

Subtle Contextual Influences on Racial Bias in the Courtroom

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Racial differences are immediately apparent to most people and are known to influence individuals' judgments about racial minorities. For instance, race impacts jury deliberations and thus cannot be ignored in the courtroom. Racial biases in the courtroom are neither new nor rare, and they play a special role in jury deliberations and court cases. For example, in 2009, the North Carolina General Assembly passed the Racial Justice Act, which allowed death row inmates to appeal their sentences if they believed race played a significant role in their sentencing. If the defendant can prove that race was a significant factor in his or her sentencing, the death penalty is commuted to a life sentence without parole.

Much research has focused on the direct effects of racial bias in juror decision-making (Sommers & Ellsworth, 2001), yet most research has overlooked the subtle influences of one's environment on juror decision-making. Subtle contextual cues, such as a Bible in court, may indirectly influence juror decision-making. The purpose of this article is to review possible effects of defendant race and subtle environmental factors, such as religious context cues, on juror evaluations and decisions. Given that exposure to religious concepts has been shown to increase racial prejudice toward African-Americans (Johnson, Rowatt, & Labouff, 2010), it is possible these religious environmental cues also increase racial bias in the courtroom.

Implicit Factors in Juror Decision-Making

Historically, a "rational" view of jury decision-making was popularly accepted. That is, jurors were assumed to be logical, non-biased listeners, waiting until all available evidence was presented before attempting a rational process of deliberation. However, research indicates this process does not characterize human decision-making. Instead, jurors tend to be influenced by a variety of biases, not all of which are conscious. Roberts (2012) suggests that one recourse to address these implicit biases is through education, particularly early in the selection process. This is particularly important given that 90% of jurors favor a verdict prior to deliberation (Hastie, Penrod, & Pennington, 1983).

This early "inoculation" is necessary because of the top-down manner in which a juror reaches a verdict, a 3-stage explanation-based process called the Story Model (Pennington & Hastie, 1986). According to the Story Model, jurors initially take the evidence presented and create a narrative story to explain their initial impressions. Second, the juror uses possible verdict alternatives as end-result decision categories. Third, jurors try to find the best fit between their narrative story – which is internally coherent, but not necessary accurate – and the verdict category. The verdict with the best fit to the story is the verdict chosen by the juror. Rather than allowing facts to dictate a decision, jurors tend to assimilate facts in light of the decision. Consistent facts are weighed heavily. Inconsistent facts are minimized or even ignored. In a trial scenario, racial biases, many of which are implicit, impact narrative stories from the outset. Hence, jurors may adopt their story or schema by using race.

Biases can also impact jury deliberations. In theory, juries are used by our court system because we believe polling individuals' on a topic will generate a more complete and less biased assessment of the evidence presented. Furthermore, we assume group consensus leads to less error. Jurors are not "blank slates," however. They come to trial with beliefs and knowledge that influences their decision-making implicitly (Devenport, Stedbaker, & Penrod, 1999). For instance, individuals' knowledge of a cultural stereotype of black individuals as aggressive and dangerous is correlated with their likelihood of shooting an armed black individual quicker than an armed white individual in a shooter videogame (Correll, Park, Judd, & Wittenbrink, 2002). Thus, knowledge of negative cultural stereotypes about African-Americans might influence jurors' perceptions of African-Americans as more violent or aggressive and, as a result, the corresponding conviction. In addition, attitudes of one juror can often influence other jurors' attitudes (Vohs & Luce, 2010).

Although education can help address implicit biases (Roberts, 2012), some attempts to address racial bias are made through jury selection. For example, the Pretrial Juror Attitude Questionnaire (PJAQ; Lecci & Myers, 2008) can be used to measure racial attitudes of potential jurors. This instru-

ment contains subscales measuring racial bias, innate criminality, social justice, conviction proneness, system confidence, and cynicism toward the defense. Racial bias is measured by tallying responses to questions like “Minority suspects are likely to be guilty, more often than not.” People who have high scores on the racial bias scale are more likely to convict those of different race regardless of the evidence. Furthermore, those who score high on the PJAQ are also more conviction prone. Therefore, racial biases elevate the likelihood of a guilty verdict and elicit a more severe sentence. Thus, by measuring these pre-existing racial biases in potential jurors, the effects of racial bias in the courtroom can be reduced.

