The Effects of Defendant Race, Psychological Expert Witness Race, and Racially Salient Psychological Expert Testimony on Juror Decision Making

Lily Cheyanne (Manick) Munavu

Western Michigan University

Follow this and additional works at: https://scholarworks.wmich.edu/dissertations

Part of the Counseling Psychology Commons, and the Criminology Commons

Recommended Citation


https://scholarworks.wmich.edu/dissertations/799

This Dissertation-Open Access is brought to you for free and open access by the Graduate College at ScholarWorks at WMU. It has been accepted for inclusion in Dissertations by an authorized administrator of ScholarWorks at WMU. For more information, please contact wmu-scholarworks@wmich.edu.
THE EFFECTS OF DEFENDANT RACE, PSYCHOLOGICAL EXPERT WITNESS RACE, AND RACIALLY SALIENT PSYCHOLOGICAL EXPERT TESTIMONY ON JUROR DECISION MAKING

by

Lily Cheyanne (Manick) Munavu

A Dissertation
Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
requirements for the
Degree of Doctor of Philosophy
Department of Counselor Education and Counseling Psychology
Dr. Lonnie Duncan, Advisor

Western Michigan University
Kalamazoo, Michigan
August 2008
ACKNOWLEDGEMENTS

There are many people to whom I am indebted and deeply grateful for supporting me through this long and arduous process. I would first like to express my appreciation to my doctoral committee chairperson, Dr. Lonnie Duncan, who not only supported me as a student in the doctoral program, but also encouraged me to pursue a topic about which I am deeply passionate. I would also like to thank my committee members, Dr. Joseph Morris, for your mentorship through your years of experience and Dr. Charles Crawford for lending your expertise in criminology.

I would like to thank my husband, Fidelis Mutua Munavu, who has provided me unwavering love and support throughout this entire process. You encouraged me when I doubted myself and believed in me when I felt like no one else did. I would also like to thank my mother, Beverly Manick, for her continued support and always making me feel as if I can accomplish anything. I would like to thank my aunt, Linda Manick, for being one of my biggest cheerleaders and my second mom. Last, but certainly not least, I would like to thank my grandparents, Michael and Margaret Evelyn Manick, who I know would both be so proud, and always encouraged me to pursue my dreams.

I would also like to thank all of my friends in the doctoral program (you know who you are) for your support, understanding and kindness. I would also like to thank my lifetime best friend, Courtney Goike, who has been there through the laughter and the tears.
Acknowledgements—Continued

I could not have done this without all of you. Thank you.

Lily Cheyanne (Manick) Munavu
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ACKNOWLEDGMENTS</th>
<th>ii</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIST OF TABLES</td>
<td>ix</td>
</tr>
<tr>
<td><strong>CHAPTER</strong></td>
<td></td>
</tr>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>Modern Racism</td>
<td>1</td>
</tr>
<tr>
<td>Role of Eyewitness Identification</td>
<td>4</td>
</tr>
<tr>
<td>Approach to Reducing Jurors’ Over Belief of Eyewitness Identification</td>
<td>6</td>
</tr>
<tr>
<td>Goal of Present Study</td>
<td>8</td>
</tr>
<tr>
<td>Definition of Major Terms</td>
<td>8</td>
</tr>
<tr>
<td>II. ACTUAL RACIAL DISPARITIES REFLECTED IN U.S. CRIMINAL JUSTICE SYSTEM</td>
<td>10</td>
</tr>
<tr>
<td>Racial Bias Reflected in Jury Decision Making Research</td>
<td>12</td>
</tr>
<tr>
<td>Modern Racism</td>
<td>16</td>
</tr>
<tr>
<td>Eyewitness Identification</td>
<td>21</td>
</tr>
<tr>
<td>Pattern of Unreliability</td>
<td>21</td>
</tr>
<tr>
<td>Cross-Race Identification</td>
<td>23</td>
</tr>
<tr>
<td>Over Belief of Eyewitness Testimony</td>
<td>28</td>
</tr>
<tr>
<td>Approaches to Reducing Jurors’ Over Belief of Eyewitnesses</td>
<td>35</td>
</tr>
<tr>
<td>Improvement of Means of Identification</td>
<td>35</td>
</tr>
<tr>
<td>Jury Instructions</td>
<td>36</td>
</tr>
<tr>
<td>Psychological Expert Testimony</td>
<td>39</td>
</tr>
</tbody>
</table>
CHAPTER

Research on Expert Psychological Testimony ........................................... 44
Psychological Expert’s Race and Juror Decision Making .................. 48
Goal of Present Study ........................................................................ 55
Hypothesis One .............................................................................. 55
Hypothesis Two .............................................................................. 55
Hypothesis Three ............................................................................ 55
Hypothesis Four .............................................................................. 56

III. METHOD .................................................................................. 57
Participants ..................................................................................... 57
Instruments ...................................................................................... 58
  Juror Pre-Trial Questionnaire ................................................... 58
  Juror Post-Trial Questionnaire ................................................. 58
  Modern Racism Scale (MRS) (McConahay, 1986) ..................... 60
Procedure ...................................................................................... 61
  Instructions to Participants ......................................................... 62
  Juror Pre-Trial Questionnaire ................................................... 63
  Brief Case Description ............................................................... 63
  Description of the Psychological Expert Witness ...................... 63
  Psychological Expert Witness Testimony Transcript ............... 64
  Jury Instructions ....................................................................... 64
# Table of Contents—Continued

## CHAPTER

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juror Post-Trial Questionnaire</td>
<td>64</td>
</tr>
<tr>
<td>Modern Racism Scale (MRS) (McConahay, 1986)</td>
<td>64</td>
</tr>
<tr>
<td>Research Design</td>
<td>65</td>
</tr>
<tr>
<td>IV. RESULTS</td>
<td>68</td>
</tr>
<tr>
<td>Preliminary Analyses</td>
<td>68</td>
</tr>
<tr>
<td>Primary Analyses</td>
<td>70</td>
</tr>
<tr>
<td>Hypotheses 1 and 2</td>
<td>70</td>
</tr>
<tr>
<td>Hypothesis 1: Verdict</td>
<td>71</td>
</tr>
<tr>
<td>Hypothesis 2: Verdict</td>
<td>72</td>
</tr>
<tr>
<td>Hypotheses 3 and 4</td>
<td>73</td>
</tr>
<tr>
<td>Hypothesis 3: Ratings of the Expert Witness</td>
<td>74</td>
</tr>
<tr>
<td>Hypothesis 4: Ratings of Defendant</td>
<td>75</td>
</tr>
<tr>
<td>Post-Hoc Analyses</td>
<td>76</td>
</tr>
<tr>
<td>Testimony Type</td>
<td>79</td>
</tr>
<tr>
<td>Modern Racism Scale Score</td>
<td>79</td>
</tr>
<tr>
<td>V. DISCUSSION</td>
<td>81</td>
</tr>
<tr>
<td>Hypothesis 1: Verdict</td>
<td>82</td>
</tr>
<tr>
<td>Hypothesis 2: Verdict</td>
<td>82</td>
</tr>
<tr>
<td>Hypothesis 3: Ratings of the Expert Witness</td>
<td>83</td>
</tr>
<tr>
<td>Hypothesis 4: Ratings of the Defendant</td>
<td>84</td>
</tr>
<tr>
<td>Other Findings</td>
<td>85</td>
</tr>
</tbody>
</table>

vi
Table of Contents—Continued

CHAPTER

Lack of Significance of Hypotheses .......................................................... 88
Testimony Type ......................................................................................... 88
Modern Racism Scale (McConahay, 1986) ............................................... 89
Limitations/Directions for Future Research .............................................. 89
Conclusion .............................................................................................. 92

REFERENCES .......................................................................................... 94

APPENDICES

A. Human Subjects Institutional Review Board Approval Letter .............. 105
B. Informed Consent Form ........................................................................ 107
C. Instructions to Participants .................................................................. 110
D. Juror Pre-Trial Questionnaire .............................................................. 112
E. Brief Case Description: Black Defendant-Black Expert ...................... 115
F. Brief Case Description: Black Defendant-White Expert ...................... 118
G. Brief Case Description: White Defendant-Black Expert ...................... 121
H. Brief Case Description: White Defendant-White Expert ...................... 124
I. Description of Psychological Expert Witness: Black Expert ................. 127
J. Description of Psychological Expert Witness: White Expert ................. 129
K. Psychological Expert Witness Testimony Transcript: Black Defendant-
   Black Expert-Not Racially Relevant Testimony ....................................... 131
L. Psychological Expert Witness Testimony Transcript: Black Defendant-
   Black Expert-Racially Relevant Testimony ........................................... 138
**APPENDICES**

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>M.</td>
<td>Psychological Expert Witness Testimony Transcript: Black Defendant-White Expert-Not Racially Relevant Testimony</td>
</tr>
<tr>
<td>N.</td>
<td>Psychological Expert Witness Testimony Transcript: Black Defendant-White Expert-Racially Relevant Testimony</td>
</tr>
<tr>
<td>S.</td>
<td>Jury Instructions</td>
</tr>
<tr>
<td>T.</td>
<td>Juror Post-Trial Questionnaire: Black Defendant-Black Expert</td>
</tr>
<tr>
<td>U.</td>
<td>Juror Post-Trial Questionnaire: Black Defendant-White Expert</td>
</tr>
<tr>
<td>V.</td>
<td>Juror Post-Trial Questionnaire: White Defendant-Black Expert</td>
</tr>
<tr>
<td>W.</td>
<td>Juror Post-Trial Questionnaire: White Defendant-White Expert</td>
</tr>
<tr>
<td>X.</td>
<td>Modern Racism Scale (McConahay, 1986): &quot;Social Attitudes Survey&quot;</td>
</tr>
</tbody>
</table>
LIST OF TABLES

1. Pearson Correlation Matrix of Independent Variables, Dependent Variables and Covariates .......................................................... 68

2. Summary Table: Participant Demographic Variables and Dependant Variables .................................................................................. 69

3. Summary Table: Participant Age and MRS Total Scores ......................... 69

4. Logistic Regression Coefficients – Hypothesis 1: Robbery Verdict .......... 72

5. Logistic Regression Coefficients – Hypothesis 1: Battery Verdict .......... 72

6. Logistic Regression Coefficients – Hypothesis 2: Robbery Verdict ........ 73

7. Logistic Regression Coefficients – Hypothesis 2: Battery Verdict ........ 73

8. Summary of MANOVA Results of Expert Witness Race and Testimony Type on Perceptions (Ratings) of Expert Witness ......................... 75

9. Summary of MANOVA Results of Defendant Race and Testimony Type on Perceptions of the Defendant ................................................ 76

10. Logistic Regression Coefficients – Full Model: Robbery Verdict ........... 78

11. Logistic Regression Coefficients – Full Model: Battery Verdict ........... 78

12. Pearson Correlation Matrix of Independent and Dependant Variables (Ratings of Expert) .................................................................. 80
CHAPTER I

INTRODUCTION

Racial disparities persist in the criminal justice system today, reflected both in the disproportionate number of Blacks currently incarcerated as well as differential sentencing in crimes ranging from drug-related offenses to murder. Although racial bias enters into the criminal justice system at many different levels (e.g., police harassment, differential charges filed, legal representation, etc.), one area that has received considerable attention (including the focus of this study) is juror decision-making. Research in this area has provided fairly consistent evidence of bias in juror decision-making. Specifically, when the race of the juror, defendant and victim are examined together, discriminatory patterns in decision-making emerge. For example, jurors are significantly more likely to vote in favor of a defendant’s guilt when the defendant is a different race than the juror, while the victim is the same race (Miller & Hewitt, 1978; Ugwuebu, 1976; Wuensch, Campbell, Kesler, & Moore, 2002).

Research in the area of discriminatory jury decision-making has focused on two broad areas: the role of racism and the role of eyewitness identification. These areas will be examined in some detail in the proceeding sections concluding with the proposed research question for this study.

Modern Racism

Research on biased juror decision-making has revealed that discrimination is not always displayed in a straightforward pattern. That is, societal norms and expectations
have changed over time. Overtly racist attitudes and opinions are no longer acceptable in many settings. However, racist beliefs are often expressed in more subtle and indirect forms. This covert racism is referred to as modern racism, and is usually expressed when norms and guidelines are ambiguous and Whites are able to rationalize their bias using factors other than race in a given situation (Dovidio, Smith, Donnella, & Gaertner, 1997; McConahay & Hough, 1976, Pfeifer & Bernstein, 2003). It is important to understand modern racism when conducting race-related research on juror decision-making in order to appropriately design a study that will detect more subtle biases in decision-making.

Dovidio, Smith, Donnella and Gaertner (1997) designed a study that examined the relationship between more traditional racist attitudes and modern racist beliefs in White jurors’ recommendations for capital sentencing of Black and White offenders convicted of murder. Participants first completed a scale assessing their current racial attitudes, and then read one of two trial summaries. In one version, the race of the defendant was White, and in the other, the defendant was Black. The summary described an actual case in which one White police officer was murdered and another was wounded while attempting to make an arrest following an armed robbery. Mock jurors were told that the defendant was found guilty of all the crimes for which he was accused. Next, participants watched a video recording that portrayed the opinions of five confederate mock jurors (participants were led to believe that the videotaped individuals had previously participated in the study) regarding sentencing in this case. Each videotaped “juror” advocated the death penalty for the defendant and provided reasons for their decision. Participants were shown one of two versions of the videotapes. The scripted reasons that each videotaped confederate juror provided in support of capital punishment
were identical in both versions of the tape. The two tapes differed in that the second juror in one version of the tape was a White male, and in the other version, the second juror was a Black male. Participants then provided their reasons for their decision.

Dovidio et al. (1997) found that participants who demonstrated high levels of prejudice on the racial attitudes scale, showed a straightforward pattern of bias toward Black defendants. That is, they gave the Black defendant a stronger recommendation for the death penalty than the White defendant. In contrast, participants that showed a low level of prejudice on the racial attitudes scale demonstrated a more complicated pattern. That is, low prejudice scoring Whites gave the strongest recommendations against the death penalty when the defendant was Black and all of the jurors endorsing the death penalty were White. However, when the defendant was Black and there was a Black juror advocating the death penalty, low prejudice scoring participants were more likely to recommend the death penalty for the Black defendant than for the White defendant. Racial composition of the jury advocating the death penalty did not affect recommendations when the defendant was White. The pattern demonstrated by the low prejudice scoring participants is consistent with modern racism. That is, without justification, the low prejudice scoring participants did not demonstrate a pattern of biased sentencing. However, the presence of a Black juror advocating the death penalty appears to have provided enough justification for low prejudice scoring participants to demonstrate a bias in sentencing. Other studies have also demonstrated a similar pattern of support for modern racism (e.g., Hill & Pfeifer, 1992; Pfeifer & Bernstein, 2003; Pfeifer & Ogloff, 1991; Sommers & Ellsworth, 2000).
Role of Eyewitness Identification

In addition to the race of the defendant and victim leading to biased decision-making, jurors may also be unduly influenced by evidence or factors introduced at trial that are not completely understood. Specifically, there is consistent evidence that suggests that jurors tend to over believe eyewitness identification testimony; despite numerous studies that have demonstrated its unreliability (e.g., Kassin, Ellsworth, & Smith, 1994; Malpass & Kravitz, 1987; etc.). Furthermore, many jurors believe that they can determine whether an eyewitness is accurate based on inappropriate cues or a misguided "common sense." As a result, several approaches to reducing this over belief have been proposed.

In 1996 the National Institute of Justice reported that 28 convicted felons were exonerated by DNA evidence after varying numbers of years in prison. In all of these cases, there was one or more false eyewitness identifications (Connors, Lundregan, Miller, & McEwen, 1996). By 2000, the number of DNA exonerated cases reached 62 (including 8 individuals who had been sentenced to death). Fifty-two of these cases contained identifications from 77 confident but mistaken eyewitnesses (Scheck, Neufel, & Dwyer, 2000). In an earlier study of approximately 500 felony cases that led to convictions that were later overturned, researchers found that incorrect eyewitness identifications contributed to wrongful convictions in 60% of the cases (Huff, Rattner, & Sagrin, 1986).

One of the first and most pivotal studies that first illustrated jurors' tendency to over believe eyewitness identification testimony was conducted by Elizabeth Loftus in 1974. Participants or mock jurors in the study read one of three summaries of a trial
involving a murder-robbery. In one condition, no eyewitness testified and the evidence presented to the jurors was solely circumstantial. In the second condition, in addition to the circumstantial evidence, there was an eyewitness identification presented to the jurors. Finally, in the third condition, as in the second condition, there was both circumstantial evidence and an eyewitness identification; however, the jurors also heard expert testimony that was intended to discredit the eyewitness (The expert testified that the eyewitness had poor vision (20/400), had not been wearing his glasses the day of the crime, and therefore, would have been unable to identify the defendant from where he stood.). Loftus found that 18% of the mock jurors voted guilty in the first condition (when there was no eyewitness identification) and 72% of the mock jurors voted guilty when a single eyewitness was added in the second condition. However, after the eyewitness was discredited in the third condition, the conviction rate only dropped to 68%, illustrating that the eyewitness failed to be discredited even after the jurors learned that the witness would have been unable to identify the defendant from where he stood. Although attempts at replicating this study have failed (Elliott, 1993; Hatvany & Strack, 1980; Kennedy & Haygood, 1992; Whitley, 1987), this was one of the first studies that highlighted the powerful influence that eyewitness testimony has on jurors. Later studies have demonstrated that jurors tend to overestimate the accuracy rates of eyewitnesses (Brigham & Bothwell, 1983) and that jurors tend to falsely believe that they can determine when eyewitnesses are accurate based on inappropriate cues (Thomson, 1988).
Approach to Reducing Jurors' Over Belief of Eyewitness Identification

One proposed solution is to improve the means by which eyewitness identifications are obtained by focusing on systemic variables, such as lineup construction. However, as in any systemic change, this is a longer-term approach that may take many years to implement. A second proposed solution is to have judges provide cautionary instructions to juries about the factors that affect the reliability of eyewitness identification. However, the effectiveness of these instructions appear to be limited (Cutler, Dexter, & Penrod, 1990; Katzev & Wishart, 1985) and revised instructions that have demonstrated the greatest effectiveness in reducing juror overbelief of eyewitnesses are inadmissible in most courts because they have been deemed to bias the jury in favor of the defense (Greene, 1988). A third proposed solution and the focus of this study involves using psychological expert testimony. A psychological expert testifies about the factors that influence the accuracy and reliability of eyewitness identifications, with the goal of clearing misconceptions and helping jurors make informed decisions. While there have been concerns raised by both the legal and psychological communities regarding the potential bias in favor of the defense that may occur with the use of psychological expert testimony, there is research evidence to suggest that this fear is unfounded. In fact, the limited research that has examined the effect that expert testimony has on juror decision-making has found jurors' sensitivity to factors influencing eyewitness memory is increased (Cutler, Penrod, & Dexter, 1989) and their reliance on eyewitness testimony alone is reduced (Hosch, Beck, & McIntyre, 1980). Furthermore, jurors do not see the eyewitness as any more or less credible as a function of the expert testimony (Cutler, Penrod, & Dexter, 1989; Hosch, Beck, &
McIntyre, 1980) and juror belief of the eyewitness is not reduced to a level that is consistent with no eyewitness at all (Culter, Penrod, & Dexter, 1989; Fox & Walters, 1986; Hosch, Beck, & McIntyre, 1980). Instead, there is evidence to suggest that jurors are able to incorporate the information learned from the psychological expert testimony and better evaluate the accuracy of the eyewitness identification on research-based factors rather than on misconceptions.

While there is a substantial body of research on the influence of victim, defendant, and juror characteristics on juror decision-making, there is little research that explores the influence of expert witness characteristics on this process. The little research that has been conducted that explores the impact of expert characteristics pertains primarily to attorneys. However, if the race of the victim, defendant and juror play an important role in juror decision-making, it may be reasonable to expect that the race of other people involved in the trial may also be influential in that process. A common model of information processing proposes that if jurors (or any information receiver) are overloaded with information (which is not uncommon in a trial that becomes saturated with details) or is unmotivated to attend to a message, may process information through a peripheral route (rather than a central route) (Petty, Cacioppo, & Goldman 1981). If peripheral processing occurs, superficial characteristics such as the race of the person delivering the message, rather than the content, may influence the juror’s assessment of the information.

The few studies that have explored the influence that expert race has on juror decision-making have yielded mixed results. Some studies suggest that White jurors are more likely to find a defendant guilty when represented by a Black defense attorney
rather than a White defense attorney (Cohen & Peterson, 1981) and view same race attorneys as being more honest than different race attorneys (Mixon, Foley & Orme, 1995). Furthermore, there is evidence to suggest that White jurors are more likely to find a defendant guilty when racial arguments are used as part of a defense (Boliver, 1999). However, there are other studies that suggest that the race of an expert witness has no effect on either the perception of the expert or the expert’s message (Memon & Shuman, 1998; Miyatake, 1999).

Goal of Present Study

The goal of the present study is to explore the relationship between defendant race, psychological expert witness race, and racially salient psychological expert testimony on juror decisions. In light of earlier research that has demonstrated the complicated role that racism plays in juror decision-making (e.g., Dovidio, Smith, Donnella & Gaertner, 1997; Pfeifer & Ogloff, 1991; Sommers & Ellsworth, 2000), and jurors’ over reliance on eyewitness identification testimony (Brigham & Bothwell, 1983; Loftus, 1974; Thomson, 1988), this study seeks to explore the role that racism plays in juror decision-making, attending particularly to whether racism affects whether jurors take into account the psychological expert witness testimony in their decisions. Specific hypotheses are presented at the end of Chapter 2.

Definition of Major Terms

The following terms will be used throughout this manuscript:

*Blacks* - This term will be used throughout to describe Americans of African ancestry. Researchers have used various terms to describe this group, including African-American,
Afro-American, and Black American. This term is used for consistency, regardless of the researchers’ original term to describe this group.

Whites – This term will be used throughout to describe Americans of European ancestry. Researchers have used various terms to describe this group, including Caucasian American, Caucasian, and White American. This term is used for consistency, regardless of the researchers’ original term to describe this group.

Psychological expert witness testimony – This term will be used to describe a psychologist who is an expert in the area of perception and cognition, and testifies during a trial to educate jurors about possible limitations of eyewitness identification.

Eyewitness testimony – This term will be used to describe an individual who testifies about a first hand account about what occurred during the commission of a crime and is able to identify the person or persons who committed the crime. The term eyewitness identification testimony may also be used, but refers to the same meaning.

Modern racism – This term refers to a modern form of prejudice that characterizes the racial attitudes of many Whites who endorse egalitarian values, who do not regard themselves as prejudiced, but who discriminate in subtle, rationalizable ways (Dovidio, Smith, Donnella, & Gaertner, 1997).

Cross-race effect – This term refers to the tendency for people of one race to be better at identifying members of their own race than members of another race (Abshire & Bernstein, 2003). This term is sometimes referred to as an “own race bias.”

Weapon focus – Weapon focus refers to the concentration of some witness’s attention on a weapon, such as the barrel of a gun or blade of a knife, during a crime, leaving less attention available for viewing other items (Loftus, Loftus, & Messo, 1987).
CHAPTER II

ACTUAL RACIAL DISPARITIES REFLECTED IN U.S. CRIMINAL JUSTICE SYSTEM

There is substantial evidence of consistent and systematic racial bias in the criminal justice system in the United States. Racial disparities are clear: Although Blacks represent about 12% of the national population (based on 2000 U.S. Census), they make up close to half of those who are incarcerated for crimes (Harrison & Karberg, 2003). Furthermore, there were an estimated 12% of African American men between the ages of 20 to 24 in jail or prison in 2002, compared to just 1.6% of White men in the same age group (Harrison & Karberg, 2003). Some of these disparities may be explained, in part, by differential sentencing for drug related offenses, which target low-level dealers in inner city areas. For instance, in 2000, the average sentence for a crack offense was 44 months longer than the average sentence for a powder cocaine offense (Coker, 2003). Although Blacks have higher rates of incarceration for drug offenses, data suggests that Blacks do not use drugs any more than Whites. In a 2001 National Survey on Drug Abuse, rates of illicit drug use were found to be 7.4% African American, 7.2% White (non-Hispanic), and 6.4% Hispanic. However, Blacks made up more than 57% of those incarcerated for drug offenses in state prisons during the same year of the study (U.S. Department of Health & Human Services, 2001). In other words, Blacks are disproportionately incarcerated for drug related offenses (Coker, 2003).

Racial disparities are also evident in death penalty sentencing. For instance, based on a survey conducted in 2000 and 2001 by the Department of Justice that
reviewed federal death penalty cases, for the years 1995-2000, 682 defendants were charged with death eligible crimes (crimes punishable by the death penalty). Of the 682 cases, the defendant was African American in 48% of the cases, Hispanic in 29% of the cases, and White in only 20% of the cases. Furthermore, in the 20% of cases in which the defendant was White, 48% were able to make a plea agreement that avoided a death penalty prosecution; however, only 25% of Blacks were able to do the same (U.S. Department of Justice, 2000).

Disparities are even more evident when crimes are committed across racial lines. Since 1977, Blacks who kill Whites have over a 4.5 times greater risk of having the death penalty sought than Blacks who murder other Blacks (Paternoster, 1983). In a thorough examination of over 7,000 executions known in American history, Radelet (1989) found that there has been 1 execution of a White for a crime against a Black for every 533 recorded executions in American history. In fact, White defendants who murder Black victims are the group least likely to receive a death sentence (Costanzo, 1997). Since 1976, 39.3% of the people killed in the execution chamber have been Black, and 86% of the executions have been people convicted of killing Whites, even though roughly half of all murder victims in the United States are Black (Smolowe, 1991). In sum, the archival research on racial disparities in the criminal justice system illustrates that Blacks are disproportionately represented in jails and prisons (Harrison & Karberg, 2003) and constitute the majority of offenders who face the death penalty (Coker, 2003).

Racial bias can enter into the legal system at various levels in the process. However, one way that has received considerable attention from social scientists is through the jury decision-making process. Juries are often not racially representative of
their respective jurisdictions. Although the Court has established guidelines that attempt to provide a racially representative jury pool, other factors, such as low rates of voter registration and small response rates to jury summons, are barriers to having representative jury pools. Furthermore, judges allow prosecutors to exclude Black jurors when race-neutral justifications are provided (Alschuler & Deiss, 1994).

Racial Bias Reflected in Jury Decision Making Research

Early researchers that investigated bias in jury verdicts found that race (as well as other demographic variables) account for less than 2% of the variance in verdict preference (Boyll, 1991; Howard & Redfering, 1983; MacCoun, 1989). However, when the interaction of the race of the juror, defendant and victim are examined together, patterns begin to emerge. One trend that has emerged is that jurors may be most likely to find a defendant guilty who is of a different race from their own, but whose victim is the same race, compared with any other defendant-victim race combination.

For instance, Foley and Chamblin (1982) had 191 White and Black university students listen to audio taped descriptions of a trial in which an adult male was charged with committing sexual battery on an 11-year-old child. The race of the defendant and the race of the victim were varied. They found that White mock jurors were most likely to find a Black defendant guilty when the victim was White. However, this significant relationship did not hold for Black participants. Hymes, Leinart, Rowe and Rogers (1993) also found support for an interracial bias in a study that had 96 White undergraduate students read a description of a trial in which the alleged victim and defendant met in a college bar, and an alleged attack ensued after an interaction at the
bar. Both the race of the victim and defendant were manipulated. The mock jurors in this study were more likely to find the defendant guilty when his race differed from the race of the victim, than when the defendant and victim’s race were the same, regardless of the race of the defendant. In a more recent study Wuensch, Campbell, Kesler, and Moore (2002), investigated whether the judgments of White mock jurors would be affected by the race of the litigants in a civil trial in which a female plaintiff had alleged sexual harassment by a male defendant. The researchers conducted two studies; one with 193 White undergraduate participants and another with 172 Black undergraduate students. Participants were provided with written summaries of the litigants’ testimony as well as testimony of the litigants’ character witnesses. The race of the litigants was manipulated. Among the White mock jurors, guilty verdicts were significantly more frequent (79%) when the plaintiff (alleged victim) was White than when she was Black (59%). Furthermore, among White male jurors, guilty verdicts were significantly more likely when the defendant was Black (73%) than when he was White (50%). A similar pattern was found for Black jurors, in which guilty verdicts were significantly more frequent when the plaintiff was Black than when she was White. In addition, Black male jurors were significantly more likely to return a guilty verdict when the defendant was White than when he was Black. Other studies have provided similar support for an interracial bias in jury decision-making (e.g., Miller & Hewitt, 1978, Ugwuegbu, 1976).

There is also evidence to support racial bias in the sentencing phase of a trial. DeSantis and Kayson (1997) conducted a study in which 160 undergraduate students and faculty (80 White and 80 Black) were given a fictitious burglary case to read in which the defendant was accused of obtaining a key to a neighbor’s apartment and stealing $25,000
worth of cash and merchandise from the neighbor’s apartment. After reading the case summaries, participants were asked to recommend sentencing, among other tasks, for the defendant. The researchers manipulated the race, attractiveness and gender of the defendant. The results indicated a significant main effect for the race of the defendant, in which Black defendants received harsher sentences than White defendants. Similar results were found by Ugwuegbu (1979) in which 256 White undergraduate students read a transcript of a simulated rape case. Both the race of the defendant and victim were manipulated. The results indicated that Black interracial (i.e., Black defendant, White victim) rape was more harshly punished by White jurors than White interracial or Black interracial rape.

Despite the research that demonstrates a pattern of racial bias in jury decision-making, there is a smaller group of studies that do not provide support for this pattern. For instance, Nemeth and Sosis (1973) tried to distinguish between the effects of defendant race and defendant attractiveness. (Attractiveness was defined as being likeable, middle-class, and no criminal history.) They used two different samples. One sample was described as coming from middle to upper-middle-class backgrounds and being politically liberal. The other sample was described as coming from working-class backgrounds and politically conservative. The participants were then given a description of the defendant as well as a summary of the facts of a vehicular homicide case. Both the race and attractiveness of the defendant were manipulated. There were no significant differences in either sample with regard to race. Furthermore, the sentence given to the defendant was found to be significantly affected by the attractiveness of the defendant among the working-class sample. That is, the unattractive defendant was sentenced more
harshly than the attractive defendant. This trend did not hold true for the middle to upper-middle-class sample.

While this study might initially call into doubt other studies that have provided support for the presence of racial bias in jury decision-making, it is important to note the methodological problems in this study. First, there were only 40 participants in each sample, with a total of 80 participants in the entire study. Thus, the sample size may not have been large enough to detect statistically significant differences with regard to the race of the defendant. Second, the race of the mock jurors was never specified in this study. Therefore, the reader is only left to assume that the participants were all White. However, if they were not, this may explain a lack of statistical significance with regard to the defendant’s race. Finally, the race of the victim was never specified in this study. As mentioned earlier, the race of the defendant or juror alone provides little predictive value. It is when the total juror-defendant-victim racial combination is examined that a statistically significant interaction emerges.

In another study by Sargent and Bradfield (2004) it appears that there is not only an absence of racial bias, but also an increased sensitivity to guilt determinations when the defendant is Black. In this study 240 White participants (community members) read a report of a case in which a Black or White man was charged with armed robbery, and the alibi that he offered was either strong or weak. In addition, the participants’ processing motivation was varied, such that some were highly motivated to process the information carefully and make thoughtful verdict decisions. In the low motivation condition, participants were given little motivation to make careful decisions and knew they would receive financial compensation for their participation regardless of the
amount of thought put into their judgments. Under the high motivation condition, participants judged the defendant’s guilt as more likely when his alibi was weak than when it was strong. This main effect was not moderated by race. However, under low motivation, the effect of the alibi strength was moderated by defendant race. That is, the Black defendant’s likelihood of guilt was judged higher when his alibi was weak than when it was strong. In contrast, the White defendant’s likelihood of guilt judgments was insensitive to alibi strength in the low motivation condition.

Modern Racism

Studies such as these (i.e., Sargent and Bradfield, 2004) are not only inconsistent with much of the research that has explored the role of racial bias in jury decision-making, but also run contrary to the statistics that reflect actual racial disparities in the American criminal justice system. However, these inconsistent results may have an explanation that reflects the complexity of current racial relations. That is, it may reflect a theory that is referred to as modern racism.

Modern racism (Dovidio, Smith, Donnella, & Gaertner, 1997; McConahay & Hough, 1976, Pfeifer & Bernstein, 2003) is described as developing in response to racial laws and norms that encourage racial tolerance and express disapproval for overt racist attitudes, opinions and behaviors. However, many White Americans’ negative feelings and attitudes about Blacks that were learned earlier in life persist into adulthood. Given the changes in societal norms, and individuals’ desire to reject traditional racist beliefs, Whites may become somewhat unaware of the racist beliefs that they continue to hold. Furthermore, these attitudes are often expressed indirectly and in subtle forms. When
norms are ambiguous or conflicting, discriminatory behaviors are likely to be displayed. Ambiguity may allow Whites to rationalize their bias against Blacks using factors other than race. However, when norms and guidelines are clear, bias is less likely to occur because it may be more difficult to justify prejudice when there are few factors other than race that could explain the discriminatory behavior. Whites are also motivated to appear non-prejudiced when racial issues are salient or a central focus. In fact, Whites may even behave more favorably toward Blacks, relative to Whites, when there is no justification for a negative reaction or evaluation. In short, as cultural expectations and norms have changed, so has the expression of once acceptable racist attitudes and beliefs for many White Americans (Dovidio, Smith, Donnella, & Gaertner, 1997; Hill & Pfeifer, 1992; Pfeifer & Bernstein, 2003).

