, with some witnesses confessing to lying about evidence. The case serves as a striking example of how peremptories can be abused by prosecutors and has been referred to as a

"relentless, determined effort to rid the jury of Black individuals" (Bogel-Burroughs, 2020, p. A19).

Racial Bias and Voir Dire

The biased nature of the jury selection process in *Flowers* (2019) extends beyond the fact that Black jurors were disproportionately struck; it is notable that the prosecutor, on average, asked each White juror one question during voir dire, as opposed to 29 questions of each Black prospective juror (Harvard Law Review, 2019). This evidence of disparate questioning might reflect prosecutors' underlying motivation for excluding Black jurors, namely that they will favor the defense in cases with Black defendants. In a 1987 training video on jury selection for new prosecutors in Philadelphia, an assistant district attorney named Jack McMahon directly instructed prosecutors to question Black jurors at length. He stated, "... you may want to ask more questions of those people so it gives you more ammunition to make an articulable reason as to why you are striking them, not for race" (Edelman, 2015).

Intervention Strategies

With evidence that excluding jurors based on race is fairly easy—and prevalent (*Flowers v. Kentucky,* 2019*; Snyder v. Louisiana,* 2008*; Miller-El v. Dretke,* 2005)—it is important to consider intervention strategies for eliminating the influence of race on such decisions, given the clearly demonstrated benefits of having racially heterogeneous juries (e.g., Sommers, 2006) and the importance of protecting citizens from disenfranchisement. One potential strategy is a message or warning about the dangers of using aspects of identity as a basis for excluding jurors.

In a study measuring juror exclusions in the context of gender, Norton, Sommers, and Brauner (2007) tested whether participants would be more likely to exclude a female juror than a male juror using a peremptory challenge. Participants were in fact more likely to exclude the

female juror, but provided gender-neutral explanations for their decisions. For instance, when the female juror was described as having young children, participants used this fact as a rationale for excluding her. When the female juror was described as working as an abuse counselor, however, participants overlooked the fact that the male juror had young children and cited the counseling experience as a reason to exclude the female juror. In a second study, Norton et al. (2007) exposed some participants to a warning about the dangers of using gender as a reason for exclusion prior to making their decision. The warning did not reduce gender-based exclusions; rather, those exposed to the warning generated even more elaborate gender-neutral justifications, as measured by the number of words in each response. The results suggest that reminders to avoid excluding jurors as a function of their membership in a cognizable group may not achieve their intended effects, as individuals may make even more concerted efforts to hide these biases. Because Norton et al. focused on gender-based exclusions, we do not yet know whether a similarly-structured warning would reduce race-based exclusions.

There is some evidence to suspect that a warning about race may be more effective than a warning about gender. In the past two decades, researchers have conducted numerous studies on "race salience," a variable that can be defined as the tendency of White jurors to be less biased by a defendant's race in cases involving racially-charged incidents compared with cases in which race is not a prominent issue. Sommers and Ellsworth tested this idea in a number of studies. In one study, for instance, Sommers and Ellsworth (2000) exposed White mock jurors to two versions of the same trial (race salient vs. non-race salient). Some of the participants were exposed to a trial with a Black defendant while others were exposed to a trial with a White defendant. White participants exposed to a version of the trial in which there was no reference to race rated Black defendants as more guilty than White defendants. White participants exposed to

a version of a trial with racially-charged language, however, were not influenced by defendant race in their guilt ratings. The researchers suggest that this effect may be attributed to the idea that White jurors, when exposed to information with racial overtones, may overtly attempt to curb any prejudices and maintain an "appearance of fairness" (Sommers & Ellsworth, 2000, p. 1376).

Using the same two versions of the trial, Sommers and Ellsworth (2000) also tested race salience in a sample with Black mock jurors. Within this sample, the race salience manipulation did not affect ratings of defendant guilt. Sommers and Ellsworth suggest that this may be due to the fact that race is already salient for Black individuals in trials with Black defendants, regardless of whether or not the case is explicitly based on racial issues.

In their discussion section, Sommers and Ellsworth explain that race can be made salient at multiple points during a trial, such as during voir dire, the questioning of prospective jurors, the attorneys' opening and closing arguments, etc. It is plausible that an instruction could make race salient by highlighting the prohibitions against using race as a factor in juror exclusions. What is more unclear, however, is whether a warning instruction will effectively eliminate the influence of race on peremptory challenges or whether it will simply lead individuals to come up with more elaborate race-neutral rationales to cover up an effect of race (cf. Norton et al., 2007).

The Current Research

The current research will test a series of questions related to the peremptory challenge as it intersects with race. The primary goals of Study 1 are to test whether race influences peremptory challenge use and to assess the nature of the explanations offered for such challenges. Given the results of Sommers and Norton (2007), we hypothesize that participants, overall, will be more likely to exclude jurors when they are portrayed as Black, but provide

race-neutral explanations for these decisions. In addition to examining whether any other variables (e.g., a warning) influence exclusion patterns, it is important to test whether or not we can replicate the results of Sommers and Norton (2007), especially given that our study was conducted immediately after the Black Lives Matter protests of 2020, a period that was found to shift White Americans' attitudes towards race (Schonfeld & Winter-Levy, 2020).

A second focus of Study 1 is to test the effect of a simple warning on the dangers of using race as a basis for a peremptory challenge on participants' decision to exclude jurors. Previous empirical research leads to two different hypotheses for the effect of a warning on participants' decisions. Based on Norton et al. (2007), a warning might not eliminate any effect of race on exclusions and might instead lead participants to write more elaborate rationales for Black juror exclusions. However, based on the findings of Sommers and Ellsworth (2000), a warning might change exclusion decisions by making race salient in the minds of participants, in turn eliminating the effect of race on exclusions (i.e., Black and White jurors would be excluded at equal rates). Because our procedure more closely resembles that of Norton et al. (2007), we predict that the warning will not limit the influence of race on peremptory use, and will instead lead participants to make even more elaborate race-neutral explanations, as measured by the number of words justifying each exclusion.

Finally, Study 1 will test whether a prospective juror's race will influence the number and type of questions asked during voir dire. Empirical research supports the notion that expectations can affect the nature of questioning within legal settings. In a study examining the nature of questions police interrogators ask when interviewing a suspect, Kassin, Goldstein, and Savitsky (2003) found that mock interrogators who already expected a suspect to be guilty chose to ask more "guilt-presumptive" questions of suspects than did those who held innocent expectations of

the suspect. One of the goals of the current research is to test whether assumptions of juror bias, rather than guilt, will have an influence on the types of questions asked of prospective jurors, and whether race will have an influence on such assumptions of bias.

Based on Kassin et al. (2003) and anecdotal evidence from *Flowers v. Mississippi* (2019), we predict that participants will choose more bias-presumptive questions and more questions in total when questioning a Black juror compared with a White juror. We also suspect that those exposed to an instruction warning them to avoid excluding jurors based on aspects of their identity (i.e., the warning) will ask more bias-presumptive and more total questions than those who are not exposed to the warning, as participants exposed to the warning will be motivated to gather as much information as possible for their race-neutral rationales (cf. Edelman, 2015).

Pilot Study

As mentioned, one goal of Study 1 was to test whether participants would ask significantly more bias-presumptive questions when questioning a Black (vs. White) juror and when exposed to a warning (vs. no warning). We generated a list of 13 questions for participants to choose from when questioning prospective jurors. This list was modeled after Kassin et al. (2003).

In their study on police interrogations and presumptions of guilt, Kassin et al. generated a list of 13 questions about a mock theft (2003, p. 191). The list contained a neutral question, along with six pairs of questions, with one of the questions of each pair implying that the suspect is guilty (e.g., “Do you know anything about the key that was hidden behind the VCR?” vs. “How did you find the key that was hidden behind the VCR?”) (p. 191). The questions were listed in a random order so that participants would not realize that the list included paired questions. Using the materials from Kassin et al. (2003) as a model, we generated a list of 13 questions for

participants to choose from when questioning prospective jurors. The list contained six pairs of questions. Each pair included one neutral question (e.g., “Do you think that police can be biased against defendants?”) and one question addressing the same issue but implying that that the prospective juror is biased and therefore unqualified to serve on the jury (e.g.,“Don’t you agree that police can be biased against defendants?”). We included one additional neutral question without a bias-presumptive counterpart (“Do you have any family members who work in the legal system?”) so that participants would not recognize that the other questions were grouped in pairs. In order to make sure that half of the questions were truly more bias-presumptive than their neutral counterparts, we conducted a pilot test.

Method

Participants

We recruited 29 students from Bates College, all of whom were compensated with class credit.

Materials and Procedure

Participants received a Qualtrics survey. After reading a consent form (Appendix A) and brief overview of the jury selection process, participants were shown the list of 13 questions. They were told that the list included questions that an attorney might ask a prospective juror in determining whether they are fit to serve on the jury. The questions appeared in a random order so that questions were not paired with their counterpart within the list. Participants rated questions on a scale of 1 (*neutral*) to 7 (*bias-presumptive*). Participants were told that a rating of 1 suggests that the attorney feels neutral and holds no prior assumptions about the juror, and that a rating of 7 suggests that the attorney strongly assumes that the juror is biased and unfit to serve.

After rating these questions, participants were debriefed on the purpose of the study (Appendix B).

Results

Six paired sample *t*-tests were conducted to test whether each bias-presumptive question reflected significantly more presumptions of bias than its neutral counterpart. For two of the pairs, bias-presumptive questions were rated as significantly more bias-presumptive than their neutral counterparts (pairs 1 and 5). For the remaining four pairs, the bias-presumptive questions did not differ significantly from their neutral counterparts (see Table 1 for a complete list of descriptive and inferential statistics for this analysis). Finally, a one-sample *t*-test was conducted to determine whether the baseline neutral question was significantly higher than 1 (the point on the scale indicating that the question was interpreted as neutral). We found that although this question was significantly higher than 1, ($M = 2.3$, $SD = 1.9$), $t(27) = 6.73$, $p < .001$, the mean rating for this question was rated as significantly lower than almost all other questions, indicating that it was indeed interpreted as a neutral question as a function of an inferential test (see Table 2).

Although Pairs 1 and 5 included questions that were rated as significantly different from one another, the questions in the remaining four pairs were not rated as such. Casual inspection revealed that the mean value of all questions in those pairs (both neutral and bias-presumptive questions) were close to the values of the neutral questions in Pairs 1 and 5. Hence, we sought to amplify the bias-presumptive questions in each of the remaining pairs. The adapted questions can be found below in Table 3 (Bias-Presumptive questions) and Table 4 (Neutral questions).

Study 1

For Study 1, we used two participant populations. Individuals recruited from Amazon Mechanical Turk (MTurk) and defense attorneys recruited through personal contact completed an online questionnaire in which they were asked to take on the role of a prosecutor in a case with a Black defendant. To measure the effect of race on peremptory use and rationale provision, we conducted a 2 (Juror Race: #1 Black/#2 White vs. #1 White/#2 Black) x 2 (Warning: Present vs. Absent) between-subjects fully randomized factorial design.

Method

Materials

For Study 1, we administered an online Qualtrics questionnaire to participants.

Trial Scenario

We used the case summary from Sommers and Norton (2007) describing an incident of robbery and aggravated assault. The case summary detailed a series of incidents in which the hypothetical victim—a male homeowner—was beaten by the defendant with a "blunt object" (Sommers & Norton, 2007, p. 265) after catching the culprit in the midst of a robbery. The case depended on DNA, hair, and footprint analysis. The victim could not identify the attacker.

Juror Profiles

The two prospective juror profiles were adapted from Sommers and Norton (2007). Juror #1 was described as a "43-year-old married male with no previous jury experience. He was a journalist who, several years earlier, had written articles about police misconduct" (p. 265). Juror #2 was described as a "40-year-old divorced male who had served on two previous juries. He was an advertising executive with little scientific background who stated during *voir dire* that he was skeptical of statistics because they are easily manipulated" (p. 265).

Ratings of Prospective Juror Conviction Likelihood

Following protocol from Sommers and Norton (2007), we asked participants without a legal background to provide a rating of how likely it would be for each of the prospective jurors to convict the defendant, on a scale of 1 (*very unlikely*) to 7 (*very likely*).

Juror Exclusion Questions

Participants were asked, "Which juror would you like to excuse from the jury?" This was a multiple choice question with the opinion to select "Juror 1" or "Juror 2." After selecting a juror to exclude, participants were instructed to provide a written rationale for why they chose to excuse him.

Additional Voir Dire Questions

We made adjustments after the pilot test to increase the likelihood that all questions labeled as "bias-presumptive" were seen as implying significantly more bias than those labeled as "neutral" (see Pilot Study above). Questions were interspersed randomly throughout the list and appeared in a random order for each participant.

Participants

Mechanical Turk

Using Amazon Mechanical Turk, we recruited 484 participants. Attention check questions suggested that 186 participants did not read instructions carefully and understand the task at hand. Those responses were eliminated from the final MTurk sample, giving us a final *N* of 298. Of the 298 participants who completed the survey for $0.75 in compensation, 184 (61.7%) were male, 111 (37.2%) were female, and 2 (.7%) were non-binary/nonconforming. Six participants (2%) identified as American Indian or Alaska Native, 21 (7%) identified as Asian, 46 (15.4%) identified as Black or African American, 1 (3%) identified as Native Hawaiian or

Other Pacific Islander, and 214 (71.8%) identified as White. Participant age ranged from 20-78 with an average of 38 years. There were 113 (37.9%) participants who indicated that they had served on a jury before and 185 (62.1%) indicated that they had not. Ninety (30.2%) participants indicated that they are or have been a practicing defense attorney and 208 (69.8%) indicated that they have never been a defense attorney.

Defense Attorneys

Because we wanted some of our participants to have legal experience, we recruited a separate sample of practicing defense attorneys with jury trial experience through a personal contact. We recruited 38 practicing attorneys, each of whom had the opportunity to enter a raffle for a $50 gift card upon completion of the survey. Of our 38 attorneys, 22 (57.9%) were male, 10 (26.3%) were female, one was non-binary/nonconforming (2.6%), and 5 (13.2%) chose not to report their gender. Thirty (78.9%) were White, one (2.6%) was Asian, one (2.6%) was Hispanic, and 6 (15.8%) chose not to report their race. Defense attorney participants' age ranged from 31-71 with an average of 48 years. The range of experience as a defense attorney (in years) was 4-40 with an average of 16 years. Thirty-three of 38 participants indicated that they had used a peremptory challenge before, and the remaining 5 chose not to respond.

Procedure

There were slight differences in procedure between the participant samples. The procedure for the MTurk sample is described first and then we note differences for the attorney sample. MTurk participants received a Qualtrics survey which they were asked to complete in one sitting. After reading a consent form (Appendix C), participants were asked to read the trial scenario and were shown a photograph of the defendant. The photograph was a mugshot of a 30-year-old Black male, which we obtained from FloridaStateMugshots.org, a collection of

criminal mugshots in the public domain (Appendix D). Participants were then told to imagine themselves as trial prosecutors. Because we did not expect participants to be familiar with the meaning and purpose of a peremptory challenge, we told participants that they would be able to eliminate a potential juror because (a) "you don't think they would be able to be fair jurors" or (b) "you do not think they would be sympathetic to your case" (Sommers & Norton, 2007, p. 261).

After reading the instructions, 129 participants in the warning condition were also exposed to the following message: 'Keep in mind, however, that according to the U.S. Supreme Court, you may not decide to remove a juror based simply on aspects of his or her identity, such as national origin, race, gender, or religion. Such an action is considered discriminatory, counter to the concept of ensuring justice for prospective jurors and defendants alike, and will disrupt the guarantee of a fair and reliable justice system as a whole.' (adapted from Norton et al., 2007, p. 474). Participants in the no warning condition (n = 207) were not exposed to this message.

As an attention check, on a separate screen, participants exposed to the warning were asked, "To what extent are prosecutors allowed to exclude potential jurors based on aspects of their identity?" If participants selected, "Never Allowed," they went on to complete the rest of the survey. If participants selected "Allowed" or "Sometimes Allowed," the survey was terminated and their response was not counted. Participants who did not see the warning were not exposed to any additional messages and went on to complete the rest of the questionnaire.

In order to make sure the goal as a prosecutor was understood, participants were asked on the next page of the questionnaire, "As the prosecutor, what is your goal in this case?" Participants who indicated that their goal was to convince the jury to come back with a verdict of "guilty" could move on to the next page of the survey. If participants indicated that their goal

was to convince the jury to come back with a verdict of "innocent," the survey was terminated and their response was not counted.

