

JURY INSTRUCTIONS: HOW TIMING, TYPE, AND DEFENDANT RACE IMPACT CAPITAL SENTENCING DECISIONS

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Much research has investigated improving the effectiveness and fairness of the judicial system. One of the variables that has received attention regarding this is juror comprehension of sentencing instructions. This study utilized a transcript, modified from an actual murder and sexual battery trial transcript, to investigate the effects of timing of the sentencing instructions (before or after penalty phase testimony), simplicity of the instructions (standard or simplified), and race of the defendant (Caucasian or African American) on the overall sentencing outcomes for defendants. Overall, results showed that defendant race was not a significant predictor of the guilt decision for either capital murder or sexual battery. No relationship was found between defendant race and the decision to render a death sentence rather than life in prison without parole (LWOP). When the defendant was presented as Caucasian, the type of instruction (standard or simplified) was unrelated to sentence, but when the defendant was presented as African American the relationship between type of instruction and sentence was marginally significant. Similarities to, and differences from, results of previous research are addressed.

Keywords: capital sentencing, jury instructions, defendant race, jury instruction timing

United States' courts have been concerned with the fair and equitable enactment of the death penalty since its inception. When *Furman v. Georgia* (1972) halted capital sentencing in the United States, the focus was not on the legality of the death penalty itself, but instead on the fairness of its application to defendants. Since its reenactment with *Gregg v. Georgia* (1976), protections have been put in place to protect defendants. For example, capital cases are now bifurcated, where the guilt and the sentencing phases of the trial are separated, and jurors must unanimously agree upon a sentence of death, based upon statutorily defined aggravating and mitigating factors.

Despite the legal protections put in place in 1976, problems continue to arise with the death penalty. Research has focused on many aspects of how the death penalty is implemented. For example, research has highlighted how jury instructions, which provide guidelines to jurors on how to make these sentencing decisions, are often misunderstood

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(Lieberman, 2009), and sentences may vary depending on jurors' legal understanding of those instructions (Heffer, 2008). In addition, the race of defendants has been shown to impact the likelihood of a jury voting to implement the death penalty, with African Americans being more likely to be found guilty and sentenced to death than Caucasians for the same crimes (Cohn, Bucolo, Pride, & Sommers, 2009). Finally, researchers have studied how the timing of instructions can influence perception of guilt, concluding that mock jurors make different decisions regarding the guilt of an African American defendant depending on whether instructions were provided before or after the presentation of evidence (Ingriselli, 2015).

The purpose of the present study is to simultaneously examine three variables (i.e., defendant race, instruction simplicity, and instruction timing) that may bias jury decision making in capital cases. It further contributes to the growing literature by utilizing a transcript that has been modified from a real trial.

JURY INSTRUCTIONS IN CAPITAL SENTENCING

In all trials, regardless of whether they are capital cases, judges instruct jurors to enact the law as best they can. The accurate comprehension of jury instructions is essential to ensure that the law is enacted as intended. Should jurors misunderstand jury instructions, it is likely that they misunderstand the law (Lieberman & Sales, 2000). Not only are guilt decisions at stake as a result of juror miscomprehension, but sentencing decisions may differ depending on comprehension of legal understanding as well (Heffer, 2008). Some research has even speculated that miscomprehension of jury instructions might lead to higher overall rates of conviction (Goodman & Greene, 1989).

Research has consistently demonstrated that jury comprehension of jury instructions is low (Lieberman, 2009). Elwork, Sales, and Alfini (1977) conducted one of the first studies regarding jury instruction comprehension and found that participants who read the original jury instructions, with no change in the legalese, did not differ in their understanding of the law when compared to participants who did not have any instructions at all. Other research has also found that jury instructions are ineffective (Lieberman & Sales, 1997; Severance & Loftus; 1982).

In capital trials, where the decision process is bifurcated, the instructions given to the jurors for the sentencing phase are particularly difficult to understand (Haney & Lynch, 1997). During the sentencing phase in a capital trial the jury must decide whether the defendant who has been found guilty must serve a sentence of life in prison without parole (LWOP) or face the death penalty. Despite the enormous ramifications (i.e., death), which stem from miscomprehension of jury instructions during capital sentencing cases, jury comprehension remains a significant problem in these cases (Smith & Haney, 2011). Reifman, Gusick, and Ellsworth (1992) found that when quizzed, Michigan citizens who served as jurors and received judge's instructions scored no better on comprehension questions than did citizens who did not, and in fact, those jurors who had received sentencing instructions only understood less than 50% of the instructions.