While modern racism may reflect a more contemporary form of racism, it is likely that traditional racism persists in some today, which is reflected in studies that demonstrate a straightforward relationship between race and biased jury-decision making. However, modern racists demonstrate a more complicated pattern of bias, which may or may not be evidenced in research, depending on the design of the study. Dovidio, Smith, Donnella and Gaertner (1997) were able to design a study that captured the complexity of this relationship for modern racists. Specifically, they examined the relationship between overt or more traditional racist attitudes and modern racism in White jurors’ recommendations for capital sentencing of Black and White offenders convicted of murder. After participants completed a scale assessing their current racial attitudes, they were given one of two trial summaries. In one version the race of the defendant was White, in the other the defendant was Black. The summary described an actual case in
Georgia in which one White police officer was murdered and another was wounded while attempting to make an arrest following an armed robbery. The summary made it clear to the mock jurors that the defendant was found guilty of all the crimes for which he was accused. Following the summary, participants watched a video recording that portrayed the opinions of five confederate mock jurors (participants were led to believe that the videotaped individuals had previously participated in the study) regarding sentencing in this case. One by one, each videotaped “juror” advocated for the death penalty in this case and provided their reasons for this decision. Participants were shown one of two versions of the videotapes. The scripted reasons that each videotaped confederate juror provided in support of capital punishment were identical in both versions of the tape. The two tapes differed in that the second juror in one version of the tape was a White male undergraduate student. In the other version, the second juror was a Black male undergraduate student. Participants then provided sentence recommendations and provided their reasons for their decision.

Dovidio et al. (1997) found that participants who showed a high level of prejudice on the racial attitudes scale demonstrated a straightforward pattern of bias toward Black defendants. That is, they gave the Black defendant a stronger recommendation for the death penalty than the White defendant. In contrast, participants that showed a low level of prejudice on the racial attitudes scale demonstrated a more complicated pattern. Low prejudice scoring Whites gave the strongest recommendations against the death penalty when the defendant was Black and all of the jurors endorsing the death penalty were White. However, when the defendant was Black and there was a Black juror advocating for the death penalty, low prejudice scoring participants were more likely to recommend
the death penalty for the Black defendant than for the White defendant. Racial composition of the jury advocating the death penalty did not affect recommendations when the defendant was White. The pattern demonstrated by the low prejudice scoring participants is consistent with modern racism. That is, without justification, the low prejudice scoring participants did not demonstrate a pattern of biased sentencing. However, it appears that the presence of a Black juror advocating the death penalty provided enough justification for low prejudice scoring participants to demonstrate a bias in sentencing.

Other studies have demonstrated a similar pattern of support for modern racism. Sommers and Ellsworth (2000) conducted a two-part study that also demonstrated the elusiveness of modern racism. In their first study, both Black and White undergraduates read 12 trial summaries, which included one paragraph describing the prosecution’s case and one paragraph describing the defense’s case. Five of the trials involved cross-racial crimes in which half of the participants read about a White defendant and the other half read about a Black defendant. All five of these trials were thought to make race salient by evoking common racial scripts (e.g., a man allegedly burned down a church attended by congregants who were not of his race). The remaining seven trial summaries did not involve cross-racial crimes or mention race at all. White participants did not differ in their guilt ratings, sentence recommendations, perceived strength of the defendants’ cases or dispositional attributions of the defendants’ behavior for the White and Black defendants. However, in the second study Sommers and Ellsworth manipulated racial salience. Participants were given one trial summary, in which the defendant was either Black or White and race was either a salient issue or not. All four versions of the
summary involved a cross racial crime. When race was salient, as in the first study, White participants did not differ in their guilt ratings, sentence recommendations, or personality attributions of the White and Black defendants. However, when race was not salient, White participants gave the Black defendant significantly higher guilt ratings and recommended longer sentences. Furthermore, White participants rated the Black defendant’s personality as significantly more aggressive and violent than the White defendant’s personality. In this study, when racial issues were salient, White participants did not exhibit prejudiced decision-making, perhaps because they were motivated to appear non-biased. However, when race was not salient, racial bias was demonstrated. A lack of racial salience may have provided enough ambiguity for White participants to find other rationalizations for their biased decision-making.

Additional support for modern racism was provided by a study conducted by Pfeifer and Ogloff (1991). In this study, 257 White undergraduates read a nine-page rape trial transcript. Both the race of the defendant and the race of the victim were varied (either Black or White). In addition, some participants received jury instructions that were based on jury instructions that would have been given by a judge in a similar case. The jury instructions included the importance of the presumption of innocence, the meaning of reasonable doubt, and the need to be free from prejudice. Other participants did not receive jury instructions. After reading the transcript, participants were asked to rate the guilt of the defendant. The results indicated a significant main effect for jury instructions. In other words, when jury instructions were given, there were no statistically significant differences in guilt ratings between the Black and White defendants. However, when participants were not given jury instructions, they rated the
Black defendant as significantly guiltier than the White defendant, when accused of raping a White woman. Consistent with modern racism, the jury instructions may have removed much of the ambiguity from the decision making process. The instructions provided legally relevant guidelines on which to base guilt determinations, providing less opportunity to base decisions on prejudicial attitudes. Other studies have also provided additional support for modern racism (e.g., Hill & Pfeifer, 1992; Pfeifer & Bernstein, 2003).

**Eyewitness Identification**

In addition to the race of the defendant and victim potentially biasing jurors’ decisions, bias may also enter the jury decision-making process in other ways, such as in the importance or weight that jurors may place on evidence not completely understood by jurors in a trial. One way in which this can occur is when jurors rely heavily on eyewitness identification, which has been shown to be unreliable.

**Pattern of Unreliability**

Research on the psychological factors that affect an individual’s ability to accurately identify another person, especially after the commission of a crime, has been an area of interest since the early 1900s. In fact, in 1912 Hugo Münsterberg published the first book on these phenomena called *On the witness stand: Essays on psychology and crime*, in which he described how our senses can be deceived as well as how suggestions can affect our perceptions. He staged a number of crimes in front of audiences of lawyers and psychologists to demonstrate that memories of crimes, especially under the stressful conditions of courtroom testimony, are often unreliable (Brigham, 1983). Since
then there has been a plethora of research on the psychology of eyewitness identification (e.g., Kassin & Barndollar, 1992; Loftus, 1974, 1976; Wells & Murray, 1983; etc.). Although the extent and degree to which specific factors affect eyewitness accuracy continue to be debated, there are a number of factors that continue to surface in the eyewitness literature, these include: (1) cross-racial identification (This refers to witnesses ability to recognize people of their own race better than people of another race (Malpass & Kravitz, 1987).), (2) arousal (or stress) (This refers to the idea that high levels of arousal lower identification accuracy (Kassin, Ellsworth, & Smith, 1994).), (3) weapon focus (This refers to the idea that if there is a visible weapon used during the commission of a crime, a witness will focus their attention, at least part of the time, on the weapon (Kassin, Ellsworth, & Smith, 1994).), (4) the forgetting curve (A witness’s ability to retain information about an event typically decreases over time (Bahrick, 1984).), (5) unconscious transference (A witness may identify a person in a lineup because the person is familiar from an encounter other than the crime.), (6) prior identification (A prior false identification may impair later identification in a lineup (Gorenstein & Ellsworth, 1980).), (7) show-ups (This is a one-one-one confrontation of a witness and a suspect where the witness is asked if the suspect is the perpetrator of the crime. It has been argued that showups are overly suggestive of the suspect’s guilt (Malpass & Devine, 1981).), (8) time estimation (It has been argued that eyewitnesses tend to overestimate the duration of events (Cutler, Penrod, & Martens, 1987).) and (9) the relationship between confidence and accuracy (There is not a relationship between witness confidence and witness accuracy. That is, an eyewitness can be highly confident and inaccurate (Smith, Kassin, & Ellsworth, 1989).) Although this is not intended to be
an exhaustive list of all the factors that may affect eyewitness identification, it covers the most commonly addressed factors in the eyewitness literature. In addition, it is important to note that some critics (e.g., Egeth, 1995 & Elliott, 1993) deny the validity of most, if not all, of the factors mentioned above which may impact an eyewitness’s ability to make an accurate identification. However, there is an even larger body of literature which supports many of the factors listed above (e.g., Loftus, 1993, etc.). Furthermore, this list illustrates the many different factors that can potentially influence an eyewitness’s accuracy, and calls into question the heavy emphasis placed on eyewitness identifications in both criminal investigations and court trials, especially in the absence of other evidence.

Cross-Race Identification

Since the cross-race effect (also sometimes referred to as own race bias or other-race effect) has been found in many studies to account for 15% of the variance in discrimination accuracy, this is an issue of particular importance (Meissner & Brigham, 2001). Several literature reviews have illustrated the robustness of this phenomenon (Brigham & Malpass, 1985; Chance & Goldstein, 1996; Meissner and Brigham, 2001) as well as its reliability (Kassin et al., 1989; Yarmey & Jones, 1983). For instance, in a recent meta-analytic review Meissner and Brigham (2001) examined 39 research articles involving 91 independent samples representing almost 5,000 participants. The reviewers found a pattern in which other-race faces received a lower proportion of hits and a higher proportion of false alarms when compared with own-race faces. Specifically, participants were 1.4 times more likely to correctly identify a previously viewed own-race face when compared with performance on other-race faces. In addition, participants were 1.56
times more likely to falsely identify a novel other-race face when compared with performance on own race faces. Meissner and Brigham (2001) also found that participants were 2.23 times more likely to accurately discriminate an own-race face as new versus old when compared with their performance on other-race faces. Previous meta-analyses (Anthony, Copper, & Mullen, 1992; Bothwell et al., 1989; Shapiro & Penrod, 1986) have indicated a cross race effect accounting for 6% to 11% of the variability across studies.

Commonly posited explanations for the cross-race effect include racial attitudes and interracial contact. However, there has been little empirical support for the hypothesis that prejudicial racial attitudes impair one’s memory for other-race faces. In their meta-analytic review, Meissner and Brigham (2001) examined the pattern of correlations between racial attitudes and performance on other-race faces across studies. They found that the mean weighted effect size across studies indicated no significant relationship between racial attitudes and the cross-race effect. On the other hand, interracial contact has been demonstrated as having a small, but statistically significant relationship with the cross-race effect. In the same meta-analytic review Meissner and Brigham (2001) examined the pattern of correlations between self-rated interracial contact and discrimination of other-race faces. The mean weighted effect size across studies demonstrated a significant relationship. They found that interracial contact accounted for approximately 2% of the variability across participants. Similar results were found in an earlier field study in which 73 clerks that worked in convenience stores were tested on their ability to identify Black and White customers who had been in the store two hours earlier. Photograph lineups that had been prepared by personnel in the
local police department were used for identification. These researchers found a weak but statistically significant relationship (a correlation of .28) between self-reported amount of interracial experiences and cross-race recognition accuracy (Brigham, Maass, Snyder & Spaulding, 1982).

Meissner and Brigham (2001) have noted that the relationship between racial attitudes and interracial contact may not be mutually exclusive. That is, although there may not be a direct relationship between one’s racial attitudes and memory for other-race faces, racial attitudes may play a mediating role by influencing one’s social contact and experience with other-race individuals. Meissner and Brigham (2001) found the mean weighted effect size between interracial attitudes and contact across studies demonstrated a significant relationship. They found overall, that individuals with more positive attitudes toward other-race individuals tended to rate themselves as having greater interracial contact when compared with individuals with more negative attitudes.

Interestingly enough, the cross-race effect appears to vary across racial and ethnic groups. Meissner and Brigham (2001) found that White participants demonstrated a significantly larger cross-race effect when compared with Black participants on the measure of discrimination accuracy (The standard distance between the means of the “new” and “old” distributions.). This difference was seen in the magnitude of false alarm responses; however, Black and White participants did not differ in the magnitude of the cross-race effect on either proportion of hits (correctly identifying a face as “old”) or estimates of response criterion (The level of familiarity necessary for an individual to categorize a given stimulus as “old” vs. “new.”). White participants also demonstrated a significantly larger cross-race effect when compared with participants in the “other”
racial and ethnic category. This significant difference was observed reliably in hit, false alarm, and response criterion estimates. However, the analysis of discrimination accuracy was not significant.

There is also evidence to suggest that even with an awareness or prior understanding of the cross-race effect, it may not make a meaningful difference in juror decision-making. For instance, Abshire and Bernstein (2003) found in their study that Black participants were more likely than White participants to be aware of the cross-race effect. In addition, Black participants perceived eyewitnesses of different races as varying in credibility. However, the Black participants who were aware of the cross-race effect were no more likely to take it into account when evaluating eyewitness testimony and reaching a verdict than participants who were unaware of the effect.

A cross-race effect has not only been found in eyewitness identification, but also in the construction of lineups. Ideal lineups should contain both the suspect as well as five or more individuals that are known to have no involvement in the crime under investigation (foils), but whose appearance is similar to the suspect or a previous description of the offender. The procedure is less suggestive when the individuals in the lineup are similar in appearance by making it less obvious which lineup member the police suspect is the actual offender. Furthermore, since the suspect is likely to fit a prior description, it is important that the foils do as well in order to enable a fairer test of the witness's ability to identify the actual suspect rather than make an identification based on an earlier description. Lindsay and Wells (1980) demonstrated that fair lineups benefit both the suspect and the police investigation. They conducted a study in which participants were first exposed to a mock crime and then were asked to identify the
offender of the crime in one of four lineup conditions. One lineup condition was a fair (containing individuals similar in appearance to the target) lineup in which the offender (target) was present. A second lineup was a fair target-absent condition. A third lineup was unfair (containing individuals dissimilar in appearance to the target), target present condition. And finally, the fourth lineup was an unfair, target absent (but one individual similar in appearance to the target was present) condition. Lindsay and Wells (1980) found that the unfair target-present lineup produced the highest number of accurate identifications, while the unfair target-absent lineup produced a high number of false identifications. The fair target-present lineup produced a small decrease in the number of accurate identifications; however, it also produced a large decrease in the number of false identifications. Clearly, there is a trade-off, with the fair target-present lineups producing less overall identifications but a greater percentage of accurate ones.

Additional evidence of the cross-race effect in lineup construction was found in a study by Brigham and Ready (1985) in which White and Black participants were asked to construct photographic lineups by selecting five photos of foils that were "reasonably similar in general appearance" to the target photo (p. 418). Brigham and Ready (1985) found that both the Black and White participants were equally selective on the White lineups; however, when constructing the Black lineups the White participants were much less selective. On the other hand, Black participants became more selective on the Black lineups. While both Black and White participants demonstrated an own-race bias in their construction of the lineup, Black participants were better lineup constructors because they showed a greater level of overall selectivity. This may be due, in part, to Blacks having greater cross-racial experience as a result of being a minority within a White majority.
Over Belief of Eyewitness Testimony

Unfortunately, there is evidence to suggest that the over belief of eyewitness identifications has led to many wrongful convictions. In 1996 the National Institute of Justice reported that 28 convicted felons were exonerated by DNA evidence after varying numbers of years in prison. In all of these cases there was one or more false identifications (Connors, Lundregan, Miller, & McEwen, 1996). By 2000, the number of DNA exonerated cases reached 62 (including 8 individuals who had been sentenced to death). Fifty-two of these cases contained identifications from 77 confident but mistaken eyewitnesses (Scheck, Neufel, & Dwyer, 2000). In an earlier study of approximately 500 felony cases that led to convictions that were later invalidated, researchers found that incorrect identifications by eyewitnesses contributed to wrongful convictions in 60% of the cases (Huff, Rattner, & Sagrin, 1986).

One of the first studies to demonstrate jurors' tendency to over believe eyewitness testimony was conducted by Elizabeth Loftus in 1974. Loftus had mock jurors read one of three summaries of a trial involving a murder-robbery. In one condition, no eyewitness testified and the evidence presented to the jurors was solely circumstantial. In the second condition, in addition to the circumstantial evidence, there was an eyewitness identification presented to the jurors. Finally, in the third condition, as in the second condition, there was both circumstantial evidence and an eyewitness identification; however, the jurors also heard expert testimony that was intended to discredit the eyewitness (The expert testified that the eyewitness had poor vision (20/400), had not been wearing his glasses the day of the crime, and therefore, would have been unable to identify the defendant from where he stood.). Loftus found that 18% of the mock jurors
voted guilty in the first condition (when there was no eyewitness identification) and 72% of the mock jurors voted guilty when a single eyewitness was added in the second condition. However, after the eyewitness was discredited in the third condition, the conviction rate only dropped to 68%, illustrating that the eyewitness failed to be discredited even after the jurors learned that the witness would have been unable to identify the defendant from where he stood. Although attempts at replicating this study have failed (Elliott, 1990; Hatvany & Strack, 1980; Kennedy & Haygood, 1992; Whitley, 1987), it was one of the first studies that highlighted the powerful influence that eyewitness testimony has on jurors.

In another study, Brigham and Bothwell (1983) had 132 jury eligible residents complete questionnaires asking them to assess the accuracy rate of eyewitnesses to three staged crimes. While the actual accuracy rates ranged from 12.5% to 32.3%, respondents to the questionnaire estimated that between 51.5% to 70.6% of the witnesses would have been able to correctly identify the offender. Similar results were found in a study conducted by Thomson (1988). In this study 54 participants viewed a videotape of four “witnesses” as they indicated whether they recognized individuals in a set of slides as having appeared in another series of slides presented 5 minutes earlier. The witnesses on the videotape were engaged in a person-recognition task, with half of the people in the slides appearing in an earlier series and half of the people not appearing in an earlier series. Thomson found that participants’ mean weight ratings bore no relationship to the accuracy to the witnesses’ responses. Despite the participants’ inability to determine the accuracy of the witnesses, many participants asserted that they “knew” when a witness’s response was correct or not.
Some critics have argued that studies that illustrate mock jurors' over belief of eyewitnesses do not generalize to an actual courtroom in which there are attorneys that examine and cross-examine eyewitnesses. Furthermore, critics have asserted that skilled attorneys could expose for jurors which witnesses are accurate from those that are inaccurate by using realistic examination techniques. In response to this criticism, Lindsay, Wells, and O'Connor (1989) videotaped experienced and inexperienced attorneys examining accurate and inaccurate witnesses to a staged crime, using their preferred questioning style. After watching the videotaped interaction, mock jurors were still unable to distinguish accurate from inaccurate witnesses. When the eyewitness was accurate, 68% of the mock jurors voted guilty. When the eyewitness was inaccurate, 70% of the jurors voted guilty.

There is also evidence to suggest that jurors do not have an adequate understanding of the problems associated with eyewitness identifications. Seltzer, Lopes and Venuti (1990) found support for this assertion after conducting post trial interviews with 190 jurors who sat on jury panels in criminal trials in the District of Columbia Superior Court. Jurors demonstrated little understanding of the factors that may affect eyewitness identification, such as cross-racial identification and arousal levels. Seltzer et al. (1990) then examined the responses of 60 jurors who sat on cases in which eyewitness identification issues became a central issue in the case. Presumably there was cross-examination in these cases that was intended to focus on the conditions that may have impacted the identification's reliability. In addition, it may have become an issue discussed and considered during the jury's deliberation. When the responses of these 60 jurors were compared to the responses of the 130 jurors who sat on cases in which
eyewitness identification was not contested, they found that for four of the five surveyed questions, there were no significant differences. On the question in which there was a significant difference, jurors who sat on a case in which there was significant debate over eyewitness identification issues were significantly ($\chi^2(3) = 12.3, p=.002$) less likely to give the correct response than the other jurors.

A later study by Shaw, Garcia and McClure (1999) illustrated a similar lack of understanding on behalf of jurors. Researchers had 72 jury-eligible adults who were enrolled at a large university in the southwestern United States each generate a list of factors they believed to affect the accuracy of an eyewitness’s testimony. Only 1% of the responses included systemic variables related to police questioning and identification procedures. However, there is a large proportion of research that explores systemic variables that affect eyewitness identification and illustrate the importance of these factors on the accuracy of eyewitness identification, such as suggestive questioning and the postevent misinformation effect (e.g., Loftus, 1974; McCloskey & Zaragoza, 1985; Zaragoza, McCloskey, & Jamis, 1987), biased lineup construction (e.g., Brigham and Ready, 1985), and biased lineup instructions (e.g., Malpass & Devine, 1981). When respondents were asked about the sources of their information about eyewitness testimony, the two highest rated items were their own “common sense” and every day life experiences. Similarly, Rahaim and Brodsky (1982) found that community residents that were asked to behave as mock jurors were unaware of the empirical evidence concerning eyewitness accuracy, with their views primarily shaped by inaccurate “common sense.”

In addition to jurors having a lack of understanding about the unreliability of eyewitness testimony, there is evidence to suggest that many practicing attorneys may
also lack awareness about it. Rahaim and Brodsky (1982) found that 73 practicing attorneys that participated in their study demonstrated little awareness and understanding of the factors affecting eyewitness identification, with the least amount of understanding regarding cross-racial identification. This suggests that attorneys should not be relied upon to instruct juries regarding the reliability of eyewitness testimony.

Furthermore, jurors may be using inappropriate and inaccurate cues to determine the accuracy of eyewitnesses. For instance, a common juror misconception is that the more confident a witness is, the more accurate they are likely to be (Smith, Kassin, & Ellsworth, 1989; Wells, Lindsay, & Ferguson, 1979; Wells & Murray, 1983). Wells, Lindsay, and Ferguson (1979) have shown that mock jurors are more likely to believe highly confident witnesses than they are to believe less confident witnesses. However, Leippe, Wells, and Ostrom (1978) have found no significant relationship between witness confidence and accuracy. Furthermore, jurors may be unaware of why a particular eyewitness may testify in a confident manner. For instance, Wells, Ferguson and Lindsay (1981) found that after witnesses were briefed on their testimony, their confidence increased, resulting in mock jurors delivering an increased number of guilty verdicts. In fact, there is evidence to suggest that eyewitness confidence may have such a strong impact on jury decision-making that it may overshadow most other variables jurors may consider when determining an eyewitness’s accuracy. For instance, Cutler, Penrod, and Stuve (1988) manipulated confidence and nine other variables believed to affect eyewitness identification procedures (e.g., retention interval, lineup instructions, disguise) and found that only confidence exerted a reliable influence on mock juror judgments.
Similar results were found in a more recent study by Brewer and Burke (2002). These researchers had 130 jury duty eligible participants listen to an audio-tape of a court case reenactment containing opening statements of the defense and prosecution, the prosecution’s examination and the defense’s cross-examination of one eyewitness, closing statements from prosecution and defense, and closing instructions from the judge which outlined the elements to be considered by participants when forming a judgment and provided an explanation of “proof beyond a reasonable doubt.” Both testimonial consistency and witness confidence were manipulated. Brewer and Burke (2002) found that witness confidence had a strong influence on the mock juror’s decisions, regardless of whether the testimony was consistent or inconsistent. Testimonial consistency, on the other hand, was found to have a statistically nonsignificant relationship to mock juror judgments. Brewer and Burke (2002) suggest that inconsistencies may have less of an impact when they come from a confident, rather than an unconfident witness, and that consistent testimony is not convincing when the witness lacks confidence. Despite the little importance mock jurors placed on testimonial consistency, research findings indicate that it is a powerful predictor of witness recall accuracy (Brewer, Potter, Fisher, Bond, & Luszcz, 1999).

Another misconception that jurors may have is that an eyewitness’s memory for peripheral details is important in determining an eyewitness’s identification accuracy. Bell and Loftus (1988) found support for this assertion in a two-part study in which they investigated the influence of the degree of detail of eyewitness testimony on judgments of credibility and guilt. In their first experiment, mock jurors read a civil court case involving an automobile-pedestrian accident. In the case summary, both the plaintiff and
defendant had an eyewitness testify on their behalf, each testifying to contradictory accounts of what happened. The degree of detail of both the plaintiff and defendant’s eyewitness were manipulated, with a highly detailed testimony consisting of additional peripheral details about what the victim was wearing. Bell and Loftus found that mock juror judgments of the credibility of the eyewitnesses on each side and the percentage of negligence of the parties were influenced by the relative degree of detail of the eyewitness testimony on each side. That is, judgments of credibility increased as the degree of detail increased in the eyewitness testimony. Furthermore, a greater percentage of negligence was assigned to the party with the low-detailed eyewitness testimony. In their second experiment, mock jurors read a criminal court case involving a robbery and murder. As in the first experiment, the prosecution and defense eyewitnesses testified to conflicting accounts, manipulating the degree of detail by including or excluding a statement about what store items the defendant picked up before robbing a small grocery store at gun point. Bell and Loftus (1988) found that the degree of detail of the prosecution eyewitness testimony influenced judgments of guilt and judgments of the credibility of the witnesses. In other words, mock jurors judged the defendant as more likely to be guilty when the prosecution eyewitness provided more detail. However, there was no main effect for the degree of detail of the eyewitness testimony on the defense’s side. Similarly, mock jurors deemed the prosecution’s witness to have greater credibility as the degree of detail increased. Again, this pattern did not hold for the defense eyewitness (no significant main effect). When Bell and Loftus asked mock jurors to provide reasons why they believed the high-detailed eyewitness had greater credibility, roughly half of the mock jurors who provided explanations stated or implied
that the eyewitness who gave a highly detailed testimony was more aware, attentive, perceptive, had a better viewing/hearing position, and had a better memory for details than the eyewitness who gave a low detailed testimony. Despite the inferences that the mock jurors in this study made about a highly detailed account, empirical evidence suggests that memory for trivial peripheral details can be negatively related to memory for a culprit’s face. That is, witnesses who are better at identification have been shown to be poorer at memory for peripheral details (Wells & Leippe, 1981).

Approaches to Reducing Jurors’ Over Belief of Eyewitnesses

Improvement of Means of Identification

Despite the many factors that influence eyewitness accuracy and jurors’ apparent lack of awareness or understanding of these factors, there are some proposed solutions to reducing inaccurate eyewitness identification. One way may involve focusing on systemic variables, such as improving the means by which identifications are obtained, resulting in identifications that are more likely to be accurate. For instance, as part of an initiative of the American Psychology-Law Society (Division 41 of the American Psychological Association), a group of eyewitness researchers wrote a scientific review article that contained specific procedural rules developed to minimize errors made in the collection of eyewitness identifications (Wells, & Bradfield, 1998). In 1999, former Attorney General Janet Reno requested that the National Institute of Justice assemble a multidisciplinary working group, which consisted of police, prosecutors, defense attorneys, and research psychologists, which published a set of guidelines for law enforcement entitled *Eyewitness Evidence: A Guide for Law Enforcement* (Kassin, Tubb,
Suggested factors include minimizing the time delay between apprehension of the suspect and the identification procedure, avoiding instructions or comments that are biasing while the identification is being made, constructing fair and appropriate lineups that use foils with a similar appearance to the suspect, minimizing the chances of witnesses seeing a photograph of the suspect before they view a lineup, avoiding nonverbal cues that communicate to witnesses investigators' expectations, among other system related variables concerning how identifications are obtained (Brigham, 1983; Shaw, Garcia, & McClure, 1999).

**Jury Instructions**

Another proposed solution may be to have judges provide cautionary instructions to juries about the factors affecting the reliability of eyewitness identification, when eyewitness testimony is involved in a case. However, research on the effect of jury instructions has shown little altering of jury decisions (Cutler, Dexter, & Penrod, 1990; Greene, 1988; Katzev & Wishart, 1985). For instance, Cutler, Dexter, and Penrod (1990) designed a study to test the effects of court-appointed expert testimony and judge’s instructions on juror decision-making. The judge’s instructions used were *Telfaire* instructions that were proposed in the District of Columbia Court of Appeals in *United States v. Telfaire*. They are a set of instructions which trial judges may use in focusing juror attention on issues surrounding eyewitness testimony in an effort to safeguard against unreliable eyewitness identifications (Katzev & Wishart, 1985). Mock jurors viewed a videotaped trial in which the primary evidence consisted of eyewitness testimony. Cutler et al. (1990) found that the judge’s instructions did not produce skepticism or sensitivity toward case evidence.
Similar results were found in a study by Katzev and Wishart (1985). Mock jurors were asked to determine the guilt or innocence of a defendant accused of burglary after hearing one of three types of judicial instructions: (1) Instruction only: the judge gave jurors a standard set of instructions that dealt with such topics as juror responsibility, function and purpose; (2) Instruction and summation: the judge gave a standard set of instructions as well as a summary of the evidence presented by the defense and prosecution; (3) Instruction, summation, and commentary: the judge gave a standard set of instructions, a summary of the evidence, and a commentary that questioned the eyewitness testimony and reviewed some of the psychological issues (e.g., role of stress, etc.) involved in eyewitness identification. Although the data suggested that each progressive condition reduced the likelihood of reaching a hung or guilty final verdict, the differences were not statistically significant. Likewise, Greene (1988) found after employing the Telfaire instructions in a mock trial, mock juror’s sensitivity to case evidence did not increase. Furthermore, there was only a slight, but nonsignificant tendency for mock jurors to rate the eyewitness as less believable in contrast to the ratings in the control condition.

Judge’s instructions have been criticized for being overly complex, confusing and difficult to comprehend (Charrow & Charrow, 1979; Greene, 1988; Katzev & Wishart, 1985). In fact, Charrow and Charrow (1979) found that jury members did not understand 45% of the important elements in patterned jury instructions. In response to an apparent lack of clarity in judge’s instructions, Greene (1988) proposed a revision of the Telfaire instructions by clarifying the language, more accurately conveying the lessons of research (Telfaire instructions omit many important factors and provides misleading information),
and explaining the processes by which various factors affect eyewitness testimony. Greene (1988) found that mock jurors that heard the revised *Telfaire* instructions were more knowledgeable about factors to consider when evaluating eyewitness testimony. These jurors also rated the defendant as more believable than mock jurors that were given no instructions. However, jurors that heard the revised *Telfaire* instructions were also less sensitive to the weak and strong conditions of the trial than the mock jurors who heard the standard *Telfaire* instructions or no instructions at all. The two groups that did not receive the revised *Telfaire* instructions were more likely to find the defendant guilty if they viewed the strong identification version of the trial than if they viewed the weak identification version of the trial. This sensitivity was not seen for mock jurors given the revised *Telfaire* instructions. These jurors did not vote for conviction in either the strong or weak version of the trial. As a result, the superior court judges who reviewed Greene's revised *Telfaire* instructions found them biased in favor of the defense. Thus, such a testimony would not be permitted in a courtroom.

The usefulness of jury instructions appears to be limited, at best. In most jurisdictions, the decision to employ jury instructions at all is left to the trial court's discretion. Some courts may only deem it necessary to use jury instructions when the evidence in a case raises serious doubts as to the accuracy of the identification. If the trial court decides to use jury instructions, it is also up to the court's discretion as to what type of instructions to use, general or special (e.g. *Telfaire* instructions). Some jurisdictions hold a general proposition that special instructions are unnecessary and consider it adequate to use only general instructions. If a court decides to use special instructions, such as the *Telfaire*, the jury instructions tend to instruct jurors on general
principles surrounding eyewitness identification, but do not more specifically instruct the
jury about how those principles apply to the case at hand, as this may create bias.
Furthermore, the trial court judge has to be careful not to overstep the jury’s role as fact
finder (Lorentzen, 1994; Maleng, 2004). However, as they are currently employed, with
jury instructions imbedded in a longer narrative about other factors unrelated to the
particular case, the relevance of such a testimony is limited (Greene, 1988).

Psychological Expert Testimony

A third proposed solution to reducing jurors’ over belief of eyewitness testimony
involves using psychological expert testimony. Psychological expert testimony about
eyewitness reliability is testimony given by an individual who is knowledgeable about the
factors that influence the accuracy and reliability of eyewitness identifications.
Testimony may be given on behalf of the prosecution or defense and is intended to revise
what jurors already believe as a matter of common sense (i.e., by informing them of
research findings not intuitively known or correcting misconceptions not supported by
research.) (Kassin, Tubb, Hosch, & Memon, 2001; Woocher, 1986).

