Does Race Matter? An Examination of Defendant Race on Legal Decision Making in the Context of Actuarial Risk Assessments

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DOES RACE MATTER? AN EXAMINATION OF DEFENDANT RACE ON LEGAL DECISION MAKING IN THE CONTEXT OF ACTUARIAL RISK ASSESSMENTS

by

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ABSTRACT

Numerous examples show how consideration of extra-legal factors, like defendant race, in legal decision-making are contributing to the overrepresentation of minorities in the legal system. Because triers of fact may be less familiar with risk assessment results presented by expert witnesses, there is a need to examine how legal decision-making is being affected by race in this context. This study aimed to examine whether individuals are in fact relying on race as a factor above empirically supported expert opinions of actual violence risk predictions. The sample consisted of 280 participants recruited from Amazon’s Mechanical Turk. To test the primary hypothesis in this study, a MANCOVA was conducted. When accounting for explicit racism, there were no overall significant effects when examining the relationship between exposure to a hypothetical defendant’s race and percent likelihood of future violence, desired social distance, and severity of punishment. There was, however, some evidence to suggest that individuals with higher reported racial biases were more likely to rank the defendant, regardless of identified race, as high risk. Further, noteworthy limitations and future directions for research are discussed. In particular, concerns about external validity, impression management, and sample demographics are emphasized.
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DEDICATION

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CHAPTER I – INTRODUCTION

Perhaps no other institution highlights the existence of racial disparities better than the criminal justice system. As a glaring example of this, one in three Black men will be incarcerated at some point in their lifetime compared to one in seventeen White men (ACLU, 2018). The fact that Blacks tend to receive harsher sentences (Mitchell, Haw, Pfeifer, & Meissner, 2005) suggests that this disparity is related to an inconsistency in legal decision making. Our Sixth Amendment rights dictate that all American citizens are entitled to a fair trial, including unbiased triers of fact (e.g., judges, jury of peers). Despite having this responsibility to make legal decisions free of bias, the United States has an obvious, long-standing history of racial bias and discrimination in legal contexts. There are numerous examples (e.g., *Pena-Rodriguez v. Colorado*, 580 US_2017) of how consideration of extra-legal factors, such as a defendant’s race, in legal decision making is contributing to the overrepresentation of minorities in the criminal justice system. Research on the issue of racial bias in legal decision making is prevalent and typically supports that minorities, especially Blacks, are more likely to have contact with the legal and forensic psychiatric inpatient settings than their White counterparts (Coid, Kahtan, Gault, & Jarman, 2000).

Because bias on the part of the trier of fact is clearly linked to racial disparity in the criminal justice system, better understanding when and how a defendant’s race leads to bias in legal decision making is imperative to ensure just outcomes. This topic is particularly relevant in the United States given that jury samples across the country are often not representative of the community from which they are selected (Ellis & Diamond, 2013; Lehman & Smith, 2013; Sarver, 2007). Regarding race, for example,
several studies found that the average jury sample was majority White (up to 91.4%; Lehman & Smith, 2013; Sarver, 2007). With an already demographically skewed jury, it becomes essential to avoid introducing additional sources of racial bias in the courtroom.

One context in which racial biases have been less studied is in forensic mental health assessment (FMHA). FMHAs are evaluations conducted by qualified clinicians to assist triers of fact in legal proceedings by providing information generally about individual’s capability, competency, or risk (Heilbrun et al., 2003), and expert opinions on these issues are often weighed heavily by legal decision makers (Cooper, Bennett, & Sukel, 1996). A particularly salient issue that often involves forensic mental health experts is the prediction of future violence. This prediction of future violence by forensic evaluators can impact the impression triers of fact have about defendants. While race is not an empirically supported risk factor for offending (Mills, Kroner, & Morgan, 2011; Douglas, Hart, Webster, Belfrage, Guy, & Wilson, 2014; Rice, Harris, & Lang, 2013), even trained professionals have falsely incorporated race into their opinions about risk (Buck v. Davis, 580 US_2017). This inclusion of race in risk assessment and legal decision making brings into question constitutional rights. However, in working toward the promise of ensuring a fair and impartial administration of justice, evaluating the effects of a defendant’s race on legal decision making when the results of violence risk assessment are central to the psycho-legal question requires additional exploration (Snowden, Gray, & Taylor, 2010).

Explicit and Implicit Racial Bias in Legal Contexts

Legally, the Sixth Amendment ensures defendants in criminal trials to an impartial jury of their peers (Bill of Rights Institute, 2018); however, there have been a
number of court cases and research studies highlighting the prevalence of racial bias in legal decision making (e.g., Daudsteil et al., 1999; Glaser, Martin & Kahn, 2015; Mitchell et al., 2005; Sweeney & Haney, 1992). Two cases that clearly demonstrate this prevalence are Pena-Rodriguez v. Colorado, 580 US_2017 and Buck v. Davis, 580 US_2017. In the case of Pena-Rodriguez v. Colorado, a juror repeatedly used racial slurs about the defendant and encourage fellow jurors during deliberations to use the defendant’s ethnicity as grounds for a guilty verdict. Two fellow jurors reported the lone juror’s behavior to the judge but due to a “no impeachment rule” for juries in Colorado, the verdict stood despite the juror’s blatantly biased decision-making (Pena-Rodriguez v. Colorado, 580 US_2017). Buck v. Davis, on the other hand, exemplified that racial bias is not strictly limited to jurors. During the sentencing phase of this murder case, three expert psychologists conducted evaluations of the defendant’s risk for future violence. Two experts testified that Mr. Buck was unlikely to commit future acts of violence, while the third concluded that his race increased his future risk of violence. Following this evaluator’s testimony, Mr. Buck was sentenced to death (Buck v. Davis, 580 US_2017). His punishment was later overturned by the U.S. Supreme Court based on the lack of evidence suggesting race alone as a risk factor for future violence. Unfortunately, these results showing racial biases in legal decision making are not limited to a few isolated court cases.

Empirical research on race and its effects on legal decision making is not a new area of exploration (Daudsteil et al., 1999). Findings from previous literature inconsistently show racial disparities in sentencing decisions. In 1992, a meta-analysis conducted by Sweeney and Haney showed support that minority defendants do in fact
receive harsher sentences than majority group defendants when using mock juror samples (Sweeney & Haney, 1992); yet, a similar meta-analysis published around the same time did not support this overarching claim (Mazella and Feingold, 1994). More recent studies have likewise been inconsistent in demonstrating more stringent sentencing for Blacks than their White counterparts (Glaser, Martin, & Kahn, 2015; Coid, Kahtan, Gault, & Jarman, 2000). For example, using a sample of U.S. adults in the general population, Glaser, Martin and Kahn (2015) found that when presenting participants with a vignette of an alleged triple murder where life without parole was the proposed sentence for the defendant, Blacks were not convicted significantly more frequently than Whites; however, differences were observed when death was the maximum sentence for the same alleged crime, such that Blacks were found guilty more often.

In a meta-analysis of 20 studies on racial disparities in sentencing using mock juror samples, Mitchell and colleagues (2005) found a significant effect ($d = .185, p < .001$) supporting racial disparities in the sentencing of Blacks versus Whites. Mitchell and colleagues (2005) additionally found a small but significant effect ($d = 0.92, p < .001$) for racial bias in verdict decisions (i.e., guilty vs. not guilty) in a separate meta-analysis of 34 studies using mock juror samples. A more recent meta-analysis of 26 studies exploring racial discrimination in prosecutorial decision making likewise found that race was a significant factor in the decision-making process (Wu, 2016). While there are some inconsistencies in the literature, most studies suggest the presence of racial disparities, particularly between Whites and Blacks, in the judicial process.

Myriad variables may play a role in helping to explain the source of racial disparities in legal decision making. One such construct may be an implicit desire for
social distance. Social distance represents a desire to physically distance oneself or loved ones from an individual with an undesirable quality. Originally, the construct of social distance was studied in the context of stigma toward different groups including, for example, racial groups and those with mental illness (Wark & Galliher, 2007; Corrigan et al., 2001) but has also been expanded to examine attitudes toward individuals with criminal histories. Edwards and Mottarella (2014) examined this construct within the context of violent and non-violent offenders and found that individuals typically want more social distance from individuals who commit violent crimes than from those who commit nonviolent offenses. Similar findings have also held for offenders who also have severe mental illness (Batastini, Bolanos, and Morgan, 2014; Batastini, Bolanos, Morgan, & Mitchell, 2017).

