PSYCHOLOGICAL MECHANISMS UNDERLYING RACE-BASED PEREMPTORY CHALLENGES

by

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Abstract

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Despite the Supreme Court decision prohibiting race-based peremptory challenges (*Batson v. Kentucky;* 1986), prosecuting attorneys strike Black venirepersons at higher rates than they strike White venirepersons (Clark, Boccaccini, Caillouet, & Chaplin, 2007; Rose, 1999; Sommers & Norton, 2007). I conducted two studies to explore the psychological mechanisms underlying race-based peremptory challenges. Study One tested the unconscious and conscious psychological influences on attorneys' strike decisions and the circumstances under which racial bias can be reduced. Study Two tested whether attorneys are driven by beliefs in the legal attitudes of Black and White jurors, beliefs in in-group favoritism between jurors and defendants, or both. Venireperson race influenced attorneys' strike decisions; however, contrary to past research, the racial bias in attorneys' decisions was directed at the White venireperson. Venireperson race was less likely to affect attorneys' strike decisions when they were warned explicitly about the *Batson* restrictions. There was some evidence that endorsement of stereotypes about the legal attitudes of Black and White jurors was related to attorneys' decisions but there was no evidence that beliefs about in-group/out-group bias influenced their decisions. Possible explanations for the unexpected discrimination against White venirepersons are discussed.

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CHAPTER 1: INTRODUCTION

When attorneys wish to remove a venireperson from a panel, two possible routes are available. With challenges for cause, which are unlimited in number, an attorney must convince the judge that venirepersons should be stricken from the panel because they hold biased attitudes. With peremptory challenges, an attorney may strike a venireperson without providing an explanation; these challenges are limited in number. The purpose of peremptory challenges is to provide a mechanism for attorneys to strike biased venirepersons even when the attorney is unable to convince the judge of the potential juror's bias. In theory, peremptory challenges serve to form a fair jury; however, there is evidence that they contribute to the formation of biased juries through the exclusion of racial minorities (Sommers & Norton, 2007).

In *Batson v. Kentucky* (1986), an all-White jury convicted a Black man of second-degree burglary and receipt of stolen goods after a prosecuting attorney used peremptory challenges to strike all four Black venirepersons from the panel. Batson appealed his conviction to the U.S. Supreme Court based on the prosecutor's racially biased use of peremptory challenges and the Court held that prosecuting attorneys may not use peremptory challenges to exclude venirepersons because of their race. According to this decision, if a defense attorney suspects that a prosecutor has made a peremptory challenge based on race, the defense must raise a *Batson* challenge and leave the judge to decide if the exclusion is lawful. The attorney must give the judge a reason other than race for why that venireperson should be stricken and the judge must decide if the reason given is legitimate. The *Batson* decision has now been extended to include other cognizable groups (*State v. Fulton,* 1991; *J.E.B. v. Alabama*, 1994; *People v. Garcia*,

2000) and its restrictions were extended to defense attorneys in *Georgia v. McCollum* (1992), making it possible for either side to raise a *Batson* challenge. Although the original case in *Batson* was brought forth by a petitioner claiming that his equal protection rights as a defendant had been violated, the *Batson* decision has since been thought to not only protect defendants but also venirepersons who have the constitutional right not to be eliminated from a jury panel simply due to their race. Since the *Batson* decision, controversy has surrounded its efficacy, specifically whether the *Batson* restriction placed on attorneys actually prevents or discourages attorneys from making racially biased jury selection decisions. To study the impact of *Batson*, we must examine the intended purpose of the decision as laid out by the Supreme Court, findings from field and laboratory research exploring if and how the *Batson* decision has affected the jury selection process, and the empirical data on the advantages of racially heterogeneous juries and the dangers of an all-White jury.

CHAPTER 2: THE INTENDED PURPOSE OF *BATSON*

The Supreme Court intended for the *Batson* ruling to prevent the use of racially-biased peremptory challenges by requiring attorneys to give an explanation for a peremptory strike that the opposing attorney alleges is based on race. Some scholars have argued that the protections provided by *Batson* defeat the primary purpose of a peremptory challenge, which is to allow attorneys to eliminate biased venirepersons even when the reasons for the bias are not easily explained (Germano, 1995, Wais, 2007). Others, however, have argued that the law according to *Batson* is not sufficiently restrictive—attorneys can easily form race-neutral explanations for their challenges and judges will typically believe a race-neutral explanation to be true (Page, 2005; Golash, 1992). In light of the arguments for and against the *Batson* decision, it is important to know exactly how the Supreme Court intended this decision to change jury selection and why the Court found it necessary to place this restriction on attorneys' peremptory challenges.

More than a century before the *Batson* decision, the Supreme Court recognized the importance of allowing defendants of all races to be tried by a jury of their peers. Following the abolition of slavery in 1865, the 14th Amendment to the U.S. Constitution guaranteed all men, regardless of race, equal protection under the law. In *Strauder v. West Virginia* (1880), the Supreme Court stated that "discriminating in the selection of jurors…against negroes because of their color, amounts to the denial of the equal protection of the laws to a colored man when he is put upon trial for an alleged offense against the state" (p. 310). In *Strauder*, the petitioner, a Black man, appealed his conviction on the basis that Blacks were not eligible for jury service in his state at that

time, violating his 14th Amendment rights to be tried by a jury of his peers and denying him the same protection under the law that a White defendant would have. Since *Strauder*, the Supreme Court held that racial discrimination when choosing a venire violates the Equal Protection Clause. Other cases following *Strauder* also examined the constitutionality of eliminating venirepersons from a panel due to their membership in a racial or other cognizable group and have ruled that the exclusion of non-Caucasians (*United States v. Fujimoto*, 1953), Puerto Ricans (*United States ex rel. Leguillow v. Davis*, 1953), Mexicans (*Hernandez v. Texas*, 1954), Native Americans (*State v. Plenty Horse*, 1971), people of certain socio-economic status (*Thiel v. Southern Pacific Co.*, 1946, *Ballard v. United States*, 1946; *Witcher v. Peyton*, 1969), and atheists (*Schowqurow v. Maryland*, 1965) is not permissible.

The Supreme Court has also ruled on the burden of proof necessary to make a claim of purposeful discrimination of venirepersons (*Swain v. Alabama*, 1965). In *Swain,* a Black petitioner convicted of rape by an all-White jury appealed his conviction on the grounds that his 14th Amendment rights to Equal Protection were violated when the prosecutor in his case used peremptory challenges to remove all the Black venirepersons from the panel. In *Swain*, the Supreme Court recognized that the State's purposeful elimination of Black venirepersons due to their race and not other factors was considered a violation of a defendant's rights under the Equal Protection Clause. However, in this specific case, the defendant failed to carry his burden of proof and did not provide sufficient evidence that the State had purposefully eliminated Black venirepersons based solely on their race. In *Swain*, the Supreme Court established that to claim a violation of the Equal Protection Clause, "the accused must show the prosecutor's *systematic* use of

peremptory challenges against Negroes over a period of time" (p. 227). This holding required defendants to show not only that the State consistently eliminated Black venirepersons in their case but also repeated this pattern of discrimination in a number of cases. Following the *Swain* decision, lower courts began to recognize the practical difficulties in meeting this burden of proof of *systematic* discrimination. In *United States v. Pearson* (1971), the Court of Appeals for the Fifth Circuit observed that:

> The burden of proof faced by defendants is most difficult. It might require checking the docket for a reasonable period of time for the names of defendants and their attorneys, investigation as to the race of the various defendants, the final composition of the petit jury and the manner in which each side exercised its peremptory challenges (p. 1217).

In essence, although the decision in *Swain* protected defendants from discriminatory jury selection in general, defendants were not protected from discriminatory jury selection if it occurred only during their case. As a result of this decision, the power of the peremptory challenge to strike venirepersons because of their race remained strong despite the Supreme Court's acknowledgment that such practices violated a defendant's 14th Amendment rights.

In 1986, when *Batson v. Kentucky* came before the Supreme Court, the Court had already established that the State should not discriminate against Black citizens when choosing a venire nor should the State discriminate against Black venirepersons when choosing a jury. The question to be decided in *Batson*, however, was whether the burden of proof set forth in *Swain* was reasonable. Batson, a Black man, was charged with second-degree murder and burglary and receipt of stolen goods. During jury selection in

Batson's case, the prosecutor used 4 of his 6 peremptory challenges to strike all 4 Black venirepersons from the panel. Batson's defense counsel moved to discharge the jury before it was sworn on the grounds that the State's removal of all Black venirepersons violated the defendant's 6th Amendment right to a jury drawn from a cross section of the community and his 14th Amendment right to equal protection under the law. The trial judge dismissed the motion and an all-White jury convicted Batson. Batson appealed his conviction to the Supreme Court of Kentucky, which affirmed the conviction, observing that the defendant had failed to carry the burden of proof set forth in *Swain* and could not show that the State had systematically used peremptory challenges to discriminate racially against venirepersons. When Batson's case was brought before the Supreme Court, the Court had to decide whether to follow precedent and honor the burden of proof set forth in the *Swain* decision or go against *Swain* and change the burden of proof to be case specific—the defendant would only have to show that peremptory challenges were used in a racially discriminatory manner in his or her specific case.

The Court overruled, in part, *Swain v. Alabama* (1965); it no longer required a defendant to prove that the State *systematically* discriminated in its challenges of venirepersons. The Court decided that defendants could establish a prima facie case of purposeful discrimination based solely on the prosecutor's use of peremptory challenges during their case. The Court delineated a series of steps to be followed to establish that discrimination had occurred. First, a defendant must show that he or she is a member of a cognizable racial group. Second, defendants are entitled to rely on the fact that the "practice [of peremptory challenges] makes it easier for those to discriminate who are of mind to discriminate" (*Avery v. Georgia*, 1953, p. 562)—a defendant can rely on the

Court's acceptance that peremptory challenges lend themselves to discriminatory practices. Finally, the defendant must show that the State used the practice of peremptory challenges to exclude venirepersons from the jury based on their race.

Once the defendant makes a prima facie case of purposeful discrimination, the burden of proof shifts to the State to show that the peremptory challenges were not based on race and instead based on some other characteristic of the venireperson that makes the challenged individual an undesirable juror. The Court explicitly states that a suspicion that jurors of a shared race with the defendant will be more lenient to the defendant is not a valid reason for exclusion of a venireperson. Although the Court does not cite any empirical research on the effects of juror-defendant similarity, it is possible that the justices were aware that attorneys may be choosing juries because they believe that the more similar jurors are to a defendant, the more likely those jurors are to be lenient toward that defendant, an idea known as the similarity-leniency hypothesis (Kerr, Hymes, Anderson, & Weathers, 1995). Despite this similarity-leniency effect, the Court requires that attorneys provide a race-neutral reason for striking a venireperson. Once attorneys have an opportunity to explain their peremptory challenge, the trial court judge decides whether the challenge will be allowed. In *Batson*, the Supreme Court states that they "have confidence that trial judges, experienced in supervising voir dire, will be able to decide if the circumstances concerning the prosecutor's use of peremptory challenges creates a prima facie case of discrimination again black jurors" (p. 97). The Supreme Court entrusts trial court judges with the responsibility of detecting a pattern of challenges that would indicate purposeful discrimination, like using peremptory challenges to strike all venirepersons of a certain race.

Although controversy naturally surrounded the *Batson* decision because it dealt with issues of race and discrimination, the case also received attention because, for the first time in history, it placed a restriction on the practice of peremptory challenges. In his dissent, Burger stated "Today the Court sets aside the peremptory challenge, a procedure which has been part of the common law for many centuries and part of our jury system for nearly 200 years" (*Batson v. Kentucky*, p. 112). Although the Supreme Court had previously expressed its opinion that venirepersons should not be excluded based on their race, Burger disagreed, expressing that the assumptions made about venirepersons of certain races are often true and that the very purpose of peremptory challenges was to allow attorneys to act upon those assumptions, however taboo, without having to express them overtly. In his dissent, Burger emphasized his view by quoting Babcock, stating " '…we have evolved in the peremptory challenge a system that allows the covert expression of what we dare not say but know is true more often than not' " (Babcock, 1975, in *Batson*, p. 121). In Burger's opinion, the *Batson* decision undermined the peremptory challenge and did more harm than good to the jury selection system.

Despite the criticisms, the *Batson* decision had many merits that outweighed the limitations placed on peremptory challenges. The Court argued that decreasing racial discrimination within the criminal justice system would only strengthen the system—making verdict decisions more just for defendants who are racial minorities. Moreover, giving all venirepersons, regardless of race, a fair chance to be chosen to serve on a jury would strengthen citizens' trust in the system. The Court also argued that the restriction placed on peremptory challenges would not make the challenge obsolete. Justice Powell stated in his opinion:

While we recognize, of course, that the peremptory challenge occupies an important position in our trial procedures, we do not agree that our decision today will undermine the contribution the challenge generally makes to the administration of justice. The reality of practice…shows that the challenge may be, and unfortunately at times has been, used to discriminate against black jurors (*Batson v. Kentucky*, p. 98).

The restriction on peremptory challenges in fact was not as strong as some judges would have liked. In his concurring opinion, Justice Marshall expressed that racial discrimination in jury selection would not be resolved through this decision and that the only real way to end this discrimination was through the complete elimination of peremptory challenges. Despite this concern, the Court placed great confidence in the *Batson* restriction to effectively decrease racial discrimination in jury selection. Justice Powell expressed no doubt that prosecutors would be able to follow the law under *Batson* and stated that a fear that attorneys would not follow the law was not reason enough to abolish peremptory challenges altogether.

Twenty-five years have passed since the *Batson* decision. During that time, in addition to extending the *Batson* restrictions to defense attorneys (*Georgia v. McCollum*, 1992), new cases have extended *Batson's* restrictions to other cognizable groups including religion (*State v. Fulton,* 1991), gender (*J.E.B. v. Alabama*, 1994), and sexual orientation (*People v. Garcia*, 2000). Courts, however, have denied cognizable group status to Italians (*United States v. Angiulo*, 1988) and young adults (*Willis v. Kemp*, 1989). The Supreme Court has even gone beyond restricting the exclusion of venirepersons who belong to the same cognizable group as the defendant. In *Powers v.*

Ohio (1991), the justices ruled in favor of a White defendant who appealed his murder conviction on the grounds that all Black venirepersons on the panel had been excused by the prosecuting attorney. The Court ruled that, although the defendant was not of the same race as the excluded venirepersons, it was still unconstitutional to remove those venirepersons from the panel solely based on their race. This case emphasized that the effects of *Batson* go beyond its original legal rulings on the protection of defendants' equal protection rights and extend to the protection of venirepersons.

Two notable recent rulings have upheld *Batson—Miller-El v. Dretke* (2005) and *Snyder v. Louisiana* (2008). Before the *Batson* ruling, Miller-El, on trial for capital murder, objected to the prosecuting attorney's use of peremptory strikes to eliminate 10 of the 11 Black venirepersons on the panel during jury selection in his case. At the time, the burden of proof necessary to show purposeful discrimination was still that set by *Swain v. Alabama* (1965), which required the petitioner to show systematic exclusion of venirepersons due to their race across a number of cases. The trial judge concluded that Miller-El did not meet this burden of proof and he was subsequently convicted and sentenced to death.

Miller-El appealed his conviction. While his appeal was pending, the *Batson* decision lowered the burden of proof to require only evidence that the prosecutor discriminated against venirepersons due to their race in the petitioner's case. Although, initially, the trial court accepted the prosecutor's race neutral reasons for striking the 10 Black venirepersons as legitimate, the Supreme Court recognized that some of the reasons given for striking the Black venirepersons could also have been applied to White venirepersons who were not eliminated. In addition, the Court expressed concern that the

prosecuting attorneys requested a "reshuffling" of venirepersons' cards (which determined where venirepersons would be seated and which venirepersons would be questioned first) when a large proportion of Black venirepersons were seated in the front. Those seated in the front would be questioned first and have a possibility of serving on the jury but venirepersons not questioned by the end of the week (most likely ones seated in the back) would be dismissed. Last, the Court saw evidence that the way in which the prosecuting attorneys posed death penalty questions to venirepersons varied by race; attorneys gave Black venirepersons a much more graphic description of the death penalty than they gave White venirepersons, possibly influencing the types of death penalty opinions Black venirepersons later expressed. The Court ruled in Miller-El's favor, accepting that the prosecutors in the case had discriminated against venirepersons on the basis of their race.

More recently, the Supreme Court again upheld *Batson* in *Snyder v. Louisiana* (2008). Snyder appealed his murder conviction and death sentence on the grounds that the prosecutor used peremptory challenges to eliminate the five Black venirepersons who survived challenges for cause. Although the prosecutor provided race neutral explanations to the trial judge for the peremptory challenges, Snyder argued that the explanations were not valid. For example, the reason given for striking one venireperson was that he looked nervous during the questioning. Another race neutral explanation given for a second eliminated Black venireperson was that he would miss too many days of his job as a student teacher. This reason was accepted at trial even though a Dean of the university where the student worked had sent a letter explaining that the student's absence from his teaching job would not be problematic. The Court ruled in Snyder's

favor and recognized that the reasons given by the prosecution, although race neutral, were not valid. This case not only affirms the *Batson* holding that prosecutors should not eliminate venirepersons based on race but also emphasizes that the race neutral reasons given for peremptory strikes against a venireperson cannot be just any reasons, but must be legitimate ones.

Judges are tasked with distinguishing between legitimate reasons to eliminate a venireperson and racially biased reasons. The question is: how successful are judges and attorneys at implementing the restrictions placed on peremptory challenges by *Batson*? Do attorneys abide by the restrictions and can judges enforce them? Has the decision eliminated or even reduced racial bias in the use of peremptory challenges? To answer these questions, we must turn to the psycholegal research on *Batson* and its effects on the jury selection process.

CHAPTER 3: BATSON'S EFFECT ON THE JURY SELECTION PROCESS

Despite the Court's attempt to reduce the number of racially biased peremptory challenges, both field and laboratory research has shown that prosecutors continue to strike Black venirepersons at higher rates than White venirepersons (Clark, Boccaccini, Caillouet, & Chaplin, 2007; Rose, 1999; Sommers & Norton, 2007). Clark and colleagues (2007) examined the personality traits and demographic characteristics of venirepersons excused from juries in twenty-eight cases (11 criminal trials and 17 civil trials). Although the authors did not find personality traits to be strongly associated with the jury selection process, they did find that demographic characteristics played a significant role in which venirepersons were excused by the prosecution versus the defense. In particular, venirepersons who were excused by the prosecution were more likely to be male, young, employed, and African-American than those excused by the defense. Despite *Batson*, attorneys still rely on race to make jury selection decisions in the same way that they rely on other demographic characteristics, and eliminating Black venirepersons seems to be a practice more common for prosecuting than for defense attorneys.

This racial difference in the type of venirepersons excused by the prosecution versus the defense was also seen in a field study of the use of the peremptory challenges by prosecuting and defense attorneys in thirteen noncapital felony criminal jury trials in North Carolina (Rose, 1999). Peremptory challenges, rather than challenges for cause, were the most common way that venirepersons were excused. Although overall Black and White venirepersons were excused with the same frequency, the prosecution had challenged 71% of the excused Black venirepersons whereas the defense had challenged

81% of the excused White venirepersons. Thus, prosecuting and defense attorneys may hold certain views about Black and White jurors' legal attitudes, specifically, that Black jurors are pro-defense and White jurors are pro-prosecution. The frequency with which prosecuting and defense attorneys excused Black and White venirepersons also implies that judges are allowing racially biased peremptory challenges despite the restrictions placed by *Batson*.

