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# Jury Bias: Myth and Reality

Callie K. Terris

*Ursinus College*, [caterris@ursinus.edu](mailto:caterris@ursinus.edu)

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**Jury Bias: Myth and Reality**

by

Callie Terris

Mentor: Gerard J. Fitzpatrick

Department of Politics

Ursinus College

Collegeville, PA

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## I. Introduction

At the heart of our justice system is the myth that all people receive an unbiased trial based on the principles of fairness and equality. The symbol of Lady Justice portrays justice as blind and objective, free of any favoritism or bias due to race, gender, or social standing. Bias is defined as a prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair. This definition gives the term a stereotypically negative connotation. One rarely thinks of bias as something positive, but the reality is that it can be.

With regard to the jury process, the usual forms of ideological or philosophical bias rarely appear. More typical is, subconscious bias, which is more typical. This does not always have negative repercussions. Successive stages in the jury process involve different biases. Some are beneficial and promote the fundamental principles of how the legal system is intended to operate, while others are detrimental because they deliberately discriminate in hopes of skewing the verdict. Key practices such as scientific jury selection, peremptory challenges, jury size, and jury nullification skew jury verdicts and risk flawed outcomes by introducing biases that reflect the attitudes, characteristics, behaviors, and decision of jurors.

In order to identify the difference between good and bad bias, this paper examines four distinct biases that occur at various stages of the jury process. The initial stage is the voir dire procedure. To gauge attitudes and opinions of potential jurors, attorneys often use scientific jury selection. An “attitudinal bias” occurs at this stage, focusing on the potential jurors’ attitudes and categorizing the jurors as favorable or not favorable based on their preexisting beliefs. Attorneys use information derived through scientific jury selection at the next stage of the jury process, peremptory challenges, to disqualify potential jurors based on various demographic characteristics, particularly race or gender, thereby showing a “characteristic bias.” Because

juries vary in size from as few as six to as many as twelve members, the group dynamic may reflect a “behavioral bias” that alters how the jurors render a verdict based on the size of the jury. The final stage of the jury process, rendering the actual verdict, can involve “decisional bias” when a jury engages in jury nullification by refusing to follow the relevant law in a case because of either sympathy or hostility toward the defendant.

These stages of the jury process are connected chronologically, allowing the four types of bias to accumulate and cause skewed results. Not all these biases are necessarily bad, but when the bad biases remain prevalent in the system, wrongful convictions of the innocent or acquittals of the guilty may occur. This paper explores the differences among the four distinct biases and the factors that determine whether they are beneficial or detrimental to the jury process. In demonstrating that bias pervades the jury process and that such bias is sometimes desirable and other times undesirable, the paper concludes that justice may not be as blind as the symbol Lady Justice suggests.

## **II. Jury Bias: Myth and Reality**

Even though people typically think of juries as being free of bias, the reality is that a particular kind of bias characterizes each of the four key stages of the jury process: identifying potential jurors, subjecting members of the jury pool to peremptory challenges during voir dire, determining the size of the jury, and jury deliberation. Sometimes these biases promote “justice” in the jury process; other times they undermine it.

### **A. Scientific Jury Selection: “Attitudinal Bias”**

Scientific jury selection attempts to bias the decision making process by skewing the jury to favor one side in a dispute and by lending itself only to those who are financially able to afford it. The use of scientific jury selection allows attorneys to pinpoint characteristics favorable

in a juror prior to the beginning of a trial. It enlists professional social scientists using statistical methods to seek information as to whether potential jurors would be sympathetic to a client prior to the voir dire process. Because the primary goal of voir dire is to shift the distribution of jurors in order to create a jury skewed for one side, scientific jury selection uses a distinct set of questions to assess pre-existing differences among individuals (Slotnick 2005, 244). By identifying specific demographic and attitudinal characteristics through to favor one side over the other, jury analysts have created a system to help attorneys pick a favorable jury.

For example, analysts typically ask members of the public a three-step set of questions, starting with step one, or basic questions regarding age, sex, occupation, and any prior jury experience. By means of such questioning, they are able to obtain information on the basic characteristics of people living within the geographic area relevant to the case at hand. Questions of this nature may also be asked during the voir dire process later. Set two focuses on questions about the implications of the first questions by asking about beliefs and attitudes. Focusing on more specific beliefs of individuals allows predictions to be made about potential jury verdicts. As the polling process continues with the third phase, the questions shift to assess which side the potential juror would favor in the trial. Questions as specific as whom a potential juror would vote for in the trial may be asked to help correlate characteristics and beliefs with the possible outcome of a trial.

Such techniques can significantly affect trials. Scientific jury selection can result in a change of venue if the results are unfavorable to one side. The 1971 trial of the well-known Catholic priest Philip Berrigan and the “Harrisburg Seven” is a prime example. Pennsylvania spent close to \$2 million on jury consultation when determining where the trial should be held (Neubauer and Meinhold 2013, 157). Consultants surveyed people living in the areas, asking

questions about their views on both religion and war. Because Father Berrigan was charged with opposing the Vietnam War with intent to destroy Selective Service records and to blow up heating tunnels in Washington, D.C., the prosecution favored trying the case in a conservative locale. The work done by the government proved successful when Harrisburg, a typically conservative area unsympathetic to anti-war activists, was chosen for the trial. By analyzing the opinions and beliefs of individuals in the possible trial venues, the government was able to find the locations most favorable for its side. In this case, had the government chosen a more liberal location that was sympathetic to anti-war activists, the results would not have been favorable. The government looked for and found an area where it was more likely than not that a certain bias would exist.

Scientific jury selection is often questioned as to its results. There is no guarantee that a consultant will successfully construct a jury that will view one side more favorably than the other. In cases like the "Harrisburg Seven," attorneys are able to obtain the most ideal circumstances going into a trial. In this instance, jurors with a bias against anti-war activism were sought. When the consultants questioned potential jurors, they assessed the probability of finding a jury that would contain the most conservative, pro-war individuals. After they found and selected an area where this was possible, the jury proved to be biased in favor of the government. While scientific jury selection may not be a guaranteed approach to selecting a jury, the analysis of a specific dynamic can have an overwhelming impact on a trial, as seen with Father Philip Berrigan. Scientific jury selection is not always problematic to the jury process, inasmuch as it can make for a more fair trial. It does, however, show that bias pervades the system. Regardless of any benefit or harm scientific jury selection may cause, it is prompted by an attitudinal bias that alters the result in some way.

