

**MIND CHANGERS:
PROCESSES OF DELIBERATION AND PERSUASION IN A
CVIL RETAIL DISCRIMINATION CASE**

Honors Thesis

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ABSTRACT

This research seeks to expand on the results of a mock jury civil trial study conducted by Sophia R. Evett, Anne-Marie G. Hakstian, & Liisa A. Burk (2012). In this study, 124 participants were placed on one of 20 juries (10 with black participants and 10 without). All participants were then asked to read a case involving an incident, at a department store. After reading the case, (*Harmon vs. Reilly's Department Store*), participants were told that the plaintiff's claim was either based on racial discrimination or unlawful detention. Deliberation analysis allowed researchers to observe topics used by jurors to persuade other jurors to change their mind from either siding with the plaintiff or the defendant. Results suggest that statements expressing empathy for the plaintiff were more prevalent when jurors found for the plaintiff while statements expressing a lack of empathy were found in juries that sided with the defendant. Statements implying that the case lies on a continuum (statements such as "His actions were not too extreme" or "Some things were right and some things were wrong") were correlated with a finding for the defendant. Lastly juries that mentioned that the store followed policy were more likely to find for the defendant while statements about the store not following policy did not have an affect on the outcome of the case.

Mind Changers: Processes of Deliberation and Persuasion in a Civil Retail
Discrimination Case

The unalienable right to pursue justice is expressed through the institutional structure of the United States Government. The Bill of Rights states that in suits of the common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved (U.S. Const. amend VII) . The procedure of trial by jury was implemented based on the belief that groups of randomly selected people will create an impartial deliberation and decision-making process. The assumption is that by utilizing a jury as opposed to a singular judge, extralegal biases will be reduced (Surowiecki, 2005).

While civil trials have been a long instituted aspect of the legal system there is uncertainty about the efficacy and fairness of jury deliberations. Concerns have been raised about the validity of jury verdicts following findings that conclude that variables such as differences between jurors and plaintiffs' attitudes, sex, and socioeconomic status affect juries' decisions (Rotenberg, K., Hewlett, M., Siegart, C., 1998). In addition, research has shown that juries, being composed of a group of people as opposed to an individual, may create biases in and of itself . Rotenberg postulates that judges may rely more on factually based evidence where as social influences play a role in jury decisions. Three forms of influence involved in jury-like settings have been suggested; normative social influence, the pressure placed on out-group members to conform, and the persuasive arguments presented by other jurors (Isenberg ,1986).

One theoretical model explaining the phenomenon of compromise in jury deliberations is presented by Bikhchandani, S, Hirshleifer, D. & Welch I (1992) which

states that jury compromise is due in part to a Bayesian Model of group decision making. This model infers that once a certain number of people have chosen a particular option, it becomes optimal for the out-group members to change their original opinion to favor that of the group majority. Bikchandani states that this is often done in spite of personal deductions and sometimes at the expense of the more factually supported outcome. These findings are consistent with a theory presented by Kalven and Zeisel (1966) suggesting that cases that fall on a continuum (some factors favoring the plaintiff and others favoring the defendant) may 'liberate' jurors from the evidence and allow personal biases and sentiments to influence their judgment.

Additionally, a leniency biasing effect has been frequently observed in mock jury trial studies. In one study conducted by MacCoun (1989), an asymmetrical effect was found in group influence that was dependent on the verdict that jury members favored. Group members favoring acquittal had more influence over the final decision of the jury than other equally sized factions favoring conviction. MacCoun (1989) found that the legal necessity to convict by the standard of no reasonable doubt in criminal proceedings provided an advantage for group members favoring acquittal whereas the preponderance of evidence required in civil cases creates symmetrical influence in jury deliberations.

The Role of Empathy in Jury Deliberations:

In one investigation into the reliability of juries, Parkinson and Baddeley (2011) found a significant tendency for juries to compromise in order to conform with the majority group. Data collected from mock jury trials suggests that individual differences, including an empathetic personality, are associated with compromise in jury type settings (Parkinson, 2011). Empathy was seen in this study to significantly increase the likelihood

of an individual to compromise, often resulting in jurors abandoning their more factually based arguments for the majority decision.

The ability for jurors to utilize empathy as a persuasive technique has previously been investigated. Message based empathy has been identified as an effective persuasion tactic in a study conducted by Lijiang Shen (2010). Message -based empathy occurs when the message recipient's perception of the message deliverer's situation, state, or opinion is altered due to the recipient adopting the perspective of the person delivering the message. The presence of empathy causes a decrease in the depth of message processing as measured by the total number of evaluative thoughts. The study suggests that the more empathy felt, the more likely persuasion will occur. For empathy to be used successfully, the messages must be perceived as realistic by the recipient (Campbell and Babrow ,2004). Given that empathy for the juror's message plays a role in persuasion, it may be significant to encourage compromise during jury deliberations.

Framework for the Present Research:

The current study builds on results from a mock jury trial study conducted by Evett and Hakstian (2012) which examined the effects of jury composition and type of legal claim utilized in a civil retail discrimination trial. The research was based on the theoretical proposition that evidence is evaluated differently in racially mixed vs. non mixed juries (Sommers ,2006). Sommers investigated the effects of jury composition on deliberation processes through mock jury trial studies, where juries were divided as either racially heterogeneous or racially homogeneous. Sommers (2006) found that racially mixed juries considered more evidence, deliberated longer, and were more likely to consider racism in comparison to all white juries. Sommers demonstrated that these

results were largely influenced by white participants raising more case facts, making fewer factual errors, and being more open to discussions of race related issues when they were on racially mixed juries.

