INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.
NOTE TO USERS

Page(s) not included in the original manuscript are unavailable from the author or university. The manuscript was microfilmed as received.

1

This reproduction is the best copy available.
Examining the Challenge for Cause Process:
Does It Eliminate Prejudice in the Jury System?

by

Dax Urbszat

A thesis submitted in conformity with the
requirements for the Degree of Master of Arts
Graduate department of Psychology
University of Toronto

© Copyright by Dax Urbszat, 1998
The author has granted a non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of this thesis in microform, paper or electronic formats.

The author retains ownership of the copyright in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

0-612-45498-3
Examining the Challenge for Cause Process: 
Does It Eliminate Prejudice in the Jury System? 
Dax Urbszat, Master of Arts, 1999 
Department of Psychology, University of Toronto

ABSTRACT

This study looks at jury selection in Canada by examining the challenge for cause process for eliminating impartial jurors. Eighty participants watched an edited murder trial video and provided verdicts for the defendants. Before watching the trial, participants were randomly asked either the traditional Parks' challenge for cause question or five experimental questions. The results showed a significant main effect for question type such that participants who answered the Parks' question were much less likely to be rejected as jurors than those who answered the experimental questions. Also, a non-significant two-way interaction between question type and racism scale showed that those who scored high on the racism scale were more likely to be rejected as jurors when asked the experimental questions versus the Parks' question. There were no significant correlations between verdicts and racism score or number of rejections.
NOTE TO USERS

Page(s) not included in the original manuscript are unavailable from the author or university. The manuscript was microfilmed as received.

This reproduction is the best copy available.

UMI
“Trial by jury is an institution unique to common law countries. It is more than a
mere incident of criminal procedure. It has been described as a pillar of the Constitution
and praised as a palladium of liberty. This is because the rights and freedoms of
individuals in our society have been protected from the power of the state to launch
prosecutions and control the appointment of judges by the requirement that guilt on any
charge must be proved to the satisfaction of 12 ordinary citizens” (R. v. Bryant, 1984).

In Canada our legal system has long been based on the presumption that jurors
can overcome any biases or prejudices they may hold and render a fair and impartial
verdict based on the facts presented in a given case. In fact, it may be this particular
presumption that most distinguishes the Canadian criminal justice system from the
United States where the assumption is that every jury panel is suspect. In the United
States every candidate for jury duty may be challenged and questioned as to
preconceptions and prejudices on any trial. As a result, encyclopedia-sized jury
questionnaires are administered by professional jury consultants who are often involved
in lengthy jury empanelment proceedings. These extreme measures are perhaps one of
the most salient reasons for the reluctance of Canadian courts to allow any extensive
tampering with the jury selection process. However, it is mere speculation to argue
which process better protects the right to a fair trial without critically examining each
system. This study is an attempt to begin to examine the correctness of some of the
assumptions made by the Canadian legal system regarding the jury selection process.
Specifically, this study investigates a crucial part of the jury selection process known as
the challenge for cause.
The challenge for cause process is the method used to excuse those jurors who would not be able to put aside their attitudinal biases and render a decision based solely on the facts presented to them. A challenge for cause occurs when either a prosecutor or the accused attempts to have one or more potential jurors disqualified on one of the grounds enumerated section 638(1) of the Criminal Code of Canada:

638(1). A prosecutor or an accused is entitled to any number of challenges on the ground that

(a) the name of the juror does not appear on the panel, but no misnomer or misdescription is a ground of challenge where it appears to the court that the description given on the panel sufficiently designates the person referred to;
(b) a juror is not indifferent between the Queen and the accused;
(c) a juror has been convicted of an offence for which he was sentenced to death or to a term of imprisonment exceeding twelve months;
(d) the juror is an alien;
(e) a juror is physically unable to perform properly the duties of a juror, or
(f) a juror does not speak the official language[s] of Canada . . .

One of the main underlying purposes of a challenge for cause is to ensure the selection of an impartial jury, which is crucial to having a fair trial. Also, it is essential to the appearance of fairness and the integrity of the trial, since “justice must be seen to be done, and even the appearance of partiality must be avoided” (R. v. Hubbert, 1975). The most common basis for the challenge for cause are when “a juror is not indifferent between the Queen and the accused.” The word “indifferent” has been held to be synonymous with “impartial”. However, partiality should not be confused with bias, since according to the law in Canada bias refers only to an attitude, whereas partiality has both an attitudinal and a behavioral component (Tanovich, Paciocco, & Skurka, 1997). Thus, partiality refers to jurors who have preconceived biases, and who will allow those biases to affect their verdict.
To safeguard against sliding down the slippery slope that leads to a jury empanelment process similar to that found in the United States, the Supreme Court of Canada has developed a number of limiting principles to prevent challenges being brought for improper reasons. First, the procedure is not to be used in an effort to secure a favourable jury, only an impartial one. Second, a challenge cannot be brought in an effort to cause the under-representation of any unbiased class of society or to undermine the representativeness that is essential to the proper functioning of the trial. Third, the process should not be used to inquire into the lifestyle, antecedents, or personal experience of the juror; it is not meant to be a procedure for wide-ranging personalized disclosure. Fourth, the procedure cannot be used as a means of discovery to assist in the exercise of peremptory challenges. Fifth, challenges cannot be used to indoctrinate the jury to a defense (R. v. Hubbert, 1977; R. v. Sherratt, 1991). Finally, the judge maintains discretion over the form of the questions put to the jury.

