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Toward A General Race Salience Effect: Alternative Manipulations And Group-Level Decision Making

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TOWARD A GENERAL RACE SALIENCE EFFECT: ALTERNATIVE MANIPULATIONS
AND GROUP-LEVEL DECISION MAKING

by

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A Dissertation

Submitted to the Graduate Faculty

of the

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This dissertation, submitted by Bradlee Gamblin in partial fulfillment of the requirements for the Degree of Doctor of Philosophy from the University of North Dakota, has been read by the Faculty Advisory Committee under whom the work has been done and is hereby approved.

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Bradlee W. Gamblin
July 6, 2017

TABLE OF CONTENTS

LIST OF FIGURES.....	vii
LIST OF TABLES.....	viii
ACKNOWLEDGEMENTS.....	ix
ABSTRACT.....	x
CHAPTER	
I. INTRODUCTION.....	1
II. LITERATURE REVIEW.....	4
White Juror Bias and the Race Salience Effect.....	4
Limitations of the Race Salience Effect.....	14
Group-Level Decision Making.....	25
The Current Studies.....	30
III. EXPERIMENT 1.....	35
Method.....	35
Results.....	45
Experiment 1 Discussion.....	60
IV. EXPERIMENT 2.....	71
Method.....	71
Results.....	75
Experiment 2 Discussion.....	80

V.	GENERAL DISCUSSION.....	86
	A Generalized Race Salience Effect.....	86
	Jury Deliberation and the Race Salience Effect.....	90
	Limitations and Future Directions.....	92
	Conclusion.....	95
	APPENDICES.....	96
	REFERENCES.....	126

LIST OF FIGURES

Figure	Page
1. Defendant Race x Race Salience Interaction on Post-Deliberation Guilt Ratings, Experiment 1.....	55

LIST OF TABLES

Table	Page
1. Participant Demographics, Experiment 1.....	36
2. Descriptive Statistics for Dependent Variables and Covariates, Experiment 1.....	40
3. Pre-Deliberation Correlations among Covariates and Dependent Variables, Experiment 1.....	48
4. Post-Deliberation Correlations among Covariates and Dependent Variables, Experiment 1.....	49
5. Pre-Deliberation Verdict Choice based on Defendant Race across Race Saliency Condition, Experiment 1.....	53
6. Participant Demographics, Experiment 2.....	72
7. Descriptive Statistics for Dependent Variables and Covariates, Experiment 2.....	74
8. Correlations among Covariates and Dependent Variables, Experiment 2.....	77
9. Verdict Choice across Defendant Race when Race is Salient, Experiment 2.....	79

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To Cedric, my nephew,
who can be anything he wants to be.

ABSTRACT

The race salience effect of juror decision making states that White jurors will display bias favoring White defendants over Black defendants only when race is not a prominent aspect of the crime or trial. Although past research has established this effect under certain conditions, a broader investigation of the effect is currently lacking in the literature. Furthermore, the literature has largely ignored the role that jury deliberation may have in attenuating or exacerbating the race salience effect. In total, 357 White mock jurors participated in a simulated court case about an interracial bar fight in which race was made salient either through attorney statements (Experiment 1, N = 207) or through pretrial publicity (Experiment 2, N = 150); participants in Experiment 1 also convened as a jury and deliberated the case. In both experiments, a race salience effect was found for verdict preference, but not for any other trial outcome. In addition, the effect identified was in the opposite direction to that expected based on previous research, as results showed an outgroup favoritism effect in race salient conditions. Experiment 1 also found no race salience effects following jury deliberation, indicating that no new effects were created through deliberation and any that existed prior to deliberation were eliminated. Implications of these findings for the race salience literature and the juror decision making literature are discussed along with implications for actual court cases.

CHAPTER I

INTRODUCTION

In October, 2014, Laquan McDonald, a 17-year-old Black man, was fatally shot by Jason Van Dyke, a White officer of the Chicago Police Department (Gorner & Meisner, 2015). The shooting was initially treated as a case of justifiable homicide, with Van Dyke contending that McDonald was lunging at officers with a knife. Pressure from the media, and a court decision, eventually led to the release of dashcam videotape evidence depicting the incident (Queally & Winton, 2015). This videotape revealed that McDonald never attempted to stab an officer; in fact, McDonald was shot from behind, meaning that he was walking away from the officers. After the dashcam videotape's release, Van Dyke was charged with first-degree murder. Even though the crime is interracial in nature, prosecutors have thus far not labeled the incident as racially motivated. Regardless, many news outlets have highlighted the racial aspects of the case (CBS, 2015; Madhani, 2015; Schmadeke, 2015; Williams, 2015). For example, the Chicago Tribune included a quote from McDonald's uncle in which he comments on the "...culture in the county of Cook... where police feel comfortable with murdering African-American people" (Schmadeke, 2015, para. 14).

Racial motivation was similarly implanted into O. J. Simpson's 1995 murder trial, this time by Simpson's defense attorneys. The prosecutors in the case presented significant circumstantial evidence linking Simpson to the murder, including blood-soaked socks and gloves, suggestive DNA analysis, a vehicle seen at the scene of the crime, shoe prints, and

several eyewitnesses (Ayres, 1994). In response, the defense centered their case around the suggestion that the Los Angeles Police Department, particularly a White officer named Mark Fuhrman, had planted and fabricated evidence in order to frame Simpson for the murder, and that they had done so because of racial bias against Simpson (Toobin, 1994). Evidence in support of potential racial bias was presented throughout the trial, and this racial bias was considered so important to the defense's case that Johnnie Cochran, one of Simpson's attorneys, highlighted the role of racism throughout his closing arguments: "...This man [Fuhrman] had the power to carry out his racist views and that is what is so troubling... This man is an indiscriminate racist... this man over the time of these interviews uses the 'N' word 42 times" (Walraven, 1995; par. 26-28).

Statements such as those made in the Chicago Tribune and by Johnnie Cochran have an undeniable impact on the reader and can even impact the trial itself in isolated cases (Nolan, 2014), but can tying the concept of race to a case systematically and predictably influence how defendants are evaluated by jurors and juries? In the psychological literature, the race salience effect of juror decision making states that, when the racial nature of a crime is highlighted, White jurors reach verdicts that are equal across Black and White defendants. However, when race is not made salient to the case, White jurors reach more lenient verdicts for White defendants compared to Black defendants, even when they have committed the same crime and the same evidence has been presented (Sommers & Ellsworth, 2000). Thus, by highlighting the racial aspect of his client's case in closing arguments, Cochran may not only have poked holes in the prosecutor's case but also allowed Simpson to receive an equivalent evaluation by the jury to that they would have afforded a White defendant. Similarly, by focusing on the racial nature of

the Van Dyke case, pretrial publicity such as that provided by the Tribune may be inadvertently ensuring that he does not receive any racially biased treatment by the jury.

However, the current state of the race salience literature does not allow researchers, or those in the legal realm, to conclude that either Cochran's or the Tribune's statements have any predictable impacts on the case because the race salience literature is limited in two critical ways. First, almost all research on the race salience effect has investigated its impact when presented directly in trial evidence (Sommers & Ellsworth, 2009). However, past research suggests that other aspects of a trial may have different temporal (Pennington & Hastie, 1986) and cognitive (Bransford & Johnson, 1972) considerations than those related to trial evidence presentation. Thus, it is difficult to conclude that there is any effect on final trial decisions when race is made salient outside of trial evidence. Second, very little prior research has considered how race salience affects jury-level decisions; instead, almost all research has investigated the race salience effect at the individual juror level (Sommers & Ellsworth, 2009). Because of the unique qualities of group-level decision making (Devine, Clayton, Dunford, Seying, & Pryce, 2001) and the role of jury deliberation in actual criminal trials (Ellsworth, 1989), it is premature to conclude that a jury-level race salience effect, if present at all, is identical to the juror-level effect. Therefore, the purpose of the current studies was to investigate the generalizability of the race salience effect using two alternative manipulations: pretrial publicity and attorney arguments (both opening and closing statements). In addition, the current studies investigated the impact of making race salient at both the individual juror level and the jury level in order to determine whether the race salience effect continues to impact verdict decisions following jury deliberations.

CHAPTER II

LITERATURE REVIEW

White Juror Bias and the Race Salience Effect

Researchers and legal professionals alike have considered the role of race in the courtroom, and both have generally concluded that White jurors are more lenient toward White defendants (Wuensch, Campbell, Kesler, & Moore, 2002), more punitive toward Black defendants (Klein & Creech, 1982), or both (Mitchell, Haw, Pfeifer, & Meissner, 2005; Sweeney & Haney, 1992). For example, a meta-analysis by Sweeney and Haney (1992) concluded that juror racial bias led to harsher sentences for Black defendants compared to White defendants, and that this effect was consistent across both geographic regions and crime type. From a legal perspective, the United States Supreme Court has made rulings suggesting that the racial makeup of a jury may affect its decision making process (*Batson v. Kentucky*, 1986; *Strauder v. West Virginia*, 1880).

Although the majority of the evidence suggests that White juror bias results in negative outcomes for Black defendants, some research suggests that this may not always be true. For instance, Mazzella and Feingold (1994) conducted a meta-analysis on the effects of various demographic characteristics on juror decision making; the investigators concluded that a defendant's race did not influence juror judgments. Even more strikingly, in a study conducted by Poulson (1990), White jurors were more likely, not less, to find White defendants guilty compared to Black defendants. Subsequent research has found similar null (Williams &

Holcomb, 2001) or leniency effects on White juror decision making (Braun & Gollwitzer, 2012). Other research suggests that White juror bias only leads to negative outcomes in certain instances, such as when inadmissible evidence is present (Hodson, Hooper, Dovidio, & Gaertner, 2005) or when jury instructions are absent (Mitchell et al., 2005).

To explain how and when White jurors may display racial bias, researchers have focused on identifying aspects of court cases that may permit jurors to subtly display their biases. For example, Braun and Gollwitzer (2012) found that jurors were more lenient toward outgroup defendants compared to ingroup defendants, but that the disparity disappeared when jurors were given an opportunity to establish that they held no prejudice toward the outgroup prior to making their decision. The authors interpreted this finding as showing that jurors may sometimes use the decision making process as proof that they do not hold prejudice toward the outgroup. Similarly, Hodson et al. (2005) found that White jurors sentenced White and Black defendants equally, but that when a particularly damaging piece of DNA evidence was deemed inadmissible in court, White jurors gave Black defendants longer sentences than White defendants. Here, the authors concluded that the inadmissible evidence provided White jurors an implicit justification to subtly display their biases: without a comparison based on defendant race, an outsider would likely consider the juror's decision to be based on the DNA evidence, not racial bias.

Rather than identifying particular situations in which White jurors may display racial bias, Sommers and Ellsworth (2000) proposed a general explanation as to when and how White jurors display bias. They termed this explanation the *race salience effect* (Sommers & Ellsworth, 2000). More specifically, the race salience effect states that White juror bias will only be displayed when race is not a central focus of the case because jurors have no reason to believe that their decisions will be interpreted as racially motivated. To explain why White jurors display

racial bias only when race is not salient in a case, Sommers and Ellsworth (2000) used the aversive racism theory framework (Gaertner & Dovidio, 1986). Therefore, before continuing with a discussion of the race salience effect, I will discuss aversive racism as it relates to displays of racial attitudes and to courtroom decision making.

Aversive Racism

Historically, blatant racism against Black Americans has been prevalent in the United States, both in society (McConahay, Hardee, & Batts, 1981) and the legal system (*Korematsu v. United States*, 1944; Mitchell, 2005; *Plessy v. Ferguson*, 1896; Steffensmeier & Demuth, 2000). However, these blatant forms of racism have consistently declined over the past half century. On an individual level, White Americans' blatantly racist attitudes toward Black Americans have decreased (Dovidio & Gaertner, 1991), and White Americans are less likely in contemporary America to support obvious examples of discrimination, such as support for segregation laws (McConahay et al., 1981) or bias in employment selection decisions (Dovidio & Gaertner, 2000). The legal system has also taken steps to eliminate blatant racial bias in both society (*Brown v. Board of Education*, 1954) and in the courtroom (*Batson v. Kentucky*, 1986). Thus, blatantly racist actions and statements are a rare occurrence in today's society (Gaertner & Dovidio, 2005).

However, racial prejudice consists of more than an individual's conscious and overt racial attitudes (Devine, 1989). Specifically, racial prejudices consist of two distinct components: *explicit attitudes* and *implicit attitudes*. Explicit racial attitudes are beliefs that the individual consciously holds toward racial outgroups; these attitudes are often referred to as "old-fashioned racism" (Gaertner & Dovidio, 2000; McConahay et al., 1981; Sommers & Ellsworth, 2000) because they reflect more traditional and direct forms of racial bias, such as believing that Black

Americans are less intelligent and more dishonest in comparison to White Americans (Dovidio & Gaertner, 1991). Explicit prejudice also encompasses more subtle constructs such as modern racism (McConahay, 1986), in which the prejudiced individual expresses their attitudes indirectly through opposition to institutions and policies supporting the racial outgroup.

In contrast, implicit racial attitudes are those of which the individual is not consciously aware and which have been shaped by processes of the individual's development (Gaertner & Dovidio, 2005). Throughout life, individuals engage in social categorization, based on salient groups that the individual belongs to, such as a person's race (Gaertner & Dovidio, 2000). By placing people into different racial categories, the individual naturally forms a racial ingroup (a group of people that share the individual's perceived racial status) and racial outgroups (groups of people that do not share the individual's perceived race; Gaertner & Dovidio, 2000). Once these groups have been developed, people tend to show bias in favor of their own racial group and against other racial groups (Tajfel & Turner, 1979). Critically, this natural ingroup favoritism and outgroup prejudice occurs implicitly, meaning it occurs automatically and outside of the individual's awareness (Dovidio & Gaertner, 2004).

Although several techniques have been developed to measure implicit attitudes (see Cunningham, Preacher, & Banaji, 2001; and De Houwer, Teige-Mocigemba, Spruyt, & Moors, 2009), the most common method by which implicit racial attitudes are frequently tested is the Implicit Association Test (IAT; Greenwald, McGhee, & Schwartz, 1998). The IAT is a computer-based test in which individuals must place targets into categories using two keyboard keys. For the racial IAT, individuals first categorize targets (typically either human faces or names; Greenwald, Nosek, & Banaji, 2003) as belonging to one of two social groups, such as White or Black. Then, individuals categorize a list of words as being either positive or negative

in valence. Finally, individuals do both tasks simultaneously while still only using two keys, such that one of each initial category is paired (e.g., a single key would categorize a face as White and a word as positive). Implicit bias is measured through reaction times during this final task (Greenwald et al., 1998). For example, shorter reaction times when White faces are paired with positive words would indicate an implicit preference for White individuals. Research using the IAT has found consistent support for a natural ingroup favoritism, as implicit racial bias is prevalent in both White and Black Americans even in individuals who consciously believe themselves to be nonracist (Nosek et al., 2007; for instances of implicit outgroup favoritism, see Jost, Banaji, & Nosek, 2004).

Importantly, an individual's explicit and implicit racial attitudes do not always agree (Gaertner & Dovidio, 2000). Past research examining the connection between explicit and implicit racial attitudes has found a weak relationship between the two (Greenwald et al., 1998; Greenwald, Poehlman, Uhlmann, & Banaji, 2009). In other words, an individual may explicitly hold neutral or positive feelings toward a racial outgroup while simultaneously harboring implicit, automatic biases against that group. Research indicates that the two forms of racial bias can have simultaneous and contrasting influences on an individual's behavior. For example, Dovidio, Kawakami, and Gaertner (2002) found that Whites' explicit racial attitudes predicted how much verbal bias they exhibited toward a Black target but that their implicit racial attitudes predicted how friendly the White individual was perceived to be by a Black target.

To explain the disagreement between many White Americans' explicit and implicit racial attitudes, Gaertner and Dovidio (1986) proposed that the traditional racist, who consciously and explicitly holds negative attitudes toward Black Americans, has largely been supplanted by the *aversive racist*, whose racial bias occurs implicitly and often in contrast to the individual's

explicitly held racial beliefs. As opposed to the traditional racist, aversive racists typically hold honest, positive explicit attitudes toward racial outgroups and may even actively support racial equality measures (Gaertner, 1973). However, as an outcome of natural social categorization processes, aversive racists also hold negative implicit attitudes toward racial outgroups which can be triggered automatically and unconsciously. Because these implicit attitudes exist outside of the individual's conscious awareness (Fazio, Jackson, Dunton, & Williams, 1995), aversive racists believe themselves to be truly egalitarian in their beliefs and actions toward racial outgroups (Gaertner & Dovidio, 2005).

Because the aversive racist's explicit and implicit racial attitudes are at odds with one another, the decision making process of an aversive racist is more complex than the traditional racist (Hing, Chung-Yan, Hamilton, & Zanna, 2008; Nail, Harton, & Decker, 2003). Thus, aversive racists use the context of the situation to determine whether or not to display racial biases (Aberson & Ettlín, 2004). When the individual's potential actions are clearly defined as either racist or nonracist, the aversive racist will not display bias because the situation has triggered the individual's explicit attitudes. However, when the individual's potential actions are unclear in their motivations and meaning, or when the individual can provide an alternative explanation for their actions, the aversive racist will display racial bias because the situation has bypassed their explicit attitudes and has triggered their negative implicit attitudes.

For example, Dovidio and Gaertner (2000) conducted a study in which participants were asked to evaluate the suitability of a job applicant for a particular position. In the experiment, participants were given a description of the candidate's qualifications (very strong, very weak, or ambiguous) as well as indications about the candidate's race. The authors found that, when the candidate's qualifications were either very strong or very weak, White participants evaluated the

candidate equally across race. However, when the candidate's qualifications were ambiguous, White participants exhibited ingroup bias, evaluating the White candidate as more fit for the job than the Black candidate. These results reflect aversive racism theory in action. When participants were given clear indications of the correct decision, they understood that any bias in favor of the White candidate would suggest racism; therefore, they evaluated the candidates equally. However, when participants were placed into an ambiguous situation, they were provided with an alternative explanation for their attitudes (the candidate's qualifications) and therefore were able to unconsciously display bias favoring the White candidate. Other studies have yielded similar findings in relation to helping behaviors (Saucier, Miller, & Doucet, 2005), college admissions (Hodson, Dovidio, & Gaertner, 2002), and legal decision making (Dovidio, Smith, Donnell, & Gaertner, 1997; Johnson, Whitestone, Jackson, & Gatto, 1995).

When viewed through the aversive racism lens, the complicated role of race in the courtroom becomes clearer. When investigating White juror bias, researchers frequently highlight the racial aspects of the case, resulting in aversive racists not displaying racial bias because the role of race is explicit (Gaertner & Dovidio, 1986). On the other hand, aversive racism theory predicts that when White jurors are placed in situations where the role of race is ambiguous, they will display bias because the defendant's race is activating their negative implicit bias. Generally, the literature supports these predictions. For example, Skolnick and Shaw (1997) found no racial effects in their investigation of White juror bias. However, the design of the study was heavily based on the O. J. Simpson trial, and the experiment was conducted in Los Angeles while Simpson's trial was ongoing – a situation in which race would be particularly salient in jurors' minds. Similarly, Fein, Morgan, Norton, and Sommers (1997) found that pretrial publicity highlighting the potential for racial bias in the case was effective in

reducing guilt ratings toward Black defendants. In both of these examples, the relevance of race to the case was clear, meaning that aversive racists should not display bias in this situation for fear of appearing explicitly racist. Klein and Creech (1982) found that, in identical cases with identical evidence, Black defendants were considered guiltier than White defendants of an accused rape. Similarly, DeSantis and Kayson (1997) found that in a burglary case, White defendants were given shorter sentences than Black defendants for the same crime; here, too, the defendant's race was not important to the case. In neither of these cases was the defendant's race highlighted, so jurors would have no reason to suspect their responses might be interpreted as racially biased. Thus, aversive racists would be able to display their implicit racial bias because their decisions could be attributed to other factors.

The Race Salience Effect

Using the aversive racism framework, Sommers and Ellsworth (2000) proposed that the distinction between explicit and implicit racism, and the tendency of individuals to only act racist when their explicit attitudes have been bypassed, can clarify the contradictory findings of the White juror bias literature. Specifically, they proposed the *race salience effect*, which states that, when a defendant's race is not a salient factor in a case, White jurors are more likely to be influenced by their implicit ingroup bias toward White defendants and against Black defendants because they are not actively thinking about race. This ingroup bias, in turn, leads White jurors to find Black defendants guiltier and more liable for the crime and to sentence Black defendants more harshly than White defendants. However, when the defendant's race is explicitly mentioned as a salient aspect of a case, jurors become primed to consider any racial biases they may have toward the defendant. By thinking about the possibility of acting unfairly, White

jurors' explicit knowledge of their biases are activated, allowing them to control their implicit biases and equalizing outcomes for White and Black defendants.

Sommers and Ellsworth (2000, Study 1) originally examined the race salience effect while investigating the roles of defendant and juror race in courtroom decision making using a methodology common to that literature: racially-charged court cases. In their study, both White and Black participants took the role of a mock juror in trials involving interracial crimes (e.g., an interracial assault between basketball teammates) in which the race of the defendant was manipulated (Black vs. White). In each case, the role of the defendant's race to the case was made explicit to the juror (e.g., the assaulter in the basketball case alleged that racial language had been used beforehand). The authors found that only Black mock jurors showed racial bias, rating Black defendants as less guilty than White defendants and judged cases against White defendants to be stronger than cases against Black defendants. In contrast, White mock jurors showed no bias in guilt or sentencing ratings and found the cases against defendants to be equally strong across defendant race.

Rather than interpreting these initial findings as evidence that only Black jurors show racial bias in racially charged trials, Sommers and Ellsworth (2000) considered the role of aversive racism in shaping White jurors' responses. Because race was explicit and important in these cases, the authors suggested that White mock jurors were forced to think about their own racial biases and judge the defendant in a way that could not be construed as racially biased. In other words, the explicit role of the defendant's race to the case triggered the explicit egalitarian racial attitudes mock jurors held, causing these individuals to respond in an unprejudiced manner. Thus, the authors proposed that White jurors would show racial bias when the defendant's race was not an explicit (or salient) aspect of the case because, in this situation,

jurors' explicit attitudes would not be triggered, allowing the jurors' implicit racial biases to influence their decision making.

To test this prediction, Sommers and Ellsworth (2000) conducted a second study in which they manipulated the salience of the defendant's race to the case. As with Study 1, both White and Black participants took the role of a mock juror in a cross-race criminal case; in Study 2, the case involved the assault and battery of either a Black woman by her White boyfriend or of a White woman by her Black boyfriend. In the race salient conditions, participants were told that the defendant had slapped his girlfriend because she "...[knew] better than to talk that way about a [White/Black] man in front of his friends" (Sommers & Ellsworth, 2000, p. 1373). In the non-race salient conditions, participants were given the same information without referring to the defendant's race. Results supported the aversive racism framework and indicated the presence of a race salience effect. When the defendant's race was salient, no bias was shown against the Black defendant in comparison to the White defendant. However, when race was not salient, White participants were more likely to find the Black defendant guilty and were more punitive to the Black defendant compared to the White defendant. In addition, White jurors considered Black defendants in the non-race-salient condition to be significantly more aggressive and violent than the White defendant.

Subsequent research on the race salience effect (and aversive racism in the courtroom) has highlighted its pervasive nature and practical implications. For example, the race salience effect has been replicated using several different crime scenarios (sexual assault: Sommers, 2006; homicide: Cohn, Bucolo, Pride, & Sommers, 2009). Furthermore, along with affecting judgments of the defendant, race salience effects have been demonstrated through perceptions of attorneys (Sommers & Ellsworth, 2001) and jury deliberation content (Sommers, 2006).

Subsequent literature has also revealed several cognitive and motivational factors related to the race salience effect, including old-fashioned and modern racism (Cohn et al., 2009), social dominance orientation (Kemmelmeier, 2005), and working memory capacity (Kleider, Knuycky, & Cavrak, 2012). Researchers have also recently begun applying the race salience effect to real life cases (Lee, 2013) and extending the effect beyond the legal realm (Cox & Devine, 2014).

