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Juror Decision Making in Hate Crime Cases

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Relatively little empirical research has been conducted on hate crimes. An issue that has previously remained almost entirely unexplored is what factors are likely to influence jurors' guilt determinations in hate crime cases. This article describes a mock-juror study that was conducted with 190 participants. Participants were given a hate crime vignette in which the ethnicity of the victim and offender were varied. Contrary to the original hypotheses, it was found that at least with this particular vignette, the offender's and victim's ethnicity did not usually affect the juror decisions. Furthermore, participants' level of racism was not related to their decisions on the juror task. The implications of the results are discussed, and suggestions are made for future research in this area.

Keywords: *hate crime; juror decision making*

Although hate crimes themselves are probably as old as civilization, and although they certainly have existed throughout the history of the United States (e.g., Petrosino, 1999), hate crime laws themselves are a relatively new phenomenon. The first hate crime laws were enacted in the early 1980s; by the end of the century, nearly every state and the federal government had some kind of hate crime law. In the summer of 2000, Congress was acting to broaden the federal law.

Like much legislation, hate crime laws have been primarily the result of a social movement based on such "triggering events" as the murder of gay University of Wyoming student Matthew Shepherd (Jacobs & Henry, 1996; Jenness & Grattet, 1996). The laws have not been based on social science, and in fact, there has been virtually no social science research conducted on how these laws operate in the real world. Instead, most of the academic

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discussion has focused on hate crime victims (e.g., Herek & Berrill, 1992; Matsuda, Lawrence, Delgado, & Crenshaw, 1993; Torres, 1999) or offenders (e.g., Byers, Crider, & Biggers, 1999; Hamm, 1993) or on the legal questions these laws raise (Dunbar, 1999; Gellman, 1991; Gerstenfeld, 1992).

The practical effects of hate crime laws are particularly problematic. These laws, unlike any others, require the determination of the offender's motive (Gellman, 1992). Because motives tend to be ambiguous, this determination may be colored by the beliefs of the decision makers (e.g., victims, witnesses, police officers, prosecutors, jurors). The law enforcement data show a surprising phenomenon: African Americans are disproportionately likely to be *accused* of committing hate crimes (Gerstenfeld, 1998). Whereas Gerstenfeld (1998) suggests several explanations for this, one possibility is that stereotypes and prejudices may lead people to be more likely to label a crime hate motivated when it is committed by an African American. This article describes a study that was meant to explore this possibility.

STEREOTYPES AND PERCEPTION

Extensive research has demonstrated that stereotypes in general, and stereotypes about race specifically, are pervasive in our culture (Brigham, 1971; Fiske, 1993). By about age 3, children are able to categorize people on the basis of race (Brigham, 1971; Katz, 1976, 1983; Milner, 1975), and attitudes about race develop soon afterward (Devine, 1989; Goodman, 1964; Katz, 1976). When we see a person of a particular race, our stereotypes about that race are automatically activated (Devine, 1989; Ford, Stangor, & Duan, 1994; Macrae, Bodenhausen, Milne, & Jetten, 1994; Macrae, Stangor, & Milne, 1994; Moskowitz & Roman, 1992). These stereotypes affect our perceptions in many ways. The influence of stereotypes on cognitive processes is greatest when the information that we receive is ambiguous (Fiske, Neuberg, Beattie, & Milberg, 1987).

At least under some conditions, information that confirms preexisting stereotypes tends to be recalled better (Fiske, 1993; Hamilton, Sherman, & Ruvolo, 1990; Hamilton & Troler, 1986; Jones, 1982). Another effect of stereotypes is that subcategory information seems to be recalled better for one's own group than for other groups (Linville & Jones, 1980; Linville, Salovey, & Fischer, 1986). There is also evidence that people are better at remembering negative information about members of other races than they are at remembering negative information about in-group members (Howard & Rothbart, 1980). People also better recall information that is consistent with stereotypes than information that is inconsistent (Fyock & Stangor,

1994; Macrae & Shepherd, 1989; Stangor & McMillan, 1992). This helps us to process information more quickly, but it also leads to self-perpetuation of stereotypes (Macrae, Hewstone, & Griffiths, 1993).