Perhaps the most important authority concerning the challenge for cause in Canada is the case of R. v. Parks (1993). This case has shown that challenges for cause can be based on a lack of impartiality arising from general attitudes or beliefs held by jurors. In Parks, a case where a black defendant was charged with the second degree murder of a white person, the Ontario Court of Appeal authorized a general question to prospective jurors concerning their ability to be impartial where the accused was black and the victim white. This case was the first to provide authoritative recognition and clarification that challenge for cause is not limited to specific cases, but that general attitudes and prejudices can also be grounds for a challenge. The Parks case has been expanded so that in Ontario, in any trial where the accused is Black and requests a
challenge for cause, the right to conduct a challenge for cause will likely be granted. Thus, the accused should be allowed to ask each prospective juror "whether his or her ability to judge the evidence in the case without bias, prejudice or partiality might be affected by the fact that the person charged is Black" (R. v. Wilson, 1996). Parks has suggested "that there is a realistic possibility that a juror will be influenced in the performance of his or her judicial duty on the basis of racial bias" (Tanovich, 1994). Indeed, in one of the studies relied on by the Ontario court, it was determined that between 12 and 16 percent of Canadians admitted to strong intolerance based on race (Multiculturalism and Citizenship Canada, 1989).

Indeed, the majority of existing literature tends to show that in simulated rape and murder trials, white mock jurors find the defendant guilty more frequently when the defendant is black than when the defendant is white. This racial bias is especially evident when the victim is white (Bullock, 1961; Field, 1979; Klein & Creech, 1982; Radelet & Pierce, 1985; Ugeuegbu, 1979; Wolfgang & Reidel, 1975).

Also, archival analyses of sentencing practices for capital offenses committed in Canada supports the claim that Black Canadians are discriminated against in guilt determinations and sentencing practices (Avio, 1988). This analysis demonstrated that Black Canadian defendants were more likely to be convicted in capital cases and receive longer sentences than White Canadian defendants. However, the correlational nature of archival analyses and the potential confound of multicollinearity among selected outcome variables limits the ability to make firm causal inferences. The literature suggests that there is a lack of empirical exploration of prejudicial bias in Canada.
In one of the very few empirical studies to examine the effects of racial prejudice on guilt determinations in Canada, Bagby and Rector (1991) did not find discrimination in verdicts based on race. However, the validity of this study has been challenged due to the use of an abbreviated written trial transcript. Videotaped trial presentations are held to be superior to written transcripts, especially when the visual cue of defendant and victim’s race is the main factor being examined (Jurow, 1971; Williams et al., 1975). It has been suggested that with videotaped presentation, extraevidentiary characteristics of the defendant maintain importance in the jurors’ decision (Bagby, Parker, Rector, & Kalemba, 1994).

However, in a Canadian study using a simulated videotaped rape trial the results showed that the defendant was found guilty more often when he was White than when he was Black (Bagby et al., 1994). The paradoxical discrimination was explained by the fact that participants rated the Black defendant as more favorable than the White defendant. Although characteristics such as defendant’s race may affect juror decision, identifying the perceived positive appeal of the defendant will better inform verdict outcome (Bagby et al, 1994). Support for this view can be found in a study that included ratings of defendant and victim attractiveness. Wang and Kemper (1992) found a bias in favor of the black defendant when the Black “targets” in the study received higher ratings of attractiveness than the White “targets”, regardless of the race of the rater. These results are consistent with earlier experimental jury research that showed attractive defendants were given shorter sentences than their less attractive counterparts regardless of race (Barnett & Feild, 1978).
Another suggested reason for the inconsistent findings of racial bias in simulated jury trials involves judicial instruction. A study by Pfeifer and Ogloff (1991) found that in the absence of jury instructions the Black defendant was rated guilty more often than the White defendant, but when the judicial instructions to set aside any bias were included, the finding of discriminatory verdicts was eradicated. Further support for this finding appears in a study by Rector, Bagby and Nicholson (1993), who also reported that judicial instructions mediate the degree to which extralegal factors such as defendant and victim race impinge on the juror's decision.

One of the main criticisms of these studies is their use of university students as participants. Some research has shown that college students' attitudes towards Blacks are more positive than the general public's (Sheppard & Bodenhausen, 1992). However, this positive attitude may not be consistent across all situations. For example, Crump, Recupero, and Roy (1992) compared White students' interracial attitudes in 1970 and in 1991 and found that some attitudes had become more egalitarian over time while other attitudes had become more negative. This study showed that White students became more positive toward Blacks with respect to interracial issues such as housing, marriage, social outings, and altruism, but became more negative with respect to crimes committed by Blacks. For example, response to the statement “you read in the paper that a black man has raped a white woman” elicited a greater negative response in 1991 than it did in 1970.

These findings are consistent with the “aversive racism” model that examines modern indirect forms of racism. Gaertner and Dovidio (1986) argue that although negative evaluations of Blacks in the United States appear to be on the decline, racism
has merely become more subtle. "The aversive racism model asserts that White Americans continue to maintain their heritage of racism against Black Americans, but display it in situations where the normative structure is weak and ambiguous" (Bagby et al. 1994). This is consistent with prior research showing that when evidence presented in a mock trial was not ambiguous, participants rated the defendant's guilt independent of race (Ugweuegbu, 1979). However, when the evidence was somewhat ambiguous, significantly more Black defendants were rated guilty than were White defendants.

Due to methodological variation across studies it is difficult to draw solid conclusions from the current research. However, the point of examining the existence and influence of racist attitudes is not solely to identify racism. There is a presumption that racism exists. The task of the researcher is to identify those situational conditions that elicit racist attitudes and actions. This information will hopefully be used to minimize the negative impact of discrimination upon society.