On the next page of the questionnaire, participants were told, "For organizational purposes, we are going to randomly pair prospective jurors from the jury pool. You will be presented with six pairs of jurors. Please pick one of two prospective jurors to exclude from the jury." This instruction gave participants a false sense of how many opportunities they would have to exclude a juror, when in fact they would only be presented with this one pair and one opportunity to exclude. We included this instruction to minimize the likelihood that participants discerned the purpose of the study upon seeing a pair of prospective jurors, one of whom was Black and one of whom was White.

On the next page of the questionnaire, participants were reminded of the trial scenario and shown the photograph of the defendant again. They were then exposed to photographs of the two prospective jurors, each attached to their profiles. For these jurors, we used photographs from the Chicago Face database presenting faces of roughly the same age (early 40s) and ratings of attractiveness (Appendix E). In order to enhance construct validity, we obtained three Black faces and three White faces, and randomly exposed participants to one photograph for each racial category (Wells & Windschitl, 1999). In one condition, Juror #1 was portrayed as Black and Juror #2 as White. In the other condition, profiles for Jurors #1 and #2 were kept the same, but #1 was portrayed as White and #2 as Black. After reading the juror backgrounds and seeing their attached photographs, participants were asked to state how likely it would be for each juror to convict the defendant. Participants were then asked to state which juror they would excuse and write an explanation for the judge articulating why they struck the individual they did.

On the next page of the questionnaire, participants were told that their rationale was not sufficient and that they would need to continue the voir dire before the judge made a final decision on excluding the juror. In preparation for the additional voir dire, participants were told that they could choose from a set of questions similar to those that might be asked by attorneys during voir dire. All participants were given the same list of thirteen questions with the following instructions: "Assume the judge decides that your rationale is not sufficient. In order to convince the judge to exclude the juror you have selected, you have an opportunity to collect more information. Your goal is to gather enough information to further justify your choice to the judge. Select at least two questions to ask the prospective juror. You can select up to eight questions." Participants were also given the optional opportunity to write their own question.

Finally, participants were asked on the next page of the questionnaire to specify the race of the juror they chose to exclude. Once finished, participants were debriefed on the purpose of the study (Appendix F).

Adjustments for Defense Attorney Sample

As noted above, we also recruited a sample of defense attorney participants. The survey was almost identical to the one we administered to MTurk participants. Because we expected defense attorneys to have more knowledge of court procedures than individuals recruited from MTurk, we made three adjustments to the procedure. First, rather than being told the two reasons for which they could eliminate potential jurors, attorneys were told, "as a prosecutor, you will be able to eliminate a certain number of individuals using peremptory challenges" (Sommers & Norton, 2007, p. 261). Further, following protocol from Sommers and Norton, defense attorneys were not asked to state how likely it would be for each juror to convict the defendant before making their exclusion decision.

Although defense attorneys, like MTurk participants, were told that their rationale was not sufficient and that they would need to continue the voir dire before the judge made a final decision, they were not given a list of thirteen questions to choose from. Because we assumed that defense attorneys had experience asking questions of prospective jurors from real court cases, they were asked to write their own questions.

Every other element of the procedure for defense attorneys remained the same as that for MTurk participants.

Results

Attorney and MTurk samples are combined in all analyses reported below unless otherwise specified. For exclusion patterns by participant type, see Table 5 (MTurk participants only), Table 6 (defense attorneys only), and Table 7 (combined samples).

Juror Exclusion

Consistent with Sommers and Norton (2007), participants were more likely to exclude Juror #1, the journalist who wrote about police misconduct, than Juror #2, the man who was skeptical of statistics. Regardless of the warning manipulation Juror #1 was challenged 62.8% of the time, whereas Juror #2 was challenged 37.2% of the time, $\chi^2(1, N = 336) = 22.01$, $p < .001$.

Juror Exclusion by Race

Collapsed across the warning manipulation and profile of the excluded juror, participants were marginally more likely to exclude Jurors #1 and #2 when they were portrayed as Black than when they were portrayed as White, $\chi^2(1, N = 336) = 3.37$, $p = .067$.[1] When Juror #1 was Black, participants challenged him 67.7% of the time. When this same juror was White, participants challenged him 58% of the time. This pattern was the same for Juror #2: when that individual

[1] Following protocol from Sommers and Norton (2007), we also ran a binary logistic regression in order to examine the effect of juror race on exclusions. This analysis yielded the same result as the chi-square, Wald (1) = 3.35, p = .067, odds ratio = 1.52.

was Black, he was challenged 42% of the time; when he was White, he was challenged 32.3% of the time.

Warning Manipulation

In order to test whether a simple instruction could mute the effect of race on exclusions, we included a warning manipulation in our study. Based on the findings of Norton et al. (2007), we expected the warning to affect the length of rationales for juror exclusion, not the exclusion patterns themselves. However, because it was plausible that the warning could affect participants' likelihood of excluding a juror based on race, we looked at the separate exclusion patterns of those who received a warning and those who did not.

Chi-square analyses revealed that participants who did not receive a warning were significantly more likely to exclude Black jurors than White jurors, $\chi^2(1, N = 207) = 6.00$, $p = .014$.[2] When participants did not receive a warning, they challenged Juror #1 74.2% of the time when he was Black, but only 57.9% of the time when he was White. When Juror #2 was Black, he was challenged 42.1% of the time. When he was White, he was challenged 25.9% of the time.

Those who did receive a warning did not appear to be influenced by race; these participants were no more likely to exclude Black jurors than they were to exclude White jurors, $\chi^2(1, N = 129) = 0.02$, $p = .884$.[3] When Juror #1 was Black, participants challenged him 59.5% of the time. When this same juror was White, participants challenged him 58.2% of the time. When Juror #2 was Black, he was challenged 41.8% of the time. When he was White, he was challenged 40.5% of the time.

[2] Wald (1) = 5.90, p = .015, odds ratio = 2.09.
[3] Wald (1) = .021, $p = .884$ odds ratio = 1.05.

Ratings of Prospective Juror Conviction Likelihood

MTurk participants[4] were asked to provide a rating of how likely it would be for each of the prospective jurors to convict the defendant, on a scale of 1 (*very unlikely)* to 7 *(very likely).* A paired samples *t*-test revealed that participants rated the White juror as significantly more likely to convict the defendant ($M = 4.6$, $SD = 1.5$) than the Black juror ($M = 4.2$, $SD = 1.8$), $t(207) = 2.49$, $p = .014$. Participants rated Juror #1 ($M = 4.2$, $SD = 1.7$) and Juror #2 ($M = 4.5$, $SD = 1.6$) equally likely to convict the defendant, $t(207) = 1.58$, $p = .116$.

Rationales

Participants' justifications for their exclusions were coded for mentions of race, mentions of juror profile, and number of words used. All coding was conducted while blind to juror exclusion and warning condition. Only 12.5% of participants mentioned race in their rationale. Across the warning manipulation, participants were slightly more likely to bring up race if they excluded a Black juror (18.1%) than a White juror (5.8%), though race was still brought up less than a fifth of the time for all Black juror exclusions.

Among those who did receive a warning, race was cited 7.8% of the time. In this condition, those who excluded the Black juror were more likely to bring up race than those who excluded the White juror (10.3% vs. 4.9%, respectively). Most of the individuals who brought up race suggested the possibility that a Black juror would not vote to convict a Black defendant (e.g., "*he would have racial sympathy*"). In other cases, the intention behind the exclusion was not clear because participants simply wrote "race" or "same race." Among participants who did not receive a warning, race was still only cited 15.5% of the time, even though participants in this condition did in fact exclude Black jurors more than White jurors. In this condition, those

[4] We asked MTurk participants at the beginning of the study if they had ever served as a defense attorney. Only participants who specified that they had never served as a defense attorney ($n = 208$) were asked to respond to this measure. Hence, our total *N* for this analysis is lower than that of other analyses in Study 1.

who excluded the Black juror were also more likely to bring up race than those who excluded the White juror (22.8% vs. 6.5%, respectively).

Participants were more likely to cite the juror's profile (i.e., Juror #1's experience writing about police misconduct or Juror #2's skepticism about statistics) in their justifications than they were to cite race. Indeed, 52.4% of all justifications included mentions of the juror's profile whereas only 12.5% cited race. Chi-square analyses revealed that regardless of the race of the excluded juror, participants were significantly more likely to bring up the juror's profile when they were exposed to the warning than when they were not exposed to a warning, $\chi^2(1, N = 336) = 27.69$, $p < .001$. Specifically, participants who were given a warning brought up the juror's profile 70.5% of the time, whereas participants who were not given a warning brought up the profile 41.1% of the time. Regardless of warning condition, participants were overall more likely to bring up a juror's profile if the prospective juror was White (58.6%) than if the prospective juror was Black (47.3%), $\chi^2(1, N = 336) = 4.24$, $p = .040$.

Other items brought up in participant justifications included the juror's demeanor or facial expression and vague mentions of background information or experience. Forty-two rationales were coded as incomplete as they were either incomprehensible or lacking in any sort of coherent content (e.g., "*good,*" "*I think a I have select juror face on right*")*.*

The warning, yet not the excluded juror's race, appeared to have an effect on the length of participant justifications. A two-way ANOVA revealed that participants who were given a warning used significantly more words to justify their exclusions ($M = 21.9$, $SD = 18.0$) than did those who were not given a warning ($M = 16.5$, $SD = 16.8$), $F(1, 336) = 7.65$, $p = .006$, $d = 0.316$, [0.094, 0.537]. No other effects from the two-way ANOVA were significant, Fs$(1, 336) < 0.90$, ps $> .345$, η^2s $< .002$.

Additional Voir Dire Questions Asked

We predicted that participants who excluded the Black juror would ask significantly more bias-presumptive questions and total questions than those who excluded the White juror. We also suspected that those who were exposed to the warning would ask significantly more bias-presumptive and total questions than those who were not exposed to the warning. However, there were no significant differences in the number of bias-presumptive questions asked or total questions asked between those who excluded the Black juror and those who excluded the White juror.

Bias-presumptive Questions

A two-way ANOVA revealed that participants who excluded the Black juror (M = 1.6, SD = 1.2) did not ask significantly more bias-presumptive questions than those who excluded the White juror (M = 1.6, SD = 1.3), $F(1, 294) = 0.08$, $p = .772$, $d = 0.04$, 95% CI [-0.19, 0.27]. This analysis also revealed that participants who were given a warning (M = 1.6, SD = 1.2) did not ask significantly more bias-presumptive questions than those who were not given a warning (M = 1.6, SD = 1.3), $F(1, 294) = 0.02$, $p = .882$, $d = 0.02$, 95% CI [-0.26, 0.21].

Total Number of Questions

A two-way ANOVA revealed that participants who excluded the Black juror did not ask significantly more questions in total (M = 3.7, SD = 2.0) than those who excluded the White juror (M = 3.8, SD = 2.3), $F(1, 294) = 0.07$, $p = .799$, $d = 0.02$, 95% CI [-0.21, 0.25]. We also found that participants who were not given a warning (M = 3.9, SD = 2.2) did not ask significantly more questions than those who not given a warning (M = 3.6, SD = 2.0), $F(1, 294) = 1.04$, $p = .308$, $d = 0.12$, 95% CI [-0.11, 0.36]. As mentioned, the defense attorneys did not complete this portion of the survey, and therefore are excluded from this analysis.

Total Number of Questions From Defense Attorneys

Defense attorneys were asked to write their own questions to gather more information about the individual they chose to exclude. The number of questions was counted for each participant. An one-way ANOVA revealed that attorneys who excluded the Black juror did not ask significantly more questions in total (M = 2.1, SD = 1.4) than those who excluded the White juror (M = 1.8, SD = 1.1), $F(1, 294) = 0.55$, p = .465, d = 0.60, 95% CI [0.01, 1.20]. We also found that attorneys who were given a warning (M = 1.8, SD = 1.4) did not ask significantly more questions than those who were not given a warning (M = 2.1, SD = 1.1), $F(1, 294) = 0.55$, p = .465, d = 0.26, 95% CI [-0.38, 0.90].

Discussion

In this study, we measured the influence of race on participants' choice to exclude jurors from jury service. We examined the justifications produced for juror exclusions and the nature and number of questions asked of those jurors.

Exclusion Patterns

Collapsing across warning condition and participant type, participants were slightly more likely to exclude Jurors #1 and #2 when they were portrayed as Black than when they were portrayed as White. More important, when participants were not given a warning or any special instructions, they were significantly more likely to exclude Jurors #1 and #2 when they were portrayed as Black (vs. White), mirroring the behavior of participants in Sommers and Norton's (2007) study, in which none of the participants received a warning. Given that participants rated White jurors as more likely to convict the defendant than Black jurors, it is probable that this effect can be attributed to participants' beliefs about Black jurors favoring the defense in cases with Black defendants.

One explanation for these results is that most participants had no legal training. Therefore, one could argue that practicing attorneys would know that excluding jurors based on their cognizable group status is unconstitutional. It is difficult to definitively test this possibility with our data because our small sample of defense attorneys precludes sufficiently powered tests of whether their behavior differed significantly from that of the MTurk participants. However, when their responses were combined with MTurk participant responses, the significant effect of race was unchanged. Further, defense attorney participants in Sommers and Norton's (2007) study were slightly more likely to exclude the Black juror than the White juror. Finally, we know from legal decisions that practicing prosecuting attorneys do use race as a factor in jury exclusions (e.g., *Flowers v. Mississippi,* 2019). Hence, we can speculate that a legal background does not protect against the effect of racial bias in peremptory challenge use.

We anticipated that warning participants against using aspects of identity to exclude jurors would produce differences in rationale length, but not exclusion patterns (cf. Norton et al., 2007). In the current research, however, the warning did in fact eliminate the effect of race on peremptory use.

One explanation for the significant effect of the warning manipulation is race salience (Sommers & Ellsworth, 2000). Specifically, it is possible that exposure to the warning made race salient in the minds of participants, leading them to make a conscious effort to act in an unbiased manner. Notably, Sommers and Ellsworth (2000) only detected the race salience effect in White mock jurors. When race was made salient for Black mock jurors, their behavior remained the same as when race was not made salient (Sommers & Ellsworth, 2000). The majority of our sample was White (71.8%), suggesting that race salience is a viable explanation for the effect of

the warning among our participants. Future research should aim to examine the effect of the warning in a sample with a greater number of nonwhite participants.

There are several reasons that could account for the discrepancy between the current research and Norton et al. (2007). One obvious possibility is that Norton et al.'s (2007) research was focused on gender, while ours was focused on race. Further, our research was conducted 14 years later than Norton et al. (2007). White Americans have become increasingly aware of discrimination and inequality, particularly with regard to race, over the past few years (North, 2020). Hence, it is possible that participants were more receptive to the warning than they might have been years ago.

An alternative possibility is that participants responded to the warning instruction because of demand characteristics, meaning that they suspected or assumed that the warning was supposed to eliminate the effect of race and hence chose to exclude the White juror in an attempt to comply with the putative purpose of the study. Notably, a nearly identical warning was not effective in Norton et al. (2007), suggesting that—at least in some contexts—warnings are not so persuasive as to automatically change behavior. Even if the effectiveness of the warning is due to demand characteristics, this possibility is not necessarily problematic. If an attorney in an actual courtroom assumes that a given warning is intended to eliminate the influence of race on exclusions and chooses not to exclude a Black juror because of that message, the warning will still have achieved its desired effect.

Rationales

Our initial hypothesis about the warning instruction was that participants' rationales would be more extensive when they excluded Black jurors, but that the exclusion patterns would not be affected by the warning instruction (cf. Norton et al., 2007). Contrary to our predictions,

the warning instruction did eliminate the effect of race on exclusions. Therefore, it was not possible to directly compare the rationales in the current research to what was found in Norton et al. However, there was an unanticipated effect of race and warning instruction on rationales: Participants who excluded the White juror mentioned the profile as a rationale more so than did participants who excluded the Black juror. This effect contradicts Sommers and Norton (2007) who found that participants (none of whom were exposed to a warning) mentioned the juror's profile more if they excluded the Black (vs. White) juror. The reason for this inconsistency between our findings and those of Sommers and Norton is unclear and an area for future investigation.

Still, however, race was rarely cited in participants' justifications for their decisions. In line with Sommers and Norton (2007), participants were more likely to cite race-neutral aspects of the participants' profile than they were to cite race. This result provides further validation for the notion that race-neutral rationales are fairly easy to generate, even if the decisions preceding the rationale generation are in fact based on race (Sommers & Norton, 2007). The finding is also consistent with analyses of real cases showing that prosecutors have often used race as a basis for excluding Black jurors in cases with Black defendants but have managed to shield such choices behind race-neutral language (Baldus et al., 2012).

