MOCK JUROR RATINGS OF GUILT IN CANADA: MODERN RACISM AND ETHNIC HERITAGE

JEFFREY E. PFEIFER
University of Regina, Saskatchewan, Canada

JAMES R. P. OGLOFF
Monash University, Victoria, Australia

This research investigated whether the prejudicial attitudes of mock jurors in Canada produce criminal sanction disparities similar to those reported by research in the United States. In order to investigate this hypothesis, English Canadian participants read a transcript of a sexual assault trial that varied the ethnic background of both the victim and the defendant (i.e., English, French or Native Canadian). Participants were then asked to rate the guilt of the defendant in two ways: (1) on a 7-point bipolar scale in accordance with their personal beliefs (i.e., Subjective Guilt Rating), and (2) on a dichotomous scale (guilty/not guilty) in accordance with judicial instructions (i.e., Legal Standard Guilt Rating). Participants were also asked to rate the victim and defendant on a number of personality traits. Results indicate that participants asked to rate the degree of guilt of the defendant according to the Subjective Guilt Rating found him more guilty if he was French, or Native Canadian as opposed to English Canadian. These prejudicial ratings, however, dissipated when participants were asked to rate the guilt of the defendant according to the Legal Standard Guilt Rating that included jury instructions. This apparent paradox in results is discussed in terms of modern racism theory.

The study of discrimination has long been a topic of interest for researchers in both the United States (see e.g., Allport, 1958; Kinder & Sears, 1981;

Dr. Jeffrey E. Pfeifer, University of Regina, Saskatchewan, Canada. Dr. Pfeifer is also Adjunct Professor with the Centre for Social Change and Social Equity at Murdoch University, Perth, Western Australia.

This work was supported by a Social Science and Humanities Research Council of Canada Research Grant awarded to the first author.

Appreciation is due to reviewers including Dr. Jacqueline Pope-Tarrence, Department of Psychology, Tate Page Hall-273, Western Kentucky University, Bowling Green, OH 42101, USA; Jerry I. Shaw, Department of Psychology, California State University, Northridge, Northridge, CA 91330, USA; Dr. Neil Christiansen, Department of Psychology, Central Michigan University, Mt. Pleasant, MI 48859, USA.

Please address correspondence and reprint requests to Dr. Jeffrey Pfeifer, Department of Psychology, University of Regina, Regina, Saskatchewan, Canada S4S0A2. Phone: 1-306-585-4218; Fax: 1-306-585-4827; Email:<jeff.pfeifer@uregina.ca>
McConahay, 1982; Pfeifer, 1988, 1999; Tomkins & Pfeifer, 1991) and Canada (see e.g., Berry, Kalin & Taylor, 1977; Dutta, Norman & Kanungo, 1972; Frideres, 1973; Gardner, LaLonde, Nero, & Young, 1988; Henry, 1969; Henry & Ginzberg, 1985; Taylor & Gardner, 1969). One area that has become especially salient in recent years is the study of prejudicial attitudes and juror perceptions of guilt and criminal sentencing in the United States (for a review of these studies see Pfeifer, 1990). A number of these laboratory studies have found that participants either: (1) rate black defendants guilty significantly more often than white defendants in both rape and murder cases, or (2) assign lengthier sentences to black defendants, especially when the rape or murder victim is white (see e.g., Bernard, 1979; Bullock, 1961; Field, 1979; Foley & Chamblin, 1982; Gleason & Harris, 1975; Gray & Ashmore, 1976; Johnson, 1985; Klein & Creech, 1982; Scroggs, 1976; Ugwuegbu, 1979). These disparate dispositional findings have been further supported by evaluations of legal and archival data indicating that black Americans are more likely than are white Americans to receive the death penalty in the United States (see e.g., Baldus, Pulaski, & Woodworth, 1986; Baldus, Woodworth, & Pulaski, 1985; Gerard & Terry, 1970; Howard, 1975; Paternoster, 1984; Wolfgang & Reidel, 1975; Zeisal, 1981).