A more recent field study on race-based peremptory challenges examined the use of *Batson* challenges in 184 cases in the U.S. Court of Appeals between 2002 and 2006 (Gabbidon, Kowal, Jordan, Roberts, & Vincenzi, 2008). The authors found that nearly two-thirds of the venirepersons removed from panels were Black, with Latinos representing the second largest group of venirepersons excused. Similar to other findings (Clark et al., 2007; Rose, 1999), prosecutors were much more likely to attempt to remove racial minorities from the panel than were defense attorneys; the prosecution produced 90% of the peremptory challenges of racial minority venirepersons. These challenges were typically successful. When they faced *Batson* challenges, attorneys were able to provide race-neutral explanations for their challenges in more than 75% of the cases. Of these cases, the courts accepted 79% of the challenges as race-neutral. Examples of acceptable race-neutral explanations included that venirepersons had questionable body language or mannerisms, that they or a member of their family had a criminal record, or that they had limited life experiences. Reasons that were not accepted by the courts were those that could apply to other venirepersons of different races yet those other venirepersons were not eliminated (which the Supreme Court recognized as unacceptable reasons in *Miller-El v. Dretke*, 2004). Moreover, the courts ruled that a venireperson of

the same race as the defendant would be lenient toward the defendant was not a legitimate justification because it was based on racial stereotypes and therefore unconstitutional.

The Louisiana Crisis Assistance Center published a report on the use of peremptory strikes by the District Attorneys' Office of Jefferson Parish. An examination of 390 felony jury trials prosecuted between 1994 and 2002 showed that prosecutors struck Black venirepersons with more than three times the frequency as White venirepersons. In 2010, the Equal Justice Initiative (EJI) released a special report highlighting the ongoing problems associated with racial bias in jury selection, specifically focused on prosecutors' use of peremptory strikes on Black venirepersons in Southern States. The EJI, based in Alabama, examined the use of peremptory strikes in Houston and Dallas Counties, Alabama, and discovered that prosecuting attorneys strike approximately 80% of qualified Black venirepersons in death penalty trials and use 79% of their peremptory strikes on Black members of the venire (EJI, 2010). The field data imply that attorneys may be getting away with striking venirepersons due to their race by developing race-neutral explanations; however, field research methods make it difficult to differentiate between race-neutral explanations that are legitimate and those that are created simply to cover up a race-based elimination. For this reason, it is important to examine the findings from laboratory research on *Batson*.

Experimental research on the use of peremptory challenges after *Batson*, although limited, has shown that attorneys make racially motivated jury selection decisions and use race-neutral explanations to disguise them. In a study of racial bias in peremptory challenges (Sommers & Norton, 2007), college students, law students, and attorneys

chose which of two venirepersons—one Black and one White—they would eliminate from the panel using a peremptory strike if they were the prosecuting attorney in a robbery and aggravated assault trial in which the defendant was Black. Details about the two venirepersons varied orthogonally to the race manipulation: one venireperson was a 43-year-old married journalist with no previous jury experience who had written articles about police misconduct; the other venireperson was a 40-year-old divorced advertising executive who had served on two previous juries and was skeptical of statistics. Undergraduates, law-students, and attorneys played the role of a prosecuting attorney, read a trial summary of a case, and chose which of the two venirepersons they would strike from the panel. Participants were more likely to strike the Black venireperson than the White venireperson regardless of the other demographic information given about the two venirepersons. When asked to explain their decisions, participants were much more likely to cite the venirepersons' non-race related demographic information than to cite race. Although race clearly played a role in attorneys' decisions to peremptorily strike a venireperson, attorneys were still able to generate race-neutral justifications for their challenges based on other information they knew about the venireperson. A judge would likely accept these explanations as lawful because *Batson* only requires that the reason for striking the venireperson *not* be race. Although the Supreme Court has ruled in favor of petitioners who have claimed that explanations such as these are not legitimate (*Miller-El v. Dretke*, 2005; *Snyder v. Louisiana*, 2008), the defendants in these cases were previously found guilty at trials in which the judges accepted invalid reasons for prosecutors' use of peremptory strikes on Black venirepersons.

Batson not only may fail to prevent racial discrimination in jury selection but may also encourage attorneys to find neutral justifications for their biased challenges (Norton, Sommers, & Brauner, 2007). In a two-part study of gender discrimination in jury selection, Norton, Sommers, and Brauner (2007) examined the frequency with which attorneys abide with the restrictions against gender discrimination placed on peremptory challenges by the Supreme Court in *J.E.B. v. Alabama*. College student participants played the role of a prosecuting attorney trying the case of a woman accused of murdering her abusive husband. In the first study, participants chose from two venirepersons, one male and one female, each of which was randomly paired with the descriptor of "parent" or "counselor." Participants struck the female venireperson at higher rates than the male venireperson irrespective of the description of the venireperson. In addition, participants cited the venirepersons' occupation as their reason for striking them—when the female venireperson was a parent, participants cited that fact as the reason for striking her; when the female venireperson was a counselor, participants cited that occupation as the reason for striking her. The second study had the same procedure and stimuli but participants were reminded of the law under *J.E.B. v. Alabama* that prohibits discrimination based on gender. The authors found that informing participants about the restriction placed by *J.E.B.* did not decrease participants' gender-biased peremptory challenges and actually improved their ability to report gender-neutral explanations for these challenges. These results imply that attorneys' knowledge of the restrictions placed under *Batson* may not discourage the use of racially biased peremptory challenges but instead serve to remind attorneys to be prepared to defend such challenges in a race neutral way.

Field and laboratory research show that *Batson* has not served the purpose of limiting attorneys' ability to discriminate against venirepersons based on race, resulting in many cases being tried with juries that are demographically unbalanced. The original purpose of *Batson* was to protect defendants from being denied their 14th Amendment right to equal protection under the law and to give them a chance to be tried by a jury of their peers, including jurors who are members of their same racial group. Additionally, the Court's reasoning in *Batson* has been used to protect venirepersons from violation of their equal protection rights not to be excluded from a jury because of their race. *Batson* has not succeeded in increasing the racial diversity of juries. Are there consequences of that racial imbalance? Are Black and White jurors different? Does diversity in a jury affect verdict decisions and how do jurors reach verdict decisions in cases where the defendant is of their same race or a different race? Social psychological and psycholegal research on race and juries has begun to answer such questions.

CHAPTER 4: EFFECT OF JURY RACIAL COMPOSITION

Differences between Black and White individuals, such as socioeconomic status, political orientation, and religious beliefs, may lead to the conclusion that these groups of people will behave differently and have differing opinions when sitting on a jury. Attorneys may hold a variety of stereotypes regarding these groups (e.g., Blacks are more skeptical of the legal system than are Whites; Whites are more pro-prosecution than are Blacks). There is some truth in these stereotypes. Whites are much more likely to support the death penalty than are Blacks (Anthony, 2000; Cochran & Chamlin, 2006; Unnever & Cullen, 2007), Blacks are more likely than Whites to believe that the justice system is unfair (Brigham & Wasserman, 1999), and Blacks are less trusting of police than are Whites (Johnson, 2007; Kennard & Kassin, 2009; Schuck & Rosenbaum, 2005; Schuck, Rosenbaum, & Hawkins, 2008). In light of these differences, researchers have examined the behavior of Black and White jurors, exploring the benefits of forming juries that include individuals from different races as well as the dangers of White juror bias against Black defendants.

The Effects of Racial Heterogeneity on Groups

When minority opinions are voiced in a group, members of that group tend to differentiate among and incorporate multiple perspectives into their discussions with more frequency than do members of groups in which only majority opinions are voiced (Antonio, Chang, Hakuta, Kenny, Levin, & Milem, 2004). If groups, such as juries, are more likely to discuss multiple perspectives when minority opinions are expressed, diversity of opinions within a group should lead to deeper processing and understanding of information. One study showed that the racial makeup of a group discussing reading

material affected the depth of discussion of that material (Sommers, Warp, & Mahoney, 2008). Participants were placed in small groups and asked to read either race-relevant or race-neutral packets of information and were told that they would later discuss the readings with the group. Participants were randomly assigned to either an all-White group or a racially diverse group. Results showed that White participants who read about race-relevant topics had better comprehension of the material when they read it in racially diverse groups than when in all-White groups. These effects of racial heterogeneity of groups did not occur for White participants who read about race-neutral topics. This finding highlights the fact that racially diverse juries may be able to process evidence related to a case in greater depth, particularly if that case contains race-relevant information, such as when the defendant is a racial minority. Thorough processing and discussion of evidence is clearly an advantage in the context of a jury trying to reach a just decision.

Diverse groups tend to have a better ability to succeed on tasks and produce better ideas than non-diverse groups (Paulus, 2000), and these findings extend to the jury context. In a study of jury decision making in racially homogeneous versus heterogeneous juries, participants deliberated on the evidence presented in a mock trial of a Black defendant in either all-White juries or racially diverse juries (Sommers, 2006). Before deliberating, participants were exposed to either race-related jury selection questions or race-neutral jury selection questions. White jurors in a racially diverse jury cited more case facts, made fewer errors when recalling the evidence, and were more likely to discuss issues of discrimination than were White jurors on an all-White jury. In addition, those jurors exposed to race-related jury selection questions were more lenient

toward the Black defendant than were jurors exposed to neutral questions. Thus, the demographic makeup of a jury could affect the fate of a Black defendant. The fact that all-White juries may be making less informed verdict decisions than are racially diverse juries brings to light the dangers of racially homogenous juries and the importance of *Batson* in its attempt to protect defendants of minority groups from being judged solely by White jurors. These juries may not only be unable to examine the evidence from all necessary perspectives but also fail to see how race may have affected a defendant's life and circumstances. This limited view of the evidence by White jurors could lead to racial bias when rendering verdict decisions, disadvantaging Black defendants.

Racial Discrimination in Jury Decision Making

Many studies have found evidence of discrimination against Black defendants by White jurors, showing that juries with different racial demographics than the defendant tend to discriminate against that defendant. This discrimination can result in not only more guilty verdicts but also higher likelihood of capital punishment for Black defendants (Dovidio, Smith, Donnella, & Gaertner, 1997; Eberhardt, Davies, Purdie-Vaughns, & Johnson, 2006; Lynch & Haney, 2000; Schuller, Kazoleas, & Kawakami, 2009). In one study, participants made sentencing decisions in a capital case during which the judge gave long jury instructions regarding the proper way to weight mitigating and aggravating factors when deciding between a death sentence and life in prison without the possibility of parole (Lynch & Haney, 2000). White jurors with low instructional comprehension were more likely than White jurors with high instructional comprehension to sentence a Black defendant to death. It is possible that when jurors understood instructions on how to weigh mitigating and aggravating factors, they were

more likely to use the evidence to guide their decisions. When these instructions were not clear, however, a lack of ability to weigh the evidence may have led jurors to rely on their stereotypes of Black males. Stereotypes include that Blacks are dangerous and are likely perpetrators of crime (Eberhardt, Goff, Purdie, & Davies, 2004; Quillian & Pager, 2001). These stereotypes are perpetuated by the media, which overrepresents Black males as perpetrators of crime (Busselle & Crandall, 2002; Dixon & Linz, 2000; Romer, Jamieson, & DeCoteau, 1998; Sommers, Apfelbaum, Dukes, Toosi, & Wang, 2006). Stereotypes about Black males also can lead to capital punishment decisions that are based on defendant race (Eberhardt, Davies, Purdie-Vaughns, & Johnson, 2006). In one study, participants' ratings of how stereotypically Black defendants looked predicted the death recommendations the defendants had received, with more stereotypically Black defendants being more likely to have received the death penalty than less stereotypically Black defendants, even after controlling for the severity of the crimes they had committed.

The racial makeup of a jury may moderate when discriminatory sentencing decisions are made (Dovidio, Smith, Donnella, & Gaertner, 1997). White participants read a trial summary of a capital case involving either a White defendant or a Black defendant and then watched a video of five other jurors giving sentencing decisions regarding the case. The five jurors on the videotape were either all White or four jurors were White and one juror was Black. In both videotapes, all five jurors advocated for the death penalty. Participants high and low in prejudice were analyzed separately. Participants who were highly prejudiced toward Blacks gave stronger sentence recommendations for the death penalty for Black defendants than for White defendants.

These participants were not affected by the racial heterogeneity of the jurors in the videotape. For low prejudiced participants, an interaction between defendant race and jury heterogeneity was seen. When the defendant was White, jury racial heterogeneity had no effect on sentencing recommendations. However, when then defendant was Black, participants were more likely to recommend the death penalty after watching a heterogeneous jury than after watching a homogeneous jury. The authors interpreted this pattern of results as evidence of aversive racism—a combination of conscious egalitarian views and unconscious racial bias. When low prejudice participants were given justification to discriminate against the Black defendant (e.g. when a Black juror advocated the death penalty) they were more likely to do so than when no justification was given. An alternative interpretation of these findings is that watching an all-White jury made low-prejudice participants in the homogeneous condition aware of the possibility of racial bias against a Black defendant, more so than participants in the heterogeneous condition, and their death penalty recommendations reflect an attempt to correct for this bias. These results show that jurors' motivation to discriminate can be affected by extra-evidentiary factors.

Although racial bias in jury decision-making may seem like a purposeful act, racial bias is not always intentional (Sommers & Ellsworth, 2000; 2001). In one study examining conscious and unconscious motivations of jurors, participants read a summary of evidence in an interracial battery case in which race was either made salient, highlighting that the battery had occurred due to racial tension between the defendant and his victim, or race was not mentioned as a possible motive (Sommers & Ellsworth, 2001). The summary depicted the defendant to be either Black or White. When race was not

salient, participants discriminated against the Black defendant, finding him guilty more often than the White defendant and recommending longer sentences for the Black defendant than for the White defendant. When race was salient, however, participants avoided discrimination and even overcompensated slightly by finding the White defendant guilty more often than the Black defendant and recommending longer sentences for the White defendant than for the Black defendant (although these differences were not statistically significant). Thus when race is a cognitively accessible construct, discrimination against racial minorities may be less likely. When race is not brought to jurors' attention, jurors appear to unconsciously, or at least not fully consciously, discriminate more.

The literature on racial bias in jury decision-making demonstrates the need for racially diverse juries. Juries that come from a different racial group than defendants discriminate against them and this discrimination results not only in more guilty verdicts but also in a higher likelihood of capital punishment. However, being a member of a racially diverse jury causes jurors who might otherwise discriminate in their verdict decisions to think about race and the relevant topics associated with race.

Jury selection choices that do not discriminate against racial minorities will lead to more racially diverse juries that will make more just decisions. However, attorneys continue to discriminate in their jury selection decisions with some frequency and are able to do so because attorneys are usually able to generate race-neutral explanations for their racially biased challenges (Sommers & Norton, 2006). Given that jurors may sometimes make unconscious discriminatory verdict decisions (Sommers & Ellsworth, 2001), attorneys might also be making discriminatory jury selection decisions

unconsciously, which could explain, at least in part, why attorneys are able to give racially neutral explanations for their racially discriminatory challenges: they may not realize that they are striking a venireperson because of that venireperson's race.

Alternatively, attorneys may make their decisions to eliminate venirepersons with full awareness of the racial bias in their decisions. Trial technique manuals encourage attorneys to determine potential jurors' beliefs and attitudes indirectly by inferring jurors' attitudes from their age, education, and employment history (Mauet, 2002; Rothblatt, 1961; Haydock & Sonsteng, 1999). Authors of these manuals inform attorneys that using demographic information about venirepersons as a proxy for their attitudes and beliefs is an effective way to determine which venirepersons should be chosen and which should be stricken from a panel. Current trial technique manuals do not suggest using race as a proxy for venirepersons' attitudes and beliefs, not surprisingly given that attorneys are prohibited from striking venirepersons because of their race. Yet it is not difficult to see how attorneys who have been trained to rely on demographic information to make jury selection decisions could use a person's race to make assumptions about that person's beliefs and attitudes (e.g., Black jurors are less trusting of police witnesses or more lenient toward defendants than are White jurors). By examining the psychological mechanisms that play a role in attorneys' decision making, it may be possible to develop methods to decrease the prevalence of racially biased challenges.

CHAPTER 5: PSYCHOLOGICAL PROCCESSES THAT MAY AFFECT ATTORNEYS' JURY SELECTION DECISIONS

Although prosecuting attorneys may be exercising racially biased peremptory challenges because they personally hold prejudicial attitudes against Black venirepersons (possibly unconsciously), attorneys may be making racially biased decisions consciously as a trial strategy (Sommers & Norton, 2008). Either an expectation of in-group/out-group bias—assuming that Black jurors will be more lenient toward a Black defendant than will White jurors—or general assumptions about the different legal attitudes of Black and White jurors could be factors influencing attorneys' jury selection decisions (Sommers & Norton, 2008). If these factors are affecting attorneys' jury selection decisions, it is unclear whether attorneys are thinking about these factors consciously or are unconsciously affected by the racial stereotypes they possess. Whether attorneys' motivations are conscious or unconscious, stereotypic beliefs about the legal attitudes of jurors of certain races may affect jury selection decisions. Finally, beliefs about in-group favoritism between jurors and defendants of the same race may also play a role in attorneys' jury selection decisions. Some or all of these psychological mechanisms could be at work when attorneys make racially biased jury selection decisions and each of these mechanisms should be explored to understand how best to decrease racial bias in jury selection.

Explicit and Implicit Racism in Peremptory Challenges.

Racial attitudes can be either explicit or implicit. Explicit bias toward a specific group of people is thought to be conscious and purposeful whereas implicit bias is thought to be more automatic and unconscious (Ottaway, Hayden, & Oakes, 2001).

Unconscious, or implicit bias, is most likely in ambiguous situations in which it is difficult to differentiate between what is and what is not discriminatory (Dovidio, Kawakami, & Gaertner, 2002). The process of voir dire, trying to determine how a venireperson will decide a case from only knowing a few facts about that individual, is a process in which attorneys must make decisions about people and their tendencies based on ambiguous and insufficient information. To make quick judgments about ambiguous situations, people use stereotypes to judge others and make inferences about their attitudes and behaviors (Dunning & Sherman, 1997).

Racial stereotypes can be activated automatically and unconsciously (Devine, 1989). In one study, participants were primed with race-related or race-neutral words through a visual task in which the words were presented just within participants' visual field but far enough from their fovea so that the meaning of the words only registered unconsciously (Devine, 1989). Those primed with race-related words about Black people, but not those primed with race-neutral words, later attributed more stereotypically Black characteristics to a neutral stimulus person. Thus, people's stereotypes may be activated automatically and these automatically activated stereotypes may influence the inferences people make about others without their awareness, making the task of avoiding racially biased peremptory challenges difficult for anyone, including attorneys. Even if attorneys wish to abide by the law set forth by *Batson*, they may be unable to avoid racial discrimination completely. If unable to suppress racial bias, attorneys will be likely to rely on stereotypes when making decisions about exercising peremptory challenges.