The admissibility of expert testimony of any kind (psychological or otherwise) is
guided by both legal standards and the discretion of trial court judges. Since traditional
evidentiary policy requires testimony to be based on a witness’s first-hand knowledge or
observation of the circumstances involved in the case, a witness’s opinion is generally
excluded from testimony. However, an exception is made for expert witnesses that are
presumed to have the ability to assess the circumstances and draw inferences above and
beyond what a lay jury would be able to draw. Since the expert’s opinion testimony is an
exception to the rule, it is the burden of either side (i.e., defense or prosecution) to
persuade a court of its value and necessity before it is deemed admissible in a case. One of the leading court decisions that guide courts’ determination about the admissibility of expert testimony is the 1973 decision of the U.S. Court of Appeals in *United States v. Amaral* (1973). The *Amaral* decision is important because it was the first to both outline the general principles regarding expert testimony and to apply those rules to the psychologist’s testimony on eyewitness identification. This decision outlines four criteria that are necessary in order for any scientific expert testimony to be admissible. First, the expert must be qualified. Although this criterion is not clearly defined in the *Amaral* decision, the Federal Rules of Evidence (enacted in 1975, the Federal Rules prescribe the criteria for the admission of evidence in the entire federal system), specify that a witness may qualify as an expert “by knowledge, skill, experience, training or education” (Woocher, 1986, p. 51). Generally this means holding an advanced degree in a relevant area of psychology (e.g., perception, memory, etc.), have conducted and published research in that area and the testimony “must concern a proper subject matter” (Woocher, 1986, p.50). In order to satisfy this criterion, the testimony must provide information that is beyond the common knowledge of the average juror. In other words, the expert needs to have some specialized knowledge that is beyond the average layperson. In addition, this criterion also requires that the expert not invade the role of the jury. That is, it is the jury that ultimately decides whether the eyewitness is accurate. The third criterion specifies that, “the testimony must be in accordance with a generally accepted explanatory theory” (Woocher, 1986, p.50). This criterion refers to a requirement established 50 years earlier in *Frye v. United States* (1923) that requires scientific testimony to be based upon a theory or research finding that has gained general
acceptance in its field. The fourth and final criterion is that the benefits of the testimony must exceed any possible prejudicial effects. This means that no expert testimony should bias or mislead jurors, outweighing evidence from other components of the trial (Woocher, 1986).

While the *Amaral* (1973) decision has been significant in shaping the current guidelines for the admissibility of expert testimony, the emphasis and application of these guidelines was altered in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993). In the *Daubert* ruling, the U.S. Supreme Court urged trial judges to serve as more active gatekeepers by determining whether an expert's testimony is scientific and assists the "trier of fact" (Kassin, Tubb, Hosch, & Memon, 2001, p. 406). The Court then shifted its focus from a general acceptance to the broader question of whether the testimony would be based on information that is not only relevant but also reliable and valid, as well as obtained through scientific methods (Kassin, Tubb, Hosch, & Memon, 2001). A review of 10 years of cases following the *Daubert* (1993) decision found that the standards for admissibility at trial of expert testimony have become more demanding. Specifically, the reviewer found that judges are more likely to make a determination on the admissibility of expert testimony prior to trial, to examine the reasoning and methodology that supports the expert opinion with more scrutiny, and to limit or exclude testimony all together from the trial (Cecil, 2005).

Despite these rulings that provide legal guidelines regarding the admissibility of expert testimony, it is also important to recognize the wide variation in the application of these criteria. Both the *Amaral* (1973) and *Daubert* (1993) rulings only apply to federal courts. While many states followed suit, some states have done so only partly, while
others have continued to use the *Frye* (1923) ruling (Kassin et al., 2001). This means that the rules and standards for the admission of expert testimony will vary, to some degree, from jurisdiction to jurisdiction, from judge to judge, and even from case to case. Furthermore, the responsibility for applying and interpreting the statutory criteria remains with the courts. Thus, trial judges are given broad discretion in determining whether to admit or exclude expert testimony in any given case (Woocher, 1986).

In addition to the legal community showing skepticism regarding expert testimony, there is dissent within the psychological community as to whether psychological expert testimony about the reliability of eyewitness identification is appropriate. Proponents argue that because jurors may over rely upon the testimony of an eyewitness, a psychologist who is an expert in the field of eyewitness identification may be able to inform the jury of the limitations of the eyewitness identification. If jurors could be educated about the inherent unreliability of eyewitness identification, they may be able to give it the appropriate weight during deliberation (Hosch, Beck, & McIntyre, 1980).

Opponents of the use of psychological experts testifying on the unreliability of eyewitness identification generally assert three main arguments. First, they argue that research in the field of eyewitness identification does not pass the *Frye* test. That is, results have not gained general acceptance in the field because there are a few studies that have provided inconsistent results. However, Kassin, Ellsworth and Smith’s (1989) survey of the leading eyewitness experts in the country, including skeptics, such as Elliott, found a consensus among 80% of those surveyed that the following topics were sufficiently established to testify on in court: the wording of questions, lineup
instructions, misleading post event information, the accuracy-confidence correlation, attitudes and expectations, exposure time, unconscious transference, showups, and the forgetting curve. Furthermore, over 70% of the respondents agreed that data regarding lineup fairness, cross-race identification bias among White witnesses, and the tendency to overestimate the duration of events was sufficiently reliable to testify in court (Egeth, 1995; Elliot, 1993; Kassin, Ellsworth, Smith, 1989; Konecni & Ebbesen, 1986).

A second argument posed by critics is that research on eyewitness accuracy lacks generalizability (Konecni & Ebbesen, 1986). Since many investigations of eyewitness accuracy use college students viewing staged crimes, critics assert that these results are not generalizable to different witnesses observing real-life events in possibly life-threatening situations. However, there have been some studies (e.g., Hosch et al., 1980) that have found no differences between community residents and college student samples. Furthermore, this critique is by no means unique to eyewitness identification research, and holds true for scientific research in many different areas and fields that rely upon college student samples.

Finally, a third argument against the use of psychological expert testimony is a concern for the possible consequences on juror decision-making. One concern is that psychological expert testimony may cause an over correction in verdicts, on the part of jurors who are overly concerned with being fair (Kennedy & Haygood, 1992). This could result in guilty defendants being acquitted and, according to some critics (e.g., Konecni and Ebbeson, 1986); the number of wrongfully convicted individuals is relatively small compared to the number of offenders who remain free due to underreported and underprosecuted crimes. This criticism is more of an ethical one that
reflects the tone of many politicians that are interested in playing on the public’s fears, rather than focusing on correcting problems within our current justice system. Critics have also expressed concern that increasing juror skepticism may not necessarily increase jurors’ ability to discriminate between accurate and inaccurate eyewitnesses. Thus, increasing jurors’ overall level of skepticism may not address the larger problem of jurors being unable to make this distinction. This criticism will be addressed in the section below.

Research on Expert Psychological Testimony

Despite the controversy surrounding the use of psychological expert testimony, there has been relatively little research that has evaluated its impact on juror decision-making (Geiselman, Putman, Korte, Shahirary, Jachimowicz, & Irzhevsky, 2002). However, the few studies that have been conducted seem to support the use of expert psychological testimony. For instance, Hosch, Beck, and McIntyre (1980) conducted a two-part study that explored this relationship. In the first phase of the study, community residents were assigned to one of four six-person juries. To increase the realism of the study, jurors actually watched the mock trial in a courtroom, with an actual judge, attorneys and psychologist (as the expert witness), playing their professionally trained roles. The case presented involved a burglary in which the eyewitness identification testimony was the only direct evidence linking the defendant to the scene of the crime. Two of the juries heard all of the testimony, including the psychological expert testimony on the unreliability of eyewitness accuracy. The other two juries heard all of the testimony except the psychological expert testimony. During the second phase of the
study, college student jurors were assigned to one of four six-person juries. Juries saw the same trial as in the first phase, except it was a videotape of the original trial. As in the first phase of the study, two juries heard the entire trial, including the psychological expert testimony and the remaining two juries viewed the trial without the psychological expert testimony. The data revealed that both samples (college students and community residents) of mock jurors who heard the psychological expert testimony regarding the unreliability of eyewitnesses perceived eyewitnesses, in general, to be significantly less reliable than mock jurors who did not hear the psychological expert testimony. It is important to note that the jurors did not see the eyewitness as any more or less credible as a function of the expert testimony; however, they did lower the importance of the eyewitness testimony relative to other testimony in the trial. Furthermore, psychological expert testimony significantly increased the amount of time jurors spent discussing eyewitness identification (27.9% vs. 9.58%) as well as significantly increased their discussion of other evidence presented at the trial.

Fox and Walters (1986) found similar results in their study. Mock jurors watched a videotaped criminal trial involving a robbery-murder at a convenience store. Jurors were assigned to one of six conditions that varied according to the confidence of the eyewitness (high vs. low eyewitness confidence) and the type of psychological expert testimony (specific expert testimony, general expert testimony, or no expert testimony). In the general psychological expert testimony condition, the psychologist discussed basic memory processes (acquisition, retention, and retrieval) and types of memory (sensory, short-term and long-term) as they relate to errors or distortions in eyewitness memory. In the specific psychological expert testimony condition, the psychologist discussed 12
specific factors affecting eyewitness perception and memory that were highly relevant to
the case. The researchers found that jurors who viewed the general psychological expert
testimony and specific psychological expert testimony were significantly less likely to
believe the eyewitness correctly identified the gunman than jurors in the control
conditions. In fact, the effects of the two types of psychological expert testimony were
similar on most of the dependent measures, except the specific psychological expert
testimony produced more innocent verdicts than the general psychological expert
testimony condition. It is also important to note that jurors continued to be influenced by
the eyewitness accounts, in all three conditions. Jurors continued to use eyewitness
confidence to evaluate eyewitness accuracy, even after viewing psychological expert
testimony that warned against relying on eyewitness confidence. That is, jurors had the
greatest reduction in their belief in the accuracy of the eyewitness in the low-confidence
condition than in the high confidence condition. Thus, eyewitness confidence mediated
the effect of the psychological expert testimony. Although the results indicate increased
skepticism among mock jurors with psychological expert testimony, it is unclear whether
jurors’ sensitivity increased (i.e., Increased sensitivity would be indicated by jurors
giving more or less weight to the eyewitness depending on the witnessing conditions.)

A later study by Cutler, Penrod, and Dexter (1989) did, in fact, find support for
psychological expert testimony increasing jurors’ sensitivity to factors influencing
eyewitness memory. These researchers conducted a 2 (witnessing and identification
conditions: poor vs. good) x 2 (Witness confidence: 80% vs. 100%) x 2 (Expert
testimony: descriptive vs. quantified) x 2 (Expert opinion: present vs. not present)
factorial design. In addition, there were four groups serving as controls. In the
witnessing and identification factor, conditions were poor when the robber was disguised, used a handgun in a threatening manner, identification took place 14 days after the robbery, and the lineup was suggestive. In the good witnessing and identification condition, the robber was not disguised, had a concealed handgun, identification took place 2 days after the robbery and the lineup instructions were not suggestive. For witness confidence, the witness testified that she was either 80% or 100% confident that she correctly identified the robber. Psychological expert testimony varied in that it was descriptive only or descriptive and quantitative. In the descriptive only testimony, the expert described the witnessing and identification conditions that were relevant in the case in influencing identification accuracy. In the descriptive-plus-quantified testimony, the expert described the same information as in the descriptive only condition; however, statistics regarding correct and false identifications found in the research literature were included as well. Finally, the last factor, expert opinion, if present, consisted of a rating that expressed the expert’s opinion about the accuracy of the eyewitness identification in this case. This rating was dependent upon the witnessing and identification conditions. After watching a videotaped trial, jurors determined a verdict, rated the credibility of the eyewitness, and were given a memory test about the testimony in the trial.

The results indicated that psychological expert testimony improved juror sensitivity to the witnessing and identification conditions compared to the control condition. That is, jurors were more likely to believe the eyewitness made a correct identification in the good rather than the poor witnessing and identification conditions. In addition, the descriptive only psychological expert testimony was the most effective form of testimony that improved juror sensitivity to witnessing and identification conditions.
Furthermore, as in the Hosch, Beck, and McIntyre (1980) study, the presence of psychological expert testimony and the type of psychological expert testimony had almost no effect on credibility ratings of the eyewitness.

Although these studies illustrate that the presence of psychological expert testimony reduces jurors' belief of the eyewitness, expert testimony does not reduce juror belief consistent with no eyewitness control conditions (Cutler, Penrod, & Dexter, 1989; Fox & Walters, 1986; Hosch, Beck, & McIntyre, 1980). In other words, even with the presence of psychological expert testimony, jurors continued to be influenced, to some degree, by the eyewitness accounts. This illustrates that the concern that jurors will demonstrate a boomerang effect (see third critique in Expert Testimony section), trying to overcompensate for possible injustices, allowing offenders who are guilty of committing crimes go free, is unfounded. Furthermore, there is also evidence that psychological expert testimony improves juror sensitivity (Cutler, Penrod, & Dexter, 1989) to eyewitness evidence, allowing them to integrate factors concerning witnessing and identification conditions when assessing eyewitness accuracy, rather than indiscriminately accepting (or discarding) eyewitness accounts based on "common sense" factors.

Psychological Expert's Race and Juror Decision Making

In assessing the value and/or weight given to the psychological expert testimony in a trial, jurors may rely on superficial characteristics, such as attractiveness or race of the expert rather than on the content of the expert's testimony. A common model of information processing proposes that there are two general routes to attitude change:
When information processing occurs through a central route, the quality of the message is evaluated; stronger arguments lead to greater persuasion. On the other hand, a message may be processed through peripheral routes. This may occur when the information receiver is unmotivated to attend to the message or overloaded with information. When information is processed through a peripheral route, factors irrelevant to the quality of the message determine attitude change. This may mean that superficial characteristics of the person delivering the message (in this case an expert) may influence the juror’s assessment of the information rather than the content of the message. Relying on peripheral cues such as attractiveness or race enable a juror to make shortcuts in their information processing. However, these shortcuts can lead to biased information processing by making generalizations about people based on their group membership or on how much the source appeals to the juror.

Attractiveness of a defendant is a fairly well researched peripheral cue. Attractiveness has been defined in several studies as having a likable personality, being middle-class, being married with children, and having no criminal record. Physical attractiveness is often determined by positive ratings on physical characteristics. In turn, unattractiveness is generally defined as the opposite of these characteristics. Barnett and Feild (1978) as well as Nemeth and Sosis (1973) both found that attractive defendants receive more lenient sentences than unattractive ones. In fact, Nemeth and Sosis (1973) examined both the role of attractiveness and race; however, they only found sentencing to be affected by the attractiveness of the defendant, not the race of the defendant. Similar results were obtained by Rector, Bagby and Nicholson (1993) in which they found that jurors’ verdicts were more directly based on the perception of both the defendant’s and
victim's positive appeal (attractiveness) than on the defendant or victim's race. (e.g., The defendant was found guilty less often when he was perceived positively. In addition, the defendant was found guilty less frequently if the victim was perceived negatively.) However, Rector et al. (1993) found that the defendant factor of positive appeal (attractiveness) differed significantly according to defendant race (i.e., Participants rated the defendant's positive appeal lower when he was Black.). Although they found no significant main effects for race and found that defendant race did not load significantly in their model. These researchers attempted to explain away these results by suggesting that the attractiveness of the defendant is more salient than defendant or victim race; however, these results remain unclear.

While there has been extensive research that explores the role that victim, juror and defendant characteristics play in juror decision-making; there has been very little research that explores the role that expert witness characteristics play in the courtroom. The little research on characteristics of experts has only pertained to attorneys. Boyll (1991) suggests that the most important characteristic of both attorneys (experts) and witnesses are to be perceived as credible. He argues that jurors are more likely to be influenced by people they consider to be honest and credible. He defines credibility as consisting of competence and expertise, trustworthiness, and being dynamic. He also suggests that persuasive techniques used in sales are important as well. In addition, an attorney's linguistic style is important in establishing credibility. Finally, Boyll (1991) emphasizes the importance of appearance and affability in persuading a jury.

The influence of an expert's race on a juror is understood even less. Cohen and Peterson (1981) investigated the effect of the defense attorney's race and gender on
jurors' attributions of guilt toward the defendant. Although they found no evidence of gender bias, they did find a consistent bias against Black defense attorneys. That is, jurors reported significantly more defendant guilt when the defendant was represented by a Black defense attorney than when he was represented by a White defense attorney. However, this study has limited external validity since high school students (11th graders) participated as the mock jurors in this study. In addition, the researchers did not specify the race of the participants. Mixon, Foley, and Orne (1995) investigated racial attitudes in a later study regarding the O.J. Simpson trial. They found that racial similarity between their survey respondents and the attorneys involved in the trial may have affected the respondents’ perceptions. For instance, they found that White survey respondents rated the White prosecutor, Marcia Clark, as higher in honesty than did the Black respondents. In addition, Black respondents rated the Black defense attorney, Johnnie Cochran, higher in honesty than did White respondents. However, it is also important to note that this study used a small sample size (Ss=100), which may limit the external validity of the results.

A dissertation that explored the effects of both the defense attorney’s race and the use of racially relevant arguments by the defense attorney in juror decision making (Boliver, 1999) indicated that mock jurors found the defendant (who was Black in all conditions) guilty significantly less often when the defense attorney was of a similar race (on one count of child abuse). This effect held for both Black and White participants. Furthermore, White participants were more likely to find the defendant guilty when the defense attorney used racial arguments as part of the defense. This may be important in understanding that not only the race of the expert may be important, but also the content,
such as a racially relevant argument, may be equally important. Boliver (1999) also found that both White and Black participants who scored highest on levels of authoritarianism were most influenced by the defense attorney that was racially similar to them.

There are a few limitations of this study that should be noted. First, the race of the defense and prosecuting attorneys were always dissimilar. That is, although the race of the defense attorney was the intended independent variable, the race of the prosecuting attorney changed as the race of the defense attorney was manipulated in order to have interracial pairings. Thus, the race of the prosecuting attorney may have been a confounding variable, limiting the conclusions that can be drawn about the race of the defense attorney. Furthermore, having racially dissimilar attorney pairings may have increased the salience of race. Another important limitation is that the defendant's race was held constant (Black), which limits the generalizability of the results. A final methodological limitation of concern was that the race of the defendant was not specified to participants when the defense attorney did not use a racially relevant argument. This is certainly unlike an actual trial in which the jurors are always aware of the race of the defendant because of their location in the same courtroom. In addition, participants in this study were left to assume the race of the defendant, which introduces error because it is uncertain what cues participants used to determine the race of the defendant and what race they ultimately assumed the defendant to be.

Despite the modest evidence that suggests that both race and racial arguments used by experts in court may influence juror decision-making, there is other evidence that suggests that these factors may not influence the decision-making process. Memon and
Shuman (1998) conducted a study to explore the influence of expert race and gender on juror decision-making in a civil dispute. Both the race and gender were manipulated of a medical expert that testified on behalf of a doctor being sued for medical malpractice (e.g., Expert conditions: White male, Black male, White female, Black female). Contrary to the anticipated results of the researchers, there were no significant differences in the perceptions of the male and female experts. Furthermore, the Black female expert was seen as the most persuasive out of all of the race-gender combinations. In addition, White jurors rated the Black female expert as more qualified than Black jurors. However, it is important to note the small sample size of Black participants in this study (n=37 out of 312 participants); therefore, interpretation of the results as they relate to Black jurors should be done so cautiously. It is also notable that although jurors rated the Black female expert as the most persuasive, expert persuasiveness did not appear to be related to their verdict. This may suggest that jurors were consciously attempting to avoid rating experts in a biased manner; however, they may have allowed biases to influence their verdict (which may be contrary to what they reported).

Similar results were found in a dissertation by Miyatake (1999) that explored how the race and gender of a psychologist testifying in court as an expert witness influences mock juror perceptions of the expert witness’s credibility and effectiveness. Mock jurors were given a brief (one page) written description of a criminal trial in which a man is accused of killing his brother. Participants were then given the written expert testimony of a clinical psychologist who testified on behalf of the defense, accompanied by a black and white photograph of the expert. Both the race (Black, White, or Asian) and the sex (male or female) of the clinical psychologist (expert witness) were manipulated in this
study. Mock jurors then completed accompanying questionnaires. The results indicated that there were no significant differences in perceptions of credibility and effectiveness among all three races of expert witnesses. Furthermore, there were no significant differences in perceptions between sexes.

While this study did not find any significant differences in ratings of the expert witnesses based on race or sex, there are some important methodological limitations of this study. First, generalizability is limited due to the sample. The sample size was both small (n=83) and consisted of only White participants. Next, the only racial relevance in this case was the race of the expert witness. The defendant in this case was White in all of the conditions (an immigrant from Greece), which means both the mock juror and defendant were of the same race, removing any biases that may have occurred due to the defendant’s race. Furthermore, there were no racially relevant arguments used in the expert witness’s testimony, which also removes an element of racial salience in the defendant’s defense. Boliver (1999) argues that race-relevant content within a trial may frighten or inflame a racially dissimilar jury. If nothing else, it increases the racial salience within a trial. However, the race of the defendant was not relevant to this trial, either indirectly by juror observation or by relevance to his defense. Finally, the only photo given to mock jurors was that of the expert witness, which might have made the manipulation of the expert witness race obvious and led mock jurors to correct for racial biases.
Goal of Present Study

In short, racial discrimination continues to have a stronghold on the criminal justice system. Research has repeatedly demonstrated that victim, defendant, and juror race are important factors in the juror decision-making process. However, despite the evidence that demonstrates the influential role that race plays in juror decision-making, little is known about the effects of the race of a psychological expert witness on juror decision-making. The goal of the present study is to explore this relationship.

Specifically, this study examined the relationship between defendant race, psychological expert witness race, and expert witness testimony on a racially relevant topic on juror decisions. Three variables were manipulated: the race of the defendant, the race of the expert witness, and the expert witness’s testimony content.

Hypothesis One

Participants with high scores on the Modern Racism Scale (MRS) (McConahay, 1986) are most likely to render a guilty verdict when both the defendant and psychological expert witness are Black.

Hypothesis Two

Participants with high scores on the MRS are most likely to render a guilty verdict when the defendant is Black and the expert provides racially relevant testimony.

Hypothesis Three

Participants will give the highest ratings – most positive (e.g., credibility, persuasiveness, importance, etc.) of the expert witness when he is White and provides non-racially relevant testimony, rather than racially relevant testimony. The lowest ratings of the expert witness will be when he is Black and provides a racially relevant testimony.
Hypothesis Four

The defendant will receive the highest ratings – most positive (e.g., type of person to commit crime, sympathy, pity, anger) when he is White, and a non-racially relevant defense is presented. The lowest ratings of the defendant will be when he is Black, and a racially relevant defense is presented.
CHAPTER III

METHOD

Participants

This study included 303 participants. The sample consisted of 85.81% White/Caucasian, 4.29% Black/African-American, 3.3% Hispanic/Latino, 2.31% Biracial (parents from two different racial groups), 1.65% “other,” 1.32% Asian/Asian-American/Pacific Islander, .66% American Indian/Native American, and .66% did not indicate any race or ethnicity. The sample included 107 males (35.31%) and 196 females (64.69%). All participants were sophomore and junior undergraduate students enrolled at a large mid-western university. All participants met the eligibility requirements for serving on a jury in the State of Indiana. These requirements exclude those: (a) who are under 18 years of age; (b) who are not a citizen of the United States; (c) who are not able to communicate in English; (d) who are under guardianship because of mental incapacity; (e) who are suffering from a physical or mental disability that prevents the participant from performing his or her duties as a juror in a satisfactory manner; (f) who have had their right to vote revoked and not yet reinstated as a result of a felony conviction; and (g) who are a law enforcement officer. These criteria for exclusion are the same as those used in the Indiana State Trial Courts. This information was obtained from a form referred to as a “Juror Pre-Trial Questionnaire,” completed by each participant.

Participants were recruited through e-mails that briefly described the study and the requirements for participation. Participants were not directly compensated for their
participation; however, their names were entered into a drawing for a chance to win cash prizes.

Instruments

Juror Pre-Trial Questionnaire

This consisted of 12 items that were used for two purposes. First, this questionnaire was used to determine if the participants were qualified to serve on a jury (exclusion criteria given in Participants section). Second, this questionnaire collected basic demographic information from participants, including: (a) age, (b) gender, (c) race/ethnicity, and (d) level of education.

Juror Post-Trial Questionnaire

This was a 41-item questionnaire that was developed from questionnaires used in two prior studies. Items #1-20 were adapted from a study (Balogh, Kite, Pickel, Canel, & Schroeder, 2003) in which participants were asked to determine a verdict of guilty or not guilty for a defendant that was accused of sexual harassment. In the original study, participants were also asked to make a series of ratings on a 7-point scale about both the defendant and alleged victim. For the present study, the questions were revised (e.g., names and charges were changed) for the relevancy of this study.

In the first section of the revised items, participants were asked to choose a verdict of guilty or not guilty on the two charges of Robbery and Battery (Items #1-2). Next, on a 7-point scale, participants are asked to rate the likelihood that the defendant was guilty (Item #3) and their confidence in their verdicts (Items #4-5). Then, participants were asked to select what they believed to be an appropriate sentence for
each charge independently (Items #6-7), if they selected a guilty verdict in the first two items. Next, participants were asked what influenced their verdict the most (Item #8) and if there was any piece of evidence or testimony that they did not find believable (Item #9). Then, participants were asked to rate the defendant’s character, rating the likelihood that he is the type of person who would engage in the types of crimes in which he was accused (Item #10). In addition, participants reported the amount of sympathy, pity, and anger they felt for the defendant (Items #11-13). Participants also rated the likelihood that the defendant has engaged or will engage in the behavior in which he stands accused (Item #14). The remaining questions in the first half of this questionnaire asked participants to rate the amount of sympathy and pity they felt for all of the victims/eyewitnesses involved in the case (Items # 15-20).

The second half of the questionnaire, items #21-37 were taken directly from another study (Miyatake, 1998) that examined participant ratings of the credibility, professional performance and expertise of a psychological expert witness. The internal consistency reliability for the previous study of 76 undergraduate students resulted in a coefficient alpha estimate of .88. For Experiment 2, a coefficient alpha estimate of .88 was also found. In the present study, participants were asked to rate the psychological expert witness on a 9-point scale ranging from 0 (disagree) to 8 (agree) with seven of the items reverse scored. A higher score indicates a higher rating of expert witness performance and expertise.

Finally, the last four items on the questionnaire (Items #38-41) were manipulation checks for expert testimony content and race. Participants were asked to identify the topic on which the expert witness testified (e.g., weapon focus, the cross-race effect, or
no topic at all) (Item #38). Next, participants were asked to identify the race of the
defendant (Item #39), the race of the two witnesses who identified the defendant (Items #
40), and the race of the psychological expert witness (Item #41).

Modern Racism Scale (MRS) (McConahay, 1986)

This instrument is designed to measure modern racist beliefs. Specifically,
modern racism is defined by: (1) a belief that discrimination no longer exists and that
African-Americans now have the freedom to compete in the marketplace and to enjoy
those things they can afford, (2) the belief that African-Americans are pushing too hard,
too fast, and into places where they are not wanted, (3) that these methods and demands
are unfair, and (4) that recent gains are undeserved and that prestige granting institutions
are giving African-Americans more attention and status than they deserve. Modern
racists assert that racism is bad and do not believe the aforementioned statements
constitute racism because they believe them to be based upon empirical facts. Finally,
modern racists do not define their own beliefs and attitudes as racist (McConahay, 1986).

This instrument consists of seven items scored on a five-point Likert-type scale
ranging from 1 (strongly disagree) to 5 (strongly agree). High scores indicate stronger
modern racist beliefs. In prior college samples, coefficient reliabilities for the MRS
range from .86 to .91 (McConahay, 1983). Validity studies have found significant
correlations between voting behavior and scores on the MRS, where those scoring high
were more likely to vote for White candidates than those scoring low on the scale
(McConahay & Hough, 1976). Similarly, there were significant correlations found
between the MRS and the strength of opposition toward busing (McConahay, 1983). In
addition, McConahay has found strong correlations between scores on the MRS and anti-Black feelings as measured by the Feeling Thermometer (McConahay, 1986).

The MRS was embedded with 12 filler items. The 12 filler items were taken from the Altemeyer Right-Wing Authoritarianism Scale (1996). This scale consists of attitudinal statements, half of which favor and half of which oppose an authoritarian attitude. The filler items were included to protect the integrity of the MRS items. Furthermore, most other studies that have used the MRS have administered it in a similar manner. This instrument was entitled, “Social Attitudes Survey,” for the purposes of administering to participants.

Procedure

Participants were recruited through e-mails that briefly described the study and the requirements for participation. A total of 8,624 recruitment e-mails were sent to sophomore and junior undergraduate college students that were 18 years of age or older, U.S. citizens, and currently enrolled at one mid-western university. The 8,624 student e-mails were randomly divided into eight e-mail lists (this was done by the University’s Office of Information Technology in order to preserve participant anonymity), to correspond to the eight different conditions. Included in the e-mails was a link that routed participants to the on-line study. A total of 376 participants followed the link and began the survey; however, 73 survey responses were dropped due to incomplete surveys, leaving a total of 303 completed surveys. First, participants read and electronically signed an informed consent form (and were encouraged to print a copy for their records). Next, participants were routed to one of eight conditions of the survey. Then, each
participant completed the on-line survey which guided them through each section, which
included: (a) instructions to the participants, (b) a juror pre-trial questionnaire, (c) a brief
case description, (d) a description of the psychological expert witness, (e) a psychological
expert witness testimony transcript, (f) jury instructions, (g) a juror post-trial
questionnaire, and (h) the Modern Racism Scale (1986).

Once participants followed the link embedded in the recruitment e-mail and
electronically signed the informed consent form, they viewed the following web pages in
the order in which they are listed below:

Instructions to Participants

The first web page viewed by participants was an overview of what they were
being asked to do in the present study. Participants were instructed to imagine that they
were living in Indianapolis, Indiana and members of a jury reviewing a criminal case.
Participants were informed that they would complete a short pre-trial questionnaire, and
read a brief case description as well as a court transcript of an expert psychological
witness’s testimony. They were also informed they would be provided jury instructions
and the legal definitions of the charges brought against the defendant before rendering a
verdict. Participants were informed that the facts of the present case were based on an
actual criminal case. Furthermore, participants were led to believe that their verdicts
would be compared to the verdicts of the jurors who heard the original trial. The
deception in this study was minimal, because the facts of the criminal case used in this
study are loosely based on an actual trial. However, participant responses were not
compared to the original outcome of the trial. The deception was deemed necessary
because research has shown that participants’ knowledge that their decision has no
consequence can significantly affect the outcome of the study (Diamond & Zeisel, 1974; Wilson & Donnerstein, 1977).

Juror Pre-Trial Questionnaire

Participants provided relevant demographic information.

Brief Case Description

This was a summary of the fictional criminal case, entitled “United States District Court, Indianapolis Division Credit One vs. Defendant.” The arguments of both the prosecution and defense were presented, including each side’s version of what occurred on the day of the crime, the events that immediately followed the crime and the evidence that supported their respective arguments. Depending on the psychological expert witness testimony condition (racially relevant or not racially relevant) to which the participant was assigned, the second paragraph of the defense’s argument either provided a brief overview of the cross-race effect (in the racially relevant condition) or a brief overview of weapon focus (in the not racially relevant condition).

Description of the Psychological Expert Witness

This was a brief, one paragraph description of the psychological expert’s education and work experience. There were two different versions of the description. In one version, the expert witness was an African American male, named Tyrone Parker. In the other version, the expert witness was a Caucasian male, named Thomas O’Neill. Only the race and name of the expert witness were varied. The remainder of the description remained the same in both versions.
Psychological Expert Witness Testimony Transcript

A fictional four-page transcript of the expert witness testimony was created for this study. There were eight different versions of the transcript corresponding to the eight different combinations of race (Defendant: Black or White and Expert Witness: Black or White) and expert witness testimony (racially relevant or not racially relevant) conditions. In one version, the expert witness provided a racially relevant testimony on behalf of the defense testifying on the cross-race effect. In the other version, the expert provided a non-racially relevant testimony on behalf of the defense on the phenomenon of weapon focus.

Jury Instructions

This web page explained the functions of the court and the jury, which are part of Indiana Pattern Criminal Jury Instructions for the Seventh Circuit Judicial Council. Next, both charges and corresponding felony classifications were listed. Finally, the legal definitions of the two charges (Robbery and Battery) in the State of Indiana were provided.

Juror Post-Trial Questionnaire

Participants provided verdicts for the defendant and rated their perceptions of the defendant, victims, and psychological expert witness.

Modern Racism Scale (MRS) (McConahay, 1986)

Participants ranked their level of agreement or disagreement with modern racist beliefs.

Participants completed their surveys at their own pace. After participants completed the study, they were directed to a web page that thanked them for their
participation and asked them to submit their responses by selecting a button if they agreed to allow their responses to be used for the purposes of this study. Once participants submitted their survey responses, they were automatically directed to a separate web page that allowed them to enter their names and contact information into a drawing in order to win a cash prize.

Research Design

This study used a 2 (Defendant Race: Black or White) x 2 (Expert Witness Race: Black or White) x 2 (Expert Witness Testimony: racially relevant or not racially relevant) between-subjects, factorial design. This study examined the effects of the race of the defendant, the race of the expert witness, and the use of racially relevant testimony on juror decisions. In addition, the influences of two covariates (Modern Racism Scale Score and gender) were also investigated. The following hypotheses were explored in this study.