As hypothesized, the warning did have an effect on rationale length; those who were exposed to a warning used significantly more words to justify their decisions than those who were not exposed to a warning. However, this effect held for participants who excluded both Black and White jurors. Hence, we cannot attribute this effect to the idea that participants were strategically attempting to cover up any influence of race on decisions as was found with gender in Norton et al. (2007). It is possible that exposure to the warning made participants feel as

though they had to further justify their exclusion decisions, regardless of the race of the juror they chose to exclude. This finding suggests that a warning could lead attorneys to be more thorough in their justifications in instances where they are required to provide explanations for their exclusion decisions, such as when using challenges for cause. There is also the possibility that the warning could lead attorneys to be more wordy, but not necessarily more thorough or thoughtful, in their justifications, which could unnecessarily take up more time at trials. Future research should test whether exposure to a warning affects the quality of rationales provided for juror exclusions.

Additional Voir Dire Questions

Finally, we hypothesized that participants who used their peremptory challenge on the Black juror or were exposed to a warning would ask more bias-presumptive questions and total questions than participants who used their peremptory challenge on the White juror or were not exposed to a warning. Inconsistent with our hypotheses, there were no effects of the excluded juror's race, nor the warning instruction, on any variables related to juror questioning. It is possible that participants selected questions based on the substance or topic of the question rather than the specific wording of the question, leading them to select the bias-presumptive questions along with their neutral pairs. Along similar lines, it is also possible that our bias-presumptive questions were not distinct enough from our neutral questions.

Practical Implications, Limitations and Future Research

Our study suggests that the implementation of a simple warning into courtrooms—perhaps in the form of an instruction given to attorneys by the judge—could potentially eliminate or reduce the effect of race on the jury selection process, which in turn could create fairer trials for defendants. This recommendation should be considered with a

degree of caution, however, as the majority of our participants did not have a legal background, and our experiment did not fully mimic the intensity of a real trial. Future research should investigate how to best integrate a warning into jury selection to ensure that the intervention is an effective tool for reducing the effect of race on peremptory challenges in an applied setting.

There were a few limitations to Study 1. Ideally, we would have recruited prosecuting attorneys since participants were asked to take on the role of a prosecutor in our survey. However, we only had contact with defense attorneys through our personal contact. Future research should aim to replicate our procedure in a sample with prosecuting attorneys. Further, the study did not capture whether the tendency to exclude the Black juror was knowingly based on race or motivated by implicit bias. Based on the prosecutor's notes from *Foster v. Chatman* (2016) outlining a deliberate plan to excuse Black jurors, we can suspect that these exclusions were knowingly based on race. Future research should aim to clarify this by measuring the psychological mechanisms behind race-motivated exclusions.

Study 2

It is evident that race affects choices of juror exclusions, at least in the context of the current paradigm. To the extent that a warning instruction is missing from the voir dire process, Black defendants and Black prospective jurors can continue to expect that some prosecutors will work strategically to create homogeneous, all-White juries. Peremptory challenges are likely to remain part of jury selection for the foreseeable future. Indeed, in *Batson v. Kentucky* (1986), only one justice, Thurgood Marshall, asserted that peremptory challenges should be abolished altogether. Moreover, even though the U.S. Supreme Court ultimately reversed the conviction in *Flowers* (2019) on the grounds that Evans' exclusions of Black jurors were discriminatory, the peremptory challenge practice remained intact.

Assuming peremptory challenges remain, the existing safeguards in place under *Batson* are clearly insufficient to protect defendants of color from having an all-White jury empaneled. Therefore, it is important to examine the impact of the jury selection and exclusion process on those jurors who remain to deliberate. The focus of Study 2 is to expand our understanding of race-motivated peremptories from attorneys' decisions to examine how they affect members of the eventual jury. Specifically, we are concerned with the effect of race-motivated peremptory challenges on a number of measures as they relate to jurors who are eventually empaneled: perceptions of fairness, emotional responses, case fact recall, and conviction likelihood. In particular, we suspect that Black jurors exposed to the exclusion of Black jurors will report the trial and legal system as less fair and report more negative emotions than White participants.

Perceptions of Fairness

There is a growing body of research on public attitudes towards and perceptions of the legal system. Although some of these investigations reveal differences in perceptions of the system as a function of race, others do not. For instance, Overby, Brown, Bruce, Smith & Winkle (2005) surveyed 671 individuals in Mississippi to investigate their beliefs about the judicial system. In their survey, the researchers asked participants a number of questions related to race and the judicial system, including whether or not they believe judges treat defendants equally regardless of race and whether or not race affects criminal sentences. The researchers found that Black participants perceived the system as significantly more biased than White participants. In a similar study by Hurwitz and Peffley (2005), 1,182 participants from across the country were asked questions about their views of the U.S. justice system. Whereas 74% of White respondents indicated that they trust the courts to provide a fair trial, only 39% of Black participants indicated so. Given the fact that Black Americans are disproportionately targeted by the criminal justice

system (Hetey & Eberhardt, 2018), it is no surprise that Black individuals are less trusting of the judicial system in general.

More relevant to our research questions, however, is how individuals who have actually gone through the jury selection process and/or have served as jurors view the legal system. If individuals experience a jury selection process that they deem unfair, they may view U.S. legal institutions as illegitimate and be less likely to follow the law (Van Damme & Pauwels, 2012). In a study of 207 individuals who had completed the voir dire process, Rose (2003) conducted interviews to determine whether or not these individuals believed they had experienced or witnessed racial bias in the jury selection process. Rose found that only a minority of Black participants who were excluded from jury service felt that they were excluded based on demographic characteristics, such as race. Still, Black participants reported less willingness to serve in the future than White participants. In a separate study of Tennessee residents who had received and responded to a jury summons, McGuffee et al. (2007) also tested a series of questions related to perceptions of fairness and racial bias in the jury system. The researchers found that views about racial neutrality were directly related to jurors' views about the fairness of the jury system. Specifically, those who believed the jury system was racially biased also rated the jury system as less fair.

Inconsistent with other findings (Hurwitz & Peffley, 2005; Overby et al., 2005), however, the researchers also found that participants of color did not report the jury selection process as less fair or more racially biased than White participants. McGuffee et al. (2007) suggest that this inconsistency could have been caused by the relatively small number of minorities in their sample, and that their results should be taken with caution. They also posit that public perceptions of system fairness is a complicated issue and that future research in this area is

necessary. The current research will aim to uncover whether there are differences between Black and White participants in perceptions of fairness when exposed to peremptory challenges that disproportionately exclude Black prospective jurors.

Experimental research suggests that racial representation on juries can influence jurors' perceptions of fairness in the legal system. In a paper by Ellis and Diamond (2003), racially diverse jury-eligible participants were given a summary of a case involving a Black male who had been accused of shoplifting. Half of the participants were exposed to a homogenous jury (8 White jurors), while the other half was exposed to a heterogeneous jury (4 White jurors and 4 Black jurors). Similarly, half of the participants read a version of the case with a "guilty" verdict, while the other half were exposed to a "not guilty" verdict. Participants were asked a series of questions about the fairness of the trial including, "How fair do you think the trial was on a scale of one (*very unfair*) to seven (*very fair*)?" (p. 1045). When the verdict was "guilty," participants in the homogenous jury rated the trial as significantly less fair than did those in the heterogeneous jury. When the verdict was "not guilty," participants in the homogenous jury and heterogeneous jury rated the trial as equally fair. This finding provides evidence that the eventual racial composition of a jury may influence individual jurors' perceptions of fairness. What this paper does not examine, however, is the nature of the selection process that gives rise to homogenous or heterogenous juries. As we see in cases like *Flowers v. Mississippi* (2019), homogenous juries can be the result of deliberate and methodical exclusions of prospective jurors of one race. Upon witnessing these exclusions, individuals may form an opinion about the fairness of the trial and legal system as a whole, though this, to our knowledge, has not been empirically tested. Will the process of witnessing a series of peremptory challenges that result in a racially homogeneous jury further alter perceptions of fairness?

Emotional Responses

When Curtis Flowers described watching Black individuals, time and time again, leave the courthouse after being excluded from jury service, he referred to the experience as "nerve-wracking" and "hurtful" (Flowers & Hill, 2021). His remark suggests that race-motivated peremptories have the potential to elicit emotional responses from defendants who are affected by them. Do empaneled jurors have similar reactions to patterns of exclusion? Do they even notice patterns of exclusion? If so, might this process have an effect on jurors who see members of their own race excluded as it did for Curtis Flowers? Further, might this process have any effect on members of the racial majority who see Black jurors excluded repeatedly?

One anecdote suggests that the experience of getting removed from a jury, particularly if the exclusion appears to be motivated by race, can also be emotional. In *California v. Silas* (2020), a 28-year-old Black woman named Crishala Reed was removed from jury service with a peremptory challenge. Prior to her removal, Ms. Reed was questioned extensively by the prosecutor about her support for Black Lives Matter. Upon her departure from the courtroom, Ms. Reed looked at the jury box and saw an absence of Black individuals. In recounting the experience, Ms. Reed said, "I wanted to cry, but I held it. I didn't want to look weak. I would never want my kids to go and do that." (Vansickle, 2020). The incident suggests that race-motivated peremptory challenges can feel deeply hurtful to those who are subject to them, especially when their fellow Black jurors are excluded as well or not represented in the first place. What is less evident, however, is whether the act of witnessing race-motivated peremptory challenges prompts an emotional reaction from any of those who do *not* get excluded and are left to deliberate. Perhaps more important than perceptions of fairness and emotional responses is the

possibility that witnessing race-motivated exclusions could affect the behavior and performance of remaining individuals as they deliberate and deliver a verdict.

Case Fact Recall

Empirical research points to the idea that individuals in diverse groups may process information with more accuracy than individuals in homogeneous groups. Indeed, as discussed previously, Sommers (2006) found that White mock jurors deliberating in diverse juries remembered more case facts and made fewer factual errors than did White participants deliberating with racially homogenous groups. Sommers explained this effect by asserting that White people process information more systematically when they are motivated to avoid acting in a biased manner. Other studies have demonstrated that White individuals may process information involving Black (vs. White) individuals more systematically under certain conditions. For instance, in a study with White participants, Sargent and Bradfield (2004) found that individuals scrutinized legally relevant information (such as alibi strength) about a Black defendant more so than they did for a White defendant under conditions of low motivation. Will case fact recall differ, however, as a function of the race of the jurors who get excluded from serving on the jury? Namely, will individuals who watch an exclusion process that gives rise to a racially heterogeneous jury remember more case facts than individuals who witness an exclusion process that gives rise to a racially homogenous jury?

Conviction Likelihood

Procedures that occur before a case begins might influence the outcome of a trial. In a study focused narrowly on jury selection processes in capital cases, Craig Haney (1984) examined the effects of death-qualification—the process by which individuals are questioned in order to ensure eligibility for capital juries—on trial outcomes. Specifically, the

death-qualification process ensures that prospective jurors do not hold any "disqualifying attitudes" towards the death penalty (p. 122). This means that prospective jurors who state that they are fundamentally against the death penalty (and hence would never vote to impose it) would likely be dismissed by a capital judge. In a mock capital trial, Haney (1984) gathered a sample of jury-eligible individuals. All participants were screened to make sure they could vote for the death penalty; individuals who held disqualifying death-penalty attitudes were excluded from the experiment. The remaining participants were randomly assigned to either experimental or control conditions. In the control condition, participants were exposed to a video of a simulated voir dire. Participants in the experimental condition were exposed to the same video supplemented with an additional 30-minute segment of death qualification. Haney found that participants who had undergone additional death-qualification questioning were more likely to convict the defendant, more likely to suspect that other trial participants also thought the defendant was guilty, and finally, more likely to sentence the defendant to death compared with participants who were not exposed to this additional death-qualification questioning. Although this research is focused specifically on death-qualification, it is reasonable to suspect that other procedures and behaviors related to jury selection—such as the systematic exclusion of jurors based on race—might similarly have an effect on juror behaviors and trial outcomes.

The idea that witnessing jurors get excluded based on race can influence the behavior of individuals who stay on the jury can be supported by anecdotes from actual court outcomes. In *Flowers v. Mississippi* (2019), the defendant was convicted and sentenced to death at four out of six trials by jury members, most of them White, who had watched the Black jurors, time and time again, get excluded from the jury. Importantly, the only times there were hung juries were when there was more than one Black juror seated. Might there be a specific link between such

exclusions and the jury's likelihood to convict? Will a jury from which all or most Black candidates have been excluded be more conviction prone in a trial with a Black defendant than a jury from which both Black and White candidates have been excused?

The Current Research

Study 2 seeks to answer such questions. Using a mock-jury paradigm, we test the effects of the exclusion of Black jurors on the remaining members of the jury. Study 2 tests four questions. First, Study 2 will test whether exposure to the exclusion of Black jurors alters perceptions of judicial system and trial fairness. Based on the idea that views about racial neutrality may be linked to jurors' views about jury system fairness (McGuffee et al., 2007), we predict that participants exposed to the exclusion of Black jurors will report the trial, fellow jurors, and legal system in general as less fair than participants who are not exposed to such exclusions. Based on the idea that Black individuals are less trusting of the legal system than White individuals (Hurwitz & Peffley, 2005; Overby et al., 2005), we hypothesize that Black participants will report the trial, fellow jurors and legal system as less fair than White participants, regardless of jury makeup.

This study also seeks to measure whether the exclusion of Black jurors elicits emotional responses from participants. Based on personal testimony from Crishala Reed and Curtis Flowers demonstrating how the exclusion of Black jurors can be deeply upsetting for Black defendants and excluded jurors, we predict that Black participants who are exposed to the exclusion of Black jurors will report feeling more targeted, hurt, and nervous than White jurors who are also exposed to this condition.

Study 2 will also test whether exposure to race-motivated peremptory challenges influences case fact recall. Based on the idea that individuals in heterogeneous groups discuss a

wider range of case facts and make fewer factual errors during deliberation (Sommers, 2006), we suspect that participants exposed to exclusions that are not influenced by race will remember more case facts than those who are exposed to exclusions that result in a predominantly White group. This effect may be stronger in White participants than in Black participants. Indeed, Sommers found that the increased breadth of new case facts discussed in heterogeneous groups in his study was attributed specifically to White participants in these groups, as Black participants in these groups only raised a marginal number of additional case facts than did White jurors in the homogenous groups. Notably, there was no all-Black jury condition with which to compare Black jurors in the heterogeneous groups.

Finally, Study 2 aims to test whether the exclusion of Black jurors affects conviction likelihood when deciding the fate of a Black defendant. Based on Sommers (2006), we know that the presence of Black individuals within a jury leads White individuals to be less conviction prone. This finding, taken together with Haney (1984) and the tendency of White jurors to convict Curtis Flowers (*Flowers v. Mississippi,* 2019), leads us to predict that White participants, but not Black participants, will be more likely to convict the defendant when they are exposed to race-motivated exclusions and left with a predominantly White jury than those who are not exposed to these exclusions and are left with a diverse jury. Because the effects of race-relevant manipulations in a legal context are less impactful on Black (vs. White) individuals (Sommers & Ellsworth, 2000), we do not expect conviction likelihood for Black participants to change as a function of jury makeup.

One Alternative Possibility

Given the national reckoning over the past year in response to the deaths of George Floyd, Breonna Taylor, Ahmaud Arbery and countless other individuals of color who were

subject to unwarranted police violence, it is possible that all participants will be motivated to promote diversity and representation within different types of groups, such as juries. Indeed, it is important to consider the theory of psychological reactance, the "impulse to restore behavioral freedoms that are perceived to have been threatened or lost" (Lemus, Bukowski, Spears & Telga, 2015, p. 237). This phenomenon extends beyond individuals; reactance may occur in a group domain, meaning that in situations in which the freedom of a group is threatened, individuals in that group may seek out strategies aimed at restoring group freedom (Lemus et al., 2015). If participants in the experimental conditions of our study view the exclusion of the Black jurors as unfair (i.e., an action that threatens the collective freedom of the jury as a decision-making body), they may be less inclined to convict the defendant as a mechanism for expressing their disapproval with the process. Therefore, an alternative hypothesis regarding conviction-likelihood for Study 2 is that all participants—regardless of race—exposed to Black juror exclusions may be less conviction prone than those exposed to the predominantly White jury.

