

# How Implicit Bias Instructions May Affect Jury Verdicts

By **Emily Shaw, Mona Lynch and Taylor Kidd** (March 30, 2023)

In February, Alonzo Bagley, an unarmed Black man, was shot and killed by Louisiana police officer Alexander Tyler. Bagley's family has since filed a civil lawsuit against the officer, and the officer has been arrested and charged with negligent homicide.[1]

Bagley's death is unfortunately one of many examples of unarmed Black men killed at the hands of police officers across the country.

These deaths and the ensuing public outcry have prompted greater attention from scholars, courts and policymakers toward the need for racial equality in all aspects of our justice system.

One area of attention has been on the issue of racial bias as it pertains to jury verdicts. Given evidence of racial bias in many different facets of society, there are persistent concerns within the legal system that jury verdicts may at times be racially biased in ways that hurt Black defendants.

In an effort to counteract potential racial bias in jury decision making, some courts have begun to use specialized instructions to warn jurors about implicit biases. Implicit biases are attitudes toward, or stereotypes against, a group of people that are not held consciously by a person, but that can still influence a person's behavior.[2]

For example, a juror who tends to believe the testimony of a white witness more than a Black witness, even while expressing a belief that race has no impact on a witness's credibility, would be showing signs of implicit bias.

The hope within the courts is that if jurors are instructed about the existence of implicit bias and warned against relying on such biases, the jurors will be better able to recognize such bias in themselves and counteract its potential effects.[3]

To date, implicit bias instructions are being used by courts in several different states, including Washington, California and Illinois. However, research has been lacking on the precise impact of these types of instructions.

It is possible, for example, that such instructions would be effective at reducing any anti-Black bias among jurors and prompt them to convict a Black defendant at similar rates to an identically situated white defendant.

However, it is also possible that the instructions would prompt jurors to be generally less inclined to convict defendants of color in an attempt to correct against perceived internal biases within the jury.

Or these instructions could potentially produce a backfire effect by drawing attention to racial aspects of a given case, or they might trigger resentment among jurors who may feel they are being accused of harboring bias.[4]



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To help explore the impact of implicit bias instructions on jurors, we conducted a social science research study.<sup>[5]</sup> For the study, we recruited citizens from the Central District of California to participate as jurors in a simulated criminal federal drug conspiracy trial. We conducted this study on 120 jury groups.

Participants were assigned to small groups of four to seven members, and each group was then assigned to watch one of eight trial videos.

Some participants saw a trial with a white defendant and a Black informant, while others saw a Black defendant and a white informant, and so on.

Crucially, we also varied the presence or absence of an implicit bias instruction as part of the instructions given to jurors; half of the groups were read standard instructions on bias from the judge through the trial video, while the other half heard instructions specifically about implicit bias.

After the study was complete, we examined the impact of the instructions on the jurors, both individually and as a group.

Our first finding was that the jurors tended to notice these implicit bias instructions. Jurors who heard the implicit bias instructions were more likely to assert that the most important duty of a juror was avoiding bias or prejudice, relative to jurors in the standard instruction condition.

We also found that there was no measurable impact of the implicit bias instructions on whether or not the defendant was found guilty. Jurors who heard the implicit bias instruction were no more or less likely to convict the defendant, relative to those who heard the standard bias instructions.

This was a promising result, as it suggested that the instructions were not improperly biasing jurors or prompting them to overcorrect for potential implicit biases.

Looking beyond the verdicts, when we conducted a qualitative analysis on the deliberations, we found some notable trends in the conversations within the groups.

Specifically, we found that the implicit bias instructions appeared to prompt jurors to be more likely to talk about bias as part of their deliberations and to discuss its potential impact on the defendant. For example, one juror remarked, "I appreciate the fact that ... according to the judge's instructions, we're not going on prejudices about the way people look."

Another observation from the deliberation process was that, for some groups, the instructions against bias were elastic enough that jurors could occasionally use them as a rhetorical tool to deter legally appropriate assessments of the evidence or witness credibility. For some of these jurors, the term "bias" was treated generically, rather than specifically relating to racism, as a quality that their fellow jurors could have toward any one of the legal actors in the case.