A forward logistic regression analysis was used to examine the first and second hypotheses in this study. A logistic regression analysis can be considered an extension of multiple regression analysis in situations in which the dependent variable is dichotomous, as in the present study (George & Mallery, 1999). The logistic regression analysis produces a regression equation that accurately predicts the probability of whether an individual will fall into one category (guilty verdict) or the other category (not guilty verdict) (Mertler & Vannatta, 2005).

Hypothesis 1: Participants with high scores on the Modern Racism Scale (MRS) (McConahay, 1986) are most likely to render a guilty verdict when both the defendant
and psychological expert witness are Black. This hypothesis was examined using a logistic regression analysis, which explored whether MRS scores, defendant race, and psychological expert witness race are significant predictors of mock juror verdict.

Hypothesis 2: Participants with high scores on the MRS are most likely to render a guilty verdict when the defendant is Black and the expert provides racially relevant testimony. This hypothesis was also examined using a logistic regression analysis in order to explore whether MRS scores, defendant race, and psychological expert testimony type (racially relevant or not racially relevant) are significant predictors of mock juror verdict.

A multivariate analysis of variance (MANOVA) was used to analyze the remaining two hypotheses. The MANOVA is used when analyzing more than one dependant variable, and when the dependant variables are correlated (Grimm & Yarnold, 1995). In both the third and fourth hypotheses of this study, one would expect participant ratings of the expert witness and defendant, respectively, to be correlated. Additionally, a MANOVA guards against the chance of committing a Type I error that can occur when doing multiple univariate analyses, and it takes into account the correlations between each of the dependant measures (Grimm & Yarnold, 1995).

Hypothesis 3: Participants will give the highest ratings — most positive (e.g., credibility, persuasiveness, importance, etc.) of the expert witness when he is White and provides non-racially relevant testimony, rather than racially relevant testimony. The lowest ratings of the expert witness will be when he is Black and provides a racially relevant testimony. To examine this hypothesis, a 2 x 2 MANOVA was used to assess
whether expert witness race (Black or White) and testimony type (racially relevant or not racially relevant) significantly affected participant ratings of the expert witness.

Hypothesis 4: The defendant will receive the highest ratings – most positive (e.g., type of person to commit crime, sympathy, pity, anger) when he is White, and a non-racially relevant defense is presented. The lowest ratings of the defendant will be when he is Black, and a racially relevant defense is presented. This hypothesis was also analyzed with a 2 x 2 MANOVA to assess whether defendant race and testimony type significantly affected participant ratings of the defendant.
CHAPTER IV

RESULTS

Preliminary Analyses

Correlations were computed between the measured variables in this study (see Table 1). The following coding scheme was adopted for this study: For race of the defendant and psychological expert witness, Black was coded “1” and White was coded “0.” For testimony type, non-racially relevant testimony was coded “0” and racially relevant testimony was coded “1.” For verdict, a not guilty verdict was coded “0” and guilty “1.” For participant gender, males were coded “1” and females “0.” Higher scores on the Modern Racism Scale indicated higher levels of modern racist beliefs.

Table 1 - Pearson Correlation Matrix of Independent Variables, Dependent Variables and Covariates

<table>
<thead>
<tr>
<th></th>
<th>Defendant Race</th>
<th>Expert Race</th>
<th>Testimony Type</th>
<th>MRS Total</th>
<th>Gender</th>
<th>Robbery Verdict</th>
<th>Battery Verdict</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defendant Race</td>
<td>-.014</td>
<td>-.059</td>
<td>-.099</td>
<td>.030</td>
<td>.003</td>
<td>-.038</td>
<td>-.064</td>
</tr>
<tr>
<td>Expert Race</td>
<td>-.036</td>
<td>.081</td>
<td>-.029</td>
<td>.049</td>
<td>.061</td>
<td>.052</td>
<td>.069</td>
</tr>
<tr>
<td>Testimony Type</td>
<td>-.059</td>
<td>-.036</td>
<td>-.099</td>
<td>.030</td>
<td>.003</td>
<td>-.038</td>
<td>-.064</td>
</tr>
<tr>
<td>MRS Total</td>
<td>.099</td>
<td>.081</td>
<td>.069</td>
<td>-.160**</td>
<td>-.092</td>
<td>-.154**</td>
<td>-.063</td>
</tr>
<tr>
<td>Gender</td>
<td>.030</td>
<td>-.029</td>
<td>.052</td>
<td>-.160**</td>
<td>-.092</td>
<td>-.154**</td>
<td>-.063</td>
</tr>
<tr>
<td>Robbery Verdict</td>
<td>.016</td>
<td>.049</td>
<td>.031</td>
<td>-.092</td>
<td>-.154**</td>
<td>-.122*</td>
<td>.739**</td>
</tr>
<tr>
<td>Battery Verdict</td>
<td>-.038</td>
<td>.064</td>
<td>.002</td>
<td>-.063</td>
<td>-.122*</td>
<td>.739**</td>
<td>-.063</td>
</tr>
</tbody>
</table>

* * p < .05, ** p < .01.
In addition, descriptive statistics were calculated for the participant demographic variables and dependant variables in the present study. These statistics are summarized in two tables below (see Tables 2 and 3).

**Table 2 - Summary Table: Participant Demographic Variables and Dependant Variables**

<table>
<thead>
<tr>
<th>Participant Race</th>
<th>Percent %</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian/Asian American</td>
<td>1.3</td>
<td>4</td>
</tr>
<tr>
<td>African American</td>
<td>4.3</td>
<td>13</td>
</tr>
<tr>
<td>Hispanic/Latino</td>
<td>3.3</td>
<td>10</td>
</tr>
<tr>
<td>Caucasian/White American</td>
<td>86.8</td>
<td>263</td>
</tr>
<tr>
<td>American Indian/Native American</td>
<td>0.7</td>
<td>2</td>
</tr>
<tr>
<td>Biracial</td>
<td>2.6</td>
<td>8</td>
</tr>
<tr>
<td>Other</td>
<td>1.0</td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Participant Gender</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>35.3</td>
<td>107</td>
</tr>
<tr>
<td>Female</td>
<td>64.7</td>
<td>196</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Participant Education</th>
<th>Mean</th>
<th>Mode</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than High School</td>
<td>.3</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>High School or GED</td>
<td>9.6</td>
<td>29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Some College</td>
<td>64.7</td>
<td>196</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Associate's Degree</td>
<td>19.8</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bachelor's Degree</td>
<td>3.3</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Graduate Degree</td>
<td>.3</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>2.0</td>
<td>6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Verdict - Robbery</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>⇒ Guilty</td>
<td>19.5</td>
<td>59</td>
</tr>
<tr>
<td>⇒ Not Guilty</td>
<td>80.5</td>
<td>244</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Verdict - Battery</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>⇒ Guilty</td>
<td>17.5</td>
<td>53</td>
</tr>
<tr>
<td>⇒ Not Guilty</td>
<td>82.5</td>
<td>250</td>
</tr>
</tbody>
</table>

**Table 3 - Summary Table: Participant Age and MRS Total Scores**

<table>
<thead>
<tr>
<th></th>
<th>Mean</th>
<th>Mode</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participant Age</td>
<td>21.86</td>
<td>20.00</td>
<td>18.00</td>
<td>58.00</td>
</tr>
<tr>
<td>MRS total score</td>
<td>14.41</td>
<td>14.00</td>
<td>7.00</td>
<td>31.00</td>
</tr>
</tbody>
</table>
All four hypotheses were examined. For the first hypothesis, a logistic regression analysis was used to determine if Modern Racism Scale scores (MRS scores), defendant race, and expert witness race are significant predictors of mock juror verdict. For the second hypothesis, a logistic regression analysis was also used to determine if MRS scores, defendant race, and testimony type are significant predictors of mock juror verdict. For the third hypothesis, participant ratings of the expert witness (e.g., credibility, persuasiveness, etc.) were analyzed using a 2 (Expert Race: Black, White) x 2 (Testimony type: Racially Relevant, Not Racially Relevant) multivariate analysis of variance (MANOVA). Finally, for the fourth hypothesis, participant ratings of the defendant (e.g., type of person to commit a crime, sympathy toward defendant, anger toward defendant, etc.) were analyzed using a 2 (Defendant Race: Black, White) x 2 (Testimony type: Racially Relevant, Not Racially Relevant) MANOVA. A total of 376 participants at least partially completed the surveys; however, 73 survey responses were dropped from the analyses due to incomplete surveys, leaving a total of 303 participants.

Primary Analyses

Hypotheses 1 and 2

For hypothesis one and two, forward logistic regression analyses were performed to identify which, if any, independent variables are significant predictors of mock juror verdict, the dependent variable. An alpha level of .05 was selected a priori for tests of significance. Logistic regression analysis is a technique used for the prediction of the probability of an occurrence of an event by fitting data to a logistic curve when the dependant variable is dichotomous. A logistic regression curve may be preferable to a
standard regression line when the dependant variable is dichotomous, as in the present study (Mertler & Vannatta, 2005). When the dependant variable is dichotomous, the assumptions of linearity, homogeneity of variance, and normality are violated. That is, the population means of the dependent variables at each level of the independent variable are not on a straight line; the variance of the errors are not constant; and the errors are not normally distributed (Howell, 2002). The logistic regression analysis produces a regression equation that accurately predicts the probability of whether an individual will fall into one category (guilty verdict) or the other category (not guilty verdict) (Mertler & Vannatta, 2005).

**Hypothesis 1: Verdict**

The first hypothesis investigated whether modern racist beliefs, defendant race, and psychological expert witness race are predictors of mock juror verdicts (guilty or not guilty), using a forward logistic regression. For this analysis, an interaction variable was created (Race Combined) by adding the defendant race and psychological expert witness race variables. These variables were added, rather than multiplied (as would be expected in the creation of an interaction variable) because the variables had previously been transformed from categorical variables to continuous variables through dummy coding. Regression results indicate that none of the hypothesized predictors (modern racist beliefs, defendant race, and psychological expert race) are statistically reliable in distinguishing between guilty and not guilty verdicts on the charge of robbery (-2 Log Likelihood = 295.622; $\chi^2(2) = 3.132$, $p = .209$) or on the charge of battery (-2 Log Likelihood = 279.667; $\chi^2(2) = 1.274$, $p = .529$). Wald statistics indicate that all hypothesized independent variables were poor predictors of verdict (see Tables 4 and 5).
Table 4 - Logistic Regression Coefficients – Hypothesis 1: Robbery Verdict

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>Wald</th>
<th>df</th>
<th>p</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>MRS Total Score</td>
<td>.043</td>
<td>2.535</td>
<td>1</td>
<td>.111</td>
<td>1.044</td>
</tr>
<tr>
<td>Race Combined</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Black Defendant</td>
<td>.168</td>
<td>.646</td>
<td>1</td>
<td>.422</td>
<td>1.183</td>
</tr>
<tr>
<td>+ Black Expert)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-2.218</td>
<td>21.040</td>
<td>1</td>
<td>.000</td>
<td>.109</td>
</tr>
</tbody>
</table>

*p < .05, **p < .01.

Table 5 - Logistic Regression Coefficients – Hypothesis 1: Battery Verdict

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>Wald</th>
<th>df</th>
<th>p</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>MRS Total Score</td>
<td>.031</td>
<td>1.194</td>
<td>1</td>
<td>.275</td>
<td>1.031</td>
</tr>
<tr>
<td>Race Combined</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Black Defendant</td>
<td>.069</td>
<td>.101</td>
<td>1</td>
<td>.751</td>
<td>1.071</td>
</tr>
<tr>
<td>+ Black Expert)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-2.070</td>
<td>17.442</td>
<td>1</td>
<td>.000</td>
<td>.126</td>
</tr>
</tbody>
</table>

*p < .05, **p < .01.

Hypothesis 2: Verdict

The second hypothesis examined whether modern racist beliefs, defendant race, and psychological expert witness testimony type (racially relevant or not racially relevant) are predictors of mock juror verdicts (guilty or not guilty), using a forward logistic regression. Regression results indicate that none of the hypothesized predictors (modern racist beliefs, defendant race, and psychological expert witness testimony type) are statistically reliable in distinguishing between guilty and not guilty verdicts on the charge of robbery (-2 Log Likelihood = 295.809; \( \chi^2(2) = 2.946, p = .400 \)) or on the charge of battery (-2 Log Likelihood = 279.160; \( \chi^2(2) = 1.780, p = .619 \)). Wald statistics indicate that all hypothesized independent variables are poor predictors of verdict (see Tables 6 and 7).
**Table 6 - Logistic Regression Coefficients – Hypothesis 2: Robbery Verdict**

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>Wald</th>
<th>df</th>
<th>p</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defendant Race</td>
<td>.045</td>
<td>.024</td>
<td>1</td>
<td>.878</td>
<td>1.046</td>
</tr>
<tr>
<td>Testimony Type</td>
<td>.196</td>
<td>.441</td>
<td>1</td>
<td>.506</td>
<td>1.217</td>
</tr>
<tr>
<td>MRS Total Score</td>
<td>.044</td>
<td>2.603</td>
<td>1</td>
<td>.107</td>
<td>1.045</td>
</tr>
<tr>
<td>Constant</td>
<td>-2.199</td>
<td>20.176</td>
<td>1</td>
<td>.000</td>
<td>.111</td>
</tr>
</tbody>
</table>

* p < .05, ** p < .01.

**Table 7 - Logistic Regression Coefficients – Hypothesis 2: Battery Verdict**

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>Wald</th>
<th>df</th>
<th>p</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defendant Race</td>
<td>-.236</td>
<td>.590</td>
<td>1</td>
<td>.443</td>
<td>.790</td>
</tr>
<tr>
<td>Testimony Type</td>
<td>.026</td>
<td>.007</td>
<td>1</td>
<td>.931</td>
<td>1.027</td>
</tr>
<tr>
<td>MRS Total Score</td>
<td>.033</td>
<td>1.368</td>
<td>1</td>
<td>.242</td>
<td>1.034</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.946</td>
<td>15.060</td>
<td>1</td>
<td>.000</td>
<td>.143</td>
</tr>
</tbody>
</table>

* p < .05, ** p < .01.

**Hypotheses 3 and 4**

A multivariate analysis of variance (MANOVA) was used to analyze the remaining two hypotheses. An alpha level of .05 was selected a priori for tests of significance. The MANOVA is used when analyzing more than one dependent variable, and when the dependent variables are correlated (Grimm & Yarnold, 1995). In both the third and fourth hypotheses of this study, one would expect participant ratings of the expert witness and defendant, respectively, to be correlated. That is, it is expected that mock jurors would rate the expert witness and defendant consistently, across domains (positively or negatively). Additionally, using a MANOVA, instead of separate univariate tests for each dependent variable, guards against the chance of committing a Type I error and it takes into account the correlations between each of the dependent measures (Grimm & Yarnold, 1995).
Taking the intercorrelations into account can provide a much richer multivariate analysis of data for two reasons. First, intercorrelations between outcome measures suggest that the measures may be partially redundant, a degree of conceptual overlapping. However, a MANOVA avoids this redundancy by taking the correlations between the dependant measures into consideration (Grimm & Yarnold, 1995). Second, a MANOVA can detect when groups differ on a system of variables (Huberty & Morris, 1989). That is, when dependant variables are taken individually, they may not show significant group differences. However, taken as a whole, as a system defining one or more theoretical constructs, differences caused by the independent variables may be revealed (Grimm & Yarnold, 1995).

Hypothesis 3: Ratings of the Expert Witness

The third hypothesis examined whether the psychological expert witness’s race and testimony type (racially relevant or not racially relevant) influenced mock juror perceptions of the psychological expert witness. To test this hypothesis, a 2 x 2 MANOVA was used to assess whether expert witness race (Black or White) and testimony type (racially relevant or not racially relevant) significantly affected participant ratings of the expert witness. Participants rated their perceptions of the expert witness’s educational qualifications, clinical experience, professional reputation, degree of ease and comfort on the stand, ability to explain technical terms clearly, his overall knowledge, and credibility. There were no significant main effects or interactions (see Table 8).
Table 8 - Summary of MANOVA Results of Expert Witness Race and Testimony Type on Perceptions (Ratings) of Expert Witness

<table>
<thead>
<tr>
<th></th>
<th>Λ</th>
<th>$F^a$</th>
<th>$df$</th>
<th>$p$</th>
<th>$\eta^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expert Witness Race</td>
<td>.953</td>
<td>1.44</td>
<td>1</td>
<td>.160</td>
<td>.047</td>
</tr>
<tr>
<td>Testimony Type</td>
<td>.950</td>
<td>1.52</td>
<td>1</td>
<td>.130</td>
<td>.050</td>
</tr>
<tr>
<td>Interaction</td>
<td>.959</td>
<td>1.22</td>
<td>1</td>
<td>.272</td>
<td>.041</td>
</tr>
</tbody>
</table>

$p < .05$, **$p < .01$. 

Hypothesis 4: Ratings of Defendant

The fourth hypothesis investigated whether defendant race and psychological expert witness testimony type (racially relevant or not racially relevant), influenced mock juror perceptions of the defendant. To test this hypothesis, a 2 x 2 MANOVA was used to assess whether defendant race and testimony type significantly affected participant ratings of the defendant. Participants rated the defendant on their perceptions of whether the defendant is the type of person to engage in the crimes in which he is accused, how likely it is that the defendant engaged in the crimes as well as their level of sympathy, pity, and anger toward the defendant. There were no significant main effects or interactions (see Table 9).
Table 9 - Summary of MANOVA Results of Defendant Race and Testimony Type on Perceptions of the Defendant

<table>
<thead>
<tr>
<th></th>
<th>Λ</th>
<th>$F^a$</th>
<th>df</th>
<th>p</th>
<th>$\eta^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defendant Race</td>
<td>.972</td>
<td>1.70</td>
<td>1</td>
<td>.135</td>
<td>.028</td>
</tr>
<tr>
<td>Testimony Type</td>
<td>.986</td>
<td>.815</td>
<td>1</td>
<td>.540</td>
<td>.014</td>
</tr>
<tr>
<td>Interaction</td>
<td>.982</td>
<td>1.11</td>
<td>1</td>
<td>.356</td>
<td>.018</td>
</tr>
</tbody>
</table>

*p < .05, **p < .01.

Post-Hoc Analyses

Due to a lack of statistically significant findings supporting the original hypotheses in this study and empirical support for the influence of demographic variables on juror decision-making (e.g., Boyll, 1991; Elkins & Phillips, 1999; Gowan & Zimmerman, 1996; Howard & Redering, 1983), post-hoc analyses were conducted to explore whether demographic variables other than those originally hypothesized play a significant role in predicting mock juror verdicts. In particular, participant race, age, gender and year in school were examined using a logistic regression analysis, along with the originally hypothesized independent variables (defendant race, psychological expert witness race, psychological expert witness testimony type, and modern racism scale scores).

On the charge of robbery, data screening led to the elimination of five outliers. Regression results indicate that the overall model of three predictors (modern racism scores, participant race, and participant gender) were statistically reliable in distinguishing between guilty and not guilty verdicts (-2 Log Likelihood = 276.494; $\chi^2(2)$ = 22.261, p = .004). The model correctly classified 81.2% of the cases. Regression
coefficients are presented in Table 10. Wald statistics indicate that all three of these variables significantly predict verdict.

A further investigation of the results reveals, on the charge of robbery, that as the MRS total score increases, so does the probability of a guilty verdict. That is, when the MRS score is increased by one point, the odds of a guilty verdict are multiplied by 1.081, p=.010. In addition, female participants are less likely to render a not guilty verdict (more likely to render a guilty verdict) than male participants. Specifically, female participants are 67% less likely to render a not guilty verdict than men. Finally, non-White participants are 69% less likely to render a not guilty verdict than White participants.

On the charge of battery, data screening led to the elimination of five outliers. Regression results indicate that the overall model of three predictors (modern racism scores, participant race, and participant gender) were statistically reliable in distinguishing between guilty and not guilty verdicts (-2 Log Likelihood = 265.636; $\chi^2(2) = 15.304, p = .053$). The model correctly classified 82.5% of the cases. Regression coefficients are presented in Table 11. Wald statistics indicate that all three of these variables significantly predict verdict. Similar to the findings on the charge of robbery, when the MRS score is increased by one point, the odds of a guilty verdict are multiplied by 1.063, p=.048. In addition, female participants are less likely to render a not guilty verdict (more likely to render a guilty verdict) than male participants. Specifically, female participants are 58% less likely to render a not guilty verdict than men. Finally, non-White participants are 62% less likely to render a not guilty verdict than White participants.
### Table 10 - Logistic Regression Coefficients – Full Model: Robbery Verdict

<table>
<thead>
<tr>
<th>Variable</th>
<th>B</th>
<th>Wald</th>
<th>df</th>
<th>p</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Testimony Type</td>
<td>.463</td>
<td>2.116</td>
<td>1</td>
<td>.146</td>
<td>1.589</td>
</tr>
<tr>
<td>Defendant Race</td>
<td>.059</td>
<td>.038</td>
<td>1</td>
<td>.846</td>
<td>1.061</td>
</tr>
<tr>
<td>Expert Race</td>
<td>.321</td>
<td>1.096</td>
<td>1</td>
<td>.295</td>
<td>1.378</td>
</tr>
<tr>
<td>MRS Total Score</td>
<td>.078</td>
<td>6.573</td>
<td>1</td>
<td>.010</td>
<td>1.081**</td>
</tr>
<tr>
<td>Participant Race (White vs. NonWhite)</td>
<td>-1.173</td>
<td>8.570</td>
<td>1</td>
<td>.003</td>
<td>.309**</td>
</tr>
<tr>
<td>Participant Gender</td>
<td>-1.098</td>
<td>8.830</td>
<td>1</td>
<td>.003</td>
<td>.333**</td>
</tr>
<tr>
<td>Participant Age</td>
<td>.001</td>
<td>.001</td>
<td>1</td>
<td>.971</td>
<td>1.001</td>
</tr>
<tr>
<td>Participant Year in School</td>
<td>-.026</td>
<td>.022</td>
<td>1</td>
<td>.881</td>
<td>.974</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.646</td>
<td>2.936</td>
<td>1</td>
<td>.087</td>
<td>.193</td>
</tr>
</tbody>
</table>

*p < .05, **p < .01.

### Table 11 - Logistic Regression Coefficients – Full Model: Battery Verdict

<table>
<thead>
<tr>
<th>Variable</th>
<th>B</th>
<th>Wald</th>
<th>df</th>
<th>p</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Testimony Type</td>
<td>.257</td>
<td>.633</td>
<td>1</td>
<td>.426</td>
<td>1.293</td>
</tr>
<tr>
<td>Defendant Race</td>
<td>-.266</td>
<td>.707</td>
<td>1</td>
<td>.401</td>
<td>.767</td>
</tr>
<tr>
<td>Expert Race</td>
<td>.402</td>
<td>1.627</td>
<td>1</td>
<td>.202</td>
<td>1.495</td>
</tr>
<tr>
<td>MRS Total Score</td>
<td>.062</td>
<td>3.920</td>
<td>1</td>
<td>.048</td>
<td>1.063*</td>
</tr>
<tr>
<td>Participant Race (White vs. NonWhite)</td>
<td>-.963</td>
<td>5.579</td>
<td>1</td>
<td>.018</td>
<td>.382*</td>
</tr>
<tr>
<td>Participant Gender</td>
<td>-.858</td>
<td>5.435</td>
<td>1</td>
<td>.020</td>
<td>.424*</td>
</tr>
<tr>
<td>Participant Age</td>
<td>.013</td>
<td>.200</td>
<td>1</td>
<td>.655</td>
<td>1.013</td>
</tr>
<tr>
<td>Participant Year in School</td>
<td>-.188</td>
<td>.952</td>
<td>1</td>
<td>.329</td>
<td>.829</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.289</td>
<td>1.708</td>
<td>1</td>
<td>.191</td>
<td>.275</td>
</tr>
</tbody>
</table>

*p < .05, **p < .01.

Correlations were computed between the independent variables in this study (defendant race, psychological expert race, psychological expert witness testimony type), a covariate (Modern Racism Scale scores) and the participant ratings of the expert witness (see Table 12). This post-hoc analysis was conducted to further explore the relationships between the independent variables, a covariate, and mock juror perceptions.
of the psychological expert witness. In this exploratory analysis, there were several significant findings.

Testimony Type

One of the characteristics on which participants rated the expert witness was their perception of his level of impressiveness or lack thereof on the witness stand. Testimony type and the expert witness’s level of impressiveness were significantly correlated $r = -.116$, $p < .05$ (see Table 12). That is, participants were more likely to rate the expert witness’s testimony as unimpressive when he provided a racially relevant testimony than when he provided a non-racially relevant testimony.

Modern Racism Scale Score

Participants’ MRS scores were significantly correlated with their ratings of the expert witness on four items. MRS scores correlated with mock jurors’ perceptions of the expert’s: (1) educational qualifications $r = .123$, $p < .05$, (2) professional reputation $r = .135$, $p < .05$, (3) professional manner/conduct on the witness stand $r = .165$, $p < .01$, and (4) expertise $r = .127$, $p < .05$ (see Table 12). That is, when participants had higher MRS scores, they were more likely to rate the expert witness as being poorly educationally qualified, having a poor professional reputation, having an unprofessional manner on the witness stand, and lacking knowledge in his field of expertise.
### Table 12 - Pearson Correlation Matrix of Independent and Dependant Variables (Ratings of Expert)

<table>
<thead>
<tr>
<th></th>
<th>DR</th>
<th>ER</th>
<th>TT</th>
<th>MR</th>
<th>EQ</th>
<th>CE</th>
<th>PR</th>
<th>WS</th>
<th>UM</th>
<th>EC</th>
<th>CK</th>
<th>PE</th>
<th>U</th>
<th>CT</th>
</tr>
</thead>
<tbody>
<tr>
<td>DR</td>
<td>-</td>
<td>.014</td>
<td>.059</td>
<td>.099</td>
<td>.039</td>
<td>.051</td>
<td>.079</td>
<td>.082</td>
<td>.057</td>
<td>.082</td>
<td>.087</td>
<td>.024</td>
<td>.039</td>
<td>.008</td>
</tr>
<tr>
<td>ER</td>
<td>-.014</td>
<td>-</td>
<td>-.036</td>
<td>-.081</td>
<td>-.058</td>
<td>-.026</td>
<td>-.103</td>
<td>-.032</td>
<td>-.048</td>
<td>-.024</td>
<td>-.087</td>
<td>-.025</td>
<td>-.055</td>
<td>.002</td>
</tr>
<tr>
<td>TT</td>
<td>-.059</td>
<td>-.036</td>
<td>-</td>
<td>-.059</td>
<td>-.123</td>
<td>-.056</td>
<td>-.135</td>
<td>-.096</td>
<td>-.165</td>
<td>-.127</td>
<td>-.094</td>
<td>-.268</td>
<td>-.092</td>
<td>-.052</td>
</tr>
<tr>
<td>MR</td>
<td>.099</td>
<td>-.081</td>
<td>-.059</td>
<td>-</td>
<td>-.330</td>
<td>-.063</td>
<td>.300</td>
<td>-.203</td>
<td>-.376</td>
<td>-.328</td>
<td>-.553</td>
<td>-.318</td>
<td>-.576</td>
<td>-.552</td>
</tr>
<tr>
<td>EQ</td>
<td>.039</td>
<td>.066</td>
<td>-.058</td>
<td>.123</td>
<td>-</td>
<td>.056</td>
<td>.500</td>
<td>.453</td>
<td>.346</td>
<td>.360</td>
<td>.553</td>
<td>-.318</td>
<td>.592</td>
<td>.490</td>
</tr>
<tr>
<td>CE</td>
<td>.051</td>
<td>.056</td>
<td>-.026</td>
<td>-.063</td>
<td>-.330</td>
<td>-</td>
<td>-.403</td>
<td>.453</td>
<td>-.376</td>
<td>-.328</td>
<td>-.318</td>
<td>-.576</td>
<td>-.454</td>
<td>-.443</td>
</tr>
<tr>
<td>PR</td>
<td>.079</td>
<td>.023</td>
<td>.008</td>
<td>.135</td>
<td>.500</td>
<td>-.403</td>
<td>-</td>
<td>-.299</td>
<td>-.526</td>
<td>-.490</td>
<td>-.490</td>
<td>-.592</td>
<td>-.454</td>
<td>-.443</td>
</tr>
<tr>
<td>WS</td>
<td>.082</td>
<td>.032</td>
<td>-.096</td>
<td>-.104</td>
<td>-.203</td>
<td>.453</td>
<td>-.299</td>
<td>-</td>
<td>-.433</td>
<td>-.318</td>
<td>-.576</td>
<td>-.454</td>
<td>-.443</td>
<td>-.443</td>
</tr>
<tr>
<td>UM</td>
<td>.057</td>
<td>-.048</td>
<td>-.031</td>
<td>.165</td>
<td>.346</td>
<td>-.376</td>
<td>.526</td>
<td>-.433</td>
<td>-</td>
<td>-.433</td>
<td>-.433</td>
<td>-.433</td>
<td>-.433</td>
<td>-.433</td>
</tr>
<tr>
<td>EC</td>
<td>.082</td>
<td>-.049</td>
<td>-.024</td>
<td>.127</td>
<td>.360</td>
<td>-.328</td>
<td>.490</td>
<td>-.490</td>
<td>-.490</td>
<td>-</td>
<td>-.490</td>
<td>-.490</td>
<td>-.490</td>
<td>-.490</td>
</tr>
<tr>
<td>CK</td>
<td>.024</td>
<td>.087</td>
<td>.025</td>
<td>.025</td>
<td>.000</td>
<td>.214</td>
<td>-.016</td>
<td>.255</td>
<td>.255</td>
<td>-.205</td>
<td>-</td>
<td>-.242</td>
<td>-.117</td>
<td>.242</td>
</tr>
<tr>
<td>U</td>
<td>.039</td>
<td>-.086</td>
<td>-.116</td>
<td>.057</td>
<td>.322</td>
<td>-.344</td>
<td>.348</td>
<td>-.310</td>
<td>.434</td>
<td>-.350</td>
<td>-.350</td>
<td>-.510</td>
<td>-.084</td>
<td>-</td>
</tr>
</tbody>
</table>
| CT  | .008| .014| .002| .050| .259| .525| .387| .438| .418| .499| .499| .453| .303| -.387| -

* * p < .05, ** p < .01.

DR – Defendant race, ER – Expert race, TT – Testimony type, MR – Modern Racism Scale total score, EQ – Poorly qualified educationally, CE – Great deal of clinical experience, PR – Poor professional reputation, WS – Comfortable on witness stand, UM – Awkward and unprofessional manner, EC – Explained technical terms clearly, CK – Inspired little confidence in his knowledge, PE – Conducted a thoroughly professional evaluation of the defendant, U – Unimpressive as judged by the transcript, CT – Credible and trustworthy.
The present study examined factors that may influence verdict outcome when a psychological expert witness testifies on behalf of the defense. Specifically, this study examined the role of defendant race, psychological expert witness race, testimony type of a psychological expert witness (racially relevant or not racially relevant), and modern racism on mock juror verdicts. Additionally, this study examined factors that may influence juror perceptions of a psychological expert witness and defendant. This study is important, as evidenced by the enduring systemic racial bias in the treatment of Blacks in the criminal justice system in this country, with Blacks being disproportionately incarcerated in jails and prisons (Coker, 2003; Harrison & Karberg, 2003; U.S. Department of Health & Human Services, 2001) and receiving harsher penalties (e.g., longer sentences and more likely to receive death penalty) than White Americans (Coker, 2003; Costanzo, 1997; Paternoster, 1983).

The first hypothesis predicted that participants with high scores on the Modern Racism Scale (MRS) (McConahay, 1986) would be most likely to render a guilty verdict when both the defendant and psychological expert witness were Black. This hypothesis was not supported. The second hypothesis predicted that participants with high scores on the MRS would be most likely to render a guilty verdict when the defendant was Black and the expert witness provided racially relevant testimony. This hypothesis was not supported. The third hypothesis anticipated that participants would give the most positive ratings of the expert witness when he was White and provided non-racially
relevant testimony, rather than racially relevant testimony. The most negative ratings of
the expert witness were anticipated when he was Black and provided a racially relevant
testimony. While this hypothesis was not directly supported, there was support for both
testimony type (racially relevant or not racially relevant) and MRS scores significantly
influencing mock juror perceptions (ratings) of the psychological expert witness. Finally,
the fourth hypothesis predicted that mock jurors would give the most positive ratings of
the defendant when he was White, and a non-racially relevant defense was presented.
The most negative ratings of the defendant were anticipated when he was Black, and a
 racially relevant defense was provided on his behalf. This hypothesis was also not
 supported.

Hypothesis 1: Verdict

Defendant race, expert witness race and Modern Racism Scale (MRS) scores did
not serve as significant predictors of verdict as hypothesized. It was expected that
participants with high MRS scores would be most likely to render a guilty verdict when
both the defendant and expert witness were Black. Regression results indicated that none
of the hypothesized predictors (modern racism scale scores, defendant race, and
psychological expert race) are statistically reliable in distinguishing between guilty and
not guilty verdicts on the charges of robbery and battery.