Considering that trial technique manuals recommend that attorneys rely on demographic characteristics as a proxy for venirepersons' attitudes, and the research

showing that Black and White jurors sometimes do hold different legal attitudes, it is reasonable to expect that attorneys may use racial stereotypes to infer venirepersons' legally-relevant attitudes when making jury selection decisions. Unless the venireperson expresses the undesirable attitude during voir dire, peremptory challenges stemming from those racial stereotypes are likely to be in violation of *Batson*. Before *Batson*, when choosing and eliminating jurors based on race was common practice, trial technique manuals explicitly made recommendations about choosing jurors of certain races. These recommendations were not typically based on research showing a relationship between juror race and legal attitudes but rather on folklore, recommendations from attorneys passed down to other attorneys based on their experiences with jury selection (Fulero & Penrod, 1990).

Although trial technique manuals no longer advise attorneys to judge venirepersons by their race, some attorneys may still trust the advice passed down from other attorneys regarding the verdict proclivities held by jurors of certain races despite knowing that they cannot explicitly use this information to eliminate venirepersons during voir dire. Attorneys may rely on these stereotypes knowingly, or the stereotypes may be activated without attorneys' knowledge (Devine, 1989). If attorneys do rely on stereotypes about Black jurors to make jury selection decisions, particularly if these stereotypes are activated unconsciously, they will attempt to eliminate Black jurors and often succeed if they can provide a race-neutral explanation. Stereotypes about Black jurors' legal attitudes, however, may not be the only assumption influencing attorneys to strike venirepersons of certain races. A belief that Black jurors may be more lenient toward a Black defendant than would White jurors, showing bias toward their in-group,

could also be a factor influencing attorneys' decisions to strike Black venirepersons, specifically when the defendant is also Black.

Beliefs about In-group/Out-group Bias.

In the *Batson* decision, the Court held that prosecutors may not defend a race-based peremptory challenge on the grounds that they believe that the venireperson will be partial to the defendant because the two are of the same race. Clearly, the Supreme Court believed that prosecuting attorneys' motivation to strike Black venirepersons when the defendant is Black would be influenced, in part, by the assumption that jurors will display racial in-group/out-group bias. The fact that the Court does not view this type of possible bias as a legitimate reason to strike Black venirepersons implies that the *Batson* decision was made with the recognition that all people may display in-group/out-group bias.

Attorneys may have good reason to believe that jurors will display in-group/out-group bias. People tend to favor members of their in-group over members of an out-group (Perdue, Dovidio, Gurtman, & Tyler, 1990; Tajfel, Billig, Bundy, & Flament, 1971). In the context of jury decision-making, the idea of in-group favoritism was highlighted in the coverage of the O.J. Simpson trial in which it was suggested strongly by the media that the jury acquitted O.J. Simpson because 9 of the 12 jurors deciding his case were Black. The assumption that the Black jurors were sympathetic to O.J. Simpson because of his race appears to be based in fact, as Black members of the community were significantly more likely than were White community members to believe that Simpson was innocent during jury selection, after closing arguments but before the jury had reached a verdict, and three weeks after the not-guilty verdict had been reached (Brigham & Wasserman, 1999). Experimental research on the O.J. Simpson trial, however, shows

that the in-group/out-group effect may not be working in the way that was suspected. In a study examining a case mimicking the O.J. Simpson trial, Black and White mock jurors read a trial summary of either a Black or a White defendant accused of murdering his wife, who was identified as White (Skolnick & Shaw, 1997). For Black defendants, there was no simple main effect of juror race; Black and White mock jurors judged the Black defendant equally. However, there was a simple main effect of juror race for White defendants, with Black jurors being more likely than White jurors to assign guilty verdicts to the White defendant. Black jurors may not be unfairly lenient toward defendants of their own race but may instead be biased against defendants of a different race.

Other studies have shown similar patterns of effects. In a jury simulation study, defendant race only had a significant effect on Black jurors' guilt ratings, with Black jurors judging the White defendant to be more likely to be guilty than the Black defendant; no White-juror bias was found (Abwender & Hough, 2001). Black and White jurors gave similar guilt ratings to the Black defendant but Black jurors gave higher guilt ratings to the White defendant than did the White jurors. These results again show a pattern indicating out-group discrimination rather than in-group favoritism.

A two-part study found evidence of both in-group and out-group bias on the part of Black jurors (Sommers & Ellsworth, 2000). In the first study, Black and White participants playing the role of mock jurors read 12 trial summaries, each consisting of two paragraphs describing the prosecution's and the defense's arguments. Five of the trials involved a cross-racial crime and for each of these cross-race trials, half of the participants read a trial in which the defendant was White and half read a trial in which

the defendant was Black. Results revealed an interaction between juror race and defendant race, with White jurors judging the White and Black defendant to be equally guilty but Black jurors judging the White defendant to be more likely to be guilty than the Black defendant. In this study, Black jurors assigned less guilt to the Black defendant than did White jurors (showing in-group favoritism) and assigned more guilt to the White defendant than did White jurors (showing out-group discrimination). These results support the idea that Black jurors may be more lenient toward defendants of their own race, giving prosecutors a reason to strike Black individuals from the venire when they are trying a case against a Black defendant.

The White-juror bias that has been exhibited in other research was not found in this study (Sommers & Ellsworth, 2000). The authors suspected that race salience may have moderated the effects of defendant race on jurors' judgments and, in a second study, used only one cross-race crime case in which they manipulated race salience. In the race salient condition, the victim testified that the defendant, before assaulting her, yelled at her about how to treat a Black man (or White man, depending on condition) in front of others. In the non-race salient condition, the victim testified that the defendant yelled at her about how to treat a man in front of others without any mention of race. When race was salient, the pattern of guilty verdicts was similar to the pattern obtained in the first study: defendant race did not influence White jurors' guilt ratings whereas Black jurors showed in-group favoritism toward that Black defendant and out-group discrimination toward the White defendant. When race was not salient, however, White jurors showed the same pattern of in-group/out-group bias, assigning the White defendant less guilt than did Black jurors and assigning the Black defendant more guilt than did Black jurors.

These results further confirm a racial in-group favoritism effect and show that it can be present for both Black and White jurors.

The research on defendant and juror race supports the idea that, under certain circumstances, jurors may be more lenient to defendants of their own race than to defendants of other races. This idea, now known as the similarity-leniency hypothesis, was specifically tested in a two-part study of juror-defendant religious similarity (Kerr et al., 1995). The authors predicted that, under some circumstances, juror-defendant similarity would lead to more leniency, however, the authors also predicted that more punitive juror attitudes would be seen when the evidence against the defendant was very strong. This prediction was based on the idea that people want to perceive their in-group in a positive manner because this perception reflects positive characteristics in themselves. However, if an in-group member displays negative behavior, people fear that such behavior will reflect poorly on them and therefore will be punitive to in-group members who behave badly. This phenomenon has been termed the black sheep effect (Marques & Yzerbyt, 1988; Marques, Yzerbyt, & Leyens, 1988). To test the relative validity of the black sheep and the similarity-leniency hypotheses, Christian and Jewish participants read a child molestation case involving either a Christian or a Jewish defendant and strong or weak evidence against the defendant. Jurors were more lenient toward defendants of their same religion regardless of evidence strength. Although these results supported the similarity-leniency hypothesis, they did not support the black sheep effect. The authors discussed that this lack of a black sheep effect may have been due to a weak evidence strength manipulation and sought to test the effect again in a second study.

In the second study, researchers manipulated the race of the juror, race of the defendant, race of the victim, and evidence strength. Results of this study supported both the similarity-leniency hypothesis (under weak evidence) and the black sheep effect (under strong evidence). When evidence was weak, the expected juror-defendant similarity leniency occurred and jurors assigned less guilt to the defendant in their in-group than the defendant in their out-group. However, when the evidence was strong, jurors assigned more guilt to the defendant in their in-group than the defendant in their out-group. Thus, in-group/out-group bias in the context of race does affect jurors' verdict choices and, sometimes, in unexpected ways.

A recent meta-analysis examining the in-group/out-group effect in the context of juror decision-making across 16 jury decision making studies found a small but significant in-group/out-group effect for both verdict and sentencing decisions, with jurors exhibiting more leniency toward defendants of their same race (Mitchell et al., 2005). Assuming that attorneys are aware of the possible in-group favoritism between a juror and defendant of the same race, it is possible that attorneys would chose to strike venirepersons from a panel based on whether the venirepersons were members of the same racial group as the defendant. Specifically, prosecutors trying a case with a Black defendant may be motivated to strike Black venirepersons from the panel, especially if the evidence against the defendant is not particularly strong, because they believe that Black jurors will be lenient toward a defendant of their same race.

If following the suggestions of trial technique manuals to determine venirepersons' beliefs and attitudes from their demographics, when trying a Black defendant prosecutors should prefer venirepersons who are of a different race as the

defendant. Choosing to strike Black venirepersons due to their race would be in violation of *Batson.* However, it seems plausible that attorneys would employ this strategy when selecting a jury based only on limited demographic information about the venirepersons. The elimination of Black venirepersons from a jury trying a Black defendant can result in racially biased verdict decisions, disadvantaging Black defendants.

CHAPTER 6: CONCLUSIONS

The Supreme Court's decision in *Batson* was intended to protect ethnic minority defendants from being deprived of their 14th Amendment right to equal protection under the law and provide them with the opportunity to be judged by a jury of their peers. In addition, the restriction led to the protection of venirepersons from being struck from a jury panel simply due to their race, as this would also violate venirepersons' equal protection rights. This restriction on the peremptory challenge was the first of its kind and, to some, seemed to undermine the very purpose of peremptory challenges. Despite the expectations that *Batson* would change the jury selection process (whether for better or worse), the restrictions placed by *Batson* have not succeeded in decreasing racially biased jury eliminations. Attorneys continue to strike venirepersons due to their race, with prosecuting attorneys more likely to use peremptory strikes on Black venirepersons and defense attorneys more likely to use peremptory strikes on White venirepersons (Clark, Boccaccini, Caillouet, & Chaplin, 2007; Rose, 1999; Sommers & Norton, 2007). Although *Batson* challenges do occur, attorneys are typically able to provide race-neutral explanations for their peremptory challenges and judges typically accept these explanations and allow the venirepersons to be eliminated, possibly resulting in juries composed of individuals who are not of the same race as the defendant (Gabbidon, Kowal, Jordan, Roberts, & Vincenzi, 2008; Sommers & Norton, 2007). Juries who differ from the defendant in terms of race, particularly all-White juries judging Black defendants, discriminate against those defendants, reaching guilty verdicts more often and recommending harsher punishments than they would for defendants of their own race (Dovidio, Smith, Donnella, & Gaertner, 1997; Eberhardt, Davies, Purdie-Vaughns, &

Johnson, 2006; Lynch & Haney, 2000; Schuller, Kazoleas, & Kawakami, 2009). These outcomes violate the intentions set forth in *Batson* to protect minority defendants.

To decrease these unjust outcomes, prosecuting attorneys must begin to abide by *Batson*, making peremptory challenge decisions based on legitimate characteristics of the venirepersons that make them undesirable jurors, yet psychological research on decision-making implies that it may be difficult for attorneys to avoid making racially biased peremptory challenges, even if they wish to abide by *Batson*. Prosecutors may be making racially biased decisions unconsciously, activating stereotypes about Black jurors without their knowledge and without understanding the impact that those stereotypes or beliefs about Black jurors really have on their peremptory challenge decisions. Alternatively, prosecutors may be fully aware of their biases yet act upon them because they have been taught to rely on demographic information as a proxy for venirepersons' tendencies. On the one hand, prosecuting attorneys might assume that Black jurors will be pro-defense, believe that the legal system is unfair, or be anti death penalty and these assumptions may be accurate (Brigham & Wasserman, 1999; Anthony, 2000; Cochran & Chamlin, 2006; Unnever & Cullen, 2007). On the other hand, prosecutors may be concerned about Black jurors only when the defendant in a case is Black, assuming that Black jurors will demonstrate racial in-group favoritism toward the defendant and be less likely to find that defendant guilty. There is some truth to this assumption as well (Mitchell et al., 2005).

It is easy to speculate as to why attorneys make racially biased peremptory challenges, but to date, there has not been any empirical research examining the motivations and psychological mechanisms that influence attorneys' race-based peremptory challenges. The research on jury selection and the use of peremptory

challenges on Black jurors, as well as the research on stereotypes, bias, and discrimination, has contributed to the understanding of race-based peremptory challenges and their consequences. However, this research has also left many questions unanswered and many research hypotheses to be explored.

CHAPTER 7: OVERVIEW

Two studies were conducted to investigate whether attorneys' racially-biased peremptory challenge decisions are the result of prejudice, trial strategy, or both processes and whether attorneys' reasons for racially-biased jury selections are based on stereotypes regarding venirepersons' legal attitudes, an expectation of in-group/out-group bias, or both assumptions. In Study One, I tested whether racially biased challenges by prosecuting attorneys are the result of racial discrimination, whether these racially biased challenges are just trial techniques used to improve their case, or whether some combination of discrimination and strategy produce racially biased challenge decisions. Discrimination is often subtle and unconscious. Making race salient during trial can lessen racial discrimination in jury verdicts by making jurors conscious that discrimination may occur so that they may consciously counteract any prejudices that they might hold (Sommers & Ellsworth, 2001). If attorneys exclude venirepersons of certain races due to discrimination (prosecuting attorneys discriminating against Black venirepersons), I predicted that making race salient to attorneys would decrease discrimination thereby decreasing racially biased jury selections. If, however, attorneys make racially biased jury selections as a technique to help their case (their decision is not based on discrimination but rather on a well thought out strategy) I predicted that race salience would not decrease racially-biased jury selections and actually would increase them. Making race salient in a case could also make the possibility of a *Batson* challenge salient to attorneys, causing attorneys to consciously refrain from discriminating on the basis of race to avoid a *Batson* challenge. To test for this possible alternative explanation of the effect of race salience, I also manipulated the salience of a *Batson* challenge.

In Study Two, I examined whether attorneys' decisions to strike a venireperson might be based on beliefs that venirepersons of certain races hold particular legal attitudes, beliefs that jurors will be more lenient to a defendant who is of their same race rather than a different race, or some combination of the two beliefs. I manipulated the race of the defendant and victim and the consistency of the venireperson's race with their criminal justice attitudes. Participants in the consistent condition read a pro-defense profile of a Black venireperson and a pro-prosecution profile of a White venireperson whereas participants in the inconsistent condition read a pro-prosecution profile of a Black venireperson and a pro-defense profile or a White venireperson. If prosecutors are strongly influenced by a belief in the legal attitudes of Black jurors, I predicted that they would be likely to strike Black venirepersons even when the defendant was White and the victim was Black and irrespective of information given about the venireperson's likely beliefs. If prosecutors are influenced by a belief in in-group/out-group bias, I predicted a main effect of defendant/victim race such that the race of defendant and victim would predict attorneys' jury selection choices, with prosecutors challenging venirepersons more often when the venirepersons belong to the same racial group as the defendant as opposed to a different racial group.

In neither study were attorneys told that the study was examining race or racial bias. Attorneys were simply asked to make a judgment about two venirepersons and those venirepersons where Black and White. Attorneys were never asked directly to make judgments about race or to provide attitudes about race. My methods were modeled after a previous study on racially biased jury selection (Sommers & Norton, 2007), which used attorney participants and found evidence of racial bias in jury selection decisions.

CHAPTER 8: STUDY ONE: DIFFERENTIATING BETWEEN ATTORNEY PREJUDICE AND TRIAL STRATEGY

Method

Participants

Participants were 171 United States prosecuting attorneys (86 male) paid $35 for their participation. Participants ranged in age from 25 to 62 years (M = 36.71). Participants had been practicing prosecuting attorneys for M = 7.20 years (range = less than 1 year to 30 years) and had conducted between 0 and 500 voir dires (M = 42.54). Eighty-four percent of participant were White, 8% were Black, 4% were Hispanic, 1% were Asian, 3% identified as "other", and 1% did not indicate their racial/ethnic background.

Design and Materials

This study had a 2 (Venireperson Race/Occupation: Black Journalist & White Advertising Executive v. White Journalist & Black Advertising Executive) x 2 (Race Salience: Salient trial v. Non salient trial) x 2 (*Batson* Warning: Present v. Absent) factorial design.

Venireperson Profiles. I modified the venireperson profiles used in Sommers and Norton (2007) for this study. Venireperson 1 was either a Black or White 43-year-old married male journalist with no previous jury experience who writes about criminal trials in his area as part of his job. Venireperson 2 was either a Black or White 40-year-old divorced male advertising executive who has served on two previous juries and is skeptical of statistics because he believes that they are easily manipulated. The descriptions of the venirepersons were provided to give attorneys a reason other than race

to cite for striking one of the venirepersons. In both venireperson profiles, the venirepersons indicated that their personal experiences and beliefs would not prevent them from being impartial.

Legal Attitudes Questions. Attorneys answered ten questions regarding their perceptions of the legal attitudes held by the Journalist and the same ten questions regarding their perceptions of the legal attitudes held by the Advertising Executive on a 6-point Likert-type scale (1 = strongly agree, 6 = strongly disagree).

Summary of Case Facts. I adapted Sommers and Ellsworth's (2001) summary of case facts for this study. Before reading the case summary, attorneys read brief demographic information about the defendant and victim (name, height, weight, race, and occupation). The case summary described an interracial battery case in which the defendant is accused of assaulting a high school basketball teammate in a locker room. The summary included two paragraphs about the prosecution's case and two paragraphs about the defense's case. The summary described the defendant in the case as Black and the victim as White.

Race Salience. I used the same race salience manipulation as Sommers and Ellsworth (2001). In the race-salient condition, the defense attorney emphasized that the defendant was a racial minority on the basketball team and had been subjected to racial remarks and unfair criticism from his other race teammates. In the non-race-salient condition, no mention of the defendant's race was made in the summary other than in the demographic information presented and the summary stated only that the defendant was subjected to obscene remarks and unfair criticism from his teammates.

***Batson* Warning.** I warned attorneys in the *Batson*-warning-present condition that jury selection decisions based on race are prohibited under *Batson*. I did not give this warning to attorneys in the *Batson*-warning-absent condition.

Demographic Questionnaire. Attorneys completed a demographic questionnaire, providing information about their race, age, gender, the number of years they had been practicing prosecuting attorneys, and the number of voir dires that they had conducted.

Manipulation Checks. Attorneys answered multiple choice manipulation check items regarding the race of the venirepersons, the reasons given by defense attorney in the trial summary for the assault (either race specific or not race specific), and whether they were reminded about the peremptory strike restrictions place by *Batson*.

Procedure

I recruited prosecutors either through an announcement emailed to them by the communications officer in their District Attorneys' office or through ads posted by their state Prosecutors' Association website (see Appendix A). Attorneys who wished to participate contacted me and, upon receiving their email, I sent them an email with a link to the study as well as a participant number (see Appendix B). Upon clicking on the link, the online survey program randomly assigned attorneys to one of the 8 experimental conditions. Attorneys provided informed consent by entering their participant numbers if they wished to continue with the study (see Appendix C).