Jurors are especially affected when race is a non-salient factor of the case (Sommers & Ellsworth, 2000). This finding is surprising; when we think of racial biases, we often think of instances in which race is a salient factor at trial. However, these attempts are guided by later-stage, explicit processes. For example, white jurors are likely to resist (or at least, to give the appearance of resisting) explicitly racial factors when race is salient (Sommers & Ellsworth, 2000). When race is non-salient, however, racial biases are less likely to be attenuated.

The subtle influences of factors such as race result from automatic processes in attributions (Kahneman, 2011). Nobel Prize winning psychologist Daniel Kahneman (2011) has demonstrated that with respect to processes in decision making, we are guided by two systems: 1) System 1, characterized by rapid, effortless, and largely unconscious decision-making, and 2) System 2, characterized by effortful, slow, and deliberate decision-making. In addition, Kahneman found that many decisions that seemingly require the kind of deliberate processing of System 2 are instead a product of unconscious System 1 processing. Therefore, although decision-makers, jurors included, believe they rely on System 2 processes, in reality, System 1 processes drive most attributions.

As Kahneman demonstrates, System 1 decisions are not only rapid and effortless, they are also characterized by an uncritical acceptance of information. That is, System 1 displays none of the skepticism that might be expected in more deliberate decision-making. For example, we might believe that we can discount the effects of advertising by realizing that claims made for a product are stated by advertisers deliberately trying to influence buying decisions. System 1 processes, though, do not discount a message’s source. The content of the message exerts its impact even if we (consciously) believe the source to be non-credible. This is the primary factor behind the legal aphorism that “you can’t unring the bell.” Once an inadmissible statement is uttered, instructions to disregard are largely ineffective (Kane, 2007).

These automatic processes have been investigated in mock jury deliberations involving White and Middle Eastern witnesses, victims, and defendants (Adams, Bryden, & Griffith, 2011). During deliberations, where Kahneman’s System 2 processes might be expected, racial biases were mediated by juror discussions. When stereotypes of Middle Eastern terrorists were evoked (a System 1 process), however, jury biases were not mediated by deliberations.

Not only does race influence jurors’ decisions in trials, it also affects the likelihood that an individual will falsely confess to a crime. For instance, Najdowki (2011) suggests stereotype threats (an implicit priming of negative attitudes about a social group that impairs performance of a member of the that social group) may be responsible for the elevated false confession rates seen in blacks. Black suspects experience anxiety and cognitive load during interrogation, producing many of the characteristics that interrogators consider signs of guilt. This increases pressure on the suspects, increasing the chance that they will confess just to terminate the interrogation (see also Kassir, 2005).

Priming of Implicit Racial Biases through Religious Prejudice

Much research on jury decision-making has focused on the direct influence of racial bias on jurors' decisions, but environmental cues likely heighten those biases. To date, these environmental influences in the courtroom have been largely ignored. However, our recent research (Johnson et al., 2010) demonstrates that environmental cues relevant to the courtroom, namely religious cues, increase racial biases toward African-Americans. These religious cues could be activating racial bias in the courtroom, which in turn affects jurors' decision-making.

In the social psychological literature, priming refers to "the temporary activation of an individual's mental representation by the environment and the effect of this activation on various psychological phenomena" (Bargh, 2007, p. 256). Thus, priming refers to the unconscious influence of individuals' environmental cues on their behaviors. Past research has demonstrated priming influences a multitude of behaviors and attitudes. For instance, individuals reported more conservative social attitudes and higher levels of prejudice toward non-Christian groups when asked about these attitudes in front of a cathedral than when in front of a governmental building (LaBouff, Rowatt, Johnson, & Finkle, 2012). A higher percentage of people voted in favor of a school bond when voting in a school rather than when voting in another location (Berger, Meredith, & Wheeler, 2008), and individuals voting in churches were more likely to support a conservative candidate and a ban on same-sex marriage than those voting in neutral locations (Rutchick, 2010). Even the weight of a document or hardness of a chair can influence individuals' social perceptions as heavier objects have been shown to increase the perceived importance of job candidates and hard objects have increased the rigidity with which individuals negotiate (Ackerman, Nocera, & Bargh, 2010). In short, subtle environmental cues have been shown to affect a variety of perceptions, attitudes, and behaviors. Thus, subtle context primes could also influence jurors' moods, perceptions of a defendant, or evaluative positions on a case. In the courtroom, one of these environmental cues could be religious objects such as the Bible.