Scientific jury selection also worked in the case of Joan Little. A black woman accused of killing her jailer, Little had a difficult time convincing the jury that she had acted in self-defense. Little stated that her jailer had entered her cell and had attempted to rape her (Abramson 2000, 160). Scientific jury selection was not used here to alter the makeup of the jury but rather to get the trial venue moved out of Beaufort, NC, which at the time was considered to be a town with predominantly racist attitudes. Consultants were hired to poll the area to see the effects of pretrial publicity and the views of black women in the surrounding communities. Prior to the trial, scientific jury selection established that approximately 75 percent of residents in the area had heard of the crime and two-thirds believed black women have lower morals and are more violent than white women (Abramson 2000, 161). After obtaining this, consultants later found that while residents of others areas may have heard of the case from the media, they did not hold the same views of black women as did people in Beaufort and its neighboring communities. Based on this information, Little's defense team was able to get the trial moved to Raleigh in Wake County-to ensure a fair hearing.

Scientific jury selection did not stop after the change in venue. Jury consultants were also brought in to assess what the ideal juror in this case would look like. Ultimately, they concluded that the best juror for Little would be a college-educated Democrat or Independent younger than forty-five, residing in Raleigh (Abramson 2000, 161). The combination of both the change of venue and the selection of jurors led to the acquittal of Little. Researchers have questioned whether it was the evidence or the use of scientific jury selection that led to her acquitted. Nonetheless, scientific jury selection produced a fair trial. Had consultants not polled the area and lobbied for the removal of the trial from Beaufort, the racist beliefs in that area-may have had a larger impact on the jury than the evidence presented.

Little's attorneys worked to achieve a favorable jury and venue. By polling the area, they learned the underlying values of its residents and used that information not only to convince the judge to change the venue but also to help them select the jury that would favor their argument. In this case, the judge claimed the evidence in favor of Little was far greater than that against her, yet this ruling came only after the change in venue. While scientific jury selection is typically used to help select the most favorable jury, other uses such as promoting a change in venue can help an individual win a case.

Trials such as those of the Harrisburg Seven and Joan Little raise questions about the fairness of scientific jury selection. Both cases are examples of how scientific jury selection has affected the results of the trial in one way or another. The large costs associated with such services make it almost impossible for poor people to take advantage of them prior to the beginning of their trial. Little's defense team spent \$35,000 on jury consultation. She was fortunate enough to have the money raised on her behalf. Julian Bond, a black Georgia State Senator who also served as the head of the Southern Poverty Law Center, sent two million letters around the country to gather funds for Little's defense. In total, \$150,000 was raised on her behalf (Reston, 1975). Some clients will spend hundreds of thousands of dollars to ensure they are put in the most favorable position to win a trial. Services this expensive are not accessible by everyone, especially those in poverty who are not as fortunate as Little was. Given the ideal of an unbiased jury system, is it fair to give one side an advantage that the other may not have the means of acquiring? Scientific jury selection was not created with the intention to be fair, but rather to give one side an edge over the other. It enables an attorney to give a client the best opportunity to win. It gives the attorney insight as to what questions to ask during voir dire, which jurors to strike, and how to present evidence and statements.



There are many differing opinions about the propriety of scientific jury selection. Some say the outcomes are not altered and other believe it skews a jury. In some form or another, scientific jury selection alters the makeup of a jury and thereby skews trial outcomes. “All jurors are exposed to the same evidence. The differences in juror reaction must stem from pre-existing differences among jurors that affect juror responses to evidence” (Diamond 1990, 178). If attorneys can go into a trial with a jury where they understand what will be the most effective techniques to help their client get acquitted, it gives them an advantage. Scientific jury selection is not guaranteed, but there is strong evidence that it improves the accuracy of jury selection. *People of California v. Lee Edward Harris* (1984) shows how accuracy can be improved with scientific jury selection. In 1979, Harris, a black man, was tried for the murder of two white owners of an apartment complex in California. After the first trial, Harris was found guilty and sentenced to death. Later, the California Supreme Court reversed the conviction because the county had relied only on voter registration lists for its venire, which underrepresented Hispanics and blacks (Abramson 2000, 165). Harris’ defense team then used scientific jury selection to help find a jury that would spare his life and sentence him to life imprisonment instead. The consulting team created juror profiles, and possible jurors were ranked from the highest risk (likely to vote for a death sentence) to lowest risk (those likely to vote for life imprisonment with no possibility of parole) (Abramson 2000, 166). At the end of voir dire, a significantly more diverse jury was chosen. The use of scientific jury selection allowed for the lowest risk jury and ultimately a new verdict of life imprisonment for Harris. The addition of possible jurors not exclusive to the voter registration list helped produce a lower-risk jury. By identifying which jurors posed a higher risk, the attorneys were able to eliminate them in voir dire and obtain the most favorable jury.

Clearly, scientific jury selection has an effect on the verdict, whether large or small. Scientific jury selection gives attorneys the knowledge to achieve a change in venue, to affect the selection of jurors, or to improve the clarity and persuasiveness of the evidence. Both the Harrisburg Trial and the case of Joan Little proved the importance of venue change as a result of scientific jury selection. “When because of pretrial publicity or the identity of one of the parties, prospective jurors in the community may have strong preconceived notions about the facts of the case or deeply held biases toward one party, a party may seek a change of venue” (Diamond 1990, 182). This bias cannot be found without scientific jury selection. In addition, mock juries can provide attorneys with valuable information about the evidence being used in the case. Often the evidence is the determining factor of a trial and scientific jury selection can aide attorneys on how to present that evidence to benefit their client. Using scientific jury selection helps an individual obtain a more favorable outcome by being better informed about the jury’s preconceived beliefs.

Scientific jury selection shows the first stage of bias in the jury process. When people’s attitudes are taken into account for the sole purpose of selecting a favorable jury, bias is created. Bias is often bad, but in this situation it can actually be positive. The bias created has an impact on the trial, but in these situations, it is working to ensure justice. In theory, scientific jury selection is working to counteract the usual principles associated with bias. Regardless of the intentions behind its use, scientific jury selection biases the jury process as a whole.

### **B. Peremptory Challenges: “Characteristic Bias”**

Until recent changes mandated by the Supreme Court, peremptory challenges allowed attorneys to strike potential jurors during voir dire based upon their gender, race, or occupation.

As a result, possible jurors are eliminated based on demographic stereotypes, regardless of their accuracy. Peremptory challenges raise the concern that attorneys are blatantly discriminating against certain jurors. The Sixth Amendment guarantees criminal defendants in federal court the right to an impartial jury of their peers. The Supreme Court extended this right to defendants in state courts through the Due Process Clause of the Fourteenth Amendment (*Duncan v. Louisiana* 1968). The Fourteenth Amendment also protects the accused from being denied equal protection under the law. Any use of a peremptory challenge solely on the basis of race or gender would be a direct violation of these amendments. In certain situations, however, the elimination of a potential juror of one race or gender may actually serve to create a fair trial, as opposed to a biased one. Regardless of whether potential jurors think they can be unbiased in a certain situation, their identity with a certain gender or race may interfere. By removing jurors who are likely to carry certain biases into jury deliberation, what is usually seen as discrimination is actually acting as the opposite. Similar to how scientific jury selection can be used to provide a fair trial, as in the case of Father Philip Berrigan when the venue was changed, peremptory challenges may be used to create a less biased jury. However, there is a fine line between striking an individual from a jury because the attorney doubts that person could serve without bias, and striking a potential juror because of that person's race. Cases have gone to trial in which each circumstance was present. Regardless of how peremptory challenges are used, they have some impact on the trial verdict.