While generally, there exists a relationship between willingness to impose the death penalty and comprehension (Wiener, Pritchard, & Weston, 1995), more specifically, jurors misunderstand critical terminology particular to capital sentencing cases despite their explanation within jury instructions. Jurors continue to struggle to interpret aggravating and mitigating factors, behaviors that constitute both, and how to utilize them when making decisions during the sentencing phase of a capital trial (Sandys, 2014). Mitigating factors are those factors regarding the crime or the defendant that should lead jurors to recommend LWOP, whereas aggravating factors lead jurors to recommend death. Data from the Kentucky Capital Jury Project show that jurors have serious misconceptions about what qualifies as a mitigating circumstance (Sandys, 2014). The misunderstanding of these factors further becomes diluted by a miscomprehension of sentencing instructions, for example the weight that should be given to each.

In 2005, California lawmakers rewrote and simplified their capital sentencing instructions using a number of psycholinguistically sound principles, such as more concrete terms, less legal jargon, fewer phrases of negation, and better organization, partly in reaction to a lack of comprehension. Research conducted by Smith and Haney (2011) examined the changes California made and found that with these updated instructions participants were able to answer significantly more questions correctly; were better able to define aggravating and mitigating; and were better able to identify specific factors as belonging to the aggravating or mitigating class. Unfortunately, overall comprehension was only slightly better than 50% even for the participants who received the simplified instructions, and participants showed the typical tendency of being better able to identify aggravating than mitigating factors. Otto, Applegate, and Davis (2009) attempted to improve juror comprehension by including in the sentencing instructions information that “debunked” typical juror misconceptions. Even with these explicit instructions refuting jurors’ misunderstandings, comprehension only reached 59% versus 46% for the control group. One conclusion that can be drawn from this research is that although simplified and modified instructions improve comprehension, understanding remains limited.

RACE AND JURY DECISION-MAKING

Previous research has focused on the role race may play in jury decision making. Undoubtedly, African Americans are treated more harshly by the criminal justice system than other racial/ethnic groups. In 2017 African Americans made up about 13% of the U.S. population (U.S. Census Bureau, 2018), but comprised 38% of the prison population (Federal Bureau of Prisons, 2018).

The bias of the legal system extends to capital sentencing, as African Americans are more likely than Caucasians to be sentenced to death (Cohn et al., 2009). African Americans are about 42% of those on death row (Fins, 2017) and represented 34.5% of those executed between 1976 and June 2018 (Death Penalty Information Center, 2018). This should not be surprising, given that African Americans are more likely to be found guilty than Caucasians for the same crimes (Cohn et al., 2009; Sommers & Ellsworth, 2000, 2001).

There is complexity within this research on how race influences jury decision. For example, Kemmelmeier (2005) found that it was not just race that influenced mock jurors, but the defendant's race coupled with the mock juror's social dominance orientation (SDO), or beliefs about his/her own dominance or superiority, that was significantly related to guilt perceptions. In fact, racial discrimination occurs in jury decision, even when controlling for the seriousness of the crime (Mitchell, Haw, Pfeifer, & Meissner, 2005). As such, the influence of the defendant's race on jury decisions is not simple. Interestingly, research consistently supports that the extent to which the defendant's race is focused upon or made salient can at times negate the racial discrimination that impacts jury decisions (Bucolo & Cohn, 2010; Cohn et al., 2009; Ingriselli, 2015; Sommers & Ellsworth, 2000, 2001, 2009). In particular, it seems that if race is made salient, either by testimony that racial slurs were addressed at the defendant or by the argument of the defense attorney, Caucasians make a conscious effort to avoid seeming racist or prejudiced (Sommers & Ellsworth, 2001). Bucolo and Cohn (2010), similarly, found that when race was made salient, Caucasian mock jurors' guilt ratings for African American defendants were significantly lower than their guilt rating for Caucasian defendants.

In looking at how jurors determine what evidence counts towards mitigation, research supports that when race is made salient through testimony provided by witnesses, Caucasian mock jurors were more likely to find the African American defendant guilty, more aggressive, and more violent than the Caucasian defendant. On the other hand, African American mock jurors always gave Caucasian defendants higher guilt ratings and recommended longer sentences compared to African American defendants regardless of whether or not race was made salient. The authors entertain the possibility that this is because African American mock jurors are more aware of the discrimination African Americans face by the criminal justice system, police, prosecutors, judges, and juries, and that "Black mock jurors' bias may reflect a conscious attempt to level the playing field" (Sommers & Ellsworth, 2000, p. 1372).

One of the best known and most cited studies on racism in capital punishment is the Baldus study (Baldus, Woodworth, Zuckerman, & Weiner, 1998). Baldus and colleagues evaluated almost 2,500 homicide cases in Georgia in the 1970s and found support for the presence of racial discrimination in death penalty trials. Other research supports that the race of the defendant continues to influence jurors' decisions (Lynch & Haney, 2000, 2009), and jurors consider the evidence differently when the defendant is African American (Baldus et al., 1998). Specifically, jurors consider mitigating evidence more when the defendant is Caucasian compared to when the defendant is African American (Haney, 2004).