Social distance is not only influenced by stigma toward a certain population (Edwards & Mottarella, 2014), but is also influenced by preferences for in-group affiliation (Smith, McPherson, & Smith-Lovin, 2014). Individuals have a tendency to prefer social interactions with members of their own race, and by virtue of this, want for social distance from other groups increases (Smith, McPherson, & Smith-Lovin, 2014). Therefore, it seems likely that in-group racial biases and biases specifically against offenders could create a compounded effect on desired social distance. Understanding the desire for social distance may have relevance for understanding the underlying causes of racial bias in legal decision making. For example, White triers of fact may make harsher legal decisions in regard to Black defendants than other Black triers of fact because of an implicit desire to keep members of their racial out-group away from their communities.
Batastini et al., (2018) preliminarily looked at social distance in the context of violence risk assessment and found no significant effects between White and non-White participants in their evaluation of a hypothetical Black defendant’s likelihood of future violence, potential dangerousness, and desired social distance; yet, White jurors were 3.8 times more likely to rate the defendant as “high risk” than non-White participants when given categorical response options. However, it is important to note that the alleged crime used in this study was a homicide and all participants regardless of their race desired a high degree of social distance from the defendant. Continuing to evaluate how social distance may influence the association between race as an extra-legal factor and legal outcomes is necessary for understanding the underlying mechanisms that allow racial biases to persist in legal decision-making, including those that are based on an individual’s likelihood of future violence.

Violence Risk Assessments, Risk Communication, and Race

Violence risk assessment plays an essential role in informing triers of fact about an individual’s propensity to reoffend at some point in the future. The standard method by which these risk assessments are conducted in forensic contexts has seen a significant shift in the last 50 years (Borum & Otto, 2000). Early violence risk assessments were conducted using unstructured clinical judgement (Borum & Otto, 2000). In an unstructured clinical judgement approach to violence risk assessment, an evaluator forms an opinion about an individual’s future dangerousness based on previous experience and clinical intuitions rather than a formal assessment tool (Heilbrun, 2009). Currently the field of violence risk assessment collectively considers this approach alone as ineffective and invalid (Heilbrun, 2009). This poor predictive ability of unstructured clinical
judgement presented a need for more empirically-validated measures of risk in legal contexts, out of which came the development of several actuarial and structured professional judgement (SPJ) violence risk assessment tools (Hanson, 2009; Tolman & Rotzien, 2007; Douglas, Hart, Webster, Belfrage, Guy, & Wilson, 2014; Rice, Harris, & Lang, 2013).

Actuarial and SPJ approaches to assessment select or specify risk factors in advance but their interpretation differs. Both weigh empirically derived risk factors and place individuals into risk-level categories (Brown & Singh, 2014; Hanson, 2009). When using SPJ measures, evaluators rely on professional judgement to place individuals into categorical “bins” (i.e., “low,” “medium,” “high”) after carefully rating the degree to which pre-selected risk items apply (Hanson, 2009; Heilbrun, 2009). In actuarial methods, a total score is calculated based on objective ratings of typically static risk factors (Heilbrun, 2009). The evaluatee’s score is then compared to known recidivists with similar characteristics who scored the same way. The recidivism rate (usually given as a percentage) associated with those known recidivists is then used to estimate the evaluatee’s likelihood of violence (Brown & Singh, 2014; Hanson, 2009). The numerical estimate is often accompanied by a categorical ranking similar to that of SPJ tools.

Actuarial and SPJ tools provide more useful methods for forensic evaluators to derive and present information about a defendant’s potential risk for future violence than the previous method of relying on unstructured professional judgement (Grove et al., 2000). In assessing an individual’s risk, these assessments evaluate risk factors that are both static (i.e., fixed) and dynamic (i.e., changing; Brown & Singh, 2014). The specific risk factors included can depend on type of offense (i.e., general violence vs. sexual
violence) and/or type of risk assessment. For example, some assessments follow Andrews and Bonta’s (2017) Risk-Needs-Responsivity model addressing criminogenic risk factors included in the Central 8 (e.g., the Level of Service Inventory-Revised [LSI-R]), while others include factors such as victim gender (e.g., Violence Risk Appraisal Guide-Revised [VRAG-R]; see also Mills, Kroner, & Morgan, 2011).

Further, while certain types of dynamic risk factors for offending behavior have been criticized as being proxies to race (e.g., education level, employment; Starr, 2014), race is not included in any published or validated risk measure because race alone is not predictive of violence. Using empirically validated assessments that force the clinician to focus only on relevant factors when predicting risk reduces the likelihood of placing significant and inappropriate weight on race. In Buck v. Davis (Buck v. Davis, 580 US_2017), for example, the expert asked to predict the defendant’s future risk notably failed to use one of the commonly accepted actuarial or SPJ risk tools.

Although the use of actuarial and SPJ tools for violence risk assessment is acceptable practice (Vitacco, Erikson, Kurus, & Apple, 2012; Mills, Kroner, & Morgan, 2011), there are no agreed upon guidelines in place for how to communicate the results of those assessments to the triers of fact. Yet clear and understandable communication of risk assessment results is arguably as important as the accuracy of the predictions themselves. While jurors are especially unique in that they typically lack familiarity with both the justice system and the scientific information being presented by expert witnesses (Ivkovic & Hans, 2003), other legal decision makers, including judges, may also be unfamiliar with the scientific information being presented by expert witnesses in cases of violence prediction. As such, understanding the results of these assessments may be more
difficult for triers of fact because of a lack of understanding of such concepts as base rates and how to interpret absolute risk probabilities (Batastini et al., 2018; Morgan, Kroner, & Mills, 2011). Batastini et al., (2018), for example, conducted a series of studies in which risk assessment results were communicated in several different ways to participants and found that, regardless of communication method, participants significantly overestimated risk.

Perhaps, especially when risk assessments are complicated, non-expert laypersons may begin to rely on extra-legal factors such as biases against certain racial groups to make their decisions. By evaluating how race affects legal decision making within the context of these actuarial risk assessments, we are able to examine the extent to which individuals are in fact relying on race as an extra-legal factor and whether this reliance is weighted more heavily than the empirically supported factors driving actual risk predictions.

The Present Study

This study aimed to examine the effects of a defendant’s race on laypersons’ perceptions of that defendant’s future risk, wanted social distance from that defendant, and perceptions of the defendant’s guilt and deserved punishment after being exposed to a mock expert testimony of results from an actuarial violence risk assessment. This study tested both direct (i.e., actual perceptions of risk level, guilt, and punishment) and indirect (i.e., more implicit biases that could influence perceptions) measures of risk for violence. Given literature suggesting the Blacks experience the largest degree of racial injustice in the criminal justice system (Mitchell et al., 2005), this study exclusively examines bias in risk perceptions for this group. The hypothetical defendant in the vignette was described
as Black, White, or neither (i.e., no racial identity was provided). A racially neutral condition was included to help determine the extent to which participants’ decisions are in fact swayed by the defendant’s race.

First, it was hypothesized that, while controlling for explicit racial biases, there would be significant group differences in participants’ perceptions of risk based on the defendant’s described race, such that participants that were exposed to information about a Black/African-American defendant would rate the defendant as having a higher risk for future violence than the White defendant or the defendant whose race was not identified. Perceptions of risk were measured in two formats: percent likelihood and a categorical risk ranking. Second, it was hypothesized that participants exposed to the Black/African-American condition would report a greater desire for social distance from the defendant than participants exposed to a White or racially undefined defendant. Third, it was hypothesized that the participants would rate the Black/African-American defendant as more likely to be guilty of the alleged crime and would subsequently suggest a more serious punishment.