In order to test these questions, we administered an online questionnaire to individuals recruited from Amazon Mechanical Turk who were asked to take on the role of a prospective juror in a case with a Black defendant. To measure the effect of exposure to race-motivated exclusions on perceptions of fairness, case fact recall, conviction likelihood, and emotions, we conducted a 2 (Participant Race: Black vs. White) x 2 (Jury Makeup: Predominantly White vs. Diverse) between-subjects fully randomized factorial design.

Method

Participants

For this study, we administered an online survey to 228 Amazon Mechanical Turk participants. We compensated each participant who completed the survey $1.00. Because participant race (Black vs. White) is a quasi-experimental variable, we recruited 97[5] participants who listed their race as Black on MTurk worker demographic information as Black and 131 participants who listed their race as White on MTurk worker demographic information. We used individuals' self-identified race on MTurk as a means of recruiting into the two categories.

Procedure

Participants received a Qualtrics survey, which they were asked to complete in one setting. After reading a consent form (Appendix G), participants were told to assume the role of a juror in a criminal court case. They were then exposed to a mock trial transcript, which included details about the case and the jury selection process.

As the first part of the trial transcript, participants witnessed a brief summary of the court case and the individuals involved in the mock court case (Appendix H). They were then shown a photograph of the defendant. We used the defendant photograph from Study 1, a mugshot of a middle-aged Black man, which we obtained from FloridaStateMugshots.org.

Next, participants were exposed to a pool of 18 prospective jurors whom the participants were told are their "fellow jurors." The pool consisted of 11 White faces and 7 Black faces (Appendix I). All faces were obtained from the University of Chicago Brain Bridge Lab's Face Database, a repository of photos made available to researchers for download. Participants were then told that each of the prospective jurors filled out questionnaires about their familiarity with

[5] We aimed to recruit an even number of Black and White participants (about 130 participants in each group). However, after leaving our survey running for three weeks, we only received responses from 97 Black participants. Hence, the sample sizes are slightly uneven.

the case and that the attorneys would now have the opportunity to ask follow-up questions to prospective jurors. All participants were then exposed to eight mock follow-up conversations between the attorneys and prospective jurors, each paired with a random face from the jury pool (Appendix J). The follow-up conversations were slightly adapted from actual dialogue in the court case, *Flowers v. Mississippi* (2019).

Participants were then told that the attorneys have an opportunity to tell the judge which jurors they want to exclude from the trial. They were shown which individuals were excluded from the jury and which individuals remained to deliberate. The racial composition of the remaining jurors was manipulated. In one condition, participants were exposed to a diverse jury (n = 111). In the other condition, participants were exposed to a predominantly White jury (n = 117).

In the diverse condition, nine jurors were crossed out of the jury pool with a red slash mark, leaving 5 Black jurors and 5 White jurors. Because we asked participants to imagine themselves as one of the jurors in the ten-person jury, Black participants saw 4 Black faces and 5 White faces (Appendix K). White participants saw 5 Black faces and 4 White faces (Appendix L). In this way, both groups of participants were in juries in which half the people were White and half were Black.

In the predominantly White jury, nine different jurors were crossed out of the jury pool with a red slash mark, leaving 1 Black juror and 9 White jurors. Black participants saw zero Black faces and 9 White faces (Appendix M) while White participants saw one Black face and 8 White faces (Appendix N). In this way, both groups of participants were in juries in which 9 of the people were White and 1 person was Black.

After viewing the makeup of the empaneled jury, all participants were told that they and their fellow jurors had been sworn in. They were then asked to read carefully through the full trial scenario (Appendix O). After reading the trial scenario, participants were asked to answer a series of "pre-deliberation" questions measuring their ability to remember case facts, conviction likelihood, perceptions of fairness, and emotional responses to trial procedures.

To measure participants' ability to remember case fact, participants were asked to respond to four questions about the details of the case. To measure conviction likelihood, we asked participants, on a scale of 0 (*not guilty*) to 7 *(guilty*), how guilty they believed the defendant to be. We also asked participants to provide a pre-deliberation decision (guilty vs. not guilty). To measure perceptions of fairness, we asked participants a series of questions relating to perceptions of other jurors, trial fairness, and the fairness of the legal system as a whole..

To capture self-reported emotional responses to the exclusions that they witnessed, participants were asked to imagine that they were going to deliberate with their fellow jurors in a real trial. We asked participants to reflect on the jury selection process that they witnessed and indicate to what extent they felt "hurt," "interested," "targeted," "confident," "nervous," and "satisfied." We decided to use "hurt" and "nervous," as these were words that were brought up by Curtis Flowers in recounting his experience watching Black jurors be dismissed from service (Flowers & Hill, 2021). We extracted the word "targeted" from Crishala Reed's statement on being excluded from service (Vansickle, 2020). The three other positively-valenced words ("interested," "confident," and "satisfied") were not extracted from a specific source. They were included to test for the possibility that the jury makeup manipulation could produce positive reactions. We also asked participants to describe in a few words how they would feel if they were

excluded from service. After responding to these questions, participants were debriefed on the purpose of the study (Appendix P).

Results

Analyses were conducted in order to determine whether participant race (*Black* vs. *White*) and/or jury makeup (*predominantly White* vs. *Diverse*) had an effect on several dependent variables, including case fact recall, conviction likelihood, perceptions of fairness, and emotional responses. Analyses that were non-significant are not reported in this section, unless otherwise specified. A complete list of descriptive and inferential statistics for all self-report measures (including non-significant analyses) can be found in Table 8 and Table 9.

Manipulation Check

In order to ensure that participants paid attention to the nature of the juror exclusions and that those in the predominantly White condition perceived the final jury as significantly less diverse than did those in the diverse condition, we asked participants to rate, on a scale of 0 (*not diverse at all*) to 7 (*very diverse*), how diverse the original jury pool was and how diverse the final jury was. We subtracted each participant's rating of the final jury from their rating of the original jury pool. If participants interpreted the manipulation in the way in which we intended, participants in the predominantly White jury should have produced a significantly higher score than those in the diverse jury condition. An independent samples *t*-test revealed that those in the predominantly White condition ($M = 3.7$, $SD = 2.4$) did indeed score significantly higher than those in the diverse condition ($M = 0.3$, $SD = 1.5$) on this measure, $t(226) = 12.72$, $p < .001$, $d = 1.68$, 95% CI [1.38, 1.98] suggesting that our exclusion manipulation was processed by participants in the way in which we intended.

Case Fact Recall

Case fact recall was calculated for each participant by adding up the total number of correct answers about the case. Participant scores ranged from 0 (*zero questions correct*) to 4 (*four questions correct*). A two-way ANOVA was conducted to detect whether participant race and/or jury makeup had an effect on the number of case facts remembered. White participants (M = 3.7, SD = 0.6) remembered significantly more case facts than Black participants (M = 3.5, SD = 0.8), $F(1, 224) = 5.22$, $p = .023$, $d = 0.31$, 95% CI [0.05, 0.58]. Participants in the predominantly White jury (M = 3.6, SD = 0.7) remembered the same number of case facts as those in the diverse condition (M = 3.7, SD = 0.6), $F(1, 224) = 1.71$, $p = .192$, $d = 0.14$, 95% CI [-0.12, 0.40]. There was no significant interaction between participant race and jury makeup, $F(1, 224) = 2.62$, $p = .107$, $\eta^2 = .012$.

The majority of participants (73.2%) responded to all four case fact recall questions correctly. In order to test for ceiling effects, we ran a one-sample t-test to tell whether the average number of questions answered correctly (M = 3.6, SD = 0.7) was significantly different from 4. We did not detect a ceiling effect for this analysis; the average number of questions answered correctly was significantly lower than 4, $t(226) = 7.99$, $p < .001$.

Conviction Likelihood

A two-way ANOVA revealed that there was a significant main effect of participant race, $F(1, 224) = 6.59$, $p = .011$, $d = 0.34$, 95% CI [0.08, 0.61] on conviction likelihood. Indeed, White participants reported the defendant as significantly more guilty (M = 4.6, SD = 1.6) than did Black participants (M = 4.0, SD = 1.6). When asked to provide a "pre-deliberation" decision ("Guilty" vs. "Not Guilty"), participants, regardless of race or condition, were slightly more likely to vote guilty than not guilty (55.7% vs 44.3%, respectively), $\chi^2(1, N = 228) = 2.97$, $p =$

.085. White participants, across condition, were significantly more likely to vote guilty (62.6%) than Black participants (46.4%), $\chi^2(1, N = 228) = 5.93$, $p = .015$. Collapsed across participant race, participants in the predominantly White condition were equally likely to vote guilty as those in the diverse condition, $\chi^2(1, N = 228) = 1.24$, $p = .266$.

Perceptions of Fairness

In order to assess participants' perceptions of trial fairness and fairness of the legal system at large, we asked participants about fairness in three categories: fellow jurors, the trial, and the legal system as a whole. We report a series of 2 (jury makeup) x 2 (participant race) ANOVAs for each dependent variable below.

Questions

To What Extent Could You Imagine Being Convinced by Your Fellow Jurors to Vote Along With Them? Upon imagining themselves as the lone voice in disagreement among an otherwise unanimous jury, White participants ($M = 3.8$, $SD = 2.0$) rated themselves as more open to changing their vote than did Black participants ($M = 3.1$, $SD = 1.9$), $F(1, 224) = 6.08$, $p = .014$, $d = 0.33$, 95% CI [0.07, 0.60].

How Open Would Fellow Jurors be to Persuasion? White participants ($M = 4.4$, $SD = 1.4$) reported that they felt their fellow jurors could be more open to persuasion than did Black participants ($M = 3.9$, $SD = 1.6$), $F(1, 224) = 5.77$, $p = .016$, $d = 0.33$, 95% CI [0.06, 0.59]. Those in the diverse condition ($M = 4.4$, $SD = 1.4$) also reported that they felt their fellow jurors could be more open to persuasion than did those in the predominantly White condition ($M = 4.0$, 1.6), $F(1, 224) = 4.16$, $p = .043$, $d = 0.26$, 95% CI [0.01, 0.52].

How Much Would You Trust Other Jurors To Listen Carefully to the Evidence in This Case? White participants reported more trust in other jurors ($M = 4.8$, $SD = 1.4$) than did

Black participants ($M = 4.0$, $SD = 1.7$), $F(1, 224) = 17.74$, $p < .001$, $d = 0.57$, 95% CI [0.30, 0.83]. Those in the diverse condition ($M = 4.7$, $SD = 1.5$) also reported more trust in other jurors than did those in the Predominantly White condition ($M = 4.3$, $SD = 1.7$), $F(1, 224) = 5.43$, $p = .021$, $d = 0.28$, 95% CI [0.02, 0.54].

How Fair Were the Juror Exclusions? White participants ($M = 2.9$, $SD = 2.1$) reported the exclusions as more fair than Black participants ($M = 3.6$, $SD = 2.2$), $F(1, 224) = 7.80$, $p = .006$, $d = 0.35$, 95% CI [0.08, 0.61]. Those in the diverse condition ($M = 2.3$, $SD = 1.8$) reported the exclusions as more fair than those in the predominantly White condition ($M = 4.1$, $SD = 2.1$), $F(1, 224) = 54.81$, $p < .001$, $d = 0.95$, 95% CI [0.67, 1.22].

How Much do You Believe That the Prosecutor's Choices Were Rooted in a Desire to Promote Justice and Give the Defendant a Fair Trial? Those in the diverse condition ($M = 3.3$, $SD = 1.9$) reported the exclusions as more rooted in justice than did those in the predominantly White condition ($M = 4.5$, $SD = 2.0$), $F(1, 224) = 20.37$, $p < .001$, $d = 0.61$, 95% CI [0.34, 0.87].

To What Extent Should the Judge Have Intervened in the Jury Selection Process? Black participants ($M = 3.6$, $SD = 2.1$) reported that the judge should have intervened more than did White participants ($M = 4.2$, $SD = 2.0$), $F(1, 224) = 3.78$, $p = .053$, $d = 0.26$, 95% CI [0.01, 0.52]. Those in the predominantly White condition ($M = 3.3$, $SD = 3.4$) reported that the judge should have intervened more than those in the diverse condition ($M = 4.5$, $SD = 1.9$), $F(1, 224) = 21.57$, $p < .001$, $d = 0.59$, 95% CI [0.33, 0.86].

Statements

In order to assess participants' perceptions of trial fairness and fairness of the legal system at large, we asked participants to indicate how much they agreed or disagreed with a

series of statements. We report a series of 2 (jury makeup) x 2 (participant race) ANOVAs for each dependent variable below.

The Other Jurors will be Fair and Impartial in this Case. White participants (M = 3.1, SD = 1.9) agreed with this statement more than Black participants (M = 3.9, SD = 1.8), $F(1, 224) = 10.12$, $p = .002$, $d = 0.42$, 95% CI [0.15, 0.68] and those in the diverse condition (M = 3.0, SD = 1.8) agreed more than those in the predominantly White (M = 3.9, SD = 1.9) condition, $F(1, 224) = 11.40$, $p = .001$, $d = 0.45$, 95% CI [0.19, 0.71].

This Defendant Will be Tried by a Jury of his Peers. White participants (M = 2.9, SD = 2.2) agreed with this statement more than Black participants (M = 4.1, SD = 2.2), $F(1, 224) = 17.67$, $p < .001$, $d = 0.52$, 95% CI [0.26, 0.80], and those in the diverse condition (M = 2.6, SD = 2.1) agreed more than those in the predominantly White (M = 4.2, SD = 2.2) condition, $F(1, 224) = 32.68$, $p < .001$, $d = 0.75$, 95% CI [0.48, 1.02].

Given the Composition of This Jury, the Defendant will get a Fair Trial. White participants (M = 3.0, SD = 1.9) agreed with this statement more than Black participants (M = 4.1, SD = 2.0), $F(1, 224) = 19.47$, $p < .001$, $d = 0.57$, 95% CI [0.30, 0.83], and those in the diverse condition (M = 2.8, SD = 1.9) agreed more than those in the predominantly White (M = 4.0, SD = 2.0) condition, $F(1, 224) = 21.15$, $p < .001$, $d = 0.64$, 95% CI [0.37, 0.90].

The Legal System, as a Whole, is Fair. White participants (M = 3.5, SD = 1.9) agreed with this statement more than Black participants (M = 4.1, SD = 2.1), $F(1, 224) = 5.88$, $p = .016$, $d = 0.33$, 95% CI [0.07, 0.59].

Emotional Responses

Six two-way ANOVAs were conducted in order to test for the effects of participant race and jury makeup on these emotional responses and any possible interactions between our

independent variables. Open-ended responses captured additional emotional responses that were not captured by the six categories listed below. Using a Bonferroni correction, the significance criterion for each of the effects below was set at .008 (.05/6).

Hurt

There was a main effect of both participant race, F (1, 224) = 17.53, p < .001, d = 0.52, 95% CI [0.26, 0.79] and jury makeup, F(1, 224) = 43.67, p < .001, d = 0.77, 95% CI [0.50, 1.04] on participants' self-reported levels of hurt. Specifically, Black participants reported higher levels of hurt (M = 2.1, SD = 2.3) than White participants (M = 1.1, SD = 1.8), and those in the predominantly White condition reported higher levels of hurt (M = 2.3, SD = 2.3) than those in the diverse condition (M = 0.8, SD = 1.5). We detected an interaction (see Figure 1) between these two variables, F(1, 224) = 11.46, p = .001, η^2 = .049. Tests of simple effects revealed that for White participants, levels of hurt were similar for those in the predominantly White condition (M = 1.5, SD = 1.9) and those in the diverse condition (M = 0.7, SD = 1.9), t(129) = 2.58, p = .011, d = 0.45, 95% CI [0.10, 0.80]. For Black participants, the effect of jury makeup was even stronger, with those in the predominantly White condition (M = 3.3, SD = 2.3) reporting significantly more hurt than those in the diverse condition (M = 0.9, SD = 1.3), t(95) = 6.26, p < .001, d = 1.27, 95% CI [0.83, 1.71].

Interested

White participants reported higher levels of being interested (M = 4.9, SD = 2.0) than Black participants (M = 3.9, SD = 2.3), F(1, 224) = 11.63, p = .001, d = 0.46, 95% CI [0.19, 0.72].

