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AVERSIVE RACISM AND IMPLICIT BIASES IN CIVIL RIGHTS WORKERS
IN THE UNITED STATES

by

Anne Nystasia Marie Hobbs

A DISSERTATION

Presented to the Faculty of
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Under the Supervision of Professors Julia McQuillan and Helen Moore

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AVERSIVE RACISM AND IMPLICIT BIASES IN CIVIL RIGHTS WORKERS
IN THE UNITED STATES

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University of Nebraska, 2011

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The aim of this study was to gain a better understanding of implicit mechanisms that perpetuate inequality. The vast majority of claims of discrimination in this country are filtered through the lens of a civil rights investigator. It is critical to our understanding of civil rights enforcement, and inequality overall, to assess the potential for implicit bias processes of non-judicial government employees to impact the outcome of discrimination cases. Social psychologists have long established that the human brain processes information in highly effective ways that may make it prone to stereotyping and error. I used a vignette methodology to assess whether the non-conscious biases of civil rights investigators impact the cases they investigate. Although there was no association between the race and gender of the decision-maker on case outcome, the complainant's race and gender were associated with differential case outcomes. Males overall were more likely to have their case ruled as discrimination in a gender discrimination case. Black complaints were more likely to have their case ruled as illegal discrimination in a racial discrimination case. Black male complainants were the most likely to have their case ruled as illegal discrimination. This feasibility study reveals that implicit attitudes can be studied among civil rights workers, and that efforts should be made to minimize the impact of implicit bias processes on investigations.

DEDICATION

This dissertation is dedicated to my husband, Chris, and to my children, Savannah, Christopher, Rachel, and Ben.

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CHAPTER 1

INTRODUCTION

In recent decades the United States has experienced extraordinary erosion of the civil rights and civil liberties established in the 1960s. Serious obstacles to basic justice that many thought had been overcome have rematerialized, leading many scholars to ask whether they were ever really surmounted (Quillian 2006). Public schools are nearly as segregated today as they were 40 years ago (Warren 2001). Minority Americans are overrepresented in our jails and prisons and, some argue, are tracked in that direction (Ferguson 2001). In many U.S. neighborhoods racial segregation is as concentrated as it was 40 years ago, when the majority of American civil rights laws were passed (Massey and Denton 1993). Civil rights have not yet equalized opportunities in employment and housing (Squires 2007). In September 2008, the U.S. Congress acknowledged the unfulfilled promise of civil rights with the passage of the Americans with Disabilities Amendments Act. In a news conference, Representative Nancy Pelosi specifically noted that “the ADA’s promise remains unfulfilled because of court rulings that have wrongly ignored the intent of Congress, which 18 years ago intended for the ADA’s protections to be interpreted broadly to protect anyone who faces discrimination on the basis of a disability” (Newswire 2008). Politicians and scholars alike have blamed the courts for the erosion of civil rights, but none have examined the process required to construct a civil rights complaint, or the critical role of civil servants in deterring these complaints from reaching the courts. The goal of this study is to understand how the attitudes of civil rights workers impact the decisions they render. To date, the internal decision making

process of civil right investigators has not been studied, which is surprising given the tremendous influence they have on discrimination policy and social justice in the U.S.

The Topic of this Study

The administrative structure that emerged with the passage of civil rights legislation generated a bureaucracy of gatekeepers with discretionary authority over various stages of the complaint process. The administrative hurdles make it extremely difficult for a claimant to proceed with a complaint of discrimination—regardless of whether the protected basis is disability, race, national origin, color, sex, religion, etc. (Hirsh 2008). Both the complaint process itself and the people who administer it can prevent a claim from progressing, and thereby interfere with the intent of civil rights legislation. The first bureaucratic gate is the investigative agency where a claimant must file. The progress of a case and the ability to navigate forward may rise or fall depending upon an investigator's ability to recognize subtle and unintentional bias in himself or herself—as well as in the fact pattern presented. Subtly dissuading people from access to rights is clearly not a concern unique to civil rights workers. Lawyers' offices, banks, stores, medical clinics and the like, each make decisions on a daily basis on who is served and who is turned away (Feagin 1991). However, bias in the civil rights environment may be especially harmful, because it is the very system set up to dismantle discrimination.

Researchers have begun to examine bias in judges and jurors and how it relates to equity in U.S. courts (Kulik, Perry, and Pepper 2003), but “there has been relatively little sociological investigation into litigation itself” (Nielsen, Nelson, and Lancaster 2008:3). Even less research has been conducted on civil rights administration. These are

important areas to study, not simply because of the paucity of research but because of the pivotal role that investigators and lawyers play in the process of accessing individual rights.

Implicit bias is important to study in its own right. Research has documented that the brain automatically processes information which can lead to incorrect categorization and errors (Levinson 2007, Rudman 2004). We are just beginning to study bias in judicial and jury decision making, but overall we know very little about how bias operates in specific situations. Bias in civil rights workers is especially important to study because these individuals make the initial decision as to whether discrimination has occurred. They serve as a filter through which discrimination claims trickle into court, so it is important to know whether investigators allow implicit bias to impact the decisions they make.

The current study aims to assess both explicit and implicit bias and to compare these cognitive processes to the decision rendered in a discrimination vignette presented to a sample of civil rights workers. I anticipate that one of three patterns will emerge to explain how underlying attitudes influence the decision-making process. Although it is unlikely, civil rights workers may allow explicit bias to directly impact the outcome of a discrimination case. Alternatively, civil rights workers may consciously set aside explicit attitudes, but allow subtle and implicit attitudes to influence their decisions. I hypothesize that aversive racism is one implicit process that may be operating. The theory of aversive racism maintains that persons may discriminate despite conscious endorsement of egalitarian values (Dovidio and Gaertner 1986). One final possibility is that neither implicit nor explicit bias influences a case, that is—that the fact pattern

governs the outcome of the case and the decision maker is able to remain objective. This explanation, the null hypothesis of this study, may seem naïve. Can a decision maker set aside their own biases when they render a decision? Despite evidence that they cannot, the expectation of objectivity is what governs most of the legal process in this country (Levinson 2007, Kulik, Perry and Pepper 2003.)

Given that explicit racism is socially unacceptable in post-civil rights America, it is unlikely that persons will openly discriminate in situations in which social norms would make discrimination obvious to others (Dovidio and Gaertner 1986). Civil rights agencies and workers are designed to dismantle discrimination, so I anticipated that accessing bias in this environment would be especially problematic. To study these hidden processes I developed a feasibility study using an experimental design. My intention was to develop a survey and vignette designed to observe implicit processes by manipulating client characteristics. I was unsure how many agencies would participate. I was also unsure how likely it was that investigators would be honest regarding explicit opinions on race and gender. Finally, even if the agencies and staff agreed to participate, and were very honest about explicit attitudes, I was unsure whether direct questioning would capture the subtle operation of aversive racism. Sociologists and psychologists alike have questioned whether implicit bias can be measured directly by questionnaires and direct questioning (Quillian 2006, Dovidio and Gaertner 1986). Although manipulation of client characteristics in the vignette offered an opportunity to study race and gender indirectly, all of the other measures were asked directly.

Ethical Considerations

Ethical considerations were also very important to me. The results of this study could be damaging to both the agencies that participated and the individuals involved. Although the political motivations for concealing bias are not the topic of this dissertation – their influence on my topic is worth mentioning briefly—because it may impact how honest respondents are on the survey. If it turns out, for instance, that there is bias operating in civil rights agencies this could threaten funding to that agency. Even if bias does not correlate to differential outcomes, it is quite plausible that political leaders could request that funds be reallocated and directed away from civil rights agencies. This is not just political rhetoric; too often the political leaders actually have sufficient power to re-direct funding (Institute for Legal Reform). In Nebraska, the Attorney General called for disbanding the civil rights agency when it came to light that the agency legally protected the rights of undocumented individuals. Similar situations occur in other states but it is generally covert and other explanations are provided for the re-direction of agency resources.

In addition to the political ramifications, individuals also work to protect and perpetuate a nonbiased, non-prejudiced self image (Gaertner and Dovidio 1986), making it difficult to capture. The study procedures, questionnaire and vignettes and informed consent can be found in Appendix A. and were submitted for review and approval by the university Institutional Review Board. Respondents were informed that the study was designed to examine how civil rights workers investigate cases, and the mechanisms (conscious and non-conscious) that come into play in reaching a recommendation in employment discrimination complaints. This research is designed to strengthen the work

of civil rights agencies by exploring a potential limitation in the process, so I plan to return and discuss the findings after I complete the research.

This current study provides a significant contribution and multi-disciplinary approach to the traditional study of inequality and discrimination. Quillian (2006) argues that the traditional sociological approaches to modern racism have been inadequate. Sociology has directed more at understanding public opinion and race-related policy issues than to “predict discrimination in everyday contexts, such as decisions to hire, to rent, or to promote” (Quillian 2006, Pager and Quillian 2005). Sociologists could increase our understanding of discrimination by incorporating individual level analysis into our macro-level approaches. Rather than a debate about which analysis is the best approach to addressing inequality I propose a dialectic that incorporates both levels of analysis. In this dissertation I argue that institutions like the U.S. Equal Opportunity Commission and our courts are shaped by individual actors. Consequently, an individual level analysis of racism and sexism will augment our understanding of the factors that drive inequality. I rely on an increasing number of sociologists who focus on mechanisms of inequality that operate beneath the institutional structures (Taylor 2010, Quillian 2006, Reskin 2002, Correll and Ridgeway 2004, Acker 2002, Feagin 1991). A long line of scholars agree that the sociological analysis of inequality could be enhanced by including an individual level analysis. The individual level analysis should not replace a macro-level approach. The two must continue to work collaboratively, informing each other, if we are ever going to change patterns of inequality. A dual level analysis may be most effective using multi-disciplinary approaches. To conduct an individual level analysis, for instance, I relied on psychological literature on cognition

and implicit bias (Baron and Banaji 2006, Greenwald, Nosek, and Banaji 2003) and Dovidio and Gaernter's (1986) theory on aversive racism. I also relied heavily on legal sociologists like Elizabeth Hirsch (2008) and Laura Beth Nielsen (2008, 2010) because of their extensive work in the area of employment discrimination law. My study provides a unique contribution to the disciplines of sociology, psychology and law because it provides an individual level analysis of the institution charged with the legal responsibility of dismantling discrimination. Although sociologists have certainly examined individual level interactions in organizational contexts, to my knowledge this has not yet been done in the area of civil rights.

Despite the obstacles that presented themselves in this feasibility study, I felt it was important to study individual-level decisions in the civil rights environment. The decisions made in U.S. civil rights agencies have important implications for our fundamental understanding of why civil rights fail to move forward and progress in the United States. Examining implicit bias also has tremendous transformative implications for persons charged with enforcing civil rights, and research in this area may assist civil rights agencies to better carry out their mission of ending discrimination in this country. In the upcoming chapters, I examine the development of the administrative process, the procedure for filing a complaint and inquire whether it is effective. This opens the door for examining underlying mechanisms that may undermine the system designed to dismantle discrimination. The goal of this dissertation is to determine whether civil rights investigators allow bias to influence the outcome of the cases they investigate. Until we fully understand how individual bias influences investigations, we cannot know how to interrupt the process. It might be that civil rights workers' reliance on the law allows

them to consciously override implicit bias, but we must study this to know if this is the case. If in fact, civil rights workers do allow implicit bias to operate, we must know this as well. Given their function as gatekeepers to the process that challenges inequality, it is vital to also take the next step and ask whether there is a need for structures that limit the impact of underlying bias on the work completed by civil rights workers.

CHAPTER 2

LITERATURE REVIEW

Discrimination in the workplace, housing and public areas is illegal and has been for roughly 40 years. In the mid- and late-1960s the U.S. Congress enacted legislation to address the long history of discrimination in this country. The Equal Pay Act (1963), Title VII of the Civil Rights Act (1964), and the Fair Housing Act (1968) are only three of at least five important pieces of legislation introduced and passed by Congress within five years of each other. Lawmakers included a number of ascriptive characteristics, or protected bases, in these laws, covering race, color, national origin, religion, age, and gender. Disability and other statuses, such as marital and familial status were added to the protected categories in more recent years. Inequality, or unequal treatment, based upon one of these protected bases is illegal. Unequal treatment *not* based upon one of these protected bases, may be unfair, but it is not illegal. As Representative Pelosi recognized with the Americans with Disabilities Amendments Act, protections grow as our understanding of inequality grows and new protected bases are still being added. As late as 2001, courts uniformly held that sexual orientation was not a protected category under Title VII. It is only now recognized as a protected basis in a few jurisdictions (Kistler 2008).

Perhaps anticipating a large influx of lawsuits, in the 1960s Congress set up an administrative process that forced persons to bring certain complaints of discrimination to an investigative agency before the individual could file in court. Unlike any other types of lawsuit, a Title VII claimant must first exhaust administrative remedies before

bringing suit in federal court (42 U.S.C. § 2000e-5, Nielsen et al 2010). This is not simply a bureaucratic hoop, such as submitting a form. A claimant must thoroughly plead a discrimination claim through the administrative process. This step is strictly enforced. If a claimant fails to allege sufficient detail or fails to raise specific issues and then later files the case in court, the court will dismiss the case specifically because the claimant has failed to exhaust the administrative remedy (*Cottrill v. MFA, Inc.*). In this respect, antidiscrimination employment law is unlike many other areas of law, where a person can hire an attorney and file a lawsuit directly in court.

Another important aspect of the process is access. When a complaint of discrimination is made at the administrative level, it is almost always filed dually with the U.S. Equal Employment Opportunity Commission and an equivalent agency at the local level. Once filed, either the local or federal agency must investigate the matter and issue a ruling. The agency that does not investigate will generally adopt the finding of the agency that did, without performing additional work on the case. This is a critical point because a claimant generally works with only one investigator and one supervisor, offering at best a limited perspective. An administrative error, an oversight, failure to contact witnesses, or failure to examine documents can result in the complaining party completely losing the ability to pursue a legal remedy. In addition, because they have jointly filed with the federal office, they may not re-file the claim and in many states there is no appeal process. Although individuals may withdraw from the administrative process after 90 days in order to file in court, most rely on the administrative agency to gather evidence and render a decision in their case. This system dictates that the vast majority of claims of

discrimination in this country are filtered through the lens of a civil rights investigator before they ever get their day in court.

Is the Process Effective for Combating Discrimination?

Nielsen et al. (2008) demonstrate that more individuals appear to be aware of their civil rights, yet fewer are achieving meaningful legal awards. The authors argue that the litigation process has become devalued by employers, fair employment agencies, and the courts, leaving only symbolic value to processing a complaint of discrimination. “At a symbolic level, law offers workers rights to contest employment discrimination. At a practical level, law does little to support the invocation of those rights for the vast majority of claimants” (Nielsen et al. 2008:4).

Few Persons Receive a Meaningful Remedy

Statistics indicate that over the past decade fewer and fewer individuals file their discrimination case in court (Nielsen et al. 2008), yet the number of complaints filed through the administrative process has grown over the past decade. According to the U.S. Equal Opportunity Commission (EEOC), more than 93,000 cases of employment discrimination were filed in the United States during 2009. This represents an increase over the past 5 years and the most complaints filed in the past 10 years, with the exception of 2008, when 95,402 complaints were filed (EEOC). Hirsh (2008) argues that the law is only an effective means of social change if there is a credible threat for non compliance. Her research demonstrates that only a small percent of those that file ever achieves any type of meaningful remedy and many end at the administrative agency (Hirsh 2008).

Researchers have found it difficult to precisely identify the number of allegations that result in a finding of illegal discrimination because a substantial number of cases settle before a determination is made (Hirsh 2008). Legal scholars concur that often what began as allegations of discriminatory treatment evolves into a cost-benefit analysis resulting in the case being settled (Nielsen et al. 2008). Despite thousands of complaints filed in the administrative process each year, Hirsh found that only 5% of racial discrimination cases investigated by the EEOC, resulted in a finding of illegal discrimination (U.S. EEOC, Hirsh 2008). According to 2009 statistics, only 3.9% of race discrimination allegations resulted in a finding of illegal discrimination (EEOC). Although slightly more gender discrimination cases were determined to be illegal discrimination, less than 5% of the 26,618 allegations filed in 2009 were determined to be a “cause case.” When one examines all cases filed on race or gender, less than 4.5% of the cases are determined to involve illegal discrimination. Overall, as the data indicate, a “reasonable cause” finding is difficult to achieve.

Why Cases Fail in the Administrative Process

It is unclear why so few cases result in a finding that supports the claimant’s allegation of illegal discrimination. Sociologists like Acker (1998) document how organizational theory sometimes fails to capture the reality of what actually happens in and between organizations. Similarly, Hirsh (2008) takes an organizational approach and documents how certain aspects of organizations charged with discriminating appear to decrease the complainant’s odds of success. She found that employers who received multiple complaints are more adept at handling discrimination cases. In addition, employers that enact equity-based policies, like affirmative action policies, can argue that

their company is committed to racial equity. Hirsch (2008) found that companies with race equity policies in places fared better in discrimination cases. Researchers have also demonstrated that factors outside the law and the process may impact the outcome. Nielsen et al (2008) demonstrated that the race and gender of the decision-maker impacts the outcome of legal cases, after controlling for other aspects of the case. They further demonstrated that ascriptive characteristics of the decision-maker appear to interact with the complainant's race and may have the most detrimental impact early in the case. Nielsen et al (2008) demonstrated that with white claimants were "less likely to be dismissed than other plaintiffs" (pg. 26). Because the administrative process is the very first step in an employment discrimination case, it is important to examine factors that impact the case early on.

Two final reasons that employment discrimination cases may have low rates of success are that the vast majority of cases are filed by individual actors and that employment discrimination is not well received in the courts. Despite widespread media attention regarding class action lawsuits against large companies like Denny's or Wal-Mart, Nielsen et al. (2010) found that most plaintiffs in employment discrimination cases are solo plaintiffs and are very likely to receive modest settlements if they receive anything at all. She demonstrated that almost all employment discrimination cases are filed by individuals and only 2% ever get to trial. Once a case makes it to trial, statistics reveal that the case is unlikely to be successful. Cases involving employment discrimination "are treated more harshly by the courts, with lower levels of settlement, higher rates of summary judgment," and higher plaintiff losses, and higher appellate

reversal rates of plaintiffs awards than for any other kind of civil litigation” (Nielsen et al. 2010:6.).

The majority of discrimination cases never make it into a courtroom (Nielsen et al. 2010, Cecil et al. 2007). Legal scholars argue that the lack of a meaningful remedy to civil rights lawsuits may discourage persons from filing in court (Bagenstos 2006, Lee 2005, Nielsen et al. 2009). Law and society research has long recognized that legal resolutions do not unfold in a vacuum, “rather, structural features of the law and regulated actors shape the process and its outcomes” (Hirsh 2008:239). Many factors influence the decision to file in court. One explanation might be that persons are dissuaded from filing in court during the administrative process. “Reasonable” or “probable cause” that discrimination occurred is the standard that administrative agencies use to indicate that evidence supports a claimant’s allegation of discrimination. Often a “cause” finding brings claimants to the next level of the process: they may settle the claim for damages or seek an attorney to file the case in court. Conversely, a finding of “no reasonable cause” may discourage a claimant from seeking further redress or filing in court. The “cause” determination rests heavily on the civil rights investigator’s recommendation. Despite this, relatively little is known about why a staggering number of cases, 95% of those filed with the EEOC, are viewed as “no cause.” Similar to Acker’s (1998) theories of gender and organizations, a substructure may be operating and reproducing inequality at the organizational level, despite the best intentions of individuals who work in civil rights.

