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### Effects of Defendant Group Status and Inclusion of a Lesser Charge on Participant-Juror Verdict Preferences

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Effects of Defendant Group Status and Inclusion of a Lesser Charge on Participant-Juror  
Verdict Preferences

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### **Abstract**

Black, Hispanic and White participant-jurors read a murder trial transcript in which the defendant belonged to either one of the other racial/ethnic groups (outgroup) or their own racial/ethnic group (ingroup). In the two-verdict condition, participants were provided with two verdict options: guilty or not guilty. In the three-verdict condition, participant-jurors were provided with three verdict options: guilty of second-degree murder (primary charge), guilty of voluntary manslaughter (lesser charge) or not guilty. In all conditions, participants provided their verdict preference, verdict certainty, the defendant's likelihood of guilt and the strength of evidence. Participants in the two-verdict condition indicated higher proportions of conviction for the primary charge (second-degree murder) than those in the three-verdict condition. No difference was observed when the analysis examined rates of conviction for both second-degree murder and voluntary manslaughter, combined. Outgroup defendants received significantly less proportions of guilt, of the primary charge, in the three-verdict condition.

*Keywords:* Jury decision-making, verdict options, lesser charge, defendant group status

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American courtrooms are influenced by racial prejudice. This notion is reflected in the words of Harper Lee in *To Kill a Mockingbird*:

In our courts, when it's a white man's word against a black man's the white man always wins. The one place where a man ought to get a square deal is a courtroom, be he any color of the rainbow, but people have a way of carrying their resentments right into a jury box (Lee, 1960, p. 220).

While the severity of racial bias in modern legal matters is less prominent than in the 1930's when Lee wrote those words, racial bias is undoubtedly still evident in the courtroom. The decrease of bias is in part attributable to the increase of legislation and judicial rulings that prohibit such discrimination, however, jurors do not always abide by the law. Disregard for the law may be conscious, unconscious or a combination of both. Regardless of cognitive awareness, current psychological research on racial bias in the legal system has focused on juror bias and the influence it has on jury decision-making.

**Racial Bias in Jury Decision-Making**

A handful of studies have explored racial bias in the legal system, inclusive of a meta-analysis conducted by Sweeney and Haney (1992). This analysis defined discrimination as disparate treatment of Black defendants, specifically in sentencing decisions generated by White mock jurors. The researchers found a minor, but significant, effect of racial bias across the studies. This significant finding revealed that White participant-jurors were more likely to provide Black defendants with longer sentences than White defendants. Mazzella and Feingold (1994) conducted a second

meta-analysis two years later and provided a different definition than that of Sweeney and Haney. The definition of racial bias in this analysis was disparate treatment of the minority (Black) defendant, more specifically, treating an individual differently based on a specific characteristic, and in the context of this research, race. Overall, Mazzella and Feingold (1994) did not find a significant effect of racial bias on judgments of guilt or sentencing decisions. Victim race, however, did appear to influence sentencing decisions as defendants were given longer sentences for crimes against White victims than against Black victims (Mazzella & Feingold, 1994). Both meta-analyses suggest juror bias towards members of a racial outgroup, an individual whose race differs from that of the mock-juror, either in relation to defendant or victim race.

Following these two analyses, Mitchell, Haw, Pfeifer, and Meissner (2005) conducted a third review. Unlike the previous reviews, Mitchell et al. (2005) defined racial bias as “disparate treatment of racial outgroups” as opposed to the previous reviews that focused on individual minority groups. Taking this definition into consideration, the review found significant racial outgroup bias in jury decision-making across studies, consistent with that of Sweeney and Haney (1992) and Mazzella and Feingold (1994). Therefore, over the thirteen years of research conducted between the first and last meta-analyses mentioned, the presence of juror bias towards members of a racial outgroup has been evident. This finding reveals the consistency of juror bias in the legal system, especially in regards to race.

The consistency of racial bias is evident even when the defendant’s race varies. Despite a majority of research conducted on juror racial bias including White jurors and Black defendants, racial bias is still a prominent issue when the defendant’s race is one

other than African American. Research on other minority defendant races, as victims of juror racial bias, is limited but studies that have been conducted support the concept of juror racial bias. For example, Esqueda, Espinoza, and Culhane (2008) found that European American participant-jurors rendered more guilty verdicts, with longer sentences, for Mexican American defendants compared to European American defendants (Esqueda, Espinoza, & Culhane, 2008). This finding supports the idea that juror racial bias is prominent towards Mexican American defendants, like juror racial bias towards Blacks.

Despite the stable presence of racial bias towards minority defendants, there is no sole explanation for it. Researchers are increasingly aware of the presence of juror racial bias but this awareness does not extend to jurors, as many individuals are not cognitively aware of their racial biases, especially in context of legal decisions and responsibilities that coincide with serving as a juror (Dovidio & Gaertner, 2004). Jurors may recognize that race is a significant factor in the trial they are serving on but they may not be consciously aware of their own personal attitudes towards race (Dovidio & Gaertner, 2004). One possible explanation for this individual lack of awareness is aversive racism theory. This theory argues that many White Americans harbor unconscious negative stereotypes towards minority groups, more specifically, African Americans. On a conscious level, however, White Americans deem themselves to be fair-minded and unprejudiced (Dovidio & Gaertner, 2004). Despite White American's beliefs that they are not prejudiced, their unconscious stereotypes support the contrary. The unconscious stereotypes seep into the decision-making process and evolve into juror racial bias.

Just as unconscious stereotypes seep into the decision-making process, evaluative biases do the same. Evaluative biases constitute an individual harboring prejudices or developing stereotypes towards another based on their evaluation of them, whether it be in regards to their physical appearance or behavior (Dovidio, Kawakami, and Gaertner, 2002). Similar to negative stereotypes, individuals are not consciously aware of their evaluative biases and as a result, these biases have been found to influence both social and legal decisions (Graham & Lowery, 2004) even when explicit bias does not (McConnell & Leibold, 2001). An example of these evaluative biases is demonstrated in Dovidio et al., (2002), who explored implicit racial associations and explicit racial attitudes, and the relationship between these and White persons' behaviors in interracial interactions. More specifically, response latency and self-report measures were utilized to predict bias and perceptions of bias in both verbal and non-verbal behavior demonstrated by Whites as they interacted with a Black peer. Results demonstrated that the self-reported racial attitudes were a significant predictor of bias in verbal behavior towards Blacks in comparison to other Whites. Results also indicated that implicit biases were likely to impact affective impressions of minority individuals and interpretations of their non-verbal behavior (Dovidio et al., 2002). Both racial attitudes and implicit biases could contribute to juror racial bias towards outgroup defendants, especially when a defendant's race is a salient factor in a criminal trial.

The previously mentioned concepts of negative stereotypes and explicit racial attitudes contribute to juror racial bias and subsequently, influence juror attitudes toward verdicts and punishment (Miller & Vidmar, 1981). Jurors provide punishments as they strive to protect society and uphold justice norms that are violated by the defendant



(Carlsmith, 2006; Darley & Pittman, 2003), or in the case of the present study, issue guilty verdicts. A consequence of laypeople providing such punishments, or guilty verdicts, is that their punitive responses can be affected by social factors that are irrelevant to the legal matters of the trial. More specifically, research has demonstrated that jurors often provide different judgments for defendants from their own community than for those of an outside community, referred to as ingroup and outgroup defendants respectively (Tyler & Boeckmann, 1997; Vidmar, 2002).