A study conducted by Evett et al. (2012) looked to extend the concepts identified in the criminal trial study conducted by Sommers (2006), to civil court proceedings. Mock jury trials were conducted in which participants were placed in jury groups that either had or did not have black jury members. A case involving retail discrimination was presented as either a retail discrimination claim or unlawful detention claim. Evett et al. (2012) found that when jurors changed their decision during deliberation, the direction of change depended on the racial composition of the jury. Juries who changed their decision from the defendant to the plaintiff during deliberations were more than twice as likely to have black members. Juries who changed their decision from the plaintiff to the defendant during deliberation were more likely to have no black jury members. The current study looks at the underlying decision making processes involved in jury decision making during mock jury deliberation trials.

The goal of this research is to better understand the methods of persuasion used by jury members and the influence that they have on final jury verdicts. Researchers hypothesized that the presence of message-based empathy, the case being presented as a civil trial (there is a preponderance of evidence statute as opposed to unreasonable doubt), and the perceived level of the store breaking or following their policies would have an effect on juror decision making.

METHODS

Data used for this study were drawn from a previous study conducted by Sophia Evett, Anne-Marie G. Hakstian, & Liisa A. Burk. This study seeks to build on and expand the information gathered in the previous study.

Participants:

The study included a total of 124 participants from a state university community in New England (61 women and 62 men). Their ages ranged from 17-73 years old with a mean age of 23.9 years old (SD=10.5). Some participants were volunteers from undergraduate classes in business and psychology; other students, staff, and associates were recruited through flyers posted around campus and were paid \$25 for their time.

Materials and Procedure:

Mock Juries:

Participants served on one of 20 juries: 10 with black participants and 10 without black¹ participants. Each participant read about a case involving an incident involving retail discrimination that took place in a department store (See Appendix A for transcripts of the case, *Harmon vs. Reilly's Department Store* and the store policies). In the case, two African American females were approached for suspected shoplifting. The woman suspected of shoplifting was detained for questioning for about twenty minutes and was embarrassed after being detained in front of her children and the community. The two women felt that their search was unwarranted and later found out that the store has a code in place which alerts security personnel to the presence of African American shoppers.

¹ The term "black" participant is used in this case because some participants were African American but other participants were Black Caribbean or African. The hypothesis was that jurors who were the same race as the plaintiff might change the nature of the deliberation process.

The jurors were asked to determine whether Mrs. Harmon, the plaintiff, should win her lawsuit against Reilly's Department Store. After reviewing the case, participants were told that the plaintiff's claim was either based on racial discrimination or unlawful detention. They were given instructions for the appropriate claim condition. (See Appendix B for the instructions given to the different claim conditions). The criteria helped jurors to evaluate the case by explaining what factors legally constitute a claim. Participants were video recorded without a moderator in the room, and transcripts were compiled from these recordings for review. Not all of the juries' deliberations were available for coding due to technical issues.

Coding:

Written transcripts of the jury deliberations were analyzed and coded using Nvivo 9, a qualitative data analysis program. Researchers reviewed the mock jury transcripts and analyzed statements made by jurors that persuaded other jurors to change their findings from their finding for the defendant to finding for the plaintiff and vice versa. Common themes were identified so that they could be coded across the transcripts. The key categories identified during this experiment were: empathetic vs. non empathetic statements made for the plaintiff, mentions of the store following vs. not following its policy, and mentions of the case lying on a continuum (some aspects support the defendant while others support the plaintiff)(Kalven et al., 1996) . Once the categories were developed researchers re-read the transcripts and coded instances of the persuasion tactics.

RESULTS

Within the jury discussions, many participants utilized persuasive arguments to convince fellow jurors to switch their opinion of the case in one direction or another. Persuasive statements were defined as facts mentioned by jurors in an attempt to change another juror's opinion about the case.

Empathy vs. lack of empathy for the plaintiff:

Participants either utilized empathy for the plaintiff or lack of empathy for the plaintiff when trying to explain why they found in favor of the plaintiff or the defendant. Statements included in the empathy condition were those that expressed an understanding of why the plaintiff reacted negatively to being searched, often in the form of 'putting themselves in her shoes':

“ They said that they were embarrassed, which I would be too.”

“ She could have gone back and purchased the items, but I wouldn't either [after] being accused of shoplifting”

Lack of empathy was identified as statements that expressed that jurors could not identify with the plaintiff or did not agree with her point of view:

“She was embarrassed...whatever.”

“She wasn't really upset, she left the store and saw an opportunity to make a lot of money”

Empathetic statements were more commonly made during the deliberations of juries that sided for the plaintiff, while juries that found for the defendant were more likely to express a lack of empathy (Figure 1).