Limitations of the Race Salience Effect

Past research on the race salience effect indicates that it can impact juror-level decisions in the courtroom (Sommers & Ellsworth, 2000), that the effect persists for both low- and high-prejudiced jurors (Cohn et al., 2009), and that aversive racism in the courtroom is linked to cognitive and motivational factors (Kemmelmeier, 2005; Kleider et al., 2012). However, there are still a number of factors concerning the race salience effect that have yet to be investigated. Nine years after their original study, Sommers and Ellsworth (2009) highlighted numerous looming misconceptions and unanswered questions regarding the race salience effect. The first of these misconceptions concerns what the race salience effect actually is. This issue stems from the fact that the term “race salience” has several meanings in the psychological literature (see, e.g., Gay & Tate, 1998; Pauker, Ambady, & Apfelbaum, 2010; and Shih, Bonam, Sanchez, & Peck, 2007); however, the race salience effect refers to an explicit reference to the defendant’s race and the relevancy of the defendant’s race to the case (Sommers & Ellsworth, 2000). Other important considerations raised by Sommers and Ellsworth (2009) included misunderstandings about the probabilistic nature of the race salience effect and the lack of research using actual jurors and juries.

Perhaps the most important unanswered question is whether the race salience effect can be induced through any mention of the relevance of the defendant’s race to the case, or whether

the race salience effect only occurs when race is made salient at particular points or through particular methodologies during a trial. In their original investigation of the race salience effect, Sommers and Ellsworth (2000) manipulated race salience using a statement presented as evidence during the trial. They suggested that future research should expand their findings by investigating alternative manipulations of race salience, through means such as pretrial publicity, voir dire questioning, and attorney arguments (Sommers & Ellsworth, 2000). However, in their review of the literature, Sommers and Ellsworth (2009) state that, "...although researchers continue to write in general terms about 'race salience,' in almost every published investigation this variable has been operationalized the same way" (p. 607). The majority of subsequent research on the race salience effect has indeed used similar manipulations to that of the original race salience effect study. For example, Sommers and Ellsworth's (2001) follow-up examination of the effect manipulated race salience in a nearly identical manner to their original manipulation, changing only the wording of the manipulation to match the trial of interest. Other studies of race salience have used recorded video as their stimuli to enhance the ecological validity of their trial simulation (Bornstein, 1999); however, these video manipulations have typically manipulated race salience using trial evidence as the original study did (Cohn et al., 2009; Thomas & Balmer, 2007).

There have been two investigations of the race salience effect that incorporated alternative manipulations. Sommers (2006) manipulated race salience during the voir dire phase of the trial. Results indicated that mock jurors exposed to the race salience voir dire questions were less likely to believe the defendant was guilty prior to jury deliberation, suggesting that voir dire questions are an effective way of making race salient. In a second investigation, Bucolo and Cohn (2010) manipulated race salience through opening and closing statements made by the

defense attorney in a trial involving a bar altercation. Results indicated that making race salient led to a leniency effect for Black defendants compared to White defendants, such that White mock jurors found Black defendants less guilty than White defendants. Although these two studies represent important steps toward establishing a broad race salience effect, neither study has been replicated.

The dearth of research on alternative manipulations, and the lack of replication for the few studies that have used alternative manipulations, is a critical limitation of the race salience literature because there are a number of steps during a trial in which White juror bias could be reduced by making race salient. Pretrial publicity, attorney statements, voir dire questioning, the racial makeup of a jury, and jury deliberation are all common aspects of a trial in which a juror's racial biases could be manipulated by the presence (or absence) of pertinent information (Sommers, 2006; Sommers & Ellsworth, 2000; 2001; 2009). Other, less common components of a trial, such as inadmissible evidence, judicial instructions regarding the defendant's race, and the labeling of the crime as a hate crime may also have the capacity to engender a race salience effect (Sommers & Ellsworth, 2001). However, just because trial aspects may be able to make race salient does not mean that they are equally effective, and it is erroneous to assume an effect exists in these cases in the absence of empirical evidence (Sommers & Ellsworth, 2009).

Therefore, the first objective of the proposed studies is to broaden the literature on the race salience effect by investigating alternative race salience manipulations. Across two experiments, I will investigate two different methodologies of manipulating race salience: through attorney statements and through pretrial publicity. Of these, attorney statements have been tentatively discussed in the literature (Bucolo & Cohn, 2010). However, issues with the

study's methodology (addressed in the following section) and its lack of replication provide ample rationale for a second investigation of this method.

Attorney Statements

One method by which race may effectively be made salient is through opening and closing statements of a trial. Opening statements and closing arguments are designated sections during a trial in which lawyers may provide structure or coherence to evidence that will be presented (in opening statements) or evidence that has already been presented (in closing arguments; Hobbs, 2003). While attorneys are barred from presenting any new evidence in their statements (Hobbs, 2003), they may influence jurors by suggesting a narrative for the case or shifting the focus of the evidence (Spiecker & Worthington, 2003); indeed, attorneys believe these statements play a crucial role in the eventual outcome of a trial (Diamond, Casper, Heiert, & Marshall, 1996).

Past research has consistently shown that opening statements and closing arguments can have a strong influence on juror decision making (Pyszczynski, Greenberg, Mack, & Wrightsman, 1981; Pyszczynski & Wrightsman, 1981). For example, Weld and Danzig (1940) investigated how mock juror verdicts shifted through 18 distinct phases of a trial. The authors found that nearly half of all mock jurors believed the defendant to be at least partially liable after the prosecutor's opening statement. Further, after hearing the defense opening statement, many mock jurors believed the defendant to not be liable. In addition, the authors found the defense closing arguments to be the most effective phase of the trial in persuading mock jurors. A more recent study by Diamond et al. (1996) found that 70% of all jurors in a death penalty sentencing hearing did not change their verdict preferences following the presentation of opening statements. Similar effects have been found for closing statements (Spiecker & Worthington,

2003), and research indicates that attorney arguments can also influence juror beliefs regarding the trial outside of final verdicts (opening statements: Lord, Ross, & Lepper, 1979; closing arguments: Haney & Lynch, 1997; Stallard & Worthington, 1998).

Consistent with this research, Bucolo and Cohn (2010) achieved a race salience effect through defense attorney statements. In their experiment, White participants were put into the role of mock jurors in a trial involving an interracial assault (carried out by either a White or a Black defendant). All participants were presented with the same evidence, including victim statements and direct and cross-examination of prosecution and defense witnesses. In addition to these, mock jurors also heard opening statements and closing arguments from both attorneys. Within the defense attorney's statements, race salience was manipulated. Mock jurors in the race salient condition were given defense attorney statements that included several passages suggesting that race was relevant to the case (e.g., "The defendant did what any [Black/White] man in this situation would do;" Bucolo & Cohn, 2010, p. 297). Mock jurors in the race non-salient condition were given the same attorney statements without the race-relevant passages. Finally, mock jurors rated how guilty they believed the defendant to be. Consistent with past research (Cohn et al., 2009; Sommers & Ellsworth, 2000), Bucolo and Cohn (2010) found that making race salient impacted mock juror guilt ratings. In contrast to the equalizing effects found in the literature (Sommers & Ellsworth, 2009), the authors found a leniency effect: when race was not salient, mock jurors gave equivalent guilt ratings for White and Black defendants, but when race was salient, mock jurors gave Black defendants significantly lower guilt ratings compared to White defendants. Thus, Bucolo and Cohn's (2010) findings indicate that attorney statements may be capable of creating unique race salience effects, leading mock jurors to be more lenient when the defendant is Black and race is salient to the case.

However, there are two important limitations of Bucolo and Cohn's (2010) investigation. First, the authors provide no theoretical framework or justification to explain how or why attorney statements would be capable of creating a race salience effect. In fact, little discussion of the literature on opening statements or closing arguments is provided in the article at all. This discussion is important because it relates to the second limitation: the authors did not examine the independent effects of opening statements and closing arguments. Because the authors simultaneously manipulated race salience within both attorney statements, it is impossible to conclude whether the effect was achieved because of the opening statement, the closing argument, or a combination of both.

The delineation between opening statements and closing arguments is critical in understanding how and when race saliency will have an impact because research into other constructs indicates that the two attorney statements have different effects, serve different purposes, and involve different persuasion techniques. For example, Diamond et al. (1996) found that, after opening statements, 70% of their mock jurors never changed their beliefs regarding the defendant's guilt, and 93% of their participants had reached a decision prior to closing arguments, suggesting that a race salience manipulation first presented during closing arguments may arrive too late to influence jurors. In addition, Spiecker and Worthington (2003) examined the effectiveness of different arguments presented by attorneys during opening statements and closing arguments. The authors investigated narrative arguments (in which the attorney provides jurors with a story structure that they can fit the evidence to) and legal-expository arguments (in which the attorney focuses on the legal requirements necessary to find the defendant guilty). They concluded that narrative arguments are most effective when presented during opening statements and legal-expository arguments are most effective when presented during closing

arguments. In other words, providing jurors with a narrative schema to understand the evidence was relatively ineffective when presented during closing arguments. Because making race salient similarly provides jurors with an interpretation of the evidence, Spiecker and Worthington's (2003) findings suggest that race salience effects may be most prominent during opening statements.

The literature on cognitive schemas and related constructs in decision making situations also suggests that opening statements may be better suited to make race salient than closing arguments. Research indicates that memory recall and comprehension are enhanced when individuals can access a relevant cognitive schema (a knowledge structure which guides and shapes information processing; Anderson & Pearson, 1984). For example, Bransford and Johnson (1972) found that when participants were not given a context in which to understand an ambiguous passage, comprehension of the passage was poorer than when they were given the context of the passage. Research on related constructs in the courtroom suggests a similar pattern. For instance, a study by Lord et al. (1979) found that pro- and anti-death penalty participants interpreted and evaluated the same death penalty arguments differently based upon their preconceived stance on the issue. Furthermore, Smith (1991) has shown that mock jurors use prior schemas about the law when making judgments in a criminal case, even when they are instructed not to do so (Smith, 1993).

Applied to juror decision making and the race salience effect, opening statements may be capable of providing a prior knowledge base to jurors by which they will better process race-relevant trial evidence. Introducing the schema that race is relevant to the case before the presentation of any evidence has the potential to allow attorneys to shape jurors' thematic frameworks to be centered on the defendant's race. By doing so, jurors may be more likely to

interpret the trial in a race-relevant manner, and their recall and comprehension of the trial may therefore be centered on the defendant's race. In contrast, a race salient schema first presented during closing arguments may not create a prior knowledge base to interpret the trial because all the evidence has already been presented. Thus, if the race salience effect acts as a schema for jurors when presented during attorney arguments, opening statements may be more effective in creating that schema than closing arguments.

Pennington and Hastie's (1986) story model of juror decision making also provides a theoretical lens supporting opening statements as more effective than closing arguments in making race salient. The story model states that, in order to organize, comprehend, and interpret evidence presented at trial, jurors construct stories of the crime that link evidence together in a causal manner. Within these stories, jurors also include any preconceived biases or knowledge outside of the court proceedings (Pennington & Hastie, 1992). As jurors consider the evidence, they may consider multiple stories; indeed, the defense and prosecution may proffer competing stories to the jury through attorney statements (Spiecker & Worthington, 2003). Jurors choose between competing stories by considering their coherency as well as the ability of each story to uniquely cover the evidence (Pennington & Hastie, 1992). Jurors then use this story to decide which subset of evidence is particularly important and which is not. Finally, based on the constructed story and the evidence congruent with it, jurors make a verdict decision by fitting their story to the verdict which best meets their interpretation of the evidence (Pennington & Hastie, 1986).

Research has consistently shown that jurors construct narratives in order to understand trial evidence and that they use these narratives to make decisions. Pennington and Hastie (1986) found that mock jurors' mental structuring of the evidence resembled a story, and that jurors who

reached different verdicts had constructed different stories of the evidence. In addition, Pennington and Hastie (1988) found that, after hearing trial evidence, mock jurors had better memory recall for sentences related to their constructed story than for sentences irrelevant to their story. In addition, an investigation of juror decision making in actual court cases concluded that the story model best fit how jurors reported their decision making processes (Hannaford, Hans, Mott, & Munsterman, 1999). Similar experimental research has extended the story model to investigate the influence of expert testimony (Klettke, Graesser, & Powell, 2010) and emotional expressions (Voss & Van Dyke, 2001) on trial outcomes, and other researchers have found that jurors' memory recall of trial information shifts to fit their constructed story (Holyoak & Simon, 1999). Thus, there is ample evidence that jurors construct stories, fit the evidence to these stories, and then use these stories to make final decisions in trials.

As with the other evidence presented, the story model of juror decision making suggests that first making race salient during opening statements would be more effective than doing so during closing arguments, and that first making race salient during closing arguments may be ineffective. In order to construct a coherent story of the trial that covers the evidence, jurors should be made aware of a given story's relevance during the early stages of the trial (Pennington & Hastie, 1992). Opening statements provide attorneys with an early stage in which they can introduce a story, and indeed many attorneys use opening statements to do so (Spiecker & Worthington, 2003). Thus, giving jurors information regarding the role of race in the case during opening statements (prior to the presentation of evidence) could lead jurors to construct stories framed around the defendant's race, causing jurors to be aware of their own explicit racial biases and thus leading to a race salience effect. On the other hand, jurors may have already reached a story conclusion in which race was not relevant if race is made salient only during

closing arguments. In this case, jurors may see the invocation of defendant race as an ineffective attorney ploy (Bucolo & Cohn, 2010) or may simply disregard the argument as not fitting their story of the crime. In addition, if race is made salient in opening statements, making race salient again during closing arguments may have no additive effects. Spiecker and Worthington (2003) found that the most effective organizational strategy for attorney arguments was to construct opening statements using a story structure and to construct closing arguments using a legal-expository structure, suggesting that story structures are relatively ineffective in closing arguments.

Pretrial Publicity

A second methodology through which race may be made salient is pretrial publicity. Pretrial publicity refers to any coverage or discussion of a court case that occurs in the media (e.g., television, newspapers, and magazines) prior to the onset of the trial (Otto, Penrod, & Dexter, 1994). Although it has not been investigated in relation to race salience, pretrial publicity's broad effects on juror decision making are known (Otto et al., 1994). Past research has established that pretrial publicity can influence processing of trial-relevant information such as appraisals (Kovera, 2002) and credibility (Ruva & Guenther, 2015) of victims, defendants, and witnesses, as well as perceptions of the case made by both the defense and the prosecution (Otto et al., 1994). Pretrial publicity can also lead to confirmation biases in which evidence presented at trial is interpreted based on exposure to pretrial publicity (Carlson & Russo, 2001; Hope, Memon, & McGeorge, 2004), and research indicates that this bias can benefit both the defense and the prosecution (Kovera, 2002). Furthermore, pretrial publicity has been found to affect jurors implicitly, even when they do not believe they have been affected (Moran & Cutler, 1991).

Along with influencing information processing throughout the trial, pretrial publicity can also influence outcome decisions. For example, Otto et al. (1994) found that mock jurors who viewed pretrial publicity targeting a defendant's character were more likely to find the defendant guilty than those who did not view the pretrial publicity, and Daftary-Kapur, Penrod, O'Connor, and Wallace (2014) found that mock jurors' eventual sentencing decisions were influenced by the type of pretrial publicity they were exposed to. These findings have been echoed by others (Dexter, Cutler, & Moran, 1992; Fein et al., 1997; Ruva & McEvoy, 2008; for a meta-analytic review, see Steblay, Besirevic, Fulero, & Jiminez-Lorente, 1999). Along with this experimental research, pretrial publicity's influence on actual trial outcomes is well-established (Studebaker & Penrod, 1997), and the effects of pretrial publicity have caused several conviction reversals for real world trials (e.g., *Rideau v. Louisiana*, 1963; *Sheppard v. Maxwell*, 1966).

Importantly, pretrial publicity can affect juror decision making throughout the course of a trial. In their meta-analysis of the pretrial publicity literature, Steblay et al. (1999) found significant pretrial publicity effects on juror decision making prior to the trial, at the conclusion of the trial, and after jury deliberation had occurred; the persistence at these later stages suggests that evidence presented at trial and group deliberation are insufficient to eliminate the effects of pretrial publicity (and may instead be used to confirm the juror's pretrial beliefs; Hope et al., 2004). Research suggests that the biasing effect of pretrial publicity persists even when jurors are explicitly made aware through voir dire (Dexter et al., 1992) and juror instructions (Daftary-Kapur et al., 2014) of the potential effects pretrial publicity may have on their decision making.

Although the race salience effect has not been investigated using a pretrial publicity manipulation, there is evidence to suggest that making race salient through this medium would be effective. For instance, research by Otto et al. (1994) indicates that pretrial publicity targeting

the defendant's character is especially powerful. Similarly, the race salience effect is known to increase negative feelings toward the defendant's character (Sommers & Ellsworth, 2000); thus, a pretrial publicity manipulation may be particularly effective. In addition, Fein et al. (1997) found pretrial publicity effects reminiscent of the race salience effect: mock jurors were more likely to convict a Black defendant after exposure to pretrial publicity, but only when the defendant's race was not highlighted in the publicity piece. When the defendant's race was highlighted, mock jurors' eventual decisions were not impacted by pretrial publicity exposure. In other words, making race salient caused these mock jurors to essentially ignore the pretrial publicity and evaluate the case based only on information from the trial. While this is not a true investigation of the race salience effect because there is no comparison condition with White defendants, Fein et al.'s (1997) results further support the possible effectiveness of making race salient through this medium.

Group-Level Decision Making

Along with the lack of research on different manipulations, another important limitation of the race salience effect literature is that the effects of race salience on jury-level decision making are currently unclear (Sommers & Ellsworth, 2009). Although juror-level effects are important, courtroom decisions are typically made by a jury acting together, not by individual jurors (Devine et al., 2001). Furthermore, the processes underlying individual- and group-level decision making are not the same (Nunez, McCrea, & Culhane, 2011); hence, a jury-level race salience effect cannot be assumed simply because a juror-level effect has been found. One prior study has investigated the race salience effect at the jury level (Sommers, 2006); however, particulars of the study design, and the fact that only one jury-level investigation exists, warrants further examination of race salience's jury-level effects.

Discussions of group-level decision making in the courtroom often involve extrapolating results from individual jurors to juries (Kerwin & Shaffer, 1994). For example, in an investigation of comprehension and defendant race, Lynch and Haney (2000) concluded that juror instruction comprehension was related to racial discrimination in capital sentencing trials. They also applied their results to both juror decision making and “capital jury decision-making” (Lynch & Haney, 2000, p. 353), effectively extrapolating their results to jury decision making even though participants did not convene as a jury. Statements equating individual- and group-level decision making in juries have also been made in the race salience literature; Kleider et al. (2012), for example, consistently apply their findings to jury trials even though they only investigated the decision making processes of individual jurors (the authors do note that their study did not examine the role of deliberation).

Even though researchers (Diamond, 1997; Nunez et al., 2011) and professionals in the court system (Saks & Marti, 1997) often underestimate or conflate juror- and jury-level decision making, the literature suggests that the two levels are fundamentally different. At the juror level, decisions of guilt are driven by factors including individual difference characteristics such as authoritarianism and socioeconomic status (Devine & Caughlin, 2014); cognitive factors such as comprehension of instructions (Lynch & Haney, 2000); moral convictions (Skitka & Houston, 2001); ingroup biases (Kerr, Hymes, Anderson, & Weathers, 1995); and preexisting beliefs about the justice system (Cowan, Thompson, & Ellsworth, 1984), social issues (Lord et al., 1979), the defendant, and the victim (Carlson & Russo, 2001). At the jury level, these factors continue to affect the final decision made by the group (Devine et al., 2001). However, jury decisions are also affected by characteristics unique to group-level decision making. For example, groups are susceptible to social loafing, in which each person within the group puts forth less individual

effort than they would have had they worked alone (Latane, Williams, & Harkins, 1979). Similarly, group members may engage in groupthink, where consensus decisions are made with little individual effort in order to enhance the cohesiveness of the group (Mullen, Anthony, Salas, & Driskell, 1994). Properties of the group itself, such as group size and group composition (Kerr & Tindale, 2004), can also affect the decision making process in groups. All of these aspects of groups have been identified in the decision making process of juries (Devine et al., 2001; Henningsen, Cruz, & Miller, 2000; Kameda & Sugimori, 1993). Thus, although juror-level variables have some impact on jury decisions (Devine et al., 2001), the uniqueness of jury decision making is clear.

In the courtroom, group decision making occurs through jury deliberation, the primary purpose of the jury process (Ellsworth, 1989). During deliberation, jurors convene and discuss the trial (considering, e.g., evidence, possible sentences, and judicial instructions) and reach a (typically unanimous) decision of guilt (Devine et al., 2001; for research on group decision making using other decision rules, see Kameda, 1991). While this process does not necessarily lead to a better understanding of the law, research has shown that deliberation often leads to correct decisions regarding the quality of evidence presented in the case (Ellsworth, 1989). Research on jury deliberation has identified many group-level factors that influence a jury's effectiveness including jury diversity (Sommers, 2006), pre-deliberation attitudes toward the case (Tindale, Davis, Vollrath, Nagao, & Hinsz, 1990), decision rules (Davis, Hulbert, Au, Chen, & Zarnoth, 1997), jury size (Saks & Marti, 1997), group decision momentum (Lynch & Haney, 2009), characteristics of the jury foreperson (Devine et al., 2001), and the content of the deliberation itself (Sommers, 2006).

Past research suggests that jury deliberation could theoretically have both an attenuating and an exacerbating impact on the race salience effect. For example, pressures of conformity (Nunez et al., 2011) and social loafing (Latane et al., 1979) may cause jurors to expend less effort into understanding connections between the case facts and the relevance of race to the case, nullifying any race salience manipulation. In addition, because the most persuasive juror in a jury setting is the one who is most confident, not most accurate (Ellsworth, 1989), those jurors who created a link between race and the case could have that link nullified by a confident, persuasive juror who disagrees. On the other hand, a confident juror who believed that race was relevant to the case could instead lead to an even stronger race salience effect. Furthermore, because acting on a jury increases jurors' feelings of accountability (Hazelwood & Brigham, 1998), each individual juror may be wary of appearing racist to their fellow jury members, causing them to consider their explicit biases more strongly and enhancing the race salience effect.

Perhaps the clearest mechanism through which the race salience effect may impact final jury decisions is by altering pre-deliberation beliefs regarding verdict preferences. Research indicates that the most influential factor on jury deliberations is which verdict has the pre-deliberation majority and how strong this majority is (Kalven & Zeisel, 1966; Sandys & Dillehay, 1995; Tindale et al., 1990). For example, in a survey of actual jury trials, Sandys and Dillehay (1995) found that the final verdict reached by the jury matched the pre-deliberation majority verdict 93% of the time. This effect is also a function of majority size: in an analysis of the pre-deliberation majority effect conducted by Devine et al. (2001), the authors concluded that larger majorities (e.g., 11 guilty, 1 not guilty) almost never waver from their pre-deliberation decision, while smaller majorities (e.g., 7 guilty, 5 not guilty) are more willing to change their

minds. There is also evidence that deliberation has significant impacts on jurors' pre-deliberation judgments regardless of majority size (Nunez et al., 2011).

The role of the pre-deliberation majority is especially important in understanding how race salience may affect the final jury decision. Because of its probabilistic nature, the race salience effect does not cause all White jurors to sentence Black defendants without prejudice (Sommers & Ellsworth, 2009). Thus, in a criminal case involving a Black defendant, it is unlikely that race salience would have an effect on all members of a jury. Rather, the impact of race salience on each of the affected White jurors' pre-deliberation judgments could alter the pre-deliberation majority unequally favoring guilt (or harsher punishment) for a Black defendant compared to a White defendant. In other words, race salience may affect jury decision making by altering the size (or direction) of the pre-deliberation majority in cases with Black defendants.