In some circumstances, jurors strive to provide harsher punishments for outgroup defendants while other times they desire the ingroup defendant to endure more severe punishments (Kerr, Hymes, Anderson, & Weathers, 1995). Graham, Weiner, and Zucker (1997) conducted a study where individuals wanted an outgroup defendant to endure harsher punishments. The study investigated American's reactions to the O.J. Simpson trial. Results revealed that African Americans recommended less severe punishments for the defendant than did their White counterparts. Outgroup discrimination was also demonstrated by Leippe and his colleagues (Leippe, Bergold & Eisenstadt, 2017; Leippe, Gettings, Despodova & Eisenstaft, 2016). In this study, Black, Hispanic and White participant-jurors read a trial transcript where the defendant was either an ingroup or outgroup member. Among all participant groups, outgroup defendants were more likely to be judged as guilty. The findings support the presence of juror racial bias and demonstrate the influence juror bias can have on the process of jury decision-making, more specifically, the duty of rendering verdicts.

**Multiple Verdict Options.**

Despite juror racial bias that may be present during the process of jury decision-making, the most important part of the process is the jury's duty to reach a verdict on behalf of the defendant. Traditionally, jurors are presented with two verdict options: guilty or not guilty. According to research, however, dichotomous verdict options are frustrating to juries and they have expressed preference for an alternative verdict (Barbato, 2005). Limited research has been conducted in regards to multiple verdict options and the influence their presence would have on the process of jury decision-making. This study aims to contribute to that literature.

Savitsky and Lindblom (1986) conducted a study to explore the influence of multiple verdict options. This study presented participant-jurors with varying verdict options across conditions. In addition to the traditional dichotomous verdict options of guilty or not guilty, participants were also presented with not guilty by reason of insanity (NGRI) and guilty but mentally ill (GBMI). More specifically, one condition included guilty or not guilty, the second condition presented the dichotomous verdict options with the addition of NGRI and the third condition included all four verdict options: guilty, not guilty, NGRI and GBMI. The results demonstrated that the presence of multiple verdict options had a significant impact on juror verdict decisions, with GBMI drawing many verdict preferences, and as a result, increasing the total proportion of guilty verdict preferences (Savitsky & Lindblom, 1986).

Another verdict that is an attractive choice to jurors is the Not Proven (NP) option utilized in Scottish law. Hope et al. (2008) found that jurors were inclined to reach a NP verdict instead of not guilty when the third option was offered (Hope et al., 2008). While

the results from Hope et al. (2008) address multiple verdict options, the American legal system does not employ the Not Proven verdict option. In order to further explore the influence of additional verdict options, despite the absence of the Not Proven verdict option in the American legal system, Smithson, Deady and Gracik (2007) conducted a study to compare the NP verdict with a verdict utilized in our legal system: one of a lesser charge. It was thought by researchers that the NP verdict would deter jurors from yielding convictions but results demonstrated that NP more often replaced outright acquittals (Smithson et al., 2007).

Koch and Devine (1999) conducted a study with a verdict option more applicable to the American legal system. Researchers examined a lesser charge verdict option but they did not compare it to another third verdict option as Smithson et al. (2007) did. Instead, Koch and Devine (1999) compared a two-verdict option condition, inclusive of guilty or not guilty, to a three-verdict option condition, inclusive of guilty of the primary charge, guilty of a lesser charge and not guilty. Researchers hypothesized that the inclusion of the lesser charge may increase the probability of conviction, at the expense of decreasing the defendant's punishment severity. The hypothesis was supported as results revealed that jurors in the three-verdict condition produced more convictions than those in the two-verdict condition. These results also supported the idea that the presence of multiple verdict options influences juror verdict outcomes; more specifically, that jurors will be more likely to convict when a lesser charge verdict is available.

A possible theory for jurors' increased likelihood to convict when a lesser charge verdict is available is the compromise effect. Simonson (1989) states that an alternative or third option is more likely to be selected when it becomes a compromise or middle

option in the set of choices. The third verdict option of a lesser charge is essentially a middle option between the set of choices inclusive of guilty of the primary charge, guilty of a lesser charge or not guilty. Theoretically, the addition of guilty of a lesser charge as a third verdict option should have the most influence in cases where the strength of evidence against the defendant is only moderately strong as a lesser charge is reserved for situations where jurors have doubt in regards to the defendant's guilt and the prosecution has failed to fulfill their responsibility proving guilty beyond a reasonable doubt.

The compromise effect suggests that framing choices for individuals matters as the presence or absence of additional options will influence the final outcome (Larsen, 2011). Therefore, in terms of decision-making processes, this theory suggests that framing verdict options, with the addition of multiple verdict options, will influence jurors' final verdict outcome. One study with findings that support this effect is Kelman, Rottenstreich, and Tversky (1996). In the study, participant-jurors read a case summary with possible verdicts that consisted of: special circumstances murder, murder, voluntary manslaughter and involuntary manslaughter. Participants were divided into two groups, the lower set group, which eliminated the special circumstances murder verdict, and the upper set group, which eliminated the involuntary manslaughter verdict.

In the lower set group, more than 50% of jurors chose voluntary manslaughter, the middle choice verdict, and 39% chose the most severe verdict of murder. In the upper set group, 57% chose murder, the middle choice verdict, and only 31% chose voluntary manslaughter, the least severe verdict (Kelman et al., 1996). From these results, researchers concluded that a verdict option does better when it is the middle choice of the set presented, demonstrating how more extreme options on either side of the intermediate

charge cause jurors to compromise among verdict choices (Kelman et al., 1996). These findings show, by support of the compromise effect, how the presence of three verdict options influences juror verdict outcomes and how jurors will likely opt for the middle verdict. The findings also provide implications for the process of jury decision-making, more specifically, verdicts presented to jurors and their influence on verdict outcomes.

### **Why Defendant Group Status Might Matter When Verdict Options Increase**

As previously discussed, it is evident that juror racial bias is a prominent issue in jury decision-making (Sweeney & Haney, 1992; Mazzella & Feingold, 1994; Mitchell et al., 2005). Furthermore, jurors harbor negative stereotypes and racial attitudes towards outgroup defendants and those negative emotions are correlated with increased guilty verdicts (Miller & Vidmar, 1981). Research has also revealed that the presence of multiple verdict options, instead of the traditional dichotomous verdict options, influences the verdict outcomes (Hope et al., 2008) as jurors tended to find additional verdict options appealing, especially when they experienced frustration with the dichotomous verdict options in situations where the prosecution did not fulfill its obligation to prove guilt beyond a reasonable doubt (Savitsky & Lindblom, 1986; Hope et al., 2008; Barbato, 2005). Since previous research shows increased outgroup discrimination (Sweeney & Haney, 1992; Esqueda et al., 2008) and ingroup leniency (Leippe, 2017; Mitchell et al., 2005; Vidmar, 2002), and the presence of multiple verdict options to be appealing (Hope et al., 2008), it is possible that participant-jurors in the three-verdict condition, where they are presented with both a primary and lesser charge verdict option, might indicate higher proportions of guilt for the primary charge (second-degree murder) for outgroup defendants and higher proportions of guilt for the lesser

charge (voluntary manslaughter) for ingroup defendants, demonstrating a shift from the primary to the lesser charge for ingroup defendants only.

