



Invited article

Race and the decision making of juries

Samuel R. Sommers*

Department of Psychology, Tufts University, USA

The relationship between race and jury decision making is a controversial topic that has received increased attention in recent years. While public and media discourse has focused on anecdotal evidence in the form of high-profile cases, legal researchers have considered a wide range of empirical questions including: To what extent does the race of a defendant affect the verdict tendencies of juries? Is this influence of race comparable for jurors of different races? In what ways does a jury's racial composition affect its verdict and deliberations? The present review examines both experimental and archival investigations of these issues. Though the extant literature is not always consistent and has devoted too little attention to the psychological mechanisms underlying the influence of race, this body of research clearly demonstrates that race has the potential to impact trial outcomes. This is a conclusion with important practical as well as theoretical implications when it comes to ongoing debates regarding jury representativeness, how to optimize jury performance, jury nullification and racial disparities in the administration of capital punishment.

In the latter half of the 20th century, psychologists and legal scholars turned their attention to a wide range of issues related to juror and jury decision making (for reviews, see Devine, Clayton, Dunford, Seying, & Price, 2001; Ellsworth & Mauro, 1998). The aims of these studies are too varied to list comprehensively, but they include investigating procedural changes such as those involving jury size and decision rule (e.g. Davis, Kerr, Atkin, Holt, & Meek, 1975; Saks, 1977), assessing the consequences of Supreme Court rulings on matters such as death qualification (e.g. Cowan, Thompson, & Ellsworth, 1984; Haney, 1984), examining the influence of different types of evidence including expert testimony (e.g. Hosch, Beck, & McIntyre, 1980) and inadmissible information (e.g. Kassin & Sommers, 1997), and developing an understanding of the general processes through which juries reach a verdict (e.g. Hastie, Penrod, & Pennington, 1983; Kalven & Zeisel, 1966; Kerr, 1981). Yet another category of studies has considered the influence on juries of personal characteristics – those of defendants, victims, as well as jurors themselves. However, even after 50 years and the turn of a

*Correspondence should be addressed to Dr Samuel R. Sommers, Tufts University, Department of Psychology, 490 Boston Avenue, Medford, MA 02155, USA (e-mail: sam.sommers@tufts.edu).

century, the findings of these investigations remain less clear-cut and less consistent. The present article focuses on the literature regarding one of the most notorious and controversial of these characteristics: race.

There are many questions researchers have asked regarding race and jury decision making: To what extent do jury verdicts differ by defendant race? What differences are observed in the decision making of jurors of various races? At the group level, how does a jury's racial composition shape not only its final verdict but also its deliberation process? This article reviews empirical responses to these queries and identifies unanswered questions in need of future empirical attention; it also considers an issue that has received too little attention in the literature, namely the precise psychological processes through which the influence of race occurs in the legal context. Just as there are myriad research issues to be pursued concerning this topic, so, too, are there different methodologies used to ask these questions (for review, see Sommers & Ellsworth, 2003). Most frequently, the investigation of race and juries has taken the form of mock trial experiments, but some researchers have conducted relevant archival analysis of actual trial outcomes. Given that the strengths and limitations of these two types of studies complement one another, the continued use of multiple methodologies remains essential for this ongoing body of research, and studies of both types are reviewed herein.

Influence of defendant's race

Most published studies examining race and legal decision making have not actually considered 'juries' *per se*, but rather have focused on the influence of a defendant's race on the judgments of individual mock jurors. Twenty-five years ago, Dane and Wrightsman (1982) described the nature of the findings in this literature as largely inconsistent; a contemporary review reveals an increase in the number of experiments devoted to this topic, but the same conclusion arguably still applies. This lack of consensus derives, in large part, from many researchers' tendency not to ground their investigation in any particular theoretical framework (for exceptions, see Bodenhausen & Lichtenstein, 1987; Wittenbrink, Gist, & Hilton, 1997), as well as the use of idiosyncratic stimulus trial materials. Of course, the inconsistencies in this literature also reflect the complexity and nuance of criminal trials, especially when compared with the pared-down stimuli often used in more general experimental investigations of social judgment.