A Theoretical Approach

In the upcoming chapters, I propose and explore three explanations for why civil rights cases fail to move forward. First, it could be that individual civil rights workers have high levels of explicit bias and that this corresponds with few cases being ruled as “cause” findings. Conflict theory might explain this type of response, but it does not seem a plausible explanation. It is unlikely that persons with high levels of bias would select the field of civil rights as their career. A second possibility is that despite overtly favorable attitudes towards Blacks and women, implicit attitudes lead investigators to frame the case and the evidence from their perspective, most often this is from a majority perspective. A third possibility is that the civil rights system is operating objectively as intended, and that a large number of cases do not succeed because the decision maker perceives them to lack merit.

Conflict Theory

Law and equality scholars argue that the process for investigating a complaint of workplace discrimination is neither an avenue for social change, nor a “forum for carefully judging the merits of claims of discrimination” (Nielsen et al. 2010:39). Nielsen and her colleagues (2010) maintain that the civil rights process is little more than a means of deflecting individual claims of employment discrimination. Here is an important point to ponder. If the system’s ineffectiveness is intentional then the entire civil rights process is simply a means of pacifying those who suffer inequality and not a mechanism to implement sincere change. The only plausible explanation for this argument would include conflict theory. Although the most prominent sociological explanations for discrimination have included conflict theory (Reskin 2000, Tomaskovoc-Devey 1993), it

does not seem plausible in this context. According to conflict theory, the beneficiaries of inequitable systems control access to the resources and exclude members of the subordinate group (Reskin 2000). Although many have argued that the legal and administrative processes to combat discrimination are ineffective, (Hirsch 2008, Nielsen et al 2010) few would argue that it is intentionally ineffective. Perhaps the question that should be asked is why it is ineffective. I contend that underlying brain processing mechanisms that go unchecked in the administrative processes are likely to be part of the explanation of why employment discrimination cases flounder in the administrative process and are summarily dismissed in the courts. Subtle processes may involve openly discriminatory individual-level interactions that are so common that they are not considered discriminatory (Benokraitis and Feagin (1986). There are a range of individual-level responses that may be operating in the civil rights environment. In this dissertation, I take up just one of these. In the next section I explore theories that explain a critical and non-conscious aspect of the civil rights process that is currently overlooked.

The American Contradiction

Americans' overt attitudes towards race, color, national origin and gender have become increasingly egalitarian over the past decades, yet inequality persists in employment, housing, and public accommodations (Feagin 1991, Quillian 2006, Reskin 2003, Roscigno, Garcia, and Bobbitt-Zeher 2007). Although most Americans openly support equality in principle, on average they "remain quite reluctant to support federal policies that would bring about these goals" (Bobo and Fox 2003:323). The disconnect between egalitarian attitudes and the day-to-day experiences of discrimination is not a new phenomenon. Myrdal (1944) identified the inconsistencies between overt

commitment to equality and actual discrimination as early as the 1940s. Myrdal (1944) described this conflict in the “American Dilemma,” which he outlined as the paradox of traditional American egalitarian values and American racist policies, practices and behavior. In his description of the black experience in America, Myrdal (1944) defines the American Creed using various American ideals, such as conservatism, enlightenment, Christianity, and Puritanism. More importantly, he recognized the incompatibility of our egalitarian values and the treatment of minority groups, notably blacks. Contemporary scholars also recognize the disconnect between the American creed and American racist practices and policies (Bagenstos 2006, Banks, Eberhardt, and Ross 2006, Clayton and Crosby 1992, Gaertner and Dovidio 1986, 2000, 2005). In some cases the incompatibility of egalitarian beliefs and racist action are viewed as “mere lip-service to a norm of equality” (Gaertner and Dovidio 2005). Because civil rights legislation did not codify changes in everyday behavior but reflected a desire to create change through laws, stereotypical images and discrimination against racial/ethnic minorities, women, the elderly, and persons with disabilities persist. Anti-discrimination laws are then further interpreted by civil rights workers within an organizational structure.

Modern Racism Theories

The unsteady progress toward equality has led researchers to question how effective civil-rights-era changes were, with many concluding that discrimination has not been dismantled, but has simply taken on new and subtle forms (Bobo and Fox 2003, Quillian 2006). Civil rights legislation developed in response to intentional racism, but it has not had the effect that many had hoped for. Theories espousing a “new racism” or “modern racism” have emerged in the contemporary dialogue about race.

Benokraitis and Feagin (1986) were some of the first scholars to point out the inadequacy of addressing overt inequality. They identified a continuum of sex discrimination ranging from overt sexism to subtle and covert forms of discrimination. Feagin (1991) further identified modern forms of racism in his documentation of race discrimination in public places. Psychologists Sears and Henry (2003) argue that a symbolic racism has replaced traditional and overt forms of racism in post-civil-rights America. These newer theories of racism highlight the lack of congruity between espoused values of equality and ongoing practices and beliefs of inequality. In so doing, Sears and Henry (2003) frame symbolic racism using some of the same American “ideals” of individualism and conservatism that Myrdal focused on 60 years prior.

Law and society scholars also explain the incongruity of equality discourse and discriminatory actions using American “individualism” and conservative politics. Dudas (2005) highlights the backlash of the post civil-rights movement by focusing on the intersection between “special rights” talk and resentment. He argues that civil rights laws have created protections that many Americans view as “special” or extra rights. Those that oppose these “special rights” have become the defenders of quintessential American values. They argue that no one should get an “extra” opportunity, and to do so is un-American. Dudas (2005) argues that the “discourse of special rights infuses conservative political action with nationalistic ardor” (pg. 2). By framing special rights as an unfair or extra opportunity, rather than an equal opportunity, it appeals to Americans sense of justice and channels resentment into intelligent and legitimized opposition to redistributive social change. Similarly, espousing equality without ever enforcing real

change may appeal to the American sense of justice without substantially changing discriminatory structures in this country.

Implicit Bias

In recent years, implicit bias has received increasing attention as a means of understanding the divergence of egalitarian ideals and discriminatory behaviors. A number of methods have been devised to test implicit bias. Perhaps the most well-known is the Implicit Association Test (IAT) which involves computer simulations of automatic responses (Greenwald and Banaji 1995, Greenwald, Nosek and Banaji 2003). Although these simulations clearly inform our knowledge of implicit bias, they do not fully explain the incongruity between overt expressions of tolerance and implicit processes that are biased. I anticipated that the relationship between implicit attitudes and explicit attitudes would be more complicated than simply establishing that implicit bias exists. A number of scholars report that explicit self-reports do not correlate with implicit attitudes, (Rudman 2004, Dovidio et al 2002) so I knew I would need to use a theoretical model and measures that could examine both.

Aversive Racism Theory

Aversive racism is a theoretical frame that provides us with one of the first solid explanations for why Americans give lip service to an ideal of equality that is never fully enacted or enforced. Using this theoretical frame, we can begin to understand why justice and equal opportunity have yet to be accomplished in the United States, and the role that civil rights workers play in perpetuating inequality. Aversive racism incorporates both the

institutional level of discrimination argued by conflict theorists, but explains the implicit bias that occurs on the individual level as well.

Intentionally thwarting individuals who file a complaint does not seem a plausible explanation, but non-consciously doing so based upon a majority mindset makes much more sense. Aversive racism seems to be a plausible explanation for the high failure rate of civil rights cases. Although Joel Kovel (1970) first coined the term “aversive racism,” Gaertner and Dovidio (1986, 2000, 2005) have done the most influential and extensive research in the area of aversive racism theory. Many scholars now argue that aversive racism provides the most viable explanation for why inequality persists despite Americans pronounced egalitarian rhetoric and established antidiscrimination legislation (Quillian 2006, Reskin 2002, Penner et al 2010). It also provides the most solid explanation of why civil rights workers, who are charged with upholding the law and eliminating discrimination, may operate in ways that circumvent their own goals and perpetuate discrimination. In addition, cases may be thwarted by the organizational structures that emerge from individual actions and beliefs.

Hallmarks of aversive racism are the combination of overt and genuinely anti-discriminatory views with underlying discriminatory or negative beliefs about another group (Fig. 2.1). This non-conscious process is likely completely unknown to the individual. Those working to further civil rights will likely be averse to the suggestion that they are biased because of workplace mandates not to discriminate and the dialogue about combating discrimination. Aversive racism is considered by race scholars to be a “modern” form of racism. Unlike other forms of modern racism, aversive racism is more likely to occur among individuals with liberal political views (Gaertner and Dovidio

2005). Notwithstanding their personal and political views, aversive racists may actively engage in discrimination, while maintaining an image of themselves as non-prejudiced (Gaertner and Dovidio, 2000, 1986, Penner et al. 2009, Pearson, et al. 2009). Individual-level bias certainly exists in this environment and one might see glimpses of these biases in areas that are “safe” for disagreement. These “safe” topics include political discussions that are viewed as areas of national debate, as opposed to racism. Currently, the topic of whether undocumented individuals should be offered the protections of civil rights in the U.S. is an example of a topic that individuals can openly disagree upon without fear of being deemed racist or prejudiced. Despite specific areas of debate, civil rights workers overall appear to select this relatively low-paid and highly intense occupation because they genuinely believe in equal rights.

Explicit Bias

Scholars who study implicit bias are often criticized for failing to adequately assess explicit attitudes (Rudman and Ashmore 2007, Mackie and Smith 1998). Dovidio and Gaertner (1986, 2004) maintain that a hallmark of the aversive racism is the overt maintenance of non-racist attitudes, operating in conjunction with underlying biased or masked prejudice. Explicit attitudes of race are therefore important to measure and I included them in my analysis. I include three explicit scales: Attitudes toward Black, Attitudes Toward Whites and Attitudes Towards Women in Authority.

The Flaws of Assuming Implicit Bias a Priori

Scholars should not start with the assumption that either explicit bias or implicit bias is operating. Dovidio and Gaertner began their work in the mid 1980's, but it is only recently that other scholars have begun to test implicit bias theories. Kang & Banaji (2006) argue that work on implicit social cognition has finally reached a level of maturity that requires extrapolation to the real world. Despite legal scholars leading the charge to examine implicit racism and sexism in the legal system, progress has been slow (Kang 2005, Kang and Banaji 2006, Kang 2009, Williams 2007). Without testing, it appears that the legal field may have simply started with the premise that bias is operating in our courts. In 2009, Kang developed a primer entitled *Implicit Bias in the Courts*. Although it may be tempting to start our discussion with the assumption that non-conscious bias is operating, without rigorous testing, critics of implicit bias will summarily dismiss both its existence and its ramifications as "myths" (Mitchell and Tetlock 2006). Tetlock and Mitchell (2008) maintain that non-conscious bias scholars have yet to provide compelling evidence that non-conscious bias exists, impacts decision-making and has real life consequences.

Implicit Bias' Critics

Tetlock and Mitchell (2008) argue against implicit bias for two reasons: they disagree with how it is measured and they are unsure of the effect order. First, they are cautious about accepting the reliability of computerized tools for capturing non-conscious bias. They rightfully acknowledge that a number of factors can influence a person to have a slow response time on a computerized program like the IAT. Responses on the

IAT might be due to implicit bias and conditioning to believe one group is inferior. Slow response times might also be due to physical factors like poor hand-eye coordination, age, or past experiences (Tetlock and Mitchell 2008). They further argue that computerized laboratory simulations do not apply to real life situations, so are not truly predictive of anything meaningful. Tetlock and Mitchell (2008) seem most critical of how quickly the notion of implicit bias has been accepted and “how confidently prominent sociologists have dismissed corporate EEO efforts as Potemkin-village cloaks for discrimination” (pg. 14). Unfortunately they seem to miss the point that even really well intentioned EEOC policy makers and those devoted to EEO ideals can be subject to implicit processes that may override their best overt intentions. This study addresses the notion that EEO policy is the solution to inequality. It is not that EEO policy should be dismissed, but that we must have a deeper commitment and look honestly at the subtle individual-level mechanisms that can interfere with even well-intentioned policy.

Mitchell and Tetlock (2008) are absolutely correct about the need for cautioned and well designed research in this area. Specifically they call for measures that will predict tangible indicators of discrimination and the power to predict discrimination even when “decision-makers work under EEO accountability norms and have incentives to get it right and vast amounts of individualized information” (pgs. 14-15). Civil right investigators, perhaps more than anyone, work under EEO accountability and have huge incentives to get it right. Their own credibility and their livelihood depend on whether or not they grasp the evidence and issue a ruling that is logical and reasonable. Despite Mitchell and Tetlock’s (2008) assumptions regarding the benefit of vast amounts of information, even individuals with subpoena power can be subject to implicit associations

when the vast amount of information paints a conflicting story. This will be taken up more in depth in the next section. A brief discussion of the difference between implicit associations and aversive racism will help clarify the direction of this dissertation.

Implicit Bias and Aversive Racism

Implicit bias is sometimes referred to as automatic brain processing. Scholars often explain it as the way we know to sit in a chair, rather than on the table when we enter a room with chairs and tables. The human brain has evolved to a highly efficient processor and quickly classifies and categorizes information. The study of implicit bias has exploded in the past decade and now includes any underlying belief that shapes our understanding and response to the world around us. Project Implicit® includes tests to measure bias in sexuality, skin tone, presidents, age, race, disability, and gender and science (Project Implicit.com). Implicit bias is generally considered non-conscious, but this is often debated. Fazio and Olson (2003) maintain that simply because one processes information quickly does not indicate a lack of awareness about the bias. Aversive racism is a very specific type of implicit bias, and it has some fundamental differences from implicit bias.

First, aversive racism has been used solely with regard to racism and has been tested only with regard to Black and white individuals. In addition, it is clearly considered a non-conscious process; not because the person with bias is hiding it, but because the person is genuinely unaware of its presence. Returning to the chair analogy, an aversive racist might enter a room and use the chair, but would maintain that they do not know what a chair is. As aversive racism suggests, measuring implicit bias can be

problematic because the person genuinely is unaware of the underlying bias. Aversive Racism scholars have tested their theory by measuring bias with regard to Black individuals, but it has not been applied to other minority groups, to my knowledge. I plan to expand the theory by testing aversive sexism, in addition to aversive racism. That is, in addition to testing to see if attitudes and bias correspond to different outcomes for Black individuals, I will also examine attitudes and outcomes for women.

The Need to Test Aversive Racism

In order to understand whether and how aversive racism impacts civil rights, employment discrimination or the legal field, we need to rigorously test attitudes and determine if particular factors impact individual-level decisions. Do individuals with higher levels of aversive racism make decisions differently than those with lower levels of aversive racism? It may be that there is a range of aversive racism. Research from the medical field now demonstrates that there are differential outcomes depending upon the decision-maker's level of explicit and implicit bias. Green et al. (2008) were the first to study aversive racism in a medical setting. Using a vignette that portrayed a Black patient who presented with symptoms of a heart attack, they found that physicians higher in aversive racism were less likely to prescribe the appropriate drugs (Green et al. 2008). Penner et al. (2009) also found support that explicit and implicit measures of bias predict different responses: explicit measures predicted blatant discrimination. Implicit measures predicted subtle, and often unintentional expressions of discrimination, like nonverbal behavior and negative decisions. These negative decisions were more likely to occur in complex situations where the differential outcome could be attributed to factors other than race (Penner et al. 2009). In addition, these scholars tested the doctor-patient

relationship and found that patients responded more negatively to their doctor when the doctor fit the profile of an aversive racist. Similar research in legal settings will increase our understanding of how aversive racism impacts both the administrative and the legal contexts.

Elements of Aversive Racism

Through several experiments over many decades, Gaertner and Dovidio (1986, 2000) demonstrate consistent factors that occur concurrently with aversive racism. This form of racism appears more prevalent in situations that are ambiguous. It is more prevalent in decision-makers with pro-white attitudes; likely to occur when accountability is diffused through multiple actors; and when the decision-maker can justify his or her actions. It is unclear from Gaertner and Dovidio's research (1986, 2000) whether these factors must appear in concert or whether they have comparable effects individually, so I will test them both individually and in unison. Each of these factors are highly relevant in the civil rights context, as I explain below.

Ambiguity.

A number of researchers have demonstrated that "reactions under conditions of ambiguity are more likely than clear contexts to produce prejudiced reactions" (Alberson and Ettl 2004, Dovidio and Gaertner 2007, Gaertner and Dovidio 1986). The civil rights environment is a quasi-legal environment prone to ambiguity because it mirrors the adversarial legal system, which fosters and encourages opposing viewpoints. To reduce liability, the defendant in an action must produce reasonable doubt in the claimant's version of the facts. Consequently, documents and testimony put forth by the opposing parties generally produce contradictory stories (Nielsen et al. 2008). Gaertner and

Dovidio (2005) propose that aversive racism may be pervasive in the legal arena precisely because the adversarial system welcomes conflicting justifications for actions. Discrimination law may be even more vulnerable because the opposing sides almost always offer both racial and nonracial explanations for a particular action. They are also emotionally charged in a way that many other legal cases are not. A defendant may feel the need to morally justify employment actions as “legitimate business decisions.” On the other side of the case, the complainant is facing a personal battle where their perceptions, work ethic and value as an employee have come under scrutiny. Employment “claims of discrimination are bitterly contested and involve sharply opposing, often subjective, characterizations of what led to a negative personnel decision” (Nielsen et al. 2010:5). Both sides produce relevant and extraneous reasons for the alleged discriminatory behavior which creates a great deal of ambiguity about what really happened. Situations that involve many different reasons for behavior are not the only scenario that creates ambiguity.

Situations where information is limited are also highly susceptible to bias (Blader 2007, Blader and Tyler 2003). Again, the civil rights arena is rife with examples. When minimal information is known about an applicant, for instance, decision-makers tend to fill in the “blanks” by drawing from their own frame of reference, including potentially biased viewpoints (Blader 2007). In the absence of explicit information indicating otherwise, women are likely to be deemed poor managers, blacks may be viewed as not hard working, and Hispanic individuals may be seen as unreliable (Alberson and Ettlin 2004.) Research has demonstrated that bias appears to be more prevalent when increased ambiguity is caused by conflicting facts. Researchers also recognize that one way that

aversive racism can impact an investigative process is by influencing how evidence is considered and weighed (Bagenstos 2006, Banks et al. 2006). Nielsen et al. (2010) noted the subjective nature of employment discrimination cases which rely upon an investigator's assessment of the complainant's job performance as well as an assessment of the employer's response. The administrative process of an investigative agency mimics the adversarial legal arena, but evidence is not gathered in the same way that it would be in a case filed in court. Generally, civil rights investigators do not collect evidence and witness statements using the federal rules of evidence. This is critical because civil rights investigators are given much more individual authority and discretion in determining the evidentiary documents they will request, the authenticity of the documents and the selection of witnesses they interview.