### **Study Overview**

The current study aims to explore the interaction between defendant group status and verdict options and how the two variables influence mock-juror verdict outcomes, more specifically, the rates of conviction when participant-jurors are presented with two-verdict options versus three-verdict options and how the manipulation of the defendant group status will moderate that effect. Previous research has supported the presence of juror racial bias in the process of jury decision-making with much of the literature focusing on bias that victimizes outgroup defendants and provides more leniency towards ingroup defendants (Graham, Weiner, & Zucker, 1997; Leippe et al., 2017). I expected similar results in that outgroup defendants would experience higher rates of juror racial bias and, as a result, would receive more guilty verdicts than ingroup defendants. In terms of multiple verdict options, I expected that participant-jurors would render more overall guilty verdicts in the three-verdict condition than the two-verdict condition, due primarily to the compromise effect (Simonson, 1989; Kelman et al., 1996) and the presence of a lesser charge verdict increasing the proportions of guilt, at the expense of decreasing the defendant's punishment severity (Koch & Devine, 1999). Overall, I expected that participant-jurors, in the three-verdict condition, would render increased proportions of guilty verdict preferences and that this relationship would be stronger when the defendant was an outgroup member compared to an ingroup member.

## **Method**

### **Participants and Design**

A total of 108 undergraduate students at an urban university in the Northeast participated in this study, ranging in age from 18 to 38 ( $M = 21.17$ ,  $SD = 4.36$ ). The sample varied in ethnicity with 23.9% Caucasian, 11.9% African American, 51.4% Hispanic and 12.8% of participants who identified as “Other”. The sample consisted of 75.2% female and 24.8% male. Participants who identified as a race/ethnicity other than White, Black or Hispanic were permitted to participate, however, their race was recorded as “Other” and their data were excluded from analysis. Participants’ data were also excluded if they were not at least 18 years old or if they failed the manipulation check.

Participants were randomly assigned to the conditions of a 2 (verdict condition: two- or three-verdict options) x 3 (defendant race/ethnicity: White, Black or Hispanic) factorial design. Given this design, the defendant’s race/ethnicity was either the same as (ingroup defendant) or different than (outgroup defendant) that of the participant-juror. The factorial design simplified to a 2 (verdict condition: two- or three-verdict options) x 2 (defendant group status: ingroup or outgroup) design.

### **Procedure**

Participants were seated at a computer station and advised they would be reading a criminal trial transcript. Initial forms were completed, including the informed consent (Appendix A) and demographic questionnaire (Appendix B). Included on the demographic questionnaire was a question regarding which race/ethnicity the participant identified with: Asian, African American, Hispanic, White or Other. Upon completion, instructions were read to the participant-jurors stating that after they read the trial

transcript, they would be asked to render a verdict preference and complete and individual juror questionnaire. Further instruction was presented on the computer screen. These instructions stated the study was sponsored by the Department of Justice, accompanied by the insignia of the DOJ, and was interested in “reasoning and decision-making by adults who are eligible to serve as jurors,” that it was likely the “research findings will have real-world impact,” that the transcript was from a real case, and that the actual verdict decision and its accuracy were known (Appendix C).

Participants independently continued the experiment on the computer through a MediaLab presentation that began with a brief summary of the case, that identified the race/ethnicity of the defendant, and photographs and names of five trial participants (the judge, attorneys, eyewitnesses and defendant). The defendant was Black, White or Hispanic while the other four were White. Participants were then presented with the trial transcript, inclusive of the judge’s preliminary (Appendix D) and final instructions (Appendix E) and the dependent measures (Appendix F), inclusive of rendering their verdict preference and certainty, the defendant’s likelihood of guilt, and the strength of trial evidence for the defendant’s guilt and innocence. Once participants completed reading the trial transcript, they read the judge’s final instructions. Participant-jurors in the two-verdict condition read, “Before you provide your verdict, I want to define the elements of the charge against the defendant. The state has charged the defendant with Felony Murder, a Second-Degree Murder offense,” this was followed by a full definition and statement of the minimum sentence duration.

Participant-jurors in the three-verdict condition read the same definition of and minimum sentence duration for second-degree murder, in addition to, “I am submitting



for your consideration the offense of Voluntary Manslaughter. That crime is called a lesser included offense of Second-Degree Murder” and “the difference of intent is a mitigating factor that reduces what otherwise would be Second-Degree Murder to Voluntary Manslaughter.” A statement of the definition and minimum sentence duration for voluntary manslaughter followed this. After reading the judge’s final instructions, participant-jurors indicated their verdict preference and other dependent measures, answered the manipulation check (Appendix G), and were fully debriefed (Appendix H).

### **Materials and Manipulations**

**Trial transcript and judge’s instructions.** The transcript outlined the trial of a robbery/murder case involving a robbery at knifepoint that escalated into a fatal stabbing. An eyewitness observed the events from his second story window. Participants were enlightened of what allegedly occurred after reading the initial statements of the prosecution’s opening arguments. The transcript consisted of excerpts from the (fictional) trial, inclusive of the judge’s opening instructions, opening and closing arguments from both the prosecution and defense, direct and cross-examination of the eyewitness, and other witnesses, police investigators, and the defendant. A photograph of the respective trial participant, as previously shown with the case summary, accompanied each trial excerpt. The trial transcript was concluded with the judge’s final instructions to the jury.

The judge’s opening instructions advised the participants that the defendant is being charged with murder in the second degree and proceeds to outline the definition of felony murder, as well as the minimum prison sentence. The instructions also inform the participants of the definition of “intent,” (included in the definition of felony murder) and

the definition of the term, “proof beyond a reasonable doubt,” advising that participant-jurors must be firmly convinced of the defendant’s guilt and have no reasonable doubt of the crime or the defendant’s identity as the person who committed the crime.

The judge’s final instructions are modified to be consistent with the verdict options presented to participant-jurors. The two-verdict condition instructions advise participant-jurors it is their responsibility to decide on the credibility of the witnesses, the importance of their testimony, and indicate their verdict preference. The definitions of second-degree murder and burden of proof are reiterated, as well as the minimum prison sentence, if the defendant is found guilty. The three-verdict condition instructions advise participant-jurors of the same information as the two-verdict condition instructions, with the inclusion of the consideration of voluntary manslaughter, presented as a lesser offense of second-degree murder. The instructions include a definition of voluntary manslaughter, followed by a minimum prison sentence, how the difference of intent is a mitigating factor that would reduce what would be considered second-degree murder to voluntary manslaughter, and an advisement that participant-jurors can find the defendant not guilty of both charges or guilty of one of the two charges.

**Dependent measures.** Participants were first asked to “indicate the verdict they prefer.” Participant-jurors in the two-verdict condition could check either “guilty” or “not guilty” while those in the three-verdict condition could check either “guilty: second-degree murder,” “guilty: voluntary manslaughter” or “not guilty.” Participants in the two-verdict condition then provided their verdict certainty on an 11-point scale (1 = *Extremely uncertain*, 11 = *Extremely certain*), rated the likelihood the defendant committed the primary charge (second-degree murder, on a scale ranging from 0% to

100%, in 5% increments) and the strength of evidence for the defendant's guilt and innocence, for second-degree murder, both on 11-point scales (1 = *Not at all strong*, 11 = *Extremely strong*).

Participants in the three-verdict condition completed the dependent measures listed above, and in addition, rated the lesser charge (voluntary manslaughter) on the same likelihood and strength of evidence scales used for the primary charge. Then participants in the three-verdict condition responded to an open-ended question that asked them to list the reasons they rendered the verdict that they did. Finally, participants in all conditions completed a manipulation check that asked participant-jurors to indicate the defendant's race/ethnicity by circling a race/ethnicity from a list of options.

## **Results**

### **Defendant Race Manipulation Check**

Of the 108 participants, 98 participants were administered a manipulation check, 92 (93.9%) of whom correctly recalled the race of the defendant. The data of the six participants who incorrectly answered the manipulated check were excluded from all data analyses. Twelve participants' data were also excluded as they identified as a race other than Black, White or Hispanic and one participant was excluded, as they were less than 18 years of age.