The importance of the issues raised in these studies is illustrated by the fact that the United States Supreme Court discussed the data noted above in *McCleskey v. Kemp* (1987). Mr. McCleskey, a black defendant, claimed that the imposition of the death sentence violated his constitutional right to equal protection because his sentence was racially based. His argument relied, in part, upon an archival study conducted by Baldus and his colleagues (1986) indicating that black defendants were significantly more likely to receive the death penalty than were white defendants when the victim was white. The Court, however, rejected McCleskey's argument, holding that while these data might reflect a "general" prejudice in sentencing, there was no direct proof to suggest that the defendant had been subject to "personal" sentencing prejudice (for a discussion of this distinction see Pfeifer, 1990). Despite the Court's opinion in the McCleskey case, social scientific data on prejudicial decision making has continued to be employed as part of defense claims in several cases in the United States (*People v. Girvies*, 1988; *People v. Stewart*, 1988) as well as in Canada (see e.g., *Regina v. Parks*, 1993; *Regina v. Williams*, 1998).

Recently, however, a number of studies have begun to question the applicability of the laboratory and archival studies noted above. Specifically, it has been argued that although archival data indicate that black defendants are more likely to receive the death penalty than are white defendants, the data do not indicate that the jury is solely responsible for this discrepancy (Pfeifer, 1990). In addition, it has been suggested that the majority of the laboratory studies on mock juror racism lack a number of major elements of the actual trial situation and, as such,
their findings may not be directly generalized to the legal arena (Pfeifer, 1996).

Pfeifer and Ogloff (1991), for example, found that although white American mock jurors tend to rate a black defendant more guilty than a white defendant, this effect dissipates when jurors are supplied with specific instructions to guide their decision making. According to the authors, this finding may be explained by theories of "modern racism" which suggest that white Americans will express their racist tendencies only in situations that they perceive to be ambiguous enough to allow for nonracist interpretation (Gaertner & Dovidio, 1986; McConahay & Hough, 1976). Accordingly, when supplied with specific instructions to guide their decision making, white mock jurors are not able to express their prejudicial attitudes due to the lack of situational ambiguity. The vitiating effect of instructions on juror decision making has been replicated in a number of recent studies dealing with sexism and racism (see e.g., Campbell et al., 1992; Hill & Pfeifer, 1992; Pfeifer & Bernstein, in review; Wolbaum & Pfeifer, in review).

In comparison to American investigators, however, researchers in Canada have invested very little effort in examining the potential influence of prejudice on courtroom interactions (see e.g., Avio, 1987, 1988; Bagby & Rector, 1992; Palys & Divorski, 1984). One exception is Avio (1987; 1988) who, like Baldus et al., has also employed archival data to demonstrate that certain groups in Canada were more likely to receive the death penalty based on their ethnicity. According to Avio, from 1926 to 1957 the odds of having been executed in Canada increased significantly for defendants who were not English Canadian. Specifically, the data suggest French Canadian defendants were 2.4 times more likely to be executed than were English Canadian defendants and that Native Canadian defendants were 6.1 times more likely to be executed than were English Canadians.

These data, combined with earlier work on Canadian ethnic relations (see e.g., Esses, Haddock & Zanna, 1993; Hiller, 1976; Ziegler, 1980), appear to suggest that English Canadians may hold prejudicial attitudes toward both French and Native Canadians similar to those that white Americans hold toward black Americans in the United States. As such, if prejudicial attitudes of English Canadians toward French and Native Canadians do indeed exist, it may be that they are playing a role in the Canadian judicial system similar to that reported in the American. Specifically, it may be that – like the U.S.-based research cited above – English Canadians harbor negative prejudicial attitudes toward their French and Native Canadian counterparts and that these attitudes can be illustrated through their guilt ratings in a mock juror experimental paradigm. Further, it may also be that these prejudicial attitudes can be constrained by the inclusion of standard judicial instructions.