In cases where informational uncertainty exists, factors unrelated to justice influence decision-makers' judgments (Blader 2007). Civil rights investigations may be even further susceptible to incomplete information, as these agencies do not carry the authority of a court; are often under-funded and under-staffed; and lack access to the newest technologies and research tools. Social psychologists now know that individuals often attempt to resolve "procedural uncertainty by relying on their own level of identification with the group" (Blader 2007:987.) Applying individual frames of reference is likely to cause misunderstandings or problematic communication in a diverse work group or diverse community. If a civil rights worker fills in the gaps of an uncertain fact pattern, based upon his or her level of association with the claimant, it is likely to have more serious consequences for the claimant who has limited legal recourse and often no appeal process.

How civil rights investigators view the facts, theory, and evidence is critical to both the administrative and legal outcome of the case; they serve as gatekeepers to the complaint process. While failure at the administrative level would not legally prohibit an individual from pursuing his or her claim in court, it often causes the claimant to think they do not have a valid case. A “no reasonable cause” finding serves to indirectly deter a claimant because it is the ruling of an official governmental entity and means that a professional, quasi-legal, agency did not recognize the situation as involving discrimination. Ultimately, civil rights investigations impact procedural justice, and discrimination law, both of which determine the how meaningful civil rights are in this country.

Impact.

A second factor that Gaertner and Dovidio (2005) cite as highly relevant to aversive racism is whether the actor sees him or herself as a person on whom the outcome relies. Rather than create stress that prevents action, researchers know that being the sole responder actually inspires action (Gaertner and Dovidio 1986). In one of his first experiments, Gaertner (1973) discovered an unexpected response pattern in persons receiving a call from a stranded motorist. Gaertner and Dovidio (2000) later found that many individuals simply hung up the telephone before they could even hear the caller’s request for help. They determined that a significant number of seemingly non-prejudiced liberals hung up their phones prior to receiving the request. Gaertner and Dovidio (2000), proposed that persons who believe they are the only or final recourse to another person in need will respond affirmatively to the request for assistance. However, if individuals believe that many others are able to assist, if there is a diffusion of responsibility, they are

less likely to respond with aid (Gaertner and Dovidio 2000). The findings of numerous studies demonstrate that white individuals often demonstrate a failure to help persons from minority groups. Gaertner and Dovidio (2005) further demonstrate a failure to treat ascriptive groups fairly even when the law mandates such action. The administrative process is the first step one takes in filing a complaint of discrimination. Because it is the initial action, civil rights investigators often do not view themselves as the only responder to the claim. Too often they consider their investigation, findings, and recommendation, as simply one step in a long process, rather than as a definitive and important determinant of the outcome.

Justification.

Aversive racism has many dimensions. It may translate into a refusal to offer assistance, an affirmative extension of benefits, or clearly differential treatment. Dovidio and Gaertner's (1986) early work demonstrated aversive racism using the rate at which whites demonstrated "pro-white" attitudes. Often the extra benefits that appear in discrimination cases are seen as non-biased, justified, favoritism that is permissible and therefore *not a* legal violation. Because bias is often not expressed overtly, in ways that can be readily recognized as racial discrimination, there is often no legal recourse. In an employment setting, it may be as subtle as encouraging certain employees to apply for a management position. This "justification" of friendship or similar work ethic may link directly to a pro-white frame of reference. Gaertner and Dovidio (2000) cite an employment case where the employer argued that although the white employee was treated more favorably than the minority employee (for the exact same performance), this was deemed permissible. The employer argued that this was not due to illegal

discrimination but justified the preferential treatment on the basis of a closer personal relationship between the other worker and the supervisor. They openly recognized that the white employee was given an *extra* opportunity within the company but maintained that this special and favorable treatment was not evidence of discrimination (Dovidio and Gaertner 2007). Sorting out this aspect of aversive racism is extremely relevant in the civil rights arena because investigators will make initial and critical determinations. Like the promotion described above, the outcome of the case rests upon whether the investigator views the extra benefit for the white employee as legally permissible or justified. Justification impacts investigations in other ways as well. Subtle behaviors often happen quickly and may be more important than the words we speak (Dovidio et al. 2002). Nonverbal cues correlate more strongly to perceptions of friendliness and openness than do verbal statements (Quillian 2008).

Legal Theories of Discrimination and Client Characteristics

Discrimination cases are investigated using one of two theories: disparate treatment or disparate impact (Lee 2005). Neither of these depends upon the complainant's characteristics, so the client's race and gender should not influence the outcome of the case. Implicit bias theories, however, suggest that civil rights workers may not know that they have implicit biases about who is a worthy "complainant," and a client's race and gender may indeed impact the outcome. Bias may also influence who is a worthy defendant or employer. Legal theories rely heavily on information that is external to the party who has complained of the discrimination. Disparate treatment employs an individual level analysis, so a civil rights worker inquires about whether the individual was treated differently than persons outside his or her protected group. Using

this analysis, an investigator is examining data and evidence at the individual employee level: i.e. was Sally treated differently than Latisha. Although this can clearly be a subjective experience for the complainant, the investigation focuses *only* on the external evidence. The net effect of this is that it is only the decision maker's subjective perception about discrimination that influences the outcome. If the investigator feels that Sally was treated roughly the same as Latisha, how Latisha feels about her case will not be relevant. Disparate treatment employs an institutional level analysis and the civil rights worker inquires about policy or procedures that impact the complainant's group differently than other groups. Using this analysis, the investigator looks only at macro level data: i.e. Were white employees impacted differently than Black employees by a policy change? Because these are the only two theories employed by the courts and neither is dependent upon the complainant's individual characteristics, the complainant's race and gender should not be associated with differential outcomes. It may, however, impact the investigator's perception of whether a case is illegal discrimination because individual complainant characteristics may trigger implicit bias.

Attitudes and Values

Attitudes may also impact a case in indirect and non-conscious ways. Dudas (2005) explains how certain political values create racial responses. The consequence of a pro-white attitude on the job may be that the white individual gets the benefit of the promotion, or the benefit of the doubt in a disciplinary action. While clearly important to the individuals involved, these consequences pale in comparison to the consequences of a civil rights worker with a pro-white bias. Investigators may not recognize certain attitudes or values as potentially discriminatory. Implicit bias may impact subtle

behaviors that investigators exhibit while working on a case. The perception of unfriendliness or hostility could hinder a potential victim of discrimination from revealing all of the information the investigator needs to fully investigate the case. Bias among civil right workers has serious implications, so it is important to study.

Implicit Influences

Because of social stratification in the United States, individual indicators of social location such as race and gender influence our life experience and how we view and categorize our world (Mitnik 2006). Characteristics such as race, gender, age, political affiliation, and religiosity are associated with our experiences of discrimination (Shelton and Sellers 2003), and whether we perceive that discrimination has occurred (Murrell, et al 1994). Kulik, Perry and Pepper (2003) explored personal characteristics of judges on sexual harassment cases and found that age and political affiliation impacted the outcomes of federal sexual harassment cases. Individual characteristics appear to influence implicit bias and influence case outcomes.

Gender. Kuran and McCaffery (2008) found that perceptions of discrimination vary by gender. They found that men and women differ significantly in their willingness to tolerate discrimination, with women more apt to identify a situation as discriminatory. They note a convergence in this pattern when they switched to a web-based survey, suggesting that survey mode may matter. Survey mode will be discussed more in depth in the limitations section.

Race and racial identity also impacts whether one perceives a situation as discriminatory. Several theoretical perspectives explore the relationship between racial identity and perceptions of racial discrimination (Shelton and Sellers 2003). Crocker and

Major (1989) also suggest that individuals highly identified with a racial group may be more likely to attribute negative treatment to racial discrimination of that group. Cross (1991) suggests that perhaps racial identity and perception of discrimination are related in a different direction: that the experience of an act of discrimination may trigger the exploration of racial identity. African Americans who considered race important perceived more racially discriminatory incidents than those who did not (Shelton and Sellers 2003, Sellers et al. 2003). I hypothesize that minorities working in the area of civil rights consider race to be important, and are therefore more likely to perceive discrimination in an ambiguous situation.

Age. It is unclear how age will associate with “cause” findings. On the one hand, individuals older than 55 likely remember a United States where facilities that were separate “but equal,” and a culture where minorities were not awarded the same benefits of whites. Individuals over 55 may have higher measures of explicitly pro-white and anti-black attitude, and lower cause findings. Conversely, older individuals working in the civil right arena likely lived through the civil rights movement and may have a deeper appreciation of how hard fought passage of civil rights laws were, so they may have a deeper sensitivity to potential discrimination. In addition, state and federal laws place individuals over 40 years of age in a protected class, so they may be more sensitive to discrimination.

Political Views. Some researchers argue that the contemporary argument over race is really a political argument (Sniderman et al., 2000). Others have argued that politically conservative values are associated with a particular type of racism: symbolic racism (Sears 1988, Henry and Sears 2002). The standard political measure has seven

categories, but I used only three because most modern forms of racism link to “liberal,” or “conservative,” so I wanted people to select from a limited continuum.

Taylor and Armor (1996) theorize about the “illusion of objectivity,” and maintain that individuals often underestimate their own level of bias. On this survey, individuals occasionally refused to answer a demographic question and indicated that it was “not applicable.” To determine if non-responses differ significantly from responses that included their demographic and personal information, non responses were recorded as dummy variables as described below.

HYPOTHESES:

The goal of this research is to better understand how implicit attitudes about race and gender can influence civil rights investigations of alleged discrimination. As the prior section sets forth, there are multiple levels where inequality may be reproduced and reinforced. The civil rights arena offers a rich environment to study the effects of implicit bias on individual and organizational level inequality. I focus on individual level attitudes of civil rights workers. I first explore the relationship between explicit and implicit attitudes to better understand the influence of individual level factors.

1. If explicitly negative or racist individual attitudes are influencing case outcomes then “old fashioned racism” is operating, and explicit attitudes will be the strongest predictor of whether a case will be deemed illegal discrimination.
 - 1.a. Investigators who report explicitly negative attitudes toward women will report lower findings of illegal discrimination for female complainants.
 - 1.b. Investigators who report explicitly negative attitudes toward Blacks will report lower findings of illegal discrimination for Black complainants.
2. If aversive racism is operating, views towards Blacks and women will be favorable, but the decision maker’s race and gender, ambiguity, impact and other justifications will lead the case not to be considered discrimination.

2.a. Investigators who report explicitly positive attitudes toward whites will report lower findings of illegal discrimination for Black complainants (as compared to white complainants).

2.b. Investigators who report high levels of ambiguity will report lower findings of illegal discrimination for Black and female complainants (compared to whites and males).

2.c. Investigators who report that they have minimal impact over their cases will report lower findings of illegal discrimination for Black and female complainants (compared to whites and males).

2.d. Investigators who report that there are other justifiable reasons for the complainant's differential treatment will report lower findings of illegal discrimination for Black and female complainants (compared to whites and males).

2.e. When high levels of ambiguity are reported in combination with low impact or other justifications, the proportion finding illegal discrimination will differ by the decision maker's race and gender.

2.f. If ambiguity, impact and other justifications are controlled for, then the decision-makers race and gender and the complainant race and gender will have no impact on the proportion finding illegal discrimination.

3. Alternatively, the law may operate as an objective and neutral process. If the law operates objectively, then neither explicit attitudes, aversive racism nor the

decision maker's characteristics will influence whether the investigator determines a case to be illegal discrimination.

CHAPTER 3 MEASURING BIAS IN INVESTIGATIVE AGENCIES

Relatively little research has been conducted on the civil rights investigative process. Before describing the methods used to study this population, I examine two reasons that the civil rights context has not been widely researched. First, the shared responsibility of the civil rights complaint process makes it cumbersome. Secondly, the laws and terminology make it difficult to access. To begin, I address the complexities of the complaint process and obstacles associated with locating investigative agencies.

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against an employee or prospective employee (www.eeoc.gov). Because more than 90,000 cases are filed each year, the EEOC's Office of State and Local Programs establish Work Sharing Agreements (WSAs) and contracts with agencies in almost every state. These agencies are known as fair employment practice agencies (FEPAs) and are generally well-trained, professional offices that are more accessible than a regional EEOC office. These offices are easier for a complainant to access because they are physically located in the city or state where the individual lives. Although technology has made it possible to submit a complaint electronically, the EEOC and many local agencies do not accept complaints online. In addition, often a complaint must be notarized before it is officially filed, so having a local FEPA allows the complainant to review and revise a complaint prior to notarizing it.

If two offices enforce similar laws, a complainant can decide whether to file in the state or federal office as a matter of convenience. Occasionally state and federal laws offer different protections, which raises the question of the best office to file the complaint. There is no straight forward response to this question. In addition to federal law, most cities and states have their own laws that prohibit discrimination. State and municipal laws are often similar to the laws enforced by the EEOC, but in some cases offer greater protection. An individual may be protected by local ordinance, but not given federal protection against discrimination. If able, an individual almost always “dual-files” under all relevant state and federal law when filing with a FEPA. This is critical because it allows the complaining party to cite all relevant laws, and list all relevant details in a single complaint. If an individual needed to file a complaint in two separate offices, logistically it would be very difficult to recall which aspects were named in the federal complaint vs. the state or local complaint. To maintain all of his or her legal rights, a complainant would be required to list the entire set of facts under city, state and federal law causing multiple investigations and massive duplication of work. It is not uncommon for an individual to file with two offices on the same issue. When this happens, the federal office generally contacts the local agency and one of the filings is dismissed. Overall work-sharing agreements streamline the process for everyone involved, but it is undoubtedly a confusing and complicated process. Another important consideration is that a complaining party has very limited recourse if an error is made that jeopardizes the complaint. But filing an allegation in one office, as the process requires, any error can result in a complete loss of his or her legal rights.

Despite potential risks, work-sharing is usually beneficial for both the federal and local agency. The EEOC is able to complete double the number of cases it could handle alone. Partnering with the EEOC in a work-sharing agreement helps the local agency establish credibility, access federal training resources and bring in revenue. Because local agencies bear the responsibility and cost of investigating complaints under their local laws, a work sharing agreement helps offset those investigative costs. To be considered for a partnership agreement, however, the local entity must be substantially equivalent to the federal process. In other words, local agencies must have similar laws, use common terminology and must process cases efficiently to be considered for a work-sharing agreement. The EEOC reviews every determination to ensure competency, signs-off on the determination or sends it back for re-work and then closes the federal claim. To accomplish this close working relationship, states sometimes have to revise their statutes so that their laws reflect federal anti-discrimination statutes. State and local agencies also receive training on investigative techniques, terminology, and are provided legal guidance to ensure that procedurally the cases are handled in the same manner as the EEOC. To this end common terminology has been established for agencies participating in work-sharing agreements. Definitions for relevant terms appear in the Appendix.

Training

Civil rights workers certainly have a better understanding of what would be considered illegal discrimination than a lay person, but much of this is acquired through on the job training. Prior to the economic crisis that began with the year 2000, the EEOC offered training to state and municipal agencies, but the majority of this

training was designed to teach investigators how to apply legal standards, how to conduct a thorough investigation and write clear and concise reports. Neither EEOC staff nor state and local agencies are required to complete a minimal level of training (Wilson 2010). Unlike investigators under the Department of Housing and Urban Development (HUD) who examine housing discrimination, EEO investigators can theoretically complete an investigation of employment discrimination and make a recommendation without receiving any training. Although state and local agencies guard against this, and do their best to sufficiently train their staff, with minimal funds and no mandate, training is often not a priority. In addition, some scholars maintain that the legal training received is inconsistent with emerging research in the social sciences on implicit bias. Research by the American Bar Association demonstrates that the legal model continues to seek evidence of purposeful intent to discriminate, and discredits underlying and non-conscious aspects of bias (Nelson et al 2008). The legal training that civil rights staff receive may exacerbate underlying bias because the legal profession gives “little credence to social science, in large measure because their worldview and legal training is inconsistent with the behavioral realist perspective that is the norm in social scientific research” (Nelson et al. 2008: 116).

Gaining Access

State and local agencies investigate the majority of cases filed in the United States. In 2009, FEPAS investigated and closed 57% of the 93,277 complaints filed (EEOC website). Although local agencies are certainly easier to access than the EEOC, they are by no means easy to access. First, they are not well funded and often do not have a visible presence in state and local government. Second, enforcement agencies are

bound by confidentiality, so the investigative process itself is a closed process that is not well understood.

As a past-Director of an enforcement agency, I was familiar with the process of filing a complaint of discrimination. Despite my familiarity, I had difficulty locating and accessing offices to invite them to participate in this research. Part of this difficulty is that civil rights enforcement agencies have different titles and different locations within government, with almost no standardization. An office's visibility generally depends upon how state lawmakers viewed the role of the office when it was established. Some investigative agencies are "human rights" offices, others are "equal rights," while still others focus on "civil rights." Many investigative state agencies fall under another state department. South Dakota's office is located within the Department of Labor, specifically the Division of Labor and Management. Whereas, in Arizona, a complaint of employment discrimination is filed through the Civil Rights Division of the Arizona Attorney General's Office. Jurisdictions are not required to have a local office. Consequently some do not maintain any state office. Alabama does not have a state agency that investigates complaints, so someone experiencing employment discrimination would need to file a complaint through the federal equal employment agency. The net result of these different approaches is that agencies that investigate discrimination are difficult to locate.

The agencies who participated in this research were state enforcement agencies located in Nebraska, Colorado, Wyoming and Iowa, and municipal agencies in Lincoln and Omaha, Nebraska. Each of the agencies was specifically selected because it maintained a federal work sharing agreement and was in good standing with the EEOC.

The Wyoming office that handles complaints of discrimination was the only office that was part of another state agency: the Labor Standards Division of the Wyoming Department of Employment (WLSA). The Colorado Division of Civil Rights, the Iowa Civil Rights Commission and the Nebraska Equal Opportunity Commission were easier to locate because they are each larger and independent state agencies. Physical access is an important element because filing a complaint of discrimination is often a difficult process for the individual alleging discrimination. It can be embarrassing to discuss details of an allegation, or time consuming, and problematic to take time off of a job to file a complaint. Obstacles to locating a website or physical office may further deter an individual from the complaint process, which is their only avenue for addressing potentially illegal behavior.

Feasibility Study

This study was designed as a feasibility study because I was unsure whether I would have access to an adequate number of respondents and whether aversive racism could be accessed via survey and vignette with this particular population. Feasibility studies generally examine whether a particular approach is an effective response to a problem (Bryce 2008). My goal is to determine if aversive racism and/or implicit bias processes contribute to low findings of “cause” among civil rights workers. In other words, does this theory offer any guidance on why so many civil rights cases fail to move forward. Another reason for designing this as a feasibility study was the relatively small number of civil rights agencies and investigators from which I could sample. I felt it was important to survey FEPA investigators because of their accessibility and standardized

procedures and terminology. Although some states have numerous smaller commissions, these commissions are often staffed with volunteers who may not use the same terminology, or receive the level of training that a FEPA undergoes. I approached agencies and placed fliers at annual Director meetings in both 2008 and 2009 and followed up by phone numerous times. Despite regular recruitment I was able to get a firm commitment from only six agencies, in four states. In 2009 there were roughly 90 FEPAs in the United States, so my sample represents 6.7% of the nation's fair employment practice agencies.