However, the effect of race salience at the group level has not yet been thoroughly investigated. In fact, only one previous study (Sommers, 2006) has approached the question, and this study did not manipulate race salience in a way that group-level effects could be adequately investigated. Sommers (2006) manipulated race salience using unique voir dire questions where the effects of a jurors' racial biases to influence the case were highlighted (e.g., "Do you have any biases or prejudices that might prevent you from judging an African American defendant fairly?" Sommers, 2006, p. 602). The author's results suggested that a race salience effect may be present, as participants who received the race salience manipulation rendered more lenient pre-deliberation verdicts for the defendant (who was Black) than participants who did not receive the manipulation. However, the author failed to include a White defendant condition in the study. This is an important limitation because the race salience effect states that trial outcomes will become equalized between White and Black defendants when race is made salient. Because

Sommers (2006) did not include a White defendant, these critical comparisons cannot be made and a true effect cannot be concluded. In addition to an individual juror investigation, the Sommers (2006) study also investigated the race salience effect at the jury level. However, conclusions could not be drawn because there was little diversity in final verdict across all conditions with only one jury voting to convict the defendant. However, even if Sommers (2006) had found an effect, these jury-level effects would be qualified by several factors. First, only 29 juries (split across four conditions) were included in the jury-level analyses, meaning that any analyses conducted would have low power to detect significant differences. Second, Sommers (2006) was simultaneously investigating the role of racial diversity in the deliberation process. Because racial diversity is known to have its own unique impact on deliberations (Sommers, 2007), the inclusion of this variable makes interpretation of the jury-level race salience effect more difficult.

The Current Studies

In their review of the literature, Sommers and Ellsworth (2009) noted several unanswered questions regarding the race salience effect. Several of these issues center around questions of external validity, including the lack of methodological variety in how race was made salient and concerns about how race salience affects overall jury decisions, if at all. In other words, although the effect has been experimentally demonstrated and replicated, its applicability to real life court cases is currently limited.

This dissertation aimed to extend the race salience literature and address the gaps noted by Sommers and Ellsworth (2009) in two ways. First, the race salience effect was investigated when introduced through attorney statements and pretrial publicity. The majority of past research (Cohn et al., 2009; Kemmelmeier, 2005; Sommers & Ellsworth, 2001) has evoked race salience

through witness statements, the same manipulation used in Sommers and Ellsworth's (2000) initial study. By investigating alternative manipulations, the current studies can explore whether the race salience effect is isolated to the specific methods explored previously or whether its effects are widely applicable within a trial setting.

Second, the race salience effect was examined with a methodology incorporating jury deliberation. Although individual juror effects are important, jurors rarely make decisions by themselves in actual court cases; furthermore, the decision making processes involved in group decisions are different than those of the individual (Devine et al., 2001). Thus, an understanding of how race salience affects group decision making in the courtroom is imperative.

Experiment 1 Hypotheses

Experiment 1 investigated the race salience effect within the context of attorney statements and jury deliberation. Experiment 1 employed a 2 (defendant race: White vs. Black) x 4 (race salience: Salient Opening vs. Salient Closing vs. Salient Both vs. Non-Salient) factorial design, controlling for mock jurors' levels of modern racism (McConahay, 1986), social dominance orientation (Pratto, Sidanius, Stallworth, & Malle, 1994), and beliefs regarding the strength of the cases made by the defense and prosecution, (Cohn et al., 2009; Kimmelmeier, 2005; Sommers & Ellsworth, 2000). At the post-deliberation stage, mock jurors' pre-deliberation responses to the dependent variables were also controlled for.

Based on Bucolo and Cohn's (2010) investigation of race salience within opening statements, research on the nature of attorney statements in general (Diamond et al., 1996; Spiecker & Worthington, 2003), cognitive schemas and prototypes (Bransford & Johnson, 1972; Smith, 1991), and the story model of juror decision making (Pennington & Hastie, 1986), I predicted:

Experiment 1, Hypothesis 1: When race was not salient in defense attorney statements, White mock jurors would give stronger sentencing, guilt, and defendant character judgments to Black compared to White defendants;

Experiment 1, Hypothesis 2: For White mock jurors, manipulating race salience in defense opening statements only would equalize sentencing, guilt, and defendant judgments for White and Black defendants;

Experiment 1, Hypothesis 3: For White mock jurors, manipulating race salience in defense closing arguments only would fail to equalize sentencing, guilt, and defendant judgments for White and Black defendants, with Black defendants receiving stronger guilt and sentencing judgments; and

Experiment 1, Hypothesis 4: For White mock jurors, there would be no difference in sentencing, guilt, and defendant judgments between when race was made salient through defense opening statements only and when race was made salient through both defense opening statements and closing arguments.

Experiment 1 also investigated the race salience effect following jury deliberations. There is empirical justification both for and against the juror-level race salience effect having an impact on overall jury decisions (Devine et al., 2001; Hazelwood & Brigham, 1998; Sandys & Dillehay, 1995; Sommers, 2006). However, the research on pre-deliberation judgments (e.g., Tindale et al., 1990) seems most useful for predicting how race salience will affect group-level judgments.

Specifically, I predicted:

Experiment 1, Hypothesis 5: For juries where race was made salient through opening statements, or through opening statements and closing arguments, pre-deliberation

sentencing, guilt, and defendant judgments would remain equalized for White and Black defendants after jury deliberation;

Experiment 1, Hypothesis 6: For juries where race was not made salient, or where race was made salient through closing arguments only, pre-deliberation sentencing, guilt, and defendant judgments would remain unequal for White and Black defendants after jury deliberation, with Black defendants receiving stronger guilt and sentencing judgments; and

Experiment 1, Hypothesis 7: After deliberation, members of juries where race was made salient through opening statements, or through opening statements and closing arguments, would be more likely to change their verdict compared to members of juries where race is not made salient, or where race is made salient through closing arguments only.

Experiment 2 Hypotheses

Experiment 2 investigated pretrial publicity as a second potential manipulation of the race salience effect. This experiment utilized a 2 (defendant race: White vs. Black) x 2 (race salience: Salient vs. Non-Salient) factorial design in which race was made salient exclusively within two pretrial publicity news articles, controlling for the same variables as in Experiment 1. Because no prior research has established pretrial publicity as an effective race salience manipulation, no jury deliberation occurred in Experiment 2. Based on research showing persistent effects of pretrial publicity in general (Stebly et al., 1999) and the suggestive findings regarding race salience by Fein et al. (1997), I predicted:

Experiment 2, Hypothesis 1: When race was not made salient through pretrial publicity, White mock jurors would give stronger sentencing, guilt, and defendant judgments to Black defendants compared to White defendants; and

Experiment 2, Hypothesis 2: For White mock jurors, manipulating race salience through pretrial publicity would equalize sentencing, guilt, and defendant judgments for White and Black defendants.

CHAPTER III

EXPERIMENT 1

Method

Participants

For Experiment 1, minimum sample size was determined using an *a priori* power analysis using G*Power 3.1.9 (Faul, Erdfelder, Buchner, & Lang, 2009). Using this program, it was determined that 250 participants would be necessary to identify medium effect sizes with $\alpha = .05$ and power = .80.

In total, Experiment 1 consisted of 264 jury-eligible White students at the University of North Dakota who participated in the study for credit toward completion of introductory-level psychology courses. Of these, one was excluded for being under 18 years of age, four were excluded from analyses for not being U.S. citizens, 11 were excluded from analyses for failing to respond to several items and 41 were excluded for failing both manipulation checks. Thus, analyses for Experiment 1 included 207 participants ($M_{age} = 19.57$, $SD = 1.84$; 66.7% female; see Table 1 for full demographic information). Participants in Experiment 1 were randomly assigned to one condition in a 2 (defendant race: White vs. Black) x 4 (race salience: Opening and Closing vs. Opening Only vs. Closing Only vs. Not Salient) factorial design, with cell sizes ranging from 23 (Closing Only, White Defendant) to 32 (Opening Only, White Defendant).

Table 1

Participant Demographics, Experiment 1f

Variable	Mean/Frequency (SD/%)
Age (18-45)	19.57 (1.84)
Sex (% Women)	138 (66.7%)
Strength of Religious Beliefs (1-7)	4.61 (1.77)
Political Orientation (1-7)	3.70 (1.41)
Served on a Jury? (% Yes)	1 (.5%)
Been Victim of a Crime? (% Yes)	19 (9.2%)
Witnessed a Crime? (% Yes)	33 (15.9%)

Trial Simulation

Past investigations of the race salience effect have typically used brief trial materials focused on one or two aspects of the trial. For example, materials for the two initial examinations (Sommers & Ellsworth, 2000; 2001) both consisted of short (0.5 to 1.5 pages) summaries of the crime and witness statements for the defense and prosecution. While these materials are sufficient to investigate the race salience effect in isolation, they do not attempt to simulate the complexity of actual trials, in which information is diverse in form and source (Bornstein, 1999).

Toward enhancing ecological validity, a basic trial transcript integrating excerpts from several actual phases of a court case (see Appendix A) was created based on a sample mock trial provided by the Michigan Center for Civic Education (n.d.) and jury instructions provided by the 8th Circuit District Court (2014). Specifically, the trial transcript included excerpts from pretrial judicial instructions, witness statements from the defense and prosecution, visual exhibits, and

post-trial jury instructions. In addition to this core transcript, Experiment 1 included excerpts from the opening statements and closing arguments for both the defense and prosecuting attorneys. The simulated case involved an accusation of assault with a deadly weapon in which the defendant pleads self-defense.

Since an unbalanced transcript could potentially mask manipulation effects, five pilot studies were conducted on the trial transcript to ensure balanced verdicts and variability in responses prior to the inclusion of any manipulations. In the first three pilot studies, several versions of the core trial transcript (without attorney statements or pretrial publicity) were tested, each differing slightly with respect to key elements of the case (e.g., one version listed Jaclyn Bardie, a defense witness, as a stranger rather than an ex-girlfriend of the defendant). Participants were either undergraduate students enrolled in psychology courses at the University of North Dakota (Pilot Study 1; $N = 87$) or a sample of individuals from around the United States recruited online through Amazon's Mechanical Turk (MTurk; Pilot Study 2 and 3; Total $N = 200$). After reading the transcript, participants responded to questions regarding their verdict preference (guilty vs. not guilty), their level of confidence in that verdict (using a 7-point scale, with higher scores indicating higher confidence), and their beliefs about the guilt of the defendant (using a 7-point scale, with higher scores indicating higher defendant guilt). Results using the final version of the transcript suggested that verdict preference was equally balanced between guilty (51.2%) and acquittal verdicts; in addition, verdict confidence ($M = 5.46$, $SD = 1.29$) and defendant guilt ratings ($M = 4.34$, $SD = 1.93$) were normally distributed, suggesting that the transcript would be able to capture a race salience effect if one existed.

Once the core trial transcript was established, a fourth pilot study was conducted through MTurk in which attorney statements (Pilot Study 4; see Appendix B) was added to the transcript

to ensure that their inclusion did not alter the balance of the transcript. Verdict preferences remained balanced in Pilot Study 4 ($N = 92$; 53.3% guilty), and verdict confidence ($M_{Pilot\ 4} = 5.61$, $SD = 1.10$) and defendant guilt ratings ($M_{Pilot\ 4} = 4.53$, $SD = 2.00$) retained similar values to those obtained with the core transcript.

A fifth pilot study ($N = 47$) was conducted in which the transcript was modified to highlight the race of the defendant and plaintiff. Specifically, modifications included changing the character's names to be more stereotypically White or Black (based on Levitt & Dubner, 2005) and the addition of demographic information (similar to that used in Sommers & Ellsworth, 2000) about the defendant and plaintiff, including information about the character's race. Because defendant race is a manipulation of both experiments, half of the participants in this pilot study read the transcript with a Black defendant and a White plaintiff and half read the transcript with a White defendant and a Black plaintiff. Participants correctly recalled the race of the defendant in 45 cases (95.74%) and the race of the plaintiff in 41 cases (87.23%). Thus, the trial transcripts for Experiment 1, and the names and demographic characteristics of the characters in the trial were accepted.

Race Salience Manipulation

In Experiment 1, race salience was manipulated through statements made by the defense attorney. For participants in the Opening Only condition, two sentences (based partially on Bucolo & Cohn, 2010) were added to the defense attorney's opening statement: "Quite frankly, ladies and gentlemen, if [Scott/Jamal] were not [White/Black] and [Jamal/Scott] were not [Black/White], we would not be in this room today," and, "The only reason [Scott/Jamal] is on trial today and not [Jamal/Scott] is because [Scott/Jamal] is [White/Black] and [Jamal/Scott] is [Black/White]." For participants in the Closing Only condition, two sentences were added to the

defense attorney's closing argument: "These facts do not change simply because [Scott/Jamal] is [White/Black] and [Jamal/Scott] is [Black/White]," and, "The definition of self-defense is the same for us all, regardless of the color of our skin." Participants in the Opening and Closing condition read defense attorney statements with the race salient sentences included during both the opening statement and the closing argument. Participants in the Not Salient condition read defense attorney statements with none of the race salient sentences included. Attorney statements made by the prosecutor were identical across condition.

Dependent Variables

Juror Questionnaire.

Mock jurors in Experiment 1 completed a questionnaire assessing punitive outcomes, beliefs about the case, and beliefs about the defendant using items taken from past race salience studies (Sommers and Ellsworth, 2000; Sommers & Ellsworth, 2001; Sommers, 2006; see Appendix C). Participants rated how guilty they believe the defendant to be (1 = *not at all*, 9 = *completely*), which dichotomous verdict choice they preferred (0 = *not guilty*, 1 = *guilty*), and their recommended sentence length in years and months. Participants were provided with the United States Sentencing Commission's (2015) recommended sentence lengths for both simple and aggravated assault to guide their decision. Given that any participant choosing a not guilty verdict would likely choose a sentence of 0 years, and that verdict choice was expected to be different across condition, sentencing recommendations were only analyzed for participants who chose a guilty verdict ($N_{\text{pre-deliberation}} = 125$; $N_{\text{post-deliberation}} = 130$).

Participants also indicated how violent and aggressive they believed the defendant to be using a 9-point scale (1 = *not at all violent/aggressive*, 9 = *very violent/aggressive*). Finally, using 7-point scales, participants responded to items regarding the strength of the defense and

prosecution’s cases (1 = *very weak*, 7 = *very strong*; see Table 2 for pre-deliberation descriptive statistics).

Table 2

Descriptive Statistics for Dependent Variables and Covariates, Experiment 1

Variable	Pre-Deliberation	Post-Deliberation
Guilt (1-7)	4.46 (1.47)	4.58 (1.83)
Verdict Choice (% Guilty)	126 (60.9%)	130 (62.8%)
Sentence Length (years) ^a	11.93 (10.34)	12.15 (10.69)
Defendant Violence (1-9)	4.74 (1.83)	5.03 (1.97)
Defendant Aggressiveness (1-9)	5.14 (1.87)	5.37 (2.03)
Defense Case Strength (1-7)	4.20 (1.26)	4.04 (1.34)
Prosecution Case Strength (1-7)	4.66 (1.20)	4.55 (1.39)
Racial Motivation (1-7)	3.11 (1.71)	2.69 (1.72)
Modern Racism (1-5)	2.37 (.60)	-----
Social Dominance Orientation (1-7)	2.46 (.96)	-----

^a: Sentence Length responses are only included for participants who reached a guilty verdict.

Jury Variables.

In Experiment 1, after responding individually to the Juror Questionnaire, participants convened as a jury to deliberate. Following deliberation, the experimenter collected basic jury characteristic data (see Appendix D). Specifically, data were gathered about the final verdict reached by the jury, the timeslot associated with the jury (in order to identify which condition the

jury was associated with), the size of the jury, the gender breakdown of the jury, the length of jury deliberation, and the participant number associated with the jury foreperson.

However, none of these group-level variables were assessed in relation to the hypotheses of the study. This decision was made based on feasibility because, according to a G*Power analysis (Faul et al., 2009), a true jury simulation with adequate power would require at least 720 mock jurors in Experiment 1. Rather, this information was collected to better understand the demographics of the average jury and to conduct post-hoc analyses related to group-level decision making in general.

Instead, hypotheses regarding the effects of jury deliberation were assessed using a procedure outlined by Miller, Maskaly, Green, and Peoples (2011). In their study, participants were asked to respond individually to questions about a court cases, deliberate as a jury, and then individually answer the same questions that they had before. The authors assessed group-level effects by examining differences between pre- and post-deliberation responses across conditions. Although there are fundamental differences between this procedure and a true test of jury decision making (e.g., it does not require a unanimous decision from the jurors; Devine et al., 2001), this procedure allows an approximation of whether jury deliberations lead to more or less attitude change when following a race salience manipulation. Therefore, the effects of deliberation were assessed by collecting responses to the Juror Questionnaire a second time (see Table 2 for post-deliberation descriptive statistics).

Covariates

Modern Racism.

Both experiments utilized McConahay's (1986) Modern Racism Scale (MRS; $\alpha_{\text{Experiment 1}} = .81$) to control for the effects of explicit racism on trial outcome variables (Bucolo & Cohn,

2010; Cohn et al., 2009). MRS is a six-item scale measuring beliefs about race relations in the United States. Participants responded using a 5-point scale (1 = *strongly disagree*, 5 = *strongly agree*), with higher scores indicating higher levels of modern racism; item 2 was reverse-coded. An example item from this scale is, “It is easy to understand the anger of Black people in America” (see Appendix E for all items and Table 2 for descriptive statistics).

Social Dominance Orientation.

Past research using race salience materials indicates that social dominance orientation (SDO; Pratto et al., 1994; $\alpha_{\text{Experiment1}} = .91$) is an important variable for White mock jurors during interracial trial scenarios (Kimmelmeier, 2005). The SDO scale (Pratto, Sidanius, & Levin, 2006) is a 16-item scale measuring an individual’s preference for group inequality and a dominant status for the ingroup. Participants in both experiments responded using a 7-point scale (1 = *strongly disagree*, 7 = *strongly agree*), with higher scores indicating higher levels of SDO; items 2, 5, 8, 9, 11, 13, 14, and 16 were reverse-coded. An example item from this scale is, “To get ahead in life, it is sometimes necessary to step on other groups” (see Appendix F for all items and Table 2 for descriptive statistics).

Post-Trial Questionnaire

In addition to these measures, a post-trial questionnaire (Appendix G) was given to all participants. Within this questionnaire, participants responded to demographics items about their age, sex, religious beliefs, political orientation, and citizenship status. Participants also responded to questions regarding previous jury service and experience as both a witness to and a victim of assault in the past. The Post-Trial Questionnaire also included two manipulation check items and one item assessing whether participants knew the purpose of the study.

Procedure

Before completing the main portion of Experiment 1, participants completed the MRS and SDO scales (Appendices E and F) as part of a prescreen survey offered through Sona Systems, the University of North Dakota's (UND) online participant management software. Participant data from these scales was downloaded and stored on secure computers located in Dr. Andre Kehn's laboratory space.

Prior to the experiment, each planned timeslot was randomly assigned to one of eight conditions. Each timeslot allowed for up to eight participants. Participants signed up for the study through UND's Sona Systems software and completed the experiment in the Applied Social Cognition Laboratory in Robertson-Sayre Hall.

Participation occurred in groups of at least four, but no more than eight, to ensure adequate jury deliberation was possible (Miller et al., 2011). A jury size of four to eight jurors was chosen for several reasons. First, several past studies have used similar jury sizes (Devine et al., 2001; Miller et al., 2001; Tindale et al., 1990). Second, the literature suggests that juries of at least four, and preferably six, people have similar decision making processes and reach similar solutions as full juries (Horowitz & Bordens, 2002; Saks & Marti, 1997; Tindale et al., 1990). Finally, concerns with obtaining a consistent attendance of twelve jurors made a full jury simulation unfeasible. Experiment 1 and 2 were conducted concurrently. Because at least four participants were required for Experiment 1, if fewer than four participants arrived for a given timeslot, they were automatically enrolled in Experiment 2.

Stage 1: Juror Phase.

Participation occurred in three stages. Once participants arrived, they were seated in a chair around a table. The experimenter then provided participants with a statement of consent

and basic instructions on completing the study. Participants were then given packets containing all materials related to the trial transcript (Appendices A and B) and read through them at their own pace. Participants first read the pretrial order and pretrial instructions from the judge. Then, they read opening statements from the prosecuting and defense attorneys. For participants in the Opening and Closing and Opening Only conditions, the defense's opening statement included two sentences about the salience of race to the case. Next, participants read the witness statements, exhibits, and post-trial instructions from the judge. Finally, participants read closing arguments from the defense and prosecution. For those in the Closing Only and Opening and Closing conditions, the defense's closing argument included two sentences manipulating race salience. After reading all materials, participants completed the Juror Questionnaire (Appendix C).

Stage 2: Jury Deliberation.

After completing Stage 1, participants convened as a jury and deliberated for up to 20 minutes. Prior to deliberation, an experimenter read jury instructions from the 8th Circuit District Court (2014; see Appendix H). Mock juries were encouraged to reach a consensus decision, as is typical in actual court cases (Devine et al., 2001). However, because the hypotheses of Experiment 1 did not involve any jury-level analyses, a consensus decision was not required and was only recorded as such for post-hoc jury-level analyses.

Stage 3: Post-Deliberation.

After jury deliberation ended, participants completed the Juror Questionnaire individually a second time. Finally, participants completed the Post-Trial Questionnaire (Appendix G) and were debriefed and given credit for their participation.

Results

Preliminary Analyses

Prior to testing the hypotheses of Experiment 1, preliminary analyses were conducted to ensure that the data met linear model assumptions, that demographics had no meaningful impact on responses to dependent variables, that correlations between covariates and dependent variables were at acceptable levels, and that the race salience manipulations were effective.

All continuous data in Experiment 1 were tested for normality and homogeneity of variance. All skewness and kurtosis values for variables were less than +/- 1.96, indicating strong evidence for normally distributed data (Field, 2013). To test for homogeneity of variance, Levene's test for equality of error variances was conducted on each of the DVs before and after deliberation. Pre-deliberation, none of the DVs displayed issues with heterogeneity ($F_{\text{guilt}} = .70$; $F_{\text{sentence}} = 2.05$; $F_{\text{violent}} = 1.44$; $F_{\text{aggressive}} = .35$; all *ns*); post-deliberation responses for sentencing recommendations ($F = .84$) and defendant character ratings of violence ($F = 1.21$) and aggressiveness ($F = 1.82$, all *ns*) were also homogeneous.

Evidence of heterogeneity of variance was found for post-deliberation guilt ratings ($F = 5.21$, $p < .001$). To statistically correct for heterogeneity, a square root data transformation was conducted on the variable; this solution did not correct the issue ($F = 5.17$, $p < .001$). Reciprocal and exponent data transformations were then attempted. However, data remained heterogeneous in all transformations ($F_{\text{reciprocal}} = 4.82$; $F_{\text{exponent}} = 7.05$, both $ps < .001$). Therefore, analyses on post-deliberation guilt ratings were conducted using untransformed variables. Because of the homogeneity of variance results, all analyses involving this variable should be interpreted with caution.

Analyses were also conducted to ensure that demographic characteristics were equivalent across the eight conditions. Results indicated no significant differences across condition based on gender ($\chi^2[7] = 7.17$), age ($F[7,199] = 1.12$), strength of religious beliefs ($F([7,199] = 1.31$), or political orientation ($F[7,198] = 1.08$, all *ns*).

Next, relationships between demographic characteristics and the dependent variables were investigated pre- and post-deliberation. Due to the number of analyses conducted at this stage, each test was analyzed with a Bonferroni corrected critical value of $p = .002$ (28 total tests with $\alpha = .05$). Given the large number of tests conducted on the demographic variables and the fact that no *a priori* hypotheses were made for relationships between demographics and dependent variables, the Bonferroni correction is appropriate to decrease the likelihood of a Type 1 error when interpreting results (Field, 2013).

Nonsignificant relationships were found between all but one of the pre-deliberation DVs and gender ($\chi^2_{\text{verdict}} [1] = .82$; $t_{\text{guilt}} [205] = -.47$; $t_{\text{sentence}} [123] = -1.05$; $t_{\text{violent}} [205] = -2.47$; $t_{\text{aggressive}} [205] = -1.45$), age ($\beta_{\text{guilt}} = .19$; $\beta_{\text{sentence}} = -.04$; $\beta_{\text{violent}} = .04$; $\beta_{\text{aggressive}} = .10$), strength of religious beliefs ($\beta_{\text{guilt}} = .09$; $\beta_{\text{sentence}} = -.04$; $\beta_{\text{violent}} = .03$; $\beta_{\text{aggressive}} = .07$), and political orientation ($\beta_{\text{guilt}} = .07$; $\beta_{\text{sentence}} = -.02$; $\beta_{\text{aggressive}} = .16$; all $ps > .002$). A significant relationship was found between political orientation and pre-deliberation violence ratings ($\beta = .21$, $p = .002$), such that the more liberal a participant's political orientation, the more likely they were to believe the defendant to have a violent character prior to deliberation.