*Batson v. Kentucky* (1986) showed how peremptory challenges were once used to discriminate against African Americans. A black man charged with second degree burglary and receipt of stolen goods was tried and convicted in a Kentucky circuit court. After the judge excused members of the venire for cause, the prosecution used its peremptory challenges to

strike all four black members of the venire. The defense then moved to invalidate the jury. Counsel stated that the prosecution violated the Sixth Amendment by failing to select a jury from a cross-section of the community, contrary to the Fourteenth Amendment's Equal Protection Clause. The judge denied the motion, stating that the cross-section requirement applies only to selection of the venire and not to selection of the jury itself. At the end of the trial, Batson was convicted on both charges.

In *Swain v. Alabama* (1965), the Supreme Court held that a "State's purposeful or deliberate denial to Negroes on account of race of participation as jurors in the administration of justice violates the Equal Protection Clause" (204). *Strauder v. West Virginia* (1880) had a similar holding with regard to purposeful discrimination against one race. This case, however, specified that people are not entitled to a jury composed fully or in part of members of their race. When Batson's case was taken to the Supreme Court, the justices reversed the decision below. Per *Strauder v. West Virginia*, when a court puts an individual in front of a jury in which jurors of the same race have been purposefully excluded, that individual is being denied equal protection under the law by not receiving a jury that was selected for its original purpose. When one race is purposefully excluded, it no longer becomes a jury of peers or equals to those being tried. Justice Lewis Powell delivered the opinion of the Court, stating that discriminating against race not only harms those on trial but also questions the competency of jurors. By eliminating jurors of one race, attorneys are assuming those individuals are unable to set aside the color of their skin to focus on the issue at hand. Ultimately, the Supreme Court held 7-2 that if prosecutors are unable to give a reasonable explanation for why those jurors had been removed, other than their race, the conviction would be reversed.

In a concurring opinion, Justice Thurgood Marshall focused on the effects peremptory challenges have on the defendant. Marshall wrote, “In cases involving the venire, this Court has found a *prima facie* case on proof that members of the defendant's race were substantially underrepresented on the venire from which his jury was drawn, and that the venire was selected under a practice providing ‘the opportunity for discrimination’” (95). The system of peremptory challenges allows for bias against the defendant, but the larger issue stems from the practice as a whole. As Justice Marshall stated, peremptory challenges provide an opportunity for bias. Once the defendant makes a *prima facie*, the state must give a reason for the challenge. Attorneys are able to give reasons for their challenges that conceal their actual racially motivated goals. Attorneys can use their gut feelings as a reason for striking a potential juror. Something as small as lack of eye contact, being quiet during voir dire, or not smiling enough can all be listed as a reason for rejection, even if the attorney is actually discriminating on race. Marshall advocated a fair trial outlined by the Constitution, which is not always possible with the use of peremptory challenges.

These notions of inequality and discrimination were countered by Justice William Rehnquist, who argued that peremptory challenges are more beneficial in eliminating bias than not. “The Court's opinion, in addition to ignoring the teachings of history, also contrasts with *Swain* in its failure to even discuss the rationale of the peremptory challenge. *Swain* observed: ‘The function of the challenge is not only to eliminate extremes of partiality on both sides, but to assure the parties that the jurors before whom they try the case will decide on the basis of the evidence placed for them, and not otherwise’” (214). Justice Rehnquist disagreed with the Court’s ruling because the purpose of the challenges was to eliminate extreme views toward one side and people who cannot remove their personal bias when the time comes to reach a verdict.

His beliefs are not favorable to a defendant, but they stem from the hope of creating the most unbiased jury.

Bias within jurors can form through the use of peremptory challenges, as shown in *Batson v. Kentucky*. When a peremptory challenge is used to purposely eliminate people of one race, it creates a jury biased toward one side. Even though members of a jury are supposed to remain unbiased, when people of one race are purposely excluded, those members selected may unknowingly favor the side of the trial sharing the same race. In addition, even if it does not cause a direct bias against one individual, the elimination of people of one race in *Batson's* case did not allow for a trial of his peers and equals, which is often the most unbiased jury. Peremptory challenges draw a fine line between a jury biased against the defendant and an unbiased jury. Both the prosecution and defense teams are looking for a bias, but which is the ethical bias to have going into trial? As Justice Rehnquist stated, peremptory challenges were created to eliminate potential jurors with extreme views and find jurors who could hear the case and not incorporate their own personal biases. However, Justice Marshall's belief that such an approach constitutes discrimination proves true when the attorneys use it to eliminate members of one race but not the other when both sides have the same problems that trigger a challenge. Because discrimination is often the basis for peremptory challenges, the results will always involve bias in some way.

Issues like those in *Batson* remain relevant. *Foster v. Chapman* (2016) dealt with the same issues of purposeful discrimination. Foster was convicted of capital murder and sentenced to death. He had entered the home of Queen Madge White and had beaten, sexually assaulted, and eventually strangled her to death. He had admitted to the murder of White. As in *Batson*, during voir dire the prosecution used its peremptory challenges to strike all four black members

in the venire. This elimination was conducted in two phases. The first phase was removal by cause. This was done through questions asked based on questionnaires filled out by potential jurors. This phase narrowed the venire down to forty-two jurors from the original ninety. Of the forty-two qualified jurors, five were black. One was later removed because a family friend knew Foster, leaving four jurors before peremptory challenges were made. During the second phase, the prosecution used its peremptory challenges to remove the remaining four jurors. Foster then argued that these challenges were racially motivated in violation of *Batson*. However, both the circuit court and the Georgia Supreme Court rejected this claim. On appeal, the United States Supreme Court affirmed the three-step process outlined in *Batson*. “First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race; second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question; and third, in light of the parties’ submissions, the trial court must determine whether the defendant has shown purposeful discrimination” (105). When Foster showed that there was additional evidence, such as notes written by the attorney marking out which members of the venire were black, and crossed-out written statements from one attorney describing which black member would be chosen if absolutely necessary, the Supreme Court reexamined his case. This new evidence found Foster’s case to be a violation of *Batson*.