Although there seems to be strong influence of stereotypes on recall, stereotypes influence other processes, such as attribution, as well. In general, people make more favorable attributions about their own group than about others (Hamilton & Troler, 1986). Again, this is not surprising, inasmuch as we tend to see ourselves as more similar to members of our own groups.

How people make causal attributions is also affected by group membership. For members of our own group, we view positive information as having an internal cause and negative information as being situationally caused. For members of other groups, these attributions are reversed (Hewstone & Jaspars, 1984; Taylor & Jaggi, 1974).

Our ratings of people of other races tend to be more polarized than ratings of members of our own group. For example, when White individuals are given information about law school applicants or candidates for a job, they will rate well-qualified Blacks higher than well-qualified Whites, but they will also rate poorly qualified Blacks lower than poorly qualified Whites (Linville & Jones 1980; McConahay, 1983, 1986). Linville and Jones (1980) and Linville et al. (1986) argue that the reason for this is that Whites have more complex schemas about Whites than about Blacks, and so the positive or negative information has less impact on the overall evaluation.

These effects of stereotypes appear to be automatic and, to some extent, unrelated to whether a person is high in prejudice. Although perception of a minority group member will automatically activate the stereotype schema, relatively unprejudiced observers will, given the opportunity, further process incoming information to avoid having the information biased by stereotypes. However, if observers are not given the opportunity to undertake this additional processing (for example, if they are not conscious that the stereotype schema has been activated), even the judgments of people low in prejudice will be affected by stereotypes (Devine, 1989). These findings are unsettling because in the realm of real life, such as in hate crime trials, the information is apt to be ambiguous and decision makers may not have the opportunity to counteract the effects of stereotypes. Moreover, it has been suggested that attempts to suppress stereotypic thoughts may actually result in those thoughts having a greater effect upon judgments (Macrae et al., 1994).

Research that has replicated real-life decisions has supported this fear. For example, as described above, the race of the applicant causes polarized appraisals in hiring and admissions (Linville & Jones, 1980; McConahay,

1983, 1986). How might race affect jury decision making in hate crime cases?

STEREOTYPES AND HATE CRIMES

To answer this question, it is first important to realize that today, the most common theme of stereotypes about Blacks is that they are aggressive, hostile, or criminal (Devine, 1989). Therefore, when a non-Black sees a Black person (particularly a young, Black male) aggression and criminality feature prominently in the schema that is automatically activated, and so these attributes might color an interpretation of ambiguous acts a person commits.

Research supports this hypothesis. Duncan (1976) showed videotapes of an ambiguous shove (that ostensibly was occurring live in an experiment) to White college students. The participants rated the shove as more violent when it was performed by a Black actor than when it was performed by a White actor. They also made more dispositional attributions for the Black actor and more situational attributions for the White actor. Similar results have been found for children who are asked to rate the ambiguous behavior of children in a story (the results even held for participants who were Black) (Sagar & Schofield, 1980) and for college students who were supposed to decide punishments for job-related transgressions and for criminal acts (Bodenhausen & Wyer, 1985; Macrae & Shepherd, 1989). Additionally, a study by McArthur and Solomon (1978) suggests that these results may occur not only when the actor is Black but whenever the victim is salient (salience was produced through having the victim wear a leg brace or have red hair).

Race apparently has an effect not just on determinations of aggression in general but in jury decision making in criminal cases specifically. Several studies have indicated that mock jurors are more likely to convict a defendant of a different race and to give him a harsher sentence (the defendants in the studies, as in reality, are mostly male) (Ugwuegbu, 1979), and that Black defendants in general receive more convictions and harsher sentences than Whites (Pfeifer & Ogloff, 1991). Study participants are more likely to ignore base-rate information when the defendant is a minority (Hewstone, Bunn, & Wilson, 1988). In a review of the literature on racism in the courtroom, Nickerson, Mayo, and Smith (1986) conclude,

The law may not see color, but jurors and judges and lawyers do. Research has shown that a substantial proportion of jurors do not even believe that

defendants in criminal cases are innocent until proven guilty . . . and our analysis suggests that minority defendants are seen as even less innocent than others. (p. 274)

These findings are not confined to the laboratory. In real criminal cases, Blacks are treated more harshly than Whites by the criminal justice system (Mann, 1993; Nickerson et al., 1986). Additionally, it has been demonstrated that race differentials exist at all stages of juvenile justice processing (Bishop & Frazier, 1996; Krisberg & Austin, 1993). A rather extensive body of research has shown that race plays a part in capital cases as well, in that Blacks who kill Whites are significantly more likely to receive the death penalty than other offenders (Baldus & Woodworth, 1998; Bowers, 1984; Gross & Mauro, 1989). The U.S. Supreme Court, although upholding the constitutionality of capital punishment, acknowledged the validity of these studies (*McCleskey v. Kemp*, 1987).