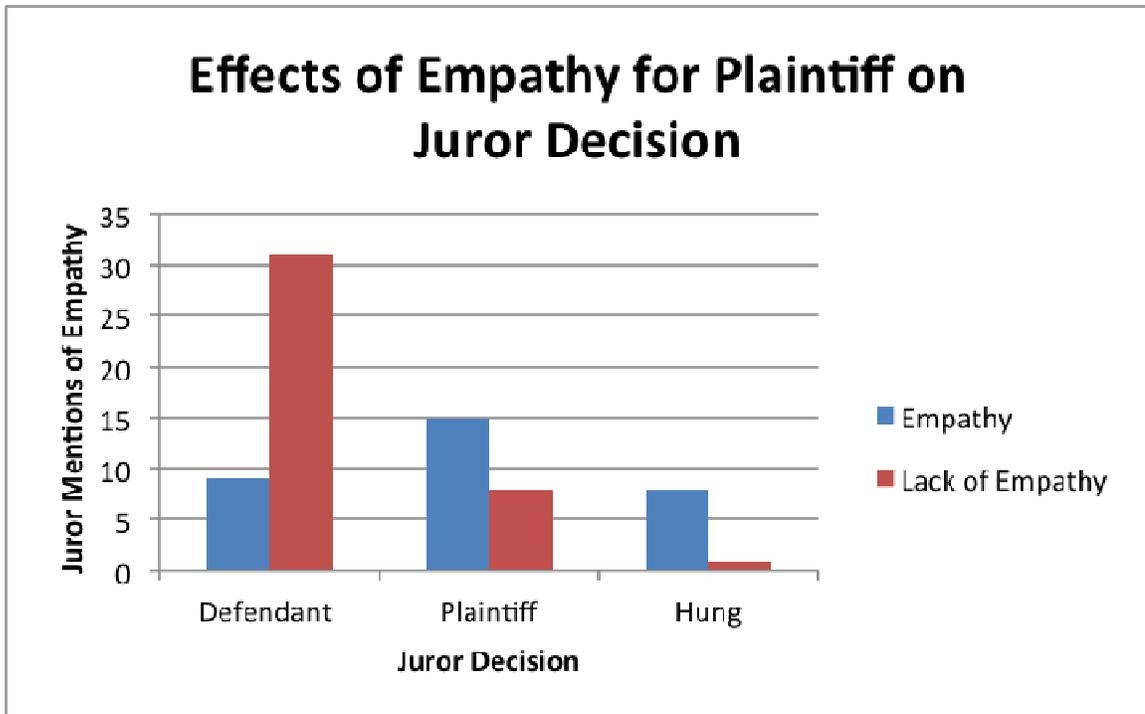


Figure 1. Empathy vs. Lack of Empathy on Jury Decision

Mentions of empathy vs. lack of empathy were examined as a function of jury composition. The jury makeup had a clear effect on the number of empathetic as well as non-empathetic mentions made by the jury during deliberation. Participants deliberating with black jurors were more likely to express empathy while participants in a jury without black jurors were more likely to express a lack of empathy (Figure 2). As discussed above, the presence of more empathetic statements resulted in findings for the plaintiff. There were fifteen statements expressing empathy made on juries finding for the plaintiff, while only 8 statements expressing empathy were made on juries that found for the defendant. More non-empathetic statements resulted in findings for the defendant; thirty-one statements expressing a lack of empathy were made on juries that found for the defendant while only eight statements expressing a lack of empathy were made on juries that found for the plaintiff.

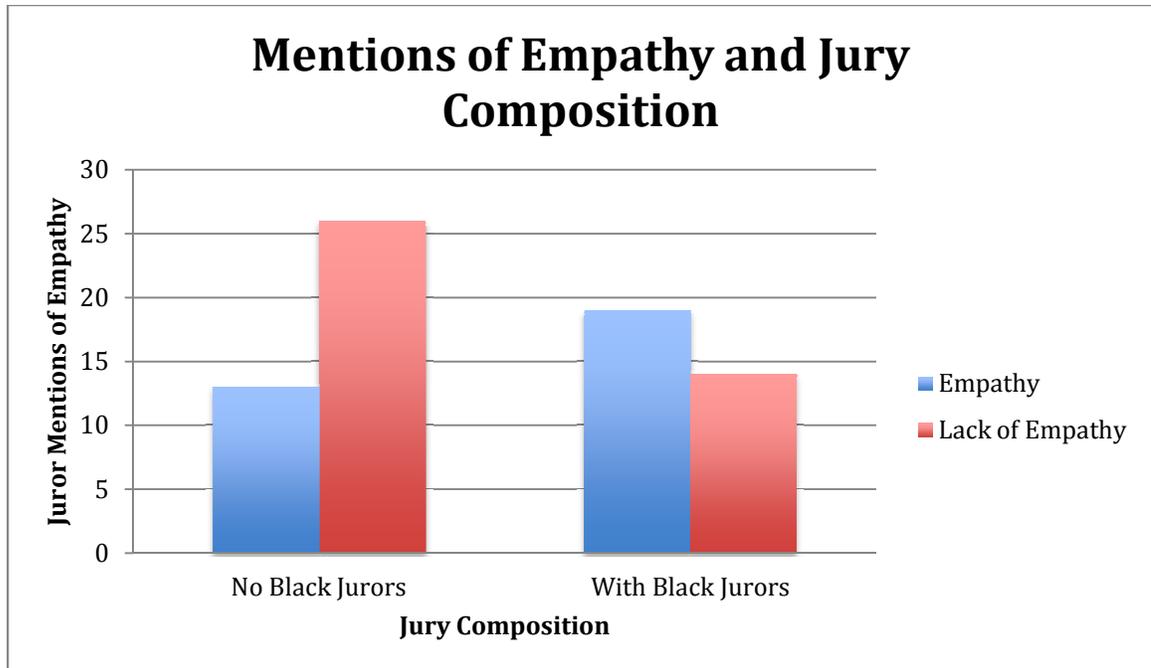


Figure 2. Mentions of Empathy and the effect of jury composition.

