

# Bias and the Juror in a Politicized World

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# The Chauvin Jury & Confronting Ideas About “Good” vs. “Bad” Jurors



# Biases & the Jury

## During Jury Selection

- ▶ Attorneys -> Jurors
- ▶ Jurors -> Attorneys
- ▶ Jurors -> Parties
- ▶ Judge -> Jurors

## During Trial

- ▶ Attorneys -> Jurors
- ▶ Jurors -> Attorneys
- ▶ Jurors -> Parties

## During Deliberation

- ▶ Jurors -> Parties during deliberation
- ▶ Jurors -> Attorneys during deliberation

# Identity-Based Peremptories

Significant differences in the race/ethnicity (among other things) of jurors removed by prosecution and defense in criminal trials

- ▶ Prosecutors more likely to remove racial/ethnic minority jurors
  - ▶ Guided by race, social class (correlated with race), assumptions about likelihood of convicting
- ▶ Less data, less obvious predicted pattern in civil cases
  - ▶ Some evidence suggesting defense more likely to remove racial/ethnic minorities
  - ▶ Also consider preferences based on gender, occupation, social class, etc.

# Juror Biases at Voir Dire

The National Legal Research Group reports that potential bias indicators for potential jurors include:

- ▶ A juror who has the same background as a witness, victim or other party involved in the trial - Such as a juror, who is a former law enforcement officer, hearing a case involving the murder of a police officer.
- ▶ A juror who holds membership with a group that has taken a position on the matter at hand - Such as a juror, who belongs to Mothers Against Drunk Driving, hearing a case in which someone is accused of driving under the influence.
- ▶ A juror who shares an experience related to the case - Such as someone who has been a victim of a robbery hearing a case about an alleged burglary.

# What About?

Attitudes toward/against law enforcement

Support for Black Lives Matter, Blue Lives Matter

News consumption - substance and source

## Juror Biases in Deliberation

### *Pena Rodriguez v. Colorado (2017)*

- ▶ Two jurors reported biased statements based on race/ethnicity made during deliberation
  - ▶ Juror statements suggested that the accused had done what he did because of his race/ethnicity + that he was likely guilty because of his race/ethnicity
  - ▶ Also comments made about an alibi witness, dismissing credibility based on race/ethnicity

### *Turner v. Stime (Spokane, WA 2007)*

- ▶ Two jurors (on an all-White jury) reported that other jurors mocked the plaintiff's attorney due to his race/ethnicity (and the plaintiff lost this case)
- ▶ Research has shown that jurors often hold biases, stereotypes that affect their perceptions of attorneys and thus the cases presented by those attorneys

# Cognitive Biases

## 17. Selective perception.

Allowing our expectations to **influence how we perceive** the world. An experiment involving a football game between students from two universities showed that one team saw the opposing team commit more infractions.



## 9. Information bias.

The tendency to **seek information** when it does not **affect action**. More information is not always better. With less information, people can often make more accurate predictions.