Gaining access to Civil Rights Workers

I was unsure if agencies would grant me access to their investigators and the internal decision-making process because this research has the potential to be politically sensitive. I received a response of four out of six western and Midwestern states. A total of 82 respondents participated. Figure 3.1 illustrates the gender and race distribution of the civil rights workers in the sample. This distribution is what I expected based on my prior work with civil rights agencies.

Issues That Impact Validity

Because I had to navigate complicated legal, political and emotional issues with directors of agencies in order to conduct my study, I have some concerns about the validity of the findings. Agencies and civil rights workers are sensitive to how they are portrayed to the public. I did not ask about any "real" cases or ask to review any of their open cases, in order not violate legal confidentiality rules. I also ensured agencies that

the results would not be reported in a way that would threaten their existence and future funding. I was also concerned that participants would strive to present themselves as non-biased or non-discriminating because of the type of work that they do. I cannot be sure that I was able to overcome this last challenge, but I did strive to develop an instrument that was hard to “game” by randomly assigning participants to vignettes using different race/gender characteristics.

A Culture of Confidentiality

State and federal law generally requires that the administrative complaint process remain confidential until the case is filed in court. If the case never makes it to court, the discriminatory act is never known to anyone outside the parties directly involved (and the investigative agency.) Even once a decision is rendered, or when a complaint is settled during this investigative process, maintaining confidentiality is almost always part of any monetary settlement drawn up between the parties. The practice of confidentiality is so strongly enforced that even the employer is not aware of the case unless the action is filed or mediation is attempted. This allows an employee to speak freely with the investigative agency and the employer will never be aware of those conversations unless the employee files an actual complaint (EEOC website). The culture of confidentiality was designed to protect the parties' reputations, but it also creates a shrouded and inaccessible process. The strong culture of internal confidentiality has inhibited public awareness and not encouraged academic research. This is likely the reason that investigative bias has not been studied in the same fashion that racial profiling has within police departments. Despite the obstacles, four of the six states participated with a 78% response rate.

There are several reasons why two of the six states did not ultimately participate. Views on discrimination are complex and difficult to access even once one has gained entry to the agency and the process. Both institutional and individual obstacles to access exist. At the institutional level, political pressures and funding concerns are very powerful deterrents to opening one's doors to research. A handful of agencies discussed participation during the initial research request. As the survey date grew closer one state dropped out without explanation. Another state agency declined to participate indicating that impending budget cuts made this an inopportune time. Those that did participate were very interested in confidentiality and how the findings would be disseminated. Enforcement agencies frequently endure a higher level of scrutiny dissimilar from other governmental entities. Their uncertainty about participating in this research project is not unwarranted, given the current U.S. climate of downsizing government agencies. According to the EEOC many FEPAs experienced economic shortfalls and had to decrease the number of investigators employed from 2009 to 2010.

Challenges to Accessing Aversive Racism

Despite the many challenges inherent in studying racism among civil rights workers, they are a crucial group so I was determined to find a way. In addition to accessing the population, I explored several options for studying this group. I considered observations of client intakes, qualitative interviews with staff and clients and online surveys. Ultimately I selected an experimental design using vignettes even though I was still unsure if this approach would be effective in capturing aversive racism, if it exists. Although the medical profession has very recently begun to examine how aversive racism

in physicians impacts treatment decisions (Penner et al. 2009), to my knowledge no similar research has been done in the legal field. Even more to the point, no research has been done with groups specifically trained to identify disproportionate treatment based upon ascriptive characteristics.

The Illusion of Objectivity

Civil rights investigators operate in a quasi-legal world: they follow legal guidance and court cases, but do not have the same rules of evidence or authority that a court has. Unfortunately, the quasi-legal context may be more prone to bias because it operates under an illusion of objectivity (Irwin and Real 2010). Most individuals have a tendency to overestimate how free their own judgments are from bias and they maintain an “illusion of objectivity” (Irwin and Real 2010, Taylor and Armor 1996). Despite decades of social science research on bias, and recent research among professional communities, the legal community has remained at arm’s length from the topic of implicit bias. Some maintain that the framework of the law or legal theory immunizes lawyers and judges from the stereotypes, attitudes and implicit associations, at least in the courtroom. Irwin and Real (2010) suggest that the study of implicit bias is especially critical for the legal community precisely because of the illusion of objectivity.

Procedure

Two state agencies that I approached declined to participate, so I traveled to the remaining four states where directors agreed to participate to collect survey responses. I requested to speak with all staff and investigators in a regularly used training room, or as part of a pre-arranged staff meeting, and asked them to set aside roughly one hour to meet

with me. At the start of the meeting, I explained that I was a director of a state agency in their region, that I had left to become a faculty member and was studying how civil rights workers render decisions in cases. After explaining informed consent, I asked that anyone who was interested in participating should hand me the signed consent and I would give them an envelope with a survey and vignette. I further explained that the vignette was adapted from a “real” case investigated by the agency that I had worked for and that the decision was accepted by the EEOC. I did not indicate whether it was a “cause” finding in the actual case. I explained that they could work at their own pace and either remain in the meeting room or go back to their workplace. The goal was for the investigator to be in the same setting they would be when conducting actual work. Roughly half of the investigators left the room to work in another location. Respondents were provided envelopes and instructed to place the vignette in the envelope before taking out Part II of the study. Part II included an opinion survey of explicit attitudes on politics, race, gender and the investigative process. To guard against order effects, I requested that they submit responses to the vignette prior to completing the survey, so that they were not inclined to revise their discrimination findings after being asked about personal views. The survey questions measuring explicit and implicit measures are described below and can be found in the Appendix.

Design

I assumed that civil rights workers would assert non-discriminatory or neutral views in any survey, but I hoped that using vignettes would be a creative way to ascertain whether different levels of aversive racism or implicit bias are operating. A vignette detailing an allegation of discrimination allowed me to examine cognitive processes that

are harder to consciously control and to capture. Vignettes are detailed descriptions of social situations that present factors central to the issue being examined (Ridegway and Correll 2006), and are increasingly being used by scholars studying aversive racism (Penner et al. 2009, Green et al. 2007). In the vignette I use, an employer implements a new policy that requires background checks of all of its employees. The employee presented in the case has been terminated from his position because the employer found an undisclosed misdemeanor fraud conviction that occurred ten years prior to the background check. The employer did not terminate all employees with law violations, which is what causes the employee to believe that he has been discriminated against (Appendix B). The vignette was adapted from a case investigated and closed by a state enforcement agency located in the region being studied. The agency's decision on the case was adopted by the EEOC.

The vignette includes a high level of detail because shorter versions of the case were pre-tested and individuals indicated that it lacked sufficient detail on which to make a recommendation. To test aversive racism, it is important to present a case with factors that might activate implicit bias. The vignette contains facts about law violations because crime research suggests law violations frequently activate a level of bias (Mitchell et al. 2005). The law violation the complainant has on his record is unemployment insurance fraud. The comparator has three offenses including assault, disorderly conduct and obstruction of law/resisting arrest. To explore the relationship between investigator bias and a finding of illegal discrimination, I intentionally used a situation that is ambiguous. A more detailed description was purposefully not included, because it does not reflect the reality of many civil rights cases.

In addition, ambiguity is one factor I specifically aimed to test, so some details were specifically excluded. Informational uncertainty can influence decision-makers' judgments (Albersson and Ettliln 2004, Dovidio and Gaertner 2007), so specific areas of uncertainty were created. For instance, the employee in the vignette indicates that other employees are given more than a week to clear up their criminal records, and that the company "retains other employees who have recent criminal (felony and misdemeanor violations)." The investigator is given no factual bases for this statement, and no means of checking the facts. After reading the vignette, the civil rights workers is asked to respond to questions about how they reached a recommendation in the case, and ultimately whether they would recommend a finding of "reasonable cause" that discrimination occurred, or "no reasonable cause" that discrimination occurred (Appendix B).

Experimental Design

Vignettes make it possible to systematically vary the complaining party's characteristics, while leaving all of the other aspects of the case intact (Ridgeway and Correll 2006, Alexander and Becker 1978). Using a between-subjects 2 X 2 factorial design I randomly assigned civil rights workers to four groups (white male, white female, black male and black female). I stacked the vignettes in alternating order before presenting them to respondents, so that participants were randomly assigned to "investigate" the vignette and make a recommendation in the case. The experimental model allows for analysis of the main effects of race and gender, as well as the interaction of race by gender. Furthermore, by employing a vignette that respondents

recognize as “real,” this model allows for increased confidence that their responses and reasoning will be similar to judgments they make in real situations (Gerber 1994).

The distribution of cases was relatively even across complainant type (Fig. 3.2). Over 67% of the respondents are men and more than 68% were white, so an insufficient number of cases were assigned to investigators who are minorities and male. I handled the lack of cases by examining the outcome of all cases involving Black clients and then by all female clients. This method could not increase the number of decision makers who were minority and male. The lack of cases made it impossible to run a three way interaction between the decision maker race and gender and complainant race/gender.

Patterns of Bias

I anticipated that one of three patterns would emerge: (1) explicit or old fashioned racism; (2) implicit and aversive racism; or (3) neutrality, or the absence of explicit and implicit bias. If explicitly negative attitudes were high on race and gender, I expected to find low findings of race and gender discrimination. If attitudes towards Blacks and women in authority are generally positive, then differential case outcomes must associate with some other variable. Because the fact pattern of the vignette remains the same, differential outcomes would be associated with factors like the race and gender, age of the decision maker, or the race and gender of the client. If this is the case, it indicates an implicit bias is operating. Other aspects may also implicitly shape case outcomes.

If aversive racism is operating, a unique pattern will emerge: attitudes toward Blacks will be positive, contextual variables like ambiguity, justification and perceptions

of impact will also be present, yet case outcomes for Black clients will be low. I anticipate a similar pattern with regard to sexism: individuals will demonstrate positive attitudes toward women in authority, but contextual variables like ambiguity, justification and perceptions may impact case outcomes causing fewer cause findings for women. Finally, it could be that through training or awareness, that bias is limited in this environment. If no patterns emerged and case outcomes are relatively uniform, this pattern would indicate an absence of explicit or implicit bias.

Concepts and Measures

DEPENDENT VARIABLES

The two dependent variables are continuous variables measuring illegal discrimination. After reading the vignette, civil rights workers were asked to determine whether the complainant's experience amounted to illegal discrimination using a scale of 1 to 5, (1= "no cause" to believe discrimination occurred; 3 = weak, but a "cause" case, and "5" = strong belief that illegal discrimination occurred). Any score of 3 or higher indicated "illegal" discrimination, with higher scores indicating stronger perceptions of illegality. Cause findings on race ranged from "1" to "5" ($M = 2.3, SD = 1.3$). Similarly cause finding on the basis of sex ranged from 1 to 5, ($M = 2.3, SD = 1.3$). The relationship between the two DVs requires explanation. The intersection of race and gender are inseparable at the individual level: an investigator cannot consider an individual as purely one and exclude the other. From a legal framework, however, the two are often parsed out and a case may be deemed illegal discrimination on one basis but legal on the other. For instance, a complainant could file a complaint of discrimination on the basis of being a woman and being black, but the investigator will generally examine evidence and apply legal theory first on one basis, then repeat the same process on the second basis. Even though scholars argue that discrimination is better understood as a broader concept that encompasses both sexism and racism (Watson et al 2002) and the courts have recognized intersectional claims for well over a decade (*Lam v. University of Hawaii*), investigators typically conduct a separate analysis of race and gender discrimination.

The two dependant variables of “cause” based on race and “cause” based on gender were correlated (.645), but not identical. I purposely did not combine the two to create one variable because these are almost always investigated as separate bases and therefore it is important to analyze them separately.

INDEPENDENT VARIABLES- Explicit Measures

Attitudes toward blacks (ATB). This scale includes ten positively and ten negatively worded items that measure explicit attitudes towards blacks Appendix X). Although Brigham (1993) used the scale to measure white college student attitudes toward blacks, I asked all respondents to complete these questions, not just white respondents. The scale has been used in a number of studies and has emerged as a reliable measure of overt attitudes toward Blacks (Penner et al. 2002, Maeder 2009, Dovidio, Kawakami and Gaertner 2002). My use of the scale yielded an alpha of .85, and principle components factor analysis revealed six dimensions that accounted for 53% of the scale. Some items were not as strongly correlated but I included all items in order to keep Brigham’s (1993) scale intact. Two respondents were missing data on four items, so I used the mean of the available items if there was a response on at least fifteen questions. Respondents selected from 1 (*strongly disagree*) to 5 (*strongly agree*) with higher scores indicating a more favorable attitude toward Blacks. Responses ranged from 2.6 to 5.0, with a relatively high mean indicating overall positive explicit attitudes toward Blacks ($M = 4.4, SD = .48$).

Attitudes toward whites (ATW). Gaertner and Dovidio (2007) recognized that discrimination is not just reflected in behaviors *against* blacks or other minority groups,

but discrimination may also occur with attitudes that are *in favor of* whites. It was important, therefore to capture attitudes toward whites. White favoritism may shape a more subtle form of discrimination. Brigham (1993) developed a scale similar to ATB to measure blacks' attitudes towards whites. His scale yielded an alpha of .75 and consisted of 6 positively worded and 14 negatively worded items. Although Brigham's scale included only Black individuals' "attitudes towards white," I did not limit the responses to Black respondents only; I included all responses. There were no problems associated with this as only one question overlapped for both scales, and the final alpha was higher than Brigham's original scale ($\alpha=.81$). Two items were missing responses, so I computed a scale using the mean of the items if at least eighteen had responses. Respondents selected from 1 (*strongly disagree*) to 5 (*strongly agree*); with higher scores indicating a more favorable attitude toward whites. Responses were similar to the ATB scale: ranging from 2.7 to 5.0 ($M = 3.8, SD = .48$).

Gender and Authority Scale. Explicit attitudes towards women were measured using the Gender and Authority Measure (Rudman and Kilanski 2000). This scale consists of 13 questions that ask the respondent to indicate a preference for a male or female in an authoritative role. Respondents express agreement with each item on a scale ranging from 1 (*strongly disagree*) to 5 (*strongly agree*). Questions include who they look up to, whether men make better leaders, whether they would prefer a male college professor, whether they prefer a male or female surgeon for a serious operation, and nine other questions. Items indicating a preference for women were re-coded. Rudman and Kilanski (2000) first used the Gender and Authority Measure (GAM), to measure explicit attitudes toward women in five areas of influence (legitimate, expert, reward, coercive,

and referent). Their original use of this scale included 15 questions that demonstrated high reliability ($\alpha=.82$). When I ran the scale with all fifteen items it yielded an alpha of .36. Due to the lower reliability, I dropped two questions: “I would rather be stopped by a woman police officer” and “If I were being sentenced in court, I would prefer that the judge be a woman.” The resulting scale is made up of 13 items with a Cronbach’s alpha of .65. Within the thirteen items, two question were missing 3 items, so I computed this scale using the mean of the available items, if at least nine of the items had a response. Respondents selected from 1 (*strongly disagree*) to 5 (*strongly agree*) with higher scores indicating a preference for women in positions of authority. Responses ranged from 2.0 to 4.3 ($M = 3.5, SD = .45$). Therefore there is a slight preference for women in authority for most of the items.

INDEPENDENT VARIABLES-

Aversive Racism Scale Development. Gaertner and Dovidio (2005) hypothesized that aversive racism is more prevalent when certain environmental and attitudinal factors are in play. I had hoped that questions related to an investigators subjective measurement of ambiguity and impact, and other justifications would come together in an Aversive Racism Scale. The items did not come together as anticipated. As detailed below, hypothesized individual elements of aversive racism were broken out as separate measures to explore their effect independent of one another.

The overt demonstration of non-racist expression, despite underlying racists’ thought or values make up the dual elements of aversive racism (Dovidio and Gaertner 2007). When it came to measuring explicit attitudes, there were a number of scales

available to select from. To my knowledge, however, a scale operationalizing aversive racism has not been created. In prior studies aversive racism has been measured using Implicit Association Tests (IATs) in conjunction with explicit measures. This approach is insufficient in my opinion, because it does not take into account the three elements that theorists believe contribute to aversive racism. To understand and capture the concept of aversive racism, therefore, I began by developing a scale relevant to the civil rights context. Following aversive racism theory, I developed measures to capture the three dimensions of aversive racism: 1) ambiguity: the amount of ambiguity present in the civil rights investigative process; 2) influence: the amount of influence or impact that an investigator feels they have over the case, and 3) justification: whether the investigator considers justifications other than the protected basis. Three items measure each dimension. Because scales are generally more reliable than single-item scales and easier to present and interpret (Nunnally 1978), I assessed whether the nine items really capture one underlying dimension or if they form separate dimensions. I evaluated the reliability and the bivariate correlations among the items. As a scale these nine items have low reliability ($\alpha = .094$) and some of the correlations are negative. In addition, factor analysis revealed that these nine items do not measure one phenomenon; they are not a unidimensional scale (Nunnally 1978). Consequently, the three aversive racism dimensions are included as three separate measures: ambiguity, impact and justification.

Ambiguity. When persons are faced with a situation where the normative response is clear, most people will not discriminate. Explicit bias aside, in clearly discriminatory situations, most individuals identify the situation as discriminatory. Implicit bias is more prevalent in situations where the normative structure is weak, the

guidelines for appropriate behavior are unclear or informational uncertainty exists (Blader 2007, Dovidio and Gaertner 2005). To simulate ambiguity, the vignette included in this research was purposely complicated and detailed. After reading the vignette, participants were asked whether the case “was ambiguous or unclear, and if so what aspects were unclear.” They were then given a follow-up question about whether they had enough information to render a decision. The reason for the design and directness of these questions was two-fold. First I hoped to understand whether the respondent considered the vignette ambiguous, and whether it was so ambiguous it would interfere with their ability to reach a decision in the case. Secondly, the questions were designed to create a certain pressure and to simulate how the complaint process works. Often the employer’s response to an allegation of discrimination is complicated and ambiguous. Despite a sometimes obvious need for additional information, pressure exists to accept the response and move forward without demanding clarification or additional evidence.

When asked about ambiguity, 7% did not respond, 18 % felt the case was clear and 75% reported that the case was ambiguous. Respondents were then asked “Do you feel that you had sufficient information to make a recommendation in this case.” Despite the ambiguity, only 23% felt that the ambiguity was problematic enough to interfere with their ability to render a decision in the case. The remaining 77% of respondents indicated that the case was so ambiguous that they did not have sufficient information to make a recommendation on the case. Despite this, 93% the respondents who indicated the case was ambiguous proceeded to render a decision as to whether discrimination occurred. The fact that many make a recommendation on the case, despite not having adequate information may be the result of social desirability. Participants may have felt an

obligation to respond because they were informed that the research was about “how civil right investigators make decisions.” This mimics the investigative setting where there are time constraints and case goals that pressure investigators into rendering decisions on cases in lieu of pursuing additional investigation.

Respondents were asked three questions regarding ambiguity and their ability to gather needed information. These questions included: 1) “In cases that I investigate, by the time I wrap up an investigation, I have all the information that I need to make a solid recommendation of “cause” or “no cause,” 2) “If I feel that information or evidence is lacking in the file, I have the legal authority to subpoena the evidence or testimony that is missing,” and 3) “The information presented by the parties to a case is often conflicting or ambiguous.” The first two questions were re-coded so that a higher score indicated higher levels of ambiguity. The first question had a higher level of missing data than every other variable. The reasons for this skip pattern may be that some persons that completed the survey were support staff, supervisor and persons who do not directly investigate, so they may not have felt that the question applied to them. The question regarding conflicting information from parties was negatively associated with the other two, so it was dropped from the scale. I created an Ambiguity scale using the first two questions. The Ambiguity scale yielded a low reliability ($\alpha = .52$), which is not uncommon for a two item scale. The scale ranged from 1.0 to 5.0, with a higher score indicating a higher level of ambiguity ($M = 1.8, SD = .90$).