Nonsignificant relationships were also found between all post-deliberation DVs and gender ($\chi^2_{\text{verdict}} [1] = 5.00$; $t_{\text{guilt}} [121.06] = -2.42$; $t_{\text{sentence}} [128] = .00$; $t_{\text{violent}} [205] = -2.35$; $t_{\text{aggressive}} [205] = -2.25$), age ($\beta_{\text{guilt}} = .10$; $\beta_{\text{sentence}} = .06$; $\beta_{\text{violent}} = .14$; $\beta_{\text{aggressive}} = .11$), strength of religious

beliefs ($\beta_{\text{guilt}} = .07$; $\beta_{\text{sentence}} = -.03$; $\beta_{\text{violent}} = .09$; $\beta_{\text{aggressive}} = .14$), and political orientation ($\beta_{\text{guilt}} = .10$; $\beta_{\text{sentence}} = -.01$; $\beta_{\text{violent}} = .16$; $\beta_{\text{aggressive}} = .15$; all $ps > .002$).

It is worth noting that, in addition to the significant pre-deliberation violence-political orientation relationship, 11 of the 27 tests yielded results that would have been significant without the Bonferroni correction. Specifically, using a $p = .05$ cutoff, gender significantly predicted post-deliberation verdict choice ($p = .03$), post-deliberation guilt ratings ($p = .02$), post-deliberation aggressive ratings ($p = .03$), and both pre-deliberation ($p = .01$) and post-deliberation defendant violence ratings ($p = .02$); age predicted pre-deliberation guilt ratings ($p = .007$) and post-deliberation defendant violence ratings ($p = .047$); religion predicted post-deliberation aggressiveness ratings ($p = .04$); and political orientation predicted post-deliberation violence ratings ($p = .02$) and both pre- ($p = .02$) and post-deliberation aggressiveness ratings ($p = .04$). Regardless, no significant demographic differences were identified across condition, meaning that even if one of these marginally significant results denotes a true relationship, the relationship should have no impact on the main analyses.

Correlations were calculated between the covariates (modern racism, social dominance orientation, and strength of case for the defense and prosecution) and the dependent variables to investigate any multicollinearity issues. Results indicated that all correlations among covariates and between covariates and DVs were at acceptable levels (highest pre-deliberation $r = .60$, post-deliberation $r = .61$; see Tables 3 and 4 for all correlations).

Table 3

Pre-Deliberation Correlations Among Covariates and Dependent Variables, Experiment 1

	1	2	3	4	5	6	7	8	9
1. Guilt	---								
2. Sentence Length	.09	---							
3. Verdict	.77**	N/A ^a	---						
4. Defendant Violence	.55**	.03	.41**	---					
5. Defendant Aggressiveness	.63**	-.12	.50**	.80**	---				
6. Case of Defense	-.50**	-.10	-.49**	-.24**	-.26**	---			
7. Case of Prosecution	.60**	.04	.56**	.44**	.43**	-.37**	---		
8. Modern Racism	.01	.15	.05	-.08	-.02	-.07	.03	---	
9. Social Dominance Orientation	-.03	-.04	.00	-.03	.04	-.02	-.04	.54**	---

Note: * = $p < .05$; ** = $p < .01$; ^a = Only guilty responses were used for sentence

recommendation analyses, so no correlation can be calculated.

Table 4

Post-Deliberation Correlations Among Covariates and Dependent Variables, Experiment 1

	1	2	3	4	5	6	7	8	9
1. Guilt	---								
2. Sentence Length	.25**	---							
3. Verdict	.84**	N/A ^a	---						
4. Defendant Violence	.67**	.06	.59**	---					
5. Defendant Aggressiveness	.70**	.19*	.60**	.86**	---				
6. Case of Defense	-.33**	-.01	-.34**	-.24**	-.21**	---			
7. Case of Prosecution	.61**	.01	.56**	.47**	.49**	-.31**	---		
8. Modern Racism	-.04	.20*	-.01	-.05	-.05	.08	-.05	---	
9. Social Dominance Orientation	-.06	-.09	-.01	.04	.03	.01	-.11	.54**	---

Note: * = $p < .05$; ** = $p < .01$; ^a = Only guilty responses were used for sentence

recommendation analyses, so no correlation can be calculated.

Finally, an analysis was conducted to ensure that the race salience manipulation was noticed by participants in the race salience conditions. Within the Post-Trial Questionnaire, participants were asked to respond to an open-ended manipulation check question: “*Did the attorney statements you read mention anything about the defendant’s race being relevant to the*

court case? If so, what did they say?" In order to test the effectiveness of the manipulations, responses to this question were coded dichotomously (1 = *race was relevant*, 2 = *race was not relevant*) and this dichotomous variable was entered into a χ^2 analysis comparing participants in the race salience conditions against participants in the Not Salient condition. Results indicated a significant relationship between condition and remembering attorney statements about race, $\chi^2[1] = 73.93, p < .001$; participants in the Race Salient conditions were more likely to recall statements about race than would be expected by chance (71.4% recall), while participants in the Not Salient condition were less likely to recall statements about race than expected by chance (0% recall).

Pre-Deliberation Analyses

To investigate Hypotheses 1-4 of Experiment 1, four 2 x 4 analyses of covariance (ANCOVAs) were conducted using defendant race (White vs. Black) and race salience (Opening and Closing, Opening Only, Closing Only, and Not Salient) as IVs; mean scores on modern racism and social dominance orientation and pre-deliberation ratings of case strength for the defense and prosecution entered as covariates; and the four continuous pre-deliberation dependent variables (guilt ratings, sentence length, defendant violent character rating, and defendant aggressiveness character rating) entered as DVs in separate analyses. A significant interaction effect would signal evidence of an overall race salience effect but is not sufficient to draw conclusions about Hypotheses 1-4. Therefore, for any significant interactions, simple effects analyses were used to analyze defendant race at each level of race salience and more thoroughly test the hypotheses.

For guilt ratings, there was a main effect of defendant race, $F(1,194) = 6.94, p = .009, \eta_p^2 = .04$; ignoring the effect of race salience, Black defendants ($M = 4.03, SD = 1.46$) were rated as

less guilty than White defendants ($M = 4.84$, $SD = 1.39$). There was no main effect of race salience, $F(3,194) = .69$, *ns*, and no interaction between the IVs, $F(3,194) = .74$, *ns*. Thus, Hypotheses 1-4 were not supported in relation to guilt ratings.

For sentencing recommendations when the defendant was found guilty, there was no main effect of defendant race ($F[1,113] = .01$) or race salience ($F[3,113] = 1.74$), and no interaction effect was identified ($F[3,113] = .37$, all *ns*). Thus, Hypotheses 1-4 were not supported in relation to sentencing recommendations.

Defendant character ratings echoed the results for guilt ratings. For ratings of the defendant's violent character, a main effect of defendant race was identified, $F(1,194) = 3.96$, $p = .048$, $\eta_p^2 = .02$, such that the Black defendant was rated as less violent ($M = 4.35$, $SD = 1.69$) compared to the White defendant ($M = 5.10$, $SD = 1.90$). However, there was no main effect of race salience ($F[3,194] = .49$), and there was no interaction between the IVs ($F[3,194] = .53$, both *ns*). For defendant aggressiveness ratings, a main effect of defendant race was also found ($F[1,194] = 4.74$, $p = .03$, $\eta_p^2 = .02$); the Black defendant was rated as less aggressive ($M = 4.71$, $SD = 1.82$) compared to the White defendant ($M = 5.53$, $SD = 1.84$). No evidence was found for a main effect of race salience ($F[3,194] = .66$) or for an interaction effect ($F[3,194] = .57$, both *ns*). Therefore, results for both character rating variables Hypotheses 1-4 of Experiment 1.

To test Hypotheses 1-4 using the pre-deliberation dichotomous DV, four χ^2 analyses were conducted, one for each level of the race salience variable, with defendant race (White vs. Black) and pre-deliberation verdict choice (Guilty vs. Not Guilty) included in the analysis. In support of the hypotheses, I expected to find a significant χ^2 when race was not salient (Hypothesis 1) and when race was made salient only through closing arguments (Hypothesis 3), with Black defendants being found guilty at a higher rate than expected by chance. I also

expected to find a nonsignificant χ^2 when race was made salient in both opening statements and closing arguments (Hypothesis 4) and when race was made salient in opening statements only (Hypothesis 2).

Results from the χ^2 analyses revealed a race salience effect, but not in the predicted direction. When race was not salient at all, there was no relationship between defendant race and verdict choice, $\chi^2(1) = .84$, *ns*. On the other hand, in the Opening and Closing condition and the Closing Only condition, significant relationships were found ($\chi^2_{\text{open/close}}[1] = 3.80$, $p = .05$, Cramer's $V = .14$; $\chi^2_{\text{close}}[1] = 5.84$, $p = .02$, Cramer's $V = .17$), suggesting evidence of a race salience effect in verdict choice. However, this finding is qualified in several ways. First, although the effect was found for two of the race salience conditions, the third (Opening Only) did not reveal the same effect ($\chi^2[1] = 3.02$, *ns*). Related to this first qualification is that the hypotheses for Experiment 1 predicted an effect for the conditions where race was made salient in opening statements; instead, the significant results were only identified in conditions where race was salient in closing arguments. Finally, the "race salience effect" found in this data is opposite that predicted and that found in most previous research (e.g., Sommers & Ellsworth, 2000, 2001). Rather than equalizing trial outcomes across race, the White defendant were more likely (and the Black defendant less likely) to be found guilty in the significant race salience conditions. For example, in the most extreme case (the Closing Only condition), 78.3% of White defendants but only 43.5% of Black defendants were judged as guilty pre-deliberation. In contrast, when race was not salient, 69.6% of White defendants and 56.5% of Black defendants were found guilty (see Table 5 for a full breakdown of all conditions). Therefore, partial support was found for a race salience effect within pre-deliberation verdict choice, but the effect was not the one hypothesized for Experiment 1.

Table 5

Pre-Deliberation Verdict Choice based on Defendant Race across Race Salience Condition, Experiment 1

Condition	Verdict	Defendant Race	
		Black Defendant	White Defendant
Opening and Closing	Guilty	13 (48.1%)	22 (73.3%)
	Not Guilty	14 (51.9%)	8 (26.7%)
Opening Only	Guilty	12 (46.2%)	22 (68.8%)
	Not Guilty	14 (53.8%)	10 (31.2%)
Closing Only	Guilty	10 (43.5%)	18 (78.3%)
	Not Guilty	13 (56.5%)	5 (21.7%)
Not Salient	Guilty	13 (56.5%)	16 (69.6%)
	Not Guilty	10 (43.5%)	7 (30.4%)

Post-Deliberation Analyses

To investigate whether the results obtained prior to deliberation persisted after participants convened as a jury, and to test Hypotheses 5 and 6 of Experiment 1, the same four pre-deliberation analyses of covariance were conducted on the continuous post-deliberation data; these analyses were identical except that pre-deliberation responses were controlled for by including each DV within its respective model as a covariate.

Hypotheses 5 and 6 predicted that the race salience effects identified pre-deliberation would continue following deliberation. Strictly speaking, both of these hypotheses are unsupported by Experiment 1 because the pre-deliberation results did not support the expected

race salience effects. However, a broader interpretation of these hypotheses would predict that the results obtained pre-deliberation would remain unchanged following deliberation; this interpretation of Hypotheses 5 and 6 is what was tested below. Therefore, it was expected that for all continuous measures, no interaction between race salience and defendant race would be found. In addition, I expected that for post-deliberation verdict preference, participants in the two significant race salience conditions (Opening and Closing, and Closing Only) would continue to disproportionately find the White defendant guilty compared to the Black defendant, and that defendants in the other two conditions would be found guilty at the same rate across race.

For guilt ratings, there was a significant main effect of defendant race ($F[1,194] = 21.10$, $p < .001$, $\eta_p^2 = .12$), with the Black defendant being considered less guilty ($M = 3.75$, $SD = 1.81$) than the White defendant ($M = 5.34$, $SD = 1.49$). The main effect of race salience was not significant, $F(3,194) = 1.25$, ns . However, for post-deliberation guilt ratings, the interaction term was significant ($F[3,194] = 3.50$, $p = .02$, $\eta_p^2 = .05$).

A simple effects analysis was conducted on defendant race at each level of race salience to explore the interaction. In this analysis, there was no effect of defendant race when race was salient in both attorney statements ($F[1,50] = .01$) or when race was salient in closing arguments only ($F[1,39] = 1.48$, both ns). However, when race was salient in opening statements only, defendant race did influence guilt ratings ($F[1,51] = 15.83$, $p < .001$, $\eta_p^2 = .24$), with the Black defendant being considered less guilty ($M = 3.08$, $SD = 1.79$) compared to the White defendant ($M = 6.00$, $SD = 1.02$). A similar relationship was found when race was not salient ($F[1,39] = 5.79$, $p = .02$, $\eta_p^2 = .13$); the Black defendant was deemed less guilty ($M = 4.22$, $SD = 2.37$) compared to the White defendant ($M = 5.83$, $SD = .98$; see Figure 1). This finding is intriguing given that the two nonsignificant conditions for post-deliberation guilt ratings were the only two

conditions to yield a pre-deliberation race salience effect within verdict choice. Regardless, results for post-deliberation guilt ratings differed from those found prior to deliberation, a finding that contradicts Hypotheses 5 and 6.

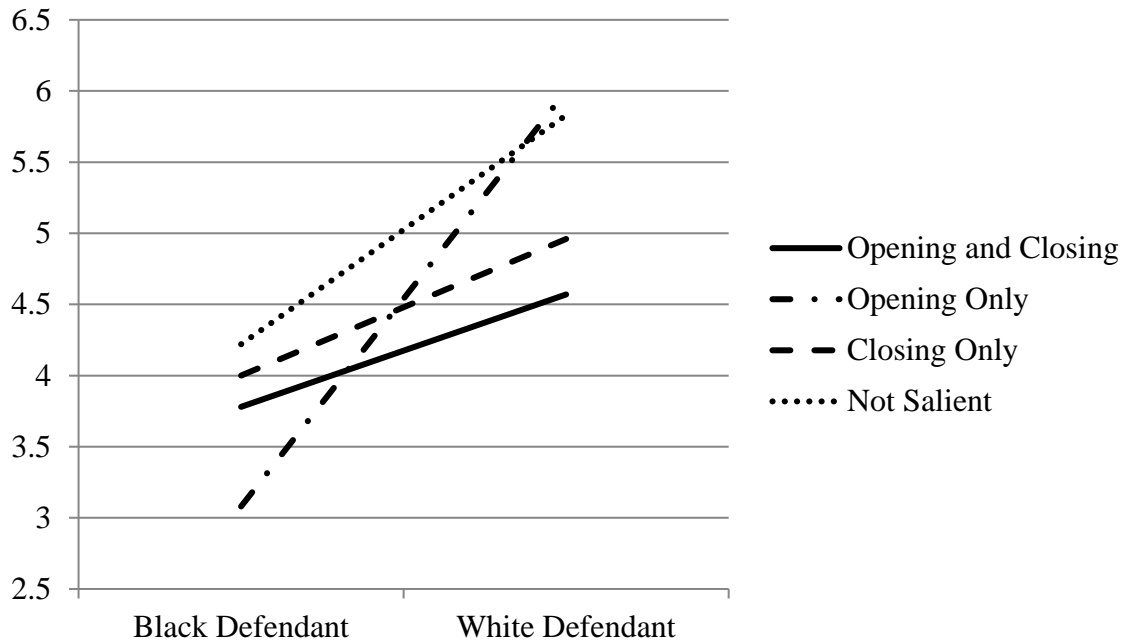


Figure 1. Defendant race x race salience interaction on post-deliberation guilt ratings, Experiment 1.

In contrast to pre-deliberation, post-deliberation sentencing recommendations yielded significant main effects for both defendant race ($F[1,116] = 6.50, p = .01, \eta_p^2 = .05$) and race salience ($F[3,116] = 4.01, p = .009, \eta_p^2 = .09$). Overall, when the Black defendant was found guilty, he was given shorter sentences ($M = 10.07, SD = 9.79$) compared to the White defendant ($M = 12.85, SD = 10.92$). In addition, when race was made salient in both attorney statements, defendants were given shorter sentences ($M = 8.67, SD = 9.79$) compared to when race was not made salient ($M = 14.06, SD = 10.50$; contrast = $-6.64, p = .002$); sentence recommendations were also significantly shorter for defendants when race was salient in opening statements only ($M = 12.30, SD = 10.47$) compared to when race was not salient (contrast = $-6.52, p = .01$). All

other comparisons across the race salience variable were nonsignificant, including all comparisons with the closing arguments only condition ($M = 13.27$, $SD = 11.50$). In addition, the interaction term in the overall ANCOVA was also not significant, $F(3,116) = .95$, *ns*. Thus, post-deliberation sentencing recommendations reflected those found prior in some ways, but not others, providing partial support for Hypotheses 5 and 6 of Experiment 1.

Results for post-deliberation defendant character ratings were identical to those found before deliberation. For violence ratings, a main effect was found for defendant race ($F[1,194] = 7.81$, $p = .006$, $\eta_p^2 = .04$), such that Black defendants were considered less violent ($M = 4.35$, $SD = 1.93$) than White defendants ($M = 5.65$, $SD = 1.81$). There was no main effect of race salience ($F[3,194] = 1.26$), and the interaction term was not significant ($F[3,194] = 1.64$, both *ns*). For aggressiveness ratings, a main effect of defendant race was also found ($F[1,194] = 13.75$, $p < .001$, $\eta_p^2 = .07$), with Black defendants seen as less aggressive ($M = 4.55$, $SD = 1.99$) compared to White defendants ($M = 6.13$, $SD = 1.77$). As with violence ratings, no evidence was found for a main effect of race salience ($F[3,194] = .59$) or for an interaction effect ($F[3,194] = .40$, both *ns*). Therefore, support was found for Hypotheses 5 and 6 in relation to defendant character ratings.

To test Hypothesis 7 of Experiment 1, Generalized Estimating Equations (GEE; Ballinger, 2004) were used with defendant race and race salience as between subjects predictors, time (pre- vs. post-deliberation) as a within-subjects predictor, and verdict choice as the dependent variable. The binary logistic model tested within GEE included all main effects and two-way interactions; the three-way interaction between defendant race, race salience, and time was not included as no hypotheses were made regarding this interaction. Support for Hypothesis 7 would be indicated through a significant two-way interaction between race salience and time

(pre- vs. post-deliberation), such that participants in the Opening and Closing and Opening Only conditions would show significant pre-post differences in verdict choice while participants in the Closing Only and Not Salient conditions would show no differences before and after deliberation.

Results indicated a significant main effect of defendant race (Wald's $\chi^2[1] = 37.11, p < .001$); ignoring time of verdict, the Black defendant was more likely to be found not guilty (56.6%) while the White defendant was overwhelmingly found guilty (78.7%). There was no main effect of race salience (Wald's $\chi^2[3] = 2.82$) or time (Wald's $\chi^2[1] = 1.66$, both *ns*), and the interactions between defendant race and race salience (Wald's $\chi^2[3] = 3.10$) and race salience and time (Wald's $\chi^2[3] = 2.66$) were also nonsignificant. Therefore, Hypothesis 7, which states that differences across time based on race salience condition would exist, was not supported.

In addition, an unexpected interaction between defendant race and time was identified (Wald's $\chi^2[1] = 12.16, p < .001$). Results indicated that pre-deliberation verdict choice for the Black defendant (51.5% not guilty) did not significantly differ from verdict choice following deliberation (61.6% not guilty; *ns*). However, the White defendant was significantly more likely to be found guilty following deliberation (85.2% guilty) than prior to deliberation (72.2% guilty; $p = .001$). Thus, mock jurors were more likely to switch to guilty verdicts following jury deliberation, but only if the defendant was White.

Post-Hoc Jury Analyses

In addition to the main analyses, post-hoc analyses were conducted on the jury-level variables to explore data trends. Given the low number of juries ($N = 46$), no hypotheses were made at the jury level and any trends identified should be interpreted with caution. First, descriptive statistics were calculated for all jury-level variables. Then, juries were compared

across conditions to examine preliminary effects of race salience at the group level. Next, analyses were conducted to examine the role of pre-deliberation majority verdict in final jury verdicts. Finally, foreperson characteristics were analyzed to explore how forepersons in this experiment were similar to and different from the average participant.

In total, 46 juries were collected in Experiment 1. Across these juries, 23 (50.0%) reached a unanimous guilty verdict, 14 (30.4%) reached a unanimous not guilty verdict, and 9 (19.6%) could not reach a unanimous verdict. These final verdicts generally matched those of the pre-deliberation majority: 29 (63.0%) juries had a majority favoring guilty verdicts prior to deliberation, 11 (24.0%) juries had not guilty majorities, and 6 (13.0%) juries were equally split between guilty and not guilty at the pre-deliberation phase (average size of majority = 70.59%, $SD = 13.05%$). Though juries were given up to 20 minutes to deliberate, most juries convened for less than the allotted time ($M = 7.75$ minutes, $SD = 5.37$ minutes). In terms of gender, 30 (65.2%) of juries had a gender majority favoring women, 6 (13.0%) had a male majority, and 10 (21.7%) were equally split between men and women (average size of gender majority = 70.54%, $SD = 16.11%$). Finally, juries ranged from 4 participants (30.4% of all juries) to 8 participants in size (13.0% of all juries), with the most common size being a four-person jury. Importantly, there were no significant differences in final verdict choice across jury size ($\chi^2[8] = 9.30, ns$), and jury size was equal across condition ($\chi^2[28] = 27.91, ns$).

After calculating descriptive statistics, jury verdicts were analyzed to examine any differences across conditions. Given the low number of juries per cell, the race salience variable was condensed into two conditions: those where race was salient at any point (total $N = 35$ juries) and those where race was not salient at all (total $N = 11$). Then, two χ^2 analyses were conducted, one for each level of the collapsed race salience variable, with defendant race and

jury verdict included in the model. Results showed a significant relationship when race was salient ($\chi^2[2] = 7.81, p = .02$), with the White defendant more likely to be found guilty (64.7%) than the Black defendant (22.2%). The analysis was not significant when race was not salient ($\chi^2[1] = 3.44, ns$); however, this result is likely due to the low N of this condition, as all five juries voted guilty when the defendant was White, but only 50% of juries unanimously voted guilty when the defendant was Black. In addition to these findings, it is worth noting that although all juries had the option to not reach a consensus, hung juries only occurred when race was salient (25.7% hung jury rate). All eleven juries where race was not salient chose to reach a unanimous decision.

Next, the effects of pre-deliberation verdict preference were explored. Previous research suggests that the majority verdict choice prior to deliberation typically matches the final jury verdict (Sandys & Dillehay, 1995), and that the size of the majority determines how often jury verdicts go against the pre-deliberation preference (Tindale et al., 1990). To investigate these past findings in relation to the juries in this experiment, a χ^2 analysis was conducted on final jury verdict and pre-deliberation majority juror verdict (ignoring juries with a 50% pre-deliberation split). Results indicated a significant relationship ($\chi^2[2] = 15.64, p < .001$); juries who favored a guilty verdict before deliberation overwhelmingly reached a guilty verdict (69.0%, residual = -2.00) and juries favoring a not guilty verdict overwhelmingly chose a unanimous not guilty verdict (72.7%, residual = 2.50). In addition, descriptive statistics were calculated to compare juries where the final verdict matched the majority and juries where the final verdict did not. Results showed that juries that changed their verdict had a smaller pre-deliberation majority ($M = 64.3\%$, $SD = 9.8\%$) compared to juries that did not change ($M = 71.9\%$, $SD = 13.8\%$). An independent samples t-test comparing these values was nonsignificant ($t[35] = -1.18, ns$);

however, given the small size of the group that changed verdicts ($N = 5$), this test has low power. Thus, overall, some support was found for the previous findings on pre-deliberation majorities and their impact on final jury decisions (Sandys & Dillehay, 1995; Tindale et al., 1990).