Hypothesis 2: Verdict

Defendant race, expert witness testimony type and MRS scores did not serve as
significant predictors of verdict as hypothesized. It was originally anticipated that
participants with high MRS scores would be most likely to render a guilty verdict when
the defendant is Black and the expert witness testifies on a racially relevant topic. Regression results indicated that none of the hypothesized predictors (modern racist beliefs, defendant race, and psychological expert witness testimony type) are statistically reliable in distinguishing between guilty and not guilty verdicts on the charges of robbery and battery.

Hypothesis 3: Ratings of the Expert Witness

The manipulation of expert witness race and the expert witness’s testimony type did not significantly effect mock jurors’ perceptions of the expert witness. It was originally predicted that participants would give the most positive ratings of the expert witness when he was White and provided non-racially relevant testimony. The lowest ratings of the expert witness were expected when he was Black and provided racially relevant testimony. While these results are inconsistent with earlier research that demonstrated jurors’ racial bias toward defense attorneys increased their attributions of guilt toward the defendant (e.g., Boliver, 1999; Cohen & Peterson, 1981; Mixon, Foley, & Orne, 1995), it is similar to research that explored the effects of expert witness race on the perceptions of the expert. For instance, Memon and Shuman (1998) found no evidence of racial bias in the perceptions of the expert witness in their study, and in fact, they found that mock jurors rated the Black female expert as the most persuasive out of all the race-gender combinations (e.g., White male, Black male, White female, Black female). In addition, Miyatake (1999) found no significant differences in ratings of credibility and effectiveness of the expert witness when he was White, Black or Asian.
While the original hypotheses were not supported regarding the mock jurors’ perceptions of the expert witness, significant correlations were found between independent variables (testimony type and Modern Racism Scale scores) and mock juror perceptions of the expert witness. First, testimony type and mock juror perceptions of the expert witness’s level of impressiveness were significantly correlated. That is, mock jurors were more likely to rate the expert witness’s testimony as unimpressive when he provided racially relevant testimony than when he provided a non-racially relevant testimony. Second, MRS scores significantly correlated with mock jurors’ perceptions of the expert’s educational qualifications, professional reputation, professional manner/conduct on the witness stand, and expertise. That is, when mock jurors had higher MRS scores, they were more likely to rate the expert witness as being poorly educationally qualified, having a poor professional reputation, having an unprofessional manner on the witness stand, and lacking knowledge in his field of expertise.

Hypothesis 4: Ratings of the Defendant

Defendant race and testimony type did not significantly effect mock jurors’ perceptions of the defendant. It was hypothesized that participants would give the most positive ratings of the defendant when he was White, and the expert witness’s testimony was not racially relevant. Conversely, the lowest ratings of the defendant were expected when he was Black and the expert witness provided racially relevant testimony. However, there was no support for this hypothesis.
Other Findings

Gender. Participant gender was not originally hypothesized to play an important mediating role in predicting verdict, as studies with similar designs to the present investigation did not find gender to be a significant predictor of verdict (e.g., Cohen & Peterson, 1981; Memon & Shuman, 1998, etc.). However, in the present study, female participants were less likely to render a not guilty verdict (more likely to render a guilty verdict) than male participants on both charges of robbery and battery. This result is similar to prior research with jurors in both civil (e.g., Elkins & Philips, 1999; Gowan & Zimmerman, 1996; Griffith, Libkuman, Dodd, Shafir, & Dickinson, 2002) and criminal (e.g., Ugwuegbu, 1979) cases which has demonstrated a consistent gender difference in which female jurors tend to consider victims more leniently and defendants more harshly in cases involving crimes against women. Similarly, in the present study, the most severely injured victim during the commission of the robbery was female. (The female victim was shot in the head and chest, lost an eye, and needed to undergo extensive rehabilitation to regain normal usage of her limbs.)

In another study that explored gender differences within the context of the insanity defense, researchers found that female mock jurors considered the defendants more dangerous than male mock jurors (Breheney, Groscup, & Galietta, 2007). However, empirical findings have been inconsistent regarding whether women are more conviction prone universally, with some research reporting support for this idea (e.g., Nagao & Davis, 1980), but others not finding such support (e.g., Villemur & Hyde, 1983).
There is also some research that suggests there may be an interaction between race and gender in juror decision-making. Dean, Wayne, Mack and Thomas (2000) found support for this idea in a study in which they evaluated the roles of both plaintiff and defendant race and gender on judgments of criminal guilt in either an assault or theft case. They found that female participants in the study were more likely than male participants to find defendants guilty of a crime when the victim was White. Similarly, in the brief case descriptions used in the present study, the victims that were violently assaulted were of a different race than the defendant. That is, when the defendant was Black, the victims that were violently assaulted were White. Thus, the race of the victims may have influenced White female participant verdict decisions.

**Participant Race.** A surprising finding in the present study was that non-White participants were less likely to render a not guilty verdict than White participants on both charges of robbery and battery. This finding is contrary to the anticipated results. However, it is important to note that the non-White sample was relatively small in comparison to the White sample (40 non-White participants versus 263 White participants) in this study. Therefore, the small non-White sample may render a comparison between the two groups inappropriate. Furthermore, the non-White comparison group consists of diverse participants, with widely varying racial and ethnic backgrounds. Therefore, it may be erroneous to attempt to place these diverse individuals in one category and make a meaningful interpretation about this heterogeneous group.

The lack of guilty verdicts rendered by the White participants in the present study is consistent with some other studies that have found no consistent evidence of racial
prejudice in White jurors' decision making. For instance, Mazzella and Feingold (1994) concluded that Black defendants are no more likely than White defendants to be found guilty in their meta-analysis of 29 studies on racial bias in juror decision-making. However, these results seem irreconcilable with the racial disparities in incarceration rates and sentencing between White and Black defendants that persist within the criminal justice system (Coker, 2003; Harrison & Karberg, 2003; U.S. Department of Health & Human Services, 2001). Sommers & Ellsworth (2000) suggest that racial prejudice and discrimination still exist; however, the manifestation of this racial bias has changed. That is, according to modern racism theory, Whites are motivated to appear nonprejudiced. Furthermore, as the participants in this study recognized that their verdicts did not have any actual consequences for any defendant or victim, White participants may have been more concerned with their social desirability rather than rendering a verdict that was consistent with their beliefs.

For instance, Memon and Shuman (1998) conducted a study that explored the influence of expert race and gender on juror decision-making in a civil dispute. Both the race and gender were manipulated of a medical expert that testified on behalf of a doctor being sued for medical malpractice (e.g., Expert conditions: White male, Black male, White female, Black female). Participants rated the Black female expert as the most persuasive out of all of the race-gender combinations, yet the Black female expert's testimony did not appear to influence their verdict. This may suggest that participants may have been attempting to avoid rating the expert in the biased manner. That is, despite the high level of persuasiveness that White participants reported about the Black expert, it did not persuade participants in their verdict decision. Similarly, in the present
study, there may be a disconnect between the attempts of White participants to appear nonprejudiced through their verdicts in this artificial situation, and the verdicts they may render when there are real consequences for both the defendant and victim.

Lack of Significance of Hypotheses

Testimony Type

Two of the four original hypotheses proposed that manipulating both the testimony type of the expert witness (racially relevant or not racially relevant) in addition to the race of the expert witness (hypothesis three) and defendant (hypothesis four) would significantly influence jurors' perceptions of both these individuals. Neither of these hypotheses were supported. Prior (e.g., Sommers & Ellsworth, 2000) studies have demonstrated that White jurors may be motivated to appear nonprejudiced when racial issues are salient, which may account for the lack of significance in the racially relevant conditions. However, this does not account for the results in the non-racially relevant conditions. This may better be explained by studies (e.g., Hill & Pfeifer, 1992; Pfeifer & Ogloff, 1991; Sargent & Bradfield, 2004) that suggest racial bias is most likely to influence White jurors' decision-making in the absence of evidentiary information or ambiguous circumstances. That is, according to modern racism theory, jurors are more likely to act on racist beliefs if they can be justified along non-racial grounds (Pfeifer & Ogloff, 1991). Ambiguity or a lack of evidentiary information can allow jurors to make prejudicial judgments based on seemingly nonracial grounds (i.e., their perceptions of the facts of the case).
Two studies (Hill & Pfeifer, 1992; Pfeifer & Ogloff, 1991) found that by simply including jury instructions, verdict differences between White and Black defendants were eliminated. Furthermore, Sargent and Bradfield (2004) found when the evidence strongly supported the defense’s case; there was no significant racial bias in verdicts between White and Black defendants. Instead, racial bias was most evident when the defendant’s alibi (defense evidence) was weak. In the present study, jury instructions, prosecution and defense arguments, as well as expert witness testimony were provided. One or a combination of these factors may have provided enough information to jurors to remove racial bias from their decision-making.

Modern Racism Scale (McConahay, 1986)

The remaining two original hypotheses predicted that jurors with high scores on the Modern Racism Scale (MRS) were most likely to render guilty verdicts when both the defendant and expert witness are Black (hypothesis one), and when the expert’s testimony is racially relevant (hypothesis two). Neither of these hypotheses were supported.

Limitations/Directions for Future Research

There are several limitations to the current study, which may inform future research. While there is empirical support for the reliability and validity of the Modern Racism Scale (MRS) (e.g., McConahay, 1983; 1986; McConahay, Hardee, & Batts, 1981), an explicit measurement of racial attitudes, there are a growing number of studies that suggest that the validity of the MRS may be diminishing. Neuger (2002) suggests that because the items on the MRS are not racially neutral, the items may be more
reactive than McConahay believes, leading respondents to censure their responses in a non-racist direction that is more consistent with today's politically correct ideals. Furthermore, there may have been enough change in racial attitudes between the time of the original validation studies of this measurement and the present, which may actually render some of the items invalid today. In Migetz's (2004) dissertation research, in which she had participants make decisions about whether to hire applicants for a human resource position while varying the race of the applicants, she found the MRS to be a weak contributor to the prediction of racist behavioral responses (i.e., in hiring decisions). Another study (Cunningham, Preacher, & Banaji, 2001) found that participants who revealed strong pro-White attitudes on implicit measures, reported disagreement with explicit statements of prejudice and negative beliefs about Black Americans on the MRS. Similarly, Boniecki and Jacks (2002) found that the MRS did not correlate with measures of implicit prejudice.

While the MRS is not believed to be an invalid instrument, it may be time for new validation studies on the scale, perhaps updating some of the items, making them more consistent with current modern racist beliefs. In addition, future use of the MRS may benefit from pairing it with a more open-ended measure rather than only relying on the forced choice responses on the MRS. For instance, in the present study, when participants had the opportunity to provide feedback and comments on the survey, many participants expressed very hostile feelings about the use of a racially relevant defense. However, despite many participants' hostile reactions to this condition, these feelings did not always translate into behavioral responses (i.e., verdict decisions). Therefore, a future
Another limitation to the current study is the use of convenience sampling, which limits the generalizability of the results. That is, all of the participants were sophomore and junior college students enrolled at one mid-western state university. According to the university website, over 91% of the students currently enrolled are from within the state. Therefore, the participant pool was limited by its geographical representation. This may be important because racial attitudes may vary by geographic region. In addition, the participant pool was limited by age, as the average participant age was 21.87 years old. College students may express fewer racist attitudes than older individuals that remember a time in which the expression of overt racist attitudes was acceptable. Furthermore, the limited life experiences and familiarity with the legal system of these participants may also limit the generalizability of these findings. For instance, several participants made comments on their surveys indicating that they did not believe that someone could be sent to prison with eyewitness identification being the only evidence linking the defendant to the crime scene. Unfortunately, this does occur within the legal system, as the scenario used in this particular study was based on an actual case. Thus, some of the participants' disbelief about the likelihood of the scenario used in this study may have influenced their decision-making. In addition, the sample used in this study was predominantly White, with only minimal representation from other racial and ethnic groups. Therefore, these results are not generalizable to other racial and ethnic minority groups. In an effort to increase generalizability, future research needs to include a sample with greater diversity.
As in all research on juror decision-making, there are limitations to this study due to its experimental nature. That is, mock jurors recognize that their verdict decisions do not carry consequences for an actual defendant, which may have influenced the amount of time that participants took to review the trial documents and render a verdict. Also, mock jurors made individual decisions in this study about their verdicts. However, in an actual trial, mock jurors would deliberate with other jurors that may influence or sway their final verdict decision. In short, it is always important to note the limitations of experimental research on juror decision-making before attempting to generalize the results to actual legal situations.

Conclusion

The results of this study indicated that participant modern racism scale scores, participant race, and participant gender all served as significant predictors of mock juror verdicts. However, the influence of these variables on verdict preference is not necessarily straightforward or predictable. This suggests that further research needs to explore exactly how and why this is occurring. This is important because current estimates are that less than two percent of cases go to trial, meaning that cases that do reach trial are often evidentially close, emotionally charged, high risk or high stake (Boyll, 1991). It is in these cases that non-evidentiary factors, such as emotions and demographic variables, may be crucial to the outcome of the trial. Furthermore, given the racial disparities in incarceration rates and sentencing between White and Black defendants (Coker, 2003; Harrison & Karberg, 2003; U.S. Department of Health & Human Services, 2001), it is evident that racial bias is, in fact, influencing the juror

92
decision-making process. Ultimately, future research needs to extend beyond exploring whether racial bias is present in juror decision-making, and begin to investigate ways to redress it in legal settings.
REFERENCES


Frye v. United States. 293 F.1013 (DC Cir. 1923).


*United States v. Amaral.* 488 F.2d 1148 (9th Cir. 1973).


Appendix A

Human Subjects Institutional Review Board Approval Letter
Date: June 18, 2007

To: Lornie Duncan, Principal Investigator
   Lily Munzavu, Student Investigator for dissertation

From: Amy Naugle, Ph.D., Chair

Re: HSIRB Project Number: 07-05-25

This letter will serve as confirmation that your research project entitled "Juror Decision-Making in a Criminal Case" has been approved under the exempt category of review by the Human Subjects Institutional Review Board. The conditions and duration of this approval are specified in the Policies of Western Michigan University. You may now begin to implement the research as described in the application.

Please note that you may only conduct this research exactly in the form it was approved. You must seek specific board approval for any changes in this project. You must also seek reapproval if the project extends beyond the termination date noted below. In addition if there are any unanticipated adverse reactions or unanticipated events associated with the conduct of this research, you should immediately suspend the project and contact the Chair of the HSIRB for consultation.

The Board wishes you success in the pursuit of your research goals.

Approval Termination: June 18, 2008
Appendix B

Informed Consent Form
Informed Consent Form

You have been invited to participate in a research project entitled “Juror Decision-Making in a Criminal Case.” This research is intended to examine how potential jurors interpret case information and reach a verdict. This project is Lily C. Munavu’s dissertation research.

You must be a Western Michigan University student to participate in this study. If you decide to participate in this study, your involvement will take no more (and may take less) than 40 minutes of your time. You will be asked to read several case related items and complete three questionnaires. Following brief instructions, the first questionnaire for you to complete is a short demographic survey that is similar to one you might complete if you were a member of an actual juror pool. Next, you will read a summary of a court case, background information on the expert witness in this case, a transcript of the expert witness’s testimony, and a set of jury instructions for you to carefully review. After reading these case materials, you will be asked to complete the last two questionnaires. The first questionnaire asks you to decide on a verdict in this case as well as respond to a series of questions about the case. The second questionnaire asks about your social attitudes, in general. Once you have read and completed all three questionnaires, you will be given the opportunity to enter into a cash prize drawing.

As in all research, there may be unforeseen risks to the participant. One potential risk of participation in this project is that you may be upset by the content of the criminal case. If so, you may seek help in dealing with your feelings at Western Michigan University’s Counseling and Testing Center, 2513 Faunce Student Services Building, Kalamazoo, MI 49008, (269) 378-1850.

The benefits of participating in this study include learning firsthand how psychological research is conducted as well as learning some information about our legal system and the juror decision-making process. Furthermore, your participation in this study may contribute to the general body of literature on our understanding of the juror decision-making process.

All information collected from you is anonymous. Software will be used to de-identify the e-mail addresses associated with responses. Furthermore, no IP addresses will be collected; therefore, there is no identifying information collected. However, there are potential limits to privacy and anonymity associated with participating in Internet research. For instance, when using a public computer to submit your responses, there is the possibility that others around you can view your responses on the computer monitor or that the history of your web use on a computer may be recorded. In addition, if you are using a computer at a workplace that monitors your e-mails and Internet activities, your responses may not be entirely confidential. Thus, you may want to be mindful of the location in which you are participating in this study. Furthermore, it is recommended that you close your browser after completing the survey when using a public computer.
All data collected will be retained for approximately seven years in a locked file in the principal investigator's office.

You may refuse to participate or quit at any time during the study without prejudice or penalty. If you have any questions or concerns about this study, you may contact either Dr. Lonnie Duncan at (269) 387-5152 or Lily Munavu at (269) 599-6283. You may also contact the Chair of the Human Subjects Institutional Review Board at (269) 387-8293 or the Vice President for Research at (269) 387-8298 if questions or problems arise during the course of the study.

Human Subjects Institutional Review Board (HSIRB) approval on June 18, 2007. Do not participate in this study after June 18, 2008.

Clicking below indicates that you have read the description of the study and agree to participate.
Appendix C

Instructions to Participants
Instructions to Participants

Imagine that you are currently living in Indianapolis, Indiana and have been selected for jury duty. You are being asked to review a criminal case that is based on the events of an actual criminal trial; however, all names and identifying information have been changed. Your verdict will be compared to the verdicts of the jurors who heard the original trial. Your task is to complete a short pre-trial questionnaire, similar to the voir dire you may encounter during jury selection. Next, you are asked to read a brief case description and court transcript of an expert psychological witness. Then you will be provided jury instructions, which include a legal definition of the charges brought against the defendant. Following your careful review of the case materials, you will be asked to complete a questionnaire in which you will render a verdict.

You will be reviewing a criminal trial in which the defendant is charged with one count of Robbery and one count of Battery. Please review all of the evidence carefully before making a decision about the guilt or innocence of the defendant.
Appendix D

Juror Pre-Trial Questionnaire
Juror Pre-Trial Questionnaire

Age _______

Gender (please check one):
   _____ Male
   _____ Female

Race/Ethnicity (please check one):
   _____ Asian/Asian American/Pacific Islander
   _____ Black/African American
   _____ Hispanic/Latino
   _____ White/Caucasian/European, not Hispanic
   _____ American Indian/Native American
   _____ Biracial (parents from two different racial groups)
   _____ Other (please write in):

Highest Level of Education (please check one):
   _____ Less than high school
   _____ High school diploma or GED
   _____ Some college (did not complete)
   _____ Associate’s Degree
   _____ Bachelor’s Degree
   _____ Graduate Degree
   _____ Other (please write in):

Are you a citizen of the United States?
   _____ Yes
   _____ No

Are you able to communicate in English?
   _____ Yes
   _____ No

Are you suffering from a physical or mental disability that prevents you from performing your duties as a juror in a satisfactory manner?
   _____ Yes
   _____ No

Are you under guardianship because of mental incapacity?
   _____ Yes
   _____ No
Have you been convicted of a felony?

____ Yes

____ No

If "Yes," have your Civil Rights been restored by a Certificate of Rehabilitation or Pardon?

____ Yes

____ No

Are you a law enforcement officer?

____ Yes

____ No

Have you ever served previously as a member of a trial jury?

____ Yes

____ No

If "Yes," please describe (briefly) the type of case (e.g., civil or criminal) and the outcome of the trial.

____________________________________________________________

Do you believe a defendant is innocent until proven guilty?

____ Yes

____ No
Brief Case Description: Black Defendant-Black Expert

Prosecution’s Case:

On August 5, 2000, at approximately 2:00 p.m. three men robbed Credit One, a credit and lending institution in Indianapolis, Indiana. During the robbery, one of the creditor’s employees, Wilma Thompson, a 42-year-old Caucasian female, was shot in the chest and head. Although she survived the attack, she lost her left eye and had to undergo extensive rehabilitation to regain normal usage of her limbs and speaking ability. Ms. Thompson’s boss, Charles Anderson, a 59-year-old Caucasian male, was assaulted, and a Credit One customer, Roberta Walker, a 63-year-old African-American female, was robbed. A set of fingerprints was left at the scene, which belonged to a 25-year-old African-American male named Eric Chapman. After Chapman’s arrest, he revealed the names of his two African-American male accomplices, 27-year-old James Smith and Smith’s cousin, whom he had only met a few months before the robbery, and knew him only as “Lamont.” However, he was able to provide police with an address where he believed “Lamont” to live. Police were unable to locate “Lamont” at the provided address; however, they arrested a 16-year-old African-American male named Lamont Jackson, fitting a similar description, at a nearby address. The shooting victim, Ms. Thompson, and her boss, Mr. Anderson, identified Mr. Jackson as the shooter during the robbery. Furthermore, James Smith, one of the accomplices in the robbery, identified Mr. Jackson as the shooter and agreed to testify against him.

Defense’s Case:

Lamont Jackson maintains his innocence and insists that he was not involved in the robbery. On August 5, 2000, from 1:00 p.m. to 4:00 p.m., several friends and relatives corroborate his story that he was playing ball with them and will testify on his behalf. Eric Chapman, the first accomplice arrested in connection with the crime who told police that “Lamont” was the third accomplice, was adamant with the police that they arrested the wrong guy when he saw 16-year-old Lamont Jackson. Furthermore, against the advice of his attorney, Mr. Chapman will be testifying on behalf of Jackson’s defense that he was in no way involved with the robbery. James Smith, the second accomplice in the robbery, who agreed to testify against Mr. Jackson, will be receiving a sentence reduction in exchange for his testimony. Furthermore, Mr. Smith failed a polygraph test on whether his version of the crime was true and continues to deny that he even has a cousin named “Lamont.” Roberta Walker, the customer in the bank at the time of the robbery, was certain that Mr. Jackson was not the third accomplice in the bank robbery. Ms. Walker has known Mr. Jackson since he was a child and will testify in his defense.

Manipulation:

Racially Relevant Expert Witness Testimony = Present
There is an increasing body of evidence that demonstrates the inherent unreliability of eyewitness identification (e.g., Kassin, Ellsworth, & Smith, 1994; Malpass & Kravitz, 1987; Wells & Murray, 1984, etc.). Many factors have been shown to undermine an eyewitness’s ability to make an accurate identification after the commission of a crime. One such factor that has consistently impaired the accuracy of identification is a cross-racial identification (also referred to as the cross-race effect) (Malpass & Kravitz, 1987). In this particular case, both of the eyewitnesses that identified Lamont Jackson as the shooter, Wilma Thompson and Charles Anderson, are White, while the defendant, Mr. Jackson, is African-American. According to the cross-race effect, the White eyewitnesses in this case are significantly more likely to falsely identify an African-American face than a White face. Furthermore, there is evidence to suggest that individuals are much more likely to be able to accurately identify an own-race face compared to an other-race face (Meissner & Brigham, 2001). In this case, the one African-American eyewitness, Roberta Walker, insists that Mr. Jackson was not the third accomplice. According to the cross-race effect, Ms. Walker’s eyewitness account is much more likely to be accurate, as it pertains to making a same-race identification, than the cross-racial identifications made by the two White eyewitnesses.

The defense has called an expert witness to testify about cross-racial identification. The following is a transcript of the expert witness’s testimony.

Racially Relevant Expert Witness Testimony = Absent

There is an increasing body of evidence that demonstrates the inherent unreliability of eyewitness identification (e.g., Kassin, Ellsworth, & Smith, 1994; Malpass & Kravitz, 1987; Wells & Murray, 1984, etc.). Many factors have been shown to undermine an eyewitness’s ability to make an accurate identification after the commission of a crime. One such factor that has consistently impaired the accuracy of identification is a phenomenon called weapon focus. Weapon focus refers to a witness’s attention being focused on a weapon, if present, during the commission of a crime. Therefore, the witness gives less attention to other factors during a crime, such as the physical features and clothing of the perpetrator. As a result, the witness’s ability to accurately recall details about the perpetrator and environment are reduced (Kramer, Buckhout, & Eugenio, 1990; Loftus, Loftus, & Messo, 1987; Steblay, 1992). In this case, not only was a weapon present, but also it was an imminent threat, as one of the witnesses was shot twice. Therefore, one would expect that the witnesses’ ability to accurately identify the perpetrators would be reduced.

The defense has called an expert witness to testify on the phenomenon of weapon focus. The following is a transcript of the expert witness’s testimony.
Appendix F

Brief Case Description: Black Defendant-White Expert
Brief Case Description: Black Defendant-White Expert

Prosecution's Case:

On August 5, 2000, at approximately 2:00 p.m., three men robbed Credit One, a credit and lending institution in Indianapolis, Indiana. During the robbery, one of the creditor's employees, Wilma Thompson, a 42-year-old Caucasian female, was shot in the chest and head. Although she survived the attack, she lost her left eye and had to undergo extensive rehabilitation to regain normal usage of her limbs and speaking ability. Ms. Thompson's boss, Charles Anderson, a 59-year-old Caucasian male, was assaulted, and a Credit One customer, Roberta Walker, a 63-year-old African-American female, was robbed. A set of fingerprints was left at the scene, which belonged to a 25-year-old African-American male named Eric Chapman. After Chapman's arrest, he revealed the names of his two African-American male accomplices, 27-year-old James Smith and Smith's cousin, whom he had only met a few months before the robbery, and knew him only as "Lamont." However, he was able to provide police with an address where he believed "Lamont" to live. Police were unable to locate "Lamont" at the provided address; however, they arrested a 16-year-old African-American male named Lamont Jackson, fitting a similar description, at a nearby address. The shooting victim, Ms. Thompson, and her boss, Mr. Anderson, identified Mr. Jackson as the shooter during the robbery. Furthermore, James Smith, one of the accomplices in the robbery, identified Mr. Jackson as the shooter and agreed to testify against him.

Defense's Case:

Lamont Jackson maintains his innocence and insists that he was not involved in the robbery. On August 5, 2000, from 1:00 p.m. to 4:00 p.m., several friends and relatives corroborate his story that he was playing ball with them and will testify on his behalf. Eric Chapman, the first accomplice arrested in connection with the crime who told police that "Lamont" was the third accomplice, was adamant with the police that they arrested the wrong guy when he saw 16-year-old Lamont Jackson. Furthermore, against the advice of his attorney, Mr. Chapman will be testifying on behalf of Jackson's defense that he was in no way involved with the robbery. James Smith, the second accomplice in the robbery, who agreed to testify against Mr. Jackson, will be receiving a sentence reduction in exchange for his testimony. Furthermore, Mr. Smith failed a polygraph test on whether his version of the crime was true and continues to deny that he even has a cousin named "Lamont." Roberta Walker, the customer in the bank at the time of the robbery, was certain that Mr. Jackson was not the third accomplice in the bank robbery. Ms. Walker has known Mr. Jackson since he was a child and will testify in his defense.

Manipulation:

Racially Relevant Expert Witness Testimony = Present
There is an increasing body of evidence that demonstrates the inherent unreliability of eyewitness identification (e.g., Kassin, Ellsworth, & Smith, 1994; Malpass & Kravitz, 1987; Wells & Murray, 1984, etc.). Many factors have been shown to undermine an eyewitness’s ability to make an accurate identification after the commission of a crime. One such factor that has consistently impaired the accuracy of identification is a cross-racial identification (also referred to as the cross-race effect) (Malpass & Kravitz, 1987). In this particular case, both of the eyewitnesses that identified Lamont Jackson as the shooter, Wilma Thompson and Charles Anderson, are White, while the defendant, Mr. Jackson, is African-American. According to the cross-race effect, the White eyewitnesses in this case are significantly more likely to falsely identify an African-American face than a White face. Furthermore, there is evidence to suggest that individuals are much more likely to be able to accurately identify an own-race face compared to an other-race face (Meissner & Brigham, 2001). In this case, the one African-American eyewitness, Roberta Walker, insists that Mr. Jackson was not the third accomplice. According to the cross-race effect, Ms. Walker’s eyewitness account is much more likely to be accurate, as it pertains to making a same-race identification, than the cross-racial identifications made by the two White eyewitnesses.

The defense has called an expert witness to testify about cross-racial identification. The following is a transcript of the expert witness’s testimony.

Racially Relevant Expert Witness Testimony = Absent

There is an increasing body of evidence that demonstrates the inherent unreliability of eyewitness identification (e.g., Kassin, Ellsworth, & Smith, 1994; Malpass & Kravitz, 1987; Wells & Murray, 1984, etc.). Many factors have been shown to undermine an eyewitness’s ability to make an accurate identification after the commission of a crime. One such factor that has consistently impaired the accuracy of identification is a phenomenon called weapon focus. Weapon focus refers to a witness’s attention being focused on a weapon, if present, during the commission of a crime. Therefore, the witness gives less attention to other factors during a crime, such as the physical features and clothing of the perpetrator. As a result, the witness’s ability to accurately recall details about the perpetrator and environment are reduced (Kramer, Buckhout, & Eugenio, 1990; Loftus, Loftus, & Messo, 1987; Steblay, 1992). In this case, not only was a weapon present, but also it was an imminent threat, as one of the witnesses was shot twice. Therefore, one would expect that the witnesses’ ability to accurately identify the perpetrators would be reduced.

The defense has called an expert witness to testify on the phenomenon of weapon focus. The following is a transcript of the expert witness’s testimony.
Appendix G

Brief Case Description: White Defendant-Black Expert
Brief Case Description: White Defendant-Black Expert

Prosecution’s Case:

On August 5, 2000, at approximately 2:00 p.m., three men robbed Credit One, a credit and lending institution in Indianapolis, Indiana. During the robbery, one of the creditor’s employees, Wilma Thompson, a 42-year-old African-American female, was shot in the chest and head. Although she survived the attack, she lost her left eye and had to undergo extensive rehabilitation to regain normal usage of her limbs and speaking ability. Ms. Thompson’s boss, Charles Anderson, a 59-year-old African-American male, was assaulted, and a Credit One customer, Roberta Walker, a 63-year-old Caucasian female, was robbed. A set of fingerprints was left at the scene, which belonged to a 25-year-old Caucasian male named Eric Chapman. After Chapman’s arrest, he revealed the names of his two Caucasian male accomplices, 27-year-old James Smith and Smith’s cousin, whom he had only met a few months before the robbery, and knew him only as “Lucas.” However, he was able to provide police with an address where he believed “Lucas” to live. Police were unable to locate “Lucas” at the provided address; however, they arrested a 16-year-old Caucasian male named Lucas McGregor, fitting a similar description, at a nearby address. The shooting victim, Ms. Thompson, and her boss, Mr. Anderson, identified Mr. McGregor as the shooter during the robbery. Furthermore, James Smith, one of the accomplices in the robbery, identified Mr. McGregor as the shooter and agreed to testify against him.

Defense’s Case:

Lucas McGregor maintains his innocence and insists that he was not involved in the robbery. On August 5, 2000, from 1:00 p.m. to 4:00 p.m., several friends and relatives corroborate his story that he was playing ball with them and will testify on his behalf. Eric Chapman, the first accomplice arrested in connection with the crime who told police that “Lucas” was the third accomplice, was adamant with the police that they arrested the wrong guy when he saw 16-year-old Lucas McGregor. Furthermore, against the advice of his attorney, Mr. Chapman will be testifying on behalf of McGregor’s defense that he was in no way involved with the robbery. James Smith, the second accomplice in the robbery, who agreed to testify against Mr. McGregor, will be receiving a sentence reduction in exchange for his testimony. Furthermore, Mr. Smith failed a polygraph test on whether his version of the crime was true and continues to deny that he even has a cousin named “Lucas.” Roberta Walker, the customer in the bank at the time of the robbery, was certain that Mr. McGregor was not the third accomplice in the bank robbery. Ms. Walker has known Mr. McGregor since he was a child and will testify in his defense.

Manipulation:

Racially Relevant Expert Witness Testimony = Present
There is an increasing body of evidence that demonstrates the inherent unreliability of eyewitness identification (e.g., Kassin, Ellsworth, & Smith, 1994; Malpass & Kravitz, 1987; Wells & Murray, 1984, etc.). Many factors have been shown to undermine an eyewitness’s ability to make an accurate identification after the commission of a crime. Once such factor that has consistently impaired the accuracy of identification is a cross-racial identification (also referred to as the cross-race effect) (Malpass & Kravitz, 1987). In this particular case, both of the eyewitnesses that identified Lucas McGregor as the shooter, Wilma Thompson and Charles Anderson, are African-American, while the defendant, Mr. McGregor, is Caucasian. According to the cross-race effect, the African-American eyewitnesses in this case are more likely to falsely identify a Caucasian face than an African-American face. Furthermore, there is evidence to suggest that individuals are much more likely to be able to accurately identify an own-race face compared to an other-race face (Meissner & Brigham, 2001). In this case, the one Caucasian eyewitness, Roberta Walker, insists that Mr. McGregor was not the third accomplice. According to the cross-race effect, Ms. Walker’s eyewitness account is much more likely to be accurate, as it pertains to making a same-race identification, than the cross-racial identifications made by the two African-American eyewitnesses.