Mentions of the case lying on a continuum:

During deliberations, many participants discussed that some facts made the case lean toward the plaintiff while other facts were more supportive of the defendant. They discussed the fact that some things were done wrong while other things were done right; for example,

“Yeah, they did something wrong but they also did these things right.”

Often times discussions included statements about wanting to find for the defendant while making them admit to some sort of wrongdoing during the incident:

“I think that they have an issue. I think [the store] ought to not be shopped at. I don’t think that if this law is absolutely hard and fast, that it is possible to find them guilty of racial discrimination under the law, even though they are racially discriminating in fact.”

“If we find for the defendant... We could also include in our finding that they need to apologize because they did treat the women sort of differently than they treat other customers.”

Interestingly, when facts that placed the case on a continuum were discussed, jurors were much more likely to find for the defendant than they were for the plaintiff (see Figure 3.)

Racial composition of the jury was analyzed, but there was no significant difference found when looking at the use of the case lying on a continuum as a persuasion tactic.

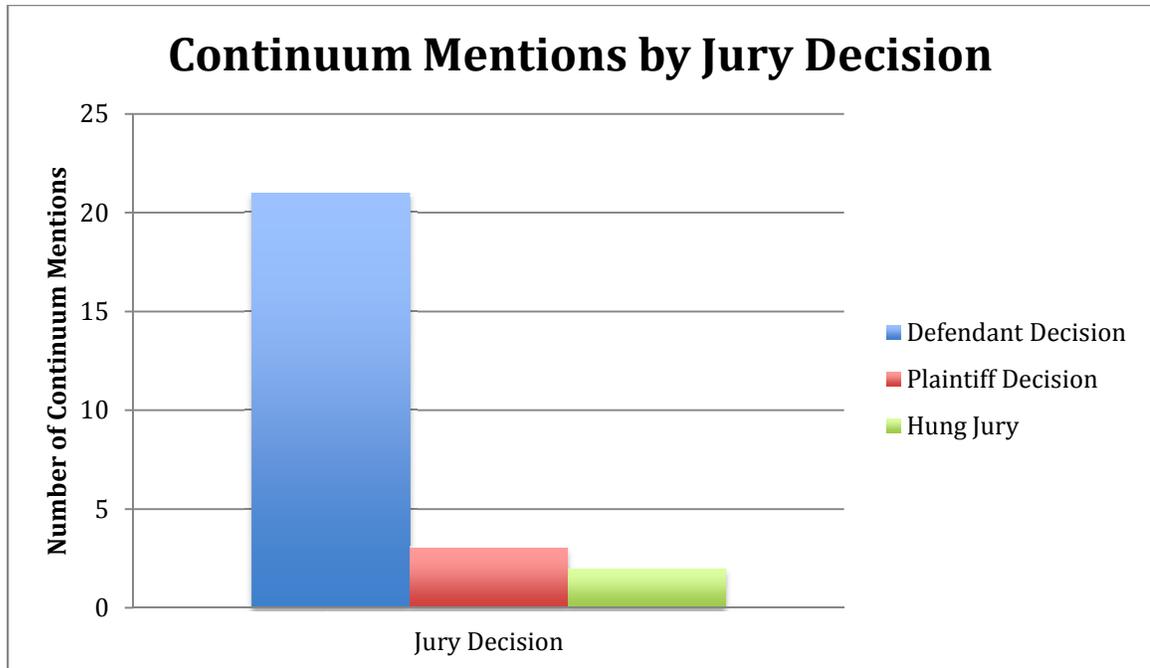


Figure 3. Statements identifying the fact that the case lies on a continuum

Store followed policy vs. store did not follow policy:

Statements made about the store following policy were mentioned much more when the jurors found for the defendant than when they found for the plaintiff. In fact, in juries that found for the plaintiff, the fact that the store followed policy was hardly discussed. However, discussing the fact that the store did not follow policy was unrelated to the jury verdict (see Figure 4). Mentions of the store not following policy appeared nineteen times in juries that found for the defendant and eighteen times in cases, which found for the plaintiff. In comparison, mentions of the store following policy were found

sixteen times in cases finding for the defendant and once in cases that found for the plaintiff.