Finally, foreperson characteristics were investigated to test for differences between forepersons and the typical participant in Experiment 1. In general, foreperson gender reflected that of the study overall: 56.8% of juries had a female foreperson compared to the gender breakdown of all participants in Experiment 1 (66.7% women). When juries were equally split between men and women, this trend was flipped, with men (60.0%) chosen as foreperson more often than women. Next, one-sample t -tests were conducted comparing foreperson age, strength of religious beliefs, political orientation, modern racism, and social dominance orientation to the overall participant population of Experiment 1. Results indicated that foreperson age ($M = 19.93$, $SD = 2.11$) did not significantly differ from other participants' ($M = 19.49$, $SD = 1.80$; $t[43] = 1.38$, ns); that foreperson political orientation ($M = 4.05$, $SD = 1.43$) did not significantly differ from other participants' ($M = 3.65$, $SD = 1.40$; $t[43] = 1.82$, ns); that foreperson modern racism ($M = 2.29$, $SD = .59$) did not significantly differ from other participants' ($M = 2.38$, $SD = .61$; $t[43] = -.98$, ns); and that foreperson social dominance orientation ($M = 2.49$, $SD = .91$) did not significantly differ from other participants' ($M = 2.44$, $SD = .97$; $t[43] = .39$, ns). A significant difference was found between religious beliefs ($t[43] = -3.24$, $p = .002$), with forepersons indicating a lower strength of religious beliefs ($M = 3.80$, $SD = 1.97$) compared to other participants ($M = 4.76$, $SD = 1.69$).

Experiment 1 Discussion

Overall, the pre-deliberation findings of Experiment 1 suggest that when race is made salient through attorney statements, the effect differs from that found through previous race

salience manipulations. Specifically, for all continuous measures (guilt ratings, sentencing recommendations, and defendant character ratings of violence and aggressiveness), the indicative interaction between race salience and defendant race was not found. However, for pre-deliberation verdict preference, there was a race salience effect. When participants received a manipulation in both attorney statements, or in closing arguments alone, they gave nonequivalent verdicts for the White and Black defendant, but when participants received either a manipulation in opening arguments only or received no manipulation at all, verdict preference was equivalent across defendant race. Furthermore, in conditions where the White and Black defendant received different verdicts, it was the White defendant who was more likely to be found guilty.

These results do not support Hypotheses 1-4 of Experiment 1 and are also incongruent with past race salience research in two important ways. First, whereas the current study found an inconsistent race salience effect, only manifesting through verdict preference, previous published research has typically reported a consistent effect through multiple dependent variables and stronger effects for continuous measures (Cohn et al., 2009; Sommers & Ellsworth, 2000; 2001). Indeed, the only nonsignificant result reported in any of these studies was a marginally significant dichotomous verdict choice (Sommers & Ellsworth, 2001).

More importantly, the race salience effect identified in the current study is distinct from the effect found in most past research. The effect initially described by Sommers and Ellsworth (2000) stated that when race was not salient, White jurors would display an anti-Black bias, and that when race was salient, trial outcomes were equivalent across defendant race. However, in the current study, trial outcomes were equivalent when race was not salient, and in two conditions where race was salient, White jurors displayed an anti-White bias (outcomes were equivalent in the third condition). This finding will be discussed in detail in the General

Discussion section below, but it is an important distinction between Experiment 1 and past race salience research.

In addition, Experiment 1 provided a more comprehensive examination of how the race salience effect operates through attorney statements by testing the unique contributions of opening statements and closing arguments on juror decisions. A critical limitation of Bucolo and Cohn's (2010) investigation of attorney statements was that race was made salient in both statements or not at all, making it impossible to determine which statement was driving the effect. In support of Bucolo and Cohn (2010), the effect was found when race was salient in both attorney statements; importantly, the same pro-outgroup bias was identified in their research as in the current study. Extending on their findings, race was also made salient in opening statements or closing arguments only; in these conditions, a race salience effect was only detected when the manipulation was included in closing arguments. In other words, the pre-deliberation findings of Experiment 1 suggest closing arguments to be the component of attorney statements in which a race salience effect can be sufficiently implemented.

It was hypothesized that a race salience effect would only be found in conditions where race was made salient in opening statements. These hypotheses were formed based on research on the story model of juror decision making (Pennington & Hastie, 1986), cognitive schemas (Bransford & Johnson, 1972), and research suggesting that jurors often reach a final decision early in a trial (Diamond et al., 1996). In all three cases, the research suggests that adding a manipulation early in the trial, rather than waiting until the end would be most effective. It was expected that the race salience effect would follow this same pattern, being effective when implemented at the start of the trial and relatively ineffective at the end of the trial.

One possible explanation as to why the manipulation was more effective in closing arguments is a combination of aversive racism and the recency effect. Aversive racism theory states that most people do not perceive themselves to be racist while at the same time holding implicit prejudices against racial outgroups (Gaertner & Dovidio, 1986). Furthermore, because aversive racists do not want to appear racist to others, they take steps to avoid appearing prejudiced by equalizing (or, in the case of the current study, overcorrecting) their behavior toward racial outgroup members (Dovidio & Gaertner, 2000). However, they only take these steps in situations where their behavior could be interpreted as overtly racist, such as when race is made salient in a court case (Sommers & Ellsworth, 2000). Thus, in Experiment 1, mock jurors should only display changed behavior when they felt their responses could be interpreted as racially biased.

In cognitive psychology, the recency effect refers to the tendency for items presented at the end of a list to be recalled with better accuracy and higher likelihood than items presented at the beginning or especially in the middle of a list (Davelaar, Goshen-Gottstein, Ashkenazi, Haarmann, & Usher, 2005). The recency effect is a component of the broader serial position effect (Murdock, 1962), which also accounts for the tendency for items at the beginning of a list to be recalled with a higher probability than items in the middle (known as the primacy effect). Furthermore, recency effects increase in strength as a function of the length of the list being recalled (Murdock, 1962; Ward, 2002). Within Experiment 1, it could be construed that the “list” being recalled was the trial transcript. Particularly in comparison to previous race salience research (e.g., Sommers & Ellsworth, 2000), this was a very complex list of information. In the study, mock jurors were asked to read or listen to pretrial judicial instructions, attorney opening statements, witness statements for the defense and prosecution, visual exhibits, attorney closing

statements, post-trial judicial instructions, sentencing instructions, and jury deliberation instructions; altogether, these materials composed 24 pages of documents that participants were asked to remember and consider when making a final decision. Therefore, it could be expected that participants would rely on the recency effect when recalling information from the trial.

If mock jurors in Experiment 1 were relying on the recency effect, it would be no surprise that only those in conditions where race was salient in closing arguments displayed a race salience effect. Participants who were given a race salience manipulation in opening statements alone went on to read or listen to another 14 pages worth of documents before responding to any trial outcome measures. In addition, participants had already read 7 pages of documents prior to reaching the opening statement manipulation. It is unlikely, then, that participants in the Opening Only condition would be able to rely on either the primacy or the recency effect to recall the race salience manipulation. Because the specifics of the manipulation were unlikely to be accurately recalled, it is also unlikely that participants in this condition would be affected by aversive racism: if the participant cannot remember that an attorney made race salient, then they will feel no reason to alter their behavior. On the other hand, for participants in the two conditions where race was made salient in closing arguments, only four pages remained of the transcript before they responded to trial outcome measures. It is much more likely that these participants would recall that race had been made salient to the case. Because they could accurately recall the race salience manipulation, these participants would also be expected to change their behavior toward the White or Black defendant in an effort to appear racially unbiased in a manner similar to that in Experiment 1. To more concretely determine whether the recency effect was driving the results found in the current study, future research should replicate Experiment 1 but also ask for detailed free recall following the study.

Experiment 1 also investigated the role of jury deliberations on the race salience effect (Sommers, 2006). Overall, the effects identified pre-deliberation persisted after jury deliberation. As indicated before deliberation, there was no evidence of a race salience effect for sentencing recommendations or defendant character ratings of violence and aggressiveness. In other words, for these three measures, it did not matter whether mock jurors were reviewing a case involving a Black or a White defendant, and it did not matter whether race had been made salient in both of the attorney statements, just one, or none at all. More importantly, post-deliberation sentencing recommendations and character ratings remained equivalent across condition, suggesting that jury deliberation played an unimportant role in these mock jurors' decision making processes and did not create any new race salience effects. Given the potential for group decision making (Tindale et al., 1990) and jury deliberations in particular (Nunez et al., 2011) to influence courtroom decision making, the current study marks an important step in establishing the persistence, or lack thereof, of race salience effects following deliberation. This point will be discussed in more detail in the General Discussion section below.

However, one critical difference in the continuous measures was noted from pre- to post-deliberation: the key interaction between defendant race and race salience was identified for guilt ratings, denoting a race salience effect. Specifically, participants were more likely to find the White defendant guilty when race was made salient in opening statements alone and when race was not made salient at all; guilt ratings were equivalent when race was made salient in both statements and in closing arguments alone. Thus, jury deliberation did play a role in guilt ratings, leading participants in two of the race salience conditions to assign stronger guilt to the White defendant.

The nature of this particular race salience effect is puzzling for several reasons. First, since equivalency was present in two of the salient conditions and a difference was found within the non-salient condition, it is the only finding of Experiment 1 to generally reflect this expected direction of effect based on past research (e.g., Sommers & Ellsworth, 2000). However, the form of discrimination remained the same, such that White mock jurors displayed an anti-White bias when race was not salient. Why would White participants display bias against their ingroup in a situation where race is not made relevant at all? Even more perplexing is that the effect found for post-deliberation guilt ratings directly contrasts that for pre-deliberation verdict choices, where a pro-outgroup bias was found when race was salient in both statements and in closing arguments only, but not the other conditions. The existence of two completely different race salience effects within the same sample is intriguing.

Perhaps the best explanation for this post-deliberation “race salience effect” is the heavy impact of defendant race across all conditions, particularly following deliberations. Across all phases of Experiment 1, with the exception of pre-deliberation sentencing recommendations, every outcome variable displayed a significant effect of defendant race, with the White defendant always receiving harsher judgments than the Black defendant. In cases where more than one effect was significant, the strongest relationship in the model was always defendant race. Furthermore, effect sizes for all defendant race analyses were larger at the post-deliberation phase, suggesting that jury deliberation may have exacerbated differences based on defendant race. This suggestion is supported by the unexpected interaction found between defendant race and time on verdict choice, where mock jurors were more likely to convict the White defendant, but not the Black defendant, following deliberation compared to pre-deliberation. Thus, at every point and for nearly every outcome, mock jurors gave more lenient trial outcomes to the Black

defendant in comparison to the White defendant, and this preference was strongest following deliberations.

The findings across defendant race help explain the odd race salience effect on post-deliberation guilt ratings because the findings suggest that guilt ratings may have served as a justification for mock jurors changing their verdict preference following deliberation. At the pre-deliberation phase, a race salience effect was found for verdict choice; after deliberating, the effect disappeared, as participants in all race salience conditions were more likely to convict the White defendant than the Black defendant. Therefore, some participants in the conditions where race was salient in opening statements only or where race was not salient at all must have changed their verdict either by voting not guilty more often for the Black defendant or guilty more often for the White defendant, or both. Participants may have felt the need to justify their change in verdict, and they had the means to do so by altering their responses to other measures at the post-deliberation stage. Thus, since post-deliberation analyses controlled for pre-deliberation responses, the “race salience effect” identified in post-deliberation guilt may simply be the result of participants in the Closing Only and Not Salient conditions adjusting their guilt ratings in tandem with their verdict preferences, and not an actual race salience effect where the salience of race to the case differentially impacted trial outcomes.

Along with addressing the race salience literature, Experiment 1 also investigated previous findings within jury deliberation and group decision making research in general. The most important of these findings relate to the pre-deliberation majority and foreperson characteristics. The influence of the pre-deliberation majority on final jury verdict is well-established in the literature (Sandys & Dillehay, 1995; Tindale et al., 1990) and was the primary justification for the post-deliberation hypotheses of Experiment 1. In support of this justification,

juries in the current study overwhelmingly reached a consensus verdict mirroring that of the pre-deliberation majority. These findings also lend credence to the strong influence of the pre-deliberation majority in a jury setting.

Experiment 1 also explored how the average foreperson was similar to and different from the average mock juror. While past research suggests that forepersons are more likely to be men (Devine et al., 2001) and older (Ellison & Munro, 2010), forepersons in the current study reflected the average mock juror in both gender and age. However, over 96% of participants were between the ages of 18 and 22, making any differences based on age difficult to detect. In addition to age and gender, Experiment 1 also investigated foreperson characteristics that have not been examined in the published literature. Compared to the average mock juror, forepersons were equivalent in terms of their political orientation, modern racism, and social dominance orientation. Forepersons did differ in the strength of their religious beliefs, with forepersons having a lower strength compared to the average mock juror. Because of the post hoc nature of the foreperson analyses, these results should be interpreted with caution. However, Experiment 1 extends the literature on foreperson characteristics and suggests new areas for research into the role of the foreperson in the jury deliberation process.

There are several limitations unique to Experiment 1. First, there are issues related to power that should be considered when interpreting these findings. Most importantly, the a priori power analysis conducted for Experiment 1 recommended a sample size of at least 250 in order to achieve adequate power. Although more than 250 participants were collected, data cleaning necessitated the removal of over 50 participants, dropping the total sample size below that recommended by the analysis. This issue was exacerbated for analyses involving sentencing recommendations, as only those participants who chose a guilty verdict were included (N = 129,

or about 16 participants per cell). However, it is worth noting that in most cases, the interaction term was not close to significance, as most p -values exceeded .50. It is unlikely that these nonsignificant interactions would have changed with more participants.

Related to the first limitation is the lack of homogeneity of variance in post-deliberation guilt ratings. This is particularly concerning given that this was one of only two variables where a race salience effect was found. The lack of homogeneity may have been due to the variability in sample size across the eight conditions, as unequal sample sizes can cause Levene's test to become untrustworthy (Field, 2013). Of course, conducting an analysis of variance with unequal sample sizes leads to further issues, particularly by lowering the power of the tests (Yuen, 1974). However, given that the interaction was significant for post-deliberation guilt ratings, the question of low power is irrelevant. Thus, results using the post-deliberation guilt measure should be interpreted with caution, but so should the test of homogeneity of variance.

There are also three important limitations related to jury research that should be considered. First, juries varied in size from four- to eight-person juries. The variability of jury size may confound the results of jury deliberation, as past research indicates that the size of a jury can influence final decisions and variability amongst jurors (Devine et al., 2001). However, given that jury size did not vary as a function of condition, and that jury size was not related to final verdict choice, jury size should only have a minimal effect, if any, in the current study. Second, juries in Experiment 1 were not required to reach a consensus jury verdict even though juries in actual criminal trials typically reach consensus (Devine et al., 2001). Some previous research indicates that jurors may behave differently when they do not have to reach a consensus (Kameda, 1991), although there is also evidence that jury decision rules have little effect on final jury verdicts (Devine et al., 2001). Future research should investigate the effects of race salience

following jury deliberation in which a consensus decision was required of the jury to empirically examine the role that decision rules play in the race salience literature.

A final limitation of the jury design used in Experiment 1 is that no actual jury-level analyses were conducted in order to test the hypotheses of the study. Rather, a pre-post design was used, based on Miller et al. (2011), in which the effects of jury deliberation were implied by comparing individual responses to trial outcomes before and after deliberation. This is not an ideal method, as there are important differences in the decision making processes of individuals and groups (Nunez et al., 2011), many of which have been investigated in the courtroom (e.g., Devine et al., 2001; Ellsworth, 1989; Kameda & Sugimori, 1993). As stated previously, the approach used in Experiment 1 was chosen based on feasibility alone. However, jury-level research is a critical step toward fully understanding the juror decision making process. The current study should be seen as an intermediary step between simple juror analyses and full jury analyses, and future research should build upon the findings of Experiment 1 by conducting a jury-level investigation of the race salience effect within attorney statements.

CHAPTER IV
EXPERIMENT 2

Method

Participants

As with Experiment 1, minimum sample size was determined for Experiment 2 with an *a priori* power analysis using G*Power 3.1.9 (Faul et al., 2009). To identify medium effect sizes at $\alpha = .05$ and power = .80, G*Power recommended a sample size of at least 128 participants.

Experiment 2 consisted of 170 jury-eligible White students at the University of North Dakota who participated in the study for credit toward completion of introductory-level psychology courses. Of these, three were excluded from analyses for not being U.S. citizens, seven were excluded from analyses for failing to respond to several items and ten were excluded for failing both manipulation checks. Thus, analyses for Experiment 2 included 150 participants ($M_{age} = 19.75$, $SD = 2.50$; 67.3% female; see Table 6 for full demographic information).

Participants were randomly assigned to a 2 (defendant race) x 2 (race salience) factorial design, with 39 participants in the Black Defendant, Race Salient condition, 40 participants in the White Defendant, Race Salient condition, 34 participants in the Black Defendant, Not Salient condition, and 37 participants in the Black Defendant, Not Salient condition.

Table 6

Participant Demographics, Experiment 2

Variable	Mean/Frequency (SD/%)
Age (18-45)	19.75 (2.50)
Sex (% Women)	101 (67.3%)
Strength of Religious Beliefs (1-7)	4.29 (1.93)
Political Orientation (1-7)	3.70 (1.45)
Served on a Jury? (% Yes)	2 (1.3%)
Been Victim of a Crime? (% Yes)	10 (6.7%)
Witnessed a Crime? (% Yes)	32 (21.3%)

Trial Simulation

The same basic trial transcript pilot tested and used with Experiment 1 (see Appendix A) was employed in Experiment 2. In addition to this transcript, Experiment 2 also included two pretrial publicity newspaper articles, one about the incident and one about the upcoming trial (partly based on Vitagliano, Yan, & Sgueglia, 2016; and WFTV Orlando, 2016; see Appendix I).

As with Experiment 1, once the core transcript was validated, an additional pilot study was conducted through MTurk ($N = 75$) in which the pretrial publicity materials were added to ensure that their inclusion did not alter the balanced verdict preference of the core transcript. Verdict preference remained balanced in this pilot study (48.6% guilty); in addition, verdict confidence ($M = 5.64$, $SD = 1.12$) and guilt ratings ($M = 4.26$, $SD = 1.89$) remained at similar levels to those found prior to adding the pretrial publicity materials.

Race Salience Manipulation

In Experiment 2, race was made salient through phrases included in the pretrial publicity newspaper articles. For participants in the Race Salient conditions, the title of the incident-relevant article included the term “interracial” in its description of the assault, and the defendant and victim were given demographic descriptors highlighting their racial groups (e.g., Jamal will be described as “an African-American male”). In the article about the upcoming trial, one sentence was added in the Race Salient conditions: “If my client was [White/Black] and the victim was [Black/White], rather than the other way around, we wouldn’t even be having this discussion.” Participants in the Not Salient conditions read the same articles with these statements omitted.

Measures and Procedure

In general, participants in Experiment 2 completed the same measures used and described in Experiment 1 above. Important differences about the procedure for Experiment 2 are described below.

Prior to arrival, each participant was randomly assigned to one of four conditions. As mentioned previously, Experiment 1 and 2 were conducted concurrently, and any timeslots with more than three participants were assigned to Experiment 1. Thus, each timeslot for Experiment 2 allowed a maximum of three participants at a time.

Prior to completing the study, all participants completed the MRS ($\alpha_{\text{Experiment2}} = .83$; Appendix E) and SDO scales ($\alpha_{\text{Experiment2}} = .91$; Appendix F) through a prescreen offered through UND’s Sona System website. After arriving, participants were seated at a computer desk where they completed the majority of the experiment. The experimenter provided participants with a statement of consent and basic instructions on completing the study and using the computer.

Participants completed the study materials at their own pace. Participants first read two pretrial publicity newspaper articles which served as the race salience manipulation (Appendix I). Then, participants read all components of the basic trial transcript (Appendix A) and completed the Juror Questionnaire (Appendix D) and the Post-Trial Questionnaire (Appendix G; see Table 7 for Experiment 2 descriptive statistics). Finally, participants were debriefed and given credit for their participation.

Table 7

Descriptive Statistics for Dependent Variables and Covariates, Experiment 2

Variable	Experiment 2
Guilt (1-7)	4.18 (1.23)
Verdict Choice (% Guilty)	74 (49.3%)
Sentence Length (years) ^a	7.00 (6.44)
Defendant Violence (1-9)	4.70 (1.79)
Defendant Aggressiveness (1-9)	5.11 (1.80)
Defense Case Strength (1-7)	4.31 (1.27)
Prosecution Case Strength (1-7)	4.18 (1.15)
Racial Motivation (1-7)	3.01 (1.78)
Modern Racism (1-5)	2.46 (.58)
Social Dominance Orientation (1-7)	2.54 (1.00)

^a: Sentence Length responses are only included for participants who reached a guilty verdict.

Results

Preliminary Analyses

As with Experiment 1, preliminary analyses were first conducted on the Experiment 2 data to ensure statistical assumptions, explore relationships between demographics and the DVs, and demonstrate the effectiveness of the race salience manipulations.

Skewness and kurtosis values for all variables except sentencing recommendation were less than +/- 1.96, indicating strong evidence for normally distributed data. In addition, all variables meeting the normality assumption also met the assumption of homogeneity of variance ($F_{\text{guilt}} = 1.95$; $F_{\text{violent}} = .13$; $F_{\text{aggressive}} = 2.61$; all *ns*). However, sentencing recommendations were outside of the acceptable range for normality (as identified in Field, 2013; skewness = 2.20, kurtosis = 6.33). To ensure normal distribution, a square root data transformation was performed on sentencing recommendations. This transformation led to a variable within the acceptable range for normality (skewness = .81, kurtosis = 1.05); the transformed variable also displayed homogeneity of variance ($F = .27$, *ns*).

Analyses were also conducted to ensure that demographic characteristics were equivalent across the four conditions. Results indicated that there were no significant differences across condition based on gender ($\chi^2[3] = 2.67$), age ($F[3,146] = 1.74$), strength of religious beliefs ($F[3,146] = .53$), or political orientation ($F[3,146] = .81$; all *ns*).

Next relationships between demographic characteristics and the dependent variables were investigated. No significant relationships were identified between the DVs and gender ($\chi^2_{\text{verdict}}[1] = 1.22$; $t_{\text{guilt}}[148] = -.68$; $t_{\text{sentence}}[148] = -.05$; $t_{\text{violent}}[148] = -1.00$, $t_{\text{aggressive}}[148] = -1.68$; all *ns*), age ($\beta_{\text{guilt}} = -.01$; $\beta_{\text{sentence}} = -.07$; $\beta_{\text{violent}} = .03$; $\beta_{\text{aggressive}} = .04$; all *ns*), strength of religious

beliefs ($\beta_{\text{guilt}} = .06$; $\beta_{\text{sentence}} = .08$; $\beta_{\text{violent}} = .08$; $\beta_{\text{aggressive}} = .13$; all *ns*), or political orientation ($\beta_{\text{guilt}} = -.04$; $\beta_{\text{sentence}} = -.03$; $\beta_{\text{violent}} = .09$; $\beta_{\text{aggressive}} = .05$; all *ns*).

Correlations were then calculated between the covariates and the dependent variables to identify any issues with multicollinearity. Results indicated that all correlations were at acceptable levels (highest $r = .50$; see Table 8 for all correlations).

Finally, a χ^2 analysis was conducted to ensure that the race salience manipulation was noticed by participants in the race salience conditions. Results indicated that there was a relationship between which race salience condition a participant was in and their ability to recall pretrial publicity statements about race ($\chi^2[1] = 22.31, p < .001$), with 40% of participants in the Race Salience conditions recalling statements about race compared to 5.6% of participants in the Not Salient conditions.