The defense has called an expert witness to testify about cross-racial identification. The following is a transcript of the expert witness’s testimony.

Racially Relevant Expert Witness Testimony = **Absent**

There is an increasing body of evidence that demonstrates the inherent unreliability of eyewitness identification (e.g., Kassin, Ellsworth, & Smith, 1994; Malpass & Kravitz, 1987; Wells & Murray, 1984, etc.). Many factors have been shown to undermine an eyewitness’s ability to make an accurate identification after the commission of a crime. Once such factor that has consistently impaired the accuracy of identification is a phenomenon called weapon focus. Weapon focus refers to a witness’s attention being focused on a weapon, if present, during the commission of a crime. Therefore, the witness gives less attention to other factors during a crime, such as the physical features and clothing of the perpetrator. As a result, the witness’s ability to accurately recall details about the perpetrator and environment are reduced (Kramer, Buckhout, & Eugenio, 1990; Loftus, Loftus, & Messo, 1987; Steblay, 1992). In this case, not only was a weapon present, but also it was an imminent threat, as one of the witnesses was shot twice. Therefore, one would expect that the witnesses’ ability to accurately identify the perpetrators would be reduced.

The defense has called an expert witness to testify on the phenomenon of weapon focus. The following is a transcript of the expert witness’s testimony.
Appendix H

Brief Case Description: White Defendant-White Expert
Prosecution’s Case:

On August 5, 2000, at approximately 2:00 p.m., three men robbed Credit One, a credit and lending institution in Indianapolis, Indiana. During the robbery, one of the creditor’s employees, Wilma Thompson, a 42-year-old African-American female, was shot in the chest and head. Although she survived the attack, she lost her left eye and had to undergo extensive rehabilitation to regain normal usage of her limbs and speaking ability. Ms. Thompson’s boss, Charles Anderson, a 59-year-old African-American male, was assaulted, and a Credit One customer, Roberta Walker, a 63-year-old Caucasian female, was robbed. A set of fingerprints was left at the scene, which belonged to a 25-year-old Caucasian male named Eric Chapman. After Chapman’s arrest, he revealed the names of his two Caucasian male accomplices, 27-year-old James Smith and Smith’s cousin, whom he had only met a few months before the robbery, and knew him only as “Lucas.” However, he was able to provide police with an address where he believed “Lucas” to live. Police were unable to locate “Lucas” at the provided address; however, they arrested a 16-year-old Caucasian male named Lucas McGregor, fitting a similar description, at a nearby address. The shooting victim, Ms. Thompson, and her boss, Mr. Anderson, identified Mr. McGregor as the shooter during the robbery. Furthermore, James Smith, one of the accomplices in the robbery, identified Mr. McGregor as the shooter and agreed to testify against him.

Defense’s Case:

Lucas McGregor maintains his innocence and insists that he was not involved in the robbery. On August 5, 2000, from 1:00 p.m. to 4:00 p.m., several friends and relatives corroborate his story that he was playing ball with them and will testify on his behalf. Eric Chapman, the first accomplice arrested in connection with the crime who told police that “Lucas” was the third accomplice, was adamant with the police that they arrested the wrong guy when he saw 16-year-old Lucas McGregor. Furthermore, against the advice of his attorney, Mr. Chapman will be testifying on behalf of McGregor’s defense that he was in no way involved with the robbery. James Smith, the second accomplice in the robbery, who agreed to testify against Mr. McGregor, will be receiving a sentence reduction in exchange for his testimony. Furthermore, Mr. Smith failed a polygraph test on whether his version of the crime was true and continues to deny that he even has a cousin named “Lucas.” Roberta Walker, the customer in the bank at the time of the robbery, was certain that Mr. McGregor was not the third accomplice in the bank robbery. Ms. Walker has known Mr. McGregor since he was a child and will testify in his defense.

Manipulation:

Racially Relevant Expert Witness Testimony = Present
There is an increasing body of evidence that demonstrates the inherent unreliability of eyewitness identification (e.g., Kassin, Ellsworth, & Smith, 1994; Malpass & Kravitz, 1987; Wells & Murray, 1984, etc.). Many factors have been shown to undermine an eyewitness’s ability to make an accurate identification after the commission of a crime. Once such factor that has consistently impaired the accuracy of identification is a cross-racial identification (also referred to as the cross-race effect) (Malpass & Kravitz, 1987). In this particular case, both of the eyewitnesses that identified Lucas McGregor as the shooter, Wilma Thompson and Charles Anderson, are African-American, while the defendant, Mr. McGregor, is Caucasian. According to the cross-race effect, the African-American eyewitnesses in this case are more likely to falsely identify a Caucasian face than an African-American face. Furthermore, there is evidence to suggest that individuals are much more likely to be able to accurately identify an own-race face compared to an other-race face (Meissner & Brigham, 2001). In this case, the one Caucasian eyewitness, Roberta Walker, insists that Mr. McGregor was not the third accomplice. According to the cross-race effect, Ms. Walker’s eyewitness account is much more likely to be accurate, as it pertains to making a same-race identification, than the cross-racial identifications made by the two African-American eyewitnesses.

The defense has called an expert witness to testify about cross-racial identification. The following is a transcript of the expert witness’s testimony.

Racially Relevant Expert Witness Testimony = Absent

There is an increasing body of evidence that demonstrates the inherent unreliability of eyewitness identification (e.g., Kassin, Ellsworth, & Smith, 1994; Malpass & Kravitz, 1987; Wells & Murray, 1984, etc.). Many factors have been shown to undermine an eyewitness’s ability to make an accurate identification after the commission of a crime. Once such factor that has consistently impaired the accuracy of identification is a phenomenon called weapon focus. Weapon focus refers to a witness’s attention being focused on a weapon, if present, during the commission of a crime. Therefore, the witness gives less attention to other factors during a crime, such as the physical features and clothing of the perpetrator. As a result, the witness’s ability to accurately recall details about the perpetrator and environment are reduced (Kramer, Buckhout, & Eugenio, 1990; Loftus, Loftus, & Messo, 1987; Steblay, 1992). In this case, not only was a weapon present, but also it was an imminent threat, as one of the witnesses was shot twice. Therefore, one would expect that the witnesses’ ability to accurately identify the perpetrators would be reduced.

The defense has called an expert witness to testify on the phenomenon of weapon focus. The following is a transcript of the expert witness’s testimony.
Appendix I

Description of Psychological Expert Witness: Black Expert
Dr. Tyrone Parker is a 40-year-old African-American male who was born in Chicago, Illinois. He received his bachelor's degree in Psychology from Vanderbilt University in 1987 and went on to complete a Ph.D. in clinical psychology from the State University of New York at Albany in 1993. Since that time Dr. Parker has worked primarily in private practice; however, he has continued to conduct research and has published several articles. In addition, he is currently an adjunct faculty member at Ball State University.
Appendix J

Description of Psychological Expert Witness: White Expert
Dr. Thomas O’Neill is a 40-year-old Caucasian male who was born in Chicago, Illinois. He received his bachelor’s degree in Psychology from Vanderbilt University in 1987 and went on to complete a Ph.D. in clinical psychology from the State University of New York at Albany in 1993. Since that time Dr. O’Neill has worked primarily in private practice; however, he has continued to conduct research and has published several articles. In addition, he is currently an adjunct faculty member at Ball State University.
Appendix K

Psychological Expert Witness Testimony Transcript: Black Defendant-Black Expert-
Not Racially Relevant Testimony
Psychological Expert Witness Testimony Transcript: Black Defendant-Black Expert-Not Racially Relevant Testimony

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION CREDIT ONE, Plaintiff,

vs.

LAMONT JACKSON, Defendant

Case No.: No. 12-3-456789-1

TRANSCRIPT OF PROCEEDINGS
Before: HONORABLE JOHN M. POWERS
Date : January 5, 2001
Place : Courtroom Number 2, 2nd Floor
        46 E. Ohio Street
        Indianapolis, IN 46204

COUNSEL PRESENT:
Mark K. Dempsey
United States Attorney’s Office
10 West Market Street, Suite 2000
Indianapolis, IN 46204-3048

For – Plaintiff
Robert B. Mitchell
Indiana Federal Community Defenders
111 Monument Circle
Indianapolis, IN 46204

For – Defendant

Betty Ann Smith
Official Court Reporter
132
Tyrone Parker is a witness called by the defense counsel. He is first duly sworn and testified as follows:

THE COURT: Could you spell that please?


MITCHELL (Defense Attorney): What is your present occupation, Dr. Parker?

PARKER: I am a clinical psychologist in private practice.

MITCHELL: Where is your practice located?

PARKER: My office is at 5210 North Meridian Street here in Indianapolis.

MITCHELL: Thank you, Doctor. Could you describe for us your educational background?

PARKER: Yes...well, I received my bachelor’s degree from Vanderbilt University in Psychology in 1987 and then I received my Ph.D. in clinical psychology from the State University of New York at Albany in 1993.

MITCHELL: Could you briefly describe your training and curriculum for your Ph.D. in clinical psychology?

PARKER: Uh...my graduate training consisted of coursework, several practicum rotations and research, which included participating on research teams as well as conducting my own research for my dissertation.

MITCHELL: I'd like to go back for a minute, if I may, to understanding what your coursework consisted of. Did you have any areas of specialization?

PARKER: Yes, actually. As clinical doctoral students we all took the same core group of classes, such as assessment, research methods and clinical classes. However, I also had some elective courses that allowed me to have a concentration in one area. I chose a concentration in the area of cognition.

MITCHELL: So you focused on the area of thinking?

PARKER: Well, it certainly encompasses thinking (chuckle), but more specifically, I examined memory, reasoning, perception and decision-making.

MITCHELL: Did you ever study anything related to eyewitness reliability?
PARKER: Yes, actually, most of the literature on eyewitness reliability comes out of cognitive psychology.

MITCHELL: What other training have you had regarding eyewitness identification?

PARKER: During my first two years in the doctoral program I participated on a research team with a well-respected professor that was conducting the leading research in the area of eyewitness identification at the time. I later went on to focus my doctoral dissertation on several factors that affect eyewitness accuracy.

MITCHELL: Since finishing your Ph.D., have you done any other work related to eyewitness reliability?

PARKER: Yes, I have continued to conduct research on the topic and have published several peer-reviewed journal articles.

MITCHELL: What is the significance of the articles being peer-reviewed?

PARKER: This means that other researchers in the field review and critique the article before it is published. These peer reviewers are examining the quality of scholarship, relevance, appropriateness and so on.

MITCHELL: In other words, would it be fair to say that these peer reviewers make sure the articles are up to snuff before publication?

PARKER: Yes.

MITCHELL: And is it fair to say that you have some special expertise and qualifications in the area of eyewitness identification?

PARKER: Yes.

MITCHELL: Your Honor, I would like to have Dr. Parker recognized as an expert.

THE COURT: Let the record show that this witness has been qualified as an expert. You may proceed, Mr. MITCHELL.

MITCHELL: Thank you, your Honor. Dr. Parker, how did you become involved with this case?

PARKER: You contacted me, I believe on the referral of one of your colleagues from my involvement in a previous case.

MITCHELL: Are you familiar with the facts of this particular case?
DEMPSEY (Prosecutor): Ah...your Honor, I must object. The witness is not permitted to comment on the particular circumstances of this case.

THE COURT: Sustained.

MITCHELL: I apologize, your Honor. Dr. Parker, what can you tell us about the phenomenon of weapon focus?

PARKER: Weapon focus refers to a witness’s visual attention being directed toward a weapon, such as a gun or knife, while a crime is being committed. Since the weapon draws the central focus, leaving less attention for other details in the environment, an individual’s ability to recall other details about the incident are reduced.

MITCHELL: When you say an individual’s central attention is given to the weapon, leaving less attention for other details in the environment, does that include details about the perpetrator, such as facial features?

PARKER: Yes.

MITCHELL: Would it be fair to say that the presence of a weapon during the commission of a crime can lead to reduced identification accuracy of the perpetrator?

Dempsey: Objection, your Honor. United States v. Frye established a standard in which scientific testimony must be based on research findings that have gained general acceptance in the field.

THE COURT: Dr. Parker is an expert witness who can testify...objection overruled. The witness may answer.

PARKER: Yes.

MITCHELL: Thank you, your Honor. Dr. Parker is there any scientific research to support the assertion that the presence of a weapon during a crime can lead to reduced identification accuracy?

PARKER: Yes. In a meta-analytic review of studies –

MITCHELL: Ah...excuse me Dr. Parker, what exactly is a meta-analytic review?

PARKER: Oh, sorry, a meta-analytic review combines or synthesizes previous separate but related studies, in this case studies related to weapon focus, by using various statistical methods.

MITCHELL: Thank you. Please continue with your explanation, Mr. Parker.
PARKER: Yes... so a meta-analytic review conducted by Nancy Mehrkens Steblay, published in 1992, that examined 19 experimental tests on weapon focus found that both lineup identification and participants' memory for characteristics of the perpetrator were reduced in the presence of a weapon.

THE COURT: Okay, Mr. Dempsey, it sounds like there are research findings to support this assertion. Your objection is overruled and Dr. Parker's last response will remain in the record as professional opinion. You may continue Mr. MITCHELL.

MITCHELL: Mr. Parker, if an eyewitness is injured by the perpetrator's weapon... For instance, if the perpetrator shoots an eyewitness, could that affect the eyewitness's ability to identify the perpetrator?

PARKER: Possibly... yes. In 1990, Kramer, Buckhout and Eugenio examined the effects of both arousal level and weapon visibility.

MITCHELL: Ah... Mr. Parker, could you define what you mean by "arousal level"?

PARKER: Certainly. I am simply referring to one's level of anxiety.

MITCHELL: Thank you, Mr. Parker. Please continue.

PARKER: As I was saying, these researchers found that the participants with the lowest recall of the perpetrator's features were those with the highest levels of arousal in the presence of a visible weapon. I suspect that arousal level of both the shooting victim and anyone else not involved in the commission of the crime in close proximity would experience a sharp increase in arousal, leading to reduced ability to accurately recall the features of the perpetrator.

DEMPSEY: I'm sorry your Honor. I must object. Move to strike the witness's last response on the basis that the witness is simply speculating here. The witness is unable to offer any studies or research that would directly answer the question.

THE COURT: I have to agree with Mr. Dempsey here. Mr. Parker's opinion does not seem to be based on any research that has examined the effect of an eyewitness being shot on his or her recall ability. Your objection is sustained, Dr. Dempsey. Mr. MITCHELL, you may continue.

MITCHELL: Thank you, your Honor. I have no further questions for the witness.

THE COURT: Do you have any questions for the witness Mr. Dempsey?

DEMPSEY: No, your Honor. I have no questions for the witness.
THE COURT: Okay, then we will break for lunch. We'll reconvene for our afternoon session at 1:30.
Appendix L

Psychological Expert Witness Testimony Transcript: Black Defendant-Black Expert-
Racially Relevant Testimony
Psychological Expert Witness Testimony Transcript: Black Defendant-Black Expert - Racially Relevant Testimony

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION CREDIT ONE, Plaintiff,

vs.

Lamont Jackson,
Defendant

Case No.: No. 12-3-456789-1

TRANSCRIPT OF PROCEEDINGS
Before: HONORABLE JOHN M. POWERS
Date: January 5, 2001
Place: Courtroom Number 2, 2nd Floor
46 E. Ohio Street
Indianapolis, IN 46204

COUNSEL PRESENT:
Mark K. Dempsey
United States Attorney’s Office
10 West Market Street, Suite 2000
Indianapolis, IN 46204-3048

For – Plaintiff
Robert B. Mitchell
Indiana Federal Community Defenders
111 Monument Circle
Indianapolis, IN 46204

For – Defendant
Betty Ann Smith
Official Court Reporter

139
Tyrone Parker is a witness called by the defense counsel. He is first duly sworn and testified as follows:

THE COURT: Could you spell that please?


MITCHELL (Defense Attorney): What is your present occupation, Dr. Parker?

PARKER: I am a clinical psychologist in private practice.

MITCHELL: Where is your practice located?

PARKER: My office is at 5210 North Meridian Street here in Indianapolis.

MITCHELL: Thank you, Doctor. Could you describe for us your educational background?

PARKER: Yes...well, I received my bachelor’s degree from Vanderbilt University in Psychology in 1987 and then I received my Ph.D. in clinical psychology from the State University of New York at Albany in 1993.

MITCHELL: Could you briefly describe your training and curriculum for your Ph.D. in clinical psychology?

PARKER: Uh...my graduate training consisted of coursework, several practicum rotations and research, which included participating on research teams as well as conducting my own research for my dissertation.

MITCHELL: I’d like to go back for a minute, if I may, to understanding what your coursework consisted of. Did you have any areas of specialization?

PARKER: Yes, actually. As clinical doctoral students we all took the same core group of classes, such as assessment, research methods and clinical classes. However, I also had some elective courses that allowed me to have a concentration in one area. I chose a concentration in the area of cognition.

MITCHELL: So you focused on the area of thinking?

PARKER: Well, it certainly encompasses thinking (chuckle), but more specifically, I examined memory, reasoning, perception and decision-making.

MITCHELL: Did you ever study anything related to eyewitness reliability?
PARKER: Yes, actually, most of the literature on eyewitness reliability comes out of cognitive psychology.

MITCHELL: What other training have you had regarding eyewitness identification?

PARKER: During my first two years in the doctoral program I participated on a research team with a well-respected professor that was conducting the leading research in the area of eyewitness identification at the time. I later went on to focus my doctoral dissertation on several factors that affect eyewitness accuracy.

MITCHELL: Since finishing your Ph.D., have you done any other work related to eyewitness reliability?

PARKER: Yes, I have continued to conduct research on the topic and have published several peer-reviewed journal articles.

MITCHELL: What is the significance of the articles being peer-reviewed?

PARKER: This means that other researchers in the field review and critique the article before it is published. These peer reviewers are examining the quality of scholarship, relevance, appropriateness and so on.

MITCHELL: In other words, would it be fair to say that these peer reviewers make sure the articles are up to snuff before publication?

PARKER: Yes.

MITCHELL: And is it fair to say that you have some special expertise and qualifications in the area of eyewitness identification?

PARKER: Yes.

MITCHELL: Your Honor, I would like to have Dr. Parker recognized as an expert.

THE COURT: Let the record show that this witness has been qualified as an expert. You may proceed, Mr. MITCHELL.

MITCHELL: Thank you, your Honor. Dr. Parker, how did you become involved with this case?

PARKER: You contacted me, I believe on the referral of one of your colleagues from my involvement in a previous case.

MITCHELL: Are you familiar with the facts of this particular case?
DEMPSEY (Prosecutor): Ah... your Honor, I must object. The witness is not permitted to comment on the particular circumstances of this case.

THE COURT: Sustained.

MITCHELL: I apologize, your Honor. Dr. Parker, what is the cross-race effect?

PARKER: The cross-race effect, also sometimes referred to as "own race bias," refers to the tendency of members of one race to see members of other races as being more similar in appearance to each other than they actually are. Said another way, people tend to remember own-race faces better than faces of other, less familiar races.

MITCHELL: Is this phenomenon unique to any particular race or is it pretty uniform across races?

PARKER: The cross-race effect is not unique to any particular race; however, there is variation between races. Whites have demonstrated a significantly larger cross-race effect than African-Americans on certain measures, but not others. For instance, Whites are more likely to incorrectly identify an unfamiliar other-race face as familiar. However, on other measures, such as the likelihood that they would correctly recognize a familiar face is roughly the same. There is an even larger difference in the cross-race effect between Whites and other racial minorities. That is, Whites have a significantly higher false alarm rate and fewer correct identifications than non-Black racial minorities.

MITCHELL: How do you explain this difference?

PARKER: This is not yet completely understood. Some researchers have suggested that it may be related to an individual's level of interracial contact. Since being categorized as a racial minority means that one's racial group is smaller in size than the racial majority, racial minorities, on average, are more likely to have greater contact with Whites than Whites are with racial minorities.

DEMPSEY: Objection, your Honor. Move to strike this witness's last response that is based on speculation rather than on research. United States v. Frye established a standard in which scientific testimony must be based on research findings that have gained general acceptance in the field.

MITCHELL: Your honor, United States v. Frye also states that scientific testimony can be based in theory.

THE COURT: Since the witness stated that an explanation is not clear or completely understood within the scientific community, the objection is sustained. The Court will strike the witness's last response from the record. You may continue Mr. MITCHELL.
MITCHELL: Dr. Parker, are you saying that individuals of one race are more likely to mistakenly identify individuals of another race than members of their own race?

PARKER: Yes.

MITCHELL: So, let's say, hypothetically, you have two witnesses identify one individual. One is a different race than the individual and one is the same race as the individual. Is the same race individual more likely to make an accurate identification than the other-race individual?

DEMPSEY: Objection, your Honor. Mr. MITCHELL is asking the witness to speculate. Move to strike the witness's last response.

THE COURT: Mr. MITCHELL?

MITCHELL: Your Honor, I am simply asking the witness to apply the research findings to an example to illustrate for the jurors how they may be practically applied.

THE COURT: I will allow it this time, Mr. MITCHELL; however, you need to keep the witness away from speculation. Mr. Dempsey, your objection is overruled and Dr. Parker's last response will remain in the record as a professional opinion. You may continue.

PARKER: Well, of course there is individual variation; but based purely on statistics, yes, the same race individual is more likely to make an accurate identification.

MITCHELL: Thank you, your Honor. I have no further questions for the witness.

THE COURT: Do you have any questions for the witness Mr. Dempsey?

DEMPSEY: No, your Honor. I have no questions for the witness.

THE COURT: Okay, then we will break for lunch. We'll reconvene for our afternoon session at 1:30.
Appendix M

Psychological Expert Witness Testimony Transcript: Black Defendant-White Expert-Not Racially Relevant Testimony
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION CREDIT ONE, Plaintiff,

vs.

LAMONT JACKSON, Defendant

TRANSCRIPT OF PROCEEDINGS

Before: HONORABLE JOHN M. POWERS

Case No.: No. 12-3-456789-1

Date : January 5, 2001
Place : Courtroom Number 2, 2nd Floor
        46 E. Ohio Street
        Indianapolis, IN 46204

COUNSEL PRESENT:
Mark K. Dempsey
United States Attorney’s Office
10 West Market Street, Suite 2000
Indianapolis, IN 46204-3048

For – Plaintiff
Robert B. Mitchell
Indiana Federal Community Defenders
111 Monument Circle
Indianapolis, IN 46204

For – Defendant

Betty Ann Smith
Official Court Reporter
145
(Not Racially Relevant Testimony = Weapon Focus)

Thomas O’Neill is a witness called by the defense counsel. He is first duly sworn and testified as follows:

THE COURT: Could you spell that please?


MITCHELL (Defense Attorney): What is your present occupation, Dr. O’Neill?

O’NEILL: I am a clinical psychologist in private practice.

MITCHELL: Where is your practice located?

O’NEILL: My office is at 5210 North Meridian Street here in Indianapolis.

MITCHELL: Thank you, Doctor. Could you describe for us your educational background?

O’NEILL: Yes...well, I received my bachelor’s degree from Vanderbilt University in Psychology in 1987 and then I received my Ph.D. in clinical psychology from the State University of New York at Albany in 1993.

MITCHELL: Could you briefly describe your training and curriculum for your Ph.D. in clinical psychology?

O’NEILL: Uh...my graduate training consisted of coursework, several practicum rotations and research, which included participating on research teams as well as conducting my own research for my dissertation.

MITCHELL: I’d like to go back for a minute, if I may, to understanding what your coursework consisted of. Did you have any areas of specialization?

O’NEILL: Yes, actually. As clinical doctoral students we all took the same core group of classes, such as assessment, research methods and clinical classes. However, I also had some elective courses that allowed me to have a concentration in one area. I chose a concentration in the area of cognition.

MITCHELL: So you focused on the area of thinking?

O’NEILL: Well, it certainly encompasses thinking (chuckle), but more specifically, I examined memory, reasoning, perception and decision-making.

MITCHELL: Did you ever study anything related to eyewitness reliability?
O'NEILL: Yes, actually, most of the literature on eyewitness reliability comes out of cognitive psychology.

MITCHELL: What other training have you had regarding eyewitness identification?

O'NEILL: During my first two years in the doctoral program I participated on a research team with a well-respected professor that was conducting the leading research in the area of eyewitness identification at the time. I later went on to focus my doctoral dissertation on several factors that affect eyewitness accuracy.

MITCHELL: Since finishing your Ph.D., have you done any other work related to eyewitness reliability?

O'NEILL: Yes, I have continued to conduct research on the topic and have published several peer-reviewed journal articles.

MITCHELL: What is the significance of the articles being peer-reviewed?

O'NEILL: This means that other researchers in the field review and critique the article before it is published. These peer reviewers are examining the quality of scholarship, relevance, appropriateness and so on.

MITCHELL: In other words, would it be fair to say that these peer reviewers make sure the articles are up to snuff before publication?

O'NEILL: Yes.

MITCHELL: And is it fair to say that you have some special expertise and qualifications in the area of eyewitness identification?

O'NEILL: Yes.

MITCHELL: Your Honor, I would like to have Dr. O'Neill recognized as an expert.

THE COURT: Let the record show that this witness has been qualified as an expert. You may proceed, Mr. MITCHELL.

MITCHELL: Thank you, your Honor. Dr. O'Neill, how did you become involved with this case?

O'NEILL: You contacted me, I believe on the referral of one of your colleagues from my involvement in a previous case.

MITCHELL: Are you familiar with the facts of this particular case?
DEMPSEY (Prosecutor): Ah...your Honor, I must object. The witness is not permitted to comment on the particular circumstances of this case.

THE COURT: Sustained.

MITCHELL: I apologize, your Honor. Dr. O'Neill, what can you tell us about the phenomenon of weapon focus?

O'NEILL: Weapon focus refers to a witness's visual attention being directed toward a weapon, such as a gun or knife, while a crime is being committed. Since the weapon draws the central focus, leaving less attention for other details in the environment, an individual's ability to recall other details about the incident are reduced.

MITCHELL: When you say an individual's central attention is given to the weapon, leaving less attention for other details in the environment, does that include details about the perpetrator, such as facial features?

O'NEILL: Yes.

MITCHELL: Would it be fair to say that the presence of a weapon during the commission of a crime can lead to reduced identification accuracy of the perpetrator?

Dempsey: Objection, your Honor. United States v. Frye established a standard in which scientific testimony must be based on research findings that have gained general acceptance in the field.

THE COURT: Dr. O'Neill is an expert witness who can testify...objection overruled. The witness may answer.

O'NEILL: Yes.

MITCHELL: Thank you, your Honor. Dr. O'Neill is there any scientific research to support the assertion that the presence of a weapon during a crime can lead to reduced identification accuracy?

O'NEILL: Yes. In a meta-analytic review of studies –

MITCHELL: Ah...excuse me Dr. O'Neill, what exactly is a meta-analytic review?

O'NEILL: Oh, sorry, a meta-analytic review combines or synthesizes previous separate but related studies, in this case studies related to weapon focus, by using various statistical methods.

MITCHELL: Thank you. Please continue with your explanation, Mr. O'NEILL.
O'NEILL: Yes...so a meta-analytic review conducted by Nancy Mehrkens Steblay, published in 1992, that examined 19 experimental tests on weapon focus found that both lineup identification and participants' memory for characteristics of the perpetrator were reduced in the presence of a weapon.

THE COURT: Okay, Mr. Dempsey, it sounds like there are research findings to support this assertion. Your objection is overruled and Dr. O'Neill's last response will remain in the record as professional opinion. You may continue Mr. MITCHELL.

MITCHELL: Mr. O'Neill, if an eyewitness is injured by the perpetrator's weapon...For instance, if the perpetrator shoots an eyewitness, could that affect the eyewitness's ability to identify the perpetrator?

O'NEILL: Possibly...yes. In 1990, Kramer, Buckhout and Eugenio examined the effects of both arousal level and weapon visibility.

MITCHELL: Ah...Mr. O'Neill, could you define what you mean by "arousal level"?

O'NEILL: Certainly. I am simply referring to one's level of anxiety.

MITCHELL: Thank you, Mr. O'Neill. Please continue.

O'NEILL: As I was saying, these researchers found that the participants with the lowest recall of the perpetrator's features were those with the highest levels of arousal in the presence of a visible weapon. I suspect that arousal level of both the shooting victim and anyone else not involved in the commission of the crime in close proximity would experience a sharp increase in arousal, leading to reduced ability to accurately recall the features of the perpetrator.

DEMPSEY: I'm sorry your Honor. I must object. Move to strike the witness's last response on the basis that the witness is simply speculating here. The witness is unable to offer any studies or research that would directly answer the question.

THE COURT: I have to agree with Mr. Dempsey here. Mr. O'Neill's opinion does not seem to be based on any research that has examined the effect of an eyewitness being shot on his or her recall ability. Your objection is sustained, Dr. Dempsey. Mr. MITCHELL, you may continue.

MITCHELL: Thank you, your Honor. I have no further questions for the witness.

THE COURT: Do you have any questions for the witness Mr. Dempsey?

DEMPSEY: No, your Honor. I have no questions for the witness.
THE COURT: Okay, then we will break for lunch. We'll reconvene for our afternoon session at 1:30.
Appendix N

Psychological Expert Witness Testimony Transcript: Black Defendant-White Expert-
Racially Relevant Testimony
UNIVERSITY OF CHICAGO

Law School Library

Psychological Expert Witness Testimony Transcript: Black Defendant-White Expert—Racially Relevant Testimony

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION CREDIT ONE, Plaintiff,

vs.

Lamont Jackson, Defendant

TRANSCRIPT OF PROCEEDINGS

Before: HONORABLE JOHN M. POWERS
Date: January 5, 2001
Place: Courtroom Number 2, 2nd Floor
46 E. Ohio Street
Indianapolis, IN 46204

COUNSEL PRESENT:
Mark K. Dempsey
United States Attorney’s Office
10 West Market Street, Suite 2000
Indianapolis, IN 46204-3048

For – Plaintiff
Robert B. Mitchell
Indiana Federal Community Defenders
111 Monument Circle
Indianapolis, IN 46204

For – Defendant
Betty Ann Smith
Official Court Reporter

152
Thomas O’Neill is a witness called by the defense counsel. He is first duly sworn and testified as follows:

THE COURT: Could you spell that please?


MITCHELL (Defense Attorney): What is your present occupation, Dr. O’Neill?

O’NEILL: I am a clinical psychologist in private practice.

MITCHELL: Where is your practice located?

O’NEILL: My office is at 5210 North Meridian Street here in Indianapolis.

MITCHELL: Thank you, Doctor. Could you describe for us your educational background?

O’NEILL: Yes...well, I received my bachelor’s degree from Vanderbilt University in Psychology in 1987 and then I received my Ph.D. in clinical psychology from the State University of New York at Albany in 1993.

MITCHELL: Could you briefly describe your training and curriculum for your Ph.D. in clinical psychology?

O’NEILL: Uh...my graduate training consisted of coursework, several practicum rotations and research, which included participating on research teams as well as conducting my own research for my dissertation.

MITCHELL: I’d like to go back for a minute, if I may, to understanding what your coursework consisted of. Did you have any areas of specialization?

O’NEILL: Yes, actually. As clinical doctoral students we all took the same core group of classes, such as assessment, research methods and clinical classes. However, I also had some elective courses that allowed me to have a concentration in one area. I chose a concentration in the area of cognition.

MITCHELL: So you focused on the area of thinking?

O’NEILL: Well, it certainly encompasses thinking (chuckle), but more specifically, I examined memory, reasoning, perception and decision-making.

MITCHELL: Did you ever study anything related to eyewitness reliability?
O'NEILL: Yes, actually, most of the literature on eyewitness reliability comes out of cognitive psychology.

MITCHELL: What other training have you had regarding eyewitness identification?

O'NEILL: During my first two years in the doctoral program I participated on a research team with a well-respected professor that was conducting the leading research in the area of eyewitness identification at the time. I later went on to focus my doctoral dissertation on several factors that affect eyewitness accuracy.

MITCHELL: Since finishing your Ph.D., have you done any other work related to eyewitness reliability?

O'NEILL: Yes, I have continued to conduct research on the topic and have published several peer-reviewed journal articles.

MITCHELL: What is the significance of the articles being peer-reviewed?

O'NEILL: This means that other researchers in the field review and critique the article before it is published. These peer reviewers are examining the quality of scholarship, relevance, appropriateness and so on.

MITCHELL: In other words, would it be fair to say that these peer reviewers make sure the articles are up to snuff before publication?

O'NEILL: Yes.

MITCHELL: And is it fair to say that you have some special expertise and qualifications in the area of eyewitness identification?

O'NEILL: Yes.

MITCHELL: Your Honor, I would like to have Dr. O'Neill recognized as an expert.

THE COURT: Let the record show that this witness has been qualified as an expert. You may proceed, Mr. MITCHELL.

MITCHELL: Thank you, your Honor. Dr. O'Neill, how did you become involved with this case?

O'NEILL: You contacted me, I believe on the referral of one of your colleagues from my involvement in a previous case.

MITCHELL: Are you familiar with the facts of this particular case?
DEMPSEY (Prosecutor): Ah...your Honor, I must object. The witness is not permitted to comment on the particular circumstances of this case.