In order to investigate whether the prejudicial sentencing trends in the United
States and Canada are similar, at least four hypotheses must be confirmed. First, it must be shown that the prejudicial attitudes held by English Canadians toward their French and Native Canadian counterparts can be replicated in a legal setting, such as a sexual assault trial. Second, it must be established that these prejudicial attitudes are affecting subjective perceptions of both the victim and defendant in the trial. Third, it must be shown that participants' perceptions of the defendant are being affected to such an extent that their sentencing decisions are being prejudiced to the same degree that they seem to be in U.S. studies. Finally, in order to support our theory regarding modern racism, it must be demonstrated that these ethnic-based differential guilt ratings may be overridden by the inclusion of jury instructions that specify the elements of the crime. This mock juror study was designed to determine whether or not these hypotheses are supported.

**METHOD**

**PARTICIPANTS**

In this study, 213 English Canadian undergraduate students from a mid-western University volunteered to act as participants. The sample was composed of 81 men and 132 women ranging in age from 18 to 45, with a mean age of 20.61.

**PROCEDURE**

Participants were randomly assigned to one of nine conditions and asked to assume the role of a juror and read a transcript depicting a sexual assault trial. In the trial, the ethnicity of both the victim and the defendant was varied in order to produce a 3 (English, French or Native victim) X 3 (English, French or Native defendant) factorial design. After reading the transcript, participants were asked to rate how guilty they believed the defendant to be in two ways. First, participants were asked to indicate how guilty they personally felt the defendant was on a 7-point bipolar scale (Subjective Guilt Rating) ranging from 1 (not guilty) to 7 (extremely guilty). Second, participants were asked whether the defendant was legally guilty or not guilty on a dichotomous scale according to the judge's instructions to the jury (Legal Standard Guilt Rating). These instructions specified the elements of the crime of sexual assault and noted that in order to find the defendant guilty each element had to be proven beyond a reasonable doubt. It is important to note that the presentation of the guilt questions was counter-balanced in such a way that one-half of the participants were presented with the bipolar scale first, while the other half of the participants were presented with the dichotomous scale.

Participants were also instructed to complete a questionnaire probing their attitudes toward the defendant and the victim along a number of personality traits
MOCK JUROR RATINGS OF GUILT IN CANADA

(e.g., dishonest-honest, unattractive-attractive). As a manipulation check, all participants were asked to identify the ethnic background of both the victim and the defendant.

RESULTS

SUBJECTIVE GUILT RATINGS

A two-way analysis of variance (ANOVA) on subjective guilt ratings of the defendant produced a main effect for defendant ethnicity \([F(2,204) = 10.98, p<.01]\) and a main effect for victim ethnicity \([F(2,204) = 4.22, p<.05]\), but did yield an interaction effect \([F(4,204) = 1.50, (ns)]\). Specifically, participants rated the Native Canadian defendant significantly more guilty than the English or French Canadian defendant if the victim was portrayed as English Canadian or French Canadian. In addition, participants rated the English Canadian defendant as significantly less guilty if the victim was portrayed as Native Canadian rather than French or English Canadian (see Table 1).

<table>
<thead>
<tr>
<th>Victim Ethnicity</th>
<th>Defendant Ethnicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>English Canadian</td>
<td>English: 3.90(_a)</td>
</tr>
<tr>
<td></td>
<td>French: 4.06(_a)</td>
</tr>
<tr>
<td></td>
<td>Native: 5.06(_b)</td>
</tr>
<tr>
<td>French Canadian</td>
<td>English: 3.72(_a)</td>
</tr>
<tr>
<td></td>
<td>French: 3.91(_a)</td>
</tr>
<tr>
<td></td>
<td>Native: 5.30(_b)</td>
</tr>
<tr>
<td>Native Canadian</td>
<td>English: 2.52(_c)</td>
</tr>
<tr>
<td></td>
<td>French: 4.09(_a)</td>
</tr>
<tr>
<td></td>
<td>Native: 4.04(_a)</td>
</tr>
</tbody>
</table>

Note: Ratings are based on 7-point bipolar scales with 1 representing not guilty and 7 representing extremely guilty. Means that do not share a common subscript differ significantly at the .05 level of significance.