Targeted

Black participants reported feeling targeted ($M = 2.4$, $SD = 2.4$) more than White participants ($M = 1.2$, $SD = 2.0$), $F(1, 224) = 22.44$, $p < .001$, $d = 0.60$, 95% CI [0.33, 0.87]. Further, those in the predominantly White condition reported feeling targeted ($M = 2.4$, $SD = 2.3$) more than those in the diverse condition ($M = 1.0$, $SD = 1.7$), $F(1, 224) = 33.07$, $p < .001$, $d = 0.66$, 95% CI [0.39, 0.92]. We detected an interaction between these two variables, $F(1, 224) = 11.91$, $p = .001$, $\eta^2 = .050$ (see Figure 2). Tests of simple effects revealed that for White participants, levels of targeted for those in the predominantly White condition ($M = 1.5$, $SD = 1.9$) were similar to those in the diverse condition ($M = 0.9$, $SD = 1.6$), $t(129) = 1.92$, $p = .057$, $d = 0.34$, 95% CI [0.01, 0.68]. For Black participants, the effect of jury makeup was even stronger, with those in the predominantly White condition ($M = 3.6$, $SD = 2.4$) reporting significantly more targeted than those in the diverse condition ($M = 1.2$, $SD = 1.7$), $t(95) = 5.50$, $p < .001$, $d = 1.12$, 95% CI [0.69, 1.54].

Confident

Those in the predominantly White condition reported lower levels of confidence ($M = 3.1$, $SD = 2.3$) than those in the diverse condition ($M = 4.2$, $SD = 2.1$), $F(1, 224) = 18.40$, $p < .001$, $d = 0.54$, 95% CI [0.28, 0.81].

Nervous

There were no significant main effects or interactions on this dependent variable.

Satisfied

Finally, those in the diverse condition reported feeling more satisfied ($M = 3.4$, $SD = 2.1$) than those in the predominantly White condition ($M = 2.0$, $SD = 2.2$), $F(1, 224) = 22.60$, $p < .001$, $d = 0.63$, 95% CI [0.36, 0.89].

Open-Ended Responses

Open-ended responses were coded for whether participants brought up negative emotions (e.g., upset, hurt, frustrated) or positive/neutral emotions (e.g., relieved, happy, fine). They were also coded for mentions of race.

How Would You Feel if You Were Excluded From Jury Service? Consistent with the findings from our quantitative measures of emotion, Black participants indicated in their open-ended responses that they would feel more negative emotions (18.6%) than White participants (3.8%), $\chi^2(1, N = 228) = 13.35$, $p < .001$. White participants indicated that they would feel more positive emotions (65.6%) than Black participants (42.3%), $\chi^2(1, N = 228) = 12.35$, $p < .001$. Seven Black participants indicated that they would feel they were excluded based on race (e.g., "*I would believe I was excluded based on my race,*" "*excluded to keep the jury pool caucasian*"). Two White participants also invoked race in their responses, focusing on their attitudes about racial dynamics. One White participant said, "I would feel somewhat relieved. I don't look forward to doing jury duty. However, I would also feel a little bad that a more 'woke' white person couldn't sit in the jury box—considering there are not many people of color." The other White participant wrote, "I would feel good that a white person (me) had been excluded and hope that my exclusion would leave a chair open for a person of color."

Discussion

In Study 2, we assessed whether exposure to exclusions of Black individuals from jury service—and the resulting predominantly White jury—would influence the conviction likelihood, case fact recall, perceptions of fairness, and emotional responses of Black and White participants. All participants saw a venire in which both Black and White jurors were represented; specifically, there were 7 Black jurors and 11 White jurors. We exposed half of our

participants to a condition in which almost all of the Black individuals were excluded from the jury, leaving a predominantly White jury. We exposed the other half to a condition in which both Black and White jurors were excluded, leaving a diverse jury. Participants' responses indicated that ratings of diversity within the initial jury pool did not differ by jury makeup, whereas the predominantly White final jury was rated as significantly less diverse than the diverse jury.

Jury makeup had an effect on several measures related to participants' attitudes about fairness. As predicted, participants exposed to diverse juries felt their fellow jurors could be more open and impartial than those in the predominantly White condition. Those in diverse juries (vs. predominantly White juries) also reported more trust in their fellow jurors. These findings have implications for real-life deliberations, as individuals on a jury, in theory, should be able to openly exchange opinions and give full consideration to the input of fellow jurors (United States District Court, n.d.).

Jury makeup also had an effect on all measures related to perceptions of the trial. Participants exposed to the predominantly White jury reported both the trial and specific juror exclusions as less fair, agreed that the judge should have intervened more, and agreed less with the statement "*This defendant will be tried by a jury of his peers"* than those exposed to the diverse jury. These findings suggest that when exposed to the exclusion of Black jurors, participants may experience lowered faith in trial procedures. It is possible that this lowered faith could have a direct impact on juror engagement during deliberations or views about trial legitimacy, though these are directions for future research.

In addition to shaping participants' attitudes about elements of the legal system and trial fairness, jury makeup appeared to have an effect on emotional responses to the trial. Participants exposed to the diverse jury expressed more positive emotions and fewer negative emotions than

those exposed to the predominantly White jury. Specifically, participants reported feeling more hurt and targeted when the jury was predominantly White (vs. diverse). Participants exposed to a diverse (vs. predominantly White) jury reported feeling more confident and satisfied. The findings suggest that the exclusion of Black jurors from the jury has the potential to affect the emotions of those who are eventually empaneled, even if those empaneled are not directly targeted by the exclusions.

Although both Black and White jurors felt more hurt and targeted when exposed to a predominantly White (vs. diverse) jury, the difference was more pronounced for Black jurors than it was for White jurors. This finding is consistent with our predictions. As mentioned, testimony from Curtis Flowers (Flowers & Hill, 2021) and Crishala Reed (Vansickle, 2020) suggests that Black exclusions can feel hurtful to Black defendants and Black jurors who are directly impacted by these decisions. Our findings posit that the emotional impact of race-motivated exclusions extends beyond these individuals and can also impact Black jurors who do not get excluded but remain to deliberate after a biased exclusion process has resulted in a predominantly White jury.

Despite influencing perceptions of fairness and emotional reactions, jury makeup did not have an effect on conviction likelihood. Inconsistent with our predictions, participants' self-reported likelihood of finding the defendant guilty did not change as a function of whether they were exposed to the diverse or predominantly White jury. There are several reasons that could account for the fact that jury makeup did not affect conviction likelihood. Our hypothesis for this variable was based on Haney (1984), who found that individuals who had undergone an additional death-qualification questioning process were more likely to convict a defendant compared with individuals who had only undergone an initial death-qualification process. It is

possible that death-qualification procedures and jury exclusions are not comparable paradigms. Further, Haney conducted his research in person, while our research was conducted in an online setting. Perhaps our manipulation could have been stronger if participants actually witnessed Black jurors leaving a physical courtroom, rather than simply disappearing from their computer screens.

Also inconsistent with our predictions is the finding that jury makeup did not affect case fact recall. Participants exposed to predominantly White juries and those exposed to diverse juries remembered statistically similar numbers of case facts. The prediction that those assigned to diverse juries would remember more case facts than those in predominantly White juries was based on Sommers (2006), who found that White participants deliberating with diverse juries in a mock court case remembered more case facts and made fewer factual errors than White participants in homogenous juries. Sommers attributed this effect to the fact that White people process information about or disclosed by Black individuals more systematically when they are motivated to avoid prejudice, which the presence of Black jurors triggered. Because participants in our study completed the study in isolation and did not actually deliberate with anyone, it is plausible that they were not driven to avoid acting in a prejudiced or biased manner. In addition to this possibility, there were other major differences between Sommers (2006) and the current research. Sommers' procedure was longer and more extensive than the procedure implemented in the current research. Participants in Sommers' study were exposed to a 30-minute long trial video, while our participants were given a short paragraph to read about the case. Because participants were exposed to more information in Sommers, there were more facts to recall and hence, more opportunities to make inaccurate judgments.

In addition to examining whether jury makeup would affect participants' attitudes, emotions and behaviors, we tested whether there would be differences in these variables between White and Black participants. We found several differences between Black and White participants that are consistent with previous research. As predicted, White participants were more likely to lean towards a guilty verdict than were Black participants. This finding aligns with other research that has found that White jurors are more likely to convict Black defendants than are Black jurors (e.g., Bernard, 1979; Bucolo, Pride, & Sommers, 2009; Cohn, Sommers & Ellsworth, 2000).

There were also stark differences in how Black and White participants responded to measures of fairness. Indeed, Black participants reported lower perceptions of fairness than White participants for all but one question (*"How much do you believe that the prosecutor's choices were rooted in a desire to promote justice and give the defendant a fair trial?"*). This finding provides further support for the notion that Black individuals view the system as less fair than White individuals (Hurwitz & Peffley, 2005; Overby et al., 2005). These differing ideas about fairness could be related to differing perceptions of the system as racially biased. In 2019, a nationwide survey found that 87% of Black adults said Black people are treated less fairly by the justice system, while only 61% of White adults shared this view (Pew Research Center, 2019). This view could be connected, in part, to personal experience: a 2016 survey revealed that 18% of Black adults reported that they had been unfairly stopped by the police, compared with only 3% of White adults (Hetey & Eberhardt, 2018).

Although we predicted differences in conviction likelihood and perceptions of fairness based on race, we did not make any predictions about differences in case fact recall between White and Black jurors. Unexpectedly, Black participants remembered fewer case facts than

White participants. There is reason to suspect that this result was a function of Black participants' general attention (or inattention) to survey instructions and questions, rather than their recollection of the case. Multiple choice attention check questions at earlier stages of the survey indicated that Black participants paid less attention to survey instructions than did White participants.

One explanation for Black participants paying less attention to survey instructions and questions is that they could have been hurt or offended by certain elements of the survey (e.g., the depiction of the defendant as Black) and therefore less inclined to pay attention to the survey as a whole. Indeed, Black participants reported feeling more negative emotions (i.e., hurt and targeted) than White participants. A Pearson's *r* correlation revealed a significant, negative correlation between attention check accuracy and feelings of "hurt" for Black participants, $r(95) = -.28$, $p = .005$, but not White participants, $r(129) = -.14$, $p = .112$. These correlations were not statistically different from one another, $z = 1.08$, $p = .280$, and hence, this speculative explanation should be approached with caution.

Practical Implications, Limitations and Future Research

In summary, Study 2 suggests that race-motivated jury selection processes that give rise to predominantly White juries can affect empaneled jurors' attitudes towards trial fairness and emotional reactions. Negative emotional reactions elicited in response to these jury selection processes may be stronger for Black individuals than White individuals. The findings provide additional incentive to implement warning strategies to curb the influence of race on peremptory challenge use, as race-motivated exclusions can affect the individuals who are given the responsibility of deciding the verdict of the trial.

There were a few limitations to our study that could have impacted internal validity. After participants witnessed juror exclusions, they all were exposed to a final jury that was either diverse or predominantly White. It is difficult to know whether the differences in perceptions of fairness and emotional responses was a result of the process of the juror exclusions themselves, the racial composition of the final jury, or both. Hence, the conclusion that race-motivated exclusions alone led to reduced perceptions of fairness and increased negative emotions should be taken with a degree of caution. In fact, fewer than half (47%) of participants in the predominantly White condition said that they thought the jurors were excluded because of their race, suggesting that the racially biased nature of the exclusions may not have been as apparent as we intended them to be, even though participants did rate the predominantly White jury as less diverse than the diverse jury. Future research on this topic should aim to amplify the biased nature of juror exclusions by including exposure to the disproportionate questioning of Black jurors, a key element of many court cases in which attorneys deliberately excluded Black jurors (e.g., *Flowers v. Mississippi*, 2019).

General Discussion

In two studies, we tested a series of questions related to race and the jury selection process, specifically with regard to the exclusion of Black jurors. In Study 1, we found that participants taking on the role of a prosecutor were more likely to exclude a Black juror than a White juror in a case with a Black defendant, but that justifications for these exclusions generally did not include mentions of race. This effect of race was eliminated among participants, however, when they were exposed to a warning about the dangers of excluding jurors based on aspects of their identity. In Study 2, we found that participants taking on the role of a juror who witnessed the exclusion of Black individuals from serving on the jury viewed elements of the

trial as less fair and elicited more negative emotions than those who witnessed exclusions of both Black and White jurors. We also found that White participants were more conviction prone, reported more trust in the system, reported the trial as more fair, and elicited fewer negative emotions than did Black participants.

One limitation of both Study 1 and Study 2 is the fact that in both trial scenarios, our defendant was depicted as Black. We designed this element of the study intentionally, as Black jurors have a long history of being excluded in cases with Black defendants. We were also motivated to seek interventions that would support Black defendants, as they are more likely than White defendants to be convicted and given longer prison sentences (Sentencing Project, 2018). Finally, parts of Study 1 were adapted from Sommers and Norton (2007), which also involved a case with a Black defendant. Still, we cannot generalize the conclusion that race can influence peremptory challenge use to cases with non-Black defendants. Future research should aim to replicate the procedures from Study 1 and 2 with a non-Black defendant.

Study 1 suggests that a simple warning on the dangers of excluding jurors based on identity should be introduced into jury selection because it could help to reduce the likelihood that Black jurors get excluded by White attorneys because of their race in cases with Black defendants. Study 2 provides further incentive to implement a warning intervention into courtrooms, as the exclusion of Black jurors may have unintended consequences for the jurors who do not get excluded from service and are left to decide on the final verdict.

Although the warning reduced the effect of race on peremptory challenges in Study 1, other types of interventions for reducing bias in jury selection should also be investigated in order to establish a multitude of sufficient safeguards to protect against race-based exclusions. One viable intervention proposed by Sommers and Norton (2008) is “category masking,” a

strategy in which decision makers are made blind to the social group membership of a target person. For instance, one study found that female musicians were more likely to be hired for a symphony orchestra if their identity was concealed by a screen during auditions (Goldin & Rouse, 2000). In the context of jury selection, attorneys could conduct voir dire over the phone or through written questionnaires only. By implementing a "blind" voir dire, the likelihood that a juror would get excluded based on race could be greatly reduced, as the race of prospective jurors would remain unknown.

Another intervention proposed by Sommers and Norton (2008) is implementing "prejudgment ratings," a tool that would require attorneys to state the characteristics of a juror that they would prefer for the case before beginning voir dire. This strategy has been found to reduce bias in other contexts, such as the workforce. In a study by Uhlmann & Cohen (2005), gender discrimination in hiring was eliminated when mock employers identified their hiring criteria for a given job (e.g., graduated from a prestigious school) prior to knowledge of the applicant's gender. In a legal setting, this intervention could make it more difficult for attorneys to exclude jurors who match their preferences, even if they are not members of a preferred racial category.

Any of these interventions could reduce the chances that Black jurors are excluded from service because of their race, potentially leading to more representative juries for Black defendants. However, no single intervention would be a panacea for the larger incidence of racial disparities in the justice system. Jury selection has many stages and steps, each of which, as mentioned in the introduction, are subject to racial bias. A focus on peremptory challenges would only be one step towards ensuring representative juries, as minorities can be excluded at other stages of jury selection as well. Further, there are countless other elements of the criminal justice

system unrelated to jury selection that contribute to the fact that Black individuals are disproportionately convicted, sentenced, and policed (Sommers & Moarotta, 2013).

In his book, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform,* criminal justice expert John Pfaff (2017) argues that one of the major drivers of mass incarceration is the relatively unchecked power of prosecutors. In addition to making decisions about which individuals are fit for juries, prosecutors have an enormous degree of discretion in deciding not only the type of charges to bring against a defendant, but also whether or not to pursue a case in the first place (Pfaff, 2017). Further, over 90% of criminal convictions are resolved through plea agreements between prosecutors and defendants rather than juries and judges (Lopez, 2017). In order to truly reduce mass incarceration and the striking racial disparities that arise within our immense prison population, a more expansive reduction of prosecutorial power could be effective.

If we want to achieve the goal of a fair and racially just system, we must be willing to reimagine our current ideas about crime and punishment and reconsider the power afforded those deciding whom and how to punish. The battle to reduce the influence of race on peremptory challenges is a small but worthwhile step in that direction. In the absence of a radical transformation of the current justice system, such recommendations would be fairly easy to institute and could enhance justice for defendants and prospective jurors of color. If measures are not taken to eliminate the influence of race on the peremptory challenges, attorneys will continue to carry out racially biased actions in the courtroom that deprive defendants of one the country's most basic constitutional rights: to be judged by a jury of their peers.