### **Verdict Preferences**

Participant-jurors' verdict preferences in each condition are displayed in Table 1. The table includes percentages of guilty verdict preferences, for the primary charge alone and the primary and lesser charge combined, as well as participant-juror perceived likelihood of guilt and the average ratings of perceived strength of evidence for guilt and

strength of evidence for innocence, all for the primary charge alone and all for the lesser charge alone.

**Table 1.** Percentages and Ratings of Participant-Jurors' Verdict Preferences

	Two-Verdict Conditions		Three-Verdict Conditions	
	Ingroup	Outgroup	Ingroup	Outgroup
<b>Percent Guilty (Primary and Lesser Charge Combined)</b>	59.1	69.2	82.4	66.7
<b>Percent Guilty (Primary Charge)</b>	59.1	69.2	58.8	29.2
<b>Percent Guilty (Lesser Charge)</b>	-	-	41.5	58.5
<b>Likelihood Of Guilt (Primary Charge)</b>	70.68	70.57	74.65	57.71
<b>Evidence For Guilt (Primary Charge)</b>	6.95	6.77	7.35	5.67
<b>Evidence for Innocence (Primary Charge)</b>	5.36	4.38	5.12	4.04
<b>Likelihood Of Guilt (Lesser Charge)</b>	-	-	52.41	64.38
<b>Evidence For Guilt (Lesser Charge)</b>	-	-	6.18	6.21
<b>Evidence for Innocence (Lesser Charge)</b>	-	-	4.82	3.63

**Proportion of guilty verdicts rendered for both charges combined.** The first two chi-square tests of independence were used to determine if verdict condition and defendant group status yielded a significant difference in the proportion of guilty verdicts rendered for both second-degree murder and voluntary manslaughter combined. The first test, examining the effects of verdict condition, revealed that participant-jurors in the two-verdict condition rendered a guilty verdict preference 64.6% of the time, whereas participant-jurors in the three-verdict condition rendered a guilty verdict preference 73.2% of the time. This difference was not statistically significant,  $\chi^2 (1, N = 89) = 0.76$ ,  $p = 0.39$ . The second chi-square test, exploring the effects of defendant group status, showed that participant-jurors who read a trial transcript with an outgroup defendant rendered guilty verdicts 68.0% of the time, whereas participant-jurors who read a trial transcript with an ingroup defendant rendered guilty verdicts 69.2% of the time. The difference was not statistically significant,  $\chi^2 (1, N = 89) = 0.02$ ,  $p = 0.90$ .

**Proportion of guilty verdicts rendered for the primary charge.** The second set of chi-square tests were conducted to explore whether verdict condition and defendant group status revealed a significant difference in the proportion of guilty verdicts for second-degree murder (the primary charge) alone. The first chi-square test, examining the effects of verdict condition, showed that participant-jurors in the two-verdict condition rendered a guilty preference for second-degree murder 64.6% of the time. Participant-jurors in the three-verdict condition rendered a guilty preference for second-degree murder 41.5% of the time. This difference was statistically significant,  $\chi^2 (1, N = 89) = 4.76$ ,  $p < 0.05$ . The second chi-square test, exploring the effects of defendant group status, revealed that participant-jurors who read a trial transcript with an outgroup

defendant indicated guilt of second-degree murder as their preferred verdict 50% of the time, whereas participant-jurors who read a trial transcript with an ingroup defendant, indicated guilt of second-degree murder as their preferred verdict 59% of the time. This difference was not statistically significant,  $\chi^2 (1, N = 89) = 0.71, p = 0.40$ .

To determine if there was an interaction effect of verdict condition and defendant group status on the proportion of guilty verdicts rendered for both second-degree murder and voluntary manslaughter combined, a logistic regression of verdict preferences, with predictors of verdict options, defendant group status, and the interaction of the two variables, was conducted. The verdict condition that the participant-juror was in did not significantly predict whether they rendered a guilty verdict,  $B = 0.85$ , Wald  $\chi^2 (1) = 1.21, p = 0.27$ . Defendant group status also did not significantly predict whether a participant-juror rendered a guilty verdict,  $B = 0.12$ , Wald  $\chi^2 (1) = 0.38, p = 0.85$ . The effect of verdict options was not moderated by defendant group status, as the interaction term in the regression was not significant,  $B = -1.29$ , Wald  $\chi^2 (1) = 1.73, p = 0.19$ .

Similarly, to determine if there was an interaction effect between verdict condition and defendant group status on the proportion of guilty verdicts rendered for the primary charge only, a logistic regression, with predictors of verdict options, defendant group status, and the interaction of the two variables, was conducted. Verdict options significantly predicted whether participant-jurors rendered a guilty verdict,  $B = 1.70$ , Wald  $\chi^2 (1) = 7.55, p = 0.006$ . In the two-verdict condition, 64.6% of the participant-jurors judged the defendant guilty of the primary, whereas, in the three-verdict condition, 41.5% did so. Defendant group status had a near-significant effect on verdict preferences, such that 59% of the participant-jurors preferred a guilty verdict for the

ingroup defendant compared to only 50% for the outgroup defendant,  $B = 1.24$ , Wald  $\chi^2 (1) = 3.48$ ,  $p = 0.06$ . The interaction term in the regression was near significant,  $B = -1.69$ , Wald  $\chi^2 (1) = 3.50$ ,  $p = 0.06$ . To understand the interaction, additional chi-square tests were conducted to examine how defendant status moderated the influence of verdict options.

The first chi-square test focused on the simple effect of defendant status in the two-verdict condition. This revealed no effect of defendant status on proportion of guilty verdicts rendered for the primary charge only ( $\chi^2 (1, N = 89) = 0.536$ ,  $p = 0.46$ ). Participant-jurors preferred a guilty verdict of the primary charge 59.1% of the time when the defendant belonged to a outgroup and 69.2% of the time when the defendant belonged to an ingroup.

The second chi-square test focused on the simple effect of defendant status in the three-verdict condition. This revealed a near-significant difference such that participant-jurors indicated 58.8% guilty verdict preferences for ingroup defendants compared to 29.2% guilty verdicts for outgroup defendants ( $\chi^2 (1, N = 89) = 3.61$ ,  $p = 0.058$ ).

Lastly, a chi-square test was conducted to explore whether verdict condition influenced verdict preferences for the primary charge when the defendant was an outgroup member. This revealed a highly significant difference, such that the outgroup defendants received significantly higher proportions of guilty verdict preferences in the two-verdict condition (69.2%) compared to the three-verdict condition (29.2%),  $\chi^2 (1, N = 89) = 8.01$ ,  $p = 0.005$ .

**Verdict-Relevant Ratings**

A series of 2 (verdict condition: two or three) x 2 (group status: ingroup or outgroup) analyses of variance (ANOVAs) was conducted to examine the scaled dependent measures relating to the primary charge.

**Mock-juror verdict certainty.** The ANOVA of verdict certainty scores revealed no effects that approached significance (all  $F$ s < 1). The overall mean certainty was 7.65.

**Likelihood of guilt of the primary charge.** The ANOVA of likelihood of guilt ratings revealed no effects,  $F$ s (1,88) < 2.07,  $p$ s > .15.

**Evidence strength for the primary charge.** The ANOVA of perceived strength of evidence for guilt of the primary charge revealed no significant main effect of verdict condition,  $F$  (1,88) = 0.40,  $p$  = 0.53. There was a marginal main effect of defendant group status on perceived strength of evidence for guilt,  $F$  (1,88) = 2.82,  $p$  = 0.10. Evidence for guilt tended to be seen as stronger when the defendant was an ingroup member ( $M$  = 7.13,  $SD$  = 2.40) compared to an outgroup member ( $M$  = 6.24,  $SD$  = 2.75). The interaction effect was not significant,  $F$  (1,88) = 1.81,  $p$  = 0.18.