Inconsistent findings

Exactly what, then, are these disparate findings? Most experiments investigating the influence of defendant's race have examined White mock jurors' perceptions of Black defendants (see Sommers & Ellsworth, 2001). Presumably, this narrow focus reflects both the historical nature of the United States' legal system - in which Black suspects and defendants have often received disproportionately harsh treatment at the hands of White individuals and a predominantly White system - as well a more general tendency in social science research to consider racial bias in terms of the White/Black dichotomy. Some of these studies have indicated that a defendant's race has no consistent effect on White jurors (e.g. McGuire & Bermant, 1977; Skolnick & Shaw, 1997), and a handful has found that White jurors are actually harsher towards same-race defendants than out-group defendants (e.g. McGowen & King, 1982; Poulson, 1990). However, a larger body of studies converges on the conclusion that White mock jurors are often harsher in their

judgments of out-group vs. in-group defendants (e.g. DeSantis & Kayson, 1997; Hymes, Leinart, Rowe, & Rogers, 1993; Klein & Creech, 1982).

Complicating the effort to characterize this literature is that relevant meta-analyses have used different inclusion criteria and have examined different outcome variables. For example, Sweeney and Haney (1992) examined 14 studies with over 2,800 participants and determined that White mock jurors were indeed harsher in their sentencing recommendations for Black vs. White defendants. Two years later, Mazzella and Feingold (1994) analysed studies examining verdict decisions as well as sentencing, but - unlike Sweeney and Haney - they included data from participants of all races. Their conclusion based on data from over 6,700 participants was that there was no significant evidence of racial bias in verdict or sentencing decisions, yet they cautioned that this finding was potentially 'misleading because race apparently interacted complexly with other factors influencing jurors' judgments of guilt' (p. 1315). More recently, Mitchell, Haw, Pfeifer, and Meissner (2005) examined data from more than 7,000 participants in studies considering verdict decisions and 3,000 participants in studies examining sentencing decisions. They reported a small, but significant, effect of racial bias for both judgments, a conclusion also supported by a small number of archival analyses, particularly those examining capital trials (e.g. Baldus, Woodworth, & Pulaski, 1990; Bowers, Steiner, & Sandys, 2001; Gross & Mauro, 1989).

Reconciling inconsistencies

In addition to the theoretical need to reconcile such inconsistencies, legal practitioners would clearly benefit from a better practical understanding of precisely when, why and to what extent a defendant's race biases jurors. One strategy for achieving this objective has been to consider individual differences that account for some of the variability in defendant race effects. For instance, McGowen and King (1982) used a pre-trial questionnaire to classify mock jurors into three categories: authoritarian, anti-authoritarian and egalitarian. They found that mock jurors with high scores on a measure of authoritarianism - typically defined as a tendency to be submissive to authority and to prefer security, order and conventional values - rendered harsher judgments for an in-group defendant, a pattern not evident among other participants. More recently, Kimmelmeier (2005) found that social dominance orientation - the preference for rigid hierarchy in one's social system such that some groups are seen as inferior to other groups - moderated the influence of defendant race on White mock jurors. He found that high-social-dominance Whites judged Black assault defendants more harshly than White defendants, but this pattern was reversed for low-dominance-orientation jurors, a conclusion that he suggested may account some of the null findings in previous investigations of defendant race.

However, arguably the most relevant individual difference measures to this investigation remain largely unexamined. Only a few experiments have examined the relationship between White jurors' explicit racial attitudes and their judgments in cases with Black defendants (cf. Bottoms, Davis, & Esptein, 2004; Dovidio, Smith, Donnell, & Gaertner, 1997; Hodson, Hooper, Dovidio, & Gaertner, 2005). In addition, few, if any, researchers have examined the predictive ability of self-reported motivations to respond without prejudice (e.g. Dunton & Fazio, 1997; Plant & Devine, 1998) when it comes to juror decision making. Moreover, a great deal of contemporary social perception and judgment research has moved beyond self-report assessment of explicit racial attitudes by considering unconscious, implicit associations and thoughts (see Greenwald &

Banaji, 1995). While the predictive utility of such attitudes for deliberative judgments such as those rendered by jurors is the subject of debate, implicit associations have myriad potential implications for the legal system (Kang & Banaji, 2006; Krieger, 2004), and are worth at least considering in the domain of juror decision making.