Does race affect decisions in hate crime cases as well? Several commentators have expressed fear that hate crime laws might ultimately hurt minorities, in part because minorities will be disproportionately accused of these crimes (Fleisher, 1995; Gellman, 1991; Greene, 1994). This issue has not previously been addressed empirically.

Craig and Waldo (1996) conducted two studies on how people view hate crimes. In the first study, they gave college students a series of open-ended questions about hate crimes. Examples of these questions are "The typical hate crime involves . . ." and "The typical perpetrator of a hate crime is . . ." (p. 118). In the second study, students were read a description of an assault that was either hate motivated or ambiguous. Several factors were varied, including the type of hate crime (race, religion, sexual orientation, or ambiguous) and the gender of the victim. In both of these studies, the researchers found that participants' perceptions about hate crimes varied according to the demographic characteristics of both the offenders and the victims.

The Craig and Waldo (1996) study provides some support for the hypothesis that race may make a difference in hate crime cases. However, that study was not designed specifically to look for such effects, nor did it attempt to replicate real-life decision making. The present study is the first to focus specifically on whether juror decisions in hate crime cases are affected by the defendant's race. It was hypothesized that participants would be more likely to find the defendant guilty of a hate crime when he was Black than when he was not, would be more certain of Black offenders' guilt, and would give Black offenders more severe sentences.

METHOD

Overview

A mock juror design was used to examine whether three main variables—the offender's race, the victim's race, and the participant's level of racism—affected the participant's decisions in a case in which the defendant was charged with a hate crime.

Participants

The sample consisted of 190 volunteers, all of whom were residents of California's Central Valley. Of these, 101 were undergraduate students, and the remaining 89 were nonstudent adults. There were no significant differences between the students and nonstudents on any of the dependent variables. Participants' ages ranged from 18 to 86, with a mean of 28.9. Seventy-seven were male and 113 were female. The self-reported racial and ethnic background of the participants was as follows: 110 (58%) White, 42 (22%) Latino, 17 (9%) Asian/Pacific Islander, 6 (3%) African American, and 13 (7%) "other".

Procedure

The participants were told that they were to act as jurors in a criminal case. After signing a consent form, each participant was given a manila envelope containing the materials packet. The first page of the packet was an instruction sheet that told the participants what their general task was and gave them some directions as to how to proceed.

The second page of the packet was a juror questionnaire. This asked some general demographic information about the participants: age, gender, and race/ethnicity. Participants were asked not to write their name anywhere, to ensure confidentiality.

The next item in the packet was the case summary.¹ It began by stating that the defendant, John Williams, had been charged with three crimes: felony assault, felony assault with a deadly weapon (ADW), and hate crime. It also gave definitions of these crimes; these definitions were adapted from the California Penal Code. The two levels of assault were included to take some emphasis off of the hate crime charge; it was desired that participants not realize that the hate crime was the primary focus of the study. Participants were told that they could not find the defendant guilty of both assault

and ADW² and that they should only consider the hate crime charge if they convicted the defendant of one of the assault charges.

Next came a two and one-half page summary of the evidence in the case, as presented by both the prosecutor and the defense. Participants were randomly given one of six versions of the case summary. These versions differed in the race of the offender and victim (Black/Black, Black/White, Black/Jewish, White/White, White/Black, and Jewish/Black), in the specific racial slurs uttered by the defendant ("You Black [White, Jewish] son of a bitch," and "You Black [White, Jewish] bastard."), and in the name of the hate group to which the defendant belonged ("African Americans United," "Aryan Activists United," or "Jewish Americans United").³ All other details of the case were identical.