The ANOVA of perceived strength of evidence for innocence ratings revealed there was no main effect of verdict options on perceived strength of evidence for innocence for the primary charge,  $F$  (1,88) = 0.35,  $p$  = 0.56. There was, however, a significant main effect of defendant status such that the perceived evidence for innocence was higher when the defendant was an ingroup member ( $M$  = 5.26,  $SD$  = 2.31) than when the defendant was a outgroup member ( $M$  = 4.22,  $SD$  = 2.30),  $F$  (1,88) = 4.23,  $p$  < 0.05. The interaction was not significant,  $F$  (1,88) = 0.01,  $p$  = 0.92.



**Likelihood of guilt of the lesser charge.** A one-way ANOVA of ratings of the likelihood of guilt, relating to the lesser charge, did not reveal a significant effect of defendant status,  $F(1,41) = 1.46, p = 0.23$ .

**Evidence strength for the lesser charge.** One-way ANOVAs of perceived strength of evidence for guilt and for innocence of the lesser charge, revealed no significant effects of defendant group status,  $F(1,41) = 0.001, p = 0.98$ , and  $F(1,41) = 2.11, p = 0.15$ , respectively.

### Discussion

The current study aimed to explore how the presence of multiple verdict options, and the defendant's group status, as either an ingroup or outgroup member, would influence mock-juror verdict preferences. In a trial for which the case for conviction was fairly strong, supported by an eyewitness testimony and a 90% DNA match, proportions of preference for guilt for the primary charge, in the two-verdict condition, were not significantly different when the defendant was an outgroup member versus when the defendant was an ingroup member. In the three-verdict condition, when participant-jurors were introduced to an additional verdict option of a lesser charge, a reverse discrimination effect was observed in the proportions of preference for guilt for the primary charge, as outgroup defendants but not ingroup defendants, saw a significant decrease in convictions of second-degree murder. A trend of reverse discrimination was also observed in ratings of strength of evidence for guilt. These findings have implications for the understanding of racial bias in the process of jury decision-making and generally, who is on the receiving end of the discrimination.

**Defendant Ingroup or Outgroup Status**

Juror biases towards members of a racial outgroup, an individual whose race differs from that of the juror, has been demonstrated in research (Sweeney & Haney, 1992; Mazzella & Feingold, 1994; Mitchell et al., 2005) and has been found to influence both social and legal decisions (Graham & Lowery, 2004). The current study hypothesized that similar trends would be observed. This prediction was not supported. Interestingly, little to no discrimination, in either direction, was observed in the two-verdict condition. Participant-jurors indicated slightly higher rates of conviction for outgroup defendants, however, the difference was not significant. The absence of discrimination, in the two-verdict condition, concurs with some previous research that found the manipulation of defendant race did not influence juror decision-making (McGuire & Bermant, 1977; Bray & Kerr, 1979; Hastie, 1993, Williams & Holcomb, 2001).

Reverse discrimination was found in the three-verdict condition as participant-jurors indicated higher rates of conviction for ingroup defendants. Ingroup members were convicted in more than half of the cases (58.8%) and outgroup defendants in less than one-third of cases (29.2%). Some research has indicated support for reverse discrimination (Foley & Piggott, 2002), especially when jurors seem inclined to appear politically correct in settings that value egalitarian attitudes (Crosby, Bromley, & Saxe, 1980). Therefore, participant-jurors' intention to appear politically correct could have been a moderating factor for decreased proportions of guilty preferences rendered for outgroup defendants. It is important to note, however, that the current study imposes a limitation on this interpretation, as it does not seem politically correct to be extra lenient

towards the White defendants who represented a majority of the outgroup defendants in this study.

### **Multiple Verdict Options**

Juries have expressed a preference for an alternative verdict, outside of the traditional dichotomous options (Barbato, 2005) and studies have found the presence of multiple verdict options to have an impact on verdict decisions (Savitsky & Lindblom, 1986; Koch & Devine, 1999). More specifically, Koch and Devine (1999) found that participant-jurors in a three-verdict condition, versus a two-verdict condition, produced more convictions. This finding led to the hypothesis that participant-jurors in the current study would produce higher proportions of guilty verdicts in the three-verdict condition compared to the two-verdict condition. Results did not reflect the findings of Koch and Devine (1999) as participant-jurors did not indicate a significant difference in proportions of guilty verdict preferences in the three-verdict condition (73.2%) compared to the two-verdict condition (64.6%). Results did, however, support the concept of a shift from the primary to a lesser charge (Koch & Devine, 1999; Simonson, 1989), as outgroup defendants saw a significant decrease in convictions of the primary charge in the three-verdict condition.

### **Multiple Verdict Options and Defendant Ingroup/Outgroup Status**

Jurors harbor negative stereotypes and racial attitudes towards outgroup defendants that are generally correlated with increased proportions of guilty verdicts (Mitchell et al., 2005; Esqueda et al., 2008) and multiple verdict options are appealing to jurors, and tend to influence verdict outcomes (Hope et al., 2008). The current study hypothesized that the two variables would interact and participant-jurors in the three-

verdict condition would indicate higher proportions of guilt for the primary charge (second-degree murder) for outgroup defendants and higher proportions of guilt for the lesser charge (voluntary manslaughter) for ingroup defendants; demonstrating a shift from the primary to the lesser charge for ingroup defendants. Instead, a shift from the primary to the lesser charge was found for outgroup defendants as they were convicted of the primary charge less often in the three-verdict condition (29.2%) than in the two-verdict condition (69.2%). The decrease in proportions of guilt of the primary charge was replaced with proportions of guilt of the lesser charge (37.5%) and outright acquittals (33.3%). Interestingly, participant-jurors indicated nearly identical proportions of guilt for the primary charge for ingroup members in the two-verdict condition (59.1%) compared to the three-verdict condition (58.8%).

One reason for the higher proportions of guilty verdict preferences for ingroup defendants, and the shift from the primary to lesser charge for outgroup defendants, may be explained by the Black Sheep Effect. According to social identity theory (Tajfel & Turner, 1986) the presence of ingroup favorability stems from a need for positive self-image and therefore, ingroup members are increasingly motivated to perceive other ingroup members positively. When an ingroup member is deviant, however, and poses a threat to that image, ingroup members will discriminate against the ingroup member, in an effort to distance themselves from the deviant ingroup member and thereby protect their social identity (Marques & Yzerbyt, 1988; Marques, 1990). Furthermore, in relation to the current study, research has found that ingroup deviants, such as criminals, may be perceived as dishonoring the whole group (Lauderdale et al., 1984; Marques, 1990). Ingroup members may fear the possibility of appearing guilty by association, when the

defendant shares group membership, and as a result, might respond with increased punishment severity or proportions of guilty verdict preferences.

Evidence for reverse discrimination was also found in participants' ratings of the strength of evidence for guilt. Outgroup defendants were viewed as having weaker evidence against them compared to ingroup defendants. Yet, the opposite effect – outgroup discrimination – was found on strength of case evidence for innocence. Ingroup defendants received higher ratings of evidence for innocence in both the two- and three-verdict conditions. Although this result is consistent with previous research supporting ingroup favoritism and outgroup discrimination (Sweeney & Haney, 1992; Mazzella and Feingold, 1994), it contradicts the reverse discrimination observed on other measures. One possibility is that participant-jurors were more ambivalent about the evidence when an ingroup member seemed to be at fault. Without further research, this result is otherwise difficult to explain.