Another tactic researchers have adopted in the effort to reconcile previous findings has been to identify factors that exaggerate or attenuate the influence of a defendant's race. In other words, several investigators have considered the specific circumstances under which a defendant's race is particularly likely to influence White jurors. Factors that have been found to increase the likelihood that a Black defendant receives harsher treatment from White jurors than a White defendant include the presence of inadmissible incriminating evidence (Johnson, Whitestone, Jackson, & Gatto, 1995), inflammatory pre-trial publicity (Fein, Morgan, Norton, & Sommers, 1997), absence of racially charged issues at trial (Sommers & Ellsworth, 2000), absence of judicial instructions regarding avoiding 'sympathy or prejudice' (Pfeifer & Ogloff, 1991), when the crime is 'blue-collar' as opposed to 'white-collar' (Gordon, Walden, McNicholas, & Bindrim, 1988) and when the evidence at trial is ambiguous (van Prooijen, 2006).

These findings have led some researchers to conclude that the aversive (or modern) racism framework favoured by many social psychologists in the more general study of race and social judgment (e.g. Gaertner & Dovidio, 1986) is also useful for reconciling the literature on defendant race (Sommers & Ellsworth, 2001). Such a theoretical perspective proposes that many White jurors - like White people more generally - are motivated to avoid the appearance of racial bias. Therefore, salient thoughts about race during the review of trial evidence (e.g. as occur when the incident in question is racially charged) or the presence of strong normative cues against the expression of racial bias (e.g. judicial instructions emphasizing the importance of avoiding prejudice) should motivate jurors to render an objective, 'colour-blind' decision. However, in the absence of such salient thoughts or normative cues regarding race, even the subtlest of racial biases are likely to impact judgments. Furthermore, aversive racism theory suggests that when ample race-neutral justification is available for a given decision (e.g. the presence of incriminating pre-trial publicity, an ambiguous case that could reasonably be interpreted in different ways), White jurors are more likely to be influenced by the taboo factor of race because they have at their disposal a legitimate explanation for their decision (see Norton, Sommers, Vandello, & Darley, 2006).

Unanswered questions and future directions

Applying social psychological theory to the investigation of defendant race in this manner is a noteworthy step forward for this line of inquiry. It remains the case, however, that too little is known regarding the psychological processes underlying the influence of a defendant's race. This gap in the literature prevents conclusions from being drawn regarding, for instance, whether prejudicial attitudes account for the influence of defendant race on White jurors, or whether simple awareness of societal stereotypes regarding race and crime is sufficient to impact judgments. The resolution of this and other related questions will be of great importance for efforts to curtail the biasing influence of race on jurors.

One cognitive mechanism potentially underlying the influence of defendant's race that has been explored, with inconsistent conclusions, is level of processing. To the extent that stereotypical thought processes underlie the effects of defendant race, one might predict that jurors process trial information more superficially or heuristically

when a defendant is Black. Interestingly, Sargent and Bradfield (2004) observed the opposite pattern of results, as White mock jurors in their studies were more sensitive to evidence strength when the defendant was Black than when he was White. The authors interpreted these findings as indicating that White mock jurors were motivated to avoid prejudice, and therefore scrutinized the trial information more carefully when the defendant was Black. Other studies have arrived at the conclusions that mock jurors engage in more systematic processing when crimes are interracial (ForsterLee, ForsterLee, Horowitz, & King, 2006) or when the defendant's race is incongruent with a crime stereotype, such as the case of a Black defendant charged with bank fraud (Jones & Kaplan, 2001).

As alluded to above, another potential consideration is the role played by prejudicial attitudes among jurors. If an in-group/out-group framework is to be applied to this study of defendant race, how is it that prejudicial attitudes are manifested in the juror context? Do jurors set a lower threshold for reasonable doubt when a defendant is an out-group member as opposed to an in-group member? Would such effects represent leniency towards an in-group, harshness towards an out-group, or some combination thereof? These are questions with clear policy implications, yet they are more often raised in Discussion sections of published articles than they are addressed with empirical data. Another provocative future direction is to fully explore the possibility that the influence of a defendant's race can, in part, be explained by unintentional and even non-conscious processes, as has been found in studies involving race and perception in the domain of policing (e.g. Correll, Park, Judd, & Wittenbrink, 2002; Payne, 2001). Does a defendant's race change the way in which jurors interpret ambiguous evidence? Do jurors bring to the courtroom different implicit beliefs about crime base-rates and racial group membership? If such tendencies exist, precisely how, then, are mock jurors able to accurately correct for the influence of race in some cases?