RACE AND JURY INSTRUCTIONS

Jury instructions play a critical role in trials, and research has demonstrated that there is an opportunity to reduce bias during jury instructions (Mitchell et al., 2005; Pfeifer & Bernstein, 2003; Pfeifer & Ogloff, 1991). For example, if the judge, during instructions, specifically tells jurors not to rely on bias or stereotypes (Pfeifer & Ogloff, 1991), then bias towards African American defendants decreases for Caucasian jurors. Similarly, Pfeifer

and Bernstein (2003) found that when mock jurors did not have information about social status, African American defendants were perceived to be significantly more guilty than Caucasian defendants. In a second study, Pfeifer and Bernstein (2003) concluded that when jury instructions regarding bias or stereotypes were not included, research participants rated African American defendants as significantly more guilty than Caucasian defendants, which shows instructions could diminish racial bias.

Regardless of if or when instructions are provided, lack of comprehension can be problematic for jurors and could result in racially biased decision-making. Racial discrimination is greater when jurors do not understand penalty phase jury instructions (Haney & Lynch, 1994, 1997; Lynch & Haney, 2000). Lynch and Haney (2000) found that juries had difficulty understanding the instructions, and those who had low comprehension were significantly more likely to impose a death sentence for the African American defendant compared to those who had high comprehension. Results of follow-up research (Lynch & Haney, 2009) confirmed a significant relationship between jurors with poor comprehension of jury instructions and racial bias against African American defendants.

There are ways to help reduce this racial bias that stems from miscomprehension of jury instructions. One way is to simplify instructions and research has demonstrated that when instructions are simplified, racial bias can be decreased (Shaked-Schroer, Costanzo, & Marcus-Newhall, 2008). In fact, whether instructions are simplified or not may also be an important factor when considering jurors' racial bias and can result in less racial bias toward African American defendants (Shaked-Schroer et al., 2008). Although not looking specifically at racial bias, Coleman, Espinoza, and Coons (2017) found that when mock jurors were provided simplified instructions they made better decisions about guilt, showed improved comprehension, were better able to define reasonable doubt, and understood the presented evidence better. In fact, the data supporting the effectiveness of simplified instructions in improving juror comprehension has led the United States government to establish a website giving examples of how this simplification might be achieved (Jury Instructions, 2018).

THE ROLE OF JURY INSTRUCTION TIMING

There are a number of methods that can be used to improve comprehension. As Shaked-Schroer and colleagues (2008) showed in their experiment, rewriting the instructions is one effective technique. Another means to improve comprehension of ambiguous or difficult material, is to provide the reader or listener with an outline or framework prior to their reading or listening (Dooling & Lachman, 1971). In fact, as long ago as 1932 Bartlett proposed the notion of a schema to explain how we interpret and remember information that is unfamiliar to us. Schemas provide a structure or scaffold for new information that might otherwise seem unrelated. Early work in educational psychology focused on the use of advanced organizers for improving comprehension of difficult material (Ausubel, 1968). These are devices that describe the relationships between new concepts and assist the learner in organizing new material. Providing jury instructions before testimony is presented might serve a similar purpose, directing attention to evidence that is particularly im-

portant, and helping the learner to identify relationships between pieces of testimony. In the legal arena, Smith (1991) found that when the presumption of innocence was defined prior to a trial, conviction rates were significantly lower and jurors were better able to integrate the trial facts with the relevant law compared to when the definition was given after the trial evidence had been presented. Furthermore, some research has shown that sentencing bias can be reduced if judges give instructions before evidence is presented to jurors rather than after evidence is presented (Ingriselli, 2015).

RESEARCH PURPOSE AND HYPOTHESES

The purpose of the present study was to simultaneously examine variables (i.e., defendant race, instruction simplicity, and instruction timing) that may bias jury decision making in capital cases. Based on previous research, our hypotheses were as follows: (H1) When the defendant was African American, research participants would be more likely to find the defendant guilty compared to when the defendant was Caucasian; (H2) The combination of using simplified sentencing instructions and providing these instructions prior to the participants reviewing the sentencing testimony would enhance jury instruction comprehension and reduce racial bias against African American defendants.

METHOD

Participants

One hundred and twenty-one students from an east coast metropolitan university were included in this study. They ranged in age from 18 to 22 years old, their mean age was 18.53 ($SD = .81$), and 59% were 18 years old. Most participants (86%) were freshmen. The sample was 63% female. Most (73%) were Caucasian, 19% were African American, 4% were Asian, and 8% were another race. Most (93%) indicated their ethnicity was non-Hispanic. Eighty-five percent of the participants' home states were New Jersey and Pennsylvania, and 46.6% were from states where the death penalty is legal.