In addition to finding an overall effect of defendant race regardless of racial biases, it was expected that explicit racial biases would differentially impact risk perceptions and legally relevant decisions based on the defendant’s race. Specifically, it was hypothesized that participants with higher levels of self-reported racial bias would rate the Black defendant as more dangerous (i.e., higher risk in both probabilistic and categorical terms), would want more social distance from him, and would believe him to be more guilty and more deserving of severe punishment than participants with lower levels of racial bias, but that this effect would not be observed for the White defendant. It
was possible that, with no identified race, racial biases would elicit a similar pattern of responding as the Black defendant given that minorities are most often suspected of committing violent crimes, like assault, whereas Whites are more likely to be suspected for white-collar crimes like embezzlement (Sunnafrank & Fontes, 1983). Examining explicit racial bias regardless of participants’ own race was necessary to ensure that this study also captures potential effects of self-stigma (i.e., internalization of negative beliefs held by society about marginalized groups to which one belongs; Treichler & Lucksted, 2018). That is, looking only at the impact of participant race may have ignored biases associated with self-stigma.
CHAPTER II – METHODS

Procedure

Approval for this study was provided by the University of Southern Mississippi’s human subjects review board. The study was then advertised on MTurk, a practical online recruitment service that allows users to recruit diverse national samples for data collection (Heen, Lieberman, & Miethe, 2014). The survey was developed on Qualtrics – an online survey platform – and disseminated through MTurk. This was done by posting a unique URL to the MTurk recruitment page. This recruitment page provided a brief description of the study including eligibility criteria, opportunities for compensation, and estimated survey length. Interested participants were instructed to click a link redirecting them to the Qualtrics survey. Here they were provided a full consent form (see Appendix A). Opting to move forward with the survey signified their consent. Following consent, they were then asked specific screener questions related to eligibility. Screener items were presented as follows:

1. How old are you? (values under 18 prompted removal from the study)


3. Have you ever been convicted of a felony? (“yes” responses prompted removal)

4. Do you have any current pending felony charges? (“yes” responses prompted removal)
5. Are you fluent in English? (“no” responses prompted removal)

Participants who consented and confirmed their eligibility on the screening items were then randomly assigned to one of three conditions that varied based solely on the description of the defendant’s race: (1) Black/African-American, (2) White/European-American, (3) race not identified.

Following random assignment to one of the three conditions based on racial identity, participants were directed to a vignette based on an actual (de-identified) case outlining a short background of the defendant Mr. Day (name generated using a random name generator; see Appendix B). All information in the vignette was identical across conditions except for the description of Mr. Day’s racial identity. Following the background vignette, participants were given an excerpted court transcript to read along with an audio recording of the expert’s testimony regarding Mr. Day’s level of risk (see Appendix C). The audio recording was designed to better simulate expert witness testimony that would be given orally in an actual courtroom setting. Participants were told to assume the evaluator has been appropriately qualified as an expert.

Risk assessment results in this case were based on the Violence Risk Appraisal Guide – Revised (VRAG-R; Harris, Rice, & Quinsey, 2016). The VRAG-R is a commonly used actuarial tool for predicting general violent recidivism and is not crime specific (Rice, Harris, & Lang, 2013). The VRAG-R is a 12-item measure that provides probability estimates of violence risk at 5- and 12-years post-release. Snowden, Gray, and Taylor (2010) found that the VRAG was found to be a significant predictor of future violence in both White and Black clients similarly. Validation of the VRAG-R was found
to have similar ROC areas as the original VRAG (761, 95% CI = .731–.791 versus .748, 95% CI = .717–.779 respectively; Rice, Harris & Lang, 2013). The VRAG-R was specifically selected because it provides a numerical estimate (as percent likelihood) that can be easily translated to ordinal categorical labels (i.e., “low,” “medium,” and “high”). While the VRAG-R developers (Rice, Harris, & Lang, 2013) do not provide clear guidance regarding which score ranges fall within these categories, recommended cutoffs have been suggested by others\(^1\) and were used to guide the categorical estimate used in this study. As such, the VRAG-R allowed for an ecologically valid examination of risk perceptions using two commonly used reporting formats.

After listening to and following along with the audio-recoded expert testimony, participants were asked to complete a series of questions assessing their own estimates of the defendant’s future risk (in both numerical probability and category rank formats), social distance, perceptions of guilt and punishment, and self-reported bias followed by social desirability and demographic questionnaires. The demographic questionnaire was included last to ensure that there were no priming effects of participants’ own race/ethnicity. Validity check items were implemented throughout the survey to ensure participant attentiveness. These measures are detailed below. Upon completing the survey, participants were compensated between $1.00 and $1.75 based on when the survey was completed (compensation was increased throughout the survey to increase recruitment).

Participants

A total of 326 participants were recruited from MTurk. Following removal of participants who failed initial eligibility screening questions (\(N = 31\)) and provided only
incomplete data \((N = 15)\), the final sample size was 280. Based on the initial G*Power conducted for the proposed analyses, a sample of size of \(N = 269\) was needed to achieve sufficient power. Thus, the analyses were acceptably powered. Of the 280 participants, 32.5\% \((N = 91)\) were randomly assigned to the Black defendant condition, 32.1\% \((N = 90)\) to the White defendant condition, and 35.4\% \((N = 99)\) to the unidentified race condition. Participants ranged in age from 23 to 76 years old, with a mean age of 42.89 \((SD = 11.61)\) years. The final sample was majority women (54.3\%) and White (81.4\%). The majority of participants had a Bachelor’s degree (41.4\%) with a high school education or equivalent being the second most frequent (27.5\%).

Just under half of the participants identified as a democrat (45.7\%), while individuals identifying as republican (23.2\%) and independent (26.1\%) made up the majority of the remaining sample. This breakdown is slightly more representative of democratic participants compared to a Pew Research Center survey (2017) showing that approximately 33\% of registered voters in the U.S. identify as democrat, with 26\% identifying as Republican and 37\% identifying as Independent. Only 5 participants (1.8\%) reported experience or training in the legal profession and 15 (5.4\%) had experience or training in the mental health profession. Approximately one-fifth (22.5\%) of participants had previously served as a member of jury. See Table 1 and Table 2 for detailed participant demographics.

Measures

The measures included in this study, with the exception of the demographic questionnaire that was always be presented last, were counterbalanced to control for order effects (see Appendix D).
Validity Items

Validity check items were implemented into the survey to ensure attentiveness to the case vignette and testimony. These items included the following multiple-choice questions: (1) what crime was Mr. Day charged with in the present case? (2) what was the general purpose of the expert’s evaluation in this case? and (3) which of the following best describe Mr. Day? These items acted as exclusionary items in the survey. Participants who missed 2 out of 3 of the validity check items were removed from the survey and their responses were not included in the analyses.

Experimenter Derived Items

To measure participants’ ratings of risk, perceptions of guilt, and punishment decisions following the presentation of the expert’s opinion of that defendant’s potential risk derived from the VRAG-R, there were four experimenter derived questions. The first experimenter-derived question asked participants to rate (on a scale of 0 to 100 percent) how likely they believe Mr. Day is to engage in any violent act at any time in the future. Of note, although the VRAG-R generates estimates using specific timeframes (i.e., 5- and 12-years post release), participants were only asked to provide a more global rating of risk because triers of fact must make decisions about a defendant’s risk to the community in a more general sense. Time-specific risk estimates are merely used as a frame of reference to determine a person’s overall dangerousness; when the justice system releases an offender, it is for an indeterminate amount of time. Second, participants were asked to categorize the defendant’s future risk of violence as either “low,” “medium,” or “high.” Third, participants were asked to rate (on a scale of 0 to 100 percent) the extent to which they believe Mr. Day should be found guilty of the alleged crimes. Lastly, participants
were told to assume a jury has found Mr. Day guilty and asked to rate the degree to which he should be punished (0 = minimum possible punishment to 100 = maximum possible punishment).

**Social Distance Scale**

The Social Distance Scale (SDS) was used to measure how much social distance the participant wanted to have from the defendant. The SDS is a seven-item measure with each question containing a 3-point response option (Penn et al., 1994). The SDS was originally intended to assess for hypothetical behavioral responses towards those with mental illnesses (Corrigan et al., 2001). A sample item reads: “How willing would you be to introduce this person to someone you are friendly with?” Similar to Batastini et al., (2014), items were edited to ask about an individual with a criminal history as opposed to someone with a mental illness. For example, an edited item reads: “How would you feel about renting a room in your home to someone with a criminal history?” In a follow-up study, Batastini et al., (2017) reported good internal consistency of this scale even with the reflected changes with a Cronbach’s alphas of 0.91.