Yet another way to address these questions of process is to remedy some of the methodological oversimplifications and oversights of previous studies. For example, the vast majority of studies have compared White jurors' judgments of White and Black defendants. This focus on the White/Black dichotomy mirrors the myopia found in the more general psychological literature on prejudice, but it would be useful to know whether such effects generalize to judgments regarding other racial groups, as well as to examine the role of socio-economic status in the perception of criminal defendants. These are also important issues from a theoretical perspective, as previous research has indicated that lay-people's stereotypical beliefs about race and crime vary by the particular racial group in question, and race-related normative pressures may also differ depending on the precise category membership of the defendant. Many White jurors may be worried about the appearance of prejudice when a defendant is Black, but such concerns may not be as strong or consistent when a defendant is a member of another racial category about which crime-related stereotypes exist, such as Latinos. Perhaps, White jurors would have little or no reservations about exhibiting bias against an Arab defendant in the wake of the September 11th terrorist attacks. These possibilities remain largely unexamined, but they may shed light on the relationship between stereotypic thoughts, prejudicial attitudes, normative concerns and juror decision making.

Finally, yet another issue to be considered is the question of the differential effects of defendant race and victim race on juror decision making. For capital trials in particular, analyses indicate that race of the victim is not only an important consideration, but, in some instances, is also more influential than the race of a defendant (see Baldus *et al.*,

1990; Eberhardt, Davies, Purdie-Vaughns, & Johnson, 2006). Despite this importance of victim race, many experiments have omitted this variable entirely, while others have used manipulations that confound victim and defendant race. The precise mechanisms by which a victim's race is influential are also not well understood. When a victim is of the same race as jurors, does this elicit greater sympathy and therefore greater outrage directed towards a defendant? Does a same-race victim increase jurors' motivation to hold someone responsible, thereby lowering the certainty threshold necessary for conviction? In sum, further exploration of race of victim effects - including their interaction with race of defendant effects - constitutes yet another endeavour worthy of future attention in this line of research.

Between-race differences in the judgments of individual jurors

The vast majority of studies examining the influence of a defendant's race - reviewed previously - use entirely or predominantly White participant samples. Myriad justifications for this reliance on White samples have been offered. First, from a historical standpoint, racial bias on the part of White legislators, judges, attorneys and jurors is well documented (see Sommers & Ellsworth, 2001), illustrating the importance of understanding the influence of race on the individual White decision makers. Second, the tendency to focus almost exclusively on Whites is hardly unique to legal research, but rather mirrors the tendencies of more general social science investigations of racial bias (Shelton, 2000). Finally, for many years, the consensus among mock jury researchers has been that little, if any, reliable relationship exists between a juror's race and her decision-making tendencies (see Hastie *et al.*, 1983; Kassin & Wrightsman, 1988).

None of these justifications for this almost exclusive focus on White jurors - alone or in combination with each another - are particularly compelling. They may serve as reasonable explanations for the decision to examine only White mock jurors in any one experiment, but they do not render any less problematic the more general dearth of data from non-White jurors. The final proposition above is particularly unconvincing; the relationship between juror race and the judgments of individual jurors may indeed be complicated and nuanced, but there hardly exists a substantial body of empirical data on which to base a conclusion that no such relationship exists. The studies upon which this assertion has been based were never intended to identify racial differences to begin with. In most cases, they were designed as investigations of non-racial issues, including evidence comprehension, case complexity and jury size, with participant race assessed simply as an afterthought, for mere demographic purposes.

Evidence for racial differences in individual jurors' judgments

Only a handful of studies have directly examined juror race and decision making, and much of this research has compared the influence of a defendant's race on the judgments of individual White vs. Black mock jurors. Unfortunately, several of these studies have methodological limitations that prevent definitive conclusions concerning between-race differences. Foley and Chamblin (1982) presented White and Black mock jurors with the audiotape of a rape trial. They found that White mock jurors were more likely to vote to convict when the defendant was Black vs. White, but no such disparity was found among Black jurors. Interpretation of this null result among Black jurors is complicated, though, by the fact that only 20 study participants were Black, a number

too small to allow for meaningful statistical comparison. Ugwuegbu (1979) manipulated defendant's race and strength of the prosecution's evidence in a rape trial summary presented to White and Black mock jurors. He found that defendant's race had little effect on White or Black jurors when the trial evidence was weak or strong, but in an ambiguous case, jurors of both races were harsher towards the other-race defendant. These data support an in-group/out-group explanation for the influence of a defendant's race on the judgments of individual jurors, though direct comparison of White and Black mock jurors is impeded by the fact that the two samples participated in separate experiments in this paper.