Eight participants (6.6%) claimed to have been a victim of a crime. Of these participants, 75% were the victim of a property crime, 12.5% were the victim of a violent crime, and 12.5% were the victim of both. All were US citizens and none claimed to have been convicted of a felony.

Importantly, jurors would need to be death qualified to serve on a capital jury, and 12% of the present participants claimed that they could not impose a sentence of death. These participants were included in the final analyses because chi-square analyses showed that there was no relationship between a participant saying that he/she could vote for the death penalty if a person was convicted of a capital offense and finding the defendant guilty of either of the crimes of which he was accused. There was also no relationship found between a participant claiming that they could vote for the death penalty if a person was convicted of a capital offense and deciding that the defendant in this case should receive the death penalty, so they were not excluded from analyses.

Materials

The materials for this study consisted of Institutional Review Board (IRB) approved informed consent forms, pre-trial instructions from a judge, pictures of the “defendant”, a “cast of characters”, a bifurcated trial transcript, guilt phase instructions, two sets of penalty phase jury instructions (standard and simplified), two “factual” quizzes (one for guilt phase, one for sentencing phase), two reaction surveys (one for guilt phase, one for sentencing phase), sentencing phase testimony, and a demographics questionnaire.

Pre-trial Instructions from the Judge

These instructions were based on the proposed Mississippi plain language model jury instructions-criminal (Proposed Mississippi plain language model jury instructions-criminal, 2012), since the trial that was used took place in Mississippi. These were general orienting instructions regarding the manner in which a trial proceeds, and instructions to pay close attention to the witness’ testimony, instructions to not form an opinion before all of the evidence has been heard, explanation of how the judge rules on motions, and explanation of what constitutes evidence. Participants were told to base their decisions on only the evidence presented at trial and to not use any extra materials or devices to learn anything about the case. All participants were provided with the same pre-trial jury instructions.

Pictures of the Defendant

Because the research manipulated the defendant’s race originally, an attempt was made to take a picture of a Caucasian male and Photoshop© him into an African American male and vice versa in order to keep all aspects of the defendant’s characteristics constant. This resulted in very unnatural looking photographs. Instead, a pilot study was conducted whereby a set of 12 African American and Caucasian faces (six each) were taken from the Chicago Face Database and a sample of 16 undergraduates were instructed to rate on a scale of 1 to 5 how “typical” each appeared to be.

Overall, six pictures were chosen to be used in this study, based on the result of the pilots study: three “typical” pictures from the African American group, and three “typical” from the Caucasian group. These faces were seen in approximately equal proportions in their respective conditions. Faces 1, 2, and 3 were Caucasian faces and they were each viewed in the Caucasian conditions 17.4% of the time. Faces 4, 5, and 6 were African American faces and they were seen 15.7, 16.5, and 15.7% of the time in the African American conditions respectively.

Cast of Characters

The “cast of characters” sheet provided to participants consisted of a list and identity of the main players in the trial including the defendant, defendant’s lawyer, prosecutor, the witnesses, and the family members involved. The witnesses were broken down into categories (e.g., law personnel and childcare providers) so that the participants could more easily keep track of their names. This list was printed on blue paper, which contrasted with the white paper the other materials were printed on so that it would stand out. It was available to the participants as they completed their tasks. The defendant picture was clipped to the cast of characters and, unlike the other materials, these were always available to the participant.

Trial Transcript

The trial transcript was taken from an actual trial transcript of Jeffrey Keith Havard (*Havard v. Mississippi, 2003-DP-00457-SCT*) posted on Freejeffreyhavard.org. He was accused (and ultimately convicted of) the 2002 sexual assault and murder of the 6-month-old daughter of his girlfriend, a crime for which he was still on death row until 2018. During the guilt phase of the trial, testimony was heard from criminal justice personnel who investigated the crime scene and conducted interviews with the defendant and the baby's mother. Medical personnel who attended to the baby in the emergency room and her pediatrician provided testimony, as did postmortem examiners. The baby's childcare providers also provided testimony. The website also provided the evidence that was used to bring charges against Mr. Havard for sexual assault and murder, and the closing arguments for the defense and the prosecution summarizing the evidence presented and their interpretations of it.

After a pilot study including 21 participants determined that the transcript was much too long (14,253 words) for students to read in the hour allotted for the study (taking a mean of 74.05 minutes, $SD = 13.06$), a modified transcript was created. Redundant testimony from multiple medical personnel and childcare personnel were condensed. After modifications, the transcript was cut to 22 pages (8,330 words) in length and had a Flesch-Kincaid readability statistic of 4.9.