**Explicit Racism Measure**

To control for overt expressions of racism, the Modern Racism Scale (MRS) was used. When assessing an individual’s racial attitudes, particularly through the use of an explicit measure, social desirability is a concern (Axt, 2017). However, Axt (2017), also found that explicit measures of racial attitudes assess implicit biases just as well as indirect measures. The MRS is a relatively non-reactive measure of racial prejudice (McConahay, Hardee, & Batts, 1981) that has been used with some frequency in the literature (McConahay, 1983; Melicon & Dixon, 2008). The MRS is a seven-item
measure using a 5-point Likert scale response option (McConahay, Hardee, & Batts, 1981). An example of an item assessing racial attitudes includes: “Over the past few years the government and news media have shown more respect to Blacks than they deserve” (McConahay, 1983; McConahay, Hardee, & Batts, 1981). In a modified 5-item version of the MRS by Melicon & Dixon (2008), the MRS was shown to have good internal consistency with a Cronbach’s alpha of 0.89.

*Social Desirability Scale*

Because this study included questions about self-reported racial bias, there was a potential for participants to respond in a socially desirable manner. Therefore, the Marlowe-Crowne Social Desirability Scale (MCSDS) was used to assess participants’ impression management. The MCSDS is a 33-item measure that places respondents into one of three categories of socially desirable responding. Individuals scoring within the “low” range (0-8) likely responded in a more undesirable manner, indicating truthful responding even when met with potential disapproval. Individuals scoring in the 9 to 19 range are considered “average,” indicating they showed some socially desirable responding indicative of an individual with average concerns for social norms. “High” scorers (20 to 33) are responding in a manner that indicates socially desirable responding and high interest in social approval (Crowne & Marlowe, 1960). Sample items from the MCSDS read, “I have never deliberately said something that hurt someone’s feelings” and “I like to gossip,” which are items considered to be normative experiences for most individuals.
Demographic Questionnaire

The demographic questionnaire included a variety of items such as: gender, race, ethnicity, age, education, political affiliation, training or experience in the legal or mental health professions, and previous juror status (see Appendix D).
CHAPTER III - RESULTS

Data Screening and Preparation

*Missing Data*

Participants \((N = 31)\) who failed to meet one or more eligibility criteria were removed from the dataset and not included in any further screening or data analyses. These participants were exited from the Qualtrics survey before completing any relevant study material. Following removal of these participants, remaining cases were screened for completion of the self-report measures (i.e., demographic form, SDS, MRS, MCSDS). Self-report measures were considered in the analyses if at least 75% of item responses to that measure were complete. Participants who did not complete at least 75% of any one self-report measure were removed from analyses. Using this criterion, 15 additional cases were removed from analyses. The remaining missing data was considered to be missing completely at random as determined by a SPSS Missing Values Analysis procedure using expectation maximization as demonstrated by a non-significant Little’s MCAR test \((\chi^2 = 22.092, \text{DF} = 22, p = .454)\). Missing data was then imputed using the regression method of multiple imputation based on the recommendations of Rubin (1996; i.e., imputations should be repeated over at least 5 sets of data).

*Accuracy of Data*

After the initial screening of the data, all participants with failed validity checks were removed from the analyses due to non-completion and are included in the removed cases mentioned prior. No additional participants were removed from the dataset for failed validity checks, leaving the final sample size at \(N = 280\).
Examination of Outliers

Remaining cases were screened for outliers following the recommendations of Tabachnick and Fidell (2013). First, frequency and descriptive statistics were generated for each variable and reviewed for the minimum and maximum ranges for each variable. None of the values within the variables used for this study fell outside the respective range of possible scores. All demographic variables and self-report measures were then converted into standardized z scores and examined for univariate outliers. Outliers were assessed separately for each condition. Cases with z-scores greater than ±3.29 \((r > .001)\) are considered to be a deviation from the normal distribution and thus a potential outlier (Tabachnick & Fidell, 2013). Six univariate outliers were found on the experimenter-derived responsibility question based on the above criteria; however, all were within appropriate range for these responses. A non-parametric test was conducted with outliers and without outliers to assess for influence. Multiple univariate outliers were found on demographic variables (i.e., race, level of education, experience in the mental health profession), however were all within normal ranges and appropriate responses to those items, thus were included in demographic analyses.

Multivariate outliers were assessed using Mahalanobis distances. Mahalanobis distances as defined in Tabachnick and Fidell (2013) as the distance between an individual case and the central point created by the mean of all other cases. Mahalanobis distances are interpreted with chi-square \((\chi^2)\) with alpha at \(p < .001\). No multivariate outliers were found.
Parametric Assumptions

Differences in participants’ ratings of the defendant’s likelihood for future violence, total scores on the SDS, and ratings of punishment severity across conditions was tested using a multivariate analysis of covariance (MANCOVA) with scores on the MRS acting as a covariate. As such, the assumptions of normality, linearity, homogeneity of variance and covariance, and multicollinearity were checked. As a categorical variable, participants’ risk category ranking was assessed in accordance with a multinomial logistic regression, therefore the assumption of multicollinearity was assessed.

Normality

Normality of the data was assessed by evaluating the skewness and kurtosis and assessing frequency plots in SPSS for outcomes of relevance to the primary analyses. According to Tabachnick and Fidell (2013), the standardized (z) values for normal skewness and kurtosis are zero, therefore values above or below zero, indicate some degree of skewness or kurtosis with alpha levels at .01 or .001. However, z values within the range of -2 to +2 are considered within acceptable limits of skewness and kurtosis (George & Mallery, 2010). Each dependent variable included in the primary MANCOVA analysis appeared to have some deviation from the normal curve and was found to violate the assumption of normality as evidenced by significant Kolmogorov-Smirnov tests (p < 0.05). Punishment severity was numerically considered to be sufficiently within the range of appropriate recommended values (skew: z = -0.72; kurtosis: z = 2.46). However, the percent likelihood of future violence, MRS and SDS total scores variables were numerically estimated to have significant skew (z = 5.17, z = 5.05, z = 5.27, respectively). And, although percent likelihood of future risk and MRS were not significantly kurtotic
(z = 0.824, z = 1.39, respectively); SDS total scores were also significantly kurtotic (z = 5.05).

A square root transformation was performed on MRS total scores and was successful in correcting the positive skew (z = 1.219). A square root transformation and a log transformation were attempted, however, neither were successful in improving the skew for the SDS total score (transformed $z = 7.17; -9.9$). An arcsine transformation was attempted on the percent likelihood variable but was not successful in correcting skewness ($z = 11.24$). Therefore, transformed MRS scores were used in the primary analyses while non-transformed values for percent likelihood and the SDS total score were used. A decision was made to retain percent likelihood and SDS scores in the planned analyses because, although there were some noted violations of normality, with the remainder of the parametric assumptions were met. Further, as noted in Piovesana and Senior (2016), larger samples tend to be more sensitive to violations of normality. Due to more severe issues with skewness ($z = 19.06$) and kurtosis ($z = 29.87$), the variable assessing responsibility (or guilt) for the alleged offense was not included in the remainder of the parametric assumptions tests or the planned MANCOVA. Instead, this outcome was separately assessed using a non-parametric Kruskal-Wallis test.

**Linearity**

Linearity was assessed by examining bivariate scatterplots on all measures used in the multivariate analysis (Tabachnick & Fidell, 2013). The relationship between variables is considered to be linear if the data appears to be an oval shaped distribution on the generated scatterplot matrix. The scatterplots were assessed through a visual inspection.
The assumption of linearity appeared to be met for all variables as evidenced by oval-shaped distributions.

*Homogeneity of variance and covariance*

Homogeneity of variance was assessed using Levene’s statistic, which compares significant group differences in error across each condition. Values above the significance level of .05 are considered acceptable, such that there is no violation of homogeneity (Pallant, 2016; Tabachnick & Fidell, 2013). Based on non-significant Levene’s statistics (Percent likelihood of future violence rating, \(p = .529\); punishment severity rating, \(p = 0.116\); MRS total score, \(p = .386\); SDS total score, \(p = .972\), the assumption of homogeneity of variance was met.

