

Determinants and Consequences of Jury Racial Diversity: Empirical Findings, Implications, and Directions for Future Research

Samuel R. Sommers*

Tufts University

One of the ideals underlying any jury system is that those groups of citizens charged with the responsibility of deciding cases should be representative of the communities from which they are selected. Anecdotal and empirical data suggest that reality often falls short of this ideal, however, as many empanelled juries are less diverse than community demographics would dictate. This article reviews the obstacles that stand in the way of jury diversity and typically, by association, jury representativeness. These range from system-related problems regarding jury source lists and summonses to more psychological considerations such as the pervasive, yet difficult-to-identify impact of race on attorneys' jury selection judgments. Drawing on psychological theory and findings, the implications of the failure to empanel diverse juries are also examined, both in terms of laypeople's attitudes toward the legal system as well as the actual decision-making performance of juries. Policy changes intended to promote diverse, representative juries are considered, as are specific directions for future research.

Consider the following two hypothetical case studies from the United States, starting with "County A." According to a recent census, County A has 16,000 jury eligible citizens, just over one-fourth of whom are African Americans. But of the individuals reporting to jury duty at the local courthouse in the preceding decade, only 10–15% have been Black. Even more strikingly, over the previous 15 years, *not a single* Black juror was actually chosen to serve on a jury. That is, despite the fact that there are more than 4,100 jury-eligible African Americans in County A, no juries have included a Black juror for more than a decade.

Now consider "County B." Like County A, County B has a sizable number of African-American citizens—in this case, 23% of the general population. In the

*Correspondence concerning this article should be addressed to Samuel R. Sommers, Tufts University [e-mail: sam.sommers@tufts.edu].

preceding two decades, County B has witnessed 18 murder trials that ended with a conviction and a sentence of death. Of the 18 juries that decided these cases, 7 had but a single Black juror and 10 had no Black jurors at all. Only 1 jury had as many as 2 Black jurors. This means, of course, that not a single one of these juries had 3 Black jurors, the number out of 12 that would indicate a jury composition representative of the more general racial demographics of County B.

While there are clear differences between these two counties—the outlook for jury diversity is not quite as desperately bleak in the latter example as in the former—these case studies provide converging examples of the historical tendency for many American jurisdictions to regularly (and, at times, spectacularly) fail to empanel diverse, representative juries. Unfortunately, as the skeptical reader may have already intuited, these examples are also not mere hypotheticals. County A is Talladega County, Alabama, circa 1965 (*Swain v. Alabama*, 1965; see also Fukurai, Butler, & Krooth, 1993). One could seek to mitigate the contemporary implications of these data, given that they are more than four decades old and come from a state that has had, by even a generous assessment, a checkered past in race relations. On the other hand, these data are *only four decades old*. This is a systematic and complete exclusion of African-American citizens from a local jury process, and it is not an example taken from Civil War Reconstruction or the early 20th century, but rather from an era still accessible in the memories of many psychologists and other readers of this journal.

The optimist might hold out hope that such race-based disparities have improved or even vanished over time. County B comes from a different era and a different state, but these differences provide little basis for optimism. The facts for County B describe Jefferson Parish, Louisiana, just prior to Hurricane Katrina in 2005 (see Liptak, 2007; *Snyder v. Louisiana*, 2008). Of course, these data, too, amount to little more than a snapshot of a specific jurisdiction during a specific period of time. But these data are contemporary and provide at least one persuasive illustration that the jury racial composition problems evident in Talladega County in 1965 have not disappeared in the modern era. Furthermore, cross-cultural analyses, discussed in more detail below, indicate that such lack of racial representation on juries is by no means an exclusively American problem (e.g., Israel, 1998, 2003).

Of course, such a glaring lack of racial diversity¹ on juries is troubling, indicating as it does that a substantial percentage of the citizenry of particular jurisdictions is not being afforded the opportunity to serve as jurors and have input

¹ It is important to note that jury *representativeness* and jury *diversity* are not the same concept. As the opening examples of this article demonstrate, though, many failures to achieve racial representativeness come in the form of jury pools that are lacking in the racial diversity found in the community at large. Therefore, efforts to improve jury representativeness often entail the promotion of jury racial diversity. Because achieving representative and diverse juries tend to be converging objectives, the present article often makes reference to the pursuit and implications of “diverse, representative juries.” That said, there do exist relatively homogeneous jurisdictions in which a representative jury is decidedly nondiverse. The philosophical and empirical questions raised by instances in which jury diversity and jury representativeness diverge are considered in the final section of this article.

into the legal process of their community. Indeed, in seminal cases such as *Swain v. Alabama* (1965) and *Batson v. Kentucky* (1986), the U.S. Supreme Court ruled that systematic efforts by attorneys during jury selection to remove from a panel prospective jurors of a particular racial group violates the constitutional rights of these individuals to serve as jurors. The extent to which this practice of race-based jury selection challenges remains an obstacle to jury diversity is discussed in more detail below and is demonstrated by the Court's continued willingness to hear cases on this issue decades later (e.g., *Miller-El v. Dretke*, 2005; *Snyder v. Louisiana*, 2008).

Whereas the Supreme Court has often focused on the issue of jury diversity from the perspective of the rights of citizens to serve as jurors, psychologists are more likely to address this topic in terms of the potential impact of a jury's racial composition on its decision-making processes or the perceptions of the community at large. Indeed, anecdotal data indicate that the consequences of nonrepresentative juries can be seen further downstream in the legal process. For instance, the Jefferson Parish data reported above reflect jury compositions for a particular type of case: capital murder trials ending in a death sentence. Thus, at least anecdotally, it appears to be those cases tried by disproportionately White juries that are more likely to end in a sentence of death (for converging empirical conclusions, see Baldus, Woodworth, Zuckerman, Weiner, & Broffitt, 2001; Bowers, Steiner, & Sandys, 2001). A jury's racial composition also has the potential to impact the way its verdict is perceived by the surrounding community. Consider the 1992 trial of the White police officers videotaped beating Black motorist Rodney King. When the trial was moved from Los Angeles to predominantly White Ventura County and ended with acquittals on most counts, outrage and rioting ensued in African-American neighborhoods (see King, 1993a).

As illustrative as these anecdotal data are, the purpose of the present article is to offer a more rigorous social psychological perspective to continuing legal debates concerning racial diversity and juries. The first section of the article considers why the empanelling of representative juries often proves to be an elusive goal, and why such failures typically come in the form of juries that are not as racially diverse as their surrounding communities. System-specific, procedural obstacles are considered (see Figure 1 for overview), as are psychological factors such as laypeople's attitudes toward jury duty and the influence of race on attorney judgments during jury selection. The second section of this article examines the implications of jury racial diversity for public confidence in the legal system and the actual performance of juries. That is, this section considers the observable effects of achieving (or failing to achieve) racially representative juries. The final section of the article assesses potential policy changes designed to address the lack of diversity in juries and articulates specific research questions in need of future empirical examination. Because of the nature of the extant research literature, this article focuses on jury diversity in U.S. courtrooms, though where possible, cross-cultural comparisons and questions of generalization are raised.

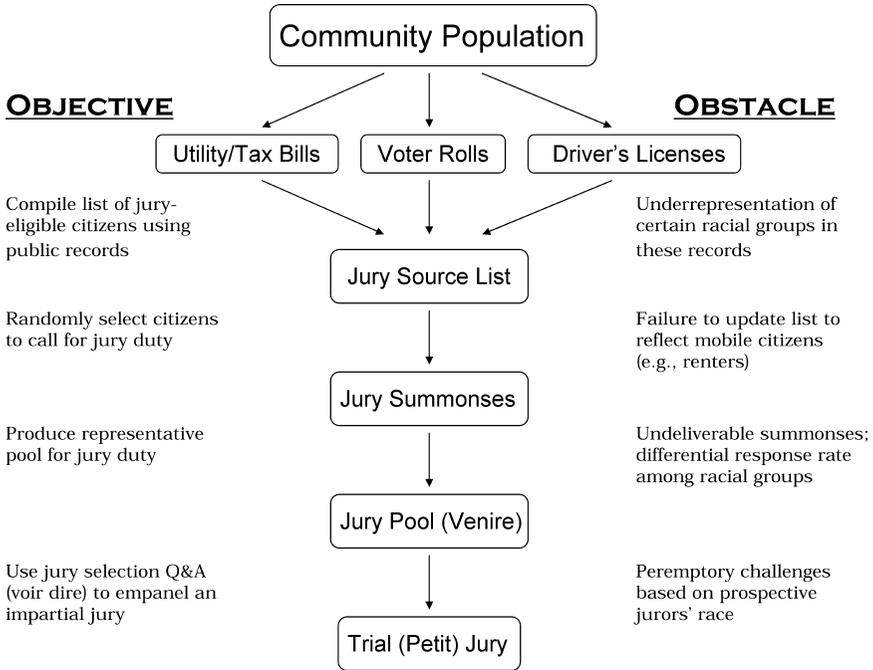


Fig. 1. Overview of U.S. Jury Selection Process. This is a generic model of how a community’s population is ultimately represented on its juries. Specific procedures vary by jurisdiction (and, of course, by country). The text in the left column lists the system objectives for each step of this process; the text in the right column lists potential obstacles to the creation of racially representative juries.

From Voter Rolls to Voir Dire: How Juries Are Empanelled

As Figure 1 details, it is no small endeavor to translate a community’s population into 12-person juries. In the section that follows, this multistep process is reviewed in chronological order, beginning with the creation of jury source lists based on public records, proceeding through the execution of summonses to jury duty, and ending with courthouse jury selection. Each of these steps is reviewed from both a theoretical and empirical perspective, identifying potential obstacles to the creation of diverse juries and important avenues for future psychological investigation.