### **Implications**

**Race, ethnicity and group status of the defendant.** Even if the participant-jurors in this study favored the outgroup, it is still discrimination and suggests the presence of racial and ethnic bias in a courtroom setting. There are reasons to be concerned of the possibility of subconscious racial and ethnic biases infiltrating the process of juror decision-making and influencing verdict preferences. One reason is whether jurors are aware of the bias in their verdict preferences. Research has supported the concept that jurors are not cognitively aware of their racial biases, especially in context of legal decisions (Dovidio & Gaertner, 2004). The utilization of pretrial judge's instructions, in an attempt to bring stereotypes to conscious awareness, and to correct for

outgroup discrimination, might serve as one legal remedy, however, research has found limited influence of pre-trial instructions on other potential bias factors, inclusive of pretrial publicity (Kramer, Kerr & Carrol, 1990; Leippe et al., 2017).

Explicitly identifying race as an important aspect of a trial could serve as another attempt to bring negative racial stereotypes to light. When race is coined as an important issue in a case, or has been presented as such by legal actors, the trial becomes characterized as race salient (Sommers & Ellsworth, 2001) and discrimination by Whites towards Black defendants is observed less frequently (Sommers & Ellsworth, 2001). One reason for the decrease of discrimination is the aversive racism theory. For example, many White Americans have unconscious negative stereotypes towards minorities but consciously, White Americans feel they are fair-minded and not prejudice (Dovidio & Gaertner, 2004). By identifying race as an important issue, participant-jurors aim to appear to others as they deem themselves to be: fair-minded and not prejudice, and therefore, decreasing public discrimination towards Black defendants.

Even when race is salient in a trial, implicit and evaluative biases have been found to influence both social and legal decisions (Graham & Lowery, 2004) when explicit bias does not (McConnel & Leibold, 2001). Implicit biases have been found to impact affective impressions of minority individuals and interpretations of their non-verbal behavior (Dovido et al., 2002). In trials where defendants' are present, but may not present themselves verbally, the defendant might be at an increased risk of outgroup discrimination from jurors who allow their implicit biases to influence the defendant's non-verbal behaviors.

Overall, it is evident that the need for legal remedies to correct discrimination and biases is crucial. By continuing to research factors that influence jury decision-making and verdict preferences, researchers can contribute to a better understanding of varying social and cognitive processes, both conscious and unconscious, that are experienced when jurors make both individual and collective decisions in regards to complex trial information. From such findings, inclusive of those from the current study, policies and procedures for juries can be adapted. More specifically, judicial instructions can be adapted to serve as a potential legal remedy against racial bias, whether towards ingroup or outgroup defendants.

**Presentation of additional verdicts.** The presence of multiple verdict options influences juror verdict preferences and impacts conviction rates (Koch & Devine, 1999) as jurors are drawn to other verdict preferences (Savitsky & Lindblom, 1986), especially one of a lesser charge. In the current study, the presence of the lesser charge option was effective in drawing participant-jurors from the primary charge to the lesser charge -- but only for outgroup defendants. This selective effectiveness of the lesser verdict option might have been a result of participant-jurors' striving to appear politically correct and demonstrate increased leniency towards outgroup defendants by convicting them of the lesser charge more frequently than the primary charge, when given the option.

Jurors are also drawn to a lesser charge option when the prosecution does not convince them beyond a reasonable doubt (Simonson, 1989), suggesting that the presence of a third verdict option is helpful to jurors in the decision-making process. Participant-jurors' responses to the open-ended question in the three-verdict condition, of the current study, support the idea that a lesser charge option is helpful when they are not convinced

beyond a reasonable doubt. Some of participant-juror responses included, (1) “I chose guilty of voluntary manslaughter because it is not fully proven that the defendant meant to kill Mr. Taylor,” (2) “The burden of proof is on the prosecution and in this case, there is no concrete indicator that the defendant is guilty of second-degree murder. There are too many loose ends the prosecution did not sew up,” (3) “DNA was 90% accurate, leaving 10% for error and if you can’t be 100% exact, then there is a possibility of innocence,” and (4) “There isn’t much evidence to prove that it was intentional murder.”

The evidence against the defendant in the current study was fairly strong. The influence of the presence of a lesser verdict option, however, might be the strongest in trials that have evidence that is only moderately strong. Future research might consider exploring the effects of strength of trial evidence and multiple verdict options on verdict preferences and determine if the rates of shifting to a verdict of a lesser charge would be higher in conditions with moderate strength of evidence compared to those with high strength of evidence.

### **Limitations**

As with any study conducted with participant-jurors, there are limitations to generalizing the results to “real world” settings. Participant-jurors consisted solely of undergraduate students from one institution where a majority of the students pursue degrees in the fields of psychology and criminal justice, or at least engage in a course that discusses such topics. Due to this exposure, in addition to the institution’s student body being relatively diverse, results may not be representative of a “general” population. Students may have been more knowledgeable of the prevalence of racial bias in society, more specifically in the criminal justice system, due to educational exposure. In addition,



the diverse population may have, to a degree, desensitized students to racial bias towards others. This effect could have influenced participant-jurors to be less likely to convict the defendant based on their ingroup or outgroup status. Future research should aim to include a more diverse sample and recruit participants other than only students.

Since participant-jurors were college students, it was evident that the verdict preferences they indicated would not impact the defendant. Similarly, the study took place in a campus research lab (vs. a simulated or real courtroom) and participant-jurors were presented with a written trial transcript and instructions (vs. live or videotaped). With the mention of these limitations, it is important to note that trial medium (e.g. written transcript or summary, audio or video) infrequently interacts with trial-related independent variables in juror decision-making experiments (Bornstein, 1999; Pezdek, Avila-Mora & Sperry; Leippe et al, 2017).

Participants in the present study indicated verdict preferences individually and did not deliberate, a methodological omission some researchers deem to be a flaw in mock-juror research. It can be observed, however, that individual pre-deliberation verdict distributions are good predictors of deliberated verdicts (Bray & Kerr, 1979; Hastie, 1993; Leippe et al., 2017). Furthermore, mock-juror research, inclusive of deliberation conditions or not, allows for experimental control that it not feasible outside of a lab, and provides researchers with the opportunity to compare verdict preferences across a variety of conditions. Mock-juror research, such as the presented study, while limited, serves an essential role in legal research.

### **Conclusion**

The current study found that in the two-verdict condition, defendant group status did not yield a significant difference of proportions of preference for guilt for the primary charge, as little to no discrimination, in either direction, was observed. In the three-verdict condition, participant-jurors did not yield higher rates of conviction compared to the two-verdict condition, however, a reverse discrimination effect was observed for proportions of guilt for the primary charge, as only outgroup defendants saw a significant decrease of convictions for second-degree murder. Similarly, a trend of reverse discrimination was found in the ratings of strength of evidence for the defendant's guilt. The Black Sheep Effect, or participant-jurors' intention to appear politically correct, could both serve as possible explanations for the finding of reverse discrimination and the shift from the primary to the lesser charge for outgroup defendants only.

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## Appendices

**Appendix A: Informed Consent****THE CITY UNIVERSITY OF NEW YORK***John Jay College of Criminal Justice**Department of Psychology***CONSENT TO PARTICIPATE IN A RESEARCH STUDY**

**Title of Research Study:** Verdict Options and Defendant Group Status as Determinants of Participant-Juror Verdict Preferences

**Principal Investigator:** Brittany DeCesare  
B.A. Psychology  
B.S. Community & Justice  
M.A. Student, John Jay College of Criminal Justice

**Faculty Advisor:** Dr. Michael R. Leippe  
B.A., M.A., Ph.D.  
Professor, John Jay College of Criminal Justice  
Department of Psychology

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You are being asked to participate in a research study because you are an undergraduate student at John Jay College of Criminal Justice.