Homogeneity of covariance was evaluated by examining Box’s M which is used to evaluate the equality of covariance matrices, or compare the variance of different groups, among the variables intended for use in the multivariate analysis (Tabachnick & Fidell, 2013). Values larger than 0.001 on Box’s M test suggest that the assumption of covariance matrices is met (Pallant, 2016). Following evaluation of Box’s M for all relevant outcome variables, the assumption of covariance matrices was met (Box’s M = 22.683, \(p = .329\)).

*Multicollinearity*

Multicollinearity was assessed for categorical risk level ranking by examining collinearity diagnostic statistics (i.e., tolerance and VIF). This was conducted by running a regression analysis. VIF values above 10 and tolerance values below 0.2 are indicative of collinearity (Field, 2015). For the relevant categorical risk variable, the VIF value
equaled 1.00 and tolerance was 1.00, indicating the assumption of multicollinearity was not violated.

Preliminary Analyses

*Group equivalence*

To ensure greater internal validity, between group differences were assessed for several demographic variables and total scores on the Maslow Crowne Desirability Scale (MCSDS). One-way ANOVAs were used for continuous variables and Chi\(^2\) analyses were used for categorical variables. Statistical significance was determined by an alpha level of \(p < 0.05\) for all analyses. Using a one-way ANOVA for participant age, no statistically significant differences were found across the three conditions, \(F(2, 280) = 0.658, p = .519\). Further, results revealed that the three groups did not differ in their levels of socially desirable responding, \(F(2, 280) = 0.070, p = .933\). By an examination of means, participants’ responding fell in the average range of social desirability (\(M = 14.82, SD = 7.362\)), with similar responding patterns across each group (Black: \(M = 14.68, SD = 8.177\); White: \(M = 15.06, SD = 7.372\); racially undefined: \(M = 14.73, SD = 6.591\)).

Pearson’s Chi\(^2\) tests were run to assess between group differences on participant gender (\(\chi^2 = 1.601, p = .449\)), race (\(\chi^2 = 5.662, p = .685\)), highest degree obtained (\(\chi^2 = 11.458, p = .65\)) and previous juror status (\(\chi^2 = .864, p = .649\)), indicating no significant differences between groups for these variables.

*Correlations of MCSDS and MRS*

Because participants who endorse more socially desirable responding may be expecting to suppress racial biases, a bivariate correlation analysis was conducted
between total scores of the MCSDS and total scores of the MRS. Although the correlation between these measures was in the expected direction, it was not significant (Pearson Correlation = - .057; p = .342). Thus, it was determined that including the MCSDS total scores as an additional covariate was not necessary.

Primary Statistical Analyses

*Multivariate analysis of covariance*

To test the primary hypothesis that, when controlling for explicit racial biases, there would be significant group differences in participants’ perceptions of violence risk (as measured by percent likelihood of future offending, severity of punishment, and total SDS scores), such that those exposed to information about a Black defendant would rate the defendant as being at higher risk than participants exposed to information about a White or racially undefined defendant, a multivariate analysis of covariance (MANCOVA) was conducted using SPSS.

The primary goal of a MANCOVA is to determine if groups differ in a statistically meaningful way on a combination of variables while controlling for a covariate (Tabachnick & Fidell, 2013). The hypothetical defendant’s race (i.e., Black/African-American, White, or not identified) served as the independent variable. The dependent variables included participants’ perceived percent likelihood that the defendant would commit a future act of violence, ratings of his punishment severity, and total scores on the SDS. Self-reported racism as measured by total scores on the MRS was entered into the analysis as a covariate.

Results of the omnibus MANCOVA indicated no significant group differences on the dependent variables (Pillai’s Trace = 0.009, F = 0.403, p = 0.887. partial eta squared
Thus, the hypothesis that those who read about a Black defendant would rate the defendant as having a statistically significantly higher likelihood for future violence, want more social distance from him, and suggest more severe punishment was not supported. Group means and standard deviations are provided in Table 3.

In addition to finding an overall effect of defendant race regardless of racial biases, it was expected that total scores on the MRS would differentially impact risk perceptions and legally relevant decisions based on the defendant’s race. However, this hypothesis was also not supported, as the MRS covariate was non-significant in the model (Pillai’s Trace = 0.022, $F = 2.013$, $p = 0.112$, partial eta squared = 0.022, observed power = 6.040). Results, therefore, do not suggest that self-reported racial biases influenced how participants rated the Black defendant in terms of his likelihood of future violence (i.e., risk in probabilistic terms), how much social distance they would want from him, or how severely he should be punished for the alleged offense. As neither the main effect nor the interaction term of the MANCOVA reached statistical significance, univariate analyses were not examined.

Multinomial logistic regression

The hypothesis that there would be a significant group difference in participants’ perceptions of risk as a categorical ranking based on the defendant’s described race was tested using a multinomial logistic regression in SPSS. This analysis was appropriate given the need to compare outcomes based on selected group category. Significant effects on the dependent variable was assessed using the Wald’s statistic, with $p < 0.05$. 

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Goodness of fit was assessed through the Pearson value and Chi² likelihood. Additionally, the Cox-Snell R² value was used as a measure of effect (Field, 2015).

The Pearson’s Chi² test showed poor model fit ($\chi^2(152) = 198.342, p = .007$). The Chi² likelihood was also non-significant ($9.249, p = .160$). The Cox-Snell R² was assessed to be 0.032. Further, the likelihood ratio tests showed no significant difference in ranked category of risk as predicted by MRS scores ($\chi^2(2) = 5.027, p = .081$) or by condition ($\chi^2(4) = 4.533, p = .339$). When compared to the reference group (“high”), MRS total scores ($b = -.309, s.e. = .351, \text{Wald’s test} = .776, p = .378$) did not influence risk category selection for those selecting “low risk.” However, when compared to those selecting medium risk, MRS total scores predicted risk category ($b = -.516, s.e. = .245, \text{Wald’s test} = 4.454, p = .035$). These findings indicate that individuals scoring higher on the MRS were not significantly different from those selecting medium risk or low risk across conditions, but those who scored higher on the MRS regardless of study condition were more likely to choose high risk. While the primary hypothesis was not supported, it does appear that more explicit racial biases are associated with higher rankings of risk no matter what race the defendant is described as.

*Kruskal-Wallis non-parametric test*

Finally, to test the hypothesis that participants would rate the Black/African American defendant as more responsible for the alleged crime than participants in the other two conditions, a non-parametric Kruskal-Wallis test was conducted with univariate outliers included and excluded. Excluding univariate outliers did not change the overall results ($K-W (2, 274) = 1.298, p = .523$) thus the univariate outliers were included in the final analyses. The Kruskal-Wallis test likewise revealed no significant group differences
in perceptions of the defendant’s responsibility (K-W (2, 280) = .383, p = .826). Most participants in the sample viewed the defendant, regardless of his racial identity, as relatively highly responsible (overall: $M = 92.39$, $SD = 15.290$; Black: $M = 91.51$, $SD = 18.080$; White: $M = 93.41$, $SD = 11.840$; Racially undefined: $M = 92.27$, $SD = 15.375$).

**Exploratory analyses**

To further explore the possible effects of race on perceptions of a hypothetical defendants’ risk and legally relevant decisions, an exploratory MANCOVA was performed with participants’ self-identified race as the independent variable with MRS scores as the covariate, and percent likelihood of risk, punishment severity ratings, and SDS total scores as the combined dependent variables. For purposes of this analysis, participant race was collapsed into White/European ($n = 228$) and non-White ($n = 52$) due to the sample’s racial distribution. Results of the MANCOVA indicated no significant group difference on the combined dependent variables while controlling for MRS total scores (Pillai’s Trace = .020, $F = 1.925$, $p = .125$, partial eta squared = .021, observed power = 0.495).

For categorical risk ranking, results of a multinomial logistic regression likewise showed that participant race did not predict category rankings of risk ($5.065$, $p = .281$). The Pearson’s Chi² test showed poor model fit ($\chi^2(96) = 154.692$, $p < .000$). The Cox-Snell R² was assessed to be 0.018. Further, the likelihood ratio tests showed no significant difference in ranked category of risk as predicted by MRS scores ($\chi^2 (2) = 4.811$, $p = .090$) or by participant race ($\chi^2 (2) = .349$, $p = .840$). Therefore, participant race did not influence risk category decisions.
Next, results of a non-parametric Kruskal-Wallis Test testing the hypothesis that there would be differences in how responsible the defendant would be for the offense based on participant race was also non-significant (K-W (1, 280) = 1.057, \( p = .304 \)). Most participants in the sample viewed the defendant, regardless of their own race, as relatively highly responsible for the alleged offense (White: \( M = 93.08, SD = 14.422 \); Non-White: \( M = 89.35, SD = 18.485 \)).