Jury Source Lists and Summonses

The first step in the selection of juries is compiling a master list of citizens eligible for jury service. For many years in the United States, this process was

known as the “key man” system, in which prominent members of the community would submit names of prospective jurors to the jury commissioner (see Hans & Vidmar, 1986). This system had obvious limitations with regard to the objective of creating jury source lists representative of the communities from which they are drawn. More recently, in the wake of Congress’ 1968 Jury Selection and Service Act, the most common technique for creating such a list of prospective jurors in the United States has become drawing from voter registration records (Abramson, 2000; Vidmar & Hans, 2007). Though specific procedures vary by jurisdiction, in many states these voter lists are supplemented by other public records, such as those pertaining to driver’s licenses, taxes, and public utilities (Boatright, 1998; Kairys, Kadane, & Lehoczy, 1977). The procedure for creating jury source lists varies by country as well: England and New Zealand make use of voter rolls, whereas procedures in Canada differ by province and are often left to the discretion of local jury administrators (see Granger, Charron, & Chumak, 1989; Israel, 1998; 2003; Lloyd-Bostock & Thomas, 1999; Tanovich, Paciocco, & Skurka, 1997).

With regard to the effort to create jury source lists that are representative cross sections of local communities, many contemporary procedures are marked improvements over those employed in decades past. Still, anecdotal observation and empirical research suggests that reliance on voter rolls and other public records is not without serious limitations when it comes to creating a diverse pool from which juries are to be empanelled. For instance, in the United States, individuals of low socioeconomic status (SES) as well as racial minority groups tend to be underrepresented on voter rolls and driver’s license lists (Diamond & Rose, 2005; Fukurai et al., 1993). This helps explain some of the egregious problems with source list representativeness described by Abramson (2000), such as a district in North Dakota in which only 17% of eligible Native Americans living on reservations voted in an election, leading to only one such individual being summoned for jury duty that entire year. Similar problems have been identified in other countries: in New Zealand, for example, Maori are underenrolled on voter lists, contributing to their underrepresentation in jury pools (Israel, 1998; for Canadian examples, see Israel, 2003). Further problems with representativeness occur when these source lists are not updated frequently; in such instances, people who move often, such as renters, are often omitted (King, 1993b).

Once a jury source list is created, the next step in producing a jury pool is to select a subset of individuals from the source list for jury duty. Typically, this selection is done at random with the caveat that individuals can only be chosen once during the course of a specific time period. In some instances, however, analysis indicates that the selection process is not as random as intended. For example, Hans and Vidmar (1986) detail an almost comical list of problems regarding an old computer selection process used in Atlantic County, New Jersey. First, because of a failure to properly merge voter and driver’s license lists by

eliminating duplicate names, a full 40% of the individuals on the source list were twice as likely as other citizens to be selected for jury duty. Moreover, the use of a fifth-letter alphabetization protocol—intended to facilitate random selection—instead led to overrepresentation in some panels of Jewish names (e.g., Feldbaum, Goldberg, Weisberg) or Italian names (e.g., Albertini, Dinardo, Ferarro).

But even assuming a truly random selection, obstacles remain to the effort to bring to the courthouse for jury duty a representative jury pool, or *venire*. In the United States, jury summonses are typically accompanied or preceded by a jury eligibility questionnaire (Vidmar & Hans, 2007). There are a variety of responses on this questionnaire that may disqualify a citizen from jury duty, including lack of English proficiency, a felony criminal history, transportation difficulties, and financial hardship; many of these characteristics are more common among low-SES individuals and particular racial/ethnic minority groups (Fukurai et al., 1993; King, 1993b). Furthermore, increased geographic mobility among racial minority individuals means that a higher proportion of jury questionnaires/summonses sent to non-White Americans are returned to court administrators as undeliverable (Ellis & Diamond, 2003; Vidmar & Hans, 2007). Similar problems have been observed for the effort to summon Aboriginal individuals in Australia, the Maori of New Zealand, and Indigenous Canadians (see Israel, 1998; 2003).

Policymakers, judges, and legal scholars have proposed a range of potential solutions for these difficulties related to source list creation and random selection, including more frequent address updates, increased financial compensation for jury duty, stratified sampling, and even decreasing the number of White names on the source list in order to achieve a better racial balance (see Cohn & Sherwood, 1999; Ellis & Diamond, 2003; King, 1993b). But in addition to system-level considerations, another vexing—and potentially more psychologically relevant—problem is that even when jury questionnaires and summonses successfully make their way to the individuals selected, many go unanswered by recipients. For instance, Boatright (1998) reported that in some urban jurisdictions in the United States, as many as 80% of individuals summoned to jury duty fail to report (see also Vidmar & Hans, 2007). Similar, disproportionately high rates of nonresponse among racial minority groups have been recorded by the U.S. Census Bureau, raising the possibility that skepticism regarding government inquiries decreases the representation of minority individuals in the *venire* (see Cohn & Sherwood, 1999).

Such suspicion directed by minority individuals toward the institution of the criminal justice system would be consistent with previous psychological theory and findings. In the legal domain, Sommers and Ellsworth (2000) reported that Black mock jurors express greater skepticism regarding the fairness and colorblindness of the U.S. legal system than do White mock jurors (for similar sentiment among actual jurors, see Butler, 1995). More generally, research has also demonstrated that cultural mistrust of White institutions and individuals is a

common theme in the race-related attitudes of African Americans (see Monteith & Spicer, 2000). Interestingly, though, whereas data indicate that jury summons nonrespondents tend to be younger and less knowledgeable about the legal system than are citizens who report for jury duty, reliable racial differences have not been reported (Boatright, 2001; Vidmar & Hans, 2007). Though an intuitively and theoretically appealing prediction, there seems to be little consistent empirical support for the proposition that racial minority jurors' skepticism regarding the fairness of the legal system contributes to their low response rates for jury duty.

Nonetheless, one might still argue that efforts to better educate the general populace about the nature of jury service could pay dividends in the pursuit of diverse jury pools to the extent that overall nonresponse rates remain particularly high in urban areas and other jurisdictions with large minority populations. As Diamond and Rose (2005) detail, many U.S. citizens have unrealistic expectations regarding jury duty that are colored by media focus on high-profile trials of long duration. More realistically, most Americans who report for jury duty spend no more than one or two days at the courthouse given the "one day/one trial" system used in many jurisdictions. Indeed, actual completion of jury duty tends to eliminate some of these misconceptions and promote positive evaluations of the system (Diamond & Rose, 1995; Rose, 2003). Whether educational campaigns or other forms of intervention could be similarly successful in improving the general public's attitudes toward jury service remains an open and potentially important empirical question.

In sum, despite improvements in procedures for creating jury source lists, the groups of citizens who report to jury duty in many jurisdictions—both American and otherwise—often fail to achieve a racially diverse, representative cross-section of the communities from which they are drawn. Factors contributing to such discrepancies include the underrepresentation of particular groups from the public records on which source lists are based, increased geographic mobility and other obstacles that prevent summonses from being delivered to individuals of particular demographics, and the disproportionately high rate of disqualifying characteristics found among low-SES and racial minority individuals. But as detailed below, even were all of these system-related problems remedied and venire everywhere suddenly more racially diverse, obstacles would persist in the effort to achieve representativeness in contemporary juries.

Jury Selection

In spite of all the effort and resources put into the recruitment of representative jury pools, many if not most of the individuals who report for jury duty complete their service without being empanelled on a trial (or *petit*) jury. On any given week, many scheduled cases are settled before proceeding to trial; those that make it to trial undergo a further jury selection process eliminating many

prospective jurors. This jury selection process varies by country, and, to a lesser degree, by local jurisdiction as well. That said, the procedures followed in, for instance, the United States, England, and Canada share some common features (see Alschuler, 1989; Lloyd-Bostock & Thomas, 1999; Vidmar, 1999). Even more so than the mostly system-related issues concerning jury source lists and summonses reviewed above, this process of evaluating and challenging prospective jurors during jury selection raises myriad questions amenable to psychological investigation.

In the United States, the process of questioning and eventually empanelling prospective jurors is referred to as *voir dire*, a term with French and Latin origins, most often translated to mean “to speak the truth.” As Vidmar and Hans (2007) detail, the nature and scope of this process varies by jurisdiction, with a majority of states allowing both judges and attorneys to pose questions to prospective jurors in the effort to determine whether they are able to serve impartially in the case at hand, and a smaller number of states only permitting questions from either the judge or the attorneys. In jurisdictions that afford only a limited *voir dire*, prospective jurors are questioned as a group and the court relies upon jurors themselves to come forward with admissions of potential bias, whereas in more expanded *voir dire* the questioning is wider ranging and may involve follow-up questions tailored to the individuals on the panel (Vidmar & Hans, 2007). This process of *voir dire* conjures up a wide range of psychological research questions, including the extent to which attorneys are able to accurately predict jurors’ verdict predispositions from a limited question and answer session, the differences between attorney- and judge-conducted *voir dire*, and the situational factors that render prospective jurors more likely to offer honest self-disclosures. Though the present article focuses on the role of *voir dire* in the pursuit of racially diverse juries, the more general social psychological assessment of jury selection is fruitful area for future research given that the process itself can be aptly described as an exercise in applied person perception.

One of the overarching purposes of *voir dire* is to empanel impartial juries. But given the adversarial nature of jury trials, in practical terms *voir dire* is also used by litigants as an opportunity to select jurors sympathetic to their side of the case and to indoctrinate prospective jurors to arguments that will be introduced at trial (see Hastie, 1991; Kovera, Dickinson, & Cutler, 2002; Sommers & Norton, 2008). These latter objectives—in particular, the effort to identify and challenge unsympathetic jurors—have the potential to come at the expense of representativeness. Notably, whereas the 6th Amendment of the U.S. Constitution mandates that juries be selected from a venire representing a fair cross-section of the community (*Taylor v. Louisiana*, 1975), there is no requirement that individual juries, once empanelled, actually reflect the demographics of their community (*Strauder v. West Virginia*, 1879; *Swain v. Alabama*, 1965).