Guilt Phase Jury Instructions

Following the trial transcript and closing arguments, research participants received the guilt phase instructions containing details of the jurors' duties in reaching a verdict, as well as detailed definitions of the various charges against Mr. Havard, (e.g., sexual penetration and felony child abuse).

Guilt Phase Reaction Survey

After participants read the portion of the transcript devoted to the guilt phase of the trial, participants were asked about their opinions about Mr. Havard, and the trial, including their decisions on guilt for murder and sexual assault. Participants were asked questions on both categorical (guilty or not guilty) and continuous scales (on a 1 to 7 point scale, with 1 being "very unsure" of guilt or innocence and 7 being "very sure").

Guilt Phase Factual Quiz

Participants completed a 5-item multiple-choice quiz about the facts of the guilt phase of the case. The purpose of this quiz was to make sure participants read and understood the trial summary.

Sentencing Phase Jury Instructions

The sentencing phase instructions from the judge were received by participants either before or after the sentencing phase testimony depending on the condition to which they had been assigned. The instructions for the sentencing phase were taken from the trial transcript and another, simpler, version based on California's simplified instructions was also created for this study (CALCRIM, 2005). The primary purpose of these instructions was to define aggravating and mitigating factors and explain how they should be consid-

ered/weighed in the determination of a sentence. In these instructions, participants were told that the defendant had been found guilty.

Sentencing Phase Testimony

Participants also read the sentencing phase of the trial. This included testimony from the deceased baby's grandmother and the defendant's mother. The grandmother spoke about how close she and the baby were and how her other granddaughter would now be denied the opportunity to grow up with her cousin. The defendant's mother spoke about his love for children and somewhat difficult childhood.

Sentencing Phase Reaction Survey

Participants were asked to choose a sentence of life in prison without parole or the death penalty and to rate their confidence in their decisions. They were also asked additional questions about their opinions about the trial.

Sentencing Phase Factual Quiz

Participants were quizzed about the sentencing phase testimony after having read it. The purpose of this five question multiple-choice quiz was to make sure participants read and understood the testimony. Both the factual quiz following the guilt phase and the factual quiz following the penalty phase were given to ensure that participants were paying attention to the lengthy and detailed trial transcripts.

Each participant was awarded a total quiz score based on the number of quiz items (out of 10) that had been answered correctly. All participants scored at least 70% with 86% of participants scoring 80% or higher on quiz questions indicating that they were in fact paying close attention to the details of the trial transcripts. Therefore, no participants were eliminated from the analyses for insufficient attention to case information. The one quiz item that was answered incorrectly most often had to do with the baby's age. In hindsight, all of the possible answers indicated that she was an infant (from 2 to 12 months of age), so it is not surprising that participants may have been confused about her exact age.

Demographics Questionnaire

Participants were asked to report their age, gender, race, ethnicity, year in school, and home state. They were also asked whether they had been a victim of a crime and if so whether it was a property or violent crime. Additionally, they were asked whether they were for or against the death penalty and were given an "other" option to write in.

Design and Procedure

The design was a 2 (**race** of defendant – African American or Caucasian) x 2 (**timing** of instruction – before or after sentencing testimony was given) x 2 (type of **instruction** – standard or simplified) between participants factorial design. Participants were recruited from undergraduate psychology courses at an east coast metropolitan university. Once participants signed up for the study in the undergraduate psychology department, they were instructed to report to a classroom on campus at a designated time, where a research assistant met them. Participants received introductory course credit for their participation. As a requirement of the course, students must either write a paper or participate

in any psychology experiment administered by psychology faculty or students conducting research during their senior year.

Between two and ten participants participated in the research at a time. The research assistant physically spaced out each participant so that no participants were sitting directly next to one another, and consented each one of them at a time. Each participant was provided with a prepared folder containing all of the materials for the study and was told not to open it. The research assistant recorded on each participant's folder their start time.

Participants read introductory instructions telling them what they would do while participating in the research (instructions were a repetition of the general information on the IRB approved consent form) and the research assistant read the participants the instructions for the study as well. The assistant subsequently provided every participant with each piece of material from their folder separately. As soon as a participant finished with one material, it was removed and placed in their manila folder prior to their receiving the next piece of material from the folder. The exception to this was the cast of characters and defendant picture, which remained available to them throughout the experiment.

All materials were presented in the order that they appear in the materials section except for the sentencing instructions which, depending on condition, could have been given either before or after the sentencing testimony was provided. The study was self-paced such that each participant moved through the materials in the same order, but not necessarily at the same pace. Once all of the measures were completed, the research assistant recorded their finish times on their folders, the participants were thanked for their time and excused. Participants took a mean of 69.45 minutes ($SD = 15.98$) to read the transcript and complete the accompanying measures.