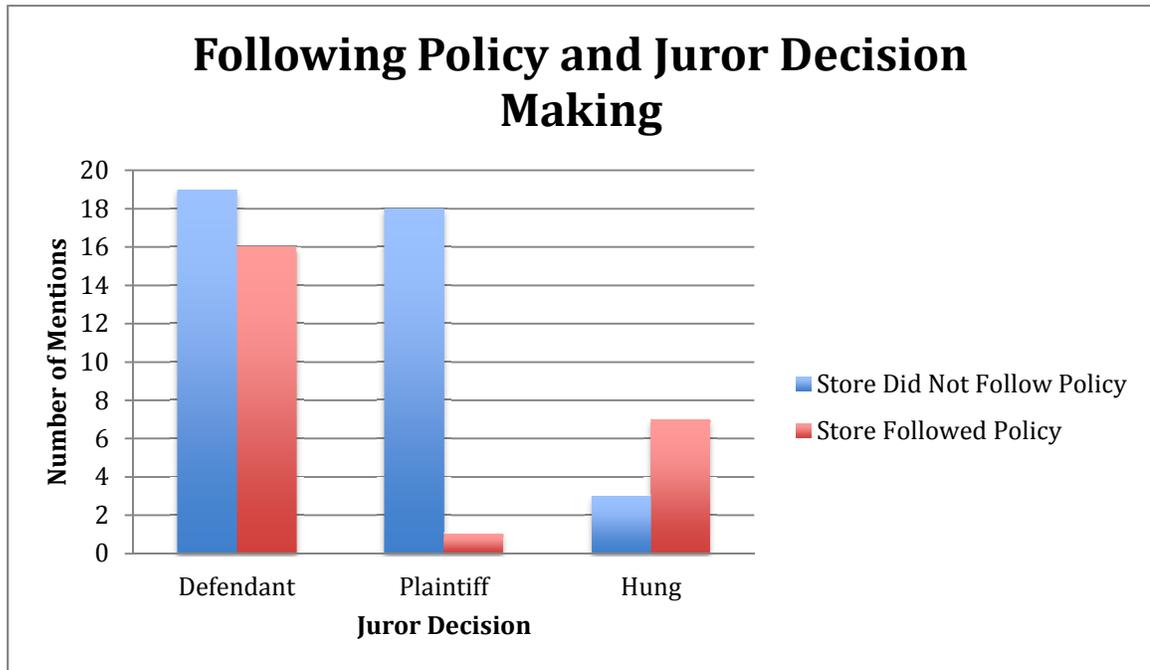


Figure 4. Statements made about the store following or not following policy and the effects on case outcome

DISCUSSION

The purpose of this study was to understand the persuasive techniques utilized by jury members during the deliberation of a civil trial involving retail discrimination. In addition, we looked at the effects of jury racial composition on the persuasive techniques used by jurors.

Empathy as a Persuasive Technique :

The use of empathetic statements for the plaintiff during deliberation was shown to be only slightly more present in verdicts for the plaintiff than in verdicts for the defendant. Mentions expressing a lack of empathy for the plaintiff were more than three times more likely to be present in findings for the defendant than in jury deliberations

finding for the plaintiff. This may be related to the fact that people who measured high on tests of empathy in previous research (Baddeley, 2012) were more likely to compromise in order to conform with the group majority. This is explained as a normative social influence in which out-group members who are presented with conflicting evidence from the majority group rationalize that it is their own deductions that are at fault for the inconsistency of in group findings. In addition, the presence of more statements for the store not following policy in findings for the defendant may be a byproduct of those with a more empathetic personality being more likely to conform regardless of the information that they perceive to be true.

The current research also looked at mentions of empathy and the composition of the jury. Our evidence supported the findings of Sommers (2006), which concluded that racially homogeneous and heterogeneous juries evaluate evidence differently. Sommers explained that this might be due to the motivation of white jurors to avoid appearing prejudiced while serving on juries with black jurors. This was supported by our results, where there were more un-empathetic statements made on juries without black jurors, and more mentions of empathy towards the plaintiff on juries containing black jury members (Figure 2).

Mentions of empathy during jury deliberation correlated with the findings presented by Evett et al. (2012) in which they found that the direction of juries that changed their mind during deliberation dependent on the racial composition of the jury. Juries who changed from a verdict for the plaintiff to a verdict to the defendant were more likely to do so when there were no black jury members. This may be due in part to the fact that juries that had no black members were much more likely to mention un-

empathetic statements during deliberation. In contrast, juries with black members were found to mention more statements expressing empathy.

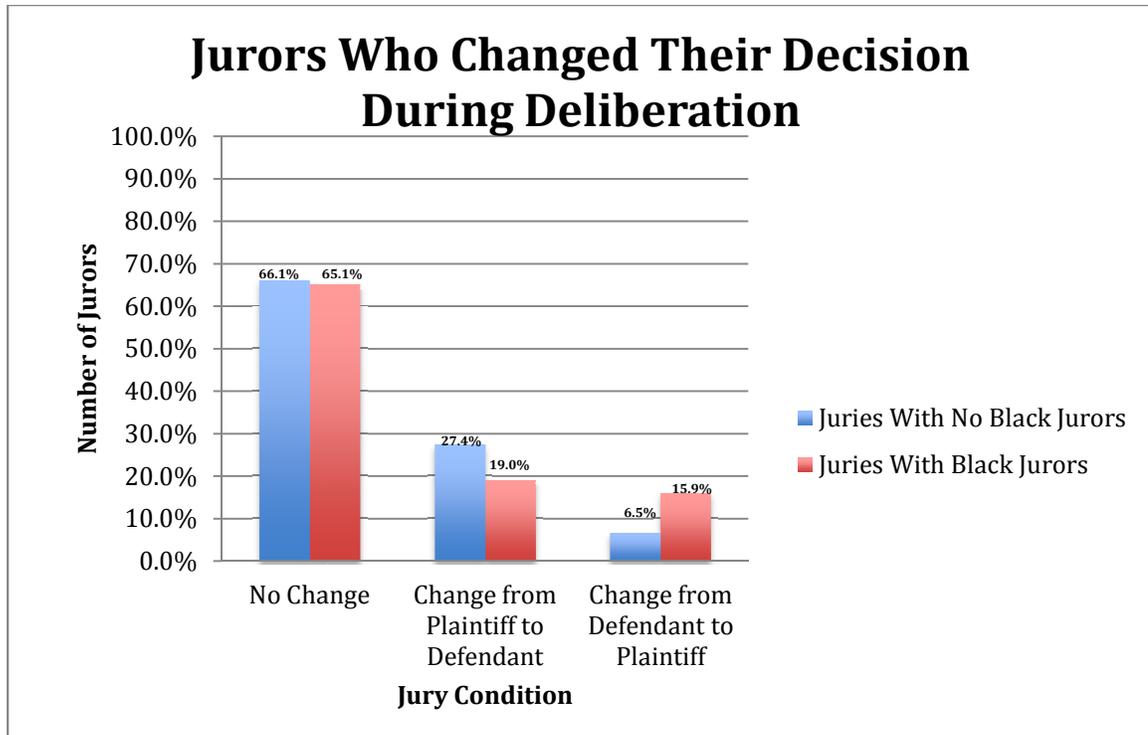


Figure 4. Direction of Change During Jury Deliberations (Evetts et al. ,2010)