Main Analyses

To examine the hypotheses of Experiment 2, four 2 x 2 ANCOVAs were conducted with defendant race (White vs. Black) and race salience (Salient vs. Not Salient) entered as IVs; mean scores on modern racism and social dominance orientation and ratings of case strength for the defense and prosecution entered as covariates; and the four continuous dependent variables (guilt ratings, sentence length, defendant violent character rating, and defendant aggressiveness character rating) entered as DVs in separate analyses. As with Experiment 1, an interaction effect between the two IVs would indicate a race salience effect; specifically, it was expected that participants would give harsher ratings to Black compared to White defendants when race was not salient (Hypothesis 1) and that participants would give equalized ratings across defendant race when race was salient (Hypothesis 2).

Table 8

Correlations Among Covariates and Dependent Variables, Experiment 2

	1	2	3	4	5	6	7	8	9
1. Guilt	---								
2. Sentence Length	.14	---							
3. Verdict	.62**	N/A ^a	---						
4. Defendant Violence	.54**	.17	.47**	---					
5. Defendant Aggression	.53**	.23*	.42**	.81**	---				
6. Case of Defense	-.16	-.05	-.22**	-.09	-.07	---			
7. Case of Prosecution	.47**	.19	.50**	.39**	.36**	-.12	---		
8. Modern Racism	.12	-.14	.08	-.17*	-.18*	.06	.03	---	
9. Social Dominance Orientation	.02	-.11	.05	-.06	-.11	.02	-.03	.44**	---

Note: * = $p < .05$; ** = $p < .01$; ^a = Only guilty responses were used for sentence recommendation analyses, so no correlation can be calculated.

For the continuous guilt measure, a main effect of defendant race was identified, $F(1,142) = 4.75$, $p = .03$, $\eta_p^2 = .03$, such that Black defendants ($M = 3.95$, $SD = 1.18$) were considered less guilty than White defendants ($M = 4.40$, $SD = 1.25$). There was no main effect of race salience,

$F(1,142) = 2.29$, *ns*; the interaction between the IVs was also not significant, $F(1,142) = .06$, *ns*. Thus, the hypothesis regarding guilt ratings was not supported.

As with Experiment 1, analyses using sentencing recommendations were conducted only on participants who chose a guilty verdict ($N = 74$). There was no main effect of defendant race, $F(1,66) = .88$; no main effect of race salience, $F(1,66) = .01$; and no interaction effect, $F(1,66) = .20$ (all *ns*). Therefore, neither of the hypotheses for Experiment 2 were supported in relation to sentence length.

For ratings of the defendant's character as violent, a main effect of defendant race was identified, $F(1,142) = 4.90$, $p = .03$, $\eta_p^2 = .03$. Overall, Black defendants were rated as less violent ($M = 4.36$, $SD = 1.70$) compared to White defendants ($M = 5.03$, $SD = 1.81$). In addition, there was a main effect of race salience with marginal significance, $F(1,142) = 3.56$, $p = .06$, $\eta_p^2 = .02$; defendants were rated as less violent when race was not salient ($M = 4.48$, $SD = 1.76$) compared to when race was salient ($M = 4.90$, $SD = 1.80$). However, there was no interaction effect in support of the hypotheses, $F(1,142) = .00$, *ns*.

Results for defendant aggressiveness character ratings echoed those for defendant violence. There was a main effect of defendant race, $F(1,142) = 5.98$, $p = .02$, $\eta_p^2 = .04$; Black defendants were rated as less aggressive overall ($M = 4.73$, $SD = 1.77$) compared to White defendants ($M = 5.47$, $SD = 1.75$). There was also a marginal main effect of race salience, $F(1,142) = 3.43$, $p = .07$, $\eta_p^2 = .02$; defendants in cases where race was not salient were considered less aggressive ($M = 4.89$, $SD = 1.83$) than defendants in cases where race was salient ($M = 5.30$, $SD = 1.75$). Again, there was no interaction effect, $F(1,142) = .21$, *ns*, meaning that the overall hypotheses for Experiment 2 were not supported.

To test the hypotheses in Experiment 2 involving dichotomous DVs, two χ^2 analyses were conducted, one for each level of the race salience variable, with defendant race (White vs. Black) and dichotomous verdict choice (Guilty vs. Not Guilty) included in the analysis. I expected to find a significant χ^2 when race was not salient with evidence that Black defendants were more likely to be found guilty than not guilty (in support of Hypothesis 1) and a nonsignificant χ^2 when race was salient (in support of Hypothesis 2).

Similar to Experiment 1, the χ^2 results revealed an unexpected race salience effect. When race was not salient, defendant race had no relationship with verdict choice, $\chi^2(1) = .51, ns$. However, when race was salient, defendant race and verdict choice shared a relationship, $\chi^2(1) = 6.72, p = .01, \text{Cramer's } V = .21$. Also as in Experiment 1, the significant relationship was opposite to that found by Sommers and Ellsworth (2000), among others, with White defendants more likely to be found guilty than not guilty, and at nearly the same rate, Black defendants more likely to be found not guilty than guilty (see Table 9).

Table 9

Verdict Choice across Defendant Race when Race is Salient, Experiment 2

Condition	Black Defendant	White Defendant
Guilty	16 (41%)	28 (70%)
Not Guilty	23 (59%)	12 (30%)
Total	39 (100%)	40 (100%)

Because race salience led to unbalanced verdict choices for both Black and White defendants, either condition (Black vs. White defendant) could be driving the significant relationship identified by the χ^2 analysis. In other words, in comparison to when race was not

salient, making race salient may have caused participants to be less likely to convict Black defendants, more likely to convict White defendants, or both. To explore which of these options was driving the effect, a follow-up pair of χ^2 analyses were conducted, one for each level of defendant race, with race salience and verdict choice as the included variables. Results indicated that participants were equally likely to convict a Black defendant whether or not race was salient, $\chi^2(1) = .06, ns$. However, when the defendant was White, participants were more likely to convict him when race was salient than when it was not, $\chi^2(1) = 4.58, p = .03$. Therefore, the data suggest that the initial χ^2 results were driven by responses to the White defendant, not the Black defendant, and that White defendants are more likely than Black defendants to be found guilty when race is salient. Thus, the results of the χ^2 analyses contradict the predictions of this study as well as those found in previous investigations of the race salience effect (e.g., Sommers & Ellsworth, 2000; 2001; Cohn et al., 2009).

Experiment 2 Discussion

As with attorney statements in Experiment 1, the findings of Experiment 2 provide limited support of a race salience effect when induced through pretrial publicity, although the effect was not in the predicted direction. Across all four continuous trial outcome measures, the expected interaction denoting a race salience effect failed to materialize. In contrast, responses to the dichotomous verdict choice did reveal an effect. When race was salient in pretrial publicity, participants were more likely to convict the White defendant compared to the Black defendant, but when race was not salient, participants convicted the defendant equally across race.

Experiment 2 serves as the first investigation of the race salience effect in pretrial publicity. It was predicted that pretrial publicity would successfully create a race salience effect based on the persistence of other pretrial publicity effects through a trial (Stebly et al., 1999)

and the suggestive findings of Fein et al. (1997) in which a Black defendant's race was highlighted or ignored within pretrial publicity. As expected, the salience of race to the case led to differential treatment for the Black and White defendant when participants made their final verdict choice. Therefore, on the surface, Experiment 2 provides evidence that race salience can effectively alter trial outcomes when induced through pretrial publicity. Given the pervasiveness of pretrial publicity in contemporary society (Stebly et al., 1999), the current study serves as an important extension of the race salience literature.

This finding is qualified in two important ways. First, rather than eliminating the ingroup favoritism displayed when race was not salient, it was making race salient that led to imbalanced verdicts in the current study by fostering outgroup favoritism. Although still a race salience effect, it is in contrast to that found in most previous research (e.g., Cohn et al., 2009; Sommers & Ellsworth, 2000) as well as the predictions of Experiment 2. However, these findings are congruent with more recent race salience research, such as the findings of Experiment 1 and those of Bucolo and Cohn (2010). Still, because the effect found in Experiment 2 differs sharply from the original effect, combining the results of the current study with past race salience research must be done cautiously and with awareness that the effects are not identical.

Second, no race salience effects were found for any of the four continuous trial outcome measures. Although similar to the results found in Experiment 1, these findings stand in contrast to what is typically found in the race salience literature, where the effect is usually strongest within continuous measures such as guilt and character ratings and weakest within categorical verdict choices (e.g., Sommers & Ellsworth, 2001). This is particularly surprising given the strong correlations between verdict choice and the other dependent variables. A statistical explanation for this may be that, given the small effect size identified for verdict choice, power

for the continuous measure analyses was too low to detect group differences. An a priori power analysis for the ANOVAs in Experiment 2, specifically targeting effects of the size found for verdict choice in the current study, indicated that a sample size of 259 would be necessary to adequately test the hypotheses. Using the same parameters with χ^2 , a sample size of 178 is necessary. As Experiment 2 included only 150 participants, it is possible that the interaction effects found for verdict choice are also found within the continuous trial outcome measures, but the current study was not powerful enough to detect those effects. Given the relatively small effect size found in this study and in most recent race salience literature (Bucolo & Cohn, 2010; Cohn et al., 2009), future researchers should consider conducting a priori power analyses with the ability to detect small effects, particularly when using a manipulation such as pretrial publicity.

The current study also highlights the potential power held by those within news media. Of course, those in the media should not be attempting to influence the outcome of a trial in either direction, regardless of whether race is salient to the case. Even so, these findings suggest that the newspaper columnist, TV personality, and political commentator can influence the outcome of an interracial trial simply by pointing out the relevance of race to the case, particularly when the defendant is White. In instances where a racial component is actually present, those in news media can play a positive role in ensuring that the role of race and racism in a criminal case is not ignored, even if those within the trial ignore it completely.

On the other hand, those in the media have the potential to exploit their position of power. For instance, pretrial publicity can easily inject racially charged undertones into cases where race is not actually relevant to a case. By injecting race into a case where it does not belong, news media can potentially bias jurors toward guilty verdicts, even if race is never

mentioned in the actual case. For example, if read by itself, the trial transcript of the current study does not appear race-based; in fact, several pilot studies were conducted with the intent of creating a balanced, unbiased transcript. However, once the racially charged pretrial publicity materials were included, mock jurors incorporated it into their decision making processes and a race salience effect was found. Conversely, news media can also alter trial outcomes by purposefully ignoring the role of race in a case with a White defendant. In this manner, the media can swing jurors away from guilty verdicts by intentionally avoiding the defendant's racial biases and motives. In response to this power, and their collective potential to exploit it to influence criminal trials, those in the media should be cognizant when invoking racial aspects in a pretrial publicity piece. Writers should ask themselves why they are reporting the crime in a racial manner, and editors should consider the intentions and potential biases of their writers.

In the courtroom, judges and lawyers can take steps to try alleviating any influence that racially charged pretrial publicity may have had on jurors, particularly when the defendant is White. Judges should take into account the amount and intensity of race salient publicity when considering a change of venue; they should also consider making a specific point of instructing jurors to disregard racially charged publicity in cases where that publicity is factually inaccurate. For their part, when the publicity is particularly invasive, lawyers may make a point to counter the race-based publicity within their statements, or through the use of character witnesses. None of these steps were taken within the current study to explore whether a challenge to race salience would alter or undo the effects of a race salience manipulation, but future research would do well to investigate this interaction to see what effects a race salience challenge might have on jurors' verdict choice.

As with Experiment 1, there were limitations unique to Experiment 2. First, unlike in Experiment 1, mock jurors in Experiment 2 never convened as a jury or deliberated the case with others. The lack of jury-level data is a pervasive limitation of courtroom decision making research in general (Nunez et al., 2011), and jury research is critically absent within the race salience literature specifically. By investigating only the individual, the current study ignores the plethora of potential effects that jury deliberation may add to the decision making process, such as social loafing (Latane et al., 1979), groupthink (Mullen et al., 1994), and in some cases, higher attention to case details (Nunez et al., 2011). It is undeniable that the ideal experiment would reflect the jury scenario present in actual criminal trials. However, with the number of juries necessary to ensure adequate power, and the amount of time it takes to collect all of these juries, jury research is heavy in resource requirements. As an alternative, Wiener, Krauss, and Lieberman (2011) recommend conducting initial courtroom research using more basic paradigms and only moving to intensive jury research once the initial findings suggest it is worth the effort. In that vein, the current study serves as an important first step in identifying the effects of race salience within pretrial publicity. Future research should build upon these initial findings and, only after consistent patterns and effects have been established, eventually culminate with a community sample jury study.

A second limitation of Experiment 2 is that the race salience manipulations used within the pretrial publicity materials were partly quotes made by the defense attorney. In other words, the manipulations used in Experiments 1 and 2 overlap in some ways. Because of this, some of the similar effects noted across the two experiments may be due to this overlap. However, it is worth noting that the effective race salience manipulations from Experiment 1 always involved a manipulation placed within closing arguments, suggesting that an early race salience

manipulation was not effective in that case. In contrast, the race salience manipulation in Experiment 2 was presented at the very beginning of the study, prior to any actual materials from the trial. In other words, the similar effects between the two experiments are for the closing arguments of Experiment 1, presented at the end of the trial, and the pretrial publicity of Experiment 2, presented before the trial materials. Because of this, the recency effects that seem to explain the findings of Experiment 1 are not applicable to Experiment 2. Rather, the effects in this study are more likely due to the particularly pervasive nature of pretrial publicity; the capacity for pretrial publicity to affect trial outcomes has been established both empirically (Stebly et al., 1999; Studebaker & Penrod, 1997) and in actual court cases (e.g., *Sheppard v. Maxwell*, 1966).

Thus, the manipulations across the two experiments appear to be distinct and should not be interpreted as identical effects. Even so, future research may wish to investigate race salience within pretrial publicity using manipulations other than attorney quotes. For example, articles could highlight statements quoted from a video recording of the incident, or previous comments posted on social media, or statements made by civil organizations (such as ACLU or NAACP) in regards to the case.

CHAPTER V

GENERAL DISCUSSION

The purpose of this dissertation was to explore whether previous research on the race salience effect could be generalized in an effort to better understand the effect's applicability to real world trials. This investigation was conducted in two ways. First, given the lack of manipulations examined in the past, the current studies sought to test two new methodologies of making race salient: attorney statements (Experiment 1) and pretrial publicity (Experiment 2). Although attorney statements had been investigated in one past study (Bucolo & Cohn, 2010), Experiment 1 marked the first attempt at understanding the unique impact of each statement in isolation. Second, given the lack of jury-level research on the race salience effect, and the importance of this type of research to any courtroom phenomenon (Nunez et al., 2011), Experiment 1 investigated the role of jury deliberation on a race salience effect implemented through attorney statements.

A Generalized Race Salience Effect

With respect to the first goal, the current studies indicate mixed support for a broad race salience effect. In both experiments, a race salience effect was identified within mock jurors' final verdict choice. Experiment 1 found this effect when race was made salient in both attorney statements and when race was salient in closing arguments alone, but no effect was identified when the manipulation was implemented through opening statements alone. Given the length of the trial used in the current studies, mock jurors in Experiment 1 potentially relied on recency

effects when choosing a verdict (Murdock, 1962), which would explain why the manipulation was only effective within closing arguments. Experiment 2 found support for a race salience effect in pretrial publicity, a medium known to have persistent effects on juror decision making in other realms (Stebly et al., 1999). Both of these studies expand the known limits of the race salience effect by identifying common aspects of a criminal trial where a manipulation can be effectively implemented.

On the other hand, no race salience effect was found for sentencing recommendations, guilt ratings, or ratings of aspects of the defendant's character, each of which have found a race salience effect in past research (Sommers & Ellsworth, 2000; 2001). Thus, the current studies can only claim partial support for a broader race salience effect. However, there are several explanations as to why the current studies failed to find evidence of the race salience effect for the continuous measures. First, given the small effect sizes identified for verdict preference, the current studies may not have had enough statistical power to detect an interaction within the continuous variables. Using the average effect size across all significant race salience effects, a sample size of 547 for Experiment 1 and 393 for Experiment 2 would have been necessary to ensure adequate power for the continuous analyses, according to G*Power (Faul et al., 2009).

A second explanation for these null results may be that interaction effects were difficult to identify due to the overwhelming role that defendant race played in the current studies. Across both experiments, in all race salience conditions, and for nearly every trial outcome, the White defendant received harsher judgments compared to the Black defendant. In each case, the effect of defendant race was stronger than any other relationship in the model. Thus, some potential race salience effects may have been overshadowed by mock jurors' general tendency to display outgroup favoritism in Experiment 1.

Evidence for a Changing Race Salience Effect

Related to the bias against the White defendant is that although a race salience effect was achieved in both of the current studies, it was markedly different from how the effect is traditionally defined. According to Sommers and Ellsworth (2000), the race salience effect refers to a bias against Black defendants that is quelled when race is made salient to the case. This definition was supported by their research and several subsequent studies (Cohn et al., 2009; Sommers & Ellsworth, 2001). However, the effect found in the current studies was that reported by Bucolo and Cohn (2010), in which equal outcomes for Black and White defendants are unbalanced when race is made salient, and the imbalance identified is a bias against White defendants.

In some ways, these two effects are similar. After all, the direction of the effect is the same, with ingroup favoritism and outgroup derogation decreasing. The racial target driving the effect is also the same; as in Sommers and Ellsworth's (2000) initial study, the race salience effects identified in the current studies were primarily caused by more negative outcomes for the White defendant, not by more positive outcomes for the Black defendant. If this is the case, then the current studies provide evidence (along with Bucolo & Cohn, 2010) that the same race salience effect found in the literature can be created through attorney statements and through pretrial publicity.

Furthermore, if the nature of the effect remains the same, the current studies suggest that the initial starting point for White defendants has shifted to be equivalent to that of Black defendants in an interracial crime, and that because White defendants receive equal treatment without a race salience manipulation, the effect now creates an anti-White bias. The aversive racism literature supports this interpretation, as research indicates outgroup favoritism under

racially salient conditions (e.g., Dovidio & Gaertner, 2000); some researchers have even suggested that showing leniency toward outgroup defendants (compared to ingroup defendants) allows mock jurors a chance to prove to others that they are not prejudiced (Braun & Gollwitzer, 2012). More generally, self-reported explicitly racist attitudes have steadily declined, even since the initial race salience studies were conducted (see, e.g., Drakulich, 2015; Durrheim, Greener, & Whitehead, 2015; Smith, Marsden, Hout, & Kim, 1972-2014). In contemporary society, mock jurors may be more likely than ever to believe themselves to be nonracist and to be motivated to avoid any situations or actions that would indicate any form of racism. Thus, it is possible that the simple fact of an interracial crime is enough to make race salient to mock jurors, activating the processes underlying aversive racism and equalizing trial outcomes across defendant race. By further highlighting the racial nature of the crime, race saliency exacerbates the effect, causing White jurors to display outgroup favoritism.

One alternative explanation for the race salience effects identified in the current studies is that the subjective nature of attorney statements and pretrial publicity led mock jurors to distrust a racially motivated anti-White crime. In the current studies, no actual evidence was presented to indicate that anyone involved in the case was motivated by race; rather, it was either the defense attorney (Experiment 1) or a newspaper article (Experiment 2) who did so. In the real world, both of these actors play a role in which subjectivity and opinion plays a significant part. Defense attorneys are motivated to help their clients and news sources are motivated by the need for readers; in both instances, making race salient may be beneficial to their goals, even if race is not actually relevant to the case. Furthermore, research indicates that the public harbors distrust for both news media (Swift, 2016) and lawyers (Fiske & Dupree, 2014). Given these considerations as well as the relatively low number of racially charged crimes committed against

White individuals (FBI, 2016a), mock jurors in the current studies may not have believed the race salience manipulations when the defendant was Black, causing the manipulation to only increase negative outcomes in the more believable case involving a White defendant.

Regardless of which explanation best fits the data, the current studies suggest that the race salience effect has changed, either in general or specifically when implemented through attorney statements and pretrial publicity. To better understand this changing effect, future research should replicate the initial studies on the race salience effect in which the manipulation occurred through eyewitness statements (Sommers & Ellsworth, 2000; 2001). If the same outgroup favoritism effect is identified, this would provide evidence that the race salience effect in general has shifted along with the public's overt racism. On the other hand, if the initial findings persist, then the current studies suggest that manipulations of race salience through attorney statements and pretrial publicity lead to an effect that is unique from that found in other situations.

Jury Deliberation and the Race Salience Effect

The second goal of this dissertation was to explore whether any race salience effects identified in Experiment 1 persisted following jury deliberation. Unfortunately, the pre-deliberation phase of Experiment 1 identified only one race salience effect within mock jurors' verdict choice. No other outcome variables displayed the interaction effect indicative of a true race salience effect. Therefore, instead of several variables through which to test the effects of jury deliberation, only verdict choice could be used to test the original post-deliberation hypotheses. For this outcome, the race salience effect identified before deliberation was negated following deliberation; the White and Black defendant were treated similarly regardless of whether mock jurors received a manipulation in opening statements, closing arguments, both, or

neither. In other words, once mock jurors were given the chance to discuss the trial amongst themselves, race salience's role in the decision making process was overruled by other, more important factors to the case.

By a large margin, Experiment 1 suggests that the most important factor for mock jurors following deliberation was the race of the defendant. At the post-deliberation phase, mock jurors believed that, compared to the Black defendant, the White defendant was guiltier, more violent, and more aggressive, and that the White defendant should be convicted at a higher rate and given a longer sentence than the Black defendant. Although defendant race was a strong predictor prior to deliberation (as well as in Experiment 2), the deliberative process seems to have exacerbated its impact, as the relationships between every variable and defendant race were stronger following deliberation than they had been prior. Even more telling is that for verdict choice, the only significant interaction was between defendant race and time. Compared to pre-deliberation rates, the White defendant was more likely to be found guilty following deliberation. On the other hand, the Black defendant was convicted at the same rate before and after deliberation.

This is an interesting finding, given that past research on the effects of jury deliberation on trial outcomes based on defendant race typically find that White jurors display an ingroup leniency bias (Lynch & Haney, 2009), particularly if the jury consists entirely of White jurors (Bell & Lynch, 2015; Sommers, 2006). Furthermore, when assessing interracial crimes in particular, Lynch and Haney (2009) found that juries were more likely to assign the death penalty to Black defendants compared to White defendants. The divergence of Experiment 1 from previous research may be due to differences in the defendant's perceived guilt. In the Lynch and Haney (2009) study, for example, jurors specifically took part in the sentencing phase of a case, meaning that the defendant had already been found guilty. In Experiment 1, jurors

were not told whether the defendant was guilty; in fact, pilot studies were conducted with the intent of ensuring that the defendant's guilt was ambiguous. Building on this, perhaps the combination of ambiguous guilt and an interracial crime was enough to create a race salience effect that pervaded all conditions. When the defendant was Black, mock jurors may have feared that reaching a guilty verdict would be construed as racist since the evidence did not clearly indicate guilt. Conversely, when the defendant was White, mock jurors may have been afraid of displaying ingroup favoritism and thus chose a guilty verdict to avoid appearing biased.

Regardless, the exacerbating role of deliberations on defendant race, along with the lack of significant race salience effects at the pre-deliberation stage, make it difficult to draw definitive conclusions about the persistence of race salience effects following jury deliberation. More jury-level race salience research is needed to understand whether the trends identified in the current studies are indicative of a larger trend for the race salience effect. This future research should take the limitations of Experiment 1 into consideration in their designs by using a larger sample size, by using more trial outcome measures, and by considering the large role played by defendant race across condition.

Limitations and Future Directions

Several limitations of this dissertation apply to both experiments. First, the samples used in the current studies were drawn from undergraduate psychology majors at the University of North Dakota, a public university in the upper Midwest United States. Along with possible limitations associated with demographic characteristics unique to this geographical area (see Rentfrow et al., 2013), the more important issue is that the current studies used a college-aged convenience sample rather than a community sample or an actual jury pool. Several researchers have questioned the validity or accuracy of jury research when conducted using student samples

(Diamond, 1997; Wiener et al., 2011), and some previous research has identified sample differences. For example, Mitchell et al. (2005) noted that sample type moderated sentencing across race, such that community samples displayed racial ingroup favoritism at a higher rate than student samples. Given the effects under investigation in the current studies, Mitchell et al.'s (2005) findings are particularly relevant, and the differences between student samples and community samples should be considered when interpreting the results of this dissertation. However, other researchers have noted inconsistent or null effects of sample type in jury research (Nunez et al., 2011). For example, in two meta-analyses conducted nearly 20 years apart (Bornstein, 1999; Bornstein et al., 2017), Bornstein and his colleagues have found few differences across samples for a wide variety of trial outcomes, including guilt ratings, verdicts, and sentencing recommendations. Thus, the use of student samples in the current studies is not cause to dismiss the findings as irrelevant to real world jurors or juries.