Subsequent simple effect analyses on defendant and victim ethnicity confirmed this trend with regard to guilt ratings. Specifically, when the race of the victim was held constant, participants rated the Native Canadian defendant significantly more guilty (\(M = 4.80\)) than the French Canadian defendant (\(M = 4.00\)), and rated the English Canadian defendant least guilty (\(M = 3.38\)). Similarly, when the race of the defendant was held constant, participants were significantly more likely to rate the defendant as more guilty if the victim was portrayed as English (\(M = 4.32\)) or French Canadian (\(M = 4.31\)) as opposed to Native Canadian (\(M = 3.55\)).

LEGAL STANDARD GUILT RATINGS

In contrast to the Subjective Guilt Ratings discussed above, examination of the
Legal Standard Guilt Ratings indicated no significant difference between subject responses \([X^2(8, N=213) = 4.22, p > .05 (ns)]\). Specifically, results suggest that, when supplied with standard judicial instructions and asked to adhere to them, participants did not rate the defendant significantly more guilty in any condition, regardless of the ethnicity of either the victim or the defendant (see Table 2). As hypothesized, these results indicate that participants are more likely to rate defendants differentially if not provided with information to guide their decisions. These differences, however, seem to disappear when participants are asked to make their decisions using a dichotomous scale based on jury instructions that emphasize the elements of the crime of sexual assault and specify that each element must be proven beyond a reasonable doubt in order to find the defendant guilty.

### Table 2

**Legal Standard Guilt Ratings Based on Defendant and Victim Ethnicity**

<table>
<thead>
<tr>
<th>Ethnicity (Defendant/Victim)</th>
<th>Guilty</th>
<th>Not Guilty</th>
</tr>
</thead>
<tbody>
<tr>
<td>English/English</td>
<td>9(45%)</td>
<td>11(55%)</td>
</tr>
<tr>
<td>English/French</td>
<td>10(56%)</td>
<td>8(44%)</td>
</tr>
<tr>
<td>English/Native</td>
<td>10(43%)</td>
<td>13(57%)</td>
</tr>
<tr>
<td>French/English</td>
<td>10(48%)</td>
<td>11(52%)</td>
</tr>
<tr>
<td>French/French</td>
<td>12(52%)</td>
<td>11(48%)</td>
</tr>
<tr>
<td>French/Native</td>
<td>10(43%)</td>
<td>13(57%)</td>
</tr>
<tr>
<td>Native/English</td>
<td>16(44%)</td>
<td>20(56%)</td>
</tr>
<tr>
<td>Native/French</td>
<td>11(48%)</td>
<td>12(52%)</td>
</tr>
<tr>
<td>Native/Native</td>
<td>15(58%)</td>
<td>11(42%)</td>
</tr>
</tbody>
</table>

**Defendant Ratings**

A series of ANOVAs performed on ratings of the defendant indicated significant main effects for intelligence \([F(2,210) = 16.27, p<.01]\), attractiveness \([F(2,210) = 31.77, p<.01]\), wealth \([F(2,210) = 36.30, p<.01]\), and laziness \([F(2,210) = 16.69, p<.01]\). Specifically, participants rated the English Canadian defendant significantly more positively than the French and Native Canadian defendants on all four personality traits. Interestingly, the trend of rating the English Canadian defendant most positively, followed by the French and Native Canadian defendants was found for all traits (see Table 3).