In spite of the equivocal research findings, the Supreme Court of Canada has recognized that the evidence of widespread bias against certain groups in the community "raises a realistic potential of partiality." In R. v. Williams (1998), MacLachlin, J. stated on behalf of the Supreme Court of Canada that it is better policy to err on the side of caution and permit prejudice to be examined than to risk prohibiting challenges that are necessary. "To suggest that all persons who possess racial prejudices will erase those prejudices from the mind when serving as jurors is to underestimate the insidious nature of racial prejudice and the stereotyping that underlies it" (R. v. Williams, 1998).

Once it has been established that there is a realistic potential or possibility of partiality on the part of prospective jurors, the second stage of the challenge for cause
process begins. The second stage involves a determination of whether the potential juror will be able to set their prejudices aside and give an impartial verdict. Even though it has been established that there may exist a realistic possibility that a potential juror may be partial on the basis of racial prejudice, the difficulty is how to determine which jurors will be unable to render an impartial verdict. The standard question (i.e., the Parks' question) allowed by judges in cases of challenge for cause due to racial bias is as follows:

"Would your ability to judge the evidence in the case without bias, prejudice or partiality be affected by the fact that the person charged is black and the deceased white."

This question was the original allowed in the Parks' case but has also been modified in cases where the victim is not white or the crime is not murder. However, the basic structure of the question remains conspicuously the same. Some legal practitioners have questioned the efficacy of this question (Tanovich, 1994). Is this simple question useful in reliably identifying impartial jurors? Will the answer to this single, closed-ended question help to show that a juror is prejudiced towards a particular racial group of which the accused is a member?

In the case of R. v. Griffis (1993), Dr. Frances Henry gave evidence that the question allowed in Parks is inadequate for these reasons:

"I don't think this question would tell you anything if the respondent said 'No'. . . and you would be no further ahead with respect to understanding whether that person harbors attitudinal prejudice or not. The second comment I would make is that, as I mentioned earlier, we are dealing with a very complex issue, and one question is not sufficient to provide a respondent with an appropriate opportunity to really express their points of view. You need more than one question to determine whether an individual harbors attitudinal prejudice. It is extremely difficult on the basis of one question to get any kind of sense of the complexities that work within an individual human mind on this issue or many other issues . . . [W]hen an individual answers this question with 'No' you have no information as to the real feelings of that person. The person may say 'No' because they genuinely believe they are not racist because they
are not overt bigots. [O]r they may say ‘No’ because it is commonly accepted in our society that harboring bias or prejudice is a value we do not regard, and therefore, it should not be admitted to, even if one felt it privately. So, I think there are constraining factors which would make a person say ‘No’ and the evaluator then would have no sense of whether that ‘No’ was a honest genuine ‘No’ – ‘No, I am not biased and I will not be affected,’ or whether that ‘No’ reflected a socially acceptable response, or whether the ‘No’ indicates a lack of insight and conscious awareness of racial bias.”

In addition to the problems stated it has also been observed that the standard Parks’ question confuses some jurors, prompting them to state their opinions in open court or to focus on their views rather than on their ability to adjudicate impartially.

It would be ideal if social scientists could administer a battery of psychological tests to determine racist attitudes in potential jurors, but this is obviously not practical or possible. However, there may be a compromise position that allows a more useful inquiry than the Parks’ question alone. The trial judge is responsible for ensuring that any questions allowed are in keeping with the appropriate principles and are relevant in the sense that they provide information as to both the attitudinal and the behavioral aspects of partiality. Challenging prospective jurors based only on their opinions, beliefs or prejudices is not appropriate. An acceptable question must go further and focus upon the ability of the prospective juror to set aside certain opinions, beliefs or prejudices when performing as a juror (R. v. Morgan, 1995). In accordance with the limiting principles stated above, it is inappropriate to ask jurors about their personal experiences. For example, you may not ask whether they are members of a particular race or class or lobbying group, or whether they or their family members have been victims of a particular crime, or had bad experiences with members of a particular race, class or group. Also, the question should be neutral or phrased so that the answer does not reveal the specific, disqualifying belief. For example, answering ‘Yes’ to the Parks’ question
would not betray whether the potential juror was anti-black or pro-black to an extent that would cause them to potentially render a biased verdict.

With these principles in mind, this study examined the efficacy of the Parks’ question and a set of experimental questions designed to facilitate the empanelling of an impartial jury.

Method

Overview

A scale designed to detect subtle racism was administered to all participants in a mass testing classroom environment, prior to their participation in this study. Within two to six weeks of completing the scale participants arrived in the laboratory under the pretext that they would be involved in a study examining the jury selection process. Participants were told they would be asked to sit as mock jurors and render a verdict for a videotaped trial. Before watching the trial participants were asked to answer questions in a challenge for cause. They were randomly assigned to either the Parks’ question condition or the experimental questions condition. At a later date participants’ answers to the challenge for cause questionnaire were examined by a group of “triers”, who decided based on the available information whether a participant should be included or excluded as a possible juror.

Participants

Eighty male and female undergraduates volunteered for the study in exchange for one course credit. Participants were run in groups ranging in size from two to eight
between 11:00 AM and 7:00 PM at one hour intervals. Participants were divided into two categories on the basis of ethnicity, sixty-two percent of participants were classified as white (n = 49) and thirty-eight percent were classified as non-white (n = 31). Seventy-six percent of participants were female (n = 61) and twenty-four percent were male (n = 19). Participants reported a mean age of 23 years (M = 23.1, SD = 6.7) with ages ranging from 19 to 52 years.