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List of Tables, Figures, and Appendices

Table 1

Difference in Means Between Bias-Presumptive and Neutral Questions (Pilot Study)

Pair	Bias-presumptive Question Mean	Neutral Question Mean	*p*	*t*
1	5.7	3.5	.000	4.81
2	3.6	3.2	.309	1.04
3	3.1	3.4	.424	0.81
4	3.6	3.4	.523	0.65
5	4.8	3.0	.003	3.24
6	3.6	3.8	.683	0.41

Table 2

T-test of Difference in Means Between Unpaired Neutral Question and Paired Neutral Questions (Pilot Study)

Paired Neutral Question	Unpaired Neutral Question Mean	Paired Neutral Question Mean	*p*	*t*
1	2.3	3.5	.017	2.53
2	2.3	3.2	.023	2.41
3	2.3	3.4	.013	2.64
4	2.3	3.4	.035	2.22
5	2.3	3.0	.186	1.36
6	2.3	3.8	.003	3.30

Table 3

Changes to Bias-Presumptive Questions Based on Results of Pilot Study

Pair	Old Question Pairs	New Question Pairs
1	Don't you agree that police can be biased against defendants?	N/A
2	In what ways could someone argue that your previous background will prevent you from being impartial?	In what ways would it be difficult for you to be impartial in this case?
3	This case relies heavily on physical evidence. How might evidence tampering influence this case?	We all know that evidence tampering is a problem. How might evidence tampering influence this case?
4	How does your marital status influence how you will approach this case?	Won't your marital status influence how you will approach this case?
5	Wouldn't you agree that scientific evidence can be manipulated easily?	N/A
6	In what ways will the amount of time you have worked at your current job influence how you will rule in this case?	In what ways will your previous work experiences taint your perception of evidence?

Note. Questions marked "N/A" did not change.

Table 4

Changes to Neutral Questions Based on Results of Pilot Study

Pair	Old Question Pairs	New Question Pairs
1	Do you think that police can be biased against defendants?	N/A
2	Does your previous experience influence how you might approach this case?	Is there anything that might influence how you might approach this case?
3	Do you believe that physical evidence can be easily tampered with?	N/A
4	Does your marital status influence how you might approach this case?	N/A
5	How confident are you in the accuracy of scientific evidence, such as statistics?	N/A
6	Do you believe that career longevity influences how a juror might approach a case?	Do you believe that career background influences how a juror might approach a case?

Note. Questions marked "N/A" did not change.

Table 5

Peremptory Challenge Use by Prospective Juror Race - MTurk Sample (Study 1)

Condition	Juror #1		Juror #2	
	When Black (%)	When White (%)	When Black (%)	When White (%)
Overall (n = 298)	68.7	58.2	41.7	31.2
Warning condition (n = 111)	60	56	43	40
No warning Condition (n = 187)	74.7	59	41	25.3

Note. Each number represents the percentage of participants who excluded the prospective juror. Participants were always given the option to choose between a Black and White juror. Therefore, the first and fourth column represent the choice given to participants in one condition, and the second and third column represent the choice given to participants in the other condition. Adding the two choices together equals 100% in both conditions.

Table 6

Peremptory Challenge Use by Prospective Juror Race - Defense Attorney Sample (Study 1)

Condition	Juror #1		Juror #2	
	When Black (%)	When White (%)	When Black (%)	When White (%)
Overall (n = 38)	60	55.6	44.4	40
Warning condition (n = 18)	57.2	75	25	42.9
No warning Condition (n = 20)	66.7	50	50	33.3

Note. Each number represents the percentage of participants who excluded the prospective juror. Participants were always given the option to choose between a Black and White juror. Therefore, the first and fourth column represent the choice given to participants in one condition, and the second and third column represent the choice given to participants in the other condition. Adding the two choices together equals 100% in both conditions.

Table 7

Peremptory Challenge Use by Prospective Juror Race - MTurk and Defense Attorneys Combined Sample (Study 1)

Condition	Juror #1		Juror #2	
	When Black (%)	When White (%)	When Black (%)	When White (%)
Overall (n = 336)	67.7	58	42	32.3
Warning condition (n = 129)	59.5	58.2	41.8	40.5
No warning Condition (n = 207)	74.2	57.9	42.1	25.9

Note. Each number represents the percentage of participants who excluded the prospective juror. Participants were always given the option to choose between a Black and White juror. Therefore, the first and fourth column represent the choice given to participants in one condition, and the second and third column represent the choice given to participants in the other condition. Adding the two choices together equals 100% in both conditions.

Table 8

Study 2 Means and Standard Deviations for Self-Report Measures By Jury Makeup and Race

Self-Report Measures	Diverse jury		Predominantly White jury	
	Black participants (n = 47)	White participants (n = 64)	Black participants (n = 50)	White participants (n = 67)
How likely are you to find the defendant guilty?	4.1 (1.6)	4.7 (1.7)	3.9 (1.6)	4.4 (1.6)
Suppose your fellow jurors were all in agreement about how the case should be decided with you as the lone voice in disagreement. To what extent could you imagine being convinced by your fellow jurors to vote along with them?	3.3 (1.8)	3.9 (2.0)	2.9 (1.9)	3.7 (2.1)
How open would fellow jurors be to persuasion?	4.2 (1.2)	4.5 (1.5)	3.6 (1.9)	4.3 (1.4)
How much would you trust other jurors to listen carefully to the evidence in this case?	4.4 (1.5)	4.9 (1.4)	3.6 (1.8)	4.7 (1.4)
How fair were the juror exclusions?	2.5 (1.9)	2.1 (1.7)	4.7 (2.0)	3.6 (2.0)
How much do you believe that the prosecutor's choices were rooted in a desire to promote justice and give the defendant a fair trial?	3.5 (2.0)	3.2 (1.9)	4.7 (1.9)	4.4 (2.0)
To what extent should the judge have intervened in the jury selection process?*	4.4 (1.9)	4.6 (4.6)	2.9 (2.0)	3.7 (2.0)
The other jurors will be fair and impartial in this case.*	3.5 (1.6)	2.7 (1.9)	4.3 (1.9)	3.5 (1.8)
This defendant will be tried by a jury of his peers.*	3.3 (2.1)	2.1 (2.0)	4.8 (2.1)	3.8 (2.2)
Given the composition of this jury, the defendant will get a fair trial.*	3.4 (1.8)	2.3 (1.8)	4.7 (2.1)	3.6 (1.9)
The legal system, as a whole, is fair.*	3.8 (2.1)	3.5 (2.0)	4.4 (2.2)	3.4 (1.9)
To what extent would you feel hurt?	0.9 (1.3)	0.7 (1.6)	3.4 (2.3)	1.5 (1.9)
To what extent would you feel interested?	4.3 (2.3)	5.2 (1.8)	3.6 (2.3)	4.6 (2.1)
To what extent would you feel targeted?	1.2 (1.7)	0.9 (1.6)	3.6 (2.4)	1.5 (1.9)
To what extent would you feel confident?	4.0 (2.2)	4.4 (2.0)	2.4 (2.2)	3.5 (2.2)
To what extent would you feel nervous?	2.4 (2.2)	2.8 (2.5)	3.1 (2.3)	3.1 (2.5)
To what extent would you feel satisfied?	3.3 (2.1)	3.4 (2.1)	1.7 (2.1)	2.2 (2.3)

Note. Standard deviations in parentheses. Participants responded to these questions on a scale of 0 (*negative*) to 7 (*affirmative*), though the specific wording of the scale depended on the nature of the question. All questions marked with an asterisk were scored in a reversed manner, from 0 (*affirmative*) - 7 (*negative*). For instance, participants responded to the statement, "The legal system, as a whole, is fair," on a scale of 0 (*strongly agree)* to 7 *(strongly disagree).*

Table 9

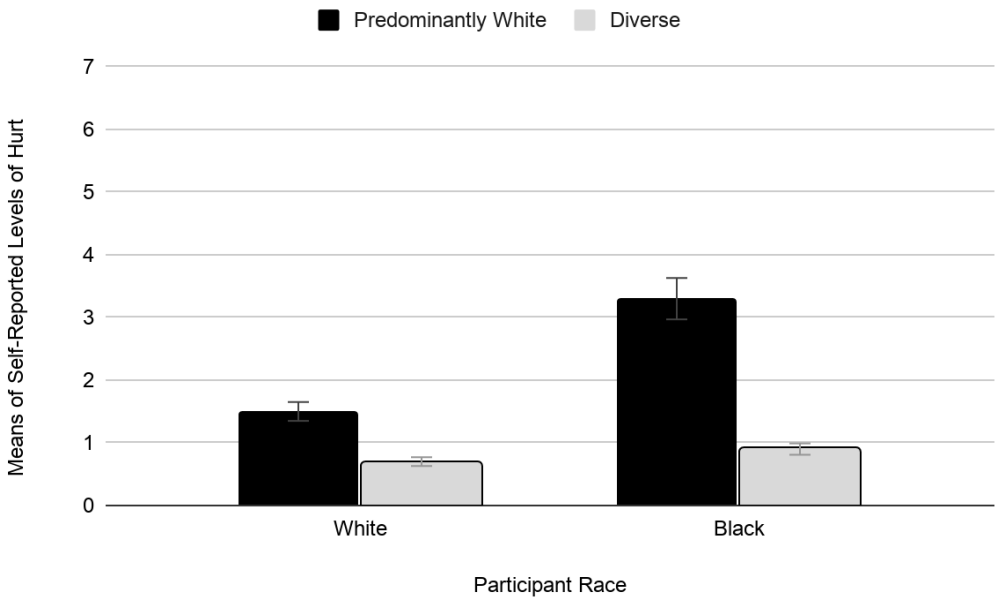
Study 2 Inferential Statistics for Self-Report Measures (2 x 2 between-subjects ANOVA)

Dependent Variable	Main Effect of Jury Makeup				Main Effect of Participant Race				Interaction		
	F	*p*	*d*	95% CI	*F*	*p*	*d*	95% CI	*F*	*p*	η^2
How likely are you to find the defendant guilty?	1.21	.272	0.16	[0.11, 0.42]	6.59	.011	0.34	[0.08, 0.61]	0.19	.668	.001
Suppose your fellow jurors were all in agreement about how the case should be decided with you as the lone voice in disagreement. To what extent could you imagine being convinced by your fellow jurors to vote along with them?	1.24	.266	0.14	[0.12, 0.40]	6.08	.014	0.33	[0.07, 0.60]	0.11	.737	.001
How open would fellow jurors be to persuasion?	4.16	.043	0.26	[0.01, 0.52]	5.77	.016	0.33	[0.06, 0.59]	0.65	.420	.003
How much would you trust other jurors to listen carefully to the evidence in this case?	5.43	.021	0.28	[0.02, 0.54]	17.74	< .001	0.57	[0.30, 0.83]	1.95	.164	.009
How fair were the juror exclusions?	54.81	< .001	0.95	[0.67, 1.22]	7.80	.006	0.35	[0.08, 0.61]	2.09	.150	.009
How much do you believe that the prosecutor's choices were rooted in a desire to promote justice and give the defendant a fair trial?	20.37	< .001	0.61	[0.34, 0.87]	0.95	.332	0.13	[0.14, 0.39]	0.01	.941	< .001
To what extent should the judge have intervened in the jury selection process?	21.57	< .001	0.59	[0.33, 0.86]	3.78	.053	0.26	[0.01, 0.52]	1.55	.215	.007
The other jurors will be fair and impartial in this case.	11.40	.001	0.45	[0.19, 0.71]	10.12	.002	0.42	[0.15, 0.68]	0.02	.903	< .001
This defendant will be tried by a jury of his peers.	32.68	< .001	0.75	[0.48, 1.02]	17.67	< .001	0.53	[0.26, 0.80]	0.16	.694	.001
Given the composition of this jury, the defendant will get a fair trial.	21.15	< .001	0.64	[0.37, 0.90]	19.47	< .001	0.57	[0.30, 0.83]	0.004	.952	< .001

The legal system, as a whole, is fair.	0.92	.339	0.11	[0.15, 0.37]	5.88	.016	0.33	[0.07, 0.59]	1.32	.252	.006
To what extent would you feel hurt?	43.67	< .001	0.77	[0.50, 1.04]	17.53	< .001	0.52	[0.26, 0.79]	11.46	.001	.049
To what extent would you feel interested?	5.07	.025	0.29	[0.03, 0.55]	11.63	.001	0.46	[0.19, 0.72]	0.08	.780	< .001
To what extent would you feel targeted?	33.07	< .001	0.66	[0.39, 0.92]	22.44	< .001	0.60	[0.33, 0.87]	11.91	.001	.050
To what extent would you feel confident?	5.91	.016	0.32	[0.06, 0.58]	18.40	.001	0.54	[0.28, 0.80]	1.63	.203	.007
To what extent would you feel nervous?	2.76	.098	0.21	[0.05, 0.47]	0.56	.456	0.10	[0.17, 0.36]	0.26	.608	.001
To what extent would you feel satisfied?	22.60	< .001	0.63	[0.36, 0.89]	1.08	.299	0.63	[0.36, 0.89]	0.35	.556	.002

Figure 1

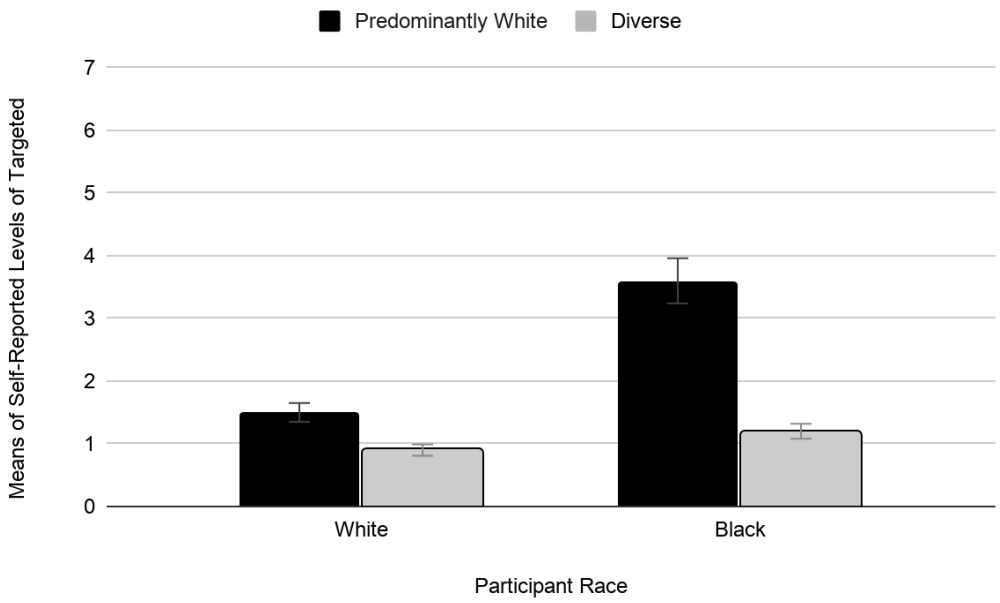
Interaction Between Participant Race and Jury Makeup on Feelings of Hurt in Study 2



Note. Participants' feelings of "hurt" were captured via self report on a scale of 0 (*does not describe my feelings at all*) to 7 (*completely describes my feelings).*

Figure 2

Interaction Between Participant Race and Jury Makeup on Feelings of Targeted in Study 2



Note. Participants' feelings of "targeted" were captured via self report on a scale of 0 (*does not describe my feelings at all*) to 7 (*completely describes my feelings*

Appendix A:
Consent Form (Pilot Study)

Consent Form
Bates College Department/Program of Psychology
Title of the Study: Decision Making in a Legal Context

Researcher Name(s): Katie Abramowitz (kabramow@bates.edu; 301-466-1783) and Professor Amy Douglass (adouglas@bates.edu)

The general purpose of this research is to examine the nature of decision making within a legal context. This study will focus specifically on the jury selection process, which occurs before the trial has begun. Participants in this study will be asked to analyze questions that might appear during the jury selection process. Findings from this study will be used for a written thesis and possibly publication in an academic journal.

I understand that:
A. My participation in this study will take approximately 15 minutes. I agree to complete the study in one sitting.
B. The probability and magnitude of harm/discomfort anticipated as a result of participating in this study are not greater than those ordinarily encountered in daily life.
C. The potential benefits of this study include gaining an impression of how the jury selection process works.
D. I will be compensated for participating in this study with 0.25 units of class credit.
E. My participation is voluntary, and I may discontinue participation in the study at any time by closing the survey. My refusal to participate will not result in any penalty.
F. Some aspects of the study purpose/procedures may be withheld from me until its end. What the investigators hope to learn from this study, the specific nature of and reasons for the procedures employed, and those aspects of my behavior that have been recorded for measurement purposes will all be fully explained to me at the end of the study.
G. My responses will be recorded anonymously, and I cannot be identified by my responses.