Impact. Many experiments that seek to measure bias have used “helping behaviors” as a variable. Dovidio and Gaertner’s (1977) earliest experiments involving a stranded motorist explored the relationship between discrimination and willingness to

help. Their surprise finding was that liberals demonstrated a lack of willingness to help. It is important to examine why responders may fail to offer assistance. The diffusion of responsibility known as “bystander effect” occurs when persons fail to offer assistance because there are multiple potential responders. Gaertner and Dovidio (2005) maintain that individuals are more likely to help another individual when the “responsibility for helping was clearly on them” (pg. 621). Diffusion of responsibility will likely impact how one responds to a situation involving discrimination. If a civil rights worker feels that their investigation contributes little to the outcome of a case, either because their views are not taken into account or because administrative decisions carry little weight, aversive racism may have room to operate, causing a lower likelihood of “cause” findings.

Three questions capture the “impact” civil rights workers have on a case: 1) “I have an impact on cases within the agency that I work for; 2) “I have an impact on cases and my recommendation on a case is generally adopted by the ultimate decision maker (the commissioners, the director, or the EEOC); and 3) “I have a meaningful impact on the cases that I work on and I impact whether a complainant eventually files in court.” Respondents expressed agreement with each item on a scale ranging from 1 (*strongly disagree*) to 5 (*strongly agree*). This scale captures three levels of influence; within the agency, with a complainant, with decision makers beyond the agency and yielded a relatively high alpha ($\alpha=.88$). Higher scores indicate that the investigators feel they have more of an impact, while lower scores indicate that they feel they have little influence over the case. Scores ranged from 1 to 5 (M= 2.1, SD=.9).

Justification. Another element in theories of aversive racism is whether or not there is a justifiable reason for a particular outcome. Gaertner and Dovidio (2005) suggest that aversive racism is particularly pertinent in the legal context precisely because conflicting evidence offers nonracial justifications for actions. Respondents were asked whether “the information presented by the parties to a case is often conflicting or ambiguous.” Respondents were also asked about whether it is “permissible for an employee to consider how well an applicant will get along with co-workers, or fit into the company culture when hiring.” Another question designed to get at nonracial justifications includes: “It is perfectly acceptable to grant a preference to a qualified friend or acquaintance and would not necessarily be evidence of discrimination, even if persons in other protected classes were not hired.” The scale ranged from 1 (*strongly disagree*) to 5 (*strongly agree*), with a higher score indicating a greater willingness to accept justifications. These measures did not create a reliable scale so they were entered as individual variables.

Complainant Race and Gender. Investigators were presented with four different combinations of race and gender depending upon the vignette that they received: vignette # 1 involved a white male, vignette #2 a white female, vignette # 3 a Black male and vignette #4 a Black female.

INDEPENDENT VARIABLES- Other Implicit Measures

Gender. Respondents were asked their sex and the responses were coded in a dichotomous measure in which men were coded as zero, and women were coded as one. The sample was 67% women and 33% men, five cases were missing data on respondent’s gender. Some responses indicated that their gender was not applicable or they simply did

not respond to the question. I re-coded those who failed to complete gender information as “1” (refusal) and those who responded as “0.”

Race. Respondents were allowed to write in any race they personally identified; they did not select from a list of categories. Using their own terminology, individuals self identified as African American, Black, Asian, Hispanic, Multi, and White. Race was then re-coded to a dichotomous measure with 0 = white, 1 = minority (68% were coded as white, 6% were missing data, and the remaining 26% were coded as minority). A handful of individuals did not answer the question regarding their race or indicated that it was “not applicable.” Rather than simply excluding the cases with missing data, I coded those who failed to include racial information as “1” (refusal) and those who responded as “0.”

Age. Individuals were directly asked their age. Data on age was missing in 6% of the cases. Age ranged from 23 to 65 years of age ($M = 44.9$, $SD = 11$ years).

Political Views. In order to assess the effect of political views on perceptions of discrimination I asked respondents “How would you identify your political views,?” Respondents were given the three choices of “extremely liberal” “moderate” and “extremely conservative” to the question. Two individuals revised the category to reflect “liberal,” placing themselves on a political continuum. A total of 31% considered themselves “liberal to “extremely liberal.” The majority of the sample, 71%, identified themselves as “moderate.” Very few, 2.3% considered themselves to be “extremely conservative.” A handful of individuals indicated they were apolitical or left the question blank – two of these correlated with the Jehovah Witness faith. The other indicated “No

political views except to say it's all bogus and dishonest." I coded these type of responses as "self-identified neutral," which I discuss more in depth below.

Self-identified as "Neutral:" A handful of respondents wrote in comments that indicated they viewed themselves as objective or neutral. Questions regarding a respondent's demographic characteristics were open-ended, so the participant could write in information or leave it blank. It does not appear that skip patterns were an oversight because they did not respond with an expected category, or leave the space blank. Comments included statements like "N/A" as a response to race, gender, age, and religious affiliation. When asked how difficult it was "to make a recommendation on this case," (1 to 10, 10= extremely difficult), one failed to indicate a number, but commented "we are neutral and we look at the facts!" (emphasis in the original). These were coded as "neutral."

CHAPTER 4 RESULTS

Examining individual levels of racism and sexism will better inform our understanding of the factors that influence case outcomes in civil rights administrative processes. In this chapter I present the results of my investigation into whether civil rights workers unconsciously, or perhaps consciously, allow bias to impact the outcome of the cases they investigate. This study was designed as a feasibility study, and any results should be viewed in that light. Although the primary purpose was to determine whether aversive racism was operating in civil rights work, an underlying question was whether implicit bias could be measured using a survey approach. Significance levels were calculated at the .05 level, but caution should be exercised when drawing conclusions from this fairly small (n=82) and regional sample. My results are organized around the theories of racism and sexism presented in the prior chapters. Bias may be operating in this population in a number of ways: (1) If explicit or “old fashioned” racism or sexism is operating, explicit attitudes will be significantly associated with case outcomes. That is, explicitly negative views toward a group will result in lower cause findings for that group. (2) If implicit factors are operating, than the client’s race or gender will significantly influence the outcome of the case. (3) If aversive racism or sexism is operating, factors like ambiguity, justification and the decision maker’s perception about his or her influence over the case will significantly impact the case outcome, and (4) if none of these patterns is present, it supports the concept of neutrality of the process and an absence of bias, racism and sexism.

This feasibility study included four states, six agencies and 82 respondents. Participants were recruited from the staff of civil rights enforcement agencies located in Nebraska, Colorado, Wyoming and Iowa, and municipal agencies in Lincoln and Omaha. Of the 105 full and part time employees, a total of 82 individuals participated, for a 78% response rate. The sample included 22 (27%) men, 55 (67%) women, and 5 (2%) who did not indicate a gender. The majority, or 72% of respondents, were investigators charged with looking into allegations of employment discrimination. The remaining individuals, 28% of the sample, included volunteers, administrative law judges, Directors, administrative staff, or compliance and housing investigators.

The sample consisted of 68% white respondents, 26% indicated a race other than white and 6% declined to provide a response regarding race. The sample is racially comparable to federal employees, but included more women than a federal sample might have (EEOC.gov). In FY2009, almost 2.8 million women (44%) and men (56%) were U.S. federal government employees. Of these, 65.6% were White, 7.9% were Hispanic or Latino, 18.0% were Black or African American, 5.8% were Asian, 0.3% were Native Hawaiian/Other Pacific Islander, 1.7% were American Indian/Alaska Native, and 0.7% were persons of two or more races. Ideally I would compare my sample to the gender and race composition of federal civil rights investigators. To obtain that information, however, I would need to place a freedom of information act request.

Analytic Strategy

A second aspect of this feasibility study was to examine whether there would be variance in the vignette and responses, especially in light of the small sample size. To assess the effectiveness of experimental manipulation, I ran a series of one-way analysis

of variance (ANOVAs) tests to determine if there was a range of responses to case outcome. The dependant variables included outcomes for gender discrimination and for race discrimination, and captured the participant's opinion of whether the civil rights allegation amounted to illegal discrimination. The dependant variable reflects the investigator's perspective of whether or not discrimination occurred. Before running the analysis, I ran statistics to test for assumptions of normality, linearity, sampling distributions, and homogeneity of variance (Tabachnik and Fidel 2001). The assumption of linearity was not met, nor was the assumption of homogeneity of variance. The variance in many of my scales was very similar which made analysis problematic. The majority of participants responded similarly on case outcome: 59% found that there was no race discrimination (scored the case lower than "3") and 56% found no gender discrimination. This resulted in few significant differences between groups, when in fact there may be significant differences in a broader sample. The dependant variable was continuous, ranging from 0 (*no cause*) to 5 (*strong cause*) to believe that discrimination occurred. In a real-world, legal sense, a "3" would be viewed as a cause case, but this dichotomy is unnecessary for the research model, so I maintained the dependant variable as continuous. Because my sample was larger than 50, I used the Kolmogorov-Smirnov to test the assumption of normality, which was also not met. I was less concerned with these results because analysis of variance is not as dependant on the normality assumption (Norusis 2000). Because this was designed as a feasibility study, I moved forward with examining the results despite the failed assumptions. I will address the limitations of these results more in the last chapter, but they should be understood as exploratory findings and non-generalizable.

Summary of Statistics

I started the analysis by looking at the operation of explicit attitudes on case outcomes by examining the relationship between explicit racism and outcomes on race discrimination cases and explicit sexism and gender discrimination cases. I ran bivariate correlations to analyze whether the difference between the means of explicit attitude scales and case outcome were significant. If a pattern of aversive racism emerges, I would expect that explicit attitudes would be negatively correlated with implicit attitudes. Next, a 2 x 2 between-groups ANOVA tested for the effects of complainant race and gender as predictors of case outcomes. A 2 (male, female) X 2 (white, minority) design was used to test my hypotheses regarding the impact of decision maker race and gender on case outcome. I then added factors (ambiguity, impact and other justifications) to test for interactions. Finally, I ran an analysis of covariance to see if holding aversive racism factors constant changed the association between decision maker race and gender and complainant race and gender and case outcome. To test other potential influences on case outcomes, I explored factors such as decision-maker age, years on the job, politics and the refusal to provide demographic information. The findings are organized around the research questions presented at the end of Chapter 2 and restated in each section below.

Explicit Attitudes

To better understand the influence of implicit bias on case outcome, I started by trying to isolate the influence of explicit attitudes. If explicit negative or racist attitudes are associated with case outcome, then “old fashioned racism” is operating. It is also

possible that it is some combination of explicit attitudes and implicit attitudes that influences case outcomes. My first hypothesis predicted that participants with explicitly negative attitudes toward women would report lower rates of illegal discrimination for female complainants. As anticipated, civil rights workers overall had very positive attitudes about women in authoritative positions. This scale did not have responses that span the full possible range of the scale (2.0 to 4.3), and had a mean that was above the midpoint of the scale 3.5 (scale 1 to 5).

More positive perceptions of women in authority was associated with being less likely to find cause in a gender discrimination case ($r = -.10$). Because I have directional hypotheses I used a one tail test to examine an increase or decrease between explicit attitudes and outcomes. Interestingly, more positive views toward women in authority were slightly and negatively associated with cause findings. Investigators who felt more positively about women in positions of power were less likely to find that gender discrimination had occurred. This finding was contrary to my expectations.

My next hypothesis predicted that investigators who report explicitly negative attitudes toward Blacks would report lower findings of illegal discrimination for Black complainants. Again, I anticipated that those working in the area of civil rights would have overall positive attitudes towards Black individuals. The scale capturing attitudes toward Blacks was negatively skewed ($Sk = -1.3$), with a limited range of responses (2.6 to 5.0) and a high mean 4.4 (scale 1 to 5). There were no respondents that selected the most negative explicit attitude toward Blacks. I ran bivariate correlations to assess if explicit attitudes toward Blacks were associated with case outcomes. Using a one tailed test I determined that the relationship was in the expected direction. Positive views

toward Blacks were associated with slightly higher findings of racial discrimination case outcome.

Patterns of Aversive Racism – Implicit Attitudes

Civil rights workers overall demonstrated favorable explicit attitudes towards minority groups (Blacks and women in authority), but these attitudes were not associated with findings of cause in case outcomes. An overall positive view of racial minorities, combined with lower rates of support in specific instances, is consistent with a pattern of aversive racism -- but this reflects only half of the pattern. Cognitive processing is more complex than this. To determine if aversive racism is operating, I measured the relationship between implicit and explicit attitudes. If aversive racism is operating I anticipated a pattern of low explicit racism and low cause findings, particularly when there is high ambiguity, minimal impact, and justification. To examine this, I first analyzed the association between the aversive racism subscales with case outcomes. If aversive racism is operating, I would expect positive explicit attitudes toward Blacks, and women in authority. Social desirability is clearly related to the theory of aversive racism, so I further anticipated that civil rights workers would demonstrate positive attitudes towards all groups, so attitudes toward whites (ATW) should also be positive.

Among the various scales, there were weak to moderate correlations (Table 4.1). Attitudes towards Blacks was strongly and positively associated with attitudes towards whites ($r=.696, p<.000$), and moderately and positively associated with views towards women in authority ($r=.366, p<.001$). Investigators with positive attitudes towards whites had an even stronger positive association with women in authority ($r=.507, p<.000$).

Thus, there is a relationship between positive attitudes towards whites, Blacks and women in authority.

Furthermore, if aversive racism is operating among civil rights workers, I should see positive bivariate correlations between explicit attitudes (ATB, ATW and Women in Authority) and negative bivariate correlations with implicit measures (ambiguity, impact and justification). The relationship between the explicit and implicit measures, however, was unexpected. I specifically examined the relationship between positive attitudes towards Blacks and elements of aversive racism. There is a positive, significant and moderate association between attitudes towards Blacks and perceived level of impact or influence over a case ($r = .416, p < .000$). There is a significant moderate negative association between attitudes toward Blacks and willingness to use other justifications to explain differential treatment ($r = -.241, p < .031$). Higher levels of ambiguity were associated with lower attitudes toward Blacks, which was expected, but the relationship was not significant ($r = -.050, p < .682$). According to aversive racism theory, high levels of ambiguity make it unclear what the normative response would be, so aversive racists will respond with ingrained values and beliefs. Attitudes towards women in authority was not associated with any of the aversive racism elements: ambiguity ($r = -.024, p < .838$), impact ($r = .101, p < .380$), or other justifications ($r = .075, p < .508$). The bivariate correlations are not consistent with prior work on aversive racism. A pattern of aversive racism should manifest as high levels on all of the scales except the dependant variable: case outcome. This pattern did not manifest, and the aversive racism hypothesis was not supported. Although many of the scales demonstrated an aversive racism pattern, in the end, Black males were the most likely to have a finding of cause.

Main Effects – Decision Maker Race and Gender

Before examining my second set of hypotheses, I examined the main effect of decision-maker race and gender on case outcomes. I ran a one-way analysis of variance (ANOVA) comparing case outcome on gender discrimination. For gender discrimination cases, there was no significant difference in the case outcome for female ($M=2.3$) and male ($M=2.1$) decision-makers ($F(1,73) = .136, p = .713$). Similarly, there was no difference in gender case outcomes for minority ($M=2.2$) and white ($M = 2.3$) decision makers ($F(1,76) = .002, p = .965$). I then employed a 2 x 2 between-subjects analysis of variance to explore the main effect of decision maker gender (male, female) when race (white, minority) is included in the model. The main effect of decision maker gender on a gender case outcome was not significant ($F(2,75) = .772, p = .466$). The main effect of decision maker race on the outcome of a gender discrimination case was also not significant ($F(5,75) = .323, p = .987$). Again, consistent with the expected pattern for no racism or sexism, neither the decision maker's race nor gender was associated with the outcome of a gender discrimination case. I then looked at the impact of decision maker's race and gender on the outcome of a race discrimination case. As Fig. 4.1. demonstrates, neither the decision-makers race ($F(1,70) = .001, p = .763$) nor gender ($F(2,70) = .694, p = .503$) are associated with race based cause finding. Contrary to expectations, and other scholarly research (Kulik et al. 2003) there was no association between individual characteristics of the decision-maker and case outcome. I discuss these findings further in the concluding chapter.

The Impact of Underlying Attitudes

Explicit bias was not associated with the case outcome in this small, exploratory sample of civil rights cases. Neither did the decision maker's race or gender affect case outcomes. I turned next to my second set of hypotheses to see which patterns might be present if aversive racism is operating. Hypothesis 2.a. predicted that investigators who report explicitly positive attitudes toward whites would report lower findings of illegal discrimination for Black complainants (as compared to white complainants). I employed analysis of variance to examine the effects of attitudes towards whites (ATW) and the complainant's race. With both ATW and complainant race in the model, a significant effect emerges if the client is Black ($F(1,76) = 6.739, p = .030$). Average cases outcomes of "3" or higher indicate that the decision maker saw the case as illegal discrimination. Cases involving Black complainants had a higher determination of illegal discrimination ($M = 2.7$) compared to white complainants ($M = 2.1$), but there was no effect when underlying attitudes towards whites were added to the model. Underlying attitudes (ATW) do not appear to contribute to the model. When both the race and gender of the complainant are added along with decision maker's attitudes towards whites (ATW), the underlying attitudes still do not contribute significantly ($F(1,17) = 2.92, p = .106$). Contrary to the hypothesis, attitudes toward whites had no significant relationship on a determination of illegal race discrimination.

I next examine the association between the ambiguity dimension of aversive racism and case outcome. Hypothesis (2.b) predicted that high levels of ambiguity would result in lower findings of illegal discrimination for Black and female complainants (compared to whites and males). To test this hypothesis, I again employed analysis of

variance; first running the model using client race (minority or white) and ambiguity with race discrimination as the dependant variable. In this model the assumption of homogeneity of variance was met. There were no significant mean differences either by client race, level of ambiguity or due to the interaction. Levels of ambiguity did not contribute significantly to the model ($F(8,54) = .517, p = .839$) neither through an interaction with the client's race ($F(6,54) = 1.058, p = .399$), or in conjunction with a client's gender $F(1,54) = .321, p = .573$). The interaction between ambiguity and complainant race and gender is not significant, therefore this hypothesis was not supported.

The third hypothesis relating to aversive racism predicted that investigators who report that they have minimal impact over their cases would have lower findings of illegal discrimination for Black and female complainants (compared to whites and males). My results indicate that the level of impact the decision maker feels they have in civil rights process does not affect the case outcome ($F(12,39) = .680, p = .760$), nor does it interact with complainant race ($F(7,39) = 1.496, p = .197$). Once again, gender does not contribute to a differential case outcome ($F(1,39) = 1.235, p = .273$). In short, the amount of influence the investigator perceives they have has little bearing on a case outcome. The only significant finding in this model was that Black male complainants had higher cause findings, but this did not appear to have any association to implicit attitudes.