Materials

Subtle Racism Scale:

A scale designed to detect subtle racism was pre-administered to participants during one of their psychology classes. The subtle racism scale was embedded within a package of psychological questionnaires designed for various research studies. In an effort to obscure any connection between the racism scale and the current study, the scale was given anywhere from two to six weeks prior to participation in the experiment. The scale was developed from a number of “old-fashioned” Black racism scales (McConahay, Hardee & Batts, 1981; Pettigrew & Meertens, 1995; Shaw & Wright, 1967) designed to measure the old-fashioned, “red-necked” form of bigotry (Gaertner & Deaux, 1986) and a modified modern racism scale (Kawakami, 1995) adapted from modern racism scales created by Sears (1988). Old-fashioned racism is overt and identifiable bigotry such as belief in segregation or negative stereotypes. Modern racism, as discussed above, refers to a more subtle, hidden type of bias that may only present itself in certain situations. The modern racism scale has been used often to examine ethnic and racial prejudice (Sears, 1988). Also, it has been suggested that this type of scale is less reactive and
therefore able to measure subtle prejudices not uncovered by more “traditional” racism items (Oskamp, 1991; Sears, 1988).

Participants were asked to respond on a seven-point Likert-type scale ranging from strong agreement (1) to strong disagreement (7). The subtle racism scale used was balanced to prevent response bias with four questions reverse scored. The scale contained twelve questions altogether with a possible range of scores from 12 to 84. Participants scores were classified as either high in racism or low in racism based on a median split of the racism questionnaire [See Appendix A].

**Challenge for Cause Questionnaire:**

A challenge for cause questionnaire was administered asking participants to report their sex, age, ethnicity, and to answer either the Parks’ challenge for cause question [See Appendix B] or the five experimental challenge for cause questions [See Appendix C]. The experimental questions were developed by consulting modern racism scales to identify the types of questions that might reveal something about a person’s potential for bias (Sears, 1988; Oskamp, 1991, Kawakami, 1995). The questions also had to be consistent with the legal principles governing challenge for cause questions stated earlier. The purpose of the experimental questions was to get the answers that would help a third party to reliably identify impartial jurors. Although this may well be an impossible mandate, these experimental questions are intended to generate a base of information for comparison with later research. The last of the five experimental questions was created as an open-ended variation of the Parks’ question: “To what extent would your beliefs or attitudes prevent you from giving a fair and impartial verdict, based solely upon the evidence, in a case where the defendant is Black?” This question is presented last under
the premise that the previous four questions will open the potential juror’s mind to the possibility of bias, thereby increasing the likelihood that an informed, truthful answer is given.

In a courtroom challenge for cause the triers listen to the lawyers ask potential jurors questions and then the triers decide whether or not the potential juror can serve on the jury. Thus, more indirect measures of racism would not be useful in a challenge for cause because the triers are not trained to interpret them. The questions had to be direct in order to allow a third party observer to make an informed decision.

To maintain anonymity in this study the potential jurors received and answered their challenge for cause questions in written format. Thus, the triers had to make their decisions to accept or reject potential jurors using the information on the challenge for cause questionnaire. Information regarding the potential jurors’ sex, age and ethnicity was also provided on the challenge for cause questionnaire in an effort to simulate some of the cues that would be present in a face to face courtroom challenge.

**Trial Video:**

The trial video involves an actual case in which three young black men are accused of murdering a white man who was the principal of the area public school and a local hero. The defendants were allegedly engaged in a drug war that provoked an exchange of gunfire, which led to the fatal shooting of the victim who was caught in the crossfire. The prosecution alleges that all three defendants are responsible for murder. Two of the defendants were on one defense team and the other defendant had a separate defense. The two defense teams represented both sides of the alleged drug war. Both the defense teams blame the other for the initiation of the incident. Therefore each side feels
they are not culpable for the alleged murder. What the participants do not know is that all
three victims were actually found guilty of murder at the trial, and the families strongly
alleged that racial inequality was responsible for the verdict.

*Verdict Sheet:*

A post-trial questionnaire was administered after participants watched the trial.
This questionnaire contained the names of all three defendants and verdict checklists
including choices of murder or manslaughter¹ and guilty or not-guilty. Participants were
also asked to provide confidence ratings for each verdict. [See Appendix D]

*Trier Evaluation Questionnaire:*

A questionnaire was given to a separate group of participants to register their
acceptance or rejection potential jurors. [See Appendix E]

**Procedure**

**Phase I:**

When participants arrived in the laboratory they were told they were going to
view a videotaped murder trial and render a verdict. After signing a consent form
participants were asked to complete the pre-trial challenge for cause questionnaire.
Participants were randomly assigned to one of two conditions. In the first condition
participants were asked to answer the Parks’ questionnaire before viewing the trial. In
the second condition participants were asked to answer the five experimental questions.
All participants, regardless of their answer to the challenge for cause questions, watched
the twenty-six minute trial video. After viewing the trial, participants were given the

---

¹ Please note that offering multiple charges for juries to choose from is not allowed in Canada criminal
trials as in New York and other states. However, multiple charges are often used when plea bargaining in
Canada.
post-trial questionnaire and asked to rate their verdicts for each defendant choosing from
(1) not guilty, (2) guilty of manslaughter, or (3) guilty of murder. On the same post-trial
questionnaire participants also gave confidence ratings for their verdict for each
defendant ranging from (1) very confident to (5) very unsure.

Once the questionnaires were completed the participants were debriefed by the
experimenter and asked if there were any questions. Participants were then thanked for
their participation and asked not to discuss the experiment with other classmates.

Phase II:

In Phase I of this study we gathered information to examine the relationship
between a participant's score on the racism scale, their answers to the challenge for cause
questionnaire, and their verdicts for the trial simulation. In Phase II the purpose was to
examine the relationship between these three factors and the "triers" acceptance or
rejection of the potential juror. A group of thirty participants was recruited using the
same recruitment procedures as in Phase I. These new participants were told that they
would be deciding whether or not potential jurors could serve on a jury.