THE COURT: Sustained.

MITCHELL: I apologize, your Honor. Dr. O’Neill, what is the cross-race effect?

O’NEILL: The cross-race effect, also sometimes referred to as “own race bias,” refers to the tendency of members of one race to see members of other races as being more similar in appearance to each other than they actually are. Said another way, people tend to remember own-race faces better than faces of other, less familiar races.

MITCHELL: Is this phenomenon unique to any particular race or is it pretty uniform across races?

O’NEILL: The cross-race effect is not unique to any particular race; however, there is variation between races. Whites have demonstrated a significantly larger cross-race effect than African-Americans on certain measures, but not others. For instance, Whites are more likely to incorrectly identify an unfamiliar other-race face as familiar. However, on other measures, such as the likelihood that they would correctly recognize a familiar face is roughly the same. There is an even larger difference in the cross-race effect between Whites and other racial minorities. That is, Whites have a significantly higher false alarm rate and fewer correct identifications than non-Black racial minorities.

MITCHELL: How do you explain this difference?

O’NEILL: This is not yet completely understood. Some researchers have suggested that it may be related to an individual’s level of interracial contact. Since being categorized as a racial minority means that one’s racial group is smaller in size than the racial majority, racial minorities, on average, are more likely to have greater contact with Whites than Whites are with racial minorities.

DEMPSEY: Objection, your Honor. Move to strike this witness’s last response that is based on speculation rather than on research. United States v. Frye established a standard in which scientific testimony must be based on research findings that have gained general acceptance in the field.

MITCHELL: Your honor, United States v. Frye also states that scientific testimony can be based in theory.

THE COURT: Since the witness stated that an explanation is not clear or completely understood within the scientific community, the objection is sustained. The Court will strike the witness’s last response from the record. You may continue Mr. MITCHELL.
MITCHELL: Dr. O’Neill, are you saying that individuals of one race are more likely to mistakenly identify individuals of another race than members of their own race?

O’NEILL: Yes.

MITCHELL: So, let’s say, hypothetically, you have two witnesses identify one individual. One is a different race than the individual and one is the same race as the individual. Is the same race individual more likely to make an accurate identification than the other-race individual?

DEMPSEY: Objection, your Honor. Mr. MITCHELL is asking the witness to speculate. Move to strike the witness’s last response.

THE COURT: Mr. MITCHELL?

MITCHELL: Your Honor, I am simply asking the witness to apply the research findings to an example to illustrate for the jurors how they may be practically applied.

THE COURT: I will allow it this time, Mr. MITCHELL; however, you need to keep the witness away from speculation. Mr. Dempsey, your objection is overruled and Dr. O’Neill’s last response will remain in the record as a professional opinion. You may continue.

O’NEILL: Well, of course there is individual variation; but based purely on statistics, yes, the same race individual is more likely to make an accurate identification.

MITCHELL: Thank you, your Honor. I have no further questions for the witness.

THE COURT: Do you have any questions for the witness Mr. Dempsey?

DEMPSEY: No, your Honor. I have no questions for the witness.

THE COURT: Okay, then we will break for lunch. We’ll reconvene for our afternoon session at 1:30.
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION CREDIT ONE, Plaintiff,

vs.

LUCAS MCGREGOR, Defendant

Case No.: No. 12-3-456789-1

TRANSCRIPT OF PROCEEDINGS
Before: HONORABLE JOHN M. POWERS
Date : January 5, 2001
Place : Courtroom Number 2, 2nd Floor
        46 E. Ohio Street
        Indianapolis, IN 46204

COUNSEL PRESENT:
Mark K. Dempsey
United States Attorney’s Office
10 West Market Street, Suite 2000
Indianapolis, IN 46204-3048

For – Plaintiff
Robert B. Mitchell
Indiana Federal Community Defenders
111 Monument Circle
Indianapolis, IN 46204

For – Defendant

Betty Ann Smith
Official Court Reporter
158
Tyrone Parker is a witness called by the defense counsel. He is first duly sworn and testified as follows:

THE COURT: Could you spell that please?


MITCHELL (Defense Attorney): What is your present occupation, Dr. Parker?

PARKER: I am a clinical psychologist in private practice.

MITCHELL: Where is your practice located?

PARKER: My office is at 5210 North Meridian Street here in Indianapolis.

MITCHELL: Thank you, Doctor. Could you describe for us your educational background?

PARKER: Yes...well, I received my bachelor's degree from Vanderbilt University in Psychology in 1987 and then I received my Ph.D. in clinical psychology from the State University of New York at Albany in 1993.

MITCHELL: Could you briefly describe your training and curriculum for your Ph.D. in clinical psychology?

PARKER: Uh...my graduate training consisted of coursework, several practicum rotations and research, which included participating on research teams as well as conducting my own research for my dissertation.

MITCHELL: I'd like to go back for a minute, if I may, to understanding what your coursework consisted of. Did you have any areas of specialization?

PARKER: Yes, actually. As clinical doctoral students we all took the same core group of classes, such as assessment, research methods and clinical classes. However, I also had some elective courses that allowed me to have a concentration in one area. I chose a concentration in the area of cognition.

MITCHELL: So you focused on the area of thinking?

PARKER: Well, it certainly encompasses thinking (chuckle), but more specifically, I examined memory, reasoning, perception and decision-making.

MITCHELL: Did you ever study anything related to eyewitness reliability?

159
PARKER: Yes, actually, most of the literature on eyewitness reliability comes out of cognitive psychology.

MITCHELL: What other training have you had regarding eyewitness identification?

PARKER: During my first two years in the doctoral program I participated on a research team with a well-respected professor that was conducting the leading research in the area of eyewitness identification at the time. I later went on to focus my doctoral dissertation on several factors that affect eyewitness accuracy.

MITCHELL: Since finishing your Ph.D., have you done any other work related to eyewitness reliability?

PARKER: Yes, I have continued to conduct research on the topic and have published several peer-reviewed journal articles.

MITCHELL: What is the significance of the articles being peer-reviewed?

PARKER: This means that other researchers in the field review and critique the article before it is published. These peer reviewers are examining the quality of scholarship, relevance, appropriateness and so on.

MITCHELL: In other words, would it be fair to say that these peer reviewers make sure the articles are up to snuff before publication?

PARKER: Yes.

MITCHELL: And is it fair to say that you have some special expertise and qualifications in the area of eyewitness identification?

PARKER: Yes.

MITCHELL: Your Honor, I would like to have Dr. Parker recognized as an expert.

THE COURT: Let the record show that this witness has been qualified as an expert. You may proceed, Mr. MITCHELL.

MITCHELL: Thank you, your Honor. Dr. Parker, how did you become involved with this case?

PARKER: You contacted me, I believe on the referral of one of your colleagues from my involvement in a previous case.

MITCHELL: Are you familiar with the facts of this particular case?
DEMPSEY (Prosecutor): Ah... your Honor, I must object. The witness is not permitted to comment on the particular circumstances of this case.

THE COURT: Sustained.

MITCHELL: I apologize, your Honor. Dr. Parker, what can you tell us about the phenomenon of weapon focus?

PARKER: Weapon focus refers to a witness’s visual attention being directed toward a weapon, such as a gun or knife, while a crime is being committed. Since the weapon draws the central focus, leaving less attention for other details in the environment, an individual’s ability to recall other details about the incident are reduced.

MITCHELL: When you say an individual’s central attention is given to the weapon, leaving less attention for other details in the environment, does that include details about the perpetrator, such as facial features?

PARKER: Yes.

MITCHELL: Would it be fair to say that the presence of a weapon during the commission of a crime can lead to reduced identification accuracy of the perpetrator?

Dempsey: Objection, your Honor. United States v. Frye established a standard in which scientific testimony must be based on research findings that have gained general acceptance in the field.

THE COURT: Dr. Parker is an expert witness who can testify... objection overruled. The witness may answer.

PARKER: Yes.

MITCHELL: Thank you, your Honor. Dr. Parker is there any scientific research to support the assertion that the presence of a weapon during a crime can lead to reduced identification accuracy?

PARKER: Yes. In a meta-analytic review of studies –

MITCHELL: Ah... excuse me Dr. Parker, what exactly is a meta-analytic review?

PARKER: Oh, sorry, a meta-analytic review combines or synthesizes previous separate but related studies, in this case studies related to weapon focus, by using various statistical methods.

MITCHELL: Thank you. Please continue with your explanation, Mr. Parker.
PARKER: Yes...so a meta-analytic review conducted by Nancy Mehrkens Steblay, published in 1992, that examined 19 experimental tests on weapon focus found that both lineup identification and participants' memory for characteristics of the perpetrator were reduced in the presence of a weapon.

THE COURT: Okay, Mr. Dempsey, it sounds like there are research findings to support this assertion. Your objection is overruled and Dr. Parker’s last response will remain in the record as professional opinion. You may continue Mr. MITCHELL.

MITCHELL: Mr. Parker, if an eyewitness is injured by the perpetrator’s weapon...For instance, if the perpetrator shoots an eyewitness, could that affect the eyewitness’s ability to identify the perpetrator?

PARKER: Possibly...yes. In 1990, Kramer, Buckhout and Eugenio examined the effects of both arousal level and weapon visibility.

MITCHELL: Ah...Mr. Parker, could you define what you mean by “arousal level”?

PARKER: Certainly. I am simply referring to one’s level of anxiety.

MITCHELL: Thank you, Mr. Parker. Please continue.

PARKER: As I was saying, these researchers found that the participants with the lowest recall of the perpetrator’s features were those with the highest levels of arousal in the presence of a visible weapon. I suspect that arousal level of both the shooting victim and anyone else not involved in the commission of the crime in close proximity would experience a sharp increase in arousal, leading to reduced ability to accurately recall the features of the perpetrator.

DEMPSEY: I’m sorry your Honor. I must object. Move to strike the witness’s last response on the basis that the witness is simply speculating here. The witness is unable to offer any studies or research that would directly answer the question.

THE COURT: I have to agree with Mr. Dempsey here. Mr. Parker’s opinion does not seem to be based on any research that has examined the effect of an eyewitness being shot on his or her recall ability. Your objection is sustained, Dr. Dempsey. Mr. MITCHELL, you may continue.

MITCHELL: Thank you, your Honor. I have no further questions for the witness.

THE COURT: Do you have any questions for the witness Mr. Dempsey?

DEMPSEY: No, your Honor. I have no questions for the witness.
THE COURT: Okay, then we will break for lunch. We’ll reconvene for our afternoon session at 1:30.
Appendix P

Psychological Expert Witness Testimony Transcript: White Defendant-Black Expert-
Racially Relevant Testimony
Psychological Expert Witness Testimony Transcript: White Defendant-Black Expert
Racially Relevant Testimony

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF INDIANA INDIANAPOLIS DIVISION

UNITED STATES DISTRICT COURT, ) Case No.: No. 12-3-456789-1
SOUTHERN DISTRICT OF INDIANA, )
INDIANAPOLIS DIVISION CREDIT ONE, )
Plaintiff,

vs.

Lucas McGregor,
 Defendant

TRANSCRIPT OF PROCEEDINGS
Before: HONORABLE JOHN M. POWERS
Date : January 5, 2001
Place : Courtroom Number 2, 2nd Floor
        46 E. Ohio Street
        Indianapolis, IN 46204

COUNSEL PRESENT:
Mark K. Dempsey
United States Attorney’s Office
10 West Market Street, Suite 2000
Indianapolis, IN 46204-3048

For – Plaintiff
Robert B. Mitchell
Indiana Federal Community Defenders
111 Monument Circle
Indianapolis, IN 46204

For – Defendant

Betty Ann Smith
Official Court Reporter

165
Tyrone Parker is a witness called by the defense counsel. He is first duly sworn and testified as follows:

THE COURT: Could you spell that please?


MITCHELL (Defense Attorney): What is your present occupation, Dr. Parker?

PARKER: I am a clinical psychologist in private practice.

MITCHELL: Where is your practice located?

PARKER: My office is at 5210 North Meridian Street here in Indianapolis.

MITCHELL: Thank you, Doctor. Could you describe for us your educational background?

PARKER: Yes...well, I received my bachelor's degree from Vanderbilt University in Psychology in 1987 and then I received my Ph.D. in clinical psychology from the State University of New York at Albany in 1993.

MITCHELL: Could you briefly describe your training and curriculum for your Ph.D. in clinical psychology?

PARKER: Uh...my graduate training consisted of coursework, several practicum rotations and research, which included participating on research teams as well as conducting my own research for my dissertation.

MITCHELL: I'd like to go back for a minute, if I may, to understanding what your coursework consisted of. Did you have any areas of specialization?

PARKER: Yes, actually. As clinical doctoral students we all took the same core group of classes, such as assessment, research methods and clinical classes. However, I also had some elective courses that allowed me to have a concentration in one area. I chose a concentration in the area of cognition.

MITCHELL: So you focused on the area of thinking?

PARKER: Well, it certainly encompasses thinking (chuckle), but more specifically, I examined memory, reasoning, perception and decision-making.

MITCHELL: Did you ever study anything related to eyewitness reliability?
PARKER: Yes, actually, most of the literature on eyewitness reliability comes out of cognitive psychology.

MITCHELL: What other training have you had regarding eyewitness identification?

PARKER: During my first two years in the doctoral program I participated on a research team with a well-respected professor that was conducting the leading research in the area of eyewitness identification at the time. I later went on to focus my doctoral dissertation on several factors that affect eyewitness accuracy.

MITCHELL: Since finishing your Ph.D., have you done any other work related to eyewitness reliability?

PARKER: Yes, I have continued to conduct research on the topic and have published several peer-reviewed journal articles.

MITCHELL: What is the significance of the articles being peer-reviewed?

PARKER: This means that other researchers in the field review and critique the article before it is published. These peer reviewers are examining the quality of scholarship, relevance, appropriateness and so on.

MITCHELL: In other words, would it be fair to say that these peer reviewers make sure the articles are up to snuff before publication?

PARKER: Yes.

MITCHELL: And is it fair to say that you have some special expertise and qualifications in the area of eyewitness identification?

PARKER: Yes.

MITCHELL: Your Honor, I would like to have Dr. Parker recognized as an expert.

THE COURT: Let the record show that this witness has been qualified as an expert. You may proceed, Mr. MITCHELL.

MITCHELL: Thank you, your Honor. Dr. Parker, how did you become involved with this case?

PARKER: You contacted me, I believe on the referral of one of your colleagues from my involvement in a previous case.

MITCHELL: Are you familiar with the facts of this particular case?
DEMPSEY (Prosecutor): Ah...your Honor, I must object. The witness is not permitted to comment on the particular circumstances of this case.

THE COURT: Sustained.

MITCHELL: I apologize, your Honor. Dr. Parker, what is the cross-race effect?

PARKER: The cross-race effect, also sometimes referred to as “own race bias,” refers to the tendency of members of one race to see members of other races as being more similar in appearance to each other than they actually are. Said another way, people tend to remember own-race faces better than faces of other, less familiar races.

MITCHELL: Is this phenomenon unique to any particular race or is it pretty uniform across races?

PARKER: The cross-race effect is not unique to any particular race; however, there is variation between races. Whites have demonstrated a significantly larger cross-race effect than African-Americans on certain measures, but not others. For instance, Whites are more likely to incorrectly identify an unfamiliar other-race face as familiar. However, on other measures, such as the likelihood that they would correctly recognize a familiar face is roughly the same. There is an even larger difference in the cross-race effect between Whites and other racial minorities. That is, Whites have a significantly higher false alarm rate and fewer correct identifications than non-Black racial minorities.

MITCHELL: How do you explain this difference?

PARKER: This is not yet completely understood. Some researchers have suggested that it may be related to an individual’s level of interracial contact. Since being categorized as a racial minority means that one’s racial group is smaller in size than the racial majority, racial minorities, on average, are more likely to have greater contact with Whites than Whites are with racial minorities.

DEMPSEY: Objection, your Honor. Move to strike this witness’s last response that is based on speculation rather than on research. United States v. Frye established a standard in which scientific testimony must be based on research findings that have gained general acceptance in the field.

MITCHELL: Your honor, United States v. Frye also states that scientific testimony can be based in theory.

THE COURT: Since the witness stated that an explanation is not clear or completely understood within the scientific community, the objection is sustained. The Court will strike the witness’s last response from the record. You may continue Mr. MITCHELL.
MITCHELL: Dr. Parker, are you saying that individuals of one race are more likely to mistakenly identify individuals of another race than members of their own race?

PARKER: Yes.

MITCHELL: So, let's say, hypothetically, you have two witnesses identify one individual. One is a different race than the individual and one is the same race as the individual. Is the same race individual more likely to make an accurate identification than the other-race individual?

DEMPSEY: Objection, your Honor. Mr. MITCHELL is asking the witness to speculate. Move to strike the witness's last response.

THE COURT: Mr. MITCHELL?

MITCHELL: Your Honor, I am simply asking the witness to apply the research findings to an example to illustrate for the jurors how they may be practically applied.

THE COURT: I will allow it this time, Mr. MITCHELL; however, you need to keep the witness away from speculation. Mr. Dempsey, your objection is overruled and Dr. Parker's last response will remain in the record as a professional opinion. You may continue.

PARKER: Well, of course there is individual variation; but based purely on statistics, yes, the same race individual is more likely to make an accurate identification.

MITCHELL: Thank you, your Honor. I have no further questions for the witness.

THE COURT: Do you have any questions for the witness Mr. Dempsey?

DEMPSEY: No, your Honor. I have no questions for the witness.

THE COURT: Okay, then we will break for lunch. We’ll reconvene for our afternoon session at 1:30.
Appendix Q

Psychological Expert Witness Testimony Transcript: White Defendant-White Expert-
Not Racially Relevant Testimony
Thomas O’Neill is a witness called by the defense counsel. He is first duly sworn and testified as follows:

THE COURT: Could you spell that please?


MITCHELL (Defense Attorney): What is your present occupation, Dr. O’Neill?

O’NEILL: I am a clinical psychologist in private practice.

MITCHELL: Where is your practice located?

O’NEILL: My office is at 5210 North Meridian Street here in Indianapolis.

MITCHELL: Thank you, Doctor. Could you describe for us your educational background?

O’NEILL: Yes...well, I received my bachelor’s degree from Vanderbilt University in Psychology in 1987 and then I received my Ph.D. in clinical psychology from the State University of New York at Albany in 1993.

MITCHELL: Could you briefly describe your training and curriculum for your Ph.D. in clinical psychology?

O’NEILL: Uh...my graduate training consisted of coursework, several practicum rotations and research, which included participating on research teams as well as conducting my own research for my dissertation.

MITCHELL: I’d like to go back for a minute, if I may, to understanding what your coursework consisted of. Did you have any areas of specialization?

O’NEILL: Yes, actually. As clinical doctoral students we all took the same core group of classes, such as assessment, research methods and clinical classes. However, I also had some elective courses that allowed me to have a concentration in one area. I chose a concentration in the area of cognition.

MITCHELL: So you focused on the area of thinking?

O’NEILL: Well, it certainly encompasses thinking (chuckle), but more specifically, I examined memory, reasoning, perception and decision-making.

MITCHELL: Did you ever study anything related to eyewitness reliability?
O'NEILL: Yes, actually, most of the literature on eyewitness reliability comes out of cognitive psychology.

MITCHELL: What other training have you had regarding eyewitness identification?

O'NEILL: During my first two years in the doctoral program I participated on a research team with a well-respected professor that was conducting the leading research in the area of eyewitness identification at the time. I later went on to focus my doctoral dissertation on several factors that affect eyewitness accuracy.

MITCHELL: Since finishing your Ph.D., have you done any other work related to eyewitness reliability?

O'NEILL: Yes, I have continued to conduct research on the topic and have published several peer-reviewed journal articles.

MITCHELL: What is the significance of the articles being peer-reviewed?

O'NEILL: This means that other researchers in the field review and critique the article before it is published. These peer reviewers are examining the quality of scholarship, relevance, appropriateness and so on.

MITCHELL: In other words, would it be fair to say that these peer reviewers make sure the articles are up to snuff before publication?

O'NEILL: Yes.

MITCHELL: And is it fair to say that you have some special expertise and qualifications in the area of eyewitness identification?

O'NEILL: Yes.

MITCHELL: Your Honor, I would like to have Dr. O'Neill recognized as an expert.

THE COURT: Let the record show that this witness has been qualified as an expert. You may proceed, Mr. MITCHELL.

MITCHELL: Thank you, your Honor. Dr. O'Neill, how did you become involved with this case?

O'NEILL: You contacted me, I believe on the referral of one of your colleagues from my involvement in a previous case.

MITCHELL: Are you familiar with the facts of this particular case?
DEMPSEY (Prosecutor): Ah... your Honor, I must object. The witness is not permitted to comment on the particular circumstances of this case.

THE COURT: Sustained.

MITCHELL: I apologize, your Honor. Dr. O’Neill, what can you tell us about the phenomenon of weapon focus?

O’NEILL: Weapon focus refers to a witness’s visual attention being directed toward a weapon, such as a gun or knife, while a crime is being committed. Since the weapon draws the central focus, leaving less attention for other details in the environment, an individual’s ability to recall other details about the incident are reduced.

MITCHELL: When you say an individual’s central attention is given to the weapon, leaving less attention for other details in the environment, does that include details about the perpetrator, such as facial features?

O’NEILL: Yes.

MITCHELL: Would it be fair to say that the presence of a weapon during the commission of a crime can lead to reduced identification accuracy of the perpetrator?

Dempsey: Objection, your Honor. United States v. Frye established a standard in which scientific testimony must be based on research findings that have gained general acceptance in the field.

THE COURT: Dr. O’Neill is an expert witness who can testify... objection overruled. The witness may answer.

O’NEILL: Yes.

MITCHELL: Thank you, your Honor. Dr. O’Neill is there any scientific research to support the assertion that the presence of a weapon during a crime can lead to reduced identification accuracy?

O’NEILL: Yes. In a meta-analytic review of studies –

MITCHELL: Ah... excuse me Dr. O’Neill, what exactly is a meta-analytic review?

O’NEILL: Oh, sorry, a meta-analytic review combines or synthesizes previous separate but related studies, in this case studies related to weapon focus, by using various statistical methods.

MITCHELL: Thank you. Please continue with your explanation, Mr. O’Neill.
O’NEILL: Yes...so a meta-analytic review conducted by Nancy Mehrkens Steblay, published in 1992, that examined 19 experimental tests on weapon focus found that both lineup identification and participants’ memory for characteristics of the perpetrator were reduced in the presence of a weapon.

THE COURT: Okay, Mr. Dempsey, it sounds like there are research findings to support this assertion. Your objection is overruled and Dr. O’Neill’s last response will remain in the record as professional opinion. You may continue Mr. MITCHELL.

MITCHELL: Mr. O’Neill, if an eyewitness is injured by the perpetrator’s weapon...For instance, if the perpetrator shoots an eyewitness, could that affect the eyewitness’s ability to identify the perpetrator?

O’NEILL: Possibly...yes. In 1990, Kramer, Buckhout and Eugenio examined the effects of both arousal level and weapon visibility.

MITCHELL: Ah...Mr. O’Neill, could you define what you mean by “arousal level”?

O’NEILL: Certainly. I am simply referring to one’s level of anxiety.

MITCHELL: Thank you, Mr. O’Neill. Please continue.

O’NEILL: As I was saying, these researchers found that the participants with the lowest recall of the perpetrator’s features were those with the highest levels of arousal in the presence of a visible weapon. I suspect that arousal level of both the shooting victim and anyone else not involved in the commission of the crime in close proximity would experience a sharp increase in arousal, leading to reduced ability to accurately recall the features of the perpetrator.

DEMPSEY: I’m sorry your Honor. I must object. Move to strike the witness’s last response on the basis that the witness is simply speculating here. The witness is unable to offer any studies or research that would directly answer the question.

THE COURT: I have to agree with Mr. Dempsey here. Mr. O’Neill’s opinion does not seem to be based on any research that has examined the effect of an eyewitness being shot on his or her recall ability. Your objection is sustained, Dr. Dempsey. Mr. MITCHELL, you may continue.

MITCHELL: Thank you, your Honor. I have no further questions for the witness.

THE COURT: Do you have any questions for the witness Mr. Dempsey?

DEMPSEY: No, your Honor. I have no questions for the witness.
THE COURT: Okay, then we will break for lunch. We'll reconvene for our afternoon session at 1:30.
Appendix R

Psychological Expert Witness Testimony Transcript: White Defendant-White Expert-
Racially Relevant Testimony
Psychological Expert Witness Testimony Transcript: White Defendant-White Expert-
Racially Relevant Testimony

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF INDIANA INDIANAPOLIS DIVISION

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION CREDIT ONE,
Plaintiff,

vs.

LUCAS MCGREGOR,
Defendant

) Case No.: No. 12-3-456789-1

TRANSCRIPT OF PROCEEDINGS
Before: HONORABLE JOHN M. POWERS
Date : January 5, 2001
Place : Courtroom Number 2, 2nd Floor
46 E. Ohio Street
Indianapolis, IN 46204

COUNSEL PRESENT:
Mark K. Dempsey
United States Attorney’s Office
10 West Market Street, Suite 2000
Indianapolis, IN 46204-3048

For – Plaintiff
Robert B. Mitchell
Indiana Federal Community Defenders
111 Monument Circle
Indianapolis, IN 46204

For – Defendant

Betty Ann Smith
Official Court Reporter

178
(Racially Relevant Testimony = Cross Racial Identification)

Thomas O’Neill is a witness called by the defense counsel. He is first duly sworn and testified as follows:

THE COURT: Could you spell that please?


MITCHELL (Defense Attorney): What is your present occupation, Dr. O’Neill?

O’NEILL: I am a clinical psychologist in private practice.

MITCHELL: Where is your practice located?

O’NEILL: My office is at 5210 North Meridian Street here in Indianapolis.

MITCHELL: Thank you, Doctor. Could you describe for us your educational background?

O’NEILL: Yes...well, I received my bachelor’s degree from Vanderbilt University in Psychology in 1987 and then I received my Ph.D. in clinical psychology from the State University of New York at Albany in 1993.

MITCHELL: Could you briefly describe your training and curriculum for your Ph.D. in clinical psychology?

O’NEILL: Uh...my graduate training consisted of coursework, several practicum rotations and research, which included participating on research teams as well as conducting my own research for my dissertation.

MITCHELL: I’d like to go back for a minute, if I may, to understanding what your coursework consisted of. Did you have any areas of specialization?

O’NEILL: Yes, actually. As clinical doctoral students we all took the same core group of classes, such as assessment, research methods and clinical classes. However, I also had some elective courses that allowed me to have a concentration in one area. I chose a concentration in the area of cognition.

MITCHELL: So you focused on the area of thinking?

O’NEILL: Well, it certainly encompasses thinking (chuckle), but more specifically, I examined memory, reasoning, perception and decision-making.

MITCHELL: Did you ever study anything related to eyewitness reliability?
O’NEILL: Yes, actually, most of the literature on eyewitness reliability comes out of cognitive psychology.

MITCHELL: What other training have you had regarding eyewitness identification?

O’NEILL: During my first two years in the doctoral program I participated on a research team with a well-respected professor that was conducting the leading research in the area of eyewitness identification at the time. I later went on to focus my doctoral dissertation on several factors that affect eyewitness accuracy.

MITCHELL: Since finishing your Ph.D., have you done any other work related to eyewitness reliability?

O’NEILL: Yes, I have continued to conduct research on the topic and have published several peer-reviewed journal articles.

MITCHELL: What is the significance of the articles being peer-reviewed?

O’NEILL: This means that other researchers in the field review and critique the article before it is published. These peer reviewers are examining the quality of scholarship, relevance, appropriateness and so on.

MITCHELL: In other words, would it be fair to say that these peer reviewers make sure the articles are up to snuff before publication?

O’NEILL: Yes.

MITCHELL: And is it fair to say that you have some special expertise and qualifications in the area of eyewitness identification?

O’NEILL: Yes.

MITCHELL: Your Honor, I would like to have Dr. O’Neill recognized as an expert.

THE COURT: Let the record show that this witness has been qualified as an expert. You may proceed, Mr. MITCHELL.

MITCHELL: Thank you, your Honor. Dr. O’Neill, how did you become involved with this case?

O’NEILL: You contacted me, I believe on the referral of one of your colleagues from my involvement in a previous case.

MITCHELL: Are you familiar with the facts of this particular case?
DEMPSEY (Prosecutor): Ah...your Honor, I must object. The witness is not permitted to comment on the particular circumstances of this case.

THE COURT: Sustained.

MITCHELL: I apologize, your Honor. Dr. O’Neill, what is the cross-race effect?

O’NEILL: The cross-race effect, also sometimes referred to as "own race bias," refers to the tendency of members of one race to see members of other races as being more similar in appearance to each other than they actually are. Said another way, people tend to remember own-race faces better than faces of other, less familiar races.

MITCHELL: Is this phenomenon unique to any particular race or is it pretty uniform across races?

O’NEILL: The cross-race effect is not unique to any particular race; however, there is variation between races. Whites have demonstrated a significantly larger cross-race effect than African-Americans on certain measures, but not others. For instance, Whites are more likely to incorrectly identify an unfamiliar other-race face as familiar. However, on other measures, such as the likelihood that they would correctly recognize a familiar face is roughly the same. There is an even larger difference in the cross-race effect between Whites and other racial minorities. That is, Whites have a significantly higher false alarm rate and fewer correct identifications than non-Black racial minorities.

MITCHELL: How do you explain this difference?

O’NEILL: This is not yet completely understood. Some researchers have suggested that it may be related to an individual’s level of interracial contact. Since being categorized as a racial minority means that one’s racial group is smaller in size than the racial majority, racial minorities, on average, are more likely to have greater contact with Whites than Whites are with racial minorities.

DEMPSEY: Objection, your Honor. Move to strike this witness’s last response that is based on speculation rather than on research. United States v. Frye established a standard in which scientific testimony must be based on research findings that have gained general acceptance in the field.

MITCHELL: Your honor, United States v. Frye also states that scientific testimony can be based in theory.

THE COURT: Since the witness stated that an explanation is not clear or completely understood within the scientific community, the objection is sustained. The Court will strike the witness’s last response from the record. You may continue Mr. MITCHELL.
MITCHELL: Dr. O’Neill, are you saying that individuals of one race are more likely to mistakenly identify individuals of another race than members of their own race?

O’NEILL: Yes.

MITCHELL: So, let’s say, hypothetically, you have two witnesses identify one individual. One is a different race than the individual and one is the same race as the individual. Is the same race individual more likely to make an accurate identification than the other-race individual?

DEMPSEY: Objection, your Honor. Mr. MITCHELL is asking the witness to speculate. Move to strike the witness’s last response.

THE COURT: Mr. MITCHELL?

MITCHELL: Your Honor, I am simply asking the witness to apply the research findings to an example to illustrate for the jurors how they may be practically applied.

THE COURT: I will allow it this time, Mr. MITCHELL; however, you need to keep the witness away from speculation. Mr. Dempsey, your objection is overruled and Dr. O’Neill’s last response will remain in the record as a professional opinion. You may continue.

O’NEILL: Well, of course there is individual variation; but based purely on statistics, yes, the same race individual is more likely to make an accurate identification.

MITCHELL: Thank you, your Honor. I have no further questions for the witness.

THE COURT: Do you have any questions for the witness Mr. Dempsey?

DEMPSEY: No, your Honor. I have no questions for the witness.

THE COURT: Okay, then we will break for lunch. We’ll reconvene for our afternoon session at 1:30.
Appendix S

Jury Instructions
Jury Instructions

Indiana Jury Instructions –
Pattern Criminal Jury Instructions for the Seventh Circuit
The Seventh Circuit Judicial Council, on November 30, 1998, approved these instructions in principle and authorized their publication for use in the Seventh Circuit.

THE FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

THE CHARGE - THE INDICTMENT

The indictment in this case is the formal method of accusing the defendant of an offense and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant is charged with:

• One count of Robbery (IC 35-42-5-1), Class A felony

The defendant has pleaded not guilty to the charge.

LESSER INCLUDED OFFENSE

If you find the defendant not guilty of the offense of robbery as charged in Count 1, then you must go on to consider whether the government has proved the offense of:

• One count of Battery (IC 35-42-2-1), Class C felony

The defendant has pleaded not guilty to the charge.
Definition of Charges:

IC 35-42-5-1
Robbery
35-42-5-1 Sec. 1. A person who knowingly or intentionally takes property from another person or from the presence of another person:
   (1) by using or threatening the use of force on any person; or
   (2) by putting any person in fear; commits robbery, a Class A felony if it results in serious bodily injury to any person other than a defendant.

IC 35-42-2-1
Battery
35-42-2-1 Sec. 1. (a) A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class C felony if it results in serious bodily injury to any other person or if it is committed by means of a deadly weapon;
Appendix T

Juror Post-Trial Questionnaire: Black Defendant-Black Expert
INSTRUCTIONS: Please read each question carefully, and circle the number that corresponds to your answer. Take your time and consider each option before selecting your response. Select only one response for each item.