I then ran the analysis using gender as a predictor for a finding of racial discrimination. The interaction of the complaints' gender and how much impact the decision maker feels they have was also not significant ($F(8,51) = .354, p = .386$). Contrary to the hypothesis, decision-makers' perceptions of having an impact on their

cases did not add significantly to the model, nor did it interact with factors such as the complainant's race or gender, to influence the outcome of a discrimination case.

The final factor relating to aversive racism occurs when the decision maker permits other explanations or justifications to influence a case. Hypothesis 2.d. predicted that investigators who accept justifications (other than race or gender) for differential treatment, will report lower findings of illegal discrimination for Black and female complainants (compared to whites and males). An analysis of variance examined complainant's race with the investigator's willingness to make justifications. Once again, although it approached significance, it revealed no significant relationship between the interaction and case outcome ($F(1,70) = 3.48, p = .066$). This analysis was repeated using the complainant's gender, and no significant relationship emerged ($F(3,67) = 1.26, p = .297$). The relationship between justifications and decision maker gender was significant, however ($F(3,24) = 3.041, p = .048$). This was an unexpected finding. Although studies have shown that women may have different perceptions of discrimination than men (Kuran and McCaffery 2008), I did not expect gender to influence the decision maker's willingness to accept non-racial justifications.

The combined effect of the elements of aversive racism were then put into one model. Hypothesis 2.e. predicted that when levels of ambiguity are reported in combination with low impact or other justifications, the proportion finding illegal discrimination will differ by investigator's race and gender. When I included the three aversive racism factors of ambiguity, impact and justification into one model, none of the relationships were significant. I also tested the combination of factors using complainant gender, and there were no significant interactions or main effects for any of these

relationships. The lack of a significant relationship is surprising and may be the result of minimal differences (in cause findings) between the groups in my sample.

Complainant Characteristics in a Race Discrimination Case

Hypothesis 2.f predicted that if ambiguity, impact and other justifications are controlled for, then neither the decision maker's race and gender nor the complainant's race and gender will affect case outcome. Prior to running this analysis I examined the main effects of complainant's race and gender on a case –aside from all other factors. The decision maker's race and gender had no impact on case outcome in any of the prior models. Complainant's race however, had a significant influence in two of the prior models. Consequently, I focused first on the impact of the client's race on the outcome of a race discrimination case. A significant difference in race discrimination cases appeared for Black complainants compared to white complainants ($F(1,75) = 9.079, p = .004$). The complainant's race accounted for ten percent of the variance in a race discrimination case. As Figure 4.2 illustrates, the mean case outcome for a white complainant was 1.8, while the mean case outcome for a black complainant was 3.0 on a race-based claim. This is an important finding because a measure of “3” indicates illegal discrimination. These results demonstrate that Black complainants are significantly more likely to have their case ruled as illegal discrimination under experimental vignette conditions. To examine if gender would impact this relationship the complainant's gender was added to the analysis. The complainant's gender did not have a significant main effect ($F(1,73) = .763, p = .385$) nor did complainant race and gender interact to influence a different case outcome ($F(1,73) = 2.212, p = .141$). This finding does not follow the

pattern of 2010 cases filed with the EEOC, in which 5% of gender cases were determined to be cause, and only 3.5% of race cases were determined to be cause cases.

Intersections of Complainant Race and Gender

Respondents received only one case, but there were four variations of the complainant's race and gender. Cases were re-coded to allow for further examination of the differences in case outcomes based upon the complainants' race and gender : 0=white male, 1= white female, 2=black male and 3=black female. There were roughly the same number of cases in each category (18 to 21). This combination of race and gender through recoding resulted in slightly different results for the between subject test, but the outcomes were identical for both analyses. Using the coded cases, there was a significant difference between case outcomes depending on complainant characteristics ($F(3,73) = 6.143, p = .01$). Complainant characteristics accounted for 14% of the difference in case outcomes. A post hoc analysis revealed that the significant differences ($p = .024$) were between cases involving Black males ($M = 3.02, SD = .27$), as compared to those involving white males ($M = 1.78, SD = .29$) or white females ($M = 1.9, SD = .28$) (Fig 4.2).

Complainant Characteristics in a Gender Discrimination Case

The results discussed in the prior section were related to race discrimination cases. To examine whether complainant characteristics influence gender discrimination cases, I ran an analysis of variance examining the main effect of the decision maker's attitudes on case outcome. The results were not significant ($F(1,73) = 2.70, p = .105$). I then used both race and gender as an interaction term. Although the results were not significant, I examined the trends and the findings were not in the expected direction.

White female complainants have the lowest findings in gender discrimination cases. Their mean case outcome was lower than any other group.

The results of the gender discrimination outcomes did not follow the expected pattern. Although the results were not significant, the pattern was unusual. As Figure 4.3 demonstrates, Black male complainants have the highest findings of discrimination in a gender discrimination case ($M=2.6$). Black men scored higher than white female complainants ($M=2.0$), Black female complainants ($M=2.1$), white male complainants ($M=2.4$). This is an unexpected pattern. In my study, men (and Black men in particular) fared much better as the complainants on gender discrimination.

Controlling for Elements of Aversive Racism

After focusing on complainant characteristics, I returned to my hypothesis of aversive racism. I started with the assumption that the complainant's race and gender might be interacting with factors of aversive racism. I theorized that if ambiguity, impact and justification were held constant, this would diminish the impact that a complainant's race and gender have on the outcome of the case. In other words, if a case is highly ambiguous, the complainant's race or gender will more strongly influence the case outcome. I ran a test of between-subjects ANCOVA to examine the effect of ambiguity occurring in conjunction with other aspects of aversive racism. Compared to regression, the use of ANCOVA is particularly useful to increase statistical power (Tabachnick and Fidell 2001). The main effect of ambiguity was not significant ($F(1,56) = .367, p .547$). Whether the respondent felt they had an impact on the eventual outcome of a case was not a significant predictor of the outcome of the case ($F(1,56) = .001, p =.980$). In this model, however, whether the respondent considered non-race and non-gender related

justifications, did significantly impact the outcome of a race discrimination case ($F(1,56)= 9.155, p =.004$).

Other factors

The homogeneity of my sample led to some problems interpreting the data. Similarity of responses led to a restricted range on many of the explicit and implicit measures. Most of my hypotheses focused on factors related to a specific type of implicit racism: aversive racism. This is a very narrow focus and restricted my findings. I decided to examine implicit bias a little more broadly by looking at decision maker characteristics other than race and gender. Factors like the decision maker age, years on the job, and political affiliation may influence other underlying attitudes not captured by my survey. I ran correlations on these to explore their relationship with case outcome. Of these factors, age and the time on the job were moderately and positively correlated to one another. Age was moderately and positively correlated with findings of racial discrimination ($r=.240, p<.041$). Age was not correlated with gender discrimination ($r=.174, p<.146$). Individuals with more time on the job were more likely to find cause on race discrimination cases ($r=.320, p<.005$) and gender discrimination cases ($r=.349, p<.003$).

Political affiliation is another decision maker characteristic that scholars argue influences implicit bias. This sample offered very little variance with regard to political affiliation as 71%, identified themselves as “moderate.” Political affiliation did not have an association with case outcome. Consistent with the findings of Dovidio and Gaertner’s early work, liberals had a lower mean than conservatives, but the very small

number of individuals in the conservative category ($n = 2$) suggest caution in drawing conclusions from this sample.

Few cases had missing data. Some cases had “informative” missing data, for example a respondent wrote: “my race and gender are irrelevant” and “NA.” Again there were no meaningful differences between case outcomes for cases where the respondent refused to indicate race, gender or political affiliation.

Summary

Many of the hypothesis set forth in this study were not supported. Explicit attitudes were not associated with case outcomes, so there was no support for old fashioned racism. Similarly, factors that influence aversive racism (ambiguity, impact and justification) also were not associated with case outcomes. There was, however, support for the operation of implicit bias, because the complainant’s race was associated with different case outcomes despite an identical fact pattern presented in the vignette. This pattern is consistent with implicit bias because no external factors explain the different outcome. Explicit attitudes do not explain higher cause findings for Black men, and gender does not explain the higher cause findings for Black men. It appears that claimant race is the factor driving the outcome in each of the models I ran. In the next chapter I will address whether a legal analysis explains the different outcomes for Black male complainants. It could be that there is a profound assumption that historical racism in the U.S. makes it nearly impossible for a white person to experience racism, and that this is driving the differential outcomes. This, however, would not explain the elevated cause findings for Black males in gender discrimination cases. A preferential treatment of

Black males, if supported by policy, would demonstrate that the law is not a neutral process.

Civil rights workers are an important group to study, and to my knowledge, have never been studied in this way. That is, the internal process of how an investigator decides a case has never been studied. Civil rights workers are a very difficult group to study. As the previous chapters indicate, there is a strong culture of confidentiality and egalitarianism. Although I believe the responses I received were genuine, they reflect a group of people very dedicated to civil rights, and susceptible to political pressures. Social desirability was a huge obstacle and inadequately handled, in hindsight. The shortcomings as well as the implications of future research will be discussed in depth in the next chapter.

CHAPTER 5 THEORETICAL IMPLICATIONS AND CONCLUSION

In this dissertation I argue that institutions like the U.S. Equal Opportunity Commission and our courts are shaped by individual actors. Consequently, an individual level analysis of racism and sexism adds another dimension to our understanding of the individual, organizational, and institutional factors that drive inequality. A really important place to start this inquiry is with civil rights workers because they act as the gatekeepers to the courts in discrimination cases in the U.S. In the previous chapters, I proposed three explanations for why civil rights cases fail to move forward. First, it could be that civil rights workers have high levels of explicit bias and that this corresponds with few cases being ruled as discrimination. A second possibility is that despite overtly favorable attitudes towards minority groups and women, implicit attitudes lead investigators to frame the case and the evidence from a majority perspective. A question for future research is whether civil rights offices reinforce implicit attitudes at the organizational level. Following aversive racism principles, I hypothesized that three specific dimensions could be influencing the outcome of cases: ambiguity, level of impact and other justifications. One final possibility is that bias is *not* operating at the individual level. If this is the case then I should find no significant differences in the outcome of cases. I employed a 2 x 2 between subjects analysis of variance to examine differences in case outcomes and to answer these questions. My goal is to explore patterns that emerge between explicit and implicit attitudes and the outcomes of discrimination cases. This feasibility study was conducted with six civil rights agencies and is designed to be replicated on a larger scale after this initial study.

Theoretical Implications:

My first research question was designed to examine the relationship between explicit bias and case outcomes. I wanted to know if overtly negative views toward Blacks and women in authority would impact case outcomes for those same groups. I hypothesized that if explicitly negative or racist attitudes were driving the case outcome, then “old fashioned racism” was operating. As expected, respondents overall had positive attitudes toward traditionally marginalized groups, and there were no statistically significant differences between cases. I specifically compared investigators attitudes toward Blacks to see if they would report lower findings of illegal discrimination for Black complainants. Although the relationship was not significant, positive views toward Blacks were associated with slightly higher findings of racial discrimination for that group. Said another way, it appears that explicit attitudes might have some relationship with the decision a civil rights worker renders in a case.

I then examined if explicit views of women in authority followed the same pattern that explicit views of Black did. I expected that it would, but found instead that investigators who felt more positively about women in positions of power were *less* likely to find that gender discrimination had occurred. Although these findings were not significant, the pattern did not emerge as I thought it would. In hindsight, the scale I employed to measure explicit attitudes toward women may not have captured bias or feelings of inequality about women. I will address the concerns I have with the scale under the limitations section. The divergence between high explicit attitudes and low findings of illegal gender discrimination seems pretty clear in hindsight. First, respondents who felt women were just as qualified to perform traditionally male jobs

(pilot a plane, serve as a judge, perform surgery) may also believe that women have no basis to argue that discrimination holds them back in the contemporary work setting. This argument has been made repeatedly in the press since the election of a Black president. A second explanation, however, is that social desirability may be driving the high levels of favorability toward women in positions of authority, while implicit attitudes may be driving whether a woman should prevail in her discrimination case. As Figure 4.3 reveals, female complainant's were less likely to prevail in a gender discrimination case ($M=2.0$) than a male complainant ($M=2.5$). Although this was not significant, the pattern is not what would be expected.

The Impact of Underlying Attitudes

My primary research question focuses on how implicit or non conscious bias might impact decision-making, and more specifically, case outcomes in a civil rights case. As I argue above in the case of women in authority, it could be that positive views toward a group activate underlying thoughts that result in a lower likelihood that the investigator will view a specific case as motivated by gender discrimination. When I examined case outcomes by the investigator's explicit attitudes toward whites (ATW) and complainant race, a significant effect emerges if the complaint is Black. Cases involving Black male and Black female complainants have a significantly higher determination of illegal discrimination ($M =2.7$) compared to white complainants ($M =2.1$). Contrary to Gaertner and Dovidio's (2000) findings, pro-white attitudes did not have a negative impact on case outcomes for Blacks. In my study, the opposite occurred. Persons who demonstrated pro-white attitudes were more likely to find that the case

involved illegal race discrimination when the complainant was Black. This is discussed at length below.

Because investigators were aware of the purpose of the study I believe that they responded as they believed appropriate and were more likely to find cause for a Black complainant. Alberson and Ettlín (2004) demonstrate that aversive racism emerges very differently in different contexts; distinguishing between clearly egalitarian and ambiguous contexts. I attempted to create an ambiguous context by being purposely vague when I described my study's goals prior to handing out the survey. I also attempted to create ambiguity through a very detailed but conflicting vignette. The civil rights environment however was dominant. Besides the fact that the study took place in civil rights offices, many directors introduced me as a past director of a FEPA, which likely highlighted the egalitarian context. In addition, by offering to return to the site to share the results, I completely set the stage for the respondents to give the most socially desirable response. According to Gaertner and Dovidio (1981), in an environment where equity is the norm and expectation, individuals will not behave inappropriately. They will demonstrate highly egalitarian attitudes. "In fact, in these situations they (white individuals) may bend over backwards, responding even more favorably to Blacks than to whites, given the additional threat to their egalitarianism" (Gaertner and Dovidio 1981: 209). This appears particularly true with regard to race, and less so for gender. If future research is able to heighten the ambiguous context, a more accurate assessment of aversive racism may be possible. A more accurate assessment of aversive sexism may also be possible. In hindsight, I would have conducted an online survey, but this would likely have impacted the response rate. It might also be possible to conduct an audit

study of four actual cases, but it would be virtually impossible to find four cases where the documents and interviews are close to identical.

As stated above, I consciously attempted to create an ambiguous environment because the three dimensions that appear to influence aversive racism are ambiguity, impact and justification. Again, contrary to my hypothesis, none of the dimensions of aversive racism had a significant impact on case outcomes. Ambiguity, for instance, is very consistently cited by implicit bias / aversive racism scholars, as an environment where bias can operate (Albersson and Ettlén 2004, Dovidio and Gaertner 2007, Nielsen et al. 2008). Despite this, I found no significant relationship between ambiguity and differential case outcomes. A number of possible explanations come to mind. First, it might be difficult to detect a significant result in this small homogenous group. It is more likely, however, that civil rights workers differ significantly from the decision makers involved in other studies. Civil rights workers have some power to track down the information and dispel ambiguity. Most individuals do not have the same ability to reduce ambiguity. For instance, a judge may feel a case is ambiguous, but it would be improper for her to indicate additional evidence that needs to be gathered. She simply takes the case as it is presented to her and must rule on it. Jurors are similarly situated. Similarly, the decisions for physicians who have been involved in studies on aversive racism generally decide on whether to order more tests; that is, whether to dispel the ambiguity. Civil rights workers have the ability to track down additional information before making a determination. In addition, a handful of investigators refused to make a determination, precisely because the vignette was ambiguous. Consequently, I believe that ambiguity operates differently within this population. Neither impact nor

justifications were significant predictors of whether a case would be determined illegal discrimination. In sum, there was little evidence that aversive racism was operating through ambiguity, impact or justifications. This does not mean that it is not operating; only that it was not captured in this group. It may be that aversive racism does not operate similarly in civil rights workers, or that civil rights workers are uniquely trained to cognitively bypass bias on some level.

Decision maker characteristics offer an example of how training may offset bias. A number of studies have shown that decision maker characteristics influence the outcome of cases. No such effect was present in my study. The case outcomes were almost identical across each group, which was unexpected. It was not the decision maker's characteristics that associated with different case outcomes. One explanation for this is that investigators are trained to request information about a decision maker or supervisor's race and gender and they routinely use this comparative information in their case analysis. Their thought processes are accustomed to considering decision maker characteristics. It is unlikely that the consistency across case and agency could be explained through training – so another explanation is that by being trained to focus on facts within the case, bias associated with decision maker characteristics is kept in check. Additional research must focus on decision maker characteristics and why no effect appeared for this group.

Legal Neutrality

My results demonstrate that Black male complainants appear to be more successful in establishing a case of illegal race discrimination. As I discussed above, one

reason may be that investigators were responding to the egalitarian norm. Black men were twice as likely to have their case ruled as illegal race discrimination than white male complainants. Black decision makers were more likely to see the case as illegal discrimination ($M=2.7$) than white decision makers ($M=2.1$), but this finding was not significant. From a historical standpoint, or even perhaps an equity standpoint this may not be startling at all. From a legal perspective it first appears that perhaps the law is not the neutral framework that we sometimes hold it out to be.

But investigators may in fact be following a legal analysis in their disproportionate findings. The Courts have taken two different approaches on the issue of standard of proof. On the one hand, the courts have clearly established that Title VII prohibits race discrimination against all races, including whites (*McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273: 280). “Some courts, however, take the position that if a White person relies on circumstantial evidence to establish a reverse discrimination claim, he or she must meet a heightened standard of proof” (EEOC Guidance pg. 15-5).

Consequently, a legal analysis offers another explanation for Black male complainants receiving cause findings at twice the rate of white male complainants. Despite this explanation, I am a little skeptical that a high level legal analysis is driving the results. It does not appear that respondents in my survey were wrangling with the divergent opinions of the courts. For instance when participants were asked which legal theories they might apply in deciding this case, only 50% of the participants identified *any* legal theory or analysis. If survey participants had indicated that white males have a higher standard of proof, or a similar argument, it would be evidence that it is the legal framework that drives case outcome. Another indicator might be if the case means were

closer together, for instance if Black male complainant's outcomes were only slightly higher than white male complainant's. I believe this response pattern is stronger evidence of a pattern of aversive racism than legal analysis.

I have focused primarily on the dichotomy between Black male complainant and white male complainants because other intersectional combinations did not rise to the level of significance in my analysis. Similarly, much of the aversive racism literature has focused on the differences between Black and white. Additional research must examine how intersectionality influences case outcomes. This study offers a brief glimpse of what might be deemed aversive sexism: civil rights workers demonstrated favorable attitudes towards women in positions of authority, but were less likely to see the case as discriminatory when the complainant was a woman. Unique intersections of race and gender may also influence case outcomes but were beyond the scope of this dissertation.

What can be done about implicit bias?