In our research, we (Johnson et al., 2010) found priming individuals with religious words increased both subtle and overt racial prejudice toward African-Americans. In the first study, individuals were subliminally primed with either religious words (e.g., Jesus, Bible, prayer) or neutral words (e.g., shirt, butter, switch). This was done by having individuals complete a word game task in which they had to decide if a string of letters was a word or a non-word. Prior to seeing this string of letters, however, individuals were flashed a religious (or neutral) word for 35 ms, quick enough to be below their conscious level of awareness but still enough time to influence their attitudes. This exposure to the word was also preceded and followed by a visual mask (i.e., XXXX) to prevent the word from remaining in individuals' visual fields. After being primed, individuals were asked a series of questions that assessed the degree to which they had subtle prejudice toward African-Americans (e.g., agreeing that we should limit the amount of welfare given to African-Americans and that Whites are more intelligent than African-American

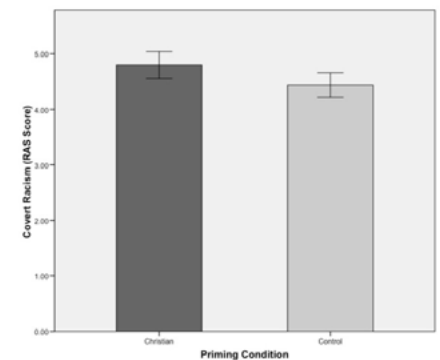


Figure 1. Priming with Christian-related words increases subtle racism (Johnson et al., 2010, Experiment 1).

icans). Individuals who were exposed to religious concepts reported more negative subtle attitudes toward African-Americans than those who were exposed to neutral concepts (see Figure 1). Thus, exposure to religious concepts increased subtle racial prejudice toward African-Americans.

Next, we wanted to see if these effects extended to a more overt measure of racial prejudice toward African Americans, namely general negative affect (Cottrell & Neuberg, 2005). General negative affect is the degree to which individuals agree with statements like “How negative do you feel towards African-Americans, as a group?” and “How much do you dislike African-Americans, as a group?” In the second study, we primed individuals with either religious or neutral words as we did in the first study, but we then measured their general negative affect toward African-Americans. We found that individuals who were exposed to religious concepts reported more general negative affect toward African-Americans than those who were exposed to neutral concepts (see Figure 2). Thus, exposure to religious concepts also increases overt measures of racial prejudice.

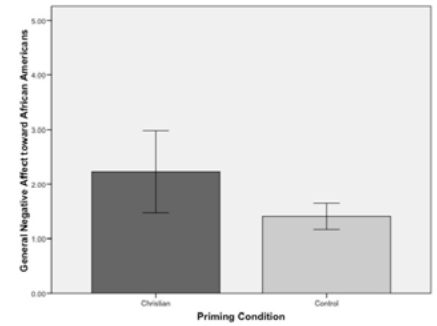


Figure 2. Priming with Christian-related words increases general negative affect toward African-Americans (Johnson et al., 2010, Experiment 2).

These findings are relevant to the jury-decision making literature because religious cues are often present in the courtroom. For instance, some courts still use a Bible on which to affirm to tell the truth. While no court makes you swear on a Bible, even the presence of a Bible in court can unconsciously influence jurors’ decisions. If a case exists in which the person on trial is obviously innocent or guilty, then these subtle cues may not influence jurors’ decisions. However, in cases which are less clear these subtle contextual religious primes might increase jurors’ racial bias and in turn, their resulting decisions on the case.

Conclusion

American society has made considerable progress in terms of racial relations in the past half-century. At the same time, racial biases and stereotypes undoubtedly remain. More overt forms of racial biases – striking members of a jury simply because of their race, for example – are considerably less common than they once were. More subtle forms of racial biases, though, still exist. Religious cues in the courtroom, either seen or spoken, can subtly implicitly prime racial prejudice and influence juror verdicts. These subtle influences are likely to elicit their effects outside the realm of consciousness. Unfortunately, as Kahneman and others have shown, identifying biases is not the same as eliminating them.

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We asked two experienced trial consultants to comment on this article as it relates to litigation advocacy. On the following pages, Karen Hurwitz and George Kich offer their perspectives.