This group of participants was recruited to serve the function of triers, as is done
in the challenge for cause process in our courts. The "triers" were told they would decide
whether a particular participant would be included or excluded as a juror based on the
information from the challenge for cause questionnaire (i.e., sex, race, age and the
participants' response to either the Parks' question or the experimental questions).
Participants were given the Trier Evaluation questionnaire to record their acceptance or
rejection of the potential jurors. This questionnaire included a modified version of a
judge’s address to triers. The “triers” were told that sitting on a jury is a privilege and a responsibility and that they should not take their decision to reject a juror lightly. The responses to the challenge for cause questions from the participants in Phase I (i.e., the “potential jurors”) were then evaluated by the participants in Phase II (i.e., the “triers”).

Upon completion of the Trier Evaluation questionnaire participants were debriefed, asked if they had any questions, and thanked for their participation.

It was expected that the experimental questions would be more useful in detecting biased jurors than the Parks’ question. Thus, it was predicted that there would be a main effect of racism such that participants who scored high on the racism scale would be excluded as jurors more often than those who scored low on the racism scale. In addition a main effect was predicted for question type such that participants in the experimental question condition would be excluded as jurors more than those in the Parks’ question condition. An interaction between the two variables was also expected. Specifically, those high in racism would be more likely to be excluded in the experimental condition than in the Parks' condition. There were no specific predictions for participants who scored low on the racism scale.

Results

Rejections

The main prediction was initially tested in a 2 (Parks’ question vs. Experimental question) x 2 (high racism vs. low racism) x 2 (male vs. female) x 2 (white vs. non-white) analysis of variance (ANOVA) using the number of trier rejections as the dependant measure. A median split was performed on participants’ scores on the racism scale,
dividing the participants into the categories of high and low racism. Ethnicity was
divided into the categories of white and non-white. Since there were no significant effects
for gender and ethnicity the data were collapsed over these variables.

As a result, a 2 (Parks’ question vs. Experimental question) x 2 (high racism vs.
low racism) analysis of variance (ANOVA) was conducted using the number of trier
rejections as the dependant measure. As predicted there was a significant main effect for
question type \( E(1, 74) = 13.93, p < .0001 \), such that participants answering the Parks’
question (\( M = 2.56, \ SD = 4.12 \)) were much less likely to be rejected as jurors than those
answering the experimental questions (\( M = 6.38, \ SD = 4.88 \)) (see Table 1).

Contrary to the initial predictions there was no significant main effect for racism.
Thus, scoring high or low on the racism scale did not predict whether the participant
would be rejected as a juror more often. However, a two-way interaction between
question type and racism score did approach significance \( E(1, 74) = 1.78, p < .18 \).
Specifically, for participants in the Parks’ condition, those who scored low on the racism
scale (\( M = 3.3, \ SD = 4.66 \)) were more likely to be rejected as jurors than those who
scored high on the racism scale (\( M = 2.0, \ SD = 3.65 \)); for participants in the experimental
condition, those who scored low on the racism scale (\( M = 5.7, \ SD = 4.73 \)) were less
likely to be rejected as jurors than those who scored high on the racism scale (\( M = 7.3, \n\ SD = 5.12 \)) (see Figure 1). Thus, as predicted those who scored high on the racism scale
were more likely (although non-significantly) to be rejected as jurors when they answered
the experimental challenge for cause questions than when they answered the Parks’
challenge for cause question.
Of the forty participants who were asked the Park's question only two responded that they would not be able to be fair. These participants were rejected for jury duty by all fifteen triers who evaluated them. Only two other participants in the Park's condition were rejected with such high trier agreement, and these participants answered the Park's question by stating "Hopefuly, no" and "I don't know" if I could be fair. Only one other participant in the Park's condition had more than three trier rejections. Thus, thirty-five of the forty participants in the Park's condition had three or less trier rejections. In contrast, over half of the participants in the experimental condition had more than four trier rejections and seventeen of the forty experimental condition participants had eight or more rejections.

In the Park's condition the agreement among triers was very high with 92.5% of all participants getting at least thirteen out of fifteen of the triers to agree. However, the experimental condition had much less trier agreement as only 47.5% of the participants had at least thirteen out of fifteen triers in agreement. Since the experimental questions provided much more information, it can be inferred that there was a greater degree of ambiguity and consequently less agreement among triers.

It is also important to note that only ten participants were not rejected by any of the triers, and all these participants were in the Park's condition. Thus, every participant in the experimental condition and seventy-five percent of participants in the Park's condition had at least one trier rejection.
Verdicts

A second 2 (Parks' question vs. Experimental question) x 2 (high racism vs. low racism) analysis of variance (ANOVA) was performed using participants' verdicts as the dependant measure. There were no significant effects in this analysis (see Tables 2, 3 and 4). Thus, contrary to expectations a participant's score on the racism scale had no significant effect on their verdicts. There were no other significant effects. A Pearson product moment correlation was performed for number of rejections and each verdict. Correlations were $r(80) = -0.11$, ns for verdict 1, $r(80) = -0.16$, ns for verdict 2, and $r(80) = -0.18$, ns for verdict 3. None of the correlations were significant.

Racism Scale

The racism scale contained twelve questions with a possible range of scores from 12 to 84. Upon completion of the study participants were classified as either high in racism or low in racism based on a median split of the racism questionnaire. The mean score for all participants was $M = 31.53$ with the lowest score being 14 and the highest score being 57 ($SD = 8.5$).