In American courtrooms, litigants have at their disposal two means of removing prospective jurors from the jury panel, the *challenge for cause* and the

peremptory challenge (for details concerning use of these challenges in England and Canada, see Lloyd-Bostock & Thomas, 1999; Vidmar, 1999). In a challenge for cause, litigants seek to convince the trial judge that the voir dire responses of a prospective juror indicate an inability to be impartial at trial. Such challenges are unlimited in number for any given case, though judges are frequently hesitant to grant them, typically giving prospective jurors the benefit of the doubt as long they state a willingness to make a genuine effort at impartiality (Babcock, 1975; Baldus et al., 2001). The other option for removing a prospective juror is to use one of a fixed number of peremptory challenges. Litigants are under no obligation to offer any evidence of potential juror bias in issuing a peremptory—in fact, traditionally no explanation at all is given for such challenges.

The most commonly cited rationale for the practice of the peremptory is that these challenges safeguard the impartiality of juries by allowing for the removal of prospective jurors whom litigants believe, but cannot prove to be biased (see Babcock, 1975; *Batson v. Kentucky*, 1986; Sommers & Norton, 2008). However, as alluded to above, when peremptories are used by litigants for purposes other than the pursuit of impartiality, they serve as a potential obstacle to the empanelling of racially diverse juries. That is, to the extent that attorneys consider prospective jurors' racial group membership in evaluating them during voir dire and in deciding whether or not to use a peremptory challenge, then even a racially representative jury pool is unlikely to yield petit juries that are particularly diverse. It therefore becomes important to consider whether—and to what extent—attorneys are influenced by the race of prospective jurors during jury selection. Both anecdote and empirical data converge on the conclusion that, indeed, race frequently influences attorneys' jury selection judgments and tendencies.

Anecdotal evidence of the impact of race on jury selection. Most voir dires provide attorneys with a limited amount of information on which to base their challenges. Though the advent of “scientific jury selection” has brought to this process greater use of empirical data (e.g., community surveys and focus groups), attorneys continue to rely on the “time-honored stratagem of selecting jurors by way of superstition, stereotypes, body language, implicit theories of attitude and personality” (Kovera, Dickinson, & Cutler, 2002, p. 165) as well as other “seat-of-the-pants” intuitions (Broderick, 1992, p. 410). Indeed, perusal of jury selection guides and training manuals reveals a wide range of “juror folklore” used by attorneys in their effort to empanel a sympathetic jury: *defense attorneys should look for female jurors unless the defendant is an attractive woman; poor jurors are good for the defense in a civil case because they are uncomfortable with large amounts of money; civil plaintiffs should avoid jurors who are bank tellers, accounts, or hold other occupations based on precision* (Fulero & Penrod, 1990; Olczak, Kaplan, & Penrod, 1991).

Ample anecdotal evidence indicates that comparable juror stereotypes exist for race—a conclusion that is not surprising in light of the vast social psychological

literature documenting the pervasive and sometimes automatic impact of race on social perception and judgment (for review, see Fiske, 1998; see also Eberhardt, 2005). Perhaps the most notorious example of such race-based juror stereotypes comes in the form of a 1986 attorney training video created by Philadelphia prosecutor Jack McMahon. As described in detail by Baldus and colleagues (2001), on this tape McMahon emphasizes the importance of voir dire for achieving the ultimate objective of empanelling a “conviction-prone” jury. According to McMahon, the “best” jurors for this goal are conservative, middle-class individuals of comparable intellectual ability. In terms of “worst” jurors, McMahon urges prosecutors to avoid “Blacks from low income areas” because of their “resentment” of law enforcement and a general tendency to resist authority. In fact, McMahon breaks down even further his stereotypes of Black jurors, suggesting that young female Black jurors and other Blacks who are “real educated” pose problems for the prosecution, as do older Black women who may sympathize with Black male defendants out of “maternal instinct.” Black men—particularly older Black men—are described as less problematic.

The McMahon tape may be among the most explicit evidence that some attorneys harbor—and are encouraged to act on—race-based juror stereotypes in selecting a jury, but it is by no means the only such evidence. In the recent U.S. Supreme Court ruling in *Miller-El v. Dretke* (2005), Justice Stephen Breyer’s concurring opinion identifies many specific attorney strategies for considering race during jury selection. For example, Justice Breyer describes one jury selection guide that advises attorneys to assign numerical points for characteristics such as age, gender, and race. The opinion also cites a Maryland Bar journal article that recommends that attorneys consider prospective jurors’ demographics and then, based on these characteristics, identify by intuition their natural enemies and allies. Breyer goes on to review materials from a legal convention that offer explicit stereotypes by juror race and nationality, as well as advertisements from trial consulting firms that claim to be able to determine, for any given case, the exact demographics of the jurors who should be struck using peremptories.

In short, there is little reason to believe that race is an exception to the tendency of attorneys to rely on stereotypes during jury selection. Of course, the accuracy of these expected relationships between jurors’ demographics and their verdict tendencies is an empirical question. But even if there is a “kernel of truth” to many juror stereotypes, and even if the limited nature of most voir dires makes it easy to understand why attorneys would be seduced into relying on base-rate assumptions at the expense of individuating information, it seems apparent that overlooking within-group variability in the name of sweeping generalizations based on juror race is a risky proposition. As a case in point, the author recently served as an expert witness in a postconviction hearing regarding racially biased statements allegedly made during deliberations in the murder trial of a Black defendant in

Cape Cod, Massachusetts. The most egregious statements were allegedly made by a dark-skinned juror of Cape Verdean descent, for whom the defense attorney had lobbied vigorously during jury selection out of the concern that “we don’t have any other jurors of color in the pool” (Russ, 2008). The attorney’s assumption that this juror would be sympathetic to his Black client was intuitive and perhaps even reasonable given empirical data. But his assumption was mistaken in this case: the juror in question was a vocal advocate for a guilty verdict during deliberations and apparently had a long personal history of making racially disparaging remarks about Blacks (Saltzman, 2008). Of course, regardless of these questions surrounding the effectiveness of race-based stereotypes for empanelling a sympathetic jury, when it comes to jury diversity, it remains clear that the manifestation of race-based juror expectations in the form of peremptory challenges constitutes an obstacle to jury diversity.

Empirical evidence of the impact of race on jury selection. In addition to anecdotal evidence, empirical analysis of actual jury selection processes provides support for the conclusion that the race of prospective jurors predicts peremptory use. For example, Turner, Lovell, Young, and Denny (1986) examined both prosecutorial and defense peremptory challenges from 121 real cases. Across this sample, prosecutors were more likely than defense attorneys to challenge Black prospective jurors, whereas the defense was more likely to challenge White individuals. The authors concluded that both prosecuting and defense attorneys tend to presume that Black jurors are prone to move a jury toward a not guilty verdict.

More recently, Rose (1999) observed jury selection for 13 trials in North Carolina, all but one of which involved a Black defendant. No overall main effect for juror race was observed—that is, Black prospective jurors were no more likely than Whites to be removed via peremptory. But consistent with Turner et al. (1986), race had different effects on prosecuting and defense attorneys. Whereas 71% of the challenges of Black prospective jurors were made by prosecutors, 81% of White juror challenges were made by the defense. This asymmetrical pattern implies an expectation that White jurors are more conviction prone than are Black jurors, or at least that they are so when the defendant is Black. Similar findings have been reported in archival analyses in other jurisdictions (Baldus et al., 2001; McGonigle, Becka, LaFleur, & Wyatt, 2005).

Finally, recent experimental data also bolster the conclusion that race colors attorneys’ evaluation of prospective jurors during jury selection. Sommers and Norton (2007) presented three different samples—college students, advanced law students, and practicing attorneys—with a mock jury selection paradigm in which participants were asked to assume the role of prosecutor in a trial with a Black defendant. Unbeknownst to participants, the racial group membership of the two prospective jurors they were to evaluate varied by condition. In one version of the voir dire summary, Juror A was depicted as White and Juror B as Black. In the

other version, the content of the Juror A and Juror B profiles remained the same, but the photographs were switched such that Juror A was now Black and Juror B White. Participants were allowed to use one peremptory challenge to remove a juror from their final jury, and across all three samples, prospective jurors were more likely to be challenged when depicted as Black as opposed to White. The effect of race on peremptory use was actually most pronounced among the attorney sample: Juror A was challenged by 79% of attorneys when he was depicted as Black, compared to only 43% of attorneys when he was White. In sum, both archival and experimental evidence support the conclusion implied by anecdotal observation, that attorneys consider prospective jurors' race during jury selection, and that race-based peremptories have the potential to undermine the pursuit of diverse juries.

Judicial efforts to reduce the influence of race on jury selection. The problematic influence of race on jury selection has not gone ignored by the U.S. Supreme Court. In fact, the Court struck down local statutes that excluded members of particular racial groups from jury duty as far back as the 19th century (*Neal v. Delaware*, 1880; *Strauder v. West Virginia*, 1879). In *Swain v. Alabama* (1965), the Court addressed directly the issue of race-based peremptory challenges, ruling that systematic exclusion of a particular racial group from jury service across several trials would constitute a violation of the Equal Protection Clause. That said, successfully proving such a pattern of bias remained practically impossible given the precedent set by *Swain*, in which the Court majority was unconvinced that the Talladega County, Alabama data introduced in the opening of this article—in which not a single Black juror had been empanelled on a jury for more than a decade—qualified as evidence of discriminatory peremptory use. Two decades later in *Batson v. Kentucky* (1986), the Court modified its thinking, lowering the burden of proof necessary for defendants to successfully make the case that the prosecution's peremptory use was biased by race. Importantly, though, in implementing this ban on race-based peremptories, the Court focused its ruling on the Constitutional requirement that citizens of all races be afforded the right to jury service, not on the rights of defendants such as James Batson to be tried by racially representative juries.