Attorneys played the role of a prosecuting attorney in a case for which they had one last peremptory strike. Attorneys read a brief description of the defendant and victim in the case and a summary of case facts (see Appendix D). Attorneys then read two venireperson profiles that contained race and demographic information about the

venirepersons (see Appendix E). Attorneys answered ten questions regarding their perceptions of the journalist's legal attitudes and the same ten questions regarding their perceptions of the advertising executive's legal attitudes of on a 6-point Likert-type scale (1 = strongly agree, 6 = strongly disagree). The ten questions were: (1) Potential Juror 1[2] is likely to question the motives of law enforcement officers; (2) Potential Juror 1[2] is likely to be sympathetic to criminal defendants; (3) Potential Juror 1[2] is likely to support harsh punishment for criminal defendants; (4) Potential Juror 1[2] is likely to be more concerned about possibly convicting an innocent person than the possibility of letting a criminal go free; (5) Potential Juror 1[2] is likely to believe that getting criminals off the street is more important than protecting innocent suspects; (6) Potential Juror 1[2] is likely to believe in protecting the rights of defendants; (7) Potential Juror 1[2] is likely to believe in protecting citizens from criminals; (8) Potential Juror 1[2] believes that defense attorneys should have to prove that the defendant is innocent; (9) Potential Juror 1[2] would be a good juror for the prosecution; (10) Potential Juror 1[2] would be a good juror for the defense (see Appendix F). For each venireperson, I reverse coded questions one, two, four, six, and ten and created an average legal attitudes score, with higher numbers indicating more pro-defense attitudes (Cronbach's α = .82 and .76 for the journalist and the advertising executive, respectively).

Attorneys picked the venireperson on whom they would like to use their one peremptory strike and (if in the *Batson* warning present condition) received a reminder about the restrictions on peremptory challenges placed by the *Batson* ruling. In addition to picking the venireperson for which they would use the strike, for each venireperson,

attorneys estimated the probability that they would use their last peremptory strike on them using a scale of 1 (not at all likely) to 7 (extremely likely) (see Appendix G).

Attorneys provided their reasoning, in writing, for choosing to strike that specific venireperson (see Appendix H). Attorneys answered an open-ended question asking them to imagine that the opposing attorney had raised a *Batson* challenge and to describe the explanation that they would provide to a judge for why they chose to strike the venireperson that they did. Two independent raters, blind to study hypotheses and conditions, coded these open-ended responses. Because some attorneys did not respond to the *Batson* challenge with an explanation of why they struck the venireperson but instead responded by explaining why they did not need to justify their strike (e.g., "Juror 2 is not in a protected class therefore not subject to a *Batson* challenge"), raters first coded for the relevance of the attorneys' responses, determining whether the response explained the *Batson* challenge or the response contained information that was not relevant to why the venireperson was struck. Excellent interrater reliability was obtained (Kappa = .94). Those items that were coded as not pertaining to the reason why the venireperson was struck (9 total) were not coded further.

For relevant items, raters coded for the mention of the following 11 categories regarding the venireperson (drawn from the information provided in the venireperson profiles): (1) race; (2) sex; (3) age; (4) marital status; (5) occupation; (6) past jury experience; (7) self, family, or friend in law enforcement; (8) self, family, or friend involved in a criminal matter; (9) disability that impairs the venireperson from being a juror; (10) experience writing about criminal trials; (11) skepticism of statistics. In addition to coding for the mention of these categories, raters also coded whether these

eleven categories were mentioned in the explanation as a factor influencing why the venireperson was struck. Categories seven, eight, and nine were not mentioned in attorneys' explanations. The interrater reliabilities for the eight mentioned categories as measured by Kappa were high (M = .88, range = .66 to 1.00). Categories one, two, seven, eight, and nine were not mentioned as reasons for striking. The interrater reliabilities for the six remaining categories as measured by Kappa were also high (M = .90, range = .86 to 1.00). Finally, raters coded which of the 11 variables appeared to be the attorneys' primary reason for striking the venireperson. If the primary reason was not one of the 11 variables, raters chose "other" (coded as category 0) and described what they perceived to be the primary reason. Of the twelve possible categories (0 through 11), raters only chose eight categories as the primary reason for striking. I thus conducted the Kappa analysis using only those eight categories, resulting in a value of: $\kappa = .90$. For all coding categories, I resolved discrepancies between the two raters while remaining blind to experimental condition.

Finally, attorneys completed items gathering demographic information and the following multiple choice manipulation check questions: (1) What was the race of potential juror 1? (African American/Caucasian); (2) What was the race of potential juror 2? (African American/Caucasian); (3) In the case summary, what did the assistant coach say about the defendant? ([The defendant] was one of only two Blacks on the team/[The defendant] did not get along with many people on the team); (4) In the case summary, what did the assistant coach say about the defendant? ([The defendant] had been the subject of unfair remarks by his teammates throughout the season/[The defendant] had been the subject of racial remarks by his teammates throughout the season); (5) Before

making a decision on whether to use a peremptory strike on the potential juror were you warned about the restrictions placed on jury selection by *Batson v. Kentucky*? (Yes/No; see Appendix I). Attorneys read a final statement debriefing them as to the true purpose of the study and thanking them for their participation (see Appendix J). Within a week of submitting their responses, I paid attorneys for their participation through PayPal or, if requested, with a check mailed to them.

Hypotheses

The present study tests two possible reasons for attorneys' racially biased jury selection decisions: trial strategy and prejudice. It was possible that defendant race, race salience, or both variables (interactively or independently) would play a role in attorneys' decisions. However, particular patterns of results would provide support for either prejudice or trial strategy as the underlying psychological mechanism for racial bias in challenge decisions.

H1: If racially-biased challenges are a trial strategy and not due to prejudice, I predicted a main effect for venireperson race such that prosecuting attorneys would be more likely to use their peremptory challenge on the Black venireperson than the White venireperson regardless of race salience.

H2: The main effect predicted in H1 would be larger when attorneys were NOT reminded of the peremptory strike restrictions placed by *Batson* than when the *Batson* warning was present, represented by a two-way interaction of venireperson race and the presence of a *Batson* warning.

H3: If racially biased challenges are due to prejudice, I predicted a two-way interaction between race salience and venireperson race such that when race is not salient, attorneys

would be more likely to use their peremptory strike on the Black venireperson whereas when race was salient attorneys would be equally likely to use their peremptory strike on the Black and White venireperson. This prediction was based on Sommers & Ellsworth's (2001) findings that when race is *not* salient, jurors discriminate against Black defendants, yet when race is salient, jurors treat Black and White defendants equally.

CHAPTER 9: STUDY ONE RESULTS

Analytic Strategy

The following dichotomous dependent variable tested the effects of our manipulations on attorneys' striking decisions: Was the journalist struck? (Yes/No). Because attorneys made a forced choice between striking the journalist and the advertising executive, an analysis of attorney strikes of the advertising executive would yield identical results. I used binary logistic regression to determine whether the following hypothesized predictors influenced the likelihood that the journalist was struck: venireperson race, the interaction between venireperson race and the presence of a *Batson* warning, and the interaction between venireperson race and race salience.

Attorneys reported the likelihood that they would strike the journalist and the likelihood that they would strike the advertising executive using 7-point Likert-type scales (1 = not at all likely, 7 = extremely likely). Attorneys also provided their perceptions of the journalist's and advertising executive's legal attitudes using 6-point Likert-type scales (1 = strongly agree, 6 = strongly disagree; higher numbers indicating more pro-defense attitudes). I conducted 2 (venireperson race/occupation) x 2 (presence of a *Batson* warning) x 2 (race salience) x 2 (venireperson) repeated measures analyses of variance (ANOVAs) with venireperson (journalist versus advertising executive) as a within subject variable to test the effects of my manipulations on attorneys' reported likelihood of striking the journalist and the advertising executive and attorneys' perceived legal attitudes of the two venirepersons.

I analyzed attorneys' open-ended responses explaining why they struck the eliminated venireperson using binary logistic regression. I conducted a separate binary

logistic regression for each of the eleven categories coded for mention from the attorney and each of the eleven categories coded as a reason given for striking. Because I did not make specific hypotheses about the effects of my manipulations on attorneys' explanations for striking, the binary logistic regression models were fully saturated using the following predictors: venireperson race/occupation, the presence of a *Batson* warning, race salience, and all two-way and three way interactions between the predictors.

Manipulation checks

Manipulation checks showed that the manipulation of venireperson race/occupation was successful. Participants were more likely to report that the journalist was Black (as opposed to White) when they read about a Black journalist (97%) than when they saw a White journalist (1%), χ^2 (1, N = 149) = 136.96, p < .001, Φ = .96, and participants were more likely to report that the advertising executive was Black (as opposed to White) when they saw a Black advertising executive (93%) than when they saw a White advertising executive (5%), χ^2 (1, N = 170) = 132.39, p < .001, Φ = -.88. Manipulation checks also showed that the *Batson* warning manipulation was successful. Participants were more likely to report that they had been given a *Batson* warning if they were in the *Batson* warning present condition (84%) than if they were in the *Batson* warning absent condition (51%), χ^2 (1, N = 169) = 20.13, p < .001, Φ = -.35.

Finally, manipulation checks showed that the race salience manipulation was successful. Participants were more likely to indicate that the trial summary mentioned that "[The defendant] was one of only two Blacks on the team" in the race salient condition (89%) than in the race nonsalient condition (1%), χ^2 (1, N = 170) = 133.49, p < .001, Φ = -.89, and participants were more likely to indicate that the trial summary

mentioned that "[The defendant] had been the subject of racial remarks by his teammates throughout the season" in the race salient condition (73%) than in the non-race salient condition (2%), χ^2 (1, N = 168) = 88.41, p < .001, Φ = .73. All the analyses presented below were conducted twice, once including and once excluding those participants who failed manipulation checks. Analyses with and without participants who failed manipulation checks yielded the same results for all analyses; therefore, the analyses below are reported for the full sample.

Venireperson Profile Differences

All participants saw two venireperson profiles: a journalist and an advertising executive. Attorneys were more likely to strike the journalist (73%) than the advertising executive (26%) across all conditions, χ^2 (1, N = 168) = 38.10, p < .001, Φ = .48. Similarly, attorneys reported a higher likelihood of striking the journalist (M = 4.25, 95% CI = 3.98, 4.51) than of striking the advertising executive (M = 3.08, 95% CI = 2.86, 3.31) across all conditions, F(1, 163) = 32.15, p < .001, η_p^2 = .17. Attorneys perceived the legal attitudes of the journalist (M = 3.97, 95% CI = 3.86, 4.07) as more pro-defense than the legal attitudes of the advertising executive (M = 3.47, 95% CI = 3.39, 3.54) across all conditions, F(1, 154) = 41.72, p < .001, η_p^2 = .21. The most common reason given for striking the journalist (used by 79% of attorneys) was his occupation. The most common reason given for striking the advertising executive (used by 44% of attorneys) was his skepticism of statistics.

Hypothesis 1: Main Effect of Venireperson Race

The binary logistic regression model using strike of the journalist (yes/no) as the dependent variable was significant, -2LL = 184.84, χ^2 (3) = 8.37, p = .04. Venireperson

race was a significant predictor such that participants were more likely to strike the journalist when he was White (80%) than when he was Black (67%), β = -1.27, SE = 0.49, Wald's χ^2 (1, N = 171) = 6.82, p < .01, Exp(β) = 0.28, 95% CIs [0.11, 0.73]. There was also a main effect of venireperson race/occupation on attorneys' reported likelihood of striking the two venirepersons such that attorneys reported a higher likelihood of striking the venirepersons when the journalist was White and the advertising executive was Black (M = 3.81, 95% CI = 3.62, 3.99) than when the journalist was Black and the advertising executive was White (M = 3.52, 95% CI = 3.33, 3.72), F(1, 163) = 7.29, p = .04, η_p^2 = .03. There was no two-way interaction between venireperson race and venireperson profile on attorneys' reported likelihood of striking the venirepersons, F(1, 163) = 2.32, p = .13, η_p^2 = .01. There was a main effect of venireperson race on attorneys' perceived legal attitudes of the venirepersons such that attorneys perceived them as more pro-defense when the journalist was White and the advertising Executive was Black (M = 3.78, 95% CI = 3.71, 3.85) than when the journalist was Black and the advertising executive was White (M = 3.65, 95% CI = 3.58, 3.73), F(1, 154) = 6.48, p = .01, η_p^2 = .04. There was also a two-way interaction between venireperson race and venireperson profile on attorneys' perceived attitudes of the journalist versus the advertising executive, F(1, 154) = 4.44, p = .04, η_p^2 = .03. Although pairwise comparisons showed that attorneys perceived the journalist as more pro-defense than the advertising executive both when the journalist was Black and the advertising executive was White (journalist: M = 3.99, 95% CI = 3.84, 4.14; advertising executive: M = 3.32, 95% CI = 3.21, 3.43) and when the journalist was White and the advertising executive

was Black (journalist: $M = 3.95$, 95% CI = 3.81, 4.10; advertising executive: $M = 3.61$, 95% CI = 3.51, 3.71), this difference was greater in the prior condition.

Attorneys mentioned venireperson race in 15% of their open-ended explanations of why they chose to strike the venireperson whom they eliminated; however, no attorneys mentioned race as a justification for striking the venireperson. The binary logistic regression model predicting the mention of the eliminated venireperson's occupation was significant, -2LL = 190.14, χ^2 (7) = 18.28, $p = .01$. However, venireperson race was not a significant predictor of whether attorneys mentioned the venireperson's occupation as a justification for striking him. The model predicting the mention of the eliminated venirepersons' experience writing about criminal trials was also significant, -2LL = 207.37, χ^2 (7) = 14.11, $p = .05$, however, venireperson race was not a significant predictor. The model predicting whether attorneys' reported that the venireperson's occupation was a reason for striking was significant, -2LL = 192.17, χ^2 (7) = 18.82, $p = .01$. However, venireperson race did not reach statistical significance as a predictor. The model predicting whether attorneys reported the venireperson's experience writing about criminal trials as a reason for striking was also significant, -2LL = 110.76, χ^2 (7) = 13.30, $p = .07$. However, venireperson race was not a significant predictor. Binary logistic regression models did not predict whether the other nine coded categories were mentioned at all or mentioned as a reason for striking. For the percentage of attorneys who mentioned, or used as a reason for striking, each of the 11 categories by condition, see Table 1.

Hypothesis 2: Interaction Between Venireperson Race and the Presence of a *Batson* Warning

The interaction between venireperson race and the presence of a *Batson* warning significantly predicted attorneys' strike decisions in the binary logistic regression model, $\beta = 1.06$, SE = 0.50, Wald's χ^2 (1, $N = 171$) = 4.52, $p = .03$, Exp(β) = 2.89, 95% CIs [1.09, 7.71]. Follow-up chi-square analyses showed that when the *Batson* warning was absent, attorneys struck the journalist more often when White (82%) than when Black (55%), χ^2 (1, $N = 82$) = 6.79, $p < .01$, $\Phi = -.29$, however when the *Batson* warning was present, attorneys struck the journalist with the same frequency when White (78%) than when Black (78%), χ^2 (1, $N = 86$) = 0.00, $p = 0.98$, $\Phi = 0.00$. There was no main effect of a *Batson* warning on attorneys' reported likelihood of striking the venirepersons, F(1, 163) = 1.91, $p = .17$, $\eta_p^2 = .01$, and no two-way

Table 1. *Study 1: Percentage of attorneys mentioning venireperson factors in strike explanations.*

	Black Journalist/White Ad Executive				White Journalist/Black Ad Executive			
	Batson Present		*Batson* Absent		*Batson* Present		*Batson* Absent	
Factor	Salient	Non-salient	Salient	Non-salient	Salient	Non-salient	Salient	Non-salient
Race								
Mentioned	5	14	5	11	25	14	32	10
Reason	_	_	_	_	_	_	_	_
Sex								
Mentioned	_	_	_	_	4	_	5	_
Reason	_	_	_	_	_	_	1	_
Age								
Mentioned	_	_	_	_	_	_	1	1
Reason	_	_	_	_	_	_	1	1
Marital Status								
Mentioned	_	10	_	6	8	_	_	5
Reason	_	5	_	6	8	_	_	5
Occupation								
Mentioned	90	86	68	61	67	62	37	57
Reason	90	86	68	61	58	62	37	57
Jury Experience								
Mentioned	_	_	5	_	13	5	5	13
Reason	_	_	5	_	4	5	5	10
Law enforcement								
Mentioned	_	_	_	_	_	_	_	_
Reason	_	_	_	_	_	_	_	_
Criminal matter								
Mentioned	_	_	_	_	_	_	_	_
Reason	_	_	_	_	_	_	_	_
Disability								
Mentioned	_	_	_	_	_	_	_	_
Reason	_	_	_	_	_	_	_	_
Writes about trials								
Mentioned	65	52	42	33	54	24	21	38
Reason	65	52	42	33	54	24	21	38
Skepticism								
Mentioned	10	10	16	22	21	19	42	24
Reason	10	10	16	22	21	19	42	20

Note. N = 163. Underscore represents 0%.

interaction between venireperson race and the presence of a *Batson* warning on attorneys' reported likelihood of striking the venirepersons, $F(1, 163) = 0.76$, $p = .38$, $\eta_p^2 = .01$. There was no two-way interaction between the presence of a *Batson* warning and venireperson profile on attorneys' likelihood of striking a venireperson, $F(1, 163) = 0.33$, $p = .57$, $\eta_p^2 = .00$, and no three-way interaction between venireperson race, the presence of a *Batson* warning, and venireperson profile on attorneys' reported likelihood of striking the venirepersons, $F(1, 163) = 1.02$, $p = .32$, $\eta_p^2 = .01$. I did not test the effect of a *Batson* warning on attorneys' perceptions of the venirepersons' legal attitudes because attorneys completed the legal attitudes questions before the manipulation of the *Batson* warning. The presence of a *Batson* warning and the interaction between venireperson race and the presence of a *Batson* warning were not significant predictors in the binary logistic regression models predicting the factors that attorneys mentioned, or gave as a reason for striking, in their open ended explanations.

Hypothesis 3: Interaction between Venireperson Race and Race Salience

The interaction between race salience and venireperson race in the binary logistic regression model did not significantly predict whether attorneys stuck the journalist, $\beta = 0.22$, SE = 0.50, Wald's χ^2 (1, $N = 171$) = 0.19, $p = .66$, Exp(β) = 1.24, 95% CIs [0.47, 3.28]. There was no main effect of race salience on attorneys' reported likelihood of striking the venirepersons, $F(1, 163) = 0.41$, $p = .52$, $\eta_p^2 = .00$, nor a two-way interaction between venireperson race and race salience on attorneys' reported likelihood of striking the venirepersons, $F(1, 163) = 0.17$, $p = .68$, $\eta_p^2 = .00$. Similarly, there was no two-way interaction between race salience and venireperson profile on attorneys' reported likelihood of striking the venirepersons, $F(1, 163) = 0.38$, $p = .54$, $\eta_p^2 = .00$, and no three-

way interaction between venireperson race, race salience, and venireperson profile on attorneys' reported likelihood of striking the venirepersons, $F(1, 163) = 0.37$, $p = .54$, $\eta_p^2 = .00$. There was a marginally significant main effect of race salience on attorneys' perceived legal attitudes of the venirepersons such that attorneys' perceived the venirepersons as more pro-defense in the non-race salient condition ($M = 3.77$, 95% CI = 3.69, 3.84) than in the race salient condition ($M = 3.67$, 95% CI = 3.60, 3.74), $F(1, 154) = 3.66$, $p = .06$, $\eta_p^2 = .02$. However, there was no interaction between venireperson race and race salience, $F(1, 154) = 0.11$, $p = .74$, $\eta_p^2 = .00$, or between race salience and venireperson profile, $F(1, 154) = 0.84$, $p = .36$, $\eta_p^2 = .01$, and no three-way interaction between venireperson race, race salience, and venireperson profile on attorneys' perceived legal attitudes of the journalist versus the advertising executive, $F(1, 154) = 1.42$, $p = .24$, $\eta_p^2 = .01$. Neither race salience nor the interaction between venireperson race and race salience were significant predictors in the logistic regression models predicting the factors mentioned in attorneys' open-ended explanations for striking the venirepersons or the reasons given for striking.