A reliability analysis was performed on the racism scale which revealed an acceptable reliability level (Cronbach's coefficient alpha = .74). A factor analysis was also performed on the scale revealing three factors. The factors did not appear to have any meaningful categories. A median split was performed on each factor and they were all subjected to a series of 2 (Parks' question vs. Experimental question) x 2 (high racism vs. low racism) analyses of variance (ANOVA) using trier rejections as the dependant measure. No significant effects were found.
Discussion

The data offer an interesting look into the machinations of the challenge for cause process. The results suggest that the usefulness of the Parks’ question for determining partiality of potential jurors due to racial prejudice is questionable. The most telling data show that those who scored high on the racism scale were less likely to be rejected as jurors than those who scored low on the racism scale when the Parks’ question was used in the challenge for cause. Conversely, when the experimental questions were used to determine acceptability as a juror those who scored high on the racism scale were more likely to be rejected than those who scored low on the racism scale, but not significantly. Thus, the experimental questions appear to be more useful in identifying potential jurors who presumably hold racially prejudicial attitudes. Although the interaction merely approached significance, it is likely that the effect would be greater if more participants had been used. Since there is no previous research on point, a medium effect size was used to determine statistical power. The power analysis revealed that a sample of 140 participants with one tail alpha set at .05 and a power of .80 would be required to detect medium effect sizes. (Cohen, 1969). Unfortunately, due to limitations on available participants this was not possible.

The significant main effect for question type can be seen as an endorsement of the greater utility of the experimental questions in rejecting potentially biased jurors. It is true that the participants receiving the greatest number of rejections were those in the experimental questions condition who scored high on the racism scale. However, it is problematic that participants in the experimental question condition who scored low on
the racism scale had more rejections than participants in the Parks’ question condition who scored either high or low on the racism scale. It can be inferred that there were more rejections in the experimental condition because there was simply much more information for triers to base their decision on. In the Park’s question there was simply a “yes” or “no” response as to whether the potential juror thought they could be fair. However, with the experimental questions there were extended answers to provocative questions like “To what extent do you believe that certain races are more prone to violent behaviour?” It is possible that the questions alone regardless of the answers given made the participants more likely to be rejected by the triers.

The fifth experimental question was adapted from the Park’s question and modified to be open ended. Thus, the answers given to this question were more expansive than the simple yes or no answers given in the Park’s condition. For example, in response to the question “To what extent would your beliefs or attitudes prevent you from giving a fair and impartial verdict, based solely upon the evidence, in a case where the defendant is black?” a typical response was “I would try hard not to let my beliefs or attitudes prevent me from giving a fair trial.” This type of answer seems to indicate more personal reflection and honesty, however, it presents more ambiguity than a simple “no” answer. This ambiguity increased the likelihood that the potential juror would be rejected by the triers. Unfortunately, this type of honest answer is probably indicative of a juror who could be impartial. Thus, the increased information provided by answering the experimental questions may have led to a greater number of rejections of jurors that would not have been partial.
The finding that the experimental questions led to more juror rejections overall is problematic in a practical sense because it implies that the use of the experimental questions in a challenge for cause will lead to the dismissal of potential jurors who should be allowed to sit on the jury. This increase in false positives would be more costly and time consuming for the court system which would have to provide a greater number of possible jurors for the jury pool. This problem is quite relevant to the courts considering our overburdened legal system and the fiercely protected assumption that all jurors are able to put aside their biases when sitting on a jury. However, the Supreme Court of Canada has noted that when trying to minimize the impact of racial prejudice on the fairness of a trial it is better to err on the side of caution (R. v. Williams, 1998).

Also, the fact that the racism scale score did not relate to number of rejections would seem to indicate that neither of the challenge for cause conditions was sufficiently effective at distinguishing biased jurors from unbiased jurors. Alternatively, it is possible that the scale itself was not useful in evaluating racial prejudice. The possibility of impression management is a serious threat to the validity of any study that examines racial prejudice using self-report questionnaires (Braver, Linder, Corwin, & Cialdini., 1977). Even though the questionnaire was administered prior to the study it is quite conceivable that some of the participants modified their answers to make themselves appear less prejudiced to the experimenter collecting the data. This may be especially true for the subject pool of university undergraduates. However, the scores on the racism scale were not lower than expected for the population \( (M = 31.53) \).

This illustrates another problem for this type of study. It is unlikely that first or second year university undergraduates are representative of a typical jury pool in many
regards, especially in attitudes toward minorities. Simply being younger (Age: \( M = 23, \ SD = 6.7 \)) would dictate that the subjects in this study would have had less exposure to negative attitudes towards Blacks that were more widespread in the past. Also, being in university could conceivably give students more interaction with different cultures and minority groups than persons in the general public would have. This is especially true for a multicultural university like the University of Toronto. This exposure may have the effect of lessening racial biases among university students compared to the more general population surveyed for jury duty. Also, it has been surmised that the characteristics of students, relative to the public at large, would probably render them less likely to convict (Dillehay & Nietzel, 1980). However, this should be an overall effect that would decrease conviction in every condition of this study.

It has been noted several times in this thesis that the system of jury selection in the United States begins with the premise that every juror is potentially biased. In contrast, the Canadian legal system is predicated on the assumption that all jurors will have the ability to set aside prejudices and biases and render impartial verdicts based on the facts presented before them. This study set out to scientifically test that assumption. According to the data collected in this study, the assumption was supported. A guilty verdict was not correlated with score on the racism scale. However, this conclusion presupposes the validity of the racism scale. In any case, participants who scored high on the racism scale were no more likely to convict the defendants of murder than were participants who scored low on the racism scale. Also, participants who scored low on the racism scale were no more likely to acquit the defendants or render a lesser sentence of manslaughter than participants who scored high on the racism scale. Thus, it appears
that verdicts were rendered by all participants without regard to their initial biases as indicated by their score on the pre-administered racism scale.