Other studies have led to the conclusion that the race of a defendant has a greater influence on Black mock jurors than on Whites. For example, Skolnick and Shaw (1997) found that Whites rendered comparable decisions for White and Black defendants, but Blacks were harsher in their judgments when the defendant was White. However, the authors are careful to note that the unique context in which this study took place renders its generalizability questionable, as it was conducted for a special journal issue devoted to the O.J. Simpson trial, the materials used – a trial transcript in which the defendant was accused of fatally stabbing his White ex-wife – were intended to resemble the Simpson case, and the study was conducted in Southern California while Simpson's civil trial was ongoing. More recently, Abwender and Hough (2001) obtained a similar result by varying the race of the defendant in a vehicular manslaughter case summary presented to White and Black mock jurors. Their study is one of the few to include Latino participants (though no Latino defendant condition was included): unlike Whites, Latino mock jurors rendered harsher decisions when the defendant was Black than when she was White.

Another study paints a more complicated picture of between-race differences. Sommers and Ellsworth (2000) presented White and Black mock jurors with the summary of an assault trial. The incident in question was always interracial, but in one version of the trial the altercation was racially charged and in the other it was literally race-neutral (i.e. race played no role in the incident, nor were racial issues made salient during the trial). As described previously, White mock jurors were not influenced by the defendant's race when the incident was racially charged, and in the race-neutral condition White jurors were harsher in their judgments of a Black vs. White defendant. Black mock jurors, on the other hand, were not influenced by this situational variable, exhibiting harsher judgments of the White defendant in both versions of the trial. This study is the rare experiment that also suggests one potential reason *why* such between-race differences in juror tendencies emerge. When asked whether they generally believed that defendant race affects treatment received in the legal system, Black mock jurors were more sceptical of the system's colour-blindness than were Whites. In fact, Blacks' average response to this question was 6.9 on a 7-point rating scale, suggesting the possibility that Blacks' concerns regarding system fairness may account for some of the observed between-race differences in juror tendencies.

Analyses of actual trials provide converging evidence for between-race differences. For example, Eisenberg, Garvey, and Wells (2001) found that age, gender and socio-economic status did not predict capital jurors' first votes during the sentencing phase of deliberations, but race did: Whites – as well as people with above average enthusiasm for the death penalty – were especially likely to vote for death on the first ballot (see also Bowers *et al.*, 2001). Interviews with former jurors indicate that their perceptions and experiences also vary across racial lines. For example, Bowers, Sandys, and Brewer (2004) interviewed jurors in Black-on-White capital murder trials. They found that White jurors were more likely than

Blacks to report that they perceived a Black defendant as dangerous, remorseless and emotionally disturbed. Black male jurors were more likely than all other jurors to put themselves in the shoes of the defendant's family and to see the defendant's family as similar to their own, whereas White jurors of both genders were less receptive to evidence of mitigation. Interview studies also reveal racial differences in jurors' subjective experiences. Antonio and Hans (2001) found that White jurors intend to be more satisfied with their jury experiences than non-White jurors, and Bowers *et al.* reported that Black jurors in capital trials expressed greater concern that the jury might have made a mistake. Findings such as these identify potential explanations for some of the between-race differences observed in mock juror experiments.

Unanswered questions and future directions

To date, there remains a scarcity of studies examining the decision making of non-White jurors, which renders conclusions regarding juror race difficult. It is unclear, for example, whether the experimental findings reviewed above regarding Black mock jurors and defendant race should be interpreted as evidence of bias against White defendants or in favour of Black defendants. Indeed, some researchers have described these effects as 'Black racism' (Skolnick & Shaw, 1997), whereas others have referred to the same pattern as one of 'same-race leniency' (Sommers & Ellsworth, 2000). The former terminology is consistent with a straightforward in-group/out-group explanation: Black jurors are harsher in their judgments of non-Black defendants, particularly when the victim is an in-group member. Such a conclusion would suggest that the effects of a defendant's race on White and Black jurors are comparable in magnitude and occur through similar psychological processes.

However, it also seems plausible that the decision tendencies of White and Black mock jurors are not simply mirror images of each other. One extrapolation of the 'same-race leniency' terminology is that this pattern of results implies race-based jury nullification among Blacks (see Butler, 2002). However, even without a nullification hypothesis, one might reasonably conclude that Black and White individuals have different race-related motivations when they serve as jurors: 'It therefore appears as if White and Black jurors bring to the courtroom different concerns . . . many Whites, according to theories of modern racism, are motivated to avoid prejudice . . . Black jurors, on the other hand, appear to be concerned about institutional bias in the legal system' (Sommers & Ellsworth, 2003, p. 1021).