The next issue with peremptory challenges is the reasons listed for why the black venire members were stricken. They were said to be too young, vague, or having too close a connection to the case. However, while these reasons were listed next to the black members, white members with the same problems were not removed. The attorneys were using these reasons to cover up their main motivation: race. The Supreme Court reversed the ruling below on the grounds that the new evidence of lists marking out which were black jurors, combined with the inconsistency

of reasons given for striking a black individual rather than a white one, showed that the prosecution was basing its peremptory challenges substantially on race.

*Foster v. Chapman* (2016) shows that old issues of racial discrimination within peremptory challenges are still present today. When seeking the most favorable jury, attorneys will strike due to race and give a non-race-related reason to cover it up. The problem with this practice is that attorneys are looking for bias in their favor. The prosecution sought a racial bias in its favor. Had it actually stricken individuals for the reasons cited, all the white members of the venire that had the same qualities or life circumstances would have been eliminated as well. However, this did not happen. For example, a black juror was eliminated for having a son close in age to Foster, whereas a white member of the venire had a son of similar age but was not stricken. *Batson* served as a baseline for fair guidelines, and *Foster* helped further the original decision by delving into the reasons for striking someone. While defendants are not guaranteed a jury of their choice, they are guaranteed an impartial jury of their peers. Purposely eliminating certain people based on race violates constitutional rights and produces a biased jury skewed toward one side.

*J.E.B. v Alabama* (1994) is another example of how peremptory challenges are used to create a skewed jury. During a paternity and support case, the legal team of the child's mother used its peremptory challenges to strike all men, thus allowing for an all-female jury. The defense unsuccessfully motioned to reject the jury as a violation of *Batson*. The Supreme Court held that the premise of *Batson* made this case a violation of the equal protection clause. Justice Harry Blackmun delivered the opinion of the Court, stating that "the Equal Protection Clause prohibits discrimination in jury selection on the basis of gender, or on the assumption that an individual will be biased in a particular case for no reason other than the fact that the person



happens to be a woman or happens to be a man. As with race, the ‘core guarantee of equal protection, ensuring citizens that their State will not discriminate... would be meaningless were we to approve the exclusion of jurors on the basis of such assumptions, which arise solely from the jurors [gender]’” (131). The opinion also argued that the interest of the court is to carry out proceedings in a fair, nondiscriminatory, and impartial manner (137). The potential jurors that were stricken were removed because of their gender, contrary to the nondiscrimination principle courts aim to follow. Because this case involved a purposeful discrimination against one gender, the principles outlined in *Batson* applied and the verdict from the state supreme court was reversed.

In dissent, Justice Scalia focused on why the issues of gender did not prove to have a big enough impact on this case. “The opinion stresses the lack of statistical evidence to support the widely held belief that, at least in certain types of cases, a juror's sex has some statistically significant predictive value as to how the juror will behave” (157). It is undeniable that one gender was specifically eliminated. Despite this, Scalia believed there was no evidence that the verdict that was reached was due to gender. In this case specifically, there was a 99.2% accuracy that the paternity was correct based on the evidence. The gender of the jurors did not likely play into the verdict. In this instance, a bias was created against the defendant and Scalia argued that the decision made by the Supreme Court was not correct because there was not enough evidence to show a correlation between gender and how the juror will behave. Had the paternity evidence not been as clear as it was, the elimination of one gender from a jury would have biased the decisions based upon the typical characteristics associated with each gender.

This case also showed how peremptory challenges can skew a jury. Had this been a case where men were unable to be impartial, the verdict would have been justified and

nondiscriminatory; but in this instance there was no overwhelming proof that the men excused were biased against women. In some situations, bias is wanted to provide a fair trial, as seen with Scientific jury selection used in the trials of Joan Little and the Harrisburg Seven. However, in the case of *J.E.B.*, the bias was not intended to create a fair trial. An all-female jury was selected to show bias toward the plaintiff and against the defendant in an effort to secure the best chance to win the trial. This was done not to produce a fair trial but rather to skew the results in the prosecution's favor.

These three cases illuminate the problem with peremptory challenges. The Constitution entitles defendants to a jury of their peers. This does not mean a jury of their liking, or even one that includes members of the defendant's gender or race. It does, however, entitle them to a jury that was chosen without discrimination. When peremptory challenges are used to discriminate, a bias is formed that will ultimately affect the jury's verdict. In *J.E.B.*, a jury of all women could have reached a different verdict if men were present during deliberation to offer their insight. It is not guaranteed but the men would have provided a different insight, which could then prompt the women to reach a different conclusion. By eliminating all members of one gender or race, the jurors are not exposed to a full spectrum of views, thus making them biased. As seen with the Supreme Court justices' concurring and dissenting opinions, each side forms a different kind a bias. Some favor peremptory challenges, which create a biased jury to help the defendant obtain a fair trial. Conversely, others oppose them because they create a jury biased in favor of the defendant. As Justice Marshall stated in *Batson*, "peremptory challenges have the potential to distort the jury process by permitting the exclusion of jurors on racial grounds should ideally lead the Court to ban them entirely from the criminal justice system" (107). Regardless of how

peremptory challenges are viewed, they create some form a bias skewing a trial one way or another.

### **C. Jury Size: “Behavioral Bias”**

The U.S Constitution outlines certain principles regarding juries. Article III, section two states that of the Constitution states a “trial of all crimes, except cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed.” The Sixth Amendment, which guaranteed the accused the right to a speedy and public trial by an impartial jury, and later the Fourteenth Amendment, which denies the state’s power to deprive individuals of life, liberty, or property without due process of law, each contribute to the creation of the current jury system. They guarantee the accused the right to a jury of one’s peers, if they meet the criteria to be tried in that manner. All adults facing non-petty criminal offenses are entitled to a jury of their peers. Under the Sixth Amendment, no crime is deemed petty for the purpose of a jury trial where the imprisonment is more than six months. In *Duncan v. Louisiana* (1968), the Supreme Court held that Duncan had not been afforded his constitutional rights when denied a jury trial for a simple battery misdemeanor resulting in a sentence of two years in prison. Justice Byron White delivered the opinion of the Court, stating that even though Louisiana courts did not permit juries in petty cases, Duncan’s case was a violation because the sentence exceeded six months. A two-year sentence is a serious penalty; therefore, a jury should be provided. This case showed how the due process clause of the Fourteenth Amendment required the Sixth Amendment’s right to a jury, thus underscoring the importance of the Constitution within our jury system.