In the aftermath of *Batson*, attorneys could be—for the first time—forced to provide justifications for their peremptory use during jury selection; less than a decade later, the prohibition on peremptory challenges was extended to gender (*J. E. B. v. Alabama*, 1994). Post-*Batson*, when a litigant becomes convinced that the opposing counsel is excluding prospective jurors based on race, she must only make a *prima facie* case that such discrimination has occurred before the burden shifts to the other side to prove otherwise. The opposing counsel must then provide a race-neutral justification for the peremptories in question, and the judge ultimately decides whether the challenges stand in violation of *Batson*.

Has the *Batson* ruling successfully ended the practice of race-based peremptory use? Archival and experimental analysis both indicate that it has not. Baldus and colleagues (2001) examined jury selection from 317 capital murder trials in Philadelphia from 1981 to 1997, allowing for assessment of the relationship between juror race and peremptory use both before and after *Batson*. Across the entire sample of cases, the data indicated a tendency for prosecutors to disproportionately target Black prospective jurors with peremptories, especially when the defendant in the case was Black. With regard to the effect of *Batson*, “time series data suggest that *Batson* had no effect whatever on prosecutorial strikes against black venire members” (p. 73).

Experimental data shed some light on why *Batson* seems to have had little practical impact on peremptory use over the past two decades. In the Sommers and Norton (2007) study described above, participants were asked to explain the basis for their peremptory challenge (as attorneys might be asked to do in a real case if opposing counsel established a *prima facie* case of discrimination). Data indicated that, despite behavioral evidence to the contrary, very few participants cited race as having impacted their judgments. Instead, participants demonstrated the facility with which decisionmakers are typically able to recruit race-neutral justifications for potentially biased decisions (see Dovidio & Gaertner, 2000; Hodson, Dovidio, & Gaertner, 2002; Norton, Sommers, Vandello, & Darley, 2006; Norton, Vandello, & Darley, 2004). Specifically, they tended to inflate the importance of the race-neutral criteria that supported their decision to challenge the Black prospective juror: when the Black juror was a journalist who had written about police misconduct, participants often cited familiarity with police corruption as the chief factor in their decision; when the Black juror expressed skepticism regarding scientific evidence, participants overlooked the police misconduct issue and justified their decision in terms of attitudes toward science.

Archival analyses support the conclusion that the *Batson* challenge procedure—in which attorneys suspected of race-based peremptory must justify their challenges to the judge—is not effective in curtailing the influence of race on jury selection. Melilli (1996) examined almost 3,000 post-*Batson* instances when an attorney had alleged that his counterpart’s peremptory use was racially discriminatory, most involving a prosecutor removing a Black prospective juror. On only 55 occasions (1.8% of the time) did an attorney forced to justify peremptory use admit that race had been influential. Furthermore, over 80% of attorneys’ race-neutral justifications were eventually accepted by judges as legitimate. Raphael and Ungvarsky (1993) offered a similar conclusion that “only a small percentage of the neutral explanations for peremptory strikes” was rejected (p. 235). Thus, attorneys appear capable of generating a wide array of race-neutral justifications for race-based peremptory challenges, leaving judges with little choice but to accept their explanations in most instances.

Summary

A range of factors contribute to the difficulties experienced by legal systems—across country and jurisdiction—regarding the pursuit of racially diverse, representative juries. Some of these obstacles are system-related and reflect between-group differences endemic to many societies, including racial disparities in income, property ownership, literacy, and civic trust. Other obstacles even more directly overlap with the types of issues investigated by social psychologists, particularly the influence of prospective jurors' race on the jury selection judgments of attorneys. The precise psychological mechanisms underlying such effects are still not well understood, and as discussed in more detail in the final section of this article, future empirical examination of these issues remains critical to psychologists' efforts to contribute to the broader discussion concerning jury diversity.

Quantifiable Effects: Why Jury Diversity Matters

Many explanations have been put forth regarding the importance of jury representativeness, and by association, jury diversity. Reviewed above, for example, are several U.S. Supreme Court rulings in which the Court weighed the Constitutional rights of citizens of all races to serve on juries as well as the rights of a defendant to a fair and impartial jury. Such considerations are clearly important, and reconciling these rights with the practical and procedural realities of a complex legal system is often a challenging balancing act. However, arguments in favor of diverse, representative juries are not confined to the realms of Constitutionality or morality. Indeed, underlying most efforts to achieve representative juries are assumptions regarding the observable effects of diversity on the general public's perceptions of the legal system, as well as on the nature and quality of a jury's actual decision making. These are assumptions well suited to analysis using psychological theory and methods.

The following section of this article examines the theoretical basis and empirical evidence for such assumptions. That is, having reviewed potential obstacles to the creation of racially representative juries, the logical next question is to ask is what are the implications of achieving (or failing to achieve) jury diversity (see Table 1)? First, the effects of jury racial composition on public perceptions are considered. Specifically, what impact does the representativeness of juries have on laypeople's confidence in jury verdicts and in their perceptions of the fairness and legitimacy of the legal system more generally? Second, the impact of a jury's racial composition on its verdict tendencies and decision-making processes is explored. Previous psychological theory and research suggests that diverse and homogeneous groups often exhibit different interpersonal dynamics and decision-making processes, and the applicability of these findings to the decisions made by juries is considered.

Table 1. Potential Consequences of the Failure to Empanel Representative Juries

| Issue | Specific Questions |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Constitutionality | Are citizens of particular groups being deprived of their right to participate in the system as jurors? |
| System legitimacy | Is public confidence in the fairness and legitimacy of the legal system undermined by unrepresentative juries, particularly among certain segments of the population? |
| Deliberation perspectives | Are jury deliberations deprived of particular community experiences and perspectives that would likely emerge on diverse juries? |
| Noninformational Processes | Is racial bias more likely to emerge, or to go unchecked? Are jurors less thorough in evaluating the trial evidence and in their decision processes? |

Effects on Public Confidence in the System

The representativeness of juries has clear implications for citizens' perceptions of a legal system's legitimacy. Reflecting again on the two examples with which this article opened, it is easy to imagine African Americans in Talladega County, Alabama in 1965 or more recently in Jefferson Parish, Louisiana harboring doubts regarding the fairness of their local legal system given the pronounced lack of diversity evident on juries in their area. As the U.S. Supreme Court ruled in *Taylor v. Louisiana* (1975), "Community participation in the administration of the criminal law. . . is not only consistent with our democratic heritage, but is also critical to public confidence in the fairness of the criminal justice system" (p. 530).

Anecdotal episodes lend support to the Court's conclusions on this count. For example, Hans and Vidmar (1986) relate the story of a 1980 trial in Dade County, Florida. When the jury—composed entirely of all White males—acquitted four White police officers for the murder of a Black citizen, "anger at the verdict and perceptions of its illegitimacy sparked three days of rioting in Miami's black community" (p. 51). As alluded to in the opening of this article, just over 10 years later, the acquittal of the White police officers charged in the beating of Black motorist Rodney King—by a majority-White jury that included no Black jurors—led to widespread rioting in predominantly African-American neighborhoods of Los Angeles (see King, 1993a).

In addition to anecdotal observations, general psychological research regarding how people conceive of justice and fairness lends support to the conclusion that jury representativeness likely affects the perceived legitimacy of the legal system. Theorists have identified various justice-related concerns commonly exhibited by laypeople, including distributive justice (i.e., whether or not outcomes are allocated equitably throughout society) and procedural justice (i.e., whether or not the process by which such outcomes are reached is transparent and fair;

for review, see Tyler & Smith, 1998). Both of these sets of justice concerns have potential relevance to perceptions of the law and legal authority, as detailed by Tyler (2006).

As one example, Tyler (2006) considers the hypothetical reaction of citizens to the process of appealing a traffic citation. To the extent that all people care about in such a situation is “winning” or “losing,” they should be happy if their appeal is successful and unhappy if it is rejected. Of course, people *do* care about their outcome in such cases, but empirical studies suggest that many individuals harbor justice-related concerns as well. In the traffic ticket example, distributive justice concerns would focus on not only the outcome one receives, but also on whether or not one is being treated *fairly*. Were the appeals of other individuals who also claimed that the traffic sign was obscured by tree branches similarly dismissed? Was the undeserved speeding citation that the police officer tacked on to the moving violation thrown out at least? If so, the sting of losing the appeal would be attenuated. Concerns about procedural justice would be satisfied by the judge taking the time to listen to the appeal, maintaining a neutral disposition, and providing ample justification for the final ruling. In sum, people’s concerns about justice often lead them to look at more than just simple outcomes in assessing their satisfaction with a process or institution, including those in the legal domain.

How are justice concerns such as these manifested with regard to jury racial composition? In terms of distributive justice, citizens’ concerns could certainly be raised by the general, race-based inequalities apparent in many criminal justice systems across the globe. In the United States, Black men are disproportionately represented in prisons, a race-based discrepancy that has only widened in recent years (e.g., Pettit & Western, 2004); similar racial differences have been noted in Australia, Canada, England, and Wales (see Tonry, 1994). Of course, there are multiple potential explanations for such disparities, including the relationship between race and socioeconomic status, law enforcement priorities and policing focus (e.g., Eberhardt, Goff, Purdie, & Davies, 2004), differential treatment of minority defendants by juries or judges (e.g., Sommers & Ellsworth, 2001), and sentencing guideline disparities for crimes associated with different races (e.g., Angeli, 1997). But to the extent that unequal outcomes for defendants of different races is attributed to issues of jury composition—as was apparently the case in the two riot-provoking examples described above—then a lack of jury diversity has the potential to feed into laypeople’s distributive justice concerns.

