



Russ Espinoza

Juror Bias in the U.S. Legal System: Examining Problems and Solutions

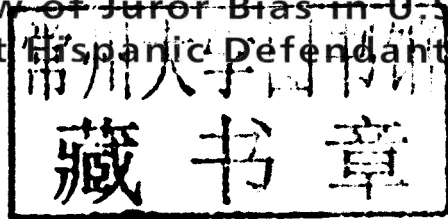
**An Empirical Examination and Comprehensive Review of
Juror Bias in U.S. Courts Against Hispanic
Defendants**

 **LAMBERT**
Academic Publishing

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Lambert Academic Publishing

Impressum/Imprint (nur für Deutschland/ only for Germany)

Bibliografische Information der Deutschen Nationalbibliothek: Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

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Verlag: Lambert Academic Publishing AG & Co. KG
Dudweiler Landstr. 99, 66123 Saarbrücken, Deutschland
Telefon +49 681 3720-310, Telefax +49 681 3720-3109, Email: info@lap-publishing.com

Herstellung in Deutschland:
Schaltungsdienst Lange o.H.G., Berlin
Books on Demand GmbH, Norderstedt
Reha GmbH, Saarbrücken
Amazon Distribution GmbH, Leipzig
ISBN: 978-3-8383-5037-0

Imprint (only for USA, GB)

Bibliographic information published by the Deutsche Nationalbibliothek: The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available in the Internet at <http://dnb.d-nb.de>.

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Publisher:
Lambert Academic Publishing AG & Co. KG
Dudweiler Landstr. 99, 66123 Saarbrücken, Germany
Phone +49 681 3720-310, Fax +49 681 3720-3109, Email: info@lap-publishing.com

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Printed in the U.S.A.
Printed in the U.K. by (see last page)
ISBN: 978-3-8383-5037-0

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Dedication

For my wife – Shabana Bawa-Espinoza

And to the founders of the Constitution and those who had the courage to amend it.

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Abstract

Bias in the legal decision making process has been given considerable attention over the last few decades. However, research regarding biases by juries and juror members has been inconsistent and inconclusive. The majority of this research has focused on race and gender of defendants and jury members, crime circumstances, aggravating and mitigating factors, and juror instructions (Espinoza & Willis-Esqueda, 2008). This book examines how these factors have recently contributed to juror bias and steps we can take to ameliorate this bias. In addition, there is a description of an empirical study that demonstrates that socio-cultural factors (e.g. defendant and attorney race, and defendant socioeconomic status) significantly contribute to juror bias in the U.S. criminal court system.

Specifically, an empirical examination of prejudice against Hispanic defendants in the legal system is conducted. Two-hundred and forty-seven participants read through a trial transcript that varied defendant race (Hispanic or European American), attorney race (Hispanic or European American), and socioeconomic status of defendant (low SES or medium SES). Dependent measures included verdict, sentencing, culpability ratings, and trait assessments of the defendant, prosecuting, and defense attorneys, as well as competency and case presentation style ratings of the attorneys. Based on the theory of aversive racism (Dovidio & Gaertner, 1986) and previous research (Espinoza, 2009; Espinoza & Willis Esqueda, 2008; Willis-Esqueda, Espinoza & Culhane, 2008), it was hypothesized that mock jurors will show juror bias against Hispanic defendants only when the defendants' race is coupled with another perceived negative attribute, such as SES. In addition, it was hypothesized that juror bias against Hispanic defendants would also be correlated with other established measures of prejudice (e.g. the Revised Legal Attitudes Questionnaire), and degree of contact with minority group members. Results confirmed that there was significant juror bias against Hispanic defendants when this defendant was of low SES and represented by a Hispanic defense attorney. Lastly, there were significant

relationships with other established measures of prejudice and degree of contact with minority group members. After describing the affects of this empirical study I discuss various remedies to address these problems and contribute to a better legal system in the United States for all.

Russ Espinoza, Ph.D.

Chapter 1

Juror Bias in the U.S. Criminal Courts

Since the founding of the United States, the legal system has used the petit jury - a jury that sits at civil and criminal trials (also called trial jury), to decide civil and criminal cases. However, empirical research involving juries and juror decision making did not begin until 1953 when the Chicago Jury Project began to examine this phenomenon (Ellsworth & Mauro, 1998). The Chicago Jury Project was designed to address the problems and inconsistencies that often occur in the legal system through juror decision making. It examined actual juries and post-hoc jury decisions, surveyed judges and attorneys, and interviewed jurors who had served on criminal and civil trials (Kalven & Zeisel, 1966). The project yielded a great deal of data, most notably that juries and judges agreed on verdicts 78% of the time and that juries were significantly more lenient than judges 19% of the time (Hans, 2000; Kalven & Zeisel, 1966).

After the Chicago Jury Project extensive jury research did not take place until the 1970s. It was at this time that J. H. Davis (1973) introduced the social decision scheme (SDS) framework, which is an explanation for how individuals cohesively formulate group decisions. This was beneficial for research scientists examining group decision making processes, specifically juror decision making. In the 1980s, the SDS framework was applied to such aspects of juror decision making as jury size, juror dispositional characteristics, and juror, judge, defendant, and victim demographic characteristics (Boyll, 1991).

Since the late 1970s and early 1980s defendant characteristics have been examined extensively due to the disproportionate numbers of minority defendants in local, state, and federal prison systems (Petersillia, 1985; Sommers & Ellsworth, 2001). In the growing body of research examining the influence of a defendant's social characteristics it has been demonstrated that jurors are

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influenced by demographic characteristics of the defendant. These characteristics effect verdict outcomes (Albonetti, 1998; Bodenhausen, 1990; Caudill, 2003; Dean, Holliday-Wayne, Mack & Thomas, 2000; LaFree, 1985; Lipton, 1983; Perez, Hosch, Ponder & Trejo, 1993), length of sentence (Brownsberger, 2000; Chiricos & Waldo, 1975; Vidmar & Miller, 1980), and culpability assignment (Carter, 1983; Dautistel, Hosch, Holmes & Graves 1999; Finkel & Groscup, 1997; Gleason & Harris, 1976; Gordon, 1990; Gordon, 1993; Mazella & Feingold, 1994; Sommers & Ellsworth, 2000; Sunnafrank & Fontes, 1983).

Perhaps the most researched characteristic is defendant race or ethnic group. However, due to the more salient and historical racism displayed against African Americans, most of the research in this area has focused on this group to the exclusion of other groups (Espinoza & Willis-Esqueda, 2008). Currently, "Hispanics"¹ are the fastest growing and largest minority population in the United States, representing 15 % of the total population (Bureau of the Census, 2000). They are also the fastest growing prison population with some estimates expecting Hispanics to be the largest minority group imprisoned in the United States by 2040 (Sweeney & Haney, 1992; Thierren & Ramirez, 2000; Yates, 1997). As the demographics and legal precedence in the U.S. continue to change, there is a constant reexamination of the criminal court system regarding juror decision making and biases. One population not given adequate attention in this legal examination of juror bias has been the Hispanic population, who we have defined as any legal American citizens of Mexican descent. For instance, Willis Esqueda, Whitfield, and Dorsey (2003) found that Hispanics are the second largest group in state prisons in the Southwest. If we are to accurately examine racial and ethnic disparities within the United States legal system, we need to consider changing demographics. Thus, research on Hispanics in the criminal justice system and biases against particular groups of Hispanics can contribute to an understanding of fair and impartial criminal justice practice and law making.