RESULTS

GUILT

Participants were asked to select guilt (guilty or not guilty) on two charges; murder and sexual battery. Since the only variable manipulated prior to obtaining guilt ratings was defendant race, two logistic regressions were conducted on murder guilt decision, ($\text{guilt} = -.944 + .179 \text{ race}, p = .384$) and sexual battery guilt decision ($\text{guilt} = -1.254 + .177 \text{ race}, p = .426$) using defendant race as the predictor. Results showed that for neither charge was race a significant predictor of guilt decision.

Participants were also asked to rate their confidence (on a 7-point scale) of the defendant's guilt on two charges; murder and sexual battery. Most (71%) of the participants found the defendant guilty of murder and more than 58% were either sure or very sure of his guilt for this charge (rated 6 or 7 on a 7-point scale). In particular, when asked how sure participants were of Jeffrey's guilt (with regards to murder), participants noted they were sure or very sure ($M = 5.30, SD = 1.55$).

Results showed that 77% of the participants found the defendant guilty of sexual battery and 72% were either sure or very sure of his guilt (rated 6 or 7 on a 7-point scale).

Specifically, when asked how sure participants were of Jeffrey's guilt (with regards to sexual battery), participants noted they were sure or very sure ($M = 5.74$, $SD = 1.66$). How sure participants claimed to be varied with the guilt decision they had made. When asked how sure they were of his guilt on the murder charge, those who found him guilty were more sure ($M = 6.12$, $SD = .69$) (on a scale of 1 to 7) than those who found him not guilty ($M = 3.24$, $SD = 1.13$), $t(118) = 16.96$, $p < .001$. Therefore, participants who believed Jeffrey was guilty of murder were significantly more sure than participants who believed he was innocent.

When asked how sure they were of his guilt on the sexual battery charge, those who found him guilty were more sure ($M = 6.45$, $SD = .73$) compared to those who found him not guilty ($M = 3.30$, $SD = 1.66$), $t(118) = 14.27$, $p < .001$. There was no difference in sureness for either the murder or sexual battery decision based on how the race of the defendant was portrayed, $p = .734$ for murder and $.684$ for sexual battery.

SENTENCE

One hypothesis was that there would be a relationship between the defendant's race and the sentence given, and when portrayed as African American the defendant would be more likely to receive a death sentence. However, data indicate that when portrayed as African American, the defendant was no more or less likely to receive the death penalty than when the defendant was portrayed as Caucasian, $\chi^2(1) = .048$, $p = .827$.

In addition, hypotheses were that the effects of penalty phase instruction type and timing, which were both designed to improve comprehension, would benefit African American defendants more than Caucasian defendants and lead to more LWOP sentences for African American defendants. Chi-square analyses were conducted to investigate the relationship between instruction type and sentence separately for the Caucasian and African American defendants. When the defendant was portrayed as Caucasian, the type of instruction was unrelated to sentence, $\chi^2(1) = .020$, $p = .887$. However, when the defendant was portrayed as African American, this relationship was marginally significant, $\chi^2(1) = 2.763$, $p = .096$ with a larger percentage of participants voting for LWOP (55%) in the simple than in the standard instruction condition (45%).

Chi-square analyses also were conducted to investigate the relationship between penalty phase instruction timing and sentence separately for when the defendant was portrayed as Caucasian and African American. For both portrayals, this relationship failed to reach statistical significance, $p = .596$ (Caucasian) and $p = .923$ (African American).

Overall, 80% of the participants gave LWOP as the appropriate sentence. Participants were asked on a scale of 1 (very sure life in prison) to 7 (very sure death penalty) how sure they were of their sentencing decision. Participants were split into two groups, those who recommended LWOP and those who recommended death. Then the mean sureness for each group was compared to the neutral middle anchor value of four. Similar to what was observed in the guilt decision data, those who recommended the death penalty were significantly more sure of their decision of death ($M = 5.95$, $SD = .95$, $t(21) = 9.85$, $p < .001$) than were those who chose LWOP ($M = 2.65$, $SD = 1.79$, $t(96) = 7.43$, $p < .001$). In addition, for

those who recommended death, their sureness in this decision was highly correlated with their sureness ratings regarding Jeffrey's guilt for murder and sexual battery, $r(22) = .55$ and $.46$, $p < .05$, respectively. For those who recommended LWOP, these correlations were small and non-significant, $r(96) = .04$ and $.07$, $p > .51$, respectively.