Appendix B:
Debriefing Form (Pilot Study)

Debriefing Form
Bates College Department/Program of Psychology

Title of the Study: Decision Making and the Jury Selection Process

Researcher Name(s): Katie Abramowitz (kabramow@bates.edu; 301-466-1783) and Professor Amy Douglass (adouglas@bates.edu)

Thank you for participating in this research survey. We are conducting this survey in order to test a series of questions that we intend to use as part of a larger study about the influence of race on the jury selection process.

While participating in this study, you were given a list of questions that an attorney might ask a prospective juror. The list contained six pairs of questions. Within each pair, one question was written in a way that was intended to be "bias-presumptive" (e.g., "Don't you agree that police can be biased against defendants?"), while the other question was written in a way that was intended to be perceived as neutral (e.g., "Do you think that police can be biased against defendants?"). We included an additional neutral question, making thirteen questions total. The goal of this survey is to test whether the two questions within each pair are distinct from one another and whether our assumptions about which questions are neutral (vs. bias-presumptive) are correct. Therefore, there was no correct way to rate any of the questions. We were simply trying to assess whether our own categorization of the questions matches how others would evaluate them.

If you are interested in learning more about this study, please feel free to contact us using the email address(es) above.

If you have any concerns about your rights as a participant in this study, please contact the Bates College Institutional Review Board (irb@bates.edu).

Thank you again for participating!

Appendix C:
Consent Form (Study 1)

Consent Form
Bates College Department/Program of Psychology
Title of the Study: Decision Making in a Legal Context

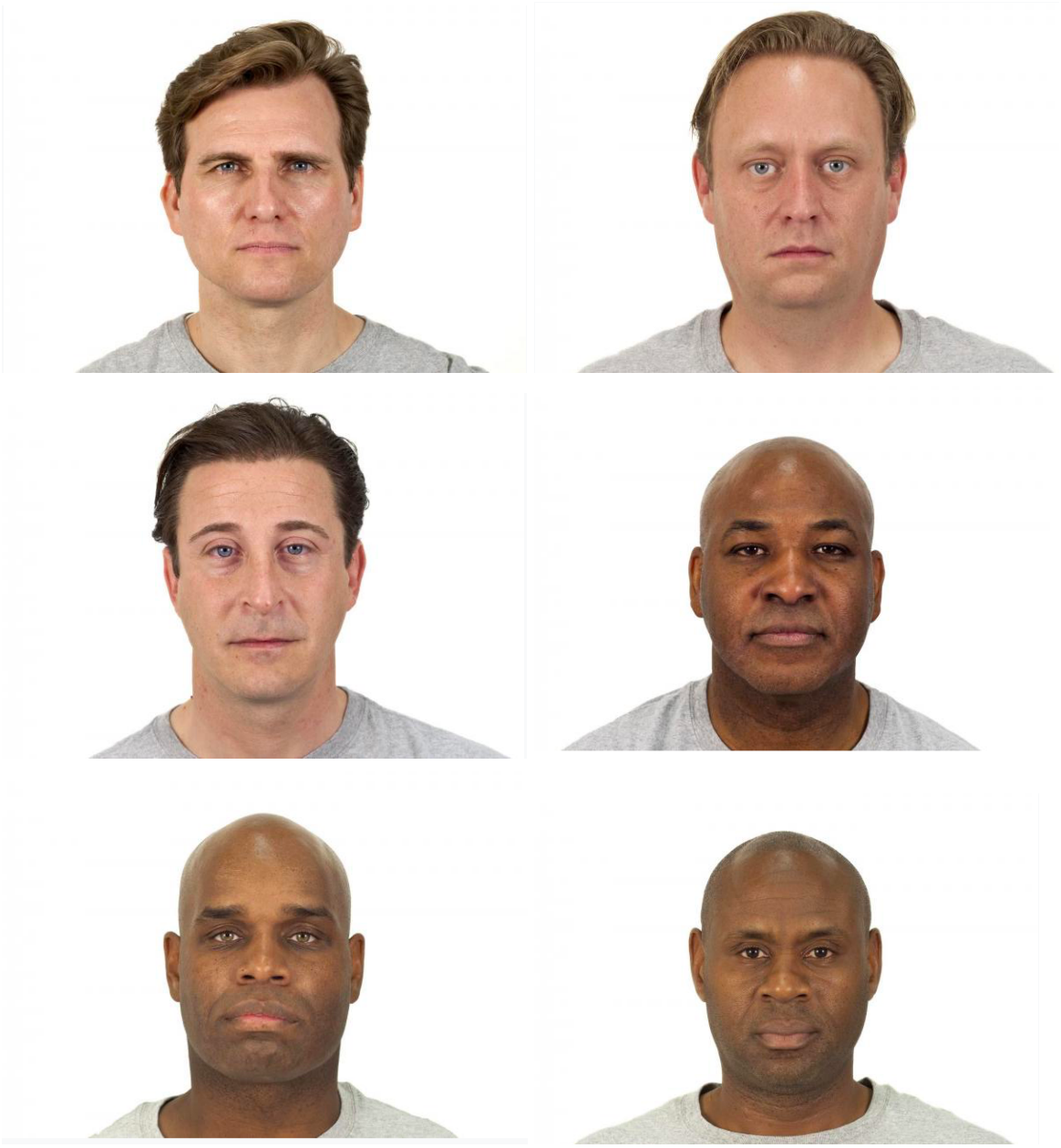
Researcher Name(s): Katie Abramowitz (kabramow@bates.edu) and Professor Amy Douglass (adouglas@bates.edu)

The general purpose of this research is to examine the nature of decision making within a legal context. This study will focus specifically on the jury selection process, which occurs before the trial has begun. Participants in this study will be asked to assume the role of a prosecutor and choose which juror would be most unsympathetic to their case in a mock trial scenario. Findings from this study will be used for a written thesis and possibly publication in an academic journal.

I understand that:
A. My participation in this study will take approximately 20 minutes. I agree to complete the study in one sitting.
B. The probability and magnitude of harm/discomfort anticipated as a result of participating in this study are not greater than those ordinarily encountered in daily life.
C. The potential benefits of this study include gaining an impression of how the jury selection process works, specifically with regards to peremptory challenges.
D. I will be compensated for participating in this study with $0.75.
E. My participation is voluntary, and I may discontinue participation in the study at any time by closing the survey. My refusal to participate will not result in any penalty.
F. Some aspects of the study purpose/procedures may be withheld from me until its end. What the investigators hope to learn from this study, the specific nature of and reasons for the procedures employed, and those aspects of my behavior that have been recorded for measurement purposes will all be fully explained to me at the end of the study.
G. My responses will be recorded anonymously, and I cannot be identified by my responses.
H. If I do not provide answers indicating that I have read questions and instructions carefully, I will not be compensated.

Appendix D:
Defendant Photograph Obtained from FloridaStateMugshots.org (Study 1)

Appendix E:
Juror Photographs Obtained from Chicago Face Database (Study 1)



Appendix F:
Debriefing Form (Study 1)

Debriefing Form
Bates College Department/Program of Psychology

Title of the Study: Decision Making and the Jury Selection Process

Researcher Name(s): Katie Abramowitz (kabramow@bates.edu) and Professor Amy Douglass (adouglas@bates.edu)

Thank you for participating in this research study. We are conducting this study to examine the influence of race on the use of peremptory challenges, a legal tool that attorneys can utilize during jury selection to exclude individuals from serving on a jury. Our main research questions are as follows:
(a) Will participants be more likely to exclude a Black juror than a White juror in an online questionnaire format?
(b) How will participants offer explanations for such exclusions?
(c) Can a simple warning on the dangers of using race as a basis for a peremptory challenge influence participants' decision to exclude?
(d) Will a prospective juror's race influence the number and types of questions asked during voir dire?

While participating in this study, you were given a description of two jurors (Juror #1 and Juror #2), each attached with a photo. For half of the participants who took this study, Juror #1 was portrayed as Black and Juror #2 was portrayed as White. For the other half of participants who took this study, the juror descriptions stayed the same, but Juror #1 was portrayed as White and Juror #2 was portrayed as Black. Half of the participants were also given a warning about using race as a basis for peremptory challenge usage, while the other half were not. You were then asked to select which juror to exclude, provide a rationale for your decision, and select questions to ask the prospective juror you chose. We expect to find that regardless of juror description, participants will be more likely to exclude the Black juror than the White juror. We also expect that explanations for such exclusions will not include mentions of race. Rather than eliminating the effect of race on peremptory use, we expect that participants who are exposed to the warning condition will write more elaborate explanations for their decision, as measured by the number of words and unique ideas they write. Finally, we expect that participants will ask more bias-presumptive questions and more questions in total to the Black juror than the White juror. Even if you chose to exclude the Black juror, that does not indicate that you harbor explicit racial bias or intentions of racial discrimination. Previous research using a very similar paradigm finds that most people choose to exclude Black jurors, so if you chose to do that, your response is

not unique. In fact, the problem of excluding Black prospective jurors is a common one throughout the justice system. Therefore, one goal of this study is to find ways to reduce the likelihood that Black prospective jurors are excused from jury service just because of their race. By doing so, we hope to contribute to a more fair process for both jurors and defendants alike.

If you are interested in learning more about this study, please feel free to ask us questions in person, or contact us using the email address(es) above. If you would like to learn more about the influence of race on peremptory use, we recommend the following:

Joshi, A. S., & Kline, C. T. (2015, September 01). Lack of Jury Diversity: A National Problem with Individual Consequences. Retrieved September 20, 2020, from https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2015/lack-of-jury-diversity-national-problem-individual-consequences/

Norton, M. I., Sommers, S. R., & Brauner, S. (2007). Bias in jury selection: Justifying prohibited peremptory challenges. Journal of Behavioral Decision Making,20 (5), 467-479. doi:10.1002/bdm.571

Sommers, S. R., & Norton, M. I. (2007). Race-based judgments, race-neutral justifications: Experimental examination of peremptory use and the Batson Challenge procedure. Law and Human Behavior, 31 (3), 261-273. doi:10.1007/s10979-006-9048-6

Sommers, S. R., & Norton, M. I. (2008). Race and jury selection: Psychological perspectives on the peremptory challenge debate. American Psychologist, 63(6), 527-539. doi:10.1037/0003-066x.63.6.527

If you have any concerns about your rights as a participant in this study, please contact the Bates College Institutional Review Board (irb@bates.edu).

Thank you again for participating!

Appendix G:
Consent Form (Study 2)

Consent Form
Bates College Department/Program of Psychology
Title of the Study: Court Procedures and Juror Behavior

Researcher Name(s): Katie Abramowitz (kabramow@bates.edu) and Professor Amy Douglass (adouglas@bates.edu)

The general purpose of this research is to examine the nature of juror behavior within a legal context. Participants in this study will be asked to assume the role of a juror and witness a series of court procedures, including the jury selection process. Before conversing with fellow jurors, participants will be asked to respond to a number of pre-deliberation questions. Findings from this study will be used for a written thesis and possibly publication in an academic journal.

I understand that:
A. My participation in this study will take approximately 30 minutes. I agree to complete the study in one sitting.
B. The probability and magnitude of harm/discomfort anticipated as a result of participating in this study are not greater than those ordinarily encountered in daily life.
C. The potential benefits of this study include gaining an impression of how the jury selection process works.
D. I will be compensated for participating in this study with $1.00.
E. My participation is voluntary, and I may discontinue participation in the study at any time by closing the survey. My refusal to participate will not result in any penalty.
F. Some aspects of the study purpose/procedures may be withheld from me until its end. What the investigators hope to learn from this study, the specific nature of and reasons for the procedures employed, and those aspects of my behavior that have been recorded for measurement purposes will all be fully explained to me at the end of the study.
G. My responses will be recorded anonymously, and I cannot be identified by my responses.

Appendix H:
Preliminary Trial Information (Study 2)

You have been selected as a prospective juror for the case, People v. Roger A. Greene. The trial concerns the case of Roger A. Greene (pictured below), who has been charged with the armed robbery of Edna D. Rodriguez.

The prosecuting attorney for this case is David Clark. The defense attorney for this case representing Mr. Greene is Craig Walker.

On the following page, you will see the pool of prospective jurors. As with any jury trial, attorneys must select individuals from a pool of prospective jurors.

Potential jurors can be excused from the case for a variety of reasons, including: knowledge of people involved in the case, economic hardship, or family obligations. In addition, attorneys can exclude jurors from the case if they feel that a juror might be unfavorable to their case for any reason.

Appendix I:
Initial Jury Pool (Study 2)

Appendix J:
Mock Conversations Between Attorneys and Prospective Jurors (Study 2)

Juror 1:

Prosecutor: You wrote on your questionnaire that you know family members on both sides of the situation. Would these factors influence you or affect you in being a fair and impartial juror in this case?

Prospective Juror: I will do my best.

Juror 2:

Defense Attorney: Today we are calling John Glass to the stand as a witness. You wrote down that you are familiar with Mr. Glass?

Prospective Juror: I just knew him through school. He went to school with my daughter. He was younger, but I know him and know his dad and mother and aunt.

Defense Attorney: And would that influence you or affect you in being a fair and impartial juror in this case?

Prospective Juror: No, sir.

Juror 3:

Defense Attorney: Could you, if you were called as a juror, lay any opinion aside that you might have formed and base your decision only on the evidence and on nothing else but evidence presented here in this court?

Prospective Juror: Yes, sir, I could.

Defense Attorney: And could you lay aside anything that you might have read in the paper, heard about, gossip in the street and anything else and base your decision just on the evidence in court?

Prospective Juror: Yes, sir, I could.

Defense Attorney: If you had read something in the past or heard some gossip out in town about the case but that's not proven in court, would that come into your play or your consideration at all when deliberating?

Prospective Juror: No, sir.

Juror 4:

Prosecutor: The alleged crime occurred outside of a convenience store on Grand Avenue. This is your place of work, correct?

Prospective Juror: Yes, sir.

Prosecutor: You also wrote that you work with one of the defendant's sisters?

Prospective Juror: That's correct.

Prosecutor: Which sister do you work with?

Prospective Juror: Cindy Greene.

Prosecutor: Cindy?

Prospective Juror: Yes, sir.

Prosecutor: How long did you work with Cindy?

Prospective Juror: I can't remember the exact – probably about a year or something like that.

Prosecutor: Okay. Were y'all pretty close?

Prospective Juror: It was more like a working relationship, you know.

Prosecutor: Do you think that any of that would affect you?

Prospective Juror: Certainly not.

Juror 5:

Prosecutor: So have you read anything about the case or seen anything on the T.V. or newspaper or radio or talked to anybody or really have any knowledge about the case?

Prospective Juror: I read a little article about it. I think that was in last week's paper or something.

Prosecutor: Okay. You read it in last week's paper?

Prospective Juror: Yeah. I glanced at the story.

Prosecutor: Has anything you saw, read or heard caused you to form an opinion as to the guilt or innocence of Mr. Greene?

Prospective Juror: I don't – could you –

Prosecutor: Repeat the question?

Prospective Juror: Right.

Prosecutor: Right now, you have not heard any evidence at all.

Prospective Juror: Right.

Prosecutor: But without hearing any evidence at all, right now, have you already got an opinion as to whether he's guilty or not guilty?

Prospective Juror: No.

Prosecutor: And these things that you might have heard at some point in the past, can you put those things aside and not consider them but only consider the evidence that's presented here in court?

Prospective Juror: Yes.

Prosecutor: And so you won't let anything you've heard influence your decision if you're a juror?

Prospective Juror: Right.

Juror 6:

Defense Attorney: How far away from the defendant did you live?

Juror: Not very far.

Defense Attorney: Just a few houses?

Juror: No. Probably about two blocks or so.

Defense Attorney: About two blocks. Would you see him very often?

Juror: Not too often.

Defense Attorney: Is there anything about being a neighbor of his that would affect you in this particular case?

Juror: No, sir.

Juror 7:

Prosecutor: You wrote on your questionnaire that the knowledge you had of the different people involved was from a working relationship, too; was that correct?

Prospective Juror: The ones involved, are you talking about…

Prosecutor: Well, the possible witnesses?

Prospective Juror: Yes.

Prosecutor: Like –

Prospective Juror: Yes.

Prosecutor: Okay. John Glass, Sarah Thompson.

Prospective Juror: Yes. I work at the bank where Mrs. Thompson does, and we see everyone in town.

Prosecutor: That's your only knowledge of these people. Nothing about knowing who they are that would affect you in this case?

Prospective Juror: No, sir.

Prosecutor: All right. Thank you.

Juror 8:

Prosecutor: Do you know anyone involved in the case?