Even more straightforward is the potential link between unrepresentative juries and procedural justice concerns. As Thibault and Walker (1975) argued, people’s satisfaction with a decision is strongly related to their perceptions of the fairness of the procedures used to reach it. In other words, even absent evidence of unequal distribution of outcomes, system-wide procedures that are viewed as unfair are likely to undermine confidence in that system (Tyler, 2006). With regard to jury representativeness, Ellis and Diamond (2003) make a compelling argument

that a lack of diversity on juries is precisely the type of procedural issue that triggers lay concerns regarding system fairness. As they suggest, homogeneous juries can appear to be less than impartial, inspire concerns that the jury will have undue affinity toward other members of the majority group, and elicit the fear that minority litigants will have little “voice” in the legal process (Ellis & Diamond, 2003).

These theory-driven predictions regarding jury representativeness and system legitimacy perceptions have been supported by empirical data. Ellis and Diamond (2003) presented White and Black community members with a written criminal trial summary in which a Black defendant was accused of shoplifting. Four versions of the summary were used: all-White jury returns a verdict of guilty, racially diverse jury returns a verdict of guilty, all-White jury returns a verdict of not guilty, and racially diverse jury returns a verdict of not guilty. When asked to assess the fairness of the trial, participants were not influenced by the jury’s racial composition when the verdict was not guilty. But in the guilty verdict condition, the diverse jury trial was seen as significantly fairer than the same trial with a homogeneous, all-White jury. This pattern—observed for both Black and White participants—supports the contention that a lack of diversity on juries has the potential to undermine public confidence in the fairness of the legal system.

Such perceptions are not limited to impartial observers of the trial process, but have also been noted among jurors themselves. Bowers et al. (2001) analyzed data obtained through the Capital Jury Project, a research study in which jurors from 340 capital murder trials across 14 states were interviewed about their trial experiences. These interviews reveal that Black jurors on juries dominated by White males tended to be less satisfied with their experiences and more critical of their jury’s deliberation process; for example, the few Black jurors on such juries often believed that their jury was intolerant of disagreement and alternative viewpoints (Bowers et al., 2001). Some Black jurors’ narratives explicitly described the race-related lack of due process they perceived among White counterparts: “They were impatient and wanted to leave early to go home to their families, I guess. Not very understanding and a hint of racism” (pp. 247–248).

In sum, the theoretical prediction that unrepresentative juries have the potential to undermine public confidence is consistent with real-world examples and supported by a limited number of empirical investigations. As the Ellis and Diamond (2003) study illustrates, the extensive psychological literature on justice motivations provides a framework for such investigations, whether survey or experimental in nature. To date, however, there remains too little data on this question of jury diversity and perceived system legitimacy to confidently quantify the magnitude, boundary conditions, and underlying mechanisms of this relationship. For instance, is the impact of unrepresentative juries more pronounced for citizens of underrepresented minority groups than for majority individuals? Are such effects comparable when laypeople perceive that a homogeneous jury has been too

lenient toward a majority defendant and when such a jury is perceived to have been too harsh toward a minority defendant? The findings of Bowers and colleagues (2001) raise provocative questions regarding precisely *how* diverse a jury must be in order to assuage concerns regarding procedural justice: even among juries that were somewhat heterogeneous yet still “White-male-dominated,” Black jurors were left with lingering doubts regarding the thoroughness of deliberations and the appropriateness of their jury’s verdict. Clearly, the relationship between jury diversity and perceived system legitimacy remains in need of additional empirical investigation.

Effects on Jury Decision-Making Processes

In addition to influencing the general public’s confidence in the legal system, a jury’s racial composition also has the potential to affect its actual decision-making process and final verdict. After all, it is the very assumption that jurors of different races—and therefore juries of varied racial compositions—have different verdict predispositions that seems to underlie the influence of race on attorneys’ jury selection judgments, as detailed above. This intuition is spelled out even more clearly in appellate court rulings regarding issues related to jury composition, such as the following opinion from U.S. Supreme Court Justice Thurgood Marshall in 1972: “When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that its exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented” (*Peters v. Kiff*, pp. 503–504).

Justice Marshall’s analysis of diversity converges with the findings of non-legal, empirical investigations that have documented the relationship between a group’s composition, its interpersonal dynamics, and its observable performance. Many of these studies come from the realm of organizational and management studies, and therefore focus on group productivity more so than group decision making. Indeed, most of these studies have operationalized diversity not in terms of race, but more generally as heterogeneity of attitudes, experiences, or expertise (for reviews, see Mannix & Neale, 2005; van Knippenberg & Schippers, 2007). These studies have produced a range of findings demonstrating both negative and positive impacts of diversity. For example, one of the most frequently mentioned negative outcome of group diversity—broadly defined—is interpersonal conflict (see De Dreu & Weingart, 2003). More specifically, a heterogeneous group composition can reduce the quantity and quality of group communication (Maznevski, 1994; Zenger & Lawrence, 1989), and predict decreases in cohesion and morale that lead to increased turnover (Jackson, 1992; McCain, O’Reilly, & Pfeifer, 1983;

O'Reilly, Caldwell, & Barnett, 1989; Putnam, 2007). Of course, the applicability of such findings to the legal context are questionable given that positive affect and group cohesion are less important on juries than fact-finding ability and a willingness to consider the entire range of a community's viewpoints (Ellsworth, 1989; *Johnson v. Louisiana*, 1972, dissenting opinion; Wilkenfeld, 2004).

Research has also identified a range of positive effects of diversity on group performance. Documented benefits of diversity—again, broadly defined—include improved group creativity, information sharing, flexibility, and thoughtfulness (Antonio et al., 2004; Hoffman & Maier, 1961; Nemeth, 1995; Phillips, Mannix, Neale, & Gruenfeld, 2004; Triandis, Hall, & Ewen, 1965). Such outcomes are particularly likely when a task is complex, requires divergent thinking, or requires interaction with nongroup members (Levine & Moreland, 1998; Moreland et al., 1996). Moreover, some studies have indicated that when groups are able to weather the initial conflict that diversity can engender, heterogeneous groups often exhibit superior performance, problem solving, and decision making (e.g., Allmendinger & Hackman, 1995; Jehn, Northcraft, & Neale, 1999; Watson, Kumar, & Michaelsen, 1993). Again, though, with regard to the present focus, the majority of these studies do not examine diversity in terms of race, and their generalizability to jury decision making is uncertain.

What do data from the legal system indicate regarding racial composition and jury performance? Multiple studies suggest that Justice Marshall was right to assume that a jury's composition has the potential to affect trial outcomes. The investigation of Baldus et al. (2001) into capital juries in Philadelphia indicated that—consistent with the assumptions of the attorneys in the trials analyzed—racial composition was a reliable predictor of jury verdicts. The Bowers et al. (2001) analyses described above led to a similar conclusion, namely that the greater the proportion of Whites to Blacks on a capital jury, the more likely a Black defendant was to be sentenced to death, especially when the victim was White. Such patterns are not confined to the White/Black dichotomy: Daudistel, Hosch, Holmes, and Graves (1999) examined 317 nonfelony juries in Texas comprised of Whites and Latinos, and determined that majority-White juries were harsher in their judgments of Latino defendants than were majority-Latino juries.

Mock jury experiments have produced similar conclusions to these archival analyses. In one such study using college students, Bernard (1979) manipulated the race of the defendant in a trial video presented to 12-person mock juries of differing racial compositions. Across conditions, White jurors were more likely to vote guilty than were Black jurors, particularly when the defendant was Black. Indeed, out of 10 mock juries examined, the only one to reach a unanimous guilty verdict in the study was also the only all-White jury to view the trial of a Black defendant. Of course, one practical challenge faced by mock jury experiments is that the n for statistical analysis equals the number of groups in the study, not the

number of individual participants, and the small sample size of the Bernard (1979) experiment prevented statistically reliable group-level findings.

As with archival data, experimental data indicate comparable results beyond the White/Black racial dichotomy. Perez, Hosch, Ponder, and Trejo (1993) presented the videotaped trial of a White or Latino defendant to majority-White and majority-Latino college student mock juries. Data indicated that the more Whites on a jury, the more likely it was to convict, particularly with a Latino defendant. In another investigation using college students, Lipton (1983) found that individual White mock jurors were more punitive toward a Latino defendant than were Latino jurors, a tendency exacerbated by jury deliberations. Findings such as these are not limited to American samples: in a mock jury study conducted in Trinidad, Chadee (1996) found that Indian-dominated juries were more likely to convict an African defendant than were African-dominated juries. Taken as a whole, these archival and experimental investigations make a compelling case that a jury's racial composition has the potential to influence its final verdict, as Justice Marshall and others have predicted. At the same time, these studies shed little light on the processes underlying the influence of jury diversity on trial outcomes. At least three different accounts for the impact of jury racial composition merit consideration.

Demographic vote split. One of the earliest and still seminal findings in empirical jury research is the conclusion of Kalven and Zeisel (1966) that the single best predictor of a jury's eventual verdict is simply the distribution of its individual members' predeliberation votes. This conclusion has been supported by more recent findings (e.g., Sandys & Dillehay, 1995; Tanford & Penrod, 1986), and it provides a straightforward and intuitive explanation for one process by which a jury's racial composition can impact its final verdict: to the extent that jurors of different races have different verdict tendencies, jury composition will predict predeliberation vote splits. For example, if former Philadelphia prosecutor Jack McMahon is accurate in his belief that Black jurors are less conviction prone than Whites, then a greater number of Black jurors on a jury is likely to translate into fewer votes for guilty, and therefore a decreased chance of a unanimous guilty verdict.