Next, the packet contained two pages of jury instructions. These instructions informed the participants of their duty to find the defendant guilty beyond a reasonable doubt or not guilty, defined reasonable doubt, and defined each crime.

The packet also contained a jury decision form. On this form, participants were asked to state whether the defendant was guilty or not guilty of each crime. For those crimes for which they found the defendant guilty, they were asked to choose one of three sentence options for the defendant. For each of the charges, they were asked to state, on a scale of 1 to 10, how certain they were of the defendant's guilt.

Once they completed their jury task, the participants completed an opinion survey form. This form contained the item from McConahay's (1986) Modern Racism Scale, hidden among dummy questions. The participants' scores on this scale permitted a test of Devine's (1989) findings that even people with low levels of prejudice can, unconsciously, behave in a racist manner.

RESULTS

The defendant in this case was charged with assault, ADW, and bias crime. Only nine of the participants (4.7%) found the defendant not guilty of either assault charge. This was as expected, as his guilt was fairly obvious. Fifteen participants (7.9%) found the defendant guilty of assault but not ADW; again, it was fairly obvious that the defendant had used a deadly weapon (a broken beer bottle). The remaining participants found the defendant guilty of ADW. Overall, 98 of the participants found the defendant guilty of a hate crime (i.e., 54% of those who found him guilty of one of the

Table 1: Mean Guilt Determinations, Certainty of Guilt, and Sentence for Each Condition

<i>Condition</i>	<i>Guilt Determination^a (M)***</i>	<i>Certainty of Guilt (M)***</i>	<i>Sentence (M)</i>
White offender			
White victim	1.45	5.58	2.60
Black victim	1.71	7.61	3.00
Black offender			
White victim	1.55	6.38	3.00
Black victim	1.18	3.57	3.20
Jewish victim	1.63	6.97	3.16
Jewish offender			
Black victim	1.66	6.88	2.95

a. 1 = Not guilty; 2 = Guilty.

*** $p < .001$.

assault charges), and 84 (46%) did not. This confirms that the case was ambiguous, as desired.

The Effects of Offender and Victim Race

There was a significant difference between the six conditions on whether the participants found the defendant guilty of a hate crime, $F(5, 170) = 4.60$, $p < .001$. There was also a significant difference between the conditions as to how certain the participants were of the defendant's guilt, $F(5, 177) = 5.23$, $p < .001$. However, the conditions did not differ significantly as to the sentence given to the defendant, $F(5, 91) < 1$, $p > .05$. The mean guilt determination, certainty of guilt, and sentences for each condition are presented in Table 1.

What accounts for these differences? Further analysis revealed that participants made different decisions when the offender and victim were of different groups than when they were of the same group. That is, people were more likely to find the defendant guilty of a hate crime when the actors were of different groups, $F(1, 180) = 16.35$, $p < .001$. People were also more certain that the defendant was guilty of a hate crime when he was a member of a different group than the victim, $F(1, 181) = 18.53$, $p < .001$. Again, however, there was no overall significant difference in sentences, $F(1, 95) = 1.52$, $p > .05$.

Table 2: ANOVAs of Effects of Offender's Race

<i>Source</i>	<i>df</i>	<i>F</i>
Victim/Offender Same Group		
Guilt determination		
Race	1	
Within-group error	58	5.10*
Certainty of guilt		
Race	1	
Within-group error	57	5.03*
Sentence		
Race	1	
Within-group error	18	1.96
Victim/Offender Different Groups		
Guilt determination		
Race	2	
Within-group error	119	< 1
Certainty of guilt		
Race	2	
Within-group error	121	< 1
Sentence		
Race	2	
Within-group error	74	< 1

* $p < .05$.

Participants made different decisions when the offender and victim were of the same group than when they were of different groups. Therefore, two sets of ANOVAs were run to determine whether the offender's race had an effect on participants' decisions. One set of ANOVAs was run for conditions in which the offender and victim were of the same race and another for when they were of different races. The results of these ANOVAs are summarized in Table 2.