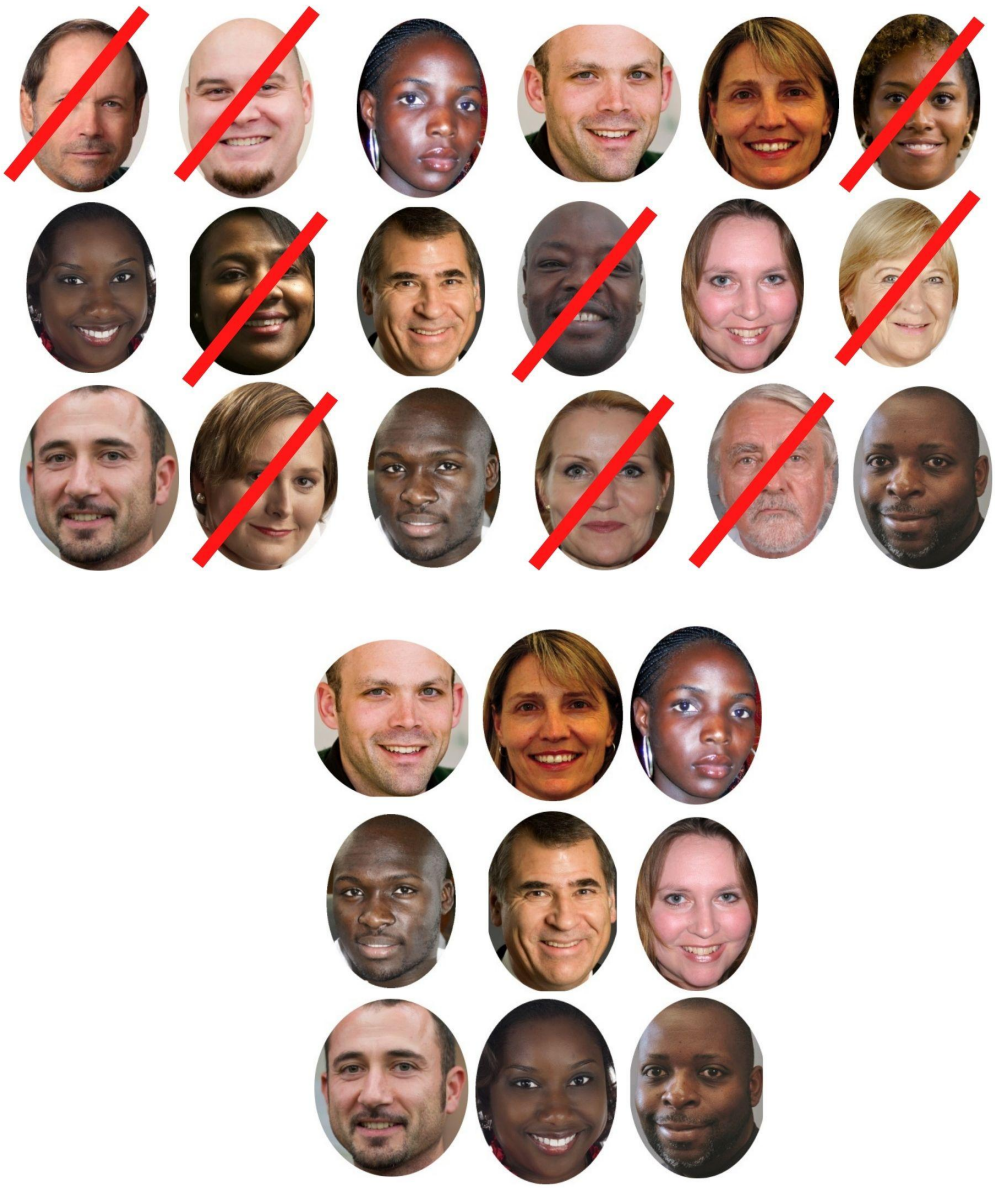
Prospective Juror: No, sir. I'm new to town.

Prosecutor: Have you heard anything about the case in the paper or on television?

Prospective Juror: I have not. This is the first I am hearing of the case.

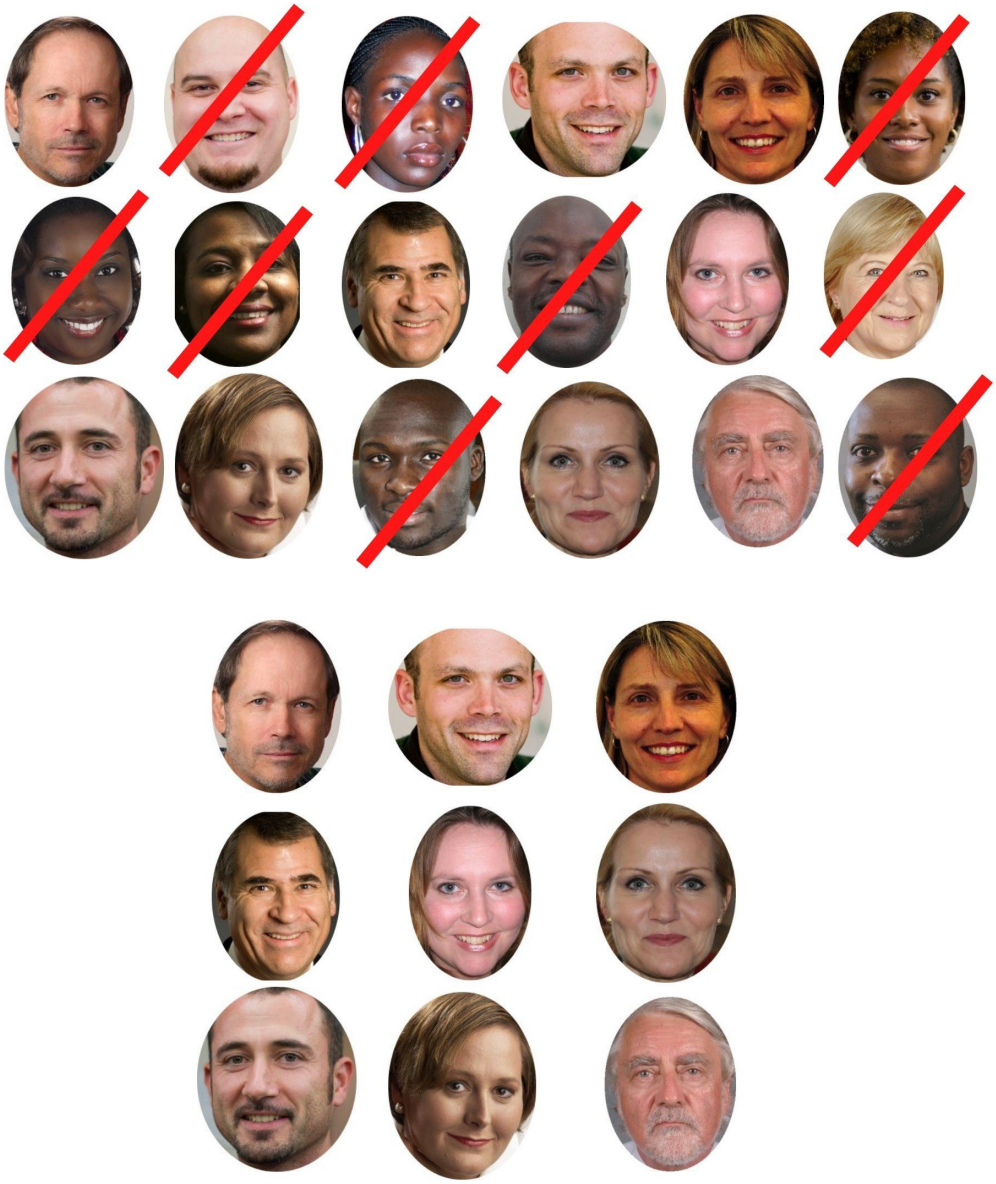
Prosecutor: Thank you.

Appendix K:
Diverse Jury for Black Participants (Study 2)

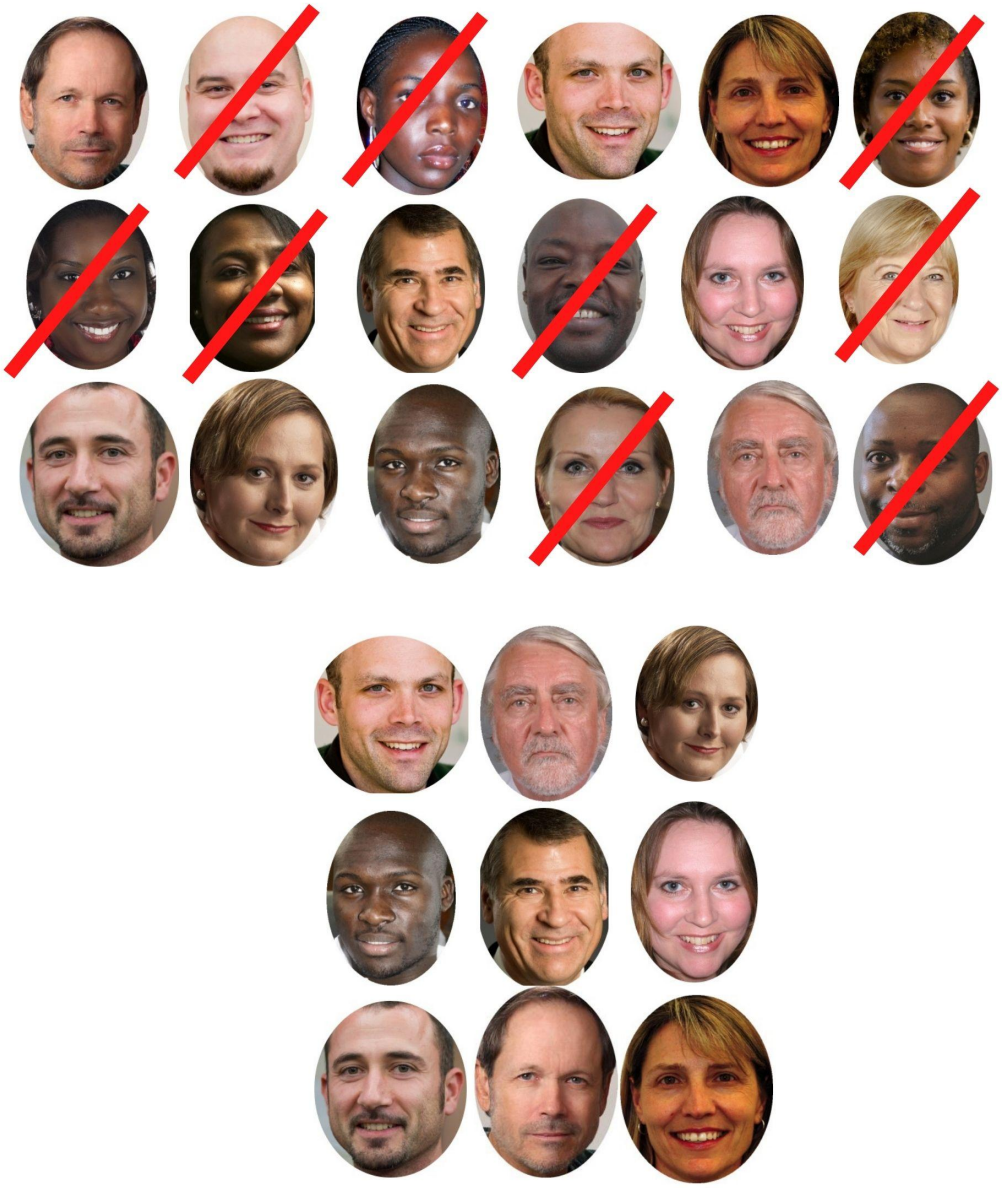


Appendix L:
Diverse Jury for White Participants (Study 2)

Appendix M:
Predominantly White Jury for Black Participants (Study 2)



Appendix N:
Predominantly White Jury for White Participants (Study 2)



Appendix O:
Full Trial Scenario (Study 2)

Roger A. Greene (pictured below) has been charged with the armed robbery of Edna D. Rodriguez. Mr. Greene is charged with threatening and robbing Mrs. Rodriguez at gunpoint outside a convenience store on 830 Grand Avenue in Springfield on August 17th 2020. The victim claims the defendant stole her purse after a small confrontation. The purse contained $780 in cash and the total estimated cost of the purse, cash, and its contents equals $800. Mr. Greene was arrested a short distance from the scene of the crime because he matched the general description of the culprit given to police. He had $750 in cash on his person. He was later identified by Mrs. Rodriguez from a police lineup as the man who stole her purse. Mr. Greene claims that he was misidentified and that the cash he was carrying was from his paycheck.

Appendix P:
Debriefing Form (Study 2)

Debriefing Form
Bates College Department/Program of Psychology

Title of the Study: Decision Making and the Jury Selection Process

Researcher Name(s): Katie Abramowitz (kabramow@bates.edu) and Professor Amy Douglass (adouglas@bates.edu)

Thank you for participating in this research study. Previous research in psychology shows that attorneys tend to exclude jurors on the basis of their race, even though this is not allowed in the legal system. They do this by using something called the "peremptory challenge," in which attorneys can exclude a juror without providing a specific explanation as to why that juror has been excluded. We are conducting this study to examine the influence of race-motivated juror exclusions on juror attitudes and behavior. Our main research questions are as follows:

(a) Will participants exposed to race-motivated peremptory challenges be more likely to convict a Black defendant?
(b) Will participants exposed to race-motivated peremptory challenges report having more or less faith in the legal system?
(c) Will participants exposed to race-motivated peremptory challenges report less trust in their fellow jurors? Further, will this effect differ for White and Black participants?

In this study, we asked participants to take on the role of a juror in a case with a Black defendant. We exposed half of our participants to a jury selection process in which a mock prosecutor used race-motivated peremptory challenges to exclude most of the Black jurors, leaving a predominantly White jury. We exposed all other participants to a jury selection process in which a mock prosecutor excluded Black and White jurors at equal rates, leaving a heterogeneous jury.

We hypothesized that participants who were not exposed to race-motivated peremptory challenges would remember a greater number of case facts, perceive the overall trial as more fair, report more trust in fellow jurors, and report more faith in the criminal justice system as a whole. We also hypothesized that those who were exposed to race-motivated peremptory challenges will be more likely to convict the defendant. Finally, we expect different results based on participant race. For instance, we suspect that Black participants exposed to race-motivated peremptory challenges will report less faith in their fellow jurors than White participants.

As a mock prospective juror, you were shown mock conversations between attorneys and prospective jurors. These conversations were slightly adapted from actual dialogue that occurred during the court case, Flowers vs. Mississippi (2019).

If we obtain our hypothesized results, this study will provide incentive to implement meaningful interventions that might reduce the influence of race on the jury selection process into the courtroom. In other words, if we find that race-motivated peremptory challenges can negatively

affect jurors' attitudes toward the legal system and ability to serve on the jury, there will be more incentive to work towards eliminating these types of exclusions.

We would like to mention that the trial scenario in this survey -- which included a Black male defendant -- may reinforce the harmful stereotype linking Black men and crime. We do not wish to support or wish to perpetuate this stereotype. However, one of the purposes of this study is to ensure justice for Black defendants who suffer at the hands of prosecutors who exclude Black jurors from serving on the jury. Therefore, we felt it was necessary to depict the defendant as Black, consistent with real cases in which appeals are based on racially-motivated juror exclusions (Flowers vs. Mississippi, 2019).

If you are interested in learning more about this study, please feel free to contact us using the email address(es) above. If you would like to learn more about the influence of race on peremptory use, we recommend the following:

Bogel-burroughs, N. (2020, September 04). After 6 Murder Trials and Nearly 24 Years, Charges Dropped Against Curtis Flowers. Retrieved September 23, 2020, from https://www.nytimes.com/2020/09/04/us/after-6-murder-trials-and-nearly-24-years-charges-dropped-against-curtis-flowers.html
Flowers v. Mississippi, 588 U.S. (2008)
Sommers, S. R. (2006). On racial diversity and group decision making: Identifying multiple effects of racial composition on jury deliberations. Journal of Personality and Social Psychology,90(4), 597-612. doi:10.1037/0022-3514.90.4.597
Sommers, S. R., & Norton, M. I. (2007). Race-based judgments, race-neutral justifications: Experimental examination of peremptory use and the Batson Challenge procedure. Law and Human Behavior, 31(3), 261-273. doi:10.1007/s10979-006-9048-6

If you have any concerns about your rights as a participant in this study, please contact the Bates College Institutional Review Board (irb@bates.edu).

Thank you again for participating!