A three-way ANOVA was conducted on their sureness scores with penalty phase instruction type, timing, and defendant race as factors. None of the main effects or two-way interactions were significant, all $p > .15$. However, the three-way interaction approached significance, $F(1, 111) = 3.795$, $p = .054$. In an attempt to locate the source of this interaction, two-way ANOVAs were conducted separately for when the defendant was portrayed as African American and Caucasian using instruction and timing as the factors. Results showed no main effect for either analysis, a significant two-way interaction for when the defendant was portrayed as Caucasian, $F(1, 53) = 5.575$, $p = .022$, but no such interaction for when the defendant was portrayed as African American $F(1, 58) = .574$, $p = .721$. Figures 1 and 2 show these results.

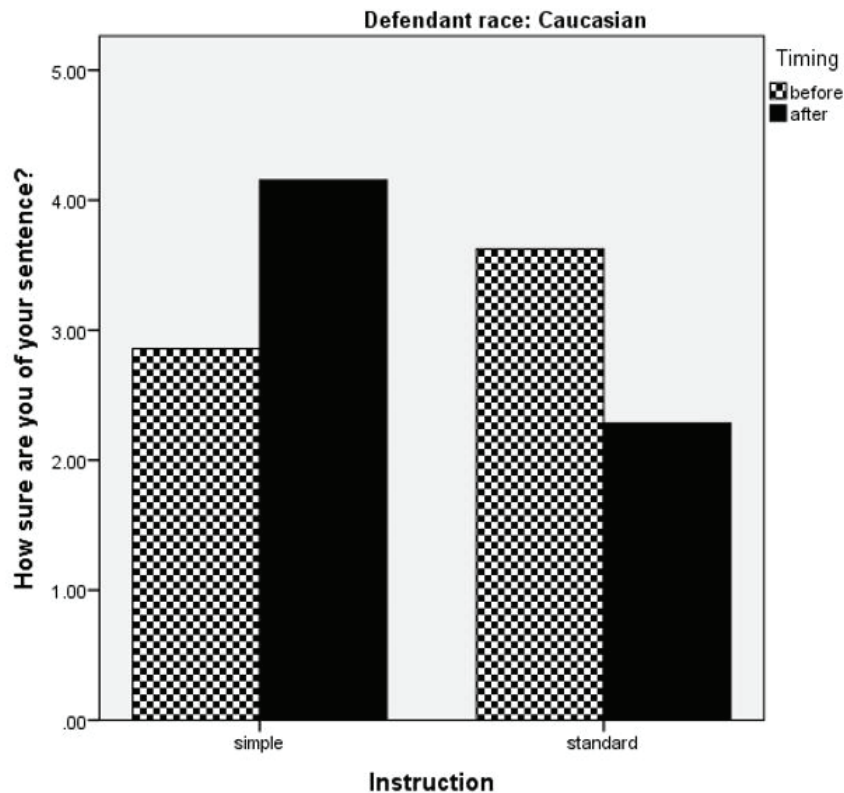


Figure 1. Certainty in the death sentence for when defendant was portrayed as Caucasian by timing and instruction.

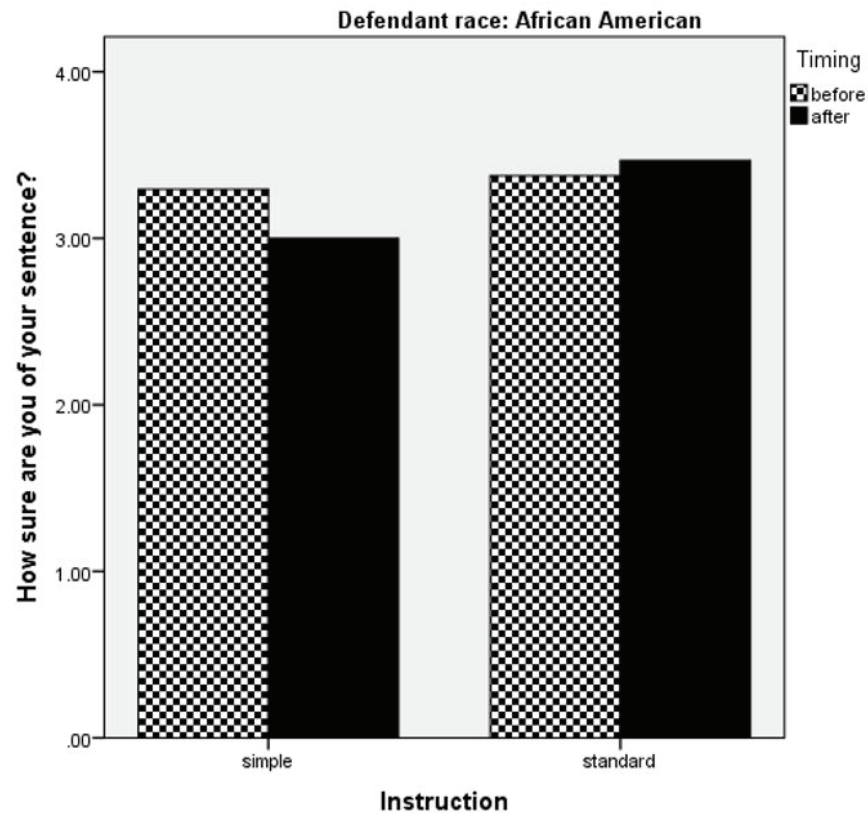


Figure 2. Certainty in the death sentence for when defendant was portrayed as African American by timing and instruction.

