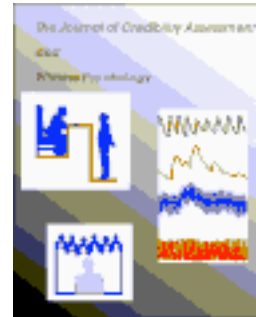


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Evaluation of the Race Card Strategy: The Importance of Supporting Evidence

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Abstract

The role that racial issues play in the courtroom has been studied in terms of the effect of salient racial variables on juror perceptions and decision-making. However, no prior research examined the effects of using charges of racial bias by police officers as a criminal defense strategy. The “race card” strategy can be defined as the introduction of salient racial variables in an attempt to sway attitudes and beliefs of jurors or judges. In these two experiments, subjects reviewed fictional criminal case summaries in which the race card strategy was or was not used. Furthermore, evidence supporting the defendant claims of racial bias was introduced in some of the cases. The results indicated that when a defendant claimed arrest because of racial bias by the arresting officer, those claims resulted in significant reductions in juror perceptions of guilt. However, claims of racial bias were only effective when the defense produced further evidence supporting claims of racist attitudes or behaviors by the arresting officer.

Evaluation of the Race Card Strategy: The Importance of Supporting Evidence

Racial variables have undoubtedly played a considerable role in criminal cases in the United States. Historically there is a disparity in the rates of conviction and the severity of sentences between racial groups in American Courts (Baldus, Woodworth, & Pulaski, 1990; Bedau, 1964; Bowers & Pierce, 1980; Bullock, 1961; Demuth & Steffensmeier, 2004; Gross & Mauro, 1989; Pruitt & Wilson, 1983; Radelet & Pierce, 1985; Wolfgang, Kelly, & Noldel, 1962; Wolfgang & Reidel, 1973). Generally the research focus in the scientific literature is on racial disparities within the criminal justice system between white and black racial groups. The evidence suggests that jurors are more likely to find blacks guilty and are more likely to give blacks longer sentences than whites (Dane & Wrightsman, 1982; Sweeney & Haney, 1992). Fortunately, recent studies indicate that the disparity in convictions and sentencing between whites and blacks is perhaps not as large as it once was (Hymes, Leinart, Rowe, & Rogers, 1993; Sunnafrank & Fontes, 1983). A recent meta-analysis of experimental studies on racial bias in juror decisions (Mazella & Feingold, 1994) found that the race of the defendant had no overall effect on verdicts, ratings of guilt, or sentencing recommendations. There was, however, evidence that a defendant's race interacted with other variables such as race of the victim and the type of criminal act to influence trial outcomes. Other researchers also concluded that race interacts with other case variables such as the type of crime to influence conviction rates and sentencing (Gordon, 1990; Gordon, Bindrim, Pruitt, & Wilson, 1988). Thus, the patterns of apparent racial bias in the criminal justice system are a well-studied feature of the larger history of racial prejudice in the United States.

At one time, the social norms regarding racial attitudes in the United States included open racism by whites toward blacks and other racial minorities. While these social norms have obviously changed markedly over the past century, racist attitudes and the associated biased treatment of minorities are still common among white Americans, although current social norms dictate that this racism be masked from public view (Sue, 2005). In addition to the explicit racial bias in our society, recently developed techniques allow researchers to discern evidence of implicit racially biased attitudes by whites toward minorities (Greenwald, McGhee, & Schwartz, 1998). Current social norms cast a negative light on those who hold racist attitudes, and these norms influence how white Americans respond when placed in situations in which race is a salient variable. There is evidence that when whites are in situations in which race is a salient variable, they attempt to appear consistent with non-prejudicial social norms by actively avoiding the appearance of racially biased attitudes and behaviors (Monteith, Deneen, & Tooman, 1996). That is, when whites conclude that race is a relevant factor in a given situation, they may explicitly avoid any indications of racial bias toward minorities and may even volunteer cues indicating their lack of racist attitudes. Monteith, Deneen, & Tooman (1996) provided evidence that the activation of a non-prejudiced social norm regarding race significantly lowered reports of racial prejudice in subjects. Recent studies have tied the effect of racial salience on prejudicial attitudes to criminal trial situations.