CHAPTER 10: STUDY ONE DISCUSSION

For Hypothesis 1, I predicted that if attorneys exercise racially-biased peremptory challenges as a conscious trial strategy, attorneys would be more likely to strike a Black than a White venireperson regardless of the presence of a *Batson* warning or race salience. This hypothesis was partially supported. Attorneys were more likely to strike the White than the Black venireperson when the *Batson* warning was absent but not when it was present. Attorneys perceived the journalist as more pro-defense than the advertising executive overall; however, they reported a higher likelihood of striking either venireperson and assumed more pro-defense attitudes when the journalist was White as opposed to Black. Additionally, attorneys were more likely to perceive the journalist as more pro-defense than the advertising executive when the journalist was White than when he was Black.

For Hypothesis 2, I predicted that the simple main effect of race would be larger when a *Batson* warning was absent than when it was present. Attorneys discriminated against the White venireperson but only when they were NOT warned about the restrictions placed by *Batson*, supporting Hypothesis 2. Attorneys' decisions were inappropriately influenced by race; however, the form of the simple main effect of venireperson race contradicted the findings of past jury selection research, both in the laboratory and field, that show that prosecuting attorneys are more likely to strike Black than White venirepersons (Clark, et al., 2007; Rose, 1999; Sommers & Norton, 2007).

Perhaps attorneys in the present study were motivated to control for biases against Black venirpersons, resulting in these unexpected results. The Flexible Correction Model (FCM) notes that if a perceiver is aware of a bias he or she holds and is motivated to

control it, he or she can estimate the magnitude and direction of the bias and attempt to correct for it (Wegener & Petty, 1997). It is possible that attorneys in this study were aware of their biases against Black venirepersons and were motivated to correct for them, as evidenced by a lack of bias against the Black venirperson in every condition. Evidence of bias correction was not seen in Sommers and Norton's (2007) research despite having used similar methodology; however, Sommers and Norton collected their data prior to *Miller-El v. Dretke* (2005) and *Snyder v. Louisiana* (2008)—two Supreme Court cases that have upheld *Batson* and highlighted prosecutorial discrimination against Black venirepersons. These cases may have made prosecuting attorneys more aware of their own personal biases against Black venirepersons and motivated them to control for those biases in the present study.

Interestingly, participants in the *Batson* warning absent condition discriminated against the White venireperson instead of the Black venireperson. Research shows that individuals are not always aware of the magnitude of their biases (Nisbett & Wilson, 1977) and can sometimes overestimate bias and thus overcorrect for it (Sommers & Kassin, 2001). This overcorrection, however, was not found in the *Batson* warning present condition. There is evidence that instructions to make unbiased decisions can help people correct for their biases even more than when not instructed to do so (Petty & Wegener, 1993; Petty & Wegener, 1995), thus one might expect that warning attorneys about a *Batson* challenge would make them correct (or overcorrect) for their biases even more than when not warned about the *Batson* restrictions. However, the *Batson* warning did not instruct attorneys to make an *unbiased* strike decision but rather to make a *legally appropriate* strike decision (one not based on race). Thus, while attorneys in the *Batson*

warning absent condition may have been making strike decisions based on correcting for their own personal biases against Black venirepersons (resulting in overcorrection), attorneys in the *Batson* warning present condition may have been making strike decisions based on the law (regardless of their own biases), thus not allowing race to play a role in their decisions at all and deciding which venireperson to strike based on the other information (occupation, jury experience, marital status) provided.

Alternatively, it is possible that attorneys in this study were different than the attorneys who participated in past research and the jury selection choices in our study represent a real bias against White venirepersons. Some of the earlier work did not provide demographic information about the attorneys who made the jury selection decisions in the studies (Clark et al., 2007; Rose, 1999), but these studies were conducted with attorneys from southern states. The other study that has shown inappropriate elimination of Black venirepersons (Sommers & Norton, 2007) had a demographically similar sample to the attorney sample in this study. One difference between the two samples that could have affected strike decisions is the years of experience reported by attorneys, with the present sample having, on average, more than twice the number of years of experience than Sommers and Norton's (2007) sample. The more experienced sample used in our study could possibly have developed different racial biases over time than Sommers and Norton's (2007) sample or be more aware of racial bias in jury selection thus more able to correct for this bias. Another difference between the two samples is that the sample size of this study is six times larger than that of Sommers and Norton (2007) and therefore possibly more representative of the population of U.S. prosecuting attorneys. Given that attorneys struck the White and Black venireperson at

the same rate when the *Batson* warning was present implies that the warning may have made the specter of racial discrimination in jury selection salient to attorneys in a more overt way than the race salience manipulation thus minimizing the influence of venireperson race. If the attorneys in our sample were truly racially biased against the White venireperson, then the *Batson* warning succeeded in eliminating the effect of this bias on strike decisions.

In Hypothesis 3, I predicted that if attorneys' racially-biased jury selections were driven by implicit bias, attorneys would be less likely to make race-based challenges when race was made salient through a trial summary than when race was not made salient. There was no support for Hypothesis 3. A marginally significant trend showed that attorneys were more likely to perceive both venirpersons as pro-defense when race was salient; however, race salience did not affect strike decisions nor attorneys' reported likelihood of striking. One possible explanation for these null effects is that the race salience manipulation was too subtle and therefore did not make attorneys think about race the way that the explicit *Batson* warning may have done; however, manipulation checks did show that attorneys noticed the ways in which the defense attorney highlighted race in the summary of case facts. Another possibility is that the way that race salience was manipulated in this study was not effective because it was modeled after a race salience manipulation meant for jurors. Sommers and Ellsworth (2001) found differences in jurors' verdict and sentencing choices using the same race salience manipulation used in the present study. In Sommers and Ellsworth's (2001) study, jurors made guilt judgments about the case described in a summary of case facts—the mode by which race salience was manipulated. The attorneys in the present study read a summary

of case facts; however, their primary task was not to make a judgment about the case but to make a judgment about the venirepersons and their possible involvement in the case as jurors. The same race salience manipulation may not have affected attorneys because it was not relevant enough to their primary task—selecting a jury. However, this finding does not mean that increasing race salience will not ever affect attorneys' decision making. Arguably, the *Batson* warning used in this study served as a task-relevant way to make race and racial bias salient and this warning did eliminate racial bias from attorneys' jury selection decisions.

In sum, the race of a venireperson affected attorneys' jury selection choices, and *Batson* warnings minimized the effects of race on those decisions. It is unclear, however, what it is about particular races that makes attorneys find them more or less desirable. Study Two examined whether attorneys are primarily driven by stereotypes about the legal attitudes of jurors of certain races or by a belief that jurors will exhibit an in-group bias in favor of a defendant that is of their same race.

CHAPTER 11: STUDY TWO: ARE RACIALLY BIASED PEREMPTORY CHALLENGES DUE TO RACIAL STEREOTYPES ABOUT LEGAL ATTITUDES OR IN-GROUP/OUT-GROUP BIAS?

Method

Participants

Participants were 104 United States prosecuting attorneys (43 male) paid $35 for their participation. Participants ranged in age from 23 to 61 years (M = 33.48). Participants had been practicing prosecuting attorneys from a range of 5 to 28 years (M = 5.40) and had conducted between 1 and 125 voir dires (M = 36.37). Sixty nine percent of participant were White, 16% were Black, 8% were Hispanic, 3% were Asian, 2% identified as "other", and 2% did not indicate their racial/ethnic background.

Design and Materials

The study had a 2 (Consistency of Profiles: Consistent Profiles [Black Pro-Defense & White Pro-Prosecution venirepersons] v. Inconsistent Profiles [White Pro-Defense & Black Pro-Prosecution profiles]) x 2 (Defendant/Victim Race: Black defendant/White victim v. White defendant/Black victim) factorial design.

Venireperson Profiles. I used the same venireperson profiles used in Study One for Study Two; however, I added information about the venirepersons' volunteer activities to make the journalist appear pro-defense and the advertising executive appear pro-prosecution. The journalist profile stated that he volunteers for Amnesty International; the advertising executive profile stated that he volunteers for the National Rifle Association.

I pilot tested the two profiles, excluding race information, with 32 New York City community member participants. In exchange for their participation, I entered participants into a lottery in which they had a 1 in 16 chance of winning one of two $30 prizes. The pro-defense venireperson was a journalist who volunteered for Amnesty International and the pro-prosecution venireperson was an advertising executive who volunteered for the National Rifle Association. Participants rated each venireperson on the ten questions assessing their perceptions of the venireperson's legal attitudes used in Study One. Participants rated the pro-defense venireperson (M = 3.82, 95% CI = 3.58, 4.06) as more pro-defense than the pro-prosecution venireperson (M = 2.74, 95% CI = 2.46, 3.02), $F(1, 27) = 24.62$, $p < .001$, $\eta_p^2 = 0.48$. The ratings of the pro-defense venireperson were significantly higher than 3.5 (the midpoint of the scale), $t(31) = 2.50$, $p = .02$. The ratings of the pro-prosecution venireperson were significantly lower than 3.5, $t(27) = -5.62$, $p < .001$.

In Study Two, half of the attorneys read venireperson profiles that were consistent with the stereotypes generally held about venirepersons of a certain race (i.e., the Black venireperson was paired with the pro-defense profile and the White venireperson was paired with the pro-prosecution profile). The other half of the attorneys read venireperson profiles that were inconsistent with stereotypes about race (i.e., the Black venireperson was paired with the pro-prosecution profile and the White venireperson was paired with the pro-defense profile).

Trial Stimulus. The case fact summary was the non-race salient version of the case facts used in Study One. Before reading the summary, attorneys read brief

demographic information about the defendant and victim (name, height, weight, race, and occupation).

Defendant/Victim Race. In half of the conditions, the defendant in the case facts summary was Black and the victim was White. In the other half of the conditions, the defendant was White and the victim was Black.

Legal Attitudes Questions. Attorneys answered the same ten questions used in Study One regarding their perceived legal attitudes of both venirepersons on a 6-point Likert-type scale (1: strongly agree; 6: strongly disagree).

Demographic Questionnaire. Attorneys completed a demographic questionnaire, providing information about their race, age, gender, the number of years they have practiced as prosecuting attorneys, and the number of voir dires that they have conducted.

Manipulation Checks. Attorneys answered multiple choice manipulation check questions to test whether they correctly noticed the race of the venirepersons, the race of the defendant, the race of the victim, the occupation of the venirepersons, and the organizations for which the venirepersons volunteered. Manipulation checks included the following questions: (1) What was the race of potential juror 1? (African American/Caucasian); (2) What was the occupation of potential juror 1? (Journalist/Advertising Executive); (3) For what organization did potential juror 1 say he volunteered? (Amnesty International/National Rifle Association); (4) What was the race of potential juror 2? (African American/Caucasian); (5) What was the occupation of potential juror 2? (Journalist/Advertising Executive); (6) For what organization did potential juror 2 say he volunteered? (Amnesty International/National Rifle Association);

(7) What was the race of the defendant in the case? (African American/Caucasian); (8) What was the race of the victim in the case? (African American/Caucasian).

Procedure

I recruited prosecutors either through an announcement emailed to them by the communications officer in their District Attorneys' office or through ads posted by their state Prosecutors' Association website (see Appendix A). When attorneys who wished to participate contacted me, I emailed them a link to the study as well as a participant number (see Appendix B). Upon clicking the link, attorneys were randomly assigned to one of the four experimental conditions. Attorneys provided informed consent through the online survey by entering their participant numbers if they wished to continue with the study (see Appendix C).

Attorneys played the role of a prosecuting attorney in a case for which they had one last peremptory strike. Attorneys read a brief description of the defendant and victim in the case and a summary of case facts (see Appendix K) and two venireperson profiles that contained race and demographic information about the venirepersons, including associations for which each venireperson volunteered (see Appendix L). Attorneys provided their perceptions of the legal attitudes of both venirepersons (see Appendix F). I created two scales from these items, one measuring the perceived attitudes of the pro-defense venireperson and one measuring the perceived attitudes of the pro-prosecution venireperson. I first reverse coded items one, two, four, six, and ten and then averaged across the ten items for each venireperson. The resulting scales were reliable (Cronbach's $\alpha = .85$ and .83 for the pro-defense venireperson and the pro-prosecution venireperson, respectively). Attorneys then picked the venireperson for which they would use the strike,

and estimated the probability that they would use their last peremptory strike on each venireperson using a scale of 1 (not at all likely) to 7 (extremely likely) (see Appendix M).

All attorneys then imagined that a *Batson* challenge had been raised and justified their peremptory strike to a judge. Attorneys provided their reasoning for choosing to strike that specific venireperson (see Appendix H). Two independent raters, blind to study hypotheses and conditions, coded these open-ended responses using the same coding categories used in Study One with one exception: a twelfth coding category was added for mention of the venireperson's volunteer organization. All twelve categories were coded for mention of the category in attorneys' explanations and mention of the category as a reason given for striking the venireperson. While remaining blind to experimental condition, I resolved all discrepancies between the codes provided by the two raters. Of the twelve categories, sex, age, involvement in law enforcement, involvement in criminal matter, and disability were not mentioned. Interrater reliability for mention of the remaining seven coding categories was sufficient (*M* kappa= .89, range = .69 to 1.00). When coding for reason for striking, the following categories were not mentioned: race, sex, age, involvement in law enforcement, involvement in criminal matter, and disability. The remaining six categories were tested for interrater reliability using Kappa (*M* = .92, range = .71 to 1.00). Finally, raters coded the attorneys' primary reason for striking the venireperson from the twelve coding categories. If the primary reason was not one of the twelve categories, raters coded "other" (coded as category 0) and explained the reason. Of the 13 possible categories (0 through 12) the raters chose

only six of those categories as the primary reasons for striking. I calculated the interrater reliability for those six categories using Kappa, resulting in a value of: $\kappa = .58$.

Finally, attorneys provided demographic information and completed multiple choice items checking the success of the manipulations (see Appendix N). Attorneys were debriefed as to the true purpose of the study and thanked for their participation (see Appendix O).

Hypotheses

This second study tests two possible explanations for why attorneys exercise racially-biased peremptory challenges: 1) attorneys may believe that venirepersons of different races hold different legal attitudes and 2) attorneys may believe that jurors will be more lenient to a defendant with whom they share racial group membership.

H1: If beliefs about the legal attitudes of jurors of certain races drive attorneys' racially biased jury selections, then there should be a main effect of profile consistency such that when the venirepersons' profiles are consistent with their race (Black pro-defense and White pro-prosecution), attorneys would be more likely to eliminate the pro-defense venireperson than the pro-prosecution venireperson regardless of defendant/victim race; however, when the venirepersons' profiles are inconsistent with their race (White pro-defense and Black pro-prosecution), attorneys would be equally likely to strike the pro-defense and the pro-prosecution venireperson regardless of defendant/victim race because the inconsistency of the attitudinal information and the venireperson's race would provide ambiguous information.

H2: If beliefs about in-group/out-group bias drive attorney's racially biased jury selections, then there should be a two-way interaction between defendant/victim race and

profile consistency such that when the defendant is Black and the victim is White, attorneys would be more likely to strike the pro-defense venireperson (Black) than the pro-prosecution venireperson (White) in the consistent profile condition and more likely to strike the pro-prosecution venireperson (Black) than the pro-defense venireperson (White) in the inconsistent profile condition. However, when the defendant is White and the victim is Black, attorneys would be more likely to strike the pro-prosecution venireperson (White) than the pro-defense venireperson (Black) in the consistent profile condition and more likely to strike the pro-defense venireperson (White) than the pro-prosecution venireperson (Black) in the inconsistent profile condition.

CHAPTER 12: STUDY TWO RESULTS

Analytic Strategy

All attorney participants saw two venireperson profiles: a pro-defense venireperson and a pro-prosecution venireperson. The dichotomous variable, strike, indicated whether attorneys struck the pro-defense venireperson (Yes/No). I conducted a profile consistency X defendant/victim race X strike loglinear analysis to test the effects of my manipulations on attorneys' strike choice. Attorneys reported the likelihood that they would strike the pro-defense venireperson and the likelihood that they would strike the pro-prosecution venireperson using a 7-point Likert-type scale (1: not at all likely, 7: extremely likely). Attorneys answered questions measuring their perceptions of the legal attitudes held by the pro-defense venireperson and the pro-prosecution venireperson on 6-point Likert-type scales (1 = strongly agree, 6 = strongly disagree). Higher numbers indicated more pro-defense attitudes. I conducted a 2 (profile consistency) X 2 (defendant/victim race) X 2 (venireperson profile) repeated measures ANOVAs with venireperson profile (pro-defense versus pro-prosecution) as a within-subjects variable to test the effects of our manipulations on attorneys' reported likelihood of striking the pro-defense and pro-prosecution venirepersons and perceptions of the legal attitudes of the pro-defense and pro-prosecution venirepersons.

Attorneys provided explanations for their decisions to strike the eliminated venireperson in an open-ended response format. Raters coded these responses on 12 factors pertaining to the venirepersons, coding both for mention of the factors and the factors being used as a reason for striking. I conducted separate binary logistic regressions for each factor, both for mention of them and being used a reason to strike.

Because I did not make specific hypotheses about the effect of my manipulations on attorneys' open-ended responses, the binary logistic regression models were fully saturated with the following predictors: profile consistency, defendant/victim race, and the interaction between profile consistency and defendant/victim race.

Manipulation checks

Manipulation checks showed that the manipulation of venireperson profile consistency was successful. Participants were more likely to state that the pro-defense venireperson was Black and volunteered for Amnesty International (as opposed to White and volunteered for Amnesty International) in the consistent condition (100%) than in the inconsistent condition (0%), χ^2 (2, N = 101) = 101.00, p < .001, Φ = 1.00, and more likely to state that the pro-prosecution venireperson was White and volunteered for the National Rifle Association (as opposed to Black and volunteered for the National Rifle Association) in the consistent condition (100%) than in the inconsistent condition (0%), χ^2 (2, N = 102) = 102.00, p < .001, Φ = 1.00. Manipulation checks showed that the defendant/victim race manipulation was successful. Participants were more likely to state the defendant was Black (as opposed to White) in the Black defendant/White victim condition (88%) than in the White defendant/Black victim condition (8%), χ^2 (2, N = 101) = 65.05, p < .001, Φ = .80. Participants also were more likely to state that the victim was White (as opposed to Black) in the Black defendant/White victim condition (84%) than in the White defendant/Black victim condition (6%), χ^2 (2, N = 101) = 65.05, p < .001, Φ = .80. The analyses presented below were conducted twice, once including and once excluding those participants who failed manipulation checks. Both sets of analyses yielded the same results; therefore, the results for the full sample are reported below.