Social psychologists have “exposed the unhappy ordinariness of implicit biases, and the extent to which they can (unintentionally) guide our thoughts and actions” (Rudman 2004). But the commonality or “ordinariness” of implicit bias should not lead us to believe that it is unchangeable. Underlying mechanisms such as bias are not set in stone and, in fact, research has shown it may be fairly malleable. Below I address some of the methods scholars have identified to interrupt non-conscious bias and automatic processing. I then close this section with a model of addressing implicit bias that I believe will be most effective with persons working in the area of civil rights.

Many scholars believe that awareness of implicit bias is the first step to reducing its operation (Armour 1995, Quillian 2006, Ridegway and Correll 2004). Armour (1995) argues that non-conscious bias operates much like a deeply ingrained bad habit, and that the first step is acknowledging that it exists and acknowledging the lack of congruity with our desired habit. In the case of implicit bias, this means identifying the biased thought or behavior and setting it along-side the egalitarian values we profess. Unfortunately, our legal system often directly opposes an open dialogue about implicit bias. Armour (1995) sheds light on this as well and demonstrates that the refusal to admit race-based considerations is a “brand of judicial formalism [that] promotes the very discrimination it purports to eliminate” (Armour 1995:736). In other words, by promoting a “colorblind” or neutral approach, the legal system may in fact deeply impact those of color, or other disadvantaged groups. She uses *Jackson vs. Chicago Transit Authority* (273 N.E.2d 748 – Ill. App Ct 1971), as an example of this. In this case, the plaintiff’s attorney pointed out that his Black client’s case was being heard by an all white jury, tried by white attorneys and presided over by a white judge. After due deliberation the jury found in favor of the plaintiff. The Appellate Court overturned the ruling because of the attorney’s remarks – *not the merits of the case*. The Appellate Court found that the closing statements were “an unmitigated appeal to prejudice and its effect could only be destructive of the proper administration of justice” (Armour 1995:735). Legal systems, including civil rights agencies, often incorrectly presume that a colorblind approach equates to neutrality. Some legal textbooks train future lawyers that referencing a client’s race or ethnicity and the implicit attitudes they evoke may be an ethical violation (Armour 1995 citing Henderson). The refusal to acknowledge implicit bias allows subtle

mechanisms to continue to undermine equity. One way to directly address bias, it to compare it to the ideals professed. Armour (1995) argues that current theories have failed to explore bias reduction strategies because we have not explored the usefulness of conscious and overtly egalitarian values. If implicit bias is the result of years of socializing, then silence is the least effective means of counteracting the “bad habit” of bias. Speaking directly about bias appears to be one of the most effective techniques for interrupting it, yet many in the legal system are resistant to the suggestion that they may be biased. The legal approach to implicit bias and its influence over civil rights agencies must be addressed through training, checklists and procedures which I cover below. I turn now to specific strategies that may effectively interfere with the operation of implicit bias.

Interpersonal Social Influences

Implicit bias and aversive racism may be activated, re-enforced or dispensed through interpersonal social interactions (Penner et al. 2009). Although I did not find support for aversive racism, many scholars document the influence of some of the elements, like ambiguity and other justifications. A comprehensive look at how to offset implicit bias should include at least these two elements. Sinclair et al. (2005) found that automatic attitudes and biases could be manipulated through social influence, specifically at the individual relationship level. Awareness of how others perceive subtle signals and how those interpersonal exchanges influence the interaction is extremely important for all people—but especially investigators. A rude or off-hand remark may deter evidence and fact gathering. Sinclair et al. (2005) also found that attention to the quality of interpersonal interactions was an efficacious way of impacting non-conscious attitudes

toward outgroups. Along a similar vein, Ridgeway and Balkwell (1997) demonstrated that status beliefs could be shared and transferred to others through group interactions. These scholars also offer relatively simple processes that can influence underlying bias. Simulations show that in group interactions, one or two persons can act as “social dynamos” that propagate beliefs across society (Ridgeway and Balkwell 1997). Often we frame “social dynamos” as leaders, but in many contexts it may be a friend or co-worker who carries more weight in influencing the environment. Context also impacts the formation of status beliefs as well. Ridgeway and Correll (2006) found that the context of interactions can serve as potent spaces where status beliefs are bred. It is important for civil rights offices to concretely foster healthy and inclusive environments that are committed to disrupting bias. The resistance to status beliefs can interrupt the construction of beliefs that feed inequality.

Civil Rights Education & Training

Many scholars have demonstrated that training and social interactions can impact implicit bias. Some programs appear to be quite effective, but others less so (Dobbin, Kalev and Kelly 2007). Education and training specific to civil rights investigators should be developed to address implicit bias because it may be very effective to interrupt underlying mechanisms that influence case outcomes. Based upon prior research, civil rights education should include at least the following topics: 1) How non-conscious bias works and how it can impact decision-making; 2) the power of individual interactions in the collection of evidence and final decision; 3) the quasi-legal relationship of civil rights – and why the “colorblind” approach disadvantages minority groups and women; and 4)

the significant benefits of working in teams. I will briefly explain the importance of each module very briefly below.

Information on Automatic Processing and Implicit Bias

Civil rights workers currently undergo some degree of training before investigating a case. Both federal and state level investigators, however, report that much of their training is “on the job training,” and they are expected to hit the ground running. One potential drawback to on-the-job training is that the investigator often reports feeling overwhelmed and cognitively begins applying shortcuts. In so doing, investigators work through legal theory, case details and concepts using their own frame of reference. If implicit bias training is conducted, it is often months or years into the job, after the investigator has established their own cognitive framework for approaching investigations.

Information about the internal processes of implicit bias should be conducted up front, ideally within the first week of employment. Simple mental manipulation “tools” may be useful in drawing the investigators attention to unintended implicit bias. For instance, investigators could be trained to re-read their final report and ask themselves if they would reach the same conclusion if the complainant was a different intersection of race and gender. They could literally be trained to ask themselves, would I have approached this case the same way if the complainant had been a black female and the comparators were white males? Investigators could be provided with a handful of cognitive techniques designed to uncover potential bias. All protected basis are not

analyzed using the same legal framework, so consideration should be given to comparable intersections that would provide a productive analysis.

Flaws in the “Objective” Legal Approach

Some issues that may arise with training investigators about implicit bias. First, the legal system has clearly not reached a deep level of reflexivity, as Armour’s (1995) research on implicit bias in court demonstrates. Investigators must be trained that legal theory and practice often do not reflect the most current research—as any expert witness would testify. A training module covering cases where courts have erred and diverged from the science of implicit bias should be brought forth and discussed. The shortcomings of legal theory should also be part of the training. In the day to day application of the law, most civil rights investigators are deferential to court opinions. This translates into a pseudo neutrality argument of “simply treating everyone the same under the law.” But psychologists confirm that the objectivity the courts argue for is cognitively impossible – it is a myth (Armor and Taylor 1996, Irwin and Real 2010). In addition, investigators may have different understandings of their responsibility for following case law. Some believe they must follow all case law as precedence; others understand that the administrative process may raise new issues and questions that influence the courts. Although it is certainly wise to follow established case law, if individuals never raise new dimensions of discrimination law, the law in this area will stagnate and be outdated– as some argue it already is (Lee 2005, Bagenstos 2006). Training on case law and implicit bias in the courts should help investigators navigate their quasi-legal role.

Individual-level Interactions

Individual interactions with complainants are clearly critical to bias. Current civil rights training may already cover this area under a heading of “office etiquette” or “professionalism.” Although this is important and related, training designed to get at implicit bias must go beyond basic professional behavior. Investigators must be aware of the power differentials and the unique influence they wield over complainants. Because discrimination complaints filed under Title VII must be brought by an individual, many investigators believe that sensitivity to a particular group undermines their neutrality. For example, if extra efforts were made to be receptive to immigrant populations, this would likely be viewed as preferential treatment for that group, broad as it is. We currently know little about individual-level interactions during an investigation and how particular interactions impact the outcomes. Studies from other fields demonstrate that power differentials and stress during an intake or appointment may inhibit the quality and quantity of information shared. Civil rights agencies must navigate a very narrow tightrope that hovers between neutrality and coldness, because demeanor hugely influences case outcome.

The Potential of Working in Groups

As proposed above, investigators may benefit from toolkits that require them to consider the case from a different perspective. Individually we can easily become complacent and believe we are reframing the case, when in fact we are cognitively napping. Vigilance is extremely important with any self-administered tool and group work can provide a great opportunity to increase vigilance and to assist individuals with monitoring implicit bias. Investigators are notoriously lone actors who work very well

independently, so this aspect of training will likely be met with some resistance. Even in training sessions, group work is often resisted. Although there might be some hesitancy, working in groups in the actual work site could be accomplished through an EEOC directive to do so. Similar to medical and counseling models, one approach might involve quarterly “staffing” where all investigators bring their complex or complicated (ambiguous) cases forward for discussion in small groups. There are some clear benefits of this approach like “ah-ha” moments where investigators openly realize that they have an underlying attitude that was interfering with their collection of evidence or progress on a case. If this approach is instituted, the staffing must be mandatory with an expectation that investigators be receptive to constructive feedback from co-workers, *and* determine the case as a team. When I was the head of an EEO state office I employed this exact technique, and found that cases resulted in different outcomes, and that investigators sometimes rejected group consensus and went back and rewrote the case again from their own lens. So, diligence is required using a group approach. There are some collateral benefits to group determinations as well, like increased camaraderie and reported enjoyment of the break from solitary work. Group work is quite difficult and is not without its problems, but can be useful for re-enforcing the basic notion that there are different ways of approaching a case cognitively.

Aversive Racism Elements

Although my study found limited support that dimensions of aversive racism were operating, training on its elements may still prove beneficial. A model training for civil rights investigators should also include an understanding of the important role

investigators play, the importance of resolving ambiguity and an awareness of how justifications may influence a case.

Investigators must have an appreciation of the unique and important role that civil rights investigators play as the gatekeepers to the court system. It is possible that civil rights investigators may consider their investigation, findings, and recommendation, as simply one step in a long process, rather than as a definitive and important determinant of the long term outcome. Research has been conducted on the relatively few cases that make it to court, but future training might focus on the elements that move a case forward to court. At a minimum, re-iterating to investigators the important role they play in gathering and preserving evidence would be a step in the right direction. Although all investigators should certainly be aware of the “right to sue” process, they may not totally understand the significance of their role as gatekeeper. A direct approach to this is critical because investigators generally do not receive any of the common messaging that they have an important job: they receive low pay, have a high work load and often come under attack by businesses, corporations, and politicians. As a result, investigators may believe they do not personally have much influence.

Training on techniques to combat implicit bias is critical for civil rights workers. It should include at a minimum: 1) techniques for cognitive reassessment; 2) the importance of individual social exchange; 3) re-examining the fallacy of objective neutrality put forth by the courts; and 4) the benefits of group work to the organizational climate of EEO offices. There is growing evidence that implicit bias processes can be challenged and can produce interactions that are less biased and eventually become the norm. Disrupting bias in civil right workers would play a major role in combating

inequality in the area of civil right and for society as a whole, but specific training must be developed to address bias in this particular context.

Directions for Future Research

Implicit bias is a multi-disciplinary topic that draws scholars from law, sociology and psychology. To date, relatively little research has focused on the civil rights process specifically. Research specific to this population must be in the forefront. As a feasibility study this research is only a first step. The next steps that I plan to undertake include re-examining how implicit bias was operationalized and examining whether other survey measures of aversive racism have emerged in the past few months. I would also utilize a different gender attitudes scale in future research. After revising the scales, I plan to contact the Nebraska State Bar Association about surveying employment and civil rights' attorneys. I also plan to contact the EEOC to determine if they would be willing to have federal investigators participate in an online version of the study.

Another clear direction for future research involves training, and assessing the impact of training on implicit bias. As part of my entry to the participating agencies, I agreed to return to share my results. If they are willing to allow staff a full morning of training, I plan to create a training module that incorporates the four elements discussed in the prior section, and survey them about its usefulness. It would be beneficial to examine a month by month trend analysis of decisions during the years agencies were involved in this study to assess whether case determinations change.

The legal community could be extremely influential for future research and training.

The American Bar Association has conducted the most thorough analysis to date on the effectiveness of federal complaint process for employment discrimination (Nielsen et al. 2010). Despite this, the legal arena has perhaps the highest resistance to the underlying notions of implicit bias. Legal scholars have argued that implicit bias research calls for reorienting employment law and developing a theory beyond disparate impact that accounts for modern forms of racism and implicit bias.

Concluding Remarks

Implicit bias presents a special challenge to anti discrimination law and to society as a whole because it suggests that people may be treating others differently even when they are unaware of their actions (Jolls and Sunstein 2006). The ideal of egalitarianism causes many to respond strongly to the idea of differential treatment: rhetoric becomes heated, thoughtful discussion is pushed aside and the problem remains hidden. A really clear example of this occurred in 2009 when Justice Sonia Sotomayor was nominated to the Supreme Court. Remarks from a speech she delivered eight years prior surfaced as evidence that she was a “reverse racist.” In her 2001 speech to the Berkeley School of Law, Sotomayor said “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life” (ABC). Her comments reflected her belief that individual differences affect the decisions we make. There are two important aspects to reflect on in this exchange. First, Justice Sotomayor was responding to Justice Sandra Day O'Connor's famous quote that "a wise old man and wise old woman will reach the same conclusion in deciding cases” (ABC). Justice Sotomayor was confronting the well

entrenched illusion of objectivity that permeates our court systems and communities. Secondly, she was speaking about a concrete context. During the fury that surrounded her nomination, the final three words of her sentence “who hasn’t lived her life,” were completely disregarded. Thoughtful reason might have generated a dialogue about implicit biases and how people operate from different frames.

Limitations Section

There were several limitations to this study. Aversive racism has not previously been operationalized using survey questions. Aversive racism is generally captured using the IAT and a vignette, or actual cases. Another scale that proved problematic was the Gender and Authority measure. Although Spence and Helmreich (1978) developed an established scale entitled Attitudes Toward Women (ATW), Rudman and Kilanski (2000) argue that their scale was a more reliable measure of individual attitudes toward women. Because it was a more recent scale and because Rudman and Kilanski (2000) had used the Gender and Authority scale to compare explicit to implicit attitudes, I used their scale. In hindsight the Gender and Authority scale did not capture the overall views on equal rights and Spence and Helmreich’s Attitude Toward Women scale (1978) or the hypermasculinity scale (Mosher and Sirkin 1984) would likely have been closer to my other explicit measures. A second limitation involves the vignette, which may differ in substantive ways from a typical in-person encounter. For example it does not take into account any inter-relational issues that arise in the investigative relationship with a client. In addition, although my response rates were relatively high, the sample size was less than ideal. Nevertheless, the primary findings are based on an experimental manipulation

involving randomized assignment, which provides confidence in the causal interpretations that I have drawn. I was limited in the statistical tools I could use. I was unable to run a three way analysis of investigator race (white: minority) by complainant race (white: minority) by outcome (legal “cause:” no “cause”) due to lack of cases decided by Black decision makers and male decision makers. The implicit ways in which investigator race and gender interact with the complainant’s race and gender is critical to our understanding of implicit bias in this area. Consequently, it is a question that must be in the forefront of future research.

Despite the limitations, my study is a strong feasibility study. This study is innovative because civil rights workers have not been studied in this way. The pivotal role that investigators play in the administrative justice system requires that we understand if bias operates with this group. Sociological explanations have focused predominantly on macro-level explanations of inequality such as neighborhood segregation (Shapiro 2004), gender stratification in the workplace (Reskin 1998), and discrimination in public accommodations (Feagin 1991). A growing number of sociologists now conclude that there are gaps in our sociological analysis of racism (Bridges and Steen 1998, Bonilla-Silva 2002, 2008, Nielsen et al. 2008, Reskin 2000, Roscigno et al. 2007). This dissertation will add an important analysis to the sociological understanding of inequality and how inequality persists. These findings add a different dimension to aversive racism theory. Although it has been proposed in theory, white responses that favor Blacks have not been directly addressed in much of the work on aversive racism. Most of the research on aversive racism has focused on the expression of bias in ambiguous situations. My findings also contribute a new level of analysis to

the arena of civil rights work. It opens the door to finding processes to disrupt the operation of implicit bias and begins a dialogue about changes that may be necessary in legal theory.

This study has important implications for our fundamental understanding of why civil rights fail to move forward and progress in the United States. If the one group charged with holding employers accountable for reducing gender and race based bias cannot see their own biases, then how will bias and discrimination ever be overcome? It is clear that further research on implicit bias in civil rights is necessary and can provide an important new layer of understanding regarding the nature and sources of inequality (Quillian 2006).

One of the most harmful aspects of discrimination and bias is its hidden nature. This pernicious aspect is amplified when kept secret from ourselves as well as others (Rudman 2004). Implicit bias harms the person experiencing the differential treatment as well as the person perpetuating it (Gaertner and Dovidio 1986). In his book entitled *The Hidden Brain*, Shankar Vedantam writes that:

Good people are not those that lack flaws, the brave are not those who feel no fear, and the generous are not those that never feel selfish. Extraordinary people are not extraordinary because they are invulnerable to unconscious biases. They are extraordinary because they chose to do something about it (pg. 8).

Sociologists, lawyers, civil rights workers, teachers, police officers, landlords, professors, judges . . . each of us has some level of bias. In the end each of us is left with the choice: will we acknowledge these biases and become extraordinary – or will we continue to ignore them and remain ordinary.

APPENDIX A: SURVEY QUESTIONS

ATB (20 items multi factor measure of Whites' Attitudes Toward Black)

If a black were put in charge of me, I would not mind taking advice and direction from him or her.

If I had a chance to introduce black visitors to my friends and neighbors, I would be please to do so.

I would rather not have blacks live in the same apartment building I live in.

I would probably feel somewhat self-conscious dancing with a black in a public place.

I would not mind it at all if a black family with about the same income and education moved in next door.

I think black people look more similar to each other than white people do.

Interracial marriage should be discouraged to avoid the "who-am-I?" confusion which the children feel.

I get very upset when I hear a white person make a prejudicial remark about blacks.

I favor open housing laws that allow more racial integration of neighborhoods.

It would not bother me if my new roommate was black.

It is likely that blacks will bring violence to neighborhoods when they move in.

I enjoy a funny racial joke, even if some people might find it offensive.

The federal government should take decisive steps to override the injustices blacks suffer at the hands of local authorities.

Black and white people are inherently equal.

Black people are demanding too much too fast in their push for equal rights.

Whites should support blacks in their struggle against discrimination and segregation.

Generally, blacks are not as smart as whites.

I worry that in the next few years I may be denied my application for a job or a promotion because of preferential treatment given to minority group members.

Racial integration (of schools, businesses, residences, etc.) has benefitted both whites and blacks.

Some blacks are so touchy about race that it is difficult to get along with them.

ATW (20 items multi factor measure of Blacks' Attitudes Toward Whites)

Most whites feel that blacks are getting to demanding in their push for equal rights.

I feel that black people's troubles in the past have built in them a stronger character than white people have.

Most whites can't be trusted to deal honestly with blacks.

Over the past few years, blacks have gotten more economically than they deserve.

Most whites can't understand what it's like to be black.

Some whites are so touchy about race that it is difficult to get along with them.

I would rather not have whites live in the same apartment building I live in.

I would accept an invitation to a New Year's Eve party given by a white couple in their home.

It would not bother me if my new roommate was white.

Racial integration (of schools, businesses, residences, etc.) has benefitted both whites and blacks.