Race, Religion and the “B” Word

RESPONSE BY KAREN HURWITZ

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This article was difficult for me to read and painful to consider. It sounded alarm bells inside of me that won't stop ringing. The “B” word is bias. I've wanted to believe things were better in terms of the “us-versus-them” mentality in this country and that inside the courtroom we were doing a decent job of uncovering bias and prejudice. This article, especially with the backdrop of the Trayvon Martin tragedy highlights how much work there is to be done.

We are biased. We view the world through the lens of our life experiences, our values and our beliefs. And our individual life experiences, values and beliefs are very different. To think that bias inside the courtroom is any less than bias outside the courtroom makes no sense. And to think that a question such as: “Is there anything about the fact that my client is African-American that might cause you to be biased in this case?” is going to uncover racial bias is naive.

The law says that jurors who have bias or prejudice about our case cannot serve. We cannot make a determination on juror biases if we dance around the subject or address it in a superficial manner. There is way too much at stake, especially in criminal cases where life and liberty are on the line.

The hard questions must always be dealt with in jury selection and the hard questions in jury selection are equally hard outside of the courtroom. We don't want to talk about subjects that make us uncomfortable, anywhere. Racial bias, whether increased by religious priming or not is generally one of those subjects. It brings to mind the lyrics of an old Pamala Stanley song: [“I, I don't, I don't want to talk about it.”](#)

We typically don't confront our biases until something or someone forces us to do so. As the research authors point out, awareness does not equate to change, but it is a prerequisite. With awareness, we have the ability to monitor our behavior and recognize when we revert to ways we do not like. At that point, we have the opportunity to act differently.

As a country, we need more conversations about bias and prejudice: conversations in which we explore our own attitudes and beliefs. Not with fear of repercussions, but to increase awareness and understanding of ourselves and others. In jury selection, we have both the opportunity and the obligation to have such a conversation.

Not only do we need to help jurors uncover their own biases, we also need to drive home a critical point through education: your client is not a statistic; your client is not a group. Your client is an individual. Your client represents no one but him or herself. When an African American is on trial, all African Americans are not on trial. When a Muslim is on trial, religion is not on trial. Statistics are not on trial. Statistics may be interesting in an academic article or helpful in setting policy, but statistics are irrelevant to what your client did or did not do.

Jurors hear the instruction that they are only to consider the evidence presented; that they are not to let bias or prejudice influence their decision. But if jurors are unconscious of their biases, then how

are they going to prevent them from influencing their decisions? Without a fuller discussion on bias and prejudice the instruction is likely to go in one ear and out the other.

In jury selection you want to create empathy for your client with regard to the bias he or she may face. The empathy may come when potential jurors can identify with your client because they or someone close to them have been judged by a stereotype. From there you want to discuss stereotypes generally, and ultimately the potential bias in your case. The expectation is that after such a discussion, not only will panel members recognize their shared experience in being judged by a stereotype, many will see that they apply a double standard when judging others based upon a stereotype.

As is true with most research, this research raises more questions. Can anyone really get a fair trial? How can we know to what extent any verdict has been affected by bias? Why would religious cues increase racial bias toward African Americans and how would they come into trial? Who made up the sample in the authors' research? Is the increased bias found in their study only toward African Americans? The answer to the latter question is "no." The same group of researchers has found in subsequent research that religious priming increases bias against gays, Muslims and atheists (Johnson, Rowatt, & LaBouff, in press).

The sample in the current research was undergraduate introductory psychology students at Baylor University in Waco, Texas. Megan Johnson, lead author and one of the researchers told me in a phone conversation that the students in the Baylor study were predominantly Christian and politically conservative and that the religious cues were Christian. Their sample was 50.7% White, 17.8% Asians, 17.8% Hispanic, and 13.7% African-American. The increase in racial bias was found within all groups in the study, including African Americans toward other African Americans.

So how might religion come into trial? Is it relevant? Religion often arises in criminal cases when talking about the defendant. It is important to many jurors that the defendant believes in God or attends church regularly. Could this cause the jurors to judge less harshly? Perhaps.