A partial chi-square analysis showed that attorneys were more likely to strike the pro-defense venireperson (78%) than the pro-prosecution venireperson (22%), χ^2 (1, N = 99) = 34.93, $p < .001$, $\Phi = .35$, across all conditions. Attorneys reported a higher likelihood of striking the pro-defense venireperson (M = 4.81, 95% CI = 4.46, 5.15) than the pro-prosecution venireperson (M = 2.74, 95% CI = 2.42, 3.06) across all conditions, $F(1, 96) = 56.52$, $p < .001$, $\eta_p^2 = .37$. Attorneys also reported more pro-defense attitudes for the pro-defense venireperson (M = 4.34, 95% CI = 4.22, 4.47) than for the pro-prosecution venireperson (M = 2.91, 95% CI = 2.80, 3.03) across all conditions, $F(1, 97) = 169.10$, $p < .001$, $\eta_p^2 = .64$. The most frequently cited primary reason for striking the pro-defense venireperson was his occupation as a journalist (provided by 40% of attorneys) and for striking the pro-prosecution venireperson was that he volunteered for the National Rifle Association (provided by 43% of attorneys).

Hypothesis 1: Main Effect of Profile Consistency.

The saturated loglinear model was significant, χ^2 (7, N = 99) = 51.34, $p < .01$, $\phi = .72$. Partial chi-square analyses showed a significant effect of profile consistency such that attorneys struck the pro-defense venireperson with more frequency in the inconsistent condition (88%) than in the consistent condition (67%), χ^2 (1, N = 99) = 7.82, $p = .01$, $\phi = .28$. There was no main effect of profile consistency on attorneys' reported likelihood of striking the venirepersons, $F(1, 96) = 0.50$, $p = .48$, $\eta_p^2 = .01$ but there was an interaction of profile consistency and venireperson profile on attorneys' reported likelihood of striking the venireperson, $F(1, 96) = 11.72$, $p = .001$, $\eta_p^2 = .11$. Although pairwise comparisons showed that attorneys reported a higher likelihood of striking the pro-defense venireperson than the pro-prosecution venireperson in both the

consistent (pro-defense: $M = 4.27$, 95% CI = 3.78, 4.75; pro-prosecution: $M = 3.14$, 95% CI = 2.69, 3.59) and inconsistent conditions (pro-defense: $M = 5.35$, 95% CI = 4.85, 5.84; pro-prosecution: $M = 2.34$, 95% CI = 1.88, 2.80), the mean difference between reported likelihood of striking the pro-defense and pro-prosecution venirepersons was greater in the inconsistent condition (when the pro-defense venireperson was White) than in the consistent condition (when the pro-defense venireperson was Black). There was a marginally significant main effect of profile consistency on attorneys' perceived legal attitudes of the venirepersons such that attorneys perceived them to be more pro-defense when the profiles were inconsistent ($M = 3.68$, 95% CI = 3.60, 3.76) than when the profiles were consistent ($M = 3.57$, 95% CI = 3.49, 3.65), $F(1, 97) = 3.72$, $p = .06$, $\eta_p^2 = .04$. The two-way interaction between profile consistency and venireperson profile on perceived legal attitudes of the venireperson was not significant, $F(1, 97) = 1.78$, $p = .19$, $\eta_p^2 = .02$.

The binary logistic regression model predicting whether attorneys mentioned the eliminated venirepersons' volunteer organization in their explanation for striking was significant, -2LL = 118.93, $\chi^2(3) = 9.94$, $p = .02$. Profile consistency was a significant predictor such that attorneys were more likely to mention the venireperson's volunteer organization (for any reason, not necessarily as a reason for striking) when the profiles were inconsistent (72%) than when the profiles were consistent (55%), $\beta = -1.16$, SE = 0.59, Wald's $\chi^2(1, N = 98) = 3.87$, $p = .05$, Exp(β) = 0.31, 95% CI = 0.37, 5.24. A binary logistic regression model predicting whether attorneys used the eliminated venirepersons' volunteer organization as a reason for striking was significant, -2LL = 119.03, $\chi^2(3) = 11.85$, $p = .01$. Profile consistency was a significant predictor such that attorneys were

more likely to mention the venirepersons' volunteer organization as a reason for striking in the inconsistent condition (70%) than in the consistent condition (53%), $\beta = -1.15$, SE = 0.59, Wald's χ^2 (1, $N = 98$) = 3.78, $p = .05$, Exp(β) = 0.32, 95% CI = 0.10, 1.01. Profile consistency did not predict whether attorneys mentioned or used as a reason for striking any of the other 11 categories for which the open-ended explanations were coded. Venireperson race was mentioned in 14% of attorney's responses, however, no attorneys mentioned race as a justification for striking the venireperson. See Table 2 for the percentage of attorneys mentioning, and using as reasons for striking, each of the 12 categories.

Hypothesis 2: Interaction between Profile Consistency and Defendant/Victim Race.

Partial chi-square analyses showed no main effect of defendant/victim race on attorneys' strike decisions, χ^2 (1, $N = 99$) = 0.54, $p = .46$, $\phi = .07$. There was a significant two-way interaction between profile consistency and defendant/victim race, χ^2 (1, $N = 99$) = 7.91, $p = .01$, $\phi = .28$. Follow-up chi-square analyses showed that, when the defendant was Black and the victim was White, attorneys struck the pro-defense venireperson with the same frequency in the consistent (72%) and inconsistent (76%) conditions, χ^2 (1, $N =$ 50) = 0.10, $p = .75$, $\phi = -.05$, however, when the defendant was White and the victim was Black, attorneys struck the pro-defense venireperson more often in the inconsistent condition (100%) than in the consistent condition (63%), χ^2 (1, $N = 50$) = 11.85, $p < .01$, $\phi = -.49$.

There was a significant main effect of defendant/victim race on attorneys' reported likelihood of striking the venirepersons such that attorneys reported a higher likelihood of striking the venirepersons in the Black defendant/White victim condition (*M*

= 3.96, 95% CI = 3.69, 4.24) than in the White defendant/Black victim condition (M = 3.58, 95% CI = 3.30, 3.86), $F(1, 96) = 3.82$, $p = .05$, $\eta_p^2 = .04$. The two-way interaction between profile consistency and defendant/victim race on attorneys' reported likelihood of striking the venirepersons was not significant, $F(1, 96) = 0.09$, $p = .77$, $\eta_p^2 = .00$, nor was the two-way interaction between defendant/victim race and reported likelihood of striking the pro-defense versus the pro-prosecution venireperson significant, $F(1, 96) = 0.00$, $p = .96$, $\eta_p^2 = .00$. There was, however, a significant three-way interaction between profile consistency, defendant/victim race, and venireperson profile on the reported likelihood of striking the venireperson, $F(1, 96) = 5.07$, $p =$

Table 2. *Study 2: Percentage of attorneys mentioning venireperson factors in strike explanations.*

	Consistent Profiles		Inconsistent Profiles	
Factor	Black Defendant	White Defendant	Black Defendant	White Defendant
Race				
Mentioned	8	8	26	17
Reason	_	_	_	_
Sex				
Mentioned	_	4	_	_
Reason	_	_	_	_
Age				
Mentioned	_	_	_	_
Reason	_	_	_	_
Marital Status				
Mentioned	4	4	9	_
Reason	4	4	9	_
Occupation				
Mentioned	60	54	52	83
Reason	60	54	52	83
Jury Experience				
Mentioned	_	4	17	4
Reason	_	4	17	4
Law enforcement				
Mentioned	_	_	_	_
Reason	_	_	_	_
Criminal matter				
Mentioned	_	_	_	_
Reason	_	_	_	_
Disability				
Mentioned	_	_	_	_
Reason	_	_	_	_
Writes about trials				
Mentioned	44	39	35	46
Reason	40	39	35	29
Skepticism				
Mentioned	12	23	9	4
Reason	12	23	9	4
Volunteer				
Mentioned	72	39	78	67
Reason	72	35	78	63

Note. $N = 98$. Underscore represents 0%.

.03, η_p^2 = .05. When the defendant was Black and the victim was White, attorneys reported a higher likelihood of striking the pro-defense venireperson than the pro-prosecution venireperson in both the consistent condition (pro-defense: *M* = 4.73, 95% CI = 4.05, 5.41; pro-prosecution: *M* = 3.00, 95% CI = 2.37, 3.63) and inconsistent condition (pro-defense: *M* = 5.25, 95% CI = 4.54, 5.96; pro-prosecution: *M* = 2.88, 95% CI = 2.22, 3.53). However, when the defendant was White and the victim was Black, attorneys reported a higher likelihood of striking the pro-defense venireperson than the pro-prosecution venireperson in the inconsistent condition (pro-defense: *M* = 5.44, 95% CI = 4.75, 6.13; pro-prosecution: *M* = 1.80, 95% CI = 1.15, 2.45) but venireperson profile did not have a significant effect in the consistent condition (pro-defense: *M* = 3.80, 95% CI = 3.11, 4.49; pro-prosecution: *M* = 3.28, 95% CI = 2.64, 3.93).

There was a marginally significant main effect of defendant/victim race on attorneys' perceived legal attitudes of the venirepersons such that attorneys perceived them to be more pro-defense when the defendant was Black and the victim was White (*M* = 3.68, 95% CI = 3.60, 3.76) than when the defendant was White and the victim was Black (*M* = 3.58, 95% CI = 3.50, 3.65), $F(1, 97) = 3.39$, $p = .07$, $\eta_p^2 = .03$. Neither the two-way interaction between profile consistency and defendant/victim race, $F(1, 97) = 0.03$, $p = .86$, $\eta_p^2 = .00$, nor the two-way interaction between defendant/victim race and venireperson profile on attorneys' perceived legal attitudes of the venirepersons were significant, $F(1, 97) = 0.15$, $p = .70$, $\eta_p^2 = .00$. There was a marginally significant three-way interaction between profile consistency, defendant/victim race, and venireperson profile on attorneys' perceived attitudes of the pro-defense versus the pro-prosecution venireperson, $F(1, 97) = 3.19$, $p = .08$, $\eta_p^2 = .03$. Pairwise comparisons showed that when

the defendant was Black and the victim was White, attorneys perceived the pro-defense venireperson as more pro-defense than the pro-prosecution venireperson but this difference was greater in the consistent condition (pro-defense: *M* = 4.38, 95% CI = 4.13, 4.63; pro-prosecution: *M* = 2.86, 95% CI = 2.62, 3.10) than in the inconsistent condition (pro-defense: *M* = 4.45, 95% CI = 4.19, 4.71; pro-prosecution: *M* = 3.03, 95% CI = 2.79, 3.27). However, when the defendant was White and the victim was Black, attorneys also perceived the pro-defense venireperson to be more pro-defense than the pro-prosecution venireperson; however, this difference was greater in the inconsistent condition (pro-defense: *M* = 4.49, 95% CI = 4.24, 4.74; pro-prosecution: *M* = 2.76, 95% CI = 2.53, 3.00) than in the consistent condition (pro-defense: *M* = 4.05, 95% CI = 3.80; pro-prosecution: *M* = 3.00, 95% CI = 2.77, 3.24). Defendant/victim race and the interaction between profile consistency and defendant/victim race were not significant predictors in any binary logistic regression models predicting the factors that attorneys' mentioned in their open-ended explanations for striking the venireperson or the reasons they gave for striking.

CHAPTER 13: STUDY TWO DISCUSSION

If attorneys' racially biased jury selection decisions are based on stereotypes about the legal attitudes of Black and White jurors (Hypothesis 1), there should be a main effect of profile consistency on attorney's strike decisions, with attorneys striking the Black pro-defense venireperson more often than the White pro-prosecution venireperson yet striking the White pro-defense and Black pro-prosecution venirepersons at equal rates, regardless of the race of the defendant and of the victim. Although profile consistency exerted an effect on attorneys' decisions, the pattern of results was different than was predicted. Attorneys struck the pro-defense venireperson with more frequency when he was White than when he was Black and reported a higher likelihood of striking him when he was White than when he was Black in the White defendant/Black victim condition (but not in the Black defendant/White victim condition). Similar to Study One results, these findings show discrimination by prosecuting attorneys against White venirepersons and are in the opposite direction of what past research has shown (Clark et al., 2007; Rose, 1999; Sommers & Norton, 2007).

It is unlikely that the difference between the findings of the present study and those of Sommers and Norton (2007) are due to demographic differences between the samples. Study Two participants were actually more similar, demographically, than Study One participants to the sample of attorneys studied by Sommers and Norton (2007). However, the sample size of the present study was considerably larger than that of Sommers and Norton (2007) thus is it possible that Study Two is a more representative sample of the population of U.S. prosecuting attorneys and shows a legitimate bias against the White venireperson. Although the consistency of the venirepersons' race and

profile did not affect attorneys' perceptions of the legal attitudes of the venirepersons, attorneys may have found the White venireperson to be a less desirable juror for reasons that I did not accurately capture with my dependent measures. As in Study One, however, I must consider the possibility that attorneys discriminated against the White venireperson in an attempt to correct for a bias against the Black venireperson. The recent Supreme Court cases (*Miller-El v. Dretke*, 2005; *Snyder v. Louisiana*, 2008) that have upheld *Batson* may have made attorneys more aware of racial bias against Black venirepersons and more motivated to control for this bias.

Attorneys' reasons for striking give some insight into the relationship between venireperson race and attorneys' beliefs about them. Attorneys mentioned the venireperson's volunteer organization as a reason for striking with more frequency when the profiles were inconsistent than when the profiles were consistent. These results imply that attorneys were more likely to pay attention to legitimate factors (outside of race) when the venirepersons' profiles were ambiguous (i.e. their race was matched with profiles that did not suggest stereotypic attitudes for their racial group) than when the information in their profile aligned with their race. Attorneys may have perceived the consistent and inconsistent profiles as such (i.e. believed that Black venirepersons are pro-defense and White venirepersons are pro-prosecution) leading them to think more about their reasons for striking when the profiles were inconsistent, and thus ambiguous, and causing them to pay more attention to the details of the profiles.

If attorneys' racially-biased jury selections were driven by a belief that jurors show in-group favoritism toward defendants of the same race (Hypothesis 2), then attorneys would be more likely to strike the Black than the White venireperson when the

defendant was Black and the victim was White and more likely to strike the White than the Black venireperson when the defendant was White and the victim was Black, regardless of the venirepersons' consistency with their profiles. Attorneys showed evidence of beliefs in in-group favoritism when the defendant was White and the victim Black (but not when the defendant was Black and the victim White), striking the pro-defense venireperson more often when he was also White. In fact, when presented with a White defendant and a White pro-defense venireperson, attorneys struck that venireperson 100% of the time. It is possible that attorneys believe that only White jurors, and not Black jurors, will show racial in-group favoritism. However, attorneys perceived the Black venireperson to be more pro-defense when the defendant was Black and the victim White and the White venireperson to be more pro-defense when the defendant was White and the victim Black, showing that attorneys may hold in-group favoritism beliefs about both races even if these beliefs do not always affect their strike decisions. The results of Study Two are consistent with those of Study One in showing a bias against White venirepersons in prosecuting attorneys' strike decisions. Although this study did not show that attorneys' are necessarily driven by stereotypic beliefs in the legal attitudes of Black and White jurors, it did show that attorneys believe in in-group favoritism between jurors and defendants of the same race.

CHAPTER 14: GENERAL DISCUSSION

In two studies, I investigated the psychological mechanisms underlying prosecuting attorneys' racially biased peremptory challenges. Study One explored the conscious and unconscious influences on attorneys' decision making by testing whether making race salient to attorneys and warning attorneys about the possibility of a *Batson* challenge moderated the effects of venireperson race on their decisions to strike a venireperson. Study Two explored whether the biases attorneys hold, both consciously and unconsciously, are related to beliefs about the legal attitudes of Black and White jurors, beliefs about in-group favoritism between jurors and defendants of the same race, or both. I designed both studies under the assumption that, without our manipulations, prosecuting attorneys would discriminate against the Black venireperson.

Although an effect of race was found, attorneys in both studies were more likely to strike the White than the Black venireperson, which is a different pattern of results than was found in previous research. Specifically, previous research found that attorneys are more likely to strike Black than White venirepersons (Clark et al., 2007; Rose, 1999; Sommers & Norton, 2007). Why do the results of the present studies differ from those found in previous research? Perhaps attorneys in these studies were more motivated to avoid discrimination against the Black venireperson than in past research but overestimated their bias and in turn overcorrected for it and discriminated against the White venireperson. Although overcorrection of bias was not seen in past research using similar methodology (Sommers & Norton, 2007), in the years between when the past research and current research was conducted, the Supreme Court has upheld *Batson* in two important decisions (*Miller-El v. Dretke*, 2005; *Snyder v. Louisiana*, 2008) involving

prosecutorial discrimination against Black venirepersons. These decisions may have increased prosecuting attorneys' awareness of their own racial bias (and even made attorneys overestimate their own biases) against Black venirepersons and their motivation to correct for it.

If attorneys were attempting to control for bias in their jury selection choices, then they were at least somewhat conscious of the fact that their jury selection decisions could be affected by the race of the venireperson. However, if attorneys were fully conscious of the effects of race on their peremptory strike decisions, then the rates at which they struck the White and Black venirepersons should be the same regardless of whether they were warned about the restrictions placed by *Batson*. Because the *Batson* warning eliminated the effect of venireperson race on attorneys' strike decisions, it is possible that race is less likely to influence jury selection decisions when race is directly brought to attorneys' consciousness and they are explicitly encouraged to make a decision that is independent of race. This possibility is consistent with findings that jurors are less likely to make racially biased verdict and sentencing decisions when they are made aware of the possibility of racial bias than when they are not made aware of race (Sommers & Ellsworth, 2001).

In Study One (however, not in Study Two), race affected attorneys' perceived legal attitudes of the two venirepersons, demonstrating that attorneys hold racial stereotypes about venirepersons. However, in Study Two, it was not clear whether these stereotypes were driving strike decisions or whether some other beliefs about Black and White venirepersons were driving the decisions. Attorneys were influenced by the possibility of racial in-group favoritism between a juror and defendant of the same race

but their strike decisions only reflected this influence when the defendant was White. Research on in-group/out-group bias suggests that jurors tend to be more sympathetic to defendants of the their own race (Kerr, Hymes, Anderson, & Weathers, 1995; Perdue, Dovidio, Gurtman, & Tyler, 1990; Tajfel, Billig, Bundy, & Flament, 1971); however, the *Batson* decision states that in-group favoritism between a juror and a defendant of the same race is not a legitimate reason to use a peremptory strike. Because the *Batson* decision was based on racial bias against a Black defendant, it is possible that attorneys did not let this in-group favoritism belief affect their final jury selection decisions when the defendant was Black, knowing that it was not an acceptable race neutral reason. However, when the defendant was White, this restriction may not have been as salient to attorneys therefore leading them to discriminate against the White venireperson.

Thus, prosecuting attorneys are influenced by both conscious and unconscious motivations to strike venirepersons based on their race and they hold beliefs about in-group favoritism between jurors and defendants of the same race. This research was only conducted with prosecuting attorneys; however, it is likely that similar psychological processes influence the decisions of defense attorneys. If so, then it is important to consider what we know about why attorneys make racially biased jury selection decisions in determining what can be done to prevent them.