By comparing the mentions of empathy to the direction of change during deliberations we can see support for the theory that empathy is being used as a key method of persuasion during jury deliberations. These results may be caused by white jurors not wanting to be perceived as prejudiced as seen in a study conducted by Sommers et al. (2006). There is additional support for this idea seen in the fact that in juries that had black members there as half as many mentions of lack of empathy as there were in juries without black members.

The Continuum – The effect of having a grey area:

In addition to empathy as a main technique utilized during deliberation, we found that mentions of the case lying on a continuum had an effect on jury deliberation

outcome. During deliberations, discussions about some facts supporting the plaintiff and some facts supporting the defendant resulted in significantly more findings for the defendant. This finding is consistent with the findings presented by MacCoun (1989), in which he found that the reasonable doubt standard creates an advantage for jury members favoring acquittal during deliberation. However, MacCoun postulated that the advantage dissipated in civil trials where a preponderance of evidence standard is used. Our current findings suggest that the asymmetrical advantage found in criminal proceedings remains present in civil trials as well.

Further support for the hypothesis that discussion about the uncertainty of guilt creates an advantage for the defendant can be seen when we review mentions of the store following vs. not following policy. When juries found for the defendant, there were an almost equal number of mentions of the store following policy, as there were mentions of the store not following policy. However when jurors found for the plaintiff, there were almost no mentions of the store following policy, but rather mentions only of the store's failures to treat the customers fairly.

Limitations:

One major limitation with the present study is that it was composed of a small number of juries in which participants were gathered using convenience sampling. This resulted in the majority of participants in the study being Caucasian. Juries with no black jury members included participants from other ethnic minorities (Asian, Hispanic, etc.). Generalizability of current data to the general population is unknown as it was conducted from a sample of participants from the same university community, with the majority of the sample comprised of university students and personnel.

A second flaw is that this research was intended to investigate the different deliberation styles of racially heterogeneous vs. homogeneous juries. Our juries were comprised of juries with black jury members vs. juries without black jury members. Therefore the validity of attributing our current result to differences in heterogeneous vs. homogeneous jury deliberations is unknown as racial differences in jury composition were analyzed but found to not be significant in most conditions.

Conclusions and Future Directions

This research investigated the persuasion techniques used during jury deliberations by reviewing transcripts compiled from mock jury trial studies. Gaining a clearer understanding of the processes of jury deliberation will allow policy makers to review the validity of the jury system working as an impartial and rule-based institution. The present research presents evidence that extralegal factors such as empathy and jury composition are key factors in the decision making process of juries.

Future research will continue to investigate the underlying processes of jury deliberations and the connection between jury composition and decision-making processes utilized in different conditions.

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Appendix A

Harmon v. Reilly's Department Store

Plaintiffs: Phyllis Harmon and Latrice Bailey

Defendant: Reilly's Department Store

Phyllis Harmon and Latrice Bailey are both African-American women. Mrs. Harmon is Latrice Bailey's aunt. On March 15, 2004, they were shopping for Bailey's infant son in the children's department of Reilly's Department Store in Parkville, OH. They had their four children with them -- an infant, a one-year-old and two seven-year-olds.

Reilly's plain-clothes security officer, Chris Miller, who is white, noticed the women in the children's department and began watching them. Miller particularly watched Bailey. At trial, he read from his security report:

"The black female that had on a dark leather coat had one pair of dark infant pants on a hanger. The other black female left the area with the children. I continued to watch the black female with the dark leather coat. She would stop walking, kept looking around toward the ceiling and looking around as if to see if someone was watching her. I noticed she had another item that was dark and she rolled it up and kept it in her left-hand. I watched her for about 15 minutes by herself. The other black female with the kids showed back up. All the people in the group started walking in the same area. The one I had been watching bent down and picked up one of the children. I noticed the dark object she had rolled up was still in her left hand and was now under the infant she picked up."

Reilly's Department Store did not present any footage from the store's security cameras to support Miller's version of the events he observed. However, Reilly's did provide its "Rules and Procedures for Security Personnel" which are attached to these case materials. These rules and procedures are standards that Reilly's expects its employees and security officers to meet when approaching and detaining suspected shoplifters. Reilly's stated policy is "to deter shoplifting whenever possible through visible security and employee awareness and to detain suspected shoplifters only when there is little or no reasonable doubt that a crime has been committed."

When Mrs. Harmon and Ms. Bailey entered a fitting room, Security Officer Miller asked Cathy Osborne, another Reilly's employee who is white, to watch them in the fitting room. Osborne could see into the fitting room because the door was open. Osborne reported to Miller that she saw Ms. Bailey push a rolled-up cloth item into her jacket, stating at least twice that she was "positive" she had observed Ms. Bailey putting something underneath her coat. Mrs. Harmon testified that the rolled up item was the baby's jacket.