During the fourteenth century, English juries were composed of twelve members which, and this number became universally accepted during the American Revolution. The number

twelve, however, has no particular significance, allowing for the number to be altered. *Burch v. Louisiana* (1979) found it to be a “historical accident” and that it was not intentionally chosen by like this by the Constitution’s framers. *Williams v Florida* (1970) earlier rejected any notion of twelve as special. When Williams was tried for robbery in a Florida state court, he filed a motion to impanel a twelve-person jury as opposed to the six-person jury that was provided. In Florida, non-capital punishment cases did not require a panel of twelve. Williams stated that this was a violation of his rights outlined in the Constitution, but his motion was rejected, and he was sentenced to life in prison. The case was taken to the Supreme Court where Justice White delivered the opinion of the Court, stating that William’s Sixth Amendment rights, as applied to the states through the Fourteenth Amendment, were not violated by Florida’s decision to provide a jury of six rather than twelve people (103). A six-person jury was deemed to be as much of a cross-section of the area as a jury with twelve members. There is never a guarantee the jury will be able to encompass all races, genders, or ethnic groups, even when composed of twelve people.

*Williams* showed that a six-person jury could serve in place of the traditional twelve-person jury. Justice Thurgood Marshall’s dissenting opinion shed light on the issues this new system raised. While there is not a distinct answer for why there is a twelve-person jury, Marshall stated that “the only reason I can discern for today’s decision that discards numerous judicial pronouncements and historical precedent that sound constitutional interpretation would look to as controlling, is the Court’s disquietude with the tension between the jurisprudential consequences wrought by ‘incorporation’ in *Duncan* and *Baldwin* and the counter-pulls of the situation in *Williams*, which presents the prospect of invalidating the common practice in the States of providing less than a 12-member jury for the trial of misdemeanor cases” (399). Not only is the six-person jury straying from what was outlined by our nation’s founders, but it also

sets a precedent that what was required can be changed. Justice Marshall also asks what makes six a reasonable-sized jury. If jury size could be smaller, why would it be cut down to six? If the jury size was intended to be twelve, there are repercussions that must be evaluated with its new, smaller size.

In a smaller group, one person is able to have a larger impact on the group as a whole, because it becomes easier for that individual to speak. In twelve-person juries, individuals are less likely to speak out because the group is larger. In a six-person jury, individuals may feel free to express concerns with evidence or testimony to influence the other five members in a specific way. “The basic assumption underlying the micro-group model is that when men get together into some structured situation, their behavior is altered. What they would decide individually is changed when they decide collectively” (Sheldon 1974, 51). The opinions of others alter the decisions that one would make in some way. Each group differs in beliefs; therefore, the behavior of the group is dictated by its size. Theoretically, a situation could be presented to two different juries, one small and one large, and produce different verdicts due to the varying jury size.

The justices of the Supreme Court are an example of this group dynamic. C. Herman Pritchett noted the differences in the Justice’s decisions due to working within a small group (Pritchett 1948, 538). Said Pritchett, “The court decisions clearly demonstrated that even judges begin with ‘different assumptions, that their inarticulate major premises are dissimilar, and that their values systems are differently constructed and weighted.’” Each justice has a set of values and ideas prior to the deliberation process. When one justice emerges as the “leader,” the others commonly recognize that confidence and authority. Opinions are then more likely to shift. This is less likely in a group of twelve because there is a larger group over which that one would need

to gain control. In a group of six, it becomes easier for an individual to express an opinion and convince others it is correct.

*Colgrove v Battin* (1973) furthered the decision made in *Williams*, by holding that six-person juries in civil cases are constitutional under the Seventh Amendment. Colgrove contended that the six-person jury afforded him was unconstitutional and petitioned for the typical jury of twelve. But Judge Battin impaneled a jury of six. “We had no difficulty reaching the conclusion in *Williams* that a jury of six would guarantee an accused the trial by jury secured by Art. III and the Sixth Amendment... Since then, much has been written about the six-member jury, but nothing that persuades us to depart from the conclusion reached in *Williams*. Thus, while we express no view as to whether any number less than six would suffice, we conclude that a jury of six satisfies the Seventh Amendment's guarantee of trial by jury in civil cases” (160). *Williams*, a criminal case, saw no distinctive differences between the two different size juries, as seen through studies of the operations of a six-person jury. The Court held in *Colgrove* that there was no fundamental difference between the sizes of the jury in civil trials. The Court thus allowed a smaller jury to serve not only in criminal trials, but also in civil trials. The behavioral differences in the jury due to size are similar to *Williams* because the small group mentality is taken into account. While the holding was similar, the repercussions differ because *Colgrove* allows six-person juries to become more prevalent.

Changes in jury size may also affect unanimity. *Apodaca v Oregon* (1972) questioned the use of unanimous verdicts. Robert Apodaca, Henry Morgan Cooper, Jr., and James Arnold Madden were convicted, respectively, of assault with a deadly weapon, burglary in a dwelling, and grand larceny before separate Oregon juries, all of which returned less than unanimous verdicts. The vote in the cases of Apodaca and Madden was 11–1, while the vote in Cooper’s

case was 10–2, the minimum requisite vote under Oregon law for sustaining a conviction (406). Justice White cited *Williams* in his opinion for the Court, stating that “in *Williams v. Florida* (1970), we had occasion to consider a related issue: whether the Sixth Amendment's right to trial by jury requires that all juries consist of twelve men. After considering the history of the twelve-man requirement and the functions it performs in contemporary society, we concluded that it was not of constitutional stature. We reach the same conclusion today with regard to the requirement of unanimity” (406). The issue of unanimity deals with the Sixth Amendment. Just as the Supreme Court held that six-person juries do not violate the amendment, so too did it hold that the amendment permits non-unanimous juries as well.

The opinion says the requirement of unanimity can actually lead to changes in verdicts. “In terms of this function, we perceive no difference between juries required to act unanimously and those permitted to convict or acquit by votes of 10 to two or 11 to one. Requiring unanimity would obviously produce hung juries in some situations where non-unanimous juries will convict or acquit” (411). If juries are forced into unanimity, jurors may change their decision to ensure the defendant is convicted or acquitted even if their opinion may have originally differed from the group. To avoid hung juries or mistrials, one or two individuals may side with the group to attempt to avoid Type I or Type II errors. Type I errors are the conviction of an innocent individual and a Type II error is the failure to convict a guilty individual. Both are common when unanimity is required because jurors act to avoid making the wrong decision. Anything less than a completely convincing case makes it difficult to convict under current conditions (Freidman 1972, 21). One side missing a crucial piece of evidence or not presenting it correctly could affect how the jury views the trial. In such situations juries may make inaccurate decisions after they deliberate.