As Table 2 illustrates, when the offender and the victim were of the same group, the race of the victim had a significant effect on whether the participants found him guilty of a hate crime and on the degree to which they were certain of his guilt. The direction of these differences, however, was actually opposite to the hypotheses: White offenders were more frequently convicted of the hate crime than were Black offenders, and participants were more certain of the White offender's guilt. Interestingly, participants were also more certain of the White offender's guilt of ADW ($M = 9.12$) than of

the Black offender's ($M = 7.97$) when the offender and the victim were of different groups, $F(1, 62) = 4.48, p < .05$.

On the other hand, there was a different trend for the sentence: Black offenders received higher average sentences than Whites (3.2 years vs. 2.6 years) for the hate crime, although this difference was nonsignificant ($p = .18$). Perhaps a significant difference would have emerged with a larger sample; only 20 participants who had offenders and victims of the same race had the opportunity to choose a sentence for the hate crime.⁴ When a post hoc comparison was done of the sentences received by Black offenders versus those received by Jewish or White offenders (regardless of whether the offender and victim were of the same group), the difference approached, but did not quite reach, significance, $t(180) = -1.9, p = .058$.

When the offender and victim were of different races, the race of the offender had no effect on the guilt determination, the sentence, or the certainty of guilt. This, too, was contrary to the original hypotheses.

To account for the combined influence of the independent variables and the participants' demographic variables on the hate crime guilt determinations, a regression analysis was performed. None of the participant variables contributed significantly to the model, nor did any independent variable except offender's race.

It might be hypothesized that participants of different races and ethnicities would respond differently in this study. Therefore, because the sample was ethnically diverse, ANOVAs were run to test this. It was found that there was no significant difference between the participants' ethnicities on hate crime guilt determination, $F(5, 175) < 1$, hate crime sentence, $F(5, 90) < 1$, or certainty of guilt of hate crime, $F(5, 175) = 1.13, p > .05$.

Racism

After completing their jury task, participants were given the Modern Racism Scale, the items for which were embedded among several other opinion questions. Devine (1989) argues that stereotypes are automatically activated and that they affect perceptions without a person's being consciously aware of their effects. Furthermore, she suggests, racism may be consciously controlled. Therefore, if a person is unaware that his or her stereotypes have been activated, those stereotypes will influence decision making regardless of the person's level of racism. To test this hypothesis, a median split was performed on the racism scale, and participants were labeled as having either low or high levels of racism on each scale. Participants with scores of 32 and below were classified as low in racism. An

Table 3: Mean Juror Decisions by Level of Racism

<i>Modern Racism Scale Score</i>	<i>Guilt Determination^a (M)</i>	<i>Certainty of Guilt (M)</i>	<i>Sentence (M)</i>
Low (≤ 32)	1.53	6.37	3.10
High (> 32)	1.49	5.32	2.74
<i>F</i>	< 1	3.50	3.99*

a. 1 = Not guilty; 2 = Guilty.

* $p < .05$.

ANOVA was then run to see if there was a relationship between levels of racism and juror decisions. Table 3 summarizes the results of this ANOVA.

The only significant relationship was between level of racism on the Modern Racism Scale and sentence in the hate crime case. The direction of this relationship was interesting: People who scored low on the racism scale tended to give higher sentences ($M = 3.10$) than people who scored high ($M = 2.74$).

DISCUSSION AND CONCLUSIONS

Although the psychological research offers good reason to suspect that hate crime laws may have a paradoxical effect on minorities, this study suggests that this fear may be misplaced. Contrary to the original hypothesis, African American offenders were not treated more harshly by the jurors in this case, and, in fact, the opposite was true: The White offender was convicted more frequently and the jurors were more certain of his guilt. Therefore, the results of this study lend support to the idea that perhaps hate crime laws are one viable and reasonably harmless method for governments to fight hate.

On the other hand, care must be taken in drawing conclusions from this study. There were a number of factors that compromised the study's external validity. Foremost among those factors was the design of the study itself: Participants read a summary of a case, rather than sitting through an actual trial, and the decisions were made by individual jurors, rather than juries after deliberation. Furthermore, many of the statistical findings of this study were nonsignificant, and great care should be taken in interpreting nonsignificant findings. They may be due to such factors as Type II statistical error, rather than reflecting "true" results.

However, it must be remembered that this was the first study to examine decisions in hate crime cases. As such, it should be considered somewhat exploratory. Its greatest strength is that it suggests many avenues for future research.