A second limitation of this dissertation is the type of crime used in the trial simulation. Past research has established that the decision making process for jurors and juries varies as a function of the type of crime being considered. For example, crime severity, crime target (property vs. person), and type of crime (blue collar vs. white collar) have all been shown to influence the decision making process (Leiber & Fox, 2005; Walker & Woody, 2011). Furthermore, crime type and defendant race are known to interact, with Black defendants receiving harsher punishment for blue collar (Dixon, Mahoney, & Cocks, 2002) and violent crimes, and White defendants receiving harsher punishment for financial and white collar crimes (Mazzella & Feingold, 1994). This issue is particularly concerning for the race salience literature, as all published research (and this dissertation) has investigated the effect in the context of a violent crime (physical assault: Bucolo & Cohn, 2010, Sommers & Ellsworth, 2000,

2001, Thomas & Balmer, 2007; homicide: Cohn et al., 2009; sexual assault: Sommers, 2006). To further establish the existence of a general race salience effect, future research should expand beyond violent crimes and use trial simulations with other common crimes, such as larceny, grand theft auto (FBI, 2016b), fraud, and embezzlement (Barnett, n.d.).

A final limitation is that the manipulations and trial transcript used in the current study were created specifically for this dissertation and, therefore, differ significantly from materials used in previous investigations of race salience. New materials were created based on the lack of race salience materials specifically created for pretrial publicity or attorney statements and based on personal communication with Samuel Sommers (February 27, 2015), in which he stated that recent projects utilizing his original materials were finding null effects. Because the materials used in this dissertation diverge from those used in the past, some differences in effects may be due to the materials themselves. However, there are also advantages to these new materials. For instance, as opposed to most race salience manipulations (e.g., Sommers & Ellsworth, 2000; 2001), the trial transcript of this study was lengthy and, for the most part, unrelated to the race salience manipulation. By structuring the transcript in this manner, the current studies are a more accurate representation of real court cases. In an actual case, a race salience effect would not likely be the focal point of the case; instead, it may be mentioned in passing, or only in relation to one piece of evidence, while the rest of the trial highlights other parts of the case. The trial transcript created for this dissertation mirrors those considerations, with just two of the 24 transcript pages mentioning the salience of race at all. For future researchers, this transcript should also prove beneficial. The transcript was pilot tested several times to ensure that the defendant's guilt was ambiguous before the addition of any race salience manipulations.

Therefore, future researchers can take this transcript and use it to test other manipulations with some assurance that any deviations from ambiguous guilt are due to the manipulation.

Conclusion

This dissertation fills gaps in the race salience literature by exploring new manipulations of the effect and examining the persistence of the effect following jury deliberation. By identifying a race salience effect in closing arguments and in pretrial publicity, the current studies suggest that race salience has broad application to courtroom settings and juror decision making. Furthermore, the failure to find post-deliberation race salience effects in Experiment 1 provides some evidence that the deliberative process does not create new effects and may undo effects that existed before deliberation. The current studies also uncovered several unexpected findings. For example, both of the current studies found a race salience effect different than that found in the majority of previous research. The outgroup favoritism effects identified in this dissertation (and by Bucolo & Cohn, 2010) suggest that the dynamics of the race salience effect may be changing along with self-reported public racial attitudes. Finally, mock jurors in the current studies had strong reactions to defendant race in isolation from race salience, indicating that a race salience effect may be created simply through the crime being interracial in nature. Future research should continue to explore the race salience effect in order to further establish the generalizability of the effect and better understand the direction and structure of the effect itself.

APPENDICES

Appendix A

Core Trial Transcript

Note: Elements of the materials that differ across Defendant Race condition are noted in brackets.

**STATE OF MINNESOTA
IN THE EIGHTH CIRCUIT DISTRICT COURT**

Trial No. 83-0992

Plaintiffs:

[SCOTT WILSON/JAMAL HOWARD]: [23/25] year-old [White/Black] male, [5'11"/6'1"], [190 lbs./185 lbs.], student

PEOPLE OF THE STATE OF MINNESOTA

vs.

Defendant:

[JAMAL HOWARD/SCOTT WILSON]: [25/23] year-old [Black/White] male, [6'1"/5'11"], [185 lbs./190 lbs.], student

PRETRIAL ORDER

1. The defendant is charged with the crime of Assault with a Deadly Weapon. That crime is defined as the intentional use of force against another person committed with an object used in a way likely to cause death or serious bodily harm.

2. The defense of Self-Defense provides that: A person may use as much force against another person as he or she reasonably believes is necessary to prevent the immediate use of unlawful force against himself.

3. The prosecution has the burden of proof on both of the above issues. The defendant should not be convicted unless there is evidence which proves beyond a reasonable doubt that the defendant committed the crime charged. If there is any evidence that the defendant was acting in self-defense, he should not be convicted unless the prosecution proves beyond a reasonable doubt that the defendant did not act in self-defense as defined in paragraph 2.

Dated: _____

SAMUEL HARRIS, Circuit Judge

PRETRIAL INSTRUCTIONS BY JUDGE HARRIS

Ladies and gentlemen, I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial, I will give you further instructions. Unless I specifically tell you otherwise, all such instructions – both those I give you now and those I give you later – are equally binding on you and must be followed.

This is a criminal case, brought against the defendant by the State of Minnesota. The defendant is charged with assault with a deadly weapon. It will be your duty to decide from the evidence whether the defendant is guilty or not guilty of the crime charged. From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts, but you must follow my instructions, whether you agree with them or not. You have taken an oath to do so.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

Finally, please remember that only this defendant, not anyone else, is on trial here, and that this defendant is on trial only for the crime charged, not for anything else.

ELEMENTS OF THE OFFENSE (GIVEN BY JUDGE HARRIS)

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crime charged, which the prosecution must prove beyond a reasonable doubt to make its case:

One, the defendant did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person;

Two, the defendant did that act willingly;

Three, when the defendant acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would directly and probably result in the application of force to someone;

Four, when the defendant acted, he had the present ability to apply force with a deadly weapon to a person; and

Five, the defendant did not act in self-defense.

At the end of the trial, I will give you a final instruction on these matters. If there is any difference between what I just told you, and what I tell you in the instructions I give you at the end of the trial, the instructions given at the end of the trial must govern you.

FURTHER INSTRUCTIONS PROVIDED BY THE COURT

Reasonable Doubt

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all doubt.

Evidence

Evidence includes the statements of witnesses, documents and other things received as exhibits, and any facts that have been stipulated – that is, facts formally agreed to by both parties.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between them, and you should give all evidence the weight and value you believe it is entitled to receive.

Deadly Weapon

A *deadly weapon* is defined as any object, instrument, or weapon that is inherently deadly or dangerous, or one that is used in such a way that it is capable of causing and likely to cause death or great bodily harm.

Use of Self-Defense as Justification

If a person reasonably believes that force is necessary to protect himself from what he reasonably believes to be unlawful physical harm about to be inflicted by another and uses such force, then he acted in self-defense.

Credibility of Witnesses

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony of any witness to believe, consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the general reasonableness of the testimony, and the extent to which the testimony is consistent with other evidence that you believe.

Note on Transcripts and Note Taking

At the end of the trial, you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult. You must pay close attention to the testimony as it is given.

STATEMENT OF [SCOTT WILSON/JAMAL HOWARD] (PROSECUTION WITNESS)

I, *[Scott Wilson/Jamal Howard]*, state:

My name is *[Scott Wilson/Jamal Howard]*. I'm a student at the University of Minnesota. On June 4, at nearly 9:30 p.m., my date, Connie Cook, and I went to Melanie's Bar in Minneapolis, Minnesota. When we arrived, Connie and I sat at the bar. At the time, the seats were unoccupied.

I bought two beers --- one for each of us --- and we began to drink. After a few sips, I noticed *[Jamal Howard/Scott Wilson]* and Tanya Morgan several feet to my left. In an angry voice, *[Jamal/Scott]* said, "Beat it! Go sit somewhere else, this is my spot!"

I pointed to a nearby stool and said, "There's your spot, jackass; go sit over there," but Jamal wouldn't move out of the way. Finally, I pushed him away, not very hard and without intending to push him down or harm him. *[Jamal/Scott]* must have tripped because he fell on the floor. I then turned toward *[Jamal/Scott]* and said something to the effect that *[Jamal/Scott]* should go away and leave me alone. I can't remember my exact words because I was upset at the time, but I did not threaten *[Jamal/Scott]* or imply that I meant to hurt him then or later.

I finished my drink and though I wanted to have another, I agreed with Connie's suggestion that we leave and go to her house. Eager to spend some time alone with Connie, I hurried through the bar toward the front door. I did not know that *[Jamal/Scott]* was still on the premises and was not even thinking about the incident with *[Jamal/Scott]* at the time.

When I was about 15 feet from the door, I pulled out my black wallet to see if I had enough money to buy a pizza to take to Connie's house. Although I did have my pocket knife on me, I did not pull it out and it was in a different pocket than my wallet. I was still looking in my wallet when I got to within two steps of the door.

The next thing I remember was waking up in a bed in the hospital.

Dated: _____

Scott Wilson

STATEMENT OF RICHARD CERVANTES (PROSECUTION WITNESS)

I, Richard Cervantes, state:

My name is Richard Cervantes. I'm a bartender at Melanie's Bar in Minneapolis, Minnesota. At about 9:45 p.m. on June 4, I was standing at the bar, serving, when I saw [*Jamal Howard/Scott Wilson*] and Tanya Morgan walk from the other side of the bar to the water fountain, where [*Jamal/Scott*] began washing his hand. [*Jamal/Scott*] got mad and said, "Just leave me alone," or, "Just let it alone."

A few moments later, [*Scott Wilson/Jamal Howard*] walked past me toward the front door. Then, [*Scott/Jamal*] pulled something out of his back pocket. I was serving someone at the time, so I did not clearly see what [*Scott/Jamal*] was holding. After [*Scott/Jamal*] walked past me, I continued serving the other patrons of the bar. I looked up in time to see [*Jamal/Scott*] hit [*Scott/Jamal*] across the face with a piece of wood that usually sits on the windowsill. The wood is used to prop the window open on hot days. [*Scott/Jamal*] groaned and fell to the floor. He wasn't moving.

When [*Scott/Jamal*] was hit, Connie Cook was a few feet behind him. For a few seconds, she just stood there; [*Jamal/Scott*] stood with the stick in his hands --- nobody moved. It all happened so fast that at first it was as if they were in suspended animation. Then Connie ran to [*Scott's/Jamal's*] side. [*Jamal/Scott*] dropped the piece of wood and ran out the door. I ran from behind the bar after [*Jamal/Scott*].

[*Jamal/Scott*] ran alongside the building towards the rear, but seemed unsure of where he should go. His hesitation allowed me to catch up with him. I grabbed him by the arm and said, "Why did you do that? Why'd you hit him like that?" [*Jamal/Scott*] replied, "I had to man, I just had to." I remember this clearly. I took [*Jamal/Scott*] back to the bar where I called the police.

This is the first time there has been trouble since I've been bartending at Melanie's Bar.

Dated: _____

Richard Cervantes

STATEMENT OF CONNIE COOK (PROSECUTION WITNESS)

I, Connie Cook, state:

My name is Connie Cook. I'm a student at the University of Minnesota, where I recently met [*Scott Wilson/Jamal Howard*].

On June 4, [Scott/Jamal] came by my house in the evening, and the two of us went to Melanie's Bar in Minneapolis, Minnesota. This was our first date. When we arrived at the bar, [Scott/Jamal] said, "Hey, let's get a drink," and we immediately sat down at two unoccupied stools at the bar.

[Scott/Jamal] bought me a beer, and we began to drink together. Suddenly, [Jamal Howard/Scott Wilson] stomped over, followed by Tanya Morgan, and began yelling at [Scott/Jamal] to, "Beat it!" and, "Get away from my seat!" [Scott/Jamal] ignored him and started drinking his drink again, but [Jamal/Scott] tried to shoulder him away from his stool anyway. When [Jamal/Scott] shouldered [Scott/Jamal], [Scott/Jamal] spilled some of his drink onto the bar. [Scott/Jamal] pushed [Jamal/Scott] back, and [Jamal/Scott] took a couple of steps backwards, then seemed to trip over his own feet, falling on the floor.

[Scott/Jamal] said to [Jamal/Scott], "Now buzz off; I don't want to see you around here bothering me anymore." [Jamal/Scott] and Tanya left the area, and we finished our drinks. I suggested that we leave and asked [Scott/Jamal] to take me home.

[Scott/Jamal] agreed and walked quickly toward the front door. Suddenly, when [Scott/Jamal] was six or seven feet from the door, I saw [Jamal/Scott] poised to strike with the piece of wood. [Scott/Jamal] didn't seem to notice and kept walking toward the door. When [Scott/Jamal] was almost to the door, [Jamal/Scott] stepped towards him and then hit him with the piece of wood.

It happened so fast that I did not have a chance to warn [Scott/Jamal]. [Scott/Jamal] fell to the ground and was bleeding and moaning, and [Jamal/Scott] ran out the door. I tried to revive [Scott/Jamal], but he remained unconscious. Shortly thereafter, I saw Richard Cervantes come back into the bar holding [Jamal/Scott] by the arm.

Dated: _____

Connie Cook

STATEMENT OF [JAMAL HOWARD/SCOTT WILSON] (DEFENDANT)

I, [Jamal Howard/Scott Wilson], state:

My name is [Jamal Howard/Scott Wilson]. I'm a student at the University of Minnesota. On June 4 at about 9:30 p.m., I was having a drink at Melanie's Bar in Minneapolis, Minnesota. I had waited for over an hour to grab two stools in the bar area. Tanya Morgan was with me. This was our first date.

Tanya and I were both out of cash, so we went to the ATM to get some more money. When we returned, [Scott Wilson/Jamal Howard] and Connie Cook were sitting in our seats. I told [Scott/Jamal] that I was sitting there and had left for a moment to get some money. I suggested that [Scott/Jamal] sit at a table along the wall instead, but [Scott/Jamal] refused to let me have our seats back and said, sarcastically, that I should go sit in a broken stool with beer spilled on it.

When I attempted to sit in the stool again, [Scott/Jamal] shoved me down on the floor, causing me to sprain my wrist and scrape my hand. [Scott/Jamal] then tried to come toward me

to fight with me but was restrained by Tanya and Connie. *[Scott/Jamal]* scowled and said, "If I see you again, I'll mess you up!" Then he went back to drinking his beer.

I got up and went with Tanya to the water fountain near the front door. I was cleaning my cut hand in the fountain when I saw *[Scott/Jamal]* coming at me fast. *[Scott/Jamal]* had what looked like a knife in his hand and appeared to be ready to use it. Feeling helpless with my right wrist sprained, and remembering that *[Scott/Jamal]* had promised to hurt me if he saw me again, I grabbed the first thing I could find to defend myself --- a piece of wood on the windowsill next to me. When *[Scott/Jamal]* was almost close enough to stab me or to jump on me, I, in desperation, swung the wood and hit *[Scott/Jamal]*. I dropped the wood and, afraid that *[Scott/Jamal]* still might come after me, ran out the door.

A few seconds later, I looked back and saw Richard Cervantes running behind me. I stopped and Richard grabbed me. Richard asked me why I had hit *[Scott/Jamal]* and I replied, "I just had to," meaning that it was the only way I had to defend myself.

Dated: _____

Jamal Howard

STATEMENT OF TANYA MORGAN (DEFENSE WITNESS)

I, Tanya Morgan, state:

My name is Tanya Morgan. I'm a student at the University of Minnesota. On June 4, *[Jamal Howard/Scott Wilson]* asked me out. He picked me up at 9:00 p.m. and took me to Melanie's Bar in Minneapolis, Minnesota.

After a wait, *[Jamal/Scott]* and I sat at the bar and had a drink. After finishing our drinks, *[Jamal/Scott]* said he would like to buy me another, but he was out of cash. We went to the ATM to get some cash. When we got back, *[Scott Wilson/Jamal Howard]* and Connie Cook had taken our seats. *[Jamal/Scott]* told *[Scott/Jamal]* that he and I just went to get some cash, and that *[Scott/Jamal]* should go sit something else.

[Scott/Jamal] got mad and pushed *[Jamal/Scott]* down. *[Jamal/Scott]* landed on his hand and looked hurt. *[Scott/Jamal]* started to come after *[Jamal/Scott]* but I grabbed his arm to hold him back. Connie Cook might have grabbed *[Scott's/Jamal's]* other arm, but I'm not sure. *[Scott/Jamal]* said to *[Jamal/Scott]*, "If I see you again, I'll beat you up!"

I helped *[Jamal/Scott]* up, and the two of us walked over to the fountain to clean up his hand. As we were washing *[Jamal's/Scott's]* scrape, I saw *[Scott/Jamal]* coming towards us angrily. There was something in his hand.

[Jamal/Scott] picked up a piece of wood from the windowsill, and when *[Scott/Jamal]* was about to jump him, *[Jamal/Scott]* hit him with it. *[Scott/Jamal]* fell on the floor, and *[Jamal/Scott]* ran outside. Richard Cervantes chased after him.

I called an ambulance and when I returned, Richard had *[Jamal/Scott]* by the arm and was leading him back into the bar.

Dated: _____

Tanya Morgan

STATEMENT OF JACLYN BARDIE (DEFENSE WITNESS)

I, Jaclyn Bardie, state:

My name is Jaclyn Bardie. I'm a student at the University of Minnesota. I had dated *[Jamal Howard/Scott Wilson]* on several occasions before the bar incident. I thought he was quiet; I would have gone out with him again, but he stopped calling.

On June 4 at about 8:30 p.m., I drove over to Melanie's Bar with my friend, Linda Robinson. I had a couple of drinks hoping to see my friends. After half an hour of sitting at the bar, Linda and I moved to a table near the front door.

I was sitting about ten feet from the door, facing the door, when I saw *[Jamal/Scott]* and Tanya Morgan by the water fountain. Tanya was holding the faucet, and *[Jamal/Scott]* had his hand under the water.

After *[Jamal/Scott]* had stopped washing his hand, I noticed *[Scott Wilson/Jamal Howard]* and Connie Cook walking fast and directly towards *[Jamal/Scott]*. I thought *[Scott/Jamal]* looked like he was going to do something to *[Jamal/Scott]*. *[Jamal/Scott]* just stood there, and when *[Scott/Jamal]* got close, *[Jamal/Scott]* picked up a piece of wood and hit him. *[Scott/Jamal]* fell down, moaning. *[Jamal/Scott]* dropped the piece of wood and ran out the door. Everything happened very fast. Richard Cervantes ran outside too and brought *[Jamal/Scott]* back inside.

I remember what everybody was wearing: Tanya had on a skirt and a yellow shirt; Connie had purple pants and a tube top; *[Jamal/Scott]* and *[Scott/Jamal]* were both wearing jeans. *[Jamal/Scott]* had an orange t-shirt on. *[Scott/Jamal]* had his name printed on his shirt.

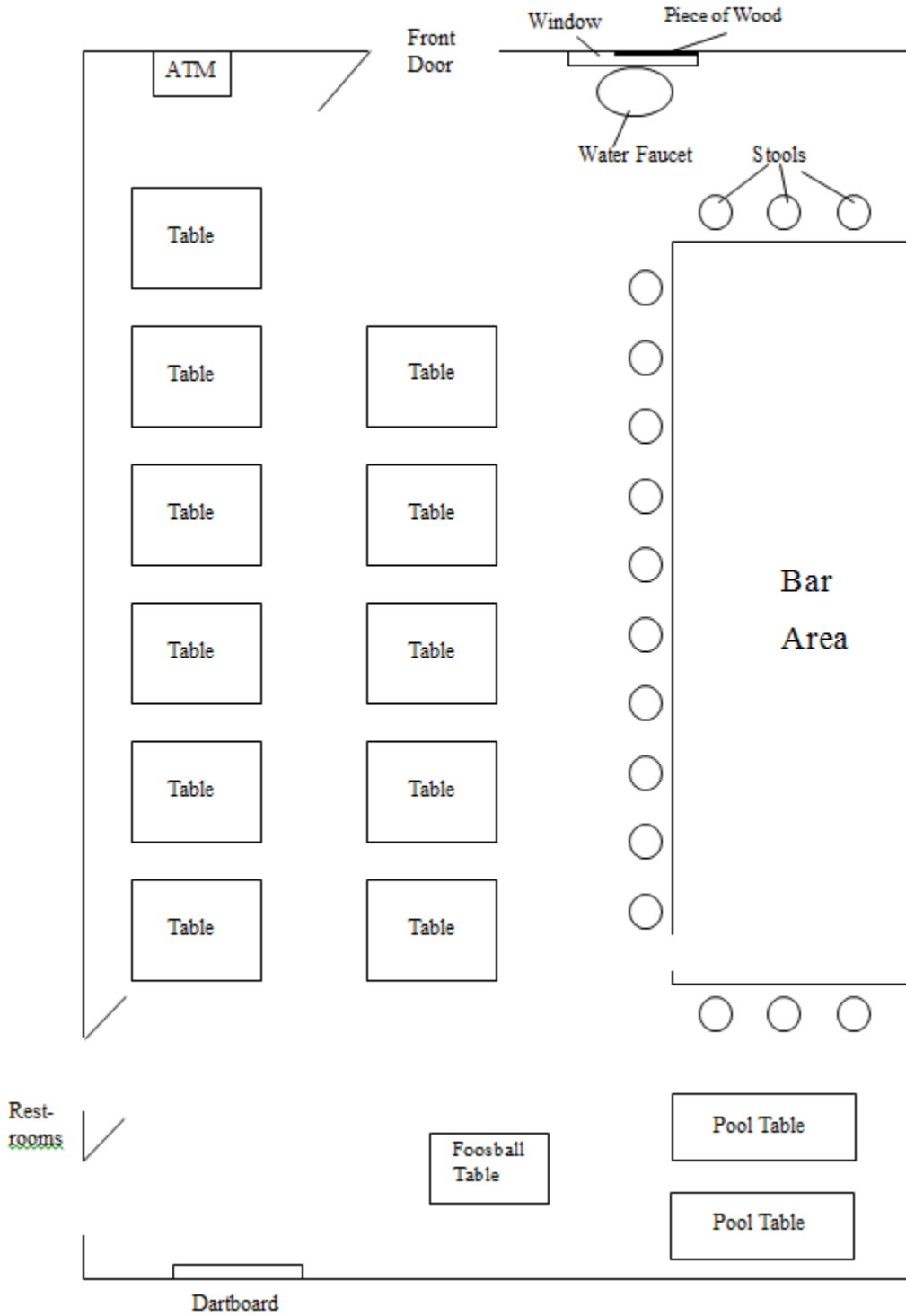
I tried talking to *[Jamal/Scott]* while we waited for the police, but he didn't say much. *[Jamal's/Scott's]* lawyer called and asked me to testify, and I agreed since *[Jamal/Scott]* is a friend of mine.

Dated: _____

Jaclyn Bardie

EXHIBIT A: DIAGRAM OF MELANIE'S BAR

Melanie's Bar



**EXHIBIT B: PHOTOGRAPH OF PIECE OF WOOD USED BY [JAMAL
HOWARD/SCOTT WILSON]**



Note: The dimensions of this exhibit are approximately 2” wide, 12” long, 1” thick

EXHIBIT C: PHOTOGRAPH OF [SCOTT WILSON'S/JAMAL HOWARD'S] POCKET KNIFE



Note: The blade of this pocket knife is approximately 3” long.

POST-TRIAL INSTRUCTIONS BY JUDGE HARRIS

Members of the jury, the instructions I gave you at the beginning of the trial remain in effect. I now give you some additional instructions. You must continue to follow the instructions

I gave you earlier as well as follow the instructions I give you now. The instructions I will now give you will be available to you while you consider your verdict.