It remains unclear precisely how such race-related concerns might manifest themselves in terms of jurors' individual judgments. In cases with a Black defendant, do Black jurors raise the certainty threshold necessary for a guilty vote? Do Black jurors interpret the same incriminating evidence as less persuasive when a defendant is Black, and are such effects particularly likely for specific types of evidence (such as the testimony of police or forensic analyses conducted by police laboratories)? To the extent that such tendencies emerge, are they intentional and conscious? Experimental studies tend to focus on the relative influence of a defendant's race on White vs. Black mock jurors, leaving unanswered additional questions concerning between-race differences in juror tendencies. For example, are differences between White and Black juror judgments confined to cases involving Black defendants?

One could speculate that more general differences may also exist in the decision tendencies of White and Black jurors. The controversy surrounding the use of race-based peremptories during jury selection, for example, arises in large part because of

stereotypes and 'juror folklore' (Fulero & Penrod, 1990; Sommers & Norton, 2007), which suggest that Black jurors are more lenient than White jurors in most cases (Page, 2005; Rose, 1999). These intuitions and assumptions remain largely untested. Moreover, the individual differences - in terms of personal experiences, political ideology and other attitudes - that may underlie such generalized differences by juror race are also poorly understood. And, of course, even though the relationship between race and legal decision making is often written about in strictly White/Black terms, the increasingly multicultural nature of many contemporary societies renders it all the more important for future studies to consider the judgments of jurors from other racial groups as well.

The influence of a jury's racial composition

Of course, the most practically important - and, for that matter, psychologically interesting - issue regarding juror race is not the simple between-race comparison of individual jurors' judgments, but rather the extent to which a jury's racial composition affects its decision making. Intuitively, the finding that individual juror judgments vary by race leads to the group-level hypothesis that racial composition influences a jury's decision making. Recent archival analyses suggest that a relationship indeed exists between jury racial composition and trial outcomes, but these studies do not identify the processes by which such effects occur. Unfortunately, experimental investigations of jury racial composition - which have the potential to shed light on issues of process - have been relatively infrequent, presumably because such group-based experiments are time-consuming, expensive and logistically complicated.

Jury racial composition and trial outcomes

One archival investigation to examine racial composition and jury decisions is the Bowers *et al.* (2001) study described earlier. This study examined 340 capital trials and found that the greater the proportion of Whites to Blacks on a jury, the more likely a Black defendant was to be sentenced to death (especially when the victim was White). Daudistel, Hosch, Holmes, and Graves (1999) examined 317 non-felony juries in Texas comprised Whites and Latinos, and reported a comparable finding. Experimental studies conducted with college student mock juries have produced similar conclusions. In one such experiment, Bernard (1979) presented ten 12-person mock juries of differing racial compositions with the video of a simulated assault trial in which the defendant was either White or Black. Across both versions of the trial, White jurors were more likely to vote guilty than were Black jurors, but this was especially so when the defendant was Black. Indeed, the only jury to reach a unanimous guilty verdict during deliberations was also the only all-White jury to view the trial of a Black defendant. However, one of the practical challenges faced by mock jury experiments is that the *N* for statistical analysis equals number of groups, not number of individual participants, and the small sample size of this study prevented statistically significant group-level findings.

Other experiments have produced similar results beyond the White/Black dichotomy. Perez, Hosch, Ponder, and Trejo (1993) presented the videotaped trial of a White or Latino defendant to college student mock juries that were either majority-White or majority-Latino. They found that the more Whites on a jury, the more conviction-prone was the jury; a tendency that was particularly pronounced when the defendant was Latino. In another examination of six-person college student juries,

Lipton (1983) found that White mock jurors expressed a more negative reaction to a Latino defendant than did Latino jurors, a tendency exacerbated by the deliberation process. In a non-US sample, Chadee (1996) examined jury decision making in Trinidad and found the comparable result that Indian-dominated juries were more likely to convict an African defendant than were African-dominated juries.