**Purpose:**

The purpose of this research study is to gain insight about how individuals evaluate and think about court cases, as well as the relationships between their evaluations and other qualities and experiences.

**Procedures:**

If you volunteer to participate in this research study, we will ask you to do the following:

- Show your student ID to confirm participation.
- Complete a demographic questionnaire prior to the commencement of the study.
- Read instructions and a trial transcript on a computer screen, in the program MediaLab. This should take approximately 35-40 minutes.
- Complete brief self-report dependent measures in regards to content from the trial transcript. This should take approximately 5 minutes.
- Read a debrief form post-completion of the study.
- All aspects of the procedure will take place in a research lab on John Jay College's Campus, more specifically room 10.68.

**Time Commitment:**

Your participation in this research study is expected to last for a total of one hour.

**Potential Risks or Discomforts:**

The foreseeable risks of participation in this study are minimal and include possible discomfort from reading aspects of the case and answering questions. In order to minimize these risks, we will provide you the option of stopping your participation if the information should cause discomfort.

**Potential Benefits:**

A possible benefit of participation is that your knowledge about how you interpret and judge a legal case will be enhanced. The research may benefit society and science by contributing knowledge about the process of legal decision-making. The potential benefits to society are increased knowledge about how the legal system works through greater understanding psychological processes of legal decision-making.

**Alternatives to Participation:**

The alternative to participation is not to participate.

**Payment for Participation:**

You will receive academic course extra credit for participation in this research study.

**New Information:**

You will be notified about any new information regarding this study that may affect your willingness to participate in a timely manner.

**Confidentiality:**

We will make our best efforts to maintain confidentiality of any information that is collected during this research study, and that can identify you. We will disclose this information only with your permission or as required by law.

We will protect your confidentiality by ensuring information gathered from you will be coded and stored on a computer and will not in any way be connected with your name, specific data or results, thus guaranteeing the anonymity of your participation. Anonymity will be maintained by the use of code numbers that will make it unnecessary to place any identifying information on any of the data you provide.

The research team, authorized CUNY staff and government agencies that oversee this type of research may have access to research data and records in order to monitor the research. Research records provided to authorized, non-CUNY individuals will not contain identifiable information about you. Publications and/or presentations that result from this study will not identify you by name.

**Participants' Rights:**

Your participation in this research study is entirely **voluntary**. If you decide not to participate, there will be no penalty to you, and you will not lose any benefits to which you are otherwise entitled.

Your participation or non-participation in this study will in no way affect your grades, your academic standing with CUNY, or any other status in the College.

You can decide to withdraw your consent and stop participating in the research at any time, without any penalty. If you decide not to participate, your decision will not affect your relationship with John Jay College or the Department of Psychology at John Jay.

**Questions, Comments or Concerns:**

If you have any questions, comments or concerns about the research, you can talk to one of the following researchers:

Brittany DeCesare, Principal Investigator, by means of e-mail: [brittany.decesare@jjay.cuny.edu](mailto:brittany.decesare@jjay.cuny.edu) or Dr. Michael R. Leippe, Faculty Advisor, by means of e-mail: [mleippe@jjay.cuny.edu](mailto:mleippe@jjay.cuny.edu).

If you have questions about your rights as a research participant, or you have comments or concerns that you would like to discuss with someone other than the researchers, please call the CUNY Research Compliance Administrator at 646-664-8918. Alternately, you can write to:

CUNY Office of the Vice Chancellor for Research  
Attn: Research Compliance Administrator  
205 East 42<sup>nd</sup> Street  
New York, NY 10017

**Signature of Participant:**

If you agree to participate in this research study, please sign and date below. You will be given a copy of this consent form to keep.

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Printed Name of Participant

---

Signature of Participant

---

Date

---

Printed Name of Individual Obtaining Consent

---

Signature of Individual Obtaining Consent

---

Date

**Appendix B: Demographic Questionnaire**

P \_\_\_\_\_

We would appreciate if you would provide some demographic information.

1) Please indicate your age: \_\_\_\_\_ years

2) Please circle your gender:

Female

Male

3) Please circle the ethnic/racial group you most identify with:

White

African American

Hispanic

Asian

Other

**Appendix C: Department of Justice Instructions**

This study is a part of a research program sponsored by the United States Department of Justice (DOJ) and examines reasoning and decision-making by adults who are eligible to serve as jurors. The goal of the program is to understand the thought processes that lead people to make accurate or inaccurate verdict judgments. The involvement of the DOJ makes it highly likely these research findings will have a real-world impact. Therefore, it is important that you consider the case very carefully and objectively.

The transcript you will read comes from a real criminal case; we will be able to compare your verdict against that of the original jury. In addition, due to information discovered after the actual trial, we know with certainty whether the defendant was in fact guilty or innocent. Therefore, we will know whether your personal verdict decision is the correct one, and be able to examine your decision-making and explanation for signs of what led you to a correct or incorrect verdict preference. This will give us valuable insight into the decision-making process of jurors.

Please now read and consider the following transcript carefully.

**Appendix D: Judge's Preliminary Instructions****Judge's Instructions (Preliminary): Two-Verdict AND Three-Verdict Condition**

(Judge):

Members of the jury, we are about to begin the trial of the case of the People of the State of New York v. (Defendant Name). The People of New York charge (Defendant Name) with Murder in the Second Degree, the Felony Murder of **Victim Name**.

Under our law, a person is guilty of Felony Murder when, a person who, with intent to cause the death of another person, causes the death of such person or of a third person, a class A-I felony. If found guilty, the defendant faces a penalty of a minimum of 15 years in prison.

Intent, a term used in this definition, has its own special meaning in our law. A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious object to do so.

The law uses the term, "proof beyond a reasonable doubt," to tell you how convincing the evidence of guilt must be to permit a verdict of guilty. A reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary doubt. It is a doubt that a reasonable person, acting in a matter of this importance, would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence. Proof of guilt beyond a reasonable doubt is proof that leaves you so firmly convinced of the defendant's guilt that you have no reasonable doubt of the existence of any element of the crime or of the defendant's identity as the person who committed the crime.

**Appendix E: Judge's Final Instructions (Condition Specific)****Judge's Instructions (Final): Condition-Specific****Two-Verdict Condition:****(Judge):**

You have had an opportunity to hear all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

Before you provide your verdict, I want to define the elements of the charge against the defendant. The State has charged the defendant with Felony Murder, a Second Degree Murder offense. Under our law, a person is guilty of Felony Murder when, a person who, with intent to cause the death of another person, causes the death of such person or of a third person, a class A-I felony. If found guilty, the defendant faces a penalty of a minimum of 15 years in prison.

Please note that the defense does not formally deny that the intentional murder of **Victim Name** occurred. Rather, it contends that (Defendant Name) committed no crime. Hence, your verdict alternatives are two: Guilty as charged of second-degree murder or not guilty. It is your task to decide on the basis of the evidence presented in this trial.

I remind you, members of the jury, that by the laws of this state, the burden of proof is not upon the defendant to prove his or her innocence, but on the contrary, the burden of proof is on the prosecution to convince you beyond any reasonable doubt that the defendant committed the crime.

**Three-Verdict Condition:****(Judge):**

You have had an opportunity to hear all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

I am submitting for your consideration the offense of Voluntary Manslaughter, which was not mentioned at the beginning of the trial.