Sommers (2007) reviewed the mock juror literature regarding race and concluded that whereas only a handful of studies have directly examined between-race differences in juror decision making, several experiments have indicated that a defendant's race often has differential effects on White versus Black mock jurors (see also Mitchell, Haw, Pfeifer, & Meissner, 2005). Once again, analyses of actual trials provide converging evidence. For example, Eisenberg, Garvey, and Wells (2001) found that age, gender, and SES did not predict actual capital jurors' first votes during the penalty phase of their deliberations, but race did, with Whites especially likely to vote for death on the first ballot (see also Bowers et al., 2001; Bowers, Sandys, & Brewer, 2004). As discussed above, interviews with former

jurors indicate that their subjective jury experiences also vary across racial lines. Antonio and Hans (2001) found that White jurors tend to report greater satisfaction with their jury experience than do non-White jurors, and Bowers et al. (2004) found that Black jurors in capital trials expressed greater concern that their jury might have come to the wrong decision. In short, the vote split account for jury composition effects boils down to a demographic explanation: because jurors of different races sometimes view the same trial differently, a jury's racial composition can determine how its predeliberation votes line up, which, in turn, impacts the likelihood of the jury reaching a guilty verdict.

Informational social influence. However, it is probable that the effects of a jury's racial composition on its decision making often transcend mere vote split variability and spill over into social influence processes as well. In advocating for diverse juries in *Peters v. Kiff* (1972), Justice Marshall was quick to point out that the potentially beneficial effects of heterogeneous juries go beyond vote split, as he emphasized the ability of diverse juries to inject into deliberations a range of "qualities of human nature and varieties of human experience." In other words, jurors of different backgrounds are presumed to bring different perspectives to the table during deliberations. This assumption is readily apparent in popular representations of juries as well. Consider, for example, Juror #5 in *12 Angry Men*, whose experiences in an impoverished, crime-ridden neighborhood similar to that of the defendant's render him the jury's de facto expert on all matters knife-fight related, therefore placing upon him the full responsibility of educating his fellow jurors on this topic (see Weisselberg, 2007). More generally, this idea that racial heterogeneity creates a more heterogeneous exchange of information among groups is often put forth as one of the principal justifications for organizational efforts to promote diversity (see Sommers, 2008).

Is there empirical support for this prediction that diverse juries exchange a broader range of perspectives and information compared to homogeneous juries? Few empirical studies have actually examined this issue, though as alluded to above, research has considered the informational benefits of racial diversity for organizations more generally. In one juror interview study, Marder (2002) examined the questionnaire responses of jurors who had served in California criminal trials to examine how their deliberations varied by gender, age, and racial diversity. She found that while gender diversity predicted reports of reduced hostility, enhanced harmony, greater mutual support among jurors, and the perception that deliberations were thorough, racial diversity was not related to any of these outcomes. But other juror interview studies have provided indirect support for the idea that the breadth of information discussed during deliberations can vary by a jury's racial composition. Bowers et al. (2004) found that all-White capital juries perceived greater consensus during deliberations than did racially diverse juries.

In the face of inconclusive and inconsistent self-report findings, a better test of the informational impact of racial composition on jury deliberations would be to compare the actual deliberation content of diverse and nondiverse juries. Given the privacy afforded to juries in actual cases, however, observational studies in real courtrooms are next-to-impossible to conduct (cf., Diamond, Vidmar, Rose, Ellis & Murphy, 2003). In 2006, Sommers compared the deliberation content of racially diverse and all-White six-person mock juries in a simulation study run at a Michigan courthouse using actual jury pool members. Results indicated that diverse mock juries—defined as those with four White and two Black jurors—deliberated longer and discussed a wider range of evidence from an assault trial involving a Black defendant than did all-White juries.

In addition to considering more factual information than homogeneous mock juries, diverse mock juries in this study were also more likely to talk about missing evidence that they wished had been presented at trial and were more willing to discuss controversial issues such as racial profiling. Furthermore, the deliberations of diverse juries included more *accurate* information, as jurors on all-White juries were more likely to make errors when discussing the facts of the case, and less likely to correct such errors when they were made. The results of Sommers (2006) indicate that not only can a jury's racial composition impact the informational content of its deliberations, but also that from a performance perspective, many of the potential effects of jury diversity are beneficial, including consideration of a wider range of perspectives, increased accuracy regarding the facts of the case, and greater willingness to discuss controversial issues.

Noninformational processes. Of course, social influence is not always purely informational in nature (Deutsch & Girard, 1955). That solely information-exchange-based processes would underlie the influence of jury diversity seems improbable for a number of reasons (see Sommers, 2008). For one, a strictly informational account places the burden for the effects of jury racial composition squarely on the shoulders of minority jurors, with diversity only expected to produce observable effects to the degree that members of racial minority groups offer novel perspectives. A strictly informational explanation also seems to imply a monolithic “Black juror perspective” (or “Latino juror perspective” or “Asian juror perspective”) to be conveyed in any given case, when in reality, within-race variability in attitudes is often greater than between-race variability. Finally, attributing in whole the effects of jury racial composition to the novel informational contributions of minority jurors seems unrealistic given empirical findings regarding the marginalization that such jurors often experience on White-dominated juries (see Bowers et al. 2001, 2004), not to mention the more general conclusion that being part of a small minority often leads to distraction and cognitive impairment during group interactions (Lord & Saenz, 1985; Sekaquaptewa & Thompson, 2002).

Indeed, several theorists have recognized the potential for noninformational processes to explain some of the effects of diversity on group decision making. In his initial formulation of social decision scheme theory, Davis (1973) suggested that informational processes alone were not sufficient to account for many group decisions—including the type made by juries—which tend to exhibit “a considerably more complex social process at work. The best-fitting model suggested a mixture of majority, conformity, and other effects to be involved” (p. 123). With regard to juries, Hans and Vidmar (1982) offered an even more concrete motivational process through which racial composition may exert an observable influence: “[the presence of minority jurors] may inhibit majority group members from expressing prejudice, especially if the defendant is from the same group as the minority group jurors” (p. 42). Anecdotal evidence suggests a related hypothesis, namely that juror racial bias, when voiced during deliberation, likely elicits a different response on diverse versus homogeneous juries. For example, the racially biased statements allegedly made by White jurors during deliberations in the Cape Cod murder trial described above may never have come to the attention of the defense attorney—or led to a posttrial hearing—were it not for the immediate and vocal response of the sole African American on the jury (Goodnough, 2008; Russ, 2008).

A closer look at the deliberation results of the Sommers (2006) study supports the prediction that the impact of jury racial composition is not wholly attributable to the novel informational contributions of minority jurors. In this study, diverse mock juries considered a wider range of information than did all-White mock juries, but this difference was driven by the finding that White mock jurors brought up more novel trial facts during deliberations when in racially heterogeneous versus homogeneous groups. These results suggest the possibility that White mock jurors were motivated to process trial evidence more carefully when they knew they would be deliberating with a diverse jury. Indeed, subsequent investigation has demonstrated the potential for membership in a racially diverse group to influence White individuals’ information processing tendencies (Sommers, Warp, & Mahoney, 2008). Such effects may result from many Whites’ concerns about avoiding prejudice (see Petty, Fleming, & White, 1999; Sargent & Bradfield, 2004) or expectations that a diverse group is likely to have tense, heated discussions (see Phillips & Loyd, 2006; Phillips, Northcraft, & Neale, 2006).

Moreover, other results reported by Sommers (2006) also reveal effects of jury racial composition that have nothing to do with information exchange. Specifically, White mock jurors’ pre-deliberation verdict preferences in this study varied by jury composition such that Whites on diverse juries were less likely to believe that the Black defendant was guilty than were Whites on all-White juries. That these differences emerged before deliberations began clearly indicated that they were not due to the exchange of information between jurors. Kerr, Hymes, Anderson, and Weathers (1995) reported similar findings one decade earlier, demonstrating

that the mere expectation of deliberating on a racially diverse jury led both White and Black mock jurors to be more punitive toward a same-race defendant when they anticipated being among the jury's racial minority. In sum, data indicate that a jury's racial composition has the potential to impact its deliberations and final verdict, and that informational differences tied to juror race are not sufficient to explain the totality of this influence.

Summary

As important as are the Constitutional ideals underlying the pursuit of diverse, representative juries, empirical research indicates that jury racial composition also has more observable, quantifiable effects. For one, the failure to empanel diverse juries has the potential to undermine the general public's confidence in the legal system, thus diminishing an institution that is supposed to be strengthened by its participatory nature. One might speculate that such decreases in perceived legitimacy subsequently render citizens of particular groups even less likely to respond to jury summons or to avail themselves of legal assistance when needed, further threatening the representativeness of the system. Furthermore, data indicate that a jury's racial composition also has the potential to influence the nature and quality of its deliberation processes. Though additional data on these issues are needed, the findings of Sommers (2006) suggest that diverse juries are, in some instances, more thorough, accurate, and open minded than their homogeneous counterparts—all positive characteristics for a jury to exhibit. In short, many questions remain regarding the precise processes through which a jury's racial composition affects its decision making, but psychological theory and data indicate that the implications of jury diversity extend into the realm of actual jury performance.

Assessing Policy Implications and Identifying Future Research Directions

Any attempt to apply behavioral science research to the legal domain faces a number of inherent challenges. First, most legal systems place a great emphasis on tradition and precedent. Procedural changes are sometimes adopted, but often slowly and not without resistance, as demonstrated by the various opinions accompanying the U.S. Supreme Court's decisions in jury selection cases like *Swain* and *Batson*. Moreover, issues of external validity often pose problems for the effort to use research findings to inform legal policy or procedure. Consider, for example, the Court majority's concerns about experiments regarding the biasing impact of voir dire in death penalty cases: “[these] studies were based on the responses of individuals randomly selected from some segment of the population, but who were not actual jurors sworn under oath to apply the law to the facts of an actual case involving the fate of an actual capital defendant. We have serious doubts about the value of these studies in predicting the behavior of actual jurors” (*Lockhart v.*

McCree, 1986, p. 171). Such concerns tend to be even greater when studies utilize college or other convenience samples.