Explaining the effects of jury racial composition

These experiments demonstrate the existence of a causal link between a jury's racial composition and its final decision, but they – like archival analyses – fail to illuminate the processes by which such influence occurs. At least three different (though not mutually exclusive) explanations can be offered for these effects. First, the relationship between racial composition and jury verdicts may simply result from the effects of a jury's composition on its vote split heading into deliberations. This is a purely demographic argument: since jurors of different races sometimes view the same trial differently, a jury's racial composition can determine its predeliberation vote split and, eventually, its verdict. This explanation would be consistent with Kalven and Zeisel's (1966) conclusion that individual predeliberation votes are the best predictors of a jury's eventual verdict, a conclusion that has been supported by more recent findings as well (e.g. Sandys & Dillehay, 1995; Tanford & Penrod, 1986).

However, it seems likely that the effects of a jury's racial composition also manifest themselves in ways beyond mere vote split variability. A second explanation for the influence of jury racial composition focuses on information exchange, namely the expectation that a diverse jury demography leads to a diversity of perspectives, experiences and attitudes exchanged during deliberations. This information exchange hypothesis is the process explanation most often offered by legal scholars in considering the effects of jury racial composition (Hans & Vidmar, 1982; Marder, 2002). This explanation was articulated eloquently by Justice Thurgood Marshall in the U.S. Supreme Court ruling *Peters v. Kiff* (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' (p. 503). Information exchange is also a common process explanation postulated by psychologists who study the effects of diversity on group decision making more generally (see Mannix & Neale, 2005; Sommers, 2006).

The traditional information exchange explanation assumes that non-White jurors are responsible for the effects of racial diversity on a jury's performance. Because racial minority jurors are expected to bring different perspectives and experiences to the jury room, a racially diverse jury is expected to consider a wider range of information during deliberations than would an all-White jury. However, one need only look to the next sentence in Justice Marshall's *Peters v. Kiff* (1972) opinion to realize that such an assumption is not required in order for a jury's racial composition to be influential: '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' (p. 504). One interpretation of this passage is that the traditional information exchange explanation does not fully account for the effects of a racially diverse jury composition.

Consistent with such sentiment, a third possibility is that racial composition also influences jury decision making through non-informational processes. In the general psychological literature on diversity and group performance, researchers have

suggested that two types of diversity are influential: deep-level diversity – including the expertise, attitudes and values of individual group members – and surface-level diversity – demographics and social category membership (Harrison, Price, & Bell, 1998; Phillips & Loyd, 2006; Phillips, Northcraft, & Neale, 2006). In the jury context, most information exchange explanations assume that surface-level diversity engenders deep-level diversity. But might surface diversity alone exert non-informational influence on jury decision making? Consider, for example, Hans and Vidmar's (1982) hypothesis that the presence of non-White jurors on a jury 'may inhibit majority group members from expressing prejudice, especially if the defendant is from the same group as the minority group jurors' (p. 42). Indeed, one mock jury study has demonstrated that the mere expectation of deliberating on a racially diverse jury is influential – in this instance by leading both White and Black mock jurors to be more punitive towards a same-race defendant when they expected to be among the jury's racial minority (Kerr, Hymes, Anderson, & Weathers, 1995).

To date, only one published experiment has directly tested these different explanations for the influence of a jury's racial composition. In this study, Sommers (2006) recruited jury-eligible community members – most of whom were actual jurors in the midst of jury duty – to serve on six-person mock juries that were either all-White or racially diverse (four White and two Black jurors). All juries were shown the same video summary of a sexual assault trial with a Black defendant before deliberating. Results indicated that jury racial composition influenced pre-deliberation vote split, as jurors on diverse juries were less conviction-prone than those on all-White juries. However, this tendency was due to more than just demographic differences, as White jurors on diverse juries were less likely to report a pre-deliberation guilty vote than were Whites on all-White juries. That this effect emerged before deliberations even began demonstrates that the influence of a diverse jury composition cannot be wholly attributed to the performance of Black jurors or to a strict information exchange explanation.

The Sommers (2006) study also provides evidence of informational differences in the deliberations of diverse vs. homogeneous juries. Specifically, racially diverse juries deliberated longer, discussed more trial evidence, and made fewer factually inaccurate statements in discussing the evidence than did all-White juries. Interestingly, these effects, too, cannot be explained solely in terms of the performance of Black jurors, as White jurors were more thorough and accurate during deliberations on diverse vs. all-White juries. A potential implication of these findings is that one process through which a diverse jury composition exerts its effects is by leading White jurors to process evidence more thoroughly. If corroborated by additional data, such a finding would suggest that jury representativeness is more than a Constitutional ideal or a means to assure system legitimacy, but also an ingredient for improved jury performance.