1. Based upon the definition of Robbery and the jury instructions you have been given, what is your verdict on one count of Robbery for Lamont Jackson?

1 = Guilty
2 = Not Guilty

2. Based upon the definition of Battery and the jury instructions you have been given, what is your verdict on one count of Battery for Lamont Jackson?

1 = Guilty
2 = Not Guilty

3. Based upon the information you were given in the Brief Case Description and expert witness testimony, how likely or unlikely is it that Lamont Jackson is guilty?

1 = extremely unlikely
2 = very unlikely
3 = somewhat unlikely
4 = guilt/innocence are equally likely
5 = somewhat likely
6 = very likely
7 = extremely likely

4. How confident are you in your verdict on the charge of Robbery in this case?

1 = not at all confident
2 = slightly confident
3 = somewhat confident
4 = moderately confident
5 = fairly confident
6 = highly confident
7 = completely confident
5. How confident are you in your verdict on the charge of **Battery** in this case?

1 = not at all confident  
2 = slightly confident  
3 = somewhat confident  
4 = moderately confident  
5 = fairly confident  
6 = highly confident  
7 = completely confident

**ANSWER QUESTION #6 ONLY IF YOUR VERDICT IN QUESTION #1 WAS “GUILTY.” OTHERWISE, SKIP TO QUESTION #7.**

6. What sentence do you believe Lamont Jackson should receive for his guilt on the charge of **Robbery** in this case? (circle only one)

1 = no penalty  
2 = 0 – 180 days  
3 = 180 days – 1 year  
4 = 1 – 3 years  
5 = 3 – 8 years  
6 = 8 – 20 years  
7 = 20 – 50 years

**ANSWER QUESTION #7 ONLY IF YOUR VERDICT IN QUESTION #2 WAS “GUILTY.” OTHERWISE, SKIP TO QUESTION #8.**

7. What sentence do you believe Lamont Jackson should receive for his guilt on the charge of **Battery** in this case? (circle only one)

1 = no penalty  
2 = 0 – 180 days  
3 = 180 days – 1 year  
4 = 1 – 3 years  
5 = 3 – 8 years  
6 = 8 – 20 years  
7 = 20 – 50 years

8. What **most** influenced your verdict?

1 = The initial evidence presented by the prosecution  
2 = The initial evidence presented by the defense  
3 = The psychological expert testimony  
4 = Other, please explain:
9. Was there any piece of evidence or testimony that you did not find believable?

1 = No
2 = Yes, please explain:

10. Do you think Lamont Jackson is or is not the type of person that engages in the types of activities in which he stands accused?

1 = Lamont Jackson is definitely not the type
2 = Lamont Jackson is probably not the type
3 = Lamont Jackson is possibly not the type
4 = Uncertain/Cannot Say
5 = Lamont Jackson is possibly the type
6 = Lamont Jackson is probably the type
7 = Lamont Jackson is definitely the type

The following questions are about Lamont Jackson. Use the scale listed below each question, and circle the number that best corresponds to your answer.

11. How much sympathy do you feel toward Lamont Jackson?

A great deal 1 2 3 4 5 6 7 no sympathy

12. How much pity do you feel for Lamont Jackson?

A great deal 1 2 3 4 5 6 7 no pity

13. How much anger do you feel toward Lamont Jackson?

A great deal 1 2 3 4 5 6 7 no anger

14. In your opinion, how likely or unlikely is it that Lamont Jackson has engaged or will engage in the behavior in which he stands accused?

Very likely 1 2 3 4 5 6 7 very unlikely

The following questions are about Wilma Thompson, the eyewitness who identified Lamont Jackson in a lineup and was shot in the chest and head, Charles Anderson, Ms. Thompson’s boss, and Roberta Walker, also in the lending institution at the time of the robbery. Use the scale listed below each question, and circle the number that best corresponds to your answer.
15. How much sympathy do you feel toward Wilma Thompson?

A great deal of sympathy

16. How much pity do you feel for Wilma Thompson?

A great deal of pity

17. How much sympathy do you feel toward Charles Anderson?

A great deal of sympathy

18. How much pity do you feel for Charles Anderson?

A great deal of pity

19. How much sympathy do you feel toward Roberta Walker?

A great deal of sympathy

20. How much pity do you feel for Roberta Walker?

A great deal of pity

The following questions are about the expert psychological witness, Tyrone Parker. Please circle one of the numbers following each statement to indicate your level of disagreement or agreement. This scale is as follows:


Disagree

Agree

In other words, if you DISAGREE with the statement, you would circle the “0.” If you AGREE with the statement, you would circle the “8.” If you neither agree nor disagree, you would circle the “4.” The other numbers are to indicate varying degrees of opinion in-between.

21. The witness is poorly qualified educationally.

0 1 2 3 4 5 6 7 8

Disagree Agree

190
22. The witness has a great deal of clinical experience.

Disagree Agree
0 1 2 3 4 5 6 7 8

23. The witness has a poor professional reputation.

Disagree Agree
0 1 2 3 4 5 6 7 8

24. The witness was comfortable on the witness stand.

Disagree Agree
0 1 2 3 4 5 6 7 8

25. The witness had an awkward and unprofessional manner.

Disagree Agree
0 1 2 3 4 5 6 7 8

26. The witness explained technical terms clearly.

Disagree Agree
0 1 2 3 4 5 6 7 8

27. The witness inspired little confidence in his or her knowledge.

Disagree Agree
0 1 2 3 4 5 6 7 8

28. The witness conducted a thoroughly professional evaluation of the defendant.

Disagree Agree
0 1 2 3 4 5 6 7 8

29. The witness was quite unimpressive, as judged by the transcript.

Disagree Agree
0 1 2 3 4 5 6 7 8

30. The witness was highly credible and trustworthy.

Disagree Agree
0 1 2 3 4 5 6 7 8
31. The testimony was of little importance to the case.

0 1 2 3 4 5 6 7 8
Disagree Agree

32. The testimony made sense, even to non-specialists or people outside the profession.

0 1 2 3 4 5 6 7 8
Disagree Agree

33. The testimony gave a negative impression of the witness's profession.

0 1 2 3 4 5 6 7 8
Disagree Agree

34. The testimony showed that the witness had high professional and ethical standards.

0 1 2 3 4 5 6 7 8
Disagree Agree

35. The testimony was not very helpful to the jury in reaching a verdict.

0 1 2 3 4 5 6 7 8
Disagree Agree

36. The testimony was very persuasive.

0 1 2 3 4 5 6 7 8
Disagree Agree

37. Please add any comment you would like to make about the transcript you read.

38. According to the psychological expert testimony, what explanation was offered on behalf of the defense?

1 = The eyewitnesses may have made an incorrect identification due to a phenomenon called weapon focus.
2 = The eyewitnesses may have made an incorrect identification due to a phenomenon referred to as the cross-race effect.
3 = No explanation was offered by the expert testimony on behalf of the defense.
39. What racial group do you believe Lamont Jackson to be a member of?

1 = Caucasian
2 = Asian/Pacific Islander
3 = African-American
4 = Hispanic
5 = Native American

40. What racial group do you believe the two witnesses who identified Lamont Jackson as one of the perpetrators of the crime to be a member of?

1 = Caucasian
2 = Asian/Pacific Islander
3 = African-American
4 = Hispanic
5 = Native American

41. What racial group do you believe the psychological expert witness, Tyrone Parker, to be a member of?

1 = Caucasian
2 = Asian/Pacific Islander
3 = African-American
4 = Hispanic
5 = Native American
Appendix U

Juror Post-Trial Questionnaire: Black Defendant-White Expert
INSTRUCTIONS: Please read each question carefully, and circle the number that corresponds to your answer. Take your time and consider each option before selecting your response. Select only one response for each item.

42. Based upon the definition of Robbery and the jury instructions you have been given, what is your verdict on one count of Robbery for Lamont Jackson?

1 = Guilty
2 = Not Guilty

43. Based upon the definition of Battery and the jury instructions you have been given, what is your verdict on one count of Battery for Lamont Jackson?

1 = Guilty
2 = Not Guilty

44. Based upon the information you were given in the Brief Case Description and expert witness testimony, how likely or unlikely is it that Lamont Jackson is guilty?

1 = extremely unlikely
2 = very unlikely
3 = somewhat unlikely
4 = guilt/innocence are equally likely
5 = somewhat likely
6 = very likely
7 = extremely likely

45. How confident are you in your verdict on the charge of Robbery in this case?

1 = not at all confident
2 = slightly confident
3 = somewhat confident
4 = moderately confident
5 = fairly confident
6 = highly confident
7 = completely confident
46. How confident are you in your verdict on the charge of **Battery** in this case?

1 = not at all confident  
2 = slightly confident  
3 = somewhat confident  
4 = moderately confident  
5 = fairly confident  
6 = highly confident  
7 = completely confident

ANSWER QUESTION #6 ONLY IF YOUR VERDICT IN QUESTION #1 WAS "GUILTY." OTHERWISE, SKIP TO QUESTION #7.

47. What sentence do you believe Lamont Jackson should receive for his guilt on the charge of **Robbery** in this case? (circle only one)

1 = no penalty  
2 = 0 – 180 days  
3 = 0 – 1 year  
4 = 6 months – 3 years  
5 = 2 – 8 years  
6 = 6 – 20 years  
7 = 20 – 50 years

ANSWER QUESTION #7 ONLY IF YOUR VERDICT IN QUESTION #2 WAS "GUILTY." OTHERWISE, SKIP TO QUESTION #8.

48. What sentence do you believe Lamont Jackson should receive for his guilt on the charge of **Battery** in this case? (circle only one)

1 = no penalty  
2 = 0 – 180 days  
3 = 0 – 1 year  
4 = 6 months – 3 years  
5 = 2 – 8 years  
6 = 6 – 20 years  
7 = 20 – 50 years

49. What most influenced your verdict?

1 = The initial evidence presented by the prosecution  
2 = The initial evidence presented by the defense  
3 = The psychological expert testimony  
4 = Other, please explain:
50. Was there any piece of evidence or testimony that you did not find believable?

1 = No
2 = Yes, please explain:

51. Do you think Lamont Jackson is or is not the type of person that engages in the types of activities in which he stands accused?

1 = Lamont Jackson is definitely not the type
2 = Lamont Jackson is probably not the type
3 = Lamont Jackson is possibly not the type
4 = Uncertain/Cannot Say
5 = Lamont Jackson is possibly the type
6 = Lamont Jackson is probably the type
7 = Lamont Jackson is definitely the type

The following questions are about Lamont Jackson. Use the scale listed below each question, and circle the number that best corresponds to your answer.

52. How much sympathy do you feel toward Lamont Jackson?

A great deal 1 2 3 4 5 6 7 no sympathy of sympathy

53. How much pity do you feel for Lamont Jackson?

A great deal 1 2 3 4 5 6 7 no pity of pity

54. How much anger do you feel toward Lamont Jackson?

A great deal 1 2 3 4 5 6 7 no anger of anger

55. In your opinion, how likely or unlikely is it that Lamont Jackson has engaged or will engage in the behavior in which he stands accused?

Very likely 1 2 3 4 5 6 7 very unlikely

The following questions are about Wilma Thompson, the eyewitness who identified Lamont Jackson in a lineup and was shot in the chest and head, Charles Anderson, Ms. Thompson's boss, and Roberta Walker, also in the lending institution at the time of the robbery. Use the scale listed below each question, and circle the number that best corresponds to your answer.
56. How much sympathy do you feel toward Wilma Thompson?
A great deal 1 2 3 4 5 6 7  
of sympathy
57. How much pity do you feel for Wilma Thompson?
A great deal 1 2 3 4 5 6 7  
of pity
58. How much sympathy do you feel toward Charles Anderson?
A great deal 1 2 3 4 5 6 7  
of sympathy
59. How much pity do you feel for Charles Anderson?
A great deal 1 2 3 4 5 6 7  
of pity
60. How much sympathy do you feel toward Roberta Walker?
A great deal 1 2 3 4 5 6 7  
of sympathy
61. How much pity do you feel for Roberta Walker?
A great deal 1 2 3 4 5 6 7  
of pity

The following questions are about the expert psychological witness, Thomas O’Neill. Please circle one of the numbers following each statement to indicate your level of disagreement or agreement. This scale is as follows:

0 1 2 3 4 5 6 7 8
Disagree Agree

In other words, if you DISAGREE with the statement, you would circle the “0.” If you AGREE with the statement, you would circle the “8.” If you neither agree nor disagree, you would circle the “4.” The other numbers are to indicate varying degrees of opinion in-between.

62. The witness is poorly qualified educationally.
0 1 2 3 4 5 6 7 8
Disagree Agree
63. The witness has a great deal of clinical experience.

   0  1  2  3  4  5  6  7  8
Disagree Agree

64. The witness has a poor professional reputation.

   0  1  2  3  4  5  6  7  8
Disagree Agree

65. The witness was comfortable on the witness stand.

   0  1  2  3  4  5  6  7  8
Disagree Agree

66. The witness had an awkward and unprofessional manner.

   0  1  2  3  4  5  6  7  8
Disagree Agree

67. The witness explained technical terms clearly.

   0  1  2  3  4  5  6  7  8
Disagree Agree

68. The witness inspired little confidence in his or her knowledge.

   0  1  2  3  4  5  6  7  8
Disagree Agree

69. The witness conducted a thoroughly professional evaluation of the defendant.

   0  1  2  3  4  5  6  7  8
Disagree Agree

70. The witness was quite unimpressive, as judged by the transcript.

   0  1  2  3  4  5  6  7  8
Disagree Agree

71. The witness was highly credible and trustworthy.

   0  1  2  3  4  5  6  7  8
Disagree Agree
72. The testimony was of little importance to the case.

0  1  2  3  4  5  6  7  8
Disagree Agree

73. The testimony made sense, even to non-specialists or people outside the profession.

0  1  2  3  4  5  6  7  8
Disagree Agree

74. The testimony gave a negative impression of the witness’s profession.

0  1  2  3  4  5  6  7  8
Disagree Agree

75. The testimony showed that the witness had high professional and ethical standards.

0  1  2  3  4  5  6  7  8
Disagree Agree

76. The testimony was not very helpful to the jury in reaching a verdict.

0  1  2  3  4  5  6  7  8
Disagree Agree

77. The testimony was very persuasive.

0  1  2  3  4  5  6  7  8
Disagree Agree

78. Please add any comment you would like to make about the transcript you read.

79. According to the psychological expert testimony, what explanation was offered on behalf of the defense?

1 = The eyewitnesses may have made an incorrect identification due to a phenomenon called weapon focus.
2 = The eyewitnesses may have made an incorrect identification due to a phenomenon referred to as the cross-race effect.
3 = No explanation was offered by the expert testimony on behalf of the defense.
80. What racial group do you believe Lamont Jackson to be a member of?

1 = Caucasian
2 = Asian/Pacific Islander
3 = African-American
4 = Hispanic
5 = Native American

81. What racial group do you believe the two witnesses who identified Lamont Jackson as one of the perpetrators of the crime to be a member of?

1 = Caucasian
2 = Asian/Pacific Islander
3 = African-American
4 = Hispanic
5 = Native American

82. What racial group do you believe the psychological expert witness, Thomas O'Neill, to be a member of?

1 = Caucasian
2 = Asian/Pacific Islander
3 = African-American
4 = Hispanic
5 = Native American
Appendix V

Juror Post-Trial Questionnaire: White Defendant-Black Expert
83. Based upon the definition of Robbery and the jury instructions you have been given, what is your verdict on one count of Robbery for Lucas McGregor?

1  =  Guilty
2  =  Not Guilty

84. Based upon the definition of Battery and the jury instructions you have been given, what is your verdict on one count of Battery for Lucas McGregor?

1  =  Guilty
2  =  Not Guilty

85. Based upon the information you were given in the Brief Case Description and expert witness testimony, how likely or unlikely is it that Lucas McGregor is guilty?

1  =  extremely unlikely
2  =  very unlikely
3  =  somewhat unlikely
4  =  guilt/innocence are equally likely
5  =  somewhat likely
6  =  very likely
7  =  extremely likely

86. How confident are you in your verdict on the charge of Robbery in this case?

1  =  not at all confident
2  =  slightly confident
3  =  somewhat confident
4  =  moderately confident
5  =  fairly confident
6  =  highly confident
7  =  completely confident
87. How confident are you in your verdict on the charge of **Battery** in this case?

1 = not at all confident  
2 = slightly confident  
3 = somewhat confident  
4 = moderately confident  
5 = fairly confident  
6 = highly confident  
7 = completely confident

ANSWER QUESTION #6 ONLY IF YOUR VERDICT IN QUESTION #1 WAS “GUILTY.” OTHERWISE, SKIP TO QUESTION #7.

88. What sentence do you believe Lucas McGregor should receive for his guilt on the charge of **Robbery** in this case? (circle only one)

1 = no penalty  
2 = 0 - 180 days  
3 = 0 - 1 year  
4 = 6 months - 3 years  
5 = 2 - 8 years  
6 = 6 - 20 years  
7 = 20 - 50 years

ANSWER QUESTION #7 ONLY IF YOUR VERDICT IN QUESTION #2 WAS “GUILTY.” OTHERWISE, SKIP TO QUESTION #8.

89. What sentence do you believe Lucas McGregor should receive for his guilt on the charge of **Battery** in this case? (circle only one)

1 = no penalty  
2 = 0 - 180 days  
3 = 0 - 1 year  
4 = 6 months - 3 years  
5 = 2 - 8 years  
6 = 6 - 20 years  
7 = 20 - 50 years

90. What most influenced your verdict?

1 = The initial evidence presented by the prosecution  
2 = The initial evidence presented by the defense  
3 = The psychological expert testimony  
4 = Other, please explain:
91. Was there any piece of evidence or testimony that you did not find believable?

1 = No
2 = Yes, please explain:

92. Do you think Lucas McGregor is or is not the type of person that engages in the types of activities in which he stands accused?

1 = Lucas McGregor is definitely not the type
2 = Lucas McGregor is probably not the type
3 = Lucas McGregor is possibly not the type
4 = Uncertain/Cannot Say
5 = Lucas McGregor is possibly the type
6 = Lucas McGregor is probably the type
7 = Lucas McGregor is definitely the type

The following questions are about Lucas McGregor. Use the scale listed below each question, and circle the number that best corresponds to your answer.

93. How much sympathy do you feel toward Lucas McGregor?

A great deal 1 2 3 4 5 6 7 no sympathy

94. How much pity do you feel for Lucas McGregor?

A great deal 1 2 3 4 5 6 7 no pity

95. How much anger do you feel toward Lucas McGregor?

A great deal 1 2 3 4 5 6 7 no anger

96. In your opinion, how likely or unlikely is it that Lucas McGregor has engaged or will engage in the behavior in which he stands accused?

Very likely 1 2 3 4 5 6 7 very unlikely

The following questions are about Wilma Thompson, the eyewitness who identified Lucas McGregor in a lineup and was shot in the chest and head, Charles Anderson, Ms. Thompson's boss, and Roberta Walker, also in the lending institution at the time of the robbery. Use the scale listed below each question, and circle the number that best corresponds to your answer.
97. How much sympathy do you feel toward Wilma Thompson?

A great deal 1 2 3 4 5 6 7  no sympathy

98. How much pity do you feel for Wilma Thompson?

A great deal 1 2 3 4 5 6 7  no pity

99. How much sympathy do you feel toward Charles Anderson?

A great deal 1 2 3 4 5 6 7  no sympathy

100. How much pity do you feel for Charles Anderson?

A great deal 1 2 3 4 5 6 7  no pity

101. How much sympathy do you feel toward Roberta Walker?

A great deal 1 2 3 4 5 6 7  no sympathy

102. How much pity do you feel for Roberta Walker?

A great deal 1 2 3 4 5 6 7  no pity

The following questions are about the expert psychological witness, Tyrone Parker. Please circle one of the numbers following each statement to indicate your level of disagreement or agreement. This scale is as follows:

0 1 2 3 4 5 6 7 8
Disagree  Agree

In other words, if you DISAGREE with the statement, you would circle the “0.” If you AGREE with the statement, you would circle the “8.” If you neither agree nor disagree, you would circle the “4.” The other numbers are to indicate varying degrees of opinion in-between.

103. The witness is poorly qualified educationally.

0 1 2 3 4 5 6 7 8
Disagree  Agree
104. The witness has a great deal of clinical experience.

Disagree

105. The witness has a poor professional reputation.

Disagree

106. The witness was comfortable on the witness stand.

Disagree

107. The witness had an awkward and unprofessional manner.

Disagree

108. The witness explained technical terms clearly.

Disagree

109. The witness inspired little confidence in his or her knowledge.

Disagree

110. The witness conducted a thoroughly professional evaluation of the defendant.

Disagree

111. The witness was quite unimpressive, as judged by the transcript.

Disagree
112. The witness was highly credible and trustworthy.

Disagree 0 1 2 3 4 5 6 7 8 Agree

113. The testimony was of little importance to the case.

Disagree 0 1 2 3 4 5 6 7 8 Agree

114. The testimony made sense, even to non-specialists or people outside the profession.

Disagree 0 1 2 3 4 5 6 7 8 Agree

115. The testimony gave a negative impression of the witness's profession.

Disagree 0 1 2 3 4 5 6 7 8 Agree

116. The testimony showed that the witness had high professional and ethical standards.

Disagree 0 1 2 3 4 5 6 7 8 Agree

117. The testimony was not very helpful to the jury in reaching a verdict.

Disagree 0 1 2 3 4 5 6 7 8 Agree

118. The testimony was very persuasive.

Disagree 0 1 2 3 4 5 6 7 8 Agree

119. Please add any comment you would like to make about the transcript you read.
120. According to the psychological expert testimony, what explanation was offered on behalf of the defense?

1 = The eyewitnesses may have made an incorrect identification due to a phenomenon called weapon focus.
2 = The eyewitnesses may have made an incorrect identification due to a phenomenon referred to as the cross-race effect.
3 = No explanation was offered by the expert testimony on behalf of the defense.

121. What racial group do you believe Lucas McGregor to be a member of?

1 = Caucasian
2 = Asian/Pacific Islander
3 = African-American
4 = Hispanic
5 = Native American

122. What racial group do you believe the two witnesses who identified Lucas McGregor as one of the perpetrators of the crime to be a member of?

1 = Caucasian
2 = Asian/Pacific Islander
3 = African-American
4 = Hispanic
5 = Native American

123. What racial group do you believe the psychological expert witness, Tyrone Parker, to be a member of?

1 = Caucasian
2 = Asian/Pacific Islander
3 = African-American
4 = Hispanic
5 = Native American
Appendix W

Juror Post-Trial Questionnaire: White Defendant-White Expert
INSTRUCTIONS: Please read each question carefully, and circle the number that corresponds to your answer. Take your time and consider each option before selecting your response. Select only one response for each item.

124. Based upon the definition of Robbery and the jury instructions you have been given, what is your verdict on one count of Robbery for Lucas McGregor?

1 = Guilty
2 = Not Guilty

125. Based upon the definition of Battery and the jury instructions you have been given, what is your verdict on one count of Battery for Lucas McGregor?

1 = Guilty
2 = Not Guilty

126. Based upon the information you were given in the Brief Case Description and expert witness testimony, how likely or unlikely is it that Lucas McGregor is guilty?

1 = extremely unlikely
2 = very unlikely
3 = somewhat unlikely
4 = guilt/innocence are equally likely
5 = somewhat likely
6 = very likely
7 = extremely likely

127. How confident are you in your verdict on the charge of Robbery in this case?

1 = not at all confident
2 = slightly confident
3 = somewhat confident
4 = moderately confident
5 = fairly confident
6 = highly confident
7 = completely confident
128. How confident are you in your verdict on the charge of **Battery** in this case?

1 = not at all confident  
2 = slightly confident  
3 = somewhat confident 
4 = moderately confident  
5 = fairly confident  
6 = highly confident  
7 = completely confident  

**ANSWER QUESTION #6 ONLY IF YOUR VERDICT IN QUESTION #1 WAS "GUILTY." OTHERWISE, SKIP TO QUESTION #7.**

129. What sentence do you believe Lucas McGregor should receive for his guilt on the charge of **Robbery** in this case? (circle only one)

1 = no penalty  
2 = 0 – 180 days  
3 = 0 – 1 year  
4 = 6 months – 3 years  
5 = 2 – 8 years  
6 = 6 – 20 years  
7 = 20 – 50 years  

**ANSWER QUESTION #7 ONLY IF YOUR VERDICT IN QUESTION #2 WAS "GUILTY." OTHERWISE, SKIP TO QUESTION #8.**

130. What sentence do you believe Lucas McGregor should receive for his guilt on the charge of **Battery** in this case? (circle only one)

1 = no penalty  
2 = 0 – 180 days  
3 = 0 – 1 year  
4 = 6 months – 3 years  
5 = 2 – 8 years  
6 = 6 – 20 years  
7 = 20 – 50 years  

131. What *most* influenced your verdict?

1 = The initial evidence presented by the prosecution  
2 = The initial evidence presented by the defense  
3 = The psychological expert testimony  
4 = Other, please explain:  

212
132. Was there any piece of evidence or testimony that you did not find believable?

1 = No
2 = Yes, please explain:

133. Do you think Lucas McGregor is or is not the type of person that engages in the types of activities in which he stands accused?

1 = Lucas McGregor is definitely not the type
2 = Lucas McGregor is probably not the type
3 = Lucas McGregor is possibly not the type
4 = Uncertain/Cannot Say
5 = Lucas McGregor is possibly the type
6 = Lucas McGregor is probably the type
7 = Lucas McGregor is definitely the type

The following questions are about Lucas McGregor. Use the scale listed below each question, and circle the number that best corresponds to your answer.

134. How much sympathy do you feel toward Lucas McGregor?

A great deal 1 2 3 4 5 6 7 no sympathy

135. How much pity do you feel for Lucas McGregor?

A great deal 1 2 3 4 5 6 7 no pity

136. How much anger do you feel toward Lucas McGregor?

A great deal 1 2 3 4 5 6 7 no anger

137. In your opinion, how likely or unlikely is it that Lucas McGregor has engaged or will engage in the behavior in which he stands accused?

Very likely 1 2 3 4 5 6 7 very unlikely

The following questions are about Wilma Thompson, the eyewitness who identified Lucas McGregor in a lineup and was shot in the chest and head, Charles Anderson, Ms. Thompson's boss, and Roberta Walker, also in the lending institution at the time
of the robbery. Use the scale listed below each question, and circle the number that best corresponds to your answer.

138. How much sympathy do you feel toward Wilma Thompson?

A great deal of sympathy 1 2 3 4 5 6 7 no sympathy

139. How much pity do you feel for Wilma Thompson?

A great deal of pity 1 2 3 4 5 6 7 no pity

140. How much sympathy do you feel toward Charles Anderson?

A great deal of sympathy 1 2 3 4 5 6 7 no sympathy

141. How much pity do you feel for Charles Anderson?

A great deal of pity 1 2 3 4 5 6 7 no pity

142. How much sympathy do you feel toward Roberta Walker?

A great deal of sympathy 1 2 3 4 5 6 7 no sympathy

143. How much pity do you feel for Roberta Walker?

A great deal of pity 1 2 3 4 5 6 7 no pity

The following questions are about the expert psychological witness, Thomas O’Neill. Please circle one of the numbers following each statement to indicate your level of disagreement or agreement. This scale is as follows:

0 1 2 3 4 5 6 7 8
Disagree Agree

In other words, if you DISAGREE with the statement, you would circle the “0.” If you AGREE with the statement, you would circle the “8.” If you neither agree nor disagree, you would circle the “4.” The other numbers are to indicate varying degrees of opinion in-between.
144. The witness is poorly qualified educationally.

[Scale: disagree (0) to agree (8)]

Disagree: 1 2 3 4 5 6 7 8
Agree

145. The witness has a great deal of clinical experience.

[Scale: disagree (0) to agree (8)]

Disagree: 1 2 3 4 5 6 7 8
Agree

146. The witness has a poor professional reputation.

[Scale: disagree (0) to agree (8)]

Disagree: 1 2 3 4 5 6 7 8
Agree

147. The witness was comfortable on the witness stand.

[Scale: disagree (0) to agree (8)]

Disagree: 1 2 3 4 5 6 7 8
Agree

148. The witness had an awkward and unprofessional manner.

[Scale: disagree (0) to agree (8)]

Disagree: 1 2 3 4 5 6 7 8
Agree

149. The witness explained technical terms clearly.

[Scale: disagree (0) to agree (8)]

Disagree: 1 2 3 4 5 6 7 8
Agree

150. The witness inspired little confidence in his or her knowledge.

[Scale: disagree (0) to agree (8)]

Disagree: 1 2 3 4 5 6 7 8
Agree

151. The witness conducted a thoroughly professional evaluation of the defendant.

[Scale: disagree (0) to agree (8)]

Disagree: 1 2 3 4 5 6 7 8
Agree

152. The witness was quite unimpressive, as judged by the transcript.

[Scale: disagree (0) to agree (8)]

Disagree: 1 2 3 4 5 6 7 8
Agree
153. The witness was highly credible and trustworthy.

Disagree Agree

154. The testimony was of little importance to the case.

Disagree Agree

155. The testimony made sense, even to non-specialists or people outside the profession.

Disagree Agree

156. The testimony gave a negative impression of the witness’s profession.

Disagree Agree

157. The testimony showed that the witness had high professional and ethical standards.

Disagree Agree

158. The testimony was not very helpful to the jury in reaching a verdict.

Disagree Agree

159. The testimony was very persuasive.

Disagree Agree

160. Please add any comment you would like to make about the transcript you read.
161. **According to the psychological expert testimony, what explanation was offered on behalf of the defense?**

1. The eyewitnesses may have made an incorrect identification due to a phenomenon called weapon focus.
2. The eyewitnesses may have made an incorrect identification due to a phenomenon referred to as the cross-race effect.
3. No explanation was offered by the expert testimony on behalf of the defense.

162. **What racial group do you believe Lucas McGregor to be a member of?**

1. Caucasian
2. Asian/Pacific Islander
3. African-American
4. Hispanic
5. Native American

163. **What racial group do you believe the two witnesses who identified Lucas McGregor as one of the perpetrators of the crime to be a member of?**

1. Caucasian
2. Asian/Pacific Islander
3. African-American
4. Hispanic
5. Native American

164. **What racial group do you believe the psychological expert witness, Thomas O’Neill, to be a member of?**

1. Caucasian
2. Asian/Pacific Islander
3. African-American
4. Hispanic
5. Native American
Appendix X

Modern Racism Scale (McConahay, 1986):
“Social Attitudes Survey”
Modern Racism Scale (McConahay, 1986): “Social Attitudes Survey”

The following survey has a number of opinion statements about public issues, politics, and your beliefs about the world, in general. Please circle one of the numbers following each statement to indicate your level of disagreement or agreement. The scale is as follows:

1. Disagree
   Strongly
2. Disagree
   Somewhat
3. Neither Agree
   Nor Disagree
   or
   No Opinion
4. Agree
   Somewhat
5. Agree
   Strongly

Your responses will be completely confidential. The focus of this survey is on group averages and percentages so do not put your name or any identifying information on this form.

1. Women should have to promise to obey their husbands when they get married.
   1 2 3 4 5

2. Over the past few years, the government and news media have shown more respect to Blacks than they deserve.
   1 2 3 4 5

3. It is important to protect the rights of radicals and deviants in all ways.
   1 2 3 4 5

4. It is always better to trust the judgment of the proper authorities in government and religion than to listen to the noisy rabble-rousers in our society who are trying to create doubt in people’s minds.
   1 2 3 4 5

5. It is easy to understand the anger of Black people in America.
   1 2 3 4 5

* Modern Racism Scale item
6. Gays and Lesbians are just as healthy and moral as anybody else.

7. Discrimination against Blacks is no longer a problem in the United States.

8. It may be considered old fashioned by some, but having a normal, proper appearance is still the mark of a gentleman, and especially, a lady.

9. There is no "ONE right way" to live life; everybody has to create their own way.

10. Over the past few years, Black have gotten more economically than they deserve.

11. Obedience and respect for authority are the most important virtues children should learn.

12. A "woman's place" should be wherever she wants to be. The days when women are submissive to their husbands and social conventions belong strictly in the past.

13. Blacks have more influence upon school desegregation plans (affirmative action plans) than they ought to have.

* Modern Racism Scale item
14. The facts on crime, sexual immorality, and the recent public disorders all show we have to crack down harder on deviant groups and troublemakers if we are going to save our moral standards and preserve law and order.

1 2 3 4 5

15. Blacks are getting too demanding in their push for equal rights.*

1 2 3 4 5

16. Our country *needs* free thinkers who will have the courage to defy traditional ways, even if it upsets many people.

1 2 3 4 5

17. Blacks should not push themselves where they are not wanted.*

1 2 3 4 5

18. Our country will be great if we honor the ways of our forefathers, do what the authorities tell us to do, and get rid of the “rotten apples” who are ruining everything.

1 2 3 4 5

19. A lot of rules regarding modesty and sexual behavior are just customs which are not necessarily any better or holier than those which other people follow.

1 2 3 4 5

* Modern Racism Scale item