For example, in one of our groups, a conversation about the lack of direct evidence for the crime led to one juror accusing others of being biased against law enforcement and saying, "You're assuming [the police] are crooked!"

However, it is legally correct and necessary for jurors to assess the credibility of witnesses as they weigh the evidence, and the implicit bias instructions should not be read as tools to dissuade jurors from engaging in necessary assessments.

But, even with an instruction given to all jurors about the need to assess witness credibility, some jurors used the instructions against bias to deter credibility assessments.

To date, it is still not known whether implicit bias instructions can meaningfully reduce racial bias in contexts where strong implicit bias exists.

Within our study, we did not find that jurors were showing anti-Black racial bias in their verdicts, either with or without the implicit bias instructions.[6] This finding is not especially surprising, given that empirical research shows mixed evidence for anti-Black racial bias in jury decision making.

However, we did find that the instructions did not create any kind of overcorrection effect in verdict outcomes. And while some jurors tried to use the instructions to shut down legally appropriate assessments of witness credibility with accusations that others were being biased, on the whole, the implicit bias instructions appeared to prompt greater conversation among jurors about the need to avoid bias in their decision making.

Thus, when it comes to applying the findings of this study in the courts, we find little to no reason to fear the use of implicit bias instructions in criminal cases. The implicit bias instructions did not prompt jurors to globally reach verdicts either for or against the defendant.

We expect that future research can explore many additional aspects of these implicit bias instructions, and their impact and application.

Different wordings of the instructions may produce different effects, and it is possible that the instructions could shape juror responses to other types of implicit attitudes or stereotypes, such as those based on gender, sexual orientation, age, etc.

It is also quite possible that, even with even more extensive implicit bias instructions, implicit bias is not something that can be instructed away or avoided through the conscious effort of jurors.

As we look toward the future, we hope that the increased societal attention to issues of racial justice will ensure that legal practitioners, policymakers and court personnel will advocate for evidence-based improvements to mitigate inequalities across our legal system.

With regard to criminal trials in particular, social psychological research suggests that the most robust check on biased decision making is ensuring that racially diverse juries are seated so that a broad range of experiences and opinions is represented in deliberations.

Jury commissioners, trial attorneys and judges can all play an important role in facilitating broadly representative jury pools and seated juries.[7]

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[1] The case of Bagley et al v. Tyler was filed in February of 2023 in the Louisiana Western District Court. For more: <https://www.ksla.com/2023/02/20/officer-who-fired-fatal-shot-alonzo-bagley-case-has-been-subject-3-internal-affairs-investigations-since-sept-21/>.

[2] Jerry Kang, Mark Bennett, Devon Carbado, Pam Casey, Nilanjana Dasgupta, David Faigman, Rachel Godsil, Anthony G. Greenwald, Justin Levinson, and Jennifer Mnookin. 2012. "Implicit Bias in the Courtroom." *UCLA Law Review* 59:1124-86.

[3] Mark W. Bennett. 2010. "Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions." *Harvard Law & Policy Review* 4:149-71.

[4] Jennifer Elek and Paula Hannaford Agor. 2014. "Can Explicit Instructions Reduce Expressions of Implicit Bias? New Questions Following a Test of a Specialized Jury Instruction." Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2430438](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2430438).

[5] Mona Lynch, Taylor Kidd, and Emily Shaw. 2022. "The Subtle Effects of Implicit Bias Instructions." *Law & Policy* 44:98-124.

[6] For more, see Tara L. Mitchell, Ryann M. Haw, Jeffery E. Pfeifer, and Christian A. Meissner. 2005. Racial Bias in Mock Juror Decision-Making: A Meta-Analytic Review of Defendant Treatment.

[7] See, for example, Mikaela Spruill and Neil A. Lewis Jr. 2022. "How Do People Come to Judge What is Reasonable? Effects of Legal and Sociological Systems on Human Psychology." *Perspectives on Psychological Science* 18(2): 378-391.