DISCUSSION

Data did not support the first hypothesis that African American defendants would be found guilty more often than Caucasian defendants. Perhaps the picture of the defendant made his race salient and therefore students exhibited signs of aversive racism (Gaertner & Dovidio, 2005). According to this theory, people hold racist views that are much more subtle than they were in the past. Stereotypes about African Americans are still held, however when the issue of race is made salient by explicit mention, Caucasians are likely to change their behavior so as to not appear prejudiced. In a study cited previously (Cohn et al., 2009), when the race of a man charged with vehicular homicide was made salient to mock jurors, participants were more likely to find the defendant not guilty and to find the defense argument as stronger. In addition, mock jurors who scored high on a racism scale were more likely to find the defendant guilty than those scoring low on such a scale, but *only* when race was not made salient. When racist jurors are alerted to the fact (by race being made salient) that what they do may be construed as racism, they are less likely to engage in this behavior, hence the reduction in guilty verdicts for racist individuals in the race salient condition.

An alternate reason that we failed to find the expected effect of race may be that the students at this university, who have a fair amount of positive interaction with people of other races, show less prejudice and racism than students in the prior studies. The lack of this effect of race was not entirely due to participants not noticing the defendant's picture. Of the 119 participants who answered a question about Jeffrey's race at the conclusion of the study, more than 70% gave answers that were consistent with the picture they were given, but 29% said that they were unsure.

The fact that participants were more sure of their decisions when they found the defendant guilty is perhaps not surprising, nor is the fact that those who recommended death were more sure of their sentencing decisions. If these participants were making the more harsh decision in each case, but were unsure of these decisions, cognitive dissonance might result and lead to the experience of distress. To reduce this stress, participants would convince themselves that they were sure about their decisions since the implications of those decisions would be severe (Festinger, 1957).

Although the finding that instruction timing was unrelated to sentence was inconsistent with our original prediction that the simplified instructions given prior to testimony would benefit the African American more so than the Caucasian defendant, a review of the literature that led us to this prediction showed substantial differences in participants' racial composition and level of education.

Limitations

One limitation of the research is that the only variable manipulated prior to obtaining guilt ratings was defendant race; type and timing of instructions were not manipulated until the sentencing phase. Previous and dated research speculated that miscomprehension of jury instruction might lead to higher overall rates of conviction (Goodman & Greene, 1989). Future research should examine whether timing and type of instructions influence guilty verdicts. Presumably, providing orienting instructions at the beginning of the trial would help the jurors to structure and encode the trial testimony and thus have a better memory and understanding of it.

Like much other research, we used mock jurors rather than actual jurors and they were not afforded the opportunity to deliberate with others. Previous research (Lynch & Haney, 2009) has shown that during deliberation, jurors often become more harsh so our findings may underrepresent the number of death sentences that would actually be doled out. And, although laboratory research using mock jurors allows for internal validity to be established, it has been suggested that more realistic elements of jury trial be incorporated into the lab (Wiener, Krauss, & Lieberman, 2011). This is one reason the present research utilized materials derived from an actual trial transcript; a factor we believe is a strength. In addition, we only investigated male defendants and reactions to two very serious crimes. Female defendants and less serious crimes might produce very different guilt and sentencing decisions.

Another limitation of the research is that our sample lacks diversity and findings cannot be generalized to the general population. Given that participants are college stu-

dents, their age only ranged from 18 to 22. While the percent of African Americans in our sample exceed the percent of African Americans in the population, most (73%) of our participants were Caucasian.

Despite these limitations, the results presented here suggest that defendant race may not be a factor when student mock jurors are asked to made decisions in either phase of capital trials and that, when making the more harsh decisions of guilt and death, they are more sure of themselves. It was also found that the simplified instructions resulted in fewer death sentences for the defendant, but only when he was portrayed as African American suggesting that simplified instructions may be effective in reducing racial bias. No such effect was associated with instruction timing. It may be that in this case, the evidence presented during the sentencing phase was not complex enough to cause these mock jurors confusion and a schema was not necessary or helpful. Additionally, despite the severity of the charges brought against Mr. Havard, the vast majority of our participants recommended LWOP as the appropriate sentence. These, we believe, are positive findings.

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