What types of religious arguments would cause a juror to feel increased bias against someone? Would an attorney intentionally introduce religion or religious cues to increase racial bias or religious bias? One recent patent case (*Commil USA, LLC v. Cisco Systems, Inc.*) speaks to this. In that case, upon the Plaintiffs request, the court granted a new trial for part of the case, including damages after finding that the defense attorney made irrelevant and prejudicial religious comments and arguments. The comments were made when one of Commil's owners, who is Jewish, took the stand and the arguments came in closing. The court concluded that the attorney created an "us v. them" mentality that had a tendency to appeal to the prejudices of the jurors and ultimately prejudiced the jury's findings. The jury awarded plaintiff \$3.7 million in the first trial, which was much lower than expected. On appeal, with the religious arguments gone, they awarded \$63.8 million, an award in line with the Plaintiff's damages.

As for religious cues in the courtroom, the one that comes to mind is the Bible. I am unaware to what extent the Bible is still used for swearing in witnesses. Certainly some courts no longer use them or the words "so help me God." The research would suggest that a lawyer should consider asking that any obvious religious cues be removed from the courtroom, citing this research. You may lose, but it seems worth the try.

The authors reference the Pretrial Juror Attitude Questionnaire by Lecci and Myers (2008) as one way to measure racial attitudes of potential jurors. I am not familiar with this scale and have not worked on a case in which this type of scale has been used. I communicated with Len Lecci regarding the scale and its use in court. While he is not aware of any lawyers who have used their scale in court, he said that

it is possible that has occurred. While I imagine this scale and others could be helpful, I wonder how the courts would use them. Would a juror who showed a high degree of racial bias on a scale automatically be excluded? Or, would it be the basis for a discussion before the judge? Or, simply additional information to consider with other information gathered in jury selection?

Below is a list of voir dire questions on racial bias to consider in a criminal case in which your client is an African American. I chose to address racial bias towards African Americans because that was the bias studied in the authors' original research. My goal is to show how you could develop a thoughtful conversation on racial bias, not to suggest that these questions must be used. Some questions could be included in a jury questionnaire with a shorter discussion during voir dire, but I believe the discussion is most important.

By thoughtfully considering these types of questions, many jurors will think about things they have never thought about before. They may begin to look at themselves and consider their own biases for the first time in their lives. You may, too. This is a huge step. HUGE. Honor it. Respect it. Recognize how difficult it is to look at your own stuff. And think about how it might affect the feelings and attitudes of someone on a jury panel staring at your client. My hope is that it will help achieve a greater degree of justice in our courts.

Possible questions on racial bias:

How many of you or someone close to you have felt negatively judged, stigmatized, seen as inferior or treated poorly based on a stereotype, a label or a prejudiced attitude regarding some aspect of your life? Maybe you are a woman with blond hair and have been stereotyped as "a dumb blond" based on no information about you but your hair color; maybe you've struggled with weight and feel you've been treated poorly because of your weight; maybe you are Jewish and have been subjected to religious slurs when nothing else was known about you; maybe you are Muslim and since 9/11/2001 feel people are afraid of you and see you as threatening and dangerous; maybe you are Hispanic and find people assuming you dropped out of high school when in fact you were at the top of your graduating class; maybe you are African American and have been stopped by the police for no apparent reason other than you are dark-skinned; maybe your spouse or partner has been stigmatized because he or she suffers from depression; maybe your child has been bullied because he is smaller than the other children his age or because she is smarter or has a learning disability; maybe you are gay and you've been physically attacked simply because you are gay. It could be one of an endless list of negative stereotypes or judgments that people have created over the years. Please share with me, if you can your experiences of being negatively judged in this way.

What does it feel like to be negatively judged by someone who knows nothing about who you are inside?

How have these negative judgments affected your life or your family's life?

How have you learned to cope with the stereotypes and judgments made about you?

How do you think people come to feel negatively toward an entire group?

Do you think people are aware of the pain and damage they can cause when they label someone who they do not even know?

If someone has a negative opinion of an entire group, do you think it is possible for them to change that negative opinion?

What are some of the ways you can imagine that a person might come to see that they are unfairly judging an entire group and the serious consequences of their judgments?

As you can see, my client, Mr. Jones (fictitious name) is African American. We've been talking about stereotypes generally. I want to continue our discussion and shift now to stereotypes about African Americans. I know some of you may feel uncomfortable having this discussion with Mr. Jones and other African Americans sitting among us. Let me reassure you that Mr. Jones welcomes the discussion; you will not say anything he has not heard before and I feel quite certain the same is true for the other African Americans in the room.