However, the evidence that racial biases have no effect on final verdicts is not convincing. Once again the problems presented by an unrepresentative subject pool and impression management may have played a factor in influencing participants' final verdicts. However, putting these artifacts aside another crucial methodological problem with this study is the use of single verdicts as opposed to group jury verdicts. The group dynamic of juries is potentially a crucial factor in determining a verdict. It is difficult to predict how the group deliberation process affects individual verdicts. In a group deliberation biases can be reinforced and accepted or scrutinized and rejected. However, the literature on the effects of deliberation on verdicts suggests that, generally, individual jurors have already decided upon a verdict at the outset of the deliberation process (Dillehay & Nietzel, 1980).

It has also been demonstrated that verdicts rendered by mock juries and actual juries are typically consistent with the verdict preferred by the majority of jurors at the onset of deliberation (Strasser, Kerr, & Davis, 1980; Zeisel & Diamond, 1978). There is evidence to suggest that group decision making may reinforce bias. For example, it has been shown repeatedly that individual verdict decisions at predeliberation become stronger and more polarized during the deliberation procedure (MacCoun & Kerr, 1988). However, the deliberation process may also have the potential to reduce prejudicial effects. For example, a task-oriented foreperson may focus the jury on the rules and facts to be considered thereby reducing informational ambiguity and the influence of extraevidentiary factors (Kassin & Wrightsman, 1983). Further study in this area might
better maximize external validity by using a group deliberation process to render jury verdicts.

Another possible problem with this study is that the complexity of the trial may have minimized the effect of bias on the decision process. Specifically, participants’ biases may have had much less effect on their deliberations because they were focused on the complex legal problem involved in this trial. Since the trial had three defendants with two separate defense teams, participants may have been forced to consider the case as more of a legal dilemma and thus attitudinal biases would have had less influence on their decision. Future studies should consider using a trial that is less complex in terms of specific legal issues. Complexity may have the same effect as a non-ambiguous situation in a mock trial such that extraevidentiary factors like race become less important (Ugweuegbu, 1979). On the other hand, it may be that complexity increases ambiguity, but that giving jurors difficult legal issues forces them to focus their attention away from factors like race. Perhaps with a more simple and straightforward trial there would be more influence given to extraevidentiary factors. Also, since all three defendants were Black, prejudice may have not been a relevant factor in this trial.

Although this study falls short on many levels for properly examining the challenge for cause process, it does show that our current challenge for cause system may not be useful in achieving its objectives and that the need for more research in this area is crucial. After all, the result of discrimination in our legal system “may not be the loss of a benefit or a job or housing in the area of choice, but the loss of the accused’s very liberty” (R. v. Williams, 1998). No challenge for cause will ever eliminate the possibility of jury verdicts being affected by racial prejudice. However, a useful challenge for cause
process will do more than remove jurors who are honest or transparent about their racist views. It will also force all remaining jurors to question their own biases and sensitize them to the need to confront racial prejudice and ensure that it does not impact on the jury verdict. Further attempts must be made to study and examine our legal assumptions in an effort to improve our current challenge for cause and jury selection systems.
References


Table 1  
Effects of question-type and racism score on number of trier rejections out of 15

<table>
<thead>
<tr>
<th></th>
<th>Park's question</th>
<th>Experimental questions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Low Racism Score</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>3.3</td>
<td>5.7</td>
<td>4.73</td>
</tr>
<tr>
<td>SD</td>
<td>4.66</td>
<td>4.73</td>
<td>4.8</td>
</tr>
<tr>
<td>n</td>
<td>17</td>
<td>23</td>
<td>40</td>
</tr>
<tr>
<td><strong>High Racism Score</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>2.0</td>
<td>7.3</td>
<td>4.21</td>
</tr>
<tr>
<td>SD</td>
<td>3.65</td>
<td>5.12</td>
<td>5</td>
</tr>
<tr>
<td>n</td>
<td>22</td>
<td>16</td>
<td>38</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>2.56</td>
<td>6.38</td>
<td>4.47</td>
</tr>
<tr>
<td>SD</td>
<td>4.12</td>
<td>4.88</td>
<td>4.87</td>
</tr>
<tr>
<td>n</td>
<td>39</td>
<td>39</td>
<td>78</td>
</tr>
</tbody>
</table>

Table 2  
Effects of question-type and racism score on verdict 1

<table>
<thead>
<tr>
<th></th>
<th>Park's question</th>
<th>Experimental questions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Low Racism Score</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>1.8</td>
<td>1.96</td>
<td>1.9</td>
</tr>
<tr>
<td>SD</td>
<td>.73</td>
<td>.64</td>
<td>.67</td>
</tr>
<tr>
<td>n</td>
<td>17</td>
<td>23</td>
<td>40</td>
</tr>
<tr>
<td><strong>High Racism Score</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>2.0</td>
<td>1.8</td>
<td>1.9</td>
</tr>
<tr>
<td>SD</td>
<td>.65</td>
<td>.75</td>
<td>.7</td>
</tr>
<tr>
<td>n</td>
<td>22</td>
<td>16</td>
<td>38</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>1.9</td>
<td>1.9</td>
<td>1.9</td>
</tr>
<tr>
<td>SD</td>
<td>.69</td>
<td>.68</td>
<td>.68</td>
</tr>
<tr>
<td>n</td>
<td>39</td>
<td>39</td>
<td>78</td>
</tr>
</tbody>
</table>
Table 3  
Effects of question-type and racism score on verdict 2