That crime is called a lesser included offense of Second-Degree Murder. As a result, our law requires that the jury consider Second-Degree Murder and Voluntary Manslaughter as follows:

You can find the defendant not guilty of both charges, or guilty of one of the two charges. Thus, you will consider Second-Degree murder and render a verdict of guilty or not guilty. If your verdict is guilty, you will not consider Voluntary Manslaughter. If your verdict is not guilty, then you will consider Voluntary Manslaughter.

Before you provide your verdict, I want to define the elements of the charge against the defendant. The State has charged the defendant with Felony Murder, a Second Degree Murder offense. Under our law, a person is guilty of Felony Murder when, a person who, with intent to cause the death of another person, causes the death of such person or of a third person, a class A-I felony. If found guilty, the defendant faces a penalty of a minimum of 15 years in prison.

Under our law, a person is guilty of Felony Voluntary Manslaughter when, a person who, with intent to cause serious physical injury to another person, causes the death of such person or third person, a class B felony. If found guilty, the defendant faces a penalty of a minimum of 5 years in prison.

Section 10.00(10) of the Penal Code defines “serious physical injury” as physical injury which “creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”

Intent, a term used in both definitions, has its own special meaning in our law. A person engages in conduct “intentionally” if, when he engages in the conduct, it is his conscious object to do so.

The difference of intent is a mitigating factor that reduces what otherwise would be Second-Degree Murder to Voluntary Manslaughter.

Please note that the defense does not formally deny that the intentional murder of **Victim Name** occurred. Rather, it contends that (Defendant Name) committed no crime. Hence, your verdict alternatives are three: Guilty as charged of second-degree murder, guilty of voluntary manslaughter or not guilty. It is your task to decide on the basis of the evidence presented in this trial.

I remind you, members of the jury, that by the laws of this state, the burden of proof is not upon the defendant to prove his or her innocence, but on the contrary, the burden of proof is on the prosecution to convince you beyond any reasonable doubt that the defendant committed the crime.



**Appendix F: Verdict Preferences Dependent Measures****Two-Verdict Condition:**

1) As a juror in this case, please indicate the verdict you prefer:

Guilty

Not Guilty

2) How certain are you of this verdict? (1 = Extremely uncertain, 11 = Extremely certain)

1      2      3      4      5      6      7      8      9      10      11

3) What is the likelihood that the defendant is guilty of the crime he was tried for (Second-degree murder)? Please provide your percentage below.

The likelihood is \_\_\_\_\_ % that the defendant is guilty of the crime he was tried for.

4) Overall, how STRONG is the evidence AGAINST the defendant? (1 = Not at all Strong, 11 = Extremely Strong)

1      2      3      4      5      6      7      8      9      10      11

5) Overall, how STRONG is the evidence of the defendant's INNOCENCE? (1 = Not at all Strong, 11 = Extremely Strong)

1      2      3      4      5      6      7      8      9      10      11

**Three-Verdict Condition:**

1) As a juror in this case, please indicate the verdict you prefer:

Guilty: Second-degree murder

Guilty: Voluntary manslaughter

Not Guilty

2) How certain are you of this verdict? (1 = Extremely uncertain, 11 = Extremely certain)

1      2      3      4      5      6      7      8      9      10      11

3) What is the likelihood that the defendant is guilty of SECOND-DEGREE MURDER? Please provide your percentage below.

The likelihood is \_\_\_\_\_ % that the defendant is guilty of second-degree murder.

4) Overall, how STRONG is the evidence AGAINST the defendant for the crime of SECOND-DEGREE MURDER? (1 = Not at all Strong, 11 = Extremely Strong)

1      2      3      4      5      6      7      8      9      10      11

5) Overall, how STRONG is the evidence of the defendant's INNOCENCE for the crime of SECOND-DEGREE MURDER? (1 = Not at all Strong, 11 = Extremely Strong)

1      2      3      4      5      6      7      8      9      10      11

6) What is the likelihood that the defendant is guilty of VOLUNTARY MANSLAUGHTER? Please provide your percentage below.

The likelihood is \_\_\_\_\_ % that the defendant is guilty of voluntary manslaughter.

7) Overall, how STRONG is the evidence AGAINST the defendant for the crime of VOLUNTARY MANSLAUGHTER? (1 = Not at all Strong, 11 = Extremely Strong)

1      2      3      4      5      6      7      8      9      10      11

8) Overall, how STRONG is the evidence of the defendant's INNOCENCE for the crime of VOLUNTARY MANSLAUGHTER? (1 = Not at all Strong, 11 = Extremely Strong)

1      2      3      4      5      6      7      8      9      10      11

9) Please list the reasons for the verdict you provided, either guilty of second-degree murder, guilty of voluntary manslaughter or not guilty.

**Appendix G: Manipulation Check**

1) What was the race of the defendant in the trial transcript? Please circle your response.

White      African American      Hispanic      Asian      Other

## **Appendix H: Debrief Form**

### **Debriefing: Mock-Juror's Responses to a Court Case Study**

The study you just completed is related to how mock-jurors generate decisions in a murder trial and some of the factors that might influence their verdict decisions.

In this study, participants were lead to believe that the trial transcript they read was that of an actual case and that the verdict from the actual jury, in tandem with the actual guilt or innocence of the defendant, was known. As a participant, you were also informed that the study was interested in whether you could determine the "correct verdict," therefore, it was imperative to read the transcript carefully. In truth, the trial transcript was not a real case. As experimenters, we apologize for the deception. The intention behind the deception was to get you to believe that the case was real and that the outcomes were known so that your motivation to carefully read the transcript and evaluate the presented case information was increased. Previous research has revealed that informing participants that their accuracy as decision-makers as the focus of the study compelled them to evaluate the case information more carefully and diligently than they would in absence of this information. Due to this insight from past studies, this study aimed to increase motivation within the participants to carefully evaluate the evidence of the case.

In regards to the trial, one of the independent variables of the study was the race or ethnicity of the defendant. Depending on the case condition in which you were randomly assigned to, the defendant was Black, Hispanic or non-Hispanic White. Judgments of evidence are often influenced by stereotypes and opinions of racial and ethnic groups. One of the interests of this study was to examine whether the effects of race/ethnicity are demonstrated when jurors evaluate evidence when the motivation to study the case is high. A second independent variable of the study was the verdict options available to the juror. Depending on the case condition in which you were randomly assigned to, the verdict options were the traditional two dichotomous options of guilty or not guilty or the traditional two with the addition of a lesser charge verdict, more specifically, voluntary manslaughter.

We will be examining the certainty of your rendered verdict as well as your perceived likelihood that the defendant was guilty of the crime he was tried for. These measures were included to help us explore the possible relationships between these individual factors and how they might affect the verdict jurors' reach in a case. The results of this study may provide contributions to resolving contemporary debates regarding jury decision-making in the criminal justice system as well as contribute to decisions about policies and procedures. For example, what we find out about judge's statements regarding bias could prove useful to decisions about revising jury instructions.

This study is being conducted under the supervision of Dr. Michael Leippe. If you want to talk with him in regards to this study, he can be contacted at

mleippe@jjay.cuny.edu. Similarly if you would like to a report of the results once the study is completed, Dr. Leippe would be happy to send you one upon request.

We remind you that once you leave this study, no records will be kept which connect your name to specific data results, thus guaranteeing the confidentiality of your participation.

Now, it is very important that you agree to the following request: Please DO NOT discuss this research with anyone who might be a participant in the research in the next few months. We will continue to run this study throughout the year and it will be invalid if participants attend with prior knowledge or preconceptions about it. Thank you very much for your cooperation and participation!