As hard a discussion as it may be it is necessary. You know why. If you are selected to be a juror in this case you will be making a judgment about Mr. Jones' innocence or guilt. His freedom is at stake. The judge will tell you before you start deliberations that you must base your decision on the evidence in the case and that you may not let bias or prejudice affect your judgment. You see where I am going here. If any of you have negative opinions of African Americans as a race; if you are afraid of African Americans; or if you've had negative experiences with African Americans, then those negative feelings or fears are going to go with you into the trial. If you are afraid of African Americans, then you would in all likelihood be afraid of Mr. Jones or see him as someone who is dangerous. You would feel that way already and you are not a juror yet.

If you are one of the many people who had the courage to share with me how you have been wrongfully judged and you were on trial, I feel certain you would want to know who on the jury panel had negative feelings about you simply because you were a member of that group. You would want jurors who look at you and have either a neutral or a positive opinion about you for whatever reason, but you would not want someone who started off thinking poorly of people who are like you.

So let me start with this, how many can recall growing up hearing a parent, grandparent or other relative use a word for African Americans that you thought was ugly? Do you think your relatives had a negative attitude toward African Americans or do you think it was simply something they heard their own parents say? Do you feel that you have come to think about African Americans the same way your relatives did or would you say that you have a different attitude?

Do you think that racial discrimination against African Americans still exists in our country? If yes, do you think there is less discrimination than there used to be or do you think it just shows up in different ways? Those that think racial discrimination against African Americans is largely a thing of the past, can you think of a turning point in our country when things changed?

Does it surprise you that the country is so split about the Zimmerman case in Florida? What do you think explains the intensity?

If bias and prejudice exist towards African Americans outside the courtroom then it seems it must exist in the courtroom, too. Would you agree?

To the extent you feel that discrimination towards African Americans is still a big problem, how do we reduce it? Is it possible?

How many of you are currently or have in the past been married to or in a relationship with an African American? If you are in a mixed relationship, what is that like for you in terms of public reactions? How many of you approve of whites marrying African Americans? How many do not? For those that do not, can you share with me how you have come to feel this way?

I'm sure some of you have heard people say that they are more afraid of African Americans. For whatever reason, if an African American man walks toward them on the street, they are more afraid than if a white man walks toward them. Can anyone share where you think the increased fear comes from? Do you think it is based upon statistics or do you think it has to do with something else?

How many of you have hired African Americans, either at your home or at your office? Were those experiences generally positive or negative for you?

How many of you have had or currently have close relationships with African Americans?

If someone does not like African Americans do you think they could fairly judge an African American accused of a crime?

If someone believes that African Americans are more dangerous than others do you think they could fairly judge an African American accused of a crime?

If you feel that it is important for people to say if they have negative opinions or feelings toward African Americans before they are allowed to serve on a jury in a case in which an African American is on trial, how do we get people to admit those feelings?

My concern ladies and gentlemen is simple. I believe that if you have a negative feeling toward African Americans as a group for any reason, if you think they are of less value than others, if you think they are more dangerous, if you think they are less intelligent or any other feeling or fear that you have, then you may very well judge Mr. Jones more negatively or harshly than you would if you did not have those feelings. I fear that if you have those negative thoughts toward African Americans that you will not be able to see Mr. Jones as a person but will see him simply as a part of a group that you do not like, value or feel comfortable with.

Mr. Jones is not a group. He is one person. Statistics may show that African Americans are charged and convicted of crimes more than whites. They are also more frequently wrongfully convicted than whites. What do those statistics tell us about Mr. Jones in terms of his innocence or guilt? Nothing, correct? Why is that? Right, because Mr. Jones is one person. He's himself. Just as you and I are one person. Neither he nor any of us can represent an entire race or religion or ethnic group. It's impossible. Mr. Jones is not a statistic in this case. He is a human being who was arrested and charged with committing a crime that he claims he did not commit. He is not

an entire race. He does not represent an entire race. No stereotype applies to everyone in a group. We've already discussed that. And the jury selected will be judging him solely upon the evidence that you hear at trial. Not based upon articles you have read in the newspaper or shows you have watched on TV. None of that has anything to do with this case or with Mr. Jones.