In two studies (Sommers & Ellsworth, 2000; 2001), researchers provided evidence that when race is made a salient issue in a mock criminal case, white jurors do not exhibit racial bias toward black defendants. However, when race is not a salient factor in the case, white jurors are likely to exhibit racial bias toward black defendants by reporting greater confidence in their guilt and by recommending harsher sentences. The researchers concluded that when racial variables are salient, white jurors are motivated to appear consistent with the social norm of not being prejudiced against minorities. The researchers argued that when there were not salient racial features in the case, white jurors are not motivated to avoid appearances of prejudice and so they will exhibit bias against black defendants.

Social scientists have argued that some criminal defense attorneys rely on jurors' fear of appearing prejudiced as part of a trial strategy aimed at winning their clients' cases (Fein, Morgan, Norton, & Sommers, 1997). The suggestion is that defense attorneys sometimes imply or explicitly argue that racial bias against their clients has led to the unfair arrest and prosecution of their clients. This strategy of introducing salient racial variables in an attempt to sway attitudes and opinions of jurors or judges is termed "playing the race card." The practice of playing the race card seems to put alleged racist behaviors of the police, prosecution witnesses, and prosecutors on trial in an attempt to reduce the probability that the judge or jury will convict the defendant. It may be that when attorneys employ the race card strategy, jurors, seeing that race is a salient feature of the case, will avoid decisions and actions that might cause them appear racist. Thus, the race card strategy plays on racially salient case variables in an attempt to reduce the probability of convictions or to reduce the severity of the sentences.

In a number of high profile criminal cases, the defense case has hinged on an argument that police arrested the defendant and prosecutors charged the defendant with crimes because of his or her race. Perhaps the most noteworthy example of this case strategy was the infamous O. J. Simpson murder trial. In that trial, the defense attorneys

accused the Los Angeles police department and the district attorney's office of unfairly pursuing the defendant because of his race. The defense accused one of the police officers who recovered physical evidence from the crime scene of being a racist. They argued that a corrupt and racist police force concocted evidence against Mr. Simpson because he was black. Some have argued that playing the race card in the Simpson case may have contributed to the defense team's successful defense of Mr. Simpson (Fein, Morgan, Norton, & Sommers, 1997).

The research literature examining the efficacy of the race card strategy in criminal cases is noticeably lacking. Unpublished research mentioned by Sommers and Ellsworth (2001) suggests that playing the race card may be effective, but might backfire if the defense case is relatively weak and white jurors suspect that the race card is just a last ditch effort employed to avoid conviction. The goal of the present study was to determine whether playing the race card influenced jurors' perceptions of a defendant's guilt. Furthermore, this study examined whether additional evidence of racial bias by an arresting officer influenced the effectiveness of the race card strategy.

Experiment 1

Experiment 1 examined whether playing the race card affected jurors' judgments of a defendant's guilt and the severity of their sentencing recommendations. This experiment also explored whether historical evidence of racist behavior by the arresting officer would influence the effectiveness of the race card strategy. It was expected that historical accusations of racial bias against the arresting officer would interact with the effectiveness of the race card strategy. That is, the race card strategy would only work when there was additional evidence to back up the claims of racial bias by the police against the defendant.

Method

Participants

The participants were 116 jury-eligible university students (65 males and 51 females, mean age = 26.7) from an introductory psychology class. We determined participants to be jury-eligible if they were qualified to vote and were not convicted of a felony, working as a law enforcement officer such as police officer, jailer, or sheriff, or serving as a judge, attorney, or state legislator.

Eighty-two of the participants identified themselves as white, 21 as Native American or Alaskan Native, 9 as black, 2 as Asian or Pacific Islander, and 2 did not indicate race. We obtained informed consent from all subjects. Subjects received extra credit in their course as compensation for their participation. All research presented in this study was conducted in accordance with the ethical standards and guidelines of the American Psychological Association.

Procedure

Subjects each read a one page fictional criminal trial summary (302 to 486 words) in which a man was charged with attempted burglary. In the case summary, prosecutors

alleged that the defendant threw a brick through a store window in an attempt to burglarize a business. A police officer claimed to have seen the defendant throw the brick through the window. The only evidence offered by the prosecution was the eyewitness testimony of the arresting officer. The defendant testified that the officer's testimony was not correct and that he was merely a passer-by. The summaries varied along two factors: whether or not the defense utilized a race card strategy, and whether or not there was a history of racial bias by the arresting officer. Either the defense claimed that the arrest was racially motivated and the defendant testified that the officer used racial slurs toward him (race card) or no such claims of racial slurs or bias were presented (no race card).