**Victim Ratings**

A series of ANOVAs performed on ratings of the victim indicated significant main effects for attractiveness \([F(2,210) = 15.28, p<.01]\), honesty \([F(2,210) =\)
TABLE 3
MEAN RATINGS OF DEFENDANT

<table>
<thead>
<tr>
<th>Trait</th>
<th>Native</th>
<th>French</th>
<th>English</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unattractive</td>
<td>2.96a</td>
<td>3.88b</td>
<td>4.38c</td>
</tr>
<tr>
<td>Unintelligent</td>
<td>3.44a</td>
<td>4.10b</td>
<td>4.57c</td>
</tr>
<tr>
<td>Poor</td>
<td>3.04a</td>
<td>3.97b</td>
<td>4.57c</td>
</tr>
<tr>
<td>Lazy</td>
<td>3.73a</td>
<td>4.37b</td>
<td>4.90c</td>
</tr>
</tbody>
</table>

Note: Ratings are based on 7-point bipolar scales with 1 representing the trait on the left and 7 representing the trait on the right. Means within the same row that do not share a common subscript differ significantly at the .01 level of significance.

17.50, p<.01], and responsibility [F(2,210) = 13.45, p<.01]. Specifically, participants rated the French Canadian victim as significantly more attractive, honest and responsible than the English and Native Canadian victims. Interestingly, the trend of rating the French Canadian victim most positively followed by the English and Native Canadian victim was found for all attributes (see Table 4).

TABLE 4
MEAN RATINGS OF VICTIM

<table>
<thead>
<tr>
<th>Trait</th>
<th>Native</th>
<th>English</th>
<th>French</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unattractive</td>
<td>3.90a</td>
<td>4.47b</td>
<td>4.94c</td>
</tr>
<tr>
<td>Dishonest</td>
<td>3.88a</td>
<td>4.68b</td>
<td>5.30c</td>
</tr>
<tr>
<td>Irresponsible</td>
<td>3.71a</td>
<td>4.40b</td>
<td>5.02c</td>
</tr>
</tbody>
</table>

Note: Ratings are based on 7-point bipolar scales with 1 representing the trait on the left and 7 representing the trait on the right. Means within the same row that do not share a common subscript differ significantly at the .01 level of significance.

DISCUSSION

Taken as a whole, these results seem to provide evidence for the proposition that ethnic stereotypes are playing a role in simulated juror ratings of guilt in Canada that is similar to that documented in the United States. To begin with, support for our first and second hypotheses comes from the fact that participants, within the context of a sexual assault trial, consistently rated French Canadian
victims more positively than either English or Native Canadians. This finding suggests that the prejudicial attitudes of English Canadians can in fact be replicated in a legal setting, and are affecting subjective perceptions of the victim. These results also confirm previous research by Lambert (1967) and Larimer (1972) which suggest that English Canadians consistently rate French Canadian women more positively (e.g., more ambitious, intelligent, and self-confident) than English Canadian women.

Similarly, support for the third hypothesis comes from the fact that guilt ratings were also impacted by the ethnic background of the victim. In effect, participants rated the defendant less favorably if he was accused of raping a French Canadian woman. Again, these results are consistent with previous U.S. research that suggests that juror ratings in a rape trial are highly reflective of attitudes towards the victim as well as the defendant (Field, 1979).

It seems, therefore, that simulated jurors in Canada do indeed hold prejudicial attitudes similar to those found in the U.S. studies and that these attitudes can be replicated in a legal setting (i.e., a sexual assault trial). The issue of major importance, however, arises from the fourth hypothesis that tests whether these prejudicial attitudes are affecting participants to such an extent that they are overriding other aspects of the trial process.