When they left the fitting room, Mrs. Harmon, Ms. Bailey, and the children went to an open cash register and Mrs. Harmon purchased an outfit for Bailey's son. The sales associate gave Mrs. Harmon coupons for men's cologne samples that were redeemable at the men's fragrance counter. The group then proceeded to the fragrance and cosmetics area, which is located close to where Reilly's meets the mall. Security Officer Miller interrupted the women while they were trying to redeem the cologne samples from the fragrance consultant. At trial, Miller read from his security report:

"I followed the black females to men's cosmetics and stopped them before they left the store. I identified myself as Reilly's security and advised them that the one black female had been observed placing something in her coat. The black female pushing the baby stroller said they had purchased some items. I asked her to come with me so

that I could ask her some questions. I asked to look into the bag. Inside were three items and a receipt for those three items.

The black female was upset and raised her voice. She said she was going to return all the items because she didn't need this. And she spent \$10,000 here last year."

In his testimony, Miller emphasized that he did not physically touch Mrs. Harmon and Ms. Bailey, nor did he arrest them, or use any racial epithets, or make derogatory remarks about them. He testified that approximately twenty minutes elapsed between the time Miller approached the women at the fragrance counter and the time he returned their bag and merchandise to them.

At trial, Mrs. Harmon testified that Security Officer Miller escorted her to the back of the store. She stated:

"I was upset. I was humiliated. I was embarrassed. He was accusing me of stealing in my own town. My neighbors could have been there. I don't know who was watching. He didn't care what he was doing to me. He was only sure that I was—that I had done something wrong and he didn't care how it made me feel. He didn't care how it made my children feel."

I told him that I did not appreciate being accused of shoplifting and that I spent a great deal of money at Reilly's and did not deserve to be treated this way. He told me to calm down or he would call the police and have us all removed from the store.

He checked my receipt and the items in my bag. Then he "shoved" the bag towards me and said "that's fine."

After the incident, Mrs. Harmon and her niece did not attempt to redeem the fragrance coupons. Instead, they proceeded to Customer Service to complain about Miller. Miller did not follow them to the Customer Service department.

The plaintiffs' lawyer argued that Reilly's security officer (Miller) detained Mrs. Harmon without probable cause, for an unreasonable time, and in an unreasonable manner. At trial, Mrs. Harmon described her feelings since the incident as follows:

"I don't feel that my life will ever be the same because when I shop now, I shop different. I don't feel comfortable taking the kids with me because I don't want my daughter to ever have to experience anything like that, ever again. I mean, she had nightmares for weeks thinking that that man was going to hurt her mother. That is what she was asking me. I go shopping. I don't take my purse. I take a little coin purse. My keys are on a bungee cord. I wear it around my wrist because I don't want to draw attention to myself. I have not gone back to Reilly's since that day. They made me feel that day, everyone, the management of Reilly's made me feel that I was not welcome to come to that store to shop. No one has ever to this day even apologized for what happened to us."

The plaintiff's lawyer presented evidence at trial to show that Reilly's security guards used special race codes to communicate to each other that African American shoppers were present in the store. "Code 3" was used to designate black women, according to past and present security officers who testified at trial. For example, Reilly's security officers would announce: "We have a couple of Code 3's (black women) coming in the such-and-such door." No codes were used for white shoppers. The evidence presented at trial suggested that Reilly's security systematically used race codes to identify African American shoppers in Reilly's stores across the country.

Lastly, the plaintiff's lawyer presented evidence that other African-American shoppers have complained to store management about being treated differently than white shoppers. In particular, they have complained that they are watched, followed, stopped, and detained without any basis. Reilly's security logs indicate that the majority of customers that are followed or stopped and searched are African American. No evidence was presented by Reilly's to suggest that African American customers are more likely to steal.

Defendant's lawyer denied that Reilly's mistreated the plaintiffs in any way. Reilly's lawyer argued that the plaintiffs are welcome to shop at Reilly's and if they choose not to, that is their own choice.

Reilly's also denied that Security Officer Miller improperly detained Mrs. Harmon. Reilly's argued that the security officer had probable cause to approach the plaintiffs and to search their bags. The department store's lawyer argued that the security officer was following Reilly's "Rules and Procedures for Security Personnel" when he approached the plaintiffs and searched their bag. Miller testified that he has never been reprimanded for his performance as a security officer at Reilly's.

REILLY'S DEPARTMENT STORES, INC.

RULES AND PROCEDURES FOR SECURITY PERSONNEL

It is Reilly's policy to deter shoplifting whenever possible through visible security and employee awareness and to detain suspected shoplifters only when there is little or no reasonable doubt that a crime has been committed. While it is difficult to formulate rules and procedures which fit every situation that may occur, the following are standards to be met in detaining suspected shoplifters.

Detention

1. The person must be observed in the actual removal and/or concealment of merchandise. If merchandise is being taken into a fitting room, you must establish a concealment by observing the customer and the merchandise count and description taken into and from the fitting room.
2. Where possible, constant observation of the suspect must be maintained by you, the security officer, or a Reilly's associate until the suspect is approached and detained.
3. Usually (and unless local laws permit otherwise), the suspect must be permitted to exit the premises prior to detention and search.