This skepticism in legal circles regarding experimental simulations highlights the importance of research programs that offer converging empirical conclusions derived from multiple methodologies (see Sommers & Ellsworth, 2003). However, archival analyses of actual trial outcomes have also, at times, been dismissed by the Supreme Court as merely correlational (e.g., *McCleskey v. Kemp*, 1987). It would seem, then, that it is not so much strong reservations regarding any particular methodology that accounts for legal resistance to empirical behavioral findings, but rather the different levels of analysis that psychologists and judges bring to bear when resolving difficult issues. Psychologists, like other social scientists, seek to understand and predict behaviors that are multiply determined. As such, we rely on processes of probabilistic inference and offer conclusions along the lines of *cases with Black defendants and White victims have an increased likelihood of ending in a death sentence*. Judges, on the other hand, focus almost exclusively on the specifics of the trial before them, asking instead the question of *was there racial bias in this particular case?* Psychologists are typically unable to provide conclusive answers to such a question.

This gulf between the perspectives of those in the legal system and behavioral scientists are not impossible to bridge, particularly when direct lines of collaboration and discourse remain open (and when a triangulation of research methodologies is utilized). But these issues constitute an important backdrop for consideration of some of the potential policy changes and future research questions suggested by psychological investigation of jury diversity. The following section considers some of the specific ways in which psychologists can contribute to the ongoing investigation of this important social issue, threading together many of the analyses that have been integrated throughout this article. Most of the potential procedural changes that have been proposed by legal scholars and judges to facilitate increased diversity on juries are amenable to empirical assessment using the methodologies of experimental psychology; psychological theory also offers novel suggestions for consideration. The goal of the analyses below is not to identify and advocate for a specific course of action, but rather to generate ideas for future investigation and to illustrate the potential for psychologists to inform legal policy and practice by devoting their attention to these issues.

Reducing Bias during Jury Selection

As alluded to above, various procedural modifications have been proposed to improve the processes of jury source list creation and random selection for jury summonses that can impede the recruitment of a representative pool of citizens for jury duty. Even more amenable to psychological assessment—and perhaps of even more theoretical interest to psychologists who study race, person perception, and

social judgment—are potential strategies for combating the influence of proscribed social category information such as race on attorneys' peremptory use. The ability of race-based peremptories to undermine the representativeness of juries is not a mere hypothetical: based on their extensive analyses, Baldus and colleagues (2001) concluded that this practice contributed to the underrepresentation of Black jurors on capital juries in Philadelphia. And the explicit prohibition of such peremptories by the U.S. Supreme Court apparently has had little to no effect on actual attorney behavior during jury selection. In fact, Norton, Sommers, and Brauner (2007) reported that reminding mock attorneys of these prohibitions did not impact the level of discrimination observed in peremptory use, but only served to prompt participants to provide even more detailed, ostensibly neutral justifications for their decisions. What, then, might constitute more effective means of curtailing the impact of race on jury selection, and by association, the threat posed to racial representativeness on juries?

Toward this end, a variety of policy changes have been recommended by scholars and judges, the most straightforward of which is simply eliminating peremptory challenges, as has been done in contemporary England and as was advocated by Justice Marshall's concurring opinion in the original *Batson* ruling. Some critics have pointed out, however, that such a change might undermine litigants' ability to ensure the selection of an impartial jury (e.g., Diamond, Ellis, & Schmidt, 1997). Moreover, the end of the peremptory would not necessarily mark the end of the influence of race on jury selection. First, challenges for cause in some cases, such as capital murder trials, have the side effect of disproportionately removing jurors of particular racial groups (e.g., Cowan, Thompson, & Ellsworth, 1984). Second, attorneys might still be able to use challenges for cause to influence jury racial composition, particularly if the elimination of peremptories were accompanied by expanded voir dire (Council for Court Excellence, 1998; Diamond et al., 1997). For these and other reasons, debate continues concerning potential procedural changes, including reduction in number of peremptories and affirmative processes designed to empanel a predetermined number of racial minority jurors for particular trials (see Baldus et al., 2001; Diamond, Ellis, & Schmidt, 1997; Fukurai & Davies, 1997; Ramirez, 1994).

As Sommers and Norton (2008) suggest, the question of how best to curb the influence of race on jury selection judgments is a topic ripe for the picking for future psychological investigation. In considering avenues for future study, one important question becomes whether the impact of race on jury selection evaluations and judgments reflects conscious versus nonconscious processes. That is, to what extent do attorneys intentionally consider race in evaluating jurors and then effortfully mask this influence when explaining their peremptory use? Or is part of the impact of race on jury selection attributable to less conscious processes, rendering some attorneys unaware that they have been biased by race in assessing prospective jurors (see Page, 2005)? The policy solutions that psychologists might

propose for counteracting the effects of race would differ markedly depending on the answers to these questions.

For instance, one possibility for future research would be to investigate the relationship between jury selection tendencies and implicit attitudes or associations regarding race (e.g., Nosek, Greenwald, & Banaji, 2007). There is increasing precedent for the consideration of implicit bias in legal decision making (see Kang & Banaji, 2006; Page, 2005), and though some findings indicate that implicit biases are more likely to predict judgments and behaviors that are spontaneous as opposed to deliberative (e.g., Dovidio, Kawakami, & Gaertner, 2002; Wilson, Lindsey, & Schooler, 2000), one might argue that the typically quick and superficial nature of voir dire questioning in the United States (Council for Court Excellence, 1998; Kovera et al., 2002) renders jury selection susceptible to such influence. If data indicate that implicit biases do indeed predict judgments during jury selection, psychologists may wish to focus assessment of potential policy recommendations on efforts at consciousness-raising among attorneys, category masking—perhaps in the form of voir dire conducted through written questionnaire—and affirmative selection of minority jurors (see Greenwald & Banaji, 1995).

However, some previous findings cast doubt on the proposition that implicit bias accounts for much of the influence of race on peremptory use. For one, most archival analyses indicate that the jury selection tendencies of American prosecuting and defense attorneys are mirror opposites, with the former focusing challenges on Black jurors and the latter on Whites (Baldus et al., 2001; Rose, 1999; Turner et al., 1986). While it is theoretically possible that high-bias individuals are drawn to careers as prosecutors and low-bias individuals to work as defense attorneys—or that time spent in these jobs predicts the development of such attitudes—this seems an unlikely explanation for the observed results. Moreover, such a proposition would not account for the finding that prosecutorial race-based peremptories are particularly likely to occur in trials with Black defendants. It seems a more plausible conclusion that attorneys' domain-specific stereotypes regarding juror race drive their peremptory use during jury selection.

As such, another promising area for future inquiry would be to assess procedural changes that would render the impact of such stereotypes less pronounced, or at least judicial identification of such influence easier. Psychological research has demonstrated that stereotypes are particularly influential when a decision maker is deprived of individuating information, under cognitive load, or facing time pressure (e.g., Kruglanski & Freund, 1983; Kunda, Davies, Adams, & Spencer, 2002; Sherman, Stroessner, Conrey, & Azam, 2005). This is an apt description of voir dire in many jurisdictions, as practical constraints often limit the number of questions posed to prospective jurors (Kovera et al., 2002). Thus, it seems worthwhile to test empirically the suggestion of Diamond and colleagues (1997) that “the way to reduce the use of these hunches and stereotypes is to provide the attorneys with better information” (p. 93) and, perhaps, more time to review it. Such expanded

voir dire could come in the form of greater latitude in attorneys' questioning or more extensive use of pre-voir dire jury selection questionnaires, a procedure that until recently was used almost exclusively in high-profile cases.

Another, more radical procedural change suggested by psychological research might be to require attorneys to report to the judge before voir dire the juror characteristics they prefer for the case in question. Assessment of prejudgment preferences has the potential to reduce the likelihood of bias (Bragger, Kutcher, Morgan, & Firth, 2002; Uhlmann & Cohen, 2005), but also may permit more meaningful scrutiny of attorneys' peremptory use. For example, a prosecutor who articulated the goal of finding jurors sympathetic to police would have difficulty justifying the challenge of a Black juror related to a police officer or the failure to challenge a White juror who endorses negative police attitudes. Alternatively, attorneys could rate prospective jurors after reading category-blind, written questionnaire responses, but before a subsequent voir dire. Such procedures and their effects are amenable to empirical assessment, though they would also comprise a major departure from traditional voir dire in the United States by requiring attorneys to reveal strategy and articulate stereotypes.

As discussed above, such proposed departures from convention are likely to be met with skepticism and resistance by many in the legal system. This tension between the types of bias reduction/identification strategies that psychologists might recommend and the openness to change of most legal systems is well illustrated by consideration of yet another potential means of eliminating bias: random selection. After all, research psychologists, too, are concerned about the impartiality and representativeness of the samples we study, typically relying on random sampling and assignment to assure ourselves that, in the long run, such considerations are addressed. In the jury selection domain, some analyses have indicated that voir dire produces juries with attitudes no different from those of 12 randomly selected individuals (e.g., Johnson & Haney, 1994). Furthermore, randomly selected juries would be more representative of the community (Baldus et al., 2001). But random selection of juries would constitute such an enormous change in procedure that there is little realistic possibility that it would ever be adopted in the United States (see Golash, 1992). Just one of many reasons for this is that such a change would potentially open the floodgates to appeals from defendants who believe that they drew the short end of the normal distribution curve regarding their jury's composition. As such, random selection remains the domain of the research psychologist, and not a feasible solution to the problems of jury representativeness outlined herein.

Unanswered Questions Regarding Jury Composition

A different, but related future direction for research in this area will be to further explore the ways in which a jury's racial composition affects its deliberations and decision making. As detailed above, few empirical studies have

investigated the impact of jury diversity, and even fewer have examined the social influence, motivational, and cognitive processes underlying such effects. The Sommers (2006) study reviewed above provides empirical evidence of the potential for racial composition to affect the actual decision making of juries, and also supports the prediction that such influence occurs through multiple processes. Still, definitive conclusions are difficult to base on a single experimental data set based on a single trial summary, and several research questions remain in need of empirical answers in the effort to more fully characterize the potential impact of racial composition on jury decision making.