Practical Implications

The *Batson* restrictions extend to both prosecutors and defenders and aim to protect venirepersons from racially biased peremptory challenges regardless of the cause or motivation. Despite the *Batson* restrictions, venireperson race appears to influence attorneys' strike decisions; however, race was less likely to influence attorneys when they

were reminded of the *Batson* restrictions. One purpose of Study One was to test the circumstances under which attorneys would be less likely to discriminate. Although the race salience manipulation was not successful in decreasing racial bias (as it did for jurors in Sommers and Ellsworth, 2001), the more overt *Batson* warning did reduce bias. In practice, it is possible that, a reminder to attorneys about the *Batson* restrictions before making their strike decisions could decrease racially biased peremptory challenges. This suggestion, however, must be taken with caution as the discrimination against the White venireperson found in the present research was not the bias against Black venirepersons found in previous research, thus, it is not clear that a *Batson* warning would decrease that form of racial bias. Additionally, the effect of the warning in this study differed from that found in previous research in which warning attorneys of the restrictions against gender-based peremptory challenges did not decrease gender bias in strike decisions and in fact increased attorneys' ability to provide legitimate reasons for striking one gender over the other (Norton, Sommers, & Brauner, 2007). The psychological processes underlying the effects of the *Batson* restriction and of *Batson* warnings on racially biased peremptory challenges must be further explored in order to fully understand them.

Limitations and Future Research

The present research had several limitations. Asking attorneys to make a forced choice between and Black and White venireperson may have created demand characteristics that triggered overcorrection. Future research should show attorneys several venireperson profiles and ask them to choose among them. Both studies were conducted online and participants were not debriefed in person therefore it is difficult to determine if our pattern of results was affected by attorneys' desire to correct for racial

bias or by a true bias against White venirepersons. Future research should be conducted in person so that the experimenter may gather more information regarding the way in which attorneys make their selections. Additionally, the open-ended question used in this study that asked attorneys to explain their strike decision was posed in the form of a *Batson* challenge, thus encouraging attorneys to give race neutral reasons for their strikes, regardless of whether or not these reasons were the true reasons. Future research should ask attorneys to explain their strike decision outside of a *Batson* challenge context to encourage attorneys to speak honestly about their jury selection choices.

The content of the summary of case facts is also a limitation in this study. Attorneys read an interracial battery case which makes attorneys' consider two different factors at once: racial similarity of the defendant and venireperson and racial similarity of the defendant and the victim. Thus it is difficult to know which of these factors attorneys consider in their jury selection choices. Another limitation of the present research is that the race salience manipulation used in Study One was one created for jurors and not for attorneys. It is possible that the null effects of race salience in Study One were seen because the summary of case facts (the mode by which salience was manipulated) was not as influential in attorneys' jury selection decisions as the venireperson profiles. Future research could attempt to make race salient in a way that is more relevant to the attorneys' task, perhaps through the information provided in the venireperson profiles.

Both studies were conducted with only prosecuting attorneys and the results may not be representative of the psychological mechanisms that affect defense attorneys. Additionally, both studies only explored the effects of two venireperson racial groups: Black and White. Future research could explore the mechanisms with defenders to test

whether racial bias in jury selection occurs with the same frequency and under the same circumstances as it does with prosecutors, as well as examine how attorneys make strike decisions when faced with venirepersons of several different races.

Conclusion

As seen in past research, venireperson race influenced the jury selection decisions that attorneys make. Bias appears to affect attorneys' peremptory challenges through both conscious and unconscious mechanisms but bringing attorneys' attention to the *Batson* restrictions protecting venirepersons from racial bias in jury selection may reduce the effects of racial bias. Attorneys hold beliefs about in-group favoritism between jurors and defendants of the same race but these beliefs do not always influence their jury selection decisions. Future laboratory research should be conducted to further uncover the psychological mechanisms underlying racially-biased peremptory challenges. Only by understanding the processes by which race influences peremptory challenges can we develop targeted interventions for minimizing the effects of race on attorneys' jury selection decisions.

Appendix A

Researchers at John Jay College of Criminal Justice are conducting an online study on jury selection funded by the National Science Foundation. We are recruiting attorney participants from all over the country. This study is being supervised by Dr. Margaret Bull Kovera. Results of this study will be disseminated in peer reviewed psycholegal journals, such as Law and Human Behavior, and results will be published as aggregate data; attorneys' names will never be linked to their data. The study takes approximately 20 minutes to complete and pays $35. Attorneys who participate in the study will be asked to read a short trial summary and a potential juror profile, and then asked to answer some brief questions about the potential juror. Interested attorneys can contact the researcher for this study, Julia Kennard, at juryselection@gmail.com. For more information on Dr. Kovera, you can visit her website at: http://web.jjay.cuny.edu/~mkovera/.

Appendix B

Dear Mr./Mrs. _____,

Thank you for your interest in the study! I really appreciate your help. Below is the study information and link:

In order to participate in and receive compensation for this study you must be a prosecuting attorneys and have conducted at least one voir dire. This is an online survey on jury selection and takes approximately 20 minutes to complete. You will be asked to read a short trial summary and a potential juror profile, and then asked to answer some brief questions about the potential juror. You will be paid $35 for your participation. You will be paid electronically via PayPal (www.paypal.com), and your payment will be sent within one week of your participation.

On the consent form (the first page), you will be asked to enter a participant ID number instead of your name. This is done so that your name will not be linked with your data.

Your participant ID is: **5215**

You can access the study through the link below:

http://johnjay.jjay.cuny.edu/psychlaw/jury/study.asp

If you have any questions about this study, you can contact me at this email address. Also, if you know of any other attorneys who may be interested in participating in the study, please send them my contact information.

Thank you so much!
Julia

Appendix C

Informed Consent

Researchers at John Jay College of CUNY are asking you to take part in a study on jury selection. The researchers want to learn more about how attorneys choose potential jurors. If you choose to take part, we will give you background information about a potential juror and information about a trial and ask you if you would like to use a peremptory challenge on that potential juror or choose the juror to serve. The research should take about 30 minutes to complete. There are no foreseeable risks for participating in this research. You will be paid $35 for your time.

Your responses to all of the questions will remain confidential. You will be one of 160 participants in this study. Only trained researchers will have access to your answers, which will be stored in a locked laboratory. We will not ask for your name while completing this survey. Taking part is voluntary. If you choose not to take part, there will be no penalty. If you decide to participate you may discontinue participation at any time. You may refuse to answer any specific questions or refuse to engage in any task at any time during the study. Withdrawal or refusing to answer specific questions or engage in specific tasks will not result in any consequences to you and will not affect your relationship with John Jay College. If you have questions about the study, please contact the Principal Investigator, Julia Busso Kennard, at lawlab@jjay.cuny.edu or by phone at (212) 484-1351. If you have questions about your rights as a participant in this study, please contact the John Jay College IRB office at (212) 237-8961.

You are making a decision whether to participate. By typing your participant ID number into the box below you are indicating that you have read the information provided above and have chosen to participate. Your participant ID number can be found in the informational email you received informing you about this study.

Particip

Appendix D

You are to play the role of a **prosecuting** attorney conducting a jury selection for a physical assault case. You will first read a case summary and then be presented with information about two potential jurors on your panel. You will then be asked to decide for which potential juror you would like to use a peremptory strike.

Below is a summary of the case:

Trial Number: 98210-12-100
Location: San Antonio, Texas
Charge: One Count of Battery with Serious Bodily Injury
Defendant: André Barkley, 6'0", 175 lbs., African-American male, 18 years-old, student
Alleged Victim: Matthew Clinton, 6'2", 185 lbs., Caucasian male, 16 years-old, student

Prosecution

The prosecution claims that André Barkley is guilty of battery with serious bodily injury. Barkley was the starting point guard on the high school basketball team, but the team had been struggling, and the coach decided to bench him in favor of a younger, less experienced player named Matthew Clinton. Before the first game after the lineup change, Barkley approached Clinton in the locker room and began yelling at him. Witnesses explain that the frustrated defendant told Clinton that "you aren't half the player I am, you must be kissing Coach's ass pretty hard to be starting."

When other teammates stepped between the two players, Barkley told them to get out of the way. When two other players then grabbed Barkley and tried to restrain him, the defendant threw them off, pushed Clinton into a row of lockers, and ran out of the room, according to prosecution witnesses. As a result of this fall, 2 of Clinton's teeth were chipped and he was knocked unconscious. The prosecution claims that Barkley has shown no remorse for his crime, and has even expressed to friends that Clinton "only got what he had coming."

Defense

The defense claims that Barkley was merely acting in self-defense, and that Clinton's injuries were accidental.

Race Salient Condition

[According to an assistant coach, Barkley was one of only two blacks on the team and had been the subject of racial remarks and unfair criticism throughout the season from many of his white teammates.]

Non Race Salient Condition

[According to an assistant coach, Barkley did not get along with many people on the team and had been the subject of obscene remarks and unfair criticism from many of his teammates throughout the season.]

Barkley claims that he was afraid for his own safety during the altercation in the locker room and "definitely felt ganged up on."

Barkley admits he "might have been aggressive towards Matthew and started the whole thing," but says that he was just frustrated and the argument was "nothing that should have started a big locker room fight or anything." Barkley claims that when several other players grabbed him from behind for no reason, he tried to break free and must have accidentally knocked into Clinton in the attempt to get out of the locker room. He explained that the reason he never apologized to Clinton in the hospital was that he "didn't think he'd want to see me," but Barkley did say he "was truly, truly sorry" that Clinton had been injured.

Appendix E

Below is a description of two potential jurors on your panel. You will be deciding for which potential juror to use a peremptory challenge.

A judge questioned the potential jurors and gathered some information about them; below are the judge's questions and the potential jurors' responses.

Potential Juror 1	Potential Juror 2
Name: Larry Johnson Sex: Male Age: 43 Race: African American/Caucasian *(depending on Race/Profile condition)* Marital Status: Married Occupation: Journalist	Name: Michael Adams Sex: Male Age: 40 Race: Caucasian/African American *(depending on Race/Profile condition)* Marital Status: Divorced Occupation: Advertising Executive
Judge's questions: 1. Have you ever served as a juror in a criminal or civil case or as a member of a grand jury either in federal or state court? **Response**: "*No.*" 2. Have you, any member of your family, or any close friend ever been employed by a law enforcement agency? **Response***: "No."* 3. Have you ever been involved, in any court, in a criminal matter that concerned yourself, any member of your family, or a close friend either as a defendant, a witness, or a victim?	Judge's questions: 1. Have you ever served as a juror in a criminal or civil case or as a member of a grand jury either in federal or state court? **Response**: "*Yes, I have served on two juries before, one civil and one criminal, both in state court.*" 2. Have you, any member of your family, or any close friend ever been employed by a law enforcement agency? **Response***: "No."* 3. Have you ever been involved, in any court, in a criminal matter that concerned yourself, any member of your family, or a close friend either as a defendant, a witness, or a victim?

Response: "*No.*"	**Response**: "*No.*"
4. If you are selected to sit on this case, will you be able to render a verdict solely on the evidence presented at the trail and in the context of the law as I will give it to you in my instructions, disregarding any other ideas, notions, or beliefs about the law that you may have encountered in reaching your verdict?	4. If you are selected to sit on this case, will you be able to render a verdict solely on the evidence presented at the trail and in the context of the law as I will give it to you in my instructions, disregarding any other ideas, notions, or beliefs about the law that you may have encountered in reaching your verdict?
Response: "*Yes.*"	**Response**: "*Yes.*"
5. Do you have any special disability or problem that would make serving as a member of this jury difficult or impossible?	5. Do you have any special disability or problem that would make serving as a member of this jury difficult or impossible?
Response: "*No.*"	**Response**: "*No.*"
6. Having heard the questions put to you by the court, is there any other reason suggest itself to you as to why you could not sit on this jury and render a fair verdict based on the evidence presented to you and in the context of the court's instructions to you on the law?	6. Having heard the questions put to you by the court, is there any other reason suggest itself to you as to why you could not sit on this jury and render a fair verdict based on the evidence presented to you and in the context of the court's instructions to you on the law?
Response: "*As part of my job as a journalist, I am in charge of writing articles about criminal trials that are happening in my area.*"	**Response**: "*I'm skeptical of evidence that involves statistics. I believe that statistics can be easily manipulated.*"
7. If chosen to sit on this jury, will your personal experiences and beliefs prevent you from being an impartial juror?	7. If chosen to sit on this jury, will your personal experiences and beliefs prevent you from being an impartial juror?
Response: "*No.*"	**Response**: "*No.*"

Appendix F

We would like to know what types of legal attitudes you think the potential jurors hold.

Please state your level of agreement or disagreement with the following questions as they pertain to **Potential Juror 1.**

1. Potential Juror 1 is likely to question the motives of law enforcement officers.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐	☐	☐	☐	☐	☐

2. Potential Juror 1 is likely to be sympathetic to criminal defendants.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐	☐	☐	☐	☐	☐

3. Potential Juror 1 is likely to support harsh punishment for criminal defendants.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐	☐	☐	☐	☐	☐

4. Potential Juror 1 is likely to be more concerned about possibly convicting an innocent person than the possibility of letting a criminal go free.

1		3	4	5	6
Strongly	Agree	Somewhat Agree	Somewhat	Disagree	Strongly

Agree			Disagree	Disagree

5. Potential Juror 1 is likely to believe that getting criminals off the street is more important than protecting innocent suspects.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree

6. Potential Juror 1 is likely to believe in protecting the rights of defendants.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree

7. Potential Juror 1 is likely to believe in protecting citizens from criminals.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree

8. Potential Juror 1 believes that defense attorneys should have to prove that the defendant is innocent.

1		3	4	5	6

Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐		☐	☐	☐	☐

9. Potential Juror 1 would be a good juror for the prosecution.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐		☐	☐	☐	☐

10. Potential Juror 1 would be a good juror for the defense.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐		☐	☐	☐	☐

Please state your level of agreement or disagreement with the following questions as they pertain to **Potential Juror 2.**

1. Potential Juror 2 is likely to question the motives of law enforcement officers.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐		☐	☐	☐	☐

2. Potential Juror 2 is likely to be sympathetic to criminal defendants.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐	☐	☐	☐	☐	☐

3. Potential Juror 2 is likely to support harsh punishment for criminal defendants.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐	☐	☐	☐	☐	☐

4. Potential Juror 2 is likely to be more concerned about possibly convicting an innocent person than the possibility of letting a criminal go free.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐	☐	☐	☐	☐	☐

5. Potential Juror 2 is likely to believe that getting criminals off the street is more important than protecting innocent suspects.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐	☐	☐	☐	☐	☐

6. Potential Juror 2 is likely to believe in protecting the rights of defendants.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐		☐	☐	☐	☐

7. Potential Juror 2 is likely to believe in protecting citizens from criminals.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐		☐	☐	☐	☐

8. Potential Juror 2 believes that defense attorneys should have to prove that the defendant is innocent.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐		☐	☐	☐	☐

9. Potential Juror 2 would be a good juror for the prosecution.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐		☐	☐	☐	☐

10. Potential Juror 2 would be a good juror for the defense.

1		3	4	5	6
Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree
☐		☐	☐	☐	☐

Appendix G

You have one peremptory strike left and must use it on one of the potential jurors.

Batson warning present condition

[Remember, the law set forth in *Batson v. Kentucky* prohibits you from eliminating a potential juror from a panel solely based on that potential juror's race.]

For which potential juror do you want to use your peremptory strike?

☐ Potential Juror 1 ☐ Potential Juror 2

How likely is it that you would use your peremptory strike on Potential Juror 1?

						7
Not at all likely						Extremely likely
						☐

How likely is it that you would use your peremptory strike on Potential Juror 2?

						7
Not at all likely						Extremely likely
						☐

Appendix H

Imagine that the defense attorney in the case has raised a *Batson* challenge. The judge has asked you to give an explanation for why you have used a peremptory challenge on the potential juror. Please give your explanation in the space provided below (255 characters max-About 30 words):

NOTE: *If your answer exceeds 255 characters (about 30 words), you will encounter an error message. If you wish to give a longer answer, please split your answer into the 3 text boxes below, using 255 characters maximum (about 30 words) for each. Thank you.*

Appendix I

Please answer the following questions:

1. What is your gender?

☐ Male ☐ Female

2. What is your age? _____

3. How many years have you practiced as a prosecuting attorney? _____

4. How many voir dires have you conducted? _____

5. What is your racial/ethnic background?

	White, non-Hispanic
	Black
	Hispanic
	Asian
	Other

6. What was the race of Potential juror 1?

☐ African American

☐ Caucasian

7. What was the race of Potential juror 2?

☐ African American

☐ Caucasian

8. In the case summary, what did the assistant coach say about the defendant Andre Barkley? ☐ Andre was one of only two Blacks on the team.

☐ Andre did not get along with many people on the team.

9. In the case summary, what did the assistant coach say about the defendant Andre Barkley?

☐ Andre had been the subject of unfair remarks by his teammates throughout the season.

☐ Andre had been the subject of racial remarks by his teammates throughout the season.

10. Before making a decision on whether to use a peremptory strike on the potential juror, Larry Johnson, were you warned about the restrictions on jury selection placed by *Batson v. Kentucky*?

☐ Yes

☐ No

Appendix J

Thank you for your participation! In this study, we are examining the role of potential jurors' race in attorneys' decisions to use peremptory challenges against them. In this study, you were presented with either an African-American and Caucasian potential juror. The case, an interracial battery case, either made race salient to the alleged crime by discussing that the defendant had been subject to racist remarks from his teammates, or did not make race a salient to the alleged crime by simply saying that the defendant had been subject to unfair remarks by his teammates. Results will explore how much the importance of race in a case affects attorneys' decisions to strike a potential juror who is either of the same race as the defendant or a different race.

If you have any questions about, please email the researcher for this study, Julia Busso Kennard, at juryselection@gmail.com.

Thanks and have a great day!

Appendix K

You are to play the role of a **prosecuting** attorney conducting a jury selection for a physical assault case. You will first read a case summary and then be presented with information about two potential jurors on your panel. You will then be asked to decide whether or not you want to use a peremptory strike on the potential juror.

Below is a summary of the case:

Trial Number: 98210-12-100
Location: San Antonio, Texas
Charge: One Count of Battery with Serious Bodily Injury

Black defendant/White victim condition

Defendant: Andre Barkley, 6'0", 175 lbs., African-American male, 18 years-old, student
Alleged Victim: Matthew Clinton, 6'2", 185 lbs., Caucasian male, 16 years-old, student

White defendant/Black victim condition

Defendant: Matthew Clinton, 6'2", 185 lbs., Caucasian male, 16 years-old, student
Alleged Victim: Andre Barkley, 6'0", 175 lbs., African-American male, 18 years-old, student

Prosecution

The prosecution claims that Andre Barkley/Clinton is guilty of battery with serious bodily injury. Barkley/Clinton was the starting point guard on the high school basketball team, but the team had been struggling, and the coach decided to bench him in favor of a younger, less experienced player named Matthew Clinton/Andre Barkley. Before the first game after the lineup change, Barkley/Clinton approached Clinton/Barkley in the locker room and began yelling at him. Witnesses explain that the frustrated defendant told Clinton/Barkley that "you aren't half the player I am, you must be kissing Coach's ass pretty hard to be starting."