Investigation

We have the right to conduct a reasonable investigation once we have established the probability of a crime having been committed. Upon making the decision to approach and detain, all caution should be used to avoid accusatory statements. You should identify yourself as a security employee of Reilly's and request that the individual return with you to discuss a security matter. The following standards must be observed during the investigatory stage:

1. You must act in a professional manner at all times.
2. Touching the suspect in any manner should be avoided unless it becomes necessary to maintain order in the particular situation. Handcuffs should not be used unless the suspect poses a threat to customers or our own personnel
3. You may detain a suspect for a reasonable amount of time in order to conduct a reasonable investigation. If you determine that there was no crime committed, terminate the contact with

- the customer and apologize for the inconvenience. If the customer wishes to make a complaint, refer them to the manager only. In all cases, the least amount of time necessary to conduct a reasonable investigation should be used.
4. Strip searches are prohibited. If you suspect that stolen objects are hidden on their person, call the police.
 5. If a detention involves a minor or a member of the opposite sex, a Reilly's witness of the same sex as the suspect must be present as soon as practical after detention begins. If any detention is expected to last ten minutes or more, an appropriate witness should be present, if such a witness is available.
 6. Pat down searches and purse searches are allowed in order to detect whether weapons are in a suspect's possession.
 7. Local authorities should be contacted as soon as possible once it has been determined that a crime has been committed.

You should only approach a customer after you believe that merchandise has actually been removed or concealed (as described in paragraph 1 under the Detention Section). If you are only suspicious of a customer's motives/behavior, but the guidelines outlined in the Detention Section have not been met, you should not approach the customer.

A thorough investigation report is to be completed promptly, detailing the chain of events leading up to the approach and detention of the suspect, all conversations with the suspect, the names of all known witnesses, length and location of detention, etc.

All evidence should be retained. If you are to be in custody of the evidence it is desirable to have the actual items unless local practice or procedure allows pictures of evidence. Evidence to be retained must be maintained in a secure area, such as a locked file cabinet. All sales or price tags must be removed and kept as evidence if the merchandise is to be returned to the sales floor.

I UNDERSTAND THAT THESE RULES ARE CONDITIONS OF MY EMPLOYMENT AND MUST BE FOLLOWED AT ALL TIMES. DEVIATION FROM THESE RULES COULD RESULT IN TERMINATION OF MY EMPLOYMENT WITH REILLY'S DEPARTMENT STORES, INC.

_____ Date: _____
Security Officer

Appendix B

Jury instructions

The law:

Mrs. Harmon and Ms. Bailey filed suit against Reilly's Department store stating their belief that they were victims of *racial discrimination*. In order to succeed in a case of *racial discrimination*, Mrs. Harmon and Ms. Bailey must prove ALL of the following facts:

- 1) they are members of a protected class under the law because of their race;
- 2) they attempted to purchase certain goods or services from the defendant, Reilly's;
- 3) they were denied the right to purchase those goods or services;
- 4) other customers, who are not African-American, were able to purchase the goods or services in question;
- 5) defendant's employees purposefully discriminated against Mrs. Harmon and Ms. Bailey.

The plaintiffs can prove that the defendant's employees purposefully discriminated against them either by using either:

- a) direct evidence (such as racial slurs, for example) OR
- b) indirect – or circumstantial – evidence

Definition of indirect – or circumstantial – evidence:

Evidence that is not obtained from directly observing it. Instead, it is evidence that is obtained from events or circumstances that surround it. For example, if someone arrives at a crime scene seconds after hearing a gunshot to find Mary standing over a corpse and holding a smoking pistol, the evidence is circumstantial, since the person did not directly observe Mary shooting the victim.

The damage award:

If the jurors decide that Mrs. Harmon and Ms. Bailey have successfully proven their case, they must next consider the plaintiffs' request for damages.

- 1) **Compensatory damages:** for the inconvenience, the stress and emotional pain and suffering that the incident caused them. Amount requested = \$56,000
- 2) **Punitive damages:** to deter this company and other companies from engaging in this type of behavior in the future. Amount requested = \$1,000,000. This amount was requested based on the fact that Reilly's net worth at the time was \$2 billion.

Jury instructions

The law:

Mrs. Harmon and Ms. Bailey filed suit against Reilly's Department store stating their belief that they were victims of *unlawful detention*. In order to succeed in a case of *unlawful detention*, Mrs. Harmon and Ms. Bailey must prove ALL of the following facts:

- 1) a Reilly's employee restrained them of their liberty;
- 2) a Reilly's employee restrained them against their will;
- 3) a Reilly's employee did not have any "sufficient legal cause" to restrain them.

The definition of "sufficient legal cause" to restrain Mrs. Harmon and Ms. Bailey is as follows:

The defendant, Reilly's, must prove that an employee or security officer had "probable cause" to believe that:

- a) Mrs. Harmon and Ms. Bailey stole merchandise or were about to steal merchandise and
- b) Mrs. Harmon and Ms. Bailey were currently in possession of the stolen merchandise.

Probable cause exists only if a Reilly's employee or security officer had reasonably trustworthy information.

If the jury believes that Reilly's had a "sufficient legal cause" to restrain Mrs. Harmon and Ms. Bailey, they must decide whether the Reilly's employee properly detained them under the law. The security officer may only detain Mrs. Harmon and Ms. Bailey:

- a) in a manner that is **reasonable** under the circumstances and
- b) for a **period of time** that is reasonable under the circumstances and
- c) for the **purpose** of investigating the plaintiff's possession of stolen merchandise.

The damage award:

If the jurors decide that Mrs. Harmon and Ms. Bailey have successfully proven their case, they must next consider the plaintiffs' request for damages.

- 1) **Compensatory damages:** for the inconvenience, the stress and emotional pain and suffering that the incident caused them. Amount requested = \$56,000
- 2) **Punitive damages:** to deter this company and other companies from engaging in this type of behavior in the future. Amount requested = \$1,000,000. This amount was requested based on the fact that Reilly's net worth at the time was \$2 billion.