<table>
<thead>
<tr>
<th></th>
<th>Park’s question</th>
<th>Experimental questions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Low Racism Score</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>1.6</td>
<td>1.7</td>
<td>1.7</td>
</tr>
<tr>
<td>SD</td>
<td>.61</td>
<td>7.1</td>
<td>.66</td>
</tr>
<tr>
<td>n</td>
<td>17</td>
<td>23</td>
<td>40</td>
</tr>
<tr>
<td><strong>High Racism Score</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>1.7</td>
<td>1.6</td>
<td>1.7</td>
</tr>
<tr>
<td>SD</td>
<td>.55</td>
<td>.62</td>
<td>.57</td>
</tr>
<tr>
<td>n</td>
<td>22</td>
<td>16</td>
<td>38</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>1.7</td>
<td>1.6</td>
<td>1.7</td>
</tr>
<tr>
<td>SD</td>
<td>.57</td>
<td>.67</td>
<td>.62</td>
</tr>
<tr>
<td>n</td>
<td>39</td>
<td>39</td>
<td>78</td>
</tr>
</tbody>
</table>

Table 4  
Effects of question-type and racism score on verdict 3

<table>
<thead>
<tr>
<th></th>
<th>Park’s question</th>
<th>Experimental questions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Low Racism Score</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>1.6</td>
<td>1.7</td>
<td>1.7</td>
</tr>
<tr>
<td>SD</td>
<td>.51</td>
<td>.7</td>
<td>.62</td>
</tr>
<tr>
<td>n</td>
<td>17</td>
<td>23</td>
<td>40</td>
</tr>
<tr>
<td><strong>High Racism Score</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>1.8</td>
<td>1.6</td>
<td>1.7</td>
</tr>
<tr>
<td>SD</td>
<td>.59</td>
<td>.62</td>
<td>.6</td>
</tr>
<tr>
<td>n</td>
<td>22</td>
<td>16</td>
<td>38</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>1.7</td>
<td>1.7</td>
<td>1.69</td>
</tr>
<tr>
<td>SD</td>
<td>.56</td>
<td>.66</td>
<td>.61</td>
</tr>
<tr>
<td>n</td>
<td>39</td>
<td>39</td>
<td>78</td>
</tr>
</tbody>
</table>
Appendix A: Subtle Racism Scale

Below are a number of opinion statements about public issues, social groups, and your beliefs about the world in general. You may disagree with some and agree with others. Please indicate your opinion by circling the appropriate answer. Circling number 1 indicates that you strongly disagree with the statement. Circling number 7 indicates that you strongly agree with the statement. The numbers 2 through 6 represent increasing gradations between the 1 and 7 categories. For example, circling the number 4 indicates that you neither disagree or agree with the statement.

1. White Canadians and black Canadians can never be really comfortable with each other, even if they are close friends.

2. Racial discrimination is no longer an obstacle for blacks in Canada.

3. Over the past few years, blacks and other racial minorities have gotten more help economically than they deserve.

4. Canada should close its doors to more immigration from the poorer countries.

5. Blacks get the worst jobs and are underpaid in Canada largely because of prejudice on the part of other Canadians.

6. It is easy to understand the anger of blacks in Canada.

7. One big reason why racial prejudice is still so strong is that Blacks offend people by being so sensitive about racial matters.

8. Blacks living here teach their children values and skills different from those required to be successful in Canada.
9. Other things being equal, I would be willing to vote for a black prime minister as leader in Canada.

<table>
<thead>
<tr>
<th>strongly disagree</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
</tr>
</thead>
</table>

10. Blacks, in comparison to the average Canadian, spend more money on drugs, flashy cars, and expensive clothes.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

11. Most blacks who receive support from welfare could get along without it if they really tried.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

12. A large part of the problems facing blacks today are not caused by blacks themselves.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
Appendix B: Parks' Question Condition

Sex: _____       Age: _____       Ethnicity: _______________________

Would your ability to judge the evidence in the case without bias, prejudice or partiality be affected by the fact that the person charged is black and the deceased white?
Appendix C: Experimental Questions Condition

Sex: _____  Age: _____  Ethnicity: __________________

1. To what extent do you think that certain races are associated with committing certain crimes?

2. To what extent do you think racism is a problem in Canadian society?

3. To what extent do you believe that all Canadians have equal opportunities for success?

4. To what extent do you believe that certain races are more prone to violent behavior?

5. To what extent would your beliefs or attitudes prevent you from giving a fair and impartial verdict, based solely upon the evidence, in a case where the defendant is black?
Appendix D: Post-trial questionnaire

Please indicate your verdict for each defendant by circling either guilty or not guilty. Choose the charge of either murder or manslaughter, understanding that manslaughter is a lesser charge involving a lesser sentence.

Defendant A: Shamille Borrough
Murder Manslaughter
Guilty/Not Guilty Guilty/Not Guilty

Defendant B: Jermaine Russell
Murder Manslaughter
Guilty/Not Guilty Guilty/Not Guilty

Defendant C: Karie Becka
Murder Manslaughter
Guilty/Not Guilty Guilty/Not Guilty

1. How confident are you in your verdict for Defendant A? Please circle one of the following responses:
   Very confident Somewhat confident Not Sure Somewhat unsure Very Unsure

2. How confident are you in your verdict for Defendant B? Please circle one of the following responses:
   Very confident Somewhat confident Not Sure Somewhat unsure Very Unsure

3. How confident are you in your verdict for Defendant C? Please circle one of the following responses:
   Very confident Somewhat confident Not Sure Somewhat unsure Very Unsure
Appendix E: Phase II Trier Evaluation Questionnaire

1. Having read these questions and these answers, do you think the person should be accepted for jury duty in this case where the defendants are black and the victim is a white man?
   
   YES          NO

2. How confident are you of your answer? Please circle one of the following responses:
   
   Very confident   Somewhat confident   Not Sure   Somewhat unsure   Very Unsure
Figure 1: Effects of racism and question type on number of trier rejections