At the same time, however, this study does begin to answer some important questions about the operation of hate crime laws. The conclusions that can be drawn from this study about the role of the offender's race are complex. To begin with, it seems clear that people are more likely to identify a crime as hate motivated when the offender and victim are of different groups, in contrast to when they are of the same group. There is some logic to this: It does seem likely that people more often harbor hatred of groups other than their own.

On the other hand, there is danger in the assumption that crimes between people of different groups are racially motivated. Purely as a matter of probability, the odds are that members of minority groups who commit crimes are more likely to victimize someone of another race than are members of the majority. If crimes between people of different groups are attributed to hate, then minorities are more likely to be accused of hate crimes. Furthermore, during an altercation, racial slurs may be exchanged when the people involved are of different races. This does not necessarily indicate, however, that race was the motive for the attack.

A real example of this was cited in the case of *UWM Post v. Board of Regents of the Univ. of Wis.* (1991), in which a federal district court held a campus hate speech code unconstitutional. According to the court, a White student had been disciplined under the code for calling a Black student "nigger" during an argument. Even the Black student asserted to the university that the other student had used the term as a general one of disrespect, as was done in many Black and racially mixed neighborhoods, and that the White student was not expressing racial animus (p. 1180).

It is not clear, however, exactly what cues lead a person to believe that an incident is a hate crime. Is it enough that the actors be of different groups? What part does evidence of racial slurs and hate group membership play? Constitutional problems may arise if people are convicted of hate crimes merely because of their speech and their group membership.

The law enforcement data (Gerstenfeld, 1998) suggest that Blacks are disproportionately likely to be named as both offenders and victims of hate crimes. The results of this study provide support for one explanation for this phenomenon: that crimes in which the offender and victim are of different races are apt to be labeled as hate crimes. This explanation need not suppose that people are being biased when they make these determinations. It might

merely be a matter of statistics, as Blacks are disproportionately accused of crimes in general. Another explanation for the law enforcement data, however, was that because of stereotypes, people are more likely to interpret a crime as hate motivated when the offender is Black than when he is White. This study permitted an analysis of this hypothesis.

In fact, contrary to hypotheses, the bias against Black offenders was not evident in this study. When the offender and victim were of different races, the offender's race did not affect any of the dependent variables. When they were of the same race, the offender's race was a factor but in the exact opposite way as predicted: It was White defendants who were convicted more often, and participants were more certain of White defendants' guilt.

There are several explanations for these unexpected results. One possibility, of course, is that any bias the jurors had was against Whites, rather than Blacks. This seems unlikely, however, as it runs counter to virtually all previous research.

A more real possibility is that the race factor was simply too overt or artificial in this study. Because the case was a written summary, rather than a real trial, the race of the defendant and of the victim had to be specifically mentioned. At trial, of course, these variables would generally be too obvious to bear mentioning; perhaps actually naming the races involved increases their conscious salience. Having been made consciously aware of the issue of race, participants might have chosen to act in a "politically correct" or socially desirable manner.

A third possibility is that the particular case that was used in this study did activate a stereotype—but the stereotype did not pertain to Blacks. In this case, the materials stated that the defendant belonged to a hate group. Although hate groups composed of members of minority groups do exist, when most people think of hate groups, they probably think of White supremacist groups (such as the Ku Klux Klan and the Skinheads). Therefore, evidence of a hate crime may actually be more consistent with the schema of Whites than of Blacks.⁵ To test this explanation, it would be useful to conduct an experiment in which no evidence of hate group membership was introduced.

The data in this study revealed another interesting relationship: Although Whites were more often convicted of hate crimes and participants were more certain of their guilt, they did not receive harsher sentences. In fact, it was Black defendants who received longer sentences, although this difference did not quite reach a statistical level of significance. Clearly, this needs to be explored with larger sample sizes. If Black offenders do, indeed, receive harsher sentences, what could account for this pattern?