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

The indictment in this case charges the defendant with assault with a deadly weapon. The defendant has pleaded not guilty to that charge. The indictment is simply the document that formally charges the defendant with the crime and is not considered evidence.

At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. The presumption of innocence alone is sufficient to find the defendant not guilty and can only be overcome if the prosecution proved during the trial, beyond a reasonable doubt, each element of the crime charged. There is no burden upon the defendant to prove that he is innocent. Instead, the burden of proof remains on the prosecution throughout the trial.

Appendix B

Attorney Statements

Note: Elements that differ across Defendant Race conditions are noted in italicized brackets. Elements that differ across Race Salience conditions are noted in bolded, underlined text.

OPENING STATEMENT FROM BRIAN THOMAS (PROSECUTION ATTORNEY)

Your honor, and ladies and gentlemen of the jury, I am Brian Thomas, and I represent the State of Minnesota as well as *[Scott Wilson/Jamal Howard]*, the victim in the case you will hear today. Let me restate that, because it is important for you to remember: *[Scott Wilson/Jamal Howard]* is the victim of assault with a deadly weapon, committed by the defendant, Mr. *[Jamal Howard/Scott Wilson]*, and the evidence you will be presented with today will prove that beyond a reasonable doubt.

These are the facts of the case as will be presented by our witnesses today. On June 4, the victim and his date, Connie Cook, went to Melanie's Bar to have a drink. Seeing two open stools at the bar, *[Scott/Jamal]* and Connie sat down and ordered drinks. It was at this time, around 9:30 p.m., that Mr. *[Howard/Wilson]* and Tanya Morgan, the defendant's girlfriend, initially approached the victim; he and Tanya had previously been sitting in the stools and wanted them back. You will hear testimony from several people about this initial altercation, which ended when Mr. *[Howard/Wilson]* fell to the ground. Following this, Mr. *[Howard/Wilson]* and his date left the area. After finishing their drinks, the victim and Ms. Cook decided to leave the bar. As they were leaving, the victim pulled out his wallet to see if he had money to buy a pizza. It was then that Mr. *[Howard/Wilson]* grabbed a slab of wood and smashed it across the victim's head, knocking him unconscious in the process. These facts, including that Mr. *[Howard/Wilson]* hit the victim, are indisputable.

What is under dispute, ladies and gentlemen, is whether Mr. *[Howard/Wilson]* acted in self-defense. I am confident that the evidence you will see today will prove that the victim did nothing to provoke the assault Mr. *[Howard/Wilson]* inflicted upon him.

The defense will claim that during the initial incident about the barstools, the victim shoved Mr. *[Howard/Wilson]* to the ground and threatened to harm him if he saw him again. You will hear the defense use these claims as evidence that Mr. *[Howard/Wilson]* later acted in self-defense. However, only Mr. *[Howard/Wilson]* and his girlfriend claim to have heard any threats; no other witnesses will corroborate these statements. In addition, if Mr. *[Howard/Wilson]* attacked the victim because he was shoved earlier, this is an act of retaliation, not of self-defense.

The defense will also use the presence of a knife on the victim's person as evidence that Mr. *[Howard/Wilson]* acted in self-defense. Mr. *[Howard/Wilson]* will testify that he saw the victim pull out the knife and walk in the general direction where he was standing. However, the victim claims that he pulled out a wallet, not a knife. More importantly, you will hear no other witness testify that they saw a knife. When I say no witnesses, I mean none: not even the defense's

witnesses will claim to have seen a knife. Given this, is the simple presence of a knife on the victim's person, which is perfectly legal in the state of Minnesota, justification enough to knock someone out cold in self-defense?

Contrary to what the defense will suggest, the evidence you will see today will indicate to you that Mr. *[Howard/Wilson]* was looking for a fight, not trying to avoid one. Consider the evidence. It was Mr. *[Howard/Wilson]* who started the initial altercation over the barstools. It was Mr. *[Howard/Wilson]* who waited around the bar; in fact, the victim was trying to leave the bar when the attack occurred. It was Mr. *[Howard/Wilson]* who struck the victim in the head with a chunk of wood.

[Jamal Howard/Scott Wilson] was a man expecting a fight on the night of June 4. As you will see during this trial, his actions that night toward *[Scott Wilson/Jamal Howard]* were aggressive, not defensive. Do not let claims of threats or knives cloud your understanding of the facts. Do not forget that *[Scott Wilson/Jamal Howard]* is the victim here today.

OPENING STATEMENT FROM CHRISTOPHER BELL (DEFENSE ATTORNEY)

Good morning, ladies and gentlemen of the jury. My name is Christopher Bell, and I am the attorney representing the defendant, Mr. *[Jamal Howard/Scott Wilson]*. In the case before you today, you will hear about a physical act committed by my client toward Mr. *[Scott Wilson/Jamal Howard]*. The act itself is not what we are debating today. Mr. *[Howard/Wilson]* and all the witnesses agree that he struck Mr. *[Wilson/Howard]* with a piece of wood on the night of June 4.

The real issue at hand is this: Why did *[Jamal/Scott]* hit *[Scott/Jamal]*? Over the course of this trial, the evidence will prove that *[Jamal/Scott]* was acting in self-defense following a series of aggressive acts committed by *[Scott Wilson/Jamal Howard]* immediately before the incident. **Quite frankly, ladies and gentlemen, if *[Jamal/Scott]* were not *[Black/White]* and *[Scott/Jamal]* were not *[White/Black]*, we would not be in this room today.** The evidence will indicate that as soon as *[Scott/Jamal]* saw *[Jamal/Scott]*, he began a sequence of physical and verbal abuse that ended only after my bloodied client left the area. These abuses also included a direct threat from *[Scott/Jamal]*: "If I see you again, I'll mess you up." It is no wonder, then, that my client reacted in defense when he noticed Scott approaching him with an object in his hand.

With all due respect to the prosecuting attorney, the evidence will show that his description of my client is erroneous. The prosecution has tried to paint *[Jamal/Scott]* as a hot-headed college kid looking for a bar fight. But what does the evidence actually say? Jaelyn Bardie will testify that *[Jamal/Scott]* is generally quiet and shy, and *[Jamal/Scott]* himself will testify that he felt afraid of *[Scott/Jamal]*. *[Jamal/Scott]* was on a first date with his girlfriend, Tanya Morgan, that night. And after the initial incident over the barstools, *[Jamal/Scott]* walked away from the situation. Does this sound like a man looking to start a fight that night?

The only reason *[Jamal/Scott]* is on trial today and not *[Scott/Jamal]* is because *[Jamal/Scott]* is *[Black/White]* and *[Scott/Jamal]* is *[White/Black]*. If anything, ladies and

gentlemen, the evidence will show that it was *[Scott/Jamal]* who was ready for conflict. After all, it was *[Scott/Jamal]* who pushed *[Jamal/Scott]* down; this is a fact that no witness disputes. It was also *[Scott/Jamal]*, not *[Jamal/Scott]*, who brought a deadly weapon with him to the bar – a jagged knife with a three-inch blade.

The prosecuting attorney has dismissed Mr. *[Wilson's/Howard's]* knife as irrelevant to this case. After all, *[Jamal/Scott]* wasn't stabbed, and only *[Jamal/Scott]* could definitively say that he saw a knife in *[Scott's/Jamal's]* hand. However, several witnesses, including *[Scott/Jamal]* himself, will testify that *[Scott/Jamal]* reached into his pocket and was holding something.

Let me repeat: the issue that you, the jury, must decide is why *[Jamal/Scott]* struck *[Scott/Jamal]*. *[Jamal/Scott]* does not deny that he hit *[Scott/Jamal]* on the night of June 4. Whether Mr. *[Wilson/Howard]* actually intended to harm my client is irrelevant when considering if *[Jamal/Scott]* acted in self-defense. Self-defense simply means that the person believed they needed to use force to protect themselves in the situation. In light of all the evidence you will see in this case – including *[Scott's/Jamal's]* threats, my client's timid nature, and the presence of the knife – it is clear that *[Jamal/Scott]* had reason to believe that force was necessary. Thank you.

CLOSING ARGUMENT FROM CHRISTOPHER BELL (DEFENSE ATTORNEY)

Ladies and gentlemen of the jury, this case comes down to two issues: whether my client acted in self-defense and reasonable doubt of my client's guilt. There are five elements of the charge of assault with a deadly weapon, and you must be convinced that all five are present in order to render a guilty verdict today. The most important of these five elements is whether or not *[Jamal Howard/Scott Wilson]* acted in self-defense.

The court has already defined self-defense, but allow me to reiterate. Legally, an individual has acted in self-defense if they reasonably believed themselves to be in physical danger from another and used force to prevent that violence from occurring. In other words, the court says that you don't have to wait for someone to harm you before you try to stop them as long as you reasonably believed yourself to be in imminent danger. This issue of "reasonable belief" is important, and it's a question you must answer for yourself. Did *[Jamal Howard/Scott Wilson]* have a legitimate reason to believe he was in harm's way on the night of June 4?

It would be easy to underestimate the fear my client felt at Melanie's Bar that night. It would be easy to take Mr. *[Wilson's/Howard's]* testimony at face value, to downplay the threat he issued to my client, to ignore that he shoved my client to the ground, to ignore the knife he brought with him to the bar. It might be easy, but I ask you not to take the easy route today. Remember that *[Jamal Howard/Scott Wilson]* was actually there: he was actually threatened; he was actually shoved to the ground; he actually thought he saw a knife in Mr. *[Wilson's/Howard's]* hand, a knife that actually happened to be there that night. Given all of this, my client's actions were clearly reasonable and justifiable. **These facts do not change simply because *[Jamal/Scott]* is *[Black/White]* and *[Scott/Jamal]* is *[White/Black]*.**

If you conclude with certainty that *[Jamal Howard/Scott Wilson]* acted in self-defense, then you must acquit him of the charges today. However, even if you are not certain that he acted in self-defense, the law requires that you are certain beyond a reasonable doubt that he acted with malicious intent. If you have any doubts that my client acted with malice, then you must also acquit him today. In this matter, the evidence speaks for itself. The eyewitnesses who testified that Mr. *[Wilson/Howard]* pushed and threatened my client; the presence of the knife; even the bartender who saw something being pulled out of Mr. *[Wilson's/Howard's]* pocket – these are the seeds of reasonable doubt.

The injuries to Mr. *[Wilson/Howard]* on the night of June 4 are regrettable and undeniable. However, these injuries are not sufficient to convict *[Jamal Howard/Scott Wilson]*. The law provides self-defense as a justification because we should be allowed to protect ourselves from others' harmful actions. It is human nature to protect yourself and those you love; indeed, I would expect all of us in this room to act the same if we felt physically threatened.

The definition of self-defense is the same for us all, regardless of the color of our skin.

Ladies and gentlemen of the jury, if you choose to convict my client, you are asking him to go against human nature. You are concluding that we are not allowed to protect ourselves from harm. Make the right choice today. Thank you.

CLOSING ARGUMENT FROM BRIAN THOMAS (PROSECUTION ATTORNEY)

Ladies and gentlemen of the jury, the defense would have you forget that *[Scott Wilson/Jamal Howard]* is the victim in this case. To hear my colleague, Mr. Bell, tell it, *[Jamal Howard/Scott Wilson]* was simply acting as anyone in his situation would have. To hear the defense tell it, it is *[Jamal Howard/Scott Wilson]* who is the true victim here, not *[Scott Wilson/Jamal Howard]*. I implore you: do not fall for their ruse.

As the defense has pointed out, there are five components that make up a conviction for assault with a deadly weapon. However, the defense glossed over the fact that four of these five components are not up for debate at all because they are already proven without dispute. It is undeniable that Mr. *[Howard/Wilson]* attacked the victim with a deadly weapon; you have seen the weapon as an exhibit today. It is undeniable that Mr. *[Howard/Wilson]* attacked the victim willingly – no one forced him to grab a piece of wood and hit the victim. Mr. *[Howard/Wilson]* also knew that his actions would cause harm and he had the ability to apply this harm. No one – not the defense attorney, not even the defendant himself – can argue that Mr. *[Howard's/Wilson's]* actions meet these first four criteria.

It is the fifth component – self-defense – that you must draw a conclusion about today. The defense has already discussed this topic, but let me paint you a different and, I would argue, more accurate picture of the facts from the night of June 4. The defense has highlighted the initial altercation between the victim and Mr. *[Howard/Wilson]* as evidence of Mr. *[Wilson's/Howard's]* aggression. However, they fail to point out that the entire incident started as an argument over barstools instigated by Mr. *[Howard/Wilson]*. The defense has accused the victim of pushing Mr. *[Howard/Wilson]* down and threatening him, but the only witnesses who

testified to either of these allegations were Mr. *[Howard/Wilson]* and his girlfriend – no one else. The defense has alluded several times to the knife that the victim was carrying, even suggesting that the victim pulled the knife out, but they neglect to mention that nobody but the defendant saw the victim with a knife.

People should have the freedom to defend themselves from imminent danger – I do not intend to deny this right. What I am contending is that Mr. *[Howard/Wilson]* was not defending himself. Ask yourself: If Mr. *[Howard/Wilson]* was not looking for a fight that night, why would he have confronted the victim and started an argument over barstools? If Mr. *[Howard/Wilson]* was not looking for a fight, then why did he stay at the bar at all after the initial altercation? Why didn't he leave? And most importantly, if Mr. *[Howard/Wilson]* was not looking for a fight, why did he strike the victim in the head with a piece of wood so hard that Mr. *[Wilson/Howard]* lost consciousness?

To reach a guilty verdict today, you the jury must conclude beyond a reasonable doubt that Mr. *[Howard/Wilson]* did not act in self-defense on the night of June 4. Remember, however, that beyond a reasonable doubt does not mean you are 100% certain. Instead, it means that a reasonable person would agree with you that Mr. *[Howard/Wilson]* acted with aggression, not self-defense. Consider the facts I mentioned before. Consider all of the evidence you have seen in this case today. A reasonable person would conclude that Mr. *[Howard/Wilson]* did not knock the victim unconscious as an act of self-defense. A reasonable person would agree that Mr. *[Howard/Wilson]* acted unreasonably. A reasonable person would hold Mr. *[Howard/Wilson]* accountable for the crime of assault with a deadly weapon. A reasonable person would find Mr. *[Howard/Wilson]* guilty. Thank you.

Appendix C

Juror Questionnaire

Instructions: Based on the evidence presented, and the judicial instructions you were given, please answer the following questions regarding your opinions regarding the verdict and other related items below. For each question, please indicate your answer by circling the item corresponding to your desired response and/or writing your answer in the blank space provided.

_____ 1. Using the scale below, how guilty do you believe the defendant to be?

Not at all Guilty							Completely Guilty
1	2	3	4	5	6	7	

_____ 2. Please enter your verdict in the present case for the charge of assault with a deadly weapon for the defendant.

a. Not Guilty b. Guilty

3. The United States Sentencing Commission (2015) has recommended guidelines for sentencing individuals convicted of assault and aggravated assault, either of which can be used to sentence someone convicted of assault with a deadly weapon. These guidelines are as follows:

Assault:

If the offense is deemed to be simple assault, a sentence of 0-6 years is appropriate

If the victim sustained bodily injury, a sentence of 4-10 years is appropriate

Aggravated Assault:

The base sentence for aggravated assault should be between 15 and 21 years.

If the assault involved more than minimal planning, add 6 years to the base sentence.

If the offense involved strangling, suffocating, or attempting to strangle or suffocate a spouse, intimate partner, or dating partner, add 9-10 years to the sentence.

If the assault was motivated by a payment or offer of money, add 6 years to the sentence.

If the offense involved violation of a court protection order, add 6 years to the sentence.

Choose only one of the following (if applicable):

If a firearm was discharged, add 16-18 years to the sentence.
If a dangerous weapon was otherwise used, add 11-15 years to the sentence.
If a dangerous weapon was threatened, add 9-10 years to the sentence.

Choose only one of the following (if applicable):

If the victim sustained minor bodily injury, add 11-15 years to the sentence.
If the victim sustained serious bodily injury, add 16-18 years to the sentence.
If the victim sustained permanent or life-threatening bodily injury, add 25-30 years to the sentence.

Using the guidelines outlined above, please provide a recommended sentence in years for the defendant in this case:

_____ years

_____ 4. Using the scale below, how violent do you believe the defendant to be?

Not at all Violent									Very Violent
1	2	3	4	5	6	7	8	9	

_____ 5. Using the scale below, how aggressive do you believe the defendant to be?

Not at all Aggressive									Very Aggressive
1	2	3	4	5	6	7	8	9	

_____ 6. Using the scale below, how strong did you find the case for the defense?

Very Weak								Very Strong
1	2	3	4	5	6	7		

_____ 7. Using the scale below, how strong did you find the case for the prosecution?

Very Weak								Very Strong
1	2	3	4	5	6	7		

_____ 8. Using the scale below, to what extent do you believe that this case was racially motivated?

Not at all								Completely
1	2	3	4	5	6	7		

Appendix D

Jury Characteristics Questionnaire

1. What timeslot is this document for? _____ (Date and Time)
2. How many individuals were in the jury for this timeslot? _____
3. Describe the gender breakdown of the jury (number of men/women). _____
4. How long did the jury deliberate? _____
5. If a unanimous verdict was reached, what was it?

Guilty	Not Guilty/Acquittal	No Verdict/Hung
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6. What is the participant number of the juror who served as foreperson? _____

Appendix E

Modern Racism Scale

Indicate the degree to which you agree with these statements by typing the correct number from the following scale in front of each item.

- 1 = "Strongly Disagree"
- 2 = "Disagree"
- 3 = "Neither Agree Nor Disagree"
- 4 = "Agree"
- 5 = "Strongly Agree"

- ___ 1. Discrimination against blacks is no longer a problem in the United States.
- ___ 2. It is easy to understand the anger of black people in America.
- ___ 3. Blacks are getting too demanding in their push for equal rights.
- ___ 4. Blacks should not push themselves where they are not wanted.
- ___ 5. Over the past few years, blacks have gotten more economically than they deserve.
- ___ 6. Over the past few years, the government and news media have shown more respect to blacks than they deserve.

Appendix F

Social Dominance Orientation Scale

Instructions:

Below are a series of statements with which you may either agree or disagree. For each statement, please indicate the degree of your agreement/disagreement by selecting the appropriate number from 1 to 7. Remember that your first responses are usually the most accurate.

1. Some groups of people are just more worthy than others.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

2. No one group should dominate society.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

3. To get ahead in life, it is sometimes necessary to step on other groups.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

4. It's okay if some groups have more of a chance in life than others.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

5. All groups should be given an equal chance in life.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

6. Inferior groups should stay in their place.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

7. Sometimes other groups must be kept in their place.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

8. It would be good if all groups could be equal.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

9. We should strive to make incomes more equal.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

10. If certain groups of people stayed in their place, we would have fewer problems.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

11. We should do what we can to equalize conditions for different groups.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

12. In getting what your group wants, it is sometimes necessary to use force against other groups.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

13. We would have fewer problems if we treated different groups more equally.

1	2	3	4	5	6	7
Strongly Disagree						Strongly Agree

14. Group equality should be our ideal.

Appendix G

Post-Trial Questionnaire

Note: Differences across Experiment in the items are noted with italicized text.

Please provide the following information. This information is important so that we may compare our sample to individuals selected for juries throughout the state. All information collected will be kept anonymous and confidential.

1. Age: _____

2. Sex (circle one): Male Female

3. Are you a U.S. Citizen? (circle one): Yes No

4. How strong are your religious beliefs?

Not at all Strong							Very Strong
1	2	3	4	5	6		7

5. What is your political orientation?

Very Conservative			Moderate			Very Liberal
1	2	3	4	5	6	7

6. Have you ever served on a jury? (circle one): Yes No

If yes, what type of trial was it? Criminal Civil

What was the case about? _____

7. Have you ever been the victim of a crime?

Yes No

8. Have you ever witnessed a crime?

Appendix H

Pre-Deliberation Jury Instructions (Experiment 1 Only)

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will list those rules for you now.

First, once I leave the room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you if you have questions during your deliberations.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment. I encourage you to reach a consensus decision – whether guilty or not guilty – but you are not required to.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, remember that considerations of guilt and punishment are separate from one another. When determining the defendant's guilt, you should not consider punishment in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the foreperson. The foreperson should leave the room and come to me outside with the note. I will respond as soon as possible either in writing or orally to the foreperson. Remember that you should not tell anyone – including me – how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Again, I encourage you to reach a consensus, whether guilty or not guilty, but a unanimous decision is not required. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

You will have 20 minutes to deliberate and reach a decision. If a unanimous decision is reached, the foreperson should write the verdict on this sheet and give it to me. If, after 20 minutes, you have not yet reached a unanimous decision, the jury will be considered hung and we will move to the next phase of the study.

Appendix I

Pretrial Publicity Materials

Note: Elements that differ across Defendant Race conditions are noted in italicized brackets.

Elements that differ across Race Salience conditions are noted in bolded, underlined text.

UNIVERSITY STUDENT ARRESTED FOLLOWING INTERRACIAL ASSAULT AT LOCAL BAR

MINNEAPOLIS – A University of Minnesota student was arrested late last night after an altercation at Melanie’s Bar that left another student in the hospital.

According to a Minneapolis Police Department report on the incident, several witnesses saw [*Jamal Howard/Scott Wilson*], [*an African-American male/a White male*], hit [*Scott Wilson/Jamal Howard*], [*a White male/an African-American male*], in the head with a blunt object before running out of the bar. The incident knocked Howard unconscious, at which point a 9-1-1 call was placed.

After the incident, Wilson initially tried to leave the bar but was chased down by Richard Cervantes, a bartender at Melanie’s Bar that night. “It looked like he was trying to run away,” Cervantes told reporters, “but when I caught up to him, he was just standing there. He looked confused.”

Witnesses also told police that Wilson and Howard had a brief altercation at the bar earlier in the night in which Howard pushed Wilson to the ground. The cause of this earlier incident is not immediately clear.

Wilson has not been formally charged with a crime at this time, but Ray Hansen, chief of police at Minneapolis PD, did not rule out the possibility of future charges. “Our investigation is currently ongoing. We will continue to collect information, and the results of the investigation will be shared with the proper authorities.”

[JAMAL HOWARD/SCOTT WILSON] TO STAND TRIAL FOR ASSAULT CHARGES,
JUDGE RULES

Associated Press – *[Jamal Howard/Scott Wilson]* will be formally arraigned on charges of assault with a deadly weapon for an incident at a bar last June, according to Jean Reynolds of the *Star Tribune* in Minneapolis. The arraignment is scheduled for next week.

[Howard/Wilson], a student at the University of Minnesota, faces one count of assault with a deadly weapon, which carries a maximum sentence of ten years in prison. The incident occurred at Melanie’s Bar in Minneapolis last June, where *[Howard/Wilson]* and *[Scott Wilson/Jamal Howard]*, another University of Minnesota student, were involved in an altercation that allegedly led *[Howard/Wilson]* to hit *[Wilson/Howard]* with a block of wood, rendering him unconscious.

As expected, *[Howard’s/Wilson’s]* defense attorney, Christopher Bell, plans to argue that *[Howard/Wilson]* acted in self-defense. Bell chided the court’s decision to move forward with a trial, citing the lack of evidence that *[Howard/Wilson]* acted maliciously. **“If my client was [White/Black] and the victim was [Black/White], rather than the other way around, we wouldn’t even be having this discussion.** The fact that my client must stand trial for defending himself in the face of Mr. *[Wilson’s/Howard’s]* threats and violent actions displays a clear failure of our justice system,” Bell stated. “The evidence presented thus far against Mr. *[Howard/Wilson]* is insubstantial at best. This case should already be over.”

But Brian Thomas, the prosecuting attorney representing the State of Minnesota, disagrees. Thomas asserts that “*[Howard/Wilson]* acted with the intention to harm” *[Wilson/Howard]*, not to defend himself. “The evidence in this case clearly shows that Mr. *[Howard/Wilson]* was the instigator on the night of June 4, and this upcoming trial gives us a chance to prove that.”

Samuel Harris, the judge presiding over the case, declined to comment for this story.

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