Further, because of the disproportionally large number of participants identifying as White, exploratory analyses were performed only among White participants (\( N = 228 \)) to determine if effects of defendant race on risk-related decisions could be found when racial minority groups were excluded. First, and similar to the primary analyses, results of a MANCOVA indicated no significant group difference across the dependent variables of percent likelihood of risk, punishment severity ratings, and SDS total scores while controlling for MRS total scores (Pillai’s Trace = .016, \( F = 1.245, p = .294 \), partial eta squared = .016, observed power = 0.331). For categorical risk ranking, results of a multinomial logistic regression likewise showed that there were not group differences in predicting category rankings of risk (11.493, \( p = .074 \)) with White participants. The Pearson’s Chi\(^2\) test, however, showed good model fit (\( \chi^2(36) = 37.334, p = .408 \)). The Cox-Snell R\(^2\) was assessed to be 0.198. Further, the likelihood ratio tests showed no significant difference in ranked category of risk as predicted by MRS scores (\( \chi^2(2) = .678, p = .713 \)). While it appears that identifying as White may predict risk category as evidenced by good model fit, findings did not reach statistical significance. Lastly, a non-parametric Kruskal-Wallis Test testing the hypothesis that there would be differences in
how responsible White participants felt the defendant was for the alleged offense was also non-significant (K-W (2, 228) = 1.139, \( p = .566 \)).

Finally, a one-way ANOVA was conducted to evaluate the relationship between political affiliation and reported explicit racial bias. There was a statistically significant group difference in explicit racial bias by political affiliation \( (F(5,273) = 19.268, \ p < .000) \). Specifically, statistically significant differences were found between democrats and republicans (Mean Difference = -1.3309, \( p < .000 \)), democrats and independents (Mean Difference = -.5829, \( p < .000 \)), and republicans and independents (Mean Difference = .7480, \( p < .000 \)). Together, individuals identifying as Democrat scored lower on reported explicit racial bias than republicans and independents, and independents scored lower on reported explicit racial bias than republicans.
CHAPTER IV – DISCUSSION

Given the disproportionate number of African Americans in the criminal justice system, evidence showing that Blacks received more serious legal outcomes, and the fact that even experts have been known to improperly rely on race to make determination about future dangerousness (*Buck v. Davis*, 580 US_2017), the purpose of the study was to examine whether a defendant’s race, with all other information equal, would impact perceptions of risk, dangerousness, and legally-relevant decisions. Specifically, this study examined jury-eligible participants’ perceptions of a defendant’s likelihood of future violence, ratings of their own desired social distance from that defendant, perception of guilt, and finally, deserved punishment for that crime. Further, this study examined the role of self-reported explicit racial biases and (exploratorily) participants’ own self-identified race on these perceptions. There are numerous real-life scenarios in which Black individuals experience larger amounts of racial injustice than their White counterparts (particularly within in the justice system), and while the empirical research on this issue has been mixed (e.g., Glaser, Martin, & Kahn, 2015; Coid, Kahtan, Gault, & Jarman, 2000; Mitchell et al., 2005; Wu, 2016), any injustices resulting from racial bias are unconstitutional. Although research on the association between racism and legal decision making is not new, examining this influence within the context of a violence risk assessment is less common. Evaluating these effects within the context of actuarial violence risk assessment is important in understanding if and how racial biases exist when laypersons are presented with expert testimony, as their decisions (e.g., regarding
sentencing or release) have the potential to significantly impact an individual’s civil liberties.

The results of this study failed to show that the race of a hypothetical defendant led to biased judgments about percent likelihood of future violence or other legally relevant decisions using this hypothetical case. Further, levels of self-reported explicit racism did not influence this relationship. In addition, these results held when White participants were isolated from the sample. However, in exploring univariate results following the main MANCOVA, there appeared to be a pattern of results suggesting explicit racism may have an influence on wanted social distance and suggested punishment, with higher racism scores being associated with more distance and more severe punishment. It is important to note, that while the \textit{a priori} power was met, the results indicated that the observed power was low.

While these results should not be overstated given the non-significant omnibus test, it seems worth noting that results were not void of the presence of racial biases. As such, further exploration into the effect of explicit racism on desired social distance and punishment when presented with results of an actuarial violence risk assessment is warranted in future studies. Factors that may have prevented significance of the overall test may have included external validity constraints, impression management concerns, and lack of insight. That is, because participants were asked to report their explicit racial biases toward Black individuals, they may have lacked insight into how their belief system may be racially biased (e.g., someone may not explicitly say that Blacks are not as deserving of the same resources as Whites even though they may frequently use microaggressions towards people of color).
While there were not significant group differences based on defendant race, there was a noteworthy difference in how individuals with higher levels of reported racial bias perceived the defendant’s category of risk. Specifically, it appeared that individuals reporting higher levels of explicit racial bias were more likely to assess any defendant (regardless of his race) as “high risk” than those with lower levels of explicit bias. One possible implication of this finding is that individuals who report more racial bias may be less able to suppress the influence of these personal biases on their legal decision-making when presented with expert findings than those who reported average or low levels of racial bias. This difference may also be attributable to other characteristics of individuals who experience higher racial bias. For example, exploratory analyses suggested that democratic participants reported fewer racial biases than other political groups. It is possible that people who are more explicitly racially biased may also hold more conservative values about crime (e.g., a “tough on crime stance”) and therefore assume that people who commit crimes are more likely to continue their criminal behavior. However, because the sample was collectively lower on explicit racism, it would be important to assess whether these findings are more problematic in a sample with greater variance in reported explicit racial bias.

Forensic Practice Implications

The implications for the findings in this study are theoretically interesting and offer several opportunities for future research. While results of this study did not show compelling evidence that participants were biased against the Black defendant, there nonetheless exists a significant disparity for minorities, especially Black men, involved in the criminal justice system. The intent of focusing this study on risk information
presented through expert witness testimony was to evaluate whether effects observed in other legal decision-making research (e.g., Coid, Kahtan, Gault, & Jarman, 2000; Daudsteil et al., 1999; Glaser, Martin & Kahn, 2015; Mitchell et al., 2005; Sweeney & Haney, 1992) would likewise be found when decision-makers are presented with scientifically informed information about a particular individual’s propensity for future violence. Because information about risk was presented by an expert who participants were told to assume was credible, it is possible that individuals may have been able to make less biased decisions simply because they were informed. That is, it could be the case that in attending to the expert’s opinion, participants were able to suppress the influence of personal racial biases on their decision-making. Future studies may look specifically at how perceptions of the expert witness or their testimony (e.g., credibility, veracity) may moderate the relationship between defendant race, explicit racial biases, and risk perceptions. It may also be useful to examine if there would be differences in risk perceptions between individuals who saw only the defendant’s background versus those who were presented with both the expert’s testimony and the defendant’s background.

Perhaps most importantly, these results have implications for expert witnesses, courts, and even jury selection. If participants are in fact able to look beyond extraneous factors like race and attend primarily to an expert’s opinion about a person’s propensity for future violence, it is even more critical that experts are making informed risk predictions and using empirically-supported risk factors to establish their risk predictions. The importance of communicating accurate findings that are grounded in actual scientific
outcomes is particularly important given that expert witnesses have falsely used factors such as race in making risk predictions (*Buck v. Davis*, 580 US_2017).

While the overrepresentation of White individuals selected for jury duty is related to larger systemic issues (e.g., voter registration, jury questioning), this study nonetheless has implications for jury selection. Results suggested that higher levels of explicit racism may be associated with perceptions of heightened risk across several different measures, and in particular, risk category. However, risk category is arguably an especially important way of communicating and conceptualizing risk as research suggests that categorical information is easiest to follow and interpret. For example, in Batastini and colleagues (2018) article on understanding how the format in which risk predictions are presented, it suggests that expert witnesses may benefit from explaining risk in a categorical method rather than a more specific numerical estimate. As such, making sure to address explicit racial biases during *voir dire* may be especially beneficial in selecting an unbiased jury when violence risk information will be introduced as evidence. Although some protections are in place to prevent an unbiased jury, specific screening about explicit racial may be appropriate to further these protections.