The overall effects in the change of jury size have a large impact on trials. People often mistakenly believe that the size of the jury does not affect the verdict. Gelfand and Solomon found that both juries convict approximately the same proportion of defendants within a certain range (Fabian 1977, 535). While in this respect the two different size juries do not differ, Gelfand and Solomon also found that six-person juries tend to make more Type I and Type II errors than twelve-person juries because if one person interprets the information slightly different, it can change the verdict, especially when the jury is smaller (Fabian 1977, 535). This is largely a result of the small-group dynamic. When one individual takes charge and leads the others to a verdict, all possibilities are not considered. Since anything short of a totally convincing case makes it unlikely that a defendant will be found guilty, one person in a group of six expressing a strong opinion, is more likely to change the minds of fellow jurors than would be the case in a jury of twelve. Bias is then created to alter an individual's behavior. An individual taking the lead and speaking forcefully to a jury of six can lead to more individuals being wrongfully convicted or acquitted of crimes.

Smaller juries provide a set of benefits to the judicial system that are not related to the verdict of the trial. With four possible hidden objectives in reducing jury, could behavioral bias be forming at the expense of the integrity of the jury? Cutting the size of the jury reduces costs, court delays, judicial power, and law and order (Sperlich, 217). Cutting jury size in half would decrease the cost of the justice system. "The thought altogether is that courts may have wanted to reduce the cost of justice as well as permit jury diversity while deciding a case" (Sperlich, 217). Juries are able to take on a new form which could be seen as a benefit, and as a result there would also be a decrease in spending. With the various benefits to reducing jury size, six-person juries will become more prevalent. "It has been estimated that in the federal system, with its



relatively high per diem rate of \$20, reducing all juries from 12 to six would save about four million dollars” (Zeisel 1974, 181). However, according to Zeisel, this reduction of cost comes with a possible 41% increase of error. The bias that is prompted by this new, smaller size will present a higher percentage of error. Smaller juries lead to small-group mentalities, and in turn behavior is altered. An individual who may have had a differing opinion from the group, which would have produced a hung jury, may have been swayed in the opposite direction. In addition, the smaller size will produce a more personal relationship between the jury and lawyers. The change in size can become too personal, which in turn can change the behavior of jurors.

Regardless of whether the jury is composed of six or twelve, the final verdict will differ based on the interactions within the group. By cutting corners, there is a reduction in justice and fairness. A possible error increase of 41% will make more likely conviction of the innocent or acquittal of the guilty. This increase of a chance of error is not worth the small percentage of a state’s budget that will be saved as a result. Knowing that individuals may not be given a fair trial, and continuing in hopes of saving money and time, is short-sighted and deprives individuals of the justice they are entitled to. When the size of the jury is smaller, the behavior of the jurors is biased, and the fairness of the trial is compromised.

Cutting juries in half poses problems for the judicial system. If the government is willing to jeopardize a fair trial to cut cost, where is the line drawn? *Ballew v Georgia* (1978) held that a conviction by a unanimous five-person jury for a non-petty offense deprives the accused of the right to a trial by jury. If five members is not enough for a proper conviction, increasing the size by just one juror leaves considerable room for error. The jury system was founded on the principles of fairness and justice; therefore, the bias created from jurors’ behavior is too great to allow six-person juries.

This behavior bias calls into question whether juries should be reduced in size at all. There are alternative options to cutting the size from twelve to six, such as a seven or ten-person jury. Nevertheless, the possible benefits are not nearly proportional to the detrimental impact on verdicts. With each numerical decrease in the number of jurors comes a decrease in the amount of money and time that would be saved. If cutting a jury in half is not sufficient enough to provide a substantial savings, seven- and ten-person juries would be no more cost effective prove the same. While the small-group mentality would become less prominent if juries were composed of seven or ten, there is no clear benefit to cutting juries from twelve. Any decrease in jury size will result in behavioral bias.

#### **D. Jury Nullification: “Decisional Bias”**

At the conclusion of a trial, juries are given specific instructions to follow during deliberation. The instructions are meant to bridge the gap between the law and the evidence presented in court. Members of the jury are not always equipped with legal knowledge, and these instructions clarify the task at hand. They play a crucial part in explaining what is material from the trial can be considered when reaching a verdict. Despite the important role these instructions play, they are not always understood by jurors. “Research shows that most jurors do not understand their instructions, and that the level of juror comprehension of instructions would improve dramatically if the instructions were rewritten with the jury in mind” (Steele and Thornburg, 126). Juror confusion was considered in *Whited v Powell* (1956). A case involving a Texas juror who had misunderstood the jury instructions. When another juror asked a question, the incorrect information interpreted by one juror was relayed to the other. On the basis of this incorrect information, the second juror made a vote change, and the verdict was wrongfully altered. The Texas Supreme Court refused to grant a mistrial based on the miscommunication

because jury verdicts would be of little value if every miscommunication was taken into account. *Whited* demonstrates how common a lack of understanding can be, and how large an impact a small change in instruction can have. The relaying of one wrong statement can change the mind of a fellow juror and alter the verdict that is reached. The Texas Supreme Court's reaction to this issue also shows that this issue may occur frequently. If these cases do not result in mistrials or a change in the instructions, misinterpretations will continue to occur.

Jury instructions have a large impact on trials because when they are not followed, wrongful convictions of the innocent or acquittals of the guilty can occur. When instructions are not understood or agreed on by jurors, they will not likely take the specific instructions into account. The instructions that the law is based upon are not guaranteed, for juries have considerable power when deliberating on a verdict. The verdict takes into account not only evidence and the law but also the beliefs and attitudes the jurors hold at the beginning of the trial. These beliefs and attitudes may bias the decision jurors reach. Indeed, not following jury instruction takes its most egregious form with "jury nullification," where the jurors ignore the law and the trial judge's instructions and apply instead their preexisting beliefs and attitudes even though the facts of the case have left them with no reasonable doubt that the law was violated (Neubauer and Meinhold 2013, 375). "Although nullification allows the jury to be merciful when it believes that either the punishment or criminal conviction is undeserved, it also allows the jury to make arbitrary or discriminatory decisions" (Spohn and Hemmens 2009, 229).

Jury nullification has been used to promote racial discrimination. There is evidence that in the South, juries would acquit white defendants in crimes against black victims. Despite sometimes overwhelming evidence that the defendant was guilty, the jury refused to convict (Spohn and Hemmens 2009, 229). The blatant discrimination demonstrates how the attitudes of

individuals can bias the verdict. Failure to convict a white defendant in a crime against a black victim, despite the law being broken, shows that a juror's previous attitudes play a role in deliberation.