It's not right to ask Americans to accept integration if they honestly don't believe in it.

I favor open housing laws that allow more racial integration of neighborhoods.

Most whites fear that blacks will bring violence to neighborhoods when they move in.

By and large, I think blacks are better athletes than whites.

Local city officials often pay less attention to a request or complaint from a black person than from a white person.

When I see an interracial couple I feel that they are making a mistake in dating each other.

I have as much respect for whites as I do for some blacks, but the average white person and I share little in common.

I think that white people look more similar to each other than black people do.

Whites should support blacks in their struggle against discrimination and segregation.

If a white were put in charge of me, I would not mind taking advice and direction from him or her.

The Gender and Authority Measure

If I were in serious legal trouble, I would prefer a male to a female lawyer.

The people I look up to most are women. a

I would feel more comfortable if the pilot of an airplane I was traveling on were male.

I would rather be stopped by a woman police officer (vs. a man).a

I probably prefer that the U.S. president is a man, versus a woman.

In general, I would rather work for a man than for a woman.

If I were having a serious operation, I would have more confidence in a male surgeon.

When it comes to politics, I would rather vote for women than for men. a

For most college courses, I prefer a male professor to a female professor.

Personally, I would rather go to a male doctor than a female doctor.

In general, women make better leaders than men do. a

In most areas, I would rather take advice from a man than from a woman.

In general, I would rather take orders from a man than from a woman.

If I were being sentenced in court, I would prefer that the judge be a woman. a

In general, I feel more comfortable when a man (vs. a woman) is in charge.

NOTES: (a) items require reverse scoring.

Summary of Investigation

Please read through the following summary of alleged discrimination. After you have read through the entire scenario, please respond to the questions. Even if you do not generally investigate cases, or are not in charge of that phase of investigation within your agency, please try to respond to each question.

◇ ◇ ◇ ◇

Intake: Mr. Dunn, a black male, makes an appointment with you to discuss his situation. Mr. Dunn has worked for a credit card/data processing company for roughly 8 years. Over the past 3 years he has served as a Team Leader. He believes that he was treated differently than other employees with whom he works when his employer learned of a 1999 law violation on his record. He would like to file on the basis of race and sex regarding the terms and conditions of his employment and his termination.

Mr. Dunn tells you that he received a letter from his employer on January 24, 2008. The letter stated the Company ran a background check on him and it showed a misdemeanor conviction from 1999. The letter further informed him he has been suspended without pay effective immediately, pending an investigation, and he has five days to clear any errors in the report, or he will be terminated. One week later, on February 1, 2008, Mr. Dunn received a letter stating his employment had been terminated.

Mr. Dunn tells you that he is concerned about a couple of issues. First, the Company uncovered the misdemeanor conviction right before the holidays in December 2007, but failed to tell him about it until a month later, in January 2008. His second concern is that the offense occurred in 1999, and the Company was not bothered by it until almost eight years later. Overall, he is concerned about how the Company handled the background checks. For instance, after he received the letter informing him that a background check had been run, Mr. Dunn went and spoke to the Human Resources Department. He explained that he was trying to “expunge” his record. He tells you that he was not given adequate time to do this; that it cannot be done in five days. Furthermore, he tells you that

Company security personnel took his keys and badge and escorted him from the building on January 24, 2008 (the day he was suspended), which he believes proves they never planned to let him try to clear his record.

Mr. Dunn informs you that the Company affords non-black employees ample time and opportunity to clear a record or clear-up a misunderstanding. He further informs you that

the Company hires and retains other non-black employees who have recent criminal (felony and misdemeanor violations.) As an example, he tells you about a coworker, Chris who is white. Chris had a more recent felony conviction, but she was allowed to remain employed. Mr. Dunn believes the different treatment is related to his race and sex so he files a complaint of discrimination (dual filed with EEOC).

During the investigation you learn: The Company processes a high volume of credit, debit and other payment card transactions. All parties agree that Mr. Dunn's job performance was good, and he had advanced to a "position of trust." Promotion documents show the Complainant had advanced to the position of Team Leader, in the Card Services Department. In this capacity, he filled in and performed various jobs for absent staff. Consequently, Mr. Dunn had access to all credit card information of the Company's clients.

In 2007, the Company's Security Compliance Department initiated an audit including background investigations. During this process, the Company determined that the Complainant had a criminal record involving unemployment insurance fraud (a misdemeanor). The Company believes the offense is related to the work he is performing. Court documents confirm that Mr. Dunn was in fact convicted of this offense on December 5, 1999.

The Company stated the white coworker disclosed misdemeanor convictions on her application when she applied for employment in 2003. Chris' convictions were for assault, disorderly conduct and obstruction of law/resisting arrest (one in July 1989 and one in June 1991). The 2007 background check revealed that Chris had additional convictions for resisting arrest, assault/battery in July 2005, and she was placed on probation.

The Company argues that Chris' convictions are not linked to the work she performs for the Company. They maintain that due to Mr. Dunn's position of trust, combined with the nature of his offense, it was serious enough to suspend him, without pay, during the investigation and later terminate his employment.

Statistical evidence gathered: According to the Company's records for 2007, twenty (20) employees were terminated for failure to pass background investigations. Of the employees terminated, 11 (55%) were white, and 9 (45%) were black, and 70% were men while 30% were women. Like Mr. Dunn, two of the persons were Team Leaders (one white and one black).

The company provided documents showing that 8,114 persons underwent background investigations between October 6, 2000 and May 16, 2007. Of those, 7,505 (92.5%) were white and 609 (7.5%) were non-white. They further maintain that 23 persons were terminated overall: 12 (52%) were white and 11 (48%) were non-white. Mr. Dunn is the only male working for the Company in his particular Department.

Other evidence gathered: The Company's "Criminal Conviction and Arrest Policy," (revised January 5, 2007) states that "a background investigation will be initiated on all employees who perform services for the Company." It also states, "Persons who have been convicted of, plead guilty to, or admit to crimes involving dishonesty, fraud, a breach of trust, violence or risk to others or other job related crimes may not, as permitted by law, be eligible for employment."

APPENDIX C: DEFINITION OF TERMS

“Cause,” “reasonable cause” or “probable cause” are commonly used terms in civil rights agencies. They refer to the recommendation the investigator makes about whether the case involves illegal discrimination. Differential treatment or discrimination in and of itself is not illegal. Discrimination occurs frequently in the workplace: supervisors decide who to promote, decide who is eligible for overtime, just as they and they decide whose hours will be cut and who will be laid off. A particular situation only becomes illegal discrimination when a preponderance of the evidence points to the conclusion that race or gender (or another protected category) was the reason the complaining party was treated differently than his or her co-workers. This is the threshold where a case goes from reasonable workplace conduct to illegal discrimination. I use the terms “cause” and “illegal discrimination” interchangeably.

A *comparator* is an individual located in a similar situation and capacity as the complaining party; someone who holds a very similar position, works in the same department and has the same supervisor. An investigator generally looks to comparators to determine whether the complainant was treated differently.

A *complainant* is the individual who brings the complaint of discrimination to the enforcement agency. The complainant is generally the only person who can file a complaint or start the investigative process (testers also have standing). The complainant may later become a petitioner or plaintiff if the case is filed in court, but is considered a complainant or complaining party until a decision is rendered by the enforcement agency.

Dual filing refers to the practice of filing a complaint under applicable state and federal law. Unless a complainant files under a state law that the federal government does not recognize (same sex marriage for instance), cases are almost always dual filed in the interest of conserving time and other resources.

*FEPA*s or “fair employment practice agencies” are the agencies that the EEOC contracts with to perform work in a substantially equivalent manner. FEPA's are paid \$240 per case and process roughly 42,000 cases annually. When a FEPA completes an investigation, a Regional EEOC Office reviews the determination and the EEOC adopts the decision or asks for additional work to be done in the case. The EEOC may refuse to make payment for a case if it does not agree with the determination rendered.

Protected bases are the characteristics or statuses of the complainant that are protected by law. Federal law lists race, color, sex, national origin, genetics, disability, age and religion as protected classes. In some areas of the county, city ordinance and state law have added other protected categories and enhanced protected bases.

Work-Sharing Agreement (WSA) refers to the agreement between the Equal Opportunity Commission and a city or state agency who has agrees to complete investigations that include federal claims. This relationship brings with it a high level of scrutiny. Every determination made by the local agency is reviewed by the EEOC. In addition, if a case is investigated by a FEPA, the parties may request a review by the EEOC for the purpose of reconsidering the determination.

Table 4.1: Bivariate Correlations Between Explicit and Implicit Attitudes

		Explicit: ATW	Explicit: ATB	Explicit Attitude: WomenPower	Implicit Factor: Ambiguity	Implicit Factor: Impact	Implicit Factor: Other justification
Explicit: Attitude Toward White (ATW)	Pearson Correlation Sig. (2-tailed) N	1 80					
Explicit: Attitude Toward Blacks (ATB)	Pearson Correlation Sig. (2-tailed) N	.687** .000 80	1 81				
Explicit: Attitudes Toward Women in Authority (WomenPower)	Pearson Correlation Sig. (2-tailed) N	.496** .000 80	.350** .001 80	1 81			
Implicit Factors: Ambiguity	Pearson Correlation Sig. (2-tailed) N	-.120 .309 74	-.186 .111 75	-.068 .563 74	1 75		
Implicit Factors: Impact	Pearson Correlation Sig. (2-tailed) N	-.330** .004 76	-.429** .000 77	-.153 .183 77	.580** .000 75	1 78	
Implicit Factors: Other justification	Pearson Correlation Sig. (2-tailed) N	-.136 .228 80	-.241* .031 81	.090 .427 80	-.012 .917 75	-.063 .585 77	1 81

** . Correlation is significant at the 0.01 level (2-tailed).

* . Correlation is significant at the 0.05 level (2-tailed).

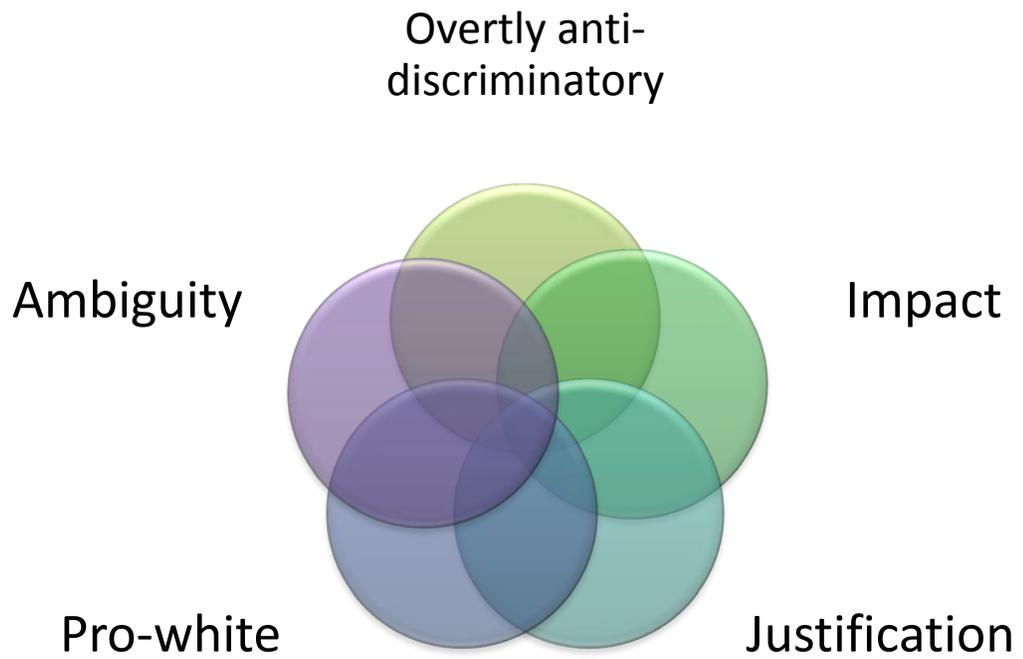


Figure 2.1: Elements of Aversive Racism

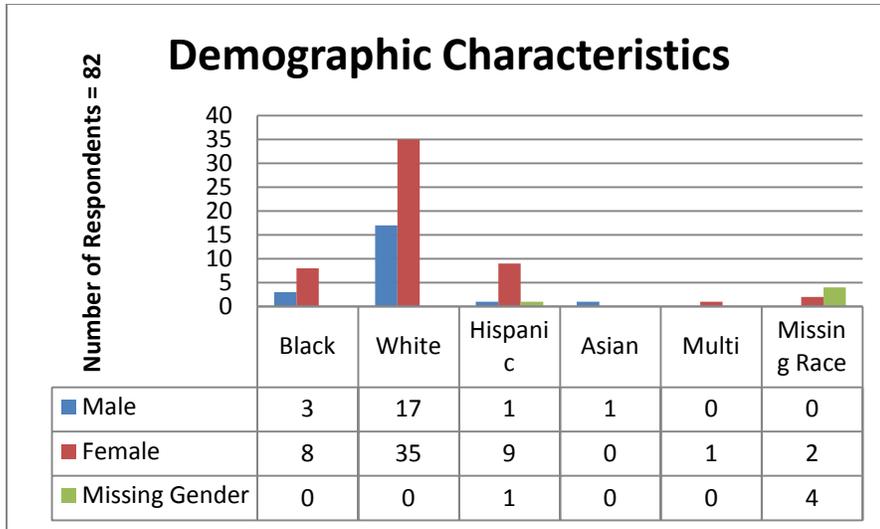
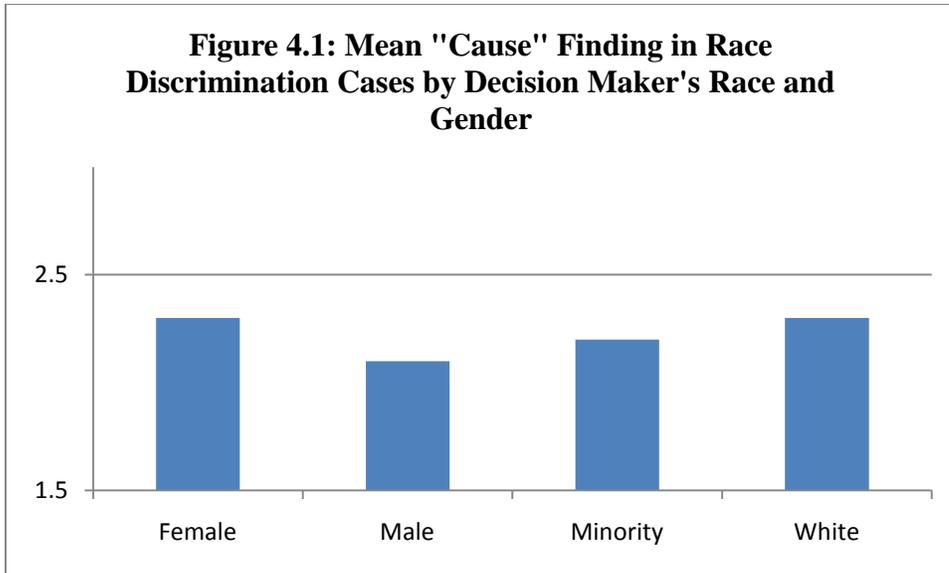


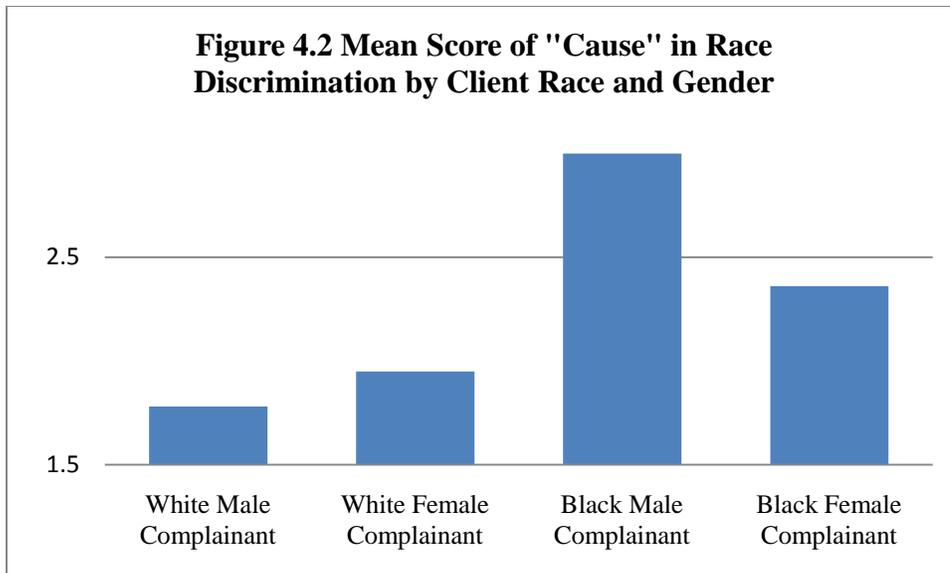
Figure 3.1: Gender and Race Distribution of Civil Rights Workers Surveyed.

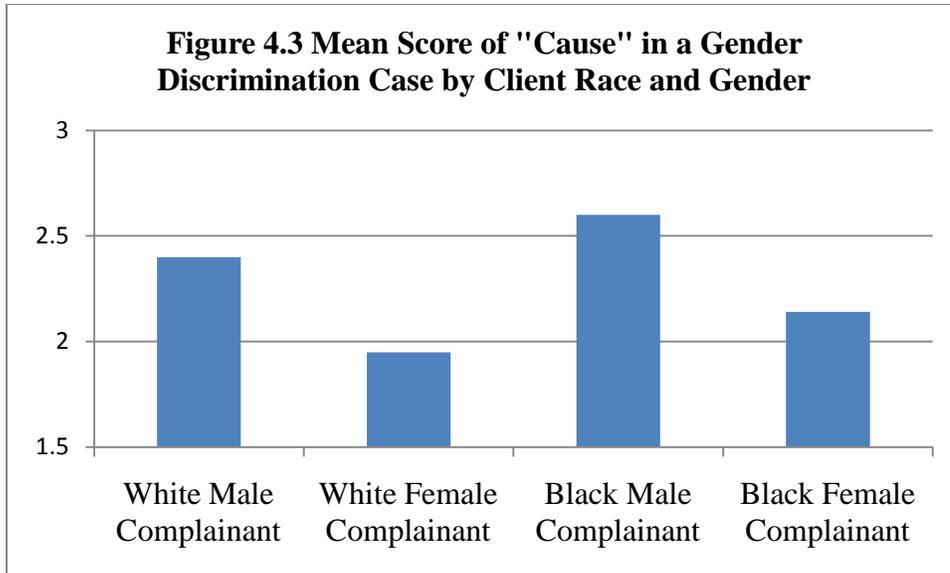
	Complainant Black Male (22 cases)	Complainant White Male (20 cases)	Complainant Black Female (18 cases)	Complainant White Female (22 cases)
Decision Maker Minority Male*	4	0	0	1
Decision Maker White Male	3	5	5	4
Decision Maker Minority Female	7	3	3	6
Decision Maker White female	5	10	10	10
Other/Missing	3	2	0	1

*Minority classification includes Black, Hispanic and Asian respondents.

Figure 3.2: Distribution of Cases by Race and Gender of the Civil Rights Worker.







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