**Limitations and Recommendations for Future Research**

There are several noteworthy limitations of this study. First, the study design specifically examined differences in legal decision-making after reading about a White defendant, a Black defendant, or a defendant whose race was unknown, all of whom were described as male. However, race is a far more varied demographic variable and, as such, future research should examine effects using diverse racial descriptions (e.g., Hispanic/Latinx, Asian) as well as explore gender differences. Further, variations in skin
tone within a racial group may also be an important determinant in risk-related decisions. This study was also limited by the use of a written description of the defendant’s race (when applicable) which reduced external validity and may have decreased the saliency of the defendant’s race. Although the ability to identify the defendant’s physical characteristics (including race when applicable), future studies should include a photo or video depiction of the trial along with the vignette. Other constructs that could not be captured in written form, such as physical size, general appearance (e.g., attractiveness, hygiene, hair style), and demeanor may have also affected participants’ decisions.

Second, the demographic make-up of the sample was predominately White (81.4%). Unfortunately, juror samples in general are often not representative of the community from which they are selected (Ellis & Diamond, 2007; Lehman & Smith, 2013; Sarver, 2007). It has been found, for example, that the average jury is made-up primarily of White individuals (up to approximately 91%; Lehman & Smith, 2013; Sarver, 2007). Therefore, this study is largely representative of the typical jury in terms of race. Further, while more Americans identify as democrat than republican (Pew, 2017), this study’s sample had a larger proportion of participants whose political affiliation was democrat. Using a more diverse sample could provide a more accurate picture about how a participant’s race or their political ideology impacts risk-related decisions.

Third, the study’s good internal validity constrained external validity, particularly the absence of other contextual factors commonly found in the courtroom or in other settings where violence risk decisions are made. In addition to not having physical exposure to the defendant himself, participants were not exposed to other courtroom
experiences such as testimony from an opposing expert, cross-examination, or jury deliberation. Future studies could examine biases in violence risk assessments by using a more detailed image of the defendant for whom participants are making legally relevant decisions about, including video of a mock trial, or adding a jury deliberation component in which participants are asked to rate risk perceptions before and after discussing their decision with peers.

Fourth, this study only examined bias within the context of a criminal trial and with results of one violence risk assessment. For example, violence risk tools are often used in inpatient psychiatric settings and to provide judges information about risk when making release decisions (i.e., discharge from civil/criminal commitment placements). Further, there other accepted risk tools that use different assessment and communication risk using procedures than the risk assessment tool selected for the expert witness testimony vignette. For example, examining whether racial biases exist when applying an SPJ tool, like the HCR-20 may yield different results. Examining the influence of racial bias on decisions that are based on violence risk assessments without providing participants with an explicit risk value (percent/category) could supplement the research on this topic. And, related to participants’ own judgements about risk rather than how it is communicated to them, future studies may consider using dichotomous risk questions such as whether or not the defendant will reoffend, as the legal system often requires jurors to make black and white decisions.

Finally, this study only examined a few characteristics of the potential jurors. It could be that other personality traits (e.g., narcissism, low intellectual functioning) or belief systems (e.g., attitudes towards punishment, political affiliation, just world beliefs)
moderate the relationship between racism and legal outcomes. Relatedly, because jurors in cases involving violence risk are asked to consider numerical data, numeracy skills may be important (e.g., Barnes, Hanoch, Miron-Shatz, & Ozanne, 2016; Scurich, Monahan, & John, 2012). By asking participants to rate decisions as a percentage, it was assumed they had at least average numeracy skills. While the sample was generally well-educated, poor numeracy skills could nonetheless lead to a lower ability to rely on expert data and, in turn, increase the likelihood that extraneous factors such as defendant race are instead used. Assessing a wider range of potential juror characteristics may expand the current understanding of how bias and decision-making interact.

It is likely that legal decision making on the part of jurors is just one small factor contributing to the larger issue of racial disparity in the criminal justice system. Continued work in assessing the decision-making process throughout the legal system from arrest to incarceration to release is important in helping guide the understanding of where these disparities originate and how to tackle them. There is significant room for future research to add to our understanding about the nuanced effects of defendant race on legal decisions.
CHAPTER V – CONCLUSION

Does defendant race matter in cases involving violence risk opinions as evidence? Possibly. The fact that Black men experience more negative outcomes in the criminal justice system is clear, but the extent to which this applies to outcomes that follow from violence risk evidence is less clear. While the results of the present study did not clearly support the presence of racial biases when exposed to expert testimony, limitations must be considered and additional research on this relationship is need to confirm that jurors and other relevant decision-makers are less influenced by racial variables in this particular legal context. There are myriad of variables that are likely contributing to these discrepancies that warrant further exploration. Yet, it could also be the case that racial disparities are more prevalent in other aspects or stages of the criminal justice system than when jurors (or other decision-makers) are hearing risk information from an expert witness. Regardless, this study’s results provide a promising contribution to the work being conducted to ensure a fair and impartial justice system: perhaps jurors as less racially biased than expected, at least in cases where scientific data is expertly presented.
APPENDIX A – Electronic Informed Consent

To participate in this survey, you must be:

- 18 years of age or older
- U.S. Citizen
- No felony convictions or pending charges
- Fluent in English

The following information pertains to your participation in this study:

**Purpose:**
Thank you for participating in this survey! The hope of this study is to learn more about the decision-making process of laypeople based on expert witness testimony.

**Description of Study:**
You will be asked to read and listen to a de-identified excerpt from a psychological report and hear testimony about the expert's opinion from that report. You will then be asked to answer several questions about your perceptions of the defendant in question. You will also be asked basic demographic information about yourself, none of which will be identifying. Your participation is expected to take approximately 15 minutes.

**Risks and Benefits:**
There are no anticipated risks of participating in this study beyond those associated with everyday life. You may choose to terminate your participation at any time. A benefit of completing this full survey is that you will receive compensation according to standard MTurk terms and conditions.

**Confidentiality:**
There will be no identifying information asked during the survey or connected to your responses.

**Alternative Procedures**
If you choose to withdraw from this study, for whatever reason, you will not receive compensation through MTurk. Additionally, there are items embedded in the survey to check your attentiveness to items and if these items are answered incorrectly, it is possible that you may be removed from the study and will not receive compensation from MTurk. Your data will not be used in the present study if your participation is withdrawn for any reason.

**Participants’ Assurance:**
This study has been reviewed and approved by the Institutional Review Board (IRB). The IRB ensures that research projects that involve human subjects follow federal regulations.
Any questions or concerns about rights as a research participant should be directed to the Chair of the IRB at 601-266-5997. Participation in this project is completely voluntary, and participants may withdraw from this study at any time without penalty, prejudice, or loss of benefits.

Any questions about the research should be directed to the Principal Investigator, Riley Davis, B.A. at riley.davis@usm.edu.
APPENDIX B – Case Background Vignette

Mr. Day is a 35-year-old [race identified or not] male charged with Aggravated Assault. Mr. Day’s defense attorney requested a psychological examination of Mr. Day’s risk for committing future violent offense in preparation for pending legal proceedings.

Alleged Offense: The current offense of Aggravated Assault resulted when witnesses reported seeing Mr. Day yelling and pacing in a department store and then punch a female manager in the abdomen when asked to leave the store. The manager went to the emergency room and suffered several bruises and a fractured rib.

Background: Mr. Day was raised in a small town by his mother and an aunt. His biological father did not have much involvement in Mr. Day’s life. He has a brother and a sister but is not close to either. There is no history of physical, sexual, or emotional abuse. Mr. Day graduated from high school and was enrolled in regular track classes. Aside from a few detentions, there were no behavioral issues during school. Mr. Day has no prior juvenile offenses. Mr. Day reported having a limited social support system. Mr. Day has never been married and does not have any children. He reported his last relationship was approximately 5 years ago and he has not dated since. Mr. Day does not have medical problems and is reportedly healthy. He has previous charges as an adult for Disorderly Conduct and possession of marijuana for which he was on probation.