The second factor involved a presentation of evidence indicating a history of racial bias by the arresting officer (history of racial bias) or no presentation of such history (no history of racial bias). A history of racial bias involved the defense entering into evidence a citizen's complaint in which a citizen alleged that the arresting officer used racial slurs toward her during a traffic stop. This 2 X 2 design resulted in four different conditions. After reading one of the four case summaries, subjects rated their certainty of the defendant's guilt on a Likert scale ranging from 0 to 10, where 0 indicated certainty of innocence, 5 indicated uncertainty, and 10 indicated certainty of guilt. They also recommended sentencing treatments on a scale on which 0 indicated the most lenient sentence, 5 indicated a moderate sentence, and 10 indicated the most severe sentence. We did not provide any definitions of lenience or severity to the participants.

Results

We analyzed data for guilt perceptions and sentencing recommendations using an analysis of variance (ANOVA). The ANOVA for guilt perceptions indicated a significant interaction between playing the race card and a history of racial bias by the arresting officer, $F(1, 115) = 5.72, p < .05, \text{partial eta squared} = .049$; see Table 1. The main effect for playing the race card, $F(1, 115) = 1.31, p = .26, \text{partial eta squared} = .012$, and the main effect for history of racial bias, $F(1, 115) = 1.08, p = .30, \text{partial eta squared} = .010$, were not significant. The ANOVA for sentencing recommendations revealed no significant effects for race card $F(1, 115) = .18, p = .67, \text{partial eta squared} = .002$, history of racial bias $F(1, 115) = .007, p = .93, \text{partial eta squared} = .000$, or the interaction $F(1, 115) = .74, p = .39, \text{partial eta squared} = .007$.

Table 1. Means and Standard Deviations for Guilt and Sentencing Ratings in Experiment 1

	Guilt Ratings	Sentence Ratings
No Race Card/No Historical Evidence	4.28 (1.51)	2.97 (2.44)
No Race Card/Historical Evidence	4.72 (2.25)	3.28 (2.30)
Race Card/ No Historical Evidence	4.69 (1.37)	3.14 (1.85)
Race Card/Historical Evidence	3.55 (1.88)	2.76 (2.03)

Discussion Experiment 1

While the effect sizes were small, the results from Experiment 1 suggest that the race card strategy can be somewhat effective in certain situations. Specifically, the race card was not effective when the only evidence of racial bias was testimony from the defendant. However, the race card strategy did work rather well when other evidence of the arresting

officer's racist attitudes supported the testimony from the defendant. These findings are consistent with those mentioned by Sommers and Ellsworth (2001). That is, the jurors may see the race card strategy alone as a desperate ploy by a guilty defendant. However, when the defense presented supporting evidence of police racism, jurors may view the charge of racial bias by the arresting officer as a more plausible scenario. Interestingly, these data are not entirely consistent with the idea that making race a salient feature of the case might reduce the probability of conviction. Simply playing the race card may have increased racial salience, but skepticism and doubt about the motives for playing the race card negated any beneficial effects it might have had.

While the results were in the expected directions, we did not find statistically significant differences on the sentencing recommendation measure. It may have been that the wording of the question was too suggestive of guilt. The question asked, "Assuming that the defendant was convicted by a jury in this case, how harsh of a sentence do you think would be appropriate?" The subjects then selected a point on a scale ranging from "most lenient" to "most severe." The question asked subjects to consider that the defendant was, in fact, guilty. Putting subjects in the position of assuming guilt may have erased any effects that the race card strategy might have produced. In ongoing studies, we have deleted the "Assuming that the defendant was convicted by a jury in this case," component of the question. The deletion of this phrase has resulted in a stronger correlation between guilt ratings and sentencing recommendations.

Experiment 1 convincingly demonstrated the importance of evidence supporting claims of racial bias in the courtroom. Of course, we only evaluated one type of such evidence in this experiment. It is possible that other types of evidence could produced different effects on the efficacy of the race card strategy.

Experiment 2

Experiment 2 built on the findings of our first experiment by further examining the role and importance of evidence that supports claims of racial bias in a criminal trial. This experiment examined whether the effectiveness of the race card strategy varied with corroborating eyewitness testimony. We expected that the race card strategy would only be effective if it was supported by testimony from witnesses who corroborated claims that the arresting officer exhibited racist behaviors toward the defendant. That is, the race card strategy would only be effective in reducing guilt ratings when there was evidence to substantiate any claims of racial bias.

Method

Participants

Eighty jury-eligible university students (42 males and 38 females, mean age = 25.2) from an introductory psychology class participated in this experiment. Sixty-one of the participants identified themselves as white, 10 as Native American or Alaskan Native, 8 as black, and 1 as Asian or Pacific Islander. We obtained informed consent from all subjects. Subjects received extra credit in their course as compensation for their participation.