Devine (1989) suggests that when people become aware that their race schemas have been activated, those who are low in racism will make the effort to ignore those schemas. On the other hand, when people are not aware of the activation of the schema, even people low in racism will be affected by stereotypes. Perhaps that is what was operating here. When participants made decisions as to the defendant's guilt, they were aware that race was an issue and tried not to be affected by stereotypes. When it came to sentencing, however, they may have been less aware of the stereotypes, and those stereotypes may have been stronger. After all, by the time they were able to choose a sentence, they had already decided that the defendant was a dangerous character, for they had already convicted him of assault or ADW and a bias crime. The idea of a dangerous criminal is highly consonant with stereotypes about Black men.

Thus, this study could be seen to provide support for Devine's (1989) work. It does not provide strong support for the argument that minorities are harmed by hate crime laws, yet it does not entirely refute it, either. It is important that further research be conducted to examine these issues more closely.

One interesting finding of this study was that there was no relationship between participants' ethnic groups and their responses to the juror task. White participants might have been hypothesized to react differently than members of minority groups. On the other hand, perhaps it is erroneous to separate Whites from "minority members": California is very close to having no single ethnic majority. Instead, Whites will soon be the largest of a large number of minorities. A more accurate question, perhaps, is, "Do White participants react differently than Black participants?" There were not enough Black participants in this study to permit such a comparison: Only 6 identified themselves as African American. It would be interesting to repeat this study among large samples of several different ethnic groups, so that comparisons could be made.

Another issue addressed by this study was the relationship between participants' level of racism and their responses in the juror study. It was hypothesized that levels of racism would not be related to decisions about hate crimes. This hypothesis was based on the work of Devine (1989), who suggested that even people low in racism might be affected by stereotypes if they were not aware that those stereotypes had been activated. In other words, it takes cognitive effort to counteract the effects of stereotypes on decision making.

The data in this study were as hypothesized, in that racism scores were not related to hate crime conviction or certainty of the defendant's guilt.

However, this study does not necessarily support Devine's (1989) theory. In Devine's study, both racist and nonracist participants made stereotype-based (i.e., racist) choices when they were unaware that they had been primed with racial cues. In the present study, neither participants high in racism nor those low in racism discriminated against the Black offenders in convictions or certainty of guilt. In fact, if anything, the participants were biased against White defendants.

The results are further clouded by two complications. First, people who scored low on the Modern Racism Scale gave significantly higher sentences for the hate crime than those who scored high. Second, Black offenders received higher sentences for the hate crime than did Whites, although this difference was not significant.

What might account for this pattern of results? One possibility, as discussed above, is that the matter of race was too salient in this case. In other words, when it came to deciding whether the defendant had committed a hate crime, participants were aware that their stereotypes had been activated. When it came to the sentencing decision, however, perhaps they were less aware of this. Another possibility, also discussed above, is that the stereotype that was activated in this case was of a White racist. The participants who were low in racism were, perhaps, more appalled at what seemed to be a race-related attack and so imposed more severe sentences.

What does all of this imply about the hate crime laws themselves? Unfortunately, what was already a muddy issue has not been made much clearer. This study does not support the hypothesis that Black defendants will be treated more harshly than White defendants in hate crime cases, at least when there is evidence of the defendant's hate group membership. On the other hand, the data do suggest that offenders who choose victims of a different race are more likely to be convicted of a hate crime than those who choose victims of the same race. Because members of minority groups are, purely as a matter of chance, more likely to have victims of different groups, this means that minority group members might be more likely to be convicted of hate crimes. Furthermore, this study implies nothing about decision making at other steps in the judicial process. Jurors have as much time as they wish to deliberate and make their decisions and thus may have the opportunity to become aware of, and to counteract, their biases. Police officers, witnesses, and victims, however, often must make more immediate decisions (and often under conditions of great stress) and so may be more likely to be influenced by stereotypes.

It is very important that more research be conducted to study these issues. This research may help inform policy makers as to the necessity for hate

crime laws, the impact (both positive and negative) of the laws, the potential effects of drafting laws in different ways, the best ways to implement the laws, and possible alternative or supplemental methods of reducing hate. As the first empirical research done on this topic, this study serves the purpose of clarifying which issues must be examined and of identifying some potential confounds to be avoided in future work. Based on the results of this study, it is possible to make several specific suggestions as to the direction that future investigations might take.