Evaluation of Risk: For this evaluation, Mr. Day was examined in a private room at the county jail where he was booked. He was compliant and cooperative throughout the evaluation. He was alert and oriented to person, place, time, and situation. His thought processes were goal-directed and consistently appropriate to topics of conversation. He denied homicidal or suicidal thoughts. He stated he was eating and sleeping well and was not depressed. Mr. Day’s intellectual functioning was estimated to be in the average range, and he evidenced no cognitive deficits during the interview.
APPENDIX C — Expert Witness Assessment Testimony

The following is an excerpt from testimony provided by the licensed psychologist who evaluated Mr. Day. Please assume this expert is qualified to conduct these types of assessments and that the procedures used are well accepted within the field.

As part of my evaluation, Mr. Day was rated on the Violence Risk Appraisal Guide, Revised (VRAG-R), a tool used for the predicting the likelihood of committing future violent acts. The VRAG-R was developed using a sample of adult male offenders. The Court should be advised that the VRAG-R is designed to predict general violent behavior and cannot predict specific acts or crimes.

Scores on the VRAG-R are derived by checking off the presence (or absence) of 12 risk factors that have, through research, demonstrated a known association to individuals who engage in violent behavior. Generally speaking, the more risk factors an offender has, the higher his level of risk will be.

Mr. Day's total score on the VRAG was a 0 (on a scale from - 34 to 44), which places him in risk Category 5 (out of 9). This category falls within the "medium" risk level range. As a group, 35% of offenders with a score similar to Mr. Day will re-offend within 5 years, and approximately 48% will re-offend within 12 years. The average rate of re-offending for the comparison group of offenders was 31% over a 5-year period.
APPENDIX D — Survey Items

**Experimenter Derived Questions**

1. In your opinion, what is the percent likelihood (out of 100%) that Mr. Day will commit another future act of violence?

2. Which category of risk do you believe best describes Mr. Day?
   a. Low Risk
   b. Medium Risk
   c. High Risk

3. In your opinion, to what extent (from 0 to 100%) do you believe that Mr. Day is responsible for the alleged crime?

4. Assume a jury has found Mr. Day guilty, to what degree (from 0 – 100%) do you feel he should be punished? (0 [minimum possible sentence] - 100 [maximum possible punishment]).

**Social Distance Scale**

Please rate the following statements on a scale of 0 to 3 with 0 being definitely unwilling and 3 being definitely willing:

0 (Definitely unwilling)
1 (Probably unwilling)
2 (Probably willing)
3 (Definitely willing)

1. How willing would you be to rent a room in your home to someone like Mr. Day?

2. How willing would you be to work on the same job with Mr. Day?

3. How willing would you be to have someone like Mr. Day as a neighbor?

4. How willing would you be to have someone like Mr. Day as the caretaker of your children for a couple of hours?

5. How willing would you be to let one of your children marry Mr. Day?

6. Please mark this question as 2.

7. How willing would you be to introduce Mr. Day to someone you are friendly with?
8. How willing would you be to recommend someone like Mr. Day for a job working for a job for a friend of yours?

Validity Check Items

1. What crime was Mr. Day charged with in the present case?
   a. Kidnapping and murder
   b. Manslaughter
   c. Aggravated assault
   d. Robbery and possession of a controlled substance

2. What was the general purpose of the expert’s evaluation in this case?
   a. To determine competency to stand trial
   b. To determine whether the defendant was insane at the time of the crime
   c. To determine the defendant’s level of risk for committing a future act of violence
   d. To determine whether the defendant should be sentenced to death

3. Which of the following BEST describes Mr. Day?
   a. A 40-year old White male
   b. A 31-year old with a history of psychiatric hospitalizations
   c. A 17-year old who has spent time in a juvenile detention center for selling drugs
   d. A 35-year old Black male

Modern Racism Scale

The questions that follow are a number of opinion statements about public issues, politics, and your beliefs about the world in general. You will agree with some, disagree with some and have no opinion about others. You are under no obligation to give an opinion any item. However, we would like for you to indicate when you do not have opinion or when do not wish to answer, please do not leave any question blank. Please use the following scale to indicate your degree of agreement with each item:

2 (Agree Strongly)
1 (Agree Somewhat)
0 (Neither agree nor disagree or no opinion)
-1 (Disagree somewhat)
-2 (Disagree strongly)

1. Over the past few years, the government and news media have shown more respect to Blacks than they deserve.

2. Over the past few years, Black have gotten more economically than they deserve.
3. Blacks have more influence upon school desegregation plans than they ought to have.

4. Blacks are getting too demanding in their push for equal rights.

5. Blacks should not push themselves where they are not wanted.

6. It is easy to understand the anger of Black people in America.

7. Discrimination against Black people is no longer a problem in the United States.

Demographic Questionnaire

1. What is your age?

2. What is your gender?
   a. Male
   b. Female
   c. Transgender
   d. Other

3. Which race/ethnicity do you most identify with?
   a. African American or Black
   b. Asian American
   c. European American/Caucasian
   d. Native American
   e. Pacific Islander
   f. Other (please specify)

4. What is the highest educational degree you’ve obtained?
   a. Not applicable - No degree earned
   b. High school diploma or equivalent
   c. Associate's degree
   d. Bachelor's degree
   e. Master's degree
   f. J.D.
   g. M.D.
   h. Ph.D.
   i. Other (please specify)

5. What is your political affiliation?
   a. Democrat
   b. Republican
c. Independent
d. Libertarian
e. Other
f. None

6. Do you have training or experience in a legal profession?
   a. Yes
   b. No

7. Have you ever served as a member of a jury before?
   a. Yes
   b. No

8. Do you have training or experience in a mental health profession?
   a. Yes
   b. No
APPENDIX E — IRB Approval

Tuesday, April 7, 2020 at 17:36:02 Central Daylight Time

Subject: IRB-19-267 - Initial: Sacco Committee Letter - Expedited and Full
Date: Thursday, June 20, 2019 at 9:22:41 AM Central Daylight Time
From: irb@usm.edu
To: Ashley Batastini, Riley Davis, Sue Fayard, Michaela Donohue
Attachments: ATT00001.png, ATT00002.png

NOTICE OF INSTITUTIONAL REVIEW BOARD ACTION
The project below has been reviewed by The University of Southern Mississippi Institutional Review Board in accordance with Federal Drug Administration regulations (21 CFR 21, 111), Department of Health and Human Services regulations (45 CFR Part 46), and University Policy to ensure:

- The risks to subjects are minimized and reasonable in relation to the anticipated benefits.
- The selection of subjects is equitable.
- Informed consent is adequate and appropriately documented.
- Where appropriate, the research plan makes adequate provisions for monitoring the data collected to ensure the safety of the subjects.
- Where appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of all data.
- Appropriate additional safeguards have been included to protect vulnerable subjects.
- Any unanticipated, serious, or continuing problems encountered involving risks to subjects must be reported immediately. Problems should be reported to ORI via the Incident template on Cayuse IRB.
- The period of approval is twelve months. An application for renewal must be submitted for projects exceeding twelve months.

PROTOCOL NUMBER: IRB-19-267
PROJECT TITLE: Does race matter? An examination of defendant race on legal decision-making in the context of actuarial risk assessments
SCHOOL/PROGRAM: School of Psychology, Psychology
RESEARCHER(S): Riley Davis, Ashley Batastini

IRB COMMITTEE ACTION: Approved
CATEGORY: Expedited
- Research on individual or group characteristics or behavior (including, but not limited to, research on perception, cognition, motivation, identity, language, communication, cultural beliefs or practices, and social behavior) or research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies.

PERIOD OF APPROVAL: June 19, 2019 to June 18, 2020

Donald Sacco, Ph.D.
Institutional Review Board Chairperson
Table F1. Total Sample Demographics

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### Table F2. Demographics Characteristics by Condition

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Table F3. Mean and Standard Deviation of the scores of perceived likelihood of future violence, SDS total scores, responsibility/guilt, suggested punishment, and MRS total scores by condition

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Table F4. Mean and Standard Deviation (SD) of the scores of perceived likelihoods of future violence, SDS total scores, responsibility/guilt, suggested punishment, MCSDS, and MRS total scores by participant race

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REFERENCES


Buck v. Davis, 580 US_2017


Pena-Rodriguez v. Colorado, 580 US_2017