Petty drug crimes is another area where juries choose to act against the law and acquit defendants of their crimes. Former New York prosecutor Paul Butler takes a strong stance against convictions for petty drug crimes, noting that jurors have the ability to make trials fairer by exercising a power they often do not know they have because jury nullification is not promoted or typically discussed prior to jury deliberation. "The First Amendment exists to protect speech like this -- honest information that the government prefers citizens not know" (Butler 2011, 1). In most instances, a jury practicing jury nullification is working to promote fairness. In marijuana cases, juries often nullify because the crime is not severe enough to merit for the punishment. In a Montana court, for example, prosecutors were forced to offer the defendant a plea bargain in a marijuana case because they could not find enough jurors who would hear the case and convict according to the law. With recent laws legalizing marijuana in certain parts of the country, crimes involving the drug are not seen as serious as they once were. Nevertheless, laws punishing possession have not changed. "Across the country, crime has fallen, but incarceration rates remain at near record levels" (Butler 2011, 3). In 2010, over 50,000 arrests were made in New York for marijuana possession. Since prosecutors determine charges against a defendant, they try to arrange for the defendant to plead guilty in exchange for a lesser sentence. When such crimes go to trial, the result is often nullification because the jurors do not believe the sentencing guidelines are fair in relation to the crime. Juries do not want to impose harsh sentences for petty drug crimes. With cases involving marijuana, the jurors' attitudes

toward that specific drug influence their decisions. Had some other substance been involved, the decision to nullify may have been different.

Supreme Court Justice Antonin Scalia was a stronger defender of juries but believed there would be less jury nullification if prosecutors brought fair cases. If jurors think the crimes being tried in front of them are significant and subject to fair sentencing guidelines, jury nullification would not occur. Prosecutors and judges often have the most power in the judicial system, but with jury nullification becoming more common, the jury itself is obtaining more power than it once had. While this trend could make laws fairer, it also leaves room for misuse. “Racist juries in the South, for example refused to convict people who committed violent acts against civil-rights activist, and nullification has been used in cases involving the use of excessive force by police” (Butler 2011, 2). Cases like this show the possibility of misuse when it comes to jury nullification. Instead of using it to produce a fair result, it is used to discriminate. Despite such problems, jury nullification is often used for good and the advantages can outweigh the disadvantages. Similar to how scientific jury selection can provide a fair trial, as with the venue change in Father Berrigan’s case, jury nullification can also promote fairness.

Attempts to convict Dr. Jack Kevorkian, famous for practice doctor-assisted suicide, frequently resulted in jury nullification. On October 23, 1991, Marjorie Wantz and Sherry Miller were reported dead after being assisted in suicide by Kevorkian. Wantz had been suffering from extreme pain, and Miller was in late stages of multiple sclerosis. At the end of the trial, Kevorkian was found guilty of the two counts of murder but the delivery of the drug charge was dropped. The defense appealed the case to the circuit court. The court instructed the jury, suicide or the assist of suicide is murder. Nonetheless, the jury eventually chose not to convict Kevorkian of the charges even though they had no doubt that he had acted in clear violation of

the law. The attitudes of the jurors biased their decision and they ignored the law as a result (Kevorkian 1994).

Cases involving doctor-assisted suicide rely on jurors' attitudes toward murder and suicide. Those who view doctor-assisted suicide as a humanitarian act will ignore the law and set free doctors such as Kevorkian. By contrast, jurors strongly opposed to suicide would not engage in jury nullification. What Dr. Kevorkian did was clearly illegal, yet jurors considered it to be the right thing to do. "What this proves is that while this may be a sin to you one thing is clear: For any enlightened human being, this can never be a crime" (Lessenberry, 1996). Kevorkian did not act with ill intent when he broke the law. His goal was to relieve suffering women of their pain and that could not have been done within the law. Cases such as these involve personal ethics. Is it just to convict a man who was relieving people of pain at their request? Said one juror, "none of the jurors had any doubt that the dead women's decision was their own... All jurors said they were moved by the videotapes the two women made in which they talked of their misery and begged to be allowed to die. None said they thought the fact that the women were not terminally ill was an issue" (Lessenberry, 1996). This issue is often left for the jury to decide, and their underlying attitudes will guide them in reaching a conclusion.

Jury nullification also occurs in domestic violence cases. Current laws regarding domestic violence make it difficult for victims to get justice. Only physical acts are taken into account when determining the severity of abuse, which neglects the psychological pain inflicted onto a victim. Not only can this limitation leave out important factors of the abuse, but victims have stated that psychological pain is often the worst pain they endure during the abuse cycle. "Non-physical manifestations of power and control that characterize the abusive relationship are simply not recognized by the criminal law. The full extent of battering's harm is inflicted over

time, yet crimes of violence are generally contingent on physical injury or the imminent threat of it” (Tuerkheimer 2004, 972). When psychological pain is neglected, the law is not recognizing patterns of control, and patterns of abuse are often seen as simple assault crimes.

“The elements of a crime—defined statutorily—what is (and is not) meaningful from a criminal justice perspective” (Tuerkheimer 2004, 974). According to present standards, mental abuse is not taken into account in domestic violence cases. This makes physical acts appear as separate instances, as opposed to an ongoing abuse. This aspect of criminal law makes jury nullification prevalent in domestic violence cases. The case of Deborah Davis shows how jurors will neglect the law when the defendant suffered abuse. After enduring a marriage marked by physical and sexual abuse, Davis shot her husband in the head as he slept. Prior to the shooting, her husband had told her she would be experiencing more abuse in the morning, and Davis took matters into her own hands to end it. After claiming that the system failed to protect her and other women in similar situations, the jury decided to acquit her of all charges despite her clear violation of the law (Graff 1988, 2). Men and women are often treated differently in these cases because it is difficult to prove the murder was an act of self-defense. They are also similar to petty drug crimes and doctor-assisted suicide in that jurors do not know they have the ability not to convict despite the law. Because jury nullification blatantly ignores the law, it is neither presented to jurors nor promoted prior to deliberation. However, in the case of Deborah Davis, the jury believed that even though murdering her husband was a clear violation of the law, she had a reasonable defense for doing it. The law permits acts of murder in times of self-defense or other mitigating circumstances. Davis was not in immediate danger when she shot her husband, but the history of abuse and threat that it would continue in the morning was enough for the jury not to convict.

Jury nullification in murder cases prompted by domestic abuse allows the defendant to be perceived as the victim instead of being punished for the act. “The repeated jury nullification in battered women's cases clearly signals that something is amiss in our system of justice. Because we refuse to openly accept the excuse of personal necessity, we lack an appropriate legal avenue through which we can express compassion for individuals who succumb to human weakness and commit wrongful acts under circumstances in which we would probably do the same” (Graff 1988, 23). The choice of the jury reflects their attitudes toward domestic violence and the guidelines outlined by the law. In 2000, 38.3% of all assaults were domestic abuse assaults. Of that percentage, only .8% of the defendants were taken into custody and the rest were released on probation ([www.bjs.gov](http://www.bjs.gov)). Such low conviction rate may inhibit woman from bringing forth charges. When the jury nullifies, bias is formed against the law and against the typical punishment for such murder. Disliking abuse of women, juries externalize this bias, and so the female victim of abuse may go free, even when she has murdered her abuser. While there is not an overwhelming number of such acts of jury nullification if domestic abuse of women remains prevalent, courts will be seeing such cases much more frequently.