Various future questions have to do with the generalizability of the findings reported by Sommers (2006). Participants in this study deliberated on the assault trial of a Black defendant as part of juries that were either all-White or racially diverse. Would similar results have emerged for judgments in a trial with a White defendant? On the one hand, if it is indeed the case that jurors of different racial backgrounds enter the jury room with different experiences and attitudes related to the legal system, then jury racial composition should have some predictive ability when it comes to the nature of the information exchanged during deliberations in many cases. If, for example, a general tendency emerges for Black jurors to voice more skepticism of police testimony than do White jurors, then a racially diverse jury is likely to consider a wider range of attitudes about the police than an all-White jury in almost any case. On the other hand, some of the noninformational influences identified by Sommers (2006) would likely be different or even nonexistent in trials with a White defendant. It seems less likely for a diverse jury composition to trigger Whites' concerns about avoiding the appearance of prejudice when the defendant is White and not Black. These are empirical questions.

For that matter, many of the noninformational effects reported by Sommers (2006) seem to depend on the assumption that White jurors are driven, at least in part, by the motivation to avoid overt expressions of prejudice. Indeed, other, non-legal findings that Whites tend to process information more systematically when it is about a Black target or conveyed by a Black source are typically explained in terms of Whites' desire to avoid prejudice (Petty et al., 1999; Sargent & Bradfield, 2004). Absent such a motivation among Whites, the effects of membership on a racially diverse jury on private and public juror tendencies would likely be very different. As Sommers (2007) has suggested, only a handful of experiments has explored the relationship between White jurors' racial attitudes and their judgments in cases with Black defendants, and few if any researchers have examined the predictive ability of self-reported motivations to respond without prejudice when it comes to juror decision making or the effects of jury racial composition. These are important avenues for future investigation.

It is also worth noting that even the diverse juries in the Sommers (2006) study were majority White, as they consisted of four White and two Black jurors. Would similar results have emerged for juries with an even split of White and Black

jurors, or for predominantly Black juries? For that matter, does the racial group membership of other individuals involved in the trial proceedings—in particular, the judge—impact jurors' expectations, cognitive tendencies, and judgments? But perhaps of most interest and theoretical importance would be to consider what the results would look like in a similar study conducted with all-Black juries. Though such jury compositions would be quite unlikely in most jurisdictions of the United States, this is not the case for locales such as Atlanta, Detroit, or Washington DC. As such, the examination of all-Black juries is of practical relevance. But just as important are the theoretical questions that such an examination could address: Are some of the apparent performance outcomes predicted by jury homogeneity in the Sommers (2006) study (e.g., more limited range of perspectives discussed, greater number of factually inaccurate statements) evident among different types of nondiverse juries, or are they more limited to homogeneously White juries? Are the interpersonal and intrapersonal processes by which racial composition exerts its effects comparable on all-Black versus all-White juries?

Questions such as these also raise a more general issue regarding the potential differences between diverse and representative juries. The present analyses have conflated these two ideas, discussing the objective of empanelling representative juries by drawing, in large part, on theory and research regarding group diversity. Such analyses seem warranted given that many real-world problems with jury representativeness are of the nature of the two examples used to start this article: jurisdictions in which juries are disproportionately dominated by White jurors despite the racial diversity of the surrounding community. Therefore, the effort to create representative juries often runs parallel to the effort to foster jury diversity.

But there are instances in which a truly representative jury pool would be decidedly nondiverse, either in terms of being almost exclusively White, or—in the case of the American urban centers identified above—almost entirely non-White. Such divergence between the concepts of jury representativeness and diversity leads to interesting philosophical questions regarding the jury system. For example, how problematic is it, then, that communities with more homogeneous populations are likely missing from their jury deliberations many of the “qualities of human nature and varieties of human experience” cited by Justice Marshall in *Peters v. Kiff* (1972)? In such cases, does the importance of affording a community the opportunity for closure in the form of a local jury verdict (see Abramson, 2000; Hans & Vidmar, 1982) outweigh the potential benefits of a diverse jury composition? This divergence also yields provocative empirical questions. To the extent that a community is relatively homogeneous, does jury racial composition have different effects on public confidence in the system than it does otherwise? Do decreased opportunities for interracial interaction in a community at-large moderate the impact of a racially diverse jury composition on group- and individual-level outcomes? In short, it is important to bear in mind that despite their overlap in many jurisdictions, jury representativeness and diversity are not exactly the same

concept, and potential divergences between these ideas merit intellectual as well as empirical attention.

Are racially diverse juries *better* decision makers than their homogeneous counterparts? This is another question that emerges from the Sommers (2006) findings, and it is one that is difficult to answer for a variety of reasons. “Better” is an elusive concept when it comes to jury decisions, for which a gold standard typically does not exist. For example, in the Sommers (2006) study, White mock jurors on diverse mock juries were less convinced of the Black defendant’s guilt before deliberations than were Whites on all-White mock juries. One interpretation of this result is that membership in a diverse jury led to reduction of racial bias. But just as plausible is the conclusion that Whites were overly lenient when on diverse juries in the effort to avoid the appearance of prejudice. Without a baseline control with which to draw comparisons, it is impossible to disentangle these possibilities.

Some might suggest that the way around this problem is to select a stimulus trial with a preestablished, “correct” verdict against which the mock juries’ decisions can be compared. Again, though, the idea of a “correct” decision is often problematic in the jury context. What establishes a verdict as demonstrably “correct”? The verdict in the actual case is hardly sufficient, as there are no assurances that a real-life decision to convict confirms a defendant’s guilt. A confession? Data indicate that confession evidence is often not as reliable as intuition suggests (see Kassir, 1997). DNA analysis? Perhaps, assuming that the evidence’s chain of custody is intact and the testing procedure is reliable. But even were forensic analysis or a verifiable videotape to emerge after a trial to confirm that the defendant did engage in certain acts at a certain time and place, juries are often charged with making more subjective decisions regarding issues of intent, severity, and justification. In this sense, the characterization of jury decision making as being equivalent to a problem-solving task with an objectively correct answer feels unsatisfying and the effort to establish accuracy benchmarks becomes problematic.

So, to return to the question, are diverse juries better decision makers than homogeneous juries? Clearly, not nearly enough data have been published to offer a definitive answer, and the question itself poses many challenges. One avenue for future investigations is to pursue the “accurate” verdict idea, though as discussed above, such efforts are not without obstacles. Another possibility is to consider alternative operationalizations of decision quality, as were adopted in the Sommers (2006) study and in much of the previous research on the effects of jury size (for review, see Ellsworth & Mauro, 1998). Many of the outcomes examined in the Sommers (2006) study are interpretable as measures of performance quality. Breadth of perspectives considered, factual accuracy in discussing the case, willingness to debate controversial issues—these are all characteristics that are valued among juries, and diverse juries were more likely to exhibit them than homogeneous juries. A related outcome for future investigation would be the presence of racial bias. That is, clearly it is “better” for juries not to be biased by the race of

the defendant at trial. To the extent that heterogeneous juries differentiate less than homogeneous juries in their judgments of Black versus White defendants, then the absence of racial bias would constitute yet another potential performance benefit of diverse juries. This is an empirical question worthy of consideration, as are the boundary conditions for performance effects such as these, as discussed above.

Finally, perhaps some of the most important questions of generalizability when it comes to the effects of jury diversity include the ways in which the effects of jury composition vary depending on the specific racial groups in question, or when diversity is defined in terms that are altogether unrelated to race. In an increasingly multicultural society, a continued research dichotomization of race in strict Black/White terms—at the expense of all other groups—will prove problematic for investigations of juries as well as for more general psychological examination of race. Furthermore, how might, for example, a jury's gender composition affect the nature and scope of its deliberations and verdict tendencies? Archival and experimental data suggest that men and women often differ in their deliberation tendencies (see Bowers et al., 2001; Ellsworth, 1989); gender is the other social category on which U.S. attorneys are not permitted to base peremptory challenges (*J. E. B. v. Alabama*, 1994; see Norton et al., 2007). In short, though this article focuses on the obstacles to and implications of racially diverse juries, practical as well as theoretical considerations highlight the importance of investigating other factors that play a role in jury representativeness, or the lack thereof.

Conclusion

The processes of jury selection and jury decision making are replete with testable, psychological hypotheses. From person perception to social judgment, from social influence to group dynamics, a wide range of basic processes of interest to psychologists are on display in these legal domains. This article examines these legal issues with one particular focus, namely their relationship to racial diversity. At the level of popular discourse and analysis, such race-related issues remain among the most controversial and polarizing of legal topics, rendering their objective, empirical investigation all that much more important. By applying both the theory and methodology of experimental psychology to this arena, we as researchers have the opportunity to contribute to a richer conceptualization of these issues and to the policy debates surrounding them. Moreover, the legal system provides a realistic and engaging domain in which we can extend and test hypotheses regarding the basic phenomena we care about.

Applied to questions surrounding jury diversity, psychological theory, and findings further our understanding of why jury pools often fail to adequately represent the racial demographics of their surrounding communities, and what the quantifiable consequences of this failure may be in terms of public confidence in

the system and the quality of jury decision making. We know from psychological investigation that the influence of race on jury selection judgments will persist despite current procedures in place to safeguard against it. We know that the effects of unrepresentative jury compositions are not merely hypothetical. While some of the obstacles that stand in the way of jury diversity are less easily remedied than others, and even the most well supported of policy recommendations may be met with resistance from legal systems that place an understandable premium on efficiency and precedent, psychological research remains an essential component of the exploration of this important social issue. Such investigations continue to be one of the few sources of empirical assessment of the numerous legal assumptions regarding human cognition and behavior that otherwise tend to go untested.

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