Procedure

Subjects each read case summaries (302 to 464 words) similar to the one used in Experiment 1. In this experiment, we varied witness corroboration of the claim that the arresting officer used racial slurs toward the defendant in four conditions. In condition 1, there was no claim of racial bias made by the defense and there were no witnesses (No Race Card). In condition 2, the defense claimed that the arresting officer used racial slurs toward the defendant during the arrest, but there were no witnesses (Race Card, No Witness). In condition 3, the defense claimed that the officer used slurs, and there was a white witness who testified hearing the officer use slurs toward the defendant (Race Card, White Witness). In condition 4, the defense claimed that the officer used slurs, and there was a black witness who testified hearing the officer use slurs toward the defendant (Race Card, Black Witness). This resulted in a four-group design. After reading one of the four vignettes, each subject rated their certainty of the defendant's guilt. They also recommended sentencing treatments ranging from lenient to harsh.

Results

Data for guilt perceptions and sentencing recommendations were analyzed using an ANOVA. The ANOVA for guilt perceptions indicated a significant difference between groups $F(3, 79) = 6.83, p < .001, partial \eta squared = .212$. Post-hoc tests revealed that both the Race Card/White Witness and the Race Card/Black Witness groups were significantly different from the No Race Card and the Race Card/No Witness groups, $p < .05$; see Table 2. The ANOVA for sentencing recommendations revealed no significant difference between groups, $F(3, 79) = 1.16, p = .33, partial \eta squared = .044$.

Table 2. Means and Standard Deviations for Guilt and Sentencing Ratings in Experiment 1

	Guilt Ratings	Sentence Ratings
No Race Card	4.85 (1.18)	2.90 (1.65)
Race Card/No Witness	5.15 (1.90)	3.80 (2.33)
Race Card/White Witness	3.20 (1.54)	2.75 (1.83)
Race Card/Black Witness	3.40 (2.04)	2.95 (1.99)

Discussion Experiment 2

The results of Experiment 2 support the conclusion that the race card strategy is useful, but its effectiveness is contingent on the presence of additional evidence supporting the claims of racial bias. In this particular case, the testimony of eyewitnesses, regardless of their race, improved the effectiveness of a race card strategy that did not produce any beneficial effects on its own. This experiment utilized the same sentence recommendation question as Experiment 1. Again, there were no statistically significant differences between groups on this measure. We discussed possible reasons for the lack of correspondence between ratings of guilt and sentencing recommendations previously.

General Discussion

The results of this study show that playing the race card in this type of criminal case can lower mock-juror assessments of a defendant's guilt. However, in these studies the race card strategy was not effective unless additional evidence support it. In these

studies, either historical evidence of racial bias by the arresting officer or corroborating testimony by eyewitnesses improved the effectiveness of the race card strategy used by the defense. In conditions in which the defense used the race card strategy in the absence of supporting evidence or testimony, subjects rated the defendant no less guilty than defendants who did not use the race card strategy. That is, the race card strategy failed to work. Perhaps jurors are skeptical and suspicious of the race card strategy, but are willing to acknowledge the argument of racial bias when there is supporting evidence. Perhaps the most important finding of these experiments is that jurors tend to suspect dishonesty in arresting officers who exhibit racist behaviors, even when there is no evidence that these racist behaviors influenced their arrest patterns and testimony. The race card strategy in this study has some parallels with the strategy use by the defense in the criminal trial of O. J. Simpson. In both cases, the defense implied that if police officers hold racist attitudes or exhibit racist behaviors, their testimony is not to be trusted. In these studies, such a strategy was effective in reducing juror perceptions of the defendant's guilt.

There are several limitations of these studies. The case summaries only involved one specific criminal act and ambiguous evidence. It may be that the effectiveness of the race card strategy varies with the type of case and the strength or weakness of the evidence. Another limitation is that this study did not involve many activities associated with a real trial. It could be that exposure to actual testimony, more in-depth consideration of evidence, and jury deliberations would completely alter the effectiveness of the race card strategy. It may also be that a more representative sample would produce entirely different results. With these limitations in mind, one might draw tentative conclusions that impugning the character of arresting police officers with claims of racist attitudes and behaviors might benefit defendants in certain criminal cases. However, the race card strategy seems likely to fail unless there are additional case elements supporting the claims of racism among the police officers.

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