The results of jury nullification show the consequences of bias. While the examples presented above show positive results such as fair trials and sentencing, they all involve deliberate disregard of the law. Jury nullification reflects decisional bias because an individual's attitudes toward a subject skews the decision being made. It projects attitudes into a form of a behavior that will dictate a decision. The outcome of jury nullification is often beneficial but presents a larger issue with regard to the law. How serious can a crime be, and still justify nullification of the law? There is bias within each stage of the jury process, but bias is most



prominent when a jury nullifies because it determines whether a person is to be acquitted despite violation of the law.

In the case of petty drug crimes, doctor-assisted suicide, and domestic violence murders, nullification is used to acquit defendants of crimes jurors believe they should not have been charged with. As marijuana has been legalized in many states, nullification occurs because jurors do not agree with the typical sentence imposed where possession and use is still illegal. Since jury nullification is happening, the most beneficial next step would be to make sentencing guidelines more lenient in relation to the crime. If jurors consider the punishment for the crime to be fair, the chance of jury nullification decreases. Fair trials can occur without the violation of the law that nullification entails. Jury nullification as a whole creates a bias in the jury process. The decisions being made, which ultimately affect someone's life, are skewed based on the jury's attitudes. With the jury's verdict being the final act of a trial, decisional bias can lead to jury nullification and the law not being applied.

### **III. Conclusion**

The notion that justice is blind and that the judicial system is based on a system of fairness and equality is highly dubious in light of the four types of jury bias analyzed in this paper. Each stage of the jury process involves a unique bias; collectively, they can skew the verdict of a jury. Starting with the first stage, scientific jury selection, bias occurs in identifying potential jurors based on their attitudes and values. Attorneys on both sides are looking for a set of jurors whose attitudes are likely to benefit their client. This undermines the unbiased jury we typically expect. However, this bias is not always harmful. While scientific jury selection does detract from an unbiased system, it is often used to create a fairer trial. In the instance of a venue change, the defendant is able to present a case to a jury that is less likely to discriminate based on

race, gender, or the issues presented. Scientific jury selection can be used to prevent certain individuals from becoming jurors, but the advantages of this bias outweigh the disadvantages.

The next stage in the jury process is the use of peremptory challenges, which involves “characteristic bias.” By using race and gender to identify the characteristics that would either be favorable or detrimental to one side of the case, attorneys discriminate and strike witnesses to skew the results. While this step is relatively similar to scientific jury selection, it differs because it takes place in the courtroom rather than beforehand. Attorneys will strike people whose race, gender, or appearance does not seem favorable to their side of the case. Peremptory challenges seek not to identify attitudes but to discriminate against individuals, thereby harming the legal system.

“Behavioral bias” occurs when the size of the jury is altered. Cutting a 12-person jury in half creates a small-group dynamic that can produce outcomes different from those produced by a 12-person jury. With a jury intended to be composed of twelve individuals, the benefits of reducing the size do not outweigh the detrimental impact on the verdict. With the savings to the jury portion of the budget representing only a small portion of the total court budget, the risk of unfair trials is too great.

The last stage in the jury process, rendering a verdict, displays “decisional bias” if jury nullification takes place. The decisional bias here tends to be beneficial, but there is a fine line that could be crossed. The disregard for the law is worrisome but the frequent occurrence of shows there are flaws in the legal system with regard to sentencing guidelines for different crimes. These four forms of bias each have advantages and disadvantages that must be considered when evaluating the jury process as a whole.

Some of the bias formed is negative, while some aids in promoting and ensuring fairness. The system does not necessarily require the removal of all bias, just the harmful kind. If all bias were removed, the system would suffer more than if it was left as is. While it is difficult to determine which kind of bias is good and which is bad in a system that is supposed to be free of any bias, the intentions and motives behind each kind must be taken into account. Scientific jury selection and jury nullification are each used to promote fairness. When a venue is changed, or a verdict is given not in accordance with the law because it is unfair, the intentions and results are often good. By contrast, the use of peremptory challenges and changes to the size of a jury bias the process in a negative way. The motives behind these two steps are selfish and discriminatory. The decrease in cost is not nearly substantial enough to risk flawed verdicts; and the bias behind peremptory challenges is rooted in discrimination and prejudicial judgment. Peremptory challenges do not consider the root of a juror's decision, as scientific jury selection does. Instead of being related to a potential juror's occupation, family life, or education, these challenges are based on an attorney's initial guess about that person's actual beliefs that may be wrong.

For the jury system to operate as intended, change must occur. The jury process must eliminate "bad" bias while maintaining the forms of bias that are "good". If blatant discrimination and shortcuts are avoided, trials will be based on the principles of justice and fairness. The bias shows that how the jury process was intended to work may not be entirely correct. A process free of any bias is neither possible nor desirable. To secure fairness while maintaining the same practices that are used today, the jury process must change the motives behind all the forms of bias. As seen with scientific jury selection and jury nullification, the benefits can be considerable when intentions are good. Peremptory challenges and changes to jury size show how quickly this bias can have a negative effect. If all stages of the jury process

were motivated by fairness like the first two, the system could eliminate this negative idea of bias. However, as of now, because the term “bias” can take so many different forms, it is seen as a bad thing, and the positive benefits are overlooked.

The jury process as a whole has bias, and that is acceptable. The reality is that without some forms of bias, such as attitudinal and decisional bias, fair trials may not be possible. For example, if a defendant was well known in a certain area tied to a crime, without a change in venue provided by scientific jury selection, the defendant may be wrongfully convicted or acquitted. The good bias works to ensure the fundamental principles of a jury, whereas the bad forms of bias tend to provoke a conscious decision to ignore and alter how the jury process was meant to be.

These notions of bias have many implications for the judicial system as a whole. Lady Justice is depicted wearing a blindfold to show objectivity and holding a set of scales to show fairness and equality. The current biases in the jury process undercut what this symbol stands for. The negative forms of bias result in a tilting to the scales. It is not fair to strike potential jurors because of their race or gender. Similarly, negative bias results when one member of a small group is able to have an inordinate influence on other jurors so as to alter their decisions. The good forms of bias work to restore equality and balance the scales by attempting to begin and end trials justly. Permitting so much bias in an important portion of the judicial system is risky but balances out when the good outweighs the bad. While the jury process is flawed, it is more practical to work on eliminating the negative bias than to eliminate juries entirely. Different forms of bias are prevalent in today’s jury process, and while this may seem to be detrimental, the process would fail without it. While the four types of jury bias cause Lady Justice’s scales to tip, she would be unable to do her job properly without them.

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