Unanswered questions and future directions

Of course, one experiment hardly provides sufficient data on which to base definitive conclusions regarding the influence of jury racial composition. The Sommers (2006) study demonstrates that the processes through which racial composition is influential need not be solely informational, yet the study also raises questions regarding generalizability and psychological process. For example, why would membership on a diverse jury lead White mock jurors to process trial evidence more systematically? One possibility is that which Hans and Vidmar (1982) have suggested, namely that a diverse jury composition motivates Whites to avoid the appearance of bias. It is also possible

that Whites on diverse juries anticipate greater disagreement during deliberations (see Phillips & Loyd, 2006); an expectation that motivates them to carefully consider their personal beliefs about the case ahead of time.

Another important question raised by the Sommers (2006) study is whether the reported effects of jury diversity are limited to cases with a Black defendant or those involving violent crime. Would similar findings emerge for a trial with a White defendant? To the extent that there exist generalized between-race differences in juror tendencies and experiences – *Black jurors are more sceptical about police evidence; Whites are more forgiving of corporate malfeasance* – racially diverse juries would be expected to exchange a broader range of information and perspectives during deliberations in any case, regardless of the defendant's race. That is, such generalized racial differences should predict generalized informational effects of jury racial composition across trials. The non-informational processes identified above, on the other hand, may be limited to cases involving Black defendants or other racially charged aspects. These are empirical issues worthy of future consideration.

Nonetheless, despite these unanswered questions, the extant experimental literature clearly demonstrates that a jury's racial composition has the potential to influence its final decision, as well as the process by which that decision is reached. This conclusion suggests that yet another important future direction will be to examine not only the consequences of jury racial composition, but also the antecedents of a jury's diversity (or lack thereof). There are many factors that impede the effort to create jury pools representative of the communities from which they are drawn, including exclusive reliance on voter registration records and low response rates to jury summons among members of particular racial groups (see Alschuler & Deiss, 1994; Cohn & Sherwood, 1999; Sommers & Ellsworth, 2001). However, even when a representative pool of prospective jurors is assembled, the use of race-based peremptory challenges during jury selection decreases the likelihood that juries will be representative or diverse. Despite legal prohibitions in the US (*Batson v. Kentucky*, 1986), this practice persists in contemporary American courtrooms (Baldus, Woodworth, Zuckerman, Weiner, & Broffitt, 2001; Melilli, 1996). Only a handful of investigations have considered the psychological processes underlying the influence of race on jury selection judgments (Norton, Sommers, & Brauner, 2007; Sommers & Norton, 2007), a topic of practical importance in light of the performance effects of jury composition reviewed above.

In sum, it is clear that much remains to be learned about the influence of a jury's racial composition on its decision making, and it seems likely that mock jury experiments will play a leading role in this investigation. Archival analyses focus on trial outcomes, and therefore demonstrate a statistical link between jury composition and final verdict, but do not speak to the processes through which these effects emerge. Juror interview studies offer more insight into the role of race in the deliberation room, but their reliance on retrospective self-report data typically limits the scope of their conclusions to those regarding participants' satisfaction with the jury experience as opposed to the processes by which race is influential (e.g. Antonio & Hans, 2001). Unfortunately, experimental psychologists have too infrequently examined the influence of race on legal decision making at the group or jury level. Until more researchers agree to wrestle with the practical obstacles inherent to such data collection, intuition and speculation will guide discourse regarding the processes by which jury racial composition is influential, and the extant experimental literature on the judgments of individual jurors will continue to suffer criticisms based on external validity.

Conclusions

Research on race and legal decision making has provided compelling evidence that race can exert a causal effect on trial outcomes in some cases. The precise mechanisms that account for this influence remain in need of additional empirical investigation, as do a variety of questions regarding the generalizability of these findings across different types of trials and racial groups. Moreover, the published research literature on this topic does not allow for definitive assessment of whether a defendant's race was influential in a particular trial, or whether a different verdict would have been reached in a case by a jury of different composition. Nonetheless, the more general conclusion that race has the potential to impact a jury's final verdict, not to mention the nature and tone of its deliberations, carries important implications for a variety of ongoing legal debates such as those regarding jury representativeness, peremptory use during jury selection and racial disparities in capital sentencing. Research concerning race and juries has also the potential to make theoretical contributions to the psychological literature on social judgment, group dynamics and decision making. For all these reasons, as well as the continued public interest in the intersection of race and the legal system, this is an area of research that should continue to draw attention and to evolve in the years to come.

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