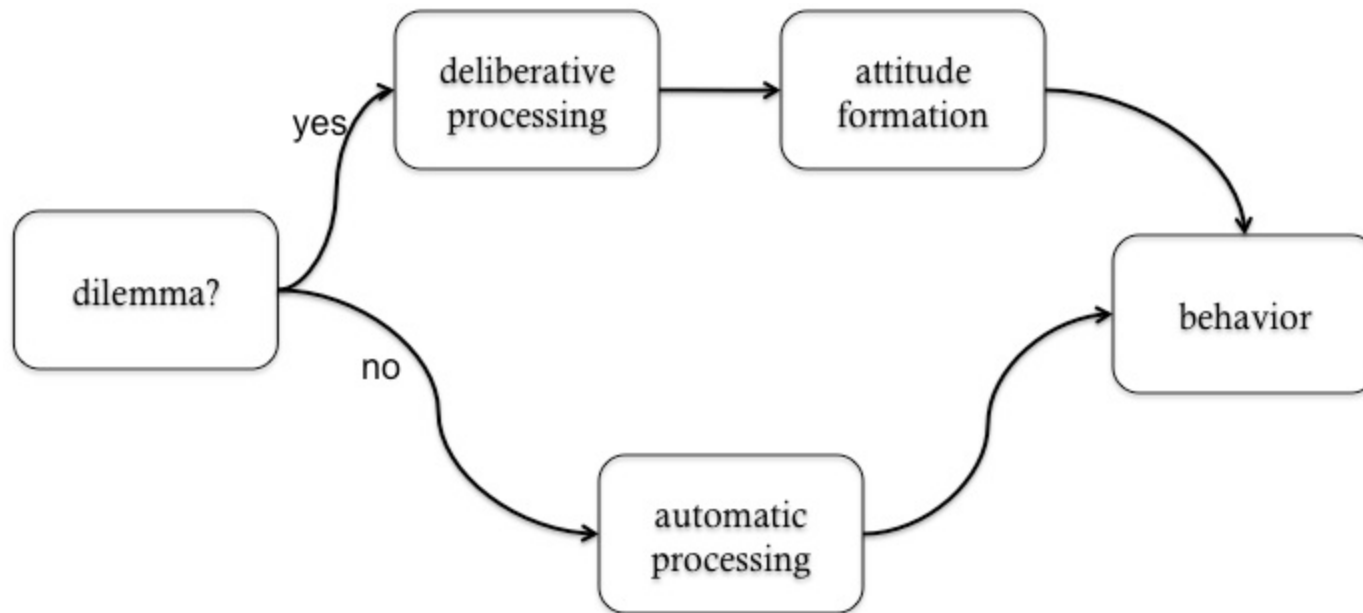
## 15. Recency.

The tendency to weigh the **latest information** more heavily than older data. Investors often think the market will always look the way it looks today and make unwise decisions.





# Implicit vs. Explicit Biases



- ▶ Removing biases at voir dire
  - ▶ Challenges for cause are not always related to perceived bias, but instead hardship, language
    - ▶ Judges have incentives to keep as many jurors as possible in the pool
  - ▶ Peremptory challenges are ripe for biases of various kinds, including prohibited ones
  - ▶ BUT removals of potential jurors might better focus on biases that are often overlooked but may really matter for outcomes
- ▶ Rehabilitating a juror during voir dire
  - ▶ Social desirability vs. persistence of biases
  - ▶ Enhanced questioning that avoids leading to socially desirable responses
    - ▶ Have to be careful about judges wanting to quickly “rehabilitate” jurors to avoid removals

# Debiasing Jurors & Juries

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## Implicit Bias “training” at orientation

- Video shown to all prospective jurors (link in resource list)
- Effectiveness unclear, but likely doesn't hurt
- Some courts have started using in all cases, but others adopting on a case-by-case basis

## Jury Instruction

- Given during orientation , at start of trial and/or before deliberation
- Pattern instructions (formal)
- Informal instruction from judge and/or attorneys

## Debiasing at Trial

- Objection/Disregard
  - Research shows people not good at disregarding, especially emotionally evocative information
  - Instruction to disregard, in some cases, can make the information more salient
    - e.g., insurance in case involving a car accident

# Illinois State Court Pattern Instructions

## 1.08 Implicit bias

We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit biases” or “unconscious biases.”

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must resist jumping to conclusions based on personal likes or dislikes. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party or witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, [or] socioeconomic status[, or [insert any other impermissible form of bias]].

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist, and help each other to resist, any urge to reach a verdict that is influenced by bias for or against any party or witness.



# What Can Be Done?

## Awareness of potential for bias

- ▶ Getting past the bias blind spot
- ▶ Pay attention, look for patterns, collect data
- ▶ Engage when you find yourself surprised, uncomfortable
- ▶ Ask questions! Articulate answers!

## Jury Diversity

- ▶ Research supports that more diverse juries (across many dimensions) are less biased , engage in more thoughtful deliberation, and better consider the full record of a case
  - ▶ Any particular biases, assumptions, expectations, etc. of any one juror are less powerful if perspectives on a jury are diverse
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