When other teammates stepped between the two players, Barkley/Clinton told them to get out of the way. When two other players then grabbed Barkley/Clinton and tried to restrain him, the defendant threw them off, pushed Clinton/Barkley into a row of lockers, and ran out of the room, according to prosecution witnesses. As a result of this fall, 2 of Clinton's/Barkley's teeth were chipped and he was knocked unconscious. The prosecution claims that Barkley/Clinton has shown no remorse for his crime, and has even expressed to friends that Clinton/Barkley "only got what he had coming."

Defense

The defense claims that Barkley/Clinton was merely acting in self-defense, and that Clinton's/Barkley's injuries were accidental. According to an assistant coach, Barkley/Clinton did not get along with many people on the team and had been the subject of obscene remarks and unfair criticism from many of his teammates throughout the season. Barkley/Clinton claims that he was afraid for his own safety during the altercation in the locker room and "definitely felt ganged up on."

Barkley/Clinton admits he "might have been aggressive towards Matthew/Andre and started the whole thing," but says that he was just frustrated and the argument was "nothing that should have started a big locker room fight or anything." Barkley/Clinton claims that when several other players grabbed him from behind for no reason, he tried to break free and must have accidentally knocked into Clinton/Barkley in the attempt to get out of the locker room. He explained that the reason he never apologized to Clinton/Barkley in the hospital was that he "didn't think he'd want to see me," but Barkley/Clinton did say he "was truly, truly sorry" that Clinton/Barkley had been injured.

Appendix L

Below is a description of two potential jurors on your panel. You will be deciding for which potential juror to use a peremptory challenge.

A judge questioned the potential jurors and gathered some information about them; below are the judge's questions and the potential jurors' responses.

Potential Juror 1	Potential Juror 2
Name: Larry Johnson Sex: Male Age: 43 Race: African American/Caucasian *(depending on Consistent v. Inconsistent condition)* Marital Status: Married Occupation: Journalist	Name: Michael Adams Sex: Male Age: 40 Race: Caucasian/African American *(depending on Consistent v. Inconsistent condition)* Marital Status: Divorced Occupation: Advertising Executive
Judge's questions: 1. Have you ever served as a juror in a criminal or civil case or as a member of a grand jury either in federal or state court? **Response**: "*No.*" 2. Have you, any member of your family, or any close friend ever been employed by a law enforcement agency? **Response***: "No."* 3. Have you ever been involved, in any court, in a criminal matter that concerned yourself, any member of your family, or a close friend either	Judge's questions: 1. Have you ever served as a juror in a criminal or civil case or as a member of a grand jury either in federal or state court? **Response**: "*Yes, I have served on two juries before, one civil and one criminal, both in state court.*" 2. Have you, any member of your family, or any close friend ever been employed by a law enforcement agency? **Response***: "No."* 3. Have you ever been involved, in any court, in a criminal matter that concerned yourself, any member of your family, or a close friend either as a defendant, a witness, or a

as a defendant, a witness, or a victim? **Response**: "*No.*"	victim? **Response**: "*No.*"
4. Are you affiliated with any clubs or organizations? **Response:** *"Yes, I volunteer for Amnesty International."*	4. Are you affiliated with any clubs or organizations? **Response:** *"I'm a volunteer for the National Rifle Association."*
5. If you are selected to sit on this case, will you be able to render a verdict solely on the evidence presented at the trail and in the context of the law as I will give it to you in my instructions, disregarding any other ideas, notions, or beliefs about the law that you may have encountered in reaching your verdict? **Response**: "*Yes.*"	5. If you are selected to sit on this case, will you be able to render a verdict solely on the evidence presented at the trail and in the context of the law as I will give it to you in my instructions, disregarding any other ideas, notions, or beliefs about the law that you may have encountered in reaching your verdict? **Response**: "*Yes.*"
6. Do you have any special disability or problem that would make serving as a member of this jury difficult or impossible? **Response**: "*No.*"	6. Do you have any special disability or problem that would make serving as a member of this jury difficult or impossible? **Response**: "*No.*"
7. Having heard the questions put to you by the court, is there any other reason suggest itself to you as to why you could not sit on this jury and render a fair verdict based on the evidence presented to you and in the context of the court's instructions to you on the law? **Response**: "*As part of my job as a journalist, I am in charge of writing articles about criminal trials that are happening in my area.*"	7. Having heard the questions put to you by the court, is there any other reason suggest itself to you as to why you could not sit on this jury and render a fair verdict based on the evidence presented to you and in the context of the court's instructions to you on the law? **Response**: "*I'm skeptical of evidence that involves statistics. I believe that statistics can be easily manipulated.*"
8. If chosen to sit on this jury, will	

your personal experiences and beliefs prevent you from being an impartial juror? **Response**: "*No.*"	8. If chosen to sit on this jury, will your personal experiences and beliefs prevent you from being an impartial juror? **Response**: "*No.*"

Appendix M

You have one peremptory strike left and must use it on one of the potential jurors.

For which potential juror do you want to use your peremptory strike?

☐ Potential Juror 1 ☐ Potential Juror 2

How likely is it that you would use your peremptory strike on Potential Juror 1?

						7
Not at all likely						Extremely likely
						☐

How likely is it that you would use your peremptory strike on Potential Juror 2?

						7
Not at all likely						Extremely likely
						☐

Appendix N

Please answer the following questions:

1. What is your gender?

☐ Male ☐ Female

2. What is your age? _____

3. How many years have you practiced as a prosecuting attorney? _____

4. How many voir dires have you conducted? _____

5. What is your racial/ethnic background?

	White, non-Hispanic
	Black
	Hispanic
	Asian
	Other

6. What was the race of Potential juror 1?

☐ African American

☐ Caucasian

7. What was the occupation of Potential juror 1?

☐ Journalist

☐ Advertising Executive

8. For what organization did Potential juror 1 say he volunteered?

- [ ] Amnesty International
- [ ] The National Rifle Association

9. What was the race of Potential juror 2?

- [ ] African American
- [ ] Caucasian

10. What was the occupation of Potential juror 2?

- [ ] Journalist
- [ ] Advertising Executive

11. For what organization did Potential juror 2 say he volunteered?

- [ ] Amnesty International
- [ ] The National Rifle Association

12. What was the race of the defendant in the case?

- [ ] African American
- [ ] Caucasian

13. What was the race of the victim in the case?

- [ ] African American
- [ ] Caucasian

Appendix O

Thank you for your participation. In this study, we are examining the role of potential jurors' race in attorneys' decisions to use peremptory challenges against them and how potential jurors' race interacts with the race of the defendant, the race of the victim, and the legal attitudes attorneys' believe a potential juror to have. In this study, you were presented with an African-American and Caucasian potential juror. The case, an interracial battery case, involved either a Black defendant and a White victim or a White defendant and a Black victim. The potential jurors either expressed attitudes that, according to Social Psychological research, were consistent with their racial stereotypes (Pro-Defense Black potential juror and Pro-Prosecution White potential juror) or inconsistent with their stereotypes (Pro-Prosecution Black potential juror and Pro-Defense White potential juror). Results will explore how much attorneys are influenced by the presumed legal attitudes of Black and White jurors and how much they are influenced by the potential for in-group/out-group bias between jurors and defendants of different or same races.

If you have any questions about the study, please email the researcher for this study, Julia Busso Kennard, at juryselection@gmail.com.

Thanks and have a great day!

References

Abwender, D., Hough, K. (2001). Interactive effects of characteristics of defendant and mock juror on U.S. participants' judgment and sentencing recommendation. *Journal of Social Psychology, 141*(5), 603-615. doi: 10.1080/00224540109600574.

Anthony, K. (2000). The relationship between race, racial identity and value conflict and the death penalty attitudes of Blacks and Whites. *Dissertation Abstracts International, 60*(12-B), 6418.

Antonio, A. L., Chang, M. J., Hakuta, K., Kenny, D. A., Levin, S., & Milem, J. F. (2004). Effects of racial diversity on complex thinking in college students. *Psychological Science*, *15*(8), 507-510. doi: 10.1080/00224540109600574.

Avery v. Georgia (1953). 345 U.S. 562.

Babcock, (1975). Voir dire: Preserving its wonderful power. *Stanford Law Review*, 27, p. 553-554. doi: 10.2307/1228326.

Ballard v. United States, 329 U.S. 187 (1946).

Batson v. Kentucky, 476 U.S. 79 (1986).

Bourke, R., & Hingston, J. (2003). *Black strikes: A study of the racially disparate use of peremptory strikes by the Jefferson Parish District Attorneys' Office.* A report of the Louisiana Crisis Assistance Center.

Brigham, J. C., & Wasserman, A. W. (1999). The impact of race, racial attitude, and gender on reactions to the criminal trial of O.J. Simpson. *Journal of Applied Social Psychology, 29*(7), 1333-1370. doi: 10.1007/BF01040623.

Busselle, R., & Crandall, H. (2002). Television viewing and perceptions about race differences in socioeconomic success. *Journal of Broadcasting and Electronic Media, 46*(2), 265-282.

Clark, J., Boccaccini, M. T., Caillouet, B., & Chaplin, W. F. (2007). Five factor model personality traits, jury selection, and case outcomes in criminal and civil cases. *Criminal Justice and Behavior*, *34*(5), 641-660. doi: 10.1037/10140-006.

Cochran, J. K., & Chamlin, M. B. (2006). The enduring racial divide in death penalty support." *Journal of Criminal Justice 34*, 85-99. doi: 10.1016/j.jcrimjus.2005.11.007.

Devine, P. G. (1989). Stereotypes and prejudice: Their automatic and controlled components. *Journal of Personality and Social Psychology, 56*(1), 5-18. doi: 10.1037//0022-3514.56.1.5.

Dixon, T. L., & Linz, D. (2000). Race and the misrepresentation of victimization on local television news. *Communication Research, 27*(5), 547-573. doi: 10.1177/009365000027005001.

Dovidio, J. F., Kawakami, K., & Gaertner, S. L. (2002). Implicit and explicit prejudice and interracial interaction. *Journal of Personality and Social Psychology, 82*(1), 62-68. doi: 10.1177/009365000027005001.

Dovidio, J. F., Smith, J. K., Donnella, A. G., & Gaertner, S. L. (1997). Racial attitudes and the death penalty. *Journal of Applied Social Psychology, 27*(16), 1468-1487. doi: 10.1111/j.1559-1816.1997.tb01609.x.

Dunning, D., & Sherman, D. A. (1997). Stereotypes and tacit inference. *Journal of Personality and Social Psychology, 73*(3), 459-471. doi: 10.1037//0022-3514.73.3.459.

Eberhardt, J. L., Davies, P. G., Purdie-Vaughns, V. J., & Johnson, S. L. (2006). Looking deathworthy: Perceived stereotypicality of Black defendants predicts capital-sentencing outcomes. *Psychological Science, 17*, 383-386. doi: 10.1111/j.1467-9280.2006.01716.x.

Eberhardt, J. L., Goff, P. A., Purdie, V. J., & Davies, P. G. (2004). Seeing black: Race, crime, and visual processing. *Journal of Personality and Social Psychology, 87*(6), 876-893. doi: 10.1037/0022-3514.87.6.876.

Equal Justice Initiative (2010). *Illegal racial discrimination in jury selection: A continuing legacy.*

Gabbidon, S. L., Kowal, L. K., Jordan, K. L., & Roberts, N. V. (2008). Race-based peremptory challenges: An empirical analysis of litigation from the U.S. Court of Appeals, 2002-2006. *American Journal of Criminal Justice*, *33*, 59-68. doi: 10.1007/s12103-007-9027-6.

Georgia v. McCollum, 505 U.S. 42 (1992).

Germano, J. H. (1995). Preserving peremptories: A practitioner's prerogative. *St. John's Journal of Legal Commentary*, *10*(432).

Golash, D. (1992). Race, fairness, and jury selection. *Behavioral Sciences and the Law, 10*, 155-177. doi: 10.1002/bsl.2370100203.

Haydock, R. & Sonsteng, J. (1999). *Trial advocacy before judges, jurors and arbitrators* (2nd ed.). St. Paul, MN: West Group.

Hernandez v. Texas, 347 U.S. 475, 478 (1954).

J.E.B. ex rel. T.B., 114 S.Ct. 1419 (1994).

Johnson, M. (2007). *Ethnic group differences in expectations of police compliance with protections.* Paper presented at the Off the Witness Stand convention, New York, NY.

Kennard, J. B., & Kassin, S. M. (March, 2009). *Racial differences in Miranda waiver.* Poster presented at the meetings of the American Psychology-Law Society, San Antonio, TX.

Kerr, S., Hymes, R., Anderson, A. B., & Weathers, J. E. (1995). Defendant-juror similarity and mock juror judgments. *Law and Human Behavior, 19*(6), 545-567. doi: 10.1007/BF01499374.

Lynch, M., & Haney, C. (2000). Discrimination and instructional comprehension: Guided discretion, racial bias, and the death penalty. *Law and Human Behavior, 24*(3), 337-358.

Marques, J. M., & Yzerbyt, V. Y. (1988). The black sheep effect: Judgmental extremity toward ingroup members in inter- and intragroup situations. *European Journal of Social Psychology, 18*, 287-292.

Marques, J. M., Yzerbyt, V. Y., & Leyens, J. P. (1988). The black sheep effect: Extremity of judgments towards in-group members as a function of group identification. *European Journal of Social Psychology, 18*, 1-16. doi: 10.1002/ejsp.2420180102.

Mauet, T.A. (2002). *Fundamentals of trial techniques, 6th ed.* New York: Aspen Publishers, Inc.

Miller-El v. Dretke, 545 U.S. 231 (2005).

Mitchell, T., Haw, R., Pfeifer, J., & Meissner, C. (2005). Racial bias in mock juror decision making: A meta-analytic review of defendant treatment. *Law and Human Behavior, 29*(6), 621-637. doi: 10.1007/s10979-005-8122-9.

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

Ottoway, M. A., Hayden, D. C., & Oakes, M. A. (2001). Implicit attitudes and racism: Effects of work familiarity and frequency on the implicit association test. *Social Cognition, 19*(2), 97-144. doi: 10.1521/soco.19.2.97.20706.

Page, A. (2005). *Batson*'s blind spot: Unconscious stereotyping and the peremptory challenge. *Boston University Law Review, 85*, 155-262.

Paulus, P.B. (2000). Groups, teams, and creativity: The creative potential of idea-generating groups. *Applied Psychology: An International Review, 49*, 237-262. doi: 10.1111/1464-0597.00013.

People v. Garcia, 77 Cal. App. 4th 1269, 92 Cal. Rptr. 2d 339 (2000).

Powers v. Ohio, 499 U.S. 400 (1991).

Purdue, C. W., Dovidio, J. F., Gurtman, M. B., & Tyler, R. B. (1990). Us and them: Social categorization and the process of intergroup bias. *Journal of Personality and Social Psychology, 59*(3), 475-486. doi: 10.1037//0022-3514.59.3.475.

Quillian, L., & Pager, D. (2001). Black neighborhoods, higher crime? The role of racial stereotypes in evaluations of neighborhood crime. *AJS, 107*(3), 717-767. doi: 10.1086/338938.

Romer, D., Jamieson, K. H., & Aday, S. (2003). Television news and the cultivation of fear of crime. *Journal of Communication, 53*(1), 88-104. doi: 10.1093/joc/53.1.88.

Rose, M. R. (1999). The peremptory challenge accused of race or gender discrimination? Some data from one country. *Law and Human Behavior, 23*(6), 695-702.

Rothblatt, H. R. (1961). *Successful techniques in the trial of criminal cases*. Englewood Cliffs, N.J.: Prentice-Hall, Inc.

Schowqurow v. Maryland, 240 Md. 121 (1965).

Schuck, A. M., Rosenbaum, D. P. (2005). Global and neighborhood attitudes toward the police: Differentiation by race, ethnicity and type of contact. *Journal of Quantitative Criminology, 21*(4), 391-418. doi: 10.1007/s10940-005-7356-5.

Schuck, A. M., Rosenbaum, D. P., Hawkins, D. F. (2008). The influence of race/ethnicity, social class, and neighborhood context on residents' attitudes toward the police. *Police Quarterly, 11*(4), 496-519. doi: 10.1177/1098611108318115.

Schuller, R. A., Kazoleas, V., & Kawakami, K (2009). The impact of prejudice screening procedures on racial bias in the courtroom. *Law and Human Behavior, 33*, 320-328. doi: 10.1007/s10979-008-9153-9.

Skolnick, P., & Shaw, J. (1997). The O.J. Simpson criminal trial verdict: Racism or status shield? *Journal of Social Issues, 53*(3), 503-516. doi: 10.1111/j.1540-4560.1997.tb02125.x.

Sommers, S. R. (2006). On racial diversity and group decision making: Identifying multiple effects of racial composition on jury deliberations. *Journal of*

Personality and Social Psychology, 90(4), 597-612. doi: 10.1037/0022-3514.90.4.597.

Sommers, S. R., Apfelbaum, E. P., Dukes, N. T., & Wang, E. J. (2006). Race and media coverage of Hurricane Katrina: Analysis, implications, and future research questions. *Analyses of Social Issues and Public Policy, 6*(1), 39-55. doi: 10.1111/j.1530-2415.2006.00103.x.

Sommers, S. R., & Ellsworth, P. C. (2000). Race in the courtroom: Perceptions of guilt and dispositional attributions. *Journal for Personality and Social Psychology, 26*(11), 1367-1379. doi: 10.1177/0146167200263005.

Sommers, S. R., & Ellsworth, P. C. (2001). White juror bias: An investigation of prejudice against Black defendants in the American courtroom. *Psychology, Public Policy, and Law, 7*(1), 201-229. doi: 10.1037//1076-8971.7.1.201.

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

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

Sommers, S. R., Warp, L. S., & Mahoney, C. C. (2008). Cognitive effects of racial diversity: White individuals' information processing in heterogeneous groups. *Journal of Experimental Social Psychology, 44*(4), 1129-1136. doi: 10.1016/j.jesp.2008.01.003.

State v. Fulton, 57 Ohio St. 3d 120, 566 N.E.2d 1195 (1992).

State v. Plenty Horse, 85 S.D. 401, 184 N.W.2d 654 (1971).

Strauder v. West Virginia, 100 U.S. 303 (1880).

Swain v. Alabama, 380 U.S. 202 (1965).

Tajfel, H., Billig, M. G., Bundy, R. P., & Flament, C. (1971). Social categorization and intergroup behavior. *European Journal of Social Psychology, 1*(2), 149-178. doi: 10.1002/ejsp.2420010202.

Thiel v. Southern Pacific Co., 328 U.S. 217 (1946_.

United States v. Angiulo, 847 F.2d 956 (1988).

United States v. Fujimoto, 105 F. Supp 727 (D. Hawaii), *cert. denied,* 344 U.S. 852 (1953).

United States ex rel. Leguillou v. Davis, 115 F. Supp. 392 (1953).

United States v. Pearson, 448 F.2d 1207 (1971).

Unnever, J. D., & Cullen, F. T. (2007). Reassessing the racial divide in support for capital punishment: The continuing significance of race. *Journal of Research in Crime and Delinquency, 44*(1), 124-158. doi: 10.1177/0022427806295837.

Wais, B. W. (2007). Actions speak louder than words: Revisions to the *Batson* doctrine and peremptory challenges in the wake of *Johnson v. California* and *Miller-El v. Dretke*. Brandis Law Journal, *45*, 437-467.

Willis v. Kemp, 109 S.Ct. 1328 (1989).

Witcher v. Peyton, 405 F.2d 725 (1969)