In order to investigate this hypothesis we may look at the two sets of results concerned with guilt ratings. First, when participants were simply asked to give their subjective perceptions of guilt (i.e., Subjective Guilt Rating) they rated the Native Canadian defendant significantly more guilty than the English or French Canadian defendant if the victim was portrayed as English Canadian or French Canadian. In addition, participants rated the English Canadian defendant as significantly less guilty if the victim was portrayed as Native Canadian rather than French or English Canadian. These results would seem to indicate that the ethnic backgrounds of both the victim and defendant are playing a significant role in encouraging differential dispositional evaluations. In contrast, when participants were asked to rate the guilt of the defendant according to the legal standard on a dichotomous scale (i.e., Legal Standard Guilt Rating), there was no significant difference found based on either defendant or victim ethnicity.

It seems, therefore, that participants place less emphasis on their prejudicial attitudes when faced with deciding the fate of a defendant in accordance with standard judicial instructions. It may, of course, be argued that this differential in guilt ratings may be attributed to the incorporation of a dichotomous scale (as opposed to a bipolar scale) rather than to the addition of instructions. However, research by Pfeifer and Ogloff (1991) suggests that it is the addition of instructions, as opposed to the response scale employed, which plays a major role in subjective perceptions of guilt. Specifically, these authors found that the addition of standard judicial instructions neutralized the prejudicial responses of white
mock jurors toward a black defendant regardless of the type of scale employed to measure guilt ratings.

In light of these findings, it may be hypothesized that Canadian participants, like their U.S. counterparts, were unable (or unwilling) to express their prejudicial attitudes when specifically asked to evaluate the defendant's guilt based on the legal standard because of the lack of situational ambiguity. Conversely, when simply asked whether they believed the defendant to be guilty (i.e., Subjective Guilt Rating), participants had no specific standard to guide them in their determination of the defendant's guilt and consequently may have been guided by their prejudices. Like white American mock jurors then, the expression of prejudicial tendencies may have been restricted when English Canadian mock jurors were provided with legal standards for determining the guilt of the defendant. This possibility is perhaps best illustrated by the response of one subject who wrote, "He [the defendant] is Indian therefore I am 99% sure he is a liar and is guilty – but I can't find him legally guilty according to the judge's instructions."

The results of this study also underline the caution that must be taken when one attempts to draw direct legal conclusions from psychological research (Loh, 1981; Melton, 1986, 1987; Monahan & Loftus, 1982; Pfeifer, 1990). Specifically, this study indicates the importance that standard jury instructions may play in the guilt determinations of jurors - an aspect that was apparently not incorporated in much of the early research in this area. Although this study investigated the effect of incorporating a legal standard into studies of juror decision making, there still exist a number of other limitations to the external validity of this study, particularly related to the legal context used to explore this issue.

First, it must be recognized that participants were asked to rate the guilt of the defendant without deliberating with other "jurors". Whether this deliberation process serves to exacerbate or minimize prejudicial attitudes has yet to be discovered. In addition, these results were obtained with regard to a sexual assault trial and as such cannot be readily generalized to other types of trials, especially due to the complex issues involved in sexual assault trials (Field, 1979; Hans & Vidmar, 1986).

Although this study may not be directly generalized to the legal system, the findings do contain important social scientific, as well as psycholegal, information concerning aspects of racism. As a social scientific study concerned with prejudice, this research seems to provide internally valid evidence for the fact that prejudicial attitudes, based on ethnicity, do indeed exist in Canada today. Further, it appears that, like our American counterparts, English Canadians are affected by the tenets of modern racism – at least within the confines of a jury simulation study. Given these findings, it may be suggested that future research on racism in Canada take into account the effect of perceived situational ambiguity on cross-racial evaluations. In addition, the results of this study also attest
to the importance of judicial instruction on juror decisions and as such suggest that future psycholegal investigation of courtroom racism examine the possible further use of instructions to constrain prejudicial tendencies.

REFERENCES


People v. Stewart, 121 Ill.2d 93, 520 N.E. 2d 348 (1988).


MOCK JUROR RATINGS OF GUILT IN CANADA

Wolbaum, J., & Pfeifer, J. E. (in review). Aboriginal and white juvenile defendants: Examining the role of race and task specificity on mock juror decision making.