So this is my last question for you and the last time I will get to speak with you as a group. You must be honest with me because the law requires it and Mr. Jones deserves it. And you can rest assured I'm not going to ask you in front of all these people why you are raising your hand. So, please raise your hand if there is any reason whatsoever, any reason that you feel you should not be a juror in this case; it may have something to do with this discussion or it may be about something we haven't even discussed. Whatever it is, in your heart of hearts, you feel this is not the case for you.

Thank you for participating in this discussion and for your honesty.

The attorney's ability to engage jurors in this type of discussion depends on many factors. Most importantly, the judge must believe in its importance and give you the time. Regardless of the number of peremptory strikes that result, I believe there is much to be gained from this conversation. Once jurors see their own biases and double standards there is a greater chance they will, at least for the duration of trial, monitor themselves along those lines.

The hope is that this type of conversation in voir dire will lead to a more thoughtful and respectful conversation in deliberations. And that's the most we can ask for from jurors -- a thoughtful rational conversation about reality; not about what they want to think or what they assume occurs, but based on reality; the reality that they have biases and prejudices and the reality that if they are not careful in their deliberations, and if they do not police their biases and prejudices they can completely misjudge someone, worse, wrongfully convict someone and worst of all cause someone to lose their life.

I don't believe it's possible to eliminate all bias, but I do believe a more direct and thorough discussion will eliminate more. We need to do better in eliminating bias in the courtroom. And we need to start now.

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How Does Religion Play a Role in Biasing Juror Deliberations?

RESPONSE BY GEORGE KITAHARA KICH

George Kitahara Kich, PhD, trial and litigation consultant in cases all across the country is founder and principal of [George Kich Consulting](#). He has presented at law associations, universities and conferences on jury analysis, voir dire, juror decision-making and witness preparation.

Prejudices, biases and stereotypes are cognitive psychosocial processes that operate within each of us and affect our relationships in both obvious and subtle ways. Many people work hard at making unconscious processes into conscious, interpersonally adaptive and mutually-enhancing behaviors and decisions. At the same time, racial, gender, class and privilege biases, subtle and overt, are very much a part of our everyday lives and our work in the courts. We do jury research, run questionnaires and prompt direct voir dire questioning as ways to get at jurors' biases. However, the recent research on "priming" and implicit biases that operate automatically and out of our awareness has added a complicating spin to our efforts at identifying, exposing or challenging jurors who hold unwavering biases.

The very interesting paper by Malavanti, Johnson, Rowatt and Weaver highlight in their research that subtle use of words, images or objects that have *religious* meaning appears to heighten jurors' negative reactions to African Americans. This is an amazing result, and brings up many questions for me: Is this religious information more exclusively United States Christian? What, if any, effects result from using non-Christian religious information? Is there any difference in response if more inclusive or accepting religious concepts or words are used? Does it matter if the person is an atheist, or how religious or religiously-identified the person is? What is the effect of a juror bringing a Bible to deliberation, and asking the other jurors to join him in a prayer meeting to help them come to the right and just decision?

Their research also made me curious about why priming about religion might induce these responses about race. Does religious priming introduce an authoritarian and exclusionary frame as Lakoff discusses in his writings about traditional moral values and Strict Father Morals? Are threats and safety rules neurologically activated against stereotypes of threatening aggressors as Ball and others have described? I recently read Rapaille's fascinating descriptions of the subtle, underlying "culture codes" that manufacturers highlight as a way to induce us to want various products. What cultural mindsets are being activated by religious priming? Further research may uncover these processes and I look forward to hearing more about their ongoing work in this area.

In the meantime, the NCSC (National Center for State Courts) has done interesting and extensive work on acknowledging and combatting implicit bias not only in jury selection and deliberations, but also among judges and in the organization and structure of the courts, with a campaign called "[Racial and Ethnic Fairness](#)". Many of their reports and articles provide ways of making the implicit more conscious, slowing down the cognitive and emotional load of the information being presented, and making space for the "high effort processing" that race-salient information requires. We also know that

the narrative structure of the story of the case, presented during voir dire, as well as throughout the trial, can expose implicit biases to the more conscious and deliberative minds of jurors. This is in line with Sommers' research that says that making race (and possibly by extension the influence of religious beliefs?) into an explicit, salient and important component of the trial can mitigate the subconscious effects of actual bias. When jurors are put on notice and primed toward conscious deliberation of race instead of allowed to have an unconscious colorblind mindset, they can focus more overtly on the facts and the law.

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