First, research ought to be done under more realistic circumstances. Rather than simply reading a summary of a case, participants should watch a simulation of an actual trial, perhaps on videotape. The artificiality of designs such as that used in this study has been a source of criticism by judges and other legal scholars. Furthermore, participants should be allowed to deliberate and make decisions as juries, rather than individual jurors. There is ample evidence that decision making in a group context is different from individual choices.⁶ A larger sample size should also be used, so that the study will be more sensitive to differences between conditions.

Another area that should be studied is the effects of including information about the defendant's hate group membership. This information would be legally relevant, as one criticism of hate crime laws has been that they may result in people being punished because they belong to hate groups (a constitutionally protected activity), rather than because of their actions. Furthermore, if evidence about hate group membership were excluded, the particular stereotypes that are most salient to participants might be different, and thus their responses might be different as well. Exclusion of hate group evidence also increases the realism of the case, as the majority of hate crimes are committed by people who do not belong to organized hate groups.

The jury decision is only one of several steps within the adjudication of a hate crime. Before a case ever reaches a jury, decisions have been made by victims, witnesses, police officers, prosecutors, defense attorneys, and judges. In fact, one criticism that has been made of hate crime laws is that they permit too much discretion on the part of prosecutors, perhaps allowing the prosecutors' own biases to operate (Hernandez, 1990). Certainly, very few hate crime cases ever go to court. Others have commented that enacting hate crime laws does not change the levels of prejudice of the people who enforce them (Greene, 1994). As stated above, there may actually be more opportunity for the effects of bias in the initial stages of a crime than there are once it goes before a jury. Therefore, research should be conducted that focuses on these other aspects of the justice system.

There is little question that when a person is singled out for criminal attack because of his or her race, religion, sexual orientation, or ethnicity, it can be emotionally devastating for the victim and for the community. A legislature rushing headlong into passing hate crime laws, however, will not necessarily assuage this devastation, nor will it necessarily deter future acts. This is particularly true if the laws themselves only serve as a vehicle for even more bias.

This study should be considered a beginning exploration of the real-life effects of hate crime laws. As the constitutional arguments have reached a logical and legal dead end, inquiry should turn to other matters, including the issues addressed by this study. It is hoped that this study will serve as an impetus for a great deal of further research into hate crimes and hate crime laws. If policy makers are more informed about the reality of these acts and these laws, then perhaps they will be able to shape more effective methods of eliminating hate.

NOTES

1. The facts of the case were adopted from a real incident that occurred in Oregon in 1992, in which a young male Skinhead brutally attacked an intoxicated Black man who may have been harassing the Skinhead's girlfriend at a convenience store. An ambiguous case was deliberately used: In a pilot study, 14 of 26 participants concluded that this was a hate crime. Had the case been unambiguous, any racial effects would have been masked. Also, in real life it is very often not clear whether an incident was hate motivated.

2. This would be true in a real life case, because assault is a lesser included offense of assault with a deadly weapon. A defendant cannot be convicted of both an offense and a lesser included offense.

3. The combinations with the Jewish offender and with the Jewish victim were included to permit a more careful testing of the hypothesis. If only Black and White offenders and victims were used, and a difference was found between them, it would not be certain whether the difference was due to stereotypes about Blacks or was due to minority status per se. A Jewish actor was chosen for two reasons. First, using a Jewish actor contributes to the realism of the case, as Jews are actually common targets of hate crimes. Furthermore, the commonly held stereotypes about Jews are quite different from those about Blacks and primarily focus on money issues rather than crime. Therefore, if stereotyping, rather than minority status, is what influences juror decisions, it would be expected that Jewish and Black offenders would receive different verdicts.

4. This was due, in part, to the fact that relatively few people who had offenders and victims of the same race found the defendant guilty of a hate crime; therefore, relatively few had the opportunity to choose a sentence.

5. It should be noted that levels of hate crime determination and certainty of guilt were at least as high for Jewish offenders as for White offenders. Because Jews are not often associated with hate groups in the media, the explanation for this is unclear. It may be due to general

lack of knowledge about Jewish people (the area in which the study was conducted has a very small Jewish population) or perhaps partly due to knowledge of Israeli extremist groups.

6. For a discussion of how this issue relates to jury size, see the Supreme Court case of *Ballew v. Georgia* (1978).

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